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

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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 V

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JOINT APPENDIX – VOLUME V

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State Defendant's Reply to Plaintiff's Opposition to Motion to Dismiss	06/29/2020	VII	JA1202 – 1221

DATED this 23rd day of September, 2021.

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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 V** 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

OPPOSITION TO MOTION TO DISMISS

Hearing Date: **June 17, 2020**
Hearing Time: **10:00 a.m.**

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Case Number: A-19-805334-C

Plaintiff Nevada Collectors Association ("NCA"), by and through its counsel of record, the law firm of Brownstein Hyatt Farber Schreck, LLP, hereby opposes the Motion to Dismiss filed by Defendant Justice Court of Las Vegas ("Justice Court").[1]

This Opposition is made pursuant to Nevada Rules of Civil Procedure ("NRCP") 12 and is based on the attached Memorandum of Points and Authorities, the papers and pleadings on file in this action, and any oral argument this Court may allow.

DATED this 26th day of May, 2020.

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[1] Unless otherwise stated, this Opposition employs the same defined terms as the Complaint and NCA's Motion for Preliminary Injunction, or alternatively, for a Writ of Mandamus or Prohibition.

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF NCA'S OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS

I.

INTRODUCTION

This is an action alleging violations of both due process and equal protection based on the combined effect of A.B. 477 and JCR 16. Acting in concert, A.B. 477 and JCR 16 have the effect of doing away with NCA members' right to meaningful access to courts, right to retain counsel, and right to a jury. This is by no mistake though. Already equipped with the long-standing rule that is JCR 16, which prohibits business entities from appearing in Justice Court without an attorney, A.B. 477 was specifically designed to deter such entities from pursuing cases to collect unpaid debt in Justice Court. Justice Court ignores the obvious constitutional issues presented in this case by raising various ill-fated (and mostly procedural) arguments. For the reasons detailed *infra*, these arguments are without merit, and such a request should not be granted when there are fundamental liberties at stake. Accordingly, NCA respectfully requests that this Court deny Justice Court's Motion for Judgment on the Pleadings.

II.

STATEMENT OF FACTS[2]

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

1. NCA is a non-profit cooperative corporation whose members consist of small businesses such as collection agencies, law firms, and asset buying companies which engage in

[2]The facts alleged herein are asserted in the First Amended Complaint on file in Case No. 2:20-cv-0007-JCM-EJY in the United States District Court of the District of Nevada and attached hereto as **Exhibit "1"**. For purposes of a motion to dismiss, all factual allegations in the Complaint must be accepted as true and all inferences must be drawn in NCA's favor. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). Justice Court does not appear to challenge or take into consideration the lengthy record supporting NCA's Motion for Preliminary Injunction. That being said, NCA expressly incorporates by reference that record, particularly the Declarations of Mary Hobbs, Tim Myers, Michael N. Aisen, and Adam Gill, and the written testimony of Peter J. Goatz, Esq., before the Nevada Legislature, all of which are attached hereto as **Exhibit "2"** through **Exhibit "6"** for this Court's reference.

the business of collecting unpaid debt on consumer accounts that are past due or in default. Compl. at ¶ 11; Decl. of M. Hobbs at ¶ 2; Decl. of T. Myers at ¶ 2.

2. NCA's members collect monies 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. Compl. at ¶ 11; Decl. of M. Hobbs at ¶ 3; Decl. of T. Myers at ¶ 3.

3. Those debts vary in kind, including, but not limiting to, the following:

a. Medical debt (including doctors, dentists, and labs);

b. Utilities;

c. Rent;

d. Credit card and revolving debt;

e. Cell phone debt;

f. Automobile loans;

g. Professional services provided on credit; and

h. Installment loans governed by NRS Chapter 675.

Compl. at ¶ 12; Decl. of M. Hobbs at ¶ 3; Decl. of T. Myers at ¶ 3.

4. Nearly all of NCA members' accounts receivable consists of unpaid small dollar consumer debts in amounts of $5,000.00 or less ("Small Dollar Debts"). Compl. at ¶ 13; Decl. of M. Hobbs at ¶ 4; Decl. of T. Myers at ¶ 4.

5. NCA serves its members by, *inter alia*, acting as a voice in business, legal, regulatory and legislative matters. Decl. of M. Hobbs at ¶ 5; Decl. of T. Myers at ¶ 5.

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

6. Many of NCA's members are debt collection companies licensed pursuant to NRS Chapter 649 by the State of Nevada Department of Business and Industry Financial Institutions Division (the "FID"). Decl. of M. Hobbs at ¶ 7; Decl. of T. Myers at ¶ 7.

7. The FID regulates and oversees the collection activities of its licensees, which include many of NCA's members, namely, collection agencies. *Id.*

8. In Nevada, any entity that recovers funds that are past due, or from accounts that

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are in default, is governed by NRS Chapter 649 and NAC Chapter 649. *See* NRS 649.020 (defining "collection agency" as "all persons engaging, directly or indirectly, and as a primary or a secondary object, business or pursuit, in the collection of or in soliciting or obtaining in any manner the payment of a claim owed or due or asserted to be owed or due to another.").

9. NRS Chapter 649's stated purpose is to: "(a) bring licensed collection agencies and their personnel under more stringent public supervision;" "(b) establish a system of regulation to ensure that persons using the services of a collection agency are properly represented;" and "(c) discourage improper and abusive collection methods." NRS 649.045(2)(a)-(c).

10. To that end, NRS Chapter 649 established a broad regulatory scheme that covers all aspects of collections practices.

11. The Nevada Legislature granted the FID and its Commissioner primary jurisdiction for the licensing and regulation of persons operating and/or engaging in collection services. *See generally* NRS Chapter 649.

12. Indeed, in order to operate as a collection agency in the State of the Nevada, a collection agency must first submit an application and obtain a license from the Commissioner. NRS 649.075(1).

13. And just as the Commissioner is empowered to grant a collection agency license to operate in the State of Nevada, the Commissioner can also administer fines to a collection agency and/or suspend or revoke such license, if it is found that a collection agency has violated a law prescribed to it. *See e.g.*, NRS 649.395.

14. One of those laws include the Fair Debt Collection Practices Act (the "FDCPA")—the main federal law that governs debt collection practices. 15 U.S.C. § 1692 *et seq*.

15. In general, the FDCPA prohibits debt collection companies from using abusive, unfair, or deceptive practices to collect debts from consumers. *See id.*

16. The stated purposes of the FCDPA is "to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692(e).

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17. Many of NCA's members are "debt collectors" within the meaning of the FDCPA and are therefore subject to its legal requirements. *See* 15 U.S.C. § 1692a(6); Decl. of M. Hobbs at ¶ 10; Decl. of T. Myers at ¶ 11.

18. The FDCPA subjects debt collectors to civil liability for violations of the FDCPA. *Id.*; 15 U.S.C. § 1692k.

19. Debt collectors are also subject to federal administrative enforcement for violations of the FDCPA. *Id.*; 15 U.S.C. § 1692l.

20. In addition, the Nevada Legislature granted the FID and its Commissioner authority to regulate collection agencies for violations of the FDCPA. *See* NRS 649.370.

21. NRS 649.370 provides that "[a] violation of any provision of the federal [FDCPA], 15 U.S.C. §§ 1682 et seq., or any regulation adopted pursuant thereto, shall be deemed to be a violation of this chapter."

22. Relevant here, the FDCPA broadly prohibits a debt collector from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e.

23. This includes "litigation activity" and FDCPA violations may be found based on false allegations and requests contained in a complaint. *McCollough v. Johnson, Rodenburg & Lauinger, LLC*, 637 F.3d 939, 951 (9th Cir. 2011) ("[T]he FDCPA applies to the litigating activities of lawyers."); *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027, 1032 (9th Cir. 2010) ("To limit the litigation activities that may form the basis of FDCPA liability to exclude complaints served personally on consumers to facilitate debt collection, the very act that formally commences such a litigation, would require a nonsensical narrowing of the common understanding of the word 'litigation' that we decline to adopt.").

24. Accordingly, by simply requesting attorney's fees in a complaint that are not authorized by law, collection agencies are violating the FDCPA.

25. NAC 649.320 empowers the Commissioner of the FID to suspend or revoke a license for violations of the FDCPA.

26. The FDCPA has a mandatory venue provision (the "Mandatory Venue Provision")

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requiring a debt collector to commence a civil action for the repayment of a consumer debt in the judicial district or similar legal entity where (a) the consumer signed the contract; or (b) the consumer resides at the time the suit is filed. 15 U.S.C. § 1692i(a)(2).

27. NRS 4.370 confers jurisdiction upon justice courts to entertain any civil causes of action in matters in which the amount in controversy does not exceed $15,000.00.

28. Because NCA members' accounts receivable generally consist of unpaid Small Dollar Debts, NCA members must file lawsuits in justice courts to collect on unpaid debts. Decl. of M. Hobbs at ¶ 14; Decl. of T. Myers at ¶ 15.

29. To the extent a consumer debt falls within the Mandatory Venue Provision of the FDCPA and requires the commencement of a civil action in Las Vegas, Nevada, a debt collector is legally required to commence a civil debt collection action in the Justice Court of Las Vegas Township (the "Justice Court"). Decl. of M. Hobbs at ¶ 15; Decl. of T. Myers at ¶ 16.

30. NCA's members are not individuals, but rather are entities that are expressly prohibited from appearing in Justice Court without representation by an attorney that is licensed to practice law. Justice Court of Las Vegas Township Rule ("JCR") 16; Compl. at ¶ 15; Decl. of M. Hobbs at ¶ 16; Decl. of T. Myers at ¶ 17.

31. JCR 16 states as follows:

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

32. As such, any time a NCA member commences a civil action to recover a debt, it is forced to retain an attorney to file, litigate, and recover monies in a collection action in Justice Court. Compl. at ¶ 17; Decl. of M. Hobbs at ¶ 17; Decl. of T. Myers at ¶ 18.

33. Because NCA's members are forced to retain counsel, they are forced to incur significant attorney's fees to (a) prepare and file the complaint; (b) litigate the case to judgment; and (c) attempt to collect upon that judgment. Compl. at ¶ 17; Decl. of M. Hobbs at ¶ 18; Decl. of T. Myers at ¶ 19.

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34. Notably, JCR 16 does not merely apply to licensed debt collectors, but to **any** entity (including a primary creditor) that seeks redress in Justice Court, no matter how large or small. *See* JCR 16.

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

35. Nevada is and has been a jurisdiction in which courts apply the so-called "American Rule" when it comes to the recovery of attorney's fees.

36. However, attorney's fees may be awarded to a prevailing party if allowed by contract, statute, or other rule of law. *See Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1028 (2006); *see also Barrett v. Baird*, 111 Nev. 1496, 1507, 908 P.2d 689, 697 (1995) ("In fact, the Nevada legislature has not hesitated to modify the American rule by enacting statutes allowing or requiring an award of attorney fees to prevailing parties under certain conditions."), *overruled on other grounds by Lioce v. Cohen*, 124 Nev. 1, 15, 174 P.3d 970, 978-79 (2008).

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

38. Indeed, it cannot reasonably be disputed that the Justice Court has traditionally been extremely diligent, careful, and prudent in its role adjudicating claims for attorney's fees in civil cases. *See* Decl. of M. Hobbs at ¶ 22; Decl. of T. Myers at ¶ 23.

39. Nevada has expressly recognized the importance of awarding reasonable attorney's fees in small dollar cases. For example, NRS 18.010(2)(a) allows prevailing parties to recover reasonable attorney's fees in **all** cases in which the amount recovered is less than $20,000.00.

40. NRS Chapter 69, which governs Justice Courts in Nevada, expressly authorizes an award of reasonable attorney's fees—taxed as costs—to prevailing parties. NRS 69.030.

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41. Nevada has numerous other fee shifting rules, including offers of judgment under Justice Court Rule of Civil Procedure 68 ("JCRCP"), and statutory liens, such as mechanic's liens and attorney's liens, including the following:

a. Offers of Judgment—JCRCP 68

b. Mechanic's Liens—NRS 108.237(1) and NRS 108.239(9)(b);

c. Attorney's Liens—NRS 18.015(1);

d. Homeowner's Associations—NRS 116.4117(4);

e. Justice Court Actions—NRS 69.030;

f. Appeals from Justice Court—NRS 69.050;

g. Arbitrations—NRS 38.243(3);

h. Fees governed by agreement, express or implied—NRS 18.010(1);

i. Actions when the prevailing party has recovered less than $20,000—NRS 18.010(2); and

j. Landlord/Tenant—NRS 118A.515.

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

43. As this Court is also well aware, the practice of law is a specialized profession, worthy of appropriate compensation.

44. According to a U.S. Consumer Law Attorney Fee Survey Report, the average hourly rate for a consumer attorney in Las Vegas **in 2015** was $420.00, and the average hourly rate for a paralegal in Las Vegas **in 2015** was $144.00. U.S. Consumer Law Attorney Fee Survey Report, p. 281, attached hereto as **Exhibit "7"**.

45. According to the December 2017 issue of *Communique*, the publication of the Clark County Bar Association, rates for Nevada attorneys have been approved by courts as high as $750.00 per hour, including rates as high as $350.00 per hour for senior associates. What are

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"Reasonable Attorney's Fees" According to the State and Federal Court in Nevada? By: John M. Naylor, Esq., attached here to as **Exhibit "8"**.

46. Given these high hourly rates in the market, the attorney's fees that accrue in small dollar consumer cases will often approach or exceed the amount of the unpaid debt, depending upon the amount owed. Decl. of M. Hobbs at ¶ 20; Decl. of T. Myers at ¶ 21.

47. That being said, NCA's members are aware that, when seeking an award of attorney's fees in a civil action, the attorney's fees sought[3] must be reasonable and must also satisfy the so-called "Brunzell factors" articulated in *Brunzell v. Golden Gate Nat'l Bank,* 85 Nev. 345, 455 P.2d 31 (1969). Decl. of M. Hobbs at ¶ 21; Decl. of T. Myers at ¶ 22.

48. In addition, when seeking an award of fees, counsel for NCA's members are bound by Nevada Rule of Professional Conduct 1.5, which prohibits the charging of unreasonable fees. *Id.*

49. Therefore, in addition to the Justice Court acting as a gatekeeper for reviewing claims for attorney's fees, counsel who submit those applications are ethically bound to act reasonably and by binding Nevada Supreme Court precedent that controls the methodology for an award of fees.

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

50. In the 2019 legislative session, the Nevada State Legislature enacted A.B. 477, which was designed principally to govern the accrual of interest in consumer form contracts and consumer debts. Compl. at ¶ 18.

51. A.B. 477 was codified in Title 8 of the NRS and was titled the Consumer Protection from the Accrual of Predatory Interest After Default Act.[4] Compl. at ¶ 19.

52. The stated purpose of A.B. 477 is to protect consumers and "must be construed as a consumer protections statute for all purposes." Compl. at ¶ 20.

[3] Technically, in Justice Courts, claims for attorney's fees are not awarded as fees. Rather, they are taxed as "costs" against the losing party. *See* NRS 69.030. As such, A.B. 477 should not even be applied to limit fees in justice courts.

[4] A.B. 477 has now been codified as NRS Chapter 97B.

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53. As relevant here, A.B. 477 limits 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. Compl. at ¶ 24.

54. 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.

Compl. at ¶ 25.

55. Rather than scale the attorney's fees to the amount of the unpaid debt, or even to an amount that is "reasonable," A.B. 477 imposes an arbitrary 15% rate cap regardless of the amount of the unpaid principal amount. *See* Compl. at ¶ 26.

56. This cap also purports to apply regardless of the amount of work required for a prevailing plaintiff to obtain a judgment, including, drafting a complaint, litigating and obtaining a judgment (by default judgment, summary judgment, or trial), and then collecting on that judgment. Compl. at ¶ 28.

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57. A.B. 477 imposes a rate cap of 15% on the amount of the debt even when a party wishes to invoke its right to a jury trial under the Seventh Amendment of the United States Constitution and Article 1, Section 3 of the Nevada Constitution. Compl. at ¶ 30.

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

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

Compl. at ¶ 36.

59. A.B. 477 purports to apply to consumer contracts "entered into on or after October 1, 2019." Compl. at ¶ 35.

60. A.B. 477 defines a "consumer" as "a natural person," and "consumer debt" is defined as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction which the money, property, insurance or services which are the subject of the transaction are primarily personal, family or household purposes, whether or not such obligation has been reduced to judgment." Compl. at ¶¶ 21-22.

61. Sections 18 and 19 of A.B. 477 were enacted with zero evidentiary support. *See* Minutes of the Meeting of the Assembly Committee Commerce and Labor – Eighteenth Session, April 3, 2019, attached hereto as **Exhibit "9"**.

62. In support of the bill, Peter Goatz[5] offered written testimony containing his own anecdotal description of *only two instances* in which the attorney's fees sought by creditors were, in his subjective opinion, excessive. *Id.*

63. Mr. Goatz did not specifically identify those cases or offer any pleadings from those cases so one could review the amount actually worked by the attorneys in those cases. *See id.*

[5] Mr. Goatz is an attorney for the Legal Aid Center of Southern Nevada.

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64. There was no empirical data or objective proof as to whether unreasonable fees were being sought or awarded by the Justice Court on a regular basis. *See id.*

65. There was no thought given as to the invasion of the judiciary's role in enacting these rules. *See id.*

66. There was no attempt to even demonstrate the existence of an actual problem that needed to be resolved by the Legislature. *See id.*

67. No thought was given as to how Sections 18 and 19 would effectively deprive creditors and debt collectors from access to justice courts. *See id.*

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

69. Equally arbitrary are the exemptions from A.B. 477. Remarkably, **banks and other financial institutions are completely exempt from the cap on attorney's fees**. **So are payday lenders.**[6] *See* A.B. 477.

70. In other words, while small businesses and debt collectors have their attorney's fees capped when collecting a consumer debt, banks and payday lenders have no such limitation.

71. Why are certain types of businesses exempt, when others are not? Regardless, A.B. 477 creates obvious absurdities. For example:

A consumer receives $1,000 worth of catering services pursuant to an extension of credit from ABC Catering, a small catering company. The consumer defaults and ABC Catering hires an attorney and sues on the unpaid debt.	ABC Catering is limited to recovery of attorney's fees at 15% on the amount of the debt (only $150).
A consumer borrows $1,000 from a bank to pay ABC Catering to pay for catering services. The consumer defaults on the bank loan and the	The bank is unlimited in its recovery of attorney's fees.

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

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bank sues on the loan.

A consumer borrows $1,000 from a Chapter 604A "payday" lender at a 650% APR[7] to pay ABC Catering for catering services. The consumer defaults on the loan and the payday lender sues on the unpaid debt.	The payday lender is unlimited in its recovery of attorney's fees.

72. These absurdities underscore just how arbitrary A.B. 477 is. The foregoing examples of loans issued by banks and payday lenders are clearly "consumer" loans for "consumer" purposes. Yet they have no limitation on the fees they can recover in Justice Court. But a small business like the fictional "ABC Catering," like any landscaper or contractor, has no such recourse. As a result, A.B. 477—sponsored by Legal Aid of Southern Nevada—actually favors payday lenders over ordinary small businesses when it comes to recovery in Justice Court. In reality, Sections 18 and 19 seemed an afterthought of A.B. 477, which by its own title focused principally on adhesion contracts and interest rates. This may explain the utter lack of thought given by the Legislature to these sections, and with no meaningful evidence supporting its passage. The Legislature simply rubber stamped the unsupported request of Mr. Goatz.

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

73. As Mr. Goatz expressly stated in his testimony on two separate occasions, Sections 18 and 19 were designed specifically to block debt collectors and small businesses from obtaining access to Justice Court. Compl. at ¶ 31.

74. On April 3, 2019, Mr. Goatz offered written testimony stating that the intent of Sections 18 and 19 of A.B. 477 was to push debt collection cases into small claims court "where attorney's fees are unavailable." Written Testimony of Peter J. Goatz, Esq., dated April 3, 2019, attached hereto at **Exhibit "6"**.

75. On May 8, 2019, Mr. Goatz testified that the purpose of the attorney fee cap in A.B. 477 was to effectively eliminate access to courts for small businesses "because there would not be an incentive for an attorney to take on a small dollar debt case…." Compl. at ¶ 31.

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

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76. At the Las Vegas Justice Court Bench Bar Meeting on July 30, 2019, one judge agreed that, in many instances, the 15% attorney fee cap will cause the amount of attorney's fees awarded in cases to be inherently "unreasonable" given the amount of uncompensated work required to obtain a judgment. Compl. at ¶ 32.

77. Because the attorney's fee limitation in A.B. 477 is so severe, NCA's members will be unable to retain counsel to represent them in small dollar consumer cases for contracts entered into after October 1, 2019. *See* Decl. of M. Hobbs ¶ 39; Decl. of T. Myers at ¶ 40.

78. As designed, Section 18 of A.B. 477, in conjunction with JCR 16, effectively bars NCA's members and other creditors from accessing the Justice Court because (a) they are required to retain counsel; (b) they are limited in their ability to recover fees to such an extreme that it is cost prohibitive to hire counsel; and (c) A.B. 477 discourages attorneys from even taking such cases in the first place. Decl. of M. Hobbs at ¶ 32; Decl. of T. Myers at ¶ 33.

79. Since October 1, 2019, the date A.B. 477 became effective, NCA members, have been receiving unpaid accounts for collection for services that were performed but not yet paid by the consumers. Decl. of T. Myers at ¶ 10.

80. These accounts receivable include unpaid medical debt and utilities, including doctor's offices and even NV Energy. *Id.*; True and correct copies of examples of some of these unpaid consumer debt accounts are collectively attached as **Exhibits "12" and "13"**.

81. Yet, NCA's members cannot move forward on these cases in Justice Court because, under A.B. 477, the attorney's fees are capped so low. For example, in recent instances of unpaid debts assigned to one NCA member, that member has been unable to proceed in justice Court because A.B. 477 and JCR 16 make it cost prohibitive to do so. In these cases, the following accounts are effectively uncollectible in Justice Court:

Unpaid Debt Amount	Attorney's Fees Capped Amount
$232.78	$34.92[8]
$245.00	$36.75
$384.67	$57.70
$426.03	$63.90

[8] 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.

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$706.65	$106.00

Decl. of T. Myers at ¶ 35; Exhibit 12.

82. In cases involving the foregoing amounts, the amount of attorney's fees incurred by NCA's members will not compensate for the attorney's fees actually incurred and expended.[9] *Id.*

83. Because these are Small Dollar Debts, debt collectors will actually lose money in many civil cases, even if they prevail on the merits. *Id.*

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

85. Meanwhile, A.B. 477 provides that in an action involving the collection of consumer debt, **the debtor** may receive any attorney's fees that are considered reasonable, without any other restriction or limitation. Decl. of M. Hobbs at ¶ 37; Decl. of T. Myers at ¶ 38.

86. Section 19 undoubtedly places an obvious double standard in favor of debtors **solely because they are consumer debtors**. Decl. of M. Hobbs at ¶ 38 Decl. of T. Myers at ¶ 39

87. Section 19 offers a remedy to debtors (an award of fees regardless of the amount of the debt sought) while depriving creditors and debt collectors of that same remedy solely because of who they are. *Id.*

88. It too is designed to discourage debt collection lawsuits from suing in Justice Court, as Section 19 provides a blunt invidious instrument for any debtor to discourage lawful and genuine Small Dollar Debt claims. *Id.*

89. Notably, Sections 18 and 19 do not just apply to debt collectors. They apply to **all** businesses, big and small, from landscapers to utility companies, to medical providers, to construction companies.

90. These businesses that provide goods and services to consumers in advance of payment will effectively have no recourse if they do not get paid because (1) they are required to

[9] The same is true for those contracts entered into between Nevada Energy and consumers that are now in collections with CCCS. *See* Decl. of T. Myers at ¶ 10.

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have an attorney to pursue Small Dollar Debts; and (2) will not be able to hire an attorney given the 15% cap of Section 18 and the patently unfair hammer of Section 19.

91. As stated by attorneys Michael Aisen and Adam Gill of Aisen, Gill & Associates, LLP:

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

Decl. of M. Aisen at ¶ 15, attached hereto as **Exhibit "4"**; Decl. of A. Gill at ¶ 15, attached hereto as **Exhibit "5"**. Caleb Langsdale of The Langsdale Law Firm adds:

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

Decl. of C. Langsdale at ¶ 5, attached hereto as **Exhibit "10"**.

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

92. A.B. 477 and JCR 16 do not merely affect debt collection agencies, debt purchasers, and attorneys.

93. Rather, these rules affect **all** businesses that work for and extend credit to consumers.

94. The enclosed record is replete with small business owners attesting as to the nonsensical and devastating effects of A.B. 477.

95. They include medical providers, dental clinics, accountants, therapists, property managers, childcare providers, dry cleaners, bakers, security providers, and landscapers. *See, e.g.*, Decl. of K. Buth, attached hereto at **Exhibit "11"**.

96. These incorporated small business owners attest to the "double whammy" where (1) JCR 16 requires them to hire an attorney to access the Justice Court; and then (2) A.B. 477 makes it effectively impossible for them to access Justice Court in Small Dollar Debt cases. *Id.*

97. Ironically, A.B. 477 actually hurts consumers as a whole because it will force businesses to tighten the credit they extend. Sections 18 and 19 of A.B. 477 will effectively

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prohibit debt collectors from commencing civil actions in Justice Court in small dollar cases, many debts will go unpaid, leaving many creditors unwilling to provide services without advance payment. *Id.*

98. This will tighten access to credit for all consumers and will effectively punish consumers who pay their debts in full and on time. *Id.*

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

99. Since A.B. 477 took effect on October 1, 2019, NCA members have been given defaulted debts arising from contracts entered into after the effective date of the new law. *See* Decl. of T. Myers at ¶ 10.

III.

LEGAL ARGUMENT

A. Standard Of Review.

Justice Court moves this Court for dismissal of NCA's claims pursuant to NRCP 12(b)(5) for failure to state a claim upon which relief may be granted. Nevada is a notice pleading jurisdiction, which requires this Court to "liberally construe [pleadings] to place into issue matters which are fairly noticed to the adverse party." *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984). So long as the claims here "set forth sufficient facts to establish all necessary elements of a claim for relief…[giving Justice Court] fair notice of the nature of the claim and relief sought," *id.*, the claims are sufficiently pleaded. In resolving the Justice Court's Motion to Dismiss, granting the same is proper only if "it appears beyond a doubt that [NCA] could prove no set of facts, which, if true, would entitle [it] to relief." *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). All factual allegations in NCA's First Amended Complaint must be accepted as true and all inferences must be drawn in its favor. *Id.*

Additionally, in resolving Justice Court's Motion to Dismiss, this Court is not limited to the four corners of the complaint. *Baxter v. Dignity Health*, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015). Specifically, this court may "consider unattached evidence on which the complaint necessarily relies if: (1) the complaint refers to the document; (2) the document is central to the

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plaintiff's claim; and (3) no party questions the authenticity of the document." *Id.* (quoting *United States v. Corinthian Colleges*, 655 F.3d 984, 999 (9th Cir. 2011)). Because the contents of documents included in the record attached to NCA's Motion for Preliminary Injunction (which is currently pending before this Court) were alleged in the First Amended Complaint and neither party questions the authenticity of such document, this court may consider said record when deciding Justice Court's Motion to Dismiss.

A. NCA's Complaint Sets Out A Viable Section 1983 Claim.

Justice Court alleges that NCA has not set out a claim under 42 U.S.C. § 1983[10] because NCA has not set forth sufficient facts showing that it suffered an actual injury that is related to any act or omission of Justice Court. Mot., at 6:14- 8:14. Justice Court's argument ignores the pending Motion for Preliminary Injunction, which includes specific documented examples of unpaid accounts that effectively cannot be brought in Justice Court because **the cost of hiring an attorney would exceed the amount of the judgment if the plaintiff were successful on 100% of its claim**.

If there is one thing NCA and Justice Court can agree on in this matter, it is the meaning of "access to courts." "[A]ccess to the courts means the opportunity to prepare, serve and file whatever pleadings or other documents are necessary or appropriate in order to commence or prosecute court proceedings affecting one's personal liberty…." *Hatfield v. Bailleux*, 290 F.2d 632, 637 (1961). This definition could not fit more squarely with the reason why NCA initiated the instant lawsuit—its members' right to meaningful access to Justice Court is being infringed upon by the combined effect of A.B. 477 ***and*** JCR 16.

A.B. 477 arbitrarily caps the amount a debt collector, in a lawsuit for unpaid debt, can recover in attorney fees to 15%. NCA has provided ample undisputed evidence showing that this cap makes it cost prohibitive for attorneys to represent debt collectors in Small Dollar Cases in Justice Court. For example, while the average hourly rate for a consumer law attorney with 3-5

[10]Justice Court does not seem to address NCA's constitutional claims arising under state law.

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years of experience is $290.00, A.B. 477 makes it so that a prevailing plaintiff would be limited Decl. of T. Myers at ¶ 35; Exhibit 12.

an award of a **total** of $75.00 in attorney fees on an unpaid $500.00 consumer debt, or $150.00 in attorney fees on a $1,000.00 consumer debt. NCA members have already been notified by their attorneys that they will not continue to represent them in Small Dollar Cases once A.B. 477 is effective.[11] Without an attorney, NCA members cannot pursue debt collection cases in Justice Court because JCR 16 prohibits entities from appearing in Justice Court without an attorney. A.B. 477, in conjunction with JCR 16, effectively prevents NCA members from having "the opportunity to prepare, serve and file whatever pleadings or other documents are necessary or appropriate in order to commence or prosecute court proceedings affecting one's personal liberty…." *Hatfield*, 290 F.2d at 637. In other words, A.B. 477, in conjunction with JCR 16, violates NCA members' right to meaningful access to the courts.

1. A.B. 477 and JCR 16 Violate NCA Members' Right to Meaningful Access to Court, Which Are Guaranteed by the Due Process Clause and the Equal Protection Clause.[12]

Justice Court argues that the right to meaningful access to courts is reserved exclusively for the First Amendment. Mot., at 7:3-10. This is simply not true. The right to meaningful access to the courts is a right granted by the Due Process Clause and the Equal Protection Clause. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433 (1982). ("As our decisions have emphasized time and again, the Due Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged."); *Vance v. Judas Priest*, 1990 WL 130920, at *2 (unpublished) (Nev. Dist. Aug. 24, 1990) (Whitehead, J.) ("The Supreme Court has held that 'the right to be heard' is 'one of the most fundamental requisites of due process.'"); *see also*

[11] A.B. 477 is now effective and applies to all consumer form contracts entered into on or after October 1, 2019.

[12] In its Motion for Preliminary Injunction, NCA also argues that there is a right to retain counsel in civil actions and right to jury trial in Justice Court that is being infringed upon by A.B. 477 and JCR 16.

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Chambers v. Baltimore & O.R. Co., 207 U.S. 142, 148 (1907) ("The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each state to the citizens of all other states to the precise extent that it is allowed to its own citizens."). These cases illustrate that the right to meaningful access to the court is not just reserved under the First Amendment. *See also Walters v, Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 335 (1985) (stating, "appellees' First Amendment arguments, at base, are really inseparable from their due process claims. The thrust is that they have been denied 'meaningful access to the courts' to present their claims.").

Here, A.B. 477 undeniably imposes crushing burdens on the ability of creditors and debt collectors to obtain legal representation in consumer debt cases. Section 18 caps the amount a creditor or debt collector can obtain in a consumer debt lawsuit to 15%. This cap on attorney's fees makes it cost prohibitive for creditors and debt collectors to commence civil actions in Justice Court in Small Dollar Debt cases. Under a regime where Section 18 is enforced, **creditors and debt collectors either cannot retain an attorney on contingency in Small Dollar Debt actions, or will lose money if charged on an hourly basis, even when they are the prevailing party**. Indeed, to avoid a debt in Nevada, a consumer now need only decide to refuse to pay a lawful Small Dollar Debt. With A.B. 477 firmly choking the ability of creditors to recover, most will simply throw up their hands and not file a lawsuit in the first place. If a creditor actually were to file a lawsuit, a consumer need only dispute the debt in court to ensure that the lawsuit is dragged out and thus force a money-losing proposition for a creditor. **Again, neither Defendant disputes this proposition**.

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

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This problem is only aggravated by the fact that entities such as NCA members are prohibited from appearing in proper person in the Justice Court, as JCR 16 explicitly states requires a business entity to obtain counsel to appear in court. As a result, JCR 16, in conjunction with A.B. 477, effectively leaves NCA members without any recourse to collect on unpaid debts from those debtors who refuse to pay the amount in which they contracted for.

Further, and perhaps the scariest aspect of A.B. 477—and another fact demonstrating its irrationality—is that **it was specifically designed** (and not incidental as Justice Court contends) to tilt the scales of justice and keep a certain class of litigant out of Justice Court. As the principal proponent of A.B. 477, Peter Goatz openly testified that Sections 18 and 19 were written to block debt collectors from obtaining access to Justice Court. Indeed, Mr. Goatz stated that the purpose of the attorney fee cap in A.B. 477 was to effectively eliminate access to courts for small businesses "because there would not be an incentive for an attorney to take on a small dollar debt case. . . . " Motion for Preliminary Injunction, Appendix Vol. III, at NCA000577 and NCA000582. This is not an "incidental" effect. It was the design behind the rule. As such, Justice Court's reasoning is not only unsound, it is *per se* irrational.

"The general rule in our legal system is that each party must pay its own attorney's fees…." *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 550 (2010). But Nevada law contains multiple applicable fee-shifting provisions, one of which provides that "[t]he prevailing party in any civil action at law in the justice courts of this State shall receive, in addition to the costs of court as now allowed by law, a reasonable attorney fee." NRS 69.030. With the exception of debt collector pursuing unpaid debts, all other prevailing litigants in Justice Court are entitled to reasonable attorney fees. Indeed, Section 19 of A.B. 477 explicitly states that **debtors** who successfully defend the collection of unpaid debt may receive whatever attorney fees the court deems reasonable.

2. Small Claims Court is not an Adequate or Appropriate Remedy.

Most of Justice Court's Opposition seems to ignore the fact that NCA members' issue in this matter is not solely with the existence of JCR 16. The issue presented here is that A.B. 477,

acting in conjunction with JCR 16, is unconstitutional because they have the combined effect of blocking NCA members' ability to pursue unpaid debt in Justice Court. Justice Court responds by simply stated NCA "can still bring claims in the Las Vegas Justice Court. [NCA] must simply comply with the long-standing rule that a corporation cannot represent itself and must retain a licensed attorney to represent it." Mot., at 9:7-9. Again, A.B. 477 makes it so that it is impossible for NCA members to retain an attorney.

The cases cited by Justice Court fall extremely short of supporting its proposition. In *Paciulan v. George*, 38 F. Supp. 2d 1128, 1137-38 (N.D. Cal 1999), *aff'd*, 229 F.3d 1226 (9th Cir. 2000), the plaintiffs brought a claim challenging the constitutionality of a California rule limiting *pro hac vice* admission to nonresidents licensed in other states. The Court concluded that the plaintiffs' right to access to the courts was not violated because "[p]laintiffs may still bring their claims in California courts as litigants; they simply may not bring claims as lawyers without first satisfying California's rules for admission to the state bar." *Paciulan*, 38 F. Supp. 2d at 1138. Unlike the plaintiffs in *Paciulan*, NCA members can **never** appear in Justice Court *pro se* because JCR 16 prohibits them from representing themselves.

In *Walters v. National Ass'n of Radiation Survivors*, 473 U.S. 305 (1985), the Supreme Court upheld a due process attack on a statutory $10 limitation on attorney's fees payable by veterans seeking disability or death benefits in proceedings before the Veterans' Administration. Acknowledging that the fee limitation would make attorneys unavailable, the Supreme Court nonetheless upheld the fee limitation statute because attorneys **were not essential** to vindicate claims before the Veterans' Administration. *Walters*, 473 U.S. at 334. Unlike in *Walters*, attorneys are essential to vindicate NCA members claims' for based on unpaid debts because, pursuant to JCR 16, they are entities and cannot under any circumstances appear in Justice Court without an attorney.

Justice Court's drawing of comparison to NRS 41.035 is not convincing either. *See* Mot., at 9:13-22. NRS 41.035 statutorily caps the amount *any* person may recover in damages against the State. Meanwhile, A.B. 477 caps the amount that *only* debt collectors can recover in attorney

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fees in cases brought to collect upon unpaid debt. A.B. 477 was specifically designed to deter attorneys from taking on such cases, knowing that debt collectors need attorneys to represent them in Justice Court. A.B. 477 effectively rids debt collectors of their ability to recovery on unpaid debts, while also allowing debtors in the same suit to collect attorney fees that are deemed reasonable. The opponents of NRS 41.035 failed to make such argument, and for this reason, the Nevada Supreme Court did not find the statute to violate any constitutional rights. *See State v. Silva*, 86 Nev. 911, 916, 478 P.2d 591, 594 (1970), *abrogated on other grounds by Martinez v. Maruszczak*, 123 Nev. 433, 168 P.3d 720 (2007) ("The fault with the argument is the failure to distinguish between the right to recover and the amount of recovery. All persons injured through the negligence of the State have been granted the right to bring suit (except where immunity is retained), and this right is granted equally and without discrimination on any basis whatsoever.")

As a solution to the obvious constitutional infirmities presented in this case, Justice Court states that NCA members can still bring their claims in small claims court because entities may appear in proper person in small claims court. Mot., at 11:4-12. This is an astonishing assertion. Setting aside the lack of legal authority suggesting this somehow cures a Constitutional defect, its position defies common sense. This Court could not enact a local rule restricting the recovery of attorney's fees under 42 U.S.C. § 1988 in civil rights cases, and then justify that restriction by telling civil rights victims, "go sue in state court." Such reasoning is unsound.

Indeed, the feeble "go to small claims court" response does not address the hurdles that were deliberately erected to discourage lawsuits from a specific forum—Justice Court—as the undisputed legislative history states. It would be one thing to limit access to a certain court ***for everyone*** by changing a jurisdictional amount in controversy—Congress has done just that when raising the jurisdictional minimum multiple times in cases arising under 28 U.S.C. § 1332. It is entirely another thing to erect barriers to entry in that court ***for some persons*** who are otherwise entitled to be there. Worse yet, by effectively forcing certain parties into small claims court, they are, in turn, robbed of their right to obtain their own counsel and their right to a jury trial. *See infra.*

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

The civil matters in which Justice Courts have jurisdiction over are dictated by NRS 4.370. Specifically, Justice Courts have jurisdiction over civil "actions arising on contract for the recovery of money only, if the sum claimed, exclusive of interest, does not exceed $15,000." NRS 4.370(1)(a). Nearly all of NCA members' accounts receivable consists of unpaid small dollar consumer debts in amounts of $5,000.00 or less. Decl. of M. Hobbs at ¶ 4; Decl. of T. Myers at ¶ 4. Accordingly, NCA members have rightfully brought debt collection lawsuits to Justice Court. Such a right cannot be chipped away by imposing extra barriers such as A.B. 477 and JCR 16's combined effect. This is especially true when those barriers are only imposed on debt collectors for no other reasons beyond the fact that they are debt collectors. Small claims court is simply not a solution, either as a practical matter or as a constitutional one.

3. NCA's Claim is Ripe for Judicial Review.

Justice Court argues that this case is not ripe for judicial review because NCA members have not yet filed a suit and been denied attorney fees. Mot., at 11:19-12:21.[13] Under the

[13]Justice Court's Motion focuses on the "injury" factor of the ripeness doctrine and so does too this Opposition.

ripeness doctrine, a "plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) 'actual or imminent, not conjectural or hypothetical.'" *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Further, "a claim is not ripe for judicial resolution if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Wolfson v. Brammer*, 616 F.3d 1045, 1064 (9th Cir. 2010). Lastly, "[o]ne does not have to await the consummation of threatened injury to obtain preventative relief." *Reg'l Rail Reorg. Act Cases*, 419 U.S. 102,143 (1974) (quotation marks and citation omitted); *see also Babbit v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979) (a plaintiff need not expose himself to prosecution in order to challenge the constitutionality of a statute "that he claims deters the exercise of his constitutional rights."). For a claim to be ripe, the plaintiff must be subject to a "genuine threat of *imminent* prosecution." *San Diego County Gun Rights Comm. v. Reno,* 98 F.3d 1121, 1126 (9th Cir.1996).

Here, NCA injury in this matter is neither hypothetical nor speculative. And, in fact, because the factual record is undisputed, Defendants concede the following:

- Section 18 of A.B. 477 effectively prevents Aisen Gill, counsel for Clark County Collection Service, from representing clients in Small Dollar Debt Cases because it is cost prohibitive to do so. Motion for Preliminary Injunction, Appendix Vol. III, at NCA000504-511.
- The Langsdale Law Firm and all lawyers within the purview of A.B. 477 will be forced to either give up work or to continue accepting placements at such a low fee cap that quality and attorney oversight will suffer, given that litigation will be subject to the 15% cap of Section 12 and patently unfair provisions of Section 19. Motion for Preliminary Injunction, Appendix Vol. III, at NCA000512-513.

See Insegna-Nieto v. State Farm Mut. Auto. Ins. Co., 2013 WL 101400, at *7 (unpublished) (D. Nev. Jan. 7, 2013) (Mahan, J.) ("Failure to at least counter any of the substantive arguments could alone be construed as consenting to all of the points in [the] motion.").

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Indeed, when this case was before him, United States District Court Judge James C. Mahan acknowledged that "the complaint arguably shows that NCA will suffer immediate and irreparable injury." Case No. 2:20-cv-0007-JCM-EJY, ECF No. 13. As shown from the testimony of Mr. Goatz, A.B. 477 was enacted with the targeted purpose of deterring attorneys to take on Small Dollar Debt Cases. The damage was done once A.B. 477 took effect and this matter does not rest of upon a contingent future event.

Indeed, since A.B. 477 took effect on October 1, 2019, NCA members have been given defaulted debts arising from contracts entered into after the effective date of the new law. *See* Decl. of T. Myers at ¶ 10; Exhibits 12 and 13. Because of the crippling effects of A.B. 477, in conjunction with JCR 16, NCA members' ability to sue on unpaid debts in already being interfered with. In sum, this matter is ripe for judicial review to determine the solitary issue in this matter: Whether A.B. 477, in conjunction with JCR 16, is unconstitutional.

B. <u>Justice Court Is Not Immune From The Instant Suit.</u>

Justice Court argues that it is immune from suit because it merely enacted JCR 16 based on what it describes as controlling state law and Justice Court owes no constitutional duty to revoke JCR 16. Mot., at 13:1-15:13. Justice Court's argument is without merit. First, Justice Court has not cited any authority providing that a court is immune from liability when it is sued based on the constitutionality of its own rules. The cases relied on by Justice Court stands for the lonely proposition that public officials cannot be sued when acting in accordance with a facially valid court order. *See* Mot., at 13:3-11. This is not the case here. Further, the Ninth Circuit has decided cases to their merits, where a court was sued based on the constitutionality of its own rules. *See e.g., Giannini v. Real*, 911 F.2d 354 (9th Cir. 1990). And, the Ninth Circuit has specifically held that the constitutionality of a local court rule may be challenged. *Standing Committee on Discipline v. Yagman*, 55 F.3d 1430, 1436-37 (9th Cir. 1995) (Local Rule 2.5.2 in Central District of California prohibiting criticism of federal judges held unconstitutional). Accordingly, Justice Court is not immune from suit challenging the constitutionality of its own rules.

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Second, there is no authority suggesting that JCR 16 may trump civil liberties and constitutional rights. Nor should these rules be treated as "hard and fast." For example, some courts in other states have allowed non-lawyers to represent entities in court under certain circumstances. *See e.g.*, *Vermont ANR v. Upper Valley Reg. Landfill*, 621 A.2d 225, 228 (Vt. 1992) ("Courts that have made exceptions to the lawyer-representation rule have generally relied on the rationale that where imposition of the rule conflicts with its purposes, lay representation should be permitted."). The *Vermont ANR* court explained that "[a]lthough the lawyer-representation rule serves important public interests, it should not be rigidly enforced in cases where those interests are not threatened and enforcement would preclude appearance by the organization." *Id.* Similarly, a New York court noted that the lawyer-representation rule serves to protect the public from unscrupulous or inexperienced representatives. *A. Victor & Co. v. Sleininger*, 9 N.Y.S.2d 323, 326 (App. Div. 1939). Nevertheless, the court concluded that where a corporation cannot afford counsel or cannot find an attorney to represent it, the corporation should not be denied its day in court. *Id.* Further, there are some jurisdictions that allow businesses to appear without an attorney in justice court. *Oregon State Bar v. Wright*, 573 P.2d 283 (Or. 1977); *Sparks v. Johnson*, 826 P.2d 928 (Mont. 1992). Despite these options, Justice Court has dug in and refuses to modify its rule to afford access to justice for all.

It is not an extraordinary ask of Justice Court to permit entities to represent themselves in Justice Court. And it is remarkable that the Justice Court, in receiving this lawsuit and becoming aware of the obvious problems it presents, seems unwilling to take a second look at JCR 16 in light of this lawsuit. The mere fact that JCR 16 is a long-standing rule is no excuse, and there is no "tradition" exception to the U.S. or Nevada Constitution. Indeed, this challenge has been triggered by the recent enactment of a statute that, when combined with JCR 16, makes it so NCA members and creditors of the like cannot hire attorneys. Thus, those "policies" that may have been sound in the past, are not so sound when considering the liberties at stake in this matter.

Justice Court also haphazardly throws out in one sentence that it "effectively is immune from [NCA's] suit by virtue of quasi-judicial immunity for following the extant law announced

by the Nevada Supreme Court." Mot., at 15:10-13. *See Ashelman v. Pope*, 793 F.2d 1072, 1075-76 (9th Cir. 1986) (noting that judges are immune from damages acts for judicial acts taken and to determine in an act is judicial, courts focus on "(1) the precise act is a normal judicial function; (2) the events occurred in the judge's chambers; (3) the controversy centered around a case then pending before the judge; and (4) the events at issue arose directly and immediately out of a confrontation with the judge in his or her official capacity."). NCA notes that it is seeking no money damages in this case, no attorney's fees (even though it would be entitled to the same as a prevailing party under 42 U.S.C. § 1988), and no costs of suit. That being said, the creation of a local rule is hardly a "normal judicial function" worthy of immunity. *See Yagman*, 55 F.3d at 136-37 (Local Rule 2.5.2 in Central District of California prohibiting criticism of federal judges held unconstitutional).[14] Accordingly, Justice Court is not immune from suit challenging the constitutionality of its own standing rules.

IV.

CONCLUSION

For the reasons set forth above, NCA respectfully requests that this Court deny Justice Court's Motion to Dismiss.

DATED this 26th day of May, 2020.

/s/Patrick J. Reilly
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[14] Justice Court's assertion of immunity makes little sense on multiple levels. Courts are not immune to writ requests and other matters challenging court actions where the court is specifically identified as a party. *See, e.g.* NRS Chapter 34. And, if Justice Court were immune from suit, it could craft a standing local rule expressly discriminating against litigants based upon race, religion, national origin, or other protected class. Surely, Justice Court cannot suggest it is "immune" from such conduct.

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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 **OPPOSITION TO MOTION TO DISMISS** was served via electronic service on the 26th day of May, 2020, to the addresses shown below:

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Exhibit 1

(First Amended Complaint)

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

NEVADA COLLECTORS ASSOCIATION, a Nevada non-profit corporation,

Plaintiff,

v.

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

Defendants.

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

FIRST AMENDED COMPLAINT

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

PARTIES, JURISDICTION AND VENUE

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

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

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

4. Defendant Sandy O'Laughlin ("Laughlin") is the Commissioner of the FID.

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

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

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

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

GENERAL ALLEGATIONS

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

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

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

11. 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 consumer accounts that are past due or in default. NCA's members collect monies 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.

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

a. Medical debt (including doctors, dentists, and labs);

b. Utilities;

c. Rent;

d. Credit card and revolving debt;

e. Cell phone debt;

f. Automobile loans;

g. Professional services provided on credit; and

h. Installment loans governed by NRS Chapter 675.

13. Nearly all of NCA members' accounts receivable consist of unpaid small dollar consumer debts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Offers of Judgment—Justice Court Rule of Civil Procedure 68

b. Mechanic's Liens—NRS 108.237(1) and NRS 108.239(9)(b);

c. Attorney's Liens—NRS 18.015(1);

d. Homeowner's Associations—NRS 116.4117(4);

e. Justice Court Actions—NRS 69.030;

f. Appeals from Justice Court—NRS 69.050;

g. Arbitrations—NRS 38.243(3);

h. Fees governed by agreement, express or implied—NRS 18.010(1);

i. Actions when the prevailing party has recovered less than $20,000—NRS 18.010(2); and

j. Landlord/Tenant—NRS 118A.515.

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

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

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

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

FIRST CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECOND CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

THIRD CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

FOURTH CLAIM FOR RELIEF

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

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

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

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

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

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

83. NCA's members have a fundamental constitutional right to meaningful access to the courts.

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

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

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

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

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

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

FIFTH CLAIM FOR RELIEF

(Declaratory Relief)

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

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

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

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

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

3. For declaratory relief; and

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

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DATED this ____ day of February, 2020.

/s/ Patrick J. Reilly

Patrick J. Reilly, Esq.
Marckia L. Hayes, Esq.
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CERTIFICATE OF SERVICE

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

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

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

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Exhibit 2

(Mary Hobbs Declaration)

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 MARY HOBBS IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

I, Mary Hobbs, hereby declare as follows:

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

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 consumer accounts that are past due or in default. NCA's members collect monies on behalf of, for the account of, or as assignees of businesses that sell goods and/or services to consumers

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

a. Medical debt (including doctors, dentists, and labs);

b. Utilities;

c. Rent;

d. Credit card and revolving debt;

e. Cell phone debt;

f. Automobile loans;

g. Professional services provided on credit; and

h. Installment loans governed by NRS Chapter 675.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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

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a judgment, and then collecting on that judgment.

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

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

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

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

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

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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.

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> 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.

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

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

40. 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.

MARY HOBBS

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Exhibit 3

(Tim Myers Declaration)

DECL
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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

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consumer accounts that are past due or in default. NCA's members collect monies 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. Those debts vary in kind, including, but not limiting to, the following:

a. Medical debt (including doctors, dentists, and labs);

b. Utilities;

c. Rent;

d. Credit card and revolving debt;

e. Cell phone debt;

f. Automobile loans;

g. Professional services provided on credit; and

h. Installment loans governed by NRS Chapter 675.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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("JCR") 16.

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

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

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

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

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

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

a judgment, and then collecting on that judgment.

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

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

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

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

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

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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.

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

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

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

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

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

41. 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 May, 2020, in Clark County, Nevada.

/s/ Tim Myers
TIM MYERS

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Exhibit 4

(Michael Aisen Declaration)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. In the current legal market, it would not be economically feasible for Aisen Gill to represent CCCS or any other client in a debt collection action involving a Small Dollar Debt lawsuit if its fees were limited to fifteen per cent (15%) of the unpaid amount of the debt. For example, under Section 18 of A.B. 477, Aisen Gill would be limited to a recovery of attorney's fees of only $75.00 for a $500.00 debt. 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.[1] For most Small Dollar Debts in the $1,000.00 to $2,000.00 range, attorney's fees would be limited to $150.00 to $300.00 if fees were capped at fifteen per cent (15%) of the unpaid amount of the debt.

[1] http://www.lasvegasjusticecourt.us/faq/fee_schedule.php.

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16. Based upon my experience as counsel who has represented CCCS in hundreds of debt collection cases, to make it economically feasible for a law firm to represent a creditor in a 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.

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

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

MICHAEL N. AISEN

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Exhibit 5
(Adam Gill Declaration)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. In the current legal market, it would not be economically feasible for Aisen Gill to represent CCCS or any other client in a debt collection action involving a Small Dollar Debt lawsuit if its fees were limited to fifteen per cent (15%) of the unpaid amount of the debt. For example, under Section 18 of A.B. 477, Aisen Gill would be limited to a recovery of attorney's fees of only $75.00 for a $500.00 debt. 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.[1] For most Small Dollar Debts in the $1,000.00 to $2,000.00 range, attorney's fees would be limited to $150.00 to $300.00 if fees were capped at fifteen per cent (15%) of the unpaid amount of the debt.

[1] http://www.lasvegasjusticecourt.us/faq/fee_schedule.php.

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16. Based upon my experience as counsel who has represented CCCS in hundreds of debt collection cases, to make it economically feasible for a law firm to represent a creditor in a 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.

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

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

ADAM L. GILL

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Exhibit 6

(Peter Goatz Testimony)

Peter J. Goatz, Esq.
Legal Aid Center of Southern Nevada, Inc.
725 E. Charleston Blvd.
Las Vegas, NV 89104
702-386-1519
pgoatz@lacsn.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

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.

Exhibit 7

(Attorney Survey)

UNITED STATES CONSUMER LAW

ATTORNEY FEE SURVEY REPORT

2015-2016

Ronald L. Burdge, Esq.

United States Consumer Law
Attorney Fee Survey Report 2015-2016

Survey Conducted By
and
Survey Report Authored By

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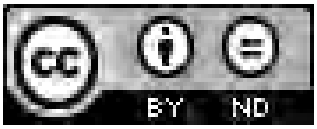

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March 13, 2018

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This publication was created to provide accurate and authoritative information concerning the subject matter covered. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney or expert. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

Nevada, Las Vegas

Firm Size	4.8
Median Years in Practice	12.0
Concentration of Practice in Consumer Law	100.0
Primary Practice Area	Consumer Law
Secondary Practice Area	General Practice
Last Time Rate Change Occurred (months)	13.2
Median Number of Paralegals in Firm	4.0
Average Paralegal Rate for All Paralegals	144
Average Attorney Rate for All Attorneys	420
25% Median Attorney Rate for All Attorneys	350
Median Attorney Rate for All Attorneys	450
75% Median Attorney Rate for All Attorneys	485
95% Median Attorney Rate for All Attorneys	500

Median Rate for Practice Areas

	Median
Attorneys Handling Bankruptcy Cases	450
Attorneys Handling Class Action Cases	450
Attorneys Handling Credit Rights Cases	450
Attorneys Handling Mortgage Cases	450
Attorneys Handling Vehicle Cases	450
Attorneys Handling TCPA Cases	450
Attorneys Handling Other Cases	450

Exhibit 8

(John Naylor Article)

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 ("NRPC").

A. NRPC 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 NRPC 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." NRPC 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. NRCP 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 without limit because on at least on 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 NRPC 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 NRPC 1.5. *Cf.* NRPC 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. Although 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* NRAP 36(c)(3)).

Courts recognize that block billing is a common practice. *See*, e.g., Daniele v. Puntillo, 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

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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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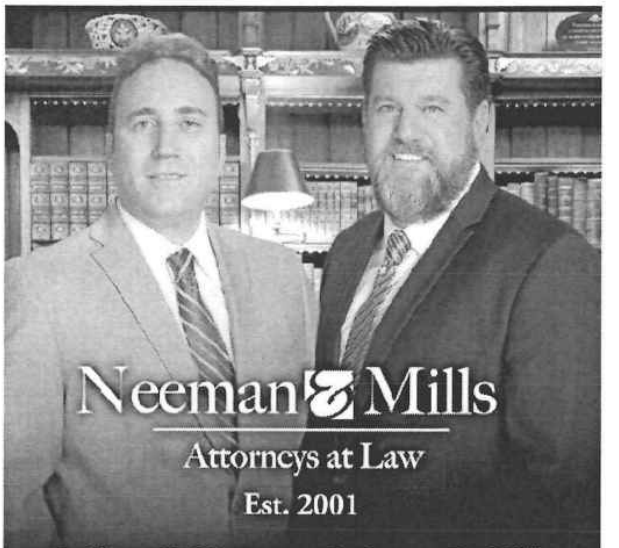

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Reasonable Attorney's Fees *continued from page 23*

hourly rate." *U.S. v. Pivaroft*, No. 2:13-cv-01498-JCM-PAL, 2015 WL 6149217, at*2 (D. Nev. Oct 19, 2015) (citing *Camacho 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 Saiid Forouzan RAD, et al.*, Case No. 2:14-cv-01947-APG-PAL, 2017 WL 2636487 (June 16, 2017), at p. *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 lodestar analysis, depending on the forum, but must also take into account NRPC 1.5, which prohibits the charging of unreasonable fees.

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.

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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 attornyes 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

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Exhibit 9

(04/03/2019 Meeting Minutes)

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

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 financers 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.

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: _____

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.

Exhibit 10

(Caleb Langsdale Declaration)

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

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

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

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

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

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

4. 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.

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

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

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

8. 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.

9. 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.

CALEB LANGSDALE, ESQ.

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Exhibit 11

(Kyle Buth Declaration)

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

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

4. To the extent that ELEVATE SPORTS PERFORMANCE & CHIROPRACTIC 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, ELEVATE SPORTS PERFORMANCE & CHIROPRACTIC 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. ELEVATE SPORTS PERFORMANCE & CHIROPRACTIC (and other businesses like it that provide goods and services to consumers in advance of payment) will effectively have no recourse if it does do 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 ELEVATE SPORTS PERFORMANCE & CHIROPRACTIC 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, ELEVATE SPORTS PERFORMANCE & CHIROPRACTIC 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 __7th__ day of Ocotber, 2019, in Clark County, Nevada.

KYLE BUTH

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Exhibit 12

(ENT Contracts)

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] Home Phone
Address [redacted]
City [redacted] State [redacted] Zip
Occupation Casino Dealer Employer Retired 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.

PATIENT SIGNATURE 10/23/09 DATE GUARANTOR SIGNATURE DATE REGISTERED BY INITIALS

Safeguard

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:

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) Samantha [redacted] Cell Phon [redacted]
Sex M F Date of Birth [redacted] Age 30 Social Security Number _____ Home Phon
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 BCBS 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

Safeguard FORMS USA

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 (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:	$ 675.68	CoPay	DED	Co-Ins
Office Write Off:	$ [illegible]	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

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) Salvador [redacted] Cell Phone [redacted]
Sex (M) F Date of Birth [redacted] Age 50 Social Security Number [redacted] Home Phone
Address [redacted]
City [redacted] State [redacted] Zip [redacted]
Occupation Construction Employer MEH Bld. Specialist 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

10-18-19

Safeguard LITHO USA

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NCA000590
JA0843

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:	$ 384.67	CoPay	(DED)	Co-Ins
Collection Fee:	$ 207.13	CoPay	DED	Co-Ins
W/O Amt Requested:	$ 591.80			

Reviewed By: JA Date of Adjustment: 4/27/2020

FOR OFFICIAL USE ONLY

__COLLECTIONS_____? Date:_____

Yes ✓ No_____ Date: 4/28/20

Jennifer Orio
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] Home Phone
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: kbarra34@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 SHL 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 RY INITIALS

Safeguard

NCA000592
JA0845

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:	$ 232.78	CoPay	(DED)	Co-Ins
Collection Fee:	$ 125.34	CoPay	DED	Co-Ins
W/O Amt Requested:	$ 358.12			

Reviewed By: JA Date of Adjustment: 4/27/2020

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) Cell Phone [Redacted]
Name (include middle initial) Treanna [Redacted] Home Phone
Sex M (F) 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 Carlos 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 Doina [Redacted] Primary Care Physician Jiang
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.

Treanna [Redacted] 11/12/19
PATIENT SIGNATURE DATE

GUARANTOR SIGNATURE DATE

REGISTERED BY INITIALS

Safeguard LITHO USA M028F029001M 03/14

Exhibit 13

(NV Energy Contracts)

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]

Date	Activity Description	Charges	Credits	Balance
02/20/20	Final Bill	$ 427.76		$ 427.76
02/23/20	Applied Deposit		$ 120.00	$ 307.76
				$ -
				$ -
				$ -
				$ -
				$ -
				$ -
				$ -
				$ -
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				$ -
				$ -
				$ -
				$ -
		TOTAL ACCOUNT BALANCE AS OF:	05/07/20	$ 307.76

NVEnergy

C A03 B17

REGINALD Redacted
Redacted

FINAL BILL

Please Pay By: Mar 9, 2020
$427.76

Account: Redacted
Customer Number: Redacted
Premises Number:
Billing Date: Feb 20, 2020

Account Summary

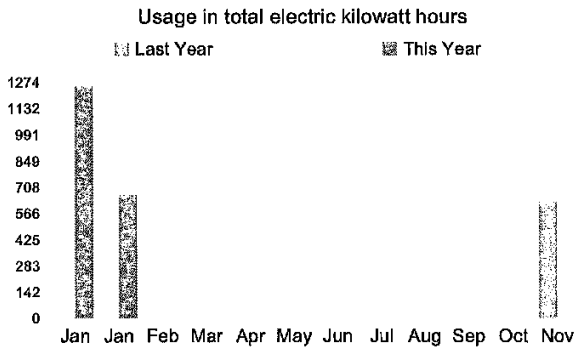
Previous Account Balance	349.96
Electric Charges	77.80
Current Amount Due	$427.76

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.

Electric Usage: Residential Service - Multi Family

Average Daily Electric Usage

Average Daily Cost this month $3.54



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

NVEnergy

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 0012178 20200220 PB5R31 PRINT 1 of 1 PB5R310000* 161586 BC

REGINALD Redacted
Redacted

89520

Redacted 0000042776 0000007780 0 005

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 Programsare 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/customercare.

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.

NVEnergy

6100 Neil Road. P.O. Box 10100. Reno. Nevada 89520 • 775-834-4444

Statement of Account

Customer Name: Brain Redacted

Prepared By: Heena

Today's Date: 05/07/20

Customer #: Redacted

Premise #: [redacted]

Date	Activity Description	Charges	Credits	Balance
01/31/20	Final Bill	$ 340.03		$ 340.03
02/12/20	Applied Deposit		$ 37.42	$ 302.61
				$ -
				$ -
				$ -
				$ -
				$ -
				$ -
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				$ -
				$ -
				$ -
				$ -
				$ -
		TOTAL ACCOUNT BALANCE AS OF:	05/07/20	$ 302.61

NVEnergy

E A03 B04

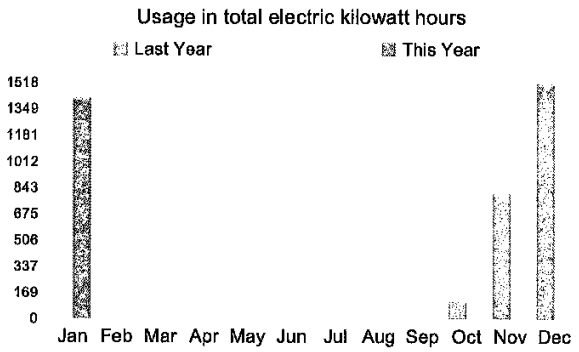
BRAIN [redacted]
[redacted]

FINAL BILL

Electric Usage: Residential Service - Multi Family

Average Daily Electric Usage

Average Daily Cost this month $4.63



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.

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/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

NVEnergy

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

9/27/18 2:07 PM 0 0004812 20200131 PA96R9 NOPRINT 1 oz 1 PA96R90000* 161566 BC

BRAIN [redacted]
[redacted]

89520

[redacted] 0000034003 0000018112 0 003

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**

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 Programsare 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/customercare.

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.

NVEnergy

E A05 B05

JAZZMIN Redacted
Redacted

FINAL BILL

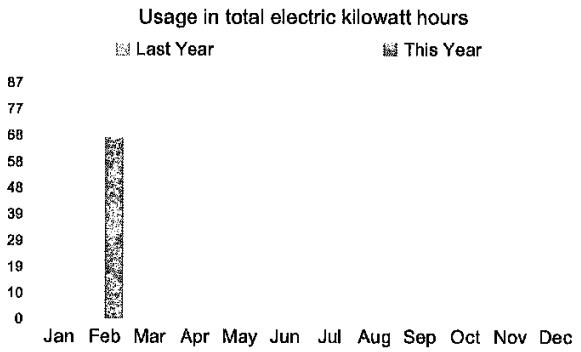
Please Pay By: Mar 19, 2020
$714.89

Account: Redacted
Customer Number: Redacted
Premises Number:
Billing Date: Mar 3, 2020

Electric Usage: Residential Service - Multi Family

Average Daily Electric Usage

Average Daily Cost this month $0.59



Account Summary

Previous Account Balance	0.00
Adjustment	70.33 CR
Electric Charges	14.84
Miscellaneous	770.38
Current Amount Due	$714.89

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.

Due to a second returned item from your bank, check payments have been suspended for one year. Payment is accepted at any authorized Shop & Pay location; visit our website nvenergy.com for a location near you or pay by phone: (800) 253-8084 (debit/credit card).

This statement includes an amount transferred from your previous account.

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

NVEnergy

ACCOUNT NUMBER: Redacted

Customer Number: Redacted

Service Address: Redacted

Please Pay By: Mar 19, 2020
$714.89

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 0012909 20200303 PC0NQ0 NOPRINT 1 oz 1 PC0NQ80000* 161588 BC

JAZZMIN Redacted
Redacted

89520

Redacted 0000071489 0000078522 1 004

NCA000601
JA0855

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**

Deposit Interest Applied	0.33 CR
Deposit Applied	70.00 CR
Total Miscellaneous Charges & Adjustments	**$700.05**

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 Programsare 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/customercare.

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.

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5/28/2020 4:32 PM
Steven D. Grierson
CLERK OF THE COURT

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

DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA COLLECTORS ASSOCIATION, a Nevada non-profit corporation, Plaintiff, vs. STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY FINANCIAL INSTITUTIONS DIVISION; JUSTICE COURT OF LAS VEGAS TOWNSHIP; DOE DEFENDANTS 1 through 20; and ROE ENTITY DEFENDANTS 1 through 20, Defendants.	CASE NO. A-19-805334-C DEPT. NO. 27

OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION OR, ALTERNATIVELY, FOR A WRIT OF MANDAMUS OR PROHIBITION

COMES NOW, Defendant, JUSTICE COURT OF LAS VEGAS TOWNSHIP (hereinafter "Justice Court"), by and through its counsel of record, THOMAS D. DILLARD, JR., ESQ., of the law firm of OLSON CANNON GORMLEY & STOBERSKI and hereby opposes Plaintiff's Motion for Preliminary Injunction or, Alternatively, for a Writ of Mandamus or Prohibition filed on May 15, 2020.

This Opposition is made and based upon all the pleadings and papers on file herein, the attached points and authorities, together with any argument that may be introduced at the time of hearing this matter.

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The Justice Court further specifically incorporates herein by reference the points and authorities included in the Motion to Dismiss filed on May 12, 2020.

DATED this 28 day of May, 2020.

OLSON CANNON GORMLEY
& STOBERSKI

BY: _____

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On November 13, 2019, Plaintiff initially filed a Complaint in the Eighth Judicial District Court of Nevada and brought suit against two governmental Defendants; namely, the State of Nevada and the Justice Court of Las Vegas Township ("Justice Court"). Plaintiff overall has alleged it is being deprived of various federal and state constitutional rights; however, the only one of Plaintiff's constitutional theories that Plaintiff avers a causal link to the Justice Court (via Justice Court Rule 16) is for the first cause of action pled as a denial of access to the courts claim. The Justice Court removed the case to the U.S. District Court of Nevada based upon federal question jurisdiction. (*Nevada Collection Association v. State of Nevada Department of Business and Industry Financial Institutions Division, et. al.*, Case No. 2:20-CV-7 JCM (EJY)). While the Justice Court had a pending motion for judgment on the pleadings, Plaintiff, on April 1, 2020, filed a First Amended Complaint ("FAC") with leave of the federal court that simply added as an individual defendant in the case the commissioner of the named State division. [Doc. #37 & #38]. There was no substantive change to the claim against the Justice Court.

The gravamen of Plaintiff's FAC is really a legal conclusion, cast as factual allegations, that Plaintiff has been denied its due process right of having "access to the courts" because it has to retain a lawyer for cases it chooses to file in Justice Court and cannot obtain all of its attorney fees as part of judgments obtained in that court pursuant to the recently passed legislation. FAC at ¶¶ 48-52. This allegation of denial of seeking redress from the courts, therefore, pertains just to cases that Plaintiff chooses to file in the Justice Court and for which there is concurrent jurisdiction in small claims court given the small debt claims at issue. This alleged denial of access is also narrowly limited to Plaintiff's self-interest in taking advantage of a statutorily created remedy of being able to obtain a full measure of attorney fees on a judgment.[1]

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

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Specifically, Plaintiff (as a corporation) contends its corporate rights are infringed because it cannot appear in a *pro se* capacity when prosecuting consumer debt cases against individuals and is also foreclosed by the recent legislation from obtaining attorney fees on any judgment obtained in Justice Court.

Plaintiff has only effectively named Justice Court of Las Vegas in the first cause of action for alleged violations of the Substantive Due Process Clause of the Fourteenth Amendment of the United States Constitution and the analogous due process clause of the Nevada State Constitution. Plaintiff seemingly brought suit against Defendant Justice Court for nothing more than maintaining the efficacy of LVJC Rule 16 following the passage of A.B. 477. The Justice Court submits that LVJC Rule 16 satisfies constitutional muster and is in actuality nothing more than a reiteration of well-established case law for which the Justice Court has no discretion to disobey.

The court should deny Plaintiff's motion for a preliminary injunction. Plaintiff has not stated plausible claims to withstand the Justice Court's pending motion to dismiss (filed on May 12, 2020) and has failed to demonstrate in its motion a likelihood of success on the merits. Plaintiff also is not in jeopardy of suffering irreparable harm. Plaintiff's claims for injury from failing to obtain a full measure of attorney fees is even now a matter of conjecture. Plaintiff certainly has not provided a basis to infer that a monetary judgment will fall short of a just and equitable remedy. Furthermore, the Justice Court has a keen interest, as does the public overall, in continuing compliance with controlling law requiring corporations making an appearance in Justice Court only through licensed attorneys. Plaintiff has therefore not presented a facial basis to impose a preliminary injunction against the Justice Court regarding the continued efficacy of Las Vegas Justice Court ("LVJC") Rule 16.

II. PROCEDURAL HISTORY

The Justice Court filed a notice of removal of civil action [#1] prior to making any other response to the initial Complaint because Plaintiff included federal claims pursuant to 42 U.S.C. § 1983 (which includes the access to courts claim). Plaintiff also filed, on January 24, 2020, a document in the U.S. District Court of Nevada entitled "Application for a Temporary

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Restraining Order and a Motion for Preliminary Injunction or, Alternatively, For a Writ of Mandamus or Prohibition." [#11]. On January 30, 2020, the Court entered an order denying Plaintiff's motion for a temporary restraining order without prejudice and directing the parties to fully brief the motion for a preliminary injunction. [#13]. The Honorable Judge James C. Mahan then determined that abstention was appropriate pursuant to the three part test enunciated in Burford v. Sun Oil Co., 319 U.S. 315 (1943). The U.S. District Court of Nevada, accordingly, remanded the case to this Honorable Court without ruling on the other pending motions.

Following the formal remand, on May 12, 2020, the Justice Court again moved to dismiss all claims alleged against it in the FAC based largely on the arguments previously raised in the federal court prior to abstention. The Justice Court, in doing, so maintains that it has not caused Plaintiff to suffer an actual injury with regard to any right it possesses regarding having access to the courts and is also insulated from suit. Specifically, the motion seeks to dismiss all claims alleged against the Justice Court based upon the following arguments:

(1) Plaintiff has failed to allege the infringement of an actual injury in a specific case to satisfy standing and pleading requirements to state a viable First Amendment or Fourteenth Amendment access to the courts § 1983 claim; and

(2) The Justice Court owes no constitutional duty to Plaintiff to disregard controlling case law of the Nevada Supreme Court and, in fact, possesses absolute immunity by following controlling law from that Court.

The Justice Court herein incorporates by reference the full points and authorities set forth in the motion to dismiss to demonstrate in this opposition that Plaintiff is highly unlikely to succeed on the merits on the first cause of action against the Justice Court. Those legal arguments for which dismissal is based are reiterated in this opposition in a more abbreviated form for convenience.

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III. STANDARD OF REVIEW

A. Standard of Review for a Preliminary Injunction

Nev. Rev. Stat. 33.010 provides that an injunction may be granted when it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetuity. A preliminary injunction is "a device for preserving the status quo and preventing the irreparable loss of rights before judgment." Texas Unlimited, Inc. v. A. BMH & Co., Inc., 240 F.3d 781, 786 (9th Cir. 2001); Univ. of Tex. v. Camenisch, 451 U.S. 390, 395, 101 S.Ct. 1830 (1981). It "should not be granted unless the movant, by a clear showing, carries the burden of persuasion." Mazurek v. Armstrong, 520 U.S. 968, 972, 117 S.Ct. 1865 (1997) (per curiam).

A preliminary injunction is only available if an applicant can show, with substantial evidence, a likelihood of success on the merits and a reasonable probability that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is an inadequate remedy. Shores v. Global Experience Specialists, Inc., 134 Nev. 503, 507, 422 P.3d 1238, 1242 (2018); Pickett v. Comanche Construction, Inc., 108 Nev. 422, 426, 836 P.2d 42, 44 (1992). A central factor to be considered by the Court in connection with a motion for injunctive relief is whether the party seeking the injunction has shown a reasonable probability of success on the merits. E.G. Sobol v. Capital Management Consultants, Inc., 102 Nev. 444, 726 P.2d 335 (1986). Indeed, the party seeking the injunction must make a "persuasive showing of irreparable harm...," and must further show a "substantial likelihood that it will prevail on the merits of the underlying action." Clark Pacific v. Krump Construction, Inc., 942 F. Supp 1324, 1346-1347 (D. Nev. 1996). The decision whether to grant a preliminary injunction is within the sound discretion of the district court, whose decision will not be disturbed on appeal absent an abuse of discretion. Number One Rent-A-Carv. Ramada Inns, 94 Nev. 779, 781, 587 P.2d 1329, 1330 (1978).

In Winter v. Natural Resources Defense Council, Inc., the U.S. Supreme Court rejected the Ninth Circuit's former sliding scale approach and announced a four-part conjuctive test that a

party seeking a preliminary injunction must satisfy. 555 U.S. 7, 20, 129 S.Ct. 365 (2008). Under the Winter test, the moving party must establish that: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) an injunction is in the public interest. Id. All four elements must be satisfied. See, e.g., hiQ Labs v. LinkedIn Corp., 938 F.3d 985, 992 (9th Cir. 2019); Am. Trucking Ass'n v. City of Los Angeles, 559 F.3d 1046, 1057 (9th Cir. 2009). While these Winters factors are not controlling in this state court action, they are instructive and the foregoing makes clear Plaintiff's motion fails to satisfy them.

In addition, irreparable harm means that money damages alone will not suffice to restore the moving party to its rightful position. See New Motor Vehicle Bd v. Orrin W. Fox Co., 434 U.S. 1345 (1977). Purely economic harms are generally not irreparable, as money lost may be recovered later, in the ordinary course of litigation. Sampson v. Murray, 415 U.S. 61, 61–62, 89–92, 94 S.Ct. 937 (1974). The harm must "be imminent, not remote or speculative, and the alleged injury must be one incapable of being fully remedied by monetary damages." Reuters Ltd. v. United Press Int'l, Inc., 903 F.2d 904, 907 (2d Cir. 1990). Thus, the plaintiff must demonstrate that in the absence of preliminary injunctive relief it is likely to suffer actual injury in prosecuting the case. "Speculative injury does not constitute irreparable injury sufficient to warrant granting a preliminary injunction." Caribbean Marine Servs. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir.1988)(citing Goldie's Bookstore, Inc. v. Superior Court, 739 F.2d 466, 472 (9th Cir.1984)).

An injunction is never issued as a matter of course. Further, in consideration of any injunctive relief, the court must balance the competitive claims of injury and must consider the effect on each party before the granting of such relief. Amoco Production Company v. Village of Gambell, Alaska, 480 U.S. 531, 107 S. Ct. 1396, 1402 (1987). Before an injunction may issue, the court must identify the harm which the preliminary injunction might cause the defendant and weigh it against the plaintiff's threatened injury. Armstrong v. Mazurek, 94 F.3rd 566, 568 (9th Cir. 1996). Where the harm likely to be suffered by the defendant outweighs the injury threatened by defendant's conduct, the plaintiff must make a stronger showing of likely success

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on the merits. MacDonald v. Chicago Park District, 132 F.3rd 355, 357 (7th Cir. 1997).

Given this differential standard, "a trial court should sustain discretionary action of a government body, absent an abuse thereof, to the same extent that an appellant court upholds the discretionary action of a trial court." Urban Renewal Agency v. Iacometti, 79 Nev. 113, 118, 379 P.2d 466, 468 (1963). If a discretionary act is supported by substantial evidence, then by definition there is no abuse of discretion. City Council, Reno v. Travelers Hotel, 100 Nev. 436, 439, 683 P.2d 960, 961-62 (1984). In this context, substantial evidence is that evidence which "a reasonable mind might accept is adequate to support a conclusion." City of Las Vegas v. Laughlin, 111 Nev. 557, 893 P.2d 383, 384 (1995). The Nevada Supreme Court has held that "the essence of the abuse of discretion, of the arbitrariness and capricious of a governmental action . . ., is most often found in an apparent absence of any grounds or reasons for the decision." City Council v. Irvine, 102 Nev. 277, 280, 721 P.2d 371, 372-373 (1986).

B. Standard of Review for Mandamus Petition and Judicial Review

The Las Vegas Justice Court is empowered to adopt rules governing the adjudication of civil cases brought before it. The Justice Court rules should be respected by the courts absent clear evidence that a court rule is arbitrary, capricious, or an abuse of discretion. Tighe v. City of Las Vegas, 108 Nev. 440, 833 P.2d 1135, 1136 (1992). Given this differential standard, "a trial court should sustain discretionary action of a government body, absent an abuse thereof, to the same extent that an appellant court upholds the discretionary action of a trial court." Urban Renewal Agency v. Iacometti, 79 Nev. 113, 118, 379 P.2d 466, 468 (1963). If discretionary act is supported by substantial evidence, then by definition there is no abuse of discretion. City Council, Reno v. Travlers Hotel, 100 Nev. 436, 439, 683 P.2d 960, 961-62 (1984). In this context, substantial evidence is that evidence which "a reasonable mind might accept is adequate to support a conclusion." City of Las Vegas v. Laughlin, 111 Nev. 557, 893 P.2d 383, 384 (1995). As stated above as applied to a preliminary injunction motion, the Nevada Supreme Court has held that "the essence of the abuse of discretion, of the arbitrariness and capricious of a governmental action . . . , is most often found in an apparent absence of any grounds or reasons for the decision." City Council v. Irvine, 102 Nev. at 280, 721 P.2d at 372-373.

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The court's function is to determine whether the judicial action was arbitrary, capricious or unreasonable. The court can only decide whether the findings could have been reasonable and have been reached on the credible evidence in the record. Innkeeper v. Remington Inc., 678 2d 546, 548 (N.J. 1995). This court cannot substitute its judgment for that of the Las Vegas Justice Court. In reviewing the decision, the court should accord the Justice Court a strong presumption of reasonableness in exercise of its statutorily delegated responsibilities.

Mandamus is not writ of right, but is in order only in exercise of sound judicial discretion. "A Writ of Mandamus is a remedy at law to command a public official to perform some ministerial, not discretionary duty, in which the party seeking such relief has established a clear right to have it preformed in a corresponding duty on the part of the official to act." Bear Barn, Inc. v. Dillard, 590 N.E.2d 1042, 1043 (Ill. App. 1992). Mandamus lies only when there is an unequivocal showing that a public official failed to preform a ministerial duty imposed by law. Casey's Gen. Stores, Inc. v. City of West Plaines, 9 S.W.3d 712, 715 (Mo. App. 1999). There must be showing that the applicant has a clear, unequivocal, specific and positive right to the act demanded. Id. A mandamus order is only warranted where the decision is "so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration." Id.

IV. LEGAL ARGUMENT

A. Plaintiff Has Little Likelihood of Success on the Merits As the Claim Against the Justice Court Very Likely Cannot Stave off Dismissal.

Plaintiff alleges the Justice Court generally denied it access to the courts because of the ramifications of Justice Court Rule 16. Specifically, LVJC Rule 16 states the following:

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

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

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Plaintiff has not alleged a tenable denial of court access claim simply because it must (like all other litigants in all cases filed in all Nevada courts save those filed in small claims court) be represented, as a corporation, by a Nevada licensed attorney. Plaintiff's argument that the limitation on attorney fees that it can recover in Justice Court cases, which was imposed by a recent statute passed by the Nevada legislative branch, also does not rise to an unconstitutional denial of access to the courts. LVJC Rule 16 only incidentally affects First Amendment and due process rights and is not scrutinized by a compelling state interest standard, but a rationale one aligned with standards set by the U.S. Supreme Court related to access to the courts claims. Moreover, Plaintiff's argument concerning the propriety of the rule requiring attorney representation is, in reality, an argument to set aside the common law, well established federal law and several controlling cases decided by the Nevada Supreme Court. The Justice Court is immune from the claim, therefore, because Plaintiff seeks to impose liability against the Justice Court for following controlling law from the courts of last resort in the State of Nevada as well as the United States.

1. Plaintiff Has Not Alleged Sufficient Facts to Plausibly Show that It Suffered an Actual Injury Relating to Access to the Courts Based Upon Any Act or Omission of the Las Vegas Justice Court.

Plaintiff has failed to allege that it was deprived of an actual injury relating to a specific case before the Justice Court to facially state a plausible claim for denial of access to the courts; therefore, Plaintiff's motion for a preliminary injunction must be denied because Plaintiff has not presented meritorious claims. Since, "[P]laintiff has failed to show the likelihood of success on the merits, [the court] 'need not consider the remaining three [preliminary injunction elements]. " Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Harris, 729 F.3d 937, 944 (9th Cir. 2013); see also Shores, 134 Nev. at 507, 422 P.3d at 1242.

There is not a likelihood of success because Plaintiff's FAC states no plausible denial of access to the courts claim against the Justice Court. The United States Supreme Court reaffirmed that a constitutional prerequisite for a denial of access to the courts claims is an "actual injury" suffered by the §1983 plaintiff. See Lewis v. Casey, 518 U.S. 343, 351-52, 116 S. Ct. 2174, 2180

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(1995). To show an actual injury, the litigant must show that the pursuit of a meritorious legal claim was hindered or prevented. See Id. An actual injury depriving a litigant of access to the courts only exists then if the party alleges and demonstrates that a non-frivolous legal claim has been frustrated or has been impeded. Id. at 353, 116 S. Ct. at 2181.

Plaintiff has not pled facts stating that it was denied specific relief in an actual case to state a cognizable denial of access claim regardless of the source of the right. "[A]ccess to the courts means the opportunity to prepare, serve and file whatever pleadings or other documents are necessary or appropriate in order to commence or prosecute court proceedings affecting one's personal liberty [or property rights]." Lewis, 518 U.S. at 384. The Supreme Court in the case of Christopher v. Harbury, 536 U.S. 403, 415–16, 122 S.Ct. 2179 (2002) explained that to demonstrate actual injury for the purposes of an access to courts claim, "the underlying cause of action and its lost remedy must be addressed by allegations in the complaint sufficient to give fair notice to a defendant" and must be "described well enough to apply the 'nonfrivolous' test and show that the 'arguable' nature of the underlying claim is more than hope." Thus, a claim for violation of this right accrues only when and if plaintiff suffers an actual injury. Harbury, 536 U.S. at 415; Lewis, 518 U.S. at 351, 354. Plaintiff's motion failing to address the seminal access to courts cases of Lewis and Harbury is telling.

There are particular causation pleading requirements in this type of claim. The plaintiff must establish the defendant's conduct was the cause-in-fact and proximate cause of the claimed injury. Harper v. City of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008). Plaintiff must also show Defendants proximately caused the alleged violation of Plaintiff's rights, "[t]he touchstone ... [for which] is foreseeability." Phillips v. Hust, 477 F.3d 1070, 1077 (9th Cir. 2007). Finally, the third element requires Plaintiff show it has no other remedy than the relief available via this suit for denial of access to the courts. Id. at 1078–79.

a. The Justice Court Legal Representation Rule Combined with the Nevada Statute's Attorney Fee Limitation Does Not Foreclose Plaintiff Having Access to the Courts to Pursue Meritorious Claims.

First, even assuming Plaintiff has standing by pleading an actual injury, the alleged denial of recovery of all attorney fees in consumer contract claims before the Las Vegas Justice Court

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does not constitute a meaningful denial of access to the courts. Plaintiff can certainly still bring any claim it chooses in that jurisdiction through lawful legal representation. Plaintiff can file pleadings and obtain a judgment in any case it chooses that meets the jurisdictional requirements. Plaintiff can also still recover attorney fees, based upon the language of Section 18 of A.B. 477, up to 15% of the amount in the debt. The limited restriction on this particular remedy does not render Plaintiff's access to this particular court constitutionally ineffective.

The case of Paciulan v. George, 38 F.Supp.2d 1128 (N.D.Cal. 1999), aff'd, 229 F.3d 1226 (9th Cir. 2000) is illustrative. In Paciulan, the plaintiff brought a claim challenging the constitutionality of a state court rule limiting *pro hac vice* admission to nonresidents licensed in other states. The court found that this rule did not deny the plaintiffs "meaningful access to the courts." Id. at 1138. The court noted that the plaintiffs may still bring their claims in California courts as litigants; they simply may not bring claims as lawyers without first satisfying California's rules of admission to the state bar. Id. On appeal, the Ninth Circuit found the restriction did not violate any First Amendment right to speech, association or petition for redress of grievances. See 229 F.3d at 1230. In the instant case, Plaintiff likewise can still bring claims in the Las Vegas Justice Court. Plaintiff must simply comply with the long-standing rule that a corporation cannot represent itself and must retain a licensed attorney to represent it.

Plaintiff's argument that the limitation in the amount of attorney fees it can recover in cases before the Justice Court works to deny them some ability to get a full remedy with a judgment in Justice Court also fails to reach a constitutional dimension. Much more severe limitations on an award of damages or on recovery of fees have easily withstood constitutional attack. For example, severe limitation in the form of damage cap statutes do not result in a denial of access to the courts. Like Nevada, pursuant to NRS 41.035, many jurisdictions impose damage limitation awards for claims against political subdivisions of the state and/or denial of recovery of punitive damages.[2] While the Nevada Supreme Court has not specifically addressed a First

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[2] The Nevada Supreme Court has on three occasions upheld the constitutionality of the compensatory damage limitation under NRS 41.035(1) to challenges under equal protection and due process (which tantamount to First Amendment challenges). See Martinez v. Maruszczak, 123 Nev. 433, 448-49, 168 P.3d 720, 730 (2007); Arnesano v. State, Department

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Amendment challenge, compensatory damage cap statutes have also been uniformly upheld to constitutional challenges that they impermissibly impair a litigant's right to access the court to obtain a full and complete remedy. See Larimore Pub. Sch. Dis. No. 44 v. Aamodt, 2018 ND 71, 908 N.W.2d 442, 453 (N.D. 2018)(finding the damage cap for tort claims against political subdivisions is not an absolute bar to a money damages remedy to constitute denial of access to courts)(collecting cases); see also Evans v. State of Alaska, 56 P.3d 1046 (Alaska 2002)(holding statutory cap on noneconomic and punitive damages awards do not violate right of access to courts).

Moreover, in Walters v. National Association of Radiation Survivors, 473 U.S. 305, 105 S.Ct. 3180 (1985), the United States Supreme Court held that a civil war era $10 limit on attorney fees provided in section 3404 of the Veterans' Benefits Act did not result in a denial of due process under the Fifth Amendment or restrict claimants' First Amendment right to access to the courts. Like here, the plaintiffs alleged that the fee limitation provision of § 3404 denied them any realistic opportunity to obtain legal representation in presenting their claims to the VA. Id. at 308, 105 S.Ct. at 3183. The Walters Court began by noting the heavy presumption of constitutionality to which a "carefully considered decision of a coequal and representative branch of our Government" is entitled. Id. at 319, 105 S.Ct. at 3188. The Court held that the First Amendment interest is "primarily the individual interest in best prosecuting a claim" and found that there were sufficient due process safeguards available to meet constitutional muster under due process and First Amendment analysis. The Court even assumed that the fee limitation would make attorneys unavailable to claimants, but nevertheless upheld the statute because attorneys were not essential to vindicate the claims in the specific VA system.

The same is true here as Plaintiff can litigate claims in the small claims court without an attorney. See NRS 73.012 ("A corporation, partnership, business trust, estate, trust, association or any other nongovernmental legal or commercial entity may be represented by its director, officer or employee in an action mentioned or covered by this chapter.") Plaintiff can also choose to

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Transportation, 113 Nev. 815, 819, 942 P.2d 139, 142 (1997); State v. Silva, 86 Nev. 911, 916, 478 P.2d 591, 593 (1970).

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litigate small value cases in Justice Court with an attorney with the ability to limit the attorney's fees to 15% of the case value per Section 18 of A.B. 477. Plaintiff has access to two different courts in Clark County to litigate the claims it has an alleged interest in prosecuting. These small limitations are, to be sure, not so onerous to render Plaintiff's ability to obtain a remedy in either court wholly ineffective.

Plaintiff has not alleged facts that fill the measure of a denial of access to the courts claim for relief pursuant to 42 U.S.C. § 1983. The first and only cause of action against the Justice Court hence cannot withstand even relaxed Rule 12(b)(5) scrutiny. Therefore, Plaintiff has failed to show a likelihood of success on the merits to obtain the type of extraordinary relief entailed in a preliminary injunction. Moreover, the Justice Court's motion to dismiss the first claim for relief against it should be granted.

b. LVJC Rule 16 Does Not Severely Burden Plaintiff's Fundamental Rights to Be Subject to Strict Scrutiny.

Plaintiff also undertakes an inapplicable analysis upon the assumption that the restrictions at issue burden their fundamental right and consequently assert that the Justice Court's enactment of Rule 16 should be governed by strict scrutiny analysis. However, there is not one case that utilizes the compelling state interest test to ascertain whether a person has been denied meaningful access to the courts in this regard. Plaintiff's argument that relies upon case law pertaining to a prior restraint of speech or upon class based discrimination is impertinent. The claim, as set forth above, is properly analyzed by the key access to court cases of Lewis v. Casey, infra and Christopher v. Harbury, infra along with their numerous federal court progeny. See infra Section III(A)(1).

The myriad of cases that have upheld various state bar requirements to enable attorneys to practice law in state courts or regulations impacting attorney's freedom of association are analogous to Plaintiff's attack on LVJC Rule 16--which requires corporations to make appearances in Justice Court through licensed attorneys. The incidental impact upon fundamental

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First Amendment rights is too insubstantial to trigger strict scrutiny.[3] The pertinent question here is not whether requiring corporations to appear through attorneys in Justice Court impacts the fundamental right of having access to the courts. The pertinent question is instead whether there is a fundamental right for a corporation to appear in a court *pro se* or without being represented by a licensed lawyer or whether the rule places a "severe burden" on access to the court.

The answers to those questions are a resounding "no". As the Supreme Court explained in Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447 (1978) when upholding an anti-solicitation rule to a First Amendment attack, "[a] lawyer's procurement of remunerative employment is a subject only marginally affected with First Amendment concerns. It falls within the state's proper sphere of economic and professional regulation." Id. at 459 (upholding restriction on solicitation under a rational basis review); see also Accountant Soc. of Virginia v. Bowman, 860 F.2d 602, 604 (4th Cir. 1988)(holding professional regulation does not trigger strict scrutiny because it restricts some kinds of speech and finding a regulation's incidental inhibition upon First Amendment right too insubstantial to do so). Local government simply have considerable discretion to place reasonable restrictions on litigants and lawyers rights to access courts of law. See Leis v. Flynt, 439 U.S. 438, 442, 99 S.Ct. 698 (1979)("Since the founding of the Republic, the licensing and regulation of lawyers has been left exclusively to the States and the District of Columbia within

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[3] Even if Plaintiff had alleged an equal protection claim against the Justice Court, which it did not, the analysis is substantially similar to the denial of access claim. Plaintiff is not a member of a protected class and therefore any alleged class based discriminatory treatment will be upheld unless it fails rational basis review. See Boddie v. Connecticut, 401 U.S. 371, 382–83, 91 S.Ct. 780 (1971) (holding that when "[n]o suspect classification, such as race, nationality, or alienage is present .... [t]he applicable standard is that of rational justification.") (citations omitted). Rational basis review is "the most relaxed and tolerant form of judicial scrutiny under the Equal Protection Clause City of Dallas v. Stanglin, 490 U.S. 19, 26, 109 S. Ct. 1591, 1596 (1989)(holding rational basis scrutiny"). In rational basis scrutiny, the court "will not overturn . . . a statute unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that [the Court] can only conclude that the legislature's actions were irrational." Vance v. Bradley, 440 U.S. 93, 97, 99 S.Ct. 939, 943 (1979). The issue is also principally an objective one as it "'must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the [legislative action].' " Connolly v. McCall, 254 F.3d 36, 42 (2d Cir.2001) (per curiam) (*quoting* Heller v. Doe, 509 U.S. 312, 320, 113 S.Ct. 2637 (1993)). Plaintiff has not made any argument that LVJC Rule 16 independently bears no conceivable rational support.

their respective jurisdictions. The states prescribe the qualifications for admission to practice and the standards of professional conduct.").[4]

Thus and contrary to Plaintiff's scant analysis and statement indicating otherwise, strict scrutiny is applied only when a challenged regulation imposes a "severe burden" on a specific fundamental right protected by the First Amendment (i.e. right to freedom of association and petition the government). See Clingman v. Beaver, 544 U.S. 581, 586, 125 S.Ct. 2029 (2005)("[W]hen regulations impose lesser burdens, a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions"); Nader v. Brewer, 531 F.3d 1028, 1036 (9th Cir. 2008)(noting strict scrutiny applies only when a restriction creates a "severe burden" on First Amendment rights); Kraham v. Lippman, 478 F.3d 502, 506 (2d Cir. 2007)(Sotomayor, C.J.)(holding court rule prohibiting certain political party officials and their families or associates from receiving court appointments did not severely burden the First Amendment freedom of association); Plyler v. Moore, 100 F.3d 365, 373 (4th Cir. 1996)(finding a prison restriction that arguably made filing papers more onerous, but did not prevent the prisoner litigant from accessing the courts, to be reasonable and not violative of the First Amendment). LVJC Rule 16 therefore does not unduly infringe any identified fundamental right, and is thus subject to only a rational basis type of review. See Romer v. Evans, 517 U.S. 620, 631–32, 116 S.Ct. 1620 (1996); FCC v. Beech Communications, Inc., 508 U.S. 307, 313-14, 113 S.Ct. 2096 (1993).

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[4] See also Jacoby & Meyers, LLP v. Presiding Justices, 852 F.3d 178, 181, 191–92 (2d Cir. 2017) (concluding that New York law, which "prohibits non-attorneys from investing in law firms ... easily pass[es] muster under rational basis review" because "the regulations preclude the creation of incentives for attorneys to violate ethical norms, such as those requiring attorneys to put their clients' interests foremost"); Nat'l. Ass'n. for the Advancement of Multijurisdiction Practice v. Berch, 773 F.3d 1037, 1047 (9th Cir. 2014)(finding a reciprocal bar admissions rule, which limited admission by lawyers in states that also allowed Arizona lawyers to gain admission by motion, was a reasonable time, place and manner restriction to satisfy any Free Speech Clause challenge); Nat'l. Ass'n. for the Advancement of Multijurisdiction Practice v. Castille, 799 F.3d 216, 221 (3d Cir. 2015)(holding a similar Pennsylvania rule to be rationally related to state's legitimate interest in securing favorable treatment for attorneys admitted in Pennsylvania); Giannini v. Real, 911 F.2d 354, 358 (9th Cir. 1990)(holding that "allowing California to set its own bar examination standards is rationally related to the legitimate government needs to ensure the quality of attorneys within the state").

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The Court noted in Dallas v. Stanglin, 490 U.S. 19, 25, 109 S.Ct. 1591 (1989) that "[i]t is possible to find some kernel of expression in almost every activity a person undertakes . . . but such a kernel is not sufficient to bring the activity within the protection of the First Amendment." Plaintiff is protesting what amounts to a kernel size or *de minimis* inhibition on its access to the Justice Courts in this case. Plaintiff can find no shelter from LVJC Rule 16 under the First Amendment.

For example, the Ninth Circuit, in Paciulan v. George, supra, upheld a California restriction that limited *pro hac* admission only to nonresidents of the state as an unconstitutional interference with the First Amendment. The plaintiffs claimed the restriction violated their fundamental right in three respects, to wit: "by limiting their speech on behalf of their clients, by preventing them from freely associating with clients and other attorneys and by restricting their ability to petition for redress of grievances." Id. at 1230. The Court rejected these challenges, stating:

> Under Appellants' sweeping formulation of the First Amendment, any regulation of bar membership would be deemed unconstitutional. No case has ever suggested that states are constitutionally barred from regulating admission to their respective bars. Rather . . . states traditionally have enjoyed the sole discretion to determine qualifications for bar membership. . . . Accordingly, Appellants' First Amendment argument fails.

Id. (internal citations and quotations omitted).

Similarly, the Ninth Circuit in Nat'l. Ass'n. for the Advancement of Multijurisdiction Practice v. Berch, 773 F.3d 1037, 1048 (9th Cir. 2014) upheld an Arizona law that only allowed admission on motion for licensed attorneys from states that had a reciprocal bar admission rule (thereby permitting Arizona lawyers to appear in that state by motion). The court held that the rule did not unconstitutionally deny anyone access to the courts. The court noted that attorneys can access the Arizona courts so long as they are admitted by motion or pass the uniform bar exam. The restriction or limitation to do so did not go far enough to offend the First Amendment Id. (citing Paciulan, 229 F.3d at 1230).

These types of incidental impacts upon a First Amendment fundamental right, like access to the courts, is clearly far too attenuated to warrant strict scrutiny review. The Supreme Court indeed held long ago that "[a] State can require high standards of qualifications, such as good

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moral character or proficiency in its law, before it admits an application to the bar, "so long as any requirement has 'a rational connection with the applicant's fitness or capacity to practice law." of Schware v. Bd. of Bar Exam'rs of N.M., 353 U.S. 232, 239, 77 S.Ct. 752 (1957). While Schware involved a Due Process Clause challenge rather than a First Amendment one, this case has been found to apply equally and under the same rationale basis review to First Amendment attack as well. See Thomas v. Collins, 323 U.S. 516, 65 S.Ct. 315 (1945)(Jackson, J, concurring)("A state may forbid one without the license to practice law as a vocation ...."); Lowe v. SEC, 472 U.S. 181, 105 S.Ct. 2557 (1985)(White, J., concurring)("Regulation on entry into a profession, as a general matter, are constitutional if they 'have a rational connection with the applicant's fitness or capacity to practice the profession"); see also King v. Governor of New Jersey, 767 F.3d 216, 229-31 (3d Cir. 2008)(finding due process case challenges to bar admission challenges on First Amendment grounds are decided by the same rational basis standard of review).

LVJC Rule 16 does not deny litigants "a reasonably adequate opportunity to present" their case to the Justice Court. Lewis, 518 U.S. at 351, 116 S.Ct. 2174 (quoting Bounds v. Smith, 430 U.S. 817, 825, 97 S.Ct. 1491 (1977)). Plaintiff is simply not barred from filing cases in Justice Court and the rule also does not limit access to the court based upon any class based distinction or impose speech content limitations. Instead, the rule merely restricts the manner corporations can appear in court to obtain a remedy from the court. The rule requiring corporations to appear in Justice Court through counsel no more impairs fundamental right of court access than does the rules of ethics impair upon an attorney's or a litigants right to have access to a court. Because LVJC Rule 16 regulates only corporations making appearances in Justice Court through licensed attorneys and does not close the courthouse doors to corporations or limit what they can or cannot say or claim, Rule 16 does not conflict with the First Amendment or substantially burden any fundamental right.

The strict scrutiny law Plaintiff cites and utilizes for analysis is totally inapplicable here because LVJC Rule 16 does not severely burden a fundamental right. In consideration of the proper legal standard, Plaintiff has not alleged facts that establish the necessary elements of a

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denial of any right it possesses pursuant to the First Amendment to have meaningful access to the courts. The FAC is barren of any allegation that the Justice Court foreseeably caused Plaintiff to lose any remedy it would have otherwise been entitled to in the Las Vegas Justice Court in a particular case. Plaintiff did not allege that it so suffered an "actual injury" in the FAC and failed to establish it did so in the motion for a preliminary injunction as well. Plaintiff also has no claim against the Justice Court for simply obeying well-established Nevada law. Inasmuch as its motion pertains to any action of the Justice Court and the continued efficacy of LVJC Rule 16, Plaintiff's motion for preliminary injunction falls well short of the mark and must be denied.

c. Plaintiff's Argument that it Has Been Denied a Fundamental Due Process Right is Misplaced.

Plaintiff's reliance upon Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 780 (1971) as establishing that access to the courts is a fundamental right which cannot be abridged unless there is a compelling state interest is unsound. The Boddie Court held that due process prohibits a state from denying access to its court to individuals seeking dissolution of their marriages solely because of their inability to pay filing fees. Boddie turned, however, upon state monopolization of the means for legally dissolving marriages and the importance of marriage as a fundamental relationship. The Court in doing so cautioned that its decision did not establish an absolute constitutional right of access to the courts. Id. at 382-83, 91 S.Ct. at 788. Plaintiff disregards that caution and effectively argues that the limitation on recovery of attorney fees of certain cases recently imposed by the Nevada legislature, combined with the efficacy of LVJC 16, is itself a denial of a fundamental right necessitating the use of strict scrutiny. This argument is altogether inconsistent with Boddie and has been explicitly rejected in other cases.

The Supreme Court made this all too clear two years after Boddie in United States v. Kras, 409 U.S. 434, 93 S.Ct. 631 (1973). The Court in Kras held that making payment of filing fees a condition to discharge in voluntary bankruptcy does not deny an indigent the equal protection of the laws. The Court further observed that a person's interest in being discharged of his debts in a bankruptcy proceeding did "not rise to the same constitutional level" as one's interest in being able to dissolve one's marriage through the only legal avenue, the courts. Id. at 446, 93 S.Ct. at 638. The Court therefore refused to require a compelling state interest as

justification for the state's bankruptcy filing fee.

Moreover, the Court the same year in Ortwein v. Schwab, 410 U.S. 656, 93 S.Ct. 1172 (1973) (per curiam) sustained an appellate filing fee as applied to indigents appealing from adverse welfare decisions. The Court noted that the interest in increased welfare benefits, like the interest in a bankruptcy discharge, "has far less constitutional significance than the interest of the Boddie appellants" in dissolving a marriage. Furthermore, because the litigation was in the area of economics and social welfare, and no suspect classification was present, the standard applied by the Court was that of rational justification. Id. at 661, 93 S.Ct. at 1175. The Court found that this requirement which was easily satisfied by the court system's need for cost recoupment. Id. at 660, 93 S.Ct. 1172.

Accordingly, like attorney fees for small contract claims, welfare payment and bankruptcy disputes, unlike marriage dissolution, were not recognized as "fundamental ... demand[ing] the lofty requirement of a compelling governmental interest before they may be significantly regulated." Kras, 409 U.S. at 446, 93 S.Ct. 631; Ortwein, 410 U.S. at 659, 93 S.Ct. 1172. The Supreme Court has also evaluated court-fees cases under the rational-basis standard, and it has declared that "[t]he State's need for revenue to offset costs, in the mine run of cases, satisfies the rationality requirement." M.L.B. v. S.L.J., 519 U.S. 102, 123, 117 S.Ct. 555 (1996)(recognizing right to free court access only in "narrow category" of civil cases). Similarly, in Wolfe v. George, 486 F.3d 1120 (9th Cir. 2007), the Ninth Circuit reviewed California's Vexatious Litigant Statute ("VLS") for a rational basis because the Ninth Circuit found that the VLS did not deprive the plaintiff, who had brought a number of civil suits against taxicab companies, of "the opportunity to vindicate a fundamental right in court." Id. at 1126.

Accordingly, there is no absolute right of access to the courts. In re Green, 669 F.2d 779, 785 (D.C.Cir. 1981); see also e.g., Angelotti Chiropractic, Inc. v. Baker, 791 F.3d 1075, 1083-84 (9th Cir. 2015)(upholding state law requiring medical providers to pay activation fee for each pending workers' compensation lien they had filed violated against a due process and equal protection clause challenge); Cliford v. Louisiana, 347 F. App'x 21, 23 (5th Cir.2009)("right to recover for medical malpractice does not fall within the fundamental interests recognized by the

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Supreme Court."); Rodriguez v. Cook, 169 F.3d 1176, 1180 (9th Cir.1999)(applying rational basis review to the "three strikes" provision of the Prisoner Litigation Reform Act to revoke litigant *in forma pauperis* status and upholding same). All that is required is a reasonable right of access to the courts—a reasonable opportunity to be heard. Boddie, 401 U.S. at 378, 383, 91 S.Ct. at 786, 788.

Also, when the government acts with an economic purpose, limitations created by it must be upheld unless they are irrational and arbitrary. In Duke Power Co. v. Carolina Environmental Study Group, 438 U.S. 59, 98 S.Ct. 2620 (1978), the Supreme Court, while upholding legislation that placed a damage cap on claims involving nuclear accidents, wrote:

> The liability-limitation provision thus emerges as a classic example of an economic regulation—a legislative effort to structure and accommodate "the burdens and benefits of economic life." "It is by now well established that [such] legislative Acts ... come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." That the accommodation struck may have profound and far-reaching consequences, contrary to appellees' suggestion, provides all the more reason for this Court to defer to the congressional judgment unless it is demonstrably arbitrary or irrational. . . .
>
> Our cases have clearly established that "[a] person has no property, no vested interest, in any rule of the common law." The "Constitution does not forbid the creation of new rights, or the abolition of old ones recognized by the common law, to attain a permissible legislative object," despite the fact that "otherwise settled expectations" may be upset thereby. Indeed, statutes limiting liability are relatively commonplace and have consistently been enforced by the courts.

Id. at 84-85, 89 n. 32, 98 S.Ct. at 2636-7, 2638 n. 32 (citations omitted).

Whether Plaintiff realizes it or not its position here effectually seeks to invoke anachronistic economic substantive due process to invalidate both the legislation and the judicial rule. Cf. F.H.A. v. The Darlington, Inc., 358 U.S. 84, 92, 79 S.Ct. 141 (1958) ("Invocation of the Due Process Clause to protect the rights asserted here would make the ghost of Lochner walk again."); see also Williamson v. Lee Optical of Okla., Inc., 348 U.S. 483, 488, 75 S.Ct. 461, 464 (1955) ("The day is gone when this Court uses the Due Process Clause ... to strike down ... laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought").

Legislation imposing new conditions on debt collection practices in the lower courts is

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not presumed invalid or worthy of strict scrutiny analysis. Indeed, "[i]t is by now well established that legislative acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on the one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 15, 96 S.Ct. 2882, 2892 (1976). Under rational-basis review, a regulation "must be upheld ... if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." FCC v. Beach Commc'ns, Inc., 508 U.S. 307, 313, 113 S.Ct. 2096 (1993). The pertinent legislation and judicial rule in this case certainly has a conceivably rational justification to pass rational basis scrutiny.

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

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

The case of Delew v. Wagner, 143 F.3d 1219 (9th Cir. 1988) is illustrative on the point that Plaintiff must plead facts of an actual injury demonstrating it was denied a state court remedy in a specific case before having standing to pursue this federal claim. In Delew, the Ninth Circuit agreed with this district court's dismissal of the §1983 claims; however, the Court held that the dismissal would be without prejudice as premature "because the Delews' wrongful death action remains pending in state court, [and] it is impossible to determine" whether they had an ineffective state court remedy. Id. at 1223. The Court in doing so relied upon the reasoning in the case of Swekel v. City of River Rouge, 119 F.3d 1259 (6th Cir. 1997). In Swekel, the Sixth

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Circuit rejected an access to courts claim because the plaintiff had yet to file suit in state court: "Before filing an 'access to courts' claim, a plaintiff must make some attempt to gain access to the courts; otherwise, how is this court to assess whether such access was in fact 'effective' and 'meaningful'?" Id. at 1264; see also Lynch v. Barrett, 703 F.3d 1153, 1157 (10th Cir. 2013) (concluding denial-of-access claim ripened once plaintiff lost underlying lawsuit)

The FAC is barren of any allegations that Plaintiff filed a meritorious action in the Las Vegas Justice Court. Plaintiff has not alleged that it obtained a judgment in that case. Plaintiff further has not alleged that it moved and prevailed on a motion for attorney fees and Plaintiff has not alleged that the awarded amount was so markedly reduced to what it was entitled to obtain that it rendered Plaintiff's access to the courts wholly ineffective. Plaintiff has thus failed to allege an actual injury and so, at a very minimum, the claim for denial of access to the courts is not ripe. Clearly, Plaintiff has also not presented the likelihood of a meritorious claim or any present basis to claim irreparable harm either.

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

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

[5] The rule of law is that a defendant that is charged with the duty of executing a facially valid court order enjoys absolute immunity from liability for a suit challenging the propriety of that

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The rule of law regarding the requirement of a corporation to be represented by a licensed attorney in the courts is beyond dispute. At common law ". . . a plea by a corporation aggregate, which is incapable of a personal appearance, must purport to be by attorney." 1 Chitty On Pleading 550 (12th Am.Ed.1855). The U.S. Supreme Court has always followed the common law on this point of doctrine. See Rowland v. California Men's Colony, 506 U.S. 194, 201–02, 113 S.Ct. 716 (1993) ("It has been the law for the better part of two centuries ... that a corporation may appear in the federal courts only through licensed counsel.")(*citing* Commercial & R.R. Bank of Vicksburg v. Slocomb, Richards & Co., 39 U.S. (14 Pet.) 60, 65, 10 L.Ed. 354 (1840) ("[A] corporation cannot appear but by attorney ....") overruled in part by 43 U.S. (2 How.) 497, 11 L.Ed. 353 (1844); and Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 738, 830, 6 L.Ed. 204 (1824) ("A corporation, it is true, can appear only by attorney, while a natural person may appear for himself."). As fictional legal entities, corporations and partnerships cannot appear for themselves personally. Sw. Express Co. v. Interstate Commerce Comm'n, 670 F.2d 53, 55 (5th Cir.1982) (per curiam). Their only proper representative is a licensed attorney, "not an unlicensed layman regardless of how close his association with the partnership or corporation." Id. at 56; see also Balbach v. United States, 119 Fed.Cl. 681, 683 (2015) ("A pro se plaintiff cannot represent a corporation ... The Court cannot waive this rule, even for cases of severe financial hardship.").

The Nevada Supreme Court also consistently held that a legal entity such as a corporation cannot appear except through counsel and a non-lawyer principal is prohibited from representing corporations. See, e.g., In re: Discipline of Schaefer, 117 Nev. 496, 509 (2001) (applying this rule and concluding that "a principal who appears on behalf of his corporation is clearly acting in his capacity as a lawyer representing a client, not as a principal of the corporation"); Guerin v. Guerin, 116 Nev. 210, 214 (2000) (applying this rule and recognizing that a proper person is not

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court order. See Turney v. O'Toole, 898 F.2d 1470, 1472 (10th Cir. 1990); see also Engebretson v. Mahoney, 724 F.3d 1034, 1038 (9th Cir. 2013) ("[P]ublic officials who ministerially enforce facially valid court orders are entitled to absolute immunity."). The absolute bar to liability against public officials following court orders applies here with regard to a lower court following the law of a higher court.

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permitted to represent an entity such as a trust); Sunde v. Contel of California, 112 Nev. 541, 542 (1996) ("Non-lawyers generally may not represent another person or an entity in a court of law"); id. at 542-43 (recognizing that the Supreme Court of Nevada has consistently required attorneys to represent other persons and entities in court); Salman v. Newell, 110 Nev. 1333, 1335 (1994) (stating that "[n]either a corporation nor a trust may proceed in proper person").

Clearly, the Nevada Supreme Court stood on firm legal ground each and every time it held that a corporation cannot represent itself in Nevada courts. The Justice Court in turn appropriately followed that law when enacting and publishing a rule in accordance with it. Plaintiff cannot prevail then against the Justice Court as a matter of law for a claim that is solely based on the propriety of that valid and controlling case law. The Justice Court effectively is immune from Plaintiff's suit by virtue of quasi-judicial immunity for following the extant law announced by the Nevada Supreme Court. Plaintiff cannot pierce this immunity from suit; hence, Plaintiff's motion for a preliminary injunction against the Justice Court should be denied due to the absence of a meritorious claim.

B. Plaintiff Has Not Demonstrated Irreparable Harm Because A Monetary Compensatory Damage Award of Alleged Lost Reimbursement of Attorney Fees Paid to Obtain Judgments in Justice Court Will Make Plaintiff Whole.

To obtain injunctive relief, plaintiff must show it is "under threat of suffering 'injury in fact' that is concrete and particularized; the threat must be actual and imminent, not conjectural or hypothetical; it must be fairly traceable to the challenged action of the defendant; and it must be likely that a favorable judicial decision will prevent or redress the injury." Ctr. for Food Safety v. Vilsack, 636 F.3d 1166, 1171 (9th Cir. 2011) (quoting Summers v. Earth Island Inst., 555 U.S. 488, 129 S. Ct. 1142 (2009))."[M]onetary injury is not normally considered irreparable." Los Angeles Mem'l Coliseum v. Nat'l Football League, 634 F.2d 1197, 1202 (9th Cir. 1980).

As set forth above in section III(A)(1), Plaintiff has not demonstrated that it will suffer irreparable harm without an injunction against the Justice Court being put in place during pendency of this litigation. Plaintiff has not even alleged facts that it was actually denied recovery of payment of any attorney fees it expended during the course of obtaining a judgment

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in the Justice Court. Further, Plaintiff's claim is that it must have complete reimbursement of any money it pays for legal representation to obtain a judgment in Justice Court or it is denied its right to access to the courts. This claim, by definition, is one for monetary relief only. Plaintiff can be made whole, should it prevail on any claim alleged in this case by way of a judgment that includes an award for compensatory damages. This factor, thus, weighs heavily against granting Plaintiff's motion for a preliminary injunction as well.

C. The Balance of Equities Tips Heavily in the Justice Court's Favor.

The Justice Court will certainly be unjustly and adversely affected by an order imposing a preliminary injunction against it as to corporate legal representation rules. In evaluating the balance of hardships, courts "identify the harms which a preliminary injunction might cause to defendants and ... weigh these against plaintiff's threatened injury." Caribbean Marine Services Co. v. Baldridge, 844 F.2d 668, 676 (9th Cir. 1998). The Justice Court has an interest in maintaining fidelity to controlling law enunciated by the Nevada Supreme Court and requiring corporations to be represented in Justice Court by licensed lawyers that are accountable to the Nevada State Bar and also bound by all the rules of ethics, including candor before the tribunal and Nevada Civil Procedure Rule 11.

The Justice Court has both an absolute duty and a keen interest in following Nevada laws and Nevada ethical rules regarding legal representation for corporations. This interest includes the Justice Court taking steps to ensure compliance with the law to avoid being overturned on appeal. It also includes risk avoidance as individual jurists are subject to suit when acting in excess of its jurisdiction.[6]

The Justice Court also is afforded considerable deference to enact local rules of practice to aid in the just, inexpensive and speedy resolution of all cases it handles pursuant to Nevada Rule of Civil Procedure 83 (stating "the courts may regulate their practice in any manner not inconsistent with these rules."). To be sure, courts possess the inherent power to prescribe or

[6] A judge is absolutely immune from suit save in only two circumstances: (1) where the judge acts in a non-judicial capacity; and (2) where the judge acts in the absence of jurisdiction. See Mireles v. Waco, 502 U.S. 9, 112 S.Ct. 286 (1991) (per curiam).

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adopt such rules of practice and procedure as they may deem best calculated to aid in the dispatch of their business, within the scope of their jurisdiction and power. See, e.g., United States v. Sherwood, 312 US 584, 61 S Ct 767 (1941); Miranda v. Southern Pac. Transp. Co., 710 F.2d 516, 521 (9th Cir.1983); Bollinger v. National F. Ins. Co., 25 Cal2d 399, 154 P2d 399 (1944); see also United States v. Warren, 601 F.2d 471, 473 (9th Cir. 1979) (per curiam) (citations omitted) ("It is undisputed that district courts have the authority to 'prescribe rules for the conduct of their business' in any manner not inconsistent with the federal rules or Acts of Congress.").

The underlying rationale for the rule requiring corporations to be represented by legal counsel was cogently explained in Heiskell v. Mozie, 65 U.S.App.D.C. 255, 82 F.2d 861, 863 (1936) wherein it stated:

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

In addition, the court in Mortgage Commission of New York v. Great Neck Improvement Co., 162 Misc. 416, 295 N.Y.S. 107, 114 (1937) bluntly explained the justification for the rule as follows:

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

The rule serves Nevada's well-established interest in regulating litigant's and attorney's conduct and promoting ethical behavior and independence among members of the legal profession. See Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447, 456 (1978). Membership and good standing of attorneys in the Nevada Bar provides the Justice Court with assurance that the knowledge, character, moral integrity and fitness of counsel of record representing corporate entities have been approved after investigation. Giannini, 911 F.2d at 360; Russell v. Hug, 275 F.3d 812, 820

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(9th Cir. 2002)(holding that district courts may rely on the infrastructure provided by state bar associations in meeting their own needs for monitoring attorney admission and practice in the federal courts and finding that the pertinent rule served rationale state interests).

The Justice Court clearly has significant interests in the continued efficacy of LVJC Rule 16 as codifying well-settled American jurisprudence regarding corporate legal representation in the courts of the United States. Any incidental infringement of Plaintiff's right to pursue a grievance and, specifically, obtain attorney fees with a Justice Court judgment is far inferior upon balance. This pertinent factor thus also weighs heavily against an order granting a preliminary injunction against the Justice Court.

D. The Proposed Injunction is Contrary to the Public Interest.

Whereas the balance of equities focuses on the parties, "[t]he public interest inquiry primarily addresses impact on non-parties rather than parties," and takes into consideration "the public consequences in employing the extraordinary remedy of injunction." Bernhardt v. Los Angeles Cty., 339 F.3d 920, 931–32 (9th Cir. 2003). The public has an interest in upholding corporation legal representation rules and also permitting only licensed attorneys without disciplinary suspensions or disbarments from appearing and making arguments in the Justice Court. Any injunction suspending or limiting the efficacy of LVJC Rule 16 undermines the public's confidence in the judiciary and in the legal community. It will further potentially subject litigants to litigation conduct that is neither civil nor ethical. The public's interest in the continued enforcement of LVJC Rule 16 is clearly paramount to any interest of Plaintiff. The public interest factor also strongly supports denial of Plaintiff's motion.

E. Plaintiff Did Not Establish A Valid Basis to Issue a Writ of Mandamus or Prohibition Against the Justice Court.

Plaintiff's motion has failed to satisfy the onerous standards to issue a writ arresting the Justice Court from enforcing LVJC Rule 16 for largely the same reasons it fell short of the preliminary injunction mark. The Justice Court's enactment and enforcement of the rule must be upheld absent evidence that it is arbitrary, capricious, or an abuse of discretion. Tighe, 108 Nev. at 442, 833 P.2d at 1136. The Justice Court simply published the established legal doctrine that a

corporation cannot represent itself in the form of a rule long before the passage of recent Nevada legislation primarily pertaining to debt collection practices. The practical and ethical rationale for the rule of law regarding licensed lawyers representing corporations, as set forth in detail above, clearly passes deferential arbitrary and capriciousness level judicial review. Plaintiff has not presented the requisite compelling argument for this court to suspend the operation of a rule of another because there are reasonably conceivable justifications for the continued use of LVJC Rule 16. Therefore, Plaintiff's alternatively argued mandamus petition must also be denied.

V. CONCLUSION

IN ACCORDANCE WITH THE FOREGOING, the Court should deny Plaintiff's motion for a preliminary injunction and alternatively argued mandamus petition. Instead, the Court should grant Defendant Justice Court's contemporaneously filed motion to dismiss and dismiss Plaintiff's claim against the Justice Court for failure to allege legal claims for relief. Plaintiff has not demonstrated any meritorious claim against the Justice Court nor has it shown that it will suffer any harm at all that cannot be adequately remedied at the conclusion of this case, even if it was prosecuting colorable claims against the Justice Court. The case law is clear that only rational basis review applies to Plaintiff's constitutional challenge to LVJC Rule 116 and the rational utility of this rule cannot be denied. Furthermore, the Justice Court's interest in the continued efficacy of LVJC Rule 16 is aligned with the public interest and, upon balance, is markedly more substantial than Plaintiff's attorney fee interest.

RESPECTFULLY SUBMITTED this 28 day of May, 2020.

OLSON CANNON GORMLEY
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CERTIFICATE OF MAILING

On the 28 day of May, 2020, the undersigned, an employee of Olson, Cannon, Gormley, Angulo & Stoberski, hereby served a true copy of **OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION OR, ALTERNATIVELY, FOR A WRIT OF MANDAMUS OR PROHIBITION**, to the parties listed below via the EFP Program, pursuant to the Court's Electronic Filing Service Order effective June 1, 2014, or mailed to the following:

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DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA COLLECTORS ASSOCIATION, a Nevada non-profit corporation, Plaintiff, vs. STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY FINANCIAL INSTITUTIONS DIVISION; JUSTICE COURT OF LAS VEGAS TOWNSHIP; DOE DEFENDANTS 1 through 20; and ROE ENTITY DEFENDANTS 1 through 20, Defendants.	CASE NO. A-19-805334-C DEPT. NO. 27 Date of Hearing: June 17, 2020 Time of Hearing: 10:00 am

REPLY TO PLAINTIFF'S OPPOSITION TO THE JUSTICE COURT'S MOTION TO DISMISS

COMES NOW, Defendant, JUSTICE COURT OF LAS VEGAS TOWNSHIP ("Justice Court"), by and through its counsel of record, THOMAS D. DILLARD, JR., ESQ., of the law firm of OLSON CANNON GORMLEY & STOBERSKI and replies to Plaintiff's Opposition to the Justice Court's Motion to Dismiss filed on May 12, 2020 pursuant to Nevada Rule of Civil Procedure 12(b)(5).

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This Reply is made and based upon all the pleadings and papers on file herein, the attached points and authorities, together with any argument that may be introduced at the time of hearing this matter before this Honorable Court.

DATED this 4 day of June, 2020.

OLSON CANNON GORMLEY
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BY: _____

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Justice Court moved to dismiss all claims for relief against it on May 12, 2020 when filing a Rule 12(b(5) motion to dismiss. Defendant Justice Court in doing so made the following arguments in the motion:

1. Plaintiff did not plausibly allege that Justice Court Rule 16 caused Plaintiff to suffer an actual injury relating to its right to have access to the courts protected by the First Amendment and/or the Fourteenth Amendment Due Process Clause [pp. 6-12] ; and

2. Defendant Justice Court relied upon well-established and controlling law from the U.S. Supreme Court and the Nevada Supreme Court when enacting, years prior to this suit, Justice Court Rule 16 and therefore possesses immunity from suit for simply following the law [pp. 13-15].

With regard to the first argument, Defendant Justice Court relied upon the seminal access to the courts cases of Lewis v. Casey, 518 U.S. 343, 116 S.Ct. 2180 (1995) and Christopher v. Harbury, 536 U.S. 403, 122 S.Ct. 2179 (2002) in making the arguments that Plaintiff was not foreclosed in having access to the courts to pursue meritorious claims and that Plaintiff has not shown that it suffered an actual injury as is required to state a plausible claim. Plaintiff failed to address these cases at all and the necessary elements to state a denial of access claim as plainly set forth in these cases. Plaintiff instead seemingly argues that these cases are inapplicable and instead it has a fundamental due process right to obtain all of its attorney fees when prevailing in a Las Vegas Justice Court case involving a consumer debt with a value of $5,000 or less. Plaintiff does not cite any true legal authority for this assertion that it has such a carefully carved out fundamental right to obtain all attorney fees in a singular court involving a narrow type of litigation.

Plaintiff has cited Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 780 (1971) in support of its argument that a person's total access to the courts is a fundamental right which cannot be abridged unless there is a compelling state interest. Plaintiff views a portion of the nearly fifty-year-old Boddie case through a microscope–overly focusing on certain language in the decision

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while not considering the entirety of the holding in the case and, moreover, completely ignoring the numerous other U.S. Supreme Court cases that clarified Boddie's limited application as well as the supplanting access to court cases that came after it.[1]

United States v. Kras, 409 U.S. 434, 93 S.Ct. 631 (1973)

Plaintiff fails to address, however, any unilateral expectation of obtaining attorney fees in prospective cases to even argue that it has a property right at stake. Plaintiff does not address the well-established Procedural Due Process case law detailed in the Justice Court's opposition to Plaintiff's motion for preliminary injunction. (Opposition to Motion for Preliminary Injunction (filed 05/28/20) pp. 15-22). Plaintiff also fails to make any argument how the existing rules of civil procedure preclude Plaintiff from being meaningfully heard by a neutral decision maker in Justice Court.

With regard to the second argument, Defendant Justice Court cited clear and controlling law that legal representation is required for corporate parties in court not only in Nevada, but across the United States. Plaintiff avoids this argument altogether and does nothing more than try to topple a straw men argument that the Justice Court is not absolutely immune when enacting local rules. The Justice Court clearly never made any such argument in the motion and so Plaintiff's arguments that there is not absolute immunity when enacting local rules of practice is completely irrelevant. Plaintiff largely ignores the actual argument presented in the hopes that the Court will just do likewise. The reality is that the Las Vegas Justice Court ("LVJC") Rule 16 is founded on controlling and well-settled law and so there is no basis to even argue that it violated Plaintiff's rights or acted in an arbitrary and capricious manner when it did not simply revoke the

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[1] See United States v. Kras, 409 U.S. 434, 93 S.Ct. 631 (1973) (limiting the scope of the right of court access defined in *Boddie v. Connecticut* to cases involving interests of constitutional significance); Ortwein v. Schwab, 410 U.S. 656, 93 S.Ct. 1172 (1973) (per curiam) (affirming limits outlined in *United States v. Kras*); M.L.B. v. S.L.J., 519 U.S. 102, 123, 117 S.Ct. 555 (1996)(explained that the *Boddie* principle extends only to "a narrow category of civil cases," i.e., those "involving state controls or intrusions on family relationships"); Christopher v. Harbury, 536 U.S. 403, 412–415, 122 S.Ct. 2179 (2002)(holding an "access to the courts" damage claim must demonstrate, first, that a "non-frivolous" legal claim existed that had been frustrated by defendants' behavior; and, second, that it was now impossible to obtain adequate compensation by pursuing the underlying legal claim in a contemporaneous judicial forum).

rule following the passage of new Nevada legislation.

Plaintiff has failed to allege facts that the Justice Court caused it to suffer any federal injury regarding denial of access to the courts. Plaintiff further did not make any argument or cite any applicable law at all in their opposition to withstand the motion to dismiss. Plaintiff's claims against the Justice Court, therefore, are properly dismissed for failure to state a viable claim.

II. LEGAL ARGUMENT

A. Plaintiff Failed to Allege Facts Stating a Plausible Claim Against the Justice Court for Denial of Access to the Courts.

Plaintiff failed to allege facts sufficient to show that the Justice Court's Rule 16 caused it an actual injury to a nonfrivolous legal claim to deny it access to the courts. See Lewis v. Casey, 518 U.S. 343, 348-49, 352-53, 116 S.Ct. 2174 (1996). Claims for denial of access to the courts may arise from the frustration or hindrance of "a litigating opportunity yet to be gained" (forward-looking access claim) or from the loss of a meritorious suit that can not now be tried (backward-looking claim). Christopher v. Harbury, 536 U.S. 403, 412–415, 122 S.Ct. 2179 (2002). For access to the court's claims, the plaintiff must show: (1) the loss of a 'nonfrivolous' or 'arguable' underlying claim; (2) the official acts frustrating the litigation; and (3) a remedy that may be awarded as recompense but that is not otherwise available in a future suit. Id. at 413–14.

Under Harbury's second element, Plaintiff must show that Justice Court Rule 16 frustrated Plaintiff's attempt to present a colorable claim. In other words, as in any § 1983 case, Plaintiff must show that the alleged violation of his rights was proximately caused by the Justice Court. See Crumpton v. Gates, 947 F.2d 1418, 1420 (9th Cir.1991) (citing Parratt v. Taylor, 451 U.S. 527, 535, 101 S.Ct. 1908 (1981)). The touchstone of proximate cause in a § 1983 action is foreseeability. See Tahoe–Sierra Pres. Council, Inc. v. Tahoe Regional Planning Agency, 216 F.3d 764, 784–85 (9th Cir.2000) (citing Arnold v. IBM Corp., 637 F.2d 1350, 1355 (9th Cir.1981)).

Plaintiff's allegations fail to detail official acts foreseeably frustrating litigation and foreclosing relief in a future suit. Plaintiff has plainly not stated a claim for denial of access to the

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courts and instead argues to apply the wrong standard. Still, Plaintiff's argument that it must now retain counsel for cases it chooses to file in the Las Vegas Justice Court, but is unable to recover all attorney fees paid to that counsel for some future suit, clearly falls short of the mark to show the foreseeable loss of an arguable underlying claim. The denial of access to the court's doctrine clearly is staked out by the Lewis v. Casey, supra and Christopher v. Harbury, supra cases with their numerous progeny and Plaintiff simply ignores all of these cases and the law altogether. The failure to even engage on the pertinent issues and feeble attempt to instead raise a generalized due process argument speaks volumes.

In fact, Plaintiff's allegations do not establish the necessary causation element. Justice Court Rule 16, like the Nevada law it is predicated upon, existed long before the passage of the legislation Plaintiff also contends is unconstitutional. The event that Plaintiff alleges proximately caused him harm is thus the Nevada Legislature's passage of A.B. 477 in the 2019 legislative session. (FAC at ¶ 18).

Plaintiff also did not cite any law suggesting a restriction on obtaining attorney fees qualifies as a denial of court access. Plaintiff made token efforts to distinguish the cases cited by the Justice Court in the motion, including the Walters U.S. Supreme Court case, but failed to cite any law in support. The bottom line is Plaintiff has the same right of every other corporate litigant to prosecute claims in the Las Vegas Justice Court. It must simply comply with Nevada rules of ethics and the well-established law from American jurisprudence to have an attorney make appearances and submit documents and so that there is reasonable and ethical accountability under Rule 11. The inability to appear *pro se* is no more a denial of access to the courts than not being allowed to appear through an unlicensed or disbarred lawyer denies a litigant constitutional access. The Nevada Supreme Court regulations of the practice of law are of course constitutional and the resulting restrictions do not rise to the level of denial of access for either lawyers or litigants. The requirement that corporations appear through duly licensed lawyers is of course no different.

Plaintiff has not stated facts that the Justice Court foreseeably foreclosed Plaintiff from having access to the Justice Court to present a colorable claim when it enacted LVJC Rule 16.

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None of the necessary elements are set forth including the loss of an actual injury and causation.

B. Justice Court Rule 16 Does Not Deny Plaintiff of Fundamental Rights or Deny Plaintiff Equal Protection Under the Law.

Plaintiff also undertakes a flawed analysis upon the assumption that the restrictions at issue burden its fundamental right and consequently assert that the Justice Court's enactment of Rule 16 should be governed by strict scrutiny analysis. However, there is not one case that utilizes the compelling state interest test to ascertain whether a person has been denied meaningful access to the courts absent the government enforcing a complete bar from the courts. The case law pertaining to burdens placed on a person having access to the court almost invariably resolve the constitutional question by using rational basis scrutiny (the most relaxed standard of review).[2] Plaintiff's argument relies upon case law pertaining to no court access at all to litigate a fundamental relationship, a prior restraint of speech or upon protected class based discrimination. None of these cases and the rationale underlying them are pertinent to this case. As a consequence, Plaintiff's attempt to avert the recent access to courts case law and reshape its claim into a due process or equal protection right is unavailing.

It is axiomatic that local governments simply have considerable discretion to place reasonable restrictions on litigants and lawyers rights to access courts of law without running afoul of First Amendment and Fourteenth Amendment rights. Leis v. Flynt, 439 U.S. 438, 442, 99 S.Ct. 698 (1979)("Since the founding of the Republic, the licensing and regulation of lawyers has been left exclusively to the States and the District of Columbia within their respective

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[2] The court through an objective reasonableness lens 'must uphold the regulation "if there is any reasonably conceivable state of facts that could provide a rational basis for the [governmental action]." " Connolly v. McCall, 254 F.3d 36, 42 (2d Cir.2001) (per curiam) (*quoting* Heller v. Doe, 509 U.S. 312, 320, 113 S.Ct. 2637 (1993)). Plaintiff must thus establish that there is a lack of any reasonably conceivable state of facts that could provide a rational basis for the governmental action. See Heller, 509 U.S. at 320, 113 S.Ct. 2367; U.S. R.R. Board v. Fritz, 449 U.S. 166, 179, 101 S.Ct. 453, 461 (1980)("[i]t is well-settled under rational basis scrutiny that the reviewing court may hypothesize the legislative purpose behind legislative action"); Shaw v. Oregon Public Employees' Ret. Board, 887 F.2d 947, 948–49 (9th Cir.1989)(stating a court applying rational basis review may "go so far as to hypothesize about potential motivations of the legislature, in order to find a legitimate government interest sufficient to justify the challenged provision").

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jurisdictions. The States prescribe the qualifications for admission to practice and the standards of professional conduct."). The Supreme Court indeed held long ago that "[a] State can require high standards of qualifications, such as good moral character or proficiency in its law, before it admits an application to the bar, "so long as any requirement has 'a rational connection with the applicant's fitness or capacity to practice law." of Schware v. Bd. of Bar Exam'rs of N.M., 353 U.S. 232, 239, 77 S.Ct. 752 (1957). Also, as a general matter, "the Court has refused to find that filing fees impermissibly violate equal protection or due process." Erwin Chemerinsky, Constitutional Law Principles & Procedures, § 10.9 (2d ed. 2002).

For example, the Ninth Circuit in Nat'l. Ass'n. for the Advancement of Multijurisdiction Practice v. Berch, 773 F.3d 1037, 1048 (9th Cir. 2014) recently upheld an Arizona law that only allowed admission on motion for licensed attorneys from states that had a reciprocal bar admission rule (thereby permitting Arizona lawyers to appear in that state by motion). The court held that the rule did not unconstitutionally deny anyone access to the courts. The court noted that attorneys can access the Arizona courts so long as they are admitted by motion or pass the uniform bar exam. The restriction or limitation to do so did not go far enough to offend the First Amendment Id. Furthermore, the federal courts have reviewed a myriad of constitutional challenges involving regulations of lawyers that seek to appear in state courts and presume these regulations are reasonable and well within the state's purview.[3]

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[3] See e.g., Jacoby & Meyers, LLP v. Presiding Justices, 852 F.3d 178, 181, 191–92 (2d Cir. 2017) (concluding that New York law, which "prohibits non-attorneys from investing in law firms ... easily pass[es] muster under rational basis review" because "the regulations preclude the creation of incentives for attorneys to violate ethical norms, such as those requiring attorneys to put their clients' interests foremost"); Nat'l. Ass'n. for the Advancement of Multijurisdiction Practice v. Berch, 773 F.3d 1037, 1047 (9th Cir. 2014)(finding a reciprocal bar admissions rule, which limited admission by lawyers in states that also allowed Arizona lawyers to gain admission by motion, was a reasonable time, place and manner restriction to satisfy any Free Speech Clause challenge); Nat'l. Ass'n. for the Advancement of Multijurisdiction Practice v. Castille, 799 F.3d 216, 221 (3d Cir. 2015)(holding a similar Pennsylvania rule to be rationally related to state's legitimate interest in securing favorable treatment for attorneys admitted in Pennsylvania); King v. Governor of New Jersey, 767 F.3d 216, 229-31 (3d Cir. 2008)(finding due process case challenges to bar admission challenges on First Amendment grounds are decided by the same rational basis standard of review); Giannini v. Real, 911 F.2d 354, 358 (9th Cir. 1990)(holding that "allowing California to set its own bar examination standards is rationally related to the legitimate government needs to ensure the

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The courts uniformly conclude that these limitations do not run so far as to place a complete bar or even a substantial burden on court access and presume that they are constitutional based upon rational basis review. Thus and contrary to Plaintiff's scant analysis and statement indicating otherwise, strict scrutiny is applied only in this context when a challenged regulation imposes a "severe burden" on a specific fundamental right protected by the First Amendment (i.e. right to freedom of association and petition the government). See Clingman v. Beaver, 544 U.S. 581, 586, 125 S.Ct. 2029 (2005)("[W]hen regulations impose lesser burdens, a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions"); Nader v. Brewer, 531 F.3d 1028, 1036 (9th Cir. 2008)(noting strict scrutiny applies only when a restriction creates a "severe burden" on First Amendment rights). To combine First Amendment and Fourteenth Amendment claims, "[u]nless a law burdens a fundamental right, targets a suspect class, or has a disparate impact on a protected class and was motivated by a discriminatory intent, [the courts] apply rational basis scrutiny to the challenged law." New Doe Child #1 v. United States, 901 F.3d 1015, 1027 (8th Cir. 2018).

Rule 16 therefore does not unduly infringe any identified fundamental right and does not target or impose a disparate impact on a protected class; therefore, the rule as well as the subject legislation imposed by the State are subject to only a rational basis type of review. See Romer v. Evans, 517 U.S. 620, 631–32, 116 S.Ct. 1620 (1996); FCC v. Beech Communications, Inc., 508 U.S. 307, 313-14, 113 S.Ct. 2096 (1993). Also, A.B. 477's "cap on attorney's fees is not a barrier to court access, but a limitation on relief." Boivin v. Black, 225 F.3d 36, 45 (1st Cir. 2000). Plaintiff in its opposition collapses fundamental right analysis with some newly formed equal protection theories in its opposition and so the reply will try to address both to make clear that strict scrutiny is inapplicable. In sum, none of Plaintiff's shifting constitutional attacks strike the target.

1. Plaintiff Has Not Been Denied a Fundamental Right of Court Access.

With respect to First Amendment rights and those deemed protected under the

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quality of attorneys within the state").

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Substantive Due Process Clause, before a "compelling interest" standard of strict scrutiny is applied, the right that Plaintiff seeks to vindicate by access to the courts must be a fundamental right. Thus, in Boddie v. Connecticut, supra, the Supreme Court held that Connecticut's substantial interest in allocating scarce judicial resources was rationally related to its scheme of filing fees, but was not sufficient to override plaintiffs' fundamental interest in access to the only avenue permitted by state law for dissolving their marriage. Id. at 381, 91 S.Ct. at 788. The Boddie Court's decision, to be sure, did not find that any regulation upon a person's right of access to the courts was an infringement on a fundamental right and subject to strict scrutiny. In fact, the Court held just the opposite by upholding the filing fee scheme in general and narrowly finding its strict application to a marriage dissolution was too fundamental to impose an unconditional fee provision. The series of cases since Boddie have made all too clear its limited application.

Not two-years after Boddie, in United States v. Kras, 409 U.S. 434, 93 S.Ct. 631 (1973), the Court observed that Kras' interest in being discharged of his debts in a bankruptcy proceeding did "not rise to the same constitutional level" as one's interest in being able to dissolve one's marriage through the only legal avenue, the courts. Id. at 446, 93 S.Ct. at 638. The Court distinguished Boddie on the basis of its relationship to the fundamental right of marriage and on the State's monopoly on the ability to grant a divorce. The Court therefore refused to require a compelling state interest as justification for the state's bankruptcy filing fee. Because litigants did not possess a concomitant right to file for bankruptcy, the State's imposition of filing fees was not unconstitutional. Likewise, in Ortwein v. Schwab, 410 U.S. 656, 660, 93 S.Ct. 1172, 1174 (1973), the Court noted that the interest in increased welfare benefits, like the interest in a bankruptcy discharge, "has far less constitutional significance than the interest of the Boddie appellants." Because the litigation was in the area of economics and social welfare, and no suspect classification was present, the standard applied by the Court was that of rational justification. Id. at 661, 93 S.Ct. at 1175.

Plaintiff's legal assertion that access to the courts is a fundamental right and any restriction or limitation on a litigant's access and remedies sought cannot stand absent a

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compelling state interest is flat wrong. If Plaintiff's due process/equal protection argument was valid, every filing fee and filing deadline, every statute of limitations, every dismissal rule, as well as every limitation on recovery of damages, costs and fees would all have to be justified by a compelling state interest since failure to comply with them would result in some restriction on a plaintiff's access to the courts and available recovery. There is absolutely no absolute right of access to the courts and monetary recovery from the courts as Plaintiff suggests. All that is required is a reasonable right of access to the courts—a reasonable opportunity to be heard. If one actually considers the entire case, Boddie v. Conn., supra stands for this very principle as does its prodigious progeny. In addition, when a legislative act has an economic purpose, limitations created by it must be upheld unless they are irrational and arbitrary. See Duke Power Co. v. Carolina Environmental Study Group, 438 U.S. 59, 84-85, 98 S.Ct. 2620, 2636–37 (1978).

Accordingly, LVJC Rule 16 (as well as A.B. 477) are presumed valid. Rational basis (or minimal) review is "a paradigm of judicial restraint" and "is not a license for courts to judge the wisdom, fairness, or logic of legislative choices." FCC v. Beach Communications, Inc., 508 U.S. 307, 313-14, 113 S.Ct. 2096 (1993). "Nor does it authorize the judiciary [to] sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines." Heller, 509 U.S. at 319, 113 S.Ct. 2637. Under the rational basis standard, "a legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data". FCC v. Beach Comm., 508 U.S. at 315, 113 S.Ct. 2096. To prevail on a rational basis challenge, Plaintiff therefore must "negate every conceivable basis" that could support a rational basis for the alleged regulation. Medina Tovar v. Zuchowski, 950 F.3d 581, 593 (9th Cir. 2020); Fournier v. Sebelius, 718 F.3d 1110, 1123 (9th Cir. 2013); see also Armour v. City of Indianapolis, Ind., 566 U.S. 673, 681, 132 S.Ct. 2073 (2012). Plaintiff certainly has not in this case negated all the conceivable rationale regarding the corporate representation rule or, for that matter, the consumer protection rationale for A.B. 477. See Sec. 3 (stating "[t]he purpose of this chapter is to protect consumers").

With respect to the specific claim against the Justice Court, LVJC Rule 16 does not deny

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litigants "a reasonably adequate opportunity to present" their case to the Justice Court. Lewis, 518 U.S. at 351, 116 S.Ct. 2174 (quoting Bounds v. Smith, 430 U.S. 817, 825, 97 S.Ct. 1491 (1977)). Plaintiff is simply not barred from filing cases in Justice Court and the rule also does not limit access to the court based upon any class based distinction or impose speech content limitations. Instead, the rule merely restricts the manner corporations can appear in court to obtain a remedy from the court. Specifically, the lone limitation is to limit recovery of attorney fees for cases filed in Justice Court (having a value less than $15,000 and pertaining to a consumer debt contract) to "15 percent of the amount of the debt, excluding attorney's fees and collection costs." A.B. 477 sec. 18(1)(a). Further, the rule requiring corporations to appear in Justice Court through counsel no more impairs fundamental right of court access than does the rules of ethics, payment of filing fees and limitation periods impair upon an attorney's or a litigants right to have access to a court. The Justice Court has cited numerous cases setting forth the reasonably and widely accepted ethical reasons that requires licensed lawyers in good standing to represent corporations. Because LVJC Rule 16 regulates only corporations making appearances in Justice Court through licensed attorneys and does not close the courthouse doors to corporations or limit what they can or cannot say or claim, Rule 16 does not conflict with the First Amendment or substantially burden any fundamental right.

2. Plaintiff Has Not Been Denied Equal Protection Rights Because it is Not a Protected Class and the Challenged Rule and Legislative Act Has Some Colorable Rationale to Support Them.

LVJC Rule 16 (even working in tandem with A.B. 477) plainly satisfies rational basis review and therefore does not transgress the Equal Protection Clause either. Plaintiff's argument about how the reduction in attorney fees unfairly reduces the value of a judgment it can obtain in Justice Court when compared to other litigants utterly misses the point when it comes to the rational review analysis. Under rational-basis review, a court is required to "accept a legislature's generalizations even when there is an imperfect fit between means and ends. A classification does not fail rational-basis review because it is not made with mathematical nicety or because in practice it results in some inequality." FCC v. Beach Comm., 508 U.S. at 521, 113 S.Ct. 2096. (internal quotation marks and citations omitted). Hence, "the question is whether [the rule and/or

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act] bears some rational relationship to a legitimate state purpose, not whether some inequality results." Jesuit College Preparatory School v. Judy, 231 F.Supp.2d 520, 534 (N.D. Tex. 2002). Plaintiff's prolix argument that splits hairs about how the fee limitation imposed upon it is unfair and how when compared to other litigants the scope of the limitation is unreasonable is of no constitutional consequence. "Laws frequently classify persons with consequences that advantage some and disadvantage[] others." Schmidt v. Ramsey, 860 F.3d 1038, 1047 (8th Cir. 2017). In joining in Plaintiff's turn of phrase, then, the issue is not whether the "butcher, baker and candlestick maker" endure some different or more onerous burden under the subject scheme than does the manufacturer of the tub that they all sit it. The rational basis inquiry is much broader and relaxed than that. This court must uphold LVJC Rule 16 and/or the legislative enactment (or classification) so long as it "bears a rational relation to **some** legitimate end." Romer, 517 U.S. at 631, 116 S.Ct. 1620 (1996)(emphasis added). This means that the court must not "strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought." Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483, 488, 75 S.Ct. 461 (1955).

Taking Plaintiff's arguments in their best possible light, Plaintiff has only offered points to question the wisdom of A.B. 477 in general and its alleged inequality when applied against it when suing consumer debtors in Justice Court. Plaintiff has not even begun to negate all rationale (stated and hypothetical) to establish that the Justice Court acted arbitrarily and capriciously. Plaintiff made no attempt to set aside the rationale set forth in the motion for LVJC Rule 16 (including reasons upheld in case law). Plaintiff has thus not eviscerated all possible rationale and the Section 1983 claim against the Justice Court must be dismissed.

C. Plaintiff is Not Denied Access to the Courts from a Limitation on Recovery of All Attorney Fees Imposed to Protect Consumers from Substantial Indebtedness Resulting from Consumer Debt.

Plaintiff has not cited any case law in support of the argument that a limitation on recovery of fees as it pertains to a certain type of case runs afoul of constitutional minima. The Justice Court in its motion cited the Supreme Court case of Walters v. National Association of

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Radiation Survivors, 473 U.S. 305, 105 S.Ct. 3180 (1985) which applied rational basis scrutiny and upheld a $10 limit on attorney fees provided in section 3404 of the Veterans' Benefits Act. Plaintiff argued that the Walters case does not apply because attorneys are essential to handle consumer debt cases in Justice Court. Plaintiff ignores however that attorneys are not essential in the circumstances of this instant case because Plaintiff can litigate those lesser value consumer debt cases in Small Claims Court.

Beyond the Walters case, the federal courts by and large have already considered the issue of whether a limitation to the recovery of fees allowed for by separate legislation imposes an undue restriction on access to the courts or puts in place an arbitrary and capricious classification. These cases addressing this issue have arose since 1997 when Congress passed the Prisoner Litigation Reform Act ("PLRA"). Section 1997e(d)(2) of the PLRA provides that whenever a monetary judgment is awarded in an action brought by a person confined in jail or in prison at time of filing that "a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant." The U.S. Supreme Court interprets this provision to mean that "district courts must apply as much of the judgment as necessary, up to 25%, to satisfy an award of attorney's fees." Murphy v. Smith, —— U.S. ——, 138 S.Ct. 784, 790 (2018).

While recognizing that this provision treats prisoner civil rights litigants differently from all other civil rights litigants, the federal courts of appeal have uniformly held that this cap on attorney's fees awarded to meritorious prisoner claims prosecuted by licensed attorneys passes constitutional muster. See e.g., Madrid v. Gomez, 190 F.3d 990, 995-96 (9th Cir. 1999)(rejecting argument that strict scrutiny applies due to right of access to the courts and stating "[u]nder [the] minimal [rational basis] standard "the PLRA certainly passes constitutional muster . . . to curtail frivolous prisoners' suits and to minimize the costs–which are borne by taxpayers–associated with those suits"); Boivin v. Black, 225 F.3d 36, 41-46 (1st Cir. 2000)(holding that the PLRA attorney fee cap does not deny prisoners access to the courts and conceivably may discourage prisoners and their counsel from filing frivolous claims to satisfy rational basis review); Walker

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v. Bain, 257 F.3d 660, 669-70 (6th Cir. 2001)(concluding that §1997e(d)(2) survives rational basis review), cert. denied, 535 U.S. 1095 (2002); Foulk v. Charrier, 262 F.3d 687, 704 (8th Cir. 2001)(stating "PLRA's attorney's fees cap passes constitutional muster"); Jackson v. State Bd. of Pardons and Paroles, 331 F.3d 790, 797-98 (11th Cir. 2003)(stating that the plaintiff failed to negate every conceivable basis that might support §1997e(d)(2) of the PLRA and so the provision passes rational basis review); Johnson v. Daley, 339 F.3d 582, 587-97 (7th Cir. 2003)(en banc)(holding that the PLRA attorney fee restriction had a rational basis and did not violate equal protection or due process components of the Fourteenth Amendment); Robbins v. Chronister, 435 F.3d 1238, 1243-44 (10th Cir. 2006)(stating "even though one could argue that applying the PLRA cap to cases like this is not the most rational means for controlling litigation, such a result is certainly not outside the bounds of legitimate legislative compromise"); Parker v. Conway, 581 F.3d 198, 203 (3d. Cir. 2009)(" The PLRA fee caps rationally relate to the legitimate government objective of achieving uniformity in attorney's fee awards, as well as multiple other legitimate government objectives. Parker's equal protection challenge therefore fails."); Shepherd v. Goode, 662 F.3d 603, 609 (2d. Cir. 2011)("But just as Congress was free to depart from the American Rule to create an incentive to pursue civil rights claims, it was also free to limit the incentive for prisoners pursuing dubious or low-value claims."); Wilkins v. Gaddy, 734 F.3d 344, 350 (4th Cir. 2013)("But under the rational basis standard, Congress could have believed that the danger of frivolous, marginal, and trivial claims was real and that a legislative solution was required to equalize prisoner and non-prisoner litigants. And although the congruence between § 1997e(d)(2) and the goal of reducing meritless and insubstantial prisoner lawsuits may not be perfect, it does exist."). As such, "[e]very circuit court to confront the question agrees that Congress's limitations on prisoners' ability to recover attorney's fees satisfy rational basis scrutiny." Jordanoff v. Coffey, 2018 WL 3371117 (W.D. Okl., July 10, 2018).

The esteemed Circuit Judge Frank H. Easterbrook of the Seventh Circuit, in the Johnson v. Daley, supra case, cogently addressed the reasonable competing equities in various approaches to awarding attorney fees and the reasonableness of the PLRA attorney fee cap. His rationale,

writing for the *en banc* majority, by and large applies with equal force to the attorney fee limitation at issue. Judge Easterbrook stated:

> Litigation produces benefits (and sometimes costs) for third parties; it is to this extent a public good, and determining how much of a public good to supply (and at whose cost) is an intractable problem. The American Rule is a rational approach; the British loser-pays rule is a rational approach; asymmetric fee-shifting in § 1988 is a rational approach; asymmetric fee shifting plus compensation for the risk of loss in order to induce counsel to be indifferent between paying clients and chancy constitutional claims would be rational (and is used in common-fund cases, though not under statutes such as § 1988, . . . ; and fee caps such as the FTCA [Federal Tort Claims Act], the EAJA [Equal Access to Justice Act], and the PLRA also represent rational approaches. The observation that prisoners receive less under the PLRA than under § 1988 no more shows that the PLRA is irrational, than the fact that defendants pay more under § 1988 than under the PLRA (or the FTCA, or the EAJA, or the American Rule) shows that § 1988 is itself irrational. These are simply different legislative solutions to an enduring problem; in a democracy, each of these options is open to the people's representatives.
>
> . . .
>
> Although the amount of the effect attributable to § 1997e(d) is hard to calculate, its direction is knowable. A rational legislature could conclude that a small reduction in weak, trivial, or bogus suits is worth achieving even at some potential cost to prisoners' ability to prevail in the less common meritorious suit.
>
> . . .
>
> The rational-basis approach tolerates . . . legislative inconsistency by asking, not what legislators (or judges) actually believe, but whether it is possible for a sensible person to believe that the law does something useful. People could, and many do, believe that § 1997e(d) does something useful.

339 F.3d at 591, 595-96, 597 (internal citations omitted).

This distinct body of case law certainly illuminates the constitutional issue in this case regarding whether Plaintiff has stated a viable claim against the Justice Court. There is no legal doubt that rational basis scrutiny applies to Plaintiff's claim that in concert LVJC Rule 16 and the attorney fee limitation of Section 18 of A.B. 477 impose a class-based burden on Plaintiff. Plaintiff does not suggest, nor could it, that the rule making sure that corporate litigants conduct themselves through agents that must take Nevada Rule of Civil Procedure 11 as their guide rests on sound public policy. Plaintiff also cannot eviscerate all economic benefits derived from limiting some consumer debt litigation and protecting consumers from the economic bondage that comes with adding substantial attorney fees, costs and interests on a consumer debt.

Plaintiff has not even undertaken a systematic negation of all the stated and conceivable

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reasons one could rationally believe warrants corporations to be represented by lawyers when making appearances in the Justice Court. Plaintiff (while articulating why it thinks the sting of the fee limitation is more painful to it than other litigants) has likewise been unable to put down all conceivable basis as to why the Nevada legislature imposed the fee cap for consumer debt cases. While the Justice Court had no involvement in the passage of that legislation, the Justice Court is compelled to address herein its constitutionality in light of Plaintiff's civil rights theory against it.

Plaintiff states no claim of a constitutional dimension against the Justice Court because both the economic legislation (A.B. 477) and the court legal ethics rule (LVJC Rule 16) arguably does something useful. This court can find now that these governmental regulations singularly, and collectively if need be, satisfy deferential rational basis scrutiny. For that reason, Plaintiff has not resisted the motion to dismiss and the Justice Court should be dismissed with prejudice.

D. Plaintiff Cannot Avert Clear and Controlling Federal and State Law Pertaining to Corporate Representations by Making a Constitutional Challenge to Justice Court Rule 16.

First, Plaintiff contends that the argument regarding the Justice Court merely enacting a local rule in accordance with Nevada Supreme Court settled law is without merit because the "Justice Court has not cited any authority that a court is immune when it is sued based on the constitutionality of its own rules." [Opp. pg. 27, lines 17-18]. To be sure, the Justice Court did not argue in the motion that Plaintiff has not stated a claim because enacting local rules is a function of judicial immunity. Rather the clear argument set forth in the motion is that the content of that particular local rule, LVJC Rule 16, is simply a reiteration of clear and controlling law not only in Nevada, but federal law as well. Plaintiff has no claim that the Justice Court must ignore controlling law and allow it to appear without representation in Justice Court. Accordingly, Plaintiff's principal argument to oppose dismissal on this basis does nothing more than topple a straw men argument and is simply impertinent to the issue.

Second, Plaintiff contends an exception to LVJC Rule 16 is reasonable because Plaintiff has alleged that it has been denied "civil liberties and constitutional rights." [Opp. pg. 28, lines 1-

2]. The first problem with that argument is that Plaintiff certainly has not demonstrated that it has suffered any federal injury by simply having to comply with LVJC Rule 16, like all other litigants in the Las Vegas Justice Court. Moreover, the remainder of Plaintiff's argument is only that it believes that there are sound reasons that the corporate representation rule should be relaxed and that two states apparently have done so in justice court cases. Whether this is a rationale or correct argument is quite besides the point. The issue is whether the Justice Court is liable for abiding by controlling law from a higher court. Plaintiff does not address this issue either. Plaintiff instead feebly argues that following "tradition" is no excuse. [Opp pg. 28, lines 21-22]. LVJC Rule 16 is certainly not a matter of following the tradition of other courts; indeed, it is duly following the commandment of the court of last resort in Nevada.

Plaintiff's last argument is based upon an inapplicable and rigid definition of immunity and a fundamental misunderstanding of how judicial immunity works. Initially, the Justice Court did not argue, as stated before, that it was engaged in a judicial act for which it possesses absolute judicial immunity in the motion. The argument is simply that the Justice Court cannot be liable, by definition, for any of Plaintiff's claims for relief regardless of how they are cased for doing nothing more than following the law enunciated by the Nevada Supreme Court. Further, Plaintiff somehow misconstrued the Justice Court argument to also stand for the proposition that the Justice Court could limit standing to only litigants of a certain race, religion, national origin or protected class. [Opp pg. 29, footnote 14]. The rationale of how Plaintiff arrived here from the Justice Court's motion is unexplained and unimaginable.

Suffice it to say, the Justice Court did not and could not argue that it relied upon any controlling law to deny anyone access to the court due to immutable characteristics in defiance of the First and Fourteenth Amendment. Conversely, LVJC Rule 16 is not at odds with the First or Fourteenth Amendment and is based upon extant case law from the U.S. Supreme Court and the Nevada Supreme Court. There is thus no basis to find any actionable conduct taken by the Justice Court and all claims succumb to dismissal at the pleading stage of this litigation.

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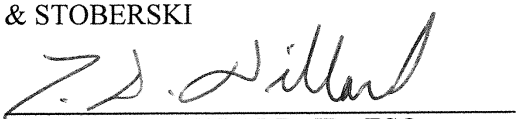
II. CONCLUSION

IN ACCORDANCE WITH THE FOREGOING, the Justice Court respectfully urges this Court to grant the motion to dismiss the Justice Court from this case with prejudice because Plaintiff has failed to state a legal claim for relief against it.

RESPECTFULLY SUBMITTED this 4 day of June, 2020.

OLSON CANNON GORMLEY
& STOBERSKI

BY: 

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CERTIFICATE OF MAILING

On the 4 day of June, 2020, the undersigned, an employee of Olson, Cannon, Gormley & Stoberski, hereby served a true copy of **REPLY TO PLAINTIFF'S OPPOSITION TO THE JUSTICE COURT'S MOTION TO DISMISS**, to the parties listed below via the EFP Program, pursuant to the Court's Electronic Filing Service Order effective June 1, 2014, or mailed to the following:

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DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA COLLECTORS ASSOCIATION, a Nevada non-profit corporation,

Plaintiff,

v.

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

Defendants.

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

STATE DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT

Defendant, State of Nevada Department of Business and Industry Financial Institutions Division and Commissioner O'Laughlin (collectively "FID"), by and through counsel, Aaron D. Ford, Nevada Attorney General and Vivienne Rakowsky, Deputy Attorney General, hereby file this Motion to Dismiss the Amended

Case Number: A-19-805334-C

Complaint.

This Motion is based on the memorandum of points and authorities below, all papers and pleadings on file, and such other evidence as this Honorable Court deems just and appropriate to make a determination.

INTRODUCTION

Prior to the remand, Plaintiff filed Leave to Amend the Complaint with the U.S. District Court in the District of Nevada. ECF No. 20-1. In its Motion for Leave, Plaintiff clearly stated: "NCA seeks amendment to its original complaint *solely* to add a party" ECF No 20, p. 2:16 (emphasis added). Plaintiff went on to state the reason for amending the complaint was to add the newly appointed Commissioner of the FID in her official capacity. ECF No. 20, p. 2:16-28, p. 1-13. The District Court allowed the Amendment, correcting the caption and adding Commissioner O'Laughlin as a defendant in her official capacity. ECF No. 20, p. 3:13-14, ECF 20-1, p. 2-4.

Nevertheless, Plaintiff neglected to notice the Court and the parties that the Amended Complaint also includes several other relevant changes, including the removal of several allegations from the original Complaint, thereby abandoning those claims and facts. (*Compl.* ¶¶ 43, 61, 62, 95), and the addition of requests for attorney fees (*Am. Compl.* ¶¶ 56, 68, 77, 88, 98).

Interestingly, Plaintiff has withdrawn ¶43 which alleges that the Plaintiffs are at risk of enforcement of AB 477 if they seek amounts in excess of AB 477 limits, and ¶95 asking for a declaration that Sections 18 and 19 "unduly conflict and interfere" with "numerous provisions of the Nevada and Federal Constitutions." Plaintiff has changed its prayer for relief and eliminated its request for a writ of prohibition against the Justice Court's enforcement of sections 18 and 19. Other changes were made as well, such as eliminating the definition in ¶12 that "small dollar debts" refer to debts of less than $5,000.

Plaintiff has alleged five causes of action including Violation of Substantive

Due Process based on Section 18 of AB 477 and JCR 16; Violation of Substantive and Procedural Due Process based on Section 19 of AB 477; Violation of Equal Protection based on Section 18 of AB 477; Violation of Equal Protection based on Section 19 of AB 477; and Declaratory Relief. None of the claims apply to the regulatory function of the FID. As a result, all Plaintiffs claims against Commissioner O'Laughlin and the Financial Institutions Division (FID) must be dismissed.

This Court lacks subject matter jurisdiction pursuant to NRCP 12(b)(1) because Plaintiff lacks standing and its claims are not ripe. The section 1983 due process and equal protection claims against the FID and Commissioner O'Laughlin must be dismissed because neither the agency nor its Commissioner are persons subject to section 1983. Pursuant to NRCP 12(b)(5), the FID cannot give Plaintiffs any relief is it seeking because the FID does not regulate AB 477 or the amount of attorney fees that can be awarded by the Justice Court. Finally, Plaintiff is not entitled to an award of attorney fees, which will be addressed in the event that the Amended Complaint against the FID and Commissioner O'Laughlin is not dismissed.

FACTS

The Financial Institutions Division, headed by Commissioner O'Laughlin is an administrative agency of the State of Nevada. ("FID"). It's mission is to "maintain a financial institutions system for the citizens of Nevada that is safe and sound, protects consumers and defends the overall public interest, and promotes economic development through the efficient, effective and equitable licensing, examination and supervision of depository fiduciary and non-depository financial institutions." http://fid.nv.gov.

The FID regulates collection agencies pursuant to NRS Chapter 649. NRS 649.051. Chapter 649 may govern the contracts between the collection agency and its Nevada customers that retain collection agency services, but does not

regulate other members of the Nevada Collector's Association ("Plaintiff") including law firms and asset buying companies. NRS 649.020; *Am. Compl.* ¶11. Relevant to this matter, Chapter 649 absolutely does not regulate the relationship between a collection agency and its attorney that represents them in Justice Court. NRS Ch. 649. Nor does the FID regulate the amount of fees that the Justice Court can award to either the collection agency or the debtor prevailing party.

AB 477 is a new chapter codified in the Nevada Revised Statutes as NRS 97B.[1] The title of the chapter is the Consumer Protection from Predatory Interest After Default Act, which is incorporated into Title 8. Title 8 regulates Commercial Instruments and Transactions. AB 477 was passed by the Nevada Legislature in June 2019 and went into effect on October 1, 2019. Plaintiffs never articulate that they are subject to an imminent threat of investigation or enforcement by the FID concerning attorney fees, or even that the FID has the power to investigate or enforce AB 477. Instead, Plaintiff merely alleges that the existence of AB 477 will prevent Plaintiffs' members from fair access to courts because they will not be able to retain counsel to represent them for small dollar collection cases. See e.g. *Am. Compl.*, ¶¶ 34, 36, 37, 38.

Plaintiff references two specific sections of AB 477 alleging that the statutes deprive them of substantial and procedural due process and equal protection. The two sections state:

> **Sec. 18** (NRS 97B.160).
>
> 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 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,

[1] Because Plaintiff continues to reference AB 477 and does not reference NRS 97B, Defendants will also use AB 477 and cross reference the appropriate statute in NRS 97B.

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 (NRS 97B.160). 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

AB 477 (2019).

The FID must be dismissed because the FID does not regulate a collection agency's ability to retain counsel to represent them in court, or a licensee's access to justice court, or the amount of attorney fees that may be awarded to the prevailing party by the justice court. Moreover, AB 477 does not delegate any powers or responsibilities to the FID. In fact, Plaintiff's Amended Complaint fails to provide any facts to support any of the claims against the FID.

Pursuant to NRCP 12(b)(1), this Court lacks subject matter jurisdiction because Plaintiff lacks standing and this case is not ripe. Additionally, under NRCP 12(b)(5) Plaintiff has failed to state a claim for which relief can be granted. Finally, the due process and equal protection official claims against Commissioner O'Laughlin along with the claims against the FID cannot stand because the Commissioner as the face of the FID as well as the FID itself are not "persons" under 42 U.S.C. § 1983.

/ / /

POINTS AND AUTHORITIES

1. This case must be dismissed for lack of subject matter jurisdiction.

A. Legal standards for NRCP 12(b)(1)

NRCP 12(b)(1) provides that when a court lacks subject matter jurisdiction, the claims must be dismissed. NRCP 12(h)(3). Without first establishing jurisdiction, the court cannot proceed to hear the case. *Steel Co. v. Citizens for a Better Environment,* 523. U.S. 83, 95 (1998).

Plaintiff has the burden to show that the court has subject matter jurisdiction. *Castillo v. United Federal Credit Union,* 134 Nev. 13,16, 409 P.3d 54 (2018); *Morrison v. Beach City LLC*, 116 Nev. 34, 36, 991 P2d. 982, 983 (Nev. 2000) (The burden proving the jurisdictional requirement is properly placed on the plaintiff). Subject matter jurisdiction does not exist if there is no standing. See e.g. *Ohfuji Investments Inc. v. Citibank, N.A.* 2019 WL 682503 *(unpublished).* In addition a case must be ripe for review.

Standing requires an "actual justiciable controversy as a predicate to judicial relief… not merely the prospect of a future problem." *Doe v. Bryon,* 102 Nev. 523, 525, 728 P.2d 443, 444 (1986). A justiciable controversy is a controversy "in which a claim of right is asserted against one who has an interest in contesting it." *Id*. Thus, for a case or controversy to exist and invoke jurisdiction, the parties must be adverse, there must be a controversy, and the issues must be ripe for determination. *Kress v. Cory*, 65 Nev. 1, 26, 189 P. 2d 352 (1948). Ripeness is similar to standing, except ripeness looks at the timing of the action. In re. T.R., 119 Nev. 646, 651, 80 P.3d 1276 (2003).

The FID and Plaintiff are not adverse because the FID does not enforce Chapter 97B (AB 477) or regulate a collection agencies choice of attorney. There is nothing that the FID can do to change Justice Court Rule 16 which requires Corporations and LLC's to be represented by an attorney in Justice Court. In fact, it would violate separation of powers for an executive agency such as the FID to

dictate how a court enforces it rules. In addition, this case is not ripe.

A justiciable controversy cannot be based on harm which is speculative or hypothetical. *Herbst Gaming, Inc. v. Heller,* 122 Nev. 877, 887, 141 P.3d 1224 (2006). Here, there is no controversy between the Plaintiff and the FID. Plaintiff does not allege that the FID has done anything to limit Plaintiffs' access to Justice Court, and has, in fact, backed off its claim that the FID can even enforce Section 18. (Paragraph 43 was eliminated from the original Complaint when the Plaintiff filed the Amended Complaint). Plaintiff does not allege that the FID regulates the amount of attorney fees Justice Court awards. Plaintiff does not allege that the FID has any power to enforce AB477. Plaintiff does not allege that he FID has taken or threatened any action against any of their members based on AB 477. Thus, there is no case or controversy and Plaintiffs claims of what can potentially happen in the future are hypothetical at best.

The Plaintiff has only speculated about a possible injury *if* they are unable to retain counsel to access the court system. In the eight months that this law has been in effect, Plaintiff has not produced any evidence that the FID has caused an actual injury that can in anyway be traceable to actions by the FID. Most relevant, there is no relief this Court can grant the Plaintiff that is within the power or jurisdiction of the FID to redress the Plaintiff's claims. *See e.g. Allen v. Wright,* 468 U.S. 737, 751, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984) (overruled on other grounds).

B. Plaintiff does not have standing against the FID because there is no case or controversy

A case or controversy must be present at all stages of the litigation. *Personhood v. Bristol,* 126 Nev. 599, 602, 245 P.3e 572, 574 (2010). A case or controversy requires standing, which enables the court to decide the merits of the case. *Allen v. Wright*, 468 U.S. 737, 750-751 (1984) (overruled on other grounds). To establish standing the Plaintiff has the burden to show; (a) an injury in fact, (b) causation, and (c) redressability. *Steel Co.,* 523. U.S. at 103-104.

a. **There is no actual injury in fact.**

Plaintiff cannot establish an injury in fact. The Plaintiff has only speculated about a possible injury if they are unable to retain counsel to access the court system. To the contrary, Plaintiff has not been denied access to any court in the State of Nevada, and has not been threatened with any administrative enforcement of AB 477.

Plaintiff's members are primarily concerned with small dollar consumer debts. *Am. Compl,* ¶13. This Court should take judicial notice of NRS Chapter 73 which provides for access to the Nevada court system without an attorney for claims under $10,000. NRS 73.010(1) provides that "[a] justice of the peace has jurisdiction and may proceed as provided in this chapter and by rules of court in all cases arising in the justice court for the recovery of money only, where the amount claimed does not exceed $10,000"), and NRS 73.012 provides that "[a] corporation, partnership, business trust, estate, trust, association or any other nongovernmental legal or commercial entity may be represented by its director, officer or employee in an action mentioned or covered by this chapter...").

Thus, Plaintiff's members are not forced to retain counsel or denied access to court; it is only that Plaintiff's members chose not to use the court with jurisdiction for the size of their claims that will allow them to appear without an attorney. Notwithstanding, Plaintiff's members are not can still opt to use an attorney and access the court of their choice, but will only be able to recover the attorney fees pursuant to AB 477. If a creditor or collection agency decides to hire an attorney to go to justice court to collect a $500 debt rather than small claims court without an attorney, it is a business decision that the creditor and/or collection agency will have to make at the time, knowing the limitations on the award of attorney fees that Justice Court will award. *See e.g. Am. Compl.* ¶¶27-30.

Thus, there is no actual injury. Any injury would be self-inflicted based on business decisions made by the Plaintiff. At this point, approximately eight (8)

months after this statute has gone into effect, none of the Plaintiff's members have suffered an injury due to any actions or threatened actions by the FID. Plaintiff additionally has not pled a single instance where they were have been denied access to court.

b. Plaintiff fails to show any causal link that would give them standing.

The Plaintiff cannot show a causal link between any actions that the FID has taken or can take to address any alleged potential injuries. To establish the causal element for standing, the injury alleged to be suffered must be "fairly traceable to the agencies alleged misconduct." *Washington Environmental Counsel v. Bellon*, 732 F.3d 1131, 1141 (9th Cir. 2013). The links cannot be hypothetical or tenuous. *Id*. When the causal chain involves other "third parties whose independent decisions collectively have a significant effect on plaintiffs injuries, the causal chain is too weak to support standing." *Bellon*, 732 F.3d at 1142. Any prospective injury would be related to an insufficient award of attorney fees which would be determined by the third party justice court and not the FID. Thus the Plaintiff cannot establish a causal link between AB 477 and the FID.

Moreover, in its Motion for a Preliminary Injunction[2] Plaintiff uses hypotheticals involving businesses that are not regulated by the FID to allege a potential injury. Small businesses such as caterers, landscapers, small medical providers, dental clinics, accountants, therapists, property managers, child care provides, dry cleaners, bakers, security providers and even the "buy here pay here" auto dealers that extend credit to their customers for goods or services, are not regulated by the FID. The fact that the FID regulates collection agencies pursuant

[2] The Court can take judicial notice of Plaintiffs Motion for Injunction which was filed on May 15, 2020. The Motion for Preliminary Injunction will be heard in conjunction with the Motion to Dismiss.

to NRS Chapter 649 does not provide a causal connection to attorney fees awarded by the court on the basis of AB 477.

Even if a business employs a licensed collection agency to collect a defaulted debt, the FID only looks at the original contract with its Nevada client (creditor) and the contract between the creditor and its customer that established the debt. The FID looks to verify that the collection agency has complied with the contract that it has with its Nevada client and that the contract with the Nevada client does not violate State of Federal law. The FID does not look at the amount of attorney fees the contract allows, and does not look at a contract between a collection agency and the attorney that appears for them in court. The fees are up to the court to award. The contract between the creditor and its debtor is in existence prior to the time that a defaulted debt is turned over to a collection agency.

Accordingly, Plaintiff cannot show a causal link because there is no plausible connection between AB 477, JCR 16, and the FID.

c. Plaintiff cannot show that the FID can redress any alleged injury.

There is no relief this Court can grant within the power or jurisdiction of the FID that can redress the Plaintiff's claims. *See e.g. Lujan v. Defenders of Wildlife*, 504 U.S. 555, 568-569 (1992) (Standing was denied based on the lack of redressability because "it was entirely conjectural whether the non-agency activity that affects respondents will be altered or affected by the agency activity they seek to achieve"). The Plaintiff cannot meet the redressability prong because the FID does not regulate AB 477 or regulate the Justice Court award of attorney fees.

AB 477's limitation on attorney fees is something that a creditor or a collection agency should consider when bringing an action in Justice Court. AB 477 does not limit access, it just limits the amount of attorney fees that can be collected. The FID does not have the jurisdiction to redress any of Plaintiff's alleged potential injuries because it does not regulate JCR 16 or AB 477.

/ / /

C. The Due Process and Equal Protection Claims must be Dismissed because they are not Ripe

Similar to standing, ripeness is also necessary to establish a case or controversy. Ripeness is concerned with timing, because if there is no injury in fact, there is no case or controversy. An alleged injury that is too imaginary or speculative will not support jurisdiction. *Doe v. Bryan, 102 Nev. 523, 525, 728 P,2d 443, (1986); Thomas v. Anchorage Equal Rights Com'm,* 220 F.3d 1134, 1138 (2000). A justiciable controversy is the first hurdle to an award of declaratory relief. *Southern Pacific Co. v. Dickerson,* 80 Nev. 572, 576, 397 P.2d 187 (1964). Claims based on future events that may or may not occur is not ripe. *Texas v. U.S.,* 523 U.S. 296, 300 (1998). Because AB 477 is a newly enacted law which has not been enforced, this case is not ripe, and dismissal is warranted.

To elaborate, a case is not ripe for review when the degree to which the harm alleged by the party seeking review is not sufficiently concrete, but rather any alleged injury is remote or hypothetical. *Cote H. v. Eighth Judicial Dist. Court ex rel County of* Clark, 124 Nev. 36 n.1, 175 P.3d 906 (2008).

Plaintiff's injury arguments are nothing more than hypotheticals and/or speculation that a creditor will not be able to hire an attorney to represent them in justice court, and that credit may be tightened for all consumers. *Am Compl.* ¶¶ 37, 38. This argument is a red herring because a creditor can hire an attorney to comply with Justice Court rule 16, but he will have to make a business decision whether he may have to pay the attorney more fees than can be recovered in a small dollar case. It is not a due process or equal protection issue, it is simply a business decision that Plaintiff will make when analyzing each case. He can also use small claims court without an attorney for the small debts.

Moreover, even if Plaintiff was to somehow provide a basis for relief, the FID is not in a position to provide that or any relief. The FID does not govern the attorney fees that justice court can award nor does it regulate the agreement

between a collection agency and its counsel that represents them in court in a collection matter.

Plaintiff filed its original complaint November 13, 2019- a little over a month after AB 477 went into effect. In its original complaint, Plaintiff alleged that "NCA's members are at risk of administrative enforcement to the extent that they seek amounts in excess of those allowed by AB 477." *Compl.* ¶ 43. Plaintiff removed that allegation from the Amended Complaint because they finally realize that the FID does not enforce the amount of attorney fees that the Justice Court can award.

Plaintiff alleges violations of substantive and procedural due process and equal protection resulting from the mere existence of Sections 18 and 19 of AB 477. Based on the alleged violations, Plaintiff has requested that the Court declare AB 477 unconstitutional and grant injunctive and declaratory relief.

Plaintiff has not alleged a specific due process or equal protection violation by the FID. Instead, Plaintiff pleads due process and equal protection constitutional guarantees and then speculates about a possible future injury through Justice Court's enforcement of AB477. *Am Compl.* ¶¶44-54, 58-65, 69-75, 80-87.

Plaintiff's claims are premature.[3] The mere existence of a statute that may or may not ever be applied to the Plaintiffs members is not sufficient, in and of itself, to meet ripeness requirements. *San Diego Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1126-27 (9th Cir. 1996). Moreover, Plaintiff never asserts how or if the FID has the power or responsibility to regulate the attorney fees only Justice Court can award. *Am. Compl.* ¶ 3. This Court should immediately dismiss these claims

[3] Plaintiff additionally alleges that the "language of AB 477 is inherently vague and ambiguous." *Am. Compl.* ¶23. Although no regulations have been adopted to provide direction for the application of the law, Plaintiff prematurely claims that in the future, its members will be unable to retain counsel to represent them in small dollar consumer cases." *Am. Compl.* ¶35. It is noteworthy that any regulations would not be adopted by the FID, since they do not govern Chapter 97B (AB 477).

against the FID and further refuse to adjudicate prematurely the constitutionality of AB 477.

D. Plaintiff's Declaratory Relief claims are not ripe.

Plaintiffs' request for a declaratory judgment based on allegations of possible future injury from this brand new statute is also not ripe. *Am. Compl.* ¶91. "The constitutional ripeness of a declaratory judgment action depends upon whether the facts alleged ... show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy ... [that] warrant the issuance of a declaratory judgment." *United States v. Braren*, 338 F.3d 971, 975 (9th Cir. 2003). Prudential ripeness requires the fitness of issues for judicial decision and the hardship to the parties if the court withholds consideration. *Braren*, 338 F.3d at 975. Again, Plaintiffs cannot meet the immediacy requirement and prudential ripeness doctrine on this new statute.

The factors considered when determining if a case is ripe for a declaratory judgment include a constitutional component that asks, "whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *U.S. v. Braren*, 338 F.3d 971, 975 (9th Cir. 2003). A justiciable controversy is a preliminary hurdle to an award of declaratory relief. *Southern Pacific Co. v. Dickerson,* 80 Nev. 572, 576, 397 P.2d 187, 190 (1964)

The case or controversy issue which includes discussion of Plaintiff's lack of injury in fact, the lack of a causal link, and the lack of redressability are addressed above with regard to standing. The same factors are considered along with prudential factors in determining whether a case is ripe for decision. The prudential portion of the ripeness evaluation weighs the fitness of the issues for judicial decision and the hardship to the parties of withholding the court's consideration. *U.S. v. Braren*, 338 F.3d 971, 975 (9th Cir. 2003).

Generally, an agency's action must be final before a declaratory judgment action is ripe. *Braren,* 338 F.3d at 975. This way, before declaratory action is taken, the effects of the agency's action is "felt in a concrete way by challenging parties." *Id*. Here there has been no agency action -- or even a threat of agency action since the FID does not enforce AB 477.

There is also no hardship to the parties since Plaintiff's members do not have an injury in fact and only speculate about a potential future injury if they cannot access the court system for small collection cases. Moreover, Plaintiff's speculative injuries are all potentially financial in nature and fail to meet the hardship requirement. *See e.g. Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1126 (9th Cir.2009) (To meet the hardship requirement, a litigant has the burden to show more than a financial loss). Plaintiffs only complain about financial loss. As a result, this matter is not fit for judicial decision against the FID.

Plaintiff never alleges or argues that the FID has any authority over AB 477 or that the FID can enforce Sections 18 or 19 of AB477. There is not a single factual allegation in the Amended Complaint claiming the FID has any regulatory ability to govern any activities that the Justice Court engages in, including the attorney fees awarded by the Justice Court. It would be a violation of separation of powers to intervene or regulate Justice Court's jurisdiction. Moreover, neither AB 477 nor Chapter 649 provide the FID with this ability.[4] Thus, even if this Court grants the Plaintiff all the relief it seeks, the FID is powerless because its regulatory ability is limited to the provisions of Chapter 649. Equally important, the FID absolutely does not have any authority over the fees that Justice Court can award under AB 477. Moreover, 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

[4] The FID only regulates collection agencies and does not regulate many of the Plaintiff's members including those who extend credit for their own products, law firms or asset buying companies

of AB 477 to the FID.

E. The FID is not a person subject to Section 1983 due process and equal protection claims.

Plaintiff alleges that its due process and equal protection claims are brought under 42 U.S.C. §1983. *Am. Compl.* ¶¶ 45, 58, 69, 80. The provisions of 42 U.S.C. § 1983 provide access to Court when any person, under the color of state law, deprives any person of the rights, privileges or immunities secured by the Constitution and laws. The section 1983 claims against the State, the FID and its Commissioner must be dismissed because neither the State of Nevada nor its agencies are "persons" under section 1983. *Maldonado v. Harris, 370 F.3d 945, 951 (9th Cir. 2004); Wolfe v. Strankman,* 392 F.3d 358, 364 ("[S]tate agencies are also protected from suit under § 1983."); *see also Will v. Michigan Dept. of State Police,* 491 U.S. 58, 69 (1989). The *Will* court looked at the legislative history of Section 1983 and determined that Congress did not intend for the state itself to be the subject of liability. *Will*, 491 U.S. at 68-69. As a result all Section 1983 claims against the FID must be dismissed.

F. **Commissioner O'Laughlin in her official capacity is not a person and must be dismissed from the Section 1983 due process and equal protection claims**.

The Supreme Court has held that a suit against officers or employees in their official capacity are really another way of pleading a lawsuit against the State. *Hafer v. Melo*, 502 U.S. 21, 25 (1991); *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989). Thus, when a person sues state employees of officers in their official capacities, the suit is actually against Nevada and not the individual. *Craig v. Donnelly*, 439 P.3d 413, 135 Nev. Adv Op. 6 (2019); see also *Kentucky v. Graham,* 473 U.S. 159, 166 (1985) (an official capacity suit is "*not* a suit against the official personally, for the real party in interest is the entity.") (emphasis in original).

In *Hafer v. Melo*, 502 U.S. 21, 112 S. Ct. 358 (1991), the United States

Supreme Court discussed the differences between an individual is sued in his or her individual capacity verses when he or she is sued in an official capacity. The court held that treating claims brought in an official capacity as claims against a state permits an official's successor to assume his or her role in litigation if an individual sued in an official capacity dies or leaves office. *Id.* Damages in an official capacity suit are imposed on the government entity and not on the individual. *Kentucky v. Graham,* 473 U.S. 159, 166 (1995).

Just like the State, Commissioner O'Laughlin is not a person under Section 1983. *Will v. Michigan Dep't. of State Police*, 492 U.S. 58, 71 (1989). Thus, because an official-capacity suit against a state official is a suit against his or her office and the state itself, all section 1983 claims for due process and equal protection must be dismissed against Commissioner O'Laughlin.

2. Dismissal is warranted because Plaintiff has failed to state a claim pursuant to NRCP 12(b)(5).

A. Legal Standards for NRCP 12(b)(5)

NRCP 12(b)(5) permits a defendant to bring a motion to dismiss a plaintiff's claim in a complaint for failure to state a claim upon which relief can be granted. Pursuant to Rule 12(b)(5), a complaint should be dismissed for failure to state a claim "if it appears beyond a doubt that [plaintiff] could prove no set of facts, which, if true, would entitle it to relief." *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (Nev. 2008). The pleadings must be liberally construed, and all factual allegations in the complaint accepted as true. *Blackjack Bonding v. City of Las Vegas Municipal Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (Nev. 2000). Plaintiff's allegations must be legally sufficient to constitute the elements of the claim asserted. *Munda v. Summerlin Life & Health Ins. Co.*, 127 Nev. 918, 923, 267 P.3d 771, 774 (2011). Dismissal is required where it appears beyond a doubt the plaintiff could prove no set of facts entitling him to relief. *Id.* Here, even if this Court finds that any claims remain against the State Defendants,

Plaintiff has failed to state a claim where any relief can be provided by the FID.

B. The FID's regulatory power over a collection agency is governed by Chapter 649.

The FID's regulatory power over a collection agency is limited to the duties and responsibilities found in NRS Chapter 649. NRS 649.051. The FID does not regulate the contracts between collection agency and their attorneys, and does not regulate the Justice Court's award of attorney fees.

Briefly, a collection agency includes all persons engaging in the business of collecting, soliciting or obtaining the payment of a claim owed or due to another. NRS 649.020. The customer is the person who authorizes or employs a collection agency for any purpose authorized by Chapter 649. NRS 649.030. A collection agency enters into a written agreement with its customer to collect the debt that is owed to the customer by a third party creditor. NRS 649.334. The terms of the contract between the collection agency and its customer must be clear and specific. NRS 649.334.

The agreement between the collection agency and its creditor customer may or may not provide for attorney fees. If interest is to be paid on the debt, it is determined through the agreement between the customer and the collection agency. NRS 649.334. When the collection agency remits the proceeds to its customer, it may first deduct its court costs NRS 649.334(2).

The FID is empowered to adopt regulations concerning collection agencies, but only concerning items such as; record keeping, preparing and filing reports, handling trust funds and accounts, the transfer or assignment of accounts and agreements, and the investigations and examinations performed by the FID. NRS 645.056.

Aside from requiring that the contract between the collection agency and its customer be specific and unambiguous, (NRS 649.334) the statutes and regulations do not provide the FID the power or jurisdiction to investigate or enforce the

amount of money that a collection agency pays its attorney for court appearances or any collection fees that justice court may impose. *See* Declaration of Mary Young, Deputy Director of FID, attached hereto as Exhibit "A."

The FID performs an annual examination of collection agencies. During the examination, the examiner reviews the books and records of the collection agency to ensure compliance with Chapter 649 and the Fair Debt Collection Practices Act. Exhibit "A." The FID reviews the contracts between the collection agency and its customer as well as the contract that created the debt between the creditor and debtor. The FID reviews the contract to see if interest, fees and costs can be collected per the Contract, but not how much can be collected. Exhibit "A." The FID does not examine the agreement between a collection agency and its legal representative. Awarding attorney fees are a function of the Justice Court and not a function of the FID. As a result, dismissal of the FID is appropriate because the FID cannot provide the relief that Plaintiff is seeking.

CONCLUSION

Based on the foregoing, Defendant FID must be dismissed from this case. Plaintiff has failed to invoke subject matter jurisdiction because there is no case or controversy between the FID and the Plaintiff and this case is not ripe. The constitutional claims must be dismissed because the FID is not a person under 42 U.S.C. § 1983. Moreover, the FID cannot provide the relief that Plaintiff has requested, because even if this Court grants declaratory and/or injunctive relief, the FID does not have the power to regulate or enforce AB 477.

Respectfully submitted this 6th day of June, 2020.

AARON D. FORD
Nevada Attorney General

By: /s/ Vivienne Rakowsky
VIVIENNE RAKOWSKY (Bar No. 9160)
Deputy Attorney General
Attorneys for State Defendant FID

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **STATE DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT** with the Clerk of the Court by using the electronic filing system on the 6th day of June, 2020.

Registered electronic filing system users will be served electronically.

/s/ Michele Caro
Michele Caro, an Employee of the
office of the Nevada Attorney General

EXHIBIT “A”

EXHIBIT “A”

DECLARATION OF MARY M. YOUNG

1. I, Mary M. Young, present this Declaration in support of the State of Nevada Department of Business and Industry Financial Institutions Division's ("FID").

2. I am over 18 years of age and have over 10 years of experience with the FID.

3. I have personal knowledge of, and am competent to testify, regarding the matters stated in the aforementioned pleadings.

4. I am currently employed as the Deputy Commissioner of the FID.

5. The FID regulates collection agencies through NRS and NAC Chapters 649.

6. The FID examines its licensees to ensure compliance with NRS and NAC Chapter 649 and the federal Fair Debt Collection Practices Act ("FDCPA").

7. The FID examines the contract between the collection agency and the creditor/client and the original contract that created the debt between the creditor and debtor.

8. We check to determine whether the contract provides for interest, fees, and costs to be collected per the contract.

9. If there is a court judgment, we check to see that the collection agency is complying with the court order.

10. The FID does not examine the agreements between a collection agency and the attorney it retains to make court appearances.

11. AB 477 (NRS 97B) does not provide for regulation or enforcement by the FID, but it references Chapter 97 with respect to contractual language in a consumer form contract (NRS 97B.070). Chapter 97 also does not provide for regulation or enforcement by the FID.

12. My understanding is that the Department of Business and Industry Consumer Affairs can act upon any complaint that is not regulated by a specific B&I agency.

Dated this 22__ day of January 2020.

By: _____
Mary M. Young
Deputy Commissioner
Nevada Department of Business & Industry
Financial Institutions Division