

January 8, 2024

Danielle Hultenius Moore
dmoore@fisherphillips.com
Stephanie Reynolds
sreynolds@fisherphillips.com
Sean L. McKaveney
smackaveney@fisherphillips.com
Keia J. Atkinson
katkinson@fisherphillips.com
Fisher & Phillips LLP
4747 Executive Drive, Suite 1000
San Diego, CA 92121

Re: *Figueroa v. Nathan Fletcher, et al.*
Case No.: 37-2023-00012828-CU-OE-CTL

Plaintiff's Response to Defendant Fletcher's Demand for Dismissal

Dear Counsel:

We are writing to provide a formal response to Defendant Nathan Fletcher's ("Fletcher") demand for dismissal dated January 3, 2024 (the "Demand"). The Demand, which was served after hours last week, provides a deadline of today for our office to dismiss Plaintiff Grecia Figueroa's ("Plaintiff" or "Ms. Figueroa") claims against Fletcher. Be advised that, for myriad reasons discussed herein, our office will *not* be dismissing any claim or party from the case at this time.

Upon reviewing the Demand, we were disappointed yet unsurprised by its oversimplified rendition of the facts. In material ways, your client and your firm appear to gravely misunderstand, or perhaps blatantly ignore, the nuance surrounding consent in sexual harassment/assault cases. Your error underscores much of why we cannot and will not dismiss any claim or party at this early stage of the case. Put simply, your Demand contains *improper* arguments that would be expected much later on in a motion for summary judgment. As a reminder of the status of this case, discovery is still ongoing and no depositions have taken place despite Plaintiff's efforts to schedule them. In fact, we are trapped in a vicious cycle of time-consuming and costly motion work because both defendants – particularly Fletcher – would rather bully Ms. Figueroa than let her speak.

Crucial to this case is the fact that survivors of sexual harassment/assault, like Ms. Figueroa, struggle to find the courage to tell their stories. They feel that they will be dismissed and called liars simply because the truth is at odds with what their perpetrators, like Fletcher, are willing to admit. This is why only about 12% of survivors come forward even though a staggering 81% of women nationwide report experiencing sexual harassment/assault in their lifetime.¹ Despite the characterization of Ms. Figueroa in your Demand, it should be noted that only about 2% of reports of sexual harassment/assault end up being false.² Therefore, just because Fletcher fancies himself a big deal does not mean that his word or his worth are more valid than Ms. Figueroa's word or worth. In fact, the conduct of your client, and indeed your firm, is plainly representative of all too many cases in the *#MeToo* Movement where men of power think that their influence, resources, and bravado can silence their victims. But this plague of "boys will be boys" is over.

As an observation about your firm's professionalism, it is clear by the slinging of mud at our client and our firm that ethics are conveniently elusive to you. The Pride Law Firm is well-respected for its advocacy of survivors of sexual harassment/assault and employees wronged by their employers. Our attorneys have nearly two decades of experience in these specific practice areas, and have tirelessly fought for justice for our clients. This case is no exception. However, rather than focus on the facts of this case, your firm took the time to research and cite two (2) unrelated and remote instances of sanctions relating to our firm in an attempt to paint Ms. Figueroa's claims as "deceptive." This is an unscrupulous folly. Perhaps we should take the time to further explore *your* firm's history of deceptive litigation tactics, which resulted in substantial sanctions and/or verdicts against you and your clients in the past.³ But what useful purpose would this serve?

Therefore, to refocus, this case is about Ms. Figueroa being wronged by Fletcher and her former employer, San Diego Metropolitan Transit System ("MTS"). This is *not* a case about the frail reputation of a cheating politician whose acts came to light at an inconvenient time in his career. Fletcher, a married man, admits that he engaged in sexual relations with Ms. Figueroa while she was employed by MTS.⁴ Although Fletcher was not Ms. Figueroa's direct supervisor, he was the Chairman of MTS' Board of Directors and carried a great deal of power and influence within the organization and within local government. Even setting aside the complex issue of consent relating to *each and every* act between Fletcher and Ms. Figueroa, we also allege that MTS knew about these sexual relations and, uncoincidentally, Ms. Figueroa was terminated the same day Fletcher announced his intent to run for public office. The potential involvement of Fletcher, and perhaps even his wife, California State Assemblywoman Lorena Gonzalez, is yet to be borne out. In sum, there are numerous factual issues that remain, and it is the job of the jury – *not* Fletcher or your firm – to determine the truth.

I. Unequal Power Dynamics Between Fletcher and Ms. Figueroa Led to Ms. Figueroa Feeling Unable to Turn Down Fletcher's Advances

A. The Complicated Psychology of Survivors Like Ms. Figueroa

At the outset, all parties must acknowledge that sexual harassment/assault cases are rarely black and white. The requirement of consent is complicated and multi-faceted, depending on a host of

factual circumstances, and often relying on witness testimonies and expert analyses. As such, the messages between Fletcher and Ms. Figueroa⁵ upon which your Demand *solely* relies cannot possibly be the deciding factor in determining whether *each and every* act or encounter was, in fact, consensual. Most glaringly, your firm hasn't bothered to even depose Ms. Figueroa to attempt to get her side of the story. One can only wonder why. But since you haven't inquired yourselves, we will illuminate you as to why it is so important to understand the psychology of survivors like Ms. Figueroa.

Survivors of sexual harassment/assault, when confronted with their perpetrator, experience a "fight or flight" reaction by the sympathetic nervous system based upon the perception or anticipation of harm.⁶ In recent decades, however, psychologists and neuroscientists have discovered a somewhat more nuanced response to sexual harassment/assault situations known as the "fawn" response.⁷ Unlike the traditional "fight or flight" dichotomy, the "fawn" response arises by "[m]any survivors describe[ing] that they 'went along with it,' perhaps as a way to get through it quickly or as a way to keep it from getting worse, which is *not* the same as providing consent."⁸ Put simply, survivors can sometimes "recall certain behaviors that may sound like normal, consensual, sexual acts, but that they resorted to these things because they felt that they had no other choice."⁹ It goes without saying that survivors of sexual harassment/assault feel a litany of emotions, from shame and humiliation to guilt and depression. The "fawning" response only exacerbates these emotions, making the survivor further doubt that they will be believed.¹⁰ Unfortunately, through your Demand, we see this phenomenon of misplaced disbelief in action.




Given these complexities, Ms. Figueroa fully intends to retain one or more experts to opine as to her psychological responses to Fletcher's unwanted sexual advances, as well as her ongoing emotional harm. Specifically, the conduct of the defendants herein has left Ms. Figueroa without meaningful work in her field, which is deeply demoralizing and economically troubling for her. Ms. Figueroa has also suffered and continues to suffer from fear, shame, humiliation, guilt, trouble sleeping, trust issues, depression, and anxiety. On at least one occasion, Ms. Figueroa contemplated suicide and was forced to speak with a suicide hotline.¹¹ To this end, the conduct of Fletcher and your firm throughout this case thus far has only made these symptoms worse.

B. Ms. Figueroa's Contemporaneous Communications with Friends Demonstrate that All or At Least Most of Fletcher's Advances Were Not Consented to by Ms. Figueroa

As you know, our offices have met and conferred extensively regarding initial written discovery. In response to your latest meet and confer letter dated December 27, 2023, and in the spirit of compromise and transparency, our office produced several sensitive documents (each marked confidential), even though the stipulated protective order is still pending with the Court. These documents were produced on January 5, 2024, which was the agreed upon date by the parties. These documents primarily consist of private communications Ms. Figueroa had with her close friends during the incidents with Fletcher.¹² A review of these private communications provides a more thorough picture of the situation and Ms. Figueroa's responses to trauma.

By way of example, the following communications are presented side-by-side to illustrate the complexity of Ms. Figueroa’s predicament and her lack of consent. In many instances, Ms. Figueroa expresses concern, fear, and apprehension about her work life with Fletcher around making advances at her.

Ms. Figueroa’s Messages with Fletcher and/or Fletcher’s Conduct	Ms. Figueroa’s Contemporaneous and/or Corresponding Messages with Friend(s)	Notes
<p>Grecia Figueroa Have a great day! Jan 19, 2023, 1:43 PM</p> <p>Nathan Fletcher Soon Jan 19, 2023, 1:42 PM</p> <p>Nathan Fletcher Gotta run: talk and hopefully see you SOI ❤️ Grecia Figueroa Jan 19, 2023, 1:42 PM</p> <p>Nathan Fletcher 0:00 / 0:00 Jan 19, 2023, 1:42 PM</p> <p>Nathan Fletcher I won't keep it forever. Just a little change ❤️ Grecia Figueroa Jan 19, 2023, 1:20 PM</p> <p>Grecia Figueroa It's different...I like beards... both look good! Jan 19, 2023, 1:20 PM</p> <p>Nathan Fletcher Makes me look old Jan 19, 2023, 1:18 PM</p> <p>Nathan Fletcher You like?</p>	<p style="text-align: right;">PLTFF088</p> <p style="text-align: center;">Thu, Jan 19, 8:34 PM</p> <p>Homeboy wastes no time. This is from today, in a public zoom meeting and I was on the meeting too and he saw me on screen LOL</p> <p>And texted me immediately</p> <p style="text-align: center; font-size: 2em; opacity: 0.5;">CONFIDENTIAL</p> <p>new look I see</p> <p>You like?</p> <p>Makes me look old</p> <p>it's different...I like beards... both look good!</p> <p>I won't keep it forever. Just a little change</p> <p>And yes I think he looks older with the beard hahahaha</p>	<p>This Instagram conversation was initiated by Fletcher on January 19, 2023, at 1:02 p.m. during an MTS Zoom meeting. Later that day, Ms. Figueroa expresses her discomfort with Fletcher’s advances.</p>

<p> Grecia Figueroa 👤 new look I see Jan 19, 2023, 1:14 PM</p> <p>Grecia Figueroa  Jan 19, 2023, 1:14 PM</p> <p>Grecia Figueroa Hi Jan 19, 2023, 1:14 PM</p> <p>Nathan Fletcher Hi Jan 19, 2023, 1:02 PM</p>		
	<p style="text-align: right;">PLTFF062</p> <p style="text-align: center;">January 7, 2023</p> 	<p>In early January 2023, Ms. Figueroa confides in her friend ██████████ about her struggles with suicide as a result of Fletcher's conduct.</p>

PLTFF063

< 17 [Redacted]

suicide. It wasn't good.

But I could sense how people could come to thinking that bc . fuck . I felt horrible. I felt like I had nowhere to go. 5:16 PM

And thankfully I pulled myself out of it. And all of that. Was I think very much fueled by Fletcher. By how stagnant I feel bc of him, by how helpless I've felt this past entire 7-8 months 5:17 PM

I don't even know... 5:17 PM

And how disgusted I am in a deeper level...about him 5:18 PM

Omg G im so sorry, I don't ever want you to feel that way and If this is bringing you to the point of feeling like that then yes it definitely needs to end it's not healthy 5:18 PM

I can see why it feels helpless, especially when you're forced to see him 5:18 PM

Like that's brutal. But please, quit your job and come live with me before you think about anything like that again, I gotchu! ❤️ 5:19 PM

PLTFF064

< 17 [Redacted]

Thank you. I love you. 5:20 PM

He's on the wrong side of 40 to be pulling this shit!!!! 5:21 PM

Yeah, no, it's like a switch in my brain went off and I was like. Hold on... This problem is done. 5:22 PM

It's like every need I've had has been met in full, including this. What was the need, "needing him to leave my life" what I am? Disgusted by him. What I don't have to do... is allow myself to think he is more than me... and I'm done. 5:23 PM

I'm ranting a bit. But it was really bad this week [Redacted] 5:24 PM

-End of conversation -

Nathan Fletcher
Don't reply:) will see you in 2023!!!
Dec 31, 2022, 6:12 PM

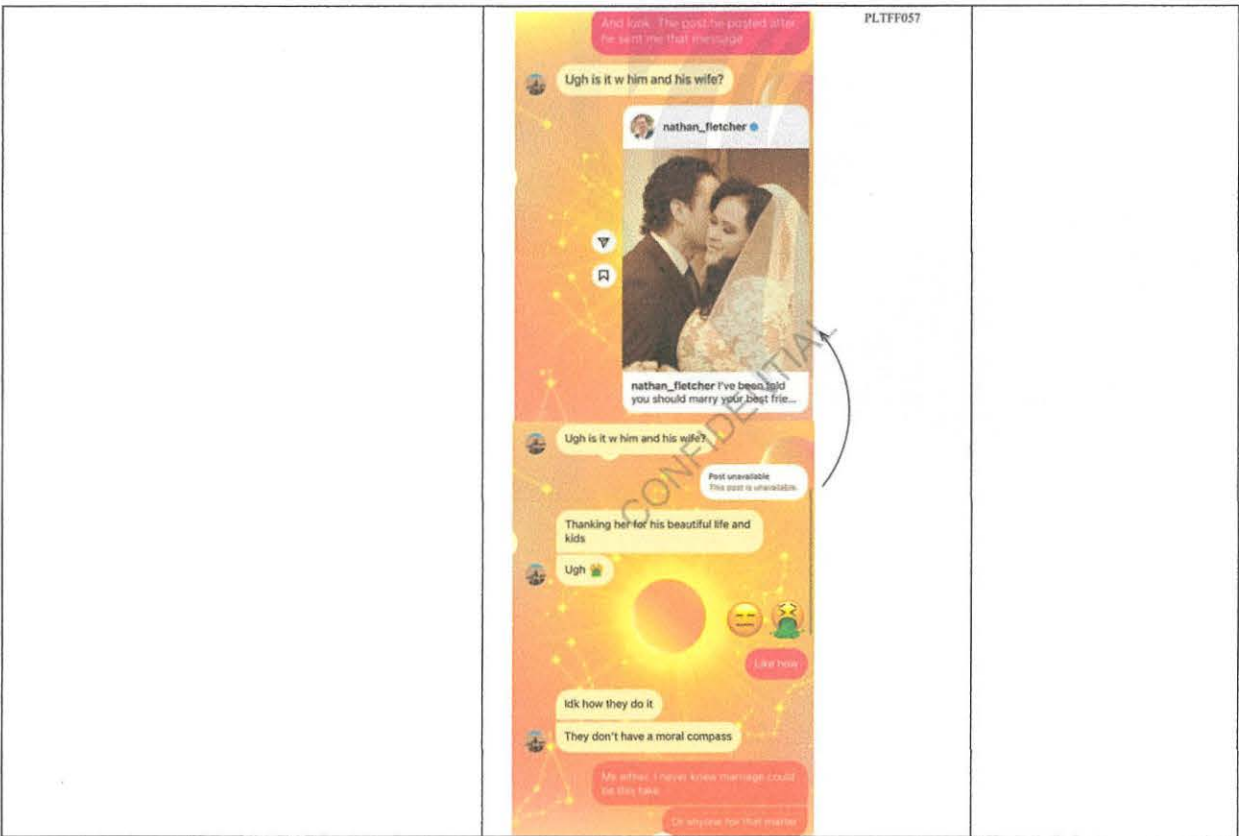
Nathan Fletcher
Happy new year mi amor. Here is to a 2023 where all are desires come true
Dec 31, 2022, 6:06 PM

Grecia Figueroa
Happy birthday, campeón.
Dec 31, 2022, 3:22 PM



In response to Ms. Figueroa's birthday message, Fletcher responds several hours later in a flirtatious manner. He refers to Ms. Figueroa as "mi amor," which is Spanish for "my love." Ms. Figueroa did not want to accept Fletcher's continued advances or pet names.

Ms. Figueroa vents to her close friend about Fletcher's advances and how she is sickened by his conduct, especially since he is married. She refers to him as "fake."



	<p>Nov. 22, 2022- Message about News Conference on Dec. 5. ^{PLTFF084}</p>	<p>There are lengthy conversations between Fletcher and Ms. Figueroa in early December 2022. Although Ms. Figueroa engages in flirting with Fletcher, he initiates the conduct and tries numerous times to get Ms. Figueroa to meet.</p> <p>On November 22, 2022, Ms. Figueroa texted a friend, [REDACTED] and said she was uncomfortable with Fletcher being at a work event. A phone call ensued.</p>

Sep 12, 2022, 7:35 AM

Nathan Fletcher
You should have said hello!!!
Sep 12, 2022, 7:35 AM

Grecia Figueroa
I was there today too. thanks for supporting our 9/11 heroes. Great speech. us
Sep 10, 2022, 11:58 PM

Nathan Fletcher
Liked a message
Sep 1, 2022, 10:18 AM

Grecia Figueroa
You too!
❤️ Nathan Fletcher
Sep 1, 2022, 10:15 AM

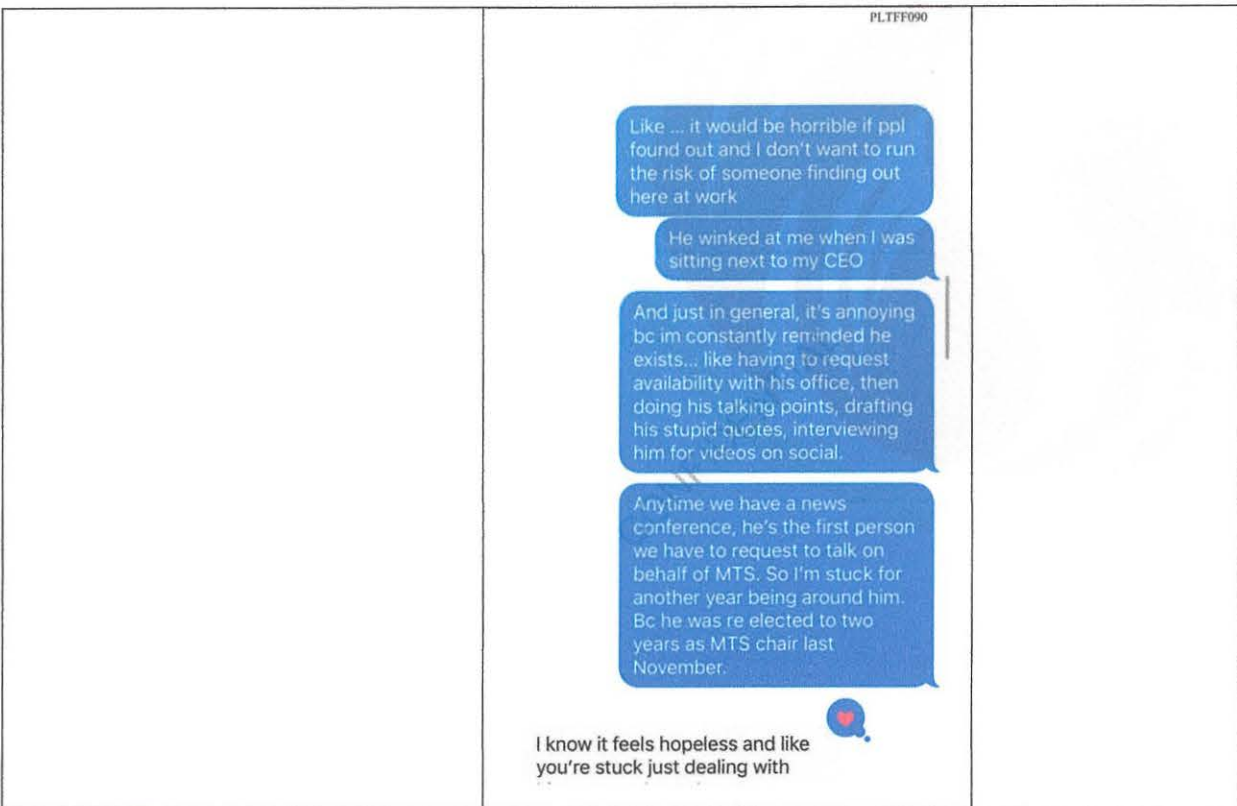
Nathan Fletcher
Hope you are well
❤️ Grecia Figueroa
Sep 1, 2022, 9:35 AM

Nathan Fletcher
Hi there
Sep 1, 2022, 8:48 AM



In early September 2022, Fletcher's advances continue and Ms. Figueroa expresses her unease to a friend. She describes the incident as "brutal" and that she is left feeling "borderline nauseous."

	<p>I can see him checking his fu ken phone</p> <p>To see if I replied</p> <p>Desperateeeee</p> <p>Im cutting off the resource of attention</p> <p>Remember...narcissist</p> <p>Yup</p> <p>Grey rock Sept 1 2022</p> <p>He keeps looking 🙄🙄🙄</p> <p>Dude is obsessed</p> <p>That was brutal</p> <p>Okay. Now. They are on "closed sessions" and at 11 there's the ceremony for the guy who is retiring</p> <p>Im borderline nauseous</p>	
	<p>PLTFF089</p> <p>Wed, Aug 31, 10:16 AM</p> <p>Sooooo this is how I make a lot of decisions in my life</p> <p>I make a decision before bed... and if I'm the morning... first thing in the morning... I ask myself if I want to still do it... then I go for it</p> <p>First thing in the morning bc I that's when my feelings are the most neutral</p> <p>Sooo... I think I'm gonna tell Fletch to stop talking to me</p> <p>I made the decision last night... and this morning I was liked yup. That's the way to go.</p> <p>What if, you call out sick the days you have to interact with him for a few months?</p> <p>1 Reply</p> <p>Uj at 06:11 like how much I have to be annoyed at him at work.</p> <p>What if you call out sick the days you have to interact with him for a few months?</p> <p>I can't bc it's usually the news conferences I run</p> <p>That I put together so it would directly affect my work.</p> <p>And I can't NOT go to the board meetings bc then I don't learn what is going on for projects. I'll be putting news conferences for</p> <p>If you tell him don't talk to me and then he has to talk to you for various reasons and he feels uncomfortable, you run the risk of him trying to get you out</p>	<p>On August 31, 2022, Ms. Figuroa discusses her feelings with a friend. She intends to ask Fletcher to leave her alone. Ms. Figuroa indicates that she cannot escape Fletcher at work and that she is constantly asked to do things for him.</p>



There are clear examples of “fawning” behavior on the part of Ms. Figueroa as she attempts to pacify Fletcher, while at the same time expressing to those close to her that she is uncomfortable with the situation. On multiple occasions, Ms. Figueroa indicates she is going to muster the courage to tell Fletcher to leave her alone. However, she is afraid of what might happen and afraid of anyone finding out. It is clear that Ms. Figueroa felt trapped and that she had no other choice than to play along with Fletcher; he was, after all, the Chairman of her employer, MTS.

Ultimately, Ms. Figueroa enjoyed her work at MTS; she has a passion for public relations and was hopeful for a long career with MTS. She was terrified that Fletcher might interfere with her career one way or another, or that MTS would find out about the encounters and terminate her. Turns out, her fears came true.

II. Fletcher’s Threatened Demurrer and/or Motion to Strike Improperly Seek to Resolve Factual Disputes in the Pleading Stage

Your Demand threatens the filing of a demurrer and/or motion to strike as to Plaintiff’s operative complaint, as well as vaguely threatening reporting of our firm to the State Bar. Both threats are misguided attempts to further bully Ms. Figueroa and her counsel. Not only that, but these threats illustrate a lack of good faith.

As to Fletcher’s responsive pleading due January 22, 2024, we reiterate that a demurrer and/or motion to strike on the grounds set forth in your Demand would be inappropriate for a number of reasons. *First*, your arguments ignore the nuance of consent and fall into the trap of “blaming the victim” in the face of clearly “fawning” behavior. *Second*, your arguments broadly assert that all interactions between Fletcher and Ms. Figueroa were consensual, when, in fact, we would have to go through each and every encounter to assess consent individually and in light of the circumstances. *Third*, your arguments ignore the totality of the circumstances, including Ms. Figueroa’s contemporaneous communications with close friends, the pressures of Ms. Figueroa’s employment and how Fletcher could have (and likely did) easily influence it such that she was fired, and the total failure of your office to depose Ms. Figueroa to obtain her sworn testimony as to these matters.

Essentially, these arguments demonstrate your attempt to circumvent the Code of Civil Procedure by having a motion for summary judgment heard at the early pleading stage. We fervently disagree with this tactic and will continue to oppose any such attempts by your office to subject our client to further turmoil simply because you can. Your professionalism and adherence to established rules from here on out would be appreciated.

III. Sanctions Are Appropriate Against Fletcher and Your Firm for Repeated Abuses of the Litigation Process

Despite what mistruths the Demand touts, our office has done nothing but zealously advocate for our client. For example, the Demand claims that we “were aware . . . that [Ms. Figueroa] was a consensual participant in her encounters with Mr. Fletcher.” This is preposterous. First of all, no one other than Ms. Figueroa herself could possibly know this for sure since she alone held the power of consent. Moreover, we understand given our extensive experience in this area that the totality of the circumstances must be assessed to properly determine consent as to each encounter. As we have explained herein, your Demand fails to consider other factors aside from the messages between Fletcher and Ms. Figueroa. However, they don’t tell the whole story.

Your Demand also suggests that our office intentionally, and without good cause, withheld “exonerating” documents from Fletcher. The “exonerating” documents we assume you refer to are the message between Fletcher and Ms. Figueroa – messages that Fletcher should himself have access to as he was a participant. Not only that, but the parties had not yet agreed upon the terms of a stipulated protective order, which meant that any sensitive documents could not be produced yet. Ultimately, these documents, and even further documents, were produced despite the stipulated protective order still being pending. We have attempted to protect our client’s Constitutionally protected privacy rights to the extent possible, while also complying with our discovery obligations.

Your office, however, has *not* acted in good faith. For example, all sets of written discovery propounded upon Fletcher have been deficient (as per our meet and confer correspondences dated September 7, 2023 and December 20, 2023), and yet your office refuses to provide supplementation. If this trend continues, we will have no choice but to move to compel Code-

compliant responses. In addition, your office has needlessly propagated motion practice at the expense of all parties and the Court's time, including frivolous motions to strike and utilizing basic (and televised) status conferences as a platform to manipulate the narrative of the case. This is all no coincidence. It is a blatant attempt to shame a survivor, Ms. Figueroa, to try to save Fletcher's reputation. However, Ms. Figueroa didn't destroy Fletcher's reputation – he did that himself through infidelity, recklessness, and alcohol abuse.

Given the foregoing, and should the abuses of the litigation process continue, Plaintiff will seek all appropriate remedies available to her, including a request for monetary sanctions against Fletcher and his attorneys at Fisher Phillips, including Danielle Moore, Stephanie Reynolds, Sean McKaveney, and Keia Atkinson.

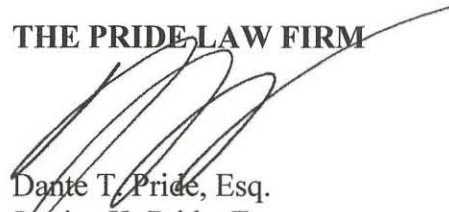
IV. Next Steps

For the foregoing reasons, Plaintiff cannot and will not dismiss any claim or party from the case at this time. Quite simply, there are too many unresolved factual disputes that the parties must contend with, including the totality of the circumstances surrounding each and every sexual encounter between Fletcher and Ms. Figueroa. To this end, Ms. Figueroa will continue to engage in the discovery process to prove her claims, including re-noticing the depositions of Fletcher, Lorena Gonzalez, and other percipient witnesses.

In light of all this, we encourage you to meet and confer further with our office. Again, the goal is not to needlessly engage in motion practice. If, however, your office proceeds with its frivolous motion(s), or should your evasiveness with discovery persist, we will have no choice but to seek all available remedies, including monetary sanctions. The abuses of our client and the litigation process must stop.

Sincerely,

THE PRIDE LAW FIRM



Dante T. Pride, Esq.
Jessica K. Pride, Esq.
Zachary Freire-Aviña, Esq.

JP/ZFA:sw

¹ *Statistics About Sexual Violence* (2015) National Sexual Violence Resource Center <https://www.nsvrc.org/sites/default/files/publications_nsvrc_factsheet_media-packet_statistics-about-sexual-violence_0.pdf> (as of January 8, 2024); *Statistics* (2023) National Sexual Violence Resource Center <<https://www.nsvrc.org/statistics>> (as of January 8, 2024).

² *See id.*

³ *See, e.g.,* Kloczko, Justin, *Appeals Court Sanctions Arent Fox, Fisher Phillips \$40K* (May 29, 2020) Daily Journal <<https://ggtriallaw.com/Articles/DJ-Arent-Fox-Fisher-Phillips-Sanctioned-%2440K-Forum-Shopping-Frivolous-Appeal.pdf>> (as of January 8, 2024); *see also, e.g.,* Umanah, Ufonobong, *Fisher Phillips Lawyers Must Learn of Colleagues' Reprimand* (May 5, 2023) Bloomberg News <<https://news.bloomberglaw.com/litigation/fisher-phillips-lawyers-must-be-told-of-colleagues-reprimand>> (as of January 8, 2024).

⁴ *See, e.g.,* Defendant Fletcher's verified Responses to Plaintiff's Request for Admission, Set Two (2), Nos. 25-28, 30-31, 38 [*note: objections were waived due to untimely responses*].

⁵ *See* Plaintiff Bate Nos. "Pltf Comm_00001 – 00120."

⁶ *See* Sullivan, Rachel, LCSW, *Another Response to Trauma: Fawning* (Oct. 22, 2022) <<https://www.belongly.com/another-response-to-trauma-fawning/>> (as of January 8, 2024).

⁷ *See id.*

⁸ *See id.* [emphasis added].

⁹ *See id.*

¹⁰ *See id.* ["Unfortunately, this specific type of response can too easily be manipulated into victim-blaming. In a society that already looks to blame the victim for sexual violence ('what was she wearing?', 'was there drinking involved?'), 'talking dirty' to a rapist fits too well into the same damaging and stigmatizing narrative. But, if I beg for mercy and give all my possessions in exchange for my life to the hypothetical gun-wielding perpetrator, does that imply that I consented to be held at gunpoint?"].

¹¹ *See* Plaintiff Bate Nos. "PLTFF111 – 112."

¹² *See* Plaintiff's Bate Nos. "PLTFF54 – 99."