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Elizabeth A. Brown
Clerk of Supreme Court

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

12
13 MICHAEL J. MONA, JR., an
14 individual,

15 Appellant,

16 vs.

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18 FAR WEST INDUSTRIES, a
19 California corporation,

20 Respondent.
21

Case No.: 73815

District Court Case No.: A-12-
670352-F

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23 **RESPONDENT'S REPLY IN SUPPORT**

24 **OF ITS MOTION TO DISMISS**

1 **I. INTRODUCTION**

2 Interlocutory Orders in garnishment proceedings are not directly
3 appealable. This Court lacks jurisdiction to hear Appellant Michael J. Mona,
4 Jr.'s ("Mona") appeal (the "Appeal"). Mona's Notice of Appeal identifies two
5 orders: (1) Far West Industries' Motion for Determination of Priority of
6 Garnishment ("Priority Order"), and (2) the order Sustaining Far West Industries'
7 Objection to Claim of Exemption ("Objection Order") collectively "Orders".
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11 Mona's Opposition to the Motion to Dismiss ("Opposition") relies on an
12 erroneous interpretation of Frank Settlemeyer & Sons, Inc. v. Smith & Harmer,
13 Ltd., 124 Nev. 1206 (2008). Mona inaccurately states that Settlemeyer holds that
14 any order in a garnishment action becomes directly appealable. See Opp.,
15 generally. This interpretation directly contradicts the plain language of
16 Settlemeyer which holds that a direct appeal can only come from a **judgment**,
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18 not a procedural interlocutory order. Id. at 1214.
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21 Mona's position regarding the timeliness of his Appeal cannot be
22 sustained. While claiming the Orders are directly appealable, Mona then
23 suggests that he should not be held to the mandated timeframes for an appeal.
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25 Mona asserts these claims without support. It is respectfully submitted that this
26 Court should dismiss Mona's Appeal due to lack of jurisdiction.
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1 **II. LEGAL ANALYSIS**

2 **A. The Orders are not Final Judgments Pursuant to NRAP 3A**
3 **Rendering this Court Without Jurisdiction Over the Appeal.**

4 The only basis the Opposition provides for this Court to exercise
5 jurisdiction over the Appeal is the inaccurate assertion that “orders directing a
6 garnishee to pay a garnishment . . . are final, appealable orders.” See Opp., p. 2.
7 The sole Nevada law relied on by Mona is the case of Settlemeyer. Id. at 1206.
8 This is not what Settlemeyer holds. Id. at 1214. In Settlemeyer, this Court stated
9 “[a] **judgement** in favor of or against the garnishee defendant constitutes **the**
10 **final judgment** in the garnishee proceedings, which may be appealed by the
11 aggrieved party under NRAP 3A(a).” Id. (emphasis added). This Court then
12 defined what constituted a judgment in a garnishment action by citing NRS
13 31.320(1) which allows the district court to enter a judgment against a **garnishee**
14 if the **garnishee** fails to respond to interrogatories. Id. (emphasis added).
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20 In Settlemeyer, this Court further went on to identify what a final
21 **judgment** was in the context of garnishment proceedings and stated:
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23 When a writ of garnishment is served, the garnishee defendant then
24 has 20 days to answer statutorily specified interrogatories. If a
25 properly served garnishee defendant fails to answer the
26 interrogatories, the Court must **enter judgment for the garnished
amount** ‘in favor of the defendant for use of the plaintiff against the
garnishee.’

27 Settlemeyer at 1214, see NRS 31.330 et seq. The Orders in this case do not
28 constitute judgments. Even if they did, Settlemeyer only applies to garnishees,

1 not judgment debtors such as Mona. Id.

2 The other cases that Mona cites to in support of his Opposition are federal
3 cases, none of which hold procedural garnishment orders such as the ones
4 rendered in this case are judgments subject to direct appeal. In United States v.
5 Sloan, 505 F.3d 685, 694 (7th Cir. 2007), the Seventh Circuit analyzed a
6 “judgment against the garnishee.” In United States v. Cohan, 798 F.3d 84 (2nd
7 Cir. 2015), the jurisdictional basis for the appeal was 28 U.S.C.A. § 1291 which
8 provides that all final “decisions” are appealable, which is different than NRAP
9 3A(b)(1) that requires a “judgment.” See id. at 88.
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13 Lastly, Mona cites to United States v. Mays, 430 F.3d 963 (9th Cir. 2005).
14 However, Mays supports the Motion to Dismiss. Id. In determining it had
15 jurisdiction over the garnishment proceedings, the Ninth Circuit noted “when the
16 district court denied Mays’ motion to dismiss the writ of garnishment, **there**
17 **were no other matters before the district court relating to Mays criminal**
18 **case. The district court’s denial of Mays’ motion to dismiss the writ of**
19 **garnishment was therefore a final judgment**, and, accordingly, we have
20 jurisdiction to hear the appeal.” Mays, 430 F.3d at 965 (emphasis added). In
21 Mays, the Ninth Circuit specifically looked back to its previous decision in
22 United States v. Moore, where the Court noted “we lack jurisdiction to review a
23 district court’s denial of a motion to quash a writ of execution relating to a
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1 garnishment order [, because] the appeal in Moore of the denial of the motion to
2 quash **was interlocutory**, and this was pivotal to the Moore Court’s conclusion
3 that it lacked appellate jurisdiction.” Mays, 340 F.3d 963 (citing to United States
4 v Moore, 878 F.2d 331 (9th Cir. 1989)) (emphasis added). The Mays case holds
5 that interlocutory orders in garnishment proceedings are not appealable and it is
6 only where “there were no other matters before the district court,” that an appeal
7 is proper. See Mays, 430 F.3d at 965. Neither of the Orders constitute
8 judgments, much less final judgments as identified in Settelmeyer.

12 **B. Granting the Motion to Dismiss Supports the**
13 **Proper and Efficient Administration of Justice.**

14 Mona claims that if the Motion to Dismiss is granted he may not have a
15 basis to seek redress through appeal. See Opp., pp. 8-9. This is inaccurate
16 because, like any other interlocutory order, if Mona believes he has a basis to
17 have the Orders addressed by this Court, he can file a writ pursuant to NRAP 21.
18 Mona’s interpretation of the law, that any order addressing garnishment or
19 payment is directly appealable is inefficient, and can result in multiple appeals
20 from the same matter being filed before a final determination is made by the
21 district court.

25 **C. If the Priority Order is Directly Appealable, This Court**
26 **Must Dismiss the Appeal as Untimely.**

27 Should the Court accept the Mona’s position that each of the Orders are
28 directly appealable, then it must dismiss the Appeal. Mona is attempting to have

1 his proverbial cake and eat it, too. While claiming that each of the Orders are
2 directly appealable, Mona suggests that he should not have to adhere to the time
3 requirements to file a Notice of Appeal for the Orders.
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5 The timeframe to file a notice of appeal is jurisdictional and inflexible.
6 NRAP 4(a)(2). It is undisputed that the Priority Order was entered and served on
7 June 21, 2016, and that the Notice of Appeal was not filed until August 18, 2017.
8 Without any citation or support, the Opposition suggests that a fleeting reference
9 regarding the Priority Order made in the Objection Order, tolled the time frame
10 for Mona to commence an appeal for the Priority Order. NRAP is clear on what
11 constitutes an order that would toll the timeframe for a Notice of Appeal. NRAP
12 4(a). An objection to a claim of exemption is not a tolling motion. To the extent
13 the Objection Order merely upheld the Priority Order, the Objection Order did
14 not “[disturb] or [revise] legal rights and obligations,” set forth in the Priority
15 Order and therefore Mona waived the right to appeal all issues in the Priority
16 Order even if they were reiterated in a subsequent order. Morrell v. Edwards, 98
17 Nev. 91, 92 (1982). The Appeal is untimely, and any arguments disputing the
18 validity of the Priority Order are waived.
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25 **III. CONCLUSION**

26 For the above-stated reasons, as well as those set forth in the underlying
27 Motion to Dismiss, it is respectfully requested that this Court dismiss the Appeal.
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1 DATED this 22nd day of January, 2018.

2 BY: /s/ Rachel E. Donn, Esq.
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify pursuant to NRAP 25(c), that on the 22nd day of January,
3
4 2018, I caused service of a true and correct copy of the above and forgoing

5 **RESPONDENT'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS**

6 pursuant to the Supreme Court Electronic Filing System, and by first class
7
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