

SERENITY PROSPERITY
748 N. Rainbow A106
Las Vegas, Nevada 89137
702-353-9722
PLAINTIFF/
IN PROPER PERSON

Electronically Filed
06/17/2022

Heather L. Linn
CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Electronically Filed
Jun 22 2022 01:21 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

SERENITY PROSPERITY

Plaintiff(s),

vs

JENNIFER INSLEY MICHERI, ESQ.
Nevada Bar No. 10089
Jinsley-micheri@dennettwinspear.com
3301 N. Buffalo Drive, Suite 195 Las
Vegas, Nevada 89129
Telephone: (702) 839-1100 Facsimile:
(702) 839-1113
**Attorneys for Defendant,
Jamie Combs**

Defendant(s).

CASE NO.: A-20-817408-C
DEPT. NO.: XXX

~~ORDER~~ ^{SSP} ~~PLAINTIFF'S MOTION~~ ^{SSP} ~~NOTICE~~
TO APPEAL COURT DECISION
BASED UPON FALSE EVIDENCE
AND MISLEADING INFORMATION
PRESENTED TO THE
COURT.

**INTRODUCTION
ORDER RE: PLAINTIFF MOTION TO
APPEAL**

Plaintiff,
CASE NO.: A-20-817408-C
DEPT. NO.: XXX vs.)
JAMIE COMBS, individually)

The above-referenced matter was scheduled for a hearing on February 2, 2022, with regard to Defendant, Jamie Combs' Renewed Motion to Dismiss Pursuant to NRC 12(b)(5). Pursuant to the Administrative Orders of this Court, and EDCR 2.23, this matter may be decided with or without oral argument. This Court has determined that it would be appropriate to decide this matter on the pleadings, and consequently, this Order issues.

FACTUAL AND PROCEDURAL HISTORY

This matter stems from a motor vehicle accident, which occurred on May 18, 2020. Defendant alleges Plaintiff filed a complaint on 7/1/20 alleging injuries resulting from that motor vehicle accident, allegedly caused by Defendants. This complaint was not filed on 7/1/20. It was filed on June 22, 20. The Complaint was originally filed against

JUN 17 2022

RECEIVED

CLERK OF THE COURT

RECEIVED
JUN 17 2022

1 Defendant Progressive Insurance and Shellie Bandy, Case Manager because Plaintiff
2 could not remember the Defendants name and Shellie Bandy refuse to relinquish the
3 Defendants name. Instead Shellie Bandy told Plaintiff to file the court complaint in her
4 name. It was clear that the Plaintiff was alleging that Bandy was not the negligent driver
5 but a case manager for Progressive. Plaintiff was attempting to make a claim against the
6 insurance carrier and Jamie Combs.

7 On June 18, 2021, the Court entered an Order regarding Plaintiff's Pro Per Motion to
8 Extend Time to Serve Summons and Complaint. In pertinent part the Order states:

9 The Defendant states Complaint is unclear as to whether she is alleging Bandy is the
10 negligent driver and also a case manager for Progressive or if she is attempting to only
11 make a claim against the insurance carrier. In any event, the Complaint is at best
12 confusing. It was made clear that the Plaintiff never said Bandy was the driver.

13 It was stated that Service by the Sherriff was filed in the case on 10/29/21, which stated
14 the Progressive office was vacant. The 120 days for service expired on or about 11/1/20.
15 On 4/6/21 Plaintiff filed the subject Motion to Extend Time for Service of the Summons
16 and Complaint, wherein she references "trouble serving Defendant," and that the
17 Sherriff attempted service but due to COVID the office was closed.

18 Service by the Sherriff was filed in the case on 9/23/20 and served on 9/28/20. The
19 dates above that were presented to the Judge to make a just decision were incorrect.

20 Consequently, when this matter came on the Court's calendar on 5/12/21, the Court
21 issued a minute order on 5/7/21, advising the Plaintiff that her Motion failed to
22 establish good cause for the untimely filing of the request for an extension of time to
23 serve and did not include a *Scrimmer* analysis, and consequently, the Court has no
24 information upon which to base a finding of good cause to extend the time for service of
25 the Summons and Complaint. The Court requested that Plaintiff file an Amended or
26 Supplemental Motion, or an Addendum to the original Motion, and include a *Scrimmer*
27 analysis (*Scrimmer v. Dist. Ct.*, 116 Nev. 507, 998 P.2d 1190 [2000]), and to demonstrate
28 good cause pursuant to *Saavedra- Sandoval v. Wal-Mart Stores, Inc.*, 245 P.3d 1198,
1201 (Nev. 2010). Such supplemental or amended pleading was to be filed at least ten
(10) days prior to the next hearing (which was set for 6/23/21). Attorney for Plaintiff
was to handle this matter not the Plaintiff.

21 CONCLUSION

22 Plaintiff hired Paul A. Shpirt, Esq. who told Plaintiff to file an amended complaint with
23 the correct name Jamie Combs and he would take care of everything else. The
24 argument above was to be handled by this attorney and know longer by the Plaintiff.
25 Plaintiff has requested fill of this case and has not received Plaintiff file from the
26 Attorney. Plaintiff received this document **DEFENDANT JAMIE COMBS' REPLY IN**
27 **SUPPORT OF RENEWED MOTION TO DISMISS PURSUANT TO NRCP 12(b)(5)** this
28 document was emailed from Attorney to Plaintiff, Due to the fact that the dates were
incorrect and other information in this document are incorrect Plaintiff would need the
file in order to appeal this case correctly. Plaintiff is asking the court to grant Plaintiff

Justice and recognize governor Sisolak 140 day extension

SERENITY PROSPERITY

748 N. Rainbow A106

Las Vegas, Nevada 89137

702-353-9722

DATED this 2 day of March 2022

SERENITY PROSPERITY

PLAINTIFF/IN PROPER

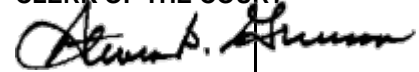
PERSON


SERENITY PROSPERITY

748 N. Rainbow A106

Las Vegas, Nevada 89137

702-353-9722



1 ASTA

2
3
4
5
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**
9

10 SERENITY PROSPERITY,

11 Plaintiff(s),

12 vs.

13 JAMIE COMBS,

14 Defendant(s),
15

Case No: A-20-817408-C

Dept No: XXX

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Serenity Prosperity

20 2. Judge: Jerry A. Wiese

21 3. Appellant(s): Serenity Prosperity

22 Counsel:

23 Serenity Prosperity
24 748 N. Rainbow, A106
Las Vegas, NV 89137

25 4. Respondent (s): Jamie Comba

26 Counsel:

27 Ryan L. Dennett, Esq.
28 3301 N. Buffalo Dr., Ste 195
Las Vegas, NV 89129

1 5. Appellant(s)'s Attorney Licensed in Nevada: N/A
2 Permission Granted: N/A

3 Respondent(s)'s Attorney Licensed in Nevada: Yes
4 Permission Granted: N/A

5 6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

6 7. Appellant Represented by Appointed Counsel On Appeal: N/A

7 8. Appellant Granted Leave to Proceed in Forma Pauperis**: Yes, March 3, 2022

8 **Expires 1 year from date filed

9 Appellant Filed Application to Proceed in Forma Pauperis: N/A

10 Date Application(s) filed: N/A

11 9. Date Commenced in District Court: July 1, 2020

12 10. Brief Description of the Nature of the Action: NEGLIGENCE - Auto

13 Type of Judgment or Order Being Appealed: Dismissal

14 11. Previous Appeal: No

15 Supreme Court Docket Number(s): N/A

16 12. Child Custody or Visitation: N/A

17 13. Possibility of Settlement: Unknown

18 Dated This 21 day of June 2022.

19 Steven D. Grierson, Clerk of the Court

20
21 /s/ Amanda Hampton

22 Amanda Hampton, Deputy Clerk

23 200 Lewis Ave

24 PO Box 551601

25 Las Vegas, Nevada 89155-1601

26 (702) 671-0512

27 cc: Serenity Prosperity

06/17/2022

Heather L. Smith
CLERK OF THE COURT

1 SERENITY PROSPERITY
(Name)

2 848 N. RAINBOW
(Address)

3 LAS VEGAS, NV
(City, State, Zip)

4 702-353-9722
(Telephone)

5 ☒ Plaintiff/ ☐ Defendant, Pro Se

6 **EIGHTH JUDICIAL DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

8
9
10 Plaintiff(s),

11 vs.

12 SERENITY PROSPERITY

13 vs.

14 Defendant(s).

14 JAMIE COMBS

Case No.: 17-20-817-408-C
Dept. No.: _____

Date of Hearing: _____
Time of Hearing: _____

15 **CERTIFICATE OF MAILING**

16 I HEREBY CERTIFY that on the 21 day of JUNE, 20__, I placed a true

17 and correct copy of the following document: APPEAL COURT DECISION
18 BASED UPON FALSE EVIDENCE AND MISLEADING
19 INFORMATION PRESENTED TO THE COURT.

19 in the United States Mail, with first-class postage prepaid, addressed to the following:

20 JENNIFER INSLEY, ESQ #10089 BAR
21 3301 N. BUFFALO DRIVE, #195
22 LAS VEGAS, NEVADA 89129
23 702-839-1100

24 Per NRS 53.045, I declare under penalty of perjury
25 that the foregoing is true and correct.

26 *[Signature]* (signature)
27 SERENITY PROSPERITY (print name)
28 ☒ Plaintiff/ ☐ Defendant, Pro Se

CLERK OF THE COURT

JUN 17 2022

RECEIVED

CASE SUMMARY**CASE NO. A-20-817408-C**

Serenity Prosperity, Plaintiff(s)
 vs.
 Shellie Bandy, Defendant(s)

§
 §
 §
 §
 §

Location: **Department 30**
 Judicial Officer: **Wiese, Jerry A.**
 Filed on: **07/01/2020**
 Cross-Reference Case Number: **A817408**

CASE INFORMATION**Statistical Closures**

02/01/2022 Motion to Dismiss by the Defendant(s)

Case Type: **Negligence - Auto**

Case Status: **02/01/2022 Dismissed**






DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-20-817408-C
 Court Department 30
 Date Assigned 07/01/2020
 Judicial Officer Wiese, Jerry A.

PARTY INFORMATION





Plaintiff	Prosperity, Serenity	Shpirt, Paul <i>Retained</i> 702-800-6000(W)
Defendant	Bandy, Shellie R	
	Combs, Jamie Removed: 02/01/2022 Dismissed	
	Combs, Jamie	Insley-Micheri, Jennifer <i>Retained</i> 7028391100(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

07/01/2020	 Complaint With Jury Demand <i>[1] Complaint and Prayer for Jury Trial</i>
07/01/2020	 Application to Proceed in Forma Pauperis Filed By: Plaintiff Prosperity, Serenity <i>[2] Application to Proceed in forma Pauperis</i>
07/01/2020	 Summons Electronically Issued - Service Pending <i>[3] Summons</i>
07/08/2020	 Order to Proceed In Forma Pauperis Granted for: Plaintiff Prosperity, Serenity <i>[4] Order to Proceed In Forma Pauperis</i>
10/29/2020	 Affidavit of Attempted Service <i>[5] Not Found Affidavit</i>

CASE SUMMARY

CASE NO. A-20-817408-C

04/06/2021	 Motion to Extend Time to Serve <i>[6] Motion to Extend Time to Serve Summons and Complaint</i>
06/18/2021	 Order <i>[7] ORDER</i>
06/22/2021	 Order <i>[8] Order to Show Cause</i>
06/23/2021	 Amended Complaint Filed By: Plaintiff Prosperity, Serenity <i>[9] Amended Complaint</i>
08/10/2021	 Notice of Association of Counsel Filed By: Plaintiff Prosperity, Serenity <i>[10] Notice of Association of Counsel</i>
08/11/2021	 Summons Electronically Issued - Service Pending Party: Plaintiff Prosperity, Serenity <i>[11] Summons</i>
08/19/2021	 Affidavit of Service Filed By: Plaintiff Prosperity, Serenity Party Served: Defendant Bandy, Shellie R <i>[12] Affidavit of Service</i>
09/08/2021	 Motion to Dismiss Filed By: Defendant Combs, Jamie <i>[13] Defendant Jamie Combs' Motion to Dismiss Pursuant to NRCP 12(b)(5)</i>
09/08/2021	 Appendix Filed By: Defendant Combs, Jamie <i>[14] Appendix to Defendant Jamie Combs' Motion to Dismiss</i>
09/08/2021	 Initial Appearance Fee Disclosure Filed By: Defendant Combs, Jamie <i>[15] Initial Appearance Fee Disclosure</i>
09/09/2021	 Clerk's Notice of Hearing <i>[16] Notice of Hearing</i>
09/22/2021	 Opposition Filed By: Plaintiff Prosperity, Serenity <i>[17] Plaintiff's Opposition To Defendant's Motion To Dismiss Pursuant To NRCP 12(B)(5)</i>
10/06/2021	 Reply in Support Filed By: Defendant Combs, Jamie <i>[18] Defendant Jamie Combs' Reply in Support of Motion to Dismiss Pursuant to NRCP 12(b)(5)</i>
10/15/2021	 Order <i>[19] Order</i>

CASE SUMMARY

CASE NO. A-20-817408-C

11/01/2021	 Notice of Entry of Order Filed By: Plaintiff Prosperity, Serenity <i>[20] Notice of Entry of Order</i>
11/16/2021	 Motion to Dismiss Filed By: Defendant Combs, Jamie <i>[21] Defendant Jamie Combs' Renewed Motion to Dismiss Pursuant to NRCP 12(b)(5) - Hearing Requested</i>
11/16/2021	 Appendix Filed By: Defendant Combs, Jamie <i>[22] Appendix to Defendant Jamie Combs' Renewed Motion to Dismiss Pursuant to NRCP 12(b)(5)</i>
11/18/2021	 Clerk's Notice of Hearing <i>[23] Notice of Hearing</i>
11/30/2021	 Opposition to Motion Filed By: Plaintiff Prosperity, Serenity <i>[24] Plaintiff's Opposition To Defendant's Renewed Motion To Dismiss Pursuant To NRCP 12(B)(5)</i>
12/14/2021	 Reply in Support Filed By: Defendant Combs, Jamie <i>[25] REPLY IN SUPPORT OF RENEWED MOTION TO DISMISS</i>
02/01/2022	 Order <i>[26] Order Re: Defendant's Renewed Motion to Dismiss</i>
02/02/2022	 Notice of Entry of Order Filed By: Defendant Combs, Jamie <i>[27] Notice of Entry of Order (Granting) Re: Defendant's Renewed Motion to Dismiss</i>
03/02/2022	 Application to Proceed in Forma Pauperis Filed By: Plaintiff Prosperity, Serenity <i>[28] Application to Proceed in Forma Pauperis</i>
03/02/2022	 Motion Filed By: Plaintiff Prosperity, Serenity <i>[29] Plaintiff's Motion to Appeal for Extended Time</i>
03/02/2022	 Certificate of Mailing Filed By: Plaintiff Prosperity, Serenity <i>[30] Certificate of Mailing</i>
03/03/2022	 Order to Proceed In Forma Pauperis Granted for: Plaintiff Prosperity, Serenity <i>[31] Order to Proceed In Forma Pauperis</i>
03/16/2022	 Opposition to Motion Filed By: Defendant Combs, Jamie <i>[32] Specially Appearing Jamie Combs Opposition to Serenity Prosperity's Motion for Extended Time</i>

CASE SUMMARY

CASE NO. A-20-817408-C

04/04/2022



Motion

Filed By: Plaintiff Prosperity, Serenity

[33] Plaintiff's Motion to Appeal For Extended Time not to Be Dismissed

04/04/2022



Certificate of Mailing

Filed By: Plaintiff Prosperity, Serenity

[34] Certificate of Mailing

04/06/2022



Change of Address

Filed By: Plaintiff Prosperity, Serenity

[35] Notice of Change of Address

04/18/2022



Opposition to Motion

Filed By: Defendant Combs, Jamie

[36] Defendants Opposition to Plaintiffs Second Motion for Extended Time

05/17/2022



Order

[37] ORDER REGARDING SERENITY PROSPERITY'S MOTION FOR EXTENDED TIME

05/17/2022



Notice of Entry

Filed By: Defendant Combs, Jamie

[38] Notice of Entry of Order Regarding Serenity Prosperity's Motion for Extended Time

06/17/2022



Notice of Appeal

Filed By: Plaintiff Prosperity, Serenity

[39] Plaintiff's SSP Notice to Appeal Court Decision

06/17/2022



Certificate of Mailing

Filed By: Plaintiff Prosperity, Serenity

[40] Certificate of Mailing

06/21/2022



Case Appeal Statement

Case Appeal Statement

DISPOSITIONS

02/01/2022

Order of Dismissal (Judicial Officer: Wiese, Jerry A.)

Debtors: Jamie Combs (Defendant)

Creditors: Serenity Prosperity (Plaintiff)

Judgment: 02/01/2022, Docketed: 02/02/2022

HEARINGS

05/07/2021



Minute Order (3:00 AM) (Judicial Officer: Wiese, Jerry A.)

Minute Order - No Hearing Held;

Journal Entry Details:


The above-referenced matter is scheduled for a hearing on 5/12/21 with regard to "Motion to Enlarge Time for Service." Pursuant to the Administrative Orders of the Court, and pursuant to EDCR 2.23, this matter may be decided with or without oral argument. NRCP 4(e)(3) reads: "If a plaintiff files a motion for an extension of time before the 120-day service period or any extension thereof expires and shows that good cause exists for granting an extension of the service period, the court must extend the service period and set a reasonable date by which service should be made." In order to determine whether good cause exists, however, the court must analyze the case pursuant to the Scrimmer factors. Scrimmer v. Eighth Judicial District, 116 Nev. 507 (2000). In Nevada, the application of NRCP 4 is a two pronged test. First, the Court must make a determination of whether a motion to enlarge time for service was properly made. If not, the court can only move on to the second determination "upon a showing of good cause

CASE SUMMARY

CASE NO. A-20-817408-C


to file an untimely motion to enlarge time." *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 245 P.3d 1198, 1201 (Nev. 2010). In this case, the motion was not timely filed and the Plaintiff has failed to demonstrate good cause for the filing of an untimely motion. The second prong provides that the Court must dismiss the action unless the party raising the motion can show good cause for the delay in service. In *Scrimmer v. Dist. Ct.*, 116 Nev. 507, 513, the Nevada Supreme Court set forth the analysis to be used in determining whether a complaint must be dismissed pursuant to NRCP 4(i) for failure to show good cause why such service was not made within the period. The factors include: (1) difficulties in locating the defendant; (2) the defendant's efforts at evading service or concealment of improper service until after the 120 day period has lapsed; (3) the plaintiff's diligence in attempting to serve the defendant; (4) difficulties encountered by counsel (5) the running of the applicable statute of limitations (6) the parties' good faith attempts to settle the litigation during the 120 day period; (7) the lapse of time between the end of the 120 day period and the actual service of process on the defendant; (8) the prejudice to the defendant caused by the plaintiff's delay in serving process; (9) the defendant's knowledge of the existence of the lawsuit; and (10) any extensions of time for service granted by the district court. *Id.* at 516. "Underlying these considerations is the policy behind Rule 4(i)-to encourage the diligent prosecution of complaints. Rule 4(i) was not adopted, however, to become an automatic sanction when a plaintiff fails to serve the complaint within 120 days of filing. When making a determination under NRCP 4(i), the district court should recognize that "good public policy dictates that cases be adjudicated on their merits." *Id.* at 516-517 (internal cite omitted). The Court finds that Plaintiff's Motion failed to establish good cause for the untimely filing of the request for an extension of time to serve and did not include a *Scrimmer* analysis, and consequently, the Court has no information upon which to base a finding of good cause to extend the time for service of the Summons and Complaint. Based upon the foregoing, the Court will continue this matter until June 23, 2021 at 9:00 a.m. and request that Plaintiff file an Amended or Supplemental Motion, or an Addendum to the original Motion, to include a *Scrimmer* analysis and to demonstrate good cause pursuant to *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 245 P.3d 1198, 1201 (Nev. 2010). Such supplemental or amended pleading should be filed at least ten (10) days prior to the next hearing. CLERK'S NOTE: A copy of the above minute order was distributed to all parties 05-07-21./lk;

06/23/2021 **CANCELED Motion** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Vacated
Plaintiff's Pro Per Motion to Extend Time to Serve Summons and Complaint

07/08/2021  **Show Cause Hearing** (10:30 AM) (Judicial Officer: Wiese, Jerry A.)
 Matter Heard;
 Journal Entry Details:
Court stated Ms. Prosperity filed a Motion to Extend the Time to Serve, and the Court requested additional information before the Court can Grant that kind of request. However, the information was not provided, and Plaintiff filed an Amended Complaint against a completely different Deft. The Statute of Limitations may have already expired against that Defendant, but it is not for the Court to decide. Argument by Ms. Prosperity; Plaintiff confirmed the Amended Complaint is against the Driver of the car that hit Ms. Prosperity. Argument by Ms. Prosperity regarding her attempts to serve Ms. Bandy when Ms. Bandy would not provide an address. COURT ORDERED, the claim is DISMISSED against Shellie Bandy and Progressive Insurance; on the Amended Complaint against Jamie Combs, the claim is not dismissed, but Ms. Prosperity must serve Ms. Combs. CLERK'S NOTE: Minute Order created from JAVS on 10-6-2021. J. Lott;

10/27/2021 **CANCELED Motion to Dismiss** (3:00 AM) (Judicial Officer: Wiese, Jerry A.)
Vacated
Defendant Jamie Combs' Motion to Dismiss Pursuant to NRCP 12(b)(5)

02/02/2022 **CANCELED Motion to Dismiss** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Vacated - per Order
Defendant Jamie Combs' Renewed Motion to Dismiss Pursuant to NRCP 12(b)(5)

05/13/2022  **Motion** (3:00 AM) (Judicial Officer: Wiese, Jerry A.)
Plaintiff's Motion to Appeal for Extended Time
 Minute Order - No Hearing Held;
 Journal Entry Details:

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-20-817408-C

The above-referenced matter is scheduled for a decision on the Chambers Calendar for 5/13/22 with regard to Plaintiff's Motion to Appeal Time for Extended Time Not to be Dismissed. Pursuant to the Administrative Orders of the Court, as well as EDCR 2.23, this matter may be decided with or without oral argument. This Court has determined that it would be appropriate to decide this matter on the pleadings, and consequently, this minute order issues. The Court has reviewed Plaintiff's Motion to Appeal Time for Extended Time Not to be Dismissed, filed on 3/2/22, Plaintiff's Motion to Appeal for Extended Time Not Be Dismissed, filed on 4/4/22, and the Oppositions thereto. Although only the Motion filed on 3/2/22 is set for a decision, the Court will address both herein. The Court finds that Plaintiff's Motions are confusing at best. To the extent that Plaintiff requests additional time to file an Appeal, the Nevada Rules of Appellate Procedure do not provide the District Court with the authority to grant an extension. See Walker v. Scully, 99 Nev. 45, 657 P.2d 94 (1983). Based on the foregoing, the Court will take no action. The Court requests that counsel for Jamie Combs prepare an Order consistent with the Court's findings and submit it to the Court within 10 days. CLERK'S NOTE: Minute order electronically served to parties via Odyssey File & Serve. //5-13-22/dy;

DATE

FINANCIAL INFORMATION

Defendant Combs, Jamie

Total Charges

223.00

Total Payments and Credits

223.00

Balance Due as of 6/21/2022

0.00

Plaintiff Prosperity, Serenity

Total Charges

272.00

Total Payments and Credits

272.00

Balance Due as of 6/21/2022

0.00

DISTRICT COURT CIVIL COVER SHEET

CLARK

County, Nevada

CASE NO: A-20-817408-C

Case No

Department 30

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone) Serenity Prosperity P.O. Box 370112 Las Vegas, NV 89137 702-353-9722	Defendant(s) (name/address/phone) Shellie R. Bandy 4080 Boulder Highway Las Vegas NV 89121 702-680-2014 Fax 702-680-2059
Attorney (name/address/phone)	Attorney (name/address/phone)

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input checked="" type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

May 18, 2020

Date

Signature of initiating party or representative

RECEIVED
See other side for family-related case filings.

JUN 22 2020

CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

SERENITY PROSPERITY,

Plaintiff,

vs.

JAMIE COMBS, individually

Defendant.

CASE NO.: A-20-817408-C

DEPT. NO.: XXX

**ORDER RE: DEFENDANT'S
RENEWED MOTION TO
DISMISS**

INTRODUCTION

The above-referenced matter is scheduled for a hearing on February 2, 2022, with regard to Defendant, Jamie Combs' Renewed Motion to Dismiss Pursuant to NRCP 12(b)(5). Pursuant to the Administrative Orders of this Court, and EDCR 2.23, this matter may be decided with or without oral argument. This Court has determined that it would be appropriate to decide this matter on the pleadings, and consequently, this Order issues.

FACTUAL AND PROCEDURAL HISTORY

This matter stems from a motor vehicle accident which occurred on May 18, 2020. Plaintiff filed a complaint on 7/1/20 alleging injuries resulting from that motor vehicle accident, allegedly caused by Defendants. The Complaint was originally filed against Defendant Progressive Insurance and Shellie Bandy, Case Manager. It was unclear whether the Plaintiff was alleging that Bandy was the negligent driver and also a case manager for Progressive or if she was attempting to only make a claim against the insurance carrier.

On June 18, 2021, the Court entered an Order regarding Plaintiff's Pro Per Motion to Extend Time to Serve Summons and Complaint. In pertinent part the Order states:

The Complaint is unclear as to whether she is alleging Bandy is the negligent driver and also a case manager for Progressive or if she is attempting to only make a claim against the insurance carrier. In any event, the Complaint is at best confusing. An Affidavit of Attempted

1 Service by the Sherriff was filed in the case on 10/29/21, which stated the
2 Progressive office was vacant. The 120 days for service expired on or
3 about 11/1/20. On 4/6/21 Plaintiff filed the subject Motion to Extend
4 Time for Service of the Summons and Complaint, wherein she references
"trouble serving Defendant," and that the Sherriff attempted service but
due to COVID the office was closed.

5

6 Consequently, when this matter came on the Court's calendar on 5/12/21,
7 the Court issued a minute order on 5/7/21, advising the Plaintiff that her
8 Motion failed to establish good cause for the untimely filing of the request
9 for an extension of time to serve and did not include a *Scrimmer* analysis,
10 and consequently, the Court has no information upon which to base a
11 finding of good cause to extend the time for service of the Summons and
12 Complaint. The Court requested that Plaintiff file an Amended or
13 Supplemental Motion, or an Addendum to the original Motion, and
include a *Scrimmer* analysis (*Scrimmer v. Dist. Ct.*, 116 Nev. 507, 998 P.2d
1190 [2000]), and to demonstrate good cause pursuant to *Saavedra-*
Sandoval v. Wal-Mart Stores, Inc., 245 P.3d 1198, 1201 (Nev. 2010).
Such supplemental or amended pleading was to be filed at least ten (10)
days prior to the next hearing (which was set for 6/23/21).

14 See, "Order" dated June 18, 2021.

15 Because the Plaintiff had not filed a supplemental or amended pleading,
16 the Court found that Plaintiff's Motion failed to establish good cause for the
17 untimely filing of the request for an extension of time to serve. Therefore the
18 Plaintiff's Motion to Extend Time for Service was denied. Additionally, pursuant
19 to NRCP 4(e)(2), the Court issued an Order to Show Cause on June 22, 2021,
20 requiring Plaintiff appear for a hearing on July 8, 2021, to show cause why the
21 Defendants should not be dismissed. The next day, the Plaintiff filed an
22 Amended Complaint, in proper person, naming Jamie Combs, as a Defendant.

23 On July 8, 2021, the Plaintiff appeared via BlueJeans for the Show Cause
24 hearing. At the hearing, the Court first noted that the Plaintiff filed a Motion to
25 Extend the Time to Service and did not provide the court with the information
26 requested in the May 7, 2021 Minute Order. The Court noted that Plaintiff filed
27 an Amended Complaint against a completely different Defendant and that the
28 statute of limitations may have already expired against that Defendant (Jamie
Combs), but that was not the issue before the Court at that time. After argument
by Plaintiff, the Court dismissed Plaintiff's claim against Shellie Bandy and

1 Progressive Insurance. As for the Amended Complaint against Jamie Combs,
2 the Court stated it would not dismiss the Amended Complaint at that time, and
3 noted that it was unclear whether Plaintiff attempted to serve Ms. Combs.

4 On August 10, 2021, Paul A. Shpirt, Esq. of Dimopoulos Injury Law filed a
5 Notice of Association of Counsel. On August 11, 2021, Mr. Shpirt caused an
6 electronic summons to be issued on Jamie Combs. An Affidavit of Service was
7 filed on August 19, 2021, reflecting that Jamie Combs's husband, Ryan Combs,
8 accepted service at their residence on August 18, 2021. Defendant Jamie Combs
9 then filed a Motion to Dismiss on September 9, 2021. The Court denied the
10 Motion. The Court previously indicated the following:

11 Although the Court has serious concerns about the timeliness of
12 the Plaintiff's Amended Complaint, and whether the allegations
13 contained therein against Defendant, Combs, relate back to the
14 filing of the original Complaint, the Defendant has failed in her
15 burden of establishing that dismissal is required under NRCP 12,
16 and consequently, the Motion must be denied.

17 The Court noted that neither party had addressed NRCP 10 or NRCP 15
18 and/or the "relation back" doctrine.

19 On November 16, 2021, Defendant Combs filed a Renewed Motion to
20 Dismiss. On November 30, 2021, Plaintiff filed an Opposition, and on 12/14/21,
21 Defendant filed a Reply.

22 **SUMMARY OF FACTUAL AND LEGAL ARGUMENTS**

23 Defendant Combs again requests that the Court enter an Order
24 dismissing Plaintiff's claims against her with prejudice, pursuant to NRCP
25 12(b)(5). Defendant previously argued that Plaintiff's claims are barred by the
26 statute of limitations, which expired on May 18, 2020. NRS 11.190(4)(e). Not
27 only was Plaintiff's original Complaint filed nearly two months late, but the
28 operative Amended Complaint was filed more than 13 months later. Defendant
argues that there is no evidence that Plaintiff attempted to serve or completed
service of the original Complaint, on any person at any time. The Court
ultimately dismissed the original Complaint as to the original parties therein.
Plaintiff filed an Amended Complaint subsequent to the expiration of the statute
of limitations (10/29/20), on June 23, 2021, and purportedly served the
Amended Complaint on August 19, 2021. Defendant argues that no prior or

1 current party had “actual notice” of either complaint within the statutory period,
2 and consequently, the case should be dismissed.

3 Defendant argues that there is no evidence that Plaintiff attempted to
4 effectuate service on any person until August of 2021, and the statute of
5 limitations expired on 10/29/20. This Court concluded that the statute of
6 limitations was tolled from 4/1/20 through 6/30/20 (91 days), with the original
7 Complaint filed 7/1/20, and the Amended Complaint filed 7/23/21.

8 Defendant argues that the original Complaint should have been served
9 within 120 days, which would have been by 10/29/20. This Court previously
10 held that even with the addition of the time tolled (91 days), the 120 days would
11 have expired long before the 6/23/21 Amended Complaint filing date.

12 Defendant cites to the case of *Echols v. Summa Corporation*, 95 Nev.
13 720, 601 P.2d 716 (1979), which held that when a Defendant has actual notice of
14 the action before the expiration of the two year period (statute of limitations), it
15 was neither misled nor prejudiced by the subsequent amendment. Defendant
16 argues that the facts in this case are distinguishable, and in our case, neither the
17 original Defendants, nor Defendant Combs, had actual notice of the Complaint
18 within the applicable statute of limitations period, and as such, Defendant was
19 misled and prejudiced by the Amended Complaint, which was filed after the
20 statutory period. Consequently, Defendant cannot use the “relation-back”
21 doctrine to obviate her duty to serve the Defendant within the statutory period.

22 Defendant argues that the parties exchanged information at the scene of
23 the accident in May of 2018, and Plaintiff was represented by counsel, who was
24 aware of the identity of Ms. Combs, prior to the filing of the original Complaint,
25 and prior to the expiration of the applicable statute of limitations. Further,
26 Plaintiff did not file a Complaint, which provided any Does or Roes, so no
27 relation back or substitution is possible.

28 Defendant argues that this Court previously found that the statute of
limitations expired on 10/29/20, long before the June 23, 2021 Amended
Complaint was filed. Defendant argues that Plaintiff’s amendment after the
expiration of the statute of limitations was improper under NRCP 15. Further,
Defendant argues that the doctrine of “laches” resulted in an unreasonable delay

1 in pursuing the claim against Ms. Combs more than three years after the
2 accident.

3 Defendant points out that there was no mistake concerning the proper
4 party's identity as Ms. Combs provided details of her identity when the accident
5 occurred in 2018, and additionally, Plaintiff failed to plead any Doe or Roe
6 Defendants. Consequently, relation back under NRCP 10 or 15 are not available
7 to Plaintiff. Defendant asserts that in Nevada, the "fictitious defendant rule" is
8 only applicable where there is uncertainty as to the defendant's name, and that
9 was not the case here. *Hill v. Summa Corp.*, 90 Nev., at 81, 518 P.2d at 1095
(1974).

10 Defendant also argues that in order to determine whether or not the
11 amendment is proper and can survive a motion to dismiss under the relation-
12 back doctrine, the Court analyzed a 3-factor test, as set forth in *Servatius v.*
13 *United Resort Hotels*, 85 Nev. 371, 455 P.2d 621 (1969). In *Servatius*, the Court
14 held that "a proper defendant may be brought into the action after the statute of
15 limitations has run if the proper defendant (1) receives actual notice of the
16 action; (2) knows that it is the proper party; and (3) has not been misled to its
17 prejudice by the amendment." *Id.* Defendant emphasizes that she did not have
actual notice of the action during the statutory time period.

18 Defendants also cite to the case of *Hayes v. Lyon Cty.*, 2018 WL 2041533
19 (unpublished), 134 Nev. 948, citing to *Garvey v. Clark County*, 91 Nev. 127, 129
20 (1975), where the court found that because appellants conceded that they elected
21 not to name a party as a defendant when they filed the action, that party was an
22 added and not substituted party so the statute of limitations barred appellants
23 claims. The Court has also held that when a Plaintiff failed to exercise
24 reasonable diligence in ascertaining the identity of the proper defendant, the
25 Amended Complaint did not "relate back" to the filing of the original Complaint.
26 *Sparks v Alpha Tau Omega Fraternity, Inc.*, 127 Nev. 287, 295, 255 P.3d 238
27 (2011). Defendant argues that the case of *Costello v. Casler*, 127 Nev. 436 (2011)
28 is distinguishable, because in that case, the Plaintiff did not know the identity of
the Defendant, but in this case, the Plaintiff did have that information.

1 In Opposition, Plaintiff argues that Defendant's Renewed Motion to
2 Dismiss is actually an untimely motion to reconsider. Plaintiff argues that
3 Defendant seeks dismissal on the same grounds as previously litigated, in
4 violation of EDCR 2.24(a). Because Defendant did not seek leave of court before
5 filing the Motion, Plaintiff argues that the Court must deny Defendant's Motion
6 as it is procedurally deficient. Even if the Court ignores the improper "Renewed"
7 Motion and instead, sua sponte, converts the instant Motion into a Motion for
8 Reconsideration pursuant to NRCP 60, it still fails, as it does not present any
9 new Court decision, new law or facts that were not considered by this Court in
10 making its original Order.

11 EDCR 2.24(b) requires a motion for reconsideration be filed within 14
12 days after service of written notice of the order or judgment unless the time is
13 shortened or enlarged by order. Here, the Notice of Entry of Order was filed on
14 November 1, 2021 and the "Renewed" Motion was filed on November 16, 2021,
15 15 days after the Notice. In addition to untimeliness, Plaintiff argues that
16 Defendant's Motion fails as a matter of law, pursuant to NRCP 60(a) and (b).
17 Plaintiff notes that Defendant does not attempt to correct any clerical mistakes
18 or oversights, as there are none. Similarly, Defendant does not argue any
19 excusable neglect or any "newly discovered evidence that, with a reasonable
20 diligence, could not have been discovered..." Defendant also does not claim
21 fraud or other reason besides, "the Court of this one wrong," argument.
22 Accordingly, NRCP 60 (a) and (b) are inapplicable.

23 The Plaintiff's Opposition is based entirely on procedural issues, and not
24 factual issues. It does not address Rules 10 or 15 or the relation-back doctrine.

25 As the Defendant noted in the Reply, when a Motion is decided, as the
26 Defendant's initial Motion to Dismiss was, and denied "without prejudice," it
27 means that it is denied with the ability to reassert the Motion, as the Court
28 suggested, by addressing the applicable law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As this Court set forth previously, "a complaint must set forth sufficient
facts to establish all necessary elements of a claim for relief." *Hay v. Hay*, 100
Nev. 196, 198 (1984). NRCP 12(b)(5) provides that a Defendant can request a

1 dismissal by motion for the failure to state a claim upon which relief can be
2 granted. Such motions are proper where it appears to a certainty that the
3 Plaintiff is entitled to no relief under any set of facts that could be proved in
4 support of the claim. See *Bratcher v. City of Las Vegas*, 1123 Nev. 502 (1997).

5 For the purpose of considering a Rule 12(b)(5) motion, the charge of the
6 complaint is accepted as true. See *Conway v. Circus Circus Casinos, Inc.*, 116
7 Nev. 870, 873 (2000). However, the Court is “not bound to accept as true a legal
8 conclusion couched as a factual allegation.” *Papasan v. Allain*, 478 U.S. 265,
9 286 (1986); see also *George v. Morton*, 2007 WL 680787, at *6 (D. Nev. March
10 1, 2007) (stating that conclusory legal allegations and unwarranted inferences
11 will not prevent dismissal). Therefore, dismissal is proper where the allegations
12 are insufficient to establish the elements of a claim for relief. See *Brent G.*
13 *Theobald Const., Inc., v. Richardson Const., Inc.*, 122 Nev. 1163, 1166
(2006)(abrogated on other grounds by 124 Nev. 224 (2008)).

14 When considering the issue of whether a statute of limitations has
15 expired, a determination must be made as to when the figurative clock for that
16 action commenced, or started to accrue. “An action accrues when the litigant
17 discovers, or should have discovered, the existence of damages, not the exact
18 numerical extent of those damages.” *Gonzales v. Stewart Title*, 111 Nev. 1350,
19 1353 (1995)(overruled by *Kopicko v. Young* on other grounds)(emphasis in
original).

20 On April 1, 2020, Governor Sisolak entered a Declaration of Emergency
21 Directive 009 indicating that “Any specific time limit set by state statute or
22 regulation for the commencement of any legal action is hereby tolled from the
23 date of this Directive until 30 days from the date the state of emergency declared
on March 12, 2020 is terminated.

24 Declaration of Emergency Directive 026, issued on June 29, 2020,
25 indicated in part that “Directive 009 (Revised) shall terminated on June 30,
26 2020 at 11:59 pm. All time tolled by Section 2 shall recommence effective July
27 31, 2020 at 11:59 pm.

28 Based upon the above-referenced Emergency Directives, it appears that
the statute of limitations in this case, and others, was tolled from 4/1/20

1 through 6/30/20 (total of 91 days). The Complaint alleges that the subject
2 motor vehicle accident occurred on 5/18/18 and consequently, pursuant to the
3 dictates of NRS 11.190(4)(e), the Complaint needed to be filed by 5/18/20. If we
4 add the 91 days during which the Statute of Limitations was tolled by the
5 Governor, the statute would have required the filing of the Complaint by August
6 19, 2018. The original Complaint was filed 7/1/20. The Amended Complaint
7 was filed 6/23/21.

8 Pursuant to NRCP 15(a), “a party may amend its pleading once as a
9 matter of course within: A) 21 days after serving it, or B) if the pleading is one to
10 which a responsive pleading is required, 21 days after service of a responsive
11 pleading or 21 days after service of a motion under Rule 12 . . . whichever is
12 earlier.. . . In all other cases, a party may amend its pleading only with the
13 opposing party’s written consent or the court’s leave.” When the Plaintiff filed
14 her Amended Complaint, she had not yet served any Defendants, nor had any of
15 the Defendants filed a Motion. Consequently, pursuant to NRCP 15(a), she was
16 free to file her Amended Complaint. The real question is whether or not the
17 Amended Complaint “related back” to the original Complaint, for purposes of
18 analyzing the statute of limitations.

19 NRCP 10(d) indicates the following:

20 Rule 10. Form of Pleadings

21

22 (d) Using a Fictitious Name to Identify a Defendant. If the
23 name of a defendant is unknown to the pleader, the defendant may
24 be designated by any name. When the defendant’s true name is
25 discovered, the pleader should promptly substitute the actual
26 defendant for a fictitious party.

27 NRCP 10.

28 NRCP 15(c) provides as follows:

(c) **Relation Back of Amendments.** An amendment to a
pleading relates back to the date of the original pleading when:

(1) the amendment asserts a claim or defense that arose
out of the conduct, transaction, or occurrence set out — or
attempted to be set out — in the original pleading; or

(2) the amendment changes a party or the naming of a
party against whom a claim is asserted, if Rule 15(c)(1) is satisfied
and if, within the period provided by Rule 4(e) for serving the

1 summons and complaint, the party to be brought in by
2 amendment:

3 (A) received such notice of the action that it will not be
4 prejudiced in defending on the merits; and

5 (B) knew or should have known that the action would
6 have been brought against it, but for a mistake concerning the
7 proper party's identity.

8 NRCP 15.

9 In evaluating the requirements of NRCP 10 and 15, the Court notes that
10 there were no fictitious Defendants identified in the Complaint, so NRCP 10
11 would not apply. There is also no evidence that the requirements of NRCP 15
12 have been met.

13 In addressing the "relation back" doctrine, the Nevada Supreme Court has
14 indicated the following:

15 An amended pleading adding a defendant that is filed after the statute of
16 limitations has run will relate back to the date of the original pleading
17 under NRCP 15(c) if "the proper defendant (1) receives actual notice of
18 the action; (2) knows that it is the proper party; and (3) has not been
19 misled to its prejudice by the amendment." *Echols v. Summa Corp.*, 95
20 Nev. 720, 722, 601 P.2d 716, 717 (1979). NRCP 15(c) is to be liberally
21 construed to allow relation back of the amended pleading where the
22 opposing party will be put to no disadvantage. See *E.W. French & Sons,*
23 *Inc. v. General Portland Inc.*, 885 F.2d 1392, 1396 (9th Cir.1989)
24 ("[C]ourts should apply the relation back doctrine of [Federal] Rule 15(c)
25 liberally."); *University & Cmty. Coll. Sys. v. Sutton*, 120 Nev. 972, 988,
26 103 P.3d 8, 18–19 (2004) (noting the liberal policy underlying NRCP 15).
27 Modern rules of procedure are intended to allow the court to reach the
28 merits, as opposed to disposition on technical niceties. See *Schmidt v.*
Sadri, 95 Nev. 702, 705, 601 P.2d 713, 715 (1979) ("The [L]egislature
envisioned that [the Nevada Rules of Civil Procedure] would serve to
simplify existing judicial procedures and promote the speedy
determination of litigation upon its merits."). A plaintiff's right to have his
or her claim heard on its merits despite technical difficulties, however,
must be balanced against "a defendant's right to be protected from stale
claims and the attendant uncertainty they cause." *Pargman v. Vickers*,
208 Ariz. 573, 96 P.3d 571, 576 (App.2004).

Costello v. Casler, 127 Nev. 436, 24 P.3d 631 (2011).

The Court has further analyzed the difference in "substituting" the
identity of a Defendant, and the "addition" of a new Defendant, as follows:

1 The rule allowing the amendment as to a defendant's identity subsequent
2 to the running of the statute of limitations was designed to apply in the
3 situation where the plaintiff is cognizant of the identity or description of
4 the fictitiously named defendant, but not his true name. *State ex rel.*
5 *Dep't Hwys v. District Court*, 95 Nev. 715, 717, 601 P.2d 710, 711 (1979).
6 Accordingly, we have held that when a plaintiff has relied on NRCP 10(a),
7 properly alleging contemplated defendants and uncertainty as to their
8 names, subsequently providing their true names in an amended pleading,
9 a substitution is effected, not an addition of a party defendant. *Hill v.*
10 *Summa Corporation*, 90 Nev. at 81, 518 P.2d at 1095. Attempts to
11 broaden our fictitious defendant practice to encompass situations where
12 the plaintiff was ignorant not only of the defendant's name, but also of his
13 identity or even his involvement have been unsuccessful. See *Garvey v.*
14 *Clark County*, 91 Nev. 127, 532 P.2d 269 (1975); *Knight v. Witco*
15 *Chemical Co.*, 89 Nev. 586, 517 P.2d 792 (1973). We have recognized the
16 problem of allowing new parties to be brought in after the expiration of
17 the period of limitation. *Servatius v. United Resort Hotels*, 85 Nev. 371,
18 455 P.2d 621 (1969). Accordingly, we have interpreted the fictitious
19 defendant rule as providing a narrow exception, allowing the pleading of
20 fictitious defendants only where there is an uncertainty as to their names.
21 *Hill v. Summa Corporation*, 90 Nev. at 81, 518 P.2d at 1095.

22 *Lunn v. American Maintenance Corp.*, 96 Nev. 787, 790, 618 P.2d 343 (1980).

23 In *Lunn*, the Court held that the proposed amendment “brought in a new
24 party defendant and did not merely correctly identify a party defendant already
25 before the court,” and consequently, the previously filed pleadings “did not toll
26 the statute of limitations.” *Id.*, at 791.

27 In an unpublished case, the Nevada Court of Appeals considered the
28 interaction between NRCP 10 and NRCP 15, and the application of the
29 *Nurenberger* case, as they relate to the proposed addition or substitution of a
30 party. Although it is not controlling, the analysis is helpful. The Court held as
31 follows:

32 Turning to Howell's contention that the district court erred in concluding
33 that the relation back provision of NRCP 15 did not apply to his request,
34 we agree. The district court, citing *Nurenberger*, concluded that NRCP
35 15(c) has no application to situations where a plaintiff seeks to add or
36 substitute parties under NRCP 10(a), as NRCP 15(c) applies only when
37 seeking to add claims or defenses. See 107 Nev. at 882, 822 P.2d at 1106.
38 But the supreme court later specifically disavowed that conclusion as
dicta and held that “the relation back effect of NRCP 15(c) does apply to
the addition or substitution of parties.” *Costello*, 127 Nev. at 440 n.4, 254
P.3d at 634 n.4. And consistent with that holding, the advisory committee
note to the current version of NRCP 15 acknowledges that “if a fictitious-

1 party replacement does not meet the [what is now codified as] Rule 10(d)
2 test, it may be treated as an amendment to add a party under Rule 15 if
3 the standards in Rule 15 are met.” NRCP 15 advisory committee's note to
4 2019 amendment. Accordingly, the district court erred when it concluded
otherwise and declined to reach Howell's arguments with respect to
NRCP 15.

5 *Howell*, 2020 WL 7828787, 478 P.3d 410 (Table)(unpublished, NV Ct. of App.,
6 12/30/2020).

7 In *Echols v. Summa Corp.*, a restaurant customer brought suit against the
8 company he believed to own the restaurant where he was injured, as well as the
9 manufacturer of the ketchup bottle which allegedly exploded in his hands. 95
10 Nev. 720, 601 P.2d 716 (1979). After the statute of limitations had expired, he
11 amended his complaint to substitute the true owner of the restaurant as the
12 defendant. The district court dismissed the action as barred by the statute of
13 limitations, and the customer appealed. The customer argued that the
14 amendment substituting the correct owner of the restaurant related back to the
15 filing of the original complaint under NRCP 15(c), and therefore was not barred
16 by the statute of limitations. The Court cited to the case of *Servatius v. United*
17 *Resort Hotels*, 85 Nev. 371, 455 P.2d 621 (1969), in which the Court held that “a
18 proper defendant may be brought into the action after the statute of limitations
19 has run if the proper defendant (1) receives actual notice of the action; (2) knows
20 that it is the proper party; and (3) has not been misled to its prejudice by the
21 amendment. *Echols* at 720, citing *Servatius v. United Resort Hotels*, 85 Nev.
371, 455 P.2d 621 (1969).

22 The Court analyzed the three *Servatius* factors, and concluded that
23 Summa (the new Defendant) received actual notice of the action before the
24 expiration of the two year period of limitations, and it was clear to those
25 operating the Frontier that the originally named Defendant was an error.
26 Summa acknowledged that it was the proper Defendant. And finally, “Having
27 actual notice of the action before the expiration of the two year period, Summa
28 was neither misled nor prejudiced by the subsequent amendment.”
Consequently, in that case, the Court held that the amendment related back to
the filing of the original complaint pursuant to NRCP 15.

1 In the present case, there is no indication or evidence, which indicates
2 that Jamie Combs (the new Defendant), had any knowledge of the action prior
3 to the expiration of the statute of limitations. It appears, based upon the most
4 recent pleadings, that Defendant was misled to her detriment or prejudice by the
5 amendment, as the statute of limitations had expired before she ever received
6 notice of the claim and she thought she was safe.

7 In considering the language of NRCP 15(c), it appears that the Plaintiff's
8 amendment was untimely. NRCP 15(c)(2) provides as follows:

9 (c) **Relation Back of Amendments.** An amendment to a
10 pleading relates back to the date of the original pleading when:

11 (1) the amendment asserts a claim or defense that arose out
12 of the conduct, transaction, or occurrence set out — or attempted
13 to be set out — in the original pleading; or

14 (2) the amendment changes a party or the naming of a
15 party against whom a claim is asserted, if Rule 15(c)(1) is satisfied
16 and if, within the period provided by Rule 4(e) for serving the
17 summons and complaint, the party to be brought in by
18 amendment:

19 (A) received such notice of the action that it will not be
20 prejudiced in defending on the merits; and

21 (B) knew or should have known that the action would
22 have been brought against it, but for a mistake concerning the
23 proper party's identity.

24 In adding a party under this rule, the amendment relates back “if Rule
25 15(c)(1) is satisfied.” In this case, it appears that the amendment does appear to
26 assert a claim that was set out in the original pleading. The amendment,
27 however, needs to be made “within the period provided by Rule 4(e) for serving
28 the summons and complaint. . .” Rule 4(e) provides that service must be
completed “no later than 120 days after the complaint is filed.” Consequently,
Rule 15(c) appears to indicate that the party seeking to amend by bringing in a
new party, may do so only if the amendment is made within 120 days after the
filing of the original Complaint. The original Complaint in this matter was filed
on 7/1/20. 120 days later would have been 10/29/20. Even if we consider the
time tolled by the Governor's Emergency Directives, the 120 days would have
expired long before the 6/23/21 Amended Complaint filing date.

NRCP 15(c) indicates that within the above-referenced time frame (120
days from the filing of the original Complaint), the new Defendant had to have

1 received notice of the action so that she would not be prejudiced in defending on
2 the merits; and she “knew or should have known” that the action would have
3 been brought against her, but for a mistake concerning the proper party’s
4 identity.

5 There is no suggestion that the Defendant, Jamie Combs, was provided
6 with such information within the relevant time period.

7 Because this Court is considering this matter on the Defendant’s Motion
8 to Dismiss, the Court must “recognize all factual allegations in [the] Complaint
9 as true and draw all inferences in [Plaintiff’s] favor.” *Buzz Stew, LLC v. City of*
10 *North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670 (2008). Further, the
11 Complaint may only be dismissed “if it appears beyond a doubt that [Plaintiff]
12 could prove no set of facts, which, if true, would entitle it to relief.” *Id.*
13 Defendant has the “burden of proof” with regard to this Motion, and Defendant
14 has sustained the obligation to establish that Defendant did not have notice of
15 the action within the 120 days provided in NRCP 4, as applied by NRCP 15(c),
16 and that the Defendant “would be prejudiced in defending on the merits,” etc.

17 The Court finds that even viewing all allegations in favor of the Plaintiff,
18 she failed to comply with the applicable statute of limitations, and the Court
19 finds that the “relation back” doctrine cannot work to save the Plaintiff’s
20 Complaint. Consequently, the Court has no choice but to grant the Defendant’s
21 Motion and Dismiss the Amended Complaint.

22 **CONCLUSION/ORDER**

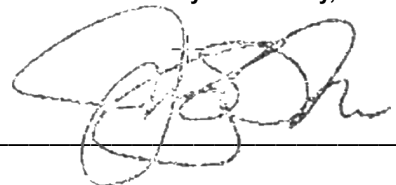
23 Based upon the foregoing, and good cause appearing,

24 **IT IS HEREBY ORDERED** that Defendant’s Motion to Dismiss is hereby
25 **GRANTED**, and the Amended Complaint is hereby **DISMISSED**.

26 The Court requests that counsel for Defendant prepare and timely process a
27 Notice of Entry relating to this Order.

28 Because this matter has been decided on the pleadings, the hearing scheduled
for 2/2/22 will be taken off calendar, and no parties nor attorneys need to appear.

Dated this 1st day of February, 2022



1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Serenity Prosperity, Plaintiff(s) | CASE NO: A-20-817408-C
7 vs. | DEPT. NO. Department 30
8 Shellie Bandy, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 2/1/2022

15 Theresa Amendola	tamendola@dennettwinspear.com
16 Jennifer Micheri	jinsley-micheri@dennettwinspear.com
17 Ashley Marchant	amarchant@dennettwinspear.com
18 Rosa Quarles	rq@stevedimopoulos.com
19 Paul Shpirt	ps@stevedimopoulos.com
20 Serenity Prosperity	Truth_1212@yahoo.com
21 Tony Amendola	aamendola@dennettwinspear.com

22
23 If indicated below, a copy of the above mentioned filings were also served by mail
24 via United States Postal Service, postage prepaid, to the parties listed below at their last
25 known addresses on 2/2/2022

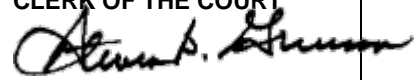
26 Jennifer Insley-Micheri	3301 N. Buffalo Drive
	Suite 195
27	Las Vegas, NV, 89129

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DISTRICT COURT
CLARK COUNTY, NEVADA

SERENTY PROSPERITY, individually,

Plaintiff,

Case No: A-20-817408-C
Dept. No: 30

vs.

JAMIE COMBS, individually,

Defendants.

**NOTICE OF ENTRY OF ORDER (GRANTING) RE: DEFENDANT'S
RENEWED MOTION TO DISMISS**

TO: ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:
YOU, AND EACH OF YOU will please take notice that an ORDER (GRANTING) RE:
DEFENDANTS RENEWED MOTION TO DIMISS was entered on the 1st day of February, 2022,
a true and correct copy of which is attached hereto and incorporated herein by this reference.

DATED this 2nd day of February, 2022.

DENNETT WINSPEAR, LLP

By /s/ Jennifer Insley Micheri
RYAN L. DENNETT, ESQ.
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), EDCR 7.26 and N.E.F.C.R. 9, I certify that on this date, I served the foregoing **ORDER (GRANTING) RE: DEFENDANT'S RENEWED MOTION TO DISMISS** on all parties to this action by the following method:

_____ Facsimile
_____ Mail
XX Electronic Service

Paul A. Shpirt, Esq.
Nevada Bar No. 10441
DIMOPOULOS INJURY LAW
6671 S., Las Vegas Blvd., Suite 275
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***Attorneys for Plaintiff,
Serenity Prosperity***

DATED this 2nd day of February, 2022.

/s/ Theresa Amendola
An Employee of DENNETT WINSPEAR, LLP

Steven S. Lerner

CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

SERENITY PROSPERITY,

Plaintiff,

VS.

JAMIE COMBS, individually

Defendant.

CASE NO.: A-20-817408-C

DEPT. NO.: XXX

**ORDER RE: DEFENDANT'S
RENEWED MOTION TO
DISMISS**

INTRODUCTION

The above-referenced matter is scheduled for a hearing on February 2, 2022, with regard to Defendant, Jamie Combs' Renewed Motion to Dismiss Pursuant to NRCp 12(b)(5). Pursuant to the Administrative Orders of this Court, and EDCR 2.23, this matter may be decided with or without oral argument. This Court has determined that it would be appropriate to decide this matter on the pleadings, and consequently, this Order issues.

FACTUAL AND PROCEDURAL HISTORY

This matter stems from a motor vehicle accident which occurred on May 18, 2020. Plaintiff filed a complaint on 7/1/20 alleging injuries resulting from that motor vehicle accident, allegedly caused by Defendants. The Complaint was originally filed against Defendant Progressive Insurance and Shellie Bandy, Case Manager. It was unclear whether the Plaintiff was alleging that Bandy was the negligent driver and also a case manager for Progressive or if she was attempting to only make a claim against the insurance carrier.

On June 18, 2021, the Court entered an Order regarding Plaintiff's Pro Per Motion to Extend Time to Serve Summons and Complaint. In pertinent part the Order states:

The Complaint is unclear as to whether she is alleging Bandy is the negligent driver and also a case manager for Progressive or if she is attempting to only make a claim against the insurance carrier. In any event, the Complaint is at best confusing. An Affidavit of Attempted

1 Service by the Sherriff was filed in the case on 10/29/21, which stated the
2 Progressive office was vacant. The 120 days for service expired on or
3 about 11/1/20. On 4/6/21 Plaintiff filed the subject Motion to Extend
4 Time for Service of the Summons and Complaint, wherein she references
"trouble serving Defendant," and that the Sherriff attempted service but
due to COVID the office was closed.

5

6 Consequently, when this matter came on the Court's calendar on 5/12/21,
7 the Court issued a minute order on 5/7/21, advising the Plaintiff that her
8 Motion failed to establish good cause for the untimely filing of the request
9 for an extension of time to serve and did not include a *Scrimmer* analysis,
10 and consequently, the Court has no information upon which to base a
11 finding of good cause to extend the time for service of the Summons and
12 Complaint. The Court requested that Plaintiff file an Amended or
13 Supplemental Motion, or an Addendum to the original Motion, and
include a *Scrimmer* analysis (*Scrimmer v. Dist. Ct.*, 116 Nev. 507, 998 P.2d
1190 [2000]), and to demonstrate good cause pursuant to *Saavedra-*
Sandoval v. Wal-Mart Stores, Inc., 245 P.3d 1198, 1201 (Nev. 2010).
Such supplemental or amended pleading was to be filed at least ten (10)
days prior to the next hearing (which was set for 6/23/21).

14 See, "Order" dated June 18, 2021.

15 Because the Plaintiff had not filed a supplemental or amended pleading,
16 the Court found that Plaintiff's Motion failed to establish good cause for the
17 untimely filing of the request for an extension of time to serve. Therefore the
18 Plaintiff's Motion to Extend Time for Service was denied. Additionally, pursuant
19 to NRCP 4(e)(2), the Court issued an Order to Show Cause on June 22, 2021,
20 requiring Plaintiff appear for a hearing on July 8, 2021, to show cause why the
21 Defendants should not be dismissed. The next day, the Plaintiff filed an
22 Amended Complaint, in proper person, naming Jamie Combs, as a Defendant.

23 On July 8, 2021, the Plaintiff appeared via BlueJeans for the Show Cause
24 hearing. At the hearing, the Court first noted that the Plaintiff filed a Motion to
25 Extend the Time to Service and did not provide the court with the information
26 requested in the May 7, 2021 Minute Order. The Court noted that Plaintiff filed
27 an Amended Complaint against a completely different Defendant and that the
28 statute of limitations may have already expired against that Defendant (Jamie
Combs), but that was not the issue before the Court at that time. After argument
by Plaintiff, the Court dismissed Plaintiff's claim against Shellie Bandy and

1 Progressive Insurance. As for the Amended Complaint against Jamie Combs,
2 the Court stated it would not dismiss the Amended Complaint at that time, and
3 noted that it was unclear whether Plaintiff attempted to serve Ms. Combs.

4 On August 10, 2021, Paul A. Shpirt, Esq. of Dimopoulos Injury Law filed a
5 Notice of Association of Counsel. On August 11, 2021, Mr. Shpirt caused an
6 electronic summons to be issued on Jamie Combs. An Affidavit of Service was
7 filed on August 19, 2021, reflecting that Jamie Combs's husband, Ryan Combs,
8 accepted service at their residence on August 18, 2021. Defendant Jamie Combs
9 then filed a Motion to Dismiss on September 9, 2021. The Court denied the
10 Motion. The Court previously indicated the following:

11 Although the Court has serious concerns about the timeliness of
12 the Plaintiff's Amended Complaint, and whether the allegations
13 contained therein against Defendant, Combs, relate back to the
14 filing of the original Complaint, the Defendant has failed in her
15 burden of establishing that dismissal is required under NRCP 12,
16 and consequently, the Motion must be denied.

17 The Court noted that neither party had addressed NRCP 10 or NRCP 15
18 and/or the "relation back" doctrine.

19 On November 16, 2021, Defendant Combs filed a Renewed Motion to
20 Dismiss. On November 30, 2021, Plaintiff filed an Opposition, and on 12/14/21,
21 Defendant filed a Reply.

22 **SUMMARY OF FACTUAL AND LEGAL ARGUMENTS**

23 Defendant Combs again requests that the Court enter an Order
24 dismissing Plaintiff's claims against her with prejudice, pursuant to NRCP
25 12(b)(5). Defendant previously argued that Plaintiff's claims are barred by the
26 statute of limitations, which expired on May 18, 2020. NRS 11.190(4)(e). Not
27 only was Plaintiff's original Complaint filed nearly two months late, but the
28 operative Amended Complaint was filed more than 13 months later. Defendant
argues that there is no evidence that Plaintiff attempted to serve or completed
service of the original Complaint, on any person at any time. The Court
ultimately dismissed the original Complaint as to the original parties therein.
Plaintiff filed an Amended Complaint subsequent to the expiration of the statute
of limitations (10/29/20), on June 23, 2021, and purportedly served the
Amended Complaint on August 19, 2021. Defendant argues that no prior or

1 current party had “actual notice” of either complaint within the statutory period,
2 and consequently, the case should be dismissed.

3 Defendant argues that there is no evidence that Plaintiff attempted to
4 effectuate service on any person until August of 2021, and the statute of
5 limitations expired on 10/29/20. This Court concluded that the statute of
6 limitations was tolled from 4/1/20 through 6/30/20 (91 days), with the original
7 Complaint filed 7/1/20, and the Amended Complaint filed 7/23/21.

8 Defendant argues that the original Complaint should have been served
9 within 120 days, which would have been by 10/29/20. This Court previously
10 held that even with the addition of the time tolled (91 days), the 120 days would
11 have expired long before the 6/23/21 Amended Complaint filing date.

12 Defendant cites to the case of *Echols v. Summa Corporation*, 95 Nev.
13 720, 601 P.2d 716 (1979), which held that when a Defendant has actual notice of
14 the action before the expiration of the two year period (statute of limitations), it
15 was neither misled nor prejudiced by the subsequent amendment. Defendant
16 argues that the facts in this case are distinguishable, and in our case, neither the
17 original Defendants, nor Defendant Combs, had actual notice of the Complaint
18 within the applicable statute of limitations period, and as such, Defendant was
19 misled and prejudiced by the Amended Complaint, which was filed after the
20 statutory period. Consequently, Defendant cannot use the “relation-back”
21 doctrine to obviate her duty to serve the Defendant within the statutory period.

22 Defendant argues that the parties exchanged information at the scene of
23 the accident in May of 2018, and Plaintiff was represented by counsel, who was
24 aware of the identity of Ms. Combs, prior to the filing of the original Complaint,
25 and prior to the expiration of the applicable statute of limitations. Further,
26 Plaintiff did not file a Complaint, which provided any Does or Roes, so no
27 relation back or substitution is possible.

28 Defendant argues that this Court previously found that the statute of
limitations expired on 10/29/20, long before the June 23, 2021 Amended
Complaint was filed. Defendant argues that Plaintiff’s amendment after the
expiration of the statute of limitations was improper under NRCP 15. Further,
Defendant argues that the doctrine of “laches” resulted in an unreasonable delay

1 in pursuing the claim against Ms. Combs more than three years after the
2 accident.

3 Defendant points out that there was no mistake concerning the proper
4 party's identity as Ms. Combs provided details of her identity when the accident
5 occurred in 2018, and additionally, Plaintiff failed to plead any Doe or Roe
6 Defendants. Consequently, relation back under NRCP 10 or 15 are not available
7 to Plaintiff. Defendant asserts that in Nevada, the "fictitious defendant rule" is
8 only applicable where there is uncertainty as to the defendant's name, and that
9 was not the case here. *Hill v. Summa Corp.*, 90 Nev., at 81, 518 P.2d at 1095
(1974).

10 Defendant also argues that in order to determine whether or not the
11 amendment is proper and can survive a motion to dismiss under the relation-
12 back doctrine, the Court analyzed a 3-factor test, as set forth in *Servatius v.*
13 *United Resort Hotels*, 85 Nev. 371, 455 P.2d 621 (1969). In *Servatius*, the Court
14 held that "a proper defendant may be brought into the action after the statute of
15 limitations has run if the proper defendant (1) receives actual notice of the
16 action; (2) knows that it is the proper party; and (3) has not been misled to its
17 prejudice by the amendment." *Id.* Defendant emphasizes that she did not have
actual notice of the action during the statutory time period.

18 Defendants also cite to the case of *Hayes v. Lyon Cty.*, 2018 WL 2041533
19 (unpublished), 134 Nev. 948, citing to *Garvey v. Clark County*, 91 Nev. 127, 129
20 (1975), where the court found that because appellants conceded that they elected
21 not to name a party as a defendant when they filed the action, that party was an
22 added and not substituted party so the statute of limitations barred appellants
23 claims. The Court has also held that when a Plaintiff failed to exercise
24 reasonable diligence in ascertaining the identity of the proper defendant, the
25 Amended Complaint did not "relate back" to the filing of the original Complaint.
26 *Sparks v Alpha Tau Omega Fraternity, Inc.*, 127 Nev. 287, 295, 255 P.3d 238
27 (2011). Defendant argues that the case of *Costello v. Casler*, 127 Nev. 436 (2011)
28 is distinguishable, because in that case, the Plaintiff did not know the identity of
the Defendant, but in this case, the Plaintiff did have that information.

1 In Opposition, Plaintiff argues that Defendant's Renewed Motion to
2 Dismiss is actually an untimely motion to reconsider. Plaintiff argues that
3 Defendant seeks dismissal on the same grounds as previously litigated, in
4 violation of EDCR 2.24(a). Because Defendant did not seek leave of court before
5 filing the Motion, Plaintiff argues that the Court must deny Defendant's Motion
6 as it is procedurally deficient. Even if the Court ignores the improper "Renewed"
7 Motion and instead, sua sponte, converts the instant Motion into a Motion for
8 Reconsideration pursuant to NRCP 60, it still fails, as it does not present any
9 new Court decision, new law or facts that were not considered by this Court in
10 making its original Order.

11 EDCR 2.24(b) requires a motion for reconsideration be filed within 14
12 days after service of written notice of the order or judgment unless the time is
13 shortened or enlarged by order. Here, the Notice of Entry of Order was filed on
14 November 1, 2021 and the "Renewed" Motion was filed on November 16, 2021,
15 15 days after the Notice. In addition to untimeliness, Plaintiff argues that
16 Defendant's Motion fails as a matter of law, pursuant to NRCP 60(a) and (b).
17 Plaintiff notes that Defendant does not attempt to correct any clerical mistakes
18 or oversights, as there are none. Similarly, Defendant does not argue any
19 excusable neglect or any "newly discovered evidence that, with a reasonable
20 diligence, could not have been discovered..." Defendant also does not claim
21 fraud or other reason besides, "the Court of this one wrong," argument.
22 Accordingly, NRCP 60 (a) and (b) are inapplicable.

23 The Plaintiff's Opposition is based entirely on procedural issues, and not
24 factual issues. It does not address Rules 10 or 15 or the relation-back doctrine.

25 As the Defendant noted in the Reply, when a Motion is decided, as the
26 Defendant's initial Motion to Dismiss was, and denied "without prejudice," it
27 means that it is denied with the ability to reassert the Motion, as the Court
28 suggested, by addressing the applicable law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As this Court set forth previously, "a complaint must set forth sufficient
facts to establish all necessary elements of a claim for relief." *Hay v. Hay*, 100
Nev. 196, 198 (1984). NRCP 12(b)(5) provides that a Defendant can request a

1 dismissal by motion for the failure to state a claim upon which relief can be
2 granted. Such motions are proper where it appears to a certainty that the
3 Plaintiff is entitled to no relief under any set of facts that could be proved in
4 support of the claim. See *Bratcher v. City of Las Vegas*, 1123 Nev. 502 (1997).

5 For the purpose of considering a Rule 12(b)(5) motion, the charge of the
6 complaint is accepted as true. See *Conway v. Circus Circus Casinos, Inc.*, 116
7 Nev. 870, 873 (2000). However, the Court is “not bound to accept as true a legal
8 conclusion couched as a factual allegation.” *Papasan v. Allain*, 478 U.S. 265,
9 286 (1986); see also *George v. Morton*, 2007 WL 680787, at *6 (D. Nev. March
10 1, 2007) (stating that conclusory legal allegations and unwarranted inferences
11 will not prevent dismissal). Therefore, dismissal is proper where the allegations
12 are insufficient to establish the elements of a claim for relief. See *Brent G.*
13 *Theobald Const., Inc., v. Richardson Const., Inc.*, 122 Nev. 1163, 1166
(2006)(abrogated on other grounds by 124 Nev. 224 (2008)).

14 When considering the issue of whether a statute of limitations has
15 expired, a determination must be made as to when the figurative clock for that
16 action commenced, or started to accrue. “An action accrues when the litigant
17 discovers, or should have discovered, the existence of damages, not the exact
18 numerical extent of those damages.” *Gonzales v. Stewart Title*, 111 Nev. 1350,
19 1353 (1995)(overruled by *Kopicko v. Young* on other grounds)(emphasis in
original).

20 On April 1, 2020, Governor Sisolak entered a Declaration of Emergency
21 Directive 009 indicating that “Any specific time limit set by state statute or
22 regulation for the commencement of any legal action is hereby tolled from the
23 date of this Directive until 30 days from the date the state of emergency declared
on March 12, 2020 is terminated.

24 Declaration of Emergency Directive 026, issued on June 29, 2020,
25 indicated in part that “Directive 009 (Revised) shall terminated on June 30,
26 2020 at 11:59 pm. All time tolled by Section 2 shall recommence effective July
27 31, 2020 at 11:59 pm.

28 Based upon the above-referenced Emergency Directives, it appears that
the statute of limitations in this case, and others, was tolled from 4/1/20

1 through 6/30/20 (total of 91 days). The Complaint alleges that the subject
2 motor vehicle accident occurred on 5/18/18 and consequently, pursuant to the
3 dictates of NRS 11.190(4)(e), the Complaint needed to be filed by 5/18/20. If we
4 add the 91 days during which the Statute of Limitations was tolled by the
5 Governor, the statute would have required the filing of the Complaint by August
6 19, 2018. The original Complaint was filed 7/1/20. The Amended Complaint
7 was filed 6/23/21.

8 Pursuant to NRCP 15(a), “a party may amend its pleading once as a
9 matter of course within: A) 21 days after serving it, or B) if the pleading is one to
10 which a responsive pleading is required, 21 days after service of a responsive
11 pleading or 21 days after service of a motion under Rule 12 . . . whichever is
12 earlier.. . . In all other cases, a party may amend its pleading only with the
13 opposing party’s written consent or the court’s leave.” When the Plaintiff filed
14 her Amended Complaint, she had not yet served any Defendants, nor had any of
15 the Defendants filed a Motion. Consequently, pursuant to NRCP 15(a), she was
16 free to file her Amended Complaint. The real question is whether or not the
17 Amended Complaint “related back” to the original Complaint, for purposes of
18 analyzing the statute of limitations.

19 NRCP 10(d) indicates the following:

20 Rule 10. Form of Pleadings

21

22 (d) Using a Fictitious Name to Identify a Defendant. If the
23 name of a defendant is unknown to the pleader, the defendant may
24 be designated by any name. When the defendant’s true name is
25 discovered, the pleader should promptly substitute the actual
26 defendant for a fictitious party.

27 NRCP 10.

28 NRCP 15(c) provides as follows:

(c) **Relation Back of Amendments.** An amendment to a
pleading relates back to the date of the original pleading when:

(1) the amendment asserts a claim or defense that arose
out of the conduct, transaction, or occurrence set out — or
attempted to be set out — in the original pleading; or

(2) the amendment changes a party or the naming of a
party against whom a claim is asserted, if Rule 15(c)(1) is satisfied
and if, within the period provided by Rule 4(e) for serving the

1 summons and complaint, the party to be brought in by
2 amendment:

3 (A) received such notice of the action that it will not be
4 prejudiced in defending on the merits; and

5 (B) knew or should have known that the action would
6 have been brought against it, but for a mistake concerning the
7 proper party's identity.

8 NRCP 15.

9 In evaluating the requirements of NRCP 10 and 15, the Court notes that
10 there were no fictitious Defendants identified in the Complaint, so NRCP 10
11 would not apply. There is also no evidence that the requirements of NRCP 15
12 have been met.

13 In addressing the "relation back" doctrine, the Nevada Supreme Court has
14 indicated the following:

15 An amended pleading adding a defendant that is filed after the statute of
16 limitations has run will relate back to the date of the original pleading
17 under NRCP 15(c) if "the proper defendant (1) receives actual notice of
18 the action; (2) knows that it is the proper party; and (3) has not been
19 misled to its prejudice by the amendment." *Echols v. Summa Corp.*, 95
20 Nev. 720, 722, 601 P.2d 716, 717 (1979). NRCP 15(c) is to be liberally
21 construed to allow relation back of the amended pleading where the
22 opposing party will be put to no disadvantage. See *E.W. French & Sons,*
23 *Inc. v. General Portland Inc.*, 885 F.2d 1392, 1396 (9th Cir.1989)
24 ("[C]ourts should apply the relation back doctrine of [Federal] Rule 15(c)
25 liberally."); *University & Cmty. Coll. Sys. v. Sutton*, 120 Nev. 972, 988,
26 103 P.3d 8, 18–19 (2004) (noting the liberal policy underlying NRCP 15).
27 Modern rules of procedure are intended to allow the court to reach the
28 merits, as opposed to disposition on technical niceties. See *Schmidt v.*
Sadri, 95 Nev. 702, 705, 601 P.2d 713, 715 (1979) ("The [L]egislature
envisioned that [the Nevada Rules of Civil Procedure] would serve to
simplify existing judicial procedures and promote the speedy
determination of litigation upon its merits."). A plaintiff's right to have his
or her claim heard on its merits despite technical difficulties, however,
must be balanced against "a defendant's right to be protected from stale
claims and the attendant uncertainty they cause." *Pargman v. Vickers*,
208 Ariz. 573, 96 P.3d 571, 576 (App.2004).

Costello v. Casler, 127 Nev. 436, 24 P.3d 631 (2011).

The Court has further analyzed the difference in "substituting" the
identity of a Defendant, and the "addition" of a new Defendant, as follows:

1 The rule allowing the amendment as to a defendant's identity subsequent
2 to the running of the statute of limitations was designed to apply in the
3 situation where the plaintiff is cognizant of the identity or description of
4 the fictitiously named defendant, but not his true name. *State ex rel.*
5 *Dep't Hwys v. District Court*, 95 Nev. 715, 717, 601 P.2d 710, 711 (1979).
6 Accordingly, we have held that when a plaintiff has relied on NRCP 10(a),
7 properly alleging contemplated defendants and uncertainty as to their
8 names, subsequently providing their true names in an amended pleading,
9 a substitution is effected, not an addition of a party defendant. *Hill v.*
10 *Summa Corporation*, 90 Nev. at 81, 518 P.2d at 1095. Attempts to
11 broaden our fictitious defendant practice to encompass situations where
12 the plaintiff was ignorant not only of the defendant's name, but also of his
13 identity or even his involvement have been unsuccessful. See *Garvey v.*
14 *Clark County*, 91 Nev. 127, 532 P.2d 269 (1975); *Knight v. Witco*
15 *Chemical Co.*, 89 Nev. 586, 517 P.2d 792 (1973). We have recognized the
16 problem of allowing new parties to be brought in after the expiration of
17 the period of limitation. *Servatius v. United Resort Hotels*, 85 Nev. 371,
18 455 P.2d 621 (1969). Accordingly, we have interpreted the fictitious
19 defendant rule as providing a narrow exception, allowing the pleading of
20 fictitious defendants only where there is an uncertainty as to their names.
21 *Hill v. Summa Corporation*, 90 Nev. at 81, 518 P.2d at 1095.

22 *Lunn v. American Maintenance Corp.*, 96 Nev. 787, 790, 618 P.2d 343 (1980).

23 In *Lunn*, the Court held that the proposed amendment “brought in a new
24 party defendant and did not merely correctly identify a party defendant already
25 before the court,” and consequently, the previously filed pleadings “did not toll
26 the statute of limitations.” *Id.*, at 791.

27 In an unpublished case, the Nevada Court of Appeals considered the
28 interaction between NRCP 10 and NRCP 15, and the application of the
29 *Nurenberger* case, as they relate to the proposed addition or substitution of a
30 party. Although it is not controlling, the analysis is helpful. The Court held as
31 follows:

32 Turning to Howell's contention that the district court erred in concluding
33 that the relation back provision of NRCP 15 did not apply to his request,
34 we agree. The district court, citing *Nurenberger*, concluded that NRCP
35 15(c) has no application to situations where a plaintiff seeks to add or
36 substitute parties under NRCP 10(a), as NRCP 15(c) applies only when
37 seeking to add claims or defenses. See 107 Nev. at 882, 822 P.2d at 1106.
38 But the supreme court later specifically disavowed that conclusion as
dicta and held that “the relation back effect of NRCP 15(c) does apply to
the addition or substitution of parties.” *Costello*, 127 Nev. at 440 n.4, 254
P.3d at 634 n.4. And consistent with that holding, the advisory committee
note to the current version of NRCP 15 acknowledges that “if a fictitious-

1 party replacement does not meet the [what is now codified as] Rule 10(d)
2 test, it may be treated as an amendment to add a party under Rule 15 if
3 the standards in Rule 15 are met.” NRCP 15 advisory committee's note to
4 2019 amendment. Accordingly, the district court erred when it concluded
otherwise and declined to reach Howell's arguments with respect to
NRCP 15.

5 *Howell*, 2020 WL 7828787, 478 P.3d 410 (Table)(unpublished, NV Ct. of App.,
6 12/30/2020).

7 In *Echols v. Summa Corp.*, a restaurant customer brought suit against the
8 company he believed to own the restaurant where he was injured, as well as the
9 manufacturer of the ketchup bottle which allegedly exploded in his hands. 95
10 Nev. 720, 601 P.2d 716 (1979). After the statute of limitations had expired, he
11 amended his complaint to substitute the true owner of the restaurant as the
12 defendant. The district court dismissed the action as barred by the statute of
13 limitations, and the customer appealed. The customer argued that the
14 amendment substituting the correct owner of the restaurant related back to the
15 filing of the original complaint under NRCP 15(c), and therefore was not barred
16 by the statute of limitations. The Court cited to the case of *Servatius v. United*
17 *Resort Hotels*, 85 Nev. 371, 455 P.2d 621 (1969), in which the Court held that “a
18 proper defendant may be brought into the action after the statute of limitations
19 has run if the proper defendant (1) receives actual notice of the action; (2) knows
20 that it is the proper party; and (3) has not been misled to its prejudice by the
21 amendment. *Echols* at 720, citing *Servatius v. United Resort Hotels*, 85 Nev.
371, 455 P.2d 621 (1969).

22 The Court analyzed the three *Servatius* factors, and concluded that
23 Summa (the new Defendant) received actual notice of the action before the
24 expiration of the two year period of limitations, and it was clear to those
25 operating the Frontier that the originally named Defendant was an error.
26 Summa acknowledged that it was the proper Defendant. And finally, “Having
27 actual notice of the action before the expiration of the two year period, Summa
28 was neither misled nor prejudiced by the subsequent amendment.”
Consequently, in that case, the Court held that the amendment related back to
the filing of the original complaint pursuant to NRCP 15.

1 In the present case, there is no indication or evidence, which indicates
2 that Jamie Combs (the new Defendant), had any knowledge of the action prior
3 to the expiration of the statute of limitations. It appears, based upon the most
4 recent pleadings, that Defendant was misled to her detriment or prejudice by the
5 amendment, as the statute of limitations had expired before she ever received
6 notice of the claim and she thought she was safe.

7 In considering the language of NRCP 15(c), it appears that the Plaintiff's
8 amendment was untimely. NRCP 15(c)(2) provides as follows:

9 (c) **Relation Back of Amendments.** An amendment to a
10 pleading relates back to the date of the original pleading when:

11 (1) the amendment asserts a claim or defense that arose out
12 of the conduct, transaction, or occurrence set out — or attempted
13 to be set out — in the original pleading; or

14 (2) the amendment changes a party or the naming of a
15 party against whom a claim is asserted, if Rule 15(c)(1) is satisfied
16 and if, within the period provided by Rule 4(e) for serving the
17 summons and complaint, the party to be brought in by
18 amendment:

19 (A) received such notice of the action that it will not be
20 prejudiced in defending on the merits; and

21 (B) knew or should have known that the action would
22 have been brought against it, but for a mistake concerning the
23 proper party's identity.

24 In adding a party under this rule, the amendment relates back “if Rule
25 15(c)(1) is satisfied.” In this case, it appears that the amendment does appear to
26 assert a claim that was set out in the original pleading. The amendment,
27 however, needs to be made “within the period provided by Rule 4(e) for serving
28 the summons and complaint. . .” Rule 4(e) provides that service must be
completed “no later than 120 days after the complaint is filed.” Consequently,
Rule 15(c) appears to indicate that the party seeking to amend by bringing in a
new party, may do so only if the amendment is made within 120 days after the
filing of the original Complaint. The original Complaint in this matter was filed
on 7/1/20. 120 days later would have been 10/29/20. Even if we consider the
time tolled by the Governor's Emergency Directives, the 120 days would have
expired long before the 6/23/21 Amended Complaint filing date.

NRCP 15(c) indicates that within the above-referenced time frame (120
days from the filing of the original Complaint), the new Defendant had to have

1 received notice of the action so that she would not be prejudiced in defending on
2 the merits; and she “knew or should have known” that the action would have
3 been brought against her, but for a mistake concerning the proper party’s
4 identity.

5 There is no suggestion that the Defendant, Jamie Combs, was provided
6 with such information within the relevant time period.

7 Because this Court is considering this matter on the Defendant’s Motion
8 to Dismiss, the Court must “recognize all factual allegations in [the] Complaint
9 as true and draw all inferences in [Plaintiff’s] favor.” *Buzz Stew, LLC v. City of*
10 *North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670 (2008). Further, the
11 Complaint may only be dismissed “if it appears beyond a doubt that [Plaintiff]
12 could prove no set of facts, which, if true, would entitle it to relief.” *Id.*
13 Defendant has the “burden of proof” with regard to this Motion, and Defendant
14 has sustained the obligation to establish that Defendant did not have notice of
15 the action within the 120 days provided in NRCP 4, as applied by NRCP 15(c),
16 and that the Defendant “would be prejudiced in defending on the merits,” etc.

17 The Court finds that even viewing all allegations in favor of the Plaintiff,
18 she failed to comply with the applicable statute of limitations, and the Court
19 finds that the “relation back” doctrine cannot work to save the Plaintiff’s
20 Complaint. Consequently, the Court has no choice but to grant the Defendant’s
21 Motion and Dismiss the Amended Complaint.

22 **CONCLUSION/ORDER**

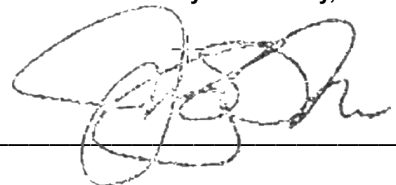
23 Based upon the foregoing, and good cause appearing,

24 **IT IS HEREBY ORDERED** that Defendant’s Motion to Dismiss is hereby
25 **GRANTED**, and the Amended Complaint is hereby **DISMISSED**.

26 The Court requests that counsel for Defendant prepare and timely process a
27 Notice of Entry relating to this Order.

28 Because this matter has been decided on the pleadings, the hearing scheduled
for 2/2/22 will be taken off calendar, and no parties nor attorneys need to appear.

Dated this 1st day of February, 2022



1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Serenity Prosperity, Plaintiff(s) | CASE NO: A-20-817408-C
7 vs. | DEPT. NO. Department 30
8 Shellie Bandy, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 2/1/2022

15 Theresa Amendola	tamendola@dennettwinspear.com
16 Jennifer Micheri	jinsley-micheri@dennettwinspear.com
17 Ashley Marchant	amarchant@dennettwinspear.com
18 Rosa Quarles	rq@stevedimopoulos.com
19 Paul Shpirt	ps@stevedimopoulos.com
20 Serenity Prosperity	Truth_1212@yahoo.com
21 Tony Amendola	aamendola@dennettwinspear.com

22
23 If indicated below, a copy of the above mentioned filings were also served by mail
24 via United States Postal Service, postage prepaid, to the parties listed below at their last
25 known addresses on 2/2/2022

26 Jennifer Insley-Micheri	3301 N. Buffalo Drive
	Suite 195
27	Las Vegas, NV, 89129

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Shellie Bandy

4080 Boulder Highway
Las Vegas, NV, 89121

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

May 07, 2021

A-20-817408-C Serenity Prosperity, Plaintiff(s)
vs.
Shellie Bandy, Defendant(s)

May 07, 2021

3:00 AM

Minute Order

HEARD BY: Wiese, Jerry A.

COURTROOM: Chambers

COURT CLERK: Lauren Kidd

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The above-referenced matter is scheduled for a hearing on 5/12/21 with regard to "Motion to Enlarge Time for Service." Pursuant to the Administrative Orders of the Court, and pursuant to EDCR 2.23, this matter may be decided with or without oral argument.

NRCP 4(e)(3) reads: "If a plaintiff files a motion for an extension of time before the 120-day service period or any extension thereof expires and shows that good cause exists for granting an extension of the service period, the court must extend the service period and set a reasonable date by which service should be made." In order to determine whether good cause exists, however, the court must analyze the case pursuant to the Scrimmer factors. Scrimmer v. Eighth Judicial District, 116 Nev. 507 (2000).

In Nevada, the application of NRCP 4 is a two pronged test. First, the Court must make a determination of whether a motion to enlarge time for service was properly made. If not, the court can only move on to the second determination "upon a showing of good cause to file an untimely motion to enlarge time." Saavedra-Sandoval v. Wal-Mart Stores, Inc., 245 P.3d 1198, 1201 (Nev. 2010). In this case, the motion was not timely filed and the Plaintiff has failed to demonstrate good cause for the filing of an untimely motion.

The second prong provides that the Court must dismiss the action unless the party raising the motion can show good cause for the delay in service. In *Scrimmer v. Dist. Ct.*, 116 Nev. 507, 513, the Nevada Supreme Court set forth the analysis to be used in determining whether a complaint must be dismissed pursuant to NRCP 4(i) for failure to show good cause why such service was not made within the period. The factors include:

- (1) difficulties in locating the defendant;
 - (2) the defendant's efforts at evading service or concealment of improper service until after the 120 day period has lapsed;
 - (3) the plaintiff's diligence in attempting to serve the defendant;
 - (4) difficulties encountered by counsel
 - (5) the running of the applicable statute of limitations
 - (6) the parties' good faith attempts to settle the litigation during the 120 day period;
 - (7) the lapse of time between the end of the 120 day period and the actual service of process on the defendant;
 - (8) the prejudice to the defendant caused by the plaintiff's delay in serving process;
 - (9) the defendant's knowledge of the existence of the lawsuit; and
 - (10) any extensions of time for service granted by the district court.
- Id. at 516.

"Underlying these considerations is the policy behind Rule 4(i)-to encourage the diligent prosecution of complaints. Rule 4(i) was not adopted, however, to become an automatic sanction when a plaintiff fails to serve the complaint within 120 days of filing. When making a determination under NRCP 4(i), the district court should recognize that "good public policy dictates that cases be adjudicated on their merits." Id. at 516-517 (internal cite omitted).

The Court finds that Plaintiff's Motion failed to establish good cause for the untimely filing of the request for an extension of time to serve and did not include a *Scrimmer* analysis, and consequently, the Court has no information upon which to base a finding of good cause to extend the time for service of the Summons and Complaint.

Based upon the foregoing, the Court will continue this matter until June 23, 2021 at 9:00 a.m. and request that Plaintiff file an Amended or Supplemental Motion, or an Addendum to the original Motion, to include a *Scrimmer* analysis and to demonstrate good cause pursuant to *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 245 P.3d 1198, 1201 (Nev. 2010). Such supplemental or amended pleading should be filed at least ten (10) days prior to the next hearing.

CLERK'S NOTE: A copy of the above minute order was distributed to all parties 05-07-21./ /lk

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

July 08, 2021

A-20-817408-C Serenity Prosperity, Plaintiff(s)
vs.
Shellie Bandy, Defendant(s)

July 08, 2021 10:30 AM Show Cause Hearing

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Lauren Kidd
Jennifer Lott

RECORDER: Vanessa Medina

REPORTER:

PARTIES

PRESENT: Prosperity, Serenity Plaintiff

JOURNAL ENTRIES

- Court stated Ms. Prosperity filed a Motion to Extend the Time to Serve, and the Court requested additional information before the Court can Grant that kind of request. However, the information was not provided, and Plaintiff filed an Amended Complaint against a completely different Deft. The Statute of Limitations may have already expired against that Defendant, but it is not for the Court to decide. Argument by Ms. Prosperity; Plaintiff confirmed the Amended Complaint is against the Driver of the car that hit Ms. Prosperity. Argument by Ms. Prosperity regarding her attempts to serve Ms. Bandy when Ms. Bandy would not provide an address. COURT ORDERED, the claim is DISMISSED against Shellie Bandy and Progressive Insurance; on the Amended Complaint against Jamie Combs, the claim is not dismissed, but Ms. Prosperity must serve Ms. Combs.

CLERK'S NOTE: Minute Order created from JAVS on 10-6-2021. J. Lott

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

May 13, 2022

A-20-817408-C	Serenity Prosperity, Plaintiff(s) vs. Shellie Bandy, Defendant(s)
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May 13, 2022	3:00 AM	Motion
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HEARD BY: Wiese, Jerry A.	COURTROOM: RJC Courtroom 14A
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COURT CLERK: Dara Yorke

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The above-referenced matter is scheduled for a decision on the Chambers Calendar for 5/13/22 with regard to Plaintiff s Motion to Appeal Time for Extended Time Not to be Dismissed. Pursuant to the Administrative Orders of the Court, as well as EDCR 2.23, this matter may be decided with or without oral argument. This Court has determined that it would be appropriate to decide this matter on the pleadings, and consequently, this minute order issues.

The Court has reviewed Plaintiff s Motion to Appeal Time for Extended Time Not to be Dismissed, filed on 3/2/22, Plaintiff s Motion to Appeal for Extended Time Not Be Dismissed, filed on 4/4/22, and the Oppositions thereto. Although only the Motion filed on 3/2/22 is set for a decision, the Court will address both herein.

The Court finds that Plaintiff s Motions are confusing at best. To the extent that Plaintiff requests additional time to file an Appeal, the Nevada Rules of Appellate Procedure do not provide the District Court with the authority to grant an extension. See Walker v. Scully, 99 Nev. 45, 657 P.2d 94 (1983).

Based on the foregoing, the Court will take no action. The Court requests that counsel for Jamie Combs prepare an Order consistent with the Court's findings and submit it to the Court within 10 days.

CLERK'S NOTE: Minute order electronically served to parties via Odyssey File & Serve. //5-13-22/dy

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

PLAINTIFF'S SSP NOTICE TO APPEAL COURT DECISION BASED UPON FALSE EVIDENCE AND MISLEADING INFORMATION PRESENTED TO THE COURT.; CASE APPEAL STATEMENT; CERTIFICATE OF MAILING; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER RE: DEFENDANT'S RENEWED MOTION TO DISMISS; NOTICE OF ENTRY OF ORDER (GRANTING) RE; DEFENDANT'S RENEWED MOTION TO DISMISS; DISTRICT COURT MINUTES

SERENITY PROSPERITY,

Plaintiff(s),

vs.

JAMIE COMBS,

Defendant(s),

Case No: A-20-817408-C

Dept No: XXX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 21 day of June 2022.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk