

# **Exhibit 9**

**(Allied Collection Services, Inc. Declaration)**

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21 The Law Offices of Mitchell D. Bluhm and Associates,  
22 LLC*

23 **UNITED STATES DISTRICT COURT**  
24 **DISTRICT OF NEVADA**

25 AARGON AGENCY, INC., a Nevada  
corporation; ACA INTERNATIONAL, a  
26 Minnesota non-profit corporation; ALLIED  
COLLECTION SERVICES, INC., a  
27 Nevada corporation; ASSETCARE, LLC, a  
Texas limited liability company;  
28 BUSINESS AND PROFESSIONAL

Case No.: 2:21-cv-01202-JCM-BNW

**DECLARATION OF MICHAEL FEENEY  
IN SUPPORT OF EMERGENCY  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER AND MOTION**

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1 COLLECTION SERVICE, INC., a Nevada  
2 corporation; CAPIO PARTNERS, LLC, a  
3 Texas limited liability company; CF  
4 MEDICAL, LLC, a Nevada limited  
5 liability company; CLARK COUNTY  
6 COLLECTION SERVICE, LLC, a Nevada  
7 limited-liability company; COLLECTION  
8 SERVICE OF NEVADA, a Nevada  
9 corporation; DONNA ARMENTA, an  
10 individual; DONNA ARMENTA LAW, a  
11 Nevada law firm; NEVADA  
12 COLLECTORS ASSOCIATION, a  
13 Nevada non-profit corporation;  
14 PLUSFOUR, INC., a Nevada corporation;  
15 RM GALICIA d/b/a PROGRESSIVE  
16 MANAGEMENT, LLC, a Nevada limited-  
17 liability company; and THE LAW  
18 OFFICES OF MITCHELL D. BLUHM &  
19 ASSOCIATES, LLC, a Georgia limited  
20 liability,

Plaintiffs,

v.

21 SANDY O'LAUGHLIN, in her capacity as  
22 Commissioner of State Of Nevada  
23 Department Of Business And Industry  
24 Financial Institutions Division,

Defendant.

**FOR PRELIMINARY INJUNCTION**

18 I, Michael Feeney, hereby declare under penalty of perjury as follows:

19 1. I am the President of Allied Collection Services, Inc. ("Allied"). I am competent to  
20 testify as to the matters herein based on my own knowledge, except as to those matters stated upon  
21 information and belief, and, as to those matters, I believe them to be true.

22 2. Allied is a Nevada corporation and licensed as a debt collector in accordance with  
23 NRS Chapter 649.

24 3. Allied engages in the business of collecting unpaid debt on consumer accounts that  
25 are past due or in default. Allied collects monies on behalf of, for the account of, or as assignees  
26 of businesses that sell goods and/or services to consumers which are primarily for personal, family,  
27 or household purposes. Those debts include medical debts as defined in Senate Bill ("S.B.") 248,  
28 which was recently enacted in the 81st Session of the Nevada Legislature.

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1           4.       At times, Allied is considered a “debt collector” within the meaning of and subject  
2 to the Fair Debt Collection Practices Act (the “FDCPA”). *See* 15 U.S.C. § 1692a(6).

3           5.       When acting as a debt collector, Allied has also furnished information consumer  
4 reporting agencies in accordance with 15 U.S.C. § 1681s-2. When doing so, Allied is subject to  
5 the requirements of the Fair Credit Reporting Act (the “FCRA”).

6           6.       Many of the clients of Allied are medical service providers, including doctors,  
7 specialists, medical offices, and hospitals. These providers retain licensed Nevada debt collectors  
8 and attorneys for their unpaid delinquent accounts, usually under an arrangement in which they do  
9 not get paid for anything sent to collection unless the debt collector and/or attorney is successful in  
10 collecting the unpaid debt. These medical service providers, providing medical services to the  
11 public, do not possess the skill, knowledge, infrastructure, or resources to engage in debt collection  
12 on their own behalf, and would be unable to collect unpaid delinquent debts if they were not able  
13 to engage the services of a licensed debt collector or attorney. In addition, many unpaid medical  
14 debts are incurred by out of state residents who seek medical treatment while they are traveling to  
15 the State of Nevada. Medical service providers are particularly ill-equipped to collect these out-of-  
16 state debts.

17           7.       S.B. 248 amends NRS Chapter 649 and therefore places its provisions under the  
18 auspices of the Commissioner of the State of Nevada, Department of Business and Industry  
19 Financial Institutions Division (the “FID”), who is empowered to enforce S.B. 248 under Chapter  
20 649.

21           8.       The Commissioner is empowered to enforce NRS Chapter 649, which includes the  
22 power to license, regulate, and discipline those who are subject to its rules. The Commissioner’s  
23 disciplinary authority includes the ability to issue cease and desist orders, suspend, and revoke  
24 licenses (without or without notice), impose administrative fines, and seek injunctive relief. Debt  
25 collectors, including Allied, are even subject to multiple criminal penalties if they violate any part  
26 of NRS Chapter 649, which will include S.B. 248 as of July 1, 2021.

27           9.       S.B. 248 fails to define various key terms. Specifically, Section 7 of S.B. 248 does  
28 not define the term “action to collect a medical debt.” It is unclear whether the term “action” means

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1 the commencement of a civil action or to certain collection “activity.” Section 7 further fails to  
2 define what activities would be considered an “action to collect a medical debt” if the term were to  
3 encompass more than the commencement of a civil action.

4 10. Allied cannot determine what constitutes an “action to collect a medical debt” within  
5 the meaning of S.B. 248, or whether the following activities are precluded by Section 7:

- 6 a. Sending an initial communication with a “Mini-Miranda” warning, which is  
7 required by 15 U.S.C. § 1692e;
- 8 b. Sending a Validation Notice, which is required by 15 U.S.C. § 1692g;
- 9 c. Responding to a verification request from a consumer as required by 15 U.S.C. §  
10 1692g;
- 11 d. Furnishing information regarding a medical debt to a consumer reporting agency  
12 under 15 U.S.C. § 1681s-2;
- 13 e. Responding to a consumer reporting agency regarding a dispute made by a consumer  
14 concerning a medical debt;
- 15 f. Responding to written or oral inquiries or disputes directly from medical debtors;
- 16 g. Communicating with clients who have retained our members to collect;
- 17 h. Responding to a regulatory complaint made to the Consumer Financial Protection  
18 Bureau;
- 19 i. Responding to a regulatory complaint made to the Federal Trade Commission;
- 20 j. Responding to a regulatory complaint made to the State of Nevada Department of  
21 Financial Institutions; and
- 22 k. Responding to a lawsuit asserted by a medical debtor against a member.

23 11. S.B. 248 also does not define whether a “medical debtor” applies only to Nevada  
24 residents, or to those treated in Nevada medical facilities. Allied cannot determine whether S.B.  
25 248 also applies to nonresidents who incur medical debt while they are located in the State of  
26 Nevada.

27 12. In addition, Section 7.5 allows a collection agency to accept a voluntary payment  
28 from a medical debtor under certain circumstances, but fails to address whether a voluntary

1 payment may be accepted from a third person acting on behalf of a medical debtor, such as an  
2 insurance company, a representative, a trustee, an executor, or merely a family member. Allied  
3 cannot determine whether it can receive payments from or even communicate with such  
4 representatives.

5 13. Section 7.5 requires a debt collector, when accepting a payment, to disclose that (a)  
6 “a payment is not demanded or due”; and (b) the medical debt will not be reported to a credit  
7 reporting agency for a period of sixty days. Yet, Section 7.5 does not state whether this requirement  
8 applies when a voluntary payment is made by mail, given that there is no opportunity for a debt  
9 collector to make said disclosure when a voluntary payment is made solely by mail. Allied cannot  
10 determine whether it is required to (a) return the payment; (b) hold the payment and send a Section  
11 7 Notice and wait 60 days to cash the check; or (3) cash the check immediately.

12 14. Section 7.5 is also inconsistent with Section 7. Specifically, in the Section 7 Notice,  
13 debt collectors are required to identify the medical provider that provided the goods or services “for  
14 which the medical debt is *owed*.” In contrast, Section 7.5 requires debt collectors to state that the  
15 debt “is not demanded or due.” These requirements are fundamentally at odds and requires Allied  
16 to make inconsistent representations to debtors. Allied cannot determine how it can possibly  
17 comply with both rules at the same time, particularly without violating the misrepresentation  
18 provisions of the FDCPA (*see* 15 U.S.C. § 1692e).

19 15. Section 8(3) of S.B. 248 is nearly unintelligible. This subsection appears to limit a  
20 debt collector from charging more than 5% of the amount of the medical debt as a fee, but then  
21 exempts interest, late fees, collection fees, attorney’s fees, and other fees or costs. This exemption  
22 appears to exempt all fees and costs of collection from a limitation on fees and costs of collection.  
23 Setting that aside, it is further unclear whether this subsection limits fees and costs incurred by  
24 debtors prior to sending these accounts to debt collectors.

25 16. S.B. 248 creates numerous conflicts with the FDCPA. To the extent S.B. 248  
26 prohibits the activities identified in Paragraph 10 of this Declaration, S.B. 248 is in direct conflict  
27 with the FDCPA and the FCRA, as it prohibits Allied from complying with those laws. In addition,  
28 S.B. 248 seems to prohibit any kind of communication with debtors (other than what is allowed in

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1 S.B. 248) as well as consumer reporting agencies.

2 17. S.B. 248 is silent as to whether its requirements apply to medical debts that were  
3 already in collection as of July 1, 2021, the effective date of the law. Allied cannot determine  
4 whether S.B. 248 regulates those accounts, including accounts for which collection activity has  
5 already commenced, as well as accounts where debtors have already agreed to payment plans.  
6 Allied cannot determine whether it is required to send Section 7 Notices to these debtors, and  
7 whether it must cease all “action to collect a medical debt” on these accounts until 60 days after a  
8 Section 7 Notice is mailed..

9 18. Section 7 of S.B. 248 is also silent as to what a debt collector may or may not do  
10 when a Section 7 Notice is returned undelivered, or when a consumer refuses delivery. Here too,  
11 Allied cannot determine whether it is barred from any further collection activity, whether it must  
12 still wait for the 60-day period to elapse, or whether it may continue with collection immediately.  
13 In short, Allied cannot determine how to comply with the rule.

14 19. S.B. 248 conflicts with other existing provisions of Nevada law. Specifically, NRS  
15 649.332 provides, “When collecting a debt on behalf of a hospital, within 5 days after the initial  
16 communication with the debtor in connection with the collection of the debt, a collection agency  
17 shall, unless the following information is included in the initial communication, send a written  
18 notice to the debtor. . . .” The written notice required in NRS 649.332(2) requires a statement  
19 indicating that:

- 20 (a) If the debtor pays or agrees to pay the debt or any portion of the debt, the  
21 payment or agreement to pay may be construed as:
  - 22 (1) An acknowledgment of the debt by the debtor; and
  - 23 (2) A waiver by the debtor of any applicable statute of limitations set  
24 forth in NRS 11.190 that otherwise precludes the collection of the  
25 debt; and
- 26 (b) If the debtor does not understand or has questions concerning his or her legal  
27 rights or obligations relating to the debt, the debtor should seek legal advice.

28 20. Section 7 of S.B. 248 is therefore in direct conflict of NRS 649.332 because it  
requires debt collectors to contradict NRS 649.332 in its Section 7 Notice. It is unclear whether

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1 the Nevada Legislature intended for NRS 649.322 to be repealed, or if this was simply overlooked  
2 as S.B. 248 was supposed to be enacted as temporary relief due to the COVID-19 pandemic.  
3 Regardless, Allied cannot determine how to comply with both rules when collecting medical debt  
4 on behalf of hospitals.

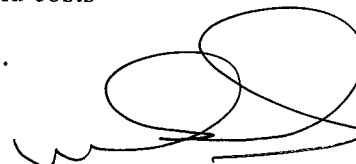
5 21. With regard to each of the rules mentioned in this Declaration, S.B. 248 lacks  
6 sufficient definiteness that Allied can understand what conduct is prohibited, and Allied has been  
7 left to guess at what its requirements are and the extent to which they apply.

8 22. Because the Commissioner of the FID has the power to suspend and even revoke  
9 licenses without a hearing, impose administrative fines, and even seek criminal prosecution for the  
10 failure to comply with any provision contained in NRS Chapter 649, the lack of definiteness (and  
11 the arbitrary discretion of the Commissioner) to impose discipline for violating S.B. 248 is  
12 particularly fraught with peril. Allied risks losing its NRS Chapter 649 license (or worse) if it  
13 miscalculates in trying to decipher S.B. 248. It is also left to choose between complying with either  
14 S.B. 248 or federal law, even though it is impossible to comply with both.

15 23. Because S.B. 248 effectively requires debt collectors to violate the FDCPA and  
16 FCRA, Allied also faces civil lawsuits and potential liability if it is forced to comply with S.B. 248.

17 24. If S.B. 248 becomes enforceable on July 1, 2021, Allied will be damaged where it  
18 will have to choose between violating S.B. 248 and possibly losing its debt collection license or  
19 being subject to a criminal penalty, or violating the FDCPA and/or FCRA and facing statutory  
20 damages, actual damages, attorneys' fees and costs

21 DATED this 28th day of June, 2021.



22  
23 MICHAEL FEENEY