IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL J. MONA, JR., an individual, Appellant, vs. FAR WEST INDUSTRIES, a California corporation, Respondent.	Case No.: 73815 Appeal from the Eighth Judicial District Court, The Honorable Joe Hardy Presiding.

APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Appellant Michael J. Mona, Jr. (Michael) is an individual.

2. Michael has been represented in the district court by Marquis Aurbach Coffing, and he is represented in this court by Marquis Aurbach Coffing.

Dated this 9th day of January, 2018.

MARQUIS AURBACH COFFING

By _____

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Appellant, Michael Jr. Mona, Jr., appeals from two orders: an order regarding Respondent Far West Industries' motion for determination of priority of garnishment and denying Michael's countermotion to discharge garnishment and for return of proceeds, 15 Appellant's Appendix (AA) 3351–56, as well as an order sustaining Far West's objection to a claim of exemption from execution, 22 AA 5162–65. Michael timely filed his notice of appeal on August 18, 2017. 22 AA 5180–82. The two orders constitute a "final judgment in [a] garnishee proceeding," and are appealable under NRAP 3A(a) and (b)(1).[1] *Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 1213–15 (2008).

II. ROUTING STATEMENT

This matter is presumptively retained by the Supreme Court because, with respect to the district court's ability to issue an order in violation of the Supremacy Clause, it raises as a principal issue a question of first impression involving the United States or Nevada Constitutions, NRAP 17(a)(13), and because, with respect

[1] *See also Mona v. Far West Indust.*, Docket No. 73812 (Appellant's Opposition to Motion to Dismiss, Jan. 1, 2018) (providing additional analysis demonstrating orders directing a garnishee to pay a garnishment, despite the garnishee's protests are final, appealable orders under NRAP 3A and 4).

to Nevada's recognition of an alimony order's automatic priority over competing garnishments, it raises questions of statewide public importance, NRAP 17(a)(14).

III. ISSUES ON APPEAL

(1) Whether Nevada recognizes the common-law rule providing alimony priority over competing garnishment orders.

(2) Whether Nevada law provides alimony priority over competing garnishments.

(3) Whether the garnishment of Michael Mona's wages as ordered in the priority order and the objection order violates the Supremacy Clause.

(4) Whether the garnishment of Michael Mona's wages as ordered in the priority order and the objection order constitutes an impermissible continuing garnishment.

(5) Whether the district court erred by forcing Michael to either violate the divorce decree or, alternatively, allow his withholdings to violate the Supremacy Clause and related garnishment restrictions.

IV. STATEMENT OF THE CASE AND SUMMARY OF ARGUMENT

The genesis of this appeal is a conflict between competing garnishments—an alimony order stemming from a divorce and a garnishment order stemming from a domesticated judgment. Importantly, the garnishment given priority

(i.e., who gets paid first) determines garnishment amount (i.e., how much they get paid). Here, if the alimony order is given priority, Michael's alimony order will be paid, and state and federal law will not allow additional garnishments of Michael's remaining disposable income; if Far West's garnishment is given priority, however, then Far West will get paid first, leaving virtually no disposable income for Michael's existing and ongoing alimony obligation.

This conflict has been addressed at common law, which provides alimony automatic priority over garnishments. The district court failed to recognize or apply that common-law principle and instead afforded the garnishment priority. The district court erred in doing so. Respectfully, this Court's inquiry should end there.

Should this Court wish to continue its analysis, however, the crux of this appeal then asks whether alimony is given priority over competing garnishments subject to state case law, as well as certain identical state and federal statutory caps. Nevada statute implicitly provides alimony priority over competing garnishments in the same manner it provides child support priority over garnishments. Additionally, Nevada case law provides alimony priority over most garnishments, including the garnishment at issue here, because the alimony is antecedent debt to the garnishment. Accordingly, the alimony order should have

been given priority either by providing it priority in the same manner child support is given priority or as antecedent debt, and the district court's failure to do either warrants reversal.

Further, when an alimony order competes with another garnishment, the garnishment amounts are subject to the applicable state and federal statutory caps. Those statutory caps constitute the maximum allowable garnishment amount; pursuant to state statute, the garnishment cannot exceed the statutory cap and, likewise, pursuant to the Supremacy Clause, the state court garnishment order cannot exceed the federally allowable amount. Because the applicable statutes are identical, the district court's reversible error was two-fold: first, by ordering a garnishment exceeding the state statutory cap; and, second, by ordering a garnishment amount that exceeds the federal statutory cap, thus violating the Supremacy Clause.

Additionally, in Nevada, garnishments cannot continue in perpetuity; rather, a writ can only continue "for 120 days or until the amount demanded in the writ is satisfied, whichever occurs earlier," NRS 31.296, meaning, after 120 days, the garnishment expires, and priority resets.[2] Thus, as soon as Far West's July

[2] NRS 31.296 was amended as of October 1, 2017, to allow for garnishments to continue for 180 days. *See* 2017 Nev. Stat. 1964, 1979. This statutory scheme was

garnishment expired, by operation of law, the alimony order ascended to first position. Nonetheless, the district court concluded a creditor with an "older debt," despite lack of diligence, may essentially "cut in line" in front of other creditors who have pending wage withholdings against a debtor and allowed for the garnishment to have priority in excess of 120 days, thus violating Nevada law.

Finally, the district court abused its discretion by forcing Michael either to violate the terms of the divorce decree or, alternatively, to allow the withholdings from his wages to violate federal and Nevada law.

V. STANDARD OF REVIEW

This court reviews pure legal issues, including priority of garnishment, de novo. *See Settelmeyer & Sons, Inc.*, 124 Nev. at 1213–15 (reviewing garnishment order de novo). Likewise, whether state law claims are preempted by federal law is a question of law that this court reviews de novo. *See Nanopierce Tech. v. Depository Tr.,* 123 Nev. 362, 370, 168 P.3d 73, 79 (2007).

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not in effect at the time of the district court's error and does not change the fundamental arguments in this brief.

VI. FACTUAL AND PROCEDURAL BACKGROUND

A. THE JUDGMENT

On April 27, 2012, a California court entered a judgment for Far West and against Michael, among others, for roughly $18,000,000 (the judgment). 1 AA 1–7. In late 2012, Far West domesticated the judgment in Nevada. 1 AA 8–9.

B. THE GARNISHMENT AND THE ALIMONY ORDER

In late 2013, pursuant to the judgment, Far West began garnishing Michael's wages at approximately $1,950 on a bi-weekly basis. 15 AA 3352. Far West garnished Michael's wages at this rate from late 2013 to mid-2015. 15 AA 3352.

On June 9, 2015, Far West served Michael's employer with a writ of garnishment related to the attachment of Mona's wages (the garnishment). 15 AA 3352. On July 23, 2015, Michael and Rhonda Mona divorced, and Michael was ordered to pay Rhonda $10,000 per month in alimony via "direct wage assignment through [Michael]'s employer" (the alimony order). 3 AA 606. Far West's garnishment was stayed for four months during a separate writ petition proceeding before this Court. 15 AA 3354; *see also Mona v. Eighth Judicial Dist. Court*, 132 Nev., Adv. Op. 72, 380 P.3d 836, 839 (2016). During that time, on October 24, 2015, pursuant to the 120-day timeframe allowed under NRS 31.296, the garnishment expired.

C. THE PRIORITY ORDER

In December of 2015, Far West obtained a new writ of execution for Michael's earnings, which was served on Michael's employer on January 7, 2016. 3 AA 590–98. On January 28, 2016, Far West received Michael's interrogatories indicating that Michael's weekly gross earnings totaled $11,538.56, with deductions required by law totaling $8,621.62. 3 AA 594–95. The deductions required by law excluded from Michael's gross earnings included, among other things, $4,615.39 in alimony payments to Rhonda. 3 AA 595. The alimony represented roughly 39% of Michael's gross income.

Far West subsequently filed a motion for determination of priority of garnishment requesting the district court establish priority between its garnishment Rhonda's alimony claim. 3 AA 554–609. In response, Michael objected, arguing that: Far West's garnishment exceeded both state and federal statutory exemption maximums; the 120-day statutory garnishment period had expired and, thus, that the garnishment constituted an illegal continuing garnishment; Rhonda's alimony had priority over the later-served garnishment, and, given the unconstitutionality of the garnishment order, the district court should discharge the writ of garnishment and order Far West to return the funds. 5 AA 1024–60.

On June 21, 2016, the district court entered the order regarding Far West's motion for determination of priority of garnishment and Michael's countermotion to discharge garnishment and for return of proceeds (the priority order). 15 AA 3351–56. The district court concluded the judgment, and thus the garnishment, had priority over the alimony order. 15 AA 3351–56. The district court also concluded that Far West's garnishment did not expire during the pendency of the four-month stay, despite the garnishment exceeding the 120-day statutory timeframe.

D. THE OBJECTION ORDER

On November 10, 2016, Michael filed a claim of exemption from execution. 15 AA 3398–400; 3422–618. Michael's claim for exemption reiterated, among other things, that Far West's garnishment exceeded statutory exemption maximums; the garnishment was an impermissible continuing garnishment; and the alimony had priority over the garnishment. 15 AA 3422–52. Two weeks later, Far West objected to the claim of exemption. 15 AA 3401–21.

On July 18, 2017, the district court entered an order sustaining Far West's objection to claim of exemption from execution (the objection order). 22 AA 5162–65. The district court incorporated the priority order by reference, and concluded: if the garnishment and alimony are competing judgments or competing

garnishments, then the garnishment is granted priority over the alimony because it was "first in time;" if the alimony is an assignment, then the garnishment is entitled to priority pursuant to *First Interstate Bank of California v. H.C.T.*, 108 Nev. 242, 828 P.2d 405 (1992); if the alimony is a garnishment, then it is subject to the 120-day limitation applicable to garnishments, and has expired, thus giving the garnishment priority; and, finally, that Nevada does not provide alimony with the same priority as child support, pursuant to NRS 31.249(5). 22 AA 5162–65. The district court ordered Michael's employer to "immediately release[]" Michael's wages pursuant to the writ of garnishment. 22 AA 5162–65. This appeal followed.

VII. LEGAL ARGUMENT

A. COMMON LAW PROVIDES THE ALIMONY ORDER PRIORITY OVER THE GARNISHMENT.

Alimony is given priority over other, competing garnishments.[3] This rule is explicitly recognized at common law, and has been adopted by federal law and

[3] Importantly, pursuant to federal law, alimony is considered a "garnishment" when determining priority and applying relevant garnishment restrictions. *See* 15 U.S.C. § 1672(c) (the "[t]erm 'garnishment' means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt."). The district court ignored this analysis and, instead, improperly determined that the divorce decree from which the alimony originated was a "competing judgment." 22 AA 5163. The district court erred in doing so.

many of this Court's sister jurisdictions. The district court failed to recognize this well-known presumption in either the priority order or the objection order and, instead, relied on misapplications on inapplicable standards in issuing both orders. The district court therefore erred in determining the garnishment had priority over the alimony, and reversal is warranted.

Indeed, federal law explicitly requires that alimony orders take priority over wage garnishments in federal debt collection cases. *See* 28 U.S.C. § 3205(8) (providing "[j]udicial orders and garnishments for the support of a person shall have priority over a writ of garnishment . . . "). This approach mirrors the common-law rules recognized and codified by many states, and should be adopted in Nevada. *See, e.g.*, Ariz. Rev. Stat. § 12-1598.14(B) (providing "[g]arnishments which are not for the support of a person and levies are inferior to garnishments for the support of a person" in Arizona); Cal. Civ. Proc. Code § 699.510 (in California, "[t]he clerk of the court shall give priority to the application for, and issuance of, writs of execution on orders or judgments for . . . spousal support."); *Bickett v. Bickett*, 579 So. 2d 149, 150 (Fla. Dist. Ct. App. 1991) (concluding Florida trial courts have "full authority to stay, modify, or condition the writ to assure . . . that alimony and child support payments have priority"); 735 Ill. Comp. Stat. 5/12-808 (in Illinois, "liens for the support of a spouse or dependent children shall have

priority over all other liens"); *Miller v. Owens*, 953 N.E.2d 1079, 1085 (Ind. Ct. App. 2011) ("[a] support withholding order takes priority over a garnishment order irrespective of their dates of entry or activation. If a person is subject to a support withholding order and a garnishment order, the garnishment order shall be honored only to the extent that disposable earnings withheld under the support withholding order do not exceed the maximum amount subject to garnishment as computed" under Indiana statute); 42 Pa. Cons. Stat. § 8127(b) (in Pennsylvania, "[a]n order of attachment for support shall have priority over any other attachment, execution, garnishment or wage assignment").

Thus, the common law provides that alimony is automatically given priority over competing garnishment claims. In Nevada, "[t]he common law is the rule of decision in [Nevada] courts unless [it is] in conflict with constitutional or statutory commands." *Hamm v. Carson Cty. Nugget, Inc.*, 85 Nev. 99, 100, 450 P.2d 358, 359 (1969); NRS 1.030. Here, no such constitutional or statutory conflicts exist; indeed, the relevant statutes provide support for this rule. *See* Section VII.B, *infra*. Accordingly, as a threshold issue, the district court erred in failing to recognizing the common-law rule and afford the alimony order automatic priority over the garnishment order, and should be reversed.

B. NEVADA LAW PROVIDES ALIMONY ORDERS AUTOMATIC PRIORITY OVER OTHER GARNISHMENTS.

Next, in both the priority order and the objection order, the district court's rationale was erroneous in several important ways, all of which warrant reversal. First, the district court failed to recognize that Nevada statute implicitly provides priority to alimony orders in the same manner it provides to child support orders; second, the district court misapprehended the nature of the alimony order and analyzed it as an assignment; third, the district court failed to recognized alimony as antecedent debt, and, finally, as discussed in Section VII.C *infra*, the district court erred in analyzing the alimony order and garnishment order as competing garnishments by entering two orders that violate Nevada statute and the Supremacy Clause.

1. Nevada statute implicitly provides alimony orders priority over garnishment orders

Nevada law explicitly affords child support orders priority over garnishments and implicitly provides that same priority to alimony orders. The district court, however, concluded that Nevada does not allow for such protections. Statutory interpretation dictates otherwise.

The meaning of a statute can be clarified by referring to "laws which . . . have the same purpose or object." *Rose v. Hald*, 127 Nev. 1171, 373 P.3d 957

(2011). Indeed, the "related-statutes canon" ("*in pari materia*") provides that "laws dealing with the same subject . . . should if possible be interpreted harmoniously." *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 252 (2012).[4]

Child support and alimony "have the same purpose—to deliver needed support to a party entitled to demand that support." Lewis Becker, *Spousal and Child Support and the "Voluntary Reduction of Income" Doctrine*, 29 Conn. L. Rev. 647, 723 (1997). NRS 31.295(3)(a) provides special garnishment restriction on the discretionary income of persons subject to orders made "for the support of any person," while NRS 31.249(5) provides automatic first priority to "a judgment for the collection of child support." NRS 31.295(3)(a) and NRS 31.249(5) thus deal with the same subject—orders for the support of a person—and have the same purpose or objective—to ensure a garnishee's discretionary income goes first to the support of those persons entitled to that support. Thus, consistent with Nevada's policy to ensuring a garnishee's discretionary income goes first to an order for the support of a person, a harmonious interpretation of the two statutes provides alimony, in addition to child support, be given first position over all other,

[4] Unlike many other canons of interpretation, "[t]he application of *in pari materia* is not necessarily conditioned on a finding of ambiguity." *See, e.g., SBC Health Midwest, Inc. v. Cty. of Kentwood*, 894 N.W.2d 535, 540 n.6 (Mich. 2017).

competing garnishments. Thus, the district court incorrectly assumed the statutory exemptions afforded to child support do not extend to alimony; that error warrants reversal.

2. The district court misapprehended the nature of the alimony order.

The district court incorrectly analyzed the alimony order as is an assignment, based on language of the divorce decree, and concluded the garnishment is entitled to priority pursuant to *First Interstate Bank of California v. H.C.T.*, 108 Nev. 242, 828 P.2d 405 (1992). The district court erred in this analysis. *First Interstate* provides that priority between a garnishment and an assignment depends on which interest is first in time; on the other hand, an assignment takes priority over writ of garnishment only to extent that consideration given for assignment represents antecedent debt. 108 Nev. at 246, 828 P.2d at 408. However, *First Interstate* does not concern alimony orders, and is thus irrelevant to the instant priority determination. The text of the divorce decree indicates the alimony is to be paid via "direct wage assignment," 3 AA 606, but the alimony itself is not actually an assignment—it a court-ordered obligation to pay alimony. *Compare Alimony*, Black's Law Dictionary (10th ed. 2014) ("[a] *court-ordered* allowance that one spouse pays to the other spouse for maintenance and support . . . after they are divorced; esp., money that a *court orders someone to pay* regularly to his or her

former spouse after the marriage has ended") (emphasis added), *with Assignment of wages*, Black's Law Dictionary (10th ed. 2014) ("[a] transfer of the right to collect wages from the wage earner to a creditor"). In other words, the alimony was not assigned to anyone. Given its inapplicability here, the district court applied the wrong legal standard in relying on *First Interstate*, and, thus, committed reversible error. *See, e.g.*, *United States v. Ruiz*, 257 F.3d 1030, 1033 (9th Cir. 2001) (concluding the application of the wrong legal standard constitutes reversible error). Thus, this Court should reverse.

3. If alimony is considered an assignment, then it is antecedent debt to the garnishment.

Even if this Court considers the alimony to be an assignment of wages, the alimony still would have priority because assignments that represent antecedent debt take priority over other garnishments, *see First Interstate*, 108 Nev. at 247, 828 P.2d at 408, and alimony is antecedent debt to later-served garnishments. *In re Futoran*, 76 F.3d 265, 267 (9th Cir. 1996) (holding that, because "debt" is simply "liability on a claim," and liability on a future alimony claim vests immediately upon marriage, that alimony is antecedent debt). Indeed, the policy rationale for alimony posits that, because marriage is a contract with the offer, acceptance, and consideration occurring immediately, alimony is seen as either an exchange for services performed during the marriage or compensation for potential economic

losses occurring during marriage. *See* Hon. David A. Hardy, *Nevada Alimony: An Important Policy in Need of a Coherent Policy Purpose*, 9 Nev. L.J. 325, 329–46 (2009). The liability on that claim, or the potential debt on a future alimony obligation, vests immediately, making potential alimony obligations antecedent debt to any later-served garnishment. *In re Futoran*, 76 F.3d at 267. Thus, if the alimony order is considered an assignment, then a proper analysis of the alimony under the *First Interstate* framework demonstrates the district court's erroneous priority conclusion—the alimony was antecedent debt to Far West's garnishment and, thus, has priority. Accordingly, reversal is warranted.

C. THE PRIORITY ORDER AND THE OBJECTION ORDER VIOLATE THE SUPREMACY CLAUSE AND NEVADA STATE LAW.

Next, in addition to ignoring both explicit and implicit rules of law providing the alimony order priority over the garnishment order, the district court erred in entering the priority order and objection order because both orders expressly violate federal and state law. Accordingly, reversal is warranted.

1. The priority and objection orders are expressly preempted by federal law.

Although the district court has discretion to determine priority, NRS 31.249, that discretion is still subject to the constraints of the Supremacy Clause, U.S. Const. art. VI, cl. 2, and the garnishment restriction provisions of the Consumer

Credit Protection Act, 15 U.S.C. § 1671 *et seq*, which preempt state law insofar as state law permits recovery exceeding that of federal garnishment restrictions.

Federal law provides clear statutory garnishment limitations for when a single garnishment is at issue. In relevant part, 15 U.S.C. § 1673(a)(1) provides that the "maximum part of the aggregate disposable earnings of an individual for any workweek" cannot exceed 25% of his "disposable weekly earnings." However, there are several exceptions to that regulation, including exceptions for "any order for the support of any person issued by a [state] court of competent jurisdiction." *Id.* § 1673(b)(1)(A). Indeed, "[t]he maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed . . . 60 per centum of such individual's disposable earnings for that week." *Id.* § 1673(b)(2)(B). Additionally, consistent with federal preemption, "[n]o court of . . . any State, and no State (or officer or agency thereof), may make, execute, or enforce any order or process in violation" of those garnishment restrictions. *Id.* § 1673(c).

While federal statutes do not provide explicit direction for determining priority and garnishment maximums for a competing support obligation and creditor garnishment, examination of the case law applying the protections found within the Consumer Credit Protection Act makes clear that no withholding of

wages is allowed for the creditor garnishment if the support obligation exceeds 25% of the debtor's disposable earnings. *See, e.g., Long Island Tr. Co. v. U.S. Postal Serv.*, 647 F.2d 336 (2d Cir. 1981) (holding a alimony had priority over a creditor garnishment, and because that priority resulted in the withholding of 25% or more of employee's disposable earnings, the creditor garnishment was impermissible under the Consumer Credit Protection Act); *see also* 28 U.S.C. § 3205 (requiring that alimony orders take priority over wage garnishments). This remains true even if state law permits garnishment of a greater amount of an employee's disposable earnings than is permitted under 15 U.S.C. § 1673(a) because of express preemption. U.S. Const. art. VI, cl. 2; *see also Donovan v. Hamilton Cty. Mun. Court*, 580 F. Supp. 554, 557-58 (S.D. Ohio 1984) (holding that "under the Supremacy Clause . . . the garnishment restriction provisions of the Consumer Credit Protection Act preempt state laws insofar as state laws would permit recovery in excess of the twenty-five percent").

Express preemption emanates from the Supremacy Clause, pursuant to which state law must yield when it frustrates or conflicts with federal law. U.S. Const. art. VI, cl. 2; *see also Rolf Jensen & Associates v. Eighth Judicial Dist. Court.*, 128 Nev., Adv. Op. 42, 282 P.3d 743, 746 (2012). Congress expressly preempts state law when it explicitly states that intent in a statute's language.

Nanopierce Techs., Inc. v. Depository Tr. & Clearing Corp., 123 Nev. 362, 371, 168 P.3d 73, 79 (2007). When determining whether Congress has expressly preempted state law, a court must examine statutory language—any explicit preemption language generally governs the extent of preemption. *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992). Any state law that is expressly preempted by federal law is "without effect." *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981).

Thus, under federal law, when determining priority of a competing alimony and creditor garnishment, a district court may not order a withholding of wages is allowed for the creditor garnishment if the alimony exceeds 25% of the garnishee's disposable earnings. *See* Lisa Stifler, *Debt in the Courts: The Scourge of Abusive Debt Collection Litigation and Possible Policy Solutions*, 11 Harv. L. & Pol'y Rev. 91, 117 (2017) ("a panoply of federal and state laws also exempt other funds from collection, such as . . . alimony payments . . . "). Any state law court order garnishing more than 25% of a garnishee's disposable income therefore "without effect," and constitutes reversible error.

Here, the district court entered an order ordering garnishment exceeding 25% of Michael's wages that is expressly preempted by federal law and, thus, without effect. Indeed, 15 U.S.C. § 1673(c) expressly provides that "[n]o court

of . . . any State . . . may make, execute, or enforce any order" that garnishes more than 25% of an employee's disposable earnings; the priority and objection orders do just that. Thus, because the garnishment restriction provisions of the Consumer Credit Protection Act preempt the priority and objection orders insofar that they permit recovery in excess of 25% of Michael's wages, the district court erred in issuing them, and reversal is warranted.

2. The priority and objection orders likewise violate Nevada garnishment restrictions.

In addition to exceeding federal law, the district court erred by entering an order in contravention of Nevada law. Nevada law mirrors the federal garnishment restrictions. Indeed, the "maximum amount of the aggregate disposable earnings of a person which are subject to garnishment may not exceed: (a) Twenty-five percent of the person's disposable earnings for the relevant workweek . . . ." NRS 31.295(2) . Thus, exactly like 15 U.S.C. § 1673, Nevada limits withholdings from creditor garnishments to 25% of disposable earnings. *Compare* NRS 31.295(2), *with* 15 U.S.C. § 1673(a). Further, NRS 31.295 contains support obligation exceptions to the 25% limitation, which provide that 25% restriction does not apply in the case of any "order of any court for the support of any person." NRS 31.295(3)(a). Finally, the maximum amount of disposable earnings subject to withholding to enforce any order for the support of any person may not exceed

60%, which mirrors limitations provided in 15 U.S.C. § 1673(b)(2)(B). *Compare* NRS 31.295(4)(b), *with* 15 U.S.C. § 1673(b)(2)(B). Thus, because state-law garnishment limitations mirror federal-law limitations and the district court's orders violate federal law, the district court's orders also violated Nevada law, and should be reversed.

When comparing the resulting percentage to the limitations provided in NRS 31.295(4) and 15 U.S.C. § 1673(b)(2)(B), it becomes clear neither state law nor federal law allows for any additional garnishment. Nevertheless, the priority order and the objection order allow for a garnishment in violation of federal and Nevada law; these orders should therefore be reversed with instructions to apply the applicable state and federal statutory caps.

D. THE PRIORITY ORDER AND THE OBJECTION ORDER CONSTITUTE A CONTINUING GARNISHMENT.

Finally, the district court erred by allowing the garnishment order to remain in first position for more than 120 days and until the judgment is satisfied indicating that the issues of priority are "resolved going forward."[5] 22 AA 5164.

[5] Additionally, the district court incorrectly held that priority of garnishments in Nevada is determined by the date of the respective award from which the garnishment originated. 22 AA 5161. In other words, the district court concluded that a prior judgment sits in first position until it is satisfied; the district court's rationale plainly puts in place a continuing garnishment, which Nevada law expressly forbids because garnishments expire.

This type of garnishment in perpetuity constitutes an impermissible continuing garnishment. Continuing garnishments have been considered, and expressly rejected, by the Nevada Legislature, demonstrating that the district court's decision in the priority order, as executed in the objection order, runs contrary to existing law and policy regarding garnishments. Accordingly, the district court erred and reversal is warranted.

Legislative history demonstrates that the 120-day expiration period in NRS 31.296 was put into place specifically to combat garnishment schemes, like the one ordered by the district court, that continue for more than a legally reasonable timeframe. Indeed, in 1989, the 120-day timeframe was adopted expressly to counter proposed amendments to NRS 31.296 that would have allowed writs of garnishment to "remain in effect until the judgment was satisfied in full in lieu of repeating the procedure every pay period." *See* Hearing on A.B. 247 Before the Assembly Judiciary Comm., 65th Leg. 12 (Nev., Mar. 28, 1989) (statement of Assemblyman Matthew Callister).

These proposed amendments were roundly criticized and, eventually, rejected. Indeed, immediate and significant opposition to the proposal came from

various sheriffs and constables throughout Nevada.[6] For example, the Washoe County Sherriff's Office testified that

> An on-going garnishment . . . would tie one debtor to one creditor indefinitely. Other creditors would have to wait in line as long as six years [unless a judgment was renewed], on the first debt served by the garnishment. Collection on multiple judgments would be delayed indefinitely.

Id. at 13 (statement of Marc J. Fowler, Washoe County Sheriff's Office-Civil Division).

The North Las Vegas Township also opposed the bill, noting that such a scheme would allow a process server simply to "make one copy which is served to the employer and stays in effect until the judgment is paid in full or judgment expires after six years unless renewed." *Id.* at 16 (statement of Constable's Office, North Las Vegas Township). Further, if the proposed changes were enacted, the law would "chang[e] a one-time garnishment to a continuing writ" which, in effect, would require competing garnishments to be ignored until the first garnishment is paid in full. *Id.*

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[6] Importantly, sheriffs and constables are the officers charged with issuing and executing garnishments and attachments. *See* NRS 31.260(1)(a) ("The writ of garnishment must . . . [b]e issued by the sheriff."); NRS 31.235 ("A constable may perform any of the duties assigned to a sheriff and has all of the authority granted to a sheriff pursuant to this chapter with respect to a writ of attachment.").

Further, "because several counties in California had discovered continuing garnishment did not work, and had discontinued the practice," *id.* at 14 (statement of Dan Ernst, Sparks Township Constable), the Legislature codified the 120-day expiration to expressly protect against continuing garnishments. *See* 1989 Nev. Stat. 699–700; NRS 31.296.

Thus, the legislative history demonstrates that NRS 31.296 does not allow for a garnishment to continue past its statutory expiration date as allowed by the district court here. The district court cited only an amorphous equitable rationale for its disregard of the statutory timeline; the statute does not contemplate such an extension of the timeline. The district court's disregard of the clear statutory timeframe is supported by neither fact nor law and, thus, amounts to reversible legal error. Moreover, the fact the district court indicated in the objection order that the spousal support expired after 120 days, if it was treated as a garnishment, but Far West's garnishment did not expire and the issue was resolved going forward, further demonstrates the district court's error. 22 AA 5163–64. Accordingly, this Court should reverse.

E. MICHAEL IS FORCED TO EITHER VIOLATE HIS DIVORCE DECREE OR, ALTERNATIVELY, ALLOW AN UNLAWFUL AMOUNT OF HIS WAGES TO BE WITHHELD.

The district court has ordered Michael into an untenable position—to either violate the alimony order in the divorce decree, or continue to allow an unlawful garnishment of his wages. Michael's only recourse is to appeal those impermissible decisions. *See Maness v. Meyers*, 419 U.S. 449, 458 (1975) ("If a person to whom a court directs an order believes that order is incorrect the remedy is to appeal, but, absent a stay, he must comply promptly with the order pending appeal"). Given the obvious inequity of the district court's orders, this Court should reverse.

To illustrate: the maximum withholding from Michael's wages is limited to 60%. 15 U.S.C. § 1673(b)(2)(B); NRS 31.295(4)(b). Currently, the district court has determined that Michael's disposable earnings total $10,342.39 and, by virtue of its continuing garnishment, Far West is forever entitled to $25%, which equates to $2,585.60. Michael is also required to pay Rhonda $10,000 per month in alimony, which equates to $4,615.39 per pay period. 3 AA 606. Adding Far West's $2,585.60 to the $4,615.39 in spousal support equals $7,200.99 in total withholdings. This total equates to 70% ($7,200.99 [total withholdings] divided by $10,342.39 [disposable earnings] =.696) of Michael's disposable earnings and, as a

result, unequivocally violates Nevada law, federal law, and, if allowed in Nevada, the Supremacy Clause because it is exceeds the maximum allowable withholding.

The situation has forced Michael to either stop paying the full amount of alimony he is required to pay, which would result in a violation of his divorce decree and possible contempt proceedings or, alternatively, he is forced to allow the withholdings on his wages to violate the law. In other words, the district court essentially amended Michael's divorce or exempted the garnishment restrictions from applying to him. Such a result runs contrary to reason and equity and, thus, should be reversed.

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VIII. CONCLUSION

For the foregoing reasons, Michael respectfully requests this Court reverse the priority order and the objection order and remand for further proceedings consistent with this Court's opinion.

Dated this 9th day of January, 2018.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

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3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 9th day of January, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPELLANT'S OPENING BRIEF** was filed electronically with the Nevada Supreme Court on the 9th day of January, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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