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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

IN RE: PRAVEEN KHURANA

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) CASE NO. CV35-18-2087
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) FINDINGS OF FACT, CONCLUSIONS
) OF LAW, AND ORDER
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This matter came before the Court for consideration of the Notice of Intent to Designate Praveen Khurana as a Vexatious Litigant. Praveen Khurana appeared *pro se*. Marcy Spilker, of the Idaho Attorney General's office, appeared on behalf of the Health and Human Services Division as the party initiating the I.C.A.R. 59 prefiling order to declare Mr. Khurana as a vexatious litigant. The Court, having considered the file and record in this matter, and the applicable law, does hereby render its Findings of Fact and Conclusions of Law as follows.

FINDINGS OF FACT

1. The following lawsuits (excluding small claims cases) were filed in Nez Perce County, within the last seven years, by Khurana, acting *pro se*:
 - a. *Praveen Khurana v. Patty O. Weeks, et al.*, CV-2011-1193;
 - b. *Delores M. Adamson, et al. v. Wells Fargo Home Mortgage*, CV-2012-1139;
 - c. *Praveen Khurana v. Wells Fargo Bank Northwest NA*, CV-2014-1365;
 - d. *Praveen Khurana v. Grange Insurance Association*, CV-2014-2061;

- e. *Praveen Khurana v. United States Fire Insurance Co.*, CV-2015-0563;
 - f. *Praveen Khurana v. Genesis Holding, Inc., et al.*, CV-2015-1522;
 - g. *John William Perry, et al. v. AMCO Insurance Co.*, CV-2016-1342.
2. **CV-2011-1193** was filed by Khurana on 6/14/2011, as an Appeal of Denial of Cancellation of Property Taxes. The Defendants filed a motion to dismiss, which was granted on 11/22/2011. Civil disposition was entered for Nez Perce County.
 3. **CV-2012-1139** was filed on June 8, 2012. This case was filed by Khurana and Delores Adamson as a dispute to a foreclosure action by Wells Fargo Bank. Eight causes of action were listed: breach of contract and fair debt collection act, violation of real estate settlement procedures act, truth in lending act violation, intentional and/or negligent infliction of emotional distress, and breach of duty of good faith. On September 19, 2013, the Court filed a notice of pending dismissal pursuant to IRCP Rule 40(c), and on October 28, 2013, the case was dismissed pursuant to the notice. In CV-2018-419 Khurana explained that he and Adamson accepted a settlement offer from Wells Fargo, which rendered this lawsuit moot. The mortgage contract was reinstated and remains in effect.
 4. **CV-2014-1365** was filed by Khurana on July 3, 2014. Khurana owns a restaurant that is adjoined on the west by the Wells Fargo Bank building, in downtown Lewiston, Idaho. The Complaint alleged Wells Fargo constructed a wooden stairwell leading from the second story of the Wells Fargo building, down to the roof of Khurana's restaurant, a single story building, as a means of fire egress. The stairway rotted over time and became unsafe and also damaged Khurana's building. In the Complaint, Khurana is seeking well over \$200,000 in damages. *See Complaint for Damages and Demand for Jury Trial*, at 9-10. The case was ultimately dismissed as an inactive case. In his

response in CV-2018-419, Khurana explained this lawsuit was declared as an asset in his bankruptcy case, and settled by the trustee for \$3,500.

5. **CV-2014-2061** was filed by Khurana on October 23, 2014. Khurana sued his insurance company, Grange Insurance Association “for failing to pay his claim for business and personal items which were stolen from his vehicle when he was traveling overseas.” *Complaint*, at 2. Six causes of action were listed in the suit,¹ and Khurana did not specify the amount of damages he was seeking. A Stipulation for Entry of Order of Dismissal was filed on November 6, 2014. The Order of Dismissal was entered on November 13, 2014. In CV-2018-419, Khurana stated that he had no choice but to commence litigation when the insurer refused to pay. Once the suit was filed, the insurer paid the amount of the loss. “Exhibit K” attached to Khurana’s response includes a photo copy of a check from Grange Insurance Association to Praveen Khurana in the amount of \$7,717.97.
6. **CV-2015-0563** was filed by Khurana on March 24, 2015. Khurana sued his insurance company, United States Fire Insurance Company, “for failing to pay his claim for business and personal items which were stolen from his vehicle when he was traveling overseas.” The same causes of action listed in CV-2014-2061 were listed in this case, and Khurana did not specify the amount of damages he was seeking. The minutes from a hearing held on June 11, 2015 indicate that the parties were considering mediation. On July 15, 2015, a Stipulation to Dismiss with Prejudice and Order Dismissing Complaint with Prejudice was entered. “Exhibit M” attached to Khurana’s response in CV-2018-

¹ Six causes of action were listed in the Complaint: 1) Breach of Contract, Implied Contract, Anticipatory Breach, Good Faith and Fair Dealing, Promissory Estoppel; 2) Negligent Misrepresentation; 3) Declaratory Judgment; 4) Specific Performance; 5) Unjust Enrichment; and 6) Bad Faith.

4109 includes a letter to Khurana which indicates the insurer settled the case for \$4,800.00.

7. **CV-2015-1522** was filed by Khurana on August 14, 2014. Khurana sued the mortgagor of Khurana's restaurant, Genesis Holding, and the attorneys who represented Genesis Holding. The claims are as follows: 1) Wrongful foreclosure; 2) Legal Malpractice; 3) Tortious Conversion; 4) Default, Breach of Contract, and Breach of Fiduciary Duty; 5) Failure to Follow Real Estate Procedures Act; 6) Failure to Follow Truth in Lending Act; 7) Breach of Fair Debt Collection Act; 8) Breach of Duty of Good Faith; 9) Unjust Enrichment; 10) Breach of Promissory Estoppel and Detrimental Reliance; and 11) Collusion and Conspiracy to Defraud the Plaintiff.

On April 27, 2016, the District Court entered an Opinion and Order on Motion to Dismiss, which granted the attorney and law firm's motion to be dismissed from the case. Final judgment was entered on May 23, 2016, dismissing claims against the attorney and the firm with prejudice.

On May 5, 2016, the Court heard the Plaintiff's motion for temporary restraining order, in which the Plaintiff was attempting to prevent the non-judicial foreclosure of the property. The motion was denied. The minutes of a hearing on May 5, 2016 indicate that Khurana was \$9,000.00 in arrears on the mortgage. The Court stated that Khurana and Smith, the attorney for Genesis Holding, needed to have a discussion on what it would take to cure the default. An Order of Dismissal with Prejudice was entered in the case on September 12, 2016.

In response to the petition in CV-2018-419, Khurana explained that this action was filed because he felt he was wrongfully foreclosed upon. He stated he owns the restaurant building again, in the name of Top Restaurant Investment LLC.

8. **CV-2016-1342** was filed by Khurana on July 15, 2016. Khurana sued his insurance company, to recover for damages which occurred when “Plaintiff was travelling with his personal and Business possessions, in a commercial vehicle, when his business and personal property were stolen, from the said vehicle overseas.” *Complaint*, at 2. The same causes of action claimed in CV-2014-20161 and CV-2015-0563 are also claimed in this case. On December 28, 2016, summary judgment was granted in favor of the Defendants, and final judgment was entered on January 4, 2017. The matter was appealed and the Court of Appeals of the State of Idaho issued an unpublished opinion on September 29, 2017, affirming the ruling on the summary judgment motion.
9. In March, 2018, this Court previously considered a Rule 59 designation for Mr. Khurana, but at that time the Court found Rule 59(d)(1) was not yet satisfied because the Court found that the record was not certain whether Khurana commenced, prosecuted, or maintained pro se at least three litigations that were finally determined adversely to him. The record was clear that two of the seven cases were finally determined adversely; however, where several of the cases were resolved by settlement, the record was unclear regarding whether these resolutions would be considered adverse. The Court warned Mr. Khurana that he was “walking a fine line and should he continue in the same manner, a finding of vexatious litigant is to be expected in the future.”
10. Mr. Khurana is currently in litigation in Nez Perce County Case CV-2017-1230. This case is a Medicaid estate recovery action where summary judgment was granted in favor

of the Department in April 2018. Mr. Khurana has appealed the determination of the Court; however, in addition, he filed a plethora of motions including: motions for relief from judgment, for stay, to vacate and reset hearing, to dismiss and for summary judgment, in limine, for counter and cross claims and jury trial, and to consolidate the foregoing case with Mr. Khurana's petition for judicial review of the Department Director's decision concerning child support. The multitude of filings following the order on summary judgment seek to relitigate not only the summary judgment issue in the Medicaid estate recovery action, but also seek to relitigate other issues, such as the child support issue, that are not relevant to the case whatsoever.

11. In CV35-18-1194, Mr. Khurana filed a petition for judicial review of the Department Director's decision regarding a child support enforcement action based upon the child support order by the Court of Queen's Bench Alberta, Edmonton, Canada. The Petition was filed on July 2, 2018. Within this action, Mr. Khurana filed several motions which were not relevant to the petition for judicial review of the Department Director's decision. These motions included objecting to the record, compelling production of documents to add to the record, asking to reconsider the denial of an augmented record, and again asking to augment the record. The repetitive motions essentially repeated the same arguments and none of the motions were granted in favor of Mr. Khurana. The Court allowed Mr. Khurana additional time to complete his brief in support of the petition for judicial review, however, Mr. Khurana failed to file the brief and ultimately the petition was dismissed by the Court.

12. With respect to both CV-2017-1230 and CV35-18-1104, the records are replete with summonses, motions, and requests for discovery that are persistent and unreasonable.

The repetitive motions lack good faith or legal basis and they impose an unacceptable burden on judicial personnel and resources and impede the normal and essential functioning of the judicial process. In CV-2017-1230, two months after summary judgment was granted, Khurana filed summonses against the following parties: the Idaho Secretary of State, Deputy Attorney General Douglas Fleenor and spouse, Chief Deputy Attorney General Nicole McKay and spouse, the Idaho State Police, Richard Adamson, Jr. and spouse, Richard Adamson, Sr. and spouse, Jane Doe Sulema and spouse, and Department Child Support Program Bureau Chief Robert Rinard and spouse, Department Child Support Program Manager Cade Hulbert and spouse, and Deputy Attorney General Daphne Huang and spouse. The summonses are irrelevant to the estate recovery action; some appear to be related to Khurana's child support obligation.

13. Khurana was been designated as a vexatious litigant by the Court of Queen's Bench Alberta, Judicial District of Edmonton, Canada. The order was pronounced on September 28, 2018.

CONCLUSIONS OF LAW

Idaho Court Administrative Rule 59 addresses vexatious litigation. This rule "allows courts to address this impediment to the proper functioning of the courts while protecting the constitutional right of all individuals to access to the courts." I.C.A.R. 59(a)(3).

The pre-filing order in CV-2018-419 sought to declare Khurana as a vexatious litigant pursuant to I.C.A.R. 59(d)(1). This rule states:

An administrative judge may find a person to be a vexatious litigant based on a finding that a person has done any of the following:

- (1) In the immediately preceding seven-year period the person has commenced, prosecuted or maintained pro se at least three litigations, other than in the small claims department of the magistrate division, that have been finally determined adversely to that person.

In CV-2018-419, this Court found that two litigations were finally determined adversely to Khurana, and thus, the Court did not declare Khurana a vexatious litigant at that time.

In the motion currently before the Court, the Department seeks to have Khurana declared a vexatious litigant pursuant to I.C.A.R. 59(d)(1)-(4). Subsections (2)-(4) state the following:

(2) After a litigation has been finally determined against the person, the person has repeatedly relitigated or attempted to relitigate, pro se, either (A) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (B) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

(3) In any litigation while acting pro se, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

(4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding.

Id. The determination of whether a person is a vexatious litigant is an abuse of discretion standard. *Telford v. Nye*, 154 Idaho 606, 610, 301 P.3d 264, 268 (2013).

A review of the record supports the determination that Khurana is a vexatious litigant as defined in I.C.A.R. 59(d)(2)-(4). In both CV-2017-1230 and CV35-18-1104 Khurana has repeatedly attempted to relitigate a prior child support ruling that was finally determined adversely against him. Khurana has repeatedly filed unmeritorious motions, pleadings, or other papers, and he has conducted unnecessary discovery, as well as engaged in tactics that are frivolous or solely intended to cause unnecessary delay in those actions. Finally, pursuant to I.C.A.R. 59(d)(4), there is no dispute by Khurana that he was found to be a vexatious litigant by the Court of Queen's Bench Alberta. Thus, for the foregoing reasons, Praveen Khurana is declared to be a vexatious litigant pursuant to I.C.A.R. 59.

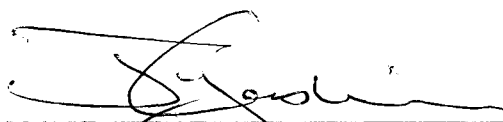
ORDER

Praveen Kevin Khurana is declared to be a vexatious litigant pursuant to I.C.A.R. 59.

Praveen Kevin Khurana is prohibited from filing any new litigation in the courts of the State of Idaho pro se without first obtaining leave of a judge of the court where the litigation is proposed to be filed.

IT IS SO ORDERED.

Dated this 19th day of December 2018.



JAY P. GASKILL, Administrative District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER was e-mailed or mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 19th day of December, 2018, to:

Praveen Khurana
858 Main Street
Lewiston, ID 83501

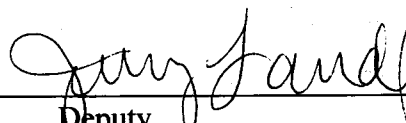
mailed

State of Idaho, Department of Health
and Welfare,
Daphne Huang
Marcy Spilker
daphne.huang@dhw.idaho.gov
marcy.spilker@dhw.idaho.gov

Administrative Director of the Courts
PO Box 83720
Boise, ID 83720

mailed

PATTY O. WEEKS, CLERK

By 
Deputy

