IN THE SUPREME COURT OF THE STATE OF NEVADA

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

APPELLANT'S APPENDIX
(Volume 5, Bates Nos. 942-1184)

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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 A

DOC# 2015-0410793

Aug 04, 2015 08:29 AM
OFFICIAL RECORDS
Ernest J. Dronenburg, 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").

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(Continued on Page 2)

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:

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(Continued on Page 3)

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)

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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 case 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)

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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.

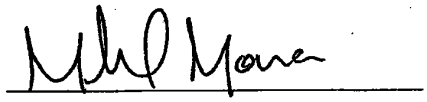
Beneficiary requests that copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust be sent to Beneficiary's address, as set forth on page one of this Deed of Trust, as provided by Section 2924(b) of the California Civil Code.

Dated:

SIGNED:

Lundene Enterprises LLC,
a Nevada limited liability company

MICHAEL MONA III, Manager



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(Continued on Page 7)

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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)SS
COUNTY OF San Diego)

On 7/28/15, before me, Omar R. Kanan, Notary Public, personally appeared Michael Ji 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

OMAR R. KANAN
COMM. # 2098274
NOTARY PUBLIC-CALIFORNIA
SAN DIEGO COUNTY
MY COMM. EXP. FEB. 23, 2019

This area for official notarial seal

(Continued on Page 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 23454
United States

7P
10/1P

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)

9/95
Rec.Form #R25

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:

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 there of, 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 ever 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.

Initials: MJM

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.

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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 n 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

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

RHODA E. LELEVIER
Commission # 2108659
Notary Public - California
San Diego County
My Comm. Expires Apr 25, 2019

Initials: MJM

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 (Date) before me, M. Ruffier, Notary Public (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.

M. RUFFIER
Commission # 1980743
Notary Public - California
San Diego County
My Comm. Expires Jun 3, 2016

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 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: APN 535-114-04-11 Document Date: July 17, 2015
Number of Pages: 6 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name:	Signer's Name:
☐ Corporate Officer — Title(s):	☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact	☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator	☐ Trustee ☐ Guardian or Conservator
☐ Other:	☐ Other:
Signer is Representing:	Signer is Representing:

EXHIBIT 9

EXHIBIT 9

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CLERK OF THE COURT

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Attorneys for Michael Mona, Jr.

DISTRICT COURT

CLARK COUNTY, NEVADA

FAR WEST INDUSTRIES, a California corporation, Plaintiff, vs. MICHAEL J. MONA, JR., an individual; RHONDA HELENE MONA, an individual; MICHAEL MONA III, an individual; LUNDENE ENTERPRISES, LLC, a Nevada limited liability corporation, DOES 1 through 10 and ROE CORPORATIONS 1 through 10, inclusive,, Defendant.	Case No.: A-15-724490-C Dept. No.: XXXII Hearing Date: February 2, 2016 Hearing Time: 9:00 a.m.

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

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

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MAC:04725-009 2681063_2

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

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 Michael Mona, Jr.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

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

As an initial matter, prudence, prejudice, and judicial economy require that Plaintiff's entire Complaint be dismissed or, at a minimum, the suit be stayed 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.[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.

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

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

II. STATEMENT OF FACTS.

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

III. LEGAL STANDARD.

Plaintiff does not dispute the Legal Standard Mona set forth in his Motion to Dismiss, which is incorporated herein by reference. See Section III of Motion to Dismiss on file herein. Further, Mona emphasizes that while this request for dismissal requires the Court to draw fair inferences of *facts*, not legal conclusions, in favor of Plaintiff, dismissal remains proper if it appears that Plaintiff can prove no set of facts which would entitle it to relief. 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).

[2] The Monas divorced and distributed their marital property. Plaintiff attempted to intervene in the Divorce Action to make unfounded allegations of fraudulent transfers to try and collect against Rhonda 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.

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IV. LEGAL ARGUMENT.

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

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

The parties do not dispute the law associated with claim preclusion, as they cite the same case in the briefs. The parties agree that Weddell is the controlling case, which sets forth the following elements a party must show to establish claim preclusion: (1) there has been a valid and final judgment in a previous action; (2) 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; and (3) the parties or their 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 the plaintiff fails to provide a "good reason" for not having done so. Weddell v. Sharp, 131 Nev. Adv. Op. 28, 350 P.3d 80, 81 (2015), reh'g denied (July 23, 2015) (emphasis added).

Here, Plaintiff's arguments contradict its actions. In its Opposition, Plaintiff tries to avoid claim preclusion by arguing that it was not a party to the Divorce Action because the Family Court rejected its untimely attempts to intervene. What Plaintiff fails to discuss or acknowledge is that the Family Court rejected Plaintiff's attempts to intervene because of Plaintiff's own lack of diligence. Thus, Plaintiff's argument is that claim preclusion does not apply because it lacked diligence in a prior case, failed to timely intervene, and the Family Court sanctioned it. In addition, Plaintiff claims the Order in the first Fraudulent Transfer Action is not 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

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

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

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

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

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

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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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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f. Sixth Cause of Action-Civil Conspiracy (See Pltf's Amended Complaint at 16:11-22).

Plaintiff asserts that Mike, Rhonda, and Mike, III have all conspired together to commit the aforementioned fraudulent transfers. Like the other claims above, this claim did not have to wait until a fourth lawsuit. At a minimum, Plaintiff could have brought this claim in the second Fraudulent Transfer Action, the Divorce Action (at least between Mike and Rhonda), and possibly in the first Fraudulent Transfer Action. Plaintiff could have named Rhonda and Mike, III in the second Fraudulent Transfer Action, could have brought this claim there, and could have saved everyone a lot of time and expense, but failed to do so. Further, the fact that Rhonda was not a party to the first Fraudulent Transfer Action did not stop Plaintiff from asserting a fraudulent transfer claim there. Thus, consistent with that action, Plaintiff could have brought this claim in the second Fraudulent Transfer Action as well. In addition, but for lack of diligence, Plaintiff could have raised civil conspiracy allegations in the Divorce Action. Thus, the second element of claim preclusion is satisfied for the sixth cause of action.

g. Seventh Cause of Action—Declaratory Relief Repeating the Fraudulent Transfer Claims and Requesting the Court to Allow it to Execute on Assets (See Pltf's Amended Complaint at 6:9-8:27 and 14:16-16:10).

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

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

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

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

First, Rhonda and Mike were Parties to the Divorce Action. If Plaintiff wanted to contest the Divorce Action and related property distribution, it should have done so through the Divorce Action, as opposed to waiting and doing so in this case through its fifth and seventh causes of action. Plaintiff knows this is true, which is why Plaintiff moved to intervene in the Divorce Action. However, Plaintiff's intervention attempt was untimely. Plaintiff moved to intervene after the Divorce Decree was entered and beyond 30 days after the time the Notice of Entry of Order related to the Divorce Decree was filed. Due to Plaintiff's lack of diligence, the Family Court denied Plaintiff's intervention attempts and sanctioned Plaintiff. Further, Plaintiff has not provided a good reason for failing to timely not contest the Divorce Action within the confines of the Divorce Action—the Family Court sure did not believe there was a good reason. And, 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.

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

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

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

4. <u>Claim Preclusion Conclusion.</u>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[3] NRCP 19(b).

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

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

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

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

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V. CONCLUSION.

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 indispensible 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.

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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]

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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).

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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 **AMENDED APPENDIX OF EXHIBITS TO PLAINTIFF FAR WEST INDUSTRIES' MOTION TO REDUCE SANCTIONS ORDER TO JUDGMENT**

Plaintiff Far West Industries hereby submits its Amended Appendix of Exhibits to Plaintiff Far West Industries' Motion to Reduce Sanctions Order to Judgment filed on February 19, 2016, as the original electronically filed document included duplicate attachments which were in error attached as Exhibit 4. The correct Exhibit 4 is attached herewith.

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Dated this 22nd day of February, 2016.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, pursuant to EDCR 8.05 and NRCP 5(b), I caused to be served electronically using the Court's E-File & Serve System, a true and correct copy of the foregoing **AMENDED APPENDIX OF EXHIBITS TO PLAINTIFF FAR WEST INDUSTRIES' MOTION TO REDUCE SANCTIONS ORDER TO JUDGMENT** to the parties below. Pursuant to EDCR 8.05(i) the date and time of the electronic service is in place of the date and place of deposit in the mail.

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I FURTHER CERTIFY that on February 22, 2016, I caused a true and correct copy of the foregoing **AMENDED APPENDIX OF EXHIBITS TO PLAINTIFF FAR WEST INDUSTRIES' MOTION TO REDUCE SANCTIONS ORDER TO JUDGMENT** to be served to the parties below via first class mail:

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/s/ Norma S. Moseley
An employee of Holley Driggs Walch
Fine Wray Puzey & Thompson

EXHIBIT 4

EXHIBIT 4

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

vs.

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.

Case No.: _____

PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

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MICHAEL J. MONA, JR.

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
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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

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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

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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
ROBERT L. EISENBERG

Subscribed and sworn before me
on the following date: July 17, 2015
Christie R. Gellman
Notary Public

CHRISTIE R. GELLMAN
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 93-5251-2 - Expires March 14, 2017

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

LEAH DELL
Notary Public, State of Nevada
Appointment No. 11-4495-1
My Appt. Expires May 9, 2019

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

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DATED this 17th day of July, 2015.

Leah Dell, an employee of
Marquis Aurbach Coffing

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

FAR WEST INDUSTRIES, a California corporation, Plaintiff, vs. RIO VISTA NEVADA, LLC, a Nevada limited liability company; WORLD DEVELOPMENT, INC., a California corporation; BRUCE MAIZE, and individual; MICHAEL J. MONA, JR., an individual; DOES I through 100, inclusive, Defendants.	Case No.: A-12-670352-F Dept. No.: XV

MONA'S OPPOSITION TO FAR WEST'S MOTION FOR DETERMINATION OF PRIORITY OF GARNISHMENT AND COUNTERMOTION TO DISCHARGE GARNISHMENT AND FOR RETURN OF PROCEEDS

Defendant Michael J. Mona, Jr. ("Mona"), through the law firm of Marquis Aurbach Coffing, hereby submits his Opposition to Far West's Motion for Determination of Priority of Garnishment and his Countermotion for Discharge of Garnishment and for Return of Proceeds. This Opposition and Countermotion are made and based on the attached Memorandum of Points

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and Authorities, the pleadings and papers on file herein, and any oral argument allowed by the Court at a hearing on this matter.

Dated this 4th day of March, 2016.

MARQUIS AURBACH COFFING

By */s/ Tye S. Hanseen*
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Based on Federal and Nevada law, the Court must not only deny Plaintiff's Motion, but must discharge the current writ and order Plaintiff to return to Mona any and all funds it has received via wage withholdings since August 1, 2015. Indeed, both Plaintiff and CannaVEST have not proceeded properly under Federal and Nevada law in regards to the wage withholdings. This has resulted in Plaintiff receiving more of Mona's wages than it was entitled to receive.

Under the Supremacy Clause of the U.S. Constitution, Nevada law may be more limited than what the Consumer Credit Protection Act's garnishment restrictions detail, but not broader. And, the garnishment proceedings related to Mona's wages in this case have been far broader than what Federal and Nevada law allow. Specifically, since August 1, 2015, the wage withholdings have been approximately 85% of Mona's disposable earnings, and they should have never exceeded 60%. Further, once Mona became subject to the support order for more than 25% of his disposable earnings, Plaintiff's wage garnishment should have been rejected.

Fortunately, the Court has the opportunity to correct the wrongs done and can ensure that future proceedings comply with the garnishment restrictions Federal and Nevada law set forth. To do so, the Court must:

1. Deny Plaintiff's Motion.
2. Discharge the current wage garnishment.
3. Order Plaintiff to provide details of all withholdings it has received via wage garnishment since August 1, 2015.
4. Order Plaintiff to return to Mona all monies it has received via wage garnishment since August 1, 2015.
5. Order that the support order took priority over any wage garnishments as of August 1, 2015, and certainly by no later than the expiration of the June 2015 wage garnishment in October 2015.
6. Deem all future wage garnishments void until further order from this Court.
7. Order the parties to comply in the future with Nevada and Federal law regarding garnishment restrictions.

II. STATEMENT OF RELEVANT FACTS

The following facts are relevant to this Motion:

- October 18, 2012—Plaintiff moved to have a California judgment against Mona domesticated in Nevada. See October 18, 2012 Application for Foreign Judgment on file herein.
- June 9, 2015—Plaintiff served Mona's employer, CannaVEST, with a Writ of Garnishment related to the attachment of Mona's wages. See **Ex. A**.
- June 26, 2015—CannaVEST responded to the June 9, 2015 Writ of Garnishment. Id.
- July 23, 2015—Mona and his wife Rhonda divorced. See Exhibit 7 to Plaintiff's Motion for Determination of Priority of Garnishment. As part of the divorce, the Court ordered Mona to pay Rhonda $10,000 per month in spousal support via direct wage assignment. Id. at 3:12-16.
- October 24, 2015—Pursuant to NRS 31.296, the June 9, 2015 Writ of Garnishment expired (the Writ expired on October 7 if the 120 days was calculated from the date of service on the employer).
- January 7, 2016—Plaintiff served CannaVEST with an additional Writ of Garnishment. See Exhibit 4 to Plaintiff's Motion for Determination of Priority of Garnishment.
- January 22, 2016—CannaVEST responded to the January 7, 2016 Writ of Garnishment. See Exhibit 5 to Plaintiff's Motion for Determination of Priority of Garnishment.
- February 16, 2016—Plaintiff filed the Motion for Determination of Priority of Garnishment.

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III. LEGAL ARGUMENT

The wage garnishment proceedings in this case are in violation of Federal and Nevada law. Under the Consumer Protection Credit Act's garnishment restrictions, Plaintiff has not been entitled to any monies via wage withholdings since the date Mona became subject to the support order related to his divorce. Specifically, a support order is a "garnishment" when considering garnishment restrictions. When a support order is solely at issue, the maximum withholding from disposable earnings is 60%. When a creditor garnishment is solely at issue, the maximum withholding from disposable earnings is 25%. When both a support order and creditor garnishment are at issue at the same time, which is the case here, they overlap and the maximum withholding remains at 60%. Moreover, if the support order exceeds 25% of the disposable earnings, then the creditor garnishment is barred, which is what should have happened in this case. To establish this conclusion, Mona details and explains below the relevant Federal law and Nevada law; applies the law to the facts of this case; demonstrates why the support order must have priority over Plaintiff's wage garnishment; and, establishes that the Court must discharge Plaintiff's current wage garnishment and order Plaintiff to return to Mona all monies received via wage withholdings since August 1, 2015.

A. IT IS IMPORTANT TO BEGIN WITH FEDERAL GARNISHMENT RESTRICTIONS BECAUSE UNDER THE SUPREMACY CLAUSE NEITHER NEVADA LAW NOR THE PROCEEDINGS IN THIS CASE MAY BE BROADER THAN OR VIOLATE FEDERAL LAW

Federal law is important here because under Federal collection law and the Supremacy Clause (Article VI, U.S. Constitution), the garnishment restriction provisions of the Consumer Credit Protection Act (15 U.S.C. § 1671 et seq.) pre-empt state law insofar as state law permits recovery exceeding that of Federal garnishment restrictions. See Article VI, U.S. Constitution and 15 U.S.C. § 1671 et. seq. Specifically, 15 U.S.C. § 1673, which details Federal law garnishment restrictions, provides in part as follows:

> (a) **MAXIMUM ALLOWABLE GARNISHMENT** Except as provided in subsection (b) and in section 1675 of this title, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

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(1) ***25 per centum*** of his disposable earnings for that week, or

(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a)(1) of title 29 in effect at the time the earnings are payable,

whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

(b) EXCEPTIONS

(1) The restrictions of subsection (a) do not apply in the case of

(A) ***any order for the support of any person*** issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.

. . .

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce ***any order for the support of any person*** shall not exceed—

(A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), ***50 per centum*** of such individual's disposable earnings for that week; and

(B) where such individual is not supporting such a spouse or dependent child described in clause (A), ***60 per centum*** of such individual's disposable earnings for that week;

. . .

(c) EXECUTION OR ENFORCEMENT OF GARNISHMENT ORDER OR PROCESS PROHIBITED

No court of the United States or any State, and no State (or officer or agency thereof), may make, execute, or enforce any order or process in violation of this section.

15 U.S.C. § 1673 (emphasis added). As a result, under Federal collection law, the maximum amount of disposable earnings that may be withheld is 25% for a creditor wage garnishment and 50% or 60% for a spousal support obligation, depending on whether the debtor is supporting an additional spouse or child unrelated to the support order. Id. Further, ***no court or state may make or enforce any order or process that violates these restrictions***. Id.

Based on the above, it is fairly clear how the statutory limitations apply when a single garnishment is at issue, whether it be a creditor judgment or support obligation. The application, however, is not as straightforward when a support obligation and creditor garnishment are at issue at the same time. Fortunately, the Department of Labor and case law have explained the proper application, which is: If the support obligation exceeds 25% of the debtor's disposable earnings, the creditor garnishment is rejected. This premise is discussed in more detail below.

B. OTHER COURTS HAVE PROVIDED GUIDANCE FOR APPLYING THE GARNISHMENT RESTRICTIONS IN CASES WHEN BOTH A SUPPORT OBLIGATION AND CREDITOR GARNISHMENT ARE AT ISSUE AT THE SAME TIME

As indicated above, when a support obligation and creditor garnishment are in play at the same time, no withholding of wages is allowed for the creditor garnishment when the support obligation exceeds 25% of the debtor's disposable earnings. In the event that the support obligation equates to less than 25%, then the law allows the creditor garnishment to attach the remaining amounts up to 25% (i.e. if a support obligation equates to 20% of a debtor's disposable earnings, then the creditor garnishment may attach the remaining 5%).

Below, Mona sets forth seven cases and a summary explaining in detail the law and application of facts to law in cases similar to the present case. Although these cases are not Nevada cases, they are still applicable because they discuss the related Federal garnishment restrictions, which Nevada law may limit but may not broaden. Furthermore, Nevada law mirrors Federal law and, as a result, the application is the same, which is important considering there are no Nevada cases discussing the application of garnishment restrictions in similar detail. In short, ***there cannot be a result against Mona in this case that exceeds what would be allowed under Federal law.***

Long Island Trust v. U.S. Postal Service

In Long Island Trust Co. v. U.S. Postal Serv., the Second Circuit Court of Appeals dealt with an issue similar to that which is presently in front of this Court. 647 F.2d 336, 337-42 (2d Cir. 1981). Specifically, the Long Island Trust recovered a judgment against Donald Cheshire and served Cheshire's employer, the United States Postal Service ("USPS"), with an income

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garnishment – just like Plaintiff did here with Mona. Id. at 338-339. However, the USPS refused to comply with the wage execution claiming that more than 25% of the debtor's disposable income was being withheld for court ordered support payments and the Consumer Credit Protection Act barred any further deductions. Id.

Long Island Trust responded to the USPS's refusal to withhold additional funds by commencing an action against the USPS to recover the income withholdings. Id. The USPS subsequently moved for summary judgment on the basis that 42% of Cheshire's earnings were being garnished pursuant to a support order issued by the Nassau County Family Court. Id. The USPS argued that the Consumer Credit Protection Act prohibited garnishment where earnings were already being withheld to the extent of 25% or more. Id. Long Island Trust argued that the law allowed for simultaneous withholdings for family support and judgment creditors, even when the amount of the support withholding exceeded 25%. Id. The district court agreed with USPS, adopted its interpretation of the Consumer Credit Protection Act, and entered judgment in its favor. Id. Long Island Trust appealed. Id.

On appeal, Long Island Trust argued that support obligations should be considered entirely independently of creditor garnishments and that the Act should be construed as reserving 25% of the earnings for creditors, leaving 75% for satisfaction of family support orders. Id. The appellate court disagreed stating: "We find no basis for this argument either in the language of the statute or in its legislative history." Id. The appellate court concluded that 15 U.S.C. § 1673 placed a ceiling of 25% on the amount of disposable earnings subject to creditor garnishment, with an exception being that the ceiling could be raised to as high as 65% percent if the garnishment was to enforce a support order. Id. In other words, no more than 25% may be withheld when garnishments are sought only by creditors and as much as 65% may be withheld when garnishments are sought only to enforce support orders. Id.

The appellate court then acknowledged that the Act was less clear as to the interrelationship when both creditor and support garnishments are at issue. Id. To clarify the proper application in such scenarios, the appellate court discussed the purpose of the Act indicating that the principal purpose in passing the Consumer Credit Protection Act was not to

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protect the rights of creditors, "***but to limit the ills that flowed from the unrestricted garnishment of wages***." Id. (emphasis added). The appellate court explained that Congress was concerned with the increasing number of personal bankruptcies, which it believed put an undue burden on interstate commerce, and it observed that the number of bankruptcies was vastly higher in states that had harsh garnishment laws. Id. ***The Act was designed to sharply curtail creditors' rights to garnish wages with a concern for the welfare of the debtor***. Id. Thus, the Act restricted, and in no way expanded, the rights of creditors. Id. Indeed, the express goal of the statute as a whole was to "restrict the availability of garnishment as a creditors' remedy." Id. (citations omitted).

The Long Island Trust court found "no merit in Long Island Trust's argument that 25 percent of an employee's disposable earnings are reserved for creditors and that up to 65 percent more may be garnished to enforce a support order." Id. The court further reasoned that subsections (a) entitled "maximum allowable garnishment" and (b) setting forth "exceptions" do not support Long Island Trust's interpretation of the Act. Id. "And in view of Congress's overall purpose of restricting garnishments in order to decrease the number of personal bankruptcies, it would be unjustifiable to infer that the general ceiling and its exceptions were intended to be cumulated to allow garnishments of disposable income to the total extent of 90 percent."

The Long Island Trust court reinforced its decision with the Secretary of Labor's comments regarding the Act stating:

> Compliance with the provisions of section (1673)(a) and (b) may offer problems when there is more than one garnishment. In that event the priority is determined by State law or other Federal laws as the CCPA contains no provisions controlling the priorities of garnishments. However, ***in no event may the amount of any individual's disposable earnings which may be garnished exceed the percentages specified in section (1673)***. To illustrate:(iv) If 25% or more of an individual's disposable earnings were withheld pursuant to a garnishment for support, and the support garnishment has priority in accordance with State law, the Consumer Credit Protection Act does not permit the withholding of any additional amounts pursuant to an ordinary garnishment which is subject to the restrictions of section (1673(a)).

Id. (citing 29 C.F.R. s 870.11) (emphasis added).

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In conclusion, the Long Island Trust court indicated that it was "mindful of the argument that the statute as thus construed may help debtors to evade payment of their just debts if they collusively procure orders of support that exceed the general statutory maximum of 25 percent." Id. However, the court indicated that this point was considered and vigorously debated in Congress prior to the passage of the Act. Id. (citing H.R.Rep.Reprint at 1978; remarks of Representative Jones, 114 Cong.Rec. 1834-35 (1968)). Further, the court noted that the decision did not leave Long Island Trust powerless to collect on its judgment because there are a variety of means available to creditors to enforce judgments. Id. The Consumer Credit Protection Act merely prohibited further garnishment of Cheshire's wages. Id.

Union Pacific R.R. v. Trona Valley Fed. Credit Union

The Union Pacific Railroad court also dealt with a case that involved both a support obligation and a creditor garnishment. 2002 WY 165, ¶¶ 14-16, 57 P.3d 1203, 1208-09 (Wyo. 2002). In handling the case, the court indicated that under 15 U.S.C. § 1672(c) (a section of the Act), the "term 'garnishment' means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt." Union Pac. R.R. v. Trona Valley Fed. Credit Union, 2002 WY 165, ¶¶ 14-16, 57 P.3d 1203, 1208-09 (Wyo. 2002) (quoting 15 U.S.C. § 1672(c)); see also Koethe v. Johnson, 328 N.W.2d 293, 297 (Iowa 1982); Marshall v. District Court for Forty–First–b Judicial District of Michigan, 444 F.Supp. 1110, 1116 (E.D. Mich. 1978); Donovan v. Hamilton County Municipal Court, 580 F.Supp. 554, 556 (S.D. Ohio 1984).

Moreover, according to the Union Pacific Railroad court, the statutes limit a garnishment to 25% of a person's disposable earnings with an exception for support obligations, which may take up to 65% of the disposable earnings. Id. If a garnishor or garnishee treated a support withholding as an amount "required by law to be withheld" prior to calculating the 25% of a person's "disposable earnings," the resulting amount withheld would be contrary to the clear and unambiguous language of the Federal (which mirrors Nevada) and Wyoming (also mirrors Nevada) statutes. Id. Such an approach would mean that up to 65% of the earnings could be withheld for support and subtracted to determine "disposable earnings." Id. Then, 25% of those

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"disposable earnings," on top of the 65% already withheld, could be garnished by creditors. Id. (citing Koethe, 328 N.W.2d at 298; Long Island Trust, 647 F.2d at 339–40). This is not the proper result because creditor garnishments may be imposed only to the extent support garnishments do not exceed the general 25% limit for garnishments. Id.

The Union Pacific Railroad court was "sympathetic to the concerns" the creditor in the case expressed "that the statute, as construed, can limit or even prevent a judgment creditor from recovering their money by allowing debtors to evade payment when their support orders exceed the general statutory maximum of 25%." Id. However, the court indicated that the purpose of the "statutes was to deter predatory credit practices while ***preserving debtors' employment and insuring a continuing means of support for themselves and their dependents***." Id. (emphasis added) (citing 15 U.S.C. § 1671 (1998); Kahn v. Trustees of Columbia University, 109 A.D.2d 395, 492 N.Y.S.2d 33, 37 (N.Y.A.D. 1 Dept.1985)). And, "in any event, these statutes merely prohibit the garnishment of a debtor's wages and do not inhibit a judgment creditor from pursuing other means to collect on a judgment." Id. (emphasis added) (citing Wyo. Stat. Ann. § 1–15–201 through –212). Thus, creditor garnishments are appropriate only to the extent support withholdings do not exceed the general 25% limit and, further, "***support garnishments are not to be treated as an exemption to be deducted from gross earnings in calculating disposable earnings***." Id.

Com. Edison v. Denson

In Com. Edison v. Denson, like the other cases discussed above, the court refuted the argument that support obligations should be treated independently, or not considered, when determining withholdings for creditor wage garnishments. Specifically, the court stated:

> The contention that payroll deductions required under a support order should not be included when computing the percentage reduction of a debtor's disposable earnings is not a legally supportable interpretation and application of these [federal and Illinois garnishment restrictions] statutes.

Com. Edison v. Denson, 144 Ill. App. 3d 383, 384-89, 494 N.E.2d 1186, 1188-90 (1986). The Com. Edison v. Denson court discussed Federal law and the Supremacy Clause (Article VI, U.S. Constitution) indicating that the garnishment restrictions in the Consumer Credit Protection Act

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pre-empt state law to the extent state law permits recovery in excess of 25% of an individual's disposable earnings. Id. The court then reiterated the 25% general limitation for creditor wage garnishments and 60% limitation (65% if there are arrearages) exception when a support order is applicable. Id.; see also 15 U.S.C. § 1673.

Despite these garnishment restrictions, plaintiffs in the Com. Edison case argued that support obligations should be considered entirely independent of judgment creditor garnishments, and that the court should construe the Consumer Credit Protection Act as reserving employees' earnings for judgment creditors after the satisfaction of family support orders. Id. However, as discussed above, the court rejected this argument stating:

> We find no basis for this argument either in the language of the statutes or in their legislative history. Our conclusion is reinforced by the manner in which 15 U.S.C. Sec. 1673 has been construed by the Secretary of Labor, who is charged with enforcing the provisions of that Act (15 U.S.C., Sec. 1676). Id.

The court further elaborated indicating ***"in no event may the amount of any individual's disposable earnings which may be garnished exceed the percentages specified in section 1673***." Id. (emphasis added). The Com. Edison court cited an example:

> To illustrate: If 25% or more of an individual's disposable earnings were withheld pursuant to a garnishment for support, and the support garnishment has priority in accordance with State law, the Consumer Credit Protection Act does not permit the withholding of any additional amounts pursuant to an ordinary garnishment which is subject to the restrictions of section (1673(a))." 29 C.F.R., Sec. 870.11. Furthermore, we think this conclusion is consistent with the decisions of Federal courts that have considered the issue. See Long Island Trust Co. v. United States Postal Service (2nd Cir.1981), 647 F.2d 336; Donovan v. Hamilton County Municipal Court (S.D. Ohio, 1984), 580 F.Supp. 554; Marshall v. District Court for Forty-First B Judicial District (E.D.Mich.1978), 444 F.Supp. 1110; Hodgson v. Hamilton Municipal Court (S.D.Ohio 1972), 349 F.Supp. 1125, 1140; Hodgson v. Cleveland Municipal Court (N.D. Ohio 1971), 326 F.Supp. 419).

In conclusion, the Com. Edison court, like other courts, acknowledged that it was "mindful of the plaintiff's argument that the statutes as thus construed may help debtors to evade payment of their debts if they collusively procure orders of support that exceed the statutory maximums." Id. Further, like other courts, the Com. Edison court indicated that "this point was considered and indeed vigorously debated in Congress prior to the passage of the Act." Id. (citing H.R. Rep. No. 1040, 90th Cong. 2nd Sess. (1968); U.S. Code & Admin. News 1968, p. 1962; Remarks of

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Representative Jones, 114 Cong. Rec. 1834-35 (1968); Remarks of Representative Sullivan, 114 Cong. Rec. 14388 (1968) quoted in Long Island Trust Co., 647 F.2d at 442, fn. 8.[1] And, the Com. Edison court ***was not willing to tamper "with the way in which Congress has chosen to balance the interests of the debtor, his family, and his creditors***" pointing out that the result did not leave plaintiffs powerless to collect on their judgments, but merely precluded garnishment of wages in excess of the statutory maximums. Id. (emphasis added).

Voss Products, Inc. v. Carlton

The Voss Products court faced a similar situation as the courts above and reached the same result in Voss Products, Inc. v. Carlton, 147 F. Supp. 2d 892, 896-98 (E.D. Tenn. 2001). In this case, the court stated:

> If support, withheld pursuant to a court order, were included in the definition of 'amounts required by law to be withheld,' ***the result would be contrary to the purposes of the Act.*** Up to 65 percent of the employee's after-tax earnings could be withheld for support, 15 U.S.C. § 1673(b), and since this amount would be subtracted to determine 'disposable earnings,' an additional 25 percent of these disposable earnings would be garnished by general creditors. ***This hypothetical result is clearly an incorrect reading of the Act. It would be inconsistent with Congress's overall purpose of restricting garnishment to cumulate the sections of 15 U.S.C. § 1673 to allow garnishment of up to 90 percent of an employee's after-tax income.*** Voss Products, Inc. v. Carlton, 147 F. Supp. 2d 892, 896-98 (E.D. Tenn. 2001) (emphasis added) (citing Long Island Trust Co., 647 F.2d at 341.

As a result, the Voss Products court also found that § 1673 places a 25% percent ceiling on the amount of disposable earnings subject to garnishment, "with the exception that the ceiling may be raised as high as 65 percent if the garnishment is to enforce family support orders." Id. Further, the court stated that it found "no merit in plaintiff's argument that 25 percent of an employee's disposable earnings are reserved for creditors and that up to 65 percent more may be garnished to enforce a support order." Id. Further the court stated that certainly "the structure of the section—with subsection (a) entitled 'Maximum allowable garnishment' and subsection (b)

[1] "By far, the biggest controversy in the whole bill—even larger than the controversy over revolving credit—involved the subject of garnishment. In H.R. 11601 as originally introduced, we proposed the complete abolishment of this modern-day form of debtors' prison. But we were willing to listen to the weight of the testimony that restriction of this practice would solve many of the worst abuses, while abolishment might go too far in protecting the career deadbeat."

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setting forth 'Exceptions' for support garnishments—does not suggest such an interpretation." Id. Moreover, "in view of Congress's overall purpose of restricting garnishments in order to decrease the number of personal bankruptcies, ***it would be unjustifiable to infer that the general ceiling and its exceptions were intended to be cumulated to allow garnishments of disposable income to the total extent of 90 percent.***" Id. (emphasis added). As other courts did, the Voss Products court stated the Secretary of Labor's comments, who is charged with enforcing the provisions of the Act, supported this conclusion. Id. The court concluded that the subject support order fully absorbed the maximum of disposable earnings subject to garnishment and nothing could be withheld pursuant to the plaintiff's garnishment application. Id.

In re Borochov

In In re Borochov, the court addressed an issue similar to the one in this case. The court stated:

> The question presented is the maximum amount that can be taken from a debtor's paycheck to pay a family support obligation and a judgment on another type of claim. This court entered a nondischargeable judgment against the debtor and later issued a writ of garnishment to the debtor's employer. The debtor is also subject to an order assigning a portion of his wages to pay spousal or child support (a "support order"). The judgment creditor contends that the employer paid too little on the garnishment. The employer now contends that it paid too much.

2008 WL 2559433, at *1 (Bankr. D. Haw. June 23, 2008). In addressing this scenario, which is exactly similar to the present case, the court discussed the Consumer Credit Protection Act stating:

> Section 1673 is easy to apply when the debtor is subject to a support order or an ordinary garnishment. The statute is less clear, however, in a case where the debtor is subject both to a support order and an ordinary garnishment. Id. at *2-3.

According to the Court, there are two ways to reconcile the maximum percentage withholdings identified in sections 1673(a) and (b). Id. The first way is to treat them as two separate limitations (25% for ordinary creditors and 65% for support) that may be added together. Id. However, this could leave the debtor with as little as ten percent of the earnings to support the debtor and, if applicable, a new spouse and family. Id. The second way treats the ordinary creditor and support percentages (25% and 65%) as overlapping; "if the amount payable

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to the support creditor under section 1673(b) exceeds the percentage payable under section 1673(a), ***the ordinary creditor gets nothing***." Id. (emphasis added). Further, according to the court, "***the case law uniformly follows the second approach***." Id. (citations omitted). The court stated that this view is consistent with comments from the U.S. Department of Labor, 29 C.F.R. § 870.11(b)(2), and with the policy of protecting consumers from excessive garnishments. Id. In conclusion, the court ordered that any amounts paid under the support order to first be applied to the 25% limit imposed by section 1673(a) and if the support payments exhaust the applicable limit under section 1673(a), the ordinary creditor is not entitled to any payments on account of the garnishment. Id. In conclusion, the court recognized that the holding did not prohibit state law from further limiting the creditor's rights. Id.

Donovan v. Hamilton Cty. Mun. Court

In Donovan v. Hamilton Cty. Mun. Court, 580 F. Supp. 554, 557-58 (S.D. Ohio 1984), the court concluded that "the language of § 1673(a) is self-executing, and that therefore the ***court order authorizing the withholding of an amount in excess of twenty-five percent of the debtor's disposable income is a violation of this section***." Id. (emphasis added). The court indicated that if state law, statutory or otherwise, permitted garnishment of a greater amount of an employee's disposable earnings than permitted under § 303(a) of Title III of the Consumer Credit Protection Act (15 U.S.C. § 1673(a)), then it violated federal standards. Id. (citing Hodgson v. Hamilton Municipal Court, 349 F.Supp. 1125, 1140 (S.D.Ohio 1972). The court indicated this conclusion was consistent with decisions of other courts. Id. (citing Long Island Trust Co. v. United States Postal Service, 647 F.2d 336 (2d Cir.1981); Marshall v. District Court for Forty-First-B Judicial District, 444 F.Supp. 1110 (E.D.Mich.1978); Hodgson v. Hamilton Municipal Court, 349 F.Supp. 1125, 1140 (S.D.Ohio 1972); Hodgson v. Cleveland Municipal Court, 326 F.Supp. 419 (N.D. Ohio 1971). The court further indicated that in reaching this decision it was affording the Department of Labor the deference it is entitled to as the interpreting agency of the Act. Id. (citing Griggs v. Duke Power Co., 401 U.S. 424, 434, 91 S.Ct. 849, 855 (1971); Udall v. Tallman, 380 U.S. 1, 16, 85 S.Ct. 792, 801 (1965)). Based on the above, the court concluded that because the Municipal Court's approach resulted in the

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garnishment of an amount in excess of 25 percent of the disposable earnings, it violated federal standards. Id.

The court then considered whether it needed to go so far as to permanently enjoin the Municipal Court and its clerk from doing anything that had the practical effect of subjecting an amount of greater than 25 percent of the employee's disposable earnings to garnishment in any given pay period. Id. Citing and referencing the judge's commentary in Hodgson, 349 F.Supp. at 1137, the court indicated that §§ 1673(c) and 1676 may be ***fairly read to constitute express authorization from Congress to issue an injunction against a State court*** and "that the Consumer Credit Protection Act 'can be given its intended scope only by the stay of state court proceedings if that is necessary.'" Id. (citing Hodgson at 1137). The Donovan court then stated that it had no assurances that the parties were willing to comply with Federal law on garnishment restrictions and, as a result, concluded that injunctive relief was necessary. Id. Accordingly, the Donovan ***court enjoined the lower court***, its clerk, and its employees from issuing creditor garnishments:

> that, alone or in conjunction with pre-existing garnishments, subject to garnishment ***an amount in excess of twenty-five percent of the debtor's disposable earnings in any given pay period, notwithstanding the fact that the debtor may not have claimed the exemption provided for in § 1673(a)***. Id. (emphasis added).

Lough v. Robinson

The Lough court confirmed once again that "garnishment" is defined as "any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt." Lough v. Robinson, 111 Ohio App. 3d 149, 153, 675 N.E.2d 1272, 1274 (1996) (citing 15 U.S.C. § 1672(c)). A support order, as mentioned in U.S. Code, Section 1673(b), Title 15 is a debt and therefore falls within the meaning of garnishment in Section 15 U.S.C. 1672(c). Id. (citing Marshall v. Dist. Court for the Forty–First Judicial Dist., 444 F.Supp. 1110, 1116 (E.D. Mich. 1978); Marco v. Wilhelm, 13 Ohio App.3d 171, 173, (1983); Long Island Trust Co., 647 F.2d at 341). To hold otherwise would frustrate the intention of Congress in drafting the Consumer Credit Protection Act. Id. (citing Long Island Trust Co., supra). Moreover, if "support orders" were not included within the meaning of "garnishment," up to

ninety percent of appellant's income – sixty-five percent for a support order and twenty-five percent for a garnishment – could be withheld. Id. This would likely lead appellant or one in his position to the bankruptcy courthouse door, which would further frustrate the intention of Congress to reduce bankruptcies caused by garnishment orders. Id.

Beyond the above, one of the main issues in Lough v. Robinson was whether disposable earnings should have been returned to the debtor. 111 Ohio App. 3d 149, 155-56, 675 N.E.2d 1272, 1276-77 (1996). The Lough court held:

> twenty-five percent of appellant's disposable earnings minus the amount of the support order yields a negative number. Therefore, ***the entire amount that was withheld by the employer for the creditor garnishment was excess and should have been returned to appellant***. Id. (emphasis added).

The court further indicated that ***a garnishment for support will serve to bar a creditor garnishment if the garnishment for support is for 25 percent or more of the disposable earnings***. Id. If the garnishment for support is for less than 25 percent, then the creditor has the right to garnish what is left of the 25 percent of the disposable earnings after calculating the support withholding. Id. (citations omitted). The court further elaborated that if support orders were not considered garnishments for calculation purposes, the result would be garnishments of up to 25 percent along with support orders of up to sixty-five percent, which would equate to 90% of a person's disposable earnings and violative of the Consumer Credit Protection Act. Id.

The Lough court held the employee was subject to a support order that amounted to 38% of his disposable earnings and, consequently, no creditor garnishments were allowable because the support withholding exceeded 25 percent of the employee's disposable earnings. Id. As a result, ***any prior amounts withheld exceeding 25 percent were to be returned to the employee.*** Id. The court further observed that limitations on creditor garnishments do not leave a creditor powerless to collect. Id. Rather, "the Consumer Credit Protection Act and analogous state laws only restrict the garnishment of wages and do not purport to immunize the debtor's other assets." Id. (citations omitted). The trial court's decision was reversed. Id.

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Summary Regarding Application of Garnishment Restrictions

The above cases are applicable to this case because they detail and discuss the correct application of the Federal garnishment restrictions, which Nevada state law, not only mirrors, but may not broaden. In other words, ***under the Supremacy Clause and 15 U.S.C. § 1673(c), Mona can end up no worse under Nevada law than he does under Federal law***. And, under Federal law, Mona is entitled to the return of funds that Plaintiff garnished because when a support obligation and creditor garnishment are in play at the same time, no withholding of wages is allowed for the creditor garnishment if the support obligation exceeds 25% of the debtor's disposable earnings. Nevada state law may limit these percentages more, but may not broaden or enforce any process in violation of these percentages.

Below Mona discusses how Nevada law mirrors Federal law and how the law further impacts the present case.

C. NEVADA GARNISHMENT RESTRICTIONS MIRROR THE CONSUMER CREDIT PROTECTION ACT AND, LIKEWISE, DISALLOW PLAINTIFF'S GARNISHMENT EFFORTS ON MONA'S WAGES

Based on the Supremacy Clause and 15 U.S.C. § 1673(c), it would make sense for Nevada to establish garnishment restrictions that at least mirror the Federal restrictions, which is exactly what the Nevada Legislature has done. Nevada's limitations are found in NRS 31.295. Pursuant to NRS 31.295(2), the:

> maximum amount of the aggregate disposable earnings of a person which are subject to garnishment may not exceed: (a) Twenty-five percent of the person's disposable earnings for the relevant workweek . . .

NRS 31.295(2). Thus, exactly like 15 U.S.C. § 1673, Nevada limits withholdings from creditor garnishments to 25% of disposable earnings. Compare NRS 31.295(2) and 15 U.S.C. § 1673(a). Also, like 15 U.S.C. § 1673, NRS 31.295 also contains support obligation exceptions to the 25% limitation. Pursuant to subsections 3 and 4 of NRS 31.295, the 25% restriction does not apply in the case of any "order of any court for the support of any person." NRS 31.295(3)(a). In such a situation, the maximum amount of disposable earnings subject to withholding to enforce any order for the support of any person may not exceed 60%, which mirrors the Federal limitation in 15 U.S.C. § 1673(b)(2)(B). Compare NRS 31.295(4)(b) and 15 U.S.C. § 1673(b)(2)(B). As a

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result, the Nevada and Federal limitations mirror one another. Thus, the results when determining garnishment limitations under Nevada law should mirror the results under Federal law restrictions.

D. PLAINTIFF AND CANNAVEST ARE INTERPRETING FEDERAL AND NEVADA LAW AND THE RELATED GARNISHMENT RESTRICTIONS AND APPLICATION INCORRECTLY

Based on Nevada and Federal law, both Plaintiff and CannaVEST have been calculating the appropriate withholdings from Mona's wages incorrectly. This is understandable because it does not appear that garnishors or garnishees in Nevada deal with competing support orders and creditor garnishments on a regular basis.

Specifically, Mona is subject to a support order withholding of $10,000 per month. In addition, Plaintiff has been garnishing Mona's wages. As the Court knows from the law detailed above, the proper procedure to handle the competing withholdings should have been as follows:

- First, Plaintiff and CannaVEST should have determined the amount of Mona's disposable earnings without the support withholding (currently $7,532.23).
- Second, Plaintiff and CannaVEST should have calculated the percentage of the support withholding in relation to the disposable earnings (currently 61% – $4,615.39 [support withholding] / $7,532.23 [disposable earnings] = .61).
- Third, Plaintiff and CannaVEST should have compared the resulting percentage to the limitations set forth in NRS 31.295(4)(b) and 15 U.S.C. § 1673(b)(2)(B).
- Fourth, if on comparison, the resulting percentage in step three (61%) exceeded 25%, then Plaintiff and CannaVEST should have understood that Plaintiff's wage garnishment was invalid under Nevada and Federal law.

Neither Plaintiff nor CannaVEST followed this procedure. Instead, CannaVEST and Plaintiff have been including the $4,615.39 in biweekly spousal support ($10,000 per month) in the deductions to determine Mona's disposable earnings. This has resulted in an inaccurate determination of Mona's disposable earnings under Nevada and Federal law. Even more concerning, however, is that Plaintiff has been taking an additional 25% of the disposable earnings, which has resulted in approximately 85% of Mona's disposable earnings being

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withheld. This is a violation of Federal and Nevada law and is exactly what the law concludes is contrary to the purpose of the Consumer Credit Protection Act and is an inappropriate outcome.

To further emphasize this conclusion, Mona has included an illustration below to summarize and depict the: 1) current violative withholdings and calculations; 2) Plaintiff's violative proposal; and 3) the correct and appropriate withholdings and calculations.

1. Current Taking/Withholdings Calculations Violating Federal and Nevada Law

Biweekly salary	$11,538.46
Federal tax	-$3,127.70
Social security	-$712.01
Medicare	-$166.52
Spousal support	-$4,615.39
Disposable earnings	$2,916.84
25% of disposable earnings	$2,916.84 X .25 = **$729.21** (this is the current amt. to Plaintiff)
Remaining amounts to Mona	$2,187.63

These calculations above represent the current and incorrect takings/withholdings from Mona's wages that violate Federal and Nevada law. The end result is that approximately 85% (25% to Plaintiff and 60% to Rhonda) of Mona's disposable earnings are being withheld and the maximum withholding is limited to 60%. NRS 31.295(4)(b) and 15 U.S.C. § 1673(b)(2)(B). Moreover, prior to the most recent wage garnishment from Plaintiff, $1,945.42 was being withheld for Plaintiff while the support order was in effect, which equates to Plaintiff taking 67% of the remaining disposable earnings by itself. Thus, the current and prior withholdings violate Federal and Nevada law.

2. Plaintiff's Proposal to Continue to Violate Federal and Nevada Law

Plaintiff's argument in its Motion also violates Federal and Nevada law because it reaches the same result as the current violative circumstances. Plaintiff argues, contrary to the law, that it is entitled to 25% of Mona's disposable earnings before any deduction for spousal support. Plaintiff implies that the spousal support should be deducted only after Plaintiff's 25% is determined. Plaintiff's proposal is as follows:

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Biweekly salary	$11,538.46
Federal tax	-$3,127.70
Social security	-$712.01
Medicare	-$166.52
Disposable earnings	$7,532.23
Amt. to Plaintiff	-$1,883.06 ($7,532.23 X .25 [25% limitation] = $1,883.06[2])
Spousal support	-$4,615.39
Remaining amounts To Mona	$1,033.78

This proposal from Plaintiff is even more violative of Federal and Nevada law than the current circumstances. Plaintiff proposes that $6,498.45 of Mona's $7,532.23 in disposable earnings be withheld. This equates to 86.3% when the maximum withholding in this case is 60%. Thus, Plaintiff's proposal is not acceptable because it violates Federal and Nevada law.

3. Withholdings/Calculations Necessary to Comply With Federal and Nevada Law

The following illustration represents how CannaVEST and Plaintiff should be treating the garnishment situation to ensure compliance with Federal and Nevada law.

Biweekly salary	$11,538.46
Federal tax	-$3,127.70
Social security	-$712.01
Medicare	-$166.52
Disposable earnings	$7,532.23
Spousal support	$4,615.39 / $7,532.23 = .61 (or 61% of the disposable earnings)[3]
Amt. to Plaintiff	$0 (because Mona's withholdings already exceeds 25%)
Remaining amounts To Mona	$2,916.84

[2] The actual amounts deducted will vary slightly throughout the year and from year to year based on federal withholdings. For example, Mona may max out on a federal withholding toward the latter half of the year, which could increase the disposable earnings. This would, in turn, increase the amount of the withholding associated with the 25% limitation.

[3] This percentage will also fluctuate slightly depending on the federal withholdings. For example, during a prior garnishment period, Mona's disposable earnings were $7,781.67. See Exhibit A. The spousal support at that time was 59% of Mona's disposable earnings ($7,781.67 [disposable earnings] / $4,615.39 [spousal support] = .59 [or 59%]). However, now, because withholdings are more, the disposable earnings are less and, as a result, the percentage of disposable earnings that the spousal support makes up is slightly higher.

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These calculations represent the proper result when complying with the garnishment restrictions that Federal and Nevada law set forth. Rhonda is entitled to her withholding under the support order. Plaintiff is not entitled to anything because Rhonda's withholding exceeds 25%. Mona is entitled to the remaining $2,916.84.

E. PLAINTIFF'S PRIORITY ARGUMENT VIOLATES FEDERAL AND NEVADA LAW AND, AS A RESULT, IS NOT VIABLE

Plaintiff is trying to increase its withholding by arguing that its wage garnishment has priority over Rhonda's support order. Pursuant to NRS 31.249, because there are competing withholding claims, the Court is tasked with the responsibility to determine priority. NRS 31.249. This responsibility, however, comes with clear and detailed guidance as to what the priority should be. As a threshold issue, the Family Court already determined the priority when it entered the support order.[4] Beyond this, the Court must give priority to the support order for at least three additional reasons. First, any scenario not giving the support order priority violates Federal and Nevada law because it results in a withholding from Mona that exceeds 60%. Second, multiple states across the country hold that spousal support orders take priority over all other creditor garnishments. Third, pursuant to Nevada law, Plaintiff's June 2015 wage garnishment expired in October 2015. Thus, if the garnishment ever had priority, it lost it in October 2015 when it expired and, at that point at the latest, it went to the back of the line and now sits indefinitely behind an ongoing support order. Mona discusses each of these three reasons for the support order having priority below.

1. The Support Order Must Have Priority or Any Result Will Violate Federal and Nevada Law

As discussed in detail in Section III.D.(2) above, if Plaintiff's proposal (its wage garnishment taking priority over the support order) is allowed to proceed, the result will violate Federal and Nevada law because 86.3% of Mona's disposable earnings will be withheld when

[4] To this end, issue preclusion bars Plaintiff's arguments. See Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008) (holding regarding claim preclusion modified by Weddell v. Sharp, 131 Nev. Adv. Op. 28, 350 P.3d 80 (2015)).

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the maximum withholding in this case is 60%. NRS 31.295(4)(b) and 15 U.S.C. § 1673(b)(2)(B). And, "***No court . . . may make, execute, or enforce any order or process in violation of this section*** [15 U.S.C. § 1673]." 15 U.S.C. § 1673(c). Thus, the Court here should determine that the support order has priority. Otherwise, the result is a violation of Federal law, and Nevada law mirrors federal law. Moreover, injunctions against state courts are appropriate when they fail comply with this Federal law. Donovan, 580 F. Supp. at 557-58 (the Donovan court enjoined the Municipal Court, its clerk, and its employees from issuing garnishments that subjected the debtor to withholdings in excess of twenty-five percent of his disposable earnings in any given pay period, notwithstanding the fact that the debtor may not have claimed the exemption provided for in § 1673(a)).

2. Multiple States Across the Country Hold that Spousal Support Orders Take Priority Over All Other Creditor Garnishments

Nevada's garnishment restrictions have not been amended since 1989. And, when the Legislature amended the restrictions in 1989, the main issue was whether wage garnishments should continue until judgment satisfaction or expire after a period of time. However, the Federal Government and other states were and have been more progressive and have provided guidance for this Court in determining priority for spousal support orders. For example:

Federal Debt Collection

As for collection of federal debts, 28 U.S.C. § 3205 requires that spousal support orders take priority over wage garnishments stating:

> Judicial orders and garnishments for the support of a person shall have priority over a writ of garnishment issued under this section. As to any other writ of garnishment or levy, a garnishment issued under this section shall have priority over writs which are issued later in time.

See 28 U.S.C. § 3205(8).

Arizona

In Arizona, "conflicting wage garnishments and levies rank according to priority in time of service." Ariz. Rev. Stat. § 12-1598.14(A). However, under subsection B:

> Garnishments, levies and wage assignments which are not for the support of a person are inferior to wage assignments for the support of a person. Garnishments

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> which are not for the support of a person and levies are inferior to garnishments for the support of a person. Ariz. Rev. Stat. § 12-1598.14(B).

And, under subsection C:

> if a judgment debtor's earnings become subject to more than one writ of garnishment pursuant to this article, and because of the application of the priorities set forth in subsections A and B a judgment creditor recovers no nonexempt earnings for two consecutive paydays, the lien on earnings of such judgment creditor is invalid and of no force and effect, and the garnishee shall notify the judgment creditor accordingly. Ariz. Rev. Stat. § 12-1598.14(C).

California

"The clerk of the court shall give priority to the application for, and issuance of, writs of execution on orders or judgments for . . . spousal support. Cal. Civ. Proc. Code § 699.510.

Florida

Florida collection law requires that spousal support take priority over a judgment creditor's wage garnishment. For example, when a creditor garnished income, which was the source of alimony and child support, the Florida appellate court held that the trial court has "full authority to stay, modify, or condition the writ to assure (a) that alimony and child support payments have priority, and (b) that the husband has funds remaining on which to live." Bickett v. Bickett, 579 So. 2d 149, 150 (Fla. Dist. Ct. App. 1991) (citing Young, Stern & Tannenbaum, P.A. v. Ernst, 453 So.2d 99, 102-03 (Fla. 3d DCA 1984); Garcia v. Garcia, 560 So.2d 403 (Fla. 3d DCA 1990); § 61.1301, Fla.Stat. (1989); Fla.R.Civ.P. 1.550(b).

Illinois

In Illinois, a withholding order gets priority over those other procedures for enforcing money judgments. In re Salaway, 126 B.R. 58, 60 (Bankr. C.D. Ill. 1991). "A lien obtained hereunder shall have priority over any subsequent lien obtained hereunder, except that liens for the support of a spouse or dependent children shall have priority over all other liens obtained hereunder." 735 Ill. Comp. Stat. 5/12-808.

Indiana

In Miller v. Owens, the appellate court stated:

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> A support withholding order takes priority over a garnishment order irrespective of their dates of entry or activation. If a person is subject to a support withholding order and a garnishment order, the garnishment order shall be honored only to the extent that disposable earnings withheld under the support withholding order do not exceed the maximum amount subject to garnishment as computed under subsection (2).

953 N.E.2d 1079, 1085 (Ind. Ct. App. 2011) (citing I.C. § 24–4.5–5–105). Thus, a support order takes priority. Id. Further, consistent with Federal and Nevada law, the only way that a secondary garnishment has any impact is if the disposable earnings subject to the support order do not exceed the related statutory maximum withholding percentage. Id.

New Jersey

Income withholding for alimony, maintenance, or child support "shall have priority over any other withholding and garnishments without regard to the dates that the other income withholding or garnishments were issued." N.J.S. 2A:17–56.10(b).

New York

As between creditor garnishments and support order garnishments, New York gives priority to those for support, regardless of the timing of those garnishments. General Motors Acceptance Corp. v. Metropolitan Opera Ass'n., 98 Misc.2d 307, 413 N.Y.S.2d 818 (App.Term, 1st Dep't 1978); Gertz v. Massapequa Public Schools, N.Y.L.J., Nov. 17, 1980, at 17 (Sup.Ct.Nas.Co.1980).

Pennsylvania

"An order of attachment for support shall have priority over any other attachment, execution, garnishment or wage assignment." See Consolidated Statutes of Pennsylvania, Title 42 § 8127(b).

Rhode Island

"Any order for wage withholding under this section [includes "any person to whom support is owed"] shall have priority over any attachment, execution, garnishment, or wage assignment unless otherwise ordered by the court." See 15 R.I. Gen. Laws § 15-5-25(f).

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Tennessee

Under Tennessee law, between garnishments of the same type, the prior in time is to be satisfied first. Voss Products, Inc. v. Carlton, 147 F. Supp. 2d 892, 896 (E.D. Tenn. 2001) (citing Tenn. Code Ann. § 26–2–214). As between creditor and support order garnishments, Tennessee gives priority to those for support, regardless of the time of those garnishments. Id. (citing Tenn. Code Ann. § 36–5–501(i)(1)).

Texas

"An order or writ of withholding under this chapter [spousal maintenance] has priority over any garnishment, attachment, execution, or other order affecting disposable earnings, except for an order or writ of withholding for child support under Chapter 158." Tex. Fam. Code § 8.105; see also 17 West's Tex. Forms, Family Law § 6:261 (3d ed.) ("An order or writ of withholding for spousal maintenance . . . has priority over any garnishment, attachment, execution, or other order affecting disposable earnings, except for an order or writ of withholding for child support under Tex. Fam. Code Ann. Ch. 158.").

Washington

"A notice of payroll deduction for support shall have priority over any wage assignment, garnishment, attachment, or other legal process." RCW 26.23.060. Further, an "order for wage assignment for spousal maintenance entered under this chapter shall have priority over any other wage assignment or garnishment, except for a wage assignment, garnishment, or order to withhold and deliver . . . for support of a dependent child, and except for another wage assignment or garnishment for maintenance." RCW 26.18.110.

Wyoming

Wyoming gives priority to support garnishments. Union Pac. R.R., 57 P.3d at 1208-09.

Summary of Spousal Support Priority from Federal Law and Other States

As the Court can see, multiple states give priority to spousal support orders. And, Mona believes that the above provides sufficient support to deem the support order as the first priority, but, in case it is not, Wisconsin, Colorado, Oklahoma, Maine, Idaho, and Nebraska, as well as others, also give priority to spousal support orders over wage garnishments. And, when there are

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equal garnishments (i.e. creditor versus creditor garnishments), the priority is typically determined by the timing of the writs (i.e. first come first served until expiration, if applicable). The priority determination has nothing to do with the dates of the underlying judgments when dealing with garnishments. Thus, the laws of the states above provide further guidance for this Court to give priority to the support order.

3. Plaintiff Does Not Have a Continuing Garnishment or Priority Until Satisfaction of its Judgment

Plaintiff's Motion is based, in part, on the inaccurate argument that priority of garnishments is determined by the date of the underlying judgment. This argument is not tenable as the priority, all other things being equal, is typically determined by the date of the garnishments themselves. See e.g. Voss Products, Inc., at 896 (between garnishments of the same type, the prior in time is to be satisfied first); 28 U.S.C. § 3205(8) (writs issued under this section shall have priority over writs which are issued later in time). Nevertheless, assuming *arguendo* that Plaintiff is correct, the priority argument is irrelevant because NRS 31.296 allowed Plaintiff's June 2015 garnishment to continue for 120 days irrespective of the date of the judgment. NRS 31.296.

Specifically, pursuant to NRS 31.296, the June 9, 2015 garnishment expired on October 7, 2015 (if the Court calculates the 120 day period from the date of service on the employer) or October 24, 2015 (if the Court calculates the 120 day period from the date of service of the answers). The choice between these two dates is irrelevant to the issues before the Court because, irrespective of what the Court believes the triggering date is for the 120 days, the garnishment expired in October 2015, and the support order, at the very latest, had priority at that time.

Plaintiff's arguments advocate for a position contrary to NRS 31.296. Specifically, Plaintiff's position stands for the premise that garnishments never expire and are continuing and ongoing until judgment satisfaction. Or, alternatively, that a creditor having priority because it had a writ issued and served first in time will always have priority, irrespective of whether its writ has expired and other creditors are waiting in line. Indeed, the Nevada Legislature refuted

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Plaintiff's position when it enacted the 120 day expiration period. The original bill allowed for continual garnishment until the amount demanded was satisfied, just as Plaintiff is proposing here. However, there was significant opposition and the supporters of the bill backed-off – agreeing to the 120 day period after much shorter periods were recommended. See Nevada Asssembly Bill 247, Chapter 338, Page 699 (1989). Thus, Plaintiff's garnishment expired and certainly lost priority at that time. Further, Plaintiff knows its garnishments have expired, which is why it continues to renew them.[5]

a. Priority Conclusion

The lone case Plaintiff cites for its position is, for the most part, not applicable because it has nothing to do with Federal or Nevada garnishment restrictions or a support order. And to the extent it is applicable, it supports Mona's arguments. See First Interstate Bank of California v. H.C.T., 108 Nev. 242, 246, 828 P.2d 405, 408 (1992) (implies, consistent with other authority, that the priority between equal garnishments [i.e. creditor versus creditor] is determined by the first issued and has nothing to do with the timing of the underlying judgments). Moreover, if the case was applicable, it would have to be disregarded because the resulting withholdings would violate Federal law, and Congress was very clear that "***No court . . . may make, execute, or enforce any order or process in violation of this section***. 15 U.S.C. § 1673(c) (emphasis added).

Indeed, the support order has priority over Plaintiff's wage garnishment. The Family Court entered its Order determining priority; any scenario giving Plaintiff's wage garnishment priority violates Federal and Nevada law; multiple states across the country hold that spousal support orders take priority over all other creditor garnishments; and, pursuant to Nevada law, Plaintiff's June 2015 wage garnishment expired in October 2015 and its new garnishment now sits indefinitely behind an ongoing support order. Thus, pursuant to NRS 31.249, the Court should hold that the support withholding takes priority over Plaintiff's wage garnishment.

Therefore, the Court should deny Plaintiff's Motion.

---

[5]

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IV. COUNTERMOTION TO DISCHARGE WRIT AND RETURN FUNDS TO MONA

Pursuant to NRS 31.045(2), Mona is entitled to file a motion requesting the discharge of the writ at any time before trial. NRS 31.045(2). As a result, based on NRS 31.045(2) and the foregoing law, facts, and related analysis in the Opposition above, Mona requests that the Court discharge the current writ on CannaVEST withholding his wages. Moreover, Mona also requests that the Court order Plaintiff to return any and all funds received via writs since the date he has been subject to the support order, which was August 1, 2015. See Lough, at 155-56 ("the entire amount that was withheld by the employer for the creditor garnishment was excess and should have been returned to appellant). In support of this Countermotion, Mona incorporates herein by reference the facts, law, and analysis from the Opposition above. Therefore, the Court should discharge the current writ and order the return of excess funds.

V. CONCLUSION

Based on Federal and Nevada law, the Court must not only deny Plaintiff's Motion, but must discharge the current writ and order Plaintiff to return to Mona any and all funds it has received via wage withholdings since August 1, 2015. Indeed, both Plaintiff and CannaVEST have not proceeded properly under Federal and Nevada law in regards to the wage withholdings. This has resulted in Plaintiff receiving more of Mona's wages than it was entitled to receive. Specifically, under the Supremacy Clause of the U.S. Constitution, Nevada law may be more limited than what the Consumer Credit Protection Act's garnishment restrictions detail, but not broader. And, the garnishment proceedings related to Mona's wages in this case have been far broader than what Federal and Nevada law allow. Since August 1, 2015, the wage withholdings have been approximately 85% of Mona's disposable earnings, and they should have never exceeded 60%. Further, once Mona became subject to the support order for more than 25% of his disposable earnings, Plaintiff's wage garnishment should have been rejected.

Based on the foregoing, Mona requests that the Court:

1. Deny Plaintiff's Motion.
2. Discharge the current wage garnishment.

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3. Order Plaintiff to provide details of all withholdings it has received via wage garnishment since August 1, 2015.

4. Order Plaintiff to return to Mona all monies it has received via wage garnishment since August 1, 2015.

5. Order that the support order took priority over any wage garnishments as of August 1, 2015, and certainly by no later than the expiration of the June 2015 wage garnishment in October 2015.

6. Deem all future wage garnishments void until further order from this Court.

7. Order the parties to comply in the future with Nevada and Federal law regarding garnishment restrictions.

Dated this 4th day of March, 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 Defendant
Michael J. Mona, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that the MONA'S OPPOSITION TO FAR WEST'S MOTION FOR DETERMINATION OF PRIORITY OF GARNISHMENT AND COUNTERMOTION TO DISCHARGE GARNISHMENT AND FOR RETURN OF PROCEEDS was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 4th day of March, 2016. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:[6]

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:

James E. Whitmire, Esq.
Santoro Whitmire
10100 W. Charleston Blvd., Suite 250
Las Vegas, Nevada 89135

/s/ Rosie Wesp
an employee of Marquis Aurbach Coffing

[6] 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

COPY

WRTG
F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
ANDREA M. GANDRA, 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

This Writ must be answered signed and returned to Constable Las Vegas Township 301 E. Carson Ave., 5th Floor Las Vegas, NV 89155

WRIT OF GARNISHMENT

THE STATE OF NEVADA TO:

CannaVEST Corp., Garnishee
2688 S. Rainbow Blvd., Ste. B
Las Vegas, NV 89146

You are hereby notified that you are attached as garnishee in the above entitled action and you are commanded not to pay any debt from yourself to Michael J. Mona, Jr., ("Defendant"), and that you must retain possession and control of all personal property, money, credit, debts, effects and choses in action of said Defendant in order that the same may be dealt with according to law. Where such property consists of wages, salaries, commissions or bonuses, the amount you shall retain be in accordance with 15 U.S.C. § 1673 and NRS 31.295.

Plaintiff, Far West Industries believes that you have property, money, credits, debts, effects and choses in action in your hands and under your custody and control belonging to said Defendant described as: "Earnings," which means compensation paid or payable for personal services performed by said Defendant in the regular course of business, including, without limitation, compensation designated as income, wages, tips, a salary, a commission or a bonus.

YOU ARE REQUIRED within 20 days from the date of service of this Writ of Garnishment to answer the interrogatories set forth herein and to return your answers to the office of the Sheriff or Constable which issues the Writ of Garnishment. In case of your failure to answer the interrogatories within 20 days, a Judgment by Default in the amount due the Plaintiff may be entered against you.

IF YOUR ANSWERS TO the interrogatories indicate that you are the employer of Defendant, this Writ of Garnishment shall be deemed to **CONTINUE FOR 120 DAYS**, or until the amount demanded in the Writ is satisfied, whichever occurs earlier less any amount which is exempt and less $3.00 per pay period not to exceed $12.00 per month which you may retain as a fee for compliance. The $3.00 fee does not apply to the first pay period covered by this Writ.

YOU ARE FURTHER REQUIRED to serve a copy of your answers to the Writ of Garnishment on Plaintiff's attorneys whose address appears below.

Dated this _____ day of _____, 2015.

Issued at direction of: **SHERIFF/CONSTABLE – CLARK COUNTY**

By: **R. WYANT P#9573** 5/27/15
Title Date

HOLLEY DRIGGS WALCH
FINE WRAY PUZEY & THOMPSON

F. THOMAS EDWARDS, ESQ., NV Bar No. 9549
E-mail: tedwards@nevadafirm.com
ANDREA M. GANDARA, ESQ., NV Bar No. 12580
E-mail: agandara@nevadafirm.com
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: 702/791-0308

Attorneys for Plaintiff

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

The undersigned, being duly sworn, states that I received the within WRIT OF GARNISHMENT on the ____ day of _____, 2015, and personally served the same on the ____ day of _____, 2015 by showing the original WRIT OF GARNISHMENT, informing of the contents and delivering and leaving a copy, along with the statutory fee of $5.00, with _____ at _____, County of Clark, State of Nevada.

By:_____

Title:_____

INTERROGATORIES TO BE ANSWERED BY THE GARNISHEE UNDER OATH:

1. Are you in any manner indebted to Defendants Michael M. Mona, Jr., either in property or money, and is the debt now due? If not due, when is the debt to become due? State fully all particulars:

ANSWER: No.

2. Are you an employer of the Defendant? If so, state the length of your pay period and the amount of disposable earnings, as defined in NRS 31.295, which each Defendant presently earns during a pay period. State the minimum amount of disposable earnings that is exempt from this garnishment which is the federal minimum hourly wage prescribed by section 6(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 206(a)(1), in effect at the time the earnings are payable multiplied by 50 for each week the pay period, after deducting any amount required by law to be withheld.

Calculate the garnishable amount as follows:

(Check one of the following) The employee is paid:

[A] Weekly: __ [B] Biweekly: X [C] Semimonthly: __ [D] Monthly: __

(1) Gross Earnings.....$ 11,538.46

(2) Deductions required by law (not including child support).....$ 3,756.79

(3) Disposable Earning [Subtract line 2 from line 1] .....$ 7,781.67

(4) Federal Minimum Wage.....$ 7.25

(5) Multiply line 4 by 50.....$ 362.50

(6) Complete the following direction in accordance with the letter selected above:

[A] Multiply line 5 by 1 .....$ NA

[B] Multiply line 5 by 2 .....$ 725.00

[C] Multiply line 5 by 52 and then divide by 24.....$ NA

[D] Multiply line 5 by 52 and then divide by 12.....$ NA

(7) Subtract line 6 from line 3.....$ 7,056.67

This is the attachable earning. This amount must not exceed 25% of the disposable earnings from line 3.

ANSWER: 25% of $7,781.67 = $1,945.42

3. Did you have in your possession, in your charge or under your control, on the date the WRIT OF GARNISHMENT was served upon you any money, property, effects, good, chattels, rights, credits or choses in the action of the Defendant, or in which Defendant is interested? If so, state its value and state fully all particulars.

ANSWER: Other than the earnings detailed above, no.

4. Do you know of any debts owing to the Defendant, whether due or not due, or any money, property, effects, goods, chattels, rights, credits or choses in action, belonging to the Defendant, or in which Defendant is interested, and now in possession or under the control of others? If so, state particulars.

ANSWER: No.

5. Are you a financial institution with a personal account held by the Defendant? If so, state the account number and the amount of money in the account which is subject to garnishment. As set forth in NRS 21.105, $2,000 or the entire amount in the account, whichever is less, is not subject to garnishment if the financial institution reasonably identifies that an electronic deposit of money has been made into the account within the immediately preceding 45 days which is exempt from execution, including, without limitation, payments of money described in NRS 21.105 or, if no such deposit has been made, $400 or the entire amount in the account, whichever is less, is not subject to garnishment, unless the garnishment is for the recovery of money owed for the support of any person. The amount which is not subject to garnishment does not apply to each account of the judgment debtor, but rather is an aggregate amount that is not subject to garnishment.

ANSWER: No.

6. State your correct name and address, or the name and address of your attorney upon whom written notice of further proceedings in this action may be served.

ANSWER: Terry A. Coffing, Esq., 10001 Park Run Drive, LV, NV 89145

7. **NOTE:** If, without legal justification, an employer of Defendant refuses to withhold earnings of Defendant demanded in a WRIT OF GARNISHMENT or knowingly misrepresents the earnings of Defendant, the Court shall order the employer to pay Plaintiff the amount of arrearages caused by the employer's refusal to withhold or the employer's misrepresentation of Defendant's earnings. In addition, the Court may order the employer to pay Plaintiff punitive damages in an amount not to exceed $1,000 for each pay period in which the employer has, without legal justification, refused to withhold Defendant's earnings or has misrepresented the earnings.

Garnishee

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Michael Murr, do solemnly swear (or affirm) that the answers to the foregoing interrogatories subscribed by me are true.

Garnishee

SUBSCRIBED AND SWORN to before me this 19th day of June, 2015

NOTARY PUBLIC

PENNY WILLIAMS
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 07-11-15
Certificate No: 11-6052-1

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CLERK OF THE COURT

GARMAN TURNER GORDON LLP
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Roen Ventures, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

FAR WEST INDUSTRIES, a California corporation, Plaintiff, vs. RIO VISTA NEVADA, LLC, a Nevada limited liability company; WORLD DEVELOPMENT INC., a California corporation; BRUCE MAIZE, an individual, MICHAEL J. MONA, JR., an individual; DOES 1 through 100, inclusive, Defendants.	CASE NO. A-12-670352-F DEPT. XV Date of Hearing: March 21, 2016 Time of Hearing: 9:00 a.m.

THIRD PARTY ROEN VENTURES, LLC'S OPPOSITION TO 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; AND COUNTERMOTION FOR ATTORNEYS' FEES AND COSTS

Roen Ventures, LLC ("Roen") by and through counsel, Erika Pike Turner, Esq. and Dylan Ciciliano, Esq. of the law firm of Garman Turner Gordon, LLP, hereby submits its brief in Opposition (the "Opposition") to Plaintiff Far West Industries' Motion: (1) for Default Judgment against for Untimely Answers to Writ of Garnishment Interrogatories; and (2) to Compel Roen's Turnover of Payments made to, on Behalf of, or for the Benefit of Michael J. Mona, Jr. (the "Motion"). In conjunction with the Opposition, Roen requests the Court admonish Plaintiff Far

West ("Far West") for filing such a frivolous Motion in contravention of applicable law and moves the Court for an award of attorneys' fees and costs necessarily incurred to oppose the Motion (the "Countermotion").

Roen's Opposition and Countermotion are made and based upon the following Memorandum of Points and Authorities, Nevada Revised Statutes ("NRS") Chapter 31, the Declaration of Bart Mackay, attached hereto as **Exhibit 1**, the Declaration of Dylan Ciciliano, attached hereto as **Exhibit 2**, exhibits thereto, the pleadings, papers, and other records contained in the Court's file, including the Motion, and any evidence or oral argument presented at a hearing on this matter.

DATED this 4th day of March, 2016.

GARMAN TURNER GORDON LLP

ERIKA PIKE TURNER
Nevada Bar No. 6454
DYLAN T. CICILIANO
Nevada Bar No. 12348
650 White Drive, Suite 100
Las Vegas, Nevada 89119
Tel: (725) 777-3000
Attorneys for Third Party Roen Ventures, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Without any legal basis, the Motion requests that this Court enter a **$24,617,357.81 default judgment** against non-debtor and non-party Roen, which is more than 2,800 times any amount that could be subject of Far West's writ of garnishment. There is no tortured reading of NRS Chapter 31 that could ever result in a default judgment against Roen that is equal to a debtor's judgment obligation. Far West attempts to mislead the Court into entering the massive default judgment by misstating NRS 31.260 and NRS 31.320 and by ignoring key phrases in the unpublished federal court magistrate's opinion upon which Far West bases its argument. Far West's Motion is patently frivolous, as the law is unequivocal that any consequences for a

default of Roen's obligation to provide responses to Far West's writ of garnishment would be limited to the amount Roen owes the debtor. The garnishor (Far West) is only entitled to the debtor's (Mona) rights in property held by the garnishee (Roen).

Further, as a threshold matter, Far West failed to meet its burden of showing Roen defaulted on its obligation to answer the writ. It is undisputed that Roen responded to the writ of garnishment issued by Far West, and explained in its responses that no money was due and owing from Roen to debtor Michael Mona, Jr. ("Mona") during the applicable 6-month writ period. As explained in the response to the writ of garnishment, Roen does not possess any money or property belonging to Mona, let alone $24.6 million. Under the written Management Agreement with Mona, Roen is required to pay Mona for work performed; however, prior to any writ of garnishment being issued or served on Roen, Roen paid the obligations due through June 2016. No payments are due under the Management Agreement until July 2016. Even then, future payments are conditioned on Mona's performance and the continued existence of the Management Agreement. As any future payments are conditional and indefinite, they cannot be subject to garnishment.

Even if the Court felt compelled to enter the requested default judgment (it should not), Roen would be entitled to set aside the default under governing rules. A default on a writ of garnishment is like a default under Nevada Rule of Civil Procedure ("NRCP") 55, in that it may be set aside for good cause or the result of mistake, inadvertence or excusable neglect. Given the relevant facts that Roen actually responded to the writ of garnishment and there was no prejudice to Far West as a result of the responses being two (2) days late, there is sufficient basis under NRCP 55 to set aside any default judgment. It is axiomatic that if there is sufficient grounds to set aside any default judgment, the Court should deny the request to enter default judgment in the first instance on those same grounds.

Far West and its counsel are trying to take advantage of third party Roen. Far West's counsel knew that Roen was represented by the undersigned and in dereliction of their professional duties, Far West's counsel failed to inquire into Roen's responses to the writ prior to seeking default judgment by the Motion. Nevada Rules of Professional Conduct ("RPC") 3.5A.

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The ethical failure is inexcusable given that the same day that Far West claims that Roen defaulted on its obligation to provide responses, Far West's counsel was in direct communications with Roen's counsel. Far West's counsel was more concerned with reaching his client's goal of sticking third-party Roen with the judgment against Mona than with his ethical obligations.

As a result of having to defend against Far West's clearly frivolous Motion, Roen seeks an award of its fees and costs. Roen should not have to bear the significant cost of opposing a baseless Motion to summarily impose a $24.6 million obligation without any consideration therefore.

II.

STATEMENT OF FACTS

A. Far West's Motion is an attempt to end-run a claim it already settled.

On or about February 7, 2014, Far West brought an action against Roen, alleging *inter alia* that Roen, its manager Bart Mackay, and Mona had engaged in some kind of fraudulent transaction in order to deprive Far West of the judgment that is the subject of the writ of garnishment. (See Complaint, Case No. A-14-695786, attached hereto as **Exhibit 3**). In the interest of avoiding fees and costs in litigation, Roen settled the matter. (See Motion to Enforce Settlement Agreement, attached hereto as **Exhibit 4**).

Far West later attempted to repudiate the settlement agreement with Roen and Mr. Mackay. (Id.). On January 14, 2016, the Court agreed with Roen and ordered that the Settlement Agreement was binding. (See Notice of Entry of Order, attached hereto as **Exhibit 5**). Despite the Court's order, Far West has refused to grant Roen the bargained for release and dismiss it from the lawsuit. A motion to dismiss has necessarily been filed to address Far West's abuse of process, a copy of which is attached hereto as **Exhibit 6**. Between January 14, 2016 and January 29, 2016, Far West's counsel and Roen's counsel had multiple communications regarding the form and content of Roen's order granting its motion to enforce the settlement agreement. (See Exh. 2 at par. 4).

On January 28, 2016 and February 2, 2016, Far West's counsel emailed Roen's counsel

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regarding the order. (See **Exhibit 2-A**). Despite its plan to seek a $24.6 million default judgment against Roen, Far West's counsel did not mention that there was any alleged failure by Roen to respond to the Writ of Garnishment. (Exh. 2, at par 5). Far West did not make any inquiry regarding the status of the answers or whether Roen intended to answer the writ. Far West's counsel made zero attempt to communicate with Roen's counsel, and instead surprised Roen's counsel with its intention to seek default judgment against Roen for $24.6 million with service of the Motion. (Id.).

B. The Writ of Garnishment only seeks information relating to compensation owed to Mona for his management services to Roen.

> Far West's writ of garnishment states that the property sought to be garnished is:
>
> "Earnings" . . . of Judgment Debtor Michael J. Mona, Jr. . . . all of which are compensation for services performed by Judgment Debtor Michael J. Mona, Jr. under the Management Agreement dated November 23, 2014 between Judgment Debtor Michael J. Mona, Jr. and Roen Ventures, LLC."

(See Writ of Garnishment, attached hereto as **Exhibit 7**, at p.2).

According to the affidavit from the Las Vegas Constable, the Constable served the Writ of Garnishment on Roen on January 7, 2016. Bart Mackay recalls that he received the Writ of Garnishment on January 8, 2016. (Exh. 1, at par 3).

During the period in which the Writ of Garnishment was pending for response, Mackay, Roen's sole manager, was travelling back and forth between Las Vegas, Nevada and Provo, Utah to care for his ill wife. (See id. at par. 4). Far West's counsel was specifically made aware of the fact that Mr. Mackay's commitments may limit his availability. (Exh. 2 at par. 6).

On January 28, 2016, Mackay deposited Roen's responses to the Writ of Garnishment in the mail in Provo, Utah. (Exh. 1at par. 5). The Writ of Garnishment was apparently post marked the next day, January 29, 2016. Calculating a January 7-January 29 time period between service of process and the post mark on the responses, the responses to Far West's writ were at most two (2) days late.

. . .

. . .

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C. **No money is due and owing under the Management Agreement.**

The Management Agreement at issue was entered into between Roen and Mona on November 23, 2013. (Management Agreement, **Exhibit 8**). Pursuant to the Management Agreement, Mona watches over and manages Roen's loan and investment portfolio. (Id. at sec. 2). Mona was an independent contractor and not an "employee of Roen." (Id. at sec. 4). As compensation for services rendered on behalf of Roen, Roen agreed to pay Mona's monthly mortgage payment. (Id. at sec. 5). Roen also agreed to provide Mona with the use of a car. (Id.). Mona could also earn discretionary performance bonuses. (Id.).

The management agreement expires on November 23, 2016 under its own terms. (Id. at sec. 6). Moreover, Roen can terminate the agreement upon notice and Roen can cease all payments under the Management Agreement at any time. (Id. at sec. 6(i)).

Currently, as stated in Roen's responses to the Writ of Garnishment, Roen does not owe Mona any management payments until July 2016. (Ex. 1 at par. 7). The required mortgage payments have been made thru June 2016. (Id. at par. 7; **Exhibit 1-A**). Mona drives a company car owned by Roen and therefore Roen does not make monthly payments to Mona for a car payment. (Id. at par. 8; **Exhibit 1-B**). Roen does not intend on issuing Mona any performance bonuses. (Id. at par. 9). Further, any future payments are speculative as they are conditioned upon Roen not terminating the Management Agreement and Mona performing thereunder. (Id. at par. 10).

Mona's mortgage payment is $6,985.43 per month. (Id. at par. 7). Only 25% of Mona's earnings can be garnished, or $1,746.36 per month.[1] If Roen does not terminate the Management Agreement and Mona continues to perform, at most, Roen will be obligated to pay five months of Mona's mortgage. Twenty-five percent of those mortgage payments will be $8,731.80. Far West seeks a default judgment that is 2,817 times larger than any garnishment Far West could obtain from Roen.

II.

[1] NRS 31.295 applies to aggregate disposable earnings and therefore the true amount may be less than $1,746.36 if Mona has any other source of income.

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LEGAL ARGUMENT

A. Roen is not in default of the Writ of Garnishment.

The entire crux of the Motion is that Roen should be found in default of the Writ of Garnishment, and therefore suffer a judgment 2,817 times greater than the amount sought in the Writ of Garnishment. The Court should not indulge Far West's ridiculous and unsupported request for judgment of $24.6 million, particularly since Roen actually responded to the Writ of Garnishment.

Writs of garnishment are a creature of Nevada statute, as outlined in NRS Chapter 31. NRS 31.450 mandates that the Court liberally construe NRS 31 to promote the objectives thereof. Under NRS 31.260, a garnishee has 20 days to submit answers to interrogatories contained in a writ of garnishment. NRS 31.260(1)(e). If a garnishee fails to answer the interrogatories, then upon application of the plaintiff, "the Court shall . . .enter judgment in favor of the defendants for the use of the plaintiff against the garnishee for . . . the value of the property or amount of money specified in the writ of garnishment." NRS 31.320(1)(a).

An answer to a writ of garnishment is not unlike an answer to a complaint. NRCP 12(a) and NRCP 55 similarly provide that a defendant shall be defaulted if it fails to answer within 20 days. However, as a result of RPC 3.5A (which applies here, too) and NRCP 55, default cannot be taken without first giving a party an opportunity to cure their default, which in and of itself demonstrates that default **is not mandatory**. It is also axiomatic that a tardy answer preceding the entry of default cures the default, such that none can be taken.

It should be abundantly clear that Far West is attempting to gain an unfair advantage by manipulating the writ process set forth in NRS Chapter 31. According to Mr. Mackay, he did not receive the Writ of Garnishment until January 8, 2016 and he placed Roen's answer in the outgoing mail on January 28, 2016. (Id. at pars. 3-5). Even if the Court accepts all of Far West's allegations as true, Roen's answer was two (2) days tardy at most and was provided weeks before the Motion was filed. At the time Far West brought its Motion, it is undisputable that Roen was not in default. Far West had received responses.

The purpose of NRS Chapter 31 is not furthered by invalidating Roen's response to the

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Writ of Garnishment and finding Roen in default based on two days of alleged delay, especially when there is no prejudice to Far West. Thus, the Court should not find Roen in default.

B. **The Court should not enter a default judgment against Roen.**

Even if the Court finds that Roen was in technical default of NRS Chapter 31, it should not enter a default judgment because Roen cured the default weeks before Far West brought its motion, the judgment would be in the amount of zero dollars ($0), Roen would be entitled to set aside the judgment pursuant to the principles underlying NRCP 55, and in applying for default judgment, Far West violated the rules of professional conduct.

1. **Roen is not currently in default as it has answered the Writ of Garnishment.**

Even under Far West's recitation of facts, Roen cured any default two (2) days after the deadline to provide responses to the writ, and before Far West sought any default. This is similar to a situation where a party fails to answer a complaint within 20 days. If the party files an answer prior to the entry of default, no default judgment can then be taken because the party is no longer in default. Likewise, a draconian interpretation of NRS 31.320 that would require entry of default when a party has responded to a writ of garnishment does not further any policy or justice generally. Instead it creates a trap for the weary and the innocent.

2. **Any judgment, default or otherwise, would be in the amount of $0.**

Far West requests that the Court enter a $24.6 million judgment against Roen. Far West's request is completely unsupported and ignores the most important tenet of garnishments, and that is that the judgment creditor can obtain no greater rights through a garnishment than the debtor possesses. Far West's attempts to traverse third-party Roen in the entire amount of the judgment violates due process and NRS Chapter 31's clearly stated limitations.

NRS 31.320 states that if the garnishee fails, neglects, or refuses to answer the interrogatories, the Court shall "enter judgment in favor of the defendant for the use of the plaintiff against the garnishee for . . . the value of the property or amount of money specified in the writ of garnishment." NRS 31.320(1)(a). Expressly, the Writ of Garnishment specifies the value of the money to be garnished as:

"Earnings" . . . of Judgment Debtor Michael J. Mona, Jr. . . . all of which are

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> compensation for services performed by Judgment Debtor Michael J. Mona, Jr. under the Management Agreement dated November 23, 2014 between Judgment Debtor Michael J. Mona, Jr. and Roen Ventures, LLC."

(See Exh. 7 at p.2). Far West knows that it can only garnish 25% of Mona's earnings. See NRS 31.295(2). Under no circumstances could its garnishment approach $24.6 million.

To circumvent the law, Far West invented its own version of NRS 31.320, whereby Far West claims that if Roen's response to a Writ of Garnishment is tardy by even a minute—or two days as the case may be—Roen is suddenly liable to the full extent of Far West's judgment against Mona. (Motion at p. 7:3-4). Such an argument is expressly belied by the statute and cannot be made with a straight face.

In case there was any doubt, the courts have further articulated that a creditor may not traverse a garnishee for more than is due to the debtor. In order for property to be subject to a writ of garnishment, "it must be owned by the party against whom the judgment is entered." Kulik v. Albers, Inc., 91 Nev. 134, 137, 532 P.2d 603, 605 (1975). The judgment creditor "stands upon no higher ground than the judgment debtor and can acquire no greater right than such debtor possesses" to the property. Ward v. Desert Eagle, LLC, No. 206-CV-00938-RCJ-LRL, 2010 WL 455089, at *5 (D. Nev. Feb. 2, 2010)(quoting Network Solutions, Inc. v. Umbro Intern., Inc., 529 S.E.2d 80, 85 (Va.2000)); Grouse Creek Ranches v. Budget Fin. Corp., 87 Nev. 419, 427, 488 P.2d 917, 923 (1971)("As a creditor contesting with a pledgee (Budget) the rights to Westates' assets, Grouse Creek stood in no better position as to the pledgee (Budget) than did Westates.") "A judgment creditor can only garnish property that belongs to, or is owed to, the judgment debtor." Ward 2010 WL 455089, at * 5; NRS 31.249(2)(limiting the property that can be garnished to property "belonging to the defendant").[2]

[2] That is because "a garnishment proceeding is a means by which a judgment-creditor seeks to reach property or credits of a judgment-debtor which are in the hands of a third person so that they may be applied in favor of the judgment." Ward, 2010 WL 455089, at *5 (citing Bd. of Tr. of Vacation Trust v. Durable Developers, Inc., 102 Nev. 401, 410, 724 P.2d 736, 743 (1986)("Garnishment invests a plaintiff-garnishor with the right to satisfy his claim against a defendant with the debts due from a third-person, the garnishee, to the defendant."); McKelvey v. Crockett, 18 Nev. 238, 2 P. 386, 387 (1884)("Garnishment is a purely statutory proceeding, aiming to invest the plaintiff with the right and power to appropriate to the satisfaction of his claim against the defendant debts due from the garnishee to the defendant.").

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Because a creditor can obtain no greater rights than possessed by the debtor, "[a]t the time of garnishment, the garnishee's obligation to the defendant must be fixed, definite, and absolute[,]" and "[a]n obligation which is uncertain or contingent, in the sense that it might never become due and payable, is not subject to garnishment." Union Bank v. F.D.I.C., 111 Nev. 951, 953-54, 899 P.2d 564, 565-66 (1995)(quoting Margrave v. Craig, 92 Nev. 760, 761, 558 P.2d 623, 624 (1976)). NRS 31.390 similarly provides that "when the judgment is rendered against any garnishee and it shall appear that the debt from the garnishee to the defendant is not yet due, execution shall not issue until the debt shall have become due." NRS 31.390. Therefore, Far West cannot collect any debt that is not due and owing to Mona.

Roen does not owe a payment to Mona until July 2016. Those payments are conditioned upon the continued existence of the Management Agreement, which Roen can terminate at any time, and Mona's continued performance under the Management Agreement. Thus, by its very terms, Roen's payment obligation to Mona is unfixed, indefinite, and conditional. Accordingly, there can be no judgment or execution levied against Roen.[3] NRS 31.390.

Far West's unsupported position yields ridiculous and untenable results. A tardy response subjecting a garnishee to a judgment of $24.6 million would equate to more than 305 years of Mona's gross income, or 1,200 years of his net garnishable income (assuming 25% could be garnished). The Court could never endorse such a ridiculous outcome when a garnishee has no direct liability for the judgment. The Court could never substantiate a finding that Roen is liable for $24.6 million when Mona could only ever earn a miniscule portion of that from Roen under the Management Agreement. As no judgment can be entered against Roen following application of the law, the Motion should be denied.

3. Roen is entitled to set aside any default judgment.

As a practicality, if the Court entered default judgment against Roen, Roen would be

[3] Alternatively, even if the Court found that the payment obligation was fixed, definite and absolute, Far West's judgment could never exceed 25% of what is due and owing on the Management Agreement, which is equal to $8,731.80, a far cry from the $24.6 million judgment requested by Far West.

afforded the opportunity to set it aside. In this case, Roen actually answered the Writ of Garnishment immediately after the deadline. Given the circumstances surrounding the alleged default, it would likely be reversible error to not set aside the default judgment.

The default provisions in NRS Chapter 31 are identical to those set forth in NRCP 55. Given the similarities between NRS Chapter 31 and NRCP 55, it is not surprising that the legislature provided that any default for failure to respond to a Writ of Garnishment may be set aside "for the same reasons and upon the same terms and conditions as provided for by rule of court for relief from a judgment or order in civil cases." NRS 31.320(2). Under NRCP 55(c), a default will be set aside for good cause or pursuant to NRCP 60. NRCP 55(c). NRCP 60 also provides that default judgment should be set aside for "mistake, inadvertence, surprise, or excusable neglect."

Nevada's default provisions are liberally construed in accordance with the state's strong public policy of deciding cases on the merits. Moseley v. Eighth Judicial Dist. Court ex rel. Cty. of Clark, 124 Nev. 654, 665, fn. 43 188 P.3d 1136, 1144 (2008); Yochum v. Davis, 98 Nev. 484, 487, 653 P.2d 1215, 1217 (1982); Franklin v. Bartsas Realty, Inc., 95 Nev. 559, 563, 598 P.2d 1147, 1149 (1979); Reynolds v. Spinelli, 281 P.3d 1213 (Nev. 2009)(unpublished decision); see also United States v. Signed Pers. Check No. 730 of Yubran S. Mesle, 615 F.3d 1085, 1089 (9th Cir. 2010)(holding that default judgments are reserved for the most extreme case). Similarly, NRS 31 is liberally construed to effectuate justice for the creditors, debtors, and garnishees and the purposes of NRS 31. NRS 31.450.

This is significant given that a garnishee, unlike a defendant in a civil action, is an innocent party not liable for the subject judgment. Roen is not subject to any judgment and is not accused of any wrongdoing that underpins Mona's debt. In fact, Roen is only a garnishee because it retains Mona's professional services. Justice therefore would always favor setting aside a default judgment that is based on nothing more than a two (2) day tardy response.

Mistake, inadvertence, surprise, or excusable neglect is not a particularly onerous standard under NRS 60(b). Setting aside a default is within the court's discretion when any of the following factors are present: "(1) a prompt application to set aside the judgment was made,

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(2) the absence of intent to delay the proceedings, (3) a lack of knowledge of procedural requirements, and (4) good faith." Moseley, 124 Nev. 654, 666, 188 P.3d 1136, 1144 (2008); Reynolds, 281 P.3d 1213 (Nev. 2009) (unpublished); Stoecklein v. Johnson Electric, Inc., 109 Nev. 268, 271, 849 P.2d 305, 308 (1993); Yochum, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982). Importantly, "good faith is an intangible and abstract quality with no technical meaning or definition and encompasses, among other things, an honest belief, the absence of malice, and the absence of design to defraud." Stoecklein, 109 Nev. at 273, 849 P.2d at 309 (1993).

Good cause under NRCP 55 is even "broader than the standard [under] NRCP 60(b). Sealed Unit Parts Co. v. Alpha Gamma Chapter of Gamma Phi Beta Sorority Inc. of Reno, 99 Nev. 641, 642, 668 P.2d 288, 289 (1983) overruled on other grounds by Epstein v. Epstein, 113 Nev. 1401, 950 P.2d 771 (1997). In determining whether good cause exists, the Nevada Supreme Court has considered whether parties have taken prompt action to set aside the default and whether there was an intent to delay the proceedings. Schulman v. Bonberg–Whitney Elec., Inc., 98 Nev. 226, 228, 645 P.2d 434, 435 (1982); Mejia v. Wachovia Mortgage, 126 Nev. 739 (2010). The Ninth Circuit in interpreting good cause under FRCP 55 considers whether culpable conduct led to default, whether a party has a meritorious defense[4], **or** whether reopening the default judgment causes prejudice. Signed Pers. Check No. 730 of Yubran S. Mesle, 615 F.3d at 1091. The standard "is disjunctive, such that a finding that any one of these factors is true is sufficient reason for the district court to refuse to set aside the default." Id.

It is clear that Roen can meet NRCP 55 and NRCP 60's standards to set aside any default. As a significant factor, Roen actually responded to the Writ of Garnishment and did so within two (2) days of what Far West considers to be the deadline. Mackay's declaration establishes that Roen thought that the deadline to respond to the Writ of Garnishment was January 28, 2016 and that Roen in fact deposited its answers in the mail on January 28, 2016. Roen's mistake and/or inadvertence is clear as it provided its answers without prompting from Far West. Thus, under

[4] However, there is no requirement that any party have a meritorious defense. See Epstein v. Epstein, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997) (finding that a meritorious defense is not necessary to set aside a default and recognizing Peralta v. Heights Med. Ctr., Inc., 485 U.S. 80 (1988)).

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NRCP 55 and 60 standards, Roen acted promptly. Mackay has also established that his travel schedule and personal obligations sufficiently establish good cause, mistake, inadvertence, and/or excusable neglect under NRCP 55 and 60. There is also no evidence that Roen intended to delay the proceeding, nor could there be since any delay was a nominal day or two. Roen has also asserted a defense to the writ of garnishment by demonstrating that no money is due and owing to Mona, whereas Far West is seeking tens of millions of dollars from Roen, which it cannot substantiate. Furthermore, Roen and Mackay's minor miscalculation of time provides grounds to excuse any tardy answer. Stoecklein, 109 Nev. at 272, 849 P.2d at 308 (finding that a California attorney-defendant, who was an experienced litigator, was not imbued with Nevada's procedural rules for purposes of NRCP 60 when he failed to appear for trial). Roen has also not shown a disregard for the judicial process. See Yochum, 98 Nev. at 487, 653 P.2d at 1217 (finding that promptly filing a responsive pleading with their motion to set aside default demonstrated a lack of disregard). It is therefore clear that Roen was acting in good faith, was not attempting to defraud Far West, and at worst mistook the deadline for its response. In light of these circumstances, good cause and/or inadvertence, mistake, surprise, or excusable neglect would warrant the setting aside of any default.

In support of its excessively harsh request, Far West cites to an unpublished Nevada District Court report and recommendation from United States Magistrate Leavitt. Corrales v. Castillo, No. 2:07-CV-00141-LRH-LR, 2008 WL 1840773 (D. Nev. Feb. 25, 2008) report and recommendation adopted, No. 0207-CV00141-LRH-RAM, 2008 WL 2180152 (D. Nev. May 23, 2008). While having no precedential value, if the Court reviews the Corrales decision, it is clear the facts of Corrales differ drastically from the facts in this action. There, on June 21, 2007, the Court issued a writ of garnishment in the amount of "$1,200,000 against moneys ***owed to Castillo***" out of a boxing purse possessed by Top Rank. Id.at *1 (emphasis added). By February 2008, Top Rank had still not responded to the writ, instead claiming that it never received service—despite substantial evidence to the contrary. Id. at *2-3. In adopting the report and recommendation, the district court noted that Top Rank failed to explain why for a period of eleven (11) months it had not responded to the writ. Corrales v. Castillo, No. 0207-CV00141-

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LRH-RAM, 2008 WL 2180152, at *2 (D. Nev. May 23, 2008). Ultimately, the Court entered a default judgment in Corrales' favor against Top Rank for the amount it owed to Castillo—the putative debtor in the action.

Unlike Corrales, Roen actually responded to the Writ of Garnishment, and it did so immediately after what Far West contends was the deadline. As opposed to Corrales, where Top Rank was actively avoiding the writ of garnishment, Roen answered the Writ of Garnishment promptly. Moreover, Corrales merely sought a default judgment in the amount Top Rank owed Castillo, which was undisputed; whereas, Far West is seeking a default judgment in an amount 2,817 time greater than what it could ever garnish from Roen. Therefore, Corrales is inapplicable and does not support Far West's position.

4. Far West's violations of the rules of professional conduct precludes entry of default judgment.

NPC 3.5A states that "when a lawyer knows or reasonably should know the identity of a lawyer representing an opposing party, he or she should not take advantage of the lawyer by causing any default or dismissal to be entered without first inquiring about the opposing lawyer's intention to proceed." The evidence is unmistakable; Far West's counsel knew that Roen was represented by Garman Turner Gordon. On the day of and day after Roen allegedly defaulted, Far West's counsel communicated with the undersigned regarding Roen and Far West's settlement of another matter and yet counsel failed to mention its intent to take default in this case. There can be no doubt that Far West's counsel knew that Garman Turner Gordon represented Roen, in fact it served Garman Turner Gordon with the Motion and did not attempt to serve Roen. As a result, they were bound by their professional obligations to inquire about Roen's intentions. Far West simply failed to do so. Instead, they attempted to take advantage of a perceived "technical" default, the very evil that NPC 3.5A prohibits.

In Landreth v. Malik, 127 Nev. Adv. Op. 16, 251 P.3d 163 (2011), the Nevada Supreme Court found that a default is void *ab initio* when an attorney fails to seek opposing counsel's intentions. There, Landreth was granted an extension to file an answer after Malik's initial notice that he would seek default. Id. After Landreth failed to file an answer during the extension

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period, Malik applied for and obtained a default judgment. Id. The court thereafter refused to set aside the judgment. Id. The Supreme Court found that the court abused its discretion in not setting aside the default. Id. at p. 172. Notably, an attorney's professional obligations under RPC 3.5A is unyielding. He or she must provide opposing counsel "before filing a request for default from the district court." Id. Failure to do so invalidates any default.

There is no dispute that Far West's counsel abandoned its professional duties when it sought default judgment against Roen. From the unsupported position in the Motion, it is clear that Far West hoped that it could convince the Court to enter an outrageous and unlawful judgment for $24.6 million—the very practice that NPC 3.5A prohibits. As a result, any default judgment would be invalid.

C. **Far West should be awarded its fees as a result of having to defend against Far West's baseless attempts to obtain a $24.6 million judgment against Far West.**

This Court may award attorneys' fees if authorized by rule, contract, or statute. See, e.g., Barney v. Mt. Rose Heating & Air, 124 Nev. 821, 825, 192 P.3d 730, 733 (2008). NRS 18.010(2)(b) provides that the Court "may make an allowance of attorney's fees to a prevailing party":

> Without regard to the recovery sought, **when the court finds that the claim**, counterclaim, cross-claim or third-party complaint or defense of the opposing party **was brought or maintained without reasonable ground or to harass the prevailing party.** The court ***shall*** **liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations.** It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations **to punish for and deter frivolous or vexatious claims** and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

NRS 18.010(2)(b). The decision to award attorney fees as sanctions against a party who pursues a claim without reasonable grounds is within the court's sound discretion. See Edwards v. Emperor's Garden Restaurant, 122 Nev. 317, 330, 130 P.3d 1280, 1288 (2006).[5]

[5] Given that the Opposition was due within the safe harbor period, Roen was unable to pursue NRCP 11 sanctions, although a violation certainly occurred here.

"In assessing a motion for attorney's fees under NRS 18.010(2)(b), the trial court must determine whether the plaintiff had reasonable grounds for its claims. Such an analysis depends upon the **actual circumstances of the case** rather than a hypothetical set of facts favoring plaintiff's averments." Bergmann v. Boyce, 109 Nev. 670, 675, 856 P.2d 560, 563 (1993) (emphasis added). A claim is groundless if it is not supported by any credible evidence. See Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals, 114 Nev. 1348, 1354, 971 P.2d 383, 387 (1998); Semenza v. Caughlin Crafted Homes, 111 Nev. 1089, 1095, 901 P.2d 684, 688 (1995).

Beyond NRS 18.010, Eighth District Court Rule ("EDCR") 7.60(b) provides the Court authority to sanction an attorney or party with the imposition of attorneys' fees and costs when an attorney or a party without just cause presents to the court a motion which is obviously frivolous, unnecessary or unwarranted, so multiples the proceedings in a case as to increase costs unreasonably and vexatiously, fails to comply with the court's rules or any order of the court.

There was no reasonable basis for Far West to conclude that it was entitled to a default judgment, let alone a default judgment worth $24.6 million. The evidence is clear that well before Far West moved for a default judgment, Far West had already received Roen's answer to the Writ of Garnishment. By definition, Roen was no longer in default when Far West filed its Motion. Moreover, Roen's answers were no more than two (2) days tardy. In and of itself, these facts demonstrate that there was no basis for Far West to seek a default judgment.

Even more egregious, Far West makes a ridiculous claim for a $24.6 million default judgment, which is **2,817 times greater than any possible garnishment**. There is no basis for such a judgment, which is demonstrated by Far West having to resort to intentionally misstating NRS 31.260 and NRS 31.320. Any default judgment is strictly limited to what the garnishee owes the debtor. A basic investigation of its request would have revealed that its request was baseless. Nonetheless, Far West ignored the case law and statutes in the hope that it could obtain an unlawful judgment and exact devastating revenge upon Roen.[6]

[6] The only case relied upon by Far West, Corrales, makes clear that Far West's Motion is frivolous. Corrales, No. 2:07-CV-00141-LRH-LR, 2008 WL 1840773. There, the District Court

Indeed, Far West's actions toward Roen demonstrate that Far West did not bring the Motion in good faith but instead tried to extract a pound of flesh from its adversary. As discussed above, Far West has already sought to collect the entire $24.6 million judgment against Mona from Roen. See Case No. A-14-695786. That case was resolved in Roen's favor and when Far West attempted to get out of its settlement agreement with Roen, Roen had to obtain a Court order enforcing the settlement agreement. At the same time it was negotiating the wording of the Court's order enforcing the settlement agreement, Far West was apparently laying a trap to circumvent the settlement agreement. Such gamesmanship and bad faith tactics are specifically disallowed by NPC 3.5A. Far West's counsel's intentionally dereliction of its duties illustrate that Far West's claims were groundless and a blatant attempt to harass Roen.

Far West's attempts to obtain a default judgment in the amount of $24.6 million, which is thousands of times greater than any possible garnishment, was clearly brought without reasonable grounds and designed to force Roen to incur fees and costs. Aside from the lack of legal support for the request, Far West's counsel ignored its professional responsibilities. Accordingly, the Court should enter an order granting Roen its fees, consistent with NRS 18.010(2)(b), to punish Far West and deter further frivolous and vexatious claims and litigation.

. . .

. . .

. . .

---------- (continued)
specifically recognized that Default Judgment could only be in the amount the garnishee (Top Rank) owed to debtor/defendant (Castillo).

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

III.

CONCLUSION

Based on the foregoing, Roen requests that the Motion be denied in its entirety and that the Court grant the Countermotion and award Roen its fees and costs associated with its response to the Motion.

DATED this 4th day of March, 2015.

GARMAN TURNER GORDON LLP

ERIKA PIKE TURNER
Nevada Bar No. 6454
DYLAN T. CICILIANO
Nevada Bar No. 12348
650 White Drive, Suite 100
Las Vegas, Nevada 89119
Tel: (725) 777-3000
Attorneys for Defendants
Roen Ventures, LLC, Mercia Holdings, LLC,
Mai Dun, LLC and Bart Mackay

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **THIRD PARTY ROEN VENTURES, LLC'S OPPOSITION TO 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; AND COUNTERMOTION FOR ATTORNEYS' FEES AND COSTS** was submitted electronically for filing and service with the Eighth Judicial District Court on the 4th day of March, 2016. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:[7]

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
Lee, Hernandez, Landrum & Garofalo		
	Contact	**Email**
	Aurora M. Maskall, Esq.	amaskall@lee-lawfirm.com
	Dara or Colleen	lee-lawfirm@live.com
	David S. Lee	dlee@lee-lawfirm.com
Marquis Aurbach Coffing		
	Contact	**Email**
	Cally Hatfield	chatfield@maclaw.com
	Leah Dell	ldell@maclaw.com
	Micah S. Echols	mechols@maclaw.com
	Rosie Wesp	rwesp@maclaw.com
	Sherri Mong	smong@maclaw.com
	Terry Coffing	tcoffing@maclaw.com
	Tye Hanseen, Esq.	thanseen@maclaw.com
Reid Rubinstein & Bogatz		
	Contact	**Email**
	Jenn Moran	Jmoran@rrblf.com
Reid Rubinstein Bogatz		
	Contact	**Email**
	Charles M. Vlasic, III	cvlasic@rrblf.com

[7] 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).

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

James E. Whitmire, Esq.
SANTORO WHITMIRE
10100 West Charleston Blvd. Suite 250
Las Vegas, Nevada 89135
Attorneys for Rhonda Helene Mona

/s/ Rebecca Post
Rebecca Post, an employee of
GARMAN TURNER GORDON LLP

Exhibit 1

GARMAN TURNER GORDON LLP
ERIKA PIKE TURNER
Nevada Bar No. 6454
Email: eturner@gtg.legal
DYLAN T. CICILIANO
Nevada Bar No. 12348
Email: dciciliano@gtg.legal
650 White Drive, Suite 100
Las Vegas, Nevada 89119
Tel: (725) 777-3000
Fax: (725) 777-3112
Attorneys for Third Party
Roen Ventures, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

FAR WEST INDUSTRIES, a California corporation, Plaintiff, vs. RIO VISTA NEVADA, LLC, a Nevada limited liability company; WORLD DEVELOPMENT INC., a California corporation; BRUCE MAIZE, an individual, MICHAEL J. MONA, JR., an individual; DOES 1 through 100, inclusive, Defendants.	CASE NO. A-12-670352-F DEPT. XV Date of Hearing: March 21, 2016 Time of Hearing: 9:00 a.m.

DECLARATION OF BART MACKAY IS SUPPORT OF OPPOSITION TO 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 AND COUNTERMOTION FOR ATTORNEYS' FEES

I, Bart P. Mackay, hereby state and declare as follows:

1. I am a current manager of Roen Ventures, LLC ("Roen"). Roen is, and has been since November 2012 a Nevada limited liability company.

2. I make this declaration in support Roen's Opposition to 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 and

Countermotion for Attorneys' Fees. I am over the age of eighteen and am competent to testify to the matters and facts set forth herein. I state the following matters and facts upon my own personal knowledge, except where stated upon information and belief, and as to those statements made upon information and belief, I believe them to be true.

3. It is my recollection that I received notice of Far West Industries' ("Far West") writ of garnishment on January 8, 2016.

4. During the preceding months, I had been travelling back and forth between Las Vegas, Nevada and Utah in order to care for my wife who is undergoing medical treatments in Utah. My primary residence is in Utah.

5. Based on my receipt of the writ of garnishment on January 8, 2016, I determined that I would need to mail my answers to the writ of garnishment and interrogatories to the Las Vegas Constable by January 28, 2016. I believed that Roen's answers to the writ of garnishment were due January 28, 2016. On January 28, 2016, I made sure that I deposited Roen's responses to the writ of garnishment and interrogatories in a post office box in Provo, Utah.

6. On or about November 23, 2013, Roen and Michael Mona, Jr. entered into a Management Agreement.

7. Pursuant to the Management Agreement, Roen has an obligation to pay Mona's mortgage of $6,985.43 per month. I have other businesses beyond Roen and attend to the books on an irregular basis. Over the holidays, I caught up on Roen's books and knowing my wife's illness might result in less time for bookkeeping in the first half of 2016, I pre-paid Mona's mortgage through July 2016. A copy of the check is attached hereto as Exhibit 1-A. The Payment was made prior to receiving the Writ of Garnishment. No further payments under the Management Agreement are due under the Management Agreement or otherwise until July 2016.

8. Roen currently owns a car that it has permitted Mona to drive when I am not using it. Roen does not make any payments on any car on behalf of Michael Mona. In 2016, Roen paid registration fees on the vehicle to the State of Nevada in the amount of $1,978.00. See the registration and copy of the title, attached hereto as Exhibit 1-B.

///

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650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

9. Roen has not issued Mona any wages or bonuses in 2016 and at this point does not intend on doing so.

10. Roen has not determined whether it will cancel the Management Agreement in July 2016. Therefore, any future payments are contingent upon Roen not cancelling the agreement and Mona performing thereunder.

I declare under penalty of perjury under the laws of the United States and the State of Nevada that the foregoing is true and correct.

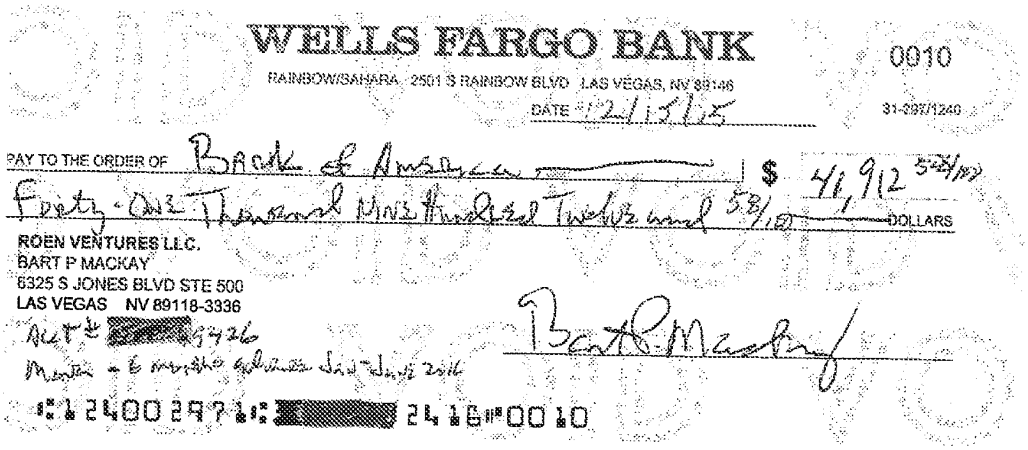
Executed this 31st day of March, 2016.

BART P. MACKAY

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

EXHIBIT 1-A

EXHIBIT 1-A



WELLS FARGO BANK

RAINBOW/SAHARA 2501 S RAINBOW BLVD LAS VEGAS, NV 89146

DATE 12/15/15

0010

31-297/1240

PAY TO THE ORDER OF Bank of America $ 41,912 [illegible]

Forty-One Thousand Nine Hundred Twelve and 58/100 DOLLARS

ROEN VENTURES LLC.
BART P MACKAY
6325 S JONES BLVD STE 500
LAS VEGAS NV 89118-3336

Acct # [redacted]9426

Monthly + 6 months advance Jan-June 2016

Bart P Mackay

⑆124002977⑆ [redacted] 2416 0010

EXHIBIT 1-B

EXHIBIT 1-B

STATE OF NEVADA

DEPARTMENT OF MOTOR VEHICLES

CERTIFICATE OF TITLE

VIN	YEAR	MAKE	MODEL	VEHICLE BODY	TITLE NUMBER
[redacted]0949	2013	MERZ	SL63 AMG	PCV	NV006992570

DATE ISSUED	ODOMETER MILES	FUEL TYPE	SALES TAX PD	EMPTY WT	GROSS WT	GVWR
06/03/2014	2029	G				

VEHICLE COLOR

ODOMETER BRAND
ACTUAL MILES

BRANDS

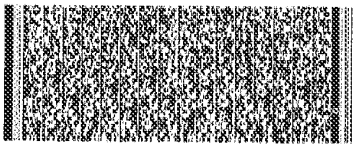
OWNER(S) NAME AND ADDRESS
ROEN VENTURES LLC
2688 S RAINBOW BLVD STE B
LAS VEGAS NV 89146-5196

LIENHOLDER NAME AND ADDRESS

LIENHOLDER RELEASE - INTEREST IN THE VEHICLE DESCRIBED ON THIS TITLE IS HEREBY RELEASED:

SIGNATURE OF AUTHORIZED AGENT _____ DATE _____

PRINTED NAME OF AGENT AND COMPANY _____



FEDERAL AND STATE LAW REQUIRES THAT YOU STATE THE MILEAGE IN CONNECTION WITH THE TRANSFER OF OWNERSHIP. FAILURE TO COMPLETE OR PROVIDING A FALSE STATEMENT MAY RESULT IN FINES AND/OR IMPRISONMENT.
The undersigned hereby certifies the vehicle described in this title has been transferred to the following owner(s):

Printed Full Legal Name of Buyer _____ Nevada Driver's License Number or Identification Number _____ ☐ AND ☐ OR

Printed Full Legal Name of Buyer _____ Nevada Driver's License Number or Identification Number _____

Address _____ City _____ State _____ Zip Code _____

I certify to the best of my knowledge the odometer reading is the actual mileage of the vehicle unless one of the following statements is checked.

ODOMETER READING _____ NO TENTHS ☐

☐ The mileage stated is in excess of its mechanical limits.
☐ The odometer reading is not the actual mileage. WARNING: ODOMETER DISCREPANCY.
☐ Exempt - Model year over 9 years old.

Signature of Seller(s)/Agent/Dealership _____ Printed Name of Seller(s)/Agent/Dealership _____

I am aware of the above odometer certification made by the seller/agent. ☐ Dealer's License Number _____ Date of Sale _____

Signature of Buyer _____ Printed Full Legal Name of Buyer _____

ACCORDING TO THE RECORDS OF THE DEPARTMENT OF MOTOR VEHICLES, THE PERSON NAMED HEREON IS THE OWNER OF THE VEHICLE DESCRIBED ABOVE, SUBJECT TO LIEN AS SHOWN.

CONTROL NO

VP-3 (Rev. 9/10)

(THIS IS NOT A TITLE NO.)

ALTERATION OR ERASURE VOIDS THIS TITLE

FEDERAL AND STATE LAW REQUIRES THAT YOU STATE THE MILEAGE IN CONNECTION WITH THE TRANSFER OF OWNERSHIP. FAILURE TO COMPLETE OR PROVIDING A FALSE STATEMENT MAY RESULT IN FINES AND/OR IMPRISONMENT.

The undersigned hereby certifies the vehicle described in this title has been transferred to the following buyer(s):

FIRST ASSIGNMENT DEALER ONLY

Printed Full Legal Name of Buyer _____ Nevada Driver's License Number or Identification Number ☐ AND ☐ OR

Printed Full Legal Name of Buyer _____ Nevada Driver's License Number or Identification Number

Address _____ City _____ State _____ Zip Code _____

I certify to the best of my knowledge the odometer reading is the actual mileage of the vehicle unless one of the following statements is checked.

_____ NO TENTHS ☐ The odometer reading is not the actual mileage. WARNING: ODOMETER DISCREPANCY

ODOMETER READING ☐ Exempt - Model year over 9 years old.

Signature of Seller(s)/Agent/Dealership _____ Printed Name of Seller(s)/Agent/Dealership

I am aware of the above odometer certification made by the seller/agent ☐ Dealer's License Number _____ Date of Sale _____

Signature of Buyer _____ Printed Full Legal Name of Buyer

FEDERAL AND STATE LAW REQUIRES THAT YOU STATE THE MILEAGE IN CONNECTION WITH THE TRANSFER OF OWNERSHIP. FAILURE TO COMPLETE OR PROVIDING A FALSE STATEMENT MAY RESULT IN FINES AND/OR IMPRISONMENT.

The undersigned hereby certifies the vehicle described in this title has been transferred to the following buyer(s):

SECOND REASSIGNMENT DEALER ONLY

Printed Full Legal Name of Buyer _____ Nevada Driver's License Number or Identification Number ☐ AND ☐ OR

Printed Full Legal Name of Buyer _____ Nevada Driver's License Number or Identification Number

Address _____ City _____ State _____ Zip Code _____

I certify to the best of my knowledge the odometer reading is the actual mileage of the vehicle unless one of the following statements is checked.

_____ NO TENTHS ☐ The mileage stated is in excess of its mechanical limits.

☐ The odometer reading is not the actual mileage. WARNING: ODOMETER DISCREPANCY

ODOMETER READING ☐ Exempt - Model year over 9 years old.

Signature of Seller(s) Agent Dealership _____ Printed Name of Seller(s)/Agent/Dealership

I am aware of the above odometer certification made by the seller/agent ☐ Dealer's License Number _____ Date of Sale _____

Signature of Buyer _____ Printed Full Legal Name of Buyer

FEDERAL AND STATE LAW REQUIRES THAT YOU STATE THE MILEAGE IN CONNECTION WITH THE TRANSFER OF OWNERSHIP. FAILURE TO COMPLETE OR PROVIDING A FALSE STATEMENT MAY RESULT IN FINES AND/OR IMPRISONMENT.

The undersigned hereby certifies the vehicle described in this title has been transferred to the following buyer(s):

THIRD REASSIGNMENT DEALER ONLY

Printed Full Legal Name of Buyer _____ Nevada Driver's License Number or Identification Number ☐ AND ☐ OR

Printed Full Legal Name of Buyer _____ Nevada Driver's License Number or Identification Number

Address _____ City _____ State _____ Zip Code _____

I certify to the best of my knowledge the odometer reading is the actual mileage of the vehicle unless one of the following statements is checked.

_____ NO TENTHS ☐ The mileage stated is in excess of its mechanical limits.

☐ The odometer reading is not the actual mileage. WARNING: ODOMETER DISCREPANCY

ODOMETER READING ☐ Exempt - Model year over 9 years old.

Signature of Seller(s) Agent Dealership _____ Printed Name of Seller(s)/Agent/Dealership

I am aware of the above odometer certification made by the seller/agent ☐ Dealer's License Number _____ Date of Sale _____

Signature of Buyer _____ Printed Full Legal Name of Buyer

LIEN

LIENHOLDER TO BE RECORDED

FEIN _____

Printed Full Legal Name of Lienholder _____ (If no lienholder write "NONE")

Address _____ Street _____ City _____ State _____ Zip Code _____

ALTERATION OR ERASURE VOIDS THIS TITLE

STATE OF NEVADA DEPARTMENT OF MOTOR VEHICLES
REGISTRATION RENEWAL BY MAIL
PO BOX 6900
CARSON CITY, NV 89702-6900

FIRST CLASS MAIL
AUTO
U.S. POSTAGE PAID
CARSON CITY, NV
PERMIT NO. 5

PLATE NO: LV2F69 YEAR: 2013 MAKE: MERZ
LAST 4 VIN: 0949 EXPIRES: 03-18-2016 SMOG - REQUIRED
ACCESS CODE: 5861764985561 1 **TOTAL FEES $1978.00**

REG FEE	$33.00	TECHNOLOGY FEE-VR	$1.00
GOV SVCS TAX	$1521.00		
SUPL GOV SVCS TAX	$383.00		
RENEWAL	$10.00		
FUND	$20.00		

20 VR-6094061
157F
VP250 (Rev 7-2015)

ROEN VENTURES LLC
2688 S RAINBOW BLVD STE B
LAS VEGAS NV 89146-5196

AADJSP1 89146

RENEWAL OPTIONS: Renew your registration at any DMV office or by using any of the following timesaving options. Nevada has no grace period for late registrations or insurance lapses.

- **Online** - Visit www.dmvnv.com where you can access personalized online services at *MyDMV*, change your address, renew your registration, print forms and applications, and much more.
- **Kiosk** – Print your registration and decal immediately. Kiosks are available at most DMV offices and convenient partner locations listed on our website at www.dmvnv.com.
- **Emission Stations** – Many Emission Stations offer renewal services. Visit our website at www.dmvnv.com to find a participating Emission Station.
- **Designated County Assessor's Office** – Visit our website at www.dmvnv.com to find a designated County Assessor's Office.
- **Mail** – Return this postcard with a check or a Payment Authorization Form (VP205) to the address on the reverse side. Enclose the smog certificate, Nevada evidence of insurance, and/or any tax exemptions you want applied. Visit our website to print the VP205 form and/or a Change of Address Form (DMV22). The new certificate of registration and decal will be mailed to the mailing address on file. **If any changes need to be made to the registration address or the renewal, the changes MUST be done by mail, at a DMV office, or online through *MyDMV*.** Please visit www.dmvnv.com.

MANDATORY INSURANCE (NRS 485): Nevada law requires continuous liability insurance on all active registrations. Fees for an insurance lapse range from $250 to $750, and fines, ranging from $250 to $1,000, are assessed on a tiered system based on the length of the lapse and the history of previous violation(s). If the lapse period is 91 days or longer, a Certificate of Financial Responsibility (SR-22) must be obtained before the vehicle registration can be reinstated, and the registered owner must maintain the SR-22 for three continuous years. Out-of-state insurance will not be accepted.

Complete Streets: You will have the option to make a voluntary, nonrefundable contribution of $2 for each vehicle renewed on the web or kiosk for the Complete Streets Program in select counties. The $2 contribution is in addition to any applicable registration fees.

Exhibit 2

GARMAN TURNER GORDON LLP
ERIKA PIKE TURNER
Nevada Bar No. 6454
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DYLAN T. CICILIANO
Nevada Bar No. 12348
Email: dciciliano@gtg.legal
650 White Drive, Suite 100
Las Vegas, Nevada 89119
Tel: (725) 777-3000
Fax: (725) 777-3112
Attorneys for Third Party
Roen Ventures, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

FAR WEST INDUSTRIES, a California corporation, Plaintiff, vs. RIO VISTA NEVADA, LLC, a Nevada limited liability company; WORLD DEVELOPMENT INC., a California corporation; BRUCE MAIZE, an individual, MICHAEL J. MONA, JR., an individual; DOES 1 through 100, inclusive, Defendants.	CASE NO. A-12-670352-F DEPT. XV Date of Hearing: March 21, 2016 Time of Hearing: 9:00 a.m.

DECLARATION OF DYLAN CICILIANO IS SUPPORT OF OPPOSITION TO 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 AND COUNTERMOTION FOR ATTORNEYS' FEES

I, Dylan Ciciliano, Esq., hereby state and declare as follows:

1. I am an attorney with the law firm of Garman Turner Gordon, and along with Erika Pike Turner, counsel for Roen Ventures, LLC ("Roen") in the above-captioned matter. I am duly licensed to practice before all courts in the State of Nevada and I have personal knowledge of all facts addressed herein, and if called upon to testify, could and would do so.

2. I make this declaration in support Roen's Opposition to 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 and Countermotion for Attorneys' Fees. I am over the age of eighteen and am competent to testify to the matters and facts set forth herein. I state the following matters and facts upon my own personal knowledge, except where stated upon information and belief, and as to those statements made upon information and belief, I believe them to be true.

3. Counsel for Far West know that Roen was represented by counsel when it served the writ of garnishment on Roen, but failed and/or refused to communicate with Roen's counsel about the writ of garnishment. In fact, Far West served Roen with the motion through the undersigned.

4. Between January 14, 2016, and January 29, 2016, I communicated by email with Far West's counsel Tom Edwards with respect to the form and content of Roen's order granting its motion to enforce the settlement agreement in Case no. A-14-695786.

5. On January 28, 2016 and February 2, 2016, Far West's counsel emailed me regarding the order in Case no. A-14-695786. A true and correct copy of the emails are attached hereto as **Exhibit 2-A**. Despite its plan to seek a $24.6 million default judgment, Far West's counsel did not mention to me that Roen failed to respond to the Writ of Garnishment or that he was working on a motion to default Roen. Far West's counsel never communicated to Roen's counsel that it was seeking a default judgment against Roen until the motion was served.

6. As early as August 2015, Erika Turner had informed Far West's counsel that Mr. Mackay had limited time and availability due to his wife's illness and treatments.

7. I have been a commercial litigator for over 4 years. I was with the law firm of Gordon Silver until May 2015. On May 18, 2015, 15 attorneys from Gordon Silver left and opened the law firm of Garman Turner Gordon. The same skill level and experience of the attorneys is present at Garman Turner Gordon that was present at Gordon Silver. With the bankruptcy practice at Gordon Silver, there was constant review of market rates for attorneys. When Garman Turner Gordon opened, there was further review of market rates. I am informed

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Las Vegas, Nevada 89119
(725) 777-3000

and believe that Roen is charged below market rates.

8. My current rate is $265.00 per hour, which I believe to commensurate with someone of similar skill and experience in the community.

9. Erika Pike Turner also worked on this matter. She has been a commercial litigator for over 18 years and was a founding member of Garman Turner Gordon. Her current rate is $495.00 per hour, which I believe to be commensurate with someone of similar skill and experience in the community.

10. Eric Olsen provided limited assistance on this matter. Eric Olsen has been a commercial litigator for over 20 years and was a founding member of Garman Turner Gordon. His current rate is $495.00 per hour, which I believe to be commensurate with someone of similar skill and experience in the community. Notably, Mr. Olsen was counsel for the creditor in the only case cited to by Far West, Corrales v. Castillo, No. 2:07-CV-00141-LRH-LR, 2008 WL 1840773 (D. Nev. Feb. 25, 2008) report and recommendation adopted, No. 0207-CV00141-LRH-RAM, 2008 WL 2180152 (D. Nev. May 23, 2008). Accordingly, he had valuable insight into the issues surrounding writs of garnishment.

11. The Motion, while presenting a frivolous and unsupported position, seeks a judgment that would financially devastate Roen and likely cause repercussions for several publically traded companies, for which Roen is a significant shareholder. Accordingly, Roen took special care to thoroughly research NRS 31 and similar garnishment statutes throughout the Country. Roen spent a total of 27.8 hours, at a value of $7,574 preparing and responding to the Motion, broken down as follows Erika Turner-0.6 hours; Eric Olsen-0.3 hours, and Dylan Ciciliano-26.9 hours.

I declare under penalty of perjury under the laws of the United States and the State of Nevada that the foregoing is true and correct.

Executed this 4th day of March, 2016.

DYLAN T. CICILIANO

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

Exhibit 2-A

Exhibit 2-A

Dylan Ciciliano

From: Tom Edwards <tedwards@nevadafirm.com>
Sent: Tuesday, February 2, 2016 6:58 PM
To: Dylan Ciciliano
Cc: Erika Turner; Andrea M. Gandara
Subject: RE: Roen adv. Far West
Attachments: 1578248_2.docx; Redline.pdf; 1636029.doc

Dylan,

We may not agree on that point, but hopefully it is not an issue. Attached are clean and redlined copies of the settlement agreement. Also enclosed is the stipulation to dismiss. Please let me know if you have any questions or would like to discuss these issues.

Thanks,
Tom

From: Dylan Ciciliano [mailto:dciciliano@Gtg.legal]
Sent: Tuesday, February 02, 2016 1:56 PM
To: Tom Edwards; Andrea M. Gandara
Cc: Erika Turner
Subject: RE: Roen adv. Far West

Great. We look forward to seeing it.

However, to be clear, we don't believe the dismissal depends on a "formal" settlement agreement.

Dylan

From: Tom Edwards [mailto:tedwards@nevadafirm.com]
Sent: Tuesday, February 2, 2016 1:51 PM
To: Dylan Ciciliano <dciciliano@Gtg.legal>; Andrea M. Gandara <agandara@nevadafirm.com>
Cc: Erika Turner <eturner@Gtg.legal>
Subject: RE: Roen adv. Far West

Dylan,

My plan is to send you the revised settlement agreement and stipulation to dismiss today.

Thanks,
Tom

From: Dylan Ciciliano [mailto:dciciliano@Gtg.legal]
Sent: Tuesday, February 02, 2016 1:44 PM
To: Tom Edwards; Andrea M. Gandara
Cc: Erika Turner
Subject: RE: Roen adv. Far West

Just following up on the below request.

From: Dylan Ciciliano
Sent: Monday, February 1, 2016 10:00 AM
To: 'Tom Edwards' <tedwards@nevadafirm.com>; Andrea M. Gandara <agandara@nevadafirm.com>
Cc: Erika Turner <eturner@Gtg.legal>
Subject: Roen adv. Far West

Tom,

I wanted to inquire into a stipulation of dismissal for the Roen Parties and for the parties to bear their own fees and costs pursuant to the terms of the settlement agreement. If you are amenable, I will circulate a stip and order this afternoon.

Dylan

Dylan T. Ciciliano, Esq.

Attorney

Phone: 725 777 3000 | Fax: 725 777 3112

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LAS VEGAS, NV 89119

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Dylan Ciciliano

From: Tom Edwards <tedwards@nevadafirm.com>
Sent: Thursday, January 28, 2016 10:57 AM
To: Dylan Ciciliano; Andrea M. Gandara
Cc: Erika Turner
Subject: RE: Order Granting Motion to Enforce Settlement

The order is at our front desk for pick up. Thanks

From: Dylan Ciciliano [mailto:dciciliano@Gtg.legal]
Sent: Thursday, January 28, 2016 10:45 AM
To: Tom Edwards; Andrea M. Gandara
Cc: Erika Turner
Subject: RE: Order Granting Motion to Enforce Settlement

Tom,

We have accepted your changes. Please let me know when you have signed the acceptance as to content and form and my runner will pick up your signature page on his way to the Court house.

We would generally reserve our rights as to the basis for the decision, as reflected in our original draft order, should the issue arise in the future.

Dylan

From: Tom Edwards [mailto:tedwards@nevadafirm.com]
Sent: Wednesday, January 27, 2016 9:46 PM
To: Dylan Ciciliano <dciciliano@Gtg.legal>; Andrea M. Gandara <agandara@nevadafirm.com>
Cc: Erika Turner <eturner@Gtg.legal>
Subject: RE: Order Granting Motion to Enforce Settlement

Dylan,

Please see our changes to your proposed order. Please let me know if you would like to discuss.

Thanks,
Tom

From: Dylan Ciciliano [mailto:dciciliano@Gtg.legal]
Sent: Tuesday, January 26, 2016 3:35 PM
To: Tom Edwards; Andrea M. Gandara
Cc: Erika Turner
Subject: RE: Order Granting Motion to Enforce Settlement

Tom,

The Order pertains to what occurred in Court, and therefore should be based on counsels review of the Order. Thus far, we have not received ***any*** comment from counsel either. From a procedural standpoint, there have been several inordinate delays in concluding the case and we cannot wait any longer on resolution. While I am sympathetic to your

client's family's medical emergency, this is not a matter of professional courtesy, as the Order is based on the Court's ruling and does not require client input.

I still intend on sending the Order down Thursday morning, which would require your comments by Wednesday evening if we were going to have any meaningful discussion. If we don't receive your comments, we'll ultimately submit the Order and create a notation along the lines of "Submitted to Plaintiff's Counsel for review on January 20, 2016. Plaintiff's Counsel represented that it was unable to provide feedback on the Order due to the unavailability of Plaintiff." It will then be your decision as to whether you wish to take some other action.

I would again reiterate that if there is some concern that you had with the Order that you let me know,

Dylan

From: Tom Edwards [mailto:tedwards@nevadafirm.com]
Sent: Tuesday, January 26, 2016 12:54 PM
To: Dylan Ciciliano <dciciliano@Gtg.legal>; Andrea M. Gandara <agandara@nevadafirm.com>
Cc: Erika Turner <eturner@Gtg.legal>
Subject: RE: Order Granting Motion to Enforce Settlement

Dylan,

I finally heard back from my client this morning. The reason I have been unable to reach him since the hearing is that he is dealing with a family medical emergency. While I hope to be able to respond by tomorrow, I am not certain when I will be able to have a substantive discussion with my client. In light of the circumstances, I believe the judge would be willing to grant us a reprieve from the timing requirement of EDCR 7.21. Please let me know if you would like me to confirm that with chambers. If you cannot grant the professional courtesy and insist on submitting the order before I have had a chance to discuss it with my client, please let me know that as well.

Thanks,
Tom

From: Dylan Ciciliano [mailto:dciciliano@Gtg.legal]
Sent: Monday, January 25, 2016 5:56 PM
To: Tom Edwards; Andrea M. Gandara
Cc: Erika Turner
Subject: RE: Order Granting Motion to Enforce Settlement

Tom,

We are not on the same page. I make it a point of practice to immediately prepare the Order so that I can have a meaningful discussion with Opposing counsel. What I hope to avoid is the inevitable situation where on the last day opposing counsel has a litany of changes and attempts to leverage the deadline. It is customary to check in on counsel and make sure the Order is moving through the process. That was our intent, to which you responded that you were demanding under threat that we wait until the 11th hour before receiving any feedback from you. That is clearly outside the purpose of the rule. Likewise, implying that we are denying you professional courtesy is inaccurate. We have consistently granted whatever time Far West has needed.

So to reset, we provided the Order last Wednesday. You were at the hearing and have ostensibly reviewed the order. Your threat below suggests the Order is inaccurate, but you have not identified anything that you contend is inaccurate. I am happy to discuss what you would contend in inaccurate, however, our office is unavailable Thursday afternoon and

such a delay would defeat the purpose of conferring in any event. If you need to clear your comments through your client, I would request that you do so sooner rather than later. To have a meaningful conversation, I am requesting that you submit your revisions by Wednesday night.

Dylan

From: Tom Edwards [mailto:tedwards@nevadafirm.com]
Sent: Monday, January 25, 2016 4:57 PM
To: Dylan Ciciliano <dciciliano@Gtg.legal>; Andrea M. Gandara <agandara@nevadafirm.com>
Cc: Erika Turner <eturner@Gtg.legal>
Subject: RE: Order Granting Motion to Enforce Settlement

Dylan,

I am glad to see that we are all on the same page that there is no rule mandating that you submit the order tomorrow. You have only provided 3 court days to review the order.
I need additional time to respond because I have not had an opportunity to discuss it with my client yet.
If you insist on prematurely submitting the order tomorrow, I will send a letter to the court advising that I requested additional time from you, you refused, that the 10 day deadline is not until Thursday and that I reserve my right to submit a competing order which accurately reflects the court's ruling.

Please let me know if you refuse to provide the professional courtesy of additional time to respond to your proposed order.

Thanks,
Tom

From: Dylan Ciciliano [mailto:dciciliano@Gtg.legal]
Sent: Monday, January 25, 2016 4:45 PM
To: Tom Edwards; Andrea M. Gandara
Cc: Erika Turner
Subject: RE: Order Granting Motion to Enforce Settlement

Tom,

Our position is that a deadline is not the date in which something must be submitted, but instead the last day in which it may be submitted.. We are not inclined to push off the order for the sake of pushing it off and your response does not indicate that you need more than a week to review the order. Is there a reason why after more than five days you still need more time? Furthermore, what right are you preserving? Is there something about the content of our proposed order that you disagree with? If you're merely going to refuse to sign the order as to Content and Form on Thursday then there is no reason for delay. If you have a legitimate concern then let's start that conversation tomorrow before noon.

As a way of notice, my client is prepared to issue the shares. All attendant consequences of your client's delay falls squarely on their shoulders.

Thanks for your attention to the matter.

Dylan

From: Tom Edwards [mailto:tedwards@nevadafirm.com]
Sent: Monday, January 25, 2016 4:27 PM
To: Dylan Ciciliano <dciciliano@Gtg.legal>; Andrea M. Gandara <agandara@nevadafirm.com>
Cc: Erika Turner <eturner@Gtg.legal>
Subject: RE: Order Granting Motion to Enforce Settlement

Dylan,

EDCR 7.21 only requires that you submit the order to the court within 10 days. That deadline falls on Thursday, January 28. Accordingly, I request that you not submit the order until Thursday afternoon. If you insist on submitting an order tomorrow, please let me know so I may preserve my client's rights.

Thanks,
Tom

From: Dylan Ciciliano [mailto:dciciliano@Gtg.legal]
Sent: Monday, January 25, 2016 3:27 PM
To: Tom Edwards; Andrea M. Gandara
Cc: Erika Turner
Subject: RE: Order Granting Motion to Enforce Settlement

Tom,

We have not heard back from you on the below order. By rule the Court must execute an order within 10 days. Accordingly, we will submit the order at or about noon tomorrow. If we do not hear from you by then, I will note that Far West, despite being given ample opportunity, chose not to comment on the order.

Dylan

From: Dylan Ciciliano
Sent: Wednesday, January 20, 2016 10:54 AM
To: Tom Edwards <tedwards@nevadafirm.com>; 'Andrea M. Gandara' <agandara@nevadafirm.com>
Cc: Erika Turner <eturner@Gtg.legal>
Subject: Order Granting Motion to Enforce Settlement

Tom,

Attached find an Order Granting the Motion to Enforce Settlement.

Dylan

Dylan T. Ciciliano, Esq.

Attorney

Phone: 725 777 3000 | Fax: 725 777 3112

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Exhibit 3

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DAVID S. LEE, ESQ.
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John R. Hawley
Nevada Bar No. 1545
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jhawley@leelawfirm.com

Attorneys for Plaintiff

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02/07/2014 09:11:56 AM

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

FAR WEST INDUSTRIES, a California corporation. Plaintiff, vs. CANNAVEST CORP., a foreign corporation; ROEN VENTURES, LLC a Nevada limited liability company; MICHAEL J. MONA, JR., DOES 1 through 25, inclusive; and ROE corporation 1 through 25, inclusive. Defendants.	CASE NO.: A-14-695786-C DEPT: XXI **ARBITRATION EXPEMTION: DISPUTE IN EXCESS OF $50,000.00**

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

COMPLAINT

Plaintiff, FAR WEST INDUSTRIES (FAR WEST), by and through its attorneys, LEE, HERNANDEZ, LANDRUM, GAROFALO & BLAKE, alleges and complaints against Defendants, CANNAVEST CORP., ROEN VENTURES, LLC, MICHAEL J. MONA JR., and BART MACKAY and certain DOES Defendants as follows:

///

///

LEE, HERNANDEZ, LANDRUM, GAROFALO & BLAKE
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LAS VEGAS, NV 89128
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PARTIES

1. Plaintiff Far West Industries (FAR WEST) is and at all times relevant hereto was a California corporation doing business in California.

2. Defendant Michael J. Mona Jr. (MONA) is and at all times relevant hereto was a resident of Clark County, Nevada, and is an officer and a director of CANNAVEST, and a manager of ROEN.

3. Defendant Bart MacKay (MACKAY) is and at all times relevant hereto was a resident of Clark County, Nevada, and is a director of CANNAVEST, and a manager and member of ROEN.

4. Defendant Cannavest Corp. (CANNAVEST) is and at all times relevant hereto was a foreign corporation that is authorized to do business in Nevada and which does business in Clark County, Nevada.

5. Defendant Roen Ventures, LLC, (ROEN) is and at all times relevant hereto was a Nevada limited liability company doing business in Clark County, Nevada. ROEN was formed by MONA and a third party, Michael Llamas.

GENERAL ALLEGATIONS

6. The true names and capacities, whether individual, corporate, associate or otherwise, of defendants DOES 1 through 25, inclusive, and ROE corporations 1 through 25, inclusive, are unknown to Plaintiff, who therefore sues such defendants as such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the individual defendants designated herein as DOE 1 through 25, inclusive, and/or ROE corporations 1 through 25, inclusive, participated in the efforts described in this complaint to conceal assets, waste assets subject to execution, and defraud creditors such as FAR WEST. Plaintiff will seek leave to amend this Complaint to insert the true names and capacities of the fictitiously designated defendants herein as soon as those identities can be ascertained.

///

///

7. On March 24, 2008, FAR WEST sued MONA and others for damages resulting from fraud arising out of a land transaction in California. That case was styled "FAR WEST INDUSTRIES, a California corporation, vs. RIO VISTA NEVADA, LLC, a Nevada limited liability company; WORLD DEVELOPMENT, INC., a California corporation; BRUCE MAIZE, an individual; MICHAEL J. MONA, JR., an individual"; and was filed in the Superior Court of the State of California, county of Riverside, case number RIC495966 (the California Action).

8. On February 23, 2012, a judgment was entered in the California Action in favor of FAR WEST and against MONA, and others, in the principal sum $17,777,562.18.

9. On October 18, 2012, the judgment in the California Action was domesticated properly in Nevada, and enforcement proceedings commenced including, but not limited to an examination of MONA as judgment debtor, and garnishments of various accounts belonging to MONA.

10. In the judgment debtor exam, MONA testified, among other things, that in 2013, he received in excess of $3 million from a brokerage account, which he then loaned to ROEN, and which was then loaned by ROEN to CANNAVEST.

11. MONA also testified during that proceeding that after the $3 million was loaned from ROEN to CANNAVEST, MACKAY offered MONA $500,000 to buy the note that MONA made to ROEN, and to buy out MONA's interest in ROEN.

12. MONA agreed, and for the sum of $500,000 sold ROEN'S $3 million debt along with MONA'S interest in ROEN to MACKAY, making MACKAY and Michael Llamas the owners of ROEN.

13. MONA also testified that there is another $22 million judgment pending against him that arose out of a deficiency proceeding that followed a trustees sale of certain real property.

FIRST CAUSE OF ACTION

14. FAR WEST repeats and realleges the allegations contained in Paragraphs 1 through 12 inclusive, as though fully set forth herein.

15. Upon information and belief, MONA, MACKAY, ROEN AND CANNAVEST have a history of engaging in financial transactions with each other.

16. In their dealings with MONA, as an officer and a director, CANNAVEST and ROEN

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knew or should have known that MONA was insolvent, or in danger of becoming insolvent.

17. Upon information and belief, MACKAY knew or should have known that MONA, a co-officer and/or co-director in CANNAVEST and ROEN was insolvent or in danger of becoming insolvent.

18. The transaction described above was between and among insiders.

19. MONA did not receive anything close to equivalent value for the $3 million that he allegedly loaned to ROEN, and which was allegedly then loaned to CANNAVEST.

20. The loan by MONA to ROEN, and subsequently to CANNAVEST was intended to prejudice creditors like FAR WEST by concealing and wasting assets that would have otherwise been available to satisfy the judgment that FAR WEST has against MONA.

21. The transaction described above is a fraudulent transfer within the meaning of NRS 112.140 *et seq.*

22. The loan between MONA, ROEN, and CANNAVEST must be set aside, and the funds therefrom disgorged to FAR WEST.

23. It has been necessary for FAR WEST to hire an attorney to prosecute this action, and FAR WEST is therefore entitled to an award of attorney's fees.

SECOND CAUSE OF ACTION

24. FAR WEST repeats and realleges the allegations contained in Paragraphs 1 through 22 inclusive, as though fully set forth herein.

25. Upon information and belief, and based on the transaction described above MONA and MACKAY use ROEN and CANNAVEST as their personal piggy banks, and treat the assets of this corporations as their own.

26. CANNAVEST and ROEN are influenced and governed by MONA and MACKAY to an undue extent.

27. Upon information and belief, there is such a unity of interest and ownership of CANNAVEST and ROEN are inseparable from the interest and ownership of MACKAY and MONA in those entities.

28. Upon information and belief, adherence to the corporate fiction of CANNAVEST and

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ROEN being separate entities would sanction fraud or promote a manifest injustice in this matter.

29. FAR WEST is entitled to a finding that CANNAVEST and ROEN are the alter egos of MONA and/or MACKAY.

30. It has been necessary for FAR WEST to hire an attorney to prosecute this action, and FAR WEST is therefore entitled to an award of attorney's fees.

THIRD CAUSE OF ACTION

31. FAR WEST repeats and realleges the allegations contained in Paragraphs 1 through 29 inclusive, as though fully set forth herein.

32. The transaction described above was designed to unlawfully conceal, and did conceal assets from creditors like FAR WEST.

33. The conduct of the defendants, and each of them in engaging in the transaction described above was intended to deceive or defraud creditors like FAR WEST.

34. The conduct of the defendants, and each of them amounts to fraud as defined by NRS 205.330.

35. Defendants, and each of them, acted maliciously, oppressively and fraudulently in the transaction described above, entitling FAR WEST to an award of punitive damages as punishment for the defendants' despicable conduct.

36. It has been necessary for FAR WEST to hire an attorney to prosecute this action, and FAR WEST is therefore entitled to an award of attorney's fees.

WHEREFORE, FAR WEST INDUSTRIES prays for judgment as follows:

1. For compensatory damages in an amount exceeding $10,000;
2. For disgorgement by defendant of the $3 million that was allegedly loaned to defendants CANNAVEST AND ROEN;
3. For punitive damages in excess of $10,000;
4. For attorneys' fees and costs according to proof;

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5. For such other and further relief as the Court may deem appropriate.

DATED this 6th day of February, 2014.

LEE, HERNANDEZ, LANDRUM, GAROFALO & BLAKE, APC

By: _____

DAVID S. LEE, ESQ.
Nevada Bar No. 6033
JOHN R. HAWLEY, ESQ.
Nevada Bar No.1545
7575 Vegas Drive, Suite 150
Las Vegas, Nevada 89128

Attorneys for FAR WEST INDUSTRIES

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

CERTIFICATE OF MAILING

Far West Industries vs. Rio Vista Nevada, LLC

I HEREBY CERTIFY that on the 6th day of February, 2014, I hereby certify that I served a copy of the above and foregoing, Complaint and Initial Appearance Fee Disclosure, via U.S. mail, in a sealed envelope, postage prepaid to the following counsel:

John W. Muije, Esq.
JOHN W. MUIJE & ASSOCIATES
1320 S. Casino Center Blvd.
Las Vegas, Nevada 89104
(702) 386-7002
Fax: (702) 386-9135
Email: jmuije@muijeandvarricchio.com
Attorney for Judgment Debtor Michael J. Mona, Jr.
and Michael J. Mona, Jr. as trustee of the Mona
Family Trust Dated February 21, 2002

Norma Ramos

An employee of LEE, HERNANDEZ, LANDRUM, GAROFALO & BLAKE, APC

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Exhibit 4

Electronically Filed
11/10/2015 10:00:25 AM

CLERK OF THE COURT

MOT
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MICHAEL R. ESPOSITO
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Tel: (725) 777-3000
Fax: (725) 777-3112
Attorneys for Defendants,
Roen Ventures, LLC, Mercia Holdings, LLC,
Mai Dun, LLC and Bart Mackay

DISTRICT COURT

CLARK COUNTY, NEVADA

FAR WEST INDUSTRIES, a California corporation, Plaintiff, vs. CANNA VEST CORP., a foreign corporation; ROEN VENTURES, LLC a Nevada limited liability company; MAI DUN, LLC, a Nevada limited liability company; MERCIA HOLDINGS, LLC, a Nevada limited liability company; MICHAEL I. MONA, JR., individually, and as an officer and a director of CANNA VEST CORP., a foreign corporation, and a manager of ROEN VENTURES, LLC a Nevada limited liability company; BART MACKAY, individually, and as a director of CANNA VEST CORP., a foreign corporation, and as a manager and member of ROE, VENTURES, LLC a Nevada limited liability company; Mal DUN, LLC, a Nevada limited li ability company; and MERCIA HOLDINGS, LLC, a Nevada limited liability company; DOES I through 25 inclusive, and ROE corporation 3 through 25, inclusive, Defendants.	CASE NO. A-14-695786-B DEPT. XI Date of Hearing: Time of Hearing:

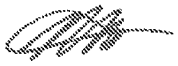
MOTION TO ENFORCE SETTLEMENT AGREEMENT

Defendants, Roen Ventures, LLC, a Nevada limited liability company ("Roen"), Bart Mackay, Mercia Holdings, LLC, a Nevada limited liability company ("Mercia") and Mai Dun, LLC, a Nevada limited liability company ("Mai Dun") (collectively, the "Roen Defendants"), by and through counsel, Erika Pike Turner, Esq. of the law firm of Garman Turner Gordon, LLP, hereby file their Motion to Enforce Settlement Agreement (the "Motion"), enforcing that certain written Settlement Agreement ("Settlement Agreement") entered into between the Roen Defendants and Plaintiff Far West Industries, a California corporation ("Plaintiff") at a September 10, 2015 mediation.

The Motion is supported by the Memorandum of Points and Authorities below, the Declaration of Erika Pike Turner, attached hereto as Exhibit 1, the Settlement Agreement attached hereto as Exhibit 1-A, the pleadings, papers, and other records contained in this Court's file, judicial notice of which is hereby requested, and any evidence or oral argument entertained at the hearing on this matter.

DATED this 10th day of November, 2015.

GARMAN TURNER GORDON LLP



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Las Vegas, Nevada 89119
Tel: (725) 777-3000
Attorneys for Defendants,
Roen Ventures, LLC, Mercia Holdings, LLC,
Mai Dun, LLC and Bart Mackay

NOTICE OF MOTION

YOU, AND EACH OF YOU, will please take notice that the undersigned will bring the above and foregoing Motion on for hearing before this Court on the 11 day of Dec, 2015, at the hour of In Chambers o'clock ____.m. of said day, or as soon thereafter as counsel can be heard in Department No. XI.

Dated this 10th day of November, 2015.

GARMAN TURNER GORDON LLP

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Nevada Bar No. 6454
MICHAEL R. ESPOSITO
Nevada Bar No. 13482
650 White Drive, Suite 100
Las Vegas, Nevada 89119
Tel: (725) 777-3000
Attorneys for Defendants,
Roen Ventures, LLC, Mercia Holdings, LLC,
Mai Dun, LLC and Bart Mackay

MEMORANDUM OF POINTS AND AUTHORITIES

I.
STATEMENT OF FACTS

By this Motion, the Roen Defendants seek to enforce the terms of the Settlement Agreement. On September 10, 2015, the Roen Defendants and Plaintiff met for a settlement conference with the Honorable Stew Bell (Ret.), and after a full day of negotiations reached an agreement. The Settlement Agreement was drafted at the mediation and signed by representatives of the parties. (See Ex. 1-A.)

4. The Settlement Agreement signed by Bart Mackay as authorized representative of the Roen Defendants and Al Lissoy, authorized representative of Plaintiff, contained the following terms:

a. Roen will transfer 1.6 million shares of Cannavest shares and 2 million shares of

Medical Marijuana, Inc. ("MJNA") shares, free and clear of all liens, to Plaintiff or its nominee. Roen will not sell any Cannavest shares for 1 year from the date the shares transferred to Plaintiff become free-trading or when Plaintiff has sold all shares of Cannavest stock transferred, whichever is later.

b. Case No. A-14-695786-B (the present "Case") claims vs. the Roen Defendants will be dismissed with prejudice, each side to bear their own fees and costs.

c. Full mutual release between Plaintiff and the Roen Defendants, save and except any claims that may exist unrelated to the Case. This release in no way effects Plaintiff's ability to collect upon Plaintiff's judgment against Defendant Michael Mona and his trust, including writs of garnishment and execution thereon from the Roen Defendants. This also applies to Rhonda Mona to the extent Plaintiff obtains a judgment against her.

d. This is subject to execution of a formal settlement agreement.

5. On September 25, 2015, counsel for the Roen Defendants emailed a proposed Settlement and Release Agreement to counsel for Plaintiff (the "Settlement and Release Agreement"). A true and accurate copy of the Settlement and Release Agreement is attached hereto as Exhibit 1-B.

6. On September 25, 2015, Plaintiff's counsel indicated she would look at the Settlement and Release Agreement and submit any proposed revisions.

7. On October 2, 2015, after hearing nothing from Plaintiff's counsel regarding proposed revisions or acceptance of the terms of the Settlement and Release Agreement, counsel for Roen Defendants sent a follow up email to check on the status of the proposed revisions.

8. From October 5, 2015 to October 9, 2015, counsel for the parties communicated regarding the status of MJNA stock included in the Settlement and Release Agreement. These email communications ended with counsel for Roen Defendants requesting revisions by end of day, Friday, October 9, 2015. There were no communications from Plaintiff from October 9 to October 26, 2015.

9. On October 26, 2015, counsel for Roen Defendants emailed counsel for Plaintiff

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for a status check.

10. On October 27, 2015, counsel for Plaintiff responded that there were still questions regarding "securities related issues" and more time was needed to respond given that lead counsel for Plaintiff was leaving town for the week.

11. A true and accurate copy of the email communications from September 25, 2015 – October 29, 2015 is attached hereto as Exhibit 1-C.

12. To date, counsel for Plaintiff has failed to respond or otherwise provide comments or edits for the Settlement and Release Agreement.

II.
LEGAL ARGUMENT

A settlement agreement entered into a signed, written instrument is enforceable. EDCR 7.50; The Power Co. v. Henry, 130 Nev. Adv. Op. 21, 321 P.3d 858, 862 (2014), reh'g denied (June 6, 2014). An enforceable settlement agreement has all of the attributes of a judgment, and may be enforced by the Court. Henry, 130 Nev. Adv. Op. 21, 321 P.3d at 862. Settlement agreements, like any contract, should be enforced as written and interpreted according to the basic principles of contract law. Id. at 21; at 863; May v. Anderson, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). Thus, there must be a meeting of the minds, offer, acceptance, and consideration. May, 121 Nev. at 672, 119 P.3d at 1257. Further, the parties must agree to the material terms of the settlement. Id. Where a settlement agreement's "material terms are certain," the Court may either enforce the settlement agreement by entering judgment on the written and signed instrument, or by entering an order includes the terms of the agreement. Henry, 130 Nev. Adv. Op. 21, 321 P.3d at 863.

The parties held a meeting of the minds on September 10, 2015, as articulated in the written Settlement Agreement. (See Ex. 1-A). Plaintiff accepted the Roen Defendants' offer and proposed consideration for a release of claims in the Case, and signed the Settlement Agreement. (Ex. 1-A).

The terms of the Settlement Agreement are unambiguous. There can be no question regarding the nature of the releases or the consideration to be provided therefore. (Ex. 1-A). The

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Las Vegas, Nevada 89119
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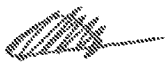
Settlement Agreement goes so far as to explicitly detail out the limitations of releases, stating that Plaintiff may still collect upon its judgment against Defendant Michael Mona and his trust. (Ex. 1-A). Further, the stock being transferred as consideration is clearly identified by the Settlement Agreement. (Exh 1-A). Thus, in this case, the material terms of the Settlement Agreement are certain, were agreed upon in a signed writing, and should be enforced by this Court. Since signing the Settlement Agreement, Plaintiff has done nothing but delay and hinder Roen Defendants attempts to obtain the agreed upon releases. Roen Defendants are attempting to bring an end to a matter that would otherwise result in costly and time-consuming litigation. The Settlement Agreement is a valid contract that will resolve these issues. Therefore, the Court should use its equitable powers to direct Plaintiff to comply with the Settlement Agreement and execute the Settlement and Release Agreement.

III.
CONCLUSION

WHEREFORE, the Roen Defendants respectfully submit that the Court enforce the Settlement Agreement against Plaintiff, and for such further and other relief as the Court deems just and proper.

DATED this 10th day of November, 2015.

GARMAN TURNER GORDON LLP



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Attorneys for Defendants
Roen Ventures, LLC, Mercia Holdings, LLC,
Mai Dun, LLC and Bart Mackay

EXHIBIT 1

EXHIBIT 1

DECL
GARMAN TURNER GORDON LLP
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Attorneys for Defendants,
Roen Ventures, LLC, Mercia Holdings, LLC,
Mai Dun, LLC and Bart Mackay

DISTRICT COURT

CLARK COUNTY, NEVADA

FAR WEST INDUSTRIES, a California corporation, Plaintiff, vs. CANNA VEST CORP., a foreign corporation; ROEN VENTURES, LLC a Nevada limited liability company; MAI DUN, LLC, a Nevada limited liability company; MERCIA HOLDINGS, LLC, a Nevada limited liability company; MICHAEL I. MONA, JR., individually, and as an officer and a director of CANNA VEST CORP., a foreign corporation, and a manager of ROEN VENTURES, LLC a Nevada limited liability company; BART MACKAY, individually, and as a director of CANNA VEST CORP., a foreign corporation, and as a manager and member of ROE, VENTURES, LLC a Nevada limited liability company; Mal DUN, LLC, a Nevada limited li ability company; and MERCIA HOLDINGS, LLC, a Nevada limited liability company; DOES I through 25 inclusive, and ROE corporation 3 through 25, inclusive, Defendants.	CASE NO. A-14-695786-B DEPT. XI

Garman Turner Gordon LLP
Attorneys At Law
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

DECLARATION OF ERIKA PIKE TURNER, ESQ.
IN SUPPORT OF MOTION TO ENFORCE SETTLEMENT AGREEMENT

The undersigned, Erika Pike Turner, Esq., hereby declares under penalty of perjury that the following assertions are true:

1. I am an attorney licensed to practice law in the State of Nevada and a partner with the law firm of Garman Turner Gordon LLP, attorneys for Defendants, Roen Ventures, LLC, a Nevada limited liability company ("Roen"), Bart Mackay, Mercia Holdings, LLC, a Nevada limited liability company ("Mercia") and Mai Dun, LLC, a Nevada limited liability company ("Mai Dun") (collectively, the "Roen Defendants") in the instant action.

2. I am competent to testify to the matters asserted herein, of which I have personal knowledge, except as to those matters stated upon information and belief. As to those matters stated upon information and belief, I believe them to be true.

3. This declaration is made in support of the Roen Defendants' Motion to Enforce Settlement Agreement filed herewith.

4. On September 10, 2015, Roen Defendants and Plaintiff met for a settlement conference with the Honorable Stew Bell (Ret.), and after a full day of negotiations reached an agreement.

5. I drafted a handwritten Settlement Agreement at the mediation, which was then reviewed and signed by representatives of both parties. A true and accurate copy of the Settlement Agreement is attached hereto as Exhibit 1-A.

6. On September 25, 2015, counsel for Roen Defendants emailed a proposed Settlement and Release Agreement to counsel for Plaintiff. A true and accurate copy of the Settlement and Release Agreement is attached hereto as Exhibit 1-B.

7. On September 25, 2015, Plaintiff's counsel indicated she would look at the Settlement and Release Agreement and submit any proposed revisions.

8. On October 2, 2015, after hearing nothing from Plaintiff's counsel regarding proposed revisions or acceptance of the terms of the Settlement and Release Agreement, counsel for Roen Defendants sent a follow up email to check on the status of the proposed revisions.

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9. From October 5, 2015 to October 9, 2015, counsel for the parties communicated regarding the status of Medical Marijuana, Inc. stock included in the Settlement and Release Agreement. These email communications ended with counsel for Roen Defendants requesting revisions by end of day, Friday, October 9, 2015. There were no communications from Plaintiff from October 9 to October 26, 2015.

10. On October 26, 2015, counsel for Roen Defendants emailed counsel for Plaintiff for a status check.

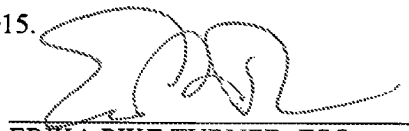
11. On October 27, 2015, counsel for Plaintiff responded that there were still questions regarding "securities related issues" and more time was needed to respond given that lead counsel for Plaintiff was leaving town for the week.

12. A true and accurate copy of the email communications from September 25, 2015 – October 29, 2015 is attached hereto as Exhibit 1-C.

13. To date, counsel for Plaintiff has failed to respond or otherwise provide comments or edits for the Settlement and Release Agreement.

I declare under penalty of perjury of the laws of the United States that these facts are true to the best of my knowledge and belief.

Executed this 10th day of November, 2015.



ERIKA PIKE TURNER, ESQ.

Garman Turner Gordon LLP
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EXHIBIT 1-A

EXHIBIT 1-A

9/10/15

1. Roen Ventures will transfer 1.6 million shares of Canarcot shares and 2 million shares of MJNA shares, free and clear of all liens, to Far West or its nominee. Roen Ventures will not sell any Canarcot shares for 1 year from the date the shares transferred to Far West become free-trading or when Far West has sold all shares of Canarcot stock transferred pursuant to Section 1, whichever is later.

2. Case No A-14-695786-B & claims v. Roen Ventures, Mercia, Mai Dun and Bart Mackay will be dismissed with prejudice, each side to bear their own fees and costs (the "Case").

3. Full mutual release by Far West on one hand and Roen Ventures, Mercia, Mai Dun and Bart Mackay on the other hand, save and except any claims that may exist unrelated to the Case.

Bart Mackay, trade.
Roen Ventures, Mai Dun and Mercia

✓ (4) This release in no way affects Far West's ability to collect upon the ~~[illegible]~~ Far West's judgment against Michael Mona and his trust, including writs of garnishment and execution upon Rosa Ventures, Mai Dun, Mercio Holdings or Bart Mackay. This also applies to Rhonda Mona to the extent Far West obtains a judgment against her.

✓ (5) This is subject to execution of a formal settlement agreement.

Bart R. Mackay
Individually and on behalf of Rosa Ventures LLC, Mercio Holdings LLC, and Mai Dun ~~[illegible]~~ Limited LLC

[signature]
Far West Industries

EXHIBIT 1-B

EXHIBIT 1-B

SETTLEMENT AND RELEASE AGREEMENT

This SETTLEMENT AND RELEASE AGREEMENT ("***Agreement***"), effective as of September 30, 2015 (the "***Effective Date***"), is by and among FAR WEST INDUSTRIES, a California corporation ("***Far West***"), on the one hand, and ROEN VENTURES, LLC, a Nevada limited liability company ("***Roen Ventures***"), MAI DUN LIMITED, LLC, a Nevada limited liability company ("***Mai Dun***"), MERCIA HOLDINGS, INC., a Nevada limited liability company ("***Mercia***"), and BART P. MACKAY, in his individual capacity and as a director of CannaVest Corp. and a manager and member of Roen Ventures, Mai Dun and Mercia ("***Mackay***"), on the other hand. Roen Ventures, Mai Dun, Mercia and Mackay are sometimes individually referred to herein as, a "***Roen Ventures Party***," and together as, the "***Roen Ventures Parties***". For purposes of this Agreement, Far West and the Roen Ventures Parties may individually be referred to as a "***Party***" and collectively be referred to as the "***Parties***."

RECITALS

A. On February 23, 2012, Far West obtained a judgment against defendant Michael Mona, Jr. ("***Mona***") for over Seventeen Million Dollars ($17,000,000), which remains unpaid.

B. On February 7, 2014, Far West commenced an action, Case No. A-14-695786-B (the "*Action*") in the Eighth Judicial District Court, Clark County, Nevada (the "*Court*"), alleging, among other claims, that Mona fraudulently transferred his assets to Roen Ventures for the purpose of avoiding payment to creditors, including Far West.

C. Roen Ventures was organized by Mona and Michael Llamas, and after its organization, Mona loaned to Roen Ventures the original principal sum of $2,000,000, which original principal sum was increased over time to $2,609,449.72 (the "***Mona Loan***").

D. Roen Ventures subsequently loaned approximately $2,000,000 to CannaVest Corp. ("***CannaVest***"), a public company that Mona operates as the Chief Executive Officer.

E. In November 2013, Mona offered to sell his interests in Roen Ventures and the Mona Loan to help settle outstanding debt Mona had incurred with his creditor, Bank of America, N.A. On November 14, 2013, Mackay's wholly owned company, Mai Dun, purchased Mona's fifty percent (50%) interest in Roen Ventures for $500,000.00 pursuant to a written Purchase Agreement. As part of the purchase of Mona's interest in Roen Ventures, Mai Dun also purchased Mona's interest in the Mona Loan.

F. Each of the Parties expressly denies any liability to any other Party for any of the claims or allegations arising out of, in connection with or relating to the Action, or otherwise, and each of the Parties has expended considerable attorneys' fees and costs and expect to incur additional considerable attorneys' fees and costs in the Action to proceed to final judgment, and as reflected herein, the Parties have determined to settle the Action without any admission of liability rather than incur further attorneys' fees and costs.

G. The Parties now wish to fully, finally, and forever settle and resolve the Action, and all claims, allegations and defenses made and asserted or which could have been made

and/or asserted by any of them in the Action, and any additional claims which could be deemed compulsory claims in the Action, except as to such agreements, representations, covenants and warranties contained herein.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, covenants and agreements of the Parties as set forth herein, the Parties to this Agreement hereby agree to settle the Action described above pursuant to the following terms and conditions:

1. Recitals. The foregoing Recitals are true and correct and are incorporated herein by this reference.

2. No Admission of Liability. This Agreement is entered into in compromise, and release, of disputed claims. Each of the Parties acknowledges that the execution of this Agreement is not to be, and shall not be, construed in any way as, an admission of wrongdoing or liability on the part of any of the Parties, or of any other person or business entity, save and except for the obligations set forth in this Agreement. The Parties acknowledge that the execution of this Agreement effects the settlement of disputed claims.

3. Settlement. As full and final settlement of the disputed claims and in consideration of a dismissal of the Action and full mutual Release of Claims, as hereinafter defined, related to the Action and any Claims, as hereinafter defined, asserted or which could have been asserted in the Action, Roen Ventures shall transfer and assign to Far West, (i) 1,600,000 shares of common stock of CannaVest, evidenced by an original certificate(s) registered in the name of Far West, or its nominee (the "***CannaVest Stock***"), and (ii) 2,000,000 shares of common stock of Medical Marijuana, Inc., evidenced by an original certificate(s) registered in the name of Far West, or its nominee (together with the CannaVest Stock, the "***Stock***").

4. Conditions of Settlement. This Agreement is subject to, and expressly conditioned upon, satisfaction by the Parties of the following conditions:

(a) Each Party shall execute and deliver this Agreement to the other Party on or before the Effective Date; and

(b) Roen Ventures shall cause the Stock to be delivered to Far West within fourteen (14) business days after the Effective Date, free and clear of any security interest, lien, pledge, option, or encumbrance (each, a "***Lien***").

5. Representations and Warranties of Far West. As a material inducement for the Roen Ventures Parties to enter into this Agreement, Far West hereby represents and warrants to the Roen Ventures Parties that:

(a) Far West has full power and authority to execute, deliver and perform its obligations under this Agreement, and this Agreement is binding upon and enforceable against Far West in accordance with its terms;

(b) Far West has not assigned or transferred to any person or entity any matter released in Section 9 of this Agreement or any part or portion of any matter released in Section 9 of this Agreement, and all claims, defenses, rights and obligations and causes of action asserted or the subject of this Agreement are in fact owned by it. Far West enters into this Agreement with the intention of binding themselves, and their successors, predecessors, partners, employees, assigns, personal representatives, executors, attorneys, agents and all others who may claim under, through or in connection with each;

(c) As of the Effective Date, Far West has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy; or (iii) to its knowledge, suffered the filing of an involuntary petition in bankruptcy;

(d) Far West acknowledges and understands that the transfer of the Stock is from an insider and that the Stock will have certain resale restrictions governed by the Securities Act of 1933 (the "***Securities Act***"), and agrees to accept the Stock with any such restrictions as may be required by the Securities Act; and

(e) Far West is accepting the Stock for its own account and not with a view to its distribution within the meaning of Section 2(11) of the Securities Act.

6. Representations, Warranties and Covenants of the Roen Ventures Parties. As a material inducement for Far West to enter into this Agreement, the Roen Ventures Parties hereby represent and warrant to Far West that:

(a) Each Roen Ventures Party has full power and authority to execute, deliver and perform its obligations under this Agreement, and that this Agreement is binding upon and enforceable against such Roen Ventures Party in accordance with its terms;

(b) None of the Roen Ventures Parties have assigned or transferred to any person or entity any matter released in Section 9 of this Agreement or any part or portion of any matter released in Section 9 of this Agreement, and all claims, defenses, rights and obligations and causes of action asserted or the subject of this Agreement are in fact owned by the them. Each Roen Ventures Party enters into this Agreement with the intention of binding themselves, and their successors, predecessors, partners, employees, assigns, personal representatives, executors, attorneys, agents and all others who may claim under, through or in connection with each;

(c) As of the Effective Date, the Roen Ventures Parties have not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy; or (iii) to their knowledge, suffered the filing of an involuntary petition in bankruptcy;

(d) Roen Ventures is the beneficial and record owner of the Stock, free and clear of any Lien; and

(e) Roen Ventures will not sell or otherwise transfer or assign any remaining shares of common stock of CannaVest owned by Roen Ventures as of the Effective Date until the later to occur of: (i) one (1) year from the date in which the CannaVest Stock being transferred to Far West hereunder may be freely traded, and (ii) the date on which Far West has

sold or otherwise transferred or assigned all of its shares of the CannaVest Stock being transferred to it hereunder.

7. Full Payment. The foregoing consideration referenced in Section 3 above is tendered as full and complete settlement, and for the release, of all claims and potential claims released by the Parties in Section 9, below, including, without limitation, all matters asserted, or which could have been asserted, including all claims for damages, interest, costs and attorneys' fees incurred in connection with the Action and all such released claims.

8. Dismissal of the Action. Concurrently with the execution of this Agreement, the Parties shall execute a stipulation for dismissal with prejudice of the Action solely with respect to the claims against the Parties to this Agreement, with each Party to bear its own costs and attorneys' fees, in the form attached hereto as Exhibit A. The Parties shall cause such stipulation to be filed with the Court within five (5) business days of satisfaction of the conditions set forth in Section 4 of this Agreement and shall thereafter take such additional actions as either Party or the Court may reasonably request to cause the Action to be dismissed with prejudice.

9. Mutual Release of All Known and Unknown Claims. Upon the satisfaction of the conditions set forth in Section 4 of this Agreement, the Parties and all those claiming through them or on their behalf, including, but not limited to, trustees, officers, directors, owners, shareholders, parents, subsidiaries, affiliates, members, partners, managers, employees, personal representatives, clients, attorneys, agents, spouses (current or former), executors, successors, or assigns, hereby release, acquit, relieve and forever discharge the other Parties, including their trustees, officers, directors, owners, shareholders, parents, subsidiaries, affiliates, members, partners, managers, employees, personal representatives, clients, attorneys, agents, spouses (current or former), executors, successors, or assigns from, and covenant not to directly or indirectly sue for or otherwise assert against the other Parties, in any forum, any and all claims, rights, actions, complaints, demands, causes of action, obligations, promises, contracts, covenants, agreements, controversies, suits, debts, expenses, damages, liens, attorneys' fees, costs, losses, judgments, costs of litigation and suits, interests, orders and/or liabilities of any nature whatsoever, whether arising at law or equity, whether or not now known, asserted or non-asserted, suspected or unsuspected, pending or threatened, matured or unmatured, fixed or contingent (collectively, "***Claims***"), which the Parties had, now have, or may claim to have against the other Parties (either directly or indirectly), arising out of, or related to Claims asserted or which could have been asserted in the Action, or any other act, event, occurrence, or matter whatsoever related to the Action, and/or the relationship and/or alleged relationship between the Parties with regard to the Claims asserted or which could have been asserted in the Action (the "***Release of Claims***"). In making the Release of Claims, it is understood and agreed that each of the Parties specifically warrant and represent that in so doing they have had the full unfettered opportunity to be advised and represented by legal counsel of their own selection, and in executing the Release of Claims they do so relying wholly upon their own judgment and advice of counsel of their independent selection. Each of the Parties hereto have made such investigation of the facts pertaining to the Release of Claims, and of all matters relating hereto, as they deem necessary.

10. Release of Unknown Claims; Waiver of Civil Code § 1542. For the purpose of implementing a full and complete release, the Parties expressly acknowledge that the Release of

Claims given in this Agreement are intended to include, without limitation, claims that each did not know or suspect to exist in their respective favor at the time of the Effective Date of this Agreement, regardless of whether the knowledge of such claims, or the facts upon which they might be based would materially have affected the settlement of this matter; and that the consideration given under this Agreement is also for the release of those claims and contemplates the extinguishment of any such unknown claims, despite the fact that California Civil Code section 1542 may provide otherwise. The Parties acknowledge and understand that they are being represented in this matter by counsel, and acknowledge that they are familiar with the provisions of California Civil Code Section 1542 and expressly waive and relinquish any and all right or benefit available to them in any capacity under the provisions of section 1542, which provides as follows:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

11. Exclusions from Release of Claims. Notwithstanding anything in this Agreement to the contrary, the Parties expressly agree that the scope of the Release of Claims does not extend to any and all claims arising from a breach of any duty or obligation imposed on any of them pursuant to this Agreement or from any claims that may exist or arise out of any other act, event, occurrence or matter wholly unrelated to (i) the Action, (ii) any Claims asserted or which could have been asserted in the Action, (iii) any act, event, occurrence, or matter whatsoever related to the Action, and (iv) the relationship and/or alleged relationship between the Parties with regard to the Claims asserted or which could have been asserted in the Action. In addition, the Release of Claims shall in no way impair or affect Far West's rights and ability to enforce and collect upon the judgment obtained by Far West against defendant Mona and his trust, and any judgment that may be obtained against his spouse (collectively, the "***Mona Parties***"), none of whom are parties to this Agreement, including without limitation, by way of writ of garnishment and execution upon the Roen Ventures Parties with respect to any interest of the Mona Parties.

12. Confidentiality and Non-Disparagement.

(a) Non-Disclosure of this Agreement. Except as stated herein, the Parties represent and agree that they will keep the existence and amount of this settlement and the terms of this Agreement completely confidential and that confidentiality is of the essence of this Agreement. Accordingly, the Parties shall keep confidential and not publicize or disclose the amount, existence, or terms of this Agreement, or the facts and allegations underlying the Action, including the negotiations leading thereto, in any manner whatsoever, whether in writing or orally, to any person, directly or indirectly, or by or through any agent or representative, or otherwise encourage, facilitate or assist any third person in doing so, except as necessary to effectuate the terms of the Agreement and/or to enforce this Agreement, other than to the following: (1) the Parties' attorneys and legal support personnel; (2) accountants; (3) tax

consultants; (4) transfer agents and broker-dealers; or (5) such other representatives or entities as required by law and/or court order. With respect to any individuals referred to in subparts (1) through (5) to whom the Parties disclose any information regarding this Agreement and its terms, the Parties agree that they will inform such individuals that the information is strictly confidential and may not be reviewed, discussed or disclosed, orally or in writing with any other person, organization or entity.

(b) Non-Disparagement. The Parties agree that they will not directly or indirectly engage in any action or make any public or private comments, or solicit, encourage or facilitate any third party in making any public or private comments, that disparage the other Parties, the Parties' employees or Parties' business practices or that disrupt or impair the Parties' normal operations or harm the reputation of the Parties with its customers, suppliers, shareholders or the public,. or that interfere with existing contractual relationships with customers, suppliers or the Parties' associates. The Parties also agree that they will not disclose, directly or indirectly, to third parties any information about the Parties concerning events that gave rise to the allegations contained in the Action.

(c) Enforcement. The Parties' obligations under this Section 12 shall survive the execution of this Agreement, and shall continue for a period of five (5) years. Any of the Parties' breach of any of the promises contained in this Section 12 shall constitute a material breach of this Agreement, which shall entitle the non-breaching Parties to the right to pursue all remedies including injunctive relief for such breach, plus the cost of enforcement consisting of attorney's fees and costs.

13. Enforceability of Agreement. The Parties agree that this Agreement is enforceable under California Code of Civil Procedure Section 664.6.

14. Good Faith Compliance; Cooperation. Each Party hereto agrees to cooperate in good faith and to do all things necessary to effectuate this Agreement.

15. Severability. If any term or provision of this Agreement shall be deemed to be invalid or unenforceable to any extent, the remainder of this Agreement will not be affected thereby, and each remaining term and provision of this Agreement will be valid and be enforced to the fullest extent permitted by law.

16. Waivers. No waiver of any breach or any covenant or provision contained herein will be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision contained herein. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act except those of the waiving Party, which will be extended by a period of time equal to the period of the delay.

17. Successors and Assigns. This Agreement is binding upon and inures to the benefit of the successors and assigns of the Parties hereto.

18. Attorney's Fees; Prevailing Party. All Parties shall bear their own attorney's fees and costs through the execution of this Agreement. In the event of the bringing of any action or suit by a Party hereto by reason of any breach of any of the covenants, agreements or provisions

on the part of the other Party arising out of this Agreement, then in that event, the prevailing Party will be entitled to recover from the other party all costs and expenses of the action or suit, reasonable attorneys' fees, witness fees and any other professional fees resulting therefrom.

19. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto and may not be modified except by an instrument in writing signed by the Party to be charged. This Agreement supersedes all prior agreements and communications between the Parties.

20. Construction. The Parties and their respective advisors believe that this Agreement is the product of all of their efforts, that it expresses their agreement and that it should not be interpreted in favor or against any Party.

21. Governing Law, Jurisdiction and Venue. The Parties hereto expressly agree that this Agreement will be governed by, interpreted under and construed and enforced in accordance with the laws of the State of Nevada. The Parties hereby consent to the jurisdiction of the courts of the State of Nevada in the event any action is brought for declaratory relief or enforcement of any of the terms and provisions of this Agreement, with venue to be in Las Vegas, Nevada.

22. Titles and Headings. Titles and headings of Sections of this Agreement are for convenience of reference only and shall not affect the construction of any provisions of this Agreement.

23. **WAIVER OF JURY TRIAL. THE PARTIES WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

24. Attorney Representation. In negotiation, preparation and execution of this Agreement, the Parties hereby acknowledge that each Party has been represented by its own counsel and that each Party has had an opportunity to consult with an attorney of its own choosing prior to the execution of this Agreement and has been advised that it is in its best interests to do so. The Parties have read this Agreement in its entirety and fully understand the terms and provisions contained herein. The Parties execute this Agreement freely and voluntarily and accept the terms, conditions and provisions of this Agreement, and state that the execution by each of them of this Agreement is free from any coercion whatsoever.

25. Survival. The representations and warranties made herein, as well as the other promises and covenants on the part of the Parties set forth herein, shall survive the Effective Date.

26. Counterparts; Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be deemed to be an original instrument but all of which together shall constitute one agreement. Signatures transmitted and delivered by facsimile or e-mail transmission shall have the same force and effect as original signatures.

[Signature Pages Follows.]

FAR WEST INDUSTRIES,
a California corporation

By: _____
Its: _____
Print Name: _____

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)
) ss:
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, 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 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.

_____
Notary Public

ROEN VENTURES, LLC,

By: _____
Bart P. Mackay, its Manager

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 _____)
) ss:
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared Bart P. Mackay, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

_____
Notary Public

MAI DUN, LLC

By: _____
Bart P. Mackay, its Manager

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 _____)
) ss:
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared Bart P. Mackay, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

_____
Notary Public

MERCIA HOLDINGS, LLC,
a Nevada limited liability company

By: _____
Bart P. Mackay, its Manager

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 _____)
) ss:
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared Bart P. Mackay, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

_____
Notary Public

BART P. MACKAY, individually

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 _____)
) ss:
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared Bart P. Mackay, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon bchalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

_____
Notary Public

EXHIBIT 1-C

EXHIBIT 1-C

Michael Esposito

From:	Erika Turner
Sent:	Friday, November 6, 2015 11:09 AM
To:	Michael Esposito
Subject:	FW: Far West v. Cannavest - Mediation
Attachments:	Roen Ventures Signed Settlement Terms.pdf

From: Christine Murphy
Sent: Thursday, October 29, 2015 4:10 PM
To: Erika Turner <eturner@Gtg.legal>; Andrea M. Gandara <agandara@nevadafirm.com>; Tom Edwards <tedwards@nevadafirm.com>
Cc: Evelyn M. Pastor <epastor@nevadafirm.com>; Tilla Nealon <tnealon@nevadafirm.com>; Dylan Ciciliano <dciciliano@Gtg.legal>; Carie Tofanelli <ctofanelli@Gtg.legal>
Subject: RE: Far West v. Cannavest - Mediation

Tom,

As a follow-up to Erika's email below, the language in numbered paragraph 1 of the signed Settlement Terms is consistent with the fact that the CannaVest Stock would be restricted at the time of transfer. In part it states "Roen Ventures will not sell any CannaVest shares for 1 year from the date the shares transferred to Far West become free-trading..."

I've attached for your convenience a copy of the signed Settlement Terms. If you are back on Monday, let's get on a call to discuss and see if we can finalize the Agreement for execution.

Thanks, Christine

From: Erika Turner
Sent: Tuesday, October 27, 2015 6:51 PM
To: Andrea M. Gandara <agandara@nevadafirm.com>; Tom Edwards <tedwards@nevadafirm.com>; Christine Murphy <cmurphy@Gtg.legal>
Cc: Evelyn M. Pastor <epastor@nevadafirm.com>; Tilla Nealon <tnealon@nevadafirm.com>; Dylan Ciciliano <dciciliano@Gtg.legal>; Carie Tofanelli <ctofanelli@Gtg.legal>
Subject: RE: Far West v. Cannavest - Mediation

No one ever said it would be completely unrestricted, and, in fact, the bar against sale of stock by Roen was triggered by the date the restriction period ended. It has been a month and there is no legitimate reason to hold it up any further. Notwithstanding, if you cannot defer the matter to your associate, then I will hold off on filing the motion until next week. I'm hopeful it will be unnecessary and we will finalize the written agreement early next week.

Erika Pike Turner

From: Tom Edwards <tedwards@nevadafirm.com>
Sent: Tuesday, October 27, 2015 6:15 PM
Subject: RE: Far West v. Cannavest - Mediation
To: Andrea M. Gandara <agandara@nevadafirm.com>, Christine Murphy <cmurphy@gtg.legal>

Cc: Erika Turner <eturner@gtg.legal>, Evelyn M. Pastor <epastor@nevadafirm.com>, Tilla Nealon <tnealon@nevadafirm.com>, Dylan Ciciliano <dciciliano@gtg.legal>, Carie Tofanelli <ctofanelli@gtg.legal>

Christine,

At the status check last week, we advised the judge of the settlement and that it would take a few weeks to finalize the settlement. The judge vacated the trial and the pre-trial dates and set a status check in chambers about 4 weeks out. Accordingly, while we are working diligently to finalize the settlement, we are not up against any court deadlines.

We are still struggling with some of the securities related issues, like the fact that the CannaVest stock will be restricted for 6 months, when it was discussed at the settlement that the CannaVest stock would be unrestricted once it was transferred to Far West.

In addition, I will be out of town for the rest of the week.

For these reasons, we request that you not file your motion to enforce the settlement at this time.

Thanks,
Tom

From: Christine Murphy [mailto:cmurphy@Gtg.legal]
Sent: Monday, October 26, 2015 2:44 PM
To: Tom Edwards; Andrea M. Gandara
Cc: Carie Tofanelli; Tilla Nealon; Evelyn M. Pastor; Dylan Ciciliano; Erika Turner
Subject: RE: Far West v. Cannavest - Mediation

Tom,

I wanted to once again follow-up on finalizing the Settlement Agreement for the above-referenced case. We have not heard anything back from you or Andrea since we responded to your inquiry regarding the Medical Marijuana, Inc. shares and we are still awaiting any comments you may have to the Agreement. Please advise. If we don't have any comments back to the Settlement Agreement by close of business on Wednesday, we will be filing a motion to enforce the signed settlement terms from the mediation.

Thanks, Christine

From: Christine Murphy
Sent: Friday, October 9, 2015 10:24 AM
To: 'Tom Edwards' <tedwards@nevadafirm.com>; Andrea M. Gandara <agandara@nevadafirm.com>
Cc: Carie Tofanelli <ctofanelli@Gtg.legal>; Tilla Nealon <tnealon@nevadafirm.com>; Evelyn M. Pastor <epastor@nevadafirm.com>
Subject: RE: Far West v. Cannavest - Mediation

Tom,

No, the Medical Marijuana, Inc. shares are not restricted. Once the Agreement is signed, Bart will contact the transfer agent who will document the transfer and issue a Stock Certificate to your client which will not have a restrictive legend on it. This is also the need for the 10 business days, so that the transfer agent can issue a Certificate.

If you have any further questions, please contact me. Also, I'm assuming that you have some additional comments to the Agreement itself. If so, can I expect to get your comments by the end of the day today.

Thanks, Christine

From: Tom Edwards [mailto:tedwards@nevadafirm.com]
Sent: Wednesday, October 7, 2015 4:25 PM
To: Christine Murphy <cmurphy@Gtg.legal>; Andrea M. Gandara <agandara@nevadafirm.com>
Cc: Carie Tofanelli <ctofanelli@Gtg.legal>; Tilla Nealon <tnealon@nevadafirm.com>; Evelyn M. Pastor <epastor@nevadafirm.com>
Subject: RE: Far West v. Cannavest - Mediation

Christine,

We are analyzing the securities related issues. Are the Medical Marijuana, Inc. shares resisted? If so, can the legend be removed? Can you email us the stock certificates for both Cannavest and Medical Marijuana, Inc.?

Thanks,
Tom

From: Christine Murphy [mailto:cmurphy@Gtg.legal]
Sent: Wednesday, October 07, 2015 2:22 PM
To: Andrea M. Gandara
Cc: Carie Tofanelli; Tom Edwards; Tilla Nealon; Evelyn M. Pastor
Subject: RE: Far West v. Cannavest - Mediation

Good afternoon Andrea,

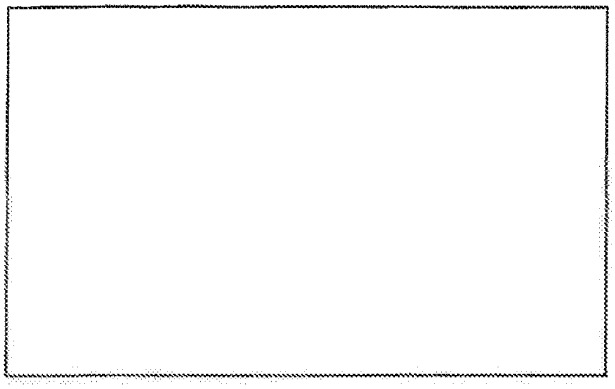
Could you please let me know where things stand on comments to the settlement agreement?

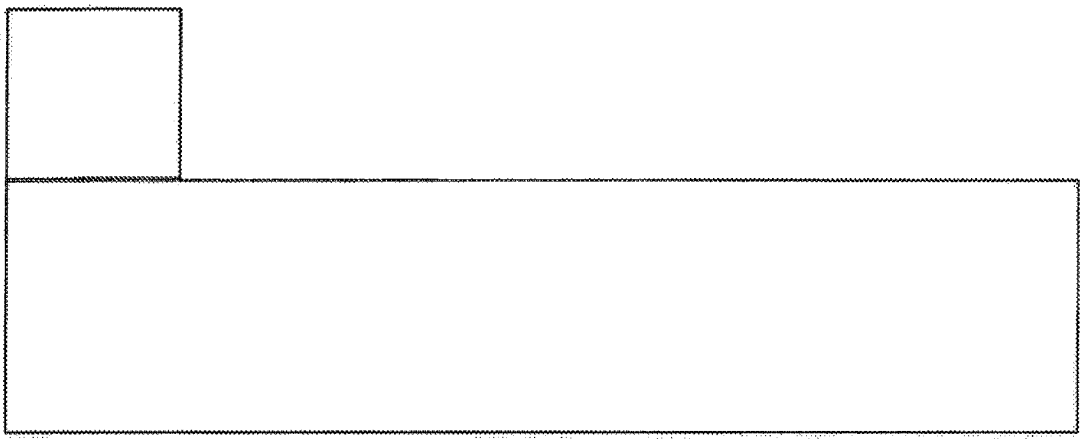
Thanks, Christine

From: Andrea M. Gandara [mailto:agandara@nevadafirm.com]
Sent: Monday, October 5, 2015 7:56 AM
To: Christine Murphy <cmurphy@Gtg.legal>
Cc: Carie Tofanelli <ctofanelli@Gtg.legal>; Tom Edwards <tedwards@nevadafirm.com>; Tilla Nealon <tnealon@nevadafirm.com>; Evelyn M. Pastor <epastor@nevadafirm.com>
Subject: RE: Far West v. Cannavest - Mediation

Hi Christine,

We are waiting for client comments. I will forward as soon as we get those back. Thanks.





From: Christine Murphy [mailto:cmurphy@Gtg.legal]
Sent: Friday, October 02, 2015 12:17 PM
To: Andrea M. Gandara
Cc: Carie Tofanelli; Tom Edwards; Tilla Nealon; Evelyn M. Pastor
Subject: RE: Far West v. Cannavest - Mediation

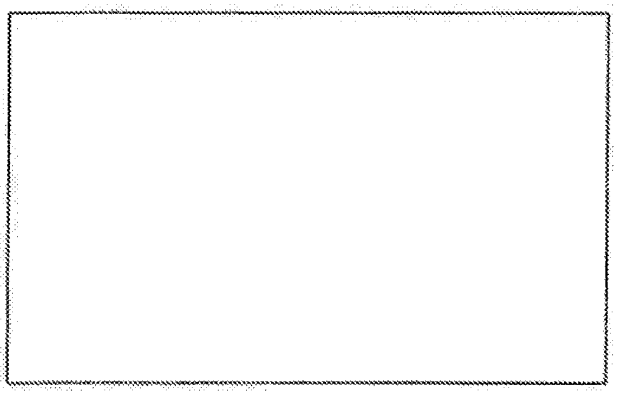
Good afternoon Andrea,

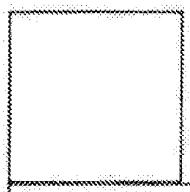
I wanted to check in to see where things stood with your review of the Settlement Agreement. Please let me know when we should expect comments back so that we can be in a position to finalize.

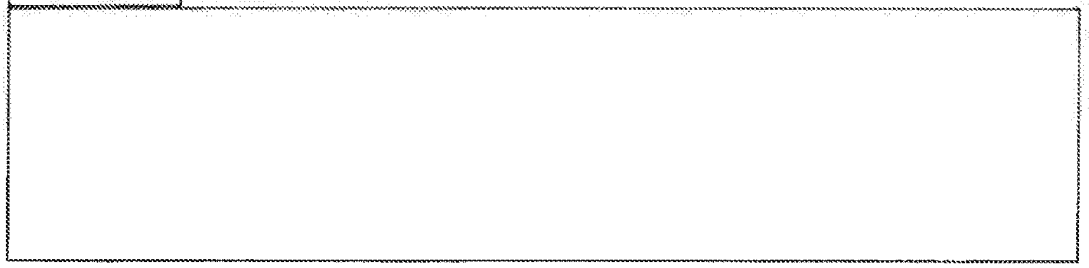
Thanks, Christine

From: Andrea M. Gandara [mailto:agandara@nevadafirm.com]
Sent: Friday, September 25, 2015 4:22 PM
To: Christine Murphy <cmurphy@Gtg.legal>
Cc: Carie Tofanelli <ctofanelli@Gtg.legal>; Tom Edwards <tedwards@nevadafirm.com>; Tilla Nealon <tnealon@nevadafirm.com>; Evelyn M. Pastor <epastor@nevadafirm.com>
Subject: RE: Far West v. Cannavest - Mediation

Thank you Christine. We will take a look and forward any revisions. Have a nice weekend.







From: Christine Murphy [mailto:cmurphy@Gtg.legal]
Sent: Friday, September 25, 2015 4:18 PM
To: Andrea M. Gandara
Cc: Carie Tofanelli
Subject: Far West v. Cannavest - Mediation

Andrea,

Attached please find a draft of the Settlement Agreement for your review. Please note that in the interest of time, this Agreement is being circulated to our client for simultaneous review, and thus, remains subject to change with all rights reserved.

If you have any questions or comments, please let me know. Thanks, Christine

Exhibit 5

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CLERK OF THE COURT

NEOJ
GARMAN TURNER GORDON LLP
ERIKA PIKE TURNER
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DYLAN T. CICILIANO
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Fax: (725) 777-3112
Attorneys for Defendants,
Roen Ventures, LLC, Mercia Holdings, LLC,
Mai Dun, LLC and Bart Mackay

DISTRICT COURT

CLARK COUNTY, NEVADA

FAR WEST INDUSTRIES, a California corporation,

Plaintiff,

vs.

CANNAVEST CORP., a foreign corporation; ROEN VENTURES, LLC, a Nevada limited liability company; MICHAEL J. MONA, JR., an officer and director of CANNAVEST CORP., a foreign corporation, and a manager of ROEN VENTURES, LLC, a Nevada limited liability company; BART MACKAY, a director of CANNAVEST CORP., a foreign corporation, and a manager and member of ROEN VENTURES, LLC, a Nevada limited liability company; DOES 1 through 25 inclusive, and ROE corporation 1 through 25, inclusive,

Defendants.

CASE NO. A-14-695786-B
DEPT. XI

NOTICE OF ENTRY OF ORDER

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NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Granting In Part And Denying In Part Motion To Enforce Settlement, a copy of which is attached hereto, was entered in the above-entitled matter on the 29th day of January, 2016 and signed by the Honorable Elizabeth Gonzalez on January 29, 2016.

Dated this 29th day of January, 2016.

GARMAN TURNER GORDON LLP

ERIKA PIKE TURNER
Nevada Bar No. 6454
DYLAN T. CICILIANO
Nevada Bar No. 12348
650 White Drive, Suite 100
Las Vegas, Nevada 89119
(725) 777-3000
Attorneys for Defendants,
Roen Ventures, LLC, Mercia Holdings, LLC, Mai Dun, LLC and Bart Mackay

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART MOTION TO ENFORCE SETTLEMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 29th day of January, 2016. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:[1]

Holley Driggs Walch Fine Wray Puzey & Thompson	
Contact	**Email**
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Tilla Nealon	tnealon@nevadafirm.com
Tom Edwards	tedwards@nevadafirm.com
Lee, Hernandez, Landrum & Garofalo	
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/s/ Karen Stupeck
Karen Stupeck, an employee of
GARMAN TURNER GORDON LLP

[1] 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).

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CLERK OF THE COURT

GARMAN TURNER GORDON LLP
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Tel: (725) 777-3000
Fax: (725) 777-3112
Attorneys for Defendants,
Roen Ventures, LLC, Mercia Holdings, LLC,
Mai Dun, LLC and Bart Mackay

DISTRICT COURT

CLARK COUNTY, NEVADA

FAR WEST INDUSTRIES, a California corporation,

Plaintiff,

vs.

CANNAVEST CORP., a foreign corporation; ROEN VENTURES, LLC, a Nevada limited liability company; MICHAEL J. MONA, JR., an officer and director of CANNAVEST CORP., a foreign corporation, and a manager of ROEN VENTURES, LLC, a Nevada limited liability company; BART MACKAY, a director of CANNAVEST CORP., a foreign corporation, and a manager and member of ROEN VENTURES, LLC, a Nevada limited liability company; DOES 1 through 25 inclusive, and ROE corporation 1 through 25, inclusive,

Defendants.

CASE NO. A-14-695786-B
DEPT. XI

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO ENFORCE SETTLEMENT

Date of Hearing: January 14, 2016
Time of Hearing: 8:30 a.m.

On January 14, 2016, Defendants Motion to Enforce Settlement Agreement came before the Court. Erika Pike Turner, Esq. and Dylan T. Ciciliano, Esq. appeared on behalf of the Defendants Roen Ventures, LLC, a Nevada limited liability company ("Roen"), Bart Mackay, Mercia Holdings, LLC, a Nevada limited liability company ("Mercia") and Mai Dun, LLC, a Nevada limited liability company ("Mai Dun") (collectively, the "Roen Defendants"). Thomas Edwards, Esq. appeared on behalf of Plaintiff Far West Industries (the "Far West").

The Court having reviewed and considered the Motion to Enforce Settlement Agreement (the "Motion"), the other papers and pleadings already on file herein, including Far West's Opposition to the Motion to Enforce Settlement Agreement, Defendants' Reply to Far West Industries' Opposition to Motion to Enforce Settlement Agreement, Far West's Sur-Reply to Motion to Enforce Settlement Agreement and oral argument permitted at the hearing of this matter, and good cause appearing therefor:

IT IS ORDERED that the Motion is GRANTED IN PART as the parties entered into a settlement agreement in the form of Exhibit 1-A to the Motion and the terms of their agreement are reflected in Exhibit 1-A to the Motion.

IT IS FURTHER ORDERED that the Motion is DENIED IN PART because Exhibit 1-B to the Motion is not the settlement between the parties and if the parties still have issues related to the language in Exhibit 1-B, for example as to the releases or reservations of rights, the parties are to include the appropriate language in the formal settlement agreement.

IT IS HEREBY ORDERED this 29th day of January, 2016.

DISTRICT COURT JUDGE

Prepared and Submitted by:

GARMAN TURNER GORDON LLP

GARMAN TURNER GORDON LLP
ERIKA PIKE TURNER
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DYLAN T. CICILIANO
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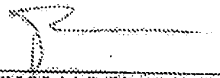
Las Vegas, Nevada 89119
Tel: (725) 777-3000
Fax: (725) 777-3112
Attorneys for Defendants,
Roen Ventures, LLC, Mercia Holdings, LLC,
Mai Dun, LLC and Bart Mackay

Agreed to as to form by:

HOLLEY DRIGGS WALCH
FINE WRAY PUZEY & THOMPSON



F. THOMAS EDWARDS. ESQ
Nevada Bar No. 9549
Email: tedwards@nevadafirm.com
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Tel: (702) 791-0308
Fax: (702) 791-1912
Attorneys for Plaintiff Far West Industries

Exhibit 6

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CLERK OF THE COURT

MOT
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Las Vegas, Nevada 89119
Tel: (725) 777-3000
Fax: (725) 777-3112
Attorneys for Defendants,
Roen Ventures, LLC, Mercia Holdings, LLC,
Mai Dun, LLC and Bart Mackay

DISTRICT COURT

CLARK COUNTY, NEVADA

FAR WEST INDUSTRIES, a California corporation,

Plaintiff,

vs.

CANNA VEST CORP., a foreign corporation; ROEN VENTURES, LLC a Nevada limited liability company; MAI DUN, LLC, a Nevada limited liability company; MERCIA HOLDINGS, LLC, a Nevada limited liability company; MICHAEL I. MONA, JR., individually, and as an officer and a director of CANNA VEST CORP., a foreign corporation, and a manager of ROEN VENTURES, LLC a Nevada limited liability company; BART MACKAY, individually, and as a director of CANNA VEST CORP., a foreign corporation, and as a manager and member of ROE, VENTURES, LLC a Nevada limited liability company; Mal DUN, LLC, a Nevada limited li ability company; and MERCIA HOLDINGS, LLC, a Nevada limited liability company; DOES I through 25 inclusive, and ROE corporation 3 through 25, inclusive,

Defendants.

CASE NO. A-14-695786-B
DEPT. XI

MOTION TO DISMISS THE ROEN DEFENDANTS WITH PREJUDICE

Date of Hearing:
Time of Hearing:

///

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

MOTION TO DISMISS THE ROEN DEFENDANTS WITH PREJUDICE

Defendants, Roen Ventures, LLC, a Nevada limited liability company ("Roen"), Bart Mackay, Mercia Holdings, LLC, a Nevada limited liability company ("Mercia") and Mai Dun, LLC, a Nevada limited liability company ("Mai Dun") (collectively, the "Roen Defendants"), by and through counsel, Erika Pike Turner, Esq. of the law firm of Garman Turner Gordon, LLP, hereby file their Motion to Dismiss the Roen Defendants with Prejudice (the "Motion"), enforcing that certain written Settlement Agreement ("Settlement Agreement") entered into between the Roen Defendants and Plaintiff Far West Industries, a California corporation ("Plaintiff").

The Motion is supported by the Memorandum of Points and Authorities below, the Settlement Agreement, attached hereto as Exhibit 1, the Declaration of Dylan T. Ciciliano, attached hereto as Exhibit 2, the pleadings, papers, and other records contained in this Court's file, judicial notice of which is hereby requested, and any evidence or oral argument entertained at the hearing on this matter.

DATED this 3rd day of March, 2016.

GARMAN TURNER GORDON LLP

/s/ Dylan T. Ciciliano
ERIKA PIKE TURNER
Nevada Bar No. 6454
DYLAN T. CICILIANO
Nevada Bar No. 12348
650 White Drive, Suite 100
Las Vegas, Nevada 89119
Tel: (725) 777-3000
Attorneys for Defendants,
Roen Ventures, LLC, Mercia Holdings, LLC,
Mai Dun, LLC and Bart Mackay

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NOTICE OF MOTION

YOU, AND EACH OF YOU, will please take notice that the undersigned will bring the above and foregoing Motion on for hearing before this Court on the 5 day of April, 2016, at the hour of 8:30 o'clock a.m. of said day, or as soon thereafter as counsel can be heard in Department No. XI.

Dated this 3rd day of March, 2016.

GARMAN TURNER GORDON LLP

/s/ Dylan T. Ciciliano
ERIKA PIKE TURNER
Nevada Bar No. 6454
DYLAN T. CICILIANO
Nevada Bar No. 12348
650 White Drive, Suite 100
Las Vegas, Nevada 89119
Tel: (725) 777-3000
Attorneys for Defendants,
Roen Ventures, LLC, Mercia Holdings, LLC,
Mai Dun, LLC and Bart Mackay

MEMORANDUM OF POINTS AND AUTHORITIES

I.
STATEMENT OF FACTS

By this Motion, the Roen Defendants again seek to enforce the terms of the Settlement Agreement, which require the Roen Defendants be dismissed with prejudice. On January 29, 2016, the Court entered its Order confirming that the Parties had reached a settlement agreement on September 10, 2015. In that Order, the Court identified that the hand-written document was the Settlement Agreement between the parties. (See Exh. 1).

The Settlement Agreement provides that the Roen Defendants will provide 2,000,000 shares of Medical Marijuan, Inc. and 1,600,000 shares of CannaVEST Corp. to Far West in return for dismissal of the Roen Defendants in Case No. A-14-695786-B (the present "Case"), with prejudice, each side to bear their own fees and costs. (See Exh. 1).

The shares called for in the Settlement Agreement have been transferred to Far West. (See **Exhibit 2-A**; **Exhibit 2-B**).

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

II.

LEGAL ARGUMENT

A settlement agreement entered into a signed, written instrument is enforceable. EDCR 7.50; The Power Co. v. Henry, 130 Nev. Adv. Op. 21, 321 P.3d 858, 862 (2014), reh'g denied (June 6, 2014). An enforceable settlement agreement has all of the attributes of a judgment, and may be enforced by the Court. Henry, 130 Nev. Adv. Op. 21, 321 P.3d at 862. Settlement agreements, like any contract, should be enforced as written and interpreted according to the basic principles of contract law. Id. at 21; at 863; May v. Anderson, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). Thus, there must be a meeting of the minds, offer, acceptance, and consideration. May, 121 Nev. at 672, 119 P.3d at 1257. Further, the parties must agree to the material terms of the settlement. Id. Where a settlement agreement's "material terms are certain," the Court should either enforce the settlement agreement by entering judgment on the written and signed instrument, or by entering an order that includes the terms of the agreement. Henry, 130 Nev. Adv. Op. 21, 321 P.3d at 863.

The Court has already found that the parties' September 10, 2013 Settlement Agreement is enforceable. (See Exhibit 1). The Settlement Agreement unambiguously provides that Roen Ventures will transfer 1.6 million Cannavest Shares and 2 million MJNA shares to Far West (the "Shares"). In exchange, the claims against the Roen Defendants "will be dismissed, with prejudice, each side to bear their own fees and costs" (the "Dismissal").

The Shares have been transferred to Plaintiff. (See Exhs. 2-A, 2-B). The only remaining action under the Settlement Agreement is the dismissal of the Roen Defendants with prejudice. Accordingly, the Roen Defendants respectfully request that the Court enter the proposed order, attached hereto as Exhibit 3, dismissing the Roen Defendants with prejudice.

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Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

III.

CONCLUSION

The Roen Defendants respectfully request that the underlying matter be dismissed with prejudice with respect to the Roen Defendants.

DATED this 3rd day of March, 2016.

GARMAN TURNER GORDON LLP

/s/ Dylan T. Ciciliano
ERIKA PIKE TURNER
Nevada Bar No. 6454
DYLAN T. CICILIANO
Nevada Bar No. 12348
650 White Drive, Suite 100
Las Vegas, Nevada 89119
Tel: (725) 777-3000
Attorneys for Defendants
Roen Ventures, LLC, Mercia Holdings, LLC, Mai Dun, LLC and Bart Mackay

CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION TO DISMISS THE ROEN DEFENDANTS WITH PREJUDICE was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 3rd day of March, 2016. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:[1]

Holley Driggs Walch Fine Wray Puzey & Thompson	
Contact	**Email**
Andrea M. Gandara	agandara@nevadafirm.com
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Tilla Nealon	tnealon@nevadafirm.com
Tom Edwards	tedwards@nevadafirm.com
Lee, Hernandez, Landrum & Garofalo	
Contact	**Email**
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Dara or Colleen	lee-lawfirm@live.com
Marquis Aurbach Coffing	
Contact	**Email**
Rosie Wesp	rwesp@maclaw.com
Tye Hanseen, Esq.	thanseen@maclaw.com

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

/s/ Rebecca Post
Rebecca Post, an employee of
GARMAN TURNER GORDON LLP

[1] 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).

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

Exhibit 1

9/10/15

1. Roen Ventures will transfer 1.6 million shares of Canvarest shares and 2 million shares of MJNA shares, free and clear of all liens, to Far West or its nominee. Roen Ventures will not sell any Canvarest shares for 1 year from the date the shares transferred to Far West become free-trading or when Far West has sold all shares of Canvarest shares transferred pursuant to Section 1, whichever is later.

2. Case No A-14-695786-B & claims v. Roen Ventures, Mercia, Mai Dao and Bart Mackay will be dismissed, with prejudice, each side to bear their own Fees and costs (the "Case").

3. Full mutual release by Far West on one hand and Roen Ventures, Mercia, Mai Dao and Bart Mackay on the other hand, save and except any claims that may exist unrelated to the Case.

Bart P. Mackay, individ.
Roen Ventures, Mai Dao and Mercia

✓(4) This release in no way effects Far West's ability to collect upon the Far West's judgment against Michael Mona and his trust, including writs of garnishment and examinations from Rose Ventures, Mr. Dan, Mercia Holdings or Bert Mackay. This also applies to Rhonda Mona to the extent Far West obtains a judgment against her.

✓(5) This is subject to execution of a formal settlement agreement.

Scott McKay
Individually and
on behalf of Rose Ventures LLC
Mercia Holdings LLC, and
Mr. Dan [illegible] LLC
Limited

Jon Christensen

Exhibit 2

DECLARATION OF DYLAN T. CICILIANO, ESQ. IN SUPPORT OF MOTION FOR TO DISMISS ROEN DEFENDANTS WITH PREJUDICE

I, Dylan T. Ciciliano, declare and state as follows:

1. I am an attorney with the law firm of Garman Turner Gordon, LLP, counsel for Defendants, Roen Ventures, LLC, Mercia Holdings, LLC, Mai Dun, LLC and Bart Mackay, ("Roen Defendants") in the above-captioned matter. I am duly licensed to practice before all courts in the State of Nevada and I have personal knowledge of all facts addressed herein, and if called upon to testify, could and would do so.

2. I make this declaration in support of Roen Defendant's Motion to Dismiss Roen Defendants with Prejudice.

3. **Exhibit 2-A** is a true and correct copy of the CannaVest Stock Certificate.

4. **Exhibit 2-B** is a true and correct copy of the MJNA Stock Certificate.

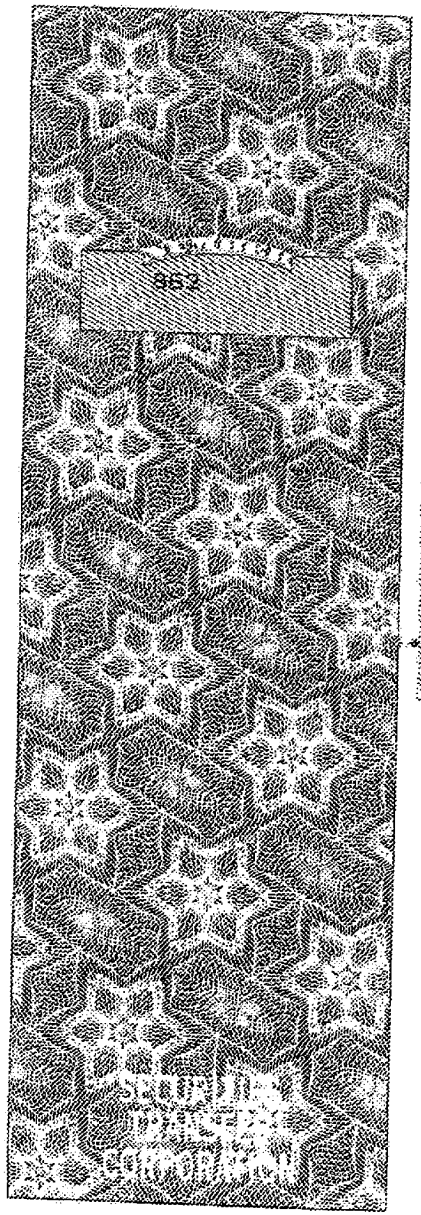
I declare under penalty of perjury under the laws of the State of Nevada (NRS 53.045) that the foregoing is true and correct.

Executed this 24th day of February, 2016.

Dylan T. Ciciliano

Garman Turner Gordon
650 White Drive, Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

Exhibit 2-A



CannaVEST CORP.

CUSIP 137653 10 1

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

COMMON STOCK

SEE REVERSE FOR
CERTAIN DEFINITIONS

TRANSFER SUBJECT TO
LEGEND ON REVERSE SIDE

SHARES

****1,600,000**

This certifies that 001162

FAR WEST INDUSTRIES

is the owner of

********ONE MILLION, SIX HUNDRED THOUSAND Shares of CANNAVEST CORPORATION

FULLY PAID AND NON-ASSESSABLE SHARES OF THE COMMON STOCK, $0.0001 PAR VALUE, OF
CannaVEST CORP.

(hereinafter called the "Corporation"), transferable on the books of the Corporation by the holder hereof in person or by duly authorized attorney, upon surrender of the Certificate properly endorsed. This certificate and the shares represented hereby are issued and shall be held subject to all the provisions of the Articles of Incorporation, as amended, and the Bylaws of the Corporation, as amended (copies of which are on file at the office of the Transfer Agent), to all of which the holder of this Certificate by acceptance hereof assents. This Certificate is not valid unless countersigned and registered by the Transfer Agent and Registrar. Witness the facsimile seal of the Corporation and the facsimile signatures of its duly authorized officers.

DATE FEBRUARY 24TH, 2016

CHIEF EXECUTIVE OFFICER

SECRETARY

CannaVEST CORP. CORPORATE SEAL DELAWARE

Countersigned:

SECURITIES TRANSFER CORPORATION
P.O. Box 701629
Dallas, Tx. 75370

By:

TRANSFER AGENT - AUTHORIZED SIGNATURE

CannaVEST CORP.

TRANSFER SUBJECT TO FEE SCHEDULE

A FULL STATEMENT OF THE RELATIVE RIGHTS, INTERESTS, PREFERENCES AND RESTRICTIONS OF EACH CLASS OF STOCK WILL BE FURNISHED BY THE CORPORATION TO ANY SHAREHOLDER UPON WRITTEN REQUEST, WITHOUT CHARGE.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	- as tenants in common	UNIF GIFT MIN ACT	- .....Custodian.....
TEN ENT	- as tenants by the entireties		(Cust) (Minor)
JT TEN	- as joint tenants with right of survivorship and not as tenants in common		under Uniform Gifts to Minors Act.....
			(State)

Additional abbreviations may also be used though not in the above list.

For value received.....*hereby sell assign and transfer unto*

Please insert Social Security or other identifying number of assignee

.....

.....

Please print or typewrite name and address including postal zip code of assignee

.....

.....

.....*Shares*

of the Common Stock represented by the within Certificate and do hereby irrevocably constitute and appoint.....

.....

Attorney to transfer the said stock on the books of the within-named Corporation with full power of substitution in the premises.

Dated....., 20.....

Signature:

X.....

X.....

X NOTICE: The signature to this assignment must correspond with the name as written upon the face of the Certificate, in every particular, without alteration or enlargement, or any change whatever.

Signature Guarantee:

THE SIGNATURE(S) SHOULD BE MEDALLION STAMP GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION PURSUANT TO S.E.C. RULE 17AD-15
Signature(s) guaranteed by:

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY OTHER SECURITIES LAWS AND MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED, ASSIGNED, HYPOTHECATED OR OTHERWISE DISPOSED EXCEPT (I) UPON EFFECTIVE REGISTRATION OF THE SECURITIES UNDER THE ACT AND OTHER APPLICABLE SECURITIES LAWS COVERING SUCH SECURITIES OR (II) UPON ACCEPTANCE BY THE COMPANY OF AN OPINION OF COUNSEL IN SUCH FORM AND BY SUCH COUNSEL, OR OTHER DOCUMENTATION, AS IS SATISFACTORY TO COUNSEL FOR THE COMPANY TO THE EFFECT THAT SUCH REGISTRATION IS NOT REQUIRED.

Exhibit 2-B

INCORPORATED UNDER THE LAWS OF OREGON

NUMBER

94482

SHARES

2,000,000

Fully Paid Non Assessable $0.01 Par Value **COMMON STOCK**

CUSIP NO. 58463A 105

THIS CERTIFIES THAT ***FAR WEST INDUSTRIES***

IS THE RECORD HOLDER OF ***TWO MILLION ***

Shares of *MEDICAL MARIJUANA, INC.* *Capital Stock*
transferable on the books of the Corporation by the holder in person or by duly authorized attorney upon surrender of this Certificate properly endorsed. This Certificate is not valid until countersigned by the Transfer Agent and registered by the Registrar.
WITNESS the facsimile seal of the Corporation and the facsimile signature of its duly authorized officers.

Dated: February 23, 2016

COUNTERSIGNED AND REGISTERED
ACTION STOCK TRANSFER CORP.
2469 E Fl. Union Blvd., #214, Salt Lake City, UT 84121
By:
TRANSFER AGENT AUTHORIZED SIGNATURE

Stuart W. Titus
PRESIDENT

MEDICAL MARIJUANA, INC.
SEAL
OREGON

Stuart W. Titus
SECRETARY

Exhibit 3

GARMAN TURNER GORDON LLP
ERIKA PIKE TURNER
Nevada Bar No. 6454
Email: eturner@gtg.legal
DYLAN T. CICILIANO
Nevada Bar No. 12348
Email: dciciliano@gtg.legal
650 White Drive, Suite 100
Las Vegas, Nevada 89119
Tel: (725) 777-3000
Fax: (725) 777-3112
Attorneys for Defendants,
Roen Ventures, LLC, Mercia Holdings, LLC,
Mai Dun, LLC and Bart Mackay

DISTRICT COURT

CLARK COUNTY, NEVADA

FAR WEST INDUSTRIES, a California corporation,

Plaintiff,

vs.

CANNA VEST CORP., a foreign corporation; ROEN VENTURES, LLC a Nevada limited liability company; MAI DUN, LLC, a Nevada limited liability company; MERCIA HOLDINGS, LLC, a Nevada limited liability company; MICHAEL I. MONA, JR., individually, and as an officer and a director of CANNA VEST CORP., a foreign corporation, and a manager of ROEN VENTURES, LLC a Nevada limited liability company; BART MACKAY, individually, and as a director of CANNA VEST CORP., a foreign corporation, and as a manager and member of ROE, VENTURES, LLC a Nevada limited liability company; Mal DUN, LLC, a Nevada limited li ability company; and MERCIA HOLDINGS, LLC, a Nevada limited liability company; DOES I through 25 inclusive, and ROE corporation 3 through 25, inclusive,

Defendants.

CASE NO. A-14-695786-B
DEPT. XI

PROPOSED ORDER TO DISMISS THE ROEN DEFENDANTS WITH PREJUDICE

PROPOSED ORDER TO DISMISS THE ROEN DEFENDANTS WITH PREJUDICE

Defendants Roen Ventures, LLC ("Roen"), Bart Mackay, Mercia Holdings, LLC ("Mercia") and Mai Dun, LLC ("Mai Dun") (collectively, the "Roen Defendants") (collectively, the "Roen Defendants") filed their Motion to Dismiss the Roen Defendants with Prejudice on February 26, 2016. After considering all responsive pleadings thereto, the Court finds as follows.

On or about September 10, 2015, the parties entered into a settlement agreement. The Court previously found that Exhibit 1-A to the Motion to Enforce Settlement Agreement is the settlement agreement (the "Settlement Agreement") between the Roen Defendants and Plaintiff Far West Industries ("Far West"). (See Order Granting in Part and Denying in Part Motion to Enforce Settlement, on file *herein*). The Settlement Agreement provides that the Roen Defendants shall transfer 2,000,000 shares of Medical Marijuan, Inc. and 1,600,000 shares of CannaVEST Corp. to Far West. In exchange, the Roen Parties shall be dismissed from the above captioned matter with prejudice, with each side to bear their own fees and costs.

The Roen Defendants have transferred 2,000,000 shares of Medical Marijuan, Inc. and 1,600,000 shares of CannaVEST Corp. to Far West.

IT IS THEREFORE ORDERED THAT the Roen Defendants are dismissed with prejudice, with each party to bear its own fees and costs incurred in this action.

IT IS SO ORDERED this _____ day of March, 2016.

_____
DISTRICT COURT JUDGE

Submitted by:

GARMAN TURNER GORDON

ERIKA PIKE TURNER
Nevada Bar No. 6454
DYLAN T. CICILIANO
Nevada Bar No. 12348
Attorneys for Defendants,
Roen Ventures, LLC, Mercia Holdings, LLC,
Mai Dun, LLC and Bart Mackay

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

Exhibit 7

WRTG
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

WRIT OF GARNISHMENT

THE STATE OF NEVADA TO:

BART A. MACKAY, RESIDENT AGENT AND MANAGER
ROEN VENTURES, LLC
6325 SOUTH JONES BOULEVARD
SUITE 500
LAS VEGAS, NEVADA 89118

You are hereby notified that you are attached as garnishee in the above entitled action and you are commanded not to pay any debt from yourself to Defendant MICHAEL J. MONA, JR. ("Judgment Debtor" or "Defendant"), and that you must retain possession and control of all personal property, money, credit, debts, effects and choses in action of Defendant in order that the same may be dealt with according to law. Where such property consists of wages, salaries,

commissions or bonuses, the amount you shall retain be in accordance with 15 U.S.C. § 1673 and NRS 31.295. Plaintiff FAR WEST INDUSTRIES ("Plaintiff") believes that you have property, money, credits, debts, effects and choses in action in your hands and under your custody and control belonging to Defendant described as:

"Earnings," which means compensation paid or payable for personal services performed in the regular course of business, including, without limitation, compensation designated as income, wages, tips, a salary, a commission or a bonus, of Judgment Debtor Michael J. Mona, Jr., paid by Roen Ventures LLC. Earnings includes, but is not limited to, payments made on behalf of Judgment Debtor Michael J. Mona, Jr. for the monthly mortgage payment on the ~~residence located at 2793 Red Arrow Drive, Las Vegas, Nevada, any residential lease payments~~ made on behalf of Judgment Debtor Michael J. Mona, Jr., the monthly payments and auto insurance associated with the purchase of any vehicle for Judgment Debtor Michael J. Mona, Jr., performance bonuses, and reimbursements for expenses of Judgment Debtor Michael J. Mona, Jr., all of which are compensation for services performed by Judgment Debtor Michael J. Mona, Jr. under the Management Agreement dated November 23, 2013 between Judgment Debtor Michael J. Mona, Jr. and Roen Ventures LLC.

YOU ARE REQUIRED within 20 days from the date of service of this Writ of Garnishment to answer the interrogatories set forth herein and to return your answers to the office of the Sheriff or Constable which issues the Writ of Garnishment. In case of your failure to answer the interrogatories within 20 days, a Judgment by Default in the amount due the Plaintiff may be entered against you.

IF YOUR ANSWERS TO the interrogatories indicate that you are the employer of Defendant Michael J. Mona, Jr., this Writ of Garnishment shall be deemed to **CONTINUE FOR 120 DAYS**, or until the amount demanded in the Writ is satisfied, whichever occurs earlier less any amount which is exempt and less $3.00 per pay period not to exceed $12.00 per month which you may retain as a fee for compliance. The $3.00 fee does not apply to the first pay period covered by this Writ.

///

YOU ARE FURTHER REQUIRED to serve a copy of your answers to the Writ of Garnishment on Plaintiff's attorney whose address appears below.

Dated this _____ day of _____, 2015.

Issued at direction of: **SHERIFF/CONSTABLE – CLARK COUNTY**

By: _____
Title Date

HOLLEY DRIGGS WALCH
FINE WRAY PUZEY & THOMPSON

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

INTERROGATORIES TO BE ANSWERED BY THE GARNISHEE UNDER OATH:

1. Are you in any manner indebted to Defendant Michael J. Mona, Jr., either in property or money, and is the debt now due? If not due, when is the debt to become due? State fully all particulars:

ANSWER: _____

_____

2. Are you an employer of Defendant Michael J. Mona, Jr.? If so, state the length of your pay period and the amount of disposable earnings, as defined in NRS 31.295, which each person presently earns during a pay period. State the minimum amount of disposable earnings that is exempt from this garnishment which is the federal minimum hourly wage prescribed by section 6(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 206(a)(1), in effect at the time the earnings are payable multiplied by 50 for each week the pay period, after deducting any amount required by law to be withheld.

Calculate the garnishable amount as follows:

(Check one of the following) The employee is paid:

[A] Weekly: __ [B] Biweekly: __ [C] Semimonthly: __ [D] Monthly: __

(1) Gross Earnings.....$_____

(2) Deductions required by law (not including child support).....$_____

(3) Disposable Earning [Subtract line 2 from line 1] .....$_____

(4) Federal Minimum Wage.....$_____

(5) Multiply line 4 by 50.....$_____

(6) Complete the following direction in accordance with the letter selected above:

[A] Multiply line 5 by 1 .....$_____

[B] Multiply line 5 by 2 .....$_____

[C] Multiply line 5 by 52 and then divide by 24.....$_____

[D] Multiply line 5 by 52 and then divide by 12.....$_____

(7) Subtract line 6 from line 3.....$_____

This is the attachable earning. This amount must not exceed 25% of the disposable

earnings from line 3.

ANSWER: _____

3. Did you have in your possession, in your charge or under your control, on the date the WRIT OF GARNISHMENT was served upon you any money, property, effects, good, chattels, rights, credits or choses in the action of the Defendant Michael J. Mona, Jr., or in which Defendant Michael J. Mona, Jr. is interested? If so, state its value and state fully all particulars.

ANSWER: _____

_____

4. Do you know of any debts owing to the Defendant Michael J. Mona, Jr., whether due or not due, or any money, property, effects, goods, chattels, rights, credits or choses in action, belonging to Defendant Michael J. Mona, Jr., or in which Defendant Michael J. Mona, Jr. is interested, and now in possession or under the control of others? If so, state particulars.

ANSWER: _____

5. Are you a financial institution with a personal account held by Defendant Michael J. Mona, Jr.? If so, state the account number and the amount of money in the account which is subject to garnishment. As set forth in NRS 21.105, $2,000 or the entire amount in the account, whichever is less, is not subject to garnishment if the financial institution reasonably identifies that an electronic deposit of money has been made into the account within the immediately preceding 45 days which is exempt from execution, including, without limitation, payments of money described in NRS 21.105 or, if no such deposit has been made, $400 or the entire amount in the account, whichever is less, is not subject to garnishment, unless the garnishment is for the recovery of money owed for the support of any person. The amount which is not subject to garnishment does not apply to each account of the judgment debtor, but rather is an aggregate amount that is not subject to garnishment.

ANSWER: _____

_____

6. State your correct name and address, or the name and address of your attorney upon whom written notice of further proceedings in this action may be served.

ANSWER: _____

_____

7. **NOTE:** If, without legal justification, an employer of Defendant Michael J. Mona, Jr. refuses to withhold earnings of them demanded in a WRIT OF GARNISHMENT or knowingly misrepresents the earnings of them, the Court shall order the employer to pay Plaintiff the amount of arrearages caused by the employer's refusal to withhold or the employer's misrepresentation of their earnings. In addition, the Court may order the employer to pay Plaintiff punitive damages in an amount not to exceed $1,000 for each pay period in which the employer has, without legal justification, refused to withhold their earnings or has misrepresented the earnings.

_____
Garnishee

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

The undersigned, being duly sworn, states that I received the within WRIT OF GARNISHMENT on the ____ day of _____, 2015, and personally served the same on the ___ day of _____, 2015, by showing the original WRIT OF GARNISHMENT, informing of the contents and delivering and leaving a copy, along with the statutory fee of $5.00, with _____ at _____, County of Clark, State of Nevada.

By:_____
Title

_____
Garnishee

SUBSCRIBED AND SWORN to before me this
_____day of _____, 2015

_____
NOTARY PUBLIC

6. State your correct name and address, or the name and address of your attorney upon whom written notice of further proceedings in this action may be served.

ANSWER: _____

_____

7. **NOTE**: If, without legal justification, an employer of Defendant Michael J. Mona, Jr. refuses to withhold earnings of them demanded in a WRIT OF GARNISHMENT or knowingly misrepresents the earnings of them, the Court shall order the employer to pay Plaintiff the amount of arrearages caused by the employer's refusal to withhold or the employer's misrepresentation of their earnings. In addition, the Court may order the employer to pay ~~Plaintiff punitive damages in an amount not to exceed $1,000 for each pay period in which the~~ employer has, without legal justification, refused to withhold their earnings or has misrepresented the earnings.

_____
Garnishee

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

The undersigned, being duly sworn, states that I received the within WRIT OF GARNISHMENT on the 7th day of January, 2016, and personally served the same on the 7th day of January, 2016, by showing the original WRIT OF GARNISHMENT, informing of the contents and delivering and leaving a copy, along with the statutory fee of $5.00, with [illegible] at 6325 S Jones Blvd, County of Clark, State of Nevada.

By: L. Crane P #958 [illegible]
Title

_____
Garnishee

SUBSCRIBED AND SWORN to before me this
_____day of _____, 2015

_____
NOTARY PUBLIC

Exhibit 8

MANAGEMENT AGREEMENT

THIS Agreement is made and entered into this 23rd day of November, 2013, by and between Michael J. Mona (hereafter "General Manager") and Roen Ventures, LLC, whose principal offices are located in Las Vegas, Nevada (hereafter "Roen").

General Manager has significant knowledge, expertise and personal relationships in certain industries in which Roen intends to operate, which knowledge and expertise would be beneficial to Roen's continuing operations and growth. Roen has requested that General Manager provide management services specified below and General Manager has agreed to render said services in accordance with the terms and conditions of this Agreement. Now, therefore, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Term. This Agreement shall become effective on the date stated above and shall continue until terminated as provided hereafter.

2. Services. Roen hereby retains and General Manager accepts Roen's appointment as its general manager with specific responsibilities to watch over and manage Roen's loan and investment portfolio, and to guide and assist Roen in establishing, developing and offering products and services as may be designated by the Company's Executive Committee from time to time. The Parties expressly acknowledge and agree that Roen may also request that General Manager render services to entities owned by or affiliated with Roen. Notwithstanding the foregoing, General Manager shall not represent or hold himself out as having an ownership interest in Roen or as a control person of said company but shall report directly to the Company's Chairman in all material decisions related to Roen, its operations or financial matters. Furthermore, notwithstanding anything to the contrary herein, during the term of this Agreement, General Manager shall have the absolute right to accept and perform consulting work for 3rd parties, and to conduct General Manager's own business affairs so long as such 3rd party consulting work or personal financial ventures are not competitive with the services or interests of Roen or its affiliated companies.

3. Performance. General Manager shall use his best efforts in the performance of his obligations under this Agreement, and shall solely determine the method, details and means of performing the above-described Services. General Manager may, at his expense, employ such assistants as General Manager deems necessary to perform the Services and Roen will not control, direct or supervise General Manager's assistants or employees in any manner. Roen and General Manager expressly acknowledge and agree that General Manager has not made, nor does General Manager make, any representations or guarantees as to the success of General Manager's services or efforts on Roen's behalf.

Initials: _____

4. Independent Contractor. The relationship of General Manager to Roen shall be that of an independent contractor. General Manager shall not be considered or deemed to be an employee of Roen for any purpose. General Manager shall have no authority to bind Roen in any manner whatsoever without Roen's prior express written authorization. Each party shall be responsible to pay their respective state and federal taxes, withholding and other forms of payments to any governmental entity, if any, incurred or payable as a result of General Manager's services.

5. Compensation. For the services performed by General Manager, Roen agrees to pay the following to or on behalf of General Manager:

(a) the monthly mortgage payment (including property taxes, insurance and interest) on the residence located at 2793 Red Arrow Dr., Las Vegas, Nevada or such other residence as General Manager may chose as his principal residence while in Las Vegas. In the event said residence is a leased property at any time, Roen will pay the lease payment associated therewith;

(b) the purchase of a vehicle, including payment of monthly payments and auto insurance associated therewith, selected by General Manager. Said vehicle shall be used primarily for business purpose, but may be used by the General Manager for personal use as well;

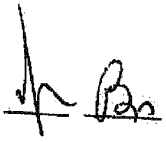
(c) such performance bonuses as may be determined from time to time at the discretion of Roen. The amount and timing of payment of any such performance bonuses will be determined solely by Roen; and

(d) reimbursement for such expenses that General Manager may incur on behalf of Roen. General Manager shall provide such documentation as may be required by Roen evidencing all expenditures for which reimbursement is sought. Reimbursements may be paid directly to such credit card issuer or vendor as may be associated with a particular expense for which reimbursement is sought.

6. Termination. The initial term of this Agreement shall be for a period of three (3) years commencing on the date this Agreement is executed (the "Initial Term"). Unless either Party notifies the other, in writing, not later than sixty (60) days prior to the expiration of the Initial Term that it does not wish to renew this Agreement for a subsequent term, this Agreement shall automatically renew for additional terms of one (1) year each (each a "Renewal Term") upon the same terms and conditions. Notwithstanding the foregoing, a Party hereto may terminate this Agreement during the Initial Term or a subsequent Renewal Term for 'cause'. As used herein, the term "for cause" shall mean and refer to:

(i) General Manager's failure to observe or perform his obligations hereunder; or

(ii) the institution by or against General Manager of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of General Manager's debts, upon General Manager's making an assignment for the benefit of creditors, or upon General Manager's death or permanent disability.

Initials: 

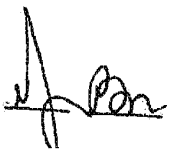
Where Roen is terminating this Agreement for cause, Roen shall specify in the notice of termination the cause(s) for termination upon which Roen is relying. General Manager shall have a period of thirty (30) days to cure such matters to the satisfaction of Roen, in Roen's sole discretion. General Manager's failure to cure such causes within said period shall result in the termination being effective at the conclusion of said cure period. If Roen terminates this Agreement for cause, or General Manager terminates this Agreement for any reason, Roen's obligation to pay the compensation set forth above in Section 5 shall cease after the termination date provided, however, said termination shall not affect compensation already "earned" by General Manager under this Agreement to the date of termination.

Should Roen terminate this Agreement without cause, Roen will continue to pay General Manager the compensation as set forth in Section 5 until (a) the expiration of the Initial Term of this Agreement, or (b) if the expiration of an Initial Term is less than twelve (12) months from the date of termination, then for such additional time as is required to constitute a twelve (12) month period from said termination date. The termination of this Agreement shall not be deemed to waive, eliminate or reduce a party's liability to the other for a breach or violation of this Agreement. Moreover, the rights and obligations of the Parties that are set forth in Sections 5 through 8 shall survive the termination of this Agreement.

7. Indemnification; Third Party Beneficiaries. Roen shall indemnify and hold General Manager harmless upon demand for any and all liability or loss threatened by third parties against or incurred by General Manager arising from the relationship established by this Agreement. The Parties expressly acknowledge and agree that the provisions of this Agreement, including the rights and obligations of the Parties hereto, are personal to the respective Party and shall not be interpreted or be deemed to extend any such benefit, right or obligation to any third party, whether it be as a third party beneficiary or otherwise.

8. Confidentiality. Roen and General Manager each agree to keep confidential and not to disclose, directly or indirectly, any information, strategies, customer lists, contacts or financial data provided to the other party, or to which Roen or General Manager may become aware relative to the other party, its operations, contacts, and financial status during the term of this Agreement, all of which shall be deemed proprietary in nature, without the express consent of the other party. The parties recognize that a breach of this covenant will result in damages to the non-breaching party for which an award of monetary damages would be inadequate. Consequently, the non-breaching party shall be entitled to injunctive relief, in addition to such other remedies as may be provided by law or in equity.

9. Governing Law/Legal Proceedings. This Agreement was negotiated and entered into in the State of Nevada and shall be governed in all respects by the laws of Nevada, without giving effect to the principles of conflicts of laws. Jurisdiction for any legal actions arising from or relating to this Agreement shall reside exclusively with the state and federal courts in the State of Nevada. Venue for any such actions shall lie in Clark County. In the event a legal proceeding is commenced to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of its costs and attorneys fees incurred therein.

Initials: 

"General Manager"

By _____

Date 11-23-13

"Roen"

By _____
Its Chairman

Date 11/23/13

Initials: _____

02493