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PREFERRED CAPITAL FUNDING-NEVADA, LLC, a Nevada limited liability company, and ALLIANCE FOR RESPONSIBLE CONSUMER LEGAL FUNDING, an Illinois nonprofit corporation,

Plaintiffs,

vs.

FRANCISCO V. AGUILAR, in his official capacity as NEVADA SECRETARY OF STATE, and KATE FELDMAN, an individual,

Defendants,

and

STOP PREDATORY LENDING NV, a Nevada Nonprofit Corp.,

Intervenor-Defendant.

ACTIVEHOURS, INC., a Delaware corporation; STACY PRESS, an individual,

Plaintiffs,

vs.

KATE FELDMAN, an individual; STOP PREDATORY LENDING NV, a Nevada Nonprofit Corp.; and FRANCISCO V. AGUILAR, in his official capacity as NEVADA SECRETARY OF STATE,

Defendants.

Case No.: 24 OC 00023
Dept. No.: I

Case No.: 24 OC 00029 1B
Dept. No.: I

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FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER DENYING PLAINTIFFS' LEGAL CHALLENGE TO INITIATIVE PETITION S-03-2024

This matter came before this Court following four complaints, filed by four different sets of plaintiffs, pursuant to NRS 295.061, challenging the legal sufficiency of Initiative Petition S-03-2024 (the "Petition"). On January 24, 2024, Kate Feldman filed Initiative Petition S-03-2024 with the Nevada Secretary of State (the

1 “Secretary”).

2 The Court, having reviewed the papers and pleadings on file, considered the
3 matter, being fully advised, and good cause appearing, finds, concludes, and orders
4 as follows:

5 **FINDINGS OF FACT AND CONCLUSIONS OF LAW¹**

6 **A. FINDINGS OF FACT**

7 **1. Initiative Petition S-03-2024**

8 On January 24, 2024, Kate Feldman, on behalf of Stop Predatory Lending NV,
9 filed the Petition with the Secretary. The Petition seeks to amend the Nevada Revised
10 Statutes by adding thereto a new Chapter, to be designated Chapter 604D:
11 Preventing Predatory Payday and Other Loans Act.

12 The Petition includes a description of effect as required by NRS 295.009(1)(b),
13 which reads, in full:

14 This measure addresses high-interest lending practices by
15 establishing maximum interest rates charged to consumers.

16 Currently, most consumer loans have no interest rate cap. The
17 proposed cap would set a maximum interest rate of 36% annually on
18 the unpaid balance of the amount financed, and would apply to
19 consumer loans; deferred-deposit transactions (“payday loans”); title
20 loans; and other loan types dependent on future earnings and
21 income.

19 The initiative also prohibits evading the interest rate cap by
20 structuring transactions to mask their nature as loans covered by
21 this measure, or partnering with out-of-state lenders to violate the
22 rate cap. The initiative voids transactions that violate the cap, and
23 establishes civil penalties.

22 **2. Procedural History**

23 On January 26, 2024, Plaintiffs Nevadans For Financial Choice and Christina
24 Bauer (collectively, “Nevadans for Financial Choice” or “NFFC”) filed a Complaint for
25 Declaratory and Injunctive Relief challenging the legal sufficiency of Initiative
26

27 ¹ Any findings of fact which are more appropriately considered conclusions of
28 law shall be treated as such, and any conclusions of law which are more appropriately
considered findings of fact shall be treated as such.

1 Petition S-01-2024, pursuant to NRS 295.061, and a Brief in Support of the
2 Complaint. Subsequently, on February 14, Plaintiffs Nevadans for Financial Choice
3 filed a First Amended Complaint timely adding Initiative Petition S-03-2024 to their
4 challenge.

5 On January 29, Plaintiff DailyPay, Inc. (“DailyPay”) filed a Complaint for
6 Declaratory and Injunctive Relief challenging the legal sufficiency of both Initiative
7 Petition S-01-2024 and Initiative Petition S-03-2024, pursuant to NRS 295.061.

8 On January 29, Plaintiffs Preferred Capital Funding - Nevada, LLC and
9 Alliance For Responsible Consumer Legal Funding (collectively, “Preferred Capital”)
10 filed a Complaint for Declaratory and Injunctive Relief challenging the legal
11 sufficiency of both Initiative Petition S-01-2024 and Initiative Petition S-03-2024,
12 pursuant to NRS 295.061.

13 On February 13, Plaintiffs ActiveHours, Inc. and Stacy Press (collectively,
14 “ActiveHours”) filed a Complaint for Declaratory and Injunctive Relief challenging
15 the legal sufficiency of Initiative Petition S-03-2024, pursuant to NRS 295.061.

16 On or about February 22, the parties stipulated to, and the Court ordered, that
17 the filed suits be consolidated into one action to make the matter more efficient in
18 terms of judicial economy, and the parties agreed to a briefing schedule. After
19 briefing, the Court held hearing on the consolidated matters on March 22, 2024.

20 **B. CONCLUSIONS OF LAW**

21 **1. The Petition Does Not Violate Nevada’s Single Subject Rule**

22 NRS 295.009(1) provides that “[e]ach petition for initiative or referendum must
23 ... [e]mbrace but one subject and matters necessarily connected therewith and
24 pertaining thereto.” Subsection 2 of that statute explains that an initiative “embraces
25 but one subject and matters necessarily connected therewith and pertaining thereto,
26 if the parts of the proposed initiative ... are functionally related and germane to each
27 other in a way that provides sufficient notice of the general subject of, and of the
28 interests likely to be affected by, the proposed initiative.” NRS 295.009(2).

1 The single-subject requirement “facilitates the initiative process by preventing
2 petition drafters from circulating confusing petitions that address multiple subjects.”
3 *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 902, 141 P.3d
4 1235, 1240 (2006). Thus, “the single-subject requirement helps both in promoting
5 informed decisions and in preventing the enactment of unpopular provisions by
6 attaching them to more attractive proposals or concealing them in lengthy, complex
7 initiatives (i.e., logrolling).” *Las Vegas Taxpayer Accountability Comte. v. City Council*
8 *of City of Las Vegas*, 125 Nev. 165, 176-77, 208 P.3d 429, 436-37 (2009).

9 In considering single-subject challenges, courts must first determine the
10 initiative’s purpose or subject. “To determine the initiative’s purpose or subject, this
11 court looks to its textual language and the proponents’ arguments.” *Las Vegas*
12 *Taxpayer*, 125 Nev. at 180, 208 P.3d at 439. Courts also will look at whether the
13 description of effect articulates an overarching purpose and explains how provisions
14 relate to a single subject. *Id.*

15 Furthermore, and most recently, in *Helton v. Nevada Voters First PAC*, 138
16 Nev. Adv. Op. 45, 512 P.3d 309 (2022), the Nevada Supreme Court stated that “even
17 if an initiative petition proposes more than one change, each of which could be
18 brought in separate initiative petitions, the proper consideration is whether the
19 changes are functionally related and germane to each other and the petition’s
20 subject.” *Id.*, 512 P.3d at 314. The Court found that “(b)oth categories of changes
21 proposed in the ... initiative concern the election process in Nevada and more
22 specifically how candidates for the specifically defined partisan offices are presented
23 to voters and elected.” *Id.*, 512 P.3d at 314-15.

24 In this case, the Court finds that the primary purpose of the Petition is to limit
25 interest rates on consumer loan transactions, and that all components of the Petition
26 are functionally related and germane to that purpose. The Court finds that the
27 Petition limits consumer interest rates on the transactions it defines as loans to 36%
28 annually. Each of the provisions of the Petition either establish that limit, make

1 conforming or ancillary changes to other statutes, or—in the case of the Sections 10
2 through 14, provide enforcement mechanisms necessary and germane to the
3 operation of the Petition’s purpose. Further, the Court finds that the Petition’s text,
4 its description, and the arguments of the Proponents in briefing and at hearing of
5 effect confirm the Petition’s primary purpose. Therefore, this Court finds that
6 Initiative Petition S-03-2024 does not violate NRS 295.009(1)(a)’s single-subject
7 requirement.

8 **2. The Petition’s Descriptions Of Effect Is Legally Adequate**

9 Under NRS 295.009(1)(b), every initiative must “[s]et forth, in not more than
10 200 words, a description of the effect of the initiative or referendum if the initiative
11 or referendum is approved by the voters.” The purpose of the description is to “prevent
12 voter confusion and promote informed decisions.” *Nevadans for Nev. v. Beers*, 122
13 Nev. 930, 939, 142 P.3d 339, 345 (2006). Thus, “[t]he importance of the description of
14 effect cannot be minimized, as it is what the voters see when deciding whether to
15 even sign a petition.” *Coal. for Nev.’s Future v. RIP Com. Tax, Inc.*, No. 69501, 2016
16 WL 2842925 at *2 (2016) (unpublished disposition) (citing *Educ. Initiative PAC v.*
17 *Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013)). “[T]he
18 description of effect may hold even more impact with respect to a referendum, since
19 merely gathering sufficient signatures to place a referendum on the ballot guarantees
20 a change to the law regardless of the election’s outcome.” *Id.* (citing Nev. Const.
21 art. 19, § 1(3) (providing that, if the voters approve the referendum, the statute “shall
22 stand as the law of the state and shall not be amended, annulled, repealed, set aside,
23 suspended or in any way made inoperative except by the direct vote of the people,”
24 and if the voters disapprove the statute or resolution, it is rendered void)).

25 The Nevada Supreme Court has repeatedly held that “a description of effect
26 must be straightforward, succinct, and non-argumentative, and it must not be
27 deceptive or misleading.” *Educ. Initiative PAC*, 129 Nev. at 42, 293 P.3d at 879
28 (internal quotation marks and citation omitted). It must also “explain the[]

1 ramifications of the proposed amendment” in order to allow voters to make an
2 informed decision. *Nev. Judges Ass’n v. Lau*, 112 Nev. 51, 59, 910 P.2d 898, 903
3 (1996).

4 This Court finds that the Petition’s description of effect meets the
5 requirements of Nevada law. The description of effect is straightforward, succinct,
6 under 200 words, and there is no basis for a finding of any argumentative language.
7 The description proceeds, succinctly and directly, through (1) a general statement of
8 the Petition’s purpose; (2) a neutral and accurate statement of current law regarding
9 interest rate limitations; (3) a description of the transactions to which the proposed
10 cap would apply; and (4) a statement of enforcement aspects of the proposal. The
11 Court finds that Plaintiffs fail to meet the burden of showing that the Petition’s
12 description of effect does not comply with NRS 295.009. Therefore, the Court finds
13 the description of effect for Initiative Petition S-03-2024 satisfies Nevada’s
14 NRS 295.009 requirement as the plain language of the description is straightforward,
15 succinct, and non-argumentative.

16 **3. The Petition Does Not Contain An Unfunded Mandate**

17 Article 19, section 2(1) of the Nevada Constitution provides that the initiative
18 process is “subject to the limitations of Article 19, Section 6, which “does not permit
19 the proposal of any statute or statutory amendment which makes an appropriation
20 or otherwise requires the expenditure of money, unless such statute or amendment
21 also imposes a sufficient tax, not prohibited by the constitution, or otherwise
22 constitutionally provides for raising the necessary revenue.” As the Nevada Supreme
23 Court holds, Section 6 applies to all proposed initiatives. *Rogers v. Heller*, 117 Nev.
24 169, 173, 18 P.3d 1034, 1036 (2001). The primary purpose behind this requirement is
25 to ensure that no initiative is presented to the voters without funding provisions when
26 the initiative requires an appropriation or expenditure.

27 “[A]n appropriation is the setting aside of funds, and an expenditure of money
28 is the payment of funds.” *Rogers v. Heller*, 117 Nev. 169, 173, 18 P.3d 1034, 1036

1 (2001). “A necessary appropriation or expenditure in *any* set amount or percentage is
2 a new requirement that otherwise does not exist.” *Id.*, 117 Nev. at 176. “[A]n initiative
3 makes an appropriation or expenditure when it leaves budgeting officials no
4 discretion in appropriating or expending the money mandated by the initiative—the
5 budgeting official must approve the appropriation or expenditure, regardless of any
6 other financial considerations.” *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 890, 141
7 P.3d 1224, 1233 (2006).

8 Here, this Court finds that plaintiffs do not provide any evidence regarding the
9 expected unfunded expenditures or costs they insist come along with the Petition, but
10 rather argue that increased regulation must somehow necessarily increase the
11 workload of state personnel, and therefore will increase state expenditures in some
12 form. While the Court is not unsympathetic to that argument, Nevada Supreme
13 Court case law authority interpreting Article 19, Section 6 does not support
14 invalidating a proposed ballot measure on those grounds. This Petition does not
15 require specific enforcement procedures, creates no additional regulatory bodies or
16 agencies, and Plaintiffs cannot point to specific instances of mandatory, non-
17 discretionary appropriations that would have to be made should this Petition become
18 law. Therefore, the Court finds that Plaintiffs fail to meet the burden of showing that
19 the Petition violates Article 19, Section 6 of the Nevada Constitution.

20 **4. The Petition Does Not Violate Article 19, Section 3**

21 Under Article 19, Section 3 of the Nevada Constitution, proponents must
22 “include the full text of the measure proposed” with their initiative petition. Nev.
23 Const. art. 19, § 3. Plaintiffs DailyPay and Nevadans for Financial Choice make “full-
24 text” arguments against the Petition. This Court rejects plaintiffs’ arguments and
25 finds that the Petition contains every provision that is proposed to be circulated for
26 signatures and to considered by the electorate, and that therefore there is no violation
27 of Article 19, Section 3.

28 Furthermore, this Court rejects the other various challenges to the Petition’s

1 legal sufficiency.²

2 **ORDER**

3 Based on the foregoing findings of fact and conclusions of law:

4 1. **IT IS THEREFORE ORDERED** and declared that Initiative Petition
5 S-03-2024 is legally sufficient.

6 2. **IT IS FURTHER ORDERED** and declared that Initiative Petition
7 S-03-2024 does not violate Nevada's single subject rule.

8 3. **IT IS FURTHER ORDERED** and declared that Initiative Petition
9 S-03-2024's description of effect meets the requirements of Nevada law.

10 4. **IT IS FURTHER ORDERED** and declared that Initiative Petition
11 S-03-2024 does not contain an unfunded mandate.

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24 ² To the extent other arguments were raised by any Plaintiffs, like DailyPay's
25 contention that the Petition is a referendum instead of an initiative, the Court has
26 considered them and finds them without merit. The Petition does not change a single
27 word of SB 290 (2023). Further, the Petition makes numerous amendments to Nevada
28 statutes, and creates new statutory sections; therefore the Petition is a statutory
initiative pursuant to Article 19, Section 2(3).

1 5. **IT IS FURTHER ORDERED** that plaintiffs' challenges to Initiative
2 Petition S-03-2023 are rejected, and Plaintiffs' complaints are dismissed with
3 prejudice as to their challenge to Initiative Petition S-03-2023.

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Dated this 12th day of April, 2024.

William A. Maddox
District Court Judge

Respectfully Submitted by:

/s/ Bradley S. Schrager
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