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9 *Attorneys for Appellant*
10 *Nevada Collectors Association*

11 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

12 NEVADA COLLECTORS
13 ASSOCIATION, a Nevada Non-profit
Corporation,

14 Appellant,

15 vs.

16 SANDY O'LAUGHLIN, in her official
17 capacity as Commissioner of the State
18 of Nevada Department Of Business
And Industry Financial Institutions
Division; STATE OF NEVADA
19 DEPARTMENT OF BUSINESS AND
INDUSTRY FINANCIAL
20 INSTITUTIONS DIVISION; JUSTICE
COURT OF LAS VEGAS
21 TOWNSHIP; DOE DEFENDANTS 1
through 20; and ROE ENTITY
22 DEFENDANTS 1 through 20,

23 Respondents.

Electronically Filed
Nov 11 2020 02:31 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No.: 81930

District Court Case No.
A-19-805334-C

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

Appellants acknowledge that this statement must be completed fully, accurately and on time pursuant to NRAP 14(c); that the Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate; and that failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement.

Appellants further acknowledge that this Court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Appellants have used dividers to separate any attached documents.

1. Judicial District: Eighth Department: XXVII
County: Clark Judge: Nancy L. Allf
District Ct. Docket No.: A-19-805334-C

2. **Attorney(s) filing this docket statement:**

Attorney: Patrick J. Reilly, Esq. Telephone: (702) 382-2101
Emily A. Ellis, Esq.
Troy P. Domina, Esq.

Firm: Brownstein Hyatt Farber Schreck LLP

Address: 100 North City Parkway, Suite 1600
Las Vegas, NV 89106

Client(s): Nevada Collectors Association ("Appellant")

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

Attorney: Aaron D. Ford, Esq. Telephone: (702) 486-3103
Vivienne Rakowsky, Esq.
David J. Pope, Esq.

Firm: State of Nevada, Office of
the Attorney General

Address: 555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101

Client(s): Sandy O'Laughlin in her official capacity,
State of Nevada Department of Business
and Industry Financial Institutions Division;
(collectively "State Respondents")

Attorney: Thomas D. Dillard, Jr., Esq. Telephone: (702) 384-4012

Firm: Olson Cannon Gormley & Stoberski

Address: 9950 W. Cheyenne Avenue
Las Vegas, NV 89129

Client(s): Justice Court of Las Vegas Township

(“County Respondent” and collectively with
State Respondents “Respondents”)

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

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): |

Order Granting in Part and Denying in Part Motion to Amend Findings of
Fact and Conclusions of Law pursuant to Nevada Rule of Civil Procedure
52(b) and 59(e).

5. Does this appeal raise issues concerning any of the following: N/A

- ☐ Child custody
- ☐ 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: N/A

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

1 related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings)
2 and their disposition: N/A

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

5 This action involves facial and as-applied challenges to the
6 constitutionality of Assembly Bill (“A.B.”) 477, which was enacted by the
7 Nevada State Legislature in the 2019 legislative session, standing alone and in
8 combination with Justice Court of Las Vegas Township Rule (“JCR”) 16,
9 which requires corporate entities to retain an attorney to appear in courts.

10 Specifically, Section 18 of A.B. 477 arbitrarily caps the recovery of
11 attorney fees for a prevailing party in a civil lawsuit at only 15% of the amount
12 of any unpaid “consumer debt,” regardless of the amount of work incurred by
13 counsel in a debt collection action. A.B. 477, when acting in conjunction with
14 JCR 16, violates the rights of NCA’s members and creditors of the like,
15 fundamental right to meaningful access to Nevada Justice Courts. This law also
16 subjected NCA members to potential administrative enforcement and civil
17 liability every time they sought attorney fees above and beyond the amount
18 allowed under A.B. 477. Notably, financial institutions such as banks were
19 wholly exempt from A.B. 477, with no conceivable rational basis ever offered
20 by Respondents for this unlawful and irrational classification.

21 As such, NCA commenced this action seeking redress for violations of (i)
22 Substantive Due Process based on Section 18 of A.B. 477 and JCR 16, (ii)
23 Substantive and Procedural Due Process based on Section 19 of A.B. 477, (iii)

1 Equal Protection based Section 18 of A.B. 477, and (iv) Equal Protection based
2 Section 19 of A.B. 477, and seeking declaratory and injunctive relief relating
3 thereto. Following the filing of motions to dismiss, the lower court concluded
4 that there was no standing and no ripe case or controversy, yet then improperly
5 ruled on the substantive merits of the motions to dismiss. At the same time, in
6 spite of a lengthy and undisputed factual record, the lower court denied NCA's
7 Motion for Preliminary Injunction. The lower court entered its Findings of
8 Fact, Conclusions of Law, and Order, on July 20, 2020, ruling in favor of
9 Respondents. Thereafter, on September 10, 2020, the lower court issued an
10 Order Granting in Part and Denying in Part Plaintiffs Motion to Amend
11 Findings of Fact and Conclusions of Law, and entered its Amended Findings of
12 Fact and Conclusions of Law and Order on September 10, 2020.

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

15 (1) Whether the lower court erred, as a matter of law, by finding that
16 NCA lacked standing to sue.

17 (2) Whether the lower court erred, as a matter of law, by finding that it
18 lacked subject matter jurisdiction.

19 (3) Whether the lower court erred, as a matter of law, by finding that
20 there was no controversy between the parties.

21 (4) Whether the lower court erred, as a matter of law, by finding that
22 the issues were not ripe for adjudication.
23

(5) Whether the lower court erred by ruling substantively on the merits of the dispute after concluding that it possessed no subject matter jurisdiction over the matter, that the matter was not ripe, that there was no standing, and that there was no case or controversy.

(6) Whether the lower court erred, as a matter of law, by denying NCA's Motion for Preliminary Injunction.

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 numbers and identify the same or similar issues raised: **N/A**

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?

☐ Yes

☒ No

If not, explain: The appropriate state, state agency, or any officer or employee thereof are parties to this appeal.

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

☐ 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

1 X An issue of public policy

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

4 ☐ A ballot question

5 If so, explain:

6 The claims for relief in this matter challenge the constitutionality of
7 legislation enacted in the most recent legislative session and court rules
8 violating substantive and procedural due process, as well as equal protection
9 provisions in the Nevada and United States Constitutions. These issues involve
10 constitutional questions, involve important questions of public policy, and are
11 substantial issues of first-impressions.

12 **13. Assignment to the Court of Appeals or retention in the Supreme**
13 **Court.** Briefly set forth whether the matter should be presumptively retained
14 by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and
15 cite the subparagraph(s) of the Rule under which the matter falls. If appellants
16 believe that the Supreme Court should retain the case despite its presumptive
17 assignment to the Court of Appeals, identify the specific issue(s) or
18 circumstances(s) that warrants retaining the case, and include an explanation of
19 their importance or significance:

20 This case should be retained by the Supreme Court because the issues
21 involving A.B. 477 and its due process implications are questions of first
22 impression involving both the United States and Nevada Constitutions and are
23 matters of statewide public importance. *See* NRAP 17(a)(11) and (12).

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

2 N/A

3 Was it a bench trial or a jury trial? N/A

4 **15. Judicial Disqualification.** Do you intend to file a motion to disqualify or
5 have a justice recuse him/her from participation in this appeal?

6 No.

7 If so, which Justice? N/A

8 **TIMELINESS OF NOTICE OF APPEAL**

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

10 The judgment was entered on September 10, 2020.

11 If no written judgment or order was filed in the district court, explain the
12 basis for seeking appellant review: N/A

13 **17. Date written notice of entry of judgment or order served:** September
14 9, 2020.

15 Was service by:

16 ☐ Delivery

17 ☒ Mail/electronic/fax

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

20 The time for filing the notice of appeal was tolled by a post judgment motion.

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

23 ☐ NRCP 50(b) Date of filing: N/A

1 X NRCP 52(b) Date of filing: August 3, 2020

2 E-Service: August 3, 2020

3 X NRCP 59 Date of filing: August 3, 2020

4 E-Service: August 3, 2020

5 **NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or**
6 **reconsideration may toll the time for filing a notice of appeal. See AA**
7 **Primo Builders v. Washington, 125 Nev. Adv. Op. No. 61, 245 P.3d 1190**
8 **(2010).**

9 (b) Date of entry of written order resolving tolling motion: September 10,
10 2020

11 (c) Date of written notice of entry of order resolving tolling motion was
12 served: September 10, 2020

13 Was service by:

14 ☐ Delivery

15 X Mail/electronic/fax

16 **19. Date notice of appeal was filed: October 8, 2020.**

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

20 **20. Specify statute or rule governing the time limit for filing the notice of**
21 **appeal, *e.g.*, NRAP 4(a) or other.** NRAP 4(a)(1) provides that “a notice of
22 appeal must be filed after entry of a written judgment or order, and no later than
23

30 days after the date that written notice of entry of the judgment or order appealed from is served.”

SUBSTANTIVE APPEALABILITY

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

- ☒ NRAP 3A(b)(1) ☐ N R S 38.205
☐ NRAP 3A(b)(2) ☐ N R S 233B.150
☐ NRAP 3A(b)(3) ☐ N R S 703.376
☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1) allows for an appeal of a final judgment that “disposes of the issues presented in the case, determines the costs, and leaves nothing for the future consideration of the court.” *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000). The “Findings of Fact, Conclusions of Law and Order,” “Order Granting in Part and Denying in Part Plaintiff’s Motion to Amend Findings of Fact, Conclusions of Law and Order,” and “Amended Findings of Fact, Conclusions of Law and Order” are such a final orders from the district court.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiff: Nevada Collectors Association

1 Defendants: Sandy O’Laughlin, State of Nevada Department of Business
2 and Industry Financial Institutions Division, Justice Court of
Las Vegas Township

3 (b) If all parties in the district court are not parties to this appeal, explain
4 in detail why those parties are not involved in this appeal, *e.g.*, formally
5 dismissed, not served, or other: All the parties from the district court are parties
6 to this appeal. N/A

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

10 Appellant’s Claims: (1) Violation of Substantive Due Process based on
11 Section 18 of A.B. 477 and JCR 16 and its effects of depriving Appellant of the
12 right to retain counsel; (2) Violation of Substantive and Procedural Due Process
13 based on Section 19 of A.B. 477 and its effects of depriving Appellant of the
14 right to access to the courts; (3) Violation of Equal Protection based on Section
15 18 of A.B. 477 and its effects of depriving Appellant of the right to access to
16 the courts and a jury trial; (4) Violation of Equal Protection based on Section 19
17 of A.B. 477 because it contains arbitrary, partial, and unreasonable
18 classifications that bear no rational relationship to a legitimate governmental
19 purpose; and (5) Declaratory Relief that various sections of A.B. 477 and JCR
20 16 conflict and interfere with numerous provisions of the U.S. Constitution and
21 Nevada Constitution. All of these claims reached final disposition pursuant to
22 the Findings of Fact, Conclusions of Law and Order,” “Order Granting in Part
23 and Denying in Part Plaintiff’s Motion to Amend Findings of Fact, Conclusions

1 of Law and Order,” and “Amended Findings of Fact, Conclusions of Law and
2 Order.”

3 Respondents’ Counterclaims: N/A

4 **24. Did the judgment or order appealed from adjudicate ALL the claims**
5 **alleged below and the rights and liabilities of ALL the parties to the action**
6 **or consolidated actions below?**

7 ☒ Yes

8 ☐ No

9 **25. If you answered “No” to question 24, complete the following: N/A**

10 (a) Specify the claims remaining pending below:

11 (b) Specify the parties remaining below:

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

14 ☐ Yes

15 ☐ No

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

19 ☐ Yes

20 ☐ No

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

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

- 2 • The latest-filed complaint, counterclaims, cross-claims, and third-party
3 claims:

4 **Exhibit 1** – Complaint and Petition for Writ of Prohibition filed in
5 Eighth Judicial District Court Clark County, Nevada on November 13, 2019.

6 **Exhibit 2** –First Amended Complaint filed in United States
7 District Court, District of Nevada, on April 1, 2020.

- 8 • Any tolling motion(s) and order(s) resolving tolling motion(s):

9 **Exhibit 3** – Motion to Amend Findings of Fact and Conclusions of
10 Law and to Alter or Amend Judgment filed on August 3, 2020.

11 **Exhibit 4** – Order Granting in Part and Denying in Part Plaintiff's
12 Motion to Amend Findings of Fact and Conclusions of Law filed on September
13 10, 2020.

14 **Exhibit 5** – Amended Findings of Fact, Conclusions of Law and
15 Order issued on September 10, 2020.

- 16 • Orders of NRCP 41(a) dismissals formally resolving each claim,
17 counterclaims, cross-claims and/or third-party claims asserted in the
18 action or consolidated action below, even if not at issue on appeal: **N/A**

- 19 • Any other order challenged on appeal: **N/A**

- 20 • Notices of entry for each attached order:

21 **Exhibit 6** – Notice of Entry of Order Granting in Part and Denying
22 Part Plaintiff's Motion to Amend Findings of Fact and Conclusions of Law
23 filed on September 10, 2020.

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Exhibit 7 – Notice of Entry of Amended Findings of Fact and
Conclusions of Law and Order filed on September 10, 2020.

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.

Nevada Collectors Association

Name of Appellant

Patrick J. Reilly, Esq.

Emily A. Ellis, Esq.

Troy P. Domina, Esq.

Name of counsel of record

November 11, 2020

Date

/s/ Patrick J. Reilly

Signature of counsel of record

State of Nevada; County of Clark
State and county where signed

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DOCKETING STATEMENT** was filed electronically with the Nevada Supreme Court on the 11th day of November, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Aaron D. Ford, Esq.
Vivienne Rakowsky, Esq.
David J. Pope, Esq.
State of Nevada,
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
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*Attorneys for State Respondents, Sandy O'Laughlin, State of Nevada
Department of Business and Industry Financial Institutions Division.*

Thomas D. Dillard, Jr., Esq.
Olson Cannon Gormley & Stoberski
9950 W. Cheyenne Avenue
Las Vegas, NV 89129
tdillard@ocgas.com

Attorney for County Respondent, Justice Court of Las Vegas Township.

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Aaron D. Ford, Esq.
Vivienne Rakowsky, Esq.
David J. Pope, Esq.
State of Nevada,
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*Attorneys for State Respondents, Sandy O'Laughlin, State of Nevada
Department of Business and Industry Financial Institutions Division.*

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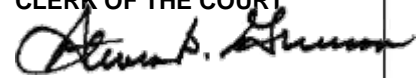
Thomas D. Dillard, Jr., Esq.
Olson Cannon Gormley & Stoberski
9950 W. Cheyenne Avenue
Las Vegas, NV 89129
tdillard@ocgas.com

Attorney for County Respondent, Justice Court of Las Vegas Township.

/s/ Mary A. Barnes
Mary A. Barnes, an employee of
Brownstein Hyatt Farber Schreck, LLP

Exhibit 1

**(11/13/2019 Complaint and Petition for Writ
of Prohibition)**



CASE NO: A-19-805334-C
Department 27

COMP

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Marckia L. Hayes, Esq., Nevada Bar No. 14539

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Attorneys for Nevada Collectors Association

DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA COLLECTORS
ASSOCIATION, a Nevada non-profit
corporation,

Plaintiff,

v.

STATE OF NEVADA DEPARTMENT
OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION;
JUSTICE COURT OF LAS VEGAS
TOWNSHIP; DOE DEFENDANTS 1
through 20; and ROE ENTITY
DEFENDANTS 1 through 20,

Defendants.

Case No.:

Dept. No.:

**COMPLAINT AND PETITION FOR WRIT
OF PROHIBITION**

Plaintiff NEVADA COLLECTORS ASSOCIATION ("NCA"), by and through its
counsel of record, the law firm of Brownstein Hyatt Farber Schreck, LLP, hereby alleges and
complains as follows:

PARTIES, JURISDICTION AND VENUE

1. NCA is a non-profit cooperative corporation organized and existing under the laws
of the State of Nevada.

2. NCA has representational standing in this action on behalf of its members, in
accordance with *Warth v. Seldin*, 422 U.S. 490 (1975), and its progeny.

///

19853882

3. Defendant State of Nevada Department of Business and Industry Financial Institutions Division (the "FID") is an administrative agency that licenses and regulates many of NCA's members under NRS Chapter 649.

4. Defendant Justice Court of Las Vegas Township (the "Justice Court") has jurisdiction over, *inter alia*, civil actions and proceedings in actions arising on contract for the recovery of money only, if the sum claimed, exclusive of interest, does not exceed \$15,000.00. NRS 4.370(1)(a).

5. The true names and capacities, whether individual, corporate, association or otherwise of Doe Defendants 1 through 20; and Roe Entity Defendants 1 through 20, inclusive, are unknown to Plaintiff at this time, who therefore sue said Defendants by such fictitious names. Plaintiff is informed and believes, and thereupon alleges, that each of the Defendants designated herein as Doe Defendants and/or Roe Entity Defendants are responsible in some manner for the events and occurrences herein referred to, and in some manner caused the injuries to Plaintiff alleged herein. Plaintiff will ask leave of the Court to amend this Complaint to insert true names and capacities of all Doe Defendants and/or Roe Entity Defendants when the same has been ascertained by Plaintiff, together with the appropriate charging allegations, and to join such parties in this action.

6. Jurisdiction is proper in this Court pursuant to the Nevada Constitution, Article 6, § 6, NRS Chapter 13, NRS 30.040, and because the acts and omissions complained of herein occurred and caused harm within Clark County, Nevada.

7. Venue is proper in this Court pursuant to NRS 13.020(3).

GENERAL ALLEGATIONS

A. Recovery of Attorney's Fees in Justice Court.

8. Nevada is and has been a jurisdiction in which courts apply the so-called "American Rule" when it comes to the recovery of attorney's fees. Specifically, attorney's fees may be awarded to a prevailing party if allowed by contract, statute, or other rule of law. *See Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1028 (2006).

1 9. Since the admission of this State to the Union, courts have adequately served as a
2 "gatekeeper" for requests for attorney's fees by prevailing parties and have dutifully exercised
3 their inherent judicial authority when assessing the reasonableness of attorney's fees awarded in
4 civil cases.

5 10. NCA's members consist of small businesses such as collection agencies, law
6 firms, and asset buying companies which engage in the business of collecting unpaid debt on
7 consumer accounts that are past due or in default. NCA's members collect monies on behalf of,
8 for the account of, or as assignees of businesses that sell goods and/or services to consumers
9 which are primarily for personal, family, or household purposes.

10 11. NCA's members collect various kinds of unpaid consumer debts, including the
11 following:

- 12 a. Medical debt (including doctors, dentists, and labs);
- 13 b. Utilities;
- 14 c. Rent;
- 15 d. Credit card and revolving debt;
- 16 e. Cell phone debt;
- 17 f. Automobile loans;
- 18 g. Professional services provided on credit; and
- 19 h. Installment loans governed by NRS Chapter 675.

20 12. NCA members' accounts receivable consist primarily of unpaid small dollar
21 consumer debts in amounts of \$5,000.00 or less ("Small Dollar Debts").

22 13. The Fair Debt Collection Practices Act (the "FDCPA") has a mandatory venue
23 provision requiring a debt collector to commence a civil action for the repayment of a consumer
24 debt in the judicial district or similar legal entity where (a) the consumer signed the contract; or
25 (b) the consumer resides at the time the suit is filed. 15 U.S.C. § 1692i(a)(2).

26 14. NCA's members are not individuals, but rather are entities which are prohibited
27 from appearing in Justice Court without representation by an attorney that is licensed to practice
28 law. Justice Court of Las Vegas Township Rule ("JCR") 16. JCR 16 states as follows:

Rule 16. Appearances in proper person. Unless appearing by an attorney regularly admitted to practice law in Nevada and in good standing, no entry of appearance or subsequent document purporting to be signed by any party to an action shall be recognized or given any force or effect unless the same shall be notarized, or signed with an unsworn declaration pursuant to NTS 53.045, by the party signing the same. Corporations and limited liability corporations (LLC) shall be represented by an attorney.

15. Because of JCR 16, any time an NCA member commences a civil action to recover a debt, it is forced to retain an attorney to file, litigate, and recover monies in a collection action in Justice Court.

16. Because NCA's members are forced to retain counsel, they are forced to incur significant attorney's fees to (a) prepare and file the complaint; (b) litigate the case to judgment; and (c) attempt to collect upon that judgment.

B. Enactment of A.B. 477 and Its Effect Upon Access to Courts.

17. In the 2019 legislative session, the Nevada State Legislature enacted Assembly Bill ("A.B.") 477, which was designed principally to govern the accrual of interest in consumer form contracts and consumer debts.

18. A.B. 477 was codified in Title 8 of the NRS and is referred to as the Consumer Protection from the Accrual of Predatory Interest After Default Act.

19. The stated purpose of the Act is to protect consumers and "must be construed as a consumer protection statute for all purposes."

20. Section 6 of A.B. 477 defines "consumer" as "a natural person."

21. Section 7 of A.B. 477 defines "consumer debt" as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction which the money, property, insurance or services which are the subject of the transaction are primarily personal, family or household purposes, whether or not such obligation has been reduced to judgment."

22. A.B. 477 purports to apply to consumer contracts "entered into on or after October 1, 2019."

23. Though the language of A.B. 477 is inherently vague and ambiguous, A.B. 477 appears to limit the recovery of attorney's fees in any action involving the collection of any

consumer debt to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if there is an express written agreement for the recovery of attorney's fees.

24. Specifically, Section 18 of A.B. 477 provides:

1. If the plaintiff is the prevailing party in any action to collect a consumer debt, the plaintiff is entitled to collect attorney's fees only if the consumer form contract or other document evidencing the indebtedness sets forth an obligation of the consumer to pay such attorney's fee[s] and subject to the following conditions:

(a) If a consumer form contract or other document evidencing indebtedness provides for attorney's fees in some specific percentage, such provision and obligation is valid and enforceable for an amount not to exceed 15 percent of the amount of the debt, excluding attorney's fees and collection costs.

(b) If a consumer form contract or other document evidencing indebtedness provides for the payment of reasonable attorney's fees by the debtor, without specifying any specific percentage, such provision must be construed to mean the lesser of 15 percent of the amount of the debt, excluding attorney's fees and collection rate for such cases multiplied by the amount of time reasonably expended to obtain the judgment.

25. A.B. 477 is not scaled to the unpaid amount of the debt, meaning that the bill imposes a 15% rate cap regardless of the amount of the unpaid principal amount owed.

26. For example, if A.B. 477 were enforced, a prevailing plaintiff would be limited to an award of a mere \$75.00 in attorney's fees on an unpaid \$500.00 consumer debt, or \$150.00 in attorney's fees on a \$1,000.00 consumer debt.

27. This cap purports to apply regardless of the amount of work required for a prevailing plaintiff to obtain a judgment, including the drafting a complaint, litigating and obtaining a judgment, and then collecting on that judgment.

28. In the event a debtor disputes the debt and proceeds to trial, a creditor is still limited to no more than 15% of the recovery, regardless of how many hours are required for the prevailing plaintiff to obtain and collect upon a judgment.

29. A.B. 477 imposes a rate cap of 15% even when a party wishes to invoke its right to a jury trial under the Seventh Amendment of the United States Constitution and Article 1, Section 3 of the Nevada Constitution.

1 30. A.B. 477 is squarely designed to prevent access to courts. During consideration of
2 A.B. 477, Peter J. Goatz of the Legal Aid Center of Southern Nevada, Inc. testified that the intent
3 of A.B. 477 was to push debt collection cases into small claims court “where attorney’s fees are
4 unavailable.” Mr. Goatz later testified that the purpose of the attorney fee cap in A.B. 477 was to
5 effectively eliminate access to courts for small businesses “because there would not be an
6 incentive for an attorney to take on a small dollar debt case....”

7 31. At the Las Vegas Justice Court Bench Bar Meeting on July 30, 2019, one judge
8 specifically noted that, in many instances, the 15% attorney fee cap will cause the amount of
9 attorney’s fees awarded in cases to be “unreasonable” given the amount of work required to
10 obtain and collect upon a judgment.

11 32. In fact, A.B. 477 renders Small Dollar Debt cases cost prohibitive because NCA
12 members will be forced to pay their attorney out-of-pocket for the attorney’s fees above those that
13 are capped by A.B. 477. In many cases, these out-of-pocket costs will actually exceed the
14 amount of the judgment awarded, with no recourse to NCA’s members.

15 33. Many of NCA’s members have already been notified by their attorneys that it is
16 economically unfeasible to continue to represent their clients in Small Dollar Debt cases once
17 A.B. 477 becomes effective.

18 34. Because the attorney fee limitation in A.B. 477 is so severe, NCA’s members will
19 be unable to retain counsel to represent them in small dollar consumer cases for contract entered
20 into after October 1, 2019.

21 35. Meanwhile, A.B. 477 provides that a debtor in an action involving the collection
22 of consumer debt may receive any attorney’s fees that are considered reasonable, without any
23 other restriction or limitation. Specifically, Section 19 provides:

24 If the debtor is the prevailing party in any action to collect
25 a consumer debt, the debtor is entitled to an award of
26 reasonable attorney’s fees. The amount of the debt that
27 the creditor sought may not be a factor in determining the
28 reasonableness of the award.

36. Because NCA's members are required to obtain counsel in Nevada courts, and because A.B. 477 deliberately seeks to deprive NCA's members from accessing the court system in small dollar consumer cases, A.B. 477 deprives them of access to the court system to obtain recovery of unpaid consumer debts.

37. NCA's members will be unable to obtain counsel to represent them based on the attorney's fees limit in Sections 18 and 19 of the Act.

38. Indeed, Sections 18 and 19 of A.B. 477 were designed specifically to prohibit debt collectors from having fair access to courts.

C. A.B. 477's Conflict with Specific Fee Shifting and Lien Statutes and Rules.

39. Nevada law has numerous statutes and rules which specifically provide for the recovery of reasonable attorney's fees, without any other limitation, to prevailing parties. These rules apply to the recovery of debts, regardless of whether such debts are commercial debts or consumer debts, and include the following:

- a. Offers of Judgment—Justice Court Rule of Civil Procedure 68
- b. Mechanic's Liens—NRS 108.237(1) and NRS 108.239(9)(b);
- c. Attorney's Liens—NRS 18.015(1);
- d. Homeowner's Associations—NRS 116.4117(4);
- e. Justice Court Actions—NRS 69.030;
- f. Appeals from Justice Court—NRS 69.050;
- g. Arbitrations—NRS 38.243(3);
- h. Fees governed by agreement, express or implied—NRS 18.010(1);
- i. Actions when the prevailing party has recovered less than \$20,000—NRS 18.010(2); and
- j. Landlord/Tenant—NRS 118A.515.

40. In Justice Courts, claims for attorney's fees are taxed as "costs" against the losing party. *See* NRS 69.030.

41. NCA is entitled to declaratory relief as to whether A.B. 477 prevails over or is subservient to each of the foregoing fee shifting rules.

42. Although a fundamental tenet of our judicial system is equal justice for all, A.B. 477 expressly favors the outcome for one discrete group of litigants at the expense of another, as it limits amounts that can be recovered against consumers simply because they are consumers, and thereby creates an impermissible an unconstitutional classification.

43. In part because of the confusion created by A.B. 477 and its applicability, NCA's members are at risk of administrative enforcement to the extent they seek amounts in excess of those allowed by A.B. 477.

FIRST CLAIM FOR RELIEF

(Violation of Substantive Due Process based on Section 18 of A.B. 477 and JCR 16)

44. NCA incorporates and realleges the previous paragraphs as though fully set forth herein.

45. The Fourteenth Amendment to the United States Constitution provides that "no state [may] deprive any person of life, liberty, or property without due process of law." In addition, 42 U.S.C. § 1983 provides a civil right of action against any person who, under color of state law, deprives any person of the rights, privileges, or immunities secured by the Constitution and laws.

46. Similarly, Article 1, Section 8 of the Nevada Constitution provides that "[n]o person shall be deprived of life, liberty, or property, without due process of law."

47. NCA and its members are persons within the meaning of the United States and Nevada Constitutions' guarantees of due process.

48. The fundamental constitutional right to meaningful access to the courts constitutes a "liberty interest" within the meaning of and subject to due process protections under the Nevada and United States Constitutions; and therefore, by definition, may not be denied arbitrarily, capriciously, corruptly, or based upon partiality or favoritism.

49. The fundamental constitutional right to retain counsel constitutes a "liberty interest" within the meaning of and subject to due process protections under the Nevada and United States Constitutions; and therefore, by definition, may not be denied arbitrarily, capriciously, corruptly, or based upon partiality or favoritism.

59. NCA and its members are persons within the meaning of the United States and Nevada Constitutions' guarantees of due process.

60. The fundamental constitutional right to meaningful access to the courts constitutes a "liberty interest" within the meaning of and subject to due process protections under the Nevada and United States Constitutions; and therefore, by definition, may not be denied arbitrarily, capriciously, corruptly, or based upon partiality or favoritism.

61. The fundamental right to petition for a governmental redress of grievances constitutes a "liberty interest" within the meaning of and subject to due process protections under the Nevada and United States Constitutions; and therefore, by definition, may not be denied arbitrarily, capriciously, corruptly, or based upon partiality or favoritism.

62. The fundamental right to petition to a jury trial constitutes a "liberty interest" within the meaning of and subject to due process protections under the Nevada and United States Constitutions; and therefore, by definition, may not be denied arbitrarily, capriciously, corruptly, or based upon partiality or favoritism.

63. Section 19 of the Act effectively denies NCA meaningful access to the courts, and was in fact designed to do so.

64. Section 19 of the Act unfairly and unduly favors one party over another in Justice Court cases based solely upon the classification of the person appearing in a Justice Court case.

65. Section 19 of the Act is arbitrary, irrational, and lacks impartiality as applied to NCA.

66. NCA and its members have been deprived of fundamental liberty rights in violation of the substantive due process guarantees of the Nevada and United States Constitutions.

67. As a direct and proximate result of the constitutional violations contained in A.B. 477, NCA is entitled to preliminary and permanent injunctive relief.

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THIRD CLAIM FOR RELIEF

(Violation of Equal Protection based Section 18 of A.B. 477)

68. NCA incorporates and realleges the previous paragraphs as though fully set forth herein.

69. The Fourteenth Amendment to the United States Constitution provides that no “state [may] ... deny to any person within its jurisdiction the equal protection of the laws.” In addition, 42 U.S.C. § 1983 provides a civil right of action against any person who, under color of state law, deprives any person of the rights, privileges, or immunities secured by the Constitution and laws.

70. Similarly, Article 4, Section 21 of the Nevada Constitution requires that all laws be “general and of uniform operation throughout the State.”

71. NCA’s members are persons within the meaning of the Nevada and United States Constitutions’ guarantees of equal protection.

72. NCA’s members have a fundamental constitutional right to meaningful access to the courts, to counsel, and to a jury trial.

73. Section 18 of A.B. 477 violates equal protection as applied to NCA’s members because it contains arbitrary, partial, and unreasonable classifications that bear no rational relationship to a legitimate governmental interest.

74. Alternatively, Section 18 of A.B. 477 bears no real or substantial relation between A.B. 477 and its objective.

75. Section 18 of the Act further violates equal protection as applied to NCA because it contains arbitrary, partial, and unreasonable classifications that are not narrowly tailored to any the advancement of any compelling interest.

76. As a result, the rights to equal protection of the law of NCA’s members are violated by A.B. 477.

77. As a direct and proximate result of the constitutional violations contained in A.B. 477, NCA is entitled to preliminary and permanent injunctive relief.

///

FOURTH CLAIM FOR RELIEF

(Violation of Equal Protection based Section 19 of A.B. 477)

78. NCA incorporates and realleges the previous paragraphs as though fully set forth herein.

79. The Fourteenth Amendment to the United States Constitution provides that no “state [may] ... deny to any person within its jurisdiction the equal protection of the laws.” In addition, 42 U.S.C. § 1983 provides a civil right of action against any person who, under color of state law, deprives any person of the rights, privileges, or immunities secured by the Constitution and laws.

80. Similarly, Article 4, Section 21 of the Nevada Constitution requires that all laws be “general and of uniform operation throughout the State.”

81. NCA is a person within the meaning of the Nevada and United States Constitutions’ guarantees of equal protection.

82. NCA’s members have a fundamental constitutional right to meaningful access to the courts.

83. Section 19 of the Act violates equal protection as applied to NCA because it contains arbitrary, partial, and unreasonable classifications that bear no rational relationship to a legitimate governmental interest.

84. Alternatively, Section 19 of A.B. 477 bears no real or substantial relation between A.B. 477 and its objective.

85. Section 19 of A.B. 477 further violates equal protection as applied to NCA because it contains arbitrary, partial, and unreasonable classifications that are not narrowly tailored to any the advancement of any compelling interest.

86. As a result, the rights to equal protection of the law of NCA’s members are violated by A.B. 477.

87. As a direct and proximate result of the constitutional violations contained in A.B. 477, NCA is entitled to preliminary and permanent injunctive relief.

///

FIFTH CLAIM FOR RELIEF

(Declaratory Relief)

88. NCA incorporates and realleges the previous paragraphs as though fully set forth herein.

89. Under NRS 30.010, *et seq.*, the Uniform Declaratory Judgment Act, any person whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain declaration of rights, status or other legal relations thereunder.

90. Section 18 of A.B. 477 limits a debt collector's recovery of attorney's fees in any action involving the collection of consumer debt to fifteen percent.

91. Section 19 of A.B. 477 allows a debtor in an action involving collection of consumer debt to recovery any attorney's fees that are considered reasonable.

92. Sections 18 and 19 of the Act unduly conflict and interfere with numerous provisions of Nevada law that specifically allow for the recovery or reasonable attorney's fees, including various lien statutes and other prevailing party provisions.

93. JCR 16 prohibits entities from appearing in Justice Court without representation by an attorney that is licensed to practice law.

94. In conjunction with Section 18, JCR 16 effectively leaves entities without access to the courts and to a jury trial, as the attorney's fee limit makes it impossible for entities to retain counsel to represent them in small dollar consumer debt actions.

95. Sections 18 and 19 of A.B. 477 and JCR 16 unduly conflict and interfere with numerous provisions of the U.S. Constitution and Nevada Constitution, entitling Plaintiff to a declaratory judgment to that effect.

96. The foregoing issues are ripe for judicial determination because there is a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

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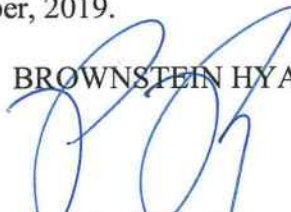
PRAYER FOR RELIEF

WHEREFORE, NCA prays for relief from this Court as follows:

1. For preliminary and permanent injunctive relief holding that A.B. 477 is unconstitutional under the Nevada Constitution and the Federal Constitution;
2. For preliminary and permanent injunctive relief holding that JCR 16 is unconstitutional under the Nevada Constitution and the Federal Constitution;
3. For a writ of prohibition against the Justice Court's enforcement of Sections 18 and 19 of A.B. 477 and/or JCR 16;
4. For declaratory relief; and
5. For any additional relief this Court deems just and proper.

DATED this 12th day of November, 2019.

BROWNSTEIN HYATT FARBER SCHRECK, LLP



Patrick J. Reilly, Esq.
Marckia L. Hayes, Esq.
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614

Attorneys for Nevada Collectors Association

Exhibit 2

(4/1/2020 First Amended Complaint)

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Nevada Bar No. 6103
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Attorneys for Nevada Collectors Association

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NEVADA COLLECTORS
ASSOCIATION, a Nevada non-profit
corporation,

Plaintiff,

v.

SANDY O'LAUGHLIN, in her official
capacity as Commissioner of State Of
Nevada Department Of Business And
Industry Financial Institutions Division;
STATE OF NEVADA DEPARTMENT
OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION;
JUSTICE COURT OF LAS VEGAS
TOWNSHIP; DOE DEFENDANTS 1
through 20; and ROE ENTITY
DEFENDANTS 1 through 20,

Defendants.

Case No.: 2:20-cv-0007-JCM-EJY

FIRST AMENDED COMPLAINT

Plaintiff Nevada Collectors Association ("NCA"), by and through its counsel of record,
the law firm of Brownstein Hyatt Farber Schreck, LLP, hereby alleges and complains as follows:

PARTIES, JURISDICTION AND VENUE

1. NCA is a non-profit cooperative corporation organized and existing under the laws
of the State of Nevada.

2. NCA has representational standing in this action on behalf of its members, in
accordance with *Warth v. Seldin*, 422 U.S. 490 (1975), and its progeny.

3. Defendant State of Nevada Department of Business and Industry Financial Institutions Division (the “FID”) is an administrative agency that licenses and regulates many of NCA’s members under NRS Chapter 649.

4. Defendant Sandy O’Laughlin (“Laughlin”) is the Commissioner of the FID.

5. Defendant Justice Court of Las Vegas Township (the “Justice Court”) has jurisdiction over, *inter alia*, civil actions and proceedings in actions arising on contract for the recovery of money only, if the sum claimed, exclusive of interest, does not exceed \$15,000.00. NRS 4.370(1)(a).

6. The true names and capacities, whether individual, corporate, association or otherwise of Doe Defendants 1 through 20; and Roe Entity Defendants 1 through 20, inclusive, are unknown to Plaintiff at this time, who therefore sue said Defendants by such fictitious names. Plaintiff is informed and believes, and thereupon alleges, that each of the Defendants designated herein as Doe Defendants and/or Roe Entity Defendants are responsible in some manner for the events and occurrences herein referred to, and in some manner caused the injuries to Plaintiff alleged herein. Plaintiff will ask leave of the Court to amend this Complaint to insert true names and capacities of all Doe Defendants and/or Roe Entity Defendants when the same has been ascertained by Plaintiff, together with the appropriate charging allegations, and to join such parties in this action.

7. Jurisdiction is proper in this Court pursuant to the Nevada Constitution, Article 6, § 6, NRS Chapter 13, NRS 30.040, and because the acts and omissions complained of herein occurred and caused harm within Clark County, Nevada.

8. Venue is proper in this Court pursuant to NRS 13.020(3).

GENERAL ALLEGATIONS

A. Recovery of Attorney’s Fees in Justice Court.

9. Nevada is and has been a jurisdiction in which courts apply the so-called “American Rule” when it comes to the recovery of attorney’s fees. Specifically, attorney’s fees may be awarded to a prevailing party if allowed by contract, statute, or other rule of law. *See Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1028 (2006).

1 10. Since the admission of this State to the Union, courts have adequately served as a
2 “gatekeeper” for requests for attorney’s fees by prevailing parties and have dutifully exercised
3 their inherent judicial authority when assessing the reasonableness of attorney’s fees awarded in
4 civil cases.

5 11. NCA’s members consist of small businesses such as collection agencies, law
6 firms, and asset buying companies which engage in the business of collecting unpaid debt on
7 consumer accounts that are past due or in default. NCA’s members collect monies on behalf of,
8 for the account of, or as assignees of businesses that sell goods and/or services to consumers
9 which are primarily for personal, family, or household purposes.

10 12. NCA’s members collect various kinds of unpaid consumer debts, including the
11 following:

- 12 a. Medical debt (including doctors, dentists, and labs);
- 13 b. Utilities;
- 14 c. Rent;
- 15 d. Credit card and revolving debt;
- 16 e. Cell phone debt;
- 17 f. Automobile loans;
- 18 g. Professional services provided on credit; and
- 19 h. Installment loans governed by NRS Chapter 675.

20 13. Nearly all of NCA members’ accounts receivable consist of unpaid small dollar
21 consumer debts.

22 14. The Fair Debt Collection Practices Act (the “FDCPA”) has a mandatory venue
23 provision requiring a debt collector to commence a civil action for the repayment of a consumer
24 debt in the judicial district or similar legal entity where (a) the consumer signed the contract; or
25 (b) the consumer resides at the time the suit is filed. 15 U.S.C. § 1692i(a)(2).

26 15. NCA’s members are not individuals, but rather are entities who are prohibited
27 from appearing in Justice Court without representation by an attorney that is licensed to practice
28 law. Justice Court of Las Vegas Township Rule (“JCR”) 16. JCR 16 states as follows:

Rule 16. Appearances in proper person. Unless appearing by an attorney regularly admitted to practice law in Nevada and in good standing, no entry of appearance or subsequent document purporting to be signed by any party to an action shall be recognized or given any force or effect unless the same shall be notarized, or signed with an unsworn declaration pursuant to NTS 53.045, by the party signing the same. Corporations and limited liability corporations (LLC) shall be represented by an attorney.

16. Because of JCR 16, any time that an NCA member commences a civil action to recover a debt, it is forced to retain an attorney to file, litigate, and recover monies in a collection action in Justice Court.

17. Because NCA's members are forced to retain counsel, they are forced to incur significant attorney's fees to (a) prepare and file the complaint; (b) litigate the case to judgment; and (c) attempt to collect upon that judgment.

B. Enactment of A.B. 477 and Its Effect Upon Access to Courts.

18. In the 2019 legislative session, the Nevada State Legislature enacted Assembly Bill ("A.B.") 477, which was designed principally to govern the accrual of interest in consumer form contracts and consumer debts.

19. A.B. 477 was codified in Title 8 of the NRS and is referred to as the Consumer Protection from the Accrual of Predatory Interest After Default Act.

20. The purpose of the Act is to protect consumers and "must be construed as a consumer protections statute for all purposes."

21. Section 6 of A.B. 477 defines "consumer" as "a natural person."

22. Section 7 of A.B. 477 defines "consumer debt" as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction which the money, property, insurance or services which are the subject of the transaction are primarily personal, family or household purposes, whether or not such obligation has been reduced to judgment."

23. A.B. 477 purports to apply to consumer contracts "entered into on or after October 1, 2019."

24. Though the language of A.B. 477 is inherently vague and ambiguous, A.B. 477 appears to limit the recovery of attorney's fees in any action involving the collection of any

1 consumer debt to no more than fifteen percent (15%) of the unpaid principal amount of the debt,
2 and only if there is an express written agreement for the recovery of attorney's fees.

3 25. Specifically, Section 18 of A.B. 477 provides:

4 1. If the plaintiff is the prevailing party in any action to collect a consumer
5 debt, the plaintiff is entitled to collect attorney's fees only if the consumer
6 form contract or other document evidencing the indebtedness sets forth an
7 obligation of the consumer to pay such attorney's fee[s] and subject to the
8 following conditions:

9 (a) If a consumer form contract or other document evidencing
10 indebtedness provides for attorney's fees in some specific
11 percentage, such provision and obligation is valid and enforceable
12 for an amount not to exceed 15 percent of the amount of the debt,
13 excluding attorney's fees and collection costs.

14 (b) If a consumer form contract or other document evidencing
15 indebtedness provides for the payment of reasonable attorney's fees
16 by the debtor, without specifying any specific percentage, such
17 provision must be construed to mean the lesser of 15 percent of the
18 amount of the debt, excluding attorney's fees and collection rate for
19 such cases multiplied by the amount of time reasonably expended to
20 obtain the judgment.

21 26. A.B. 477 is not scaled to the unpaid amount of the debt, meaning that the bill
22 imposes a 15% rate cap regardless of the amount of the unpaid principal amount owed.

23 27. For example, if A.B. 477 were enforced, a prevailing plaintiff would be limited to
24 an award of a mere \$75.00 in attorney's fees on an unpaid \$500.00 consumer debt, or \$150.00 in
25 attorney's fees on a \$1,000.00 consumer debt.

26 28. This cap purports to apply regardless of the amount of work required for a
27 prevailing plaintiff to obtain a judgment, including the drafting a complaint, litigating and
28 obtaining a judgment, and then collecting on that judgment.

29 29. In the event a debtor disputes the debt and proceeds to trial, a creditor is still
30 limited to no more than 15% of the recovery, regardless of how many hours are required for the
31 prevailing plaintiff to obtain and collect upon a judgment.

32 30. A.B. 477 imposes a rate cap of 15% even when a plaintiff wishes to invoke its
33 right to a jury trial under the Seventh Amendment of the United States Constitution and Article 1,
34 Section 3 of the Nevada Constitution.

31. During consideration of A.B. 477, Peter J. Goatz of the Legal Aid Center of Southern Nevada, Inc. testified in support of A.B. 477. In his testimony, he specifically noted that the purpose of the attorney fee cap in A.B. 477 was to effectively eliminate access to courts for small businesses “because there would not be an incentive for an attorney to take on a small dollar debt case....” Testimony of Peter J. Goatz, Esq. (May 8, 2019) at p. 5.

32. At the Las Vegas Justice Court Bench Bar Meeting on July 30, 2019, one judge noted that, in many instances, the 15% attorney fee cap will cause the amount of attorney’s fees awarded in cases to be “unreasonable” given the amount of work required to obtain a judgment.

33. In fact, A.B. 477 renders small dollar collection cases cost prohibitive because NCA members will be forced to pay their attorney out-of-pocket for the attorney’s fees above those that are capped by A.B. 477. In many cases, these out-of-pocket costs will actually exceed the amount of the judgment awarded, with no recourse to NCA’s members.

34. Many of NCA’s members have already been notified by their attorneys that they will not continue to represent them in small dollar consumer collection cases once A.B. 477 becomes effective.

35. Because the attorney fee limitation in A.B. 477 is so severe, NCA’s members will be unable to retain counsel to represent them in small dollar consumer cases for contract entered into after October 1, 2019.

36. Meanwhile, A.B. 477 provides that a debtor in an action involving the collection of consumer debt may receive any attorney’s fees that are considered reasonable, without any other restriction or limitation. Specifically, Section 19 provides:

If the debtor is the prevailing party in any action to collect a consumer debt, the debtor is entitled to an award of reasonable attorney’s fees. The amount of the debt that the creditor sought may not be a factor in determining the reasonableness of the award.

37. Because NCA’s members are required to obtain counsel in Nevada courts, and because A.B. 477 deliberately seeks to deprive NCA’s members from accessing the court system

1 in small dollar consumer cases, A.B. 477 deprives them of access to the court system to obtain
2 recovery of unpaid consumer debts.

3 38. NCA's members will be unable to obtain counsel to represent them based on the
4 attorney's fees limit in Sections 18 and 19 of the Act.

5 39. Indeed, Sections 18 and 19 of A.B. 477 were designed specifically to prohibit debt
6 collectors from having fair access to courts.

7 **C. A.B. 477's Conflict with Specific Fee Shifting and Lien Statutes and Rules.**

8 40. Nevada law has numerous statutes and rules which specifically provide for the
9 recovery of reasonable attorney's fees, without any other limitation, to prevailing parties. These
10 rules apply to the recovery of debts, regardless of whether such debts are commercial debts or
11 consumer debts, and include the following:

- 12 a. Offers of Judgment—Justice Court Rule of Civil Procedure 68
- 13 b. Mechanic's Liens—NRS 108.237(1) and NRS 108.239(9)(b);
- 14 c. Attorney's Liens—NRS 18.015(1);
- 15 d. Homeowner's Associations—NRS 116.4117(4);
- 16 e. Justice Court Actions—NRS 69.030;
- 17 f. Appeals from Justice Court—NRS 69.050;
- 18 g. Arbitrations—NRS 38.243(3);
- 19 h. Fees governed by agreement, express or implied—NRS 18.010(1);
- 20 i. Actions when the prevailing party has recovered less than \$20,000—NRS
21 18.010(2); and
- 22 j. Landlord/Tenant—NRS 118A.515.

23 41. In Justice Courts, claims for attorney's fees are taxed as "costs" against the losing
24 party. *See* NRS 69.030.

25 42. NCA is entitled to declaratory relief as to whether A.B. 477 prevails over or is
26 subservient to the foregoing fee shifting rules.

27 43. Although a fundamental tenet of our judicial system is equal justice for all, A.B.
28 477 expressly favors the outcome for one discrete group of litigants at the expense of another, as

1 it limits amounts that can be recovered against consumers simply because they are consumers,
2 and thereby creates an impermissible an unconstitutional classification.

3 FIRST CLAIM FOR RELIEF

4 **(Violation of Substantive Due Process based on Section 18 of A.B. 477 and JCR 16)**

5 44. NCA incorporates and realleges the previous paragraphs as though fully set forth
6 herein.

7 45. The Fourteenth Amendment to the United States Constitution provides that “no
8 state [may] deprive any person of life, liberty, or property without due process of law.” In
9 addition, 42 U.S.C. § 1983 provides a civil right of action against any person who, under color of
10 state law, deprives any person of the rights, privileges, or immunities secured by the Constitution
11 and laws.

12 46. Similarly, Article 1, Section 8 of the Nevada Constitution provides that “[n]o
13 person shall be deprived of life, liberty, or property, without due process of law.”

14 47. NCA and its members are persons within the meaning of the United States and
15 Nevada Constitutions’ guarantees of due process.

16 48. The fundamental constitutional right to meaningful access to the courts constitutes
17 a “liberty interest” within the meaning of and subject to due process protections under the Nevada
18 and United States Constitutions; and therefore, by definition, may not be denied arbitrarily,
19 capriciously, corruptly, or based upon partiality or favoritism.

20 49. The fundamental constitutional right to retain counsel constitutes a “liberty
21 interest” within the meaning of and subject to due process protections under the Nevada and
22 United States Constitutions; and therefore, by definition, may not be denied arbitrarily,
23 capriciously, corruptly, or based upon partiality or favoritism.

24 50. The fundamental constitutional right to a jury trial constitutes a “liberty interest”
25 within the meaning of and subject to due process protections under the Nevada and United States
26 Constitutions; and therefore, by definition, may not be denied arbitrarily, capriciously, corruptly,
27 or based upon partiality or favoritism.

56. NCA has been forced to retain counsel to prosecute this action and is thus entitled to an award of reasonable attorney's fees and costs as provided by applicable law.

(Violation of Substantive and Procedural Due Process based on Section 19 of A.B. 477)

59. Similarly, Article 1, Section 8 of the Nevada Constitution provides that “[n]o person shall be deprived of life, liberty, or property, without due process of law.”

60. NCA and its members are persons within the meaning of the United States and Nevada Constitutions' guarantees of due process.

61. The fundamental constitutional right to meaningful access to the courts constitutes a "liberty interest" within the meaning of and subject to due process protections under the Nevada and United States Constitutions; and therefore, by definition, may not be denied arbitrarily, capriciously, corruptly, or based upon partiality or favoritism.

62. Section 19 of the Act effectively denies NCA meaningful access to the courts, and was in fact designed to do so.

63. Section 19 of the Act unfairly and unduly favors one party over another in Justice Court cases based solely upon the classification of the person appearing in a Justice Court case.

64. Section 19 of the Act is arbitrary, irrational, and lacks impartiality as applied to NCA.

65. NCA and its members have been deprived of fundamental liberty rights in violation of the substantive due process guarantees of the Nevada and United States Constitutions.

66. As a direct and proximate result of the constitutional violations contained in A.B. 477, NCA is entitled to preliminary and permanent injunctive relief.

67. NCA has been forced to retain counsel to prosecute this action and is thus entitled to an award of attorney's fees and costs as provided by applicable law.

THIRD CLAIM FOR RELIEF

(Violation of Equal Protection based Section 18 of A.B. 477)

68. NCA incorporates and realleges the previous paragraphs as though fully set forth herein.

69. The Fourteenth Amendment to the United States Constitution provides that no "state [may] ... deny to any person within its jurisdiction the equal protection of the laws." In addition, 42 U.S.C. § 1983 provides a civil right of action against any person who, under color of state law, deprives any person of the rights, privileges, or immunities secured by the Constitution and laws.

70. Similarly, Article 4, Section 21 of the Nevada Constitution requires that all laws be “general and of uniform operation throughout the State.”

71. NCA is a person within the meaning of the Nevada and United States Constitutions’ guarantees of equal protection.

72. NCA’s members have a fundamental constitutional right to meaningful access to the courts.

73. Section 18 of A.B. 477 violates equal protection as applied to NCA’s members because it contains arbitrary, partial, and unreasonable classifications that bear no rational relationship to a legitimate governmental interest.

74. Alternatively, Section 18 of A.B. 477 bears no real or substantial relation between A.B. 477 and its objective.

75. Section 18 of the Act further violates equal protection as applied to NCA because it contains arbitrary, partial, and unreasonable classifications that are not narrowly tailored to any the advancement of any compelling interest.

76. As a result, the rights to equal protection of the law of NCA’s members are violated by A.B. 477.

77. As a direct and proximate result of the constitutional violations contained in A.B. 477, NCA is entitled to preliminary and permanent injunctive relief.

78. NCA has been forced to retain counsel to prosecute this action and is thus entitled to an award of reasonable attorney’s fees and costs as provided by applicable law.

FOURTH CLAIM FOR RELIEF

(Violation of Equal Protection based Section 19 of A.B. 477)

79. NCA incorporates and realleges the previous paragraphs as though fully set forth herein.

80. The Fourteenth Amendment to the United States Constitution provides that no “state [may] ... deny to any person within its jurisdiction the equal protection of the laws.” In addition, 42 U.S.C. § 1983 provides a civil right of action against any person who, under color of

1 state law, deprives any person of the rights, privileges, or immunities secured by the Constitution
2 and laws.

3 81. Similarly, Article 4, Section 21 of the Nevada Constitution requires that all laws be
4 “general and of uniform operation throughout the State.”

5 82. NCA is a person within the meaning of the Nevada and United States
6 Constitutions’ guarantees of equal protection.

7 83. NCA’s members have a fundamental constitutional right to meaningful access to
8 the courts.

9 84. Section 19 of the Act violates equal protection as applied to NCA because it
10 contains arbitrary, partial, and unreasonable classifications that bear no rational relationship to a
11 legitimate governmental interest.

12 85. Alternatively, Section 19 of A.B. 477 bears no real or substantial relation between
13 A.B. 477 and its objective.

14 86. Section 19 of A.B. 477 further violates equal protection as applied to NCA
15 because it contains arbitrary, partial, and unreasonable classifications that are not narrowly
16 tailored to any the advancement of any compelling interest.

17 87. As a result, the rights to equal protection of the law of NCA’s members are
18 violated by A.B. 477.

19 88. As a direct and proximate result of the constitutional violations contained in A.B.
20 477, NCA is entitled to preliminary and permanent injunctive relief.

21 89. NCA has been forced to retain counsel to prosecute this action and is thus entitled
22 to an award of attorney’s fees and costs as provided by applicable law.

23 **FIFTH CLAIM FOR RELIEF**

24 **(Declaratory Relief)**

25 90. NCA incorporates and realleges the previous paragraphs as though fully set forth
26 herein.

27 91. Under NRS 30.010, *et seq.*, the Uniform Declaratory Judgment Act, any person
28 whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract

1 or franchise, may have determined any question of construction or validity arising under the
 2 instrument, statute, ordinance, contract or franchise and obtain declaration of rights, status or
 3 other legal relations thereunder.

4 92. Section 18 of A.B. 477 limits a debt collector's recovery of attorney's fees in any
 5 action involving the collection of consumer debt to fifteen percent.

6 93. Section 19 of A.B. 477 allows a debtor in an action involving collection of
 7 consumer debt to recovery any attorney's fees that are considered reasonable.

8 94. Sections 18 and 19 of the Act unduly conflict and interfere with numerous
 9 provisions of Nevada law that specifically allow for the recovery or reasonable attorney's fees,
 10 including various lien statutes and other prevailing party provisions.

11 95. JCR 16 prohibits entities from appearing in Justice Court without representation
 12 by an attorney that is licensed to practice law.

13 96. In conjunction with Section 18, JCR 16 effectively leaves entities without access
 14 to the courts and to a jury trial, as the attorney's fee limit makes it impossible for entities to retain
 15 counsel to represent them in small dollar consumer debt actions.

16 97. The foregoing issues are ripe for judicial determination because there is a
 17 substantial controversy between parties having adverse legal interests of sufficient immediacy and
 18 reality to warrant the issuance of a declaratory judgment.

19 98. NCA has been forced to retain counsel to prosecute this action and is thus entitled
 20 to an award of attorney's fees and costs as provided by applicable law.

21 PRAYER FOR RELIEF

22 WHEREFORE, NCA prays for relief from this Court as follows:

23 1. For preliminary and permanent injunctive relief holding that A.B. 477 is
 24 unconstitutional under the Nevada Constitution and the Federal Constitution;

25 2. For preliminary and permanent injunctive relief holding that JCR 16 is
 26 unconstitutional under the Nevada Constitution and the Federal Constitution;

27 3. For declaratory relief; and

28 4. For any additional relief this Court deems just and proper.

1 DATED this ____ day of February, 2020.

2 /s/ Patrick J. Reilly

3 Patrick J. Reilly, Esq.

4 Marckia L. Hayes, Esq.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

100 North City Parkway, Suite 1600

Las Vegas, NV 89106-4614

Attorneys for Nevada Collectors Association

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), and Section IV of District of Nevada Electronic Filing Procedures, I certify that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and that the foregoing **FIRST AMENDED COMPLAINT** was served via electronic service on the ____ day of February, 2020, to the addresses shown below:

Thomas D. Dillard, Jr. Esq.
Olson Cannon Gormley & Stoberski
9950 West Cheyenne Avenue
Las Vegas, NV 89129
tdillard@ocgas.com

*Attorneys for Justice Court of Las Vegas
Township*

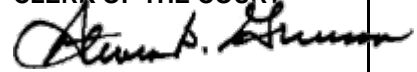
Vivienne Rakowsky, Esq.
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(702) 486-3103

*Attorneys for Sandy O' Laughlin and State of Nevada, Department of
Business And Industry Financial Institutions Division*

/s/Susan Roman
An employee of Brownstein Hyatt Farber Schreck, LLP

Exhibit 3

**(8/3/2020 Motion to Amending Findings of
Fact and Conclusions of Law and to Alter or
Amend Judgment)**



MAMJ
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Nevada Bar No. 6103
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preilly@bhfs.com

Attorneys for Nevada Collectors Association

DISTRICT COURT
CLARK COUNTY, NEVADA

NEVADA COLLECTORS
ASSOCIATION, a Nevada non-profit
corporation,

Plaintiff,

v.

SANDY O'LAUGHLIN, in her official
capacity as Commissioner of State Of
Nevada Department Of Business And
Industry Financial Institutions Division;
STATE OF NEVADA DEPARTMENT
OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION;
JUSTICE COURT OF LAS VEGAS
TOWNSHIP; DOE DEFENDANTS 1
through 20; and ROE ENTITY
DEFENDANTS 1 through 20,

Defendants.

Case No.: A-19-805334-C

Dept. No.: XXVII

**MOTION TO AMEND FINDINGS OF FACT
AND CONCLUSIONS OF LAW AND TO
ALTER OR AMEND JUDGMENT**

Hearing Requested

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21357298

1 Plaintiff Nevada Collectors Association (“NCA”) hereby moves this court to amend its
2 Findings of Fact and Conclusions of Law entered on July 20, 2020, in the above-entitled action.
3 This Motion is made pursuant to NRCP 52(b) and NRCP 59(e) and is based on the attached
4 Memorandum of Points and Authorities, the papers and pleadings on file in this action, and any
5 oral argument this Court may allow.

6 DATED this 3rd day of August, 2020.

7
8 /s/Patrick J. Reilly
Patrick J. Reilly, Esq.
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614

11 *Attorneys for Nevada Collectors Association*

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW AND TO
ALTER OR AMEND JUDGMENT

This is an action challenging the constitutionality and enforceability of NRS 97B.160 and NRS 97B.170. NCA filed a Motion for Preliminary Injunction or, Alternatively for Writ of Mandamus or Prohibition (the “Motion for Preliminary Injunction”). In addition to NCA’s Motion for Preliminary Injunction, both defendants moved to dismiss, contending *inter alia* that NCA lacked standing to sue and that its claims were not ripe for adjudication. Specifically, Defendants moved for dismissal under both NRCP 12(b)(1) and NRCP 12 (b)(5). On July 20, 2020, this Court entered a document entitled “Findings of Fact, Conclusions of Law, and Order” (the “FFCL”) in which this Court dismissed all of NCA’s claims based on standing and ripeness grounds. This Court stated:

1. Plaintiff has the burden to show by a preponderance of the evidence that the allegations are sufficient **to invoke this Court’s jurisdiction.** *Leite v. Crane Co.* 749 F.3d1117, 1122 (9th Cir. 2014)[.]
2. The Nevada Constitution provides that its courts have jurisdiction over civil and criminal cases, which has been interpreted to **prohibit courts from ruling on cases that are not ripe.** *City of North Las Vegas v. Cluff*, 85 Nev. 200, 452 P.2d 461 (1969)[.]
3. **Dismissal is required pursuant to NRCP 12(b)(1) because Plaintiff failed to establish subject matter jurisdiction.** Plaintiff did not show that the parties were adverse, **that a controversy existed** between the parties and that the issues were ripe for adjudication. See *Kress v. Cory*, 65 Nev. 1, 26, 189 P. 2d 352 (1948). The FID and Plaintiff are not adverse. **There is no controversy between the Plaintiff and FID** because the Nevada Legislature did not delegate the authority to enforce AB 477 to the FID, and the FID does not regulate activities of the Justice Court including the amount of attorney fees it can award to a prevailing party or the requirement that an entity must appear with counsel.
4. Plaintiff failed to show a hardship or that the issues were fit for judicial decision. *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 887, 141 P.3d 1224 (2006). **Plaintiff did not meet the prudential considerations** because Plaintiff’s claim of potential hardship if the members cannot access the Court system for small debt collection cases is speculative. Plaintiffs lacked an actual injury because there

has not been any enforcement or a threat of enforcement of AB 477.

5. **This case is not ripe for determination.** A case is not ripe for review when the degree to which the harm alleged by the party seeking review is not sufficiently concrete and any alleged injury is **remote or hypothetical**. *Cote H. v. Eighth Judicial Dist. Court ex rel County of Clark*, 124 Nev. 36 n.1, 175 P.3d 906 (2008). Speculative or hypothetical future harm **is not sufficient to invoke jurisdiction**. *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, (1986). Plaintiff's claim of possible future injury if the Plaintiffs do not have access to the court of their choice **is not ripe** because the Plaintiff has not been denied access to court and there has not been any enforcement activities or threat of enforcement of AB477.

FFCL at 5:4-6:6 (emphasis added). Despite the foregoing ruling, the Court continued to decide the merits of the case. The Court not only denied NCA's Motion for Preliminary Injunction on the merits, it granted Defendants' NRCP 12(b)(5) motions to dismiss as well, dismissing the action on the merits and with prejudice. FFCL at 6:15-9:26.

Based on this Court's conclusions that NCA had no standing to sue and that this matter is not ripe for adjudication,¹ this Court was precluded as a matter of law from deciding this case on its merits. In fact, by making those determinations, this Court divested itself of jurisdiction to venture any further into the case, including a merits determination. While this Court may have sought convenience in having all matters decided at once, it was plain error for the Court to venture into the substantive weeds of this action once it determined there was no case or controversy to be decided.

The ripeness doctrine "turns on 'the fitness of the issues for judicial decision' and the 'hardship to the parties of **withholding** court consideration.'" Laurence H. Tribe, *AMERICAN CONSTITUTIONAL LAW* § 3-10, p. 77 (2d ed. 1988) (emphasis added), quoting *Pacific Gas & Elec. Co. v. State Energy Resources Conservation and Dev. Comm'n*, 461 U.S. 190, 201 (1983), and *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967). Standing is most central to defining whether there is a "case" or "controversy" before the court. Tribe at § 3-14, p. 107. The standing doctrine "addresses the question whether a party has a sufficient *stake* in an otherwise justiciable

¹ NCA respectfully disagrees with the Court's ripeness and standing determinations.

1 controversy to obtain judicial resolution of that controversy.” *Id.* (emphasis in original), quoting
2 *Sierra Club v. Morton*, 405 U.S. 727, 731 (1972).

3 Both doctrines have arisen from and subsume Article III constitutional requirements and
4 concerns of prudential restraint. *Tribe* at §§ 3-10, p. 77 and 3-14, p. 107. In Nevada, the “case
5 and controversy” requirement is not as strict as that required by federal courts. *See Stoickmeier v.*
6 *Nevada Dept. of Corrections*, 122 Nev. 385, 392-93, 135 P.3d 220, 225-26 (2006), abrogated on
7 other grounds by *Buzz Stew, LLC v. City of N. Las Vegas*, 122 Nev. 224, 228 n.6, 181 P.3d 670,
8 672 n.6 (2008). That being said, Nevada plainly recognizes both doctrines, and once a court
9 determines that standing is lacking or that a matter not ripe, it may proceed no further.

10 This court has a long history of requiring an actual justiciable
11 controversy **as a predicate to judicial relief**. In cases for
12 declaratory relief and where constitutional matters arise, this court
has required plaintiffs to meet increased jurisdictional standing
requirements. . . .

13 *Stockmeier*, 122 Nev. at 393, 135 P.3d at 225-26 (emphasis added). The Nevada Supreme Court
14 has specifically stated that, if a matter is not ripe for adjudication, it may not “consider”
15 arguments on the merits. *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 888, 141 P.3d 1224, 1231
16 (2006).

17 Indeed, it is fundamentally inconsistent for a court to embrace constitutional and
18 prudential restraints to conclude a matter is not ripe for decision, and then proceed to determine
19 that matter on the merits. It is equally inconsistent for a court to conclude that a plaintiff has no
20 standing to sue, and then issue an advisory opinion by adjudicating the merits as though that
21 plaintiff did have standing. NCA also wonders what the point is of such doctrines if courts are to
22 invoke these doctrines and then ignore them within the same breath.

23 This is not a mere exercise in intellectual consistency. By concluding that this matter is
24 not ripe for adjudication, this Court robbed itself of jurisdiction to decide this matter on the
25 merits, and it was reversible error to proceed further. *Addington v. U.S. Airline Pilots Ass’n*, 606
26 F.3d 1174, 1179 (9th Cir. 2010). In *Addington*, a dispute arose from the merger of US Airways,
27 Inc. and America West Air-lines. Specifically, the parties were unable to successfully merge the
28 seniority lists of the respective airlines’ pilots. 606 F.3d at 1177. A complex and expensive

1 district court litigation followed, involving class certification, a jury trial on the merits, and a
2 bifurcated bench trial as to remedy. *Id.* at 1178-79. Based on those trial verdicts, the district
3 court entered judgment against the pilots' union for breaching its fiduciary duty to its pilots. *Id.*
4 On appeal, the Ninth Circuit noted the "considerable time, effort, and expense . . . devoted to the
5 merits of Plaintiffs' DFR claim before both this Court and the district court." *Id.* at 1179. Yet,
6 the court concluded that the dispute was not ripe. As a direct result, the Ninth Circuit was
7 "without jurisdiction to address the merits of the claim...." 606 F.3d at 1179. Despite all of the
8 time, effort, and expense involved up to that point, the Ninth Circuit painfully remanded the case
9 to district court with instructions to dismiss for lack of ripeness, as though the proceedings on the
10 merits had never taken place. *Id.* at 1184.

11 This Court made no bones about it. It concluded that NCA could not "invoke this Court's
12 jurisdiction." FFCL at 5:4-6, citing *Leite v. Crane Co.*, 749 F.3d 1117, 1122 (9th Cir. 2014). The
13 Court further concluded that case law "prohibit[s] courts from ruling on cases that are not ripe."
14 FFCL at 5:7-10, citing *City of N. Las Vegas v. Cluff*, 85 Nev. 200, 452 P.2d 461 (1969). The
15 Court then ignored its own conclusion that it was "prohibit[ed]" from ruling on the merits by
16 ruling on the merits in the very same document. This error is not only clear, it is patently visible
17 on the face of the FFCL.

18 It is also no coincidence that this Court granted dismissal under NRCP 12(b)(1). Rule
19 12(b)(1) dismissals plainly concern the Court's *ability* to hear and decide a matter. "A case is
20 properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) when the district
21 court **lacks the statutory or constitutional power to adjudicate it.**" *Makarova v. United States*,
22 201 F.3d 110, 113 (2d Cir. 2000) (emphasis added) (addressing FED. R. CIV. P. 12(b)(1)).²

23 In short, if a court does not have the "power" to hear a case, it cannot decide that case.
24 Just as a person cannot be "half pregnant" and a couple cannot be "half married," this Court
25
26

27 ² "Federal cases interpreting the Federal Rules of Civil Procedure are strong persuasive authority, because the
28 Nevada Rules of Civil Procedure are based in large part upon their federal counterparts." *Executive Management, Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002).

1 cannot possess “half jurisdiction.” It either possess jurisdiction, or it does not. And if this Court
2 concludes it does not possess jurisdiction (as it did here), its inquiry must end.

3 This legal error warrants the granting of relief under Nevada law. Specifically, NRCP
4 52(b) provides as follows:

5 On a party’s motion filed no later than 28 days after service of
6 written notice of entry of judgment, the court may amend its
7 findings — or make additional findings — and may amend the
8 judgment accordingly. The time for filing the motion cannot be
extended under Rule 6(b). The motion may accompany a motion
for a new trial under Rule 59.

9 NRCP 52(b). This Court is also empowered to alter or amend a judgment based on an error in law
10 occurring at the trial³ and objected to by the party making the motion. NRCP 59(a)(1)(G).
11 Defendants simply cannot have it both ways by obtaining a dismissal based on grounds of ripeness
12 and standing, and at the same time obtain an adjudication on the merits from this Court.

13 Accordingly, NCA moves this Court to amend the FFCL to delete any and all substantive
14 findings of fact and conclusions of law, such as Paragraphs 11-13 of the Findings of Fact and
15 Paragraphs 7-22 of the Conclusions of Law. NCA also requests that the Court amend its dismissal
16 to correctly reflect a dismissal *without* prejudice, and that it amend the FFCL to deny Defendants’
17 Rule 12(b)(5) motions and NCA’s Motion for Preliminary Injunction as not ripe for decision.

18 NCA thanks the Court for its time and attention to this matter.

19 DATED this 3rd day of August, 2020.

20
21 /s/Patrick J. Reilly
Patrick J. Reilly, Esq.
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614

22
23 *Attorneys for Nevada Collectors Association*
24
25
26
27

28 ³ It is unclear whether the Court’s hearing on a Motion for Preliminary Injunction constitutes a “trial” for the
purposes of Rule 59. NCA nevertheless raises Rule 59 in this Motion out of an abundance of caution.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), and Section IV of District of Nevada Electronic Filing Procedures, I certify that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and that the foregoing **MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW AND TO ALTER OR AMEND JUDGMENT** was served via electronic service on the 3rd day of August, 2020, to the addresses shown below:

Thomas D. Dillard, Jr. Esq.
Olson Cannon Gormley & Stoberski
9950 West Cheyenne Avenue
Las Vegas, NV 89129
tdillard@ocgas.com

*Attorneys for Justice Court of Las Vegas
Township*

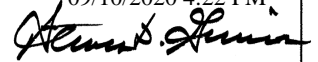
Vivienne Rakowsky, Esq.
Office of the Attorney General
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Las Vegas, NV 89101
vrakowsky@ag.nv.gov
(702) 486-3103

*Attorneys for Sandy O' Laughlin and State of Nevada, Department of
Business And Industry Financial Institutions Division*

/s/Mary Barnes
An employee of Brownstein Hyatt Farber Schreck, LLP

Exhibit 4

**(9/10/2020 Order Granting in Part and
Denying in Part Plaintiff's Motion to
Amending Findings of Fact and Conclusions
of Law)**


CLERK OF THE COURT

ORDR

AARON D. FORD
Attorney General
VIVIENNE RAKOWSKY (Bar No. 9160)
Deputy Attorney General
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Office of the Attorney General
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Attorney for Defendant
Justice Court of Las Vegas
Township

DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA COLLECTORS ASSOCIATION, a
Nevada non-profit corporation,

Plaintiff,

v.

SANDY O'LAUGHLIN, in her official
capacity as Commissioner of State of
Nevada Department of Business and
Industry and Financial Institutions
Division; STATE OF NEVADA
DEPARTMENT OF BUSINESS AND
INDUSTRY FINANCIAL INSTITUTIONS
DIVISION; JUSTICE COURT OF LAS
VEGAS TOWNSHIP; DOE DEFENDANTS
1 through 20; and ROE ENTITIY
DEFENDANTS 1 through 20,
Defendants.

Case No.: A-19-805334-C
Dept. No.: XXVII

**ORDER GRANTING IN PART
AND DENYING IN PART
PLAINTIFF'S MOTION TO
AMEND FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

1 This matter came on for hearing on September 9, 2020, (the "Hearing") with the
2 Plaintiff filing their Motion to Amend Findings of Fact and Conclusions of Law and to
3 Alter or Amend Judgment on August 3, 2020, Defendant Justice Court of Las Vegas
4 Township filing its Opposition on August 14, 2020, State Defendant filing its Opposition
5 on August 17, 2020 and Plaintiff filing its Reply thereto on September 2, 2020.

6 The Court hearing arguments from the parties and reviewed the pleadings
7 therto,

8 IT IS HEREBY ORDERED that the Motion is GRANTED IN PART AND
9 DENIED IN PART. The Court has GRANTED the Motion as to removing the last
10 sentence of paragraph five (5) of the previous order that states:

11
12 Plaintiff's claim of possible future injury if the Plaintiffs
13 do not have access to the court of their choice is not ripe
14 because the Plaintiff has not been denied access to court
15 and there has not been any enforcement activities or
16 threat of enforcement of AB477.

17 IT IS FURTHER ORDERED that the Motion is denied as to all other respects.

18 DATED this ____ day of September, 2020.

Dated this 10th day of September, 2020

19 By: Nancy L Alif
DISTRICT COURT JUDGE

20 Submitted by:
21 AARON D. FORD
22 Attorney General

D79 742 9B6B 8278
Nancy Alif
District Court Judge

23 By: /s/ Vivienne Rakowsy
24 VIVIENNE RAKOWSKY
25 Deputy Attorney General
26 555 E. Washington Ave. Ste 3900
27 Las Vegas, Nevada 89101
28 Attorneys for State Defendants

///

1 OLSON CANNON GORMLEY
& STOBERSKI

2 By: /s/ Thomas D. Dillard, Jr.
3 THOMAS D. DILLARD, JR., ESQ.
4 9950 W. Cheyenne Avenue
5 Las Vegas, Nevada 89129
6 Attorney for Defendant
Justice Court of Las Vegas
Township

7 Approved as to form and content by:

8 BROWNSTEIN HYATT
9 FARBER SCHRECK, LLP

10 By: /s/ Patrick J. Reilly
11 Patrick J. Reilly, Esq.
12 Marckia L. Hayes, Esq.
13 100 N. City Parkway, Ste. 1600
14 Las Vegas, Nevada 89106-4614
15 P: 702-382-2101
F: 702-382-8135
preilly@bhfs.com
mhayes@bhfs.com
Attorneys for Plaintiff

Melissa Burgener

From: Reilly, Patrick J. <preilly@bhfs.com>
Sent: Wednesday, September 9, 2020 1:09 PM
To: Vivienne Rakowsky; Melissa Burgener
Cc: Tom Dillard
Subject: RE: NV Collectors v. LVJC, et al.

Approved as to form on my end as well. You may use my electronic signature.

Thank you.

Patrick J. Reilly
Brownstein Hyatt Farber Schreck, LLP
100 North City Parkway, Suite 1600
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preilly@bhfs.com

From: Vivienne Rakowsky [mailto:VRakowsky@ag.nv.gov]
Sent: Wednesday, September 09, 2020 12:48 PM
To: 'Melissa Burgener'; Reilly, Patrick J.
Cc: Tom Dillard
Subject: RE: NV Collectors v. LVJC, et al.

Thank you. I am fine with the Amended Order and the Order on the hearing today. You may use my electronic signature.

Sincerely,
Vivienne

Vivienne Rakowsky, Deputy Attorney General
State of Nevada
Office of the Attorney General
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From: Melissa Burgener <mburgener@ocgas.com>
Sent: Wednesday, September 9, 2020 11:52 AM
To: Vivienne Rakowsky <VRakowsky@ag.nv.gov>; Reilly, Patrick J. <preilly@bhfs.com>
Cc: Tom Dillard <tdillard@ocgas.com>
Subject: NV Collectors v. LVJC, et al.

Good Morning,

Please find the attached orders in the above mentioned matter for your review.

Thank you,
Melissa Burgener
Assistant to Thomas D. Dillard, Jr., Esq.
and Michael Mccloughlin, Esq.
Olson Cannon Gormley & Stoberski
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Nevada Collectors Association,
7 Plaintiff(s)

CASE NO: A-19-805334-C

8 vs.

DEPT. NO. Department 27

9 State of Nevada Department of
10 Business and Industry Financial
11 Institutions Div., Defendant(s)

12 **AUTOMATED CERTIFICATE OF SERVICE**

13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
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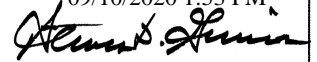
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23 David Pope	dpope@ag.nv.gov
24 Patrick Reilly	preilly@bhfs.com
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Exhibit 5

**(9/10/2020 Amended Findings of Fact and
Conclusions of Law and Order)**


CLERK OF THE COURT

ORDR

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Attorney for Defendant
Justice Court of Las Vegas
Township

DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA COLLECTORS ASSOCIATION, a
Nevada non-profit corporation,

Plaintiff,

v.

SANDY O'LAUGHLIN, in her official
capacity as Commissioner of State of
Nevada Department of Business and
Industry and Financial Institutions
Division; STATE OF NEVADA
DEPARTMENT OF BUSINESS AND
INDUSTRY FINANCIAL INSTITUTIONS
DIVISION; JUSTICE COURT OF LAS
VEGAS TOWNSHIP; DOE DEFENDANTS
1 through 20; and ROE ENTITIY
DEFENDANTS 1 through 20,
Defendants.

Case No.: A-19-805334-C
Dept. No.: XXVII

**AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER**

1 This matter came on for hearing on July 1, 2020, (the "Hearing"). Plaintiff,
2 Nevada Collectors Association, represented by Patrick J. Reilly of the law firm of
3 Brownstein Hyatt Farber Schreck, LLP appeared at the Hearing. Thomas D. Dillard,
4 Jr. of Olson Cannon Gormley & Stoberski appeared for Defendant Justice Court and
5 Vivienne Rakowsky, Deputy Attorney General with the Nevada Attorney General's
6 Office, appeared on behalf of Sandy O'Laughlin in her official capacity as Commissioner
7 of the Financial Institutions Division and the State of Nevada Department of Business
8 and Industry Financial Institutions Division ("FID").

9 At the hearing, the Court heard the Justice Court's and the FID's separate
10 Motions to Dismiss and the Plaintiff's Motion for a Temporary Injunction and
11 Alternative Motion for a Writ of Mandamus or Prohibition. After considering the briefs
12 and the respective arguments, and having considered the evidence introduced by the
13 parties and being fully advised, this Court enters the following Findings of Fact,
14 Conclusions of Law, and Order.

15 **FINDINGS OF FACT**

16 Based upon the papers filed and arguments at the time of the hearing, this Court
17 finds that by a preponderance of the evidence in the record the following facts have been
18 proven.

19 1. The current version of Las Vegas Justice Court Rule 16 ("LVJC Rule 16") was
20 made effective on January 1, 2007. LVJC Rule 16 states:

21 Unless appearing by an attorney regularly admitted to practice law in
22 Nevada and in good standing, no entry of appearance or subsequent
23 document purporting to be signed by any party to an action shall be
24 recognized or given any force or effect unless the same shall be notarized,
25 or signed with an unsworn declaration pursuant to NRS 53.045, by the
26 party signing the same. Corporations and limited liability corporations
(LLC) shall be represented by an attorney. [Added; effective January 1,
2007.]

26 2. The Nevada State Legislature unanimously passed A.B. 477 (entitled the
27 "Consumer Protection from the Accrual of Predatory Interest After Default Act") in the
28 2019 Nevada State Legislative Session.

1 3. On November 13 2019, Plaintiff, on behalf of its members, filed a complaint
2 in the Eighth Judicial District Court naming the FID and Justice Court as Defendants
3 alleging that sections 18 and 19 of AB 477, codified as NRS 97B.160 and NRS 97B.170,
4 violate the due process and equal protection guarantees of the State and federal
5 constitutions. Plaintiff further alleged that these sections when combined with LVJC
6 Rule 16 denied it access to the courts because the legislation limited attorney fees
7 recovery to 15% of the underlying judgment involving consumer debt contract cases of
8 less than \$5,000 (for which there is concurrent jurisdiction in the Justice Courts and
9 the Small Claims Courts). Plaintiff also requested declaratory and injunctive relief.

10 4. On January 2, 2020, Defendant Justice Court removed the case to the U.S.
11 District Court based on federal question jurisdiction (Case No. 2:20-CV-0007-JCM-
12 EJY).

13 5. Based on a motion to dismiss filed by the FID and a motion for judgment
14 on the pleadings filed by Justice Court, on February 3, 2020, Plaintiff successfully
15 sought leave to file an Amended Complaint. Amongst other changes, Plaintiff amended
16 the Complaint to add the Commissioner of the FID in her official capacity.

17 6. On April 13, 2020, the U.S. District Court *sua sponte* applied *Burford*
18 abstention and remanded the matter back to State Court, finding that it would be
19 “intervening in Nevada’s efforts to establish a coherent policy if it were to adjudicate
20 the instant action.” ECF No. 39, p. 7:3-4.

21 7. Upon remand, the FID and Justice Court each filed Motions to Dismiss,
22 and Plaintiff filed a motion for a Preliminary Injunction or, Alternatively for a Writ of
23 Mandamus or Prohibition along with exhibits including declarations and exemplar
24 small dollar collections. The motions were fully briefed by all parties. A hearing was
25 held for all motions on July 1, 2020.

26 8. Plaintiff claims that its members are primarily concerned with collecting
27 small debts under \$5,000, and argued that the limitations on attorney fees codified in
28 AB 477 is unconstitutional. Plaintiff moved for a temporary injunction, writ of

1 mandamus or writ or prohibition claiming: (1) a creditor will not be able to hire an
2 attorney to represent them in Justice Court; (2) attorneys may refuse to represent
3 creditor entities; and (3) that credit may be tightened for all consumers.

4 9. Defendant Justice Court argued Plaintiff did not plausibly allege that Las
5 Vegas Justice Court Rule 16 caused Plaintiff to suffer an actual injury relating to its
6 right to have access to the courts protected by the First Amendment and/or the
7 Fourteenth Amendment Due Process Clause; and the Justice Court relied upon well-
8 established and controlling law from the U.S. Supreme Court and the Nevada Supreme
9 Court when enacting, years prior to this suit, Rule 16 and therefore possessed immunity
10 from suit for simply following the law.

11 10. The FID argued that dismissal is justified pursuant to NRCP 12(b)(1) and
12 NRCP 12(b)(5). Plaintiff lacks standing because there is no justiciable controversy. The
13 case is not ripe for adjudication because ripeness cannot be based on speculative or
14 hypothetical prospect of a future harm. The Nevada Legislature did not designate the
15 FID to administer AB 477 and the FID does not regulate many of the Plaintiffs members
16 including attorneys and businesses that extend credit to their own customers. An
17 agency cannot expand the powers delegated by the legislature through regulations.
18 Plaintiffs 42 USC § 1983 claims for violations of due process and equal protection do
19 not apply to the FID and its Commissioner because neither the agency nor its
20 commissioner in her official capacity are persons subject to section 1983.

21 11. Plaintiff failed to provide facts to establish that it was substantially denied
22 access to the Justice Courts in Nevada or negate all plausible justifications for the
23 Nevada Legislature to pass AB 477 and LVJC Rule 16.

24 12. Plaintiff in the FAC further failed to allege that it or any affiliated
25 company took any matter to Justice Court and received an order reducing requested
26 attorney fees pursuant to the 2019 Legislative Act.

27 13. Plaintiff's allegations fail to detail official acts foreseeably frustrating
28 litigation and foreclosing relief in a future suit.

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1 *Dist. Court ex rel County of Clark*, 124 Nev. 36 n.1, 175 P.3d 906 (2008). Speculative or
2 hypothetical future harm is not sufficient to invoke jurisdiction. *Doe v. Bryan*, 102 Nev.
3 523, 525, 728 P.2d 443, (1986).

4 6. In considering the ripeness doctrine in pre-enforcement cases, the court
5 looks to see if there is a “credible threat,” or an “actual and well-founded fear” that
6 enforcement action would be taken against the plaintiff by the defendant. *Holder v.*
7 *Humanitarian Law Project*, 561 U.S. 1, 15 (2010); *Virginia v. American Booksellers*
8 *Assn. Inc.*, 484 U.S. 383, 393 (1988); *see also Delew v. Wagner*, 143 F.3d 1219, 1223 (9th
9 Cir. 1988). In the nine months since AB 477 went into effect, there has not been any
10 imminent threat that the FID will or even can enforce Sections 18 or 19 of AB 477
11 against Plaintiff’s members.

12 7. Plaintiff failed to provide a set of facts which would entitle Plaintiff to
13 relief, pursuant to NRCP 12(b)(5). The FID’s regulatory ability is limited to the powers
14 provided in NRS chapter 649. The Nevada Legislature did not delegate the authority to
15 enforce AB 477 to the FID, nor does the FID regulate activities of the Justice Court
16 including the amount of attorney fees it can award to a prevailing party or the
17 requirement that an entity must appear with counsel. *See State of Nevada v. Nevada*
18 *Association Services*, 128 Nev. 362, 294 P.3d 1223 (2012).

19 8. NRS 41.031 requires that the agency’s action must provide the *basis* for
20 the lawsuit, Plaintiff has not shown that the FID has taken any action that can be
21 interpreted as a basis for declaratory, injunctive or any relief against the FID. The FID
22 enforces the law with respect to its licensees, but not with respect to a small business
23 that extend credit to its own customers or with respect to attorneys.

24 9. The FID has the power to adopt regulations, as long as the regulations do
25 not broaden the powers of the FID past the limitations found in statutes. There is no
26 statute in Chapter 649 that allows the FID to regulate attorney fees in a contract
27 between a creditor and a debtor.

28 10. Judicial notice of facts outside of the complaint is only applicable to facts

1 not subject to reasonable dispute or facts that are capable of verification from a reliable
2 source. NRS 47.130, *Mack .v Estate of Mack*, 125 Nev. 80, 92, 206 P.3d 98 (2009).
3 Plaintiff's declarations do not fit the criteria for judicial notice.

4 11. Neither the FID nor its commissioner sued in her official capacity is a
5 person subject to section 1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 69
6 (1989). Therefore all official capacity 42 USC § 1983 claims against the FID must be
7 dismissed.

8 12. Claims for denial of access to the courts may arise from the frustration or
9 hindrance of “a litigating opportunity yet to be gained” (forward-looking access claim)
10 or from the loss of a meritorious suit that cannot now be tried (backward-looking claim).
11 *Christopher v. Harbury*, 536 U.S. 403, 412–415, 122 S.Ct. 2179 (2002). For access to the
12 court's claims, the plaintiff must show: (1) the loss of a ‘nonfrivolous’ or ‘arguable’
13 underlying claim; (2) the official acts frustrating the litigation; and (3) a remedy that
14 may be awarded as recompense but that is not otherwise available in a future suit. *Id.*
15 at 413–14.

16 13. LVJC Rule 16 and A.B. 477 do not unduly infringe any identified
17 fundamental right and also does not target or impose a disparate impact on a protected
18 class; therefore, the Justice Court Rule as well as the subject legislation imposed by the
19 State are subject to only a rational basis type of review. *See Romer v. Evans*, 517 U.S.
20 620, 631–32, 116 S.Ct. 1620 (1996); *FCC v. Beech Communications, Inc.*, 508 U.S. 307,
21 313-14, 113 S.Ct. 2096 (1993).

22 14. To prevail on a rational basis challenge, Plaintiff therefore must “negate
23 every conceivable basis” that could support a rational basis for the alleged regulation.
24 *Medina Tovar v. Zuchowski*, 950 F.3d 581, 593 (9th Cir. 2020); *Fournier v. Sebelius*, 718
25 F.3d 1110, 1123 (9th Cir. 2013); *see also Armour v. City of Indianapolis, Ind.*, 566 U.S.
26 673, 681, 132 S.Ct. 2073 (2012). Plaintiff certainly has not in this case negated all the
27 conceivable rationale regarding the corporate representation rule codified by LVJC Rule
28 16 or, for that matter, the consumer protection rationale for A.B. 477. *See* Sec. 3 (stating

1 “[t]he purpose of this chapter is to protect consumers”).

2 15. Also, A.B. 477's “cap on attorney’s fees is not a barrier to court access, but
3 a limitation on relief.” *Boivin v. Black*, 225 F.3d 36, 45 (1st Cir. 2000). LVJC Rule 16
4 thus does not deny litigants “a reasonably adequate opportunity to present” their case
5 to the Justice Court. *Lewis v. Casey*, 518 U.S. 343, 351, 116 S.Ct. 2174 (1996) (quoting
6 *Bounds v. Smith*, 430 U.S. 817, 825, 97 S.Ct. 1491 (1977)).

7 16. The Nevada Supreme Court has held long before the enactment of LVJC
8 Rule 16 that a legal entity such as a corporation cannot appear except through counsel,
9 and non-lawyer principals are prohibited from representing these types of entities. *See*
10 *In re: Discipline of Schaefer*, 117 Nev. 496, 509 (2001); *see also Rowland v. California*
11 *Men's Colony*, 506 U.S. 194, 201–02, 113 S.Ct. 716 (1993) (“It has been the law for the
12 better part of two centuries ... that a corporation may appear in the federal courts only
13 through licensed counsel.”)(citing *Commercial & R.R. Bank of Vicksburg v. Slocomb,*
14 *Richards & Co.*, 39 U.S. (14 Pet.) 60, 65, 10 L.Ed. 354 (1840) (“[A] corporation cannot
15 appear but by attorney”) *overruled in part by* 43 U.S. (2 How.) 497, 11 L.Ed. 353
16 (1844); and *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738, 830, 6 L.Ed.
17 204 (1824) (“A corporation, it is true, can appear only by attorney, while a natural person
18 may appear for himself.”)).

19 17. A defendant that is charged with the duty of executing a facially valid court
20 order enjoys absolute immunity from liability for a suit challenging the propriety of that
21 court order. *See Turney v. O'Toole*, 898 F.2d 1470, 1472 (10th Cir. 1990); *see also*
22 *Engebretson v. Mahoney*, 724 F.3d 1034, 1038 (9th Cir. 2013) (“[P]ublic officials who
23 ministerially enforce facially valid court orders are entitled to absolute immunity.”).

24 18. The Justice Court appropriately followed that law when enacting and
25 publishing LVJC 16 in accordance with controlling law from the Nevada Supreme
26 Court. Plaintiff cannot prevail then against the Justice Court as a matter of law that is
27 solely based on the propriety of that valid and controlling case law. The Justice Court
28 effectively is immune from Plaintiff's suit by virtue of quasi-judicial immunity for

1 following the extant law announced by the Nevada Supreme Court.

2 19. A temporary injunction is an extraordinary remedy “must balance the
3 competing claims of injury and must consider the effect on each party of the granting or
4 withholding of the requested relief.” *Winter*, 555 U.S. at 24 (citation omitted). As a
5 threshold inquiry, when a plaintiff fails to show the likelihood of success on the merits,
6 the court need not consider the remaining factors. *Garcia v. Google, Inc.*, 786 F.3d 733,
7 740 (9th Cir. 2015). Plaintiff is not likely to succeed on the merits and has failed to
8 show that they are subject to irreparable harm if a temporary injunction is not issued.
9 Balancing the competing claims, along with the effect on each party does not weigh in
10 favor of the Plaintiff.

11 20. Plaintiff has failed to provide a basis to issue a writ of mandamus or a writ
12 of prohibition. *Nevada Restaurant Services, Inc. v. Clark County*, 2018 WL 1077279*7,
13 *Stearns v. Eighth Judicial District Court in and for Clark County*, 62, Nev. 102,112, 12
14 P.2d 206 (1943).

15 21. NRS 73.010(1) provides that “[a] justice of the peace has jurisdiction and
16 may proceed as provided in this chapter and by rules of court in all cases arising in the
17 justice court for the recovery of money only, where the amount claimed does not exceed
18 \$10,000. Plaintiff’s members have not been denied access to court for their small
19 collection cases; it is only that Plaintiff’s members chose not to use the court with
20 jurisdiction for their claims that will allow them to appear without an attorney.

21 22. An injury does not take place when the Plaintiffs have access to another
22 court with jurisdiction for their claims and does not require an entity to appear with an
23 attorney.

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Melissa Burgener

From: Reilly, Patrick J. <preilly@bhfs.com>
Sent: Wednesday, September 9, 2020 1:09 PM
To: Vivienne Rakowsky; Melissa Burgener
Cc: Tom Dillard
Subject: RE: NV Collectors v. LVJC, et al.

Approved as to form on my end as well. You may use my electronic signature.

Thank you.

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Sent: Wednesday, September 09, 2020 12:48 PM
To: 'Melissa Burgener'; Reilly, Patrick J.
Cc: Tom Dillard
Subject: RE: NV Collectors v. LVJC, et al.

Thank you. I am fine with the Amended Order and the Order on the hearing today. You may use my electronic signature.

Sincerely,
Vivienne

Vivienne Rakowsky, Deputy Attorney General
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Sent: Wednesday, September 9, 2020 11:52 AM
To: Vivienne Rakowsky <VRakowsky@ag.nv.gov>; Reilly, Patrick J. <preilly@bhfs.com>
Cc: Tom Dillard <tdillard@ocgas.com>
Subject: NV Collectors v. LVJC, et al.

Good Morning,

Please find the attached orders in the above mentioned matter for your review.

Thank you,
Melissa Burgener
Assistant to Thomas D. Dillard, Jr., Esq.
and Michael Mccloughlin, Esq.
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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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6 Nevada Collectors Association,
7 Plaintiff(s)

CASE NO: A-19-805334-C

8 vs.

DEPT. NO. Department 27

9 State of Nevada Department of
10 Business and Industry Financial
11 Institutions Div., Defendant(s)

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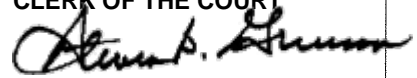
16 Service Date: 9/10/2020

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23 David Pope	dpope@ag.nv.gov
24 Patrick Reilly	preilly@bhfs.com
25 Susan Roman	sroman@bhfs.com
26 Mary Barnes	mabarnes@bhfs.com

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28

Exhibit 6

**(9/10/2020 Notice of Entry of Order Granting
in Part and Denying in Part Plaintiff's
Motion to Amending Findings of Fact and
Conclusions of Law)**



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Attorney for Defendant
Justice Court of Las Vegas
Township

DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA COLLECTORS
ASSOCIATION, a Nevada non-profit
corporation,

Plaintiff,

vs.

STATE OF NEVADA DEPARTMENT
OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION;
JUSTICE COURT OF LAS VEGAS
TOWNSHIP; DOE DEFENDANTS 1
through 20; and ROE ENTITY
DEFENDANTS 1 through 20,

Defendants.

CASE NO. A-19-805334-C
DEPT. NO. 27

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the **ORDER GRANTING IN PART AND DENYING
IN PART PLAINTIFF'S MOTION TO AMEND FINDINGS OF FACT AND
CONCLUSIONS OF LAW**, was filed on September 10, 2020, in the above-captioned matter.

A copy of said Order is attached hereto.

DATED this 10th day of September, 2020.

OLSON CANNON GORMLEY
& STOBERSKI

BY: /s/ Thomas D. Dillard
THOMAS D. DILLARD, JR., ESQ.
9950 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Attorney for Defendant
Justice Court of Las Vegas
Township

CERTIFICATE OF MAILING

On the 10th day of September, 2020, the undersigned, an employee of Olson, Cannon, Gormley, Angulo & Stoberski, hereby served a true copy of **NOTICE OF ENTRY OF ORDER**, to the parties listed below via the EFP Program, pursuant to the Court's Electronic Filing Service Order effective June 1, 2014, or mailed to the following:

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Attorneys for State Defendant

/s/ Melissa Burgener
An employee of OLSON CANNON
GORMLEY & STOBERSKI

ORDR

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Attorney for Defendant
Justice Court of Las Vegas
Township

DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA COLLECTORS ASSOCIATION, a
Nevada non-profit corporation,

Plaintiff,

v.

SANDY O'LAUGHLIN, in her official
capacity as Commissioner of State of
Nevada Department of Business and
Industry and Financial Institutions
Division; STATE OF NEVADA
DEPARTMENT OF BUSINESS AND
INDUSTRY FINANCIAL INSTITUTIONS
DIVISION; JUSTICE COURT OF LAS
VEGAS TOWNSHIP; DOE DEFENDANTS
1 through 20; and ROE ENTITIY
DEFENDANTS 1 through 20,
Defendants.

Case No.: A-19-805334-C
Dept. No.: XXVII

**ORDER GRANTING IN PART
AND DENYING IN PART
PLAINTIFF'S MOTION TO
AMEND FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

1 This matter came on for hearing on September 9, 2020, (the "Hearing") with the
2 Plaintiff filing their Motion to Amend Findings of Fact and Conclusions of Law and to
3 Alter or Amend Judgment on August 3, 2020, Defendant Justice Court of Las Vegas
4 Township filing its Opposition on August 14, 2020, State Defendant filing its Opposition
5 on August 17, 2020 and Plaintiff filing its Reply thereto on September 2, 2020.

6 The Court hearing arguments from the parties and reviewed the pleadings
7 therto,

8 IT IS HEREBY ORDERED that the Motion is GRANTED IN PART AND
9 DENIED IN PART. The Court has GRANTED the Motion as to removing the last
10 sentence of paragraph five (5) of the previous order that states:

11
12 Plaintiffs claim of possible future injury if the Plaintiffs
13 do not have access to the court of their choice is not ripe
14 because the Plaintiff has not been denied access to court
and there has not been any enforcement activities or
threat of enforcement of AB477.

15 IT IS FURTHER ORDERED that the Motion is denied as to all other respects.

16 DATED this ____ day of September, 2020.

17 Dated this 10th day of September, 2020

18 By: Nancy L Alf
19 DISTRICT COURT JUDGE

20 Submitted by:
21 AARON D. FORD
22 Attorney General

D79 742 9B6B 8278
Nancy Alf
District Court Judge

23 By: /s/ Vivienne Rakowsy
24 VIVIENNE RAKOWSKY
25 Deputy Attorney General
26 555 E. Washington Ave. Ste 3900
Las Vegas, Nevada 89101
Attorneys for State Defendants

27 ///
28

1 OLSON CANNON GORMLEY
& STOBERSKI

2 By: /s/ Thomas D. Dillard, Jr.
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4 9950 W. Cheyenne Avenue
5 Las Vegas, Nevada 89129
6 Attorney for Defendant
Justice Court of Las Vegas
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7 Approved as to form and content by:

8 BROWNSTEIN HYATT
9 FARBER SCHRECK, LLP

10 By: /s/ Patrick J. Reilly
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19 Attorneys for Plaintiff
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Melissa Burgener

From: Reilly, Patrick J. <preilly@bhfs.com>
Sent: Wednesday, September 9, 2020 1:09 PM
To: Vivienne Rakowsky; Melissa Burgener
Cc: Tom Dillard
Subject: RE: NV Collectors v. LVJC, et al.

Approved as to form on my end as well. You may use my electronic signature.

Thank you.

Patrick J. Reilly
Brownstein Hyatt Farber Schreck, LLP
100 North City Parkway, Suite 1600
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702.882.0112 cell
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From: Vivienne Rakowsky [<mailto:VRakowsky@ag.nv.gov>]
Sent: Wednesday, September 09, 2020 12:48 PM
To: 'Melissa Burgener'; Reilly, Patrick J.
Cc: Tom Dillard
Subject: RE: NV Collectors v. LVJC, et al.

Thank you. I am fine with the Amended Order and the Order on the hearing today. You may use my electronic signature.

Sincerely,
Vivienne

Vivienne Rakowsky, Deputy Attorney General
State of Nevada
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From: Melissa Burgener <mburgener@ocgas.com>
Sent: Wednesday, September 9, 2020 11:52 AM
To: Vivienne Rakowsky <VRakowsky@ag.nv.gov>; Reilly, Patrick J. <preilly@bhfs.com>
Cc: Tom Dillard <tdillard@ocgas.com>
Subject: NV Collectors v. LVJC, et al.

Good Morning,

Please find the attached orders in the above mentioned matter for your review.

Thank you,
Melissa Burgener
Assistant to Thomas D. Dillard, Jr., Esq.
and Michael Mcloughlin, Esq.
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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Nevada Collectors Association,
7 Plaintiff(s)

CASE NO: A-19-805334-C

8 vs.

DEPT. NO. Department 27

9 State of Nevada Department of
10 Business and Industry Financial
11 Institutions Div., Defendant(s)

12 **AUTOMATED CERTIFICATE OF SERVICE**

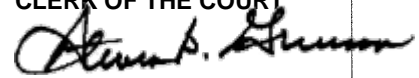
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
15 recipients registered for e-Service on the above entitled case as listed below:

16 Service Date: 9/10/2020

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24 Patrick Reilly	preilly@bhfs.com
25 Susan Roman	sroman@bhfs.com
26 Mary Barnes	mabarnes@bhfs.com

Exhibit 7

**(9/10/2020 Notice of Entry of Order -
Amended Findings of Fact and Conclusions
of Law and Order)**



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Justice Court of Las Vegas
Township

DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA COLLECTORS
ASSOCIATION, a Nevada non-profit
corporation,

Plaintiff,

vs.

STATE OF NEVADA DEPARTMENT
OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION;
JUSTICE COURT OF LAS VEGAS
TOWNSHIP; DOE DEFENDANTS 1
through 20; and ROE ENTITY
DEFENDANTS 1 through 20,

Defendants.

CASE NO. A-19-805334-C
DEPT. NO. 27

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the **AMENDED FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND ORDER**, was filed on September 10, 2020, in the above-
captioned matter. A copy of said Order is attached hereto.

DATED this 10th day of September, 2020.

OLSON CANNON GORMLEY
& STOBERSKI

BY: /s/ Thomas D. Dillard
THOMAS D. DILLARD, JR., ESQ.
9950 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Attorney for Defendant
Justice Court of Las Vegas
Township

CERTIFICATE OF MAILING

On the 10th day of September, 2020, the undersigned, an employee of Olson, Cannon, Gormley, Angulo & Stoberski, hereby served a true copy of **NOTICE OF ENTRY OF ORDER**, to the parties listed below via the EFP Program, pursuant to the Court's Electronic Filing Service Order effective June 1, 2014, or mailed to the following:

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An employee of OLSON CANNON
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Attorney for Defendant
Justice Court of Las Vegas
Township

DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA COLLECTORS ASSOCIATION, a
Nevada non-profit corporation,

Plaintiff,

v.

SANDY O'LAUGHLIN, in her official
capacity as Commissioner of State of
Nevada Department of Business and
Industry and Financial Institutions
Division; STATE OF NEVADA
DEPARTMENT OF BUSINESS AND
INDUSTRY FINANCIAL INSTITUTIONS
DIVISION; JUSTICE COURT OF LAS
VEGAS TOWNSHIP; DOE DEFENDANTS
1 through 20; and ROE ENTITIY
DEFENDANTS 1 through 20,
Defendants.

Case No.: A-19-805334-C
Dept. No.: XXVII

**AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER**

1 This matter came on for hearing on July 1, 2020, (the "Hearing"). Plaintiff,
2 Nevada Collectors Association, represented by Patrick J. Reilly of the law firm of
3 Brownstein Hyatt Farber Schreck, LLP appeared at the Hearing. Thomas D. Dillard,
4 Jr. of Olson Cannon Gormley & Stoberski appeared for Defendant Justice Court and
5 Vivienne Rakowsky, Deputy Attorney General with the Nevada Attorney General's
6 Office, appeared on behalf of Sandy O'Laughlin in her official capacity as Commissioner
7 of the Financial Institutions Division and the State of Nevada Department of Business
8 and Industry Financial Institutions Division ("FID").

9 At the hearing, the Court heard the Justice Court's and the FID's separate
10 Motions to Dismiss and the Plaintiff's Motion for a Temporary Injunction and
11 Alternative Motion for a Writ of Mandamus or Prohibition. After considering the briefs
12 and the respective arguments, and having considered the evidence introduced by the
13 parties and being fully advised, this Court enters the following Findings of Fact,
14 Conclusions of Law, and Order.

15 FINDINGS OF FACT

16 Based upon the papers filed and arguments at the time of the hearing, this Court
17 finds that by a preponderance of the evidence in the record the following facts have been
18 proven.

19 1. The current version of Las Vegas Justice Court Rule 16 ("LVJC Rule 16") was
20 made effective on January 1, 2007. LVJC Rule 16 states:

21 Unless appearing by an attorney regularly admitted to practice law in
22 Nevada and in good standing, no entry of appearance or subsequent
23 document purporting to be signed by any party to an action shall be
24 recognized or given any force or effect unless the same shall be notarized,
25 or signed with an unsworn declaration pursuant to NRS 53.045, by the
26 party signing the same. Corporations and limited liability corporations
(LLC) shall be represented by an attorney. [Added; effective January 1,
2007.]

26 2. The Nevada State Legislature unanimously passed A.B. 477 (entitled the
27 "Consumer Protection from the Accrual of Predatory Interest After Default Act") in the
28 2019 Nevada State Legislative Session.

1 3. On November 13 2019, Plaintiff, on behalf of its members, filed a complaint
2 in the Eighth Judicial District Court naming the FID and Justice Court as Defendants
3 alleging that sections 18 and 19 of AB 477, codified as NRS 97B.160 and NRS 97B.170,
4 violate the due process and equal protection guarantees of the State and federal
5 constitutions. Plaintiff further alleged that these sections when combined with LVJC
6 Rule 16 denied it access to the courts because the legislation limited attorney fees
7 recovery to 15% of the underlying judgment involving consumer debt contract cases of
8 less than \$5,000 (for which there is concurrent jurisdiction in the Justice Courts and
9 the Small Claims Courts). Plaintiff also requested declaratory and injunctive relief.

10 4. On January 2, 2020, Defendant Justice Court removed the case to the U.S.
11 District Court based on federal question jurisdiction (Case No. 2:20-CV-0007-JCM-
12 EJY).

13 5. Based on a motion to dismiss filed by the FID and a motion for judgment
14 on the pleadings filed by Justice Court, on February 3, 2020, Plaintiff successfully
15 sought leave to file an Amended Complaint. Amongst other changes, Plaintiff amended
16 the Complaint to add the Commissioner of the FID in her official capacity.

17 6. On April 13, 2020, the U.S. District Court *sua sponte* applied *Burford*
18 abstention and remanded the matter back to State Court, finding that it would be
19 “intervening in Nevada’s efforts to establish a coherent policy if it were to adjudicate
20 the instant action.” ECF No. 39, p. 7:3-4.

21 7. Upon remand, the FID and Justice Court each filed Motions to Dismiss,
22 and Plaintiff filed a motion for a Preliminary Injunction or, Alternatively for a Writ of
23 Mandamus or Prohibition along with exhibits including declarations and exemplar
24 small dollar collections. The motions were fully briefed by all parties. A hearing was
25 held for all motions on July 1, 2020.

26 8. Plaintiff claims that its members are primarily concerned with collecting
27 small debts under \$5,000, and argued that the limitations on attorney fees codified in
28 AB 477 is unconstitutional. Plaintiff moved for a temporary injunction, writ of

1 mandamus or writ or prohibition claiming: (1) a creditor will not be able to hire an
2 attorney to represent them in Justice Court; (2) attorneys may refuse to represent
3 creditor entities; and (3) that credit may be tightened for all consumers.

4 9. Defendant Justice Court argued Plaintiff did not plausibly allege that Las
5 Vegas Justice Court Rule 16 caused Plaintiff to suffer an actual injury relating to its
6 right to have access to the courts protected by the First Amendment and/or the
7 Fourteenth Amendment Due Process Clause; and the Justice Court relied upon well-
8 established and controlling law from the U.S. Supreme Court and the Nevada Supreme
9 Court when enacting, years prior to this suit, Rule 16 and therefore possessed immunity
10 from suit for simply following the law.

11 10. The FID argued that dismissal is justified pursuant to NRCP 12(b)(1) and
12 NRCP 12(b)(5). Plaintiff lacks standing because there is no justiciable controversy. The
13 case is not ripe for adjudication because ripeness cannot be based on speculative or
14 hypothetical prospect of a future harm. The Nevada Legislature did not designate the
15 FID to administer AB 477 and the FID does not regulate many of the Plaintiffs members
16 including attorneys and businesses that extend credit to their own customers. An
17 agency cannot expand the powers delegated by the legislature through regulations.
18 Plaintiffs 42 USC § 1983 claims for violations of due process and equal protection do
19 not apply to the FID and its Commissioner because neither the agency nor its
20 commissioner in her official capacity are persons subject to section 1983.

21 11. Plaintiff failed to provide facts to establish that it was substantially denied
22 access to the Justice Courts in Nevada or negate all plausible justifications for the
23 Nevada Legislature to pass AB 477 and LVJC Rule 16.

24 12. Plaintiff in the FAC further failed to allege that it or any affiliated
25 company took any matter to Justice Court and received an order reducing requested
26 attorney fees pursuant to the 2019 Legislative Act.

27 13. Plaintiff's allegations fail to detail official acts foreseeably frustrating
28 litigation and foreclosing relief in a future suit.

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1. Plaintiff has the burden to show by a preponderance of the evidence that the allegations are sufficient to invoke this Court's jurisdiction. *Leite v. Crane Co.* 749 F.3d1117, 1122 (9th Cir. 2014)

3. Dismissal is required pursuant to NRCP 12(b)(1) because Plaintiff failed to establish subject matter jurisdiction. Plaintiff did not show that the parties were adverse, that a controversy existed between the parties and that the issues were ripe for adjudication. See *Kress v. Cory*, 65 Nev. 1, 26, 189 P. 2d 352 (1948). The FID and Plaintiff are not adverse. There is no controversy between the Plaintiff and FID because the Nevada Legislature did not delegate the authority to enforce AB 477 to the FID, and the FID does not regulate activities of the Justice Court including the amount of attorney fees it can award to a prevailing party or the requirement that an entity must appear with counsel.

5. This case is not ripe for determination. A case is not ripe for review when the degree to which the harm alleged by the party seeking review is not sufficiently concrete and any alleged injury is remote or hypothetical. *Cote H. v. Eighth Judicial*

1 *Dist. Court ex rel County of Clark*, 124 Nev. 36 n.1, 175 P.3d 906 (2008). Speculative or
2 hypothetical future harm is not sufficient to invoke jurisdiction. *Doe v. Bryan*, 102 Nev.
3 523, 525, 728 P.2d 443, (1986).

4 6. In considering the ripeness doctrine in pre-enforcement cases, the court
5 looks to see if there is a “credible threat,” or an “actual and well-founded fear” that
6 enforcement action would be taken against the plaintiff by the defendant. *Holder v.*
7 *Humanitarian Law Project*, 561 U.S. 1, 15 (2010); *Virginia v. American Booksellers*
8 *Assn. Inc.*, 484 U.S. 383, 393 (1988); *see also Delew v. Wagner*, 143 F.3d 1219, 1223 (9th
9 Cir. 1988). In the nine months since AB 477 went into effect, there has not been any
10 imminent threat that the FID will or even can enforce Sections 18 or 19 of AB 477
11 against Plaintiff’s members.

12 7. Plaintiff failed to provide a set of facts which would entitle Plaintiff to
13 relief, pursuant to NRCP 12(b)(5). The FID’s regulatory ability is limited to the powers
14 provided in NRS chapter 649. The Nevada Legislature did not delegate the authority to
15 enforce AB 477 to the FID, nor does the FID regulate activities of the Justice Court
16 including the amount of attorney fees it can award to a prevailing party or the
17 requirement that an entity must appear with counsel. *See State of Nevada v. Nevada*
18 *Association Services*, 128 Nev. 362, 294 P.3d 1223 (2012).

19 8. NRS 41.031 requires that the agency’s action must provide the *basis* for
20 the lawsuit, Plaintiff has not shown that the FID has taken any action that can be
21 interpreted as a basis for declaratory, injunctive or any relief against the FID. The FID
22 enforces the law with respect to its licensees, but not with respect to a small business
23 that extend credit to its own customers or with respect to attorneys.

24 9. The FID has the power to adopt regulations, as long as the regulations do
25 not broaden the powers of the FID past the limitations found in statutes. There is no
26 statute in Chapter 649 that allows the FID to regulate attorney fees in a contract
27 between a creditor and a debtor.

28 10. Judicial notice of facts outside of the complaint is only applicable to facts

1 not subject to reasonable dispute or facts that are capable of verification from a reliable
2 source. NRS 47.130, *Mack v. Estate of Mack*, 125 Nev. 80, 92, 206 P.3d 98 (2009).
3 Plaintiff's declarations do not fit the criteria for judicial notice.

4 11. Neither the FID nor its commissioner sued in her official capacity is a
5 person subject to section 1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 69
6 (1989). Therefore all official capacity 42 USC § 1983 claims against the FID must be
7 dismissed.

8 12. Claims for denial of access to the courts may arise from the frustration or
9 hindrance of "a litigating opportunity yet to be gained" (forward-looking access claim)
10 or from the loss of a meritorious suit that cannot now be tried (backward-looking claim).
11 *Christopher v. Harbury*, 536 U.S. 403, 412–415, 122 S.Ct. 2179 (2002). For access to the
12 court's claims, the plaintiff must show: (1) the loss of a 'nonfrivolous' or 'arguable'
13 underlying claim; (2) the official acts frustrating the litigation; and (3) a remedy that
14 may be awarded as recompense but that is not otherwise available in a future suit. *Id.*
15 at 413–14.

16 13. LVJC Rule 16 and A.B. 477 do not unduly infringe any identified
17 fundamental right and also does not target or impose a disparate impact on a protected
18 class; therefore, the Justice Court Rule as well as the subject legislation imposed by the
19 State are subject to only a rational basis type of review. *See Romer v. Evans*, 517 U.S.
20 620, 631–32, 116 S.Ct. 1620 (1996); *FCC v. Beech Communications, Inc.*, 508 U.S. 307,
21 313-14, 113 S.Ct. 2096 (1993).

22 14. To prevail on a rational basis challenge, Plaintiff therefore must "negate
23 every conceivable basis" that could support a rational basis for the alleged regulation.
24 *Medina Tovar v. Zuchowski*, 950 F.3d 581, 593 (9th Cir. 2020); *Fournier v. Sebelius*, 718
25 F.3d 1110, 1123 (9th Cir. 2013); *see also Armour v. City of Indianapolis, Ind.*, 566 U.S.
26 673, 681, 132 S.Ct. 2073 (2012). Plaintiff certainly has not in this case negated all the
27 conceivable rationale regarding the corporate representation rule codified by LVJC Rule
28 16 or, for that matter, the consumer protection rationale for A.B. 477. *See* Sec. 3 (stating

1 "[t]he purpose of this chapter is to protect consumers").

2 15. Also, A.B. 477's "cap on attorney's fees is not a barrier to court access, but
3 a limitation on relief." *Boivin v. Black*, 225 F.3d 36, 45 (1st Cir. 2000). LVJC Rule 16
4 thus does not deny litigants "a reasonably adequate opportunity to present" their case
5 to the Justice Court. *Lewis v. Casey*, 518 U.S. 343, 351, 116 S.Ct. 2174 (1996) (quoting
6 *Bounds v. Smith*, 430 U.S. 817, 825, 97 S.Ct. 1491 (1977)).

7 16. The Nevada Supreme Court has held long before the enactment of LVJC
8 Rule 16 that a legal entity such as a corporation cannot appear except through counsel,
9 and non-lawyer principals are prohibited from representing these types of entities. *See*
10 *In re: Discipline of Schaefer*, 117 Nev. 496, 509 (2001); *see also Rowland v. California*
11 *Men's Colony*, 506 U.S. 194, 201–02, 113 S.Ct. 716 (1993) ("It has been the law for the
12 better part of two centuries ... that a corporation may appear in the federal courts only
13 through licensed counsel.")(citing *Commercial & R.R. Bank of Vicksburg v. Slocumb,*
14 *Richards & Co.*, 39 U.S. (14 Pet.) 60, 65, 10 L.Ed. 354 (1840) ("[A] corporation cannot
15 appear but by attorney") *overruled in part* by 43 U.S. (2 How.) 497, 11 L.Ed. 353
16 (1844); and *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738, 830, 6 L.Ed.
17 204 (1824) ("A corporation, it is true, can appear only by attorney, while a natural person
18 may appear for himself.")).

19 17. A defendant that is charged with the duty of executing a facially valid court
20 order enjoys absolute immunity from liability for a suit challenging the propriety of that
21 court order. *See Turney v. O'Toole*, 898 F.2d 1470, 1472 (10th Cir. 1990); *see also*
22 *Engbretson v. Mahoney*, 724 F.3d 1034, 1038 (9th Cir. 2013) ("[P]ublic officials who
23 ministerially enforce facially valid court orders are entitled to absolute immunity.").

24 18. The Justice Court appropriately followed that law when enacting and
25 publishing LVJC 16 in accordance with controlling law from the Nevada Supreme
26 Court. Plaintiff cannot prevail then against the Justice Court as a matter of law that is
27 solely based on the propriety of that valid and controlling case law. The Justice Court
28 effectively is immune from Plaintiff's suit by virtue of quasi-judicial immunity for

1 following the extant law announced by the Nevada Supreme Court.

2 19. A temporary injunction is an extraordinary remedy “must balance the
3 competing claims of injury and must consider the effect on each party of the granting or
4 withholding of the requested relief.” *Winter*, 555 U.S. at 24 (citation omitted). As a
5 threshold inquiry, when a plaintiff fails to show the likelihood of success on the merits,
6 the court need not consider the remaining factors. *Garcia v. Google, Inc.*, 786 F.3d 733,
7 740 (9th Cir. 2015). Plaintiff is not likely to succeed on the merits and has failed to
8 show that they are subject to irreparable harm if a temporary injunction is not issued.
9 Balancing the competing claims, along with the effect on each party does not weigh in
10 favor of the Plaintiff.

11 20. Plaintiff has failed to provide a basis to issue a writ of mandamus or a writ
12 of prohibition. *Nevada Restaurant Services, Inc. v. Clark County*, 2018 WL 1077279*7,
13 *Stearns v. Eighth Judicial District Court in and for Clark County*, 62, Nev. 102,112, 12
14 P.2d 206 (1943).

15 21. NRS 73.010(1) provides that “[a] justice of the peace has jurisdiction and
16 may proceed as provided in this chapter and by rules of court in all cases arising in the
17 justice court for the recovery of money only, where the amount claimed does not exceed
18 \$10,000. Plaintiff’s members have not been denied access to court for their small
19 collection cases; it is only that Plaintiff’s members chose not to use the court with
20 jurisdiction for their claims that will allow them to appear without an attorney.

21 22. An injury does not take place when the Plaintiffs have access to another
22 court with jurisdiction for their claims and does not require an entity to appear with an
23 attorney.

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1 ORDER

2 This Court being fully apprised in the premises, and good cause appearing to
3 the Court ORDERS as follows:

- 4 1. Plaintiff's Motion for a Preliminary Injunction or, alternatively for a writ of
5 mandamus or prohibition is denied. The Plaintiff is not likely to succeed on
6 the merits and has not suffered irreparable harm. The balance of the
7 hardships do not weigh in favor of the Plaintiff.
8 2. Defendants FID and Justice Court's Motions to Dismiss are granted with
9 prejudice.

10 DATED this 9 day of September, 2020.

Dated this 10th day of September, 2020

11 By: Nancy L Alf
12 DISTRICT COURT JUDGE

13
14 Submitted by:
15 AARON D. FORD
16 Attorney General

56A D48 D9D3 9D4A N
Nancy Alf
District Court Judge

17 By: /s/ Vivienne Rakowsky
18 VIVIENNE RAKOWSKY
19 Deputy Attorney General
20 555 E. Washington Ave. Ste 3900
Las Vegas, Nevada 89101
Attorneys for State Defendants

21 OLSON CANNON GORMLEY
22 & STOBERSKI

23 By: /s/ Thomas D. Dillard, Jr.
24 THOMAS D. DILLARD, JR., ESQ.
25 9950 W. Cheyenne Avenue
26 Las Vegas, Nevada 89129
27 Attorney for Defendant
Justice Court of Las Vegas
Township

28 ///

1 Approved as to form and content by:

2 BROWNSTEIN HYATT
3 FARBER SCHRECK, LLP

4 By: /s/ Patrick J. Reilly
5 Patrick J. Reilly, Esq.
6 Marckia L. Hayes, Esq.
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Melissa Burgener

From: Reilly, Patrick J. <preilly@bhfs.com>
Sent: Wednesday, September 9, 2020 1:09 PM
To: Vivienne Rakowsky; Melissa Burgener
Cc: Tom Dillard
Subject: RE: NV Collectors v. LVJC, et al.

Approved as to form on my end as well. You may use my electronic signature.

Thank you.

Patrick J. Reilly
Brownstein Hyatt Farber Schreck, LLP
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Las Vegas, NV 89106
702.464.7033 tel
702.882.0112 cell
preilly@bhfs.com

From: Vivienne Rakowsky [mailto:VRakowsky@ag.nv.gov]
Sent: Wednesday, September 09, 2020 12:48 PM
To: 'Melissa Burgener'; Reilly, Patrick J.
Cc: Tom Dillard
Subject: RE: NV Collectors v. LVJC, et al.

Thank you. I am fine with the Amended Order and the Order on the hearing today. You may use my electronic signature.

Sincerely,
Vivienne

Vivienne Rakowsky, Deputy Attorney General
State of Nevada
Office of the Attorney General
555 East Washington Avenue, Suite 3900
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From: Melissa Burgener <mburgener@ocgas.com>
Sent: Wednesday, September 9, 2020 11:52 AM
To: Vivienne Rakowsky <VRakowsky@ag.nv.gov>; Reilly, Patrick J. <preilly@bhfs.com>
Cc: Tom Dillard <tdillard@ocgas.com>
Subject: NV Collectors v. LVJC, et al.

Good Morning,

Please find the attached orders in the above mentioned matter for your review.

Thank you,
Melissa Burgener
Assistant to Thomas D. Dillard, Jr., Esq.
and Michael McLoughlin, Esq.
Olson Cannon Gormley & Stoberski
9950 W. Cheyenne Ave.,
Las Vegas, Nevada 89129
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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Nevada Collectors Association,
7 Plaintiff(s)

CASE NO: A-19-805334-C

8 vs.

DEPT. NO. Department 27

9 State of Nevada Department of
10 Business and Industry Financial
11 Institutions Div., Defendant(s)

12 **AUTOMATED CERTIFICATE OF SERVICE**

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

16 Service Date: 9/10/2020

17 Tom Dillard	tdillard@ocgas.com
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