

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 JAQUELINE FAUSTO,

4 Appellant,

5
6 vs.

7 RICARDO SANCHEZ-FLORES, an
8 individual; VERENICE RUTH FLORES,
9 an individual

10 Respondents.

Case No.: 80074 Electronically Filed
Mar 16 2020 12:58 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

11 **JOINT APPENDIX,**
12 **VOLUME I**

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JOINT APPENDIX INDEX
(Alphabetical)

Document Name	Date Filed	Bates	Vol. No.
Acceptance of Service of Summons and Complaint [Christopher B. Phillips, counsel for Defendants Ricardo Sanchez-Flores and Verenice Ruth Flores] under District Court Case No. A-19-797890-C	7/31/2019	JA0031	I
Addendum to Opposition to Defendants' Motion to Dismiss or in the Alternative Motion to Stay under District Court Case No. A-19-797890-C	9/10/2019	JA0081- JA0086	I
Case Appeal Statement under District Court Case No. A-19-797890-C	11/15/2019	JA0166- JA0170	I
Complaint under District Court Case No. A-19-797890-C	7/3/2019	JA0001- JA0014	I
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Notice of Entry of Stipulation and Order [To Extend Time to Respond to Defendants' Motion to Dismiss – First Request] under District Court Case No. A-19-797890-C	8/15/2019	JA0058- JA0062	I
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9	under District Court Case No. A-19-797890-C			
10	Stipulation and Order to Extend Time to Respond to	8/14/2019	JA0056-	I
11	Defendants' Motion to Dismiss [First Request] under Case		JA0057	
12	No. A-19-797890-C			
13	Supplemental Points and Authorities in Response to	9/13/2019	JA0087-	I
14	Plaintiff's Addendum to Opposition to Defendants' Motion		JA0134	
15	to Dismiss under Case No. A-19-797890-C			
16	Transcript of Proceedings- Defendant's Motion to Dismiss	9/17/2019	JA0135-	I
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Motion to Dismiss or in the Alternative Motion to Stay under District Court Case No. A-19-79890-C	7/24/2019	JA0019- JA0029	I
Notice of Hearing [re: Motion to Dismiss]	7/24/2019	JA0030	I
Acceptance of Service of Summons and Complaint [Christopher B. Phillips, counsel for Defendants Ricardo Sanchez-Flores and Verenice Ruth Flores] under District Court Case No. A-19-797890-C	7/31/2019	JA0031	I
Opposition to Defendants' Motion to Dismiss or in the Alternative Motion to Stay under District Court Case No. A-19-797890-C	8/9/2019	JA0032- JA0051	I
Declaration of Jaqueline Fausto in Support of Opposition to Defendants' Motion to Dismiss or in the Alternative Motion to Stay under District Court Case No. A-19-797890-C	8/9/2019	JA0052- JA0055	I
Stipulation and Order to Extend Time to Respond to Defendants' Motion to Dismiss [First Request] under Case No. A-19-797890-C	8/14/2019	JA0056- JA0057	I
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Reply in Support of Motion to Dismiss or in the Alternative Motion to Stay under District Court Case No. A-19-797890-C	8/19/2019	JA0063- JA0071	I
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1	Supplemental Points and Authorities in Response to Plaintiff's Addendum to Opposition to Defendants' Motion to Dismiss under Case No. A-19-797890-C	9/13/2019	JA0087-JA0134	I
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3	Findings of Fact and Conclusions of Law, and Order Granting Defendants' Motion to Dismiss under District Court Case No. A-19-797890-C	10/17/2019	JA0153-JA0157	I
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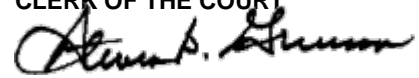
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CASE NO: A-19-797890-C
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DISTRICT COURT

CLARK COUNTY, NEVADA

JAQUELINE FAUSTO, an individual,

Plaintiff,

v.

RICARDO SANCHEZ-FLORES, an individual;
VERENICE RUTH FLORES, an individual;

Defendants.

Case No.

Dept. No.

COMPLAINT

COMES NOW, Plaintiff Jaqueline Fausto ("Plaintiff"), by and through her undersigned counsel of record, and hereby alleges and complains of Defendant Ricardo Sanchez-Flores, an individual and Defendant Verenice Ruth Flores, an individual as follows:

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///

1 **I. PARTIES, JURISDICTION, AND VENUE**

2 1. At all times relevant to the claims asserted herein, Plaintiff Jaqueline Fausto was
3 and is an individual residing in this Judicial District of Clark County, Nevada.

4 2. Plaintiff is informed, believes, and alleges, that at all times relevant to the claims
5 asserted herein, Defendant Ricardo Sanchez-Flores (“Sanchez-Flores”) is and was an individual
6 residing in this Judicial District in Clark County, Nevada.

7 3. Plaintiff is informed, believes, and alleges, that at all times relevant to the claims
8 asserted herein, Defendant Verence Ruth Flores (“Ms. Flores”) is and was an individual residing
9 in this Judicial District in Clark County, Nevada.

10 4. Plaintiff is informed, believes, and alleges that at all times relevant to the claims
11 asserted herein, Verence Flores served as managing member of FFA Group, LLC.

12 5. Venue is proper in this judicial district as Plaintiff has operated in, the subject
13 offenses and sexual assaults took place in, and a substantial amount of the decisions that are the
14 subject of this civil action were made in this judicial district in Clark County, Nevada.

15 6. All alleged unlawful actions occurred in this judicial district in Clark County,
16 Nevada.

17 **II. GENERAL ALLEGATIONS**

18 7. On or about the year 2010, Ms. Fausto was introduced to Ricardo Sanchez-Flores
19 and his then wife, Verence Flores through a mutual acquaintance, Christian Altamirano, for the
20 purposes of starting a Nevada Limited Liability Company – FFA Group, LLC.

21 8. On or about December 25, 2015, FFA Group, LLC was officially formed five
22 years after Ms. Fausto’s introduction to Ricardo Sanchez-Flores and Verence Flores.

23 9. Christian Altamirano, Ms. Fausto, and Ms. Flores were listed as the founding
24 Managing Members of FFA Group, LLC.

25 10. For the next year, Ms. Fausto, Ricardo Sanchez-Flores, Verence Flores, and
26 Christian Altamirano worked together in their professional capacities to grow and develop FFA
27 Group, LLC.

1 11. Together Ms. Fausto, Ricardo Sanchez-Flores, Ms. Flores, and Christian
2 Altamirano contributed countless hours of their professional expertise and devoted efforts, and
3 also expended finances to build FFA Group, LLC.

4 12. During these early joint endeavors, from 2015 to 2016, Ms. Fausto developed a
5 loyal and trusting relationship with Ricardo Sanchez-Flores and Verenice Flores.

6 13. By 2016, Ms. Fausto grew comfortable enough to confide in Ricardo Sanchez-
7 Flores and more specifically in Verenice Flores regarding her experiences as a domestic violence
8 victim, which she had suffered from her ex-husband.

9 14. On or about December 30, 2016, Ms. Fausto was notified that she had passed three
10 sections of the Certified Public Accountant ("CPA") Exam.

11 15. On or about the same date, Ricardo Sanchez-Flores and Verenice Flores took Ms.
12 Fausto out to celebrate Ms. Fausto's professional accomplishment.

13 16. It is clear now, that from the beginning of the evening of December 30, 2016,
14 Ricardo Sanchez-Flores was strategically taking advantage of the trust he had earned from his
15 vulnerable business partner Ms. Fausto over the past six years to ultimately sexually assault and
16 rape Ms. Fausto from the confines of his own home later that evening while Ms. Fausto was
17 intoxicated.

18 17. Before the assault, earlier in the evening of December 30, 2016, Ricardo Sanchez-
19 Flores recommended that Ms. Fausto leave her vehicle for the evening "in case" Ms. Fausto
20 became too intoxicated from celebratory drinks.

21 18. As previously stated, Ms. Fausto trusted Ricardo Sanchez-Flores and Ms. Flores,
22 so when she became intoxicated from celebrating, Ms. Fausto felt comfortable to ride home to
23 the residence of Ricardo Sanchez-Flores and Ms. Flores in their vehicle.

24 19. It was also not uncommon for Ms. Fausto to be present at the residence of Ricardo
25 Sanchez-Flores and Ms. Flores for professional purposes. The residence of Ricardo-Sanchez
26 Flores and Ms. Flores is where Ms. Fausto spent much of her time over the previous year working
27 on various components of starting up FFA Group, LLC.

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1 20. By the point in the evening when the celebrations concluded on December 30,
2 2016, Ms. Fausto was so intoxicated, she needed help maneuvering from one location to the next
3 while she walked. As a result of Ms. Fausto's intoxication, she was mentally incapacitated. Under
4 the conditions, Ricardo Sanchez-Flores knew or should have known, that due to Ms. Fausto's
5 intoxication she was mentally and physically incapable of resisting or understanding the nature
6 of Ricardo Sanchez-Flores' sexual assault to follow.

7 21. In response to Ms. Flores' intoxicated state, Ricardo Sanchez-Flores was able to
8 exert undue influence, dominion and control over Ms. Flores. Ricardo Sanchez-Flores did not
9 hesitate to swoop in and guide Ms. Fausto directly into his predatory plan of sexual assault by
10 leading Ms. Fausto to the back seat of Ms. Flores' vehicle, and joining Ms. Fausto in the back
11 seat while Ms. Flores drove Ms. Fausto and Ricardo Sanchez-Flores to their residence.

12 22. The moment Ms. Flores began driving, Ricardo Sanchez-Flores began an evening
13 of open or gross lewdness against Ms. Fausto which eventually escalated to sexual assault by the
14 conclusion of the evening.

15 23. During the car ride Ricardo Sanchez-Flores committed several acts of open or
16 gross lewdness by willfully and unlawfully: squeezing the buttocks, grabbing the breasts,
17 grabbing the genital area of Ms. Fausto, and taking advantage of Ms. Fausto's inability or
18 incapability to resist or understand what Ricardo Sanchez-Flores was doing to Ms. Fausto while
19 she was under the influence of alcohol.

20 24. Ms. Flores conveniently, was allegedly unaware of the assault that took place
21 during the car ride; however, Ms. Flores should have known of her husband's perverse practices
22 against Ms. Fausto.

23 25. Upon arriving to the residence of Ricardo Sanchez-Flores and Ms. Flores, Ms.
24 Flores went to bed while Ms. Fausto was left at the hands of her predator and later in the evening
25 in the hands of her eventual rapist.

26 26. Ricardo Sanchez-Flores continued by willfully, unlawfully, and feloniously
27 sexually assaulting and subjecting Ms. Fausto to sexual penetration, to wit: digital penetration:
28 by inserting his fingers in the genital opening of Ms. Fausto, against her will, or under conditions

1 in which Ricardo Sanchez-Flores knew or should have known that Ms. Fausto was mentally or
2 physically incapable of resisting or understanding Ricardo Sanchez-Flores' conduct.

3 27. Ricardo Sanchez-Flores continued to exert undue influence, dominion and control
4 over Ms. Fausto and guided Ms. Fausto to sleep in the living room, and later in the evening after
5 Ms. Flores was sound asleep, Ricardo Sanchez-Flores returned to Ms. Fausto in her state of
6 intoxication and then willfully and unlawfully committed acts of open or gross lewdness, by
7 rubbing the bare breasts of Ms. Fausto, and then willfully, unlawfully, and feloniously sexually
8 assaulted and subjected Ms. Fausto to sexual penetration, to wit: sexual intercourse: by placing
9 his penis into the genital opening of Ms. Fausto, against her will, or under the conditions in which
10 Ricardo Sanchez-Flores knew, or should have known that Ms. Fausto was mentally or physically
11 incapable of resisting or understanding the nature of Ricardo Sanchez-Flores' conduct.

12 28. Ms. Flores walked in after she was woken from the noise of the sexual assaults
13 described in paragraph 27 of this Complaint, and witnessed Ricardo Sanchez-Flores raping Ms.
14 Fausto with his pants down (hereinafter referred to as the "Rape"). Ms. Flores said to Ricardo
15 Sanchez-Flores, "I hope [Ms. Fausto] doesn't remember anything."

16 29. By the time Ms. Flores witnessed the Rape, Ricardo Sanchez-Flores had
17 committed at least four counts of open or gross lewdness and at least three counts of sexual assault
18 against Ms. Fausto.

19 30. Ms. Flores intervened minimally, during the instant moment, and demanded that
20 Mr. Sanchez-Flores leave the room.

21 31. December 30, 2016, the night Plaintiff was raped and sexually assaulted by
22 Ricardo Sanchez-Flores, was the last time Plaintiff ever had contact with Ricardo Sanchez-Flores.

23 32. Though it would seem Ms. Flores was concerned for the well-being of Ms. Fausto,
24 it is clear now that she was only interested in making sure that Ms. Fausto didn't remember the
25 terrible acts inflicted upon her in her state of intoxication by Ricardo Sanchez-Flores.

26 33. On or about December 31, 2016, Ms. Flores drove Ms. Fausto to pick up Ms.
27 Fausto's car after Ms. Fausto was sober enough to drive (hereinafter referred to as the "Car
28 Ride").

1 34. During the Car Ride, Ms. Flores asked Ms. Fausto if she remembered anything
2 from the night before.

3 35. Still in shock, and not having fully understood yet the nature of Ricardo Sanchez-
4 Flores' horrible acts against Ms. Fausto, Ms. Fausto stated she did not remember anything.

5 36. It is clear that Ms. Flores intended to accomplish an unlawful objective for the
6 purpose of harming Ms. Fausto by aiding or abetting Ricardo Sanchez-Flores' sexual assault of
7 Ms. Fausto after the assault occurred.

8 37. On or about December 31, 2016, after leaving the situation where the sexual
9 assault happened, from the support of her family Ms. Fausto went to the doctor to get a rape kit.

10 38. Within the week in which the rape kit was prepared, Ms. Fausto went to the Las
11 Vegas Metro Police Department (hereinafter referred to as "LVMPD") station to report the crime.

12 39. On or about February 17, 2017, Ms. Fausto was interviewed by Detective Lafreine
13 (hereinafter referred to as the "Detective") with LVMPD.

14 40. On or about April 3, 2017, the Detective attempted to contact Christian Altamirano
15 and Ms. Flores regarding the case. Neither Mr. Atlamirano nor Ms. Flores would cooperate with
16 the investigation.

17 41. Around the same time, Mr. Sanchez-Flores retained an attorney and a DNA sample
18 was collected from Mr. Sanchez-Flores.

19 42. Despite her eye witness role in the assault, Ms. Flores refused to cooperate with
20 the investigation.

21 43. After four months of no contact, on or about April 1, 2017, Ms. Flores initiated
22 communication by text message to Ms. Fausto to wish Ms. Fausto a happy birthday. During the
23 conversation that took place on or about April 1, 2017, Plaintiff in her candor explained to Ms.
24 Flores that contrary to their initial conversation the morning after Ms. Fausto's assault on or about
25 December 31, 2016, Ms. Fausto did in fact now understand the nature of Ricardo Sanchez-Flores'
26 conduct and realized he took advantage of Ms. Fausto's state of intoxication to sexually assault
27 Ms. Fausto.

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1 44. Ms. Flores responded in what seemed to be concern and informed Ms. Fausto she
2 planned to divorce Ricardo Sanchez-Flores for his heinous acts.

3 45. After the conversation between Ms. Flores and Ms. Fausto on or about April 1,
4 2017, Ms. Flores did not immediately leave Ricardo Sanchez-Flores, instead she retained a
5 criminal attorney.

6 46. On or around April 7, 2017, the Detective collected the unwashed clothes that
7 Plaintiff was wearing the day she was assaulted.

8 47. Over the years, the Detective investigating the criminal acts of Ricardo Sanchez-
9 Flores, kept Ms. Fausto apprised of the status of the investigation.

10 48. On or about February 2, 2019, Ms. Fausto was notified that the lab had finally
11 processed Ms. Fausto's rape kit and that Mr. Sanchez-Flores' DNA was in fact found in the
12 clothing Ms. Fausto was wearing on the night of the assault.

13 49. On or about April 25, 2019, a Criminal Complaint was filed in the Justice Court,
14 Las Vegas Township of Clark County Nevada under Case No. 19F03440X naming Ricardo
15 Sanchez-Flores as Defendant for Sexual Assault (Category A Felony- NRS 200.364, 200.366-
16 NOC 50095) and Open or Gross Lewdness (Gross Misdemeanor – NRS 201.210- NOC 50971).

17 50. On or about June 24, 2019, the preliminary Hearing was held regarding Ricardo
18 Sanchez-Flores' criminal case relative to the Sexual Assault and Open and Gross Lewdness
19 against Ms. Fausto.

20 51. The Court found probable cause regarding the charges alleged in the criminal
21 complaint based off the evidence and the DNA results. Ricardo Sanchez-Flores did not accept
22 the plea deal offered by the District Attorney; and therefore, the case has been transferred to the
23 U.S. District Court for prosecution.

24 52. As a direct and proximate result of the acts of Ricardo Sanchez-Flores and Ms.
25 Flores, Ms. Fausto has suffered severe injuries as further alleged below.

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1 **III. CLAIMS FOR RELIEF**

2 **FIRST CLAIM FOR RELIEF**

3 **(Sexual Assault and Battery against Ricardo Sanchez-Flores)**

4 53. Plaintiff repeats and realleges the allegations contained in paragraph 1 through 52
5 of this Complaint as if fully set forth herein.

6 54. Ricardo Sanchez-Flores engaged in unlawful, harmful, and offensive contact and
7 touching and ultimate sexual assault of Ms. Fausto against her will.

8 55. As a direct and proximate result of Ricardo Sanchez-Flores' acts, Ms. Fausto
9 suffered bodily injury, pain and suffering, mental anguish, loss of the capacity for the enjoyment
10 of life, medical care and treatment, expenses for medical care and treatment, loss of earnings and
11 loss of the ability to earn money. These losses are either permanent or continuing in nature, and
12 Ms. Fausto will continue to suffer from these losses in the future.

13 56. The intentional and/or reckless conduct of Ricardo Sanchez-Flores and Ms. Flores
14 caused Plaintiff to be damaged in an amount of excess of \$15,000.00.

15 57. The conduct of Ricardo Sanchez-Flores and Ms. Flores was done with purposeful
16 intent to injure Ms. Fausto and this malice in law allows an award of punitive damages against
17 Ricardo Sanchez-Flores and Ms. Flores.

18 58. Due to the conduct of Ricardo Sanchez-Flores and Ms. Flores, it has been
19 necessary for Ms. Fausto to retain the services of an attorney to bring this action, and accordingly,
20 Ms. Fausto is entitled to reasonable attorney's fees and costs incurred herein.

21 **SECOND CLAIM FOR RELIEF**

22 **(Intentional Infliction of Emotional Distress (Outrage))**

23 59. Plaintiff repeats and realleges the allegations contained in paragraph 1 through 58
24 of this Complaint as if fully set forth herein.

25 60. The conduct of Ricardo Sanchez-Flores and Ms. Flores as described herein above
26 was and is extreme, outrageous, willful, malicious, oppressive, atrocious, and goes well beyond
27 all possible bounds of decency in civilized community, and was done either deliberately, and with
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1 the express intent of causing Ms. Fausto emotional distress, or done in reckless disregard of the
2 fact that such emotional distress would result from the aforementioned conduct.

3 61. The conduct of Ricardo Sanchez-Flores and Ms. Flores, as referenced herein
4 above, has resulted in severe emotional distress for Plaintiff, resulting in anxiety, nervousness,
5 depression, sleeplessness, fatigue, confusion, pain and suffering, severe mental anguish and
6 distress, loss of the capacity for the enjoyment of life, medical care and treatment, loss of earnings
7 and loss of ability to earn money and other physical manifestations of emotional trauma caused
8 by Ricardo Sanchez-Flores and Ms. Flores.

9 62. The physical and psychological effects of sexual assault, endure long after the
10 assault takes place. Sexual violations are inflicted in and on the body, the place where one's
11 consciousness resides. Thus, as a victim of sexual assault directly and proximately inflicted and
12 caused by Ricardo Sanchez-Flores, Ms. Fausto can never entirely escape or be free from the
13 setting where the violations to her body took place.

14 63. The intentional and/or reckless conduct of Ricardo Sanchez-Flores and Ms. Flores
15 caused Plaintiff to be damaged in an amount of excess of \$15,000.00.

16 64. The conduct of Ricardo Sanchez-Flores and Ms. Flores was done with purposeful
17 intent to injure Ms. Fausto and this malice in law allows an award of punitive damages against
18 Ricardo Sanchez-Flores and Ms. Flores.

19 65. Due to the conduct of Ricardo Sanchez-Flores and Ms. Flores, it has been
20 necessary for Ms. Fausto to retain the services of an attorney to bring this action, and accordingly,
21 Ms. Fausto is entitled to reasonable attorney's fees and costs incurred herein.

22 **THIRD CLAIM FOR RELIEF**
23 **(False Imprisonment)**

24 66. Plaintiff repeats and realleges the allegations contained in paragraph 1 through 65
25 of this Complaint as if fully set forth herein.

26 67. On or about December 30, 2016, Defendants intended to confine Plaintiff to their
27 car and house.

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68. Defendants' imprisonment of Plaintiff was against her will and was such that it violated her right to be free from restraint of movement.

69. Defendants were aware of their confinement of Plaintiff and the harm that was being done to Plaintiff as a result of her unwanted confinement.

70. The intentional and/or reckless conduct of Ricardo Sanchez-Flores and Ms. Flores caused Plaintiff to be damaged in an amount of excess of \$15,000.00.

71. The conduct of Ricardo Sanchez-Flores and Ms. Flores was done with purposeful intent to injure Ms. Fausto and this malice in law allows an award of punitive damages against Ricardo Sanchez-Flores and Ms. Flores.

72. Due to the conduct of Ricardo Sanchez-Flores and Ms. Flores, it has been necessary for Ms. Fausto to retain the services of an attorney to bring this action, and accordingly, Ms. Fausto is entitled to reasonable attorney's fees and costs incurred herein.

FOURTH CLAIM FOR RELIEF
(Civil Conspiracy)

73. Plaintiff repeats and realleges the allegations contained in paragraph 1 through 72 of this Complaint as if fully set forth herein.

74. Based upon the foregoing conduct as alleged herein above, Ricardo Sanchez-Flores and Ms. Flores acted in concert to deprive Plaintiff of her health, safety, liberty and sanity, with object of the conspiracy being to coerce or intimidate Ms. Fausto into allowing Ricardo Sanchez-Flores to both engage in conduct amounting to and escape prosecution for Sexual Assault and Open or Gross Lewdness.

75. Ricardo Sanchez-Flores and Ms. Flores, each acted in concert and in combination, with each in full knowledge of and ratifying the acts of the other, harming Ms. Fausto and resulting in damage.

76. The civil conspiracy, malice, and oppression caused by Ricardo Sanchez-Flores and Ms. Flores caused Ms. Fausto to be damaged in an amount in excess of \$15,000.00.

77. The civil conspiracy of Ricardo Sanchez-Flores and Ms. Flores was accomplished by exploiting a position of trust and confidence, and/or by acting in violation of Nevada law,

1 which constitutes oppressive behavior on Ms. Fausto thereby warranting an award of punitive
2 damages.

3 78. That due to the conduct of Ricardo Sanchez-Flores and Ms. Flores, it has been
4 necessary for Plaintiff to retain the services of an attorney to bring this action, and accordingly,
5 Ms. Fausto is entitled to recover her reasonable attorneys' fees and costs incurred herein.

6
7 **FIFTH CLAIM FOR RELIEF**
8 **(Concerted Action)**

9 79. Plaintiff repeats and realleges the allegations contained in paragraph 1 through 78
10 of this Complaint as if fully set forth herein.

11 80. Ricardo Sanchez-Flores and Ms. Flores and each of them acted together with a
12 joint plan and/or intent to harm, imprison, and otherwise violate Ms. Fausto.

13 81. While Defendants acted in concert with one another pursuant to their common
14 plan, they in fact engaged in malicious, oppression, and tortious acts against Ms. Fausto.

15 82. Defendants' wrongful and unjustified actions caused Ms. Fausto such harm
16 including, but not limited to: significant physical pain, mental anguish, and financial instability.

17 83. The concerted actions, malice, and oppression conducted by Ricardo Sanchez-
18 Flores and Ms. Flores caused Ms. Fausto to be damaged in an amount in excess of \$15,000.00.

19 84. The concerted actions of Ricardo Sanchez-Flores and Ms. Flores were
20 accomplished by exploiting a position of trust and confidence, and/or by acting in violation of
21 Nevada law, which constitutes oppressive behavior on Ms. Fausto thereby warranting an award
22 of punitive damages.

23 85. That due to the conduct of Ricardo Sanchez-Flores and Ms. Flores, it has been
24 necessary for Plaintiff to retain the services of an attorney to bring this action, and accordingly,
25 Ms. Fausto is entitled to recover her reasonable attorneys' fees and costs incurred herein.

26
27 **SIXTH CLAIM FOR RELIEF**
28 **(Negligence)**

86. Plaintiff repeats and realleges the allegations contained in paragraph 1 through 85
of this Complaint as if fully set forth herein.

87. Defendants owed a duty of reasonable care to Ms. Fausto.

88. By engaging in the aforementioned conduct, Ricardo Sanchez-Flores vehemently violated that duty to Ms. Fausto.

89. By engaging in the aforementioned conduct, Ms. Flores also violated that duty to Ms. Fausto.

90. As a result of Defendants' breach of their duty to Ms. Fausto, they caused Ms. Fausto such harm including, but not limited to: significant physical pain, mental anguish, and financial instability.

91. Defendants were aware of their confinement of Plaintiff and the harm that was being done to Plaintiff as a result of her unwanted confinement.

92. As a result of Defendants' actions, Plaintiff was damaged in an amount in excess of \$15,000.00.

93. The negligence of Ricardo Sanchez-Flores and Ms. Flores constitutes oppressive behavior on Ms. Fausto thereby warranting an award of punitive damages.

94. That due to the conduct of Ricardo Sanchez-Flores and Ms. Flores, it has been necessary for Plaintiff to retain the services of an attorney to bring this action, and accordingly, Ms. Fausto is entitled to recover her reasonable attorneys' fees and costs incurred herein.

IV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court enter judgment against Defendants as follows:

1. All medical, incidental, special, and general damages and expenses and losses sustained by Ms. Fausto and reasonably likely to be sustained in the future according to proof at the time of trial in an amount in excess of \$15,000.00;
2. Prejudgment interest as provided by law;
3. Punitive and/or exemplary damages against Defendants in an amount appropriate to punish and/or set an example of these defendants
4. For an award of reasonable attorneys' fees and costs and litigation expenses plus interest accruing thereon, in her favor at the maximum rate allowed by law; and

5. For such other and further relief that the Court or jury may deem just or equitable deems proper.

DATED this 2nd day of July, 2019.

HUTCHISON & STEFFEN, PLLC

Joseph R. Ganley (SBN#5643)
Piers R. Tueller (SBN#14633)
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Attorneys for Plaintiff Jaqueline Fausto

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VERIFICATION

STATE OF Nevada)
County of Clark) ss.

I, Jaqueline Fausto, being first duly sworn, under penalty of perjury, do hereby depose
and say:

I am a Plaintiff in this action, and I have read the foregoing Complaint, know the contents
of the and the matters stated therein are true of my own knowledge, except for those matters stated
on information and belief, and, as to those matters, I believe them to be true.

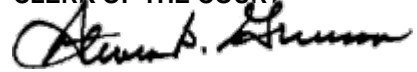
DATED: This 2 day of July, 2019.

Jaqueline Fausto
Jaqueline Fausto

SUBSCRIBED and SWORN to before me
this 2nd day of July, 2019 by Jaqueline Fausto.

Kaci Chappuis
NOTARY PUBLIC





NOTC

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Attorneys for Plaintiff Jaqueline Fausto

DISTRICT COURT

CLARK COUNTY, NEVADA

JAQUELINE FAUSTO, an individual,

Plaintiff,

v.

RICARDO SANCHEZ-FLORES, an individual;
VERENICE RUTH FLORES, an individual;

Defendants.

Case No. A-19-797890-C
Dept. No. XXIII

**NOTICE OF AFFIDAVIT OF
SERVICE**

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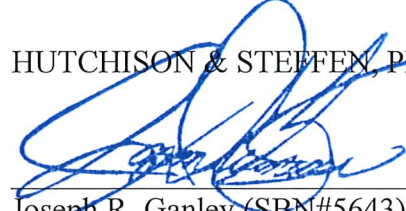
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1 **COMES NOW**, Plaintiff Jaqueline Fausto (“Plaintiff”), by and through her undersigned counsel
2 of record, and Notices the Affidavit of Service upon Defendant Verenice Ruth Flores, an
3 individual. See Exhibit 1 (Affidavit of Service).

4 DATED this 23 day of July, 2019.

5 HUTCHISON & STEFFEN, PLLC

6 

7 Joseph R. Ganley (SBN#5643)

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20 jguinasso@hutchlegal.com

21 *Attorneys for Plaintiff Jaqueline Fausto*

EXHIBIT 1

EXHIBIT 1

AFFIDAVIT OF SERVICE

State of Nevada

County of Clark

District Court

Case Number: A-19-797890-C

Plaintiff:

JAQUELINE FAUSTO, an individual

vs.

Defendants:

RICARDO SANCHEZ-FLORES, an individual; VERENICE RUTH FLORES, an individual

Received by Bullet Legal Services on the 3rd day of July, 2019 at 1:33 pm to be served on **VERENICE RUTH FLORES, 1613 San Pedro Ave., Las Vegas, NV 89104.**

I, Anthony Spada, being duly sworn, depose and say that on the **8th day of July, 2019 at 1:53 pm, I:**

INDIVIDUALLY/PERSONALLY served by delivering a true copy of the **SUMMONS and COMPLAINT** to: **VERENICE RUTH FLORES** at the address of: **1613 San Pedro Ave., Las Vegas, NV 89104.**

Description of Person Served: Age: 50, Sex: F, Race/Skin Color: HISPANIC, Height: 5'1", Weight: 130, Hair: BLACK, Glasses: N

I certify that at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to or interested in the proceeding in which this affidavit is made.

State of Nevada
County of Clark

Subscribed and sworn to before me on the 11th
day of July, 2019 by the affiant
who is personally known to me.

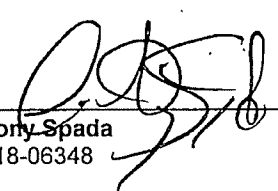
NOTARY PUBLIC



BERT LOTT

Notary Public, State of Nevada
Appointment No. 07-48889
My Appt. Expires Sept 14, 2019

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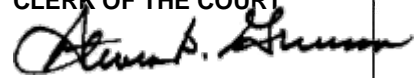

Anthony Spada
R-2018-06348

Bullet Legal Services
1930 Village Center Circle, #3-965
Las Vegas, NV 89134
(702) 823-1000

Our Job Serial Number: BRT-2019002039
Ref: 8498-001



JA0018



1 **MTD**
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7 *Attorneys for Defendants*
Ricardo Sanchez-Flores and
8 *Verenice Ruth Flores*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 JAQUELINE FAUSTO, an individual,
12 Plaintiff,

CASE NO: A-19-797890-C

DEPT NO: XXIII

13 vs.

HEARING REQUESTED

14 RICARDO SANCHEZ-FLORES, an
individual; VERENICE RUTH FLORES, an
15 individual;

16 Defendants.

17
18 **MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION TO STAY**

19 COMES NOW Defendants RICARDO SANCHEZ-FLORES (individually referred to as
20 "Ricardo") and VERENICE RUTH FLORES, (individually referred to as "Verenice") (hereinafter
21 collectively referred to as "Defendants") by and through their counsel of record, John Henry
22 Wright, Esq., and Christopher B. Phillips, Esq., of The Wright Law Group, P.C., and hereby
23 submits their Motion to Dismiss Plaintiff JACQUELINE FAUSTO'S ("Plaintiff") complaint filed
24 on July 3, 2019.

25 This Motion is made pursuant to Rule 12 of the Nevada Rules of Civil Procedure and is
26 based upon the points and authorities contained herein, the exhibits attached hereto, the records and
27 files of this case and any argument that the court elects to entertain at hearing on said Motion.

28 ///


THE WRIGHT LAW GROUP P.C.
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
Tel: (702) 405-0001 Fax: (702) 405-8454





DATED this 24 day of July, 2019.

THE WRIGHT LAW GROUP, P.C.


JOHN HENRY WRIGHT, ESQ.
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CHRISTOPHER B. PHILLIPS, ESQ.
Nevada Bar No. 14600
2340 Paseo Del Prado, Ste. D-305
Las Vegas, NV 89102
*Attorneys for Defendants
Ricardo Sanchez-Flores and
Verenice Ruth Flores*

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

Defendant Ricardo is currently facing criminal prosecution before this Court, in this very department, in case number C-19-341309-1. The criminal prosecution arises from the very same conduct that is alleged in Plaintiff's complaint.

II. LEGAL STANDARD

Rule 12(b)(5) of the Nevada Rules of Civil Procedure provides that a complaint (or counterclaim) may be dismissed for "failure to state a claim upon which relief can be granted." In considering such a motion, the Court construes all factual allegations in the complaint as true and draws all reasonable inferences in favor of the non-moving party. *Buzz Stew, LLC v. City of North Las Vegas*, 181 P.3d 670, 672 (Nev. 2008). Nevertheless, the allegations in the complaint must be legally sufficient to constitute the elements of the claim asserted. *Malfabon v. Georgia*, 111 Nev. 793, 796, 898 P.2d 107, 108 (1995). Where the Plaintiff has failed to state the necessary elements of the predicate claim, the Plaintiff fails to state a claim upon which relief can be granted pursuant to NRCP 12(b)(5), and the claim must be dismissed. *Hale v. Burkhardt*, 104 Nev. 632, 764 P.2d 866 (1998).

III. ARGUMENT

A. Plaintiff's Claims are Time Barred by Statute of Limitations

Plaintiff's complaint alleges six causes of action, to wit: (1) Sexual Assault and Battery, (2) Intentional Infliction of Emotional Distress (Outrage), (3) False Imprisonment, (4) Civil Conspiracy, (5) Concerted Action, and (6) Negligence. Counts one, two, three, five and six are all



1 tort claims and are, at this late date, barred by statute of limitations and must be dismissed¹.

2 Pursuant to NRS 11.190(4)(e), any action to recover damages for injuries to a person caused
3 by a wrongful act or neglect must be commenced within two (2) years of the alleged wrongful
4 conduct or neglect. Here, Plaintiff's complaint alleges that Defendants engaged in wrongful and
5 negligent conduct on or about December 30 and December 31, 2016. *See Plaintiff's Complaint* at
6 ¶¶ 32, 33. Calculating two years from the latest date alleged, December 31, 2016, Plaintiff's
7 complaint needed to be filed on or before December 31, 2018. Here, Plaintiff's complaint was not
8 filed until July 3, 2019, which is six months and four days after the statute of limitation deadline.

9 In Nevada, when a defense of statute of limitation appears from the complaint itself, a
10 motion to dismiss is proper. *Kellar v. Snowden*, 87 Nev. 488, 491 (Nev. 1971) (*citing Manville v.*
11 *Manville*, 79 Nev. 487, 387 P.2d 661 (1963)). When the complaint shows on its face that the causes
12 of action are barred, the burden falls on the Plaintiff to show that the bar does not exist. *Id.* (*citing*
13 *Bank of Nevada v. Friedman*, 82 Nev. 417, 422, 420 P.2d 1, 4 (1966)). Here, Defendants' alleged
14 conduct is said to have occurred on December 30 and December 31, 2016. Notably, this Court
15 takes every fact as plead in the complaint as true for the purposes of a Motion to Dismiss.
16 Accordingly, Plaintiff's complaint as to time and date of the alleged conduct is deemed to be true;
17 and as a result, by Plaintiff's own admission, her tort claims for Sexual Assault and Battery,
18 Intentional Infliction of Emotional Distress (outrage), False Imprisonment, and Negligence are, at
19 this late date, barred by statute of limitations and must be dismissed.

20 As to Plaintiff's claim for concert of action, Nevada has not specified a statute of limitations
21 for a concert of action claim. However, relevant case law suggests that the appropriate statute of
22 limitations for a claim of concert of action is the same statute of limitations that controls the
23 underlying tort. Here, all of Plaintiff's tort claims are barred by a two year statute of limitation,
24 thus, she is also barred from pursuing a concert of action claim based on her time barred tort
25 allegations.

26
27 ¹Count four for Civil Conspiracy fails as a matter of law and must also be dismissed for other
28 reasons explained *infra*.



1 This rule is consistent with the decision of other another department of this court, as well
2 as the United States District Court for the District of Nevada. In *State ex rel. Pickens v. La Villa*
3 *Vegas*, 2018 Nev. Dist. LEXIS 1419, *7 (Eight Judicial Dist. Ct., Dept. 4, Dec. 2018), the
4 Honorable Kerry Earley applied a two year statute of limitations to a claim for concert of action.
5 In *U-Haul Co. of Nevada v. United States*, 2011 U.S. Dist. LEXIS 83932, *10 (Dist. of Nev.,
6 2011), the District Court held that a concert of action claim is barred if the claim arises from a
7 barred tort. Similarly, this same holding was also reached in *Kravitz v. Summersett (In re Great*
8 *Lakes Comnet, Inc.)*, 588 B.R. 1, 17 (W.D. MI., 2018) wherein the court noted that the statute of
9 limitations for the underlying tort controls for the purpose of concert of action claims.

10 Furthermore, Nevada's sister state, Arizona, has held that a claim for concert of action is
11 the same as a claim for civil conspiracy. See *Champ v. Jung*, 2017 U.S. Dist. LEXIS 217260, *7-8,
12 (Dist. of Arizona, 2017).

13 So, whether this Court concludes that the claim for concert of action is controlled by the
14 underlying tort statute of limitations, or if this Court concludes that a claim for concert of action
15 is duplicative of Plaintiff's civil conspiracy claim, in either instance, Plaintiff's claim for concert
16 of action is not a claim for which this Court can grant relief; and Plaintiff's concert of action claim
17 must be dismissed.

18 **B. Plaintiff Cannot Maintain an Action for Civil Conspiracy**

19 Unlike Plaintiff's tort claims which are time barred by statute of limitations, Plaintiff's
20 claim for civil conspiracy is timely. Claims for civil conspiracy are controlled by Nevada's catch
21 all statute of limitations provision, which means civil conspiracy is subject to a four (4) year
22 limitations period. See *Siragusa v. Brown*, 114 Nev. 1384, 1392 (citing NRS 11.220).

23 In spite of its timeliness, Plaintiff cannot maintain a claim for civil conspiracy based upon
24 the facts alleged in her complaint for two reasons. First, "...[i]n order to support a claim of civil
25 conspiracy, it is necessary for the plaintiff to prove a separate, actionable tort. *Martell v. Turcek*,
26 2008 U.S. Dist. LEXIS 51966, *21 (E.D. MI, 2008). Here, Plaintiff cannot maintain any actionable
27 tort, as all of her tort claims are time barred.

28 ///



1 Secondly, Plaintiff does not allege that she was injured by the formation of a conspiracy
2 itself, but by torts committed by Defendants acting in concert with one another. This is key, as the
3 tort of civil conspiracy requires that the fact of a conspiracy, not simply the acts perpetrated by co-
4 conspirators, gives rise to a cause of action for civil conspiracy. Many courts agree that there
5 simply is no independent or separate and distinct tort cause of action for civil conspiracy. *See* 15A
6 C.J.S. Conspiracy, relying on *Caminito vs. City of New York*, 256 N.Y.S.2d 670 (Sup. 1965);
7 *Weinbaum v. Goldfarb, Whitman & Cohen*, 46 Cal. App. 4th 1310 (2nd. Dist. 1996); *Applied*
8 *Equipment Corp., vs. Litton Saudi Arabia, Ltd.*, 7 Ca. 4th 503, 869 P.2d 454 (1994); *Sackman v.*
9 *Liggett Group, Inc.*, 965 F.Supp. 391 (E.D.N.Y. 1997). Nevada is one state that does recognize
10 the tort of civil conspiracy, but only in very limited situations.

11 The Nevada Supreme Court explained the elements of civil conspiracy in *Short v. Riviera*
12 *Hotel, Inc.*, 79 Nev. 94, 378 P.2d 979 (1963). In *Short*, Plaintiff Benny Short was a bandleader who
13 was under contract with the Riviera Hotel. The Hotel decided it was going to terminate Short's
14 contract, which was at-will. Before doing so, the Riviera and others met with Short's union band-
15 members and an agreement was reached whereby his band-members would also terminate their
16 contracts with Short, thus making it impossible for Short to fulfill obligations he had with other
17 establishments. Short's contracts with his band members were also at-will. Short alleged that
18 these actions were meant to injure him in retaliation for prior disputes he had with the union's
19 leadership.

20 The district court granted summary judgment for the defense reasoning that the contracts
21 were all at-will, and therefore their termination legal, and thus the agreement amongst the various
22 parties to take such action collectively would likewise be legal. On appeal, the Supreme Court
23 disagreed, overturned and remanded the case. The Nevada Supreme Court found that some acts
24 which, when performed by one person acting alone are legal - can become illegal because of the
25 effect they have when they are done in concert with others. Relying heavily on boycott and anti-
26 trust cases, the Nevada Supreme Court carved out a very narrow scenario when the tort of civil
27 conspiracy will be recognized in the state of Nevada. The Nevada Supreme Court defined Civil
28 Conspiracy as follows:

... where an act done by an individual, though harmful to another, is not actionable
because justified by his rights, yet the same act becomes actionable when
committed in pursuance of a combination of persons actuated by malicious motives



1 and not having the same justification as the individual.' Virtually the same
2 statement is found in 15 C.J.S. Conspiracy § 8, p. 1003.

3 The United States Supreme Court has thus stated the rule: 'An act lawful when
4 done by one may become wrongful when done by many acting in concert, taking
5 on the form of a conspiracy which may be prohibited if the result be hurtful to the
6 public or to the individual against whom the concerted action is directed.' Fed.
Trade Comm. v. Raymond, etc., Co., 263 U.S. 565, 574, 44 S.Ct. 162, 164, 68
L.Ed. 448; Grenada Lumber Co. v. Mississippi, 217 U.S. 433, 440, 30 S.Ct. 535,
54 L.Ed. 826; Bedford Cut Stone Co. v. Journeymen Stone Cutters Assn., 274 U.S.
37, 54, 47 S.Ct. 522, 71 L.Ed. 916.

7 ***

8 When an act done by an individual is not actionable because justified by his rights,
9 though harmful to another, such act becomes actionable when done in pursuance
10 of combination of persons actuated by malicious motives and not having same
justification as the individual.² Many other cases could be cited. The great weight
of authority is in support of the rule last discussed and we accept the same as the
correct one.

11 *Short v. Hotel Riviera, Inc.* 79 Nev. 94, 104-106, 378 P.2d 979, 985 - 986 (Nev.1963)³

12 Thus, civil conspiracy, as an action in tort, does not exist unless the inclusion of several
13 people is what causes the injury. Said another way, if the act is illegal if committed by one person
14 acting alone, adding additional tortfeasors to the plan does not create the tort of civil conspiracy.
15 In order to constitute civil conspiracy, the act alleged must be one that is *legal* to be performed by
16 an *individual* but *illegal* when performed by *several acting together* with the intent to injure.

17 Probably the best illustration of this concept is price fixing: one vendor setting the price of
18 his goods is not illegal; but several conspiring to set their prices in line with one another is an anti-
19 trust violation and constitutes the tort of civil conspiracy.

20 _____
21 ²*Clark v. Sloan*, 169 Okl. 347, 37 P.2d 263; *Starmer v. Mid-West Chevrolet Corporation*, 175 Okl.
22 160, 51 P.2d 786. *Accord: Deon v. Kirby Lumber Co.*, 162 La. 671, 111 So. 55, 52 A.L.R. 1023;
23 *Ertz v. Produce Exchange Co.*, 79 Minn. 140, 81 N.W. 737, 48 L.R.A. 90; *Brown v. Jacobs*
Pharmacy Co., 115 Ga. 429, 41 S.E. 553, 57 L.R.A. 547; *Rosenblum v. Rosenblum*, 320 Penn. 103,
24 181 A. 583; *St. Luke's Hospital v. Industrial Commission*, 142 Colo. 28, 349 P.2d 995; *Texas*
Public Utilities Corporation v. Edwards (Tex.Civ.App.), 99 S.W.2d 420; *Ingo v. Kock*, 2 Cir.,
25 1942, 127 F.2d 667; *Pfoh v. Whitney*, Ohio App., 62 N.E.2d 744; *Bankers' Fire & Marine Ins. Co.*
26 *v. Sloss*, 229 Ala. 26, 155 So. 371; Prosser, Torts (2d ed.) 731, 732. See 11 Harvard Law Review
449, 457.

27 ³ After the *Short* case was remanded and the trial took place, the Defendants appealed the finding
28 of civil conspiracy and challenged the Court's prior holding. The Court confirmed the rule set forth
in the first case and it stands today. *See, Hotel Riviera, Inc., v. Short*, 80 Nev. 505, 396 P.2d 855
(1964).



1 This example of price fixing is also relevant to the Nevada Supreme Court more recent
2 discussion of civil conspiracy in *GES, Inc. v. Corbitt*, wherein the Court explained, that in order
3 “[t]o prevail in civil conspiracy action, a plaintiff must prove an agreement between the
4 tortfeasors...” *GES, Inc. v. Corbitt*, 117 Nev. 265, 270-271, 21 P.3d 11 (Nev. 2001). This makes
5 sense in the context of price fixing, because price fixing requires the agreement of multiple vendors
6 in order to have any effect on prices. Price fixing and the facts of the *Short* case are some of the
7 very rare circumstances when a civil conspiracy is formed.

8 As far as the *Short* and *GES* holdings relate to the instant case, sexual assault, rape, battery,
9 false imprisonment, *et. al.* as alleged by Plaintiff is conduct that is always illegal, regardless of
10 whether the conduct is committed by one single defendant/tortfeasor acting alone or by several
11 acting together. Likewise, that conduct alleged by Plaintiff is always illegal regardless of whether
12 an agreement exists between multiple defendants. Here, if Plaintiff’s allegations are proven to be
13 true at the time of trial, all that Plaintiff will have proven is that two defendants committed illegal
14 conduct. But two people committing the same illegal conduct does not, under Nevada law,
15 constitute civil conspiracy. As such, Plaintiff’s claim for civil conspiracy is not recognized under
16 Nevada Law and Plaintiff’s complaint for civil conspiracy must be dismissed.

17 **C. Plaintiff’s Claim for Concert of Action is Insufficiently Plead**

18 In addition to the fact that Plaintiff’s claim for concert of action is barred by statute of
19 limitations as explained *supra*, Plaintiff’s claim for concert of action is also insufficiently plead.
20 In Nevada, a claim for concert of action can only lie when two or more people acting together to
21 commit a tort pursuant to a common plan. *See GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 (Nev.
22 2001). Here, Plaintiff has not plead that Defendant Ricardo and Defendant Verenice acted together
23 based on a specific plan. Notably, Plaintiff’s complaint alleges that Defendant Verenice was
24 unaware of the alleged assault that took place during the car ride, and upon arriving at the
25 residence, Defendant Verenice went to sleep. Plaintiff alleges that Defendant Verenice woke up
26 sometime during the alleged sexual assault and walked into the room where Defendant Ricardo and
27 Plaintiff were located. At best, Defendant Verenice’s role is only that of an eye witness. *See*
28 *Plaintiff’s complaint* at ¶¶ 24, 25, 28 and 29. Since Defendant Verenice was unaware of Defendant
Ricardo’s alleged conduct during the car ride, was asleep at home, and not awake until later, after



1 the alleged rape had occurred, Defendant Verenice cannot be said to have participated in some sort
2 of common plan or scheme to sexually assault and rape Plaintiff. Notably, Defendant cannot
3 participate in a plan while she is asleep in another room. Taking every allegation as true, Plaintiff
4 has not alleged a common plan or scheme, nor has she alleged how Defendants separate conduct
5 qualifies as fulfilling a common plan.

6 For these reasons, Plaintiff's claim for concert of action is insufficiently plead, fails to state
7 a claim for which this court can grant relief, and as such, Plaintiff's cause of action for concert of
8 action must be dismissed.

9 **D. Alternative Motion to Stay**

10 For all the reasons set forth in sections A, B, and C above, Defendants maintain that
11 Plaintiff's complaint should be dismissed in its entirety. However, in the event this Court disagrees,
12 Defendants respectfully move this Court to stay the proceedings in this civil action until such time
13 as the related criminal proceeding can be concluded.

14 The district court has the power to stay a civil proceeding due to a pending criminal
15 investigation. It is true that a stay of civil discovery should not be granted lightly and the burden
16 is on the movant to show that a stay is warranted. *Aspen Fin. Servs. v. Eighth Judicial District*
17 *Court of Nev.*, 128 Nev. 635, 642 (2012). Determining whether a stay is appropriate is a fact driven,
18 case-by-case determination that requires the trial court to balance the competing interests involved
19 in the case. *Id.* (citing *Federal Sav. and Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 902 (9th Cir.
20 1989)). The Nevada Supreme Court has held that in determining whether a stay is appropriate, the
21 district court should consider to what extent the Defendant's fifth amendment rights are implicated,
22 along with the following nonexhaustive factors:

23 (1) the interest of the plaintiffs in proceeding expeditiously with [th] litigation or
24 an particular aspect of it, and the potential prejudice to plaintiffs of a delay; (2) the
25 burden which any particular aspect of the proceedings may impose on the
26 defendants; (3) the convenience of the court in the management of its cases, and the
efficient use of judicial resources; (4) the interests of persons not parties to the civil
litigation; and (5) the interest of the public in the pending civil and criminal
litigation.

27 *Aspen*, 128 Nev. 642-643 (citing *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 325 (9th Cir.
28 1995).



1 Here, the *Aspen* factors weigh heavily in favor of staying this civil action pending the
2 outcome of the related criminal case. Most importantly, subjecting Defendants to civil discovery,
3 which would almost certainly include deposition testimony of the Defendant Ricardo. This would
4 subject Defendant Ricardo to a line of questioning that would require him to either assert or waive
5 his fifth amendment rights. Defendant Ricardo's participation in civil discovery has a great
6 potential to result in a scenario where his testimony, or even written discovery responses, could
7 later be used against him in the related criminal proceeding. Defendant Ricardo should not be
8 compelled to participate in civil discovery until such time as the related criminal case is
9 adjudicated.

10 Similarly, Plaintiff's interest in an expeditious resolution of this civil action pales in
11 comparison to Defendant Ricardo's interest in resolving the related criminal action. According to
12 Plaintiff's complaint, the actions complained of occurred in December 2016, yet Plaintiff did not
13 bring the instant complaint until July 2019, more than two years later. The fact that Plaintiff's tort
14 claims are barred by statute of limitations, as explained *supra*, demonstrate Plaintiff's unreasonable
15 delay in bringing this action. As such, Plaintiff cannot be said to have a compelling interest in an
16 expeditious disposition of this civil action. Defendants will not be harmed by this requested stay.

17 As explained above, the burden on Defendants in staying this civil action is minimal. In
18 fact, Defendants are requesting that the matter be stayed pending resolution of the related criminal
19 action.

20 As to the convenience of the court, this department is currently assigned to both this civil
21 action and the related criminal action in case no. C-19-341309-1. The related criminal action is
22 currently set for calendar call on January 29, 2020, and trial is scheduled to begin on February 3,
23 2020. There is no better scenario for managing the court's judicial resources. This court has the
24 ability to control both the civil and criminal case without concern for any other judicial
25 department's schedule. This court has both cases, and can easily stay the civil matter until such
26 time as the criminal matter may be resolved.

27 There is no indication that any parties other than those named in this civil action have any
28 interest in the outcome of this particular case; and to the extent that the public at large has any



1 interest, the public's interest weighs in favor of proceeding with the criminal matter first.

2 For these reasons, the *Aspen* factors all weigh in favor of a stay of litigation in this matter
3 pending adjudication of the related criminal case.

4 IV. CONCLUSION

5 For all of the above reasons, Plaintiff's complaint fails to state any cause of action for which
6 this court can grant relief. Plaintiff's claims for Sexual Assault and Battery, Intentional Infliction
7 of Emotional Distress, False Imprisonment, and Negligence are barred by statute of limitations.
8 Plaintiff's claims for Civil Conspiracy and Concerted Action both fail as a matter of law.
9 Accordingly, Plaintiff's complaint must be dismissed in its entirety.

10 Alternatively, this civil action must be stayed pursuant to *Aspen*, pending resolution of
11 Defendant Ricardo's pending criminal case.

12 Dated this 24 day of July, 2019.

13 THE WRIGHT LAW GROUP, P.C.

14
15 

16 JOHN HENRY WRIGHT, ESQ.

17 Nevada Bar No. 6182

18 CHRISTOPHER B. PHILLIPS, ESQ.

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23 *Ricardo Sanchez-Flores and*

24 *Verenice Ruth Flores*

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing NOTICE OF APPEARANCE was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 24th day of July, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:

HUTCHISON & STEFFEN, PLLC

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Piers R. Tueller, Esq.
Attorneys for Plaintiff
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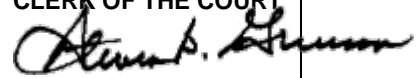
I further certify that I served a copy of this document by Electronic mail a true and correct copy, addressed to:

None.

An employee of **THE WRIGHT LAW GROUP, P.C.**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Electronically Filed
7/24/2019 2:58 PM
Steven D. Grierson
CLERK OF THE COURT



Jaqueline Fausto, Plaintiff(s)

vs.

Ricardo Sanchez-Flores, Defendant(s)

Case No.: A-19-797890-C

Department 23

NOTICE OF HEARING

Please be advised that the Motion to Dismiss or in the Alternative Motion to Stay in the above-entitled matter is set for hearing as follows:

Date: August 27, 2019

Time: 9:30 AM

Location: RJC Courtroom 12C
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

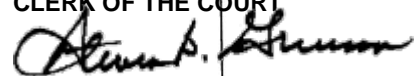
By: /s/ Joshua Raak
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Joshua Raak
Deputy Clerk of the Court

JA0030



ACSR

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*Attorneys for Defendants
Ricardo Sanchez-Flores and Verence Ruth Flores*

DISTRICT COURT

CLARK COUNTY, NEVADA

JAQUELINE FAUSTO

Plaintiff(s),

-vs-

RICARDO SANCHEZ-FLORES, an
individual; Verence Ruth Flores, an
individual

Defendant(s).


CASE NO. A-19-797890-C


DEPT. NO. XXIII

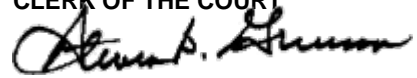
**ACCEPTANCE OF SERVICE
OF SUMMONS AND COMPLAINT**

I, Christopher B. Phillips, Counsel for Defendants Ricardo Sanchez-Flores and
Verence Ruth Flores, hereby accept service of Summons and Complaint on behalf of
Defendant Ricardo Sanchez-Flores.

DATED this 31 day of July, 2019.



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Attorneys for Plaintiff Jaqueline Fausto

DISTRICT COURT

CLARK COUNTY, NEVADA

JAQUELINE FAUSTO, an individual,

Plaintiff,

v.

RICARDO SANCHEZ-FLORES, an individual;
VERENICE RUTH FLORES, an individual;

Defendants.

Case No. A-19-797890-C
Dept. No. XXIII

**OPPOSITION TO
DEFENDANTS' MOTION TO
DISMISS OR IN THE
ALTERNATIVE MOTION TO
STAY**

**HEARING DATE: August 27, 2019
HEARING TIME: 9:30 AM**

COMES NOW, Plaintiff Jaqueline Fausto ("Plaintiff"), by and through her undersigned counsel of record, and hereby opposes the July 24, 2019 Motion to Dismiss or in the Alternative Motion to Stay filed by Defendants Ricardo Sanchez-Flores and Verenice Ruth Flores.

1 This Opposition is made pursuant to Rule 12 of the Nevada Rules of Civil Procedure and
2 is based upon the points and authorities contained herein, the exhibits attached hereto, the records
3 and files of this case and any argument that the court elects to entertain at the Hearing on said
4 Motion.

5 MEMORANDUM OF POINTS AND AUTHORITIES

6 I. INTRODUCTION

7 Defendants' Motion to Dismiss should be denied. Ms. Fausto has pled sufficient facts
8 and related claims for relief to invoke the jurisdiction of this Court. Ms. Fausto has pled
9 sufficient facts and claims for relief to show that Defendants' actions resulted in concrete and
10 actualized harms, discovered and claimed by Ms. Fausto within an appropriately calculated
11 statute of limitations. A complaint will not be dismissed for failure to state a claim unless it appears
12 beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact,
13 would entitle him or her to relief. *Simpson v. Mars Inc.*, 113 Nev. 188, 929 P.2d 966 (1997); see also,
14 *Zalk-Josephs Co. v. Wells Cargo, Inc.*, 81 Nev. 163, 400 P.2d 621 (1965). Moreover, on a motion to
15 dismiss for failure to state a claim for relief, the trial court must construe the pleadings liberally and
16 draw every fair intendment in favor of the plaintiff. *Merluzzi v. Larson*, 96 Nev. 409, 610 P.2d 739
17 (1980)(overruled on other grounds).

18 Moreover, Nevada is a notice-pleading jurisdiction and our courts are directed to construe
19 liberally pleadings to place into issue matters which are fairly noticed to the adverse party. See
20 *Langevin v. York*, 111 Nev. 1481, 907 P.2d 981 (1985); *Nevada State Bank v. Jamison Family*
21 *Partnership*, 106 Nev. 792, 801, 801 P.2d 1377, 1383 (1990). Under NRCP 8(a), to plead a claim
22 for relief, a party must only include (i) a short and plain statement of the claim showing that the
23 pleader is entitled to relief, and (ii) a demand for judgment for the relief the pleader seeks. Nevada
24 permits the pleading of conclusions of law or conclusions of fact, "so long as the pleading gives
25 fair notice of the nature and basis of the claim" and a "general indication of the type of litigation
26 involved." See *Crucil v. Carson City*, 95 Nev. 583, 585, 600 P.2d 216, 217 (1979); see also,
27 *Taylor v. State*, 73 Nev. 151, 153, 311 P.2d 733 (1957). The test is whether the statement of the
28 claim is so general that it renders the opposing party "wholly unable to admit or deny it

1 intelligently or conscientiously." *Id.* at 153. Furthermore, NRCP 8(f) states, "[a]ll pleadings shall
2 be so construed as to do substantial justice." *See also, Chastain v. Clark County School Dist.*,
3 109 Nev. 1172, 1179, 866 P.2d 286, 291 (1993)(holding that pursuant to NRCP 8(f), the
4 Complaint need only provide the defendant with sufficient notice of the claim). Furthermore, "the
5 dispositive resolution of questions of fact is not a part of a motion to dismiss on the pleadings."
6 *Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 668, 918 P.2d 314, 317 (1996).

7 Here, Defendants have failed to meet their burden and Ms. Fausto has properly submitted
8 her Complaint in conformance with Nevada law. Therefore, Defendants' Motion is unpersuasive
9 and must be denied.

10 **II. BACKGROUND**

11 On July 3, 2019, Plaintiff JAQUELINE FAUSTO, a victim of sexual assault, filed this
12 present lawsuit against Defendants Ricardo Sanchez-Flores and Verenice Ruth Flores. This
13 present lawsuit seeks judgment against Defendants for all medical, incidental, special, and
14 general damages and expenses and losses sustained by Ms. Fausto as a result of Defendants'
15 actions and damages reasonably likely to be sustained in the future according to proof at the time
16 of trial in an amount in excess of \$15,000.00; prejudgment interest as provided by law; punitive
17 and/or exemplary damages against Defendants in an amount appropriate to punish and/or set an
18 example of these Defendants; for an award of reasonable attorneys' fees and costs and litigation
19 expenses plus interest accruing thereon, in her favor at the maximum rate allowed by law; and
20 for such other relief that the Court or jury may deem just or equitable and deems proper.

21 On or about the year 2010, Ms. Fausto was introduced to Ricardo Sanchez-Flores and his
22 then wife, Verenice Flores through a mutual acquaintance, Christian Altamirano, for the
23 purposes of starting a Nevada Limited Liability Company – FFA Group, LLC. On or about
24 December 25, 2015, FFA Group, LLC was officially formed five years after Ms. Fausto's
25 introduction to Ricardo Sanchez-Flores and Verenice Flores. Christian Altamirano, Ms. Fausto,
26 and Ms. Flores were listed as the founding Managing Members of FFA Group, LLC. For the
27 next year, Ms. Fausto, Ricardo Sanchez-Flores, Verenice Flores, and Christian Altamirano
28 worked together in their professional capacities to grow and develop FFA Group, LLC. Together

1 Ms. Fausto, Ricardo Sanchez-Flores, Ms. Flores, and Christian Altamirano contributed countless
2 hours of their professional expertise and devoted efforts, and also expended finances to build
3 FFA Group, LLC. During these early joint endeavors, from 2015 to 2016, Ms. Fausto developed
4 a loyal and trusting relationship with Ricardo Sanchez-Flores and Verenice Flores.

5 By 2016, Ms. Fausto grew comfortable enough to confide in Ricardo Sanchez-Flores and
6 more specifically in Verenice Flores regarding her experiences as a domestic violence victim,
7 which she had suffered from her ex-husband. On or about December 30, 2016, Ricardo Sanchez-
8 Flores and Verenice Flores took Ms. Fausto out to celebrate Ms. Fausto's professional
9 accomplishment of passing the Certified Professional Accountant Exam. It is clear now, that
10 from the beginning of the evening of December 30, 2016, Ricardo Sanchez-Flores was
11 strategically taking advantage of the six years of trust he had earned from his vulnerable business
12 partner to ultimately sexually assault and rape Ms. Fausto from the confines of his own home
13 later that evening while Ms. Fausto was intoxicated. Before the assault, earlier in the evening of
14 December 30, 2016, Ricardo Sanchez-Flores recommended that Ms. Fausto leave her vehicle
15 for the evening "in case" Ms. Fausto became too intoxicated from celebratory drinks.

16 As previously stated, Ms. Fausto trusted Ricardo Sanchez-Flores and Ms. Flores, so when
17 she became intoxicated from celebrating, Ms. Fausto felt comfortable to ride home to the
18 residence of Ricardo Sanchez-Flores and Ms. Flores in their vehicle. It was also not uncommon
19 for Ms. Fausto to be present at the residence of Ricardo Sanchez-Flores and Ms. Flores for
20 professional purposes. The residence of Ricardo Sanchez-Flores and Ms. Flores is where Ms.
21 Fausto spent much of her time over the previous years, working on various components of
22 starting up FFA Group, LLC.

23 By the point in the evening when the celebration concluded on December 30, 2016, Ms.
24 Fausto was so intoxicated, she needed help maneuvering from one location to the next while she
25 walked. As a result of Ms. Fausto's intoxication, she was mentally incapacitated. Under the
26 conditions, Ricardo Sanchez-Flores knew or should have known, that due to Ms. Fausto's
27 intoxication she was mentally and physically incapable of resisting or understanding the nature
28 of Ricardo Sanchez-Flores' sexual assault to follow.

1 In response to Ms. Flores' intoxicated state, Ricardo Sanchez-Flores was able to exert
2 undue influence, dominion, and control over Ms. Flores. Ricardo Sanchez-Flores did not hesitate
3 to swoop in and guide Ms. Fausto directly into his predatory plan of sexual assault by leading
4 Ms. Fausto to the back seat of Ms. Flores' vehicle, and joining Ms. Fausto in the back seat while
5 Ms. Flores drove Ms. Fausto and Ricardo Sanchez-Flores to their residence.

6 The moment Ms. Flores began driving, Ricardo Sanchez-Flores began an evening of open
7 or gross lewdness against Ms. Fausto which eventually escalated to sexual assault by the
8 conclusion of the evening.

9 During the car ride Ricardo Sanchez-Flores committed several acts of open or gross
10 lewdness by willfully and unlawfully: squeezing the buttocks, grabbing the breasts, grabbing the
11 genital area of Ms. Fausto, and taking advantage of Ms. Fausto's inability or incapability to resist
12 or understand what Ricardo Sanchez-Flores was doing to Ms. Fausto while she was under the
13 influence of alcohol. Ms. Flores conveniently, was allegedly unaware of the assault that took
14 place during the car ride; however, Ms. Flores should have known of her husband's perverse
15 practices against Ms. Fausto.

16 Upon arriving to the residence of Ricardo Sanchez-Flores and Ms. Flores, Ms. Flores went
17 to bed while Ms. Fausto was left at the hands of her predator and later in the evening in the hands
18 of her eventual rapist.

19 Ricardo Sanchez-Flores continued by willfully, unlawfully, and feloniously sexually
20 assaulting and subjecting Ms. Fausto to sexual penetration, to wit: digital penetration: by
21 inserting his fingers in the genital opening of Ms. Fausto, against her will, or under conditions
22 in which Ricardo Sanchez-Flores knew or should have known that Ms. Fausto was mentally or
23 physically incapable of resisting or understanding Ricardo Sanchez-Flores' conduct.

24 Ricardo Sanchez-Flores continued to exert undue influence, dominion, and control over
25 Ms. Fausto and guided Ms. Fausto to sleep in the living room, and later in the evening after Ms.
26 Flores was sound asleep, Ricardo Sanchez-Flores returned to Ms. Fausto in her state of
27 intoxication and then willfully and unlawfully committed acts of open or gross lewdness, by
28 rubbing the bare breasts of Ms. Fausto, and then willfully, unlawfully, and feloniously sexually

1 assaulted and subjected Ms. Fausto to sexual penetration, to wit: sexual intercourse: by inserting
2 his penis into the genital opening of Ms. Fausto, against her will, or under the conditions in
3 which Ricardo Sanchez-Flores knew, or should have known that Ms. Fausto was mentally or
4 physically incapable of resisting or understanding the nature of Ricardo Sanchez-Flores'
5 conduct.

6 Ms. Flores walked in after she was woken from the noise of the sexual assaults described
7 in paragraph 27 of the Complaint, and witnessed Ricardo Sanchez-Flores raping Ms. Fausto with
8 his pants down (hereinafter referred to as the "Rape"). Ms. Flores said to Ricardo Sanchez-
9 Flores, "I hope [Ms. Fausto] doesn't remember anything."

10 By the time Ms. Flores witnessed the Rape, Ricardo Sanchez-Flores had committed at
11 least four counts of open or gross lewdness and at least three counts of sexual assault against
12 Ms. Fausto.

13 Ms. Flores intervened minimally, during the instant moment, and demanded that Ricardo
14 Sanchez-Flores leave the room. December 30, 2016, the night Plaintiff was raped and sexually
15 assaulted by Ricardo Sanchez-Flores, was the last time Plaintiff ever had contact with Ricardo
16 Sanchez-Flores.

17 Though it would seem Ms. Flores was concerned for the well-being of Ms. Fausto, it is
18 clear now that she was only interested in making sure that Ms. Fausto didn't remember the
19 terrible acts inflicted upon her in her state of intoxication by Ricardo Sanchez-Flores.

20 On or about December 31, 2016, Ms. Flores drove Ms. Fausto to pick up Ms. Fausto's car
21 after Ms. Fausto was sober enough to drive (hereinafter referred to as the "Car Ride").

22 During the Car Ride, Ms. Flores asked Ms. Fausto if she remembered anything from the
23 night before. Still in shock, and not having fully understood yet the nature of Ricardo Sanchez-
24 Flores' horrible acts against Ms. Fausto, Ms. Fausto stated she did not remember anything. It is
25 clear that Ms. Flores intended to accomplish an unlawful objective for the purpose of harming
26 Ms. Fausto by aiding or abetting Ricardo Sanchez-Flores' sexual assault of Ms. Fausto after the
27 assault occurred.

1 On or about December 31, 2016, after leaving the situation where the sexual assault
2 happened, from the support of her family Ms. Fausto went to the doctor to get a rape kit. Within
3 the week in which the rape kit was prepared, Ms. Fausto went to the Las Vegas Metro Police
4 Department (hereinafter referred to as "LVMPD") station to report the crime.

5 On or about February 17, 2017, Ms. Fausto was interviewed by Detective Lafreine
6 (hereinafter referred to as the "Detective") with LVMPD.

7 On or about April 3, 2017, the Detective attempted to contact Christian Altamirano and
8 Ms. Flores regarding the case. Neither Mr. Atlamirano nor Ms. Flores would cooperate with the
9 investigation. Around the same time, Ricardo Sanchez-Flores retained an attorney and a DNA
10 sample was collected from Ricardo Sanchez-Flores.

11 Despite her eye witness role in the assault, Ms. Flores refused to cooperate with the
12 investigation.

13 After four months of no contact, on or about April 1, 2017, Ms. Flores initiated
14 communication by text message to Ms. Fausto to wish Ms. Fausto a happy birthday. During the
15 conversation that took place on or about April 1, 2017, Plaintiff in her candor explained to Ms.
16 Flores that contrary to their initial conversation the morning after Ms. Fausto's assault on or about
17 December 31, 2016, Ms. Fausto did in fact now understand the nature of Ricardo Sanchez-Flores'
18 conduct and realized he took advantage of Ms. Fausto's state of intoxication to sexually assault
19 Ms. Fausto. Ms. Flores responded in what seemed to be concern and informed Ms. Fausto she
20 planned to divorce Ricardo Sanchez-Flores for his heinous acts.

21 After the conversation between Ms. Flores and Ms. Fausto on or about April 1, 2017,
22 Ms. Flores did not immediately leave Ricardo Sanchez-Flores, instead she retained a criminal
23 attorney.

24 On or around April 7, 2017, the Detective collected the unwashed clothes that Plaintiff
25 was wearing the day she was assaulted.

26 Over the years, the Detective investigating the criminal acts of Ricardo Sanchez-Flores,
27 kept Ms. Fausto apprised of the status of the investigation.

28

1 On or about February 2, 2019, more than two years after the assault occurred, Ms. Fausto
2 was notified that the lab had finally processed Ms. Fausto's rape kit and that Ricardo Sanchez-
3 Flores' DNA was in fact found in the clothing Ms. Fausto was wearing on the night of the assault.

4 On or about April 25, 2019, more than two years after the assault occurred, a Criminal
5 Complaint was filed in the Justice Court, Las Vegas Township of Clark County Nevada under
6 Case No. 19F03440X naming Ricardo Sanchez-Flores as Defendant for Sexual Assault (Category
7 A Felony- NRS 200.364, 200.366- NOC 50095) and Open or Gross Lewdness (Gross
8 Misdemeanor – NRS 201.210- NOC 50971).

9 On or about June 24, 2019, the preliminary Hearing was held regarding Ricardo Sanchez-
10 Flores' criminal case relative to the Sexual Assault and Open and Gross Lewdness against Ms.
11 Fausto.

12 During the June 24, 2019 Preliminary Hearing two additional counts of sexual assault
13 were added to the Criminal Complaint amending the original complaint, since it was discovered
14 after follow-up interviews with the District Attorney's Office that Ms. Fausto didn't fully
15 understand certain actions by Ricardo Sanchez-Flores constituted sexual assault. For example,
16 Ms. Fausto did not know until speaking with the District Attorney's office in early June that when
17 Ricardo Sanchez-Flores penetrated her anus with his penis, that his actions constituted Sexual
18 Assault (Category A Felony- NRS 200.364, 200.366- NOC 50095). As Ms. Fausto cooperates
19 fully with the investigation of the criminal charges pending against Ricardo Sanchez-Flores, she
20 continues to discover portions from the evening that were defined as assault.

21 The Court found probable cause regarding the charges alleged in the Criminal Complaint
22 based off the evidence and the DNA results. Ricardo Sanchez-Flores did not accept the plea deal
23 offered by the District Attorney; and therefore, the case has been transferred to the U.S. District
24 Court for prosecution.

25 Currently the related criminal action against Ricardo Sanchez-Flores is set for calendar
26 call on January 29, 2020, and trial is scheduled to begin February 3, 2020.

27 ///

28 ///

1 **III. LEGAL ARGUMENT**

2 **A. The statutory period of limitations in this case has been tolled under the**
3 **“Discovery Rule” and therefore the Complaint does not show on its face that**
4 **the causes of action are time barred.**

5 Defendants’ reliance on the “General Rule” for their discussion on the timeliness of Ms.
6 Fausto’s Complaint is an inaccurate application of law to the present facts. Defendant has failed
7 to consider the exception to the General Rule recognized by this Court and many others in the
8 form of the so-called “Discovery Rule.” Under the Discovery Rule, the statutory period of
9 limitations is tolled until the injured party discovers or reasonably should have discovered facts
10 supporting a cause of action. *Petersen v. Bruen*, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990);
11 citing *Sorenson v. Pavlikowski*, 94 Nev. 440, 443–444, 581 P.2d 851, 853–854 (1978). The
12 rationale behind this “Discovery Rule” is that the policies served by statute of limitations do not
13 outweigh the equities reflected in the proposition that a plaintiff should not be foreclosed from
14 judicial remedies prior to their knowledge of injury or prior to the discovery of the cause of those
15 injuries. *Id.*

16 Turning to NRS 11.190 (4)(e), the Nevada Supreme Court has long recognized that:

17 In order to reach the intention of the legislature, courts are not bound
18 to always take the words of a statute either in their literal or ordinary
19 sense, if by so doing it would lead to any absurdity or manifest
20 injustice, but may in such cases modify, restrict, or extend the
21 meaning of the words, so as to meet the plain, evident policy and
22 purview of the act, and bring it within the intention which the
23 legislature had in view *at the time it was enacted* (emphasis added).

24 *Petersen v. Bruen*, 106 Nev. 271, 276–77, 792 P.2d 18, 21 (1990)

25 Unlike almost all other complainants subjected to statutes of limitations, and conversely,
26 like victims of Child Sexual Abuse (“CSA”), victims of sexual assault, suffer from personal
27 intrusion into their mental and emotional makeup. As a result, “the adverse effects of such abuse
28 may perceptibly increase for prolonged periods, if not an entire lifetime.” *Petersen v. Bruen*, 106
Nev. 271, 281, 792 P.2d 18, 24 (1990). Additionally, the mental and emotional dysfunction

1 suffered by such victims may virtually prevent them from seeking relief against their tormentors
2 until the period of limitations has long since expired. *Id.* In this case, Ms. Fausto suffered, and
3 continues to suffer from night terrors, paranoia, trouble sleeping, depression and anxiety for
4 which she receives medical treatment. See Declaration of Jaqueline Fausto in Support of
5 Opposition to Motion to Dismiss at ¶2. Ms. Fausto sought counseling almost immediately after
6 the assault since she has been a victim of domestic violence in the past, and is familiar with the
7 steps of trauma treatment. See Declaration of Jaqueline Fausto in Support of Opposition to
8 Motion to Dismiss at ¶3. However, Ms. Fausto did not discover the nexus of the delayed mental
9 trauma (night terrors, paranoia, trouble sleeping, depression and anxiety) caused by Defendants
10 until this year, when the Criminal Complaint was filed against Ricardo Sanchez-Flores after Ms.
11 Fausto received confirmation that the rape kit did in fact contain Mr. Sanchez Flores' DNA and
12 the Criminal Complaint was filed, she was required to participate in the criminal investigations
13 in a more involved manner since reporting the assault in 2016. See Declaration of Jaqueline
14 Fausto in Support of Opposition to Motion to Dismiss at ¶4. After Ms. Fausto learned that the
15 rape kit contained the DNA of Mr. Sanchez-Flores and the Criminal Complaint was filed, Ms.
16 Fausto sought legal counsel on June 10, 2019. See Declaration of Jaqueline Fausto in Support of
17 Opposition to Motion to Dismiss at ¶5. During the June 24, 2019 Preliminary Hearing two
18 additional counts of sexual assault were added to the Criminal Complaint amending the original
19 Complaint, since it was discovered after follow-up interviews with the District Attorney's Office
20 that Ms. Fausto did not fully understand that certain actions by Ricardo Sanchez-Flores on
21 December 30, 2016, constituted sexual assault. See Declaration of Jaqueline Fausto in Support of
22 Opposition to Motion to Dismiss at ¶6. For example, Ms. Fausto did not know until speaking
23 with the District Attorney's office in early June of 2019 that when Ricardo Sanchez-Flores
24 penetrated her anus with his penis, that his actions constituted Sexual Assault (Category A
25 Felony- NRS 200.364, 200.366- NOC 50095). See Declaration of Jaqueline Fausto in Support of
26 Opposition to Motion to Dismiss at ¶7.

27 The pertinent language of NRS 11.190(4)(e) was first enacted in Nevada in 1951. *Petersen*
28 *v. Bruen*, 106 Nev. 271, 277, 792 P.2d 18, 21 (1990). In *Peterson*, the Court found it logical to

1 conclude that the Legislature did not specifically contemplate victims of sexual abuse and the
2 delayed mental trauma they suffer after the “wrongful acts” terminology of the statute when it
3 was enacted in 1951. In this case, Ms. Fausto’s rape kit was not even processed until after two
4 years from the date of the alleged assault. Ms. Fausto did not have to participate in the criminal
5 investigation process against Ricardo Sanchez-Flores to the degree she does now, until this year,
6 2019. See Declaration of Jaqueline Fausto in Support of Opposition to Motion to Dismiss at ¶8.
7 Even though Ms. Fausto experienced night terrors, paranoia, trouble sleeping, depression and
8 anxiety in the months following the Assault, she did not discover the nexus between her night
9 terrors, paranoia, trouble sleeping, depression, anxiety, and other delayed mental trauma
10 specifically, until after she was required to participate in the criminal investigations after the
11 Criminal Complaint was filed and specifically after she was required to see her rapist at the
12 Preliminary Criminal Hearing on June 24, 2019. See Declaration of Jaqueline Fausto in Support
13 of Opposition to Motion to Dismiss at ¶9. After the Hearing on June 24, 2019, Ms. Fausto had to
14 be medically treated and her doctor increased the dosage of her anxiety medicine due to the
15 increased severity of the night terrors, paranoia, trouble sleeping, depression, and anxiety she
16 suffered after seeing her rapist Ricardo Sanchez-Flores for the first time since the sexual assault
17 that took place on or about December 30, 2016. See Declaration of Jaqueline Fausto in Support
18 of Opposition to Motion to Dismiss at ¶10.

19 In *Peterson*, the Plaintiff was a victim of child sexual abuse. However, like the Plaintiff
20 in *Peterson*, while Ms. Fausto is not a child, she nevertheless has suffered from and continues to
21 suffer from delayed mental trauma, which continues to be triggered and becomes more severe as
22 she goes through the investigation process with the criminal prosecutor and the District
23 Attorney’s office regarding Defendants’ actions. See Declaration of Jaqueline Fausto in Support
24 of Opposition to Motion to Dismiss at ¶11. In *Peterson*, it was not until after the passing of the
25 statute of limitations, that the Plaintiff discovered the nexus between the delayed mental trauma
26 and the sexual assault from his abuser. It is clear after attending the criminal proceedings on June
27 24, 2019 and participating in the investigations this year after the filing of the Criminal Complaint
28 once the rape kit was finally processed, Ms. Fausto’s anxiety, fear of being alone (paranoia), night

1 terrors, trouble sleeping, and depression were severely triggered by seeing her rapist, Ricardo
2 Sanchez-Flores and Verenice Ruth Flores again, and that at said time Ms. Fausto learned of the
3 nexus between the actions of Defendants and her mental trauma she suffers from daily. See
4 Declaration of Jaqueline Fausto in Support of Opposition to Motion to Dismiss at ¶12. Ms. Fausto
5 filed this present action only one week after the nexus of delayed mental trauma was discovered
6 caused by her rapist.

7 [T] the primary purpose of [the statutes of limitation] is to “[prevent] surprises through
8 the revival of claims that have been allowed to slumber until evidence has been lost, memories
9 have faded, and witnesses have disappeared.” *Telegraphers v. Ry. Express Agency*, 321 U.S. 342,
10 348–349, 64 S.Ct. 582, 586, 88 L.Ed. 788 (1944).

11 To place the passage of time in a position of priority and importance over the plight of
12 [Ms. Fausto’s victimization] would seem to be the ultimate exaltation of form over substance,
13 convenience over principle. *Petersen v. Bruen*, 106 Nev. 271, 281, 792 P.2d 18, 24 (1990).

14 In the present case, Ms. Fausto did not realize the facts supporting a cause of action until
15 significantly after the initial assault. Following the assault, Ms. Fausto required medical treatment
16 for bodily injury, mental anguish, anxiety, depression, and loss of capacity for enjoyment of life,
17 among other things. See Complaint ¶¶55 and 61. It was not until Ms. Fausto had made substantial
18 recovery from this traumatic event and a police investigation had been conducted, that she
19 realized the lasting effects inflicted both on herself and her family, which Ms. Fausto continues
20 to suffer from to this date. This period of time included the rape kit not being processed for
21 almost *two years*! Id. at ¶48.

22 Whereas Ms. Fausto was mentally unprepared, was reliant of documentation from the Las
23 Vegas Metropolitan Police Department, and unable to bring forward a claim within the statutory
24 period of limitations alleged by Defendants, application of the Discovery Rule by this Court is
25 proper. It is evident that the equities in the proposition that Ms. Fausto should not be foreclosed
26 from judicial remedies prior to her discovery of the cause and extent of those injuries heavily
27 outweighs the policies served by statute of limitation.

28

1
2 **B. Whether Ms. Fausto pursued due diligence in determining the existence of a**
3 **cause of action is a question of fact to be determined after a full hearing and**
4 **discovery and dismissal of Ms. Fausto's Complaint prior to such would be**
5 **improper.**

6 The "Discovery Rule" also requires a plaintiff to exercise due diligence in determining
7 the existence of a cause of action and delays the accrual of the cause of action until the plaintiff
8 obtains inquiry notice. *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1025, 967 P.2d 437, 440 (1998)
9 (applying the inquiry notice standard to determine when the applicable statute of limitations ran).
10 Whether Ms. Fausto exercised due diligence in her discovery of her injuries and cause of action
11 is "a question of fact to be determined by the jury or trial court after a full hearing [and
12 discovery]." *Millspaugh v. Millspaugh*, 96 Nev. 446, 448, 611 P.2d 201, 202 (1980). Further,
13 dismissal on statute of limitations grounds is only appropriate "when uncontroverted evidence
14 irrefutably demonstrates plaintiff discovered or should have discovered" the facts giving rise to
15 the cause of action. *Nevada Power Co. v. Monsanto Co.*, 955 F.2d 1304, 1307 (9th Cir.1992);
16 *quoting Mosesian v. Peat, Marwick, Mitchell & Co.*, 727 F.2d 873, 877 (9th Cir.1984).

17 Victims of sexual assault, like victims of Child Sexual Abuse ("CSA"), suffer from
18 personal intrusion into their mental and emotional makeup. As a result, "the adverse effects of
19 such abuse may perceptibly increase for prolonged periods, if not an entire lifetime." *Petersen v.*
20 *Bruen*, 106 Nev. 271, 281, 792 P.2d 18, 24 (1990). Additionally, the mental and emotional
21 dysfunction suffered by such victims may virtually prevent them from seeking relief against their
22 tormentors until the period of limitations has long since expired. *Id.*

23 As stated above, Ms. Fausto exercised due diligence in her determinations that the injuries
24 she sustained, as a direct result of Defendants' actions, resulted in the existence of a cause of
25 action. See generally Declaration of Jaqueline Fausto in Support of Opposition to Motion to
26 Dismiss. While her mental capability, or lack thereof, may have precluded her from bringing an
27 action within the statute of limitations prescribed by the General Rule, as soon as Ms. Fausto
28 sufficiently recovered from the immediate effects of her trauma, she discovered the lasting

1 injuries to her mental and physical health that constitute a claim by which this Court may grant
2 relief and brought the appropriate action.

3 Consequently, as Ms. Fausto's Complaint complies with the Discovery Rule, Defendants'
4 arguments are precluded and the Motion to Dismiss should be denied.

5 **C. Defendants' lack of argument against any specific Complaint allegations**
6 **support the denial of the Motion to Dismiss.**

7 Whereas Ms. Fausto has asserted a proper claim for civil conspiracy against Defendants,
8 Defendants Motion is devoid of any reference to specific allegations in the Complaint they claim
9 to be deficient. The tort of civil conspiracy is recognized in Nevada, and a suit for damages based
10 thereon may be permissible. *Aldabe v. Adams*, 81 Nev. 280, 402 P.2d 34 (1965)(overruled on
11 other grounds). "A claim for civil conspiracy should identify a combination between two or more
12 persons and should name the alleged parties to the conspiracy. In addition, the claim should
13 identify the required unlawful objective." *Morris v. Bank of Am. Nevada*, 110 Nev. 1274, 886
14 P.2d 454 (1994); *see also*, *Sutherland v. Gross*, 105 Nev. 192, 772 P.2d 287 (1989). "Whether
15 the plaintiff knew or should have known of the facts constituting the elements of civil conspiracy
16 is a question of fact for the trier of fact." *Siragus v. Brown*, 114 Nev. 1384, 971 P.2d 801 (1998).
17 Here, Defendants' underlying motion: (1) fabricates a non-existent legal analysis for civil
18 conspiracy using a hodge-podge of Minnesota, New York, California, and Federal case holdings,
19 and (2) ignores that the purpose of a motion to dismiss is not to debate the **substantive** facts, but
20 to contend that **insufficient** facts have been alleged. It is important to note, that Nevada is a notice
21 pleading jurisdiction and a Complaint need only set forth sufficient facts to establish all elements
22 of a claim for relief so that the adverse party has notice of the claim and the relief sought." *Hay*
23 *v. Hay*, 100 Nev. 196, 198 (1984). In ruling upon a Rule 12(b)(5) motion to dismiss, if a Court
24 in reviewing the complaint and taking it at face value, determines that a plaintiff "fail[ed] to state
25 a cognizable claim for relief" only then is it proper to grant the motion to dismiss." *Morris v.*
26 *Bank of Am. Nevada*, 110 Nev. 1274, 1276, 886 P.2d 454, 455 (1994). Here, such action is not
27 proper as Defendants' Motion fails to persuasively establish that Ms. Fausto has not alleged facts
28 necessary to support this cause of action.

To demonstrate: in Ms. Fausto's Complaint, and to support her claim for Civil Conspiracy, she asserted the following in conformance with established Nevada Supreme Court precedent:

Complaint Allegations	Legal Requirements ¹
<i>Ricardo Sanchez-Flores and Ms. Flores acted in concert</i> to deprive Plaintiff of her health, safety, liberty and sanity, with <i>object of the conspiracy being to coerce or intimidate Ms. Fausto into allowing Ricardo Sanchez-Flores to both engage in conduct amounting to and escape prosecution for Sexual Assault and Open or Gross Lewdness.</i> ¶74	Two or more parties; Acting in concert;
Ricardo Sanchez-Flores and Ms. Flores, each acted in concert and <i>in combination, with each in full knowledge of and ratifying the acts of the other, harming Ms. Fausto</i> and resulting in damage. ¶75	Intent to accomplish an unlawful objective for the purpose of harming another;
The civil conspiracy, malice, and oppression caused by Ricardo Sanchez-Flores and Ms. Flores <i>caused Ms. Fausto to be damaged in an amount in excess of \$15,000.00.</i> ¶76	Damages
The civil conspiracy of Ricardo Sanchez-Flores and Ms. Flores was accomplished by exploiting a position of trust and confidence, and/or by acting in violation of Nevada law, which constitutes oppressive behavior on Ms. Fausto thereby <i>warranting an award of punitive damages.</i> ¶77	Damages
That due to the conduct of Ricardo Sanchez-Flores and Ms. Flores, <i>it has been necessary for Plaintiff to retain the services of an attorney to bring this action, and accordingly, Ms. Fausto is entitled to recover her reasonable attorneys' fees and costs</i> incurred herein. ¶78	Damages

¹ Consolidated Generator-Nevada Inc. v. Cummins Engine Co., Inc., 114 Nev. 1304, 1311, 917 P.2d 1251, 1256 (1998).

1 Defendants' Motion does not provide persuasive argument that Ms. Fausto's pleadings
2 are insufficient – at this stage in the litigation – to warrant dismissal. Defendants' reliance on
3 *Short v. Hotel Riviera, Inc.* (an employment dispute) would have the Court ignore these pleadings
4 and instead hold that the rape and sexual assault of Ms. Fausto and subsequent cover-up is
5 immaterial because, as cited in the Motion:
6

7 “where an act done by an individual, though harmful to another, is
8 not actionable because justified by his rights, yet the same act
9 becomes actionable when committed in pursuance of a combination
of persons actuated by malicious motives and not having the same
justification as the individual.”

10 *Short v. Hotel Riviera, Inc.*, 79 Nev. 94, 105, 378 P.2d 979, 985 (1963)

11 Or as clarified by Defendants “the ***act alleged*** must be one that is ***legal to be performed***
12 ***by an individual*** but illegal when performed by several acting together with the intent to injure.”
13 Motion pg. 6:15-16. What does that mean? Defendants provide no further substantive explanation
14 and instead say that “if Plaintiff's allegations are proven to be true at trial, all that Plaintiff will
15 have proven is that two defendants committed illegal conduct.” It is unclear what act Defendants
16 are alleging is legal when performed by an individual. This case is about a series of outrageous,
17 vile, immoral actions taken by both Defendants that did not begin and end with the violation of
18 Ms. Fausto at Defendants' property. At this point in the lawsuit, it is disingenuous and likely
19 apparent of Defendants' behavior to attempt to use semantics to ignore the clear language of the
20 Complaint, attempt to avoid the discovery process to fully vet and review the Complaints, and
21 attempt to get away with behavior/actions that have no place among friends and society-at-large.

22 Lacking a realistic argument, and failing to provide applicable and persuasive legal
23 authority, Defendants' Motion should be denied and Ms. Fausto be allowed to continue to seek
24 legal redress from the Court.

25 ///

26 ///

27 ///

28 ///

1 **D. In direct refutation to Defendants' single Complaint argument, Plaintiff has**
2 **sufficiently plead a common plan therefore Plaintiff's Claim for Concert of**
3 **Action should survive dismissal.**

4 In Nevada, the elements for a claim of concert of action – and what must be alleged in a
5 complaint – are: (1) two or more persons act together while committing a tort pursuant to a
6 common design or plan; (2) two people commit a tort while “acting in concert with one another
7 or pursuant to a common design”; and (3) associated causation and damages. *GES, Inc. v. Corbitt*,
8 117 Nev. 265, 21 P.3d 11 (Nev. 2001). However, the *Corbitt* holding specifically and solely
9 addresses the concert of action exception to NRS 41.141(5)(d) and thus Defendants have correctly
10 not attempted to rely on the facts of this decision.

11 However it is clear that based on the Complaint language – which is what is relevant for
12 Defendants' Motion – that Defendants are mistaken, Ms. Fausto has met her pleading burden.
13 Defendants' sole argument, relevant to the Complaint language asserts that “Plaintiff has not
14 plead that Defendant Ricardo Sanchez-Flores and Defendant Verenice acted together based on a
15 specific plan.” Motion pg. 7:21-22. This is incorrect. Ms. Fausto's Complaint states:

- 16 - “Ricardo Sanchez-Flores and Ms. Flores and each of them acted
17 together with a **joint plan** and/or intent to harm, imprison, and
18 otherwise violate Ms. Fausto.” ¶80.
19 - “While Defendants acted in concert with one another pursuant to
20 their **common plan**, they in fact engaged in malicious, oppression,
21 and tortious acts against Ms. Fausto.” ¶81.

22 As Defendants have made no additional arguments regarding the insufficiency of the
23 Complaint allegations, Defendants' Motion should be denied.

24 Additionally, Defendants attempt to justify Defendant Verenice's actions claiming that
25 she was either unaware or asleep are outside the language of the Complaint and are immaterial.
26 See Motion pg.7:27-28 and 8:2-3. Justifying a defendant's actions is inappropriate in arguing for
27 a dismissal under Rule 12(b)(5). As Defendants clearly lack any argument related to the
28 Complaint language, they should not be rewarded for filing a shotgun motion wherein they assert
any/all arguments, regardless of applicability, thus requiring Ms. Fausto to spend her time and
resources addressing the baseless arguments and also require the Court to spend its limited
judicial resources on an unsuitable filing.

Lacking any issue with the Complaint language, and thus failing to meet their burden,
Defendants' Motion should be immediately denied.

1 **E. Because Defendants have not met their burden to show that a stay is**
2 **warranted in this case their request for a stay should be denied.**

3 A stay of civil discovery should not be granted lightly and the burden is on the moving
4 party to show that a stay is warranted. *Aspen Fin. Servs. V. Eighth Judicial Court of Nev.*, 128
5 Nev. 635, 642 (2012). Defendants have failed to satisfy the burden that a stay is warranted.

6 This issue has been directly addressed and it has been established that “a defendant has
7 no absolute right not to be forced to choose between testifying in a civil matter and asserting his
8 Fifth Amendment privilege.” *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 326 (9th Cir.
9 1995) (citing *Baxter v. Palmigiano*, 425 U.S. 308, 318, 96 S.Ct. 1551, 1557, 47 L.Ed.2d 810
10 (1976). Not only is it permissible to conduct a civil proceeding at the same time as a related
11 criminal proceeding, even if that necessitates invocation of the Fifth Amendment privilege, but it
12 is also permissible for the trier of fact to draw adverse inferences from the invocation of the Fifth
13 Amendment in a civil proceeding. *Id.* Based on the foregoing, it would be improper to grant
14 Defendants’ Motion to Stay due to the related criminal proceeding.

15 Defendants have bemoaned that any civil action would affect Defendant Ricardo Sanchez-
16 Flores’s ability to maintain innocence, specifically by his participation in a deposition and/or
17 written discovery responses. However, as *Keating* has established, Ms. Fausto has the right to
18 continue her personal lawsuit against Defendants. It is unjust and unreasonable to force her to
19 wait – what could be years – for her chance to achieve justice. Consequently, the request to stay
20 these proceedings is wrong and should be denied.

21 **IV. CONCLUSION**

22 Defendants’ Motion to Dismiss, or in the alternative Motion to Stay, should be denied.
23 Defendants’ Motion has failed to establish any legally persuasive rationales to ignore Ms.
24 Fausto’s personal claims and allegations for Sexual Assault and Battery, Intentional Infliction of
25 Emotional Distress, False Imprisonment, and Negligence as contained in the proper and timely-
26 filed Complaint.

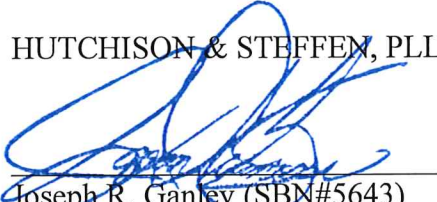
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1 Furthermore, Defendants' request for a stay until resolution of Defendant Ricardo
2 Sanchez-Flores's pending criminal case is inappropriate, has failed to satisfy the burden to show
3 a stay is necessary, and would impede justice as Defendants' claims that subjection to civil
4 discovery would force Defendant Ricardo Sanchez-Flores to invoke and/or waive his Fifth
5 Amendment rights is without merit.

6 DATED this 9th day of August, 2019.

7 HUTCHISON & STEFFEN, PLLC

8 

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23 *Attorneys for Plaintiff Jacqueline Fausto*

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I, hereby certify that I am a non-party over the age of 18 years, and that on the 9th day of August, 2019, I caused a true and correct copy of the **PLAINTIFF'S OPPOSITION TO DISMISS OR IN THE ALTERNATIVE MOTION TO STAY** to be electronically served through the Eighth Judicial District Court EFP System pursuant to NEFR 9 on the following:

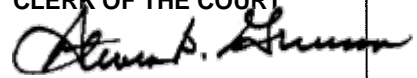
John Henry Wright, Esq. - john@wrightlawgroupnv.com
Christopher Phillips, Esq. - chris@wrightlawgroupnv.com
Attorneys for Defendants Ricardo Sanchez-Flores
and Verence Ruth Flores

I hereby declare, under penalty of perjury by the laws of the State of Nevada, County of Clark, that the aforementioned is a true and correct statement of fact.

DATED: August 9, 2019



Employee of Hutchison & Steffen, PLLC



DECL

Joseph R. Ganley (SBN#5643)
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Attorneys for Plaintiff Jaqueline Fausto

DISTRICT COURT

CLARK COUNTY, NEVADA

JAQUELINE FAUSTO, an individual,

Plaintiff,

v.

RICARDO SANCHEZ-FLORES, an individual;
VERENICE RUTH FLORES, an individual;

Defendants.

Case No. A-19-797890-C
Dept. No. XXIII

**DECLARATION OF JAQUELINE
FAUSTO IN SUPPORT OF
OPPOSITION TO
DEFENDANTS' MOTION TO
DISMISS OR IN THE
ALTERNATIVE MOTION TO
STAY**

1 I, Jaqueline Fausto, declare under penalty of perjury under the law of the State of Nevada
2 that the foregoing is true and correct and if called upon to do so, I could testify competently to
3 the same under oath in a court of law:

4 1. I am over 18 years of age.

5 2. I began suffering from night terrors, paranoia, trouble sleeping, depression and
6 anxiety for which I receive medical treatment in 2017.

7 3. I sought counseling almost immediately after the sexual assault that occurred on
8 or about December 30, 2016, since I have been a victim of domestic violence in the past, and I
9 am familiar with the steps of trauma treatment .

10 4. I did not discover the nexus of the night delayed mental trauma (night terrors,
11 paranoia, trouble sleeping, depression and anxiety) caused by Defendants until this year, when
12 the Criminal Complaint was filed against Ricardo Sanchez-Flores, and I was required to
13 participate in the criminal investigations in a more involved manner since reporting the assault in
14 2016.

15 5. After Ms. Fausto learned that the rape kit contained the DNA of Mr. Sanchez
16 Flores and the Criminal Complaint was filed, Ms. Fausto sought legal counsel on June 10, 2019.

17 6. During the June 24, 2019 Preliminary Hearing two additional counts of sexual
18 assault were added to the Criminal Complaint amending the original complaint, since it was
19 discovered after follow-up interviews with the District Attorney's Office that I did not fully
20 understand that certain actions by Ricardo Sanchez-Flores on December 30, 2016 constituted
21 sexual assault.

22 7. For example, I did not know until speaking with the District Attorney's office in
23 early June of 2019 that when Ricardo Sanchez-Flores penetrated my anus with his penis, that his
24 actions constituted Sexual Assault (Category A Felony- NRS 200.364, 200.366- NOC 50095).

25 8. I have not had to participate in the criminal investigation process against Ricardo
26 Sanchez-Flores to the degree I do now, until this year, 2019.

27 9. Even though I experienced night terrors, paranoia, trouble sleeping, depression and
28 anxiety in the months following the Assault, I did not discover the nexus between my night terrors,

1 paranoia, trouble sleeping, depression, anxiety, and other delayed mental trauma specifically,
2 until after I was required to participate in the criminal investigations after the Criminal Complaint
3 was filed and specifically after I was required to my her rapist at the Preliminary Criminal Hearing
4 on June 24, 2019.

5 10. After the hearing on June 24, 2019, I had to be medically treated and my doctor
6 increased the dosage of my anxiety medicine due to the increased severity of the night terrors,
7 paranoia, trouble sleeping, depression, and anxiety I suffered after seeing my rapist Ricardo
8 Sanchez-Flores for the first time after since sexual assault that took place on or about December
9 30, 2016.

10 11. I suffered from and continue to suffer from delayed mental trauma, which
11 continues to be triggered and becomes more severe as I goes through the investigation process
12 with the criminal prosecutor and the District Attorney's office regarding Defendants' actions.

13 12. It is clear after attending the criminal proceedings on June 24, 2019 and
14 participating in the investigations this year after the filing of the Criminal Complaint once the
15 rape kit was finally processed, my anxiety, fear of being alone (paranoia), night terrors, trouble
16 sleeping, and depression were severely triggered by seeing my rapist, Ricardo Sanchez-Flores
17 and Verenice Ruth Flores again, and that at said time I learned of the nexus between the actions
18 of Defendants and my mental trauma I suffer from daily.

19 Executed on this 9 day of August, 2019.
20


21
22 
23 Jacqueline Fausto
24
25
26
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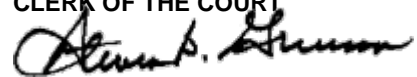
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2
3 **CERTIFICATE OF SERVICE**

4
5 Pursuant to N.R.C.P. 5(b), I, hereby certify that I am a non-party over the age of 18 years,
6 and that on the 9 day of August, 2019, I caused a true and correct copy of the
7 **DECLARATION OF JAQUELINE FAUSTO IN SUPPORT OF OPPOSITION TO**
8 **DEFENDANTS' MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION TO**
9 **STAY** to be electronically served through the Eighth Judicial District Court EFP System pursuant
10 to NEFR 9 on the following:

11 **John Henry Wright, Esq. - john@wrightlawgroupnv.com**
12 **Christopher Phillips, Esq. - chris@wrightlawgroupnv.com**
13 ***Attorneys for Defendants Ricardo Sanchez-Flores***
and Verence Ruth Flores

14 I hereby declare, under penalty of perjury by the laws of the State of Nevada, County of
15 Clark, that the aforementioned is a true and correct statement of fact.
16 DATED: August 9, 2019

17 
18 _____
Employee of Hutchison & Steffen, PLLC



1 **SAO**

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18 jguinasso@hutchlegal.com

19 *Attorneys for Plaintiff Jaqueline Fausto*

20 **DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

22 JAQUELINE FAUSTO, an individual,

23 Plaintiff,

24 v.

25 RICARDO SANCHEZ-FLORES, an individual;
26 VERENICE RUTH FLORES, an individual;

27 Defendants.

Case No. A-19-797890-C
Dept. No. XXIII

**STIPULATION AND ORDER TO
EXTEND TIME TO RESPOND
TO DEFENDANTS' MOTION TO
DISMISS**


[FIRST REQUEST]

28 Pursuant to EDCR 2.22, IT IS HEREBY STIPULATED between the Plaintiff, Jaqueline
Fausto ("Plaintiff"), and Defendants, Ricardo Sanchez-Flores and Verenice Ruth Flores,
(collectively referred to as "Defendants") that Plaintiff shall be granted an extension from August


1 5, 2019 to **August 9, 2019** to respond to Defendant's *Motion to Dismiss or in the Alternative*
2 *Motion to Stay*.

3
4 Dated August 5, 2019

5
6 HUTCHINSON & STEFFEN


7
8 By: 
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Ricardo Sanchez-Flores and Verenice Ruth
Flores

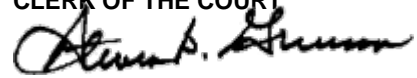
16 **ORDER**

17 IT IS HEREBY ORDERED that Plaintiff shall have until August 9, 2019, to respond to
18 Defendants' *Motion to Dismiss or in the Alternative Motion to Stay*.

19 Dated this  day of August, 2019.

20
21 
22 DISTRICT COURT JUDGE

23 JUDGE STEFANY A. MILEY
24
25
26
27
28



NTSO

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Attorneys for Plaintiff Jaqueline Fausto

DISTRICT COURT

CLARK COUNTY, NEVADA

JAQUELINE FAUSTO, an individual,

Plaintiff,

v.

RICARDO SANCHEZ-FLORES, an individual;

VERENICE RUTH FLORES, an individual;

Defendants.

Case No. A-19-797890-C

Dept. No. XXIII

**NOTICE OF ENTRY OF
STIPULATION AND ORDER**

///

///

1 NOTICE IS HEREBY GIVEN that on August 14, 2019, a *Stipulation and Order to*
2 *Extend Time to Respond to Defendants' Motion to Dismiss [First Request]* was entered in the
3 above-captioned matter, a copy of which is attached hereto.

4 DATED August 15, 2019.

5 HUTCHISON & STEFFEN, PLLC

6
7 */s/ Piers R. Tueller*

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this 15th day of August, 2019, I caused the document entitled **NOTICE OF ENTRY OF STIPULATION AND ORDER** to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- X to be electronically served through the Eighth Judicial District Court's electronic filing system pursuant to NEFCR (9); and/or
- ☐ to be hand-delivered

to the attorneys listed below:

Christopher Bryan Phillips

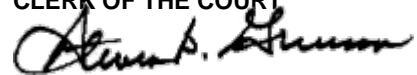
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John H Wright

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/s/ Heather Bennett

An Employee of Hutchison & Steffen, PLLC



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19 *Attorneys for Plaintiff Jaqueline Fausto*

20 **DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

22 JAQUELINE FAUSTO, an individual,

23 Plaintiff,

24 v.

25 RICARDO SANCHEZ-FLORES, an individual;
26 VERENICE RUTH FLORES, an individual;

27 Defendants.

Case No. A-19-797890-C
Dept. No. XXIII

**STIPULATION AND ORDER TO
EXTEND TIME TO RESPOND
TO DEFENDANTS' MOTION TO
DISMISS**


[FIRST REQUEST]

28 Pursuant to EDCR 2.22, IT IS HEREBY STIPULATED between the Plaintiff, Jaqueline
Fausto ("Plaintiff"), and Defendants, Ricardo Sanchez-Flores and Verenice Ruth Flores,
(collectively referred to as "Defendants") that Plaintiff shall be granted an extension from August


1 5, 2019 to **August 9, 2019** to respond to Defendant's *Motion to Dismiss or in the Alternative*
2 *Motion to Stay*.

3
4 Dated August 5, 2019

5
6 HUTCHINSON & STEFFEN


7
8 By: 
9 Jason D. Guinasso, Esq.
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15 *Attorney for Defendant*

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By: 
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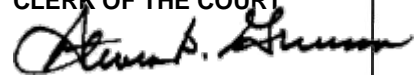
16 **ORDER**

17 IT IS HEREBY ORDERED that Plaintiff shall have until August 9, 2019, to respond to
18 Defendants' *Motion to Dismiss or in the Alternative Motion to Stay*.

19 Dated this  day of August, 2019.

20
21 
22 DISTRICT COURT JUDGE

23 JUDGE STEFANY A. MILEY
24
25
26
27
28



1 **RIS**
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7 *Attorneys for Defendants*
Ricardo Sanchez-Flores and
8 *Verenice Ruth Flores*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 JAQUELINE FAUSTO, an individual,
12 Plaintiff,

CASE NO: A-19-797890-C

DEPT NO: XXIII

13 vs.

Date: August 27, 2019
Time: 9:30AM

14 RICARDO SANCHEZ-FLORES, an
individual; VERENICE RUTH FLORES, an
15 individual;

16 Defendants.

17
18 **REPLY IN SUPPOT OF MOTION TO DISMISS OR IN THE ALTERNATIVE**
19 **MOTION TO STAY**

20 COMES NOW Defendants RICARDO SANCHEZ-FLORES (individually referred to as
21 "Ricardo") and VERENICE RUTH FLORES, (individually referred to as "Verenice") (hereinafter
22 collectively referred to as "Defendants") by and through their counsel of record, John Henry
23 Wright, Esq., and Amy J. Smith, Esq., of The Wright Law Group, P.C., and hereby submits this
24 Reply in Support of their Motion to Dismiss Plaintiff JACQUELINE FAUSTO'S ("Plaintiff")
complaint filed on July 3, 2019.

25 This Reply is made pursuant to Rule 12 of the Nevada Rules of Civil Procedure and is
26 based upon the points and authorities contained herein, the exhibits attached hereto, the records and
27 files of this case and any argument that the court elects to entertain at hearing on said Motion.

28 ///

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DATED this 19th day of August, 2019.

THE WRIGHT LAW GROUP, P.C.


JOHN HENRY WRIGHT, ESQ.

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Las Vegas, NV 89102

Attorneys for Defendants

Ricardo Sanchez-Flores and

Verenice Ruth Flores

MEMORANDUM OF POINTS AND AUTHORITIES

I. ESTABLISHED FACTS

Defendant Ricardo is currently facing criminal prosecution before this Court, in this very department, in case number C-19-341309-1. The criminal prosecution arises from the very same conduct that is alleged in Plaintiff's complaint.

II. ARGUMENT

A. Plaintiff Has Failed to Support Her Assertion That Her Claims are Not Time Barred by Applicable Statute of Limitations

Plaintiff does not dispute that her tort claims for Sexual Assault and Battery, Intentional Infliction of Emotional Distress (outrage), False Imprisonment, and Negligence are, at this late date, barred by statute of limitations; therefore, these claims should be dismissed. Instead, Plaintiff conflates the Discovery Rule and the narrow exception for tolling in the cases of abused children ("Child Exception") in an attempt to avoid the statute of limitation. Rather than conceding that these claims should be dismissed, Plaintiff argues either the Discovery Rule or the Child Exception (a common law exception which allows children of sexual abuse to bring an action - after some period of memory repression - once the child understands that a cause of action exists) should apply to a 32-year old woman, who was 29 at the time of the alleged sexual battery. Opposition 11:19-24; *See Petersen v. Bruen*, 106 Nev. 271, 792 P.2d 18, (1990).

Plaintiff almost exclusively on the Child Exception for her assertion that the statute of limitation should be tolled. *Petersen* discusses both the Discovery Rule and the Child Exception.



1 Since, neither the Discovery Rule nor the Child Exception apply to allow for tolling of the statute
2 of limitation, the claims for Sexual Assault and Battery, Intentional Infliction of Emotional Distress
3 (outrage), False Imprisonment, and Negligence must be dismissed.

4 **1. The General Discovery Rule Does Not Apply In this Case**

5 The Discovery Rule is a two-step process, and the burden in on the plaintiff to prove that
6 the Discovery Rule applies. The Discovery Rule tolls the statute of limitation until the plaintiff
7 “discovers or should have discovered **facts** supporting a cause of actions.” *Id.* at 274. (citing
8 *Sorenson v. Pavlikowski*, 94 Nev. 440, 443-444, 581 P.2d 851, 853-854). In order for the
9 Discovery Rule to apply, the “complaint must allege: (1) the time and manner of discovery, and (2)
10 the circumstance excusing delayed discovery.” *Petersen.* at 274.

11 On the face of the complaint, Plaintiff alleges the time discovery of the facts was December
12 21, 2016, by a Sexual Abuse Nurse Examiner (“SANE”) Exam. Complaint ¶ 37. Plaintiff’s
13 complaint further alleges she reported the crime (which is the basis for her civil complaint) a week
14 later. Complaint ¶ 38. Plaintiff failed to address the untimely filing of her complaint. *See*
15 Complaint. Therefore the Discovery Rule does not apply, and the case must be dismissed.

16 **2. The Child Exception Does Not Apply in This Case**

17 Alternatively, Plaintiff pleads with the Court to treat her like a child to allow her complaint
18 to survive Defendants’ Motion. *See* Opposition p. 1-8. Since Plaintiff knows claims for Sexual
19 Assault and Battery, Intentional Infliction of Emotional Distress (outrage), False Imprisonment, and
20 Negligence are all barred by the statue of limitation, and she knows the Discovery Rule, she tries
21 to compare herself a child to fit into a narrow exception for children so traumatized by abuse that
22 they repress the experience. Since Plaintiff is not a child, and she has not alleged memory
23 suppression, the Child Exception does not apply to her. Thus, the Plaintiff’s claims for Sexual
24 Assault and Battery, Intentional Infliction of Emotional Distress (outrage), False Imprisonment, and
25 Negligence must be dismissed.

26 Plaintiff presented the *Petersen* to the Court as one that allowed for the tolling of a sexually
27 related civil action on the basis of an ongoing “mental and emotional dysfunction.” Opposition
28 9:24-28. However, Plaintiff failed to mention that the *Petersen* Court tolled the statute of



1 limitation because (1) the plaintiff suppressed the memories of the events, and (2) the plaintiff did
2 not understand the wrongfulness of the conduct. *Petersen*, at 280. While *Petersen* did discuss
3 ongoing psychological implications of child sexual abuse, that is the basis for the Child Exception.

4 In *Petersen*, the plaintiff was seven years old when he began being “seduced” by his “big
5 brother” in the Big Brothers program. *Petersen*. at 272. At the age of seven, Petersen did not
6 “consider[] the acts offensive at the time.” *Id.* at 273. Petersen endured the abuse of Bruen for
7 eight years, from 1975 to 1983. *Id.* at 272. Petersen began psychotherapy in November 1987. *Id.*
8 In an affidavit by Petersen, he “avverred that he had blocked out the eight years of sexual
9 molestation by Bruen until vividly recalled during in therapy.” *Id.* at 273.

10 By averring that he had blocked from his memory the incidents involving Bruen
11 until recall was achieved in the course of therapy, Petersen has sought to place
12 himself within the ambit of the discovery rule. Moreover, he seeks to buttress the
13 believability of his period of forgetfulness by alleging that he did not perceive the
14 acts to be offensive at the time of their occurrence, that he consented thereto and
15 was not physically injured as a result. In other words, **at the time of Bruen's
perfidy, Petersen was not sufficiently traumatized or impressed with the
wrongfulness of the acts to make their repression particularly difficult.**

16 ***

17 In cases of CSA [Child Sexual Assault] survivors, virtually **the only means of
sustaining the burden is to convince the trier of fact that the plaintiff's
mentation repressed the acts of abuse or their deleterious effects over a certain
period of time.** The fact that a CSA survivor may have been mentally and
18 emotionally incapable of asserting his or her claim within the statutory period
19 would have no relevance under the discovery rule.

20 *Petersen*. at 280. (emphasis added). In reaching its decision to adopt the Child Exception, the
21 Court relied on the following two-prong test from the Michigan Court of Appeals: “(a) a plaintiff
22 can make out a case that **she has repressed the memory** of the facts upon which her claim is
23 predicated, such that she could not have been aware of the rights she was otherwise bound to know,
24 and (b) there is corroboration for plaintiff's testimony that the sexual assault occurred.” *Id.* at 276
25 (emphasis added). Plaintiff's complaint does not allege that her memory was suppressed. Thus,
26 Plaintiff's claims for Sexual Assault and Battery, Intentional Infliction of Emotional Distress
27 (outrage), False Imprisonment, and Negligence must be dismissed.

28 ///



1 **B. Plaintiff's Complaint Does Not Meet the Requirements to Maintain an Action**
2 **for Civil Conspiracy**

3 **1. Civil Conspiracy Requires Multiple Parties to Engage In Conduct That is**
4 **Otherwise Lawful, When Conducted by Multiple People, Is Unlawful**

5 Plaintiff incorrectly states that the defendants' motion to dismiss relies on non-binding
6 authority from other jurisdictions. Plaintiff must have overlooked the entire one page summary of
7 the Nevada Supreme Court's decision - citing to the United States Supreme Court - defining the
8 "very narrow scenario when the tort of civil conspiracy will be recognized. . ." Motion P 5:11-
9 6:12.

10 Simply saying that two people committed an unlawful act, at the same time,, which resulted
11 in harm and/or damages, even if planned, is not enough for a claim of civil conspiracy. Rather,
12 Plaintiff must show that the object of the civil conspiracy is an unlawful action. To claim civil
13 conspiracy, Plaintiff must alleged **the conspiracy between the Defendants is or was unlawful**
14 **conduct because it was committed by multiple individuals.**

15 For example, if multiple airlines, acting in concert, agree to charge the same amount for
16 every flight from Las Vegas to Los Angeles with the intent to harm consumers by charging the
17 customers more, there could be an action for civil conspiracy. However, if the airlines individually
18 fix prices there would be no tort. In this example, price fixing with other airlines is the tort of civil
19 conspiracy. *See Fed. Trade Comm. v. Raymond, etc., Co.*, 263 U.S. 565, 574, 44 S.Ct. 162, 164,
20 68 L.Ed. 448 (1923) (Companies acting together to fix prices with other wholesalers would be a
21 unlawful conspiracy); *Federal Trade Comm. V. Gratz*, 253 U.S. 421, 427 (1920) (holding
22 companies acting together in bad faith to hinder competition is an "unfair method of competition"
23 which is actionable). If only one airline fixed its prices, a consumer could purchase a flight from
24 another airline; but when multiple airlines fix the prices in concert with other airlines, all of the
25 airlines are liable for civil conspiracy.

26 Here, the torts alleged by Plaintiff are illegal whether committed by one person, or multiple
27 people. As such, a claim for civil conspiracy cannot be maintained on these facts.

28 **2. Plaintiff Cannot Even Meet the Elements of Her Own Test for Civil**



Conspiracy

Plaintiff's claim of civil conspiracy failed to meet the elements of her own test. Plaintiff relied on, *Morris v. Bank of Am. Nevada*, 1110 Nev. 1247, 886 P.2d 454(1994), in her opposition. Opposition 14:11-14. According to *Morris* a civil conspiracy is defined as follows: "An actionable conspiracy consists of a combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another, and damage results from the act or acts." *Id.* at 1276. (citation omitted). In *Morris*, the court affirmed the lower court's dismissal of Morris' counterclaim for civil conspiracy, because **"Morris' conspiracy counterclaim fails to allege that the Bank conspired to do some identifiable unlawful act."** *Id.* (emphasis added). Plaintiff conflated harm and an unlawful act. In Plaintiff's chart she stated that **"in combination, with each in full knowledge of and ratifying the acts of the other harming Ms. Fausto"** satisfies the "unlawful objective requirement." Opposition 15:10-13. Not only does this explanation fail to state "some identifiable unlawful act," but it fails to even use the word "unlawful act." The unlawful act is a key element to a cause of action for civil conspiracy. Even if individuals planned to harm someone, that does not rise to an actionable claim for civil conspiracy, unless the unlawful action requires two or more people.

Since Plaintiff has not alleged any unlawful act, her complaint must be dismissed.

C. Plaintiff's Claim for Concert of Action is Insufficiently Plead

Plaintiff's argument for why our motion to dismiss the claim for concert of action is impossible to follow. Plaintiff cites to her own conclusory language to show that she has specifically plead a claim for Concert of Action by saying the defendants "acted in concert" and "acted together," without stating any facts to support that conclusion. Plaintiff is just mirroring the point in the Motion that her claim for Concert of Action is not sufficiently plead. Opposition 14:13-17. Further, Plaintiff completely ignored the fact that the defendants must have "acted together" to **commit a tort**. Plaintiff does not allege a tort in her claim for Concert of Action, and all the tort claims in her complaint are barred by the statute of limitation. Therefore, Plaintiff's claim for Concert of Action must be dismissed.

D. Alternative Motion to Stay



Plaintiff argues that the burden of moving to stay a case is on the moving. Plaintiff cites to case law which states it is “permissible for the trier of fact to draw adverse inferences from the invocation of the Fifth Amendment in a civil proceeding.” Opposition 18:10-13. What Plaintiff failed to mention is that in *Keating v. Office of Thrift Supervision* 45 F.3d 322 (9th Cir 1995), the **Court did stay the case for nine months pending the outcome of the defendant’s state criminal case.** (emphasis added). After the state convicted Keating, he was prosecuted by the federal government. *Id.* at 325. The Court denied Keating’s **second request** for a stay, reasoning that Keating had ample time to prepare for the administrative hearing it postponed for nine months; the administrative court claims were “**unrelated to the federal charges.**” *Id.* (emphasis added).

Plaintiff’s inference that this Court should hold any invocation of the Defendants’ Constitutional right to invoke their Fifth Amendment Right, is exactly the reason that the civil and criminal actions should not be maintained at the same time. Therefore, if this Court does not dismiss Plaintiff’s complaint in its entirety, this action should be stayed pending the out of the criminal proceeding.

IV. CONCLUSION

For all of the above reasons, Plaintiff’s Opposition utterly failed to support her contention that her complaint states any cause of action for which this Court can grant relief. Plaintiff has added nothing to support her claim. Instead, Plaintiff has implied that she hopes this Court will “draw negative inferences” if the Defendant(s) invoke the Fifth Amendment. Accordingly, Plaintiff’s complaint must be dismissed in its entirety.

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1 Alternatively, this civil action must be stayed pursuant to *Aspen* and *Keating*, pending
2 resolution of Defendant Ricardo's pending criminal case.

3 Dated this 19th day of August, 2019.

4 THE WRIGHT LAW GROUP, P.C.

5
6

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13 *Attorneys for Defendants*

14 *Ricardo Sanchez-Flores and*

15 *Verenice Ruth Flores*

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CERTIFICATE OF SERVICE


I hereby certify that the foregoing REPLY IN SUPPORT OF MOTION TO DISMISS was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 19th day of August, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:

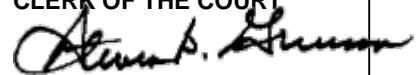
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Piers R. Tueller, Esq. ptueller@hutchlegal.com
Attorneys for Plaintiff
Jacqueline Fausto

I further certify that I served a copy of this document by Electronic mail a true and correct copy, addressed to:

None.


An employee of **THE WRIGHT LAW GROUP, P.C.**



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19 *Attorneys for Plaintiff Jaqueline Fausto*

20 **DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

22 JAQUELINE FAUSTO, an individual,

23 Plaintiff,

24 v.

25 RICARDO SANCHEZ-FLORES, an individual;
26 VERENICE RUTH FLORES, an individual;

27 Defendants.

Case No. A-19-797890-C
Dept. No. XXIII

STIPULATION AND ORDER

28 **STIPULATION AND ORDER TO CONTINUE HEARING RE: DEFENDANT'S MOTION**
TO DISMISS OR IN THE ALTERNATIVE MOTION TO STAY

Plaintiff Jaqueline Fausto ("Plaintiff") by and through her counsel of record Jason D. Guinasso, Esq., Joseph R. Ganley, Esq., and Piers R. Tueller, Esq. of Hutchison & Steffen, PLLC and Defendants Ricardo Sanchez-Flores and Verenice Ruth Flores (collectively "Defendants"), by and

1 through their counsel of record, John Henry Wright, Esq., and Amy J. Smith, Esq., of the Wright
2 Law Group, P.C., respectfully submit this Stipulation and Order to Continue the Hearing date re:
3 Defendants' Motion to Dismiss or in the Alternative Motion to Stay, currently scheduled for August
4 27, 2019 at 9:30 a.m.

5 On July 25, 2019, Defendant filed its Motion Dismiss or in the Alternative Motion to Stay.
6 Because of pressing timelines in other cases, including attendance at a trial, Plaintiff was granted
7 an extension up to and including August 9, 2019 to file her Opposition.

8 Currently, Counsel for Plaintiff, have a previously set hearing in a different matter scheduled
9 for August 27, 2019.

10 The Parties are NOT available to re-set the hearing for the following dates: August 27, 2019;
11 September 3, 2019; September 10, 2019; October 8, 2019.

12 **The Parties are mutually available to re-set the hearing for the following dates:**
13 **September 17, 2019; September 24, 2019; October 1, 2019.**

14 Therefore, IT IS HEREBY STIPULATED AND AGREED, by the parties, by and through
15 their respective counsel of record, that the August 27, 2019 Hearing date re: Defendant's Motion
16 for to Dismiss or in the Alternative Motion to Stay is vacated.

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1 Therefore, IT IS FURTHER STIPULATED AND AGREED, by the parties, by and
2 through their respective counsel of record, that the Hearing re: Defendants' Motion to Dismiss
3 or in the Alternative Motion to Stay be rescheduled to 9/17, 2019 at 9:30am
4 a.m./p.m., in accordance with the parties' mutual availability provided above.

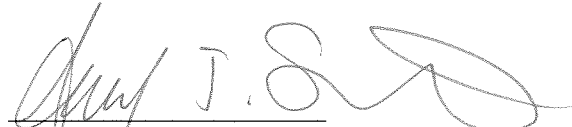
5 The parties further agree that the electronic signatures are sufficient for this Stipulation and
6 Order.

7 Dated this 21st day of August, 2019

8 HUTCHINSON & STEFFEN

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Attorneys for Plaintiff

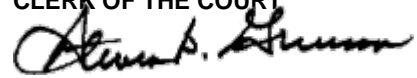
20 **ORDER**

21 IT IS HEREBY ORDERED that August 27, 2019 Hearing date re: Defendants' Motion to
22 Dismiss or in the Alternative Motion to Stay is vacated.

23 IT IS FURTHER ORDERED, that the Hearing re: Defendants' Motion to Dismiss or
24 in the Alternative Motion to Stay be rescheduled to and this matter will be rescheduled to
25 9-17, 2019 at 9:30 a.m./p.m.,

26 
27 DISTRICT COURT JUDGE

28 JUDGE STEFANY A. MILEY



NTSO

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Attorneys for Plaintiff Jaqueline Fausto

DISTRICT COURT

CLARK COUNTY, NEVADA

JAQUELINE FAUSTO, an individual,

Plaintiff,

v.

RICARDO SANCHEZ-FLORES, an individual;

VERENICE RUTH FLORES, an individual;

Defendants.

Case No. A-19-797890-C

Dept. No. XXIII

**NOTICE OF ENTRY OF
STIPULATION AND ORDER**

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1 NOTICE IS HEREBY GIVEN that on August 26, 2019, a *Stipulation and Order* was
2 entered in the above-captioned matter, a copy of which is attached hereto.

3 DATED September 10, 2019.

4 HUTCHISON & STEFFEN, PLLC

5 /s/ Jason D. Guinasso

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21 *Attorneys for Plaintiff Jaqueline Fausto*

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this 10th day of September, 2019, I caused the document entitled **NOTICE OF ENTRY OF STIPULATION AND ORDER** to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- X to be electronically served through the Eighth Judicial District Court's electronic filing system pursuant to NEFCR (9); and/or
- ☐ to be hand-delivered

to the attorneys listed below:

Amy J. Smith

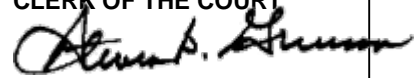
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/s/ Bernadette Francis

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1 **SAO**

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19 *Attorneys for Plaintiff Jaqueline Fausto*

20 **DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

22 JAQUELINE FAUSTO, an individual,

23 Plaintiff,

24 v.

25 RICARDO SANCHEZ-FLORES, an individual;
26 VERENICE RUTH FLORES, an individual;

27 Defendants.

Case No. A-19-797890-C
Dept. No. XXIII

STIPULATION AND ORDER

28 **STIPULATION AND ORDER TO CONTINUE HEARING RE: DEFENDANT'S MOTION**
TO DISMISS OR IN THE ALTERNATIVE MOTION TO STAY

Plaintiff Jaqueline Fausto ("Plaintiff") by and through her counsel of record Jason D. Guinasso, Esq., Joseph R. Ganley, Esq., and Piers R. Tueller, Esq. of Hutchison & Steffen, PLLC and Defendants Ricardo Sanchez-Flores and Verenice Ruth Flores (collectively "Defendants"), by and

1 through their counsel of record, John Henry Wright, Esq., and Amy J. Smith, Esq., of the Wright
2 Law Group, P.C., respectfully submit this Stipulation and Order to Continue the Hearing date re:
3 Defendants' Motion to Dismiss or in the Alternative Motion to Stay, currently scheduled for August
4 27, 2019 at 9:30 a.m.

5 On July 25, 2019, Defendant filed its Motion Dismiss or in the Alternative Motion to Stay.
6 Because of pressing timelines in other cases, including attendance at a trial, Plaintiff was granted
7 an extension up to and including August 9, 2019 to file her Opposition.

8 Currently, Counsel for Plaintiff, have a previously set hearing in a different matter scheduled
9 for August 27, 2019.

10 The Parties are NOT available to re-set the hearing for the following dates: August 27, 2019;
11 September 3, 2019; September 10, 2019; October 8, 2019.

12 **The Parties are mutually available to re-set the hearing for the following dates:**
13 **September 17, 2019; September 24, 2019; October 1, 2019.**

14 Therefore, IT IS HEREBY STIPULATED AND AGREED, by the parties, by and through
15 their respective counsel of record, that the August 27, 2019 Hearing date re: Defendant's Motion
16 for to Dismiss or in the Alternative Motion to Stay is vacated.

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1 Therefore, IT IS FURTHER STIPULATED AND AGREED, by the parties, by and
2 through their respective counsel of record, that the Hearing re: Defendants' Motion to Dismiss
3 or in the Alternative Motion to Stay be rescheduled to 9/17, 2019 at 9:30am
4 a.m./p.m., in accordance with the parties' mutual availability provided above.

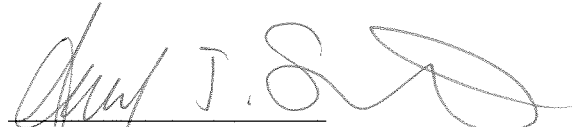
5 The parties further agree that the electronic signatures are sufficient for this Stipulation and
6 Order.

7 Dated this 21st day of August, 2019

8 HUTCHINSON & STEFFEN

THE WRIGHT LAW GROUP, P.C.

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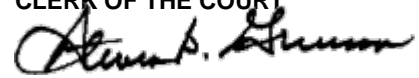
20 **ORDER**

21 IT IS HEREBY ORDERED that August 27, 2019 Hearing date re: Defendants' Motion to
22 Dismiss or in the Alternative Motion to Stay is vacated.

23 IT IS FURTHER ORDERED, that the Hearing re: Defendants' Motion to Dismiss or
24 in the Alternative Motion to Stay be rescheduled to and this matter will be rescheduled to
25 9-17, 2019 at 9:30 a.m./p.m.,

26 
27 DISTRICT COURT JUDGE

28 JUDGE STEFANY A. MILEY



ADDM

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Attorneys for Plaintiff Jaqueline Fausto

DISTRICT COURT

CLARK COUNTY, NEVADA

JAQUELINE FAUSTO, an individual,

Plaintiff,

v.

RICARDO SANCHEZ-FLORES, an individual;
VERENICE RUTH FLORES, an individual;

Defendants.

Case No. A-19-797890-C
Dept. No. XXIII

**ADDENDUM TO OPPOSITION
TO DEFENDANTS' MOTION
TO DISMISS OR IN THE
ALTERNATIVE MOTION TO
STAY**

**HEARING DATE: September 17,
2019
HEARING TIME: 9:30 AM**

1 **COMES NOW**, Plaintiff Jaqueline Fausto (“Plaintiff”), by and through her undersigned
2 counsel of record, and hereby submits an addendum to her Opposition to the July 24, 2019,
3 Motion to Dismiss or in the Alternative Motion to Stay filed by Defendants Ricardo Sanchez-
4 Flores and Verenice Ruth Flores (the “Motion”).

5 This addendum, made pursuant to Rule 7 of the Nevada Rules of Civil Procedure, and
6 made at the request of this Court, serves as an addendum to Plaintiff’s Opposition to Defendants’
7 Motion to Dismiss or in the Alternative Motion to Stay, is based upon the points and authorities
8 contained herein and any argument that this Court elects to entertain at the Hearing on the
9 Motion.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. The Discovery Rule and Equitable Tolling**

12 As an extension of Ms. Fausto’s request that this Court toll the statute of limitations for
13 her claim to the date of discovery, Mr. Fausto requests that this Court equitably toll the statute of
14 limitations on Ms. Fausto’s claims against the Defendants. The question for this Court is simple:
15 how is a victim of sexual assault supposed to proceed when her word is all she has? Ms. Fausto
16 acted prudently in getting a rape kit, seeing a doctor the very next day. And even though there
17 was uncertainty about what happened December 30, 2016, Ms. Fausto sought out help
18 immediately. The State of Nevada let her down when it failed to process the kit quickly. Without
19 objective evidence tying Mr. Sanchez-Flores to the assault, there was nothing to support Ms.
20 Fausto’s testimony and it would have been irresponsible to bring the claim sooner. Ms. Fausto
21 asks this Court to toll the statute of limitations on her claim because she deserves her day in court.

22 “The rule in the federal courts is that both tolling doctrines—equitable estoppel and
23 equitable tolling—are, just like the discovery rule, grafted on to federal statutes of limitations.”
24 *Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 451 (1990). The Nevada Supreme Court too
25 has “recogni[z]ed the doctrine of equitable tolling.” *Copeland v. Desert Inn Hotel*, 99 Nev. 823,
26 826 (1983) (recognizing equitable tolling under Nevada’s antidiscrimination statutes). In
27 *Copeland*, the Court outlined the following factors for granting equitable tolling:
28

1 the diligence of the claimant; the claimant's knowledge of the
2 relevant facts; the claimant's reliance on authoritative statements by
3 the administrative agency that misled the claimant about the nature
4 of the claimant's rights; any deception or false assurances on the part
5 of the employer against whom the claim is made; the prejudice to
the employer that would actually result from delay during the time
that the limitations period is tolled; and any other equitable
considerations appropriate in the particular case.

6 *Id.*

7 Admittedly, and as the Nevada Federal District Court recognized, "[t]he Nevada Supreme
8 Court has not published a case in which it was faced with the prospect of applying the doctrine
9 of equitable tolling to [NRS] 11.190(4)(e)." *Wisenbaker v. Farwell*, 341 F.Supp.2d 1160 (2004).
10 But, this lack of clear precedent did not prevent the Federal District Court from applying equitable
11 tolling to tort claims tied to an administrative proceeding. *Id.* In *Wisenbaker*, it did precisely
12 this—predicting the Nevada Supreme Court would apply the same logic that it had applied in
13 employment and antidiscrimination law, the Federal District Court equitably tolled the statutes
14 of limitation because facts compel that as the fair and just outcome. *Id.*

15 Like the case before this Court, a New Jersey court applied the doctrine of equitable tolling
16 to a sexual assault by a police officer when the assailant's identity was unclear. *Dunn v. Borough*
17 *of Mountainside*, 301 N.J. Super. 262, 279-81 (1997). Because the police officer intentionally
18 withheld his identity, tolling the statute of limitations was warranted to allow the victim to have
19 her day in court. Ms. Fausto also struggled to remember what happened on the night in question.
20 The morning after the assault, Ms. Fausto was still in shock and did not fully understand the
21 nature of Mr. Sanchez-Flores' acts against her. (Complaint paragraph 36). She knew was
22 assaulted, but admittedly there was a lack of clarity. Mr. Sanchez-Flores and his wife, Verenice
23 Ruth Flores acted in concert to hide what he had done. Their intentional attempt to conceal the
24 facts behind Ms. Fausto's claim justify this Court equitably tolling the statute of limitations.

25 Ms. Fausto's diligence after the assault and reliance on the State of Nevada to process her
26 rape kit also weigh heavily in favor of equitable tolling. Equitable tolling "permits a plaintiff to
27 avoid the bar of the statute of limitations if despite all due diligence [she] is unable to obtain vital
28 information bearing on the existence of [her] claim." *Cada*, 920 F.2d at 451 (citing *Holmberg v.*

1 *Armbrecht*, 327 U.S. 392, 396 (1946). Ms. Fausto acted quickly. She went to a doctor the day
2 after the assault to get a rape kit. She filed a criminal complaint soon after and preserved her
3 clothing. The State failed her. It did not process the rape kit until more than 2 years later. Ms.
4 Fausto should not be punished because she wanted to ensure the identity of her assailment. Ms.
5 Fausto's complaint and declaration show that there was a lot of uncertainty surrounding the night
6 of the assault. Mr. Sanchez-Flores and Ms. Flores knew she was intoxicated and took advantage
7 of her. Ms. Fausto had reason to believe she was assaulted by Mr. Sanchez-Flores, but that was
8 not enough to bring a claim. Her diligence and justified reliance on the State to process the rape
9 kit sooner, justifies tolling the statute of limitations.

10 Equity towards the Defendants also weigh in favor of Ms. Fausto's decision to delay filing
11 this action until the rape kit was complete. A baseless allegation can ruin a person's life. Were
12 Ms. Fausto to have brought suit without the rape kit as evidence, could have opened herself to a
13 defamation claim, an abuse of prosecution claim, and could have jeopardized Mr. Sanchez-Flores
14 and Ms. Flores's future without cause. The results of the rape kit helped Ms. Fausto truly know
15 what happened on December 30, 2016. She was in a house, severely intoxicated, and taken
16 advantage of. Who's to say there was not another person in the house? The results of the rape
17 kit were the evidence Ms. Fausto needed to realize that she had been the victim of sexual assault.
18 Simply, this Court should grant equitable tolling and preserve Ms. Fausto's claim if it concludes
19 that she may "have been prevented from doing so due to inequitable circumstances." *Ellis v.*
20 *General Motors Acceptance Corp.*, 160 F.3d 703, 706 (11th Cir. 1998).¹

21 ///

23 ¹This Court could also choose to equitably toll Ms. Fausto's claims based on federal jurisprudence. Because the
24 Nevada Supreme Court has not been clear in its application of equitable tolling to tort claims, federal law may be
25 persuasive in this Court's decision on the matter. When applying equitable tolling under federal law, courts "follow
26 [the] tradition in which courts of equity have sought to 'relieve hardships which, from time to time, arise from a hard
27 and fast adherence' to more absolute legal rules, which, if strictly applied, threaten the 'evils of archaic rigidity.'" *Holland v. Florida*, 130 S.Ct. 2549, 2563 (2010) (quoting *Hazel—Atlas Glass Co. v. Hartford—Empire Co.*, 322
28 U.S. 238, 248, (1944)). Thus, the equitable tolling doctrine "enables courts to meet new situations [that] demand
equitable intervention, and to accord all the relief necessary to correct ... particular injustices." *Id.* Under federal
equitable tolling, the plaintiff must show that (1) she pursued her rights diligently and (2) some extraordinary
circumstances stood in her way. *Kwai Fun Wong v. Beebe*, 732 F.3d 1030, 1052 (9th Cir. 2013). Ms. Fausto's
conduct satisfies both these standards. As is discussed in this addendum at length, Ms. Fausto was extremely diligent
and would have filed her claim sooner but for the State of Nevada's failure to process her rape kit.

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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I, hereby certify that I am a non-party over the age of 18 years,
and that on the 10th day of September, 2019, I caused a true and correct copy of the
ADDENDUM TO PLAINTIFF'S OPPOSITION TO DISMISS OR IN THE
ALTERNATIVE MOTION TO STAY to be electronically served through the Eighth Judicial
District Court EFP System pursuant to NEFR 9 on the following:

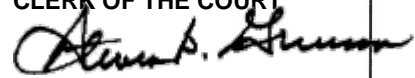
John Henry Wright, Esq. - john@wrightlawgroupnv.com
Christopher Phillips, Esq. - chris@wrightlawgroupnv.com
Amy J. Smith, Esq.- amys@wrightlawgroupnv.com
Attorneys for Defendants Ricardo Sanchez-Flores
and Verence Ruth Flores

I hereby declare, under penalty of perjury by the laws of the State of Nevada, that the
aforementioned is a true and correct statement of fact.

DATED: September 10, 2019



Employee of Hutchison & Steffen, PLLC



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7 *Attorneys for Defendants*
Ricardo Sanchez-Flores and
8 *Verenice Ruth Flores*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 JAQUELINE FAUSTO, an individual,
12 Plaintiff,

CASE NO: A-19-797890-C

DEPT NO: XXIII

13 vs.

Date: September 17, 2019
Time: 9:30AM

14 RICARDO SANCHEZ-FLORES, an
individual; VERENICE RUTH FLORES, an
15 individual;

16 Defendants.

17
18 **SUPPLEMENTAL POINTS AND AUTHORITIES IN RESPONSE TO PLAINTIFF'S**
ADDENDUM TO OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

19 COME NOW Defendants RICARDO SANCHEZ-FLORES (individually referred to as
20 "Ricardo") and VERENICE RUTH FLORES, (individually referred to as "Verenice") (hereinafter
21 collectively referred to as "Defendants") by and through their counsel of record, John Henry
22 Wright, Esq., and Amy J. Smith, Esq., of The Wright Law Group, P.C., and hereby submit this
23 Supplemental Points and Authorities in Response to Plaintiff's Addendum to Opposition to
24 Defendants' Motion to Dismiss or in the Alternative Motion to Stay Plaintiff JACQUELINE
25 FAUSTO'S ("Plaintiff") complaint filed on July 3, 2019 ("Supplement").

26 ///

27 ///

28 ///

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Las Vegas, Nevada 89102
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This Supplement is made pursuant to Rule 12 of the Nevada Rules of Civil Procedure and is based upon the points and authorities contained herein, the exhibits attached hereto, the records and files of this case and any argument that the court elects to entertain at hearing on said Motion.

DATED this 13th day of September, 2019.

THE WRIGHT LAW GROUP, P.C.

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Nevada Bar No. 6182

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Attorneys for Defendants

Ricardo Sanchez-Flores and

Verenice Ruth Flores

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

On August 5, 2019, the day Plaintiff's opposition was due, her counsel requested an extension of time to file the opposition. A true and correct copy of the email from Plaintiff's counsel requesting an extension is attached hereto as **Exhibit 1**. Defendants' counsel agreed to stipulate to extend the time for Plaintiff's counsel to file the opposition until August 9, 2019. **Exhibit 2**. On August 20, 2019, Plaintiff's counsel requested the hearing on the motion to dismiss be reset to accommodate Plaintiff's counsel; and Defendants' counsel again agreed to this extension. **Exhibit 3**. On September 3, 2019, Plaintiff's counsel - for a third time - requested rescheduling the hearing on the motion to dismiss. **Exhibit 4**. Having already agreed to two prior extensions, Defendants' counsel declined to agree to a third extension. **Exhibit 5**. Surprisingly, Plaintiff's counsel filed an Addendum to her Opposition to Defendants' motion to dismiss or in the Alternative Motion to Stay ("Addendum") seven days before the hearing scheduled for September 17, 2019.

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II. INTRODUCTION

Plaintiff's Addendum asserts new factual allegations in a weak attempt to move forward with her untimely complaint. The factual allegations in Plaintiff's Addendum, made by counsel without a declaration by Plaintiff, are not made in good faith, because the factual allegations are contrary to evidence the Plaintiff already possesses or should possess. Exhibits 6-9, cited below, are used in this Supplement expressly for the limited purpose of showing the Court that Plaintiff's allegations contradict the evidence in Plaintiff's possession.

There is no legal basis for Plaintiff's filing of the Addendum. While Plaintiff claims the Addendum is made pursuant to NRCP 7, it is not styled as a motion. Even if it were styled as a motion, it would be improper because (1) Plaintiff did not request a hearing as required by EDCR 2.20, and (2) Defendants do not have 10 days to oppose the Addendum brought since it was filed less than 10 days before the hearing on Defendants' motion to dismiss. Since Plaintiff's Addendum is improperly filed, this Court should strike it. Further, this Court should award Defendants reasonable attorneys' fees spent in defending against Plaintiff's frivolous Addendum.

Plaintiff's Addendum violates NRCP 11, because it is filed for an improper purpose, the legal basis is frivolous, and the factual contentions are contrary to prior statements and evidence Plaintiff is reasonably able to access or actual possesses. Plaintiff is trying to delay the hearing on Defendants' motion to dismiss after Defendants' counsel would not agree to grant Plaintiff's counsel a third extension. Further, Plaintiff is intentionally causing Defendants to spend unnecessary money on defending Plaintiff's Addendum. The frivolous legal authority cited by Plaintiff is not applicable to the facts of this case; and the new factual contentions made in Plaintiff's Addendum are not based on evidence, a reasonable belief that evidence exists to support her contentions, or a lack of information. Both the factual and the legal assertions in Plaintiff's Addendum violate NRCP 11, and are designed to harass, delay, and cause Defendants to spend needless money defending Plaintiff's Addendum.

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None of the non-binding and/or unrelated law Plaintiff wishes to add to her August 9, 2019 Opposition are based on the facts of this case. Since these non-binding and unrelated cases do not relate to the facts of this case, Plaintiff's counsel made new factual contentions in Plaintiff's Addendum. The factual contentions relating to Plaintiff's lack of knowledge of who she should sue are not based on any fact asserted anywhere prior to the filing of Plaintiff's Addendum. Further, none of these new "facts" are supported by any evidence or declaration; and Plaintiff has not alleged there is a good faith basis for believing that new evidence would support Plaintiff's counsel's contention that she could not remember what happened on the night in question. Since none of the legal authority in Plaintiff's Addendum is binding, or even remotely related to the facts of this case, the statute of limitation should not be tolled in this case; and this Court should strike Plaintiff's Addendum and award Defendants reasonable attorneys' fees for having to defend Plaintiff's frivolous Addendum.

III. ARGUMENT

A. PLAINTIFF'S ADDENDUM IS NOT MADE PURSUANT TO NRCP 7

Plaintiff's Addendum does not comply with NRCP 7, because it is not made as a motion. NRCP 7 applies to pleadings and motions. Since the Addendum is not one of the motions or pleadings specified in NRCP 7(a), Plaintiff must be have attempted to use NRCP 7(b); Plaintiff did not specify which portion of NRCP 7 it was referring. NRCP 7(b) states:

Motions and Other Papers.

(1) In General. **A request for a court order must be made by motion.**
The motion must:

- (A) be in writing unless made during a hearing or trial;
- (B) state with particularity the grounds for seeking the order; and
- (C) state the relief sought.

(emphasis added). If Plaintiff's Addendum had been a motion for leave to file an addendum, Plaintiff would have been required to request a hearing pursuant to EDCR 2.20. If the Addendum were a motion made pursuant to NRCP 7(b), the Defendants would have had 10 days to respond under EDCR 2.20(e), which states:

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1 Within 10 days after the service of the motion, and 5 days after service of any
2 joinder to the motion, the opposing party must serve and file written notice of non-
3 opposition or opposition thereto, together with a memorandum of points and
4 authorities and supporting affidavits, if any, stating facts showing why the motion
5 and/or joinder should be denied. Failure of the opposing party to serve and file
6 written opposition may be construed as an admission that the motion and/or joinder
7 is meritorious and a consent to granting the same.
8 Plaintiff would be able to file a reply in support of her motion no later than 5 days before the
9 hearing according to EDCR 2.20(h) which states, "a moving party may file a reply memorandum
10 of points and authorities not later than 5 days before the matter is set for hearing. A reply
11 memorandum must not be filed within 5 days of the hearing or in open court unless court approval
12 is first obtained."

13 In this case, Plaintiff filed her Addendum to try and get in the last word and prevent
14 Defendants from being able to reply. August 9, 2019 was the last day for Plaintiff to oppose
15 Defendants' motion to dismiss. That time has passed, and Plaintiff cannot unilaterally add
16 arguments after briefing is finished, a mere eight days before the hearing is scheduled.

17 **B. Plaintiff's Addendum violates Rule 11**

18 Pursuant to NRCP 11(b):

19 **Representations to the Court.** By presenting to the court a pleading, written
20 motion, or other paper — whether by signing, filing, submitting, or later advocating
21 it — an attorney or unrepresented party certifies that to the best of the person's
22 knowledge, information, and belief, formed after an inquiry reasonable under the
23 circumstances:

24 (1) it is not being presented for any improper purpose, such as to harass,
25 cause unnecessary delay, or needlessly increase the cost of litigation;

26 (2) the claims, defenses, and other legal contentions are warranted by
27 existing law or by a non-frivolous argument for extending, modifying, or reversing
28 existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so
identified, will likely have evidentiary support after a reasonable opportunity for
further investigation or discovery;

(4) the denials of factual contentions are warranted on the evidence or, if
specifically so identified, are reasonably based on belief or a lack of information.

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1 Plaintiff had sixteen (16) days to oppose Defendants' motion to dismiss. Plaintiff already
2 filed its Opposition and does not get to a second chance. The arguments Plaintiff is making are not
3 from binding authority, nor are the arguments based on new law. More than a month after filing
4 her Opposition, Plaintiff wants this Court to consider non-binding authority from the years between
5 1946 through 2004. *See Addendum*. But-for the second extension granted to Plaintiff, the motion
6 to dismiss would already have been heard and resolved.

7 Further, the factual allegations in the Addendum are contrary to the Plaintiff's prior
8 statements, including sworn testimony from the Plaintiff, details of which will be discussed in
9 section B(3)

10 **1. Plaintiff's Addendum Violates NRCP 11(b)(1)**

11 Plaintiff's Addendum violates NRCP 11(b)(1); because it is used for an improper purpose
12 to delay the hearing and increase the cost of litigation for Defendants. Plaintiff already asked for
13 a third extension on September 6, 2019. **Exhibit 4**. When that extension was not granted, Plaintiff
14 filed her Addendum 8 days before the hearing. The filing of this frivolous Addendum forced
15 Defendants' counsel to have to choose between granting Plaintiff's counsel the requested extension
16 or setting aside other business to reply to Plaintiff's Addendum. Since Plaintiff already asked for
17 an extension, and she filed this frivolous Addendum three weeks after briefing closed, Plaintiff's
18 Addendum is meant to delay the hearing.

19 Plaintiff's filing of the Addendum is being brought to needlessly increase the price of
20 litigation, Defendants have to pay attorneys' fees to respond to Plaintiff's improper, untimely, and
21 frivolous Addendum. Since Defendants would not agree to a third extension, Plaintiff threw
22 together an Addendum to force Defendants to waste time and money defending against the
23 Addendum. **Exhibits 4 and 5**. The Addendum is improper, untimely, frivolous, and brought in
24 bad faith. There is no good faith basis for trying to include additional arguments and factual
25 contentions to Plaintiff's Opposition long after the time has passed for her to Oppose Defendants'
26 motion to dismiss.

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1 **2. Plaintiff's Addendum Violates NRCP 11(b)(2)**

2 Plaintiff's Addendum violates NRCP 11(b)(2); because it is a frivolous attempt to further
3 argue that Plaintiff should be able to maintain her claim despite it being barred by the statute of
4 limitations. Plaintiff already made that argument. *See Plaintiff's Opposition*. The bulk of
5 Plaintiff's legal argument in her Opposition was dedicated to arguing that the discovery rule and
6 the Child Exception should apply to toll the statute of limitation. *See Plaintiff's Opposition; See*
7 **Defendants' Reply**.

8 Plaintiff does not get the last word on Defendants' motion to dismiss, and should not be
9 allowed to make arguments she should have made in her Opposition. It might be understandable
10 to make a new argument based on new law, but that's not what Plaintiff did. Plaintiff wants to add
11 a new argument based on already existing law. Worse yet, Plaintiff is trying to use non-binding
12 authority. The only Nevada case Plaintiff cited in her Addendum was a case laying out factors
13 specific to employment law; and Plaintiff made no attempt to indicate why that law should apply
14 to this case. The purpose of this Addendum was to use the word "rape" ten times in three pages,
15 in an effort to get this Court to overlook her late filing. *See Addendum* at p. 2-4. In the same way
16 the Plaintiff waited until it was too late to file her complaint, Plaintiff's counsel frivolously waited
17 until a month after filing Plaintiff's Opposition to bring new defenses.

18 **3. Plaintiff's Addendum Violates NRCP 11(b)(3)-(4)**

19 Plaintiff's Addendum violates NRCP 11(b)(3)-(4), because the factual contentions have no
20 evidentiary support, the factual contentions will not be supported by evidence upon further
21 investigation or discovery, and run contrary to prior statements and sworn testimony of Plaintiff.
22 Even the employment case Plaintiff's counsel refers to, *Cada v. Baxter Health Care*, 920 F.2d 446
23 (7th Cir. 1990)¹, along with all other case law in Nevada, states that the accrual date for statute of
24 limitations begins on the date the plaintiff discovers the injury.

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28 ¹Citation of this case is made for illustration purposes, but Defendants still contend that this case
is non-binding and should not be applied in this case.



1 Plaintiff's counsel is inventing facts, which are unverified by the Plaintiff, in order to
2 convince this Court that Plaintiff's complaint should survive Defendants' motion to dismiss, which
3 it cannot. If the facts alleged by Plaintiff's counsel were true, Plaintiff's counsel would move to
4 amend the complaint. However, Plaintiff's counsel knows it cannot amend Plaintiff's complaint
5 to include the contrary facts he alleges in the Addendum.

6 Plaintiff's counsel, for the first time in this case, asserts - without a supporting affidavit or
7 declaration - that Plaintiff didn't know that Ricardo should be sued until the results of her Sexual
8 Assault Nurse Examiner exam ("SANE exam") were given to her. SANE exams are taken after
9 an alleged injury. If Plaintiff did not believe she was injured, she would have had no reason to
10 have a SANE exam. The accrual date predates the SANE exam, because Plaintiff learned of her
11 injury before the SANE exam. Plaintiff admits that the SANE exam was taken more than two years
12 before Plaintiff filed the action. *See* Addendum. So, even if this Court considers adopting the
13 Seventh Circuit's interpretation of federal equitable tolling, the statute of limitations would not be
14 tolled. Therefore, Plaintiff's complaint is barred by the statute of limitation.

15 One day after the night in question, Plaintiff made a written statement to the police.
16 **Exhibit 6.** In Plaintiff's written statement, she refers to Ricardo as, "the suspect." *Id.* at p. 1.
17 Further, Plaintiff stated she, "was aware of what was going on, however, I couldn't scream, say no
18 or alert his [Ricardo's] wife." *Id.* at p. 2. In her written statement, Plaintiff made the following
19 written statement:

20 [H]e [Ricardo] came in the living room pulled down my shorts, tights, & under
21 wear and started to touch me. He started to penetrate me w/ either his penis or his
22 finger but he couldn't all the way because at the time I was menstruating and was
23 wearing a "diva cup" . . . He the (sic) proceeded to perform oral sex on me . . . he
was moving his body up & down while I somewhat moaned & would say
"NO". . . . In addition, while he was touching me, he also proceeded to "penetrate
my rectum" . . .

24 *Id.* at 3-4. On February 17, 2019, in a recorded statement to the police, Plaintiff again
25 referred to Ricardo as the "suspect." **Exhibit 7** at p. 4. Plaintiff alleged that "Ricardo has decided
26 to feel me up, you know, like, start grabbing my butt and start touching me in the back." *Id.* at p.6.

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1 Plaintiff further stated that she knew what the incident in question happened “around 4:00 or 5:00,
2 um, and I know because my mom called me and I could feel the - the vi- the phone vibrate.” *Id.*
3 at p. 7. Plaintiff provides the police with the following verbal allegations:

4 [H]e [Ricardo] stated, uh, again touching. And, um, he started taking off my - my
5 clothes and my, uh, pantyhose. And he started, uh, touching me and, um, you know
6 feeling me up – all - all - all of me. And he - he, um tried penetrate me, uh,
7 vaginally but I have, uh, I had a NuvaRing and therefore he couldn't penetrate me
completely. . . . But then he proceeded to perform oral sex on me. And all this time
I want to scream. I want to, like, say, "No," or - but I just couldn't. I - I couldn't. I -
I froze. I - I - I couldn't even move.

8 *Id.* at p. 6-8. On June 24, 2019, less than three months ago, Plaintiff gave sworn testimony similar
9 to the testimony she gave in her written and verbal statements to the police. **Exhibit 9.** Under
10 oath, Plaintiff testified that, “[h]e [Ricardo] start with touching my butt, the middle of my butt. It
11 was over my clothes. I was still fully clothed and he would just move his hand closer to my
12 vagina.” *Id.* at p. 12. When asked if she was intoxicated, said “yes,” but Plaintiff confirmed that
13 she remembered. *Id.*

14 Yet, less than three months after giving sworn testimony about what happened the night in
15 question, Plaintiff's Addendum now asserts that she is not sure what happened that night. The
16 Addendum gives the following factual contentions which directly contradict Plaintiff's prior
17 statements:

18 Ms. Fausto also struggled to remember what happened on the night in question.

19 Ms. Fausto should not be punished because she wanted to ensure the identity of her
20 assailment (sic). Ms. Fausto's complaint and declaration show that there was a lot
21 of uncertainty surrounding the night of the assault. . . . Ms. Fausto had reason to
believe she was assaulted by Mr. Sanchez-Flores, but that was not enough to bring
a claim.

22 A baseless allegation can ruin a person's life. Were Ms. Fausto to have brought
23 suit without the rape kit as evidence, could have opened herself to a defamation
24 claim, an abuse of prosecution claim, and could have jeopardized Mr. Sanchez-
Flores and Ms. Flores's future without cause. The results of the rape kit helped
Ms. Fausto truly know what happened on December 30, 2016.

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1 **Opposition 3:19-4:15.** All of the above factual allegations are the statements of Plaintiff's counsel,
2 and the above statements contradict both the Plaintiff's complaint and the Plaintiff's prior
3 representations. For a motion to dismiss, even if everything in complaint were taking as true, there
4 would be no cause of action. However, for the purposes of a motion to dismiss, the court should
5 only consider the four corners of the complaint, and any attachments to the complaint. *Buzz Stew,*
6 *LLC v. City of Las Vegas*, 124 Nev. 224, 121 P.2d 670 (2008). Plaintiff's counsel is attempting
7 to add new facts, without amending the complaint, to make the facts of this case fit into the case
8 law Plaintiff's counsel has provided. Since the factual contentions are not in the complaint, and
9 contradict Plaintiff's factual allegations in the complaint, this Court should not even consider these
10 new arguments of counsel. "Arguments of counsel are not evidence and do not establish the facts
11 of the case." *Jain v. McFarland*, 109 Nev. 465, 475-76, 851 P.2d 450, 457 (1993).

12 Even if the Court decided to consider the arguments of counsel, these arguments contradict
13 Plaintiff's prior statements and the allegations in the complaint. Plaintiff's counsel stated that
14 Plaintiff was not certain enough about the identity of her alleged assailant to bring a lawsuit.
15 However, Plaintiff was certain enough to report Ricardo to the police. **Exhibit 6.** Plaintiff's
16 counsel's new allegation that Plaintiff feared exposing herself to a defamation action is baseless.
17 Bringing a lawsuit for money against Ricardo would not have caused her to be any more at risk for
18 a defamation action than making allegation that might subject Ricardo to prison.

19 Since Plaintiff's counsel is completely changing Plaintiff's factual allegations in her
20 Addendum, the statements should have - at the very least - have been supported by an affidavit, or
21 declaration, from Plaintiff. Further, Plaintiff's counsel should have moved to amend Plaintiff's
22 complaint to survive the motion to dismiss standard.

23 The complete reversal in Plaintiff's position has no evidentiary support, it is not likely to
24 be supported by evidence after further investigation, or discovery, and the Addendum does not
25 indicated that the factual allegations above are even remotely based on belief or lack of
26 information. All of the factual allegations are statements by counsel, not Plaintiff. Since there is
27 no evidence to support Plaintiff's change in factual contentions, and there cannot ever be any
28 evidence in the future, the factual contentions above violate NRCP 11(b)(3)-(4).



1 **C. THE LEGAL AND FACTUAL CONTENTIONS IN PLAINTIFF'S**
2 **ADDENDUM ARE NOT SUPPORTED BY THE FACTS IN THIS CASE.**

3 **1. The *Copeland* Case Cited by Plaintiff Does Not Apply to this Case,**
4 **Because it Applies to Employment Law Only**

5 If this Court is willing to consider the untimely and frivolous Addendum filed by Plaintiff,
6 the cases cited still add nothing to Plaintiff's contention that her complaint can survive a motion
7 to dismiss. The singular Nevada state case cited in Plaintiff's Addendum is *Copeland v. Desert*
8 *Inn*, 99 Nev. 823 (1983). **Addendum** at 2:24-3:6. However, even the quote taken from this case
9 shows that the factors of equitable tolling are factors used in employment cases. Addendum 3:1-6.
10 Plaintiff makes no attempt to explain why the factors in the *Copeland* case should be modified to
11 apply here. **See Addendum.** As written, the rule in *Copeland* would force this Court to consider
12 (1) if an administrative agencies mislead the Plaintiff, (2) if an employer deceived the Plaintiff, and
13 (3) whether an employer would be prejudiced by the tolling. *Id.* Since such a finding would be
14 nonsensical, *Copeland* cannot apply in this case, because it would be impossible for this Court to
15 consider these factors above in this case.

16 **2. None of the Other Non-binding Cases Apply to this Case, Because the**
17 **Cases Have No Application to the Facts in this Case**

18 *Cada* is a 7th Circuit Case, which applied federal law to an age discrimination suit. In
19 *Cada*, an employee appealed a Northern District of Illinois's grant of summary judgment. *Cada v.*
20 *Baxter Healthcare Corp.*, 920 F. 2d 446 (7th Circuit 1990).

21 The *Cada* court defined the federal law of equitable tolling as, a doctrine that "permits the
22 plaintiff to avoid the bar of the statute of limitation if despite all due diligence he is unable to
23 obtain vital information bearing on the **existence of his claim.**" *Id.* at 451. (emphasis added). The
24 *Cada* court ultimately held that the appellant was not entitled to have the statute of limitation
25 tolled. *Id.* at 453.

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1 As an alternative to using federal law, Plaintiff reached all the way out to New Jersey, for
2 some more non-binding, hardly persuasive authority, state law for the East Coast. In *Dunn v.*
3 *Borough of Mountainside*, 301 N.J. Super, 262 (1997), the only thing the plaintiff knew about the
4 defendant was that he was a police officer. Even with this limited knowledge, the plaintiff retained
5 an attorney to represent her the very next day. The plaintiff in *Dunn* reviewed hundreds of photos,
6 drove the same route countless times, and underwent hypnosis. *Id.* at 269-270. The plaintiff made
7 every attempt to identify the defendant, and she did not wait on the return of DNA evidence. *Dunn*
8 *v. Borough of Mountainside*, 301 N.J. Super, 262 (1997).

9 *Wisebaker v. Farwell*, 341 F. Supp 2d 1160, 1169 (Nev. Dist. Ct. 2004), is a federal case
10 which was applying Nevada law. In *Wisebaker*, the federal court, interpreting state law did allow
11 for equitable tolling, but only for the limited period of time that the plaintiff sought remedies
12 through an administrative body. *Wisebaker v. Farwell*, 341 F. Supp 2d 1160 (Nev. Dist. Ct. 2004)

13 *Dunn* does not apply in this case. First, this is a case from the East Coast. Second, the
14 plaintiff in that case retained counsel right away and attempted to uncover the identity of the
15 defendant. Unlike *Dunn*, Plaintiff did nothing for over two years, and now she wants this Court
16 to find that her lack of effort to litigate this case should be forgiven because she was waiting on the
17 State of Nevada to provide her with evidence. In contrast, Plaintiff did not act on her claims until
18 more than two years after the accrual date. She did nothing to try and build a case prior to filing
19 her complaint. According to Plaintiff's counsel, Plaintiff was waiting on the state of Nevada to
20 make her case for her. See Addendum. Since the facts in *Dunn* are completely different, and
21 because this is a New Jersey case, *Dunn* does not apply in this case.

22 *Wisebaker* also does not apply in this case, because Plaintiff did not seek any remedies until
23 after the statute of limitation ran, unlike in *Wisebaker*, where the statute of limitation was tolled
24 while the plaintiff sought administrative remedies prior to seeking legal remedies.

25 Equitable tolling does not apply here at all. For the first time in the Plaintiff's Addendum,
26 she argues that the results of the SANE exam were necessary for her to file her lawsuit, because
27 she was not sure of the identity of her assailant, and she wanted to avoid a defamation claim.
28 Addendum P4:4 and 4:11-13.



1 There is no doubt Plaintiff believed she was injured when she conducted a SANE exam,
2 and reported Ricardo to the police, more than two years before the complaint was filed. Plaintiff's
3 complaint alleges very specific details about what happened the night in question. *See* Complaint.
4 Plaintiff was sure enough to make a report to the police over two years ago, have a SANE exam
5 performed on her, attend therapy, and make detailed allegations in her complaint. Plaintiff's
6 Complaint and Addendum contradict each other. In Plaintiff's Complaint, she alleges very specific
7 details, from who put her in the car to telling Verenice she did not know what happened. *See*
8 Complaint.

9 After telling Verenice she did not recall what happened on the night in question, Plaintiff
10 went to the police to "report the crime." Complaint 6:10-11. Astonishingly, in Plaintiff's
11 Addendum, Plaintiff's counsel again contends that Plaintiff was unsure what happened the night
12 in question. Addendum 3:19; 3:21-22; 4:3-8; and 4:12-15. Even if the Court considers the
13 arguments of Plaintiff's counsel, alleging that Plaintiff is uncertain of what happened that night,
14 one thing is certain, Plaintiff, alleges she knew she was injured when she took the SANE exam over
15 two years prior to filing her complaint. According the case law provided by Plaintiff's counsel, in
16 Plaintiff's Opposition and Addendum, the statute of limitations begins to run when that Plaintiff
17 knew or should have known she was injured. Plaintiff does not seem to dispute that she knew she
18 was injured in her complaint. Despite Plaintiff's counsel's repeated attempts to add facts in
19 Plaintiff's Opposition and Addendum, her complaint does not even address the untimeliness of the
20 filing of her complaint.

21 Lawsuits have existed for hundreds of years. Reliable DNA testing has only existed for
22 decades. To suggest that DNA evidence is required to bring a lawsuit is ludicrous. Plaintiff's
23 argument that this Court should apply the federal law, interpreted by another jurisdiction, indicates
24 that she knows her claim is barred by the statute of limitation under Nevada law. This argument
25 is just a weak attempt to revive a complaint that was filed untimely.

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D. CONCLUSION

Plaintiff's Addendum is nothing more than a weak attempt to try to add new facts to this case, while also burdening the Defendants with having to defend against Plaintiff's frivolous Addendum. Defendants respectfully requests that this Court strike Plaintiff's Addendum, and award Defendants reasonable attorneys' fees for having to defend against Plaintiff's untimely, frivolous motion, filed to harass Defendants.

Dated this 13th day of September, 2019.

THE WRIGHT LAW GROUP, P.C.

JOHN HENRY WRIGHT, ESQ.
Nevada Bar No. 6182
AMY J. SMITH, ESQ.
Nevada Bar No. 14954
2340 Paseo Del Prado, Ste. D-305
Las Vegas, NV 89102
*Attorneys for Defendants
Ricardo Sanchez-Flores and
Verenice Ruth Flores*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing SUPPLEMENTAL POINTS AND AUTHORITIES IN
3 RESPONSE TO PLAINTIFF'S ADDENDUM TO OPPOSITION TO DEFENDANTS' MOTION
4 TO DISMISS was submitted electronically for filing and/or service with the Eighth Judicial
5 District Court on the 13th day of September, 2019. Electronic service of the foregoing document
6 shall be made in accordance with the E-Service List as follows:

7 **HUTCHISON & STEFFEN, PLLC**

8 Joseph R. Ganley, Esq. jganley@hutchlegal.com
9 Piers R. Tueller, Esq. ptueller@hutchlegal.com
10 *Attorneys for Plaintiff*
11 *Jacqueline Fausto*

12 I further certify that I served a copy of this document by Electronic mail a true and correct
13 copy, addressed to:

14 None.

15 

16 An employee of **THE WRIGHT LAW GROUP, P.C.**

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28
THE WRIGHT LAW GROUP P.C.
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
Tel: (702) 405-0001 Fax: (702) 405-8454



EXHIBIT 1

Amy Smith

From: Bernadette Francis <bfrancis@hutchlegal.com>
Sent: Monday, August 5, 2019 9:44 AM
To: Chris Phillips
Cc: John Wright; Jason D. Guinasso; Amy Smith; Piers R. Tueller
Subject: URGENT REQUEST FOR EXTENSION: Fausto v. Sanchez-Flores Case No. A-19-797890-C
Attachments: 2019.08.05..SAO (Extension of time opp to MTD).docx

Importance: High

Mr. Phillips:

My apologies for the last-minute request.

Mr. Tueller became very ill at the end of the week which interfered with the finalization of Plaintiff's Opposition to Defendants' Motion to Dismiss or in the Alternative Stay in the above matter. Would you be agreeable to granting our office a short extension of time in which to respond to your Motion to Dismiss making the new deadline **Friday, August 9, 2019**?

I have attached a proposed stipulation and order for your approval. If you approve, please print and sign and let me know when it is ready for pick up and we will send a runner for pick up right away.

Thank you for your consideration in this matter. Since this is a time sensitive matter your prompt response is greatly appreciated. I look forward to hearing from you soon.

Best,

Bernadette

Bernadette Francis
Paralegal



HUTCHISON & STEFFEN, PLLC
(775) 853-8746
hutchlegal.com

Notice of Confidentiality: The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking any action in reliance upon, this information by anyone other than the intended recipient is not authorized.

EXHIBIT 2

Amy Smith

From: Chris Phillips
Sent: Monday, August 5, 2019 9:49 AM
To: Bernadette Francis
Cc: John Wright; Jason D. Guinasso; Amy Smith; Piers R. Tueller
Subject: RE: URGENT REQUEST FOR EXTENSION: Fausto v. Sanchez-Flores Case No. A-19-797890-C

This is fine. I've signed your SAO – its ready for pick up.

Christopher B. Phillips, Esq.

Associate Attorney

THE WRIGHT LAW GROUP, P.C.

2340 Paseo Del Prado, Suite D305

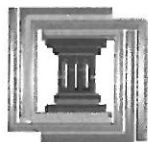
Las Vegas, NV 89102

T: 702.405.0001

F: 702.405.8454

chris@wrightlawgroupnv.com

www.wrightlawgroupnv.com



THE WRIGHT LAW GROUP
P.C.

From: Bernadette Francis <bfrancis@hutchlegal.com>
Sent: Monday, August 5, 2019 9:44 AM
To: Chris Phillips <Chris@wrightlawgroupnv.com>
Cc: John Wright <john@wrightlawgroupnv.com>; Jason D. Guinasso <jguinasso@hutchlegal.com>; Amy Smith <amys@wrightlawgroupnv.com>; Piers R. Tueller <ptueller@hutchlegal.com>
Subject: URGENT REQUEST FOR EXTENSION: Fausto v. Sanchez-Flores Case No. A-19-797890-C
Importance: High

Mr. Phillips:

My apologies for the last-minute request.

Mr. Tueller became very ill at the end of the week which interfered with the finalization of Plaintiff's Opposition to Defendants' Motion to Dismiss or in the Alternative Stay in the above matter. Would you be agreeable to granting our office a short extension of time in which to respond to your Motion to Dismiss making the new deadline **Friday, August 9, 2019**?

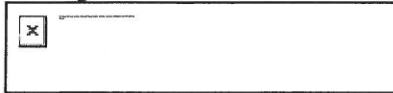
I have attached a proposed stipulation and order for your approval. If you approve, please print and sign and let me know when it is ready for pick up and we will send a runner for pick up right away.

Thank you for your consideration in this matter. Since this is a time sensitive matter your prompt response is greatly appreciated. I look forward to hearing from you soon.

Best,

Bernadette

Bernadette Francis
Paralegal



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Amy Smith

From: Amy Smith
Sent: Tuesday, August 20, 2019 2:27 PM
To: Bernadette Francis; Chris Phillips
Cc: John Wright; Jason D. Guinasso
Subject: RE: Fausto v. Sanchez-Flores Case No. A-19-797890-C

Good afternoon Bernadette,

I am agreeable to resetting the hearing on the motion to dismiss.

Thank you,

Amy J. Smith, Esq.

Associate Attorney
The Wright Law Group P.C.
2340 Paseo Del Prado, Suite D-305
Las Vegas, NV 89102
amys@wrightlawgroupnv.com
www.wrightlawgroupnv.com
P. (702) 405-0001 ext. 113
F. (702) 405-8454



From: Bernadette Francis <bfrancis@hutchlegal.com>
Sent: Tuesday, August 20, 2019 11:08 AM
To: Chris Phillips <Chris@wrightlawgroupnv.com>
Cc: John Wright <john@wrightlawgroupnv.com>; Jason D. Guinasso <jguinasso@hutchlegal.com>; Amy Smith <amys@wrightlawgroupnv.com>
Subject: Fausto v. Sanchez-Flores Case No. A-19-797890-C
Importance: High

Mr. Phillips:

Mr. Guinasso and Mr. Ganley have a conflict with the hearing date in this matter for the Motion to Dismiss set for Tuesday, August 27, 2019 at 9:30a.m. Mr. Guinasso must appear in Incline Village for another case for the entire day on August 27, 2019.

Would you be agreeable to stipulating to re-setting the Hearing on the Motion to Dismiss to the next available date the court has that works for both of our offices?

I do apologize for the delayed request; Mr. Guinasso has been in trial and I double set him inadvertently.

If you are agreeable, I will call send over the Stipulation for your signature as soon as possible this morning.

Best,

Bernadette

Bernadette Francis
Paralegal



HUTCHISON & STEFFEN, PLLC
(775) 853-8746
hutchlegal.com

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EXHIBIT 4

Amy Smith

From: Bernadette Francis <bfrancis@hutchlegal.com>
Sent: Friday, September 6, 2019 2:36 PM
To: Amy Smith; Jason D. Guinasso
Subject: Re: Fausto v. Sanchez-Flores Case No. A-19-797890-C

Hi Amy:

Unfortunately Jason is not available on September 17 with some rescheduling on his trial calendar.

Would you be agreeable to rescheduling the Motion to Dismiss Hearing set for the 17th of September? I can prepare an SAO.

From: Amy Smith <amys@wrightlawgroupnv.com>
Date: Friday, August 23, 2019 at 12:19 PM
To: Bernadette Francis <bfrancis@hutchlegal.com>, "Jason D. Guinasso" <jguinasso@hutchlegal.com>
Subject: RE: Fausto v. Sanchez-Flores Case No. A-19-797890-C

Following up

Amy J. Smith, Esq.

Associate Attorney
The Wright Law Group P.C.
2340 Paseo Del Prado, Suite D-305
Las Vegas, NV 89102
amys@wrightlawgroupnv.com
www.wrightlawgroupnv.com
P. (702) 405-0001 ext. 113
F. (702) 405-8454



From: Bernadette Francis <bfrancis@hutchlegal.com>
Sent: Wednesday, August 21, 2019 11:10 AM
To: Amy Smith <amys@wrightlawgroupnv.com>; Jason D. Guinasso <jguinasso@hutchlegal.com>
Subject: Re: Fausto v. Sanchez-Flores Case No. A-19-797890-C

Great. Our runner should be there soon. Thank you!

EXHIBIT 5

Amy Smith

From: Amy Smith
Sent: Friday, September 6, 2019 2:57 PM
To: Bernadette Francis; Jason D. Guinasso
Subject: RE: Fausto v. Sanchez-Flores Case No. A-19-797890-C

Good afternoon Bernadette,

I will not agree to reschedule the hearing on the motion to dismiss again. We already agreed to an extension on the time for your office to oppose our motion to dismiss and one extension of the hearing date.

Thank you,

Amy J. Smith, Esq.

Associate Attorney
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Las Vegas, NV 89102
amys@wrightlawgroupnv.com
www.wrightlawgroupnv.com
P. (702) 405-0001 ext. 113
F. (702) 405-8454



From: Bernadette Francis <bfrancis@hutchlegal.com>
Sent: Friday, September 6, 2019 2:36 PM
To: Amy Smith <amys@wrightlawgroupnv.com>; Jason D. Guinasso <jguinasso@hutchlegal.com>
Subject: Re: Fausto v. Sanchez-Flores Case No. A-19-797890-C

Hi Amy:

Unfortunately Jason is not available on September 17 with some rescheduling on his trial calendar.

Would you be agreeable to rescheduling the Motion to Dismiss Hearing set for the 17th of September? I can prepare an SAO.

From: Amy Smith <amys@wrightlawgroupnv.com>
Date: Friday, August 23, 2019 at 12:19 PM

EXHIBIT 6

2*

JA0113

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENTEvent #
170112-1960

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>SEXUAL ASSAULT</u>	Date Occurred <u>12/31/16</u>	Time Occurred <u>0400-0600</u>
Location of Occurrence <u>8011 WINTERBERRY Ct. LV, NV 89123</u>	Sector/Beat <u>I2</u>	<input type="checkbox"/> City <input checked="" type="checkbox"/> County

Your Name (Last / First / Middle) <u>Fausto Jaqueline</u>				Date of Birth <u>4/1/87</u>		Social Security # [REDACTED]		
Race <u>HISPANIC</u>	Sex <u>F</u>	Height <u>5'8"</u>	Weight <u>150</u>	Hair <u>DARK BROWN</u>	Eyes <u>BROWN</u>	Work Schedl. (Hours) <u>8-5pm</u>	(Days Off) <u>City & Sund.</u>	Business / School <u>STEWART ARCHITECT & PLANNING</u>
Residence Address: (Number & Street) [REDACTED]		Bldg./Apt. # [REDACTED]	City <u>N. Las Vegas</u>	State <u>NV</u>	Zip Code <u>89031</u>	Res. Phone: [REDACTED]		Bus. Phone: [REDACTED]
Bus. (Local) Address: (Number & Street) [REDACTED]		Bldg./Apt. # <u>250</u>	City <u>Las Vegas</u>	State <u>NV</u>	Zip Code <u>89117</u>	Occupation <u>Tax accountant</u>		Depart Date (if visitor) [REDACTED]
Best place to contact you during the day <u>Anytime</u>						Best time to contact you during the day <u>Anytime</u>		
						Can You Identify the Suspect? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		

DETAILS On December 30th, 2016 I went out with my friends to celebrate me passing 2 sections of the CPA exam. That the "suspect" ~~was~~ Ricardo Flores had gotten a promotion, that one of our friends had quit their jobs, and that we were going to finally commence our business. I have known Ricardo Flores for about 5 years. I met him through his wife whom I used to work with. We were all starting our tax and consulting business in 2017. I can say I trusted these individuals with my life. Ricardo had always been extremely nice and I never felt unsafe with him. On that night (12/30/16) we went to have a couple drinks at Remedios (located in Washington & Pecos) we were joined by Ricardo's friends, which are not Spanish speaking, so we decided to go Downtown to somewhere it was more "American". Ricardo advised I leave my car at his mother in law's home. Since we would all

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) NVACON THE 12th DAY OF Jan. AT 1314 (AM / PM), 2016

Witness/Officer: _____

(SIGNATURE)

Witness/Officer: _____

(PRINTED)

P# 13179

LVMPD 85 (REV. 6-08)

SIGNATURE OF PERSON GIVING STATEMENT

JA0114

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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be leaving together and in case any of us drank too much, we would not have to drive. I got my car at his mother in law's (sahara & easton). We left & we ended up in The Vanguard lounge, I ordered a beer and we were casually hanging out, Ricardo & his friends bought me a drink, then I got another drink & since I felt safe & I was in celebratory mode, I gave in. I was drunk, I was very very drunk, yes, I was also flirting w/ his friend but I don't remember his name. I recall them saying that they had to take me home because I was not in a good mode to drive. I had to be taken into the SUV by his friends and I was placed in the back of the SUV. I ~~remember~~ remember that they were arguing with him because he wanted to drive even though he had been drinking. His wife "convinced" him to let her drive, however, he decided to sit in the back with me, while he calmly directed his wife to drive to their home, his wife didn't have her glasses so she was focused on the road. From the time we left the Vanguard (fremont & LV Blvd) and the time we arrived to his home (windmill & 215) he groped ~~me~~ with my clothes on. He would grab my butt & put his hand from my rectum to my vagina. I believe this was all about 30 mins. I was aware of what was going on, however, I couldn't scream, say no or alert his wife. I felt paralyzed & shocked

Witness: _____

SCORP

Witness: _____

12179

LVMPD 86 (REV. 3-91)

Jaqueline Fausst
SIGNATURE OF PERSON GIVING STATEMENT
Jaqueline Fausst
PRINT NAME OF PERSON GIVING STATEMENT

JA0115

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that ~~some~~ one who I respected, admired & at one point cared for (in a friendship manner) was capable of taking advantage of me when I was extremely vulnerable. He was also aware of my difficult past as a domestic violence victim. He & his wife were the friends or family I always asked for, they were my support system when my ex husband abused me back in 2015.

Once I arrived at their home, him & his wife placed me in their living room sofa with my face down. When his wife was in the bathroom (as she claims, I thought she was sleeping), he came to the living room pulled down my shorts, pants, & under wear and started to touch me. He started to penetrate me w/ either his penis or his finger but he couldn't all the way because at the time I was menstruating and was wearing a "diner cup" which is inserted in my vagina. He then proceeded to perform oral sex on me & then would come back & whisper in my ear if I liked it when "he grabbed my pussy", he was moving his body up & down while I somewhat moaned & would say "NO". All of what occurred as of this moment was not consent. I would never have agreed to any of this, I am extremely conservative & have not had sex with anyone but my ex husband.

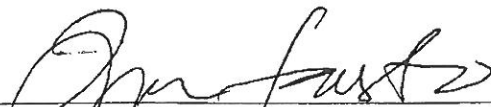
Witness: _____



13179

Witness: _____

LVMPD 86 (REV. 3-91)



SIGNATURE OF PERSON GIVING STATEMENT

Ingridine Fausto

PRINT NAME OF PERSON GIVING STATEMENT

JA0116