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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL H. GRISHAM,

Plaintiff,

v.

EIGHTH JUDICIAL DISTRICT FAMILY COURT OF CLARK COUNTY NEVADA, JUDGE VINCENT OCHOA,

Defendants.

Case No. 2:13-cv-02349-JCM-NJK

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants THE EIGHTH JUDICIAL DISTRICT COURT, FAMILY DIVISION (erroneously sued herein as the Eighth Judicial District Family Court of Clark County Nevada) (the "EJDC") and The Honorable Judge VINCENT OCHOA ("Judge Ochoa"), by and through their counsel of record, Catherine Cortez Masto, Attorney General, and William J. Geddes, Senior Deputy Attorney General, herein file *Defendants' Motion for Summary Judgment*. This motion is made pursuant to the following Points and Authorities, the pleadings and papers on file in this action, and any oral arguments the Court may entertain at any hearing set for this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. CASE OVERVIEW

This federal action challenges the propriety of a state-court's adjudication of divorce

proceedings, on constitutional grounds. (*Complaint*, Docket No. 001, p. 1, ll. 18-24.) The divorce case below was commenced on January 16, 2007 and proceeded in the Eighth Judicial District Court, Family Court Division, as Case No. 07-D368513 ("*Case 513*"). (*See Id.*) In the proceedings below, the state court issued a *Decree of Divorce* to Michael and Susie Grisham. (*See Section IV, infra, Statement of Fact Nos. 4-15*.) The *Decree of Divorce* incorporated a *Property Settlement Agreement* ("*PSA*"), proposed by the Grishams, which governed the distribution of their marital property. (*See Id*.)

In this action, Plaintiff Michael Grisham has sued the state court and Honorable Judge Vincent Ochoa, alleging that the court lacked proper jurisdiction to issue court orders in *Case 513*. (*See generally* Docket No. 001.) According to Grisham, such a lack of jurisdiction arose from the court's alleged bias, amounting to fraud, relating to the activities of Susie Grisham's first attorney, of the law firm Wells & Rawlings.[1] (*Id.*, p. 4, ll. 10-24.) Plaintiff alleges that Wells & Rawlings represented Susie Grisham at the outset of the underlying divorce proceedings, in conflict with the firm's prior representation of Michael Grisham in a prior marital action against Susie Grisham.[2] (*Id.*, p. 2, l. 21 to p. 3, l. 19.) Grisham alleges that he complained about these matters to the Eighth Judicial District Court, the Nevada Supreme Court, and the Nevada State Bar, to no avail. (*Id.*, p. 3, ll. 16-21.) Grisham alleges that the opposing attorneys and the judges of the Eighth Judicial District Court did not acknowledge the matter, so as to "cover[ ] for their fellow attorney which has subverted due process and committed fraud upon the court." (*Id.*, p. 4, ll. 13-24.) Plaintiff alleges that such a result "corrupted" the impartial functions of the court.[3] (*Id.*) On these

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[1] The record shows that the original complaint filed by Susie Grisham was filed by her attorney Gregg A. Hubley, of the law firm Wells & Rawlings. (**Exh. A**, p. 1, ll. 1-6 (caption header); and p. 6, ll. 6-9 (signature block).) Thus, Michael Grisham has not established that Kirby Wells ever performed any legal work on this matter; it is known only that someone at Kirby Wells' law firm, Wells & Rawlings, performed such work.

[2] Plaintiff also complains that, upon withdrawing from its representation of Susie Grisham in the underlying divorce case, Wells & Rawlings referred her case to another law firm. (Docket No. 001., p. 2, l. 21 to p. 3, l. 19.) Michael Grisham alleges that such a case referral constituted the "giving [of] further legal advice . . . to Susie Grisham," in violation of Michael Grisham's attorney-client relationship with Wells & Rawlings. (*Id.,* p. 4, ll. 10-13.)

[3] Michael Grisham also alleges that he was wrongfully discriminated against by the court, when he was not permitted to file a pleading in *Case 513*, on behalf the opposing party, his wife. (Docket No. 001, p. 3, l. 22 to p. 4, l. 2.) Plaintiff claims that Defendant Judge Ochoa disallowed such a filing, which Plaintiff claims amounted to applying a "double standard" because the judge allowed the Wells & Rawlings firm to file a pleading on behalf of Susie Grisham, but disallowed Michael Grisham to file a pleading on behalf of Susie Grisham. (*Id.*, p. 4, ll. 2-9.)

allegations and theories, Plaintiff claims that the state court "never had original jurisdiction" to hear *Case 513*. (*Id.*, p. 4, l. 25 to p. 5, l. 3.) Plaintiff concludes:

> [due to] the violation of Due Process of representation and privilege of the attorney client relationship, there can be no Final Judgment whether that be of the District Court or Supreme Court of the State of Nevada to enforce under the Full Faith and Credit Clause of Article IV Section 1 of the United States Constitution orders to sell the property of Michael Grisham in another state.

(*Id.*, p. 4, l. 26 to p. 5, l. 3.)

Here, Grisham seeks declaratory relief in the form of an order issued by this Court, declaring that the state court's "findings, decrees, and orders [are] void and legally unenforceable." (Docket No. 001, p. 5, ll. 5-13.) Grisham also seeks to have this Court declare that the state court cannot exercise continuing jurisdiction over *Case 513*.[4] (*See e.g.*, Docket No. 001, ll. 5-8 (asking this Court to find that the state district court does not have jurisdiction to hear, adjudicate, and issue orders in *Case 513*).) Grisham also appears to seek injunctive relief, to block the sale of certain marital property.[5] Federal jurisdiction of this action is ostensibly based on: (1) the Full Faith and Credit Clause of Article IV, § 1 of the U.S. Constitution; (2) 28 U.S.C. 1738; (3) the Privilege and Immunities Clause of Article IV of the U.S. Constitution; (4) the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution; and (5) the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. (*See* Docket No. 001, p. 1, l. 18 to p. 2, l. 3).[6]

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[4] Doing so would contradict Nevada law. *See* Nevada Revised Statutes ("NRS") 125.150(6)-(7) (envisioning that the family court may subsequently resume its jurisdiction to modify a property settlement agreement or to alter a payment schedule for spousal obligations, based on changed circumstances); NRS 125.240 (allowing the family court to enforce the final judgment on divorce "by such order as it deems necessary"); and *Barelli v. Barelli*, 113 Nev. 873, 944 P.2d 246 (1997) (confirming that subsequent proceedings to reform or rescind property settlement agreements fall within the family court's jurisdiction). (*See* **Exh. D**, p. 27, § 23, Spousal Support/Alimony (*Decree of Divorce* and *PSA* require Grisham to pay spousal support to Susie Grisham, every month until she remarries or dies). Thus, taken together, NRS 125.150, 125.240, and **Exh. D**, § 23 frame the possibility that subsequent disputes might arise among the Grishams, requiring the state court to resume its jurisdiction of *Case 513*.)

[5] (*See e.g.*, Docket No. 001-3 (Plaintiff's "*Petition for Temporary Stay,*" which appeared to be a motion for a preliminary injunction, seeking to enjoin the sale of the community property in Big Bear City, California) (petition stricken in Docket No. 008, upon Defendants' *Motion to Strike*, Docket No. 007).)

[6] Defendants filed an *Answer* ("*Answer*") to the *Complaint*, generally denying its allegations. (*See generally Answer*, Docket No. 006.) In their *Answer*, Defendants interposed thirty-five (35) affirmative defenses, including those that challenged the viability of this action. (*See e.g.*, *Answer*, Docket No. 006, pp. 3-8, Affirmative Defense Nos. 2-4, 8-9, 21-26 (raising the affirmative defenses of: Plaintiff's lack of standing; the Court's lack of jurisdiction over the

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II. SUMMARY OF LEGAL ARGUMENT

Defendants herein move the Court to grant them summary judgment. First, the Court's jurisdiction is not proper here, as federal district courts cannot review final state court determinations. As well, federal courts usually abstain from adjudicating domestic-relations cases. Second, the Court should apply claim preclusion and issue preclusion here, to bar the relitigation of matters previously adjudicated. Third, this action fails to state cognizable claims, as they proceed directly on the constitution, rather than by 42 U.S.C. § 1983. The constitutional claims also fail under the Full Faith and Credit Clause, the Privileges and Immunities Clause, the Due Process Clause, and the Equal Protection Clause, including for immunity reasons. Finally, Grisham consented to the terms *PSA*, implicating contractual obligations, not constitutional claims. He should be *estopped* from challenging the propriety of the state courts' jurisdiction in *Case 513*, as he voluntarily availed himself of those state-court forums, including on appeal.

III. REQUEST FOR JUDICIAL NOTICE

In the Ninth Circuit, courts "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue." *U.S. ex rel. Robinson Rancheria Citizens Counsel v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (citing *St. Louis Baptist Temple, Inc. v. FDIC*, 605 F.2d 1169, 1172 (10th Cir.1979). Here, the subject matter of this action involves *Case 513*, and its appeal, which proceeded in the Nevada Supreme Court as Case No. 55394 ("*Case 394*").[7] Judicial notice is proper here.[8]

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claims and parties, the *Complaint*'s failure to state a claim; Plaintiff's failure to join necessary parties under Rule 19; and the application of various types of immunity that bar the claims of this action, including absolute judicial immunity).)

[7] (*See e.g., Complaint*, Docket No. 001, p. 1, ll. 18-25; p. 2, ll. 15-24 (allegations reference the court proceedings of *Case 513*); *Id.*, p. 5, ll. 5-14 (same); *Complaint for Decree of Separate Maintenance* filed in *Case 513*, attached hereto as **Exh. A**; *Opinion* by the Nevada Supreme Court decided in *Case 394*, attached hereto as **Exh. F** (also reported in *Grisham v. Grisham*, 289 P.3d 230 (Nev. 2012)).

[8] The accuracy of these proceedings and court records "cannot reasonably be questioned" because they may be verified by accessing the official, state-court records. *See Adams v. Carey*, 2009 WL 4895545, 2 (the accuracy of a court record submitted on a motion could not reasonably be questioned, inasmuch as the court record could be checked by accessing court records). Moreover, even without the Court taking judicial notice of the proceedings and filings of *Case 513* and *Case 394*, **Exhs. A-F** supply a sufficient body of evidence to support Defendants' *Concise Statement of Facts Not Genuinely In Issue*, contained in § IV of this motion. **Exhs. A-F** are self-authenticating under Federal Rule of Evidence ("Fed. R. Evid.") 902. As well, **Exh. A** is attached to Plaintiff's *Complaint*, at Docket No. 001, pp. 12-18; thus, he does not contest the authenticity of this exhibit. **Exhs. A-F** are certified copies of public records filed in the Eighth Judicial District Court and the Nevada Supreme Court. *See* Federal Rule of Evidence

Defendants request that the Court take judicial notice of the filings and proceedings in *Case 513* and *Case 394*, including the following documents: (1) *Complaint for Decree of Separate Maintenance* filed *Case 513*, attached hereto as **Exhibit** ("**Exh.") A**; (2) *Substitution of Attorneys*, filed in *Case 513*, attached hereto as **Exh. B**; (3) *Answer to Complaint for Decree of Separate Maintenance and Counterclaim for Decree of Divorce*, filed in *Case 513,* attached hereto as **Exh. C**; (4) *Decree of Divorce* and incorporated *PSA*, entered in *Case 513,* attached hereto as **Exh. D**; and (5) *Court Docket*, of *Case 513,* attached hereto as **Exh. E**; and (6) *Opinion* by the Nevada Supreme Court decided in *Case 394*, attached hereto as **Exh. F**, as reported in *Grisham v. Grisham*, 289 P.3d 230 (Nev. 2012).

IV. CONCISE STATEMENT OF FACTS NOT GENUINELY IN ISSUE[9]

1. On January 16, 2007, Susie Grisham filed a *Complaint for Decree of Separate Maintenance* in *Case 513*, naming Michael Grisham as a Defendant. (**Exh. A**; and **Exh. E**, at p. 24, Entry No. 7);

2. On January 22, 2007, Susie Grisham substituted counsel in *Case 513*, appointing Radford J. Smith, of the law office of Radford J. Smith, Chartered, to represent her in the place and stead of Gregg A. Hubley, of Wells & Rawlings. (**Exh. B**; and **Exh. E**, at p. 24, Entry No. 6);

3. On February 7, 2007, Michael Grisham filed his verified *Answer to Complaint for Decree of Separate Maintenance and Counterclaim for Decree of Divorce* in *Case 513*. (**Exh. C**; and **Exh. E**, at p. 23, Entry No. 5);

4. On May 19, 2008, *Case 513* proceeded to trial, and on the first day of trial, the parties appeared with their lawyers to advise the Court that they had reached an out-of-court

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("Fed. R. Evid.") 902(4) (certified copies of official records or documents filed in a public office are self-authenticating). **Exh. F** is self-authenticating because it purports to be a court opinion published by the public authority of the Nevada Supreme Court, as signed by the Nevada Supreme Court Justices. *See* Fed. R. Evid. 902(5) (publications purporting to be issued by a public authority are self-authenticating). **Exh. D** is self-authenticating because it purports to be a court decree published by the Eighth Judicial District Court, as signed by a District Court Judge. *See* Fed. R. Evid. 902(5). Finally, **Exh. E** is self-authenticating because it purports to be a publication issued by the public authority of the Eighth Judicial District court, summarizing its legal proceedings in *Case 513*, *i.e.*, the district court's docket. *See* Fed. R. Evid. 902(5).

[9] A fact is "material" if it "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id*.

settlement of the case. (**Exh. F**, p. 2, ll. 12-13; and (**Exh. E**, p. 35, Entry No. 5);

5. The final draft of their *PSA* contained some last-minute handwritten changes, and the Grishams' lawyers did not have sufficient time to prepare a clean, execution copy; yet they asked to put the settlement on the record and to proceed with an uncontested, divorce-prove-up hearing, leaving the ministerial task of preparing and signing a clean copy of the *PSA* and entering a final decree. (**Exh. F**, p. 2, ll. 13-19);

6. At the divorce-prove-up hearing, the Grishams' lawyers read into the record the few handwritten notations on the *PSA* draft and "stipulated that the *PSA* with its handwritten changes would be binding on the parties today," with Michael Grisham testifying that "he had reviewed, understood, and agreed to the *PSA*" and confirming that "he recognized he would be bound by the *PSA*" (**Exh. F**, p. 2, l. 23 to p. 3, l. 12);

7. At the end of the end of the divorce-prove-up hearing, the court orally accepted the settlement and recapped the agreement reached by the Grishams at the hearing. (**Exh. F**, p. 3, ll. 13-21; and **Exh. E**, p. 35, Entry No. 5);

8. Michael Grisham's lawyer generated a clean copy of the *PSA*, which Susie Grisham and her attorney signed and returned. (**Exh. F**, p. 3, ll. 22-23);

9. Michael Grisham did not sign the *PSA* and later ignored his lawyer's letters and calls, pursuant to which his lawyer withdrew as counsel and asserted an attorney's lien, which the court reduced to judgment. (**Exh. F**, p. 3, ll. 23-26);

10. Several months later, with no progress having been made on the case, Susie Grisham moved for entry of a divorce decree based on the *PSA*, which was not signed by Michael Grisham. (**Exh. F**, p. 3, ll. 27-28);

11. Representing himself, Michael Grisham did not file a written opposition to Susie Grisham's motion for entry of the divorce decree, but instead moved for a mistrial. (**Exh. F**, p. 3, ll. 28-29);

12. In support of her motion, Susie Grisham argued that, although Michael Grisham had refused to sign the *PSA*, the district court could enforce the *PSA*, "based on the prove-up hearing transcript and minute order." (**Exh. F**, p. 3, l. 30 to p. 4, l. 1);

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13. After further proceedings, including a hearing at which Michael Grisham appeared and orally opposed Susie Grisham's motion, and on September 30, 2008, the district court entered a final, written decree incorporating the *PSA*. (**Exh. F**, p. 4, ll. 1-4; and **Exh. E**, p. 34, Entry No. 5);

14. On September 30, 2008, the state court granted Susie Grisham's motion to enforce the *Decree of Divorce*, notwithstanding Michael Grisham's refusal to sign the *PSA*, and the *Decree of Divorce*, declared, among other things, that: (a) the bonds of matrimony between the Grishams were dissolved; (b) the division of the marital property, as set forth in the *PSA,* was ratified, confirmed, and incorporated into the decree; (c) the spousal support obligations, as set forth in the *PSA,* were ratified, confirmed, and incorporated into the decree; (d) the *PSA*, itself, was incorporated into the decree; and (e) the state court retained continuing jurisdiction over the sale of marital assets and spousal support obligations. (**Exh. E**, p. 34, Entry No. 5; and *see generally* **Exh. D**);

15. Subsequently, Grisham commenced his appeal of *Case 513*, and on December 6, 2012, the Nevada Supreme Court issued its decision in *Case 394*, affirming the district court's decision in *Case 513*, relating to the enforceability of the *PSA*, notwithstanding the fact that Michael Grisham refused to sign it. (*See generally* **Exh. F**; and *Id.* at p. 2, ll. 3-4); and

16. On December 14, 2013, *Case 513* was closed, upon the filing of the judgment in the case. (*See* **Exh. E**, p. 24, Entry No. 8 and 11).

V. LEGAL STANDARDS

A. Summary Judgment

Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 56(b) allows parties to file a motion for summary judgment at any time until 30 days after the close of all discovery. Fed. R. 56(b). Summary judgment is appropriate when it is demonstrated that there exists no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c).[10] The moving party bears the initial burden of informing the district court of

[10] The "purpose of summary judgment is to 'pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citations omitted).

the basis for its motion for summary judgment, and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," which the moving party believes demonstrate the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323.[11] If the moving party meets its initial burden here, the burden then *shifts* to the opposing party to establish that a genuine issue as to any material fact does, indeed, exist. *Matsushita*, 475 U.S. at 586.[12] When attempting to establish the existence of such a factual dispute, the opposing party is not permitted merely to rely upon on its pleadings, but is required to tender evidence of specific facts in the form of affidavits, and/or admissible discovery material, in support of his or her contention that the dispute does exist. Fed. R. Civ. P. 56(e); *Matsushita*, 475 U.S. at 586 n. 11.[13]

B. Federal-Question Jurisdiction of the Federal Courts

"Unlike state courts, federal courts are courts of limited jurisdiction. Federal courts have subject-matter jurisdiction only over cases or controversies that the United States Constitution and Congress authorize them to adjudicate." *PWFG Reo Owner LLC v. Barbieri*, 2012 WL 4371193, 1 (N.D.Cal. 2012).[14] "The existence of federal question jurisdiction is ordinarily determined from the face of the complaint." *Addison*, 2011 WL 146516 at 2 (citing *Ultramar Am. Ltd. v. Dwelle*, 900 F.2d 1412, 1414 (9th Cir.1990)). Yet, the "'mere presence of a federal issue in

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[11] The court may also rely on judicially-noticed documents filed in the underlying litigation, when ruling on a summary judgment motion. (*See Ins. Co. of N. America v. Hilton Hotels U.S.A., Inc.*, 908 F.Supp. 809 (D.Nev. 1995) (in an insurance-coverage litigation, the court took judicial notice of the court-filed documents in the underlying litigation, when adjudicating a summary judgment motion).)

[12] The evidence of the non-moving party is to be believed. *Anderson*, 477 U.S. at 255. All reasonable inferences that may be drawn from the facts placed before the court must be drawn in favor of the opposing party. *Matsushita*, 475 U.S. at 587. That having been said, inferences are not drawn out of the air, and it is the opposing party's obligation to produce a factual predicate from which the inference may be drawn. *Richards v. Nielsen Freight Lines,* 602 F.Supp. 1224, 1244-45 (E.D.Cal.1985), *aff'd*, 810 F.2d 898, 902 (9th Cir.1987).

[13] The non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita*, 475 U.S. at 586. Here, the Court is concerned with establishing the existence of genuine issues, and where the record on the whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial. *Id*. at 587.

[14] 28 U.S.C. § 1331 provides: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. "A suit arises under the Constitution and laws of the United States only if the original statement of the plaintiff's cause of action shows that it is based on the Constitution or federal statutes." *Addison v. Countrywide Home Loans, Inc.*, 2011 WL 146516, 2 (D.Nev. 2011) (citing *Louisville & Nashville R .R. Co. v. Mottley*, 211 U.S. 149 (1908)).

a state cause of action does not automatically confer federal-question jurisdiction.'" *Addison*, 2011 WL 146516 at 2 (quoting *Merrell Dow Pharm. Inc. v. Thomas*, 478 U.S. 804, 813 (1986)). "'[O]riginal federal jurisdiction is unavailable unless it appears that some substantial, disputed question of federal law is a necessary element of one of the well-pleaded state claims....'" *Addison*, 2011 WL 146516 at 2.[15]

VI. LEGAL ARGUMENT

A. Federal District Courts Cannot Review Final State Court Determinations

"It is well-established that a federal district court does not have authority to review the final determination of a state court." *Pilger v. Bank of America, N.A.*, 2013 WL 2211647, 2 (D.Nev. 2013) (citing *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983)).[16] "The *Rooker–Feldman* doctrine generally bars federal district courts 'from exercising subject matter jurisdiction over a suit that is a de facto appeal from a state court judgment.'" *Davies*, 2009 WL 1561579 at 4 (quoting *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139 (9th Cir. 2004)).[17] The Supreme Court explained that the *Rooker–Feldman* doctrine "is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and

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[15] Quoting *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 13 (1983)) and citing *Grable & Sons Metal Products, Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 314 (2005) (the legal question asks whether "a state-law claim necessarily raise[s] a stated federal issue . . . without disturbing any congressionally approved balance of federal and state judicial responsibilities")). "As federal courts are courts of limited jurisdiction, a plaintiff bears the burden of establishing that his case is properly filed in federal court." *Darkins v. Snowden*, 2013 WL 5530977, 3 (C.D.Cal. 2013) (citing *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994); and *In re Ford Motor Co./Citibank (South Dakota), N.A.*, 264 F.3d 952, 957 (9th Cir.2001)). "This burden, at the pleading stage, must be met by pleading sufficient allegations to show a proper basis for the federal court to assert subject matter jurisdiction over the action." *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936).

[16] *See also Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923); and *Johnson v. De Grandy*, 512 U.S. 997, 1005–06 (1994) ("a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights.") "Review of state court decisions can be secured only in the United States Supreme Court." *Pilger*, 2013 WL 2211647 at 2 (citing *Feldman*, 460 U.S. at 482; *Worldwide Church of God v. McNair*, 805 F.2d 888, 890 (9th Cir.1986) ("[t]he United States District Court, as a court of original jurisdiction, has no authority to review the final determinations of a state court in judicial proceedings").

[17] *See also Robinson v. Ariyoshi*, 753 F.2d 1468, 1471–72 (9th Cir.1985) (federal court has no jurisdiction over federal constitutional issues if consideration would require a review of the allegations underlying the state judicial decision), *vacated on other grounds*, 477 U.S. 902 (1986); *Texaco v. Pennzoil Co.*, 784 F.2d 1133, 1141-42 (2nd Cir. 1986) (inferior federal courts may not act as appellate tribunals over state courts) *prob. juris. noted*, 477 U.S. 903).

inviting district court review and rejection of those judgments." *Davies v. Doi*, 2009 WL 1561579, 4 (D.Hawai'i 2009) (quoting *Exxon Mobil Corporation v. Saudi Basic Industries Corporation*, 544 U.S. 280, 284 (2005)).[18]

Here, Grisham is asking this Court to invalidate a divorce decree and a property settlement agreement that he consented to in open court, both of which were confirmed to be valid and enforceable by the Nevada Supreme Court.[19] However, it is improper for a federal district court to review the final determinations in *Case 513* and *Case 394*. Michael Grisham lost his case twice, at the state court level and on appeal. He cannot insist upon another appellate review of the state-court judgment in a U.S. district court, based on a claim that the "state judgment itself violates the loser's federal rights." *Johnson*, 512 U.S. at 1005–06. Given the absence of federal, subject-matter jurisdiction here, summary judgment is proper.

B. Federal-Court Abstention in Domestic-Relations Matters

Even if jurisdiction otherwise existed here, federal courts abstain from cases that "would deeply involve them in adjudicating domestic matters." *Thompson v. Thompson*, 798 F.2d 1547, 1558 (1986).[20]

> The strong state interest in domestic relations matters, the superior competence of state courts in settling family disputes because regulation and supervision of domestic relations within their borders is entrusted to the states, and the possibility of incompatible federal and state court decrees in cases of continuing judicial supervision by the state makes federal abstention in these cases appropriate.

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[18] Federal claims amounting "to nothing more than an impermissible collateral attack on prior state court decisions" are impermissible especially when "[s]uch an order would implicitly reverse the state trial court's findings." *Branson v. Nott*, 62 F.3d 287, 291–92 (9th Cir.1995). Moreover, "It is now settled that a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Pilger*, 2013 WL 2211647 at 2. *See also Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984) (discussing res judicata and collateral estoppel under the Constitution's full faith and credit clause and the parallel federal statute–28 U.S.C. § 1738).

[19] (*See* Docket 001, p. 5, ll. 5-8 (asking the Court to "find[ ] [t]he Eighth Judicial District Family Court of Clark County never had Original Jurisdiction and does not have Jurisdiction to hear, adjudicate, and issue orders" in *Case 513*); and **Exh. F** (confirming that Grisham consented to the terms of the *PSA* in open court, and affirming the validity of the *Decree of Divorce* and the *PSA*).)

[20] *See also Firestone v. Cleveland Trust Co.*, 654 F.2d 1212, 1215 (6th Cir.1981); *Bergstrom v. Bergstrom*, 623 F.2d 517, 520 (8th Cir.1980); *Huynh Thi Ahn v. Levi*, 586 F.2d 625, 632–34 (6th Cir.1978); and *Hernstadt v. Hernstadt*, 373 F.2d 316, 318 (2d Cir.1967)).

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Peterson v. Babbitt, 708 F.2d 465, 466 (9th Cir. 1983).[21]

Here, Grisham seeks to dismantle a state-court issued *Divorce Decree* and the *PSA*. He seeks to invalidate the divorce proceedings below, overrule an appellate decision, and enjoin a state court from exercising its statutorily-prescribed, continuing jurisdiction to enforce or modify the *Decree of Divorce* and the *PSA*, including for spousal-support obligations. However, "Nevada has a strong interest in protecting valid divorce decrees." *Vaile v. Eighth Judicial District Court ex rel. County of* Clark, 118 Nev. 262, 272 (2002). By invalidating the *Decree of Divorce* and its *PSA*, this federal Court would alter the status quo of now-unmarried persons, ostensibly returning them to the legal status of husband and wife. By invalidating the *PSA*, this Court would alter Michael Grisham's spousal support obligations, by eliminating them. Grisham's request justifiably triggers federal-abstention concerns, with no apparent benefit to be gained. No discernable objective would be gained by invalidating the decisions below and instituting a new round of divorce proceedings. Doing so will not "unring any bells" or eliminate any confidential information that arguably might have been gained by Susie Grisham during her brief engagement of the Wells & Rawlings firm in the divorce proceedings below.[22] She now knows what she now knows, if anything, and any confidential information gained from Wells & Rawlings cannot forcibly be erased from her mind, by an order of the Court. *See e.g. Lexington Ins. Co. v.* Swanson, 2007 WL 905776 (W.D.Wash. 2007) ("once a witness has been shown a document, there would be no way to 'unring the bell' and tell the witness to forget about the document"); and *Bud Antle, Inc. v. Grow-Tech, Inc.*, 131 F.R.D. 179 (N.D.Cal. 1990) (where a privileged document was inadvertently disclosed to an opposing party, "the bell has already been rung, and the court cannot now unring it by denying defendants access to the letter").) For good reason, courts have shown a

[21] *See also Moore v. Sims*, 442 U.S. 415 (1979). This "domestic relations exception" is narrowly confined to cases that "consist of those where a federal court is asked to grant a divorce or annulment, determine support payments, or award custody of children. There is no subject matter jurisdiction over these types of domestic disputes." *Peterson*, 708 F.2d at 466 (citing *Csibi v. Fustos*, 670 F.2d 134,137 (9th Cir. 1982)).

[22] Grisham has not demonstrated how Wells & Rawlings' brief and early involvement inured to his legal detriment during the years-long litigation. The record reflects that a substitution of counsel occurred before Michael Grisham even filed his responsive pleading. (*See* **Exh. E**, p. 24, Entries 6 and 7 (*Substitution of Attorney* was filed on January 22, 2007, shortly after Susie Grisham's original pleading was filed on January 16, 2007); and *Id.*, p. 23, Entry No. 5 (Michael Grisham filed his *Answer and Counter-claim* on February 7, 2007, after the substitution of counsel).)

willingness to abstain from futile adjudication, and Grisham's request here is a futile one.[23] Moreover, the attorney-client issue that Grisham raises does not state a constitutional claim here. "Standing alone, the attorney-client privilege is merely a rule of evidence; it has not yet been held a constitutional right." *Clutchette v. Rushen*, 770 F.2d 1469, 1471 (9th Cir. 1985) (citing *Maness v. Meyers*, 419 U.S. 449, 466 n. 15 (1975); *Beckler v. Superior Court*, 568 F.2d 661, 662 (9th Cir.1978)).[24] Accordingly, it is proper for the Court to avoid becoming deeply involved in adjudicating domestic matters, and to exercise abstention here.

C. The Claims of this Case Are Barred by Claim Preclusion

28 U.S.C. § 1738 extends the Full Faith and Credit Clause to the federal judiciary, "requiring federal courts to 'give the same preclusive effect to state court judgments that those judgments would be given in the courts of the State from which the judgments emerged.'" *Sille v. Parball Corp.*, 2013 WL 5435828, 1 (D.Nev. 2013) (quoting *Kremer v. Chem. Const. Corp.*, 456 U.S. 461, 466 (1982)). Thus, when evaluating the claim preclusion and issue preclusion arguments presented herein, the court must apply Nevada law, not federal law. *Bushman v. Safeway Stores, Inc.*, 608 F.Supp. 232, 235 (D.Nev. 1985) (28 U.S.C. § 1738 "directs a federal court to refer to the preclusion law of the state in which judgment was rendered," and disallows a federal court from employing its "own rules of res judicata in determining the effect of state judgments"). In Nevada, claim preclusion applies to bar a legal claim that was previously litigated, when: (1) the parties or their privies of both cases are the same; (2) there is a valid, final judgment

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[23] *See e.g. Klamath Tribe Claims Committee v. U.S.*, 97 Fed.Cl. 203, 213 (Fed.Cl. 2011) (courts will avoid a "futile gesture" of issuing unenforceable order) (citing *Fed. Practice & Procedure* § 2945); *Marseilles Hydro Power, LLC v. Marseilles Land and Water Co.*, 299 F.3d 643, 647 (7th Cir. 2002) ("an unenforceable order is no order at all"); *Callaway v. McRae*, 2008 WL 3200728, 4 (court denied motion for injunctive relief that essentially requested the court to issue an unenforceable order); *U.S. v. Kemp*, 938 F.Supp. 1554, 1571 (N.D.Ala. 1996) ("the imposition of unenforceable sentences breeds contempt for the justice system"); *Plotnick v. Deluccia,* 2013 WL 7869380 (N.J.Super.Ch. 2013) ("[i]n short, this court declines to impose an unenforceable order"); and *In re Marriage of Condon*, 62 Cal.App.4th 533, 562 (Cal.App.2.Dist. 1998) ("[a]n unenforceable order is no order at all").

[24] In the context of some criminal prosecutions, government intrusion with the confidential relationship between a defendant and his counsel may violate a defendant's Sixth Amendment rights, if such an intrusion substantially prejudices the accused. *United States v. Irwin*, 612 F.2d 1182, 1186-87 (9th Cir.1980) ("mere government intrusion into the attorney-client relationship, although not condoned by the court, is not of itself violative of the Sixth Amendment right to counsel," except when "the intrusion substantially prejudices the defendant"). This is not the case here, as the proceedings below were not criminal proceedings, but civil proceedings. Moreover, the government Defendants here were not alleged to be involved in any potential "intrusion" of the attorney-client relationship; any such alleged involvement would have been limited to Susie Grisham and her lawyers.

in the first case; and (3) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case. *Ruby*, 124 Nev. at 1054 (citing *University of Nevada v. Tarkanian*, 110 Nev. 581, 600 (1994); *Executive Mgmt. v. Ticor Title Ins. Co.*, 114 Nev. 823, 835 (1998)).[25]

Here, claim preclusion applies to bar the claims of this case. First, the parties or privies of *Case 513* and this federal case are the same, as evidenced by the fact that this action attempts to appeal *the very same case* that came before. When determining whether the parties are the same, "a court should note that 'even when parties are not identical, privity may exist if there is a substantial identity between parties, that is, when there is sufficient commonality of interest.'" *Insegna-Nieto v. State Farm Mut. Auto. Ins. Co.*, 2013 WL 101400, 4 (citing *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 322 F.3d 1064, 1082 (9th Cir. 2003)). Plaintiff has styled this action as a collateral, federal-court appeal of the state-court proceedings below, attacking Susie Grisham here in substituted form, by attacking the state court's decision below.[26] Susie Grisham and the Defendants share a sufficient commonality of interest. Susie Grisham seeks to protect the divorce decree and the *PSA*, as evidenced by the fact that she moved to enter the *Decree of Divorce* and its *PSA* in the proceedings below. (*See* **Exh. F**, p. 3, ll. 27-28.) Defendants have an interest in protecting their valid divorce decrees. *Vaile*, 118 Nev. at 272. Thus, the parties are the same in both actions, and this first legal factor is satisfied here. Second, *Case 513* proceeded to a final judgment, by way of the *Decree of Divorce* and its incorporated *PSA*, which judgment was confirmed to be valid on appeal. The second factor is satisfied. Turning to the third factor, this subsequent action is based on the same claims or any part of them that were or could have been brought in the first case. The claims below related to the dissolution of a marriage, the division of marital property, and the establishment of

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[25] In *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048 (2008), the Nevada Supreme Court cleared up the confusing terminology and legal tests for "claim preclusion," and "issue preclusion." *See Ruby*, 124 Nev. 1048, 1054.

[26] Courts look to the context and meaning of court filings, not merely to the form in which they appear. *See EIE Guam Corp. v. Long Term Credit Bank of Japan, Ltd.*, 322 F.3d 635, 643 (9th Cir. 2003) (when evaluating a court-jurisdiction issue, the court determined that an action was asserted against an unnamed party, adding "[w]e are not limited to the pleadings but must also examine the context of the case as a whole. In other words, we do not exalt form over substance").

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spousal-support obligations. As well, the validity of the *PSA* was confirmed on appeal. All these issues were generally raised before and are implicitly raised again in this action, inasmuch as Grisham now seeks to invalidate *all* orders and proceedings of *Case 513* and *Case 394*. As to the narrow and specific issue presented here that challenges the jurisdiction of the district court, based on the alleged, conflicted legal representation of the Wells & Rawlings firm, that claim was also raised below. (*Complaint.*, p. 3, ll. 16-19) (alleging that Grisham raised the "issue of jurisdiction and conflict of representation" to the district court, the appellate court). The two suits arise from the same transactional nucleus of facts, concerning the divorce proceedings, the validity of *PSA*, and the jurisdiction/conflicted-representation issues. Rights or interests established below would be destroyed or impaired by prosecution of this federal action. The two suits involve the alleged infringement of the same rights. Substantially the same evidence is presented in both actions. Accordingly, this third factor is satisfied.[27] Claim preclusion applies.

D. <u>The Issues of this Case are Barred by Issue Preclusion</u>

Nevada courts apply issue preclusion when: (1) the issue decided in the prior litigation is identical to the issue presented in the current action; (2) the initial ruling was made on the merits and became final; (3) the party against whom the judgment is asserted was a party or in privity with a party to the prior litigation; and (4) the issue was actually and necessarily litigated. *Ruby*, 124 Nev. at 1055 (citing *Tarkanian*, 110 Nev. at 599; and *Executive Mgmt.*, 114 Nev. at 835, 963 P.2d at 473).

Here, issues concerning the validity of the *Decree of Divorce* and the *PSA*, as well as issues concerning the court's jurisdiction and the alleged conflict of legal representation are barred by issue preclusion. Such issues were litigated before and their adjudication again is barred by the doctrine of issue preclusion. First, as established in the preceding analysis, broad issues relating to the dissolution of the marriage, the distribution of marital assets, and spousal-support obligations were litigated below. As well, the narrow issues concerning "jurisdiction" and the alleged "conflict of representation" were also raised in the district court and on appeal,

[27] *Insegna-Nieto*, 2013 WL 101400 at 4 (setting forth a four-part evaluation process for the third factor of this test) (citing *Mpoyo v. Litton Electro–Optical Sys.*, 430 F.3d 985, 987 (9th Cir. 2005)).

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according to Plaintiff. Thus, the issues decided in the state-court proceedings are identical to the issues presented here, and this first factor is satisfied. Second, the rulings in the state-court proceedings were made on their merits and became final. To be sure, the *Decree of Divorce and its PSA* were evaluated: (1) at the divorce trial, where the parties stipulated and approved the *PSA* in open court, which the district court accepted; (2) at the hearing on Susie Grisham's motion to enter the divorce decree, over Michael Grisham's objection; and (3) on appeal in the Nevada Supreme Court, which confirmed the validity of the *Decree of Divorce* and its *PSA*, notwithstanding the fact that Michael Grisham refused to sign the *PSA*. According to Plaintiff's allegations, the narrow issues concerning "jurisdiction" and the alleged "conflict of representation" were not resolved in his favor. (Docket No. 001, p. 3, ll. 16-19 (he raised these issues with the court, "without judicial relief").) The rulings of the case became final, and the case was closed. The second legal factor is satisfied. Third, the party against whom the judgment is asserted to preclude this action—*i.e.*, Michael Grisham—was a party in the prior litigation of *Case 513* and *Case 394*. The third legal factor is satisfied. Fourth, as established in the analysis for the first factor, the issues presented in this case were actually and necessarily litigated by Michael Grisham in the state court and on appeal. Thus, the four-part issue-preclusion test is satisfied.

E. Direct, Constitutional Claims are Not Cognizable in the Ninth Circuit

In the Ninth Circuit, "it is well-settled that a '[p]laintiff has no cause of action directly under the United States Constitution' and, instead, must pursue relief under Section 1983 with respect to the asserted violation of his constitutional rights." *Darkins*, 2013 WL 5530977 at 5 (quoting *Azul–Pacifico, Inc. v. City of Los Angeles*, 973 F.2d 704, 705 (9th Cir.1992) ("[w]e have previously held that a litigant complaining of a violation of a constitutional right must utilize 42 U.S.C. § 1983") (citations omitted). "The Ninth Circuit 'has held that a litigant complaining of a violation of a constitutional right does not have a direct cause of action under the United States Constitution but must utilize 42 U.S.C. § 1983.'" *Darkins*, 2013 WL 5530977 at 3.[28]

[28] *Quoting Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir.2001) (claim brought against county entities not cognizable directly under the Fourth Amendment but, rather, only under Section 1983 and, thus, was subject to (and failed under) the pleading requirements of *Monell v. Department of Soc. Servs.*, 436 U.S. 658 (1978)); *see also Bank of Lake Tahoe v. Bank of America*, 318 F.3d 914, 917 (9th Cir. 2003) (finding that, in view of the above-noted rule, a claim alleging "'equal protection' violations" must be considered and construed "under the umbrella of § 1983"); *Martinez v. City of Los Angeles*, 141 F.3d 1373, 1382–83 (9th Cir.1998) ("a plaintiff may not sue

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Here, Michael Grisham complains that a state court and a state-court judge exercised jurisdiction over his divorce proceedings below, in violation of: (1) the Full Faith and Credit Clause; (2) 28 U.S.C. 1738; (3) the Privilege and Immunities Clause; (4) the Due Process Clause; and (5) the Equal Protection Clause. (Docket No. 001, p. 1, l. 18 to p. 2, l. 3.) However, his *Complaint* is based on the Constitution *directly*; Grisham has not proceeded by way of 42 U.S.C. § 1983.[29] Thus, Grisham fails to state any cognizable claim under the U.S. Constitution.

F. No Claim is Stated Under the Privileges and Immunities Clause

"The purpose of the Privileges and Immunities Clause is to ensure that rights granted by a state to its citizens are not withheld from citizens of other states." *Darkins*, 2013 WL 5530977, 6 (citing *State of Nevada v. Watkins*, 914 F.2d 1545, 1555 (9th Cir. (Nev.) 1990) ('the clause was intended "to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned") (internal quotation marks and citation omitted)).[30] "The Privileges and Immunities Clause has no application when a State's resident complains about a law applicable to the residents of his State" or when "a plaintiff fails to allege that he or she is an out-of-state resident who is not being accorded the benefits that a second, foreign state provides to its own citizens. *Darkins*, 2013 WL 5530977 at 6.[31]

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a state defendant directly under the Constitution where section 1983 provides a remedy, even if that remedy is not available to the plaintiff")). "Section 1983 "embodies individual rights cognizable under" the Privileges and Immunities Clause. *Darkins*, 2013 WL 5530977 at 5 (quoting *International Organization of Masters, Mates & Pilots v. Andrews*, 831 F.2d 843, 845 (9th Cir.1987)). A plaintiff is precluded from proceeding directly under the Privileges and Immunities Clause. *Darkins*, 2013 WL 5530977 at 5. "Section 1983 does not furnish any independent substantive rights." *Darkins*, 2013 WL 5530977 at 5 (quoting *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 617 (1979)). "Instead, it provides a remedial means of vindicating rights conferred elsewhere in the United States Constitution and federal laws." *Darkins*, 2013 WL 5530977 at 5 (quoting *Chapman*, 441 U.S. at 617).

[29] "To establish a cognizable claim under Section 1983, plaintiff must allege (and ultimately prove) two elements: first, that defendant violated a 'right secured by the Constitution and the laws of the United States'; and second, that defendant was acting under the color of state law when he deprived plaintiff of that federal right." *Darkins*, 2013 WL 5530977 at 5 (quoting *West v. Atkins*, 487 U.S. 42, 48 (1988); and citing *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir.2006); and *Johnson v. Knowles*, 113 F.3d 1114, 1117 (9th Cir.1997)).

[30] The Privileges and Immunities Clause "'was designed to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy.'" *Darkins*, 2013 WL 5530977, 6 (quoting *Supreme Court v. Friedman*, 487 U.S. 59, 64 (1988) (quoting *Toomer v. Witsell*, 334 U.S. 385, 395 (1948)). "The Privileges and Immunities Clause prevents 'a State from discriminating against citizens of other States in favor of its own.'" *Darkins*, 2013 WL 5530977, 6 (citing *Hague v. Committee of Indus. Org.*, 307 U.S. 496, 511 (1939)).

[31] *See also Connecticut ex rel. Blumenthal v. Crotty*, 346 F.3d 84, 94 (2d Cir.2003) (the Privileges and

Here, Michael Grisham has not alleged that he is a citizen of another state who was denied the privileges and immunities of the State of Nevada that are offered to citizens of the State of Nevada. Grisham could not make such a claim.[32] Moreover, the application of Nevada divorce statutes and Nevada court rules have general application to *all* court participants; disparate treatment is not implicated here.[33] Accordingly, Grisham's action does not state a claim under the Privileges and Immunities Clause.

G. No Claim is Stated Under The Full Faith and Credit Clause

"The Supreme Court held long ago that the Full Faith and Credit Clause was not a source of federal jurisdiction."[34] *Thompson v. Thompson*, 798 F.2d 1547, 1555 (9th Cir. 1986).[35] Rather, as above demonstrated, the Full Faith and Credit Clause *precludes* the serial relitigation of the same actions and issues in different courts. *Riley v. New York Trust Co.*, 315 U.S. 343, 348-49 (1942).[36] Thus, Grisham has stated no claim under the Full Faith and Credit Clause here.

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Immunities Clause analysis requires a finding that "a State has, in fact, discriminated against out-of-staters with regards to the privileges and immunities it accords its own citizens"); *Maldonado v. Houston*, 157 F.3d 179, 190 n. 9 (3d Cir.1998) (rejecting a Privileges and Immunities Clause challenge to a Pennsylvania welfare statute brought by Pennsylvania welfare recipients, because "[a]s a necessary prerequisite for the Privileges and Immunities Clause to apply, it must be shown that a state discriminated against a citizen of another state," and the challenged statute was applicable only to Pennsylvania residents).

[32] Michael Grisham filed a counter-claim for divorce and admitted that he was *a resident of Nevada for at least six weeks* prior to bringing his counter-claim. (*See* **Exhibit C**, p. 3 (Grisham avers that he "is now, and for the past six weeks immediately preceding the commencement of this action has been, an actual, bona fide resident of the County of Clark, State of Nevada, actually and physically present and residing therein during all of said period of time").)

[33] While Michael Grisham alleges that the state court applied a "double standard" by allowing Wells & Rawlings to file a pleading on behalf of Susie Grisham, while disallowing him from filing a document on her behalf, such is not a citizenship-based allegation. Moreover, as she was a represented party-opponent, his filing was improper.

[34] The Full Faith and Credit Clause of the U.S. Constitution provides: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." U.S. Constitution, Article IV, § 1.

[35] *See also Bergen Industries and Fishing Corp. v. Joint Stock Holding Co.*, 2002 WL 15871179, 1 (W.D.Wash. 2002); *Guinness PLC v. v. Ward*, 955 F.2d 875, 883 (4th Cir.1992); *Minnesota v. Northern Securities Co.*, 194 U.S. 48, 72 (1904); and C. Wright, A. Miller & E. Cooper, 13B *Federal Practice and Procedure* 2d § 3563, at 50 (1984)).

[36] "Nevertheless, the Full Faith and Credit clause will not operate to prevent a 'redetermination of issues ... if there is reason to doubt the quality, extensiveness, or fairness of procedures followed in prior litigation.'" *Sille*, 2013 WL 5435828 at 1 (quoting *Kremer*, 456 U.S. at 481)). "However, to satisfy these requirements, "state proceedings need do no more than satisfy the minimum procedural requirements of the Fourteenth Amendment's Due Process

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H. Plaintiff's Claim Fails Under The Due Process Clause

The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1031 (9th Cir. 2012). "Any significant taking of property by the State is within the purview of the Due Process Clause." *Lavan*, 693 F.3d at 1031 (citing *Fuentes v. Shevin,* 407 U.S. 67, 86 (1972)).[37] "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Club Moulin Rouge LLC v. City of Huntington Beach*, 2005 WL 5517234, 5 (C.D.Cal. 2005) (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). Here, no reasonable fact-finder could conclude that Grisham did not receive notice and an opportunity to be heard at a meaningful time in the proceedings below. He actively participated in *Case 513* and *Case 394*, and he received due notice and due opportunity to present his views to the courts. Yet, there is a second type of due process claim to consider here, as well. Grisham alleges that the divorce proceedings were unfair because the Wells & Rawlings firm and Susie Grisham allegedly engaged in misconduct, which allegedly gave rise to the court's judicial bias. (*See* Docket No. 001, p. 4, ll. 10-24.) This claim fails. Where the prejudicial misconduct of an attorney implicates a violation of one's due process, such misconduct must "sufficiently permeate" a legal proceeding to cause the fact-finder to become "necessarily prejudiced." *Kehr v. Smith Barney, Harris Upham & Co., Inc.*, 736 F.2d 1283 (9th Cir. 1984).[38] The "touchstone of due process analysis" in cases alleging attorney misconduct "is the fairness of the trial, not the culpability of

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Clause." *Sille*, 2013 WL 5435828 at 1 (quoting *Kremer*, 456 U.S. at 481)). "In other words, '[a r]edetermination of issues is warranted if there is a reason to doubt the quality, extensiveness, or fairness of procedures followed in the prior litigation.'" *Lyons v. Traquina*, 2010 WL 3069336, 5 (E.D.Cal. 2010) (citing *Montana v. U.S.*, 440 U.S. 147, 164 n. 11). Such minimal procedural requirements of the due process clause are "clearly satisfied" when a litigant has a full opportunity to present his contentions on the record during the state proceedings. *Caldeira v. County of Kauai*, 866 F.2d 1175, 1180 (9th Cir. 1989) (internal brackets and quotation marks omitted) (quoting *Kremer*, 456 U.S. at 483; and citing *Rider v. Com. of Pa.*, 850 F.2d 982 (3rd Cir. 1988)). Here, given a litigation and appeal in the divorce proceedings below, Grisham was accorded sufficient due process to alleviate any exceptional concerns here.

[37] "To succeed on a procedural due process claim, a plaintiff must demonstrate that: (1) he had a constitutionally protected liberty or property interest; (2) the deprivation of that interest by the government; and (3) a lack of adequate process." *San Joaquin Deputy Sheriffs' Ass'n,* 898 F.Supp.2d at 1188 (citing *Portman v. County of Santa Clara,* 995 F.2d 898, 904 (9th Cir.1993)).

[38] *See Abhyankar v. Yates*, 2011 WL 3359671, 5 (C.D.Cal. 2011) (prosecutorial misconduct when making statements at trial must go beyond being undesirable or universally condemned; the comments must "so infect the trial with unfairness as to make the resulting conviction a denial of due process) (citations omitted).

the attorney." *Smith v. Phillips*, 455 U.S. 209 at 219 (1982). Grisham has not alleged that the Wells & Rawlings firm made any unfairly-prejudicial statements to the fact-finding judge that "necessarily prejudiced" the judge at trial. Yet, even if such an argument were made, no reasonable juror could conclude that Wells & Rawlings' brief involvement at the *outset* of the pleading stage had the requisite impact *at trial*, sufficient to constitute a violation of Grisham's due process rights to a fair trial. Assuming that an attorney from Wells & Rawlings spoke to the presiding judge in *Case 513*, prior to withdrawing as counsel on January 22, 2007, *e.g.* at a motion hearing, and further assuming that he or she spoke to the judge in a manner giving rise to prejudice against Grisham, any such prejudice would have dissipated by the time the trial commenced, *some sixteen months* later on May 19, 2008.[39] Moreover, the case did not proceed to a deliberated, verdict-type judgment at trial, but rather to a stipulated settlement agreement that was accepted by the court. Thus, the result Grisham achieved on the day of trial was the result he freely bargained for, not a result foisted on him by a fact-finder, against his consent. That Grisham later withdrew his consent does not change the analysis. Hence, Grisham's attorney-misconduct argument under the Due Process Clause is unavailing here. Turning to a third, theoretical, due-process violation, prejudicial intervention by a trial judge can fundamentally impair the fairness of a legal proceeding, so as to violate the Due Process Clause. *Copeland v. Walker*, 258 F.Supp. 105, 135 (E.D.N.Y. 2003) (in the context of a criminal prosecution). Yet, "trial judges are accorded significant leeway in performing their 'duty as more than a moderator to clarify ambiguous questions and testimony for the jury and to insure that the trial [is] fairly conducted.'" *Copeland*, 258 F.Supp at 135 (citation omitted). "Indeed, it is presumed that public officials have "'properly discharged their official duties.'" *Copeland*, 258 F.Supp at 135) (citing *Bracy v. Gramley*, 520 U.S. 899, 909 (quoting *United States v. Armstrong*, 517 U.S. 456, 464 (1996)). Moreover, the standard of review is even more limited where a *federal* court is asked to review the conduct of a *state* court judge. *Copeland*, 258 F.Supp at 135.[40] Plaintiffs face a difficult task when making any

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[39] The substitution of attorney was filed on January 22, 2007. (**Exh. E**, p. 24, Entry No. 6.) The trial date was May 19, 2008. (**Exh. E**, p. 35, Entry No. 5.)

[40] *See also Daye v. Attorney General of State of N.Y.*, 712 F.2d 1566, 1571 (C.A.N.Y. 1983); *Garcia v. Warden, Dannemora Correctional Facility*, 795 F.2d 5, 7 (2nd Cir. 1986) (a federal court's power to review a state claim of judicial bias is restricted to "the narrow one of due process and not the broad exercise of supervisory power

such argument here.[41]

> The critical question in determining whether the trial judge was fundamentally unfair is twofold: (1) did the trial judge's interference "distract the jury from a conscientious discharge of their responsibilities to find the facts, apply the law, and reach a fair verdict," and (2) "was the overall conduct of the trial such that public confidence in the impartial administration of justice was seriously at risk.

Copeland, 258 F.Supp at 135 (citing *Daye*, 712 F.2d at 1572.)[42]

Here, Grisham cannot succeed on a judicial-bias, due-process claim. Grisham has not articulated any valid basis for this Court to conclude that any EJDC judge, including Defendant Judge Ochoa, engaged in any misconduct *at a trial* in this case. This is true for at least two reasons. First, *Case 513* did not resolve by way of a trial, but by a stipulated settlement-agreement that was openly articulated to the court on the record, on the day of trial. Thus, no EJDC judge involvement affected any verdict-decision in *Case 513*. Second, Defendant Judge Ochoa was not assigned to handle *Case 513* until the year 2011—long after the day of trial, May 19, 2008.[43]

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that [it] would possess in regard to [its] own trial court") (citations omitted).

[41] "Thus, questions concerning a judge's partiality or intervention rarely rise to the level of a constitutional claim because the Due Process Clause "establishes a constitutional floor, not a uniform standard." *Copeland*, 258 F.Supp at 135 (citing *Gramley*, 520 U.S. at 904–05; *Gayle v. Scully*, 779 F.2d 802, 813 (2nd Cir. 1985) ("a petitioner claiming that a judge's bias deprived him of a fair trial faces a difficult task").

[42] "While the standard is admittedly 'ill-defined,' *Johnson v. Scully*, 727 F.2d 222, 226 (2d Cir.1984), it is clear that the trial judge may question witnesses, including the defendant, and that such questioning may be adverse and may emphasize evidence damaging to the defendant's case." *Copeland*, 258 F.Supp at 135-36 (citing *Daye*, 712 F.2d at 1572).

[43] (*See* **Exh. E**, p. 6, Entry No. 3 (docket entry reflecting reassignment of *Case 513* to Department S on January 1, 2011; *Id.*, p. 26, Entry No. 2 (docket entry reflecting the first hearing in *Case 513*, for which judicial officer Vincent Ochoa presided; *Id.*, p. 35, Entry No. 6 (docket entry reflecting that Honorable Sandra Pomrenze was the judicial officer at the day of trial in *Case 513*, on May 19, 2008 and that she issued the *Decree of Divorce* and accepted the *PSA*, as requested by the parties at trial); and *Id.*, p. 34, Entry No. 5 (docket entry reflecting that Honorable Sandra Pomrenze was the judicial officer who granted Susie Grisham's motion for entry of *Decree of Divorce*)). Defendant Judge Ochoa is the judge assigned to Department S. (*See* http://www.clarkcountycourts.us/ejdc/courts-and-judges/judges.html (last accessed March 16, 2014)). For purposes of this summary judgment motion, the Family Court Division's website page is self-authenticating. Federal courts consider records from government websites to be self-authenticating under Rule 902(5). *See, e.g., Estate of Gonzales v. Hickman,* 2007 WL 3237727, 2 n. 3 (C.D.Cal. 2007) (finding report issued by the Inspector General of the State of California on the Office of the Inspector General's website to be self-authentic); *Lorraine v. Markel Am. Ins. Co.,* 241 F.R.D. 534, 551 (D.Md.2007) ("[g]iven the frequency with which official publications from government agencies are relevant to litigation and the increasing tendency for such agencies to have their own websites, Rule 902(5) provides a very useful method for authenticating these publications. When combined with the public records exception to the hearsay rule, Rule 803(8), these official publications posted on government agency websites should

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Thus, Defendant Judge Ochoa is not implicated in any judicial-bias, due-process claim that Grisham might assert here. Moreover, the court rulings at issue here have been confirmed on appeal in the Nevada Supreme Court, foreclosing the question of any judicial impropriety here. Finally, Grisham's mere allegation that an *attorney* briefly engaged in misconduct, by participating in a conflicted representation of an opposing party at the outset of the litigation, does not state a claim of misconduct against a *judge*. This claim fails.

I. Plaintiff's Claim Fails Under the Equal Protection Clause

"The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." *Lee v. City of Los Angeles,* 250 F.3d 668, 686 (9th Cir. 2001) (citing *City of Cleburne v. Cleburne Living Ctr.,* 473 U.S. 432, 439, (1985) and *Plyler v. Doe,* 457 U.S. 202, 216 (1982)).[44] Grisham's equal-protection claim is not asserted against a rulemaking body, but against a court.[45] Thus, the equal-protection analysis here assesses whether the adjudication process was unconstitutionally discriminatory. *See Harrison v. Green*, 125 Fed.Appx. 952, 953 (10th Cir. 2005) (equal protection claim asserted on the theory that the judge discriminated against the accused, when not explaining the crime's specific element to him, by pre-judging the accused to be able to understand the charges, "based on his education, business experience, and prior criminal record"). In discrimination claims

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be admitted into evidence easily"); *United States ex rel. Parikh v. Premera Blue Cross,* 2006 WL 2841998, 4 (W.D.Wash. 2006) (determining documents found on government websites to be self-authenticating); *Hispanic Broad. Corp. v. Educ. Media Found.,* 2003 WL 22867633, 5 n. 5 (C.D.Cal. 2003) (holding, "exhibits which consist of records from government websites, such as the FCC website are self-authenticating").

[44] "To state a claim under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause of the Fourteenth Amendment a plaintiff must show that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class." *Lee*, 250 F.3d at 686 (emphasis added) (citing *Barren v. Harrington,* 152 F.3d 1193, 1194 (9th Cir.1998), *cert. denied,* 525 U.S. 1154 (1999)).

[45] In equal protection claims against rulemaking bodies, where the challenged governmental policy is "facially neutral," proof of its disproportionate impact on an identifiable group can satisfy the intent requirement only if it tends to show that some invidious or discriminatory purpose underlies the policy. *Lee*, 250 F.3d at 686 (citing *Village of Arlington Heights v. Metro. HPous. Dev. Corp.*, 429 U.S. 252, 264-66 (1977) (citing *Washington v. Davis*, 426 U.S. 229, 242 (1976)) ("[d]isproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination"). Where a particular group does not constitute a "suspect class" for equal protection purposes, a governmental policy that purposefully treats that group differently from another group need only be "rationally related to legitimate legislative goals" to pass constitutional muster. *Lee*, 250 F.3d at 686 (citing *Does 1-5 v. Chandler*, 83 F.3d 1150, 1155 (9th Cir.1996) (citing *City of Cleburne*, 473 U.S. at 440, 105 S.Ct. 3249)).

asserted against judges, the same analysis is followed as for claims against rulemaking bodies, and if the claimant is not a member of a suspect class, the rational-basis analysis holds sway. *See Harrison*, 125 Fed.Appx. at 955 (as the claimant was not a member of a suspect class, a rational-basis review of the judge's conduct was determinative on the equal-protection claim).

Here, Grisham does not specify what alleged facts give rise to his equal-protection claim. The only discernable allegation in the *Complaint* that is susceptible to a disparate-treatment analysis under the Equal Protection Clause is the allegation that, on December 13, 2013:

> the Honorable Judge Ochoa clearly ruled Michael Grisham has no standing to plead on behalf of the opposing party and was presented with undeniable evidence that the original summons and complaint was filed by Michael Grisham's Attorney Kirby Wells law firm. The Eighth Judicial District Family Court of Clark County is applying a double standard to accept, the summons and complaint from an agent of Michael Grisham in the form of Attorney Kirby Wells Original Summons and Complaint on behalf of Susie Grisham.

(Docket No. 001, p. 4, ll. 5-10.) However, this does not state an equal-protection claim. First, Grisham is not a member of a protected class, nor has he identified himself as one.[46] Accordingly, the rational-relationship standard governs. "Non-lawyers generally may not represent another person or an entity in a court of law." *Sunde v. Contel of California*, 112 Nev. 541, 915 P.2d 298 (1996) (citing *Rowland v. California Men's Colony*, 506 U.S. 194, 201–03 (1993)). Nevada Rule of Civil Procedure ("NRCP 11") requires every court filing to be signed by the attorney of record, in his or her individual name, or if the party is not represented by an attorney, every court filing should be signed by the party. NRCP 11. Here, Michael Grisham was a *pro se* litigant, after his attorney withdrew from his legal representation.[47] Michael Grisham has not alleged that he was licensed to practice law in Nevada at any time. Therefore, he was not

[46] "As a general matter, a classification is suspect (and therefore entitled to strict scrutiny) if it is directed to a discrete and insular minority group." *Sanchez v. City of Fresno*, 914 F.Supp.2d 1079, 1108 (citing *United States v. Carolene Prods.*, 304 U.S. 144, 152 n. 4 (1938); *Abebe v. Mukasey*, 554 F.3d 1203, 1206 (9th Cir.2009)). "Courts have found that race, alienage, national origin, and to some degree, gender and illegitimacy, are suspect classes." *Sanchez v. City of Fresno*, 914 F.Supp.2d at 1108 (citing *Cleburne*, 473 U.S. at 440–41). This case does not implicate a classification based on race, alienage, national origin, gender or illegitimacy.

[47] (*See* **Exh. E**, p. 1, *Party Information* section (indicating Michael Grisham last appeared *pro se*; and *Id.*, p. 18, Entry No. 4 (motion to withdraw as counsel of record by attorney Anita Webster, counsel for Michael Grisham, filed on July 8, 2008).)

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permitted to represent any other person in the divorce proceedings, including Susie Grisham. As well, he was not permitted to sign documents on her behalf. Rule 11 required that her attorney do so, and if unrepresented, she do so. Thus, any decision by Defendant Judge Ochoa to disallow Michael Grisham to represent another party or to make court filings on behalf of an opposing party was not based on unlawful discrimination, but was based on a judge's duty to construe and administer the law. *See* NRCP 1 (the rules of civil procedure are construed and administered to secure the just, speedy, and inexpensive determination of every action). Applying the law is rationally related to a proper court purpose, and this equal-protection claim fails.

J. The Judges of Defendant EJDC, including Judge Ochoa, Enjoy Absolute, Judicial Immunity For Any Injunctive-Relief Claims That Might Proceed under 42 USC § 1983

Again, Defendant Judge Ochoa's involvement in *Case 513* did not begin prior to 2011, and he neither issued nor entered the original *Decree of Divorce*, with its incorporated *PSA*. Thus, he did not have any personal involvement in establishing the *Decree of Divorce* and the *PSA*, sufficient to state any § 1983 claims against Defendant Judge Ochoa for any such alleged, past conduct.[48] However, to the degree that Grisham seeks prospective, injunctive relief against any EJDC judge, including Defendant Judge Ochoa, to prevent the *future* occurrence of certain events, such relief would not yet be ripe for adjudication, as *Case 513* has not been re-opened.[49] Defendant Judge Ochoa has merely reserved jurisdiction over *Case 513*.[50] Moreover, the judges of the EJDC, including Judge Ochoa, would be shielded from any such injunctive-relief claim, by their absolute, judicial immunity. "Anglo–American common law has long recognized judicial immunity, a 'sweeping form of immunity' for acts performed by judges that relate to the 'judicial

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[48] Liability under § 1983 must be based on the *personal involvement* of the defendant." *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. (Nev.) 1998) (citing *May v. Enomoto,* 633 F.2d 164, 167 (9th Cir.1980)).

[49] "Concerns of justiciability go to the power of the federal courts to entertain disputes, and to the wisdom of their doing so. We presume that federal courts lack jurisdiction 'unless 'the contrary appears affirmatively from the record.'" *Renne v. Geary*, 501 U.S. 312, 316 (1991) (quoting *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 546 (1986) (quoting *King Bridge Co. v. Otoe County*, 120 U.S. 225, 226 (1887)).

[50] (*See e.g.* Docket No. 001, p. 5, ll. 5-8 (plaintiff moves the Court to find that the state court "does not have jurisdiction to hear, adjudicate, and issue orders" in *Case 513* (*i.e.*, now and in the future)); and Docket No. 001-3 (Plaintiff's "*Petition for Temporary Stay*" (now stricken), which appeared to be a motion for a preliminary injunction, seeking to enjoin the sale of the community property in Big Bear City, California).)

process.'" (*In Re Castillo*, 297 F.3d 940, 947 (9th Cir. 2002)).[51] "In short, the common law provided absolute immunity from subsequent damages liability for all persons-governmental or otherwise-who were integral parts of the judicial process." *Briscoe*, 460 U.S. at 335. "[I]f the relevant action is judicial in nature, the judge is immune so long as [the action] was not taken in the complete absence of jurisdiction." *Huminski v. Corsones*, 396 F.3d 53, 75 (2nd Cir. 2004) (citing *Mireles*, 502 U.S. at 11-12). "A clear absence of all jurisdiction means a clear lack of all subject matter jurisdiction." *Mullis v. U.S. Bankruptcy Court for District of Nevada*, 828 F.2d 1385, 1389 (9th Cir. (Nev.) 1987) (citing *Bradley v. Fisher*, 80 U.S. 335, 351-52 (1871)). However, here, no such claim can be made in this action, as the Eighth Judicial District Court, Family Division had plenary, subject-matter jurisdiction over the divorce proceedings below,[52] and the Nevada Supreme Court had appellate jurisdiction of the divorce proceedings below.[53] "The Supreme Court has established a two-prong test to determine whether an act is 'judicial.'" *La Scalia v. Driscoll*, 2012 WL 1041456 (E.D.N.Y. 2012) (quoting *Barrett v. Harrington*, 130 F.3d 246, 255 (6th Cir.1997)) (cited with approval in *Huminski*, 396 F.3d at 75). "First, the Court must consider

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[51] *See also Forrester v. White*, 484 U.S. 219, 225 (1988); and *Imbler v. Pachtman*, 424 U.S. 409, 423 n. 20 (1976)). Judicial immunity is "immunity from suit, not just from ultimate assessment of damages." *Mireles v. Waco*, 502 U.S. 9, 11 (1991) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)).

> The reasons for this rule are also substantial. It is precisely the function of a judicial proceeding to determine where the truth lies. The ability of courts, under carefully developed procedures, to separate truth from falsity, and the importance of accurately resolving factual disputes in criminal (and civil) cases are such that those involved in judicial proceedings should be 'given every encouragement to make a full disclosure of all pertinent information within their knowledge.

Briscoe, 460 U.S. at 335, quoting *Imbler*, 424 U.S. at 439 (*concurring op.*). "The common law's protection for judges and prosecutors formed part of a 'cluster of immunities protecting the various participants in judge-supervised trials,' which stemmed "from the characteristics of the judicial process." *Briscoe*, 460 U.S. at 335 (quoting *Butz v. Economou*, 438 U.S. 478, 512 (1978); *King v. Skinner*, 98 Eng.Rep. 529 (K.B.1772) ("[n]either party, witness, counsel, jury, or Judge can be put to answer, civilly or criminally, for words spoken in office").

[52] *See* Nevada Constitution, Article 6, § 6(2)(b) (providing that the legislature may establish a family court as a division of any district court and may prescribe its jurisdiction); NRS 3.223 (in each judicial district in which it is established, the family court has original, exclusive jurisdiction in any proceeding brought under NRS Chapter 125, which would include NRS 125.120 (the court may grant a divorce to either party); and NRS 125.150(1)(b) (the court shall, to the extent practicable, make an equal disposition of the community property when granting a divorce)); and *Landreth v. Milk*, 251 P.3d 163, 164 (Nev. 2011) (confirming that the Nevada Legislature established a family court in the Second and Eighth Judicial Districts). Moreover, even subsequent proceedings to reform or rescind property settlement agreements fall within the family court's jurisdiction. *See Barelli,* 113 Nev. 873, 944 P.2d 246.

[53] Nevada Constitution, Article 6, § 4 ("[t]he supreme court shall have appellate jurisdiction in all civil cases arising in district courts").

whether the function is "normally performed by a judge." *La Scalia*, 2012 WL 1041456 at 7 (quoting *Stump v. Sparkman*, 435 U.S. 349, 362 (1978)). Second, the court must assess whether the parties dealt with the judge in his judicial capacity. *La Scalia*, 2012 WL 1041456 at 7 (citing *Stump*, 435 U.S. at 362). Here, the matters complained of occurred during official court proceedings. The state court's issuance of orders in a divorce case—even over the objection of a defendant—are functions normally performed by a judge.

While the common law historically rejected a rule of judicial immunity from *prospective* relief under 42 U.S.C. § 1983 against state court judges acting in their judicial capacity, such a doctrine has been abrogated. *McSmith v. Chasez*, 2007 WL 1097400, 2 (E.D.La. 2007)(citing *Pulliam*, 466 U.S. at 541-42). To be sure, Congress overruled *Pulliam* and its progeny on this score, when it amended the civil rights statute 42 U.S.C. § 1983 in 1996.[54] That *Pulliam* has been so abrogated for injunctive-relief claims arising under § 1983 is widely recognized.[55] Thus, even if Michael Grisham's direct-constitutional-claim error were cured in a subsequent suit—or if the Court liberally construed this action to proceed under 42 U.S.C. § 1983—absolute, judicial immunity would bar all injunctive-relief claims asserted against the EJDC judges, including

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[54] The amended statute now provides in relevant part: "except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." *See* 42 U.S.C. § 1983 (civil action for deprivation of rights) (amended Oct. 19, 1996).

[55] *See Azubuko v. Royal*, 443 F.3d 302, 303-04 (3rd Cir. 2006) (recognizing that Congress amended § 1983 as such; *Bolin v. Story*, 225 F.3d 1234, 1242 (11th Cir. 2000) (explaining that the 1996 amendment to § 1983 applies to both state and federal judges) (other citations omitted)); *McSmith*, 2007 WL 1097400 at 2 (confirming that the "Federal Courts Improvement Act of 1996" amended § 1983, the effect of which "statutorily overruled *Pulliam's* holding regarding the availability of injunctive relief against a state judge in his official capacity") (citing *Guerin v. Higgins*, 2001 WL 363486, 1 (2nd Cir. 2001) (unpublished); *Nollet v. Justices*, 83 F.Supp.2d 204, 210 (D.Mass. 2000); and *Bolin*, 225 F.3d at 1242)); *Rush v. Wiseman*, 2010 WL 1705299, 10 (E.D.Pa. 2010) (recognizing that the amended § 1983 abrogated *Pulliam's* holding that judicial immunity did not apply to prospective relief against a judge acting in his or her judicial capacity); *Castiglione v. Basen*, 2012 WL 847489, 4 (D.N.J. 2012) (same); *La Scalia v. Driscoll*, 2012 WL 1041456, 7 (E.D.N.Y. 2012) (same); *Foulk v. Upton*, 2012 WL 6924559, 10 (D.Or. 2012) (same); *Elite Door & Trim, Inc. v. Tapia*, 2013 WL 2244966, 3 (Tex.App.-Dallas 2013) (same); *Agbannaoag v. Honorable Judges of Circuit Court of First Circuit of Hawai'i*, 2013 WL 5325053, 3 (D.Hawai'i 2013) (same); *Flanders v. Snyder Bromley*, 2010 WL 2650028, 7 (D.Colo. 2010) (same); *Kuhn v. Thompson*, 304 F.Supp.2d 1313,1322 (M.D.Ala 2004)(same); *Willner v. Frey*, 421 F.Supp.2d 913 (E.D.Va. 2006) (same); *Kircher v. City of Ypsilanti*, 458 F.Supp.2d 439, 448 (E.D.Mich. 2006) (same); *Bunch v. Williams*, 2006 WL 3292613 (W.D.Ark. 2006) (same); *Lefebvre v. Blackburn*, 2008 WL 2949474, 4 (N.D.Fla. 2008) (same); *Wise v. U.S.*, 2009 WL 3052608, 4 (D.S.C. 2009) (same); Gonzales-*Quezada v. Hayden*, 2010 WL 101323 (W.D.Wash. 2010) (same); *Besara Mobile Home Park, LLC v. City of Fremont*, 2010 WL 2991592,1 (N.D.Cal. 2010) (same); *Canning v. Poole*, 2010 WL 3199348, 2 n.1 (E.D.Ky. 2010) (same); *Clay v. Osteen*, 2010 WL 4116882, 4 (M.D.N.C. 2010) (same); *El v. Delgado*, 2010 WL 5201195, 9 (N.D.W.Va. 2010) (same); and *Hiramanek v. Clark*, 2013 WL 3803613 (N.D.Cal. 2013) (same).

Defendant Judge Ochoa. He has not alleged the violation of a decree, which was available.

K. Michael Grisham is Contractually Bound to the *Decree of Divorce* and *PSA*

The divorce proceedings below were concluded by a settlement agreement, whose terms Michael Grisham agreed to in open court. (*See* **Exh. F**, pp. 2-4, § I (the parties agreed to the settlement agreement, with its penciled-in interlineations, in open court confirming their agreement to the judge).) Under examination by his *own lawyer*, Michael Grisham testified "that he had reviewed, understood, and agreed to the *PSA*," and he acknowledged its principal terms and "confirmed that he recognized that he would bound by the *PSA*." (**Exh. F**, p. 3, ll. 9-12.) At the end of the hearing, the state court accepted the settlement, which is reflected in the court's minutes. (**Exh. F**, p. 3, ll. 13-21.) Although Grisham later challenged the *PSA*'s validity, Susie Grisham prevailed in her motion to enter the *Decree of Divorce* and its incorporated *PSA*. The Nevada Supreme Court confirmed that Michael Grisham was bound by the terms of the *PSA*, which was a valid agreement, based on his oral assent to it, given in open court. *See generally Grisham v. Grisham*, 289 P.3d 230 (Nev. 2012).[56] "Courts elsewhere, by statute, court rule, or common law, similarly enforce oral settlement agreements—even agreements otherwise subject to the writing requirement of a statute of frauds—if put on the record and approved in open court." *Grisham*, 289 P.3d at 233-34 (citations omitted).[57]

Here, the Nevada Supreme Court concluded that the in-court proceedings established the *PSA* as an enforceable settlement agreement, subject to the general principles of contract law, and that the district court did not abuse its discretion in declining to relieve Michael Grisham's obligations under the *PSA*. *See Grisham*, 289 P.3d at 234-37. The validity of the *PSA* is governed by contractual principles, not constitutional considerations, and here the contract is

[56] Under Nevada District Court Rule ("DCR") 16, an agreement to settle pending litigation can be enforced by a motion in the case being settled if the agreement is entered into the court minutes following a stipulation. *Grisham*, 289 P.3d at 233 (citing *Resnick v. Valente*, 97 Nev. 615, 616, 637 P.2d 1205, 1206 (1981) (applying DCR 24, later renumbered DCR 16)). DCR 16 gives "the court ... an efficient method for determining genuine settlements and enforcing them." *Grisham*, 289 P.3d at 233 (citing *Resnick*, 97 Nev. at 616, 637 P.2d at 1206). It "does not thwart the policy in favor of settling disputes; instead, it enhances the reliability of actual settlements." *Grisham*, 289 P.3d at 233 (citing *Resnick*, at 616–17, 637 P.2d at 1206).

[57] Inasmuch as the *PSA* included promises affecting an interest in land, the *PSA* does not fall within the purview of the Nevada statutes of fraud because the *PSA* was agreed to as a stipulated judgment in open court. *Grisham*, 289 P.3d at 234 (citations omitted).

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enforceable as it was not unconscionable.[58] The Nevada Supreme Court has held that Michael Grisham is contractually bound to the *PSA*. Grisham does not present a constitutional claim.

L. Plaintiff Should be *Estopped* from Challenging the Propriety of the Divorce Proceedings

Equity is concerned with advancing "fair play" in litigation. *See Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001) (general considerations of equity, the orderly administration of justice, and regard for dignity of judicial proceedings warrant a court from preventing a litigant from asserting one position, and then later seeking an advantage by taking an inconsistent position).[59] "[F]ederal law governs the application of judicial estoppel in federal court." *Rissetto*, 94 F.3d at 603. The doctrine applies to positions taken in the same action or in different actions. See *Id.* at 605 ("[w]e now make it explicit that the doctrine of judicial estoppel is not confined to inconsistent positions taken in the same litigation"). It also "applies to a party's stated position whether it is an expression of intention, a statement of fact, or a legal assertion." *Wagner v. Professional Engineers in California*, 354 F.3d 1036, 1044 (9th Cir. 2004) (citing

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[58] *See Guerra v. Tertz Corp.*, 504 F.Supp.2d 1014, 1020-21 (D.Nev. 2007) ("[u]nder Nevada law, a court may decline to enforce an unconscionable contract provision") (citing NRS § 104A.2108(1) (permitting a court to refuse to enforce unconscionable lease contracts or terms therein); and *D.R. Horton, Inc. v. Green*, 120 Nev. 549, 96 P.3d 1159, 1162–63 (2004)). "To be unenforceable, the contract term generally must be both procedurally and substantively unconscionable." *Guerra*, 504 F.Supp.2d at 1021 (citing *D.R. Horton, Inc.*, 96 P.3d at 1162). "A clause is procedurally unconscionable when a party lacks a meaningful opportunity to agree to the clause terms either because of unequal bargaining power, as in an adhesion contract, or because the clause and its effects are not readily ascertainable upon a review of the contract." *Guerra*, 504 F.Supp.2d at 1021 (citing *D.R. Horton, Inc.*, 96 P.3d at 1162). Procedural unconscionability usually results from "the use of fine print or complicated, incomplete, or misleading language that fails to inform a reasonable person of the contractual language's consequences." *Guerra*, 504 F.Supp.2d at 1021 (citing *D.R. Horton, Inc.*, 96 P.3d at 1162). A contract is substantively unconscionable when the contract's terms and the surrounding circumstances at the time of execution are "so one-sided as to oppress or unfairly surprise an innocent party." *Guerra*, 504 F.Supp.2d at 1021 (citing *Bill Stremmel Motors, Inc. v. IDS Leasing Corp.*, 89 Nev. 414, 514 P.2d 654, 657 (1973)). Here, such factors do not apply.

[59] *See also Rissetto v. Plumbers & Steamfitters Local 343*, 94 F.3d 597, 600-601 (9th Cir.1996); *Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir.1990). In *Hamilton*, the Ninth Circuit Court of Appeals explained the application of equity and fairness in litigation, as follows:

> This court invokes judicial estoppel not only to prevent a party from gaining an advantage by taking inconsistent positions, but also because of "general consideration[s] of the orderly administration of justice and regard for the dignity of judicial proceedings," and to "protect against a litigant playing fast and loose with the courts."

Hamilton, 270 F.3d at 782 (quoting *Russell*, 893 F.2d at 1037) (emphasis added).

Helfand v. Gerson, 105 F.3d 530, 535 (9th Cir.1997)). Factors relevant in deciding whether to apply the judicial-*estoppel* doctrine include:

> (1) whether the party's later position is "clearly inconsistent" with its earlier position; (2) whether the party has successfully advanced the earlier position, such that judicial acceptance of an inconsistent position in the later proceeding would create a perception that either the first or the second court had been misled; and (3) "whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped."

Milton H. Green Archives, Inc. v. CMG Worldwide, Inc., 568 F.Supp.2d 1152, 1164-65 (quoting *New Hampshire v. Maine*, 532 U.S. 742, 751 (2001)). In addition to these factors, the Ninth Circuit examines "whether the party to be estopped acted inadvertently or with any degree of intent." *EaglePicher Inc. v. Federal Ins. Co.*, 2007 WL 2265659, 3 (D.Ariz. 2007) (citing *Johnson v. Oregon Dep't of Human Resources Rehab. Div.*, 141 F.3d 1361, 1369 (9th Cir.1998)).

Here, Grisham's challenge to the state courts' jurisdiction below is based on the notion that the proceedings were corrupted with bias against him, in violation of his due process rights. However, the district court's *subject-matter* jurisdiction has never been challenged and cannot be assailed.[60] Therefore, judicial *estoppel* applies here to preclude Grisham from "playing fast and loose with the courts." Grisham volitionally availed himself of the state courts for several years in the divorce proceedings.[61] That he affirmed the legitimacy of the state court's jurisdiction over him in the divorce proceedings below cannot reasonably be disputed. For more than two years, he or his attorneys filed many briefs and papers in court, seeking judicial relief for his benefit—

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[60] Parties cannot be *estopped* from challenging the subject-matter jurisdiction of a court. *White v. U.S.*, 2011 WL 6175933 (citations omitted). However, the subject matter jurisdiction of the Eighth Judicial District Court, Family Division over divorce proceedings is firmly rooted in the Nevada Constitution and well established by state law. *See* Nevada Constitution, Article 6, § 6(2)(b); NRS 3.223; NRS 125.120; NRS 125.150(1)(b); *Landreth*, 251 P.3d at 164; *Barelli*, 113 Nev. at 944 P.2d 246.

[61] Grisham petitioned the court for a divorce in his counter-claim. *Cf. Schnabel v. Lui*, 302 F.3d 1023, 1037 (9th Cir. 2002) (a defendant who files a counterclaim has waived objection to personal jurisdiction); and *cf. Freeman v. Bee Machine Co.,* 319 U.S. 448, 453 (1943) (a defendant who removed a case to federal court and filed a counterclaim "thus invoked the jurisdiction of the federal court and submitted to it"). Here, Grisham submitted to the jurisdiction of the state court for his own benefit, to dissolve a marriage and to request the equitable distribution of his marital property. (*See* **Exh. E**, p. 23, Entry No. 5 (Grisham filed an answer and counterclaim for a decree of divorce).) Grisham freely consented to the *PSA* and declared his consent to the state court. (**Exh. F**, p. 2, l. 23 to p. 3, l. 12.)

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whether substantively or procedurally—in the divorce proceedings.[62] Each such filing implicitly recognized and assented to the jurisdiction of the state court. Upon changing his mind about the *PSA* he petitioned the state appellate court for relief. Upon losing his appeal, he now comes before this federal Court and adopts a contrary position, disavowing the propriety of the state court's jurisdiction in the divorce proceedings. The first legal element is satisfied here because Grisham's current legal position, which repudiates the propriety of the state courts' jurisdiction below, is "clearly inconsistent" with the legal position he impliedly took below, when repeatedly availed himself of the state courts' jurisdiction. The second legal element is satisfied here because Grisham "successfully advanced" his prior inconsistent position, when he submitted to the family court's jurisdiction, filed a counter-claim for divorce, and obtained a *Decree of Divorce*. He later "successfully advanced" his prior inconsistent position by seeking and obtaining appellate-court review of the proceedings below. Thus, judicial acceptance of his inconsistent position here in this federal proceeding would create a perception that either the state courts or this federal court have been misled. The third factor is also satisfied here because Grisham would derive an unfair advantage or impose an unfair detriment on Defendants, and by extension Susie Grisham, if not *estopped*. If the *Decree of Divorce* and the *PSA* were declared invalid by this Court, then the State of Nevada's important interest in protecting valid divorce decrees would be unfairly undermined. *See Vaile*, 118 Nev. at 272. Grisham's belated "forum-shopping" seeks to advance his unwarranted contempt of valid, state-court judgments, under the banner of a

[62] (*See e.g.* **Exh. E,** p. 22, Entry No. 7 (substitution of attorneys filed May 30, 2007); *Id.*, p. 22, Entry No. 5 (motion to withdraw Rhonda Mushkin as attorney of record filed January 31, 2008); *Id.*, p. 21, Entry No. 5 (countermotion to hold Susie Grisham in contempt, for return of stolen property, for order of confidentiality regarding Michael Grisham's hard drive, and for equitable accounting of Susie Grisham's inheritance, filed March 20, 2008); *Id.*, p. 20, Entry No. 11 (application for commission to take out-of-state deposition, filed April 1, 2008); *Id.*, p. 19, Entry No. 14 (motion for protective order quashing discovery, filed May 1, 2008); *Id.*, p. 19, Entry No. 7 (pre-trial memorandum, filed May 12, 2008); *Id.*, p. 18, Entry No. 4 (motion to withdraw Anita Webster as counsel of record, filed July 8, 2008); *Id.*, p. 16, Entry No. 5 (opposition to motion to reduce attorney's lien to judgment, filed October 7, 2008); *Id.*, p. 15, Entry No. 1 (motion for mistrial, filed January 22, 2009); *Id.*, p. 14, Entry No. 14 (motion to be re-heard on entry of judgment of attorney's lien, filed January 22, 2009); *Id.*, p. 14, Entry No. 1 (motion to stay decree of divorce and property settlement agreement and motion for mistrial and a new trial, filed March 20, 2009); *Id.*, p. 13, Entry No. 10 (notice of appeal, filed on April 9, 2009); *Id.*, p. 11, Entry No. 14 (motion for transcript, filed July 10, 2009); *Id.*, p. 10, Entry No. 9 (motion to stay decree of divorce and property settlement agreement), filed October 16, 2009); and *Id.*, p. 10, Entry No. 7 (motion to be heard on open tolling motions, filed October 16, 2009).)

trumped-up, meritless, constitutional claim.[63] Allowing him to proceed in this manner would unfairly undermine the public trust in the integrity and finality of valid state court judgments.[64] The fourth factor is met because Grisham purposefully availed himself of the state court forum, before opportunistically disavowing that forum. He who seeks equity must do equity, and in this regard, judicial *estoppel* should apply in this equitable-relief action. *See Freck v. I.R.S.*, 37 F.3d 986, 989 (3rd Cir. 1994) (equitable *estoppel* applied the equitable maxim that he who desires equity must be willing to do equity). Grisham should be *estopped* from disavowing the propriety of the state-courts' jurisdiction over the divorce proceedings and its appeal, after he invoked such jurisdiction and advanced his position under that jurisdiction.

VII. CONCLUSION

FOR ALL THE FOREGOING REASONS, the Court should GRANT summary judgment to Defendants and dismiss this case and all Defendants, with prejudice.

DATED this 27th day of March, 2014.

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[63] A party is typically understood to be forum shopping for filing a federal court declaratory action to see if it might fare better in federal court, as compared to state court. *Gemini Ins. Co. v. Kukui'ula Development Co.* (Hawaii), LLC, 2011 WL 3490253, 7 (D.Hawai'i, 2011). Courts have defined improper forum shopping to encompass situations where the action is "reactive" or "defensive" in that a party files a claim in federal court after an action in the same matter has been filed in state court. *Id.*

[64] "Courts, in our system, elaborate principles of law in the course of resolving disputes. The power and the prerogative of a court to perform this function rest, in the end, upon the respect accorded to its judgments." *Republican Party of Minn. v. White*, 536 U.S. 765, 793, (2002) (concurring op.). False and meritless attacks on a court's integrity also erode the public confidence in the judicial system, which the State of Nevada, on behalf of its court system, have an interest in maintaining. *See Standing Committee on Discipline of U.S. Dist. Court for Cent. Dist. of California v. Yagman*, 55 F.3d 1430, 1437-38 (9th Cir. 1995) ("false statements impugning the integrity of a judge erode public confidence without serving to publicize problems that justifiably deserve attention"); *White*, 536 U.S. at 793 ("[j]udicial integrity is, in consequence, a state interest of the highest order).

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this date I caused to be served a copy of the foregoing *Defendants' Motion for Summary Judgment*, by Electronic Court Filing via "CM/ECF" and also by U.S. Mail, First-Class postage prepaid, and E-Mail to:

Michael H. Grisham,
5250 S. Rainbow Blvd., Unit 1136
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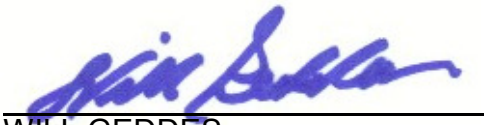
Pro Se Plaintiff
E-Mail: mgrish@embarqmail.com

DATED this 27th day of March, 2014.



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