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

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

JOINT APPENDIX – VOLUME VII

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JOINT APPENDIX – VOLUME VII

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Reply in Support of NCA's Motion for Preliminary Injunction or, Alternatively, for a Writ of Mandamus or Prohibition	06/10/2020	VI	JA0977 – 0993
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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 VII** 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: July 1, 2020

Hearing Time: 9:30 a.m.

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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 Defendants State of Nevada Department of Business and Industry Financial Institutions Division and Commissioner Sandy O'Laughlin (collectively, the "FID").[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 22nd day of June, 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.

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

I.

INTRODUCTION

In its Motion, the FID avoids the basic and primary issues raised in the Complaint. Section 18 of A.B. 477 arbitrarily caps the recovery of attorney fees for a prevailing party in a civil lawsuit at *only 15%* of the amount of any unpaid "consumer debt," regardless of the amount of work incurred by counsel in a debt collection action. A.B. 477, when acting in conjunction with JCR 16, violates the rights of NCA's members and creditors of the like, fundamental right to meaningful access to Nevada Justice Courts. This new law also subjects NCA members to potential administrative enforcement every time they dare to seek attorney fees above and beyond the amount allowed under A.B. 477.

The state agency with unequivocal authority to penalize NCA members for seeking such attorney fees is the FID. Specifically, NRS Chapter 649 grants the FID primary authority over licensed collection agencies in the State of Nevada, which includes imposing penalties on said agencies for violations of NRS Chapter 649. Under Chapter 649, the FID is also empowered to penalize licensed collection agencies for violations of the Fair Debt Collection Practices Act (the "FDCPA"). Collection agencies are heavily regulated, and to no surprise, requesting attorney fees that are not permitted under state law, violates the FDCPA. To state simply, whenever NCA violates the FDCPA, it also violates NRS Chapter 649, and at least one violation includes requesting attorney fees above 15% of the amount of the debt because such fees are prohibited under A.B. 477. Based on the plain language of NRS Chapter 649, the FID cannot credibly deny that it has the regulatory authority to regulate the conduct of collection agencies under A.B. 477. Accordingly, this Court should dismiss the FID's Motion.

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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 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

[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 the FID's 12(b)(1) and 12(b)(5) motion, the parties and this Court must accept as true all factual allegations contained in the challenged pleading. *See Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (providing that subject matter jurisdiction facial attack is resolved as a 12(b)(6) motion, which is by "accepting the plaintiff's allegations as true and drawing all reasonable inferences in plaintiff's favor[.]";*Morrison v. Beach City LLC*, 116 Nev. 34, 38, 991 P.2d 982, 984 (2000) (citing to federal courts for subject matter jurisdiction standard); *Vacation Village, Inc. v. Hitachi Am., Ltd.*, 110 Nev. 481, 484, 874, P.2d 744, 746 (1994) (In reviewing a dismissal for failure to state a claim upon which relief can be granted, "[a]ll factual allegations of the complaint must be accepted as true."). The FID 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.

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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 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.

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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).

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."

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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") 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.

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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.

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

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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.

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

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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 "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.

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[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.

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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.

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

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

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> 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.

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.

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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.*

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.

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

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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 bank sues on the loan.	The bank is unlimited in its recovery of attorney's fees.
A consumer borrows $1,000 from a Chapter 604A "payday" lender at a 650% 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.

[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.

[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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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.

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.

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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
$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.*

[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.

[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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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 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.

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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 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.

100. Because the cap on attorney fees in A.B. 477 makes it cost prohibitive for NCA members to commence civil actions in Justice Court in Small Dollar Debt cases, NCA members

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are currently left with two undesirable options: (1) surrender their right to collect on those defaulted debts; or (2) disregard A.B. 477's cap on attorney fees, attempt to recover attorney fees exceeding 15% of the debt, and be subject to penalties by the FID and/or lawsuits by debtors.

III.

LEGAL ARGUMENT

A. Standard Of Review.

The FID contends this Court lacks subject matter jurisdiction because there is no actual controversy between the FID and NCA, and therefore, NCA does not have standing against the FID. Mot., 6:2-7:20. In order to establish standing, the plaintiff must show that it has (1) suffered an injury in fact; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) the injury will be redressed by a favorable decision. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 180-81 (2000). NCA has the burden of establishing subject matter jurisdiction. *Morrison v. Beach City LLC*, 116 Nev. 34, 36, 991 P.2d 982, 983 (2000).

The FID also alleges that NCA has failed to state a claim that could entitle it to relief. Mot., at 16:13-17:1. 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 FID'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 the FID'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

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necessarily relies if: (1) the complaint refers to the document; (2) the document is central to the 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 the FID's Motion to Dismiss.

B. <u>The FID Has Primary Regulatory Authority Over Licensed Collection Agencies Which Includes NCA's Members.</u>

The FID contends that this Court has no jurisdiction over it because it is not expressly empowered to regulate A.B. 477. Mot., at 17:2-18:14. This argument can only be described as "too clever by half." *No state agency is expressly assigned to regulate NRS Chapter 97B.* At the same time, Nevada law *requires* a party suing the State of Nevada to name the appropriate agency. NRS 41.031(2) ("In any action against the State of Nevada, the action must be brought in the name of the State of Nevada on relation of the particular department, commission, board or other agency of the State whose actions are the basis for the suit.").

Tellingly, the FID does not suggest which state agency should be sued in its place. Therefore, under the FID's reasoning, the State could enact an unconstitutional rule of law, but avoid constitutional challenge simply by neglecting to assign a government agency to the chapter under which the law rests. The FID offers no legal authority for this nonsensical proposition and its position offers no respite from the claims in this lawsuit.

Setting aside the foregoing, the FID is very much an appropriate defendant in this action because it licenses and regulates NCA's members, namely, collection agencies. In Nevada, any entity that recovers funds that are past due, or from accounts that are in default, is governed by NRS Chapter 649 and NAC Chapter 649. *See* NRS 649.020 (defining "collection agency" as "all persons engaging, directly or indirectly, and as a primary or a secondary object, business or pursuit, in the collection of or in soliciting or obtaining in any manner the payment of a claim owed or due or asserted to be owed or due to another."). NRS Chapter 649's stated purpose is to:

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"(a) bring licensed collection agencies and their personnel under more stringent public supervision;" "(b) establish a system of regulation to ensure that persons using the services of a collection agency are properly represented;" and "(c) discourage improper and abusive collection methods." NRS 649.045(2)(a)-(c). To that end, NRS Chapter 649 established a broad regulatory scheme that covers all aspects of collections practices.

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

The Commissioner is also charged with administering and enforcing the provisions in NRS Chapter 649. The Commissioner is not solely limited to the powers under NRS Chapter 649, as such chapter encourages the Commissioner to adopt provisions that may be necessary to carry out the provisions of NRS Chapter 649. NRS 649.053 ("The Commissioner shall adopt such regulations as may be necessary to carry out the provisions of this chapter.").

The FID minimizes its power by citing to NRS 645.056 for the proposition that 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." This statement ignores the very regulations promulgated by the FID in Nevada Administrative Code Chapter 649. See, e.g., NAC 649.105 (governing exemptions from licensing), NAC 649.130 and NAC 649.140 (governing branch offices), NAC 649.2109 and NAC 649.220 (governing the responsibilities of managers), NAC 649.250 through NAC 649.280 (governing locations of agencies, fictitious names, and approval of machine-driven form letters). Most notably, NAC 649.320 states that the Commissioner of the FID must deem a violation of the

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FDCPA to be "to be an act or omission inconsistent with the faithful discharge of the duties or obligations of a collection agency or collection agent and grounds for the suspension or revocation of the license of the collection agency or collection agent." NAC 649.320. In other words, the Commissioner has the power to suspend or revoke the license of a collection agency, or impose other lesser discipline, if she deems that a licensee has violated the FDCPA.

Collection agencies are also heavily regulated by federal law. The Fair Debt Collection Practices Act (the "FDCPA") is the main federal law that governs debt collection practices. 15 U.S.C. § 1692 *et seq*. In general, the FDCPA prohibits debt collection companies from using abusive, unfair, or deceptive practices to collect debts from consumers. *See id.* 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).

The Nevada Legislature granted the FID and its Commissioner authority to regulate collection agency violations of the FDCPA. *See* NRS 649.370. In particular, 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." 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. This includes the "false representation of the character, amount, or legal status of any debt; or any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt." 15 U.S.C. § 1692e(2)(A)-(B). And, as previously mentioned, NAC 649.320 empowers the Commissioner of the FID to suspend or revoke a license for a violation of the FDCPA.

As a general matter, there is no dispute that "litigation activity is subject to the FDCPA." *Sayyed v. Wolpoff & Abramson*, 485 F.3d 226, 231 (4th Cir. 2007); *see also Heintz v. Jenkins*, 514 U.S. 291, 299 (1995) (holding that a car loan borrower could pursue FDCPA claims against the lender's counsel for falsely asserting in a letter that the borrower owed money for a

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particularly broad substitute insurance policy on the car); *McCollough v. Johnson, Rodenburg & Lauinger, LLC*, 637 F.3d 939, 951 (9th Cir. 2011) ("[T]he FDCPA applies to the litigating activities of lawyers.") (quotation marks omitted)). FDCPA violations may even be found based on false allegations and requests contained in a complaint. *See 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.").

In the context of this case, there exist many cases where consumers have initiated lawsuits against collection agencies for requesting attorney fees that are not permitted under state law. *See e.g.*, *Kirk v. Gobel*, 622 F. Supp. 2d 1039, 1046 (2009) (finding a violation of the FDCPA when a debt collection attorney claimed fees under a settlement statute where no settlement offer had yet been made, or could be made). Additionally, there are cases where consumers are challenging attorney fees in debt collection cases where no basis for such challenge exists. *See e.g., Elyazidi v. SunTrust Bank*, 780 F.3d 227, 231 (4th Cir. 2015) (where a consumer unsuccessfully alleged that an attorney misrepresented the requested attorney fees even though such fees were permitted by state law).

This Court is no doubt familiar with the FDCPA's prohibition against a debt collector making a false or misleading representation of "the character, amount, or legal status of any debt."[10] Indeed, since the FDCPA was enacted, the "false or misleading representation" prong has become a classic "gotcha" provision for anyone seeking to assert a claim against a licensed debt collector—with or without actual merit—arising from the mere assertion by a debt collector of the amount of a debt owed by a creditor. If consumer protection attorneys can make such assertions, so can the FID.

[10] *See e.g., Seare v. Bank of New York Mellon*, No. 2:16-cv-00907-JCM-CWH, 2017 WL 736878, at 4 (D. Nev. 2017) (where a plaintiff unsuccessfully attempted to initiate a suit under 15 U.S.C. § 1692e for a non-judicial foreclosure); *Bradford v. Patenaude & Felix*, No. 2:12-CV-42 JCM (GWF), 2012 WL 5288765, at *5 (D. Nev. 2012) ("The factual allegations included in the complaint, including those incorporated by reference in paragraph 16, fail to allege in any modicum of deal exactly what P & F did that violated [the FDCPA].).

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Here, as outlined in the First Amended Complaint, NCA members consist of licensed collection agencies that are subject to the provisions of NRS Chapter 649. Specifically, NCA members consist of small businesses such as collection agencies, law firms, and asset buying companies that engage in the business of collecting unpaid debt on consumer contracts that are past due or in default. Accordingly, the FID and its Commissioner regulate the conduct of many NCA members.

It is clear that the perimeters of what constitutes as a violation under the FDCPA are broad. And, there can be no reasonable dispute that the FID and its Commissioner have the authority to regulate collection agencies based upon purported violations of the FDCPA. Under this regulatory framework, simply requesting attorney fees above and beyond the 15 percent allowed under A.B. 477 subjects collection agencies to possible discipline under NRS Chapter 649.[11] Accordingly, the FID cannot credibly deny that it has the regulatory authority to regulate the conduct of collection agencies under A.B. 477.

C. NCA Has Standing to Challenge the Constitutionality of A.B. 477 and JCR 16.

NCA unquestionably has standing to challenge the constitutionality of A.B. 477 and JCR 16. "The 'irreducible constitutional minimum' of Article III standing consists of (1) 'injury in fact,' (2) 'a causal connection between the injury and the conduct complained of,' and (3) a likelihood 'that the injury will be redressed by a favorable decision.'" *Novak v. United States*, 795 F.3d 1012, 1017–18 (9th Cir. 2015) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). To demonstrate redressability, the plaintiff must show "a 'substantial likelihood' that the requested relief will remedy the alleged injury in fact." *Vermont Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765, 771 (2000) (citation omitted).

101. 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

[11] *See, e.g., Gomex v. Cavalry Portfolio Services, LLC*, — F.3d —, 2020 WL 3396724 (7th Cir. June 19, 2020). This case, decided just last Friday in the Seventh Circuit, addressed whether a demand for payment could be construed as "false" under the FDCPA merely because a judge, several years later, determines that a debt collector is not entitled to every penny it demands. 2020 WL 3396724 at *2. Clearly these kinds of issues are still being litigated around the country, and it provides cold comfort for the NCA and its members when the FID claims it has no jurisdiction over NRS Chapter 97.

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irreparable injury." Case No. 2:20-cv-0007-JCM-EJY, ECF No. 13. Indeed, attached to the Motion for Preliminary Injunction are numerous declarations from debt collectors and attorneys in Nevada that represent creditors in consumer debt collection cases. *See* Exhibits 1 through 6. In those declarations, attorneys have illustrated how A.B. 477 will effectively prevent said attorneys from representing clients in Small Dollar Debt cases because the attorney fees are capped so low. *See e.g.*, Motion for Preliminary Injunction, Appendix Vol. III, NCA000504-511. A.B. 477 would not cause NCA's members injury if JCR 16 did not prohibit NCA members from appearing in court without an attorney, as NCA members could simply represent themselves. On the flip side, JCR 16 would not cause NCA members injury if A.B. 477 did not cap recovery of attorney's fees at such an artificially low rate, effectively debilitating NCA members of any chance of retaining counsel to represent it. As previously mentioned, 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. As it stands, NCA members are forced to disregard the attorney's fees limit in A.B. 477 so that they may hire an attorney and seek to enforce its right to pursue these defaulted debts in Justice Court, which only subjects NCA to potential liability under the FDCPA, and it turn, NRS Chapter 649.

With regard to the causation element, causation can be established "even if there are multiple links in the chain," as long as the chain is not "hypothetical or tenuous." *Mendia v. Garcia*, 768 F.3d 1009, 1012 (9th Cir. 2014); *Maya v. Centex Corp.*, 658 F.3d 1060, 1070 (9th Cir. 2011). As demonstrated in detail *supra*, the FID has the direct power to regulate the conduct of collection agencies, including NCA members. And, the FID has a concrete prior history of attempting to discipline collection agencies, even for violating provisions of law that fall outside of NRS Chapter 649. *See State, Dep't of Bus. and Indus., Fin. Inst. Div. v. Nevada Ass'n Servs.*, 128 Nev. 362, 294 P.3d 1223 (2012) (affirming injunction against FID Advisory Opinion interpreting NRS 116.3116, which governs homeowner associations and super-priority liens). Further, in addressing the redressability requirement, if this Court takes NCA's well-pleaded allegations as true, as it must, a declaratory judgment prohibiting the FID from enforcing A.B.

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477 by way of NRS Chapter 649 would remedy part of the immediate and irreparable injury NCA will suffer. NCA need not be in fear of the penalties the FID may impose if NCA seeks attorney fees greater than 15% of the amount of the debt. In sum, the NCA has standing to challenge the constitutionality of A.B. 477 and JCR 16.

D. <u>This Matter is Ripe for Judicial Determination.</u>

NCA's request for a declaratory judgment as to the constitutionality and applicability of A.B. 477 and JCR 16 are ripe for judicial determination under Article III. Ripeness, although it closely resembles standing, "focuses on the timing of the action than on the party bringing the action." *In re T.R.*, 119 Nev. 646, 651, 80 P.3d 1276, 1279 (2003). A ripeness analysis requires the following factors to be weighed: "(1) the hardship to the parties of withholding judicial review; and (2) the suitability of the issues for review." *Id.* (citing *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149, *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99, 97 (1977)).

Here, the factors indicate that this case is ripe for review. The first factor is easily met, as withholding court consideration will cause hardship to NCA members and collection agencies of the like. As previously mentioned, A.B. 477 imposes crushing burdens on the ability of creditors and debt collectors to obtain legal representation in consumer debt cases.[12] The cap on attorney fees in A.B. 477 makes it cost prohibitive for creditors and debt collectors to commence civil actions in Justice Court in Small Dollar Debt cases. The problem is only aggravated by the fact that entities such as NCA members are prohibited from appearing in proper person in Justice Court, as JCR 16 explicitly requires a business entity to obtain counsel to appear in court. Without a judgment in the case declaring A.B. 477, in conjunction with JCR 16, unconstitutional, creditors will be left with two options: (1) surrender their right to collect on unpaid debts from those debtors who refuse to pay the amount in which they contracted for because they cannot find an attorney to take on their claim; or (2) disregard A.B. 477's cap on attorney fees, attempt to

[12] All the while, debtors in debt collection cases and any other person or entity that prevails in Justice Court may obtained fees that are reasonable. *See* NRS 69.030 ("The 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."); *see also* NRS 97B.170 (providing that a prevailing debtor in consumer debt case can receive reasonable attorney fees).

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recover attorney fees exceeding 15% of the debt, and be subject to penalties by the FID and/or lawsuits by debtors.

The second factor is also quickly resolved upon a showing that a constitutional challenge presents a purely legal issue. *See Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977); *see also LaGrand v. Stewart*, 133 F.3d 1253, 1278 (9th Cir. 1998) (Pregerson, J., dissenting) ("As was true in *Abbott Laboratories*, the LaGrands's challenge presents a purely legal issue: Is Arizona's death penalty statute constitutional? . . . . Because the issue in this case 'will not be clarified by further factual development," the LaGrands's challenge is purely legal and is therefore fit for judicial review.") (internal citations omitted); *see also Thomas v. Union Carbide Agric. Prods.*, 473 U.S. 568, 581 (1985) (providing that an issue is ripe if the issue "will not be clarified by further factual development.")

The primary issue in this matter is whether A.B. 477, in conjunction with JCR 16, is constitutional. This is a pure legal question and no interest is served by delaying the resolution of this claim. In its pending Motion for Preliminary Injunction, NCA has attached exhibits demonstrating the fee amounts that are common and necessary to litigate Small Dollar Debt cases, in addition to declarations from attorneys that represent debt collectors stating that their ability to take on these types of cases will be severely limited because the cap makes them cost prohibitive. NCA has further demonstrated how this issue is worsened by the fact that debt collectors are required to retain counsel to represent them in Justice Court. In addition, on the face of A.B. 477, banks and payday lenders are inexplicably and irrationally exempted from the law when collecting consumer debt. None of this is disputed. The only issues left to resolve are whether A.B. 477, in conjunction with JCR 16, is constitutional and to what extent it applies in conjunction with other conflicting fee shifting rules in Nevada.

E. <u>Small Claims Court is not an Adequate or Appropriate Remedy.</u>

The FID argues that small claims court is a viable alternative to Justice Court. Mot., at 11:24-25. As fully explained in NCA's First Reply, smalls claims court is not a solution to A.B. 477 and JCR 16's infringement on NCA members' constitutional rights.

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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. 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).

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.

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IV.

CONCLUSION

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

DATED this 22nd day of June, 2020.

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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 22nd day of June, 2020, to the addresses shown below:

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An employee of Brownstein Hyatt Farber Schreck, LLP

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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Las Vegas, NV 89106-4614
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DATED this ____ day of February, 2020.

/s/ Patrick J. Reilly

Patrick J. Reilly, 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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/s/Susan Roman
An employee of Brownstein Hyatt Farber Schreck, LLP

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Exhibit 2

(Mary Hobbs 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 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

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

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.

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)

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 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.

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.
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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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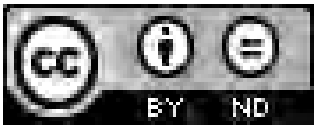

March 13, 2018

This publication contains the results of proprietary research.

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. Though the *Brunzell* factors are not exclusive, most state courts generally focus on the four that are listed. Using these factors, Nevada state courts have recently approved hourly rates at least as high as $750 for local attorneys with approximately 30 years of experience in commercial litigation cases and $350 an hour for senior associates. Nevada state courts have also approved rates for out-of-state attorneys approaching $1,000 an hour. An informal survey of state court decisions suggests that the analysis focuses primarily on the quantity and quality of work (and advocacy) rather than the hourly rate.

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

Two additional issues regularly crop up when considering fees. The first is block billing, which is defined as, "the time-keeping practice whereby a lawyer enters the total daily time spent working on a case and lists all of the tasks worked on during the day, rather than separately itemizing the time spent on each task." *In re Margaret Mary Adams 2006 Trust*, No. 61710, 2015 WL 1423378, *2 (Nev. March 26, 2015) (unpublished), (citing *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 945 n.2 (9th Cir 2007)) (*Note* 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

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*

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.

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

IMPORTANT CLE DATES	
11/2017	Consolidated fee statements mailed and emailed by State Bar
12/31/17	Deadline to earn credits
1/15/18	CLE Board will notify 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

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
preilly@bhfs.com
Marckia L. Hayes, Esq., Nevada Bar No. 14539
mhayes@bhfs.com
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
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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

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.

BROWNSTEIN HYATT FARBER SCHRECK, LLP
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Exhibit 11

(Kyle Buth 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 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

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.

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

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

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

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 UTHO USA

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

M02SF02000TML 03/14

NCA000590
JA1188

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 RN INITIALS

Safeguard

NCA000592
JA1190

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.

Juana [Redacted] 11/12/19
PATIENT SIGNATURE DATE GUARANTOR SIGNATURE DATE REGISTERED BY INITIALS

Safeguard LITHO USA M028F029001M 03/14

NCA000594
JA1192

Exhibit 13

(NV Energy Contracts)

NV Energy

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

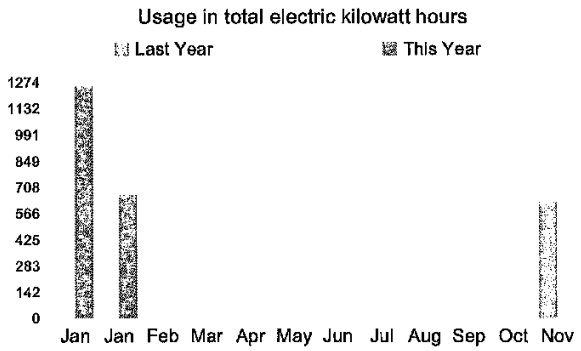
Previous Account Balance	349.96
Electric Charges	77.80
Current Amount Due	$427.76

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

8/27/19 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

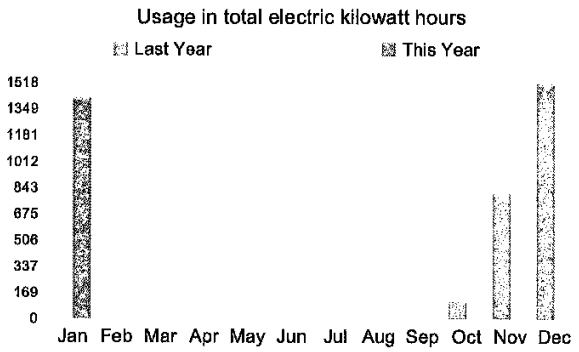
BRAIN Redacted
Redacted

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

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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

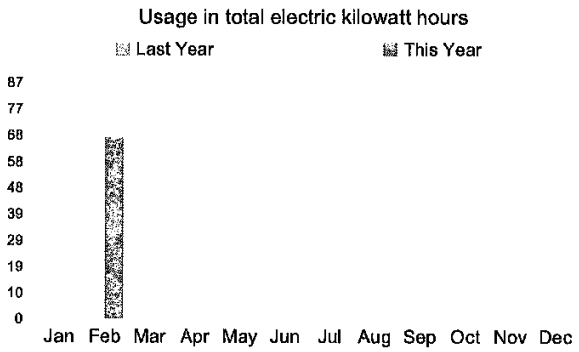
Please Pay By: Mar 19, 2020
$714.89

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

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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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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 ENTITIY DEFENDANTS 1 through 20; Defendants.	Case No.: A-19-805334-C Department: XXVII **STATE DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS**

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

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

Within Plaintiff's 28 page Opposition to the FID's Motion to Dismiss, Plaintiff fails to present an argument as to any specific relief the FID can provide if the Plaintiff were to somehow prevail. No amendment can fix the deficiency. This is evident in Plaintiff's conclusion, which simply states, "[f]or the reasons set forth above, NCA respectfully requests that this Court deny *Justice Court's* Motion to Dismiss." *Opp.* p. 29:3-4.

The FID should be dismissed because there is nothing that this Court can impose against the FID that will change the fact that Justice Court determines appropriate attorney fees, that Justice Court requires an entity to have an attorney present, that the Legislature did not delegate the FID to enforce of AB 477. Plaintiffs reliance on the fact that the "FID should suggest which state agency should be sued in its place" is absurd. Plaintiff's statement proves that the FID was only named out of a lack of knowledge as to who to name as a defendant. Moreover, the FID is not under a duty to determine who the Plaintiff should name, it is up to the Plaintiff to properly bring its claims and name the appropriate agency. *See Opp.* at p. 20:17. Rule 8 notice pleading does not cure this defect.

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, but not limited to; law firms, asset buying companies and those who finance their own products. NRS 649.020; *Am. Compl.* ¶11. Thus, contrary to Plaintiffs assertion at ¶10 of its Opposition, the FID does not regulate "all aspects of collection practices."

Plaintiff incorrectly argues that the FID can discipline any person that collects a debt, but that is incorrect. The FID only takes disciplinary action against *licensees*[1] -- not against many of Plaintiff's members who are not required to have a

[1] The FID may bring an action for unlicensed activity against those who conduct activities as defined in NRS 640.020 and should licensed pursuant to Chapter 649, and are not.

license. *Opp*. p. 21:10-13. Contrary to Plaintiff's next assertion, the FID cannot draft regulations to expand its jurisdiction beyond the powers granted by the legislature. *Opp*. p. 21:15-18. It is absolutely clear that the Nevada Legislature did not delegate the powers to enforce AB 477 to the FID and that Chapter 649 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 the collection agency or the debtor prevailing party.

The FID filed a meritorious motion to dismiss because Plaintiff does not have standing for claims against the FID, the case is not ripe, and Plaintiff failed to state a claim for which the FID can grant any relief.[2] Plaintiff's added declarations do not change the facts; the FID does not regulate AB 477, the FID does not regulate any agreement between a collection agency and its attorney, the FID does not enforce JCR 16 which requires an entity to be represented by counsel, and the FID does not regulate the amount of attorney fees that the Justice Court can award a prevailing Plaintiff.

A. Judicial notice is not appropriate.

This Motion to Dismiss is based on the facts in the Amended Compliant not the declarations. However, the FID would be remiss if it did not request that this court deny Plaintiff's request and refuse to take judicial notice of Plaintiff's declarations. *Opp*. p. 19:26-28, p. 20:1-7. Judicial notice is only applicable for facts not subject to reasonable dispute or facts that are capable of verification from a reliable source. NRS 47.130, *Mack .v Estate of Mack*, 125 Nev. 80, 92, 206 P.3d 98 (2009). The Rule was intended to avoid the need for formal fact-finding as to specific facts that are undisputed and easily verified. *Melong v. Micronesian Claims Comm.,* 643 F.2d 10, 12 fn. 5 (D.C.Cir.1980). The contents of Plaintiffs self-serving declarations were challenged in the FID's Opposition to the Motion for Temporary Injunction. Judicial notice of facts outside of the complaint should not improperly place Plaintiff's theory

[2] See also FID's Motion in opposition to temporary injunction that is scheduled to be heard at the same time and is hereby incorporated by reference.

of the case before the Court as undisputed facts. As a result, Plaintiff's request for judicial notice should be denied.

B. The primary issues in the Amended Complaint are not within the scope of authority of the FID.

Plaintiff complains that the FID did not address the "primary issues in the Complaint." There is nothing for the FID to address. As stated numerous times, the FID does not regulate a contract between a collection agency and its attorney, the FID does not regulate how much attorney fees the Justice Court can award, and the FID does not regulate JCR 16 that requires an entity to appear in Justice Court with an attorney. The FID simply reviews the agreement between the creditor and the collection agency it hires to collect the debt to see if the agreement provides or does not provide for attorney fees. NRS 649.334.

Plaintiffs' opposition simply repeats the same arguments and facts in its complaint and motion for a temporary injunction, but fails to address why the right to a jury trial is an important and efficient use of judicial resources to collect a debt of a few hundred dollars. *See* examples in *Plaintiff's Opposition ("Opp")* ¶81. Likewise, Plaintiff does not address why anyone would want to perform extensive discovery including depositions to collect, for example, a $232.78 debt. *Opp.* at¶81. In reality, it is a waste of precious judicial resources and unfair to a defendant who is not represented by counsel to be subject to a jury trial for a few hundred dollars. If it is cost prohibitive for a creditor as alleged by Plaintiff at ¶ 84, imagine the devastating impact on the debtor who would most likely pay the few hundred dollars debt if they could, or may not pay because they believe that the debt is not justified. Maybe small claims court is the appropriate venue for small dollar collection cases.

Most relevant, Plaintiff does not address the official capacity claims alleged pursuant to 42 U.S.C. §1983 for due process and equal protection. These claims cannot stand because the State and its agencies are not persons for the purpose of Section 1983 claims. Because Plaintiff did not oppose or address the FID's motion

with respect to the due process and equal protection claims, Plaintiff has waived any objection to dismissing those claims against the FID. *See e.g. Old Aztec Mine v. Brown,* 97 Nev. 49, 51, 623 P.2d 981 (1981)("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.") As a result, all due process and equal protection claims against the FID should immediately be dismissed.

ARGUMENT

A. Plaintiff disregards separation of powers.

Nevada has a tripartite government. NEV. CONST. ART 3. Each branch has separate functions and powers, and no persons "charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases expressly directed or permitted in this constitution." NEV. CONST. ART 3, Sect 1. The Constitution provides that the executive department shall enforce the laws enacted by the Legislature.

Yet, in an attempt to expose the FID to this litigation where it does not belong, Plaintiff is asking this Court violate separation of powers by ordering an agency of the executive branch not to enforce FDCPA although required under federal law as well as pursuant to NRS Chapter 649. The Nevada Legislature incorporated the FDCPA into Chapter 649, and requires the FID to enforce it, Plaintiff is overreaching, especially when there has been no threat of enforcement.

Solely in an attempt to expand jurisdiction to keep the FID in this litigation. Plaintiffs' allege that they "are forced disregard the attorney fees limit in AB 477 so that they may hire an attorney and seek to enforce its right to pursue these defaulted debts in Justice Court, which only subjects NCA to potential liability under FDCPA, and in turn, NRS Chapter 649." *See Opp*. p.25:14-19. In truth, nobody is forcing Plaintiffs members to violate the law. Plaintiffs' members are not foreclosed from bringing the collection matter to a court of competent jurisdiction to

decide the matter, since they can appear in small claims court, which has jurisdiction to award money damages up to $10,000 without an attorney. NRS Chapter 73.

If Plaintiff feels it is necessary to have an attorney to collect a debt of a few hundred dollars, it is simply a business decision that Plaintiff has to make. There is no right to access the specific court of your choice, as long as there is a venue for your case to be heard. There has not been any violation of a constitutional right. *See e.g.* NEVADA CONST. ART. 6.

The legislature sets the jurisdictional limits of the court- $15,000 for Justice Court, and $10,000 for small claims court. NRS 4.370, NRS 73.010. Both courts are presided over by a justice of the peace. NRS 4.010, NRS 73.010. Thus, for small debt collection cases that are monetary only, as described by Plaintiff in its Opposition, small claims court is an adequate venue.

Plaintiff overtly tells this Court that its members intend violate AB 477 by asking Justice Court to award more attorney fees that they are entitled to under the law. Whether merely "asking" for attorney fees is an abusive, deceptive, and unfair collection practice as defined by the FDCPA is not clear and only speculative at this time, because there has not been any enforcement or even a threat of enforcement abainst any of Plaintiff's members.[3] Additionally, separation of powers prevents the FID from regulating actions taken by the Justice Court whether it be the amount of attorney fees awarded or whether an entity must appear with legal representation.

Not only is an executive agency forbidden to interfere with the actions of the judicial branch (or the legislative branch), but an agency cannot even enforce or opine on the actions of another executive agency. In the *State of Nevada v. Nevada Association Services,* a case which Plaintiff' counsel in intimately familiar with, the

[3] As argued in the FID's opposition to the Motion for temporary injunction, when the judiciary imposes an injunction to stop the enforcement of a law enacted by the legislature, it is an extraordinary remedy that should not be granted based on hypothetical and speculative injury.

FID was severely admonished for issuing an opinion as to the fees that can be charged by a Chapter 649 licensed collection agency performing collections for Chapter 116 home owners associations. 128 Nev. 362, 294 P.3d 1223 (2012). The advisory opinion issued by the FID necessarily interpreted some statutes contained in Chapter 116, and contained a disclaimer explaining "that it would only address [Chapter 116] as it related to collection agencies [NRS Chapter 649] and the Fair Debt Collection Practices Act, 15 U.S.C. § 1692f." *Nevada Association Services,* 128 Nev. at 364. The Court found that because Chapter 116 is regulated by the Real Estate Division, the FID did not have the jurisdiction to opine on or establish the fees that the collection agencies can charge. *Nevada Association Services,* 128 Nev. at 367. It is particularly noteworthy that counsel for Plaintiff is taking a 180 degree opposite position in this case by alleging that the FID has powers to enforce AB477 (NRS 97B) although the legislature did not delegate such powers to the FID, and would probably be first to sue the FID if it attempted to enforce section 18. Thus, *Nevada Association Services* conclusively proves that the FID is restricted to enforcement of its statutes and regulations delegated to it by the legislature and cannot expand its jurisdiction to encompass any statutes not expressly assigned by the legislature to FID's jurisdiction.

B. <u>The FID must be dismissed pursuant to FRCP 12(b)(1) because Plaintiff has still failed to show standing that would give this Court subject matter jurisdiction</u>

The Plaintiff has not met its burden to show by a preponderance of the evidence that the allegations are sufficient to invoke this Court's jurisdiction. *Leite v. Crane Co.* 749 F.3d1117, 1122 (9th Cir. 2014). Even under the liberal notice pleading rule, when a Plaintiff does not meet its burden, Rule 12(b)(1) of the Nevada Rules of Civil Procedure provides for dismissal for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Especially here, when no amendment can result in a justiciable controversy, the FID must be dismissed.

Plaintiff argues Article III standing, although Nevada does not contain a "case or controversy" clause in its Constitution. The proper standard in Nevada is a judicially created doctrine of a justiciable controversy. *In re Amerco Derivative Litigation,* 127 **Nev**. 196, 213, 252 P.3d 681, 694 (2011). Nevada also requires a prudential component, as argued in the FID's Motion to Dismiss at pp.13-14. The Nevada Constitution provides that its courts have jurisdiction over civil and criminal cases, which has been interpreted to prohibit courts from ruling on cases that are not ripe. *City of North Las Vegas v. Cluff,* 85 Nev. 200, 452 P.2d 461 (1969). Any decision on a case that it not ripe would amount to an advisory opinion by the court. See e.g. *People's Legislature v. Miller,* 131 Nev. 1332, 2015 WL 5925729 (2015) (unreported) citing *Personhood Nev. v. Bristol,* 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) ("This court's duty is not to render advisory opinions but, rather, to resolve actual controversies by an enforceable judgment.").

For a justiciable 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). As argued in the Motion to Dismiss, the FID and the Plaintiff are not adverse and this case is not ripe. Plaintiff has filed a complaint for relief, and the FID is powerless to grant the relief that Plaintiff wants.

Even under the standards articulated in Plaintiffs opposition, Plaintiff does not have standing for claims against the FID. Plaintiff has not shown an injury in fact, causation, and redressability. *Steel Co.,* 523. U.S. at 103-104.

1. There is no actual injury

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. Plaintiff also alleges that its members are subjected to "potential administrative enforcement" if they dare to seek more than the allowed attorney fees. Since there has not been any enforcement or threat of enforcement from the

FID, there is no actual injury.

Plaintiff incorrectly alleges that its members have only two options, to surrender their right to collect the debt or violate AB 477. *Opp*. p. 26:22-25. Plaintiff omits at least two additional options: (1) to pay an attorney to appear with them in Justice Court and if they prevail be awarded attorney fees pursuant to AB 477, or (2) bring the small debt action in small claims court with jurisdiction of a monetary award up to $10,000, and appearance with counsel is not required. NRS Ch. 73.

Plaintiff's members are primarily concerned with debts under $5,000, and provided examples in the $200 to $700 range. *Opp*. ¶ 81. NRS Chapter 73 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 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 allows them to appear without an attorney. Notwithstanding, Plaintiff's members 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 small dollar debt or ask for a jury trial to collect a few hundred dollars 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 of AB 477.

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Thus, Plaintiffs members have not suffered injury in fact because AB 477 does not deny Plaintiffs members access to court in the State of Nevada, and the FID has not threatened any of Plaintiffs members (or anyone else) with any administrative enforcement of AB 477.

2. 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 link 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). 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. Plaintiff has not alleged any misconduct by the FID.

Throughout its Opposition, Plaintiff makes misleading statements incorrectly attempting to expand the FID jurisdiction to "any entity that recovers funds that are past due, or from accounts that are in default." *Opp*. p. 20:23-24. Plaintiff further exaggerates the powers of the FID stating "[t]he Nevada Legislature granted the FID and its Commissioner primary jurisdiction for the licensing and regulation of persons operating and/or engaging in collection services." *Opp.*, p. 21:6-7. To the contrary, NRS 649.020 limits a collection agency to those who collect debts for *another person*.

The same statute which limits the definition to those that collect debts for another person provides exemptions from the general rule to include: "Individuals regularly employed on a regular wage or salary, in the capacity of credit men or in other similar capacity upon the staff of employees of any person not engaged in the business of a collection agency or making or attempting to make collections as an

incident to the usual practices of their primary business or profession; Banks; Nonprofit cooperative associations; Unit-owners' associations and the board members, officers, employees and units' owners of those associations when acting under the authority of and in accordance with chapter 116 or 116B of NRS and the governing documents of the association, except for those community managers included within the term "collection agency" pursuant to subsection 3; Abstract companies doing an escrow business; Duly licensed real estate brokers, except for those real estate brokers who are community managers included within the term "collection agency" pursuant to subsection; Attorneys and counselors at law licensed to practice in this State, so long as they are retained by their clients to collect or to solicit or obtain payment of such clients' claims in the usual course of the practice of their profession. NRS 649.020. Many of these exempt entities are members of Plaintiff's organization.

As discussed above in the introduction section to this brief, the Nevada Supreme Court in *Nevada Association Services* reinforces the FID's argument that it cannot expand its jurisdiction where the Legislature has not specifically granted that power. The FID does not write the law, the Legislature does. The FID solely acts within the confines of the enacted statutes to execute the laws.

Plaintiff's other cited case law is inapposite. Actions by borrower against attorney collector is irrelevant since attorneys are not regulated by the FID. NRS 649.020. Another speaks of litigation activities subject to the FDCPA, but does not concern simply requesting attorney fees in excess of the amounts provided by law as a violation of FDCPA which results in administrative actions by the regulator. Plaintiff's statement comparing assertions made by a consumer protection attorney regarding claims against a debt collector attempting to win a monetary award to the FID that regulates pursuant to the applicable statutes is shameful. *Opp.* p. 23:23-24. Plaintiffs cannot show a causal link because its claims are pure speculation.

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Plaintiff uses hypotheticals involving businesses that are not regulated by the FID to allege a potential injury. *See e.g. Opp,* ¶¶ 92, 93, 95, The 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 to NRS Chapter 649 does not provide a causal connection to attorney fees awarded by the court on the basis of AB 477. Moreover, Plaintiff never argues what they think the FID can do to grant relief.

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

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

Plaintiff does not address the redressability prong because here 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 nonagency 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 (NRS Chapter 97B). Plaintiff has not and cannot establish that the FID has the power to enforce AB 477 since the FID does not determine the amount of attorney fees that can be awarded.

Plaintiff attempts to cure its pleading deficiency by claiming that the interaction of JCR 16 and AB 477 cause the injury. Plaintiff alleges that if it was not for JCR 16 they could appear in court without an attorney, and urge this Court to overrule Nevada Justice Court law. The FID does not have any jurisdiction with respect to requirement in JCR 16 for a business to have legal representation, or with

AB 477's limitation on the amount of attorney fees that a court can award. Accordingly, Plaintiff cannot show that any of its grievances can be redressed by the FID through this action.

4. Plaintiff has failed to show that this case is ripe for declaratory judgment.

A case or controversy (or justiciable controversy) is a prerequisite to all actions, including those for declaratory or injunctive relief. *See Cardinal Chem. Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 95 (1993), *Daimler Chrysler Corp. v. Cuno,* 547 U.S. 332, 342 (2006). Plaintiff's lack of injury in fact, the lack of a causal link, and the lack of redressability are addressed with regard to standing above. 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. *Herbst Gaming, Inc. v. Heller,* 122 Nev. 877, 887, 141 P.3d 1224 (2006).

The factors to determine ripeness for a declaratory judgment include a component which asks whether the facts alleged, under all the circumstances, show that there is a justiciable controversy against one who has an interest in contesting it, that the controversy is between parties having adverse legal interests, that the controversy is ripe for judicial determination. *Kress v. Cory,* 65 Nev. 1, 26, 189 P.2d 352 (1948). Plaintiff has not established a controversy between the FID and the Plaintiff because the FID does not regulate many of the Plaintiff's members and is limited to Chapter 649 with respect to governing licensed collection agencies. The FID is powerless to take any action with respect to AB 477 and the fees awarded by Justice Court. Plaintiffs in their complaint never explain why the FID has been named as a Defendant or what they think the FID can do even if this Court grants the Plaintiff's claims.

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There has not been and cannot be any threat of enforcement by the FID regarding AB 477, because the Nevada legislature did not delegate the enforcement of AB 477 to the FID.

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. AB 477 has been in effect for nine-months.

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. Since Plaintiff's members have not been denied access to court, their claim of injury is hypothetical and speculative, at best. 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). As a result, this matter is not ripe for judicial decision against the FID because Plaintiff only allege possible future harm.

C. <u>Dismissal is appropriate pursuant to NRCP 12(b)(5) because Plaintiff has failed to state a claim against the FID.</u>

1. The FID only regulates collection agencies that collect debts for another.

Plaintiff misconstrues NRS 649.020 which defines a collection agency to include "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*." (emphasis added). An NRS Chapter 649 licensee does not include attorneys that perform collections or businesses that extend credit on their own products or services.

Plaintiff's examples of aggrieved businesses include small businesses that sell

and finance their own products. According to the Plaintiff: the caterer; small medical providers; dental clinics; accountants; therapists; property managers; child care providers; dry cleaners; bakers; security providers; and landscapers will lose their access to justice court if the FID enforces AB 477. *Opp.* ¶ 93, 95. Plaintiff claims to fear that the FID will take enforcement action against their members, but that cannot happen because the FID does not regulate businesses that extend credit on their own goods and/or services.

NRS 645.395 provides for discipline of a "licensee" that violates a provision of Chapter 645. It does not provide for disciplinary action for a violation of Chapter 97B.[4]

Plaintiff is attempting to argue the FID's has some wide jurisdiction over all

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[4] **NRS 649.395 Authorized disciplinary action; grounds for disciplinary action; effect of revocation of license; orders imposing discipline deemed public records.**

1. The Commissioner may impose an administrative fine, not to exceed $500 for each violation, or suspend or revoke the license of a collection agency, or both impose a fine and suspend or revoke the license, by an order made in writing and filed in the Office of the Commissioner and served on the licensee by registered or certified mail at the address shown in the records of the Commissioner, if:

(a) The licensee is adjudged liable in any court of law for breach of any bond given under the provisions of this chapter; or

(b) After notice and hearing, the licensee is found guilty of:

(1) Fraud or misrepresentation;

(2) An act or omission inconsistent with the faithful discharge of the licensee's duties and obligations; or

(3) A violation of any provision of this chapter.

2. The Commissioner may suspend or revoke the license of a collection agency without notice and hearing if:

(a) The suspension or revocation is necessary for the immediate protection of the public; and

(b) The licensee is afforded a hearing to contest the suspension or revocation within 20 days after the written order of suspension or revocation is served upon the licensee.

3. Upon revocation of his or her license, all rights of the licensee under this chapter terminate, and no application may be received from any person whose license has once been revoked.

4. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.

debt collection, which is not true. The FID's regulatory authority is over licensed collection agencies, which are only a portion of the Plaintiff's members. A collection agency does not extend credit to consumers, and only collects debts "due to another." NRS 649.020(1). While the FID can impose discipline on a licensee for a violation of Chapter 649, it cannot impose discipline on a collection agency for an activity that is not included in Chapter 649. Plaintiff has brought this action challenging a portion of Chapter 97B, which, Plaintiff recognizes was not delegated to be regulated by the FID. *Opp*. p. 20:12.

The Plaintiff cannot just name any agency because the law requires that "an action must be brought in the name of the State of Nevada on relation of the particular department, commission, board or other agency of the State whose actions are the basis for the suit." NRS 41.031(2). Plaintiff misses the point of NRS 41.031; the law requires that the agency's action must provide the *basis* for the lawsuit, and Plaintiff has not provided any information that the FID's actions are the basis for this lawsuit.

The FID's jurisdiction is limited. The FID is not involved in the contract between a creditor who finances its products or services and its customer that established the original debt. The FID solely reviews the contract during an examination of the licensee to verify the existence of the debt. With respect to attorney fees, the FID reviews the contract to see if the contract between the debtor and creditor provides for attorney fees (e.g. "any" legal fees, "reasonable" attorney fees or "no" attorney fees). The FID does not look at, and has no regulatory power over the agreement between the business (creditor) and its customer (debtor) that established the debt or how much attorney fees are included in the contract. Thus, if the contract that established the debt does not provide for any attorney fees at all, and the collection agency collects attorney fees, it still is and has always been a violation of Chapter 649 and FDCPA—regardless of how much collected, irrespective of the existence or non-existence of AB 477.

The Supreme Court specifically reinforced the limited power of the FID, which has the "authority to administer and enforce the provisions of NRS Chapter 649 and may adopt such regulations as may be necessary to carry out the provisions of this chapter." *Nevada Association Services, Inc.,* 128 Nev. at 367 (internal quotations omitted). A regulation cannot expand its powers. Bottom line: the FID does not regulate all collections. If the collection agency matter is not contained in Chapter 649, the FID cannot not regulate it. *Nevada Association Services, Inc.,* 128 Nev. at 367.

Plaintiff's citation to 15 U.S.C §1692(e) is a red herring. The FID enforces the law with respect to its licensees, but not with respect to a small business that extend credit to its own customers or with respect to attorneys. As stated above, the review of the contract that established the debt between the creditor and debtor is solely to make sure that the collection agency is not going beyond the agreement that established the debt. If a collection agency violates a portion of the Fair Debt Collection Practices Act by going beyond the contract between the creditor and debtor, that is a separate issue, unrelated to AB 477.

2. Regulations cannot exceed the scope of the enabling statute.

The FID has the power to adopt regulations, but the regulations cannot broaden the powers of the FID past the limitations found in statutes. There is no statute in Chapter 649 that allows the FID to regulate attorney fees in a contract between a creditor and a debtor. Unquestionably, the amount of attorney fees in the contract between the creditor and the debtor was determined and agreed to long before the debtor goes into default and long before the matter is turned over to a licensed collection agency to collect the unpaid debt.

3. Plaintiff fails to provide a basis for relief.

Plaintiff still fails to provide any basis for relief from the FID. The FID does not have the power to tell the Justice Court how much attorney fees it can award or

tell the Justice Court it should allow an entity to appear without legal representation. There is nothing in AB 477 or in Chapter 649 that expands the FID's authority to be a watchdog over the Justice Court. The FID is also not involved with whether AB 477 trumps the fee shifting rules cited in the Opposition at ¶ 19. If Plaintiff violates a Justice Court order, it is between the Court and the Plaintiff, and does not involve the regulatory authority of the FID.

The FID certainly has no control over AB 477 Section 19 which addresses the right to collect reasonable attorney fees from the creditor if the debtor prevails. This section is absolutely beyond the reach of the FID authority.[5] If a collection agency does not prevail in court, it is the cost of doing business, and will be determined by the court not by the FID.

Thus, the FID should be dismissed because even if this Court grants the Plaintiffs the relief they are seeking, it will not change any duties of the FID with respect to regulating collection agencies under NRS Chapter 649.

CONCLUSION

Plaintiff amended its original complaint because it realized that it did not have any claims against the FID. Even with the Amendment, Plaintiffs claims must fail. Plaintiff's Opposition does nothing to change the fact that the FID must be dismissed from this case. Pursuant to NRCP 12(b)(1), this Court lacks subject matter jurisdiction because Plaintiff lacks standing against the FID 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. Plaintiff does not dispute that the due process and equal protection claims cannot stand because the FID and its commissioner in her official capacity are not considered "persons" under 42 U.S.C. § 1983.

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[5] **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).

Accordingly, based on the foregoing, the FID must be dismissed because the FID does not have jurisdiction over AB 477 and therefore cannot grant any relief to the Plaintiff.

Respectfully submitted June 29, 2020.

AARON D. FORD
Attorney General

By: /s/ Vivienne Rakowsky
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **STATE DEFENDANT'S REPLY TO PLAINTIFFS OPPOSITION TO MOTION TO DISMISS** with the Clerk of the Court by using the electronic filing system on the 29th day of June, 2020.

Registered electronic filing system users will be served electronically.

/s/ Michele Caro
Michele Caro, an Employee of the
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DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA COLLECTORS ASSOCIATION, a Nevada non-profit corporation, Plaintiff, v. STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY FINANCIAL INSTITUTIONS DIVISION; JUSTICE COURT OF LAS VEGAS TOWNSHIP; DOE DEFENDANTS 1 through 20; and ROE ENTITIY DEFENDANTS 1 through 20, Defendants.	Case No.: A-19-805334-C Dept. No.: XXVII

NOTICE OF ENTRY OF ORDER OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law, and Order was filed on this date, a copy of which is attached hereto.

DATED this 20th day of July 2020.

AARON D. FORD
Attorney General

By:/s/ VIVIENNE RAKOWSKY
VIVIENNE RAKOWSKY
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General and that on the 20th day of July, 2020, I filed the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** via this Court's electronic filing system. Parties that are registered with this Court's EFS will be served electronically.

/s/ Michele Caro
An Employee of the Office of the Attorney General

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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

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Case Number: A-19-805334-C

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

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

FINDINGS OF FACT

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

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

> 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. [Added; effective January 1, 2007.]

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

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

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

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

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

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

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

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

9. Defendant Justice Court argued Plaintiff did not plausibly allege that Las Vegas 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; and the 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, Rule 16 and therefore possessed immunity from suit for simply following the law.

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

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

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

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

/ / /

CONCLUSIONS OF LAW

Based on the foregoing factual findings, this Court makes the following conclusions of law:

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

2. The Nevada Constitution provides that its courts have jurisdiction over civil and criminal cases, which has been interpreted to prohibit courts from ruling on cases that are not ripe. *City of North Las Vegas v. Cluff,* 85 Nev. 200, 452 P.2d 461 (1969)

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

4. Plaintiff failed to show a hardship or that the issues were fit for judicial decision. *Herbst Gaming, Inc. v. Heller,* 122 Nev. 877, 887, 141 P.3d 1224 (2006). Plaintiff did not meet the prudential considerations because Plaintiff's claim of potential hardship if the members cannot access the Court system for small debt collection cases is speculative. Plaintiffs lacked an actual injury because there has not been any enforcement or a threat of enforcement of AB 477.

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

Dist. Court ex rel County of Clark, 124 Nev. 36 n.1, 175 P.3d 906 (2008). Speculative or hypothetical future harm is not sufficient to invoke jurisdiction. *Doe v. Bryan,* 102 Nev. 523, 525, 728 P.2d 443, (1986) Plaintiff's claim of possible future injury if the Plaintiffs do not have access to the court of their choice is not ripe because the Plaintiff has not been denied access to court and there has not been any enforcement activities or threat of enforcement of AB477.

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

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

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

9. The FID has the power to adopt regulations, as long as the regulations do not broaden the powers of the FID past the limitations found in statutes. There is no

statute in Chapter 649 that allows the FID to regulate attorney fees in a contract between a creditor and a debtor.

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

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

12. 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 cannot 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.

13. LVJC Rule 16 and A.B. 477 do not unduly infringe any identified fundamental right and also does not target or impose a disparate impact on a protected class; therefore, the Justice Court 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).

14. 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 codified by LVJC Rule 16 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").

15. 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). LVJC Rule 16 thus does not deny litigants "a reasonably adequate opportunity to present" their case to the Justice Court. *Lewis v. Casey*, 518 U.S. 343. 351, 116 S.Ct. 2174 (1996) (quoting *Bounds v. Smith*, 430 U.S. 817, 825, 97 S.Ct. 1491 (1977).

16. 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); *see also 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.")).

17. 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 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.").

18. The Justice Court appropriately followed that law when enacting and publishing LVJC 16 in accordance with controlling law from the Nevada Supreme

Court. Plaintiff cannot prevail then against the Justice Court as a matter of law 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.

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

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

21. 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. Plaintiff's members have not been denied access to court for their small collection cases; it is only that Plaintiff's members chose not to use the court with jurisdiction for their claims that will allow them to appear without an attorney.

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

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ORDER

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

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

DATED this ___ day of July, 2020.

Dated this 20th day of July, 2020

By: Nancy L Allf
DISTRICT COURT JUDGE

JD

FA8 3C2 F559 72AD
Nancy Allf
District Court Judge

Submitted by:
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By: /s/ VIVIENNE RAKOWSKY
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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Nevada Collectors Association, Plaintiff(s) vs. State of Nevada Department of Business and Industry Financial Institutions Div., Defendant(s)	CASE NO: A-19-805334-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

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DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA COLLECTORS ASSOCIATION, a Nevada non-profit corporation,

Plaintiff,

v.

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

Defendants.

Case No.: A-19-805334-C

Dept. No.: XXVII

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

Hearing Requested

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Plaintiff Nevada Collectors Association ("NCA") hereby moves this court to amend its Findings of Fact and Conclusions of Law entered on July 20, 2020, in the above-entitled action. This Motion is made pursuant to NRCP 52(b) and NRCP 59(e) 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 3rd day of August, 2020.

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

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

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

> has not been any enforcement or a threat of enforcement of AB 477.
>
> 5. **This case is not ripe for determination**. A case is not ripe for review when the degree to which the harm alleged by the party seeking review is not sufficiently concrete and any alleged injury is **remote or hypothetical**. *Cote H. v. Eighth Judicial Dist. Court ex rel County of Clark*, 124 Nev. 36 n.1, 175 P.3d 906 (2008). Speculative or hypothetical future harm **is not sufficient to invoke jurisdiction**. Doe v. Bryan, 102 Nev. 523, 525, 728 P.2d 443, (1986). Plaintiff's claim of possible future injury if the Plaintiffs do not have access to the court of their choice **is not ripe** because the Plaintiff has not been denied access to court and there has not been any enforcement activities or threat of enforcement of AB477.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NRCP 52(b). This Court is also empowered to alter or amend a judgment based on an error in law occurring at the trial[3] and objected to by the party making the motion. NRCP 59(a)(1)(G). Defendants simply cannot have it both ways by obtaining a dismissal based on grounds of ripeness and standing, and at the same time obtain an adjudication on the merits from this Court.

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

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

DATED this 3rd day of August, 2020.

/s/Patrick J. Reilly
Patrick J. Reilly, Esq.
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Attorneys for Nevada Collectors Association

[3] It is unclear whether the Court's hearing on a Motion for Preliminary Injunction constitutes a "trial" for the purposes of Rule 59. NCA nevertheless raises Rule 59 in this Motion out of an abundance of caution.

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CERTIFICATE OF SERVICE

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

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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: September 9, 2020 Time of Hearing: 10:00 am

OPPOSITION TO PLAINTIFF'S MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW AND TO ALTER OR AMEND JUDGMENT

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 opposes in part Plaintiff's Motion to Alter or Amend Findings of Fact and Conclusions of Law and to Alter or Amend Judgment.

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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 before this Honorable Court.

DATED this 14 day of August, 2020.

OLSON CANNON GORMLEY
& STOBERSKI

BY: _____

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Court on July 1, 2020 heard oral argument with regard to Plaintiff's motion for a preliminary injunction and Defendant Justice Court's motion to dismiss as well as the State of Nevada's motion to dismiss. Contrary to Plaintiff's statement otherwise, the Justice Court moved to dismiss solely pursuant to Rule 12(b)(5) for failure to state a claim for relief. Specifically, the Justice Court argued, among other things, that Plaintiff has failed to allege facts stating a valid claim for denial of meaningful access to the courts under the U.S. Constitution because it failed to allege that it suffered an actual injury. See Lewis v. Casey, 518 U.S. 343, 348-49, 352-53, 116 S.Ct. 2174 (1996). For access to the court's claims, the plaintiff must show: (1) an actual injury and not a speculative loss of an 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. Christopher v. Harbury, 536 U.S. 403, 413–414, 122 S.Ct. 2179 (2002).

The Court decided from the bench following oral argument and denied Plaintiff's motion for preliminary injunction and granted both Defendants' motions to dismiss. Plaintiff's counsel suggested that the Court enter the order as a final order after the Court announced its decision. The Court indicated that it intended to do so and instructed defense counsel to prepare findings of fact and conclusions of law to that effect and allow Plaintiff an opportunity to review. The Justice Court included the failing to allege an actual injury in the draft order in paragraph 5.

Upon receipt of the order in draft form, Plaintiff immediately objected to the draft on the assertion that all factual representations in Plaintiff's briefings were found to be true by the Court. Plaintiff requested to have the order reflect that all facts were deemed true in the order. Defendants to be sure did not agree with Plaintiff's assertion that the Court made a meritorious findings on all facts alleged by Plaintiff and so they objected. The parties submitted letter briefs to the Court. (Correspondences to the Court, attached as Exhibit "A"). The Court ultimately reviewed and signed the order submitted to it. (Findings of Fact and Conclusions of Law, attached as Exhibit "B").

The Court went further than that when granting the motion to dismiss for the Justice

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Court than just finding that Plaintiff did not allege an actual injury (i.e. the actual loss of a meritorious claim). The Court further concluded that the Justice Court did not as a matter of law interfere in Plaintiff's access to the Courts and possesses quasi-judicial immunity for Plaintiff's claims. The order, to this end, stated:

> 11. 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 cannot 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.
>
> 12. LVJC Rule 16 and A.B. 477 do not unduly infringe any identified fundamental right and also does not target or impose a disparate impact on a protected class; therefore, the Justice Court 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).
>
> 13. 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 codified by LVJC Rule 16 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").
>
> 15. 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). LVJC Rule 16 thus does not deny litigants "a reasonably adequate opportunity to present" their case to the Justice Court. *Lewis v. Casey*, 518 U.S. 343. 351, 116 S.Ct. 2174 (1996) (quoting Bounds v. Smith, 430 U.S. 817, 825, 97 S.Ct. 1491 (1977).
>
> 16. 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); *see also 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

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may appear for himself.")).

16. 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 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.").

17. The Justice Court appropriately followed that law when enacting and publishing LVJC 16 in accordance with controlling law from the Nevada Supreme Court. Plaintiff cannot prevail then against the Justice Court as a matter of law 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.

Id. at pp. 7-8.

With respect to the claims against the Justice Court, the Court did not conclude that it lacked subject matter jurisdiction over the case because Plaintiff did not allege an actual injury. It is true to say that if this was the one and only basis for dismissal of the claim against the Justice Court, the complaint would be appropriately dismissed without prejudice. As set forth above, however, the Court found two other independent basis as a matter of law to dismiss the claim against the Justice Court with prejudice; to wit: (1) Plaintiff cannot allege facts that the Justice Court denied it access to the Court based merely on a limitation on available attorney fees Plaintiff can recover in Justice Court; and (2) the Justice Court is clothed with absolute immunity for following the controlling law issued by the Nevada Supreme Court regarding the corporate representation rule (which Plaintiff alleged was unconstitutional).

Therefore, with respect to the portion of the order pertaining to the denial of Plaintiff's motion for preliminary injunction against the Justice Court and the dismissal of Plaintiff's claim against the Justice Court with prejudice, Plaintiff has failed to present any basis to warrant any altering or amending. The Justice Court takes no position with respect to Plaintiff's argument affecting portions of the order pertaining to the State of Nevada Defendants other than this portion of the order is clearly severable from the portion pertaining to the Justice Court.

II. LEGAL ARGUMENT

Plaintiff has not identified any portion of the order that divested the Court of subject matter jurisdiction from determining that the Justice Court is entitled to an order of dismissal

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with prejudice. Any portion of the order with respect to the ability of Plaintiff to bring suit against the FID is distinct and separate from the Court determination as a matter of law that Plaintiff has not been denied court access and cannot pierce the Justice Court's absolute immunity from suit. Plaintiff clearly seeks to invalidate the Court's findings of fact and conclusions of law with respect to Plaintiff's failure to state a viable claim against the Justice Court based upon an alleged distinct and separate defect regarding the order with respect to the claims against the State of Nevada Defendants.

The alleged problem Plaintiff suggests in the order with respect to paragraph five (the only pertinent paragraph touching at all upon Plaintiff's claim against the Justice Court) is easily ameliorated by removing the term ripeness and references to the matter being ripe. The intent and purpose of this paragraph with respect to the denial of access claim is the failure to allege an actual injury. That is, Plaintiff did not allege facts that it was actually denied some amount of attorney fees in an actual case to lay the foundation for its denial of access theory. The Court, as set forth above, however, went much further than that. The fatal flaw in Plaintiff's claim–and the very reason Plaintiff's argument is impertinent with respect to the Justice Court–is that the Court determined as a matter of law that Plaintiff's entire theory of denial of attorney fees is of no constitutional consequence. The Court need not decide whether Plaintiff actually lost a meritorious claim for attorney fees because the limitation of attorney fees is not a denial of court access as a matter of law. That is because, as the Court mentioned from the bench on July 1, 2020 and as codified in paragraph 15 of the order:

> 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). LVJC Rule 16 thus does not deny litigants "a reasonably adequate opportunity to present" their case to the Justice Court. *Lewis v. Casey*, 518 U.S. 343. 351, 116 S.Ct. 2174 (1996) (quoting *Bounds v. Smith*, 430 U.S. 817, 825, 97 S.Ct. 1491 (1977).

(Ex. "B" pg. 4). The finding of no actual injury suffered by Plaintiff clearly did not preclude the Court from reaching this conclusion of law as well as accepting the Justice Court's absolute immunity defense.

Plaintiff's proposed remedy is clearly not substantially justified by the alleged harm it raises with respect to the ripeness reference in paragraph five of the order. Plaintiff rather

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pretextually seeks to undermine the Court's entire reasoning as opposed to simply amending one paragraph of the order to alleviate the harm Plaintiff asserts is so problematic regarding the interrelation with ripeness and subject matter jurisdiction. Therefore, in the alternative, the Court should simply amend paragraph 5 of the order to state the following: "Plaintiff has not alleged that it has suffered an actual injury with respect to denial or, or limitation of, any award of attorney fees pertaining to a case previously pending in the Justice Court." This correction simply clarifies the Court's finding of fact regarding failure to aver facts meting out the actual injury element of a denial of access to courts claim and removes any reference to ripeness. Other than this minor amendment to the order, Plaintiff's motion with respect to the portions of the order pertinent to the Justice Court should be denied.

III. CONCLUSION

IN ACCORDANCE WITH THE FOREGOING, the Justice Court respectfully submits that Plaintiff has not presented any basis to warrant altering or amending the order with respect to the denial of its motion for a preliminary injunction against the Justice Court and the dismissal with prejudice of its claims against the Justice Court.

RESPECTFULLY SUBMITTED this 14 day of August, 2020.

OLSON CANNON GORMLEY
& STOBERSKI

BY: T. D. Dillard

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CERTIFICATE OF MAILING

On the 14 day of August, 2020, the undersigned, an employee of Olson, Cannon, Gormley & Stoberski, hereby served a true copy of **OPPOSITION TO PLAINTIFF'S MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW AND TO ALTER OR AMEND JUDGMENT**, 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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EXHIBIT A

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July 17, 2020

VIA EMAIL (dept27lc@clarkcountycourts.us) AND U.S. MAIL

Hon. Nancy L. Allf
Eighth Judicial District Court
Department XXVII
200 Lewis Avenue
Las Vegas, Nevada 89155

Re: Nevada Collectors Association v. State of Nevada
Eighth Judicial District Court Case No. A.19-805334-C

Your Honor:

I am writing to you with respect to the draft order submitted by Defendants in the above-entitled action. A copy of the draft order with NCA's only proposed change is attached hereto as **Exhibit "1"**. Nevada Collectors Association has no objection to the contents already contained in the order drafted by Defendants. However, NCA has requested the addition of a simple finding of fact that was expressly made on the record by this Court. Defendants have refused to include your express finding, prompting this objection.

NCA requests only that the order include the following additional language:

> The facts and evidence supplied by Plaintiff in its Motion for Preliminary Injunction are not in dispute. Rather, this matter deals simply with the application of law and the constitutionality of A.B. 477 and LVJC Rule 16.

You specifically made this finding at the end of the July 1 hearing when you stated "The facts here are not in dispute." A partial transcript of the July 1 hearing is attached hereto as **Exhibit "2"**.

In meeting and conferring prior to drafting this letter, Defendants' counsel seem to contend that the Court treated NCA's Motion for Preliminary Injunction under some kind of "the facts are assumed to be true" standard. NRCP 65 has no such standard. Rather, NRCP 65(a)(2) states that "evidence that is received on the motion and that would be admissible at trial *becomes part of the trial record* and need not be repeated at trial" even when a motion is not consolidated with trial on the merits. NCA also notes that this Court chose not conduct an evidentiary hearing, which would have been required if the facts were in dispute. *See, e.g., Nevada Power v. Fluor* Illinois, 108 Nev. 638, 837 P.2d 1354 (1992) (requiring evidentiary hearing on discovery sanction motion when there is a "question of fact"); *Leibowitz v. Hunt*, 2018 WL 2272800, at * 2 (Nev. May 10, 2018) (unpublished) (requiring evidentiary hearing to resolve factual dispute on motion to vacate arbitration award).

NCA also notes that Defendants did not make an objection to any of NCA's exhibits, nor did the Court make any ruling excluding any exhibits. As such, the unopposed factual record submitted by NCA on its Motion for Preliminary Injunction *is* the factual record of the case.

NCA simply asks that this Court confirm the obvious—that NCA's Motion for Preliminary Injunction was factually unopposed. Defendants did not include a single declaration, affidavit, or document contradicting the evidence supplied by NCA. FID's counsel contends that she disagreed with the NCA's evidence in briefing and argued against it—yet we know that "[a]rguments of counsel are not evidence and do not establish the facts of the case." *Nevada Ass'n Servs., Inc. v. District Ct.*, 130 Nev. 949, 957, 338 P.3d 1250, 1255 (2014). While Defendants prevailed on the legal arguments, they chose not to contest dozens of admissible exhibits submitted and actually considered by this Court when making its ruling.

As such, the factual record on NCA's Motion for Preliminary Injunction is unopposed and, as this Court stated when ruling, "[t]he facts here are not in dispute."

With that single change, NCA approves the form of the draft order, and respectfully requests that this Court add the proposed finding of fact.

Sincerely,

/s/
Patrick J. Reilly
Enclosures

cc: Vivienne Rakowsky, Esq. (via email)
Thomas Dillard, Esq. (via email)

21306044.1

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WRITER'S EMAIL ADDRESS:

July 18, 2020

VIA EMAIL (dept27lc@clarkcountycourts.us)

Hon. Nancy L. Allf
Eighth Judicial District Court
Department XXVII
200 Lewis Avenue
Las Vegas, Nevada 89155

Re: Nevada Collectors Association v. State of Nevada
Eighth Judicial District Court Case No. A.19-805334-C

Your Honor:

The defendants respectfully object to Plaintiff's counsel's request to change your order and insert words and meanings that were not part of your July 1, 2020 findings.

Mr. Reilly alleges that this Court "expressly" made findings with respect to the declarations and evidence that were part of Plaintiffs Motion for a Preliminary Injunction when no such express finding was made. As the context of the transcript clearly shows, the Court's statement that the facts were not in dispute concerns the Motions to Dismiss and not the Motion for a preliminary Injunction. The complete paragraph refers to the constitutional challenge and the standard of review for the constitutional challenge, which were not part of Plaintiffs Motion for a Preliminary Injunction. The transcript states:

> The facts here are not in dispute. It deals simply with the application of law and the constitutionality of the law. I believe the plaintiffs claims fail under either of the standards of review, and I don't believe that the fact that there were - there are conflicts in our statutes with regard to recoverability of attorneys' fees matters here, because we have that with regard to banks, payday lenders, offers of judgment, and other statutes. So I don't find that that creates a lack of equal protection to this plaintiff.

Plaintiff's Counsel argues that there were no objections to the declarations and exhibits attached to Plaintiff's Motion for a Preliminary Injunction. That is not factually correct. The Declarations and collection statements were disputed and opposed in the State Defendant's Opposition to the Motion for a Preliminary Injunction. In addition, in its Reply to its Motion to Dismiss, the State Defendants argued that this Court should not take judicial notice of the declarations and evidence because the Plaintiff should not improperly place its theory of the case before the Court as undisputed facts. Further argument was made on this issue during the hearing in opposition to Plaintiffs claims that there was no opposition to the exhibits. The parties agree that this Court did not address the exhibits in the order from the bench.

Finally, Plaintiff mischaracterizes the issue. The issue is not whether the Exhibits are part of the record, the issue is whether the exhibits were disputed or not. Here the exhibits were disputed, and because this Court did not make a finding about the exhibits, the exhibits do not necessarily become undisputed and assumed to be true.

The parties had some discussion about modifying Plaintiff's suggestion about the truthfulness of all of Plaintiff's factual assertions set forth in their briefing to indicate the Court accepted the truthfulness of the allegations "for purposes of the court's decision on the pending motions." Plaintiff outright refused to insert this qualification and stated that because the Court found all the facts not to be in dispute that Defendants "will have to deal with that on appeal and upon remand. This position underscored Defendants' overall concern that Plaintiff is herein attempting to lay the ground work in this order, should the matter be remanded, to argue that all alleged facts have been found to be true for all purposes moving forward. It is Defendants' position that the Court did not make conclusive findings regarding the verity of these facts beyond following Rule 12(b)(5) standards and found the factual assertions to be insufficient and/or inconsequential when deciding the motion for preliminary injunction. The Court's statement in context indicates it concluded that the pertinent issues were issues of constitutional law. The fact that the Court found that the claims for relief should be dismissed with prejudice before any discovery was ever conducted makes this clear.

As such, the Court's statement regarding the absence of a material factual dispute was not intended to suggest that the parties fully, fairly and necessarily litigated the validity of Plaintiff's factual assertions in their written briefs and the Court then took on a fact finding role to determine Plaintiff's assertions of fact as true for all other subsequent purposes in the litigation. Defendants instead understood that the Court made the above statement with respect to deciding the issues at bar as matters of law irrespective of the validity of Plaintiff's litany of factual assertions. For this reason, the Court dismissed the claims with prejudice as no factual amendment could cure the legal shortcomings of the claims. Defendants thus assert that there is no reason to include the paragraph demanded by Plaintiff to avoid any attempt or suggestion that Plaintiff's factual assertions are deemed valid in subsequent proceedings, whether the case is remanded following an appeal or not.

This Court ordered that it would not entertain competing orders, and ordered that the findings of fact and conclusions of law be prepared by the Defendants. Defendants prepared the draft and sent it to Plaintiff's counsel. Plaintiff's counsel had the draft for a week and agreed to approve of the form. Without warning, as it was out for signatures and about to be filed, Plaintiff insisted on the additional language to accept the exhibits attached to the Motion for a Preliminary Injunction

as undisputed and true. The Defendants object to Plaintiffs change and request that this Court accept the Order as written without the addition of section 1. Exhibit A.

Very truly yours,

OLSON, CANNON, GORMLEY
& STOBERSKI

/s/ Thomas D. Dillard
Thomas D. Dillard, Jr., Esq.

/s/ Vivienne Rakowsky
Vivienne Rakowsky
Deputy Attorney General

cc: Patrick J. Reilly

EXHIBIT B

Electronically Filed
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DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA COLLECTORS ASSOCIATION, a Nevada non-profit corporation, Plaintiff, v. STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY FINANCIAL INSTITUTIONS DIVISION; JUSTICE COURT OF LAS VEGAS TOWNSHIP; DOE DEFENDANTS 1 through 20; and ROE ENTITIY DEFENDANTS 1 through 20, Defendants.	Case No.: A-19-805334-C Dept. No.: XXVII

NOTICE OF ENTRY OF ORDER OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law, and Order was filed on this date, a copy of which is attached hereto.

DATED this 20th day of July 2020.

AARON D. FORD
Attorney General

By:/s/ VIVIENNE RAKOWSKY
VIVIENNE RAKOWSKY
Attorneys for Defendant

Case Number: A-19-805334-C

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General and that on the 20th day of July, 2020, I filed the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** via this Court's electronic filing system. Parties that are registered with this Court's EFS will be served electronically.

/s/ Michele Caro
An Employee of the Office of the Attorney General

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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

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Case Number: A-19-805334-C

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

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

FINDINGS OF FACT

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

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

> 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. [Added; effective January 1, 2007.]

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

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

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

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

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

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

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

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

9. Defendant Justice Court argued Plaintiff did not plausibly allege that Las Vegas 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; and the 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, Rule 16 and therefore possessed immunity from suit for simply following the law.

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

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

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

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

///

CONCLUSIONS OF LAW

Based on the foregoing factual findings, this Court makes the following conclusions of law:

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

2. The Nevada Constitution provides that its courts have jurisdiction over civil and criminal cases, which has been interpreted to prohibit courts from ruling on cases that are not ripe. *City of North Las Vegas v. Cluff,* 85 Nev. 200, 452 P.2d 461 (1969)

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

4. Plaintiff failed to show a hardship or that the issues were fit for judicial decision. *Herbst Gaming, Inc. v. Heller,* 122 Nev. 877, 887, 141 P.3d 1224 (2006). Plaintiff did not meet the prudential considerations because Plaintiff's claim of potential hardship if the members cannot access the Court system for small debt collection cases is speculative. Plaintiffs lacked an actual injury because there has not been any enforcement or a threat of enforcement of AB 477.

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

Dist. Court ex rel County of Clark, 124 Nev. 36 n.1, 175 P.3d 906 (2008). Speculative or hypothetical future harm is not sufficient to invoke jurisdiction. *Doe v. Bryan,* 102 Nev. 523, 525, 728 P.2d 443, (1986) Plaintiff's claim of possible future injury if the Plaintiffs do not have access to the court of their choice is not ripe because the Plaintiff has not been denied access to court and there has not been any enforcement activities or threat of enforcement of AB477.

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

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

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

9. The FID has the power to adopt regulations, as long as the regulations do not broaden the powers of the FID past the limitations found in statutes. There is no

statute in Chapter 649 that allows the FID to regulate attorney fees in a contract between a creditor and a debtor.

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

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

12. 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 cannot 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.

13. LVJC Rule 16 and A.B. 477 do not unduly infringe any identified fundamental right and also does not target or impose a disparate impact on a protected class; therefore, the Justice Court 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).

14. 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 codified by LVJC Rule 16 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").

15. 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). LVJC Rule 16 thus does not deny litigants "a reasonably adequate opportunity to present" their case to the Justice Court. *Lewis v. Casey*, 518 U.S. 343. 351, 116 S.Ct. 2174 (1996) (quoting *Bounds v. Smith*, 430 U.S. 817, 825, 97 S.Ct. 1491 (1977).

16. 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); *see also 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.")).

17. 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 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.").

18. The Justice Court appropriately followed that law when enacting and publishing LVJC 16 in accordance with controlling law from the Nevada Supreme

Court. Plaintiff cannot prevail then against the Justice Court as a matter of law 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.

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

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

21. 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. Plaintiff's members have not been denied access to court for their small collection cases; it is only that Plaintiff's members chose not to use the court with jurisdiction for their claims that will allow them to appear without an attorney.

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

/ / /

/ / /

ORDER

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

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

DATED this ___ day of July, 2020.

Dated this 20th day of July, 2020

By: Nancy L Allf
DISTRICT COURT JUDGE

FA8 3C2 F559 72AD JD
Nancy Allf
District Court Judge

Submitted by:
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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Nevada Collectors Association, Plaintiff(s) vs. State of Nevada Department of Business and Industry Financial Institutions Div., Defendant(s)	CASE NO: A-19-805334-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

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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 ENTITIY DEFENDANTS 1 through 20; Defendants.	Case No.: A-19-805334-C Department: XXVII **STATE DEFENDANT'S OPPOSITION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW AND TO ALTER OR AMEND JUDGMENT**

Defendant, State of Nevada Department of Business and Industry Financial Institutions Division ("FID"), by and through counsel, Aaron D. Ford, Nevada Attorney General and Vivienne Rakowsky, Deputy Attorney General, hereby file this Opposition to Plaintiff's Motion to Amend Findings of Fact and Conclusions of Law and to Alter or Amend Judgment.

/ / /

INTRODUCTION

Plaintiff's motion to amend the findings of fact and conclusions of law and to alter or amend the Judgment pursuant to NRCP 52(b) and 59(e) should be denied. Rule 52 allows amendment, but findings of fact, whether based on oral or other evidence, must not be set aside unless they are clearly erroneous. NRCP 52(a)(6). Fact-based conclusions of law will not be disturbed if supported by substantial evidence. *Grover C. Dils Medical center v. Menditto*, 121 Nev. 278, 283, 112 P.3d 1093 (2005).

NRCP Rule 59 enables a district court to "rectify its own mistakes in the period immediately following" its decision. *White v. New Hampshire Dept. of Employment Security*, 455 U.S. 445, 450, 102 S.Ct. 1162. This is an extraordinary remedy and can only be used "(1) when the motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) when the motion is necessary to present newly discovered or previously unavailable evidence; (3) when the motion is necessary to prevent manifest injustice; and (4) when the amendment is justified by an intervening change in controlling law. *Stevo Design, Inc. v. SBR Marketing Ltd.,* 919 F.Supp.2d 1112 (2013). None of those factors are present here.

Plaintiff is simply attempting to re-write history. Asking this Court to remove paragraphs 11-13 of the findings of fact and paragraphs 7-22 of the conclusions of law, changing the dismissal with prejudice to without prejudice, and changing the basis for denying the preliminary injunction from not likely to succeed on the merits to not ripe, are baseless and unsupported requests. Plaintiff pushed its version of the facts throughout the pendency of this case through hundreds of pages of exhibits, and now asks this Court to ignore the facts.

Finality of a case is important. It is costly in time and money to continue to defend a lawsuit, especially when the FID should not have been named because the Plaintiff was aware at the outset that Legislature did not delegate the FID to enforce

AB477.[1]

Plaintiff already attempted to make an end run around the Defendants in its Friday afternoon July 17, 2020 letter to the Court.

Although this Court specifically stated that it would not entertain competing orders, Plaintiff not only sent the court a competing order, but sent its competing draft without notification to the Defendants that it was taking such action. Plaintiff's competing draft sought two changes rolled into one paragraph.[2] One, for the Court to find that the Plaintiff's evidence supplied in the motion for preliminary injunction was not in dispute, and secondly that the matter before the Court was a question of law with regards to the constitutionality of AB 477 and JCR 16. Defendants opposed the addition, because neither of those assertions were accurate.

Throughout this case, the FID challenged Plaintiff's factual exhibits in its responses, and specifically requested that the Court deny judicial notice of the mountains of documentary exhibits submitted by the Plaintiff. *See e.g.* Motion to Dismiss Amended Complaint, p. 9:18-24, p. 10:2-11, Opposition to Plaintiff's Motion for Injunction, p; 8:9-28, p.9:2-11.

The FID also argued that the Court should deny judicial notice of Plaintiff exhibits because is not appropriate to "improperly place Plaintiff's theory of the case before the Court as undisputed facts." Opposition to Motion for Preliminary Injunction, p.3:23-27, p. 4:1-11.

Second, based on the pleadings, the motions, and huge number of Plaintiff's exhibits, Plaintiff made an as-applied constitutional challenge to the statute. An as-applied challenge involves factual determinations as to how the law affects the

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[1] Especially true since Plaintiffs counsel was also counsel in *State of Nevada v. Nevada Association Services,* when the FID was severely admonished for issuing an advisory opinion regarding fees charged by a Chapter 649 licensed collection agency performing collections for Chapter 116 home owners associations because HOA's are within the jurisdiction of the Real Estate Division. 128 Nev. 362, 294 P.3d 1223 (2012).

[2] Plaintiff claim that with that single change the Plaintiffs would approve the form of the draft order.

Plaintiffs. Only a facial challenge is purely a question of law.

All Plaintiff's arguments concerned how the law affects Plaintiff's members. Plaintiff made arguments such as its members could not hire attorneys to represent them in court, its members would lose money if they have to be represented in Justice Court, its members would be denied access to court for small dollar collection actions, how AB 477 unfairly singles out its members, and its members would suffer economic loss, which are all arguments that are made in an as-applied challenge. Plaintiff never argued a facial challenge or claimed that the law was unconstitutional in every aspect. See *Malecon Tobacco v. Department of Taxation,* 118 Nev. 837, 841, 59 P.3d 474 (2002).

The Court adopted the proposed order submitted by the Defendants without the Plaintiff's requested changes, and the final Order should not be changed based on Plaintiffs latest arguments.

Plaintiff's Motion for a Preliminary Injunction was heard at the same time as both Defendant's Motions to Dismiss.

After being remanded from the Federal Court to this Court, Plaintiff insisted on hearing both the Justice Court's and the FID's Motions to Dismiss at the same time as the Plaintiff's Motion for a Preliminary Injunction, Writ of Mandamus or Prohibition. See *Stipulation,* May 11, 2020 and Email May 7, 2020, attached hereto as Exhibit "A.".

Plaintiff had a specific strategy which is evident in the number of declarations and other documents that Plaintiff used for its arguments. Plaintiff believed that its facts were so relevant, the Plaintiff added hundreds of pages of exhibits which were referenced in Plaintiff's motion for preliminary injunction and even used its exhibits in an attempt to bolster its opposition to the Defendant's motion to dismiss. Plaintiff continued to argue the facts at the hearing. It is all part of the record and the record should not be changed to suit Plaintiff's change in strategy. See e.g. *Garcia v. Scolari's Food & Drug,* 125 Nev.48, 55, 200 P.3d 514 (2009) (finding that good cause

did not exist to admit additional evidence when counsel changed strategy after receiving an adverse decision.)

This Court requested that the Order be drafted to include all the motions that were heard that day. Partial Transcript, July 1, 2020, attached hereto as exhibit "B." Accordingly, the findings of fact and conclusions of law include the facts that were considered by this Court on the motions heard on July 1, 2020.

There is no basis for this Court to change its Order.

This Court should not "delete any and all substantive findings of fact and conclusion of law such as paragraphs 11-13 of the findings of fact and paragraphs 7-22 of the Conclusions of law" as requested by the Plaintiff.

Neither NRCP 52(b) nor NRCP 59(e) provide a basis for the Order to be changed. There were no clear errors of fact. There were no manifest errors of law, no newly discovered evidence, no manifest injustice, and no intervening change to controlling law.

The FID brought its Motion to Dismiss under two theories, that is not unusual, nor does the law limit a court's findings to one or the other theory, especially when dismissal is appropriate under either or both theories.[3] One theory was based on the lack of jurisdiction pursuant to NRCP 12(b)(1), and the second was failure to state a claim because the Plaintiff could prove no set of facts that would entitle them to relief, pursuant to NRCP 12(b)(5). Rule 12(b) does not provide that dismissal can only be based on one theory. Both theories consider the facts before the Court.[4]

Plaintiff never argued that this Court should not consider the facts, and instead used citations to exhibits in its motion for a preliminary injunction in an

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[3] See e.g. *Schultz Partners v. Bd. of Equalization*, 127 Nev. 1173, 383 P.3d 959 (2011) dismissing a case based on failure to state a claim along with specific counts for failure to join necessary parties.

[4] In addition, the Justice Court motion to dismiss, heard at the same time as the FID's motion was a 12(b)(5) motion and not based on ripeness.

attempt support its opposition to FID's motion to dismiss. The Court is not precluded by law from including the facts considered in making its decision from an Order. *Herbst* does not preclude a court from considering other arguments regarding other theories for dismissal. 122 Nev. 877, 888, 141 P.3d 1224, 1231(2006). A higher court frequently reverses based on jurisdiction (which can be raised at any time) but has never stated that a lower court is precluded from a determination on the merits as Plaintiff alludes to in its analysis of *Addington v. U.S. Airline Pilots,* 606 F.3d 1174(9th Circuit 2010). Likewise, Plaintiff's reference to *Cluff* is inapplicable. *Cluff* concerned declaratory relief from a statue that was not enacted at the time. *City of N. Las Vegas, v. Cluff,* 85 Nev 200, 452 P.2d 461(1969). AB 477 has already been enacted and this was not solely a declaratory relief matter. Plaintiff asserted due process and equal protection constitutional challenges.

Plaintiff placed a multitude of facts and exhibits before the Court, because Plaintiff wanted the facts to be considered. The Court not only considered two motions to dismiss from two separate Defendants based on different theories for dismissal, but it also considered a motion for a preliminary injunction. To the Plaintiff, the facts mattered enough that the Plaintiff wanted the court to consider the facts unopposed. Now that this Court decided against the Plaintiff, suddenly the facts become irrelevant and should be disregarded. Plaintiff is incorrect. Even if a finding of fact is accidently referred to as a conclusion of law, the error is harmless and should not be changed.

Plaintiff's motion for a preliminary injunction was denied because the Plaintiff was not under a threat of irreparable harm and was not likely to succeed on the merits.[5] The determination was based on the facts presented to the Court. The

[5] This Court stated "I am going to deny the plaintiffs' request for a preliminary injunction. I don't believe that there's a likelihood of success on the merits. I don't find that there's irreparable harm and in balancing the hardships. While I recognize that its monetary relief being sought by the plaintiffs here, I don't believe that the hardship balances in favor of the plaintiff." Excerpt of transcript, p. 2:11-16.

Court needed to consider the facts to weigh the competing claims of injury and consider the effect on each party if the court were to grant or withhold the preliminary injunction. See *Winter v. NRDC*, 555 U.S. 7, 24, (2008).

With respect to the Motion to Dismiss, under of NRCP 12(b)(1) the Court must still make factual findings to show that the case is not ripe and/or that there is no standing.[6] Plaintiff argued facts and used its exhibits to attempt to show that the matter was ripe for decision. The prudential factors for ripeness also require findings of facts regarding, "the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967). The determination of the hardship to the parties is a factual determination because the Plaintiff "must show that withholding review would result in direct and immediate hardship and would entail more than possible financial loss." *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1126 (9th Cir.2009), quoting *US West Commc'ns v. MFS Intelnet,* 193 F.3d 1112. 1118 (9th Cir. 1999).

The dismissal pursuant to NRCP 12(b)(5) required factual findings to determine if the Plaintiff could prove no set of facts, which, if true, would entitle it to relief and whether any relief could be granted on the claims as asserted. It was necessary for the Court to find, for example, that the FID's regulatory powers over a collection agency is limited to the powers granted under Chapter 649.

Thus, the facts were essential to all decisions made in this case. This Court dismissed this case based on both 12(b)(1) and 12(b)(5) and ruled against issuing a Preliminary Injunction. It is undisputed that facts that were used as a basis for this Court's decisions, and as a result the Court used its discretion to include findings of fact and conclusions of law in the Order. Plaintiff never claims that any of the factual findings were inaccurate.

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[6] Rule 12(d) allows a court to consider facts outside the pleading when considering a 12(b)(1) Motion. *See e.g. Ohfuji Investments v. Citibank,* 2019 WL 6826503 (unreported)

Accordingly, this Court must deny Plaintiff's request to remove the factual findings and legal conclusions gathered from the Defendants' motions to dismiss as well as the Plaintiff's motion for a preliminary injunction (along with the oppositions and replies) and oral arguments from the Order.

This Court must also deny Plaintiff's request to change this Court's finding on Plaintiff's motion for a preliminary injunction from the Plaintiff is not likely to succeed on the merits and was not at risk of imminent harm, to a decision that the preliminary injunction was denied because it was not ripe. Any such change would be wrong because no such finding was made. Exhibit "B," p. 2:11-16. This Court made factual findings with regards to the theories presented, and properly included them in the Order. History should not be re-written because the Plaintiff has changed strategies.

Dismissal with prejudice is appropriate

This Court dismissed the Amended Complaint with prejudice and made a final decision for purposes of appeal. Plaintiff had already amended its complaint once. This Court considered the pleadings and motions and oral arguments at the time of hearing, and even when construing the pleadings liberally and accepting all the asserted facts as true, Plaintiff failed to state any cognizable claim for relief. No further amendment could cure the deficiency, and therefore dismissal with prejudice was appropriate.

This Court should not change its ruling. At the time of the hearing, Plaintiff questioned the findings of fact stating "given that the Court's making a ruling that there is not standing and that the dispute is not right (sic), is it wise for this Court to make a substantive determination on the merits of this case?" The Court responded that it made substantive ruling on the merits of the case and that the order is intended to be final and appealable. Thus, the Court had the opportunity to look at this issue and stated that it intended to make a substantive ruling. Exhibit "B," p. 4. The Court dismissed the case with prejudice. It is time to put this matter to rest.

CONCLUSION

The record speaks for itself, and Plaintiff cannot un-ring that bell. This Court should deny Plaintiff's requested changes to the Order because Plaintiff has not satisfied the requirements of NRCP Rule 52 or Rule 59. Removing findings of fact and conclusions of law, changing the basis for its decision on Plaintiff's motion for an injunction, and changing the Order to without prejudice would rewrite history and inaccurately depict the issues and findings in this case, and therefore should be denied.

Respectfully submitted August 17, 2020.

AARON D. FORD
Attorney General

By: /s/ Vivienne Rakowsky
Vivienne Rakowsky (Bar No. 9160)
Deputy Attorney General
David J. Pope (Bar No. 8617)
Chief Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **STATE DEFENDANT'S OPPOSITION TO AMEND FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** with the Clerk of the Court by using the electronic filing system on the 17th day of August, 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”

SAO
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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

STIPULATION AND ORDER EXTENDING TIME FOR DEFENDANTS TO FILE RESPONSE TO AMENDED COMPLAINT AND SETTING BRIEFING AND HEARING SCHEDULE TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

STIPULATION

Defendant, State of Nevada Department of Business and Industry Financial Institutions Division, Defendant Justice Court of Las Vegas Township ("Justice Court"), and Plaintiff Nevada Collectors Association ("NCA") hereby stipulate and agree as follows:

1. On April 1, 2020, NCA filed its First Amended Complaint against Defendants in Case #2:20-cv-0007-JCM-EJY in the United States District Court of the District of Nevada., ECF No. 38.

2. On April 13, 2020, United States District Court Judge James C. Mahan remanded the above-entitled action to state court. ECF No. 39.

3. On April 30, 2020, Plaintiff filed a Notice of Remand to State Court, prompting Defendants' 14-day deadline to respond to the First Amended Complaint.

4. In the meantime, NCA is preparing to re-file its Motion for Preliminary Injunction or, Alternatively, for Writ Relief (the "Motion"). NCA anticipates it will file its Motion no later than May 15, 2020.

5. Defendants' deadlines to file their response to the First Amended Complaint shall be extended from May 14, 2020 to June 8, 2020.

6. NCA will file its Motion no later than May 15, 2020, and Defendants' oppositions to the Motion shall be filed on or before June 15, 2020.

7. In the event Defendants file any dispositive motion in response to the First Amended Complaint, said motions shall be heard by the Court concurrently with NCA's Motion. The parties will coordinate a combined hearing date with the Court at a later time.

Dated this 11th day of May, 2020.

AARON D. FORD
Nevada Attorney General

By: /s/ Vivienne Rakowsky
VIVIENNE RAKOWSKY (Bar No. 9160)
Deputy Attorney General
DAVID J. POPE (Bar No. 8617)
Chief Deputy Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
Attorneys for State Defendant

Dated this 11th day of May, 2020.

BROWNSTEIN FARBER HYATT. SCHRECK, LLP

By: /s/ Marckia L. Hayes
MARCKIA L. HAYES (Bar No.14539)
PATRICK J. REILLY (Bar No. 6103)
100 City Parkway Suite 1600
Las Vegas, NV 89106
Attorneys for Plaintiff

Dated this 11th day of May, 2020.

OLSON CANNON GORMLEY &
STOBERSKI

By: /s/ Thomas D. Dillard
THOMAS D. DILLARD, ESQ. (Bar No. 6270)
9950 W. Cheyenne Avenue
Las Vegas, NV 89129
Attorneys for Las Vegas Justice Court

ORDER

IT IS SO ORDERED.

DATED this 11th day of May, 2020.

Nancy L Allf
DISTRICT COURT JUDGE

Respectfully submitted by:

AARON D. FORD
Nevada Attorney General

By: /s/ Vivienne Rakowsky
VIVIENNE RAKOWSKY (Bar No. 9160)
Deputy Attorney General

From: Reilly, Patrick J. <preilly@bhfs.com>
Sent: Thursday, May 7, 2020 5:29 PM
To: Vivienne Rakowsky <VRakowsky@ag.nv.gov>; Hayes, Marckia L. <mhayes@bhfs.com>; Tom Dillard <tdillard@ocgas.com>
Cc: Marilyn A. Millam <MMillam@ag.nv.gov>
Subject: [] RE: Nevada Collectors Association

I'm fine with that (June 15), so long as we all have the same hearing date for all pending motions. Marckia will work with you tomorrow to get the stipulation finalized and submitted.

Separately, if you or David have five minutes to discuss S.B. 201, please let me know.

Thank you.

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RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA COLLECTORS ASSOCIATION, a Nevada non-profit corporation, Plaintiff(s), vs. STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY FINANCIAL INSTITUTIONS DIVISION, et al., Defendant(s).	CASE NO: A-19-805334-C DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

WEDNESDAY, JULY 1, 2020

RECORDER'S EXCERPTED TRANSCRIPT OF PROCEEDINGS RE: PENDING MOTIONS

APPEARANCES (VIA VIDEO CONFERENCE):

For the Plaintiff(s): PATRICK J. REILLY, ESQ.

For the Defendant(s): THOMAS D. DILLARD JR., ESQ.
VIVIENNE RAKOWSKY, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

LAS VEGAS, NEVADA; WEDNESDAY, July 1, 2020

[Excerpt of proceedings beginning at 10:13 a.m.]

THE COURT: Okay. Thank you to everyone. The matter is now submitted. This is the ruler of the court.

This case involves a professional association of collection agencies who are challenging AB 477, which limits the recovery of attorneys' fees in justice court to 15% on consumer debts. And that's cases where the parties are entitled to which (indiscernible) by the jury.

I am going to deny the plaintiffs' request for a preliminary injunction. I don't believe that there's a likelihood of success on the merits. I don't find that there's irreparable harm and in balancing the hardships. While I recognize that it's a monetary relief being sought by the plaintiffs here, I don't believe that the hardship balances in favor of the plaintiff.

The facts here are not in dispute. It deals simply with the application of law and the constitutionality of the law. I believe the plaintiffs claims fail under either of the standards of review, and I don't believe that the fact that there were – there are conflicts in our statutes with regard to recoverability of attorneys' fees matters here, because we have that with regard to banks, payday lenders, offers of judgment, and other statutes. So I don't find that that creates a lack of equal protection to this plaintiff.

And frankly, the argument that there's a lack of access to the

court fails for the reason that the plaintiffs have every right to pursue. What their concern is, is that they can't recover their attorneys' fees. But they certainly have access to the court; there's no question about that.

I don't find that there's a lack of due process. I had some -- I make a finding that the plaintiff here as a professional association and not the individual litigants also lacks standing and that there's also an issue with rightness here. It's up (indiscernible) the justice immunity from forcing the statute as well, and I also recognize the financial institution is deficient as a regulatory agency. It's also immune from enforcing the law.

So for all of those reasons, I am denying the request for a preliminary injunction and granting the Motion to Dismiss. The facts are not in dispute. This is simply an application of law.

So I will task Mr. Dillard and Ms. Rakowsky with preparing proposed orders. I would like one order on both motions. It should include findings of fact and conclusions of law. And before it's submitted to me for my review, Mr. Reilly must have it for one week before it's submitted to me.

Mr. Reilly, if you can approve the form only, that's fine. If you have concerns with regard to the drafting, let us know. I will not accept a competing order, but let us know and I'll either review, interlineate, or set a telephonic.

Are there any questions before we conclude the hearing?

MS. RAKOWSKY: No, Your Honor.

MR. REILLY: Yes, Your Honor. Briefly.

Given that the Court's – yes, given that the Court's making a ruling that there's no standing and that the dispute is not right, is it wise for the Court to make a substantive determination on the merits of the case?

THE COURT: I believe that I did make a substantive ruling on the merits of the case. This is intended to be a final order and appealable.

MR. REILLY: Thank you.

THE COURT: Any other questions?

Then thank you all for your appearance. And until I see you see you next, stay safe and stay healthy.

[Excerpt of the proceedings concluded at 10:17 a.m.]

* * * * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Shannon Day
Independent Transcriber