

Filed for Record at Request of:

Michael D. Sifen
c/o R. Edward Bourdon Jr., Attorney
281 Independence Blvd.
Pembroke One, Fifth Floor
Virginia Beach, Virginia 23462

DEED OF TRUST

THIS DEED OF TRUST, made this 17 day of July, 2015, between LUNDENE ENTERPRISES LLC, a Nevada limited liability company, GRANTOR, and First American Title Company, a corporation, TRUSTEE, whose address is 7676 Hazard Center Dr. Suite 1100, San Diego, CA 92108, and MICHAEL D. SIFEN, BENEFICIARY.

WITNESSETH: Grantor hereby bargains, sells and conveys to Trustee in Trust, with power of sale, the following described real property situated in the County of San Diego, State of California, legally described as follows (hereafter the "Real Property"):

See Legal Description Attached as Exhibit "A" hereto and incorporated herein as if fully set forth.

APN: 535-114-04-11

TOGETHER with all right, title and interest of Grantor in all buildings and improvements now located or hereafter to be constructed thereon (collectively "Improvements");

TOGETHER with all right, title and interest of Grantor in the appurtenances, hereditaments, privileges, reversions, remainders, profits, easements, franchises and tenements thereof, including all timber, natural resources, minerals, oil, gas and other hydrocarbon substances thereon or therein, air rights, and any land lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Real Property and Improvements;

TOGETHER with all of Grantor's right, title and interest to all proceeds (including claims or demands thereto) from the conversion, voluntary or involuntary, of any of the Real Property and Improvements into cash or liquidated claims, including, without limitation proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments in lieu thereof made by any public body or decree by any court of competent jurisdiction for taking or for degradation of the value in any condemnation or eminent domain proceeding, and all causes of action and the proceeds thereof of all types for any damage or injury to the Real Property and Improvements or any part thereof, including, without limitation, causes of action arising in tort or contract and causes of action for fraud or concealment of a material fact, and all proceeds from the sale of the Real Property and/or Improvements.

TOGETHER with all right, title and interest of Grantor in and to (i) all leases, rental agreements and other contracts and agreements relating to use and possession (collectively "Leases") of any of the Real Property or Improvements, and (ii) the rents, issues, profits and proceeds therefrom together with all guarantees thereof and all deposits (to the full extent permitted by law) and other security therefore (collectively "Rents"). The Real Property, Improvements, Leases, Rents and all other right, title and interest of Grantor described above are hereafter collectively referred to as the "Property".

1. Obligations Secured. Grantor makes this Deed of Trust for the purpose of securing:

Page 1 of 4

Initials: MJM

a. Payment of all indebtedness and other obligations evidenced by a promissory note in the principal amount of \$1,000,000 dated February 28, 2014, made by Michael J. Mona III, manager and sole member of Grantor, as principal and/or guarantor and Beneficiary as party thereto.

b. Payment and performance of all obligations of Grantor under this Deed of Trust, including payment of all sums expended or advanced by Beneficiary (or any one of them) hereunder and under the above-mentioned promissory note, together with interest thereon, in the preservation, enforcement and realization of the rights of Beneficiary hereunder or under any of the other obligations secured hereby including, but not limited to, attorney's fees, court costs, other litigation expenses, and foreclosure expenses.

c. Payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when such obligation is evidenced by a writing which states that it is secured by this Deed of Trust.

d. All modifications, extensions and renewals (if any) of one or more of the obligations secured hereby, including without limitation (i) modifications of the required principal payment dates or interest payment dates, deferring or accelerating payment dates wholly or partly, and (ii) modifications, extensions or renewals at a different rate of interest, whether or not, in the case of a note or other contract, the modification, extension or renewal is evidenced by a new or additional promissory note or other contract.

The obligations secured by this Deed of Trust are herein collectively called the "Secured Obligations". All persons who may have or acquire an interest in the Property shall be deemed to have notice of, and shall be bound by, the terms of the Agreement, this Deed of Trust, and any other instruments or documents made or entered into in connection herewith (collectively "Documents") and each of the Secured Obligations.

2. Leases and Rents.

a. Neither the assignment of the Leases and Rents set forth in this Deed of Trust nor any provision of the Agreement shall impose upon Beneficiary any duty to produce Rents from the Property or cause Beneficiary to be (a) a "mortgagee in possession" for any purpose, (b) responsible for performing any of the obligations of the lessor under any Lease or (c) responsible or liable for any waste by any lessees or any other parties, for any dangerous or defective condition of the Property, for any negligence in the management, upkeep, repair or control of the Property or for any other act or omission by any other person.

b. Grantor covenants and agrees that Grantor shall not (i) amend, modify or change any term, covenant or condition of any Lease in existence on the date of this Deed of Trust without the prior written consent of Beneficiary or (ii) enter into any Lease of the Property, or any interest therein, or any portion thereof, from and after the date of this Deed of Trust without the prior written consent of Beneficiary. Grantor agrees that commencing with an Event of Default, as hereinafter defined, each tenant of the Property, or any portion thereof, shall make such Rents payable to and pay such Rents to Beneficiary, or Beneficiary's agent, upon Beneficiary's written demand to each tenant therefor, without any liability on the part of such tenant to inquire further as to the existence of a Default by Grantor, provided, however, in the event of Grantor's cure of any such Default as herein provided, Grantor shall again be entitled to recover and collect such Rents as provided above prior to the event of Default.

c. Grantor shall (i) fulfill or perform each and every condition and covenant of each Lease to be fulfilled or performed by the lessor thereunder, (ii) give prompt notice to Beneficiary of any notice of default by the lessor or the lessee thereunder received by Grantor together with a complete copy of any such notice, and (iii) enforce, short of termination thereof, the performance or observance of each and every covenant and condition thereof by the lessee thereunder to be performed or observed.

d. Grantor shall furnish to Beneficiary, within thirty (30) days after a request by Beneficiary, a written statement containing the names of all lessees of the Property, the terms of their respective Leases, the spaces occupied and the rentals payable and received thereunder and a copy of each Lease.

3. **Further Covenants of Grantor.** To protect the security of this Deed of Trust, Grantor further covenants and agrees:

a. To keep the property in good condition and repair; to permit no waste thereof, to complete any building, structure or improvement being built or about to be built thereon; to restore promptly any building, structure or improvement thereon which may be damaged or destroyed; and to comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the property.

b. To pay before delinquent all lawful taxes and assessments upon the property; to keep the property free and clear of all other charges, liens or encumbrances impairing the security of this Deed of Trust except as otherwise expressly authorized in writing by the Beneficiary.

c.. To keep all buildings now or hereafter erected on the property described herein continuously insured against loss by fire or other hazards in an amount not less than the total debt secured by this Deed of Trust. All policies shall be held by the Beneficiary, and be in such companies as the Beneficiary may approve and have loss payable first the Beneficiary and then to the Grantor. The amount collected under any insurance policy may be applied upon any indebtedness hereby secured in such order as the Beneficiary shall determine. Such application by the Beneficiary shall not cause discontinuance of any proceedings to foreclose this Deed of Trust. In the event of foreclosure, all rights of the Grantor in insurance policies then in force shall pass to the purchaser at the foreclosure sale.

d. To defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Beneficiary or Trustee, and to pay all costs and expenses, including cost of title search and attorney's fees in a reasonable amount, in any such action or proceeding, and in any suit brought by the Beneficiary to foreclose the Deed of Trust.

e. To pay all costs, fees and expenses in connection with this Deed of Trust, including the expenses of the Trustee incurred in enforcing the obligation secured hereby and Trustee's and attorney's fees actually incurred, as provided by statute.

f. Should Grantor fail to pay when due any taxes, assessments, insurance premiums, liens, encumbrances or other charges against the property hereinabove described, Beneficiary may pay the same, and the amount so paid, with interest at the rate set forth in the note secured hereby, shall be added to and become a part of the debt secured in this Deed of Trust.

4. **Additional Agreements of Parties.** It is mutually agreed that:

a. In the event any portion of the Property is taken or damaged in an eminent domain proceeding, the entire amount of the award or such portion as may be necessary to fully satisfy the obligations secured hereby, shall be paid to Beneficiary to be applied to said obligation.

b. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive their rights to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.

c. The Trustee shall reconvey all or any part of the Property covered by this Deed of Trust to the person entitled thereto, on written request of the Grantor and the Beneficiary, or upon satisfaction of the obligations secured and written request for reconveyance made by the Beneficiary or the person entitled thereto.

d. Upon default by Grantor in the payment of any indebtedness secured hereby or in the performance of any agreement contained herein, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In such event and upon written request of the Beneficiary, Trustee shall sell the trust property, in accordance with the laws of the State of California, at public auction to the highest bidder. Any person except the Trustee may bid at the Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (a) to the expense of the sale, including a reasonable Trustee's fee and attorney's fee; (b) to the obligations secured by this Deed of Trust; (c) the surplus, if any, shall be distributed to the persons entitled thereto.

e. Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the property which Grantor has or had the power to convey at the time of his execution of this Deed of Trust, and such as he may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchaser and encumbrances for value.

f. The power of sale conferred by this Deed of Trust and by the law of the State of California is not an exclusive remedy; Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage.

g. In the event of the death, incapacity, disability or resignation of Trustee, Beneficiary may appoint in writing a successor trustee, and upon the recording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the original trustee. The Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Trustee or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.

h. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on their heirs, devisees, legatees, administrators, executors and assigns. The term Beneficiary shall mean the holders and owners of the note secured hereby, whether or not named as a Beneficiary herein.

"GRANTOR"
By: Michael J. Mona III
Michael J. Mona III, Manager and Sole Member
Lundene Enterprises, LLC

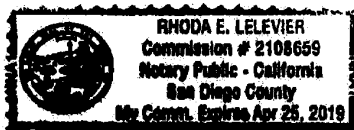
STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On this 17th day of July, 2015, before me, the undersigned, a Notary Public in and for the State of California, duly commissioned and sworn, personally appeared Michael J. Mona III, to me known to be the Manager and duly authorized agent of Grantor and who acknowledged that he executed the foregoing instrument on behalf of Grantor for the uses and purposes therein mentioned.

Witness my hand and official seal hereto affixed the day and year first above written.

Rhoda E. Lelevier
Notary Public in and for the State of California

Page 4 of 4



Initials: MTM

Please see attached California Acknowledgment

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of San Diego, County of San Diego, State of California, described as follows:

A CONDOMINIUM ("CONDOMINIUM") LOCATED ON THE REAL PROPERTY DESCRIBED AS LOT 1 OF SUBDIVISION MAP NO. 14325, FILED IN THE OFFICIAL RECORDS OF SAN DIEGO COUNTY, CALIFORNIA ON DECEMBER 28, 2001 ("PROPERTY"), COMPRISED OF:

PARCEL 1:

A SEPARATE INTEREST IN UNIT NO. 701, AS DESIGNATED ON THE CONDOMINIUM PLAN FOR PARKLOFT CONDOMINIUMS RECORDED ON MARCH 8, 2002 AS INSTRUMENT NO. 02-198684 AND AS AMENDED AUGUST 21, 2002 AS INSTRUMENT NO. 02-708932 BOTH IN THE OFFICIAL RECORDS OF SAN DIEGO COUNTY, CALIFORNIA ("CONDOMINIUM PLAN").

PARCEL 2:

AN UNDIVIDED 1/120TH INTEREST IN THE UNDIVIDED INTEREST COMMON AREA AS DESCRIBED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PARKLOFT CONDOMINIUM OWNERS ASSOCIATION RECORDED ON MARCH 8, 2002 AS INSTRUMENT NO. 02-198685, IN THE OFFICIAL RECORDS OF SAN DIEGO COUNTY, CALIFORNIA ("DECLARATION") AND ON THE CONDOMINIUM PLAN, WHICH WILL NOT BE OWNED BY THE PARKLOFT CONDOMINIUM OWNERS ASSOCIATION ("ASSOCIATION").

PARCEL 3:

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, USE, ENJOYMENT AND SUPPORT OVER THE COMMON AREA, AS DESCRIBED IN THE DECLARATION AND ON THE CONDOMINIUM PLAN, WHICH WILL BE OWNED BY THE ASSOCIATION.

EXCEPTING THEREFROM

A. ALL NUMBERED CONDOMINIUM UNITS DESCRIBED IN THE DECLARATION AND ON THE CONDOMINIUM PLAN OTHER THAN THE UNIT CONVEYED AS PARCEL 1 ABOVE.

B. THOSE PORTIONS OF THE EXCLUSIVE USE COMMON AREA, AS DESCRIBED IN THE DECLARATION AND ON THE CONDOMINIUM PLAN, WHICH ARE SET ASIDE AND ALLOCATED FOR THE EXCLUSIVE USE OF OWNERS OF CONDOMINIUMS (AS DEFINED IN THE DECLARATION) OTHER THAN THE CONDOMINIUM CONVEYED HEREIN.

PARCEL 4:

THE EXCLUSIVE RIGHT TO USE THE FOLLOWING ELEMENTS OF THE COMMON AREA (DESIGNATED AS EXCLUSIVE USE COMMON AREA), AS SHOWN ON THE CONDOMINIUM PLAN, WHICH WILL BE OWNED THE ASSOCIATION.

APN: 535-114-04-11

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of San Diego)
 On July 17, 2015 before me, M. Ruffier, Notary Public
Date Here Insert Name and Title of the Officer
 personally appeared Michael J. Mona III
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Deed of Trust: AM 535-114-0411 Document Date: July 17, 2015
 Number of Pages: 6 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

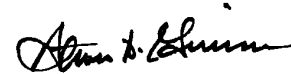
Signer's Name: _____

- ☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

EXHIBIT 9

EXHIBIT 9



CLERK OF THE COURT

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 **Marquis Aurbach Coffing**

2 Terry A. Coffing, Esq.

3 Nevada Bar No. 4949

4 Tye S. Hanseen, Esq.

5 Nevada Bar No. 10365

6 10001 Park Run Drive

7 Las Vegas, Nevada 89145

8 Telephone: (702) 382-0711

9 Facsimile: (702) 382-5816

10 tcoffing@maclaw.com

11 thanseen@maclaw.com

12 Attorneys for Michael Mona, Jr.

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 FAR WEST INDUSTRIES, a California
16 corporation,

17 Plaintiff,

18 vs.

19 MICHAEL J. MONA, JR., an individual;
20 RHONDA HELENE MONA, an individual;
21 MICHAEL MONA III, an individual;
22 LUNDENE ENTERPRISES, LLC, a Nevada
23 limited liability corporation, DOES 1 through 10
24 and ROE CORPORATIONS 1 through 10,
25 inclusive,,
26

27 Defendant.

Case No.: A-15-724490-C

Dept. No.: XXXII

Hearing Date: February 2, 2016

Hearing Time: 9:00 a.m.

28 **DEFENDANT MICHAEL J. MONA, JR.'S REPLY IN SUPPORT OF MOTION TO DISMISS**

29 Defendant Michael J. Mona, Jr. ("Mona"), through the law firm of Marquis Aurbach
30 Coffing, hereby files his Reply in Support of Motion to Dismiss. This Reply is based on the

31 ///

32 ///

33 ///

34 ///

35 ///

1 following Memorandum of Points and Authorities, the pleadings and papers on file herein, and
2 any oral argument by counsel permitted at the hearing on this matter.

3 Dated this 26th day of January, 2016.

4 MARQUIS AURBACH COFFING

5
6 By /s/ Tye S. Hanseen
7 Terry A. Coffing, Esq.
8 Nevada Bar No. 4949
9 Tye S. Hanseen, Esq.
10 Nevada Bar No. 10365
11 10001 Park Run Drive
12 Las Vegas, Nevada 89145
13 Attorneys for Michael Mona, Jr.

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. INTRODUCTION.**

16 The foundation of Plaintiff's Opposition is a District Court Order that is the subject of a
17 Writ Petition the Nevada Supreme Court has been considering since July 2015. To avoid
18 dismissal or, alternatively, a stay of these proceedings pending the outcome of the Writ, Plaintiff
19 asserts the Writ is "meritless." The truth, however, is the Writ is so well-founded that the
20 Supreme Court has assigned it to the En Banc Court for consideration, as opposed to flatly
21 rejecting the Writ as it does with so many other writs. Not only is the Writ well-founded and
22 likely to be set for oral argument in the coming weeks, but Plaintiff continues to make assertions
23 and implications in its Opposition that are not accurate.

24 As an initial matter, prudence, prejudice, and judicial economy require that Plaintiff's
25 entire Complaint be dismissed or, at a minimum, the suit be stayed pending the outcome of the
26 Writ proceeding before the Supreme Court. The vast majority of Plaintiff's arguments and
27 claims hinge on the outcome of the Writ and the Supreme Court's conclusions. As a result, any
28 relief to Plaintiff in any realm at this juncture would be improper and premature.¹

¹ Co-defendants addressed the substance of the Writ proceeding, in large part, in their Opposition to Plaintiff's Countermotion for Summary Judgment. Thus, Mona will not regurgitate the arguments herein, but simply incorporates them by reference.

1 Aside from the pending Supreme Court decision, Plaintiff's claims in this suit have
2 already been disposed of or could have been brought in prior suits. Indeed, this is the fourth case
3 in which Plaintiff has asserted similar claims. And, in this case, Plaintiff not only expects the
4 Court to ignore the Writ and the Supreme Court's jurisdiction, but it also expects the Court to
5 ignore the prior suits (first and second "Fraudulent Transfer Actions) and overturn a valid
6 Divorce Decree ("Divorce Action").²

7 Moreover, Plaintiff has not alleged facts sufficient to defeat an NRCP 12(b)(5) dismissal,
8 has failed to add an indispensable party because it is trying to execute on an asset in which a
9 third-party holds an interest, and has failed to comply with NRCP 9's particularity requirements.
10 Therefore, the Court should reject Plaintiff's attempt to remedy its failures from prior suits and
11 grant the Motion to Dismiss.

12 **II. STATEMENT OF FACTS.**

13 Plaintiff does not dispute the facts from the Motion to Dismiss. Thus, Mona incorporates
14 herein by reference those same facts, as opposed to regurgitating them verbatim. See Motion to
15 Dismiss at Section II on file herein.

16 **III. LEGAL STANDARD.**

17 Plaintiff does not dispute the Legal Standard Mona set forth in his Motion to Dismiss,
18 which is incorporated herein by reference. See Section III of Motion to Dismiss on file herein.
19 Further, Mona emphasizes that while this request for dismissal requires the Court to draw fair
20 inferences of *facts*, not legal conclusions, in favor of Plaintiff, dismissal remains proper if it
21 appears that Plaintiff can prove no set of facts which would entitle it to relief. Brown v. Kellar,
22 97 Nev. 582, 636 P.2d 874 (1981) (emphasis added); see also Bergmann v. Boyce, 109 Nev. 670,
23 856 P.2d 560 (1993).

24
25
26 ² The Monas divorced and distributed their marital property. Plaintiff attempted to intervene in the
27 Divorce Action to make unfounded allegations of fraudulent transfers to try and collect against Rhonda
28 Mona for a Judgment against Mike Mona. The Family Court, however, denied Plaintiff's intervention
attempts and awarded both Mike Mona and Rhonda Mona the fees and costs they incurred in opposing
Plaintiff's request.

1 **IV. LEGAL ARGUMENT.**

2 Plaintiff's Opposition provides further clarity as to why the Court's dismissal or,
3 alternatively, a stay is proper. Specifically, the Court should dismiss Plaintiff's claims because
4 claim preclusion bars the Amended Complaint. Also, Plaintiff cannot maintain the civil
5 conspiracy claim because it has not set forth facts sufficient to defeat an NRCP 12(b)(6)
6 dismissal. Further, Plaintiff failed to join an indispensable party to the second and seventh causes
7 of action. In addition, Plaintiff failed to satisfy NRCP 9's pleading requirements. Thus, the
8 Court should grant the Motion to Dismiss.

9 **A. NEVADA LAW BARS PLAINTIFF'S CLAIMS BECAUSE THE COURT**
10 **ALREADY DECIDED (OR COULD HAVE BUT FOR PLAINTIFF'S**
11 **LACK OF DILIGENCE) THE OUTCOME OF THE CLAIMS.**

12 The parties do not dispute the law associated with claim preclusion, as they cite the same
13 case in the briefs. The parties agree that Weddell is the controlling case, which sets forth the
14 following elements a party must show to establish claim preclusion: (1) there has been a valid
15 and final judgment in a previous action; (2) the subsequent action is based on the same claims or
16 any part of them that were or *could* have been brought in the first action; and (3) the parties or
17 their privies are the same in the instant lawsuit as they were in the previous lawsuit, *or* the
18 defendant can demonstrate that he or she should have been included as a defendant in the earlier
19 suit and the plaintiff fails to provide a "good reason" for not having done so. Weddell v. Sharp,
20 131 Nev. Adv. Op. 28, 350 P.3d 80, 81 (2015), reh'g denied (July 23, 2015) (emphasis added).

21 Here, Plaintiff's arguments contradict its actions. In its Opposition, Plaintiff tries to
22 avoid claim preclusion by arguing that it was not a party to the Divorce Action because the
23 Family Court rejected its untimely attempts to intervene. What Plaintiff fails to discuss or
24 acknowledge is that the Family Court rejected Plaintiff's attempts to intervene because of
25 Plaintiff's own lack of diligence. Thus, Plaintiff's argument is that claim preclusion does not
26 apply because it lacked diligence in a prior case, failed to timely intervene, and the Family Court
27 sanctioned it. In addition, Plaintiff claims the Order in the first Fraudulent Transfer Action is not
28 final. However, at the same time, Plaintiff is seeking summary judgment against Rhonda Mona
based on the Order—the same Order Plaintiff is arguing is not final. Thus, Plaintiff's own

1 actions contradict its arguments. Indeed, the facts of the Divorce Action and the Fraudulent
2 Transfer Actions satisfy the Weddell elements regarding claim preclusion.

3 1. **The First Element for Claim Preclusion Regarding a Final Judgment**
4 **in a Previous Action is Satisfied Because There are Decisions in Prior**
5 **Actions.**

6 The Divorce Action was final on July 23, 2015 and the Family Court denied Plaintiff's
7 untimely attempt to intervene to make fraudulent transfer allegations. See Pltf's Amended
8 Complaint at 7:24-8:19; see also Pltf's September 24, 2015 Motion to Intervene at 3:17-25 and
9 November 25, 2015 Order in case No. D-15-517425.

10 There is also a final Order against Mike and Rhonda Mona in the first Fraudulent
11 Transfer Action. See July 15, 2015 Order at Exhibit 4 of Plaintiff's Appendix in Support of its
12 Opposition. The Order makes more than nine pages of findings of fact and conclusions of law.
13 Id. at 2:23-11:3. Plaintiff argues in its Opposition that Mona is estopped from arguing the Order
14 is final because Mona is challenging the Order in the Writ proceeding. However, Plaintiff's
15 logic and actions refute its own argument. For example, Plaintiff is arguing in favor of the Order
16 in the Writ proceeding and against the Order being final for claim preclusion purposes in this
17 case. Further, Plaintiff is also asking that the Court enter summary judgment against Rhonda
18 Mona based on Order—the same Order Plaintiff is arguing is not final to avoid satisfaction of the
19 first element of claim preclusion.

20 Therefore, for the purposes of avoiding dismissal based on claim preclusion, Plaintiff
21 wants the Court to believe the Order from the first Fraudulent Transfer Action is not final. But,
22 for the purposes of its Countermotion for Summary Judgment, Plaintiff wants the Court to accept
23 the Order as final to enter a \$3.4 million judgment against Rhonda. Plaintiff cannot have it both
24 ways. Either the Order is final and Plaintiff's related claims get dismissed or the Order is not
25 final and Plaintiff has no basis for obtaining summary judgment. Thus, the first element of claim
26 preclusion is satisfied.

2. **The Second Element Regarding Claim Preclusion is Satisfied Because this Action is Based On the Same Claims or Any Part of Them That Were or *Could Have Been Brought* in Prior Actions.**

The second element regarding the opportunity to bring the same claims in a previous action is satisfied because Far West, at a minimum, *could* have brought the claims it is asserting now on at least two or three prior occasions. Plaintiff asserts this is not true, but Plaintiff's argument regarding this second element misses the mark.

The law of claim preclusion under Weddell for the second element is not whether the claims were actually brought in a prior action or whether the Plaintiff was a party to a prior action, as Plaintiff portrays to the Court. Rather, the law is whether "the subsequent action is based on the same claims or any part of them that were or *could have been brought* in the first action." Weddell, at 81 (emphasis added).

As a result, to satisfy this second element, all Mona has to do is show that parts of the claims in this action could have been brought in one of the three prior actions. Id. To that end, it must be noted that the crux of Plaintiff's argument in all four cases is it possesses a Judgment against Mike Mona and, in all four cases, Plaintiff is alleging Mike fraudulently transferred assets to avoid collection. The three prior cases are:

1. The first Fraudulent Transfer Action (Case No. A670352) asserting fraudulent transfer claims between Mike and Rhonda for \$3.4 million based on a Post-Marital Settlement Agreement.
2. The second Fraudulent Transfer Action (Case No. A-14-695786) asserting fraudulent transfer claims between Mike Mona and a business associate.
3. The Divorce Action asserting fraudulent transfer claims for the second time regarding the \$3.4 million (even though Judge Hardy already made a decision), asserting the divorce was fraudulent/improper (as alleged in this case), and raising the \$90,000 car issue (as alleged in this case).

With this context and the three prior cases in mind, Mona addresses below why the second element (how any part of the current claims could have been brought in the three prior actions) is satisfied for each claim in this case. See Weddell, at 81.

1 a. **First Cause of Action—Fraudulent Transfer Between Mike**
2 **and Rhonda for \$500,000 Cash (See Pltf's Amended Complaint**
3 **at 4:12-1).**

4 Plaintiff could have brought this claim in at least the first and second Fraudulent Transfer
5 Actions. The crux of Plaintiff's claim has never changed and Plaintiff brought the \$3.4 million
6 fraudulent transfer claim between Mike and Rhonda in the first Fraudulent Transfer Action.
7 And, just like Plaintiff brought the \$3.4 million claim in the first Fraudulent Transfer Action,
8 based on Plaintiff's logic and prior actions, it could have brought this \$500,000 claim in the first
9 Fraudulent Transfer Action as well and did not. Further, Plaintiff could have named Rhonda in
10 the second Fraudulent Transfer Action, which is now closed or being closed, and did not. Thus,
11 the second element of claim preclusion is satisfied for the first cause of action.

12 b. **Second Cause of Action—Fraudulent Transfer Between Mike**
13 **and Rhonda for \$3.4 million (See Pltf's Amended Complaint**
14 **4:18-28 and 10:24-11:5).**

15 This is now the third time that Plaintiff has brought this claim. Plaintiff first asserted and
16 succeeded on this claim in the first Fraudulent Transfer Action obtaining an Order that the \$3.4
17 million alleged transfer between Mike and Rhonda was a fraudulent transfer. This Order is now
18 the subject of the Writ before the Supreme Court. Plaintiff is also making the same allegations in
19 this case (encompassed in the second cause of action). Asserting the claim again here and trying
20 to usurp the decision from the Supreme Court is not appropriate, as any determination of the
21 final outcome of the claim is dependent on the Writ proceeding and first Fraudulent Transfer
22 Action. Thus, Plaintiff is barred from bringing the exact same claim, which has been decided
23 and is the subject of an appeal. Further, Plaintiff raised this issue, for the second time, in the
24 Divorce Action. But, Plaintiff's lack of diligence in the Divorce Action lead the Family Court to
25 sanction Plaintiff and deny its attempts to intervene. Thus, this is now the third time Plaintiff has
26 asserted this claim and, as a result, the second element of claim preclusion is satisfied for the
27 second cause of action.
28

1 c. **Third Cause of Action—Fraudulent Transfer Between Mike**
2 **and Rhonda for \$90,000 (See Pltf's Amended Complaint at**
3 **5:16-26 and 12:13-13:13).**

4 The basis of this claim is that Rhonda bought a car with community funds while her and
5 Mike were married because her other car was aging. Plaintiff calls this a “fraudulent transfer.”
6 And, the question is whether the second element of claim preclusion is satisfied—whether
7 Plaintiff *could* have brought any part of this claim in a prior action. Indeed, Plaintiff *could* have
8 brought this claim in the first Fraudulent Transfer Action, *could* have brought the claim in the
9 second Fraudulent Transfer Action, and raised the claim in the Divorce Action.

10 Like Plaintiff brought the \$3.4 million claim between Mike and Rhonda in the first
11 Fraudulent Transfer Action, it *could* have also brought this claim, at least according to Plaintiff's
12 logic and prior actions. Also, like the other fraudulent transfer claims, there is no reason why
13 Plaintiff could not have named Rhonda in the second Fraudulent Transfer Action and brought
14 this claim there. Further, Plaintiff raised this claim in the Divorce Action, but the Family Court
15 sanctioned Plaintiff and denied its intervention attempts because of Plaintiff's lack of diligence.
16 Thus, the second element of claim preclusion is satisfied for the third cause of action because
17 Plaintiff *could* have raised this claim, and indeed did so, in prior actions.

18 d. **Fourth Cause of Action—Fraudulent Transfer Between Mike**
19 **and His Son, Mike Mona, III, for Mike Giving His Son a**
20 **Vehicle Because Mike Was Going to Buy a New One (See Pltf's**
21 **Amended Complaint at 5:27-6:8 and 13:14-14:15).**

22 The basis of this claim is that Mike gave his son a previously owned car because Mike
23 was getting a new one and Plaintiff calls it a “fraudulent transfer.” Similar to the arguments
24 above, Plaintiff *could* have brought this claim in either the first or second Fraudulent Transfer
25 Actions, but did not. As for the first Fraudulent Transfer Action, Plaintiff brought the \$3.4
26 million claim regarding Rhonda. As a result, following Plaintiff's own strategy and logic,
27 Plaintiff *could* have also brought this claim against Mike, III, but did not. Further, Plaintiff *could*
28 have brought this claim in the second Fraudulent Transfer Action by naming Mike, III as a party,
29 but did not. Instead, Plaintiff decided to file lawsuit, after law suit, after lawsuit when one single

1 law suit would suffice. Thus, the second element of claim preclusion is satisfied for the fourth
2 cause of action.

3
4 **e. Fifth Cause of Action—Fraudulent Transfer Between Mike and Rhonda for the Divorce Decree and Distribution of Related Property (See Plt's Amended Complaint at 6:9-8:27 and 14:16-16:10).**

6 Thorough this claim, Plaintiff expects the Court to disregard a valid and final Divorce
7 Decree. This fifth cause of action, along with the second cause of action for the \$3.4 million, is
8 Plaintiff's most blatant attempt at taking multiple shots at the same claim. Plaintiff raised this
9 claim when it attempted to intervene in the Divorce Action. However, Plaintiff's attempts were
10 not timely. As a result, the Family Court rejected Plaintiff's arguments and sanctioned Plaintiff.
11 Plaintiff claims that it "could not" have brought this claim in the Divorce Action because the
12 Family Court did not allow it to do so. Plaintiff does not mention, however, that it raised the
13 claim and *could have* (key language for the second element and claim preclusion) brought the
14 claim but for its lack of diligence.

15 Plaintiff's lack of diligence while the Divorce Action was pending does not give rise to
16 the opportunity to bring a new suit to challenge the final and closed Divorce Action. The Family
17 Court in the Divorce Action already decided this issue and rejected Plaintiff's attempts. Thus,
18 the Divorce Decree and related property distribution, save the issues surrounding the Post-
19 Marital Settlement Agreement, are finalized and closed. The Divorce was final and the case
20 closed on July 23, 2015. And, Plaintiff could have brought his claims in the Divorce Action, but
21 lack of diligence precluded it from further pursuit of the claims. Further, not only did the Family
22 Court deny Plaintiff's attempts to make untimely fraudulent transfer claims within the Divorce
23 Action, but it also awarded Mike Mona and Rhonda Mona, separately, the attorney fees and costs
24 they each incurred in opposing Plaintiff's attempts.

25 Plaintiff is not entitled to rehabilitate its failures in the Divorce Action by bringing yet
26 another lawsuit to make the same assertions it was precluded from bringing in the Divorce
27 Action because of lack of diligence. Thus, the second element of claim preclusion is satisfied for
28 the fifth cause of action.

This claim is essentially a regurgitation of the first five claims for fraudulent transfer. Thus, Mona will not regurgitate those arguments other than to say that like those arguments, this claim could have been brought, but was not, in at least one if not more of the prior actions. Further, in conjunction with this claim, Plaintiff asks the Court to allow it to execute on all of the assets described in the Complaint whether the judgment debtor owns them or whether they are now Rhonda's separate property as part of the Divorce Decree. Again, the Divorce Decree is done and final. And, Plaintiff's representation to this Court that the Decree is subject to Plaintiff's ongoing and continuing claim is not accurate. Rather, the Decree is subject only to the Supreme Court's ruling on the \$3.4 million alleged fraudulent transfer, which is the subject of the Writ proceeding. The Decree is not subject to Plaintiff's ongoing attempts at execution, other cases, or anything else—only the Order on the \$3.4 million and Writ proceeding related to

1 the first Fraudulent Transfer Action. Thus, the second element of claim preclusion is satisfied
2 for the seventh cause of action.

3
4 **3. The Third Element of Claim Preclusion is Satisfied Because the**
5 **Parties Were the Same in Prior Suits or Defendants Should Have**
6 **Been Included and Plaintiffs Failed to Provide a "Good Reason" for**
7 **Failing To Do So.**

8 Plaintiff alleges that the third element is not satisfied because the Defendants in this case
9 were not Parties in the prior cases. Plaintiff misinterprets the law on this issue. Nevada law does
10 not require that the Parties be the same. Rather, the required showing is that the parties or their
11 privies are the same as they were in the previous lawsuit *or* that the Defendants should have been
12 included in the earlier suit and the Plaintiff failed to provide a "good reason" for not having done
13 so. Weddell, at 81. Thus, whether Rhonda, Mike, III, or Lundene were parties to prior suits
14 does not matter so long as they should have been Parties and Plaintiff fails to provide a good
15 reason for not including them. Id. As a result, Plaintiff's argument that the third element is not
16 satisfied because Rhonda, Mike, III, and/or Lundene were not Parties to the prior cases is without
17 merit for three reasons.

18 First, Rhonda and Mike were Parties to the Divorce Action. If Plaintiff wanted to contest
19 the Divorce Action and related property distribution, it should have done so through the Divorce
20 Action, as opposed to waiting and doing so in this case through its fifth and seventh causes of
21 action. Plaintiff knows this is true, which is why Plaintiff moved to intervene in the Divorce
22 Action. However, Plaintiff's intervention attempt was untimely. Plaintiff moved to intervene
23 after the Divorce Decree was entered and beyond 30 days after the time the Notice of Entry of
24 Order related to the Divorce Decree was filed. Due to Plaintiff's lack of diligence, the Family
25 Court denied Plaintiff's intervention attempts and sanctioned Plaintiff. Further, Plaintiff has not
26 provided a good reason for failing to timely not contest the Divorce Action within the confines of
27 the Divorce Action—the Family Court sure did not believe there was a good reason. And,
28 admitting you were untimely and sanctioned, does not equate to a "good reason." Thus, at a
minimum, the third element is satisfied in relation to the fifth and seventh causes of action
regarding the divorce.

1 Second, although Mona disputes the propriety of Judge Hardy's decision allowing the
2 first Fraudulent Transfer Action to move forward against Rhonda based on the Post-Marital
3 Property Settlement Agreement, Far West was able to do so, which is the subject of the Writ.
4 And, if Far West was going to move forward against Rhonda in the first Fraudulent Transfer
5 Action for the \$3.4 million associated with the Post-Marital Property Settlement Agreement,
6 then, at least according to Far West, it could have also moved against Rhonda for the other
7 claims in this case, as well as against Mike, III and Lundene.

8 Far West will argue that Mona is estopped from making this argument because Mona
9 argues in the Writ proceeding that Far West's actions were inappropriate. However, Far West is
10 doing the same thing here; it is arguing in the Writ proceeding that it was appropriate for it to
11 add Rhonda and, for the purposes of avoiding dismissal in this case based on claim preclusion,
12 Far West is arguing that Rhonda was not and/or should not have been a party to the first
13 Fraudulent Transfer Action. In the end, the truth is that Rhonda, Mike, and Plaintiff, at a
14 minimum, were all part of the first Fraudulent Transfer action and Judge Hardy already
15 addressed the Post-Marital Property Settlement Agreement issue there, which is Plaintiff's
16 second cause of action in this case. Thus, the third element is satisfied again.

17 Third, Plaintiff brought a second Fraudulent Transfer Action that involved Mike and
18 some of his business associates, but did not include Rhonda, Mike, III, or Lundene. And, if
19 Plaintiff was going to file a second Fraudulent Transfer Action, it should have brought all of the
20 claims and Parties into that one action, if for no other reason than for judicial economy and
21 consistency, but Plaintiff failed to do so. Instead, as it stands, Mona and Plaintiff are litigating
22 on multiple fronts. And, as Nevada law requires, Plaintiff has not set forth a good reason why it
23 did not include Rhonda, Mike, III, and Lundene in the first Fraudulent Transfer Action. As a
24 result, the third element for claim preclusion is satisfied for a third time.

25 **4. Claim Preclusion Conclusion.**

26 Claim preclusion applies to the Amended Complaint because: (1) There are two and
27 possibly three Orders/Judgments; (2) there are, at a minimum, parts of the claims in this case that
28 could have been brought in prior actions, but were not; and (3) at a minimum, Plaintiff should

1 have included the Defendants in prior actions and failed to provide a good reason for not doing
2 so. Weddell, at 28, 350 P.3d at 81. As a result, claim preclusion applies and the Court should
3 grant this Motion, especially as to the second claim regarding the \$3.4 million issue already
4 decided before Judge Hardy and fifth claim regarding the finality of the Divorce Decree already
5 decided before the Family Court.

6 **B. THE COURT SHOULD DISMISS THE SIXTH CAUSE OF ACTION FOR**
7 **CIVIL CONSPIRACY BECAUSE PLAINTIFF CANNOT SET FORTH**
8 **FACTS SUFFICIENT TO MAINTAIN THE CLAIM.**

9 Plaintiff's civil conspiracy claim is based on legal conclusions. Legal conclusions are not
10 entitled to the presumption of truth when evaluating a motion to dismiss for failure to state a
11 claim. See Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672
12 (2008) (in reviewing the dismissal of a complaint under NRCP 12(b)(5), courts "recognize all
13 factual allegations" in the complaint as true) (emphasis added); Pack v. LaTourette, 128 Nev.
14 Adv. Op. 25, 277 P.3d 1246, 1248 (2012) ("we accept the plaintiff's factual allegations as true
15 and then determine whether these allegations are legally sufficient to satisfy the elements of the
16 claim asserted.") (emphasis added); W. Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir.
17 1981) (Courts do not "assume the truth of legal conclusions merely because they are cast in the
18 form of factual allegations."); and In re Stac Elecs., 89 F.3d at 1339, 1403 (9th Cir. 1996)
19 (conclusory allegations and unwarranted inferences are insufficient to defeat a motion to
20 dismiss).

21 The facts, not legal conclusions, that a claimant must set forth to maintain a civil
22 conspiracy claim must show: 1) two or more persons; 2) taking concerted action; 3) to
23 accomplish an unlawful objective; 4) of harming another; 5) damage results; 6) and there is
24 evidence of an explicit or tacit agreement between the alleged conspirators. See Guilfoyle v.
25 Olde Monmouth Stock Transfer Co., 130 Nev. Adv. Op. 78, 335 P.3d 190, 198-99 (2014) (citing
26 Consol. Generator-Nevada, Inc. v. Cummins Engine Co., 114 Nev. 1304, 1311, 971 P.2d 1251,
27 1256 (1998) and Dow Chemical Co. v. Mahlum, 114 Nev. 1468, 1489, 970 P.2d 98, 112 (1998)).
28 Moreover, dismissal is appropriate "if there is no evidence of an agreement or intent to harm the

1 plaintiff.” Id. (citing Consol. Generator–Nevada, 114 Nev. at 1311, 971 P.2d at 1256). Plaintiff
2 has not satisfied these elements with a showing of facts, as Nevada law requires.

3 Here, Plaintiff’s allegations in the Complaint, and even its arguments in its Opposition to
4 the Motion to Dismiss, are not sufficient to maintain a civil conspiracy claim. Specifically,
5 Plaintiff’s Complaint regarding civil conspiracy encompasses less than four lines of legal
6 conclusions asserted on “information and belief.” See Plt’s Amended Complaint at 16:15-18.
7 In the Opposition, Plaintiff tries to strengthen its claim by asserting that it described the familial
8 relationship between the Defendants and the business relationship between Mike, III and
9 Lundene. However, being a mom, dad, or son of another party (familial relationship) or having
10 an LLC (business relationship between Mike, III and Lundene) does nothing to satisfy the
11 elements of a civil conspiracy claim.

12 Plaintiff’s obligation is to set forth *facts*, not legal conclusions, satisfying the elements of
13 the claim, which Plaintiff failed to do. And, other than Plaintiff’s three or so lines of legal
14 conclusions, there are no facts in the Complaint, or the Opposition for that matter, showing some
15 concerted action to accomplish some unlawful objective of harming another combined with facts
16 showing an explicit or tacit agreement between the alleged conspirators. As a result, Plaintiff
17 cannot maintain the civil conspiracy claim and the Court should dismiss the sixth cause of action
18 for civil conspiracy.

19 **C. THE CLAIM AGAINST M3, LUNDENE, AND RHONDA MONA FOR**
20 **FRAUDULENT TRANSFER IS BASED ON THE ACTION BEFORE**
JUDGE HARDY THAT IS THE SUBJECT OF THE WRIT.

21 Plaintiff’s attempt to avoid dismissal of the second cause of action carries two significant
22 problems that further require the Court’s dismissal of the second cause of action. First, Plaintiff
23 admits that the claim stems from the Order in the first Fraudulent Transfer Action that is the
24 subject of the Writ proceeding. Second, Plaintiff misleads the Court as to the actually issue
25 regarding the claim by asserting the issue is whether a subsequent transferee may be held liable,
26 which is not the issue before the Court.

1 1. **The Second Cause of Action is Based On an Order Currently Being**
2 **Challenged Before The Supreme Court.**

3 Plaintiff admits in its Opposition that the claim regarding the purchase of a condominium,
4 which is buried in the bottom of the second cause of action in the Complaint, is based on the
5 Order from Judge Hardy in the Fraudulent Transfer Action that is the subject of the Writ
6 proceeding. See Pltf's Opp'n at 12:16:19. Thus, Plaintiff expects this Court to enter a Judgment
7 against Rhonda based on an Order that the Supreme Court is considering vacating. Not only
8 that, but Plaintiff expects the Court to not only enter Judgment against Rhonda as part of the
9 second cause of action, but also against her son, Mike, III, as a subsequent transferee based on
10 the same Order that is before the Supreme Court. This is wholly inappropriate. At a minimum,
11 Plaintiff's pursuit of this claim must be stayed pending the outcome of the Writ proceeding
12 because the claim is based entirely on the challenged Order. Plaintiff is inappropriately trying to
13 parlay this challenged Order into Judgments against Rhonda and Mike, III. Thus, the Court
14 should dismiss or stay the second cause of action pending the outcome of the Writ.

15 2. **To Avoid Dismissal of This Claim Plaintiff Argues and Directs The**
16 **Court To a Secondary Matter That is Not Even at Issue.**

17 Plaintiff directs the Court to inapplicable law in its Opposition regarding this issue.
18 Specifically, Plaintiff skipped the analysis of whether there was even a fraudulent transfer (i.e.
19 good faith taking/transfer between Mike and Rhonda) and began its Opposition to the dismissal
20 of this claim arguing the issue before the Court is whether a creditor may recover against a
21 subsequent transferee who did not take in good faith. To even get to this point, Plaintiff would
22 first need the Supreme Court to affirm the Order against Rhonda in the Fraudulent Transfer
23 Action, which may never happen. Second, Plaintiff would then need to establish that Mike, III
24 did not take in good faith for value, which position Plaintiff cannot support because Mona
25 provided the related deed of trust, which also references the related promissory note. See Ex. A
26 to the Motion to Dismiss on file herein.

27 Despite the deed of trust and related promissory note, Plaintiff claims that the Court must
28 accept as true its allegation that Mike, III did not take in good faith. However, without

1 supporting facts, simply asserting someone did not take in good faith equates to a legal
2 conclusion, which the Court does not have to accept as true.

3 In summary, Plaintiff's second cause of action is premised on the findings in the Order
4 from the first Fraudulent Transfer Action that is currently the subject of a Writ proceeding before
5 the Supreme Court. It is wholly inappropriate for Plaintiff to be seeking Judgments against
6 Rhonda and Mike, III as a subsequent transferee based on said Order. In addition, even if the
7 Court is willing to ignore the Writ proceeding, Plaintiff still must establish that Mike, III did not
8 take in good faith while the operative facts show exactly the opposite, as there is a deed of trust
9 and promissory note regarding the subject condominium. Thus, at a minimum, the Court should
10 dismiss the claim or stay the case until the Supreme Court rules on the Writ proceeding.

11 **D. PLAINTIFF'S ARGUMENTS TO AVOID DISMISSAL FOR FAILURE TO**
12 **JOIN AN INDISPENSIBLE PARTY CONTRADICT THE FACTS**
13 **PLAINTIFF HAS ASSERTED IN THE COMPLAINT—INDEED,**
14 **PLAINTIFF CHANGED COURSE TO TRY AND AVOID DISMISSAL.**

15 Plaintiff tries to avoid dismissal of its claims, the second cause of action and even the
16 seventh cause of action, by asserting that it is only seeking Judgment against Rhonda and Mike,
17 III and execution is not at issue. Plaintiff's Complaint indicates otherwise. Specifically,
18 Plaintiff's seventh cause of action for declaratory relief almost entirely surrounds the Court
19 allowing it to *execute* on assets based on the fraudulent transfer allegations. See Plaintiff's
20 Complaint at 16:23-17:16. Thus, unless Plaintiff is agreeing to dismiss its seventh cause of
21 action and related allegations dealing with execution, calling Mona's argument a "deflection"
22 that should be given "no credence" is another inaccuracy. Indeed, execution is at issue, as
23 Plaintiff has requested such relief in its Complaint and is now denying it. Id.

24 With this context and acknowledgement that Plaintiff did not address the authority Mona
25 set forth regarding failure to join an indispensable party, which is incorporated herein from the
26 Motion to Dismiss by reference, dismissal is warranted under NRCP 12(b)(6) and NRCP 19
27 because to proceed without the absent party could prejudice either the absent party or others. As
28 Plaintiff's own Complaint asserts, it expects the Court to allow it to execute on a condominium

1 that is encumbered by a third party who is not a party to this suit. See Ex. B to Motion to
2 Dismiss.

3 As a result, unless the third party is added or Plaintiff agrees to dismiss its seventh cause
4 of action, the non-party's interests will be impacted without him being afforded due process.
5 The non-party will not be afforded the opportunity to defend his interests, which could leave the
6 current parties exposed to liability. And, if Plaintiff cannot add the non-party, then the Court
7 must dismiss the claim because a judgment rendered in the non-party's absence would be
8 prejudicial to his interests.³ Therefore, the Court should dismiss the second and seventh causes
9 of action.

10 **E. PLAINTIFF FAILED TO SATISFY THE PARTICULARITY**
11 **REQUIREMENTS OF NRCP 9.**

12 NRCP 9 required Plaintiff to plead the fraud claims in the Amended Complaint with
13 particularity. NRCP 9; see also Rocker v. KPMG LLP, 122 Nev. 1185, 1192, 148 P.3d 703, 708
14 (2006) ("To plead with particularity, plaintiffs must include in their complaint averments to the
15 time, the place, the identity of the parties involved, and the nature of the fraud.") (internal
16 quotations omitted) (abrogated on other grounds).

17 Here, even after having the Opportunity to oppose dismissal, Plaintiff has not identified
18 an actual "transfer," the related nature of said "transfer," or when Mike allegedly "transferred"
19 \$500,000 to Rhonda. Plaintiff simply alleges that Mike received funds and "transferred" them to
20 Rhonda without consideration—Plaintiff does bother to identify how or when the alleged
21 "transfer" took place. For example, Rhonda may have simply utilized funds that were
22 community property in a joint bank account and Plaintiff is calling it a "fraudulent transfer."
23 Further, Plaintiff implies that the alleged "transfer" took place in November 2013, but this is not
24 true. A close reading of Plaintiff's Opposition and Complaint reveals that Mona provided
25 testimony in November 2013, but this date has nothing to do with the date of the alleged
26 "transfer." Indeed, the facts must be stated with particularity because Plaintiff is also alleging

27 _____
28 ³ NRCP 19(b).

1 that Rhonda did not give Mike “consideration” for the funds, and she could not be required to
2 give consideration for community property. Thus, in the end, Plaintiff has only alleged that one
3 party received money and gave it to another without consideration, which not sufficient to
4 maintain a claim for fraud. As a result, the Court should dismiss the first cause of action.

5 As for the alleged transfer of \$900,000, Plaintiff overstates in the Opposition what the
6 Complaint actually contains regarding the alleged transfer. For example, the subject paragraphs
7 are far narrower than Plaintiff portrays. Specifically, paragraphs 31-34 and 97-102 discuss the
8 \$900,000 transfer. Eight of the ten allegations are on information and belief, none of them assert
9 how the alleged transfer took place and none of them assert when the alleged transfer took place.
10 See Plt’s Complaint at ¶¶ 31-34 and 97-102. Rather, in short, the Complaint asserts that a
11 mother gave her son money to buy a condo without consideration, which is not sufficient to
12 maintain a claim for fraud. As a result, the Court should dismiss the second cause of action.

13 Regarding the second cause of action for the alleged “transfer” of \$90,000, Plaintiff
14 alleges that Rhonda and Mike sold stock in a company and Rhonda used the money to buy a car.
15 In other words, a married couple sold some stock and one of the spouses used the proceeds to
16 buy a car. Somehow, Plaintiff twists this scenario into a fraudulent transfer because Mike
17 allegedly “transferred” money to Rhonda without consideration. Without identifying how or
18 when the alleged “transfer” took place, however, a simple allegation of a spouse buying a car
19 with community funds is not sufficient to maintain a claim for fraud. As a result, the Court
20 should dismiss the third cause of action.

21 In summary, based on Plaintiff’s logic throughout the Amended Complaint, a spouse is
22 not allowed to use community property funds to purchase anything without the purchase/use of
23 the funds being deemed a fraudulent transfer. Further, parents are not allowed to assist children
24 by providing a vehicle or housing accommodations without such assistance being deemed a
25 fraudulent transfer. And, in the end, Plaintiff has not identified the how or when of the alleged
26 transfers. Moreover, the vast majority of all of the allegations are made “on information and
27 belief.” Thus, Plaintiff has not satisfied NRCP 9’s pleading requirements and the Court should
28 grant the Motion to Dismiss.

Prudence, prejudice, and judicial economy require that the Court dismiss Plaintiff's Complaint or, at a minimum, stay the case pending the outcome of the Writ proceeding before the Supreme Court. The vast majority of Plaintiff's arguments and claims hinge on the outcome of the Writ and the Supreme Court's conclusions. As a result, any relief to Plaintiff in any realm at this juncture would be improper and premature.

Further, Plaintiff's claims in this suit have already been disposed of or are already pending in other suits. Indeed, in this case, Plaintiff not only expects this Court to ignore the Writ and the Supreme Court's jurisdiction over the related Order, but it also expects this Court to ignore prior suits and overturn a valid Divorce Decree and related distribution of property in a case in which the Family Court already denied Plaintiff's intervention attempts and sanctioned Plaintiff.

Moreover, Plaintiff has not alleged facts sufficient to defeat an NRCP 12(b)(5) dismissal, failed to add an indispensable party because it is trying to execute on an asset in which a third-party holds an interest, and failed to comply with NRCP 9's particularity requirements. Therefore, the Court should deny Plaintiff's attempts to remedy its failures from prior suits, acknowledge the inadequacies and lack of basis of the current suit, and grant the Motion to Dismiss.

Dated this 26th day of January, 2016.

MARQUIS AURBACH COFFING

By /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 Defendants

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT MICHAEL J. MONA, JR.'S**
REPLY IN SUPPORT OF MOTION TO DISMISS was submitted electronically for filing
and/or service with the Eighth Judicial District Court on the 26th day of January, 2016.
Electronic service of the foregoing document shall be made in accordance with the E-Service
List as follows:⁴

Holley Driggs Walch Fine Wray Puzey & Thompson**Contact**

Andrea M. Gandara
Norma
Tilla Nealon
Tom Edwards

Email

agandara@nevadafirm.com
nmoseley@nevadafirm.com
tnealon@nevadafirm.com
tedwards@nevadafirm.com

Santoro Whitmire**Contact**

Asmeen Olila-Stoilov
James E. Whitmire, Esq.
Joan White

Email

astoilov@santoronevada.com
jwhitmire@santoronevada.com
jwhite@santoronevada.com

I further certify that I served a copy of this document by mailing a true and correct copy
thereof, postage prepaid, addressed to:

N/A

/s/ Rosie Wesp
an employee of Marquis Aurbach Coffing

⁴ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System
consents to electronic service in accordance with NRCP 5(b)(2)(D).

EXHIBIT 5

EXHIBIT 5

IN THE SUPREME COURT OF THE STATE OF NEVADA

RHONDA HELENE MONA; AND
MICHAEL J. MONA, JR.,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JOSEPH HARDY, JR., DISTRICT
JUDGE,

Respondents,

and

FAR WEST INDUSTRIES,
Real Party in Interest.

No. 68434

FILED

JUL 20 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER GRANTING TEMPORARY STAY

Petitioners have filed a motion to stay: (1) a district court order that imposes sanctions on the petitioners and allows real party in interest to execute upon the bank accounts of petitioner Rhonda Mona, and (2) the underlying district court proceedings. Our review of the motion indicates that a temporary stay is warranted, pending receipt and consideration of any opposition to the motion. Accordingly, we temporarily stay the July 15, 2015, order in Eighth Judicial District Court Case No. A-12-670352-F, as well as the proceedings below, pending further order of this court. Real party in interest shall file a response to the motion within 11 days from the date of this order.

It is so ORDERED.

Saitta, J.

Saitta

Gibbons, J.

Gibbons

Pickering, J.

Pickering

cc: Hon. Joseph Hardy, Jr., District Judge
Marquis Aurbach Coffing
Lemons, Grundy & Eisenberg
Holley, Driggs, Walch, Fine Wray Puzey & Thompson/Las Vegas
Eighth District Court Clerk

EXHIBIT 6

EXHIBIT 6

IN THE SUPREME COURT OF THE STATE OF NEVADA

RHONDA HELENE MONA; AND
MICHAEL J. MONA, JR.,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JOSEPH HARDY, JR., DISTRICT
JUDGE,

Respondents,

and

FAR WEST INDUSTRIES,
Real Party in Interest.

No. 68434

FILED

OCT 16 2015

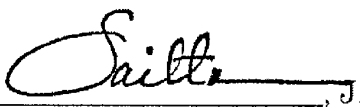
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER

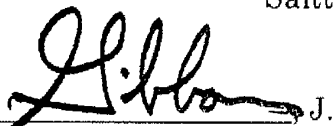
Petitioners have filed a motion to: (1) stay the district court's minute order requiring them to post supersedeas bonds, and (2) maintain our prior stay of the underlying district court proceedings in light of the district court's apparent intention to lift that stay. Our review of the motion indicates that the following relief is warranted. We temporarily stay the requirement that petitioners post supersedeas bonds, pending this court's receipt and consideration of further briefing on the motion. Within 5 days from the date of this order, petitioners shall supplement the motion with a clear statement regarding what they propose as alternate security in lieu of a supersedeas bond to "maintain the status quo and protect the judgment creditor pending an appeal." *Nelson v. Heer*, 121 Nev. 882, 885 88, 122 P.3d 1252, 1254 (2005). Real party in interest shall

have 11 days from service of petitioners' supplement to file a combined response to the motion and supplement, and petitioners shall have 3 days from service of the response to file a reply. Further, under our order of August 31, 2015, all proceedings in Eighth Judicial District Court Case No. A-12-670352-F remain stayed pending further order of this court.

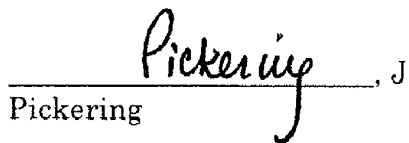
It is so ORDERED.

 J.

Saitta

 J.

Gibbons

 J.

Pickering

cc: Hon. Joseph Hardy, Jr., District Judge
Marquis Aurbach Coffing
Lemons, Grundy & Eisenberg
Holley, Driggs, Walch, Fine Wray Puzey & Thompson/Las Vegas
Eighth District Court Clerk

EXHIBIT 7

EXHIBIT 7

IN THE SUPREME COURT OF THE STATE OF NEVADA

RHONDA HELENE MONA; AND
MICHAEL J. MONA, JR.,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JOSEPH HARDY, JR., DISTRICT
JUDGE,

Respondents,

and

FAR WEST INDUSTRIES,
Real Party in Interest.

No. 68434

FILED

NOV 19 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING MOTION

This original petition for a writ of mandamus or prohibition challenges a district court order that, in part, directs that funds in certain bank accounts be applied to a domesticated foreign judgment. We previously stayed the proceedings below pending further order of this court and, in addressing arguments regarding a bond, noted that the district court was better suited than this court to make supersedeas bond determinations. *See Nelson v. Heer*, 121 Nev. 832, 836, 122 P.2d 1252, 1254 (2005).

Thereafter, the district court considered the parties' arguments concerning a bond and ordered petitioner Michael J. Mona, Jr., and the Mona Family Trust to post a bond of \$24,172,076.16, and


petitioner Rhonda Helene Mona to post a bond of \$490,000. The district court's order noted that if petitioners did not timely post their respective bonds, the stay pending this proceeding would expire as to each.


Petitioners then filed in this court an emergency motion to stay the district court's order requiring them to post supersedeas bonds. We granted a temporary stay, pending our consideration of further briefing on the motion, including a supplement by petitioners "with a clear statement regarding what they propose as alternate security in lieu of a supersedeas bond." The briefing on the motion is now complete.

Having considered the parties' arguments and the documents on file herein, we perceive no abuse of discretion by the district court in its order setting the bonds, *see McCulloch v. Jeakins*, 99 Nev. 122, 123, 659 P.2d 302, 303 (1983), and conclude that petitioners have not sufficiently demonstrated that their proposed alternate security will "maintain the status quo and protect the judgment creditor pending" this proceeding. *Nelson*, 121 Nev. at 835-36, 122 P.2d at 1254. We therefore deny petitioners' motion to extend the stay of proceedings without bond, or on conditions different from those ordered by the district court, requiring petitioner Michael J. Mona, Jr., and the Mona Family Trust to post a bond of \$24,172,076.16, and petitioner Rhonda Helene Mona to post a bond of \$490,000. This court's stay entered August 31, 2015, and temporary stay entered October 16, 2015, shall expire within 5 business days from the date of this order unless the parties comply with the bond requirements

imposed by the district court in its written order of October 16, 2015, as a condition of any stay.

It is so ORDERED.


_____, J.
Saitta

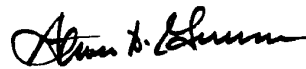

_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Joseph Hardy, Jr., District Judge
Marquis Aurbach Coffing
Lemons, Grundy & Eisenberg
Holley, Driggs, Walch, Fine Wray Puzey & Thompson/Las Vegas
Eighth District Court Clerk

EXHIBIT 8

EXHIBIT 8



CLERK OF THE COURT

1 **Marquis Aurbach Coffing**
Terry A. Coffing, Esq.
2 Nevada Bar No. 4949
Tye S. Hanseen, Esq.
3 Nevada Bar No. 10365
10001 Park Run Drive
4 Las Vegas, Nevada 89145
Telephone: (702) 382-0711
5 Facsimile: (702) 382-5816
tcoffing@maclaw.com
6 thanseen@maclaw.com
Attorneys for Defendants

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 FAR WEST INDUSTRIES, a California
10 corporation,

11 Plaintiff,

12 vs.

13 MICHAEL J. MONA, JR., an individual;
RHONDA HELENE MONA, an individual;
14 MICHAEL MONA III, an individual;
LUNDENE ENTERPRISES, LLC, a Nevada
15 limited liability corporation, DOES 1 through 10
and ROE CORPORATIONS 1 through 10,
16 inclusive,,
17 Defendant.

Case No.: A-15-724490-C
Dept. No.: XXXII

Hearing Date:
Hearing Time:

18
19 **DEFENDANTS' MOTION TO DISMISS**

20 Defendants Michael J. Mona, Jr., Rhonda Helene Mona, Michael Mona, III, and Lundene
21 Enterprises, LLC (collectively "Defendants"), through the law firm of Marquis Aurbach Coffing,
22 hereby file their Motion to Dismiss. This Motion is based on the following Memorandum of

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Points and Authorities, the pleadings and papers on file herein, and any oral argument by counsel
2 permitted at the hearing on this matter.

3 Dated this 4th day of December, 2015.

4 MARQUIS AURBACH COFFING

5
6 By /s/ Tye S. Hanseen
7 Terry A. Coffing, Esq.
8 Nevada Bar No. 4949
9 Tye S. Hanseen, Esq.
10 Nevada Bar No. 10365
11 10001 Park Run Drive
12 Las Vegas, Nevada 89145
13 Attorneys for Defendants

14 **NOTICE OF MOTION**

15 You and each of you, will please take notice that the DEFENDANTS' MOTION TO
16 DISMISS will come on regularly for hearing on the 02 day of FEBRUARY,
17 2016, at the hour of 9:00A.m., or as soon thereafter as counsel may be heard, in
18 Department XXXII in the above-referenced court.

19 Dated this 4th day of December, 2015.

20 MARQUIS AURBACH COFFING

21 By /s/ Tye S. Hanseen
22 Terry A. Coffing, Esq.
23 Nevada Bar No. 4949
24 Tye S. Hanseen, Esq.
25 Nevada Bar No. 10365
26 10001 Park Run Drive
27 Las Vegas, Nevada 89145
28 Attorneys for Defendants

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Plaintiff's Amended Complaint contains allegations Plaintiff knows are inaccurate. Based on the allegations in the Amended Complaint, Plaintiff expects this Court to overturn a valid Divorce Decree and related distribution of property in a case in which the Family Court already denied Plaintiff's intervention attempts. The Monas divorced and distributed their

1 marital property ("Divorce Action"). Plaintiff attempted to intervene in the Divorce Action to
2 make unfounded allegations of fraudulent transfers to try and collect against Rhonda Mona for a
3 Judgment against Mike Mona. The Family Court, however, denied Plaintiff's intervention
4 attempts and awarded both Mike Mona and Rhonda Mona the fees and costs they incurred in
5 opposing Plaintiff's requests.

6 Prior to the Divorce Action, Plaintiff filed a case against Mike Mona ("Fraudulent
7 Transfer Action") to collect on the Judgment. In the midst of the Fraudulent Transfer Action,
8 Plaintiff brought a fraudulent transfer claim against Rhonda Mona, who is neither a judgment
9 debtor nor a party to the Fraudulent Transfer Action. Nevertheless, the court entered an
10 Order/Judgment against Rhonda Mona for fraudulent transfer based on a Post-Marital Settlement
11 Agreement under which Mike and Rhonda Mona equally split the proceeds of a stock sale, and
12 Plaintiff did not make any other assertions of fraudulent transfers in the Fraudulent Transfer
13 Action. The court's Order/Judgment against Rhonda Mona regarding the fraudulent transfer
14 claim is the subject of an appeal pending before the Nevada Supreme Court.

15 Plaintiff brought the current action to: (1) Try and remedy its failure to intervene in the
16 Divorce Action and assert its fraudulent transfer allegations there; and (2) to remedy its failure to
17 include the current fraudulent transfer allegations in the Fraudulent Transfer Action when it had
18 the opportunity to do so prior to the conclusion of the Divorce Action. At this point, however,
19 claim preclusion bars Plaintiff's third opportunity to bring the allegations because the court has
20 either already ruled on the claims or Plaintiff could have brought the claims in prior actions and
21 failed to do so. Moreover, Plaintiff cannot marshal facts sufficient to satisfy the elements of the
22 claims brought herein. Thus, the Court should grant this Motion to Dismiss.

23 **II. STATEMENT OF FACTS.**

24 **A. THE PARTIES.**

25 Mike Mona is a resident of Nevada. See Pltf's Amended Complaint at 2:8-11. Plaintiff
26 is a California corporation that possesses a California Judgment against Mike Mona. Id. at 2:6-7
27 and 3:4-28. Rhonda Mona is Mike Mona's ex-wife and Mike Mona, III ("M3") is Mike Mona's
28 son. Id. at 2:8-11, 16-19 and 7:24-26.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

3
4
5
6
7

8
9
10
11
12
13

14
15
16
17
18

19
20
21
22
23
24
25

1 **C. THE DIVORCE ACTION, PLAINTIFF'S FAILURES, AND FEES AND**
2 **COSTS AGAINST PLAINTIFF.**

3 On July 23, 2015, Mike Mona and Rhonda Mona finalized their divorce and, in so doing,
4 divided the couples' property and debt. Id. at 7:24-8:19. The Divorce Action and its results are
5 subject to the Order/Judgment in the Fraudulent Transfer Action and those matters raised in that
6 Action, but the Divorce Action is not subject to the current case or claims that could have been
7 brought in the Fraudulent and Divorce Actions and were not. Id. at 4:21-22.

8 Plaintiff untimely attempted to intervene in the Divorce Action again making various
9 allegations of fraudulent transfer. See Pltf's September 24, 2015 Motion to Intervene in case No.
10 D-15-517425 at 3:17-25. However, the Court denied Plaintiff's Motion to Intervene to make its
11 claims of fraudulent transfer because it was untimely. See November 25, 2015 Order in case No.
12 D-15-517425. Thus, although Plaintiff would have been able to intervene in the Divorce Action
13 and assert, for at least the second time, its claims for fraudulent transfer, the Family Court denied
14 Plaintiff's request because it sat on its hands by waiting until the Divorce Action was closed
15 before doing anything. Id.

16 Not only did the Family Court deny Plaintiff's attempts to make untimely fraudulent
17 transfer claims within the Divorce Action, but it also awarded Mike Mona and Rhonda Mona,
18 separately, the attorney fees and costs they each incurred in opposing Plaintiff's attempts. See
19 November 25, 2015, November 30, 2015, and December 2, 2015 Orders in case No. D-15-
20 517425.

21 **D. THE SUBJECT MATTER OF THE CURRENT SUIT HAS ALREADY**
22 **BEEN DETERMINED OR IS ALREADY (OR COULD HAVE BEEN) THE**
23 **SUBJECT OF PRIOR ACTIONS.**

24 Plaintiff has asserted seven claims in the current suit broken down as follows:

- 25 1. Fraudulent Transfer – Plaintiff asserts that Mike Mona gave Rhonda Mona (his
26 wife at the time) community property of \$500,000 without consideration and this
27 somehow equates to a fraudulent transfer. See Pltf's Amended Complaint at
28 4:12-16.
2. Fraudulent Transfer – Plaintiff asserts that Mike Mona gave Rhonda Mona (his
wife at the time) \$3.4 million dollars without consideration and this somehow
equates to a fraudulent transfer. Id. at 4:18-28 and 10:24-11:5.

3. Fraudulent Transfer – Plaintiff asserts that Mike Mona gave Rhonda Mona (his wife at the time) community property of \$90,000 to buy car and this somehow equates to a fraudulent transfer. Id. at 5:16-26 and 12:13-13:13.
4. Fraudulent Transfer – Plaintiff claims that Mike Mona giving his son a vehicle somehow equates to a fraudulent transfer. Id. at 5:27-6:8 and 13:14-14:15.
5. Fraudulent Transfer – Plaintiff claims that the valid Divorce Decree equates to a fraudulent transfer and expects this Court to essentially void it, even though Plaintiff already failed to timely intervene in the Divorce Action. Id. at 6:9-8:27 and 14:16-16:10.
6. Civil Conspiracy – Without any factual allegations to support the claim, Plaintiff asserts that the Defendants conspired to engage in fraudulent transfers. Id. at 16:22.
7. Declaratory Relief – Plaintiff demands that the Court declare the claimed fraudulent transfers as fraudulent transfers and allow Plaintiff to execute on all of the assets, whether part of the Divorce Action or owned by people other than Mike Mona. Id. at 16:25-17:16.

In response to these allegations, Defendants filed this Motion to Dismiss, which asserts that claim preclusion bars the claims and Plaintiff has failed to set forth the facts necessary to maintain the claims.

III. LEGAL STANDARD

A claim for relief set forth in any pleading may be dismissed as a matter of law under NRCPC 12(b)(5) for failure to state a claim upon which relief can be granted. See NRCPC 12(b)(5). While dismissal requires the Court to construe the pleadings liberally and draw every fair inference in favor of the non-moving party, if it appears that the pleading party can prove no set of facts which would entitle it to relief dismissal should be granted. Brown v. Kellar, 97 Nev. 582, 636 P.2d 874 (1981) (emphasis added); see also Bergmann v. Boyce, 109 Nev. 670, 856 P.2d 560 (1993).

The test for determining whether the allegations are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature and basis of a legally sufficient claim and the relief requested. Breliant v. Preferred Equities Corp., 109 Nev. 842, 846, 858 P.2d 1258 (1993). In reviewing a motion to dismiss, the court shall determine whether or not the challenged pleading sets forth sufficient allegations to make out the elements for a claim for relief. Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985). If all of a party's allegations are

1 accepted as true and still do not justify any relief, the trial court should properly dismiss the
2 claims. Blackjack Bonding v. City of Las Vegas Municipal Court, 116 Nev. 1213, 1214, 14 P.3d
3 1275, 1278 (2000) (emphasis added).

4 **IV. LEGAL ARGUMENT.**

5 The Court should grant this Motion for eight reasons. First, claim preclusion bars
6 Plaintiff's Amended Complaint and the related allegations because this is at least Plaintiff's
7 fourth opportunity/attempt to assert the claims in this case and, as a result, the claims have
8 already been, or could have been, brought and decided. Second, Plaintiff's second cause of
9 action was already decided in the Fraudulent Transfer Action. Third, the Family Court already
10 denied Plaintiff's attempts to intervene to challenge the divorce, which is Plaintiff's fifth cause
11 of action. Fourth, there is no evidence of any agreement between the Defendants that could
12 possibly support a civil conspiracy claim. Fifth, Plaintiff's assertion in the second cause of
13 action that a loan from Rhonda Mona to her son, M3, is a fraudulent transfer is baseless because
14 Rhonda is not a debtor, the loan did not make her insolvent, and M3 provided consideration for
15 the loan. Sixth, Plaintiff failed to join an indispensable party to the second cause of action.
16 Seventh, the seventh cause of action for declaratory relief simply reasserts the first five causes of
17 action, all of which the Court should dismiss. Eighth, Plaintiff failed to satisfy NRCP 9's
18 pleading requirements. Thus, the Court should grant the Motion to Dismiss.

19 **A. NEVADA LAW BARS PLAINTIFF'S CLAIMS BECAUSE THE COURT**
20 **ALREADY DECIDED (OR COULD HAVE BUT FOR PLAINTIFF'S**
21 **FAILURES) THE OUTCOME OF THE CLAIMS.**

22 Plaintiff is now re-litigating the same issues that were already decided or could have been
23 decided on prior occasions in two different prior lawsuits. In 2008, the Nevada Supreme Court
24 established a clear test for claim preclusion, which test it modified in 2015. Specifically, in
25 Nevada, for claim preclusion to apply, a defendant must show: (1) there has been a valid and
26 final judgment in a previous action; (2) the subsequent action is based on the same claims or any
27 part of them that were or could have been brought in the first action; and (3) the parties or their
28 privies are the same in the instant lawsuit as they were in the previous lawsuit, or the defendant
can demonstrate that he or she should have been included as a defendant in the earlier suit and

1 the plaintiff fails to provide a "good reason" for not having done so. Weddell v. Sharp, 131 Nev.
2 Adv. Op. 28, 350 P.3d 80, 81 (2015), reh'g denied (July 23, 2015). Here, claim preclusion
3 applies to all of Plaintiff's claims.

4 The first element regarding a final judgment in a previous action is satisfied because there
5 are currently final judgments in the Divorce and Fraudulent Transfer Actions. The Divorce
6 Action was final on July 23, 2015 and the Family Court denied Plaintiff's untimely attempt to
7 intervene to make fraudulent transfer allegations. See Pltf's Amended Complaint at 7:24-8:19;
8 see also Pltf's September 24, 2015 Motion to Intervene at 3:17-25 and November 25, 2015 Order
9 in case No. D-15-517425. In addition, Plaintiff obtained an Order/Judgment against Mike and
10 Rhonda Mona in the Fraudulent Transfer Action, which is now part of an appeal before the
11 Nevada Supreme Court. See Pltf's Amended Complaint at 4:21-28 and 6:22-7:11.

12 The second element regarding the opportunity to bring the same claims in a previous
13 action is satisfied because Far West has asserted Fraudulent Transfer claims in the current case,
14 asserted Fraudulent Transfer claims in the Fraudulent Transfer Action, and made fraudulent
15 transfer allegations in the Divorce Action. Id., *generally*; see also Pltf's September 24, 2015
16 Motion to Intervene at 3:17-25 and November 25, 2015 Order in case No. D-15-517425.
17 Moreover, there is a fourth action that Plaintiff brought against Mike Mona and various third
18 parties to which Rhonda Mona, M3, and these claims could and should have been brought, but
19 were not. See case No. A-14-695786. Thus, this is actually the fourth action Plaintiff has been
20 part of involving Mona related to the same set of facts and in all four actions Plaintiff has
21 asserted fraudulent transfer allegations that could have and should have all been brought in a
22 prior action.

23 Lastly, the third element regarding the same parties is satisfied because Mike Mona,
24 Rhonda Mona, and Far West were all part of the Divorce Action and the Fraudulent Transfer
25 Action, and Far West should have included M3, as it did Rhonda Mona, in the Fraudulent
26 Transfer Action. Moreover, Far West could have included Rhonda Mona and M3 in case No. A-
27 14-695786.

1 Therefore, claim preclusion applies to the Amended Complaint because there are two
2 valid and final judgments, this is the fourth action based on the same claims and set of facts, and
3 the parties/their privies are similar in the suits. Weddell, at 28, 350 P.3d at 81. As a result, the
4 Court should grant this Motion. The preclusion of the individual claims is discussed more fully
5 below.

6 **B. CLAIM AND ISSUE PRECLUSION FURTHER BAR THE SECOND**
7 **CAUSE OF ACTION FOR FRAUDULENT TRANSFER BECAUSE THE**
8 **COURT HAS ALREADY RULED ON THE ISSUE.**

9 Plaintiff's second cause of action is for the alleged fraudulent transfer of \$3.4 million
10 from Mike Mona to Rhonda, which is half of \$6.8 million the Monas received through a stock
11 sale. See Pltf's Amended Complaint at 10:26-11:25. Plaintiff has already asserted and obtained
12 an Order/Judgment regarding this exact same claim against Mike Mona and Rhonda Mona in
13 case No. A-12-670352. Id. at 3:22-24, 4:18-28, and 6:26-7:10. The Court concluded that Mike
14 Mona agreeing to split the \$6.8 million with Rhonda Mona through the Post-Marital Settlement
15 Agreement was a fraudulent transfer. Id. The Court's Order is now the subject of a pending
16 appeal before the Nevada Supreme Court. Id. at 7:50. Therefore, Plaintiff is barred from
17 bringing the exact same claim; which has been decided and is the subject of an appeal.

18 **C. THE DIVORCE DECREE AND ORDER DENYING PLAINTIFF'S**
19 **INTERVENTION ATTEMPT BAR THE FIFTH CAUSE OF ACTION FOR**
20 **FRAUDULENT TRANSFER THROUGH THE DIVORCE.**

21 Plaintiff's fifth cause of action for fraudulent transfer requests that this Court nullify the
22 Divorce Decree and related distribution of property and debt. See Pltf's Amended Complaint at
23 14:16-16:10. The Divorce was final and the case closed on July 23, 2015. Id. at 7:24-26.
24 Plaintiff moved to intervene to continue to make further fraudulent transfer allegations. See
25 Pltf's September 24, 2015 Motion to Intervene in case No. D-15-517425 at 3:17-25. However,
26 the Court denied Plaintiff's Motion to Intervene to make its claims of fraudulent transfer because
27 it was untimely. See November 25, 2015 Order in case No. D-15-517425.

28 In other words, Plaintiff would have been able to intervene in the Divorce Action and
assert, for at least the second time, its claims for fraudulent transfer, the Family Court denied
Plaintiff's request because it sat on its hands by waiting until the Divorce Action was closed

1 before doing anything. Id. Further, not only did the Family Court deny Plaintiff's attempts to
2 make untimely fraudulent transfer claims within the Divorce Action, but it also awarded Mike
3 Mona and Rhonda Mona, separately, the attorney fees and costs they each incurred in opposing
4 Plaintiff's attempts. See November 25, 2015, November 30, 2015, and December 2, 2015
5 Orders in case No. D-15-517425.

6 Plaintiff is not entitled to rehabilitate its failures in the Divorce Action by bringing yet
7 another lawsuit to make the same assertions it was precluded from bringing in the Divorce
8 Action. Therefore, the Court should grant the Motion to Dismiss as to the fifth cause of action.

9
10 **D. PLAINTIFF CANNOT MARSHAL FACTS SUFFICIENT TO MAINTAIN
THE SIXTH CAUSE OF ACTION FOR CIVIL CONSPIRACY.**

11 "Actionable civil conspiracy arises where two or more persons undertake some concerted
12 action with the intent 'to accomplish an unlawful objective for the purpose of harming another,'
13 and damage results." Guilfoyle v. Olde Monmouth Stock Transfer Co., 130 Nev. Adv. Op. 78,
14 335 P.3d 190, 198-99 (2014) (citing Consol. Generator-Nevada, Inc. v. Cummins Engine Co.,
15 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998)). Further, there must be "evidence of an
16 explicit or tacit agreement between the alleged conspirators." Id. (citing Dow Chemical Co. v.
17 Mahlum, 114 Nev. 1468, 1489, 970 P.2d 98, 112 (1998)). Dismissal is appropriate "if there is no
18 evidence of an agreement or intent to harm the plaintiff." Id. (citing Consol. Generator-Nevada,
19 114 Nev. at 1311, 971 P.2d at 1256).

20 Here, Plaintiff's allegations supporting the civil conspiracy claim encompass less than
21 four lines of text and are asserted on "information and belief." See Pltf's Amended Complaint at
22 16:15-18. Even considering Plaintiff's incorporation and realleging of prior allegations in the
23 Amended Complaint, there is no evidence at all that Mike Mona, Rhonda Mona, and/or M3 had
24 some agreement amongst themselves to intentionally harm Plaintiff. Thus, the Court should
25 dismiss the sixth cause of action for civil conspiracy.

1 **E. THE CLAIM AGAINST M3, LUNDENE, AND RHONDA MONA FOR**
2 **FRAUDULENT TRANSFER IS BASELESS AND MUST BE DISMISSED.**

3 NRS Chapter 112 requires that Plaintiff establish the following criteria before setting
4 aside a transfer as a fraudulent conveyance: 1) the conveyance must be made by a debtor who is
5 insolvent or who will be rendered insolvent by it; 2) there was not fair consideration for the
6 conveyance; and 3) the purchaser was not a bona fide purchaser for value without notice of the
7 fraud at the time of the purchase. Brown v. Fed. Sav. & Loan Ins. Corp., 105 Nev. 409, 413-14,
8 777 P.2d 361, 364 (1989). The creditor must show that the transfer made the debtor insolvent, or
9 dismissal is necessary. Crescent v. White, 92 Nev. 661, 662-63, 556 P.2d 1265, 1265-66 (1976).
10 Moreover, the creditor bears the burden of proof both with respect to the insolvency of the debtor
11 and the inadequacy of consideration. Matusik v. Large, 85 Nev. 202, 205, 452 P.2d 457, 458
12 (1969).

13 Here, hidden under the second cause of action for fraudulent transfer of \$3.4 million from
14 Mike Mona to Rhonda Mona is a claim that Rhonda Mona fraudulently transferred \$900,000 to
15 her son, M3, to purchase a condominium. See Pltf's Amended Complaint at 11:26-12:8. This
16 claim is baseless for multiple reasons. For example, Rhonda Mona is not a debtor, a co-debtor,
17 or subject to the Judgment – the Judgment is against Mike Mona. Id. at 3:18-21. Further,
18 Rhonda Mona was not made insolvent by the loan to her son. Rhonda Mona loaned \$900,000 of
19 the \$3.4 million to her son and the Judgment was not her debt to pay. Id. at 11:26-27. Thus,
20 Rhonda Mona was left with \$2.5 million even after the loan. As a result, Plaintiff cannot satisfy
21 the first element of the claim. In addition, there was consideration for the loan – Rhonda and
22 M3/Lundene entered into a promissory note and deed of trust related to the loan and the
23 condominium. See Ex. A. As a result, Plaintiff cannot satisfy the second element of the claim
24 regarding no consideration. Moreover, M3 did not purchase the condominium from Rhonda –
25 Rhonda did not transfer the condominium to M3. Rather, M3 borrowed money from Rhonda
26 pursuant to a promissory note to purchase the condominium from a third party. As a result,
27 Plaintiff cannot satisfy the third element. Therefore, Plaintiff cannot satisfy a single fraudulent
28

1 transfer element related to the condominium or related loan from Rhonda Mona to M3, and the
2 Court should grant the Motion to Dismiss.

3
4 **F. THE COURT MUST DISMISS THE SECOND CAUSE OF ACTION
BECAUSE PLAINTIFF FAILED TO JOIN AN INDISPENSIBLE PARTY.**

5 NRCP 12(b)(6) provides that a district court may dismiss a case for "failure to join a
6 party under Rule 19." A motion to dismiss pursuant to NRCP 12(b)(6) "demands a fact specific
7 and practical inquiry," and as a result, its determination, unlike ordinary motions to dismiss, is
8 not limited to the pleadings.¹ Dismissal is warranted under NRCP 12(b)(6) and NRCP 19 if
9 complete relief cannot be granted without the absent party or the dispute is such that to proceed
10 without the absent party could prejudice either the absent party or others.²

11 The question of joinder under NRCP 19 and dismissal for failure to join an indispensable
12 party under NRCP 12(b)(6) involves a three step analysis. First, the Court must determine
13 whether a person is necessary to the action and should be joined. NRCP 19(a) sets forth the
14 initial analysis as follows:

15 A person who is subject to service of process and whose joinder will not deprive
16 the court of jurisdiction over the subject matter of this action shall be joined as a
17 party in the action if (1) in the person's absence complete relief cannot be
18 accorded among those already parties, or (2) the person claims an interest relating
19 to the subject of the action and is so situated that the disposition of the action in
the person's absence may (i) as a practical matter impair or impeded the person's
ability to protect that interest or (ii) leave any of the persons already parties
subject to a substantial risk of incurring double, multiple or otherwise inconsistent
obligations by reason of the claimed interest.³

20 The aforementioned facts "are not to be applied in a mechanical way" but determined in a
21 "practical and pragmatic but equitable manner."⁴ Ultimately, if the Court finds that the absent
22

23 ¹ Makah Indian Tribe v. Verity, 910 F.2d 555, 558 (9th Cir. 1990). FRCP 19(a) is virtually identical to
24 NRCP 19(a). As a result, Nevada courts "have previously recognized that federal decisions involving the
Federal Rules of Civil Procedure provide persuasive authority when this court examines its rules." See
25 Blaine Equipment Co. v. State, 122 Nev. 860, 865, 138 P.3d 820 (2006).

26 ² NRCP 19.

27 ³ NRCP 19(a).

28 ⁴ Francis Oil & Gas, Inc. v. Exxon, Corp., 661 F.2d 873, 878 (10th Cir. 1981).

1 party falls within the aforementioned provisions, then the party must be joined if feasible.⁵
2 Second, the Court must determine whether or not it has personal jurisdiction over the absent
3 party.⁶ If so, then the party must be joined.⁷ Third, if the absent party cannot properly be
4 brought before the Court then the Court must determine whether the absent party is
5 Indispensable to the action.⁸ In other words, the Court must determine whether it should proceed
6 without the absent party or dismiss the case due to the indispensability of the party.⁹ NRCP
7 19(b) provides that four factors are to be considered in determining whether or not to proceed as
8 follows:

9 first, to what extent a judgment rendered in the person's absence might be
10 prejudicial to the person or those already parties; second, the extent to which, by
11 protective provisions in the judgment, by the shaping of the relief, or other
12 measures, the prejudice can be lessened or avoided; third, whether a judgment
13 rendered in the person's absence will be adequate; fourth, whether the plaintiff
14 will have an adequate remedy if the action is dismissed for nonjoinder.¹⁰

15 Applying the above factors to the case at bar demonstrates that dismissal is appropriate
16 because Plaintiff expects the Court to allow it to execute on a condominium that is encumbered
17 by a third party who is not a party to this suit. See Ex. B. As a result, unless the third party is
18 added, there cannot be complete relief among the parties and the non-party's interests will be
19 impacted without the non-party being afforded due process, as the non-party will not be afforded
20 the opportunity to defend its interests, which could leave the current parties exposed to liability.
21 And, if Plaintiff cannot add the non-party, then the Court must dismiss the claim because a

22 _____
23 ⁵ NRCP 19(a), (b).

24 ⁶ See Id.

25 ⁷ Id.

26 ⁸ NRCP 19(b).

27 ⁹ Id.

28 ¹⁰ Id.

1 judgment rendered in the non-party's absence would be prejudicial to the non-party and its
2 interests.¹¹ Therefore, the Court should dismiss the second cause of action.

3 **G. THE DECLARATORY RELIEF CLAIM IS BARRED BECAUSE IT IS**
4 **SIMPLY A REPEAT OF ALL OF THE OTHER CLAIMS FOR RELIEF,**
5 **WHICH THE COURT SHOULD DISMISS.**

6 In its seventh cause of action, Plaintiff demands that the Court declare the claimed
7 fraudulent transfers as fraudulent transfers and allow Plaintiff to execute on all of the assets,
8 whether part of the Divorce Action or owned by people other than Mike Mona. Id. at 16:25-
9 17:16. This claim represents a retread of the first five causes of action for fraudulent transfer.
10 Thus, to the extent to Court grants the Motion to Dismiss as to claims one through five, it should
11 also grant the Motion to Dismiss as to the declaratory relief claim.

12 **H. PLAINTIFF FAILED TO SATISFY THE PARTICULARITY**
13 **REQUIREMENTS OF NRCP 9.**

14 NRCP 9 required Plaintiff to plead the fraud claims in the Amended Complaint with
15 particularity. NRCP 9; see also Rocker v. KPMG LLP, 122 Nev. 1185, 1192, 148 P.3d 703, 708
16 (2006) ("To plead with particularity, plaintiffs must include in their complaint averments to the
17 time, the place, the identity of the parties involved, and the nature of the fraud.") (internal
18 quotations omitted) (abrogated on other grounds).

19 Here, Plaintiff did not plead the fraud claims with particularity. For example, Plaintiff
20 does not identify when or how Mike Mona allegedly sold his interest in Roen or allegedly
21 transferred the \$500,000 in community property to his wife. See Pltf's Amended Complaint at
22 4:1-16 and 9:22-10:23. Also, Plaintiff does not identify how, when, or in what manner the loan
23 from Rhonda Mona (not a debtor) to her son (not a debtor) equates to fraud. Id. at 5:9-13 and
24 11:26-12:5. In addition, Plaintiff does not identify how, when, or the manner in which a sale of
25 stock for \$100,000 in cash, which was used to purchase a car, equates to a fraudulent transfer.
26 Id. at 5:16-26 and 12:15-19.

27 ¹¹ NRCP 19(b).
28

1 Truly, based on Plaintiff's logic throughout the Amended Complaint, a spouse is not
2 allowed to use community property funds to purchase anything of significant without the
3 purchase/use of the funds being deemed a fraudulent transfer. Or, alternatively, parents are not
4 allowed to assist children by providing vehicle or housing accommodations without such
5 assistance being deemed a fraudulent transfer. Indeed, Plaintiff has no evidence whatsoever that
6 any of the alleged transfers were completed with the intent to avoid paying the Judgment or to
7 hinder Plaintiff's collection efforts. Moreover, the vast majority of all of the allegations are
8 made "on information and belief." Thus, Plaintiff has not satisfied NRCP 9's pleading
9 requirements and the Court should grant the Motion to Dismiss.

10 **V. CONCLUSION.**

11 Plaintiff has brought the current action to (1) try and remedy its failure to timely
12 intervene in the Divorce Action and assert its fraudulent transfer allegations there and (2) to
13 remedy its failure to include the current fraudulent transfer allegations in the Fraudulent Transfer
14 Action when it had the opportunity to do so prior to the Divorce Action. Plaintiff is not entitled
15 to a third bite at the apple, and claim preclusion bars this suit. Moreover, Plaintiff's claims are
16 without merit because they are based solely on the allegation that there was not consideration for
17 the use of community funds or gifts to immediate family members, which in and of itself does
18 not equate to a fraudulent transfer. Thus, the Court should grant this Motion to Dismiss.

19 Dated this 4th day of December, 2015.

20 MARQUIS AURBACH COFFING

21
22 By /s/ Tye S. Hanseen
23 Terry A. Coffing, Esq.
24 Nevada Bar No. 4949
25 Tye S. Hanseen, Esq.
26 Nevada Bar No. 10365
27 10001 Park Run Drive
28 Las Vegas, Nevada 89145
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANTS' MOTION TO DISMISS** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 4th day of December, 2015. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹²

Holley Driggs Walch Fine Wray Puzey & Thompson

Contact	Email
Andrea M. Gandara	agandara@nevadafirm.com
Norma	nmoseley@nevadafirm.com
Tilla Nealon	tnealon@nevadafirm.com
Tom Edwards	tedwards@nevadafirm.com

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A

/s/ Rosie Wesp
an employee of Marquis Aurbach Coffing

¹² Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

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 Electronically Filed
Jan 09 2018 04:06 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial District
Court, The Honorable Joe Hardy
Presiding.

APPELLANT'S APPENDIX
(Volume 4, Bates Nos. 697-941)

Marquis Aurbach Coffing

Terry A. Coffing, Esq.

Nevada Bar No. 4949

Tye S. Hanseen, Esq.

Nevada Bar No. 10365

Tom W. Stewart, Esq.

Nevada Bar No. 14280

10001 Park Run Drive

Las Vegas, Nevada 89145

Telephone: (702) 382-0711

Facsimile: (702) 382-5816

tcoffing@maclaw.com

thanseen@maclaw.com

tstewart@maclaw.com

Attorneys for Appellant

INDEX TO APPELLANT'S APPENDIX

DOCUMENT DESCRIPTION		LOCATION
Application of Foreign Judgment (filed 10/18/12)		Volume 1 Bates Nos. 1–7
Notice of Filing Application of Foreign Judgment & Affidavit (filed (10/23/12)		Volume 1 Bates Nos. 8–17
Far West Industries' Ex Parte Motion for Order Allowing Examination of Judgment Debtor (filed 01/17/13)		Volume 1 Bates Nos. 18–19
	Exhibit to Far West Industries' Ex Parte Motion for Order Allowing Examination of Judgment Debtor	
Exhibit	Document Description	
A	Affidavit of John R. Hawley, Esq. in Support of Ex Parte Motion for Examination of Judgment Debtor	Volume 1 Bates Nos. 20–22
Minute Order re: Recusal and Reassignment-no hearing held (filed 01/24/13)		Volume 1 Bates Nos. 23
Order for Appearance of Judgment Debtors (filed 01/30/13)		Volume 1 Bates Nos. 24–25
	Exhibit to Order for Appearance of Judgment Debtors	
Exhibit	Document Description	
A	List of Documents and Things to be Produced at Debtor's Examination	Volume 1 Bates Nos. 26–31
Amended Order for Appearance of Judgment Debtors (filed 02/06/13)		Volume 1 Bates Nos. 32–33
Notice of Examination of Judgment Debtor on an Order Shortening Time (filed 02/13/13)		Volume 1 Bates Nos. 34–38
	Exhibits to Notice of Examination of Judgment Debtor on an Order Shortening Time	
Exhibit	Document Description	
A	Application of Foreign Judgment (filed 10/18/12)	Volume 1 Bates Nos. 39–44
B	Order for Appearance of Judgment Debtors (filed 01/30/13)	Volume 1 Bates Nos. 45–53

DOCUMENT DESCRIPTION		LOCATION
	Exhibits to Notice of Examination of Judgment Debtor on an Order Shortening Time (cont.)	
C	Amended Order for Appearance of Judgment Debtors (filed 02/06/13)	Volume 1 Bates Nos. 54–56
	Second Amended Order for Appearance of Judgment Debtors (filed 02/20/13)	Volume 1 Bates Nos. 57–58
	Amended Order for Examination of Judgment Debtor (filed 04/29/13)	Volume 1 Bates Nos. 59–61
	Motion for Order to Show Cause Regarding Contempt on Order Shortening Time (filed 05/21/13)	Volume 1 Bates Nos. 62–72
	Exhibits to Motion for Order to Show Cause Regarding Contempt on Order Shortening Time	
Exhibit	Document Description	
A	Collective documents domesticating a California judgment	Volume 1 Bates Nos. 73–80
B	Order for Appearance of Judgment Debtors (filed 01/30/13)	Volume 1 Bates Nos. 81–90
C	Emails re dates for examination of judgment debtors	Volume 1 Bates Nos. 91–94
D	Emails re dates for examination of judgment debtors	Volume 1 Bates Nos. 95–96
E	Amended Order for Examination of Judgment Debtor (filed 04/29/13)	Volume 1 Bates Nos. 97–100
F	Affidavit of John Hawley, Esq. in Support of Order Shortening Time	Volume 1 Bates Nos. 101–103
G	Letter from Tye Hanseen re: no longer representing Mr. Mona	Volume 1 Bates Nos. 104–105
H	Transcript re nonappearance of Michael J. Mona for examination of judgment debtor.	Volume 1 Bates Nos. 106–109
	Special Appearance and Objection to Further Proceedings on Order to Show Cause Predicated Upon Lack of Personal Jurisdiction (filed 05/30/13)	Volume 1 Bates Nos. 110–116
	Supplemental Points and Authorities Regarding a Lack of Personal Jurisdiction (filed 06/18/13)	Volume 1 Bates Nos. 117–125

DOCUMENT DESCRIPTION		LOCATION
Reply in Support of Motion to Order to Show Cause Re Contempt (filed 06/28/13)		Volume 1 Bates Nos. 126–129
Order to Show Cause (filed 07/10/13)		Volume 1 Bates Nos. 130–132
Stipulation and Order (filed 07/26/13)		Volume 1 Bates Nos. 133–136
Notice to Vacate Examination of Judgment Debtors (filed 9/10/13)		Volume 1 Bates Nos. 137–139
Order (filed 10/07/13)		Volume 1 Bates Nos. 140–142
Notice of Examination of Judgment Debtor (filed 10/31/13)		Volume 1 Bates Nos. 143–145
Return and Answer to Writ of Garnishment as to Cannavest Corp. (filed 12/26/13)		Volume 1 Bates Nos. 146–147
	Exhibits to Return and Answer to Writ of Garnishment as to Cannavest Corp.	
Exhibit	Document Description	
I	Writ of Garnishment	Volume 1 Bates Nos. 148–154
Notice of Changes to Transcript of Judgment Debtor Examination of Michael J. Mona Jr. (filed 01/06/14)		Volume 1 Bates Nos. 155–158
Discovery Commissioners Report and Recommendations (filed 05/15/14)		Volume 1 Bates Nos. 159–162
Notice of Entry of Order Regarding the Discovery Commissioner's Report and Recommendation (filed 05/15/14)		Volume 1 Bates Nos. 163–168
Ex Parte Application for Examination of Judgment Debtor Examination of Michael J. Mona, Individually, and as Trustee of the Mona Family Trust Dated February 12, 2002, and Rhonda Mona as Trustee of the Mona Family trust Dated February 12, 2002 (filed 05/08/15)		Volume 1 Bates Nos. 169–172

	Exhibits to Ex Parte Application for Examination of Judgment Debtor Examination of Michael J. Mona, Individually, and as Trustee of the Mona Family Trust Dated February 12, 2002, and Rhonda Mona as Trustee of the Mona Family trust Dated February 12, 2002	
Exhibit	Document Description	
1	Definitions	Volume 1 Bates Nos. 173–179
	Order Regarding Motion for Protective Order on Order Shortening Time (filed 06/17/15)	Volume 1 Bates Nos. 180–182
	Notice of Entry of Order Regarding Motion for Protective Order on Order Shortening Time (filed 06/17/15)	Volume 1 Bates Nos. 183–187
	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 (filed 06/29/15)	Volume 1 Bates Nos. 188–204
	Exhibits to 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	
Exhibit	Document Description	
1	Post-Marital Property Settlement Agreement	Volume 1 Bates Nos. 205–217
2	Judgment Debtor Examination of Michael J. Mona	Volume 1 Bates Nos. 218–223
3	Rough Draft Transcript of Deposition of Rhonda H. Mona	Volume 1 Bates Nos. 224–233
4	Judgment and Findings of Fact and Conclusions of Law	Volume 2 Bates Nos. 234–254
	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 (filed 06/30/15)	Volume 2 Bates Nos. 255–257

Notice of Entry of 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 (filed 06/30/15)		Volume 2 Bates Nos. 258–263
Response to 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 (filed 07/07/15)		Volume 2 Bates Nos. 264–278
	Exhibits to Response to 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	
Exhibit	Document Description	
A	Findings of Fact and Conclusions of law (filed 03/06/12 in Superior Court of California Riverside)	Volume 2 Bates Nos. 279–295
B	Post-Marital Property Settlement Agreement	Volume 2 Bates Nos. 296–308
C	Declaration of Mike Mona in Support of Response to Order to Show Cause	Volume 2 Bates Nos. 309–310
Supplement to Response to 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 (filed 07/08/15)		Volume 2 Bates Nos. 311–316
Declaration in Support of Request for Contempt (filed 07/08/15)		Volume 2 Bates Nos. 317–324
Order Regarding 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 (filed 07/15/15)		Volume 2 Bates Nos. 325–335
Notice of Entry of 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 (filed 07/16/15)		Volume 2 Bates Nos. 336–349
Motion to Compel Application of Particular Assets Toward Satisfaction of Judgment (filed 07/16/15)		Volume 2 Bates Nos. 350–360

	Exhibits to Motion to Compel Application of Particular Assets Toward Satisfaction of Judgment	
Exhibit	Document Description	
1	Judgment Debtor Examination of Michael J. Mona, Jr.	Volume 2 Bates Nos. 361–370
2	Deposition of Rhonda Mona	Volume 2 Bates Nos. 371–376
Plaintiff's Memorandum of Fees and Costs Associated with Order to Show Cause Why Accounts of Rhonda Mona should Not be Subject to Execution and Why the Court Should Not Find Monas in Contempt (filed 07/20/15)		Volume 2 Bates Nos. 377–380
Motion on an Order Shortening Time for Bond Pending Appeal (filed 09/09/15)		Volume 2 Bates Nos. 381–391
	Exhibits to Motion on an Order Shortening Time for Bond Pending Appeal	
Exhibit	Document Description	
1	Order (filed 08-31-15)	Volume 2 Bates Nos. 392–395
2	Judgment (filed 04/27/12 in the Superior Court of California Riverside)	Volume 2 Bates Nos. 396–414
3	Deed of Trust	Volume 2 Bates Nos. 415–422
4	Deed of Trust with Assignment of Rents	Volume 2 Bates Nos. 423–430
Opposition to Motion on an Order Shortening Time for Bond Pending Appeal (filed 09/16/15)		Volume 2 Bates Nos. 431–439
	Exhibits to Opposition to Motion on an Order Shortening Time for Bond Pending Appeal	
Exhibit	Document Description	
A	Order (filed 08/31/15)	Volume 2 Bates Nos. 440–443
B	Transcript of Proceedings of July 9, 2015 Hearing (filed 07/14/15)	Volume 2 Bates Nos. 444–447
C	Third Amended Complaint (filed 07/15/14)	Volume 2 Bates Nos. 448–459

	Exhibits to Opposition to Motion on an Order Shortening Time for Bond Pending Appeal (cont.)	
D	Complaint (filed 09/11/15)	Volume 2 Bates Nos. 460–473
E	Far West’s Motion to Intervene, for a finding and Order that the Post-Marital Agreement is void Based on the Principles of Res Judicata and Issue Preclusion, and that the Plaintiff and Defendant are Jointly Liable for the Judgment Held by Intervenor (filed 09/04/15)	Volume 3 Bates Nos. 474–517
Second Motion to Compel Application of Particular Assets Towards Satisfaction of Judgment (filed 10/12/15)		Volume 3 Bates Nos. 518–524
	Exhibits to Second Motion to Compel Application of Particular Assets Towards Satisfaction of Judgment	
Exhibit	Document Description	
1	Judgment Debtor Examination of Michael J. Mona, Jr.	Volume 3 Bates Nos. 525–531
2	Order Granting Temporary Stay (filed 07/20/15)	Volume 3 Bates Nos. 532–534
3	Order (filed 08/31/15)	Volume 3 Bates Nos. 535–538
4	Decree of Divorce (filed 07/23/15)	Volume 3 Bates Nos. 539–545
Order Regarding Motion on an Order Shortening time for Bond Pending Appeal (filed 10/16/15)		Volume 3 Bates Nos. 546–553
Plaintiff Far West Industries’ Motion for Determination of Priority of Garnishment (filed 02/16/16)		Volume 3 Bates Nos. 554–563
	Exhibits to Plaintiff Far West Industries’ Motion for Determination of Priority of Garnishment	
Exhibit	Document Description	
1	Judgment (filed 04/27/12 in the Superior Court of the State of California, Riverside)	Volume 3 Bates Nos. 564–567

	Exhibits to Plaintiff Far West Industries' Motion for Determination of Priority of Garnishment (cont.)	
2	Case Summary	Volume 3 Bates Nos. 568–570
3	Writ of Execution	Volume 3 Bates Nos. 571–575
4	Instructions to the Sheriff/Constable-Clark County	Volume 3 Bates Nos. 576–589
5	Writ of Garnishment	Volume 3 Bates Nos. 590–598
6	Email Chain between Tom Edward and Tye Hanseen	Volume 3 Bates Nos. 599–602
7	Decree of Divorce (filed 07/23/2015)	Volume 3 Bates Nos. 603–609
Plaintiff Far West Industries' Motion: (1) For Default Judgment Against Roen Ventures, LLC for Untimely Answers to Writ of Garnishment and Interrogatories; and (2) to Compel Roen Ventures, LLC's Turnover of Payment Made to, on Behalf of, or for the Benefit of Michael J. Mona, Jr. (filed 02/16/16)		Volume 3 Bates Nos. 610–622
	Exhibits to Plaintiff Far West Industries' Motion: (1) For Default Judgment Against Roen Ventures, LLC for Untimely Answers to Writ of Garnishment and Interrogatories; and (2) to Compel Roen Ventures, LLC's Turnover of Payment Made to, on Behalf of, or for the Benefit of Michael J. Mona, Jr.	
Exhibit	Document Description	
1	Judgment (filed 04/27/12 in the Superior Court of the State of California, Riverside)	Volume 3 Bates Nos. 623–626
2	Management Agreement	Volume 3 Bates Nos. 627–630
3	Management Agreement	Volume 3 Bates Nos. 631–635
4	Writ of Execution	Volume 3 Bates Nos. 636–641
5	Instructions to the Sheriff/Constable-Clark County	Volume 3 Bates Nos. 642–656

	Exhibits to Plaintiff Far West Industries' Motion: (1) For Default Judgment Against Roen Ventures, LLC for Untimely Answers to Writ of Garnishment and Interrogatories; and (2) to Compel Roen Ventures, LLC's Turnover of Payment Made to, on Behalf of, or for the Benefit of Michael J. Mona, Jr. (cont.)	
6	Writ of Garnishment	Volume 3 Bates Nos. 657–676
Plaintiff Far West Industries' Motion to Reduce Sanctions Order to Judgment (filed 02/19/16)		Volume 3 Bates Nos. 677–679
Appendix of Exhibits to Plaintiff Far West Industries' Motion to Reduce Sanctions Order to Judgment (filed 02/19/16)		
	Exhibits to Appendix of Exhibits to Plaintiff Far West Industries' Motion to Reduce Sanctions Order to Judgment	
Exhibit	Document Description	
1	Order Regarding Order to Show Cause Why Accounts of Rhonda Mona Should Not Be Subject to Execution and Why the Court Should Not Find Monas in Contempt (filed 07/15/15) (cont. in Vol. 4)	Volume 3 Bates Nos. 680–691
2	Plaintiff's Memorandum of Fees and Costs Associated With Order to Show Cause Why Accounts of Rhonda Mona Should Not be Subject to Execution and Why the Court Should Not Find Monas in Contempt (filed 07/20/15)	Volume 3 Bates Nos. 692–696
3	Transcript of Show Cause Hearing: Why Accounts Of Rhonda Mona Should Not Be Subject To Execution And Why The Court Should Not Find Monas In Contempt (filed 07/14/15)	Volume 4 Bates Nos. 697–807
4	Petition for Writ of Mandamus or Prohibition (filed 07/17/15)	Volume 4 Bates Nos. 808–849
5	Order Granting Temporary Stay (filed 07/20/15)	Volume 4 Bates Nos. 850–852
6	Order (filed 10/16/15)	Volume 4 Bates Nos. 853–856

	Exhibits to Appendix of Exhibits to Plaintiff Far West Industries' Motion to Reduce Sanctions Order to Judgment (cont.)	
7	Order Denying Motion (filed 11/19/15)	Volume 4 Bates Nos. 857–860
8	Motion to Dismiss (filed December 4, 2015)	Volume 4 Bates Nos. 861–941 Volume 5 Bates Nos. 942–957
9	Defendant Michael J. Mona, Jr.'s Reply in Support of Motion to Dismiss (filed 01/26/16)	Volume 5 Bates Nos. 958–978
Amended Appendix of Exhibits to Plaintiff Far West Industries' Motion to Reduce Sanctions Order to Judgment (filed 02/22/16)		Volume 5 Bates Nos. 979–981
	Exhibits to Amended Appendix of Exhibits to Plaintiff Far West Industries' Motion to Reduce Sanctions Order to Judgment	
Exhibit	Document Description	
4	Petition for Writ of Mandamus or Prohibition (filed 07/17/15)	Volume 5 Bates Nos. 982–1023
Mona's Opposition to Far West's Motion for Determination of Priority of Garnishment and Countermotion to Discharge Garnishment and for Return of Proceeds (filed 03/04/16)		Volume 5 Bates Nos. 1024–1053
	Exhibits to Mona's Opposition to Far West's Motion for Determination of Priority of Garnishment and Countermotion to Discharge Garnishment and for Return of Proceeds	
Exhibit	Document Description	
A	Writ of Garnishment	Volume 5 Bates Nos. 1054–1060
Third Party Roen Ventures, LLCs' Opposition to Motion: (1) For Default Judgment Against Roen Ventures, LLC for Untimely Answers to Writ of Garnishment and Interrogatories; and (2) to Compel Roen Ventures, LLC's Turnover of Payment Made to, on Behalf of, or for the Benefit of Michael J. Mona, Jr.; and Countermotion for Attorney's Fees and Costs (filed 03/04/16)		Volume 5 Bates Nos. 1061–1080

	Exhibits to Third Party Roen Ventures, LLCs' Opposition to Motion: (1) For Default Judgment Against Roen Ventures, LLC for Untimely Answers to Writ of Garnishment and Interrogatories; and (2) to Compel Roen Ventures, LLC's Turnover of Payment Made to, on Behalf of, or for the Benefit of Michael J. Mona, Jr.; and Countermotion for Attorney's Fees and Costs	
Exhibit	Document Description	
1	Declaration of Bart Mackay in Support of Opposition to Plaintiff Far West Industries' Motion: (1) for Default Judgment Against Roen Ventures, etc.	Volume 5 Bates Nos. 1081–1090
2	Declaration of Dylan Ciciliano in Support of Opposition to Plaintiff Far West Industries' Motion: (1) for Default Judgment Against Roen Ventures, etc.	Volume 5 Bates Nos. 1091–1102
3	Complaint (filed 02/07/14)	Volume 5 Bates Nos. 1103–1110
4	Motion to Enforce Settlement Agreement (filed 11/10/15)	Volume 5 Bates Nos. 1111–1144
5	Notice of Entry of Order (01/29/16)	Volume 5 Bates Nos. 1145–1151
6	Motion to Dismiss the Roen Defendants with Prejudice (filed 03/03/16)	Volume 5 Bates Nos. 1152–1171
7	Writ of Garnishment	Volume 5 Bates Nos. 1172–1179
8	Management Agreement	Volume 5 Bates Nos. 1180–1184
Mike Mona's Opposition to Motion to Reduce Sanctions Order to Judgment (filed 03/07/16)		Volume 6 Bates Nos. 1185–1192
Non-Party Rhonda Mona's Opposition to Plaintiff Far West Industries' Motion to Reduce Sanctions Order to Judgment (filed 03/07/16)		Volume 6 Bates Nos. 1193–1200

	Exhibits to Non-Party Rhonda Mona's Opposition to Plaintiff Far West Industries' Motion to Reduce Sanctions Order to Judgment	
Exhibit	Document Description	
A	Defendant's Opposition to Countermotion for Summary Judgment (filed 01/19/16)	Volume 6 Bates Nos. 1201–1223
B	Order Regarding Plaintiff Far West Industries' Countermotion for Summary Judgment	Volume 6 Bates Nos. 1224–1227
C	Petition for Writ of Mandamus or Prohibition (filed 07/17/15)	Volume 6 Bates Nos. 1228–1269
Plaintiff Far West Industries' Reply to Mona's Opposition to Far West's Motion for Determination of Priority of Garnishment and Opposition to Countermotion to Discharge Garnishment and for Return of Proceeds (filed 03/14/16)		Volume 6 Bates Nos. 1270–1282
	Exhibits to Plaintiff Far West Industries' Reply to Mona's Opposition to Far West's Motion for Determination of Priority of Garnishment and Opposition to Countermotion to Discharge Garnishment and for Return of Proceeds	
Exhibit	Document Description	
8	Writ of Garnishment	Volume 6 Bates Nos. 1283–1289
9	Judgment Debtor Examination of Michael J. Mona, Jr.	Volume 6 Bates Nos. 1290–1294
10	Deposition of Rhonda Mona	Volume 6 Bates Nos. 1295–1298
11	Checks	Volume 6 Bates Nos. 1299–1302
Plaintiff Far West Industries' Reply in Support of Motion to Reduce Sanctions Order to Judgment (filed 03/14/16)		Volume 6 Bates Nos. 1303–1309
Appendix of Exhibits to Plaintiff Far West Industries' Reply in Support of Motion to Reduce Sanctions Order to Judgment (filed 03/14/16)		Volume 6 Bates Nos. 1310–1311

	Exhibits to Appendix of Exhibits to Plaintiff Far West Industries' Reply in Support of Motion to Reduce Sanctions Order to Judgment	
Exhibit	Document Description	
11	Supplemental Appendix to Real Party In Interest's Answering Brief	Volume 6 Bates Nos. 1312–1424 Volume 7 Bates Nos. 1425–1664 Volume 8 Bates Nos. 1665–1890 Volume 9 Bates Nos. 1891–2127 Volume 10 Bates Nos. 2128–2312
Plaintiff Far West Industries' Reply to Roen Venture LLC's Opposition to Motion: (1) For Default Judgment Against Roen Ventures, LLC for Untimely Answers to Writ of Garnishment and Interrogatories; and (2) to Compel Roen Ventures, LLC's Turnover of Payment Made to, on Behalf of, or for the Benefit of Michael J. Mona, Jr., and Opposition to Countermotion for Attorney's Fees and Costs (filed 03/14/16)		Volume 10 Bates Nos. 2313–2322
Amended Appendix of Exhibits to Plaintiff Far West Industries' Reply in Support of Motion to Reduce Sanctions Order to Judgment (filed 03/15/16)		Volume 10 Bates Nos. 2323–2325
	Exhibits to Amended Appendix of Exhibits to Plaintiff Far West Industries' Reply in Support of Motion to Reduce Sanctions Order to Judgment	
Exhibit	Document Description	
10	Real Party in Interest's Answering Brief	Volume 10 Bates Nos. 2326–2367 Volume 11 Bates Nos. 2368–2385

	Exhibits to Amended Appendix of Exhibits to Plaintiff Far West Industries' Reply in Support of Motion to Reduce Sanctions Order to Judgment (cont.)	
11	Supplemental Appendix to Real Party in Interest's Answering Brief	Volume 11 Bates Nos. 2386–2607 Volume 12 Bates Nos. 2608–2836 Volume 13 Bates Nos. 2837–3081 Volume 14 Bates Nos. 3082–3138
Mona's Reply in Support of Countermotion to Discharge Garnishment and for Return of Proceeds (filed 03/23/16)		Volume 14 Bates Nos. 3139–3154
Errata to Non-Party Rhonda Mona's Opposition to Plaintiff Far West Industries' Motion to Reduce Sanctions Order to Judgment (filed 03/29/16)		Volume 14 Bates Nos. 3155–3156
Non-Party Rhonda Mona's Supplemental Briefing Following Recent Oral Argument Concerning Plaintiff Far West Industries' Motion to Reduce Sanctions Order to Judgment (filed 04/22/16)		Volume 14 Bates Nos. 3157–3172
	Exhibits to Non-Party Rhonda Mona's Supplemental Briefing Following Recent Oral Argument Concerning Plaintiff Far West Industries' Motion to Reduce Sanctions Order to Judgment	
Exhibit	Document Description	
A	Defendant's Opposition to Countermotion for Summary Judgment (filed 01/19/16)	Volume 14 Bates Nos. 3173–3193
B	Defendants Rhonda Helen Mona, Michael Mona II, and Lundene Enterprises, LLC's Reply to Plaintiff's Opposition to Motion to Dismiss (filed 01/26/16)	Volume 14 Bates Nos. 3194–3210
C	Transcript of Proceedings: Plaintiff Far West Industries' Opposition to Defendants' Motion to Dismiss and Countermotion for Summary Judgment (filed 04/06/26)	Volume 14 Bates Nos. 3211–3279
D	Decree of Divorce (filed 07/23/15)	Volume 14 Bates Nos. 3280–3286

Plaintiff Far West Industries' Supplemental Brief Regarding Motion to Reduce Sanctions Order to Judgment (filed 04/22/16)		Volume 14 Bates Nos. 3287–3298
	Exhibits to Plaintiff Far West Industries' Supplemental Brief Regarding Motion to Reduce Sanctions Order to Judgment	
Exhibit	Document Description	
12	Writ of Garnishment-Bank of George	Volume 14 Bates Nos. 3299–3305
13	Writ of Garnishment-Bank of Nevada	Volume 14 Bates Nos. 3306–3313
14	Mona's Redacted Bank Records	Volume 14 Bates Nos. 3314–3327
Supplemental Brief Regarding Judicial Estoppel and Reducing the Sanction Order to Judgment (filed 04/23/16)		Volume 15 Bates Nos. 3328–3346
Order Regarding Plaintiff Far West Industries' Motion: (1) For Default Judgment Against Roen Ventures, LLC for Untimely Answers to Writ of Garnishment Interrogatories; and (2) to compel Roen Ventures, LLC's Turnover of Payments Made to, on Behalf of, or for the Benefit of Michael J. Mona, Jr. (filed 04/28/16)		Volume 15 Bates Nos. 3347–3350
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 06/21/16)		Volume 15 Bates Nos. 3351–3356
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 (filed 06/21/16)		Volume 15 Bates Nos. 3357–3365
Notice of Entry of Order Shortening Time and Notice of Hearing (filed 07/07/16)		Volume 15 Bates Nos. 3366–3372
Joint Case Appeal Statement (filed 07/14/16)		Volume 15 Bates Nos. 3373–3378

Joint Notice of Appeal (filed 07/15/16)		Volume 15 Bates Nos. 3379–3397
Claim of Exemption (filed 07/15/16)		Volume 15 Bates Nos. 3398–3400
Plaintiff's Far West Industries' Objection to Claim of Exception from Execution on an Order Shortening Time (filed 07/21/16)		Volume 15 Bates Nos. 3401–3411
	Exhibits to Plaintiff's Far West Industries' Objection to Claim of Exception from Execution on an Order Shortening Time	
Exhibit	Document Description	
1	Writ of Garnishment-Michael Mona	Volume 15 Bates Nos. 3412–3416
2	Writ of Execution	Volume 15 Bates Nos. 3417–3421
Memorandum of Points and Authorities in Support of Claim of Exemption and Discharge (filed 07/29/16)		Volume 15 Bates Nos. 3422–3452
	Exhibits to Memorandum of Points and Authorities in Support of Claim of Exemption and Discharge	
Exhibit	Document Description	
A	Legislative History related to 120 day expiration period	Volume 15 Bates Nos. 3453–3501
B	Notice of Entry of Decree of Divorce	Volume 15 Bates Nos. 3502–3510
C	Plaintiff's Opposition to Far West's Motion to Intervene for a Finding and Order that the Post-Marital Agreement is Void Based on the Principles of Res Judicata and Issue Preclusion, and that the Plaintiff and Defendant are Jointly Liable for the Judgment Held by Intervenor and Plaintiff's Countermotion for Far West to Pay Plaintiff's Attorneys Fees and Costs Incurred Pursuant to NRS 12.130(1)(d)	Volume 15 Bates Nos. 3511–3524

	Exhibits to Memorandum of Points and Authorities in Support of Claim of Exemption and Discharge (cont.)	
D	Defendant Michael Mona's Joinder to Plaintiff's Opposition to Far West's Motion to Intervene for a Finding and Order that the Post-Marital Agreement is Void Based on the Principles of Res Judicata and Issue Preclusion, and that the Plaintiff and Defendant are Jointly Liable for the Judgment Held by Intervenor and Plaintiff's Countermotion for Far West to Pay Plaintiff's Attorneys Fees and Costs Incurred Pursuant to NRS 12.130(1)(d) (filed 09/29/15)	Volume 15 Bates Nos. 3525–3528
E	Notice of Entry of Order (filed 12/01/15)	Volume 15 Bates Nos. 3529–3533
F	Writ of Garnishment-Michael Mona	Volume 15 Bates Nos. 3534–3535
G	Constable's return of Notice of Execution after Judgment and Writ of Execution to Michael Mona	Volume 15 Bates Nos. 3536–3545
H	Writ of Garnishment- Michael Mona	Volume 15 Bates Nos. 3546–3556
I	Claim of Exemption (filed 07/15/16)	Volume 15 Bates Nos. 3557–3560
J	Mona's Opposition to Far West's Motion for Determination of Priority of Garnishment and Countermotion to Discharge Garnishment and for Return of Proceeds (filed 03/04/16)	Volume 16 Bates Nos. 3561–3598
K	Mona's Reply in Support of Countermotion to Discharge Garnishment and for Return of Proceeds (filed 03/23/16)	Volume 16 Bates Nos. 3599–3614
L	NRS 21.112	Volume 16 Bates Nos. 3615–3616
M	Affidavit of Claiming Exempt Property form	Volume 16 Bates Nos. 3617–3618
Order Sustaining Plaintiff Far West Industries' Objection to Claim of Exemption from Execution (filed 08/09/16)		Volume 16 Bates Nos. 3619–3621
Memorandum of Points and authorizes in Support of Claim of Exemption and Motion to Discharge Garnishment (filed 11/10/16)		Volume 16 Bates Nos. 3622–3659

Appendix of Exhibits Attached to Memorandum of Points and Authorities in Support of Claim of Exemption and Motion for Discharge of Garnishment (filed 11/10/16)		Volume 16 Bates Nos. 3660–3662
	Exhibits to Appendix of Exhibits Attached to Memorandum of Points and Authorities in Support of Claim of Exemption and Motion for Discharge of Garnishment	
Exhibit	Document Description	
A	Nevada Assembly Bill 247, Chapter 338, Page 699 (1989)	Volume 16 Bates Nos. 3663–3711
B	Decree of Divorce dated July 23, 2015	Volume 16 Bates Nos. 3712–3718
C	Rhonda’s Opposition to Motion to Intervene dated September 28, 2015	Volume 16 Bates Nos. 3719–3731
D	Mona’s September 29, 2015 Joinder to Rhonda’s Opposition	Volume 16 Bates Nos. 3732–3735
E	November 25, 2015 Order Denying Intervention and awarding fees and costs	Volume 16 Bates Nos. 3736–3738
F	Writ of Garnishment expiring April 29, 2016	Volume 16 Bates Nos. 3739–3740
G	Writ of Garnishment served July 1, 2016	Volume 16 Bates Nos. 3741–3748
H	July 5, 2016 correspondence from Constable with Notice and Writ of Execution	Volume 16 Bates Nos. 3749–3758
I	Writ of Execution and Writ of Garnishment served October 31, 2016	Volume 16 Bates Nos. 3759–3769
J	Claim of Exemption forms from Clark County and the Self-Help Center	Volume 16 Bates Nos. 3770–3777
K	NRS 21.075	Volume 16 Bates Nos. 3778–3780
L	NRS 20.076	Volume 16 Bates Nos. 3781–3782
M	NRS 21.090	Volume 16 Bates Nos. 3783–3785
N	NRS 21.112	Volume 16 Bates Nos. 3786–3787
O	NRS 31.200	Volume 16 Bates Nos. 3788–3789
P	NRS 31.249	Volume 16 Bates Nos. 3790–3791

	Exhibits to Appendix of Exhibits Attached to Memorandum of Points and Authorities in Support of Claim of Exemption and Motion for Discharge of Garnishment (cont.)	
Q	NRS 31.260	Volume 16 Bates Nos. 3792–3793
R	NRS 31.270	Volume 16 Bates Nos. 3794–3795
S	NRS 31.295	Volume 16 Bates Nos. 3796–3797
T	NRS 31.296	Volume 16 Bates Nos. 3798–3799
U	EDCR 2.20	Volume 16 Bates Nos. 3800–3801
Claim of Exemption from Execution (filed 11/10/16)		Volume 17 Bates Nos. 3802–3985
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) (filed 11/21/16)		Volume 17 Bates Nos. 3986–4002
	Exhibits to 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)	
Exhibit	Document Description	
1	Findings of Fact and Conclusions of Law (filed 03/06/12 Superior Court of California, County of Riverside)	Volume 17 Bates Nos. 4003–4019
2	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 06/21/16)	Volume 17 Bates Nos. 4020–4026
3	Writ of Execution	Volume 17 Bates Nos. 4027–4035
4	Documents from the Office of the Ex–Officio Constable	Volume 17 Bates Nos. 4036–4039
Affidavit of Service upon CV Sciences, Inc. FKA Cannavest Corp. (filed 11/23/16)		Volume 17 Bates Nos. 4040–4041

Order Continuing Hearing re Far West's Objection to Claim of Exemption from Execution on an Order Shortening Time (filed 12/06/16)		Volume 17 Bates Nos. 4042–4043
Notice of Entry of Order Continuing Hearing on Objection to Claim of Exemption (filed 12/07/16)		Volume 18 Bates Nos. 4044–4048
Opposition to Plaintiff's Motion for Attorney Fees and Costs Pursuant to NRS 18.010(2)(b) (filed 12/08/16)		Volume 18 Bates Nos. 4049–4054
Declaration of Rosanna Wesp (filed 12/15/16)		Volume 18 Bates Nos. 4055–4056
Order Regarding Mona's Claim of Exemption, Motion to Discharge, Memorandum of Points and Authorities, and Far West's Objection to Claim or Exemption Regarding October 2016 Garnishment (filed 01/09/17)		Volume 18 Bates Nos. 4057–4058
Notice of Entry of Order (filed 01/10/17)		Volume 18 Bates Nos. 4059–4063
Application for Issuance of Order for Arrest of Defendant Michael J. Mona, Jr. (filed 01/20/17)		Volume 18 Bates Nos. 4064–4066
	Exhibits to Application for Issuance of Order for Arrest of Defendant Michael J. Mona, Jr.	
Exhibit	Document Description	
1	Subpoena Duces Tecum to Michael D. Sifen	Volume 18 Bates Nos. 4067–4076
Michael J. Mona's Opposition to Application for Issuance of Order for Arrest of Defendant Michael J. Mona, Jr. (filed 02/06/17)		Volume 18 Bates Nos. 4077–4089
	Exhibits to Michael J. Mona's Opposition to Application for Issuance of Order for Arrest of Defendant Michael J. Mona, Jr.	
Exhibit	Document Description	
1	Decree of Divorce (filed 07/23/15)	Volume 18 Bates Nos. 4090–4096
Reply to Opposition to Application for Issuance of Order for Arrest of Defendant Michael J. Mona, Jr. (filed 02/14/17)		Volume 18 Bates Nos. 4097–4107
	Exhibits to Reply to Opposition to Application for Issuance of Order for Arrest of Defendant Michael J. Mona, Jr.	
Exhibit	Document Description	
A	Decree of Divorce (filed 07/23/15)	Volume 18 Bates Nos. 4108–4114

	Exhibits to Reply to Opposition to Application for Issuance of Order for Arrest of Defendant Michael J. Mona, Jr. (cont.)	
B	Nevada Secretary of State Entity Details for CV Sciences, Inc.	Volume 18 Bates Nos. 4115–4118
C	Executive Employment Agreement	Volume 18 Bates Nos. 4119–4136
	Exhibits to Reply to Opposition to Application for Issuance of Order for Arrest of Defendant Michael J. Mona, Jr. (cont.)	
D	Judgment Debtor Examination of Michael Mona	Volume 18 Bates Nos. 4137–4148
E	Residential Lease/Rental Agreement	Volume 18 Bates Nos. 4149–4152
F	Management Agreement	Volume 18 Bates Nos. 4153–4157
Claim of Exemption from Execution (filed 03/24/17)		Volume 18 Bates Nos. 4158–4164
Appendix of Exhibits Attached to Memorandum of Points and Authorities in Support of Claim of Exemption and Motion to Discharge Garnishment (filed 03/24/17)		Volume 18 Bates Nos. 4165–4167
	Exhibits to Appendix of Exhibits Attached to Memorandum of Points and Authorities in Support of Claim of Exemption and Motion to Discharge Garnishment	
Exhibit	Document Description	
A	Nevada Assembly Bill 247, Chapter 338, Page 699 (1989)	Volume 18 Bates Nos. 4168–4216
B	Decree of Divorce dated July 23, 2015	Volume 18 Bates Nos. 4217–4223
C	Rhonda’s Opposition to Motion to Intervene dated September 28, 2015	Volume 18 Bates Nos. 4224–4236
D	Mona’s September 29, 2015 Joinder to Rhonda’s Opposition	Volume 18 Bates Nos. 4237–4240
E	November 25, 2015 Order Denying Intervention and awarding fees and costs	Volume 18 Bates Nos. 4241–4243
F	Writ of Garnishment expiring April 29, 2016	Volume 18 Bates Nos. 4244–4245

	Exhibits to Appendix of Exhibits Attached to Memorandum of Points and Authorities in Support of Claim of Exemption and Motion to Discharge Garnishment (cont.)	
G	Writ of Garnishment served July 1, 2016	Volume 18 Bates Nos. 4246–4253
H	July 5, 2016 correspondence from Constable with Notice and Writ of Execution	Volume 18 Bates Nos. 4254–4263
I	Writ of Execution and Writ of Garnishment served October 31, 2016	Volume 18 Bates Nos. 4264–4274
J	Claim of Exemption forms from Clark County and the Self-Help Center	Volume 18 Bates Nos. 4275–4282
K	NRS 21.075	Volume 19 Bates Nos. 4283–4285
L	NRS 20.076	Volume 19 Bates Nos. 4286–4287
M	NRS 21.090	Volume 19 Bates Nos. 4288–4290
N	NRS 21.112	Volume 19 Bates Nos. 4291–4292
O	NRS 31.200	Volume 19 Bates Nos. 4293–4294
P	NRS 31.249	Volume 19 Bates Nos. 4295–4296
Q	NRS 31.260	Volume 19 Bates Nos. 4297–4298
R	NRS 31.270	Volume 19 Bates Nos. 4299–4300
S	NRS 31.295	Volume 19 Bates Nos. 4301–4302
T	NRS 31.296	Volume 19 Bates Nos. 4303–4304
U	EDCR 2.20	Volume 19 Bates Nos. 4305–4306
V	Check to Mike Mona, Writ of Execution, and Writ of Garnishment	Volume 19 Bates Nos. 4307–4323

Memorandum of Points and Authorities in Support of Claim of Exemption and Motion to Discharge Garnishment (filed 03/30/17)		Volume 19 Bates Nos. 4324–4359
Appendix of Exhibits Attached to Memorandum of Points and Authorities in Support of Claim of Exemption and Motion to Discharge Garnishment (filed 03/30/17)		Volume 19 Bates Nos. 4360–4362
	Exhibits to Appendix of Exhibits Attached to Memorandum of Points and Authorities in Support of Claim of Exemption and Motion to Discharge Garnishment	
Exhibit	Document Description	
A	Nevada Assembly Bill 247, Chapter 338, Page 699 (1989)	Volume 19 Bates Nos. 4363–4411
B	Decree of Divorce dated July 23, 2015	Volume 19 Bates Nos. 4412–4418
C	Rhonda’s Opposition to Motion to Intervene dated September 28, 2015	Volume 19 Bates Nos. 4419–4431
D	Mona’s September 29, 2015 Joinder to Rhonda’s Opposition	Volume 19 Bates Nos. 4432–4435
E	November 25, 2015 Order Denying Intervention and awarding fees and costs	Volume 19 Bates Nos. 4436–4438
F	Writ of Garnishment expiring April 29, 2016	Volume 19 Bates Nos. 4439–4440
G	Writ of Garnishment served July 1, 2016	Volume 19 Bates Nos. 4441–4448
H	July 5, 2016 correspondence from Constable with Notice and Writ of Execution	Volume 19 Bates Nos. 4449–4458
I	Writ of Execution and Writ of Garnishment served October 31, 2016	Volume 19 Bates Nos. 4459–4469
J	Claim of Exemption forms from Clark County and the Self-Help Center	Volume 19 Bates Nos. 4470–4477
K	NRS 21.075	Volume 19 Bates Nos. 4478–4480
L	NRS 20.076	Volume 19 Bates Nos. 4481–4482
M	NRS 21.090	Volume 19 Bates Nos. 4483–4485
N	NRS 21.112	Volume 19 Bates Nos. 4486–4487

	Exhibits to Appendix of Exhibits Attached to Memorandum of Points and Authorities in Support of Claim of Exemption and Motion to Discharge Garnishment (cont.)	
O	NRS 31.200	Volume 19 Bates Nos. 4488–4489
P	NRS 31.249	Volume 19 Bates Nos. 4490–4491
Q	NRS 31.260	Volume 19 Bates Nos. 4492–4493
R	NRS 31.270	Volume 19 Bates Nos. 4494–4495
S	NRS 31.295	Volume 19 Bates Nos. 4496–4497
T	NRS 31.296	Volume 19 Bates Nos. 4498–4499
U	EDCR 2.20	Volume 19 Bates Nos. 4500–4501
V	Check to Mike Mona, Writ of Execution, and Writ of Garnishment	Volume 19 Bates Nos. 4502–4518
W	Check to CV Sciences, Writ of Execution, and Writ of Garnishment	Volume 20 Bates Nos. 4519–4535
X	Affidavit of Service regarding March 15, 2017 service of Writ of Execution, and Writ of Garnishment from Laughlin Township Constable’s Office	Volume 20 Bates Nos. 4536–4537
Claim of Exemption from Execution (filed 03/30/17)		Volume 20 Bates Nos. 4538–4544
Order Regarding Far West’s Application for Issuance of Order for Arrest of Defendant Michael J. Mona, Jr. (filed 03/31/17)		Volume 20 Bates Nos. 4545–4546
Notice of Entry of Order (filed 04/03/17)		Volume 20 Bates Nos. 4547–4550
Memorandum of Points and Authorities in Support of Claim of Exemption and Motion to Discharge Garnishment (filed 04/20/17)		Volume 20 Bates Nos. 4551–4585
Claim of Exemption from Execution (filed 04/20/17)		Volume 20 Bates Nos. 4586–4592

Appendix of Exhibits Attached to Memorandum of Points and Authorities in Support of Claim of Exemption and Motion to Discharge Garnishment (filed 04/20/17)		Volume 20 Bates Nos. 4593–4595
	Exhibits to Appendix of Exhibits Attached to Memorandum of Points and Authorities in Support of Claim of Exemption and Motion to Discharge Garnishment	
Exhibit	Document Description	
A	Nevada Assembly Bill 247, Chapter 338, Page 699 (1989)	Volume 20 Bates Nos. 4596–4644
B	Decree of Divorce dated July 23, 2015	Volume 20 Bates Nos. 4645–4651
C	Rhonda’s Opposition to Motion to Intervene dated September 28, 2015	Volume 20 Bates Nos. 4652–4664
D	Mona’s September 29, 2015 Joinder to Rhonda’s Opposition	Volume 20 Bates Nos. 4665–4668
E	November 25, 2015 Order Denying Intervention and awarding fees and costs	Volume 20 Bates Nos. 4669–4671
F	Writ of Garnishment expiring April 29, 2016	Volume 20 Bates Nos. 4672–4673
G	Writ of Garnishment served July 1, 2016	Volume 20 Bates Nos. 4674–4681
H	July 5, 2016 correspondence from Constable with Notice and Writ of Execution	Volume 20 Bates Nos. 4682–4691
I	Writ of Execution and Writ of Garnishment served October 31, 2016	Volume 20 Bates Nos. 4692–4702
J	Claim of Exemption forms from Clark County and the Self-Help Center	Volume 20 Bates Nos. 4703–4710
K	NRS 21.075	Volume 20 Bates Nos. 4711–4713
L	NRS 20.076	Volume 20 Bates Nos. 4714–4715
M	NRS 21.090	Volume 20 Bates Nos. 4716–4718
N	NRS 21.112	Volume 20 Bates Nos. 4719–4720
O	NRS 31.200	Volume 20 Bates Nos. 4721–4722
P	NRS 31.249	Volume 20 Bates Nos. 4723–4724

	Exhibits to Appendix of Exhibits Attached to Memorandum of Points and Authorities in Support of Claim of Exemption and Motion to Discharge Garnishment (cont.)	
Q	NRS 31.260	Volume 20 Bates Nos. 4725–4726
R	NRS 31.270	Volume 20 Bates Nos. 4727–4728
S	NRS 31.295	Volume 20 Bates Nos. 4729–4730
T	NRS 31.296	Volume 20 Bates Nos. 4731–4732
U	EDCR 2.20	Volume 20 Bates Nos. 4733–4734
V	Check to Mike Mona, Writ of Execution, and Writ of Garnishment	Volume 20 Bates Nos. 4735–4751
W	Check to CV Sciences, Writ of Execution, and Writ of Garnishment	Volume 20 Bates Nos. 4752–4768
X	Affidavit of Service regarding March 15, 2017 service of Writ of Execution, and Writ of Garnishment from Laughlin Township Constable’s Office	Volume 21 Bates Nos. 4769–4770
Y	Affidavit of Service regarding April 3, 2017 service of Writ of Execution, and Writ of Garnishment from Laughlin Township Constable’s Office	Volume 21 Bates Nos. 4771–4788
Stipulation and Order Regarding Amended Nunc Pro Tunc Order Regarding Plaintiff Far West Industries’ Motion to Reduce Sanctions Order to Judgment (filed 04/24/17)		Volume 21 Bates Nos. 4789–4791
Notice of Entry Stipulation and Order Regarding amended Nunc Pro Tunc Order regarding Plaintiff Far West Industries’ Motion to Reduce Sanctions Order to Judgment (filed 04/25/17)		Volume 21 Bates Nos. 4792–4797
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) (filed 05/02/17)		Volume 21 Bates Nos. 4798–4817

	Exhibits to 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)	
Exhibit	Document Description	
1	Findings of Fact and Conclusions of law (filed 03/06/12 Superior Court of California Riverside)	Volume 21 Bates Nos. 4818–4834
2	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 06/21/16)	Volume 21 Bates Nos. 4835–4841
3	Nevada Secretary of State Entity Details for CV Sciences, Inc.	Volume 21 Bates Nos. 4842–4845
4	Answers to Interrogatories	Volume 21 Bates Nos. 4846–4850
Stipulation and Order Regarding Writ of Garnishment Served 04/03/17 and Claim of Exemption , and Vacating Related Hearing without Prejudice (filed 05/15/17)		Volume 21 Bates Nos. 4851–4854
Notice of Entry of Stipulation and Order Regarding Writ of Garnishment Served 04/03/17 and Claim of Exemption , and Vacating Related Hearing without Prejudice (filed 05/16/17)		Volume 21 Bates Nos. 4855–4861
Claim of Exemption from Execution (filed 05/23/17)		Volume 21 Bates Nos. 4862–4868
Appendix of Exhibits Attached to Memorandum of Points and Authorities in Support of Claim of Exemption and Motion to Discharge Garnishment (filed 05/23/17)		Volume 21 Bates Nos. 4869–4871
	Exhibits to Appendix of Exhibits Attached to Memorandum of Points and Authorities in Support of Claim of Exemption and Motion to Discharge Garnishment	
Exhibit	Document Description	
A	Nevada Assembly Bill 247, Chapter 338, Page 699 (1989)	Volume 21 Bates Nos. 4872–4920
B	Decree of Divorce dated July 23, 2015	Volume 21 Bates Nos. 4921–4927
C	Rhonda’s Opposition to Motion to Intervene dated September 28, 2015	Volume 21 Bates Nos. 4928–4940

	Exhibits to Appendix of Exhibits Attached to Memorandum of Points and Authorities in Support of Claim of Exemption and Motion to Discharge Garnishment (cont.)	
D	Mona's September 29, 2015 Joinder to Rhonda's Opposition	Volume 21 Bates Nos. 4941–4944
E	November 25, 2015 Order Denying Intervention and awarding fees and costs	Volume 21 Bates Nos. 4945–4947
F	Writ of Garnishment expiring April 29, 2016	Volume 21 Bates Nos. 4948–4949
G	Writ of Garnishment served July 1, 2016	Volume 21 Bates Nos. 4950–4957
H	July 5, 2016 correspondence from Constable with Notice and Writ of Execution	Volume 21 Bates Nos. 4958–4967
I	Writ of Execution and Writ of Garnishment served October 31, 2016	Volume 21 Bates Nos. 4968–4978
J	Claim of Exemption forms from Clark County and the Self-Help Center	Volume 21 Bates Nos. 4979–4986
K	NRS 21.075	Volume 21 Bates Nos. 4987–4989
L	NRS 20.076	Volume 21 Bates Nos. 4990–4991
M	NRS 21.090	Volume 21 Bates Nos. 4992–4994
N	NRS 21.112	Volume 21 Bates Nos. 4995–4996
O	NRS 31.200	Volume 21 Bates Nos. 4997–4998
P	NRS 31.249	Volume 21 Bates Nos. 4999–5000
Q	NRS 31.260	Volume 21 Bates Nos. 5001–5002
R	NRS 31.270	Volume 21 Bates Nos. 5003–5004
S	NRS 31.295	Volume 21 Bates Nos. 5005–5006
T	NRS 31.296	Volume 21 Bates Nos. 5007–5008

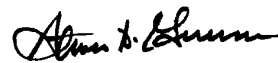
	Exhibits to Appendix of Exhibits Attached to Memorandum of Points and Authorities in Support of Claim of Exemption and Motion to Discharge Garnishment (cont.)	
U	EDCR 2.20	Volume 21 Bates Nos. 5009–5010
V	Check to Mike Mona, Writ of Execution, and Writ of Garnishment	Volume 22 Bates Nos. 5011–5027
W	Check to CV Sciences, Writ of Execution, and Writ of Garnishment	Volume 22 Bates Nos. 5028–5044
X	Affidavit of Service regarding March 15, 2017 service of Writ of Execution, and Writ of Garnishment from Laughlin Township Constable’s Office	Volume 22 Bates Nos. 5045–5046
Y	Affidavit of Service regarding April 3, 2017 service of Writ of Execution, and Writ of Garnishment from Laughlin Township Constable’s Office	Volume 22 Bates Nos. 5047–5064
Z	Writ of Execution and Writ of Garnishment served May 9, 2017	Volume 22 Bates Nos. 5065–5078
Memorandum of Points and Authorities in Support of Claim of Exemption and Motion to Discharge Garnishment (filed 05/23/17)		Volume 22 Bates Nos. 5079–5114
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) (filed 06/05/17)		Volume 22 Bates Nos. 5115–5131
	Exhibits to 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)	
Exhibit	Document Description	
1	Findings of Fact and Conclusions of law (filed 03/06/12 in Superior Court of California Riverside)	Volume 22 Bates Nos. 5132–5148
2	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 06/21/16)	Volume 22 Bates Nos. 5149–5155

	Exhibits to 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) (cont.)	
3	Affidavit of Service by Laughlin Township Constable's Office	Volume 22 Bates Nos. 5156–5157
4	Affidavit of Service by Laughlin Township Constable's Office	Volume 22 Bates Nos. 5158–5159
Notice of Entry of Order Sustaining Plaintiff Far West Industries' Objection to Claim of Exemption from Execution (filed 07/19/17)		Volume 22 Bates Nos. 5160–5165
Ex Parte Motion for Order Allowing Judgment Debtor Examination of Michael J. Mona, Jr., Individually, and as Trustee of the Mona Family Trust Dated February 12, 2002 (filed 08/16/17)		Volume 22 Bates Nos. 5166–5179
Notice of Appeal (filed 08/18/17)		Volume 22 Bates Nos. 5180–5182
	Exhibits to Notice of Appeal	
Exhibit	Document Description	
1	Notice of Entry of Order Sustaining Plaintiff Far West Industries' Objection to Claim of Exemption from Execution (filed 07/19/17)	Volume 22 Bates Nos. 5183–5189
2	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 (filed 06/21/16)	Volume 22 Bates Nos. 5190–5199
Order for Examination of Judgment Debtor Michael J. Mona, Jr., Individually, and as Trustee of the Mona Family Trust dated February 12, 2002 (filed 08/18/17)		Volume 22 Bates Nos. 5200–5211
Far West Industries' Reply to CV Sciences Inc.'s Answers to Writ of Garnishment Interrogatories and Ex parte Request for Order to Show Cause Why CV Sciences Inc. Should Not be Subjected to Garnishment Penalties (filed 11/20/17)		Volume 22 Bates Nos. 5212–5223

	Exhibits to Far West Industries' Reply to CV Sciences Inc.'s Answers to Writ of Garnishment Interrogatories and Ex parte Request for Order to Show Cause Why CV Sciences Inc. Should Not be Subjected to Garnishment Penalties	
Exhibit	Document Description	
1	Answers to Interrogatories to be Answered by Garnishee	Volume 22 Bates Nos. 5224–5229
2	United States Securities and Exchange Commission, Form 10-K	Volume 22 Bates Nos. 5230–5233
3	Judgment Debtor Examination of Michael J. Mona, Jr.	Volume 22 Bates Nos. 5234–5241
4	Excerpts of Car Lease Documents	Volume 22 Bates Nos. 5242–5244
5	Excerpts of Life Insurance Premium Documents	Volume 22 Bates Nos. 5245–5250
6	Excerpts of Car Insurance Documents	Volume 23 Bates Nos. 5251–5254
7	Laughlin Constable Affidavit of Service	Volume 23 Bates Nos. 5255–5256
8	Laughlin Constable Affidavit of Mailing	Volume 23 Bates Nos. 5257–5258
9	Answers to Writ of Garnishment Interrogatories	Volume 23 Bates Nos. 5259–5263
10	Email Exchange between Andrea Gandara an Tye Hanseen June 26, 2017 through August 26, 2017	Volume 23 Bates Nos. 5264–5267
11	Email Exchange between Andrea Gandara an Tye Hanseen, November 2017	Volume 23 Bates Nos. 5268–5275
Docket of Case No. A670352		Volume 23 Bates Nos. 5276–5284

EXHIBIT 3

EXHIBIT 3



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

FAR WEST INDUSTRIES,	.	CASE NO. A-670352
	.	
Plaintiff,	.	DEPT. NO. XV
	.	
vs.	.	TRANSCRIPT OF
	.	PROCEEDINGS
RIO VISTA NEVADA, LLC, et al..	.	
	.	
Defendants.	.	
	.	
<u>And all related claims.</u>		

BEFORE THE HONORABLE JOE HARDY, DISTRICT COURT JUDGE

**SHOW CAUSE HEARING: WHY ACCOUNTS OF RHONDA MONA SHOULD NOT BE
SUBJECT TO EXECUTION AND WHY THE COURT SHOULD NOT FIND MONAS
IN CONTEMPT**

THURSDAY, JULY 9, 2015

APPEARANCES:

FOR THE PLAINTIFF:	F. THOMAS EDWARDS, ESQ. ANDREA GANDARA, ESQ.
FOR THE DEFENDANTS:	TERRY A. COFFING, ESQ.

ALSO PRESENT:

FOR RHONDA MONA:	ANDREW KYNASTON, ESQ. ED KAINEN, ESQ.
------------------	--

COURT RECORDER:

MATTHEW YARBROUGH
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Englewood, CO 80110
(303) 798-0890

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 LAS VEGAS, NEVADA, THURSDAY, JULY 9, 2015, 10:10 A.M.

2 THE COURT: Far West Industries vs. Rio Vista
3 Nevada, A-670352. We have a few appearances here. Could you
4 please make them?

5 MR. COFFING: Terry Coffing on behalf of Mike Mona,
6 and for the purposes of this motion, on behalf of Rhonda Mona.

7 MR. EDWARDS: Tom Edwards on behalf of Far West.

8 MS. GANDARA: Andrea Gandara, also on behalf of Far
9 West.

10 THE COURT: I'm sorry. What was your last name,
11 ma'am?

12 MS. GANDARA: It's Gandara.

13 THE COURT: How do you spell that?

14 MS. GANDARA: G-a-n-d-a-r-a.

15 MR. COFFING: Go ahead.

16 MR. our Honor, Andrew Kynaston and Ed Kainen. We're
17 not appearing officially in this case, but we represent Rhonda
18 Mona in the divorce case that's been filed in Family Court.
19 And she asked us to be present today for this hearing.

20 THE COURT: Did you bring popcorn?

21 MR. KYNASTON: Next time, Your Honor.

22 THE COURT: So, Mr. Coffing, for purpose -- for
23 generally, you represent Mr. Mona. For purposes of this
24 hearing, you represent both Mr. Mona and Mrs. Mona; is that
25 correct?

1 MR. COFFING: Yes, Your Honor.

2 THE COURT: Okay.

3 MR. COFFING: Because of the timing, you'll recall
4 we're here on an ex-parte shortening -- Order Shortening Time.
5 And obviously, since you signed your order, Ms. Mona has
6 sought divorce counsel, but she hasn't had the opportunity to
7 get separate counsel in this. And I think to the extent Mike
8 and Rhonda's interests are aligned in the same -- for the
9 purpose of this motion, my client has agreed to waive any
10 potential conflict that might exist.

11 THE COURT: Okay. Thank you. Mr. Edwards, go
12 ahead.

13 MR. EDWARDS: Your Honor --

14 THE COURT: Oh, before -- sorry. Sorry for saying
15 go ahead and then cutting you off about a split second later.

16 Just so everyone knows, I have reviewed the Ex-Parte
17 Application for OSC, the OSC that I signed, a Notice of Entry
18 of the OSC, ROC of the Ex-Parte Application, and Order to Show
19 Cause, Mr. Mona's Response to the Order to Show Cause,
20 Plaintiff's Reply in Support of the Order to Show Cause. And
21 Mr. Mona's Supplement to the Response to the Order to Show
22 Cause that the Court received via facsimile sometime very late
23 yesterday, as well as several Nevada cases and statutes, and
24 the exhibits, the transcripts, etcetera, that were attached to
25 the briefs.

1 So I think I'm familiar with the issues. I also do
2 recall the prior hearing that we were here on as well as the
3 telephonic hearing that we had prior to, or during the
4 examination.

5 So having said all that, I think I'm pretty
6 familiar. But due to these issues being, in my mind,
7 extremely serious, I welcome counsel to present their
8 arguments. One of the reasons I saved you all to the end,
9 because I do expect arguments, you know, even though I have
10 read everything.

11 And again, this is some serious accusations, serious
12 conduct. And so with that in mind, I will try not to cut you
13 off again, at least for now.

14 MR. EDWARDS: Feel free to cut me off, Your Honor.
15 I'd love you to direct my argument if you can help.

16 As to the supplement they filed late last night
17 addressing the issue of contempt, they essentially make two
18 arguments, that you can't hear the issue of contempt, because
19 we haven't submitted a declaration.

20 You may not have received it yet, but we have in
21 response essentially copied and pasted out of our brief, put
22 it into a declaration. You have the declaration filed on the
23 record now. Their second issue --

24 THE COURT: Do you have a copy with you?

25 MR. EDWARDS: I do, Your Honor. But I guess for the

1 second issue, I'm not quite sure you even need to review it.
2 They --

3 THE COURT: Since we're talking about it, you can
4 bring it up. Make sure you keep a copy for yourself.

5 MR. EDWARDS: I might have to steal a copy from Mr.
6 Coffing (inaudible).

7 THE COURT: Thanks.

8 MR. EDWARDS: There's nothing new in this
9 declaration, Your Honor, that's not already contained in the
10 briefs, so we're just doing it to make sure we trigger the
11 statute.

12 Another issue raised in the supplemental brief last
13 night is that the Monas have the ability to preempt you from
14 hearing the issue of contempt. And although -- and we only
15 received it last night, haven't had a tremendous opportunity
16 to look at that completely. My initial glance says, I think
17 they're right. And to the extent they want to preempt you
18 from hearing the issue of contempt, they can do so. We'd have
19 to be set in front of another Judge.

20 But keep in mind, only on the issue of contempt.
21 And that's what I want to stress is, the issue of contempt
22 before you is, frankly, very limited. If we take contempt off
23 the table, that means you can't issue a \$500 sanction and you
24 can't imprison him for 25 days. That's it. Everything else
25 is still on the table.

1 Because the sanctions we requested under Rule 37 are
2 entirely separate from the contempt portion, and they don't
3 have these same requirements. There's no opportunity for them
4 to preempt you. There's no requirement for a declaration and
5 so forth.

6 So we're really here today to allow my client to
7 execute on three different bank accounts, three different bank
8 accounts held in the name of Mrs. Mona, and upon that basis,
9 the defendants don't think we can get them.

10 The first account is a checking account at Bank of
11 George that contains about \$190,000. Mrs. Mona admitted in
12 her judgment debtor examination, the recent judgment debtor
13 examination, that this is income that she earned during the
14 marriage, and therefore it is community property. No dispute
15 about that.

16 The only issue of whether we can execute is, when
17 did our judgment arise? Did it arise during the marriage? It
18 did. And therefore, we are entitled -- it is a community debt
19 and we are entitled to satisfy that community debt with
20 community property.

21 The case I'd like you to review, Your Honor, it's
22 cited in our reply brief, is the Randano case. It's 86 Nevada
23 123. And it analyzed in an almost identical situation with a
24 fraud judgment against the husband, could the creditor collect
25 against the community estate.

1 And the courts -- the Nevada Supreme Court's
2 analysis is very straightforward. It said, if they incurred
3 the judgment during the marriage, it's a community debt that
4 can be satisfied with community property. It's that
5 straightforward.

6 Now, the Monas have cited some case law involving
7 bank loans. And in bank loans, in certain situations, a court
8 will try to consider, well, was this a loan to just the
9 husband, or was this a loan to the husband and the wife, to
10 try to determine what assets the lender can go after.

11 But this isn't a lending case, Your Honor. We are a
12 bank. This is a fraud judgment. And the intent analysis
13 simply doesn't make sense in this context. All right. My
14 client did not intend to be defrauded by Mr. Mona. And that
15 -- for that reason, Your Honor, the Randano court did not
16 consider intent at all. It simply looked at, when was the
17 judgment entered? If it was entered during the marriage, it's
18 a community debt, able to satisfy it under community property.

19 And other than that argument, the Monas don't
20 dispute any of the issues associated with this checking
21 account at Bank of George.

22 The next two accounts, Your Honor, I'd like to lump
23 together. There's the money market account at Bank of George
24 for \$300,000, and a checking account with Bank of Nevada that
25 is supposedly funded exclusively from the money in the Bank of

1 George money market account.

2 So essentially, we have one pool of money in two
3 different accounts, both in the name of Mrs. Mona. And
4 unfortunately, we're relying exclusively upon Mrs. Mona's
5 testimony because the defendants have never produced any
6 records associated with any three of these accounts, despite
7 court orders to do so.

8 So the question is, where did this pool of money
9 come from? Back in 2003 -- excuse me -- 2013, the Monas sold
10 stock worth roughly \$6.8 million. And you'll remember, during
11 this time period, our judgment had already been entered, and
12 we were -- we were knocking at the door begging to get a
13 judgment debtor examination.

14 We started the process back in January. We weren't
15 able to actually get it on until November. But we were
16 breathing down his neck trying to get the judgment debtor
17 exam. So Mr. Mona finds himself -- or excuse me -- the Mona
18 family finds themselves sitting on \$6.8 million. They need to
19 figure out a way to get rid of it before my client gets it.

20 So what do they? September 13th, 2013, they signed
21 a Post-Marital Settlement Agreement to split the money between
22 husband and wife as their separate property. So, thank
23 goodness, Mr. Mona got rid of half of the money. And then he
24 takes essentially the remainder of the money and loans it to
25 one of his companies, Roen Ventures which is the subject of a

1 separate fraudulent transfer action.

2 Then late September, 2013, Mr. Mona produced 33,000
3 documents to my client, which is obviously just a document
4 dump. Most of the documents had nothing to do with any assets
5 he actually held. But what was not included in that document
6 dump was the Post-Marital Settlement Agreement he signed just
7 a few days earlier, despite a court order saying, you must
8 produce any documents to which you were a party in the last --
9 or any contracts to which you were a party in the last five
10 years.

11 Then November 2013, he shows up for his judgment
12 debtor exam and says, I'm sorry, guys, I'm broke. Yeah, he's
13 broke. He just, you know, dealed out (sic) \$6.8 million.
14 When asked specifically, what did you do with that \$6.8
15 million? Specifically. He said, I paid some personal bills
16 and then loaned the rest to Roen Ventures.

17 He didn't mention the Post-Marital Settlement
18 Agreement and he made no mention of splitting the money with
19 his wife. Yet at his recent judgment debtor examination, he
20 admitted that he definitely should have produced the Post-
21 Martial Settlement Agreement, and he definitely should have
22 testified that he split the money with his wife. But he
23 didn't do either.

24 //

25 The first time we learned of the Post-Martial

1 Settlement Agreement is just a few weeks ago when they --
2 about two weeks ago when they produced it to us subject to the
3 subsequent judgment debtor examination orders. Keep in mind,
4 this is almost two years after they should have produced it in
5 the first place and after almost all of that money has already
6 been spent, dissipated.

7 So my client, because of this delay, potentially
8 lost millions of dollars, \$3.4 million, because they didn't
9 timely produce it pursuant to court order.

10 So when they try to convince you, hey, Judge, we
11 produced it, no harm, no foul, that's not the case. There was
12 absolutely harm. There was absolutely foul. We lost millions
13 of dollars because of their non-disclosure.

14 So then the question is, how do we get to this money
15 sitting in these two bank accounts? Well, the Post-Martial
16 Settlement Agreement is, in and of itself, a fraudulent
17 transfer. A fraudulent transfer is any transfer intended to
18 hinder, delay or defraud a creditor.

19 When analyzing whether it is a fraudulent transfer,
20 you consider -- the Court considers badges of fraud -- there's
21 a non-exclusive list of -- of those badges in the statute.
22 One of those is a transfer to an insider. This is clearly a
23 transfer to an insider. This was community property. They
24 transferred it to each other individually. It was transferred
25 to insiders.

1 THE COURT: When you say badges of fraud, the Court
2 doesn't necessarily have to find that every single one of
3 those is met; is that your argument?

4 MR. EDWARDS: That's correct, Your Honor. These --
5 there's factors for you to consider. And frankly, it's a
6 non-exclusive list. There are other factors or related
7 factors that you can consider as well in making the ultimate
8 determination. And the statute, in fact, says that. It says,
9 you can consider these factors among others. So we had
10 transfer to the insider. They can't dispute that.

11 That the debtor retained possession or control of
12 the assets. Well, it -- again, they haven't produced the bank
13 records so we have to rely on Mrs. Mona's testimony where she
14 said, even though I was supposed to get \$3.4 million, I think
15 I only got \$2 million. That means Mr. Mona continued to have
16 control over another \$1.4 million. He continued to be in
17 possession and control.

18 The transfer was concealed. This another badge of
19 fraud. Because he didn't provide the Post-Martial Settlement
20 Agreement pursuant to court order, because he lied about it in
21 the judgment debtor examination, he absolutely tried to
22 conceal this transfer.

23 One of the other badges is, before the transfer the
24 debtor was sued. And my client had sued well in advance.

25 THE COURT: Already had a judgment, right?

1 MR. EDWARDS: Exactly. The judgment had already
2 been entered.

3 Another badge is, the transfer was substantially all
4 of the debtor's assets. He was sitting on \$6.4 million in
5 roughly September of 2013. When he shows up at the judgment
6 debtor exam in November he says, I'm broke. He transferred
7 away substantially all of his assets.

8 The debtor concealed assets. For the same reasons
9 as stated before, he concealed the agreement, he concealed the
10 testimony at the judgment debtor exam, and never gave us the
11 bank accounts with which we could've seen these transfers in
12 the first place to his wife.

13 The other badge of fraud is that the debtor was
14 insolvent when the transfer was made. Well, they argue that
15 he wasn't insolvent in the brief. At the judgment debtor
16 examination he freely admitted, he's been insolvent since 2008
17 or 2009.

18 And then the last badge of fraud that we think
19 applies, Your Honor, is the transferred occurred shortly after
20 substantial debt was incurred. Now, this is -- our judgment
21 was entered a year, year-and-a-half before the actual transfer
22 occurred. But we think that with this factual -- what this
23 badge of fraud tells you is that timing of the transfer is
24 something you should consider. And the timing of this
25 transfer on the eve of the judgment debtor examination

1 suggests that the intent was to defraud, delay and hinder my
2 client.

3 And so because the Post-Martial Settlement Agreement
4 is, in and of itself, a fraudulent transfer, that money
5 remains community property upon which we can execute. And
6 again, we're talking about the money market account at Bank of
7 George that we think has \$300,000 in it, and the checking
8 account with Bank of Nevada that is funded by the Bank of
9 George account.

10 As to the issue of sanctions. We've asked for
11 sanctions under Rule 37, which allows you to sanction a party
12 for failing to disclose documents in violation of a court
13 order. And those documents specifically are the failure to
14 disclose the Post-Martial Settlement Agreement in 2013, and
15 the failure to produce the bank records in Mrs. Mona's name
16 containing community property in both 2013 and 2015.

17 Rule 37 gives you broad authority to issue sanctions
18 for failure to produce records. And some of the enumerated
19 sanctions that you can do are, designate facts deemed
20 established, and you can refuse to allow the Monas to oppose a
21 claim or an issue.

22 So, Your Honor, because of that, we ask that you
23 deem establish that the Post-Martial Settlement Agreement is
24 itself a fraudulent transfer. You can establish that our
25 rights are established to execute upon the three accounts that

1 we're talking about today, and prevent the Monas from claiming
2 that any of the funds are exempt from execution.

3 An additional remedy under Rule 37 is an award of
4 attorneys fees and costs. I request that, although he already
5 has a \$23 million judgment hanging over his head so I'm not
6 quite sure how much my fees and costs are going to scare him.

7 But to reiterate, Your Honor, the failure to produce
8 that Post-Martial Settlement Agreement in 2013, and the
9 associated bank records in Mrs. Mona's name cost us millions
10 of dollars. This is not a situation of no harm, no foul,
11 because they produced it two years later. It cost my client
12 millions, and that's why these sanctions are warranted.

13 Thank you.

14 THE COURT: Thank you. Before you begin, Mr.
15 Coffing, I might save you some time and argument. You're
16 certainly welcome to address what it is I'm going to say right
17 now, but I'm going to say it now because it might save some
18 time for everyone.

19 The Court appreciates the supplement submitted and
20 filed by Mr. Mona. I don't necessarily appreciated the
21 timing, but it's somewhat understandable given the timing of
22 the hearing today. But certainly appreciate the arguments
23 made in there regarding the contempt, including the necessary
24 affidavit and the jurisdictional issue.

25 I also appreciate concession, if you will, by

1 plaintiff that if Mr. or Mrs. Mona do want another Judge to
2 rule on the contempt, then they are entitled to that right. I
3 did review the statute, as well as a couple of those cases,
4 and therefore, I am not going to find contempt of either Mr.
5 or Mrs. Mona, unless they want me to consider that today,
6 which I assume they don't. That denial, if you will, is
7 obviously without prejudice to the extent plaintiff wants to,
8 you know, follow up with another Judge on that ground.
9 However, I am going to consider whether sanctions should be
10 issued.

11 So again, if you want to address the contempt issue
12 and my ruling on that, you're certainly welcome to. But I
13 wanted to make that now, because it might save you a little
14 time and argument.

15 MR. COFFING: Well, I appreciate that, Your Honor.
16 But I want to be -- I think while I am a former law clerk, I
17 am loathe to last minute filings, so I appreciate your concern
18 with the timing of it. But, Your Honor, look at the timing
19 from my perspective. While I'm exiting the judgment debtor
20 exam of Mike Mona, I'm asked to sign documents here, receipt
21 of copy, you've got an ex-parte order, granting an Order to
22 Show Cause, while I'm walking out the door before a holiday
23 weekend. And so the timing of all of this, Your Honor, is
24 very troubling and problematic to both my clients.

25 THE COURT: Do you want to continue the hearing for

1 a week?

2 MR. COFFING: Well, that's the dilemma. And Mr.
3 Edwards did say, he's absolutely correct, he did offer me the
4 opportunity to continue the hearing. He offered that.

5 However, your Order to Show Cause contains
6 injunctive language that my client couldn't live with in the
7 time frames in which he -- his calendar, your calendar, my
8 calendar would allow.

9 So I'm in a dilemma. Yeah, would I like to see this
10 45 days out? I absolutely would. But I'm in a dilemma where
11 you've signed an order already as against two clients, one of
12 whom is not a party, that effectively enjoined them from using
13 -- using their money.

14 So I'm in a rock and a hard place as from that
15 respect, Your Honor. So yeah, I'd love to have time. But at
16 this point, I don't think that that's available to me with the
17 status of your order. So, I have that I have that dilemma and
18 so that's where I stand.

19 But let me first address the fact that we can't
20 dispute here; Rhonda Mona is not a party to this case. She
21 has not been served with any process. There's no fraudulent
22 conveyance claims made against her. There is nothing that
23 brings Rhonda Mona before this Court other than the fact that
24 you signed a judgment debtor exam order requiring her to
25 appear and produce documents.

1 And you'll recall at our telephonic conference, I
2 raised this very issue. I have no doubt or dispute that they
3 are entitled to take discovery from Rhonda Mona. But to call
4 her a judgment debtor defendant -- calling her a judgment
5 debtor is simply an error.

6 So when they stand before you and say the Monas did
7 not produce documents; number one, Mike Mona did not have the
8 obligation to produce documents that were not in his name, nor
9 is he required to make his own determinations as to what
10 constitutes community property.

11 Number two, the request of documents from Rhonda
12 Mona said, produce documents related to the judgment debtor.
13 And so they're here complaining that Rhonda Mona didn't
14 produce her bank account records when their own request says,
15 judgment debtor, you produce -- or produce documents for -- in
16 the judgment debtor which she is not one.

17 So, Your Honor, we have some serious procedural --

18 THE COURT: So that begs the question though, why
19 hasn't Mr. Mona produced them, because he is a judgment
20 debtor?

21 MR. COFFING: Because they weren't his -- his --
22 they're not his records.

23 THE COURT: So aren't they --

24 MR. COFFING: They're not his bank accounts.

25 THE COURT: -- community property?

1 MR. COFFING: Well, Your Honor, you're making that
2 determination, right? It sounds like you're making that
3 determination.

4 THE COURT: I'm asking a question.

5 MR. COFFING: Okay.

6 THE COURT: You can --

7 MR. COFFING: I don't --

8 THE COURT: -- answer or not.

9 MR. COFFING: No. I don't believe they are
10 community property, Your Honor. And I believe that Mr.
11 Kainen, at some point in time, will argue long and loud that
12 they are not. The parties entered into an agreement
13 authorized by Nevada statute in which their -- their separate
14 assets would be characterized.

15 And what counsel needs to clarify for you, and I
16 think will agree, that as it relates to the \$190,000, Mrs.
17 Mona testified that those were her earnings deposited in a
18 separate account before this judgment arose. And now they're
19 saying, well, it was during the marriage. But it was before
20 the judgment and that puts us in par with, I believe it's the
21 Jewett v. Patt case.

22 They want to attach separate property. And when she
23 deposits money in an account with her name on it, there's a
24 presumption of separate property.

25 Now, that presumption can be overcome. And so my

1 client, Ms. Mona, has not had the opportunity to present you
2 the facts as required under the Norwest case, to present you
3 the facts that would overcome a presumption of community
4 property which I think you'll probably tell me is my burden.
5 But I think it's their burden to overcome the presumption of
6 community property when it's deposited in an account that is
7 titled that way.

8 I get a paycheck, go home and give my wife \$50, and
9 she deposits it in an account that says, Jane Coffing, in her
10 sole and separate property, that's what it is. Now, they can
11 argue transmutation, they can argue a whole bunch of things
12 that happen in Family Court, but we don't have in front of
13 here, because Rhonda Mona is not a party. They hadn't served
14 her with process. They have no ability, I dare say,
15 respectfully, the Court has no ability to enjoin the use of
16 these funds until such time as she's a party to an action
17 which is required under NRS 22, the statute that they cite to
18 you.

19 So, Your Honor, fundamental due process issue here
20 relates to Rhonda Mona. She's not a party. And any
21 characterization of this Court of what her assets may or may
22 not be subject to, must have her -- she must have the
23 opportunity to be heard, she must have the opportunity to
24 present evidence.

25 And that's exactly what the Court said in the case

1 we cited, the Norwest case, when we talk about what was the
2 intent. And I think my colleague misspeaks as to what the
3 intent issue goes to. It's not the intent -- it was Rhonda
4 Mona's intent to defraud anyone, it's what did his client
5 intend to be able to satisfy any obligations that may arise as
6 a result of the contract that ultimately issued of the
7 judgment. Had they wanted Rhonda Mona to sign on the line for
8 any contract, they could've asked. Had they wanted her to do
9 that, they could have. They didn't.

10 So did Far West ever have the intent to look to
11 Rhonda Mona for the repayment of the judgment? That's the
12 analysis and that's what this Court must determine on a
13 factual basis before you can declare a separate account is,
14 indeed, a community account.

15 And so what this is, Your Honor, respectfully again,
16 this is an end-run. This is an end-run around filing a
17 fraudulent conveyance action in which evidence would have to
18 be presented. Counsel could be retained to rebut that
19 independent of Mr. Mona's interests, and that they could
20 proceed along that basis. And they know that, because they've
21 sued someone else on a fraudulent conveyance claim.

22 So when you're -- when you're looking at this, Your
23 Honor, any remedy or relief that you think is warranted as
24 against Mr. Mona cannot be entered against Rhonda Mona until
25 she's had the opportunity to defend her rights, to have her

1 day in court, her due process, and for them to present
2 evidence that would rebut the presumption that these are,
3 indeed, separate funds once they're deposited in the account,
4 and once they entered into a contract pursuant to Nevada
5 statute that allows married couples to characterize their
6 assets.

7 So what they asking for is summary judgment on a
8 fraudulent conveyance claim when there are serious factual
9 disputes that they must overcome, factual issues that they
10 must overcome, that aren't even before you today because
11 Rhonda Mona is not a party to this action.

12 And the way we got here, I believe, is based upon
13 the improper issuance of a judgment debtor exam to a non-
14 debtor. And I've objected to that. I objected to the
15 production of documents. You heard my objections I put on the
16 record at the time of the hearing.

17 But let's go to the production of this document
18 itself. First of all, Mike Mona -- and Mr. Edwards will
19 confirm, neither he or I were counsel for these parties at the
20 time of the first judgment debtor exam -- Mike Mona produced
21 33,000 pages of documentation.

22 Counsel can now say most of them are irrelevant, but
23 when you produce -- when you put out a document request that
24 encompasses the world, you're going to get the world. And
25 some of it may not be relevant, but that's what they produced.

1 And if you look at Mr. Mona's latest judgment debtor
2 exam, what did he say? He believed that the document was
3 produced. And if you look at the snippet of the transcript
4 from the prior exam, they never followed up on this issue,
5 Your Honor. They -- Mona said, I paid bills. I gave the
6 money to Roen. And that's where they immediately went. What
7 about Roen? And that's where the subject of the examination
8 went.

9 So when Mr. Edwards asked the question, you know,
10 why didn't you tell us? Well, I don't know that it was ever
11 asked in the sense that he could answer that.

12 THE COURT: I thought he said, he should have told
13 him.

14 MR. COFFING: He should have, had he been asked; all
15 right? But if you're going to -- if Mr. Mona had the intent
16 to deceive and hide and conceal, why did he produce it now;
17 right? He produced it. He thought it was previously produced
18 and he's produced it. And that's part of the Court's analysis
19 that I think you really need to consider when you're -- when
20 you're talking about draconian relief here.

21 And it is, indeed, draconian what they're asking you
22 for. Prevent -- negative inferences; prevent them raising
23 further defenses to execution that have not yet happened?
24 Your Honor, that cannot be done -- I don't believe that that's
25 an appropriate sanction, number one, in these facts and

1 circumstances, because the other factor I want you to look at,
2 Your Honor, where have they been for the last two years?
3 Where have they been?

4 I don't know what happened with prior counsel. I
5 don't know why prior counsel's not here. But I can tell you,
6 after the judgment debtor exam we got a Writ of Garnishment
7 for Mr. Mona's wages, which has been paid, and then nothing,
8 until Mr. Edwards came along.

9 So for them to come into court ex-parte, Order
10 Shortening Time and say, oh, my gosh, we've been damaged;
11 where have you been? Because remember, Your Honor, at that
12 judgment debtor exam, the first one, what was produced? The
13 stock transaction. They knew the stock had been sold.
14 They're asking about it. It's there. Right?

15 And so that had happened prior to the judgment
16 debtor exam. The money was already gone in the sense of the
17 transfer to -- the contract between Rhonda, and the
18 transaction with Roen, by the time they took that judgment
19 debtor exam.

20 So I would respectfully disagree with my colleague
21 that there's been some millions of dollars lost. They
22 haven't. They were gone at the time. And for them to rush
23 into court now, again, ex-part, Order Shortening Time, and say
24 we've been harmed, on something that they failed to follow up
25 on two years ago, that's not fair to my client, Mike Mona,

1 number one. And it certainly cannot be considered any level
2 of due process that Rhonda Mona's entitled to as it relates to
3 her separate property.

4 So, Your Honor, I think while my client's being
5 painted as a villain, he's a real estate developer that got
6 caught in the crash. At the time of his last judgment debtor
7 exam, he was involved in a lawsuit with Bank of America to the
8 tune of 13 plus million dollars.

9 And so has he been insolvent with these debts
10 hanging out there? Yeah. Is he still working and making a
11 living? He is. And they're garnishing those wages for it.

12 But to now come in and demonize him for this, I
13 think it's an inappropriate characterization and it puts us in
14 a bad light before the Court, because not -- because you owe
15 money doesn't make you a bad person.

16 And while you have what thoughts you may as against
17 Mike Mona. But certainly as it relates to Rhonda Mona, she's
18 entitled to be heard. She's entitled to her day in court.
19 And she's entitled to have that opportunity on contested
20 factual issues of which they bear the burden, as well as
21 Rhonda, without having that opportunity to do so.

22 And so, Your Honor, I would request that this motion
23 be denied; right? And I think it's inappropriate on an Order
24 Show to Cause for this Court to make a characterization as to
25 what amounts to community or separate property without one of

1 the parties being present, without one of the parties being
2 able to have separate counsel to be heard on the issues.

3 And I say -- Your Honor, I hope the issue related to
4 recusal is not taken with any disrespect. I have the
5 obligation to (inaudible).

6 THE COURT: No, the law is the law. So no
7 disrespect taken whatsoever. I was sincere when I said, you
8 know, I certainly appreciate, you know, you pointing out in
9 your opposition basically agreeing with you on that point
10 that, you know, contempt's not for me to decide. So no
11 disrespect is taken --

12 MR. COFFING: Right.

13 THE COURT: -- whatsoever.

14 MR. COFFING: Well, I appreciate that, Your Honor.
15 But as it relates to sanctions, I think the same consideration
16 needs to be given. The level of sanctions that they are
17 requesting on this time frame without Rhonda being present,
18 it's certainly just -- it violates due process, it's not fair.

19 And if the Court is going to entertain anything
20 about these case -- or about these three accounts, it should
21 be on an evidentiary basis in which all parties should be
22 allowed to participate fully.

23 And I think by that time, Rhonda may have different
24 counsel, and maybe it's Mr. Kainen, that will want to
25 certainly weigh in on that because her rights are entitled to

1 protection regardless of what conduct you think Mr. Mona has
2 been guilty of.

3 THE COURT: Thank you. Before you sit down, I had a
4 question that I wanted to ask you -- and I'll ask Mr. Edwards,
5 as well -- that popped into mind.

6 You know, the property settlement agreement or
7 whatever it's technically called between Mr. and Mrs. Mona,
8 apparently provided for the split, if you will, of that money.
9 And I -- it may be in the briefs, but I don't recall seeing
10 any argument or evidence as to where Mrs. Mona's money that
11 she received from that agreement went.

12 MR. COFFING: Your Honor, I believe she testified --
13 and counsel will correct me -- I believe she testified that --
14 number one, that she was uncertain as to how much she
15 received. Number two, it would have gone into, I think she
16 testified, the Bank of George account. But she did not review
17 any records or have independent knowledge of where that money
18 would have gone.

19 But importantly, Your Honor, the fact that the money
20 was received and transferred was not -- not a secret to them.
21 They knew it two years ago. They had all those documents.

22 THE COURT: Well, thank you. And once you said
23 that, oh yeah, that was in there. So, I appreciate that.

24 MR. COFFING: Before I rest, Your Honor --

25 THE COURT: Sure.

1 MR. COFFING: -- may I just poke my head in with
2 counsel here and ask if I've missed something?

3 (Pause in the proceedings)

4 MR. COFFING: I think -- Your Honor, could Mr.
5 Kainen address a brief point so I don't just regurgitate what
6 he just said?

7 THE COURT: You can regurgitate what he said.

8 MR. COFFING: Okay.

9 THE COURT: And take your time. I'm, you know --.

10 (Pause in the proceedings)

11 MR. COFFING: Your Honor, I think if I can
12 supplement a little bit what Mr. Kainen wanted me to emphasize
13 is the mere fact that the debt arises does not automatically
14 make it community. And I think I've touched on this a little
15 bit. Because, remember, this judgment contains allegations
16 and the judgment relates to fraud which would be personal to
17 Mr. Mona.

18 And if it's personal to Mr. Mona, it cannot
19 therefore be held as against Rhonda Mona individually. And it
20 wasn't until -- it wasn't until the property settlement,
21 Postnuptial Agreement, in which that was -- essentially
22 recognized the parties tried to free their assets.

23 So there's nothing fraudulent as it relates between
24 two spouses wanting to characterize their property during the
25 course of a marriage. We have a statute that allows for that.

1 And that's an analysis I think for another day, Your Honor.

2 Mr. Mona, if he chooses, can argue against who gets
3 this debt in the divorce, but it's going to be hard for him to
4 argue that the judgment relates to fraud, and that fraud is
5 personal to him, and therefore be, again, patently unfair and
6 inappropriate to now say, Ms. Mona, you're going to -- your
7 separate assets are going to be subject to that debt.

8 THE COURT: Thank you.

9 MR. EDWARDS: Your Honor, as to that last issue, we
10 think the Randano case, the Nevada Supreme Court case
11 expressly addresses it. It's a fraud judgment that arises
12 during the marriage. It is community debt subject to
13 execution upon community property. It's that straightforward.

14 As to the issue -- as to the argument that Mr. Mona
15 did not have an obligation to produce these documents. First,
16 as to the Post-Martial Settlement Agreement, I heard no
17 argument that would suggest he didn't have an obligation to
18 produce that. He did have an obligation. He says he should
19 have produced it; he didn't. And we lost millions of dollars
20 because of it.

21 As to the bank statements, the orders entered by
22 this Court back in 2013, and again in 2015 said that he's to
23 produce assets of any of his assets, and that would
24 necessarily include documents reflecting his community
25 property, which are these bank statements held in the name of

1 his wife. He knew it was about these accounts. He didn't ask
2 his wife for these -- for these bank statements. He should
3 have.

4 As to the argument that Mrs. Mona did not have an
5 obligation to produce these documents. The judgment debtor
6 examination order for Mrs. Mona said, we need you to produce
7 the documents of the judgment debtor, her husband, documents
8 reflecting his assets. His assets would necessarily include
9 community property assets.

10 She had access to those bank accounts, holding
11 community property assets, yet she chose not to provide them
12 to us. In fact, during their judgment debtor exam, she didn't
13 search for any documents whatsoever, but.

14 As to the argument that she is not a judgment
15 debtor. At the time you issued your Order for Judgment Debtor
16 Examination in 2015, she was a trustee of the Mona Family
17 Trust, which was a judgment debtor. After you entered your
18 order, she mysteriously resigned.

19 So the fact -- the argument that this Court did not
20 have jurisdiction over Mrs. Mona is simply not accurate.
21 There was a separate order directing her to do certain things,
22 namely, producing documents, and she did not do that.

23 An argument was made that -- referring to the
24 checking account at Bank of George, that because the money was
25 earned before the judgment, we can't execute upon it. Your

1 Honor, that's just not the law. NRS 123.220 defines what
2 community property is. Community property is all property
3 acquired after marriage by either husband or wife. It's that
4 simple. It's everything.

5 The money she earned after marriage is community
6 property. The fact that she put it into her own account
7 doesn't change that. It's community property -- presumptively
8 community property and there's nothing -- there's no
9 information that would allow them to change that.

10 For example, there is not Post-Martial Settlement
11 Agreement saying, oh, this money in my account from what I
12 earned during the marriage is my separate property. They
13 don't have that. It doesn't exist. It's community property
14 and we're allowed to execute upon it.

15 They argued that you don't have the authority to
16 freeze the assets of either -- I guess, of either Mr. Mona or
17 Mrs. Mona. That's simply not the case, Your Honor. We cited
18 to the -- the statutes in our Reply, expressly permitting you
19 to freeze the assets of both Mr. Mona and Mrs. Mona, to the
20 extent we consider her a third party. And those statutes are
21 NRS 21.280, and NRS 21.330, expressly allowing you to freeze
22 assets.

23 And, in fact, as it relates to third party assets,
24 you're authorized without a bond, without anything, to freeze
25 the assets that we would be talking about, in the hands of a

1 third party, up until the time of judgment. It's not just a
2 temporary freeze. You have extraordinary latitude on freezing
3 assets of the judgment debtor and third parties who hold
4 assets of the judgment debtor.

5 Counsel says that we should have followed up at the
6 initial judgment debtor examination after asking him, what'd
7 you do with the \$6.8 million? And he told us, I paid
8 personal bills and loaned the rest to Roen. That's like
9 saying that there's an obligation to saying, are you lying to
10 me, after every single question.

11 There is no obligation under Nevada law to inquire
12 whether somebody's lying to you. They took an oath at the
13 beginning the judgment debtor examination to tell the truth
14 and the whole truth. They didn't do that.

15 Counsel wants you to consider why they produced the
16 documents now. If they were really trying to conceal, why did
17 they produce the documents now? All I can say to that, Your
18 Honor, is when you lie -- lying is very hard; all right? It's
19 hard to keep all of your lies straight. Two years past, he
20 may not have remembered he was trying to conceal that
21 transfer. It's difficult to lie, easy to tell the truth. He
22 lied initially and forgot about it and produced the document
23 to us now.

24 //

25 And finally, counsel asked, where have we been for

1 the last two years, I guess implying that when he failed to
2 produce the records in 2013, we should have, through ESP,
3 known he withheld a Post-Martial Settlement Agreement and come
4 to the Court and asked for relief.

5 We didn't learn about this agreement until two weeks
6 ago. And when we learned about that, we've been working hard
7 ever since to take appropriate action. There's been no delay.
8 We couldn't take action as it relate to the Post-Martial
9 Settlement Agreement before we even knew it existed.

10 We should have known back in 2013. But he didn't
11 disclose the documents and he lied to us about it when we
12 asked him.

13 Thank you, Your Honor.

14 THE COURT: Thank you.

15 MR. COFFING: I know counsel gets the last word,
16 Your Honor, but --

17 THE COURT: We're -- we're done. Thank you. I
18 guess when I say "we", I mean, counsel.

19 The Court is going to grant in part, and deny in
20 part, the sanctions requested. And I'll give you my
21 reasoning. Mr. Edwards, you will be preparing the Order, so
22 take good notes or you can certainly request a DVD or
23 transcript.

24 //

25 I don't believe that the Norwest and Hogevoll cases

1 cited by Mr. and Mrs. Mona really apply in this situation.
2 Those cases, I believe, are distinguishable in that neither of
3 them dealt with the collection of judgment as we have here.
4 Rather, they dealt with loans that were made.

5 I believe that the fact that appears undisputed that
6 Mrs. Mona had nothing to do with the underlying transactions
7 is largely irrelevant at this judgment execution stage.

8 The opposition mentioned on page 6, line 13, that
9 Mr. and Mrs. Mona are in the process of a divorce, but omitted
10 all other details regarding that process, including what the
11 Court believes to be a fairly key fact in determining what's
12 going on and evaluating that argument, that fact being that
13 these divorce proceedings were filed a week ago, on July 2nd.

14 And also omitted the fact that apparently both of
15 them testified in their examination shortly before July 2nd
16 that they had no plans to get divorce. The Court's certainly
17 not going to enjoin them from getting divorced, but to rely on
18 that fact as they do, but omit all other details of what the
19 Court believes are material facts to that process was
20 disappointing.

21 The timing of the briefs and the hearing. The Monas
22 both apparently take issue with the fact that I am having the
23 hearing today. They took issue with that in the opposition,
24 not disclosing to the Court, although they do today after it
25 was disclosed in the Reply, that plaintiff offered to continue

1 the hearing.

2 I believe that I do have the ability to set matters
3 like this on shortened time. I could have set it even shorter
4 than I did. When offered to continue the hearing today,
5 counsel for the Monas declined that option. And so the Court
6 is going to rule today.

7 The Monas argue that I do not have authority to rule
8 because of the pending divorce proceeding, but they do not
9 really provide any authority by case law or statute, that says
10 a Judge such as myself presiding over execution proceedings on
11 a judgment must stay or defer ruling to a recently filed
12 divorce proceeding that was initiated after the Court issued
13 several Orders to Show Cause.

14 The Monas admit on page 7, line 9 of their
15 opposition that the rule is that all property acquired after
16 marriage is presumed to be community property. The Court
17 agrees with that, and agrees with plaintiff who also obviously
18 states that is the case.

19 It's undisputed that Mr. and Mrs. Mona have been
20 married for 30 years. There's been no evidence before the
21 Court that the assets and debts and property that we're
22 dealing with were acquired prior to their marriage, and
23 therefore the Court considers those assets debts and property
24 that we're dealing with to be community property, given the
25 lack of evidence to the contrary.

1 I do believe, as plaintiff argued, that I have
2 authority under NRS 21.280 and 21.330, to order parties,
3 judgment debtors, and even non-parties to the extent Mrs. Mona
4 is considered to be a non-party, I can order parties and non-
5 parties to dispose or transfer assets as I have done, and as I
6 am doing today.

7 Regarding the Post-Martial Property Settlement
8 Agreement, after considering the factors set forth in NRS
9 112.180(1)(a) and applying those to the facts in this case, I
10 do find that that distribution is a -- or was -- "is" probably
11 is more applicable -- is a fraudulent transfer made to hinder,
12 delay or defraud plaintiff in its efforts to execute on the
13 judgment.

14 Therefore, I do find that the property contained
15 therein, i.e. the \$6.8 million or so in proceeds, does remain
16 or remains community property subject to execution.

17 I do find that Mr. Mona lied in his November 25th,
18 2013 examination regarding what he did with the stock sale
19 proceeds. He first said, oh, I paid the bills. That's
20 obviously not entirely true.

21 Then he said he paid off some debts that he had,
22 just personal bills, and loaned \$2.6 million to Roen Ventures.
23 At no time did he report or disclose at -- in either the
24 document production or at his examination hearing at that time
25 the purported transfer of \$3.4 million to Mrs. Mona.

1 And, you know, sometimes you can say, well, I
2 forgot. Well, the problem with Mr. Mona, if he wanted to try
3 to take that position, is that the purported transferred
4 occurred just a few weeks before his examination.

5 I do find that Mr. Mona violated the January 30th,
6 2013 order, by not producing the agreement or the bank account
7 records that are purportedly Mrs. Mona's separate bank account
8 records. I find that those would constitute community
9 property and should have been disclosed and they were not. I
10 find that Mr. Mona violated the October 7, 2013 order to make
11 complete production of documents.

12 I do find that Mr. and Mrs. Mona violated the May
13 13, 2015 order by failing to produce the community property
14 bank records. And those bank records to which I'm referring
15 are the Bank of George checking account, the Bank of George
16 money market account, and the Bank of Nevada checking account.

17 I would refer to numbers of the accounts, but Mrs.
18 Mona wasn't able to provide those in her examination and
19 therefore I don't have numbers, and I don't think plaintiff
20 has those numbers either. But hopefully that description is
21 sufficient.

22 //

23 Under NRS 21.320, the money in the Bank of George
24 and Bank of Nevada accounts, I do find is subject to execution
25 and shall be applied to satisfaction of the judgment in

1 accordance with the Rules of execution on judgment, including
2 the various exemptions that may apply.

3 Mr. Mona admits that he should have produced the
4 Post-Martial Property Settlement Agreement and at his recent
5 examination testified that he thought he produced it, but if
6 he didn't he doesn't know why he didn't produce it. Nor -- he
7 admitted also that he didn't know why he didn't disclose the
8 existence of that agreement in his prior testimony and he now
9 agrees that, yes, he should've disclosed that. And the Court
10 certainly agrees with Mr. Mona in that regard.

11 Bear with me here.

12 The Court takes into account the Nevada Supreme
13 Court cases cited by plaintiff, as well as the District of
14 Nevada, Henry v. Rizzolo case. And I do find that regarding
15 the transfers set forth in the Post-Martial Property
16 Settlement Agreement, transfer was to an insider, i.e. Mr.
17 Mona's wife, Mrs. Mona, who at the time, I believe, was also
18 trustee of the Mona Family Trust, judgment debtor.

19 There is some question as to whether Mrs. Mona
20 received the \$3.4 million or the \$2 million. In either case,
21 you know, the -- if it was \$2 million, certainly Mr. Mona, as
22 a judgment debtor, did retain some possession or control after
23 the ostensible transfer of \$3.4 million. I do find that the
24 transfer was concealed. It wasn't produced, nor was Mr. Mona
25 truthful in his answers at the examination.

1 Before the transfer was made, certainly the debtors,
2 plural, had been sued and actually had a judgment pending
3 against them. The transfer was of substantially all of the
4 debtor's assets, as Mr. Mona testified he was insolvent.

5 Again, debtor removed or concealed assets by
6 effectuating that purported transfer and not disclosing it
7 either in the production nor in the examination testimony. As
8 I said, debtor was insolvent or became insolvent shortly after
9 the transfer.

10 As argued by plaintiff, and the Court agrees, these
11 are badges of fraud or factors and are not an exhaustive list
12 such as elements of a Complaint. You don't have to meet every
13 one in order to find that a fraudulent transfer was made.

14 The lack of one badge among many, as the Court has
15 found, does not mean that a fraudulent transfer did not occur.
16 Here the evidence overwhelmingly supports a finding of
17 fraudulent transfer in regard to the Post-Martial Property
18 Settlement Agreement, and the Court so find that that was a
19 fraudulent transfer and that those assets therefore remain
20 community property subject to execution.

21 The money that Mrs. Mona purportedly received as a
22 result of that transfer went into supposedly -- although we
23 don't know because the records haven't been produced -- to her
24 bank account -- bank accounts or account that we have been
25 discussing.

1 I believe I do have authority under NRCP 37 to issue
2 sanctions. Again, I am not finding contempt due to the issues
3 of -- I don't have jurisdiction. And the Court appreciates
4 the affidavit or declaration that was submitted late last
5 night and received this morning. But, you know, the timing of
6 that does raise issues that as I think plaintiff's counsel
7 said at the beginning, the Court probably doesn't even need
8 that given the lack of jurisdiction anyway.

9 So, the sanctions that will be issued.

10 The Court turns to page 16 of the Application for
11 Order to Show Cause. That might be helpful to enable the
12 parties to follow along.

13 The Court does issue an Order that the purported
14 transfer pursuant to the Post-Martial Property Settlement
15 Agreement is a fraudulent transfer, and the facts proving the
16 fraudulent transfer, including badges of fraud as discussed
17 previously, are deemed established. The Court issues an order
18 entitling plaintiff to execute upon the bank accounts at Bank
19 of George and Bank of Nevada in the name of Mrs. Mona are
20 deemed established.

21 The order will include that the Monas are prohibited
22 from claiming that any money purportedly transferred pursuant
23 to the Post-Martial Property Settlement Agreement and any
24 money in the bank accounts in the name of Mrs. Mona are exempt
25 from execution. The Court does not issue 4, does not issue 5.

1 Those are the contempt related sanctions.

2 And the order -- the Court will order that Mr. and
3 Mrs. Mona immediately produce any previously undisclosed bank
4 records for the past five years, regardless of whose name is
5 on the account. Understandably, immediately, is probably not
6 able to comply, so they do have instead of immediately, 7 days
7 from today to do that.

8 And the Court will award plaintiff reasonable
9 expenses, including attorneys fees and costs incurred, as a
10 result of the failure to comply with the Court's orders.
11 Plaintiff is directed to, as they requested, submit a bill of
12 fees and costs within let's say 7 days from today. Again, the
13 Court is not going to order that Mr. Mona be imprisoned.

14 And the Court will order that Mr. and Mrs. Mona be
15 prohibited from effectuating any transfers or otherwise
16 disposing of or encumbering any property not exempt from
17 execution until their assets have been applied towards
18 satisfaction of plaintiff's judgment.

19 Mr. Edwards, prepare the order. Submit it to Mr.
20 Coffing for review and approval. If you can't agree -- which
21 given this order, I wouldn't be surprised if you don't -- I'd
22 ask that you try to agree -- but if you don't, you're welcome
23 to submit competing orders. Thank you.

24 MR. COFFING: Your Honor, on behalf of the Monas, I
25 would move for a stay to allow at least Rhonda Mona to

1 pursue --

2 THE COURT: Can you speak up a little?

3 MR. COFFING: I'm sorry.

4 THE COURT: Just because the microphone's closer
5 when you're --

6 MR. COFFING: Your Honor, I understand your order,
7 and I'm going to ask the Court for a stay of any execution or
8 entry of order until such time as at least Rhonda Mona can
9 pursue whatever remedies she has before the Nevada Supreme
10 Court, or appellate court now, I guess I have to put them in
11 there too.

12 So I'd ask for the stay as I believe I'm required to
13 under a Rule SCR 4 analysis. And if I've cited that wrong,
14 forgive me. So I'd ask for that stay for a period of 7 days.

15 THE COURT: Sure. Let me hear from Mr. Edwards.

16 MR. EDWARDS: Your Honor, my request would simply be
17 that they file a motion so we can consider the issue.

18 MR. COFFING: Well, Your Honor, given -- given your
19 order, my motion -- I'm making the motion now, because we need
20 immediate relief. And again, as to Rhonda Mona, I believe the
21 Court lacks jurisdiction over her to enter these sanctions.
22 And so she should be afforded some opportunity as -- by way of
23 a stay to pursue that remedy.

24 THE COURT: The Court understands that the motion is
25 an oral motion. Understandably, it's oral, because it's in

1 response to the order that was just made here.

2 So the Court will grant the oral motion for stay of
3 the Court's order as it pertains only to Mrs. Mona for 7 days.
4 However, the stay does not -- that includes only the execution
5 of the three bank accounts and discussion, so it -- the stay
6 does not include the directive to produce the bank account
7 records that we've discussed, and does not -- does not pertain
8 to Mr. Mona at all.

9 MR. EDWARDS: And it also wouldn't stay the
10 obligation that they can't transfer anything in the meantime;
11 correct?

12 THE COURT: You can -- you can respond.

13 MR. COFFING: Your Honor, again, as it relates at
14 least to Rhonda Mona, it is our position that the Court lacks
15 jurisdiction, and I understand you disagree.

16 And so to the extent that there's a stay, if they
17 want to stay any type of dissipation of assets, they should be
18 required to post the appropriate bond, because that's -- until
19 -- until otherwise, that's her money.

20 And I understand you've made your ruling, but
21 obviously we differ. And as she's not a party to this action,
22 she should not be subject to a judgment which she -- or an
23 order that she believes this Court enters into without
24 jurisdiction.

25 MR. EDWARDS: And, Your Honor, under 21.330, you are

1 perfectly within your rights to freeze the assets of third
2 parties without any bond whatsoever. And what I'm hearing
3 counsel say is, Judge, give me 7 days so I can go hide this
4 money somewhere else. That's not appropriate.

5 MR. COFFING: She may -- she may certainly need to
6 hire counsel, Your Honor, and she has to live; all right? And
7 so you've prohibited, by virtue of your order, from us
8 claiming any exemption to the funds at issue. And so --

9 THE COURT: No, I specifically said the judgment
10 exemptions apply.

11 MR. COFFING: Your Honor, my notes said that you --
12 that one of the sanctions was that they be prohibited from
13 claiming the exempt -- that the assets were exempt from
14 execution.

15 MR. EDWARDS: That is one of the sanctions from your
16 questions, Your Honor. And the justification being, right now
17 we have a tiny pool of money to work with, whereas, had these
18 documents been disclosed as they should have been back in
19 2013, we would've had millions of dollars to collect upon.
20 Now, we have a few hundred thousand.

21 So for them to further apply -- after already
22 dissipating millions of dollars of assets that we can no
23 longer go after, to say, oh, and in addition to, I get to
24 claim these exemptions, we think that's inappropriate.

25 MR. COFFING: Well, to effectively deprive her of

1 the ability to retain counsel is equally inappropriate.

2 MR. EDWARDS: Well, she's been under an order that
3 she can't -- I'm sorry.

4 THE COURT: I'll give Mr. Coffing one last chance to
5 say what he wants, and then Mr. Edwards one last chance to say
6 what you want in that regard.

7 MR. COFFING: In relationship to a stay, Your Honor,
8 I think I've made the record that I need to make.

9 THE COURT: I'm sorry, man. The air is on back here
10 and I couldn't even hear it.

11 MR. COFFING: Your Honor, I think I've made the
12 record I need in my request for a stay. And again, until --
13 the fact that she's not a party, until this order is final and
14 she has the ability to pursue some type of appellate relief, I
15 don't think it's appropriate to enjoin the use of what amounts
16 to be her only asset -- liquid assets.

17 We do have a divorce pending, right? And I
18 understand you have concerns with the timing, but that divorce
19 -- there's a joint preliminary injunction that was entered
20 upon the filing of the divorce. I'm sure Mr. Mona will be
21 ordered at some point to pay some level of support, but until
22 that time, you know, I think it's just inappropriate for the
23 Court to enjoin her use of these assets for the limited time
24 period that you've allowed.

25 MR. EDWARDS: Your Honor, the purpose of a stay is

1 to preserve the status quo. And if we unfreeze these assets,
2 they may not be there tomorrow. That's not preserving status
3 quo. They've told you over and over again, Mr. Mona makes
4 \$300,000 a year. If that's not enough money to retain
5 counsel, I don't know what is.

6 THE COURT: They have 7 days from today to produce
7 the records. That would include the bank account records.
8 Presumably, if transfers are made that are dubious in nature,
9 if I were her, I'd be hesitant to make.

10 The Court understands, however, that people need
11 money to live. And so the Court is going to grant the request
12 for stay for 7 days from today, limited again, to Mrs. Mona
13 and those three bank accounts. In all other regards, however,
14 the order is not stayed.

15 MR. EDWARDS: Your Honor, I know you told me I only
16 get one more chance, but could we at least put a dollar cap on
17 it, what she can expend over these seven days?

18 THE COURT: No.

19 MR. EDWARDS: Okay. Thank you.

20 THE COURT: Thank you.

21 MR. COFFING: Thank you, Your Honor.

22 (Proceeding was concluded at 11:26 a.m.)

23 * * * * *

24

25

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

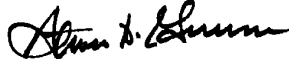
Verbatim Digital Reporting, LLC
Englewood, CO 80110
(303) 798-0890

Julie Ford 7-10-15
JULIE LORR TRANSCRIBER DATE

EXHIBIT 1

EXHIBIT 1

Electronically Filed
07/15/2015 04:19:30 PM



CLERK OF THE COURT

ORDER

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
ANDREA M. GANDARA, ESQ.
Nevada Bar No. 12580
E-mail: agandara@nevadafirm.com
HOLLEY DRIGGS WALCH
FINE WRAY PUZEY & THOMPSON
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

Hearing Date: July 9, 2015
Time of Hearing: 9:00 a.m.

**ORDER REGARDING ORDER TO SHOW CAUSE WHY
ACCOUNTS OF RHONDA MONA SHOULD NOT BE SUBJECT TO
EXECUTION AND WHY THE COURT SHOULD NOT FIND MONAS IN CONTEMPT**

The Court held a hearing regarding its Order To Show Cause Why Accounts Of Rhonda
Mona Should Not Be Subject To Execution And Why The Court Should Not Find Monas In
Contempt ("Order to Show Cause") on July 9, 2015, at 9:00 a.m. ("July 9 Hearing"). F. Thomas
Edwards, Esq. and Andrea M. Gandara, Esq. of the law firm of Holley, Driggs, Walch, Fine,
Wray, Puzey & Thompson, appeared on behalf of Plaintiff Far West Industries ("Plaintiff" or
"Far West"). Terry A. Coffing, Esq., of the law firm of Marquis Aurbach Coffing, appeared on
behalf of Defendant Michael J. Mona, Jr. ("Mr. Mona") and Rhonda Helene Mona ("Mrs.
Mona") (collectively referred to as the "Monas"). Edward L. Kainen, Esq., and Andrew L.

10594-01/1542544.doc

JUL 14 2015

1 Kynaston, Esq., of the law firm of Kainen Law Group, LLC, also appeared as divorce counsel
2 for Mrs. Mona.

3 Prior to the July 9 Hearing, the Court reviewed all relevant pleadings and papers before
4 it, including, but not limited to: (1) Plaintiff's Ex Parte Application For Order To Show Cause
5 Why Accounts Of Rhonda Mona Should Not Be Subject To Execution And Why The Court
6 Should Not Find The Monas In Contempt ("Application") and the attached Exhibits 1-4; (2) the
7 Order to Show Cause and the notice of entry and receipt of copy associated therewith; (3) the
8 Response to Order To Show Cause Why Accounts Of Rhonda Mona Should Not Be Subject To
9 Execution And Why The Court Should Not Find The Monas In Contempt ("Response") and the
10 attached Exhibits A-C; (4) the Plaintiff's Reply in Support of Order To Show Cause Why
11 Accounts Of Rhonda Mona Should Not Be Subject To Execution And Why The Court Should
12 Not Find The Monas In Contempt ("Reply"); (4) the Supplement to Response to Order To Show
13 Cause Why Accounts Of Rhonda Mona Should Not Be Subject To Execution And Why The
14 Court Should Not Find The Monas In Contempt ("Supplement"). The Court was presented the
15 Declaration in Support of Request for Contempt of Plaintiff's counsel, F. Thomas Edwards, Esq.,
16 at the July 9 Hearing, which it accepted without objection.

17 With no other appearances having been made, the Court having reviewed and examined
18 the papers, pleadings and records on file in the above-entitled matter and heard the argument of
19 counsel, and good cause appearing therefore, the Court enters the following findings facts and
20 conclusions of law. To the extent any finding of fact should properly be designated a conclusion
21 of law, it shall be deemed a conclusion of law. To the extent any conclusion of law should
22 properly be designated a finding of fact, it shall be deemed a finding of fact.

23 The Court makes the following findings of facts and conclusions of law:

24 On April 27, 2012, Plaintiff obtained a Judgment entered against Mr. Mona and the Mona
25 Family Trust Dated February 21, 2002 ("Mona Family Trust"). See Judgment, attached as Ex. 4
26 to Application. Mr. Mona and Mrs. Mona were at all relevant times co-trustees of the Mona
27 Family Trust, although after this Court ordered Mrs. Mona to appear for a judgment debtor
28 examination, based upon her capacity as trustee of the Mona Family Trust, Mrs. Mona resigned

1 and/or was removed as a trustee.

2 On January 30, 2013, the Court entered its original order for the judgment debtor
3 examination of Mr. Mona, setting forth certain documents that Mr. Mona was required to
4 produce, including:

5 8. Documents reflecting all assets (real, personal or mixed),
6 whether owned by you individually, in any partnership or
7 corporation form or in joint tenancy or in tenancy in common for
8 the past five (5) years.

9 11. A copy of all statements, and a copy of each check
10 register for each account, for each and every financial
11 institution (including but not limited to all banks, savings and
12 loans, credit unions, and brokerage houses) where you have an
13 account, where you have signature authority on an account, or in
14 which you have held or now hold an interest from January 2005
15 through to the present.

16 12. A copy of all bank statements, deposit slips, and canceled
17 checks for all bank, money market accounts which you own or in
18 which you owned any interest whatsoever, or on which you were
19 authorized to draw checks, whether said documents were in your
20 name alone, in the name of another person/entity, or in the
21 name of another and yourself as joint tenants, for the period of
22 three (3) years prior to the date hereof.

23 13. All savings account passbooks, bank statements and
24 certificates of deposit for any and all accounts, in which you
25 owned any interest whatsoever, or from which you were
26 authorized to make withdrawals, whether said accounts were in
27 your name alone, in the name of any other person, or in your name
28 and another as joint tenants, for the period of five (5) years prior to
the date hereof.

39. Copies of any and all contracts to which you are a party
entered into within the last five (5) years.

See Ex. A to Order entered 1/30/13 ("January 2013 Order") (emphasis added).

The Court subsequently ordered Mr. Mona to make a complete production of documents
by September 25, 2013. See Order entered 10/7/13 ("October 2013 Order"), 2:9-13.

On or about September 13, 2013, the Monas executed a Post-Marital Property Settlement
Agreement, in which Mr. and Mrs. Mona explain that they have sold their community property
shares of Medical Marijuana, Inc., for \$6,813,202.20. See Ex. 1 to the Application. The
Agreement then purports to divide the proceeds equally between themselves as their separate
property, with each receiving \$3,406,601.10. Id.

1 Although Mr. Mona produced approximately 33,000 documents in response to the
2 January 2013 Order and the October 2013 Order, Mr. Mona did not produce the Post-Marital
3 Settlement Agreement, in violation of both the January 2013 Order and the October 2013 Order.

4 At his judgment debtor examination on November 25, 2013, when Mr. Mona was asked
5 what he did with the more than \$6 million in stock sale proceeds, Mr. Mona lied and failed to
6 disclose the transfer of \$3,406,601.10 to Mrs. Mona. Specifically, at the judgment debtor
7 examination on November 25, 2013, Mr. Mona testified as follows:

8 **Q. When you got out of Alpine Securities, how much was the**
9 **stock worth?**

10 A. About \$0.12 a share.

11 **Q. And translate that into an aggregate.**

12 A. About \$6 million.

13 **Q. Did you cash out?**

14 A. Yes.

15 **Q. What did you do with that \$6 million?**

16 A. Paid bills.

17 **Q. What bills?**

18 A. Paid off some debts that I had.

19 **Q. What bills?**

20 A. Just personal bills. Gave 2.6 – loaned \$2.6 million to Roen
21 Ventures.

22 See Transcript of 11/25/13 Judgment Debtor Examination of Mr. Mona, 9:8-21, attached as Ex. 2
23 to the Application.

24 Mr. Mona's deceit and omission cannot be excused by a lack of memory because the
25 purported transfer through the Post-Marital Settlement Agreement occurred only shortly before
26 his examination. Likewise, Mr. Mona's deceit and omission cannot be blamed on his attorney,
27 as Mr. Mona was in control of his testimony at the judgment debtor examination in 2013. At his
28 more recent judgment debtor examination, Mr. Mona admitted that he should have produced the
Post-Marital Settlement Agreement in 2013 and that he should have disclosed it during the

1 November 25, 2013 examination and, on this point, the Court agrees with Mr. Mona.

2 The Court finds that the money purportedly transferred through the Post-Marital
3 Settlement Agreement was community property as it was acquired during the Monas' marriage.
4 The Monas have been married for more than 30 years. All property acquired after the marriage
5 by either husband or wife is community property, subject only to limited exceptions identified in
6 NRS 123.220. All debts incurred during that time are community debts under Randono v. Turk,
7 86 Nev. 123, 466 P.2d 218 (1970). See also Cirac v. Lander Cnty., 95 Nev. 723, 602 P.2d 1012;
8 In re Bernardelli, 12 B.R. 123 (Bankr. D. Nev. 1981); Nelson v. United States, 53 F.3d 339, 1995
9 WL 257884; F.T.C. v. Neiswonger, 580 F.3d 769 (8th Cir. 2009).

10 Plaintiff obtained the Judgment against Mr. Mona during the Monas' marriage, and it
11 therefore is a community debt. That community debt can be collected against the entirety of the
12 Monas' community property under Randono v. Turk, 86 Nev. 123, 466 P.2d 218 (1970) and
13 Henry v. Rizzolo, 2012 WL 1376967 (Dist. Nev. April 19, 2012). See also Cirac v. Lander
14 Cnty., 95 Nev. 723, 602 P.2d 1012; In re Bernardelli, 12 B.R. 123 (Bankr. D. Nev. 1981); Nelson
15 v. United States, 53 F.3d 339, 1995 WL 257884; F.T.C. v. Neiswonger, 580 F.3d 769 (8th Cir.
16 2009). The Court finds Norwest Fin. v. Lawver, 849 P.2d 324 (Nev. 1993) and Hogevoll v.
17 Hogevoll, 59 Cal.App.2d 188, 138 P.2d 693 (1943), which are cited in the Response,
18 distinguishable as those cases involved determinations of lender intent and community debt with
19 respect to loans made during marriage, as opposed to collection on a judgment for fraud
20 committed by a spouse during marriage. Mrs. Mona's alleged lack of involvement in the
21 underlying litigation that gave rise to Far West's Judgment is not relevant as to judgment
22 collection. There is no evidence that the assets and debts at issue here were acquired by either of
23 the Monas before marriage.

24 On May 13, 2015, the Court entered orders scheduling the judgment debtor examinations
25 of Mr. and Mrs. Mona. The order set forth a list of documents that Mr. and Mrs. Mona were
26 required to produce, including:

- 27 1. For the period beginning April 2012 through the present
28 date, financial documents of Judgment Debtor, including, but
not limited to, but not limited to, statements for checking,

1 savings or other financial accounts, securities brokerage
2 accounts, certificates of deposit, shares in banks, savings and loan,
3 thrift, building loan, credit unions, or brokerage houses or
4 cooperative, and records of income, profits from companies, cash
5 on hand, safe deposit boxes, deposits of money with any other
6 institution or person, cash value of insurance policies, federal and
state income tax refunds due or expected, any debt payable to or
held by or for Judgment Debtor, checks, drafts, notes, bonds,
interest bearing instruments, accounts receivable, liquidated and
unliquidated claims of any nature, or any and all other assets.

23. For the period beginning April 2012 through the present
date, Documents relating to monies, gifts, bequests, dispositions,
or transfers paid or given to Judgment Debtor.

26. For the period beginning April 2012 through the present
date, Documents relating to all tangible or intangible property or
other assets sold, assigned, transferred, or conveyed by
Judgment Debtor to any person or entity.

29. Documents evidencing any and all other intangible
personal, tangible, and/or real property of Judgment Debtor not
already identified in the items set forth above.

See Orders entered 5/13/15 ("May 2015 Orders").

In their response to the May 2015 Orders, the Monas did not produce certain bank
records purportedly because the bank accounts are in the name of Mrs. Mona only, despite the
fact that the accounts hold community property, in violation of the May 2015 Orders. Mrs.
Mona made no efforts to produce any documents in response to the May 2015 Orders. Mr.
Mona's failure to produce these bank records in response to the January 2013 Order and the
October 2013 Order was also a violation of said orders.

According to Mrs. Mona's testimony during examination, she has three (3) different bank
accounts in her name. The first account is a checking account at Bank of George, which contains
approximate \$190,000.00 in purported earnings from design projects performed by Mrs. Mona
during the marriage, such that the funds are community property. See Rough Transcript of
06/26/15 Judgment Debtor Examination of Mrs. Mona, 26:6-14 and 27:19-29:19 attached as Ex.
3 to the Application.

The second account is a money market account at the Bank of George, which contains
approximately \$300,000.00 that is purportedly the only remaining money from the transfer to
Mrs. Mona through the Post-Marital Settlement Agreement. Mrs. Mona testified that she

1 believes she only received approximately \$2 million based upon the Post-Marital Settlement
2 Agreement, instead of the full \$3.4 million identified in the Post-Marital Settlement Agreement.
3 See Rough Transcript of 06/26/15 Judgment Debtor Examination of Mrs. Mona, 21:18-23
4 attached as Ex. 3 to the Application. These funds constitute community property because they
5 were acquired during marriage. This remains true despite the Monas fraudulent transfer of the
6 community property to Mrs. Mona, as explained in more detail below.

7 The third account is a checking account from Bank of Nevada, which is purportedly
8 funded through the money market account at Bank of George, and thus also contains community
9 property.

10 The Monas did not produce any records related to these three (3) accounts that contain
11 community property in Mrs. Mona's name and so it is not possible to determine the account
12 numbers and identifying information associated with these accounts.

13 While the Response mentions the Monas' divorce proceedings, the Response omitted key
14 facts about the divorce, including that the divorce proceeding was only filed on July 2, 2015, and
15 that the Monas testified at their respective judgment debtor examinations just a few days earlier
16 that they had no plans to get divorced. The omission of these material facts in the Response
17 reflects on the Monas' credibility.

18 The fact that Mrs. Mona filed for divorce after the Court issued its Order to Show Cause
19 does not deprive the Court of its jurisdiction to rule on the Order to Show Cause. The Monas
20 have cited to no authority that the filing of a divorce complaint imposes a stay of execution upon
21 a judgment.

22 The Response to the Order to Show Cause complains about the timing of the briefing
23 schedule and the hearing date. However, the Response failed to disclose that Plaintiff offered to
24 both extend the briefing schedule and continue the hearing. At the hearing, the Court offered
25 additional time to the Monas, but the Monas declined. Accordingly, the Court proceeded to issue
26 its ruling.

27 The Monas have preempted the presiding judge as to any request for contempt in the
28 Application, as they are entitled to do. The Court expressly makes no finding of contempt as to

1 Mr. and Mrs. Mona without prejudice to Plaintiff pursuing such a request before another judge.
2 The Court only is considering whether sanctions should be issued pursuant to NRCP 37 as
3 requested in the Application.

4 The Court finds that Mr. Mona violated the January 2013 Order and October 2013 Order
5 by not producing the Post-Marital Settlement Agreement and the bank account records for Mrs.
6 Mona's three (3) bank accounts that contained community property. The Court further finds that
7 both Mr. and Mrs. Mona violated the May 2015 Orders by failing to produce bank records for
8 Mrs. Mona's three (3) bank accounts that contained community property.

9 The Court concludes that Mr. Mona's failure to produce the Post-Marital Settlement
10 Agreement as ordered and Mr. Mona and Mrs. Mona's failure to disclose Mrs. Mona's bank
11 records for the three (3) accounts in Mrs. Mona's name were not substantially justified and
12 constitute serious violations subject to sanctions under NRCP 37. Considering all available
13 sanctions under NRCP 37 for such violations, the Court finds grounds to designate the Post-
14 Marital Settlement Agreement a fraudulent transfer under NRS 112.180 on the merits based on
15 the following badges of fraud associated with that transfer.

16 First, the transfer in the Post-Marital Settlement Agreement was to an insider, Mrs.
17 Mona, as she is the wife of Mr. Mona, a judgment debtor, and was at all relevant times the
18 Trustee of the Mona Family Trust, a judgment debtor.

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

21 Third, Mr. Mona concealed the transaction by not producing the Post-Marital Settlement
22 Agreement as required by the January 2013 Order and October 2013 Order and by not disclosing
23 the transfer during his judgment debtor examination on November 25, 2013. Mr. Mona was not
24 truthful when he was asked during the November 25, 2013 examination about what he did with
25 the approximately \$6.8 million dollars.

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

28 ///

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

4 Sixth, Mr. Mona concealed assets by failing to disclose the Post-Marital Settlement
5 Agreement in 2013, by not disclosing the transfer during his judgment debtor examination on
6 November 25, 2013, and by not producing the bank account records for the accounts in Mrs.
7 Mona's name.

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

10 These considerations are several of many factors in NRS 112.180(2), which provides a
11 non-exhaustive list of considerations that support a determination that there was an actual intent
12 to hinder, delay, or defraud a creditor. To find a fraudulent transfer, not every factor must be
13 shown and the lack of one or more badges of fraud among many is not dispositive. The badges of
14 fraud described above provide overwhelming evidence that the Post-Marital Settlement
15 Agreement was a fraudulent transfer.

16 The Court therefore concludes that the Post-Marital Settlement Agreement is a fraudulent
17 transfer intended to hinder, delay and defraud Plaintiff in its efforts to execute upon the
18 Judgment and the \$6,813,202.20 remains community property that is subject to execution by Far
19 West in satisfaction of its Judgment. The funds in Mrs. Mona's three (3) bank accounts shall be
20 applied towards satisfaction of the Judgment pursuant to NRS 21.320. The Court finds the
21 sanctions imposed herein to be appropriate in light of the very serious misconduct at issue,
22 specifically the failure to disclose documents as ordered, which resulted in the dissipation of
23 millions of dollars in assets, of which only a relatively small amount remains (\$300,000 in Mrs.
24 Mona's Bank of George money market account) and concealment of significant community
25 property (\$190,000.00 in Mrs. Mona's Bank of George checking account) which could have
26 gone to satisfy Plaintiff's Judgment. The Court has also previously found that Mr. Mona is not
27 taking this proceeding seriously. See Order entered 06/17/2015. The sanctions are meant to deter
28 the Monas and future litigants from similar abuses.

1 This Court has authority pursuant to NRS 21.280 and, to the extent Mrs. Mona is
2 considered a third party, pursuant to NRS 21.330, to order Mr. and Mrs. Mona to not dispose
3 and/or transfer their assets as the Court has done in the past and does again in this Order.

4 Based on the foregoing, and good cause appearing:

5 **IT IS HEREBY ORDERED** that the relief requested in the Application is **GRANTED**
6 **IN PART and DENIED IN PART;**

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

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

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

16 **IT IS HEREBY FURTHER ORDERED** that the Monas produce any previously
17 undisclosed bank records (including signature cards, bank statements, front and back of all
18 checks, check books and registers, deposit slips or receipts, withdrawal slips or receipts, wire
19 transfer confirmations or reports, etc.) for the past five (5) years, regardless of whose name is on
20 the account, no later than July 20, 2015;

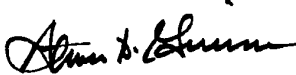
21 **IT IS HEREBY FURTHER ORDERED** that Plaintiff is awarded reasonable expenses,
22 including, without limitation, attorney's fees and costs incurred as a result of the failure to
23 comply with the Court's orders, with Plaintiff to submit a bill of fees and costs no later than July
24 20, 2015; and

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

0755

EXHIBIT 2

EXHIBIT 2



CLERK OF THE COURT

MEMC

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
ANDREA M. GANDARA, ESQ.
Nevada Bar No. 12580
E-mail: agandara@nevadafirm.com
HOLLEY DRIGGS WALCH
FINE WRAY PUZEY & THOMPSON
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

**PLAINTIFF'S MEMORANDUM OF FEES
AND COSTS ASSOCIATED WITH
ORDER TO SHOW CAUSE WHY
ACCOUNTS OF RHONDA MONA
SHOULD NOT BE SUBJECT TO
EXECUTION AND WHY THE COURT
SHOULD NOT FIND MONAS IN
CONTEMPT**

Pursuant to the Court's Order Regarding Order to Show Cause Why Accounts of Rhonda
Mona Should Not be Subject to Execution and Why the Court Should Not Find Monas in
Contempt, entered on July 17, 2015 (the "Order"), Plaintiff Far West Industries, by and through
its undersigned counsel, hereby submits this memorandum of fees and costs associated with the
Order to Show Cause Why Accounts of Rhonda Mona Should Not be Subject to Execution and
Why the Court Should Not Find Monas in Contempt.¹

¹ The Order provides that today is the deadline to file this memorandum of fees and costs.
However, just today, the Nevada Supreme Court entered an order granting a temporary stay of
the Order pending receipt and consideration of Far West's opposition to the Monas' stay request.
Thus, Far West submits this memorandum of fees and costs in an abundance of caution to
comply with the deadline in the Order, although the Court cannot act upon this memorandum of
fees and costs until the the Nevada Supreme Court lifts the temporary stay.

Date	Professional	Description	Time	Rate	Total
6/28/2015	FTE	Draft ex parte application for order to show cause why accounts of Mrs. Mona are not subject to execution and request for sanctions; draft order to show cause	7.8	\$315	\$2,457.00
6/29/2015	FTE	Revise ex parte motion; prepare exhibits for same; finalize and file ex parte motion	1.2	\$315	\$378.00
7/7/2015	FTE	Review opposition to Order to Show Cause; research and draft reply in support of Order to Show Cause	2.3	\$315	\$724.50
7/7/2015	AMG	Receive and analyze response to order to show cause; research family court records regarding the Monas' divorce filing; analyze case law regarding order to show cause	0.8	\$225	\$180.00
7/8/2015	FTE	Research and draft reply in support of order to show cause; draft declaration of Ms. Wiley regarding search of produced records; finalize and file reply brief; correspond with opposing counsel regarding same; review supplement filed by Monas; draft declaration in support of contempt finding	5.8	\$315	\$1,827.00
7/8/2015	AMG	Research and draft argument sections for reply in support of OSC	4.5	\$225	\$1,012.50
7/8/2015	JW	Revise declaration; review document production; prepare thumbdrives of searchable documents for hearing	0.8	\$195	\$156.00
7/9/2015	FTE	Prepare for and attend hearing on order to show cause	3.7	\$315	\$1,165.50
7/9/2015	AMG	Attend hearing on order to show cause; draft proposed order on OSC	4.7	\$225	\$1,057.50
7/10/2015	FTE	Revise order regarding sanctions; teleconference with opposing counsel; correspond with opposing counsel	2.9	\$315	\$913.50
7/10/2015	AMG	Revise and supplement order regarding OSC	3.3	\$225	\$742.50
7/13/2015	FTE	Review and revise proposed order; correspond with opposing counsel regarding same	1.2	\$315	\$378.00
7/14/2015	FTE	Correspond with Attorney Echols regarding order; revise order; correspond with opposing counsel regarding same; submit order to court	0.6	\$315	\$189.00

1	FEES SUBTOTAL				\$11,181.00
2	COSTS				
3		Description	Units	Cost	Total
4		Filing fees	6	\$3.50	\$21.00
5		Delivery fees	4	\$10	\$40.00
6	COSTS SUBTOTAL				\$61.00
7	FEES AND COSTS TOTAL				\$11,242.00

7 STATE OF NEVADA)
) ss.
 8 COUNTY OF CLARK)

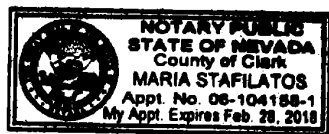
9 F. THOMAS EDWARDS, being duly sworn under penalty of perjury, states: that the
 10 affiant is the attorney for the Plaintiff; that the items contain in the above memorandum are true
 11 and correct and to the best of this affiant's knowledge and belief; and that the said disbursements
 12 have been necessarily incurred in this action.
 13

14 FURTHER YOUR AFFIANT SAYETH NAUGHT.

15
 16 
 17 F. THOMAS EDWARDS, ESQ.

18
 19 Subscribed and Sworn to before me
 20 this 20th day of July, 2015.

21 
 22 NOTARY PUBLIC



1 **CERTIFICATE OF ELECTRONIC FILING/SERVICE**

2 I am an employee of Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson. On the
3 20th day of July, 2015, I filed with this Court and electronically served in accordance with
4 Administrative Order 14.2, to all interested parties, through this Court's Wiznet/Odyssey E-File
5 & Serve, a true copy of the foregoing PLAINTIFF'S MEMORANDUM OF FEES AND COSTS
6 ASSOCIATED WITH ORDER TO SHOW CAUSE WHY ACCOUNTS OF RHONDA MONA
7 SHOULD NOT BE SUBJECT TO EXECUTION AND WHY THE COURT SHOULD NOT
8 FIND MONAS IN CONTEMPT, in the above matter, addressed as follows:

9
10 Terry Coffing, Esq.
Tye Hanseen, Esq.
11 MARQUIS AURBACH COFFING
1001 Park Run Drive
12 Las Vegas, NV 89145
E-mail: thanseen@maclaw.com
13 tcoffing@maclaw.com

14 mechols@maclaw.com
15 chatfield@maclaw.com
ldell@maclaw.com
16 smong@maclaw.com
rwesp@maclaw.com

17 Aurora M. Maskall, Esq.
David S. Lee, Esq.
18 LEE, HERNANDEZ, LANDRUM &
GARAFALO
19 7575 Vegas Drive, #150
Las Vegas, NV 89128
20 E-mail: amaskall@lee-lawfirm.com
dlee@lee-lawfirm.com
21 lee-lawfirm@live.com

F. Thomas Edwards, Esq.
Andrea M. Gandara, Esq.
HOLLEY, DRIGGS, WALCH, PUZEY &
THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, NV 89101
E-mail: tedwards@nevadafirm.com
agandara@nevadafirm.com

nmoseley@nevadafirm.com
tnealon@nevadafirm.com

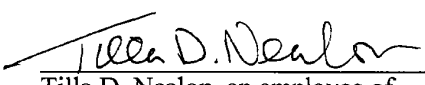
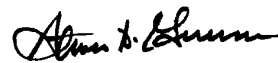
22
23 
24 Tilla D. Nealon, an employee of
25 Holley, Driggs, Walch, Fine, Wray, Puzey &
26 Thompson
27
28

EXHIBIT 3

EXHIBIT 3



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

FAR WEST INDUSTRIES,	.	CASE NO. A-670352
	.	
Plaintiff,	.	DEPT. NO. XV
	.	
vs.	.	TRANSCRIPT OF
	.	PROCEEDINGS
RIO VISTA NEVADA, LLC, et al..	.	
	.	
Defendants.	.	
	.	
<u>And all related claims.</u>		

BEFORE THE HONORABLE JOE HARDY, DISTRICT COURT JUDGE

**SHOW CAUSE HEARING: WHY ACCOUNTS OF RHONDA MONA SHOULD NOT BE
SUBJECT TO EXECUTION AND WHY THE COURT SHOULD NOT FIND MONAS
IN CONTEMPT**

THURSDAY, JULY 9, 2015

APPEARANCES:

FOR THE PLAINTIFF:	F. THOMAS EDWARDS, ESQ. ANDREA GANDARA, ESQ.
FOR THE DEFENDANTS:	TERRY A. COFFING, ESQ.

ALSO PRESENT:

FOR RHONDA MONA:	ANDREW KYNASTON, ESQ. ED KAINEN, ESQ.
------------------	--

COURT RECORDER:

MATTHEW YARBROUGH
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Englewood, CO 80110
(303) 798-0890

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 LAS VEGAS, NEVADA, THURSDAY, JULY 9, 2015, 10:10 A.M.

2 THE COURT: Far West Industries vs. Rio Vista
3 Nevada, A-670352. We have a few appearances here. Could you
4 please make them?

5 MR. COFFING: Terry Coffing on behalf of Mike Mona,
6 and for the purposes of this motion, on behalf of Rhonda Mona.

7 MR. EDWARDS: Tom Edwards on behalf of Far West.

8 MS. GANDARA: Andrea Gandara, also on behalf of Far
9 West.

10 THE COURT: I'm sorry. What was your last name,
11 ma'am?

12 MS. GANDARA: It's Gandara.

13 THE COURT: How do you spell that?

14 MS. GANDARA: G-a-n-d-a-r-a.

15 MR. COFFING: Go ahead.

16 MR. our Honor, Andrew Kynaston and Ed Kainen. We're
17 not appearing officially in this case, but we represent Rhonda
18 Mona in the divorce case that's been filed in Family Court.
19 And she asked us to be present today for this hearing.

20 THE COURT: Did you bring popcorn?

21 MR. KYNASTON: Next time, Your Honor.

22 THE COURT: So, Mr. Coffing, for purpose -- for
23 generally, you represent Mr. Mona. For purposes of this
24 hearing, you represent both Mr. Mona and Mrs. Mona; is that
25 correct?

1 MR. COFFING: Yes, Your Honor.

2 THE COURT: Okay.

3 MR. COFFING: Because of the timing, you'll recall
4 we're here on an ex-parte shortening -- Order Shortening Time.
5 And obviously, since you signed your order, Ms. Mona has
6 sought divorce counsel, but she hasn't had the opportunity to
7 get separate counsel in this. And I think to the extent Mike
8 and Rhonda's interests are aligned in the same -- for the
9 purpose of this motion, my client has agreed to waive any
10 potential conflict that might exist.

11 THE COURT: Okay. Thank you. Mr. Edwards, go
12 ahead.

13 MR. EDWARDS: Your Honor --

14 THE COURT: Oh, before -- sorry. Sorry for saying
15 go ahead and then cutting you off about a split second later.

16 Just so everyone knows, I have reviewed the Ex-Parte
17 Application for OSC, the OSC that I signed, a Notice of Entry
18 of the OSC, ROC of the Ex-Parte Application, and Order to Show
19 Cause, Mr. Mona's Response to the Order to Show Cause,
20 Plaintiff's Reply in Support of the Order to Show Cause. And
21 Mr. Mona's Supplement to the Response to the Order to Show
22 Cause that the Court received via facsimile sometime very late
23 yesterday, as well as several Nevada cases and statutes, and
24 the exhibits, the transcripts, etcetera, that were attached to
25 the briefs.

1 So I think I'm familiar with the issues. I also do
2 recall the prior hearing that we were here on as well as the
3 telephonic hearing that we had prior to, or during the
4 examination.

5 So having said all that, I think I'm pretty
6 familiar. But due to these issues being, in my mind,
7 extremely serious, I welcome counsel to present their
8 arguments. One of the reasons I saved you all to the end,
9 because I do expect arguments, you know, even though I have
10 read everything.

11 And again, this is some serious accusations, serious
12 conduct. And so with that in mind, I will try not to cut you
13 off again, at least for now.

14 MR. EDWARDS: Feel free to cut me off, Your Honor.
15 I'd love you to direct my argument if you can help.

16 As to the supplement they filed late last night
17 addressing the issue of contempt, they essentially make two
18 arguments, that you can't hear the issue of contempt, because
19 we haven't submitted a declaration.

20 You may not have received it yet, but we have in
21 response essentially copied and pasted out of our brief, put
22 it into a declaration. You have the declaration filed on the
23 record now. Their second issue --

24 THE COURT: Do you have a copy with you?

25 MR. EDWARDS: I do, Your Honor. But I guess for the

1 second issue, I'm not quite sure you even need to review it.
2 They --

3 THE COURT: Since we're talking about it, you can
4 bring it up. Make sure you keep a copy for yourself.

5 MR. EDWARDS: I might have to steal a copy from Mr.
6 Coffing (inaudible).

7 THE COURT: Thanks.

8 MR. EDWARDS: There's nothing new in this
9 declaration, Your Honor, that's not already contained in the
10 briefs, so we're just doing it to make sure we trigger the
11 statute.

12 Another issue raised in the supplemental brief last
13 night is that the Monas have the ability to preempt you from
14 hearing the issue of contempt. And although -- and we only
15 received it last night, haven't had a tremendous opportunity
16 to look at that completely. My initial glance says, I think
17 they're right. And to the extent they want to preempt you
18 from hearing the issue of contempt, they can do so. We'd have
19 to be set in front of another Judge.

20 But keep in mind, only on the issue of contempt.
21 And that's what I want to stress is, the issue of contempt
22 before you is, frankly, very limited. If we take contempt off
23 the table, that means you can't issue a \$500 sanction and you
24 can't imprison him for 25 days. That's it. Everything else
25 is still on the table.

1 Because the sanctions we requested under Rule 37 are
2 entirely separate from the contempt portion, and they don't
3 have these same requirements. There's no opportunity for them
4 to preempt you. There's no requirement for a declaration and
5 so forth.

6 So we're really here today to allow my client to
7 execute on three different bank accounts, three different bank
8 accounts held in the name of Mrs. Mona, and upon that basis,
9 the defendants don't think we can get them.

10 The first account is a checking account at Bank of
11 George that contains about \$190,000. Mrs. Mona admitted in
12 her judgment debtor examination, the recent judgment debtor
13 examination, that this is income that she earned during the
14 marriage, and therefore it is community property. No dispute
15 about that.

16 The only issue of whether we can execute is, when
17 did our judgment arise? Did it arise during the marriage? It
18 did. And therefore, we are entitled -- it is a community debt
19 and we are entitled to satisfy that community debt with
20 community property.

21 The case I'd like you to review, Your Honor, it's
22 cited in our reply brief, is the Randano case. It's 86 Nevada
23 123. And it analyzed in an almost identical situation with a
24 fraud judgment against the husband, could the creditor collect
25 against the community estate.

1 And the courts -- the Nevada Supreme Court's
2 analysis is very straightforward. It said, if they incurred
3 the judgment during the marriage, it's a community debt that
4 can be satisfied with community property. It's that
5 straightforward.

6 Now, the Monas have cited some case law involving
7 bank loans. And in bank loans, in certain situations, a court
8 will try to consider, well, was this a loan to just the
9 husband, or was this a loan to the husband and the wife, to
10 try to determine what assets the lender can go after.

11 But this isn't a lending case, Your Honor. We are a
12 bank. This is a fraud judgment. And the intent analysis
13 simply doesn't make sense in this context. All right. My
14 client did not intend to be defrauded by Mr. Mona. And that
15 -- for that reason, Your Honor, the Randano court did not
16 consider intent at all. It simply looked at, when was the
17 judgment entered? If it was entered during the marriage, it's
18 a community debt, able to satisfy it under community property.

19 And other than that argument, the Monas don't
20 dispute any of the issues associated with this checking
21 account at Bank of George.

22 The next two accounts, Your Honor, I'd like to lump
23 together. There's the money market account at Bank of George
24 for \$300,000, and a checking account with Bank of Nevada that
25 is supposedly funded exclusively from the money in the Bank of

1 George money market account.

2 So essentially, we have one pool of money in two
3 different accounts, both in the name of Mrs. Mona. And
4 unfortunately, we're relying exclusively upon Mrs. Mona's
5 testimony because the defendants have never produced any
6 records associated with any three of these accounts, despite
7 court orders to do so.

8 So the question is, where did this pool of money
9 come from? Back in 2003 -- excuse me -- 2013, the Monas sold
10 stock worth roughly \$6.8 million. And you'll remember, during
11 this time period, our judgment had already been entered, and
12 we were -- we were knocking at the door begging to get a
13 judgment debtor examination.

14 We started the process back in January. We weren't
15 able to actually get it on until November. But we were
16 breathing down his neck trying to get the judgment debtor
17 exam. So Mr. Mona finds himself -- or excuse me -- the Mona
18 family finds themselves sitting on \$6.8 million. They need to
19 figure out a way to get rid of it before my client gets it.

20 So what do they? September 13th, 2013, they signed
21 a Post-Marital Settlement Agreement to split the money between
22 husband and wife as their separate property. So, thank
23 goodness, Mr. Mona got rid of half of the money. And then he
24 takes essentially the remainder of the money and loans it to
25 one of his companies, Roen Ventures which is the subject of a

1 separate fraudulent transfer action.

2 Then late September, 2013, Mr. Mona produced 33,000
3 documents to my client, which is obviously just a document
4 dump. Most of the documents had nothing to do with any assets
5 he actually held. But what was not included in that document
6 dump was the Post-Marital Settlement Agreement he signed just
7 a few days earlier, despite a court order saying, you must
8 produce any documents to which you were a party in the last --
9 or any contracts to which you were a party in the last five
10 years.

11 Then November 2013, he shows up for his judgment
12 debtor exam and says, I'm sorry, guys, I'm broke. Yeah, he's
13 broke. He just, you know, dealed out (sic) \$6.8 million.
14 When asked specifically, what did you do with that \$6.8
15 million? Specifically. He said, I paid some personal bills
16 and then loaned the rest to Roen Ventures.

17 He didn't mention the Post-Marital Settlement
18 Agreement and he made no mention of splitting the money with
19 his wife. Yet at his recent judgment debtor examination, he
20 admitted that he definitely should have produced the Post-
21 Martial Settlement Agreement, and he definitely should have
22 testified that he split the money with his wife. But he
23 didn't do either.

24 //

25 The first time we learned of the Post-Martial

1 Settlement Agreement is just a few weeks ago when they --
2 about two weeks ago when they produced it to us subject to the
3 subsequent judgment debtor examination orders. Keep in mind,
4 this is almost two years after they should have produced it in
5 the first place and after almost all of that money has already
6 been spent, dissipated.

7 So my client, because of this delay, potentially
8 lost millions of dollars, \$3.4 million, because they didn't
9 timely produce it pursuant to court order.

10 So when they try to convince you, hey, Judge, we
11 produced it, no harm, no foul, that's not the case. There was
12 absolutely harm. There was absolutely foul. We lost millions
13 of dollars because of their non-disclosure.

14 So then the question is, how do we get to this money
15 sitting in these two bank accounts? Well, the Post-Martial
16 Settlement Agreement is, in and of itself, a fraudulent
17 transfer. A fraudulent transfer is any transfer intended to
18 hinder, delay or defraud a creditor.

19 When analyzing whether it is a fraudulent transfer,
20 you consider -- the Court considers badges of fraud -- there's
21 a non-exclusive list of -- of those badges in the statute.
22 One of those is a transfer to an insider. This is clearly a
23 transfer to an insider. This was community property. They
24 transferred it to each other individually. It was transferred
25 to insiders.

1 THE COURT: When you say badges of fraud, the Court
2 doesn't necessarily have to find that every single one of
3 those is met; is that your argument?

4 MR. EDWARDS: That's correct, Your Honor. These --
5 there's factors for you to consider. And frankly, it's a
6 non-exclusive list. There are other factors or related
7 factors that you can consider as well in making the ultimate
8 determination. And the statute, in fact, says that. It says,
9 you can consider these factors among others. So we had
10 transfer to the insider. They can't dispute that.

11 That the debtor retained possession or control of
12 the assets. Well, it -- again, they haven't produced the bank
13 records so we have to rely on Mrs. Mona's testimony where she
14 said, even though I was supposed to get \$3.4 million, I think
15 I only got \$2 million. That means Mr. Mona continued to have
16 control over another \$1.4 million. He continued to be in
17 possession and control.

18 The transfer was concealed. This another badge of
19 fraud. Because he didn't provide the Post-Martial Settlement
20 Agreement pursuant to court order, because he lied about it in
21 the judgment debtor examination, he absolutely tried to
22 conceal this transfer.

23 One of the other badges is, before the transfer the
24 debtor was sued. And my client had sued well in advance.

25 THE COURT: Already had a judgment, right?

1 MR. EDWARDS: Exactly. The judgment had already
2 been entered.

3 Another badge is, the transfer was substantially all
4 of the debtor's assets. He was sitting on \$6.4 million in
5 roughly September of 2013. When he shows up at the judgment
6 debtor exam in November he says, I'm broke. He transferred
7 away substantially all of his assets.

8 The debtor concealed assets. For the same reasons
9 as stated before, he concealed the agreement, he concealed the
10 testimony at the judgment debtor exam, and never gave us the
11 bank accounts with which we could've seen these transfers in
12 the first place to his wife.

13 The other badge of fraud is that the debtor was
14 insolvent when the transfer was made. Well, they argue that
15 he wasn't insolvent in the brief. At the judgment debtor
16 examination he freely admitted, he's been insolvent since 2008
17 or 2009.

18 And then the last badge of fraud that we think
19 applies, Your Honor, is the transferred occurred shortly after
20 substantial debt was incurred. Now, this is -- our judgment
21 was entered a year, year-and-a-half before the actual transfer
22 occurred. But we think that with this factual -- what this
23 badge of fraud tells you is that timing of the transfer is
24 something you should consider. And the timing of this
25 transfer on the eve of the judgment debtor examination

1 suggests that the intent was to defraud, delay and hinder my
2 client.

3 And so because the Post-Martial Settlement Agreement
4 is, in and of itself, a fraudulent transfer, that money
5 remains community property upon which we can execute. And
6 again, we're talking about the money market account at Bank of
7 George that we think has \$300,000 in it, and the checking
8 account with Bank of Nevada that is funded by the Bank of
9 George account.

10 As to the issue of sanctions. We've asked for
11 sanctions under Rule 37, which allows you to sanction a party
12 for failing to disclose documents in violation of a court
13 order. And those documents specifically are the failure to
14 disclose the Post-Martial Settlement Agreement in 2013, and
15 the failure to produce the bank records in Mrs. Mona's name
16 containing community property in both 2013 and 2015.

17 Rule 37 gives you broad authority to issue sanctions
18 for failure to produce records. And some of the enumerated
19 sanctions that you can do are, designate facts deemed
20 established, and you can refuse to allow the Monas to oppose a
21 claim or an issue.

22 So, Your Honor, because of that, we ask that you
23 deem establish that the Post-Martial Settlement Agreement is
24 itself a fraudulent transfer. You can establish that our
25 rights are established to execute upon the three accounts that

1 we're talking about today, and prevent the Monas from claiming
2 that any of the funds are exempt from execution.

3 An additional remedy under Rule 37 is an award of
4 attorneys fees and costs. I request that, although he already
5 has a \$23 million judgment hanging over his head so I'm not
6 quite sure how much my fees and costs are going to scare him.

7 But to reiterate, Your Honor, the failure to produce
8 that Post-Martial Settlement Agreement in 2013, and the
9 associated bank records in Mrs. Mona's name cost us millions
10 of dollars. This is not a situation of no harm, no foul,
11 because they produced it two years later. It cost my client
12 millions, and that's why these sanctions are warranted.

13 Thank you.

14 THE COURT: Thank you. Before you begin, Mr.
15 Coffing, I might save you some time and argument. You're
16 certainly welcome to address what it is I'm going to say right
17 now, but I'm going to say it now because it might save some
18 time for everyone.

19 The Court appreciates the supplement submitted and
20 filed by Mr. Mona. I don't necessarily appreciated the
21 timing, but it's somewhat understandable given the timing of
22 the hearing today. But certainly appreciate the arguments
23 made in there regarding the contempt, including the necessary
24 affidavit and the jurisdictional issue.

25 I also appreciate concession, if you will, by

1 plaintiff that if Mr. or Mrs. Mona do want another Judge to
2 rule on the contempt, then they are entitled to that right. I
3 did review the statute, as well as a couple of those cases,
4 and therefore, I am not going to find contempt of either Mr.
5 or Mrs. Mona, unless they want me to consider that today,
6 which I assume they don't. That denial, if you will, is
7 obviously without prejudice to the extent plaintiff wants to,
8 you know, follow up with another Judge on that ground.
9 However, I am going to consider whether sanctions should be
10 issued.

11 So again, if you want to address the contempt issue
12 and my ruling on that, you're certainly welcome to. But I
13 wanted to make that now, because it might save you a little
14 time and argument.

15 MR. COFFING: Well, I appreciate that, Your Honor.
16 But I want to be -- I think while I am a former law clerk, I
17 am loathe to last minute filings, so I appreciate your concern
18 with the timing of it. But, Your Honor, look at the timing
19 from my perspective. While I'm exiting the judgment debtor
20 exam of Mike Mona, I'm asked to sign documents here, receipt
21 of copy, you've got an ex-parte order, granting an Order to
22 Show Cause, while I'm walking out the door before a holiday
23 weekend. And so the timing of all of this, Your Honor, is
24 very troubling and problematic to both my clients.

25 THE COURT: Do you want to continue the hearing for

1 a week?

2 MR. COFFING: Well, that's the dilemma. And Mr.
3 Edwards did say, he's absolutely correct, he did offer me the
4 opportunity to continue the hearing. He offered that.

5 However, your Order to Show Cause contains
6 injunctive language that my client couldn't live with in the
7 time frames in which he -- his calendar, your calendar, my
8 calendar would allow.

9 So I'm in a dilemma. Yeah, would I like to see this
10 45 days out? I absolutely would. But I'm in a dilemma where
11 you've signed an order already as against two clients, one of
12 whom is not a party, that effectively enjoined them from using
13 -- using their money.

14 So I'm in a rock and a hard place as from that
15 respect, Your Honor. So yeah, I'd love to have time. But at
16 this point, I don't think that that's available to me with the
17 status of your order. So, I have that I have that dilemma and
18 so that's where I stand.

19 But let me first address the fact that we can't
20 dispute here; Rhonda Mona is not a party to this case. She
21 has not been served with any process. There's no fraudulent
22 conveyance claims made against her. There is nothing that
23 brings Rhonda Mona before this Court other than the fact that
24 you signed a judgment debtor exam order requiring her to
25 appear and produce documents.

1 And you'll recall at our telephonic conference, I
2 raised this very issue. I have no doubt or dispute that they
3 are entitled to take discovery from Rhonda Mona. But to call
4 her a judgment debtor defendant -- calling her a judgment
5 debtor is simply an error.

6 So when they stand before you and say the Monas did
7 not produce documents; number one, Mike Mona did not have the
8 obligation to produce documents that were not in his name, nor
9 is he required to make his own determinations as to what
10 constitutes community property.

11 Number two, the request of documents from Rhonda
12 Mona said, produce documents related to the judgment debtor.
13 And so they're here complaining that Rhonda Mona didn't
14 produce her bank account records when their own request says,
15 judgment debtor, you produce -- or produce documents for -- in
16 the judgment debtor which she is not one.

17 So, Your Honor, we have some serious procedural --

18 THE COURT: So that begs the question though, why
19 hasn't Mr. Mona produced them, because he is a judgment
20 debtor?

21 MR. COFFING: Because they weren't his -- his --
22 they're not his records.

23 THE COURT: So aren't they --

24 MR. COFFING: They're not his bank accounts.

25 THE COURT: -- community property?

1 MR. COFFING: Well, Your Honor, you're making that
2 determination, right? It sounds like you're making that
3 determination.

4 THE COURT: I'm asking a question.

5 MR. COFFING: Okay.

6 THE COURT: You can --

7 MR. COFFING: I don't --

8 THE COURT: -- answer or not.

9 MR. COFFING: No. I don't believe they are
10 community property, Your Honor. And I believe that Mr.
11 Kainen, at some point in time, will argue long and loud that
12 they are not. The parties entered into an agreement
13 authorized by Nevada statute in which their -- their separate
14 assets would be characterized.

15 And what counsel needs to clarify for you, and I
16 think will agree, that as it relates to the \$190,000, Mrs.
17 Mona testified that those were her earnings deposited in a
18 separate account before this judgment arose. And now they're
19 saying, well, it was during the marriage. But it was before
20 the judgment and that puts us in par with, I believe it's the
21 Jewett v. Patt case.

22 They want to attach separate property. And when she
23 deposits money in an account with her name on it, there's a
24 presumption of separate property.

25 Now, that presumption can be overcome. And so my

1 client, Ms. Mona, has not had the opportunity to present you
2 the facts as required under the Norwest case, to present you
3 the facts that would overcome a presumption of community
4 property which I think you'll probably tell me is my burden.
5 But I think it's their burden to overcome the presumption of
6 community property when it's deposited in an account that is
7 titled that way.

8 I get a paycheck, go home and give my wife \$50, and
9 she deposits it in an account that says, Jane Coffing, in her
10 sole and separate property, that's what it is. Now, they can
11 argue transmutation, they can argue a whole bunch of things
12 that happen in Family Court, but we don't have in front of
13 here, because Rhonda Mona is not a party. They hadn't served
14 her with process. They have no ability, I dare say,
15 respectfully, the Court has no ability to enjoin the use of
16 these funds until such time as she's a party to an action
17 which is required under NRS 22, the statute that they cite to
18 you.

19 So, Your Honor, fundamental due process issue here
20 relates to Rhonda Mona. She's not a party. And any
21 characterization of this Court of what her assets may or may
22 not be subject to, must have her -- she must have the
23 opportunity to be heard, she must have the opportunity to
24 present evidence.

25 And that's exactly what the Court said in the case

1 we cited, the Norwest case, when we talk about what was the
2 intent. And I think my colleague misspeaks as to what the
3 intent issue goes to. It's not the intent -- it was Rhonda
4 Mona's intent to defraud anyone, it's what did his client
5 intend to be able to satisfy any obligations that may arise as
6 a result of the contract that ultimately issued of the
7 judgment. Had they wanted Rhonda Mona to sign on the line for
8 any contract, they could've asked. Had they wanted her to do
9 that, they could have. They didn't.

10 So did Far West ever have the intent to look to
11 Rhonda Mona for the repayment of the judgment? That's the
12 analysis and that's what this Court must determine on a
13 factual basis before you can declare a separate account is,
14 indeed, a community account.

15 And so what this is, Your Honor, respectfully again,
16 this is an end-run. This is an end-run around filing a
17 fraudulent conveyance action in which evidence would have to
18 be presented. Counsel could be retained to rebut that
19 independent of Mr. Mona's interests, and that they could
20 proceed along that basis. And they know that, because they've
21 sued someone else on a fraudulent conveyance claim.

22 So when you're -- when you're looking at this, Your
23 Honor, any remedy or relief that you think is warranted as
24 against Mr. Mona cannot be entered against Rhonda Mona until
25 she's had the opportunity to defend her rights, to have her

1 day in court, her due process, and for them to present
2 evidence that would rebut the presumption that these are,
3 indeed, separate funds once they're deposited in the account,
4 and once they entered into a contract pursuant to Nevada
5 statute that allows married couples to characterize their
6 assets.

7 So what they asking for is summary judgment on a
8 fraudulent conveyance claim when there are serious factual
9 disputes that they must overcome, factual issues that they
10 must overcome, that aren't even before you today because
11 Rhonda Mona is not a party to this action.

12 And the way we got here, I believe, is based upon
13 the improper issuance of a judgment debtor exam to a non-
14 debtor. And I've objected to that. I objected to the
15 production of documents. You heard my objections I put on the
16 record at the time of the hearing.

17 But let's go to the production of this document
18 itself. First of all, Mike Mona -- and Mr. Edwards will
19 confirm, neither he or I were counsel for these parties at the
20 time of the first judgment debtor exam -- Mike Mona produced
21 33,000 pages of documentation.

22 Counsel can now say most of them are irrelevant, but
23 when you produce -- when you put out a document request that
24 encompasses the world, you're going to get the world. And
25 some of it may not be relevant, but that's what they produced.

1 And if you look at Mr. Mona's latest judgment debtor
2 exam, what did he say? He believed that the document was
3 produced. And if you look at the snippet of the transcript
4 from the prior exam, they never followed up on this issue,
5 Your Honor. They -- Mona said, I paid bills. I gave the
6 money to Roen. And that's where they immediately went. What
7 about Roen? And that's where the subject of the examination
8 went.

9 So when Mr. Edwards asked the question, you know,
10 why didn't you tell us? Well, I don't know that it was ever
11 asked in the sense that he could answer that.

12 THE COURT: I thought he said, he should have told
13 him.

14 MR. COFFING: He should have, had he been asked; all
15 right? But if you're going to -- if Mr. Mona had the intent
16 to deceive and hide and conceal, why did he produce it now;
17 right? He produced it. He thought it was previously produced
18 and he's produced it. And that's part of the Court's analysis
19 that I think you really need to consider when you're -- when
20 you're talking about draconian relief here.

21 And it is, indeed, draconian what they're asking you
22 for. Prevent -- negative inferences; prevent them raising
23 further defenses to execution that have not yet happened?
24 Your Honor, that cannot be done -- I don't believe that that's
25 an appropriate sanction, number one, in these facts and

1 circumstances, because the other factor I want you to look at,
2 Your Honor, where have they been for the last two years?
3 Where have they been?

4 I don't know what happened with prior counsel. I
5 don't know why prior counsel's not here. But I can tell you,
6 after the judgment debtor exam we got a Writ of Garnishment
7 for Mr. Mona's wages, which has been paid, and then nothing,
8 until Mr. Edwards came along.

9 So for them to come into court ex-parte, Order
10 Shortening Time and say, oh, my gosh, we've been damaged;
11 where have you been? Because remember, Your Honor, at that
12 judgment debtor exam, the first one, what was produced? The
13 stock transaction. They knew the stock had been sold.
14 They're asking about it. It's there. Right?

15 And so that had happened prior to the judgment
16 debtor exam. The money was already gone in the sense of the
17 transfer to -- the contract between Rhonda, and the
18 transaction with Roen, by the time they took that judgment
19 debtor exam.

20 So I would respectfully disagree with my colleague
21 that there's been some millions of dollars lost. They
22 haven't. They were gone at the time. And for them to rush
23 into court now, again, ex-part, Order Shortening Time, and say
24 we've been harmed, on something that they failed to follow up
25 on two years ago, that's not fair to my client, Mike Mona,

1 number one. And it certainly cannot be considered any level
2 of due process that Rhonda Mona's entitled to as it relates to
3 her separate property.

4 So, Your Honor, I think while my client's being
5 painted as a villain, he's a real estate developer that got
6 caught in the crash. At the time of his last judgment debtor
7 exam, he was involved in a lawsuit with Bank of America to the
8 tune of 13 plus million dollars.

9 And so has he been insolvent with these debts
10 hanging out there? Yeah. Is he still working and making a
11 living? He is. And they're garnishing those wages for it.

12 But to now come in and demonize him for this, I
13 think it's an inappropriate characterization and it puts us in
14 a bad light before the Court, because not -- because you owe
15 money doesn't make you a bad person.

16 And while you have what thoughts you may as against
17 Mike Mona. But certainly as it relates to Rhonda Mona, she's
18 entitled to be heard. She's entitled to her day in court.
19 And she's entitled to have that opportunity on contested
20 factual issues of which they bear the burden, as well as
21 Rhonda, without having that opportunity to do so.

22 And so, Your Honor, I would request that this motion
23 be denied; right? And I think it's inappropriate on an Order
24 Show to Cause for this Court to make a characterization as to
25 what amounts to community or separate property without one of

1 the parties being present, without one of the parties being
2 able to have separate counsel to be heard on the issues.

3 And I say -- Your Honor, I hope the issue related to
4 recusal is not taken with any disrespect. I have the
5 obligation to (inaudible).

6 THE COURT: No, the law is the law. So no
7 disrespect taken whatsoever. I was sincere when I said, you
8 know, I certainly appreciate, you know, you pointing out in
9 your opposition basically agreeing with you on that point
10 that, you know, contempt's not for me to decide. So no
11 disrespect is taken --

12 MR. COFFING: Right.

13 THE COURT: -- whatsoever.

14 MR. COFFING: Well, I appreciate that, Your Honor.
15 But as it relates to sanctions, I think the same consideration
16 needs to be given. The level of sanctions that they are
17 requesting on this time frame without Rhonda being present,
18 it's certainly just -- it violates due process, it's not fair.

19 And if the Court is going to entertain anything
20 about these case -- or about these three accounts, it should
21 be on an evidentiary basis in which all parties should be
22 allowed to participate fully.

23 And I think by that time, Rhonda may have different
24 counsel, and maybe it's Mr. Kainen, that will want to
25 certainly weigh in on that because her rights are entitled to

1 protection regardless of what conduct you think Mr. Mona has
2 been guilty of.

3 THE COURT: Thank you. Before you sit down, I had a
4 question that I wanted to ask you -- and I'll ask Mr. Edwards,
5 as well -- that popped into mind.

6 You know, the property settlement agreement or
7 whatever it's technically called between Mr. and Mrs. Mona,
8 apparently provided for the split, if you will, of that money.
9 And I -- it may be in the briefs, but I don't recall seeing
10 any argument or evidence as to where Mrs. Mona's money that
11 she received from that agreement went.

12 MR. COFFING: Your Honor, I believe she testified --
13 and counsel will correct me -- I believe she testified that --
14 number one, that she was uncertain as to how much she
15 received. Number two, it would have gone into, I think she
16 testified, the Bank of George account. But she did not review
17 any records or have independent knowledge of where that money
18 would have gone.

19 But importantly, Your Honor, the fact that the money
20 was received and transferred was not -- not a secret to them.
21 They knew it two years ago. They had all those documents.

22 THE COURT: Well, thank you. And once you said
23 that, oh yeah, that was in there. So, I appreciate that.

24 MR. COFFING: Before I rest, Your Honor --

25 THE COURT: Sure.

1 MR. COFFING: -- may I just poke my head in with
2 counsel here and ask if I've missed something?

3 (Pause in the proceedings)

4 MR. COFFING: I think -- Your Honor, could Mr.
5 Kainen address a brief point so I don't just regurgitate what
6 he just said?

7 THE COURT: You can regurgitate what he said.

8 MR. COFFING: Okay.

9 THE COURT: And take your time. I'm, you know --.

10 (Pause in the proceedings)

11 MR. COFFING: Your Honor, I think if I can
12 supplement a little bit what Mr. Kainen wanted me to emphasize
13 is the mere fact that the debt arises does not automatically
14 make it community. And I think I've touched on this a little
15 bit. Because, remember, this judgment contains allegations
16 and the judgment relates to fraud which would be personal to
17 Mr. Mona.

18 And if it's personal to Mr. Mona, it cannot
19 therefore be held as against Rhonda Mona individually. And it
20 wasn't until -- it wasn't until the property settlement,
21 Postnuptial Agreement, in which that was -- essentially
22 recognized the parties tried to free their assets.

23 So there's nothing fraudulent as it relates between
24 two spouses wanting to characterize their property during the
25 course of a marriage. We have a statute that allows for that.

1 And that's an analysis I think for another day, Your Honor.

2 Mr. Mona, if he chooses, can argue against who gets
3 this debt in the divorce, but it's going to be hard for him to
4 argue that the judgment relates to fraud, and that fraud is
5 personal to him, and therefore be, again, patently unfair and
6 inappropriate to now say, Ms. Mona, you're going to -- your
7 separate assets are going to be subject to that debt.

8 THE COURT: Thank you.

9 MR. EDWARDS: Your Honor, as to that last issue, we
10 think the Randano case, the Nevada Supreme Court case
11 expressly addresses it. It's a fraud judgment that arises
12 during the marriage. It is community debt subject to
13 execution upon community property. It's that straightforward.

14 As to the issue -- as to the argument that Mr. Mona
15 did not have an obligation to produce these documents. First,
16 as to the Post-Martial Settlement Agreement, I heard no
17 argument that would suggest he didn't have an obligation to
18 produce that. He did have an obligation. He says he should
19 have produced it; he didn't. And we lost millions of dollars
20 because of it.

21 As to the bank statements, the orders entered by
22 this Court back in 2013, and again in 2015 said that he's to
23 produce assets of any of his assets, and that would
24 necessarily include documents reflecting his community
25 property, which are these bank statements held in the name of

1 his wife. He knew it was about these accounts. He didn't ask
2 his wife for these -- for these bank statements. He should
3 have.

4 As to the argument that Mrs. Mona did not have an
5 obligation to produce these documents. The judgment debtor
6 examination order for Mrs. Mona said, we need you to produce
7 the documents of the judgment debtor, her husband, documents
8 reflecting his assets. His assets would necessarily include
9 community property assets.

10 She had access to those bank accounts, holding
11 community property assets, yet she chose not to provide them
12 to us. In fact, during their judgment debtor exam, she didn't
13 search for any documents whatsoever, but.

14 As to the argument that she is not a judgment
15 debtor. At the time you issued your Order for Judgment Debtor
16 Examination in 2015, she was a trustee of the Mona Family
17 Trust, which was a judgment debtor. After you entered your
18 order, she mysteriously resigned.

19 So the fact -- the argument that this Court did not
20 have jurisdiction over Mrs. Mona is simply not accurate.
21 There was a separate order directing her to do certain things,
22 namely, producing documents, and she did not do that.

23 An argument was made that -- referring to the
24 checking account at Bank of George, that because the money was
25 earned before the judgment, we can't execute upon it. Your

1 Honor, that's just not the law. NRS 123.220 defines what
2 community property is. Community property is all property
3 acquired after marriage by either husband or wife. It's that
4 simple. It's everything.

5 The money she earned after marriage is community
6 property. The fact that she put it into her own account
7 doesn't change that. It's community property -- presumptively
8 community property and there's nothing -- there's no
9 information that would allow them to change that.

10 For example, there is not Post-Martial Settlement
11 Agreement saying, oh, this money in my account from what I
12 earned during the marriage is my separate property. They
13 don't have that. It doesn't exist. It's community property
14 and we're allowed to execute upon it.

15 They argued that you don't have the authority to
16 freeze the assets of either -- I guess, of either Mr. Mona or
17 Mrs. Mona. That's simply not the case, Your Honor. We cited
18 to the -- the statutes in our Reply, expressly permitting you
19 to freeze the assets of both Mr. Mona and Mrs. Mona, to the
20 extent we consider her a third party. And those statutes are
21 NRS 21.280, and NRS 21.330, expressly allowing you to freeze
22 assets.

23 And, in fact, as it relates to third party assets,
24 you're authorized without a bond, without anything, to freeze
25 the assets that we would be talking about, in the hands of a

1 third party, up until the time of judgment. It's not just a
2 temporary freeze. You have extraordinary latitude on freezing
3 assets of the judgment debtor and third parties who hold
4 assets of the judgment debtor.

5 Counsel says that we should have followed up at the
6 initial judgment debtor examination after asking him, what'd
7 you do with the \$6.8 million? And he told us, I paid
8 personal bills and loaned the rest to Roen. That's like
9 saying that there's an obligation to saying, are you lying to
10 me, after every single question.

11 There is no obligation under Nevada law to inquire
12 whether somebody's lying to you. They took an oath at the
13 beginning the judgment debtor examination to tell the truth
14 and the whole truth. They didn't do that.

15 Counsel wants you to consider why they produced the
16 documents now. If they were really trying to conceal, why did
17 they produce the documents now? All I can say to that, Your
18 Honor, is when you lie -- lying is very hard; all right? It's
19 hard to keep all of your lies straight. Two years past, he
20 may not have remembered he was trying to conceal that
21 transfer. It's difficult to lie, easy to tell the truth. He
22 lied initially and forgot about it and produced the document
23 to us now.

24 //

25 And finally, counsel asked, where have we been for

1 the last two years, I guess implying that when he failed to
2 produce the records in 2013, we should have, through ESP,
3 known he withheld a Post-Martial Settlement Agreement and come
4 to the Court and asked for relief.

5 We didn't learn about this agreement until two weeks
6 ago. And when we learned about that, we've been working hard
7 ever since to take appropriate action. There's been no delay.
8 We couldn't take action as it relate to the Post-Martial
9 Settlement Agreement before we even knew it existed.

10 We should have known back in 2013. But he didn't
11 disclose the documents and he lied to us about it when we
12 asked him.

13 Thank you, Your Honor.

14 THE COURT: Thank you.

15 MR. COFFING: I know counsel gets the last word,
16 Your Honor, but --

17 THE COURT: We're -- we're done. Thank you. I
18 guess when I say "we", I mean, counsel.

19 The Court is going to grant in part, and deny in
20 part, the sanctions requested. And I'll give you my
21 reasoning. Mr. Edwards, you will be preparing the Order, so
22 take good notes or you can certainly request a DVD or
23 transcript.

24 //

25 I don't believe that the Norwest and Hogevoll cases

1 cited by Mr. and Mrs. Mona really apply in this situation.
2 Those cases, I believe, are distinguishable in that neither of
3 them dealt with the collection of judgment as we have here.
4 Rather, they dealt with loans that were made.

5 I believe that the fact that appears undisputed that
6 Mrs. Mona had nothing to do with the underlying transactions
7 is largely irrelevant at this judgment execution stage.

8 The opposition mentioned on page 6, line 13, that
9 Mr. and Mrs. Mona are in the process of a divorce, but omitted
10 all other details regarding that process, including what the
11 Court believes to be a fairly key fact in determining what's
12 going on and evaluating that argument, that fact being that
13 these divorce proceedings were filed a week ago, on July 2nd.

14 And also omitted the fact that apparently both of
15 them testified in their examination shortly before July 2nd
16 that they had no plans to get divorce. The Court's certainly
17 not going to enjoin them from getting divorced, but to rely on
18 that fact as they do, but omit all other details of what the
19 Court believes are material facts to that process was
20 disappointing.

21 The timing of the briefs and the hearing. The Monas
22 both apparently take issue with the fact that I am having the
23 hearing today. They took issue with that in the opposition,
24 not disclosing to the Court, although they do today after it
25 was disclosed in the Reply, that plaintiff offered to continue

1 the hearing.

2 I believe that I do have the ability to set matters
3 like this on shortened time. I could have set it even shorter
4 than I did. When offered to continue the hearing today,
5 counsel for the Monas declined that option. And so the Court
6 is going to rule today.

7 The Monas argue that I do not have authority to rule
8 because of the pending divorce proceeding, but they do not
9 really provide any authority by case law or statute, that says
10 a Judge such as myself presiding over execution proceedings on
11 a judgment must stay or defer ruling to a recently filed
12 divorce proceeding that was initiated after the Court issued
13 several Orders to Show Cause.

14 The Monas admit on page 7, line 9 of their
15 opposition that the rule is that all property acquired after
16 marriage is presumed to be community property. The Court
17 agrees with that, and agrees with plaintiff who also obviously
18 states that is the case.

19 It's undisputed that Mr. and Mrs. Mona have been
20 married for 30 years. There's been no evidence before the
21 Court that the assets and debts and property that we're
22 dealing with were acquired prior to their marriage, and
23 therefore the Court considers those assets debts and property
24 that we're dealing with to be community property, given the
25 lack of evidence to the contrary.

1 I do believe, as plaintiff argued, that I have
2 authority under NRS 21.280 and 21.330, to order parties,
3 judgment debtors, and even non-parties to the extent Mrs. Mona
4 is considered to be a non-party, I can order parties and non-
5 parties to dispose or transfer assets as I have done, and as I
6 am doing today.

7 Regarding the Post-Martial Property Settlement
8 Agreement, after considering the factors set forth in NRS
9 112.180(1)(a) and applying those to the facts in this case, I
10 do find that that distribution is a -- or was -- "is" probably
11 is more applicable -- is a fraudulent transfer made to hinder,
12 delay or defraud plaintiff in its efforts to execute on the
13 judgment.

14 Therefore, I do find that the property contained
15 therein, i.e. the \$6.8 million or so in proceeds, does remain
16 or remains community property subject to execution.

17 I do find that Mr. Mona lied in his November 25th,
18 2013 examination regarding what he did with the stock sale
19 proceeds. He first said, oh, I paid the bills. That's
20 obviously not entirely true.

21 Then he said he paid off some debts that he had,
22 just personal bills, and loaned \$2.6 million to Roen Ventures.
23 At no time did he report or disclose at -- in either the
24 document production or at his examination hearing at that time
25 the purported transfer of \$3.4 million to Mrs. Mona.

1 And, you know, sometimes you can say, well, I
2 forgot. Well, the problem with Mr. Mona, if he wanted to try
3 to take that position, is that the purported transferred
4 occurred just a few weeks before his examination.

5 I do find that Mr. Mona violated the January 30th,
6 2013 order, by not producing the agreement or the bank account
7 records that are purportedly Mrs. Mona's separate bank account
8 records. I find that those would constitute community
9 property and should have been disclosed and they were not. I
10 find that Mr. Mona violated the October 7, 2013 order to make
11 complete production of documents.

12 I do find that Mr. and Mrs. Mona violated the May
13 13, 2015 order by failing to produce the community property
14 bank records. And those bank records to which I'm referring
15 are the Bank of George checking account, the Bank of George
16 money market account, and the Bank of Nevada checking account.

17 I would refer to numbers of the accounts, but Mrs.
18 Mona wasn't able to provide those in her examination and
19 therefore I don't have numbers, and I don't think plaintiff
20 has those numbers either. But hopefully that description is
21 sufficient.

22 //

23 Under NRS 21.320, the money in the Bank of George
24 and Bank of Nevada accounts, I do find is subject to execution
25 and shall be applied to satisfaction of the judgment in

1 accordance with the Rules of execution on judgment, including
2 the various exemptions that may apply.

3 Mr. Mona admits that he should have produced the
4 Post-Martial Property Settlement Agreement and at his recent
5 examination testified that he thought he produced it, but if
6 he didn't he doesn't know why he didn't produce it. Nor -- he
7 admitted also that he didn't know why he didn't disclose the
8 existence of that agreement in his prior testimony and he now
9 agrees that, yes, he should've disclosed that. And the Court
10 certainly agrees with Mr. Mona in that regard.

11 Bear with me here.

12 The Court takes into account the Nevada Supreme
13 Court cases cited by plaintiff, as well as the District of
14 Nevada, Henry v. Rizzolo case. And I do find that regarding
15 the transfers set forth in the Post-Martial Property
16 Settlement Agreement, transfer was to an insider, i.e. Mr.
17 Mona's wife, Mrs. Mona, who at the time, I believe, was also
18 trustee of the Mona Family Trust, judgment debtor.

19 There is some question as to whether Mrs. Mona
20 received the \$3.4 million or the \$2 million. In either case,
21 you know, the -- if it was \$2 million, certainly Mr. Mona, as
22 a judgment debtor, did retain some possession or control after
23 the ostensible transfer of \$3.4 million. I do find that the
24 transfer was concealed. It wasn't produced, nor was Mr. Mona
25 truthful in his answers at the examination.

1 Before the transfer was made, certainly the debtors,
2 plural, had been sued and actually had a judgment pending
3 against them. The transfer was of substantially all of the
4 debtor's assets, as Mr. Mona testified he was insolvent.

5 Again, debtor removed or concealed assets by
6 effectuating that purported transfer and not disclosing it
7 either in the production nor in the examination testimony. As
8 I said, debtor was insolvent or became insolvent shortly after
9 the transfer.

10 As argued by plaintiff, and the Court agrees, these
11 are badges of fraud or factors and are not an exhaustive list
12 such as elements of a Complaint. You don't have to meet every
13 one in order to find that a fraudulent transfer was made.

14 The lack of one badge among many, as the Court has
15 found, does not mean that a fraudulent transfer did not occur.
16 Here the evidence overwhelmingly supports a finding of
17 fraudulent transfer in regard to the Post-Martial Property
18 Settlement Agreement, and the Court so find that that was a
19 fraudulent transfer and that those assets therefore remain
20 community property subject to execution.

21 The money that Mrs. Mona purportedly received as a
22 result of that transfer went into supposedly -- although we
23 don't know because the records haven't been produced -- to her
24 bank account -- bank accounts or account that we have been
25 discussing.

1 I believe I do have authority under NRCP 37 to issue
2 sanctions. Again, I am not finding contempt due to the issues
3 of -- I don't have jurisdiction. And the Court appreciates
4 the affidavit or declaration that was submitted late last
5 night and received this morning. But, you know, the timing of
6 that does raise issues that as I think plaintiff's counsel
7 said at the beginning, the Court probably doesn't even need
8 that given the lack of jurisdiction anyway.

9 So, the sanctions that will be issued.

10 The Court turns to page 16 of the Application for
11 Order to Show Cause. That might be helpful to enable the
12 parties to follow along.

13 The Court does issue an Order that the purported
14 transfer pursuant to the Post-Martial Property Settlement
15 Agreement is a fraudulent transfer, and the facts proving the
16 fraudulent transfer, including badges of fraud as discussed
17 previously, are deemed established. The Court issues an order
18 entitling plaintiff to execute upon the bank accounts at Bank
19 of George and Bank of Nevada in the name of Mrs. Mona are
20 deemed established.

21 The order will include that the Monas are prohibited
22 from claiming that any money purportedly transferred pursuant
23 to the Post-Martial Property Settlement Agreement and any
24 money in the bank accounts in the name of Mrs. Mona are exempt
25 from execution. The Court does not issue 4, does not issue 5.

1 Those are the contempt related sanctions.

2 And the order -- the Court will order that Mr. and
3 Mrs. Mona immediately produce any previously undisclosed bank
4 records for the past five years, regardless of whose name is
5 on the account. Understandably, immediately, is probably not
6 able to comply, so they do have instead of immediately, 7 days
7 from today to do that.

8 And the Court will award plaintiff reasonable
9 expenses, including attorneys fees and costs incurred, as a
10 result of the failure to comply with the Court's orders.
11 Plaintiff is directed to, as they requested, submit a bill of
12 fees and costs within let's say 7 days from today. Again, the
13 Court is not going to order that Mr. Mona be imprisoned.

14 And the Court will order that Mr. and Mrs. Mona be
15 prohibited from effectuating any transfers or otherwise
16 disposing of or encumbering any property not exempt from
17 execution until their assets have been applied towards
18 satisfaction of plaintiff's judgment.

19 Mr. Edwards, prepare the order. Submit it to Mr.
20 Coffing for review and approval. If you can't agree -- which
21 given this order, I wouldn't be surprised if you don't -- I'd
22 ask that you try to agree -- but if you don't, you're welcome
23 to submit competing orders. Thank you.

24 MR. COFFING: Your Honor, on behalf of the Monas, I
25 would move for a stay to allow at least Rhonda Mona to

1 pursue --

2 THE COURT: Can you speak up a little?

3 MR. COFFING: I'm sorry.

4 THE COURT: Just because the microphone's closer
5 when you're --

6 MR. COFFING: Your Honor, I understand your order,
7 and I'm going to ask the Court for a stay of any execution or
8 entry of order until such time as at least Rhonda Mona can
9 pursue whatever remedies she has before the Nevada Supreme
10 Court, or appellate court now, I guess I have to put them in
11 there too.

12 So I'd ask for the stay as I believe I'm required to
13 under a Rule SCR 4 analysis. And if I've cited that wrong,
14 forgive me. So I'd ask for that stay for a period of 7 days.

15 THE COURT: Sure. Let me hear from Mr. Edwards.

16 MR. EDWARDS: Your Honor, my request would simply be
17 that they file a motion so we can consider the issue.

18 MR. COFFING: Well, Your Honor, given -- given your
19 order, my motion -- I'm making the motion now, because we need
20 immediate relief. And again, as to Rhonda Mona, I believe the
21 Court lacks jurisdiction over her to enter these sanctions.
22 And so she should be afforded some opportunity as -- by way of
23 a stay to pursue that remedy.

24 THE COURT: The Court understands that the motion is
25 an oral motion. Understandably, it's oral, because it's in

1 response to the order that was just made here.

2 So the Court will grant the oral motion for stay of
3 the Court's order as it pertains only to Mrs. Mona for 7 days.
4 However, the stay does not -- that includes only the execution
5 of the three bank accounts and discussion, so it -- the stay
6 does not include the directive to produce the bank account
7 records that we've discussed, and does not -- does not pertain
8 to Mr. Mona at all.

9 MR. EDWARDS: And it also wouldn't stay the
10 obligation that they can't transfer anything in the meantime;
11 correct?

12 THE COURT: You can -- you can respond.

13 MR. COFFING: Your Honor, again, as it relates at
14 least to Rhonda Mona, it is our position that the Court lacks
15 jurisdiction, and I understand you disagree.

16 And so to the extent that there's a stay, if they
17 want to stay any type of dissipation of assets, they should be
18 required to post the appropriate bond, because that's -- until
19 -- until otherwise, that's her money.

20 And I understand you've made your ruling, but
21 obviously we differ. And as she's not a party to this action,
22 she should not be subject to a judgment which she -- or an
23 order that she believes this Court enters into without
24 jurisdiction.

25 MR. EDWARDS: And, Your Honor, under 21.330, you are

1 perfectly within your rights to freeze the assets of third
2 parties without any bond whatsoever. And what I'm hearing
3 counsel say is, Judge, give me 7 days so I can go hide this
4 money somewhere else. That's not appropriate.

5 MR. COFFING: She may -- she may certainly need to
6 hire counsel, Your Honor, and she has to live; all right? And
7 so you've prohibited, by virtue of your order, from us
8 claiming any exemption to the funds at issue. And so --

9 THE COURT: No, I specifically said the judgment
10 exemptions apply.

11 MR. COFFING: Your Honor, my notes said that you --
12 that one of the sanctions was that they be prohibited from
13 claiming the exempt -- that the assets were exempt from
14 execution.

15 MR. EDWARDS: That is one of the sanctions from your
16 questions, Your Honor. And the justification being, right now
17 we have a tiny pool of money to work with, whereas, had these
18 documents been disclosed as they should have been back in
19 2013, we would've had millions of dollars to collect upon.
20 Now, we have a few hundred thousand.

21 So for them to further apply -- after already
22 dissipating millions of dollars of assets that we can no
23 longer go after, to say, oh, and in addition to, I get to
24 claim these exemptions, we think that's inappropriate.

25 MR. COFFING: Well, to effectively deprive her of

1 the ability to retain counsel is equally inappropriate.

2 MR. EDWARDS: Well, she's been under an order that
3 she can't -- I'm sorry.

4 THE COURT: I'll give Mr. Coffing one last chance to
5 say what he wants, and then Mr. Edwards one last chance to say
6 what you want in that regard.

7 MR. COFFING: In relationship to a stay, Your Honor,
8 I think I've made the record that I need to make.

9 THE COURT: I'm sorry, man. The air is on back here
10 and I couldn't even hear it.

11 MR. COFFING: Your Honor, I think I've made the
12 record I need in my request for a stay. And again, until --
13 the fact that she's not a party, until this order is final and
14 she has the ability to pursue some type of appellate relief, I
15 don't think it's appropriate to enjoin the use of what amounts
16 to be her only asset -- liquid assets.

17 We do have a divorce pending, right? And I
18 understand you have concerns with the timing, but that divorce
19 -- there's a joint preliminary injunction that was entered
20 upon the filing of the divorce. I'm sure Mr. Mona will be
21 ordered at some point to pay some level of support, but until
22 that time, you know, I think it's just inappropriate for the
23 Court to enjoin her use of these assets for the limited time
24 period that you've allowed.

25 MR. EDWARDS: Your Honor, the purpose of a stay is

1 to preserve the status quo. And if we unfreeze these assets,
2 they may not be there tomorrow. That's not preserving status
3 quo. They've told you over and over again, Mr. Mona makes
4 \$300,000 a year. If that's not enough money to retain
5 counsel, I don't know what is.

6 THE COURT: They have 7 days from today to produce
7 the records. That would include the bank account records.
8 Presumably, if transfers are made that are dubious in nature,
9 if I were her, I'd be hesitant to make.

10 The Court understands, however, that people need
11 money to live. And so the Court is going to grant the request
12 for stay for 7 days from today, limited again, to Mrs. Mona
13 and those three bank accounts. In all other regards, however,
14 the order is not stayed.

15 MR. EDWARDS: Your Honor, I know you told me I only
16 get one more chance, but could we at least put a dollar cap on
17 it, what she can expend over these seven days?

18 THE COURT: No.

19 MR. EDWARDS: Okay. Thank you.

20 THE COURT: Thank you.

21 MR. COFFING: Thank you, Your Honor.

22 (Proceeding was concluded at 11:26 a.m.)

23 * * * * *

24

25

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

Verbatim Digital Reporting, LLC
Englewood, CO 80110
(303) 798-0890

Julie Ford 7-10-15
JULIE LORR TRANSCRIBER DATE

EXHIBIT 4

EXHIBIT 4

IN THE SUPREME COURT OF THE STATE OF NEVADA

RHONDA HELENE MONA AND MICHAEL J.
MONA, JR.,

Petitioners,

vs.

Electronically Filed
Jul 17 2015 02:39 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

Case No.: _____

THE EIGHTH JUDICIAL DISTRICT COURT
FOR THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK, AND THE
HONORABLE JOE HARDY, DISTRICT
JUDGE,

Respondents,

and

FAR WEST INDUSTRIES,

Real Party in Interest.

PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

ROBERT L. EISENBERG
Nevada Bar No. 0950
Lemons, Grundy & Eisenberg
6005 Plumas Street, #300
Reno, Nevada 89519
775-786-6868
Email: rle@lge.net
ATTORNEYS FOR PETITIONER
RHONDA HELENE MONA

TERRY A. COFFING
Nevada Bar No. 4949
MICAH S. ECHOLS
Nevada Bar No. 8437
TYE S. HANSEEN
Nevada Bar No. 10365
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, Nevada 89145
702-382-0711
Email: tcoffing@maclaw.com
mechols@maclaw.com
thanseen@maclaw.com
ATTORNEYS FOR PETITIONER
MICHAEL J. MONA, JR.

2562301_2

NRAP 26.1 DISCLOSURE STATEMENT

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 Justices of this Court may evaluate possible disqualification or recusal.

1. Petitioner Rhonda Helene Mona ("Rhonda") is an individual.
2. Petitioner Michael J. Mona, Jr. ("Michael") is an individual.
3. Rhonda has been represented in divorce proceedings in the District Court by Kainen Law Group, LLC, and she is represented in this Court by Lemons, Grundy & Eisenberg.
4. Michael has been represented in the District Court by Marquis Aurbach Coffing and John W. Muije & Associates, and he is represented in this Court by Marquis Aurbach Coffing.

DATED: July 17, 2015

/s/ Robert L. Eisenberg
ROBERT L. EISENBERG
Nevada Bar No. 0950
Lemons, Grundy & Eisenberg
6005 Plumas Street, #300
Reno, Nevada 89519
775-786-6868
Email: rlle@lge.net

/s/ Micah S. Echols
TERRY A. COFFING
Nevada Bar No. 4949
MICAH S. ECHOLS
Nevada Bar No. 8437
TYE S. HANSEEN
Nevada Bar No. 10365
Marquis Aurbach Coffing

-i-

2562301_2

10001 Park Run Drive
Las Vegas, Nevada 89145
702-382-0711
Email: tcoffing@maclaw.com
mechols@maclaw.com
thanseen@maclaw.com

ROUTING STATEMENT

According to NRAP 17(a)(1), this case is presumptively retained by the Supreme Court because it is a proceeding invoking the Supreme Court's original jurisdiction. The issues presented in this writ petition do not fall into the exception outlined in NRAP 17(b)(8) because the issues do not involve a challenge to pretrial discovery orders or orders resolving motions in limine.

DATED: July 17, 2015

/s/ Robert L. Eisenberg
ROBERT L. EISENBERG
Nevada Bar No. 0950
Lemons, Grundy & Eisenberg
6005 Plumas Street, #300
Reno, Nevada 89519
775-786-6868
Email: rle@lge.net

/s/ Micah S. Echols
TERRY A. COFFING
Nevada Bar No. 4949
MICAH S. ECHOLS
Nevada Bar No. 8437
TYE S. HANSEEN
Nevada Bar No. 10365
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, Nevada 89145
702-382-0711
Email: tcoffing@maclaw.com
mechols@maclaw.com
thanseen@maclaw.com

TABLE OF CONTENTS

I	INTRODUCTION	1
II	ISSUES PRESENTED AND OVERVIEW OF RELIEF REQUESTED	3
III	STANDARDS OF REVIEW	6
	A. STANDARDS FOR REVIEWING QUESTIONS OF LAW.	6
	B. STANDARDS FOR REVIEWING DISCOVERY SANCTIONS ORDERS.	7
	C. STANDARDS FOR REVIEWING PETITIONS FOR WRITS OF MANDAMUS AND PROHIBITION.	7
IV	RELEVANT FACTUAL AND PROCEDURAL BACKGROUND	9
	A. THE FOREIGN JUDGMENT AGAINST MIKE.	9
	B. MIKE'S INITIAL JUDGMENT DEBTOR EXAMINATION AND PRODUCTION OF DOCUMENTS.	10
	C. A YEAR AND A HALF LATER, FAR WEST AGAIN SEEKS EX PARTE JUDGMENT DEBTOR EXAMINATIONS.	10
	D. MIKE'S SUCCESSFUL PROTECTIVE ORDER AGAINST FAR WEST.	11
	E. FAR WEST'S EX PARTE MOTION TO SHOW CAUSE FOR SANCTIONS AND THE DISTRICT COURT HEARING.	11
V	LEGAL ARGUMENT	14
	A. THE DISTRICT COURT NEVER ACQUIRED PERSONAL JURISDICTION OVER RHONDA.	14
	1. As a non-party, Rhonda should have been personally served to be subject to any discovery order.	14
	2. Far West clearly understood the requirement for personal service of discovery to other non-parties.	15

3.	NRCP 37 did not authorize the sanctions awarded by the District Court.	16
B.	A SEPARATE ACTION WAS REQUIRED BEFORE IMPOSING LIABILITY AGAINST RHONDA.	16
1.	As a matter of law, Far West was not permitted to add new parties, such as Rhonda, in post-judgment proceedings, even if she had been personally served.	16
2.	Since <i>Randono v. Turk</i> , 86 Nev. 123, 466 P.2d 218 (1970) violates Rhonda's procedural due process rights, it should be overruled on this basis.	17
3.	NRS 21.330 also requires "an action" against a third party such as Rhonda.	19
C.	THE "ULTIMATE" SANCTIONS AWARDED AGAINST THE MONAS FURTHER VIOLATED THEIR PROCEDURAL DUE PROCESS RIGHTS.	19
1.	Far West never conferred with the Monas before seeking ex parte relief from the District Court.	19
2.	An evidentiary hearing was required before the District Court could impose "ultimate" sanctions.	21
3.	The District Court lacked authority to make findings on a fraudulent transfer without giving the Monas an opportunity to present any defense.	22
D.	THE MONAS' POST-MARTIAL PROPERTY SETTLEMENT AGREEMENT IS A STATED EXCEPTION TO NRS 123.220 AND PROTECTS RHONDA'S SEPARATE PROPERTY FROM EXECUTION.	23
1.	As a matter of law, Rhonda is not responsible for intentional conduct by her husband.	23
2.	Nevada law specifically allows written agreements for separate property as an exception to the definition of community property.	25

3.	At a minimum, there were factual issues regarding the nature of Rhonda's separate bank accounts because the District Court failed to trace the funds.....	26
VI	CONCLUSION	26
	VERIFICATION OF ROBERT L. EISENBERG	28
	VERIFICATION OF MICAH S. ECHOLS	29

TABLE OF AUTHORITIES

CASES

<i>Beazer Homes, Nev., Inc. v. Dist. Ct.</i> , 120 Nev. 575, 97 P.3d 1132 (2004).....	7
<i>Birth Mother v. Adoptive Parents</i> , 118 Nev. 972, 59 P.3d 1233 (2002).....	6
<i>Browning v. Dixon</i> , 114 Nev. 213, 954 P.2d 741 (1998).....	3, 14
<i>Buzz Stew, LLC v. City of N. Las Vegas</i> , 124 Nev. 224, 181 P.3d. 670 (2008).....	8
<i>Callie v. Bowling</i> , 123 Nev. 181, 160 P.3d 878 (2007).....	3, 16, 17, 18
<i>Camfield Tires, Inc. v. Michelin Tire Corp.</i> , 719 F.2d 1361 (8th Cir. 1983).....	22
<i>Clark Cnty. Sch. Dist. v. Richardson Constr., Inc.</i> , 123 Nev. 382, 168 P.3d 87 (2007).....	7
<i>Consol. Generator-Nevada, Inc. v. Cummins Engine Co.</i> , 114 Nev. 1304, 971 P.2d 1251 (1998).....	3, 14
<i>Countrywide Home Loans, Inc. v. Thitchener</i> , 124 Nev. 725, 192 P.3d 243 (2008).....	9
<i>Crawford v. State</i> , 121 Nev. 744, 121 P.3d 582 (2005).....	7
<i>Curda-Derickson v. Derickson</i> , 668 N.W.2d 736 (Wis. App. 2003).....	24
<i>Dayside Inc. v. Dist. Ct.</i> , 119 Nev. 404, 75 P.3d 384 (2003).....	8
<i>Egan v. Chambers</i> , 299 P.3d 364 (Nev. 2013)	18
<i>Emerson v. Dist. Ct.</i> , 263 P.3d 224 (Nev. 2011)	9

<i>Estes v. Titus</i> , 751 N.W.2d 493 (Mich. 2008)	23
<i>Foster v. Dingwall</i> , 227 P.3d 1042 (Nev. 2010)	7, 21
<i>Hardy v. U.S.</i> , 918 F.Supp. 312 (D. Nev. 1996)	6, 26
<i>Henry v. Rizzolo</i> , 2012 WL 1376967 (D. Nev. 2012).....	6, 24
<i>Houston Bus. Journal, Inc. v. Office of Comptroller of Currency, U.S. Dep't of Treasury</i> , 86 F.3d 1208 (D.C. Cir. 1996).....	14
<i>In re Bernardelli</i> , 12 B.R. 123 (Bankr. D. Nev. 1981).....	24
<i>In re Miller</i> , 517 B.R. 145 (D. Ariz. 2014).....	24
<i>In re Wilson's Estate</i> , 56 Nev. 353, 53 P.2d 339 (1936).....	26
<i>Int'l Game Tech., Inc. v. Dist. Ct.</i> , 124 Nev. 193, 179 P.3d 556 (2008).....	7
<i>Jeep Corp. v. Dist. Ct.</i> , 98 Nev. 440, 652 P.2d 1183 (1982).....	8
<i>Jewett v. Patt</i> , 95 Nev. 246, 591 P.2d 1151 (1979).....	5, 23
<i>Marquis & Aurbach v. Dist. Ct.</i> , 122 Nev. 1147, 146 P.3d 1130 (2006).....	16
<i>McCleary Cattle Co. v. Sewell</i> , 73 Nev. 279, 317 P.2d 957 (1957).....	4, 17, 18
<i>Miller v. A.H. Robins Co.</i> , 766 F.2d 1102 (7th Cir. 1985).....	22
<i>Nevada Power Co. v. Fluor Illinois</i> , 108 Nev. 638, 837 P.2d 1354 (1992).....	5, 21

<i>NOLM, LLC v. County of Clark</i> , 120 Nev. 736, 100 P.3d 658 (2004).....	15
<i>Norwest Fin. v. Lawver</i> , 109 Nev. 242, 849 P.2d 324 (1993).....	24
<i>Nutton v. Sunset Station, Inc.</i> , 131 Nev. Adv. Op. No. 34 (Jun. 11, 2015)	22
<i>Peck v. Crouser</i> , 295 P.3d 586 (Nev. 2013)	9
<i>Pengilly v. Rancho Santa Fe Homeowners Ass’n</i> , 116 Nev. 646, 5 P.3d 569 (2000).....	8
<i>Randono v. Turk</i> , 86 Nev. 123, 466 P.2d 218 (1970).....	4, 17, 18
<i>Salman v. Newell</i> , 110 Nev. 1333, 885 P.2d 607 (1994).....	15
<i>Secretary of State v. Nevada State Legislature</i> , 120 Nev. 456, 93 P.3d 746 (2004).....	9
<i>Shelton v. Dist. Ct.</i> , 64 Nev. 487, 185 P.2d 320 (1947).....	8
<i>Smith v. Dist. Ct.</i> , 107 Nev. 674, 818 P.2d 849 (1991).....	7
<i>Sprenger v. Sprenger</i> , 110 Nev. 855, 878 P.2d 284 (1994).....	25
<i>State ex rel. Dep’t of Transp. v. Thompson</i> , 99 Nev. 358, 662 P.2d 1338 (1983).....	8, 31
<i>Verheyden v. Verheyden</i> , 104 Nev. 342, 757 P.2d 1328 (1988).....	25
<i>Workforce Solutions v. Urban Servs. of Am., Inc.</i> , 977 N.E.2d 267 (Ill. App. 2012).....	23
<i>Young v. Johnny Ribeiro Bldg., Inc.</i> , 106 Nev. 88, 787 P.2d 777 (1990).....	5, 21, 27

<i>Zhang v. Dist. Ct.</i> , 120 Nev. 1037, 103 P.3d 20 (2004).....	8
---	---

RULES

EDCR 2.34(d).....	4, 20
NRCP 37	4, 5, 13, 16, 20, 21, 27
NRCP 37(a)(2)(A)	4, 20
NRCP 45	3, 14
NRCP 45(c)	3, 14
NRCP 65(b).....	20

STATUTES

NRS 21.320	19
NRS 21.330	4, 19
NRS 34.160	7
NRS 34.320	7
NRS 34.330	8
NRS 50.165(1).....	15
NRS 50.255(6).....	15
NRS 112.180	13
NRS 123.070	25
NRS 123.190(1).....	25
NRS 123.220	4, 6, 18, 23, 25
NRS 123.220(1).....	6, 25

NRS 123.230	24
NRS Chapter 21	5
NRS Chapter 31	5
NRS Chapter 112	5, 23

Petitioners, Rhonda Helene Mona (“Rhonda”) and Michael J. Mona, Jr. (“Mike”) (collectively “the Monas”), hereby petition this Court for a writ of mandamus or prohibition to vacate the District Court’s July 15, 2015 post-judgment sanctions order that subjects Rhonda’s separate bank accounts to execution and orders the release of all funds in the accounts if this Court does not intervene by July 20, 2015, which is the last day of the temporary stay entered by the District Court. 2 Petitioners’ Appendix (“App.”) 348-58.

I

INTRODUCTION

This writ petition presents important issues in the context of execution proceedings following the domestication of a foreign judgment in Nevada. Real party in interest, Far West Industries (“Far West”) obtained a judgment in California against Mike and other defendants, not including Rhonda, for allegations relating to fraud. 1 App. 173-93. After the foreign judgment was domesticated in Nevada, Far West did not make any effort to “add” Rhonda to the judgment. Rhonda was deposed in her capacity as the trustee of the Mona Family Trust, wherein Far West learned of some of Rhonda’s personal assets. 1 App. 163-72. After this deposition, Far West filed an ex parte motion on order shortening time to subject Rhonda’s personal assets to the judgment against Mike. 1 App. 127-43. Without notice, the District Court froze several of Rhonda’s personal bank accounts pending a show cause hearing. 2 App. 194-96.

In the show cause hearing, the District Court refused to allow an evidentiary hearing. Yet, the District Court's order sanctions the Monas and considers Far West's arguments of fraudulent transfer (which were never alleged in a complaint) as "established." 2 App. 357. The District Court's order also deems as "established" Far West's ability to execute upon Rhonda's personal bank accounts, even though Far West has not issued execution documents against Rhonda or given her the chance to claim exemptions. *Id.* Despite a post-marital property settlement agreement between the Monas defining Rhonda's separate property, the District Court simply discarded the agreement and considered it as a fraudulent transfer during this same show cause hearing. *Id.*; 2 App. 238-50. The Monas now seek relief from this Court to vacate the District Court's sanctions order. 2 App. 348-58. The show cause hearing was held on Thursday, July 9, 2015. 2 App. 302-47. The written order from the show cause hearing was filed on Wednesday, July 15, 2015 (2 App. 348-58) and allows a temporary stay of the order through Monday, July 20, 2015. 2 App. 358.

The Monas have also concurrently filed an emergency motion to stay the entire District Court proceedings because Far West is continuing to take measures to attach Rhonda's separate property and seek relief that is beyond the District Court's jurisdiction.

II

ISSUES PRESENTED AND OVERVIEW OF RELIEF REQUESTED

(1) **Lack of personal jurisdiction over Rhonda.** Rhonda was not a party to the foreign judgment (1 App. 1-7) originally obtained in California by Far West, nor was Rhonda ever made a party to the post-judgment proceedings in the District Court. As a fundamental right of due process, Far West was required to personally serve Rhonda before acquiring jurisdiction over her. *See, e.g., Browning v. Dixon*, 114 Nev. 213, 218, 954 P.2d 741, 744 (1998) (explaining that service of process is required to satisfy due process). The same holds true for discovery proceedings involving non-parties, which requires personal service of a subpoena according to NRCP 45. *See Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (“Nevada Rules of Civil Procedure 45(c) requires that a subpoena be personally served.”). Due to the lack of personal service upon Rhonda, this Court should vacate the District Court’s sanctions order. 2 App. 348-58.

(2) **A separate action was needed against Rhonda.** As a matter of law, Far West was not permitted to add new parties, such as Rhonda, in post-judgment proceedings, even if she had been personally served. In *Callie v. Bowling*, 123 Nev. 181, 186, 160 P.3d 878, 881 (2007), this Court explained that new parties cannot be added to a judgment in post-judgment proceedings based upon an alter ego theory because the new party is completely deprived of formal notice, discovery, fact finding, and an opportunity to be heard before the claim is resolved. The Court’s holding in *Callie* specifically overruled the

former practice of simply adding new parties to a judgment in post-judgment proceedings by amendment. *See McCleary Cattle Co. v. Sewell*, 73 Nev. 279, 317 P.2d 957 (1957). Contrary to *Callie*, the District Court relied upon *Randono v. Turk*, 86 Nev. 123, 466 P.2d 218 (1970) for the notion that a judgment against Mike could be levied against Rhonda's separate property without due process. Since *Randono* violates Rhonda's due process rights, it should be overruled on the same basis that *Callie* overruled *McCleary Cattle*. Further, the District Court relied, in part, upon NRS 21.330 to sanction Rhonda as a non-party. Yet, this statute expressly requires a judgment creditor, such as Far West, to "institute an action" against a non-party, such as Rhonda, instead of attaching her separate property and entering sanctions. Since Far West did not institute a separate action against Rhonda, the Court should, alternatively, vacate the District Court's sanctions award on this basis.

(3) Further violations of the Monas' procedural due process rights. Everything about the District Court sanctions proceeding demonstrates that it should have never even taken place. Far West was required according to NRCP 37(a)(2)(A) to "include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action." Similarly, EDCR 2.34(d) mandated that Far West was to provide an affidavit of counsel that this meet and confer had taken place or the "[d]iscovery motion[] may not be filed" Yet, Far West's motion under NRCP 37 was made ex parte and without any

certification. 1 App. 127-43. No explanation was given why Far West's motion was made ex parte.

Although the District Court imposed "ultimate" sanctions upon the Monas, the District Court refused to hold an evidentiary hearing. According to well established Nevada law, this was reversible error. *See, e.g., Nevada Power Co. v. Fluor Illinois*, 108 Nev. 638, 837 P.2d 1354 (1992). Although the District Court's sanctions award is premised on NRCp 37, it did not even consider the factors outlined in *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990). And, Far West did not even attempt to comply with any of the execution protocols in NRS Chapter 21 and Chapter 31.

The District Court's sanctions order also makes a binding determination on fraudulent transfer against the Monas according to NRS Chapter 112 (Uniform Fraudulent Transfer Act) ("UFTA"), again without any separate complaint against the Monas, no evidentiary hearing, and no opportunity to conduct additional discovery. The District Court's flagrant violation of the Monas' due process rights provides a third basis to vacate the sanctions order.

(4) The post-marital property settlement agreement protects Rhonda's separate property. According to *Jewett v. Patt*, 95 Nev. 246, 247-48, 591 P.2d 1151, 1152 (1979), Rhonda's marriage to Mike does not make her automatically liable for the foreign judgment against him, especially since the judgment was based upon fraud. 1 App. 173-93. Other courts citing *Jewett* have held that "a spouse is not personally liable for his or her spouse's

intentional torts committed during marriage merely by virtue of being married.” *Henry v. Rizzolo*, 2012 WL 1376967, at *2 (D. Nev. 2012).

While the District Court claimed to have construed NRS 123.220 defining community property, it avoided the stated exception in subsection 1 of the statute for “[a]n agreement in writing between the spouses.” Far West itself presented a copy of the Monas’ post-marital property settlement agreement, defining Rhonda’s separate property. 1 App. 144-56. Yet, the District Court concluded that the entire agreement was a fraudulent transfer without an evidentiary hearing and without hearing testimony from the Monas. Since there were factual issues regarding the property agreement, the District Court was required to hold an evidentiary hearing and trace the source of the assets before summarily concluding that the Monas committed a fraudulent transfer. *See Hardy v. U.S.*, 918 F.Supp. 312, 317 (D. Nev. 1996) (“The question whether the property belongs solely to one spouse or to the marital community depends on the source of the funds with which it was acquired.”). The District Court’s summary treatment of this issue similarly warrants the requested extraordinary relief of vacating the District Court’s sanctions order.

III

STANDARDS OF REVIEW

A. Standards for reviewing questions of law.

This Court reviews questions of law de novo. *See Birth Mother v. Adoptive Parents*, 118 Nev. 972, 974, 59 P.3d 1233, 1235 (2002). Statutory interpretation is a question of law which this Court reviews de novo. *See id.*

Although this Court generally reviews petitions for extraordinary relief with an abuse of discretion standard, this Court will still apply a de novo standard of review to questions of law, such as statutory interpretation, in writ petition proceedings. *See Int'l Game Tech., Inc. v. Dist. Ct.*, 124 Nev. 193, 198, 179 P.3d 556, 559 (2008) (citation omitted).

B. Standards for reviewing discovery sanctions orders.

This Court reviews a sanctions order for an abuse of discretion. *See Clark Cnty. Sch. Dist. v. Richardson Constr., Inc.*, 123 Nev. 382, 390, 168 P.3d 87, 93 (2007) (citation omitted). However, this Court applies a somewhat heightened standard of review when the sanction is case concluding or an ultimate sanction. *Foster v. Dingwall*, 227 P.3d 1042, 1048 (Nev. 2010) (citation omitted).

C. Standards for reviewing petitions for writs of mandamus and prohibition.

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station, or to control a manifest abuse of discretion. *See Beazer Homes, Nev., Inc. v. Dist. Ct.*, 120 Nev. 575, 579, 97 P.3d 1132, 1134-35 (2004); *see also* NRS 34.160. “An abuse of discretion occurs if the district court’s decision is arbitrary and capricious or if it exceeds the bounds of law or reason.” *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005).

A writ of prohibition is the appropriate remedy for a lower court’s improper exercise of jurisdiction. *See* NRS 34.320; *see also Smith v. Dist. Ct.*, 107 Nev. 674, 818 P.2d 849 (1991). A writ of prohibition may issue to arrest

the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the jurisdiction of the district court. *See id.* “Jurisdictional rules go to the very power” of a court’s ability to act. *Pengilly v. Rancho Santa Fe Homeowners Ass’n*, 116 Nev. 646, 649, 5 P.3d 569, 571 (2000) (citations omitted).

Although an individual can appeal a final judgment, where there is no legal remedy, extraordinary relief is justified. *See Zhang v. Dist. Ct.*, 120 Nev. 1037, 1039, 103 P.3d 20, 22 (2004), *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d. 670 (2008). Petitions for extraordinary writs are addressed to the sound discretion of the Court and may only issue where there is no “plain, speedy, and adequate remedy” at law. *See* NRS 34.330; *see also State ex rel. Dep’t of Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983). However, “each case must be individually examined, and where circumstances reveal urgency or strong necessity, extraordinary relief may be granted.” *See Jeep Corp. v. Dist. Ct.*, 98 Nev. 440, 443, 652 P.2d 1183, 1185 (1982) (citing *Shelton v. Dist. Ct.*, 64 Nev. 487, 185 P.2d 320 (1947)).

This Court will exercise its discretion to consider writ petitions, despite the existence of an otherwise adequate legal remedy, when an important issue of law needs clarification, and this Court’s review would serve considerations of public policy, sound judicial economy, and administration. *See Dayside Inc. v. Dist. Ct.*, 119 Nev. 404, 407, 75 P.3d 384, 386 (2003), *overruled on other*

grounds by Countrywide Home Loans, Inc. v. Thitchener, 124 Nev. 725, 192 P.3d 243 (2008).

In this case, a writ petition is the proper vehicle for Rhonda to seek extraordinary relief from this Court because she was not a party to the District Court litigation and cannot appeal or exercise any other remedy available at law. *See Emerson v. Dist. Ct.*, 263 P.3d 224, 227 (Nev. 2011). Although Mike is a party to the District Court litigation, the sanctions order is not appealable. 2 App. 348-58. *Cf. Peck v. Crouser*, 295 P.3d 586, 587-88 (Nev. 2013) (explaining test for orders that grow out of the final judgment to determine appealability). Mike also has a beneficial interest in maintaining Rhonda's separate property as separate, as outlined in the Monas' post-marital property settlement agreement, particularly because the Monas are currently going through a divorce. *See Secretary of State v. Nevada State Legislature*, 120 Nev. 456, 461, 93 P.3d 746, 749 (2004) (expressing that parties have standing when they have a "legally recognized interest" or "beneficial interest" in the outcome).

IV

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

A. The foreign judgment against Mike.

In April 2012, Far West obtained a judgment in Riverside, California against Mike, as one of four named defendants. 1 App. 1-7. The underlying findings of fact and conclusions of law recite that in a real estate development transaction, Far West prevailed on claims against Mike for: (1) intentional

misrepresentation; (2) negligent misrepresentation; (3) failure to disclose; and (4) conspiracy to commit fraud. 1 App. 190-92. Although the Mona Family Trust was not a named defendant in the California litigation, the presiding court made an alter ego finding to extend the judgment against it. 1 App. 192. No mention is made in the California order of Rhonda.

B. Mike's initial judgment debtor examination and production of documents.

Soon after Far West domesticated its judgment in Nevada, it began seeking Mike's judgment debtor examination on an ex parte basis, without confirming his availability. In response to Far West's document requests, Mike produced approximately 30,000 documents in 20 boxes that were delivered to Far West's counsel for physical examination. 1 App. 18. Through the document production and scheduling of Mike's debtor examination, the District Court minutes in December 2013 reflect that "the parties have conducted the judgment debtor's exam and everything is going along satisfactorily" with a status check to be set in six months. 1 App. 25.

C. A year and a half later, Far West again seeks ex parte judgment debtor examinations.

After a lull of nearly a year and a half, Far West then sought ex parte dates for judgment debtor examinations for Mike in his individual and trustee capacities and Rhonda in her capacity as trustee of the Mona Family Trust. 1 App. 26-29. Far West's ex parte application also contained a variety of documents that it wanted produced. *Id.* The District Court's order granted the requested relief in full and set the dates for the debtor examinations. 1 App. 70-

74. Notably, because Rhonda, in her capacity as trustee of the Mona Family Trust, was not represented, Far West first attempted to serve her personally and then later requested permission to serve her by certified or registered mail, as permitted by NRS 14.090, because Far West's process server was unable to enter the guard gated community. 1 App. 62-69. By the time that Far West eventually mailed the order setting Rhonda's judgment debtor examination, in her trustee capacity, there were only about two weeks until the examination. 1 App. 75-90. Rhonda, in her trustee capacity, provided testimony at a judgment debtor examination. 1 App. 163-72.

D. Mike's successful protective order against Far West.

Since Far West had a pattern of setting dates on an ex parte basis, Mike moved the District Court for a protective order for his second judgment debtor examination and given the fact that he already had his examination taken. 1 App. 91-99. Far West chose not to accommodate Mike's availability, which was documented in the declaration of Mike's counsel. 1 App. 93-94. After court intervention and a hearing, Far West had no choice but to reschedule Mike's second judgment debtor examination and the deadline for a production of additional documents. 1 App. 122-26.

E. Far West's ex parte motion to show cause for sanctions and the District Court hearing.

Without contacting Mike's counsel or attempting to contact Rhonda, Far West filed an ex parte motion for an order to show cause why the accounts of Rhonda Mona should not be subject to execution and why the court should not find the Monas in contempt. 1 App. 127-43. Noticeably missing from Far

West's ex parte motion is any attempt to meet and confer or why the motion was filed on an ex parte basis. *Id.* Although the ex parte motion sought relief against Rhonda personally, Far West did not make any effort to personally serve her with the motion. 2 App. 197-99. In addition to itemizing the issues at controversy in the upcoming hearing, the District Court's order granting the ex parte motion also placed a freeze on Rhonda's separate property. 2 App. 194-96. Mike filed a written opposition and objected to the entire proceeding. 2 App. 206-52.

In the hearing before the District Court, Rhonda's divorce attorneys appeared, but the District Court would not allow them to argue. 2 App. 303. Although the District Court offered to continue the hearing, it was inconsequential since Rhonda's bank accounts had already been frozen. 2 App. 317. Mike's counsel also pointed out that the orders for which Far West was seeking enforcement were ambiguous because they named Rhonda in her capacity as trustee, but Far West asked for relief against her personally. 2 App. 318. Mike's counsel, speaking in favor of Rhonda, stated:

So, Your Honor, fundamental due process issue here relates to Rhonda Mona. She's not a party. And any characterization of this Court of what her assets may or may not be subject to, must have her—she must have the opportunity to be heard, she must have the opportunity to present evidence.

2 App. 320. Despite the Monas' arguments on the procedural and substantive points against sanctions, the District Court ordered the following (2 App. 348-58):

(1) that Mike violated previous court orders for not producing the post-marital property settlement agreement, even though it was attached to Far West's ex parte motion. 1 App. 144-56; 2 App. 351.

(2) that Mike "lied" in his deposition about what he had done with \$3,406,601.10 that was the subject of the property agreement, even though the District Court would not allow Mike to clarify his statements made in a previous judgment debtor examination. 2 App. 351.

(3) that all the funds that are the subject of the Monas' property settlement agreement are community property, even though the District Court did not conduct a full tracing of the funds or hold an evidentiary hearing. 2 App. 352.

(4) the order also inaccurately reflects that a judgment debtor examination had been set for Rhonda, in her personal capacity, and that she violated court orders by failing to produce documents. 2 App. 352-53.

(5) that the Monas' failure to produce documents and the property settlement agreement constitute a sanction under NRCP 37 and a fraudulent transfer under NRS 112.180. 2 App. 355-56.

Without an evidentiary hearing, the District Court concluded that "the facts entitling Plaintiff to execute upon the bank accounts in the name of Mrs. Mona are deemed established." 2 App. 357. The District Court also prohibited the Monas from claiming any exemptions from execution relating to Rhonda's separate accounts and any funds that are subject to the property settlement

agreement. *Id.* With the exception of production of documents, the District Court stayed the effect of the order until July 20, 2015.

V

LEGAL ARGUMENT

A. The District Court never acquired personal jurisdiction over Rhonda.

1. As a non-party, Rhonda should have been personally served to be subject to any discovery order.

Rhonda was not a party to the foreign judgment (1 App. 1-7) originally obtained in California by Far West, nor was Rhonda ever made a party to the post-judgment proceedings in the District Court. As a fundamental right of due process, Far West was required to personally serve Rhonda before acquiring jurisdiction over her. *See, e.g., Browning v. Dixon*, 114 Nev. 213, 218, 954 P.2d 741, 744 (1998) (explaining that service of process is required to satisfy due process). The same holds true for discovery proceedings involving non-parties, which requires personal service of a subpoena according to NRCP 45. *See Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (“Nevada Rules of Civil Procedure 45(c) requires that a subpoena be personally served.”). Far West’s failure to serve Rhonda in her personal capacity deprived the District Court of personal jurisdiction over her. *See Houston Bus. Journal, Inc. v. Office of Comptroller of Currency, U.S. Dep’t of Treasury*, 86 F.3d 1208, 1213 (D.C. Cir. 1996) (“In general, a state-court litigant seeking to compel a non-party to produce documents must use the state court’s subpoena power or, if the non-party is

beyond the jurisdiction of such court, use whatever procedures another state may provide.”). Nevada statutes similarly conclude that a witness has a duty to appear and testify only when “duly served with a subpoena” NRS 50.165(1); *see also* NRS 50.255(6) (excusing an obligation to appear unless the required fees are paid with the subpoena). Due to the lack of personal service upon Rhonda, this Court should vacate the District Court’s sanctions order. 2 App. 348-58.

2. Far West clearly understood the requirement for personal service of discovery to other non-parties.

When Far West sought Rhonda’s judgment debtor examination in her capacity as trustee, it went to great lengths to personally serve her in this representative capacity. 1 App. 62-90. Yet, when Far West moved ex parte to freeze accounts belonging to Rhonda personally, Far West made no effort to send her a subpoena or otherwise serve her personally. According to Nevada law, an individual serving in a representative capacity as a trustee of a trust is not the same as an individual. *See Salman v. Newell*, 110 Nev. 1333, 1335, 885 P.2d 607, 608 (1994). The fact that Far West acknowledged the requirement to personally serve Rhonda in her representative capacity, yet completely failed to serve her in her personal capacity, operates as an estoppel. *See, e.g., NOLM, LLC v. County of Clark*, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004) (“Judicial estoppel applies to protect the judiciary’s integrity and prevents a party from taking inconsistent positions by intentional wrongdoing or an attempt to obtain an unfair advantage.”) (citation and internal quotation marks omitted).

3. NRCP 37 did not authorize the sanctions awarded by the District Court.

When interpreting the Nevada Rules of Civil Procedure, this Court applies the same rules of statutory construction. *See Marquis & Aurbach v. Dist. Ct.*, 122 Nev. 1147, 1157, 146 P.3d 1130, 1137 (2006). The plain language of NRCP 37(b) distinguishes sanctions available against a non-party “deponent” and a “party.” The only sanctions available against a non-party are that the non-party “may be considered a contempt of court.” Yet, the District Court already denied Far West any contempt relief because the Monas’ objected to Judge Hardy, the presiding District Court Judge, from holding a contempt hearing, which the District Court accepted. 2 App. 354-55. Thus, it was legally impossible for the District Court to impose sanctions against Rhonda as a non-party in her personal capacity, particularly since she was never subject to any court order. Therefore, due to the District Court’s lack of personal jurisdiction over Rhonda, the entire sanctions award should be vacated on this basis.

B. A separate action was required before imposing liability against Rhonda.

1. As a matter of law, Far West was not permitted to add new parties, such as Rhonda, in post-judgment proceedings, even if she had been personally served.

As a matter of law, Far West was not permitted to add new parties, such as Rhonda, in post-judgment proceedings, even if she had been personally served. In *Callie v. Bowling*, 123 Nev. 181, 186, 160 P.3d 878, 881 (2007), this Court explained that new parties cannot be added to a judgment in post-judgment proceedings based upon an alter ego theory because the new party is

completely deprived of formal notice, discovery, fact finding, and an opportunity to be heard before the claim is resolved. The Court's holding in *Callie* specifically overruled the former practice of simply adding new parties to a judgment in post-judgment proceedings by amendment. See *McCleary Cattle Co. v. Sewell*, 73 Nev. 279, 317 P.2d 957 (1957).

In the California litigation, Far West took steps to add other entities to the judgment as Mike's alleged alter egos. 1 App. 189. Yet, Far West did not attempt to add Rhonda to its judgment while the case was still in California. According to *Callie*, "[a] party who wishes to assert an alter ego claim must do so in an independent action against the alleged alter ego with the requisite notice, service of process, and other attributes of due process." *Id.* at 881. This case is even worse than the facts in *Callie* because at least the judgment creditor there moved to amend the complaint to add the new party. In the instant case, Far West simply began attaching Rhonda's separate bank accounts on an ex parte basis. To preserve Rhonda's due process, as explicitly held by the *Callie* court, this Court should vacate the District Court's sanctions order because Far West had to initiate a new action to pursue any claims against Rhonda, personally, in the post-judgment proceedings.

2. **Since *Randono v. Turk*, 86 Nev. 123, 466 P.2d 218 (1970) violates Rhonda's procedural due process rights, it should be overruled on this basis.**

Contrary to *Callie*, the District Court relied upon *Randono v. Turk*, 86 Nev. 123, 466 P.2d 218 (1970) for the notion that a judgment against Mike could be levied against Rhonda's separate property without due process. Since

Randono violates Rhonda's due process rights, it should be overruled on the same basis that *Callie* overruled *McCleary Cattle*. According to the District Court's interpretation of *Randono*, a community debt can be levied against a non-party spouse when the assets are also community property, without any prior notice. 2 App. 352. Indeed, many of the authorities that Far West relied upon, even from other jurisdictions, lead back to *Randono*. *Id.*

However, the fundamental flaw in the reasoning of *Randono* is that its stated holding does not find support within the enumerated statutes. For example, NRS 123.220 defines community property and its exceptions, but it does not allow an alleged community debt to be levied upon a spouse that is not a party to the underlying lawsuit. Many other statutes listed in *Randono* are either inapposite or no longer exist. *Id.*, 86 Nev. at 132, 466 P.2d at 223-24. When case law is not supported by the plain language of the governing statutes, the case law is no longer valid. *See, e.g., Egan v. Chambers*, 299 P.3d 364, 365 (Nev. 2013) ("While we acknowledge the important role that *stare decisis* plays in Nevada's jurisprudence, we recognize that we broadened the scope of NRS 41A.071, expanding the reach of the statute beyond its precise words."). Since the holding of *Randono* applied to this case does not accurately reflect the plain language of the referenced statutes, it should be overruled. Further, *Randono* should be overruled on the basis that its principles deprived Rhonda of her due process rights in a manner that was specifically prohibited by *Callie*.

3. NRS 21.330 also requires “an action” against a third party such as Rhonda.

The District Court relied, in part, upon NRS 21.330 to sanction Rhonda as a non-party. Yet, this statute expressly requires a judgment creditor, such as Far West, to “institute an action” against a non-party, such as Rhonda, instead of attaching her separate property and entering sanctions. Moreover, the District Court did more than require Rhonda to hold her separate property while a separate action was being instituted by Far West against her. The District Court bypassed the entire process outlined by NRS 21.330 and instead ordered the funds in her account to be applied toward Far West’s judgment. 2 App. 356. The language in NRS 21.320 also does not support Far West’s position because it qualifies a court’s ability to release property with the phrase “not exempt from execution.” Yet, Far West has not issued any writs of execution against Rhonda for the funds in her bank accounts. And, Rhonda has not had the opportunity to claim exemptions. Thus, the District Court abused its discretion by summarily ordering the disposal of Rhonda’s separate property when Far West did not institute a separate action or commence execution proceedings. On this alternative basis, the Court should vacate the District Court’s sanctions award.

C. The “ultimate” sanctions awarded against the Monas further violated their procedural due process rights.

1. Far West never conferred with the Monas before seeking ex parte relief from the District Court.

Everything about the District Court sanctions proceeding demonstrates that it should have never even taken place. Far West was required according to

NRCP 37(a)(2)(A) to “include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.” Similarly, EDCR 2.34(d) mandated that Far West was to provide an affidavit of counsel that this meet and confer had taken place or the “[d]iscovery motion[] may not be filed” Yet, Far West’s motion under NRCP 37 was made ex parte and without any certification. 1 App. 127-43. No explanation was given why Far West’s motion was made ex parte. What good are these procedural rules designed to allow counsel to resolve their discovery differences if Far West will continue to run to the District Court without conferring every time it perceives a violation? After producing approximately 30,000 documents to Far West’s satisfaction (1 App. 25), its counsel should have conferred according to these mandatory rules before running to the Court ex parte to complain about the omitted property settlement agreement that it already had. 1 App. 144-56.

Additionally, on what possible basis could Far West proceed in the District Court ex parte? It is hard to say because Far West did not identify any basis in its ex parte motion. 1 App. 127-43. For example, NRCP 65(b) requires an affidavit explaining why it would be impractical to give notice and to articulate the immediate and irreparable harm to seek a temporary restraining order without notice. No such affidavit was prepared in the instant case. Thus, Far West’s act of failing to confer with counsel and then seeking ex parte relief to freeze Rhonda’s account was nothing more than an abuse of the court process that violated Rhonda’s due process rights.

2. An evidentiary hearing was required before the District Court could impose “ultimate” sanctions.

Despite counsel’s protests for an evidentiary hearing, the District Court imposed “ultimate” sanctions without allowing an evidentiary hearing. 2 App. 296, 326. Instead, the District Court ordered the separate property in Rhonda’s bank accounts to be released to satisfy Far West’s judgment against Mike. 2 App. 356. According to well established Nevada law, this was reversible error. *See, e.g., Nevada Power Co. v. Fluor Illinois*, 108 Nev. 638, 837 P.2d 1354 (1992). Although the District Court’s sanctions award is premised on NRCP 37, it did not even consider the factors outlined in *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990).

In *Fluor Illinois*, this Court explained that when a district court’s determination that parties failed to obey an order involved factual questions as to the meaning of the order, an evidentiary hearing was required. 108 Nev. at 644, 837 P.2d at 1359. When a district court makes a liability determination as a discovery sanction, as in the instant case (2 App. 357), an evidentiary hearing is also mandatory. *See Foster v. Dingwall*, 227 P.3d 1042, 1047 (Nev. 2010); *see also Fluor Illinois*, 108 Nev. at 645, 837 P.2d at 1359. Moreover, as reported in *Fluor Illinois* and in numerous authorities, the weighing of the *Young* factors is mandatory before an award of sanctions can be made under NRCP 37. *Id.* Yet, neither Far West’s ex parte motion, the District Court’s order, nor the hearing transcript even mention *Young*. Thus, the District Court’s failure to hold an evidentiary hearing or even consider the mandatory *Young*

factors was an abuse of discretion that warrants this Court vacating the entire sanctions order.

3. The District Court lacked authority to make findings on a fraudulent transfer without giving the Monas an opportunity to present any defense.

Even though the District Court did not allow an evidentiary hearing, it took the extreme steps of concluding that Mike “lied” (2 App. 351) and that a fraudulent transfer was conclusively established. 2 App. 357. Instead of hearing evidence, the District Court considered Mike’s statements made in a judgment debtor examination and Rhonda’s statements made in her representative capacity. Yet, as the Nevada Court of Appeals has explained, “In light of the jury’s role in resolving questions of credibility, a district court should not reject the content of an affidavit even if it is at odds with statements made in an earlier deposition.” *Nutton v. Sunset Station, Inc.*, 131 Nev. Adv. Op. No. 34, at *23-24 (Jun. 11, 2015) (citing *Miller v. A.H. Robins Co.*, 766 F.2d 1102, 1104 (7th Cir. 1985) (“An inconsistent affidavit may preclude summary judgment . . . if the affiant was confused at the deposition and the affidavit explains those aspects of the deposition testimony or if the affiant lacked access to material facts and the affidavit sets forth the newly-discovered evidence.”); *Camfield Tires, Inc. v. Michelin Tire Corp.*, 719 F.2d 1361, 1365 (8th Cir. 1983) (an inconsistent affidavit may be accepted if it was not a sham but rather was an attempt to explain certain aspects of the confused deposition testimony and therefore was not really inconsistent) (further citations omitted)).

Thus, the only way to resolve the disputed issues was through an evidentiary hearing, not a summary proceeding that lacked due process.

Equally as troubling as the District Court's refusal to provide a defense is the District Court's summary finding of a fraudulent transfer. Instead of holding an evidentiary hearing, the District Court granted Far West ex parte relief and then refused to allow the Monas to present a defense. Other courts construing the right to a trial or hearing involving UFTA claims have also allowed a hearing or a trial. *See, e.g., Workforce Solutions v. Urban Servs. of Am., Inc.*, 977 N.E.2d 267, 275 (Ill. App. 2012) (allowing an evidentiary hearing on a creditor's claim under UFTA). And, the transfer between spouses does not always violate UFTA. *See, e.g., Estes v. Titus*, 751 N.W.2d 493, 497 (Mich. 2008) ("A UFTA action will not reach such property unless both spouses are debtors on the claim that is the subject of the action."). The District Court's flagrant violation of the Monas' due process rights provides a third basis to vacate the sanctions order.

D. The Monas' post-marital property settlement agreement is a stated exception to NRS 123.220 and protects Rhonda's separate property from execution.

1. As a matter of law, Rhonda is not responsible for intentional conduct by her husband.

According to *Jewett v. Patt*, 95 Nev. 246, 247-48, 591 P.2d 1151, 1152 (1979), Rhonda's marriage to Mike does not make her automatically liable for the foreign judgment against him, especially since the judgment was based upon fraud. 1 App. 173-93. Other courts citing *Jewett* have held that "a spouse is not personally liable for his or her spouse's intentional torts committed

during marriage merely by virtue of being married.” *Henry v. Rizzolo*, 2012 WL 1376967, at *2 (D. Nev. 2012). Other courts have reached similar results. *See Norwest Fin. v. Lawver*, 109 Nev. 242, 246, 849 P.2d 324, 326 (1993) (“The character of [the] property acquired upon credit during marriage is determined according to the intent of the lender to rely upon the separate property of the purchaser or upon a community asset.”); *In re Miller*, 517 B.R. 145, 147 (D. Ariz. 2014) (applying Arizona law and concluding that “community property cannot be reached to satisfy a guarantee of a debt of another unless both spouses sign.”); *Curda-Derickson v. Derickson*, 668 N.W.2d 736, 743 (Wis. App. 2003) (“[D]ebts created by the torts of only one spouse are an exception from those debts incurred in the interest of the family.”). In fact, a bankruptcy court construing Nevada law has stated that this very issue is unresolved in Nevada law: “The question of whether community property in Nevada is liable for the judgment debt created by the tort of a spouse is one for a Nevada court not this court.” *In re Bernardelli*, 12 B.R. 123, 123 (Bankr. D. Nev. 1981).

Moreover, NRS 123.230 specifically limits the ability of a spouse to encumber community property, absent a power of attorney, except in certain circumstances up to half of the community property. Thus, even absent the property settlement agreement, Far West would not have been entitled to recover Rhonda’s separate property or her half of the community property. Accordingly, it was error for the District Court to conclude that the fraud judgment against Mike extended to Rhonda’s separate property.

2. Nevada law specifically allows written agreements for separate property as an exception to the definition of community property.

While the District Court claimed to have construed NRS 123.220 defining community property, it avoided the stated exception in subsection 1 of the statute for “[a]n agreement in writing between the spouses.” Far West itself presented a copy of the Monas’ post-marital property settlement agreement, defining Rhonda’s separate property. 1 App. 144-56. NRS 123.070 also allows married parties to enter into contracts with each other or other persons, the same as if they were not married. Further, NRS 123.190(1) provides, “When the husband has given written authority to the wife to appropriate to her own use her earnings, the same, with the issues and profits thereof, is deemed a gift from him to her, and is, with such issues and profits, her separate property.”

Nevada law also clearly allows married persons to transmute separate property to community property and vice versa. *See Verheyden v. Verheyden*, 104 Nev. 342, 757 P.2d 1328 (1988); *see also Sprenger v. Sprenger*, 110 Nev. 855, 858, 878 P.2d 284, 286 (1994) (stating that the transmutation of separate property into community property must be shown by clear and convincing evidence). Thus, the District Court’s summary conclusion that Rhonda’s separate property was subject to a community debt simply because the debt was acquired during the marriage was a gross misstatement of Nevada law.

3. At a minimum, there were factual issues regarding the nature of Rhonda's separate bank accounts because the District Court failed to trace the funds.

The District Court erroneously concluded that the entire property settlement agreement was a fraudulent transfer without an evidentiary hearing and without hearing testimony from the Monas. Since there were factual issues regarding the property settlement agreement, the District Court was required to hold an evidentiary hearing and trace the source of the assets before summarily concluding that the Monas committed a fraudulent transfer. *See Hardy v. U.S.*, 918 F.Supp. 312, 317 (D. Nev. 1996) ("The question whether the property belongs solely to one spouse or to the marital community depends on the source of the funds with which it was acquired."); *In re Wilson's Estate*, 56 Nev. 353, 53 P.2d 339, 343 (1936) ("The community estate may be vested in either spouse, and the true character of the property is to be determined by the nature of the transaction under which it is acquired without reference to who retains the title.") (citations omitted). The District Court's summary treatment of this issue similarly warrants the requested extraordinary relief of vacating the District Court's sanctions order.

VI

CONCLUSION

This Court should vacate the District Court's sanctions order for a variety of reasons. The District Court lacked personal jurisdiction over Rhonda and was unable to issue any sanctions against her, particularly with regard to her separate property. Far West violated Rhonda's due process rights by trying to

include her in post-judgment proceedings without giving her notice and without filing a separate action. The entire District Court proceeding should not have taken place because Far West did not confer with counsel before seeking ex parte relief for the discovery dispute, the District Court issued an “ultimate” sanction without allowing an evidentiary hearing, and the District Court failed to consider the mandatory *Young* factors before issuing sanctions under NRCP 37. Finally, Rhonda is not liable for the debts arising from her husband’s torts, especially in light of the property settlement agreement between the Monas. For any of these reasons, this Court should grant the requested extraordinary relief and vacate the District Court’s sanction order.

DATED: July 17, 2015

/s/ Robert L. Eisenberg
ROBERT L. EISENBERG
Nevada Bar No. 0950
Lemons, Grundy & Eisenberg
6005 Plumas Street, #300
Reno, Nevada 89519
775-786-6868
Email: rle@lge.net

/s/ Micah S. Echols
TERRY A. COFFING
Nevada Bar No. 4949
MICAHA S. ECHOLS
Nevada Bar No. 8437
TYE S. HANSEEN
Nevada Bar No. 10365
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, Nevada 89145
702-382-0711
Email: tcoffing@maclaw.com
mechols@maclaw.com
thanseen@maclaw.com

VERIFICATION

State of Nevada)
County of Washoe)

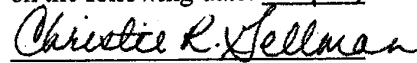
Robert L. Eisenberg, being first duly sworn, deposes and says:

That he is a member of the law firm of Lemons, Grundy & Eisenberg, attorneys for Petitioner Rhonda Helene Mona in the above-entitled Petition; he has obtained copies of district court papers relating to this case, and he is familiar with the facts and circumstances set forth in the Petition; and that he knows the contents thereof to be true, based on the information he has received, except as to those matters stated on information and belief, and as to those matters, he believes them to be true.

This verification is made pursuant to NRS 15.010.


ROBERT L. EISENBERG

Subscribed and sworn before me
on the following date: July 17, 2015


Notary Public



VERIFICATION

State of Nevada)
)
County of Clark)

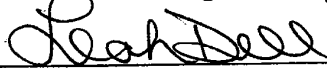
Micah S. Echols, being first duly sworn, deposes and says:

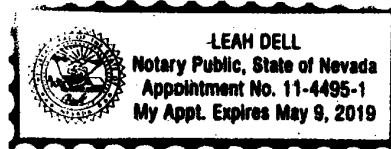
That he is a member of the law firm of Marquis Aurbach Coffing, attorneys for Petitioner Michael J. Mona, Jr. in the above-entitled Petition; he has obtained copies of district court papers relating to this case, and he is familiar with the facts and circumstances set forth in the Petition; and that he knows the contents thereof to be true, based on the information he has received, except as to those matters stated on information and belief, and as to those matters, he believes them to be true.

This verification is made pursuant to NRS 15.010.


MICAH S. ECHOLS

Subscribed and sworn before me
on the following date: 7/17/15


Notary Public



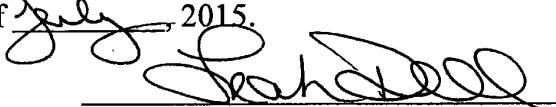
CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1), I certify that I am an employee of Marquis Aurbach Coffing and that on this date I caused to be served at Las Vegas, Nevada, a true copy of the Petition for Writ of Mandamus or Prohibition and Petitioners' Appendix addressed to:

The Honorable Joe Hardy
Eighth Judicial District Court, Dept. 15
200 Lewis Avenue
Las Vegas, Nevada 89155
Via Hand Delivery

F. Thomas Edwards
Andrea M. Gandara
Holley Driggs Walch
Fine Wray Puzey & Thompson
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
tedwards@nevadafirm.com
agandara@nevadafirm.com
Via Email

DATED this 17th day of July, 2015.



Leah Dell, an employee of
Marquis Aurbach Coffing

EXHIBIT 5

EXHIBIT 5

IN THE SUPREME COURT OF THE STATE OF NEVADA

RHONDA HELENE MONA; AND
MICHAEL J. MONA, JR.,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JOSEPH HARDY, JR., DISTRICT
JUDGE,

Respondents,

and

FAR WEST INDUSTRIES,
Real Party in Interest.

No. 68434

FILED

JUL 20 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER GRANTING TEMPORARY STAY

Petitioners have filed a motion to stay: (1) a district court order that imposes sanctions on the petitioners and allows real party in interest to execute upon the bank accounts of petitioner Rhonda Mona, and (2) the underlying district court proceedings. Our review of the motion indicates that a temporary stay is warranted, pending receipt and consideration of any opposition to the motion. Accordingly, we temporarily stay the July 15, 2015, order in Eighth Judicial District Court Case No. A-12-670352-F, as well as the proceedings below, pending further order of this court. Real party in interest shall file a response to the motion within 11 days from the date of this order.

It is so ORDERED.

Saitta, J.

Saitta

Gibbons, J.

Gibbons

Pickering, J.

Pickering

cc: Hon. Joseph Hardy, Jr., District Judge
Marquis Aurbach Coffing
Lemons, Grundy & Eisenberg
Holley, Driggs, Walch, Fine Wray Puzey & Thompson/Las Vegas
Eighth District Court Clerk

EXHIBIT 6

EXHIBIT 6

SUPREME COURT OF NEVADA
Office of the Clerk
201 South Carson Street
Carson City, Nevada 89701
Tel: 775-684-1600 Fax: 775-684-1601

FACSIMILE TRANSMITTAL SHEET

To: Holley Driggs Walch Fine Wray **Fax:** 702-791-1912
Puzey & Thompson

F. Thomas Edwards

From: Supreme Court **Date:** 10/16/15

Re: 68434, Mona vs. Dist. Ct. (Far **Pages:** 3 including cover
West Indus.)

cc:

☐ **Urgent** ☐ **Per your request** ☐ **Please Reply** ☐ **For Review**

Notes:

IN THE SUPREME COURT OF THE STATE OF NEVADA

RHONDA HELENE MONA; AND
MICHAEL J. MONA, JR.,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JOSEPH HARDY, JR., DISTRICT
JUDGE,

Respondents,

and

FAR WEST INDUSTRIES,
Real Party in Interest.

No. 68434

FILED

OCT 16 2015

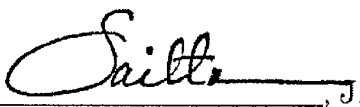
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER

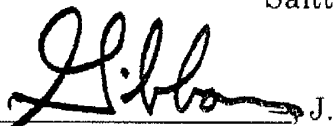
Petitioners have filed a motion to: (1) stay the district court's minute order requiring them to post supersedeas bonds, and (2) maintain our prior stay of the underlying district court proceedings in light of the district court's apparent intention to lift that stay. Our review of the motion indicates that the following relief is warranted. We temporarily stay the requirement that petitioners post supersedeas bonds, pending this court's receipt and consideration of further briefing on the motion. Within 5 days from the date of this order, petitioners shall supplement the motion with a clear statement regarding what they propose as alternate security in lieu of a supersedeas bond to "maintain the status quo and protect the judgment creditor pending an appeal." *Nelson v. Heer*, 121 Nev. 882, 885 88, 122 P.3d 1252, 1254 (2005). Real party in interest shall

have 11 days from service of petitioners' supplement to file a combined response to the motion and supplement, and petitioners shall have 3 days from service of the response to file a reply. Further, under our order of August 31, 2015, all proceedings in Eighth Judicial District Court Case No. A-12-670352-F remain stayed pending further order of this court.

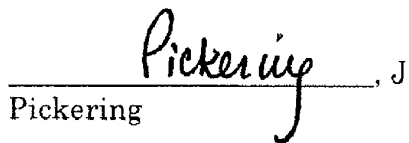
It is so ORDERED.

 J.

Saitta

 J.

Gibbons

 J.

Pickering

cc: Hon. Joseph Hardy, Jr., District Judge
Marquis Aurbach Coffing
Lemons, Grundy & Eisenberg
Holley, Driggs, Walch, Fine Wray Puzey & Thompson/Las Vegas
Eighth District Court Clerk

EXHIBIT 7

EXHIBIT 7

IN THE SUPREME COURT OF THE STATE OF NEVADA

RHONDA HELENE MONA; AND
MICHAEL J. MONA, JR.,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JOSEPH HARDY, JR., DISTRICT
JUDGE,

Respondents,

and

FAR WEST INDUSTRIES,
Real Party in Interest.

No. 68434

FILED

NOV 19 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING MOTION

This original petition for a writ of mandamus or prohibition challenges a district court order that, in part, directs that funds in certain bank accounts be applied to a domesticated foreign judgment. We previously stayed the proceedings below pending further order of this court and, in addressing arguments regarding a bond, noted that the district court was better suited than this court to make supersedeas bond determinations. *See Nelson v. Heer*, 121 Nev. 832, 836, 122 P.2d 1252, 1254 (2005).

Thereafter, the district court considered the parties' arguments concerning a bond and ordered petitioner Michael J. Mona, Jr., and the Mona Family Trust to post a bond of \$24,172,076.16, and


petitioner Rhonda Helene Mona to post a bond of \$490,000. The district court's order noted that if petitioners did not timely post their respective bonds, the stay pending this proceeding would expire as to each.


Petitioners then filed in this court an emergency motion to stay the district court's order requiring them to post supersedeas bonds. We granted a temporary stay, pending our consideration of further briefing on the motion, including a supplement by petitioners "with a clear statement regarding what they propose as alternate security in lieu of a supersedeas bond." The briefing on the motion is now complete.

Having considered the parties' arguments and the documents on file herein, we perceive no abuse of discretion by the district court in its order setting the bonds, *see McCulloch v. Jeakins*, 99 Nev. 122, 123, 659 P.2d 302, 303 (1983), and conclude that petitioners have not sufficiently demonstrated that their proposed alternate security will "maintain the status quo and protect the judgment creditor pending" this proceeding. *Nelson*, 121 Nev. at 835-36, 122 P.2d at 1254. We therefore deny petitioners' motion to extend the stay of proceedings without bond, or on conditions different from those ordered by the district court, requiring petitioner Michael J. Mona, Jr., and the Mona Family Trust to post a bond of \$24,172,076.16, and petitioner Rhonda Helene Mona to post a bond of \$490,000. This court's stay entered August 31, 2015, and temporary stay entered October 16, 2015, shall expire within 5 business days from the date of this order unless the parties comply with the bond requirements

imposed by the district court in its written order of October 16, 2015, as a condition of any stay.

It is so ORDERED.


_____, J.
Saitta

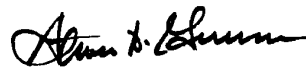

_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Joseph Hardy, Jr., District Judge
Marquis Aurbach Coffing
Lemons, Grundy & Eisenberg
Holley, Driggs, Walch, Fine Wray Puzey & Thompson/Las Vegas
Eighth District Court Clerk

EXHIBIT 8

EXHIBIT 8



CLERK OF THE COURT

1 **Marquis Aurbach Coffing**
Terry A. Coffing, Esq.
2 Nevada Bar No. 4949
Tye S. Hanseen, Esq.
3 Nevada Bar No. 10365
10001 Park Run Drive
4 Las Vegas, Nevada 89145
Telephone: (702) 382-0711
5 Facsimile: (702) 382-5816
tcoffing@maclaw.com
6 thanseen@maclaw.com
Attorneys for Defendants

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 FAR WEST INDUSTRIES, a California
10 corporation,

11 Plaintiff,

12 vs.

13 MICHAEL J. MONA, JR., an individual;
RHONDA HELENE MONA, an individual;
14 MICHAEL MONA III, an individual;
LUNDENE ENTERPRISES, LLC, a Nevada
15 limited liability corporation, DOES 1 through 10
and ROE CORPORATIONS 1 through 10,
16 inclusive,,
17 Defendant.

Case No.: A-15-724490-C
Dept. No.: XXXII

Hearing Date:
Hearing Time:

18
19 **DEFENDANTS' MOTION TO DISMISS**

20 Defendants Michael J. Mona, Jr., Rhonda Helene Mona, Michael Mona, III, and Lundene
21 Enterprises, LLC (collectively "Defendants"), through the law firm of Marquis Aurbach Coffing,
22 hereby file their Motion to Dismiss. This Motion is based on the following Memorandum of

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Points and Authorities, the pleadings and papers on file herein, and any oral argument by counsel
2 permitted at the hearing on this matter.

3 Dated this 4th day of December, 2015.

4 MARQUIS AURBACH COFFING

5
6 By /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
7 Attorneys for Defendants

8
9
10 **NOTICE OF MOTION**

11 You and each of you, will please take notice that the DEFENDANTS' MOTION TO
12 DISMISS will come on regularly for hearing on the 02 day of FEBRUARY,
13 2016, at the hour of 9:00A.m., or as soon thereafter as counsel may be heard, in
14 Department XXXII in the above-referenced court.

15 Dated this 4th day of December, 2015.

16 MARQUIS AURBACH COFFING

17
18 By /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
19 Attorneys for Defendants

20
21
22
23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24 **I. INTRODUCTION.**

25 Plaintiff's Amended Complaint contains allegations Plaintiff knows are inaccurate.
26 Based on the allegations in the Amended Complaint, Plaintiff expects this Court to overturn a
27 valid Divorce Decree and related distribution of property in a case in which the Family Court
28 already denied Plaintiff's intervention attempts. The Monas divorced and distributed their

1 marital property ("Divorce Action"). Plaintiff attempted to intervene in the Divorce Action to
2 make unfounded allegations of fraudulent transfers to try and collect against Rhonda Mona for a
3 Judgment against Mike Mona. The Family Court, however, denied Plaintiff's intervention
4 attempts and awarded both Mike Mona and Rhonda Mona the fees and costs they incurred in
5 opposing Plaintiff's requests.

6 Prior to the Divorce Action, Plaintiff filed a case against Mike Mona ("Fraudulent
7 Transfer Action") to collect on the Judgment. In the midst of the Fraudulent Transfer Action,
8 Plaintiff brought a fraudulent transfer claim against Rhonda Mona, who is neither a judgment
9 debtor nor a party to the Fraudulent Transfer Action. Nevertheless, the court entered an
10 Order/Judgment against Rhonda Mona for fraudulent transfer based on a Post-Marital Settlement
11 Agreement under which Mike and Rhonda Mona equally split the proceeds of a stock sale, and
12 Plaintiff did not make any other assertions of fraudulent transfers in the Fraudulent Transfer
13 Action. The court's Order/Judgment against Rhonda Mona regarding the fraudulent transfer
14 claim is the subject of an appeal pending before the Nevada Supreme Court.

15 Plaintiff brought the current action to: (1) Try and remedy its failure to intervene in the
16 Divorce Action and assert its fraudulent transfer allegations there; and (2) to remedy its failure to
17 include the current fraudulent transfer allegations in the Fraudulent Transfer Action when it had
18 the opportunity to do so prior to the conclusion of the Divorce Action. At this point, however,
19 claim preclusion bars Plaintiff's third opportunity to bring the allegations because the court has
20 either already ruled on the claims or Plaintiff could have brought the claims in prior actions and
21 failed to do so. Moreover, Plaintiff cannot marshal facts sufficient to satisfy the elements of the
22 claims brought herein. Thus, the Court should grant this Motion to Dismiss.

23 **II. STATEMENT OF FACTS.**

24 **A. THE PARTIES.**

25 Mike Mona is a resident of Nevada. See Pltf's Amended Complaint at 2:8-11. Plaintiff
26 is a California corporation that possesses a California Judgment against Mike Mona. Id. at 2:6-7
27 and 3:4-28. Rhonda Mona is Mike Mona's ex-wife and Mike Mona, III ("M3") is Mike Mona's
28 son. Id. at 2:8-11, 16-19 and 7:24-26.

1 **B. DOMESTICATION OF THE JUDGMENT AND FRAUDULENT**
2 **TRANSFER ACTION.**

3 The California Judgment is against Mike Mona only. Id. 3:4-28. The Judgment amount
4 allegedly totals more than \$24,000,000.00. Id. at 3:25. On October 18, 2012, Plaintiff
5 domesticated the Judgment in Nevada and began collection activities. Id. at 3:22-28. Mike
6 Mona does not have \$24,000,000.00 to pay the Judgment and Plaintiff has allegedly collected
7 \$28,647.59 thus far. Id. at 3:26-28.

8 As part of Plaintiff's efforts against Mike Mona, Plaintiff asserted fraudulent transfer
9 claims against Rhonda and Mike Mona in case No. A-12-670352 ("Fraudulent Transfer
10 Action"). Id. at 6:22-7:10. Specifically, apparently miffed Mike Mona was not voluntarily
11 satisfying Plaintiff's demands, Plaintiff asserted that \$6.8 million in proceeds from a stock sale,
12 which Mike Mona split with Rhonda Mona through a Post-Marital Settlement Agreement,
13 equated to a fraudulent transfer. Id. at 4:21-28 and 6:22-7:10.

14 The Department overseeing the Fraudulent Transfer Action entered an Order/Judgment
15 against Mike Mona and Rhonda Mona, even though Rhonda was not even a party to the
16 Fraudulent Transfer Action, concluding that Rhonda Mona engaged in the fraudulent transfer.
17 Id. Due to the parameters and procedure under which the Department entered Judgment, the
18 related Order is now the subject of an appeal before the Nevada Supreme Court. Id. at 7:11.

19 In the Fraudulent Transfer Action, other than asserting that the \$6.8 million stock sale
20 and related Post-Marital Settlement Agreement represented a fraudulent transfer, Plaintiff did not
21 assert any other dealings between Mike Mona, Rhonda Mona, or M3 represented a fraudulent
22 transfer. Id. at 4:21-28 and 6:22-7:10. Plaintiff sought to compel the application of guns, a
23 Jaguar, and a tax refund to satisfy the Judgment, but never, although it has the opportunity to do
24 so, asserted any of these items or anything else was a fraudulent transfer. Id. at 4:21-28 and
25 6:22-7:20.

1 **C. THE DIVORCE ACTION, PLAINTIFF'S FAILURES, AND FEES AND**
2 **COSTS AGAINST PLAINTIFF.**

3 On July 23, 2015, Mike Mona and Rhonda Mona finalized their divorce and, in so doing,
4 divided the couples' property and debt. Id. at 7:24-8:19. The Divorce Action and its results are
5 subject to the Order/Judgment in the Fraudulent Transfer Action and those matters raised in that
6 Action, but the Divorce Action is not subject to the current case or claims that could have been
7 brought in the Fraudulent and Divorce Actions and were not. Id. at 4:21-22.

8 Plaintiff untimely attempted to intervene in the Divorce Action again making various
9 allegations of fraudulent transfer. See Pltf's September 24, 2015 Motion to Intervene in case No.
10 D-15-517425 at 3:17-25. However, the Court denied Plaintiff's Motion to Intervene to make its
11 claims of fraudulent transfer because it was untimely. See November 25, 2015 Order in case No.
12 D-15-517425. Thus, although Plaintiff would have been able to intervene in the Divorce Action
13 and assert, for at least the second time, its claims for fraudulent transfer, the Family Court denied
14 Plaintiff's request because it sat on its hands by waiting until the Divorce Action was closed
15 before doing anything. Id.

16 Not only did the Family Court deny Plaintiff's attempts to make untimely fraudulent
17 transfer claims within the Divorce Action, but it also awarded Mike Mona and Rhonda Mona,
18 separately, the attorney fees and costs they each incurred in opposing Plaintiff's attempts. See
19 November 25, 2015, November 30, 2015, and December 2, 2015 Orders in case No. D-15-
20 517425.

21 **D. THE SUBJECT MATTER OF THE CURRENT SUIT HAS ALREADY**
22 **BEEN DETERMINED OR IS ALREADY (OR COULD HAVE BEEN) THE**
23 **SUBJECT OF PRIOR ACTIONS.**

24 Plaintiff has asserted seven claims in the current suit broken down as follows:

- 25 1. Fraudulent Transfer – Plaintiff asserts that Mike Mona gave Rhonda Mona (his
26 wife at the time) community property of \$500,000 without consideration and this
27 somehow equates to a fraudulent transfer. See Pltf's Amended Complaint at
28 4:12-16.
2. Fraudulent Transfer – Plaintiff asserts that Mike Mona gave Rhonda Mona (his
wife at the time) \$3.4 million dollars without consideration and this somehow
equates to a fraudulent transfer. Id. at 4:18-28 and 10:24-11:5.

- 1 3. Fraudulent Transfer – Plaintiff asserts that Mike Mona gave Rhonda Mona (his
2 wife at the time) community property of \$90,000 to buy car and this somehow
equates to a fraudulent transfer. Id. at 5:16-26 and 12:13-13:13.
- 3 4. Fraudulent Transfer – Plaintiff claims that Mike Mona giving his son a vehicle
4 somehow equates to a fraudulent transfer. Id. at 5:27-6:8 and 13:14-14:15.
- 5 5. Fraudulent Transfer – Plaintiff claims that the valid Divorce Decree equates to a
6 fraudulent transfer and expects this Court to essentially void it, even though
Plaintiff already failed to timely intervene in the Divorce Action. Id. at 6:9-8:27
and 14:16-16:10.
- 7 6. Civil Conspiracy – Without any factual allegations to support the claim, Plaintiff
8 asserts that the Defendants conspired to engage in fraudulent transfers. Id. at
16:22.
- 9 7. Declaratory Relief – Plaintiff demands that the Court declare the claimed
10 fraudulent transfers as fraudulent transfers and allow Plaintiff to execute on all of
the assets, whether part of the Divorce Action or owned by people other than
Mike Mona. Id. at 16:25-17:16.
- 11

12 In response to these allegations, Defendants filed this Motion to Dismiss, which asserts
13 that claim preclusion bars the claims and Plaintiff has failed to set forth the facts necessary to
14 maintain the claims.

15 **III. LEGAL STANDARD**

16 A claim for relief set forth in any pleading may be dismissed as a matter of law under
17 NRCP 12(b)(5) for failure to state a claim upon which relief can be granted. See NRCP
18 12(b)(5). While dismissal requires the Court to construe the pleadings liberally and draw every
19 fair inference in favor of the non-moving party, if it appears that the pleading party can prove no
20 set of facts which would entitle it to relief dismissal should be granted. Brown v. Kellar, 97 Nev.
21 582, 636 P.2d 874 (1981) (emphasis added); see also Bergmann v. Boyce, 109 Nev. 670, 856
22 P.2d 560 (1993).

23 The test for determining whether the allegations are sufficient to assert a claim for relief
24 is whether the allegations give fair notice of the nature and basis of a legally sufficient claim and
25 the relief requested. Breliant v. Preferred Equities Corp., 109 Nev. 842, 846, 858 P.2d 1258
26 (1993). In reviewing a motion to dismiss, the court shall determine whether or not the
27 challenged pleading sets forth sufficient allegations to make out the elements for a claim for
28 relief. Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985). If all of a party's allegations are

1 accepted as true and still do not justify any relief, the trial court should properly dismiss the
2 claims. Blackjack Bonding v. City of Las Vegas Municipal Court, 116 Nev. 1213, 1214, 14 P.3d
3 1275, 1278 (2000) (emphasis added).

4 **IV. LEGAL ARGUMENT.**

5 The Court should grant this Motion for eight reasons. First, claim preclusion bars
6 Plaintiff's Amended Complaint and the related allegations because this is at least Plaintiff's
7 fourth opportunity/attempt to assert the claims in this case and, as a result, the claims have
8 already been, or could have been, brought and decided. Second, Plaintiff's second cause of
9 action was already decided in the Fraudulent Transfer Action. Third, the Family Court already
10 denied Plaintiff's attempts to intervene to challenge the divorce, which is Plaintiff's fifth cause
11 of action. Fourth, there is no evidence of any agreement between the Defendants that could
12 possibly support a civil conspiracy claim. Fifth, Plaintiff's assertion in the second cause of
13 action that a loan from Rhonda Mona to her son, M3, is a fraudulent transfer is baseless because
14 Rhonda is not a debtor, the loan did not make her insolvent, and M3 provided consideration for
15 the loan. Sixth, Plaintiff failed to join an indispensable party to the second cause of action.
16 Seventh, the seventh cause of action for declaratory relief simply reasserts the first five causes of
17 action, all of which the Court should dismiss. Eighth, Plaintiff failed to satisfy NRCP 9's
18 pleading requirements. Thus, the Court should grant the Motion to Dismiss.

19 **A. NEVADA LAW BARS PLAINTIFF'S CLAIMS BECAUSE THE COURT**
20 **ALREADY DECIDED (OR COULD HAVE BUT FOR PLAINTIFF'S**
21 **FAILURES) THE OUTCOME OF THE CLAIMS.**

22 Plaintiff is now re-litigating the same issues that were already decided or could have been
23 decided on prior occasions in two different prior lawsuits. In 2008, the Nevada Supreme Court
24 established a clear test for claim preclusion, which test it modified in 2015. Specifically, in
25 Nevada, for claim preclusion to apply, a defendant must show: (1) there has been a valid and
26 final judgment in a previous action; (2) the subsequent action is based on the same claims or any
27 part of them that were or could have been brought in the first action; and (3) the parties or their
28 privies are the same in the instant lawsuit as they were in the previous lawsuit, or the defendant
can demonstrate that he or she should have been included as a defendant in the earlier suit and

1 the plaintiff fails to provide a "good reason" for not having done so. Weddell v. Sharp, 131 Nev.
2 Adv. Op. 28, 350 P.3d 80, 81 (2015), reh'g denied (July 23, 2015). Here, claim preclusion
3 applies to all of Plaintiff's claims.

4 The first element regarding a final judgment in a previous action is satisfied because there
5 are currently final judgments in the Divorce and Fraudulent Transfer Actions. The Divorce
6 Action was final on July 23, 2015 and the Family Court denied Plaintiff's untimely attempt to
7 intervene to make fraudulent transfer allegations. See Pltf's Amended Complaint at 7:24-8:19;
8 see also Pltf's September 24, 2015 Motion to Intervene at 3:17-25 and November 25, 2015 Order
9 in case No. D-15-517425. In addition, Plaintiff obtained an Order/Judgment against Mike and
10 Rhonda Mona in the Fraudulent Transfer Action, which is now part of an appeal before the
11 Nevada Supreme Court. See Pltf's Amended Complaint at 4:21-28 and 6:22-7:11.

12 The second element regarding the opportunity to bring the same claims in a previous
13 action is satisfied because Far West has asserted Fraudulent Transfer claims in the current case,
14 asserted Fraudulent Transfer claims in the Fraudulent Transfer Action, and made fraudulent
15 transfer allegations in the Divorce Action. Id., *generally*; see also Pltf's September 24, 2015
16 Motion to Intervene at 3:17-25 and November 25, 2015 Order in case No. D-15-517425.
17 Moreover, there is a fourth action that Plaintiff brought against Mike Mona and various third
18 parties to which Rhonda Mona, M3, and these claims could and should have been brought, but
19 were not. See case No. A-14-695786. Thus, this is actually the fourth action Plaintiff has been
20 part of involving Mona related to the same set of facts and in all four actions Plaintiff has
21 asserted fraudulent transfer allegations that could have and should have all been brought in a
22 prior action.

23 Lastly, the third element regarding the same parties is satisfied because Mike Mona,
24 Rhonda Mona, and Far West were all part of the Divorce Action and the Fraudulent Transfer
25 Action, and Far West should have included M3, as it did Rhonda Mona, in the Fraudulent
26 Transfer Action. Moreover, Far West could have included Rhonda Mona and M3 in case No. A-
27 14-695786.

1 Therefore, claim preclusion applies to the Amended Complaint because there are two
2 valid and final judgments, this is the fourth action based on the same claims and set of facts, and
3 the parties/their privies are similar in the suits. Weddell, at 28, 350 P.3d at 81. As a result, the
4 Court should grant this Motion. The preclusion of the individual claims is discussed more fully
5 below.

6 **B. CLAIM AND ISSUE PRECLUSION FURTHER BAR THE SECOND**
7 **CAUSE OF ACTION FOR FRAUDULENT TRANSFER BECAUSE THE**
8 **COURT HAS ALREADY RULED ON THE ISSUE.**

9 Plaintiff's second cause of action is for the alleged fraudulent transfer of \$3.4 million
10 from Mike Mona to Rhonda, which is half of \$6.8 million the Monas received through a stock
11 sale. See Pltf's Amended Complaint at 10:26-11:25. Plaintiff has already asserted and obtained
12 an Order/Judgment regarding this exact same claim against Mike Mona and Rhonda Mona in
13 case No. A-12-670352. Id. at 3:22-24, 4:18-28, and 6:26-7:10. The Court concluded that Mike
14 Mona agreeing to split the \$6.8 million with Rhonda Mona through the Post-Marital Settlement
15 Agreement was a fraudulent transfer. Id. The Court's Order is now the subject of a pending
16 appeal before the Nevada Supreme Court. Id. at 7:50. Therefore, Plaintiff is barred from
17 bringing the exact same claim; which has been decided and is the subject of an appeal.

18 **C. THE DIVORCE DECREE AND ORDER DENYING PLAINTIFF'S**
19 **INTERVENTION ATTEMPT BAR THE FIFTH CAUSE OF ACTION FOR**
20 **FRAUDULENT TRANSFER THROUGH THE DIVORCE.**

21 Plaintiff's fifth cause of action for fraudulent transfer requests that this Court nullify the
22 Divorce Decree and related distribution of property and debt. See Pltf's Amended Complaint at
23 14:16-16:10. The Divorce was final and the case closed on July 23, 2015. Id. at 7:24-26.
24 Plaintiff moved to intervene to continue to make further fraudulent transfer allegations. See
25 Pltf's September 24, 2015 Motion to Intervene in case No. D-15-517425 at 3:17-25. However,
26 the Court denied Plaintiff's Motion to Intervene to make its claims of fraudulent transfer because
27 it was untimely. See November 25, 2015 Order in case No. D-15-517425.

28 In other words, Plaintiff would have been able to intervene in the Divorce Action and
assert, for at least the second time, its claims for fraudulent transfer, the Family Court denied
Plaintiff's request because it sat on its hands by waiting until the Divorce Action was closed

1 before doing anything. Id. Further, not only did the Family Court deny Plaintiff's attempts to
2 make untimely fraudulent transfer claims within the Divorce Action, but it also awarded Mike
3 Mona and Rhonda Mona, separately, the attorney fees and costs they each incurred in opposing
4 Plaintiff's attempts. See November 25, 2015, November 30, 2015, and December 2, 2015
5 Orders in case No. D-15-517425.

6 Plaintiff is not entitled to rehabilitate its failures in the Divorce Action by bringing yet
7 another lawsuit to make the same assertions it was precluded from bringing in the Divorce
8 Action. Therefore, the Court should grant the Motion to Dismiss as to the fifth cause of action.

9
10 **D. PLAINTIFF CANNOT MARSHAL FACTS SUFFICIENT TO MAINTAIN
THE SIXTH CAUSE OF ACTION FOR CIVIL CONSPIRACY.**

11 "Actionable civil conspiracy arises where two or more persons undertake some concerted
12 action with the intent 'to accomplish an unlawful objective for the purpose of harming another,'
13 and damage results." Guilfoyle v. Olde Monmouth Stock Transfer Co., 130 Nev. Adv. Op. 78,
14 335 P.3d 190, 198-99 (2014) (citing Consol. Generator-Nevada, Inc. v. Cummins Engine Co.,
15 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998)). Further, there must be "evidence of an
16 explicit or tacit agreement between the alleged conspirators." Id. (citing Dow Chemical Co. v.
17 Mahlum, 114 Nev. 1468, 1489, 970 P.2d 98, 112 (1998)). Dismissal is appropriate "if there is no
18 evidence of an agreement or intent to harm the plaintiff." Id. (citing Consol. Generator-Nevada,
19 114 Nev. at 1311, 971 P.2d at 1256).

20 Here, Plaintiff's allegations supporting the civil conspiracy claim encompass less than
21 four lines of text and are asserted on "information and belief." See Pltf's Amended Complaint at
22 16:15-18. Even considering Plaintiff's incorporation and realleging of prior allegations in the
23 Amended Complaint, there is no evidence at all that Mike Mona, Rhonda Mona, and/or M3 had
24 some agreement amongst themselves to intentionally harm Plaintiff. Thus, the Court should
25 dismiss the sixth cause of action for civil conspiracy.

1 **E. THE CLAIM AGAINST M3, LUNDENE, AND RHONDA MONA FOR**
2 **FRAUDULENT TRANSFER IS BASELESS AND MUST BE DISMISSED.**

3 NRS Chapter 112 requires that Plaintiff establish the following criteria before setting
4 aside a transfer as a fraudulent conveyance: 1) the conveyance must be made by a debtor who is
5 insolvent or who will be rendered insolvent by it; 2) there was not fair consideration for the
6 conveyance; and 3) the purchaser was not a bona fide purchaser for value without notice of the
7 fraud at the time of the purchase. Brown v. Fed. Sav. & Loan Ins. Corp., 105 Nev. 409, 413-14,
8 777 P.2d 361, 364 (1989). The creditor must show that the transfer made the debtor insolvent, or
9 dismissal is necessary. Crescent v. White, 92 Nev. 661, 662-63, 556 P.2d 1265, 1265-66 (1976).
10 Moreover, the creditor bears the burden of proof both with respect to the insolvency of the debtor
11 and the inadequacy of consideration. Matusik v. Large, 85 Nev. 202, 205, 452 P.2d 457, 458
12 (1969).

13 Here, hidden under the second cause of action for fraudulent transfer of \$3.4 million from
14 Mike Mona to Rhonda Mona is a claim that Rhonda Mona fraudulently transferred \$900,000 to
15 her son, M3, to purchase a condominium. See Pltf's Amended Complaint at 11:26-12:8. This
16 claim is baseless for multiple reasons. For example, Rhonda Mona is not a debtor, a co-debtor,
17 or subject to the Judgment – the Judgment is against Mike Mona. Id. at 3:18-21. Further,
18 Rhonda Mona was not made insolvent by the loan to her son. Rhonda Mona loaned \$900,000 of
19 the \$3.4 million to her son and the Judgment was not her debt to pay. Id. at 11:26-27. Thus,
20 Rhonda Mona was left with \$2.5 million even after the loan. As a result, Plaintiff cannot satisfy
21 the first element of the claim. In addition, there was consideration for the loan – Rhonda and
22 M3/Lundene entered into a promissory note and deed of trust related to the loan and the
23 condominium. See Ex. A. As a result, Plaintiff cannot satisfy the second element of the claim
24 regarding no consideration. Moreover, M3 did not purchase the condominium from Rhonda –
25 Rhonda did not transfer the condominium to M3. Rather, M3 borrowed money from Rhonda
26 pursuant to a promissory note to purchase the condominium from a third party. As a result,
27 Plaintiff cannot satisfy the third element. Therefore, Plaintiff cannot satisfy a single fraudulent
28

1 transfer element related to the condominium or related loan from Rhonda Mona to M3, and the
2 Court should grant the Motion to Dismiss.

3
4 **F. THE COURT MUST DISMISS THE SECOND CAUSE OF ACTION
BECAUSE PLAINTIFF FAILED TO JOIN AN INDISPENSIBLE PARTY.**

5 NRCP 12(b)(6) provides that a district court may dismiss a case for “failure to join a
6 party under Rule 19.” A motion to dismiss pursuant to NRCP 12(b)(6) “demands a fact specific
7 and practical inquiry,” and as a result, its determination, unlike ordinary motions to dismiss, is
8 not limited to the pleadings.¹ Dismissal is warranted under NRCP 12(b)(6) and NRCP 19 if
9 complete relief cannot be granted without the absent party or the dispute is such that to proceed
10 without the absent party could prejudice either the absent party or others.²

11 The question of joinder under NRCP 19 and dismissal for failure to join an indispensable
12 party under NRCP 12(b)(6) involves a three step analysis. First, the Court must determine
13 whether a person is necessary to the action and should be joined. NRCP 19(a) sets forth the
14 initial analysis as follows:

15 A person who is subject to service of process and whose joinder will not deprive
16 the court of jurisdiction over the subject matter of this action shall be joined as a
17 party in the action if (1) in the person’s absence complete relief cannot be
18 accorded among those already parties, or (2) the person claims an interest relating
19 to the subject of the action and is so situated that the disposition of the action in
the person’s absence may (i) as a practical matter impair or impeded the person’s
ability to protect that interest or (ii) leave any of the persons already parties
subject to a substantial risk of incurring double, multiple or otherwise inconsistent
obligations by reason of the claimed interest.³

20 The aforementioned facts “are not to be applied in a mechanical way” but determined in a
21 “practical and pragmatic but equitable manner.”⁴ Ultimately, if the Court finds that the absent
22

23 ¹ Makah Indian Tribe v. Verity, 910 F.2d 555, 558 (9th Cir. 1990). FRCP 19(a) is virtually identical to
24 NRCP 19(a). As a result, Nevada courts “have previously recognized that federal decisions involving the
Federal Rules of Civil Procedure provide persuasive authority when this court examines its rules.” See
25 Blaine Equipment Co. v. State, 122 Nev. 860, 865, 138 P.3d 820 (2006).

26 ² NRCP 19.

27 ³ NRCP 19(a).

28 ⁴ Francis Oil & Gas, Inc. v. Exxon, Corp., 661 F.2d 873, 878 (10th Cir. 1981).

1 party falls within the aforementioned provisions, then the party must be joined if feasible.⁵
2 Second, the Court must determine whether or not it has personal jurisdiction over the absent
3 party.⁶ If so, then the party must be joined.⁷ Third, if the absent party cannot properly be
4 brought before the Court then the Court must determine whether the absent party is
5 Indispensable to the action.⁸ In other words, the Court must determine whether it should proceed
6 without the absent party or dismiss the case due to the indispensability of the party.⁹ NRCP
7 19(b) provides that four factors are to be considered in determining whether or not to proceed as
8 follows:

9 first, to what extent a judgment rendered in the person's absence might be
10 prejudicial to the person or those already parties; second, the extent to which, by
11 protective provisions in the judgment, by the shaping of the relief, or other
12 measures, the prejudice can be lessened or avoided; third, whether a judgment
13 rendered in the person's absence will be adequate; fourth, whether the plaintiff
14 will have an adequate remedy if the action is dismissed for nonjoinder.¹⁰

15 Applying the above factors to the case at bar demonstrates that dismissal is appropriate
16 because Plaintiff expects the Court to allow it to execute on a condominium that is encumbered
17 by a third party who is not a party to this suit. See Ex. B. As a result, unless the third party is
18 added, there cannot be complete relief among the parties and the non-party's interests will be
19 impacted without the non-party being afforded due process, as the non-party will not be afforded
20 the opportunity to defend its interests, which could leave the current parties exposed to liability.
21 And, if Plaintiff cannot add the non-party, then the Court must dismiss the claim because a

22 _____
23 ⁵ NRCP 19(a), (b).

24 ⁶ See Id.

25 ⁷ Id.

26 ⁸ NRCP 19(b).

27 ⁹ Id.

28 ¹⁰ Id.

1 judgment rendered in the non-party's absence would be prejudicial to the non-party and its
2 interests.¹¹ Therefore, the Court should dismiss the second cause of action.

3 **G. THE DECLARATORY RELIEF CLAIM IS BARRED BECAUSE IT IS**
4 **SIMPLY A REPEAT OF ALL OF THE OTHER CLAIMS FOR RELIEF,**
5 **WHICH THE COURT SHOULD DISMISS.**

6 In its seventh cause of action, Plaintiff demands that the Court declare the claimed
7 fraudulent transfers as fraudulent transfers and allow Plaintiff to execute on all of the assets,
8 whether part of the Divorce Action or owned by people other than Mike Mona. Id. at 16:25-
9 17:16. This claim represents a retread of the first five causes of action for fraudulent transfer.
10 Thus, to the extent to Court grants the Motion to Dismiss as to claims one through five, it should
11 also grant the Motion to Dismiss as to the declaratory relief claim.

12 **H. PLAINTIFF FAILED TO SATISFY THE PARTICULARITY**
13 **REQUIREMENTS OF NRCP 9.**

14 NRCP 9 required Plaintiff to plead the fraud claims in the Amended Complaint with
15 particularity. NRCP 9; see also Rocker v. KPMG LLP, 122 Nev. 1185, 1192, 148 P.3d 703, 708
16 (2006) ("To plead with particularity, plaintiffs must include in their complaint averments to the
17 time, the place, the identity of the parties involved, and the nature of the fraud.") (internal
18 quotations omitted) (abrogated on other grounds).

19 Here, Plaintiff did not plead the fraud claims with particularity. For example, Plaintiff
20 does not identify when or how Mike Mona allegedly sold his interest in Roen or allegedly
21 transferred the \$500,000 in community property to his wife. See Pltf's Amended Complaint at
22 4:1-16 and 9:22-10:23. Also, Plaintiff does not identify how, when, or in what manner the loan
23 from Rhonda Mona (not a debtor) to her son (not a debtor) equates to fraud. Id. at 5:9-13 and
24 11:26-12:5. In addition, Plaintiff does not identify how, when, or the manner in which a sale of
25 stock for \$100,000 in cash, which was used to purchase a car, equates to a fraudulent transfer.
26 Id. at 5:16-26 and 12:15-19.

27 ¹¹ NRCP 19(b).
28

1 Truly, based on Plaintiff's logic throughout the Amended Complaint, a spouse is not
2 allowed to use community property funds to purchase anything of significant without the
3 purchase/use of the funds being deemed a fraudulent transfer. Or, alternatively, parents are not
4 allowed to assist children by providing vehicle or housing accommodations without such
5 assistance being deemed a fraudulent transfer. Indeed, Plaintiff has no evidence whatsoever that
6 any of the alleged transfers were completed with the intent to avoid paying the Judgment or to
7 hinder Plaintiff's collection efforts. Moreover, the vast majority of all of the allegations are
8 made "on information and belief." Thus, Plaintiff has not satisfied NRCP 9's pleading
9 requirements and the Court should grant the Motion to Dismiss.

10 **V. CONCLUSION.**

11 Plaintiff has brought the current action to (1) try and remedy its failure to timely
12 intervene in the Divorce Action and assert its fraudulent transfer allegations there and (2) to
13 remedy its failure to include the current fraudulent transfer allegations in the Fraudulent Transfer
14 Action when it had the opportunity to do so prior to the Divorce Action. Plaintiff is not entitled
15 to a third bite at the apple, and claim preclusion bars this suit. Moreover, Plaintiff's claims are
16 without merit because they are based solely on the allegation that there was not consideration for
17 the use of community funds or gifts to immediate family members, which in and of itself does
18 not equate to a fraudulent transfer. Thus, the Court should grant this Motion to Dismiss.

19 Dated this 4th day of December, 2015.

20 MARQUIS AURBACH COFFING

21
22 By /s/ Tye S. Hanseen
23 Terry A. Coffing, Esq.
24 Nevada Bar No. 4949
25 Tye S. Hanseen, Esq.
26 Nevada Bar No. 10365
27 10001 Park Run Drive
28 Las Vegas, Nevada 89145
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANTS' MOTION TO DISMISS** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 4th day of December, 2015. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹²

Holley Driggs Walch Fine Wray Puzey & Thompson

Contact

Andrea M. Gandara
Norma
Tilla Nealon
Tom Edwards

Email

agandara@nevadafirm.com
nmoseley@nevadafirm.com
tnealon@nevadafirm.com
tedwards@nevadafirm.com

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A

/s/ Rosie Wesp
an employee of Marquis Aurbach Coffing

¹² Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Exhibit A

DOC# 2015-0410793



Aug 04, 2015 08:29 AM
OFFICIAL RECORDS
Ernest J. Drönenburg, Jr.,
SAN DIEGO COUNTY RECORDER
FEES: \$51.00
PCOR: N/A
PAGES: 7

RECORDING REQUESTED BY

Terry A. Coffing, Esq.
Marquis Aurbach Coffing, P.C.
10001 Park Run Drive
Las Vegas, NV 89145

AND WHEN RECORDED MAIL DOCUMENT TO:

Terry A. Coffing, Esq.
Marquis Aurbach Coffing, P.C.
10001 Park Run Drive
Las Vegas, NV 89145

Space Above This Line for Recorder's Use Only

A.P.N.: 535-114-0411

**DEED OF TRUST WITH ASSIGNMENT OF RENTS
(LONG FORM)**

THIS DEED OF TRUST, made this July 28, 2015, between

TRUSTOR: **Lundene Enterprises LLC, a Nevada limited liability company**

whose address is **877 Island Avenue, Unit 701, San Diego, CA 92101**

TRUSTEE: **First American Title Insurance Company**

and BENEFICIARY: **Rhonda Mona**

whose address is **59 Promontory Ridge Drive, Las Vegas, NV 89135**

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, that property in the City of San Diego, County of San Diego, State of California, described as:

A CONDOMINIUM ("CONDOMINIUM") LOCATED ON THE REAL PROPERTY DESCRIBED AS LOT 1 OF SUBDIVISION MAP NO. 14325, FILED IN THE OFFICIAL RECORDS OF SAN DIEGO COUNTY, CALIFORNIA ON DECEMBER 28, 2001 ("PROPERTY"), COMPRISED OF:

PARCEL 1:

A SEPARATE INTEREST IN UNIT NO. 701, AS DESIGNATED ON THE CONDOMINIUM PLAN FOR PARKLOFT CONDOMINIUMS RECORDED ON MARCH 8, 2002 AS INSTRUMENT NO. 02-198684 AND AS AMENDED AUGUST 21, 2002 AS INSTRUMENT NO. 02-708932 BOTH IN THE OFFICIAL RECORDS OF SAN DIEGO COUNTY, CALIFORNIA ("CONDOMINIUM PLAN").

PARCEL 2:

AN UNDIVIDED 1/120TH INTEREST IN THE UNDIVIDED INTEREST COMMON AREA AS DESCRIBED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PARKLOFT CONDOMINIUM OWNERS ASSOCIATION RECORDED ON MARCH 8, 2002 AS INSTRUMENT NO. 02-198685, IN THE OFFICIAL RECORDS OF SAN DIEGO COUNTY, CALIFORNIA ("DECLARATION") AND ON THE CONDOMINIUM PLAN, WHICH WILL NOT BE OWNED BY THE PARKLOFT CONDOMINIUM OWNERS ASSOCIATION ("ASSOCIATION").

(Continued on Page 2)

Page 1 of 8

MJM

PARCEL 3:

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, USE, ENJOYMENT AND SUPPORT OVER THE COMMON AREA, AS DESCRIBED IN THE DECLARATION AND ON THE CONDOMINIUM PLAN, WHICH WILL BE OWNED BY THE ASSOCIATION.

EXCEPTING THEREFROM

ALL NUMBERED CONDOMINIUM UNITS DESCRIBED IN THE DECLARATION AND ON THE CONDOMINIUM PLAN OTHER THAN THE UNIT CONVEYED AS PARCEL 1 ABOVE.

THOSE PORTIONS OF THE EXCLUSIVE USE COMMON AREA, AS DESCRIBED IN THE DECLARATION AND ON THE CONDOMINIUM PLAN, WHICH ARE SET ASIDE AND ALLOCATED FOR THE EXCLUSIVE USE OF OWNERS OF CONDOMINIUMS (AS DEFINED IN THE DECLARATION) OTHER THAN THE CONDOMINIUM CONVEYED HEREIN.

PARCEL 4:

THE EXCLUSIVE RIGHT TO USE THE FOLLOWING ELEMENTS OF THE COMMON AREA (DESIGNATED AS EXCLUSIVE USE COMMON AREA), AS SHOWN ON THE CONDOMINIUM PLAN, WHICH WILL BE OWNED THE ASSOCIATION.

together with rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) payment of the sum of \$787,760.88 U.S., with interest thereon according to the terms of a promissory note or notes of even date herewith made by Trustor, payable to order of Beneficiary, and extensions or renewals thereof, (2) the performance of each agreement of Trustor incorporated by reference or contained herein and (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

A. To protect the security of this Deed of Trust, Trustor agrees:

(Continued on Page 3)

Page 2 of 8

MJM

- 1) To keep said property in good condition and repair, not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefore, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon, not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.
- 2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
- 3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.
- 4) To pay, at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all cost, fees and expenses of this Trust

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may; make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

- 5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

- 1) That any award in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.
- 2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require payment when due of all other sums so secured or to declare default for failure so to pay.
- 3) That at any time or from time to time, without liability therefore and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without

(Continued on Page 4)

MTM

affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easements thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

- 4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto".
- 5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right; prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collecting of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
- 6) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of said having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of trustee and of this Trust, including costs of evidence of title in connection with sale, Trustee shall apply to proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

- 7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named

(Continued on Page 5)

Page 4 of 8

MJM

herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

- 8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
- 9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.
- 10) Trustor requests that copies of the notice of default and notice of sale be sent to Trustor's address as shown above.

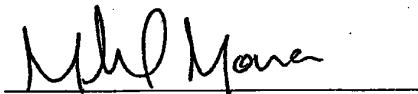
Beneficiary requests that copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust be sent to Beneficiary's address, as set forth on page one of this Deed of Trust, as provided by Section 2924(b) of the California Civil Code.

Dated:

SIGNED:

Lundene Enterprises LLC,
a Nevada limited liability company

MICHAEL MONA III, Manager



(Continued on Page 6)

Page 5 of 8

MM

(Continued on Page 7)

MSM
Page 6 of 8

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California)
COUNTY OF San Diego)

On 7/28/15, before me, Omar R. Kanan, Notary
Public, personally appeared Michael J. Mona III

, who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



This area for official notarial seal

(Continued on Page 8)

Page 7 of 8

MJM

Exhibit B

PLEASE COMPLETE THIS INFORMATION.

RECORDING REQUESTED BY:

Michael D. Sifen

AND WHEN RECORDED MAIL TO:

Michael D. Sifen

500 CENTRAL DRIVE #106

VA BEACH

VA 23434

UNITED STATES

DOC# 2015-0378073



JUL 17, 2015 02:11 PM

OFFICIAL RECORDS

Ernest J. Dronenburg, Jr.,

SAN DIEGO COUNTY RECORDER

FEES: \$36.00

PAGES: 7

THIS SPACE FOR RECORDER'S USE ONLY

Deed of Trust

(Please fill in document title(s) on this line)

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(Additional recording fee applies)