No. 21-15957

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SUSAN BAKER, an individual, et al.,

Plaintiffs-Appellants,

v.

DEAN MEILING, an individual, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Nevada
No. 3:20-cv-00518-MMD-CLB
Hon. Miranda M. Du

APPELLANTS' OPENING BRIEF

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I. STATEMENT OF JURISDICTION

Appellants appeal the judgment entered in favor of Defendants Chemeon Surface Technology, LLC, Dean Meiling, Madylon Meiling, DSM Partners, LP, DSM P GP LLC., and Suite B LLC (hereinafter collectively "Appellees" or "Meiling Appellees")[1] on May 7, 2021 in which the Nevada District Court granted Appellees' Motion for Judgment on the Pleadings, dismissing Appellants' Complaint *without a single opportunity to amend*.[2] Appellants' Complaint was dismissed in its entirety with prejudice based on the litigation privilege and the purported running of the statute of limitations, pursuant to Judge Du's Order dated April 28, 2021. [1-ER-2; 2-ER-20.]

Appellants first filed suit in Los Angeles Superior Court on February 6, 2020. [4-ER-765.] On May 13, 2020, Appellees removed the case to the United States District Court of Nevada under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §1332(d)(2). [4-ER-742.] On September 20, 2020, Appellees filed a Motion for Judgment on the Pleadings, resulting in the April 28, 2021 Order. [4-ER-667.]

The Notice of Appeal was timely filed on May 28, 2021. Fed. R. App. P. 4(a). [4-ER-798.] This Court has jurisdiction over this Appeal under 28 U.S.C. §1291.

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[1] Each of these entities is or at one time was owned or operated by Dean and Madylon Meiling.

[2] The District Court's Order also denied Appellants' Motion to Dismiss Chemeon's Counterclaim, Appellants' Motion to Strike Chemeon's Counterclaim and ruled that Appellees' Motion to Stay Discovery was moot.

II. SUMMARY OF REASONS WHY THE LOWER COURT'S ORDER MUST BE REVERSED

The Meiling Appellees, together with Defendants James Proctor, Armstrong Teasdale, LLP, Janet Chubb and Tiffany Schwartz-, participated in a "Fraudulent Scheme" to put Metalast International, LLC ("MI-LLC") into receivership in order to fraudulently acquire the valuable intellectual property owned by its related entity Metalast International, Inc. ("MI-INC") (i.e., MI-INC's trademarks; the "IP"), in which the Meiling Appellees had no interest or right to possess. Without the IP, MI-LLC – the only entity in which the Meiling Appellees had any interest – was entirely worthless, as it owned nothing of value.

The history of these litigants' dispute shows the unlawful lengths to which the Appellees went to acquire the IP, and then misrepresent that they owned the IP in order to market and sell the "formerly known as Metalast" product, which Magistrate Baldwin ruled on February 23, 2021 they never had the right to do. [Appellants' Motion for Judicial Notice ("MJN") of Magistrate Baldwin February 23, 2021, Findings of Fact & Conclusions of Law ("Magistrate Baldwin's Order"[3]) attached as Exhibit "A" to MJN.] The Meiling Appellees

[3] Magistrate Baldwin's Order was issued on February 23, 2021, in a related matter titled *Chemeon Surface Technology v. Metalast International, Inc., et al.*, bearing United States District Court, District of Nevada, Case No. 3:15-cv-00294-CLB, **after** Appellants had submitted their Opposition to Appellees Motion for Judgment on the Pleadings on October 5, 2021, , but **before**

in fact had actual knowledge that they could never acquire MI-INC's IP, and accordingly instituted the lawsuit styled *D&M-MI, LLC v. Metalast International, LLC, et al*., Ninth Judicial District of the State of Nevada Case No.13-CV-0114 (the "Receivership Proceeding") that culminated in a November 4, 2013 Credit Bid "Sale" ("Credit Bid Sale") in order to convert the IP for their own use. [MJN Magistrate Baldwin's Order, 42:19–28; [4-ER-778, lines 1-2.]] In fact, as set forth below, the Meiling Appellees had to file the Receivership Proceeding in order to achieve their ulterior motive of unlawfully acquiring the IP, in furtherance of which they recruited receiver James Proctor, and which they ultimately succeeded in doing until Magistrate Baldwin's Order was issued.

The Nevada District Court myopically viewed the Receivership Proceeding alleged in the Complaint as a litigation proceeding that served to protect all the tortious conduct perpetrated by Appellees by virtue of the litigation privilege. [1-ER-11, lines 3-4.] However, as set forth below – and as Appellants could easily have further clarified had they been granted leave to amend – it was Appellees' conduct in furtherance of their "ulterior motive" to unlawfully acquire the IP that forms the gravamen of the charging allegations in

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Judge Du of the Nevada District Court issued the April 28, 2021, Order. **As such, while the District Court had the benefit of Magistrate Baldwin's Order prior to the issuance of its Order, Appellants did not prior to their briefing deadline, and for this reason they could not cite to or incorporate Magistrate Baldwin's Order prior to the District Court's dismissal of the Complaint with prejudice**.

the Complaint, which conduct quintessentially constitutes an Abuse of Process claim. *Land Barron Inv. v. Bonnie Springs Family*, 131 Nev. 686, 697 – 698 (2015). ["To support an abuse of process claim a claimant must show: "(1) an ulterior purpose other than resolving a legal dispute, and (2) a willful act in the use of the legal process not proper in the regular conduct of the proceeding."]

Thus, the Complaint is, at minimum, capable of being amended to allege a cause of action for Abuse of Process. As set forth below, Appellees' abuses of the legal process included: (1) the rigged Credit Bid "Sale"[4] which was the reason they instituted the Receivership Proceeding; and (2) the filing of an application with the U.S. Patent and Trademark Office ("USPTO") that contained a false "Amended and Restated Security Agreement" with a fraudulently doctored "Exhibit B," which purported to include the IP as part of the collateral for the Meiling Appellees' loans to MI-LLC (not MI-INC). Such conduct constitutes a "willful act in the use of the legal process" and was perpetrated to achieve Appellees' "ulterior purpose" of unlawfully acquiring the IP, which Appellees were successful in misappropriating until Magistrate Baldwin's Order was issued, thereby entirely ousting Appellants' interests in MI-

[4] The rigged Credit Bid "Sale" was a questionable conduct to sell MI-LLC's physical assets

LLC. *Land Barron Inv., supra*, 131 Nev. at 697 – 698; see also, *LaMantia v. Redisi*, 118 Nev. 27, 31 (2002).

Moreover, the entire Complaint sounds in Civil Conspiracy, as every cause of action alleged arises from the Fraudulent Scheme perpetrated by Appellees and their co-defendant cohorts, whose conduct in furtherance of the scheme was essential to achieve the ulterior motive.

As such, the Complaint should not have been dismissed, particularly without leave to amend. Additionally, as further set forth below, the Complaint is not barred by any applicable statute of limitations because the date arbitrarily selected by the District Court – to wit, the date that Appellant Dean Meiling caused the sale of MI-LLC on November 4, 2013 - is entirely irrelevant to any limitations periods governing Appellants' claims. [1-ER-14, lines 1-19; see also, MJN, Exhibit "A" (Magistrate Baldwin's Order) at 42: 19-28; [4-ER-778, line 2.] Because the Credit Bid "Sale" could never have included the IP, this event could not have triggered any applicable limitations period, as Appellants could not have discovered the Fraudulent Scheme until well into 2018, as set forth in the Complaint. [4-ER-779, lines 7-8.]

As detailed below, Appellants respectfully request that this Court reverse the Order of the Nevada District Court dismissing Appellants' Complaint with prejudice and denying leave to amend.

III. ISSUE ON APPEAL AND STANDARD OF REVIEW

The issue raised in this Appeal is whether the Nevada District Court's April 28, 2021 Order erroneously granted Appellees' Motion for Judgment on the Pleadings in its entirety with prejudice, without permitting a single opportunity to amend, based on an application of the litigation privilege and the statute of limitations for a fraud cause of action.

The standard of review governing the order dismissing the complaint under Fed. R. Civ. P., Rule 12(b)(6) is de novo. *Itelo v. Glock, Inc*., 349 F.3d 1191, 1199 (9th Cir. 2003). The standard of review for the denial of leave to amend is abuse of discretion, *United States ex. Rel Lee v. Corinthian Colls*, 655 F.3d 984, 995 (9th Cir. 2011), but this Court reviews the question of futility of amendment de novo. *Carvalho v. Equifax Info. Servs*., LLC, 629 F.3d 876, 893 (9th Cir. 2010).

The district court may only grant a motion for judgment on the pleadings "when material facts are not in dispute and the movant is entitled to judgment as a matter of law." *Bonicamp v. Vazquez*, 120 Nev. 377, 379 (2017). This Court

may consider whether additional facts can be pleaded in determining whether leave to amend should be granted. *Schneider v. California Dep't of Corr*., 151 F.3d 1194, 1197 (9th Cir. 1998). Additionally, this Court must treat the well-pleaded allegations of the complaint as true and determine whether the complaint states facts sufficient to constitute *any* cause of action. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Holm International Properties, LLC v. Pacific Legends East Condominium Association*, 133 Nev. 1023 (2017) (citing Certified Fire Prot., Inc. v. Precision Constr., Inc. 128 Nev. 371, 381 (2012) [holding that the court "must analyze a claim according to substance, rather than its label," and as such the District Court erred in dismissing the appellant's complaint because it stated a viable claim for unjust enrichment notwithstanding that the alleged claim was labeled "quiet title"]."quiet title"]).

In addition, the appellate court must "recognize all factual allegations in plaintiff's complaint as true and draw all inferences in plaintiff's favor." *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228 (2008). As set forth below, it was an abuse of discretion for the lower court to deny leave without a single opportunity to amend.

IV. PERTINENT FACTS

A. HISTORY OF MI-INC AND MI-LLC

David M. Semas purchased the rights to a patented metal coating technology. [MJN Exhibit "A" Magistrate Baldwin's Order at ¶ 2.] Through this licensed technology, the product Metalast AA-100 was initially marketed and sold by his company, Metalast International, Inc. ("MI-INC") [MJN Exhibit "A" Magistrate Baldwin's Order at ¶¶ 2-3.]

MI-LLC was at all times a separate business entity from MI-INC. In 1996, MI-INC entered into a license agreement with MI-LLC, permitting MI-LLC the right to use the Metalast trademarks. [MJN Exhibit "A" Magistrate Baldwin's Order at ¶ 9.] The Metalast word and logo marks were always registered in the name of MI-INC, and never in the name of MI-LLC. [MJN Exhibit "A" Magistrate Baldwin's Order at ¶ 9.]

In 1996, the USPTO granted MI-INC's applications and issued the registrations explicitly listing MI-INC as the registered owner of the trademarks. [MJN Exhibit "A" Magistrate Baldwin's Order at ¶¶ 10 - 12.] The identity and ownership of the registered trademark owner was repeatedly disclosed to MI-LLC members (including the Meiling Appellees). [MJN Exhibit "A" Magistrate

Baldwin's Order at ¶¶ 13.] MI-INC always retained ownership of the trademarks and remains the owner to date. *Id.*

This issue was at the heart of the action styled *Chemeon Surface Technology v. Metalast International, Inc*., Nevada District Court Case No. 3:15-cv-00294-CLB, in which Magistrate Baldwin's Findings of Fact & Conclusions of Law conclusively determined that MI-INC always owned the marks, and the Meiling Appellees never had the right to represent that their company Chemeon Surface Technology, LLC's products were "formerly known as Metalast." *Id* at ¶ 10. As set forth below, the issuance of Magistrate Baldwin's Order is what should have served to terminate the Meiling Appellees' continuing tortious misappropriation of MI-INC's IP.

B. DEAN MEILING'S COMPANY BECAME A SECURED CREDITOR OF MI-LLC AND ITS PHYSICAL ASSETS ONLY, WHICH POSITION HE ULTIMATELY USED TO CAUSE THE APPOINTMENT OF A RECEIVER

Appellee Dean Meiling invested $1.2 million and received a member interest in MI-LLC only. [MJN Exhibit "A" Magistrate Baldwin's Order ¶19.] Between 1999 and 2013, Dean Meiling, through his business entities, including DSM Partners, Ltd., ("DSM"), lent money to MI-LLC on various occasions. [MJN Exhibit

"A" ¶20.] Through these various loans, DSM became a secured creditor of MI-LLC's physical assets only. [MJN Exhibit "A" ¶21.]

> "37. Under the Fraudulent Scheme, the Meiling Defendants feigned negotiating and entering into an additional funding arrangement, and defendant Janet Chubb misrepresented that Defendant James Proctor was the Meilings' "Accountant," using the guise of conducting "due diligence" to infiltrate Investment LLC's business and financial affairs in purported furtherance of the additional funding agreement. As such, Defendants obtained access to the Insider Information, which they secretly and improperly used to designate a receiver to assume control of Investment LLC on the false premise that the company could not "make payroll." This . . . resulted in the Meiling [Appellees] taking over and ultimately acquiring the assets of Investment LLC, with their righthand man Proctor becoming the Receiver…"

[4-ER- 777 ¶ 37.]

This feigned investment in MI-LLC to get access to MI-LLC's financial records was done to create the *perception* that MI-LLC was in financial dire straits to establish a receivership for MI-LLC. [4-ER-777 ¶ 37.]

Accordingly, the establishment of the receivership allowed the Meiling Appellees to set the stage for putting their ulterior motive into effect through the Credit Bid "Sale," as further set forth below.

C. IT CANNOT BE DISPUTED THAT MI-INC AT ALL TIMES OWNED THE TRADEMARKS, SUCH THAT THE PROCEEDINGS USED BY THEM TO STEAL THIS WERE NECESSARILY PERPETRATED TO ACHIEVE THAT "ULTERIOR MOTIVE"

Despite Appellees' feigned attempt to acquire the valuable Metalast trademarks and Metalast brand name, it has now been conclusively determined by the Nevada District Court in *Chemeon Surface Technology v. Metalast International, Inc*. that: "MI-INC always owned the trademarks, and not MI-LLC." 4-ER-778 ¶ 41; MJN Exhibit "A" Magistrate Baldwin's Order at ¶¶ 10 – 12, 15.]

The Meiling Appellees recognized this long before Magistrate Baldwin's Order, and thus attempted to legitimize their theft and misappropriation of the trademarks that MI-LLC never owned by feigning that they were acquired as part of their purchase of MI-LLC's assets through the rigged Credit Bid "Sale" that Dean Meiling ensured only he and receiver James Proctor attended. [MJN Exhibit "A" Magistrate Baldwin's Order at ¶¶ 3, 9-10; 4-ER-778-780 ¶¶ 40-46.] The Appellees' attempt to unlawfully acquire the trademarks of which they had actual knowledge were only owned by MI-INC was their "ulterior motive" in causing the unlawful Credit Bid "Sale" using the legal process of the

Receivership Proceeding and filing the fraudulent USPTO application. [4-ER-778-779 ¶¶ 41-42.] This is in fact the first element of an Abuse of Process claim, which requires an "ulterior motive" or "ulterior purpose." *LaMantia v. Redisi*, *supra,* 118 Nev. at 30.

Appellees' willful and improper use of these legal processes, to wit, the receivership that resulted in the Credit Bid "Sale" and the registration for trademark ownership with the USPTO, fully satisfy this second element of an Abuse of Process cause of action. *Posadas v. City of Reno,* 109 Nev. 448, 457 (1993). In using the rigged receivership Credit Bid "Sale" to attempt to include the IP as part of the assets of MI-LLC that were being acquired by Dean Meiling's company, and coupling that with the fraudulent USPTO filing containing a false Amended and Restated Security Agreement with a fraudulently doctored "Exhibit B," Appellees abused the legal process to achieve their unlawful ulterior motive. See, *LaMantia, supra*, 118 Nev. at 30. This is precisely what can be alleged in a legally viable amended complaint.

V. ARGUMENT

A. THE DISTRICT COURT IMPROPERLY DISMISSED THE COMPLAINT WITHOUT LEAVE TO AMEND DESPITE APPELLANTS HAVING ALLEGED

SUFFICIENT FACTS TO AT MINIMUM SUPPORT AN ABUSE OF PROCESS CLAIM, WHICH CAN BE FURTHER CLARIFIED IN AN AMENDED COMPLAINT

"Generally, a court denies leave to amend only when it is clear that the deficiencies of the complaint cannot be cured." See *DeSoto v. Yellow Freight Sys*., Inc., 957 F.2d 655, 658 (9th Cir. 1992). *Gorski v. Hartford Ins. Co*., Case No.: 2:19-cv-01146-GMN-EJY (D. Nev. Feb. 20, 2020). It is black-letter law that a district court must give a plaintiff at least one chance to amend a deficient complaint. *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032 (9th Cir. 2015). A deficient complaint which asserts at least a plausible claim should be granted leave to amend. *Id. "*Tagging the facts with the label of a particular cause of action does not alter the thrust of the lawsuit" or the gravamen of the Complaint. *Bissell v. College Development Co.,*89 Nev. 558, 561 (1973.)

Here, without taking into consideration the tort of abuse of process, the District Court dismissed the Complaint with prejudice without providing Appellants an opportunity to amend. As analyzed in *Taylor v. Sullivan*, No. 3:19-CV-00668-RCJ (D. Nev. May 20, 2020) (hereinafter referred to as "*Taylor* 2"), the litigation privilege does not apply to the tort of Abuse of Process because Abuse of Process is concerned with an *underlying purpose* other than resolving a legal dispute, rather than the communications made in furtherance of the legal

process. *Id*. at 2020 WL 2559377; *Land Barron Inv. v. Bonnie Springs Family, supra*, 131 Nev. at 697 – 698. With respect to establishing underlying motive to support an Abuse of Process claim, the recent case of *Taylor 2* is illustrative. In the underlying case of *Taylor v. Sullivan*, No. 3:18-cv-00586-MMD-VCF (D. Ct Nevada May 20, 2020) ("*Taylor 1*"), pro se Plaintiff Lula Taylor sued Costco for injuries from a slip and fall at one of Costco's locations. However, during the discovery process, Costco's counsel became concerned that Plaintiff Taylor was getting legal assistance by another individual plaintiff, Bill Tezak, who was practicing law without a license. Magistrate Judge Baldwin, therefore, issued orders limiting Plaintiff Tezak's involvement in the underlying litigation, which was affirmed by Judge Du. *Id.* 2020 WL 2559377.

After Plaintiff Taylor's motion for recusal of Judges Du and Baldwin was denied, Plaintiffs filed a separate action for Abuse of Process, among other claims, against Defendants, Costco's counsel, Judge Du and Magistrate Baldwin in *Taylor 2*. 2020 WL 2559377. Plaintiffs alleged that these Defendants committed tortious abuse of process in "using the court's subpoena power in the civil discovery process for an ulterior and improper motive." *Taylor v. Sullivan* 2020 WL 2559377 at *6. Directly relevant here, the District Court in *Taylo*r 2 held that an improper ulterior motive removes an otherwise privileged communication from the protection of the litigation privilege:

> While the application for a subpoena, and a subsequent motion to show cause when the subpoena is not obeyed, are technically communications - in that they are written requests to a court - an abuse of process claim is not concerned with the communication themselves. In fact, its argument is the exact opposition - that is, such claims allege that even where the communications are facially valid, the moving party's improper motives constitute an abuse of process. Therefore, the litigation privilege does not apply. *Taylor v. Sullivan* 2020 WL 2559377 *6 (D. Ct Nevada May 20, 2020.)

Thus, as explained in *Taylor 2,* to support an abuse of process claim under Nevada law, a claimant must demonstrate: (1) an ulterior purpose other than to resolve a legal dispute, [i.e., parties abusing the legal process] and (2) a willful act in the use of the process not proper in the regular conduct of the proceeding. *LaMantia v. Redisi*, *supra*, 118 Nev. at 30 (2002). "An ulterior purpose is any improper motive underlying the issuance of legal process." *Id.*

Here, while the Complaint dismissed by the District Court does not expressly allege a cause of action labeled Abuse of Process, the facts alleged in the Complaint wholly support such a cause of action. At minimum, leave to amend should have been granted to nominally allege an Abuse of Process claim, which is otherwise substantively alleged. The Complaint alleges the following:

35. Plaintiffs are informed and believe, and thereon allege, that each of the Defendants planned, schemed and conspired to use the Meiling Defendants' contributions and usurious loans to Investment LLC, to fraudulently convert, overtake, and acquire the assets of Investment LLC (hereinafter the "Fraudulent Scheme").

36. In furtherance of the Fraudulent Scheme, the Meiling Defendants concocted a plan to feign interest in making an additional $3M investment in Investment LLC in order to surreptitiously access private and confidential financial information ("Insider Information") about the company and its impending profitability to procure the appointment of Receiver Defendants, who facilitated the takeover of Investment LLC under entirely false pretenses.

37. Under the Fraudulent Scheme, . . Defendants obtained access to the Insider Information, which they secretly and improperly used to designate a receiver to assume control of Investment LLC on the false premise that the company could not "make payroll." This . . .resulted . . .with their righthand man Proctor becoming the Receiver . . .

* * *

40. Defendant Tiffany Schwartz, an attorney with Chubb's law firm at the time, fraudulently filed a forged document with the USPTO entitled "Amended Security Agreement" (the "Fraudulent USPTO Filing") with a

> purported date of June 17, 2013. This document was represented as containing an Exhibit "B" that purportedly gave the Meilings a secured interest in seven (7) trademarks held in the name of Investment LLC's former manager, Metalast International, Inc., that the Meilings had purportedly received as collateral for a loan made to Investment LLC in 2009. In actuality, the parties to the Security Agreement never executed any Exhibit "B" to the agreement. In fact, it was impossible for an Exhibit "B" to exist in 2009 (when the security agreement was executed) because the very first trademark listed in Exhibit "B" did not exist until April 17, 2012 [Registration No. 4128211].
>
> * * *
>
> 45. Receiver Defendants misrepresented that Investment LLC owned the seven trademarks held by [MM-INC.], and knowingly conducted the "sale" to the Meilings under those false pretenses. In doing so, Receiver Defendants assigned the "Metalast" name, brand and trademark to the Meilings, without notifying the Plaintiffs. With the consummation of this sale, the Receiver Defendants' mission was accomplished.
>
> [4-ER-776-780 ¶¶35, 36, 37, 40, 45.]

Importantly, the Complaint was filed on February 5, 2020, and *Taylor v. Sullivan* was published on May 20, 2020, which was too late to have incorporated

the relevant Abuse of Process allegations into Appellant's Complaint. With leave to amend, Appellants will add an Abuse of Process cause of action.

B. THERE IS SUBSTANTIAL EVIDENCE OF ABUSE OF PROCESS BY APPELLEES

1. Appellees' Demonstrated "Ulterior Motive" Was To Unlawfully Acquire The Trademarks of MI-INC Despite Them Only Ever Possessing An Interest In MI-LLC

Appellees' motive in causing the appointment of a receiver and ultimately the Credit Bid "Sale" of MI-LLC was by definition "ulterior" because it was driven by a demonstrably improper motive underlying the legal process. [4-ER-776-778, 780 ¶¶ 35-37; 40, 45]; see *Posadas v. City of Reno*, *supra*, 109 Nev. at 448. In failing to recognize this, Judge Du erroneously focused on communications during the legal process and not the ulterior motive:

> In fact, Plaintiffs allege, 'the Receiver Defendants' entire goal was to sell the company for the bare credit bid amount made by Chemeon, effectively ensuring the company's liquidation in the ultimate and exclusive favor of the Meiling Defendants. (*Id.* at 17.)
>
> * * *

> Plaintiffs allege that the fraudulent filing at the USPTO was a preliminary step in Defendants' intended march towards the Receivership Action . . . the litigation privilege covers statements made and actions taken in anticipation of 'future litigation contemplated in good faith.
>
> [1-ER-9, lines 4-12.]

Contrary to Judge Du's mischaracterization of Appellants' Complaint allegations, Appellees' surreptitious *motive* to fraudulently acquire the MI-LLC trademarks by engineering the receivership and stripping MI-LLC of its assets through the Credit Bid "Sale," and then using that sale to legitimize its feigned ownership of MI-INC's IP for several years to yield enormous pecuniary benefit, is the very definition of an *ulterior purpose*. See, *Land Baron Inv., supra*, 131 Nev. at 698. [4-ER-776-780 ¶¶ 35-46.] This Fraudulent Scheme, as defined in the Complaint, was concocted for no other reason than to acquire the Metalast IP, including the Metalast word mark and Logo marks. [MJN Exhibit "A" Magistrate Baldwin's Order ¶¶ 15, 18 – 27; 4-ER-776, 778-780 ¶¶ 31, 40-46.] As such, the District Court misunderstood that the the Receiver Defendants' entire goal was to sell the company for the bare credit bid amount made by Chemeon." [4-ER-779-780 ¶44.] This is plainly incorrect; the goal – i.e., the ulterior motive – was to fraudulently acquire MI-INC's IP through the sale of MI-LLC's assets. This

is what the District Court overlooked in its Order, which is precisely what mandates its reversal.

2. Appellees Engaged in Willful Acts in the Use of Legal Process That Were Not Proper In The Regular Conduct of the Proceedings, In Furtherance of Their Abuses of Process

As alleged in the Complaint, Appellees concocted the Fraudulent Scheme to put the company into receivership, foreclose on the assets through the Credit Bid "Sale", and feign ownership of the IP they knew belonged to MI-INC. [4-ER-776-780 ¶¶ 31, 35-46.] In implementing their scheme to surreptitiously acquire the IP, Appellees conspired in multiple subsequent willful acts, thereby satisfying the second element of the Abuse of Process tort: – Appellees engaged in "willful acts in the use of the legal process that was not proper in the regular conduct of the proceeding." *Land Barron Inv. v. Bonnie Springs Family*, *supra*, 131 Nev. at 697 – 698; see [4-ER-776-780 ¶¶ 31, 35-46.]

"Process" is defined as: "any method used to acquire jurisdiction over a person or specific property that is issued under the official seal of a court, administrative agency or government entity. Subpoenas to testify, attachments of property, executions on property, garnishments, and other provisional

remedies are among the types of "process" considered to be capable of abuse." See *Laxalt v. McClatchy*, 622 F. Supp. 737 (D. Nev. 1985).

As discussed below, these willful acts were necessarily perpetrated to achieve their ulterior motive.

a. Appellees Used The Credit Bid "Sale" To Convert MI-INC's IP as Reflected in the Order Approving the Sale

First, Appellees willfully concocted the Fraudulent Scheme, which was consummated with the Credit Bid "Sale," to improperly use that legal process to fraudulently include the IP belonging to MI-INC as an asset in the November 4, 2013 Order Approving the Sale of Assets, despite Appellees' actual knowledge that the IP was never an asset of MI-LLC or collateral for any loans to MI-LLC. [MJN Exhibit "A" Magistrate Baldwin's Order ¶ 15; 4-ER-776, 778-780 ¶¶ 35-40, 45.] The Meiling Appellees knew they could not otherwise acquire Metalast's trademarks. [MJN Ex. "A" ¶¶ 26 – 27; 4-ER-778-780 ¶¶40-42, 45.] This conduct was the consummation of the Fraudulent Scheme, which effected the ulterior purpose of converting MI-INC's IP through the Credit Bid "Sale," thereby removing any such "proceeding" from any litigation privilege protection.

As set forth below, there was another proceeding used by the Meiling Appellees to forge their ulterior motive.

b. The Meiling Appellees Forged An Assignment of MI-INC's IP In A Fake Amended and Restated Security Agreement as Part of Their Fraudulent USPTO Filing

Second, as part of the Fraudulent Scheme, Appellees conspired to create a counterfeit "Amended and Restated Security Agreement" listing several Metalast trademarks as purported collateral for loans Appellees previously made to MI-LLC, all of which trademarks were exclusively owned by MI-INC at all times. Such an abuse of "process" – which encompasses agreements and applications submitted to a government agency (*Laxalt v. McClatchy*, *supra*, 622 F. Supp. At 737) – was committed in furtherance of Appellants' ulterior motive. [4-ER-778-780 ¶¶ 40-42, 45; 1-ER-9.]

Exhibit "B" was fabricated and falsely added to include MI-INC's IP to make it appear that MI-LLC owned it, and could actually transfer it in the Credit Bid "Sale." [4-ER-778-780 ¶¶40-42, 45.] As alleged in the Complaint, it was impossible for the Amended and Restated Security Agreement, dated June 17,

2013, to contain Exhibit "B," because the very first trademark listed in Appellees' forged Exhibit "B" did not exist until April 17, 2021. [4-ER-778 ¶40.]

Appellees took yet another step *not proper in the regular conduct of* the Credit Bid "Sale", in filing a false Amended & Restated Security Agreement with the USPTO, which was ultimately rejected. [4-ER-778-779 ¶¶40–42; 1-ER-9, lines 4-15.] This was the second "proceeding" Appellees used to further their ulterior motive of acquiring the IP.

These assertions regarding Appellees' "willful acts" make out the second element of an Abuse of Process cause of action. The District Court did not recognize this, and erroneously denied Appellants the opportunity to amend their Complaint.

C. THE COMPLAINT ALSO ALLEGES A VIABLE CLAIM FOR CIVIL CONSPIRACY, FURTHER WARRANTING REVERSAL OF THE DISTRICT COURT'S ORDER

Civil Conspiracy is a Nevada state law claim and " . . . liability may attach where two or more persons undertake some concerted action with the intent to commit an unlawful objective, not necessarily a tort." *Cadle Co. v. Woods & Erickson, LLP*, 345 P.3d 1049, 1052 (Nev. 2015). To state a claim for civil conspiracy under Nevada law, a plaintiff must allege (1) the commission of an underlying tort; and (2) an agreement between the defendants to commit

that tort." *Lalatag v. Money First Fin. Servs., Inc*., No. 2:09-cv-02268-LRH-RJJ, 2010 WL 2925875 at *2 (D. Nev. July 20, 2010) (citing *GES, Inc. v. Corbitt*, 21 P.3d 11, 15 (Nev. 2001)).

The Complaint is fraught with allegations of conspiracy between the Meiling Appellees and their defendant cohorts. [4-ER-777-780 ¶¶36-46.] As noted above, notwithstanding that the Complaint did not allege such a claim, the District Court was required to grant leave if *any* viable claim was alleged. See, *Holm International Properties, LLC, supra*, 133 Nev. at 1023. The alleged Fraudulent Scheme which forms the basis of each of the claims brought in the Complaint *is* the "agreement between the defendants" to commit the sundry torts alleged against Appellees. [4-ER-777-780 ¶¶36-46.]

Accordingly, the District Court should also have granted leave to allow Appellants to allege a Civil Conspiracy claim.

D. THE DISTRICT COURT ERRONEOUSLY APPLIED THE LITIGATION PRIVILEGE

1. Public Policy Prevents Application of the Privilege in These Precise Circumstances

The general rule regarding the litigation privilege is that it ". . . immunizes from civil liability communicative acts occurring in the course of judicial proceedings, even if those acts would otherwise be tortious." *Greenberg Traurig,*

LLP v. Frias Holding Co., 130 Nev. 627, 631 (2014). The Nevada Supreme Court has recognized the long-standing common law rule that communications uttered or published in the course of judicial proceedings are absolutely privileged, rendering those who make the communications immune from civil liability. *Id.* The policy behind the litigation privilege, as it applies to attorneys participating in judicial proceedings, is to grant them "as officers of the court the utmost freedom in their efforts to zealously advocate on behalf of their clients." *Id.*

"The privilege is not without limits, however." *Id.* at 630. As such, "[t]he Supreme Court of Nevada has declined to apply it under circumstances that are inconsistent with the public policy behind the privilege." *Freedom Mortgage Corporation v. Kent,* 2020 WL 5096995 *5 [Nevada District Court Case No. 2:19-cv-01411-APG-DJA] (citing *Dickerson v. Downey Brand, LLP*, 133 Nev. 1002 (2017), a Nevada Supreme Court decision. [1-ER-10.]

Dickerson held that the litigation privilege "is not designed to provide attorneys with the ability to act malfeasant and then hide behind the privilege with impunity." *Id.* A distinction was emphasized between "communicative acts" and "the actions resulting from those communications." *Dickerson, supra*, 133 Nev. at 1002. Thus, the litigation privilege "does not apply to bar liability ... [where] the gravamen of the complaint was not a communication but a course of conduct." *Dickerson, supra*, 133 Nev. at 1002. Accordingly, the *Dickerson* Court held that the

privilege does not extend to an attorney whose conduct goes beyond zealous advocacy and causes the client through "mendacious behavior" to commit some unlawful act as with the breach of a contract with a third party. *Id*. Under those circumstances, the Supreme Court of Nevada concluded the district court did not err by refusing to apply the privilege.

Here, the Complaint alleges the Meiling Appellees' illegal course of conduct to acquire MI-INC's IP. [4-ER-778 ¶41.] In an email thread, attorney Bruce Leslie, an associate attorney in defendant Janet Chubb, Esq.'s office, informed Dean Meiling by email that Meiling's company would not acquire the valuable IP from the Credit Bid "Sale" because the trademarks were held by MI-INC as reflected in a Security Agreement. [4-ER-778 ¶41.] Leslie informed Appellee Dean Meiling that the real Security Agreement conferred no secured interest in any trademarks because none were listed. [4-ER-778 ¶41.] In light of this knowledge, the Meiling Appellees and their co-defendant cohorts subsequently conspired in creating a forged assignment of the IP through the Amended and Restated Security Agreement. [4-ER-778 ¶41.] This conduct on the part of the Meilings' attorneys certainly extended "beyond zealous advocacy," in causing their clients, the Meilings, to commit the unlawful acts alleged in the Complaint. [4-ER-778-79 ¶¶40-42.] Under such circumstances, this Court, in line with the Supreme Court of Nevada, must conclude that the District Court should not have applied the privilege.

2. The Alleged *Conduct* Committed in Furtherance of Appellees' Ulterior Motive Did Not Involve "Communications" or "Communicative Acts," Further Reinforcing the Inapplicability of the Privilege

Notwithstanding Appellants alleging this course of conduct in the Complaint, Judge Du found *Dickerson* inapplicable to the facts stating, in pertinent part: "Unlike in *Dickerson* where the Nevada Supreme Court found the plaintiff's complaint targeted the defendants' actions—specifically not paying the expert—Plaintiffs' Complaint targets a series of communications that culminated in the Receivership Action." [1-ER-10, lines 23-26.]

Judge Du's interpretation and application of the litigation privilege to the instant case is contrary to her ruling in *Allstate Ins. Co. v. Belsky*, No. 2:15-cv-02265-MMD-CWH (D. Nev. Sep. 21, 2018). There, in reference to fraudulent medical records attached to attorney settlement letters, Judge Du wrote: "Extending the litigation privilege and witness immunity to the conduct alleged here would not serve the purpose of promoting those involved in judicial proceedings to 'speak freely.' To the contrary, it would encourage the fabrication of evidence in an attempt to leverage settlement, and fabrication of evidence is unsurprisingly not entitled to protection." *Id.*

Judge Du's erroneous application of the litigation privilege to the instant matter reflects the District Court's misunderstanding of the allegations in the Complaint, which alleges that the ***conduct*** of carrying out the Credit Bid "Sale" and creating and submitting a false USPTO application to unlawfully effect the transfer of the IP. [4-ER-778-779 ¶¶40-42.] Moreover, the conduct committed in furtherance of Appellants' ulterior motive expressly involved the "fabrication of evidence," particularly "Exhibit B" to the Amended and Restated Security Agreement. Thus, both *Dickerson* and *Allstate* govern the allegations Appellants' Complaint.

In furtherance of this point, the *Freedom Mortgage* court emphasized that it is important to analyze "whether the 'gravamen' of a complaint is based on non-privileged actions rather than potentially privileged communications" in evaluating wheter the litigation privilege applies. *Freedom Mortgage, supra*, *6. This question is significant here, where the Complaint alleges a course of conduct by Appellees' to unlawfully obtain Metalast's IP as follows:

> 36. In furtherance of the Fraudulent Scheme, the Meiling Defendants concocted a plan to feign interest in making an additional $3M investment in Investment LLC in order to surreptitiously access private and confidential financial information ("Insider Information") about the company and its impending profitability to procure the appointment of Receiver Defendants, who facilitated the takeover of

Investment LLC . . . as a result of the Meiling Defendants' false promises of additional investment funding for Investment LLC, and acts feigned in furtherance thereof, Investment LLC ceased efforts to obtain funding from other sources, as it had successfully done on many prior occasions.

* * *

40. Additionally, in furtherance of the conspiracy, [Appellees] fraudulently filed a forged document with the USPTO entitled "Amended Security Agreement" (the "Fraudulent USPTO Filing") with a purported date of June 17, 2013. This document was represented as containing an Exhibit "B" that purportedly gave the Meilings a secured interest in seven (7) trademarks held in the name of Investment LLC's former manager, Metalast International, Inc., that the Meilings had purportedly received as collateral for a loan made to Investment LLC in 2009. In actuality, the parties to the Security Agreement never executed any Exhibit "B" to the agreement. In fact, it was impossible for an Exhibit "B" to exist in 2009 (when the security agreement was executed) because the very first trademark listed in Exhibit "B" did not exist until April 17, 2012 [Registration No. 4128211].

* * *

> 42. [Defendant Schwartz filed a Notice of Recordation of Assignment with the USPTO. For good reason, the USPTO refused to acknowledge this assignment.
>
> * * *
>
> 45. As part of the sham sale and their undivided loyalty to the Meilings . . . Receiver Defendants misrepresented that Investment LLC owned the seven trademarks held by Metalast International, Inc., and knowingly conducted the "sale" to the Meilings under those false pretenses. In doing so, Receiver Defendants assigned the "Metalast" name, brand and trademark to the Meilings, without notifying the Plaintiffs. With the consummation of this sale, the Receiver Defendants' mission was accomplished, the Meiling Defendants took over the company, and ownership and control (and all profits) remains with them to date, to the continuing detriment of Plaintiffs and all Class members.

[4-ER-777-780 ¶¶36, 40, 42, 45.]

Indisputably, Appellants' allegations against Appellees entirely center on their *conduct* in participating in the Fraudulent Scheme, not any communications or "communicative acts" with any persons. [4-ER-776-780 ¶¶ 34-46.] This fundamental point was missed by Judge Du. Thus, the District Court erred in taking a very narrow view of Appellants' Complaint without permitting leave to amend. [1-ER-7-10.]

E. THE DISTRICT COURT ERRED IN RULING THAT THE COMPLAINT IS BARRED BY THE STATUTE OF LIMITATIONS

1. While the Applicable Statute of Limitations Governing Appellants' Claims Is Four Years, The Complaint is Timely Even Under A Two-Year Limitations Period

As noted above, Civil Conspiracy is a well-recognized tort that is broadly defined in Nevada. *Cadle Co. v. Woods & Erickson, LLP*, 345 P.3d 1049, 1052 (Nev. 2015). As further set forth above, the Complaint is fraught with allegations of conspiracy between the Meiling Appellees and their defendant cohorts, and the Fraudulent Scheme forms the entire basis of the charging allegations brought in the Complaint. [4-ER-777-780 ¶¶36-46.]

Civil Conspiracy is governed by the catch-all provision of NRS 11.220, which provides that an action "must be commenced within 4 years after the cause of action shall have accrued." [NRS 11.220.] Furthermore, NRS 11.190(3) expressly provides that the statute of limitations for a conspiracy claim does not commence until all of the elements for such a claim have accrued. In *Oak Grove Investors v. Bell Gossett Co*., 99 Nev. 616, 623 (1983), the court held: "the term 'accrued' as used in NRS 11.220 incorporates the same 'diligent discovery' rule

that is present in NRS 11.190(3)." *Id.* "We explained that '[t]o hold otherwise would transmute the statute from one of limitation into one of abolition . . . Such a result is not consonant with the legislative purpose of the statute.'" *Id.*

> 43. None of the Plaintiffs could have discovered the conspiracy or plot to overtake Investment LLC until several months after a deposition of Defendant James Proctor that occurred in the latter half of September 2016, in a different lawsuit in Nevada, at which documents were produced, including the Leslie Email Exchange. Plaintiffs are informed and believe that the earliest date any plaintiff was able to discover the existence of these documents was March 3, 2017, when one or more of them received an email notifying them of a February 22, 2017 ruling in the other Nevada lawsuit regarding Proctor's potential liability arising from Defendants' conspiratorial conduct evidenced in these documents. Prior to this date, due to the "gag order" (in Receiver Defendants' own terms), neither Plaintiffs nor Mr. Semas had any knowledge or notice of the existence of any of the documents or that any proceedings occurred, including the deposition, nor could they have discovered the existence of the Leslie Email Exchange, as they were all expressly prohibited from communicating or making any inquiries whatsoever as to Defendants' dealings. Further, Receiver Defendants did not notify Plaintiffs of any of the events regarding the credit bid sale, nor did Receiver Defendants send them any necessary tax information such as a K-1 form.

> As such, these documents could not have been discovered prior to this date.

[4-ER-779 ¶43.]

Thus, the filing of the Complaint on **February 6, 2020** was timely, even if a two-year limitations period is used, as the allegations demonstrate the reasons why Appellants could not have begun to discover any facts about the Fraudulent Scheme until well into 2018. This can be further clarified in an amended complaint, and, as set forth below, even if a triable issue of fact exists as to the actual discovery date, the District Court still abused its discretion in dismissing the Complaint without an opportunity to amend.

2. The Arbitrary Date Relied Upon by the District Court Could Not Have Triggered Any Applicable Limitations Period

In order for the bar of the statute of limitations to be raised by motion for judgment on the pleadings or a motion to dismiss, the defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows that the action *may* be barred." *Marshall v. Gibson, Dunn & Crutcher*, 37 Cal. App.4th 1397, 1403 (1995); *Kellar v. Snowden*, 87 Nev. 488, 491(1971). Further, a court may only grant a motion for judgment on the pleadings "when material facts are not in dispute and the movant is entitled to judgment as a matter of law." *Bonicamp, supra,* 120 Nev. at 379.

Without citing to anything specifically, Judge Du decided that the trigger date for the running of any applicable statutes of limitations governing any of the claims in the Complaint was November 4, 2013, the date of the Order Approving the Receivership Sale. [1-ER-14.] Judge Du's arbitrary reliance on the November 4, 2013 Credit Bid "Sale" of MI-LLC for the commencement of the running of the statute of limitations was erroneous because that date does not establish anything, as the entire point of the Complaint is that the trademarks could never be part of the sale. [Judge Du Order at 13:16; MJN Exhibit "A" Magistrate Baldwin's Order ¶¶ 10 – 12; 4-ER-780 ¶45.] Thus, the sale could not have put Appellants on notice of anything, as no events occurred and no facts existed that could have alerted them to the Fraudulent Scheme at that time.

As stated above, Appellants could not have discovered the Fraudulent Scheme until many months after one or more of them discovered the existence of various documents through email correspondence sent on March 3, 2017. (4-ER-779 ¶43.] As such, there is no defect that "clearly and affirmatively appear[s] on the face of the complaint," nor does any other evidence exist to compel the District Court's arbitrary finding. Appellants knew that MI-INC always owned the trademarks, so any alleged notice of the Credit Bid "Sale" to which Judge Du refers could not have provided any information to Appellants that anything was

amiss. [1-ER-14, lines 1-14.] The Complaint alleges this with particularity, and specifies the reasons therefor. [4-ER-779 ¶43.]

Moreover, as noted above, even if Appellees dispute the facts triggering any applicable statute of limitations, a court cannot grant a motion for judgment on the pleadings. *Bonicamp*, *supra*, 120 Nev. at 379. The District Court thus abused its discretion in dismissing the entire Complaint with prejudice based its arbitrary application of a limitations period.

Further, Judge Du erred in assuming the role of trier of fact and unilaterally deciding when Appellants *should have discovered* the wrongdoing. In this regard, it is well settled that a determination of "'[w]hen the plaintiff knew or in the exercise of proper diligence should have known of the facts constituting the elements of his cause of action is a question of fact for the trier of fact.'" *Nevada State Bank v. Jamison Family Partnership*, 106 Nev. 792, 800 (1990). For example, "when a fiduciary 'fails to fulfill his obligations' and keeps that failure hidden, the statute of limitations will not begin to run until the failure of the fiduciary is 'discovered, or should have been discovered' by the injured party.'" *Id*.

Accordingly, ". . .under a discovery-based statute of limitations such as ours [Nevada], the time of discovery may be decided, as a matter of law, only

where uncontroverted evidence proves that the plaintiff discovered or should have discovered the fraudulent conduct. *Nevada Power Co. v. Monsanto Co*., 955 F.2d 1304, 1307 (9th Cir.1992) cited by *Siragusa v. Brown*, 114 Nev. 1384 (1998). Therefore, it was error for the District Court to decide for itself when Appellants *should have* discovered facts constituting elements of all the claims alleged in the Complaint.

It was also error for the District Court to find that because the March 3, 2017 date was alleged "on information and belief," such made the date "implausible," pursuant to *Diaz v. Chase*, 416 F. Supp. 3d 1090 (D. Nev. 2019). [1-ER-12, line 20.] First, the March 3, 2017 email is simply alleged to be the date on which one or more of the Appellants discovered the existence of certain documents for the first time; it is by no means the date they discovered the conspiratorial conduct between Appellees that gives rise to Appellants' claims, which occurred many months later. (4-ER-779 ¶ 43.]

Second, while *Diaz* held that allegations in a complaint based on "information and belief" are too speculative, the court also stated that dismissal of the plaintiff's claim should have been *with leave to amend* because there remained a factual issue as to the plausibility of the claim. *Id.* at 1094. Therefore, the District Court erred here in dismissing Appellants' Complaint without leave on this basis.

3. Appellees' Misrepresentations Are A Continuing Violation For Statute of Limitations Purposes

Although the Receivership ended a long time ago, the Meiling Appellees' "ulterior motive" of acquire the Metalast trademarks has continued. As Magistrate Baldwin found:

> "Thus, by February 9, 2015, both Chemeon and Appellees were fully aware that the 'ban provision' extended to any use of the term 'Metalast' in commerce. [MJN Exhibit "A" Magistrate Baldwin's Order at ¶ 42.] Specifically, they understood they could not use the term 'Metalast' in commerce to market, sell, or advertise products. MJN Exhibit "A" Magistrate Baldwin's Order at ¶ 42.]
>
> * * *
>
> The circumstances surrounding the negotiation and Bankruptcy Court approval of the Settlement made reasonable Semas's expectation that the Meiling Appellees would not have used the term 'Metalast' to market advertise, market, sell, etc. its products in commerce after June 15, 2015. [MJN Exhibit "A" Magistrate Baldwin's Order at ¶50.]
>
> * * *
>
> However, after the Settlement – and for years thereafter - Chemeon began publishing: 'The Company previously known as Metalast Surface Technology LLC (and earlier as Metalast

> International LLC) officially changed its name to Chemeon Surface Technology LLC."
>
> [MJN Exhibit "A" Magistrate Baldwin's Order at at ¶¶ 55 – 57; 62, 64.]

Thus, the Meilings have already been found to have continued claiming they have a right to the IP. This constitutes a continuing violation, tolling Appellants' statute of limitations for all causes of action alleged in the Complaint, as well as a cause of action for Abuse of Process.

Nevada recognizes a continuing course of conduct as tolling an applicable statute of limitations pending the completion of the conduct or offense. Similar to a claim for insurance fraud which is a continuing offense, and as such, the statute of limitations does not begin to run until the continuous commitment of the offense is completed, as Appellees continue to engage in the same course of conduct in furtherance of the Fraudulent Scheme. See, *Igbinovia v. Nevada*, 2018 U.S. Dist. 17 LEXIS 139046 citing *Flowers v. Carville*, 310 F.3d 1118, 1126 (9th Cir. 2002), which states: "When a tort involves continuing wrongful conduct, the statute of limitations doesn't begin to run until that conduct ends." See also, *Perelman v. State,* 115 Nev. 190, 192 – 193 (1999); *Feldman v. State*, 126 Nev. 710 [Held: "When a felony is deemed to be a 'continuing offense' the

statute of limitations does not begin to run until the continuous commitment of the offense is completed. (citing *Perelman v. State, supra*, 115 Nev. at 192).]

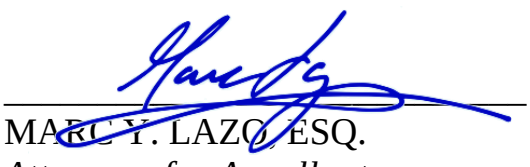
Appellees' course of conduct has been ongoing well beyond the Credit Bid "Sale," as evidenced by their continuing violation of the Settlement Agreement in the Semas Bankruptcy, which Magistrate Baldwin specifically found. [MJN Exhibit "A" Magistrate Baldwin's Order ¶¶ 32, 36, 37, 42, 50, 55 – 64.] Therefore, there is a continuing violation for statute of limitations purposes such that the course of conduct alleged in the Complaint cannot be time-barred. [4-ER-777-780 ¶¶ 36-46; see also, *Igbinovia v. Nevada*, 2018 U.S. Dist. 17 LEXIS 139046.] As such, none of the causes of action alleged in the Complaint can be time-barred.

VI. CONCLUSION

For the foregoing reasons, Appellants pray that this Court reverse the Nevada District Court's Orders in its entirety, and, at minimum, remand with instructions that Appellants be given leave to amend the Complaint.

Dated: January 3, 2021

K&L LAW GROUP, P.C.



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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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