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 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.

CASE NO. 81930

APPEAL

From the Eighth Judicial District Court, Department XXVII
The Honorable Nancy L. Allf, District Judge
District Court Case No. A-19-805334-C

RESPONDENT JUSTICE COURT OF LAS VEGAS TOWNSHIP'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the JUSTICE COURT OF LAS VEGAS TOWNSHIP is a political subdivision of the State and thereby exempt from the disclosure requirements of NRAP 26.1(a)

DATED this 8th day of November, 2021

OLSON, CANNON, GORMLEY,
& STOBERSKI

By /s/ Thomas D. Dillard
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JUSTICE COURT LAS VEGAS TOWNSHIP

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ROUTING STATEMENT

This subject matter of this appeal is neither presumptively retained by the Supreme Court pursuant to NRAP 17(a), nor presumptively assigned by the Court of Appeals pursuant to NRAP 17(b). In accord with NRAP 17(c), this Court has discretion to assign this appeal to the Court of Appeals, dependent upon the workloads of each court.

ISSUES PRESENTED FOR REVIEW

1. Whether the District Court correctly held that the Justice Court did not erect an unconstitutional barrier to NCA's access to the court.

2. Whether the District Court properly dismissed the Section 1983 claims against the Justice Court because NCA did not suffer an actual injury to a meritorious claim.

3. Whether the District Court correctly concluded that the NCA did not negate all conceivable objectively reasonable purposes for the continued operation of Las Vegas Justice Court Rule 16.

4. Whether the Justice Court possesses immunity for enforcing Las Vegas Justice Court Rule 16 as an embodiment of well established law from the Nevada Supreme Court.

5. Whether the District Court abused its discretion when it denied NCA's motion for preliminary injunction.

STATEMENT OF THE CASE

A. Nature of the Appeal

This is an appeal from the district court granting Defendant and Respondent JUSTICE COURT OF LAS VEGAS TOWNSHIP's motion to dismiss in its entirety and with prejudice for failure to state a claim for relief and denying

NCA's motion for preliminary injunction. The district court entered an Amended Findings of Fact, Conclusions of Law and Order dated September 10, 2020 [Joint Appendix ("JA") Volume VIII ("JA[#1-8]") at 1337-1346] finding that Plaintiff and Appellant Nevada Collectors Association ("NCA") could not state facts that it was substantially denied constitutional access to the Justice Court or that it was denied equal protection under the law. [JA8 at 1344]. In addition, the district court correctly concluded that NCA sued the Justice Court for a local rule predicated upon well-established case law of this Honorable Court; therefore, the Justice Court was entitled to absolute immunity for simply ministerially enforcing controlling Nevada case law regarding legal representation of corporations. [JA8 at 1244-45].

This action arises from the passage of Assembly Bill 477 ("A.B. 477")—recently enacted in the 80th session of the Nevada Legislature—and its interplay with defendant Las Vegas Justice Court's ("Justice Court") Rule 16 ("JCR 16"). NCA's constitutional claims against the Justice Court as alleged in its First Amended Complaint ("FAC") are really legal conclusions, cast as factual allegations, that NCA has been denied its due process right of having "access to the courts" because it has to retain a lawyer for cases it chooses to file in Justice Court pursuant to JCR 16 and it cannot obtain all of its attorney fees as part of

judgments obtained in that court pursuant to the Nevada Legislature's 2019 passage of A.B. 477. [JA7 1104-05]. This allegation of denial of seeking redress from the courts, therefore, pertains just to cases that NCA chooses to file in the Justice Court and for which there is concurrent jurisdiction in small claims court given the small debt claims at issue. This alleged denial of access is also narrowly limited to NCA's self-interest in taking advantage of a statutorily created remedy of being able to obtain a full measure of attorney fees on a judgment. Specifically, NCA (as a corporation) contends its corporate rights are infringed because it cannot appear in a *pro se* capacity when prosecuting consumer debt cases against individuals and is also foreclosed by the recent legislation from obtaining attorney fees on any judgment obtained in Justice Court.

NCA has only effectively named Justice Court of Las Vegas in the first cause of action for alleged violations of the Substantive Due Process Clause of the Fourteenth Amendment of the United States Constitution and the analogous due process clause of the Nevada State Constitution. NCA brought suit against the Justice Court for nothing more than maintaining the efficacy of JCR 16 following the passage of A.B. 477 and without regard to a limitation of fees on any particular case. The district court agreed with the Justice Court that JCR 16 satisfies constitutional muster and is in actuality nothing more than a reiteration of well-

established case law for which the Justice Court has no discretion to disobey and is therefore entitled to immunity. [JA8 at 1344-45].

B. District Court Proceedings Below

On November 13, 2019, NCA initially filed a Complaint in the Eighth Judicial District Court of Nevada and brought suit against two governmental Defendants; namely, the State of Nevada and the Justice Court of Las Vegas Township ("Justice Court"). [JA1 at 01-14]. The Justice Court removed the case to the U.S. District Court of Nevada based upon federal question jurisdiction. See Case No. 2:20-CV-7 JCM (EJY)). While the Justice Court had a pending motion for judgment on the pleadings, NCA, on April 1, 2020, filed the FAC. [JA7 1097-1111]. On April 13, 2020, the U.S. District Court of Nevada then entered an order remanding the case based upon Burford v. Sun Oil Co., 319 U.S. 315, 63 S.Ct. 1908 (1943).

Following the remand, on May 12, 2020, the Justice Court again moved to dismiss all claims alleged against it in the FAC based largely on the arguments previously raised in the federal court prior to abstention. [JA1 at 51-65]. The Justice Court, argued it had not caused NCA to suffer an actual injury with regard to any right it possesses regarding having access to the courts and is also insulated from suit. Specifically, the Justice Court moved to dismiss based upon the

following arguments:

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

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

[JA1 at 56-65].

The district court on July 1, 2020 heard oral argument with regard to a motion for a preliminary injunction filed by NCA and the Justice Court's motion to dismiss as well as Defendants and Respondents of the State of Nevada ("State Defendants") motion to dismiss. [JA8 1292-1318]. On July 20, 2020, the district court granted the motions to dismiss and denied NCA motion for a preliminary injunction [JA7 at 1261-1270]. The order, in pertinent part, held:

> 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. . . .
>
> To prevail on a rational basis challenge, Plaintiff therefore must "negate every conceivable basis" that could support a rational basis for the alleged regulation. . . . 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").
> . . .
> Also, A.B. 477's "cap on attorney's fees is not a barrier to court access, but a limitation on relief." . . . LVJC Rule 16 thus does not deny litigants "a reasonably adequate opportunity to present" their case to the Justice Court. . . .
>
> 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.. . .
>
> 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. . . . .
>
> 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.

[JA7 at 1267-68] (citations omitted).

On August 3, 2020, NCA filed a motion to amend findings of fact and conclusion of law and to alter or amend the judgment. [JA7 at 1236-43]. The district court amended paragraph 5 in the conclusion of law section and issued an Amended Findings of Fact and Conclusions of Law on September 10, 2020. [JA8 at 1337, 1341-42]. NCA then filed a timely Notice of Appeal.

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STATEMENT OF THE FACTS

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

This rule in fact is just a reiteration of well-established law enunciated by the Nevada Supreme Court regarding the ethics of legal representation in Nevada. [JA8 at 1338, 1344].

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. [JA8 at 1338-39]. The Act recovery of attorney's fees under certain circumstances. Specifically, Section 18 capped recovery of attorney's fees at 15% of the amount of the consumer debt.

On November 13 2019, NCA, 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. NCA further alleged that these sections, when combined with JCR 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). [JA8 at 1339].

However, NCA did not allege that it ever filed suit in the Las Vegas Justice Court and had any application for attorney fees limited based upon an application of AB 477. [JA7 1097-1111].

SUMMARY OF THE ARGUMENT

The Justice Court has not caused NCA to suffer an actual injury related to the right of court access to be able to recover all previous statutorily available attorney fees for prevailing parties in consumer contract cases. NCA's potential inability to recover all the attorney fees incurred in these types of cases that it chooses to file in the Las Vegas Justice Court absolutely does not constitute a meaningful denial of access to the courts or a loss of a fundamental right. A legislative cap on attorney fees that may be incurred by an attorney representing a corporation in Justice Court is not a constitutional barrier to court access as a matter of law. NCA has failed to cite any legal support for its assertion that a limitation on fee recovery is a denial of access.

Regardless of how NCA frames a constitutional claim pursuant to Section 1983, the legislative and judicial action pertinent here are subject only to rational basis review. The Justice Court's continued enforcement of JCR 16 is, thus, not subject to strict scrutiny and clearly meets the very deferential rational basis standard of review. NCA has failed to negate every conceivable rational basis for the Nevada Legislature's passage of A.B. 477 and the corporate representation rule (and the Las Vegas Justice Court's memorializing that rule of law in a court rule). There is thus no constitutional injury to NCA under the First or Fourteenth Amendments.

NCA also failed to allege the infringement of an actual injury in a specific case that was adjudicated by the Justice Court. NCA did not first prevail on a motion for attorney fees after passage of A.B. 477. NCA has also not alleged that the awarded amount was then reduced by the Justice Court to somehow render NCA's access to the court wholly ineffective. There is no thus no actual injury pled that is required for a denial of access to the courts case under well established law. NCA has alleged, at best, a speculative one, even assuming for purposes of argument that the Justice Court could legally deny constitutional access to the courts when complying with A.B. 477.

The Justice Court also owes no constitutional duty to NCA to disregard controlling case law of the Nevada Supreme Court requiring attorney representation for corporations. JCR 16 is nothing more than a restatement of not only long-standing Nevada law, but of American jurisprudence in general. The Justice Court, therefore, is immune from the claim that it denied NCA access to the courts by simply following the controlling law announced by the courts.

NCA has not demonstrated any meritorious claim against the Justice Court nor has it shown that it will suffer any harm at all that cannot be adequately remedied at the conclusion of this case, even if it was prosecuting colorable claims against the Justice Court. The case law is clear that only rational basis review applies to NCA's constitutional challenge to JCR 16 and the rational utility of this rule cannot be denied. Furthermore, the Justice Court's interest in the continued efficacy of JCR 16 is aligned with the public interest and, upon balance, is markedly more substantial than NCA's attorney fee interest.

ARGUMENT

I. The Justice Court Has Not Foreclosed NCA from Having Meaningful Access to the Justice Courts to Pursue Meritorious Debt Claims.

The inability to recover all attorney fees incurred in consumer contract claims filed in the Las Vegas Justice Court does not constitute a meaningful denial

of access to the courts or a loss of a fundamental right. In addition, the Justice Court's continued enforcement of JCR 16, in cases discretionarily filed in that court by NCA, is not subject to strict scrutiny and meets deferential rational basis review. NCA is unable to cite any law or provide any legally plausible constitutional argument to support its claim that the Justice Court violated its federal rights by not repealing JCR 16 following the Legislature's decision to enact A.B. 477 and limit recovery of attorney fees in certain circumstances. NCA's brief makes it clear that its legal theory here is akin to the long since rejected economic due process doctrine and asks this Court nothing less but to act as a super-legislature to supercede the informed decision made by elected legislators.

A. The Justice Court Did Not Deny NCA Basic Court Access.

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

district court correctly dismissed NCA's Section 1983 claim for failure to state a viable claim for relief.

The legislative and judicial branches possess wide discretion to place limitations to court access regarding recovery of attorney fees and requirements for litigants to be represented by ethical and duly licensed representatives. There is no absolute right of access to the courts. In re Green, 669 F.2d 779, 785 (D.C. Cir. 1981); see also e.g., Angelotti Chiropractic, Inc. v. Baker, 791 F.3d 1075, 1083-84 (9th Cir. 2015) (upholding state law requiring medical providers to pay an activation fee for each pending workers' compensation lien they had filed violated against a due process and equal protection clause challenge); Cliford v. Louisiana, 347 F. App'x 21, 23 (5th Cir.2009) ("right to recover for medical malpractice does not fall within the fundamental interests recognized by the Supreme Court."); Rodriguez v. Cook, 169 F.3d 1176, 1180 (9th Cir.1999) (applying rational basis review to the "three strikes" provision of the Prisoner Litigation Reform Act to revoke litigant *in forma pauperis* status and upholding same). All that is required is a reasonable right of access to the courts—a reasonable opportunity to be heard. Boddie v. Connecticut, 401 U.S. 371, 378, 383 91 S.Ct. 780, 786, 788 (1971).

Objectively reasonable limitations on relief and representation are

simply not constitutionally repugnant barriers to court access. Boivin, 225 F.3d at 45.

The type of economic and ethical limitations at issue here do not run so far as to place a complete bar or even a substantial burden on court access; accordingly, the courts presume that they are constitutional based upon rational basis review whether the challenge is based under a First or Fourteenth Amendment theory. The Justice Court has not deprived NCA of a fundamental right of court access regardless of any alleged hardship imposed on its members by having to comply with the corporate legal representation rule and have the legislature limit its recovery of attorney fees on consumer contract cases based upon its discretion to enact economic protective measures for the citizenry. The district court committed no error when it dismissed NCA's 42 U.S.C. § 1983 claim for failure to state facts that the Justice Court committed a constitutional transgression when it kept JCR 16 following the passage of A.B. 477.

B. Reasonable Limitations on Attorney Representation and Recovery of Attorney Fees Satisfies Rational Basis Scrutiny.

Strict scrutiny is applied only when a challenged regulation imposes a "severe burden" on a specific fundamental right protected by the First Amendment (i.e. right to freedom of association and petition the government). See Clingman v.

Beaver, 544 U.S. 581, 586, 125 S.Ct. 2029 (2005) ("[W]hen regulations impose lesser burdens, a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions"); Nader v. Brewer, 531 F.3d 1028, 1036 (9th Cir. 2008) (noting strict scrutiny applies only when a restriction creates a "severe burden" on First Amendment rights). To combine First Amendment and Fourteenth Amendment claims, "[u]nless a law burdens a fundamental right, targets a suspect class, or has a disparate impact on a protected class and was motivated by a discriminatory intent, [the courts] apply rational basis scrutiny to the challenged law." New Doe Child #1 v. United States, 901 F.3d 1015, 1027 (8th Cir. 2018).

To be sure, legislation imposing new conditions on debt collection practices in the lower courts is not presumed invalid or worthy of strict scrutiny analysis. Indeed, "[i]t is by now well established that legislative acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on the one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 15, 96 S.Ct. 2882, 2892 (1976). Under rational-basis review, a regulation "must be upheld ... if there is any reasonably conceivable state of facts that could provide a rational basis for the

classification." FCC v. Beach Commc'ns, Inc., 508 U.S. 307, 313, 113 S.Ct. 2096 (1993). The pertinent legislation and judicial rule in this case certainly has a conceivably rational justification to pass rational basis scrutiny.

Therefore, it is axiomatic that when the government acts with an economic purpose, as it did with AB 477, limitations created by it must be upheld unless they are irrational and arbitrary. In Duke Power Co. v. Carolina Environmental Study Group, 438 U.S. 59, 98 S.Ct. 2620 (1978), the Supreme Court, while upholding legislation that placed a damage cap on claims involving nuclear accidents, wrote:

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

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

At the district court level, NCA cited Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 780 (1971) in support of an argument that a litigant's total access to the courts is a fundamental right which cannot be abridged unless there is a compelling state interest required under a strict scrutiny analysis. NCA, in doing so, misinterpreted Boddie and also disregarded numerous other access to court cases that came after it. See M.L.B. v. S.L.J., 519 U.S. 102, 123, 117 S.Ct. 555 (1996) (explaining that the *Boddie* principle extends only to "a narrow category of civil cases," i.e., those "involving state controls or intrusions on family relationships"). NCA has apparently abandoned the strict scrutiny argument for this appeal, but an analysis of the Boddie line of cases pertaining to barriers to access the courts remains instructive and foundational.

In Boddie v. Connecticut, supra, the Supreme Court held that Connecticut's substantial interest in allocating scarce judicial resources was rationally related to its scheme of filing fees, but was not sufficient to override plaintiffs' fundamental interest in access to the only avenue permitted by state law for dissolving their marriage. Id. at 381, 91 S.Ct. at 788. The Boddie Court's decision, to be sure, did not find that any regulation, upon a person's right of access to the courts, was an infringement on a fundamental right and subject to strict scrutiny. In fact, the

Court held just the opposite by upholding the filing fee scheme in general and narrowly finding its strict application to a marriage dissolution was too fundamental to impose an unconditional fee provision.

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

NCA continues to fail to grapple with the myriad of judicial precedents instructing that First Amendment and Fourteenth Amendment challenges to restrictions regarding representation in court and recovery of fees and damages pass constitutional muster if they are not arbitrary or capricious. NCA failed to advance any argument in this case that the consumer protection limitation on attorney fees passed by the Nevada Legislature in 2019 and the corporate representation rule (universally followed by federal and state courts alike) fail under this deferential review. NCA just assumes that the limitation on fees imposes a court access barrier because its landlord members find it too restrictive.[1] NCA's brief, however, is barren of any legal authority for its position that the requirement that it be represented by a lawyer in Justice Court and that the legislature limitation on attorney fee recovery denies it constitutional court access under any analysis.

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

C. Attorney Fee Limitations Do Not Block Court Access.

First, it should be noted at the outset that the recovery of attorney fees is a statutory created remedy. The American Rule provides the "'basic point of reference' " for awards of attorney's fees: "'Each litigant pays his own attorney's fees, win or lose, unless a statute or contract provides otherwise.'" Hardt v. Reliance Standard Life Ins. Co., 560 U.S. 242, 252–253, 130 S.Ct. 2149 (2010). The rule is deeply rooted in the common law and courts generally will not deviate from it "absent explicit statutory authority.' Buckhannon Board & Care Home, Inc. v. West Virginia Dept. of Health and Human Resources, 532 U.S. 598, 602, 121 S.Ct. 1835 (2001). NCA's position on its very face--that a statutory limitation of attorney fees (which is a statutory created remedy in the first place) works as an unconstitutional court barrier–makes little sense. Not surprisingly, therefore, the federal courts have uniformly upheld attorney fee limits in a variety of contexts.

Indeed, in Walters v. National Association of Radiation Survivors, 473 U.S. 305, 105 S.Ct. 3180 (1985), the United States Supreme Court held that a civil war era $10 limit on attorney fees provided in section 3404 of the Veterans' Benefits Act did not result in a denial of due process under the Fifth Amendment or restrict claimants' First Amendment right to access to the courts. Like here, the plaintiffs alleged that the fee limitation provision of § 3404 denied them any realistic

opportunity to obtain legal representation in presenting their claims to the Veterans Administration ("VA"). Id. at 308, 105 S.Ct. at 3183. The Walters Court began by noting the heavy presumption of constitutionality to which a "carefully considered decision of a coequal and representative branch of our Government" is entitled. Id. at 319, 105 S.Ct. at 3188. The Court held that the First Amendment interest is "primarily the individual interest in best prosecuting a claim" and found that there were sufficient due process safeguards to meet constitutional muster under Due Process Clause and First Amendment analysis. The Court even assumed that the fee limitation would make attorneys unavailable to these claimants, but nevertheless upheld the statute against constitutional attack because attorneys were not essential to vindicate the claims in the specific VA system.

Beyond the Walters case, the federal courts by and large have already considered the issue of whether a limitation to the recovery of fees allowed for by separate legislation imposes an undue restriction on access to the courts or puts in place an arbitrary and capricious classification. These cases addressing this issue have arose since 1997 when Congress passed the Prisoner Litigation Reform Act ("PLRA"). Section 1997e(d)(2) of the PLRA provides that whenever a monetary judgment is awarded in an action brought by a person confined in jail or in prison at time of filing that "a portion of the judgment (not to exceed 25 percent) shall be

applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant." The Supreme Court interprets this provision to mean that "district courts must apply as much of the judgment as necessary, up to 25%, to satisfy an award of attorney's fees." Murphy v. Smith, —— U.S. ——, 138 S.Ct. 784, 790 (2018).

While recognizing that this provision treats prisoner civil rights litigants differently from all other civil rights litigants, similar to NCA's allegation here, the federal courts of appeal have uniformly held that this cap on attorney's fees awarded to meritorious prisoner claims prosecuted by licensed attorneys passes constitutional muster.[2] As such, "[e]very circuit court to confront the question

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[2] See e.g., Madrid v. Gomez, 190 F.3d 990, 995-96 (9th Cir. 1999) (rejecting argument that strict scrutiny applies due to right of access to the courts and stating "[u]nder [the] minimal [rational basis] standard "the PLRA certainly passes constitutional muster . . . to curtail frivolous prisoners' suits and to minimize the costs–which are borne by taxpayers–associated with those suits"); Boivin v. Black, 225 F.3d 36, 41-46 (1st Cir. 2000) (holding that the PLRA attorney fee cap does not deny prisoners access to the courts and conceivably may discourage prisoners and their counsel from filing frivolous claims to satisfy rational basis review); Walker v. Bain, 257 F.3d 660, 669-70 (6th Cir. 2001) (concluding that §1997e(d)(2) survives rational basis review), cert. denied, 535 U.S. 1095 (2002); Foulk v. Charrier, 262 F.3d 687, 704 (8th Cir. 2001) (stating "PLRA's attorney's fees cap passes constitutional muster"); Jackson v. State Bd. of Pardons and Paroles, 331 F.3d 790, 797-98 (11th Cir. 2003) (stating that the plaintiff failed to negate every conceivable basis that might support §1997e(d)(2) of the PLRA and so the provision passes rational basis review); Johnson v. Daley, 339 F.3d 582,

agrees that Congress's limitations on prisoners' ability to recover attorney's fees satisfy rational basis scrutiny." Jordanoff v. Coffey, 2018 WL 3371117 (W.D. Okl., July 10, 2018).

The esteemed Circuit Judge Frank H. Easterbrook of the Seventh Circuit, in the case of Johnson v. Daley, 339 F.3d 582 (7th Cir. 2003) (en banc), cogently addressed the reasonable competing equities in various approaches to awarding attorney fees and the reasonableness of the PLRA attorney fee cap. His rationale, writing for the *en banc* majority, by and large applies with equal force to the attorney fee limitation at issue. Judge Easterbrook stated:

587-97 (7th Cir. 2003) (en banc) (holding that the PLRA attorney fee restriction had a rational basis and did not violate equal protection or due process components of the Fourteenth Amendment); Robbins v. Chronister, 435 F.3d 1238, 1243-44 (10th Cir. 2006) (stating "even though one could argue that applying the PLRA cap to cases like this is not the most rational means for controlling litigation, such a result is certainly not outside the bounds of legitimate legislative compromise"); Parker v. Conway, 581 F.3d 198, 203 (3d. Cir. 2009) (" The PLRA fee caps rationally relate to the legitimate government objective of achieving uniformity in attorney's fee awards, as well as multiple other legitimate government objectives. Parker's equal protection challenge therefore fails."); Shepherd v. Goode, 662 F.3d 603, 609 (2d. Cir. 2011) ("But just as Congress was free to depart from the American Rule to create an incentive to pursue civil rights claims, it was also free to limit the incentive for prisoners pursuing dubious or low-value claims."); Wilkins v. Gaddy, 734 F.3d 344, 350 (4th Cir. 2013) ("But under the rational basis standard, Congress could have believed that the danger of frivolous, marginal, and trivial claims was real and that a legislative solution was required to equalize prisoner and non-prisoner litigants. And although the congruence between § 1997e(d)(2) and the goal of reducing meritless and insubstantial prisoner lawsuits may not be perfect, it does exist.").

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

Id. at 591, 595-96, 597 (internal citations omitted).

NCA makes all the same arguments in this context that were universally rejected by the federal courts when holding that a specific limitation on recover of attorney fees did not deny a litigant meaningful access to the courts.

Moreover, severe limitation in the form of compensatory damage cap statutes do not result in a denial of access to the courts either. Like Nevada, pursuant to NRS 41.035, many jurisdictions impose damage limitation awards for claims against political subdivisions of the state and/or denial of recovery of punitive damages. The Nevada Supreme Court has on three occasions upheld the constitutionality of the compensatory damage limitation under NRS 41.035(1) to challenges under equal protection and due process (which tantamount to First Amendment challenges). See Martinez v. Maruszczak, 123 Nev. 433, 448-49, 168 P.3d 720, 730 (2007); Arnesano v. State, Department Transportation, 113 Nev. 815, 819, 942 P.2d 139, 142 (1997); State v. Silva, 86 Nev. 911, 916, 478 P.2d 591, 593 (1970).[3] While the Nevada Supreme Court has not specifically addressed a First Amendment challenge, compensatory damage cap statutes have also been

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

uniformly upheld to constitutional challenges that they impermissibly impair a litigant's right to access the court to obtain a full and complete remedy.[4]

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

NCA's implicit assertion that access to the courts is a fundamental right and any restriction or limitation on a litigant's access and remedies sought cannot stand absent a compelling state interest is flat wrong. If NCA's due process/equal protection argument was valid, every filing fee and filing deadline, every statute of limitations, every dismissal rule, as well as every limitation on recovery of damages, costs and fees would all have to be justified by a compelling state interest since failure to comply with them would result in some restriction on a plaintiff's access to the courts and available recovery. There is absolutely no absolute right of access to the courts and monetary recovery from the courts as NCA suggests.

The lone limitation at issue (based upon the 2019 legislation) is the limitation of the recovery of attorney fees for cases filed in Justice Court (having a value less than $15,000 and pertaining to a consumer debt contract) to "15 percent of the amount of the debt, excluding attorney's fees and collection costs." A.B. 477, sec. 18(1)(a). NCA has abjectly failed to identify any case law or make any reasoned argument that this de minimis limitation in the recovery of fees (a statutory created remedy in the first place) constitutes an unreasonable barrier to seek redress in court.

D. The Corporate Representation Rule Codified in LVJCR 16 Does Not Block Court Access.

NCA further has no legal basis to claim that the attorney representation rule for corporations deprives it access to the Justice Court. It is axiomatic that local governments simply have considerable discretion to place reasonable restrictions on litigants and lawyers rights to access courts of law without running afoul of First Amendment and Fourteenth Amendment rights. Leis v. Flynt, 439 U.S. 438, 442, 99 S.Ct. 698 (1979)("Since the founding of the Republic, the licensing and regulation of lawyers has been left exclusively to the States and the District of Columbia within their respective jurisdictions. The States prescribe the qualifications for admission to practice and the standards of professional conduct."). The Supreme Court indeed held long ago that "[a] State can require high standards of qualifications, such as good moral character or proficiency in its law, before it admits an application to the bar, "so long as any requirement has 'a rational connection with the applicant's fitness or capacity to practice law." of Schware v. Bd. of Bar Exam'rs of N.M., 353 U.S. 232, 239, 77 S.Ct. 752 (1957).

For example, the Ninth Circuit in Nat'l. Ass'n. for the Advancement of Multijurisdiction Practice v. Berch, 773 F.3d 1037, 1048 (9th Cir. 2014) upheld an Arizona law that only allowed admission on motion for licensed attorneys from

states that had a reciprocal bar admission rule (thereby permitting Arizona lawyers to appear in that state by motion). The court held that the rule did not unconstitutionally deny anyone access to the courts. The court noted that attorneys can access the Arizona courts so long as they are admitted by motion or pass the uniform bar exam. The restriction or limitation to do so did not go far enough to offend the First Amendment Id. Furthermore, the federal courts have reviewed a myriad of constitutional challenges involving regulations of lawyers that seek to appear in state courts and presume these regulations are reasonable and well within the state's purview.[5]

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

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

The myriad of cases that have upheld various state bar requirements to enable attorneys to practice law in state courts or regulations impacting attorney's freedom of association are analogous to NCA's attack on JCR 16--which requires corporations to make appearances in Justice Court through licensed attorneys. The incidental impact upon fundamental First Amendment rights is too insubstantial to trigger strict scrutiny.[6] The pertinent question here is not whether requiring

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[6] As the Supreme Court explained in Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447, 98 S.Ct. 1925 (1978) when upholding an anti-solicitation rule to a First Amendment attack, "[a] lawyer's procurement of remunerative employment is a subject only marginally affected with First Amendment concerns. It falls within the state's proper sphere of economic and professional regulation." Id. at 459.

corporations to appear through attorneys in Justice Court impacts the fundamental right of having access to the courts. The pertinent question is instead whether there is a fundamental right for a corporation to appear in a court *pro se* or without being represented by a licensed lawyer or whether the rule places a "severe burden" on access to the court. It clearly does not.

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

The rule requiring corporations to appear in Justice Court through counsel no more impairs fundamental right of court access than does the rules of ethics, payment of filing fees and limitation periods impair upon an attorney's or a litigants right to have access to a court. The Justice Court has cited numerous

cases setting forth the reasonably and widely accepted ethical reasons that requires licensed lawyers in good standing to represent corporations. The Nevada Supreme Court regulations of the practice of law are of course constitutional and the resulting restrictions do not rise to the level of denial of access for either lawyers or litigants. The requirement that corporations appear through duly licensed lawyers is of course no different. Because JCR 16 regulates only corporations making appearances in Justice Court through licensed attorneys and does not close the courthouse doors to corporations or limit what they can or cannot say or claim, Rule 16 does not conflict with the First Amendment or substantially burden any fundamental right.

The bottom line is NCA has the same right of every other corporate litigant to prosecute claims in the Las Vegas Justice Court. It must simply comply with Nevada rules of ethics and the well-established law from American jurisprudence to have an attorney make appearances and submit documents and so that there is reasonable and ethical accountability under Rule 11. The inability to appear *pro se* is no more a denial of access to the courts than not being allowed to appear through an unlicensed or disbarred lawyer denies a litigant constitutional access.

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E. The Justice Court Provided NCA Reasonable Court Access.

In sum, the Justice Court has not denied NCA "a reasonably adequate opportunity to present" their case to the Justice Court. Lewis v. Casey, 518 U.S. 343, 351, 116 S.Ct. 2174 (1995). NCA is simply not barred from filing cases in Justice Court and the rule also does not limit access to the court based upon any class based distinction or impose speech content limitations. Instead, the rule merely restricts the manner corporations can appear in court to obtain a remedy from the court. This long-standing requirement does not fall short of the constitutional line.

II. NCA Did Not Suffer an Actual Injury Arising from a Meritorious Claim to Be Denied Access to the Courts.

The district court correctly held that NCA failed to allege that it was deprived of an actual injury relating to a specific case before the Justice Court to facially state a plausible claim for denial of access to the courts. The United States Supreme Court reaffirmed that a constitutional prerequisite for a denial of access to the courts claims is an "actual injury" suffered by the §1983 plaintiff. See Lewis, 518 U.S. at 351-52, 116 S. Ct. At 2180 (holding to have standing to assert a claim of denial of access to the courts a plaintiff must show an "actual injury"); Christopher v. Harbury, 536 U.S. 403, 122 S.Ct. 2179 (2002) (dismissing

complaint because the plaintiff did not allege facts that the defendant's misconduct caused her to lose a 'nonfrivolous' or 'arguable' claim for which she has no comparable remedy through a future suit). To show an actual injury, the litigant thus must show that his pursuit of a legal claim was hindered or prevented. See Id. An actual injury depriving a litigant of access to the courts only exists if the party alleges and demonstrates that a non-frivolous legal claim has been frustrated or has been impeded. Lewis, 518 U.S. at 353, 116 S. Ct. at 2181. NCA further failed to allege the Justice Court proximately caused the alleged violation of NCA's rights, "[t]he touchstone ... [for which] is foreseeability." Phillips v. Hust, 477 F.3d 1070, 1077 (9th Cir. 2007). The failure to set forth an actual injury relating to a specific claim adjudicated by the Justice Court is fatal to the cause of action pled against the Justice Court.

First, NCA's alleged theory of recovery generally finds no shelter under the Fourteenth Amendment as alleged in the FAC. [JA7 1105-08]. The First Amendment guarantees the right to "petition the Government for a redress of grievances." U.S. Const. amend. I. It is well settled that the right to access to the courts is subsumed within the right to petition. See Bill Johnson's Rests., Inc. v. N.L.R.B, 461 U.S. 731, 741, 103 S.Ct. 2361 (1983). Thus, meaningful access to the courts is guaranteed by the Constitution, see Barnett v. Centoni, 31 F.3d 813,

815 (9th Cir. 1994), however, it "is subsumed under the First Amendment right to petition the government for redress of grievances." Sorranno's Gasco, Inc. v. Morgan, 874 F.2d 1310, 1314 (9th Cir. 1989). NCA has thus not pled a viable claim for relief for a violation of the Substantive Due Process Clause of the Fourteenth Amendment.

Regardless, NCA has not pled facts stating that it was denied specific relief in an actual case to state a cognizable denial of access claim regardless of the source of the right. "[A]ccess to the courts means the opportunity to prepare, serve and file whatever pleadings or other documents are necessary or appropriate in order to commence or prosecute court proceedings affecting one's personal liberty [or property rights]." Lewis, 518 U.S. at 384, 116 S.Ct. 2174. The Supreme Court in the case of Christopher v. Harbury, supra explained that to demonstrate actual injury for the purposes of an access to courts claim, "the underlying cause of action and its lost remedy must be addressed by allegations in the complaint sufficient to give fair notice to a defendant" and must be "described well enough to apply the 'nonfrivolous' test and show that the 'arguable' nature of the underlying claim is more than hope." Thus, a claim for violation of this right accrues only when and if plaintiff suffers an actual injury. Harbury, 536 U.S. at 415, 122 S.Ct. 2179; Lewis, 518 U.S. at 351, 354, 116 S.Ct. 2174. In other words,

a claim for deprivation of the constitutional right of access to the courts must allege both the underlying cause of action, whether that action is merely anticipated or already lost, and the official acts that frustrated the litigation. Harbury, 536 U.S. at 415–16, 122 S.Ct. 2179.

Claims for denial of access to the courts may arise from the frustration or hindrance of "a litigating opportunity yet to be gained" (forward-looking access claim) or from the loss of a meritorious suit that can not now be tried (backward-looking claim). Harbury, 536 U.S. at 412–415, 122 S.Ct. 2179. 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, 122 S.Ct. 2179.

In addition, under Harbury's second element, NCA must show that Justice Court Rule 16 frustrated NCA's attempt to present a specific and colorable claim for relief. In other words, as in any § 1983 case, NCA must show that the alleged violation of his rights was proximately caused by the Justice Court. See Crumpton v. Gates, 947 F.2d 1418, 1420 (9th Cir.1991); Harper v. City of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008). The touchstone of proximate cause in a § 1983 action is foreseeability. See Tahoe–Sierra Pres. Council, Inc. v. Tahoe Regional

Planning Agency, 216 F.3d 764, 784–85 (9th Cir.2000). Finally, the third element requires NCA show it has no other remedy than the relief available via this suit for denial of access to the courts. Phillips, 477 F.3d at 1078–79.

NCA has not alleged facts that fill the measure of a denial of access to the courts claim for relief pursuant to Section 1983. NCA's argument that it must now retain counsel for cases it chooses to file in the Las Vegas Justice Court, but is unable to recover all attorney fees paid to that counsel for some future suit, clearly falls short of the mark to show the foreseeable loss of an arguable underlying claim. Justice Court Rule 16, like the Nevada law it is predicated upon, existed long before the passage of the legislation NCA also contends is unconstitutional. The event that NCA alleges proximately caused it harm is thus the Nevada Legislature's passage of A.B. 477 in the 2019 legislative session. Hence, NCA has no plausible argument that the Justice Court frustrated a foreseeable meritorious claim belonging to NCA. The foreseeability requirement for an "actual injury" is clearly not met because the current Justice Court rule has been in existence for many years and so the Justice Court could not have engaged in foreseeable conduct that foreclosed a remedy possessed by NCA.

In addition, NCA has not alleged that it prevailed in an action in Justice Court and then had a motion for attorney fees denied. There is no actual injury.

NCA has alleged a speculative one, even assuming for purposes of argument that a Court denies constitutional access to the courts when limiting recovery of fees per statutory directive. The case of Delew v. Wagner, 143 F.3d 1219 (9th Cir. 1988) is illustrative on the point that NCA must plead facts of an actual injury that demonstrates it was denied a state court remedy in a specific case before having standing to pursue this federal claim. In Delew, the Ninth Circuit agreed with this Court's dismissal of the §1983 claims; however, the Court held that the dismissal would be without prejudice as premature "because the Delews' wrongful death action remains pending in state court, [and] it is impossible to determine" whether they had an ineffective state court remedy. Id. at 1223. The Court in doing so relied upon the reasoning in the case of Swekel v. City of River Rouge, 119 F.3d 1259 (6th Cir. 1997). In Swekel, the Sixth Circuit rejected an access to courts claim because the plaintiff had yet to file suit in state court: "Before filing an 'access to courts' claim, a plaintiff must make some attempt to gain access to the courts; otherwise, how is this court to assess whether such access was in fact 'effective' and 'meaningful'?" Id. at 1264; see also Lynch v. Barrett, 703 F.3d 1153, 1157 (10th Cir. 2013) (concluding denial-of-access claim ripened once plaintiff lost underlying lawsuit); Karim-Panahi v. Los Angeles Police Dept., 839 F.2d 621, 625 (9th Cir. 1988) (dismissing as unripe a § 1983 claim because

whether the plaintiff has a federally cognizable cover-up claim would depend on whether the plaintiff lost the pending state law suit and, thereafter, whether the plaintiff could show that the acts of the alleged cover-up defendants were causally connected with a failure to succeed in that lawsuit).

The FAC is barren of any allegations that NCA filed a meritorious action in the Las Vegas Justice Court. [JA7 1097-1111]. NCA has not alleged that it obtained a judgment in that case. NCA further has not alleged that it moved and prevailed on a motion for attorney fees and NCA has not alleged that the awarded amount was so markedly reduced to what it was entitled to obtain that it rendered NCA's access to the courts wholly ineffective. NCA has thus failed to allege an actual injury and so, at a very minimum, the claim for denial of access to the courts is not ripe and should be dismissed without prejudice.

There are thus no facts pled suggesting the Justice Court frustrated an underlying claim possessed by NCA and in doing so caused NCA to be wholly denied seeking relief in a subsequent action. The first and only cause of action against the Justice Court hence could not withstand Rule 12(b)(5) scrutiny. Therefore, the district court correctly dismissed the denial of court access claim against the Justice Court with prejudice.

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III. The Justice Court Did Not Deny NCA Equal Protection under the Law.

NCA failed to allege that it was subject to arbitrary and capricious treatment as a result of some identifiable class membership to prevail on a claim under the Equal Protection Clause of the Fourteenth Amendment. JCR 16 does not unduly infringe any identified fundamental right, and is thus subject to only a rational basis type of review. See Romer v. Evans, 517 U.S. 620, 631–32, 116 S.Ct. 1620 (1996). Accordingly, to establish a denial of equal protection, NCA faces a heavy burden and must allege that the Justice Court intentionally discriminated against it on the basis of class and the Justice Court's actions were not rationally related to any legitimate state interest. See Village of Belle Terre v. Boraas, 416 U.S. 1, 7-8, 94 S.Ct. 1536, 1540-41 (1974). NCA in doing so must further allege facts of differential treatment from a similarly situated class. See Washington v. Davis, 426 U.S. 229, 239, 96 S.Ct. 2040 (1976).

The Fourteenth Amendment's Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 439, 105 S.Ct. 3249 (1985). A plaintiff generally alleges a violation of the Equal Protection Clause by asserting that they are a member of a class made up of similarly-situated individuals and that defendants intentionally acted in a way that infringes on the

constitutional rights of the class as opposed to others, resulting in disparate treatment. Lee v. City of Los Angeles, 250 F.3d 668, 686 (9th Cir. 2001). For all equal protection claims, it is necessary to first identify the class of group being discriminated against. See Squaw Valley Dev. Co. v. Goldberg, 375 F.3d 936, 949 (9th Cir. 2004).

First, there is no allegation in the FAC to infer that NCA was treated differently when being compared to a similarly situated party. Gerhart v. Lake County, Mont., 637 F.3d 1013, 1022 (9th Cir.), cert. denied, 565 U.S. 881, 132 S.Ct. 249 (2011). To state a claim for relief under the equal protection clause, a plaintiff must first allege "that two or more classifications of similarly situated persons were treated differently." Gallegos–Hernandez v. United States, 688 F.3d 190, 195 (5th Cir. 2012). Thus, the "[d]issimilar treatment of dissimilarly situated persons does not violate equal protection." Klinger v. Department of Corrections, 31 F.3d 727, 731 (8th Cir. 1994). The threshold inquiry in evaluating an equal protection claim is "to determine whether a person is similarly situated to those persons who allegedly received favorable treatment." United States v. Whiton, 48 F.3d 356, 358 (8th Cir. 1995); see also Kawaoka v. City of Arroyo Grande, 17 F.3d 1227, 1240-41 (9th Cir. 1994) (holding that owners of agricultural property

did not establish equal protection claim by alleging that they were treated differently from owners of nonagricultural property).

Second, JCR 16 (as well as A.B. 477) are presumed valid. Rational basis (or minimal) review is "a paradigm of judicial restraint" and "is not a license for courts to judge the wisdom, fairness, or logic of legislative choices." F.C.C. v. Beach Commc'ns. Inc., 508 U.S. 307, 313-14, 113 S.Ct. 2096 (1993); see also TriHealth, Inc. v. Bd. of Comm'rs, Hamilton Cty., 430 F.3d 783, 791 (6th Cir. 2005). "Nor does it authorize the judiciary [to] sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines." Heller v. Doe, 509 U.S. 312, 319, 113 S.Ct. 2637 (1993). The Justice Court's action must be upheld if there is "any reasonably conceivable state of facts that could provide a rational basis." Beach Comm., 508 U.S. at 313, 113 S.Ct. 2096. The corporate representation rule codified in JCR 16 "must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." Id. at 313, 113 S.Ct. 2096.

Further, "a legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data". Id. at 315, 113 S.Ct. 2096. State action "is not subject to courtroom fact-finding

and may be based on rational speculation unsupported by evidence or empirical data." RUI One Corp. v. City of Berkeley, 371 F.3d 1137, 1155 (9th Cir. 2004). NCA 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); see also U.S. R.R. Board v. Fritz, 449 U.S. 166, 179, 101 S.Ct. 453, 461 (1980) ("[i]t is well-settled under rational basis scrutiny that the reviewing court may hypothesize the legislative purpose behind legislative action"); Shaw v. Oregon Public Employees' Ret. Board, 887 F.2d 947, 948–49 (9th Cir.1989) (stating a court applying rational basis review may "go so far as to hypothesize about potential motivations of the legislature, in order to find a legitimate government interest sufficient to justify the challenged provision"). NCA certainly has not in this case negated all the conceivable rationale regarding the corporate representation rule or, for that matter, the consumer protection rationale for A.B. 477. See Sec. 3 (stating "[t]he purpose of this chapter is to protect consumers").

This is an uphill climb. "It is emphatically not the function of the judiciary to sit as a super-legislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines." Van Der Linde Housing, Inc. v. Rivanna Solid Waste

Authority, 507 F.3d 290, 293 (4th Cir. 2007).Our "Constitution presumes that ... improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted." TriHealth, Inc, 430 F.3d at 791.

JCR 16 (even working in tandem with A.B. 477) plainly satisfies rational basis review and therefore does not transgress the Equal Protection Clause. NCA's argument about how the reduction in attorney fees unfairly reduces the value of a judgment it can obtain in Justice Court when compared to other litigants utterly misses the point when it comes to the rational review analysis. Under rational-basis review, a court is required to "accept a legislature's generalizations even when there is an imperfect fit between means and ends. State action does not fail rational-basis review "because it is not made with mathematical nicety or because in practice it results in some inequality." Beach Comm., 508 U.S. at 521, 113 S.Ct. 2096. Hence, "the question is whether [the rule and/or act] bears some rational relationship to a legitimate state purpose, not whether some inequality results." Jesuit College Preparatory School v. Judy, 231 F.Supp.2d 520, 534 (N.D. Tex. 2002). NCA's prolix argument that splits hairs about how the fee limitation imposed upon it is unfair and how when compared to other litigants the scope of the limitation is unreasonable is of no constitutional consequence. "Laws

frequently classify persons with consequences that advantage some and disadvantage[] others." Schmidt v. Ramsey, 860 F.3d 1038, 1047 (8th Cir. 2017). This Court must uphold JCR 16 and/or the legislative enactment (or classification) so long as it "bears a rational relation to some legitimate end." Romer, 517 U.S. at 631, 116 S.Ct. 1620. This means that the Court must not "strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought." Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483, 488, 75 S.Ct. 461 (1955).

This distinct body of case law certainly illuminates the constitutional issue in this case regarding whether NCA has stated a viable claim against the Justice Court. There is no legal doubt that rational basis scrutiny applies to NCA's novel claim that, in concert together, a judicial act (JCR 16) and a legislative act (the attorney fee limitation of Section 18 of A.B. 477) impose a class-based burden on NCA. NCA does not suggest, nor could it, that the court rule requiring corporate litigants to conduct themselves through duly licensed attorneys agents rests on sound public policy. NCA also cannot eviscerate all economic benefits derived from limiting some consumer debt litigation and protecting consumers from the economic bondage that comes with adding substantial attorney fees, costs and interests on a consumer debt.

NCA has clearly not negated all rationale (stated and hypothetical) to establish that the Justice Court acted arbitrarily and capriciously. The district court aptly found in the FAC and the briefing below the lack of a systematic negation of all the stated and conceivable reasons one could rationally believe warrants corporations to be represented by lawyers when making appearances in the Justice Court. NCA (while articulating why it thinks the sting of the fee limitation is more painful to it than other litigants) has likewise been unable to put down all conceivable basis as to why the Nevada legislature imposed the fee cap for consumer debt cases.

Therefore, NCA stated no claim of a constitutional dimension against the Justice Court because both the economic legislation (A.B. 477) and the court legal ethics rule (JCR 16) arguably do some things that are useful. This Court can find now that these governmental regulations singularly, and collectively if need be, satisfy deferential rational basis scrutiny. The district court's decision dismissing the equal protection claim must then be affirmed.

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

NCA has failed to state a viable claim for relief against the Justice Court because NCA only brought suit against it for enacting a rule that is merely a

reiteration of controlling state law. It is axiomatic that the Justice Court owes no constitutional duty to revoke JCR 16 and permit NCA to appear without counsel of record on a case in violation of controlling and well-established case law.

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

The rule of law regarding the requirement of a corporation to be represented by a licensed attorney in the courts is beyond dispute. The U.S. Supreme Court has always followed the common law on this point of doctrine. See Rowland v. California Men's Colony, 506 U.S. 194, 201–02, 113 S.Ct. 716 (1993) ("It has been the law for the better part of two centuries ... that a corporation may appear in the federal courts only through licensed counsel."). As fictional legal entities,

corporations and partnerships cannot appear for themselves personally. Sw. Express Co. v. Interstate Commerce Comm'n, 670 F.2d 53, 55 (5th Cir.1982) (per curiam). Their only proper representative is a licensed attorney, "not an unlicensed layman regardless of how close his association with the partnership or corporation." Id. at 56; see also Balbach v. United States, 119 Fed.Cl. 681, 683 (2015) ("A pro se plaintiff cannot represent a corporation ... The Court cannot waive this rule, even for cases of severe financial hardship.").

This Court accordingly has consistently held 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, e.g., In re: Discipline of Schaefer, 117 Nev. 496, 509 (2001) (applying this rule and concluding that "a principal who appears on behalf of his corporation is clearly acting in his capacity as a lawyer representing a client, not as a principal of the corporation"); Guerin v. Guerin, 116 Nev. 210, 214, 993 P.2d 1256 (2000) (applying this rule and recognizing that a proper person is not permitted to represent an entity such as a trust); Sunde v. Contel of California, 112 Nev. 541, 542, 915 P.2d 298 (1996) ("Non-lawyers generally may not represent another person or an entity in a court of law"); id. at 542-43 (recognizing that the Supreme Court of Nevada has consistently required attorneys to represent other persons and entities in court);

Salman v. Newell, 110 Nev. 1333, 1335, 885 P.2d 607 (1994) (stating that "[n]either a corporation nor a trust may proceed in proper person").

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

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

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

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

Clearly, the Nevada Supreme Court stood on firm legal ground each and every time it held that a corporation cannot represent itself in Nevada courts. The

Justice Court in turn appropriately followed that law when enacting and publishing a rule in accordance with that law. NCA 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 NCA's suit by virtue of quasi-judicial immunity for following the extant law announced by the Nevada Supreme Court.

NCA contends that courts have struck down local rules of courts on constitutional grounds and sot there is no immunity. The Justice Court, however, never argued that NCA has not stated a claim because enacting local rules is a function of judicial immunity. Rather the clear argument set forth in the court below and the brief above is that the content of that particular local rule, JCR 16, is simply a reiteration of clear and controlling law not only in Nevada, but federal law as well. NCA has no claim that the Justice Court must ignore controlling law and allow it to appear without representation in Justice Court. Accordingly, NCA's principal argument to oppose dismissal on this basis does nothing more than topple a straw men argument and is simply impertinent to the issue.

The district court properly dismissed with prejudice NCA's Section 983 claim because NCA did not pierce the Justice Court's immunity from suit. The Court should affirm on this independent basis as well.

V. The District Court Did Not Abuse Its Discretion By Denying NCA's Motion for a Preliminary Injunction.

NCA failed to demonstrate that the district court committed a clear error of judgement when it denied the motion for preliminary injunction. NCA did not show that it had a likelihood of success on the merits and that it would suffer irreparable harm unless the district court stayed enforcement of JCR 16.

A preliminary injunction is only available if an applicant can show, with substantial evidence, a likelihood of success on the merits and a reasonable probability that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is an inadequate remedy. Shores v. Global Experience Specialists, Inc., 134 Nev. 503, 507, 422 P.3d 1238, 1242 (2018); Pickett v. Comanche Construction, Inc., 108 Nev. 422, 426, 836 P.2d 42, 44 (1992). A central factor to be considered is whether the party seeking the injunction has shown a reasonable probability of success on the merits. E.G. Sobol v. Capital Management Consultants, Inc., 102 Nev. 444, 726 P.2d 335 (1986). Indeed, the party seeking the injunction must make a "persuasive showing of irreparable harm...," and must further show a "substantial likelihood that it will prevail on the merits of the underlying action." Clark Pacific v. Krump Construction, Inc., 942 F. Supp 1324, 1346-1347 (D. Nev. 1996). Given this

differential standard, "a trial court should sustain discretionary action of a government body, absent an abuse thereof, to the same extent that an appellant court upholds the discretionary action of a trial court." Urban Renewal Agency v. Iacometti, 79 Nev. 113, 118, 379 P.2d 466, 468 (1963). If a discretionary act is supported by substantial evidence, then by definition there is no abuse of discretion. City Council, Reno v. Travelers Hotel, 100 Nev. 436, 439, 683 P.2d 960, 961-62 (1984). This Court has held that "the essence of the abuse of discretion, of the arbitrariness and capricious of a governmental action . . ., is most often found in an apparent absence of any grounds or reasons for the decision." City Council v. Irvine, 102 Nev. 277, 280, 721 P.2d 371, 372-373 (1986).

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

In Winter v. Natural Resources Defense Council, Inc., the U.S. Supreme announced a four-part conjuctive test that a party seeking a preliminary injunction must satisfy. 555 U.S. 7, 20, 129 S.Ct. 365 (2008). Under the Winter test, the moving party must establish that: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) an injunction is in the public interest. Id. All four elements must be satisfied. See, e.g., hiQ Labs v. LinkedIn Corp., 938 F.3d 985, 992 (9th Cir. 2019).

First, NCA has not alleged a tenable denial of court access claim simply because it must (like all other litigants in all cases filed in all Nevada courts save those filed in small claims court) be represented, as a corporation, by a Nevada licensed attorney. JCR 16 only incidentally affects First Amendment and due process rights and is not scrutinized by a compelling state interest standard, but a rationale one aligned with standards set by the U.S. Supreme Court related to access to the courts claims. The rule requiring corporations to appear in Justice Court through counsel no more impairs fundamental right of court access than does the rules of ethics impair upon an attorney's or a litigants right to have access to a court. NCA's argument that the limitation on attorney fees that it can recover in Justice Court cases, which was imposed by a recent statute passed by the

Nevada legislative branch, also does not rise to an unconstitutional denial of access to the courts. Moreover, NCA's argument concerning the propriety of the rule requiring attorney representation is, in reality, an argument to set aside the common law, well established federal law and several controlling cases decided by the Nevada Supreme Court. The Justice Court is immune from the claim, therefore, because NCA seeks to impose liability against the Justice Court for following controlling law from the courts of last resort in the State of Nevada as well as the United States.

NCA has not alleged facts that establish the necessary elements of a denial of any right it possesses pursuant to the First Amendment to have meaningful access to the courts. The FAC is barren of any allegation that the Justice Court foreseeably caused NCA to lose any remedy it would have otherwise been entitled to in the Las Vegas Justice Court in a particular case. [JA7 1097-1111]. NCA did not allege that it so suffered an "actual injury" in the FAC and failed to establish it did so in the opening brief.

Second, NCA failed to demonstrate that it would suffer irreparable harm without an injunction against the Justice Court being put in place during pendency of this litigation. NCA did even alleged facts that it was actually denied recovery of payment of any attorney fees it expended during the course of obtaining a

judgment in the Justice Court. [JA7 1097-1111]. Further, NCA's claim is that it must have complete reimbursement of any money it pays for legal representation to obtain a judgment in Justice Court or it is denied its right to access to the courts. This claim, by definition, is one for monetary relief only.

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

The rule serves Nevada's well-established interest in regulating litigant's and attorney's conduct and promoting ethical behavior and independence among members of the legal profession. See Ohralik, 436 U.S. at 456, 98 S.Ct. 1925. Membership and good standing of attorneys in the Nevada Bar provides the Justice Court with assurance that the knowledge, character, moral integrity and

fitness of counsel of record representing corporate entities have been approved after investigation. Giannini, 911 F.2d at 360; Russell v. Hug, 275 F.3d 812, 820 (9th Cir. 2002) (holding that district courts may rely on the infrastructure provided by state bar associations in meeting their own needs for monitoring attorney admission and practice in the federal courts and finding that the pertinent rule served rationale state interests).

The Justice Court clearly has significant interests in the continued efficacy of JCR 16 as codifying well-settled American jurisprudence regarding corporate legal representation in the courts of the United States. Any incidental infringement of NCA's right to pursue a grievance and, specifically, obtain attorney fees with a Justice Court judgment is far inferior upon balance.

The fourth factor weighs heavily in favor of the Justice Court as well. Whereas the balance of equities focuses on the parties, "[t]he public interest inquiry primarily addresses impact on non-parties rather than parties," and takes into consideration "the public consequences in employing the extraordinary remedy of injunction." Bernhardt v. Los Angeles Cty., 339 F.3d 920, 931–32 (9th Cir. 2003). The public has an interest in upholding corporation legal representation rules and also permitting only licensed attorneys without disciplinary suspensions or disbarments from appearing and making arguments in

the Justice Court. Any injunction suspending or limiting the efficacy of JCR 16 undermines the public's confidence in the judiciary and in the legal community. It will further potentially subject litigants to litigation conduct that is neither civil nor ethical. The public's interest in the continued enforcement of JCR 16 is clearly paramount to any interest of NCA.

CONCLUSION

This Court should affirm the district court order granting Justice Court's motion to dismiss with prejudice because the Justice Court did not bar NCA access to the court or take arbitrary or capricious adverse action against NCA. The district court further did not abuse its discretion when denying NCA's motion for a preliminary injunction to stay enforcement of JCR 16.

DATED this 8th day of November, 2021.

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with:

___ 1. Pursuant to the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has:

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3. Finally, I hereby certify that I have read this Answering Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every

assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATE 11/08/21 /s/ Thomas D. Dillard

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 8th day of November, 2021, I served the above **RESPONDENT JUSTICE COURT OF LAS VEGAS TOWNSHIP'S ANSWERING BRIEF** through the Court's electronic service system (or, if necessary, by U.S. Mail, first class, postage pre-paid), upon the following:

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