

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

MICHAEL J. MONA, JR., an individual

Appellant,

vs.

FAR WEST INDUSTRIES, a California  
corporation

Respondent.

No. 73815

Electronically Filed  
Sep 22 2017 02:20 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**DOCKETING STATEMENT  
CIVIL APPEALS**

**GENERAL INFORMATION**

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

**WARNING**

This statement must be completed fully, accurately and on time. NRAP 14(c). The Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XV  
County Clark Judge Hon. Joe Hardy  
District Ct. Case No. A-12-670352-F

**2. Attorney filing this docketing statement:**

Attorney Terry A. Coffing, Esq., Tye S. Hanseen, Esq.,  
and Tom W. Stewart, Esq.  
Telephone 702-382-0711  
Firm Marquis Aurbach Coffing  
Address 10001 Park Run Drive, Las Vegas, NV 89145  
Client Michael J. Mona, Jr. ("Mr. Mona")

**3. Attorney(s) representing respondent(s):**

Attorney F. Thomas Edwards, Esq. and Andrea M. Gandara, Esq.  
Telephone 702-791-0308  
Firm Holley Driggs Walch Fine Wray Puzey & Thompson  
Address 400 S. Fourth Street, Third Floor, Las Vegas, NV 89101  
Client Far West Industries ("Far West")

**4. Nature of disposition below (check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial         | <input type="checkbox"/> Dismissal                                      |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of Jurisdiction                           |
| <input type="checkbox"/> Summary judgment                   | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify)                                |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination     | <input checked="" type="checkbox"/> Other disposition (specify)         |

(1) Order Regarding Plaintiff Far West Industries' Motion for Determination of Priority of Garnishment and Defendant Michael J. Mona's Countermotion to Discharge Garnishment and for Return of Proceeds (filed 6/21/17), and  
(2) Order Sustaining Plaintiff Far West Industries' Objection to Claim of Exemption from Execution (filed 7/18/17).

**5. Does this appeal raise issues concerning any of the following: N/A.**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

*Mona v. Far West Indus.*, Docket No. 70857

*Mona v. Eighth Judicial District Ct.*, Docket No. 68434

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

*Mona v. Mona*, Case No. D-15-517425-D, Eighth Judicial District Court, Family Division, Department B, Clark County, Nevada; decree of divorce filed July 23, 2015.

*Far West Industries v. Michael Mona, Jr., et al*, A-15-724490-C; Eighth Judicial District Court, Department 32, Clark County, Nevada; final orders issued.

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

The underlying action is a foreign judgment collection case. Far West obtained a California judgment against Mr. Mona, domesticated the judgment in Nevada, and began collection activities.

On June 21, 2016, the District Court entered the Order Regarding Plaintiff Far West Industries' Motion for Determination of Priority of Garnishment and Defendant Michael J. Mona's Countermotion to Discharge Garnishment and for Return of Proceeds ("Priority Order"), which determined that the judgment obtained by Far West has priority over the Decree of Divorce providing for the assignment of alimony to Rhonda Mona ("Ms. Mona").

On July 18, 2017, the District Court entered an Order Sustaining Plaintiff Far West Industries' Objection to Claim of Exemption from Execution ("July 18, 2017 Order"), which incorporates the Priority Order and which gives

Far West's garnishment priority over Ms. Mona's alimony. Mr. Mona now appeals the July 18, 2017 Order and the Priority Order as so incorporated.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

- (1) Whether the garnishment of Michael Mona's wages as ordered in the Priority Order and the July 18, 2017 Order constitutes a continuing garnishment, in perpetuity having priority, and thus violates Nevada law;
- (2) Whether *First Interstate Bank of California v. H.C.T.*, 108 Nev. 242, 246, 828 P.2d 405, 408 (1992) is controlling in this case.
- (3) Whether priority between a creditor garnishment and spousal support in Nevada is determined on a first in time basis in comparing the dates of the judgment for the creditor and the divorce decree or related judgment/order allowing spousal support.
- (4) Whether priority of garnishments is determined by dates of judgments, dates of garnishments, or some other event.
- (5) Whether spousal support equates to a garnishment when considering priority with competing creditor garnishments, or whether Nevada law requires alimony receiving spouses to actually obtain a judgment and garnish funds to receive consideration for priority over creditor garnishments.
- (6) Whether the spousal support herein has been assigned and, as a result is an actual assignment, or whether wages were assigned to pay the spousal support.
- (7) If the spousal support is an assignment, whether it is considered antecedent debt.
- (8) Whether the garnishment of Michael Mona's wages as ordered in the Priority Order and the July 18, 2017 Order violates the Supremacy Clause and related garnishment restrictions;
- (9) Whether the lower court abused its discretion and violated Nevada law in allowing a continuing garnishment and related priority over spousal support awarded in a divorce decree.
- (10) Whether the lower court abused its discretion in requiring the debtor to violate the divorce decree or allow his withholdings to violate the Supremacy Clause and related garnishment restrictions.
- (11) Whether spousal support expires when considering the 120 expiration period for garnishments.



- (12) Whether the lower court abused its discretion by displacing the spousal support after it had sole possession of first priority.
- (13) Whether Mona's wages became exempt from any further withholdings from creditor garnishments once the spousal support took sole possession of first position and exceeded 25% of his disposable earnings.
- (14) Whether the lower court abused its discretion when it affirmed Far West's objection to the claim of exemption.
- (15) Whether the lower court abused its discretion when it failed to address, fully consider, and/or grant the Motion to Discharge.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Appellant is unaware of any proceeding presently pending before this Court which raises the same or similar issues raised in this appeal.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

The appeal involves issues arising under the United States Constitution because it involves garnishment restrictions. And, the Supremacy Clause requires that Nevada's garnishment restrictions at least meet Federal garnishment

restrictions. In addition, the appeal raises substantial issues of first impression because it is not believed there is Nevada law regarding priority of competing garnishments, garnishment restrictions, the interrelations of creditor garnishments with spousal support, expiration of garnishments, or whether spousal support is considered a garnishment for priority considerations, as well as other issues presented. This is an issue of public policy as well because it deals with the determination of priority of a creditor garnishment over spousal support and whether a subsequent district court has jurisdiction to essentially modify spousal support awarded in a divorce decree, require the debtor to allow withholdings to violate the Supremacy Clause, and/or require the debtor to choose to violate the terms of a divorce decree.

- 13. Assignment to the Supreme Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Supreme Court because it raises as a principal issue a question of first impression involving the United States or Nevada Constitutions, NRAP 17(a)(13), and because it raises a question of statewide public importance, NRAP 17(a)(14).

- 14. Trial.** If this action proceeded to trial, how many days did the trial last? N/A  
Was it a bench or jury trial? N/A

- 15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

### **TIMELINESS OF NOTICE OF APPEAL**

- 16. Date of entry of written judgment or order appealed from**

The Priority Order was entered June 21, 2016.

The July 18, 2017 Order was entered July 18, 2017.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: N/A

**17. Date written notice of entry of judgment or order was served**

The Priority Order was served June 21, 2016.  
The July 18, 2017 Order was served July 19, 2017.

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCp 50(b), 52(b), or 59)**

N/A.

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCp 50(b)      Date of filing

☐ NRCp 52(b)      Date of filing

☐ NRCp 59          Date of filing

**NOTE:** Motions made pursuant to NRCp 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion N/A.

(c) Date written notice of entry of order resolving tolling motion was served N/A.

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed**

The notice of appeal was filed August 8, 2017.

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a).

## SUBSTANTIVE APPEALABILITY

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |   |                                       |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify)          |                                       |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The Priority Order and July 17, 2016, Order dispose of all unresolved issues and, as such, constitute final orders.

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Plaintiff: Far West Industries, Inc.

Defendants: Michael Mona, Jr., Rio Vista Nevada, LLC; World Development, Inc.; Bruce Maize

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

The California action involved transactions between the Plaintiff and all Defendants. However, the instant appeal only involves Plaintiff's attempts to garnish Mr. Mona's wages as a result of that judgment; thus, the other defendants are not implicated by this appeal.

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the date of formal disposition of each claim.**

This is a foreign judgment collection action. Thus, there are no "claims."

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered “No” to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):**

N/A

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal

- Any other order challenged on appeal
- Notices of entry for each attached order

<b>Exhibit</b>	<b>Document Description</b>
1	Application for Foreign Judgment (filed 10/18/12)
2	Notice of Entry of Amended Nunc Pro Tunc Order Regarding Plaintiff Far West Industries' Motion to Reduce Sanctions Order to Judgment with Order (filed 06/15/16)
3	Notice of Entry of Order Sustaining Plaintiff Far West Industries' Objection to Claim of Exemption From Execution with Order (filed 07/19/17)
4	Notice of Entry of Order Regarding Plaintiff Far West Industries' Motion for Determination of Priority of Garnishment and Defendant Michael J. Mona's Countermotion to Discharge Garnishment and for Return of Proceeds with Order (filed 06/21/16)

## VERIFICATION

**I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.**

Michael J. Mona

Name of appellant

Terry A. Coffing, Esq,  
Tye S. Hanseen, Esq. and  
Tom W. Stewart, Esq.

Name of counsel of record

September 22, 2017

Date

/s/ Tye S. Hanseen

Signature of counsel of record

Clark County, Nevada

State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 22nd day of September, 2017, I served a copy of this completed docketing statement upon all counsel of record:

☒ Electronically via this Court CM/ECF system according to the Master Service List:

F. Thomas Edwards, Esq.

☒ By mailing it by first class mail with sufficient postage prepaid to the following addresses:

Ara Shirinian  
10651 Capesthorne Way  
Las Vegas, Nevada 8935  
*Settlement Judge*

Andrea Gandara, Esq.  
Holley Driggs Walch Fine Wray Puzey & Thompson  
400 S. Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
*Attorney for Far West Industries*

Dated this 22nd day of September, 2017.

/s/ Leah Dell

\_\_\_\_\_  
Signature



# Exhibit 1

## CIVIL COVER SHEET A-12-670352-F

Clark County, Nevada

I V

Case No. \_\_\_\_\_  
(Assigned by Clerk's Office)**I. Party Information**

Plaintiff(s) (name/address/phone):

Far West Industries

Defendant(s) (name/address/phone):

Rio Vista Nevada, LLC,  
World Development, Inc.,  
Bruce Maize,  
Michael J. Mona, Jr.

Attorney (name/address/phone):

David S. Lee, Esq.  
Lee, Hernandez, Landrum, Garofalo & Blake, APC  
7575 Vegas Drive, Suite 150  
Las Vegas, Nevada 89128  
(702) 880-9750

Attorney (name/address/phone):

**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Torts	
<input type="checkbox"/> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> <b>Title to Property</b> <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> <b>Condemnation/Eminent Domain</b> <input type="checkbox"/> <b>Other Real Property</b> <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> <b>Negligence</b> <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> <b>Product Liability</b> <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> <b>Intentional Misconduct</b> <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination) <input type="checkbox"/> <b>Other Torts</b> <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition

**Probate****Other Civil Filing Types**

<input type="checkbox"/> <b>Summary Administration</b> <input type="checkbox"/> <b>General Administration</b> <input type="checkbox"/> <b>Special Administration</b> <input type="checkbox"/> <b>Set Aside Estates</b> <input type="checkbox"/> <b>Trust/Conservatorships</b> <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> <b>Other Probate</b>	<input type="checkbox"/> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> <b>Breach of Contract</b> <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> <b>Civil Petition for Judicial Review</b> <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> <b>Appeal from Lower Court</b> (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> <b>Civil Writ</b> <input type="checkbox"/> Other Special Proceeding <input checked="" type="checkbox"/> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input checked="" type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters
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**III. Business Court Requested** (Please check applicable category; for Clark or Washoe Counties only.)

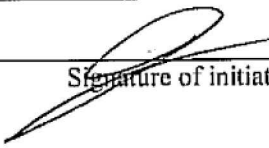
- ☐ NRS Chapters 78-88
- ☐ Commodities (NRS 90)
- ☐ Securities (NRS 90)

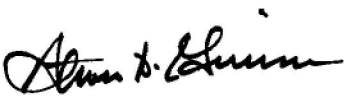
- ☐ Investments (NRS 104 Art. 8)
- ☐ Deceptive Trade Practices (NRS 598)
- ☐ Trademarks (NRS 600A)

- ☐ Enhanced Case Mgmt/Business
- ☐ Other Business Court Matters

October 18, 2012

Date

  
Signature of initiating party or representative

  
CLERK OF THE COURT

**FORJ**  
John R. Hawley  
Nevada Bar No. 001545  
LEE, HERNANDEZ, LANDRUM,  
GAROFALO & BLAKE  
7575 Vegas Drive, Suite 150  
Las Vegas, Nevada 89128  
(702) 880-9750  
Fax; (702) 314-1210  
jhawley@leelawfirm.com

Attorneys for Plaintiff

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

FAR WEST INDUSTRIES, a California  
corporation,

Plaintiff,

vs.

RIO VISTA NEVADA, LLC, a Nevada  
limited liability company; WORLD  
DEVELOPMENT, INC., a California  
corporation; BRUCE MAIZE, and individual;  
MICHAEL J. MONA, JR., an individual;  
DOES I through 100, inclusive,

Defendants.

CASE NO.: A - 12 - 670352 - F

I V

**APPLICAION OF FOREIGN  
JUDGMENT**

**AFFIDAVIT OF JOHN R. HAWLEY, ESQ.**

STATE OF NEVADA     )  
                                      : ss.  
COUNTY OF CLARK    )

COMES NOW, JOHN R. HAWLEY, ESQ., being first duly sworn, and states as follows:

1. That Affiant is an attorney, duly licensed to practice in the State of Nevada and is a  
member of the law firm of LEE, HERNANDEZ, LANDRUM, GAROFALO & BLAKE.

LEE, HERNANDEZ, LANDRUM,  
GAROFALO & BLAKE  
7575 VEGAS DRIVE, SUITE 150  
LAS VEGAS, NV 89128  
(702) 880-9750

LEE, HERNANDEZ, LANDRUM,  
GAROFALO & BLAKE  
7575 VEGAS DRIVE, SUITE 150  
LAS VEGAS, NV 89128  
(702) 880-9750

2. That Affiant is counsel of record for FAR WEST INDUSTRIES, a California corporation in the instant matter.

3. That the name and last known address of the Judgment Debtors herein are as follows:

**Michael J. Mona, Jr.**  
**2793 Red Arrow Drive**  
**Las Vegas, NV 89135**

**Michael J. Mona, Jr., as trustee of the Mona Family Trust dated February 21, 2002**  
**2793 Red Arrow Drive**  
**Las Vegas, NV 89135**

4. That the name and address of the Judgment Creditor herein is as follows:

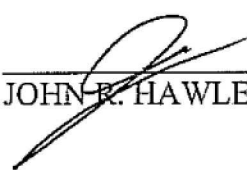
**Far West Industries, a California corporation**  
**2922 Daimler Street**  
**Santa Ana, CA 89128**

5. That the Judgment herein, a duly exemplified copy of which is attached hereto, is valid and enforceable.

6. That no portion of the Judgment herein has been satisfied.

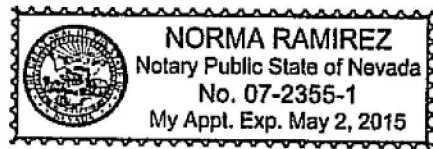
FURTHER Affiant sayeth naught.

DATED this 18<sup>th</sup> day of October, 2012.

  
JOHN R. HAWLEY, ESQ.

SUBSCRIBED and SWORN to  
before me this 18<sup>th</sup> day of  
October, 2012.

  
NOTARY PUBLIC



(SEAL)

# EXEMPLIFICATION CERTIFICATE

The documents to which this certificate is attached are full, true and correct copies of the originals on file and of record in my office. All of which we have caused by these presents to be exemplified, and the seal of our Superior Court of California, County of Riverside to be hereunto affixed.



IN WITNESS WHEREOF, I have hereto set my hand and affixed the Seal of the said Court,

This 7<sup>th</sup> day of June  
Sherri R. Carter  
Sherri R. Carter, Clerk  
Superior Court of California, County of Riverside

I, Mac R. Fisher, Judge of the Superior Court of the State of California, in and for the County of Riverside, do hereby certify that SHERRI R. CARTER whose name is subscribed to the preceding exemplification, is the Clerk of the said Superior Court of the State of California, in and for the County of Riverside, and that full faith and credit are due to her official acts. I further certify, that the seal affixed to the exemplification is the seal of our said Superior Court and that the attestation thereof is in due form and according to the form of attestation used in this State.

Date June 7, 2012

[Signature]  
Judge of the Superior Court of California  
County of Riverside

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

APR 27 2012

MJV

APR 30 2012

JP

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF RIVERSIDE, RIVERSIDE COURT

FAR WEST INDUSTRIES, a California  
corporation,

Plaintiff,

vs.

RIO VISTA NEVADA, LLC, a Nevada limited  
liability company; WORLD DEVELOPMENT,  
INC., a California corporation; BRUCE MAIZE,  
an individual; MICHAEL J. MONA, JR., an  
individual; and DOES 1 through 100, inclusive,

Defendants.

Case No. RIC495966

JUDGE: Hon. Jacqueline Jackson

~~[PROPOSED] JUDGMENT NUNC PRO TUNC~~

Action Filed: March 24, 2008

Trial Date: September 23, 2011

On February 23, 2012, the Honorable Jacqueline Jackson entered Finding of Fact and Conclusion of Law in the above-referenced matter. Based upon those Findings and Conclusion, Judgment is hereby entered in favor of Plaintiff Far West Industries, a California corporation and against the following Defendants, jointly and severally: (1) Michael J. Mona, Jr.; (2) Michael J. Mona, Jr., as Trustee of the Mona Family Trust dated February 21, 2002; (3) Rio Vista Nevada, LLC, a Nevada limited liability company; and (4) World Development, Inc., a California corporation in the amount of \$17,777,562.18. Recoverable court costs of \$25,562.56 and attorney's fees of \$327,548.84 are also awarded to Far West Industries, jointly and severally against all Defendants. The Clerk is hereby directed to enter those amounts on this Judgment following Far West Industries' post-Judgment petition for them. Finally, the Clerk is hereby

~~[PROPOSED] JUDGMENT NUNC PRO TUNC~~

1 directed to release the \$32,846 that was interplead by Defendant Fidelity National Title Company  
2 to Far West Industries upon entry of this Judgment.

3 Dated: 4/27/12

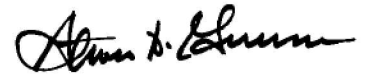
  
The Honorable Jacqueline Jackson,  
Judge Presiding

GREEN & HALL  
ATTORNEYS AT LAW  
A PROFESSIONAL CORPORATION

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## Exhibit 2



CLERK OF THE COURT

1 **NEOJ**  
F. THOMAS EDWARDS, ESQ.  
2 Nevada Bar No. 9549  
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8 *Attorneys for Plaintiff Far West Industries*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 FAR WEST INDUSTRIES, a California  
corporation,

12 Plaintiff,

13 v.

14 RIO VISTA NEVADA, LLC, a Nevada limited  
15 liability company; WORLD DEVELOPMENT,  
INC., a California corporation; BRUCE MAIZE,  
16 an individual, MICHAEL J. MONA, JR., an  
individual; DOES 1 through 100, inclusive,

17 Defendants.

Case No.: A-12-670352-F  
Dept. No.: XV

**NOTICE OF ENTRY OF AMENDED**  
**NUNC PRO TUNC ORDER REGARDING**  
**PLAINTIFF FAR WEST INDUSTRIES'**  
**MOTION TO REDUCE SANCTIONS**  
**ORDER TO JUDGMENT**

19 YOU, and each of you, will please take notice that an AMENDED *NUNC PRO TUNC*  
20 ORDER REGARDING PLAINTIFF FAR WEST INDUSTRIES' MOTION TO REDUCE  
21 SANCTIONS ORDER TO JUDGMENT in the above entitled matter was filed and entered by

22 ///

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27 ///

28 ///

1 the Clerk of the above-entitled Court on the 13th day of June, 2016, a copy of which is attached  
2 hereto.

3 Dated this 15<sup>th</sup> day of June, 2016.

4 **HOLLEY DRIGGS WALCH**  
5 **FINE WRAY PUZEY & THOMPSON**

6   
7 F. THOMAS EDWARDS, ESQ. (NBN 9549)  
8 ANDREA M. GANDARA, ESQ. (NBN 12580)  
9 400 South Fourth Street, Third Floor  
10 Las Vegas, Nevada 89101  
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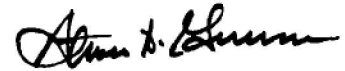
**CERTIFICATE OF SERVICE**

I certify that I am an employee of Holley Driggs Walch Fine Wray Puzey & Thompson,  
 and that on the 15<sup>th</sup> day of June, 2016, I served via electronic service in accordance with  
 Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve,  
 a true copy of the foregoing **NOTICE OF ENTRY OF AMENDED NUNC PRO TUNC**  
**ORDER REGARDING PLAINTIFF FAR WEST INDUSTRIES' MOTION TO REDUCE**  
**SANCTIONS ORDER TO JUDGMENT**, in the above matter, addressed as follows:

James E. Whitmire, Esq.  
**SANTORO WHITMIRE**  
 10100 West Charleston Boulevard, Suite 250  
 Las Vegas, Nevada 89135  
*Attorneys for Defendants Rhonda Helene Mona,*  
*Michael Mona, III, and*  
*Lundene Enterprises, LLC*

Terry A. Coffing, Esq.  
 Tye S. Hanseen, Esq.  
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 1001 Park Run Drive  
 Las Vegas, NV 89145  
*Attorneys for Defendant*  
*Michael J. Mona, Jr.*

  
 An employee of Holley Driggs Walch  
 Fine Wray Puzey & Thompson



CLERK OF THE COURT

1 AMOR

2  
3  
4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA  
6

7 FAR WEST INDUSTRIES,

Case No: A670352

Dept No.: XV

8 Plaintiffs,

9 vs.

10 RIO VISTA NEVADA, LLC, et al.,

11 Defendants.  
12

13  
14 **AMENDED NUNC PRO TUNC ORDER REGARDING PLAINTIFF FAR WEST**  
15 **INDUSTRIES' MOTION TO REDUCE SANCTIONS ORDER TO JUDGMENT<sup>1</sup>**

16 The Court held an initial hearing regarding Plaintiff Far West Industries' Motion to Reduce  
17 Sanctions Order to Judgment (the "Motion") on March 30, 2016, at 9:00 a.m. (the "Initial Hearing")  
18 and, following supplemental briefing, a continued hearing regarding the Motion on May 5, 2016, at  
19 9:00 a.m. (the "Second Hearing"). F. Thomas Edwards, Esq. and Andrea M. Gandara, Esq., of the  
20 law firm Holley Driggs Walch Fine Wray Puzey & Thompson, appeared on behalf of Plaintiff Far  
21 West Industries ("Far West"). Terry A. Coffing, Esq. and Tye S. Hanseen, Esq., of the law firm  
22 Marquis Aurbach Coffing, appeared on behalf of Defendant Michael J. Mona, Jr. ("Mr. Mona").  
23 James E. Whitmire, Esq. appeared on behalf of Rhonda Helene Mona ("Ms. Mona"). Collectively,  
24 Mr. Mona and Ms. Mona are referred to as the "Monas."

25 The Court reviewed all relevant pleadings and papers before it, including, but not limited to:  
26 (1) the Motion filed by Far West and Exhibits 1-9; (2) the Opposition to Motion filed by Mr. Mona  
27

28 <sup>1</sup> This Amended *Nunc Pro Tunc* Order shall replace and supersede the Order filed herein on May 23, 2016, and shall be treated as if this order had been filed then.

1 ("Mr. Mona's Opposition"); (3) the Opposition to Motion filed by Ms. Mona ("Ms. Mona's  
2 Opposition") and Exhibits A-C; (4) the Reply in Support of the Motion filed by Far West and  
3 Exhibits 10 and 11; (5) the Errata to Ms. Mona's Opposition to the Motion; (6) the Supplemental  
4 Brief filed by Ms. Mona ("Ms. Mona's Supplement") and Exhibits A-C; (7) the Supplemental Brief  
5 filed by Far West (the "Far West Supplement") and Exhibits 12-14; and (8) the Supplemental Brief  
6 filed by Mr. Mona ("Mr. Mona's Supplement").

7 With no other appearances having been made, the Court having reviewed and examined the  
8 papers, pleadings and records on file in the above-entitled matter and heard the argument of counsel,  
9 and good cause appearing therefore, the Court enters the following findings of fact and conclusions  
10 of law. To the extent any finding of fact should properly be designated a conclusion of law, it shall  
11 be deemed a conclusion of law. To the extent any conclusion of law should properly be designated a  
12 finding of fact, it shall be deemed a finding of fact.

### 13 FINDINGS OF FACT

#### 14 A. Judgment Collection Action and Sanctions of the Monas

15 Far West has a domesticated California Judgment against Mr. Mona and the Mona Family  
16 Trust dated February 21, 2002 (the "Mona Family Trust") that is now nearly \$25 million, including  
17 interest accruing at a rate of \$4,967.30 per day.<sup>2</sup> See Application for Foreign Judgment, filed on  
18 October 18, 2012, attaching Judgment.

19 On September 13, 2013, after Far West domesticated its Judgment, the Monas executed a  
20 Post-Marital Settlement Agreement through which Mr. Mona and Ms. Mona were each transferred  
21 \$3,406,601.10 from the sale of the Monas' community property shares of Medical Marijuana, Inc.,  
22 for \$6,813,202.20. See Order Regarding Order to Show Cause Why Accounts of Rhonda Mona  
23 Should Not Be Subject to Execution and Why the Court Should Not Find Monas in Contempt (the  
24 "Sanctions Order"), entered July 15, 2015, at 3:24-28.

25 ///

26 ///

27  
28 <sup>2</sup> Pursuant to CAL. CIV. PRO. CODE § 685.010(a), "Interest accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied."

1 During a judgment debtor examination on June 26, 2015, Ms. Mona testified regarding the  
2 Post-Marital Settlement Agreement and testified that she had three different bank accounts in her  
3 name that contained approximately \$490,000.00 in community property funds. *Id.* at 6:20-7:12.

4 On June 29, 2015, Far West filed an Ex Parte Application for Order To Show Cause Why  
5 Accounts Of Rhonda Mona Should Not Be Subject To Execution And Why The Court Should Not  
6 Find Monas In Contempt (the "OSC Application") seeking sanctions against the Monas for violating  
7 Court orders and lying under oath to conceal their fraudulent transfer through the Post-Marital  
8 Settlement Agreement and seeking to execute against the three accounts Ms. Mona testified  
9 contained community property funds. *See* OSC Application, filed June 29, 2015. On June 30, 2015,  
10 the Court issued the Order to Show Cause Why Accounts of Rhonda Mona Should Not Be Subject  
11 to Execution and Why the Court Should Not Find Monas in Contempt (the "Order to Show Cause")  
12 scheduling a hearing on July 9, 2015. *See* Order to Show Cause, entered on June 30, 2015.

13 During the July 9, 2015 hearing on the Order to Show Cause, the Court sanctioned the  
14 Monas and stated that "the evidence overwhelmingly support[ed] a finding of fraudulent transfer in  
15 regard to the Post-Marital Property Settlement Agreement, and the Court so find[s] that . . . was a  
16 fraudulent transfer and that those assets therefore remain community property subject to execution."  
17 *See* Transcript of Show Cause Hearing: Why Accounts Of Rhonda Mona Should Not Be Subject To  
18 Execution And Why The Court Should Not Find Monas In Contempt (the "OSC Hearing  
19 Transcript"), dated July 9, 2015, attached to the Motion as **Exhibit 3**, at 38:16-18.

20 On July 15, 2015, the Court entered the Sanctions Order, outlining in detail several badges of  
21 fraud associated with the Post-Marital Settlement Agreement:

22  
23 First, the transfer in the Post-Marital Settlement Agreement was to an  
24 insider, Ms. Mona, as she is the wife of Mr. Mona, a judgment debtor,  
25 and was at all relevant times the Trustee of the Mona Family Trust, a  
judgment debtor.

26 Second, Mr. Mona appears to have retained possession and control  
27 over some portion of the funds that were purportedly transferred  
pursuant to the Post-Marital Settlement Agreement.

28 Third, Mr. Mona concealed the transaction by not producing the Post-  
Marital Settlement Agreement as required by the January 2013 Order

1 and October 2013 Order and by not disclosing the transfer during his  
2 judgment debtor examination on November 25, 2013. Mr. Mona was  
3 not truthful when he was asked during the November 25, 2013  
4 examination about what he did with the approximately \$6.8 million  
5 dollars.

6 Fourth, prior to effectuating the transfer through the Post-Marital  
7 Settlement Agreement, Far West sued and obtained the Judgment  
8 against Mr. Mona and the Mona Family Trust.

9 Fifth, the Post-Marital Settlement Agreement, and the related transfers  
10 of the proceeds from the sale of the stock, transferred substantially all  
11 of Mr. Mona's assets as he was insolvent at the time of the transfers,  
12 or rendered Mr. Mona insolvent shortly after they were made.

13 Sixth, Mr. Mona concealed assets by failing to disclose the Post-  
14 Marital Settlement Agreement in 2013, by not disclosing the transfer  
15 during his judgment debtor examination on November 25, 2013, and  
16 by not producing the bank account records for the accounts in Ms.  
17 Mona's name.

18 Seventh, at the time of the transfer through the Post-Marital Settlement  
19 Agreement, Mr. Mona was insolvent, or the transfer rendered Mr.  
20 Mona insolvent shortly after it was made.

21 See Sanctions Order, entered July 15, 2015, at 8:16-9:9; see also OSC Hearing Transcript, dated July  
22 9, 2015, Ex. 3, at 37:14-38:20 (describing facts demonstrating badges of fraud).

23 The Sanctions Order further stated:

24 **IT IS HEREBY FURTHER ORDERED** that the Monas' purported  
25 transfer pursuant to the Post-Marital Property Settlement Agreement is  
26 a fraudulent transfer, and the facts proving the fraudulent transfer,  
27 including the badges of fraud outlined above, are deemed established;

28 **IT IS HEREBY FURTHER ORDERED** that the facts entitling  
Plaintiff to execute upon the bank accounts in the name of Mrs. Mona  
are deemed established;

**IT IS HEREBY FURTHER ORDERED** that the Monas are  
prohibited from claiming that any money purportedly transferred  
pursuant to the Post-Marital Property Settlement Agreement and any  
money in the bank accounts in the name of Mrs. Mona are exempt  
from execution;

...

**IT IS HEREBY FURTHER ORDERED** that Mr. Mona, Mrs. Mona,  
and the Monas collectively are prohibited from effectuating any  
transfers or otherwise disposing of or encumbering any property not  
exempt from execution and until the money in the bank accounts in the  
name of Mrs. Mona are applied to Plaintiff's Judgment.



1 See Sanctions Order, entered July 15, 2015, at 10:7-28.

2 B. Writ Petition Regarding Sanctions and Stay Pending Writ

3 The Monas filed a Petition for Writ of Mandamus or Prohibition as to the Sanctions Order on  
4 July 17, 2015. Among other arguments, the Monas contended that "a separate action was required  
5 before imposing liability against Rhonda Mona." *See* Petition for Writ of Mandamus or Prohibition,  
6 filed July 17, 2015, attached to the Motion as **Exhibit 4**, at 16 of 30.

7 On July 20, 2015, the Nevada Supreme Court issued its Order Granting Temporary Stay that  
8 stayed the Sanctions Order and proceedings in the above-captioned action. *See* Order Granting  
9 Temporary Stay, entered July 20, 2015, attached to the Motion as **Exhibit 5**.

10 On October 16, 2015, this Court issued its Order Regarding Motion on an Order Shortening  
11 Time for Bond Pending Appeal (the "Bond Order"), which ordered Mr. Mona and the Mona Family  
12 Trust to post a bond of \$24,172,076.16 within seven business days of September 17, 2015 and Ms.  
13 Mona to post a bond of \$490,000.00 within 30 calendar days of September 17, 2015. *See* Bond  
14 Order, dated October 16, 2015, at 7:6-11.

15 The same date, October 16, 2015, the Nevada Supreme Court issued an Order that stayed the  
16 supersedeas bond requirement and maintained the prior stay pending further briefing from the  
17 parties. *See* Order, dated October 16, 2015, attached to the Motion as **Exhibit 6**, pp. 1-2.

18 On November 19, 2015, the Nevada Supreme Court issued an Order Denying Motion, which  
19 stated:

20  
21 This court's stay entered August 31, 2015, and temporary stay entered  
22 October 16, 2015, shall expire within 5 business days from the date of  
23 this order unless the parties comply with the bond requirements  
24 imposed by the district court in its written order of October 16, 2015,  
25 as a condition of any stay.

26 *See* Order Denying Motion, dated November 19, 2015, attached to the Motion as **Exhibit 7**, at pp. 1-

27 2.

28 ///

///

Pursuant to the Bond Order and Order Denying Motion, the stay of this action and the Sanctions Order pending the writ proceeding terminated on November 30, 2015 when Mr. Mona and Ms. Mona failed to post the required bonds.

C. Execution of Sanctions Order

When Far West was finally able to execute against Ms. Mona's accounts after the stay pending appeal expired, only \$18,739.59 remained, which is less than 1% of the \$3.4 million originally fraudulently transferred to Ms. Mona and less than 4% of the \$490,000.00 that existed when the Sanctions Order was issued. See Answers to Writ of Garnishment from Bank of George, attached to Far West Supplement as **Exhibit 12**, and Answers to Writ of Garnishment from Bank of Nevada, attached to Far West Supplement as **Exhibit 13**.

Based on bank records recently produced by Ms. Mona, she transferred more than \$430,000.00 after Far West moved to execute against the bank accounts in her name, including the following transfers:

06/26/2015	Ms. Mona testifies regarding fraudulent transfer through Post-Marital Settlement Agreement and separate bank accounts		
06/29/2015	Far West files its Ex Parte Application For Order To Show Cause Why Accounts Of Rhonda Mona Should Not Be Subject To Execution And Why The Court Should Not Find The Monas In Contempt		
07/02/2015	\$10,000.00	Check to Lemons, Grundy & Eisenberg	FWSUPBRF-0001
07/02/2015	\$30,000.00	Check to Kainen Law Group	FWSUPBRF-0001
07/02/2015	\$75,000.00	Wire Transfer Out to Marquis Aurbach Coffing Trust	FWSUPBRF-0002
07/02/2015	\$20,000.00	Wire Transfer Out to Rhonda Mona	FWSUPBRF-0002
07/02/2015	\$9,500.00	Check to Rhonda Mona	FWSUPBRF-0001
07/06/2015	\$7,708.00	Check 2582 to Ramon Sarti	FWSUPBRF-0003
07/08/2015	\$25,000.00	Wire Transfer Out to Rhonda Mona	FWSUPBRF-0002
07/15/2015	The Court enters the Sanctions Order		
07/20/2015	The Nevada Supreme Court enters a temporary stay of the Sanctions Order		
07/22/2015	\$5,080.96	Check 2600 to Clark County Treasurer	FWSUPBRF-0004
08/24/2015	\$1,523.70	Payment to Parkloft Condominium Association	FWSUPBRF-0005
08/24/2015	\$2,570.70	Check 2622 to A-1 Self Storage	FWSUPBRF-0006
08/24/2015	\$22,000.00	Wire Transfer Out to Rhonda Mona	FWSUPBRF-0007

09/15/2015 *incorrectly dated as 2014	\$9,500.00	Check to Rhonda Mona	FWSUPBRF-0008
09/22/2015	\$25,000.00	Wire Transfer Out to Rhonda Mona	FWSUPBRF-0009
09/24/2015	\$75,000.00	Wire Transfer Out to Rhonda Mona	FWSUPBRF-0009
10/23/2015	\$8,938.61	Check 2667 to SDCTTC	FWSUPBRF-0010
11/02/2015	\$25,000.00	Wire Transfer Out to Rhonda Mona	FWSUPBRF-0011
11/30/2015	The temporary stay of the Sanctions Order expires		
12/04/2015	\$45,000.00	Check 1272 to MAC	FWSUPBRF-0012
12/11/2015	\$35,000.00	Wire Transfer Out to Santoro Whitmire Ltd.	FWSUPBRF-0013

See Ms. Mona's Redacted Bank Records, attached to Far West Supplement as **Exhibit 14**.

As reflected in the table above, Ms. Mona violated the Court's explicit prohibition against her effectuating any transfers of non-exempt property until the funds in her bank accounts were applied to Far West's Judgment by paying the law firm of Marquis Aurbach Coffing \$45,000 on December 4, 2015 and the law firm of Santoro Whitmire Ltd. \$35,000 on December 11, 2015, after the stay pending appeal of the Sanctions Order expired. *Id.*; see Sanctions Order, Ex. 1 to the Motion, at 10:25-28.

In sum, the Monas turned \$3.4 million dollars into just \$18,739.59 so they could avoid paying the money towards satisfaction of Far West's Judgment. Ms. Mona in particular continues to show contempt for this Court and its orders by directly violating the Sanctions Order. She is not taking this proceeding seriously. The Court is dumbfounded that Ms. Mona transferred \$80,000 to the law firms of Marquis Aurbach Coffing and Santoro Whitmire Ltd. after the stay pending appeal expired in December 2015 in direct violation of the Sanctions Order, which reflects that she is not an innocent party in this proceeding. The pending writ proceeding does not excuse Ms. Mona's violation of the Sanctions Order, especially in light of the fact that the Ms. Mona posted no bond and any stay of the Sanctions Order terminated on November 30, 2015.

#### D. Mona Fraudulent Transfer Action

On September 14, 2015, Far West filed a lawsuit, *Far West Industries v. Mona, et al.*, Case No. A-15-724490-C, against the Monas, their son, Michael Mona III ("Michael III"), and Michael III's entity, Lundene Enterprises, LLC, for various fraudulent transfers, including the Post-Marital

1 Settlement Agreement (the "Mona Fraudulent Transfer Action"). The Mona Fraudulent Transfer  
2 Action is pending before the Honorable Judge Rob Bare. On December 4, 2015, the Monas filed a  
3 Motion to Dismiss the Mona Fraudulent Transfer Action. *See* Defendants' Motion to Dismiss (the  
4 "Motion to Dismiss"), attached to the Motion as **Exhibit 8**. Despite arguing before the Nevada  
5 Supreme Court that a separate action was required before imposing liability against Rhonda Mona in  
6 post-judgment proceedings, the Monas argued to Judge Bare that Far West's claim should be  
7 dismissed because Far West has already successfully obtained a "final order/judgment" that the \$3.4  
8 million transfer between the Monas was a fraudulent transfer from this Court. *See* Motion to  
9 Dismiss, filed December 4, 2015, Ex. 8, at 3:6-13 *and* Defendant Michael J. Mona, Jr.'s Reply in  
10 Support of Motion to Dismiss, attached to the Motion as **Exhibit 9**, at 7:13-15. The Monas further  
11 argued that "Claim and Issue Preclusion Further Bar the Second Cause of Action for Fraudulent  
12 Transfer Because the Court Has Already Ruled on the Issue[.]" referring to the Sanctions Order. *See*  
13 Motion to Dismiss, filed December 4, 2015, Ex. 8, at 9:6-14.

14 On December 18, 2015, Far West opposed the Monas' Motion to Dismiss and filed a  
15 countermotion seeking judgment against Ms. Mona for \$3,406,601.10 based on the Sanctions Order  
16 and fraudulent transfer effectuated through the Post-Marital Settlement Agreement.

17 On February 2, 2016, Judge Bare heard the Monas' Motion to Dismiss and Plaintiff Far West  
18 Industries' Counter-motion for Summary Judgment and on March 16, 2016, entered an order denying  
19 Far West's counter-motion without prejudice and stating, "[T]his Order in no way prevents Far West  
20 from seeking the judgment requested in the Counter-motion from the Honorable Joe Hardy" in this  
21 case.

22 E. The Monas' Inconsistent Positions During Litigation

23 Now that Far West is seeking to execute upon the Sanctions Order by obtaining an order  
24 from this Court, the Monas are taking a contrary position before this Court regarding the finality of  
25 the Sanctions Order. In the Mona Fraudulent Transfer Action, the Monas asserted that the first  
26 element for claim preclusion was satisfied because there is currently a final judgment on Far West's  
27 fraudulent transfer claim against Ms. Mona in the instant case. *See* Motion to Dismiss, Ex. 8 to the  
28

1 Motion, at 9:19-20. In identifying the final judgment in this case, the Monas readily indicated that  
2 the Sanctions Order is an "Order/Judgment" against them. *Id.* at 8:4-5, 8:9-11. The Monas further  
3 argued before Judge Bare that "claim preclusion applies to [Far West's] Complaint because there are  
4 two valid and final judgments . . . [,]" clearly referring to the Sanctions Order as one of the valid and  
5 final judgments. *Id.* at 9:1-2. They again advocated that "Claim and Issue Preclusion Further Bar  
6 the Second Cause of Action for Fraudulent Transfer Because the Court Has Already Ruled on the  
7 Issue" and conceded that Far West "has already asserted and obtained an Order/Judgment regarding  
8 this same exact claim [for the fraudulent transfer of \$3.4 million by Mr. Mona to Ms. Mona] in Case  
9 No. A-12-670352." *Id.* at 9:6-12.

10 Now the Monas are claiming before this Court that the Sanctions Order is not final and  
11 accordingly the Motion should be denied. In her Opposition to the Motion, Ms. Mona takes the  
12 position that the Sanctions Order is "interlocutory" and suggests that the Sanctions Order is  
13 somehow not final because it is on appeal.<sup>3</sup> See Ms. Mona's Opposition to the Motion, filed March  
14 7, 2016, at 3:10-11, 4:9-10 and 23-25, 6:25-7:2. Mr. Mona takes a similar tone in his Opposition to  
15 the Motion when he argues the appeal of Sanctions Order somehow means this Court should not  
16 enter judgment in favor of Far West. See Mr. Mona's Opposition to the Motion, filed March 7,  
17 2016, at 4:15-24.

18 The Monas also have taken inconsistent positions as to how Far West can seek redress for the  
19 Monas' fraudulent transfer through the Post-Marital Settlement Agreement. Before the Nevada  
20 Supreme Court, the Monas argued that "[a] separate action was required before imposing liability  
21 against Rhonda." See Petition for Writ of Mandamus or Prohibition, Ex. 4 to the Mot., at 16 of 30.  
22 However, when Far West instituted the separate action before Judge Bare by bringing the Mona  
23 Fraudulent Transfer Action for the Monas' fraudulent transfer through the Post-Marital Settlement  
24 Agreement, the Monas then argued "Plaintiff is barred from bringing the exact same claim, which  
25 has been decided and is the subject of an appeal." See Motion to Dismiss, Ex. 8 to the Motion, at  
26

27  
28 <sup>3</sup> Despite arguing in one instance that the Sanctions Order is only interlocutory in her Opposition to the Motion, Ms. Mona goes on to state in the same paper that the Sanctions Order entered "case terminating sanctions[.]" See Ms. Mona's Opposition to the Motion, at 4:14. It strains logic that an order entering case terminating sanctions is not final.

1 9:15-16. The Monas' arguments would leave Far West with no basis or forum to obtain relief from  
2 their fraudulent transfer.

3 **Conclusions of Law**

4 Pursuant to NRS 112.210(2) and the Court's powers in equity which are recognized in NRS  
5 112.240, the Court orders that Far West may immediately levy execution against Ms. Mona in the  
6 amount of \$490,000.00 plus interest at the statutory rate to be calculated from July 15, 2015 (the  
7 date of entry of the Sanctions Order). The \$490,000.00 amount reflects the amount that Ms. Mona  
8 testified was in her three bank accounts during her judgment debtor examination on June 26, 2015.  
9 Far West is precluded from seeking to recover amounts in excess of \$490,000.00 against Ms. Mona,  
10 subject to future motion practice.

11 The Court makes its order pursuant to NRS 112.210(2) because Far West is a creditor that  
12 has obtained a judgment on a fraud claim against judgment debtor Mr. Mona. Nevada is a  
13 community property state, which subjects the entire marital estate to that judgment obtained against  
14 Mr. Mona. Therefore, the Court has authority to allow Far West to levy execution on the funds, up  
15 to \$490,000, that the Court previously found were fraudulently transferred to Ms. Mona.

16 It is also fair and equitable to allow Far West to execute against Ms. Mona in the amount of  
17 \$490,000 for several reasons:

18 First, the Court previously determined that the Monas fraudulently transferred \$3.4 million to  
19 Ms. Mona through the Post-Marital Settlement Agreement. The original July 15, 2015 Sanctions  
20 Order arose with the issue with the bank accounts and testimony that at that time there was  
21 approximately \$490,000 in the bank accounts. By the time collection was able to be made there was  
22 approximately \$18,000 in the bank accounts.

23 Second, the Court is dumbfounded that Ms. Mona transferred funds after the stay pending  
24 appeal expired in violation of the Sanctions Order. Her conduct demonstrates that even if she was at  
25 one time an innocent party to this proceeding, she is no longer an innocent party and that she is not  
26 taking this action seriously.

27 ///

1 Third, regardless of whether Ms. Mona was a party to the judgment collection action, she  
2 received \$3.4 million to the detriment of Far West. Accordingly, it is fair and equitable to allow Far  
3 West to track the \$3.4 million transferred to Ms. Mona through the Post-Marital Settlement  
4 Agreement.

5 Fourth, to the extent it is necessary and in the alternative or in addition to the Court's  
6 statutory authority pursuant to NRS 112.210(2) and the Court's powers in equity which are  
7 recognized in NRS 112.240, the Court considers the judicial estoppel doctrine, as set forth in *Mainor*  
8 *v. Nault*, 120 Nev. 750, 765, 101 P.3d 308, 318 (2004) and *Delgado v. Am. Family Ins. Grp.*, 125  
9 Nev. 564, 570, 217 P.3d 563, 567 (2009). Judge Bare has not yet ruled on the Monas' Motion to  
10 Dismiss, such that the element of successful assertion of the initial position has not technically been  
11 met at this time. However, all of the other elements of judicial estoppel have been met. The Court  
12 finds that the Monas took two totally inconsistent positions as to the finality of the Sanctions Order  
13 in two judicial proceedings – this judgment collection action and the Mona Fraudulent Transfer  
14 Action in an attempt to obtain an unfair advantage in litigation including, at a minimum, delay.  
15 These positions were not taken as a result of ignorance, fraud, or mistake. In fact, at the Second  
16 Hearing, when Ms. Mona's counsel was asked whether she would withdraw her Motion to Dismiss  
17 as to the Second Cause of Action in the Mona Fraudulent Transfer Action, which relates to the \$3.4  
18 million transfer to her through the Post-Marital Settlement Agreement, counsel could not do that,  
19 which leaves a cloud over the Mona Fraudulent Transfer Action.

20 The Court acknowledges that the law is not perfectly clear on the doctrine of judicial  
21 estoppel. In *Mainor v. Nault*, the Nevada Supreme Court indicates that judicial estoppel is an  
22 extraordinary remedy that should be cautiously applied and that, although not all of the required  
23 elements are always necessary, the doctrine generally applies when they are present. Contrastingly,  
24 in *Delgado v. Am. Family Ins. Grp.*, 125 Nev. 564, 570, 217 P.3d 563, 567 (2009), the Nevada  
25 Supreme Court holds that "judicial estoppel will bar a party from raising an argument only when the  
26 following conjunctive test is satisfied," *i.e.*, all the elements are met. Not all of the elements for  
27 judicial estoppel have been met here, in particular the element requiring that the party be successful  
28



1 in asserting the first position (i.e., the tribunal adopted the position or accepted it as true).  
2 Nevertheless, the Court finds that through the back and forth, inconsistent positions, and  
3 contradictory arguments between this Court, Judge Bare, and the Nevada Supreme Court, the Monas  
4 have attempted to obtain an unfair advantage. And, the primary purpose of judicial estoppel "to  
5 protect the judiciary's integrity" is met if the Court orders that execution and collection efforts may  
6 proceed against Ms. Mona on the \$490,000.00, plus interest. The Court, therefore, invokes the  
7 doctrine at its discretion.

8 Fifth, there is no stay in place and no bond has been posted, which gives additional reason  
9 for the Court to allow execution up to \$490,000 plus interest.

10 Based on the foregoing, and good cause appearing:

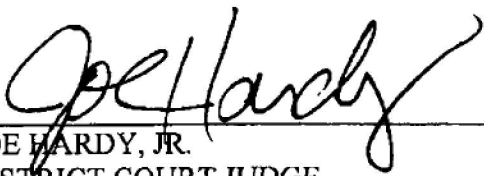
11 **IT IS HEREBY ORDERED** that the relief requested in the Motion is **GRANTED IN**  
12 **PART AND DENIED IN PART** as set forth herein;

13 **IT IS HEREBY FURTHER ORDERED** that, pursuant to NRS 112.210(2), the Court's  
14 powers in equity which are recognized in NRS 112.240, and the judicial estoppel doctrine, Far West  
15 may immediately execute against Ms. Mona up to \$490,000.00, plus statutory interest calculated  
16 from July 15, 2015;

17 **IT IS HEREBY FURTHER ORDERED** that this Court may consider allowing Far West to  
18 execute against Ms. Mona in excess of \$490,000.00, subject to future motion practice.

19 **IT IS SO ORDERED.**

20 Dated this 13<sup>th</sup> day of June, 2016.

21  
22   
23 JOE HARDY, JR.  
24 DISTRICT COURT JUDGE  
25 DEPARTMENT 15  
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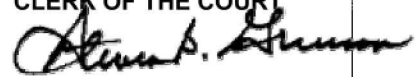
**CERTIFICATE OF SERVICE**

I hereby certify that on or about the date e-filed, I e-served, emailed, faxed, mailed or placed a copy of the AMENDED *NUNC PRO TUNC* ORDER REGARDING PLAINTIFF FAR WEST INDUSTRIES' MOTION TO REDUCE SANCTIONS ORDER TO JUDGMENT in the attorney folder in the Clerk's Office addressed to:

Thomas Edwards, Esq.	<a href="mailto:tedwards@nevadafirm.com">tedwards@nevadafirm.com</a>
Terry Coffing, Esq.	<a href="mailto:tcoffing@maclaw.com">tcoffing@maclaw.com</a>
James Whitmire, III, Esq.	<a href="mailto:jwhitmire@santoronevada.com">jwhitmire@santoronevada.com</a>
Erika Pike Turner, Esq.	<a href="mailto:eturner@gtg.legal">eturner@gtg.legal</a>
William Urga, Esq.	<a href="mailto:wru@juwww.com">wru@juwww.com</a>

  
\_\_\_\_\_  
Judicial Executive Assistant

# Exhibit 3



1 **NEOJ**  
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3 Nevada Bar No. 9549  
4 E-mail: [tedwards@nevadafirm.com](mailto:tedwards@nevadafirm.com)  
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8 HOLLEY DRIGGS WALCH  
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400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Telephone: 702/791-0308  
Facsimile: 702/791-1912  
*Attorneys for Plaintiff Far West Industries*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FAR WEST INDUSTRIES, a California  
corporation,

Plaintiff,

v.

RIO VISTA NEVADA, LLC, a Nevada limited  
liability company; WORLD DEVELOPMENT,  
INC., a California corporation; BRUCE MAIZE,  
an individual, MICHAEL J. MONA, JR., an  
individual; DOES 1 through 100, inclusive,

Defendants.

Case No.: A-12-670352-F  
Dept. No.: XV

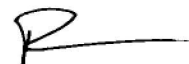
**NOTICE OF ENTRY OF ORDER  
SUSTAINING PLAINTIFF FAR WEST  
INDUSTRIES' OBJECTION TO CLAIM  
OF EXEMPTION FROM EXECUTION**

Date of Hearing: June 14, 2017  
Time of Hearing: 9:00 a.m.

YOU, and each of you, will please take notice that an Order Sustaining Plaintiff Far West Industries' Objection to Claim of Exemption from Execution in the above entitled matter was filed and entered by the Clerk of the above-entitled Court on the 18<sup>th</sup> day of July, 2017, a copy of which is attached hereto.

Dated this 19<sup>th</sup> day of July, 2017.

**HOLLEY DRIGGS WALCH  
FINE WRAY PUZEY & THOMPSON**



F. THOMAS EDWARDS, ESQ. (NBN 9549)  
ANDREA M. GANDARA, ESQ. (NBN 12580)  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiff Far West Industries*

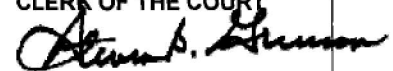
**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Holley Driggs Walch Fine Wray Puzey & Thompson, and that on the \_\_\_\_\_ day of July, 2017, I served via electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve, a true copy of the foregoing **NOTICE OF ENTRY OF ORDER SUSTAINING PLAINTIFF FAR WEST INDUSTRIES' OBJECTION TO CLAIM OF EXEMPTION FROM EXECUTION**, in the above matter, to the addressee below. Pursuant to EDCR 8.05(i), the date and time of the electronic service is in place of the date and place of deposit in the mail.

Terry A. Coffing, Esq.  
Tye S. Hanseen, Esq.  
**MARQUIS AURBACH COFFING**  
1001 Park Run Drive  
Las Vegas, Nevada 89145

*Attorneys for Defendant Michael J. Mona, Jr.*

\_\_\_\_\_  
An employee of Holley Driggs Walch  
Fine Wray Puzey & Thompson



**ORDER**

F. THOMAS EDWARDS, ESQ.  
Nevada Bar No. 9549  
E-mail: tedwards@nevadafirm.com  
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Nevada Bar No. 12580  
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Facsimile: 702/791-1912

*Attorneys for Plaintiff Far West Industries*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FAR WEST INDUSTRIES, a California  
corporation,

Plaintiff,

v.

RIO VISTA NEVADA, LLC, a Nevada limited  
liability company; WORLD DEVELOPMENT,  
INC., a California corporation; BRUCE MAIZE,  
an individual, MICHAEL J. MONA, JR., an  
individual; DOES 1 through 100, inclusive,

Defendants.

Case No.: A-12-670352-F  
Dept. No.: XV

Date of Hearing: June 14, 2017  
Time of Hearing: 9:00 a.m.

**ORDER SUSTAINING PLAINTIFF FAR WEST INDUSTRIES'  
OBJECTION TO CLAIM OF EXEMPTION FROM EXECUTION**

On June 14, 2017, at 9:00 a.m., the Court heard the matter of Plaintiff Far West Industries Objection to Claim of Exemption from Execution on an Order Shortening Time and Motion for Attorney Fees and Costs Pursuant to NRS 18.010(2)(b) (the "Objection"). F. Thomas Edwards, Esq. and Andrea M. Gandara, Esq., of the law firm Holley Driggs Walch Fine Wray Puzey & Thompson, appeared on behalf of Plaintiff Far West Industries ("Far West"). Tye S. Hanseen, Esq., of the law firm Marquis Aurbach Coffing, appeared on behalf of Defendant Michael J. Mona, Jr. ("Mr. Mona").

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The Court's Order Regarding Plaintiff Far West Industries' Motion for Determination of Priority of Garnishment and Defendant Michael J. Mona's Countermotion to Discharge Garnishment and for Return of Proceeds ("Priority Order"), entered June 21, 2016, remains unchanged and is incorporated by reference into this Order.

If the Court treats the Judgment and the Divorce Decree as competing judgments, which the Court believes is appropriate under the circumstances, Far West's Judgment is first in time and entitled to priority because it was entered on April 27, 2012 and clearly pre-dates the July 23, 2015 Divorce Decree.

If the Court analyzes priority with regard to competing garnishments, Far West necessarily prevails and is entitled to priority because Far West's first garnishment of Defendant's wages occurred on December 13, 2013 and no garnishment has been issued with regard to the Divorce Decree.

If the Court treats the Divorce Decree as an assignment because it provides Ms. Mona's alimony "via direct wage assignment" through Mr. Mona's employer, Far West's Judgment and garnishment is entitled to priority pursuant to *First Interstate Bank of California v. H.C.T.*, 108 Nev. 242, 246 (1992).

In the alternative, if the Court was to treat the Divorce Decree as a garnishment, it is subject to the 120-day limitation applicable to garnishments and it has expired. Accordingly, under this alternative analysis, Far West has priority ahead of Ms. Mona's alimony.

1 In the Court's exercise of discretion on priority, the Court also finds that equity is on the  
2 side of Far West for the reasons set forth in the Objection. Further, the Court notes that Nevada  
3 does not provide spousal support with the same priority as child support. *See* NRS 31.249(5).

4 In sum, the Far West's Judgment and garnishment have priority over the Divorce Decree  
5 and assignment of alimony that Ms. Mona has for multiple reasons.

6 Based on the foregoing, and good cause appearing,

7 **IT IS HEREBY ORDERED** that Far West's Objection is **SUSTAINED**.

8 **IT IS FURTHER ORDERED** that Mr. Mona's Claim of Exemption, filed May 23, 2017,  
9 is **DENIED**.

10 **IT IS FURTHER ORDERED** that Mr. Mona's wages from CV Sciences, Inc., being  
11 levied upon pursuant to Far West's Writ of Garnishment shall be immediately released to Far West  
12 and continue to be released to Far West in accordance with the Writ of Garnishment.

13 **IT IS FURTHER ORDERED** that the issues of priority, calculation and treatment as to  
14 Far West's garnishment of Mr. Mona's earnings are resolved going forward.

15 **IT IS FURTHER ORDERED** that any service defects of future Writs of Garnishment  
16 can be addressed as they arise in the future.

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**IT IS FURTHER ORDERED** that Far West's request for attorney fees and costs is  
**DENIED WITHOUT PREJUDICE.**

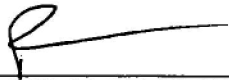
**IT IS SO ORDERED.**

Dated this 18<sup>th</sup> day of July, 2017.

  
DISTRICT COURT JUDGE

Submitted by:

**HOLLEY DRIGGS WALCH  
FINE WRAY PUZEY & THOMPSON**

  
F. THOMAS EDWARDS, ESQ.  
Nevada Bar No. 9549  
ANDREA M. GANDARA, ESQ.  
Nevada Bar No. 12580  
400 South Fourth Street, Third Floor  
Las Vegas, NV 89101

*Attorneys for Plaintiff Far West Industries*

Approved as to form by:

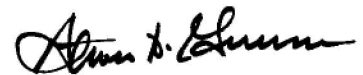
**MARQUIS AURBACH COFFING**

/s/ Tye S. Hanseen  
TERRY A. COFFING, ESQ.  
Nevada Bar No. 4949  
TYE S. HANSEEN, ESQ.  
Nevada Bar No. 10365  
10001 Park Run Drive  
Las Vegas, Nevada 89145

*Attorneys for Defendant Michael J. Mona, Jr.*



## Exhibit 4



CLERK OF THE COURT

1 **NEOJ**  
2 F. THOMAS EDWARDS, ESQ.  
3 Nevada Bar No. 9549  
4 E-mail: [tedwards@nevadafirm.com](mailto:tedwards@nevadafirm.com)  
5 ANDREA M. GANDARA, ESQ.  
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8 HOLLEY DRIGGS WALCH  
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10 400 South Fourth Street, Third Floor  
11 Las Vegas, Nevada 89101  
12 Telephone: 702/791-0308  
13 Facsimile: 702/791-1912

14 *Attorneys for Plaintiff Far West Industries*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 FAR WEST INDUSTRIES, a California  
18 corporation,

19 Plaintiff,

20 v.

21 RIO VISTA NEVADA, LLC, a Nevada limited  
22 liability company; WORLD DEVELOPMENT,  
23 INC., a California corporation; BRUCE MAIZE,  
24 an individual, MICHAEL J. MONA, JR., an  
25 individual; DOES 1 through 100, inclusive,

26 Defendants.

Case No.: A-12-670352-F  
Dept. No.: XV

**NOTICE OF ENTRY OF ORDER  
REGARDING PLAINTIFF FAR WEST  
INDUSTRIES' MOTION FOR  
DETERMINATION OF PRIORITY OF  
GARNISHMENT AND DEFENDANT  
MICHAEL J. MONA'S  
COUNTERMOTION TO DISCHARGE  
GARNISHMENT AND FOR RETURN OF  
PROCEEDS**

27 YOU, and each of you, will please take notice that an ORDER REGARDING  
28 PLAINTIFF FAR WEST INDUSTRIES' MOTION FOR DETERMINATION OF PRIORITY  
OF GARNISHMENT AND DEFENDANT MICHAEL J. MONA'S COUNTERMOTION TO  
DISCHARGE GARNISHMENT AND FOR RETURN OF PROCEEDS in the above entitled

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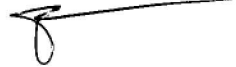
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///

1 matter was filed and entered by the Clerk of the above-entitled Court on the 21st day of June,  
2 2016, a copy of which is attached hereto.

3 Dated this 21<sup>st</sup> day of June, 2016.

4 **HOLLEY DRIGGS WALCH**  
5 **FINE WRAY PUZEY & THOMPSON**

6 

7 F. THOMAS EDWARDS, ESQ. (NBN 9549)  
8 ANDREA M. GANDARA, ESQ. (NBN 12580)  
9 400 South Fourth Street, Third Floor  
10 Las Vegas, Nevada 89101  
11 *Attorneys for Plaintiff Far West Industries*

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Holley Driggs Walch Fine Wray Puzey & Thompson, and that on the 21<sup>st</sup> day of June, 2016, I served via electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve, a true copy of the foregoing **NOTICE OF ENTRY OF ORDER REGARDING PLAINTIFF FAR WEST INDUSTRIES' MOTION FOR DETERMINATION OF PRIORITY OF GARNISHMENT AND DEFENDANT MICHAEL J. MONA'S COUNTERMOTION TO DISCHARGE GARNISHMENT AND FOR RETURN OF PROCEEDS**, in the above matter, addressed as follows:

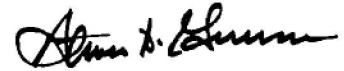
James E. Whitmire, Esq.  
**SANTORO WHITMIRE**  
 10100 West Charleston Boulevard, Suite 250  
 Las Vegas, Nevada 89135  
*Attorneys for Defendants Rhonda Helene Mona,  
 Michael Mona, III, and  
 Lundene Enterprises, LLC*

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 Tye S. Hanseen, Esq.  
**MARQUIS AURBACH COFFING**  
 1001 Park Run Drive  
 Las Vegas, Nevada 89145  
*Attorneys for Defendant  
 Michael J. Mona, Jr.*

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 Dylan Ciciliano, Esq.  
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*Attorneys for Roen Ventures, LLC*

William R. Urga, Esq.  
**JOLLEY URGAWOODBURY & LITTLE**  
 3800 Howard Hughes Parkway, 16th Floor  
 Las Vegas, Nevada 89169  
*Attorneys for Non-Party Theodore Sobieski*

  
 An employee of Holley Driggs Walch  
 Fine Wray Puzey & Thompson



CLERK OF THE COURT

1 **ORDR**

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3  
4 **DISTRICT COURT**

5 **CLARK COUNTY, NEVADA**

6  
7 FAR WEST INDUSTRIES, a California  
8 corporation,

9 Plaintiff,

10 vs.

11 RIO VISTA NEVADA, LLC, a Nevada limited  
12 liability company; WORLD DEVELOPMENT,  
13 INC., a California corporation; BRUCE MAIZE,  
14 an individual; MICHAEL J. MONA, JR., an  
individual; DOES 1 through 100, inclusive,

15 Defendants.

Case No.: A-12-670352-F  
Dept No.: XV

**ORDER REGARDING PLAINTIFF  
FAR WEST INDUSTRIES' MOTION  
FOR DETERMINATION OF  
PRIORITY OF GARNISHMENT AND  
DEFENDANT MICHAEL J. MONA'S  
COUNTERMOTION TO DISCHARGE  
GARNISHMENT AND FOR RETURN  
OF PROCEEDS**

16 Having reviewed the parties' pleadings and briefs herein, including, but not limited to,  
17 Plaintiff Far West Industries' ("Plaintiff") Motion for Determination of Priority of Garnishment  
18 ("Motion"); Defendant Michael J. Mona's ("Defendant") Opposition to Far West's Motion for  
19 Determination of Priority of Garnishment and Countermotion to Discharge Garnishment and for  
20 Return of Proceeds ("Opposition" and "Countermotion," respectively); Plaintiff Far West Industries'  
21 Reply to Mona's Opposition to Far West's Motion for Determination of Priority of Garnishment and  
22 Opposition to Countermotion to Discharge Garnishment and for Return of Proceeds; and  
23 Defendant's Reply in Support of Countermotion to Discharge Garnishment and for Return of  
24 Proceeds, and having held argument on March 30, 2016 and taken this matter under advisement, the  
25 Court GRANTS Plaintiff's Motion and DENIES Defendant's Countermotion as follows:

26 Plaintiff obtained a judgment of over \$18 million from a California state court against  
27 Defendant on April 27, 2012.<sup>1</sup> Plaintiff domesticated the judgment in Nevada and has been  
28

<sup>1</sup> See Judgment, attached as Exhibit 1 to Plaintiff's Motion.

1 garnishing Defendant's wages since December 2013 at approximately \$1,950 on a bi-weekly basis.<sup>2</sup>  
2 In December 2015, Plaintiff obtained a new Writ of Execution for Defendant's earnings, which was  
3 served on Defendant's employer on January 7, 2016.<sup>3</sup> On January 28, 2016, Plaintiff received  
4 Defendant's Interrogatories in response to the Writ of Garnishment indicating that Defendant's  
5 weekly gross earnings totaled \$11,538.56, with deductions required by law totaling \$8,621.62.<sup>4</sup> The  
6 deductions required by law excluded from Defendant's gross earnings comprised of federal income  
7 tax, Social Security, Medicare, and \$4,615.39 in alimony payments to Defendant's ex-wife, Rhonda  
8 Mona ("Ms. Mona").<sup>5</sup> Based on those deductions, payments to Plaintiff decreased to less than \$750.  
9 Plaintiff subsequently filed its Motion for Determination of Priority of Garnishment requesting that  
10 this Court establish priority between Plaintiff's garnishment and Ms. Mona's alimony claim.  
11

#### 12 **I. Amount and Priority of Garnishments**

13 Under federal law the maximum amount of wages that may be garnished in any workweek  
14 may not exceed either (1) 25% of an individual's disposable earnings or (2) the amount by which the  
15 individual's disposable earnings for that week exceed thirty times the Federal minimum hourly  
16 wage, whichever is less.<sup>6</sup> In the event of a garnishment pursuant to an order for the support of a  
17 person, the maximum aggregate disposable earnings of an individual, where such individual is not  
18 supporting a spouse or dependent child, may not exceed 60% of the individual's disposable earnings  
19 for that week.<sup>7</sup> When an issue arises as to multiple garnishments, priority is determined by state law  
20 or other federal law.<sup>8</sup>

22 Nevada law mirrors the provisions set forth in 15 U.S.C. § 1673, and states that the aggregate  
23 disposable earnings subject to garnishment may not exceed 25%, with a maximum of 60% where  
24

25 <sup>2</sup> See Application of Foreign Judgment, filed on October 18, 2012 in Case No. A-12-670325-F.

26 <sup>3</sup> See Case Summary, attached as Exhibit 2 to Plaintiff's Motion.

27 <sup>4</sup> See Writ of Garnishment with Answers to Interrogatories from Cannavest, attached as Exhibit 5 to Plaintiff's Motion.

28 <sup>5</sup> *Id.*; see also "Deduction Emails" attached as Exhibit 6 to Plaintiff's Motion; see also Decree of Divorce, attached as Exhibit 7 to Plaintiff's Motion.

<sup>6</sup> 15 U.S.C. § 1673(a).

<sup>7</sup> 15 U.S.C. § 1673(b)(2)(B).

<sup>8</sup> 29 C.F.R. 870.11.

1 there is an order for the support of a person.<sup>9</sup> As to priority of claims, Nevada law gives the Court  
2 discretion in determining the priority and method of satisfying claims, except that any writ to satisfy  
3 a judgment for child support must be given first priority pursuant to NRS 31.249(5).<sup>10</sup>

4 Defendant identifies several states that grant garnishment priority to spousal support orders.  
5 However, applying such a priority to Ms. Mona's alimony is not supported by Nevada law, which  
6 provides garnishment priority solely to child support orders. Thus, unlike the cases cited by  
7 Defendant, it is inappropriate to award priority to Ms. Mona's alimony claim because such a priority  
8 is simply not supported by Nevada law. Since Ms. Mona's alimony claim is not automatically  
9 entitled to priority under Nevada law, this Court has discretion to determine priority between  
10 Plaintiff's garnishment and Ms. Mona's alimony claim pursuant to NRS 31.249.

## 11 II. Priority of Garnishments

12 Nevada case law regarding priority of garnishments is limited. However, in *First Interstate*  
13 *Bank of California v. H.C.T.*, the Nevada Supreme Court held that priority depends on "which  
14 interest is first in time," and agreed with a Sixth Circuit case that "the rights of the parties are  
15 determined from the date of the award."<sup>11</sup> In this case, Plaintiff's April 27, 2012 judgment clearly  
16 pre-dates the July 23, 2015 Divorce Decree. Even if the date of Plaintiff's first garnishment is used  
17 as the date for determining priority, Plaintiff's interest would still be first in time, as Plaintiff's first  
18 garnishment of Defendant's wages occurred on December 13, 2013.<sup>12</sup>

19 The Court in *First Interstate* further provided that as between an assignment and a  
20 garnishment, an assignment "takes priority over a writ of garnishment only to the extent that the  
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24 <sup>9</sup> NRS 31.295.

25 <sup>10</sup> The statute provides: "If the named garnishee is the subject of more than one writ of garnishment regarding the  
26 defendant, the court shall determine the priority and method of satisfying the claims, except that any writ of garnishment  
27 to satisfy a judgment for the collection of child support must be given first priority."

28 <sup>11</sup> *First Interstate Bank of California v. H.C.T.*, 108 Nev. 242 (1992) citing *Marion Mfg. Co. v. Long*, 588 F.2d 538, 541  
(6th Cir. 1978).

<sup>12</sup> The Court in *First Interstate* concluded that a creditor's interests vested when it first serve its writ of garnishment, and  
used the date of the first garnishment in determining priority. It is unclear whether Ms. Mona has ever garnished  
Defendant's wages to enforce the alimony award provided in the Decree of Divorce. However, the first date Ms. Mona  
was able to garnish Defendant's wages would have occurred after filing of the Decree of Divorce in July 2015, long after  
Plaintiff's judgment or first date of garnishment.

1 consideration given for the assignment represents an antecedent debt or present advance.”<sup>13</sup> Under  
2 this test, Ms. Mona’s alimony, paid “via a direct wage assignment” through Defendant’s employer,  
3 takes priority only if it represents consideration for an antecedent debt or present advance.<sup>14</sup> In this  
4 case, Defendant’s obligation under the Decree of Divorce represents only a court order to pay  
5 monthly alimony to Ms. Mona, and was not ordered as consideration for an antecedent debt or  
6 present advance. Thus, Plaintiff’s judgment still takes priority even under this analysis.  
7

### 8 **III. Expiration**

9 Defendant claims that Plaintiff’s status as “first in time” was lost when Plaintiff’s  
10 garnishment expired. However, Plaintiff was prevented from renewing its garnishment for four  
11 months (from July 20, 2015 to November 30, 2015) because of a stay pending an appeal instituted  
12 by Defendant and Ms. Mona. Plaintiff obtained a new garnishment immediately after expiration of  
13 the stay on December 1, 2015. It would be inequitable for Plaintiff’s garnishment to lose its position  
14 to Ms. Mona’s ongoing support order simply because it was prevented from renewing its  
15 garnishment during the four month period when the case was stayed.<sup>15</sup>  
16

### 17 **IV. Defendant’s Motion to Discharge the Writ**

18 In his Countermotion to Discharge Writ and Return Funds to Mona, Defendant cites to NRS  
19 31.045(2) in asserting his right to move for discharge of the writ.<sup>16</sup> As Plaintiff correctly asserts,  
20 NRS 31.200 states that a Defendant may move for discharge of an attachment on the following  
21 grounds:

- 22 (a) That the writ was improperly or improvidently issued;
- 23 (b) That the property levied upon is exempt from execution or necessary and  
24 required by the defendant for the support and maintenance of the defendant and  
members of the defendant’s family;
- 25 (c) That the levy is excessive.

26 <sup>13</sup> *First Interstate Bank of California v. H.C.T.*, 108 Nev. 242, 246 (1992).

27 <sup>14</sup> See Decree of Divorce 3:12-16, attached as Exhibit 7 to Plaintiff’s Motion.

28 <sup>15</sup> The Court is also aware, as set forth in great detail in other orders of the facts and circumstances of this case, and finds that equity supports an exercise of the Court’s discretion in favor of Plaintiff on the priority of garnishment issue as set forth in this Order.

<sup>16</sup> See Defendant’s Opposition and Countermotion at 28:1-11.



1 In his counter motion, Defendant incorporates by reference the "facts, law, and analysis"  
2 included in his Opposition, but does not specifically address which, if any, of the three parameters of  
3 NRS 31.200 he bases his motion.<sup>17</sup>

4 Furthermore, Defendant's request that Plaintiff return any excess garnishment fails to address  
5 why Plaintiff, and not Defendant's employer Cannavest, should be required to remit any excess  
6 garnishment to Defendant. Defendant provided no controlling or persuasive authority requiring a  
7 judgment creditor to return funds that an employee claims were overpaid.<sup>18</sup>

8  
9 In light of the foregoing, this Court finds that because Plaintiff's garnishment predates the  
10 Decree of Divorce, Plaintiff's garnishment is entitled to priority over Ms. Mona's alimony claim,  
11 and Plaintiff is entitled to garnish 25% of Defendant's disposable earnings (calculated by subtracting  
12 federal taxes, Social Security, and Medicare from Defendant's biweekly salary) *before* any  
13 deductions may be made to satisfy Ms. Mona's alimony claim.<sup>19</sup> Furthermore, there are no facts  
14 supporting Defendant's counter motion for discharge under NRS 31.200. To the extent that  
15 Defendant's employer Cannavest garnished Defendant's wages in an amount exceeding what it was  
16 allowed, Defendant may seek reimbursement directly from Cannavest.

17  
18 Based on the foregoing, and good cause appearing:

19 **IT IS HEREBY ORDERED** that Plaintiff's garnishment is entitled to take priority over Ms.  
20 Mona's alimony claim.

21 **IT IS FURTHER ORDERED** that Plaintiff is entitled to garnish 25% of Defendant's  
22 disposable earnings, calculated by subtracting federal taxes, Social Security, and Medicare from  
23

24  
25 <sup>17</sup> See Defendant's Opposition 28:9-11.


26 <sup>18</sup> Defendant cites *Lough v. Robinson*, 111 Ohio App.3d 149, 155-156 (1996), which states "the entire amount that was  
27 withheld by the employer for the creditor garnishment was excess and should have been returned to appellant."  
28 However, *Lough* does not clarify who must return the funds to the employee, and there is no authority presented  
supporting Defendant's claim that reimbursement should come from Plaintiff.

<sup>19</sup> This formula is relied on by both Plaintiff and Defendant as the correct method for calculating Defendant's disposable  
earnings; see Defendant's Opposition and Counter motion at 20:14-20 and Plaintiff's Reply at 6:14-22. The only  
difference between the parties' proposed calculations is whether Plaintiff's garnishment or Ms. Mona's alimony are  
subtracted from Defendant's disposable earnings first.

1 Defendant's biweekly earnings. Any amount in excess of 25% of Defendant's disposable earnings  
2 may be applied to satisfy Ms. Mona's alimony claim.

3 **IT IS FURTHER ORDERED** that Defendant's Countermotion to Discharge Garnishment  
4 and for Return of Proceeds is DENIED.

5 DATED this 21<sup>st</sup> day of June, 2016.

6   
7  
8 JOE HARDY  
9 DISTRICT JUDGE  
DEPARTMENT XV

10 **CERTIFICATE OF SERVICE**

11  
12 I hereby certify that on or about the date filed, a copy of the foregoing was electronically  
13 served, mailed or placed in the attorney's folder on the first floor of the Regional Justice Center as  
14 follows:

15 Thomas Edwards, Esq. [tedwards@nevadafirm.com](mailto:tedwards@nevadafirm.com)  
16 Terry Coffing, Esq. [tcoffing@maclaw.com](mailto:tcoffing@maclaw.com)  
17 James Whitmire, III, Esq. [jwhitmire@santoronevada.com](mailto:jwhitmire@santoronevada.com)  
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