

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT CONTINUATION

Page 4 of 4

Event #: 170112-1960

In addition, while was touching me he also proceeded to "penetrate my rectum"; ever since that night I have been bleeding every time I defecate. I am unsure if he used his finger or his penis to do this. Then proceeded to put his hands under my bralette & grope my breasts.

Electronically Filed
Mar 16 2020 12:59 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

When he heard his wife leaving the bathroom (i think) he put my clothing back on & pretended to cover me. His wife confronted him and asked him what he was doing to which he claims he was just covering me. She also asked him if he had done anything to me & she said she was going to call the cops to which he replied "call the cops", "call the cops" and anything she would say he would just say "call the cops". She told him to leave because she needed to think. I passed out. My friend woke me up like around 9:00 am & told me we had to go because my mom had been calling. She then drove me to her mom's house & asked me if I remembered what had happened. I told her no and if Ric had fired wine. I felt extremely uneasy & told her that he gets crazy when he drinks but that I didn't remember what had happened. I did but I felt so weird telling her. She dropped me off, I picked up my car & drove home.

Witness: _____

5602P

Witness: _____

13179

LVMPD 86 (REV. 3-91)

Jaqueline Fausto

SIGNATURE OF PERSON GIVING STATEMENT

PRINT NAME OF PERSON GIVING STATEMENT

Jaqueline Fausto

Docket 80074 Document 2020-10JA0117

EXHIBIT 7

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 1

EVENT #: 170112-1960

SPECIFIC CRIME: SEXUAL ASSAULT

DATE OCCURRED:

TIME OCCURRED:

LOCATION OF OCCURRENCE:

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: JAQUELINE FAUSTO

DOB:

SOCIAL SECURITY #:

RACE:

SEX:

HEIGHT:

WEIGHT:

HAIR:

EYES:

HOME ADDRESS:

PHONE 1:

WORK ADDRESS:

PHONE 2:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE J. LAFRENIERE, P# 7570, LVMPD SEXUAL ASSAULT SECTION, on 02/17/2017 at 0714 hours.

Q: Operator, this is Detective J. LaFreniere -- L-A-F-R-E-N-I-E-R-E -- P# 7570.

This is reference case number 170112-1960. Today's February 17, 2017. The time is 7:14 am. This interview's being conducted at the Las Vegas Metropolitan Police Department Headquarters located at 400 South Martin Luther King, Las Vegas, Nevada, 89106. This interview's being conducted with Jaqueline -- it's J-A-Q-U-E-L-I-N-E -- Fausto -- F-A-U-S-T-O -- date of birth 4-1 of '87. She has a Social Security number of [REDACTED]. She has a contact phone number of [REDACTED].

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 2

EVENT #: 170112-1960
STATEMENT OF: JAQUELINE FAUSTO

██████████ and she has a address of ██████████. That's North Las Vegas, Nevada, 89031. Jaqueline, all that information for you, is that accurate?

A: Yes.

Q: Okay. Uh, but just to recap for the recorder, um, we spoke just a f- for couple minutes before I turned it on. Um, I just explained my name, what I do, um, and kinda the - the structure of the interview. Um, while we talk today, if I get anything wrong please correct me immediately, okay?

A: Mmm.

Q: If I keep talking you can interrupt, say, "Jason, hold on. That's not right." It's very important that everything we talk about today is 100% accurate.

A: Okay.

Q: Are you okay with that?

A: Correct. I am.

Q: Okay. Also if I ask you something and you don't remember, it's perfectly okay to say, "I don't remember," or, "I don't know." I just don't want you to guess or estimate unless I ask you to...

A: Okay.

Q: ...okay? Uh, then this last thing, Jaqueline, um, not implying at all that you would lie to me. I just go over this with everybody that I talk to.

A: Mm-hm.

Q: Do you understand the difference between truth and lie?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 3

EVENT #: 170112-1960
STATEMENT OF: JAQUELINE FAUSTO

A: Yes.

Q: Okay. Um, as long as you're upfront and honest with me about everything I can pretty much work with anything. Um, I just like to always explain to people I'm talking to if you lie to me about something little I can only assume you would lie about something big and considerably hurt the case. Does that make sense?

A: That makes sense.

Q: Can we agree that everything we talk about today is gonna be the truth?

A: Correct.

Q: Okay perfect. Um, so then you, um, we - and just to recap we - I think we've been texting back and forth a little bit, um, tryin' to schedule the interview.

A: Mm-hm.

Q: Um, you were able to come in today. And, um, I think we scheduled it for 7 o'clock. And, uh, then you came here to the police station for the interview. Is that correct?

A: That is correct.

Q: Okay. So Jaqueline, I'm gonna ask you to tell me what you reported and what happened to you, um, to cause you to make a report with the police department. I'm gonna ask you to tell me about it from beginning to end. You can start where you want to and gi- go through it as detailed as possible, okay? After that I will go back and I'll ask a bunch more questions surrounding...

A: Okay.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 4

EVENT #: 170112-1960
STATEMENT OF: JAQUELINE FAUSTO

Q: While we talk, if you wonder why I'm asking something or you don't understand, just ask me and I'll explain it to you, okay?

A: Okay.

Q: All right, Jaqueline, go ahead. What you - what did you report?

A: Um, well, um, I - I - what - what I reported was where we started, um, where the night started over, um, okay. It was, uh, December 30, um, 2016. Mmm, uh, my group of friends and I, including, uh, Ricardo -- the sus- suspect -- er, uh, we went out to, um, celebrate that I had passed two sections of the CPA exam and he had, uh, gotten a promotion at his job. Um, and we decided to go out to, uh, get something to - to drink and to eat. And we went to Remedios, or translated in English it's Remedies, which is a - a Mexican bar. Um, we started hanging out there and it was a group of friends. Um, it was him, his wife, my other friend and his girlfriend and his other friends that came by later. Uh, we were there for - we were there until 1:00 am in the morning, I believe. And I had already had, um, I had, like, a couple drinks. I wasn't intoxicated. Uh, and when his other friends came in they did not know, um, they had not, uh, th- they - they didn't speak Spanish so we decided to go somewhere else where it was more American for them. Um, this place, uh, Rem- Remedies is in Washington and Pecos so Ricardo actually suggested that I take my car and drop it off at his mother-in-law's house. And his mother-in-law's house is, um, uh - uh, Sahara - Sahara and Eastern. So, ah, we all left. We all followed Ricardo and his wife, which is

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 5

EVENT #: 170112-1960

STATEMENT OF: JAQUELINE FAUSTO

actually my very good friend. I mean I would consider her one of my very closest friends. Uh, we followed her to - to her house. And once there I left my car there and I took my purse and, you know, just my - my cellphone. And I left my car there and I traveled with them to - we went downtown. Um, after that we went to Coin, uh, s- uh, not ser- Insert Coin, um, this other place that they were charging with entrance fee. So we're like, "No, let's just go." So we ended up on Fremont Street and it, uh, down - more down where - what is it called? I forgot the name of the bar but it's in front of the Beauty Bar. And, uh, and, uh, we ended up there and I think that's the only place that we were at. So right there, um, I continue drinking, knowing that I was not driving and, um, knowing that I could be a responsible adult and celebrate. I have been stuck at home for so many months because of studying and I just wanted to have fun. I completely trusted my friends because we were just starting a business in 2017. So, um, I mean I gave 'em everything -- savings, trust, um, everything I had. Absolutely no, um, I - at any point did I ever think that nothing - that anything could go wrong 'cause I trusted them with my life. So right there I started, uh, drinking more. And he - Ricardo kept - kept, eh, giving me more stuff, more and more. A- and when you're dri- I don't drink that much but when I do you don't really take in consideration how much alcohol's gonna play in affecting you. So I had a, um, I had a beer and then he brought a shot of, ah, like, plain alcohol. And I drank that. And then he brought something else. And then I was drinking water,

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 6

EVENT #: 170112-1960
STATEMENT OF: JAQUELINE FAUSTO

thinking I could, you know, subdue the effects of alcohol that - no. So then I was very intoxicated at one point. Um, after that I remember going, um, I remember somebody arguing -- I think it was his wife and him and the other people -- that Ricardo wanna drive. And we were - we all knew that he was intoxicated and he shouldn't - he shouldn't drive or we all assume he was intoxicated. And I think they were going back and forth arguing. And all of a sudden I just notice or kinda, like, realize that his wife is in the front of the car or - or driving in the driver's seat. And I am put in the back by s- s- one of his friends, I believe. I am not sure. Uh, and I'm just laying there intoxicated. And, uh, s- somehow or I kinda, like, know what's around me and I realize that she's in the front seat in the driver's seat and he's sitting back there with me, which I don't understand why if the front seat was, um, empty or he could've done that. Um, she started driving and she did not have her glasses. So this is only my assumption is that she did not notice what was going on back there but she was driving. And in the back he s- decided to sit in the back with me and he was giving her directions in where to go. So this is Fremont and, you know, downtown Fremont. And she lives at Windmill and 215. And all the way from - from Fremont to her house, uh, Ricardo has decided to feel me up, you know, like, start grabbing my butt and start touching me in the back. I - I couldn't say anything. I was still very intoxicated but I still heard him giving directions to his wife. And he was not, like, they were very clear directions -- "Turn right here. Turn left here. In a couple of lights

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 7

EVENT #: 170112-1960
STATEMENT OF: JAQUELINE FAUSTO

you're gonna turn to the right here." So he did - he seemed like he was very calm and not intoxicated or - and again, this is just my assumption but the way that he was giving instructions, he knew where he was going. He knew where he was driving. But he was sitting in the back with me. Um, I ended up in their house because it was our understanding that if I was to drink more than I would've, eh, you know, I would just go - go home with them. Again, never doubted them. I trusted them with my life. And, um, they put me - when I got there they put me in the sofa. And I was laying, ah, facedown. And I do remember passing out again. And then later on at night or, ah, I guess this is around 1:00, 2:00 - no not 1:00 because 1:00 was when we got there to - to the bar so, like, around 4:00 or 5:00, um, and I know this because my mom called me and I could feel the - the vi- the phone vibrate. Sh- she started, um, h- he started, uh, again touching me. And, um, he started taking off my - my clothes and my, uh, pantyhose. And he started, uh, touching me and, um, you know, feeling me up -- all - all - all of me. And he - he, um, tried to penetrate me, uh, vaginally but I have, uh, I had a NuvaRing and therefore he couldn't penetrate me completely. He could only penetrate me up to where the -- not the NuvaRing, I'm sorry -- the DivaCup. I was - I was menstruating and he couldn't penetrate me fully because h- I had that on. 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. I didn't know what

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 8

EVENT #: 170112-1960
STATEMENT OF: JAQUELINE FAUSTO

was going on. I did, like, I just - I guess I was in shock that this person who I trusted my - I known him for about four, five years. And I just didn't really know what was going on. And...

Q: Let me get you some tissue. Hold on a second. Sorry. Usually I keep some in here.

A: That's okay. U- um, uh, I - I - I - I - I don't know what - I don't know what was going on or what got into him for him to decide that it was okay to - to touch me or to - or to do what he was doing. So after - I could feel him. I could feel his - his - his hand and his mouth. And then he would, uh, come to my ear and - and just whisper in my ear, "Do you like it when I grab your pussy?" And I just - he's telling me all of these obscene things in my - in - in my ear. And meanwhile I'm just, like, there laying facedown. And then, um, this I can only assume. I really can't say for sure. But, like, for a week after I had blood in my stool. And, um, I - I - again, I - that I don't, like, I don't remember fully but he did, um, he did continue, you know, try, eh, like, kissing me inappropriately, you know, oral - to perform oral sex, just touching me. And then, um, uh, a few - I don't even know how this long, uh, how long this took but his wife comes out -- uh, I don't know -- f- from the bathroom or from - from the room. And he a- she asked him, "What is going on?" And he says, "Nothing. I was covering her. I was putting, uh, I was cu- uh, I was putting a blanket over her and wanting to see if she needed water or anything." And his wife was like, "What did you do to her?" "I didn't do

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 9

EVENT #: 170112-1960

STATEMENT OF: JAQUELINE FAUSTO

anything to her." "Uh, Ricardo, what did you do to her?" "I didn't do anything."
And, uh, and then she - he goes, "You were doing something to her. Y- I saw
you." And she - he just said, "Call the police then if I did something." And then
she goes, "Okay fine. I'm gonna call the police." And then, um, he goes, "Go
ahead - go ahead," you know, just, like, trying to defy her. And, ah, meanwhile I
was still just there, just passed out or - not passed out, just, like, immobile in
shock. I couldn't say anything. I couldn't say absolutely anything. Um, after, you
know, they started goin' back and forth she just said, you know, "Get out of here.
Like, I don't wanna see you. Let me think." I wake up, like, around 9:00 am in
the morning -- um, my friend -- 8:00 - 9:00 - 8:00 - 9:00 - 8:00 in the morning
knowing what happened. I d- I still don't know what to say. She - she says, "All
right, Jackie, let me take you - let me take you to c- go get your car at my mom's
house." Uh, she drives me over there. And, you know, and I'm just serious. I'm
not saying anything. She asked me, "Do you remember what happened last
night?" And I don't know what to say to my friend. I don't know if she knows
what happened and doesn't want to acknowledge it. I don't know if she, like,
wants me to, like, wanting me to, like, forget what happened so that it doesn't
have to be acknowledged. And I was like, um, it's like, "I - I know Ricardo gets a
little flirty sometimes. And, you know, did he say anything to you?" And I was
like, "I don't - I don't know - I don't know." And she drive me to my - to my - to my
car. I pick up my car and then I just drive myself home. And later on I - she calls

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 60

EVENT #: 170112-1960
STATEMENT OF: JAQUELINE FAUSTO

said you might've told her or - or you discussed it via text message...

A: Mm-hm.

Q: ...is there - would you be okay with maybe screenshotting those and sending them to me...

A: Yes.

Q: ...to my e-mail? Perfect.

A: Yes.

Q: Um, that and then you said I can make a copy of this...

A: Correct.

Q: ...correct? Okay. I'll do that here. And, um, we'll turn off the recorder and we'll get you outta here...

A: Okay.

Q: ...quick, okay? Same people are present. The time is 8:18.

THIS VOLUNTARY STATEMENT WAS COMPLETED AT 400 S. MARTIN L. KING BOULEVARD ON THE 17TH DAY OF FEBRUARY, 2017 AT 0818 HOURS.

JL:Nettranscripts
JL014

EXHIBIT 8

FILED
MAY 12 10 08 AM '17
JUSTICE COURT
LAS VEGAS NEVADA
DEPUTY DB

170112-1960

SW2017

1110

Page 1 of 1

RETURN

(Must be made within 10 days of issuance of Warrant)

The Search and Seizure Warrant authorizing a search and seizure at the following described location(s):

RICARDO SANCHEZ-FLORES DOB

SSN

was executed on

MAY 10TH, 2017
(month, day, year)

A copy of this inventory was left with

RICARDO SANCHEZ-FLORES

MR. GELER

(name of person or "at the place of search")

The following is an inventory of property taken pursuant to the warrant:

DNA SAMPLE VIA EPITHELIAL CELLS - BUCCAL SWAB KIT

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in Justice Court of Las Vegas Township, in and for the County of Clark, State of Nevada.

By [Signature] Deputy

Date MAY 16 2017

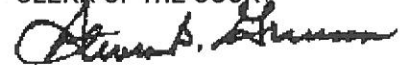
This inventory was made by:

J. LATRENIERE 7570

E. ROBERSON 6028

(at least two officers including affiant if present. If person from whom property is taken is present include that person.)

EXHIBIT 9



1 CASE NO. C341309

2

3

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP

4

COUNTY OF CLARK, STATE OF NEVADA

5

6

7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 vs.) CASE NO. 19F03440X

10 RICARDO SANCHEZ-FLORES,)

11 Defendant.)

12 _____)

13

REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING

14

BEFORE THE HONORABLE JOSEPH SCISCENTO
JUSTICE OF THE PEACE

15

16 MONDAY, JUNE 24, 2019
9:00 A.M.

17

18 APPEARANCES:

19 For the State:

S. GETLER, ESQ.
DEPUTY DISTRICT ATTORNEY

20

21 For the Defendant:

W. GELLER, ESQ.
ATTORNEY AT LAW

22

Also Present:

A. ORWOLL
J. PRINCE

23

24

25 Reported by: CHRISTA BROKA, CCR. No. 574

JA0132

1	<u>INDEX</u>	
2	<u>WITNESS</u>	<u>PAGE</u>
3	<u>JAQUELINE FAUSTO</u>	
4	Direct Examination by Ms. Orwoll	6
5	Cross-Examination by Mr. Geller	18
6	Redirect Examination by Ms. Orwoll	52
7	Recross-Examination by Mr. Geller	56
8		
9	<u>EXHIBITS</u>	<u>ADMITTED</u>
10	(NONE)	
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1 A. He start with touching my butt, the middle of my
2 butt. It was over the clothes. I was still fully
3 clothed and he would just would move his hand closer to
4 my vagina.

5 Q. Did you give him permission to touch you there?

6 A. No.

7 Q. What happened next?

8 A. We get to their house and I was picked up again.
9 I am put on top of the sofa.

10 Q. Who set you there?

11 A. Him, Ricardo.

12 Q. And what happened after you set on the sofa?

13 A. I was just laying down there. Later he came --

14 Q. The defendant did?

15 A. Yeah. He came and started lifting up my dress
16 and removing my shorts and tights.

17 Q. Jaqueline, were you awake when he came in and
18 start doing that?

19 A. I wasn't -- I was sleeping but when he starting
20 touching me when -- I did wake up.

21 Q. At that point in time were you still feeling
22 intoxicated?

23 A. Yes.

24 Q. But you remember?

25 A. I remember.



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

JAQUELINE FAUSTO,
Plaintiff,

vs.

RICARDO SANCHEZ-FLORES,
ET AL.,
Defendants.

CASE#: A-19-797890-C
DEPT. XXIII

BEFORE THE HONORABLE STEFANY MILEY,
DISTRICT COURT JUDGE

TUESDAY, SEPTEMBER 17, 2019

RECORDER'S TRANSCRIPT OF PROCEEDINGS
DEFENDANT'S MOTION TO DISMISS OR IN THE ALTERNATIVE
MOTION TO STAY

APPEARANCES:

For the Plaintiff: ALEXANDER R. VELTO, ESQ.

For Ricardo Sanchez-Flores: JOHN H. WRIGHT, ESQ.

RECORDED BY: MARIA GARIBAY, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, September 17, 2019

2
3 [Case called at 9:47 a.m.]

4 THE COURT: Hi everybody, good morning.

5 MR. WRIGHT: Morning, Your Honor.

6 MR. VELTO: Morning, Your Honor.

7 THE COURT: Okay, so this is defendant's motion to dismiss
8 or in the alternative for a stay. Okay, so it is your motion. So you're
9 basically saying all the tort claims are barred by the statute of limitations
10 and that the -- the discovery rule would not apply.

11 MR. WRIGHT: Correct, Your Honor. If I may make -- John
12 Wright for defense and Ricardo Sanchez-Flores is present.

13 THE COURT: Okay, good morning.

14 MR. WRIGHT: Morning, Your Honor. Yeah. Quite simply,
15 you know, a lot's been written, but there's not much to say about it. We
16 all know what the statute of limitations is on a -- on a injury to person, it's
17 two years. This was filed what, two years and seven months.

18 There is no -- there's no suppressed memory exception here.
19 We got a -- a 30-year-old woman who made a report to the police within
20 days of the alleged incident. She identifies my client, she gives graphic
21 detail of what she says occurred to her.

22 There's simply no basis in fact or in law to toll the statute of
23 limitations. They haven't explained why the statute of limitations was
24 blown, other than to say well, gee, we -- we wanted to get DNA
25 evidence. There's no exception for well we'll file once we have a certain

1 level of evidence that we feel comfortable with. Certainly enough
2 evidence at the time for her to go to the police for the police to execute a
3 search warrant. As you know, they're prosecuting my client.

4 None of these exceptions apply. None of these exceptions
5 have any relevance to this case, they don't -- they're not from any of
6 these jurisdictions. So I -- I'm -- you know, it's as simple as it gets,
7 Judge. Statute of limitations is two years. Complaint was filed two
8 years and seven months later. There's nothing pled in the complaint
9 which suggest there's any reason otherwise. There's no declaration
10 from the Plaintiff to suggest why there's any reason otherwise.

11 THE COURT: Okay, thank you. Is there anything else, sir?

12 MR. WRIGHT: No.

13 THE COURT: Counsel?

14 MR. VELTO: Your Honor, Alex Velto for Ms. Fausto. Initially I
15 want to note the legal standard for reviewing a rule -- a motion to
16 dismiss is to only look at the pleadings. Things that are referenced by
17 opposing counsel are things that are not contained in the pleadings.

18 Looking at the pleading specifically to paragraph 48, this Court
19 can do one of two things. This Court can either determine that the
20 statute of limitations has not run because it didn't run until Ms. Fausto
21 discovered the nexus between her injuries and the actions from the
22 Defendant.

23 THE COURT: That's what I had a question on.

24 MR. VELTO: Yes, Your Honor.

25 THE COURT: Usually in cases such as this, I mean my initial

1 thought would be that the discovery rule wouldn't apply because at this
2 point she knew a sexual assault had occurred at the time she went and
3 had the SANE exam probably reported the Defendant to the police. I
4 don't understand how she can say she didn't actually know until she got
5 the confirmation that the DNA found on her clothing matched the DNA of
6 the Defendant. I mean she obviously knew something happened. It
7 wasn't like a surprise she woke two years later and learned that she had
8 been sexually assaulted.

9 MR. VELTO: Yes, Your Honor --

10 THE COURT: In fact her actions would indicate that she knew
11 back at the time of the -- it occurred.

12 MR. VELTO: Your Honor, you're correct that she knew the
13 nature of the assault. She knew the nature that an attack happened, but
14 she didn't have enough evidence to bring a cognizable claim until much
15 later.

16 THE COURT: But there's two different things, evidence --
17 whether she has an abundance of evidence versus whether she knew
18 are two totally different things.

19 MR. VELTO: Your Honor, I -- I would ask that you look at the
20 *Peterson* case. The *Peterson* case does a good job explaining the
21 discovery rule and while there's very few facts for an opinion from the
22 Nevada Supreme Court, it does identify the one fact that is pled which is
23 that there's a nexus that was discovered between the injuries and the
24 action. That's exactly what's pled in the declaration from Ms. Fausto in
25 opposition to the motion to dismiss.

1 THE COURT: But didn't she have like the nightmares and all
2 the other psychologically issues following the initial event which
3 occurred around the same time as that she had the -- the SANE exam?

4 MR. VELTO: Your -- Your Honor, yes, and if -- if -- if you're
5 not inclined to apply the discovery rule, I'm happy to shift to the
6 equitable tolling argument because I think that might be something that
7 you may be more persuaded by.

8 THE COURT: I'll be honest with you, I don't see it on the
9 discover rule because honestly I -- I think that logic would tell you and I
10 think that the facts would indicate that the discovery of this was at the
11 time she realized she had been sexually assaulted which would be
12 immediately after the event and the time she reported to the police and
13 she was sent to do the SANE exam at the hospital. I mean regardless
14 of whether or not the DNA was not analyzed until two years later, so
15 yeah, switch to the other argument.

16 MR. VELTO: Thank you, Your Honor. This Court can
17 conclude that the statute of limitations should be equitably tolled
18 because under Nevada law, the Nevada Supreme Court has adopted
19 equitable tolling.

20 THE COURT: Okay.

21 MR. VELTO: It has done so in multiple instances. It's done
22 so in *Copeland* under the context of antidiscrimination. It's done so in
23 other instances in the context of employment law.

24 Now what the Nevada Supreme Court looks for when it
25 applies equitable tolling and what courts should look for is the diligence

1 of the plaintiff, whether there's an undue hardship placed on the
2 defendant, and whether there's anything that's out of the control of the
3 plaintiff.

4 Now, it's important to remember the facts surrounding this
5 case. Ms. Fausto immediately went to go get the rape kit, but it took
6 over two years for the AG's office to process that rape kit. In that time
7 the DA's office did not go forward with the -- with the criminal charges.
8 In that time Ms. Fausto waited for the results. Because if she would
9 have come to court sooner, it would have been her word against the
10 Defendant's word, and that's not a situation where any rape victim
11 should be forced to bring a claim.

12 Now, under the doctrine applying those specific factors, Ms.
13 Fausto was diligent. She immediately filed a report, she immediately got
14 the rape kit done. She pursued an attorney when she got after -- when
15 she got the rape kit back from the AG's office and she shouldn't be held
16 responsible because the State failed the process the rape kit.

17 Now, Your Honor, the second prong I think is very significant
18 because it's about the prejudice to the Defendant. By Ms. Fausto
19 waiting until she had concrete evidence to bring forth towards the
20 Defendant, she was equitable and her temperance and diligence should
21 not be punished. She was fair in that she didn't just bring an allegation
22 without any hard, concrete evidence. This is the type of equity that
23 allows this Court to grant equitable tolling because it's fair to both sides.

24 Now, the Nevada Supreme Court has not applied this doctrine
25 admittedly because it hasn't really been given the opportunity to.

1 Looking to *Peterson* though, which is the case from the discovery rule,
2 the Nevada Supreme Court specifically talks about NRS 11.190, which
3 is the statute we're talking about, and it says courts are not bound to
4 always take the words of a statute by their literal or ordinary sense if
5 doing so would lead to any absurdity or manifest injustice.

6 Your Honor, it's not Ms. Fausto's fault that the State failed to
7 process her rape kit. And while the Supreme Court hasn't been given
8 the opportunity to rule on equitable tolling in this context, it's clearly laid
9 out the principles behind it and it's a recognized doctrine.

10 The Nevada District Court, applying state law, looked at the
11 history of Nevada's application of equitable tolling and predicted that it
12 would do precisely that in the context of this statute for a tort claim. So
13 while there's not a case I can point to you that says equitable tolling
14 applies, under these facts, what I can point to you is tons of guiding law
15 and principles which allow this Court to take the facts and apply existing
16 law.

17 The closest parallel, Your Honor, is a case from New Jersey.
18 Admittedly it's not binding, but that case involved a police officer who
19 had assaulted a person and she hadn't been able to identify who the
20 officer was. And while Ms. Fausto could identify the Defendant in this
21 instance, which she did early on, there was an act of deceit and
22 conspiracy on the part of the police officers which is precisely what we're
23 pleading is that the day after -- the day after the attack when the
24 Defendant's -- when -- I'm sorry, the Defendant's wife brought the --
25 brought -- drove her to her car, she was attempting to conceal the facts

1 and asking her questions to see what she knew, trying to hide what had
2 happened. That's the same type of deceit and the same type of injustice
3 that should allow this Court to grant equitable tolling because Nevada
4 law supports it and it's the only way to allow Ms. Fausto to have her day
5 in court.

6 THE COURT: Okay.

7 MR. VELTO: If Your Honor has any other questions?

8 THE COURT: No. Well, unless you want to address the other
9 issues. I mean really almost all your -- pretty much all your claims are
10 tort based so the statute of limitations depending on Court rules would
11 clean up most of those, but then they argued on the -- let's see.

12 MR. VELTO: Civil --

13 THE COURT: Civil conspiracy that is another one. Civil
14 conspiracy they argued doesn't apply as a matter of law, concert of
15 action doesn't apply as a matter of law.

16 MR. VELTO: Could I address --

17 THE COURT: Yes, sir.

18 MR. VELTO: Thank you, Your Honor. If -- if Your Honor
19 doesn't mind, I have a -- a case that directly responds to these claims if I
20 could present it to you?

21 THE COURT: Yeah, was it cited in your brief?

22 MR. VELTO: It wasn't cited in the brief, but I have it here and
23 I printed out copies. It's binding --

24 THE COURT: What is --

25 MR. VELTO: -- Nevada law and it clearly addresses both

1 issues.

2 MR. WRIGHT: Judge, we've been through this already. This
3 is the --

4 THE COURT: Why didn't you cite it in your reply?

5 MR. VELTO: Your Honor, respectfully, I'm constantly thinking
6 and working about this case. My job is to help you make the best
7 decision possible and I would understand if this were just persuasive,
8 but it's a Nevada Supreme Court case that explains both civil conspiracy
9 and concert of action and says why the standard that they've applied
10 from the Eastern District of Michigan is not applicable, it is not the way
11 the law is in Nevada.

12 THE COURT: But why didn't you -- show it to the defense,
13 please.

14 MR. VELTO: Sure.

15 MR. WRIGHT: Judge, I can't possibly --

16 MR. VELTO: It's this one paragraph.

17 MR. WRIGHT: -- analyze it and we -- this is the problem we
18 had because they filed an -- an additional brief on the day that my reply
19 was due. My reply was already in. They file --

20 THE COURT: I -- and I misspoke. I kept saying reply, but I
21 meant to say opposition. Let me clarify --

22 MR. WRIGHT: Yeah, they filed a --

23 MR. VELTO: Yes, Your Honor.

24 THE COURT: Thank you.

25 MR. WRIGHT: It's a never ending, you know, opposition that

1 -- that we have to address and --

2 THE COURT: What's the date of that case?

3 MR. VELTO: 1998, Your Honor. It's been around since I was
4 in grade school admittedly.

5 THE COURT: Well I wasn't in grade school, but I have a -- I
6 don't know what case you're referring to.

7 MR. VELTO: The only purpose, Your Honor, of bringing this
8 today was that I think it's very clear and it's one paragraph and it -- they
9 haven't cited any binding law and it's consistent with the arguments we
10 made.

11 They're -- they cited a case in the Eastern District of Michigan
12 which says that civil conspiracy requires an actionable tort when in fact
13 the Nevada Supreme Court says an actionable civil conspiracy consists
14 of two or more persons by some concerted action intending to
15 accomplish an unlawful objective for the purpose of harming another.
16 So the requirements in Nevada are not an actionable tort which means
17 the statute of limitations wouldn't be -- wouldn't preclude this claim,
18 especially given that there's a concurrent criminal action before Your
19 Honor.

20 THE COURT: Well as far as an actionable tort, that -- that
21 would be a question so what would be the conspiracy because what's
22 been cited -- and I'm only referring to what's been -- I know of in the civil
23 document because I really haven't had any proceedings in the criminal
24 case.

25 My understanding is this alleged rape, it was with the

1 Defendant and the wife may have walked down later at some point and
2 viewed it, but it doesn't -- there's nothing I know of that they conspired
3 for this rape to occur and the unlawful act or the wrongful act would be
4 the rape itself.

5 MR. VELTO: Yes. Your Honor, yes --

6 THE COURT: And there's nothing she did to -- to help it go
7 forward or -- I don't know what she did. I don't know how you can have
8 two people.

9 MR. VELTO: Your Honor, our argument is based on the -- the
10 pleadings solely that she assisted in both helping get Ms. Fausto
11 intoxicated, driving her home afterwards, accompanying her at the
12 house, being a part of the entire action as it occurred while not
13 necessarily being -- physically assaulting her, but assisting in many
14 ways which allowed for the assailant to assault her. So that
15 encompasses our -- our civil conspiracy action, and you may be right
16 that we may not prove that in discovery, but at this point it's just based
17 on what is pled and we feel that we've pled based under plausibility
18 pleading that that could be -- that could happen. Or I'm sorry, under
19 notice pleading that that could happen.

20 THE COURT: So -- okay, so you're saying that even if I were
21 to find the statute of limitations bars most of your tort-based claims, that
22 nonetheless a civil conspiracy concert of action can still stand based
23 upon the language in that case?

24 MR. VELTO: Yes, Your Honor, but we would hope that you
25 would grant equitable tolling for the statute -- for the -- the tort claim

1 based on things that were just out of Ms. Fausto's control. She -- there's
2 a reason why she didn't bring the case earlier on. There's a reason why
3 the DA's office decided not to prosecute -- not to bring the case forward
4 until much later on until they got the rape kit back. That's a factor that
5 we think that has never -- it's never been addressed because it hasn't
6 happened.

7 The AG's office having a huge backlog of rape kits was all
8 over the news and it was something that defected [sic] Ms. Fausto, and
9 if this Court takes a stance that that's not enough to defer filing a
10 complaint when the Defendant's been on notice, when the -- Ms. Fausto
11 is preventing from causing a published [sic] backlash devastating the
12 Defendant without bringing any evidence forward when she brings her
13 claim, that's -- that's equity for you to allow her to bring her claim after
14 the statute of limitations because she tried to preserve the evidence,
15 tried to ensure there was evidence.

16 THE COURT: Okay. May I have the cite for that case,
17 please?

18 MR. WRIGHT: Sure, Judge, and I -- I believe it's -- we may
19 have actually cited to it. It's, let's see here, 114 Nevada 1468, *Dow*
20 *Chemical versus Mahlum*, but it doesn't say anything about what we're
21 talking about other than to distinguish between a civil conspiracy and a
22 concert of action. The law of civil conspiracy as we cited is from the --
23 from the Nevada Supreme Court case where I think it was -- trying
24 remember the guy's name. I think it was Stubbs. It was out of Reno. It
25 was the bandleader who was -- who was employed by one hotel casino

1 and then the owner of that hotel casino --

2 THE COURT: You cited that in your brief.

3 MR. WRIGHT: Exactly, I cited in my brief and that's the
4 Nevada Supreme Court case that defines civil conspiracy and what it
5 said is and it followed the U.S. Supreme Court analysis which was the --
6 in order to have civil conspiracy, it is the act of conspiracy which causes
7 the harm, not the underlying tort. That's the difference with concert of
8 action.

9 In other words, it's a very rare instance that you have civil
10 conspiracy, it's completely different from criminal conspiracy because it
11 requires two people get together and do something that is illegal if two
12 people do it, but it's not necessarily illegal if one person does it and the
13 -- the classic example is price fixing. A shopkeeper can set its own
14 price, there's nothing illegal about that, but you get two shopkeepers
15 setting prices together, that's a -- that conspiracy, the act of the
16 conspiracy, not the setting of the price is what causes the harm. That's
17 why it's a very rare instance where you have civil conspiracy because if
18 one person doing whatever they're doing together is illegal, you don't
19 have civil conspiracy. What you got is two joint tortfeasors committing
20 the same tort. It's not the same thing as civil conspiracy. And that's
21 what the case was explaining.

22 Concert of action is different because that's where you have
23 an underlying tort, but that is actionable. You don't have an actionable
24 underlying tort here because the statute of limitations has been blown.
25 In other words, you can't have a concert of action case without an

1 underlying tort being -- proceeding at the same time. That is the
2 difference.

3 And to say that you got to wait for DNA evidence is a
4 ridiculous proposition to begin with that she was waiting for this evidence
5 to come around. She could have filed the lawsuit and then had her own
6 DNA testing done. It was all her own clothing. She -- there's
7 procedures, it can be done, she could have been proceeding along this
8 track for two and a half years now, rather than waiting.

9 And the fact that there was no DNA evidence didn't stop them
10 from her going to the police, making the allegations, and certainly DNA
11 evidence is something that is relatively new, but lawsuits concerning
12 sexual assault are not. So there's no reason for the delay here. They've
13 still not explained why they delayed it.

14 Now they're [sic] seem to say that their -- that they
15 intentionally delayed it, but they haven't shown what they did in order to
16 move the evidence forward in the case. Did they contact the police, did
17 they try to get their own independent testing, did they do any of this?
18 None of this has anything to do -- any of the case law that they've cited
19 has anything to do with the facts of this case. Like you quite clearly
20 said, she knew the injury when she reported to the police. That was two
21 and a half years ago.

22 MR. VELTO: Your Honor, may I respond?

23 THE COURT: Uh-huh.

24 MR. VELTO: I'm hearing a lot of arguments that are about
25 what was going on in Ms. Fausto's mind and about the truth of what

1 happened. At this point there hasn't been an opportunity to be
2 discovery. They may very well be able to establish that Ms. Fausto did
3 not delay her filing because the State failed to process the -- the rape kit.
4 During a deposition, they may be very well able to establish those facts
5 later on. But at this point the legal standard just has us look at the
6 pleadings and the pleading clearly articulate that the State failed to
7 process this rape kit for over two years. The reasonable inference of
8 that is that that's reason why didn't file.

9 Your Honor, there was -- this was just out of her control. And
10 at this point we're hoping to go forward with discovery and they might be
11 able to establish later on that that was not the reason why she didn't file.
12 And then Your Honor may be able to rule that it's not equitable tolling,
13 but at this point, based on the pleadings, I believe it's sufficient. It
14 clearly articulates the -- like the reason why she didn't file and it says
15 that the -- she waited until after the AG's office got the rape kit back.

16 She trusted the process. Her trust in the process should not
17 be to her disadvantage because she waited until she had cognizable
18 evidence that she could bring forward to bring a claim.

19 If she files this claim a day after she gets the rape kit done,
20 what happens? The case gets kicked because it's her word against his.
21 There was alcohol involved. It was a night where she was out with a
22 bunch of his friends where his wife has decided to say that it's that she --
23 it was consensual. Like there's nothing that backs her case except for
24 real evidence so if she brings the case, she loses.

25 Now all we're asking is for the opportunity for Ms. Fausto to

1 have her day in court and to be able to have the claim extended
2 because that's what equity requires. And every guiding principle from
3 the Nevada Supreme Court says that under the factors that it's outlined
4 that that's the right outcome, Your Honor.

5 THE COURT: All right. We need to --

6 MR. WRIGHT: Do I get the last word or I know that --

7 THE COURT: It is your motion, but we need to cut this off at
8 some point.

9 MR. WRIGHT: I'll be -- it's be very quick, Judge. Sexual
10 assault cases don't come down to DNA evidence, they come down to
11 the issue of consent, so it's always going to be a he said/she said
12 situation regardless of whether or not there's DNA evidence. So waiting
13 two and a half years doesn't resolve anything. That's why you have a
14 criminal case pending before you.

15 THE COURT: Okay. So no more argument. At this point the
16 motion to dismiss is going to be granted in part and deferred in part. It's
17 granted in part with respect to the Court does find that the -- the
18 tort-based claims are by -- barred by the two year statute of limitations.
19 As I've previously articulated, I don't believe that the discovery rule
20 applies and I've already given you the reasons for that.

21 As far as the alternative argument that the statute of
22 limitations would have been tolled under equitable principles, the Court
23 also finds that that is not applicable as well and would not have tolled
24 the statute of limitations on the tort-based claim.

25 As I've previously indicated, the Plaintiff knew about the

1 sexual assault years earlier and in fact she went and had a SANE
2 examination and she went to the police. I don't believe that it makes a
3 difference that the criminal case, the DNA in that case was delayed
4 because there's multiple things that the Plaintiff could have done.

5 Quite simply, the Plaintiff could have done her own DNA in the
6 civil case. She did not need to wait for the DNA analysis in the criminal
7 case, although I do realize that probably the reason she did it, it's a lot
8 easier to get a -- a judgment in your favor in the civil case if you have a
9 conviction in the criminal case, but it's kind of a buyer beware, she made
10 a choice of -- to wait.

11 As far as, you know, another thing is in the civil case is and
12 waiting for the DNA where it's not reasonable, criminal cases are a little
13 bit differently obviously because it's a higher burden of proof. In the civil
14 case, I mean you can proceed -- anyways, it is a lower standard of
15 proof. There was nothing that required her to wait for the criminal case.
16 So I just -- there's no basis for tolling the statute of -- statute of
17 limitations on equitable grounds.

18 Now so that would get rid of all the tort-based claims which
19 would be sexual assault, battery, intentional infliction of emotional
20 distress, false imprisonment, negligent -- negligence, but what I am
21 deferring on because I want to look at the case provided by the plaintiff
22 is the civil conspiracy and the concert of action. Off the top of my head
23 without reading that case, I'm not familiar with it. I -- I won't know until
24 I've read it whether I've read it in the past, but I want to look and see
25 whether that case allows civil conspiracy and concert of action to stand

1 alone as independent causes of actions and I will get that out as soon as
2 I possibly can. Okay?

3 MR. VELTO: Okay.

4 THE COURT: Just defer on the order -- the defendant's going
5 to do the order because you're the prevailing party on the statute of
6 limitations, but just wait on the order until I get my minute order on the
7 other two issues.

8 MR. WRIGHT: Okay.

9 THE COURT: Thank you.

10 MR. WRIGHT: Sounds good. Thank you.

11 THE COURT: So we only need one order.

12 MR. VELTO: Thank you.

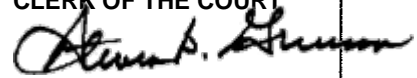
13 [Hearing concluded at 10:09 a.m.]

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21 ATTEST: I hereby certify that I have truly and correctly transcribed the
22 audio/visual proceedings in the above-entitled case to the best of my
23 ability.

24 

25 Tracy A. Gegenheimer, CER-282, CET-282
Court Recorder/Transcriber



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8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 JAQUELINE FAUSTO, an individual,

CASE NO: A-19-797890-C

11 Plaintiff,

DEPT NO: XXIII

12 vs.

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

16 Defendants.

17 **FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ORDER GRANTING**
18 **DEFENDANTS' MOTION TO DISMISS**

19 The above matter came before the Court on September 17, 2019 for hearing on Defendants'
20 Motion to Dismiss or in the Alternative Motion to Stay¹. Defendants RICARDO SANCHEZ-
21 FLORES and VERENICE RUTH FLORES, were represented by JOHN HENRY WRIGHT, ESQ.,
22 of The Wright Law Group, P.C., and Plaintiff JAQUELINE FAUSTO was represented by JOSEPH
23 R. GANLEY, ESQ., of HUTCHINSON & STEFFEN, PLLC. The Court having considered the
24 motion, the opposition, the reply, the addendum, the supplemental points and authority, and the
25 arguments of counsel, the Court hereby finds and orders as follows:

26 ///

27 ///

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input checked="" type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

28 ¹Since the Court dismissed the Complaint in its entirety, the Court did not consider Defendants' Motion to Stay.





FINDINGS OF FACT

1. Plaintiff's complaint alleges tort claims occurred on or about December 30, 2016 and/or December 31, 2016.
2. Plaintiff knew of her alleged injuries at that time because (1) she sought counseling, (2) she made two reports to the police, and (3) conducted a Sexual Assault Nurse Examiner Exam shortly following the alleged injury.
3. Plaintiff filed her complaint on July 3, 2019, more than two years and a half years after the date she alleged the torts occurred.
4. Plaintiff's complaint did not address the two year statute of limitation for the tort claims.
5. Plaintiff's complaint did allege that the statute of limitation should be tolled.
6. Plaintiff's complaint did not allege any facts which would warrant tolling of the statute of limitation.
7. On July 24, 2019, Defendants timely filed a motion to dismiss.
8. On August 9, 2019, Plaintiff's opposition to the motion to dismiss, for the first time, requested that statute of limitation be tolled on her tort claims.
9. On September 10, 2019, Plaintiff's addendum to her opposition to the motion to dismiss, for the first time, alleged that she was not sure what happened on the night in question.
10. The Court found that Plaintiff's complaint was filed more than two years after the accrual date.

CONCLUSIONS OF LAW

1. None of the claims in Plaintiff's complaint were tolled.
2. The statute of limitation was not tolled by the Discovery Rule, because Plaintiff knew about her alleged injury on December 30, 2016, more than two years prior to filing her complaint on July 8, 2019.
3. Equitable tolling does not apply in this case, because Plaintiff was not prevented from obtaining vital information bearing on the existence of her claim.
4. Pursuant to NRS 11.190(4)(e), any action to recover damages for injuries to a person caused by a wrongful act or neglect must be commenced within two (2) years of the alleged



wrongful conduct or neglect. Therefore, NRS 11.190(4)(e) barred the Plaintiff from bringing tort claims any date after December 31, 2018.

5. Plaintiff's tort claims (1) sexual assault and battery, (2) intentional infliction of emotional distress (outrage), (3) false imprisonment, and (6) negligence are barred by the statute of limitation.

6. A claim for concerted action adopts the same statute of limitation as the underlying claim. Plaintiff's claim of concerted action (claim 5) is also barred by the two statute of limitation, because all of the underlying torts were subject to a two year statute of limitation.

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

"[a]n act lawful when done by one may become wrongful when done by many acting in concert, taking on the form of a conspiracy which may be prohibited if the result be hurtful to the 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.

When an act done by an individual is not actionable because justified by his rights, though harmful to another, such act becomes actionable when done in pursuance 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.

Further, a plaintiff must show the commission of an actionable underlying tort to establish a civil conspiracy claim.

8. Since counts (1) sexual assault and battery, (2) intentional infliction of emotional distress

²*Clark v. Sloan*, 169 Okl. 347, 37 P.2d 263; *Starmer v. Mid-West Chevrolet Corporation*, 175 Okl. 160, 51 P.2d 786. *Accord: Deon v. Kirby Lumber Co.*, 162 La. 671, 111 So. 55, 52 A.L.R. 1023; *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, 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., 1942, 127 F.2d 667; *Pfoh v. Whitney*, Ohio App., 62 N.E.2d 744; *Bankers' Fire & Marine Ins. Co. v. Sloss*, 229 Ala. 26, 155 So. 371; Prosser, Torts (2d ed.) 731, 732. See 11 Harvard Law Review 449, 457.



(outrage), (3) false imprisonment, (5) concerted action, and (6) negligence are dismissed as barred by the statute of limitation, and no other tort claims remain, count (4) civil conspiracy cannot be maintained.

9. The Plaintiff's complaint is dismissed with prejudice in its entirety, because all of the underlying tort claims, and the concerted action claim are barred by a two year statute of limitation. Plaintiff's remaining claim for civil conspiracy is dismissed with prejudice, because Plaintiff failed to show that the defendants worked together in a way that could have injured her. Further, even if civil conspiracy only required more than one person committing a tort which stands on its own, all underlying torts are barred by the statute of limitation.

IT IS HEREBY ORDERED that Plaintiff's complaint is dismissed with prejudice.

IT IS FURTHER ORDERED, counts (1) sexual assault and battery, (2) intentional infliction of emotional distress (outrage), (3) false imprisonment, (5) concerted action and (6) negligence, are dismissed as untimely, because these claims are barred by the statute of limitation, which ran on December 31, 2018.

IT IS FURTHER ORDERED, the remaining count, (4) civil conspiracy, is dismissed, because Plaintiff cannot maintain a claim for an underlying illegal act conducted by multiple persons.

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IT IS SO ORDERED.

DATED this 16th day of Oct, 2019.


Honorable Judge Stefany Miley
JUDGE STEFANY A. MILEY


DATED this 11th day of October, 2019. DATED this ____ day of September, 2019.

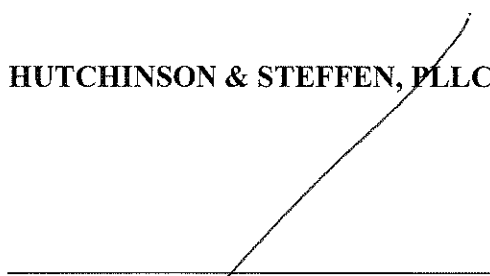
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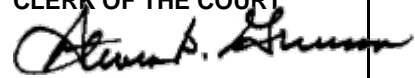
Approved as to form and content by:

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9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 JAQUELINE FAUSTO, an individual,
12 Plaintiff,
13 vs.
RICARDO SANCHEZ-FLORES, an
14 individual; VERENICE RUTH FLORES, an
individual;
15 Defendants.

CASE NO: A-19-797890-C

DEPT NO: XXIII

16
17 **NOTICE OF ENTRY**

18 NOTICE IS HEREBY GIVEN that a Findings of Fact and Conclusions of Law, and Order
19 Granting Defendants' Motion to Dismiss was entered on October 17, 2019, a copy of which is
20 hereto attached as **Exhibit A**.

21 Dated this 17th day of October, 2019.

22 **THE WRIGHT LAW GROUP, P.C.**

23 /s/ Amy J. Smith, Esq.
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24 Nevada Bar No. 6182
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Attorneys for Defendants'
RICARDO SANCHEZ-FLORES and
26 VERENICE RUTH FLORES





CERTIFICATE OF SERVICE

I hereby certify that the foregoing NOTICE OF ENTRY OF ORDER was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 17th day of October, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

HUTCHINSON & STEFFEN, PLLC

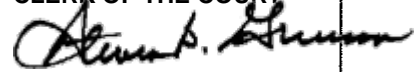
Joseph R. Ganley, Esq. jganley@hutchlegal.com
Piers R. Tueller, Esq. ptueller@hutchlegal.com
Jason D. Guinasso, Esq. jguinasso@hutchlegal.com
Attorneys for Plaintiff Jaqueline Fausto

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

None.

/s/Candi Ashdown
An employee of **THE WRIGHT LAW GROUP, P.C.**

EXHIBIT A



1 **ORDG**
2 JOHN HENRY WRIGHT, ESQ.
3 Nevada Bar No. 6182
4 AMY J. SMITH, ESQ.
5 Nevada Bar No. 14954
6 **THE WRIGHT LAW GROUP, P.C.**
7 2340 Paseo Del Prado, Suite D-305
8 Las Vegas, Nevada 89102
9 Telephone: (702) 405-0001
10 Facsimile: (702) 405-8454
11 Email: john@wrightlawgroupnv.com
12 amys@wrightlawgroupnv.com
13 *Attorneys for Defendants*

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 JAQUELINE FAUSTO, an individual,

CASE NO: A-19-797890-C

11 Plaintiff,

DEPT NO: XXIII

12 vs.

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

16 Defendants.

17 **FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ORDER GRANTING**
18 **DEFENDANTS' MOTION TO DISMISS**

19 The above matter came before the Court on September 17, 2019 for hearing on Defendants'
20 Motion to Dismiss or in the Alternative Motion to Stay¹. Defendants RICARDO SANCHEZ-
21 FLORES and VERENICE RUTH FLORES, were represented by JOHN HENRY WRIGHT, ESQ.,
22 of The Wright Law Group, P.C., and Plaintiff JAQUELINE FAUSTO was represented by JOSEPH
23 R. GANLEY, ESQ., of HUTCHINSON & STEFFEN, PLLC. The Court having considered the
24 motion, the opposition, the reply, the addendum, the supplemental points and authority, and the
25 arguments of counsel, the Court hereby finds and orders as follows:

26 ///

27 ///

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input checked="" type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

28 ¹Since the Court dismissed the Complaint in its entirety, the Court did not consider Defendants' Motion to Stay.





FINDINGS OF FACT

1. Plaintiff's complaint alleges tort claims occurred on or about December 30, 2016 and/or December 31, 2016.
2. Plaintiff knew of her alleged injuries at that time because (1) she sought counseling, (2) she made two reports to the police, and (3) conducted a Sexual Assault Nurse Examiner Exam shortly following the alleged injury.
3. Plaintiff filed her complaint on July 3, 2019, more than two years and a half years after the date she alleged the torts occurred.
4. Plaintiff's complaint did not address the two year statute of limitation for the tort claims.
5. Plaintiff's complaint did allege that the statute of limitation should be tolled.
6. Plaintiff's complaint did not allege any facts which would warrant tolling of the statute of limitation.
7. On July 24, 2019, Defendants timely filed a motion to dismiss.
8. On August 9, 2019, Plaintiff's opposition to the motion to dismiss, for the first time, requested that statute of limitation be tolled on her tort claims.
9. On September 10, 2019, Plaintiff's addendum to her opposition to the motion to dismiss, for the first time, alleged that she was not sure what happened on the night in question.
10. The Court found that Plaintiff's complaint was filed more than two years after the accrual date.

CONCLUSIONS OF LAW

1. None of the claims in Plaintiff's complaint were tolled.
2. The statute of limitation was not tolled by the Discovery Rule, because Plaintiff knew about her alleged injury on December 30, 2016, more than two years prior to filing her complaint on July 8, 2019.
3. Equitable tolling does not apply in this case, because Plaintiff was not prevented from obtaining vital information bearing on the existence of her claim.
4. Pursuant to NRS 11.190(4)(e), any action to recover damages for injuries to a person caused by a wrongful act or neglect must be commenced within two (2) years of the alleged



wrongful conduct or neglect. Therefore, NRS 11.190(4)(e) barred the Plaintiff from bringing tort claims any date after December 31, 2018.

5. Plaintiff's tort claims (1) sexual assault and battery, (2) intentional infliction of emotional distress (outrage), (3) false imprisonment, and (6) negligence are barred by the statute of limitation.

6. A claim for concerted action adopts the same statute of limitation as the underlying claim. Plaintiff's claim of concerted action (claim 5) is also barred by the two statute of limitation, because all of the underlying torts were subject to a two year statute of limitation.

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

"[a]n act lawful when done by one may become wrongful when done by many acting in concert, taking on the form of a conspiracy which may be prohibited if the result be hurtful to the 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.

When an act done by an individual is not actionable because justified by his rights, though harmful to another, such act becomes actionable when done in pursuance 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.

Further, a plaintiff must show the commission of an actionable underlying tort to establish a civil conspiracy claim.

8. Since counts (1) sexual assault and battery, (2) intentional infliction of emotional distress

²*Clark v. Sloan*, 169 Okl. 347, 37 P.2d 263; *Starmer v. Mid-West Chevrolet Corporation*, 175 Okl. 160, 51 P.2d 786. *Accord: Deon v. Kirby Lumber Co.*, 162 La. 671, 111 So. 55, 52 A.L.R. 1023; *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, 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., 1942, 127 F.2d 667; *Pfoh v. Whitney*, Ohio App., 62 N.E.2d 744; *Bankers' Fire & Marine Ins. Co. v. Sloss*, 229 Ala. 26, 155 So. 371; Prosser, Torts (2d ed.) 731, 732. See 11 Harvard Law Review 449, 457.



(outrage), (3) false imprisonment, (5) concerted action, and (6) negligence are dismissed as barred by the statute of limitation, and no other tort claims remain, count (4) civil conspiracy cannot be maintained.

9. The Plaintiff's complaint is dismissed with prejudice in its entirety, because all of the underlying tort claims, and the concerted action claim are barred by a two year statute of limitation. Plaintiff's remaining claim for civil conspiracy is dismissed with prejudice, because Plaintiff failed to show that the defendants worked together in a way that could have injured her. Further, even if civil conspiracy only required more than one person committing a tort which stands on its own, all underlying torts are barred by the statute of limitation.

IT IS HEREBY ORDERED that Plaintiff's complaint is dismissed with prejudice.

IT IS FURTHER ORDERED, counts (1) sexual assault and battery, (2) intentional infliction of emotional distress (outrage), (3) false imprisonment, (5) concerted action and (6) negligence, are dismissed as untimely, because these claims are barred by the statute of limitation, which ran on December 31, 2018.

IT IS FURTHER ORDERED, the remaining count, (4) civil conspiracy, is dismissed, because Plaintiff cannot maintain a claim for an underlying illegal act conducted by multiple persons.

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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



IT IS SO ORDERED.

DATED this 16th day of Oct, 2019.


Honorable Judge Stefany Miley
JUDGE STEFANY A. MILEY


DATED this 11th day of October, 2019. DATED this _____ day of September, 2019.

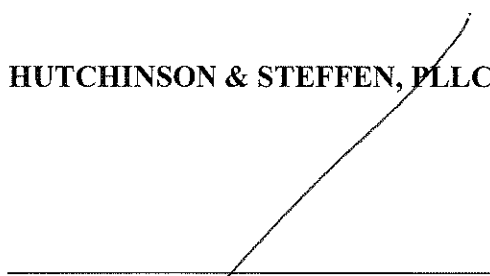
Respectfully submitted by:

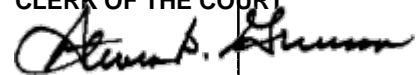
Approved as to form and content by:

THE WRIGHT LAW GROUP, P.C.

HUTCHINSON & STEFFEN, PLLC.


JOHN HENRY WRIGHT, ESQ.
Nevada Bar No. 6182
AMY J. SMITH, ESQ.
Nevada Bar No. 14954
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
Attorneys for Defendants


JOSEPH R. GANLEY, ESQ.
Nevada Bar No. 5643
PIERS R. TUELLER, ESQ.
Nevada Bar. No 14633
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Attorneys for Plaintiff



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Piers R. Tueller (SBN#14633)
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Jason D. Guinasso (SBN#8478)
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500 Damonte Ranch Parkway, Suite 980
Reno, NV 89521
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Fax: (775) 201-9611
jguinasso@hutchlegal.com

Attorneys for Plaintiff/Appellant Jaqueline Fausto

DISTRICT COURT

CLARK COUNTY, NEVADA

JAQUELINE FAUSTO, an individual,

Plaintiff/Appellant,

v.

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

Defendants.

Case No. A-19-797890-C

Dept. No. XXIII

**CASE APPEAL
STATEMENT**

CASE APPEAL STATEMENT

COMES NOW, Plaintiff/Appellant, JAQUELINE FAUSTO ("Ms. Fausto"), by and through her undersigned counsel of record, and pursuant to NRAP 3(f) hereby submits her Case Appeal Statement as follows:

///

JA0166

1 **1. The name of the judge who entered the orders being appealed.**

2 The Honorable Stefany Miley, Department XXIII, Eighth Judicial District Court.

3 **2. The name of each appellant and the name and address of counsel for each**
4 **appellant.**

5 ▪ Jaqueline Fausto is represented by Joseph R. Ganley, Esq., Jason D. Guinasso,
6 Esq., and Alex R. Velto of Hutchison & Steffen, PLLC.

7 ○ Appellate Counsel: Joseph R. Ganley, Esq.
8 Jason D. Guinasso, Esq.
9 Alex R. Velto, Esq.

10 ○ Trial Counsel: Joseph R. Ganley, Esq.
11 Jason D. Guinasso, Esq.

12 ○ Firm address: Hutchison & Steffen, PLLC
13 10080 West Alta Drive, Suite 200
14 Las Vegas, Nevada 89145

15 Hutchison & Steffen, PLLC
16 500 Damonte Ranch Parkway, Suite 980
17 Reno, Nevada 89511

18 **3. Identify each respondent and the name and address of appellate counsel, if**
19 **known, for each respondent, but if the name of a respondent's appellate**
20 **counsel is not known, then the name and address of that respondent's trial**
21 **counsel.**

22 ▪ Ricardo Sanchez-Flores.

23 ○ Appellate Counsel:

24 ○ Trial Counsel: John Henry Wright, Esq.
25 Christopher Phillips, Esq.
26 Amy J. Smith, Esq.

27 ○ Firm address: The Wright Law Group, P.C.
28 2340 Paseo Del Prado Boulevard
 Building D, Suite 305
 Las Vegas, Nevada 89102

29 ///

30 ///

1 ▪ Verenice Ruth Flores.

2 ○ Appellate Counsel:

3 ○ Trial Counsel: John Henry Wright, Esq.
4 Christopher Phillips, Esq.
5 Amy J. Smith, Esq.

6 ○ Firm address: The Wright Law Group, P.C.
7 2340 Paseo Del Prado Boulevard
8 Building D, Suite 305
9 Las Vegas, Nevada 89102

10 **4. Indicate whether an attorney identified in response to questions 2 or 3 is not**
11 **licensed to practice law in Nevada, and if so, whether the District Court**
12 **granted that attorney permission to appear under SCR 42, including a copy of**
13 **any District Court order granting that permission.**

14 Not applicable.

15 **5. Indicate whether the appellant was represented by appointed counsel in the**
16 **District Court.**

17 Appellant was represented by retained counsel.

18 **6. Indicate whether the appellant is represented by appointed counsel on appeal.**
19 Appellant was represented by retained counsel.

20 **7. Indicate whether the District Court granted the appellant leave to proceed in**
21 **forma pauperis, and if so, the date of the District Court's order granting that**
22 **leave.**

23 Not applicable.

24 **8. Indicate the date that the proceedings commenced in the District Court.**

25 July 2, 2019.

26 **9. Provide a brief description of the nature of the action and result in the District**
27 **Court, including the type of judgment or order being appealed and the relief**
28 **granted by the District Court.**

///

1 Plaintiff brought a complaint in district court, alleging, sexual assault and battery,
2 intentional infliction of emotional distress, false imprisonment, concerted action, conspiracy,
3 and negligence. The Defendants moved to dismiss the claims, arguing the statute of limitations
4 had run on the actions. Plaintiff argued the discovery rule and equitable tolling precluded the
5 statute of limitations from running and that the concerted action and conspiracy claims were
6 not barred. The District Court entered *Findings of Fact and Conclusions of Law, and Order*
7 *Granting Defendants' Motion to Dismiss* in favor of Defendants on all claims on October 17,
8 2019. The District Court's Order dismissed under Ms. Fausto's claims as a matter of law on
9 the pleadings. Ms. Fausto appeals from the District Court's Order.

10 **10. Indicate whether the case has previously been the subject of an appeal to or**
11 **original writ proceeding in the Supreme Court or Court of Appeals and, if so,**
12 **the caption and docket number of the prior proceeding.**

13 This case has not previously been the subject of an appeal or original writ.

14 **11. Indicate whether the appeal involves child custody or visitation.**

15 This appeal does not involve child custody or visitation.

16 **12. If this is a civil case, indicate whether this appeal involves the possibility of**
17 **settlement.**

18 Yes, this appeal does involve the possibility of settlement.

19 DATED this 15 day of November, 2019.

20 HUTCHISON & STEFFEN, PLLC

21 
22 JASON D. GUINASSO, ESQ. (SBN#8478)

23 ALEX R. VELTO, ESQ. (SBN#14961)

24 HUTCHISON & STEFFEN, PLLC

25 500 Damonte Ranch Parkway, Suite 980

26 Reno, NV 89521

27 Telephone: (775) 853-8746

28 Facsimile: (775) 201-9611

jguinass@hutchlegal.com

Attorneys for Plaintiff

1
2 **CERTIFICATE OF SERVICE**

3 Pursuant to N.R.C.P. 5(b), I, hereby certify that I am a non-party over the age of 18
4 years, and that on the 15 day of November, 2019, I caused a true and correct copy of the
5 **CASE APPEAL STATEMENT** to be electronically served through the Eighth Judicial
6 District Court EFP System pursuant to NEFR 9 on the following:

7 **John Henry Wright, Esq. - john@wrightlawgroupnv.com**

8 **Christopher Phillips, Esq. - chris@wrightlawgroupnv.com**

9 **Amy J. Smith, Esq. - amys@wrightlawgroupnv.com**

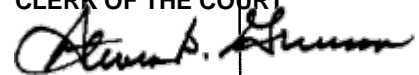
Attorneys for Defendants Ricardo Sanchez-Flores and Verenice Ruth Flores

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

12 DATED: November 15, 2019

13 

14 _____
Employee of Hutchison & Steffen, PLLC



NOAS

Joseph R. Ganley (SBN#5643)
Piers R. Tueller (SBN#14633)
HUTCHISON & STEFFEN, PLLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
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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 APPEAL

///

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///

///

///

JA0171

1 Plaintiff, JAQUELINE FAUSTO, by and through her undersigned counsel of record,
2 does hereby appeal the *Findings of Fact and Conclusions of Law, and Order Granting*
3 *Defendants' Motion to Dismiss* ("Order") entered by this Court on October 17, 2019. A copy
4 of the *Order* is attached as **Exhibit "1."**

5 DATED this 15 day of November, 2019.

6 HUTCHISON & STEFFEN, PLLC

7 
8 _____
9 Joseph R. Ganley (SBN#5643)
10 HUTCHISON & STEFFEN, PLLC
11 10080 West Alta Drive, Suite 200
12 Las Vegas, NV 89145
13 Tel: (702) 385-2500
14 Fax: (702) 385-2086
15 jganley@hutchlegal.com

16 JASON D. GUINASSO, ESQ. (SBN# 8478)
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21 Facsimile: (775) 201-9611
22 jguinass@hutchlegal.com
23 *Attorneys for Plaintiff*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(b), I, hereby certify that I am a non-party over the age of 18
3 years, and that on the 15 day of November, 2019, I caused a true and correct copy of the
4 **NOTICE OF APPEAL** to be electronically served through the Eighth Judicial District Court
5 EFP System pursuant to NEFR 9 on the following:

6 **John Henry Wright, Esq. - john@wrightlawgroupnv.com**

7 **Christopher Phillips, Esq. - chris@wrightlawgroupnv.com**

8 **Amy J. Smith, Esq. - amys@wrightlawgroupnv.com**

Attorneys for Defendants Ricardo Sanchez-Flores and Verenice Ruth Flores

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

11 DATED: November 15, 2019

12 

13 _____
Employee of Hutchison & Steffen, PLLC

EXHIBIT 1

EXHIBIT 1

Steven D. Grierson

1 **ORDG**
2 JOHN HENRY WRIGHT, ESQ.
3 Nevada Bar No. 6182
4 AMY J. SMITH, ESQ.
5 Nevada Bar No. 14954
6 **THE WRIGHT LAW GROUP, P.C.**
7 2340 Paseo Del Prado, Suite D-305
8 Las Vegas, Nevada 89102
9 Telephone: (702) 405-0001
10 Facsimile: (702) 405-8454
11 Email: john@wrightlawgroupnv.com
12 amys@wrightlawgroupnv.com
13 Attorneys for Defendants

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 JAQUELINE FAUSTO, an individual,
11 Plaintiff,
12 vs.
13 RICARDO SANCHEZ-FLORES, an
14 individual; VERENICE RUTH FLORES, an
15 individual;
16 Defendants.

CASE NO: A-19-797890-C
DEPT NO: XXIII

16 **FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ORDER GRANTING**
17 **DEFENDANTS' MOTION TO DISMISS**

18 The above matter came before the Court on September 17, 2019 for hearing on Defendants'
19 Motion to Dismiss or in the Alternative Motion to Stay¹. Defendants RICARDO SANCHEZ-
20 FLORES and VERENICE RUTH FLORES, were represented by JOHN HENRY WRIGHT, ESQ.,
21 of The Wright Law Group, P.C., and Plaintiff JAQUELINE FAUSTO was represented by JOSEPH
22 R. GANLEY, ESQ., of HUTCHINSON & STEFFEN, PLLC. The Court having considered the
23 motion, the opposition, the reply, the addendum, the supplemental points and authority, and the
24 arguments of counsel, the Court hereby finds and orders as follows:

25 ///

26 ///

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input checked="" type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

28 ¹Since the Court dismissed the Complaint in its entirety, the Court did not consider Defendants' Motion to Stay.





FINDINGS OF FACT

1. Plaintiff's complaint alleges tort claims occurred on or about December 30, 2016 and/or December 31, 2016.
2. Plaintiff knew of her alleged injuries at that time because (1) she sought counseling, (2) she made two reports to the police, and (3) conducted a Sexual Assault Nurse Examiner Exam shortly following the alleged injury.
3. Plaintiff filed her complaint on July 3, 2019, more than two years and a half years after the date she alleged the torts occurred.
4. Plaintiff's complaint did not address the two year statute of limitation for the tort claims.
5. Plaintiff's complaint did allege that the statute of limitation should be tolled.
6. Plaintiff's complaint did not allege any facts which would warrant tolling of the statute of limitation.
7. On July 24, 2019, Defendants timely filed a motion to dismiss.
8. On August 9, 2019, Plaintiff's opposition to the motion to dismiss, for the first time, requested that statute of limitation be tolled on her tort claims.
9. On September 10, 2019, Plaintiff's addendum to her opposition to the motion to dismiss, for the first time, alleged that she was not sure what happened on the night in question.
10. The Court found that Plaintiff's complaint was filed more than two years after the accrual date.

CONCLUSIONS OF LAW

1. None of the claims in Plaintiff's complaint were tolled.
2. The statute of limitation was not tolled by the Discovery Rule, because Plaintiff knew about her alleged injury on December 30, 2016, more than two years prior to filing her complaint on July 8, 2019.
3. Equitable tolling does not apply in this case, because Plaintiff was not prevented from obtaining vital information bearing on the existence of her claim.
4. Pursuant to NRS 11.190(4)(e), any action to recover damages for injuries to a person caused by a wrongful act or neglect must be commenced within two (2) years of the alleged



wrongful conduct or neglect. Therefore, NRS 11.190(4)(e) barred the Plaintiff from bringing tort claims any date after December 31, 2018.

5. Plaintiff's tort claims (1) sexual assault and battery, (2) intentional infliction of emotional distress (outrage), (3) false imprisonment, and (6) negligence are barred by the statute of limitation.

6. A claim for concerted action adopts the same statute of limitation as the underlying claim. Plaintiff's claim of concerted action (claim 5) is also barred by the two statute of limitation, because all of the underlying torts were subject to a two year statute of limitation.

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

"[a]n act lawful when done by one may become wrongful when done by many acting in concert, taking on the form of a conspiracy which may be prohibited if the result be hurtful to the 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.

When an act done by an individual is not actionable because justified by his rights, though harmful to another, such act becomes actionable when done in pursuance 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.

Further, a plaintiff must show the commission of an actionable underlying tort to establish a civil conspiracy claim.

8. Since counts (1) sexual assault and battery, (2) intentional infliction of emotional distress

²*Clark v. Sloan*, 169 Okl. 347, 37 P.2d 263; *Starmer v. Mid-West Chevrolet Corporation*, 175 Okl. 160, 51 P.2d 786. *Accord: Deon v. Kirby Lumber Co.*, 162 La. 671, 111 So. 55, 52 A.L.R. 1023; *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, 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., 1942, 127 F.2d 667; *Pfoh v. Whitney*, Ohio App., 62 N.E.2d 744; *Bankers' Fire & Marine Ins. Co. v. Sloss*, 229 Ala. 26, 155 So. 371; Prosser, Torts (2d ed.) 731, 732. See 11 Harvard Law Review 449, 457.



1 (outrage), (3) false imprisonment, (5) concerted action, and (6) negligence are dismissed
2 as barred by the statute of limitation, and no other tort claims remain, count (4) civil
3 conspiracy cannot be maintained.

4 9. The Plaintiff's complaint is dismiss with prejudice in its entirety, because all of the
5 underlying tort claims, and the concerted action claim are barred by a two year statute of
6 limitation. Plaintiff's remaining claim for civil conspiracy is dismissed with prejudice,
7 because Plaintiff failed to show that the defendants worked together in a way that could
8 have injured her. Further, even if civil conspiracy only required more than one person
9 committing a tort which stands on its own, all underlying torts are barred by the statute of
10 limitation.

11 IT IS HEREBY ORDERED that Plaintiff's complaint is dismissed with prejudice.

12 IT IS FURTHER ORDERED, counts (1) sexual assault and battery, (2) intentional
13 infliction of emotional distress (outrage), (3) false imprisonment, (5) concerted action and
14 (6) negligence, are dismissed as untimely, because these claims are barred by the statute of
15 limitation, which ran on December 31, 2018.

16 IT IS FURTHER ORDERED, the remaining count, (4) civil conspiracy, is
17 dismissed, because Plaintiff cannot maintain a claim for an underlying illegal act conducted
18 by multiple persons.

19 ///

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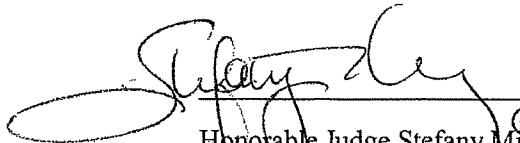
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IT IS SO ORDERED.

DATED this 16th day of Oct, 2019.


Honorable Judge Stefany Miley
JUDGE STEFANY A. MILEY

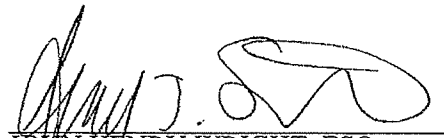
DATED this 11th day of October, 2019. DATED this ____ day of September, 2019.

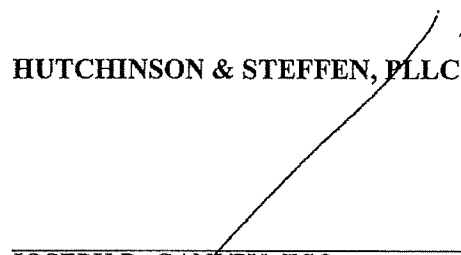
Respectfully submitted by:

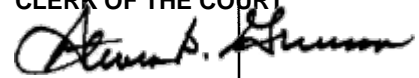
Approved as to form and content by:

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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

**POSTING OF
APPEAL BOND**

WHEREAS, the above-entitled Court in the above matter did enter the *Findings of Fact and Conclusions of Law, and Order Granting Defendants' Motion to Dismiss* ("Order") on October 17, 2019, against the Plaintiff JAQUELINE FAUSTO, in total and in favor of the Defendants; and

WHEREAS the Plaintiff intends to appeal to the Supreme Court of the State of Nevada by and through her undersigned counsel of record.

JA0180

1 NOW, THEREFORE, the Plaintiff, by and through her undersigned counsel of record,
2 does undertake and promise that in the event the appeal is dismissed or the *Order* is affirmed,
3 then in that event the undersigned will pay \$500.00, or any portion thereof as determined by
4 the District Court as and for costs and expenses. Plaintiff has deposited with the Eighth Judicial
5 District Court, a check in the amount of \$500.00 for the appeal bond.

6 DATED this 15 day of November, 2019.

7 HUTCHISON & STEFFEN, PLLC



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21 Facsimile: (775) 201-9611
22 jguinass@hutchlegal.com
23 *Attorneys for Plaintiff*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(b), I, hereby certify that I am a non-party over the age of 18
3 years, and that on the 18 day of November, 2019, I caused a true and correct copy of the
4 **POSTING OF APPEAL BOND** to be electronically served through the Eighth Judicial
5 District Court EFP System pursuant to NEFR 9 on the following:

6 **John Henry Wright, Esq. - john@wrightlawgroupnv.com**

7 **Christopher Phillips, Esq. - chris@wrightlawgroupnv.com**

8 **Amy J. Smith, Esq. - amys@wrightlawgroupnv.com**

Attorneys for Defendants Ricardo Sanchez-Flores and Verenice Ruth Flores

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

11 DATED: November 18, 2019

12 

13 Employee of Hutchison & Steffen, PLLC