

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA COLLECTORS
ASSOCIATION, a Nevada non-profit
corporation,

Appellant,

v.

SANDY O'LAUGHLIN, in her
official capacity as Commissioner of
the State of Nevada Department of
Business and Industry and Financial
Institution 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,

Respondents.

Supreme Court Case No.: 81930

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

Electronically Filed
Sep 23 2021 02:05 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from Eighth Judicial District Court, State of Nevada, County of Clark
The Honorable Nancy L. Allf, District Judge

JOINT APPENDIX – VOLUME I

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JOINT APPENDIX – VOLUME I

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State Defendant's Reply to Plaintiff's Opposition to Motion to Dismiss	06/29/2020	VII	JA1202 – 1221
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DATED this 23rd day of September, 2021.

/s/ Patrick J. Reilly

Patrick J. Reilly

Eric D. Walther

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CERTIFICATE OF SERVICE


Pursuant to Nevada Rule of Appellate Procedure 25(b), I certify that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and that the foregoing **JOINT APPENDIX – VOLUME I** was served by submitting electronically for filing and/or service with Supreme Court of Nevada’s EFlex Filing system and serving all parties with an email address on record, as indicated below, pursuant to Rule 8 of the N.E.F.C.R. on the 23rd day of September, 2021, to the addresses shown below:

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12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 NEVADA COLLECTORS
15 ASSOCIATION, a Nevada non-profit
16 corporation,

17 Plaintiff,

18 v.

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

26 Defendants.

Case No.:

Dept. No.:

**COMPLAINT AND PETITION FOR WRIT
OF PROHIBITION**

27 Plaintiff NEVADA COLLECTORS ASSOCIATION ("NCA"), by and through its
28 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.

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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

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 24. 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 25. 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 26. 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 27. 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 28. 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 29. A.B. 477 imposes a rate cap of 15% even when a party wishes to invoke its right to
33 a jury trial under the Seventh Amendment of the United States Constitution and Article 1, Section
34 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.

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

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

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

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

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

- 14 a. Offers of Judgment—Justice Court Rule of Civil Procedure 68
- 15 b. Mechanic's Liens—NRS 108.237(1) and NRS 108.239(9)(b);
- 16 c. Attorney's Liens—NRS 18.015(1);
- 17 d. Homeowner's Associations—NRS 116.4117(4);
- 18 e. Justice Court Actions—NRS 69.030;
- 19 f. Appeals from Justice Court—NRS 69.050;
- 20 g. Arbitrations—NRS 38.243(3);
- 21 h. Fees governed by agreement, express or implied—NRS 18.010(1);
- 22 i. Actions when the prevailing party has recovered less than \$20,000—NRS
23 18.010(2); and
- 24 j. Landlord/Tenant—NRS 118A.515.

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

27 41. NCA is entitled to declaratory relief as to whether A.B. 477 prevails over or is
28 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.

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

5 51. Because the attorney’s fees limit established in A.B. 477 is so low, and because
6 JCR 16 requires NCA members to obtain counsel in Justice Court, these rules effectively make it
7 impossible for NCA’s members to retain counsel to represent them in Small Dollar Debt actions.

8 52. Section 18 of A.B. 477 and JCR 16 effectively deny NCA’s members meaningful
9 access to the courts and to a jury trial, as the rules impermissibly infringe on the right of creditors
10 to pursue small dollar consumer debt actions.

11 53. Section 18 of A.B. 477 and JCR 16 are arbitrary, irrational, and lack impartiality
12 as applied to NCA’s members.

13 54. NCA’s members have therefore been deprived of fundamental liberty rights in
14 violation of the Nevada and United States Constitutions.

15 55. As a direct and proximate result of the constitutional violations contained in A.B.
16 477 and JCR 16, separately and applied together, NCA is entitled to preliminary and permanent
17 injunctive relief.

18 **SECOND CLAIM FOR RELIEF**

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

20 56. NCA incorporates and realleges the previous paragraphs as though fully set forth
21 herein.

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

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

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

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

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

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

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

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

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

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

24 67. As a direct and proximate result of the constitutional violations contained in A.B.
25 477, 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.

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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.

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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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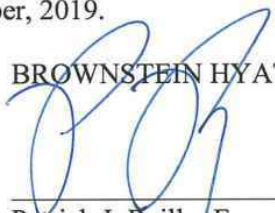
PRAYER FOR RELIEF

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.

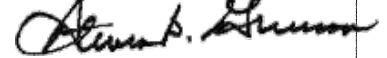
DATED this 12th day of November, 2019.

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



THOMAS D. DILLARD, JR., ESQ.
Nevada Bar No. 006270
OLSON CANNON GORMLEY
& STOBERSKI
9950 W. Cheyenne Avenue
Las Vegas, Nevada 89129
(702) 384-4012 - telephone
(702) 383-0701 - facsimile
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

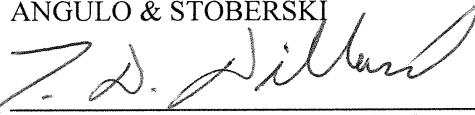
NOTICE OF REMOVAL OF CIVIL ACTION
TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Notice is hereby given that Defendant, JUSTICE COURT OF LAS VEGAS
TOWNSHIP, has filed a Notice of Removal of Civil Action with the United States District Court
for the District of Nevada, a copy of which is attached hereto as Exhibit "A".

DATED this 2 day of January, 2020.

OLSON, CANNON, GORMLEY
ANGULO & STOBERSKI

BY:



THOMAS D. DILLARD, JR., ESQ.
9950 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Attorney for Defendant
Justice Court of Las Vegas
Township

Law Offices of
OLSON CANNON GORMLEY & STOBERSKI
A Professional Corporation
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
(702) 384-4012 Telecopier (702) 383-0701

CERTIFICATE OF MAILING

On the 2 day of January, 2020, the undersigned, an employee of Olson, Cannon, Gormley, Angulo & Stoberski, hereby served a true copy of **NOTICE OF REMOVAL OF CIVIL ACTION TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA**, 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:

Patrick J. Reilly, Esq.
Marckia L. Hayes, Esq.
BROWNSTEIN HYATT
FARBER SCHRECK, LLP
100 N. City Parkway, Ste. 1600
Las Vegas, Nevada 89106-4614
P: 702-382-2101
F: 702-382-8135
preilly@bhfs.com
mhayes@bhfs.com
Attorneys for Plaintiff


An employee of OLSON, CANNON, GORMLEY,
ANGULO & STOBERSKI

EXHIBIT A

Law Offices of
OLSON CANNON GORMLEY & STOBERSKI
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 Attorney for Defendant
 Justice Court of Las Vegas
 Township

UNITED STATES DISTRICT COURT
 DISTRICT OF 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. 2:20cv0007

NOTICE OF REMOVAL OF CIVIL ACTION

TO: THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA:

Defendant, JUSTICE COURT OF LAS VEGAS TOWNSHIP, respectfully shows:

1. JUSTICE COURT OF LAS VEGAS TOWNSHIP is a Defendant in the above entitled action.

2. The above entitled action was commenced in the Eighth Judicial District Court for the State of Nevada, in and for the County of Clark, and is now pending in that court. Process was served upon the Defendant on December 6, 2020. Copies of said Summons and Complaint are attached hereto as Exhibits "A" and "B", respectively.

...

1 3. This Notice is filed timely pursuant to 28 U.S.C.A. §1446(b).

2 4. Defendants are informed and believe and thereon allege, that there have been no
3 further proceedings or papers filed in said action.

4 5. This action is a civil action of which this Court has original jurisdiction under the
5 provisions of 28 U.S.C.A. §1331 (Federal Question) and is one which may be removed to this
6 Court by Defendant pursuant to the provisions of 28 U.S.C.A. §1441(a)(b); in that it is a civil
7 action which allegedly arises out of violations of rights secured by the constitution of the United
8 States and this Court has original jurisdiction over the claims set forth in Plaintiff's Complaint.

9 6. A copy of Defendant's Notice of Removal of the above entitled action to the United
10 States District Court, for the District of Nevada, together with copies of the Summons and the
11 Complaint have been deposited with the Deputy Clerk in the Clerk's Office for the Eighth
12 Judicial District Court of the State of Nevada.

13 7. Copies of all pleadings and papers served upon Defendants in the above entitled
14 action are filed herewith.

15 8. This Notice is filed with this Court within thirty (30) days after receipt by Defendant
16 herein of the Complaint in the above entitled action.

17 WHEREFORE, Defendant prays that the above entitled action be removed from the
18 Eighth Judicial District Court of the State of Nevada in and for the County of Clark, to this
19 Court.

20 DATED this 2 day of January, 2020.

21 OLSON, CANNON, GORMLEY
22 ANGULO & STOBERSKI

23 BY:



24 THOMAS D. DILLARD, JR., ESQ.
25 9950 W. Cheyenne Avenue
26 Las Vegas, Nevada 89129
27 Attorney for Defendant
28 Justice Court of Las Vegas
Township

Law Offices of
OLSON CANNON GORMLEY & STOBERSKI
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(702) 384-4012 Telecopier (702) 383-0701

AFFIDAVIT OF THOMAS D. DILLARD, JR.

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

THOMAS D. DILLARD, JR., being first duly sworn deposes and says:

1. That your affiant is an attorney duly licensed to practice law in the State of Nevada and in the United States District Court, District of Nevada, and that he is a member of the law firm of OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI, maintaining offices at 9950 W. Cheyenne Avenue, Las Vegas, Nevada.

2. That your affiant is the attorney for LAS VEGAS METROPOLITAN POLICE DEPARTMENT and makes this affidavit on behalf of the Defendant herein and that your affiant has prepared and read the foregoing notice and knows the matters set forth and contained therein to be true and correct to the best of your affiant's knowledge and belief.

3. Your affiant further states that on January 2, 2020, he caused to be filed with the Clerk of the Eighth Judicial District Court, a copy of Defendant's Notice of Removal of the above entitled action to the United States District Court for the District of Nevada at Las Vegas, together with copies of the Summons and the Complaint, by depositing such copies with the Deputy Clerk in the Clerk's office for the Eighth Judicial District Court of the State of Nevada at the office of the County Clerk, Clark County Courthouse, 200 South Third Street, Las Vegas, Nevada, 89101.

4. That your affiant caused to be served a Notice Removal on attorney of record for the Parties, in the above entitled action by depositing the same in the United States Mail on

....


....

....

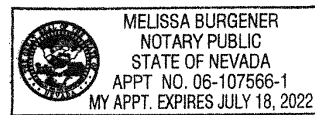
....

....

1 January 2, 2020, in an envelope properly addressed to counsel for Plaintiff Patrick Reilly,
2 Esq., 100 N. City Parkway, #1600, Las Vegas, Nevada, 89106

3
4 
5 THOMAS D. DILLARD, JR.

6 Subscribed and sworn before me
7 this 2 day of January, 2020.



NOTARY PUBLIC in and for said
County and State.

Low Offices of
OLSON CANNON GORMLEY & STOBERSKI
A Professional Corporation
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
(702) 384-4012 Telecopier (702) 383-0701

EXHIBIT A

Electronically Issued
11/13/2019 2:47 PM

SUMM

Patrick J. Reilly, Esq.
Nevada Bar No. 6103
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
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Telephone: 702.382.2101
Facsimile: 702.382.8135
preilly@bhfs.com

Attorneys for Nevada Collectors Association

DISTRICT COURT

CLARK COUNTY, NEVADA

CASE NO: A-19-805334-C

Case No.:

Dept No.: Department 27

NEVADA COLLECTORS
ASSOCIATION, a Nevada non-profit
corporation,

Plaintiff,

v.

SUMMONS

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.

SUMMONS - CIVIL

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 21 DAYS. READ
THE INFORMATION BELOW.**

**TO THE DEFENDANT, JUSTICE COURT OF LAS VEGAS TOWNSHIP: A civil
Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the Complaint.**

1. If you intend to defend this lawsuit, within 21 days after this Summons is served
on you, exclusive of the day of service, you must do the following:

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

EXHIBIT B

Electronically Filed
11/13/2019 2:46 PM
Steven D. Grlerson
CLERK OF THE COURT



1 **COMP**
Patrick J. Reilly, Esq., Nevada Bar No. 6103
2 preilly@bhfs.com
Marckia L. Hayes, Esq., Nevada Bar No. 14539
3 mhayes@bhfs.com
BROWNSTEIN HYATT FARBER SCHRECK, LLP
4 100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
5 Telephone: 702.382.2101
Facsimile: 702.382.8135

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

6 *Attorneys for Nevada Collectors Association*

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

10 NEVADA COLLECTORS
11 ASSOCIATION, a Nevada non-profit
corporation,

Case No.:

Dept. No.:

12 Plaintiff,

**COMPLAINT AND PETITION FOR WRIT
OF PROHIBITION**

13 v.

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

18 Defendants.

19
20 Plaintiff NEVADA COLLECTORS ASSOCIATION ("NCA"). by and through its
21 counsel of record, the law firm of Brownstein Hyatt Farber Schreck, LLP, hereby alleges and
22 complains as follows:

23 **PARTIES, JURISDICTION AND VENUE**

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

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

28 ///

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BROWNSTEIN HYATT FARRER SCHRECK, LLP
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Las Vegas, NV 89108-4411
702.337.1100

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).

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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:

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1 Rule 16. **Appearances in proper person.** Unless appearing
2 by an attorney regularly admitted to practice law in Nevada and in
3 good standing, no entry of appearance or subsequent document
4 purporting to be signed by any party to an action shall be
5 recognized or given any force or effect unless the same shall be
6 notarized, or signed with an unsworn declaration pursuant to NTS
7 53.045, by the party signing the same. Corporations and limited
8 liability corporations (LLC) shall be represented by an attorney.

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

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

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

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

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

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

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

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

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

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

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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 24. 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
obligation of the consumer to pay such attorney's fee[s] and subject to the
following conditions:

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

10 (b) If a consumer form contract or other document evidencing
11 indebtedness provides for the payment of reasonable attorney's fees
12 by the debtor, without specifying any specific percentage, such
13 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.

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

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

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

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

25 29. A.B. 477 imposes a rate cap of 15% even when a party wishes to invoke its right to
26 a jury trial under the Seventh Amendment of the United States Constitution and Article 1, Section
27 3 of the Nevada Constitution.

28

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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.

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

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

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

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

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

- 14 a. Offers of Judgment—Justice Court Rule of Civil Procedure 68
- 15 b. Mechanic's Liens—NRS 108.237(1) and NRS 108.239(9)(b);
- 16 c. Attorney's Liens—NRS 18.015(1);
- 17 d. Homeowner's Associations—NRS 116.4117(4);
- 18 e. Justice Court Actions—NRS 69.030;
- 19 f. Appeals from Justice Court—NRS 69.050;
- 20 g. Arbitrations—NRS 38.243(3);
- 21 h. Fees governed by agreement, express or implied—NRS 18.010(1);
- 22 i. Actions when the prevailing party has recovered less than \$20,000 NRS
23 18.010(2); and
- 24 j. Landlord/Tenant—NRS 118A.515.

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

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

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1 42. Although a fundamental tenet of our judicial system is equal justice for all, A.B.
2 477 expressly favors the outcome for one discrete group of litigants at the expense of another, as
3 it limits amounts that can be recovered against consumers simply because they are consumers.
4 and thereby creates an impermissible unconstitutional classification.

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

8 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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50. The fundamental constitutional right 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.

51. Because the attorney's fees limit established in A.B. 477 is so low, and because JCR 16 requires NCA members to obtain counsel in Justice Court, these rules effectively make it impossible for NCA's members to retain counsel to represent them in Small Dollar Debt actions.

52. Section 18 of A.B. 477 and JCR 16 effectively deny NCA's members meaningful access to the courts and to a jury trial, as the rules impermissibly infringe on the right of creditors to pursue small dollar consumer debt actions.

53. Section 18 of A.B. 477 and JCR 16 are arbitrary, irrational, and lack impartiality as applied to NCA's members.

54. NCA's members have therefore been deprived of fundamental liberty rights in violation of the Nevada and United States Constitutions:

55. As a direct and proximate result of the constitutional violations contained in A.B. 477 and JCR 16, separately and applied together, NCA is entitled to preliminary and permanent injunctive relief.

SECOND CLAIM FOR RELIEF

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

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

57. 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.

58. 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."

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Las Vegas, NV 89101-4611
702.251.2100

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

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

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

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

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

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

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

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

24 67. As a direct and proximate result of the constitutional violations contained in A.B.
25 477, NCA is entitled to preliminary and permanent injunctive relief.

26 ///

27 ///

28 ///

19853482

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.

///

19853882

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.

///

19853882

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 recover 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 of 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.

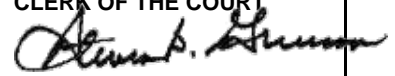
DATED this 12th day of November, 2019.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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**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

NOTICE OF REMAND TO STATE COURT

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20854589

1 PLEASE TAKE NOTICE that on April 13, 2020, U.S. District Court James C. Mahan
2 remanded the above-entitled action to state court. A copy of Judge Mahan's Order is attached for
3 this Court's reference as **Exhibit "1"**.

4 DATED this 30th day of April, 2020.

5
6 /s/Patrick J. Reilly

Patrick J. Reilly, Esq.

7 Marckia L. Hayes, Esq.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

100 North City Parkway, Suite 1600

8 Las Vegas, NV 89106-4614

9 *Attorneys for Nevada Collectors Association*
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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 **NOTICE OF REMAND TO STATE COURT** was served via electronic service on the 30th day of April, 2020, to the addresses shown below:

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*Attorneys for Justice Court of Las Vegas
Township*

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*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 “1”

(Order)

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

NEVADA COLLECTORS ASSOCIATION,

Plaintiff(s),

v.

STATE OF NEVADA DEPARTMENT OF
BUSINESS AND INDUSTRY FINANCIAL
INSTITUTIONS DIVISION, et al.,

Defendant(s).

Case No. 2:20-CV-7 JCM (EJY)

ORDER

Presently before the court is the matter of *Nevada Collectors Association v. State of Nevada Department of Business and Industry Financial Institutions Division et al.*, case number 2:20-cv-00007-JCM-EJY.

I. Background

This action arises from the passage of Assembly Bill 477 (“A.B. 477”)—recently enacted in the 80th session of the Nevada Legislature—and its interplay with defendant Las Vegas Justice Court’s (“Justice Court”) Rule 16 (“JCR 16”). (ECF No. 38). Plaintiff Nevada Collectors Association (“NCA”) alleges the following: NCA is a nonprofit cooperative corporation whose members consist of small businesses that collect consumer debts “on behalf of, for the account of, or as assignees of businesses that sell goods and/or services to consumers which are primarily for personal, family, or household purposes.” *Id.* Most of the actions initiated by NCA members are to recover consumer debts in the amount of \$5,000.00 or less. *Id.*

Many of NCA’s members are debt collectors within the meaning of the Fair Debt Collection Practices Act (“FDCPA”) and are thus subject to its legal requirements. *Id.* Of particular relevance here, the FDCPA requires a debt collector to commence any civil action for

1 the repayment of a consumer debt “in the judicial district or similar legal entity—[A] in which
2 such consumer signed the contract sued upon; or [B] in which such consumer resides at the
3 commencement of the action.” 15 U.S.C. § 1692i(a)(2)(A–B).

4 Pursuant to NRS 4.370, the justice courts have jurisdiction over all civil actions arising on
5 contract for the recovery of money in which the amount in controversy does not exceed
6 \$15,000.00. NRS 4.370(1)(a). And pursuant to JCR 16, corporations and limited liability
7 corporations are prohibited from appearing before a justice court without an attorney. (ECF No.
8 1). Accordingly, NCA members are generally required to file any action to collect unpaid
9 consumer debt in a justice court, and to do so through an attorney. *Id.*

10 Section 18 of A.B. 477 permits the recovery of attorney’s fees for a prevailing plaintiff in
11 an action to collect a consumer debt “only if the consumer form contract or other document
12 evidencing the indebtedness sets forth an obligation of the consumer to pay such attorney’s fees.”
13 (ECF No. 11-2). Additionally, Section 18 caps said recovery of attorney’s fees at 15% of the
14 amount of the consumer debt. *Id.*

15 Under Section 19 of A.B. 477, if a debtor is the prevailing party in any action to collect a
16 consumer debt, the debtor is entitled to an award of reasonable attorney’s fees. *Id.* Section 19
17 further provides that “[t]he amount of the debt that the creditor sought may not be a factor in
18 determining the reasonableness of the award.” *Id.*

19 In light of the foregoing, NCA reasons that: (1) pursuant to the FDCPA, NCA members
20 are generally required to file any action to collect unpaid consumer debt in a justice court; (2) JCR
21 16 requires many of those members to be represented by an attorney; (3) because many NCA
22 members are required to be represented by an attorney, significant legal costs are incurred; and (4)
23 A.B. 477 unlawfully caps a consumer creditor’s recovery of attorney’s fees at 15% of the amount
24 of the consumer debt, making it cost prohibitive for many NCA members to retain an attorney and
25 meaningfully access the courts. (ECF No. 1).

26 On November 13, 2019, NCA filed a complaint in the Eighth Judicial District Court for
27 the State of Nevada alleging five causes of action: (1) violation of substantive due process based
28 on Section 18 of A.B. 477 and JCR 16; (2) violation of substantive and procedural due process

1 based on Section 19 of A.B. 477; (3) violation of equal protection based on Section 18 of A.B.
 2 477; (4) violation of equal protection based on Section 19 of A.B. 477; and (5) declaratory relief.
 3 *Id.* This action was removed to this court on January 2, 2020. *Id.* NCA filed an amended
 4 complaint to add defendant State of Nevada Department of Business and Industry Financial
 5 Institutions Division's ("FID") newly-appointed commissioner, Sandy O' Laughlin
 6 ("O'Laughlin"), as a defendant. (ECF Nos. 20; 37; 38).

7 Now, FID and Justice Court each move to be dismissed from this case. (ECF Nos. 10; 15).
 8 NCA requests that the court issue a preliminary injunction enjoining FID and/or Justice Court from
 9 enforcing A.B. 477, JCR 16, or both. (ECF No. 12).

10 **II. Legal Standard**

11 Ordinarily, the question of whether a federal district court can exercise jurisdiction and
 12 whether it should are one and the same: "where the district court is presented with a case within
 13 its original jurisdiction, it has 'a "virtually unflagging obligation" to exercise the jurisdiction
 14 conferred upon [it] by the coordinate branches of government and duly invoked by litigants.'" *Williams v. Costco Wholesale Corp.*, 471 F.3d 975, 977 (9th Cir. 2006) (quoting *United States v. Rubenstein*, 971 F.2d 288, 293 (9th Cir.1992) (quoting in turn *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976))). However, there are cases which fall within the
 17 district court's jurisdiction but are nonetheless inappropriate for federal review due to "deference
 18 to the paramount interests of another sovereign, and the concern is with principles of comity and
 19 federalism." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 723 (1996) (citations omitted); *see*
 20 *also Growe v. Emison*, 507 U.S. 25, 32 (1993). Notably, abstention—which "derives from the
 21 discretion historically enjoyed by courts of equity"—is appropriate only when the relief sought is
 22 equitable in nature. *Quackenbush*, 517 U.S. at 727–30.

24 Because of its "virtually unflagging obligation" to exercise its jurisdiction, "abstention is
 25 permissible only in a few 'carefully defined' situations with set requirements." *United States v. Morros*, 268 F.3d 695, 703 (9th Cir. 2001) (quoting *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans* ("NOPSI"), 491 U.S. 350, 359 (1989) (quoting in turn *Deakins v. Monaghan*, 484 U.S. 193, 203 (1988))). Thus, "[a]bstention from the exercise of federal jurisdiction is the

exception, not the rule.” *City of Tucson v. U.S. W. Commc’ns, Inc.*, 284 F.3d 1128, 1132 (9th Cir. 2002) (quoting *Colo. River Water Conservation Dist.*, 424 U.S. at 813).

III. Discussion

Federal district courts may abstain in a variety of narrow circumstances, as established by Supreme Court cases such as *R.R. Comm’n of Tex. v. Pullman Co.*, 312 U.S. 496 (1941); *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943); and *Colo. River Water Conservation Dist.*, 424 U.S. 800. As a threshold matter, the court notes that NCA seeks only equitably, namely injunctive, relief in this action. (See ECF Nos. 1; 12; 38). Therefore, if the principles of comity and federalism so demand, abstention may be appropriate. In this case, the court finds reason to abstain under *Burford*.

In an effort to limit the application of abstention under the *Burford* principle, this circuit generally requires certain factors to be present for abstention to apply: (1) that the state has concentrated suits involving the local issue in a particular court; (2) the federal issues are not easily separable from complicated state law issues with which the state courts may have special competence; and (3) that federal review might disrupt state efforts to establish a coherent policy. If the district court determines that *Burford* abstention is appropriate under the circumstances, dismissal rather than stay of the federal action is normally required.

Tucker v. First Maryland Sav. & Loan, Inc., 942 F.2d 1401, 1405 (9th Cir. 1991) (internal citations omitted). The court will address each factor in turn.

1. Nevada has concentrated suits involving the local issue in a particular court

Neither AB 477 nor JCR 16, on its face, relegates certain collection activities to a particular state court. However, as the parties have laboriously briefed, the effect of AB 477 and JCR 16 effectively consign these issues to one of two courts: either justice courts or small claims courts. (See generally ECF Nos. 10; 12; 15; 17; 18; 19; 26; 30; 31; 36). NCA argues throughout the briefing in this case that, because AB 477 cap the recovery of attorney fees to 15% of the underlying debt, it “prevent[s] a certain class of litigants (creditors in consumer debt cases) from filing suit for an unpaid debt by making it cost prohibitive to do so.” (See, e.g., ECF No. 12 at 7–8, 11, 16–18, 22–24).¹ Consequently, its members will be forced to abandon collection efforts on small debts or bring such collection actions in small claims court. *Id.*

¹ For the sake of clarify, the court refers to the CM/ECF system’s pagination, not NCA’s.

1 On one hand, Justice Court argues that the interaction of AB 477 vis-à-vis JCR 16 does not
 2 deprive NCA's members of access to courts because they can still choose to fund litigation in
 3 justice court or represent themselves *pro se* in small claims court. (ECF No. 15 at 8–11). On the
 4 other hand, NCA fervently argues that small claims court “is not an adequate or appropriate
 5 remedy.” (ECF No. 30 at 14). NCA contends that it is purposefully relegated to small claims
 6 court, where attorney fees, discovery, and jury trials are disallowed. *Id.* at 14–16.

7 Thus, because NCA's principal concern is small dollar debt cases, the court finds that the
 8 interaction of AB 477 vis-à-vis JCR 16 means that Nevada has concentrated suits involving this
 9 local issue—collection of consumer debts in Nevada—in a particular court. Indeed, this
 10 conclusion is buttressed by the legislative history of AB 477: “During consideration of A.B. 477,
 11 Peter J. Goatz of the Legal Aid Center of Southern Nevada, Inc. testified that **the intent of A.B.**
 12 **477 was to push debt collection cases into small claims court** ‘where attorney’s fees are
 13 unavailable.’” (ECF Nos. 1 at 14; 19 at 7; 30 at 7; 38 at 6) (emphasis added).

14 2. *The federal issues in this case are not easily separable from the myriad of complicated*
 15 *state law issues, which the state courts have special competence to adjudicate*

16 The principles of comity and federalism warn against interference with state regulatory
 17 schemes and the orderly administration of state judiciaries. This action requires the federal district
 18 court to do just that, and in no small measure. The court is being asked to review the
 19 constitutionality of a state law, AB 477, in light of its interaction with a local state court rule, JCR
 20 16. To further confound the issue, NCA alleges that “the language of AB 477 is inherently vague
 21 and ambiguous” (ECF No. 38 at 4). Notably, for each and every alleged violation of the
 22 federal constitution, there is a concomitant provision of the Nevada constitution. *See id.*

23 Further, the effect of AB 477, taken with JCR 16, is aimed squarely at the regulation of
 24 debt collection in Nevada. Indeed, the parties have thoroughly litigated the threshold questions of
 25 whether FID is, in fact, the proper party to this action, whether the FID can redress any alleged
 26 injury, and what authority AB 477 grants FID. (ECF Nos. 10 at 9–11; 19 at 10–15; 31 at 4–12).
 27 Moreover, NCA notes that the effect of AB 477 vis-à-vis JCR 16 conflicts with a myriad of other
 28 state laws regarding attorney fees including, *inter alia*, Justice Court Rule of Civil Procedure 68,

Nevada Revised Statute (“NRS”) §§ 108.237(1) and 108.239(9)(b), NRS 18.015(1), NRS 116.4117(4), NRS 69.030, NRS 69.050, NRS 38.243(3), NRS 18.010(1) and (2), and NRS 118A.515. (*See* ECF No. 12 at 5).

Accordingly, the federal questions in this case are raised only by the operation of several different provisions of Nevada law and Nevada court rules. Thus, the court cannot reach the federal questions in this case without treading dangerous waters. Rather than stalwartly embrace a complex issue of state law, the court will abstain.

3. *Federal review in this case may disrupt state efforts to establish a coherent policy*

As discussed above, Nevada has a complex web of statutes that govern the award of attorney fees in any case. Nevada has, as its own sovereign, a process of administering its own judicial system. Nevada has also developed its own approach and regulatory system to address debt collection actions in its jurisdiction, of which AB 477 is only part. These three, separate policies are each intricate of their own accord but, taken separately, may be appropriate for review in federal court. Taken together, however, the court finds that this action requires addressing the delicate balance that Nevada’s legislative, executive, and judicial branches have attempted to strike.

As NCA aptly argues, “[c]ollection agencies are also heavily regulated by state law.” (ECF No. 19 at 12). Indeed, as FID points out, its “regulatory power over a collection agency is limited to the duties and responsibilities found in NRS Chapter 649.” (ECF No. 10 at 9). It “does not regulate the contract between collection agenc[ies] and their attorneys”; nor does it “regulate the Justice Court’s award of attorney fees.” *Id.* In short, FID argues that it:

does not regulate many of [NCA’s] members and is limited to Chapter 649 with respect to governing licensed collection agencies. The FID is powerless to take any action with respect to AB 477 and the fees awarded by Justice Court. . . . There has not been and cannot be any threat of enforcement by the FID regarding AB 477, because the Nevada legislature did not delegate the enforcement of AB 477 to the FID.

(ECF No. 31 at 6). And yet, despite FID’s arguments, NCA retorts that it “has primary regulatory authority over licensed collection agencies which includes NCA’s members.” (ECF No. 19 at 10).

1 NCA's argument then underscores the complexity of Nevada's regulatory scheme, arguing that a
2 variety of NRS chapters make FID a proper defendant in this case. *Id.* at 10–15, 18–20.

3 Accordingly, the court finds that it would be intervening in Nevada's efforts to establish a
4 coherent policy if it were to adjudicate the instant action. Instead, the court chooses to abstain.

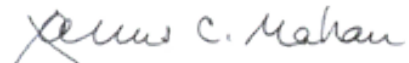
5 **IV. Conclusion**

6 Accordingly,

7 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that, the federal question
8 raised in this case notwithstanding, the court ABSTAINS from exercising jurisdiction over the
9 instant action pursuant to *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943).

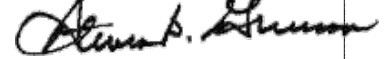
10 IT IS FURTHER ORDERED that the matter of *Nevada Collectors Association v. State of*
11 *Nevada Department of Business and Industry Financial Institutions Division et al.*, case number
12 2:20-cv-00007-JCM-EJY, be, and the same hereby is, REMANDED to the Eighth Judicial District
13 Court, Clark County, Nevada.

14 DATED April 13, 2020.

15 
16 UNITED STATES DISTRICT JUDGE

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James C. Mahan
U.S. District Judge



1 THOMAS D. DILLARD, JR., ESQ.
2 Nevada Bar No. 006270
3 OLSON CANNON GORMLEY
& STOBERSKI
4 9950 W. Cheyenne Avenue
5 Las Vegas, Nevada 89129
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7 Attorney for Defendant
8 Justice Court of Las Vegas
9 Township

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 NEVADA COLLECTORS
10 ASSOCIATION, a Nevada non-profit
corporation,

11 Plaintiff,

12 vs.

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

17 Defendants.

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

HEARING REQUESTED
(per submitted stipulation)

18 **MOTION TO DISMISS**

19
20 COMES NOW, Defendant, JUSTICE COURT OF LAS VEGAS TOWNSHIP ("Justice
21 Court"), by and through its counsel of record, THOMAS D. DILLARD, JR., ESQ., of the law
22 firm of OLSON CANNON GORMLEY & STOBERSKI and pursuant to Nevada Rule of Civil
23 Procedure 12(b)(5), moves this Honorable Court for a dismissal of Plaintiff's First Amended
24 Complaint on file herein.

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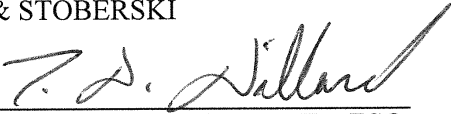
Law Offices of
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9950 West Cheyenne Avenue
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1 This Motion is made and based upon all the pleadings and papers on file herein, the
2 attached points and authorities, together with any argument that may be introduced at the time of
3 hearing this matter before this Honorable Court.

4 DATED this 12 day of May, 2020.

5 OLSON CANNON GORMLEY
6 & STOBERSKI

7 BY:


8 THOMAS D. DILLARD, JR., ESQ.
9 9950 W. Cheyenne Avenue
10 Las Vegas, Nevada 89129
11 Attorney for Defendant
12 Justice Court of Las Vegas Township
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND PROCEDURAL HISTORY

On November 13, 2019, Plaintiff initially filed a Complaint in the Eighth Judicial District Court of Nevada and brought suit against two governmental Defendants; namely, the State of Nevada and the Justice Court of Las Vegas Township (“Justice Court”). The Justice Court removed the case to the U.S. District Court of Nevada based upon federal question jurisdiction. (*Nevada Collection Association v. State of Nevada Department of Business and Industry Financial Institutions Division, et. al.*, Case No. 2:20-CV-7 JCM (EJY)). While the Justice Court had a pending motion for judgment on the pleadings, Plaintiff, on April 1, 2020, filed a First Amended Complaint (“FAC”) with leave of the federal court that simply added as an individual defendant in the case the commissioner of the named State division. [Doc. 37 & 38]. On April 13, 2020, the U.S. District Court of Nevada then entered an order remanding the case to the Eighth Judicial District Court of Nevada. (Case No. 2:20-CV-7 JCM (EJY), Document 39). The Honorable Judge James C. Mahan determined that abstention was appropriate pursuant to the three part test enunciated in *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943).¹ The Justice Court herein moves to dismiss all claims alleged against it in the FAC based on the arguments previously raised in the federal court prior to abstention. That is, Plaintiff has not alleged the Justice Court has denied it meaningful access to the courts and the Justice Court is insulated from any immunity because Plaintiff sues it for simply adhering to controlling law in Nevada.

¹ “In this case, the court finds reason to abstain under *Burford*.”

In an effort to limit the application of abstention under the *Burford* principle, this circuit generally requires certain factors to be present for abstention to apply: (1) that the state has concentrated suits involving the local issue in a particular court; (2) the federal issues are not easily separable from complicated state law issues with which the state courts may have special competence; and (3) that federal review might disrupt state efforts to establish a coherent policy. If the district court determines that *Burford* abstention is appropriate under the circumstances, dismissal rather than stay of the federal action is normally required.

Tucker v. First Maryland Sav. & Loan, Inc., 942 F.2d 1401, 1405 (9th Cir. 1991) (internal citations omitted).” [Case No. 2:20-CV-7 JCM (EJY) #39, pg. 4, lines 10-17].

1 **II. PERTINENT FACTUAL ALLEGATIONS AGAINST THE JUSTICE COURT**

2 Plaintiff filed against the State of Nevada Defendants and against the Justice Court
3 because it alleges that the recent passage of a law by the Nevada State legislature takes on an
4 unconstitutional dimension when it is combined with the application of the longstanding Justice
5 Court rule that corporations cannot represent themselves in proceedings before that tribunal. The
6 FAC does not allege that the Justice Court had any involvement at all, or any interest for that
7 matter, in the passage or ramifications of A.B. 477, that is now codified in Title 8 of the Nevada
8 Revised Statutes. As such, the lone allegation in the FAC pertaining to actions taken by the
9 Justice Court is evidently nothing more than the promulgation of Las Vegas Justice Court
10 ("LVJC") Rule 16 that long preexisted the passage of the State legislation.

11 The gravamen of Plaintiff's FAC is really a legal conclusion, cast as factual allegations,
12 that Plaintiff has been denied its due process right of having "access to the courts" because it has
13 to retain a lawyer for cases it chooses to file in Justice Court and cannot obtain all of its attorney
14 fees as part of judgments obtained in that court pursuant to the recently passed legislation. This
15 allegation of denial of seeking redress from the courts, therefore, pertains just to cases that
16 Plaintiff chooses to file in the Justice Court and for which there is concurrent jurisdiction in
17 small claims court given the small debt claims at issue. This alleged denial of access is also
18 narrowly limited to Plaintiff's self-interest in taking advantage of a statutorily created remedy of
19 being able to obtain a full measure of attorney fees on a judgment.² Specifically, Plaintiff (as a
20 corporation) contends its corporate rights are infringed because it cannot appear in a pro se
21 capacity when prosecuting consumer debt cases against individuals and is also foreclosed by the
22 recent legislation from obtaining attorney fees on any judgment obtained in Justice Court.

23 Plaintiff has only named Justice Court of Las Vegas in the first cause of action for
24 violations of the Substantive Due Process Clause of the Fourteenth Amendment of the United

25 ² The American Rule provides the "'basic point of reference'" for awards of attorney's fees:
26 "'Each litigant pays his own attorney's fees, win or lose, unless a statute or contract provides
27 otherwise.'" Hardt v. Reliance Standard Life Ins. Co., 560 U.S. 242, 252–253, 130 S.Ct. 2149
28 (2010). The rule is deeply rooted in the common law and courts generally will not deviate from
 it "absent explicit statutory authority." Buckhannon Board & Care Home, Inc. v. West Virginia
 Dept. of Health and Human Resources, 532 U.S. 598, 602, 121 S.Ct. 1835 (2001).

1 States Constitution and the analogous due process clause of the Nevada State Constitution.
2 Plaintiff seemingly brought suit against Defendant Justice Court for nothing more than
3 maintaining the efficacy of LVJC Rule 16 following the passage of A.B. 477. Specifically, LVJC
4 Rule 16 states the following:

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

9 (emphasis added). This current version of this Justice Court rule, made effective in 2007, is in
10 fact just a reiteration of well-established law enunciated by the Nevada Supreme Court regarding
11 the ethics of legal representation in Nevada.

12 The foregoing demonstrates that Defendant Justice Court has not caused Plaintiff to
13 suffer an actual injury with regard to any right it possesses regarding having access to the courts.
14 Plaintiff has failed to allege the infringement of an actual injury in a specific case. More
15 importantly, the Justice Court owes no constitutional duty to Plaintiff to disregard controlling
16 case law of the Nevada Supreme Court. LVJCR Rule 16 is nothing more than a restatement of
17 not only long-standing Nevada law, but of American jurisprudence in general. Defendant Justice
18 Court, therefore, is immune from the claim that it denied Plaintiff access to the courts by simply
19 following the controlling law announced by the courts.

20 **III. STANDARD OF REVIEW UNDER RULE 12(b)(5) and SECTION 1983 CLAIMS**

21 A trial court may dismiss a complaint pursuant to Nev.R.Civ.P. 12(b)(5) if it appears with
22 certainty that a plaintiff can prove no set of facts which would entitle him or her to relief. See
23 Edgar v. Wagner, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985). All allegations pled must be
24 accepted as true. See Capital Mortgage Holding v. Hahn, 101 Nev. 314, 315, 705 P.2d 126
25 (1985). It is requisite the court construe the pleading liberally and draw every fair intendment in
26 favor of the non-moving party. See Squires v. Sierra Nev. Educ. Found., 107 Nev. 902, 905, 823
27 P.2d 256, 257 (1991). However, the court should not accept as true unreasonable inferences
28 from the facts alleged or mere conclusions of law. See Alcantara v. Wal-Mart Stores, Inc., 130

1 Nev. 252, 256, 321 P.3d 912, 914 (2014); Ritzer v. Gerovicap Pharmaceutical Corp, 162 F.R.D.
2 642, 645 (D. Nev. 1995).

3 In addition, there are two elements to a § 1983 claim: (1) the conduct complained of must
4 have been under the color of state law; and (2) the conduct must have subjected the plaintiffs to a
5 deprivation of constitutional rights. See Jones v. Community Redevelopment Agency, 733 F.2d
6 646, 649 (9th Cir. 1984). "Conclusory allegations, unsupported by facts, [will be] rejected as
7 insufficient to state a claim under the Civil Rights Act." Id. (quoting Sherman v. Yakahi, 549
8 F.2d 1287, 1290 (9th Cir. 1977)). Dismissal of §1983 claims is always appropriate when the
9 specific facts alleged simply fail to support a transgression by a state actor of a constitutional
10 magnitude. In this case, Plaintiff has failed to state a plausible Section 1983 claim because the
11 allegations in the FAC do not constitute a constitutional transgression on the part of Defendant
12 Justice Court. The Justice Court further is cloaked with immunity from Plaintiff's claims.

13 **IV. LEGAL ARGUMENT**

14 **A. Plaintiff Has Not Alleged Sufficient Facts to Plausibly Show that It Suffered** 15 **an Actual Injury Relating to Access to the Courts For Any Act or Omission** 16 **of the Las Vegas Justice Court.**

17 Plaintiff has failed to allege that it was deprived of an actual injury relating to a specific
18 case before the Justice Court to facially state a plausible claim for denial of access to the courts.
19 The United States Supreme Court reaffirmed that a constitutional prerequisite for a denial of
20 access to the courts claims is an "actual injury" suffered by the §1983 plaintiff. See Lewis v.
21 Casey, 518 U.S. 343, 351-52, 116 S. Ct. 2174, 2180 (1995)(holding to have standing to assert a
22 claim of denial of access to the courts a plaintiff must show an "actual injury"); Christopher v.
23 Harbury, 536 U.S. 403, 122 S.Ct. 2179 (2002)(dismissing complaint because the plaintiff did not
24 allege facts that the defendant's misconduct caused her to lose a 'nonfrivolous' or 'arguable'
25 claim for which she has no comparable remedy through a future suit). To show an actual injury,
26 the litigant thus must show that his pursuit of a legal claim was hindered or prevented. See Id. An
27 actual injury depriving a litigant of access to the courts only exists if the party alleges and
28 demonstrates that a non-frivolous legal claim has been frustrated or has been impeded. Id. at 353,

1 116 S. Ct. at 2181. The failure to set forth an actual injury relating to a specific claim adjudicated
2 by the Justice Court is fatal to the first cause of action pled against the Justice Court.

3 First, Plaintiff's alleged theory of recovery generally finds no shelter under the Fourteenth
4 Amendment as alleged in the FAC. The First Amendment guarantees the right to "petition the
5 Government for a redress of grievances." U.S. Const. amend. I. It is well settled that the right to
6 access to the courts is subsumed within the right to petition. See Bill Johnson's Rests., Inc. v.
7 Nat'l Labor Relations Bd., 461 U.S. 731, 741 (1983). Thus, meaningful access to the courts is
8 guaranteed by the Constitution, see Barnett v. Centoni, 31 F.3d 813, 815 (9th Cir. 1994),
9 however, it "is subsumed under the First Amendment right to petition the government for redress
10 of grievances." Sorranno's Gasco, Inc. v. Morgan, 874 F.2d 1310, 1314 (9th Cir. 1989). Plaintiff
11 has thus not pled a viable claim for relief for a violation of the Substantive Due Process Clause of
12 the Fourteenth Amendment.

13 Regardless, Plaintiff has not pled facts stating that it was denied specific relief in an
14 actual case to state a cognizable denial of access claim regardless of the source of the right.
15 "[A]ccess to the courts means the opportunity to prepare, serve and file whatever pleadings or
16 other documents are necessary or appropriate in order to commence or prosecute court
17 proceedings affecting one's personal liberty [or property rights]." Lewis, 518 U.S. at 384. The
18 Supreme Court in the case of Christopher v. Harbury, 536 U.S. 403, 415–16, 122 S.Ct. 2179
19 (2002) explained that to demonstrate actual injury for the purposes of an access to courts claim,
20 "the underlying cause of action and its lost remedy must be addressed by allegations in the
21 complaint sufficient to give fair notice to a defendant" and must be "described well enough to
22 apply the 'nonfrivolous' test and show that the 'arguable' nature of the underlying claim is more
23 than hope." Thus, a claim for violation of this right accrues only when and if plaintiff suffers an
24 actual injury. Harbury, 536 U.S. at 415; Lewis, 518 U.S. at 351, 354. In other words, a claim for
25 deprivation of the constitutional right of access to the courts must allege both the underlying
26 cause of action, whether that action is merely anticipated or already lost, and the official acts that
27 frustrated the litigation. Harbury, 536 U.S. at 415–16. For access to the court's claims, the
28 plaintiff must therefore allege plausible facts establishing: (1) the loss of a 'nonfrivolous' or

1 ‘arguable’ underlying claim; (2) the official acts frustrating the litigation; and (3) a remedy that
2 may be awarded as recompense but that is not otherwise available in a future suit. *Id.* at 413–14.³

3 Plaintiff must thus allege the Justice Court proximately caused the alleged violation of
4 Plaintiff’s rights, “[t]he touchstone ... [for which] is foreseeability.” *Phillips v. Hust*, 477 F.3d
5 1070, 1077 (9th Cir. 2007). Under *Harbury*’s second element, Plaintiff must show that Justice
6 Court Rule 16 frustrated Plaintiff’s attempt to present a specific and colorable claim for relief. In
7 other words, as in any § 1983 case, Plaintiff must show that the alleged violation of his rights
8 was proximately caused by the Justice Court. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th
9 Cir.1991) (citing *Parratt v. Taylor*, 451 U.S. 527, 535, 101 S.Ct. 1908 (1981)); *Harper v. City of*
10 *Los Angeles*, 533 F.3d 1010, 1026 (9th Cir. 2008). The touchstone of proximate cause in a §
11 1983 action is foreseeability. *See Tahoe–Sierra Pres. Council, Inc. v. Tahoe Regional Planning*
12 *Agency*, 216 F.3d 764, 784–85 (9th Cir.2000) (citing *Arnold v. IBM Corp.*, 637 F.2d 1350, 1355
13 (9th Cir.1981)). Finally, the third element requires Plaintiff show it has no other remedy than the
14 relief available via this suit for denial of access to the courts. *Id.* at 1078–79.

15 **1. The Justice Court Legal Representation Rule with the Nevada**
16 **Statute’s Attorney Fee Limitation Does Not Foreclose Plaintiff Having**
17 **Access to the Courts to Pursue Meritorious Claims.**

18 First, even assuming Plaintiff has standing by pleading an actual injury, the alleged denial
19 of recovery of all attorney fees in consumer contract claims before the Las Vegas Justice Court
20 does not constitute a meaningful denial of access to the courts. Plaintiff can certainly still bring
21 any claim it chooses in that jurisdiction through lawful legal representation. Plaintiff can file
22 pleadings and obtain a judgment in any case it chooses that meets the jurisdictional requirements.
23 Plaintiff can also still recover attorney fees, based upon the language of Section 18 of A.B. 477,
24 up to 15% of the amount in the debt. The limited restriction on this particular remedy does not
25 render Plaintiff’s access to this particular court constitutionally ineffective.

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27 ³ Claims for denial of access to the courts may arise from the frustration or hindrance of “a
28 litigating opportunity yet to be gained” (forward-looking access claim) or from the loss of a
meritorious suit that cannot now be tried (backward-looking claim). *Harbury*, 536 U.S. at
412–15.

1 For example, in the case of Paciulan v. George, 38 F.Supp.2d 1128 (N.D.Cal. 1999) a
2 claim was brought challenging the constitutionality of a state court rule limiting *pro hac vice*
3 admission to nonresidents licensed in other states. The Court found that this rule did not deny the
4 plaintiffs “meaningful access to the courts.” Id. at 1138. The court noted that the plaintiffs may
5 still bring their claims in California courts as litigants; they simply may not bring claims as
6 lawyers without first satisfying California’s rules of admission to the state bar. Id. Plaintiff
7 likewise can still bring claims in the Las Vegas Justice Court. They must simply comply with the
8 long-standing rule that a corporation cannot represent itself and must retain a licensed attorney to
9 represent it.

10 Plaintiff’s argument that the limitation in the amount of attorney fees it can recover in
11 cases before the Justice Court works to deny them some ability to get a full remedy with a
12 judgment in Justice Court fails to reach a constitutional dimension. Much more severe limitations
13 on an award of damages or on recovery of fees have easily withstood constitutional attack.

14 For example, severe limitation in the form of damage cap statutes do not result in a denial
15 of access to the courts. Like Nevada, pursuant to NRS 41.035, many jurisdictions impose damage
16 limitation awards for claims against political subdivisions of the state and/or denial of recovery
17 of punitive damages. The Nevada Supreme Court has on three occasions upheld the
18 constitutionality of the compensatory damage limitation under NRS 41.035(1) to challenges
19 under equal protection and due process (which tantamount to First Amendment challenges). See
20 Martinez v. Maruszczak, 123 Nev. 433, 448-49, 168 P.3d 720, 730 (2007); Arnesano v. State,
21 Department Transportation, 113 Nev. 815, 819, 942 P.2d 139, 142 (1997); State v. Silva, 86 Nev.
22 911, 916, 478 P.2d 591, 593 (1970).⁴ While the Nevada Supreme Court has not specifically
23 addressed a First Amendment challenge, compensatory damage cap statutes have also been
24 uniformly upheld to constitutional challenges that they impermissibly impair a litigant’s right to

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26 ⁴ These statutes support legitimate state interests in protecting the public fisc and encouraging
27 qualified professionals to accept public employment. There is certainly accompanying
28 legitimate governmental interests embodied in the Justice Court rule requiring licensed lawyers
to appear for corporate litigants. It is evident as well that the Nevada legislature reasonably
intended to protect citizens from onerous judgments that end up being substantially greater than
the value of the underlying consumer credit default.

1 access the court to obtain a full and complete remedy.⁵

2 Indeed, in Walters v. National Association of Radiation Survivors, 473 U.S. 305, 105
3 S.Ct. 3180 (1985), the United States Supreme Court held that a civil war era \$10 limit on
4 attorney fees provided in section 3404 of the Veterans' Benefits Act did not result in a denial of
5 due process under the Fifth Amendment or restrict claimants' First Amendment right to access to
6 the courts. Like here, the plaintiffs alleged that the fee limitation provision of § 3404 denied them
7 any realistic opportunity to obtain legal representation in presenting their claims to the VA. Id. at
8 308, 105 S.Ct. at 3183. The Walters Court began by noting the heavy presumption of
9 constitutionality to which a “carefully considered decision of a coequal and representative branch
10 of our Government” is entitled. Id. at 319, 105 S.Ct. at 3188. The Court held that the First
11 Amendment interest is “primarily the individual interest in best prosecuting a claim” and found
12 that there were sufficient due process safeguards available to meet constitutional muster under

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14 ⁵ See e.g., Evans v. State of Alaska, 56 P.3d 1046 (Alaska 2002)(holding statutory cap on
15 noneconomic and punitive damages awards do not violate right of access to courts); State v.
16 DeFoor, 824 P.2d 783, 790-91 (Colo. 1992) (holding access to court provision does not address
17 adequacy of remedy; statutory damage limit on claim against state does not violate access to
18 court); Ryszkiewicz v. City of New Britain, 193 Conn. 589, 479 A.2d 793, 799 (1984) (stating
19 access to courts provision cannot be construed as granting unqualified right to recover
20 unlimited damages from governmental entities); Cauley v. City of Jacksonville, 403 So.2d 379,
21 384-86 (Fla. 1981) (rejecting claims that subsequent statutory damage cap on claims against
22 municipality violated constitutional open court provision); Espina v. Jackson, 442 Md. 311, 112
23 A.3d 442, 456-63 (Md. Ct. App. 2015) (concluding damage cap did not leave plaintiff totally
24 remediless or with a drastically inadequate remedy and thus holding limitation did not violate
25 access to court and right to remedy provisions); Wells v. Panola Cty. Bd. of Educ., 645 So.2d
26 883, 890-92 (Miss. 1994) (stating open court provision did not create unlimited right of access
27 to courts and holding damage cap statute constitutional); Estate of Cargill v. City of Rochester,
28 119 N.H. 661, 406 A.2d 704, 705-06 (1979) (stating statute limiting tort recovery from
governmental subdivisions does not deny constitutional court access); Larimore Pub. Sch. Dis.
No. 44 v. Aamodt, 2018 ND 71, 908 N.W.2d 442, 453 (N.D. 2018); finding the damage cap for
tort claims against political subdivisions is not an absolute bar to a money damages remedy to
constitute denial of access to courts); Zauflik v. Pennsbury Sch. Dist., 629 Pa. 1, 104 A.3d
1096, 1127-29 (2014) (stating legislature acted within constitutional authority in adopting
damage cap for actions against local governmental entities); Tindley v. Salt Lake City Sch.
Dist., 2005 UT 30, 12-26, 116 P.3d 295 (2005)(stating open court provision is not absolute
guarantee of all substantive rights and damage cap on claims against governmental entity did
not violate open court provision); Stanhope v. Brown Cty., 90 Wis.2d 823, 280 N.W.2d 711,
720 (1979) (holding limit on recovery from governmental tortfeasor does not violate remedy
provision of state constitution).

1 due process and First Amendment analysis. The Court even assumed that the fee limitation
2 would make attorneys unavailable to claimants, but nevertheless upheld the statute because
3 attorneys were not essential to vindicate the claims in the specific VA system.

4 The same is true here as Plaintiff can litigate claims in the small claims court without an
5 attorney. See NRS 73.012 ("A corporation, partnership, business trust, estate, trust, association or
6 any other nongovernmental legal or commercial entity may be represented by its director, officer
7 or employee in an action mentioned or covered by this chapter.") Plaintiff can also choose to
8 litigate small value cases in Justice Court with an attorney with the ability to limit the attorney's
9 fees to 15% of the case value per Section 18 of A.B. 477. Plaintiff has access to two different
10 courts in Clark County to litigate the claims it has an alleged interest in prosecuting. These small
11 limitations are, to be sure, not so onerous to render Plaintiff's ability to obtain a remedy in either
12 court wholly ineffective.

13 Plaintiff has not alleged facts that fill the measure of a denial of access to the courts claim
14 for relief pursuant to Section 1983. There are no facts pled suggesting the Justice Court frustrated
15 an underlying claim possessed by Plaintiff and in doing so caused Plaintiff to be wholly denied
16 seeking relief in a subsequent action. The first and only cause of action against the Justice Court
17 hence cannot withstand Rule 12(b)(5) scrutiny. Therefore, Defendant Justice Court is entitled to
18 an order of dismissal with prejudice on this basis.

19 **2. Plaintiff's First Claim for Relief for Denial of Access Claim, is Not Ripe**
20 **Because Plaintiff Has Not Alleged that it Suffered an Actual Injury Suffered.**

21 Alternatively, Plaintiff has not alleged that the Justice Court proximately caused it to
22 suffer an "actual injury" by having a remedy foreclosed that is no hope to subsequently obtain.
23 The foreseeability requirement is clearly not met because the current Justice Court rule has been
24 in existence for many years and so the Justice Court could not have engaged in foreseeable
25 conduct that foreclosed a remedy possessed by Plaintiff. In addition, Plaintiff has not alleged that
26 it prevailed in an action in Justice Court and then had a motion for attorney fees denied. There is
27 no actual injury. Plaintiff has alleged a speculative one, even assuming for purposes of argument
28 that a Court denies constitutional access to the courts when abiding by the American rule of

1 attorney fees.

2 The case of Delew v. Wagner, 143 F.3d 1219 (9th Cir. 1988) is illustrative on the point
3 that Plaintiff must plead facts of an actual injury that demonstrates it was denied a state court
4 remedy in a specific case before having standing to pursue this federal claim. In Delew, the
5 Ninth Circuit agreed with this Court's dismissal of the §1983 claims; however, the Court held
6 that the dismissal would be without prejudice as premature "because the Delews' wrongful death
7 action remains pending in state court, [and] it is impossible to determine" whether they had an
8 ineffective state court remedy. Id. at 1223.⁶ The Court in doing so relied upon the reasoning in
9 the case of Swekel v. City of River Rouge, 119 F.3d 1259 (6th Cir. 1997). In Swekel, the Sixth
10 Circuit rejected an access to courts claim because the plaintiff had yet to file suit in state court:
11 "Before filing an 'access to courts' claim, a plaintiff must make some attempt to gain access to
12 the courts; otherwise, how is this court to assess whether such access was in fact 'effective' and
13 'meaningful'?" Id. at 1264; see also Lynch v. Barrett, 703 F.3d 1153, 1157 (10th Cir. 2013)
14 (concluding denial-of-access claim ripened once plaintiff lost underlying lawsuit)

15 The FAC is barren of any allegations that Plaintiff filed a meritorious action in the Las
16 Vegas Justice Court. Plaintiff has not alleged that it obtained a judgment in that case. Plaintiff
17 further has not alleged that it moved and prevailed on a motion for attorney fees and Plaintiff has
18 not alleged that the awarded amount was so markedly reduced to what it was entitled to obtain
19 that it rendered Plaintiff's access to the courts wholly ineffective. Plaintiff has thus failed to
20 allege an actual injury and so, at a very minimum, the claim for denial of access to the courts is
21 not ripe and should be dismissed without prejudice.

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26 ⁶ In Karim-Panahi v. Los Angeles Police Dept., 839 F.2d 621, 625 (9th Cir. 1988), the Ninth
27 Circuit dismissed as unripe for adjudication a § 1983 cover-up claim on the grounds that
28 whether the plaintiff has a federally cognizable cover-up claim would depend on whether the
plaintiff lost the pending state law suit and, thereafter, whether the plaintiff could show that the
acts of the alleged cover-up defendants were causally connected with a failure to succeed in that
lawsuit.

1 **B. The Justice Court is Immune From Suit for Simply Enacting a Rule that**
2 **Comports with Controlling Law Enunciated by the Nevada Supreme Court.**

3 Plaintiff has failed to state a viable claim for relief against the Justice Court because
4 Plaintiff only brought suit against it for enacting a rule that is merely a reiteration of controlling
5 state law. The Nevada Supreme Court has held long before the enactment of LVJC Rule 16 that a
6 legal entity such as a corporation cannot appear except through counsel, and non-lawyer
7 principals are prohibited from representing these types of entities. See In re: Discipline of
8 Schaefer, 117 Nev. 496, 509 (2001). It is axiomatic that the Justice Court owes no constitutional
9 duty to Plaintiff to revoke LVJC Rule 16 and permit Plaintiff to appear without counsel of record
10 on a case in violation of controlling and well-established case law.

11 The essence of Plaintiff's claim against the Justice Court is to impose liability against it
12 for following controlling Nevada law from the Nevada Supreme Court as well as the United
13 States Supreme Court. The rule of law is that a defendant that is charged with the duty of
14 executing a facially valid court order enjoys absolute immunity from liability for a suit
15 challenging the propriety of that court order. See Turney v. O'Toole, 898 F.2d 1470, 1472 (10th
16 Cir. 1990); see also Engebretson v. Mahoney, 724 F.3d 1034, 1038 (9th Cir. 2013) ("[P]ublic
17 officials who ministerially enforce facially valid court orders are entitled to absolute immunity.").
18 The absolute bar to liability against public officials following court orders applies here with
19 regard to a lower court following the law of a higher court.

20 The rule of law regarding the requirement of a corporation to be represented by a licensed
21 attorney in the courts is beyond dispute. At common law ". . . a plea by a corporation aggregate,
22 which is incapable of a personal appearance, must purport to be by attorney." 1 Chitty On
23 Pleading 550 (12th Am.Ed.1855). The U.S. Supreme Court has always followed the common law
24 on this point of doctrine. See Rowland v. California Men's Colony, 506 U.S. 194, 201-02, 113
25 S.Ct. 716 (1993) ("It has been the law for the better part of two centuries ... that a corporation
26 may appear in the federal courts only through licensed counsel.")(citing Commercial & R.R.
27 Bank of Vicksburg v. Slocomb, Richards & Co., 39 U.S. (14 Pet.) 60, 65, 10 L.Ed. 354 (1840)
28 ("[A] corporation cannot appear but by attorney") overruled in part by 43 U.S. (2 How.) 497,

1 11 L.Ed. 353 (1844); and Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 738, 830, 6
2 L.Ed. 204 (1824) ("A corporation, it is true, can appear only by attorney, while a natural person
3 may appear for himself.")). As fictional legal entities, corporations and partnerships cannot
4 appear for themselves personally. Sw. Express Co. v. Interstate Commerce Comm'n, 670 F.2d
5 53, 55 (5th Cir.1982) (per curiam). Their only proper representative is a licensed attorney, "not
6 an unlicensed layman regardless of how close his association with the partnership or
7 corporation." Id. at 56; see also Balbach v. United States, 119 Fed.Cl. 681, 683 (2015) ("A pro se
8 plaintiff cannot represent a corporation ... The Court cannot waive this rule, even for cases of
9 severe financial hardship.").

10 The Nevada Supreme Court accordingly consistently held that a legal entity such as a
11 corporation cannot appear except through counsel, and non-lawyer principals are prohibited from
12 representing these types of entities. See, e.g., In re: Discipline of Schaefer, 117 Nev. 496, 509
13 (2001) (applying this rule and concluding that "a principal who appears on behalf of his
14 corporation is clearly acting in his capacity as a lawyer representing a client, not as a principal of
15 the corporation"); Guerin v. Guerin, 116 Nev. 210, 214 (2000) (applying this rule and
16 recognizing that a proper person is not permitted to represent an entity such as a trust); Sunde v.
17 Contel of California, 112 Nev. 541, 542 (1996) ("Non-lawyers generally may not represent
18 another person or an entity in a court of law"); id. at 542-43 (recognizing that the Supreme Court
19 of Nevada has consistently required attorneys to represent other persons and entities in court);
20 Salman v. Newell, 110 Nev. 1333, 1335 (1994) (stating that "[n]either a corporation nor a trust
21 may proceed in proper person").

22 The underlying rationale for the rule was inquired into in Heiskell v. Mozie, 65
23 U.S.App.D.C. 255, 82 F.2d 861, 863 (1936) wherein it was explained:

24 The rule in these respects is neither arbitrary nor unreasonable. It arises out of the
25 necessity, in the proper administration of justice, of having legal proceedings
26 carried on according to the rules of law and the practice of courts and by those
27 charged with the responsibility of legal knowledge and professional duty. . . . The
28 rules for admission to practice law in the courts . . . require the applicant to
submit to an examination to test not only his knowledge and ability, but also his
honesty and integrity, and the purpose behind the requirements is the protection of
the public and the courts from the consequences of ignorance or venality.

The court in Mortgage Commission of New York v. Great Neck Improvement Co., 162 Misc.

1 416, 295 N.Y.S. 107, 114 (1937) bluntly explained the justification for the rule as follows:

2 Were it possible for corporations to prosecute or defend actions in person, through
3 their own officers, men unfit by character and training, men, whose credo is that
4 the end justifies the means, disbarred lawyers or lawyers of other jurisdictions
5 would soon create opportunities for themselves as officers of certain classes of
6 corporations and then freely appear in our courts as a matter of pure business not
7 subject to the ethics of our profession or the supervision of our bar associations
8 and the discipline of our courts.

9 Clearly, the Nevada Supreme Court stood on firm legal ground each and every time it
10 held that a corporation cannot represent itself in Nevada courts. The Justice Court in turn
11 appropriately followed that law when enacting and publishing a rule in accordance with that law.
12 Plaintiff cannot prevail then against the Justice Court as a matter of law that is solely based on
13 the propriety of that valid and controlling case law. The Justice Court effectively is immune from
14 Plaintiff's suit by virtue of quasi-judicial immunity for following the extant law announced by
15 the Nevada Supreme Court. Dismissal with prejudice therefore is appropriate because Plaintiff
16 cannot pierce the Justice Court's immunity from suit.


17 **V. CONCLUSION**

18 IN ACCORDANCE WITH THE FOREGOING, the Court should grant the instant
19 motion to dismiss pursuant to Rule 12(b)(5) against the Justice Court for failure to state a claim
20 for relief and dismiss claims made against the Justice Court in the First Amended Complaint.

21 RESPECTFULLY SUBMITTED this 12 day of May, 2020.

22 OLSON CANNON GORMLEY
& STOBERSKI

23 BY:

24 
25 THOMAS D. DILLARD, JR., ESQ.
26 9950 W. Cheyenne Avenue
27 Las Vegas, Nevada 89129
28 Attorney for Defendant
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Township

CERTIFICATE OF MAILING

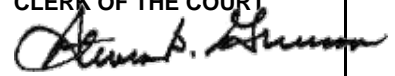
On the 2 day of May, 2020, the undersigned, an employee of Olson, Cannon, Gormley & Stoberski, hereby served a true copy of **MOTION TO DISMISS**, to the parties listed below via the EFP Program, pursuant to the Court's Electronic Filing Service Order effective June 1, 2014, or mailed to the following:

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**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 FOR PRELIMINARY
INJUNCTION OR, ALTERNATIVELY,
FOR A WRIT OF MANDAMUS OR
PROHIBITION**

Hearing Requested

Plaintiff Nevada Collectors Association ("NCA") hereby moves for a preliminary injunction or, alternatively for a writ of mandamus or prohibition (the "Motion"). Specifically, the NCA asks this Court to preliminarily enjoin Sections 18 and 19 of Assembly Bill ("A.B.") 477, which was enacted in the 80th Session of the Nevada Legislature, and Las Vegas Justice Court Rule ("JCR") 16.

20855472

i

1 This Motion is made and based upon on the attached Memorandum of Points and
2 Authorities, the papers and pleadings on file in this action, and any oral argument this Court may
3 allow.

4 DATED this 15th day of May, 2020.

5
6 /s/Patrick J. Reilly
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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
2 **MOTION FOR PRELIMINARY INJUNCTION OR, ALTERNATIVELY,**
3 **FOR A WRIT OF MANDAMUS OR PROHIBITION**

4 **I.**

5 **INTRODUCTION**

6 This is an action for injunctive and declaratory relief arising from the enactment of A.B.
7 477 in the most recent session of the Nevada Legislature. Specifically, Section 18 of A.B. 477
8 arbitrarily caps the recovery of attorney's fees for a prevailing party in a civil lawsuit at only 15%
9 of the amount of any unpaid "consumer debt," regardless of the amount of work actually incurred
10 by counsel in a debt collection action. In stark contrast, Section 19 purports to allow a consumer
11 to recover unlimited fees against the plaintiff if he or she prevails in the case. In addition to the
12 equal protection issues arising from the disparate treatment of party litigants based solely upon
13 their identity, the stated purpose of these rules was to raise artificial barriers to discourage the
14 filing of debt collection lawsuits in justice courts. Even though state law unquestionably confers
15 jurisdiction on the justice courts for all civil actions in which the amount in controversy does not
16 exceed \$15,000.00 (*see* NRS 4.370), A.B. 477 is designed to prevent a certain class of litigants
17 (creditors in consumer debt cases) from filing suit for an unpaid debt by making it cost
18 prohibitive to do so.

19 Plaintiff NCA is an organization whose members consists of small businesses that collect
20 monies on behalf of, for the account of, or as assignees of businesses that sell goods and/or
21 services to consumers which are primarily for personal, family, or household purposes. NCA has
22 representational standing in this matter on behalf of its members. Because of the nature of their
23 businesses, NCA members will undeniably be affected by the enforcement of A.B. 477 in the
24 manner detailed above.

25 The practical effect of A.B. 477 is that it will prevent businesses from ever being able to
26 retain counsel in small dollar cases because the statutory cap on attorney's fees in consumer
27 contract lawsuits is so low. As is widely known, entities are prohibited from appearing in court
28 without an attorney pursuant to JCR 16. A.B. 477 is specifically designed to make it cost
29 prohibitive for consumer creditors to file suit in justice courts. Those creditors are denied their

1 fundamental constitutional right to meaningful access (really any access) to the courts, their right
2 to a jury trial (which would make their cases even more cost prohibitive), as well as their
3 fundamental constitutional right to retain counsel.

4 Thus, NCA brings this instant motion to enjoin the enforcement of A.B. 477, JCR 16, or
5 both. For the reasons set forth below, the Court should grant the Motion.

6 **II.**

7 **STATEMENT OF FACTS**

8 **A. NCA Promotes Lawful Consumer Debt Collection For Its Members.**

9 NCA is a non-profit cooperative corporation whose members consist of small businesses
10 such as collection agencies, law firms, and asset buying companies which engage in the business
11 of collecting unpaid debt on consumer accounts that are past due or in default. Declarations of
12 Mary Hobbs and Tim Myers, attached to the Appendix of Exhibits filed concurrently herewith
13 (the "Appendix") at NCA 000488 and NCA000496. NCA's members collect monies on behalf
14 of, for the account of, or as assignees of businesses that sell goods and/or services to consumers
15 which are primarily for personal, family, or household purposes. *Id.* Those debts vary in kind,
16 including, but not limiting to, the following:

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

25 *Id.* at NCA000489 and NCA000497. Nearly all of NCA members' accounts receivable consist of
26 unpaid small dollar consumer debts in amounts of \$5,000.00 or less ("Small Dollar Debts"). *Id.*
27 NCA serves its members by, *inter alia*, acting as a voice in business, legal, regulatory and
28 legislative matters. *Id.*

B. The Legal Obligations of NCA Members, the Mandatory Venue Provision of the FDCPA, and JCR 16.

Many of NCA's members are debt collection companies licensed pursuant to NRS Chapter 649 by the State of Nevada Department of Business and Industry Financial Institutions Division (the "FID"). Appendix at NCA000489 and NCA000497. The FID regulates and oversees the collection activities of its licensees, which include many of NCA's members, namely, collection agencies. *Id.*

In Nevada, any entity that recovers funds that are past due, or from accounts that are in default, is governed by NRS Chapter 649 and NAC Chapter 649. *See* NRS 649.020 (defining "collection agency" as "all persons engaging, directly or indirectly, and as a primary or a secondary object, business or pursuit, in the collection of or in soliciting or obtaining in any manner the payment of a claim owed or due or asserted to be owed or due to another."). NRS Chapter 649's stated purpose is to: "(a) bring licensed collection agencies and their personnel under more stringent public supervision;" "(b) establish a system of regulation to ensure that persons using the services of a collection agency are properly represented;" and "(c) discourage improper and abusive collection methods." NRS 649.045(2)(a)-(c). To that end, NRS Chapter 649 established a broad regulatory scheme that covers all aspects of collections practices.

The Nevada Legislature granted the FID and its Commissioner primary jurisdiction for the licensing and regulation of persons operating and/or engaging in collection services. *See generally* NRS Chapter 649. Indeed, in order to operate as a collection agency in the State of the Nevada, a collection agency must first submit an application and obtain a license from the Commissioner. NRS 649.075(1). And just as the Commissioner is empowered to grant a collection agency license to operate in the State of Nevada, the Commissioner can also administer fines to a collection agency and/or suspend or revoke such license, if it is found that a collection agency has violated a law prescribed to it. *See e.g.*, NRS 649.395.

One of those laws include the Fair Debt Collection Practices Act (the "FDCPA")—the main federal law that governs debt collection practices. 15 U.S.C. § 1692 *et seq.* In general, the FDCPA prohibits debt collection companies from using abusive, unfair, or deceptive practices to

1 collect debts from consumers. *See id.* The stated purposes of the FDCPA is “to eliminate abusive
2 debt collection practices by debt collectors, to insure that those debt collectors who refrain from
3 using abusive debt collection practices are not competitively disadvantaged, and to promote
4 consistent State action to protect consumers against debt collection abuses.” 15 U.S.C. § 1692(e).
5 Many of NCA’s members are “debt collectors” within the meaning of the FDCPA and are
6 therefore subject to its legal requirements. *See* 15 U.S.C. § 1692a(6). Appendix at NCA000489
7 and NCA000497. The FDCPA subjects debt collectors to civil liability for violations of the
8 FDCPA. *Id.*; 15 U.S.C. § 1692k. Debt collectors are also subject to federal administrative
9 enforcement for violations of the FDCPA. *Id.*; 15 U.S.C. § 1692l.

10 In addition, the Nevada Legislature granted the FID and its Commissioner authority to
11 regulate collection agencies for violations of the FDCPA. *See* NRS 649.370. NRS 649.370
12 provides that “[a] violation of any provision of the federal [FDCPA], 15 U.S.C. §§ 1682 et seq.,
13 or any regulation adopted pursuant thereto, shall be deemed to be a violation of this chapter.”
14 Relevant here, the FDCPA broadly prohibits a debt collector from using “any false, deceptive, or
15 misleading representation or means in connection with the collection of any debt.” 15 U.S.C. §
16 1692e. This includes “litigation activity” and FDCPA violations may be found based on false
17 allegations and requests contained in a complaint. *McCollough v. Johnson, Rodenburg &*
18 *Lauinger, LLC*, 637 F.3d 939, 951 (9th Cir. 2011) (“[T]he FDCPA applies to the litigating
19 activities of lawyers.”); *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027, 1032 (9th Cir. 2010)
20 (“To limit the litigation activities that may form the basis of FDCPA liability to exclude
21 complaints served personally on consumers to facilitate debt collection, the very act that formally
22 commences such a litigation, would require a nonsensical narrowing of the common
23 understanding of the word ‘litigation’ that we decline to adopt.”). By simply requesting
24 attorney’s fees in a complaint that are not authorized by law, collection agencies are violating the
25 FDCPA. NAC 649.320 empowers the Commissioner of the FID to suspend or revoke a license
26 for violations of the FDCPA.

27 The FDCPA has a mandatory venue provision (the “Mandatory Venue Provision”)
28 requiring a debt collector to commence a civil action for the repayment of a consumer debt in the

1 judicial district or similar legal entity where (a) the consumer signed the contract; or (b) the
2 consumer resides at the time the suit is filed. 15 U.S.C. § 1692i(a)(2); Appendix at NCA000490
3 and NCA000498. NRS 4.370 confers jurisdiction upon justice courts to entertain any civil causes
4 of action in matters in which the amount in controversy does not exceed \$15,000.00. *Id.*

5 Because NCA members' accounts receivable generally consist of unpaid Small Dollar
6 Debts, NCA members must file lawsuits in justice courts to collect on unpaid debts. Appendix at
7 NCA000490 and NCA000498. To the extent a consumer debt falls within the Mandatory Venue
8 Provision of the FDCPA and requires the commencement of a civil action in Las Vegas, Nevada,
9 a debt collector is legally required to commence a civil debt collection action in the Justice Court
10 of Las Vegas Township (the "Justice Court"). *Id.*

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

14 **Rule 16. Appearances in proper person.** Unless appearing
15 by an attorney regularly admitted to practice law in Nevada and in
16 good standing, no entry of appearance or subsequent document
17 purporting to be signed by any party to an action shall be
18 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.

19 As such, any time a NCA member commences a civil action to recover a debt, it is forced to
20 retain an attorney to file, litigate, and recover monies in a collection action in Justice Court.
21 Appendix at NCA000490 and NCA000498. Because NCA's members are forced to retain
22 counsel, they are forced to incur significant attorney's fees to (a) prepare and file the complaint;
23 (b) litigate the case to judgment; and (c) attempt to collect upon that judgment. Appendix at
24 NCA000491 and NCA000499. Notably, JCR 16 does not merely apply to licensed debt
25 collectors, but to any entity (including a primary creditor) that seeks redress in Justice Court, no
26 matter how large or small. *See* JCR 16.

27 ///

28 ///

C. Collection of Reasonable Attorney’s Fees in Small Dollar Cases in Justice Court.

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. However, 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); *see also Barrett v. Baird*, 111 Nev. 1496, 1507, 908 P.2d 689, 697 (1995) (“In fact, the Nevada legislature has not hesitated to modify the American rule by enacting statutes allowing or requiring an award of attorney fees to prevailing parties under certain conditions.”), *overruled on other grounds by Lioce v. Cohen*, 124 Nev. 1, 15, 174 P.3d 970, 978-79 (2008). Since the admission of this State to the Union, Nevada courts have served as a trusted “gatekeeper” for requests for attorney’s fees by prevailing parties and have dutifully exercised their inherent judicial authority when assessing the reasonableness of attorney’s fees awarded in civil cases. Indeed, it cannot reasonably be disputed that the Justice Court has traditionally been extremely diligent, careful, and prudent in its role adjudicating claims for attorney’s fees in civil cases. *See* Appendix at NCA000491 and NCA000499.

Nevada has expressly recognized the importance of awarding reasonable attorney’s fees in small dollar cases. For example, NRS 18.010(2)(a) allows prevailing parties to recover reasonable attorney’s fees in all cases in which the amount recovered is less than \$20,000.00. NRS Chapter 69, which governs Justice Courts in Nevada, expressly authorizes an award of reasonable attorney’s fees—taxed as costs—to prevailing parties. NRS 69.030.

Nevada has numerous other fee shifting rules, including offers of judgment under Justice Court Rule of Civil Procedure 68 (“JCRC”), and statutory liens, such as mechanic’s liens and attorney’s liens, including the following:

- a. Offers of Judgment—JCRC 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.

The reason for these rules is obvious—Nevada has a long standing and time-honored policy of awarding attorney’s fees in certain cases, including Justice Court collection matters, because Small Dollar Debt cases are cost prohibitive if prevailing parties are unable to recover their reasonable attorney’s fees.

As this Court is also well aware, the practice of law is a specialized profession, worthy of appropriate compensation. According to a U.S. Consumer Law Attorney Fee Survey Report, the average hourly rate for a consumer attorney in Las Vegas in 2015 was \$420.00, and the average hourly rate for a paralegal in Las Vegas in 2015 was \$144.00. Appendix at NCA000296. According to the December 2017 issue of *Communique*, the publication of the Clark County Bar Association, rates for Nevada attorneys have been approved by courts as high as \$750.00 per hour, including rates as high as \$350.00 per hour for senior associates. *Id.* at NCA000424. Given these high hourly rates in the market, the attorney’s fees that accrue in small dollar consumer cases will often approach or exceed the amount of the unpaid debt, depending upon the amount owed. Appendix at NCA000491 and NCA000499.

That being said, NCA’s members are aware that, when seeking an award of attorney’s fees in a civil action, the attorney’s fees sought¹ must be reasonable and must also satisfy the so-called “Brunzell factors” articulated in *Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 455 P.2d 31 (1969). Appendix at NCA000491 and NCA000499. In addition, when seeking an award of fees, counsel for NCA’s members are bound by Nevada Rule of Professional Conduct 1.5,

¹ Technically, in Justice Courts, claims for attorney’s fees are not awarded as fees. Rather, they are taxed as “costs” against the losing party. See NRS 69.030. As such, A.B. 477 should not even be applied to limit fees in justice courts.

1 which prohibits the charging of unreasonable fees. *Id.* Therefore, in addition to the Justice Court
2 acting as a gatekeeper for reviewing claims for attorney's fees, counsel who submit those
3 applications are ethically bound to act reasonably and by binding Nevada Supreme Court
4 precedent that controls the methodology for an award of fees.

5 **D. The Enactment of A.B. 477 and Setting An Arbitrary Limit On Recovery Of**
6 **Attorney's Fees With No Supporting Record or Meaningful Thought.**

7 In the 2019 legislative session, the Nevada State Legislature enacted A.B. 477, which was
8 designed principally to govern the accrual of interest in consumer form contracts and consumer
9 debts. Appendix at NCA000492 and NCA000499-500. A.B. 477 was codified in Title 8 of the
10 NRS and was titled the Consumer Protection from the Accrual of Predatory Interest After Default
11 Act.² *See id.* The stated purpose of A.B. 477 is to protect consumers and "must be construed as a
12 consumer protections statute for all purposes." *See id.*

13 As relevant here, A.B. 477 limits the recovery of attorney's fees in any action involving
14 the collection of any consumer debt to no more than fifteen percent (15%) of the unpaid principal
15 amount of the debt, and only if there is an express written agreement for the recovery of
16 attorney's fees. *See id.* Specifically, Section 18 of A.B. 477 provides:

- 17 1. If the plaintiff is the prevailing party in any action to collect a
18 consumer debt, the plaintiff is entitled to collect attorney's fees
19 only if the consumer form contract or other document
20 evidencing the indebtedness sets forth an obligation of the
21 consumer to pay such attorney's fee[s] and subject to the
22 following conditions:
23 (a) If a consumer form contract or other document evidencing
24 indebtedness provides for attorney's fees in some specific
25 percentage, such provision and obligation is valid and
26 enforceable for an amount not to exceed 15 percent of the
27 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

28 ² A.B. 477 has now been codified as NRS Chapter 97B.

multiplied by the amount of time reasonably expended to obtain the judgment.

Appendix at NCA000431-432, NCA000492, and NCA000500.

Rather than scale the attorney's fees to the amount of the unpaid debt, or even to an amount that is "reasonable," A.B. 477 imposes an arbitrary 15% rate cap regardless of the amount of the unpaid principal amount. Appendix at NCA000492 and NCA000500. This cap also purports to apply regardless of the amount of work required for a prevailing plaintiff to obtain a judgment, including, drafting a complaint, litigating and obtaining a judgment (by default judgment, summary judgment, or trial), and then collecting on that judgment. *Id.* A.B. 477 imposes a rate cap of 15% on the amount of the debt 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. Appendix at NCA000493 and NCA000500-501.

In stark contrast, Section 19 of 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 cap, 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.

Appendix at NCA000432. A.B. 477 purports to apply to consumer contracts "entered into on or after October 1, 2019." *Id.* A.B. 477 defines a "consumer" as "a natural person," and "consumer debt" is defined 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." *Id.* at NCA000428.

Sections 18 and 19 of A.B. 477 were enacted with zero evidentiary support. In support of the bill, Peter Goatz³ offered written testimony containing his own anecdotal description of *only*

³ Mr. Goatz is an attorney for the Legal Aid Center of Southern Nevada.
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two instances in which the attorney's fees sought by creditors were, in his subjective opinion, excessive. See Appendix at NCA000573. Mr. Goatz did not specifically identify those cases or offer any pleadings from those cases so one could review the amount actually worked by the attorneys in those cases. See id. There was no empirical data or objective proof as to whether unreasonable fees were being sought or awarded by the Justice Court on a regular basis. See id. There was no thought given as to the invasion of the judiciary's role in enacting these rules. See id. There was no attempt to even demonstrate the existence of an actual problem that needed to be resolved by the Legislature. See id. No thought was given as to how Sections 18 and 19 would effectively deprive creditors and debt collectors from access to justice courts.

And, significantly, there was no discussion whatsoever as to why the attorney's fee cap was set at the arbitrary amount of 15%, as opposed to some other percentage. It is literally a number grabbed out of thin air, making the amount of the cap itself hopelessly arbitrary.

Equally arbitrary are the exemptions from A.B. 477. Remarkably, **banks and other financial institutions are completely exempt from the cap on attorney's fees. So are payday lenders.**⁴ Appendix at NCA000429. In other words, while small businesses and debt collectors have their attorney's fees capped when collecting a consumer debt, banks and payday lenders have no such limitation. Why are certain types of businesses exempt, when others are not? Regardless, A.B. 477 creates obvious absurdities. For example:

A consumer receives \$1,000 worth of catering services pursuant to an extension of credit from ABC Catering, a small catering company. The consumer defaults and ABC Catering hires an attorney and sues on the unpaid debt.

ABC Catering is limited to recovery of attorney's fees at 15% on the amount of the debt (only \$150).

A consumer borrows \$1,000 from a bank to pay ABC Catering to pay for catering services. The consumer defaults on the bank loan and the bank sues on the loan.

The bank is unlimited in its recovery of attorney's fees.

A consumer borrows \$1,000 from a Chapter 604A "payday" lender at a 650%

The payday lender is unlimited in its recovery of attorney's fees.

⁴ Banks and payday lenders are equally exempt from the requirement that there be a written agreement for the recovery of attorney's fees. To that extent, A.B. 477 also arbitrarily and unconstitutionally creates disparate treatment in court proceedings between different kinds of persons and entities based solely on their identities.

APR⁵ to pay ABC Catering for catering services. The consumer defaults on the loan and the payday lender sues on the unpaid debt.

These absurdities underscore just how arbitrary A.B. 477 is. The foregoing examples of loans issued by banks and payday lenders are clearly “consumer” loans for “consumer” purposes. Yet they have no limitation on the fees they can recover in Justice Court. But a small business like the fictional “ABC Catering,” like any landscaper or contractor, has no such recourse. As a result, A.B. 477—sponsored by Legal Aid of Southern Nevada—actually favors payday lenders over ordinary small businesses when it comes to recovery in Justice Court.

In reality, Sections 18 and 19 seemed an afterthought of A.B. 477, which by its own title focused principally on adhesion contracts and interest rates. This may explain the utter lack of thought given by the Legislature to these sections, and with no meaningful evidence supporting its passage. The Legislature simply rubber stamped the unsupported request of Mr. Goatz.

E. The Stated Purpose and Combined Effect of A.B. 477 and JCR 16.

As Mr. Goatz expressly stated in his testimony on two separate occasions, Sections 18 and 19 were designed specifically to block debt collectors and small businesses from obtaining access to Justice Court. On April 3, 2019, Mr. Goatz offered written testimony stating that the intent of Sections 18 and 19 of A.B. 477 was to push debt collection cases into small claims court “where attorney’s fees are unavailable.”⁶ Appendix at NCA000577. On May 8, 2019, Mr. Goatz testified 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

⁵ According to the Center for Responsible Lending, the *average* APR for a Chapter 604A loan in Nevada is 652%. See <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-payday-rate-cap-map-feb2019.pdf>.

⁶ Small claims court is not an adequate or appropriate alternative for NCA members and creditors similarly situated. The Nevada Supreme Court has stated that “[h]istorically, there is a distinct difference between justice court and small claims court, and this difference is found in the sole reason for small claim courts’ existence: to provide an avenue for speedy and effective remedies in civil actions involving minimal sums.” *Cheung v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 121 Nev. 867, 874, 124 P.3d 550, 556 (2005). One major difference is that there is a right to a jury trial in justice courts, while there is no such right in small claims court. See *i.d.*; JCRCP 38(a). Furthermore, unlike justice courts, “in small claims court a party is not permitted to conduct depositions or other discovery; neither party may obtain attorney fees; the plaintiff may not seek any prejudgment collection; the proceedings are summary, excusing strict rules; and the collection of any judgment may be deferred and otherwise determined by the justice of the peace.” *Cheung*, 121 Nev. at 872, 124 P.3d at 554.

small dollar debt case....” Appendix at NCA000582. At the Las Vegas Justice Court Bench Bar Meeting on July 30, 2019, one judge agreed that, in many instances, the 15% attorney fee cap will cause the amount of attorney’s fees awarded in cases to be inherently “unreasonable” given the amount of uncompensated work required to obtain a judgment.

Because the attorney’s 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 contracts entered into after October 1, 2019. As designed, Section 18 of A.B. 477, in conjunction with JCR 16, effectively bars NCA’s members and other creditors from accessing the Justice Court because (a) they are required to retain counsel; (b) they are limited in their ability to recover fees to such an extreme that it is cost prohibitive to hire counsel; and (c) A.B. 477 discourages attorneys from even taking such cases in the first place. Appendix at NCA000493 and NCA000501.

Since October 1, 2019, the date A.B. 477 became effective, NCA members, have been receiving unpaid accounts for collection for services that were performed but not yet paid by the consumers. Appendix at NCA000. These accounts receivable include unpaid medical debt and utilities, including doctor’s offices and even NV Energy. *Id.* Yet, NCA’s members cannot move forward on these cases in Justice Court because, under A.B. 477, the attorney’s fees are capped so low. For example:

Unpaid Debt Amount	Attorney’s Fees Capped Amount
\$232.78	\$34.92 ⁷
\$245.00	\$36.75
\$384.67	\$57.70
\$426.03	\$63.90
\$706.65	\$106.00

Appendix at NCA000585-594. In cases involving the foregoing amounts, the amount of attorney’s fees incurred by NCA’s members will not compensate for the attorney’s fees actually incurred and expended.⁸ *Id.* Because these are Small Dollar Debts, debt collectors will actually lose money in many civil cases, even if they prevail on the merits. *Id.* As a result, the attorney

⁷ At this time, the filing fee alone charged by the Justice Court for commencing a civil action is \$74.00 for an action when the sum claimed does not exceed \$2,500.00. http://www.lasvegasjusticecourt.us/faq/fee_schedule.php.

⁸ The same is true for those contracts entered into between Nevada Energy and consumers that are now in collections with CCCS. See Appendix NCA000595-602.

1 fee cap in Section 18 of A.B. 477 will effectively stop debt collectors and creditors like NCA's
2 members from filing suit in Small Dollar Debt cases because it is cost prohibitive to do so. *See*
3 *id.*

4 Meanwhile, A.B. 477 provides that in an action involving the collection of consumer debt,
5 **the debtor** may receive any attorney's fees that are considered reasonable, without any other
6 restriction or limitation. Appendix at NCA000495 and NCA000503. Section 19 undoubtedly
7 places an obvious double standard in favor of debtors **solely because they are consumer**
8 **debtors**. Section 19 offers a remedy to debtors (an award of fees regardless of the amount of the
9 debt sought) while depriving creditors and debt collectors of that same remedy solely because of
10 who they are. *Id.* It too is designed to discourage debt collection lawsuits from suing in Justice
11 Court, as Section 19 provides a blunt invidious instrument for any debtor to discourage lawful
12 and genuine Small Dollar Debt claims. *Id.*

13 Notably, Sections 18 and 19 do not just apply to debt collectors. They apply to **all**
14 businesses, big and small, from landscapers to utility companies, to medical providers, to
15 construction companies. These businesses that provide goods and services to consumers in
16 advance of payment will effectively have no recourse if they do not get paid because (1) they are
17 required to have an attorney to pursue Small Dollar Debts; and (2) will not be able to hire an
18 attorney given the 15% cap of Section 18 and the patently unfair hammer of Section 19. As
19 stated by attorneys Michael Aisen and Adam Gill of Aisen, Gill & Associates, LLP:

20 In the current market, it would not be economically feasible for
21 Aisen Gill to represent CCCS or any other client in a debt
22 collection action involving a Small Dollar Debt lawsuit if its fees
were limited to fifteen per cent (15%) of the unpaid amount of the
debt.

23 NCA000506 and NCA000510. Caleb Langsdale of The Langsdale Law Firm adds:

24 Under A.B. 477, The Langsdale Law Firm will be unable [to]
25 accept new referrals that fall within the statutes['] purview because
26 the cap on attorney's fees makes the time and work required to
bring for a lawsuit, regardless of the amount in controversy, cost
prohibitive and economically unfeasible.

27 Appendix at NCA000513.

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F. The Butcher, Baker, and Candlestick Maker—Get Stiffed By A.B. 477.

A.B. 477 and JCR 16 do not merely affect debt collection agencies, debt purchasers, and attorneys. Rather, these rules affect all businesses that work for and extend credit to consumers. The enclosed record is replete with small business owners attesting as to the nonsensical and devastating effects of A.B. 477. They include medical providers, dental clinics, accountants, therapists, property managers, childcare providers, dry cleaners, bakers, security providers, and landscapers. *See* NCA000514 to NCA000569. These incorporated small business owners attest to the “double whammy” where (1) JCR 16 requires them to hire an attorney to access the Justice Court; and then (2) A.B. 477 makes it effectively impossible for them to access Justice Court in Small Dollar Debt cases. *Id.*

Ironically, A.B. 477 actually hurts consumers as a whole because it will force businesses to tighten the credit they extend. Sections 18 and 19 of A.B. 477 will effectively prohibit debt collectors from commencing civil actions in Justice Court in small dollar cases, many debts will go unpaid, leaving many creditors unwilling to provide services without advance payment. *See* NCA000514 to NCA000569. This will tighten access to credit for all consumers and will effectively punish consumers who pay their debts in full and on time. *Id.*

G. A.B. 477 Has Actually Interfered with NCA Members’ Ability to Sue In Justice Court.

Since A.B. 477 took effect on October 1, 2019, NCA members have been given defaulted debts arising from contracts entered into after the effective date of the new law. *See* NCA000585 through NCA000602 for draft complaints that cannot be filed in Justice Court without being subjected to the boa constrictor that is A.B. 477.

III.

PROCEDURAL HISTORY

This is the third attempt by NCA to obtain a preliminary injunction. NCA commenced this action in 2019 and filed a motion for preliminary injunction on November 27, 2019. This Court set a hearing date of January 8, 2020. On January 2, 2020, Justice Court removed the case to federal court, forcing NCA to re-file its Motion for Preliminary Injunction in that forum from

scratch. The motion was fully briefed when, on April 13, 2020, U.S. District Court Judge James C. Mahan abstained from hearing the case *sua sponte* and remanded the case back to this Court. NCA000603 to NCA000609. In his Order, Judge Mahan concluded that the federal issues in the case “are not easily separable from the myriad of complicated state law issues, which the state courts have special competence to adjudicate.” NCA000607 at Ins. 14-15. Judge Mahan also specifically noted that A.B. 477 conflicts with numerous other state law fee shifting rules. NCA000607 to NCA000608. With Judge Mahan’s remand, NCA again seeks the relief that has been denied for months due to the procedural quagmire this case has become.

IV.

LEGAL ARGUMENT

A. This Court Has Broad Discretion to Provide Injunctive When A Party, Such As NCA, Will Suffer Irreparable Harm.

This Court has broad discretion in determining whether to enter a preliminary injunction. *University & Cmty. College Sys. of Nev. v. Nevadans for Sound Gov’t*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). A preliminary injunction is appropriate “to preserve the relative positions of the parties until a trial on the merits can be held.” *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). Under Rule 65, to obtain a preliminary injunction, NCA must show: (1) NCA has a reasonable likelihood of prevailing on the merits, (2) Defendants’ conduct will cause irreparable harm if it continues, and (3) NCA has no adequate remedy at law. *Department of Conservation & Natural Resources v. Foley*, 121 Nev. 77, 80, 109 P.3d 760, 762 (2005). Pursuant to NRS 33.010, an injunction may be granted in the following cases:

1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.
2. When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff.
3. When it shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some

act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

Consistent with this statute, the Nevada Supreme Court has articulated that "[a] preliminary injunction is available if an applicant can show a likelihood of success on the merits and a reasonable probability that the non-moving party's conduct, if allowed to continue, will cause irreparable harm." *Clark Cnty. Sch. Dist. v. Buchanan*, 112 Nev. 1146, 1149, 924 P.2d 716, 719 (1996) (internal citations omitted); *see also Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987) (listing the above factors). The district court may also weigh the public interest and the relative hardships of the parties in deciding whether to grant a preliminary injunction. *Id.*

B. NCA Easily Satisfies The First Requirement of Injunctive Relief – A Likelihood Of Success On The Merits.

Satisfying the first element—demonstrating a likelihood of success on the merits of NCA's claims—is a simple task. *See Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987) (holding that a "preliminary injunction to preserve the status quo is normally available upon a showing that the party seeking it enjoys a reasonable probability of success on the merits . . ."). As is clear from even a cursory review of the factual background above, NCA's claims are well-founded, as NCA and its members stand to have their due process and equal protection rights violated.

1. NCA's Members Have Fundamental Due Process Right To Meaningful Access To The Courts, to Petition, and to a Jury Trial.

The Due Process Clauses of the United States and Nevada Constitutions prohibit the State from depriving any person "of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1; NEV. CONST. art. 1, § 8(5). "The touchstone of due process is protection of the individual against arbitrary action of government,' . . . whether the fault lies in denial of fundamental procedural fairness . . . , or in the exercise of power without any reasonable justification in the service of a legitimate government objective." *City of Sacramento v. Lewis*, 523 U.S. 833, 845-46 (1998) (quoting *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974)).

1 Accordingly, “substantive due process and procedural due process converge on the same broad
2 issue: whether the government’s action in depriving an individual of a liberty or property interest
3 was arbitrary.” *Zavareh v. Nevada ex. rel. Bd. of Regents of Nev. Sys. of Higher Educ.*, No. 2:12-
4 cv-02033-APG-PAL, 2013 WL 5781729 (D. Nev. 2013).

5 The purpose and intent of due process both in its procedural and substantive applications
6 is to protect life, liberty, and property interest against arbitrary and capricious deprivation. Thus,
7 when determining whether a due process violation exists, courts must analyze the following two
8 steps: “first, it must be determined ‘whether there exists a liberty or property interest which have
9 been interfered with by the State, and second whether the procedures attendant upon that
10 deprivation were constitutionally sufficient.” *Malfitano v. County of Storey*, 133 Nev. 276, 282,
11 396 P.3d 815, 819 (2017) (internal quotation marks omitted).

12 Under Nevada law, courts apply strict scrutiny to cases that affect fundamental rights.
13 The Court has stated:

14 The highest level of scrutiny—strict scrutiny—is applied **in cases**
15 **involving fundamental rights** or a suspect class. Under strict
16 scrutiny, legislation should only be upheld if it is necessary to
advance a compelling state interest, and it is narrowly tailored to
achieve that interest.

17 *Tarango v. State Indus. Ins. Sys.*, 117 Nev. 444, 454, 25 P.3d 175, 182 (2001) (emphasis added).

18 It is well-established that parties have a constitutional right to meaningful access to the courts,
19 even though such right is not specifically enumerated in the federal or state constitutions. *See*
20 *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971). In *Boddie*, the Court stated:

21 Perhaps no characteristic of an organized and cohesive society is
22 more fundamental than its erection and enforcement of a system of
23 rules defining the various rights and duties of its members,
24 enabling them to govern their affairs and definitively settle their
25 differences in an orderly, predictable manner. Without such a
26 ‘legal system,’ social organization and cohesion are virtually
27 impossible; with the ability to seek regularized resolution of
28 conflicts individuals are capable of interdependent action that
enables them to strive for achievements without the anxieties that
would beset them in a disorganized society. Put more succinctly, it
is this injection of the rule of law that allows society to reap the
benefits of rejecting what political theorists call the ‘state of
nature.’

1 401 U.S. at 374. Notably, the Court in *Boddie* struck down the enforcement of a court rule
2 requiring the payment of court fees by indigent women in divorce proceedings.

3 NCA's members have a liberty interest in having meaningful access to the courts. *See*
4 *Malfitano*, 133 Nev. at 282, 396 P.3d at 819 (providing that protected interests "are not created
5 by the Constitution, but rather, they are created and their dimensions are defined by existing rules
6 or understandings that stem from an independent source such as state law.") (citing *Board of*
7 *Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972); *see also Wilkinson v. Austin*, 545
8 U.S. 209, 221 (2005) (proving that liberty interest can arise from the Constitution itself and "from
9 an expectation or interest created by state laws or policies."). "[P]ersons forced to settle their
10 claims of right and duty through the judicial process must be given a meaningful opportunity to
11 be heard. *Boddie*, 401 U.S. at 377. The "right to sue and defend in the courts is . . . one of the
12 highest and most essential privileges of citizenship...." *Chambers v. Baltimore & Ohio R.R. Co.*,
13 207 U.S. 142, 148 (1907). "The very essence of civil liberty certainly consists in the right of
14 every individual to claim the protection of the law, whenever he received an injury. One of the
15 first duties of that government is to afford that protection." *Marbury v. Madison*, 1 Cranch 137,
16 163 (1803). "As our decisions have emphasized time and again, the Due Process Clause grants
17 the aggrieved party the opportunity to present his case and have its merits fully judged." *Logan v.*
18 *Zimmerman Brush Co.*, 455 U.S. 422, 433 (1982). As such, "'the right to be heard' is 'one of the
19 most fundamental requisites of due process.'" *Vance v. Judas Priest*, 1990 WL 130920, at *2
20 (unpublished) (Nev. Dist. Aug. 24, 1990) (Whitehead, J.).

21 There also exists a constitutional right to retain counsel in civil actions. *See, e.g., Powell*
22 *v. Alabama*, 287 U.S. 45, 68-69 (1932); *see also Roa v. Lodi Med. Grp.*, 695 P.2d 164, 166 (Cal.
23 1985) ("Although the right to be represented by retained counsel in civil actions is not expressly
24 enumerated in the federal or state Constitution, our cases have long recognized that the
25 constitutional due process guarantee does embrace such right."). Indeed, the Supreme Court of
26 the United States has laid out a two-part test to determine whether that right has been infringed
27 upon by the enactment of a statute. *See United States Dept. of Labor v. Triplett*, 494 U.S. 715,
28 722 (1990). In particular, a claimant must show that: (1) he or she could not obtain

1 representation, and (2) the unavailability of attorneys is attributable to the particular statute. *See*
2 *id.* It also goes without saying that NCA's members have a constitutionally protected right to
3 petition the Government for a redress of grievances (U.S. CONST. amend. I) and to a jury trial
4 (U.S. CONST. amend. VII). For example, a government law that "erects a barrier that makes it
5 more difficult for members of one group to obtain a benefit than it is for members of another
6 group" may violate the petition clause of the First Amendment. *See Northeastern Fl. Chapter of*
7 *Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993) (conferring
8 standing on association of contractors challenging MBE ordinance).

9 Here, there is no doubt that Section 18 of A.B. 477 imposes crushing burdens on the
10 ability of creditors and debt collectors to obtain legal representation in consumer debt cases.
11 Section 18 caps the amount a creditor or debt collector can obtain in a consumer debt lawsuit to
12 15%. This cap on attorney's fees make it cost prohibitive for creditors and debt collectors to
13 commence civil actions in Justice Court in Small Dollar Debt cases. Under a regime where
14 Section 18 is enforced, **creditors and debt collectors either cannot retain an attorney on**
15 **contingency in Small Dollar Debt actions, or will lose money if charged on an hourly basis,**
16 **even when they are the prevailing party.**

17 Indeed, to avoid a debt in Nevada, a consumer need only decide to refuse to pay a lawful
18 Small Dollar Debt. With A.B. 477 firmly choking the ability of creditors to recover, most will
19 simply throw up their hands and not file a lawsuit in the first place. If a creditor actually were to
20 file a lawsuit, a consumer need only dispute the debt in court to ensure that the lawsuit is dragged
21 out and thus force a money-losing proposition for the plaintiff. For small businesses, this is a
22 crushing burden. For utilities like NV Energy, those losses will simply be passed along to the
23 consumers who follow the rules and pay their debts.

24 As such, not only would the arbitrary 15% cap limit NCA members' ability to recover
25 attorney's fees to such an extreme that is it cost prohibitive to hire counsel, the cap also
26 discourages attorneys from taking such cases in the first place. Since the 15% cap only affects
27 creditors and debt collectors in consumer debt lawsuits, attorneys may avoid these problems by
28 refusing to represent entities such as NCA members or their creditor clients.

1 This problem is only aggravated by the fact that entities such as NCA members are
2 prohibited from appearing in proper person in the Justice Court, as JCR 16 explicitly states
3 requires a business entity to obtain counsel to appear in court. As a result, JCR 16, in conjunction
4 with Sections 18 and 19, effectively leave NCA members without any recourse to collect on
5 unpaid debts from those debtors who refuse to pay the amount in which they contracted for. So
6 long as Nevada law confers jurisdiction on the justice courts for these cases, every business,
7 whether big or small—from landscapers to utilities, to medical providers, to construction workers,
8 to debt collectors such as NCA members—have a right to be heard within the justice courts and
9 that right must remain unfettered. *See Boddie*, 401 U.S. at 379–80 (“No less than these rights, the
10 right to a meaningful opportunity to be heard within the limits of practicality, must be protected
11 against denial by particular laws that operate to jeopardize it for particular individuals.”).

12 Consider the actual account receivable received by CCCS from one of its clients, where
13 the unpaid debt amount is \$706.65. Appendix at NCA000585 to NCA000594. The consumer has
14 yet to pay the unpaid debt. CCCS cannot hire an attorney on a contingency basis because fees
15 would be limited to only \$106.00 under A.B. 477. As described by Mr. Myers, CCCS cannot hire
16 an attorney on an hourly basis because the attorney’s fees would easily outpace the amount owed
17 and, thus far, has been frozen in its ability to sue and recover these sums. CCCS effectively has
18 no remedy and thus cannot recover on the defaulted debt.

19 This is not a speculative injury. This is what small businesses are being faced with as
20 A.B. 477’s effects are now being felt. As the undisputed record demonstrates, it is neither
21 practical nor attainable for NCA members to obtain the required counsel to initiate and litigate
22 Small Dollar Debt cases in Justice Court where they can only recover 15% in attorney’s fees
23 regardless of the amount of work needed to obtain a judgment. Indeed, the attorney fee cap in
24 Section 18 of A.B. 477 will deter creditors and debt collectors like NCA members from filing suit
25 in Small Dollar Debt cases because it is cost prohibitive to do so. A.B. 477 and JCR 16, in
26 concert, stand to jeopardize NCA members’ right to a meaningful opportunity to be heard;
27 accordingly, this Court should grant the Motion and issue an injunction or writ enjoining the
28 enforcement of A.B. 477, JCR 16 (or both) until a final judgment on the merits.

2. **NCA Has An Equal Protection Right To Meaningful Access.**

The Equal Protection Clauses of the United States and Nevada Constitutions provide for a general and uniform application of the laws. U.S. CONST. amend. XIV, § 1; NEV. CONST. art. IV, § 21. Accordingly, the threshold issue in an equal protection analysis is whether a statute effectuates dissimilar treatment of similarly situated persons. *Allen v. State*, 100 Nev. 130, 135, 676 P.2d 792, 795 (1984) (“Equal protection of the law has been long recognized to mean that no class of persons shall be denied the same protection of the law which is enjoyed by other classes in like circumstances.”). The level of scrutiny in an equal protection analysis varies depending on the type of classification created. *Tarango v. SIIS*, 117 Nev. 444, 454, 25 P.3d 175, 182 (2001). As mentioned previously, where fundamental rights are implicated, strict scrutiny applies. *Id.*

Even where a case presents no judicially recognized suspect class or fundamental right that would warrant intervention under a strict scrutiny standard, or where it presents no quasi-suspect class such as sex that would warrant an intermediate level of scrutiny, the court still must analyze the challenged law under the rational basis test. *See Allen*, 100 Nev. at 136, 676 P.2d at 795. Under the rational basis test, a statute will not survive an equal protection challenge if the statute is not reasonably related to a legitimate government purpose. *Tarango*, 117 Nev. at 455, 25 P.3d at 182; *see also State v. District Ct.*, 101 Nev. 658, 662, 708 P.2d 1022, 1024 (1985) (providing that the constitutionality of a statute will not be upheld against an equal protection challenge if the law is unreasonable, arbitrary, and bears no rational relationship to a legitimate state purpose); *Allen*, 100 Nev. at 136, 676 P.2d at 796 (“[W]e will not overturn such a statute unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature’s actions were irrational.”) (quoting *Vance v. Bradley*, 440 U.S. 93, 97 (1979)).

Regardless of whether a strict scrutiny or rational basis test is applied, A.B. 477 is unconstitutional because the amount which a prevailing party may recover in attorney’s fees depends **solely and irrationally on the identity of that party**. Specifically, Section 18 provides that in a lawsuit to collect on consumer debt, a creditor or debt collector attempting to collect on the debt is limited to 15% recovery of attorney’s fees regardless of the amount of the unpaid debt.

1 Astonishingly, other consumer creditors, such as banks and payday lenders, have no such
2 restriction at all. On the other side of the courtroom, Section 19 allows a prevailing debtor to
3 recover *any* attorney’s fees that are deemed reasonable and provides no limit on what a
4 reasonable amount may be. As a result, A.B. 477 creates multiple arbitrary statutory
5 classifications. Some plaintiffs suing on a consumer debt get a better result than other consumer
6 plaintiffs simply because of who they are. In addition, consumer defendants get better results at
7 the expense of plaintiffs, simply because of who they are. These classifications are
8 fundamentally irrational.

9 This invidious classification is particularly abhorrent because it incubates and festers in
10 our court system—a sacred place in which all litigants are supposed to be treated equally,
11 regardless of their identity. *See, e.g.*, NEVADA JURY INSTRUCTION 1.3 (2018) (“A corporation is
12 entitled to the same fair and unprejudiced treatment as an individual would be under like
13 circumstances, and you should decide the case with the same impartiality you would use in
14 deciding a case between individuals.”). Yet, A.B. 477 openly invites and welcomes disparate
15 treatment when it comes to applying fundamental rights—the bill proudly perches itself on only
16 one of the scales of justice.⁹

17 NCA challenges the government to defend the constitutionality of a law that brazenly
18 allows different rights and remedies based purely upon the identity of a litigant. Needless to say,
19 if A.B. 477 is constitutional, so too would the following rules, were they to be enacted:

20 Wealthy people can recover attorney’s
21 fees as prevailing parties in litigation.

Poor people can only recover costs.

22 Casinos are entitled to cross-examine
23 witnesses at trial.

Non-casino litigants are limited to only
two minutes to cross examine a
witness.

24
25
26
27 ⁹ A timeless virtue, justice is often personified by Iustitia, the goddess of Justice within Roman mythology. Iustitia is
28 blindfolded to represent impartiality, while she holds a set of balancing scales. Marta-Ann Schnabel, *What Is Justice?*, 64 LOUISIANA BAR J. 264 (2017).

Homeowners associations are not required to post a bond when obtaining a preliminary injunction.

Homeowners must post a bond when obtaining preliminary injunctive relief.

Contractors have an automatic right to appeal a lower court's decision in a mechanic's lien case.

Developers may only appeal a lower court's decision in a mechanic's lien case if the judgment exceeds \$35,000.00.

None of these imagined rules have anything to do with the merits of a dispute. Yet we know fundamentally that the foregoing rules, if enacted, could not possibly withstand constitutional scrutiny because they openly favor one class of litigant over another in a judicial proceeding. And they possess the same infirmities of A.B. 477—a different set of court rules for different people. A.B. 477 creates preferred status for some litigants in the halls of justice. It is the judicial equivalent of adding stadium boxes, priority access, and VIP sections to the courtroom.

Perhaps the scariest aspect of A.B. 477—and another fact demonstrating its irrationality—is that **it was specifically designed** to tilt the scales of justice and keep a certain class of litigant out of Justice Court. As the principal proponent of A.B. 477, Peter Goatz openly testified that Sections 18 and 19 were written to block debt collectors from obtaining access to Justice Court. Indeed, Mr. Goatz stated 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. . . .” Appendix at NCA000577 and NCA000582. This reasoning is not only unsound, it is *per se* irrational. Creditors and debt collectors have a statutory right to bring any lawsuit involving Small Dollar Debts before the Justice Court. *See* NRS 4.370 (1)(a) (providing that Justice Courts have jurisdiction “[i]n actions arising on contract for the recovery of money only, if the sum claimed, exclusive of interest, does not exceed \$15,000.”). A.B. 477 does not alter the jurisdiction of the Justice Court for all, which is something the Legislature could do. Rather, this law has erected barriers to the Justice Court *for some* depending on the identity of the litigant. Specifically, Section 18 effectively eliminates creditors’ and debt collectors’ ability to obtain counsel in debt collection cases due to the artificially low cap on the recovery of attorney’s fees. And regardless of creditors and debt

collectors' willingness to appear in Justice Court in proper person, creditors and debt collectors must hire counsel to represent them in Justice Court because JCR 16 prohibits entities from appearing in Justice Court without representation by an attorney licensed to practice law.

Mr. Goatz also testified that the intent of A.B. 477 was to push debt collection cases into small claims court "where attorney's fees are unavailable." As evident from this statement, Mr. Goatz is aware that small claims court does not afford parties before it the same rights and procedures as those in Justice Court.

Equally troubling, A.B. 477 was enacted with no evidentiary support. On two occasions, Mr. Goatz described two unnamed cases in which the unspecified amount of attorney's fees sought by creditors were, in his personal opinion, excessive. There was no empirical data or objective proof as to whether unreasonable or excessive fees were actually being sought or awarded by the Justice Court on a regular basis. In addition, A.B. 477's legislative history is devoid of any attempt to demonstrate the existence of an actual problem that needed to be resolved by the Legislature. Simply put, without any record of any kind to support proposed legislation, a bill like A.B. 477 becomes a "rubber stamp" bill. There is nothing in the record supporting the Legislature's decision to cap the amount of recovery of attorney's fees in consumer debt cases, as opposed to bank loan or payday loan cases. There is nothing in the record supporting the Legislature's decision to select the random number of a 15% cap, as opposed to a 20% or 25% cap. And there is nothing in the record showing that the fees being awarded in Justice Court were actually excessive. Thus, there is no legitimate governmental purpose for Sections 18 and 19 of A.B. 477. Even under a lenient rational basis standard,¹⁰ there must be something more than the "rubber stamp" given by this Legislature in this instance.

C. NCA Will Suffer Irreparable Harm In The Absence Of A Preliminary Injunction.

This Court should issue a preliminary injunction to preserve the *status quo ante* if a party will be subject to "irreparable harm" in the absence of an injunction. *Dixon*, 103 Nev. at 415, 742

¹⁰ The utter lack of an evidentiary basis and "rubber stamp" consideration given by the Legislature should particularly weigh against application of a "conceivable" rational basis standard, which does nothing but invite the kind of thoughtless proceeding that took place here.

P.2d at 1029. The lengthy record is undisputed that, under A.B. 477 and JCR 16, businesses that provide goods and services to consumers in advance of payment will effectively have no recourse in Small Dollar Debt cases if they do not get paid because (1) they are required to have an attorney to pursue Small Dollar Debts; and (2) will not be able to hire an attorney given the 15% cap of Section 18 and the patently unfair hammer of Section 19. Indeed, debt collectors' ability to sue on unpaid debts, such as those held by CCCS, is already being interfered because of A.B. 477. Because Sections 18 and 19 will effectively prohibit creditors from commencing civil actions in Justice Court in small dollar cases, many debts will go unpaid, leaving many creditors unwilling to provide services without advance payment. This will tighten access to credit for all consumers and will effectively punish consumers who pay their debts in full and on time. *Id.* Consequently, the Court should issue an injunction.

D. The Interests Of NCA And The Public Will Be Best Served If Defendants Are Enjoined From Harming NCA.

With regard to the Court's final considerations, the relative interests of the parties and the public interest weigh heavily in favor of the issuance of injunctive relief on the terms requested. *See Ottenheimer*, 91 Nev. at 342, 535 P.2d at 1285. A.B. 477's broad sweeping language essentially applies to every consumer contract under the sun. Thus, A.B. 477 also affects doctors, electricians, car dealers, and any other company that sells a product or service for a profit. Similar to NCA, those companies have an interest that involves being able to collect on unpaid debt by way of the courts. As detailed in great length above, A.B. 477 and JCR 16 effectively bar creditors and debt collectors from suing in Justice Court in Small Dollar Debt cases. The effect of this law will be to impact the consumer credit market in Nevada, as creditors will be effectively unable to proceed in Justice Court. As such, this Court should enjoin Defendants from enforcing A.B. 477 until there is a final judgment on the merits in this matter.

E. The Bond Amount Should Be Nominal.

Security is required "for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. NRCP 65(c). This Court has the discretion to fix the bond amount "in such sum as the Court deems proper."

1 *Id.* NCA merely seeks to maintain the *status quo* by enjoining Defendants from enforcing A.B.
2 477, and given the constitutional rights that will be clearly violated if A.B. 477 becomes effective,
3 there is a low possibility that Defendants will be *wrongfully* enjoined or restrained. As sum, a
4 minimal bond, if any, is appropriate.

5 **F. This Court Has Broad Discretion to Provide Writ Relief When There is No Plain,**
6 **Speedy, and Adequate Remedy in the Course of Law.**

7 NRS Chapter 34 empowers courts to issue writs of prohibition to arrest the proceedings of
8 any tribunal exercising judicial functions, when such proceedings are without or in excess of the
9 jurisdiction of such tribunal. NRS 34.320. Such a writ may be issued by a district court “in all
10 cases where there is no plain, speedy and adequate remedy in the ordinary course of law.” NRS
11 34.330. In addition, a writ of mandamus is appropriate in cases applying the constitutionality of a
12 particular rule or statute. *See, e.g., We the People Nev. ex rel. Angle v. Miller*, 124 Nev. 874, 892,
13 192 P.3d 1166, 1178 (2008). A district court has discretion when deciding whether to consider a
14 petition for a writ of mandamus. *Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006).

15 Here, Justice Court should be directed to revoke JCR 16 and allow entities to appear in
16 Justice Court in proper person. Or, in the alternative, the FID and Justice Court should be
17 directed to not enforce A.B. 477. Without such relief, A.B. 477, in conjunction with JCR 16, will
18 violate NCA members’ rights to meaningful access to the courts, retain counsel, and to a jury.
19 The reality of the situation is that A.B. 477 now affects the way in which JCR 16 is applied. JCR
20 16 was previously never an issue for NCA members because they were able to retain counsel (and
21 were afforded the opportunity to recover awarded reasonable attorney’s fees just like any other
22 litigant in Justice Court). Now, with the enactment of A.B. 477, and considering NCA members’
23 lack of ability to retain counsel, Justice Court’s enforcement of JCR 16 constitutes an arbitrary a
24 capricious exercise of discretion. On the flip side, if the FID enforces A.B. 477 and imposes
25 administrative penalties on collection agencies for requesting fees over and beyond the 15% cap,
26 such enforcement would not only support a law that includes invidious classification, but also
27 support the intended purpose of the law: to eliminate access to courts for small businesses.
28 Justice Court only awarding collection agencies 15% of the amount of the debt would also have

1 the same affect. Lastly, writ relief is appropriate because no adequate or speedy legal remedy
2 exists until the next legislative session. Thus, this Court should grant NCA's requests for writ
3 relief.

4 **IV.**

5 **CONCLUSION**

6 For the above mentioned reasons, NCA respectfully requests that the Court issue a
7 preliminary injunction or writ of prohibition consistent with the relief sought herein.

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

9 DATED this 15th day of May, 2020.

10
11 /s/Patrick J. Reilly
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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 FOR PRELIMINARY INJUNCTION OR, ALTERNATIVELY, FOR A WRIT OF MANDAMUS OR PROHIBITION** was served via electronic service on the 15th day of May, 2020, to the addresses shown below:

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