

1
2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3 A CAB SERIES, LLC, ADMINISTRATION)
4 COMPANY,)

5 Appellant,)

6 v.)

7 MICHAEL MURRAY; MICHAEL)
8 RENO, and WELLS FARGO BANK NA,)

9 Respondents.)

Case No. : 84472
District Case No. A-19-792961-C
Electronically Filed
Apr 28 2022 04:51 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

DOCKETING STATEMENT
CIVIL APPEALS

10 **GENERAL INFORMATION**

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

14 **WARNING**

15 This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court
16 may impose sanctions on counsel or appellant if it appears that the information provided
17 is incomplete or inaccurate. 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.

18 A complete list of the documents that must be attached appears as Question 27 on this docketing
19 statement. Failure to attach all required documents will result in the delay of your appeal and may
result in the imposition of sanctions.

20 This court has noted that when attorneys do not take seriously their obligations under NRAP 14
21 to complete the docketing statement properly and conscientiously, they waste the valuable
22 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.

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

24 Department: 14

County: Clark

25 Judge: Adriana Escobar

District Ct. Case No. A-19-792961-C

26 2. **Attorney(s) filing this docketing statement:**

27 Attorney: Jay A. Shafer

Telephone: (702) 794-4411

28 Firm: Cory Reade Dows & Shafer

Fax: (702) 794-4421

Address: 1333 N. Buffalo #210
Las Vegas, NV 89128

Email: jshafer@crdslaw.com

Client: Appellant A Cab Series, LLC, Administration Company

If this is a joint statement by multiple applicants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement

3. **Attorney(s) representing respondent(s):**

Attorney: Leon Greenberg
Ranni Gonzalez
Firm: Leon Greenberg P.C.

Telephone: (702) 383-6085
Fax: (702) 385-1827

Address: 2965 S. Jones Blvd., Ste. E3
Las Vegas, NV 89146

Email:
leongreenberg@overtimelaw.com

Clients: Respondents Michael Murray and Michael Reno

Attorney: Kelly H. Dove
Firm: Snell & Wilmer LLP

Telephone: (702) 784-5202
Fax: (702) 784-5252

Address: 3883 Howard Hughes Pkwy. Ste 110
Las Vegas, NV 89128

Email: Kdove@swlaw.com

Client: Respondent Wells Fargo NA

4. **Nature of disposition below (check all that apply):**

Judgment after bench trial
Judgment after jury verdict
Summary Judgment
Default Judgment

X Dismissal

X Lack of Jurisdiction
X Failure to State a Claim
Failure to Prosecute
Other (specify):

Grant/Denial of NRCP 60(b) relief
Grant/Denial of Injunction
Grant/Denial of declaratory relief
Review of agency determination
Divorce Decree
Original Modification
Other disposition (specify):

5. **Does this appeal raise issues concerning any of the following: NO**

Child custody(visitation rights only)
Venue
Termination of parental rights

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Docket No. 77050 – A Cab, LLC v. Murray (Appeal from judgment, other relief)

Related to Docket No. 77050: Docket No. 72691, Docket No. 73326, Docket No. 81641, Docket No. 82539, Docket No. 84456, Docket No. 84472.

7. **Pending and prior proceedings in other courts.** List the case name, number, and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Murray v. A Cab LLC, et al Eighth Judicial District Court, Clark County, Case No. A-12-669926-C, Department IX.

Murray is a class action suit against A Cab for A Cab's alleged failure to pay its employees a sufficient wage to satisfy the Minimum Wage Act of the Nevada Constitution. This matter was original heard by Judge Cory in Dept 1 of the Eighth Judicial District Court. In 2018, pursuant to an unexpected decision, the District Court *sua sponte* entered summary judgment against A Cab Series LLC. The Plaintiff began execution upon the judgment, which prompted a motion to quash by A Cab LLC. This was denied by the *Murray* Court in an Order filed on December 18, 2018. Appellate review of the judgment and the order on the motion to quash was sought, and this Court issued a decision on December 30, 2021 which affirmed in part, reversed in part and remanded. Particularly the decision on the Motion to Quash execution was reversed and remanded.

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

The underlying action is a suit for declaratory relief and, as to Wells Fargo Bank, NA, a suit for breach of contract. Plaintiff had its property taken in a writ of execution served on Wells Fargo Bank, NA. Plaintiff asserts that defendant Wells Fargo improperly assigned a Federal employer identification number (EIN) to its account which was the same number assigned to the accounts of the *Murray* action judgment debtor A Cab, LLC. Plaintiff also asserted that Wells Fargo improperly disclosed its confidential information when handling a writ designated to "A Cab LLC and A Cab Taxi Service", making no mention of the plaintiff in the underlying action. Following motion practice in this matter, and without the benefit of oral argument, the district court granted a motion for judgment on the pleadings. The basis for this was that the doctrine of collateral estoppel barred successive litigation and that the primary issue in this matter had been decided by the *Murray* court. Judge Escobar, following a dismissal of the action and denying sanctions considered another request for sanctions. The district court granted the request saying that plaintiff was unreasonable in contending that Judge Cory erred in granting the motion to quash in the *Murray* action and arguing that there had not been actual litigation or a hearing. Thus the district court found that Plaintiff's claims were not warranted by existing law or by a nonfrivolous argument. Subsequently this Court considered the denial of the Motion to Quash in the *Murray* action and reversed and remanded. Plaintiff then sought reconsideration of the dismissal by Judge Escobar, which is presently pending before the district court.

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 judgment on the pleadings and dismissal based upon a finding of collateral estoppel over a decision by the *Murray* court.

Whether the district court erred in finding that claims for breach of contract against plaintiff's bank were barred as a matter of law because the *Murray* court made a determination on a motion to quash.

Whether the district court erred in finding privity between plaintiff and the defendant in the *Murray* action?

Whether the district court lacked subject matter jurisdiction over this case from the outset because the *Murray* court made a determination on a motion to quash.

Whether a finding of collateral estoppel for a reversed decision renders the basis for dismissal void.

Whether the district court erred in dismissing plaintiff's claims for declaratory relief as to its status as an independent entity.

Whether the district court erred in denying plaintiff's request to file an amended complaint.

Whether the district court erred in determining that the entirety of plaintiff's complaint violated NRCP 11(b)(2).

Whether plaintiff should have been subject to sanctions for bringing this action.

Multiple other issues under investigation and consideration.

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))

An issue arising under the United States and/or Nevada Constitutions

A substantial issue of first-impression

☒ An issue of public policy

An issue where *en banc* consideration is necessary to maintain uniformity of this court's decisions

A ballot question
If so, explain

The Nevada legislature has enacted a statutory scheme for the creation of series LLCs. By this statute there should be a presumption of corporate separation, subject to a showing by a moving party that the corporate veil should be pierced. Here plaintiff was not entitled to this presumption and provided no opportunity to demonstrate its adherence to corporate forms. Plaintiff, seeking relief in what it thought would be a fair and deliberate forum, was met with dismissal and reprisals.

13. **Assignment to the Court of appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstances(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case is arguably assigned to the Nevada Supreme Court pursuant to NRAP 17(a)(11), because it raises issues regarding the burden of demonstrating the existence of NRS 86.296 series LLCs, and the district court's novel and erroneous applications of collateral estoppel present questions of first impression before this Court. Also, the amount in controversy is potentially substantial, and by negative implication of the money amounts cited as reasons for a case to be transferred to the Court of Appeals, the amount here justified Supreme Court consideration. This case should be retained by the Nevada Supreme Court.

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

N/A

Was it a bench or jury trial? N/A

15. 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? No

TIMELINESS OF NOTICE OF APPEAL

16. **Date of entry of written judgment or orders appealed from:**

Order Granting Motion for Judgment on the Pleadings entered by the district court on February 25, 2022, resolving all issues and making this a final order.

Order Granting Defendants Murray And Reno's Motion For Judgment On The Pleadings Pursuant TO NRCP 12(C) entered by the district court on January 4, 2021.

Order Granting the Motion Of Defendants Murray And Reno For An Award Of Attorney's Fees And Costs And Denying The Motion Of The Plaintiff To Retax Costs

1 And Strike Memorandum Of Costs And Disbursements entered by the district court on
2 April 20, 2021.

3 Order Denying Plaintiff's Motion For Reconsideration And Granting Counter-Motion Of
4 Defendants Murray And Reno For An Award Of Attorney's Fees entered by the district
5 court on July 21, 2021.

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

8 17. **Date written notice of entry of judgment or order served:** February 25, 2022.

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

10 18. **If the time for filing the notice of appeal was tolled by a post-judgment motion**
11 **(NRCP 50(b), 52 (b), or 59),**

12 (a) Specify the type of motion, and the date and method of service of the motion, and date
13 of filing.

14 NRCP 50(b) Date of filing _____
15 NRCP 52(b) Date of filing _____
16 NRCP 59 Date of filing _____

17 Plaintiff filed individual Motions for Reconsideration of Dismissal as to Respondent
18 Wells Fargo, NA and Respondents Murray and Reno on March 11, 2022.

19 **Note: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration**
20 **may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington,**
21 **126 Nev. __, 245 P.3d 1190 (2010).**

22 (b) Date of entry of written order resolving tolling motion: not yet resolved.

23 (c) Date of written notice of entry of order resolving motion served: N.A.

24 Was service by delivery _____ or by mail _____ (specify).

25 19. **Date notice of appeal was filed:** March 28, 2022.

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

28 20. **Specify statute or rule governing the time limit for filing the notice of appeal, e.g.,**
NRAP 4(a) or other:

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. **Specify the statute or other authority granting this court jurisdiction to review the**
judgment or order appealed from:

1 X NRAP 3A(b)(1) NRS 38.205
NRAP 3(A)(b)(2) NRS 233B.1 50
2 NRAP 3A(b)(3) NRS 703.376
Other (specify) _____

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

4 The district court has entered what it believes is a final judgment as claims have now
5 been dismissed as to all parties, even though reconsideration has been requested, Plaintiff
6 has filed a notice of appeal to protect all appellate remedies.

7 **22. List all parties involved in the action in the district court:**

8 (a) Parties:

9 A Cab Series, LLC, Administration Company Plaintiff

10 Michael Murray and Michael Reno Defendants
11 (in their capacity as Class Representatives)

12 Wells Fargo Bank., NA Defendant

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

15 Not applicable

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

18 Plaintiff has sought claims for declaratory relief as to its corporate status, and the funds
19 taken by the writ, and breach of Contract against Wells Fargo. The claims against
20 Defendants Murray and Reno were dismissed on January 4, 2021, and as against Wells
Fargo Bank, NA on February 25, 2022

21 **24. Did the judgment or order appealed from adjudicate ALL the claims alleged below**
22 **and the rights and liabilities of ALL the parties to the action or consolidated**
23 **actions below:**

24 Yes X No _____

25 **25. If you answered "No" to question 24, complete the following:**

26 (a) Specify the claims remaining pending below:

27 Not Applicable

28 (b) Specify the parties remaining below:

Not Applicable

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

Yes ___ No ___

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

Yes ___ No ___

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

Defendants believe the judgment of the district court is an interlocutory order, but it purports to be a final judgment, with the claims against Creighton J. Nady, which are derivative in nature, severed and stayed both to create finality and to defeat the five year rule of NRCP 41(e). Defendants believe the district court's order is inappropriate, but have been forced to file a notice of appeal to protect all appellate rights.

27. **Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party 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 or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

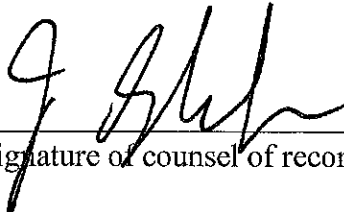
VERIFICATION

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(s): A Cab Series, LLC, Administration Company

Name of counsel of record: Jay A. Shafer, Esq.

DATE: 4/28/22


Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), EDCR 7.26, and NEFCR 9 and 13, on this 21st day of April 2022, I caused to be served a true and correct copy of the foregoing: DOCKETING STATEMENT by the method(s) indicated to the following part(ies):

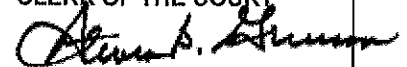
☐ **in accordance with NEFCR 9 and 13**

Leon Greenberg, Esq. . Leon Greenberg Professional Corporation 2965 S. Jones Blvd., Suite E3 Las Vegas, Nevada 89146 leongreenberg@overtimelaw.com dana@overtimelaw.com Attorneys for Defendants MURRAY and RENO	Kelly H. Dove, Esq. Snell & Wilmer L.L.P. 3883 Howard Hughes Pkwy. Suite 110 Las Vegas, Nevada 89169 kdove@swlaw.com Attorneys for Defendant Wells Fargo NA
Charles K. Hauser 2231 Nordica Court, Las Vegas, NV 89117 chuckkhauser@gmail.com Settlement Judge	

- ☐ First-Class United States mail, postage fully prepaid upon the following Parties who are not registered users in accordance with NEFCR 9(d) a sealed envelope, postage prepaid to the following counsel and/or parties to this matter:
- ☐ Personal Service upon the following parties or their Counsel:
- ☐ By direct email upon the following Parties, for whom I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- ☐ By fax or other electronic transmission in accordance with NRCP 5(D) upon the following Parties, for which proof of successful transmission is attached hereto.

/s/ Kathrine von Arx

Authorized Representative of CORY READE DOWS & SHAFER



COMP

JAY A. SHAFER, ESQ.
Nevada Bar No. 009184
CORY READE DOWS AND SHAFER
1333 North Buffalo Drive, Suite 210
Las Vegas, Nevada 89128
Telephone: (702) 794-4411
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JShafer@crdslaw.com
Attorneys for Plaintiff
A CAB SERIES, LLC, ADMINISTRATION COMPANY,

CASE NO: A-19-792961-C
Department 2

DISTRICT COURT

CLARK COUNTY, NEVADA

A CAB SERIES, LLC, ADMINISTRATION
COMPANY,

Plaintiff,

v.

MICHAEL MURRAY, an Individual, as a class
representative, MICHAEL RENO, an
Individual, as a class representative, WELLS
FARGO BANK NA, a National Banking
Association; DOES 1-100, and ROE BUSINESS
ENTITIES I through C, inclusive,

Defendants.

)
)
) Case No.
) Dept. No.
)
)

ARBITRATION EXEMPT
(Declaratory Relief Requested;
Extraordinary Relief Requested)

COMPLAINT

Plaintiff A CAB SERIES, LLC, ADMINISTRATION COMPANY, [hereinafter
"Plaintiff" or "ADMINISTRATION COMPANY"], by and through its attorney, JAY A.
SHAFER, ESQ. and the law firm of CORY READE DOWS & SHAFER, hereby pleads, alleges
and avers as follows:

PARTIES

1. Plaintiff ADMINISTRATION COMPANY is and was at all times relevant hereto a
Nevada Corporation claiming to do in Clark County, Nevada.

1 2. Upon information and belief, Defendant MICHAEL MURRAY [hereinafter
2 "MURRAY"], is an individual who is now and at all times relevant hereto a resident of Clark
3 County, Nevada, in his capacity as a class representative in Case number A-12-669926-C.

4 3. Upon information and belief, Defendant MICHAEL RENO, [hereinafter referred to
5 as "RENO"], is an individual who is now and at all times relevant hereto a resident of Clark
6 County, Nevada, in his capacity as a class representative in Case number A-12-669926-C.

7 4. Defendant WELLS FARGO BANK NA. [hereinafter "WELLS FARGO"] is and was
8 at all times relevant hereto a National Banking Association actually doing business in Clark
9 County, Nevada.

10 5. Plaintiff is informed, believes and thereon alleges that the true names and capacities,
11 whether individual, corporate, associate or otherwise, of DOES 1 through 100 and ROE
12 BUSINESS ENTITIES I through C, are unknown to Plaintiff who therefore sues said Defendants
13 by said fictitious names. Plaintiff is informed and believes that each of the Defendants
14 designated as a DOE is responsible in some manner for the events and happenings described in
15 the Complaint which proximately caused or contributed to the damages to Plaintiffs as alleged
16 herein. Plaintiff is informed and believes that each of the Defendants designated as a ROE
17 BUSINESS ENTITY is responsible for the events and happenings described in the Complaint
18 which proximately caused and contributed to the damages to Plaintiff as alleged herein. Plaintiff
19 will ask leave of to amend the Complaint to insert the true names and capacities of the DOE and
20 ROE and state appropriate charging allegations when that information has been ascertained.

21 6. Plaintiff is informed and believes, and based upon that information and belief, alleges
22 that at all times relevant herein Defendants were authorized agents of each other and were acting
23 with the knowledge, authorization and/or ratification of each of the other Defendants.

1 7. Plaintiff is informed and believes, and thereon alleges, that at all times relevant herein
2 Defendants were ostensible or apparent agents of each other and were acting with the
3 knowledge, authorization and/or ratification of the appearance of said apparent agency for the
4 acts and representations of each of the other Defendants.

5 8. Defendants and each of them are and/or were at all times relevant hereto alter egos,
6 shells instrumentalities of each other and shared an identity of interests such as to recognize any
7 such fictions would be to countenance a fraud.

8 9. Defendants and each of them had full knowledge of the acts of the other, engaged in a
9 common plan or knowledge of the actions of the others and were engaged in a civil conspiracy
10 and should be held jointly and severally liable for the acts of the others.

11 10. Defendants and each of them are and/or were at all times relevant hereto the express,
12 implied and/or ostensible agents of each other and were at all times acting within the course and
13 scope of said agency, and each Defendant has ratified the acts of each Defendant.
14

15
16
17 **GENERAL ALLEGATIONS**

18 11. Plaintiff A CAB SERIES, LLC, ADMINISTRATION COMPANY is a Nevada
19 Series LLC, and is thus a limited-liability company whose creation has been authorized pursuant
20 to subsection 2 of NRS 86.296 by a limited-liability company formed by filing articles of
21 organization with the Secretary of State pursuant to NRS 86.151.

22 12. ADMINISTRATION COMPANY is involved with managing and operating a
23 taxicab company.

24 13. In August of 2018, Defendants MURRAY and RENO obtained a judgment
25 against A Cab Series LLC, in case A-12-669926-C arising out of a lawsuit for alleged failure to
26

1 pay the required minimum wage for employees (hereinafter "Labor Lawsuit").

2 14. Defendants MURRAY and RENO were class representatives in the lawsuit

3 15. In September of 2018, Defendants MURRAY and RENO caused a writ of
4 execution to be issued to Wells Fargo Bank in prosecution of the judgment entered in the Labor
5 Lawsuit.

6 16. The writ was issued to obtain assets of Labor Lawsuit Judgment Debtors A Cab
7 LLC, and A Cab Series LLC.

8 17. A Cab LLC is not an extant entity, and A Cab Series LLC is a different legal
9 entity than Plaintiff, and Plaintiff is a separate corporate entity which was never named in the
10 Labor Lawsuit.

11 18. Despite being advised of the difference between A Cab Series LLC and Plaintiff
12 ADMINISTRATION COMPANY, Wells Fargo returned a large sum of money to the Sherrieff in
13 response to the writ, pulling from several different accounts owned by several separate series
14 accounts, including the account of Plaintiff.

15 19. In fact, upon information and belief, the writ was only served on an entity known
16 as "A Cab LLC" and was not directed to the assets of Plaintiff ADMINISTRATION
17 COMPANY, but that Defendant WELLS FARGO advised Defendants MURRAY and RENO of
18 this entity and claimed that they were linked in their system.

19 20. Plaintiff ADMINISTRATION COMPANY was surprised to learn of the writ only
20 after its funds had been taken and Plaintiff has never received any legal notice of the writ.

21 21. Plaintiff's funds have now been distributed to the trust account of the law firm
22 representing Defendants MURRAY and RENO, where upon information they remain.

23 22. Despite being advised of the difference between A Cab Series LLC and Plaintiff
24
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1 ADMINISTRATION COMPANY, upon information and belief, Defendants have refused to
2 release or return funds.

3 23. Plaintiff sought to lodge an objection to the writ of execution, but no hearing was
4 ever scheduled or heard as to Plaintiff's separate claims for execution.

5 24. The funds in the account of Plaintiff were its own and separate property, except
6 where they were held in trust for a third parties such as the IRS, Nevada Taxicab Authority,
7 Nevada Department of Taxation, and other entities for which Plaintiff is liable to pay the
8 obligations of this third party.
9

10 25. Plaintiff ADMINISTRATION COMPANY is entitled to a return of its property.
11

12 **FIRST CLAIM FOR RELIEF**
13 **(Declaratory Relief)**

14 26. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1 through
15 25 of this Complaint as if fully set forth herein.

16 27. An actual controversy now exists between Plaintiff and Defendants (including
17 DOE Defendants) regarding the obligations and rights of the respective parties regarding the
18 separate nature of the property and the funds Plaintiff is entitled to, respective rights as between
19 Plaintiff and Defendants (including DOE Defendants) related to the obligations arising out of the
20 debt to third party A Cab Series, LLC, the acts of Defendants to attempt to frustrate the
21 administration of law and circumvent the corporate protections set out in Nevada Statutes.
22

23 28. Plaintiff ADMINISTRATION is entitled to a declaration of rights that Defendants
24 have no rights in and to the funds taken from its Wells Fargo account.

25 29. Plaintiff ADMINISTRATION is entitled to a declaration of rights that it is a sole
26 and separate entity from A Cab Series LLC.
27
28

1 30. An actual controversy now exists between Plaintiff and Defendants regarding
2 these issues.

3 31. These controversies are ripe for judicial determination as Plaintiff has been
4 harmed and will continue to be harmed by Defendants' continued improper actions.

5 32. Plaintiff desires a judicial determination of the respective rights and obligations of
6 Plaintiff and Defendants with respect to Plaintiff's claims and rights.

7 33. Such a judicial determination is necessary and appropriate in order that Plaintiff
8 may ascertain and enforce Plaintiff's rights and obligations.
9

10 **SECOND CLAIM FOR RELIEF**
11 **(Injunction)**

12 34. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through
13 34 of the Complaint as if fully set forth.

14 35. Defendants acts as described herein are harmful and of a continuing nature for
15 which Plaintiff has no adequate remedy at law.

16 36. Unless restrained by this Court, Defendants will seek to and likely dissipate and
17 distribute the funds belonging to Plaintiff to the class members.

18 37. Unless restrained by this Court, Defendants will continue to violate Nevada law
19 and to fail to abide by the protections Plaintiff is entitled to as a separate legal entity.
20

21 38. The potential damages proximately caused by these deprivations of property are
22 difficult to assess and correct, requiring injunctive action.

23 39. Unless enjoined, Defendants will continue the systematic destruction, alienation,
24 and interference in Plaintiff's business affairs and assets, which will cause irreparable harm to
25 Plaintiff.

26 40. As a direct and proximate result of Defendants' violations, Plaintiff has suffered
27
28

1 and continues to suffer damages in an amount in excess of \$15,000.00, the total amount which
2 cannot yet be fixed and will be subject to proof at the time of trial.

3 41. As a result of Defendants' actions, Plaintiff has been required to retain an attorney
4 in order to prosecute this action and is entitled to reasonable attorneys' fees.

5
6 **THIRD CLAIM FOR RELIEF**
7 **(Breach of Contract – WELLS FARGO)**

8 42. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through
9 41 of the Complaint as if fully set forth.

10 43. Defendant WELLS FARGO owed a duty of care to Plaintiff to safeguard its
11 property, and to not compromise its rights to the assets it entrusted to WELLS FARGO.

12 44. Defendant WELLS FARGO breached this duty by acting in an intentional or
13 negligent manner that compromised Plaintiff's rights, including its right to confidentiality,
14 privacy and its rights in the assets Plaintiff entrusted to WELLS FARGO.

15 45. Due to Defendant's inexcusable conduct, Plaintiff has been harmed in the amount
16 of the funds taken, plus interest and loss of use of the property.

17 46. Plaintiff has suffered damages and is entitled to be compensated for Plaintiff's
18 losses, together with an award of punitive damages against Defendants in an amount in excess of
19 \$15,000.00 together with attorney's fees incurred in this action.

20 WHEREFORE, Plaintiff ADMINISTRATION COMPANY prays for judgment against
21 Defendants and each of them, jointly and severally, as follows:

- 22
23
24 1. Actual damages, plus all interest as provided by law;
25 2. General damages in sums to be determined at the time of trial;
26 3. An Order for Writ of Restitution of the Subject Property;
27
28

4. Reasonable attorneys' fees and Costs of Suit;
5. Declaratory Relief
6. Injunctive Relief
7. Pre-judgment interest;
8. For any and all such other and further relief as the Court may deem just.

Dated this 11th day of April, 2019,

CORY READE DOWS AND SHAFER

By: /s/ Jay A. Shafer

Jay A. Shafer, Esq.
Nevada Bar No. 9184
1333 North Buffalo Drive, Suite 210
Las Vegas, Nevada 89103
(702) 794-4411
(702) 794-4421 Facsimile

1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5 A CAB SERIES, LLC, Administration
6 Company,

7 Plaintiff(s),

8 vs.

9 MICHAEL MURRAY; MICHAEL RENO;
10 WELLS FARGO BANK, NA; DOES 1-100;
and ROE BUSINESS ENTITIES I through C,

11 Defendant(s).

CASE NO.: A-19-792961-C
DEPT. NO.: XIV (14)

12
13 **ORDER GRANTING DEFENDANTS MURRAY AND RENO'S MOTION FOR**
14 **JUDGMENT ON THE PLEADINGS PURSUANT TO NRCP 12(C) AND DENYING**
15 **DEFENDANTS MURRAY AND RENO'S MOTION FOR SANCTIONS PURSUANT**
16 **TO NRCP 11(C)**

17 Defendants Michael Murray and Michael Reno's Motion for Judgment on the
18 Pleadings Pursuant to NRCP 12(c) and Motion for Sanctions Pursuant to NRCP 11(c)
19 The motions of defendants Michael Murray and Michael Reno to dismiss the
20 Plaintiff's complaint pursuant to NRCP Rule 12 and for sanctions pursuant to NRCP
21 Rule 11 came on for Chambers Calendar before Department 14 of the Eighth Judicial
22 District Court, the Honorable Adriana Escobar presiding, on September 2, 2020. This
23 Court hereby finds and Orders as follows:

24 **Motion for Judgment**

25 "After the pleadings are closed—but early enough not to delay trial—a party
26 may move for judgment on the pleadings." NRCP 12(c). A district court may grant a

1 motion for judgment on the pleadings when the material facts of the case are not in
2 dispute and the movant is entitled to judgment as a matter of law. *Perry v. Terrible*
3 *Herbst, Inc.*, 132 Nev. 767, 769 (2016); see also *Duff v. Lewis*, 114 Nev. 564, 568
4 (1998) (“a motion under NRCP 12(c) is designed to provide a means of disposing of
5 cases when material facts are not in dispute and a judgment on the merits can be
6 achieved by focusing on the content of the pleadings.”) (quotations omitted). “[A]
7 defendant will not succeed on a motion under Rule 12(c) if there are allegations in the
8 plaintiff’s pleadings that, if proved, would permit recovery.” *Duff*, 114 Nev. 564, 568.
9 An NRCP 12(c) motion for judgment on the pleadings “has utility only when all
10 material allegations of fact are admitted in the pleadings and only questions of law
11 remain.” *Id.*

12 Because a motion for judgment on the pleadings is functionally identical to a
13 motion to dismiss for failure to state a claim, the same standard of review applies to
14 motions brought under either rule. *Curb Mobility, LLC v. Kaptyn, Inc.*, 434 F. Supp.
15 3d 854, 857 (D. Nev. 2020).

16 **Issue Preclusion**

17 Issue preclusion bars the successive litigation of an issue of fact or law
18 actually litigated and resolved in a valid court determination essential to the prior
19 judgment, even if the issue recurs in the context of a different claim. *Paulos v.*
20 *FCH1, LLC*, 136 Nev. 18, 23 (2020). Thus, issue preclusion will apply to prevent the
21 relitigation of matters that parties have had a full and fair opportunity to litigate. *Id.*
22 Issue preclusion is proper where the following four elements are met:

- 23 1) Same issue the issue decided in the prior litigation
24 must be identical to the issue presented in the current
25 action;
- 26 2) Final adjudication the merits the initial ruling must have
27 been on the merits and have become final;

- 1 3) Same parties or their privies the party against whom
2 the judgment is asserted must have been a party or in
3 privity with a party to the prior litigation
4 4) Actually and necessarily litigated the issue was
5 actually and necessarily litigated.

6 *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 258 (2014).

7 Availability of issue preclusion is a mixed question of law and fact, in which
8 legal issues predominate and, once it is determined to be available, the actual
9 decision to apply it is left to the discretion of the tribunal in which it is invoked.
10 *Redrock Valley Ranch, LLC v. Washoe Cty.*, 127 Nev. 451, 460 (2011).

11 On August 12, 2018, in a separate class action lawsuit, *Murray v. A Cab Taxi*
12 *Service, LLC et al*, A-12-669926-C, Judge Cory entered a judgment against A Cab,
13 LLC for \$1,000,000 in unpaid premium wages in favor of 890 class members that
14 were taxi driver employees [hereinafter, the "Murray Action"]. Plaintiff brings causes
15 of action for declaratory relief, injunction, and breach of contract against Wells Fargo.
16 Primarily, Plaintiff seeks a judgment that funds taken by Defendants, as class
17 representatives, was Plaintiff s property, and that Plaintiff is a separate entity from the
18 judgment debtor and not subject to execution.

19 ***The same issues***

20 For issue preclusion to attach, the issue decided in the prior proceeding must
21 be identical to the issue presented in the current proceeding. *Alcantara*, 130 Nev.
22 252, 259. In the prior Murray Action, the Defendant(s) there moved to quash a writ of
23 execution on Wells Fargo. In its Order Denying the Motion to Quash Writ of
24 Execution, the ultimate issue presented was whether Wells Fargo was subject to the
25 writ. Order Denying Defendants Motion to Quash Writ of Execution, *Murray*, No. A-
26 12-669926-C (Dec. 18, 2018), Exhibit B (Murray and Reno's Motion). The Murray
27 Court Plaintiffs' writ of execution resulted in Wells Fargo placing a hold on

1 \$233,619.56 maintained in six different bank accounts, each having a different name
2 that began with A Cab Series LLC. *Id.* All six of those accounts were identified by
3 Wells Fargo under the same IRS Employer Identification Number (EIN). *Id.*
4 Defendant brought the motion to quash on the ground that those accounts were the
5 property of six legally separate entities, each such entity being a separate series LLC
6 issued by the judgment debtor, A Cab LLC, as per NRS 86.296. *Id.* Notably, Plaintiff
7 in the instant case was alleged to be one of the six legally separate entities. *Id.* at
8 n.1.

9 In its Order Denying Defendant(s) Motion to Quash Writ of Execution, the
10 Murray Court made multiple, but separate findings, and made clear that each finding
11 would provide a basis for its denial of the Motion to Quash. Specifically, each finding
12 was "intended, either on their own or in conjunction, to provide a proper basis for the
13 Court's decision." *Id.* The Murray Court denied the Motion to Quash finding that
14 Defendant A Cab LLC lacked standing and the other Series LLCs had not made an
15 appearance. Relevant here, the Murray Court made a specific finding that the Wells
16 Fargo funds are properly levied upon by the judgment, explaining that an allegedly
17 legally independent series LLC entity paying its own employees separate from A Cab
18 LLC's funds "would have to secure its own unique, EIN number, and process its
19 payroll with the IRS under such number and not under A Cab LLC's EIN number." *Id.*

20 The Murray Court additionally found that there was no evidence that the
21 independent series LLCs exist, or if they exist, they have not complied with the asset
22 shielding provisions of NRS 68.696(3). *Id.* The Murray court explained under
23 Nevada law, none of the alleged series LLCs had been created, and if they were,
24 there was no evidence supporting that their obligations were limited with respect to A
25 Cab LLC. "Specifically, [t]he Court finds that even if the six alleged series LLCs have
26 been created, they have not complied with NRS 86.296(3) and have never adopted

1 the liability limitations available to series LLCs under that statute.” *Id.* And
2 importantly, the Murray Court found that the “six Series LLCs in the Murray Action
3 failed to show any basis in the Motion to Quash to conclude they have, in respect to
4 the Wells Fargo accounts and any other assets they are alleged to possess,
5 accounted for such assets separately from the other assets of the judgment debtor A
6 Cab LLC as required by NRS 86.296(3) to invoke the statute’s liability limitations.” *Id.*

7 The issues in the Murray Action and instant action are the same—whether
8 funds subject to the writ of execution on Wells Fargo was the separate property of the
9 alleged series LLCs, including Plaintiff. “Issue preclusion cannot be avoided by
10 attempting to raise a new legal or factual argument that involves the same ultimate
11 issue previously decided in the prior case.” *Alcantara*, 130 Nev. 252, 259. The
12 Murray Court specifically analyzed and made findings that Plaintiff was not created,
13 that even if Plaintiff exists, Plaintiff is not subject to limiting its liability from that of the
14 judgment debtor, and that the funds in the account are that of judgment debtor. This
15 Court rejects the argument by Plaintiff that the Murray Court must have conducted an
16 evidentiary hearing on these issues for issue preclusion to apply. Those issues are
17 the same issues that Plaintiff now asks this Court to address.

18 ***The same parties or their privies***

19 Issue preclusion can only be used against a party whose due process rights
20 have been met by virtue of that party having been a party or in privity with a party in
21 the prior litigation. *Alcantara*, 130 Nev. 252, 260. The Nevada Supreme Court has
22 recognized that “privity does not lend itself to a neat definition, thus determining
23 privity for preclusion purposes requires a close examination of the facts and
24 circumstances of each case.” *Mendenhall v. Tassinari*, 133 Nev. 614, 619 (2017).

25 Here, Plaintiff’s argument that it was a not party to the Murray Action, and thus
26 issue preclusion does not apply, lacks merit. Plaintiff is in privity with defendants

1 from the Murray Action. "[T]he record demonstrates a substantial identity between
2 the parties." *Mendenhall*, 133 Nev. 614, 619. Plaintiff does not point to anything in
3 the pleadings supporting that Plaintiff is not in privity with the judgment debtor.

4 ***Final Adjudication on the Merits***

5 The Murray Court's Order Denying Defendants Motion to Quash Writ of
6 Execution, which was adjudicated on the merits, addressed the same issues Plaintiff
7 makes in the instant motion, with the Murray Court finding the funds in the six Wells
8 Fargo accounts were not immune to execution as they were assets of the judgment
9 debtor.

10 ***Actually and Necessarily Litigated***

11 When an issue is properly raised and is submitted for determination, the
12 issue is "actually litigated" for purposes of applying issue preclusion. *Alcantara*, 130
13 Nev. 252, 263. Whether the issue was necessarily litigated turns on whether the
14 common issue was necessary to the judgment in the earlier suit. *Id.*

15 Here, the issues of Plaintiff's existence as a separate legal entity from
16 judgment debtor and whether the funds in the Wells Fargo account belonged to
17 series LLCs, and thus, separate from the judgment debtor were a common issue
18 necessary to the Order Denying Defendants Motion to Quash Writ of Execution in the
19 Murray Action. Based on the foregoing, issue preclusion applies and Plaintiff cannot
20 bring the instant action. Even if the allegations contained in Plaintiff complaint are
21 true, recovery would not be permitted. Thus, Plaintiff fails to state any claims for
22 relief.

23 ***Subject Matter Jurisdiction***

24 Defendants also contend that this Court does not have subject matter
25 jurisdiction over the instant complaint because Plaintiff seeks to have funds returned
26 that are subject to the exclusive jurisdiction of the Murray Action. Plaintiff contends
27

1 that this Court has jurisdiction because Plaintiff also seeks a determination that it is a
2 separate entity from the Murray Court Judgment Debtor, created under NRS 86.296,
3 and is a sole and separate entity from A Cab Series LLC. Plaintiff further asserts that
4 its claim for injunctive relief is defensive in nature and does not seek an active
5 distribution of the funds, but rather a preservation of the funds until the declaratory
6 relief can be addressed.

7 Based on the above analysis regarding issue preclusion, any argument
8 Plaintiff makes that asks this Court to make a determination (1) as to Plaintiff's status
9 as a separate entity or (2) the ownership of the funds in the Wells Fargo accounts, is
10 precluded. Moreover, these arguments were directly addressed by the Murray Court.
11 Plaintiff cannot seek to bypass the rulings of the Murray Court by a filing a complaint
12 in a separate case.

13 Moreover, the Murray Court specifically ordered that class counsel only
14 release such monies as specified by a further Order of this Court in that case. Order
15 Granting Summary Judgment, Severing Claims, and Directing Entry of Final
16 Judgment, Murray v. A Cab Taxi Service LLC, No. A-12-669926-C (Dec. 18, 2018),
17 Exhibit A (Murray and Reno's Motion). Any decision regarding the outcome of the
18 money obtained from the Wells Fargo accounts, including any challenge regarding
19 the Murray Court's determination that the accounts are not the property of Plaintiff,
20 must come from the Murray Court.

21 Based on the foregoing, the Court **GRANTS** Murray and Reno's Motion and
22 dismisses Plaintiff's complaint as to Defendants Murray and Reno with prejudice.

23 **Defendants' Motion for Sanctions**

24 NRCP 11(b) provides:

25 By presenting to the court a pleading, written motion, or other
26 paper--whether by signing, filing, submitting, or later
advocating it--an attorney or unrepresented party certifies that

1 to the best of the person's knowledge, information, and belief,
formed after an inquiry reasonable under the circumstances:

2 (1) it is not being presented for any improper purpose, such
3 as to harass, cause unnecessary delay, or needlessly
increase the cost of litigation;

4 (2) the claims, defenses, and other legal contentions are
5 warranted by existing law or by a nonfrivolous argument for
6 extending, modifying, or reversing existing law or for
establishing new law;

7 (3) the factual contentions have evidentiary support or, if
8 specifically so identified, will likely have evidentiary support
after a reasonable opportunity for further investigation or
discovery; and

9 (4) the denials of factual contentions are warranted on the
10 evidence or, if specifically so identified, are reasonably based
on belief or a lack of information.

11 If the Court determines that Rule 11(b) has been violated, the Court has the
12 discretion to impose an appropriate sanction. NRCP 11(c)(1).

13 Plaintiff's complaint was not warranted as the issues raised are precluded
14 under the doctrine of collateral estoppel. See *Elyousef v. O Reilly & Ferrario, LLC*,
15 126 Nev. 441, 445 (2010) (providing that under the doctrine of collateral estoppel, if
16 an issue of fact or law has been actually litigated and determined by a valid and final
17 ruling, the determination is conclusive in a subsequent action between the parties).
18 Plaintiff's complaint violates NRCP 11(b)(2) as the Murray Court had already
19 determined that Plaintiff was not a separate entity as a matter of law, though, the
20 Court does not find that Plaintiff's instant action was brought for an improper purpose
21 in violation of NRCP 11(b)(1). The only sanction the Court finds appropriate is
22 granting Defendants' attorney fees and costs for defending this action. However,
23 because NRCP 11(b)(5) precludes monetary sanctions for an NRCP 11(b)(2)
24 violation, and this Court does not find nonmonetary directives proper, this Court
25 **DENIES** Defendants' Sanction Motion.

26 Accordingly,

IT IS ORDERED THAT Defendants' Motion for Judgment on the Pleadings is **GRANTED** and Plaintiff's complaint as to Defendants Murray and Reno is dismissed with prejudice.

IT IS FURTHER ORDERED THAT Defendants' Motion for Sanctions is DENIED.

IT IS SO ORDERED.

Dated this 4th day of January, 2021

Q. Enobar

JUDGE ADRIANA ESCOBAR
DISTRICT COURT JUDGE

C8B AC7 C9F2 7408
Adriana Escobar
District Court Judge

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 A Cab Series, LLC, Plaintiff(s)

CASE NO: A-19-792961-C

7 vs.

DEPT. NO. Department 14

8 Michael Murray, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

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5
6 **DISTRICT COURT**
7
8 **CLARK COUNTY, NEVADA**

9 A CAB TAXI SERVICE LLC,
ADMINISTRATION COMPANY,

10 Plaintiff,

11 vs.

12 MICHAEL MURRAY, MICHAEL
13 RENO and WELLS FARGO BANK
NA,

14 Defendants.
15
16

Case No.: A-19-792961-C

DEPT.: 14

**ORDER GRANTING THE MOTION OF
DEFENDANTS MURRAY AND RENO
FOR AN AWARD OF ATTORNEY'S
FEES AND COSTS AND DENYING
THE MOTION OF THE PLAINTIFF TO
RETAX COSTS AND STRIKE
MEMORANADUM OF COSTS AND
DISBURSEMENTS**

17 The motion of defendants Michael Murray and Michael Reno for an Award of Attorney's
18 Fees and Costs (Fees and Costs Motion) pursuant to NRS 7.085, NRS 18.010(2)(b) and the Nevada
19 Constitution, Article 15, Section 16, the Minimum Wage Amendment (the "MWA") and the motion
20 of plaintiff to Retax Costs and Strike Memorandum of Costs and Disbursements (Retax Motion) was
21 set for a hearing on March 2, 2021, with the Court resolving both motions upon its thorough review
22 of the written submissions and without oral argument from counsel, the Court finds as follows:
23
24
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26

1 **Fees and Costs Motion**

2 NRS 7.085 provides:

3 1. If a court finds that an attorney has:

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

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

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

15 If claims, defenses, and other legal contentions are not warranted by existing law or by a
16 nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new
17 law, the Court may, after notice and a reasonable opportunity to respond, impose an appropriate
18 sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation.
NRCP 11(c)(1).

19 "In addition to the cases where an allowance is authorized by specific statute, the court may
20 make an allowance of attorney's fees to a prevailing party... Without regard to the recovery sought,
21 when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of
22 the opposing party was brought or maintained without reasonable ground or to harass the prevailing
23 party." NRS 18.010(2)(b).

1 Defendants Murray and Reno request a fee award of \$18,720, or in the alternative, \$30,240,
2 claiming this amount to be a “more proper award.” In its January 4, 2021, Order, this Court granted the
3 motion of Defendants Murray and Reno for judgment on the pleadings pursuant to NRCP 12(c) on the
4 ground that Plaintiff's complaint violated NRCP 11(b)(2). As found by the Court in that Order, Plaintiff
5 brought this action without reasonable ground—in fact as the issues raised in Plaintiff's complaint
6 were not warranted as these issues were precluded under the doctrine of collateral estoppel. This
7 Court found in that Order that a sanction awarding Defendants Murray and Reno attorney fees and
8 costs for defending this action was appropriate.

9 Given this Court's January 4, 2021, ruling, this Court awards Defendants Murray and Reno
10 attorney fees in the amount of \$18,720 pursuant to NRS 7.085 and NRS 18.010(2)(b) against
11 Plaintiff and its counsel, attorney Jay Shafer. Defendants' request for \$30,240 in attorney fees is
12 denied. The Court finds in this case that attorney fees are not to be granted under the Minimum
13 Wage Act (MWA). Although Defendants Murray and Reno prevailed on MWA claims in Case No.
14 A-12-669926-C, they cannot use the MWA to seek attorney fees in this action. The proper avenue to
15 seek attorney fees under the MWA in Case No. A-12-669926-C was to seek such fees in that case.

16 Defendants Murray and Reno request a costs award in the amount of \$302.59. Defendants
17 seek \$253.00 for the filing fee incurred in filing their answer to Plaintiff's complaint, \$7.59 for an
18 electronic payment (credit card) fee charged by the Wiznet system to file that answer, and \$52.50 in
19 Wiznet filing charges.

20 Defendants have supported their request for costs in the amount of \$253.00. *See Cadle Co. v.*
21 *Woods & Erickson, LLP*, 131 Nev. 114, 121 (2015). Thus, this Court awards Defendants Murray and
22 Reno \$253.00 in costs.

23 The Court does not grant Defendants Murray and Reno's request that the fee and costs award that
24 is granted be entered as a judgment with their counsel, Leon Greenberg, as the judgment creditor. The

1 Court finds this request is not properly before this Court and their counsel has provided no legal authority
2 or analysis in connection with the same.

3 Based on the foregoing findings, Defendants Reno and Murray's Motion (the Fees and Costs
4 Motion) is **GRANTED IN PART AND DENIED IN PART.** Defendants Reno and Murray are
5 awarded \$18,720 in attorney's fees and \$253.00 in costs, for a total award of \$18,973.

6 **Retax Motion**

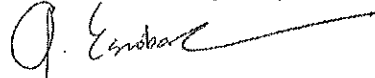
7 To retax and settle costs upon motion of the parties pursuant to NRS 18.110, a district court must
8 have before it evidence that the costs were reasonable, necessary, and actually incurred. *Cadle Co. v.*
9 *Woods & Erickson, LLP*, 131 Nev. 114, 121 (2015).

10 Plaintiff seeks to strike and retax Defendants Murray and Reno's cost memorandum on the
11 ground they have failed to support their costs request. The Court has found Defendants Murray and
12 Reno have supported their request for costs in the amount of \$253.00.

13 Accordingly, Plaintiff's Retax Motion is **DENIED.**

14 **IT IS SO ORDERED.**

Dated this 20th day of April, 2021

15 

16 Honorable Adriana Escobar
DISTRICT COURT JUDGE

17 **C0A 644 BC38 2BA7**
Adriana Escobar
District Court Judge

18 Submitted by:

19 /s/ Leon Greenberg

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23 Approved as to Form:

24 /s/ Jay Shafer

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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5	A Cab Series, LLC, Plaintiff(s)	CASE NO: A-19-792961-C
6	vs.	DEPT. NO. Department 14
7	Michael Murray, Defendant(s)	

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10 **AUTOMATED CERTIFICATE OF SERVICE**

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12 Court. The foregoing Order was served via the court's electronic eFile system to all
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DISTRICT COURT
CLARK COUNTY, NEVADA

9 A CAB TAXI SERVICE LLC,
10 ADMINISTRATION COMPANY,

11 Plaintiff,

12 vs.

13 MICHAEL MURRAY, MICHAEL
14 RENO and WELLS FARGO BANK
15 NA,

16 Defendants.

Case No.: A-19-792961-C

DEPT.: 14

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION
AND GRANTING COUNTER-MOTION
OF DEFENDANTS MURRAY AND
RENO FOR AN AWARD OF
ATTORNEY'S FEES**

17 The Motion to Reconsider of plaintiff A Cab Taxi Service LLC, Administration
18 Company seeking reconsideration of the Court's April 21, 2021, Order Granting the Motion
19 of Defendants Murray and Reno for an Award of Attorney's Fees and Costs, along with the
20 Counter-Motion of defendants Michael Murray and Michael Reno for an Award of
21 Attorney's Fees pursuant to NRS 7.085, were heard by the Court on June 8, 2021, with
22 argument by counsel for the parties in support and in opposition to such motion and
23 countermotion being presented to the Court, and upon due consideration of such oral

1 argument, and all of the other submissions of the parties and the prior proceedings taken in
2 this case, the Court hereby makes the following findings:

3 Leave for reconsideration of motions is within this Court's discretion under EDCR 2.24.
4 A district court may reconsider a previously decided issue if substantially different evidence is
5 subsequently introduced or the decision is clearly erroneous. *Masonry & Tile Contractors v. Jolley,*
6 *Urga & Wirth*, 113 Nev. 737, 741 (1997). These principles guide the Court in resolving plaintiffs'
7 motion for reconsideration.

8 Defendants' counter motion seeks an award of attorney's fees pursuant NRS 7.085, which
9 provides:

10 NRS 7.085 Payment of additional costs, expenses and attorney s fees by attorney
11 who files, maintains or defends certain civil actions or extends civil actions in
certain circumstances.

12 1. If a court finds that an attorney has:

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

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

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

22 In seeking reconsideration plaintiff contends that the underlying basis for this Court's April
23 21, 2021, Order Granting the Motion of Defendants Murray and Reno for an Award of Attorney s
24 Fees and Costs was flawed and erroneous in that such Order sought a reconsideration precluded by

1 EDCR 7.12. It also contends the underlying dismissal giving rise to that motion was improper as
2 both plaintiff and defendant agree that the Court in Case No A-12-669926-C did not determine that
3 the plaintiff in this action and the defendant in the *Murray* action were the same as a matter of law.
4 The Court finds that plaintiff contends that the issue of its ownership of the Wells Fargo Accounts in
5 the *Murray* case has not been determined and it is entitled to a declaration of its rights and that it is a
6 sole and separate entity from A Cab Series LLC, the judgment debtor in the *Murray* action, and that
7 defendants have no rights to the funds in the Wells Fargo Account.

8 Defendants Murray and Reno in opposing plaintiff's motion and in such defendants'
9 countermotion for sanctions request that plaintiff and its counsel be subject to some form of
10 additional sanctions paid to the court or another suitable beneficiary and award of attorneys fees for
11 their continued improper conduct. They contend that plaintiff presents no new facts, law or
12 arguments warranting reconsideration of the Court's prior Order and assert that this Court correctly
13 recognized this litigation was not commenced upon reasonable grounds as ownership of the *res* at
14 issue has been determined in the *Murray* lawsuit. In respect to their countermotion, they assert
15 plaintiff's motion for reconsideration presents not even a scintilla of reasoning, arguments, or
16 evidence that such reconsideration is warranted and the filing of that motion for reconsideration
17 would be the proper subject of yet again, another Rule 11 motion against plaintiffs by such
18 defendants. They request under NRS 7.085 that the Court grant a further award of attorney's fees to
19 defendants' counsel of at least \$2,000.

20 Having considered the arguments of the parties, the Court DENIES the plaintiff's motion for
21 reconsideration and GRANTS the defendants' countermotion for attorney's fees. It does so for the
22 reasons set forth and detailed in the opposition and countermotion of defendants as follows:

23 (1) The Court's prior Order found ownership of the *res* at issue, the Wells Fargo Funds, was
24 determined in the *Murray* lawsuit, meaning there was no good faith basis for plaintiff to bring this

1 action seeking a determination of such ownership and any such request had to be brought in the
2 *Murray* lawsuit or an appeal in *Murray* where jurisdiction over that *res* had been assumed;

3 (2) The alleged claim of plaintiff for a declaration on its "independent status" as a separate
4 entity from the judgment debtor in the *Murray* lawsuit provided no good faith basis to commence
5 this lawsuit against the defendants Murray and Reno; such defendants had no alleged arguable
6 interest in that issue separate and apart from their interest in the Wells Fargo funds and their interest
7 in those funds was adjudicated in the *Murray* lawsuit;

8 (3) The motion for reconsideration set forth no evidence whatsoever, or any other good faith
9 argument, or that the findings in the prior order were or are factually erroneous or are based upon a
10 misunderstanding by the Court of controlling law.

11 In granting the counter-motion and calculating an award of attorney's fees to defendants'
12 counsel the Court is guided by the factors discussed in *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev.
13 345, 349, 455 P.2d 31, 33 (1969) and *Cadle Co. v. Woods & Erickson, Ltd. Liab. P'ship*, 131 Nev.
14 114, 345 P.3d 1049 (2015) (the four "*Brunzell*" factors). As set forth in Ex. "B" to the
15 countermotion in the declaration of attorney Leon Greenberg, the Court finds those factors fully
16 justify an award of \$2,000 in attorney's fees to defendant Murray and Reno's counsel for plaintiff's
17 counsel's violation of NRS 7.085 by presenting the motion for reconsideration. The first *Brunzell*
18 factor is satisfied. The quality of the advocate's work and expertise is substantial, as Leon
19 Greenberg has nearly 30 years of litigation experience involving the class action wage and hour
20 claims at the heart of the parties' dispute. The second *Brunzell* factor is satisfied, as the intricacy,
21 importance and difficulty of the work at issue is congruent with the amount of attorney time, at least
22 five hours, that was consumed in opposing the motion, pursuing the counter-motion, arguing the
23 issues, and drafting this Order. The third *Brunzell* factor is satisfied, as the Court finds the advocacy
24 of such counsel was skillful and evidenced an appropriate expenditure of attention and time (five

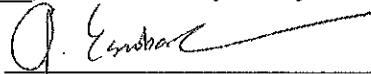
1 hours for fee calculation purposes) by such counsel and that the declaration of counsel is sufficient to
2 establish this expenditure. The fourth *Brunzell* factor is also satisfied, as such counsel was fully
3 successful and secured the full possible measure of benefit for their clients. Further, as discussed in
4 Ex. "B" to the countermotion in the declaration of attorney Leon Greenberg, applying a \$400 an hour
5 rate for fee calculation purposes for a fee award, requested at \$2,000 for at least a five-hour
6 expenditure of time, is supported by the prior history of such counsel receiving attorney fee awards
7 at the substantially higher hourly rate of \$720 an hour.

8 Accordingly, the Court DENIES the plaintiff's motion for reconsideration and
9 GRANTS the defendants' countermotion to the extent of awarding attorney's fees under NRS
10 7.085 in the amount of \$2,000 to be paid by plaintiff's counsel to counsel for defendants
11 Murray and Reno.

12 **IT IS SO ORDERED.**

13 Dated this 9 day of July

13 Date ~~2021~~ this 21st day of July, 2021

14 

15 Honorable Adriana Escobar
16 DISTRICT COURT JUDGE

17 **E5B 8B9 0C8F 29F2**
Adriana Escobar
District Court Judge

18 Submitted by:

Approved as to Form and Content:

19 /s/ Leon Greenberg

NOT APPROVED

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Attorney for the Plaintiff

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 A Cab Series, LLC, Plaintiff(s)

CASE NO: A-19-792961-C

7 vs.

DEPT. NO. Department 14

8 Michael Murray, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 7/21/2021

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Heaven S. Smith
CLERK OF THE COURT

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hcummings@swlaw.com

Attorneys for Defendant Wells Fargo Bank, N.A.

DISTRICT COURT
CLARK COUNTY, NEVADA

A CAB SERIES, LLC, ADMINISTRATION
COMPANY,

Plaintiff,

vs.

MICHAEL MURRAY, an Individual, as a
class representative, MICHAEL RENO, an
Individual, as a class representative, WELLS
FARGO BANK NA, a National Banking
Association; DOES 1-100, and ROE
BUSINESS ENTITIES I through C, inclusive,
Defendants.

Case No. A-19-792961-C

Dept. No. XIV

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING
MOTION FOR JUDGMENT ON THE
PLEADINGS**

Date of Hearing: September 2, 2020

Hearing Time: In Chambers

Defendant Wells Fargo Bank, N.A. ("Wells Fargo") filed its Motion for Judgment on the Pleadings ("Motion") on December 2, 2019. A Cab Series, LLC, Administration Company ("Plaintiff") filed its Opposition on January 13, 2020. Wells Fargo replied in support of its Motion on February 26, 2020. Wells Fargo's Motion came on for hearing in the Court's Chambers on September 2, 2020 before the Honorable Judge Adriana Escobar in Department 14 of the above-entitled court. Having reviewed the filings, including all arguments, authorities, and exhibits

1 provided therein, and good cause appearing, the Court issued a Minute Order on October 26, 2020,
2 setting forth the following Findings of Fact, Conclusions of Law, and Order.

3 FINDINGS OF FACT

4 1. This matter stems from an active proceeding also pending in the Eighth Judicial
5 District Court: *Murray v. A Cab Taxi Service, A Cab LLC, and Creighton J. Nady*, No. A-12-
6 669926-C (Nev. Dist. Ct., Clark Cty., Oct. 8, 2012) (the "*Murray Action*").

7 2. On August 21, 2018, the Honorable Judge Kenneth Cory entered a judgment for
8 \$1,033,027.81 against the *Murray Action* defendants, A Cab Taxi Service and A Cab LLC.

9 3. To collect on the judgment, the *Murray Action* plaintiffs served a writ of execution
10 on Wells Fargo for the assets of "A CAB LLC and A CAB TAXI SERVICE LLC". All accounts
11 subjected to the writ of execution in the *Murray Action* each contained the name with "A Cab
12 Series LLC" and all six accounts were identified under the same IRS Employer Identification
13 Number ("EIN").

14 4. The *Murray Action* defendant A Cab LLC moved to quash the writ of execution,
15 arguing that the Wells Fargo accounts did not belong to the judgment debtor, but, rather, were the
16 property of six legally separate entities. The court in the *Murray Action* denied the motion to
17 quash. Wells Fargo delivered the funds taken from the accounts belonging to the Series LLCs
18 with the Court.

19 5. Plaintiff filed the instant action on April 15, 2019, bringing claims for declaratory
20 relief, injunction, and breach of contract against Wells Fargo. Plaintiff primarily sought a judgment
21 that the funds subject to the writ of execution in the *Murray Action* was Plaintiff's property, that
22 Plaintiff is a separate entity from the judgment debtor in the *Murray Action* and not subject to
23 execution, and that Wells Fargo had erred in assigning the same EIN to the accounts of the separate
24 entities.

25 6. The court in the *Murray action* specifically analyzed and made findings that Plaintiff
26 could not limit its liability from that of the judgment debtor, and that the funds in the accounts
27 levied upon belonged to the judgment debtor. Ultimately, with the instant action, Plaintiff asks this
28 Court to address those same issues.

CONCLUSIONS OF LAW

A. Standard for Motion for Judgment on the Pleadings.

8. Rule 12(c) of the Nevada Rules of Civil Procedure permits a party to move for judgment on the pleadings at any time “[a]fter the pleadings are closed by within such time as not to delay the trial. . . .” NRCP 12(c). “A Rule 12(c) motion is designed to provide a means of disposing of cases when material facts are not in dispute and a judgment on the merits can be achieved by focusing on the content of the pleadings.” *Bernard v. Rockhill Development Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1241 (1987); *see also Duff v. Lewis*, 114 Nev. 564, 568, 958 P.2d 82, 85 (1998).

9. “Judgment on the pleadings is proper when, as determined from the pleadings, the material facts are not in dispute and the moving party is entitled to judgment as a matter of law.” *Lawrence v. Clark Cty.*, 127 Nev. 390, 393, 254 P.3d 606, 608 (2011) (*Bonicamp v. Vazquez*, 120 Nev. 377, 379, 91 P.3d 584, 585 (2004)).

10. Further, a Rule 12(c) motion for “judgment on the pleadings is reviewed in the same manner as a dismissal under NRCP 12(b)(5).” *Peck v. Zipf*, 133 Nev. 890, 892, 407 P.3d 775, 778 (2017) (citing *Sadler v. PacifiCare of Nev.*, 130 Nev. 990, 993, 340 P.3d 1264, 1266 (2014)).

11. Accordingly, a defendant is entitled to dismissal when a plaintiff fails “to state a claim upon which relief can be granted.” NRCP 12(b)(5). Dismissal for failure to state a claim is therefore appropriate when the plaintiff cannot prove any set of facts that would entitle him to relief. *See Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 227–28 (2008).

12. In considering a motion for judgment on the pleadings, the Court must accept the non-moving party’s factual allegations as true and construe them in its favor. *Sadler*, 130 Nev. at 993, 340 P.3d at 1266 (citing *Buzz Stew*, 124 Nev. at 227, 181 P.3d at 672). The Court is not, however, bound to accept as true a legal conclusion couched as a factual allegation. *See Papasan v. Allain*, 478 U.S. 265, 286 (1986); *see also Bailey v. Gates*, 52 Nev. 432, 437 (1930) (“Good pleading requires that . . . the facts relating to the matter be averred, leaving the court to draw the legal conclusion. . . .”).

B. The Court May Take Judicial Notice of Orders, Hearing Transcripts, and the Docket in the *Murray* Action.

13. As with a motion to dismiss, on a motion for judgment on the pleadings “the court is not limited to the four corners of the complaint.” *Baxter v. Dignity Health*, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015) (citation omitted). The Court may take judicial notice of documents that are incorporated by reference into a complaint, even if not attached to the same, if: (1) the complaint refers to the document, (2) the document is central to the plaintiff’s claims, and (3) the authenticity of the document is undisputed. *Id.* Under Nevada law, a court may consider any matter that is properly the subject of judicial notice without converting a motion to dismiss into a motion for summary judgment. *See Occhiuto v. Occhiuto*, 97 Nev. 143, 145, 625 P.2d 568, 569 (1981).

14. Pursuant to Nev. Rev. Stat. 47.130, courts may take judicial notice of facts that are “[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute.” *Mack v. Estate of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009). Records in another and different case merit judicial notice when a valid reason presents itself based on the closeness of the relationship between the two cases. *See id.* (citing *Occhiuto*, 97 Nev. at 145, 625 P.2d at 569).

15. Based on the foregoing, the Court takes judicial notice of the orders, hearing transcripts, and the docket in the *Murray* Action.

C. Plaintiff’s Third Cause of Action for Breach of Contract Is Dismissed.

16. To establish a viable breach of contract action, “Nevada law requires the plaintiff to show (1) the existence of a valid contract, (2) a breach by the defendant, and (3) damage as a result of the breach.” *Saini v. Int’l Game Tech.*, 434 F. Supp. 2d 913, 919–20 (D. Nev. 2006) (citing *Richardson v. Jones*, 1 Nev. 405, 405 (1865)).

17. Plaintiff fails to allege the existence of valid contract between itself and Wells Fargo.

18. Moreover, Plaintiff’s breach of contract claim is a negligence claim in substance. Indeed, Plaintiff asserts that: (1) Wells Fargo owed a duty of care to Plaintiff to safeguard its property, and not to compromise its rights to the assets it entrusted to Wells Fargo, (2) Wells Fargo

1 breached its duty by acting in an intentional or negligent manner that compromised Plaintiff's rights,
2 including its right to confidentiality, privacy and its rights in the assets Plaintiff entrusted to Wells
3 Fargo, and (3) due to Wells Fargo's inexcusable conduct, Plaintiff has been harmed in the amount
4 of the funds taken, plus interest and loss of use the property.

5 19. In rejecting motion to quash in the *Murray* Action, the court found that the funds
6 were properly levied upon and Wells Fargo complied with its obligations under the law by
7 surrendering the levied funds to the Court

8 20. Wells Fargo did not have a duty to safeguard Plaintiff's accounts from a lawful
9 judgment and writ of execution issued in the *Murray* case.

10 21. Plaintiff fails to state a claim for which relief can be granted and, therefore,
11 Plaintiff's third cause of action for breach of contract is dismissed with prejudice.

12 **D. Plaintiff's Claims Against Wells Fargo Are Barred by the Doctrine of Collateral**
13 **Estoppel.**

14 22. Under the doctrine of collateral estoppel, if an issue of fact or law has been actually
15 litigated and determined by a valid and final ruling, the determination is conclusive in a subsequent
16 action between the parties. *See Elyousef v. O'Reilly & Ferrario, LLC*, 126 Nev. 441, 445, 245 P.3d
17 547, 549 (2010); *see also Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 114 Nev. 823, 835, 963 P.2d
18 465, 473 (1998).

19 23. The doctrine provides that a party is estopped from relitigating in a subsequent case
20 any issue that was actually and necessarily litigated in a prior case. *See Elyousef*, 126 Nev. at 445,
21 245 P.3d at 549–50. Collateral estoppel bars relitigation of an issue when the following factors are
22 satisfied: “(1) the issue decided in the prior litigation must be identical to the issue presented in the
23 current action; (2) the initial ruling must have been on the merits and have become final; . . . (3) the
24 party against whom the judgment is asserted must have been a party or in privity with a party to the
25 prior litigation; and (4) the issue was actually and necessarily litigated.” *Id.* (quoting *Five Star*
26 *Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008).

27 24. The factors supporting collateral estoppel are present: (1) the issue presented in the
28 *Murray* Action is identical to the issue presented in this action; (2) the order denying the motion to

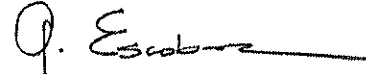
quash the writ of execution in the *Murray* Action was a final ruling on the merits; (3) Plaintiff, as well as those in privity with Plaintiff, was a party to the *Murray* Action; and, (4) the *Murray* lawsuit was actually and necessarily litigated.

25. Therefore, pursuant to the doctrine of collateral estoppel, Plaintiff is barred from asserting the claims made in this matter against Wells Fargo.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Wells Fargo's Motion for Judgment on the Pleadings is **GRANTED**. The Complaint and all causes of action alleged therein against Wells Fargo is dismissed with prejudice.

Dated this 24th day of February, 2022



A-19-792961-C

8E8 643 A25E 934F
Adriana Escobar
District Court Judge

Respectfully submitted by:

SNELL & WILMER L.L.P.

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Attorneys for Defendant Wells Fargo, N.A.

Approved as to Form and Content by:

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*Attorneys for Plaintiff A Cab Series, LLC,
Administration Company*

Williams, Maricris

From: Jay Shafer <jshafer@crdslaw.com>
Sent: Wednesday, February 16, 2022 12:43 PM
To: Dove, Kelly
Cc: Williams, Maricris; Kathrine von Arx
Subject: RE: A-Cab

[EXTERNAL] jshafer@crdslaw.com

Yes, you may submit.



CORY READE DOWS & SHAFER
ATTORNEYS AT LAW

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Sent: Wednesday, February 16, 2022 11:17 AM
To: Jay Shafer <jshafer@crdslaw.com>
Cc: Williams, Maricris <mawilliams@swlaw.com>
Subject: A-Cab
Importance: High

Hi Jay –

We accepted your remaining changes. Please confirm that we can send this to the Court with your e-signature.

Thank you,
Kelly

Kelly H. Dove
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Snell & Wilmer

Pronouns: she/her/hers

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 A Cab Series, LLC, Plaintiff(s) | CASE NO: A-19-792961-C
7 vs. | DEPT. NO. Department 14
8 Michael Murray, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

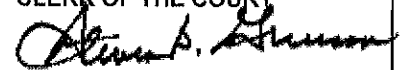
11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
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10 Attorneys for Defendants
11 MURRAY and RENO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

12 A CAB SERIES, LLC,
13 ADMINISTRATION COMPANY,

14 Plaintiffs,

15 vs.

16 MICHAEL MURRAY, MICHAEL
17 RENO, WELLS FARGO BANK NA,
18 DOES 1-100 and ROE BUSINESS
19 ENTITIES I through C,
20 Defendants.

Case No.: A-19-792961-C

Dept.: 14

**NOTICE OF ENTRY OF
ORDER**

21 PLEASE TAKE NOTICE that the annexed Order of the Court is served this date
22 with notice of its entry.

23 Dated: January 20, 2021

24 LEON GREENBERG PROFESSIONAL CORP.

25 /s/Leon Greenberg

26 Leon Greenberg, Esq.
27 Nevada Bar No. 8094
28 2965 S. Jones Boulevard - Ste. E-3
Las Vegas, NV 89146
Tel (702) 383-6085
Attorney for the Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that on January 20, 2021, he served the within:

ORDER WITH NOTICE OF ENTRY

by court electronic service to:

JAY A. SHAFER, ESQ.
CORY READE DOWS AND SHAFER
1333 North Buffalo Drive, Suite 210
Las Vegas, NV 89128

/s/ Leon Greenberg
Leon Greenberg

1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5 A CAB SERIES, LLC, Administration
6 Company,

7 Plaintiff(s),

8 vs.

9 MICHAEL MURRAY; MICHAEL RENO;
10 WELLS FARGO BANK, NA; DOES 1-100;
and ROE BUSINESS ENTITIES I through C,

11 Defendant(s).

CASE NO.: A-19-792961-C
DEPT. NO.: XIV (14)

12
13 **ORDER GRANTING DEFENDANTS MURRAY AND RENO'S MOTION FOR**
14 **JUDGMENT ON THE PLEADINGS PURSUANT TO NRCP 12(C) AND DENYING**
15 **DEFENDANTS MURRAY AND RENO'S MOTION FOR SANCTIONS PURSUANT**
16 **TO NRCP 11(C)**

17 Defendants Michael Murray and Michael Reno's Motion for Judgment on the
18 Pleadings Pursuant to NRCP 12(c) and Motion for Sanctions Pursuant to NRCP 11(c)
19 The motions of defendants Michael Murray and Michael Reno to dismiss the
20 Plaintiff's complaint pursuant to NRCP Rule 12 and for sanctions pursuant to NRCP
21 Rule 11 came on for Chambers Calendar before Department 14 of the Eighth Judicial
22 District Court, the Honorable Adriana Escobar presiding, on September 2, 2020. This
23 Court hereby finds and Orders as follows:

24 **Motion for Judgment**

25 "After the pleadings are closed—but early enough not to delay trial—a party
26 may move for judgment on the pleadings." NRCP 12(c). A district court may grant a

1 motion for judgment on the pleadings when the material facts of the case are not in
2 dispute and the movant is entitled to judgment as a matter of law. *Perry v. Terrible*
3 *Herbst, Inc.*, 132 Nev. 767, 769 (2016); see also *Duff v. Lewis*, 114 Nev. 564, 568
4 (1998) (“a motion under NRCP 12(c) is designed to provide a means of disposing of
5 cases when material facts are not in dispute and a judgment on the merits can be
6 achieved by focusing on the content of the pleadings.”) (quotations omitted). “[A]
7 defendant will not succeed on a motion under Rule 12(c) if there are allegations in the
8 plaintiff's pleadings that, if proved, would permit recovery.” *Duff*, 114 Nev. 564, 568.
9 An NRCP 12(c) motion for judgment on the pleadings “has utility only when all
10 material allegations of fact are admitted in the pleadings and only questions of law
11 remain.” *Id.*

12 Because a motion for judgment on the pleadings is functionally identical to a
13 motion to dismiss for failure to state a claim, the same standard of review applies to
14 motions brought under either rule. *Curb Mobility, LLC v. Kaptyn, Inc.*, 434 F. Supp.
15 3d 854, 857 (D. Nev. 2020).

16 **Issue Preclusion**

17 Issue preclusion bars the successive litigation of an issue of fact or law
18 actually litigated and resolved in a valid court determination essential to the prior
19 judgment, even if the issue recurs in the context of a different claim. *Paulos v.*
20 *FCH1, LLC*, 136 Nev. 18, 23 (2020). Thus, issue preclusion will apply to prevent the
21 relitigation of matters that parties have had a full and fair opportunity to litigate. *Id.*

22 Issue preclusion is proper where the following four elements are met:

- 23 1) Same issue the issue decided in the prior litigation
24 must be identical to the issue presented in the current
25 action;
- 26 2) Final adjudication the merits the initial ruling must have
27 been on the merits and have become final;

- 1 3) Same parties or their privies the party against whom
2 the judgment is asserted must have been a party or in
3 privity with a party to the prior litigation
4 4) Actually and necessarily litigated the issue was
5 actually and necessarily litigated.

6 *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 258 (2014).

7 Availability of issue preclusion is a mixed question of law and fact, in which
8 legal issues predominate and, once it is determined to be available, the actual
9 decision to apply it is left to the discretion of the tribunal in which it is invoked.
10 *Redrock Valley Ranch, LLC v. Washoe Cty.*, 127 Nev. 451, 460 (2011).

11 On August 12, 2018, in a separate class action lawsuit, *Murray v. A Cab Taxi*
12 *Service, LLC et al*, A-12-669926-C, Judge Cory entered a judgment against A Cab,
13 LLC for \$1,000,000 in unpaid premium wages in favor of 890 class members that
14 were taxi driver employees [hereinafter, the "Murray Action"]. Plaintiff brings causes
15 of action for declaratory relief, injunction, and breach of contract against Wells Fargo.
16 Primarily, Plaintiff seeks a judgment that funds taken by Defendants, as class
17 representatives, was Plaintiff s property, and that Plaintiff is a separate entity from the
18 judgment debtor and not subject to execution.

19 ***The same issues***

20 For issue preclusion to attach, the issue decided in the prior proceeding must
21 be identical to the issue presented in the current proceeding. *Alcantara*, 130 Nev.
22 252, 259. In the prior Murray Action, the Defendant(s) there moved to quash a writ of
23 execution on Wells Fargo. In its Order Denying the Motion to Quash Writ of
24 Execution, the ultimate issue presented was whether Wells Fargo was subject to the
25 writ. Order Denying Defendants Motion to Quash Writ of Execution, *Murray*, No. A-
26 12-669926-C (Dec. 18, 2018), Exhibit B (Murray and Reno's Motion). The Murray
27 Court Plaintiffs' writ of execution resulted in Wells Fargo placing a hold on

1 \$233,619.56 maintained in six different bank accounts, each having a different name
2 that began with A Cab Series LLC. *Id.* All six of those accounts were identified by
3 Wells Fargo under the same IRS Employer Identification Number (EIN). *Id.*
4 Defendant brought the motion to quash on the ground that those accounts were the
5 property of six legally separate entities, each such entity being a separate series LLC
6 issued by the judgment debtor, A Cab LLC, as per NRS 86.296. *Id.* Notably, Plaintiff
7 in the instant case was alleged to be one of the six legally separate entities. *Id.* at
8 n.1.

9 In its Order Denying Defendant(s) Motion to Quash Writ of Execution, the
10 Murray Court made multiple, but separate findings, and made clear that each finding
11 would provide a basis for its denial of the Motion to Quash. Specifically, each finding
12 was "intended, either on their own or in conjunction, to provide a proper basis for the
13 Court's decision." *Id.* The Murray Court denied the Motion to Quash finding that
14 Defendant A Cab LLC lacked standing and the other Series LLCs had not made an
15 appearance. Relevant here, the Murray Court made a specific finding that the Wells
16 Fargo funds are properly levied upon by the judgment, explaining that an allegedly
17 legally independent series LLC entity paying its own employees separate from A Cab
18 LLC's funds "would have to secure its own unique, EIN number, and process its
19 payroll with the IRS under such number and not under A Cab LLC's EIN number." *Id.*

20 The Murray Court additionally found that there was no evidence that the
21 independent series LLCs exist, or if they exist, they have not complied with the asset
22 shielding provisions of NRS 68.696(3). *Id.* The Murray court explained under
23 Nevada law, none of the alleged series LLCs had been created, and if they were,
24 there was no evidence supporting that their obligations were limited with respect to A
25 Cab LLC. "Specifically, [t]he Court finds that even if the six alleged series LLCs have
26 been created, they have not complied with NRS 86.296(3) and have never adopted

1 the liability limitations available to series LLCs under that statute.” *Id.* And
2 importantly, the Murray Court found that the “six Series LLCs in the Murray Action
3 failed to show any basis in the Motion to Quash to conclude they have, in respect to
4 the Wells Fargo accounts and any other assets they are alleged to possess,
5 accounted for such assets separately from the other assets of the judgment debtor A
6 Cab LLC as required by NRS 86.296(3) to invoke the statute’s liability limitations.” *Id.*

7 The issues in the Murray Action and instant action are the same—whether
8 funds subject to the writ of execution on Wells Fargo was the separate property of the
9 alleged series LLCs, including Plaintiff. “Issue preclusion cannot be avoided by
10 attempting to raise a new legal or factual argument that involves the same ultimate
11 issue previously decided in the prior case.” *Alcantara*, 130 Nev. 252, 259. The
12 Murray Court specifically analyzed and made findings that Plaintiff was not created,
13 that even if Plaintiff exists, Plaintiff is not subject to limiting its liability from that of the
14 judgment debtor, and that the funds in the account are that of judgment debtor. This
15 Court rejects the argument by Plaintiff that the Murray Court must have conducted an
16 evidentiary hearing on these issues for issue preclusion to apply. Those issues are
17 the same issues that Plaintiff now asks this Court to address.

18 ***The same parties or their privies***

19 Issue preclusion can only be used against a party whose due process rights
20 have been met by virtue of that party having been a party or in privity with a party in
21 the prior litigation. *Alcantara*, 130 Nev. 252, 260. The Nevada Supreme Court has
22 recognized that “privity does not lend itself to a neat definition, thus determining
23 privity for preclusion purposes requires a close examination of the facts and
24 circumstances of each case.” *Mendenhall v. Tassinari*, 133 Nev. 614, 619 (2017).

25 Here, Plaintiff’s argument that it was a not party to the Murray Action, and thus
26 issue preclusion does not apply, lacks merit. Plaintiff is in privity with defendants

1 from the Murray Action. "[T]he record demonstrates a substantial identity between
2 the parties." *Mendenhall*, 133 Nev. 614, 619. Plaintiff does not point to anything in
3 the pleadings supporting that Plaintiff is not in privity with the judgment debtor.

4 ***Final Adjudication on the Merits***

5 The Murray Court's Order Denying Defendants Motion to Quash Writ of
6 Execution, which was adjudicated on the merits, addressed the same issues Plaintiff
7 makes in the instant motion, with the Murray Court finding the funds in the six Wells
8 Fargo accounts were not immune to execution as they were assets of the judgment
9 debtor.

10 ***Actually and Necessarily Litigated***

11 When an issue is properly raised and is submitted for determination, the
12 issue is "actually litigated" for purposes of applying issue preclusion. *Alcantara*, 130
13 Nev. 252, 263. Whether the issue was necessarily litigated turns on whether the
14 common issue was necessary to the judgment in the earlier suit. *Id.*

15 Here, the issues of Plaintiff's existence as a separate legal entity from
16 judgment debtor and whether the funds in the Wells Fargo account belonged to
17 series LLCs, and thus, separate from the judgment debtor were a common issue
18 necessary to the Order Denying Defendants Motion to Quash Writ of Execution in the
19 Murray Action. Based on the foregoing, issue preclusion applies and Plaintiff cannot
20 bring the instant action. Even if the allegations contained in Plaintiff complaint are
21 true, recovery would not be permitted. Thus, Plaintiff fails to state any claims for
22 relief.

23 ***Subject Matter Jurisdiction***

24 Defendants also contend that this Court does not have subject matter
25 jurisdiction over the instant complaint because Plaintiff seeks to have funds returned
26 that are subject to the exclusive jurisdiction of the Murray Action. Plaintiff contends
27

1 that this Court has jurisdiction because Plaintiff also seeks a determination that it is a
2 separate entity from the Murray Court Judgment Debtor, created under NRS 86.296,
3 and is a sole and separate entity from A Cab Series LLC. Plaintiff further asserts that
4 its claim for injunctive relief is defensive in nature and does not seek an active
5 distribution of the funds, but rather a preservation of the funds until the declaratory
6 relief can be addressed.

7 Based on the above analysis regarding issue preclusion, any argument
8 Plaintiff makes that asks this Court to make a determination (1) as to Plaintiff's status
9 as a separate entity or (2) the ownership of the funds in the Wells Fargo accounts, is
10 precluded. Moreover, these arguments were directly addressed by the Murray Court.
11 Plaintiff cannot seek to bypass the rulings of the Murray Court by a filing a complaint
12 in a separate case.

13 Moreover, the Murray Court specifically ordered that class counsel only
14 release such monies as specified by a further Order of this Court in that case. Order
15 Granting Summary Judgment, Severing Claims, and Directing Entry of Final
16 Judgment, Murray v. A Cab Taxi Service LLC, No. A-12-669926-C (Dec. 18, 2018),
17 Exhibit A (Murray and Reno's Motion). Any decision regarding the outcome of the
18 money obtained from the Wells Fargo accounts, including any challenge regarding
19 the Murray Court's determination that the accounts are not the property of Plaintiff,
20 must come from the Murray Court.

21 Based on the foregoing, the Court **GRANTS** Murray and Reno's Motion and
22 dismisses Plaintiff's complaint as to Defendants Murray and Reno with prejudice.

23 **Defendants' Motion for Sanctions**

24 NRCP 11(b) provides:

25 By presenting to the court a pleading, written motion, or other
26 paper—whether by signing, filing, submitting, or later
advocating it—an attorney or unrepresented party certifies that

1 to the best of the person's knowledge, information, and belief,
2 formed after an inquiry reasonable under the circumstances:

3 (1) it is not being presented for any improper purpose, such
4 as to harass, cause unnecessary delay, or needlessly
5 increase the cost of litigation;

6 (2) the claims, defenses, and other legal contentions are
7 warranted by existing law or by a nonfrivolous argument for
8 extending, modifying, or reversing existing law or for
9 establishing new law;

10 (3) the factual contentions have evidentiary support or, if
11 specifically so identified, will likely have evidentiary support
12 after a reasonable opportunity for further investigation or
13 discovery; and

14 (4) the denials of factual contentions are warranted on the
15 evidence or, if specifically so identified, are reasonably based
16 on belief or a lack of information.

17 If the Court determines that Rule 11(b) has been violated, the Court has the
18 discretion to impose an appropriate sanction. NRCP 11(c)(1).

19 Plaintiff's complaint was not warranted as the issues raised are precluded
20 under the doctrine of collateral estoppel. See *Elyousef v. O Reilly & Ferrario, LLC*,
21 126 Nev. 441, 445 (2010) (providing that under the doctrine of collateral estoppel, if
22 an issue of fact or law has been actually litigated and determined by a valid and final
23 ruling, the determination is conclusive in a subsequent action between the parties).
24 Plaintiff's complaint violates NRCP 11(b)(2) as the Murray Court had already
25 determined that Plaintiff was not a separate entity as a matter of law, though, the
26 Court does not find that Plaintiff's instant action was brought for an improper purpose
27 in violation of NRCP 11(b)(1). The only sanction the Court finds appropriate is
granting Defendants' attorney fees and costs for defending this action. However,
because NRCP 11(b)(5) precludes monetary sanctions for an NRCP 11(b)(2)
violation, and this Court does not find nonmonetary directives proper, this Court
DENIES Defendants' Sanction Motion.

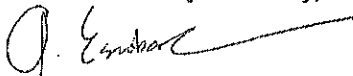
Accordingly,

1 **IT IS ORDERED THAT** Defendants' Motion for Judgment on the Pleadings is
2 **GRANTED** and Plaintiff's complaint as to Defendants Murray and Reno is dismissed
3 with prejudice.

4 **IT IS FURTHER ORDERED THAT** Defendants' Motion for Sanctions is
5 **DENIED.**

6 **IT IS SO ORDERED.**

7 Dated this 4th day of January, 2021

8 

9 _____
JUDGE ADRIANA ESCOBAR
DISTRICT COURT JUDGE

10 C8B AC7 C9F2 7408
11 Adriana Escobar
12 District Court Judge
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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 A Cab Series, LLC, Plaintiff(s) CASE NO: A-19-792961-C
7 vs. DEPT. NO. Department 14
8 Michael Murray, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

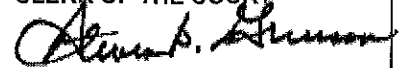
14 Service Date: 1/4/2021

15 Jeanne Forrest jforrest@swlaw.com
16 Sonja Dugan sdugan@swlaw.com
17 Jay Shafer JShafer@premierlegalgroup.com
18 Docket Docket docket_las@swlaw.com
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21 Dana Sniegocki dana_s@overtimelaw.com
22 Leon Greenberg leongreenberg@overtimelaw.com
23 Laurie Alderman lalderman@crdslaw.com
24 Kelly Dove kdove@swlaw.com
25 Leta Metz assistant@crdslaw.com
26
27
28

1 If indicated below, a copy of the above mentioned filings were also served by mail
2 via United States Postal Service, postage prepaid, to the parties listed below at their last
3 known addresses on 1/5/2021

4 Leon Greenberg

Leon Greenberg PC
c/o: Leon Greenberg
2965 S. Jones Blvd. Suite E4
Las Vegas, NV, 89144



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9 dana@overtimelaw.com
10 Attorneys for Defendants
11 MURRAY and RENO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

12 A CAB SERIES, LLC,
13 ADMINISTRATION COMPANY,

14 Plaintiffs,

15 vs.

16 MICHAEL MURRAY, MICHAEL
17 RENO, WELLS FARGO BANK NA,
18 DOES 1-100 and ROE BUSINESS
19 ENTITIES I through C,
20 Defendants.

Case No.: A-19-792961-C

Dept.: 14

**NOTICE OF ENTRY OF
ORDER**

21 PLEASE TAKE NOTICE that the annexed Order of the Court is served this date
22 with notice of its entry.

23 Dated: April 21, 2021

24 LEON GREENBERG PROFESSIONAL CORP.

25 /s/Leon Greenberg

26 Leon Greenberg, Esq.
27 Nevada Bar No. 8094
28 2965 S. Jones Boulevard - Ste. E-3
Las Vegas, NV 89146
Tel (702) 383-6085
Attorney for the Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that on April 21, 2021, he served the within:

ORDER WITH NOTICE OF ENTRY

by court electronic service to:

JAY A. SHAFER, ESQ.
CORY READE DOWS AND SHAFER
1333 North Buffalo Drive, Suite 210
Las Vegas, NV 89128

/s/ Leon Greenberg
Leon Greenberg

1 LEON GREENBERG, ESQ.
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4 leongreenberg@overtimelaw.com
Attorneys for Plaintiffs

5
6
7 **DISTRICT COURT**
8
9 **CLARK COUNTY, NEVADA**

10 A CAB TAXI SERVICE LLC,
ADMINISTRATION COMPANY,

11 Plaintiff,

12 vs.

13 MICHAEL MURRAY, MICHAEL
RENO and WELLS FARGO BANK
NA,

14 Defendants.

Case No.: A-19-792961-C

DEPT.: 14

**ORDER GRANTING THE MOTION OF
DEFENDANTS MURRAY AND RENO
FOR AN AWARD OF ATTORNEY'S
FEES AND COSTS AND DENYING
THE MOTION OF THE PLAINTIFF TO
RETAX COSTS AND STRIKE
MEMORANADUM OF COSTS AND
DISBURSEMENTS**

17 The motion of defendants Michael Murray and Michael Reno for an Award of Attorney's
18 Fees and Costs (Fees and Costs Motion) pursuant to NRS 7.085, NRS 18.010(2)(b) and the Nevada
19 Constitution, Article 15, Section 16, the Minimum Wage Amendment (the "MWA") and the motion
20 of plaintiff to Retax Costs and Strike Memorandum of Costs and Disbursements (Retax Motion) was
21 set for a hearing on March 2, 2021, with the Court resolving both motions upon its thorough review
22 of the written submissions and without oral argument from counsel, the Court finds as follows:

1 **Fees and Costs Motion**

2 NRS 7.085 provides:

3 1. If a court finds that an attorney has:

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

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

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

14 If claims, defenses, and other legal contentions are not warranted by existing law or by a
15 nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new
16 law, the Court may, after notice and a reasonable opportunity to respond, impose an appropriate
17 sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation.
18 NRCP 11(c)(1).

19 "In addition to the cases where an allowance is authorized by specific statute, the court may
20 make an allowance of attorney's fees to a prevailing party... Without regard to the recovery sought,
21 when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of
22 the opposing party was brought or maintained without reasonable ground or to harass the prevailing
23 party." NRS 18.010(2)(b).

1 Defendants Murray and Reno request a fee award of \$18,720, or in the alternative, \$30,240,
2 claiming this amount to be a “more proper award.” In its January 4, 2021, Order, this Court granted the
3 motion of Defendants Murray and Reno for judgment on the pleadings pursuant to NRCP 12(c) on the
4 ground that Plaintiff's complaint violated NRCP 11(b)(2). As found by the Court in that Order, Plaintiff
5 brought this action without reasonable ground—in fact as the issues raised in Plaintiff's complaint
6 were not warranted as these issues were precluded under the doctrine of collateral estoppel. This
7 Court found in that Order that a sanction awarding Defendants Murray and Reno attorney fees and
8 costs for defending this action was appropriate.

9 Given this Court's January 4, 2021, ruling, this Court awards Defendants Murray and Reno
10 attorney fees in the amount of \$18,720 pursuant to NRS 7.085 and NRS 18.010(2)(b) against
11 Plaintiff and its counsel, attorney Jay Shafer. Defendants' request for \$30,240 in attorney fees is
12 denied. The Court finds in this case that attorney fees are not to be granted under the Minimum
13 Wage Act (MWA). Although Defendants Murray and Reno prevailed on MWA claims in Case No.
14 A-12-669926-C, they cannot use the MWA to seek attorney fees in this action. The proper avenue to
15 seek attorney fees under the MWA in Case No. A-12-669926-C was to seek such fees in that case.

16 Defendants Murray and Reno request a costs award in the amount of \$302.59. Defendants
17 seek \$253.00 for the filing fee incurred in filing their answer to Plaintiff's complaint, \$7.59 for an
18 electronic payment (credit card) fee charged by the Wiznet system to file that answer, and \$52.50 in
19 Wiznet filing charges.

20 Defendants have supported their request for costs in the amount of \$253.00. *See Cadle Co. v.*
21 *Woods & Erickson, LLP*, 131 Nev. 114, 121 (2015). Thus, this Court awards Defendants Murray and
22 Reno \$253.00 in costs.

23 The Court does not grant Defendants Murray and Reno's request that the fee and costs award that
24 is granted be entered as a judgment with their counsel, Leon Greenberg, as the judgment creditor. The

1 Court finds this request is not properly before this Court and their counsel has provided no legal authority
2 or analysis in connection with the same.

3 Based on the foregoing findings, Defendants Reno and Murray's Motion (the Fees and Costs
4 Motion) is **GRANTED IN PART AND DENIED IN PART**. Defendants Reno and Murray are
5 awarded \$18,720 in attorney's fees and \$253.00 in costs, for a total award of \$18,973.

6 **Retax Motion**

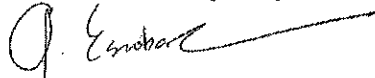
7 To retax and settle costs upon motion of the parties pursuant to NRS 18.110, a district court must
8 have before it evidence that the costs were reasonable, necessary, and actually incurred. *Cadle Co. v.*
9 *Woods & Erickson, LLP*, 131 Nev. 114, 121 (2015).

10 Plaintiff seeks to strike and retax Defendants Murray and Reno's cost memorandum on the
11 ground they have failed to support their costs request. The Court has found Defendants Murray and
12 Reno have supported their request for costs in the amount of \$253.00.

13 Accordingly, Plaintiff's Retax Motion is **DENIED**.

14 **IT IS SO ORDERED.**

Dated this 20th day of April, 2021



Honorable Adriana Escobar
DISTRICT COURT JUDGE

C0A 644 BC38 2BA7
Adriana Escobar
District Court Judge

15
16
17
18 Submitted by:

19 /s/ Leon Greenberg

20 Leon Greenberg, Esq. NSB 8094
21 Leon Greenberg Professional Corporation
22 2965 S. Jones Boulevard - Ste. E-3
23 Las Vegas, NV 89146
24 Tel (702) 383-6085
25 Attorney for the Defendants Murray and Reno

26 Approved as to Form:

/s/ Jay Shafer

1 Jay Shafer, Esq. NSB 9184
2 Cory Reade Dows and Shafer
3 1333 North Buffalo Dr. - Suite 210
4 Las Vegas, Nevada, 89128
5 Tel (702) 794-4441
6 Attorney for the Plaintiff
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 A Cab Series, LLC, Plaintiff(s) | CASE NO: A-19-792961-C
7 vs. | DEPT. NO. Department 14
8 Michael Murray, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

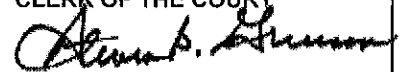
14 Service Date: 4/20/2021

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25 Joey Adamiak	joey@overtimelaw.com

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Leon Greenberg

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9 dana@overtimelaw.com
10 Attorneys for Defendants
11 MURRAY and RENO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

12 A CAB SERIES, LLC,
13 ADMINISTRATION COMPANY,

14 Plaintiffs,

15 vs.

16 MICHAEL MURRAY, MICHAEL
17 RENO, WELLS FARGO BANK NA,
18 DOES 1-100 and ROE BUSINESS
19 ENTITIES I through C,

20 Defendants.

Case No.: A-19-792961-C

Dept.: 14

**NOTICE OF ENTRY OF
ORDER**

21 PLEASE TAKE NOTICE that the annexed Order of the Court is served this date
22 with notice of its entry.

23 Dated: July 21, 2021

24 LEON GREENBERG PROFESSIONAL CORP.

25 /s/Leon Greenberg

26 Leon Greenberg, Esq.
27 Nevada Bar No. 8094
28 2965 S. Jones Boulevard - Ste. E-3
Las Vegas, NV 89146
Tel (702) 383-6085
Attorney for the Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that on July 21, 2021, he served the within:

ORDER WITH NOTICE OF ENTRY

by court electronic service to:

JAY A. SHAFER, ESQ.
CORY READE DOWS AND SHAFER
1333 North Buffalo Drive, Suite 210
Las Vegas, NV 89128
Attorney for Plaintiffs

and all other recipients registered in this case on the Court's electronic service system.

/s/ Leon Greenberg
Leon Greenberg

DISTRICT COURT
CLARK COUNTY, NEVADA

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION
AND GRANTING COUNTER-MOTION
OF DEFENDANTS MURRAY AND
RENO FOR AN AWARD OF
ATTORNEY'S FEES**

1 argument, and all of the other submissions of the parties and the prior proceedings taken in
2 this case, the Court hereby makes the following findings:

3 Leave for reconsideration of motions is within this Court's discretion under EDCR 2.24.

4 A district court may reconsider a previously decided issue if substantially different evidence is
5 subsequently introduced or the decision is clearly erroneous. *Masonry & Tile Contractors v. Jolley,*
6 *Urga & Wirth*, 113 Nev. 737, 741 (1997). These principles guide the Court in resolving plaintiffs'
7 motion for reconsideration.

8 Defendants' counter motion seeks an award of attorney's fees pursuant NRS 7.085, which
9 provides:

10 NRS 7.085 Payment of additional costs, expenses and attorney s fees by attorney
11 who files, maintains or defends certain civil actions or extends civil actions in
certain circumstances.

12 1. If a court finds that an attorney has:

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

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

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

22 In seeking reconsideration plaintiff contends that the underlying basis for this Court's April
23 21, 2021, Order Granting the Motion of Defendants Murray and Reno for an Award of Attorney s
24 Fees and Costs was flawed and erroneous in that such Order sought a reconsideration precluded by

1 EDCR 7.12. It also contends the underlying dismissal giving rise to that motion was improper as
2 both plaintiff and defendant agree that the Court in Case No A-12-669926-C did not determine that
3 the plaintiff in this action and the defendant in the *Murray* action were the same as a matter of law.
4 The Court finds that plaintiff contends that the issue of its ownership of the Wells Fargo Accounts in
5 the *Murray* case has not been determined and it is entitled to a declaration of its rights and that it is a
6 sole and separate entity from A Cab Series LLC, the judgment debtor in the *Murray* action, and that
7 defendants have no rights to the funds in the Wells Fargo Account.

8 Defendants Murray and Reno in opposing plaintiff's motion and in such defendants'
9 countermotion for sanctions request that plaintiff and its counsel be subject to some form of
10 additional sanctions paid to the court or another suitable beneficiary and award of attorneys fees for
11 their continued improper conduct. They contend that plaintiff presents no new facts, law or
12 arguments warranting reconsideration of the Court's prior Order and assert that this Court correctly
13 recognized this litigation was not commenced upon reasonable grounds as ownership of the *res* at
14 issue has been determined in the *Murray* lawsuit. In respect to their countermotion, they assert
15 plaintiff's motion for reconsideration presents not even a scintilla of reasoning, arguments, or
16 evidence that such reconsideration is warranted and the filing of that motion for reconsideration
17 would be the proper subject of yet again, another Rule 11 motion against plaintiffs by such
18 defendants. They request under NRS 7.085 that the Court grant a further award of attorney's fees to
19 defendants' counsel of at least \$2,000.

20 Having considered the arguments of the parties, the Court DENIES the plaintiff's motion for
21 reconsideration and GRANTS the defendants' countermotion for attorney's fees. It does so for the
22 reasons set forth and detailed in the opposition and countermotion of defendants as follows:

23 (1) The Court's prior Order found ownership of the *res* at issue, the Wells Fargo Funds, was
24 determined in the *Murray* lawsuit, meaning there was no good faith basis for plaintiff to bring this

1 action seeking a determination of such ownership and any such request had to be brought in the
2 *Murray* lawsuit or an appeal in *Murray* where jurisdiction over that *res* had been assumed;

3 (2) The alleged claim of plaintiff for a declaration on its "independent status" as a separate
4 entity from the judgment debtor in the *Murray* lawsuit provided no good faith basis to commence
5 this lawsuit against the defendants Murray and Reno; such defendants had no alleged arguable
6 interest in that issue separate and apart from their interest in the Wells Fargo funds and their interest
7 in those funds was adjudicated in the *Murray* lawsuit;

8 (3) The motion for reconsideration set forth no evidence whatsoever, or any other good faith
9 argument, or that the findings in the prior order were or are factually erroneous or are based upon a
10 misunderstanding by the Court of controlling law.

11 In granting the counter-motion and calculating an award of attorney's fees to defendants'
12 counsel the Court is guided by the factors discussed in *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev.
13 345, 349, 455 P.2d 31, 33 (1969) and *Cadle Co. v. Woods & Erickson, Ltd. Liab. P'ship*, 131 Nev.
14 114, 345 P.3d 1049 (2015) (the four "*Brunzell*" factors). As set forth in Ex. "B" to the
15 countermotion in the declaration of attorney Leon Greenberg, the Court finds those factors fully
16 justify an award of \$2,000 in attorney's fees to defendant Murray and Reno's counsel for plaintiff's
17 counsel's violation of NRS 7.085 by presenting the motion for reconsideration. The first *Brunzell*
18 factor is satisfied. The quality of the advocate's work and expertise is substantial, as Leon
19 Greenberg has nearly 30 years of litigation experience involving the class action wage and hour
20 claims at the heart of the parties' dispute. The second *Brunzell* factor is satisfied, as the intricacy,
21 importance and difficulty of the work at issue is congruent with the amount of attorney time, at least
22 five hours, that was consumed in opposing the motion, pursuing the counter-motion, arguing the
23 issues, and drafting this Order. The third *Brunzell* factor is satisfied, as the Court finds the advocacy
24 of such counsel was skillful and evidenced an appropriate expenditure of attention and time (five
25
26

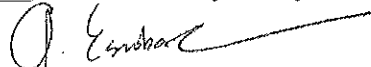
1 hours for fee calculation purposes) by such counsel and that the declaration of counsel is sufficient to
2 establish this expenditure. The fourth *Brunzell* factor is also satisfied, as such counsel was fully
3 successful and secured the full possible measure of benefit for their clients. Further, as discussed in
4 Ex. "B" to the countermotion in the declaration of attorney Leon Greenberg, applying a \$400 an hour
5 rate for fee calculation purposes for a fee award, requested at \$2,000 for at least a five-hour
6 expenditure of time, is supported by the prior history of such counsel receiving attorney fee awards
7 at the substantially higher hourly rate of \$720 an hour.

8 Accordingly, the Court DENIES the plaintiff's motion for reconsideration and
9 GRANTS the defendants' countermotion to the extent of awarding attorney's fees under NRS
10 7.085 in the amount of \$2,000 to be paid by plaintiff's counsel to counsel for defendants
11 Murray and Reno.

12 **IT IS SO ORDERED.**

13 Dated this 9 day of _____

2021 this 21st day of July, 2021



Honorable Adriana Escobar
DISTRICT COURT JUDGE

E5B 8B9 0C8F 29F2
Adriana Escobar
District Court Judge

Approved as to Form and Content:

18 Submitted by:

NOT APPROVED

19 /S/ Leon Greenberg

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Attorney for the Plaintiff

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 A Cab Series, LLC, Plaintiff(s) | CASE NO: A-19-792961-C
7 vs. | DEPT. NO. Department 14
8 Michael Murray, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 7/21/2021

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Leon Greenberg

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Attorneys for Defendant Wells Fargo Bank, N.A.
7

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA
10

11 A CAB SERIES, LLC, ADMINISTRATION
12 COMPANY,

13 Plaintiff,

14 vs.

15 MICHAEL MURRAY, an Individual, as a
16 class representative, MICHAEL RENO, an
17 Individual, as a class representative, WELLS
18 FARGO BANK NA, a National Banking
19 Association; DOES 1-100, and ROE
20 BUSINESS ENTITIES I through C, inclusive,

21 Defendants.
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Electronically Filed
2/25/2022 9:57 AM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

Case No. A-19-792961-C

Dept. No. XIV

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER GRANTING MOTION FOR
JUDGMENT ON THE PLEADINGS**

1 PLEASE TAKE NOTICE that Findings of Fact, Conclusions of Law, and Order Granting
2 Motion for Judgment on the Pleadings were entered in the above-captioned matter on February
3 24, 2022, a copy of which are attached hereto.

4
5 Dated: February 25, 2022

SNELL & WILMER L.L.P.

6 By: /s/ Kelly H. Dove

7 Kelly H. Dove, Esq.
8 Nevada Bar No. 10569
9 Hayley J. Cummings, Esq.
10 Nevada Bar No. 14858
11 3883 Howard Hughes Parkway
12 Suite 1100
13 Las Vegas, NV 89169
14 *Attorneys for Defendant Wells Fargo*
15 *Bank, N.A*

CERTIFICATE OF SERVICE

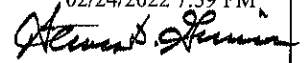
I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS** by method indicated below:

- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- ☐ **BY PERSONAL DELIVERY:** by causing personal delivery by, a messenger service with which this firm maintains an account, of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.
- ☐ **BY EMAIL:** by emailing a PDF of the document listed above to the email addresses of the individual(s) listed below.

DATED this 25th day of February, 2022.

/s/ Maricris Williams

An employee of SNELL & WILMER L.L.P.


CLERK OF THE COURT

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12 *Attorneys for Defendant Wells Fargo Bank, N.A.*

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 A CAB SERIES, LLC, ADMINISTRATION
16 COMPANY,

17 Plaintiff,

18 vs.

19 MICHAEL MURRAY, an Individual, as a
20 class representative, MICHAEL RENO, an
21 Individual, as a class representative, WELLS
22 FARGO BANK NA, a National Banking
23 Association; DOES 1-100, and ROE
24 BUSINESS ENTITIES I through C, inclusive,

25 Defendants.

Case No. A-19-792961-C

Dept. No. XIV

26 **FINDINGS OF FACT, CONCLUSIONS**
27 **OF LAW, AND ORDER GRANTING**
28 **MOTION FOR JUDGMENT ON THE**
PLEADINGS

Date of Hearing: September 2, 2020

Hearing Time: In Chambers

29 Defendant Wells Fargo Bank, N.A. ("Wells Fargo") filed its Motion for Judgment on the
30 Pleadings ("Motion") on December 2, 2019. A Cab Series, LLC, Administration Company
31 ("Plaintiff") filed its Opposition on January 13, 2020. Wells Fargo replied in support of its Motion
32 on February 26, 2020. Wells Fargo's Motion came on for hearing in the Court's Chambers on
33 September 2, 2020 before the Honorable Judge Adriana Escobar in Department 14 of the above-
34 entitled court. Having reviewed the filings, including all arguments, authorities, and exhibits

1 provided therein, and good cause appearing, the Court issued a Minute Order on October 26, 2020,
2 setting forth the following Findings of Fact, Conclusions of Law, and Order.

3 FINDINGS OF FACT

4 1. This matter stems from an active proceeding also pending in the Eighth Judicial
5 District Court: *Murray v. A Cab Taxi Service, A Cab LLC, and Creighton J. Nady*, No. A-12-
6 669926-C (Nev. Dist. Ct., Clark Cty., Oct. 8, 2012) (the "*Murray Action*").

7 2. On August 21, 2018, the Honorable Judge Kenneth Cory entered a judgment for
8 \$1,033,027.81 against the *Murray Action* defendants, A Cab Taxi Service and A Cab LLC.

9 3. To collect on the judgment, the *Murray Action* plaintiffs served a writ of execution
10 on Wells Fargo for the assets of "A CAB LLC and A CAB TAXI SERVICE LLC". All accounts
11 subjected to the writ of execution in the *Murray Action* each contained the name with "A Cab
12 Series LLC" and all six accounts were identified under the same IRS Employer Identification
13 Number ("EIN").

14 4. The *Murray Action* defendant A Cab LLC moved to quash the writ of execution,
15 arguing that the Wells Fargo accounts did not belong to the judgment debtor, but, rather, were the
16 property of six legally separate entities. The court in the *Murray Action* denied the motion to
17 quash. Wells Fargo delivered the funds taken from the accounts belonging to the Series LLCs
18 with the Court.

19 5. Plaintiff filed the instant action on April 15, 2019, bringing claims for declaratory
20 relief, injunction, and breach of contract against Wells Fargo. Plaintiff primarily sought a judgment
21 that the funds subject to the writ of execution in the *Murray Action* was Plaintiff's property, that
22 Plaintiff is a separate entity from the judgment debtor in the *Murray Action* and not subject to
23 execution, and that Wells Fargo had erred in assigning the same EIN to the accounts of the separate
24 entities.

25 6. The court in the *Murray action* specifically analyzed and made findings that Plaintiff
26 could not limit its liability from that of the judgment debtor, and that the funds in the accounts
27 levied upon belonged to the judgment debtor. Ultimately, with the instant action, Plaintiff asks this
28 Court to address those same issues.

CONCLUSIONS OF LAW

A. Standard for Motion for Judgment on the Pleadings.

8. Rule 12(c) of the Nevada Rules of Civil Procedure permits a party to move for judgment on the pleadings at any time “[a]fter the pleadings are closed by within such time as not to delay the trial. . . .” NRCP 12(c). “A Rule 12(c) motion is designed to provide a means of disposing of cases when material facts are not in dispute and a judgment on the merits can be achieved by focusing on the content of the pleadings.” *Bernard v. Rockhill Development Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1241 (1987); *see also Duff v. Lewis*, 114 Nev. 564, 568, 958 P.2d 82, 85 (1998).

9. “Judgment on the pleadings is proper when, as determined from the pleadings, the material facts are not in dispute and the moving party is entitled to judgment as a matter of law.” *Lawrence v. Clark Cty.*, 127 Nev. 390, 393, 254 P.3d 606, 608 (2011) (*Bonicamp v. Vazquez*, 120 Nev. 377, 379, 91 P.3d 584, 585 (2004)).

10. Further, a Rule 12(c) motion for “judgment on the pleadings is reviewed in the same manner as a dismissal under NRCP 12(b)(5).” *Peck v. Zipf*, 133 Nev. 890, 892, 407 P.3d 775, 778 (2017) (citing *Sadler v. PacifiCare of Nev.*, 130 Nev. 990, 993, 340 P.3d 1264, 1266 (2014)).

11. Accordingly, a defendant is entitled to dismissal when a plaintiff fails “to state a claim upon which relief can be granted.” NRCP 12(b)(5). Dismissal for failure to state a claim is therefore appropriate when the plaintiff cannot prove any set of facts that would entitle him to relief. *See Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 227–28 (2008).

12. In considering a motion for judgment on the pleadings, the Court must accept the non-moving party’s factual allegations as true and construe them in its favor. *Sadler*, 130 Nev. at 993, 340 P.3d at 1266 (citing *Buzz Stew*, 124 Nev. at 227, 181 P.3d at 672). The Court is not, however, bound to accept as true a legal conclusion couched as a factual allegation. *See Papasan v. Allain*, 478 U.S. 265, 286 (1986); *see also Bailey v. Gates*, 52 Nev. 432, 437 (1930) (“Good pleading requires that . . . the facts relating to the matter be averred, leaving the court to draw the legal conclusion. . . .”).

B. The Court May Take Judicial Notice of Orders, Hearing Transcripts, and the Docket in the *Murray* Action.

13. As with a motion to dismiss, on a motion for judgment on the pleadings “the court is not limited to the four corners of the complaint.” *Baxter v. Dignity Health*, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015) (citation omitted). The Court may take judicial notice of documents that are incorporated by reference into a complaint, even if not attached to the same, if: (1) the complaint refers to the document, (2) the document is central to the plaintiff’s claims, and (3) the authenticity of the document is undisputed. *Id.* Under Nevada law, a court may consider any matter that is properly the subject of judicial notice without converting a motion to dismiss into a motion for summary judgment. *See Occhiuto v. Occhiuto*, 97 Nev. 143, 145, 625 P.2d 568, 569 (1981).

14. Pursuant to Nev. Rev. Stat. 47.130, courts may take judicial notice of facts that are “[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute.” *Mack v. Estate of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009). Records in another and different case merit judicial notice when a valid reason presents itself based on the closeness of the relationship between the two cases. *See id.* (citing *Occhiuto*, 97 Nev. at 145, 625 P.2d at 569).

15. Based on the foregoing, the Court takes judicial notice of the orders, hearing transcripts, and the docket in the *Murray* Action.

C. Plaintiff’s Third Cause of Action for Breach of Contract Is Dismissed.

16. To establish a viable breach of contract action, “Nevada law requires the plaintiff to show (1) the existence of a valid contract, (2) a breach by the defendant, and (3) damage as a result of the breach.” *Saini v. Int’l Game Tech.*, 434 F. Supp. 2d 913, 919–20 (D. Nev. 2006) (citing *Richardson v. Jones*, 1 Nev. 405, 405 (1865)).

17. Plaintiff fails to allege the existence of valid contract between itself and Wells Fargo.

18. Moreover, Plaintiff’s breach of contract claim is a negligence claim in substance. Indeed, Plaintiff asserts that: (1) Wells Fargo owed a duty of care to Plaintiff to safeguard its property, and not to compromise its rights to the assets it entrusted to Wells Fargo, (2) Wells Fargo

1 breached its duty by acting in an intentional or negligent manner that compromised Plaintiff's rights,
2 including its right to confidentiality, privacy and its rights in the assets Plaintiff entrusted to Wells
3 Fargo, and (3) due to Wells Fargo's inexcusable conduct, Plaintiff has been harmed in the amount
4 of the funds taken, plus interest and loss of use the property.

5 19. In rejecting motion to quash in the *Murray* Action, the court found that the funds
6 were properly levied upon and Wells Fargo complied with its obligations under the law by
7 surrendering the levied funds to the Court

8 20. Wells Fargo did not have a duty to safeguard Plaintiff's accounts from a lawful
9 judgment and writ of execution issued in the *Murray* case.

10 21. Plaintiff fails to state a claim for which relief can be granted and, therefore,
11 Plaintiff's third cause of action for breach of contract is dismissed with prejudice.

12 **D. Plaintiff's Claims Against Wells Fargo Are Barred by the Doctrine of Collateral**
13 **Estoppel.**

14 22. Under the doctrine of collateral estoppel, if an issue of fact or law has been actually
15 litigated and determined by a valid and final ruling, the determination is conclusive in a subsequent
16 action between the parties. *See Elyousef v. O'Reilly & Ferrario, LLC*, 126 Nev. 441, 445, 245 P.3d
17 547, 549 (2010); *see also Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 114 Nev. 823, 835, 963 P.2d
18 465, 473 (1998).

19 23. The doctrine provides that a party is estopped from relitigating in a subsequent case
20 any issue that was actually and necessarily litigated in a prior case. *See Elyousef*, 126 Nev. at 445,
21 245 P.3d at 549–50. Collateral estoppel bars relitigation of an issue when the following factors are
22 satisfied: “(1) the issue decided in the prior litigation must be identical to the issue presented in the
23 current action; (2) the initial ruling must have been on the merits and have become final; . . . (3) the
24 party against whom the judgment is asserted must have been a party or in privity with a party to the
25 prior litigation; and (4) the issue was actually and necessarily litigated.” *Id.* (quoting *Five Star*
26 *Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008).

27 24. The factors supporting collateral estoppel are present: (1) the issue presented in the
28 *Murray* Action is identical to the issue presented in this action; (2) the order denying the motion to

quash the writ of execution in the *Murray* Action was a final ruling on the merits; (3) Plaintiff, as well as those in privity with Plaintiff, was a party to the *Murray* Action; and, (4) the *Murray* lawsuit was actually and necessarily litigated.

25. Therefore, pursuant to the doctrine of collateral estoppel, Plaintiff is barred from asserting the claims made in this matter against Wells Fargo.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Wells Fargo's Motion for Judgment on the Pleadings is **GRANTED**. The Complaint and all causes of action alleged therein against Wells Fargo is dismissed with prejudice.

Dated this 24th day of February, 2022



A-19-792961-C

8E8 643 A25E 934F
Adriana Escobar
District Court Judge

Respectfully submitted by:

SNELL & WILMER L.L.P.

By: /s/ Kelly H. Dove
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Attorneys for Defendant Wells Fargo, N.A.

Approved as to Form and Content by:

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*Attorneys for Plaintiff A Cab Series, LLC,
Administration Company*

Williams, Maricris

From: Jay Shafer <jshafer@crdslaw.com>
Sent: Wednesday, February 16, 2022 12:43 PM
To: Dove, Kelly
Cc: Williams, Maricris; Kathrine von Arx
Subject: RE: A-Cab

[EXTERNAL] jshafer@crdslaw.com

Yes, you may submit.



CORY READE DOWS & SHAFER
ATTORNEYS AT LAW

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Sent: Wednesday, February 16, 2022 11:17 AM
To: Jay Shafer <jshafer@crdslaw.com>
Cc: Williams, Maricris <mawilliams@swlaw.com>
Subject: A-Cab
Importance: High

Hi Jay –

We accepted your remaining changes. Please confirm that we can send this to the Court with your e-signature.

Thank you,
Kelly

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Snell & Wilmer

Pronouns: she/her/hers

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 A Cab Series, LLC, Plaintiff(s)

CASE NO: A-19-792961-C

7 vs.

DEPT. NO. Department 14

8 Michael Murray, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 2/24/2022

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