

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 02:10 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 IV

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JOINT APPENDIX – VOLUME IV

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Appendix of Exhibits to Motion for Preliminary Injunction or, Alternatively, for a Writ of Mandamus or Prohibition Volume I	05/15/2020	II	JA0101 – 0313
Appendix of Exhibits to Motion for Preliminary Injunction or, Alternatively, for a Writ of Mandamus or Prohibition Volume I – CONTINUED	05/15/2020	III	JA0314 – 0526
Appendix of Exhibits to Motion for Preliminary Injunction or, Alternatively, for a Writ of Mandamus or Prohibition Volume II	05/15/2020	IV	JA0527 – 0601
Appendix of Exhibits to Motion for Preliminary Injunction or, Alternatively, for a Writ of Mandamus or Prohibition Volume III	05/15/2020	IV	JA0602 – 0720
Complaint and Petition for Writ of Prohibition	11/13/2019	I	JA0001 – 0014
Corrected State Defendant’s Motion to Dismiss Amended Complaint	06/15/2020	VI	JA0994 – 1015
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Motion for Preliminary Injunction or, Alternatively, for a Writ of Mandamus or Prohibition	05/15/2020	I	JA0067 – 0100

Motion to Amend Findings of Fact and Conclusions of Law and to Alter or Amend Judgment	08/03/2020	VII	JA1236 – 1243
Motion to Dismiss	05/12/2020	I	JA0051 – 0066
Notice of Entry of Order Granting in Part and Denying in Part Plaintiff's Motion to Amend Findings of Fact and Conclusions of Law	09/10/2020	VIII	JA1327 – 1334
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Notice of Entry of Order of Findings of Fact, Conclusions of Law, and Order	07/20/2020	VII	JA1222 – 1235
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Opposition to Motion to Dismiss	05/26/2020	V	JA0721 – 0856
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Recorder's Transcript of Proceedings re: Pending Motions	08/19/2020	VIII	JA1292 – 1318

Reply in Support of NCA's Motion for Preliminary Injunction or, Alternatively, for a Writ of Mandamus or Prohibition	06/10/2020	VI	JA0977 – 0993
Reply Memorandum in Support of Motion to Amend Findings of Fact and Conclusions of Law and to Alter or Amend Judgment	09/02/2020	VIII	JA1319 – 1326
Reply to Plaintiff's Opposition to the Justice Court's Motion to Dismiss	06/04/2020	V	JA0887 – 0906
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State Defendant's Opposition to Plaintiff's Motion for Preliminary Injunction, Writ of Mandamus or Prohibition	06/15/2020	VI	JA1016 – 1054

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

BROWNSTEIN HYATT FARBER

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CERTIFICATE OF SERVICE

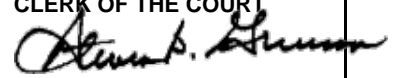
Pursuant to Nevada Rule of Appellate Procedure 25(b), I certify that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and that the foregoing **JOINT APPENDIX – VOLUME IV** was served by submitting electronically for filing and/or service with Supreme Court of Nevada’s EFlex Filing system and 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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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

**APPENDIX OF EXHIBITS TO
MOTION FOR PRELIMINARY
INJUNCTION OR, ALTERNATIVELY,
FOR A WRIT OF MANDAMUS OR
PROHIBITION – VOLUME II**

Exhibit	Document	Page Nos.
2	What are "Reasonable Attorney's Fees" According to the State and Federal Courts in Nevada? By: John M. Naylor, Esq.	NCA000424-000426
3	Assembly Bill No. 477 – Committee on Commerce and Labor	NCA000427-000432
4	Minutes of the Meeting of the Assembly Committee on Commerce and Labor – Eightieth Session, April 3, 2019	NCA000433-000452

5	Minutes of the Senate Committee on Commerce and Labor – Eightieth Session, May 8, 2019	NCA000453-000487
6	Declaration of Mary Hobbs in Support of Motion for Preliminary Injunction (Secretary and Treasurer of Nevada Collectors Association)	NCA000488-000495

DATED this 15th day of May, 2020.

/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 APPENDIX OF EXHIBITS TO APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION OR, ALTERNATIVELY, FOR A WRIT OF MANDAMUS OR PROHIBITION – VOLUME II was served via electronic service on the 15th day of May, 2020, to the addresses shown below:

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/s/Mary Barnes

An employee of Brownstein Hyatt Farber Schreck, LLP

What are “Reasonable Attorney’s Fees” According to the State and Federal Courts in Nevada?

By John M. Naylor, Esq.

IN SEEKING ATTORNEY’S FEES IN LITIGATION IN NEVADA, PRACTITIONERS SHOULD BE MINDFUL OF THE DIFFERENT APPROACHES BY THE STATE AND FEDERAL COURTS, AS WELL AS THE NEVADA RULES OF PROFESSIONAL CONDUCT (“NRP C”).

A. NRP C 1.5 prohibits unreasonable fees

MODEL RULE 1.5 OF THE PROFESSIONAL RULES OF CONDUCT PROHIBITS AN ATTORNEY FROM CHARGING UNREASONABLE FEES. ADOPTED IN NEVADA IN 2006, THIS RULE HAS BEEN THE SUBJECT OF LITTLE DISCUSSION. MOST OF THE NEVADA CASES REFERRING TO THE RULE ARE DISCIPLINARY PROCEEDINGS IN WHICH IT IS MENTIONED WITH LITTLE OR NO ANALYSIS. TO DETERMINE REASONABleness, NEVADA STATE COURTS RELY HEAVILY ON THE “Brunzell FACTORS,” WHILE THE FEDERAL COURTS RELY ON THE “LODESTAR ANALYSIS.” THESE TWO APPROACHES DIFFER MOST WHEN IT COMES TO DETERMINING WHAT IS A REASONABLE HOURLY RATE.

THE STARTING POINT IS NRP C 1.5, WHICH LISTS EIGHT NON-EXCLUSIVE FACTORS TO CONSIDER. ONE OF THE FACTORS IS THE FEES “CUSTOMARILY CHARGED IN THE LOCALITY FOR SIMILAR LEGAL SERVICES.” NRP C 1.5(A)(3). THE DRAFTERS RECOMMEND THAT “[I]N A NEW CLIENT-LAWYER RELATIONSHIP, HOWEVER, AN UNDERSTANDING AS TO FEES AND EXPENSES MUST BE PROMPTLY ESTABLISHED. GENERALLY, IT IS DESIRABLE TO FURNISH THE CLIENT WITH AT LEAST A SIMPLE MEMORANDUM OR COPY OF THE LAWYER’S CUSTOMARY FEE ARRANGEMENTS . . .” MODEL RULE 1.5(A)(3), COMMENT 2 (NEVADA DID NOT ADOPT THE COMMENTS; HOWEVER, ATTORNEYS AND COURTS MAY LOOK TO THEM FOR GUIDANCE. NRP C 1.0A). ATTORNEYS SHOULD INCLUDE THAT DISCUSSION AND A STATEMENT OF THE HOURLY RATES IN THEIR ENGAGEMENT LETTERS.

THE COMMENTS SUGGEST THAT THE ATTORNEY MAY CHARGE WHATEVER RATE IS AGREED UPON WITH A CLIENT. PERHAPS THIS IS NOT SURPRISING BECAUSE ON AT LEAST ONE OCCASION, THE SUPREME COURT OF NEVADA LOOKED ASKANCE AT AN ATTORNEY WHO, AMONG OTHER THINGS, ENTERED INTO A FLAT FEE ARRANGEMENT OF \$125,000, PAYABLE IN ADVANCE AND DEEMED EARNED UPON PAYMENT, AND ATTEMPTED TO WITHDRAW FROM THE REPRESENTATION 30 DAYS LATER.

B. The Brunzell factors as a test of reasonableness

WHILE THE MAJORITY OF CASES CITING NRP C 1.5 CONCERN DISCIPLINARY MATTERS, ATTORNEYS KNOW THAT THE ISSUE OF REASONABleness MOST OFTEN ARISES IN CONNECTION WITH FEE APPLICATIONS. AS NOTED, NEVADA COURTS RELY ON THE Brunzell FACTORS, WHICH LARGELY OVERLAP THE FACTORS LISTED IN NRP C 1.5. Cf. NRP C 1.5 AND *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

MISSING FROM Brunzell IS ANY MENTION OF THE PREVAILING COMMUNITY RATES. THOUGH THE Brunzell FACTORS ARE NOT EXCLUSIVE, MOST STATE COURTS GENERALLY FOCUS ON THE FOUR THAT ARE LISTED. USING THESE FACTORS, NEVADA STATE COURTS HAVE RECENTLY APPROVED HOURLY RATES AT LEAST AS HIGH AS \$750 FOR LOCAL ATTORNEYS WITH APPROXIMATELY 30 YEARS OF EXPERIENCE IN COMMERCIAL LITIGATION CASES AND \$350 AN HOUR FOR SENIOR ASSOCIATES. NEVADA STATE COURTS HAVE ALSO APPROVED RATES FOR OUT-OF-STATE ATTORNEYS APPROACHING \$1,000 AN HOUR. AN INFORMAL SURVEY OF STATE COURT DECISIONS SUGGESTS THAT THE ANALYSIS FOCUSES PRIMARILY ON THE QUANTITY AND QUALITY OF WORK (AND ADVOCACY) RATHER THAN THE HOURLY RATE.

C. Can block billing be reasonable and can reasonable fees include support staff?

TWO ADDITIONAL ISSUES REGULARLY CROP UP WHEN CONSIDERING FEES. THE FIRST IS BLOCK BILLING, WHICH IS DEFINED AS, “THE TIME-KEEPING PRACTICE WHEREBY A LAWYER ENTERS THE TOTAL DAILY TIME SPENT WORKING ON A CASE AND LISTS ALL OF THE TASKS WORKED ON DURING THE DAY, RATHER THAN SEPARATELY ITEMIZING THE TIME SPENT ON EACH TASK.” *In re Margaret Mary Adams 2006 Trust*, No. 61710, 2015 WL 1423378, *2 (Nev. MARCH 26, 2015) (UNPUBLISHED), (CITING *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 945 N.2 (9TH CIR. 2007)) (NOTE NRP C 36(c)(3)).

COURTS RECOGNIZE THAT BLOCK BILLING IS A COMMON PRACTICE. See, e.g., *DANIEL V. PUNITHO*, 97 A.D.3d 512, 513 (N.Y. APP. DIV. 2012). THE SUPREME COURT OF NEVADA DETERMINED THAT THE DISTRICT COURTS CAN ANALYZE BLOCK BILLED TIME ENTRIES UNDER THE Brunzell FACTORS. *Margaret Mary Adams 2006 Trust* at *2. REJECTING THE NOTION THAT ACROSS-THE-BOARD REDUCTIONS

of block billing were proper, the Court found that district courts must separately analyze each time entry. *Id.* The Supreme Court of Nevada has held that entries containing two to four tasks are amendable to analysis under *Brunzell*. *Id.* If the district court needs additional information, it should request it from the billing attorney. *Id.* Thus, the attorney should be prepared to provide additional information.

The second issue that regularly comes up is the billing of non-attorney time. State courts are typically willing to consider billed paralegal time, but what about those staff members who spend time doing basic work, such as organizing documents and exhibits? Their time is also part of reasonable attorney's fees. *Las Vegas Metropolitan Police Department v. Yeghiazarian*, 129 Nev. Ad. Op. 81, 312 P.3d 503, 509 – 10 (2013) (analyzing NRS 17.115(4)(d)(3)). Again, attorneys are well advised to include this in their engagement letters.

D. The federal courts' Lodestar analysis can produce different results

The federal courts take a similar approach to reasonableness, but with a much different result when it comes to hourly rates. Federal courts use the "lodestar analysis" which "is calculated by multiplying the number of hours the prevailing party reasonably expended by a reasonable

Reasonable Attorney's Fees *continued on page 24*



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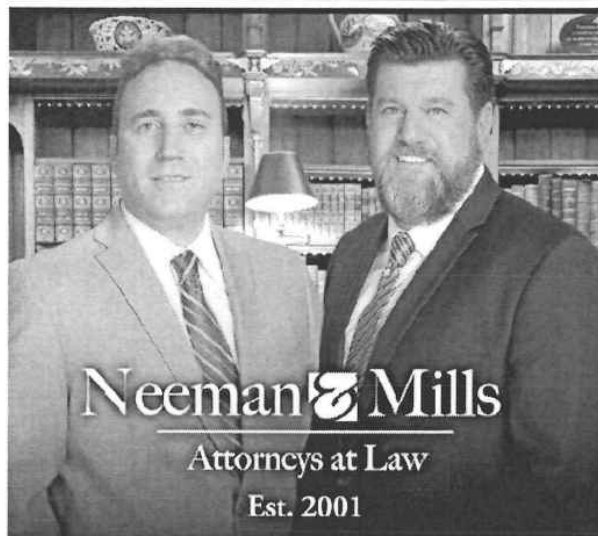
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Reasonable Attorney's Fees *continued from page 23*

HOURLY RATE." *U.S. v. Pivaroft*, No. 2:13-cv-01498-JCM-PAL, 2015 WL 6149217, at*2 (D. Nev. Oct. 19, 2015) (citing *Cama-cho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008)). REASONABLE HOURLY RATES ARE "THOSE PREVAILING IN THE COMMUNITY FOR SIMILAR SERVICES BY LAWYERS OF REASONABLY COMPARABLE SKILL, EXPERIENCE, AND REPUTATION." *Id.* (citing *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984)). UNLIKE NEVADA STATE COURT DECISIONS, THE U.S. DISTRICT COURT FOR NEVADA HAS MADE SPECIFIC FINDINGS AS TO WHAT IS A REASONABLE HOURLY RATE. REVIEWING A NUMBER OF THESE TYPES OF CASES GOING BACK TO 2012, THE COURT IN *Pivaroft* DETERMINED THAT \$450 FOR A PARTNER AND \$250 FOR AN EXPERIENCED ASSOCIATE WAS REASONABLE. *Pivaroft*, No. 2:13-cv-01498-JCM-PAL, 2015 WL 6149217, at*2. UNTIL NEWER DECISIONS COME ALONG, THIS APPEARS TO BE THE CURRENT "CAP" FOR RATES IN FEDERAL MATTERS REGARDLESS OF WHAT THE STATE COURTS ARE DOING.

IN CONTRACTUAL DISPUTES GOVERNED BY NEVADA LAW, A PREVAILING PARTY CLAUSE MAY AFFORD RELIEF FROM THIS LINE OF CASES. IN THOSE INSTANCES, THE FEDERAL COURTS WILL ANALYZE FEES UNDER BOTH THE *Brunzell* FACTORS AS WELL AS LR 54-14(B), WHICH INCLUDES ANALYSIS OF "THE CUSTOMARY FEE." *Branch Banking and Trust Company v. Estate of Said Forouzan RAD, et al.*, Case No. 2:14-cv-01947-APG-PAL, 2017 WL 2636487 (JUNE 16, 2017), ATP. *2.

IN CONCLUSION, THE FEES THAT A PRACTITIONER MAY BE AWARDED COULD DIFFER SIGNIFICANTLY DEPENDING ON WHETHER THE CASE IS IN STATE OR FEDERAL COURT IN NEVADA. FURTHER, SIMPLY BECAUSE AN ENGAGEMENT LETTER WITH THE CLIENT ALLOWS FOR CERTAIN FEES DOES NOT MEAN THE COURT WILL FIND THOSE FEES REASONABLE. COURTS NOT ONLY NEED TO ANALYZE THE FEES REQUESTED UNDER *Brunzell* OR THE IDESTAR ANALYSIS, DEPENDING ON THE FORUM, BUT MUST ALSO TAKE INTO ACCOUNT NRPC 1.5, WHICH PROHIBITS THE CHARGING OF UNREASONABLE FEES. **1**



John M. Naylor has been licensed for 30 years and is a cofounder of Naylor & Braster, a Las Vegas law firm specializing in business litigation. Prior to founding the firm, he was a partner at Lionel Sawyer & Collins. Between 1995 and 1999, he was a judge advocate in the U.S. Air Force. He specialized in criminal prosecution and defense matters as well as representing the Air Force in contract disputes before the Armed Services Board of Contract Appeals.

NOTICE UPDATED

NV SUPREME COURT RULE CHANGES EFFECTIVE JANUARY 1, 2018 [ADKT 0478]

(affects CLE requirements for total credits and SUBSTANCE ABUSE credits)

Summary of changes to credit requirement and substance abuse credits

- The total annual credit requirement will change to thirteen (13) total credits, which includes two (2) hours of ethics and one (1) hour of substance abuse in every year.
- Attorneys may carry forward up to two (2) hours of excess substance abuse credits and apply the same to the their substance abuse requirement for the next two (2) calendar years.
- Excess substance abuse credits can no longer be applied toward an attorney's ethics requirement.
- Attorneys who complete more than two (2) hours of ethics in any calendar year may still carry forward up to four (4) hours of excess credit and apply the same to their ethics requirement for the next two (2) calendar years.

Nevada Board Of Continuing Legal Education
457 Court St, Reno, NV 89501. Phone: (775) 329-4443
<https://www.nvdeboard.org/>

IMPORTANT CLE DATES

11/2017	Consolidated fee statements mailed and emailed by State Bar
12/31/17	Deadline to earn credits
1/15/18	CLE Board will notify attorneys that have yet to comply with the credit requirement for 2017 and provisionally assess a \$100 extension fee
2/15/18	Deadline to report credits (extended) and pay fees
On or About 3/1/18	CLE Board issues Notices of Noncompliance and assesses late fee
4/1/18	Deadline to submit credits (late) and/or pay fees to avoid suspension
On or About 4/1	Non-compliant attorneys are administratively CLE suspended

Assembly Bill No. 477—Committee
on Commerce and Labor

CHAPTER.....

AN ACT relating to consumer contracts: enacting the Consumer Protection from the Accrual of Predatory Interest After Default Act; prohibiting the use of certain form contracts; limiting prejudgment and postjudgment interest and attorney's fees under certain circumstances; prohibiting choice of law, forum selection and other provisions in certain form contracts; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law contains various provisions governing retail installment sales. (Chapter 97 of NRS) **Sections 2-19** of this bill enact the Consumer Protection from the Accrual of Predatory Interest After Default Act, which contains provisions governing the use of form contracts in certain consumer transactions. **Sections 5-8** of this bill define "business," "consumer," "consumer debt" and "consumer form contract." **Section 9** of this bill prohibits the use of a consumer form contract by a business that is not in compliance with the provisions of this bill. **Section 10** of this bill exempts certain business organizations and other persons from the provisions of this bill. **Section 11** of this bill prohibits the inclusion of a choice of law or forum selection provision in a consumer form contract. **Section 12** of this bill requires any consumer form contract involving financial services be signed by the consumer in writing or electronically signed in full compliance with section 101(c) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001(c). **Section 13** of this bill prohibits the inclusion of certain provisions in a consumer form contract that would limit a consumer's rights. **Section 14** of this bill declares that any provision in a consumer form contract that violates the provisions of this bill is void and unenforceable. **Section 15** of this bill provides that if a consumer enters a consumer form contract with a person who is required to be licensed but is not, the contract is void for all purposes. **Section 17** of this bill provides certain limits on the amount of prejudgment interest and the rate of postjudgment interest under certain circumstances. **Sections 18 and 19** of this bill provide certain methods for calculating attorney's fees for the prevailing party in any action to collect a consumer debt.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.



80th Session (2019)

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 8 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 19, inclusive, of this act.

Sec. 2. *This chapter may be cited as the Consumer Protection from the Accrual of Predatory Interest After Default Act.*

Sec. 3. 1. *The purpose of this chapter is to protect consumers.*

2. *This chapter must be construed as a consumer protections statute for all purposes.*

3. *This chapter must be liberally construed to effectuate its purpose.*

Sec. 4. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 5 to 8, inclusive, of this act, have the meanings ascribed to them in those sections.*

Sec. 5. *"Business" means a proprietorship, corporation, partnership, association, trust, unincorporated organization or other enterprise doing business in this State.*

Sec. 6. *"Consumer" means a natural person.*

Sec. 7. *"Consumer debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in 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.*

Sec. 8. 1. *"Consumer form contract" means a retail charge agreement or a retail installment contract involving a retail installment transaction in writing between a retail seller and a consumer buyer, or a lease in writing between a lessor and a consumer lessee, involving the sale or lease of goods or services, including, without limitation, credit or financial services, primarily for personal, family or household purposes and which has either been drafted by the business or by a third party for use with more than one consumer, unless a second consumer is the spouse of the first consumer.*

2. *As used in this section:*

(a) *"Buyer" has the meaning ascribed to it in NRS 97.085.*

(b) *"Goods" has the meaning ascribed to it in NRS 97.035.*

(c) *"Retail charge agreement" has the meaning ascribed to it in NRS 97.095.*



80th Session (2019)

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(d) "Retail installment contract" has the meaning ascribed to it in NRS 97.105.

(e) "Retail installment transaction" has the meaning ascribed to it in NRS 97.115.

(f) "Retail seller" has the meaning ascribed to it in NRS 97.125.

(g) "Services" has the meaning ascribed to it in NRS 97.135.

Sec. 9. 1. A business, including, without limitation, any officer, agent, employee or representative, shall not individually or in cooperation with another, solicit the execution of, receive or rely upon a consumer form contract, including, without limitation, reliance upon the consumer form contract as a basis of a suit or claim, unless the business has complied with the provisions of this chapter.

2. The provisions of this chapter apply to any person who seeks to evade its application by any device, subterfuge or pretense.

Sec. 10. The provisions of this chapter do not apply to:

1. A person doing business pursuant to the authority of any law of this State or of the United States relating to banks, national banking associations, savings banks, trust companies, savings and loan associations, credit unions, mortgage brokers, mortgage bankers, thrift companies or insurance companies, including, without limitation, any affiliate or subsidiary of such a person regardless of whether the affiliate or subsidiary is a bank.

2. Any business:

(a) Whose principal purpose or activity is lending money on real property which is secured by a mortgage;

(b) Approved by the Federal National Mortgage Association as a seller or servicer; and

(c) Approved by the United States Department of Housing and Urban Development and the Department of Veterans Affairs.

3. A person who provides money for investment in loans secured by a lien on real property, on his or her own account.

4. A seller of real property who offers credit secured by a mortgage of the property sold.

5. A person who exclusively extends credit to any person who is not a resident of this State for any business, commercial or agricultural purpose that is located outside this State.

6. A person while performing any act authorized pursuant to chapter 604A of NRS.



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7. A motor vehicle manufacturer or distributor, or an affiliate or captive financial entity of a motor vehicle manufacturer or distributor.

Sec. 11. If a consumer form contract is signed by the consumer or otherwise formed while the consumer resides in this State with a person operating within this State:

1. A choice of law provision in a consumer form contract which provides that the consumer form contract is to be governed or interpreted pursuant to the laws of another state is void. Enforcement and interpretation of such a contract must be governed by the laws of this State if enforcement of the consumer form contract is sought in a court of this State.

2. A forum selection provision in a consumer form contract which provides that any claims or actions related to the consumer form contract must be litigated in a forum outside this State is void.

Sec. 12. 1. Any consumer form contract involving a loan, extension of credit, deposit account or other financial services must be signed by the consumer in writing or electronically in full compliance with Section 101(c) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001(c).

2. Any change of terms to a consumer form contract must be agreed to by the consumer by affirmative consent, signed in writing or electronically in full compliance with Section 101(c) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001(c).

Sec. 13. A consumer form contract must not contain:

1. A provision that the consumer will hold the other party harmless, or that otherwise relieves the other party of liability, for any harm or damage caused to the consumer arising from the consumer form contract.

2. A confession of judgment clause.

3. A waiver of the right to a jury trial, unless the consumer agrees to an alternative dispute resolution such as binding arbitration, in any action brought by or against the consumer.

4. Any assignment of or order for payment of wages or other compensation for services.

5. A provision in which the consumer agrees not to assert any claim or defense arising out of the consumer form contract or to seek any remedies pursuant to any consumer protection law.

6. A waiver of any provision of this chapter or any other consumer protection statute. Any such waiver shall be deemed null, void and of no effect.



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7. A provision requiring or having the practical effect of requiring that any aspect of a resolution of a dispute between the parties to the agreement be kept confidential. This subsection does not affect the right of the parties to agree that certain specified information is a trade secret or otherwise confidential or to later agree, after the dispute arises, to keep a resolution confidential.

Sec. 14. A provision in a consumer form contract that violates this chapter shall be void and unenforceable. A court may refuse to enforce other provisions of the consumer form contract as equity may require.

Sec. 15. Any consumer form contract entered into by a consumer with a person who is required to be licensed pursuant to any provision of NRS or NAC in order to enter into the consumer transaction, but is not so licensed, is void. Neither the obligee nor any assignee of the obligation may collect, receive or retain any principal, finance charge or other fees in connection with the transaction.

Sec. 16. (Deleted by amendment.)

Sec. 17. If the plaintiff is the prevailing party in any action to collect a consumer debt:

1. And a rate of interest is stated in the consumer form contract, interest may be awarded by the court only as set forth in this section.

2. Interest under the consumer form contract, prejudgment interest and postjudgment interest awarded by the court must not be compounded.

3. Any prejudgment interest the court awards the plaintiff must be limited to the lesser of:

(a) The accrued interest at the rate stated in the consumer form contract to the day the action to collect the debt is filed; or

(b) One hundred eighty days of interest at the rate stated in the consumer form contract.

4. Any postjudgment interest the court awards the plaintiff must be limited to the lesser of:

(a) The rate of interest in the consumer form contract; or

(b) A rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus 2 percent. The rate must remain fixed at that rate until the judgment is satisfied.

Sec. 18. 1. If the plaintiff is the prevailing party in any action to collect a consumer debt, the plaintiff is entitled to collect attorney's fees only if the consumer form contract or other



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document evidencing the indebtedness sets forth an obligation of the consumer to pay such attorney's fee and subject to the following conditions:

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

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

2. The documentation setting forth a party's obligation to pay attorney's fees must be provided to the court before a court may enforce those provisions.

Sec. 19. 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.

Sec. 20. The provisions of this act apply to contracts entered into on or after October 1, 2019.

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**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Eightieth Session
April 3, 2019**

The Committee on Commerce and Labor was called to order by Chair Ellen B. Spiegel at 12:35 p.m. on Wednesday, April 3, 2019, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconference to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Ellen B. Spiegel, Chair
Assemblyman Jason Frierson, Vice Chair
Assemblywoman Maggie Carlton
Assemblyman Skip Daly
Assemblyman Chris Edwards
Assemblywoman Melissa Hardy
Assemblyman Al Kramer
Assemblywoman Susie Martinez
Assemblyman William McCurdy II
Assemblywoman Dina Neal
Assemblywoman Jill Tolles
Assemblyman Steve Yeager

COMMITTEE MEMBERS ABSENT:

Assemblywoman Sandra Jauregui (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Edgar Flores, Assembly District No. 28

STAFF MEMBERS PRESENT:

Dave Ziegler, Majority Leadership Policy Analyst
Patrick Ashton, Committee Policy Analyst
Wil Keane, Committee Counsel



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JA0539

Karen Easton, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Peter J. Goats, Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada
Jennifer Jeans, representing Coalition of Legal Services Providers
Shane Piccinini, representing Food Bank of Northern Nevada; and Human Services Network
John Sande IV, representing Nevada Franchised Auto Dealers Association
Jesse A. Wadhams, representing Las Vegas Metro Chamber of Commerce
Andy MacKay, Executive Director, Nevada Franchised Auto Dealers Association
Andy Peterson, Vice President, Government Affairs, Retail Association of Nevada
Aviva Y. Gordon, Private Citizen, Henderson, Nevada
Chris Ferrari, representing Nevada Credit Union League
Connor Cain, representing Nevada Bankers Association
George E. Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry
Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada
Alfredo Alonso, representing American Legal Finance Association
Keith L. Lee, representing Injury Care Solutions

Chair Spiegel:

[Roll was called. Committee rules were explained.] I am going to move the presentation on payday lending from today to Friday's agenda. We will now open the hearing on Assembly Bill 477.

Assembly Bill 477: Enacts provisions governing the accrual of interest in certain consumer form contracts. (BDR 8-935)

Peter J. Goatz, Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada:

I am here in support of Assembly Bill 477 which includes the Consumer Protection from the Accrual of Predatory Interest After Default Act. Too many Nevadans are at the mercy of form contracts which contain provisions that a consumer does not get to bargain for, including the charging of high interest rates years after they have defaulted on a debt. I would like to give an example, which is also in my written testimony that was submitted (Exhibit C).

In February of 2015, a 24-year-old cosigned for the purchase of a vehicle on credit for his cousin. The sale was in the form of a retail sales contract. The total purchase price was about \$11,500, of which \$10,200 was financed at 23.99 percent for 42 months. His cousin fell behind on payments, and in April 2016, the vehicle was repossessed by the finance company and sold. At the time of the repossession, about \$11,625 was owed. The vehicle

was sold, and after costs and credits were assessed, a deficiency remained of approximately \$8,000. After waiting almost a year while interest accrued at 23.99 percent, the finance company then sued both individuals to recover the deficiency. A default judgment was entered in May 2017 for the principal amount of \$8,000. After adding attorney's fees, costs, and prejudgment interest, the original bargained-for contract was the same price as after the deficiency judgment was entered. The 24-year-old then came to the Legal Aid Center for assistance. Because this had been going on since April 2016, and interest continued to accrue at 23.99 percent, after just three years the interest had increased by almost \$6,000.

While consumers may understand what they are signing up for when they are purchasing a vehicle, they do not understand that they are agreeing to 24 percent or more interest in perpetuity. What they do not foresee is the scenario that after a year the car breaks down, it gets repossessed because they cannot afford the repairs, and they cannot afford to make payments on a vehicle they cannot use. The creditor can sit on these loans that have been defaulted on for up to four years while interest continues to accrue at that very high rate. The default judgment can last forever—until collected. Nevada law states a judgment lasts for six years, and can be renewed every six years.

I will now walk you through Assembly Bill 477. Sections 1 through 8 set forth definitions to be used in the construction of these contracts. It defines a consumer form contract; the retail sales contract is one form of these consumer contracts. These are contracts of adhesion, and the consumer has little or no say in the negotiation of the terms of the contract. These are forms that are presented on a take-it-or-leave-it basis. They may be used for the purchase of furniture, vehicles, or services. Usually these contracts call for performance over a period of time, and generally for installment payments.

The Coalition of Legal Services Providers has submitted an amendment (Exhibit D). In section 8, it would define "consumer form contract" to not only include a contract that was drafted by the business, but also a contract that was drafted by a third party for use by the business.

Section 10 of the bill would exempt out a wide range of businesses, including banks; mortgage lenders; business, commercial, and agricultural lenders; and high-interest title loans and check cashing businesses. Section 11 contains a choice of law provision and forum selection clause. This would ensure Nevadans receive the benefits of Nevada law and not have to go to a foreign jurisdiction to resolve their disputes.

Section 14 deals with what happens if one of these form contracts contains a provision that is prohibited by this act. I think it is a little unclear, because it says, "If only one provision of a consumer form contract violates this chapter, a court may refuse to enforce other provisions of the consumer form contract as equity may require." The court could either sever that provision or void the entire contract.

Section 15 states that contracts entered into with consumers and businesses who were not properly licensed by the state would be void. Section 16 limits the cause of action by which the creditor can sue the consumer for breach of contract.

The Coalition has proposed an amendment (Exhibit D) that would further define what defaults would trigger the right of a business to initiate an action to recover on the defaulted consumer form contract. The two limits are: when a consumer fails to make payment; and when the relationship between the parties is such that it is significantly impairing the collateral assets. The burden would be placed on the creditor to establish that sufficient facts exist that there is an impairment on their part.

Section 17 talks about the prevailing party in an action. If the business is the prevailing party, they can receive interest at the statutory interest rate, which is two plus prime, for the amount set forth in the contract. Section 18 deals with attorney's fees. We often see attorney's fees in these low dollar amount cases well in excess of the actual principal that was loaned. This section would limit that to either 15 percent of the principal amount of the debt, excluding otherwise chargeable attorney's fees and costs, or a reasonable hourly rate multiplied by time. Section 19 makes attorney's fees reciprocal. We often see in these consumer form contracts that they only run to one party—generally to the business and not to the consumer.

We submitted an exhibit which outlines the pre- and post-judgment interest rates from other states (Exhibit E). Many states have similar laws that would drop the interest rate down after a default to their state maximum—we do not have that. This bill would correct that.

Chair Spiegel:

Ms. Jeans, do you have anything to add to the presentation?

Jennifer Jeans, representing Coalition of Legal Services Providers:

I do not have anything to add but Mr. Goatz and I are available to answer any questions.

Chair Spiegel:

Would this bill limit the accrual of interest based on the period from the date of the judgment until it is collected? Would accrual of interest stop on the date of judgment?

Peter Goatz:

The intent is that the default interest rate, the lesser of two plus prime or what is stated in the contract, would run from the date of default throughout the collection of the judgment.

Assemblywoman Neal:

I am not sure I understand the language you are proposing in section 11, subsections 1 and 2, regarding choice of law. Could you please explain that?

Peter Goatz:

In the consumer form contracts, the choice of law often indicates other states. While there are standard rules of construction in legal cases, this would direct the court to ignore what the contract says regarding the jurisdiction, and require that Nevada law apply to a consumer form contract against a Nevada consumer that is entered into in Nevada.

Assemblywoman Neal:

That is my understanding of how it reads, which is why I disagree with it. Typically, under choice of law and contract provisions, there are several things set out in terms of case law. It is not just where the person resides, where the contract negotiations occurred, and other various things. I have some concerns with following state law versus the other rules of construction that are out there. I do not like that it is all going to be in this state, which may not be the proper venue.

Peter Goatz:

I think we can address your concerns. This bill is really focused on contracts that are signed while the consumer resides in this state. The intent of this bill is that it should only apply to contracts entered into in Nevada, with Nevada consumers. Generally, a creditor has to sue the defendant either where the contract is made or where the defendant resides. This is to say if you are going to sue a Nevada consumer in Nevada, use Nevada law.

Assemblywoman Neal:

That is why I think the provision is obsolete. The law will lead them here if it is proper for the case to be here. To exclude any option that it be in another state does not make sense. You do not need the provision if the majority of what happened occurred here. I do not understand why you need section 11 at all.

Peter Goatz:

That is true. Except in these form adhesion contracts where the choice of law provision and the form section clause is not bargained for between the consumer and the business it is on a take-it-or-leave-it basis. In these contracts, they may select a different choice of law and a different forum to litigate in even if the consumer is in Nevada. That would be binding because it is a contract and everyone agreed, in theory, to litigate their claims in another state.

Assemblyman Kramer:

I agree with Assemblywoman Neal. I could construe this to say that if I bought the car and moved to Nevada, this contract is now void because it does not require Nevada law. Whatever else you are amending, I think you need to touch that up. The rule of law in this ought to be where the contract was signed, or where the person lives. I think the way it is written could be deceptive.

Peter Goatz:

We would be happy to work with you to craft language that would satisfy your concerns.

Assemblyman Kramer:

I do not see a harm to the public by doing this. I am a little concerned because it sets the interest rate at default. If someone completes their contract, everything is fine; if they do not complete the contract, that is when this comes into play. The issue on these types of loans is related more to the disclosure up front. If you are signing a loan for 23 percent interest, it is probably because you have bad credit; they do not expect it to be paid off. I do not see anything in this bill that causes for disclosure beyond someone just wanting a car and going in and buying it. You have the change in interest, the change in the contract, and it seems like the part that would be most beneficial is to educate someone up front.

Chair Spiegel:

Is there any testimony in support of Assembly Bill 477?

Shane Piccinini, representing Food Bank of Northern Nevada:

When the recession hit in 2008, there were a lot of people who had great jobs and great credit. Through no fault of their own, they lost everything because the industry they were working in collapsed. In those situations, there are very few places people can go. In 2015 we were serving over 100,000 people every month; currently we serve 90,000 a month. When working with our clients through the Getting Ahead program, one of the biggest hurdles they had to financial stability was being able to pay off the short-term loans they had to get in order to keep from losing everything. In some cases, they lost their house and were just trying to hang onto their car. In other cases, they lost both and were trying to figure out how to get money together to put a deposit down on a weekly rental, or another rental someplace else. I thank the bill sponsors for bringing this forward, and I appreciate your time.

Chair Spiegel:

Is there anyone to testify in opposition?

John Sande IV, representing Nevada Franchised Auto Dealers Association:

We have reached out to the bill sponsors and they have agreed to work with us on some of the concerns we have. Without the amendment, the bill did not necessarily apply to us. The retail installment contract is governed under *Nevada Revised Statutes* Chapter 97, which provides the Commissioner of Financial Institutions shall provide the form for the retail installment contract for a motor vehicle sale. The Commissioner is actually the one who has promulgated that document. It has been in place for a number of years, and has been amended for a number of years. We worked with Legal Aid on a number of occasions to provide what those provisions would look like. In addition to being promulgated by the Financial Institutions Division, it is also required to comply with the federal Truth in Lending Act (TILA). The TILA is to provide disclosure to customers.

A retail installment contract outlines the annual percentage rate, breaks down what the finance charge is, tells the total amount financed, and the sales price. That is all required under the TILA. In addition, there are a number of other disclosures. New car dealers have relationships with banks and credit unions; it is our job to shop interest rates for our

customers—the contract will then be assigned to the creditor. Our dealers do not typically hold the notes and are not servicing them. A lot of this probably would not apply to us. There are some times when financing falls apart; it is rare, but the dealer would then be required to hold the note. My concern is if something is inconsistent with this law, it would invalidate the entire contract. I think that would be a concern for commerce generally.

Regarding attorney's fees, I did not read it to be reciprocal. It looks like only the debtor is able to receive attorney's fees. Another provision of concern is that if the debtor chooses, he may actually request the attorney's fees that the creditor paid his attorneys. The Federal Arbitration Act (FAA) permits contracts in commerce to have arbitration clauses to try to officially handle disputes. Some of our contracts do have arbitration clauses, and some do not. I believe that is preempted by federal statute.

Assemblyman Kramer:

Do your contracts state that if they go to court it would be in Nevada?

John Sande:

I think it says the forum of the creditor; I do not think it specifically says which state has jurisdiction.

Jesse A. Wadhams, representing Las Vegas Metro Chamber of Commerce:

We have some concerns with the language used in the bill. Throughout the bill it makes these contracts void rather than voidable. The distinction might be useful as you are working with the trier of fact. I do think prohibiting arbitration is covered by the FAA. Section 16 of the bill mandates only using breach of contract as the cause of action, and specifically includes the concept of quantum meruit. This raises a concern because you have voided a contract; somebody could get the benefit of at least part of the bargain without ever having paid for the value that was received.

The way I read section 19, it turns the concept of attorney's fees on its head. Typically, if you are recovering attorney's fees, it means you are not paying to defend your rights. If you were suddenly able to have the option to take the attorney's fees that were paid to the other side, it does sort of make it more of a punitive issue rather than a recovery of that which you were using to defend yourself.

Assemblywoman Hardy:

Are you referring to section 14 when you said it would make the contract void instead of voidable?

Jesse Wadhams:

It is actually used in a few places; I noted it in sections 13, 14, 15, and a few other places.

Assemblywoman Hardy:

Are you saying that the whole contract would be void?

Jesse Wadhams:

That is the way I read the bill.

Assemblyman Yeager:

I agree that section 19 is worded in an unusual way. I imagine the intent is for debtors who are not represented by counsel. What if we added a prevailing party, if successful, would be entitled to recover some kind of civil penalty? I think the intent is probably to recognize that as a debtor, going through litigation is not a nice process. If you finally win, you are not liable, but maybe you should be compensated in some way for having gone through that.

John Sande:

It might be more appropriate for the financiers to answer that question, since they are typically the ones that would have to deal with this—I do not think the car dealers would. I think in the worker's comp realm, typically you are going to litigation because an insurer has denied a claim for injury and there is potentially some bad faith components to that; but it is a slightly different litigation than a creditor that is going after money owed to him or her. I agree with you that litigation today is more impactful, more than just financially; also from the time perspective and the emotional factors that go into it. I do think that worker's comp and adversarial proceedings are somewhat different, and maybe would not justify a civil fine.

Assemblywoman Neal:

How do you interpret section 16?

Jesse Wadhams:

It reads to me as if the only cause of action is whether or not the contract was performed. I think it says that the person enforcing the contract can only say, did you or did you not breach, but the opposing party can come back with a whole host of defenses that can be alleged as causes of action. It changes the nature of how these would be litigated.

Assemblywoman Neal:

That is how I interpret it. I know under contracts you may have six or seven more defenses. Regardless of the cause of action asserted, a consumer may raise a defense based on the reasonable value—it changes the structure of how contract rules work and how you set up a cause of action. If you are challenging a contract, it now says, here are the rails for which you can have a defense. Do you have some concern about that?

Jesse Wadhams:

I think you hit on a few of those issues with regard to how section 16 reads. It says that the person enforcing the contract can only say, did you or did you not breach, yet the opposing party can come back with a whole host of defenses that you cannot allege as causes of action. It does change the way cases would be litigated.

Andy MacKay, Executive Director, Nevada Franchised Auto Dealers Association:

Ditto to what was said by Mr. Wadhams and Mr. Sande. I would like to address a couple of questions from Assemblyman Kramer. With respect to cosigning on a loan, as part of the

retail installment contract, it lays out every part of the deal: the cost of the vehicle, sales tax, sales tax credit, et cetera. There is a law library of approximately 25 different forms—one of them specifically addresses cosigning on a loan. At the top of the form, in bold letters, it says that by cosigning on this loan you own the debt as well as the other individual. I cannot say how nonfranchise dealers operate, but it is part of the contract for franchise dealers. If the cosigner does not acknowledge and sign it, then the deal does not move forward. Section 9 could have a negative impact on consumer protection.

Assemblywoman Carlton:

I typically do not associate these high-interest loans with franchise dealers. I associate them with the small car lot on the corner. How would this affect franchise dealers?

John Sande:

I do not think the impact on the auto dealers will be too significant. In the franchise environment, we are assigning the papers to the banks that we made the arrangements with. Our concern would be that our retail installment contract, which was promulgated by the Commissioner of Financial Institutions, would need to be reworked, revised, and go through the regulatory process to accomplish that. The small car dealers typically hold onto their notes, have their own financing arm, are the ones who are going to repossess the vehicles, and are the ones who try to make collections. New car dealers do not do that.

Assemblywoman Carlton:

Do you want to sell cars to people who can afford them?

John Sande:

I would like to put an exclamation behind yes. We are not out trying to sell cars to people who cannot afford them.

Assemblywoman Carlton:

My perspective on this bill is we have a subset of people who are the bad guys, not the ones in this room, but dealers who are selling cars to people who cannot afford them.

John Sande:

I would like to think so, and I appreciate your comments.

Chair Spiegel:

If this bill were to be amended to deal with some of the contract concerns that Assemblywoman Neal pointed out—the arbitration concerns that were addressed, the attorney's fees, and a limitation where the provisions of this only kicked in if the interest rate charged on the initial loan were above a set percent, would you then be supportive of this bill?

John Sande:

I think you addressed every concern we had. I do not know why we would not support that measure.

Andy Mackay:

Take this as a punt; the devil is in the details. I cannot make a commitment until I actually see it on paper. I do not mean to be evasive, but I think the Committee respects that position until I actually see it. It would certainly make the bill much more palatable. We have to take into consideration our financing partners.

Chair Spiegel:

Can I at least get a commitment to working with the bill proponents?

Andy MacKay:

You have that commitment.

Andy Peterson, Vice President, Government Affairs, Retail Association of Nevada:

Ditto Mr. Wadhams' testimony.

Aviva Y. Gordon, Private Citizen, Henderson, Nevada:

I am a small business owner and member of the Henderson Chamber of Commerce. We are here in opposition to Assembly Bill 477. [She submitted and spoke from (Exhibit F).] We have concerns with sections 13 and 14. In section 13, the prohibitions in the form contract language may affect a choice to do any business within the state of Nevada. Those limitations may adversely affect the ability of consumers to receive goods and services that they are currently receiving from the state of Nevada. In section 14, the language in the first sentence indicates that a contract that violates the chapter would be void and unenforceable. It goes on to say, if there is only one provision of a consumer form contract that violates the chapter, a court may refuse to enforce other provisions of the contract. I think the current status of Nevada law is if you can sever out offensive terms within the contract, the rest of the contract should survive. The concerning language is the first sentence; the balance of section 14 embodies the current state of Nevada law, and that is the way it should continue. We are willing to work with this Committee or the sponsor to arrive at a resolution.

Chair Spiegel:

Is there anyone to testify in neutral?

Chris Ferrari, representing Nevada Credit Union League:

I am here in the neutral position, but would like clarification regarding sections 9 and 10. Section 10 specifically says, "Except as otherwise provided in section 9." While there appears to be a clear delineation or exemption for credit unions on page 3, line 13, the first line referencing back to section 9 raises a question. We just want to make sure we are not limited from offering all of our customers different options along the way.

Connor Cain, representing Nevada Bankers Association:

We share the same question the credit unions have and believe there might be some ambiguity in section 10.

Peter Goatz:

We just want to thank the bill sponsor and the Committee for considering this issue. We will be working closely with the people who testified to resolve their concerns, as well as the concerns of the Committee.

Chair Spiegel:

We will close the hearing on Assembly Bill 477 and we will open the hearing on Assembly Bill 305.

**Assembly Bill 305: Revises provisions relating to certain financial transactions.
(BDR 52-1060)**

Assemblyman Edgar Flores, Assembly District No. 28:

For my presentation of Assembly Bill 305, I will first offer a quick overview of presettlement loans and/or presettlement funding loans, sometimes referred to as lawsuit loans. I will then explain some of the issues we have identified; specifically how consumers are sometimes taken advantage of. Third, I would like to walk you through the conceptual amendment (Exhibit G). The only thing I will be using from Assembly Bill 305, as currently drafted, are the definitions in sections 2 through 11. I will refer only to the bill when addressing those specific definitions. Everything else will refer to the conceptual amendment.

A presettlement funding contract is when, for example, an individual is involved in a severe car accident and they are not at fault. That person is not able to work for an indefinite period of time, and they need to figure out how to pay their mortgage or other bills they may have. Sometimes they may decide that the best recourse is for them to get a loan. There are companies that will loan money on a settlement check you will be receiving.

I have a specific case to share with you. This particular person was supposed to be in Las Vegas to testify; however, she was in so much pain she was unable to make it. She was confined to a hospital for an extended period of time, her bills were stacking up, and she needed to do something. She was receiving monthly loans from \$1,500 to \$2,000. She ended up borrowing a total of \$71,000 over the course of two years. That \$71,000 loan turned into \$458,000. When I had the opportunity to meet with her, we tried to figure out how that happened—what went wrong in the contract and how was it possible someone could be charged that much? In reviewing the contract, we think the company was capitalizing the loan. When they received the loan in March for X amount, then they received a loan in April for another amount, they were capitalizing the interest—and it became a huge uncontrollable number.

During conversations with fellow legislators, it was brought to my attention that a legislator of ours had looked into this issue in the past. They had a similar scenario—a constituent went to his legislator and told him that a \$9,000 loan had turned into a \$75,000 repayment. How is this happening? I realized that on top of the issue of capitalizing the interest, the other thing is that they are operating outside of no cap. In other words, there is no interest cap that they are working with. In addition, the way these contracts are written, the

individual who is borrowing the money has no idea how much they are going to pay back. It is just something they did because they were desperate. When we have desperate individuals who are going to be signing a contract, we need to make sure to set up some protections and safeguards. That is where this conceptual amendment comes in (Exhibit G).

Sections 2 through 10 of the amendment, as previously stated, simply explain the definitions. Section 11 authorizes a licensed provider to enter into a presettlement funding contract with a consumer. A provider can lend money to a consumer as a lump sum or as a series of periodic advances. The provider must set up an open-ended account for the consumer. The consumer can pay off the account at any time without penalty. The contract must specify the maximum amount the consumer may be obligated to pay from his or her award, if any, on the legal action. Section 12 reiterates that there is a 40 percent cap, which falls in line with some of the language we have in *Nevada Revised Statutes* (NRS) Chapter 675. Section 13 indicates that this section allows a licensee to apply for certain fees and charges as may be set forth in loans under NRS Chapter 675.

Section 14 allows the provider to give the consumer a written statement at the end of each billing cycle: if the contract provides for periodic disbursements, the billing cycle is monthly; if the contract provides for a loan in a lump sum, the billing cycle is no longer than one year.

Section 15 lists a number of prohibited acts, meaning the lending company may not: pay commission for a referral; refer the consumer to a specific attorney or medical provider; make a loan to a consumer who has already entered into a funding contract on the same legal action; influence or attempt to influence the consumer's, legal action; agree to take a percentage of the recovery on the consumer's claim; or renew or extend the contract if it results in an annual percentage interest greater than 40 percent.

Section 16 provides that anyone who violates any provisions within this bill will forfeit any interest, charges, fees, or other return of the principal. Section 17 makes it clear that the presettlement funding contract loan is regulated under NRS Chapter 675. Sections 18 and 19 mention other sections that are covered and applicable to this act and the effective date.

Dave Ziegler, Majority Leadership Policy Analyst:

We believe the provisions of A.B. 305 should be moved from NRS Chapter 597, which is Miscellaneous Trade Regulations, to NRS Chapter 675, which is Installment Loans. The main reason is that the Financial Institutions Division already regulates these loans under NRS Chapter 675. The other reason is to characterize these presettlement funding transactions as open-ended transactions, similar to a line of credit. When we talked with Commissioner George Burns about this measure and how to make it as good as it could possibly be, that was the input from the Financial Institutions Division. These are very similar to any other open-ended credit arrangement.

George E. Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry:

We have been asked to assist in providing information on the subject of this bill. The background given is very good. There are many terms for consumer legal funding, such as presettlement funding, lawsuit cash advances, accident funding, or litigation funding; these transactions can be either pre- or post-settlement. Consumer legal funding is a transaction where the plaintiff in a legal action can be provided money based upon the anticipated settlement of the case. The industry takes the position that this sort of transaction is not a loan; it usually calls for no payment if there is no settlement. Nevertheless, it is a loan secured by an inchoate interest in a possible legal settlement process, and there is still some sort of security interest which would make it a form of lending. In the absence of any other law to the contrary, and to honor the legislative intent of NRS Chapter 675, the Financial Institutions Division has taken the position that consumer legal funding is a form of lending under NRS 675.060, subsection 1.

We currently license consumer legal funding under this general umbrella of NRS Chapter 675 lending, without any specificity for this type of lending. The purpose of A.B. 305 is to provide greater specifics regarding consumer legal funding in order to curb some of the onerous practices that the ambiguity of NRS Chapter 675 creates. One of the presettlement funding abuses we see is unlicensed activity. There are a lot of out-of-state companies on the Internet that people can access and they get a loan through them. When this occurs, the unlicensed lenders are not regulated and examined by the Financial Institutions Division, and they tend to charge interest exceeding the 40 percent annual percentage rate, which is the cap in NRS Chapter 675. If we do get a complaint, we cite the unlicensed activity, bring the lender to task, and oftentimes it gets resolved without having to go any further with disciplinary actions.

The issue of a small loan turning into a huge repayment is the result of compounding interest. Because of the 40 percent cap, the lenders tend to do their loans individually for each advancement. If you need \$2,000 for living expenses in month one, they make a loan for \$2,000, and then the next month you need another \$2,000. What they do is take the second loan, use it to pay off the first loan, and roll the interest into the second loan—so now you are paying interest on interest. If you go through a period where this covers several years, the compounding of interest becomes astronomical. That is how they recover more money in the lending arrangement than the 40 percent cap would permit if it stayed as a single loan. What we do in these instances is very difficult. The NRS allows for this kind of compounding interest, as well as rolling and payoffs—that is the way it operates right now.

We also see what we call "front loading" of interest. They take a loan with a term of six months and say all the interest is due in the first month. Then they begin accruing interest against the total principal and that interest that just accrued in the first month over how many years it takes to settle the case.

Another type of abuse is the sale of loans to other lenders. Oftentimes the presettlement lenders will make the loan and turn around and sell it to somebody else; when they sell it to

somebody else, it again capitalizes that interest, and it begins the whole cycle again. What happens is that loans for less than \$100,000 end up costing some individuals more than the actual settlement. There have been complaints where the amount of the settlement did not even cover the amount of the loan—they actually owed money at the end of the process.

We welcome the specificity that Assembly Bill 305 would bring to this because it would make our job at Financial Institutions Division a whole lot easier in regulating this industry.

Chair Spiegel:

One of the things expressed to me by opponents of legislation such as this is that the interest rate needs to be high because these are risky loans, and there is no guarantee of a settlement. If there is no settlement, the loan would not have to be paid back. Does your office have any data regarding how often one of these loans is offered and does not get repaid because the person does not prevail?

George Burns:

We do not have any specific data on that. I know that we currently have nine complaints outstanding in this particular category.

Chair Spiegel:

Do you know if there is any way for us to get a sense of how risky these loans actually are?

George Burns:

I do know they do a very rigorous underwriting before they even make a loan. They are in consultation with the lawyer representing the client asking questions. What is the amount? What is the probability of settlement? They do not make these loans frivolously. I never heard of an instance where they were totally out because there was no settlement at all. What I have heard is there was pressure put on the client to settle sooner, and for an amount lower than perhaps they would be able to get just to get the loan paid off.

Assemblyman Yeager:

In section 11 of the conceptual amendment, subsection 2, the agreement itself contains a statement of the maximum amount the consumer may be obligated to pay. How would that be calculated? I read the bill to indicate you can charge interest and other fees.

George Burns:

The intent is that instead of making these individual installment loans, it would become an open line of credit. The underwriter would say, Okay, we believe your case is going to be able to settle for \$200,000—because of our risk, we are willing to loan you \$100,000—that is your credit line on this. If this loan should go for this period of time, then this is the maximum amount you would be obligated to repay. It is the same amount you would see in any Truth in Lending statement on a loan.

Assemblyman Yeager:

In section 14 it refers to providing a statement of the balance owed. Could we add into section 14, in addition to the actual individual, that any attorney of record would receive notice as well? Typically, the attorney is involved in this process to advise the lender about the risks of litigation. I think it might make sense that both the borrower and the attorney receive statements.

Assemblyman Flores:

Absolutely. I think that makes a lot of sense.

Assemblyman Yeager:

Section 18 of the conceptual amendment says this is not retroactive to loans that have been entered into before October 1, 2019, until the contract is extended or renewed. Does this mean if the contract is extended or renewed this provision would then apply?

George Burns:

I think the purpose is because these types of lending arrangements go on for years and years. When a loan did come up for extension or renewal, it would fall under these provisions. Currently, we only have about four companies that operate in the state of Nevada doing this kind of lending right now. They will be made well aware of this, and we will give them notice of the requirements and the due dates for those requirements.

Assemblywoman Neal:

Section 12 of the conceptual amendment adds "must comply with the Truth in Lending Act and Regulation Z." How is the billing cycle affected by this?

George Burns:

There are very specific prescriptions within the Truth in Lending Act and Regulation Z regarding how an open-ended line of credit has to be reported. That is one of the reasons we felt that particular lending mechanism would work very well for this.

Chair Spiegel:

Is there any testimony in support of Assembly Bill 305?

Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada:

No one should have to continue to struggle after settling. Assembly Bill 305 protects consumers from being taken advantage of in desperate and vulnerable situations by providing clear regulations and capping the interest rate.

Shane Piccinini, representing Human Services Network:

This is a problem that we see in our network throughout the year. It makes us wonder what we could do differently. I am excited to see this bill come forward. As a community, we are not very good at providing the tools we need to help people when they are in vulnerable and unfortunate situations. Oftentimes they are placed in these situations through no fault of their own. Our credit counselors often struggle with how to help people in these situations. This

is a way to level the playing field, and to try to help people dig themselves out of the situations that they find themselves in.

Chair Spiegel:

Is there anyone wishing to testify in opposition to A.B. 305?

Alfredo Alonso, representing American Legal Finance Association:

We believe the American Legal Finance Association is among the good players on these types of loans. We agree with everything that has been said today. There is a bill in the Senate, Senate Bill 432, that we believe deals a little more from a global standpoint on how to regulate this industry—making sure the disclosures and the attorneys involved are also included, and that many of the nuances of this type of lending would be included. We look forward to continue working with the sponsor.

Assemblywoman Carlton:

The Chair of the Assembly on Government Affairs [Assemblyman Flores] brought forward some issues such as the caps, the rolling installments, the large increases, and no statements of disclosure. Are those types of issues encapsulated in Senate Bill 432 currently?

Alfredo Alonso:

Yes, there is a cap, and we believe there are more protections in the Senate Bill 432. There are obviously going to be different methods in which to ultimately regulate these people. The amendment to A.B. 305 (Exhibit G) treats these like high-interest loans. The concern there is that there is a payback to that. We do not believe this is a loan; this is more of an advance and treated as a line of credit. We would not necessarily agree with that because if the person loses, there is no payback. This is a risk taken by the companies who are loaning that money. If they win, then that is where the payback occurs. In our opinion, that is not a loan because you should not have to pay it back unless you win.

Assemblywoman Carlton:

So is that basically the crux of your opposition? Or is your opposition simply that there is another bill, and you like that one better?

Alfredo Alonso:

Both. To clarify, we have many additional protections. We include the attorneys in that negotiation. This is a very difficult loan to get in the first place, it should be in consultation with a lawyer, and I think there are many protections in the other bill that we would like to discuss with the sponsor and try to come up with something that works for everybody.

Chair Spiegel:

I did not realize there was a trade association website. Do you have any data on the number of times these advances are not repaid to the funders because the person does not prevail, or the settlement comes in and it is less than anticipated?

Alfredo Alonso:

I do not have that, but I can get it for you. I think the association probably has some idea of what that would look like.

Keith L. Lee, representing Injury Care Solutions:

I appear here in opposition to A.B. 305. I furnished a proposed amendment (Exhibit H). My client is different from the ordinary presettlement funding situation that you have heard discussed today. Whether you classify it as a loan, advancement, or whatever, we do not make a loan to the plaintiff or the plaintiff's counsel. We do not grant them an open line of credit. We purchase, at a discount, a medical provider's bill. We then file a lien for the full amount of the bill with the plaintiff and plaintiff's counsel, so when and if there is a settlement, we get paid from that. With respect to my client, we oftentimes continue negotiations after there is a settlement regarding the exact amount to be repaid. If no settlement is received, then there is no recourse back to the plaintiff—the plaintiff and the plaintiff's counsel owe us nothing. We are different than presettlement loans because we do not advance monies directly to the plaintiff, we do not grant any kind of open line of credit, and we do not make a loan. Our only objection to A.B. 305 is in section 6 of the bill [the definition of "presettlement funding"]. At line 29, which corresponds to section 5 of the conceptual amendment, we think the term "or indirectly," should be deleted. I have suggested an amendment and will continue to speak with the sponsor to address my concerns.

Assemblywoman Carlton:

Mr. Alonso, it is my understanding that the people you currently represent are not regulated under NRS Chapter 597. Would they be regulated by moving them to NRS Chapter 675?

Alfredo Alonso:

I believe we have at least one member who is currently licensed under that chapter, if not two. I think the problem is that they are not regulated in at least 40 states.

Assemblywoman Carlton:

Mr. Lee, if your clients stayed in NRS Chapter 597 they would not be regulated. If all the other guys move over to NRS Chapter 675, would that solve the problem?

Keith Lee:

I do not think we fit into NRS Chapter 675 at all, because we do not make loans. To my knowledge, the ordinary factoring company that I referred to is not regulated by any law in the state of Nevada. It is a business between a willing seller, in this case receivables for a medical bill, and the purchaser, with the idea that the factoring company is going to get its profit either from the settlement or in the collection of those receivables.

Chair Spiegel:

I want to get a couple of questions on the record. I think there could be some confusion from Committee members and members of the public about having a discussion about medical receivables factoring in conjunction with this bill. My understanding is that if someone is

injured in an accident and is having medical services performed on a lien basis, that person would never be charged by the medical provider, even if their lawsuit did not prevail. Is that correct?

Keith Lee:

I am not aware of that. If you are asking does a provider of medical services provide a contingent bill to someone who is injured, I have never heard of that situation.

Chair Spiegel:

If it winds up coming back to the consumer for something that had been performed on a lien basis, but then the case was dismissed, did not settle, or the injured person did not prevail, is the consumer charged interest on the balance?

Keith Lee:

What my client does is file a lien for the medical bill with the plaintiff and the plaintiff's attorney. That is the amount that we look to if there is a settlement. There is no interest on that—it is just that amount. Oftentimes if the settlement is less than the anticipated amount, my client will negotiate with the lawyer for the plaintiff to reduce the amount that we would recover. There is no loan agreement or repayment agreement; there is no recourse to the plaintiff.

Chair Spiegel:

So factoring is not a loan to the person who is injured. It is a tool the medical provider has to get payment by selling the debt.

Keith Lee:

That is correct. The two-fold advantage is the medical provider gets paid and does not have to wait, and the plaintiff and plaintiff's family does not have to carry the burden of another bill out there. There is a mutual benefit to both sides.

Chair Spiegel:

Is there anyone who wishes to testify in the neutral position? [There was none.]

Assemblyman Flores:

I look forward to working with all the interested parties in this conversation. There may be a difference of philosophical opinion on certain things, but I will work with everybody, and specifically with Mr. Lee. I think he is outside of the scope of the intent of the bill.

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Chair Spiegel:

We will now close the hearing on Assembly Bill 305. Is there any public comment? [There was none.]

The meeting is adjourned [at 2:26 p.m.].

RESPECTFULLY SUBMITTED:

Karen Easton
Committee Secretary

APPROVED BY:

Assemblywoman Ellen B. Spiegel, Chair

DATE: _____

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EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is written testimony presented by Peter J. Goatz, Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada, in support of Assembly Bill 477.

Exhibit D is a proposed amendment to Assembly Bill 477, submitted by the Coalition of Legal Services Providers, and presented by Peter J. Goatz, Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada

Exhibit E is a document dated January 2015, titled "Pre/Post Judgment Interest," submitted by Jennifer Jeans, Coalition of Legal Services Providers, in support of Assembly Bill 477.

Exhibit F is written testimony dated April 3, 2019, submitted by Aviva Y. Gordon, Private Citizen, Henderson, Nevada, in opposition to Assembly Bill 477.

Exhibit G is a conceptual amendment to Assembly Bill 305, dated April 2, 2019, presented by Assemblyman Edgar Flores, Assembly District No. 28.

Exhibit H is a conceptual amendment to Assembly Bill 305 submitted by Keith L. Lee, representing Injury Care Solutions.

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Eightieth Session
May 8, 2019**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 1:35 p.m. on Wednesday, May 8, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Pat Spearman, Chair
Senator Marilyn Dondero Loop, Vice Chair
Senator Chris Brooks
Senator Joseph P. Hardy
Senator James A. Settelmeyer
Senator Heidi Seevers Gansert

COMMITTEE MEMBERS ABSENT:

Senator Nicole J. Cannizzaro (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Bea Duran, Assembly District No. 11
Assemblywoman Selena Torres, Assembly District No. 3
Assemblyman Jim Wheeler, Assembly District No. 39

STAFF MEMBERS PRESENT:

Cesar Melgarejo, Committee Policy Analyst
Bryan Fernley, Committee Counsel
Jennifer Richardson, Committee Secretary

OTHERS PRESENT:

Rebecca Gasca, American Kratom Association

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Mac Haddow, American Kratom Association
Kelly Dunn, Urban Ice Inc.
Tom Pilkington, Urban Ice Inc.
Kim Demott
Kimberly Surratt
Sarah Paige
Tom Clark, Nevada Association of Health Plans
Steve Lencioni, Nevada State Medical Association
Jennifer Jeans, Washoe Legal Service; Legal Aid Center of Southern Nevada
Peter Goatz, Legal Aid Center of Southern Nevada
Shane Piccinini, Food Bank of Northern Nevada; Human Services Network
Patricia Messenger, J&J Realty
Roger Lloyd, Executive Vice President, United Finance Company
Danielle Fagre Arlowe, Senior Vice President, American Financial Services
Association
Andrew MacKay, Nevada Franchised Auto Dealers Association
John Sande IV, Nevada Franchised Auto Dealers Association
Mayra Salinas-Menjivar, University of Nevada, Las Vegas, Immigration Clinic
Michael Kegan, University of Nevada, Las Vegas, Immigration Clinic
Sylvia Lazos, Nevada Immigrant Coalition
Miranda Hoover, Board of Examiners for Social Workers
Laura Nowlan, Nevada Hispanic Business Group
Caleb Green, University of Nevada, Las Vegas, Immigration Clinic
Linda Jones, Clark County Education Association
Maria Rodriguez, Mexico City Federation
Ronnie Najarro, Deputy State Director, The LIBRE Initiative, Nevada
Jacquelyn Nader, Fingerprinting Express
Maria Davis
Ruben Murillo, Nevada State Education Association
Marcos Lopez, Americans for Prosperity, Nevada
Mariana Sarmiento
Kathia Sotelo, Make the Road Nevada
Elias Barajas
Cyrus Hojjaty
Scott Anderson, Chief Deputy, Office of the Secretary of State

CHAIR SPEARMAN:

We will open the hearing on Assembly Bill (A.B.) 303.

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ASSEMBLY BILL 303 (1st Reprint): Revises provisions relating to kratom products. (BDR 52-1055)

ASSEMBLYMAN JIM WHEELER (Assembly District No. 39):

I am presenting A.B. 303. This bill defines kratom and allows people to access it. Americans spend billions of dollars on prescription drugs every year. Many of those drugs, especially opioids, are abused by people. Over the last few decades, this problem has been growing at an alarming rate. Drug abuse is responsible for 140 deaths per day.

Kratom is a cousin of the coffee plant. It is used by many people as an alternative to addictive opioids. Kratom is a way to escape addiction. We need to improve access to alternative options. We need to study the effects and find solutions to our opioid problem. Kratom attaches to the same receptors in the brain that opioids attach to; however, in its raw form it is not addictive.

We have seen problems with kratom being imported by people who are adulterating the product. We would like to label the product, make sure that people know what they are buying and provide the public a pure and safe product.

REBECCA GASCA (American Kratom Association):

I am presenting A.B. 303. This is a simple bill that seeks to mandate appropriate labeling on the sale of kratom. In addition to labeling, the bill mandates that kratom be sold in unadulterated forms and prohibits sales to minors under the age of 18. Violations of this bill will result in civil penalties.

Kratom is a tropical evergreen grown in southeast Asia. This bill is important because it enables consumers to have access to unadulterated kratom. Several years ago, problems arose with kratom. Those problems resulted from manufactured and imported adulterated kratom. Deaths occurred as a result.

At the time of those deaths, the U.S. had not conducted any studies on kratom. There was a lot of misinformation on the substance. Since then, clarifications have been made. The National Institute on Drug Abuse (NIDA) funded research at the University of Florida in order to study the plant. This is a stop-gap measure to ensure the safe purchase of kratom.

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Utah and Georgia recently signed similar bills into law. There is bipartisan support on this issue. States are trending to correct the erroneous information released over the past ten years. Similar measures are being considered in Arkansas, Rhode Island, Wisconsin, Ohio, Michigan, Missouri, Kansas, Oregon, Idaho and Arizona.

SENATOR HARDY:

Are the Centers for Disease Control and Prevention (CDC) incorrect when it states that 59.9 percent of the 102 kratom positive decedents were caused by kratom?

MAC HADDOW (American Kratom Association):

The CDC report supports why this legislation is so important. That data determined that most kratom deaths were the result of adulterated kratom products being consumed or the possibility of polydrug use in conjunction with the consumption of a kratom product. Polydrug use is the use of two or more psychoactive drugs.

In the CDC report, 60 percent of deaths involved fentanyl, morphine or other drug adulterations. The information available to a coroner or medical examiner is determined by the sophistication of technology. In deaths where kratom was detected, we found the technology sometimes gives a false positive.

The CDC cited a January 2019 *New England Journal of Medicine* report from the state of Colorado where there were 15 related kratom deaths. Four of those kratom deaths were with kratom alone. When those four deaths were subjected to a complete analysis, it was found that three of the four deaths involved polydrug use. One test was not complete due to the lack of a sufficient blood sample.

The CDC requested a more sophisticated analysis. We are attempting to find the autopsy reports and medical records for every reported kratom involved death. In an independent analysis, we determined polydrug use or adulterated products contributed to each of those deaths.

Our findings were confirmed by the NIDA in a 2018 published review by the Food and Drug Administration (FDA) on deaths associated with kratom. It was confirmed that all but one of the deaths reported by the FDA involved polydrug use or adulterated kratom products. The CDC report supports the premise that

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the American Kratom Association uses to promote this legislation protecting consumers.

SENATOR HARDY:

You folks have looked into the seven deaths where only kratom was found. The CDC has identified kratom as the cause of death. Did you find those deaths to be reputed? Are they disputed as to the cause of death?

MR. HADDOW:

We requested all the medical records. We are not certain that there are crossovers for those seven. We will determine that when we receive the reports. The CDC analysts made a point in their report regarding medical examiners and coroners. Many coroners and medical examiners do not have sophisticated equipment to detect other substances. When those blood samples are subjected to a more sophisticated analysis, the results may change.

We will examine those seven deaths when we obtain the medical records. We try to accumulate every record from around the Country where kratom deaths are reported. We are confident we will prove that these deaths are a result of adulterated products. This is an epidemic that we wish the FDA would address.

SENATOR HARDY:

It is wishful thinking to assume a plant product cannot be poisonous in and of itself. If you take too much of any substance, whether it is caffeine, aspirin, foxglove, or any of those kinds of medicines, there are risks. It would not surprise me that kratom is a plant product that can kill if too much of it is consumed.

MR. HADDOW:

That is a good point. With the exception of individuals who have an addictive personality, it would be difficult to take too much resulting in death. The kratom plant used in its natural form tastes so bad that it is self-limiting in terms of being able to ingest it. If used in a capsule, the product upsets your stomach.

The NIDA funded two studies on animals where they researched the addiction liability of kratom and the potential health impacts. The study found no addiction liability, meaning that one could have a dependency to it but not an opioid addiction. In a dependency, one could wean off the substance; in this

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case, kratom is a caffeine related dependency. Opioid addiction requires sophisticated intervention and medically assisted treatment.

The study found a reduced craving for morphine in rats where morphine was used as the control drug. The study was completed and published in July 2018. It determined there was no addiction liability and discounted the threat to public safety from kratom alone. A \$3.5 million grant was issued in December 2018 for the purpose of studying the potential benefits.

You are correct. If an individual is determined to use any substance in excess, there is a potential for harm. Kratom does not have opioid properties. A relatively small amount will not kill you. You would have to ingest so much kratom that it probably would not happen.

SENATOR DONDERO LOOP:

I am not a doctor. I am a mother and an educator. I read a study from the FDA that kratom was not safe or effective for any medical use. I read several articles from Senator Bramble of Utah. He did not want the substance banned, but instead wanted regulatory restrictions added to it. The regulations involved the sale of kratom. It was to make sure that it was not mixed or sold under certain circumstances.

I read another article related to the Utah legislation. While salmonella is not specific to this type of product, there was an outbreak of salmonella in Utah associated with the kratom product.

My concern is whether or not we are putting one more thing on the market that somebody can mix, use or sell for illegal purposes.

MS. GASCA:

I hear your concerns. This bill would prohibit the sale of kratom to minors. It requires responsible labeling so that people know what they are consuming. This product is on the market. The problem is with adulterated products being sold. Consumers do not know whether the kratom they purchase is adulterated or not.

This bill intends to require this type of labeling, because this product is coming from China. We prefer manufacturers to be of good standing and adhere to FDA guidelines with good manufacturing practices like those who will testify. This

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piece of legislation would prohibit sales to minors, prohibit altering the product and require that vendors be held accountable.

SENATOR DONDERO LOOP:

What does that mean? The FDA states there is no evidence to indicate that this is a safe or effective product for any medical use, yet it can be bought on Amazon. Saying you cannot sell it to minors does not prevent minors from purchasing it.

MR. HADDOW:

The FDA is required by the Controlled Substances Act to meet criteria set forth in that statute to declare that kratom does not have any approved medical use. The substance is marketed as a dietary ingredient or an herbal supplement.

There are thousands of products that do not meet FDA criteria and do not have an approved medical use. It is not a drug. Therefore, it is not subject to a new drug application. The FDA takes that stance in order to submit an application to the Drug Enforcement Administration (DEA). The DEA determines if the substance is schedulable under Schedule I, which is the only designation available.

The FDA rejected the first application for kratom in 2015. While that was being adjudicated, its second application was submitted in October 2018. Normally, those applications are approved in 30 to 60 days with some outliers being approved as late as 120 days. When you have what the FDA has described as a critical problem with people dying, the DEA will evaluate the application in the context of a schedule recommendation.

However, they have not done so, because the FDA has to prove there is an addiction liability. The alkaloids in kratom are similar to other plant-based products that become new drugs. The alkaloids impact the mu opioid receptor in the brain. It is a partial agonist. A classic opioid impacts the mu opioid receptor then travels to the respiratory system. Overdose deaths cause people to suffocate because the drug is suppressing the respiratory system.

Kratom alkaloids do not do that. They are similar to St. John's wort and naloxone. Naloxone and cheese affect the same mu opioid receptor. When I testified before the Wisconsin legislature, they were amused that cheese has

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this effect. Affecting that receptor is not the criteria for scheduling or enacting regulation.

Dietary ingredients or herbal supplements need to have good manufacturing processes in place to prevent the salmonella issue. Kratom is sold throughout the U.S. except in the seven states that banned kratom. Since 2016, there were a dozen proposed bans that were defeated.

This year, Utah and Georgia passed kratom regulations. We are trying to protect consumers while it is on the market. The requirements of this bill will provide accurate labeling, restrict the adulteration and prohibit elevating or synthesizing the alkaloids. The regulation is to ensure the sale of the pure product.

The DEA is waiting for the pending resolution from ongoing studies, which will investigate the therapeutic effects and the reduction of cravings for the opioids. We think kratom offers great promise to develop a future synthesized drug from this plant.

As a dietary ingredient or herbal supplement, kratom is a mood booster, a minor pain reliever and provides people with a natural product for their health and well-being. Salmonella can be cleaned up. Salmonella does not occur in the natural plant, but contaminates it during transport, packaging or during the drying process. Lettuce has outbreaks of salmonella.

Senator Bramble of Utah was concerned about identifying flaws in the manufacturing process and preventing contamination.

SENATOR DONDERO LOOP:

You named states that passed regulation. I can name more states that banned the substance.

MR. HADDOW:

In 2009, there was a cluster of nine deaths in Sweden attributed to a kratom powder product called krypton. Those deaths resulted in a public review. In 2012, the FDA took regulatory action. They ignored a peer reviewed published article about those nine deaths which led to six states banning the substance. The deaths were attributed to adulterated kratom powder with o-desmethylnaloxone, which is the chemical used to produce tramadol.

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The subsequent information provided to Arkansas, Alabama, Rhode Island, Tennessee, Wisconsin and Vermont was based on those nine deaths. Wisconsin is about to file the Kratom Consumer Protection Act. We met with officials in Arkansas; they are considering legislative action to rescind the ban. We are working in Alabama to do the same. Rhode Island has a bill filed. This is an appropriate way for us to protect consumers against those adulterated products until the FDA resolves its arguments.

The NIDA has confirmed all the deaths they reviewed, with the exception of one, were the result of polydrug use or adulterated kratom products. It is not U.S. policy to ban a substance because it is adulterated with a dangerous substance. This bill seeks good regulation.

CHAIR SPEARMAN:

The intent of the bill is to keep kratom from being sold to minors or people under the age of 18. I am looking at a website where you can order this in several forms. There is no language prohibiting the sale of kratom over the internet. If you are trying to prohibit the sale to minors and prohibit the sale of adulterated kratom, is there a way to put that language in the bill? I share my colleagues' concerns. If we cannot stop online sales, how do we make sure that it is not sold to minors?

BRYAN FERNLEY (Committee Counsel):

The bill does not prohibit sales over the internet. Under this bill, sales could be made over the internet. The bill prohibits knowingly selling or offering to sell to a minor. The question would be how does a person selling over the internet know whether a person purchasing over the internet is 18 years of age or older? The language specifies that the seller cannot knowingly sell to a minor, so potentially the person over the internet could claim that they did not knowingly sell to a minor. There is an issue over how this regulation is enforced.

MR. HADDOW:

We represent millions of consumers. We welcome adding language to protect minors. In addition to banning sales to minors, this bill requires strict guidelines for labeling. Whether the product is sold in a store, a retail location or over the internet, the label has to describe the contents of the product and ensure they are not enhanced or synthesized.

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Those are important protections for consumers. We attempted to strengthen the Utah legislation. One objection to our bill was that kratom should not be regulated at all. I thought that was strange. We want to enhance safety. Until the issue is resolved at the federal level, we need to protect people.

SENATOR HARDY:

Was there discussion about striking the word "knowingly?" We do not sell cigarettes or alcohol to minors. We do not use the word "knowingly" for the sale of those products.

MS. GASCA:

That would be appropriate.

MR. HADDOW:

We support strengthening the bill as much as we can.

SENATOR SETTELMAYER:

If you strike the word "knowingly," you allow it to be sold accidentally. The minors are at the store where they grab the wrong thing. They have an innocent clerk who made a mistake by selling it. Now, that clerk committed a crime.

MS. GASCA:

This is not a criminal offense. This is a civil offense. Theoretically, if we struck the language "knowingly" and someone sold kratom to a minor, they would be subject to a civil fine.

MR. HADDOW:

The FDA regulates internet sales when they can determine that an internet supplier, organization or manufacturer selling in the U.S. makes a claim that is impermissible. They can address the issue further if the sale occurs in a state where the sale violates state statutes. The FDA is shutting down kratom manufacturers who are making impermissible claims. The Georgia legislation will help the FDA to enforce these matters.

CHAIR SPEARMAN:

I have a concern over selling the product. Seeing that it is sold in so many different outlets over the internet means that we cannot plug every hole. Striking the word "knowingly" strengthens that language, because we cannot

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police every internet outlet. I want to make sure this bill is a disincentive to people selling a dangerous substance.

KELLY DUNN (Urban Ice Inc.):

We support A.B. 303. Kratom is sold everywhere. Its popularity is growing. We see more people requesting the product. Lately, we noticed a money grab within the industry. People realize it is a worthwhile business and they are jumping in to try to make enhanced products. They are not going through the proper procedures.

We have been concerned about that for a long time. We produced a documentary, "A Leaf of Faith" that gives the latest science and information on kratom. It is important for us to get information out to the public. Part of the problem with people in a money grab is that they are cutting corners in order to profit from the popularity of kratom. Consumers need protection.

As a company owner, we carry product liability insurance. We follow all the rules. We have an audit once per year. Everything we do is about education and support. We want to do the right things here.

I use kratom. I have a 21-year-old son who also uses kratom. This is something I am comfortable giving to my child.

SENATOR HARDY:

How will this bill decrease the bad actors you described?

MR. DUNN:

Part of the problem is that people are not testing the product, and they are selling the product labeled "not for human consumption." They are not making claims or testing the product in order to avoid liability. That is currently occurring. For us, that is a problem. People are buying products that are designated "not for human consumption."

SENATOR HARDY:

Does this bill help?

MR. DUNN:

Yes, this bill will eliminate that from happening. It will eliminate the bad actors that do not follow procedures. All products should be manufactured under the

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current Good Manufacturing Practice (CGMP) regulations and carry liability insurance. That is what we want.

TOM PILKINGTON (Urban Ice Inc.):

We support A.B. 303. We are a company selling kratom in North Las Vegas. We are firm supporters of the Kratom Consumer Protection Act. We put the health and safety of Nevadans first. At Urban Ice, we manufacture and sell kratom products all over the Country. We are industry leaders in safety and compliance.

Our products are made in a certified facility that meets or exceeds all requirements under CGMP. This includes double verification to ensure everything we produce is consistent, safe and effective. Our products are tested multiple times for impurities, adulterants and contaminants by an independent third-party certified lab. We use and follow strict standards, because the safety of our customers is our first priority.

We follow strict federal labeling guidelines that include listing contents, directions for safe and effective use, lot numbers for traceability and contact information for questions, comments or concerns. Our products are packaged and sold with tamperproof seals.

At our distribution center in North Las Vegas, our employees are trained in all relevant aspects of safety for warehousing and distribution. Our management team holds a variety of certifications for CGMP.

We have an opportunity to protect consumers in Nevada. This legislation is proactive and responsible. We consider it our responsibility as a company to provide safe products to our customers. Please support A.B. 303.

KIM DEMOTT:

I support A.B. 303. I am a kratom consumer. I am a 33-year-old stay at home mother of 2 children. Over the last several years, I have been diagnosed with several chronic illnesses and conditions including: lupus, fibromyalgia, Sjogren's syndrome, osteoarthritis, osteoporosis, carpal tunnel syndrome, migraines, endometriosis, interstitial cystitis chronic fatigue, chronic pain, anxiety and depression.

I was prescribed 28 different medications per day, including powerful opioids like oxycodone, hydrocodone, morphine, Ativan, Xanax and Klonopin. Even

though I was taking all these different medications, I was in pain and I had no quality of life. I was houseridden and bedridden from when I was 28 until I was 31 years of age. In the fall of 2014, my doctors labeled me permanently disabled. I was 29 years old.

I would tell my kids that I was in too much pain and too tired to be involved in their activities. This caused me to miss out on precious time and memories we cannot get back. I could not cook, clean, drive, go to the store or go for a quick walk. My children would hear me hiding in the bedroom or bathroom crying from the pain. I could not take a shower, brush my teeth or get dressed in under an hour, because I would have to rest with every task I did.

I became isolated and depressed. The medications that the doctors put me on made me feel like a zombie and damaged my self-esteem. The side effects led to prescribing more medications, which meant more pills to add to the huge amount I took daily. I was so depressed and helpless that I attempted suicide a few times.

I have enjoyed drinking my kratom tea for the last two years. It improves my mood and energy like a cup of coffee would. It supports my joint and muscle comfort, which helps to aid me with my discomforts and my chronic fatigue. It makes my pain more bearable. I am not cured. My pain is not completely gone. It never will be. The discomfort I have is brought to a level where I can live and function.

My bad days are not as frequent or severe as they used to be. It has improved my quality of life and dramatically changed it for the better. I am not spending every day on the couch or in bed. My kids have their mom back. They are happy that we are able to do so many things together.

Ms. GASCA:

Regarding Senator Hardy's question to a previous testifier about labeling for human consumption; it is a salient point. Some vendors are putting products on their shelves that are labeled "not for human consumption," but people know that it is kratom and that they can consume it anyway. This bill seeks to prohibit that.

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Section 2 states that kratom is not able to be sold regardless of its labeling for human consumption. This important aspect of the bill prevents bad actors from skirting the intent of this legislation.

We wish we could plug the holes on internet sales. If there is anything we can do to address that issue, we are in favor of exploring those ideas. This bill will help in ways that Mr. Haddow testified in respect to sales in the future.

CHAIR SPEARMAN:

We will close the hearing on A.B. 303 and open the hearing on A.B. 472.

ASSEMBLY BILL 472 (1st Reprint): Revises provisions relating to insurance coverage of maternity care. (BDR 57-812)

ASSEMBLYWOMAN BEA DURAN (Assembly District No. 11):

I am presenting A.B. 472 which requires certain health insurance providers to cover maternity care for a gestational carrier.

KIMBERLY SURRATT:

I am presenting A.B. 472. Assemblyman Frierson and I remodeled all the assisted reproductive statutes to modernize the State. There was a need for this bill in 2013. We continue to see problems with insurance companies. Other states are modeling similar statutes after Nevada.

This past year, every insurance policy in the State excluded surrogates from maternity care. There are states that have taken a look at this issue. Wisconsin has taken a deep look into the matter. In our opinion this is a form of discrimination, because it excludes some women from coverage based on how they conceived.

Inquiring from women how they conceived is a personal and private matter. These inquiries open the door to further invasive questions, such as whether or not the child is up for adoption or whether insurers should deny medical care based on the woman's intent.

As a family law attorney, I find this disturbing and upsetting, because people do not go about these decisions lightly. We need to protect these women and protect their interest. The intent of this bill is to prohibit an insurer from

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excluding maternity services that are generally covered under specific subgroups of insurers based solely on the reason the woman became pregnant.

Through negotiations and discussions with Health Plan of Nevada and other various entities, we arrived at the language that is currently in the bill. The multiple subsections of the bill are to cover all the different forms of insurance throughout the *Nevada Revised Statutes* (NRS).

Nevada has policies such as: health insurance, group health insurance, health benefit plans, benefit contracts, contracts for hospital or medical services, health maintenance organizations that issue healthcare plans and managed care organizations. We repeat the language in the bill in order to cover every category of insurance.

At this time, we do not have opposition. We worked with the opposition to come to an agreement with the current bill. There was a request from the Department of Insurance (DOI) for language that defines a gestational carrier differently than what we define in family law.

In family law statutes, we define gestational carrier as one who is not genetically related to the child. That is what is allowed under NRS. We consider a genetic surrogate or a traditional surrogate to be a woman who is using her own egg. A woman using her own egg cannot be considered a gestational carrier. That is not permitted under the NRS, because it would require the woman to relinquish her parental rights with an adoption as opposed to being covered under the NRS chapter that defines surrogacy.

We believe this was sufficient language until the DOI pointed it out. The exclusions for the policies uses the word "surrogate," not "genetic surrogate" or "traditional surrogate" like the family law industry uses. I am not sure how to address this issue besides stating "gestational carrier or surrogate" to give the DOI the ability to know exactly how they will enforce this. When this amendment is ready, we will not have any issues with it.

SARAH PAIGE:

I am presenting A.B. 472. I have been working in assisted reproductive technology for nine years. I work in all 50 states. We have found over the past couple of years that insurance carriers in Nevada have pulled out of the State

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and have pulled coverage for gestational carriers. Nevada does not have a single carrier that covers gestational carriers.

Anthem offers a catastrophic policy to women under the age of 30. The average age of a gestational carrier is 32. Rarely do women fall under those guidelines to be able to access that type of insurance policy. We are in a situation where we have gestational carriers within the State who do not have access to potential maternity coverage.

CHAIR SPEARMAN:

You stated that the language is inconsistent with what is used in insurance statute. You stated there was an amendment. Do you have the amendment with you today?

MS. SURRETT:

It was brought forth by the DOI to change the language to "gestational carrier or surrogate." That would cover them in the language they see within policies. I would like to keep gestational carrier in the bill, because that is what is used in family law statutes. This way we are all using the same language.

CHAIR SPEARMAN:

I recommend you get with the Legal Division to figure out how to address this issue with the language.

MS. SURRETT:

Yes, we will do that.

SENATOR HARDY:

I agree with your desire to keep the gestational carrier language. Section 3, subsection 2 states "deemed to be a child of the intended parent." Sometimes the surrogate parent does not want to let the child go even though there is a contract. If you deem this to be a child of the intended parent, you may get in trouble when the surrogate parent is able to keep the child regardless of the contract.

MS. SURRETT:

I agree. That is my concern. I do not want to mix up the language, because these issues do arise. We determine parentage in family law differently than what a contract for insurance does. When the language states "gestational

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carrier or surrogate," it does not create any family law parentage problems. The language will be cleaner this way.

TOM CLARK (Nevada Association of Health Plans):
We support A.B. 472. We worked with the sponsors of this bill. There may be some fiscal impact with the changes.

STEVE LENCIONI (Nevada State Medical Association):
We support A.B. 472. Prenatal care is important for the baby and for the health of the woman. Rates of mortality and morbidity are on the rise. Prenatal care is critical for improving the health of a woman regardless of how or why she became pregnant.

CHAIR SPEARMAN:
We will close the hearing on A.B. 472 and open the hearing on A.B. 477.

ASSEMBLY BILL 477 (1st Reprint): Enacts provisions governing the accrual of interest in certain consumer form contracts. (BDR 8-935)

JENNIFER JEANS (Washoe Legal Service; Legal Aid Center of Southern Nevada):
I am presenting A.B. 477 with Peter Goatz in Las Vegas. This bill addresses form contracts providing for high attorney fees and interest rates which continue to accrue for years after a consumer has defaulted on a loan, trapping them in a cycle of debt.

Form contracts are contracts of adhesion meaning that the consumer has little to no say in the negotiation of the terms of the contract. They are presented on a take it or leave it basis. They are the most common means by which vehicle sales are financed, and they can be used for the purchase of furniture or other services.

We met with stakeholders and addressed the concerns of the opposition presented at the hearing in the Assembly. We recently became aware of additional opposition. We are in discussions with them to try to reach a compromise.

PETER GOATZ (Legal Aid Center of Southern Nevada):
I am presenting A.B. 477. My practice is focused on providing legal advice and direct representation to low-income consumers in our community. In Nevada,

the interest rates stated in a consumer form contract apply throughout and beyond the date of performance set forth in the contract. The interest rate applies after default, before a judgment is entered and after a judgment is entered until paid. This is often after many years.

Since interest rates are not capped in Nevada. A consumer form contract can set any rate of interest that the consumer and the business agree to. This interest rate may include compound interest. If there is no interest rate set forth in the contract, then the default legal rate of prime rate plus 2 percent applies. This document (Exhibit C) shows a history of prime interest rates. The default legal rate is calculated using simple interest.

Consumers understand what they are signing up for in these consumer form contracts. When they agree to purchase a car and pay 29 percent interest over 3 years, they do not understand or do not foresee the typical scenario we see at the Legal Aid Center of Southern Nevada.

In a typical scenario, the car breaks down, and the consumer cannot afford the loan payments plus the repair bills, so they default. The vehicle is repossessed and later sold. The post-repossession sale results in a deficiency between the contract price and the value of the vehicle. The loan during this time continues to accrue compounding interest at 29 percent. The consumer does not have the car anymore, but must continue to make payments. At this point, the consumer cannot get the vehicle back even if they pay the loan.

A lawsuit is filed against the consumer for the deficiency. Once the judgment is entered, the amount owed by the consumer is charged interest at the contract rate in the original contract loan. While the judgment is being collected, that judgment continues to accrue interest at 29 percent. That accrual may continue for years, because a judgment may be renewed every six years.

This effectively places the consumers into a debt treadmill with little opportunity to extricate from it. Assembly Bill 477 seeks to protect consumers from this debt cycle by limiting the accrual of interest to prime rate plus 2 percent from the date of default as defined in the consumer form contract. This bill sets the interest rate to be simple not compounding interest.

This bill does not apply to banks, credit unions, credit cards issued by banks or high interest loans that are otherwise regulated by NRS 604A. This bill adds

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Nevada to the number of states that limit the interest rate after a default on contracts. The majority of states have judgment limits set to a reasonable rate set in statute, notwithstanding the rate that is provided for in the contract.

We submitted the *Jurisdictions Comparative Chart* (Exhibit D contains copyrighted material. Original is available on request of the Research Library.) This publication was compiled by Cozen O'Connor. Assembly Bill 477 limits other provisions frequently added to these adhesion contracts where normally the consumer has no opportunity to negotiate with the other party.

This bill ensures that Nevada law applies versus another state law. Nevada courts will hear disputes over contracts that are entered into between consumers and businesses within the State. The bill prohibits any clause in a contract that holds the business harmless for damages. It would prevent the business from taking a confession of judgment or requiring the consumer to waive a jury trial unless the business offers an alternative dispute forum.

Assembly Bill 477 would prohibit a confidentiality clause and an assignment of wages. It prevents consumers from being forced to waive their defense for statutory protections. It provides that the contract would be void if the business or the other party fails to be licensed under another provision of law. It would limit the collection of attorney fees to a maximum of 15 percent of the principle debt.

That is our overview. Please pass A.B. 477. I submitted to the Committee my written statement (Exhibit E) which has more detail on my testimony.

CHAIR SPEARMAN:

Can you explain the difference between simple and compounding interest?

MR. GOATZ:

I am an attorney, not an accountant, so I will try my best. Compounding interest means that as interest accrues, it is combined to the principle and the next cycle of interest is applied to that combined amount, compounding the total interest charged.

If you borrow \$100 at simple interest of 12 percent per year, you pay 1 percent per month. After 1 year at 12 percent interest you would owe \$112. Compounded interest is much higher. It works like a credit card. Your interest

rate applies to your balance and you have a new balance. The next month you have a new balance and the interest rate is applied to the new balance compounding the interest. If it is \$100 at 24 percent compounding interest, the closing statement would be \$124 then interest would accrue at 24 percent on that \$124.

MS. JEANS:

This bill intends to address issues that happen to consumers after they default on a debt. There are significant delays between the time of default and when legal action is taken on the debt. During that delay, these interest rates are continuing to accrue. That perpetuates the debt treadmill.

CHAIR SPEARMAN:

So when someone defaults on \$10,000 at 12 percent, even if their contract says they pay 12 percent interest, are you saying the percentage rate they pay is arbitrarily raised?

MS. JEANS:

No, that is not the case. When the consumer enters into a contract, they anticipate being in the contract for a term of three or four years. In some cases, such as in the example Mr. Goatz presented, the consumer needs to make repairs on the car but is unable to pay the loan and the repair bill. The car is repossessed and sold at a deficiency.

The deficiency is sold to a third-party debt collector. The third-party debt collector will hold that note for a period of time before they sue the consumer. While they are sitting on the note, they accrue attorney fees and interest on that note. This period of time can take years. It extends far outside the time the consumer anticipated when they signed the original contract. In many cases the debt doubles or triples. We are trying to bring Nevada in line with other states that put limits on those contractual interest rates after default.

SHANE PICCININI (Food Bank of Northern Nevada; Human Services Network):

We support A.B. 477. Our organization sees clients when they have these problems. A lot of times the default on the car loan or furniture are not the only problems that our clients are dealing with. Oftentimes, there are extenuating circumstances for which these families fall into this situation that are beyond their control. This was apparent from 2009 through 2014 during the Great

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Recession. Any backstop we can place to help consumers hang on and to manage their debts would be something we support.

PATRICIA MESSENGER (J&J Realty):

I support A.B. 477. I had a client who lost their car in 2009. In 2014, they went to purchase a home and all of a sudden my client is hit on their credit rating. I agree with this bill. The client did not realize they had this debt looming over them. It was not on their credit score until they were ready to go buy a house. Please support A.B. 477. We need to stop the third-party debt collectors from holding us hostage for three or four years after the deal.

ROGER LLOYD (Executive Vice President, United Finance Company):
We oppose A.B. 477. I will read a prepared statement (Exhibit F).

CHAIR SPEARMAN:

Can you summarize the three points that you have an issue with?

MR. LLOYD:

Yes. Assembly Bill 477 would lead to disparate treatment of consumers, unfair competition among lenders in Nevada and it is unclear and complex, leaving lenders unable to comply with the bill.

CHAIR SPEARMAN:

Who would be at a disadvantage? How would the unfair competition among lenders impact the different lenders?

MR. LLOYD:

Any lender not exempted would be at a competitive disadvantage, because they would not be subject to the interest rate limitations.

DANIELLE FAGRE ARLOWE (Senior Vice President, American Financial Services Association):

We oppose A.B. 477. I will read a prepared statement (Exhibit G). To answer your question to another testifier, half of the retail installment sales contract purchases for new cars would not be exempt. All captive vehicle finance companies would not be exempt. That would impact over half of new car sales and slightly less than half of used car sales.

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I called a collections attorney to ask him about this issue and he confirmed that no other state legislature had passed a law eliminating post-default interest.

CHAIR SPEARMAN:

There are two things that you oppose. The definition of default and what day a default begins. Is that correct?

MS. FAGRE ARLOWE:

Without knowing when default occurs, we cannot calculate it. There are inconsistencies in Nevada law. Form contract law says 30 days post-default. The section of statute that Mr. Lloyd cited has a different definition. Traditionally, default is the day after you miss a payment. Vehicle finance companies will not repossess a car the day after a payment is missed because they do not want to repossess cars: they want to finance cars.

Eliminating post-default interest is an incentive to go into default. The person who entered into a contract is paying a contract rate for interest, and the person who entered into default is paying no rate of interest.

ANDREW MACKAY (Nevada Franchised Auto Dealers Association):

We are neutral toward A.B. 477. We opposed the bill when it was in the Assembly. Our issues with section 10 were addressed. The intent of the bill was not clear. We arrange financing on behalf of the vehicle buyer and reassign that note to a vendor. Based on section 10, the language does not appear to make financial institutions exempt. The Legal Division stated that they would not apply our provisions until the next reprint of the bill.

CHAIR SPEARMAN:

Are you opposed to section 10?

MR. MACKAY:

Yes. This section states the provisions of this chapter do not apply to the lists of trust companies, savings banks, etc. We are not one of those entities, but we reassign our paperwork to one of those entities.

JOHN SANDE IV (Nevada Franchised Auto Dealers Association):

We are neutral toward A.B. 477. I would like to give an example of compounding interest. The difference between simple and compounding interest is that simple interest is determined at the time of the contract, and it does not

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change throughout the term of the loan. If you agree to pay 10 percent on \$100, every month or year, you agree to pay that \$10 in interest.

Compounding interest is slightly different in that in the end of that term, the interest is added to the principle. You would recalculate the interest after every term to include that rate. That is how it compounds on itself.

CHAIR SPEARMAN:

Ms. Jeans, could you define default and point out the definition in the bill?

MS. JEANS:

The definition of default is referenced in the bill as being defined by NRS 97.

Any institution that is specifically excluded from the bill under section 10 is exempted from this chapter altogether no matter how they come to hold the note.

MR. GOATZ:

Default is not defined in this bill, because it is defined in NRS 97. The definition of default is defined and outlined in the contract. That is what controls the terms of the loan in regard to defaults. In a retail sales contract for the sale of a vehicle on credit, that date of default is 30 days after a missed payment.

It is not defined in the bill because the default is defined in the contract itself.

CHAIR SPEARMAN:

The opposition states there is no definition of default. You state that default is defined in the contract. If the contract states you are in default after two days of a missed payment, then that is the definition of default for that contract. Is that correct?

MR. GOATZ:

Yes, that is correct. Statute covers a lot of consumer form contracts, including vehicle sales and rent-a-center sales where consumers buy a TV or furniture on credit.

We are not upsetting any language in another statute that defines default relating to the form contracts. This bill states that once default happens,

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interest is adjusted to what is set forth within this bill, which is prime plus 2 percent.

CHAIR SPEARMAN:

There was another concern that this bill would create incentives for a person to default on a loan. Their original loan was 15 percent. They default and they are given a new interest rate of prime plus 2 percent for a total of 10 percent interest. If there is a chance for the interest to go lower, it sounds like an incentive. If the original interest rate is 15 percent, does it need to go lower or would it be better to remain at that rate?

MR. GOATZ:

From our perspective, our client who seeks our services has bought a car on credit. It is their only car for their family. They do not want to default. There is no incentive under this bill to default, because they need that vehicle to get to work and to manage their family.

When they default, they lose their vehicle. There is no incentive for a consumer to default, lose a vehicle and continue to pay the loan for a vehicle they do not have in order to get a lower interest rate on the loan. The consumers would prefer to keep their vehicles.

This interest rate applies after the car is repossessed and sold at a deficiency. There is no collateral for the consumer to recapture by curing the loan. This bill is trying to stop the excess interest that doubles, triples or quadruples the debt after the consumer has lost the vehicle, TV or furniture under these contracts.

Defaulting for a lower interest rate would not be an incentive for our clients. They do not want to default; they want to keep their items. This bill addresses the debt cycle that results after defaulting.

MS. JEANS:

We do not feel that the definition of default is ambiguous, because it is also the same definition that gives the holder of the note the right to repossess the vehicle. The holders of the note are aware of when they have the right to repossess. That is the definition of default. There is no incentive to default to get a lower interest rate because the customer loses the property.

There are a few other issues raised that I would like to address. Regarding the disparate treatment of Nevada consumers, the law already treats consumers differently based on different points in time. The consumer is going to be treated differently after they default. They lose the value of the collateral. With respect to treating lenders differently, lenders that operate under different sets of regulations based on the interest that they charge have always been treated differently.

This bill does not address banks, as defined under section 10, because those are not the institutions that are lending at these higher interest rates at certain used car dealerships. The interest rate at default is tied to the prime rate rather than a set rate, because nearly all states that provide for a statutory post-default or post-judgment interest rate are tied to prime or another determination of interest that fluctuates. That rate is based on the market and what is appropriate and reasonable.

CHAIR SPEARMAN:

We will close the hearing on A.B. 477 and open the hearing on A.B. 275.

ASSEMBLY BILL 275 (2nd Reprint): Makes various changes relating to professional and occupational licensing. (BDR 54-676)

ASSEMBLYWOMAN SELENA TORRES (Assembly District No. 3):

I am presenting A.B. 275. I have a summary ([Exhibit H](#)) of the bill that outlines what this bill does and what it does not do. We have submitted a proposed amendment ([Exhibit I](#)) to the Committee.

The amendment makes it clear that nothing in this legislation violates 8 U.S.C. 1324(a) ([Exhibit J](#) contains copyrighted material; original is available on request of the Research Library). That is used to determine who is eligible to be employed. This bill does not issue work visas. It allows our occupational licensing boards to test competency for a working profession. The purpose of these boards is not to test whether an individual is eligible to work.

Section 1 of the bill cites 8 U.S.C. 1621 ([Exhibit K](#) contains copyrighted material; original is available on request of the Research Library). That states individuals may have an occupational license and that individual states have the ability to issue occupational licenses regardless of the applicant obtaining a social security number.

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This bill eliminates the social security requirement from our State occupational licensing boards. It does not change employment requirements that are already mandated by the federal government. We are required to ensure that our State statutes are in line with federal code.

If you have known someone who has completed immigration processing paperwork, you know that the process is long. Sometimes that process can take months or years to complete. This bill allows individuals in this circumstance to start applying for their occupational licenses, so when they receive their social security number, they can begin to work right away.

This would allow individuals who have obtained work authorization cards to begin working. For example, we allow Deferred Action for Childhood Arrivals (DACA) recipients to become teachers. We do not allow Temporary Protection Status holders to work. We do not allow for other forms of work authorizations to become educators. This bill would impact a variety of professions in allowing individuals who are already eligible to work to obtain an occupational license.

We need to recognize that this bill will improve the prosperity of our community. It allows individuals to seek gainful employment. When they do receive their eligibility to work in this Country, they are not relying on government assistance. It allows them to contribute to our economy.

These individuals are taxpayers. They have an Individual Taxpayer Identification Number (ITIN). We know they are completing background checks when they receive them. I spoke with a variety of offices in Nevada and they confirmed they can complete a background check for these individuals. The fingerprinting background waiver (Exhibit L) and the fingerprinting application (Exhibit M) were submitted to the Committee.

A social security number is not required for a background check. The background check is to determine if an individual has committed a crime. If they have not committed a crime, they can get their license.

MAYRA SALINAS-MENJIVAR (University of Nevada, Las Vegas, Immigration Clinic): I am presenting A.B. 275. We want to make it clear that this bill is not in violation of 8 U.S.C. 1324(a) which specifies what employment is unlawful by federal law. This bill is in compliance with federal statutes.

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MICHAEL KEGAN (University of Nevada, Las Vegas, Immigration Clinic):
I am presenting A.B. 275. This bill does not legalize anyone to work. This body could not do that even if they wanted to. This bill is about additional barriers that are preventing people who want to work when they are already allowed to work by the federal government.

Because we have a DACA renewal program at our clinic, our students do most of the work. Through this process, I have gotten the sense of the process and the people affected by it. These people are subject to barriers and struggle to maintain their status here. Recipients of DACA are required to file a renewal every two years and pay an expensive fee.

These DACA recipients work in the building trades, in restaurants, as teachers, social workers and engineers. I met with a person at the medical school at Loyola University Chicago which was the first in the Country to admit DACA students to the medical school. Those students have now completed medical school and are completing their residencies.

These are hard-working people who are doing everything correctly under the law in terms of what the federal government allows them to apply for. There is no purpose served by additional obstacles being put in their way to delay them from working in fields where we need their talent. This bill would remove handicaps to our own homegrown talent.

SENATOR BROOKS:
I am not familiar with an ITIN. What is that?

ASSEMBLYWOMAN TORRES:
An ITIN is an individual taxpayer identification number used for tax processing and is issued by the Internal Revenue Service. It is an alternative number of identification that is issued by our federal government.

SENATOR DONDERO LOOP:
We want everyone to get jobs. We want to help them get jobs and to contribute to our community. How do these people in need know how to get these services? How do we help them, and what happens if they cannot secure what they need?

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ASSEMBLYWOMAN TORRES:

Governor Steve Sisolak has brought legislation forth to create the Office of New Americans. This is a way to push an initiative like this. An individual is not able to be employed without meeting employment requirements. If they obtain a job in a fast food restaurant, they will need a social security number. They would need to provide that on being employed.

The same thing would apply here; they would provide their résumé, fill out the application and provide them with a license. When the employer asks for a social security number, the applicant would not be hired if they do not have one.

Resources like the University of Nevada, Las Vegas, Immigration Clinic is important because it helps individuals when there is an opportunity toward legalization.

CHAIR SPEARMAN:

When we start to talk about immigration, it brings out individuals who do not read a lot. They are not informed properly. To be clear, there are more immigrants in the U.S. from Canada and Germany than there are from countries to our south. This bill addresses all individuals immigrating to the U.S., not just those of Latin heritage.

SYLVIA LAZOS (Nevada Immigrant Coalition):

We support A.B. 275. I will read a prepared statement (Exhibit N).

MIRANDA HOOVER (Board of Examiners for Social Workers):

We support A.B. 275.

LAURA NOWLAN (Nevada Hispanic Business Group):

We support A.B. 275. We are a community-based nonprofit organization. We focus on bringing the Hispanic and non-Hispanic communities together through education, volunteering and advocacy. We work with many entrepreneurs and small business owners. This bill will unlock opportunities for citizens and non-citizens, particularly for those with work permits under the DACA program.

With many DACA recipients studying in ambitious fields such as medicine or law, keeping the doors shut on the licensed professionals for those degrees will

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jeopardize their career plans. It prevents the State from fully benefiting from its return on its investment after educating those students.

California, Nebraska and Indiana choose to fully benefit from DACA recipient contributions by enabling them to obtain licenses. Nevada can follow suit as well.

CALEB GREEN (University of Nevada, Las Vegas, Immigration Clinic):
We support A.B. 275 for the same reasons mentioned by others in support. This bill addresses the ranges and issues that our clients see when seeking legal employment in Nevada. This bill allows us to benefit from the education we have invested in our DACA students. They are willing workers who are able to assist us; they should be able to work here in Nevada.

LINDA JONES (Clark County Education Association):
We support A.B. 275. I will read a statement of support (Exhibit O) from Angie Sullivan who is one of our members.

MARIA RODRIGUEZ (Mexico City Federation):
We support A.B. 275. When I lived in San Diego, California, I was able to obtain my cosmetology license. That allowed me to have financial stability and helped me to invest in the future of my family. Once we moved to Nevada, I was not able to obtain the same license even though I am qualified to do the work.

RONNIE NAJARRO (Deputy State Director, The LIBRE Initiative, Nevada):
We support A.B. 275. I will read a prepared statement (Exhibit P).

JACQUELYN NADER (Fingerprinting Express):
We support A.B. 275. Fingerprinting Express has stores all across Nevada. We have been around since 2003, and we were the first fingerprinting industry with multiple stores throughout the State. We use live scan fingerprints. We got into this business because the owners firmly believed that they could help people of all backgrounds to get to work quickly. The fingerprinting process was quite cumbersome.

Over the years, we have worked with people who do and do not have social security numbers. Since we use biometric data for fingerprint background checks instead of name and birth certificate background checks, there is no

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need for a social security card or a number. This is something that is recognized by the Department of Public Safety.

MARIA DAVIS:

I support A.B. 275. I am an interpreter in the State. I travel to different areas of our community. By allowing our DACA recipients to obtain occupational licensing, we will be able to help our educators especially in the rural areas. This helps special needs students.

There is a great need for these specialists to perform home visits for special needs children. By allowing this, we are gaining professionals and diversity. We would provide bilingual individuals who are able to break the language barrier and provide great services.

CHAIR SPEARMAN:

Will those who support A.B. 275 please stand? I see that the majority of the room in Carson City is standing and nearly all of the room in Las Vegas is standing.

RUBEN MURILLO (Nevada State Education Association):

We support A.B. 275. We submitted our letter of support (Exhibit Q) to the Committee.

MARCOS LOPEZ (Americans for Prosperity, Nevada):

We support A.B. 275.

MARIANA SARMIENTO:

I support A.B. 275.

KATHIA SOTELO (Make the Road Nevada):

I support A.B. 275. I have a prepared statement (Exhibit R).

ELIAS BARAJAS:

I support A.B. 275.

CYRUS HOJJATY:

I oppose A.B. 275. This bill brings an incentive to offer lawlessness. The Ninth Circuit Court of Appeals is not an accountable source. The Committee took the

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oath of office to respect the Constitution and to respect federal law. Federal law does not deliver an opportunity for unlawful arrivals to obtain employers.

This Committee is defending people who came into our Country illegally.

CHAIR SPEARMAN:

I ask that you confine your comments to the subject contained within the bill. We are not discussing federal immigration. This bill is about State occupational licensing boards. If you are going to testify in opposition, your testimony is to remain within the confines of the bill.

MR. HOJJATY:

The bill delivers incentives for people to come here unlawfully and get a pass. People who come here from the caravans with no identity can get licensing or get a pass. This is unfair to American citizens like myself and like my parents who came here lawfully.

According to the Supreme Court of the United States, the DACA program will be declared unconstitutional. This law will be void. The Committee should be spending its time to promote E-Verify laws.

I spoke to the sponsor of the bill when I met her in Carson City. She is not telling me how massive immigration is a net benefit to our State. Why should I pay taxes if you do not represent me? I feel like this bill and the Committee represent more non-citizens than citizens like me. How is this fair to the people who legalized the right way? Why become a citizen?

This is what the Committee is offering to the American people. I am disappointed that this bill was brought to the Senate Floor within a few days of the next hearing. The Committee should be more transparent. This is part of a global immigration plan. The people present who are from Make the Road are paid agitators.

CHAIR SPEARMAN:

This Committee will not address issues not related to the bills we are hearing. This bill is not about immigration. We are not attacking any ethnicity. This is about jobs.

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MS. MESSENGER:

I oppose A.B. 275. Federal law states that you must have a social security number in order to have a business license. What this Committee is doing is deviating from that. This bill allows people to go to complete licensing. I have friends who are law abiding citizens.

I know what it takes to become naturalized. I am a second generation Polish immigrant. I understand what it takes to become a citizen of this Country. This bill sidesteps the law.

CHAIR SPEARMAN:

I assure you. This bill does not misrepresent anything in federal law. This bill addresses State law.

SCOTT ANDERSON (Chief Deputy, Office of the Secretary of State):

We are neutral toward A.B. 275. I discussed sections 114 and 115 with the sponsor. Those sections have provisions regarding notaries public. Our notary law allows for the provisions that this statute intends. We do not require social security numbers or tax ID numbers when certifying a notary. The language in this section would make it more difficult for us to register people as notaries. We will address this in more detail with the sponsor.

CHAIR SPEARMAN:

I would like to recommend an author, Paulo Freire. I recommend everyone look up this author and read his books.

ASSEMBLYWOMAN TORRES:

I would like to make it clear that our professional occupational licensing boards test for competency. They do not determine whether or not a person is eligible to work. The ability to work is determined by 8 U.S.C. 1324(a). This bill follows every federal statute.

This bill is not about business licenses. This bill is about occupational licensing. I did not meet or speak with Mr. Hojjaty. I encourage him to reach out to my office.

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CHAIR SPEARMAN:

Because of time constraints, the following written testimony (Exhibit S and Exhibit T) were submitted. We will close the hearing on A.B. 275. We ask that any public comment be submitted in writing to the Committee as we are pressed for time. The meeting is adjourned at 4:00 p.m.

RESPECTFULLY SUBMITTED:

Jennifer Richardson,
Committee Secretary

APPROVED BY:

Senator Pat Spearman, Chair

DATE: _____

NCA000485

JA0591

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	9		Attendance Roster
A.B. 477	C	1	Peter Goatz / Legal Aid Center of Southern Nevada	Interest Rate Chart
A.B. 477	D	19	Peter Goatz / Legal Aid Center of Southern Nevada	Jurisdictions Comparative Chart
A.B. 477	E	5	Peter Goatz / Legal Aid Center of Southern Nevada	Written Testimony
A.B. 477	F	3	Roger Lloyd / United Finance Company	Letter of Opposition
A.B. 477	G	2	Danielle Fagre Arlowe / American Financial Services Association	Written Testimony
A.B. 275	H	1	Assemblywoman Selena Torres	Bill Summary
A.B. 275	I	1	Assemblywoman Selena Torres	Proposed Amendment
A.B. 275	J	15	Assemblywoman Selena Torres	8 U.S.C. 1324(a), Cornell University
A.B. 275	K	3	Assemblywoman Selena Torres	8 U.S.C. 1621, Cornell University
A.B. 275	L	2	Assemblywoman Selena Torres	Fingerprinting Background Waiver, Nevada Department of Public Safety
A.B. 275	M	2	Assemblywoman Selena Torres	Fingerprinting Application
A.B. 275	N	1	Sylvia Lazos / Nevada Immigrant Coalition	Letter of Support
A.B. 275	O	1	Linda Jones / Clark County Education Association	Letter of Support, Angie Sullivan
A.B. 275	P	1	Ronnie Najarro / The LIBRE Initiative, Nevada	Letter of Support

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A.B. 275	Q	1	Ruben Murillo / Nevada State Education Association	Letter of Support
A.B. 275	R	1	Kathia Sotelo / Make the Road Nevada	Letter of Support
A.B. 275	S	1	Senator Pat Spearman	Written Testimony, Zulma Rico, Make the Road Nevada
A.B. 275	T	1	Senator Pat Spearman	Written Testimony, Jose Rivera Nevada Hispanic Legislative Caucus

NCA000487

JA0593

1 **DECL**

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6 *Attorneys for Nevada Collectors Association*

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

10 NEVADA COLLECTORS
11 ASSOCIATION,

12 Plaintiff,

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.

Case No.:

Dept. No.:

**DECLARATION OF MARY HOBBS IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

19
20 I, Mary Hobbs, hereby declare as follows:

21 1. I am the Secretary and Treasurer of the Nevada Collectors Association (the
22 "NCA") and also head the NCA's committee for legislative affairs.

23 2. The NCA is a non-profit cooperative corporation organized and existing under the
24 laws of the State of Nevada.

25 3. NCA's members consist of small businesses such as collection agencies, law
26 firms, and asset buying companies which engage in the business of collecting unpaid debt on
27 consumer accounts that are past due or in default. NCA's members collect monies on behalf of,
28 for the account of, or as assignees of businesses that sell goods and/or services to consumers

1 which are primarily for personal, family, or household purposes. Those debts vary in kind,
2 including, but not limiting to, the following:

- 3 a. Medical debt (including doctors, dentists, and labs);
- 4 b. Utilities;
- 5 c. Rent;
- 6 d. Credit card and revolving debt;
- 7 e. Cell phone debt;
- 8 f. Automobile loans;
- 9 g. Professional services provided on credit; and
- 10 h. Installment loans governed by NRS Chapter 675.

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

13 5. NCA serves its members by, *inter alia*, acting as a voice in business, legal,
14 regulatory and legislative matters.

15 6. I am also the Compliance Officer and Legal Department Manager of National
16 Business Factors, Inc. of Nevada ("NBF"), a Nevada corporation.

17 7. NBF is a collections company and is licensed pursuant to NRS Chapter 649 by the
18 State of Nevada Department of Business and Industry Financial Institutions Division (the "FID").
19 The FID regulates and oversees the collection activities of its licensees, which include NBF and
20 NCA's members.

21 8. NBF offers and provides customized solutions for receivables management,
22 billing, and collection services.

23 9. NBF is also is a member of the NCA and the American Collectors Association.

24 10. Many of the NCA's members, including NBF, are "debt collectors" within the
25 meaning of the Fair Debt Collection Practices Act (the "FDCPA"). *See* 15 U.S.C. § 1692a(6).
26 Such members are therefore subject to the FDCPA.

27 11. The FDCPA subjects debt collectors to civil liability for violations of the FDCPA.
28 15 U.S.C. § 1692k. Debt collectors are also subject to federal administrative enforcement for

1 violations of the FDCPA. The FDCPA subjects debt collectors to potential civil liability for
2 violations of the FDCPA. 15 U.S.C. § 1692l. In addition, a violation of the FDCPA is also
3 deemed a violation of NRS Chapter 649 under state law, subjecting a debt collector to potential
4 state administrative penalties, including fines and injunctive relief, possible loss of license, and
5 even criminal penalties under Nevada law. NRS 649.370, NRS 649.400, NRS 649.435, and NRS
6 649.440.

7 12. The FDCPA has a mandatory venue provision (the "Mandatory Venue Provision")
8 requiring a debt collector to commence a civil action for the repayment of a consumer debt in the
9 judicial district or similar legal entity where (a) the consumer signed the contract; or (b) the
10 consumer resides at the time the suit is filed. 15 U.S.C. § 1692i(a)(2).

11 13. NRS 4.370 confers jurisdiction to its justice courts to entertain any civil causes of
12 action in matters that do not exceed \$15,000.00.

13 14. Because NCA members' accounts receivable generally consist of unpaid Small
14 Dollar Debts, NCA members must file lawsuits in justice courts to collect on unpaid debts.

15 15. To the extent a consumer debt falls within the Mandatory Venue Provision of the
16 FDCPA and requires the commencement of a civil action in Las Vegas, Nevada, a debt collector
17 is legally required to commence a civil debt collection action in a court located in Las Vegas,
18 Nevada, such as the Justice Court of Las Vegas Township (the "Justice Court").

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

23 **Rule 16. Appearances in proper person.** Unless appearing
24 by an attorney regularly admitted to practice law in Nevada and in
25 good standing, no entry of appearance or subsequent document
26 purporting to be signed by any party to an action shall be
27 recognized or given any 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.

28 17. As such, any time NBF or an NCA member commences a civil action to recover a

1 debt in Justice Court, it is forced to retain an attorney to file, litigate, and recover monies in a
2 collection action in that court.

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

6 19. According to a U.S. Consumer Law Attorney Fee Survey Report, the average
7 hourly rate for a consumer attorney is \$420.00, and the average hourly rate for a paralegal is
8 \$144.00. A true and correct copy of this report is attached as **Exhibit "1"** to the Appendix of
9 Exhibits (the "Appendix") filed concurrently with this Motion for Preliminary Injunction.
10 According to the December 2017 issue of *Communique*, the publication of the Clark County Bar
11 Association, rates for Nevada attorneys have been approved by courts as high as \$750.00 per
12 hour, including rates as high as \$350.00 per hour for senior associates. A true and correct copy of
13 this article is attached as **Exhibit "2"** to the Appendix of Exhibits filed concurrently with this
14 Motion for Preliminary Injunction.

15 20. Given these high hourly rates in the market and the small amount of these debts,
16 sometimes the attorney's fees that accrue in Small Dollar Debt cases will approach or exceed the
17 amount of the unpaid debt.

18 21. CCCS and NCA's members are aware that, when seeking an award of attorney's
19 fees in a civil action, the attorney's fees sought must be reasonable and must also satisfy the so-
20 called "Brunzell factors" articulated in *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455
21 P.2d 31 (1969). In addition, when seeking an award of fees, counsel for NCA's members are
22 bound by Nevada Rule of Professional Conduct 1.5, which prohibits the charging of unreasonable
23 fees.

24 22. It has been the experience of CCCS and it has been the experience of NCA's
25 members that the Justice Court has been quite diligent in assessing the reasonableness of claimed
26 attorney's fees in civil cases and effective in policing those claimed fees, particularly in Small
27 Dollar Debt cases, where attorney's fees are often reduced by Justice Court judges depending on
28 the amount of the unpaid debt.

23. 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.

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

25. A.B. 477 appears to limit the recovery of attorney's fees in any action involving the collection of any consumer debt to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if there is an express written agreement for the recovery of attorney's fees. A true and correct copy of A.B. 477 is attached to the Appendix as **Exhibit "3"**. Specifically, Section 18 of A.B. 477 provides:

1. If the plaintiff is the prevailing party in any action to collect a consumer debt, the plaintiff is entitled to collect attorney's fees only if the consumer form contract or other document evidencing the indebtedness sets forth an obligation of the consumer to pay such attorney's fee[s] and subject to the following conditions:
 - (a) If a consumer form contract or other document evidencing indebtedness provides for attorney's fees in some specific percentage, such provision and obligation is valid and enforceable for an amount not to exceed 15 percent of the amount of the debt, excluding attorney's fees and collection costs.
 - (b) If a consumer form contract or other document evidencing indebtedness provides for the payment of reasonable attorney's fees by the debtor, without specifying any specific percentage, such provision must be construed to mean the lesser of 15 percent of the amount of the debt, excluding attorney's fees and collection rate for such cases multiplied by the amount of time reasonably expended to obtain the judgment.

26. Rather than scale the attorney's fees to the amount of the unpaid debt, or even to an amount that is "reasonable" based upon the work required to be performed by counsel, A.B. 477 imposes a blind 15% rate cap on the unpaid principal amount.

27. 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

1 a judgment, and then collecting on that judgment.

2 28. Section 18 of A.B. 477 imposes a rate cap of 15% even when a party wishes to
3 invoke its right to a jury trial under the Seventh Amendment of the United States Constitution and
4 Article 1, Section 3 of the Nevada Constitution.

5 29. A.B. 477 purports to apply to consumer contracts “entered into on or after October
6 1, 2019.” Section 18 limits attorney’s fees in civil actions to collect all “consumer debt,” which is
7 defined as “any obligation or alleged obligation of a consumer to pay money arising out of a
8 transaction which the money, property, insurance or services which are the subject of the
9 transaction are primarily personal, family or household purposes, whether or not such obligation
10 has been reduced to judgment.”

11 30. Given this framework, many Small Dollar Debt cases are simply cost prohibitive
12 to file, even in a case where the defendant does not appear and a default judgment is entered. In
13 cases where a defendant appears and defends the case, the economics of filing a lawsuit in a
14 Small Dollar Debt case makes no sense.

15 31. A.B. 477 is squarely designed to prevent access to courts. During consideration of
16 A.B. 477, Peter J. Goatz of the Legal Aid Center of Southern Nevada, Inc. testified in support of
17 A.B. 477. A true and correct copy of the minutes for a legislative hearing dated May 8, 2019 is
18 attached to the Appendix as **Exhibit “4”**. In Mr. Goatz’s testimony, he specifically noted that
19 the purpose of the attorney fee cap in A.B. 477 was to block access to courts for small businesses
20 by eliminating “an incentive for an attorney to take on a small dollar debt case....” Exhibit 3 at p.
21 5. On April 3, 2019, Mr. Goatz testified that the intent of A.B. 477 was to push debt collection
22 cases into small claims court “where attorney’s fees are unavailable.” A true and correct copy of
23 Mr. Goatz’s testimony dated May 8, 2019 is attached to the Appendix as **Exhibit “5”**.

24 32. As designed, Section 18 of A.B. 477, in conjunction with JCR 16, effectively bars
25 NCA’s members, including NBF, from accessing the Justice Court because (a) they are required
26 to retain counsel; (b) they are limited in their ability to recover fees to such an extreme that it is
27 cost prohibitive to hire counsel; and (c) discourages attorneys from even taking such cases in the
28 first place.

33. For example, NCA's members will be limited to a recovery of attorney's fees in the following amounts once A.B. 477 becomes effective:

Unpaid Debt Amount	Attorney's Fees Capped Amount
\$ 500.00	\$ 75.00 ¹
\$1,000.00	\$150.00
\$1,500.00	\$225.00
\$2,000.00	\$300.00
\$2,500.00	\$375.00
\$3,000.00	\$450.00
\$5,000.00	\$750.00

34. In cases involving the foregoing amounts, the amount of attorney's fees incurred by CCCS and NCA's members will not adequately or reasonably compensate for the attorney's fees actually expended. Because these are Small Dollar Debts, debt collectors would actually lose money in some civil cases, even if they prevail on the merits. In other cases, the recovery would be swallowed whole or nearly whole by fees that would have to be paid to counsel, without being able to recover those amounts from the debtor.

35. The effect of A.B. 477 will only become worse as attorney's fees rise in Clark County, Nevada year over year, while attorney's fees are still capped as a percentage of the unpaid debt.

36. As a result, the attorney's fee cap in Section 18 of A.B. 477 will effectively stop debt collectors like CCCS and NCA's members from filing suit in many Small Dollar Debt cases because it is cost prohibitive to do so. CCCS and NCA's members 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.

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

¹ 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.

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

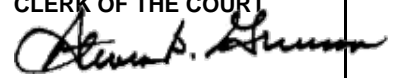
6 38. Section 19 places an obvious double standard in favor of debtors solely because
7 they are debtors. Section 19 offers a remedy to debtors (an award of fees regardless of the
8 amount sought) while depriving creditors and debt collectors of that same remedy solely because
9 of who they are. It too is designed to discourage debt collection lawsuits from suing in Justice
10 Court, as Section 19 provides a blunt instrument for any debtor to discourage lawful and genuine
11 Small Dollar Debt claims. In fact, Small Dollar Debt cases become financially unviable in any
12 matter that is contested, not only because plaintiffs will have to expend huge amounts of money
13 on their fees (for which compensation will be strictly capped), but will risk having to pay
14 defendants' attorney's fees without restriction if the defendant "prevails" in any sense of the
15 word.

16 39. Because Sections 18 and 19 will effectively prohibit debt collectors from
17 commencing civil actions in Justice Court in small dollar cases, many debts will go unpaid,
18 leaving many creditors unwilling to provide services without advance payment. This will tighten
19 access to credit for all consumers and will effectively punish consumers who pay their debts in
20 full and on time.

21 40. I declare under penalty of perjury of the laws of the State of Nevada that the
22 foregoing is true and correct.

23 EXECUTED this 15th day of October, 2019, in Clark County, Nevada.

24 
MARY HOBBS



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Attorneys for Nevada Collectors Association

DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA COLLECTORS ASSOCIATION,
a Nevada non-profit corporation,

Plaintiff,

v.

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

Defendants.

Case No.: A-19-805334-C

Dept No.: XXVII

**APPENDIX OF EXHIBITS TO
MOTION FOR PRELIMINARY
INJUNCTION OR, ALTERNATIVELY,
FOR A WRIT OF MANDAMUS OR
PROHIBITION – VOLUME III**

Exhibit	Document	Page Nos.
7	Declaration of Tim Myers in Support of Motion for Preliminary Injunctions (President of Nevada Collectors Association)	NCA000496-000503
8	Declaration of Michael N. Aisen in Support of Motion for Preliminary Injunction (Attorney/Partner at Aisen, Gill & Associates, LLP)	NCA000504-000507

9	Declaration of Adam L. Gill in Support of Motion for Preliminary Injunctions (Attorney/Partner at Aisen Gill & Associates, LLP)	NCA000508-000511
10	Declaration of Caleb Langsdale, Owner of Langsdale Law Firm in Support of Motion for Preliminary Injunction	NCA000512-000513
11	Declaration of Kyle Buth in Support of Motion for Preliminary Injunction (Owner of Elevate Sports Performance & Chiropractic)	NCA000514-000516
12	Declaration of Cort W. Christie in Support of Motion for Preliminary Injunction (Owner of Superior Capital Corporation)	NCA000517-000518
13	Declaration of Cort W. Christie in Support of Motion for Preliminary Injunction (Owner of Alaska Northern Lights, Inc.)	NCA000519-000520
14	Declaration of Cort W. Christie in Support of Motion for Preliminary Injunction (Owner of Zenith Endeavors I, LLC)	NCA000521-000522
15	Declaration of Cort W. Christie in Support of Motion for Preliminary Injunction (Owner of Inc Authority, LLC)	NCA000523-000524
16	Declaration of Cort W. Christie in Support of Motion for Preliminary Injunction (Owner of Corporate Service Center, Inc.)	NCA000525-000526
17	Declaration of Cort w. Christie in Support of Motion for Preliminary Injunction (Owner of Nevada Corporate Headquarter, Inc.)	NCA000527-000528
18	Declaration of Jaswinder Grover, M.D. in Support of Motion for Preliminary Injunction (Manager of Nevada Spine Clinic)	NCA000529-000531
19	Declaration of Debbie Hail in Support of Motion for Preliminary Injunction (Managing Member of BLT Cleaners, LLC)	NCA000532-000533
20	Declaration of Larry Holt in Support of Motion for Preliminary Injunction (Owner of Sundance Chiropractic, LLC)	NCA000534-000535

1	21	Declaration of Larry Holt In Support of Motion for Preliminary Injunction (Owner of Precision Spinal Care Las Vegas)	NCA000536-00537
2			
3	22	Declaration of Andrew J. Huxford, DDS in Support of Motion for Preliminary Injunction (Owner of Boulder Dental Group & Downtown Dental)	NCA000538-000540
4			
5	23	Declaration of Eddy H. Luh, MD in Support of Motion for Preliminary Injunction (Owner of Las Vegas Surgical Associates)	NCA000541-000543
6			
7	24	Declaration of Jenni Mckenna in Support of Motion for Preliminary Injunction (Owner of Mckenna Property Management)	NCA000544-000546
8			
9	25	Declaration of Kasey Hewson in Support of Motion for Preliminary Injunction (Owner of All About Kids)	NCA000547-000549
10			
11	26	Declaration of Max Jacobson-Fried in Support of Motion for Preliminary Injunction (Owner of JMF Desserts LLC)	NCA000550-000551
12			
13	27	Declaration of Amanda Peterson in Support of Motion for Preliminary Injunction (Operations Manager of Acctcorp of Southern Nevada)	NCA000552-000553
14			
15	28	Declaration of Cory Reif in Support of Motion for Preliminary Injunction (Owner of Eagle Sentry)	NCA000554-000555
16			
17	29	Declaration of Ashley Romero in Support of Motion for Preliminary Injunction (Owner of Vegas Valley Hearing)	NCA000556-000558
18			
19	30	Declaration of Amber Russo in Support of Motion for Preliminary Injunction (President of Kino Financial Co., Inc.)	NCA000559-000560
20			
21	31	Declaration of Michael K. Schaefer in Support of Motion for Preliminary Injunction (Owner of Frontier Landscaping, Inc.)	NCA000561-000563
22			
23	32	Declaration of G. Mark Sylvain, MD in Support of Motion for Preliminary Injunction (Owner of Orthopaedic Specialists of Nevada)	NCA000564-000566
24			
25	33	Declaration of Kelly Tate, CPA in Support of Motion for Preliminary Injunction (President of Tarheel, Inc.)	NCA000567-000569
26			
27			
28			

34	Declaration of Marty Basch in Support of Motion for Preliminary Injunction (Executive Vice President of KEMP Broadcasting & Digital Outdoor)	NCA000570-000572
35	Written Testimony of Peter J. Goatz, Esq. dated April 3, 2019	NCA000573-000577
36	Written Testimony of Peter J. Goatz, Esq. dated May 8, 2019	NCA000578-000582
37	Declaration of Patrick J. Reilly, Esq. in Support of Application for Temporary Restraining Order and Motion for Preliminary Injunction or, Alternatively, for a Writ of Mandamus or Prohibition	NCA000583-000584
38	Ear, Nose and Throat Consultants of Nevada Contracts	NCA000585-000594
39	Nevada Energy Contracts	NCA000595-000602
40	Judge Mahan's Order Remanding Case to Eighth Judicial District Court	NCA000603-000609

DATED this 15th day of May, 2020.

/s/ Patrick J. Reilly

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

Attorneys for Nevada Collectors Association

CERTIFICATE OF SERVICE

Pursuant to 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 APPENDIX OF EXHIBITS TO APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION OR, ALTERNATIVELY, FOR A WRIT OF MANDAMUS OR PROHIBITION – VOLUME III was served via electronic service on the 15th day of May, 2020, to the addresses shown below:

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/s/Mary Barnes

An employee of Brownstein Hyatt Farber Schreck, LLP

20226658

DECL

Patrick J. Reilly, Esq.
Nevada Bar No. 6103
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Attorneys for Nevada Collectors Association

DISTRICT COURT
CLARK COUNTY, NEVADA

NEVADA COLLECTORS
ASSOCIATION, a Nevada non-profit
corporation,

Plaintiff,

v.

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

Defendants.

Case No.: A-19-805334-C

Dept. No.: XXVII

**DECLARATION OF TIM MYERS IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

I, Tim Myers, hereby declare as follows:

1. I am the President of the Nevada Collectors Association (the "NCA").
2. The NCA is a non-profit cooperative corporation organized and existing under the laws of the State of Nevada.
3. NCA's members consist of small businesses such as collection agencies, law firms, and asset buying companies which engage in the business of collecting unpaid debt on

1 consumer accounts that are past due or in default. NCA's members collect monies on behalf of,
2 for the account of, or as assignees of businesses that sell goods and/or services to consumers
3 which are primarily for personal, family, or household purposes. Those debts vary in kind,
4 including, but not limiting to, the following:

- 5 a. Medical debt (including doctors, dentists, and labs);
- 6 b. Utilities;
- 7 c. Rent;
- 8 d. Credit card and revolving debt;
- 9 e. Cell phone debt;
- 10 f. Automobile loans;
- 11 g. Professional services provided on credit; and
- 12 h. Installment loans governed by NRS Chapter 675.

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

15 5. NCA serves its members by, *inter alia*, acting as a voice in business, legal,
16 regulatory and legislative matters.

17 6. I am also the Business Development Manager of Clark County Collection Service,
18 LLC ("CCCS"), a Nevada limited-liability company.

19 7. CCCS is a collection agency and is licensed pursuant to NRS Chapter 649 by the
20 State of Nevada Department of Business and Industry Financial Institutions Division (the "FID").
21 The FID regulates and oversees the collection activities of its licensees, which include CCCS and
22 NCA's members.

23 8. CCCS offers and provides customized solutions for receivables management and
24 collection services.

25 9. CCCS is also a member of the NCA and the American Collectors Association.

26 10. Since October 1, 2019, CCCS has received unpaid accounts receivable from its
27 clients directing CCCS to collect those unpaid debts. Said debts are consumer debts, such as
28 debts for medical services and residential utilities. True and correct copies of examples of some

1 of these unpaid consumer debt accounts are collectively attached as **Exhibits “38” and “39”** to
2 the Appendix of Exhibits (the “Appendix”) filed concurrently with this Motion for Preliminary
3 Injunction.

4 11. Many of the NCA’s members, including CCCS, are “debt collectors” within the
5 meaning of the Fair Debt Collection Practices Act (the “FDCPA”). *See* 15 U.S.C. § 1692a(6).
6 Such members are therefore subject to the FDCPA.

7 12. The FDCPA subjects debt collectors to civil liability for violations of the FDCPA.
8 15 U.S.C. § 1692k. Debt collectors are also subject to federal administrative enforcement for
9 violations of the FDCPA. The FDCPA subjects debt collectors to civil liability for violations of
10 the FDCPA. 15 U.S.C. § 1692l. In addition, a violation of the FDCPA is also deemed a violation
11 of NRS Chapter 649 under state law, subjecting a debt collector to potential administrative
12 penalties, including fines and injunctive relief, possible loss of license, and even criminal
13 penalties. NRS 649.370, NRS 649.400, NRS 649.435, and NRS 649.440.

14 13. The FDCPA has a mandatory venue provision (the “Mandatory Venue Provision”)
15 requiring a debt collector to commence a civil action for the repayment of a consumer debt in the
16 judicial district or similar legal entity where (a) the consumer signed the contract; or (b) the
17 consumer resides at the time the suit is filed. 15 U.S.C. § 1692i(a)(2).

18 14. NRS 4.370 confers jurisdiction to its justice courts to entertain any civil causes of
19 action in matters that do not exceed \$15,000.00.

20 15. Because NCA members’ accounts receivable generally consist of unpaid Small
21 Dollar Debts, NCA members must file lawsuits in justice courts to collect on unpaid debts.

22 16. To the extent a consumer debt falls within the Mandatory Venue Provision of the
23 FDCPA and requires the commencement of a civil action in Las Vegas, Nevada, a debt collector
24 is legally required to commence a civil debt collection action in the Justice Court of Las Vegas
25 Township (the “Justice Court”).

26 17. NCA’s members are not individuals, but rather are entities. As such, CCCS and
27 NCA’s members are expressly prohibited from appearing in Justice Court without representation
28 by an attorney that is licensed to practice law. Justice Court of Las Vegas Township Rule

1 (“JCR”) 16.

2 18. As such, any time CCCS or an NCA member commences a civil action to recover
3 a debt, it is forced to retain an attorney to file, litigate, and recover monies in a collection action
4 in Justice Court.

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

8 20. According to a U.S. Consumer Law Attorney Fee Survey Report, the average
9 hourly rate for a consumer attorney is \$420.00, and the average hourly rate for a paralegal is
10 \$144.00. A true and correct copy of this report is attached as **Exhibit “1”** to the Appendix.
11 According to the December 2017 issue of *Communique*, the publication of the Clark County Bar
12 Association, rates for Nevada attorneys have been approved by courts as high as \$750.00 per
13 hour, including rates as high as \$350.00 per hour for senior associates. A true and correct copy of
14 this article is attached as **Exhibit “2”** to the Appendix.

15 21. Given these high hourly rates in the market and the small amount of these debts,
16 sometimes the attorney’s fees that accrue in Small Dollar Debt cases will approach or exceed the
17 amount of the unpaid debt.

18 22. CCCS and NCA’s members are aware that, when seeking an award of attorney’s
19 fees in a civil action, the attorney’s fees sought must be reasonable and must also satisfy the so-
20 called “Brunzell factors” articulated in *Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 455
21 P.2d 31 (1969). In addition, when seeking an award of fees, counsel for NCA’s members are
22 bound by Nevada Rule of Professional Conduct 1.5, which prohibits the charging of unreasonable
23 fees.

24 23. It has been the experience of CCCS and it has been the experience of NCA’s
25 members that the Justice Court has been quite diligent in assessing the reasonableness of claimed
26 attorney’s fees in civil cases and effective in policing those claimed fees, particularly in Small
27 Dollar Debt cases, where attorney’s fees are often reduced by Justice Court judges depending on
28 the amount of the unpaid debt.

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24. 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.

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

26. A.B. 477 appears to limit the recovery of attorney’s fees in any action involving the collection of any consumer debt to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if there is an express written agreement for the recovery of attorney’s fees. A true and correct copy of A.B. 477 is attached to the Appendix as **Exhibit “3”**. Specifically, Section 18 of A.B. 477 provides:

1. If the plaintiff is the prevailing party in any action to collect a consumer debt, the plaintiff is entitled to collect attorney’s fees only if the consumer form contract or other document evidencing the indebtedness sets forth an obligation of the consumer to pay such attorney’s fee[s] and subject to the following conditions:
 - (a) If a consumer form contract or other document evidencing indebtedness provides for attorney’s fees in some specific percentage, such provision and obligation is valid and enforceable for an amount not to exceed 15 percent of the amount of the debt, excluding attorney’s fees and collection costs.
 - (b) If a consumer form contract or other document evidencing indebtedness provides for the payment of reasonable attorney’s fees by the debtor, without specifying any specific percentage, such provision must be construed to mean the lesser of 15 percent of the amount of the debt, excluding attorney’s fees and collection rate for such cases multiplied by the amount of time reasonably expended to obtain the judgment.

27. Rather than scale the attorney’s fees to the amount of the unpaid debt, or even to an amount that is “reasonable” based upon the work required to be performed by counsel, A.B. 477 imposes a blind 15% rate cap on the unpaid principal amount.

28. 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

1 a judgment, and then collecting on that judgment.

2 29. Section 18 of A.B. 477 imposes a rate cap of 15% even when a party wishes to
3 invoke its right to a jury trial under the Seventh Amendment of the United States Constitution and
4 Article 1, Section 3 of the Nevada Constitution.

5 30. A.B. 477 purports to apply to consumer contracts “entered into on or after October
6 1, 2019.” Section 18 limits attorney’s fees in civil actions to collect all “consumer debt,” which is
7 defined as “any obligation or alleged obligation of a consumer to pay money arising out of a
8 transaction which the money, property, insurance or services which are the subject of the
9 transaction are primarily personal, family or household purposes, whether or not such obligation
10 has been reduced to judgment.”

11 31. Given this framework, many Small Dollar Debt cases are simply cost prohibitive
12 to file, even in a case where the defendant does not appear and a default judgment is entered. In
13 cases where a defendant appears and defends the case, the economics of filing a lawsuit in a
14 Small Dollar Debt case makes no sense.

15 32. A.B. 477 is squarely designed to prevent access to courts. During consideration of
16 A.B. 477, Peter J. Goatz of the Legal Aid Center of Southern Nevada, Inc. testified in support of
17 A.B. 477. A true and correct copy of the minutes for a legislative hearing dated May 8, 2019 is
18 attached to the Appendix as **Exhibit “4”**. In Mr. Goatz’s testimony, he specifically noted that
19 the purpose of the attorney fee cap in A.B. 477 was to block access to courts for small businesses
20 by eliminating “an incentive for an attorney to take on a small dollar debt case....” Exhibit 3 at p.
21 5. On April 3, 2019, Mr. Goatz testified that the intent of A.B. 477 was to push debt collection
22 cases into small claims court “where attorney’s fees are unavailable.” A true and correct copy of
23 Mr. Goatz’s testimony dated May 8, 2019 is attached to the Appendix as **Exhibit “5”**.

24 33. As designed, Section 18 of A.B. 477, in conjunction with JCR 16, effectively bars
25 NCA’s members, including CCCS, from accessing the Justice Court because (a) they are required
26 to retain counsel; (b) they are limited in their ability to recover fees to such an extreme that it is
27 cost prohibitive to hire counsel; and (c) discourages attorneys from even taking such cases in the
28 first place.

34. As shown below, it would be cost prohibitive to pursue such debts in Justice Court because the attorney's fees are capped at such a low amount. As a specific example, CCCS has recently received the following unpaid consumer accounts for collection in the following amounts, also identifying the "capped amount" for recovery of fees under A.B. 477:

35.	Unpaid Debt Amount	Attorney's Fees Capped Amount
	\$232.78	\$34.92 ¹
	\$245.00	\$36.75
	\$384.67	\$57.70
	\$426.03	\$63.90
	\$706.65	\$106.00

35. In cases involving the foregoing amounts, and other accounts like them, the amount of attorney's fees incurred by CCCS and NCA's members will not adequately or reasonably compensate them for the attorney's fees actually expended. In fact, in these specific instances, CCCS would actually lose money by suing, even if it were to prevail on the merits, as a result of the attorney fee limitation in A.B. 477. In other cases, the recovery would be swallowed whole or nearly whole by fees that would have to be paid to counsel, without being able to recover those amounts from the debtor. As a result, NCA's members have placed accounts like these on "hold" and are unable to pursue collection of these accounts in Justice Court since A.B. 477 took effect on October 1, 2019. NCA members have thus been effectively precluded from pursuing these and other Small Dollar Debts in Justice Court specifically because of A.B. 477.

36. The effect of A.B. 477 will only become worse as attorney's fees rise in Clark County, Nevada year over year, while attorney's fees are still capped as a percentage of the unpaid debt.

37. As a result, the attorney's fee cap in Section 18 of A.B. 477 will effectively stop debt collectors like CCCS and NCA's members from filing suit in many Small Dollar Debt cases because it is cost prohibitive to do so. CCCS and NCA's members will effectively have no recourse in Small Dollar Debt cases if they do not get paid because (1) they are required to have

¹ 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.

1 an attorney to pursue Small Dollar Debts; and (2) will not be able to hire an attorney given the
2 15% cap of Section 18.

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

6 If the debtor is the prevailing party in any action to collect a
7 consumer debt, the debtor is entitled to an award of reasonable
8 attorney's fees. The amount of the debt that the creditor sought
award.

9 39. Section 19 places an obvious double standard in favor of debtors solely because
10 they are debtors. Section 19 offers a remedy to debtors (an award of fees regardless of the
11 amount sought) while depriving creditors and debt collectors of that same remedy solely because
12 of who they are. It too is designed to discourage debt collection lawsuits from suing in Justice
13 Court, as Section 19 provides a blunt instrument for any debtor to discourage lawful and genuine
14 Small Dollar Debt claims. In fact, Small Dollar Debt cases become financially unviable in any
15 matter that is contested, not only because plaintiffs will have to expend huge amounts of money
16 on their fees (for which compensation will be strictly capped), but will risk having to pay
17 defendants' attorney's fees without restriction if the defendant "prevails" in any sense of the
18 word.

19 40. Because Sections 18 and 19 will effectively prohibit debt collectors from
20 commencing civil actions in Justice Court in small dollar cases, many debts will go unpaid,
21 leaving many creditors unwilling to provide services without advance payment. This will tighten
22 access to credit for all consumers and will effectively punish consumers who pay their debts in
23 full and on time.

24 41. I declare under penalty of perjury of the laws of the State of Nevada that the
25 foregoing is true and correct.

26 EXECUTED this 15th day of May, 2020, in Clark County, Nevada.

27
28 /s/ Tim Myers
TIM MYERS

20953633

1 **DECL**

Patrick J. Reilly, Esq., Nevada Bar No. 6103

2 preilly@bhfs.com

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

3 mhayes@bhfs.com

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6 *Attorneys for Nevada Collectors Association*

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

10 NEVADA COLLECTORS
11 ASSOCIATION,

12 Plaintiff,

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
DEFENDANTS 1 through 20,

17 Defendants.
18
19

Case No.:

Dept. No.:

**DECLARATION OF MICHAEL N. AISEN
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

20 I, Michael N. Aisen, hereby declare as follows:

21 1. I am an attorney, licensed to practice law in the State of Nevada, and a partner at
22 Aisen, Gill & Associates, LLP ("Aisen Gill"), a Nevada law firm.

23 2. Aisen Gill currently represents Clark County Collection Service, LLC ("CCCS")
24 in the Justice Court of Las Vegas Township ("Justice Court") as well as other courts, and is the
25 primary attorney for debt collection.

26 3. CCCS retains Aisen Gill to make appearances in Justice Court because Justice
27 Court Rule 16 requires corporate entities (including limited-liability companies) to retain counsel
28 for all court filings and appearances.

1 4. Nearly all of the cases in which Aisen Gill has represented CCCS in Justice Court
2 involves the collection of unpaid small dollar consumer debts in amounts of \$3,000.00 or less
3 ("Small Dollar Debts"). Most cases involve even smaller debts, ranging from \$1,000.00 to
4 \$2,000.00.

5 5. In the aforementioned cases, Aisen Gill works with CCCS to review the file, work
6 on drafting the Complaint and other documents, litigate the case to judgment, and collect on that
7 judgment. In some cases, Aisen Gill is able to resolve disputed debts and work out settlements of
8 other debts with consumers.

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

14 7. NRS 4.370 confers jurisdiction to its justice courts to entertain any civil causes of
15 action in matters that do not exceed \$15,000.00.

16 8. To the extent a consumer debt falls within the Mandatory Venue Provision of the
17 FDCPA and requires the commencement of a civil action in Las Vegas, Nevada, a debt collector
18 is legally required to commence a civil debt collection action in the Justice Court of Las Vegas
19 Township (the "Justice Court").

20 9. When charging its clients, a debt collection law firm must factor into its pricing
21 not only the value of its work, but the substantial overhead of operating a law firm. In addition,
22 law firms must factor into their pricing the risk of potential lawsuits filed under the FDCPA.
23 Such lawsuits are often hyper-technical and frivolous. They nevertheless increase the cost of
24 doing business for a law firm engaged in this area of practice.

25 10. I am familiar with and have reviewed Assembly Bill ("A.B.") 477, which was
26 enacted in the most recent session of the Nevada Legislature. It is my understanding the A.B. 477
27 purports to limit awards of attorney's fees in consumer debt lawsuits to no more than fifteen per
28 cent (15%) of the unpaid amount of the debt.

1 11. Rather than scale the attorney's fees to the amount of the unpaid debt, or even to
2 an amount that is "reasonable," A.B. 477 imposes a 15% rate cap regardless of the amount of the
3 unpaid principal amount.

4 12. This limitation also purports to apply regardless of the amount of work required
5 for a prevailing plaintiff to obtain a judgment, including, drafting a complaint, litigating and
6 obtaining a judgment, and then collecting on that judgment.

7 13. Section 18 of A.B. 477 imposes a rate cap of 15% even when a plaintiff or
8 defendant wishes to invoke the right to a jury trial under the Seventh Amendment of the United
9 States Constitution and Article 1, Section 3 of the Nevada Constitution.

10 14. A.B. 477 purports to apply to consumer contracts "entered into on or after October
11 1, 2019." Section 18 limits attorney's fees in civil actions to collect all "consumer debt," which is
12 defined as "any obligation or alleged obligation of a consumer to pay money arising out of a
13 transaction which the money, property, insurance or services which are the subject of the
14 transaction are primarily personal, family or household purposes, whether or not such obligation
15 has been reduced to judgment."

16 15. In the current legal market, it would not be economically feasible for Aisen Gill to
17 represent CCCS or any other client in a debt collection action involving a Small Dollar Debt
18 lawsuit if its fees were limited to fifteen per cent (15%) of the unpaid amount of the debt. For
19 example, under Section 18 of A.B. 477, Aisen Gill would be limited to a recovery of attorney's
20 fees of only \$75.00 for a \$500.00 debt. The filing fee alone charged by the Justice Court for
21 commencing a civil action is \$74.00 for an action when the sum claimed does not exceed
22 \$2,500.00.¹ For most Small Dollar Debts in the \$1,000.00 to \$2,000.00 range, attorney's fees
23 would be limited to \$150.00 to \$300.00 if fees were capped at fifteen per cent (15%) of the
24 unpaid amount of the debt.

25
26
27
28 ¹ http://www.lasvegasjusticecourt.us/faq/fee_schedule.php.

EXECUTED this 18th day of September, 2019, in Clark County, Nevada.

MICHAEL N. AISEN

1 **DECL**

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6 *Attorneys for Nevada Collectors Association*

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

10 NEVADA COLLECTORS
11 ASSOCIATION,

12 Plaintiff,

13 v.

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

17 Defendants.
18
19

Case No.:

Dept. No.:

**DECLARATION OF ADAM L. GILL IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

20 I, Adam L. Gill, hereby declare as follows:

21 1. I am an attorney, licensed to practice law in the State of Nevada, and a partner at
22 Aisen, Gill & Associates, LLP ("Aisen Gill"), a Nevada law firm.

23 2. Aisen Gill currently represents Clark County Collection Service, LLC ("CCCS")
24 in the Justice Court of Las Vegas Township ("Justice Court") as well as other courts, and is the
25 primary attorney for debt collection.

26 3. CCCS retains Aisen Gill to make appearances in Justice Court because Justice
27 Court Rule 16 requires corporate entities (including limited-liability companies) to retain counsel
28 for all court filings and appearances.

1 4. Nearly all of the cases in which Aisen Gill has represented CCCS in Justice Court
2 involves the collection of unpaid small dollar consumer debts in amounts of \$3,000.00 or less
3 ("Small Dollar Debts"). Most cases involve even smaller debts, ranging from \$1,000.00 to
4 \$2,000.00.

5 5. In the aforementioned cases, Aisen Gill works with CCCS to review the file, work
6 on drafting the Complaint and other documents, litigate the case to judgment, and collect on that
7 judgment. In some cases, Aisen Gill is able to resolve disputed debts and work out settlements of
8 other debts with consumers.

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

14 7. NRS 4.370 confers jurisdiction to its justice courts to entertain any civil causes of
15 action in matters that do not exceed \$15,000.00.

16 8. To the extent a consumer debt falls within the Mandatory Venue Provision of the
17 FDCPA and requires the commencement of a civil action in Las Vegas, Nevada, a debt collector
18 is legally required to commence a civil debt collection action in the Justice Court of Las Vegas
19 Township (the "Justice Court").

20 9. When charging its clients, a debt collection law firm must factor into its pricing
21 not only the value of its work, but the substantial overhead of operating a law firm. In addition,
22 law firms must factor into their pricing the risk of potential lawsuits filed under the FDCPA.
23 Such lawsuits are often hyper-technical and frivolous. They nevertheless increase the cost of
24 doing business for a law firm engaged in this area of practice.

25 10. I am familiar with and have reviewed Assembly Bill ("A.B.") 477, which was
26 enacted in the most recent session of the Nevada Legislature. It is my understanding the A.B. 477
27 purports to limit awards of attorney's fees in consumer debt lawsuits to no more than fifteen per
28 cent (15%) of the unpaid amount of the debt.

1 11. Rather than scale the attorney's fees to the amount of the unpaid debt, or even to
2 an amount that is "reasonable," A.B. 477 imposes a 15% rate cap regardless of the amount of the
3 unpaid principal amount.

4 12. This limitation also purports to apply regardless of the amount of work required
5 for a prevailing plaintiff to obtain a judgment, including, drafting a complaint, litigating and
6 obtaining a judgment, and then collecting on that judgment.

7 13. Section 18 of A.B. 477 imposes a rate cap of 15% even when a plaintiff or
8 defendant wishes to invoke the right to a jury trial under the Seventh Amendment of the United
9 States Constitution and Article 1, Section 3 of the Nevada Constitution.

10 14. A.B. 477 purports to apply to consumer contracts "entered into on or after October
11 1, 2019." Section 18 limits attorney's fees in civil actions to collect all "consumer debt," which is
12 defined as "any obligation or alleged obligation of a consumer to pay money arising out of a
13 transaction which the money, property, insurance or services which are the subject of the
14 transaction are primarily personal, family or household purposes, whether or not such obligation
15 has been reduced to judgment."

16 15. In the current legal market, it would not be economically feasible for Aisen Gill to
17 represent CCCS or any other client in a debt collection action involving a Small Dollar Debt
18 lawsuit if its fees were limited to fifteen per cent (15%) of the unpaid amount of the debt. For
19 example, under Section 18 of A.B. 477, Aisen Gill would be limited to a recovery of attorney's
20 fees of only \$75.00 for a \$500.00 debt. The filing fee alone charged by the Justice Court for
21 commencing a civil action is \$74.00 for an action when the sum claimed does not exceed
22 \$2,500.00.¹ For most Small Dollar Debts in the \$1,000.00 to \$2,000.00 range, attorney's fees
23 would be limited to \$150.00 to \$300.00 if fees were capped at fifteen per cent (15%) of the
24 unpaid amount of the debt.

25
26
27
28 ¹ http://www.lasvegasjusticecourt.us/faq/fee_schedule.php.

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1 16. Based upon my experience as counsel who has represented CCCS in hundreds of
2 debt collection cases, to make it economically feasible for a law firm to represent a creditor in a
3 Small Dollar Debt case, the law firm must average \$450.00 in attorney's fees per case.

17. As a result, the attorney fee cap in Section 18 of A.B. 477 will effectively prevent Aisen Gill and other law firms from representing clients in Small Dollar Debt cases because it is cost prohibitive to do so.

7 18. I declare under penalty of perjury of the laws of the State of Nevada that the
8 foregoing is true and correct.

9 EXECUTED this 7 day of October, 2019, in Clark County, Nevada.

ADAM L. GILL

19753243.1

JA0622

1 **DECL**
Patrick J. Reilly, Esq., Nevada Bar No. 6103
2 preilly@bhfs.com
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6 *Attorneys for Nevada Collectors Association*

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

10 NEVADA COLLECTORS
11 ASSOCIATION,

12 Plaintiff,

13 v.

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

17 Defendants.
18
19

Case No.:
Dept. No.:

**DECLARATION OF LANGSDALE LAW
FIRM IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

20 **I, CALEB LANGSDALE, ESQ., hereby declare as follows:**

21 1. I am the owner of **THE LANGSDALE LAW FIRM**, a Nevada Professional
22 Corporation, which is licensed to practice law within Clark County, Nevada.

23 2. **THE LANGSDALE LAW FIRM** is primarily engaged in the business of creditor
24 rights collection law. Most of my referrals are delinquent consumer retail installment contracts
25 that could not be resolved via traditional collection methods. Most of the accounts referred to our
26 office are for small dollar amounts, usually less than \$5,000.00 ("Small Dollar Debts").

27 3. For these Small Dollar Debts referrals to remain feasible for initiating litigation,
28 **THE LANGSDALE LAW FIRM** relies on court ordered reasonable attorney's fees under NRS

1 18.010(2)(a), as the unpaid dollar amount is always less than \$20,000.00.

2 4. It is my understanding that the Nevada Legislature recently enacted Assembly Bill
3 ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer
4 debt to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if
5 there is an express written agreement for the recovery of attorney's fees.

6 5. Under A.B. 477, **THE LANGSDALE LAW FIRM** will be unable accept new
7 referrals that fall within the statutes purview because the cap on attorney's fees makes the time
8 and work required to bring for a lawsuit, regardless of the amount in controversy, cost prohibitive
9 and economically unfeasible.

10 6. **THE LANGSDALE LAW FIRM** and all lawyers that practice litigation within
11 the purview of A.B. 477 will be forced to either give up work or to continue accepting placements
12 at such a low fee cap that quality and attorney oversight will suffer, given the that litigation will
13 be subject to the 15% cap of Section 18 and the patently unfair provisions of Section 19.

14 7. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default
15 on their debt obligations because law firms like **THE LANGSDALE LAW FIRM** will no longer
16 be available to initiate litigation to enforce Retail Contracts as the effects of A.B. 477 make
17 litigation economically infeasible.

18 8. Because A.B. 477 will effectively prohibit debt collectors from commencing civil
19 actions in Justice Court in small dollar cases, many debts will go unpaid.

20 9. I declare under penalty of perjury of the laws of the State of Nevada that the
21 foregoing is true and correct.

22 EXECUTED this 30 day of September, 2019, in Clark County, Nevada.

23
24 
25 _____
26 CALEB LANGSDALE, ESQ.
27
28

DECL

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Attorneys for Nevada Collectors Association

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NEVADA COLLECTORS
ASSOCIATION,

Plaintiff,

v.

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

Defendants.

Case No.:
Dept. No.:

**DECLARATION OF KYLE BUTH IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

I, KYLE BUTH, hereby declare as follows:

1. I am the owner of ELEVATE SPORTS PERFORMANCE & CHIROPRACTIC, a Nevada limited-liability company which is licensed to operate and conduct business in Clark County, Nevada.

2. ELEVATE SPORTS PERFORMANCE & CHIROPRACTIC is engaged in the business of chiropractic care. It provides services to consumers, often on credit, requiring payment at a later date. Most of our accounts are for small dollar amounts, usually less than \$5,000.00 ("Small Dollar Debts").

3. In the event of a default on an unpaid consumer debt, it is my understanding that

1 ELEVATE SPORTS PERFORMANCE & CHIROPRACTIC is required to retain a debt
2 collection agency or debt collection attorney to recover that unpaid debt.

3 4. To the extent that ELEVATE SPORTS PERFORMANCE & CHIROPRACTIC is
4 required to go to court to obtain payment on an unpaid small dollar consumer debt, it is allowed
5 to recover reasonable attorney's fees under NRS 18.010(2)(a), as the unpaid dollar amount is
6 always less than \$20,000.00.

7 5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill
8 ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer
9 debt to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if
10 there is an express written agreement for the recovery of attorney's fees.

11 6. Under A.B. 477, ELEVATE SPORTS PERFORMANCE & CHIROPRACTIC
12 will be unable to retain an attorney to commence a civil lawsuit to recover a consumer debt
13 because of the cap on attorney's fees, which in most cases would make filing any collection
14 lawsuit cost prohibitive.

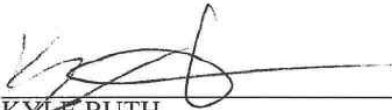
15 7. ELEVATE SPORTS PERFORMANCE & CHIROPRACTIC (and other
16 businesses like it that provide goods and services to consumers in advance of payment) will
17 effectively have no recourse if it does not get paid on Small Dollar Debts because it (1) is
18 required to have any attorney to pursue Small Dollar Debts; and (2) will not be able to hire an
19 attorney given the 15% cap of Section 18 and the patently unfair provisions of Section 19.

20 8. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default
21 on their debt obligations because ELEVATE SPORTS PERFORMANCE & CHIROPRACTIC
22 will not be able to afford an attorney to pursue those defaults.

23 9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil
24 actions in Justice Court in small dollar cases, many debts will go unpaid. As a result, ELEVATE
25 SPORTS PERFORMANCE & CHIROPRACTIC will be less inclined to provide consumer
26 services without advance payment.

1 10. I declare under penalty of perjury of the laws of the State of Nevada that the
2 foregoing is true and correct.

3 EXECUTED this __7th__ day of Ocotber, 2019, in Clark County, Nevada.

4
5 
6 KYLE BUTH

1 **DECL**

2 Patrick J. Reilly, Esq., Nevada Bar No. 6103
3 preilly@bhfs.com
4 Marckia L. Hayes, Esq., Nevada Bar No. 14539
5 mhayes@bhfs.com
6 BROWNSTEIN HYATT FARBER SCHRECK, LLP
7 100 North City Parkway, Suite 1600
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9 Telephone: 702.382.2101
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11 *Attorneys for Nevada Collectors Association*

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

14 NEVADA COLLECTORS
15 ASSOCIATION,

16 Plaintiff,

17 v.

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

25 Defendants.

Case No.:
Dept. No.:

26 **DECLARATION OF CORT W. CHRISTIE**
27 **IN SUPPORT OF MOTION FOR**
28 **PRELIMINARY INJUNCTION**

I, Cort W. Christie, hereby declare as follows:

1. I am the owner of Superior Capital Corporation., a Nevada corporation which is licensed to operate and conduct business in Clark County, Nevada.

2. Superior Capital Corporation is engaged in the business of business start-up services. It provides services to consumers, often on credit, requiring payment at a later date. Most of our accounts are for small dollar amounts, usually less than \$5,000.00 ("Small Dollar Debts").

3. In the event of a default on an unpaid consumer debt, it is my understanding that Superior Capital Corporation is required to retain a debt collection agency or debt collection attorney to recover that unpaid debt.

Cort W. Christie

1 **DECL**

Patrick J. Reilly, Esq., Nevada Bar No. 6103

2 preilly@bhfs.com

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

3 mhayes@bhfs.com

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5 Telephone: 702.382.2101

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6 *Attorneys for Nevada Collectors Association*

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

10 NEVADA COLLECTORS
11 ASSOCIATION,

12 Plaintiff,

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
DEFENDANTS 1 through 20,

17 Defendants.
18
19

Case No.:

Dept. No.:

**DECLARATION OF CORT W. CHRISTIE
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

20 I, Cort W. Christie, hereby declare as follows:

21 1. I am the owner of Alaska Northern Lights, Inc., a Nevada corporation which is
22 licensed to operate and conduct business in Clark County, Nevada.

23 2. Alaska Northern Lights, Inc. is engaged in light therapy. It provides products to
24 consumers, often on credit, requiring payment at a later date. Most of our accounts are for small
25 dollar amounts, usually less than \$5,000.00 ("Small Dollar Debts").

26 3. In the event of a default on an unpaid consumer debt, it is my understanding that
27 Alaska Northern Lights, Inc. is required to retain a debt collection agency or debt collection attorney
28 to recover that unpaid debt.

1 4. To the extent that Cort W. Christie is required to go to court to obtain payment on
2 an unpaid small dollar consumer debt, it is allowed to recover reasonable attorney's fees under NRS
3 18.010(2)(a), as the unpaid dollar amount is always less than \$20,000.00.

4 5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill
5 ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer debt
6 to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if there
7 is an express written agreement for the recovery of attorney's fees.

8 6. Under A.B. 477, Cort W. Christie will be unable to retain an attorney to commence
9 a civil lawsuit to recover a consumer debt because of the cap on attorney's fees, which in most
10 cases would make filing any collection lawsuit cost prohibitive.

11 7. Cort W. Christie (and other businesses like it that provide goods and services to
12 consumers in advance of payment) will effectively have no recourse if it does not get paid on
13 Small Dollar Debts because it (1) is required to have any attorney to pursue Small Dollar Debts;
14 and (2) will not be able to hire an attorney given the 15% cap of Section 18 and the patently unfair
15 provisions of Section 19.'

16 8. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default
17 on their debt obligations because Cort W. Christie will not be able to afford an attorney to pursue
18 those defaults.

19 9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil
20 actions in Justice Court in small dollar cases, many debts will go unpaid. As a result, Cort W.
21 Christie will be less inclined to provide consumer services without advance payment.

22 10. I declare under penalty of perjury of the laws of the State of Nevada that the
23 foregoing is true and correct.

24 EXECUTED this ____ day of September, 2019, in Clark County, Nevada.

25 

26 _____
27 Cort W. Christie
28

1 **DECL**

Patrick J. Reilly, Esq., Nevada Bar No. 6103

preilly@bhfs.com

2 Marcia L. Hayes, Esq., Nevada Bar No. 14539

mhayes@bhfs.com

3 BROWNSTEIN HYATT FARBER SCHRECK, LLP

4 100 North City Parkway, Suite 1600

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5 Telephone: 702.382.2101

6 Facsimile: 702.382.8135

7 *Attorneys for Nevada Collectors Association*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 NEVADA COLLECTORS
11 ASSOCIATION,

12 Plaintiff,

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.

Case No.:

Dept. No.:

**DECLARATION OF CORT W. CHRISTIE
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

20 I, Cort W. Christie, hereby declare as follows:

21 1. I am the owner of Zenith Endeavors I, LLC, a Nevada limited-liability company
22 which is licensed to operate and conduct business in Clark County, Nevada.

23 2. Zenith Endeavors I, LLC is engaged in the business of Consulting Services. It
24 provides services to consumers, often on credit, requiring payment at a later date. Most of our
25 accounts are for small dollar amounts, usually less than \$5,000.00 ("Small Dollar Debts").

26 3. In the event of a default on an unpaid consumer debt, it is my understanding that
27 Zenith Endeavors I, LLC is required to retain a debt collection agency or debt collection attorney
28 to recover that unpaid debt.

1 4. To the extent that Cort W. Christie is required to go to court to obtain payment on
2 an unpaid small dollar consumer debt, it is allowed to recover reasonable attorney's fees under NRS
3 18.010(2)(a), as the unpaid dollar amount is always less than \$20,000.00.

4 5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill
5 ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer debt
6 to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if there
7 is an express written agreement for the recovery of attorney's fees.

8 6. Under A.B. 477, Cort W. Christie will be unable to retain an attorney to commence
9 a civil lawsuit to recover a consumer debt because of the cap on attorney's fees, which in most
10 cases would make filing any collection lawsuit cost prohibitive.


11 7. Cort W. Christie (and other businesses like it that provide goods and services to
12 consumers in advance of payment) will effectively have no recourse if it does not get paid on
13 Small Dollar Debts because it (1) is are required to have any attorney to pursue Small Dollar Debts;
14 and (2) will not be able to hire an attorney given the 15% cap of Section 18 and the patently unfair
15 provisions of Section 19.

16 8. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default
17 on their debt obligations because Cort W. Christie will not be able to afford an attorney to pursue
18 those defaults.

19 9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil
20 actions in Justice Court in small dollar cases, many debts will go unpaid. As a result, Cort W.
21 Christie will be less inclined to provide consumer services without advance payment.

22 10. I declare under penalty of perjury of the laws of the State of Nevada that the
23 foregoing is true and correct.

24 EXECUTED this 1st day of October, 2019, in Clark County, Nevada.

25 
26 _____
27 Cort W. Christie
28

1 **DECL**

Patrick J. Reilly, Esq., Nevada Bar No. 6103

preilly@bhfs.com

2 Marcia L. Hayes, Esq., Nevada Bar No. 14539

3 mhayes@bhfs.com

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5 Telephone: 702.382.2101

6 Facsimile: 702.382.8135

7 *Attorneys for Nevada Collectors Association*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 NEVADA COLLECTORS
11 ASSOCIATION,

12 Plaintiff,

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.

Case No.:

Dept. No.:

**DECLARATION OF CORT W. CHRISTIE
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

19
20 I, Cort W. Christie, hereby declare as follows:

21 1. I am the owner of Inc Authority, LLC., a Nevada limited-liability which is licensed
22 to operate and conduct business in Clark County, Nevada.

23 2. Inc Authority, LLC is engaged in the business of business start-up services. It
24 provides services to consumers, often on credit, requiring payment at a later date. Most of our
25 accounts are for small dollar amounts, usually less than \$5,000.00 ("Small Dollar Debts").

26 3. In the event of a default on an unpaid consumer debt, it is my understanding that Inc
27 Authority, LLC is required to retain a debt collection agency or debt collection attorney to recover
28 that unpaid debt.

1 4. To the extent that Cort W. Christie is required to go to court to obtain payment on
2 an unpaid small dollar consumer debt, it is allowed to recover reasonable attorney's fees under NRS
3 18.010(2)(a), as the unpaid dollar amount is always less than \$20,000.00.

4 5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill
5 ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer debt
6 to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if there
7 is an express written agreement for the recovery of attorney's fees.

8 6. Under A.B. 477, Cort W. Christie will be unable to retain an attorney to commence
9 a civil lawsuit to recover a consumer debt because of the cap on attorney's fees, which in most
10 cases would make filing any collection lawsuit cost prohibitive.

11 7. Cort W. Christie (and other businesses like it that provide goods and services to
12 consumers in advance of payment) will effectively have no recourse if it does not get paid on
13 Small Dollar Debts because it (1) is required to have any attorney to pursue Small Dollar Debts;
14 and (2) will not be able to hire an attorney given the 15% cap of Section 18 and the patently unfair
15 provisions of Section 19.'

16 8. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default
17 on their debt obligations because Cort W. Christie will not be able to afford an attorney to pursue
18 those defaults.

19 9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil
20 actions in Justice Court in small dollar cases, many debts will go unpaid. As a result, Cort W.
21 Christie will be less inclined to provide consumer services without advance payment.

22 10. I declare under penalty of perjury of the laws of the State of Nevada that the
23 foregoing is true and correct.

24 EXECUTED this 30th day of September, 2019, in Clark County, Nevada.

25
26 
27 Cort W. Christie
28

1 **DECL**

Patrick J. Reilly, Esq., Nevada Bar No. 6103

2 preilly@bhfs.com

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3 mhayes@bhfs.com

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5 Telephone: 702.382.2101

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6 *Attorneys for Nevada Collectors Association*

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

10 NEVADA COLLECTORS
11 ASSOCIATION,

12 Plaintiff,

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.

Case No.:

Dept. No.:

**DECLARATION OF CORT W. CHRISTIE
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

19
20 I, Cort W. Christie, hereby declare as follows:

21 1. I am the owner of Corporate Service Center, Inc., a Nevada corporation which is
22 licensed to operate and conduct business in Clark County, Nevada.

23 2. Corporate Service Center, Inc. is engaged in the business of business start-up
24 services. It provides services to consumers, often on credit, requiring payment at a later date. Most
25 of our accounts are for small dollar amounts, usually less than \$5,000.00 ("Small Dollar Debts").

26 3. In the event of a default on an unpaid consumer debt, it is my understanding that
27 Corporate Service Center, Inc. is required to retain a debt collection agency or debt collection
28 attorney to recover that unpaid debt.

1 4. To the extent that Cort W. Christie is required to go to court to obtain payment on
2 an unpaid small dollar consumer debt, it is allowed to recover reasonable attorney's fees under NRS
3 18.010(2)(a), as the unpaid dollar amount is always less than \$20,000.00.

4 5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill
5 ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer debt
6 to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if there
7 is an express written agreement for the recovery of attorney's fees.

8 6. Under A.B. 477, Cort W. Christie will be unable to retain an attorney to commence
9 a civil lawsuit to recover a consumer debt because of the cap on attorney's fees, which in most
10 cases would make filing any collection lawsuit cost prohibitive.

11 7. Cort W. Christie (and other businesses like it that provide goods and services to
12 consumers in advance of payment) will effectively have no recourse if it does not get paid on
13 Small Dollar Debts because it (1) is required to have any attorney to pursue Small Dollar Debts;
14 and (2) will not be able to hire an attorney given the 15% cap of Section 18 and the patently unfair
15 provisions of Section 19.'

16 8. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default
17 on their debt obligations because Cort W. Christie will not be able to afford an attorney to pursue
18 those defaults.

19 9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil
20 actions in Justice Court in small dollar cases, many debts will go unpaid. As a result, Cort W.
21 Christie will be less inclined to provide consumer services without advance payment.

22 10. I declare under penalty of perjury of the laws of the State of Nevada that the
23 foregoing is true and correct.

24 EXECUTED this 29th day of September, 2019, in Clark County, Nevada.

25
26 
27 Cort W. Christie
28

1 **DECL**

2 Patrick J. Reilly, Esq., Nevada Bar No. 6103
3 preilly@bhfs.com
4 Marckia L. Hayes, Esq., Nevada Bar No. 14539
5 mhayes@bhfs.com
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9 Telephone: 702.382.2101
10 Facsimile: 702.382.8135

11 *Attorneys for Nevada Collectors Association*

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

14 NEVADA COLLECTORS
15 ASSOCIATION,

16 Plaintiff,

17 v.

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

25 Defendants.

Case No.:
Dept. No.:

**DECLARATION OF CORT W. CHRISTIE
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

26 I, Cort W. Christie, hereby declare as follows:

27 1. I am the owner of Nevada Corporate Headquarter, Inc., a Nevada corporation which
28 is licensed to operate and conduct business in Clark County, Nevada.

29 2. Nevada Corporate Headquarters, Inc. is engaged in the business of business start-up
30 services. It provides services to consumers, often on credit, requiring payment at a later date. Most
31 of our accounts are for small dollar amounts, usually less than \$5,000.00 ("Small Dollar Debts").

32 3. In the event of a default on an unpaid consumer debt, it is my understanding that
33 Nevada Corporate Headquarters, Inc. is required to retain a debt collection agency or debt collection
34 attorney to recover that unpaid debt.

1 4. To the extent that Cort W. Christie is required to go to court to obtain payment on
2 an unpaid small dollar consumer debt, it is allowed to recover reasonable attorney's fees under NRS
3 18.010(2)(a), as the unpaid dollar amount is always less than \$20,000.00.

4 5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill
5 ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer debt
6 to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if there
7 is an express written agreement for the recovery of attorney's fees.

8 6. Under A.B. 477, Cort W. Christie will be unable to retain an attorney to commence
9 a civil lawsuit to recover a consumer debt because of the cap on attorney's fees, which in most
10 cases would make filing any collection lawsuit cost prohibitive.

11 7. Cort W. Christie (and other businesses like it that provide goods and services to
12 consumers in advance of payment) will effectively have no recourse if it does not get paid on
13 Small Dollar Debts because it (1) is required to have any attorney to pursue Small Dollar Debts;
14 and (2) will not be able to hire an attorney given the 15% cap of Section 18 and the patently unfair
15 provisions of Section 19.

16 8. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default
17 on their debt obligations because Cort W. Christie will not be able to afford an attorney to pursue
18 those defaults.

19 9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil
20 actions in Justice Court in small dollar cases, many debts will go unpaid. As a result, Cort W.
21 Christie will be less inclined to provide consumer services without advance payment.

22 10. I declare under penalty of perjury of the laws of the State of Nevada that the
23 foregoing is true and correct.

24 EXECUTED this 29th day of September, 2019, in Clark County, Nevada.

25
26 
27 _____
28 Cort W. Christie

1 **DECL**

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

6 Facsimile: 702.382.8135

Attorneys for Nevada Collectors Association

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

10 NEVADA COLLECTORS
11 ASSOCIATION,

12 Plaintiff,

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

Case No.:

Dept. No.:

**DECLARATION OF JASWINDER
GROVER, M.D. IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION**

20 I, JASWINDER GROVER, M.D., hereby declare as follows:

21 1. I am the manager of NEVADA SPINE CLINIC, a Nevada limited-liability
22 company which is licensed to operate and conduct business in Clark County, Nevada.

23 2. NEVADA SPINE CLINIC is engaged in the business of providing medical
24 surgery services to the general public. It provides services to consumers, often on credit,
25 requiring payment at a later date. Most of our accounts are for small dollar amounts, usually less
26 than \$5,000.00 ("Small Dollar Debts").

27 3. In the event of a default on an unpaid consumer debt, it is my understanding that
28 NEVADA SPINE CLINIC is required to retain a debt collection agency or debt collection

1 attorney to recover that unpaid debt.

2 4. To the extent that NEVADA SPINE CLINIC is required to go to court to obtain
3 payment on an unpaid small dollar consumer debt, it is allowed to recover reasonable attorney's
4 fees under NRS 18.010(2)(a), as the unpaid dollar amount is always less than \$20,000.00.

5 5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill
6 ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer
7 debt to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if
8 there is an express written agreement for the recovery of attorney's fees.

9 6. Under A.B. 477, NEVADA SPINE CLINIC will be unable to retain an attorney to
10 commence a civil lawsuit to recover a consumer debt because of the cap on attorney's fees, which
11 in most cases would make filing any collection lawsuit cost prohibitive.

12 7. NEVADA SPINE CLINIC (and other businesses like it that provide goods and
13 services to consumers in advance of payment) will effectively have no recourse if it does do not
14 get paid on Small Dollar Debts because it (1) is required to have any attorney to pursue Small
15 Dollar Debts; and (2) will not be able to hire an attorney given the 15% cap of Section 18 and the
16 patently unfair provisions of Section 19.

17 8. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default
18 on their debt obligations because NEVADA SPINE CLINIC will not be able to afford an attorney
19 to pursue those defaults.

20 9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil
21 actions in Justice Court in small dollar cases, many debts will go unpaid. As a result, NEVADA
22 SPINE CLINIC will be less inclined to provide consumer services without advance payment.

23 ///

24 ///

25 ///

26 ///

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1 10. I declare under penalty of perjury of the laws of the State of Nevada that the
2 foregoing is true and correct.

3 EXECUTED this ____ day of October, 2019, in Clark County, Nevada.

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27
28 JASWINDER GROVER, M.D.

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

1 **DECL**

2 Patrick J. Reilly, Esq., Nevada Bar No. 6103

3 preilly@bhfs.com

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

5 mhayes@bhfs.com

6 BROWNSTEIN HYATT FARBER SCHRECK, LLP

7 100 North City Parkway, Suite 1600

8 Las Vegas, NV 89106-4614

9 Telephone: 702.382.2101

10 Facsimile: 702.382.8135

11 *Attorneys for Nevada Collectors Association*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 NEVADA COLLECTORS
15 ASSOCIATION,

16 Plaintiff,

17 v.

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

25 Defendants.

Case No.:

Dept. No.:

**DECLARATION OF DEBBIE HAIL IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

26 I, Debbie Hail, hereby declare as follows:

27 1. I am the managing member of BLT Cleaners, LLC doing business as Boston
28 Cleaners ("Boston Cleaners"), a Nevada limited-liability company which is licensed to operate
and conduct business in Clark County, Nevada.

29 2. Boston Cleaners is engaged in the business of providing dry cleaning services. It
30 provides services to consumers, often on credit, requiring payment at a later date. Most of our
31 accounts are for small dollar amounts, usually less than \$5,000.00 ("Small Dollar Debts").

32 3. In the event of a default on an unpaid consumer debt, it is my understanding that
33 Boston Cleaners is required to retain a debt collection agency or debt collection attorney to

1 recover that unpaid debt.

2 4. To the extent that Boston Cleaners is required to go to court to obtain payment on
3 an unpaid small dollar consumer debt, it is allowed to recover reasonable attorney's fees under
4 NRS 18.010(2) (a), as the unpaid dollar amount is always less than \$20,000.00.

5 5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill
6 ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer
7 debt to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if
8 there is an express written agreement for the recovery of attorney's fees.

9 6. Under A.B. 477, Boston Cleaners will be unable to retain an attorney to commence
10 a civil lawsuit to recover a consumer debt because of the cap on attorney's fees, which in most
11 cases would make filing any collection lawsuit cost prohibitive.

12 7. Boston Cleaners (and other businesses like it that provide goods and services to
13 consumers in advance of payment) will effectively have no recourse if it does not get paid on
14 Small Dollar Debts because it (1) is required to have any attorney to pursue Small Dollar Debts;
15 and (2) will not be able to hire an attorney given the 15% cap of Section 18 and the patently
16 unfair provisions of Section 19.

17 8. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default
18 on their debt obligations because Boston Cleaners will not be able to afford an attorney to pursue
19 those defaults.

20 9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil
21 actions in Justice Court in small dollar cases, many debts will go unpaid. As a result, Boston
22 Cleaners will be less inclined to provide consumer services without advance payment.

23 10. I declare under penalty of perjury of the laws of the State of Nevada that the
24 foregoing is true and correct.

25 EXECUTED this 4th day of October, 2019, in Clark County, Nevada.

26  / Managing Member
27 DEBBIE HAIL BLT Cleaners, LLC
28

1 **DECL**

2 Patrick J. Reilly, Esq., Nevada Bar No. 6103
3 preilly@bhfs.com
4 Marcia L. Hayes, Esq., Nevada Bar No. 14539
5 mhayes@bhfs.com
6 BROWNSTEIN HYATT FARBER SCHRECK, LLP
7 100 North City Parkway, Suite 1600
8 Las Vegas, NV 89106-4614
9 Telephone: 702.382.2101
10 Facsimile: 702.382.8135

11 *Attorneys for Nevada Collectors Association*

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

14 NEVADA COLLECTORS
15 ASSOCIATION,

16 Plaintiff,

17 v.

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

25 Defendants.

Case No.:
Dept. No.:

**DECLARATION OF LARRY HOLT IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

26 I, Larry Holt, hereby declare as follows:

27 1. I am the owner of Sundance Chiropractic, LLC, a Nevada limited-liability
28 company which is licensed to operate and conduct business in Clark County, Nevada.

29 2. Sundance Chiropractic, LLC is engaged in the business of Healthcare. It provides
30 services to consumers, often on credit, requiring payment at a later date. Most of our accounts are
31 for small dollar amounts, usually less than \$5,000.00 ("Small Dollar Debts").

32 3. In the event of a default on an unpaid consumer debt, it is my understanding that
33 Sundance Chiropractic is required to retain a debt collection agency or debt collection attorney to
34 recover that unpaid debt.

1 4. To the extent that **Sundance Chiropractic** is required to go to court to obtain
2 payment on an unpaid small dollar consumer debt, it is allowed to recover reasonable attorney's
3 fees under NRS 18.010(2)(a), as the unpaid dollar amount is always less than \$20,000.00.

4 5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill
5 ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer
6 debt to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if
7 there is an express written agreement for the recovery of attorney's fees.

8 6. Under A.B. 477, **SUNDANCE CHIROPRACTIC** will be unable to retain an
9 attorney to commence a civil lawsuit to recover a consumer debt because of the cap on attorney's
10 fees, which in most cases would make filing any collection lawsuit cost prohibitive.

11 7. **SUNDANCE CHIROPRACTIC** (and other businesses like it that provide goods
12 and services to consumers in advance of payment) will effectively have no recourse if it does do
13 not get paid on Small Dollar Debts because it (1) is required to have any attorney to pursue Small
14 Dollar Debts; and (2) will not be able to hire an attorney given the 15% cap of Section 18 and the
15 patently unfair provisions of Section 19.

16 8. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default
17 on their debt obligations because **SUNDANCE CHIROPRACTIC** will not be able to afford an
18 attorney to pursue those defaults.

19 9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil
20 actions in Justice Court in small dollar cases, many debts will go unpaid. As a result,
21 **SUNDANCE CHIROPRACTIC** will be less inclined to provide consumer services without
22 advance payment.

23 10. I declare under penalty of perjury of the laws of the State of Nevada that the
24 foregoing is true and correct.

25 EXECUTED this 9th day of October 2019, in Clark County, Nevada.

26
27 
28 Larry Holt - Manager

1 **DECL**

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

6 *Attorneys for Nevada Collectors Association*

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

10 NEVADA COLLECTORS
11 ASSOCIATION,

12 Plaintiff,

13 v.

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

17 Defendants.
18
19

Case No.:
Dept. No.:

**DECLARATION OF LARRY HOLT IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

20 I, Larry Holt, hereby declare as follows:

21 1. I am the owner of Precision Spinal Care Las Vegas, LLC, a Nevada limited-
22 liability company which is licensed to operate and conduct business in Clark County, Nevada.

23 2. Precision Spinal Care Las Vegas is engaged in the business of Healthcare. It
24 provides services to consumers, often on credit, requiring payment at a later date. Most of our
25 accounts are for small dollar amounts, usually less than \$5,000.00 ("Small Dollar Debts").

26 3. In the event of a default on an unpaid consumer debt, it is my understanding that
27 Precision Spinal Care Las Vegas is required to retain a debt collection agency or debt collection
28 attorney to recover that unpaid debt.

1 4. To the extent that **Precision Spinal Care Las Vegas** is required to go to court to
2 obtain payment on an unpaid small dollar consumer debt, it is allowed to recover reasonable
3 attorney's fees under NRS 18.010(2)(a), as the unpaid dollar amount is always less than
4 \$20,000.00.

5 5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill
6 ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer
7 debt to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if
8 there is an express written agreement for the recovery of attorney's fees.

9 6. Under A.B. 477, **PRECISION SPINAL CARE LAS VEGAS** will be unable to
10 retain an attorney to commence a civil lawsuit to recover a consumer debt because of the cap on
11 attorney's fees, which in most cases would make filing any collection lawsuit cost prohibitive.

12 7. **PRECISION SPINAL CARE LAS VEGAS** (and other businesses like it that
13 provide goods and services to consumers in advance of payment) will effectively have no
14 recourse if it does not get paid on Small Dollar Debts because it (1) is required to have any
15 attorney to pursue Small Dollar Debts; and (2) will not be able to hire an attorney given the 15%
16 cap of Section 18 and the patently unfair provisions of Section 19.

17 8. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default
18 on their debt obligations because **PRECISION SPINAL CARE LAS VEGAS** will not be able
19 to afford an attorney to pursue those defaults.

20 9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil
21 actions in Justice Court in small dollar cases, many debts will go unpaid. As a result,
22 **PRECISION SPINAL CARE LAS VEGAS** will be less inclined to provide consumer services
23 without advance payment.

24 10. I declare under penalty of perjury of the laws of the State of Nevada that the
25 foregoing is true and correct.

26 EXECUTED this 9th day of October 2019, in Clark County, Nevada.

27
28 
Larry Holt - Manager
2

1 **DECL**
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

6 *Attorneys for Nevada Collectors Association*

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

10 NEVADA COLLECTORS
11 ASSOCIATION,

12 Plaintiff,

13 v.

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

17 Defendants.
18
19

Case No.:
Dept. No.:

**DECLARATION OF ANDREW J.
HUXFORD DDS IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION**

20 I, Andrew J. Huxford DDS, hereby declare as follows:

21 1. I am the owner of **BOULDER DENTAL GROUP & DOWNTOWN DENTAL**,
22 a Nevada limited-liability company which is licensed to operate and conduct business in Clark
23 County, Nevada.

24 2. **BOULDER DENTAL GROUP & DOWNTOWN DENTAL** is engaged in the
25 business of dentistry. It provides services to consumers, often on credit, requiring payment at a
26 later date. Most of our accounts are for small dollar amounts, usually less than \$5,000.00 ("Small
27 Dollar Debts").

28 3. In the event of a default on an unpaid consumer debt, it is my understanding that

1 **BOULDER DENTAL GROUP & DOWNTOWN DENTAL** is required to retain a debt
2 collection agency or debt collection attorney to recover that unpaid debt.

3 4. To the extent that **BOULDER DENTAL GROUP & DOWNTOWN DENTAL**
4 is required to go to court to obtain payment on an unpaid small dollar consumer debt, it is allowed
5 to recover reasonable attorney's fees under NRS 18.010(2)(a), as the unpaid dollar amount is
6 always less than \$20,000.00.

7 5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill
8 ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer
9 debt to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if
10 there is an express written agreement for the recovery of attorney's fees.

11 6. Under A.B. 477, **BOULDER DENTAL GROUP & DOWNTOWN DENTAL**
12 will be unable to retain an attorney to commence a civil lawsuit to recover a consumer debt
13 because of the cap on attorney's fees, which in most cases would make filing any collection
14 lawsuit cost prohibitive.

15 7. **BOULDER DENTAL GROUP & DOWNTOWN DENTAL** (and other
16 businesses like it that provide goods and services to consumers in advance of payment) will
17 effectively have no recourse if it does not get paid on Small Dollar Debts because it (1) is
18 required to have any attorney to pursue Small Dollar Debts; and (2) will not be able to hire an
19 attorney given the 15% cap of Section 18 and the patently unfair provisions of Section 19.

20 8. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default
21 on their debt obligations because **BOULDER DENTAL GROUP & DOWNTOWN DENTAL**
22 will not be able to afford an attorney to pursue those defaults.

23 9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil
24 actions in Justice Court in small dollar cases, many debts will go unpaid. As a result,
25 **BOULDER DENTAL GROUP & DOWNTOWN DENTAL** will be less inclined to provide
26 consumer services without advance payment.

27 10. I declare under penalty of perjury of the laws of the State of Nevada that the
28 foregoing is true and correct.

EXECUTED this 30th day of September, 2019, in Clark County, Nevada.

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

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Chris P. O'S
LOCAL BUSINESS OPERATOR

19738605.1

1 **DECL**

2 Patrick J. Reilly, Esq., Nevada Bar No. 6103
3 preilly@bhfs.com
4 Marckia L. Hayes, Esq., Nevada Bar No. 14539
5 mhayes@bhfs.com
6 BROWNSTEIN HYATT FARBER SCHRECK, LLP
7 100 North City Parkway, Suite 1600
8 Las Vegas, NV 89106-4614
9 Telephone: 702.382.2101
10 Facsimile: 702.382.8135

11 *Attorneys for Nevada Collectors Association*

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

14 NEVADA COLLECTORS
15 ASSOCIATION,

16 Plaintiff,

17 v.

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

25 Defendants.

Case No.:
Dept. No.:

**DECLARATION OF EDDY H. LUH M.D. IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

26 I, Eddy H. Luh M.D., hereby declare as follows:

27 1. I am the owner of **LAS VEGAS SURGICAL ASSOCIATES**, a Nevada limited-
28 liability company which is licensed to operate and conduct business in Clark County, Nevada.

29 2. **BOULDER DENTAL GROUP & DOWNTOWN DENTAL** is engaged in the
30 business of dentistry. It provides services to consumers, often on credit, requiring payment at a
31 later date. Most of our accounts are for small dollar amounts, usually less than \$5,000.00 ("Small
32 Dollar Debts").

33 3. In the event of a default on an unpaid consumer debt, it is my understanding that
34 **BOULDER DENTAL GROUP & DOWNTOWN DENTAL** is required to retain a debt

1 collection agency or debt collection attorney to recover that unpaid debt.

2 4. To the extent that **LAS VEGAS SURGICAL ASSOCIATES** is required to go to
3 court to obtain payment on an unpaid small dollar consumer debt, it is allowed to recover
4 reasonable attorney's fees under NRS 18.010(2)(a), as the unpaid dollar amount is always less
5 than \$20,000.00.

6 5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill
7 ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer
8 debt to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if
9 there is an express written agreement for the recovery of attorney's fees.

10 6. Under A.B. 477, **LAS VEGAS SURGICAL ASSOCIATES** will be unable to
11 retain an attorney to commence a civil lawsuit to recover a consumer debt because of the cap on
12 attorney's fees, which in most cases would make filing any collection lawsuit cost prohibitive.

13 7. **LAS VEGAS SURGICAL ASSOCIATES** (and other businesses like it that
14 provide goods and services to consumers in advance of payment) will effectively have no
15 recourse if it does do not get paid on Small Dollar Debts because it (1) is required to have any
16 attorney to pursue Small Dollar Debts; and (2) will not be able to hire an attorney given the 15%
17 cap of Section 18 and the patently unfair provisions of Section 19.

18 8. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default
19 on their debt obligations because **LAS VEGAS SURGICAL ASSOCIATES** will not be able to
20 afford an attorney to pursue those defaults.

21 9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil
22 actions in Justice Court in small dollar cases, many debts will go unpaid. As a result,
23 **BOULDER DENTAL GROUP & DOWNTOWN DENTAL** will be less inclined to provide
24 consumer services without advance payment.

25 10. I declare under penalty of perjury of the laws of the State of Nevada that the
26 foregoing is true and correct.

27 EXECUTED this 30th day of September, 2019, in Clark County, Nevada.
28

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1000
Las Vegas, NV 89106-4614
702.862.2101

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LOCAL BUSINESS OPERATOR

19738605.1

1 **DECL**

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

6 *Attorneys for Nevada Collectors Association*

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

10 NEVADA COLLECTORS
11 ASSOCIATION,

12 Plaintiff,

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
DEFENDANTS 1 through 20,

17 Defendants.
18
19

Case No.:

Dept. No.:

**DECLARATION OF MCKENNA
PROPERTY MANAGEMENT IN SUPPORT
OF MOTION FOR PRELIMINARY
INJUNCTION**

20 I, Jenni Mckenna, hereby declare as follows:

21 1. I am the owner of MCKENNA PROPERTY MANAGEMENT, a Nevada
22 limited-liability company which is licensed to operate and conduct business in Clark County,
23 Nevada.

24 2. MCKENNA PROPERTY MANAGEMENT is engaged in the business of
25 PROPERTY MANAGEMENT. It provides services to consumers, often on credit, requiring
26 payment at a later date. Most of our accounts are for small dollar amounts, usually less than
27 \$5,000.00 ("Small Dollar Debts").

28 3. In the event of a default on an unpaid consumer debt, it is my understanding that

19738605.1

1 **MCKENNA PROPERTY MANAGEMENT** is required to retain a debt collection agency or
2 debt collection attorney to recover that unpaid debt.

3 4. To the extent that **MCKENNA PROPERTY MANAGEMENT** is required to go
4 to court to obtain payment on an unpaid small dollar consumer debt, it is allowed to recover
5 reasonable attorney's fees under NRS 18.010(2)(a), as the unpaid dollar amount is always less
6 than \$20,000.00.

7 5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill
8 ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer
9 debt to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if
10 there is an express written agreement for the recovery of attorney's fees.

11 6. Under A.B. 477, **MCKENNA PROPERTY MANAGEMENT** will be unable to
12 retain an attorney to commence a civil lawsuit to recover a consumer debt because of the cap on
13 attorney's fees, which in most cases would make filing any collection lawsuit cost prohibitive.

14 7. **MCKENNA PROPERTY MANAGEMENT** (and other businesses like it that
15 provide goods and services to consumers in advance of payment) will effectively have no
16 recourse if it does do not get paid on Small Dollar Debts because it (1) is are required to have any
17 attorney to pursue Small Dollar Debts; and (2) will not be able to hire an attorney given the 15%
18 cap of Section 18 and the patently unfair provisions of Section 19.

19 8. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default
20 on their debt obligations because **MCKENNA PROPERTY MANAGEMENT** will not be able
21 to afford an attorney to pursue those defaults.

22 9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil
23 actions in Justice Court in small dollar cases, many debts will go unpaid. As a result,
24 **MCKENNA PROPERTY MANAGEMENT** will be less inclined to provide consumer services
25 without advance payment.

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

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10. I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct.

EXECUTED this 30 day of September, 2019, in Clark County, Nevada.


MCKENNA PROPERTY MANAGEMENT

DECL

Patrick J. Reilly, Esq., Nevada Bar No. 6103

preilly@bhfs.com

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

mhayes@bhfs.com

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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Las Vegas, NV 89106-4614

Telephone: 702.382.2101

Facsimile: 702.382.8135

Attorneys for Nevada Collectors Association

DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA COLLECTORS
ASSOCIATION,

Plaintiff,

v.

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

Defendants.

Case No.:

Dept. No.:

**DECLARATION OF All About Kids IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

I, **All About Kids**, hereby declare as follows:

1. I am the owner of **All About Kids**, a Nevada limited-liability company which is licensed to operate and conduct business in Washoe County, Nevada.
2. **All About Kids** is engaged in the business of Childcare. It provides services to

consumers, often on credit, requiring payment at a later date. Most of our accounts are for small dollar amounts, usually less than \$5,000.00 ("Small Dollar Debts").

3. In the event of a default on an unpaid consumer debt, it is my understanding that **All About Kids** is required to retain a debt collection agency or debt collection attorney to recover that unpaid debt.

4. To the extent that **All About Kids** is required to go to court to obtain payment on an unpaid small dollar consumer debt, it is allowed to recover reasonable attorney's fees under NRS 18.010(2)(a), as the unpaid dollar amount is always less than \$20,000.00.

5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer debt to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if there is an express written agreement for the recovery of attorney's fees.

6. Under A.B. 477, **All About Kids** will be unable to retain an attorney to commence a civil lawsuit to recover a consumer debt because of the cap on attorney's fees, which in most cases would make filing any collection lawsuit cost prohibitive.

7. **All About Kids** (and other businesses like it that provide goods and services to consumers in advance of payment) will effectively have no recourse if it does not get paid on Small Dollar Debts because it (1) is required to have any 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 provisions of Section 19.

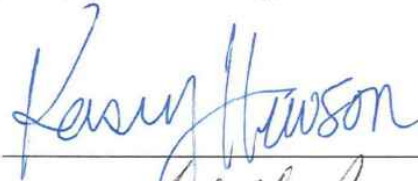
8. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default on their debt obligations because **All About Kids** will not be able to afford an attorney to pursue

those defaults.

9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil actions in Justice Court in small dollar cases, many debts will go unpaid. As a result, **All About Kids** will be less inclined to provide consumer services without advance payment.

10. I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct.

EXECUTED this 9th day of October, 2019, in Washoe County, Nevada.



3615 Lakeside Dr.
Reno, Nevada 89509
775-236-0770

1 **DECL**

Patrick J. Reilly, Esq., Nevada Bar No. 6103

2 preilly@bhfs.com

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

3 mhayes@bhfs.com

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4 100 North City Parkway, Suite 1600

Las Vegas, NV 89106-4614

5 Telephone: 702.382.2101

Facsimile: 702.382.8135

6 *Attorneys for Nevada Collectors Association*

7
8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 NEVADA COLLECTORS
11 ASSOCIATION,

12 Plaintiff,

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
DEFENDANTS 1 through 20,

17 Defendants.
18
19

Case No.:

Dept. No.:

**DECLARATION OF Max Jacobson-Fried IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

20 I, **Max Jacobson-Fried**, hereby declare as follows:

21 1. I am the owner of **JMF Desserts LLC**, a Nevada limited-liability company which
22 is licensed to operate and conduct business in Clark County, Nevada.

23 2. **JMF Desserts LLC** is engaged in the business of Desserts and Baked Goods. It
24 provides services to consumers, often on credit, requiring payment at a later date. Most of our
25 accounts are for small dollar amounts, usually less than \$5,000.00 ("Small Dollar Debts").

26 3. In the event of a default on an unpaid consumer debt, it is my understanding that
27 **JMF Desserts LLC** is required to retain a debt collection agency or debt collection attorney to
28 recover that unpaid debt.

4. To the extent that **JMF Desserts LLC** is required to go to court to obtain payment on an unpaid small dollar consumer debt, it is allowed to recover reasonable attorney's fees under NRS 18.010(2)(a), as the unpaid dollar amount is always less than \$20,000.00.

5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer debt to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if there is an express written agreement for the recovery of attorney's fees.

6. Under A.B. 477, **JMF Desserts LLC** will be unable to retain an attorney to commence a civil lawsuit to recover a consumer debt because of the cap on attorney's fees, which in most cases would make filing any collection lawsuit cost prohibitive.

7. **JMF Desserts LLC** (and other businesses like it that provide goods and services to consumers in advance of payment) will effectively have no recourse if it does not get paid on Small Dollar Debts because it (1) is required to have any 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 provisions of Section 19.

8. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default on their debt obligations because **JMF Desserts LLC** will not be able to afford an attorney to pursue those defaults.

9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil actions in Justice Court in small dollar cases, many debts will go unpaid. As a result, **JMF Desserts LLC** will be less inclined to provide consumer services without advance payment.

10. I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct.

EXECUTED this first day of October, 2019, in Clark County, Nevada.


Max Jacobson-Fried

1 **DECL**

Patrick J. Reilly, Esq., Nevada Bar No. 6103

preilly@bhfs.com

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

mhayes@bhfs.com

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Telephone: 702.382.2101

Facsimile: 702.382.8135

Attorneys for Nevada Collectors Association

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

10 NEVADA COLLECTORS
11 ASSOCIATION,

12 Plaintiff.

13 v.

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

17 Defendants.
18

Case No.:

Dept. No.:

**DECLARATION OF ACCTCORP OF
SOUTHERN NEVADA IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

19 I, **ACCTCORP OF SOUTHERN NEVADA**, hereby declare as follows:

20 1. I am the Operations Manager of ACCTCORP OF SOUTHERN NEVADA, a
21 Nevada Corporation which is licensed to operate and conduct business in Clark County, Nevada.

22 2. **ACCTCORP OF SOUTHERN NEVADA** is a Nevada Licensed Collection
23 Agency. It provides services to Nevada Business Owners advancing costs to our clients to file
24 lawsuits when necessary to effectively recover balances assigned for collections. Most of our
25 accounts are for small dollar amounts, usually less than \$5,000.00 ("Small Dollar Debts").

26 3. In the event of a default on an unpaid consumer debt, ACCTCORP OF
27 SOUTHERN NEVADA is required to retain a debt collection attorney to recover that unpaid
28

1 debt.

2 4. To the extent that **ACCTCORP OF SOUTHERN NEVADA** is required to retain
3 counsel to go to court to obtain payment on an unpaid small dollar consumer debt, it is allowed to
4 recover reasonable attorney's fees under NRS 18.010(2)(a) or NRS chapter 69, as the unpaid
5 dollar amount is always less than \$20,000.00.

6 5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill
7 ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer
8 debt to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if
9 there is an express written agreement for the recovery of attorney's fees.

10 6. Under A.B. 477, **ACCTCORP OF SOUTHERN NEVADA** will be unable to
11 retain an attorney to commence a civil lawsuit to recover a consumer debt because of the cap on
12 attorney's fees, which in most cases would make filing any collection lawsuit cost prohibitive.

13 7. **ACCTCORP OF SOUTHERN NEVADA** will effectively have no recourse if it
14 does do not get paid on Small Dollar Debts because it (1) is required to have any attorney to
15 pursue Small Dollar Debts; and (2) will not be able to hire an attorney given the 15% cap of
16 Section 18 and the patently unfair provisions of Section 19.

17 8. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default
18 on their debt obligations because **ACCTCORP OF SOUTHERN NEVADA** will not be able to
19 afford an attorney to pursue those defaults on behalf of its clients.

20 9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil
21 actions in Justice Court in small dollar cases, many debts will go unpaid. As a result,
22 **ACCTCORP OF SOUTHERN NEVADA** will be less inclined to provide collection services
23 without advance payment for legal costs and fees from its clients.

24 10. I declare under penalty of perjury of the laws of the State of Nevada that the
25 foregoing is true and correct.

26 EXECUTED this 30th day of September, 2019, in Clark County, Nevada.

27 
28 Amanda Patterson, Operations Manager
ACCTCORP OF SOUTHERN NEVADA

1 **DECL**
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

6 *Attorneys for Nevada Collectors Association*
7

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

10 NEVADA COLLECTORS
11 ASSOCIATION,

12 Plaintiff,

13 v.

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

17 Defendants.
18
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Case No.:

Dept. No.:

**DECLARATION OF EAGLE SENTRY IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

20 I, **Cory Reif**, hereby declare as follows:

21 1. I am the owner of **Eagle Sentry**, a Nevada S-corporation which is licensed to
22 operate and conduct business in Clark County, Nevada.

23 2. **Eagle Sentry** is engaged in the business of Alarm Systems and Home Technology.
24 It provides services to consumers, often on credit, requiring payment at a later date. Most of our
25 accounts are for small dollar amounts, usually less than \$5,000.00 ("Small Dollar Debts").

26 3. In the event of a default on an unpaid consumer debt, it is my understanding that
27 **Eagle Sentry** is required to retain a debt collection agency or debt collection attorney to recover
28 that unpaid debt.

4. To the extent that **Eagle Sentry** is required to go to court to obtain payment on an unpaid small dollar consumer debt, it is allowed to recover reasonable attorney's fees under NRS 18.010(2)(a), as the unpaid dollar amount is always less than \$20,000.00.

5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill (“A.B.”) 477, which caps attorney’s fees in any lawsuit involving the collection of a consumer debt to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if there is an express written agreement for the recovery of attorney’s fees.

6. Under A.B. 477, **Eagle Sentry** will be unable to retain an attorney to commence a civil lawsuit to recover a consumer debt because of the cap on attorney's fees, which in most cases would make filing any collection lawsuit cost prohibitive.


7. **Eagle Sentry** (and other businesses like it that provide goods and services to consumers in advance of payment) will effectively have no recourse if it does not get paid on Small Dollar Debts because it (1) is required to have any 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 provisions of Section 19.

8. Effectively, A.B. 477 will allow a “free pass” to consumers who decide to default on their debt obligations because **Eagle Sentry** will not be able to afford an attorney to pursue those defaults.

9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil actions in Justice Court in small dollar cases, many debts will go unpaid. As a result, **Eagle Sentry** will be less inclined to provide consumer services without advance payment.

10. I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct.

EXECUTED this 3rd day of October, 2019, in Clark County, Nevada.


Cory Reif

1 **DECL**

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

6 *Attorneys for Nevada Collectors Association*

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

10 NEVADA COLLECTORS
11 ASSOCIATION,

12 Plaintiff,

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
DEFENDANTS 1 through 20,

17 Defendants.

Case No.:

Dept. No.:

**DECLARATION OF VEGAS VALLEY
HEARING IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

20 **I, Ashley Romero, hereby declare as follows:**

21 1. I am the owner of **VEGAS VALLEY HEARING**, a Nevada limited-liability
22 company which is licensed to operate and conduct business in Clark County, Nevada.

23 2. **VEGAS VALLEY HEARING** is engaged in the business of Audiology. It
24 provides services to consumers, often on credit, requiring payment at a later date. Most of our
25 accounts are for small dollar amounts, usually less than \$5,000.00 ("Small Dollar Debts").

26 3. In the event of a default on an unpaid consumer debt, it is my understanding that
27 **VEGAS VALLEY HEARING** is required to retain a debt collection agency or debt collection
28 attorney to recover that unpaid debt.

1 4. To the extent that **VEGAS VALLEY HEARING** is required to go to court to
2 obtain payment on an unpaid small dollar consumer debt, it is allowed to recover reasonable
3 attorney's fees under NRS 18.010(2)(a), as the unpaid dollar amount is always less than
4 \$20,000.00.

5 5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill
6 ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer
7 debt to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if
8 there is an express written agreement for the recovery of attorney's fees.

9 6. Under A.B. 477, **VEGAS VALLEY HEARING** will be unable to retain an
10 attorney to commence a civil lawsuit to recover a consumer debt because of the cap on attorney's
11 fees, which in most cases would make filing any collection lawsuit cost prohibitive.

12 7. **VEGAS VALLEY HEARING** (and other businesses like it that provide goods
13 and services to consumers in advance of payment) will effectively have no recourse if it does do
14 not get paid on Small Dollar Debts because it (1) is are required to have any attorney to pursue
15 Small Dollar Debts; and (2) will not be able to hire an attorney given the 15% cap of Section 18
16 and the patently unfair provisions of Section 19.

17 8. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default
18 on their debt obligations because **VEGAS VALLEY HEARING** will not be able to afford an
19 attorney to pursue those defaults.

20 9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil
21 actions in Justice Court in small dollar cases, many debts will go unpaid. As a result, **VEGAS**
22 **VALLEY HEARING** will be less inclined to provide consumer services without advance
23 payment.

24 10. I declare under penalty of perjury of the laws of the State of Nevada that the
25 foregoing is true and correct.

26 EXECUTED this 1 day of September, 2019, in Clark County, Nevada.

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BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

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VEGAS VALLEY HEARING

1 **DECL**

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

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6 *Attorneys for Nevada Collectors Association*

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

10 NEVADA COLLECTORS
11 ASSOCIATION,

12 Plaintiff,

13 v.

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

17 Defendants.
18
19

Case No.:

Dept. No.:

**DECLARATION OF AMBER RUSSO IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

20 I, Amber Russo, hereby declare as follows:

21 1. I am the President of **KINO FINANCIAL CO., INC.**, a Nevada company which
22 is licensed to operate and conduct business in Clark County, Nevada.

23 2. **KINO FINANCIAL CO., INC.** is engaged in the business of debt purchasing. It
24 provides services to consumers, often on credit, requiring payment at a later date. Most of our
25 accounts are for small dollar amounts, usually less than \$5,000.00 ("Small Dollar Debts").

26 3. In the event of a default on an unpaid consumer debt, it is my understanding that
27 **KINO FINANCIAL CO., INC.** is required to retain a debt collection agency or debt collection
28 attorney to recover that unpaid debt.

1 4. To the extent that **KINO FINANCIAL CO., LLC.** is required to go to court to
2 obtain payment on an unpaid small dollar consumer debt, it is allowed to recover reasonable
3 attorney's fees under NRS 18.010(2)(a), as the unpaid dollar amount is always less than \$20,000.00.

4 5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill
5 ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer debt
6 to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if there
7 is an express written agreement for the recovery of attorney's fees.

8 6. Under A.B. 477, **KINO FINANCIAL CO., LLC.** will be unable to retain an
9 attorney to commence a civil lawsuit to recover a consumer debt because of the cap on attorney's
10 fees, which in most cases would make filing any collection lawsuit cost prohibitive.

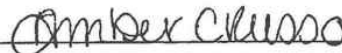
11 7. **KINO FINANCIAL CO., LLC.** will effectively have no recourse if it does do not
12 get paid on Small Dollar Debts because it (1) is are required to have any attorney to pursue Small
13 Dollar Debts; and (2) will not be able to hire an attorney given the 15% cap of Section 18 and the
14 patently unfair provisions of Section 19.

15 8. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default
16 on their debt obligations because **KINO FINANCIAL CO., LLC.** will not be able to afford an
17 attorney to pursue those defaults.

18 9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil
19 actions in Justice Court in small dollar cases, many debts will go unpaid.

20 10. I declare under penalty of perjury of the laws of the State of Nevada that the
21 foregoing is true and correct.

22 EXECUTED this 7th day of October, 2019, in Clark County, Nevada.

23 

24 Amber C. Russo, President
25 **KINO FINANCIAL CO., LLC.**

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

1 **DECL**

2 Patrick J. Reilly, Esq., Nevada Bar No. 6103
3 preilly@bhfs.com
4 Marckia L. Hayes, Esq., Nevada Bar No. 14539
5 mhayes@bhfs.com
6 BROWNSTEIN HYATT FARBER SCHRECK, LLP
7 100 North City Parkway, Suite 1600
8 Las Vegas, NV 89106-4614
9 Telephone: 702.382.2101
10 Facsimile: 702.382.8135

11 *Attorneys for Nevada Collectors Association*

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

14 NEVADA COLLECTORS
15 ASSOCIATION,

16 Plaintiff,

17 v.

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

25 Defendants.

Case No.:
Dept. No.:

**DECLARATION OF MICHAEL K
SCHAEFER IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION**

26 **I, MICHAEL K SCHAEFER**, hereby declare as follows:

27 1. I am the owner of FRONTIER LANDSCAPING, INC., a Nevada Corporation
28 which is licensed to operate and conduct business in Clark County, Nevada.

29 2. FRONTIER LANDSCAPING, INC., is engaged in the business of providing
30 landscaping services. It provides services to consumers, often on credit, requiring payment at a
31 later date. Most of our accounts are for small dollar amounts, usually less than \$5,000.00 ("Small
32 Dollar Debts").

33 3. In the event of a default on an unpaid consumer debt, it is my understanding that
34 FRONTIER LANDSCAPING, INC., is required to retain a debt collection agency or debt
35 collection attorney to recover that unpaid debt.

19738605.1

NCA000561

JA0672

1 4. To the extent that FRONTIER LANDSCAPING, INC., is required to go to court
2 to obtain payment on an unpaid small dollar consumer debt, it is allowed to recover reasonable
3 attorney's fees under NRS 18.010(2)(a), as the unpaid dollar amount is always less than
4 \$20,000.00.

5 5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill
6 ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer
7 debt to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if
8 there is an express written agreement for the recovery of attorney's fees.

9 6. Under A.B. 477, FRONTIER LANDSCAPING, INC., will be unable to retain an
10 attorney to commence a civil lawsuit to recover a consumer debt because of the cap on attorney's
11 fees, which in most cases would make filing any collection lawsuit cost prohibitive.

12 7. FRONTIER LANDSCAPING, INC., (and other businesses like it that provide
13 goods and services to consumers in advance of payment) will effectively have no recourse if it
14 does do not get paid on Small Dollar Debts because it (1) is required to have any attorney to
15 pursue Small Dollar Debts; and (2) will not be able to hire an attorney given the 15% cap of
16 Section 18 and the patently unfair provisions of Section 19.

17 8. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default
18 on their debt obligations because FRONTIER LANDSCAPING, INC., will not be able to afford
19 an attorney to pursue those defaults.

20 9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil
21 actions in Justice Court in small dollar cases, many debts will go unpaid. As a result, FRONTIER
22 LANDSCAPING, INC., will be less inclined to provide consumer services without advance
23 payment.

24 ////

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26 ////

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3 10. I declare under penalty of perjury of the laws of the State of Nevada that the
4 foregoing is true and correct.

5 EXECUTED this 2nd day of October, 2019, in Clark County, Nevada.

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MICHAEL K SCHAEFER

1 **DECL**

2 Patrick J. Reilly, Esq., Nevada Bar No. 6103
3 preilly@bhfs.com
4 Marckia L. Hayes, Esq., Nevada Bar No. 14539
5 mhayes@bhfs.com
6 BROWNSTEIN HYATT FARBER SCHRECK, LLP
7 100 North City Parkway, Suite 1600
8 Las Vegas, NV 89106-4614
9 Telephone: 702.382.2101
10 Facsimile: 702.382.8135

11 *Attorneys for Nevada Collectors Association*

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

14 NEVADA COLLECTORS
15 ASSOCIATION,

16 Plaintiff,

17 v.

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

25 Defendants.

Case No.:
Dept. No.:

26 **DECLARATION OF G. MARK SYLVAIN**
27 **M.D. IN SUPPORT OF MOTION FOR**
28 **PRELIMINARY INJUNCTION**

1 I, G. MARK SYLVAIN M.D., hereby declare as follows:

2 1. I am the owner of **ORTHOPAEDIC SPECIALISTS OF NEVADA**, a Nevada
3 limited-liability company which is licensed to operate and conduct business in Clark County,
4 Nevada.

5 2. **ORTHOPAEDIC SPECIALISTS OF NEVADA** is engaged in the business of
6 orthopaedic medical services. It provides services to consumers, often on credit, requiring
7 payment at a later date. Most of our accounts are for small dollar amounts, usually less than
8 \$5,000.00 ("Small Dollar Debts").

9 3. In the event of a default on an unpaid consumer debt, it is my understanding that

1 **ORTHOPAEDIC SPECIALISTS OF NEVADA** is required to retain a debt collection agency
2 or debt collection attorney to recover that unpaid debt.

3 4. To the extent that **ORTHOPAEDIC SPECIALISTS OF NEVADA** is required to
4 go to court to obtain payment on an unpaid small dollar consumer debt, it is allowed to recover
5 reasonable attorney's fees under NRS 18.010(2)(a), as the unpaid dollar amount is always less
6 than \$20,000.00.

7 5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill
8 ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer
9 debt to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if
10 there is an express written agreement for the recovery of attorney's fees.

11 6. Under A.B. 477, **ORTHOPAEDIC SPECIALISTS OF NEVADA** will be unable
12 to retain an attorney to commence a civil lawsuit to recover a consumer debt because of the cap
13 on attorney's fees, which in most cases would make filing any collection lawsuit cost prohibitive.

14 7. **ORTHOPAEDIC SPECIALISTS OF NEVADA** (and other businesses like it
15 that provide goods and services to consumers in advance of payment) will effectively have no
16 recourse if it does not get paid on Small Dollar Debts because it (1) is required to have any
17 attorney to pursue Small Dollar Debts; and (2) will not be able to hire an attorney given the 15%
18 cap of Section 18 and the patently unfair provisions of Section 19.

19 8. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default
20 on their debt obligations because **ORTHOPAEDIC SPECIALISTS OF NEVADA** will not be
21 able to afford an attorney to pursue those defaults.

22 9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil
23 actions in Justice Court in small dollar cases, many debts will go unpaid. As a result,
24 **ORTHOPAEDIC SPECIALISTS OF NEVADA** will be less inclined to provide consumer
25 services without advance payment.

26 10. I declare under penalty of perjury of the laws of the State of Nevada that the
27 foregoing is true and correct.

28 EXECUTED this ____ day of September, 2019, in Clark County, Nevada.

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

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LOCAL BUSINESS OPERATOR

19738605.1

1 **DECL**

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

6 *Attorneys for Nevada Collectors Association*

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

10 NEVADA COLLECTORS
11 ASSOCIATION,

12 Plaintiff,

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.

Case No.:

Dept. No.:

**DECLARATION OF KELLY TATE, C.P.A.
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

20 I, KELLY TATE, C.P.A., hereby declare as follows:

21 1. I am the President of TARHEEL, INC., a Nevada corporation which is licensed to
22 operate and conduct business in Clark County, Nevada.

23 2. TARHEEL, INC. is engaged in the business of providing accounting services to
24 the general public. It provides services to consumers, often on credit, requiring payment at a later
25 date. Many of our accounts are for small dollar amounts, usually less than \$5,000.00 ("Small
26 Dollar Debts").

27 3. In the event of a default on an unpaid consumer debt, it is my understanding that
28 TARHEEL, INC. is required to retain a debt collection agency or debt collection attorney to

1 recover that unpaid debt.

2 4. To the extent that TARHEEL, INC. is required to go to court to obtain payment on
3 an unpaid small dollar consumer debt, it is allowed to recover reasonable attorney's fees under
4 NRS 18.010(2)(a), as the unpaid dollar amount is always less than \$20,000.00.

5 5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill
6 ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer
7 debt to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if
8 there is an express written agreement for the recovery of attorney's fees.

9 6. Under A.B. 477, TARHEEL, INC. will be unable to retain an attorney to
10 commence a civil lawsuit to recover a consumer debt because of the cap on attorney's fees, which
11 in most cases would make filing any collection lawsuit cost prohibitive.

12 7. TARHEEL, INC. (and other businesses like it that provide goods and services to
13 consumers in advance of payment) will effectively have no recourse if it does do not get paid on
14 Small Dollar Debts because it (1) is required to have any attorney to pursue Small Dollar Debts;
15 and (2) will not be able to hire an attorney given the 15% cap of Section 18 and the patently
16 unfair provisions of Section 19.

17 8. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default
18 on their debt obligations because TARHEEL, INC. will not be able to afford an attorney to pursue
19 those defaults.

20 9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil
21 actions in Justice Court in small dollar cases, many debts will go unpaid. As a result, TARHEEL,
22 INC. will be less inclined to provide consumer services without advance payment.

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10. I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct.

EXECUTED this 15th day of October, 2019, in Clark County, Nevada.

~~KELLY TATE, C.P.A.~~

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

1 **DECL**
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

6 *Attorneys for Nevada Collectors Association*

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

10 NEVADA COLLECTORS
11 ASSOCIATION,

12 Plaintiff,

13 v.

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

17 Defendants.
18
19

Case No.:
Dept. No.:

**DECLARATION OF MARTY BASCH IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

20 I, Marty Basch, hereby declare as follows:

21 1. I am the Executive Vice President of **KEMP BROADCASTING & DIGITAL**
22 **OUTDOOR**, a Nevada limited-liability company which is licensed to operate and conduct
23 business in Clark County, Nevada.

24 2. **KEMP BROADCASTING & DIGITAL OUTDOOR** is engaged in the business
25 of Advertising. It provides services to consumers, often on credit, requiring payment at a later
26 date. Most of our accounts are for small dollar amounts, usually less than \$5,000.00 ("Small
27 Dollar Debts").

28 3. In the event of a default on an unpaid consumer debt, it is my understanding that

1 **KEMP BROADCASTING & DIGITAL OUTDOOR** is required to retain a debt collection
2 agency or debt collection attorney to recover that unpaid debt.

3 4. To the extent that **KEMP BROADCASTING & DIGITAL OUTDOOR** is
4 required to go to court to obtain payment on an unpaid small dollar consumer debt, it is allowed
5 to recover reasonable attorney's fees under NRS 18.010(2)(a), as the unpaid dollar amount is
6 always less than \$20,000.00.

7 5. It is my understanding that the Nevada Legislature recently enacted Assembly Bill
8 ("A.B.") 477, which caps attorney's fees in any lawsuit involving the collection of a consumer
9 debt to no more than fifteen percent (15%) of the unpaid principal amount of the debt, and only if
10 there is an express written agreement for the recovery of attorney's fees.

11 6. Under A.B. 477, **KEMP BROADCASTING & DIGITAL OUTDOOR** will be
12 unable to retain an attorney to commence a civil lawsuit to recover a consumer debt because of
13 the cap on attorney's fees, which in most cases would make filing any collection lawsuit cost
14 prohibitive.

15 7. **KEMP BROADCASTING & DIGITAL OUTDOOR** (and other businesses like
16 it that provide goods and services to consumers in advance of payment) will effectively have no
17 recourse if it does not get paid on Small Dollar Debts because it (1) is required to have any
18 attorney to pursue Small Dollar Debts; and (2) will not be able to hire an attorney given the 15%
19 cap of Section 18 and the patently unfair provisions of Section 19.

20 8. Effectively, A.B. 477 will allow a "free pass" to consumers who decide to default
21 on their debt obligations because **KEMP BROADCASTING & DIGITAL OUTDOOR** will not
22 be able to afford an attorney to pursue those defaults.

23 9. Because A.B. 477 will effectively prohibit debt collectors from commencing civil
24 actions in Justice Court in small dollar cases, many debts will go unpaid. As a result, **KEMP**
25 **BROADCASTING & DIGITAL OUTDOOR** will be less inclined to provide consumer
26 services without advance payment.

27 10. I declare under penalty of perjury of the laws of the State of Nevada that the
28 foregoing is true and correct.

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4514
702.382.2101

EXECUTED this 30th Day of October, 2019, in Clark County, Nevada.


KEMP BROADCASTING & DIGITAL OUTDOOR
Marty Basch, Executive Vice President

Peter J. Goatz, Esq.
Legal Aid Center of Southern Nevada, Inc.
725 E. Charleston Blvd.
Las Vegas, NV 89104
702-386-1519
pgoatz@lacsns.org

Re: Testimony on AB 477, the Consumer Protection from the Accrual of Predatory Interest After Default Act

Madam Chair, and members of the committee, my name is Peter Goatz, and I am an attorney in the consumer protection unit of Legal Aid Center of Southern Nevada. My practice is focused on providing legal advice and direct representation to low-income consumers in our community. I support AB 477 because too many Nevadans are at the mercy of form contracts which provide for the charging of high interest rates and attorney's fees for years after they have defaulted on a debt.

A Real-Life Example:

In February 2015, a 24-year-old co-signed for the purchase of a vehicle for on credit for his cousin. The sale was set forth in a form retail installment sales contract. The total purchase price was \$11,411.18, of which \$10,229.18 was financed at 23.99% APR for 42 months. His cousin fell behind on payments, and by April 2016 the vehicle was repossessed by the finance company and sold. At the time of the repossession, \$11,624.66 was owed. The vehicle sold at auction for a mere \$1,300. Adding in costs of the repossession, and being credited for unused service contract or GAP insurance premiums, a deficiency remained of \$8,000.09.

The finance company then sued both individuals to recover the balance owed on the loan. Neither defended the suit, and a default judgment entered on May 25, 2017 in the principal amount of \$8,000.09. The total of the judgment of \$10,849.21, which included \$500 in attorney's fees, \$330 in costs, and \$2,019.12 in prejudgment interest.

The finance company recently began to collect on the judgment by garnishing his wages, which are \$10.00 per hour. He came to Legal Aid for assistance to stop the garnishment. Although the principal amount of the judgment was \$8,000.09, because of interest accruing at 23.99%, in just 3 years pre-and post-judgment interest alone increased the balance owed by \$5,826.02 – a 72.82% increase over the balance of the loan.

Assembly Committee: Commerce and Labor Exhibit: C Page 1 of 5 Date: 04/03/2019 Submitted by: Peter J. Goatz

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And because there is no way to stop the garnishment, even with the wage exemption protections, a portion of his earnings will be garnished until paid. The continued garnishment, however, will not be enough to keep up with the interest accruing at \$5.26 per day.

AB 477 seeks to protect Nevadans from the imposition of a high interest rates and attorney's fees that would follow them throughout the collection process, which keeps them on a debt treadmill or may force them into bankruptcy.

What does the bill do?

The bill defines a consumer form contract, and places reasonable limitations on the interest a creditor can charge and collect after default. The bill also limits the attorney's fees a creditor can charge, allowing the consumer to make progress to repay the creditor, and break the cycle of debt.

What are Consumer Form Contracts?

Consumer form contracts are contracts of adhesion – meaning that the consumer has little to no say in the negotiation of the terms of the contract. They are presented to consumers on a take-it-or-leave-it basis. These contracts may be contracts for the purchase of furniture or vehicles, or for services. Usually, these contracts call for performance over a period of time and obligate the consumer to pay the creditor in installments at a specified interest rate for the item or service.

A common form consumer contract is called a retail installment sales contract. These contracts are, "the most common means by which vehicle sales are financed, and they are also a common means of financing the sale of other goods such as furniture. Sometimes they are also used for other sales such as gym memberships. The retail seller enters into a contract with the consumer for the sale of the goods that provides for the payment of the price, plus finance charges, in installments over time. A retail installment contract provides that the payments are to be made to the retail seller." National Consumer Law Center, Consumer Credit Regulation Ch. 11 (2d ed. 2015).

How the law works now:

In Nevada, the interest rate stated in a consumer form contract applies throughout and beyond the date of performance set forth in the contract. The consumer form

contract rate of interest applies after default, before a judgment is entered, and after a judgment is entered until paid---often many years. And since interest rates are unlimited in Nevada, a consumer form contract can set any rate of interest, and include the compounding of interest.

In the absence of provisions in a contract setting forth the rate of interest and its computation, the interest rate is set by the Commissioner of Financial Institutions at a rate equal to the prime rate at the largest bank in Nevada plus 2% and interest is calculated using simple interest, which is recalculated each January 1 and July 1.

While consumers might understand what they're signing up for by agreeing to a consumer form contract for when they, say, agree to pay for a used car over 3 years at an APR of 29%, they do not foresee this typical scenario: after one year, the car breaks down. The consumer cannot afford repairs and so the car is repossessed and sold resulting in a deficiency of several thousand dollars. The debt is then sold to a debt buyer, which sits on the debt for up to four years after the original default while the interest rate continues running at 29% -- doubling the debt over a three-year period. A lawsuit is filed and judgment obtained for the original deficiency amount plus interest at the contract rate of 29% (and attorney's fees and costs, of course). And while the judgment is being collected by garnishing the consumer's wages, the contract rate of interest awarded in the judgment keeps running at 29% (plus more collection costs and fees), effectively placing the consumer on a debt treadmill potentially forever as a judgment can be renewed every 6 years until finally paid.

A Matter of Interest:

The consumer is free to contract with a provider of goods and services. Generally, however, the only negotiating power a consumer has in scenarios where the goods or service is for a period of time is for the price, interest rate, and term of repayment. But in credit sales, even the interest rate and repayment terms are usually decided for the consumer based on their credit history. When a consumer form contract is used, it will contain other provisions regarding when a default occurs, and how interest is calculated. These provisions a consumer cannot negotiate or bargain for.

The purpose of post-default, prejudgment interest is to compensate a plaintiff for the lost opportunity to use the money owed between the time the plaintiff's claim accrued and the time of judgment. *Sunwest Bank v. Colucci*, 117 N.M. 373, 377, 872 P.2d 346, 350 (1994).

Post-judgment interest, on the other hand, compensates a plaintiff for being deprived of compensation from the time of the judgment until payment of the judgment debt by the defendant. *See Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 835-36, 110 S.Ct. 1570, 108 L.Ed.2d 842 (1990).

Often, consumer form contracts are written in such a way as to require that interest continue to accrue at the rate in the contract until paid in full. Nevada allows for this to happen.

Other States:

Post-default, prejudgment interest rates vary by state. Some jurisdictions mirror Nevada and provide that the interest rate originally agreed to continues to accrue after default and through judgment. In other jurisdictions, after default, the rate is limited to a fixed rate or the lesser of the contract rate or the fixed rate set by that state's statute. For example, Delaware sets the interest rate at default at 5% over the Federal Reserve discount rate including any surcharge or the contract rate, whichever is less. Del. Code Ann. Tit. 6, § 2301.

As for post-judgment interest, one treatise notes, "In some jurisdictions, judgments and decrees are held to bear a fixed statutory rate of interest, notwithstanding the contracts on which they are founded provide for a different rate, except in cases in which the statute provides that the interest called for by the contract determines the rate of the judgment or where the contract interest rate applies if the contract was unambiguous that its rate would be applied to the judgment. Generally, the contract rate applies until the contract is superseded by the judgment, or stated alternatively, the contract rate governs until the contract is merged in a judgment, at which time interest then accrues at the statutory rate." 47 C.J.S. Interest & Usury § 100.

Texas, for example, limits the accrual of interest post-judgment to the lesser of the contract rate or 18% per year. Tex. Fin. Code Ann. § 304.002.

A Jurisdictions Comparative Chart: Pre/Post Judgment Interest compiled by Cozen O'Connor of states' laws as of January 2015, has been submitted to the committee and should be available on NELIS.

AB 477 strikes a fair balance in calculating interest at the rate provided by the proposed statute.

Attorneys' Fees:

Nevada allows recovery of attorney's fees if a statute, rule, or contractual provision authorizes such an award. *See Smith v. Crown Fin. Servs. of Am.*, 111 Nev. 277, 281, 890 P.2d 769, 771 (1995); *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 106 P.3d 1198, 1200 (2005). A court may grant an award for attorney fees provided that the fees are reasonable. *Kahn v. Morse & Mowbray*, 121 Nev. 464, 479, 117 P.3d 227, 238 (2005) (finding the decision to award attorney's fees is within the discretion of

the court if brought claims have reasonable grounds). Reasonable attorney fees include charges for paralegals, law clerks, and non-attorney staff who support an attorney during litigation. *LVMPD v. Yeghiazarian*, 129 Nev. 760, 312 P.3d 503, 510 (2013). The amount of awards is only tempered by reasonableness.

In debt collection cases, our office has seen attorney's fees requests that are almost the entire amount of principal balance or multiples of the balance. For example, in one case, a single mother was sued by a debt collector on a principal debt of \$1,850. The debt collector's attorney filed a motion for summary judgment, requesting attorney's fees of \$1,610. In another case, the same debt collector and attorney sued a consumer on a \$575 principal debt, and requested \$1,650 in attorney's fees. The charging of attorney's fees in multiples of the principal debt is unconscionable, but permissible. AB 477 would limit those charges.

The bill limits attorney's fees to the lesser of 15% of the principal balance being collected or the reasonable hourly rate multiplied by the reasonable amount of time it took to obtain the judgment. This would mean that more cases would be resolved in small claims, where attorney's fees are unavailable, or that Nevada consumers would not be penalized unreasonably by the imposition of attorney's fees.

The Bill Applied:

The 24-year old who co-signed for a vehicle purchase for his cousin at an interest rate of 23.99% could have benefited from a bill like AB 477. Instead of accruing \$5,826.02 in interest over the past three years, the interest that would accrue under this bill would have been \$1,515.47, which is more manageable for the consumer to repay and provides a reasonable interest rate to compensate the creditor for the lost opportunity to use the money owed.

I urge this committee to pass AB 477 to protect Nevadans from creditors who seek to charge consumers in consumer form contracts high interest rates and attorney's fees for years after a consumer defaults on a debt.

Peter J. Goatz, Esq.
Legal Aid Center of Southern Nevada, Inc.
725 E. Charleston Blvd.
Las Vegas, NV 89104
702-386-1519
pgoatz@lacsns.org

Re: Testimony on AB 477, the Consumer Protection from the Accrual of Predatory Interest After Default Act

Madam Chair, and members of the committee, my name is Peter Goatz, and I am an attorney in the consumer protection unit of Legal Aid Center of Southern Nevada. My practice is focused on providing legal advice and direct representation to low-income consumers in our community. I support AB 477 because too many Nevadans are at the mercy of form contracts which provide for the charging of high interest rates and attorney's fees for years after they have defaulted on a debt tapping them in a cycle of debt from which they may never escape.

A Real-Life Example:

In February 2015, a 24-year-old co-signed for the purchase of a vehicle for on credit for his cousin. The sale was set forth in a form retail installment sales contract. The total purchase price was \$11,411.18, of which \$10,229.18 was financed at 23.99% APR for 42 months. His cousin fell behind on payments, and by April 2016 the vehicle was repossessed by the finance company and sold. At the time of the repossession, \$11,624.66 was owed. The vehicle sold at auction for a mere \$1,300. Adding in costs of the repossession, and being credited for unused service contract or GAP insurance premiums, a deficiency remained of \$8,000.09.

The finance company then sued both individuals to recover the balance owed on the loan. Neither defended the suit, and a default judgment entered on May 25, 2017 in the principal amount of \$8,000.09. The total of the judgment of \$10,849.21, which included \$500 in attorney's fees, \$330 in costs, and \$2,019.12 in prejudgment interest.

The finance company recently began to collect on the judgment by garnishing his wages, where he makes \$10.00 per hour. He came to Legal Aid for assistance to stop the garnishment. Although the principal amount of the judgment was \$8,000.09, because of interest accruing at 23.99%, in just 3 years pre-and post-judgment

EXHIBIT E Senate Committee on Commerce and Labor	
Date: 5-8-2019	Total pages: 5
Exhibit begins with: E1	thru: E5

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interest alone increased the balanced owed by \$5,826.02 – a 72.82% increase over the balance of the loan.

And because there is no way to stop the garnishment, even with the wage exemption protections, a portion of his earnings will be garnished until paid. The continued garnishment, however, will not be enough to keep up with the interest accruing at \$5.26 per day.

AB 477 seeks to protect Nevadans from the imposition of a high interest rate and attorney's fees that would follow them throughout the collection process, which keeps them on a debt treadmill or may force them into bankruptcy.

What does the bill do?

The bill defines a consumer form contract, and places reasonable limitations on the amount a creditor can charge and collect after default. The bill limits the amount of interest and attorney's fees a creditor can charge, allowing the consumer to make progress to repay the creditor, and break the cycle of debt.

What are Consumer Form Contracts?

Consumer form contracts are contracts of adhesion – meaning that the consumer has little to no say in the negotiation of the terms of the contract. They are presented to consumers on a take-it-or-leave-it basis. These contracts may be contracts for the purchase of furniture or vehicles, or for services. Usually, these contracts call for performance over a period of time and obligate the consumer to pay the creditor in installments at a specified interest rate for the item or service.

A common form consumer contract is called a retail installment sales contract. These contracts “are the most common means by which vehicle sales are financed, and they are also a common means of financing the sale of other goods such as furniture. Sometimes they are also used for other sales such as gym memberships. The retail seller enters into a contract with the consumer for the sale of the goods that provides for the payment of the price, plus finance charges, in installments over time. A retail installment contract provides that the payments are to be made to the retail seller.” National Consumer Law Center, Consumer Credit Regulation Ch. 11 (2d ed. 2015).

How the law works now:

In Nevada, the interest rate stated in a consumer form contract applies throughout and beyond the date of performance set forth in the contract. The consumer form contract rate of interest applies after default, before a judgment is entered, and after a judgment is entered until paid---often many years. And since interest rates are unlimited in Nevada, a consumer form contract can set any rate of interest, and include the compounding of interest.

In the absence of provisions in a contract setting forth the rate of interest and its computation, the interest rate is set by the Commissioner of Financial Institutions at a rate equal to the prime rate at the largest bank in Nevada plus 2% and interest is calculated using simple interest, which is recalculated each January 1 and July 1.

While consumers might understand what they're signing up for by agreeing to a consumer form contract for when they, say, agree to pay for a used car over 3 years at an APR of 29%, they do not foresee this typical scenario: after one year, the car breaks down. The consumer cannot afford repairs and so the car is repossessed and sold resulting in a deficiency of several thousand dollars. The debt is then sold to a debt buyer, which sits on the debt for up to four years after the original default while the interest rate continues running at 29% -- doubling the debt over a three-year period. A lawsuit is filed and judgment obtained for the original deficiency amount plus interest at the contract rate of 29% (and attorney's fees and costs, of course). And while the judgment is being collected by garnishing the consumer's wages, the contract rate of interest awarded in the judgment keeps running at 29% (plus more collection costs and fees), effectively placing the consumer on a debt treadmill potentially forever as a judgment can be renewed every 6 years until finally paid.

A Matter of Interest:

The consumer is free to contract with a provider of goods and services. Generally, however, the only negotiating power a consumer has in scenarios where the goods or service is for a period of time is for the price, interest rate, and term of repayment. But in credit sales, even the interest rate and repayment terms are usually decided for the consumer based on their credit history. When a consumer form contract is used, it will contain other provisions regarding when a default occurs, and how interest is calculated. These provisions a consumer cannot negotiate or bargain for.

The purpose of post-default, prejudgment interest is to compensate a plaintiff for the lost opportunity to use the money owed between the time the plaintiff's claim

accrued and the time of judgment. *Sunwest Bank v. Colucci*, 117 N.M. 373, 377, 872 P.2d 346, 350 (1994).

Post-judgment interest, on the other hand, compensates a plaintiff for being deprived of compensation from the time of the judgment until payment of the judgment debt by the defendant. *See Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 835–36, 110 S.Ct. 1570, 108 L.Ed.2d 842 (1990).

Often, consumer form contracts are written in such a way as to require that interest continue to accrue at the rate in the contract until paid in full. Nevada allows for this to happen.

Other States:

Post-default, prejudgment interest rates vary by state. Some jurisdictions mirror Nevada and provided that the interest rate originally agreed to continues to accrue after default and through judgment. In other jurisdictions, after default, the rate is limited to a fixed rate or the lesser of the contract rate or the fixed rate set by that state's statute. For example, Delaware sets the interest rate at default at 5% over the Federal Reserve discount rate including any surcharge or the contract rate, whichever is less. Del. Code Ann. Tit. 6, § 2301.

As for post-judgment interest, one treatise notes, "In some jurisdictions, judgments and decrees are held to bear a fixed statutory rate of interest, notwithstanding the contracts on which they are founded provide for a different rate, except in cases in which the statute provides that the interest called for by the contract determines the rate of the judgment or where the contract interest rate applies if the contract was unambiguous that its rate would be applied to the judgment. Generally, the contract rate applies until the contract is superseded by the judgment, or stated alternatively, the contract rate governs until the contract is merged in a judgment, at which time interest then accrues at the statutory rate." 47 C.J.S. Interest & Usury § 100.

Texas, for example, limits the accrual of interest post-judgment to the lesser of the contract rate or 18% per year. Tex. Fin. Code Ann. § 304.002.

A *Jurisdictions Comparative Chart: Pre/Post Judgment Interest* compiled by Cozen O'Connor of states' laws as of January 2015, is attached for reference.

We think AB 477 strikes a fair balance in calculating interest at the rate provided by the proposed statute.

Attorneys' Fees:

Nevada allows recovery of attorney's fees if a statute, rule, or contractual provision authorizes such an award. *See Smith v. Crown Fin. Servs. of Am.*, 111 Nev. 277, 281, 890 P.2d 769, 771 (1995); *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 106 P.3d 1198, 1200 (2005). A court may grant an award for attorney fees provided that the fees are reasonable. *Kahn v. Morse & Mowbray*, 121 Nev. 464, 479, 117 P.3d 227, 238 (2005) (finding the decision to award attorney's fees is within the discretion of the court if brought claims have reasonable grounds). Reasonable attorney fees include charges for paralegals, law clerks, and non-attorney staff who support an attorney during litigation. *LVMPD v. Yeghiazarian*, 129 Nev. 760, 312 P.3d 503, 510 (2013). The amount of awards is only tempered by reasonableness.

In debt collection cases, our office has seen attorney's fees requests that are almost the entire amount of principal balance or multiples of the balance. For example, in one case, a single mother was sued by a debt collector on a principal debt of \$1,850. The debt collector's attorney filed a motion for summary judgment, requesting attorney's fees of \$1,610. In another case, the same debt collector and attorney sued a consumer on a \$575 principal debt, and requested \$1,650 in attorney's fees. The charging of attorney's fees in multiples of the principal debt is unconscionable, but permissible. AB 477 would limit those charges.

The bill limits attorney's fees to the lesser of 15% of the principal balance being collected or the reasonable hourly rate multiplied by the reasonable amount of time it took to obtain the judgment. This law would likely mean that more cases would be resolved in small claims, where attorney's fees are unavailable because there would not be an incentive for an attorney to take on a small dollar debt case, or that Nevada consumers would not be penalized unreasonably by the imposition of attorney's fees.

Support AB 477

I urge this committee to pass AB 477 to protect Nevadans from creditors who allow interest to accrue for years before they attempt to collect on a consumer form contract thus giving consumer an opportunity to avoid being trapped in a debt cycle from which they may never escape.

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

Attorneys for Nevada Collectors Association

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NEVADA COLLECTORS
ASSOCIATION,

Plaintiff,

v.

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

Defendants.

Case No.: 2:20-cv-00007-JCM-EJY

DECLARATION OF PATRICK J. REILLY,
ESQ. IN SUPPORT OF APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND
MOTION FOR PRELIMINARY
INJUNCTION OR, ALTERNATIVELY,
FOR A WRIT OF MANDAMUS OR
PROHIBITION

I, Patrick J. Reilly, Esq., hereby declare as follows:

1. I am a shareholder with Brownstein Hyatt Farber Schreck, LLP and counsel for the Nevada Collectors Association ("NCA") in this action.

2. I make this declaration in support of NCA's Application for Temporary Restraining Order and Motion for Preliminary Injunction or, Alternatively, for a Writ of Mandamus or Prohibition.

3. NCA originally filed its complaint in state court in this matter and, shortly thereafter, moved for a preliminary injunction, knowing that it would obtain a firm hearing date on its motion.

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4. Indeed, the hearing was scheduled for a set time on February 27, 2020.

5. For this reason, NCA did not seek a temporary restraining order in state court.

6. I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

EXECUTED this 24th day of January, 2020, in Clark County, Nevada.



PATRICK J. REILLY, ESQ.

EAR, NOSE AND THROAT CONSULTANTS OF NEVADA
ACCOUNT ADJUSTMENT REQUEST FORM

4/27/2020

Jacqueline Redacted
Redacted

Acct#: Redacted DOS 10/23/19

DOCTORS NAME: FOGGIA GOLL SIKAND SCHROEDER YU
TOLAN SALINAS KIM LANDRY WALKER ELLIS MIRABAL

COLLECTIONS

1ST STATEMENT DATE 11/28/2019 1ST COLLECTION LETTER 3/9/2020
LAST STATEMENT DATE 2/28/2020 FINAL CALL MADE 4/20/2020

Surgery Write Off:	\$		CoPay	DED	Co-Ins
Office Write Off:	\$		CoPay	DED	Co-Ins
Office Procedure W/O:	\$	426.03	CoPay	DED	Co-Ins
Collection Fee:	\$	229.40	CoPay	DED	Co-Ins
W/O Amt Requested:	\$	655.43			

Reviewed By: _____ Date of Adjustment: _____

FOR OFFICIAL USE ONLY

COLLECTIONS _____ ? Date: _____
Yes ☒ No ☐ Date: 4/28/20
Doctors Signature / Administrator Signature

PATIENT #: _____

**Ear Nose and Throat Consultants of Nevada
Patient History and Agreement-Adult**

Patient: (please print)

Name (include middle initial) Jacqueline **Redacted** Cell Phone **Redacted**
Sex M F Date of Birth **Redacted** Age 36 Social Security Number **Redacted**
Address **Redacted**
City **Redacted** State **Redacted** Zip _____
Occupation Casino Dealer Employer Palm Work Phone _____
Work Address _____ City _____ State _____ Zip _____
Race / Ethnicity: _____ Language: _____
Email Address: _____

Spouse:

Name (include middle initial) _____ Home Phone _____
Sex M F Date of Birth _____ Age _____ Social Security Number _____
Address _____
City _____ State _____ Zip _____
Occupation _____ Employer _____ Work Phone _____
Work Address _____ City _____ State _____ Zip _____

Insurance Information:

Primary Insurance Health Plan of Nevada Subscriber _____
I.D. Number **Redacted** Group Number **Redacted** Phone _____
Claims Mailing Address _____
Secondary Insurance _____ Subscriber _____
I.D. Number _____ Group Number _____ Phone _____
Claims Mailing Address _____

Other Information:

Referred By SW Medical Primary Care Physician _____
Emergency Contact _____ Phone _____
Nearest relative not living with you Ernest **Redacted** Phone **Redacted**

Financial Agreement and Authorization for Treatment

The above information is complete and correct. I authorize treatment of the above named patient. I hereby authorize release of information necessary to file a claim with my insurance company and I assign benefits otherwise payable to me to the doctor or group indicated on the claim. All professional services are charged to the patient. The patient is responsible for all fees, regardless of insurance coverage. In the event of collection proceedings due to lack of payment on my part, I agree to pay any and all collection fees that may be added to my account in order to recover monies due the doctor.

A copy of the signature is as valid as the original.

[Signature] 10/23/19 _____
PATIENT SIGNATURE DATE GUARANTOR SIGNATURE DATE REGISTERED BY INITIALS

EAR, NOSE AND THROAT CONSULTANTS OF NEVADA
ACCOUNT ADJUSTMENT REQUEST FORM

4/27/2020

Samantha Redacted
Redacted

Acct#: Redacted DOS 10/18/19

DOCTORS NAME: FOGGIA GOLL SIKAND SCHROEDER YU
TOLAN SALINAS KIM LANDRY WALKER ELLIS MIRABAL

COLLECTIONS

1ST STATEMENT DATE 11/28/19 1ST COLLECTION LETTER 3/9/2020
LAST STATEMENT DATE 2/28/20 FINAL CALL MADE 4/20/2020

Surgery Write Off:	\$		CoPay	DED	Co-Ins
Office Write Off:	\$	50.00	CoPay	DED	Co-Ins
Office Procedure W/O:	\$	195.00	CoPay	DED	Co-Ins
Collection Fee:	\$	131.92	CoPay	DED	Co-Ins
W/O Amt Requested:	\$	376.92			
Reviewed By:	JA		Date of Adjustment:	4/27/2020	

FOR OFFICIAL USE ONLY

COLLECTIONS ? Date: 4/28/20
Yes ☒ No ☐
Date: 4/28/20
Doctors Signature / Administrator Signature
Jennifer Price

PATIENT #: _____

**Ear Nose and Throat Consultants of Nevada
Patient History and Agreement-Adult**

Patient: (please print)

Name (include middle initial) Samantha Redacted Cell Phone Redacted
Sex M F Date of Birth Redacted Age 30 Social Security Number Redacted
Address Redacted
City Redacted State Redacted Zip Redacted
Occupation _____ Employer _____ Work Phone _____
Work Address _____ City _____ State _____ Zip _____
Race / Ethnicity: _____ Language: _____
Email Address: _____

Spouse:

Name (include middle initial) _____ Home Phone _____
Sex M F Date of Birth _____ Age _____ Social Security Number _____
Address _____
City _____ State _____ Zip _____
Occupation _____ Employer _____ Work Phone _____
Work Address _____ City _____ State _____ Zip _____

Insurance Information:

Primary Insurance BURS Subscriber _____
I.D. Number _____ Group Number _____ Phone _____
Claims Mailing Address _____
Secondary Insurance _____ Subscriber _____
I.D. Number _____ Group Number _____ Phone _____
Claims Mailing Address _____

Other Information:

Referred By _____ Primary Care Physician _____
Emergency Contact _____ Phone _____
Nearest relative not living with you _____ Phone _____

Financial Agreement and Authorization for Treatment

The above information is complete and correct. I authorize treatment of the above named patient. I hereby authorize release of information necessary to file a claim with my insurance company and I assign benefits otherwise payable to me to the doctor or group indicated on the claim. All professional services are charged to the patient. The patient is responsible for all fees, regardless of insurance coverage. In the event of collection proceedings due to lack of payment on my part, I agree to pay any and all collection fees that may be added to my account in order to recover monies due the doctor.

A copy of the signature is as valid as the original.

Samantha 10-18-19
PATIENT SIGNATURE DATE GUARANTOR SIGNATURE DATE REGISTERED BY INITIALS

EAR, NOSE AND THROAT CONSULTANTS OF NEVADA
ACCOUNT ADJUSTMENT REQUEST FORM

4/27/2020

Salvador Redacted
Redacted

Acct#: Redacted DOS 11/18/19

DOCTORS NAME: FOGGIA GOLL SIKANI SCHROEDER YU
TOLAN SALINAS KIM LANDRY WALKER ELLIS MIRABAL

COLLECTIONS

1ST STATEMENT DATE 11/28/19 1ST COLLECTION LETTER 3/9/2020
LAST STATEMENT DATE 2/28/20 FINAL CALL MADE 4/20/2020

Surgery Write Off:	\$ 675.68	CoPay	DED	Co-Ins
Office Write Off:	\$ 100.00	CoPay	DED	Co-Ins
Office Procedure W/O:	\$ 30.97	CoPay	DED	Co-Ins
Collection Fee:	\$ 380.50	CoPay	DED	Co-Ins
W/O Amt Requested:	\$ 1087.15			
Reviewed By: JA		Date of Adjustment:	4/27/2020	

FOR OFFICIAL USE ONLY

COLLECTIONS _____ ? Date: _____
Yes ☒ No ☐ Date: 4/28/20
Doctors Signature Administrator Signature

PATIENT #: _____

**Ear Nose and Throat Consultants of Nevada
Patient History and Agreement-Adult**

Patient: (please print)

Name (include middle initial) Salvador Redacted Cell Phone Redacted
Sex ☒ M ☐ F Date of Birth Redacted Age 50 Social Security Number Redacted
Address Redacted
City Redacted State Redacted Zip Redacted
Occupation Construction Employer MEH Bld Special Work Phone _____
Work Address _____ City _____ State _____ Zip _____
Race / Ethnicity: Hisp. Language: Spanish
Email Address: _____

Spouse:

Name (include middle initial) _____ Home Phone _____
Sex ☐ M ☐ F Date of Birth _____ Age _____ Social Security Number _____
Address _____
City _____ State _____ Zip _____
Occupation _____ Employer _____ Work Phone _____
Work Address _____ City _____ State _____ Zip _____

Insurance Information:

Primary Insurance Salvador Redacted Subscriber _____
I.D. Number Redacted Group Number Redacted Phone _____
Claims Mailing Address _____
Secondary Insurance _____ Subscriber _____
I.D. Number _____ Group Number _____ Phone _____
Claims Mailing Address _____

Other Information:

Referred By Javier Redacted Primary Care Physician _____
Emergency Contact _____ Phone _____
Nearest relative not living with you Ginger Redacted Phone Redacted

Financial Agreement and Authorization for Treatment

The above information is complete and correct. I authorize treatment of the above named patient. I hereby authorize release of information necessary to file a claim with my insurance company and I assign benefits otherwise payable to me to the doctor or group indicated on the claim. All professional services are charged to the patient. The patient is responsible for all fees, regardless of insurance coverage. In the event of collection proceedings due to lack of payment on my part, I agree to pay any and all collection fees that may be added to my account in order to recover monies due the doctor.

A copy of the signature is as valid as the original.

Salvador Redacted 10-
PATIENT SIGNATURE DATE GUARANTOR SIGNATURE DATE

REGISTERED BY INITIALS

EAR, NOSE AND THROAT CONSULTANTS OF NEVADA
ACCOUNT ADJUSTMENT REQUEST FORM

4/27/2020

Kim Redacted

Redacted

Acct#: Redacted DOS 10/31/19

DOCTORS NAME: FOGGIA GOLL SIKAND SCHROEDER YU
TOLAN SALINAS KIM LANDRY WALKER ELLIS MIRABAL

COLLECTIONS

1ST STATEMENT DATE 12/7/19 1ST COLLECTION LETTER 3/13/2020
LAST STATEMENT DATE 3/7/2020 FINAL CALL MADE 4/20/2020

Surgery Write Off:	\$ _____	CoPay	DED	Co-Ins
Office Write Off:	\$ _____	CoPay	DED	Co-Ins
Office Procedure W/O:	\$ <u>384.67</u>	CoPay	<u>DED</u>	Co-Ins
Collection Fee:	\$ <u>207.13</u>	CoPay	DED	Co-Ins
W/O Amt Requested:	\$ <u>591.80</u>			
Reviewed By: <u>JA</u>		Date of Adjustment:	<u>4/27/2020</u>	

FOR OFFICIAL USE ONLY

COLLECTIONS _____ ? Date: _____
Yes ☒ No ☐ Date: 4/28/20
Jennifer Price
Doctors Signature / Administrator Signature

PATIENT #: _____

**Ear Nose and Throat Consultants of Nevada
Patient History and Agreement-Adult**

Patient: (please print)
Name (include middle initial) Kim [Redacted] Cell Phone [Redacted]
Sex M ☒ F Date of Birth [Redacted] Age 41 Social Security Number [Redacted]
Address [Redacted]
City [Redacted] State [Redacted] Zip [Redacted]
Occupation Assistant Principal Employer CCSD Work Phone [Redacted]
Work Address [Redacted] City [Redacted] State NV Zip [Redacted]
Race / Ethnicity: White Language: English
Email Address: Wbarra34@yahoo.com

Spouse:
Name (include middle initial) Michael [Redacted] Home Phone [Redacted]
Sex M ☒ F Date of Birth [Redacted] Age 45 Social Security Number [Redacted]
Address [Redacted]
City [Redacted] State [Redacted] Zip [Redacted]
Occupation Disabled Employer Disability Work Phone _____
Work Address _____ City _____ State _____ Zip _____

Insurance Information:

Primary Insurance Sierra Health + Life Subscriber Kim [Redacted]
I.D. Number [Redacted] Group Number [Redacted] Phone 1800-279-4863
Claims Mailing Address SFL Claims, PO Box 15645 Las Vegas NV 89114
Secondary Insurance _____ Subscriber _____
I.D. Number _____ Group Number _____ Phone _____
Claims Mailing Address _____

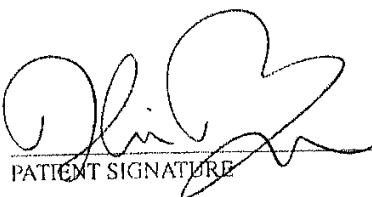
Other Information:

Referred By Sierra [Redacted] Primary Care Physician Dr. Prabhu
Emergency Contact Michael [Redacted] Phone [Redacted]
Nearest relative not living with you Joseph [Redacted] Phone [Redacted]

Financial Agreement and Authorization for Treatment


The above information is complete and correct. I authorize treatment of the above named patient. I hereby authorize release of information necessary to file a claim with my insurance company and I assign benefits otherwise payable to me to the doctor or group indicated on the claim. All professional services are charged to the patient. The patient is responsible for all fees, regardless of insurance coverage. In the event of collection proceedings due to lack of payment on my part, I agree to pay any and all collection fees that may be added to my account in order to recover monies due the doctor.

A copy of the signature is as valid as the original.


PATIENT SIGNATURE
10/30/19
DATE

GUARANTOR SIGNATURE

DATE


REGISTERED BY INITIALS

EAR, NOSE AND THROAT CONSULTANTS OF NEVADA
ACCOUNT ADJUSTMENT REQUEST FORM

4/27/2020

Treanna Redacted

Redacted

Acct#: Redacted DOS 11/12/19

DOCTORS NAME: FOGGIA GOLL SIKAND SCHROEDER YU
TOLAN SALINAS KIM LANDRY WALKER ELLIS MIRABAL

COLLECTIONS

1ST STATEMENT DATE 11/28/19 1ST COLLECTION LETTER 3/9/2020
LAST STATEMENT DATE 2/28/19 FINAL CALL MADE 4/20/2020

Surgery Write Off:	\$ _____	CoPay	DED	Co-Ins
Office Write Off:	\$ _____	CoPay	DED	Co-Ins
Office Procedure W/O:	\$ <u>232.78</u>	CoPay	<u>DED</u>	Co-Ins
Collection Fee:	\$ <u>125.34</u>	CoPay	DED	Co-Ins
W/O Amt Requested:	\$ <u>358.12</u>			
Reviewed By: <u>JA</u>		Date of Adjustment:	<u>4/27/2020</u>	

FOR OFFICIAL USE ONLY

COLLECTIONS _____ ? Date: _____
Yes ☒ No ☐ Date: 4/28/20
Jennifer Price
Doctors Signature / Administrator Signature

PATIENT #: _____

Ear Nose and Throat Consultants of Nevada Patient History and Agreement-Adult

Patient: (please print)

Name (include middle initial) Treanna Redacted Cell Phone Redacted
 Sex M P Date of Birth Redacted Age 29 Social Security Number _____
 Address Redacted
 City Redacted State Redacted Zip Redacted
 Occupation Agent (call center) Employer Alorica Work Phone _____
 Work Address _____ City _____ State _____ Zip _____
 Race / Ethnicity: _____ Language: English
 Email Address: Redacted

Spouse:

Name (include middle initial) Carlos Redacted Home Phone _____
 Sex M F Date of Birth Redacted Age 35 Social Security Number _____
 Address "
 City " State " Zip "
 Occupation IT tech Employer Safidel Work Phone _____
 Work Address _____ City _____ State _____ Zip _____

Insurance Information:

Primary Insurance United Health Care Subscriber Carler Ayala
 I.D. Number Redacted Group Number Redacted Phone 800-842-5653
 Claims Mailing Address PO Box 740800, Atlanta GA 30374-0800
 Secondary Insurance _____ Subscriber _____
 I.D. Number _____ Group Number _____ Phone _____
 Claims Mailing Address _____

Other Information:

Referred By Diana Redacted Primary Care Physician Jianu
 Emergency Contact Carlos Redacted Phone Redacted
 Nearest relative not living with you Kim Redacted Phone Redacted

Financial Agreement and Authorization for Treatment

The above information is complete and correct. I authorize treatment of the above named patient. I hereby authorize release of information necessary to file a claim with my insurance company and I assign benefits otherwise payable to me to the doctor or group indicated on the claim. All professional services are charged to the patient. The patient is responsible for all fees, regardless of insurance coverage. In the event of collection proceedings due to lack of payment on my part, I agree to pay any and all collection fees that may be added to my account in order to recover monies due the doctor.

A copy of the signature is as valid as the original.

Juanu Redacted 11/12/19
 PATIENT SIGNATURE DATE GUARANTOR SIGNATURE DATE REGISTERED BY INITIALS

6100 Neil Road, P.O. Box 10100, Reno, Nevada 89520 • 775-834-4444

Statement of Account

Customer Name: Reginald Redacted

Prepared By: Heena

Today's Date: 05/07/20

Customer #: Redacted

Premise #: [REDACTED]

[illegible]



C A03 B17

REGINALD Redacted
Redacted

FINAL BILL

Electric Usage: Residential Service - Multi Family

Average Daily Electric Usage

Average Daily
Cost this month

\$3.54

Usage in total electric kilowatt hours

Last Year

This Year

Please Pay By: Mar 9, 2020
\$427.76

Account: Redacted

Customer Number: Redacted

Premises Number: Redacted

Billing Date: Feb 20, 2020

Account Summary

Previous Account Balance 349.96

Electric Charges 77.80

Current Amount Due \$427.76

This is your final bill. Please subtract any amount that you've paid from the total amount due. If you need help with these charges, please call Customer Service at the number listed below.

Meter Information

If NV Energy is unable to read your meter because of circumstances beyond control, you may be billed based on estimated usage for that billing period.

Meter#	Type	Service Period	Bill Days	Previous	Current	Multiplier	Usage
CC029239667	kWh	Jan 27, 2020 to Feb 18, 2020	22	50,394	51,057	1	663

Charge Details

Electric Consumption	663.000	kWh	x	0.10261	68.03
Temp. Green Power Financing	663.000	kWh	x	0.00070	0.46
Renewable Energy Program	663.000	kWh	x	0.00039 CR	0.26 CR
Energy Efficiency Charge	663.000	kWh	x	0.00224	1.49
Tax Reduction	663.000	kWh	x	0.00346 CR	2.29 CR
Basic Service Charge					6.42
Local Government Fee				5%	3.69
Universal Energy Charge	663.000	kWh	x	0.00039	0.26

Total Electric Service Amount \$77.80

Customer Service: (702) 402-5555 or (800) 331-3103 Toll Free 24/7, excluding holidays Emergencies: (702) 402-2900
Para servicio en español (702) 402-5554. TDD/TYY: 711 - Hearing impaired service available 24/7 days a week.

Please return this portion with payment - to ensure timely processing do not use staples or tape



ACCOUNT NUMBER: Redacted

Customer Number: Redacted

Service Address: Redacted

Please Pay By: Mar 9, 2020
\$427.76

Enter Amount Enclosed: \$

Payment Options:

Online at nvenergy.com or call (844) 343-3719
At any of our authorized Shop & Pay locations
By phone: (800) 253-8084 (debit/credit card)
By mail: PO Box 30150, Reno, NV 89520-3150

9/27/19 2:07 PM 0 0012170 20200220 P03R31 PRINT 1 oz 1 P05R310000* 161596 EG

REGINALD Redacted

Redacted



89520

Redacted

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NCA000596

JA0707

Customer Assistance

If you wish to dispute any bill, charge or service, NV Energy will promptly investigate the matter. However, to avoid termination of service, all charges must be paid during the investigation period. If you are not satisfied with our final decision, you may contact the Public Utilities Commission (702) 486-2600, Online at puc.nv.gov or at 9075 West Diablo Drive, Suite 250, Las Vegas, Nevada 89148.

Need additional hand-delivered notification for planned outages or 48-hour notification prior to a disconnection of the service for non-payment? If you or a permanent member of the household are dependent on life support equipment, electrically operated medical equipment, are disabled or age 62 or older, please call (702) 402-5555 or (800) 331-3103 to update your account information.

Energy Assistance Programs are available and can help low-income customers pay their energy bills and/or weatherize their homes. Residential customers must meet income guidelines to qualify. For more information call (702) 486-1404 or visit dwss.nv.gov. For the Weatherization Assistance Program serving all of Nevada, call (775) 687-2227.

Project REACH is funded by NV Energy and administered by the United Way of Southern Nevada. The energy assistance program is provided to residential customers, age 62 and older, medically fragile, Reservist or National Guard members who meet income guidelines. Project REACH is provided to help pay a past due energy bill once during a 12-month period. Call (702) 402-5200 or visit our website at nvenergy.com/assistance for guidelines.

Additional Information

Understanding Your Bill: Your bill has a lot of information and terms you may not have heard before. For definitions of all charges and taxes, please visit www.nvenergy.com/home/customer-care.

Rules and Regulations: Rules, regulations, and rate schedules are available for public inspection at nvenergy.com/rates.

Payments & Due Date: Bills for service are rendered and due monthly by the due date. Your bill becomes past due on the next meter read date, at which time a 1.5% late fee is applied. All payments made by check authorize NV Energy to initiate an electronic debit. Checks will not be returned and funds may be withdrawn the same day. Please make checks payable to NV Energy.

Payment Arrangements: If you have difficulty making a payment, we are here to help. Give us a call so we can review all the options available to assist you.

Interruption in Service: NV Energy may issue a termination of service notice and may require a security deposit for delinquent payments.

Good Pay Forgiveness: Life happens - payments get lost, transactions don't go through, time slips away. Whatever the reason, we understand. We forgive a missed payment one time for customers with excellent payment history, so you don't face possible service interruptions.

NCA000597

JA0708



Customer Name: Brain **Redacted**

Prepared By: Heena

Today's Date: 05/07/20

Customer #: Redacted

Premise #: [REDACTED]

Page 1 of 1

NCA000598

JA0709



E A03 B04

BRAIN Redacted

Redacted

FINAL BILL

Please Pay By: Feb 19, 2020

\$340.03

Additional time is provided to pay this bill. Please pay the amount due by Feb 24, 2020 to avoid a 1.5% late fee or deposit.

Account: Redacted

Customer Number:

Redacted

Premises Number:

Billing Date:

Jan 31, 2020

Account Summary

Previous Account Balance	289.03
Return Pymt - Jan 30, 2020	288.96
Payment - Jan 27, 2020	288.96 CR
Adjustment	130.12 CR
Electric Charges	162.22
Miscellaneous	18.90
Current Amount Due	\$340.03

This is your final bill. Please subtract any amount that you've paid from the total amount due. If you need help with these charges, please call Customer Service at the number listed below.

Electric Usage Residential Service - Multi Family

Average Daily Electric Usage

Average Daily
Cost this month

\$4.63

Usage in total electric kilowatt hours

Last Year

This Year



Meter Information

If NV Energy is unable to read your meter because of circumstances beyond control, you may be billed based on estimated usage for that billing period.

Meter#	Type	Service Period	Bill Days	Previous	Current	Multiplier	Usage
CC030117950	kWh	Dec 26, 2019 to Jan 27, 2020	32	3,046	4,394	1	1,348
	kWh	Jan 27, 2020 to Jan 30, 2020	3	4,394	4,467	1	73

Charge Details

Electric Consumption (Prior Rate)	244.000	kWh	x	0.10555	25.75
Electric Consumption (New Rate)	1,104.000	kWh	x	0.10261	113.28
Electric Consumption (New Rate)	73.000	kWh	x	0.10261	7.49
Temp. Green Power Financing	1,421.000	kWh	x	0.00070	0.99
Renewable Energy Program	1,421.000	kWh	x	0.00039 CR	0.55 CR
Energy Efficiency Charge	1,421.000	kWh	x	0.00224	3.18
Tax Reduction	1,421.000	kWh	x	0.00346 CR	4.92 CR
Basic Service Charge					8.75
Local Government Fee				5%	7.70
Universal Energy Charge	1,421.000	kWh	x	0.00039	0.55

Total Electric Service Amount

\$162.22

Customer Service: (702) 402-5555 or (800) 331-3103 Toll Free 24/7, excluding holidays Emergencies: (702) 402-2900

Para servicio en español (702) 402-5554. TDD/TTY: 711 - Hearing impaired service available 24/7 days a week.

Please return this portion with payment - to ensure timely processing do not use staples or tape



ACCOUNT NUMBER: Redacted

Customer Number: Redacted

Service Address: Redacted

Please Pay By: Feb 19, 2020

\$340.03

Enter Amount
Enclosed: \$

Payment Options:

Online at nvenergy.com or call (844) 343-3719
At any of our authorized Shop & Pay locations
By phone: (800) 253-8084 (debit/credit card)
By mail: PO Box 30150, Reno, NV 89520-3150

8/27/18 2:07 PM 0 001812 20280131 PAPER9 NHPHINT 1 of 1 PAPER90000 181568 BC

BRAIN Redacted
Redacted

89520

Redacted

0000034003 0000018112 0 003

NCA000599

JA0710

Questions about your bill: (702) 402-5555 or (800) 331-3103 www.nvenergy.com

Office located at: 6226 West Sahara Ave, Las Vegas, NV 89146.

BILLING DATE: Jan 31, 2020	ACCOUNT NUMBER: Redacted	DATE DUE: Feb 19, 2020	AMOUNT DUE: \$340.03
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Miscellaneous Charges & Adjustments

Returned Payment Fee		12.00
Remote Connection Charge		6.00
Local Government Fee	5%	0.30
Local Government Fee	5%	0.60
Deposit Interest Applied		0.07 CR
Deposit Interest Applied		0.05 CR
Deposit Applied		130.00 CR
Total Miscellaneous Charges & Adjustments		\$111.22 CR

Customer Assistance

If you wish to dispute any bill, charge or service, NV Energy will promptly investigate the matter. However, to avoid termination of service, all charges must be paid during the investigation period. If you are not satisfied with our final decision, you may contact the Public Utilities Commission (702) 486-2600, Online at puc.nv.gov or at 9075 West Diablo Drive, Suite 250, Las Vegas, Nevada 89148.

Need additional hand-delivered notification for planned outages or 48-hour notification prior to a disconnection of the service for non-payment? If you or a permanent member of the household are dependent on life support equipment, electrically operated medical equipment, are disabled or age 62 or older, please call (702) 402-5555 or (800) 331-3103 to update your account information.

Energy Assistance Programs are available and can help low-income customers pay their energy bills and/or weatherize their homes. Residential customers must meet income guidelines to qualify. For more information call (702) 486-1404 or visit dwss.nv.gov. For the Weatherization Assistance Program serving all of Nevada, call (775) 687-2227.

Project REACH is funded by NV Energy and administered by the United Way of Southern Nevada. The energy assistance program is provided to residential customers, age 62 and older, medically fragile, Reservist or National Guard members who meet income guidelines. Project REACH is provided to help pay a past due energy bill once during a 12-month period. Call (702) 402-5200 or visit our website at nvenergy.com/assistance for guidelines.

Additional Information

Understanding Your Bill: Your bill has a lot of information and terms you may not have heard before. For definitions of all charges and taxes, please visit www.nvenergy.com/home/customer-care.

Rules and Regulations: Rules, regulations, and rate schedules are available for public inspection at nvenergy.com/rates.

Payments & Due Date: Bills for service are rendered and due monthly by the due date. Your bill becomes past due on the next meter read date, at which time a 1.5% late fee is applied. All payments made by check authorize NV Energy to initiate an electronic debit. Checks will not be returned and funds may be withdrawn the same day. Please make checks payable to NV Energy.

Payment Arrangements: If you have difficulty making a payment, we are here to help. Give us a call so we can review all the options available to assist you.

Interruption in Service: NV Energy may issue a termination of service notice and may require a security deposit for delinquent payments.

Good Pay Forgiveness: Life happens - payments get lost, transactions don't go through, time slips away. Whatever the reason, we understand. We forgive a missed payment one time for customers with excellent payment history, so you don't face possible service interruptions.

NCA000600

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JAZZMIN Redacted

Redacted

FINAL BILL

Electric Usage: Residential Service - Multi Family

Average Daily Electric Usage

Average Daily
Cost this month

\$0.59

67
77
68
58
48
39
29
19
10
0

Usage in total electric kilowatt hours

Last Year

This Year

Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec

Meter Information

If NV Energy is unable to read your meter because of circumstances beyond control, you may be billed based on estimated usage for that billing period.

Meter#	Type	Service Period	Bill Days	Previous	Current	Multiplier	Usage
CC029786355	kWh	Feb 6, 2020 to Mar 2, 2020	25	38,731	38,798	1	67

Charge Details

Electric Consumption	67.000	kWh	x	0.10261	6.87
Temp. Green Power Financing	67.000	kWh	x	0.00070	0.05
Renewable Energy Program	67.000	kWh	x	0.00039 CR	0.03 CR
Energy Efficiency Charge	67.000	kWh	x	0.00224	0.15
Tax Reduction	67.000	kWh	x	0.00346 CR	0.23 CR
Basic Service Charge					7.29
Local Government Fee				5%	0.71
Universal Energy Charge	67.000	kWh	x	0.00039	0.03

Total Electric Service Amount **\$14.84**

Miscellaneous Charges & Adjustments

Remote Connection Charge		6.00
Local Government Fee	5%	0.30
Transfer From Account 30-3039525-1944875		764.08

Customer Service: (702) 402-5555 or (800) 331-3103 Toll Free 24/7, excluding holidays **Emergencies:** (702) 402-2900
Para servicio en español (702) 402-5554. TDD/TYY: 711 - Hearing impaired service available 24/7 days a week.

Please return this portion with payment - to ensure timely processing do not use staples or tape



ACCOUNT NUMBER: Redacted

Customer Number: Redacted

Service Address: Redacted

Please Pay By: Mar 19, 2020

\$714.89

Enter Amount Enclosed: \$

Payment Options:

Online at nvergy.com or call (844) 343-3719
At any of our authorized Shop & Pay locations
By phone: (800) 253-8084 (debit/credit card)
By mail: PO Box 30150, Reno, NV 89520-3150

9/27/19 2:07 PM 0 0012809 20200303 PCEN08 NOPRINT 1 oz 1 PC2N080000* 181588 BC



JAZZMIN Redacted

Redacted



89520

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NCA000601
JA0712

Questions about your bill: (702) 402-5555 or (800) 331-3103 www.nvenergy.com
Office located at: 6226 West Sahara Ave, Las Vegas, NV 89146.

BILLING DATE: Mar 3, 2020	ACCOUNT NUMBER: Redacted	DATE DUE: Mar 19, 2020	AMOUNT DUE: \$714.89
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Deposit Interest Applied	0.33 CR
Deposit Applied	70.00 CR

Total Miscellaneous Charges & Adjustments	\$700.05
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Customer Assistance

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NCA000602

JA0713

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

James C. Mahan
U.S. District Judge

NCA000603

JA0714

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
 15 district court's jurisdiction but are nonetheless inappropriate for federal review due to "deference
 16 to the paramount interests of another sovereign, and the concern is with principles of comity and
 17 federalism." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 723 (1996) (citations omitted); *see*
 18 *also Growe v. Emison*, 507 U.S. 25, 32 (1993). Notably, abstention—which "derives from the
 19 discretion historically enjoyed by courts of equity"—is appropriate only when the relief sought is
 20 equitable in nature. *Quackenbush*, 517 U.S. at 727–30.

21 Because of its "virtually unflagging obligation" to exercise its jurisdiction, "abstention is
 22 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*,
 23 484 U.S. 193, 203 (1988))). Thus, "[a]bstention from the exercise of federal jurisdiction is the
 24

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,

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

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

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

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

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

22 does not regulate many of [NCA’s] members and is limited to
23 Chapter 649 with respect to governing licensed collection agencies.
24 The FID is powerless to take any action with respect to AB 477 and
25 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.

26 (ECF No. 31 at 6). And yet, despite FID’s arguments, NCA retorts that it “has primary regulatory
27 authority over licensed collection agencies which includes NCA’s members.” (ECF No. 19 at 10).
28

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.

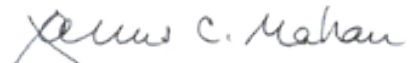
5 **IV. Conclusion**

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