

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

NEVADA COLLECTORS  
ASSOCIATION, a Nevada non-profit  
corporation,

Appellant,

vs.

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,

Respondents.

No. 81930

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**AMICUS BRIEF OF THE  
Legal Aid Center OF SOUTHERN NEVADA, INC.  
(In Support of Respondents)**

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## **NRAP 26.1 DISCLOSURE**

The undersigned counsel of record hereby certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order for this court to evaluate possible disqualification or recusal.

The Legal Aid Center of Southern Nevada, Inc., is a 501(c)(3) nonprofit corporation. Legal Aid Center of Southern Nevada, Inc., is not owned in whole or in part by a publicly traded company.

Attorneys Therese M. Shanks, Esq., of Fennemore Craig, P.C., and Keren Gesund, Esq., of Gesund & Pailet, LLC, have appeared as pro bono counsel for Legal Aid of Southern Nevada, Inc., in this case.

Dated this 15<sup>th</sup> day of November, 2021.

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## **INTEREST OF Legal Aid Center OF SOUTHERN NEVADA, INC.**

Amicus Curiae Legal Aid Center of Southern Nevada, Inc. (“Legal Aid Center”), is a private, non-profit 501(c)(3) corporation dedicated to the preservation of access to justice and the provision of quality legal counsel, advice and representation for individuals who are unable to protect their rights because they cannot afford an attorney. To fulfill its mission, Legal Aid Center provides free legal counsel to qualified, low-income individuals who otherwise would not be able to retain an attorney.

Legal Aid Center has considerable experience assisting low-income Nevadans who are defending against consumer debt collection actions in Nevada’s courts. Legal Aid Center participated extensively in the legislative process of A.B. 477, the bill being challenged before this Court by Appellant. Because of this experience and history, Legal Aid Center is in the unique position to inform this Court of the history of A.B. 477, and the policy considerations which resulted in its enactment. This Court’s decision in this appeal will have profound implications on Legal Aid Center’s low-income clients, as well as all Nevadans.

Legal Aid Center submits this amicus brief in support of Respondents. Legal Aid Center’s brief will not address the ultimate constitutional implications of A.B. 477 that give rise to this appeal. Instead, Legal Aid Center’s brief will provide this

Court with the history of A.B. 477, and the legal, policy and statistical considerations upon which it is based.

Legal Aid Center has given authority to Fennemore Craig, P.C. and Gesund & Pailet, LLC to file this brief on behalf of Legal Aid Center. Peter Goatz, Esq. is an attorney with Legal Aid Center, and has the authority to file an appeal or authorize counsel to appear on behalf of Legal Aid Center.

### **SUMMARY OF THE ARGUMENT**

A.B. 477, now codified in NRS Chapter 97B, was enacted to end the cycle of debt consumers frequently find themselves trapped in due to collection efforts on consumer form contracts that provided for high interest rates and disproportionate attorney fee awards years after the consumer defaulted on the underlying debt. A.B. 477 protects consumers in two main ways.

First, it places reasonable limitations on the interest an entity can charge and collect after default. Consistent with the approach taken by many other jurisdictions, A.B. 477 does not limit the amount of interest that can be charged prior to default. Instead, post-default, when a consumer form contract contains an interest rate, the amount of prejudgment interest is limited to the lesser of (a) the accrued interest at the rate stated in the consumer form contract from the day the action to collect the debt is filed, or (b) one hundred eighty days of interest at the rate stated in the consumer form contract. Post-judgment interest is limited to the lesser of (a) the rate

of interest in the contract or (b) the rate of interest established by the Commissioner of Financial Institutions pursuant to NRS 99.040.

Second, A.B. 477 constitutionally limits the attorney's fees that an entity can charge when collecting a debt based upon a consumer form contract to 15 percent of the underlying debt. A.B. 477's 15 percent limitation is modeled after Section 2.507(2) of the Uniform Credit Consumer Protection Act, which has been adopted by many other jurisdictions and which has never been found unconstitutional. The limitation imposed by A.B. 477 conforms to Nevada's long standing policies of the American rule, which does not allow a litigant an automatic right to attorney's fees in courts. The limitation also conforms to proportionality in fee awards in the courts which decide cases of smaller jurisdictional amounts. For example, attorney's fees are not recoverable in small claims court.

Finally, although A.B. 477 excludes certain entities from its provisions, it does so because those entities are either regulated by other statutory chapters, or because those entities are not the ones charging the high interest rates and collecting the disproportionate fee awards that A.B. 477 was enacted to prevent. Many other consumer protection acts apply only to debt collectors and not creditors, for these same reasons. The most notable is the Federal Fair Debt Collections Practices Act, which has consistently been upheld as constitutional despite its disparate treatment of creditors and debt collectors.



Invalidating A.B. 477 will adversely affect consumers by thrusting them back into the cyclical debt that A.B. 477 was enacted to prevent. Accordingly, Legal Aid Center requests that this Court uphold A.B. 477.

## **ARGUMENT**

### **I. OVERVIEW**

Legal Aid Center provides free legal services, advice and representation to consumers who are adversely affected by debt collection practices. Legal Aid Center's have personally observed the detrimental effect upon Nevadans of consumer form contracts that provide for high interest rates and disproportionate attorney fee awards years after the consumer has defaulted on the debt. *See Hearing on A.B. 477 before Assem. Comm. on Commerce & Labor*, 80<sup>th</sup> Reg. Sess. (Apr. 3, 2019). These consumers are frequently trapped in a cycle of debt from which they cannot escape.

A.B. 477, now codified as NRS Chapter 97B, places reasonable limitations on the interest an entity can charge and collect after default. *See* NRS 97B.150. It also constitutionally limits the attorney's fees that an entity can charge. *See* NRS 97B.160. These two provisions allow a consumer to make progress on the repayment of the outstanding amounts and break the cycle of debt. Invalidating A.B. 477 will adversely affect consumers by thrusting them back into the cyclical debt that A.B. 477 was enacted to prevent.

## II. A MATTER OF INTEREST: NRS 97B.150

Prior to the Legislature’s enactment of A.B. 477, Nevada law did not limit the rate of interest established in consumer form contracts.<sup>1</sup> As a result, entities could create contracts setting high rates of interest, and including compounding of that interest.<sup>2</sup> While most parties to contracts are free to negotiate the terms of those agreements, consumer credit agreements are generally recognized as adhesion contracts. *See DIRECTV, Inc. v. Imburgia*, 577 US. 47, 69-70 (2015) (Ginsburg, dissenting) (noting that the most common forms of “adhesion contracts” are those “involving securities accounts, credit cards, mobile phones, car rentals, and many other social amenities and necessities”).

Adhesion credit agreements typically apply variable interest rates,<sup>3</sup> undefined collection fees and attorney’s fees/costs provisions. The interest rate in a consumer form contract applied not only during the duration of the agreement, but also beyond the date of performance. Thus, when a consumer defaulted upon a debt, interest continued to accrue after default up until the debt was collected. This was

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<sup>1</sup> “Consumer Form Contract” is defined at NRS 97B.070.

<sup>2</sup> In the absence of contractual provisions establishing an interest rate, the interest rate is set by the Commissioner of Financial Institutions at a rate equal to the prime rate of interest at the largest bank in Nevada plus 2%. NRS 99.040(1).

<sup>3</sup> Common interest rates for credit card agreement range between prime plus 14%-24% or more. Not only does the prime rate fluctuate but creditors may increase their own rate after notice to the consumer. *See Chase Bank USA, N.A. v. McCoy*, 562 U.S. 195, 197 (2011); 12 CFR §226.9.

particularly problematic when an entity obtained a judgment but waited several years to collect, thus allowing interest to continue to accrue well beyond the period when a lay person would expect a debt to continue to increase.

While consumers might understand that they have entered into an agreement to pay for a used car over a three year period at an interest rate of 29%, many consumers do not understand that this interest may continue to compound for many years after the vehicle is repossessed after their default. A common scenario that Legal Aid Center witnesses is when a consumer buys a car on the terms described above and the car breaks down after one year. Unfortunately, the consumer cannot afford both to repair the car and keep making their monthly payments. After the consumer defaults under the agreement, the car is repossessed and sold at a deficiency. The consumer's debt is then sold to a debt buyer, which sits on the debt for up to four years after the original default. During this period, the interest is still accruing at 29%, which effectively doubles the debt over a three-year period. The debt buyer then files a lawsuit against the consumer and obtains a judgment for the deficiency plus the interest at 29% (and attorney fees and costs). This judgment is collected by garnishment of the consumer's wages. Because Nevada law limits garnishment to a percentage of the weekly wages, *see* NRS 31.295(2), garnishment does not expeditiously pay down the debt. During the garnishment period, interest continues to accrue at 29%, and the debt amount may continue to increase or may

only slightly decrease. Since judgments can be renewed every six years until paid, this effectively places the consumer on a perpetual debt treadmill.

During the legislative process for A.B. 477, Legal Aid Center analyzed the policy considerations underlying Nevada's pre and post-judgment interest statutes, as well as the approach taken in other jurisdictions. Post-default, prejudgment interest rates vary by jurisdictions, and many jurisdictions limit the interest rate to a fixed rate after default. This is because pre-judgment and post-judgment interest serve slightly different purposes. Prejudgment interest is intended to compensate a plaintiff for the lost opportunity to use the money between the time the claim accrues and the date of judgment. *Ramada Inns, Inc. v. Sharp*, 101 Nev. 824, 826, 711 P.2d 1, 2 (1985). In contrast, post-judgment interest merely serves to compensate the plaintiff for being unable to collect the compensation from the judgment. *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 835-36 (1990). Accordingly, many states limit the interest which may be collected post-judgment.

A.B. 477 struck a balance between these competing interests by calculating interest at the rate provided by what is now NRS 97B.150. A.B. 477 does not affect the amount of interest which may be charged prior to default. *See* NRS Chapter 97B. Post-default, when a consumer form contract contains an interest rate, the amount of prejudgment interest is limited to the lesser of (a) "the accrued interest at the rate stated in the consumer form contract from the day the action to collect the debt is

filed,” or (b) “[o]ne hundred eighty days of interest at the rate stated in the consumer form contract.” NRS 97B.150(3). Post-judgment interest is limited to the lesser of (a) the rate of interest in the contract or (b) the rate of interest established by the Commissioner of Financial Institutions pursuant to NRS 99.040. NRS 97B.150(4). A.B. 477 allows an entity to receive reasonable interest on a consumer form contract that is in default while still protecting a consumer from unreasonably high interest rates, resulting in a more manageable debt for the consumer to pay down. Invalidating NRS 97B.150 will negate the Legislature’s intent, and place consumers back onto the debt treadmill from which A.B. 477 sought to remove them.

### **III. THE FURTHEST EXTENT OF FEES: NRS 97B.160**

#### **A. NRS 97B.160’S PROVISIONS**

Consumer form contracts generally provide for an award of attorney’s fees against the consumer. In debt collection cases, Legal Aid Center and private counsel frequently see attorney’s fees requests that either meet or exceed, by multiples, the balance of the actual debt. These high fee awards further contribute to the endless debt cycle consumers face when hit with fees in the same or greater amount than the judgment against them. For example, in a recent case, a single mother was sued for collection of a principal debt of \$1,580. The debt collector’s attorney requested attorney’s fees be awarded in the amount of \$1,610 – more than the debt itself. In another recent case, the same debt collector and attorney sued a consumer for

collection of a \$575 principal debt, and requested \$1,650 in attorney's fees. While the charging of attorney's fees in multiples of the principle debt seems patently unfair to the consumer, it was legal under Nevada law prior to A.B. 477's enactment.

A.B. 477 struck a balance between contractual fee provisions and consumer rights. If a consumer form contract provides for an award of attorney's fees, the fee award is capped as follows:

(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 amount of the debt***, excluding attorney's fees and collection costs, or the amount of attorney's fees calculated by a reasonable rate for such cases multiplied by the amount of time reasonably expended to obtain the judgment.

NRS 97B.160(1) (emphasis added).

A.B. 477 is modeled on the Uniform Credit Consumer Protection Act (the "UCCPA"). Under Section 2.507(2) of the UCCPA, a consumer contract "may provide for payment by the consumer of reasonable attorney's fees not in excess of 15 percent of the unpaid debt after default . . . ." UCCPA, § 2.507(2) (1974). This limitation implements the UCCPA's purpose of "protect[ing] consumers against unfair practices by some suppliers of consumer credit," as well as "permit[ting] and encourag[ing] the development of fair and economically sound consumer credit practices." UCCPA, § 1.102(2)(d)-(e). Multiple states have enacted the UCCPA's

15 percent limitation on attorney fees. *See* Ala. Code § 5-19-10; Alaska Stat. Ann. § 06.50.460(a); Kan. Stat. Ann. § 16a-2-507; Md. Code Ann., Com. Law § 12.307.1(a)-(b); Me. Rev. Stat. tit. 9-A, § 2-507(2); Mo. Ann. Stat. § 408.092(1); S.C. Code Ann. § 37-3-404. None of these statutes have been found unconstitutional.

Consistent with these statutes, A.B. 477 balances the competing interests of the pertinent parties by allowing for an award of some fees, while still protecting the consumer from being subject to an additional judgment amount in excess of the underlying debt.

## **B. A.B. 477 IS CONSISTENT WITH THE AMERICAN RULE**

The American Rule is a significant policy consideration underlying A.B. 477. A “bedrock principle” of the legal system in this country, the American Rule provides that “[e]ach litigant pay his own attorney’s fees, win or lose, unless a statute or contract provides otherwise.” *Peter v. Nankwest, Inc.*, 589 U.S. \_\_\_\_, 140 S. Ct. 365, 370 (2019) (internal quotations omitted). Nevada “adheres” to the American Rule, and only allows attorney’s fees awards if permitted by statute, rule or contract. *Pardee Homes of Nev. v. Wolfram*, 135 Nev. 173, 177, 444 P.3d 423, 426 (Nev. 2019).

“The rationale supporting the American Rule is rooted in fair access to the legal system[.]” *Nankwest, Inc. v. Iancu*, 898 F.3d 1177, 1181 (Fed. Cir. 2018).

As the U.S. Supreme Court has explained, “litigation is at best uncertain [and] one should not be penalized for merely defending or prosecuting a lawsuit and . . . the poor might be unjustly discouraged from instituting actions to vindicate their rights if the penalty for losing included the fees of their opponents’ counsel.” *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714, 718 (1967).

Under the American Rule, litigants do not have a constitutional right to attorney’s fees awards under the constitutional theories of due process or access to the courts. *See Richard v. Hinson*, 70 F.3d 415, 417 (5th Cir. 1995) (stating that there is “no constitutional basis” to seek a party’s “reimbursement of attorney’s fees and expenses”). An attorney’s fees cap merely requires a party to pay for their access to court, but does not otherwise limit it. *Id.* “Thus, there is no constitutional problem with . . . requiring litigants to pay for their own lawyers in civil cases, although those expenses may make litigation impractical if not impossible for some persons.” *King v. Marion Cir. Ct.*, 868 F.3d 589, 592 (7th Cir. 2017).

A.B. 477 merely reflects the principles of the American Rule, i.e., that most parties must generally pay for their own counsel. However, A.B. 477 also implements the American Rule’s exception for the allowance of fees pursuant to contract:

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 amount of the debt***, excluding attorney’s fees and collection costs, or the amount of attorney’s fees calculated by a reasonable



rate for such cases multiplied by the amount of time reasonably expended to obtain the judgment.

*See Pardee Homes of Nev.*, 135 Nev. at 177, 444 P.3d at 426. In doing so, A.B. 477 incorporated another bedrock principle of fee awards in small contractual damages cases, i.e., reasonableness.

### **C. REASONABLENESS**

Most litigation over consumer form contracts occurs in justice court because it concerns debts less than the \$15,000 jurisdictional minimum for the district courts of Nevada. *See* NRS 4.370(1)(a). Additionally, there is often litigation over consumer form contracts in small claims court for amounts less \$10,000. NRS 73.010(1).

Nevada law has traditionally capped fee awards in these courts. In justice court, attorney's fees cannot be awarded in excess of \$3,000, unless otherwise provided for by contract. JCRCP 39A(i)(2). In small claims court, attorney's fees are prohibited, with one exception not at issue here. NRS 73.040. If a small claims determination is appealed, attorney's fees awards are capped at \$15. NRS 73.050. Even in the district courts, when the amount in controversy does not exceed \$50,000 and placed in the court annexed arbitration program, Nevada has capped the amount of attorney's fees recoverable in arbitration at \$3,000 unless otherwise provided for by contract. NAR 16(E); NSTR 27(b)(3).

These fee caps are rooted in the concept of reasonableness. This Court previously upheld the limitation of fee awards in small claims actions as a reasonable exercise of legislative power. *Snyder v. York*, 115 Nev. 327, 988 P.2d 793 (1999). *Snyder* involved a challenge to a district court’s refusal to award more than \$15 in fees pursuant to NRS 73.050, which limits the fees awarded to prevailing party on appeal from small claims to court to the maximum of \$15. As this Court explained, the smalls claims courts exist “to allow an inexpensive method of recovery of money” where the amount is less than \$10,000. *Id.* This Court found that “[i]t is clear that the legislature’s intent is to keep the costs and attorney’s fees low in small claims cases.” *Id.* Accordingly, this Court observed that “[i]t would be absurd to award \$11,932.50 in attorney’s fees on a \$2,500 small claims case.”

This Court’s observation in *Snyder* is consistent with the approach taken by the federal courts under the various statutory schemes that cap attorney’s fees awards. As the Supreme Court has previously explained, the “reasonableness” of a fee award “necessarily will depend, to a large extent, on the amount that may be reasonably expected to be recovered if the plaintiff prevails.” *City of Riverside v. Rivera*, 477 U.S. 561, 593 (1986) (Burger, Dissenting). In a contractual case “where the prospective recovery is limited . . . any competent attorney, whether prosecuting or defending a contract action . . . would realize that the case simply cannot justify a fee in excess of the potential recovery . . .” *Id.* Accordingly, statutory fee caps

also “rationally relate to the legitimate government objective of deterring frivolous lawsuits and deterring lawsuits that, while not technically frivolous, generate litigation costs that exceed any potential recovery.” *Parker v. Conway*, 581 F.3d 198, 203-04 (3d Cir. 2009).

A.B. 477 is part of a larger and continuing effort of the Nevada Legislature to include greater protections for consumers faced with debt collection. For example, in 2021, the Legislature passed S.B. 248, which prohibits a collection agency seeking to collect a medical debt from obtaining an award of attorney fees for more than 5 percent of the amount of the debt. *See* S.B. 248, § 8. The bill proponents explained that S.B. 248 was intended to address the disproportionate attorney fee awards that “can force people into having to choose between paying a creditor and putting food on the table.” *Hearing on S.B. 248 before Sen. Comm. on Commerce & Labor*, 81<sup>st</sup> Reg. Sess. (Mar. 29, 2021).

Accordingly, this Court should uphold A.B. 477 as a valid exercise of the Legislature’s power. Invalidating this statute will detrimentally impacts many consumers in Nevada.

#### **IV. THE SCOPE OF A.B. 477**

A.B. 477 excludes certain entities from its provisions for several specific reasons. First, many of the excluded entities (*e.g.*, payday and title lenders) are already governed pursuant to NRS Chapter 604A, which already directs courts to

“consider the complexity of the case, the amount of the debt, and whether the licensee could have used less costly means to collect the debt.” NRS 604A.5014; NRS 604A.5041; NRS 604A.5068. Second, these other entities are generally not the entities charging exorbitant interest rates on smaller debt amounts and/or seeking awards of attorney’s fees disproportionately in excess of the amount of debt. *See Hearing on A.B. 477 before Sen. Comm. on Commerce & Labor*, 80<sup>th</sup> Reg. Sess. (May 8, 2019). It is not uncommon to see a debt collectors add to the principal amount owed (1) collection fees (as much as 50% of the debt),<sup>4</sup> (2) 24% interest, and (3) attorney’s fees and costs. For example, in Las Vegas, a pro se litigant, who appears *in forma pauperis*, and whose sole activity is to file an answer to the complaint can find himself with a \$2,293.45 judgment for a \$446.46 debt.<sup>5</sup> *See Richland Holdings Inc DBA Acctcorp of Southern Nevada vs. Donald Williams*, Case No. 19C004574.<sup>6</sup> Or a default judgment for \$3,641.91 on a \$1,870.16 debt. *See Richland Holdings Inc DBA Acctcorp of Southern Nevada vs. Courtlon Eddins*,

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<sup>4</sup> *See e.g. Ahmed v. Richland Holdings*, No. 2:19-CV-1925 JCM (DJA), 2021 U.S. Dist. LEXIS 36326 (D. Nev. Feb. 26, 2021) (holding that a local Las Vegas debt collector’s flat 50% collection fee (on top of 24% interest and attorneys’ fees/costs) to be reasonable as a matter of law).

<sup>5</sup> Attached as Exhibit 1 is a Register of Actions and pleadings, containing an example of such a case.

Case No. 19C007174.<sup>7</sup> This results in a consumer being hit with a judgment for sometimes three times or more of the principal balance of the outstanding amounts owed.

Furthermore, many consumer protection statutes apply to some entities but not to others, *e.g.*, to debt collectors but not to creditors, but are nonetheless constitutional. One prime example is the Fair Debt Collection Practices Act (“FDCPA”). This statute applies primarily to debt collectors because, “[u]nlike creditors, who generally are restrained by the desire to protect their good will when collecting past due amounts, independent collectors are likely to have no future contact with the consumer and are often unconcerned with the consumer’s opinion of them.” S. Rpt. No 95-382, 95th Cong., 1st Sess., reprinted in 1977 U.S. Code Cong. & Admin. News 1695, 1696. As a result, debt collectors were far more likely to use questionable collection practices than creditors. *Id.* Despite its different treatment between debt collectors and creditors, courts have repeatedly upheld the

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<sup>7</sup> Upon information and belief, the difference between the debt sued upon and the total judgment identified in the Register of Actions is only attorneys’ fees, costs and interest. Richland’s 50% collection fee (where charged) is already included in the amount sued upon. *See e.g. Richland Holdings Inc DBA Acctcorp of Southern Nevada vs. Neil Mercurius*, Case No. 19C017504 seeking to recover an account balance of \$2,159.32, a contractual collection fee of \$1,079.66, interest accruing at a contractual rate of 24% from the date of assignment and attorneys’ fees and costs. The Register of Actions shows the balance sought in the complaint to be \$3,238.98 (\$2,159.32 balance + \$1,079.66 collection fee) resulting in a default judgment totaling \$5,048.02.

FDCPA as constitutional. *See, e.g., U.S. v. ACB Sales & Serv., Inc.*, 590 F. Supp. 561, 576 (D. Ariz. 1984) (holding that because the FDCPA “is a form of economic legislation,” it does involve suspect classes and Congress had a rational basis to treat debt collectors differently than creditors because it found that debt were “the prime source of egregious collection practices” (internal quotations omitted)).

Unlike the FDCPA, A.B. 477 will extend to creditors in some instances. *See* NRS 97B.060-NRS 97B.080. However, the same logic applies. Like the FDCPA, A.B. 477 was intended to protect against the collection efforts by those entities most likely to assert unreasonably high interest rates and seek disproportionate fee awards. This does not render the bill unconstitutional.

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## CONCLUSION

For the foregoing reasons, Legal Aid Center respectfully requests that this Court uphold A.B. 477 in its entirety.

Dated this 15<sup>th</sup> day of November, 2021.

**FENNEMORE CRAIG, P.C.**

/s/ Therese M. Shanks

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## **CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this Appellant's Opening Brief complies with 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 been prepared in a proportionally spaced typeface using Microsoft Word 16 in 14 font and Times New Roman type.

2. I further certify that this opening brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 4,142 words.

3. Finally, I hereby certify that I have read this appellate 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

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sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 15<sup>th</sup> day of November, 2021.

**FENNEMORE CRAIG, P.C.**

/s/ Therese M. Shanks

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## **CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Fennemore Craig and that on November 15, 2021 I served the foregoing **AMICUS BRIEF OF THE Legal Aid Center OF SOUTHERN NEVADA, INC.** via this Court's Electronic Filing System, or if necessary by U.S. Mail to the following:

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Attorney for Respondent Justice Court  
of Las Vegas Township

/s/ Diana L. Wheelen  
an employee of Fennemore Craig

# **EXHIBIT 1**

# **EXHIBIT 1**

**REGISTER OF ACTIONS****CASE No. 19C017504****RICHLAND HOLDINGS INC, DBA Acctcorp of Southern Nevada,  
Plaintiff(s) vs. NEIL MERCURIUS, Defendant(s)**§  
§  
§  
§  
§Case Type: **Civil - Debt Collection Agency**  
Date Filed: **06/19/2019**  
Location: **JC Department 5****PARTY INFORMATION****Defendant MERCURIUS, NEIL****Lead Attorneys**  
**Keren E. Gesund**  
*Retained*  
702-300-1180(W)**Plaintiff RICHLAND HOLDINGS INC DBA Acctcorp  
of Southern Nevada****Donna Armenta, ESQ**  
*Retained*  
702-525-1364(W)**EVENTS & ORDERS OF THE COURT****DISPOSITIONS**09/23/2019 **Default Judgment** (Judicial Officer: Saragosa, Melissa)  
Debtors: NEIL MERCURIUS (Defendant)  
Creditors: RICHLAND HOLDINGS INC (Plaintiff)  
Judgment: 09/23/2019, Docketed: 09/24/2019  
Total Judgment: 5,048.02**OTHER EVENTS AND HEARINGS**06/19/2019 **Start Time Tracking: JCRCP 41(e) - 2 years**  
06/19/2019 **Start Time Tracking: JCRCP 41(e) - 5 years**  
06/19/2019 **Start Time Tracking: JCRCP 4(i)**  
06/19/2019 **Civil Complaint - \$2500.01 to \$5,000.00**  
*COMPLAINT \$3238.98*  
06/20/2019 **Civil Summons Issued (Efilng)**  
07/17/2019 **Returned Summons**  
*SUMMONS*  
07/30/2019 **Default**  
*DEFAULT*  
07/30/2019 **Application for Default Judgment**  
*APPLICATION FOR DEFAULT JUDGMENT*  
09/23/2019 **Default Judgment Order**  
*ORDER FOR DEFAULT JUDGMENT*  
09/24/2019 **Notice of Entry of Default Judgment**  
*Notice of Entry of Default Judgment*  
10/16/2019 **Issuance of Writ - Filing Fee**  
*Writ of Execution*  
10/16/2019 **Memorandum of Costs and Disbursements**  
*Memorandum of Costs*  
01/01/2021 **Administrative Reassignment to Department 5**  
*Case reassigned from Department 04 (Judge Melissa Saragosa)***FINANCIAL INFORMATION****Defendant MERCURIUS, NEIL**

Total Financial Assessment

71.00

Total Payments and Credits

71.00

**Balance Due as of 11/14/2021****0.00**

08/29/2019 Transaction Assessment

08/29/2019 File and Serve Payments Receipt # CIV-2019-103121

MERCURIUS, NEIL

71.00

(71.00)

**Plaintiff RICHLAND HOLDINGS INC**

Total Financial Assessment

164.00

Total Payments and Credits

164.00

**Balance Due as of 11/14/2021****0.00**

06/20/2019 Transaction Assessment

06/20/2019 File and Serve Payments Receipt # CIV-2019-73637

RICHLAND HOLDINGS INC

124.00

(124.00)

07/30/2019 Transaction Assessment

07/30/2019 File and Serve Payments Receipt # CIV-2019-89837

RICHLAND HOLDINGS INC

15.00

(15.00)

11/14/21, 5:38 AM

<https://lvjcpa.clarkcountynv.gov/Anonymous/CaseDetail.aspx?CaseID=12915118>

10/17/2019 Transaction Assessment  
10/17/2019 File and Serve Payments

Receipt # CIV-2019-122963

RICHLAND HOLDINGS INC

25.00  
(25.00)

JUSTICE COURT, LAS VEGAS TOWNSHIP  
Clark County Nevada

RICHLAND HOLDINGS INC, Plaintiff(s)  
vs.  
NEIL MERCURIUS, Defendant(s)

CASE NO.: 19C017504

Department No.: 04

SUMMONS

FOR COURT USE ONLY

NOTICE: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD  
UNLESS YOU RESPOND WITHIN 20 DAYS.<sup>1</sup> READ THE INFORMATION BELOW.

TO THE ABOVE-NAMED DEFENDANT: You are hereby summoned and required to serve upon Plaintiff's attorney, whose address is set forth below, an Answer to the Complaint which is herewith served upon you, within 20 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.<sup>2</sup>

\* If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must do the following:

- a. File with the Clerk of the Court, whose address is shown below, a formal written response (Answer) to the Complaint in accordance with the rules of the Court. A \$71.00 filing fee is required, or you must file an Application to Proceed *In Forma Pauperis* and request a waiver of the fee. (You may obtain forms and information at the Civil Law Self-Help Center located in the Regional Justice Center or at its website at <http://www.civillawselfhelpcenter.org/>.)
- b. Serve a copy of your response upon the attorney whose name and address is shown below.

\* Unless you respond, your default will be entered upon application of the Plaintiff, and this Court may enter a judgment against you for the relief demanded, which could result in the taking of money or property or other relief.

\* If you intend to seek the advice of an attorney, you should do so promptly so that your response will be timely.

Armenta, Donna, ESQ  
Donna Armenta Law  
4955 S Durango Dr Ste 174  
Las Vegas, NV 89113  
702-525-1364

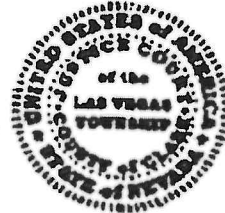
Attorney Name, Address and Phone

6527

By:

DEPUTY CLERK

Justice Court,  
Las Vegas Township  
Regional Justice Center  
200 Lewis Avenue  
PO Box 552511  
Las Vegas, NV 89155-2511



06/20/2019

Date

APPROPRIATE COURTROOM ATTIRE AND SHOES ARE REQUIRED. NO SHORTS, HALTER TOPS, TANK TOPS, FOOD OR DRINK ARE PERMITTED.

<sup>1</sup> Notwithstanding the above, the State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members, and legislators, each have 45 days after service of this Summons within which to file an Answer to the Complaint.

<sup>2</sup> When service of the Summons is made by publication, the Summons shall, in addition to any special statutory requirements, also contain a brief statement of the object of the action substantially as follows: "This action is brought to recover a judgment for the sum of (indicate dollar amount), due and owing, " or as the case may be. (JCRCP4(b)).

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DONNA ARMENTA ESQ  
Nevada State Bar No. 6527  
DONNA ARMENTA LAW  
4955 S DURANGO DR SUITE 174  
LAS VEGAS, NV 89113  
Telephone: 702-525-1364  
Facsimile: 702-973-7170  
Email: Donna@DonnaArmentaLaw.com  
*Attorney for Plaintiff*

JUSTICE COURT, LAS VEGAS TOWNSHIP  
CLARK COUNTY, NEVADA

RICHLAND HOLDINGS INC.,  
d/b/a ACCTCORP OF SOUTHERN NEVADA,  
A NEVADA CORPORATION,

Plaintiff,

vs.

NEIL MERCURIUS,

Defendant

CASE NO.: 19C017504

DEPT. NO. Department #: LVJC 4

**COMPLAINT FOR BREACH OF  
CONTRACT AND MONIES DUE AND OWING**

COMES NOW, Plaintiff, RICHLAND HOLDINGS, INC., d/b/a ACCTCORP OF SOUTHERN NEVADA, A Nevada Corporation, qualified to do business and doing business in the State of Nevada, by and through their Counsel of Record, DONNA ARMENTA ESQ and for its cause of action against Defendant, NEIL MERCURIUS alleges as follows:

**I. JURISDICTIONAL ALLEGATIONS**

1. Plaintiff, RICHLAND HOLDINGS, INC., d/b/a ACCTCORP OF SOUTHERN NEVADA, is a Nevada Corporation duly licensed to conduct collection services in Clark County, Nevada.
2. That upon information and belief, and at all times relevant to this action, Defendant, NEIL MERCURIUS is and was at all times a resident of Clark County, Nevada.

COMPLAINT

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3. **R.C. WILLEY HOME FURNISHINGS, INC.** is a Business Entity which provides services in Clark County, Nevada.

## **II. GENERAL ALLEGATIONS**

4. On or about, **March 31, 2016**, Defendant, **NEIL MERCURIUS** entered into a valid and binding agreement with **R.C. WILLEY HOME FURNISHINGS, INC.** for the procurement of services.
5. Defendant, **NEIL MERCURIUS** started to incur charges relating to the agreement on or about **March 31, 2016** and became delinquent in their account by failing to maintain their account through regular payments under the terms of their agreement.
6. Defendant, **NEIL MERCURIUS** became delinquent on **March 1, 2018** with an account balance of **\$2,159.32**. A **CONTRACTUAL COLLECTION FEE** of **\$1,079.66** was added for a total of **\$3,238.98**, plus interest accruing at a **CONTRACTUAL RATE** of **24%** from the *date of assignment*, and until paid.
7. After unsuccessfully attempting to collect the outstanding balance of the account from Defendant, **NEIL MERCURIUS** the account was duly assigned from **R.C. WILLEY HOME FURNISHINGS, INC.** to **RICHLAND HOLDINGS, INC., d/b/a ACCTCORP OF SOUTHERN NEVADA** on **July 16, 2018**.

## **III. FIRST CAUSE OF ACTION**

### **BREACH OF CONTRACT**

8. Plaintiff incorporates and re-alleges all above Paragraphs as though fully set forth at this point.
9. On **March 31, 2016** Defendant, **NEIL MERCURIUS** and **R.C. WILLEY HOME FURNISHINGS, INC.** entered into an agreement.
10. Pursuant to terms of this agreement Defendant, **NEIL MERCURIUS** would pay monies to **R.C. WILLEY HOME FURNISHINGS, INC.** in consideration for services provided by **R.C. WILLEY HOME FURNISHINGS, INC..**

COMPLAINT

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11. **R.C. WILLEY HOME FURNISHINGS, INC.** did perform services on behalf of Defendant, **NEIL MERCURIUS** therefore fulfilling all of its obligations pursuant to the agreement.
  12. Defendant, **NEIL MERCURIUS** has breached the terms of the agreement contract by failing/refusing to tender the past due and owing amount.
  13. Plaintiff has made demand upon Defendant, **NEIL MERCURIUS** for the amount due and owing, but Defendant, **NEIL MERCURIUS** has failed, neglected and refused to pay.
  14. It has been necessary for Plaintiff to retain services of an Attorney to bring and maintain this action.
  15. Plaintiff is entitled to reasonable Attorney's Fees and Costs of the suit as provided by law.

#### IV. SECOND CAUSE OF ACTION

##### MONIES DUE AND OWING

16. Plaintiff incorporates and re-alleges all above Paragraphs as though fully set forth at this point.
17. Defendant, **NEIL MERCURIUS** owes to Plaintiff, the duly assigned collection agent for, **R.C. WILLEY HOME FURNISHINGS, INC.** a sum of **\$3,238.98** (*includes a Contractual Collection fee*), plus interest at the **CONTRACTUAL RATE** of **24%** from the *date of assignment*, and until paid in full.
18. Although demand has been made upon Defendant, **NEIL MERCURIUS** for the amount due and owing, Defendant, **NEIL MERCURIUS** has failed, neglected and refused to pay.
19. It has been necessary for Plaintiff to retain services of an Attorney to bring and maintain this action.
20. Plaintiff is entitled to reasonable Attorney's Fees and Costs of the suit as provided by law.

1       **WHEREFORE**, Plaintiff, RICHLAND HOLDINGS, INC., d/b/a ACCTCORP OF SOUTHERN  
2 NEVADA, prays as follows:

- 3       1.     For a Judgment against Defendant, **NEIL MERCURIUS** for the amount due and owing to  
4             Plaintiff in the sum of **\$3,238.98** (*includes a Contractual Collection Fee*);  
5       2.     **CONTRACTUAL INTEREST** at the **CONTRACTUAL RATE** of **24%** from the *date*  
6             *of assignment* and until paid in full;  
7       3.     For reasonable Attorney's Fees and Costs of suit incurred herein;  
8       4.     For all reasonable and necessary costs incurred herein, pursuant to NRS 69 or NRS 18;  
9       5.     For any other Judgment this Court may deem proper in premises.

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11       **DATED 19 June 2019**

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13                       **/S/ DONNA ARMENTA ESQ**  
14                       DONNA ARMENTA ESQ  
15                       Nevada State Bar No. 6527  
16                       **DONNA ARMENTA LAW**  
17                       *Attorney for Plaintiff*

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