In the Supreme Court of the State of Alaska

ROBIN L. PEPPER, *Appellant*, v. ROUTH CRABTREE, APC, RICHARD L. CRABTREE, AND CRI, LLC AKA CHECKRITE OF ANCHORAGE, *Appellees*.	)	Supreme Court No. S-13042 Superior Court No. 3AN-07-08568 CI

Appeal from a Final Judgment of the Superior Court,
Third Judicial District at Anchorage,
The Honorable Mark Rindner, Presiding

REPLY BRIEF OF APPELLANT ROBIN PEPPER

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REPLY BRIEF OF APPELLANT ROBIN PEPPER

Routh Crabtree proposes an extreme and uncompromising version of the *Noerr-Pennington* doctrine that would undermine decades of precedent regulating unfair and deceptive trade practices in the context of debt collection litigation. Routh's position would also call into the question the constitutionality of many statutes and undermine the United States Supreme Court's unanimous decision that the litigating activities of attorney-debt collectors are subject to federal consumer-protection law. *See Heintz v. Jenkins*, 514 U.S. 291 (1995). For the reasons explained in our opening brief (at 23-36), Routh's position is based on a misunderstanding of Petition Clause jurisprudence and is at odds with the decision of every court that has considered the issue of *Noerr-Pennington* immunity for unfair and deceptive debt-collection practices.

Routh attributes to Pepper the equally extreme view that debt collectors are entirely unprotected by the First Amendment, and that the consumer-protection laws may be used to collaterally attack the underlying merits of collection lawsuits. But that is not Pepper's position, and this case does not require the Court to choose between such dramatic extremes.

When the dust is settled, this case can be resolved by answering a much narrower question—namely, whether a debt collector's *failure to provide notice to a debtor* constitutes protected petitioning and, if so, whether a debt collector that engages in such activity is immune from liability under Alaska's Unfair Trade

Practices Act by virtue of the *Noerr-Pennington* doctrine. The answer is that there is no First Amendment right to withhold notice to any opposing litigant in the first place, let alone an unsophisticated or incompetent debtor facing the possibility of default. To the contrary, that debtor has a countervailing right under the Due Process Clause to notice and nothing in the Petition Clause undercuts that right. The bottom line is that the failure to notify a person of the proceedings against them is not, in any meaningful sense, a petition. Routh has not identified any case law suggesting otherwise. Accordingly, Routh's *Noerr-Pennington* defense fails.

I. THIS CASE FALLS WITHIN THE HEARTLAND OF CONDUCT TRADITIONALLY REGULATED BY THE CONSUMER-PROTECTION LAWS.

In our opening brief (11-23), we demonstrated that the conduct alleged in this case—the failure to notify a debtor against whom a default is sought—implicates a debtors' right to due process and falls within the heartland of conduct traditionally regulated by the consumer-protection laws, including the Federal Trade Commission (FTC) Act, the Fair Debt Collection Practices Act (FDCPA), and state mini-FTC acts, including Alaska's Unfair Trade Practices Act (UTPA). We also pointed out (at 18-20) that Routh Crabtree's expansive theory of *Noerr-Pennington* immunity is incompatible with a long history under which the consumer-protection statutes are applied to the activities of lawyers who regularly collect debts through litigation and, specifically, to the practice of failing to properly serve debtors against whom default judgments are sought. Indeed, Routh's expansive understanding of the Petition

Clause would threaten the validity of federal statutes—including, for example, provisions of the FDCPA, 15 U.S.C. § 1692i, and the Servicemembers' Civil Relief Act, 50 U.S.C. App. § 521(b)—and would overturn decades of longstanding precedent. Routh says nothing in response.

That history—and Routh's silence in the face of that history—is particularly significant here for at least two reasons. *First*, the U.S. Supreme Court has made clear that, even in antitrust cases, protected petitioning under *Noerr-Pennington* does not encompass conduct whose "context and nature . . . make it the type of commercial activity that has traditionally had its validity determined by the antitrust laws themselves." *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 505 (1988); *see Venetian Casino Resort, L.L.C. v. N.L.R.B.*, 484 F.3d 601, 611-13 (D.C. Cir. 2007) (employer's actions were not protected unfair-labor-practices determination by virtue of *Noerr-Pennington* doctrine because they were the type of actions long governed by the National Labor Relations Act). Routh never grapples with the fact that the conduct at issue here is commercial activity that has traditionally had its validity determined by the consumer-protection laws.

Second, *Noerr-Pennington*, even in its most expansive form, is a "rule of statutory construction" that is designed to avoid a clash between the Petition Clause and novel applications of a given statute. *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 931 (9th Cir. 2006). The doctrine therefore should not be used to disrupt a longstanding interpretation of a statute. To successfully invoke the doctrine, a defendant has the

burden of showing that the statute in question does not reach the allegedly protected conduct, an inquiry that necessarily turns on the language, purpose, and history of the statute itself. *Id.* at 939-42 (extensively analyzing precedent and statutory language of RICO to determine whether it covered the novel application sought by the plaintiffs). By failing to even engage Pepper's extensive discussion of the traditional reach of unfair trade practices law, Routh has failed to carry that burden.

II. FAILURE TO GIVE NOTICE TO A DEBTOR IS NOT PETITIONING ACTIVITY PROTECTED BY THE FIRST AMENDMENT.

A. There Is No First Amendment Right to Withhold Notice To Another Person, Particularly In Light of That Person's Countervailing Right to Due Process.

1. Both parties' briefs devote substantial attention to their differing views on unsettled questions concerning the Petition Clause and the *Noerr-Pennington* doctrine generally. For the reasons given in our opening brief (at 23-36), Routh dramatically overstates the reach of *Noerr-Pennington*. But regardless of the answers to those questions, it is clear that the *Noerr-Pennington* doctrine cannot be applied as a defense in *this case*. That is because Ms. Pepper's suit is not directed at protected petitioning activity in the first place. Pepper Br. 37-50.

The gravamen of Ms. Pepper's UTPA action is Routh's failure to give notice of the proceedings against her—a debt collection abuse sometimes known as "sewer service." Even in the antitrust context, "[b]ecause the *Noerr-Pennington* doctrine grows out of the Petition Clause, its reach extends only to what may fairly be

described as *petitions*, not to litigation conduct generally." *Freeman v. Lasky, Haas & Cohler*, 410 F.3d 1180, 1184 (9th Cir. 2005) (emphasis in original). "A complaint, an answer, a counterclaim and other assorted documents and pleadings, in which plaintiffs or defendants make representations and present arguments to support their request that the court do or not do something, can be described as petitions without doing violence to the concept." *Id.* But notice to another party, like discovery, "is merely communication between parties as an aid to litigation. It is not in any sense a communication to the court and is therefore not a petition." *Id.; see also Cardtoons v. Major League Baseball Players Ass'n*, 208 F.3d 885, 892 (10th Cir. 2000) (en banc) ("The plain language of the First Amendment protects only those petitions which are made to 'the Government.' … A letter from one private party to another private party simply does not implicate the right to petition…").

As we pointed out in our opening brief (at 37), we can find no authority anywhere for the proposition that one party's failure to provide notice to another constitutes protected petitioning activity. Routh's brief cites no such authority. Instead, Routh ignores this critical threshold issue and simply assumes throughout its brief that the petitioning activity at issue here is the "filing of a complaint." Routh Br. 18-20. But Routh never explains how Ms. Pepper's allegations about the lack of notice might put the complaint itself at issue, and elsewhere in its brief Routh argues that just the opposite is true. *See* Routh Br. 26 (asserting that Ms. Pepper "has never challenged" the basis of the "underlying District Court complaint"). Routh cannot

have it both ways. The substance of Ms. Pepper's claim would be essentially the same if Routh had failed to notify her of a nonjudicial foreclosure of her home under a deed of trust, or failed to notify her of a garnishment of her wages or her bank account. Under those circumstances, would Routh be able to sensibly argue that Pepper's insistence on notice would place an impermissible burden on its ability to legitimately prosecute the foreclosure or garnishment? It is the *lack of notice* only on which liability is premised, not the underlying complaint.

In that respect, this case is similar to *Theofel v. Farey-Jones*, 359 F.3d 1066 (9th Cir. 2004). There, in the midst of prior commercial litigation between ICA and Farey-Jones, Farey-Jones had improperly subpoenaed and obtained ICA's emails, many of which was privileged or personal. *Id.* at 1071. In response, ICA and its employees sued Farey-Jones and its lawyer, contending that their abuse of the subpoena process violated the federal Wiretap Act, the Computer Fraud and Abuse Act, and various state laws. *Id.* at 1072. Farey-Jones and its lawyer raised the *Noerr-Pennington* doctrine as a defense to liability. The Ninth Circuit was "skeptical that *Noerr-Pennington* applies at all to the type of conduct at issue" because "subpoenaing private parties in connection with private commercial litigation bears little resemblance to the sort of governmental petitioning the doctrine is designed to protect." *Id.* at 1078-79. (And even assuming that *Noerr-Pennington* applied, the court held, the defense would fail because the distinct activity on which liability was premised—the discovery misconduct—was not itself defensible. *Id.* at 1079.) Here,

even more so than in *Theofel*, the conduct on which liability is premised is distinct from direct petitioning activity, consists solely of private communication between parties, and bears little resemblance to the sort of government petitioning that the doctrine is designed to protect. No litigant has any legitimate interest in withholding service from an opposing party. Pepper's suit attacks only the failure to provide notice and in no way burdens Routh Crabtree's constitutionally-guaranteed right to access the courts and petition for redress of its grievances.

Where, as here, liability is not predicated on the filing of a petition, the First Amendment is not implicated and "[t]he issue of immunity collapses into the issue of state law liability." *Cardtoons*, 208 F.3d at 893 (citing *Allied Tube & Conduit Corp.*, 486 U.S. at 509).

2. Because there is no First Amendment right to withhold notice from an opposing party in litigation, there is no clash between the Constitution and the law's insistence that unsophisticated debtors be given notice of the proceedings against them. This should come as no surprise, because, as noted in our opening brief (at 14-15), the debtor has a countervailing right under the Due Process Clause to be notified of the proceedings, so that she may access the courts and avoid a default judgment. *See Aguchak v. Montgomery Ward*, 520 P.2d 1352 (Alaska 1974); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise

interested parties of the pendency of the action and afford them an opportunity to present their objections."). Extending the *Noerr-Pennington* doctrine to protect the failure to provide notice to a debtor would put the First Amendment's Petition Clause and the Due Process Clause on a collision course. It would be especially odd to invite such a conflict between two constitutional provisions in the name of applying a doctrine designed to avoid constitutional questions. Routh's brief offers no solution to this problem.

Simply put, Routh's position stands the Petition Clause on its head. As explained throughout our opening brief (at 2, 11, 14-16, 38-40), Routh's plea for Petition Clause immunity in this case is especially misplaced here because it was *Routh's* conduct that threatened to deprive Pepper of *her* right of access to the courts. As the Supreme Court has recognized, the Petition Clause should not be read to immunize conduct that deprives opponents of access to the courts. *See California Motor Transportation Co. v. Trucking Unlimited*, 404 U.S. 508, 513 (1972) (as to conduct "effectively barring respondents from access to the agencies and courts," "actions of that kind cannot acquire immunity by seeking refuge under the umbrella of 'political expression.'").

B. The Failure to Give Notice Is Not Protected "Incidental" Activity, and Routh Has Waived Any Argument to the Contrary.

Our opening brief explained why the failure to give notice to a debtor should not be immunized on the alternative theory that it constitutes "incidental" conduct necessary to direct petitioning. Pepper Br. 39-4.

Routh has made no argument to the contrary, in this Court or in the court below, has cited no authority on point, and appears to have expressly disclaimed the theory. Routh Br. 19-20. The issue has therefore been waived. *See Oceanview Homeowners Ass'n, Inc. v. Quadrant Constr. & Eng'g*, 680 P.2d 793, 797 (Alaska 1984); *Wettanen v. Cowper*, 749 P.2d 362, 364 (Alaska 1988).

But even assuming *arguendo* that the issue had been preserved for review in this Court, this case is notably poor candidate for an extension of immunity doctrine on the basis of "incidental" activity. *First*, the majority of courts limit the *Noerr-Pennington* doctrine to direct petitioning activity, particularly outside the antitrust context. *See Venetian Casino Resort*, 484 F.3d at 612-14 (explaining that the "incidental conduct" extension has been "limited specifically to antitrust cases" and that "[t]he Supreme Court has extended Noerr-Pennington immunity into labor law *only to protect direct petitioning*, i.e., employer lawsuits; it has yet to do so in labor law for 'incidental' conduct.") (emphasis added and internal citations omitted); *Cardtoons*, 208 F.3d at 893 (holding that immunity exists only where liability is predicated on a "petition addressed to the government").

Second, even under the most expansive form of the doctrine, Noerr-*Pennington* immunity extends only to those lawsuits in which liability is premised, at least indirectly, on the legitimacy of the underlying petition as a whole. The failure to give notice does not qualify as "conduct incidental to the prosecution of the suit" because it is "a separate and distinct activity which might form the basis for . . . liability." *Freeman*, 410 F.3d at 1184 (quoting *Columbia Pictures Industries, Inc. v. Professional Real Estate Investors, Inc.*, 944 F.3d 1525 (9th Cir. 1991), *aff'd on other grounds*, 508 U.S. 49 (1993)). That is, in Ms. Pepper's suit, "[w]hether this particular misconduct violates [the UTPA]" does not even arguably "depend" on whether Routh's collection action "as a whole would be actionable." *Id.* Unlike many antitrust and labor relations actions in which the *Noerr-Pennington* doctrine is typically raised, Ms. Pepper does not claim that the underlying lawsuit brought by Routh Crabtree was actionable, even indirectly—on the grounds that it interfered with competition in an industry, for example, or that it constituted a retaliatory action in response to labor organizing activity. In other words, she complains not about the effect of the underlying action as a whole, but only that certain non-petitioning conduct—the failure to properly notify her—is itself an unfair and deceptive practice. Accordingly, this case concerns not protected incidental conduct, but "a separate and distinct activity which might form the basis for . . . liability." *Freeman*, 410 F.3d at 1184.

Third, as noted above, "context matters." *Venetian Casino Resort*, 484 F.3d at 612. Even in antitrust cases, so-called incidental activity is not protected if its "context and nature . . . make it the type of commercial activity that has traditionally had its validity determined by the antitrust laws." *Id.* at 612. Routh does not deny that a debt collectors' failure to notify debtors of proceedings against them is "the type of commercial activity that has traditionally" been regulated under consumer-protection laws, and is not in any sense "customary pre-litigation activity." *Id.* And any analogy to First Amendment breathing-room analysis does not hold up on these facts because the act of withholding notice is in no way necessary for a debt collector "to exercise its petitioning rights meaningfully." *Id.* at 934; *see Sosa*, 437 F.3d at 936 (recognizing that conduct must be a "common" and "necessary" incident to petitioning for it to be protected and describing presuit demand letters as "a common, if not universal, feature of modern litigation").

III. EVEN IF ROUTH'S CONDUCT WERE PROTECTED, THE SHAM EXCEPTION WOULD APPLY.

Even if the failure to notify a debtor somehow constituted protected petitioning activity, the *Noerr-Pennington* defense would nevertheless fail in this case because Routh's failure to notify Pepper is indefensible, and therefore falls within the doctrine's "sham" exception to the defense. Pepper Br. 41-50; *see Theofel*, 359 F.3d at 1079. Notably, Routh does not even attempt to show that the failure to notify Pepper was objectively reasonable. Instead, its only response (at 22-23) is to

argue that the sham exception must be applied to the underlying litigation as a whole rather than to Routh's failure to notify Pepper. Because Pepper, in Routh's view, "is attempting to impose liability based on the complaint itself," she must show that "the petition itself is a sham." Routh Br. 22.

Although Routh's premise is wrong—as discussed above, Pepper's suit is *not* in any sense premised on the filing of a complaint—its argument correctly recognizes that the scope and application of the *Noerr-Pennington* doctrine's sham exception turns on whether the plaintiff's theory of liability is premised on specific, discrete activity rather than on the litigation as a whole—*i.e.* "based on the complaint itself." Here, because Pepper's suit is based only on the failure to provide notice, the appropriate inquiry under the sham exception is whether the failure to provide notice has objective merit. That question answers itself.

The distinction between the two approaches is best illustrated by the difference between two Ninth Circuit opinions involving alleged discovery abuse—*Theofel*, 359 F.3d 1066, and *Freeman*, 410 F.3d 1180—both of which were written by Judge Kozinski within one the space of a year. Whereas in *Theofel* the court tested the objective baselessness of the subpoena itself, in *Freeman* the court looked at the merit of the underlying action as a whole. *Compare Theofel*, 359 F.3d at 1079 *with Freeman*, 410 F.3d at 1185. In *Sosa*, a subsequent case in which the sham exception was not at issue, the Ninth Circuit recognized the propriety of both approaches. *See Sosa*, 437 F.3d at 938 ("Private discovery conduct, not itself a

petition, may fall within the sham exception where *either* the conduct itself, *or* the underlying petition," satisfies the "sham" test.) (citing *Theofel* and *Freeman*) (emphasis added).

In *Theofel*, because liability was premised only on the abuse of a subpoena standing alone (which, as discussed above, was alleged to have independently violated the Wiretap Act, Computer Fraud and Abuse Act, and various state laws), the *Noerr-Pennington* defense failed because the subpoena itself was "objectively baseless." *Theofel*, 359 F.3d at 1079. The court specifically rejected the argument that the court should "look only at the merits of the underlying litigation, not at the subpoena" and rejected the proposition that "a litigant should have immunity for any and all discovery abuses so long as his lawsuit has some merit." *Id.* at 1079 ("Assuming that *Noerr-Pennington* applies at all, we hold that it is no bar where the challenged discovery conduct itself is objectively baseless."). Similarly, here, liability is predicated only on the failure to notify an opposing party. So even if one assumes (counterfactually) that the failure to provide notice is otherwise protected activity, there is no immunity because the failure to notify is itself objectively baseless.

By contrast, in cases where liability is really premised on the defendant's petition as a whole (as is often the case in antitrust or labor relations cases), the courts take a different approach. In *Freeman*, for example, the plaintiff attempted to avoid immunity in an antitrust case based on the theory that the defendants' discovery misconduct, by "stretching out the litigation," "postponed the day of

judgment and thus extended Sandior's price fixing." *Id.* at 1183. Similarly, in *Gunderson v. University of Alaska, Fairbanks*, 902 P.2d 323 (Alaska 1995), Gunderson sought to impose antitrust liability on Alaska Railroad Corporation for filing a protest (concededly an act of petitioning) that resulted in the cancellation of Gunderson's contract with the University of Alaska. He sought to avoid immunity, however, by arguing that the Railroad had presented false and misleading evidence, such that its protest *as a whole* was a "sham". *Id.* at 327. In both *Freeman* and *Gunderson*, unlike here, the allegations of discovery abuse and misrepresentation, respectively, went to the propriety of the underlying petition as a whole, on which the liability was premised.[1]

These two approaches to the sham exception, based on the plaintiff's differing theories of liability, is sensible. If liability is premised, as it is here, on discrete activity having nothing to do with the propriety of the underlying action, it makes little sense for the exception to turn on the merit of the action as a whole. But where liability is really based on the underlying action as a whole, a plaintiff should not be permitted to easily circumvent the *Noerr-Pennington* doctrine by pointing to some alleged abuse or another that allegedly occurred in the course of that action, where

[1] In *Sosa*, the plaintiffs brought a RICO action that directly challenged the content of DIRECTV's litigation position as articulated in its demand letters, which was the only petitioning activity at issue. *Id.* at 926. Although the plaintiffs in that case "declined to argue that the letters f[e]ll within the sham exception," 437 F.3d at 938, the nature of the theory of liability suggests that, if the defense had been raised, it would have been appropriate to assess whether the letters themselves were baseless (indeed, there would have been no other conduct to assess).

that misrepresentation is not independently the source of liability. Otherwise, litigants who want to impose liability for the act of filing a petitioning will too easily be able to point to some perceived misstatement or misconduct and make arguments like those made and rejected in *Freeman* and *Gunderson*. Thus, the case law correctly recognizes that the scope of the *Noerr-Pennington* doctrine matches the theory of the case. *Sosa*, 437 F.3d at 938. Where the theory of the case is narrow and, as it is here and as it was in *Theofel*, the reach of the *Noerr-Pennington* doctrine (assuming petitioning is at issue at all) should be similarly narrow.

IV. ROUTH'S ALTERNATIVE ARGUMENTS ARE MERITLESS.

Hedging its bets, Routh (at 27-36) attempts to salvage the trial court's dismissal on several alternative grounds, including the regulatory exemption to the UTPA and the doctrines of separation of powers and ripeness. These arguments are wholly without merit.

First, Routh argues (at 27-29) that acts by attorneys in the litigation context should fall within the Alaska UTPA's exemption for regulated activities. *See* AS 45.50.481(a)(1) (exempting acts or transactions that are "regulated under laws administered by the state, by any regulatory board or commission, or officer acting under statutory authority of the state . . . unless the law regulating the act or transaction does not prohibit the practices" at issue). This Court has consistently construed that exemption narrowly, however, and Routh has not demonstrated that the specific conduct at issue in this lawsuit—the practice of failing to notify debtors

of the proceedings against them—satisfies the exemption. *See generally Smallwood v. Central Peninsula General Hosp.*, 151 P.3d 319, 329 (Alaska 2006). To qualify, an activity or practice must satisfy a two-part test: The exemption withdraws unfair acts and practices from the purview of the UTPA "only where the business is both regulated elsewhere and the unfair acts and practices are therein prohibited." *State v. O'Neill Investigations, Inc.*, 609 P.2d 520, 528 (Alaska 1980).

The failure to provide notice to debtors is not "regulated elsewhere." *O'Neill*, 609 P.2d at 528. Regulation is "clearly distinct from and involves something more than mere prohibition." *Matanuska Maid, Inc. v. State*, 620 P.2d 182, 186 (Alaska, 1980) ("If we were to [define] 'regulate' as 'subject to any prohibitory law,' the applicability of the Unfair Trade Practices and Consumer Protection Act would be severely limited."). To the contrary, "section 481(1) exempts only those acts or transactions which are the subject of 'ongoing, careful regulation.'" *Id.* Routh suggests that the Rules of Civil Procedure regulate the failure to provide notice, but the rules, of course, are not themselves a body of the state government, a regulatory board or commission, or an officer acting under statutory authority of the state. Nor does any regulatory body carry out "ongoing, careful regulation" of debt collectors' practice of failing to notify debt collectors of proceedings seeking default judgments against them.

Routh points to other sources of law, including the Rules of Professional Conduct, but it cannot show that any regulatory body engages in ongoing, careful

regulation of the actions at issue in this case under law that specifically prohibits the form of conduct at issue. *See O'Neill*, 609 P.2d at 528 (regulation concerning debt collection agencies "does not prohibit the acts and practices alleged in the State's complaint"); *Smallwood*, 151 P.3d at 329 (although provider billing generally was regulated by federal and state Medicaid laws and regulations, "none of those statutory provisions or regulations governs the form of the provider billing statement or prohibits billing practices" at issue); *Matanuska Maid,* 620 P.2d at 186 ("[R]egulation under a separate and distinct statutory scheme, without prohibition of the acts and practices thought unfair, is insufficient to trigger the exemption contained in section 481(1)."). Moreover, as in *O'Neill*, none of the provisions cited by Routh specifically "regulate[s] the activities of debt collection agencies vis-a-vis debtors"; their "primary concern" is instead the regulation of attorneys. 609 P.2d at 528. Accordingly, Routh's reliance on the regulatory exemption fails.

Second, reframing its regulatory-exemption argument, Routh argues that it is a violation of the constitutional doctrine of separation-of-powers to apply the UTPA to the activities of lawyers. But the lead case that Routh cites explains persuasively why this argument is misplaced: "the judicial disciplinary system and consumer protection laws have different functions and there is no reason why they cannot coexist." *Short v. Demopolis*, 691 P.2d 163, 170 (1984). Moreover, for the reasons already explained above, Alaska's Rules of Professional Conduct are not specifically designed to regulate the practices of debt collectors with respect to unsophisticated

debtors. *Id.* (noting that the professional conduct code's "emphasis is consistently ethical," and consumer-protection law, "by contrast, is primarily addressed to the pragmatic concerns of the public; it emphasizes prevention of injury to the consumer").

Third, Routh (at 32-34) cites a handful of cases from other states refusing to apply state statutes to the "professional," as opposed to the "entrepreneurial" activities of attorneys, and suggests that Alaska do the same. Th is argument has no basis in the text, purpose, or history of the Alaska statute, and Routh offers none.

Fourth, and finally, Routh (at 35-36) invokes the ripeness principles applicable to malicious prosecution cases, suggesting that Pepper's case depends on a result in Routh's suit against Pepper. But once again, Routh mischaracterizes the allegations at issue, which do not attack Routh's collection lawsuit but rather attack only the means by which Routh attempted to collect debt from Pepper, and specifically, Routh's failure to provide notice to Pepper.

CONCLUSION

The Superior Court's order dismissing this action should be reversed.

Respectfully submitted,

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APPELLATE RULE 513.5(c)(2) CERTIFICATE OF FONT

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