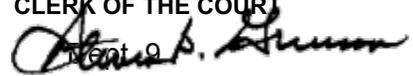


Electronically Filed
3/15/2024 10:38 PM
Steven D. Grierson
CLERK OF THE COURT



No. A-23-865757-C

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK**

Electronically Filed
Mar 21 2024 02:47 PM
Elizabeth A. Brown
Clerk of Supreme Court

Lisa Breslaw
Plaintiff
vs.
Peter Cooper
Defendant

NOTICE OF APPEAL

Notice is hereby given that Lisa Breslaw, PLAINTIFF above named, hereby, appeals to the Supreme Court of Nevada from the Order Granting Defendant's Motion to Dismiss the Complaint in case A-23-865757-C (Breslaw vs. Cooper) entered in this action on the day of March 15, 2024.

/s/Lisa Breslaw
Plaintiff, In Proper Person
7326 N. Decatur Blvd., Unit 1
Las Vegas, NV 89131
702-488-6989
lisa.breslaw@alumni.unlv.edu

CERTIFICATE OF SERVICE

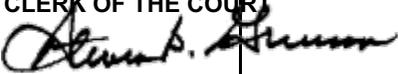
I hereby certify that on March 15, 2024, I served a true and correct copy of the foregoing:

NOTICE OF APPEAL FOR ORDER GRANTING DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

Through the electronic filing system of the Eighth Judicial District Court of the State of Nevada, pursuant to Nevada Electronic Filing and Conversion Rules upon the following:

Sagar Raich, ESQ.
NEVADA BAR NO. 13229
Brian Schneider, ESQ.
NEVADA BAR No. 15458
2280 E Pama Ln, Las Vegas, NV
Las Vegas, NV 89119
Telephone: (702) 758-4240
Fascimale (702) 998-6930
Email: sraich@raichattorneys.com
Attorneys for Defendant, Peter Cooper

/s/Lisa Breslaw
Plaintiff, In Proper Person
7326 N. Decatur Blvd., Unit 1
Las Vegas, NV 89131
702-488-6989
lisa.breslaw@alumni.unlv.edu



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**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK**

LISA BRESLAW,

Plaintiff(s),

vs.

PETER COOPER,

Defendant(s),

Case No: A-23-865757-C

Dept No: IX

CASE APPEAL STATEMENT

1. Appellant(s): Lisa Breslaw

2. Judge: Maria Gall

3. Appellant(s): Lisa Breslaw

Counsel:

Lisa Breslaw
7326 N. Decatur Blvd., Unit 1
Las Vegas, NV 89131

4. Respondent (s): Peter Cooper

Counsel:

Sagar Raich, Esq.
2280 E. Pama Ln.
Las Vegas, NV 89119

- 1
2 5. Appellant(s)'s Attorney Licensed in Nevada: N/A
3 Permission Granted: N/A
4 Respondent(s)'s Attorney Licensed in Nevada: Yes
5 Permission Granted: N/A
6
7 6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No
8
9 7. Appellant Represented by Appointed Counsel On Appeal: N/A
10
11 8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
12 **Expires 1 year from date filed
13 Appellant Filed Application to Proceed in Forma Pauperis: No
14 Date Application(s) filed: N/A
15
16 9. Date Commenced in District Court: February 14, 2023
17
18 10. Brief Description of the Nature of the Action: TORT - Intentional Misconduct
19 Type of Judgment or Order Being Appealed: Dismissal
20
21 11. Previous Appeal: Yes
22 Supreme Court Docket Number(s): 86570
23
24 12. Child Custody or Visitation: N/A
25
26 13. Possibility of Settlement: Unknown

27 Dated This 19 day of March 2024.

28 Steven D. Grierson, Clerk of the Court

29 /s/ Cierra Borum

30 Cierra Borum, Deputy Clerk
31 200 Lewis Ave
32 PO Box 551601
33 Las Vegas, Nevada 89155-1601
34 (702) 671-0512

35 cc: Lisa Breslaw
36
37
38

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-23-865757-C

Lisa Breslaw, Plaintiff(s)
vs.
Peter Cooper, Defendant(s)

§
§
§
§
§
§

Location: **Department 9**
 Judicial Officer: **Gall, Maria**
 Filed on: **02/14/2023**
 Cross-Reference Case Number: **A865757**
 Supreme Court No.: **86570**

CASE INFORMATION

Statistical Closures

03/15/2024 Motion to Dismiss by the Defendant(s)
 05/11/2023 Motion to Dismiss by the Defendant(s)

Case Type: **Intentional Misconduct**

Case Status: **03/15/2024 Dismissed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-23-865757-C
 Court Department 9
 Date Assigned 02/14/2023
 Judicial Officer Gall, Maria

PARTY INFORMATION

Plaintiff

Breslaw, Lisa D.

Lead Attorneys

Pro Se

702-488-6989(H)

Defendant

Cooper, Peter

Raich, Sagar R.

Retained

702-758-4240(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

EVENTS

02/14/2023



Summons

Filed by: Plaintiff Breslaw, Lisa D.

[1] Summons

02/14/2023



Complaint

Filed By: Plaintiff Breslaw, Lisa D.

[2] Complaint

02/14/2023



Miscellaneous Filing

Filed by: Plaintiff Breslaw, Lisa D.

[3] Exhibit 1 Professor's Name Mentioned by Plaintiff

02/14/2023



Miscellaneous Filing

Filed by: Plaintiff Breslaw, Lisa D.

[4] Exhibit 2 (Plaintiff's old Reddit Posting Threads Retrieved Etc.)

02/14/2023



Miscellaneous Filing

Filed by: Plaintiff Breslaw, Lisa D.

[5] Exhibit 3 (Dr. Gallo's name in search engine)

02/14/2023



Miscellaneous Filing

CASE SUMMARY

CASE NO. A-23-865757-C

Filed by: Plaintiff Breslaw, Lisa D.
[6] Exhibit 4 (troll accounts naming and referencing Dr. Gallo)

02/14/2023  Miscellaneous Filing
Filed by: Plaintiff Breslaw, Lisa D.
[7] Exhibit 5 (libelous SRD post)

02/14/2023  Miscellaneous Filing
Filed by: Plaintiff Breslaw, Lisa D.
[8] Exhibit 6 (Peter's harassment)

02/14/2023  Miscellaneous Filing
Filed by: Plaintiff Breslaw, Lisa D.
[9] Exhibit 7 (Cease and Desist From UNLV)

02/14/2023  Miscellaneous Filing
Filed by: Plaintiff Breslaw, Lisa D.
[10] Exhibit 8 (Police Warnings/Defendant's Confirmation of Them)

02/14/2023  Miscellaneous Filing
Filed by: Plaintiff Breslaw, Lisa D.
[11] Exhibit 9 (Affidavits of Due Diligence by Private Investigators and Process Servers from Previous Case)

02/14/2023  Miscellaneous Filing
Filed by: Plaintiff Breslaw, Lisa D.
[12] Exhibit 10 (High Cortisol Levels My Physician Attributes to Stress)

02/14/2023  Miscellaneous Filing
Filed by: Plaintiff Breslaw, Lisa D.
[13] Exhibit 11 (Transcript of Rule 60(B)(6) motion hearing Jan. 26th Case A-21-847948-C)

02/15/2023  Summons Electronically Issued - Service Pending
[14] Summons (Electronically Issued Only)

02/15/2023  Filing
Filed By: Plaintiff Breslaw, Lisa D.
[15] Exhibit Index

02/20/2023  Affidavit of Service
Filed By: Plaintiff Breslaw, Lisa D.
[16] Affidavit of Service

03/09/2023  Notice of Intent to Take Default
Party: Plaintiff Breslaw, Lisa D.
[17] Notice of Intent to Take Default

03/13/2023  Motion to Dismiss
Filed By: Defendant Cooper, Peter
[18] Defendant's Motion to Dismiss Complaint; Hearing not Requested

03/14/2023  Opposition to Motion to Dismiss
Filed By: Plaintiff Breslaw, Lisa D.
[19] Opposition to Defendant's Motion to Dismiss/Plaintiff's Motion for Expedited Discovery

CASE SUMMARY

CASE NO. A-23-865757-C

- 03/16/2023  Clerk's Notice of Hearing
[20] Notice of Hearing
- 03/16/2023  Miscellaneous Filing
Filed by: Plaintiff Breslaw, Lisa D.
[21] Exhibit Index to Opposition to Motion to Dismiss (Exhits 12-15)
- 03/16/2023  Miscellaneous Filing
Filed by: Plaintiff Breslaw, Lisa D.
[22] Exhibit 12 (Raich Law refuses to accept service of this complaint and files notice of conclusion of representation)
- 03/16/2023  Miscellaneous Filing
Filed by: Plaintiff Breslaw, Lisa D.
[23] Exhibit 13 (Defendant's PROPOSED Order asking for this matter to be finally adjudicated and my opposition)
- 03/16/2023  Miscellaneous Filing
Filed by: Plaintiff Breslaw, Lisa D.
[24] Exhibit 14 (Judge Trujillo denies my motion for alternative service bc there wasn't enough evidence linking Defendant to the Reddit accounts)
- 03/16/2023  Miscellaneous Filing
Filed by: Plaintiff Breslaw, Lisa D.
[25] Exhibit 15 (3/1/22 Order stating that the appeal divested the District Court of Jurisdiction)
- 03/19/2023  Miscellaneous Filing
Filed by: Plaintiff Breslaw, Lisa D.
[26] Exhibit 16-Tort Continuing (index/description attached to exhibit)
- 04/22/2023  Amended
Filed By: Plaintiff Breslaw, Lisa D.
[27] Amended Opposition to Defendant's Motion to Dismiss
- 04/22/2023  Amended
Filed By: Plaintiff Breslaw, Lisa D.
[28] Amended Opposition to Defendant's Motion to Dismiss
- 04/23/2023  Motion for Leave to File
[29] Leave to Amend Complaint
- 04/24/2023  Clerk's Notice of Hearing
[30] Notice of Hearing
- 04/24/2023  Notice of Change of Hearing
[31] Notice of Change of Hearing
- 04/26/2023  Reply
Filed by: Defendant Cooper, Peter
[32] Defendant's Reply to Opposition to Motion to Dismiss
- 04/27/2023  Reply to Opposition

CASE SUMMARY

CASE NO. A-23-865757-C

Filed by: Plaintiff Breslaw, Lisa D.

[33] Reply re: Defendant's Opposition to Plaintiff's Motion for Expedited Discovery and Leave to Amend Complaint

05/08/2023



Recorders Transcript of Hearing

[35] Transcript of Hearing Held on May 3, 2023

05/11/2023



Order

[36] Order

05/11/2023



Notice of Appeal

Filed By: Plaintiff Breslaw, Lisa D.

[37] Notice of Appeal

05/11/2023



Notice of Entry of Order

Filed By: Defendant Cooper, Peter

[38] Notice of Entry of Order

05/12/2023



Case Appeal Statement

[39] Case Appeal Statement

11/01/2023



NV Supreme Court Clerks Certificate/Judgment -Remanded

[40] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Reversed and Remand

11/28/2023



Motion

Filed By: Plaintiff Breslaw, Lisa D.

[41] Motion to File Supplemental Material Re: Analysis in Fausto/Jan 4, 2024 Hearing

11/29/2023



Clerk's Notice of Hearing

[42] Notice of Hearing

11/30/2023



Filing

Filed By: Plaintiff Breslaw, Lisa D.

[43] Amended Proposed Supplemental Material

12/15/2023



Supplemental

Filed by: Defendant Cooper, Peter

[44] Defendant's Supplemental Brief

12/17/2023



Filing

Filed By: Plaintiff Breslaw, Lisa D.

[45] Oppositon to Defendant's "Supplemental Brief"

01/09/2024



Order

[46] Order Granting Motion to Supplement Material Regarding Analysis in Fausto

02/08/2024



Notice of Change of Address

Filed By: Defendant Cooper, Peter

[47] Notice of Change of Address

03/15/2024



Order

[48] Order Granting Defendant's Motion to Dismiss the Complaint

CASE SUMMARY

CASE NO. A-23-865757-C

03/15/2024  Notice of Appeal
 Filed By: Plaintiff Breslaw, Lisa D.
[49] Notice of Appeal

03/18/2024  Notice of Entry of Order
 Filed By: Plaintiff Breslaw, Lisa D.
[50] Notice of Entry of Order

03/19/2024  Case Appeal Statement
Case Appeal Statement

DISPOSITIONS

03/15/2024 **Order of Dismissal With Prejudice** (Judicial Officer: Gall, Maria)
 Debtors: Lisa D. Breslaw (Plaintiff)
 Creditors: Peter Cooper (Defendant)
 Judgment: 03/15/2024, Docketed: 03/18/2024

HEARINGS

04/28/2023  **Minute Order** (3:00 AM) (Judicial Officer: Gall, Maria)
Re: Defendant's Motion to Dismiss
 Minute Order - No Hearing Held;
 Journal Entry Details:
This minute order is intended to serve as an indicative ruling/advance opinion ahead of the May 3, 2023, oral argument. The court has reviewed Defendant's motion to dismiss and is inclined to grant the motion. As an initial matter, the court rejects the notion of res judicata as applied to the prior without prejudice dismissal. "A dismissal for lack of in personam jurisdiction is not res judicata as to the merits of the claim. [A plaintiff] had the right to file another complaint on the same cause of action curing the jurisdictional defect." Kendall v. Overseas Dev. Corp., 700 F.2d 536, 539 (9th Cir. 1983). Next, Defendant argues that "the current Complaint does nothing to address that flaw, as it was served in Colorado." But, the place at which Defendant was served has nothing to do with whether the court has personal jurisdiction over Defendant. To the extent Defendant is of the position that the complaint in this matter is otherwise deficient in conferring personal jurisdiction over Defendant, Defendant has not explained why. That said, the court agrees with Defendant that the statute of limitations runs from publication of the allegedly defamatory statements. The discovery rule and/or equitable tolling might apply if Plaintiff had not discovered the statements when she did or Defendant had hid the defamatory statements, but it is undisputed that Plaintiff knew of the statements as posted on Reddit in late 2019. Plaintiff also identified the statements as being posted by Peter Cooper as late as April 2020. The fact that people sometimes use fake names to post online is not of consequence here, because at that point Plaintiff had all relevant facts needed to file her case, as shown by the fact that she filed her prior case in 2021. Accordingly, the court is inclined to grant the motion following the May 3, 2023, hearing but will hear oral argument under the guidelines set forth in its prior minute order. CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve/ kw 5.1.23;

05/03/2023 **Motion to Dismiss** (10:00 AM) (Judicial Officer: Gall, Maria)
 Events: 03/13/2023 Motion to Dismiss
Defendant's Motion to Dismiss Complaint
 Granted;

05/03/2023 **Opposition and Countermotion** (10:00 AM) (Judicial Officer: Gall, Maria)
 Events: 03/14/2023 Opposition to Motion to Dismiss
Plaintiff's Opposition to Motion to Dismiss and attached Motion for Expedited Discovery
 Denied;

05/03/2023 **Motion for Leave** (10:00 AM) (Judicial Officer: Gall, Maria)
 Events: 04/23/2023 Motion for Leave to File
Plaintiff's Leave to Amend Complaint
 Moot;

CASE SUMMARY

CASE NO. A-23-865757-C

05/03/2023

 **All Pending Motions** (10:00 AM) (Judicial Officer: Gall, Maria)

Matter Heard;

Journal Entry Details:

DEFENDANT'S MOTION TO DISMISS COMPLAINT...PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS AND ATTACHED MOTION FOR EXPEDITED DISCOVERY...PLAINTIFF'S LEAVE TO AMEND COMPLAINT Mr. Schneider advised he would reserve his argument as he was in agreement with the indicative ruling in the Minute Order. Argument by Ms. Breslaw regarding the opposition of Defendant's Motion. Colloquy regarding the prior case filed in 2021. Court advised its indicative ruling from its Minute Order stands and ORDERED, Defendant's Motion to Dismiss Complaint GRANTED. COURT FURTHER ORDERED, Plaintiff's Leave to Amend Complaint ADVANCED and DENIED AS MOOT. Mr. Schneider to prepare the order. COURT ORDERED, status check SET to ensure submission of the order. 5/19/2023 3:00 AM (CHAMBERS) STATUS CHECK: SUBMISSION OF ORDER;

05/19/2023

CANCELED Status Check (3:00 AM) (Judicial Officer: Gall, Maria)

Vacated

Status Check: Submission of Order

11/15/2023

 **Minute Order** (10:36 AM) (Judicial Officer: Gall, Maria)

Re: Supplement Hearing Setting

MINUTES

Minute Order - No Hearing Held;

Journal Entry Details:

In light of the court of appeals order, the court schedules a supplemental hearing to address the analysis in Fausto. The supplemental hearing shall be held on January 4, 2024, at 9:00 AM. CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve/ kw 11.15.23;

SCHEDULED HEARINGS

Hearing (01/04/2024 at 9:00 AM) (Judicial Officer: Gall, Maria)

Supplemental Hearing: Analysis in Fausto

01/02/2024

 **Minute Order** (11:24 AM) (Judicial Officer: Gall, Maria)

Re: Reset Motion to File Supplemental Material Hearing

Minute Order - No Hearing Held;

Journal Entry Details:

The court will hear the motion to file supplemental material, originally scheduled for its December 29, 2023, in chambers calendar, on January 4, 2024, at 9:00 AM. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Kelli Wise, to all registered parties for Odyssey File & Serve. /kw 1.2.24;

01/04/2024

Hearing (9:00 AM) (Judicial Officer: Gall, Maria)

Supplemental Hearing: Analysis in Fausto

Hearing Set;

01/04/2024

Motion (9:00 AM) (Judicial Officer: Gall, Maria)

Plaintiff's Motion to File Supplemental Material Re: Analysis in Fausto/Jan 4, 2024 Hearing

Granted;

01/04/2024

 **All Pending Motions** (9:00 AM) (Judicial Officer: Gall, Maria)

MINUTES

Matter Heard;

Journal Entry Details:

PLAINTIFF'S MOTION TO FILE SUPPLEMENTAL MATERIAL RE: ANALYSIS IN FAUSTO/JAN 4, 2024 HEARING...SUPPLEMENTAL HEARING: ANALYSIS IN FAUSTO Court advised it had received the supplements filed. Court noted this hearing was meant to act as a case management conference and status check to decide how to proceed given the appeals order, therefore supplemental material was not needed. Ms. Breslaw stated she had filed a

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-23-865757-C

supplement to ensure nothing was missed during in-person hearings. Mr. Schneider advised he also filed a response to Ms. Breslaw's supplement. Following Ms. Breslaw's argument the opposition to her supplement had been filed untimely, Court expressed the clock was going to be reset. **COURT ORDERED**, Plaintiff's Motion to File Supplemental Material Re: Analysis in Fausto/Jan 4, 2024 Hearing **GRANTED**. Court inquired if anything additional was needed to supplement the record and if oral argument was needed. Ms. Breslaw requested oral argument; Mr. Schneider agreed to oral argument, but didn't feel it was necessary. **COURT ORDERED**, oral argument **SET** on the supplemental material. 01/25/2024 9:00 AM **SUPPLEMENTAL BRIEFING ARGUMENT**;

SCHEDULED HEARINGS

 **Hearing** (01/25/2024 at 9:00 AM) (Judicial Officer: Gall, Maria)
Oral Argument: Supplemental Briefing

01/25/2024

 **Hearing** (9:00 AM) (Judicial Officer: Gall, Maria)
Oral Argument: Supplemental Briefing
Granted;
Journal Entry Details:
Mr. Schneider argued on the merits of dismissal as it relates to the Fausto analysis. Ms. Breslaw explained she had been diligently working to move this case forward and noted the mental state she had been in. **COURT ORDERED**, matter taken **UNDER SUBMISSION**. Court will issue a decision in approximately two weeks, noting it may be longer.;

DATE

FINANCIAL INFORMATION

Defendant Cooper, Peter	
Total Charges	223.00
Total Payments and Credits	223.00
Balance Due as of 3/19/2024	0.00
Plaintiff Breslaw, Lisa D.	
Total Charges	449.20
Total Payments and Credits	449.20
Balance Due as of 3/19/2024	0.00
Plaintiff Breslaw, Lisa D.	
Appeal Bond Balance as of 3/19/2024	500.00

DISTRICT COURT CIVIL COVER SHEET

Clark County, Nevada

Case No. _____
(Assigned by Clerk's Office)

CASE NO: A-23-865757-C
Department 9

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

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Lisa Breslaw	Peter Cooper
7050 Shady Palms St.	2900 Aurora Ave. Apt. 157
Las Vegas, NV 89131	Boulder, CO 80303
702-488-6989	
Attorney (name/address/phone):	Attorney (name/address/phone):
Pro Se	

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

Civil Case Filing Types

<p style="text-align: center;">Real Property</p> <p>Landlord/Tenant</p> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <p>Title to Property</p> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <p>Other Real Property</p> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<p style="text-align: center;">Negligence</p> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <p style="text-align: center;">Malpractice</p> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<p style="text-align: center;">Torts</p> <p>Other Torts</p> <input type="checkbox"/> Product Liability <input checked="" type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<p style="text-align: center;">Probate</p> <p>Probate <i>(select case type and estate value)</i></p> <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 <p>Estate Value</p> <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	<p style="text-align: center;">Construction Defect & Contract</p> <p>Construction Defect</p> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <p>Contract Case</p> <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	<p style="text-align: center;">Judicial Review/Appeal</p> <p>Judicial Review</p> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <p>Nevada State Agency Appeal</p> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <p>Appeal Other</p> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<p style="text-align: center;">Civil Writ</p> <p>Civil Writ</p> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant	<p style="text-align: center;">Other Civil Filing</p> <p>Other Civil Filing</p> <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ <p>Other Civil Filing</p> <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.

Feb. 14, 2023

Date

/s/Lisa Breslaw

Signature of initiating party or representative

See other side for family-related case filings.

1 **ORDR**

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 LISA BRESLAW,

Case No.: A-23-865757-C

5 Plaintiff,

Dept No.: IX

6 vs.

7 PETER COOPER,

8 Defendant.

9 **ORDER GRANTING DEFENDANT'S MOTION TO DISMISS THE COMPLAINT**

10 Upon consideration of the briefs and oral argument, and for the reasons
11 discussed below, the court **GRANTS** Defendant's motion to dismiss the complaint
12 **WITH PREJUDICE**. In so doing, the court adopts its previous order granting the
13 motion, as well as the following supplemental findings.

14 **I. PROCEDURAL HISTORY**

15 On March 13, 2023, Defendant Peter Cooper filed a motion to dismiss the
16 complaint, arguing the court lacks personal jurisdiction, the claims are precluded by
17 a prior suit, and the statute of limitations bars the claims.

18 On March 14, 2023, Plaintiff filed an opposition to the motion to dismiss,
19 arguing that the court has specific personal jurisdiction over Defendant due to
20 contacts with Nevada, that the prior case was not dismissed with prejudice and
21 therefore does not preclude the case at bar, and that the statute of limitations should
22 be equitably tolled. Plaintiff filed an amended opposition on April 22, 2023, adding
23 more case law in support of her statute of limitations argument.

24 On April 26, 2023, Defendant filed a reply. Defendant argued that Plaintiff's
25 personal jurisdiction argument was already rejected by the Nevada Court of Appeals,
26 that claim preclusion bars her claims, and that neither the discovery rule nor
27 equitable tolling applies to the statute of limitations here.

1 The court heard oral argument on May 3, 2023. The court issued an order
2 granting the motion to dismiss on May 11, 2023, finding Plaintiff's claims are time-
3 barred by a two-year statute of limitations. Upon consideration of the *Copeland v.*
4 *Desert Inn Hotel*, 99 Nev. 823, 826, 673 P.2d 490, 492 (1983) "enumerated tolling
5 factors, as well as other equitable factors," the court held that equitable tolling was
6 not appropriate in this case. Order, Dkt. No. 36 (May 11, 2023). The court also found
7 Plaintiff pursued her claim diligently, though it did not do so in the context of *Fausto*
8 *v. Sanchez-Flores*, as neither party briefed or argued *Fausto* for this court. *See* 137
9 Nev. 113, 114, 482 P.3d 677, 679 (2021) (holding that, in addition to the *Copeland*
10 factors, courts must consider Plaintiff's diligence and any extraordinary
11 circumstances beyond the Plaintiff's control). Consequently, the court did not
12 expressly consider or decide whether *Fausto's* required factor of extraordinary
13 circumstances beyond Plaintiff's control prevented her from timely pursuing her
14 claims.

15 Plaintiff appealed the dismissal. On November 1, 2023, the Nevada Court of
16 Appeals issued a decision affirming in part and reversing in part. The Appeals Court
17 found that this court properly analyzed the *Copeland* factors and correctly found that
18 Plaintiff diligently pursued her claim. Nevertheless, the Appeals Court reversed this
19 court's decision and remanded the matter for this court to consider the second, new
20 equitable tolling factor added to the analysis by *Fausto*—again, whether
21 extraordinary circumstances outside of Plaintiff's control caused the claim to be filed
22 outside the limitations period. *See id.*

23 Upon remand, Plaintiff moved to file supplemental briefing on November 28,
24 2023. Alongside the motion, Plaintiff filed her supplemental brief, arguing that two
25 extraordinary circumstances warrant equitable tolling in this case. First, she argued
26 a mental health crisis prevented her from recognizing the nature and extent of her
27 injuries. Second, she argued that she did not know her social media posts mentioned
28 Dr. Gallo and UNLV by name until her original case was on appeal. According to

1 Plaintiff, discovery of this fact is an extraordinary circumstance justifying equitable
2 tolling because (1) it changed the nature of her injuries, and (2) it established
3 Defendant’s minimum contacts with Nevada such that the court could now exercise
4 personal jurisdiction.

5 In response, Defendant filed a supplemental brief on December 15, 2023.
6 Defendant argued that Plaintiff already had enough evidence to file her complaint
7 when she filed the previous case. Defendant also argued that Plaintiff’s mental
8 crisis, if there was one, did not reach the level of “extraordinary circumstance”
9 sufficient to justify equitable tolling—after all, Plaintiff has returned to work, filed
10 work grievances, sought medical care, and pursued other lawsuits during the time for
11 which she sought tolling.

12 Plaintiff filed an opposition to Defendant’s supplemental brief on December 17,
13 2023. Citing case law from the U.S. District Court for the District of Columbia,
14 Plaintiff argued that equitable tolling on mental health grounds is appropriate where
15 an individual is “unable to engage in rational thought and deliberate decision
16 [making]” during the relevant statute of limitations period. *Davis v. Vilsack*, 880 F.
17 Supp. 2d 156, 162 (D.D.C. 2012). According to Plaintiff, she could not engage in
18 rational thought or deliberate decisions “regarding Dr. Gallo” during the limitations
19 period. Plaintiff also asserted that “[i]t is possible to be sane . . . in most areas of life
20 but insane regarding a particular person or situation” In other words, seeking
21 medical care and filing other lawsuits does not mean she was mentally able to handle
22 the proceedings against Dr. Gallo.

23 At a hearing on January 4, 2024, the court granted Plaintiff’s motion to file
24 supplemental material, namely because the parties’ prior briefing did not mention
25 *Fausto*, let alone apply any facts to its analysis. The parties represented that they
26 had nothing further to supplement. Plaintiff also requested oral argument on the
27 *Fausto* analysis. Defendant acquiesced.

28

1 Accordingly, the court held a hearing on the “extraordinary circumstances”
2 *Fausto* factor on January 25, 2024. Upon conclusion of oral argument, the court took
3 the matter under advisement. This order follows.

4 **II. APPLICABLE LAW**

5 Under NRCP 12(b)(5), a party may move to dismiss a complaint for failure to
6 state a claim upon which relief can be granted. Dismissal of a claim is appropriate
7 where it appears to a certainty that the Plaintiff cannot prove any set of facts that
8 would entitle them to relief. *See Bratcher v. City of Las Vegas*, 113 Nev. 502, 507,
9 937 P.2d 485, 489 (1997) (quoting *Vacation Village v. Hitachi America*, 110 Nev. 481,
10 484, 874 P.2d 744, 746 (1994)).

11 For the purpose of a Rule 12(b)(5) motion, the court accepts the facts in the
12 complaint as true and makes all reasonable inferences in favor of the non-moving
13 party. *See Conway v. Circus Circus Casinos, Inc.*, 116 Nev. 870, 873, 8 P.3d 837, 839
14 (2000). The court, however, is “not bound to accept as true a legal conclusion couched
15 as a factual allegation.” *See Papasan v. Allain*, 478 U.S. 265, 286 (1986). *See also*
16 *George v. Morton*, 2007 WL 680787, at *6 (D. Nev. March 1, 2007) (stating that
17 conclusory legal allegations and unwarranted inferences will not prevent dismissal).

18 When considering whether a statute of limitations has expired, the court must
19 determine when the action accrued. “An action accrues when the litigant discovers,
20 or should have discovered, the *existence* of damages, not the exact numerical extent
21 of those damages.” *Gonzales v. Stewart Title*, 111 Nev. 1350, 1353, 905 P.2d 176, 178
22 (1995) (emphasis in original), *overruled on other grounds by Kopicko v. Young*, 114
23 Nev. 1333, 971 P.2d 789 (1998).

24 In *Copeland v. Desert Inn Hotel*, the Nevada Supreme Court enumerated a
25 number of non-exclusive factors for courts to consider when deciding whether the
26 statute of limitations should be tolled on equitable grounds. *See* 99 Nev. 823, 826,
27 673 P.2d 490, 492 (1983). The relevant enumerated factors are “the diligence of the
28 claimant; the claimant's knowledge of the relevant facts; . . . ; any deception or false

1 assurances on the part of the [party] against whom the claim is made; the prejudice
2 to the [defendant] that would actually result from delay during the time that the
3 limitations period is tolled; and any other equitable considerations appropriate in the
4 particular case.”

5 The Supreme Court expanded on *Copeland* in *Fausto v. Sanchez-Flores*, where
6 it held that the plaintiff must also demonstrate that they “acted diligently in
7 pursuing [their] claim and that extraordinary circumstances beyond [their] control
8 caused [their] claim to be filed outside the limitations period.” 137 Nev. 113, 114, 482
9 P.3d 677, 679 (2021).

10 III. ANALYSIS

11 This court already addressed the *Copeland* factors, the *Fausto* “diligence”
12 factor, and “other equitable factors” in its original, May 11, 2023, Order. The court
13 adopts its previous findings in their entirety. Accordingly, the court need only
14 address the remaining *Fausto* “extraordinary circumstances” factor.

15 Plaintiff asserts two “extraordinary circumstances” that allegedly justify
16 equitable tolling. First, she contends her mental health at the time of posting
17 prohibited her from recognizing her injuries and filing suit. Second, she contends
18 that her failure to realize that her posts identified Dr. Gallo and UNLV by name
19 constitutes an extraordinary circumstance. As noted above, Plaintiff asserts two
20 reasons that this “undiscovered” fact constitutes an extraordinary circumstance.
21 According to Plaintiff, not only does it confer jurisdiction on Defendant, but it
22 changes the nature of her injuries.

23 A. Plaintiff’s Mental Health Issues from 2019 to Early 2021 Do Not Rise to 24 the Level of Extraordinary Circumstance.

25 Plaintiff argues that she suffered a mental breakdown from the time she
26 posted on Reddit up to and including the time she alleges Defendant made the posts
27 at issue. She claims this is an extraordinary circumstance justifying equitable tolling
28 because she could not function well enough to pursue her case.

1 The court disagrees. Though the court is not unsympathetic to Plaintiff's
2 struggles, it cannot ignore Plaintiff's own admissions indicating that she could
3 recognize her injury and pursue her claims against Defendant.

4 Around December 2019 and upon discovering Defendant's Reddit post,
5 Plaintiff began deleting her own Reddit posts—an attempt to limit the potential
6 damage to her reputation. *See* Compl. at ¶¶ 15-17. In other words, she was able to
7 recognize the injury and take steps to curb its effect.

8 But that is not the only indication that Plaintiff knew that Defendant's Reddit
9 posts could lead to actionable injury. Around April 2020, Plaintiff scoured
10 Defendant's post history and various internet accounts to identify Defendant. *See id.*
11 at ¶¶ 23-24. She then contacted Defendant's local police in South Yorkshire,
12 England—half a world away. *See id.* And, in the time leading up to January 2021,
13 Plaintiff sought attorneys to represent her in this matter. *See id.* at ¶ 31. As this
14 court recognized in its previous order, Plaintiff has diligently pursued her claim. She
15 began doing so at least as early as January 2021. But, this sort of diligence is not
16 consistent with a person suffering mental issues so severe as to justify equitable
17 tolling, even in light of *Fausto's* “extraordinary circumstances” factor.

18 Moreover, in January 2021, Plaintiff began working part time as a college-
19 level English tutor. *See* Compl. at ¶ 33. She worked as a tutor for nearly the entire
20 year. *See id.* Obtaining and holding a job that involves tutoring college students
21 suggests her mental health crisis ended at least as early as January 2021. The funds
22 from tutoring even allowed her to begin pursuing this case *pro se*—further evidence
23 that she was able to recognize her injury and pursue her claims. *See* Compl. at ¶ 33.

24 The court cannot locate a Nevada case on point, but other jurisdictions have
25 considered equitable tolling in the specific circumstance of mental health issues. *See,*
26 *e.g., Davis v. Vilsack*, 880 F.Supp. 156, 162-63 (D.D.C. 2012) (collecting cases). In
27
28

1 *Davis*, the U.S. District Court for the District of Columbia¹ recognized that equitable
2 tolling grounded in *non compos mentis* “is typically granted only in the extreme case.
3 The mere existence of mental problems or life difficulties will not suffice; rather,
4 ‘total incapacity’ is ‘necessary to warrant equitable tolling’ on *non compos mentis*
5 grounds.” *Id.* at 161-62. *See also Miller v. Rosenker*, 578 F.Supp.2d 67, 72 (D.D.C.
6 2008)) (“Suffering from a ‘severe panic disorder and depression’ is not evidence of the
7 type of ‘total incapacity’ necessary to warrant equitable tolling.”).

8 This is not an extreme case. Plaintiff does not allege or describe “total
9 incapacity.” *Miller*, 578 F.Supp.2d at 71. Her alleged facts indicate the opposite.
10 Indeed, she even admits her “feelings for Dr. Gallo never prevented her from seeking
11 medical care or *recognizing injury and wrongdoing by people other than Dr. Gallo.*”
12 Pltf’s Opp. to Deft’s Supplemental Br. at 2. By her own admissions, Plaintiff was
13 able to recognize her injury and pursue her claims during the time she asks for
14 equitable tolling.

15 B. The “Undiscovered” Fact that Plaintiff’s Posts Mentioned Dr. Gallo and
16 UNLV by Name Is Not an Extraordinary Circumstance Sufficient to
17 Justify Equitable Tolling.

18 Plaintiff next claims her failure to realize her posts mentioned Dr. Gallo and
19 UNLV by name is an extraordinary circumstance that justifies equitable tolling. She
20 proffers two arguments: first, that her discovery of these references changes the
21 nature of her injuries, and second, that the references to Dr. Gallo and UNLV confer
22 personal jurisdiction over Defendant.

23 Setting aside the fact that these were Plaintiff’s posts to begin with, the court
24 finds that this “undiscovered” fact is not an extraordinary circumstance. Its

25
26 ¹ As described in *Davis*, the District of Columbia’s equitable tolling rules take into
27 account similar considerations as Nevada courts under *Fausto*—namely,
28 extraordinary circumstances and the Plaintiff’s diligence. *Compare Davis*, 880
F.Supp.2d at 161-162 *with Fausto*, 137 Nev. at 114.

1 discovery does not change the nature of Plaintiff's injuries, and *Plaintiff's* reference
2 to Dr. Gallo or UNLV is not a sufficient contact by *Defendant* to confer specific
3 personal jurisdiction.

4 *i. Even Express References to Dr. Gallo and UNLV Do Not Change*
5 *the Nature of Plaintiff's Injuries.*

6 Plaintiff alleges injuries that include damage to her reputation, damage to her
7 career, and physical health issues. She contends the nature of these damages
8 changed when she discovered that her posts mentioned Dr. Gallo and UNLV by
9 name. She further claims that this change warrants equitable tolling of the statute
10 of limitations until she made that "discovery."

11 First, the general nature of the injury—damage to Plaintiff's reputation and
12 consequences therefrom—did not change when she discovered the posts that mention
13 Dr. Gallo and UNLV. Even before this discovery, Plaintiff was well aware that
14 Defendant's posts may have damaged her reputation—after all, she filed her previous
15 lawsuit alleging damage to her reputation before learning that Dr. Gallo and UNLV
16 could be identified. Thus, while the magnitude of Plaintiff's damages may be affected
17 by the express mention of Dr. Gallo and UNLV, the nature of her damages stays the
18 same.

19 Second, Plaintiff claims the nature of her injuries changed because naming Dr.
20 Gallo in a post led to the cease and desist letter she received from UNLV. The letter,
21 in turn, led to all of her other career-based injuries. As part of this claim, Plaintiff
22 alleges various Reddit users contacted UNLV out of concern for Dr. Gallo. She
23 asserts that those contacts were a direct result of Plaintiff identifying Dr. Gallo in
24 her posts. But even assuming that is true, it is not reasonable to infer those contacts
25 led to the cease and desist letter—presumably, the university would issue a cease
26 and desist to the individuals making the calls, rather than Plaintiff. The only
27 reasonable inference is that Plaintiff's contacts with UNLV led to the cease and
28

1 desist, not Defendant’s post or the fact that Dr. Gallo and UNLV were identifiable
2 from Plaintiff’s posts.

3 Ordinarily, the court may only consider the pleadings on a motion to dismiss.
4 *See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261
5 (1993) (“As a general rule, the court may not consider matters outside the pleading
6 being attacked.”). In reaching the above conclusion, the court did not consider the
7 text of the cease and desist letter. That said, it is within the court’s discretion to
8 consider documents attached to the pleadings or incorporated by reference, without
9 converting the motion to one for summary judgment. *See id.* (“[T]he court may take
10 into account matters of public record, orders, items presented in the record of the
11 case, and any exhibits attached to the complaint when ruling on a motion to dismiss
12 for failure to state a claim upon which relief can be granted.”). *See also* NRCP 10(c)
13 (“A copy of a written instrument that is an exhibit to a pleading is a part of the
14 pleading for all purposes.”); *Baxter v. Dignity Health*, 131 Nev. 759, 765, 357 P.3d
15 927, 930 (2015) (conversion to a summary judgment motion “is *not* triggered by a
16 court’s ‘consideration of matters incorporated by reference or integral to the
17 claim[.]’”). Here, Plaintiff filed the cease and desist letter from UNLV as an exhibit
18 to her complaint, incorporated it into her claim for damages, and argued it as a
19 grounds for equitable tolling. *See* Compl. at ¶ 44, Ex. 7; Pltf’s Supplemental Br. at 5;
20 Pltf’s Opp. to Deft’s Supplemental Br. at 4. The court therefore finds it appropriate
21 to consider the content of the cease and desist under *Breliant*, 109 Nev. at 847.

22 The text of the letter supports the conclusion that Plaintiff’s actions led to the
23 letter, not the actions of anonymous Reddit users. The letter states it “address[es]
24 your [(Plaintiff’s)] ongoing harassing behavior.” Ex. 7 to Compl. It cites Plaintiff’s
25 “numerous unwanted and harassing communications to faculty and staff,” Plaintiff’s
26 “onslaught of emails and telephone calls,” and Plaintiff’s “persistent actions”
27 Ex. 7 to Compl. It then directs Plaintiff to cease and desist contact with UNLV, not
28 the Reddit users who anonymously reached out to the university. Ex. 7 to Compl.

1 Even assuming Plaintiff is correct that the cease and desist changes the nature of her
2 damages, it is unreasonable to infer that Defendant’s post contributed to the letter,
3 rather than Plaintiff’s own contacts with UNLV.

4 Third, Plaintiff alleges more injuries than just those related to UNLV, but all
5 of those damages would have arisen regardless of the posts mentioning UNLV or Dr.
6 Gallo by name. For example, Plaintiff claims she suffered “an inordinate amount of
7 stress, distress, and humiliation,” she became “misanthropic,” and she felt “a loss of
8 dignity and embarrassment over the SRD posts and her old Reddit posts . . . being
9 made public.” Had her posts not been brought to the attention of UNLV, Plaintiff
10 still would have suffered these damages, albeit to a lesser degree. Again, this goes to
11 the magnitude of Plaintiff’s damages, not the nature.

12 Fourth, assuming the nature of Plaintiff’s injuries *did* change, it is unclear to
13 the court how that change constitutes an extraordinary circumstance that prevented
14 Plaintiff from suing within the limitations period. As discussed below, many of
15 Plaintiff’s alleged damages existed with or without posts mentioning Dr. Gallo or
16 UNLV by name. And Plaintiff did, in fact, bring a timely lawsuit before discovering
17 those posts. That is irreconcilable with *Fausto’s* requirement that the extraordinary
18 circumstance prevent the Plaintiff from filing a lawsuit within the limitations period.
19 137 Nev. at 114.

20 Accordingly, the court finds that the nature of Plaintiff’s injuries did not
21 change upon “discovery” of the posts mentioning Dr. Gallo and UNLV. Even if they
22 did, that change is not an extraordinary circumstance within the meaning of *Fausto*,
23 and it does not justify equitable tolling.

24 *ii. The Mere Mention of Dr. Gallo and UNLV in Plaintiff’s Posts*
25 *Does Not Confer Personal Jurisdiction over Defendant.*

26 Finally, Plaintiff asserts that Defendant targeted Nevada by knowingly
27 reposting and discussing posts that mention Plaintiff, Dr. Gallo, and UNLV.
28 According to Plaintiff, this constitutes such minimum contacts with Nevada that

1 exercising personal jurisdiction would be within the bounds of due process. If that
2 does confer personal jurisdiction, Plaintiff contends that her late discovery of those
3 posts therefore constitutes an extraordinary circumstance that justifies equitable
4 tolling under *Fausto*.

5 Not so. Plaintiff does not explain how *her* failure to discover the content of *her*
6 posts that *she* deleted is an extraordinary circumstance. But the court need not even
7 reach that issue, because it finds that the “newly discovered” posts do not confer
8 personal jurisdiction. Accordingly, Plaintiff’s failure to timely discover the posts is
9 irrelevant to her ability to obtain personal jurisdiction over a nonresident defendant.

10 “To obtain personal jurisdiction over a nonresident defendant, a plaintiff must
11 show: (1) that the requirements of Nevada’s long-arm statute have been satisfied,
12 and (2) that due process is not offended by the exercise of jurisdiction.” *Arbella Mut.*
13 *Ins. Co. v. Eighth Jud. Dist. Ct.*, 122 Nev. 509, 512, 134 P.3d 710, 712 (2006).
14 Nevada’s long arm statute, NRS 14.065, reaches the constitutional limits of due
15 process under the Fourteenth Amendment, which requires that the defendant have
16 such minimum contacts with the state that the defendant could reasonable anticipate
17 being haled into court here, thereby complying with “traditional notions of fair play
18 and substantial justice.” *Id.* Due process is satisfied if the contacts are sufficient to
19 obtain either general or specific personal jurisdiction. *See id.*

20 Specific personal jurisdiction exists where the cause of action arises out of the
21 *defendant’s* purposeful contacts with the forum state. *See Baker v. Eighth Jud. Dist.*
22 *Ct.*, 116 Nev. 527, 533, 999 P.2d 1020, 1024 (2000). In *Walden v. Fiore*, the Supreme
23 Court of the United States clarified that mere injury to a forum resident, without
24 more, is insufficient to establish minimum contacts with the forum state. *See* 571
25 U.S. 277, 286 (2014). “Due process requires that a defendant be haled into court in a
26 forum [s]tate based on *his own affiliation* with the [s]tate, not based on random,
27 fortuitous, or attenuated contacts he makes by interacting with other persons
28 affiliated with the State.” *Id.* (emphasis added) (internal quotations omitted).

1 The Eastern District of Michigan addressed minimum contacts in the context
2 of social media posts in *Twin Flames Universe.com, Inc. v. Cole*, 528 F.Supp. 3d 708,
3 716-17 (E.D. Mich. 2021) (citing *Blessing v. Chandrasekhar*, 988 F.3d 889 (6th Cir.
4 2021)).² The court held that it did not have personal jurisdiction over the defendant
5 because Michigan “was not the focal point of Defendant[’s] . . . posts and comments.”
6 *Id.* at 717. *See also Blessing*, 988 F.3d at 904-06 (finding that Kentucky could not
7 establish specific personal jurisdiction over non-resident defendants where
8 defendants’ only actions were posting allegedly libelous tweets on Twitter, as “[t]he
9 tweets ‘did not create sufficient contacts’ with Kentucky ‘simply because’ the
10 plaintiffs [had] Kentucky connections”). The defendant’s posts did not “specifically
11 target[]” Michigan readers and were not “directed at [Michigan] readers, as opposed
12 to the residents of other states” *Id.* Moreover, the court found “no evidence that
13 Defendant . . . posted her comments on social media ‘hoping to reach [Michigan]
14 specifically as opposed to’ her social media followers generally.” *Id.* In the face of an
15 argument that Michigan-based readers read the social media posts, the *Twin Flames*
16 court recognized that “Plaintiffs cannot rely on ‘third parties and their connections
17 with the forum state’ to establish Defendant[’s] . . . minimum contacts.” *Id.*

18 Nothing in the record shows Defendant mentioned Dr. Gallo or UNLV by
19 name.³ The focal point of Defendant’s alleged posts was Plaintiff’s actions, not UNLV
20 or the state of Nevada. Plaintiff has not established a preexisting connection
21 between her and Defendant or between Defendant and Nevada. Defendant did not
22

23 ² Like Nevada’s, Michigan’s long-arm statute reaches the limits of due process under
the U.S. Constitution.

24 ³ The only reference to Nevada by Defendant is found in a thread from
25 r/LegalAdviceUK. *See* Ex. 8 to Compl. In that post, Defendant sought advice
26 regarding a police complaint by a Las Vegas resident. *See id.* As the Court of
27 Appeals previously recognized, “this may indicate that [Defendant] eventually
became aware that [Plaintiff] was likely a citizen of Las Vegas, [but] it does not
28 demonstrate that [Defendant] directed . . . conduct towards Nevada” *Breslaw v.*
Cooper, No. 84072-COA, at 6 n.4 (Nev. Ct. App. Sept. 12, 2022).

1 post anything specifically targeted or directed at Nevada readers, as opposed to
2 residents of other states, and there is no evidence Defendant posted hoping to reach
3 Nevada specifically, as opposed to the internet generally. “[S]omething more than
4 knowledge of the Plaintiffs’ presence in the forum must be found, such as
5 purposefully reaching into the forum state to create reputational harm to the
6 plaintiff in the forum state.” *Twin Flames* at 718.

7 Assuming Plaintiff’s allegations to be true, the fact that the Reddit posts
8 caused some readers to contact UNLV also does not establish personal jurisdiction.
9 Plaintiff cannot rely on third parties’ contacts with Nevada to establish minimum
10 contacts by Defendant. *See id.* at 717.

11 The Court of Appeals reached a similar conclusion in Plaintiff’s previous case
12 against Defendant Cooper. *See Breslaw v. Cooper*, No. 84072-COA, at 6 (Nev. Ct.
13 App. Sept. 12, 2022). It found the record did not “include any competent evidence
14 that [Defendant] purposefully directed those posts towards Nevada, rather than
15 towards [Plaintiff], who happened to be a Nevada resident.” *Id.* (citing *Twin Flames*
16 528 F.Supp. 3d at 716-17 (E.D. Mich. 2021)).

17 Plaintiff’s “newly discovered” posts do not alter the analysis. Upon review of
18 the entire record, the court can only locate one instance where Plaintiff inadvertently
19 identifies Dr. Gallo, in the middle of a long string of text. Such an oblique reference,
20 standing alone, can hardly transform the focus of Defendant’s posts. Particularly so
21 where Plaintiff made the reference, and Defendant did not quote her or mention Dr.
22 Gallo by name.

23 Because this previously “undiscovered” reference to Dr. Gallo does not confer
24 personal jurisdiction, the court finds it does not rise to the level of extraordinary
25 circumstance sufficient to justify equitable tolling. Even if it did justify equitable
26 tolling, the court would be constrained to dismiss for lack of personal jurisdiction.

27
28

1 **IV. CONCLUSION**

2 Plaintiff's mental health issues do not rise to the level of an extraordinary
3 circumstance under *Fausto*. In conjunction with the court's prior consideration of
4 Plaintiff's diligence and the *Copeland* factors, the court holds that equitable tolling is
5 not justified on this ground.

6 Plaintiff has also failed to show that her late "discovery" of the post
7 mentioning Dr. Gallo constitutes an extraordinary circumstance sufficient to justify
8 equitable tolling.

9 To the extent Plaintiff raises other arguments in her supplemental *Fausto*
10 briefing, the court finds them unconvincing.

11 Accordingly, the district court **FINDS** and **ORDERS** as follows:

- 12 1. Plaintiff's claims were beyond the two-year statute of limitations when filed
13 in February 2023.
- 14 2. Defendant's Rule 12(b)(5) motion to dismiss is **GRANTED**.
- 15 3. The case is **DISMISSED WITH PREJUDICE**.

16 **IT IS SO ORDERED.**

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Dated this 15th day of March, 2024



B65 CBC EE76 4B42
Maria Gall
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Lisa Breslaw, Plaintiff(s)

CASE NO: A-23-865757-C

7 vs.

DEPT. NO. Department 9

8 Peter Cooper, 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: 3/15/2024

15 Lisa Breslaw

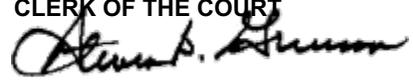
lisa.breslaw@alumni.unlv.edu

16
17 If indicated below, a copy of the above mentioned filings were also served by mail
18 via United States Postal Service, postage prepaid, to the parties listed below at their last
known addresses on 3/18/2024

19 Sagar Raich

RAICH LAW PLLC
Attn: Sagar Raich, Esq.
2280 E. Pama Lane
Las Vegas, NV, 89119

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Lisa Breslaw
7326 N. Decatur Blvd., Unit 1
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702-488-6989
lisa.breslaw@alumni.unlv.edu
Plaintiff, In Proper Person

**DISTRICT COURT
CLARK COUNTY, NV**

Lisa Breslaw
Plaintiff

Case no. A-23-865757-C
Dept. 9

Vs.

Notice of Entry of Order

Peter Cooper
Defendant

Please take notice that an ORDER was entered by the above-entitled court on March 15, 2024, a copy of which is attached hereto and made a part thereof.

DATED This 18h day of March, 2024.

/s/Lisa Breslaw
Lisa Breslaw
7326 N. Decatur Blvd., Unit 1
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702-488-6989
lisa.breslaw@alumni.unlv.edu
Plaintiff, In Proper Person

CERTIFICATE OF SERVICE

I hereby certify ha on this 18th day of March, 2024, a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER was electronically delivered to Odyssey for filing and service upon all electronic service list recipients.

/s/Lisa Breslaw
Lisa Breslaw
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Plaintiff, In Proper Person

1 **ORDR**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4 **LISA BRESLAW,**

Case No.: A-23-865757-C

5 **Plaintiff,**

Dept No.: IX

6 **vs.**

7 **PETER COOPER,**

8 **Defendant.**

9
10 **ORDER GRANTING DEFENDANT'S MOTION TO DISMISS THE COMPLAINT**

11 Upon consideration of the briefs and oral argument, and for the reasons
12 discussed below, the court **GRANTS** Defendant's motion to dismiss the complaint
13 **WITH PREJUDICE**. In so doing, the court adopts its previous order granting the
14 motion, as well as the following supplemental findings.

15 **I. PROCEDURAL HISTORY**

16 On March 13, 2023, Defendant Peter Cooper filed a motion to dismiss the
17 complaint, arguing the court lacks personal jurisdiction, the claims are precluded by
18 a prior suit, and the statute of limitations bars the claims.

19 On March 14, 2023, Plaintiff filed an opposition to the motion to dismiss,
20 arguing that the court has specific personal jurisdiction over Defendant due to
21 contacts with Nevada, that the prior case was not dismissed with prejudice and
22 therefore does not preclude the case at bar, and that the statute of limitations should
23 be equitably tolled. Plaintiff filed an amended opposition on April 22, 2023, adding
24 more case law in support of her statute of limitations argument.

25 On April 26, 2023, Defendant filed a reply. Defendant argued that Plaintiff's
26 personal jurisdiction argument was already rejected by the Nevada Court of Appeals,
27 that claim preclusion bars her claims, and that neither the discovery rule nor
28 equitable tolling applies to the statute of limitations here.

1 The court heard oral argument on May 3, 2023. The court issued an order
2 granting the motion to dismiss on May 11, 2023, finding Plaintiff's claims are time-
3 barred by a two-year statute of limitations. Upon consideration of the *Copeland v.*
4 *Desert Inn Hotel*, 99 Nev. 823, 826, 673 P.2d 490, 492 (1983) "enumerated tolling
5 factors, as well as other equitable factors," the court held that equitable tolling was
6 not appropriate in this case. Order, Dkt. No. 36 (May 11, 2023). The court also found
7 Plaintiff pursued her claim diligently, though it did not do so in the context of *Fausto*
8 *v. Sanchez-Flores*, as neither party briefed or argued *Fausto* for this court. *See* 137
9 Nev. 113, 114, 482 P.3d 677, 679 (2021) (holding that, in addition to the *Copeland*
10 factors, courts must consider Plaintiff's diligence and any extraordinary
11 circumstances beyond the Plaintiff's control). Consequently, the court did not
12 expressly consider or decide whether *Fausto's* required factor of extraordinary
13 circumstances beyond Plaintiff's control prevented her from timely pursuing her
14 claims.

15 Plaintiff appealed the dismissal. On November 1, 2023, the Nevada Court of
16 Appeals issued a decision affirming in part and reversing in part. The Appeals Court
17 found that this court properly analyzed the *Copeland* factors and correctly found that
18 Plaintiff diligently pursued her claim. Nevertheless, the Appeals Court reversed this
19 court's decision and remanded the matter for this court to consider the second, new
20 equitable tolling factor added to the analysis by *Fausto*—again, whether
21 extraordinary circumstances outside of Plaintiff's control caused the claim to be filed
22 outside the limitations period. *See id.*

23 Upon remand, Plaintiff moved to file supplemental briefing on November 28,
24 2023. Alongside the motion, Plaintiff filed her supplemental brief, arguing that two
25 extraordinary circumstances warrant equitable tolling in this case. First, she argued
26 a mental health crisis prevented her from recognizing the nature and extent of her
27 injuries. Second, she argued that she did not know her social media posts mentioned
28 Dr. Gallo and UNLV by name until her original case was on appeal. According to

1 Plaintiff, discovery of this fact is an extraordinary circumstance justifying equitable
2 tolling because (1) it changed the nature of her injuries, and (2) it established
3 Defendant’s minimum contacts with Nevada such that the court could now exercise
4 personal jurisdiction.

5 In response, Defendant filed a supplemental brief on December 15, 2023.
6 Defendant argued that Plaintiff already had enough evidence to file her complaint
7 when she filed the previous case. Defendant also argued that Plaintiff’s mental
8 crisis, if there was one, did not reach the level of “extraordinary circumstance”
9 sufficient to justify equitable tolling—after all, Plaintiff has returned to work, filed
10 work grievances, sought medical care, and pursued other lawsuits during the time for
11 which she sought tolling.

12 Plaintiff filed an opposition to Defendant’s supplemental brief on December 17,
13 2023. Citing case law from the U.S. District Court for the District of Columbia,
14 Plaintiff argued that equitable tolling on mental health grounds is appropriate where
15 an individual is “unable to engage in rational thought and deliberate decision
16 [making]” during the relevant statute of limitations period. *Davis v. Vilsack*, 880 F.
17 Supp. 2d 156, 162 (D.D.C. 2012). According to Plaintiff, she could not engage in
18 rational thought or deliberate decisions “regarding Dr. Gallo” during the limitations
19 period. Plaintiff also asserted that “[i]t is possible to be sane . . . in most areas of life
20 but insane regarding a particular person or situation” In other words, seeking
21 medical care and filing other lawsuits does not mean she was mentally able to handle
22 the proceedings against Dr. Gallo.

23 At a hearing on January 4, 2024, the court granted Plaintiff’s motion to file
24 supplemental material, namely because the parties’ prior briefing did not mention
25 *Fausto*, let alone apply any facts to its analysis. The parties represented that they
26 had nothing further to supplement. Plaintiff also requested oral argument on the
27 *Fausto* analysis. Defendant acquiesced.

28

1 Accordingly, the court held a hearing on the “extraordinary circumstances”
2 *Fausto* factor on January 25, 2024. Upon conclusion of oral argument, the court took
3 the matter under advisement. This order follows.

4 **II. APPLICABLE LAW**

5 Under NRCP 12(b)(5), a party may move to dismiss a complaint for failure to
6 state a claim upon which relief can be granted. Dismissal of a claim is appropriate
7 where it appears to a certainty that the Plaintiff cannot prove any set of facts that
8 would entitle them to relief. *See Bratcher v. City of Las Vegas*, 113 Nev. 502, 507,
9 937 P.2d 485, 489 (1997) (quoting *Vacation Village v. Hitachi America*, 110 Nev. 481,
10 484, 874 P.2d 744, 746 (1994)).

11 For the purpose of a Rule 12(b)(5) motion, the court accepts the facts in the
12 complaint as true and makes all reasonable inferences in favor of the non-moving
13 party. *See Conway v. Circus Circus Casinos, Inc.*, 116 Nev. 870, 873, 8 P.3d 837, 839
14 (2000). The court, however, is “not bound to accept as true a legal conclusion couched
15 as a factual allegation.” *See Papasan v. Allain*, 478 U.S. 265, 286 (1986). *See also*
16 *George v. Morton*, 2007 WL 680787, at *6 (D. Nev. March 1, 2007) (stating that
17 conclusory legal allegations and unwarranted inferences will not prevent dismissal).

18 When considering whether a statute of limitations has expired, the court must
19 determine when the action accrued. “An action accrues when the litigant discovers,
20 or should have discovered, the *existence* of damages, not the exact numerical extent
21 of those damages.” *Gonzales v. Stewart Title*, 111 Nev. 1350, 1353, 905 P.2d 176, 178
22 (1995) (emphasis in original), *overruled on other grounds by Kopicko v. Young*, 114
23 Nev. 1333, 971 P.2d 789 (1998).

24 In *Copeland v. Desert Inn Hotel*, the Nevada Supreme Court enumerated a
25 number of non-exclusive factors for courts to consider when deciding whether the
26 statute of limitations should be tolled on equitable grounds. *See* 99 Nev. 823, 826,
27 673 P.2d 490, 492 (1983). The relevant enumerated factors are “the diligence of the
28 claimant; the claimant's knowledge of the relevant facts; . . . ; any deception or false

1 assurances on the part of the [party] against whom the claim is made; the prejudice
2 to the [defendant] that would actually result from delay during the time that the
3 limitations period is tolled; and any other equitable considerations appropriate in the
4 particular case.”

5 The Supreme Court expanded on *Copeland* in *Fausto v. Sanchez-Flores*, where
6 it held that the plaintiff must also demonstrate that they “acted diligently in
7 pursuing [their] claim and that extraordinary circumstances beyond [their] control
8 caused [their] claim to be filed outside the limitations period.” 137 Nev. 113, 114, 482
9 P.3d 677, 679 (2021).

10 **III. ANALYSIS**

11 This court already addressed the *Copeland* factors, the *Fausto* “diligence”
12 factor, and “other equitable factors” in its original, May 11, 2023, Order. The court
13 adopts its previous findings in their entirety. Accordingly, the court need only
14 address the remaining *Fausto* “extraordinary circumstances” factor.

15 Plaintiff asserts two “extraordinary circumstances” that allegedly justify
16 equitable tolling. First, she contends her mental health at the time of posting
17 prohibited her from recognizing her injuries and filing suit. Second, she contends
18 that her failure to realize that her posts identified Dr. Gallo and UNLV by name
19 constitutes an extraordinary circumstance. As noted above, Plaintiff asserts two
20 reasons that this “undiscovered” fact constitutes an extraordinary circumstance.
21 According to Plaintiff, not only does it confer jurisdiction on Defendant, but it
22 changes the nature of her injuries.

23 A. Plaintiff’s Mental Health Issues from 2019 to Early 2021 Do Not Rise to 24 the Level of Extraordinary Circumstance.

25 Plaintiff argues that she suffered a mental breakdown from the time she
26 posted on Reddit up to and including the time she alleges Defendant made the posts
27 at issue. She claims this is an extraordinary circumstance justifying equitable tolling
28 because she could not function well enough to pursue her case.

1 The court disagrees. Though the court is not unsympathetic to Plaintiff's
2 struggles, it cannot ignore Plaintiff's own admissions indicating that she could
3 recognize her injury and pursue her claims against Defendant.

4 Around December 2019 and upon discovering Defendant's Reddit post,
5 Plaintiff began deleting her own Reddit posts—an attempt to limit the potential
6 damage to her reputation. *See* Compl. at ¶¶ 15-17. In other words, she was able to
7 recognize the injury and take steps to curb its effect.

8 But that is not the only indication that Plaintiff knew that Defendant's Reddit
9 posts could lead to actionable injury. Around April 2020, Plaintiff scoured
10 Defendant's post history and various internet accounts to identify Defendant. *See id.*
11 at ¶¶ 23-24. She then contacted Defendant's local police in South Yorkshire,
12 England—half a world away. *See id.* And, in the time leading up to January 2021,
13 Plaintiff sought attorneys to represent her in this matter. *See id.* at ¶ 31. As this
14 court recognized in its previous order, Plaintiff has diligently pursued her claim. She
15 began doing so at least as early as January 2021. But, this sort of diligence is not
16 consistent with a person suffering mental issues so severe as to justify equitable
17 tolling, even in light of *Fausto's* “extraordinary circumstances” factor.

18 Moreover, in January 2021, Plaintiff began working part time as a college-
19 level English tutor. *See* Compl. at ¶ 33. She worked as a tutor for nearly the entire
20 year. *See id.* Obtaining and holding a job that involves tutoring college students
21 suggests her mental health crisis ended at least as early as January 2021. The funds
22 from tutoring even allowed her to begin pursuing this case *pro se*—further evidence
23 that she was able to recognize her injury and pursue her claims. *See* Compl. at ¶ 33.

24 The court cannot locate a Nevada case on point, but other jurisdictions have
25 considered equitable tolling in the specific circumstance of mental health issues. *See,*
26 *e.g., Davis v. Vilsack*, 880 F.Supp. 156, 162-63 (D.D.C. 2012) (collecting cases). In
27
28

1 *Davis*, the U.S. District Court for the District of Columbia¹ recognized that equitable
2 tolling grounded in *non compos mentis* “is typically granted only in the extreme case.
3 The mere existence of mental problems or life difficulties will not suffice; rather,
4 ‘total incapacity’ is ‘necessary to warrant equitable tolling’ on *non compos mentis*
5 grounds.” *Id.* at 161-62. *See also Miller v. Rosenker*, 578 F.Supp.2d 67, 72 (D.D.C.
6 2008)) (“Suffering from a ‘severe panic disorder and depression’ is not evidence of the
7 type of ‘total incapacity’ necessary to warrant equitable tolling.”).

8 This is not an extreme case. Plaintiff does not allege or describe “total
9 incapacity.” *Miller*, 578 F.Supp.2d at 71. Her alleged facts indicate the opposite.
10 Indeed, she even admits her “feelings for Dr. Gallo never prevented her from seeking
11 medical care or *recognizing injury and wrongdoing by people other than Dr. Gallo.*”
12 Pltf’s Opp. to Deft’s Supplemental Br. at 2. By her own admissions, Plaintiff was
13 able to recognize her injury and pursue her claims during the time she asks for
14 equitable tolling.

15 B. The “Undiscovered” Fact that Plaintiff’s Posts Mentioned Dr. Gallo and
16 UNLV by Name Is Not an Extraordinary Circumstance Sufficient to
17 Justify Equitable Tolling.

18 Plaintiff next claims her failure to realize her posts mentioned Dr. Gallo and
19 UNLV by name is an extraordinary circumstance that justifies equitable tolling. She
20 proffers two arguments: first, that her discovery of these references changes the
21 nature of her injuries, and second, that the references to Dr. Gallo and UNLV confer
22 personal jurisdiction over Defendant.

23 Setting aside the fact that these were Plaintiff’s posts to begin with, the court
24 finds that this “undiscovered” fact is not an extraordinary circumstance. Its

25
26 ¹ As described in *Davis*, the District of Columbia’s equitable tolling rules take into
27 account similar considerations as Nevada courts under *Fausto*—namely,
28 extraordinary circumstances and the Plaintiff’s diligence. *Compare Davis*, 880
F.Supp.2d at 161-162 *with Fausto*, 137 Nev. at 114.

1 discovery does not change the nature of Plaintiff's injuries, and *Plaintiff's* reference
2 to Dr. Gallo or UNLV is not a sufficient contact by *Defendant* to confer specific
3 personal jurisdiction.

4 *i. Even Express References to Dr. Gallo and UNLV Do Not Change*
5 *the Nature of Plaintiff's Injuries.*

6 Plaintiff alleges injuries that include damage to her reputation, damage to her
7 career, and physical health issues. She contends the nature of these damages
8 changed when she discovered that her posts mentioned Dr. Gallo and UNLV by
9 name. She further claims that this change warrants equitable tolling of the statute
10 of limitations until she made that "discovery."

11 First, the general nature of the injury—damage to Plaintiff's reputation and
12 consequences therefrom—did not change when she discovered the posts that mention
13 Dr. Gallo and UNLV. Even before this discovery, Plaintiff was well aware that
14 Defendant's posts may have damaged her reputation—after all, she filed her previous
15 lawsuit alleging damage to her reputation before learning that Dr. Gallo and UNLV
16 could be identified. Thus, while the magnitude of Plaintiff's damages may be affected
17 by the express mention of Dr. Gallo and UNLV, the nature of her damages stays the
18 same.

19 Second, Plaintiff claims the nature of her injuries changed because naming Dr.
20 Gallo in a post led to the cease and desist letter she received from UNLV. The letter,
21 in turn, led to all of her other career-based injuries. As part of this claim, Plaintiff
22 alleges various Reddit users contacted UNLV out of concern for Dr. Gallo. She
23 asserts that those contacts were a direct result of Plaintiff identifying Dr. Gallo in
24 her posts. But even assuming that is true, it is not reasonable to infer those contacts
25 led to the cease and desist letter—presumably, the university would issue a cease
26 and desist to the individuals making the calls, rather than Plaintiff. The only
27 reasonable inference is that Plaintiff's contacts with UNLV led to the cease and
28

1 desist, not Defendant’s post or the fact that Dr. Gallo and UNLV were identifiable
2 from Plaintiff’s posts.

3 Ordinarily, the court may only consider the pleadings on a motion to dismiss.
4 *See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261
5 (1993) (“As a general rule, the court may not consider matters outside the pleading
6 being attacked.”). In reaching the above conclusion, the court did not consider the
7 text of the cease and desist letter. That said, it is within the court’s discretion to
8 consider documents attached to the pleadings or incorporated by reference, without
9 converting the motion to one for summary judgment. *See id.* (“[T]he court may take
10 into account matters of public record, orders, items presented in the record of the
11 case, and any exhibits attached to the complaint when ruling on a motion to dismiss
12 for failure to state a claim upon which relief can be granted.”). *See also* NRCP 10(c)
13 (“A copy of a written instrument that is an exhibit to a pleading is a part of the
14 pleading for all purposes.”); *Baxter v. Dignity Health*, 131 Nev. 759, 765, 357 P.3d
15 927, 930 (2015) (conversion to a summary judgment motion “is *not* triggered by a
16 court’s ‘consideration of matters incorporated by reference or integral to the
17 claim[.]’”). Here, Plaintiff filed the cease and desist letter from UNLV as an exhibit
18 to her complaint, incorporated it into her claim for damages, and argued it as a
19 grounds for equitable tolling. *See* Compl. at ¶ 44, Ex. 7; Pltf’s Supplemental Br. at 5;
20 Pltf’s Opp. to Deft’s Supplemental Br. at 4. The court therefore finds it appropriate
21 to consider the content of the cease and desist under *Breliant*, 109 Nev. at 847.

22 The text of the letter supports the conclusion that Plaintiff’s actions led to the
23 letter, not the actions of anonymous Reddit users. The letter states it “address[es]
24 your [(Plaintiff’s)] ongoing harassing behavior.” Ex. 7 to Compl. It cites Plaintiff’s
25 “numerous unwanted and harassing communications to faculty and staff,” Plaintiff’s
26 “onslaught of emails and telephone calls,” and Plaintiff’s “persistent actions”
27 Ex. 7 to Compl. It then directs Plaintiff to cease and desist contact with UNLV, not
28 the Reddit users who anonymously reached out to the university. Ex. 7 to Compl.

1 Even assuming Plaintiff is correct that the cease and desist changes the nature of her
2 damages, it is unreasonable to infer that Defendant's post contributed to the letter,
3 rather than Plaintiff's own contacts with UNLV.

4 Third, Plaintiff alleges more injuries than just those related to UNLV, but all
5 of those damages would have arisen regardless of the posts mentioning UNLV or Dr.
6 Gallo by name. For example, Plaintiff claims she suffered "an inordinate amount of
7 stress, distress, and humiliation," she became "misanthropic," and she felt "a loss of
8 dignity and embarrassment over the SRD posts and her old Reddit posts . . . being
9 made public." Had her posts not been brought to the attention of UNLV, Plaintiff
10 still would have suffered these damages, albeit to a lesser degree. Again, this goes to
11 the magnitude of Plaintiff's damages, not the nature.

12 Fourth, assuming the nature of Plaintiff's injuries *did* change, it is unclear to
13 the court how that change constitutes an extraordinary circumstance that prevented
14 Plaintiff from suing within the limitations period. As discussed below, many of
15 Plaintiff's alleged damages existed with or without posts mentioning Dr. Gallo or
16 UNLV by name. And Plaintiff did, in fact, bring a timely lawsuit before discovering
17 those posts. That is irreconcilable with *Fausto's* requirement that the extraordinary
18 circumstance prevent the Plaintiff from filing a lawsuit within the limitations period.
19 137 Nev. at 114.

20 Accordingly, the court finds that the nature of Plaintiff's injuries did not
21 change upon "discovery" of the posts mentioning Dr. Gallo and UNLV. Even if they
22 did, that change is not an extraordinary circumstance within the meaning of *Fausto*,
23 and it does not justify equitable tolling.

24 *ii. The Mere Mention of Dr. Gallo and UNLV in Plaintiff's Posts*
25 *Does Not Confer Personal Jurisdiction over Defendant.*

26 Finally, Plaintiff asserts that Defendant targeted Nevada by knowingly
27 reposting and discussing posts that mention Plaintiff, Dr. Gallo, and UNLV.
28 According to Plaintiff, this constitutes such minimum contacts with Nevada that

1 exercising personal jurisdiction would be within the bounds of due process. If that
2 does confer personal jurisdiction, Plaintiff contends that her late discovery of those
3 posts therefore constitutes an extraordinary circumstance that justifies equitable
4 tolling under *Fausto*.

5 Not so. Plaintiff does not explain how *her* failure to discover the content of *her*
6 posts that *she* deleted is an extraordinary circumstance. But the court need not even
7 reach that issue, because it finds that the “newly discovered” posts do not confer
8 personal jurisdiction. Accordingly, Plaintiff’s failure to timely discover the posts is
9 irrelevant to her ability to obtain personal jurisdiction over a nonresident defendant.

10 “To obtain personal jurisdiction over a nonresident defendant, a plaintiff must
11 show: (1) that the requirements of Nevada’s long-arm statute have been satisfied,
12 and (2) that due process is not offended by the exercise of jurisdiction.” *Arbella Mut.*
13 *Ins. Co. v. Eighth Jud. Dist. Ct.*, 122 Nev. 509, 512, 134 P.3d 710, 712 (2006).
14 Nevada’s long arm statute, NRS 14.065, reaches the constitutional limits of due
15 process under the Fourteenth Amendment, which requires that the defendant have
16 such minimum contacts with the state that the defendant could reasonable anticipate
17 being haled into court here, thereby complying with “traditional notions of fair play
18 and substantial justice.” *Id.* Due process is satisfied if the contacts are sufficient to
19 obtain either general or specific personal jurisdiction. *See id.*

20 Specific personal jurisdiction exists where the cause of action arises out of the
21 *defendant’s* purposeful contacts with the forum state. *See Baker v. Eighth Jud. Dist.*
22 *Ct.*, 116 Nev. 527, 533, 999 P.2d 1020, 1024 (2000). In *Walden v. Fiore*, the Supreme
23 Court of the United States clarified that mere injury to a forum resident, without
24 more, is insufficient to establish minimum contacts with the forum state. *See* 571
25 U.S. 277, 286 (2014). “Due process requires that a defendant be haled into court in a
26 forum [s]tate based on *his own affiliation* with the [s]tate, not based on random,
27 fortuitous, or attenuated contacts he makes by interacting with other persons
28 affiliated with the State.” *Id.* (emphasis added) (internal quotations omitted).

1 The Eastern District of Michigan addressed minimum contacts in the context
2 of social media posts in *Twin Flames Universe.com, Inc. v. Cole*, 528 F.Supp. 3d 708,
3 716-17 (E.D. Mich. 2021) (citing *Blessing v. Chandrasekhar*, 988 F.3d 889 (6th Cir.
4 2021)).² The court held that it did not have personal jurisdiction over the defendant
5 because Michigan “was not the focal point of Defendant[’s] . . . posts and comments.”
6 *Id.* at 717. *See also Blessing*, 988 F.3d at 904-06 (finding that Kentucky could not
7 establish specific personal jurisdiction over non-resident defendants where
8 defendants’ only actions were posting allegedly libelous tweets on Twitter, as “[t]he
9 tweets ‘did not create sufficient contacts’ with Kentucky ‘simply because’ the
10 plaintiffs [had] Kentucky connections”). The defendant’s posts did not “specifically
11 target[]” Michigan readers and were not “directed at [Michigan] readers, as opposed
12 to the residents of other states . . .” *Id.* Moreover, the court found “no evidence that
13 Defendant . . . posted her comments on social media ‘hoping to reach [Michigan]
14 specifically as opposed to’ her social media followers generally.” *Id.* In the face of an
15 argument that Michigan-based readers read the social media posts, the *Twin Flames*
16 court recognized that “Plaintiffs cannot rely on ‘third parties and their connections
17 with the forum state’ to establish Defendant[’s] . . . minimum contacts.” *Id.*

18 Nothing in the record shows Defendant mentioned Dr. Gallo or UNLV by
19 name.³ The focal point of Defendant’s alleged posts was Plaintiff’s actions, not UNLV
20 or the state of Nevada. Plaintiff has not established a preexisting connection
21 between her and Defendant or between Defendant and Nevada. Defendant did not
22

23 ² Like Nevada’s, Michigan’s long-arm statute reaches the limits of due process under
the U.S. Constitution.

24 ³ The only reference to Nevada by Defendant is found in a thread from
25 r/LegalAdviceUK. *See* Ex. 8 to Compl. In that post, Defendant sought advice
26 regarding a police complaint by a Las Vegas resident. *See id.* As the Court of
27 Appeals previously recognized, “this may indicate that [Defendant] eventually
became aware that [Plaintiff] was likely a citizen of Las Vegas, [but] it does not
28 demonstrate that [Defendant] directed . . . conduct towards Nevada . . .” *Breslaw v.*
Cooper, No. 84072-COA, at 6 n.4 (Nev. Ct. App. Sept. 12, 2022).

1 post anything specifically targeted or directed at Nevada readers, as opposed to
2 residents of other states, and there is no evidence Defendant posted hoping to reach
3 Nevada specifically, as opposed to the internet generally. “[S]omething more than
4 knowledge of the Plaintiffs’ presence in the forum must be found, such as
5 purposefully reaching into the forum state to create reputational harm to the
6 plaintiff in the forum state.” *Twin Flames* at 718.

7 Assuming Plaintiff’s allegations to be true, the fact that the Reddit posts
8 caused some readers to contact UNLV also does not establish personal jurisdiction.
9 Plaintiff cannot rely on third parties’ contacts with Nevada to establish minimum
10 contacts by Defendant. *See id.* at 717.

11 The Court of Appeals reached a similar conclusion in Plaintiff’s previous case
12 against Defendant Cooper. *See Breslaw v. Cooper*, No. 84072-COA, at 6 (Nev. Ct.
13 App. Sept. 12, 2022). It found the record did not “include any competent evidence
14 that [Defendant] purposefully directed those posts towards Nevada, rather than
15 towards [Plaintiff], who happened to be a Nevada resident.” *Id.* (citing *Twin Flames*
16 528 F.Supp. 3d at 716-17 (E.D. Mich. 2021)).

17 Plaintiff’s “newly discovered” posts do not alter the analysis. Upon review of
18 the entire record, the court can only locate one instance where Plaintiff inadvertently
19 identifies Dr. Gallo, in the middle of a long string of text. Such an oblique reference,
20 standing alone, can hardly transform the focus of Defendant’s posts. Particularly so
21 where Plaintiff made the reference, and Defendant did not quote her or mention Dr.
22 Gallo by name.

23 Because this previously “undiscovered” reference to Dr. Gallo does not confer
24 personal jurisdiction, the court finds it does not rise to the level of extraordinary
25 circumstance sufficient to justify equitable tolling. Even if it did justify equitable
26 tolling, the court would be constrained to dismiss for lack of personal jurisdiction.

27
28

1 **IV. CONCLUSION**

2 Plaintiff's mental health issues do not rise to the level of an extraordinary
3 circumstance under *Fausto*. In conjunction with the court's prior consideration of
4 Plaintiff's diligence and the *Copeland* factors, the court holds that equitable tolling is
5 not justified on this ground.

6 Plaintiff has also failed to show that her late "discovery" of the post
7 mentioning Dr. Gallo constitutes an extraordinary circumstance sufficient to justify
8 equitable tolling.

9 To the extent Plaintiff raises other arguments in her supplemental *Fausto*
10 briefing, the court finds them unconvincing.

11 Accordingly, the district court **FINDS** and **ORDERS** as follows:

- 12 1. Plaintiff's claims were beyond the two-year statute of limitations when filed
13 in February 2023.
- 14 2. Defendant's Rule 12(b)(5) motion to dismiss is **GRANTED**.
- 15 3. The case is **DISMISSED WITH PREJUDICE**.

16 **IT IS SO ORDERED.**

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Dated this 15th day of March, 2024



B65 CBC EE76 4B42
Maria Gall
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Lisa Breslaw, Plaintiff(s)

CASE NO: A-23-865757-C

7 vs.

DEPT. NO. Department 9

8 Peter Cooper, 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: 3/15/2024

15 Lisa Breslaw

lisa.breslaw@alumni.unlv.edu

16
17 If indicated below, a copy of the above mentioned filings were also served by mail
18 via United States Postal Service, postage prepaid, to the parties listed below at their last
known addresses on 3/18/2024

19 Sagar Raich

RAICH LAW PLLC
Attn: Sagar Raich, Esq.
2280 E. Pama Lane
Las Vegas, NV, 89119

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Intentional Misconduct

COURT MINUTES

April 28, 2023

A-23-865757-C Lisa Breslaw, Plaintiff(s)
vs.
Peter Cooper, Defendant(s)

April 28, 2023 3:00 AM Minute Order

HEARD BY: Gall, Maria **COURTROOM:** Chambers

COURT CLERK: Kelli Wise

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- This minute order is intended to serve as an indicative ruling/advance opinion ahead of the May 3, 2023, oral argument.

The court has reviewed Defendant's motion to dismiss and is inclined to grant the motion.

As an initial matter, the court rejects the notion of res judicata as applied to the prior without prejudice dismissal. "A dismissal for lack of in personam jurisdiction is not res judicata as to the merits of the claim. [A plaintiff] had the right to file another complaint on the same cause of action curing the jurisdictional defect." Kendall v. Overseas Dev. Corp., 700 F.2d 536, 539 (9th Cir. 1983).

Next, Defendant argues that "the current Complaint does nothing to address that flaw, as it was served in Colorado." But, the place at which Defendant was served has nothing to do with whether the court has personal jurisdiction over Defendant. To the extent Defendant is of the position that the complaint in this matter is otherwise deficient in conferring personal jurisdiction over Defendant, Defendant has not explained why.

That said, the court agrees with Defendant that the statute of limitations runs from publication of the allegedly defamatory statements. The discovery rule and/or equitable tolling might apply if Plaintiff

had not discovered the statements when she did or Defendant had hid the defamatory statements, but it is undisputed that Plaintiff knew of the statements as posted on Reddit in late 2019. Plaintiff also identified the statements as being posted by Peter Cooper as late as April 2020. The fact that people sometimes use fake names to post online is not of consequence here, because at that point Plaintiff had all relevant facts needed to file her case, as shown by the fact that she filed her prior case in 2021.

Accordingly, the court is inclined to grant the motion following the May 3, 2023, hearing but will hear oral argument under the guidelines set forth in its prior minute order.

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve/ kw 5.1.23

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Intentional Misconduct

COURT MINUTES

May 03, 2023

A-23-865757-C Lisa Breslaw, Plaintiff(s)
vs.
Peter Cooper, Defendant(s)

May 03, 2023 10:00 AM All Pending Motions

HEARD BY: Gall, Maria **COURTROOM:** RJC Courtroom 05A

COURT CLERK: Kelli Wise

RECORDER: Gina Villani

REPORTER:

PARTIES

PRESENT: Breslaw, Lisa D. Plaintiff
 Schneider, Brian Attorney

JOURNAL ENTRIES

- DEFENDANT'S MOTION TO DISMISS COMPLAINT...PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS AND ATTACHED MOTION FOR EXPEDITED DISCOVERY...PLAINTIFF'S LEAVE TO AMEND COMPLAINT

Mr. Schneider advised he would reserve his argument as he was in agreement with the indicative ruling in the Minute Order. Argument by Ms. Breslaw regarding the opposition of Defendant's Motion. Colloquy regarding the prior case filed in 2021. Court advised its indicative ruling from its Minute Order stands and ORDERED, Defendant's Motion to Dismiss Complaint GRANTED. COURT FURTHER ORDERED, Plaintiff's Leave to Amend Complaint ADVANCED and DENIED AS MOOT. Mr. Schneider to prepare the order. COURT ORDERED, status check SET to ensure submission of the order.

5/19/2023 3:00 AM (CHAMBERS) STATUS CHECK: SUBMISSION OF ORDER

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Intentional Misconduct

COURT MINUTES

November 15, 2023

A-23-865757-C Lisa Breslaw, Plaintiff(s)
vs.
Peter Cooper, Defendant(s)

November 15, 2023 10:36 AM Minute Order

HEARD BY: Gall, Maria **COURTROOM:** Chambers

COURT CLERK: Kelli Wise

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- In light of the court of appeals order, the court schedules a supplemental hearing to address the analysis in Fausto. The supplemental hearing shall be held on January 4, 2024, at 9:00 AM.

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve/ kw
11.15.23

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Intentional Misconduct

COURT MINUTES

January 02, 2024

A-23-865757-C Lisa Breslaw, Plaintiff(s)
vs.
Peter Cooper, Defendant(s)

January 02, 2024 11:24 AM Minute Order

HEARD BY: Gall, Maria **COURTROOM:** Chambers

COURT CLERK: Kelli Wise

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The court will hear the motion to file supplemental material, originally scheduled for its December 29, 2023, in chambers calendar, on January 4, 2024, at 9:00 AM.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Kelli Wise, to all registered parties for Odyssey File & Serve. / kw 1.2.24

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Intentional Misconduct

COURT MINUTES

January 25, 2024

A-23-865757-C Lisa Breslaw, Plaintiff(s)
vs.
Peter Cooper, Defendant(s)

January 25, 2024 9:00 AM Hearing

HEARD BY: Gall, Maria **COURTROOM:** RJC Courtroom 05A

COURT CLERK: Kelli Wise

RECORDER: Gina Villani

REPORTER:

PARTIES

PRESENT: Breslaw, Lisa D. Plaintiff
 Schneider, Brian Attorney

JOURNAL ENTRIES

- Mr. Schneider argued on the merits of dismissal as it relates to the Fausto analysis. Ms. Breslaw explained she had been diligently working to move this case forward and noted the mental state she had been in. COURT ORDERED, matter taken UNDER SUBMISSION. Court will issue a decision in approximately two weeks, noting it may be longer.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

LISA BRESLAW
7326 N. DECATUR BLVD., UNIT 1
LAS VEGAS, NV 89131

DATE: March 19, 2024
CASE: A-23-865757-C

RE CASE: LISA BRESLAW vs. PETER COOPER

NOTICE OF APPEAL FILED: March 15, 2024

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- Order
- Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

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):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET ORDER GRANTING DEFENDANT'S MOTION TO DISMISS THE COMPLAINT; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

LISA BRESLAW,

Plaintiff(s),

vs.

PETER COOPER,

Defendant(s),

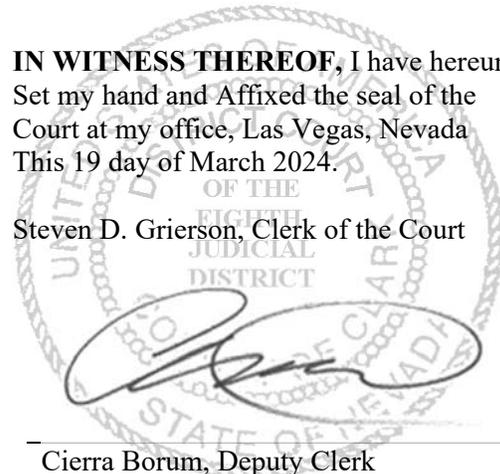
Case No: A-23-865757-C

Dept No: IX

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 19 day of March 2024.

Steven D. Grierson, Clerk of the Court



Cierra Borum, Deputy Clerk