

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Aug 25 2014 04:37 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

LISA JOHNSON,

Appellant,

vs.

WELLS FARGO BANK NATIONAL
ASSOCIATION,

Respondent.

Docket No. 66094

District Case A655393

**DOCKETING STATEMENT
CIVIL APPEALS****GENERAL INFORMATION**

All appellants not in proper person must complete the docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14©. The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107, Nev. 340, 810 P.2d 1217 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: Eighth Judicial District Court, State of Nevada

Department: 26

County: Clark

Judge: Gloria Sturman

District Ct. Docket No. A655393

- 1 2. Attorney filing this docketing statement:
2 Attorney: Michael Wall Telephone: (702) 385-2500
3 Firm: Hutchison & Steffen, LLC Fax: (702) 385-2086
4 Address: 10080 W. Alta Dr., Suite 200, Email: mwall@hutchlegal.com
5 Las Vegas, Nevada 89145
6 Client(s): Lisa Johnson, appellant
7
8 If this is a joint statement by multiple applicants, add the names and addresses of other counsel and
9 the names of their clients on an additional sheet accompanied by a certification that they concur in
10 the filing of this statement
11
12 3. Attorney(s) representing respondent(s):
13 Attorney: Kent F. Larsen Telephone: (702) 252-5002
14 Paul M. Haire Fax: (702) 252-5006
15 Firm: Smith Larsen & Wixom email: kfl@slwlaw.com
16 Address: 1935 Village Center Circle pmh@slwlaw.com
17 Las Vegas, Nevada 89134
18 Client(s): Wells Fargo Bank National Association, respondent
19 4. Nature of disposition below (check all that apply):
20 Judgment after bench trial **XX** Grant/Denial of NRCP 60(b) relief
21 Judgment after jury verdict Grant/Denial of Injunction
22 Summary Judgment Grant/Denial of declaratory relief
23 Default Judgment Review of agency determination
24 Dismissal Divorce Decree
25 Lack of Jurisdiction Original Modification
26 Failure to State a Claim Other disposition (specify)
27 Failure to Prosecute
28 Other (specify):
29 5. Does this appeal raise issues concerning any of the following: NO
30 Child custody(visitation rights only) Termination of parental rights
31 Venue Grant/denial of injunction or
32 TRO
33 Adoption Juvenile matters
34 6. Pending and prior proceedings in this court. List the case name and docket
35 number of all appeals or original proceedings presently or previously pending
36 before this court which are related to this appeal:
37 None
38 7. Pending and prior proceedings in other courts. List the case name, number and
39 court of all pending and prior proceedings in other courts which are related to this
40 appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates
41 of disposition:
42 None

8. Nature of the action. Briefly describe the nature of the action and the result below:

Johnson filed a complaint against Wells Fargo for defamation, false light, and declaratory relief concerning statements that Wells Fargo employee Arash Dounel made to third-party Michael Kaplan concerning Johnson, including false representations that Johnson must have had a criminal history. Following a bench trial, Judge Gloria Sturman returned a judgment in Johnson's favor concerning her defamation claim. Judge Sturman previously granted Wells Fargo's motion for summary judgment pursuant to NRCP 56 as to Johnson's false light claim. Judge Sturman also granted Wells Fargo's trial motion for judgment as a matter of law pursuant to NRCP 52 concerning Johnson's declaratory relief request for Wells Fargo's explanation as to: (1) why its employee stated that Johnson was involved in criminal activities; (2) the bases for Wells Fargo's defamatory statements against Johnson; and (3) why Wells Fargo decided to close Johnson's accounts at Wells Fargo. This appeal is from the district court's order granting Wells Fargo's motion for judgment as a matter of law concerning Johnson's declaratory relief request.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the district court erred in granting Wells Fargo's motion for judgment as a matter of law on Johnson's declaratory relief cause of action, thus precluding Johnson from discovering why her account was closed and who had accused her of criminal conduct, where the lack of such information may cause her damage in the future.

Whether the Bank Secrecy Act provided Wells Fargo with a basis for refusing to disclose why they closed Johnson's account.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

None

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A ☒ Yes No

If not, explain

12. Other issues. Does this appeal involve any of the following:

Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))

- 1 An issue arising under the United States and/or Nevada Constitutions
A substantial issue of first-impression
2 An issue of public policy **X**
3 An issue where en banc consideration is necessary to maintain uniformity of this
court's decisions
4 A ballot question
If so, explain

5 The Bank was allowed to close Johnson's account but refused to tell her why,
allegedly under the Bank Secrecy Act. Courts have split on the application of this
6 Act. Johnson and other Nevada citizens are at risk if Banks may disparage them
and hurt their credit and business interest without obligation to even disclose the
7 reason for their actions.

8 13. Trial. If this action proceeded to trial, how many days did the trial last?

9 Three days.

10 Was it a bench or jury trial? Bench

11 14. Judicial disqualification. Do you intend to file a motion to disqualify or have a
justice recuse him/herself from participation in this appeal. If so, which Justice?

12 No

13 TIMELINESS OF NOTICE OF APPEAL

14 15. Date of entry of written judgment or order appealed from: June 13, 2014.

15 If no written judgment or order was filed in the district court, explain the basis for
16 seeking appellate review:

17 16. Date written notice of entry of judgment or order served: June 13, 2014.

18 (a) Was service by delivery _____ or by mail/electronic/fax **X**_____.

19
20 17. If the time for filing the notice of appeal was tolled by a post-judgment motion
(NRCPP 50(b), 52 (b), or 59,

21 (a) Specify the type of motion, and the date and method of service of the motion,
22 and date of filing.

23 NRCPP 50(b).....Date served.....By delivery..... or by mail.....Date of
filing.....

24 NRCPP 52(b).....Date served.....By delivery..... or by mail.....Date of
filing.....

25 NRCPP 59.....Date served.....By delivery..... or by mail.....Date of
26 filing.....

27 **Note: Motions made pursuant to NRCPP 60 or motions for rehearing or**
reconsideration may toll the time for filing a notice of appeal. **See AA Primo**
Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

28

1 (b) Date of entry of written order resolving tolling motion: _____

2 (c) Date of written notice of entry of order resolving motion served: _____

3 (i) Was service by delivery _____ or by mail _____ (specify).

4
5 18. Date notice of appeal was filed: July 14, 2014 (Monday).

6 If more than one party has appealed from the judgment or order, list date each
7 notice of appeal was filed and identify by name the party filing the notice of
8 appeal: N/A

9 19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g.,
10 NRAP 4(a), NRS 155.190, or other.

11 NRAP 4(a)

12 SUBSTANTIVE APPEALABILITY

13
14 20. Specify the statute or other authority granting this court jurisdiction to review the
15 judgment or order appealed from:

16 NRAP 3A(b)(1) ☒ NRS 38.205
17 NRAP 2(A)(b)(2) NRS 233B.150
18 NRAP 3A(b)(3) NRS 703.376
19 Other

20 (specify) _____

21 Explain how each authority provides a basis for appeal from the judgment or
22 order:

23 Final judgment.

24 21. List all parties involved in the action in the district court:

25 (a) Parties:

26 Lisa Johnson Plaintiff

27 Wells Fargo Bank, National Association Defendant

28

1 (b) If all parties in the district court are not parties to this appeal, explain in detail
2 why those parties are not involved in this appeal *e.g.*, formally dismissed, not
3 served, or other:

4 22. Give a brief description (3 to 5 words) of each party's separate claims,
5 counterclaims, cross-claims or third-party claims, and the date of formal
6 disposition of each claim.

7 (1) Defamation; (2) False Light; and (3) Declaratory Relief, based on statement
8 that account was closed because Johnson must have been a criminal, and seeking
9 to discover why account was closed.

10 23. Did the judgment or order appealed from adjudicate ALL the claims alleged
11 below and the rights and liabilities of ALL the parties to the action or consolidated
12 actions below:

13 Yes X No

14 24. If you answered "No" to question 23, complete the following:

15 (a) Specify the claims remaining pending below:

16 (b) Specify the parties remaining below:

17 (c) Did the district court certify the judgment or order appealed from as a final
18 judgment pursuant to NRCP 54(b):

19 Yes No

20 (d) Did the district court make an express determination, pursuant to NRCP
21 54(b), that there is no just reason for delay and an express direction for the entry
22 of judgment:

23 Yes No

24 25. If you answered "No" to any part of question 24, explain the basis for seeking
25 appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

26 26. Attache file-stamped copies of the following documents:

- 27 ● The latest-filed complaint, counterclaims, cross-claims, and third-party
28 claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim,
counterclaims, cross-claims and/or third-party claims asserted in the action

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- or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

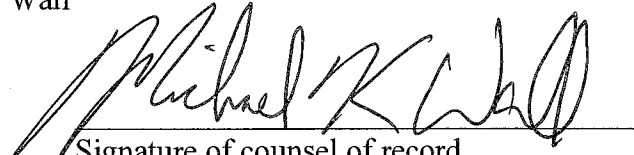
VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Name of Appellant: Lisa Johnson

Name of counsel of record: Michael K. Wall

Date: Aug 25, 2014


Signature of counsel of record

Clark County, Nevada
State and county where signed

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON &
3 STEFFEN, LLC and that on this 28th day of August, 2014, I caused the above and
4 foregoing document entitled: **DOCKETING STATEMENT** to be served as follows:
5

6 ☒ by placing same to be deposited for mailing in the United States Mail, in a
7 sealed envelope upon which first class postage was prepaid in Las Vegas,
8 Nevada; and/or

9 ☐ Pursuant to EDCR 7.26, to be sent **via facsimile**; and/or

10 ☐ to be hand-delivered;

11 to the attorneys listed below at the address and/or facsimile number indicated below:

12 Kent F. Larsen (Nevada Bar No.: 3463)

13 Paul M. Haire (Nevada Bar No.: 5656)

14 Smith Larsen & Wixom

15 1935 Village Center Circle

16 Las Vegas, Nevada 89134

17 Telephone (702)252-5002

18 Facsimile (702)252-5006

19 kfl@slwlaw.com

20 pmh@slwlaw.com

21 *Attorneys for Respondent*

22 Paul Schofield

23 8440 W. Lake Mead Blvd., Ste. 200

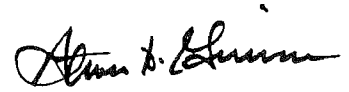
24 Las Vegas, NV 89128

25 (702) 474-4444

26 *Settlement Judge*

27
28

An employee of Hutchison & Steffen, LLC


CLERK OF THE COURT

COMP

Mark A. Hutchison (4639)
Timothy R. Koval (12014)
HUTCHISON & STEFFEN, LLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Tel: (702) 385-2500
Fax: (702) 385-2086
Email: mhutchison@hutchlegal.com
Email: tkoval@hutchlegal.com

Attorneys for Lisa Johnson

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LISA JOHNSON, a Nevada resident,
Plaintiff,

vs.

WELLS FARGO BANK, NATIONAL
ASSOCIATION; DOES I through X,
inclusive; and ROE CORPORATIONS, I
through X, inclusive,
Defendants.

Case No. A - 12 - 655393 - C
Dept. XXVI

COMPLAINT

Arbitration Exemption:
Action in Equity

Plaintiff Lisa Johnson ("Johnson" or "Plaintiff") complains against defendant Wells Fargo Bank, National Association ("Wells Fargo" or "Defendant") as follows:

1. Jurisdiction.

1. Lisa Johnson is a resident of Clark County, Nevada.
2. Upon information and belief, Wells Fargo engages in business transactions and activities in the State of Nevada and with Nevada-based companies.
3. Johnson does not know the true names and characters of Does I through X or Roe Corporations I through X, whether individual, corporate, associate or otherwise, and Johnson therefore sues these defendants by fictitious names. Johnson is informed and believes and therefore alleges that each of the defendants designated as Does I through X and Roe Corporations I through X is responsible in some manner for the events and happenings this complaint describes, and Johnson will ask leave of this court to amend this complaint to insert

1 the true names and characters of Does I through X and Roe Corporations I through X when she
2 learns of them and to join these defendants in this action.

3 **2. Factual Background.**

4 4. Prior to August 2011, Johnson and Michael Kaplan ("Kaplan"), who is
5 Johnson's boyfriend, maintained a joint bank account with Wells Fargo.

6 5. At that time, Johnson also maintained a credit card account and an operating
7 account with Wells Fargo for a limited-liability company named Guitarfile, LLC, of which
8 Johnson is the managing member.

9 6. Neither Kaplan nor Johnson had any issues or problems with their accounts at
10 Wells Fargo leading up to this time.

11 7. In or about August 2011, Wells Fargo made the unilateral decisions to close the
12 accounts of Johnson and Kaplan without disclosing the reasons for the account closures.

13 8. Instead, Wells Fargo merely stated that, "[t]he Bank's risk assessment process
14 and the results of this process are confidential, and the Bank's decision to close your account(s)
15 is final."

16 9. Johnson and Kaplan thereafter requested an explanation from Wells Fargo as to
17 why the bank took such drastic and perplexing actions against their financial interests.

18 10. Indeed, on October 6, 2011, Kaplan approached Arash Duonel ("Duonel"), who
19 is a brokerage associate at Wells Fargo, and asked him why the accounts were closed.

20 11. Duonel at first stated that he could not see any reason why Wells Fargo closed
21 the accounts.

22 12. However, as the conversation progressed, Duonel asserted that Johnson must
23 have some type of criminal background, thereby suggesting that the accounts were closed due
24 to alleged criminal activity by Johnson.

25 13. Duonel further asserted to Kaplan that Johnson "must have arrest warrants
26 outstanding."

27 14. Duonel also advised Kaplan that he "should hire a private investigator to check
28 up on [Johnson]."

1 15. Contrary to Duonel's assertions, Johnson has no criminal record.

2 16. Duonel made these statements to Kaplan willfully and/or without regard to the
3 impact that they would have on the relationship between Kaplan and Johnson and her status as
4 a beneficiary to Kaplan's estate.

5 17. Notwithstanding Wells Fargo's bold pronouncements against Johnson's status as
6 a law-abiding citizen, Wells Fargo refused to issue a letter of apology or to disclose any
7 information to Johnson or Kaplan regarding the basis for Duonel's defamatory statements and
8 the recent account closures.

9 18. Indeed, on October 26, 2011, Kaplan received a letter from Wells Fargo, which
10 merely stated, "Wells Fargo performs ongoing reviews of its account relationships in
11 connection with the Bank's responsibilities to oversee and manage risks in its banking
12 operations. Our risk based assessment is confidential and as a result, we are unable to disclose
13 the specific information and/or details leading to this decision. . . . We're confident that we
14 have handled this situation appropriately and consider this matter closed."

15 19. In spite of Wells Fargo's conduct, Johnson and Kaplan continued to
16 communicate with Wells Fargo in an attempt to understand the rationale behind Wells Fargo's
17 baseless actions.

18 20. During these communications, Duonel represented to Kaplan that he and
19 Johnson would be able to reopen their accounts with Wells Fargo, thereby providing hope that
20 the parties would be able to resolve their dispute amicably without judicial intervention.

21 21. However, when Kaplan went to a Wells Fargo branch to reopen his joint account
22 with Johnson, a Wells Fargo representative instructed Kaplan that neither he nor Johnson were
23 eligible to open any accounts at Wells Fargo.

24 22. Kaplan subsequently communicated with Chad Maze of the private wealth
25 department at Wells Fargo, who instructed Kaplan that he could not open an account with
26 Wells Fargo "if Lisa was associated with it. Of course you could open an account in your
27 name, or the name of your trust, but including Lisa could not be one of the options."

28 ///

1 23. Wells Fargo's actions have damaged, and will continue to damage, Johnson in
2 various ways.

3 24. For example, Wells Fargo's disclosure of false information to one or more third
4 parties regarding Johnson's alleged criminal activities has damaged Johnson.

5 25. Further, Johnson has been required to disclose her involuntary account closures
6 to her publicist, who possessed an outstanding check from Johnson at the time of the closures.
7 This embarrassing disclosure has harmed Johnson's status and reputation in the business
8 community.

9 26. Further, Wells Fargo's actions have affected Johnson's ability to obtain bank
10 accounts, lines of credit, and loans from other financial institution, as she will be required to
11 disclose her former relationship with Wells Fargo to such entities and the fact that Wells Fargo
12 closed her account.

13 27. This disclosure subjects Johnson to harmful financial scrutiny, which damages
14 her business prospects and creates financial uncertainty. This is especially true, as Johnson
15 plans to publish a book in the near future and to release a line of products in association with
16 this book.

17 **3. Legal Claims.**

18 **FIRST CLAIM**
19 **(Defamation)**

20 28. Johnson repeats and realleges all preceding paragraphs as though they were fully
21 set forth at length herein.

22 29. Wells Fargo, through its representatives, employees, and/or agents has made
23 false and defamatory statements concerning Johnson to Kaplan and/or other third parties.

24 30. Wells Fargo's publication of these statements to such individuals was
25 unprivileged and constituted defamation per se.

26 31. Wells Fargo made these statements in a negligent manner and/or with malice.

27 32. Wells Fargo's actions directly and proximately have caused and will continue to
28 cause Johnson to suffer damages in excess of \$10,000.

33. Wells Fargo's defamation was fraudulent, oppressive, and malicious and warrants the imposition of punitive damages against Wells Fargo in excess of \$10,000.

34. Wells Fargo's actions compels Johnson to employ an attorney for redress, entitling Johnson to obtain attorneys' fees and costs for pursuing this action.

SECOND CLAIM (False Light)

35. Johnson repeats and realleges all preceding paragraphs as though they were fully set forth at length herein.

36. Wells Fargo, through its representatives, employees, and/or agents, gave publicity to matters regarding Johnson that placed Johnson before the public in a false light, including blatantly false allegations that: (1) Johnson has a criminal background; (2) Johnson has arrest warrants outstanding; and (3) Kaplan should hire a private investigator to reveal Johnson's alleged criminal activity.

37. The false light under which Johnson has been placed would be highly offensive to a reasonable person.

38. Wells Fargo had knowledge of or acted in reckless disregard as to the falsity of the publicized matters and the false light in which Johnson was placed.

39. Wells Fargo's actions directly and proximately have caused and will continue to cause Johnson to suffer damages in excess of \$10,000.

40. Wells Fargo's actions of placing Johnson in a false light was fraudulent, oppressive, and malicious and warrants the imposition of punitive damages against Wells Fargo in excess of \$10,000.

41. Wells Fargo's actions compel Johnson to employ an attorney for redress, entitling Johnson to obtain attorneys' fees and costs for pursuing this action.

THIRD CLAIM (Declaratory Relief)

42. Johnson repeats and realleges all preceding paragraphs as though they were fully set forth at length herein.

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43. NRS 30.030 provides:

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

44. An actual controversy exists between Johnson and Wells Fargo as to its obligation to Johnson to disclose the reasons for closing her account and the accompanying statements and/or innuendos that she is or was involved in criminal activity.

45. Johnson is entitled to know why her accounts with Wells Fargo were closed as well as the basis for its defamatory statements against her.

46. Johnson is entitled to a declaration by this Court that Wells Fargo must provide Johnson a detailed explanation as to why the bank decided to close her accounts and why it alleged that she was/is involved in criminal activities.

WHEREFORE, Johnson respectfully requests that judgment be entered against Wells Fargo as follows:

1. For an award of damages in excess of \$10,000, plus interest at the legal rate for each applicable claim;
2. For an award of punitive damages in excess of \$10,000, plus interest at the legal rate for each applicable claim; and
3. For declaratory relief pursuant to the third claim.
4. For attorney's fees, costs, and interest.

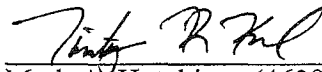
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5. For such further relief as the Court deems appropriate.

DATED this 26 day of January, 2012.

HUTCHISON & STEFFEN, LLC



Mark A. Hutchison (4639)
Timothy R. Koval (12014)
HUTCHISON & STEFFEN, LLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Tel: (702) 385-2500
Fax: (702) 385-2086
Email: mhutchison@hutchlegal.com
Email: tkoval@hutchlegal.com

Attorneys for Plaintiff Lisa Johnson



CLERK OF THE COURT

1 NOTC
Mark A. Hutchison (4639)
2 Joseph S. Kistler (3458)
Timothy R. Koval (12014)
3 HUTCHISON & STEFFEN, LLC
Peccole Professional Park
4 10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
5 Tel: (702) 385-2500
Fax: (702) 385-2086
6 Email: mhutchison@hutchlegal.com
Email: tkoval@hutchlegal.com

7 *Attorneys for Lisa Johnson*

8
9 DISTRICT COURT
CLARK COUNTY, NEVADA

10
11 LISA JOHNSON, a Nevada resident,
12 Plaintiff,

13 vs.

14 WELLS FARGO BANK, NATIONAL
ASSOCIATION; DOES I through X,
15 inclusive; and ROE CORPORATIONS, I
through X, inclusive,

16 Defendants.

Case No.
Dept.

NOTICE OF ENTRY OF ORDER ON
THE ORDER OF FINDINGS OF
FACT AND CONCLUSION OF LAW

17 TO: ALL INTERESTED PARTIES

18 NOTICE IS HEREBY GIVEN that an Order was entered in the above-entitled action on
19 June 9, 2014, a copy of which is attached hereto.

20
21 DATED this 13th day of June, 2014.

22
23 HUTCHISON & STEFFEN, LLC



24
25 Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
26 Timothy R. Koval (12014)
Peccole Professional Park
27 10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
28 *Attorneys for Plaintiff Lisa Johnson*

HUTCHISON & STEFFEN

A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this 13th day of June, 2014, I caused the above and foregoing document entitled

NOTICE OF ENTRY OF ORDER to be served as follows:

- ☒ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**; and/or
- ☐ to be hand-delivered;

to the attorney(s) listed below at the address and/or facsimile number indicated below:

Paul Haire, Esq.
 SMITH LARSEN & WIXOM
 Hills Center Business Park
 1935 Village Center Circle
 Las Vegas, NV 89134
 Facsimile 702-252-5006

Attorneys for Defendants



An employee of Hutchison & Steffen, LLC

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DISTRICT COURT
CLARK COUNTY, NEVADA

ORIGINAL

Electronically Filed
06/09/2014 03:34:06 PM

Lisa Johnson, Plaintiff(s)
vs.
Wells Fargo Bank National
Association, Defendant(s)

CASE NO.: A-12-655393-C

Department 26

Alvin D. Johnson
CLERK OF THE COURT

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
JUDGMENT**

The above matter having come on for a bench trial February 5-7, 2014, and the Court having considered the evidence presented at trial, hereby enters the following findings of fact, conclusions of law, and judgment:

FINDINGS OF FACT

1. Lisa Johnson ("Johnson" or "Plaintiff") is an individual who resides in Clark County, Nevada.
2. Defendant Wells Fargo Bank, N.A. ("Wells Fargo" or "Defendant") engages in business transactions and activities in the State of Nevada and with Nevada-based companies.
3. Johnson filed her complaint against Wells Fargo on January 26, 2012. The complaint asserted claims against Wells Fargo for defamation, false light, and declaratory relief.
4. Wells Fargo filed an answer to the complaint on April 6, 2012, which denied all material allegations of Johnson's complaint and asserted affirmative defenses, which included the alleged "truthfulness" of the alleged defamatory statements.

RECEIVED

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JUN 09 2014

CLERK OF THE COURT

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5. The Court granted Wells Fargo's motion for summary judgment pursuant to NRCP 56 as to Johnson's cause of action for false light on January 10, 2014 based upon the lack of sufficient publication to the general public of the alleged statement and for the reasons stated on the record at the summary judgment hearing. The Court granted Wells Fargo's motion for judgment as a matter of law pursuant to NRCP 52 as to Johnson's cause of action for declaratory relief on February 7, 2014 based upon the Court's earlier rulings regarding the Bank Secrecy Act (31 U.S.C. § 5311 et seq.) and the Patriot Act and for the reasons stated on the record at trial.
 6. Johnson, at all times relevant, was and is the managing member of Guitarfile, LLC ("Guitarfile"), a Nevada limited-liability company.
 7. Johnson, as manager of Guitarfile, opened three accounts for Guitarfile at Wells Fargo on about May 12, 2010. The lead account number for these business accounts was a Wells Fargo account number ending in #7051 ("Guitarfile Business Account").
 8. Johnson, as manager of Guitarfile, opened a Guitarfile business credit card account prior to August 2011 with account number ending in #2957 ("Guitarfile Credit Card Account").
 9. Johnson and Michael Kaplan ("Kaplan") are a couple that have been together for over ten years. There is no asset pooling agreement between Johnson and Kaplan.
 10. Johnson and Kaplan signed a consumer account application to open and did open a Wells Fargo account ending in #4164 on October 2, 2004 ("Joint Account").

- 1 11. On or About August 15, 2011, Wells Fargo notified Johnson that it was
- 2 closing the Guitarfile Credit Card Account effective September 16, 2011.
- 3
- 4 12. On or about August 18, 2011, Wells Fargo notified Johnson that it was
- 5 closing the Guitarfile Business Account effective September 22, 2011.
- 6
- 7 13. On or about August 18, 2011, Wells Fargo notified Johnson and Kaplan
- 8 that it was closing the Joint Account effective September 22, 2011.
- 9
- 10 14. Johnson inquired of Wells Fargo concerning the reason for Wells Fargo's
- 11 election to close the accounts, but Wells Fargo refused to identify the
- 12 specific reasons for the closure of the accounts.
- 13
- 14 15. Kaplan was identified as the primary Joint Account holder while Johnson
- 15 was identified as the secondary Joint Account holder.
- 16
- 17 16. The Guitarfile Credit Car Account, and Guitar file Business Account were
- 18 closed on September 16, 2011 and September 22, 2011, respectively.
- 19
- 20 17. Thereafter, on October 6, 2011, Kaplan went into a Wells Fargo branch
- 21 located in Malibu, California (the "Malibu Branch") solely on his own
- 22 behalf, and not as Johnson's agent, or to inquire about the closed accounts.
- 23
- 24 18. During the course of Kaplan's check-cashing transaction, the Wells Fargo
- 25 teller invited Kaplan to speak with a personal banker to discuss the
- 26 possibility of opening additional accounts with Wells Fargo.
- 27
- 28 19. At that point, the teller introduced Kaplan to Arash Dounel ("Dounel") who
- 29 further identified himself to Kaplan as a Wells Fargo premier banker and
- 30 brokerage associate.
- 31
- 32 20. During Kaplan's discussion with Dounel, Kaplan told Dounel about Wells
- 33 Fargo's Joint Account closure letter. Dounel asked if he had a copy with

- 1 him, Kaplan did not, but at Dounel's request, he called Johnson and
2 requested that she e-mail Dounel the closure letter for the Joint Account.
3
4 21. After Johnson e-mailed Dounel the Joint Account closure letter, Kaplan
5 observed Dounel reading the letter, then looking at something on his
6 computer screen; Kaplan could not see the screen.
7
8 22. After Dounel reviewed the letter and his computer screen, he made
9 remarks to Kaplan suggesting that Johnson must have a criminal
10 background or must be involved in criminal activity, and that Kaplan
11 should consider hiring a private investigator to look into Johnson's
12 background.
13
14 23. No evidence was presented to show Johnson had a criminal history, and
15 Wells Fargo withdrew its affirmative defense of truthfulness prior to trial.
16
17 24. Kaplan was not acting as Johnson's agent at the time the aforementioned
18 statements were made to him.
19
20 25. Dounel was acting within the scope and course of his Wells Fargo
21 employment at the time the aforementioned statements were made to
22 Kaplan.
23
24 26. Dounel testified that he did not recall the conversation, and stated that
25 such remarks were not consistent with his normal practiced and "didn't
26 sound like something I would say." The weight of the evidence suggests the
27 remarks attributed to Dounel were in fact made. The circumstances,
28 however, are not indicative of malice or ill-will toward Johnson.
29
30 27. Dounel was negligent in speaking imprudently in response to what was
described as Kaplan's insistence on an explanation for the reason the

1 accounts were closed. Dounel admitted he had no information suggestive
2 of criminal activity on the part of Johnson.

3
4 28. Dounel's remarks to Kaplan were inappropriate and defamatory. Because
5 the remarks concerned allegations of criminal activity, they were
6 defamatory per se.

7 29. Dounel's statements to Kaplan about Johnson caused stress upon their
8 relationship, as Kaplan questioned Johnson about Dounel's allegation that
9 Johnson had a criminal record, which she denied. The topic of Johnson's
10 criminal history, or lack thereof, has been revisited on many occasions
11 thereafter.

12
13 30. The Court finds credible evidence that Dounel's statements caused stress
14 and strain on Johnson's and Kaplan's personal relationship which stress
15 constitutes compensable damage to Johnson.

16 31. Johnson planned to open a bank account in anticipation of publishing a
17 book of her photographs, the account was to be funded with an initial
18 deposit of \$25,000 from Kaplan. Dounel's statements regarding Johnson's
19 alleged criminal activities caused Kaplan not to fund that account for
20 Johnson. Johnson suffered compensable losses in excess of \$25,000.

21
22 **CONCLUSIONS OF LAW**

23 1. Defamation. The elements of defamation are: (1) defendant made a false
24 and defamatory statement concerning the plaintiff; (2) an unprivileged
25 publication to a third person; (3) fault, amounting to at least negligence;
26 and (4) actual or presumed damages. *See Shafer v. City of Boulder*, 896
27 F.Supp.2d 915, 940 (D. Nev. 2012); *see also Wynn v. Smith*, 117 Nev. 6, 10-
28

1 11, 16 P.3d 424, 427 (2001); *Pacquiao v. Mayweather*, 803 F.Supp.2d
2 1208, 1211 (D. Nev. 2011).

- 3
4 2. To constitute slander *per se*, the alleged defamation must be oral and must
5 fall into one of four categories: (1) that the plaintiff committed a crime; (2)
6 that the plaintiff has contracted a loathsome disease; (3) that a woman is
7 unchaste; or (4) the allegations must be one which would tend to injure the
8 plaintiff in his or her trade, business, profession, or office. *See Nevada*
9 *Independent Broadcasting Corp. v. Allen*, 99 Nev. 404, 409, 664 P.2d 337,
10 341 (1983).
11
12 3. As a general rule, only assertions of fact, not opinion, can be defamatory.
13 However, expressions of opinion may suggest that the speaker knows
14 certain facts to be true or may imply that facts exist which will be sufficient
15 to render the message defamatory if false. *See Shafer v. City of Boulder*,
16 896 F.Supp.2d, at 940.
17
18 4. Statements of belief are defamatory if they imply the existence of
19 defamatory facts that are not disclosed to the listener. *See id.* at 941.
20
21 5. Based on the Court's findings of fact, the Court concludes that Dounel's
22 statements to Kaplan that Johnson must have a criminal background or
23 must be involved in criminal activity, constitute defamation and
24 defamation *per se*. as they falsely state that Johnson has a criminal history.
25
26 6. The Court concludes that Dounel was acting within the scope and course of
27 his employment when he made the defamatory statements to Kaplan.
28
29 7. The Court concludes that Dounel's defamatory statements were
unprivileged and made to a third-party because: (1) Kaplan went to the

1 Malibu Branch on October 6, 2011 to conduct his own personal business –
2 not on Johnson's behalf; (2) Dounel approached Kaplan that day for the
3 specific purpose of soliciting Kaplan's business based on information that
4 Dounel obtained regarding Kaplan's separate personal account at Wells
5 Fargo; (3) there is no evidence that Dounel believed that Kaplan was
6 Johnson's agent; and (4) there is insufficient evidence demonstrating that
7 Dounel's defamatory statements to Kaplan were privileged.
8

9 8. The Court concludes that Dounel made the defamatory statements to
10 Kaplan negligently; however, Dounel's defamatory statements do not rise
11 to the level of implied or express malice.
12

13 9. The Court concludes that the statements made by Wells Fargo, acting by
14 and through its agent Dounel, constitute slander *per se*.

15 10. Special damages for slander. In all slander actions, special damages, to be
16 recoverable, must be proven. *See K-Mart Corp. v. Washington*, 109 Nev.
17 1180, 1194, 866 P.2d 274, 283 (1993) (overruled in part on other grounds
18 by *Pope v. Motel 6*, 121 Nev. 307, 114 P.3d 277 (2005)). Special damages
19 are quantifiable monetary losses that flow directly from the injury to
20 reputation caused by the defamation. *See id.*, 114 P.3d, at 284.
21

22 11. General damages presumed for slander *per se*. With slander *per se*, the
23 plaintiff is entitled to presumed, general damages. *See Bongiovi v.*
24 *Sullivan*, 122 Nev. 556, 577, 138 P.3d 433, 448 (2006). General damages
25 are those awarded for loss of reputation, shame, mortification, and hurt
26 feelings. *See id.*; *see also K-Mart Corp. v. Washington*, 109 Nev., at 1194,
27 866 P.2d, at 284.
28

1 12. Punitive damages may be awarded when the plaintiff proves by clear and
2 convincing evidence that the defendant is guilty of oppression, fraud or
3 malice, express or implied. See, NRS 42.005(1). There is insufficient
4 evidence to conclude that Dounel acted with oppression, fraud or malice,
5 express or implied, in making the statement at issue. Therefore, the Court
6 finds Johnson is not entitled to punitive damages.
7

8 13. The Court concludes that Johnson is entitled to:

- 9 a. Special damages in the amount of \$25,000 that, but-for Dounel's
10 defamatory statements to Kaplan concerning Johnson, Johnson
11 would have received from Kaplan to fund the account in
12 anticipation of publishing the book of her photographs.
13
14 b. General damages totaling \$90,000 for loss of reputation, shame,
15 mortification, and hurt feelings.
16

17 JUDGMENT

- 18 1. Judgment is hereby entered in Wells Fargo's favor and against Johnson on
19 Johnson's claims of false light and declaratory relief.
20
21 2. Judgment is hereby entered in Johnson's favor and against Wells Fargo on
22 Johnson's claims of defamation in the following amounts:
23 a. Special damages in the amount of \$25,000.
24 b. General damages in the amount of \$90,000.
25 c. Pre-judgment interest from the date the complaint and summons
26 were served on Wells Fargo on February 2, 2012 to the date of entry
27 of this judgment for the special and general damages awarded.
28

1 d. Post-judgment interest from the date the judgment is entered for
2 the special and general damages awarded until paid at a rate of
3 \$16.54 per day.

4 e. Costs, per NRS 18.020(3), upon Johnson's filing an approved
5 memorandum of costs.

6
7 3. Without deciding entitlement at this time, the Court permits Johnson to
8 seek recovery of costs in accordance with statute, and to move for
9 attorney's fees, if she so desires.

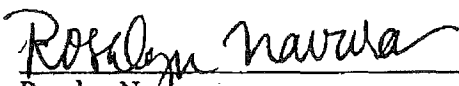
10
11 DATED: June 06, 2014

12 
13 GLORIA STURMAN
District Court Judge, Department 26

14 I hereby certify that on the date signed, a copy of the foregoing Order was placed in
15 the attorney folder(s) in the Clerk's Office or mailed or faxed to the following:

16 Kent F Larsen
1953 Village Center CIR
17 Las Vegas, NV 89134 → 702.252.5006

18 Mark A Hutchison
19 Peccole Professional Park
10080 Alta Drive, Ste. 200 → 702.385.2886
20 Las Vegas, NV 89145-8651

21 
22 Rosalyn Navara,
23 Judicial Executive Assistant
24
25
26
27
28

BROADCAST REPORT

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 TEL :
 SER. # : 000B2N205625

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 NG : POOR LINE CONDITION
 CV : COVERPAGE
 PC : PC-FAX

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FAX : 7026714305
TEL :
SER.# : 000B2N285625

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DISTRICT COURT
CLARK COUNTY, NEVADA

Lisa Johnson, Plaintiff(s)
vs.
Wells Fargo Bank National
Association, Defendant(s)

CASE NO.: A-12-655393-C

Department 26

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
JUDGMENT**

The above matter having come on for a bench trial February 5-7, 2014, and the Court having considered the evidence presented at trial, hereby enters the following findings of fact, conclusions of law, and judgment:

FINDINGS OF FACT

1. Lisa Johnson ("Johnson" or "Plaintiff") is an individual who resides in Clark County, Nevada.
2. Defendant Wells Fargo Bank, N.A. ("Wells Fargo" or "Defendant") engages in business transactions and activities in the State of Nevada and with Nevada-based companies.