IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 22-15352

AARGON AGENCY, INC., a Nevada corporation; ALLIED COLLECTION SERVICES, INC., a Nevada corporation; ASSETCARE, LLC, a Texas limited liability company; CAPIO PARTNERS, LLC, a Texas limited liability company; CF MEDICAL, LLC, a Nevada limited liability company; CLARK COUNTY COLLECTION SERVICE, LLC, a Nevada limited-liability company; COLLECTION SERVICE OF NEVADA, a Nevada corporation; NEVADA COLLECTORS ASSOCIATION, a Nevada non-profit corporation; PLUSFOUR, INC., a Nevada corporation; RM GALICIA d/b/a PROGRESSIVE MANAGEMENT, LLC, a Nevada limited-liability company; and THE LAW OFFICES OF MITCHELL D. BLUHM & ASSOCIATES, LLC, a Georgia limited liability company,

Appellants,

vs.

SANDY O'LAUGHLIN, in her capacity as Commissioner of State of Nevada Department of Business and Industry Financial Institutions Division,

Respondent.

Appeal from a Decision of the United States District Court for the District of Nevada
The Honorable Richard F. Boulware
Case No. 2:21-cv-01202-RFB-BNW

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANTS' OPENING BRIEF AND SUPPORTING REVERSAL

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CORPORATE DISCLOSURE STATEMENT

In accordance with Fed. R. App. ("F.R.A.P.") 26.1 AND 29(c)(1), movants, Amicus Curiae, Nevada Hospital Association, a Nevada domestic cooperative corporation, (hereinafter "NHA"), state that they have no parent corporations and issue no stock; therefore, no publicly held corporation owns 10% of NHA.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Rules

I.

JURISDICTIONAL STATEMENT

Jurisdiction is based upon 28 U.S.C. § 1331. The Appellants sought injunctive relief challenging a Nevada statute effective July 1, 2021, referred to as Senate Bill 248 ("S.B. 248"). Appellants claim S.B. 248 is preempted by (1) the Supremacy Clause of the United States Constitution; (2) the Fair Credit Reporting Act ("FCRA"); and (3) the Fair Debt Collection Practices Act ("FDCPA") and 12 C.F.R. § 1006.1 *et seq*. ("Regulation F"). Appellants further argue that S.B. 248 violates the First and Fourteenth Amendments because it imposes undue burdens on speech and is unconstitutionally vague.

Jurisdiction for this Court is based upon 28 U.S.C. § 1292(a)(1). This appeal follows the lower court's order dated February 7, 2022, denying Collectors' Application for Temporary Restraining Order and Motion for Preliminary Injunction (the "Injunction Motion").

This Motion to File an Amicus Curiae Brief is made pursuant to Federal Rule of Appellate Procedure 29. Leave is being asked to allow NHA to file an amicus brief to inform the Court of the unintended negative consequences from the implementation of SB 248: some Collectors are choosing not to collect the medical debt because of SB 248.

II.

STATEMENT OF THE ISSUES TO BE ADDRESSED IN THE AMICUS CURIAE BRIEF

1. Did the district court err when it concluded that the harm suffered by Appellants was not irreparable, and that the balance of equities and public interest did not support the Injunction Motion?

III.

ARGUMEMNT IN SUPPORT OF THE MOTION FOR LEAVE TO FILE THIS AMICUS CURIAE BRIEF

Nevada Hospital Association, a Nevada domestic cooperative corporation, (NHA) hereby moves for leave to file a brief as amicus curiae in support of Appellants', AARGON AGENCY, INC., a Nevada corporation; ALLIED COLLECTION SERVICES, INC., a Nevada corporation; ASSETCARE, LLC, a Texas limited liability company; CAPIO PARTNERS, LLC, a Texas limited liability company; CF MEDICAL, LLC, a Nevada limited liability company; CLARK COUNTY COLLECTION SERVICE, LLC, a Nevada limited-liability company; COLLECTION SERVICE OF NEVADA, a Nevada corporation; NEVADA COLLECTORS ASSOCIATION, a Nevada non-profit corporation; PLUSFOUR, INC., a Nevada corporation; RM GALICIA d/b/a PROGRESSIVE MANAGEMENT, LLC, a Nevada limited-liability company; and THE LAW

OFFICES OF MITCHELL D. BLUHM & ASSOCIATES, LLC, a Georgia limited liability company,, et al., ("Collectors"), appeal and reversal of the decision below.

Appellants have consented to the filing of this brief; appellee refused consent as it failed to respond to the request to file this amicus curiae brief. A copy of the proposed brief is attached to this motion.[1] Founded in 1971, NHA is a non-profit industry advocacy organization with more than sixty (60) member providers of health care within the State of Nevada. NHA advocates before the Nevada Legislature, administrative agencies, and the courts on a wide range of issues, and works for enactment and enforcement of laws protecting its industry members, its members' workers, and the public. NHA often represents members' interests in litigation and as amicus curiae.

In 2021, the Nevada Legislature enacted S.B. 248.[2] S.B. 248 amended Nev. Rev. Stat. Chapter 649, governing licensed debt collectors, effectively placing compliance with its requirements under the auspices of the Commissioner.[3] The Commissioner is empowered to enforce Chapter 649 and has the authority to impose discipline against debt collectors for violations of the S.B. 248.[4] NHA has been

[1] See Amicus Curiae Brief attached as Exhibit 1.
[2] 1-ER-35-37.
[3] 1-ER-38.
[4] *Id.*

informed by its members that they are experiencing unintended negative consequences from the implementation of SB 248.

Any violation of S.B. 248 places the Appellants at risk of administrative fines, suspension or revocation of their licenses, civil injunctions, and even criminal penalties.[5] The criminal penalties can multiply quickly, as "[e]ach day a person operates a collection agency in violation of the provisions of this chapter is a separate violation under this section."[6]

S.B. 248 became effective on July 1, 2021.[7] The bill provides, in pertinent part, as follows:

> **Section 7**
>
> 1. Not less than 60 days before taking any action to collect a medical debt, a collection agency shall send by registered or certified mail to the medical debtor written notification that sets forth:
>
> (a) The name of the medical facility, provider of health care or provider of emergency medical services that provided the goods or services for which the medical debt is owed;
>
> (b) The date on which those goods or services were provided; and
>
> (c) The principal amount of the medical debt.
>
> 2. The written notification required by subsection 1 must:
>
> (a) Identify the name of the collection agency; and
>
> (b) Inform the medical debtor that, as applicable:

[5] *See* Nev. Rev. Stat. §§ 649.395 649.400, and 649.440.
[6] Nev. Rev. Stat. § 649.435
[7] Exhibit 1, § 10.

(1) The medical debt has been assigned to the collection agency for collection; or

(2) The collection agency has otherwise obtained the medical debt for collection.

Section 7.5

1. Nothing in section 7 of this act shall prohibit a collection agency from accepting a voluntary payment from a medical debtor during the 60-day notification period specified in subsection 1 of section 7 of this act provided that:

   (a) The medical debtor initiates the contact with the collection agency; and

   (b) The collection agency discloses to the medical debtor that:

      (1) A payment is not demanded or due; and

      (2) The medical debt will not be reported to any credit reporting agency during the 60-day notification period specified in subsection 1 of section 7 of this act.

2. No action by a medical debtor to initiate contact with a collection agency may be construed to allow the collection agency to take action to collect the medical debt before the expiration of the 60-day notification period specified in subsection 1 of section 7 of this act….[8]

Section 8(2) prohibits debt collectors from suing to recover unpaid medical debts in amounts of $10,000 or less during this period.[9]

S.B. 248 prohibits debt collectors from taking any action to collect a medical debt until they send by certified or registered mail a written notice to the debtor detailing all of the information set out in S.B. 248(7) (the "Section 7 Notice"). Debt

[8] 1-ER-39-40.

[9] *Id.* (citing to Nevada's jurisdictional limit of $10,000 for small claims court).

collectors must then wait sixty (60) days thereafter (the "Notice Period") before undertaking any further collection. Debt collectors view the "Section 7 Notice" as inconsistent with the FDCPA and are unwilling to run afoul of the Consumer Financial Protection Bureau ("CFPB") or the Federal Trade Commission ("FTC").

Section 7.5 allows a debt collector to accept a voluntary payment, however it may only do so if the debtor initiates contact with the debt collector and, only if the debt collector expressly informs the debtor that (1) a payment "is not demanded or due" and (2) the debt "will not be reported to any credit reporting agency during the 60-day notification period."

Based upon these provisions of SB 248, Collectors are becoming less likely to collect the debts of NHA's members, and NHA's members are suffering from those consequences in the following ways:

(1.) The sixty (60) day "cooling off" period has increased the length of time to collect medical debt. The longer debt is outstanding the less likely for debt recovery. Immediately, NHA's members are unable to incorporate Medicare bad debt amounts on the current year cost report due to sixty day "cooling off" period. Thus, NHA's members are unable to charge bad debt expense to the appropriate reporting period driving lower Medicare cost report reimbursements.

(2.) Some collection agencies have stopped medical debt collection in Nevada. This is impacting the rural, critical access hospitals ("CAH"). This has resulted in some CAHs keeping "open" patient receivable accounts greater than 120 days. This simple accounting act may drive a financial audit finding, Appellants or CAHs do not have sufficient staff to actively "work" the account for collection. Hospital patient billing systems automatically generate a patient bill along with subsequent patient statements (every 30 days). But, a CAH usually has only a single business office person to address hospital inpatient, hospital outpatient, and rural health clinic billing. A CAH does not have the staff to actively work unpaid accounts. More importantly, generally accepted accounting principles allow for patient accounts to be held "open" on the financial statements only to the extent hospitals are actively working the account and/or requires accounts not actively being worked to be "written" off. Thus, the accounting treatment necessitated by SB 248 will increase the bad debt expense or cause reductions in revenue for NHA's members.

(3.) NHA's members have forecasted that net revenue will decrease by 1% in the next 12 to 18 months. NHA's members have also forecasted that expenses will increase due to growing bad debt expense from the accounts not being collected. This increase in expenses is estimated to grow from 1.5% to a

forecasted 5% by the end of 2022. Obviously, decreases in revenue and increases in expenses both cause a reduction in profitability of NHA's members.

Given these significant and unintended consequences of S.B. 248, NHA moves the court for leave to file an amicus brief to further discuss and support the Appellants' arguments.

IV.

CONCLUSION

The motion for leave to file an amicus brief should be granted.

November 25, 2014

Respectfully submitted,

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STATEMENT OF RELATED CASES

There are no related cases before this Court.

CERTIFICATE OF COMPLIANCE

We hereby certify that this brief complies with the type-volume limitation set forth in Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure. This brief uses a proportional typeface and 14-point font and contains 1972 words.

DATED this 12th day of April, 2022.

/s/ Rusty Graf

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IN THE UNITED STATES COURT OF APPEALS
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AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANTS' OPENING BRIEF AND SUPPORTING REVERSAL

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CORPORATE DISCLOSURE STATEMENT

In accordance with Fed. R. App. ("F.R.A.P.") 26.1 AND 29(c)(1), movants, Amicus Curiae, Nevada Hospital Association, a Nevada domestic cooperative corporation, (hereinafter "NHA"), state that they have no parent corporations and issue no stock; therefore, no publicly held corporation owns 10% of NHA.

TABLE OF CONTENTS

Cases

Other Authorities

I.

JURISDICTIONAL STATEMENT

Jurisdiction is stated as based upon 28 U.S.C. § 1331. The Appellants sought injunctive relief challenging a Nevada statute effective July 1, 2021, referred to as Senate Bill 248 ("S.B. 248"). Appellants claim S.B. 248 is preempted by (1) the Supremacy Clause of the United States Constitution; (2) the Fair Credit Reporting Act ("FCRA"); and (3) the Fair Debt Collection Practices Act ("FDCPA") and 12 C.F.R. § 1006.1 *et seq*. ("Regulation F"). Appellants further argue that S.B. 248 violates the First and Fourteenth Amendments because it imposes undue burdens on speech and is unconstitutionally vague.

Jurisdiction for this Court is stated by Appellants to also be based upon 28 U.S.C. § 1292(a)(1). The appeal is of the district court's order dated February 7, 2022, denying Collectors' Application for Temporary Restraining Order and Motion for Preliminary Injunction (the "Injunction Motion").

This Amicus Brief is made pursuant to Federal Rule of Appellate Procedure 29 following the required Motion to this Court. Leave was requested to allow NHA to file this amicus brief to inform the Court of the unintended negative consequences from the implementation of SB 248: Collectors are choosing not to collect the medical debt related to SB 248 causing a significant financial impact to the NHA's members.

II.

STATEMENT OF THE ISSUES TO BE ADDRESSED IN THIS BRIEF

1. Did the district court err when it concluded that the harm suffered by Appellants was not irreparable, and that the balance of equities and public interest did not support the Injunction Motion?

II.

STANDARD OF REVIEW

This Court applies a *de novo* standard when reviewing purely or predominately legal issues.[1] Matters involving interpretation or application of the U.S. Constitution, as well as federal and state statutes and regulations, fall squarely within this standard.[2] When applying the *de novo* standard, the Court gives no deference to the district court's ruling, but independently considers the matter anew, as if no decision had been rendered on the matter below.[3] Under this standard, "no form of appellate deference is acceptable."[4]

A moving party is entitled to preliminary injunctive relief if (1) it is likely to succeed on the merits; (2) it will suffer imminent irreparable harm if injunctive relief is not granted; (3) the balance of equities tips in their favor; and (4) granting the

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[1] *California First Amend. Coalition v. Calderon*, 150 F.3d 976, 980 (9th Cir. 1998
[2] *See, e.g., Cooper Indus., Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 436, 121 S. Ct. 1678, 1685 (2001).
[3] *Voigt v. Savell*, 70 F.3d 1552, 1564 (9th Cir. 1995)
[4].

injunction is in the public interest.[5] This Court employs a sliding scale whereby "the elements of the preliminary injunction test are balanced, so that a stronger showing of one element may offset a weaker showing of another."[6]

This Court has also instructed that an "injunction is appropriate when a plaintiff demonstrates . . . that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor."[7]

III.

STATEMENT OF THE CASE

Appellants commenced the district court action against Commissioner Sandy O'Laughlin (the "Commissioner") of the State of Nevada, Department of Business and Industry, Nevada Financial Institutions Division, challenging S.B. 248. Appellants applied for a temporary restraining order and moved for a preliminary injunction. Injunctive relief was sought. Appellants argued injunctive relief was appropriate because S.B. 248 constitutes an unlawful restraint on speech, is unconstitutionally vague, and because it is preempted by the FCRA, the FDCPA, and Regulation F.[8]

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[5] *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 877 (9th Cir. 2009).
[6] *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).
[7] *Id.* at 1134–35.
[8] This Amicus Brief will address only those issues raised in this appeal as to the irreparable harm and the balancing of the hardships elements of the injunctive relief request.

The district court denied the emergency motions on February 7, 2022, taking more than seven (7) months to issue its decision. This Amicus Brief is being asserted in support of the appeal that followed.

IV.

STATEMENT OF FACTS APPLICABLE TO THE AMICUS CURIAE

Nevada Hospital Association (NHA), a Nevada domestic cooperative corporation, hereby moves for leave to file a brief as amicus curiae in support of Appellants', AARGON AGENCY, INC., a Nevada corporation; ALLIED COLLECTION SERVICES, INC., a Nevada corporation; ASSETCARE, LLC, a Texas limited liability company; CAPIO PARTNERS, LLC, a Texas limited liability company; CF MEDICAL, LLC, a Nevada limited liability company; CLARK COUNTY COLLECTION SERVICE, LLC, a Nevada limited-liability company; COLLECTION SERVICE OF NEVADA, a Nevada corporation; NEVADA COLLECTORS ASSOCIATION, a Nevada non-profit corporation; PLUSFOUR, INC., a Nevada corporation; RM GALICIA d/b/a PROGRESSIVE MANAGEMENT, LLC, a Nevada limited-liability company; and THE LAW OFFICES OF MITCHELL D. BLUHM & ASSOCIATES, LLC, a Georgia limited liability company,, et al., ("Collectors"), appeal and reversal of the decision below.

In 2021, the Nevada Legislature enacted S.B. 248.[9] S.B. 248 amended Nev. Rev. Stat. Chapter 649, governing licensed debt collectors, effectively placing compliance with its requirements under the auspices of the Commissioner.[10] The Commissioner is empowered to enforce Chapter 649 and has the authority to impose discipline against debt collectors for violations of the S.B. 248.[11] The NHA believes that Nevada hospitals are experiencing unintended negative consequences from the implementation of SB 248 and the amended Nev. Rev. Stat. Chapter 649.

Any violation of S.B. 248 places the Appellants at risk of administrative fines, suspension or revocation of their licenses, civil injunctions, and even criminal penalties.[12] The criminal penalties can multiply quickly, as "[e]ach day a person operates a collection agency in violation of the provisions of this chapter is a separate violation under this section."[13]

S.B. 248 became effective on July 1, 2021.[14] The bill provides, in pertinent part, as follows:

> **"Section 7**
>
> 1. Not less than 60 days before taking any action to collect a medical debt, a collection agency shall send by registered or

[9] 1-ER-35-37.
[10] 1-ER-38.
[11] *Id.*
[12] *See* Nev. Rev. Stat. §§ 649.395 649.400, and 649.440.
[13] Nev. Rev. Stat. § 649.435.
[14] Exhibit 1, § 10.

certified mail to the medical debtor written notification that sets forth:

(a) The name of the medical facility, provider of health care or provider of emergency medical services that provided the goods or services for which the medical debt is owed;

(b) The date on which those goods or services were provided; and

(c) The principal amount of the medical debt.

2. The written notification required by subsection 1 must:

(a) Identify the name of the collection agency; and

(b) Inform the medical debtor that, as applicable:

(1) The medical debt has been assigned to the collection agency for collection; or

(2) The collection agency has otherwise obtained the medical debt for collection.

Section 7.5

1. Nothing in section 7 of this act shall prohibit a collection agency from accepting a voluntary payment from a medical debtor during the 60-day notification period specified in subsection 1 of section 7 of this act provided that:

(a) The medical debtor initiates the contact with the collection agency; and

(b) The collection agency discloses to the medical debtor that:

(1) A payment is not demanded or due; and

(2) The medical debt will not be reported to any credit reporting agency during the 60-day notification period specified in subsection 1 of section 7 of this act.

2. No action by a medical debtor to initiate contact with a collection agency may be construed to allow the collection agency to take action to collect the medical debt before the expiration of the 60-

> day notification period specified in subsection 1 of section 7 of this act…."[15]

Section 8(2) prohibits debt collectors from suing to recover unpaid medical debts in amounts of $10,000 or less during this period.[16]

S.B. 248 prohibits debt collectors from taking any action to collect a medical debt, until they send by certified or registered mail a written notice to the debtor detailing all of the information set out in S.B. 248(7) (the "Section 7 Notice"). Debt collectors must then wait sixty (60) days thereafter (the "Notice Period") before undertaking any further collection.

Section 7.5 allows a debt collector to accept a voluntary payment, however it may only do so if the debtor initiates contact with the debt collector and, only if the debt collector expressly informs the debtor that (1) a payment "is not demanded or due" and (2) the debt "will not be reported to any credit reporting agency during the 60-day notification period."[17]

S.B. 248's broad prohibition against taking "any action" to collect a medical debt prevents a debt collector from doing anything other than sending the Section 7 Notice and waiting for the Notice Period to expire. During this period, a debt collector is prohibited from contacting the debtor by telephone, sending any written

[15] 1-ER-39-40.
[16] *Id.* (citing to Nevada's jurisdictional limit of $10,000 for small claims court).
[17] 1-ER-39-40.

communication, and bringing a lawsuit, even though such debt is due and owing to the subject healthcare provider still awaiting payment for the services it provided to the consumer/patient.

The Appellants have argued that "S.B. 248 not only sent shock waves through the medical debt collection industry in Nevada, it stopped medical debt collections entirely."[18] S.B. 248, as enacted, is vague and ambiguous on its face, when it fails to define terms such as "medical debtor" and "action to collect a medical debt."[19]

S.B. 248 requires a debt collector to interface with a Nevada medical debtor, but then hamstrings that same debt collector from doing anything else. Once the medical debtor is alerted to the debt collector's involvement, S.B. 248 then bars debt collectors from continuing to contact medical debtors in any way. S.B. 248 acknowledges that medical debtors will contact the debt collector following the sending of the Notice, but then S.B. 248 offers no guidance as to what debt collectors can and cannot say to medical debtors who choose to contact them voluntarily.

SB 248 is causing a chilling effect on the medical industry as a whole. If the Collectors are unwilling or unable to collect these medical debts, then the members of the NHA may be less likely to provide the services or they will be forced to increase the costs of those services.

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[18] See Appellants Opening Brief, p. 19.
[19] *See* 1-ER-38-40.

V.

LEGAL ARGUMENT

A. Collectors Have Been Irreparably Harmed, and the Balance of the Equities and Public Interest Is In Their Favor.

A party seeking injunctive relief is entitled to preserve the *status quo ante* when they are subject to "irreparable harm" if an injunction is not issued.[20] The deprivation of a constitutional right has no adequate legal remedy and thus "unquestionably constitutes irreparable injury."[21] Irreparable harm similarly arises in the context of unconstitutional business regulations.[22] This Court applies a "sliding scale approach," such that "'serious questions going to the merits' and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest."[23]

The Appellants have alleged in the district court that undisputed evidence confirms irreparable harm. S.B. 248 deprives Collectors of their basic constitutional rights and interferes with their obligation to comply with the mandatory

[20] *Small v. Avanti Health Sys. LLC*, 661 F.3d 1180, 1191 (9th Cir. 2011).
[21] *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012).
[22] *See, e.g., Lone Star Sec. and Video, Inc. v. City of Los Angeles*, 2012 WL2529404, at *3 (C.D. Cal. July 2, 2012).
[23] *Arc of California v. Douglas*, 757 F.3d 975, 983 (9th Cir. 2014).

requirements of the FDCPA and the FCRA. This has forced them to choose which law they will comply with and which they will not.

The Collectors are faced with a Hobson's Choice of sorts. If Collectors comply with S.B. 248, they will be deemed to violate the FDCPA and FCRA. Conversely, if Collectors comply with their obligations under the FDCPA and the FCRA, they will be deemed to violate S.B. 248. Either way, Collectors are subject to discipline, penalties, or litigation for merely attempting to follow the law.

Despite these irreconcilable conflicts, the district court undertook the approach of considering the irreparable harm by disregarding sworn declarations. The district court also took a less-than-thorough approach to considering the very real impact of S.B. 248 is having on small or large medical businesses in Nevada.

First, it concluded that Collectors sworn declarations were "conclusory" with regard to the threat imposed by S.B. 248 on their businesses.[24] This assumption was directly at odds with the district court's acknowledgement that S.B. 248 "*had caused an "industry standstill" in collection of medical debt in Nevada."*[25] This industry standstill, caused by the insurmountable and irreconcilable conflicts between S.B. 248 and federal law, coupled with the very real financial risks to Appellants' businesses and those of the members of the NHA who rely on the collection efforts

[24] 1-ER-30.
[25] 4-ER-566:14-16.

of the Appellants, their very survival was somehow not enough irreparable harm for the district court. Instead, the district court's order ultimately characterized the harm to Collectors as solely pecuniary, somehow believing that this ended the inquiry. The court's cursory analysis of the actual harms being suffered by the Collectors is perplexing and does not address the chilling effect on the medical industry as a whole and its unintended consequences to the other members of the medical industry such as the NHA members.

The district court's treatment of PlusFour bordered on heartless. PlusFour was only collecting Nevada medical debt when S.B. 248 took effect. At that time, it had twelve employees and was a successful small business. Solely because of S.B. 248, PlusFour was forced to lay off all of its other employees, and the company was on the verge of permanent closure.[26] The district court concluded that PlusFour "preemptively" stopped collecting. According to the district court, it was as though losing the ability to continue conducting one's business because of an unconstitutional statute was a voluntary "choice."

The district court seemed to believe there was no irreparable harm because PlusFour had not been "threatened with suit under the FDCPA or SB 248" and that Collectors' challenge involved "hypothetical enforcement scenarios."[27] These

[26] 3-ER-454-455.
[27] 1-ER-22:13 and 1-ER-31:2-6.

conclusions are astonishing in light of the district court's own assessment of the impact of S.B. 248. The district court acknowledged that S.B. 248 had caused an "industry standstill" stopping collection of all medical debt in Nevada. Why was collection stopped? Because Collectors could not comply with S.B. 248 without violating federal laws, and vice versa. Regardless, if any of the substantive claims succeed here, reversal is warranted. This causes much more than pecuniary costs to the Collectors; it is causing a chilling effect on the medical industry as a whole. This in turn will cause damage to the public in the form of a reduced availability of medical services or higher costs for the same services. And all of the bases for reversal set forth by Collectors in this appeal independently warrant reversal.

Based upon the provisions of SB 248, Appellants are becoming less likely to collect the debts of NHA's members, and NHA's members are specifically suffering from those consequences in the following ways:

(1.) The sixty (60) day "cooling off" period has increased the length of time to collect medical debt. The longer debt is outstanding the less likely for debt recovery. Immediately, the NHA's members are unable to incorporate Medicare bad debt amounts on the current year cost report due to sixty day "cooling off" period. This will have a cascading effect for the recovery of Medicare payments for years to come. Thus, NHA's members are unable to charge bad debt expense to the correct reporting period driving lower

Medicare cost report reimbursements, which in turn drives how and how much the NHA's members are paid.

(2.) Some collection agencies have stopped medical debt collection in Nevada. This is materially impacting the rural, critical access hospitals ("CAH"). The collection agencies read SB 248 to be in conflict with the Federal Debt Collections Practice Act. This has resulted in CAHs keeping "open" patient receivable accounts greater than 120 days. This simple accounting act has caused certain financial statement audit findings as there is not sufficient staff to actively "work" the account for collection.

Hospital patient billing systems automatically generate a patient bill along with subsequent patient statements (every 30 days). But, a CAH usually has only a single business office person to address hospital inpatient, hospital outpatient, and rural health clinic billing. A CAH does not have the staff to actively work unpaid accounts. More importantly, generally accepted accounting principles allow for patient accounts to be held "open" on the financial statements only to the extent hospitals are actively working the account and/or requires accounts not actively being worked to be "written" off. Thus, this accounting act caused by SB 248 will increase the bad debt expense or cause reductions in revenue for NHA's members.

(3.) NHA's members have forecasted that new revenue will decrease by 1% in the next 12 to 18 months. NHA's members have also forecasted that expenses will increase due to growing bad debt expense from the accounts not being collected. This increase in expenses is estimated to grow from 1.5% to a forecasted 5% by the end of 2022. Obviously, decreases in revenue and increases in expenses both cause a reduction in profitability of NHA's members.

Given these significant and unintended consequences of S.B. 248, NHA moves the Court to reverse the findings of the district court and find in favor of the Appellants.

VI.

CONCLUSION

The NHA asserts and concurs with the arguments of Appellants in that the district court erred when it concluded that the harm suffered by Appellants was not irreparable, and that the balance of equities and public interest did not support the Injunctive Relief sought.

April 12, 2022

Respectfully submitted,

/s/ Rusty Graf_____

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STATEMENT OF RELATED CASES

There are no related cases before this Court.

CERTIFICATE OF COMPLIANCE

We hereby certify that this brief complies with the type-volume limitation set forth in Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure. This brief uses a proportional typeface and 14-point font and contains 3535 words.

DATED this 12th day of April, 2022.

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