STEVEN T. JAFFE, ESQ.
Nevada Bar No. 7035
sjaffe@lawhjc.com
JASON R. WIGG, ESQ.
Nevada Bar No. 7953
jwigg@lawhjc.com
KYLE E.N. GEORGE, ESQ.
Nevada Bar No. 13489
kgeorge@lawhjc.com

HALL JAFFE & CLAYTON, LLP
7425 PEAK DRIVE
LAS VEGAS, NEVADA 89128
(702) 316-4111
FAX (702)316-4114

Attorneys for Defendants Stan Hu, Liuid, LLC and Liuid Holdings, LLC

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

MARISA BONIFAZIO, an individual,

Plaintiff,

vs.

LIUID, LLC, a Nevada Limited Liability Company, LIUID HOLDINGS, LLC, a Nevada Limited Liability Company, WILLIAM TAYLOR, an individual; STAN HU, an individual, DOES 1-50 inclusive; and ROES 51-60 inclusive,

Defendants.

CASE NO. A-15-728285-C
DEPT NO. XXXI

DEFENDANTS STAN HU'S, LIUID, LLC'S AND LIUID HOLDINGS, LLC'S REPLY IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT PURSUANT TO NRCP 12(b)(5)

Date: May 5, 2016

Time: 9:30 a.m.

COMES NOW Defendants STAN HU, LIUID, LLC and LIUID HOLDINGS, LLC ("Defendants"), by and through their attorneys of record, STEVEN T. JAFFE, ESQ., JASON R. WIGG, ESQ. and KYLE E.N. GEORGE, ESQ. of the law firm of HALL JAFFE & CLAYTON, LLP, and hereby submit the instant Reply in Support of Their Motion to Dismiss Plaintiff's Amended Complaint Pursuant to NRCP 12(b)(5) based on Plaintiff's failure to state a claim against Defendants upon which relief can be granted.

Docket 71801 Document 2016-37341

Defendants' Motion and Reply are based upon the papers and pleadings on file, the attached points and authorities and any oral argument the Court entertains at the hearing on Defendants' Motion..

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff spends considerable time and pages in her Opposition reiterating what Defendants do not dispute: that Plaintiff's alleged injuries were caused by an alleged sexual assault by Defendant William Taylor that occurred during a business trip for her employer, Defendant Liuid, LLC ("Liuid"). In conceding that she did, in fact, allege that the event at issue occurred during a business trip for Liuid, Plaintiff effectively agrees with Defendants' argument that her claims arise out of her employment with Liuid. And, because Plaintiff wholly fails to satisfy her burden of demonstrating that one of the exceptions to the NIIA's exclusive remedy provision applies to the allegations in her amended complaint, all of her claims against the Moving Defendants necessarily fail. Thus, Defendants' NRCP 12(b)(5) Motion to Dismiss should be granted in its entirety.

II. STATEMENT OF RELEVANT FACTS

Plaintiff alleges that on October 8, 2015, she and two other Liuid employees flew to Columbus, Mississippi with Liuid Chief Executive Officer Stan Hu ("Hu"), as part of a business trip to Mississippi and Alabama for the purpose of donating a scholarship to the University of Alabama. Instead of staying in a hotel, Hu, Plaintiff and the two other employees stayed at the home of William Taylor ("Taylor") in Brooksville, Mississippi. Though highly disputed, Plaintiff claims that she was sexually assaulted by Taylor in his home after allegedly becoming ill, vomiting and passing-out on the bathroom floor. Plaintiff filed the instant lawsuit against Taylor for assault, battery, intentional infliction of emotional distress and negligence. As against the Moving Defendants, Plaintiff alleges causes of action for: (1) intentional infliction of emotional distress; (2) negligent hiring, retention and supervision; and (3) negligence.

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II. LEGAL ARGUMENT

A. Because Plaintiff has Failed to Opposed Defendants' Motion to Dismiss Liuid Holdings, LLC, All Causes of Action Against Liuid Holdings Must Be Dismissed.

Plaintiff has once again failed to oppose Defendants' arguments that she has not stated any claim or cause of action against Liuid Holdings and that, as a result, all causes of action against said Defendant must be dismissed. Consequently, Plaintiff has conceded this point. *See, generally*, Local Rule 7-2(d) ("The failure of an opposing party to file points and authorities in response to any motion shall constitute a consent to the granting of the motion.") As such, and because Plaintiff has failed to raise a single argument in opposition to Defendants' Motion to Dismiss relative to Defendant Liuid Holdings, Plaintiff's complaint against Liuid Holdings should be dismissed pursuant to NRCP 12(b)(5).

Additionally, and because Plaintiff has now twice filed vacuous, unsupported complaints against Liuid Holdings and has twice failed to oppose Defendants' motions to dismiss her claims against Liuid Holdings, Defendants respectfully renew their request for sanctions based on Plaintiff's abuse of process.

B. Because Plaintiff Concedes that the Trip at Issue was Business Related And Because Her Amended Complaint Fails to Allege Any Exception to the Exclusive Remedy Provision of the Nevada Industrial Insurance Act ("NIIA"), Plaintiff's Amended Complaint Must Be Dismissed.

Both parties agree that "it is undisputed that Bonifazio's injuries occurred while she was on a business trip for Defendants." Plaintiff's Opposition at 11:6-7. Because we agree that this was a work related trip and that the event at issue arose as a consequence of Plaintiff's work-related activities, the only question before the court is whether Plaintiff has sufficiently alleged facts that, if true, would trigger an exception to the NIIA's exclusive remedy provision. Since she has failed to allege such facts on the face of her Complaint, she has failed to state against Defendants on which relief can be granted.

As a threshold matter, Plaintiff cites to a 2015 unpublished decision by the Supreme Court of Nevada as authority for her argument that the Exclusive Remedy provision of the NIIA is a question of fact for the jury. *See* Plaintiff's Opposition at 9:7-8. Unpublished opinions are not controlling and Plaintiff's use of an unpublished opinion issued before January 1, 2016 is

strictly prohibited. *See* **NRAP 36** ("A party may cite for its persuasive value, if any, an unpublished disposition issued by this court on or after January 1, 2016....") The case cited by Plaintiff was issued in 2015.

In addition to improperly citing and relying upon a pre-2016 unpublished disposition as if it were controlling legal authority, Plaintiff compounds her error by badly conflating Defendants' NRCP 12(b)(5) motion to dismiss for failure to state a claim with an NRCP 56 motion for summary judgment. The *Bellagio* opinion that Plaintiff improperly cites involved a motion for summary judgment, and not a 12(b)(5) motion to dismiss for failure to state a claim upon which relief can be granted. The important distinction that Plaintiff overlooks is that a Motion for Summary Judgment permits inquiry into collateral evidence, whereas a Motion to Dismiss for Failure to State a Claim is limited to allegations on the face of Plaintiff's Complaint. Because Defendants have filed an NRCP 12(b)(5) Motion for Dismiss, this Court only needs to look at whether Plaintiff has made sufficient allegations ***on the face of her Amended Complaint*** to establish the *prima facie* elements of her claims. Here, because both parties agree that the underlying incident occurred while Plaintiff was on a work trip, Plaintiff's Amended Complaint must also contain sufficient allegations that, taken as true, would establish that Plaintiff's causes of action in tort are not barred by the Exclusive Remedy provisions of the NIIA.

The burden lies with Plaintiff to allege sufficient facts in her Complaint to sustain the elements of her claims against Defendants. ***Edgar v. Wagner***, 101 Nev. 226, 227, 699 P.2d 110, 111 (1985) ("On review of a motion to dismiss, our task is to determine whether or not the challenged pleading ***sets forth allegations sufficient to make out the elements*** of a right to relief."). The Nevada Legislature has enacted statutes that shift jurisdiction for work-related injuries from courts of law to the Worker Compensation system. **NRS 616A.020**. Unless Plaintiff alleges facts that implicate an exception to the NIIA's "Exclusive Remedy" provision, Plaintiff is statutorily barred from bringing her claim in tort, and must file for relief through Nevada's Worker Compensation system.

Plaintiff has conceded that "it is undisputed that Bonifazio's injuries occurred while she was on a business trip for Defendants." Plaintiff's Opposition at 12:1-2. *See also* Plaintiff's

Amended Complaint at Paragraph 39 ("On October 8, 2015, Ms. Bonifazio along with two other Liuid employees and Hu went on the ***company trip*** to Mississippi and Alabama"); Paragraph 43 ("Upon arrival to Columbus, Mississippi, instead of providing the employees with accommodations at a hotel, close to the venue which was the purpose of the ***business trip***"); Paragraph 45 ("Despite same, Hu knowingly forced the employees to stay at Taylor's home as an accommodation for the ***work trip***"). (emphasis added). Therefore, as this Court previously ruled, on the face of Plaintiff's Amended Complaint, this matter falls within Exclusive Remedy provision of the NIIA. **NRS 616A.020**.

Plaintiff attempts to escape the purview of the Exclusive Remedy provision by arguing that the NIIA is not applicable if "the employer deliberately and specifically intended to injure [her]." ***Conway v. Circus Circus Casinos, Inc.***, 116 Nev. 870, 8 P. 3d 83 7, (2000). Despite Plaintiff's recognition and acknowledgment of this rule, her Amended Complaint is entirely devoid of any allegation that Defendants ***deliberately and specifically intended*** to harm her. *See generally*, Plaintiff's Amended Complaint. As a result, this exception does not apply.

Similarly, although Plaintiff correctly observes in her Opposition that "a showing of knowledge coupled with the substantial certainty that injury will result ***is not enough*** to avoid the exclusive recovery provision of worker's compensation system," ***Cerka v. Salt Lake County***, 988 F Supp. 1420, 1421-1422 (D. Utah 1997), her Amended Complaint does no more than vaguely allege that Taylor was prohibited from attending a university function because of "offensive behavior." Allegations that Taylor was barred from university events does not amount to "knowledge" or "substantial certainty" that Plaintiff would be attacked by him, and even if it did, that "is not enough to avoid the exclusive [remedy] provision of worker's compensation system." ***Cerka***, 988 F Supp. at 1421-1422. Plaintiff's argument therefore fails.

Additionally, despite Plaintiff's reliance on ***Angle v. Alexander***, 328 Ark. 714, 945 S. W2d 933, 935 (Ark. 1997) for the proposition that "the facts must show the employer had a 'desire' to bring about the consequences of the acts or that the acts were premeditated with the specific intent to injure the employee," she has not alleged in her Amended Complaint that Defendants' had any such desire or specific intent. As Plaintiff noted, "mere knowledge and appreciation of a risk is not the same as the intent to cause injury." *Citing* ***Martinkowski v.***

Carborundum Co., 108 Misc. 2d 184, 437 NY.S.2d 237,238 (Sup. Ct. 1981). As applied here, because Plaintiff has not alleged in her Amended Complaint that Defendants ***intended*** to cause her harm, this exception is inapplicable to Plaintiff's claims.

Plaintiff also erroneously argues that the Court in *Wood v. Safeway* held that a claim may fall outside the scope of the Exclusive Remedy provision of the NIIA when an assault on an employee is imported into the workplace. This is a gross misstatement of *Wood*. The *Wood* Court held that a claim may not be subject to the NIIA's exclusive remedy when "the animosity or dispute which culminates in the assault is imported into the place of employment ***from the injured employee's private or domestic life***, ... at least where the animosity ***is not exacerbated by the employment.***" ***Wood v. Safeway, Inc.***, 121 Nev. 724, 736, 121 P.3d 1026, 1034 (2005). (emphasis added). If, as Plaintiff argues in her Opposition, the assault were "imported into the workplace ***by Hu***," (emphasis added) this would bring this matter squarely into the province of the NIIA, since Hu is her employer and her employment purportedly "exacerbated" the risk of the assault. The "imported into the workplace" exception is applicable only when the violence (through *an employee's* private or domestic life) is imported into the workplace, not if, as Plaintiff alleges here, her *employer* imports it. When the latter occurs - as Plaintiff alleges - the exclusive remedy provision applies and bars any subsequent, tort-based lawsuit by the employee against the employer relative to the event.

Plaintiff next argues that her employment did not contribute to and/or increase her risk of assault beyond that of the general public. This argument is problematic for a couple of reason. First, it contradicts Plaintiff's claim that her employer imported the assault into the workplace - as bizarre, unfounded and legally insufficient as the claim may be - because if her employer did do so, then Plaintiff cannot also plausible argue that her employment did not contribute to or increase her risk of injury beyond that of the general public - unless the entirety of the general public were also employed by Liuid, which is clearly not the case. Secondly, Plaintiff's argument does not comport with the analysis of the *Wood* Court. In *Wood*, the Supreme Court analyzed whether the victim's employment brought her into contact with her assailant, and concluded that "[i]t is uncontroverted that Doe's employment with Safeway brought her into contact with the assailant." ***Wood***, 121 Nev. at 736. Similarly, here, it is

uncontroverted that Ms. Bonifazio's employment with Liuid brought her into contact with. Taylor. Therefore, like *Wood*, "[Ms. Bonifazio's] injury falls within the coverage of the NIIA, and her claims are barred by NRS 616A.020." ***Id.***

Lastly, Plaintiff's arguments that the applicability of the NIIA's exclusive remedy provision is a question of fact to be decided by the jury leads to absurd results. If, as Plaintiff argues, she is entitled to bring unsubstantiated claims and entitled to unlimited time and opportunity to make her case ***before*** the case can be dismissed for failure to state a claim, then the intent and force of NRCP 12(b)(5) would be eviscerated. Such an interpretation of the law and the Rules of Civil Procedure cannot withstand scrutiny. As the Nevada Supreme Court has held, the Rules of Civil Procedure require that Plaintiff's Complaint "set forth allegations sufficient to make out the elements of a right to relief." ***Edgar***, 101 Nev. at 227. Plaintiff here has failed to do so.

This Court previously ruled that Plaintiff's original Complaint failed to state a claim upon which relief could be granted because it was, *inter alia*, precluded by the Exclusive Remedy provisions of the NIIA. Because Plaintiff's Amended Complaint is substantively identical to her original complaint, Defendants respectfully request that Plaintiff's Amended Complaint also be dismissed pursuant to NRCP 12(b)(5)..

C. The Doctrine of Respondeat Superior Is Inapplicable to this Matter because Defendant Taylor Was Not Employed by Defendants.

Despite failing to allege in her Amended Complaint that Taylor - the purported assailant - was employed by Defendants at the time of the event at issue, Plaintiff nevertheless argues that under NRS 41.745, an employer may be held liable for an employee's foreseeable tortious conduct. Plaintiff's argument is fatally flawed because: (1) Taylor was/is not one of Defendants' employees and (2) Plaintiff failed to allege that Taylor was employed by Defendants at the time of the event at issue. Plaintiff's respondeat superior/vicarious liability arguments and the authorities cited in support of the same are therefore misplaced and wholly fail to demonstrate that any exception to the NIIA's exclusive remedy provisions applies to Plaintiffs' claims against Defendants.

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D. Plaintiff Fails to Allege Facts in Support of Her Claim for Negligent Hiring, Retention and Supervision.

Plaintiff generally alleges that Defendants "negligently retained and supervised said employees even though they knew, or should have known, that the employees had propensities to act unlawfully," but fails to allege any ***unlawful conduct by any employee*** that was the actual and proximate cause of her alleged harm. See Plaintiff's Amended Complaint at para. 90. Common sense and Nevada law dictate that "for an employer to be liable for negligent hiring, training, or supervision of an employee, the person involved must actually be an employee." ***Rockwell v. Sun Harbor Budget Suites***, 112 Nev. 1217, 1226, 925 P.2d 1175, 1181 (1996). And, as previously argued, because Plaintiff has not alleged that Taylor was employed by Defendants, they cannot be held liable for Taylor's alleged conduct.

In a misguided effort to overcome the obviousness of the foregoing, Plaintiff proffers several vacuous argument regarding Hu's alleged conduct in her Opposition to Defendants' Motion to Dismiss, but wholly fails to explain how these allegations lend support to a viable cause of action for negligent hiring, retention, or supervision of Hu - who is the Chief Executive Officer and owner of Liuid, the entity that employed Plaintiff. Rather, Plaintiff broadly alleges that a Liuid employee has "propensities to act unlawfully," but does not allege a single unlawful act by any employee.

Plaintiff also fails to demonstrate any nexus between Hu's alleged "refusal to hire a Human Resources Manager;" the failure to "provide an Employee Handbook;" his "practice of using derogatory comments," the "constant inability to make time payroll for his employees," or any other alleged behavior by Hu, and the event giving rise to Plaintiff's lawsuit - namely, the alleged assault by Taylor on Plaintiff. Further, and most importantly, Plaintiff fails to demonstrate how - if the foregoing allegations are true - they somehow trigger an exception to the NIIA's exclusive remedy provision. These omissions are fatal to Plaintiff's claims against Defendants. Thus, Plaintiffs' amended complaint against Defendants must be dismissed pursuant to NRCP 12(b)(5).

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i. Plaintiff's Argument that "Liuid, LLC's Knowledge of Hu's Incompetent and Negligent Propensities Establishes a Prima Facie Case for Negligent Hiring, Supervision, and Retention" Places Plaintiff's Claims Squarely Within the Exclusive Remedy Provision of the NIIA.

Even if Plaintiff were correct when she argues that she has alleged facts sufficient to pursue a claim for negligent hiring, supervision and retention - which she has not - this would mean that she has actually argued herself **into** the Exclusive Remedy provision of the NIIA. The statute is unambiguous. "The rights and remedies provided in chapters 616A to 616D, inclusive, of NRS for an employee on account of an injury by accident sustained arising out of and in the course of the employment shall be exclusive." **NRS 616A.020(1).** Thus, if Plaintiff's injury were actually and proximately caused by Defendants' alleged negligent hiring, supervision, or retention of any employee (which they are not), this would necessarily mean that the NIIA's exclusive remedy provision applies to Plaintiff's claims and would further require the dismissal of her lawsuit against the Moving Defendants.

ii. Plaintiff's Amended Complaint Alleges Acts By Taylor That, If True, Sever Defendants' Liability to Plaintiff.

Assuming *arguendo* that Plaintiff's Amended Complaint is not barred by the NIIA (even though it is), the allegations in Plaintiff's Amended Complaint regarding Defendant Taylor, if true, describe a criminal and superceding intervening act that effectively terminate any liability by Defendants to Plaintiff as a matter of law.

To maintain a cause of action in negligence in Nevada, a plaintiff must establish that the named defendant both actually and proximately caused her injuries:

> Causation consists of two components: actual cause and proximate cause. To demonstrate actual cause ..., the plaintiff must prove that, but for the [defendant's act] the plaintiff's damages would not have occurred. The second component, proximate cause, is essentially a policy consideration that limits a defendant's liability to foreseeable consequences that have a reasonably close connection with both the defendant's conduct and the harm which that conduct created.

Goodrich & Pennington Mortgage Fund, Inc. v. J.R. Woolard, Inc., 120 Nev. 777, 784, 101 P.3d 792, 797 (2004) (internal brackets omitted).

"Proximate cause" is in turn defined as "any cause which in natural [foreseeable] and continuous sequence, ***unbroken by any efficient intervening cause***, produces the injury complained of and ***without which the result would not have occurred.***" ***Id.*** (emphasis added).

It is a longstanding rule in Nevada that:

> Negligence, is not actionable unless, ***without the intervention of an intervening cause***, it proximately causes the harm for which complaint was made. An intervening cause means not a concurrent and contributing cause but a superseding cause which is itself the natural and logical cause of the harm.

Thomas v. Bokelman, 86 Nev. 10, 13, 462 P.2d 1020, 1022 (1970) (emphasis added).

"An intervening act is a superseding cause only if it is unforeseeable." ***Wood v. Safeway, Inc.***, 121 Nev. 724, 741, 121 P.3d 1026, 1037 (2005).

The Court looks at several factors to determine whether an intervening cause is foreseeable:

> These include whether (1) the intervention causes the kind of harm expected to result from the actor's negligence, (2) the intervening event is normal or extraordinary in the circumstances, (3) the intervening source is independent or a normal result of the actor's negligence, (4) the intervening act or omission is that of a third party, (5) the intervening act is a wrongful act of a third party that would subject him to liability, and (6) the culpability of the third person's intervening act. Restatement (Second) of Torts § 442 (1965).

Bower v. Harrah's Laughlin, Inc., 125 Nev. 470, 492, 215 P.3d 709, 725 (2009) holding modified by ***Garcia v. Prudential Ins. Co. of Am.***, 129 Nev. Adv. Op. 3, 293 P.3d 869 (2013).

However, the Bower Court also held that as a matter of law, "[w]***hen a third party commits an intentional tort or a crime, the act is a superseding cause,*** even when the negligent party created a situation affording the third party an opportunity to commit the tort or crime." ***Bower v. Harrah's Laughlin, Inc.***, 125 Nev. at 492. (emphasis added).

Here, if Taylor assaulted Plaintiff as she alleges in her Amended Complaint, then this act would constitute both a crime and an intentional tort that would act as a superseding cause which breaks the chain of proximate causation. Therefore, based on Plaintiff's allegations, any act or omission by Defendants would not be actionable. ***Thomas***, 86 Nev. at 13. Consequently, based entirely upon the allegations in Plaintiff's Amended Complaint, as a matter of law Plaintiff's claim against Defendants must be dismissed pursuant to NRCP 12(b)(5).

E. Plaintiff's Cause of Action for Intentional Infliction of Emotional Distress Fails as a Matter of Law.

Plaintiff fails to allege that Defendants ***intended*** to cause her emotional distress, nor does she allege any ***extreme and outrageous conduct*** by Defendants - both of which are essential elements of a *prima facie* case for Intentional Infliction of Emotional Distress.

Even treating Plaintiff's allegation that Hu "brandished a weapon at Bonifazio at Taylor's home" as true, as Plaintiff noted in her Opposition, "[l]iability for emotional distress generally does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." ***Burns v. Mayer***, 175 F. Supp. 2d 1259, 1268 (D. Nev. 2001). Plaintiff has previously conceded that Hu held the weapon ***in jest***. She is therefore now judicially estopped from representing that Hu held the weapon with ill-intent. Even if Mr. Hu did "brandish" the weapon, however, this does not amount to the type of extreme and outrageous conduct necessary to sustain a claim for Intentional Infliction of Emotional Distress. ***Id.***

Because Plaintiff: (1) fails to allege that Defendants intended to cause Plaintiff emotional distress; (2) fails to allege extreme and outrageous conduct by the Moving Defendants; and (3) is statutorily barred from pursuing her claims against Defendants in a court of law, Plaintiff has failed to state a claim upon which relief can be granted and her Amended Complaint must be dismissed.

F. The District Court Has Broad Authority to Impose Sanctions Without Formalistic Motion Practice.

Although sanctions for NRCP 11 violations require a formal Motion, a district court may impose sanctions for other impermissible conduct without requiring the filing of a Rule 11 Motion.

The Nevada Supreme Court has held that district courts have broad authority to impose sanctions to "command obedience to the judiciary and to deter and punish those who abuse the judicial process." ***Emerson v. Eighth Judicial Dist. Court of State, ex rel. Cty. of Clark***, 127 Nev. Adv. Op. 61, 263 P.3d 224, 228 (2011).

Here, Defendants seek sanctions against Plaintiff for abuse of process based on Plaintiff's unsupported claims - claims that even a cursory amount of research would have revealed are barred by statute. Because Plaintiff filed a substantively indistinguishable Amended Complaint after being put on notice that her original Complaint was legally deficient, Defendants have been forced to expend significant time and treasure to twice litigate virtually identical (and defective) complaints. Plaintiff has also utilized her Amended Complaint as a vehicle to launch bombastic, inflammatory, and utterly irrelevant personal attacks against Hu.

These allegations are so unrelated to this matter that Plaintiff's improper attempt to harm Hu's reputation and his business is transparent.

Additionally, NRCP 11 is not the only rule governing Plaintiff and her counsel's conduct. Plaintiff's counsel has an ethical obligation under Rule 3.1 of the Nevada Rules of Professional Conduct to not present claims to this court when there is no basis in law and fact for doing so:

> Meritorious Claims and Contentions. A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, ***unless there is a basis in law and fact for doing so that is not frivolous***, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

(emphasis added).

As discussed in the underlying Motion, Plaintiff's behavior meets the elements for abuse of process. The Nevada Supreme Court has granted this Court authority to impose sanctions to "punish those who abuse the judicial process." ***Emerson***, 263 P.3d at 228. Defendants respectfully renew their request that this Court impose sanctions against Plaintiff for her abuse of the judicial process.

III. CONCLUSION

For the reasons set forth above, Defendants Liuid, Liuid Holdings and Hu respectfully request the Court grant their Motion to Dismiss pursuant to NRCP 12(b)(5) in its entirety and to award sanctions against Plaintiff as set forth above.

HALL JAFFE & CLAYTON, LLP

By: */s/ Jason R. Wigg*
STEVEN T. JAFFE, ESQ.
Nevada Bar No. 7035
JASON R. WIGG, ESQ.
Nevada Bar No. 7953
KYLE E.N. GEORGE, ESQ.
Nevada Bar No. 13489
7425 Peak Drive
Las Vegas, Nevada 89128
Attorneys for Defendants Stan Hu, Liuid LLC, and Liuid Holdings, LLC

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I hereby certify that I am an employee of HALL JAFFE & CLAYTON, LLP, and that on the 29th day of April, 2016, the foregoing **DEFENDANTS STAN HU'S, LIUID, LLC'S AND LIUID HOLDINGS, LLC'S REPLY IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT PURSUANT TO NRCP 12(b)(5)** was served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court e-Filing System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules, and if not on the e-serve list, was mailed via U.S. Mail, postage prepaid as noted below, as follows:

Sigal Chattah, Esq.
CHATTAH LAW GROUP
5875 Rainbow Blvd., Suite 201
Las Vegas, NV 89118
Attorneys for Plaintiff

/s/ Barbara Gracey
An Employee of HALL JAFFE & CLAYTON, LLP

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CLERK OF THE COURT

ORD

SIGAL CHATTAH, ESQ.
Nevada Bar No.: 8264
CHATTAH LAW GROUP
5875 S. Rainbow Blvd. #204
Las Vegas, Nevada 89118
Tel: (702) 360-6200
Fax:(702) 643-6292
Attorneys for Plaintiff
Marisa Bonifazio

DISTRICT COURT

CLARK COUNTY, NEVADA

MARISA BONIFAZIO, an individual,

Plaintiff,

vs.

LIUID, LLC, a Nevada Limited Liability Company, LIUID HOLDINGS, LLC, a Nevada Limited Liability Company, WILLIAM TAYLOR, an individual; STAN HU, an individual, DOES 1-50 inclusive; and ROES 51-60 inclusive,

Defendants.

CASE NO: A-15-728285-C
DEPT NO: XXXI

ORDER DENYING DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

The matter came on for hearing before the district court on May 5, 2016 at 9:30 a.m. on Defendant, LIUID, LLC'S Motion To Dismiss Plaintiff's Amended Complaint. Steven T. Jaffe, Esq. of HALL JAFFE & CLAYTON, LLP appeared on behalf of Defendants LIUID, LLC ET AL. Sigal Chattah, Esq. of CHATTAH LAW GROUP appeared on behalf of Plaintiff MARISA BONIFAZIO.

The district court, having reviewed the papers and pleadings on file herein, having heard the arguments of counsel present at the hearing and for good cause appearing, hereby rules as follows:

///

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Dismiss Plaintiff's Amended Complaint is hereby DENIED WITHOUT PREJUDICE as to LIUID LLC and STAN HU.

IT IS FURTHER ORDERED, by way of Stipulation that Defendant LIUID HOLDINGS LLC is to be dismissed from this action without prejudice.

Dated this 2 day of ~~May,~~ June 2016.

JOANNA S. KISHNER

JUDGE OF THE DISTRICT COURT

Respectfully submitted:

CHATTAH LAW GROUP

Sigal Chattah, Esq.
Nevada Bar No. 8264
5785 S. Rainbow Blvd., #204
Las Vegas, NV 89119
Attorney for Plaintiff

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CLERK OF THE COURT

MSTR
STEVEN T. JAFFE, ESQ.
Nevada Bar No. 007035
sjaffe@lawhjc.com
JASON R. WIGG, ESQ.
jwigg@lawhjc.com
KYLE E.N. GEORGE, ESQ.
Nevada Bar No. 013489
kgeorge@lawhjc.com

HALL JAFFE & CLAYTON, LLP
7425 PEAK DRIVE
LAS VEGAS, NEVADA 89128
(702) 316-4111
FAX (702)316-4114

Attorneys for Defendants Stan Hu, Liuid, LLC and Liuid Holdings, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

MARISA BONIFAZIO, an individual,

Plaintiff,

vs.

LIUID, LLC, a Nevada Limited Liability Company, LIUID HOLDINGS, LLC, a Nevada Limited Liability Company, WILLIAM TAYLOR, an individual; STAN HU, an individual, DOES 1-50 inclusive; and ROES 51-60 inclusive,

Defendants.

CASE NO. A-15-728285-C
DEPT NO. XXXI

DEFENDANTS STAN HU'S and, LIUID, LLC'S MOTION TO STRIKE

Date:

Time:

COMES NOW Defendants STAN HU and LIUID, LLC, by and through their attorneys of record, STEVEN T. JAFFE, ESQ., JASON R. WIGG, ESQ. and KYLE E.N. GEORGE, ESQ. of the law firm of HALL JAFFE & CLAYTON, LLP, who hereby respectfully submit this Motion to Strike pursuant to NRCP 12(f). The Motion is based upon the papers and pleadings on file, the attached points and authorities and any oral argument this Honorable Court may entertain at hearing on Defendants' Motion.

NOTICE OF MOTION

TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing DEFENDANTS STAN HU'S and LIUID, LLC'S MOTION TO STRIKE on for hearing before the above-entitled Court on the 16 day of August, 2016, at the hour of 9:00AM, _.m., or as soon thereafter as counsel may be heard.

HALL JAFFE & CLAYTON, LLP

By */s/ Jason R. Wigg*
STEVEN T. JAFFE, ESQ.
Nevada Bar No. 007035
JASON R. WIGG, ESQ.
Nevada Bar No. 007953
KYLE E.N. GEORGE, ESQ.
Nevada Bar No. 013489
7425 Peak Drive
Las Vegas, Nevada 89128
Attorneys for Defendants Liuid LLC, and Liuid Holdings, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As the Court is aware, Plaintiff Marisa Bonifazio ("Plaintiff") filed a complaint against Defendants on December 2, 2015 stemming from an alleged, October 8, 2015 sexual assault by Defendant William Taylor ("Taylor") that occurred while Plaintiff was on a business trip in Brooksville, Mississippi. See Plaintiff's December 2, 2015 Complaint, attached as **Exhibit A**. Plaintiff was employed by Defendant Liuid, LLC ("Liuid") and was accompanied on the trip by the owner and Chief Executive Officer of Liuid, Defendant Stan Hu ("Hu," collectively with Liuid, "Defendants") at the time of the alleged assault.

On January 12, 2016, Defendants filed a Motion to Dismiss Plaintiff's Complaint based on the applicability of the exclusive remedy provision of the Nevada Industrial Insurance Act ("NIIA") - which generally bars lawsuits by an employee against an employer for work-related injuries.[1] Defendants' Motion to Dismiss was granted without prejudice and Plaintiff was permitted leave to file an Amended Complaint within ten (10) days relative to Plaintiff's causes of actions against Defendants. See February 24, 2016 Notice of Entry of Order, attached as **Exhibit B**.

Plaintiff's Amended Complaint was filed on March 3, 2016 and included new factual averments regarding Defendants but no additional causes of action. See Plaintiff's March 3, 2016 Amended Complaint, attached hereto as **Exhibit C**. Defendants filed a Motion to Dismiss Plaintiff's Amended Complaint on March 22, 2016, again arguing that, inter alia, Plaintiff's claims were barred by the NIIA. The Court denied Defendants' Motion at the May 5, 2016 hearing.

II. STATEMENT RELEVANT FACTS

Plaintiff's Amended Complaint alleges the following causes of action against Defendants

[1] Defendant Liuid Holdings, LLC also moved to dismiss Plaintiff's complaint based on: (1) Plaintiff's failure to allege any facts in support of her causes of action against Liuid Holdings and (2) the absence of any relationship between Liuid (her employer) and Liuid Holdings. Because Plaintiff recently stipulated to dismiss Liuid Holdings from this case, Liuid Holdings is not included as one of the moving parties.

relative to the alleged sexual assault that was purportedly committed by Defendant Taylor - who was not employed by Defendants: (1) Intentional Infliction of Emotional Distress; (2) Negligent Hiring, Retention and Supervision; and (3) Negligence. *See* **Exhibit C**. None of the causes of action alleged by Plaintiff, nor the relief sought by her, concern the manner in which Liuid is managed, statements made (or not) by Hu relative to the business, or whether a Liuid employee manual was ever created. Id. Plaintiff nevertheless includes the following factual averments that she alleges are "common to all claims" and which Defendants respectfully request should be stricken pursuant to NRCP 12(f) because they are immaterial, impertinent and/or scandalous:

Liuid's Corporate Deficiencies

1. Upon her hiring, Bonifazio immediately advised Hu to begin looking for a Human Resources director and referred him to a qualified candidate.

2. Hu declined said recommendation, insisting that the company was small and the code of conduct in the employment contracts sufficed.

12. Bonifazio further advised that an employee handbook/manual should also be created to advise employees of their rights and responsibilities with the Company and governmental agencies.

13. Hu advised Bonifazio that Tom D'Urso, the Company's Chief Operations Officer, who resides on the East Coast would oversee the creation of same with the Company's attorney Robert Misko, Esq.

14. Thereafter, an employee manual was never created.

15. Bonifazio also implored Hu to hire an accounts receivable employee as there were wholesale accounts to be opened and there was no corporate infrastructure or oversight thereon to assure compliance with regulations including but not limited to inventory, financials and consignment, and Internal Revenue Service compliance.

16. Bonifazio further requested that Hu hire someone with an accounting background and explaining that if the company was audited by the IRS, they would all suffer the outcome. Hu ignored her recommendation and D'urso advised her he would assist with same.

17. Instead of following Bonifazio's recommendation, Hu expected Bonifazio to perform tasks and duties she was not professionally qualified to perform including but not limited to management and payment of invoices, bill reimbursements, etc.

18. Hu repeatedly told Bonifazio that he expected everyone to "cover" everything as it was a start-up company, despite Bonifazio's advice to hire professionals to cover integral positions in a company to protect their interests as employees.

19. As a result of the lack of corporate structure, employee paychecks were late every pay period, sometimes over a week late.

Hu's Incorrigible Supervision

20. Hu's failure to act in a competent manner was exhibited throughout the term of Bonifazio's employment with Liuid.

21. Hu would be late and sometimes fail to show up at promotional events that Bonifazio and other employees organized.

22. Hu would further subject the employees to atrociously discriminatory and misogynistic statements stating that the spokesperson for the company, champion swimmer, Helen Yee "looks like a porn-star and has an unbelievable rack" and her "boobs should be able to sell our products". Hu would also make comments about her breast augmentation being excellent flotation devices.

23. Bonifazio herself was subject to inappropriate remarks which were ignored and example of such as inquiring about her nail color and asking her if she just "left the strip club" and telling her that "shiny gold reminds [him]of the titty bars".

24. On another occasion Bonifazio was ill and Hu inquiring whether she was "prego" commented that she and her boyfriend "need to stop going at it so much".

25. Hu would often make in appropriate remarks about sex, porn and "rubbing one out".

26. Hu was systematically absent from morning meetings or conference calls often claiming to be hung over from the night before or fighting with his girlfriend.

27. In August, 2015, Liuid held the Company's launch party, at the M- Resort and Casino, in Las Vegas, Nevada. At said event Hu became grossly inebriated and aggressive and had gotten into an altercation with someone. Consequently hotel security closed down the launch party minutes earlier than scheduled.

28. At said launch party, Defendant Taylor, arrived at the last hour of the launch party and thereafter, Hu and Taylor had engaged in an all-night partying bender, whereby Taylor was thrown out of a casino for spitting on the floors and verbally assaulting casino employees.

29. Bonifazio and the other employees notified Hu and D'Urso that Hu's behavior was placing all employees at risk and the lack of company structure exposes the company to liabilities.

30. Bonifazio and the other employees were constantly babysitting him and the employee morale at the Company was waning.

31. Again, Hu ignores employee recommendations to hire someone to oversee Human Resources and compile an employee manual.

32. In September, 2015 Liuid employees advise Hu that his constant tardiness at meetings was frustrating employees and affecting the business productivity, whereby Hu indicated that he was having personal problems with his girlfriend.

33. Bonifazio notified D'Urso of the issues with Hu's ineptitude in running the

operations whereby she was assured that D'Urso would be moving to Las Vegas and would supervise same.

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40. The evening before the trip, Hu notified employees to be at the airport 30 minutes earlier for the purposes of holding a quick staff meeting prior to departure.

41. As usual, Hu did not show up for the early staff meeting and did not arrive at the airport until the employees had already boarded on the plane.

42. Hu got on the plane, immediately before the flight closed for departure and told the employees that again, he was fighting with his girlfriend.

****

84. That Defendant Liuid Companies and agents thereof, specifically D'Urso, were advised by Bonifazio and other employees that Hu's extreme and outrageous conduct was affecting the Company productivity and diminishing employee morale.

85. That despite Hu's constant failure to manage employees and refusal to follow employment fundamentals, such as provide for human resources, an employee manual, payment of salaries in a timely manner, etc., Defendant Companies failed to remedy same.

86. That despite D'Urso's knowledge of Hu's constant drinking and ineptitude in management, no other alternatives were provided for the management of the Company.

See **Exhibit C** at pp.2:19 – 5:9; pp.5:26-6:5; p.10:20-27.

Because these allegations are immaterial, impertinent, inadmissible, scandalous and prejudicial to Defendants, Defendants respectfully request the Court to strike paragraphs 22-33; 40-42; and 84-86 of Plaintiff's Amended Complaint as per NRCP 12(f) and, further, order Plaintiff to file a second amended complaint with the stricken allegations omitted.

III.LEGAL ARGUMENT

A. The Allegations Contained In Paragraphs 22-33; 40-42 And 84-86 Of Plaintiff's Amended Complaint Are Immaterial, Impertinent Or Scandalous And Should Be Stricken As Per NRCP 12(f)

NRCP 12(f) states in pertinent part as follows:

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

The purpose of NRCP 12(f) is to reinforce the requirement in Rule 8 that pleadings be simple, concise and direct.[2] *See* 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1380 at 644 (3d ed. 2004). Although the trial court is traditionally vested with broad discretion when considering 12(f) motions, a motion to strike should be granted "if it is clear that the matter to be stricken could have no possible bearing on the subject matter of the litigation." *LeDuc v. Kentucky Central Life Ins. Co.*, 814 F.Supp. 820, 830 (N.D.Cal.1992); *Colaprico v. Sun Microsystems, Inc.*, 758 F.Supp. 1335, 1339 (N.D.Cal.1991). ("[T]he function of a [FRCP] 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial.") *Zaloga v. Provident Life and Acc. Ins. Co. of America*, 671 F.Supp.2d 623, 633 (M.D.Pa. 2009) (The purpose of a motion to strike is to clean up the pleadings, streamline litigation, and avoid unnecessary forays into immaterial matters...").

An "immaterial" matter is generally that which has no essential or important relationship to the claim for relief. *See Fantasy Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev'd on other grounds, Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 114 S.Ct. 1023, 127 L.Ed.2d 455 (1994), citing Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1382 at 706-07 (1990). "'Impertinent' matter consists of statements that do not pertain, and are not necessary, to the issues in question." *See Fogerty* at 1527 (emphasis added). Superfluous historical allegations are a proper subject of a motion to strike. *Id. citing Healing v. Jones*, 174 F.Supp. 211, 220 (D.Ariz.1959). "Scandalous" matter "improperly casts a derogatory light on someone, most typically on a party to the action." *Germaine Music v. Universal Songs of Polygram*, 275 F.Supp 2d 1288, 1300 (D Nev 2003) *rev'd on other grounds, Germaine Music v. Universal Songs of Polygram*, 130 Fed. Appx 153 (9th Cir 2005), citing 5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1382, at 712 (2d ed.1990) (emphasis added); *see also Mazzeo v. Gibbons*, 649 F.Supp.2d 1182, 1202 (D Nev 2009)

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[2]NRCP 12(f) is substantively identical to Federal Rule of Civil Procedure ("FRCP") 12(f) and, accordingly, cases applying the Federal rule should be considered "strong persuasive authority." *See Executive Mgmt. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d. 872, 876 (1998); *citing Las Vegas Novelty, Inc. v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990).

(allegations that were "calculated to cast Defendants in a derogatory light..." were stricken and plaintiff was ordered to file a second amended complaint excluding the stricken allegations).

Although Defendants readily acknowledge that Motions to Strike are generally disfavored, it is well settled that "where the motion may have the effect of making the trial of the action less complicated, or have the effect of otherwise streamlining the ultimate resolution of the action, the motion to strike will be well taken." *See State of Cal. ex rel. State Lands Commission v. U.S*, 512 F. Supp. 36, 38 (D.C. Cal 1981), *citing Narragansett Tribe v. So. R. I. Land Devel.*, 418 F.Supp. 798, 801-802 (D.R.I.1976). For the reasons set forth herein, Defendants respectfully submit that the instant motion represents the exception to the general rule regarding motions to strike.

A case in which a "well taken" motion to strike was filed is *Fantasy v. Fogerty, supra*, where the court struck a counterclaim filed by the musician John Fogerty. Fogerty had been sued by Fantasy for copyright infringement and, in response, he filed a counterclaim alleging that one of Fantasy's shareholders had fraudulently induced him to enter an "unwise and illegal tax shelter scheme...." *Id.* Fogerty's counterclaim included "some seven pages of allegations concerning the tax shelter plan and his dealings with [the shareholder]; only a few lines were devoted to Fogerty's allegation that Fantasy committed a material breach..." *Id.* at 1527.

In upholding the trial court's striking of the counterclaim, The Ninth Circuit Court of Appeal reasoned that because "the statute of limitations and res judicata would prevent proof of the....allegations from being introduced at trial, the material was properly stricken under [Federal] Rule 12(f). *Id.* at 1528. Furthermore, whether Fogerty was fraudulently induced to enter into the "tax plan agreements simply was not relevant to the materiality of any breach Fantasy might have committed...." *Id.* The court also noted that the allegations raised by Fogerty would have been burdensome to answer and, if not stricken, would lead to unwarranted and prejudicial inferences against Fantasy. The Court reasoned as follows:

> Moreover, in granting Fantasy's motion to strike, the district court correctly noted that the... allegations created serious risks of prejudice to Fantasy, delay, and confusion of the issues. The allegations did not involve the parties to the copyright infringement action, but rather consisted of stale and barred charges that had already been extensively litigated and would have been burdensome for Fantasy to answer. There was a strong

> likelihood that evidence of the disputes...would lead to unwarranted and prejudicial inferences against Fantasy.

See Fantasy at 1528, *citing Loughrey v. Landon*, 381 F. Supp 884, 888 (D.C. Pa 1974) ("[The allegations] refer to persons other than the defendants and to activities for which any cause of action has long since been barred by the statute of limitations. Their presence may lead to unwarranted prejudicial inferences against the defendants. Accordingly, paragraphs 6, 7 and 8 will be stricken from the complaint.") The Court also held that the "stricken allegations would have unnecessarily complicated the trial of the copyright claim by requiring the introduction of extensive evidence of the tax plan agreements...." *Fantasy* at 1528. Thus, the appellate court agreed with the lower court's determination to grant Fantasy's motion to strike the counter-claim for the purpose of streamlining the ultimate resolution of the action and focusing the jury's attention on the real issues in the case. *Id.*

Applying the foregoing rationale and strong persuasive authority to the instant matter, Plaintiff's allegations in paragraphs 22-33; 40-42; and 84-86 of her Amended Complaint are immaterial, impertinent, and should be stricken pursuant to NRCP 12(f). Specifically, these allegations are immaterial and impertinent in that they bear no relationship to the claims for relief, they refer to persons who are not parties to the litigation, and they are superfluous to the issues in question. They are also scandalous in that they are clearly designed to cast Liuid and, in particular, Hu, in a derogatory light - indeed, these allegations are so irrelevant to the controversy being litigated that they appear to have been asserted for the sole purpose of prejudicing the Defendants. Moreover, the granting of the instant motion to strike will streamline the ultimate resolution of this case by focusing the efforts and attention of the parties and the Court on the real issues in the case which, by a plain reading of the Amended Complaint, concern an alleged sexual assault (by someone who was not employed by Defendants) while Plaintiff was on a business trip in Mississippi, and not whether (for example) Hu was allegedly absent from management meetings or was late to the airport.

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B. Paragraphs 22-33; 40-42; and 84-86 of Plaintiff's Amended Complaint Are Irrelevant and Prejudicial to Defendants

Evidence that is "relevant" in Nevada is defined by NRS 48.015, which provides as follows:

> "[R]elevant evidence" means any evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.

The Nevada Supreme Court has held that evidence is considered relevant where it has some tendency in reason to establish a proposition material for the case. *Landry's Horse D.E.B. v. Kaiser Aetna*, 100 Nev. 29, 676 P.2d 235 (1984). When proffered evidence is not relevant, it must be excluded because its prejudicial effect necessarily outweighs its relevance, the substance of the proffered testimony or evidence is collateral to the issues of the trial, and would only confuse and mislead the jury. *See Uniroyal Goodrich Tire Co. v. Mercer*, 111 Nev. 318, 890 P.2d 785 (1995); *Larsen v. State*, 102 Nev. 448, 725 P.2d 1214 (1986).

Furthermore, evidence that is relevant may nevertheless be excluded if its probative value is outweighed by its prejudicial impact. Specifically, NRS provides, in pertinent part, that:

> Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury.

In determining admissibility, the trial judge must balance the prejudicial and distracting impact of the evidence against its probative value, and in cases where prejudice outweighs probative value, the evidence should be excluded. *Nester v. State of Nevada*, 75 Nev. 41, 54, 334 P.2d 524 (1959).

As applied to this case, the allegations in paragraphs 22-33; 40-42; and 84-86 of Plaintiff's Amended Complaint run afoul of NRS 48.015 and NRS 48.135 because they are irrelevant and grossly prejudicial to Defendants. Moreover, a complaint's allegations are initially taken to be *judicial admissions which are binding upon the pleading party*. *See eg, Valerio v. Andrew Youngquist Corp.*, 127 Cal Rptr. 2d 436, 441, Cal Ct. App. 202 (...a pleader is bound by well pleaded material allegations..."); *Calloway v. Allstate Insurance Co.*, 485 N.E.2d 1242, 1245 (Ill. Ct. App. 1985) ("Allegations contained in a complaint are judicial

admissions and are conclusive against the pleader.") Accordingly, any effort by either party to rely upon or cite to Plaintiff's Amended Complaint at trial, for example, would be hopelessly complicated by Plaintiff's myriad, immaterial, impertinent and scandalous allegations against Defendants. Defendants therefore respectfully request the Court to strike paragraphs 22-33; 40-42; and 84-86 of Plaintiff's Amended Complaint and to order Plaintiff to file a second amended complaint by a date certain, with the stricken paragraphs omitted. *See Mazzeo v. Gibbons, supra.*

IV.CONCLUSION

Based on the foregoing, Defendants respectfully request this Honorable Court grant their Motion to Strike in its entirety.

Dated this 5th day of June 2016.

HALL JAFFE & CLAYTON, LLP

By /s/ Jason R. Wigg
STEVEN T. JAFFE, ESQ.
Nevada Bar No. 007035
JASON R. WIGG, ESQ.
Nevada Bar No. 007953
KYLE E.N. GEORGE, ESQ.
Nevada Bar No. 013489
7425 Peak Drive
Las Vegas, Nevada 89128
Attorneys for Defendants Stan Hu, Liuid LLC, and Liuid Holdings, LLC

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of HALL JAFFE & CLAYTON, LLP, and that on the 5th day of June, 2016, the foregoing **DEFENDANTS STAN HU'S and, LIUID, LLC'S MOTION TO STRIKE** was served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court e-Filing System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules, and if not on the e-serve list, was mailed via U.S. Mail, postage prepaid as noted below, as follows:

Sigal Chattah, Esq.
CHATTAH LAW GROUP
5875 S. Rainbow Blvd., Suite 201
Las Vegas, NV 89118
Attorneys for Plaintiff

/s/Barbara Gracey
An Employee of HALL JAFFE & CLAYTON, LLP

EXHIBIT A

EXHIBIT A

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CLERK OF THE COURT

COM
SIGAL CHATTAH, ESQ.
Nevada Bar No.: 8264
CHATTAH LAW GROUP
5875 S. Rainbow Blvd., Suite 204
Las Vegas, Nevada 89118
Tel: (702) 360-6200
Fax:(702) 643-6292
Sigal@thegoodlawyerlv.com
Attorneys for Plaintiff
Marisa Bonifazio

DISTRICT COURT

CLARK COUNTY, NEVADA

MARISA BONIFAZIO, an individual,

Plaintiff,

vs.

LIUID, LLC, a Nevada Limited Liability Company, LIUID HOLDINGS, LLC, a Nevada Limited Liability Company, WILLIAM TAYLOR, an individual; STAN HU, an individual, DOES 1-50 inclusive; and ROES 51-60 inclusive,

Defendants.

CASE NO: A-15-728285-C
DEPT NO: XXXI

COMPLAINT

COMES NOW, Plaintiff, MARISA BONIFAZIO, by and through her attorney of record, SIGAL CHATTAH, ESQ., of CHATTAH LAW GROUP, who hereby complains of Defendants and each of them and alleges as follows:

IDENTIFICATION OF THE PARTIES

1. At all relevant times herein, Plaintiff MARISA BONIFAZIO (hereinafter "Plaintiff" or "Ms. Bonifazio") is a resident of the State of Nevada, County of Clark.

2. At all relevant times herein, Defendant LIUID LLC, was a Nevada Limited Liability Company conducting business in Clark County, Nevada.

3. At all relevant times herein, Defendant LIUID HOLDINGS LLC, was a Nevada Limited Liability Company conducting business in Clark County, Nevada.

4. At all times relevant herein, Defendant WILLIAM TAYLOR, was a resident of the State of Mississippi, residing in Brooksville, Mississippi.

5. At all times relevant herein, Defendant STAN HU, was a resident of the State of Nevada, residing in Las Vegas, Nevada and operating as the Chief Executive Officer of Defendant LIUID, LLC.

6. Defendants DOES I-X, who are unidentified security guards, supervisors, managers, and other employee/agents of the entity Defendants, are individuals whose true names and capacities are unknown to Plaintiff and therefore are sued by these fictitious names. Plaintiff will seek leave to amend this complaint as the true identities of these individuals become known.

7. Defendants ROE CORPORATIONS 1-10 are entities whose true names and capacities are unknown to Plaintiff and therefore are sued by these fictitious names. Plaintiff will seek leave to amend this complaint as the true identities of these entities become known.

ALLEGATIONS COMMON TO ALL CLAIMS

8. Plaintiff repeats and realleges all preceding paragraphs as though fully set forth herein.

9. On May 4, 2015, Ms. Bonifazio began working as a Sales Director for Liuid LLC.

10. On October 8, 2015, Ms. Bonifazio along with two other Liuid employees and Luid Chief Executive Officer, Stan Hu went on a company trip to Mississippi and Alabama for the purposes of donating a scholarship to the University of Alabama.

11. On said day, Hu, Ms. Bonifazio and two additional employees flew into Columbus, Mississippi, and instead of providing the employees with accommodations at a hotel, close to the venue which was the purpose of your business trip, Hu took them to his friend's house for accommodations in Brooksville, Mississippi, despite the fact that none of the employees knew said individual, only known as Willy T a/k/a William Taylor (hereinafter "Willy T or "TAYLOR"").

12. Hu advised the group that Taylor was prohibited from attending certain events at the University as he was prohibited from being at the President's Tent at the University due to offensive behavior therein.

13. Despite same, Hu ***knowingly*** forced the employees to stay at Taylor's home as an accommodation for the work trip.

14. Hu deliberately and with a conscious disregard for their safety, placed them, specifically subjected Ms. Bonifazio, as the only female employee in a harmful environment.

15. Furthermore despite the fact that the employees voiced their objections, Hu insisted in said alternate accommodations.

16. The individuals arrived at TAYLOR's home, in a rural area, almost an hour and a half from the nearest town. None of the employees were able to leave the filthy and roach infested accommodations which were abysmal with no sheets on the beds and no locks on the doors.

17. Furthermore, Hu exposed all the employees to various discriminatory slurs made by TAYLOR throughout the night of their arrival, during the course of dinner.

18. In addition to same, despite being advised by Bonifazio that she was uncomfortable with guns. Hu, in jest pointed a gun at her and the other employees, while giving them a tour of the accommodations, claiming "if any one doesn't behave this is what you're getting".

19. Further, there were guns visible throughout the home, including but not limited to, a handgun, a shot gun or rifle, a type of hunting gun.

20. Shortly after arrival, the Parties were having dinner at the home where alcoholic beverages were consumed, when Ms. Bonifazio felt ill and began vomiting in the bathroom.

21. Ms. Bonifazio, felt she was unable to move, as if in a drugged state and remained lying on the floor of the bathroom.

22. Bonifazio was clearly impaired in the bathroom when Defendant TAYLOR entered the bathroom and picked her up off the floor and carried her into a bedroom and placed her on top of the bed.

23. Ms. Bonifazio attempted to resist as was indicated by bruising and contusions on her body, and was unable to as a result of the incapacitated and drugged state she was in.

24. Ms. Bonifazio also attempted to reach for her telephone which TAYLOR had pushed away and was unable to as a result of her impaired state.

25. While Ms. Bonifazio was visibly impaired by and through ingesting a drug surreptitiously administered at dinner, TAYLOR started sexually fondling her, and Ms. Bonifazio, incapacitated could not fight back.

26. Noticing that TAYLOR was gone, two other employees came into the bedroom to check up on Ms. Bonifazio and saw TAYLOR sexually assaulting an incapacitated Bonifazio.

27. The employees immediately intervened and extracted her out of the compromising position that Defendants placed her in.

28. Subsequently Hu, in a grossly inebriated state and an effort to calm the situation, drove Ms. Bonifazio and the other two employees to the nearest hotel approximately an hour and a half away.

29. Thereafter, Ms. Bonifazio secured a flight out of Mississippi and returned to Las Vegas, Nevada on the first available flight after the incident.

30. Despite the tragic occurrence with Ms. Bonifazio, and even after her departure back to Las Vegas, after said incident, Hu continued to expose the employees to reckless behaviors.

31. Further, despite the fact that Hu should have notified police of said incident and/or taken Ms. Bonifazio to the nearest police station to file an incident report regarding same, Hu refused to do so because of a potential adverse action to his friend Defendant TAYLOR

32. As Ms. Bonifazio and none of the other employees knew the city they were in and could not identify the rural area and location thereto, it was incumbent upon Hu as the employer to transport Ms. Bonifazio to the proper authorities to report the situation.

FIRST CAUSE OF ACTION
Assault
(Against TAYLOR)

33 Plaintiff repeats and realleges all preceding paragraphs as though fully set forth herein.

34. Defendant, intentionally acted to make Plaintiff reasonably apprehend that she was in imminent danger of being unlawfully touched in a harmful or offensive manner.

35. Plaintiff did not consent to Defendant's conduct.

36. As a direct and proximate result of the malicious and intentional conduct by Defendant, Plaintiff suffered damages in excess of $10,000.

37. The intentional conduct of the Defendant was so despicable, oppressive, malicious, and engaged in with such conscious disregard for Plaintiff's rights and safety that punitive damages in excess of $10,000 are warranted, as is an award of attorney fees and costs of this action.

SECOND CLAIM FOR RELIEF
Battery
(Against TAYLOR)

38. Plaintiff repeats and realleges all preceding paragraphs as though fully set forth herein.

39. Defendant, unlawfully touched Plaintiff in a sexual manner, without Plaintiff's consent with intent to arouse or gratify his own sexual desire.

40. Plaintiff did suffer physical injury as a result of Defendants' attack.

41. As a direct and proximate result of the malicious and intentional conduct by Defendant Plaintiff suffered damages in excess of $10,000.

42. The intentional conduct of the Defendant was so despicable, oppressive, malicious, and engaged in with such conscious disregard for Plaintiff's rights and safety that punitive damages in excess of $10,000 are warranted, as is an award of attorney fees and costs of this action.

THIRD CAUSE OF ACTION
Intentional Infliction of Emotional Distress
(Against ALL Defendants)

43. Plaintiff repeats and realleges all preceding paragraphs as though fully set forth herein.

44. Defendants' acts and omissions described herein were extreme and outrageous and intentionally conducted to cause emotional distress to Plaintiff.

45. As a direct and proximate result of the malicious and intentional conduct by Defendants, whose acts were directed and ratified by Defendants LIUID Companies, Plaintiff suffered, and will continue to suffer, damages, including but not limited to such severe and extreme emotional distress manifested as great humiliation, embarrassment, shame, and other pain and suffering, in an amount in excess of $10,000.

46 The intentional conduct of the Defendants was so despicable, oppressive, malicious, and engaged in with such conscious disregard for Plaintiff's rights and safety that punitive damages in excess of $10,000 are warranted, as is an award of attorney fees and costs of this action.

FOURTH CLAIM FOR RELIEF
Negligent Hiring, Retention, and Supervision
(Against Defendants LIUID LLC, LIUID HOLDINGS LLC and HU)

47. Plaintiff repeats and realleges all preceding paragraphs as though fully set forth herein.

48. These Defendants owed several duties to Plaintiff including, but not limited to, the following:

a. The duty to keep employees safe from the negligent and/or criminal acts of its employees or third parties;

b. The duty to provide responsible management;

c. The duty to act reasonably under the circumstances; and

d. The duty to take action to control the wrongful acts of its employees and associates when it had reason to anticipate such acts.

49. Defendants breached these duties by having Plaintiff and additional employees stay with an individual prone to unlawful behavior, and who were not qualified to assure safe

accommodations during the business trip. Defendants further breached these duties by failing to properly train and adequate supervise its employees. Finally, Defendants negligently retained and supervised said employees even though they knew, or should have known, that the employees had propensities to act unlawfully.

50. As a direct and proximate result of these breaches, Plaintiff has suffered damages in excess of $10,000.

51. The failures of Defendants to hire, train, and maintain a proper staff was intentional and so despicable, oppressive, malicious, and engaged in with such conscious disregard for Plaintiff's rights and safety that punitive damages in excess of $10,000 are warranted, as is an award of attorney fees and costs of this action.

FIFTH CLAIM FOR RELIEF
Negligence
(Against All Defendants)

52. Plaintiff repeats and realleges all preceding paragraphs as though fully set forth herein.

53. Defendants owed a duty to Plaintiff to keep her safe on a business trip and the accommodations in a reasonably safe condition.

54. Defendants breached that duty in that they failed to appropriately do so and permitted and ratified the assault, battery, and other tortuous conduct, and otherwise failed to take actions necessary to provide a safe and secure premises for Plaintiff.

55. As a direct and proximate result of Defendants' failures, Plaintiff has suffered damages in excess of $10,000.

56. The intentional conduct by Defendants was so despicable, oppressive, malicious, and engaged in with such conscious disregard for Plaintiff's rights and safety that punitive damages in excess of $10,000 are warranted, as is an award of attorney fees and costs of this action.

WHEREFORE, Plaintiff prays for relief as follows:

1. For Compensatory Damages in excess of $10,000.00;

2. For Punitive Damages in Excess of $10,000.00;

3. For costs and attorney fees incurred in prosecuting this action; and

4. For such further relief as the Court deems warranted.

DATED this 25 day of November, 2015

CHATTAH LAW GROUP

SIGAL CHATAH, ESQ.
Nevada Bar No.: 8264
CHATTAH LAW GROUP
5875 S. Rainbow Blvd., Suite 204
Las Vegas, Nevada 89118
Tel: (702) 360-6200
Fax:(702) 643-6292
Sigal@thegoodlawyerlv.com
Attorney for Plaintiff

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No. A-15-728285-C
(Assigned by Clerk's Office) XXXI

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

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
MARISA BONIFAZIO	LUID, LLC
Attorney (name/address/phone):	Attorney (name/address/phone):
SIGAL CHATTAH, ESQ. BAR NO. 8264	
CHATTAH LAW GROUP	
5875 S. Rainbow Blvd., #2-04	
Las Vegas, NV 89118 (702) 360-6200	

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

Civil Case Filing Types

Real Property	Torts	
Landlord/Tenant	**Negligence**	**Other Torts**
☐ Unlawful Detainer	☐ Auto	☐ Product Liability
☐ Other Landlord/Tenant	☐ Premises Liability	☒ Intentional Misconduct
Title to Property	☐ Other Negligence	☐ Employment Tort
☐ Judicial Foreclosure	**Malpractice**	☐ Insurance Tort
☐ Other Title to Property	☐ Medical/Dental	☐ Other Tort
Other Real Property	☐ Legal	
☐ Condemnation/Eminent Domain	☐ Accounting	
☐ Other Real Property	☐ Other Malpractice	

Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate *(select case type and estate value)*	**Construction Defect**	**Judicial Review**
☐ Summary Administration	☐ Chapter 40	☐ Foreclosure Mediation Case
☐ General Administration	☐ Other Construction Defect	☐ Petition to Seal Records
☐ Special Administration	**Contract Case**	☐ Mental Competency
☐ Set Aside	☐ Uniform Commercial Code	**Nevada State Agency Appeal**
☐ Trust/Conservatorship	☐ Building and Construction	☐ Department of Motor Vehicle
☐ Other Probate	☐ Insurance Carrier	☐ Worker's Compensation
Estate Value	☐ Commercial Instrument	☐ Other Nevada State Agency
☐ Over $200,000	☐ Collection of Accounts	**Appeal Other**
☐ Between $100,000 and $200,000	☐ Employment Contract	☐ Appeal from Lower Court
☐ Under $100,000 or Unknown	☐ Other Contract	☐ Other Judicial Review/Appeal
☐ Under $2,500		

Civil Writ		Other Civil Filing
Civil Writ		**Other Civil Filing**
☐ Writ of Habeas Corpus	☐ Writ of Prohibition	☐ Compromise of Minor's Claim
☐ Writ of Mandamus	☐ Other Civil Writ	☐ Foreign Judgment
☐ Writ of Quo Warrant		☐ Other Civil Matters

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

Novembe 25, 2015
Date

Signature of initiating party or representative

See other side for family-related case filings.

Nevada AOC - Research Statistics Unit
Pursuant to NRS 3.275

Form PA 201
Rev 3.1

IAFD
SIGAL CHATTAH, ESQ.
Nevada Bar No.: 8264
CHATTAH LAW GROUP
5875 S. Rainbow blvd. #203
Las Vegas, Nevada 89118
Tel: (702) 360-6200
Fax: (702) 643-6292
Attorney for Plaintiff
Marisa Bonifazio

DISTRICT COURT

CLARK COUNTY, NEVADA

MARISA BONIFAZIO, an individual, Plaintiff, vs. LIUID, LLC, a Nevada Limited Liability Company, LIUID HOLDINGS, LLC, a Nevada Limited Liability Company, WILLIAM TAYLOR, an individual; STAN HU, an individual, DOES 1-50 inclusive; and ROES 51-60 inclusive, Defendants.	CASE NO: DEPT NO: **IAFD**

INITIAL APPEARANCE DISCLOSURE FEE

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above entitled action as indicated below:

MARISA BONIFAZIO, Plaintiff	$270.00
TOTAL REMITTED:	$270.00

Dated this 25th day of November, 2015.

CHATTAH LAW GROUP

SIGAL CHATTAH ESQ.
Nevada Bar No.: 8264
LAW OFFICES OF SIGAL CHATTAH
5875 S. Rainbow Blvd. #204
Las Vegas, Nevada 89118
Attorney for Plaintiff

EXHIBIT B

EXHIBIT B

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CLERK OF THE COURT

NEO
STEVEN T. JAFFE, ESQ.
Nevada Bar No. 007035
sjaffe@lawhjc.com
JASON R. WIGG
Nevada Bar No. 7953
jwigg@lawhjc.com

HALL JAFFE & CLAYTON, LLP
7425 PEAK DRIVE
LAS VEGAS, NEVADA 89128
(702) 316-4111
FAX (702)316-4114

Attorney for Defendants,Liuid, LLC and Liuid Holdings, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

MARISA BONIFAZIO, an individual,

Plaintiff,

vs.

LIUID, LLC, a Nevada Limited Liability Company, LIUID HOLDINGS, LLC, a Nevada Limited Liability Company, WILLIAM TAYLOR, an individual; STAN HU, an individual, DOES 1-50 inclusive; and ROES 51-60 inclusive,

Defendants.

CASE NO. A-15-728285-C
DEPT NO. XXXI

NOTICE OF ENTRY OF ORDER ON DEFENDANTS LIUID, LLC, LIUID HOLDINGS, LLC AND STAN HU'S MOTION TO DISMISS

PLEASE TAKE NOTICE that the Order on Defendants Liuid, LLC, Liuid Holdings, LLC and Stan Hu's Motion to Dismiss was entered on the 23rd day of February, 2016,

///

a copy of which is attached hereto.

DATED this 24 day of February, 2016.

HALL JAFFE & CLAYTON, LLP

BY _____
STEVEN T. JAFFE, ESQ.
Nevada Bar No. 007035
JASON R. WIGG, ESQ.
Nevada Bar No. 007953
7425 Peak Drive
Las Vegas, Nevada 89128
Attorney for Defendants, Liuid, LLC and Liuid Holdings, LLC

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that I am an employee of HALL JAFFE & CLAYTON, LLP and that on the 24th day of February, 2016, the foregoing **NOTICE OF ENTRY OF ORDER ON DEFENDANTS LIUID, LLC, LIUID HOLDINGS, LLC AND STAN HU'S MOTION TO DISMISS** was served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court e-Filing System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules, and if not on the e-serve list, was mailed via U.S. Mail, postage prepaid as noted below, as follows:

Sigal Chattah, Esq.
CHATTAH LAW GROUP
5875 S. Rainbow Blvd., Suite 201
Las Vegas, NV 89118
Attorneys for Plaintiff

An Employee of HALL JAFFE & CLAYTON, LLP

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CLERK OF THE COURT

ORD
STEVEN T. JAFFE, ESQ.
Nevada Bar No. 007035
sjaffe@lawhjc.com
JASON R. WIGG
Nevada Bar No. 7953
jwigg@lawhjc.com

HALL JAFFE & CLAYTON, LLP
7425 PEAK DRIVE
LAS VEGAS, NEVADA 89128
(702) 316-4111
FAX (702)316-4114

Attorney for Defendants,Liuid, LLC and Liuid Holdings, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

MARISA BONIFAZIO, an individual,

Plaintiff,

vs.

LIUID, LLC, a Nevada Limited Liability Company, LIUID HOLDINGS, LLC, a Nevada Limited Liability Company, WILLIAM TAYLOR, an individual; STAN HU, an individual, DOES 1-50 inclusive; and ROES 51-60 inclusive,

Defendants.

CASE NO. A-15-728285-C
DEPT NO. XXXI

ORDER ON DEFENDANTS LIUID, LLC, LIUID HOLDINGS, LLC and STAN HU'S MOTION TO DISMISS

On February 16, 2016, LIUID, INC., LIUID HOLDINGS, LLC, and STAN HU (hereinafter collectively "LIUID"), did appear before the Court by and through their attorney of record, Steven T. Jaffe, Esq., of HALL JAFFE & CLAYTON, on the LIUID parties' Motion to

Dismiss the Plaintiff's Complaint pursuant to NRCP 12(b)(5). Appearing at that time on behalf of the Plaintiff was Sigal Chattah, Esq. Having considered the papers submitted, having heard the arguments of counsel, having considered the law, and for good cause shown, it is hereby

ORDERED, ADJUDGED, and DECREED that the Motion to Dismiss pursuant to NRCP 12(b)(5) filed on behalf of the LIUID Defendants shall be and is hereby granted without Prejudice and it is further

ORDERED, ADJUDGED, and DECREED that Plaintiff shall be permitted to file and amendment to counts three, four, and five of the Complaint within ten (10) days after having been served with a Notice of Entry of this Order.

IT IS SO ORDERED this 22 day of Feb, 2016.

JOANNA S. KISHNER

HON. JOANNA S. KISHNER
DISTRICT COURT JUDGE

Respectfully Submitted by:
HALL JAFFE & CLAYTON, LLP

STEVEN T. JAFFE, ESQ.
Nevada Bar No. 007035
JASON R. WIGG, ESQ.
Nevada Bar No. 007953
7425 Peak Drive
Las Vegas, Nevada 89128
Attorney for Defendants, Liuid, LLC and Liuid Holdings, LLC

Approved as to form and content by:
CHATTAH LAW GROUP

Sigal Chattah, Esq.
5875 S. Rainbow Blvd., Suite 201
Las Vegas, NV 89118
Attorneys for Plaintiff

EXHIBIT C

EXHIBIT C

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CLERK OF THE COURT

ACOM
SIGAL CHATTAH, ESQ.
Nevada Bar No.: 8264
CHATTAH LAW GROUP
5875 S. Rainbow Blvd., Suite 204
Las Vegas, Nevada 89118
Tel: (702) 360-6200
Fax:(702) 643-6292
Sigal@thegoodlawyerlv.com
Attorneys for Plaintiff
Marisa Bonifazio

DISTRICT COURT

CLARK COUNTY, NEVADA

MARISA BONIFAZIO, an individual,

Plaintiff,

vs.

LIUID, LLC, a Nevada Limited Liability Company, LIUID HOLDINGS, LLC, a Nevada Limited Liability Company, WILLIAM TAYLOR, an individual; STAN HU, an individual, DOES 1-50 inclusive; and ROES 51-60 inclusive,

Defendants.

CASE NO: A-15-728285-C
DEPT NO: XXXI

AMENDED COMPLAINT

COMES NOW, Plaintiff, MARISA BONIFAZIO, by and through her attorney of record, SIGAL CHATTAH, ESQ., of CHATTAH LAW GROUP, who hereby complains of Defendants and each of them and alleges as follows:

IDENTIFICATION OF THE PARTIES

1. At all relevant times herein, Plaintiff MARISA BONIFAZIO (hereinafter "Plaintiff" or "Ms. Bonifazio") is a resident of the State of Nevada, County of Clark.

2. At all relevant times herein, Defendant LIUID LLC, was a Nevada Limited Liability Company conducting business in Clark County, Nevada.

3. At all relevant times herein, Defendant LIUID HOLDINGS LLC, was a Nevada Limited Liability Company conducting business in Clark County, Nevada.

4. At all times relevant herein, Defendant WILLIAM TAYLOR, was a resident of the State of Mississippi, residing in Brooksville, Mississippi.

5. At all times relevant herein, Defendant STAN HU, was a resident of the State of Nevada, residing in Las Vegas, Nevada and operating as the Chief Executive Officer of Defendant LIUID, LLC.

6. Defendants DOES I-X, who are unidentified security guards, supervisors, managers, and other employee/agents of the entity Defendants, are individuals whose true names and capacities are unknown to Plaintiff and therefore are sued by these fictitious names. Plaintiff will seek leave to amend this complaint as the true identities of these individuals become known.

7. Defendants ROE CORPORATIONS 1-10 are entities whose true names and capacities are unknown to Plaintiff and therefore are sued by these fictitious names. Plaintiff will seek leave to amend this complaint as the true identities of these entities become known.

ALLEGATIONS COMMON TO ALL CLAIMS

8. Plaintiff repeats and realleges all preceding paragraphs as though fully set forth herein.

9. On May 4, 2015, Ms. Bonifazio began working as a Sales Director for Liuid LLC.

Liuid's Corporate Deficiencies

10. Upon her hiring, Bonifazio immediately advised Hu to begin looking for a Human Resources director and referred him to a qualified candidate.

11. Hu declined said recommendation, insisting that the company was small and the code of conduct in the employment contracts sufficed.

12. Bonifazio further advised that an employee handbook/manual should also be created to advise employees of their rights and responsibilities with the Company and governmental agencies.

13. Hu advised Bonifazio that Tom D'Urso, the Company's Chief Operations Officer, who resides on the East Coast would oversee the creation of same with the Company's attorney Robert Misko, Esq.

14. Thereafter, an employee manual was never created.

15. Bonifazio also implored Hu to hire an accounts receivable employee as there were wholesale accounts to be opened and there was no corporate infrastructure or oversight thereon to assure compliance with regulations including but not limited to inventory, financials and consignment, and Internal Revenue Service compliance.

16. Bonifazio further requested that Hu hire someone with an accounting background and explaining that if the company was audited by the IRS, they would all suffer the outcome. Hu ignored her recommendation and D'urso advised her he would assist with same.

17. Instead of following Bonifazio's recommendation, Hu expected Bonifazio to perform tasks and duties she was not professionally qualified to perform including but not limited to management and payment of invoices, bill reimbursements, etc.

18. Hu repeatedly told Bonifazio that he expected everyone to "cover" everything as it was a start-up company, despite Bonifazio's advice to hire professionals to cover integral positions in a company to protect their interests as employees.

19. As a result of the lack of corporate structure, employee paychecks were late every pay period, sometimes over a week late.

Hu's Incorrigible Supervision

20. Hu's failure to act in a competent manner was exhibited throughout the term of Bonifazio's employment with Liuid.

21. Hu would be late and sometimes fail to show up at promotional events that Bonifazio and other employees organized.

22. Hu would further subject the employees to atrociously discriminatory and misogynistic statements stating that the spokesperson for the company, champion swimmer, Helen Yee "looks like a porn-star and has an unbelievable rack" and her "boobs should be able to sell our products". Hu would also make comments about her breast augmentation being excellent flotation devices.

23. Bonifazio herself was subject to inappropriate remarks which were ignored and example of such as inquiring about her nail color and asking her if she just "left the strip club" and telling her that "shiny gold reminds [him]of the titty bars".

24. On another occasion Bonifazio was ill and Hu inquiring whether she was "prego" commented that she and her boyfriend "need to stop going at it so much".

25. Hu would often make in appropriate remarks about sex, porn and "rubbing one out".

26. Hu was systematically absent from morning meetings or conference calls often claiming to be hung over from the night before or fighting with his girlfriend.

27. In August, 2015, Liuid held the Company's launch party, at the M- Resort and Casino, in Las Vegas, Nevada. At said event Hu became grossly inebriated and aggressive and had gotten into an altercation with someone. Consequently hotel security closed down the launch party 30 minutes earlier than scheduled.

28. At said launch party, Defendant Taylor, arrived at the last hour of the launch party and thereafter, Hu and Taylor had engaged in an all-night partying bender, whereby Taylor was thrown out of a casino for spitting on the floors and verbally assaulting casino employees.

29. Bonifazio and the other employees notified Hu and D'Urso that Hu's behavior was placing all employees at risk and the lack of company structure exposes the company to liabilities.

30. Bonifazio and the other employees were constantly babysitting him and the employee morale at the Company was waning.

31. Again, Hu ignores employee recommendations to hire someone to oversee Human Resources and compile an employee manual.

32. In September, 2015 Liuid employees advise Hu that his constant tardiness at meetings was frustrating employees and affecting the business productivity, whereby Hu indicated that he was having personal problems with his girlfriend.

33. Bonifazio notified D'Urso of the issues with Hu's ineptitude in running the operations whereby she was assured that D'Urso would be moving to Las Vegas and would supervise same.

34. In October, Hu notified Bonifazio and the other employees that they would be attending a company trip to his Alma Matter to donate a scholarship at the University of Alabama.

35. Bonifazio and the other employees expected the trip to include accommodations and travel fare to and from the event.

36. Hu notified the group that they would be staying at his friend's house, whereby the group hesitated to stay at someone's house they didn't know.

37. Hu told the employees that as a Company excursion, they would go shooting in Taylor's backyard, wherein Bonifazio disclosed that her brother had been shot when she was 8 years old and she was uncomfortable around guns.

38. Hu insisted and told them it would be a great team building experience and that it would only be for one night.

Facts and Circumstances Surrounding Bonifazio's Claim

39. On October 8, 2015, Ms. Bonifazio along with two other Liuid employees and Hu went on the company trip to Mississippi and Alabama.

40. The evening before the trip, Hu notified employees to be at the airport 30 minutes earlier for the purposes of holding a quick staff meeting prior to departure.

41. As usual, Hu did not show up for the early staff meeting and did not arrive at the airport until the employees had already boarded on the plane.

42. Hu got on the plane, immediately before the flight closed for departure and told the employees that again, he was fighting with his girlfriend.

43. Upon arrival to Columbus, Mississippi, instead of providing the employees with accommodations at a hotel, close to the venue which was the purpose of the business trip, Hu took them to his friend's house for accommodations in Brooksville, Mississippi, despite the fact that none of the employees knew said individual, only known as Willy T a/k/a William Taylor (hereinafter "Willy T or "TAYLOR"").

44. Hu advised the group that Taylor was prohibited from attending certain events at the University as he was prohibited from being at the President's Tent at the University due to offensive behavior therein.

45. Despite same, Hu ***knowingly*** forced the employees to stay at Taylor's home as an accommodation for the work trip.

46. Hu deliberately and with a conscious disregard for their safety, placed them, specifically subjected Ms. Bonifazio, as the only female employee in a harmful environment.

47. Furthermore despite the fact that the employees voiced their objections, Hu insisted in said alternate accommodations.

48. The individuals arrived at TAYLOR's home, in a rural area, almost an hour and a half from the nearest town. None of the employees were able to leave the filthy and roach infested accommodations which were abysmal with no sheets on the beds and no locks on the doors.

49. Furthermore, Hu exposed all the employees to various discriminatory slurs made by TAYLOR throughout the night of their arrival, during the course of dinner.

50. Additionally, Taylor had an array of weapons displayed throughout the home and Bonifazio, specifically objected to being around guns as she had suffered a trauma early in her life therefrom.

51. In addition to same, despite being advised by Bonifazio that she was uncomfortable with guns. Hu, pointed a gun at her and the other employees, brandishing a weapon, while giving them a tour of the accommodations, claiming "if any one doesn't behave this is what you're getting".

50. Further, there were guns visible throughout the home, including but not limited to, a handgun, a shot gun or rifle, a type of hunting gun.

51. Shortly after arrival, the Parties were having dinner at the home where alcoholic beverages were consumed, when Ms. Bonifazio felt ill and began vomiting in the bathroom.

52. Ms. Bonifazio, felt she was unable to move, as if in a drugged state and remained lying on the floor of the bathroom.

53. Bonifazio was clearly impaired in the bathroom when Defendant TAYLOR entered the bathroom and picked her up off the floor and carried her into a bedroom and placed her on top of the bed.

54. Ms. Bonifazio attempted to resist as was indicated by bruising and contusions on her body, and was unable to as a result of the incapacitated and drugged state she was in.

55. Ms. Bonifazio also attempted to reach for her telephone which TAYLOR had pushed away and was unable to as a result of her impaired state.

56. While Ms. Bonifazio was visibly impaired by and through ingesting a drug surreptitiously administered at dinner, TAYLOR started sexually fondling her, and Ms. Bonifazio, incapacitated could not fight back.

57. Noticing that TAYLOR was gone, two other employees came into the bedroom to check up on Ms. Bonifazio and saw TAYLOR sexually assaulting an incapacitated Bonifazio.

58. The employees immediately intervened and extracted her out of the compromising position that Defendants placed her in.

59. Subsequently Hu, in a grossly inebriated state and an effort to calm the situation, drove Ms. Bonifazio and the other two employees to the nearest hotel approximately an hour and a half away.

60. Thereafter, Ms. Bonifazio secured a flight out of Mississippi and returned to Las Vegas, Nevada on the first available flight after the incident.

61. Despite the tragic occurrence with Ms. Bonifazio, and even after her departure back to Las Vegas, after said incident, Hu continued to expose the remaining employees to reckless behaviors.

62. Further, despite the fact that Hu should have notified police of said incident and/or taken Ms. Bonifazio to the nearest police station and/or hospital to file an incident report regarding same, Hu refused to do so because of a potential adverse action to his friend Defendant TAYLOR

63. As Ms. Bonifazio and none of the other employees knew the city they were in and could not identify the rural area and location thereto, it was incumbent upon Hu as the employer to transport Ms. Bonifazio to the proper authorities to report the situation and/or take her to a hospital for emergency medical treatment.

FIRST CAUSE OF ACTION
Assault
(Against TAYLOR)

64. Plaintiff repeats and realleges all preceding paragraphs as though fully set forth herein.

65. Defendant, intentionally acted to make Plaintiff reasonably apprehend that she was in imminent danger of being unlawfully touched in a harmful or offensive manner.

66. Plaintiff did not consent to Defendant's conduct.

67. As a direct and proximate result of the malicious and intentional conduct by Defendant, Plaintiff suffered damages in excess of $10,000.

68. The intentional conduct of the Defendant was so despicable, oppressive, malicious, and engaged in with such conscious disregard for Plaintiff's rights and safety that punitive damages in excess of $10,000 are warranted, as is an award of attorney fees and costs of this action.

SECOND CLAIM FOR RELIEF
Battery
(Against TAYLOR)

69. Plaintiff repeats and realleges all preceding paragraphs as though fully set forth herein.

70. Defendant, unlawfully touched Plaintiff in a sexual manner, without Plaintiff's consent with intent to arouse or gratify his own sexual desire.

71. Plaintiff did suffer physical injury as a result of Defendants' attack.

72. As a direct and proximate result of the malicious and intentional conduct by Defendant Plaintiff suffered damages in excess of $10,000.

73. The intentional conduct of the Defendant was so despicable, oppressive, malicious, and engaged in with such conscious disregard for Plaintiff's rights and safety that punitive damages in excess of $10,000 are warranted, as is an award of attorney fees and costs of this action.

THIRD CAUSE OF ACTION
Intentional Infliction of Emotional Distress
(Against ALL Defendants)

74. Plaintiff repeats and realleges all preceding paragraphs as though fully set forth herein.

75. Defendant Hu, individually and on behalf of Liuid Companies, knew prior to the October, 2015, company trip, that Taylor had dangerous propensities and regardless of same, placed Bonifazio in harm's way.

76. Defendant Hu further knew that Bonifazio had experienced trauma regarding guns in during her childhood, and that she did not want to be anywhere near them.

77. Defendant Hu intentionally arranged for the Parties to stay at Defendant Taylor's house, which was riddled with guns throughout the home.

78. Defendant Hu further brandished a weapon at Bonifazio at Taylor's home.

79. After Bonifazio's assault by Defendant Taylor, Defendant Hu refused to transport Bonifazio to the emergency room and/or police station to file a complaint against Taylor, as to protect his friend.

80. Defendants' acts and omissions described herein were extreme and outrageous and intentionally conducted to cause emotional distress to Plaintiff.

81. As a direct and proximate result of the malicious and intentional conduct by Defendants, whose acts were directed and ratified by Defendants LIUID Companies, Plaintiff suffered, and will continue to suffer, damages, including but not limited to such severe and extreme emotional distress manifested as great humiliation, embarrassment, shame, and other pain and suffering, in an amount in excess of $10,000.

82. The intentional conduct of the Defendants was so despicable, oppressive, malicious, and engaged in with such conscious disregard for Plaintiff's rights and safety that punitive damages in excess of $10,000 are warranted, as is an award of attorney fees and costs of this action.

FOURTH CLAIM FOR RELIEF
Negligent Hiring, Retention, and Supervision
(Against Liuid Companies)

83. Plaintiff repeats and realleges all preceding paragraphs as though fully set forth herein.

84. That Defendant Liuid Companies and agents thereof, specifically D'Urso, were advised by Bonifazio and other employees that Hu's extreme and outrageous conduct was affecting the Company productivity and diminishing employee morale.

85. That despite Hu's constant failure to manage employees and refusal to follow employment fundamentals, such as provide for human resources, an employee manual, payment of salaries in a timely manner, etc., Defendant Companies failed to remedy same.

86. That despite D'Urso's knowledge of Hu's constant drinking and ineptitude in management, no other alternatives were provided for the management of the Company.

87. That despite knowledge of Taylor's dangerous propensities, Liuid Companies ratified Hu's decision to accommodate the employees at Taylor's home.

88. Further, upon Bonifazio's injury, Defendant Hu intentionally failed to render medical assistance and assist Bonifazio in reporting Taylor's assault.

89. These Defendants owed several duties to Plaintiff including, but not limited to, the following:

a. The duty to keep employees safe from the negligent and/or criminal acts of its employees or third parties;

b. The duty to provide responsible management;

c. The duty to act reasonably under the circumstances; and

d. The duty to take action to control the wrongful acts of its employees and associates when it had reason to anticipate such acts.

90. Defendants breached these duties by having Plaintiff and additional employees stay with an individual prone to unlawful behavior, and who were not qualified to assure safe accommodations during the business trip. Defendants further breached these duties by failing to properly train and adequate supervise its employees. Finally, Defendants negligently retained and supervised said employees even though they knew, or should have known, that the employees had propensities to act unlawfully.

91. As a direct and proximate result of these breaches, Plaintiff has suffered damages in excess of $10,000.

92. The failures of Defendants to hire, train, and maintain a proper staff was intentional and so despicable, oppressive, malicious, and engaged in with such conscious disregard for Plaintiff's rights and safety that punitive damages in excess of $10,000 are warranted, as is an award of attorney fees and costs of this action.

FIFTH CLAIM FOR RELIEF
Negligence
(Against All Defendants)

93. Plaintiff repeats and realleges all preceding paragraphs as though fully set forth herein.

93. Defendants owed a duty to Plaintiff to keep her safe on a business trip and the accommodations in a reasonably safe condition.

94. Defendants breached that duty in that they failed to appropriately do so and permitted and ratified the assault, battery, and other tortious conduct, and otherwise failed to take actions necessary to provide a safe and secure premises for Plaintiff.

96. As a direct and proximate result of Defendants' failures, Plaintiff has suffered damages in excess of $10,000.

WHEREFORE, Plaintiff prays for relief as follows:

1. For Compensatory Damages in excess of $10,000.00;
2. For Punitive Damages in Excess of $10,000.00;
3. For costs and attorney fees incurred in prosecuting this action; and
4. For such further relief as the Court deems warranted.

DATED this __2nd___ day of March, 2016.

CHATTAH LAW GROUP

SIGAL CHATAH, ESQ.
Nevada Bar No.: 8264
CHATTAH LAW GROUP
5875 S. Rainbow Blvd., Suite 204
Las Vegas, Nevada 89118
Tel: (702) 360-6200
Fax:(702) 643-6292
Sigal@thegoodlawyerlv.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee of CHATTAH LAW GROUP that on the 2nd day of March, 2016, I served a copy of PLAINTIFF'S AMENDED COMPLAINT upon the following by facsimile and by the Courts electronic system:

Steven T. Jaffe, Esq.
Jason R. Wigg
HALL JAFFE & CLAYTON, LLP
7425 Peak Drive
Las Vegas, NV 89128
Fax (702) 316-4114

An Employee of Chattah Law Group

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CLERK OF THE COURT

OPPS

SIGAL CHATTAH, ESQ.
Nevada Bar No.: 8264
CHATTAH LAW GROUP
5875 S. Rainbow Blvd., Suite 204
Las Vegas, Nevada 89118
Tel: (702) 360-6200
Fax:(702) 643-6292
Sigal@thegoodlawyerlv.com
Attorneys for Plaintiff
Marisa Bonifazio

DISTRICT COURT

CLARK COUNTY, NEVADA

MARISA BONIFAZIO, an individual,

Plaintiff,

vs.

LIUID, LLC, a Nevada Limited Liability Company, LIUID HOLDINGS, LLC, a Nevada Limited Liability Company, WILLIAM TAYLOR, an individual; STAN HU, an individual, DOES 1-50 inclusive; and ROES 51-60 inclusive,

Defendants.

CASE NO: A-15-728285-C
DEPT NO: XXXI

Date of Hearing: August 16, 2016
Time of Hearing: 9:00 a.m.

PLAINTIFF MARISA BONFIAZIO'S OPPOSITION TO DEFENDANT LIUID, LLC'S MOTION TO STRIKE

COMES NOW, Plaintiff, MARISA BONIFAZIO, by and through her attorney of record, SIGAL CHATTAH, ESQ., of CHATTAH LAW GROUP, who hereby submits the foregoing OPPOSITION TO DEFENDANTS LIUID LLC ET AL'S MOTION TO STRIKE.

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///

///

This Opposition is based upon the following Memorandum of Points and Authorities and supporting documents, along with any oral argument the Court may entertain at the time of hearing on said Motion.

Dated this 15th day of July, 2016.

CHATTAH LAW GROUP

SIGAL CHATTAH, ESQ.
Nevada Bar No.: 8264
CHATTAH LAW GROUP
5875 S. Rainbow Blvd. #204
Las Vegas, Nevada 89118
Tel: (702) 360-6200
Fax: (702) 643-6292
Attorney for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Defendants bring this Motion to Strike averments that are allegedly "immaterial, impertinent, inadmissible, scandalous and prejudicial" requesting this Court strike paragraphs 22-33; 40-42; and 84-86 of the Amended Complaint. Defendants Motion is frivolous and a waste of this Court's time and is brought only to cause an undue delay and prolong responding to Plaintiff's Amended Complaint. Accordingly, Plaintiff is hereby requesting this Court deny the Motion as stated in detail *infra* and grant Ms. Bonifazio's request for attorney's fees for responding hereto.

II.

STATEMENT OF FACTS

On May 4, 2015, Ms. Bonifazio began working as a Sales Director for Liuid LLC. Thereafter, on October 8, 2015, Ms. Bonifazio along with two other Liuid employees and Luid Chief Executive Officer, Defendant Stan Hu went on a company trip to Mississippi and Alabama for the purposes of donating a scholarship to the University of Alabama, Hu's Alma Matter.

On said day, Hu, Ms. Bonifazio and two additional employees flew into Columbus, Mississippi, and instead of providing the employees with accommodations at a hotel, close to the venue which was the purpose of your business trip, Hu took them to his friend's house for accommodations in Brooksville, Mississippi, despite the fact that none of the employees knew said individual, only known as Willy T a/k/a William Taylor (hereinafter "Willy T or "TAYLOR"").

Hu advised the group that Taylor was prohibited from attending certain events at the University as he was prohibited from being at the President's Tent at the University due to offensive behavior therein. Hu also advised them that Taylor had been "86'ed" from the Southpoint Hotel & Casino in Las Vegas, Nevada. Furthermore despite the fact that the employees voiced their objections, Hu insisted in said alternate accommodations.

Despite same, Hu ***knowingly*** forced the employees to stay at Taylor's home as an accommodation for the work trip. Hu deliberately and with a conscious disregard for their safety, placed them, specifically subjected Ms. Bonifazio, as the only female employee in a harmful environment.

The individuals arrived at Taylor's home, in a rural area, almost an hour and a half from the nearest town. None of the employees were able to leave the filthy and roach infested accommodations which were abysmal with no sheets on the beds and no locks on the doors.

Furthermore, Hu exposed all the employees to various discriminatory slurs made by TAYLOR throughout the night of their arrival, during the course of dinner. In addition to same, despite being advised by Bonifazio that she was uncomfortable with guns. Hu, in jest pointed a gun at her and the other employees, while giving them a tour of the accommodations, claiming "if any one doesn't behave this is what you're getting". Further, there were guns visible throughout the home, including but not limited to, a handgun, a shot gun or rifle and a type of hunting gun.

Shortly after arrival, the Parties were having dinner at Taylor's home where alcoholic beverages were consumed. Subsequently, Ms. Bonifazio felt ill and began vomiting in the bathroom. Ms. Bonifazio felt she was unable to move, as if in a drugged state and remained lying on the floor of the bathroom.

Bonifazio was clearly impaired in the bathroom when Defendant Taylor entered the bathroom and picked her up off the floor and carried her into a bedroom and placed her on top of the bed. She attempted to resist as was indicated by bruising and contusions on her body, and was unable to as a result of the incapacitated and drugged state she was in. [1] Ms. Bonifazio also attempted to reach for her telephone which TAYLOR had pushed away and was unable to as a result of her impaired state.

While Ms. Bonifazio was visibly impaired by and through ingesting a drug surreptitiously administered at dinner, TAYLOR started sexually fondling her, and Ms. Bonifazio in an incapacitated state, could not fight back.

Noticing that TAYLOR was gone, two other employees came into the bedroom to check up on Ms. Bonifazio and saw TAYLOR sexually assaulting an incapacitated Bonifazio. The employees immediately intervened and extracted her out of the compromising position that Defendants placed her in.

Subsequently Hu, in a grossly inebriated state and an effort to calm the situation, drove Ms. Bonifazio and the other two employees to the nearest hotel approximately an hour and a half away. Thereafter, Ms. Bonifazio secured a flight out of Mississippi and immediately returned to Las Vegas, Nevada on the first available flight after the incident.

Despite the tragic occurrence with Ms. Bonifazio, and even after her departure back to Las Vegas, after said incident, Hu continued to expose the employees to reckless behaviors. Further, despite the fact that Hu should have notified police of said incident and/or taken Ms. Bonifazio to the nearest police station to file an incident report regarding same, he refused to do so because of a potential adverse action to his friend Defendant Taylor

[1] Photographs of Bonifazio's injuries are on hand and will be provided throughout the course of discovery.

As Ms. Bonifazio and none of the other employees knew the city they were in and could not identify the rural area and location thereto, it was incumbent upon Hu as the employer to transport Ms. Bonifazio to the proper authorities to report the situation. This lawsuit ensued.

III.

LEGAL ARGUMENT

A. THIS COURT INSTRUCTED PLAINTIFF TO FILE AN AMENDED COMPLAINT WITH ADDITIONAL AVERMENTS

NRCP 12(f) entitled *Motion to strike.* Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

Motions to strike are generally not granted unless it is clear that the matter to be stricken could have no possible bearing on the subject matter of the litigation. *Colaprico v. Sun Microsystems, Inc., 758 F. Supp. 1335, 1339 (N.D. Cal. 1991).* Evidentiary allegations are not usually proper pleading, but ***allegations supplying background or historical material*** or other matter of an evidentiary nature will not be stricken unless unduly prejudicial to defendant. [*Emphasis added*] *Fuchs Sugars & Syrups, Inc. v. Amstar Corp., 402 F. Supp. 636, 637-638 (S.D.N.Y. 1975).* Where allegations, when read with the complaint as a whole, give a full understanding thereof, they need not be stricken. *Bloombury Woolen Company v. Moosehead Woolen Mills, 109 F. Supp. 804, 806 (D. Me. 1953).*

Motions to strike are generally disfavored, unless "it is clear that the matter to be stricken could have no possible bearing on the subject matter of the litigation *Montemayor v. GC Servs. LP, 302 F.R.D. 581, 587 (2014).* Further, courts must view the pleadings under attack in the light

most favorable to the pleader. *State of Cal. ex rel. State Lands Comm'n v. U.S., 512 F. Supp. 36, 39 (N.D. Cal. 1981).*

1. Each Allegation In Bonifazio's Amended Complaint Provides the Court With Background Facts of the Request for Relief Stated Therein and are Neither Redundant or Immaterial.

A "redundant" matter is comprised "of allegations that constitute a needless repetition of other averments or which are foreign to the issue to be denied." *Wilkerson v. Butler,* 229 F.R.D. 166, 170 (E.D. Cal. 2005)). An immaterial matter "has no essential or important relationship to the claim for relief or the defenses being pleaded," while an "[i]mpertinent matter consists of statements that do not pertain, and are not necessary, to the issues in question." *Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993) (quoting 5 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1382, at 706-07, 711 (1990)), rev'd on other grounds, 510 U.S. 517, 114 S. Ct. 1023, 127 L. Ed. 2d 455.*

The purpose of a Rule 12(f) motion "is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial." *Sidney-Vinstein v. A.H. Robins Co., 697 F.2d 880, 885 (9th Cir. 1983).* However, where the motion may have the effect of making the trial of the action less complicated, or have the effect of otherwise streamlining the ultimate resolution of the action, the motion to strike will be well taken." *State of California ex rel. State Lands Comm'n v. U.S., 512 F. Supp. 36, 39 (N.D. Cal. 1981).*

Challenged pleadings must be viewed in the light most favorable to the non-moving party. *State Lands Comm'n, 512 F. Supp. at 39.* Motions to strike pursuant to Rule 12(f) "will usually be denied unless the allegations have no possible relation to the controversy and may cause prejudice to one of the parties." *Friedman v. 24 Hour Fitness USA, Inc., 580 F.Supp.2d*

985, 990 (C.D. Cal. 2008); (Rule 12(f) motions "are generally not granted unless it is clear that the matter to be stricken could have no possible bearing on the subject matter of litigation"). Whether to strike a pleading is committed to the discretion of the Court. *Fantasy, 984 F.2d at 1527.*

Bonifazio's action as it pertains to Defendants herein include the following claims for relief: 1) Intentional Infliction of Emotional Distress; 2) Negligent Hiring Retention and Supervision; and 3) Negligence.

All three claims for relief must be plead in a very fact intensive manner to assert the proper allegations and sustain a Motion to Dismiss based on a failure to state a claim under NRCP 12(b)(5).

(a) Bonifazio Asserted Facts to Establish a Prima Facie Case of Intentional Infliction of Emotional Distress.

As Plaintiff has alleged before, in *Conway v. Circus Circus Casinos, Inc., 116 Nev. 870, 8 P.3d 837, (2000),* the Nevada Supreme Court concluded that the employee may avoid the exclusive remedy provision of the NIIA in regard to their injuries only if the employer deliberately and specifically intended to injure them. *Id. at 875*; *citing to King v. Penrod Drilling Co., 652 F. Supp. 1331, 1334 (D. Nev. 1987).*

Further, in Nevada, the elements of a cause of action for intentional infliction of emotional distress are: "'(1) extreme and outrageous conduct with either the intention of, or reckless disregard for, causing emotional distress, (2) the plaintiff's having suffered severe or extreme emotional distress and (3) actual or proximate causation.'" *Posadas v. City of Reno, 109 Nev. 448, 851 P.2d 438, 444 (Nev. 1993) (quoting Star v. Rabello, 97 Nev. 124, 625 P.2d 90, 91-92 (Nev. 1981)).* "[E]xtreme and outrageous conduct is that which is outside all possible bounds

of decency and is regarded as utterly intolerable in a civilized community." *Maduike v. Agency Rent—A—Maduike, 114 Nev. 1, 953 P.2d 24, 26 (Nev. 1998)*

In order for Bonifazio to demonstrate that there was intentional behavior, allegations as to intentional behavior which were extreme and outrageous had to be asserted in the Amended Complaint.

(b) Bonifazio Asserted Facts to Establish a Prima Facie Case for Negligent Hiring Retention and Supervision.

An employer has a general duty "to conduct a reasonable background check on a potential employee to ensure that the employee is fit for the position." *Hall v. SSF, Inc., 112 Nev. 1384, 930 P.2d 94, 98 (Nev. 1996) (quotation omitted).* The employer "breaches this duty when it hires an employee even though the employer knew, or should have known, of that employee's dangerous propensities." *Id.* An employer also "has a duty to use reasonable care in the training, supervision, and retention of his or her employees to make sure that the employees are fit for their positions. *Id. at 99.*

Bonifazio's allegations regarding Defendant Hu and Liuid's corporate deficiencies strike to the heart of the prima facie case for negligent hiring, retention and supervision that is Plaintiff's Fourth Claim for Relief. Therefore, all allegations restated in Defendants' Motion to Strike on pages 4-6 are an integral part of the prima facie case Bonifazio has brought against Defendants.

Furthermore, based on the allegations in Bonifazio's Amended Complaint, it is clear that the egregious behavior Bonifazio was subject to was reasonably foreseeable by Hu's intentional and egregious conduct.

According to NRS 41.745(1), an employee's conduct "is reasonably foreseeable if a person of ordinary intelligence and prudence could have reasonably anticipated the conduct and

the probability of injury." whether an intentional act is reasonably foreseeable depends on whether one has "'reasonable cause to anticipate such act and the probability of injury resulting therefrom. *Wood v. Safeway, Inc., 121 Nev. 724, 739. (2005).*

A. DEFENDANTS' MOTION IS FRIVOLOUS AND IS BROUGHT IN AN ATTEMPT PROLONG LITIGATION AND DEFENDANTS' COUNSEL SHOULD BE SANCTIONED UNDER NRS 7.085 FOR BRINGING THE FOREGOING MOTION

Defendants bring the foregoing Motion to Strike under NRCP 12(f) instead of filing a responsive pleading, as a delay tactic after two Motions to Dismiss were brought, at no time requesting the Court to strike allegations in either the Amended Complaint or Initial Complaint. This Motion is completely frivolous, lacks any merit and is filed as an abusive litigation tactic to delay and avoid filing an Answer on this matter.

Courts have "inherent equitable powers to dismiss actions or enter default judgments for . . . abusive litigation practices."*Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 916 (9th Cir. 1987) (citations omitted).* Litigants and attorneys alike should be aware that these powers may permit sanctions for discovery and other litigation abuses not specifically proscribed by statute. *Young v. Johnny Ribeiro Bldg., 106 Nev. 88, 92* 787 P.2d 777,*(1990).*

NRS 7.085 entitled, Payment of additional costs, expenses and attorney's fees by attorney who files, maintains or defends certain civil actions or extends civil actions in certain circumstances provides as follows:

1. If a court finds that an attorney has:

(a) Filed, maintained or defended a civil action or proceeding in any court in this State and such action or defense is not well-grounded in fact or is not warranted by existing law or by an argument for changing the existing law that is made in good faith; or

(b) Unreasonably and vexatiously extended a civil action or proceeding before any court in this State, the court shall require ***the attorney personally to pay the additional costs, expenses and attorney's fees reasonably incurred because of such conduct.***

2. The court ***shall liberally construe the provisions of this section in favor of awarding costs, expenses and attorney's fees in all appropriate situations***. It is the intent of the Legislature that the court award costs, expenses and attorney's fees pursuant to this section and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations ***to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.***

Id.

The Supreme Court in *Watson Rounds, P.C. v. Eighth Judicial Dist. Court, 358 P.3d 228 (2015)* provides the following, "[N]RS 7.085 allows the district court to make an attorney personally liable for the attorney fees and costs an opponent incurs when the attorney "[f]ile[s], maintain[s] or defend[s] a civil action. [that] is not well-grounded in fact or is not warranted by existing law or by [a good faith] argument for changing the existing law." We have previously held, in the context of an attorney fees award, that a district court abuses its discretion by making such an award without including in its order "sufficient reasoning and findings in support of its ultimate determination." *Id. at 233,* citing to *Barney v. Mt. Rose Heating & Air Conditioning, 124 Nev. 821, 829, 192 P.3d 730, 736 (2008) (quoting Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 865, 124 P.3d 530, 549 (2005)).*

This action was commenced on November 30, 2015, and Defendants have not yet filed an Answer on this case. While the Notice of Entry denying Defendants' Motion to Dismiss Amended Complaint was filed June 16, 2016, instead of filing an Answer, this Motion to Strike was filed. Despite the fact that each allegation and averment in said Amended Complaint directly correlates and supports each claim for relief corresponding thereto, Defendants file this frivolous pleading to prolong any litigation of this matter on the merits. Amazingly, this case has been open for eight (8) months and yet no Answer is on file yet.

This matter needs to be litigated on the merits, with all allegations in the Complaint included to demonstrate a prima facie case for the claims for relief in said Amended Complaint

IV.

CONCLUSION

Based on the above-stated arguments and precedent, Plaintiff respectfully requests this Court deny Defendants' Motion to Strike and grant Plaintiff's request for attorney's fees for having to respond to this unreasonable and frivolous Motion and continue this matter in the interest of fair play and substantial justice.

Respectfully submitted this _15th_ day of July, 2016.

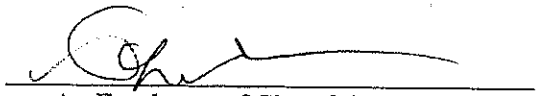
CHATTAH LAW GROUP

SIGAL CHATTAH ESQ.
Nevada Bar No.: 8264
CHATTAH LAW GROUP
5875 S. Rainbow Blvd. #204
Las Vegas, Nevada 89118
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee of CHATTAH LAW GROUP that on the 15th day of July 2016, I served a copy of PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO STRIKE upon the following by facsimile and by the Courts electronic system:

Steven T. Jaffe, Esq.
Jason R. Wigg
HALL JAFFE & CLAYTON, LLP
7425 Peak Drive
Las Vegas, NV 89128
Fax (702) 316-4114



An Employee of Chattah Law Group