

IN THE SUPREME COURT OF THE STATE OF NEVADA

TKNR, INC., a California Corporation,

Appellant,

v.

W L A B INVESTMENT GROUP, LLC,

Respondent.

SC Case No. 85620

DC Case No.: A-18-785917-C

Electronically Filed
Jul 12 2023 10:29 AM
Elizabeth A. Brown
Clerk of Supreme Court

**From the Eighth Judicial District Court
The Honorable Linda Marie Bell, District Judge
District Court Case No. A-18-785917-C**

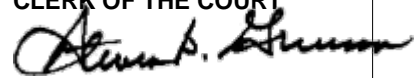
APPELLANT'S APPENDIX

Michael B. Lee, Esq. (NSB 10122)
Michael Matthis, Esq. (NSB 14582)
MICHAEL B. LEE, P.C.

VOLUME IX

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IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,

Plaintiff,

vs.

CASE NO.: A-18-785917-C
DEPT. NO.: XIV

**NOTICE OF ENTRY OF ORDER
DENYING DEFENDANTS' MOTION FOR
ATTORNEYS' FEES**

TKNR INC., a California Corporation, and
CHI ON WONG aka CHI KUEN WONG, an
individual, and KENNY ZHONG LIN, aka
KEN ZHONG LIN aka KENNETH ZHONG
LIN aka WHONG K. LIN aka CHONG
KENNY LIN aka ZHONG LIN, an
individual, and LIWE HELEN CHEN aka
HELEN CHEN, an individual and YAN QIU
ZHANG, an individual, and INVESTPRO
LLC dba INVESTPRO REALTY, a Nevada
Limited Liability Company, and MAN
CHAU CHENG, an individual, and JOYCE
A. NICKRANDT, an individual, and
INVESTPRO INVESTMENTS LLC, a
Nevada Limited Liability Company, and
INVESTPRO MANAGER LLC, a Nevada
Limited Liability Company and JOYCE A.
NICKRANDT, an individual and Does 1
through 15 and Roe Corporation I - XXX,

Defendants.

Date of Hearing: September 14, 2022
Time of Hearing: 9:00 a.m.

Please take notice that an Order Denying Defendants' Motion for Attorneys' Fees was
entered in the above-entitled matter on October 18, 2022, a copy of which is attached hereto.

DATED this 25th day of October, 2022.

MICHAEL B. LEE, P.C.

/s/ Michael Matthis
MICHAEL B. LEE, ESQ. (NSB No.: 10122)
MICHAEL MATTHIS, ESQ. (NSB No.: 14582)
Attorney for Defendants

MICHAEL B. LEE, P.C.
1820 E. SAHARA AVENUE, SUITE 110
LAS VEGAS, NEVADA 89104
TEL – (702) 477.7030; FAX – (702) 477.0096

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 25th day of October, 2022, I placed a copy of the
NOTICE OF ENTRY OF ORDER DENYING DEFENDATS' MOTION FO ATTORNEYS'
FEES as required by Eighth Judicial District Court Rule 7.26 by delivering a copy or by mailing
by United States mail it to the last known address of the parties listed below, facsimile
transmission to the number listed, and/or electronic transmission through the Court's electronic
filing system to the e-mail address listed below:

STEVEN DAY, ESQ.
Nevada Bar No. 3708
DAY & ASSOCIATES
1060 Wigwam Parkway
Henderson, NV 89074
Tel. (702)309-3333
Fax (702)309-1085
sday@dayattorneys.com
Attorneys for Plaintiff

Frank Miao
frankmiao@yahoo.com
Plaintiff

/s/Mindy Pallares
An employee of MICHAEL B. LEE, P.C.

1 DAO

2 **EIGHTH JUDICIAL DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4
5 WLAB INVESTMENT, LLC,

6 Plaintiff,

7 vs.

8 TKNR INC., a California Corporation, and CHI ON
9 WONG aka CHI KUEN WONG, an individual, and
10 KENNY ZHONG LIN, aka KEN ZHONG LIN aka
11 KENNETH ZHONG LIN aka ZHONG LIN, an
12 individual, and LIWE HELEN CHEN aka HELEN
13 CHEN, an individual and YAN QIU ZHANG, an
14 individual, and INVESTPRO LLC dba INVESTPRO
15 REALTY, a Nevada Limited Liability Company, and
16 MAN CHAU CHENG, an individual, and JOYCE A.
17 NICKRANDT, an individual, and INVESTPRO
18 INVESTMENTS LLC, a Nevada Limited Liability
19 Company, and INVESTPRO MANAGER LLC, a
20 Nevada Limited Liability Company and JOYCE A.
21 NICKRANDT, an individual and Does 1 through 15
22 and Roe Corporation I – XXX,

23 Defendants.

Case No. A-18-785917-C
Dept No. VII

24 **DECISION AND ORDER**

25 This case arises from WLAB Investment alleging that the TKNR Defendants had fraudulently
26 induced WLAB into purchasing an apartment building that contained numerous defects. Now before
27 the Court is the TKNR Defendants' Motion for Attorneys' Fees. WLAB filed an Opposition to the
28 TKNR Defendants' Motion on August 24, 2022. The parties came before this Court for oral argument
on September 14, 2022. After review of the papers filed and consideration of oral arguments, the
TKNR Defendants' Motion for Attorneys' Fees is denied.

29 **I. Factual and Procedural Background**

30 WLAB filed their initial complaint on December 11, 2018 against the TKNR Defendants for:
31 (1) Recovery under NRS Chapter 113; (2) Construct Fraud; (3) Common Law Fraud; and (4)
32 Fraudulent Inducement. After two years of litigation, the TKNR Defendants filed their Motion for

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

1 Summary Judgment, or in the alternative, Partial Summary Judgment. In the TKNR Defendants'
2 original Motion for Attorney's Fees which was incorporated in their December 15, 2020, Motion for
3 Summary Judgment, the TKNR Defendants petitioned the District Court for attorney's fees pursuant
4 to Rule 11 and NRS 18.010(2)(b). WLAB filed a timely Opposition as well as a Countermotion for
5 continuance based on NRCPP 56(f), and a Countermotion for Imposition of Monetary Sanctions.

6 On March 11, 2021, a hearing was held regarding the TKNR Defendants' Motion for
7 Summary Judgment. The Court granted Summary Judgment as to all claims and awarded the TKNR
8 Defendants attorney's fees as well as Rule 11 Sanctions. On March 31, 2021, the original order
9 granting summary judgment in favor of the TKNR Defendants was filed along with a hearing to show
10 cause related to the violation of Rule 11 by WLAB. However, the then-presiding Judge unilaterally
11 amended the original order, removing the order to show cause language, instead requesting the TKNR
12 Defendants to file an affidavit in support of the requested attorney's fees and costs. The TKNR
13 Defendants filed the Affidavit in support of Attorneys' Fees and Costs indicating that the requested
14 fees and costs were appropriate under either Rule 11 or for abuse of process.

15 On March 16, 2021, WLAB filed a Motion to Reconsider the Amended Order. The Court
16 granted in part and denied in part WLAB's Motion. On May 25, 2021, Judgment was entered awarding
17 the TKNR Defendants the sum of \$128,166.78 in attorneys' fees and costs from WLAB.

18 WLAB later filed a Notice of Appeal arguing that factual issues existed which precluded the
19 District Court from granting summary judgment. WLAB further argued that this matter did not warrant
20 Rule 11 sanctions. On May 12, 2022, the Nevada Supreme Court affirmed in part and reversed in part
21 the TKNR Defendants' Motion for Summary Judgment. The Nevada Supreme Court found that issues
22 of fact did not exist in the record and affirmed the District Court's granting of summary judgment. In
23 regards to the Rule 11 sanctions, the Nevada Supreme Court found that the TKNR Defendants' had
24 not complied with Rule 11 procedural rules. The Court concluded that the District Court imposed
25 sanctions without first giving the offending party notice and reasonable opportunity to respond. As
26 such, the Court reversed the award of the TKNR Defendants' attorney's fees. On August 16, 2022,
27 the Remittitur was filed with the Court.

28 On August 10, 2022, the TKNR Defendants filed the instant motion arguing that recovery of

attorneys' fees and costs is appropriate under NRS § 18.010(2)(a), NRS § 17.117, Nev. R. Civ. P. 68. The TKNR Defendants later filed a Supplement arguing they were entitled to attorney fees under the Residential Purchase Agreement entered into between the parties. WLAB later filed an Opposition to the TKNR Defendants' Motion for Attorney Fees and Costs arguing that the TKNR Defendants' Motion should be denied for failing to follow procedural requirements and as untimely pursuant to NRCP 54(d)(B)(i).

II. The TKNR Defendants are not entitled to attorney fees and costs under NRCP 11.

Rule 11 requires any motion for sanctions to be made "separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b)." Nev. R. Civ. P. 11(c)(1)(a). The motion must describe the specific conduct that allegedly violates section 11(b). Id.

The requirement of a separate Rule 11 motion is mandatory. Radcliffe v. Rainbow Constr. Co., 254 F.3d 772, 789 (9th Cir. 2001). A request for Rule 11 sanctions cannot be contained within any other motion. Id. The court in Nuwesra v. Merrill Lynch, Fenner & Smith, Inc., rejected defendants' argument to treat their affidavit of service and reply affidavit as a motion for Rule 11 sanctions because a motion must "be made separately from other motions or requests." Nuwesra v. Merrill Lynch, Fenner & Smith, Inc., 174 F.3d 87, 94 (2d Cir. 1999). In Barber v. Miller, the court acknowledged that defendant gave plaintiff multiple warnings but concluded that such warnings were not motions "and the Rule requires service of a motion." Barber v. Miller, 146 F.3d 707, 710 (9th Cir. 1998)

The Rule 11 motion must be served on opposing counsel but not filed with the court. Id. This is the 21 day "safe harbor" provision which allows the targeted attorney and party the opportunity to correct or withdraw the alleged wrongful claim or assertion. The 21-day safe harbor provision is also considered a mandatory step. Radcliffe at 788. Other federal appellate courts concur. Tompkins v. Cyr, 202 F.3d 770, 788 (5th Cir.2000); Elliott v. Tilton, 64 F.3d 213, 216 (5th Cir. 1995); Penn, LLC v. Prosper Bus. Dev. Corp., 773 F.3d 764 (6th Cir. 2014). In Corley v. Rosewood Care Ctr., Inc., 142 F.3d 1041, 1058 (7th Cir. 1998), the defendants conceded that rule 11 sanctions were improper where they had failed to comply with the separate motion and safe harbor provisions of Rule 11.

Here, the TKNR Defendants' Motion for Rule 11 sanctions is combined with their motion for

1 attorney fees. Defendants' Motion further fails to describe WLAB's specific conduct that allegedly
2 violates section 11(b). WLAB was served on August 10, 2022, with the TKNR Defendants' Motion
3 for Attorney Fees. WLAB had not, prior to filing the motion, been served with TKNR's Motion for
4 Rule 11 sanctions. WLAB was served a second time with TKNR's filed motion for attorney fees on
5 August 22, 2022. This again is a direct violation of the procedural requirements of NRCP 11(c)(2)
6 requiring a 21 day safe harbor before a motion for Rule 11 sanctions. Furthermore, this was
7 specifically the Nevada Supreme Court's finding with the last Rule 11 motion previously filed for the
8 TKNR Defendants. On May 12, 2022, The Nevada Supreme Court found that the TKNR Defendants'
9 motion for Rule 11 sanctions did not meet the rule's "Mandatory procedural requirements" and
10 reversed the district court's order awarding attorney fees:

11 In particular, respondents did not serve notice of their motion at least
12 21 days before they filed the motion with the district court and the motion was
13 not made separately from their summary judgment motion as required by NRCP 11(c)(2).

14 See Supreme Court Order, May 12, 2022, p.7

15 The targeted party of Rule 11 sanctions must be given an opportunity to respond. In this case,
16 no such opportunity was given and the TKNR Defendants' again failed to follow Rule 11 procedures.
17 Therefore, The TKNR Defendants' request for attorney fees under Rule 11 is denied.

18 **III. TKNR's request for attorney fees based on NRS 18.010, NRS 17.117 and NRCP 68 is**
19 **denied as untimely.**

20 NRCP 54(d)(B)(i) states that a motion for attorney fees must be filed within 21 days of notice
21 of entry of order of judgment. Pursuant to NRCP 54(d)(B)(i), The TKNR Defendants' instant motion
22 for attorney fees based on NRS 18.010, NRS 17.117 and NRCP 68 is denied as untimely. Here, the
23 TKNR Defendants in their December 15, 2020, Motion for Summary Judgment, requested attorney
24 fees pursuant to NRS 18.010(2)(b) and Rule 11. The then-presiding Judge chose to award attorney
25 fees pursuant to Rule 11. The TKNR Defendants did not appeal the denial of their request for fees
26 pursuant to NRS 18.010(2)(b). The TKNR Defendants instead decided to request fees pursuant to
27 NRS 18.010(2)(b) over one year post judgment.

28 In the TKNR Defendants' Motion for Summary Judgment, TKNR argued they were entitled

1 to attorney fees based on Rule 11 and NRS 18.010(2)(b). See TKNR Defendants' Motion for Summary
2 Judgment, pp. 30-31. The TKNR Defendants never requested fees pursuant to NRS 17.117 or NRCP
3 68. Id. The TKNR Defendants have argued for the first time, over 400 days after notice of entry of
4 judgment, that they are entitled to fees pursuant to NRS 17.117 and NRCP 68. The 21 day window to
5 file a motion for attorney fees under NRCP 54(d)(B)(i) has passed. Therefore, the TKNR Defendants'
6 request for attorney fees pursuant to NRS 18.010, NRS 17.117 and NRCP 68 is denied as untimely.

7
8 **IV. TKNR's request for attorney fees based on the Residential Purchase Agreement is denied as untimely.**

9 On August 25, 2022, The TKNR Defendants filed a supplement to their original Motion
10 arguing that pursuant to the terms of the Residential Purchase Agreement signed by the parties in this
11 matter, the TKNR Defendants are entitled to their attorney fees and costs. The Supplement includes
12 citation to the provision of the Residential Purchase Agreement between the Parties that provide for
13 recovery of attorneys' fees and costs by the prevailing party.

14 Here, the TKNR Defendants had 21 days to file their motion for attorney fees to specify "the
15 judgment and the statute, rule, or other grounds entitling the movant to the award." Nev. R. Civ. P
16 54(d)(2)(B)(i)(ii). The TKNR Defendants filed this supplement to their original Motion for Attorney
17 Fees approximately a year and a half after notice of the entry of judgment. The TKNR Defendants did
18 not mention The Residential Purchase Agreement entered into between both parties as a ground that
19 entitled them to attorney fees when they filed their original motion on December 15, 2020. The TKNR
20 Defendants' request for attorney fees based on the supplement filed on August 25, 2022 is untimely
21 under NRCP 54(d)(2)(B)(i)(ii). Therefore, the Motion for Attorney Fees and Costs pursuant to the
22 Residential Purchase Agreement is denied.

23 **V. Conclusion**

24 In regards to the request for attorney fees under Rule 11, the TKNR Defendants have again
25 failed to follow procedural requirements. Furthermore, Pursuant to NRCP 54(d)(B)(i), The TKNR
26 Defendants' Motion for Attorney Fees and Costs pursuant to NRS 18.010, NRS 17.117, NRCP 68,
27 and the Residential Purchase Agreement is denied as untimely. Based on the foregoing, the TKNR
28

1 Defendants' Motion for Attorneys' Fees and Costs is denied. The October 19, 2022 status check is
2 VACATED.

3 DATED this _____ Dated this 18th day of October, 2022 day of October, 2022.

4 

5 LINDA MARIE BELL
6 DISTRICT COURT JUDGE
7 CD9 616 7970 6BB8
8 Linda Marie Bell
9 District Court Judge

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 W L A B Investment LLC,
Plaintiff(s)

CASE NO: A-18-785917-C

7 vs.

DEPT. NO. Department 7

8
9 TKNR Inc, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 10/18/2022

15 Brinley Richeson	bricheson@daynance.com
16 Steven Day	sday@daynance.com
17 Michael Matthis	matthis@mblnv.com
18 Nikita Burdick	nburdick@burdicklawnv.com
19 Michael Lee	mike@mblnv.com
20 Bradley Marx	brad@marxfirm.com
21 Frank Miao	frankmiao@yahoo.com
22 Benjamin Childs	ben@benchilds.com

23
24
25 If indicated below, a copy of the above mentioned filings were also served by mail
26 via United States Postal Service, postage prepaid, to the parties listed below at their last
known addresses on 10/19/2022

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AA001587

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John Savage	Holley Driggs Attn: John Savage, Esq 400 South Fourth Street, Third Floor Las Vegas, NV, 89101
Nikita Pierce	6625 South Valley View Blvd. Suite 232 Las Vegas, NV, 89118

From: mike@mblnv.com
Sent: Friday, April 2, 2021 11:58 AM
To: 'DC14Inbox'
Cc: 'Brinley Richeson'; 'Michael Matthis'; 'Steve Day'; 'Reed, Ariana'; Benjamin B. Childs (ben@benchilds.com)
Subject: A-18-785917-C - ORDR - Order to Show Cause Pursuant to Nevada Rule of Civil Procedure 11(c)(3) on Plaintiff and Plaintiff's Prior Counsel, Benjamin Childs, for Violation of Nevada Rule of Civil Procedure 11(b)
Attachments: 2021.04.02 - OSC re Rule 11.doc; 2021.04.02 - OSC re Rule 11.pdf

Dear Administrator:

As directed by this Honorable Court through the Order filed on March 30, 2021, please find the proposed Order to Show Cause related to the Rule 11 violations. I have copied Mr. Childs on this e-mail chain. As noted in the proposed OSC, we will also provide any executed Order to Frank Miao, the representative for Plaintiff, and Mr. Childs through e-mail. We have not included Mr. Miao on this e-mail at this time, but Plaintiff's current counsel is copied.

Thank you for your attention to this matter. As always, please contact me with any questions, comments, or concerns.

MICHAEL B. LEE, ESQ.

mike@mblnv.com



MICHAEL B. LEE, P.C.
EST. 1976

1820 E. Sahara Avenue, Suite 110, Las Vegas, NV 89104

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CONFIDENTIAL. This e-mail message and the information it contains are intended to be privileged and confidential communications protected from disclosure. Any file(s) or attachment(s) transmitted with it are transmitted based on a reasonable expectation of privacy consistent with ABA Formal Opinion No. 99-413. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. If you have received this e-mail message in error, please notify the sender by e-mail at mike@mblnv.com and permanently delete this message. Personal messages express only the view of the sender and are not attributable to Michael B. Lee, P.C. **IRS Circular 230 Disclosure:** To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

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Facsimile: (702) 477.0096
mike@mblnv.com
Attorney for Defendants

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,
Plaintiff,
vs.

CASE NO.: A-18-785917-C
DEPT. NO.: XIV

**ORDER TO SHOW CAUSE PURSUANT
TO NEVADA RULE OF CIVIL
PROCEDURE 11(c)(3) ON PLAINTIFF
AND PLAINTIFF'S PRIOR COUNSEL,
BENJAMIN CHILDS, FOR VIOLATION
OF NEVADA RULE OF CIVIL
PROCEDURE 11(B)**

Date of Hearing:
Time of Hearing:

TKNR INC., a California Corporation, and
CHI ON WONG aka CHI KUEN WONG, an
individual, and KENNY ZHONG LIN, aka
KEN ZHONG LIN aka KENNETH ZHONG
LIN aka WHONG K. LIN aka CHONG
KENNY LIN aka ZHONG LIN, an
individual, and LIWE HELEN CHEN aka
HELEN CHEN, an individual and YAN QIU
ZHANG, an individual, and INVESTPRO
LLC dba INVESTPRO REALTY, a Nevada
Limited Liability Company, and MAN
CHAU CHENG, an individual, and JOYCE
A. NICKRANDT, an individual, and
INVESTPRO INVESTMENTS LLC, a
Nevada Limited Liability Company, and
INVESTPRO MANAGER LLC, a Nevada
Limited Liability Company and JOYCE A.
NICKRANDT, an individual and Does 1
through 15 and Roe Corporation I - XXX,

Defendants.
AND RELATED CLAIMS.

This matter prior being set for hearing before the Honorable Court on March 11, 2021 at
9:30 a.m., on Defendants' TKNR INC., CHI ON WONG aka CHI KUEN WONG, KENNY
ZHONG LIN, aka KEN ZHONG LIN aka KENNETH ZHONG LIN aka WHONG K. LIN aka
CHONG KENNY LIN aka ZHONG LIN, LIWE HELEN CHEN aka HELEN CHEN, YAN QIU
ZHANG, INVESTPRO LLC dba INVESTPRO REALTY, MAN CHAU CHENG, JOYCE A.
NICKRANDT, INVESTPRO INVESTMENTS LLC, and INVESTPRO MANAGER LLC,

(collectively, the “Defendants”), Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment (“Motion”), and this Court’s finding that “[t]he overwhelming facts and law illustrate that Plaintiff’s claim is frivolous” (Order at ¶ 78), issues this Order to Show Cause Pursuant to Nevada Rule of Civil Procedure 11(c)(3) on Plaintiff and Plaintiff’s Prior Counsel, Benjamin Childs, Esq., for Violation of Nevada Rule of Civil Procedure 11(b).

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. Frank Miao, on behalf of Plaintiff, and Benjamin Childs, Esq., are to appear, which may be through remote means if elected by the Court, before this Honorable Court in Department XIV, 200 Lewis Avenue, Las Vegas, Nevada 89155, on the ____ day of _____, 2021, at ____:____.m., to show cause why they should not be held in contempt of court.

2. Pursuant to Nevada Rule of Civil Procedure 11(b), this Honorable Court previously found that Plaintiff violated Rule 11(b), and the Court sets this Order to Show Cause related to appropriate sanctions on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.” NEV. R. CIV. PRO. 11(c).

3. “On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).” *Id.* at 11(c)(3). “A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney fees and other expenses directly resulting from the violation.” *Id.* at 11(c)(4).

4. Rule 11 prevents a party from bringing a lawsuit for an improper purpose, which includes: (1) harassment, causing unnecessary delay, or needless increasing the cost of litigation; or (2) making frivolous claims. NEV. R. CIV. PRO. 11(b)(1)-(2). Rule 11 sanctions should be

1 imposed for frivolous actions.

2 5. A frivolous claim is one that is “both baseless and made without a reasonable and
3 competent inquiry.” *Bergmann v. Boyce*, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993) (quoting
4 *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir.1990); *Golden Eagle*
5 *Distrib. Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1537 (9th Cir.1986)). A determination of
6 whether a claim is frivolous involves a two-pronged analysis: (1) the court must determine
7 whether the pleading is “well grounded in fact and is warranted by existing law or a good faith
8 argument for the extension, modification or reversal of existing law”; and (2) whether the
9 attorney made a reasonable and competent inquiry. *Bergmann*, 109 Nev. at 676, 856 P.2d at 564.

10 6. The court intends to award to the Defendants the reasonable expenses, including
11 attorneys’ fees and costs, incurred for defending this frivolous lawsuit, either under Rule 11 or as
12 damages for Defendants’ counterclaim for abuse of process. This sanction will be limited to
13 what suffices to deter repetition of the conduct or comparable conduct by others similarly
14 situated. The Court may also consider sanctions including nonmonetary directives, an order to
15 pay a penalty into court, or, an order directing payment to Defendants for part or all of the
16 reasonable attorney fees and other expenses directly resulting from the violation.

17 7. WLAB and Mr. Childs may file affidavits on their behalf with the Court and may
18 appear and present testimony at the hearing, or may, at or prior to the hearing, file with the Court
19 a written response to this Order to Show Cause and as it relates to the Rule 11 issued identified
20 herein and in the underlying Order;

21 8. In the event that Mr. Miao and/or Mr. Childs fail to appear at the Order to Show
22 Cause hearing, or fail to show sufficient cause why WLAB and Mr. Childs should not be
23 sanctioned under Rule 11, the Court will enter an order holding WLAB, Mr. Childs, and
24 Benjamin B. Childs (Law Firm), jointly and severally liable under Rule 11 for sanctions, and
25 consider holding WLAB and Mr. Childs in contempt of court, which may include both monetary
26 sanctions and jail time in the county jail; and

27 9. Defendants are directed to use reasonable means to serve a copy of this Order on
28 WLAB and Mr. Childs as expeditiously as possible, including, which may include electronic

MICHAEL B. LEE, P.C.
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TEL – (702) 477.7030; FAX – (702) 477.0096

1 service through the court filing system and e-mail to Mr. Miao, Plaintiff's current attorney Day
2 & Nance, and Mr. Childs.

3
4
5
6
7 Date: April 2, 2021.

8 Respectfully Submitted By:

9 MICHAEL B. LEE, P.C.

10 /s/ Michael Lee
11 MICHAEL B. LEE, ESQ. (NSB 10122)
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