

(b) Indemnifies the judgment debtor against loss, liability, damages, costs and counsel fees by reason of the taking, withholding or sale of such property by the sheriff.

3. At the time of giving the sheriff the undertaking provided for in subsection 2, the judgment creditor shall give notice of the undertaking to the judgment debtor.

4. The sheriff shall not be liable to the judgment debtor for damages by reason of the taking, withholding or sale of any property, where:

(a) No affidavit claiming exemption is served on him; or

(b) An affidavit claiming exemption is served on him, but the sheriff fails to release the property in accordance with this section.

Assembly Bill No. 418—Assemblymen Evans, Jeffrey, Dini, Nevin, Spinello, Sedway, Price, Marvel, Humke, DuBois, Swain, Kerns, Arberry, Myrna Williams, Diamond, Bergevin and Lambert

CHAPTER 339

AN ACT relating to registration of vehicles; requiring certain residents of other states who are employed in Nevada to register their vehicles with the department of motor vehicles and public safety; providing a fee for registration; and providing other matters properly relating thereto.

[Approved June 15, 1989]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section. 1. Chapter 482 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *A border state employee who:*

1. *Commutes to a place of employment in Nevada that is less than 35 air miles from the state border;*

2. *Has not otherwise registered his vehicle in this state; and*

3. *Is not otherwise required to register his vehicle in this state, shall, pursuant to section 3 of this act, annually register the vehicle.*

Sec. 3. 1. *A border state employee who is required by section 2 of this act to register his vehicle shall submit to the department:*

(a) *A completed application on a form furnished by the department that contains the vehicle identification number of the vehicle to be registered, the license plate number issued for the vehicle by the border state and the name and address of the owner of the vehicle;*

(b) *An affidavit stating that he is a border state employee as defined in NRS 482.012 and is employed in Nevada at a place of employment located less than 35 air miles from the state border; and*

(c) *The fee for registration specified in subsection 7 of NRS 482.480.*

2. *The department shall issue an identification card and registration sticker to a border state employee who complies with the provisions of subsection 1. The registration sticker must be placed on the rear of the registered*

Exhibit B

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1 **NOE**
2 Edward L. Kainen, Esq.
3 Nevada Bar No. 5029
4 Andrew L. Kynaston, Esq.
5 Nevada Bar No. 8147
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8 Las Vegas, Nevada 89129
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11 service@KainenLawGroup.com
12 Attorneys for Plaintiff

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DISTRICT COURT
CLARK COUNTY, NEVADA

10 RHONDA HELENE MONA,

11 Plaintiff,

12 vs.

13 MICHAEL JOSEPH MONA,

14 Defendant.

CASE NO. D-15-517425-D
DEPT NO. B

Date of Hearing: July 23, 2015
Time of Hearing: 8:45 a.m.

16 **NOTICE OF ENTRY OF DECREE OF DIVORCE**

17 TO: MICHAEL JOSEPH MONA, Defendant:

18 TO: TERRY A COFFING, ESQ, and TYE S. HANSEEN, ESQ., attorney's for Defendant

19 PLEASE TAKE NOTICE that on the 23rd day of July, 2015, the Honorable Linda
20 Marquis entered a Decree of Divorce, a copy of which is attached hereto.

21 DATED this 23rd day of July, 2015.

22 KAINEN LAW GROUP, PLLC

23 By: 

24 EDWARD L. KAINEN, ESQ.
25 Nevada Bar No. 5029
26 ANDREW L. KYNASTON, ESQ.
27 Nevada Bar No. 8147
28 3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of July, 2015, I caused to be served the ***Notice of Entry of Decree of Divorce*** to all interested parties as follows:

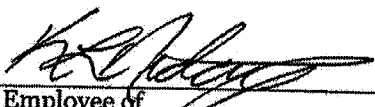
— BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

Terry Coffing, Esq.
10001 Park Run Drive
Las Vegas, Nevada 89145

— BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

— BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

— BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):


An Employee of
KAINEN LAW GROUP, PLLC


CLERK OF THE COURT

1 DECD
Edward Kainen, Esq.
2 Nevada Bar No. 5029
Andrew L. Kynaston, Esq.
3 Nevada Bar No. 8147
KAINEN LAW GROUP, PLLC
4 3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
5 PH: (702) 823-4900
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6 Service@KainenLawGroup.com
Attorneys for Plaintiff
7

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 RHONDA HELENE MONA,
11

12 Plaintiff,

13 vs.

14 MICHAEL JOSEPH MONA,
15

16 Defendant.

CASE NO. D-15-517425-D
DEPT NO. B

Date of Hearing: July 23, 2015
Time of Hearing: 8:45 a.m.

17 DECREE OF DIVORCE

18 The above-entitled cause having come on for hearing this 23rd day of July, 2015, before
19 the above-entitled Court, Plaintiff, RHONDA HELENE MONA ("Wife"), present and represented by
20 and through her attorneys, EDWARD KAINEN, ESQ., and ANDREW L. KYNASTON, ESQ., of the
21 law firm of KAINEN LAW GROUP, PLLC; and Defendant, MICHAEL JOSEPH MONA ("Husband"),
22 present and represented by and through his attorney, TERRY A. COFFING, ESQ., and TYE S.
23 HANSEEN, ESQ., of the law firm of MARQUIS, AURBACH, COFFING; the Court having heard the
24 evidence of witnesses sworn and examined in open Court, the cause having been submitted for decision
25 and judgment, and the Court being fully advised, finds:

26 That the Court has jurisdiction in the premises, both as to the subject matter thereof as
27 well as the parties thereto; that Wife has been domiciled in this State for more than six weeks preceding
the commencement of this action, and that Wife is now domiciled in and is an actual, bona fide resident

28 of the State of Nevada, and that the parties are entitled to an absolute Decree of Divorce on the grounds of
Non-Trial Dispositions:
☐ Other ☐ Dismissed - Want of Prosecution ☐ Without Judicial Conf/Hng
☐ Involuntary (Statutory) Dismissal ☐ With Judicial Conf/Hng
☐ Default Judgment ☐ By ADR
Trial Dispositions:
☐ Disposed After Trial Start ☐ Judgment Reached by Trial

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1 incompatibility as set forth in Wife's Complaint for Divorce.

2 The Court finds that there are no minor children of the parties, none adopted, and that
3 Wife is not pregnant.

4 The Court further finds that the parties entered into a Post-Marital Property Settlement
5 Agreement (hereinafter "Agreement") on or about the 13th day of September, 2013, which this Court
6 determines has met the requirements of NRS 123.070, 123.080, and 123.130(1), which statutory
7 provisions permit married parties to enter into written contracts with regard to their property during the
8 marriage, including a right to transmute by such agreements community property to separate property,
9 and separate property to community property. See, Verheyden v. Verheyden, 104 Nev. 342, 757 P.2d
10 1328 (1988). Further, that in entering into the Agreement the parties provided full and fair disclosure,
11 each had the opportunity to consult with counsel (and indeed engaged counsel to assist them), and the
12 Agreement includes no provisions which would otherwise render the Agreement void or
13 unconscionable. See, Cord v. Neuhoft, 94 Nev. 21, 573 P.2d 1170 (1978), and Dimick v. Dimick, 112
14 Nev. 402, 915 P.2d 254 (1996). That upon equal division of community property Wife preserved the
15 majority of her separate property designated to her under the Agreement, while Husband's portion has
16 been dissipated by his spending and/or by his separate creditors or separate debts. This Court finds that
17 such post marital agreements are permissible by law.

18 The Court further finds that Husband is presently subject to a significant outstanding
19 judgment that was rendered against him personally, based upon a finding of fraud resulting from his
20 personal conduct in another legal action (Case No. A-12-670352-F) to which Wife was not a party nor
21 a named Defendant.

22 The Court further finds that said judgment and the liability associated therewith is the
23 sole and separate debt of Husband; Wife and her separate property assets as established under the
24 Agreement should not be subject to Husband's outstanding judgment. Husband shall indemnify,
25 defend, and hold Wife harmless from his separate debts.

26 ...

27 ...

28 ...

1 The Court further finds that Husband has engaged in various personal acts, including but
2 not limited to those actions which resulted in the judgment against him in Case No. A-12-670352-F, and
3 actions substantially encumbering the marital residence without Wife's knowledge or consent, which
4 acts constitute marital waste and therefor entitle Wife to be able to receive her community property
5 share from assets that might otherwise be awarded to Husband in this divorce action, based upon the
6 holdings in Lofgren v. Lofgren, 112 Nev. 1282, 926 P.2d 296 (1996), and Putterman v. Putterman, 113
7 Nev. 606, 939 P.2d 1047 (1997).

8 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
9 bonds of matrimony heretofore and now existing between Husband and Wife be, and the same are
10 hereby wholly dissolved, and an absolute Decree of Divorce is hereby granted to Wife, and each of the
11 parties hereto is hereby restored to the status of a single, unmarried person.

12 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that commencing August
13 1, 2015, and continuing on the 1st day of each month thereafter, Husband shall be obligated to pay
14 periodic alimony to Wife in the amount of \$10,000.00 per month. Said obligation to pay alimony shall
15 continue until such time as Husband's death, Wife's death, or Wife's remarriage, which ever event
16 occurs first. This obligation shall be paid via a direct wage assignment through Husband's employer.

17 IT IS FURTHER ORDERED, ADJUDGED AND DECREED, to the extent Wife suffers
18 any loss to her sole and separate property resulting from or related to the outstanding fraud judgment
19 against Husband, any other separate debts of Husband, or Husband's failure to fulfill his obligations
20 herein, Wife shall be entitled to additional alimony sufficient to reimburse her for any such losses
21 pursuant to the holding in Siragusa v. Siragusa, 108 Nev. 987, 843 P.2d 807 (1992).

22 IT IS FURTHER, ORDERED, ADJUDGE AND DECREED, based upon the findings
23 set forth herein-above, that the parties' Post-Marital Property Settlement Agreement is valid and
24 enforceable. Said Agreement is adopted by the Court and incorporated into this Decree and the assets
25 set forth therein are confirmed to each party as his/her sole and separate property, subject only to the
26 resolution of disputed third party claims in Case No. A-12-670352.

27 ...

28 ...

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1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED, concerning the parties'
2 marital residence located at 2793 Red Arrow Dr., Las Vegas, Nevada 89135 (hereinafter "Red Arrow
3 property") titled in The Mona Family Trust, which community asset has an estimated fair market value
4 of \$2,200,000.00, and is encumbered by a first mortgage in the amount \$1,172,402.97 owed to Bank
5 of America. Unbeknownst to Wife, Husband has further encumbered said residence by taking at least
6 three additional notes/obligations totaling approximately \$2,142,400.51, which resulted in the loss of
7 Wife's community property equity in said residence. Said actions by Husband constitute marital waste
8 and entitles Wife to receive her equal share from assets that might otherwise be awarded to Husband.
9 See, Lofgren v. Lofgren, 112 Nev. 1282, 926 P.2d 296 (1996), and Putterman v. Putterman, 113 Nev.
10 606, 939 P.2d 1047 (1997). But for Husband's improper actions, said residence would have equity in
11 the approximate amount of \$1,000,000.00, to which each party would have been entitled to one-half.
12 Said residence and the entirety of the liabilities and encumbrances thereon is therefor the sole and
13 separate obligation of Husband, and Wife's interest therein shall be offset by the award of other assets
14 as set forth herein. Husband shall indemnify, defend and hold Wife harmless therefrom.

15 IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the parties presently
16 hold 4,000,000 stock options in CannaVest, the value of which is unknown and cannot be determined
17 at this time, however, the parties acknowledge that the strike price for said options exceeds the current
18 market price. As a result of Husband's acts constituting marital waste, including those with respect to
19 the marital residence, Wife shall be awarded 3,000,000 shares of said stock options, and Husband shall
20 be awarded 1,000,000 stock options.

21 IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that from Wife's separate
22 property funds, she loaned approximately \$787,760.88 to their son, Michael Mona, III, for the purchase
23 of a home by their son. Accordingly, there is a \$787,760.88 receivable due to Wife from their son. Said
24 receivable is confirmed to Wife as her sole and separate property.

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties are entitled
26 to any returns on their respective separate property investments in the entity called ROEN. To the extent
27 any funds are recovered from said investments, they shall each be entitled to their separate property
28 investments.

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1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Wife shall further
2 have confirmed as her sole and separate property the following:

- 3 1) Any and all bank accounts in Wife's name alone, including but not limited to her
4 separate property bank accounts at Bank of George and Bank of Nevada;
- 5 2) Wife's vehicle, 2014 Jaguar, free and clear of any encumbrances;
- 6 3) One-half of any tax refund received for the 2014 tax year;
- 7 4) The two family dogs, Rex and Lucky;
- 8 5) Wife's personal property, including her jewelry, clothing, and personalities; and
- 9 6) The furniture, furnishings, and firearms in her possession presently located in the Red
10 Arrow property.

11 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Husband shall further
12 have confirmed as his sole and separate property the following:

- 13 1) Any and all bank accounts in Husband's name alone;
- 14 2) Husband's vehicle, 2006 Mercedes SL, free and clear of any encumbrances;
- 15 3) One-half of any tax refund received for the 2014 tax year; and
- 16 4) Husband's personal property, including his clothing, jewelry and personalities;
- 17 5) Any and all assets and liabilities held through the entity known as MONACO.

18 IT IS FURTHER ORDERED, ADJUDGE AND DECREED that Husband shall be solely
19 responsible for his separate debts, including but not limited to the fraud judgment against him arising
20 out of the case of Far West Industries v. Rio Vista Nevada, LLC, et. al. (Case A-12-670352-F), and shall
21 indemnify, defend, and hold Wife harmless therefrom.

22 IT IS FURTHER ORDERED, ADJUDGE AND DECREED that Husband shall be solely
23 responsible for his separate debt to Mike Sifen, and shall indemnify, defend and hold Wife harmless
24 therefrom.

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall
26 submit the information required in NRS 125B.055, NRS 125.130 and NRS 125.230 on a separate form
27 to the Court and the Welfare Division of the Department of Human Resources within ten (10) days from
28 the date this Decree is filed. Such information shall be maintained by the Clerk in a confidential manner

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1 and not part of the public record. Each party shall update the information filed with the Court and the
2 Welfare Division of the Department of Human Resources within ten (10) days should any of that
3 information become inaccurate.

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall bear
5 his/her own attorney's fees and costs incurred in this matter.

6 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties herein sign
7 any and all documents necessary to effectuate the transfer of the property as set forth herein. Should
8 either party fail to execute any such documents, the Clerk of the Court shall be authorized to execute
9 such documents as necessary to effectuate the provisions of this Decree of Divorce.

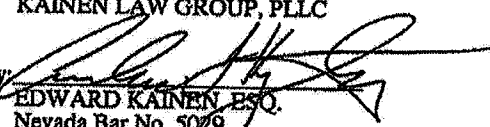
10 DATED and DONE this 23rd day of July, 2015.

11
12
13 
DISTRICT JUDGE

LINDA MARQUIS


14 Submitted by:

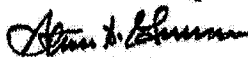
KAINEN LAW GROUP, PLLC

15
16 By: 
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ANDREW L. KYNASTON, ESQ.
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Attorneys for Plaintiff

20 Approved as to Form and Content:

21 MARQUIS AURBACH COFFING

22
23 By: 
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Nevada Bar No. 4949
TYE S. HANSEEN, ESQ.
Nevada Bar No. 10365
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Defendant



JUL 23 2015

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE DOCUMENT ON FILE

Exhibit C

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1 **OPP**
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DISTRICT COURT
CLARK COUNTY, NEVADA

RHONDA HELENE MONA,

Plaintiff,

vs.

MICHAEL JOSEPH MONA,

Defendant.

CASE NO. D-15-517425-D
DEPT NO. B

Date of Hearing: 10/8/ 2015
Time of Hearing: 9:00 a.m.

ORAL ARGUMENT REQUESTED: YES

**PLAINTIFF'S OPPOSITION TO FAR WEST'S MOTION TO INTERVENE,
FOR A FINDING AND ORDER THAT THE POST-MARITAL AGREEMENT IS VOID
BASED ON THE PRINCIPLES OF RES JUDICATA AND ISSUE PRECLUSION, AND
THAT THE PLAINTIFF AND DEFENDANT ARE JOINTLY LIABLE FOR THE
JUDGMENT HELD BY INTERVENOR**

**AND
PLAINTIFF'S COUNTERMOTION FOR FAR WEST TO PAY PLAINTIFF'S
ATTORNEY'S FEES AND COSTS INCURRED PURSUANT TO NRS 12.130(1)(d)**

COMES NOW, Plaintiff, RHONDA HELENE MONA, by and through her attorneys,
EDWARD KAINEN, ESQ., and ANDREW L. KYNASTON, ESQ., of the law firm of KAINEN LAW
GROUP, PLLC, and submits her Opposition to Far West's Motion to Intervene, For a Finding and Order
that the Post-Marital Agreement is Void Based on the Principles of Res Judicata and Issue Preclusion,
And that the Plaintiff and Defendant are Jointly Liable for the Judgment Held by Intervenor, and her
Counter-motion for Far West to Pay Plaintiff's Attorney's Fees and Costs Incurred Pursuant to NRS
12.130(1)(d), as a result of Far West's unwarranted efforts to intervene in this matter.

RECEIVED
SEP 28 2015
MAC LAW

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1 This Opposition is made and based upon the pleadings on file herein, the Points and
2 Authorities, and the Affidavit of Counsel submitted herewith.

3 DATED this 24th day of September, 2015.

4 KAINEN LAW GROUP, PLLC

5 By: 
6 EDWARD KAINEN, ESQ.

Nevada Bar No. 5029

7 ANDREW L. KYNASTON, ESQ.

Nevada Bar No. 8147

8 3303 Novat Street, Suite 200

9 Las Vegas, Nevada 89129

Attorneys for Plaintiff

10 I.

11 **POINTS AND AUTHORITIES**

12 NRCP Rule 24 provides:

13 (a) **Intervention of Right.** Upon timely application anyone shall be
14 permitted to intervene in an action: (1) when a statute confers an
15 unconditional right to intervene; or (2) when the applicant claims an
16 interest relating to the property or transaction which is the subject of the
17 action and the applicant is so situated that the disposition of the action
18 may as a practical matter impair or impede the applicant's ability to
19 protect that interest, unless the applicant's interest is adequately
20 represented by existing parties.

17 (b) **Permissive Intervention.** Upon timely application anyone may be
18 permitted to intervene in an action: (1) when a statute confers a
19 conditional right to intervene; or (2) when an applicant's claim or defense
20 and the main action have a question of law or fact in common. In
21 exercising its discretion the court shall consider whether the intervention
22 will unduly delay or prejudice the adjudication of the rights of the
23 original parties.

21 (c) **Procedure.** A person desiring to intervene shall serve a motion to
22 intervene upon the parties as provided in Rule 5. The motion shall state
23 the grounds therefor and shall be accompanied by a pleading setting forth
24 the claim or defense for which intervention is sought. The same
25 procedure shall be followed when a statute gives a right to intervene.

24 NRS 12.130 provides:

25 1. Except as otherwise provided in subsection 2:

26 (a) Before the trial, any person may intervene in an action or proceeding,
27 who has an interest in the matter in litigation, in the success or either of
28 the parties, or an interest against both.

(b) An intervention takes place when a third person is permitted to
become a party to an action or proceeding between other persons, either
by joining the plaintiff in claiming what is sought by the complaint, or by

uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant.

(c) Intervention is made as provided by the Nevada Rules of Civil Procedure.

(d) The court shall determine upon the intervention at the same time that the action is decided. If the claim of the party intervening is not sustained, the party intervening shall pay all costs incurred by the intervention.

2. The provisions of this section do not apply to intervention in an action or proceeding by the Legislature pursuant to NRS 218F.720.

II.

STATEMENT OF FACTS

Plaintiff, RHONDA HELENE MONA (hereinafter "Rhonda"), and Defendant, MICHAEL JOSEPH MONA (hereinafter "Michael") were divorced more than two months ago by Decree of Divorce entered July 23, 2015, following a hearing before this Court held that same day. Notice of Entry of the Decree of Divorce was filed as required by Court Rule and this divorce matter was shortly thereafter closed. The parties believed that this unpleasant chapter in their life was behind them and they could now move forward with their respective lives.

Nearly a month and a half after the Notice of Entry of the Decree of Divorce, one of the Michael's creditors, Far West, has now filed its pending Motion seeking to intervene in an already completed and closed divorce case. Far West's Motion is improper, untimely, and unnecessary.¹ It is merely a continuation of their aggressive (almost harassing) methods of trying to collect a debt. Far West's Motion should be summarily denied. Just like any other creditor, they have no business intervening in a divorce case, especially one that is already done, over, and judicially closed. The fact of the parties' divorce has no bearing on Far West's rights to seek through any legal and lawful means to collect on whatever judgment they may hold. Furthermore, Rhonda was not a named party in any prior lawsuit filed by Far West against Michael and she is not a named debtor on Far West's judgment

¹ Not only is the motion untimely under Court rules relating to intervention, but arguably under court rules regarding motions for reconsideration, to set aside, and or to file a notice of appeal, which must be done with 30 days of the Notice of Entry of the Decree. Certainly, if the actual parties to the case are beyond the time that they could file any such post judgment motion or appeal, then a non-party should likewise be prohibited from now filing a motion in a closed matter, finalized more than a month and a half before their motion to intervene was filed.

1 against Michael. The parties' Decree of Divorce, like any Decree simply allocates the property and
2 debts of the parties between them, and requires Michael to indemnify Rhonda from his debts. Far West
3 has been aggressively trying to drag Rhonda into their collection efforts of their judgment against
4 Michael, clearly seeing her as an additional source for possible collection. Rhonda should be left out
5 of the dispute between Far West and Michael and be allowed to move on with her life. Attempting to
6 intervene in the parties already concluded divorce should not be permitted by this Court.

7 III.

8 ARGUMENT

9 Intervention in a case is governed by NRCP Rule 24 and NRS 12.130. Intervention of
10 Right under the Rule is allowed only "upon timely application," which is a prerequisite before further
11 consideration of whether there is even an actual basis for intervention under the Rule. Considering the
12 fact that the Divorce Decree was filed and entered more than a month and a half prior to Far West's
13 Motion being filed, and after the case was already judicially closed, Far West's Motion is not timely.
14 Furthermore, Far West was fully aware that a divorce action had been filed and was already pending
15 between the Michael and Rhonda by at least July 9, 2015, if not earlier, because it was openly discussed
16 at a hearing held that day in Dept. 15 before Judge Joe Hardy of the District Court (hereinafter "District
17 Court Judge")² in the ongoing civil case between Michael and Far West. Therefore, for Far West to
18 wait nearly two months to file their Motion to intervene in this divorce case, it is clearly not "timely
19 application" so their Motion must fail for being untimely.

20 Next, pursuant to NRCP Rule 24(a), if the timeliness prerequisite is met, a third party
21 can intervene "when a statute confers an unconditional right to intervene." Far West tries to argue that
22 NRS 12.130 allows them to intervene in this divorce case, again ignoring the untimeliness of their
23 attempted intervention. NRS 12.130(1)(a) makes it clear that a party may seek to intervene "before the
24 trial". Again, Far West did not file their motion until a month and a half after the final hearing in this
25 case, the Decree of Divorce was entered, and the case was closed by the Court. Again, even under the
26

27 ² Rhonda and her counsel acknowledge that this Court is also a District Court. In the context of this
28 Opposition and Countermotion, this nomenclature is being used to distinguish the regular civil
District Court Judge (Joe Hardy) from the Family District Court Judge (Linda Marquis).

1 very statute Far West tries to rely upon, their motion is not timely and must be denied.

2 If the Court were to entirely disregard the clear fact that Far West's Motion is untimely,
3 NRCP Rule 24(a) further provides that intervention by a third party is only permitted "when the
4 applicant claims an interest relating to the property or transaction which is the subject of the action and
5 the applicant is so situated that the disposition of the action may as a practical matter impair or impede
6 the applicant's ability to protect that interest." Far West's judgment is certainly not the "subject of the
7 action" in this divorce case. Rather the subject of the action is the parties' divorce itself and all things
8 incident thereto, including allocation of assets and debts of the parties. In this case, Far West has not
9 demonstrated that Rhonda's and Michael's divorce action will in anyway impair or impede their ability
10 to protect their interests as a creditor of Michael. Indeed, if the Court were to accept their logic and
11 argument in their Motion, one might argue that any creditor should be allowed to intervene in every
12 divorce case, whether it be a mortgage company, an automobile loan holder, a credit card company, or
13 any other creditor. Such a conclusion would yield an absurd result, where suddenly every creditor of
14 every party to a divorce will be required to seek to intervene in every divorce case in order to get paid
15 from community assets prior to the division of such assets. The reality is that a divorce decree which
16 allocates assets and responsibility for debts does nothing to bind any of the creditors or otherwise
17 impede a creditors right to lawfully collect a debt where such a right exists. Rather, it simply assigns
18 responsibility as and between the parties themselves. In other words, if a decree of divorce says the wife
19 is responsible for the husband's American Express bill, American Express is still able to pursue
20 collection against anyone from whom they have right to collect. Such a provision in a Decree does not
21 limit the collection rights of any third party.

22 Notably omitted from Far West's legal analysis regarding intervention is any reference
23 to or citation to the recently published opinion from the Court of Appeals of the State of Nevada,
24 Anderson v. Sanchez, 131 Nev., Advance Op. 51 (decided July 23, 2015) – ironically decided the very
25 same day that the parties' Decree of Divorce was filed in this case.³ Anderson involved a divorce case
26

27 ³ In fact, Far West's attorney in this matter, Daniel Marks, Esq., was one of the attorneys for the
28 Respondent in this case, so he should certainly be aware of this newly published opinion and the
potential application to the legal arguments being presented in this matter.

1 where the husband and wife had reached a final settlement agreement during mediation which was
2 memorialized in a Memorandum of Understanding. Prior to entry of the final decree of divorce, the
3 husband attempted to rescind his signature from the memorialized agreement, claiming that his sister
4 had an ownership interest in one of the houses, and she should therefore have been joined or allowed
5 to intervene in the action due to her claimed ownership interest in the asset. The district court proceeded
6 to enter the Decree over husband's objections and an appeal ensued.

7 On appeal the Nevada Court of Appeals reversed and remanded the matter holding:

8 the district court should have conducted an evidentiary hearing to decide the joinder
9 issues before the court adjudicated the parties' property pursuant to the settlement
10 agreement. We therefore vacate the district court's divorce decree only as it affects the
11 disposition of the property at issue and remand this matter to the district court with
instructions to conduct an evidentiary hearing to determine whether the sister should
have been joined under NRCP 19(a). (Anderson, 131 Nev. Adv. Op. at Page 2)

12 The holding from the Court of Appeals primarily addresses the issue of whether the sister should have
13 been joined to the action adding that "[i]f the district court determines that [the sister] is a necessary
14 party, the court must then determine the relative rights of [husband, wife and the sister] in the []
15 property, and must revisit the portions of the [agreement] concerning that property as appropriate."
16 Anderson, 131 Nev. Adv. Op. at Page 20. The crux of the issue was whether the sister had an ownership
17 interest in the property, which is why an evidentiary hearing was required.

18 In conducting it's analysis, the Appellate Court provided helpful guidance for analyzing
19 when a third party should be allowed to intervene in a divorce case. The primary fact that appeared to
20 clearly distinguish Anderson from the facts of the case at bar was that the husband's sister claimed to
21 have an *actual ownership interest* in one of the marital assets (a residence), whereas in this case Far
22 West is simply a creditor seeking to collect a judgment against any/all community assets. Far West has
23 no ownership interest in any of the parties' assets. Intervention may be proper when a third party
24 "claims an interest in property involved in litigation." Anderson, 131 Nev. Adv. Op. at Page 12 (citing
25 Wharff v. Wharff, 56 N.W.2d 1, 3-4 (Iowa 1952). "The court recognized that allowing intervention
26 would help avoid a multiplicity of suits and the possibility that the division of property in a divorce
27 might be rendered inequitable if property divided in the divorce is later awarded to a third person in a
28 separate action." Anderson, 131 Nev. Adv. Op. at Page 12 (citing Wharff v. Wharff, 56 N.W.2d 1, 4

1 (Iowa 1952).

2 In this case, Far West is not, and indeed cannot, assert an ownership interest in any of
3 the former marital assets, which might arguably justify their intervention in this case. Rather they are
4 a judgment holder, a debt collector, whose right to continue to try to collect a debt has no bearing on,
5 and is not impacted by, the divorce of Rhonda and Michael. Indeed, if one of the purposes of allowing
6 an intervention is to "avoid a multiplicity of suits," the fact that Far West is already engaged in litigation
7 with Michael regarding the collection of their judgment is assurance that their rights as a creditor are
8 being addressed, without the necessity of them also intervening in a divorce case that is done and over.

9 The Court in Anderson further noted that "the majority view" among jurisdictions is that
10 "a third person may be joined as a party to a divorce action based on a claimed interest in real or
11 personal property that is to be divided among the divorcing parties." Anderson, 131 Nev. Adv. Op. at
12 Page 12 (citing Copeland v. Copeland, 616 S.W.2d 773, 775 (Ark. Ct. App. 1981). Several other cases
13 cited by the Nevada Court of Appeals in its opinion further establish that Far West's intervention in the
14 parties' divorce is unwarranted and unnecessary. For example, the Court cites Aniballi v. Aniballi, 842
15 P.2d 342, 343 (Mont. 1992), which noted that "a decree of dissolution resolves rights to the marital
16 property as between the parties seeking dissolution of the marriage, but will not determine title *in rem*."
17 Parties in a divorce are therefore able to divide their interest in the property, leaving any interest of third
18 parties undisturbed. Anderson, 131 Nev. Adv. Op. at Page 15 ((citing Aniballi, 842 P.2d at 343; see also
19 Walters v. Walters, 113 S.W.3d 214, 219 (Mo. Ct. App. 2003) (recognizing that the trial court did not
20 need to determine the relative interests of a couple and the husband's mother in the property being
21 divided in a divorce proceeding, but could properly divide only the couple's interest by awarding '[a]ny
22 interest the parties may have in the property.))

23 Again, Far West is merely a creditor who holds a judgment. They are no different from
24 any other creditor. For example, if a community residence is awarded to one party in a divorce subject
25 to a mortgage on the property in both parties' names; the mortgage company's right to pursue both
26 parties in the event of a delinquency on the mortgage is not impaired by the fact that the Decree stating
27 that one party is solely responsible for debt. Certainly, the party who was to be indemnified on the debt
28 has a cause of action or recourse against the former spouse to recover any losses they may experience

1 should the debt holder execute its rights against that party. Accordingly, denying Far West's Motion
2 to Intervene in no way impairs or impedes their ability to try to collect on their judgment through any
3 legal and lawful means. The Decree is a binding order as and between the parties only.

4 Far West next tries to argue that they should be permitted to intervene pursuant to NRCP
5 Rule 24(b) (Permissive Intervention). Again, this rule also has a prerequisite of timeliness and Far
6 West's Motion is not timely, as already discussed at length above. Furthermore, their argument that
7 there is a "claim or defense and the main action have a question of law or fact in common" is a stretch
8 at best and sanctionable under NRCP Rule 11 at worst. Far West tries to argue that the "question of law
9 in common" is the validity of the Post-Marital Settlement Agreement and the disposition of the parties'
10 assets. Far West argues that because the District Court Judge in the civil case between Michael and Far
11 West made a finding that the parties post-marital agreement was a fraudulent transfer, that this Court
12 is prohibited from considering the same in allocating the parties' assets in the divorce. In making such
13 arguments, Far West fails to fully disclose the facts and circumstances surrounding this issue. The
14 District Court Judge rendered an opinion regarding the parties' Post-Marital Agreement and related
15 matters at issue in the civil case between Michael and Far West without taking any evidence
16 notwithstanding multiple factual and legal arguments and objections set forth in that case. Rhonda is
17 aware that Michael's attorneys in the civil case took a Writ on the District Court Judge's ruling which
18 Writ was granted. The matter has been stayed by the Nevada Supreme Court pending further review
19 on appeal. A copy of the Order Granting Temporary Stay filed July 20, 2015, is attached as Exhibit "1."

20 Prior to this Court even considering Far West's arguments related to specific facts and
21 circumstances of the case, the Court must first decide if Far West can get over the threshold by
22 qualifying to intervene in the parties closed and finalized divorce. Rhonda maintains that Far West
23 cannot get over the threshold for all the reasons stated herein. Therefore, without delving too deeply
24 into Far West's arguments about res judicata and issue preclusion, the very case law cited by Far West
25 in their motion is contrary to Far West's claims about the application of res judicata. "For res judicata
26 to apply, three pertinent elements must be present: (1) the issue decided in the prior litigation must be
27 identical to the issue presented in the current action; (2) the initial ruling must have been on the merits
28 and have become final; and (3) the party against whom the judgment is asserted must have been a party

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1 or in privity with the party in the prior litigation.” University of Nevada v. Tarkanian, 110 Nev. 581,
2 598, 879 P.2d 1180, 1191 (1994)(citing Horvath v. Gladstone, 97 Nev. 594, 597, 637 P.2d 531, 5333
3 (1981) (emphasis added)). In this case, none of the cited “pertinent elements” are applicable
4 notwithstanding Far West’s arguments to the contrary. 1) The issue decided in the prior litigation
5 between Michael and Far West is certainly not *identical* to the issue in the divorce case, which is simply
6 an allocation of responsibility for the debt in question. 2) The ruling by the District Court is not final,
7 as a Writ was granted and an appeal is pending. 3) Rhonda was certainly not a party to the litigation
8 between Michael and Far West.

9 Far West in its motion is also attempting to mislead the Court by suggesting that the
10 parties’ Divorce itself is fraudulent and was done without this Court being aware of the ongoing civil
11 litigation between Michael and Far West. These claims are entirely false. The parties’ divorce is real
12 and the reasons thereof are none of Far West’s business. The language of the Decree of Divorce and
13 testimony placed on the record at the time of the final hearing in the divorce case clearly show that this
14 Court was made fully aware of the civil fraud judgment against Michael and the civil proceedings
15 brought by Far West. Indeed, the civil case and the fraud judgment against Michael are mentioned at
16 least four times in the parties’ Decree of Divorce and were disclosed, discussed and referenced on the
17 record at the final hearing. Additionally, the Decree expressly includes language acknowledging that
18 the there is still a pending disputed third party claim in Case No. A-12-67035. As such, any argument
19 by Far West suggesting that this Court was not made aware of the related civil action, or that the parties
20 failed to disclose the same to the family court, is simply false. Further, such a blatantly false statement
21 of facts is sanctionable under NRCP Rule 11.

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IV.

CONCLUSION

Based on the foregoing, Rhonda respectfully requests that the Court summarily deny Far West's Motion to Intervene and that Far West be ordered to reimburse Rhonda for her attorney's fees and costs incurred in being required to respond to Far West's unwarranted motion, as permitted by NRS 12.130(d).

Respectfully submitted,

KAINEN LAW GROUP, PLLC

By


EDWARD KAINEN, ESQ.

Nevada Bar No. 5029

ANDREW L. KYNASTON, ESQ.

Nevada Bar No. 8147

3303 Novat Street, Suite 200

Las Vegas, Nevada 89129

Attorneys for Plaintiff

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AFFIDAVIT OF COUNSEL IN SUPPORT MOTION

STATE OF NEVADA)
: ss.
COUNTY OF CLARK)

ANDREW L. KYNASTON, being first duly sworn, deposes and says:

That I am an attorney duly licensed to practice law in the State of Nevada. That I represent, Rhonda Helene Mona, who is the Plaintiff in the above action.

I am requesting, on behalf of my client, that Far West's Motion to Intervene be denied for the reasons set forth in the above Opposition. Also, that fees and costs be imposed as provided under NRS 12.130(d).

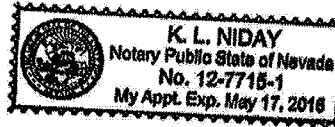
FURTHER, Affiant sayeth naught.


ANDREW L. KYNASTON

SUBSCRIBED AND SWORN to before me

this 24th day of September, 2015.


NOTARY PUBLIC, in and for said
County and State



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of September, 2015, I caused to be served the Plaintiff's Opposition to Far West's Motion to Intervene, for a Finding and Order That the Post-marital Agreement Is Void Based on the Principles of Res Judicata and Issue Preclusion, and That the Plaintiff and Defendant Are Jointly Liable for the Judgment Held by Intervenor and Plaintiff's Countermotion for Far West to Pay Plaintiff's Attorney's Fees and Costs Incurred Pursuant to Nrs 12.130(1)(d) to all interested parties as follows:

X BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

Terry Coffing, Esq.
10001 Park Run Drive
Las Vegas, Nevada 89145

Daniel Marks, Esq.
610 S. Ninth Street
Las Vegas, Nevada 89101

BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):


An Employee of
KAINEN LAW GROUP, PLLC

EXHIBIT "1"

Exhibit D


CLERK OF THE COURT

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

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **RHONDA HELENE MONA,**

10
11 **Plaintiff,**

12 **vs.**

13 **MICHAEL JOSEPH MONA,**

14
15 **Defendant.**

Case No.: D-15-517425-D
Dept. No.: B

Date of Hearing: October 8, 2015
Time of Hearing: 9:00 a.m.

ORAL ARGUMENT REQUESTED: YES

16
17 **DEFENDANT MICHAEL MONA'S JOINDER TO PLAINTIFF'S OPPOSITION TO**
18 **FAR WEST'S MOTION TO INTERVENE, FOR A FINDING AND ORDER THAT THE**
19 **POST-MARITAL AGREEMENT IS VOID BASED ON THE PRINCIPLES OF RES**
20 **JUDICATA AND ISSUE PRECLUSION, AND THAT THE PLAINTIFF AND**
21 **DEFENDANT ARE JOINTLY LIABLE FOR THE JUDGMENT HELD BY**
22 **INTERVENOR**
23 **AND**
24 **PLAINTIFF'S COUNTERMOTION FOR FAR WEST TO PAY PLAINTIFF'S**
25 **ATTORNEY FEES AND COSTS INCURRED PURSUANT TO NRS 12.130(1)(d)**

26 Defendant Michael J. Mona ("Defendant"), through the law firm of Marquis Aurbach
27 Coffing, hereby joins Plaintiff Rhonda Mona's ("Plaintiff") Opposition to Far West's Motion to
28 Intervene, for a Finding and Order that the Post-Marital Agreement is Void Based on the
Principles of Res Judicata and Issue Preclusion, and that the Plaintiff and Defendant are Jointly
Liable for the Judgment Held By Intervenor and Plaintiff's Countermotion for Far West to Pay
Plaintiff's Attorney Fees and Costs Incurred Pursuant to NRS 12.130(1)(d). This Joinder hereby

MARQUIS AURBACH COFFING

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adopts the same facts, law, and analysis in the Opposition and Countermotion as if fully set forth herein, to the extent they apply to the Defendant, and is based on the same arguments and all papers and pleadings on file with this Court.

Dated this 29th day of September, 2015.

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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT MICHAEL MONA'S JOINDER TO PLAINTIFF'S OPPOSITION TO FAR WEST'S MOTION TO INTERVENE, FOR A FINDING AND ORDER THAT THE POST-MARITAL AGREEMENT IS VOID BASED ON THE PRINCIPLES OF RES JUDICATA AND ISSUE PRECLUSION, AND THAT THE PLAINTIFF AND DEFENDANT ARE JOINTLY LIABLE FOR THE JUDGMENT HELD BY INTERVENOR AND PLAINTIFF'S COUNTERMOTION FOR FAR WEST TO PAY PLAINTIFF'S ATTORNEY FEES AND COSTS INCURRED PURSUANT TO NRS 12.130(1)(D)** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 29th day of September, 2015. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Kainen Law Group

Contact	Email
Andrew Kynaston, Esq.	andrew@kainenlawgroup.com
Carol Navarro	carol@kainenlawgroup.com
Edward Kainen, Esq.	ed@kainenlawgroup.com
Kolin Niday	kolin@kainenlawgroup.com
Service	service@kainenlawgroup.com

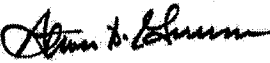
I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

F. Thomas Edwards, Esq.
Andrea M. Gandara, Esq.
Holley Driggs Walch, et al.
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Intervenor Far West Industries

/s/ Rosie Wesp
an employee of Marquis Aurbach Coffing

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).

Exhibit E



CLERK OF THE COURT

1 NOE
Edward L. Kainen, Esq.
2 Nevada Bar No. 5029
Andrew L. Kynaston, Esq.
3 Nevada Bar No. 8147
KAINEN LAW GROUP, PLLC
4 3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
5 Telephone: (702) 823-4900
Facsimile: (702) 823-4488
6 service@KainenLawGroup.com
Attorneys for Plaintiff
7

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 RHONDA HELENE MONA,

11 Plaintiff,

12 vs.

13 MICHAEL JOSEPH MONA,

14 Defendant.
15

CASE NO. D-15-517425-D
DEPT NO. B

Date of Hearing: 10/08/2015
Time of Hearing: 9:00 a.m.

16 **NOTICE OF ENTRY OF ORDER**

17 TO: MICHAEL JOSEPH MONA, Defendant:

18 TO: TYE S. HANSEEN, ESQ., Attorney for Defendant

19 PLEASE TAKE NOTICE that on the 25th day of November, 2015, the Honorable Linda
20 Marquis entered an Order, a copy of which is attached hereto.

21 DATED this 1st day of December, 2015.

22 KAINEN LAW GROUP, PLLC

23 By: 

24 EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
25 ANDREW L. KYNASTON, ESQ.
Nevada Bar No. 8147
26 3303 Novat Street, Suite 200
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27 Attorneys for Plaintiff
28

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1 day of December, 2015, I caused to be served the ***Notice of Entry of Order*** to all interested parties as follows:

___ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

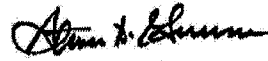
___ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

___ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

Rwesp@maclaw.com
Tcoffing@maclaw.com
Thanseen@maclaw.com


An Employee of
KAINEN LAW GROUP, PLLC


CLERK OF THE COURT

1 **ORDER**
2 EDWARD L. KAINEN, ESQ.
3 Nevada Bar No. 5029
4 ANDREW L. KYNASTON, ESQ.
5 Nevada Bar No. 8147
6 KAINEN LAW GROUP, PLLC
7 3303 Novat Street, Suite 200
8 Las Vegas, Nevada 89129
9 Telephone: (702) 823-4900
10 Facsimile: (702) 823-4488
11 Service@KainenLawGroup.com
12 Attorneys for Plaintiff

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DISTRICT COURT
CLARK COUNTY, NEVADA

RHONDA HELENE MONA,

Plaintiff,

vs.

MICHAEL JOSEPH MONA,

Defendant.

CASE NO. D-15-517425-D
DEPT NO. B

Date of Hearing: October 8, 2015
Time of Hearing: 9:00 a.m.

ORDER

THIS MATTER having come on before the above-entitled Court on the 8th day of October, 2015, on "Far West's Motion to Intervene, For a Finding and Order that the Post-Marital Agreement is Void Based on the Principles of Res Judicata and Issue Preclusion, and that the Plaintiff and Defendant are Jointly Liable for the Judgment Held by Intervenor, Plaintiff's Opposition thereto and Countermotion for Far West to Pay Plaintiff's Attorney's Fees and Costs Incurred Pursuant to NRS 12.130(1)(d), and Defendant's Joinder thereto", Intervenor, Far West Industries ("Far West"), not present but represented by and through their attorneys, DANIEL MARKS, ESQ., of THE LAW OFFICE OF DANIEL MARKS, ESQ., and THOMAS EDWARDS, ESQ., of the law firm of HOLLEY DRIGGS WALCH FINE WRAY PUZEY & THOMPSON, Plaintiff, RHONDA HELENE MONA ("Rhonda"), not present but appearing by and through her attorneys, EDWARD L. KAINEN, ESQ., and ANDREW L. KYNASTON, ESQ., of the KAINEN LAW GROUP, PLLC, and Defendant, MICHAEL

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RECEIVED

NOV 13 2015

DEPT 2

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1 JOSEPH MONA ("Michael"), not present and appearing by and through his attorney, TYE HANSEEN,
2 ESQ., of the law firm of MARQUIS AURBACH COFFING; the Court having reviewed the pleadings
3 and papers on file herein, and good cause appearing therefor, makes the following Findings and Orders:

4 THE COURT HEREBY FINDS that this case was already closed at the time Far West
5 filed their Motion to Intervene.

6 Therefor, good cause appearing.

7 IT IS HEREBY ORDERED that Far West's Motion to Intervene is denied, due to the
8 motion not being timely.

9 IT IS FURTHER ORDERED that based on the denial of Far West's Motion, Plaintiff and
10 Defendant's request for attorney's fees should be granted. Plaintiff's and Defendant's counsel will
11 provide the Court with Memorandum of Fees and Costs pursuant to the Brunzel factors outlining the
12 amounts expended to oppose Far West's Motion, and Far West shall have 14 days to respond to the
13 Memorandum of Fees and Costs filed by Plaintiff and Defendant.

14 IT IS FURTHER ORDERED that Far West may obtain video of the hearing conducted
15 October 8, 2015.

16 DATED this 24 day of November, 2015.

17 
18 DISTRICT COURT JUDGE MC

19 Submitted by:

20 KAINEN LAW GROUP, PLLC

21 By: 

22 EDWARD KAINEN, ESQ., #5029
23 ANDREW L. KYNASTON, ESQ., #8147
24 3303 Novat Street, Suite 200
25 Las Vegas, Nevada 89129
26 Attorneys for Plaintiff

27 MARQUIS AURBACH & COFFING

28 By: 

29 TYE HANSEEN, ESQ., #10365
30 10001 Park Run Drive
31 Las Vegas, Nevada 89145
32 Attorney for Defendant

Exhibit F

1 WRTG

F. THOMAS EDWARDS, ESQ.

2 Nevada Bar No. 9549

E-mail: tedwards@nevadafirm.com

3 ANDREA M. GANDRA, ESQ.

Nevada Bar No. 12580

4 E-mail: agandara@nevadafirm.com

HOLLEY DRIGGS WALCH

5 FINE WRAY PUZEY & THOMPSON

400 South Fourth Street, Third Floor

6 Las Vegas, Nevada 89101

Telephone: 702/791-0308

7 Facsimile: 702/791-1912

8 Attorneys for Plaintiff Far West Industries

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 FAR WEST INDUSTRIES, a California
12 corporation,

13 Plaintiff,

14 v.

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

20 Defendants.

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

21 WRIT OF GARNISHMENT

BE RETURNING THE ENCLOSED
CHECK FOR THE FOLLOWING REASON:

22 THE STATE OF NEVADA TO:

☒ 120 DAYS EXPIRED 7/29/16

23 MICHAEL MONA, RESIDENT AGENT AND PRESIDENT,
24 CANNAVEST CORPORATION
25 2688 SOUTH RAINBOW BOULEVARD
26 SUITE B
27 LAS VEGAS, NV 89146

GARNISHMENT RELEASED

BALANCE DUE

JUDGMENT PAID IN FULL

OTHER

28 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

Exhibit G

The Office of the
EX-OFFICIO CONSTABLE

July 5, 2016

MICHAEL J MONA JR
10001 PARK RUN DR
LAS VEGAS, NV 89145

RECEIVED
JUL 12 2016
MAC LAW

RE: Court Case Number A-12-670352

In accordance with NRS 21.075, we are sending you a copy of the *Notice of Execution after Judgment* and the *Writ of Execution* on your case. If this office can be of any further service, please do not hesitate to call.

Sincerely,

Office of the Ex-Officio Constable

2 enclosures

302 E Carson Ave 5th Floor / Box 552110
Las Vegas, NV 89101
Ofc: 702) 455-4099 / Fax: 702) 385-2436

EIGHTH JUDICIAL DISTRICT COURT
Clark County, Nevada
NOTICE OF EXECUTION

YOUR PROPERTY IS BEING ATTACHED OR YOUR WAGES ARE BEING GARNISHED.

A court has determined that you owe money to **FAR WEST INDUSTRIES**, the judgment creditor. The judgment creditor has begun the procedure to collect that money by garnishing your wages, bank account and other personal property held by third persons or by taking money or other property in your possession.

Certain benefits and property owned by you may be exempt from execution and may not be taken from you. The following is a partial list of exemptions:

1. Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.
2. Payments for benefits or the return of contributions under the Public Employees' Retirement System.
3. Payments for public assistance granted through the Division of Welfare and Supportive Services of the Department of Health and Human Services or a local governmental entity.
4. Proceeds from a policy of life insurance.
5. Payments of benefits under a program of industrial insurance.
6. Payments received as disability, illness or unemployment benefits.
7. Payments received as unemployment compensation.
8. Veteran's benefits.
9. A homestead in a dwelling or a mobile home, not to exceed \$550,000, unless:
 - (a) The judgment is for a medical bill, in which case all the primary dwelling, including a mobile or manufactured home, may be exempt.
 - (b) Allodial title has been established and not relinquished for the dwelling or mobile home, in which case all of the dwelling or mobile home and its appurtenances are exempt, including the land on which they are located, unless a valid waiver executed pursuant to NRS 115.010 is applicable to the judgment.
10. All money reasonably deposited with a landlord by you to secure an agreement to rent or lease a dwelling that is used by you as your primary residence, except that such money is not exempt with respect to a landlord or landlord's successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.
11. A vehicle, if your equity in the vehicle is less than \$15,000.
12. Seventy-five percent of the take-home pay for any workweek, unless the weekly take-home pay is less than 50 times the federal minimum hourly wage, in which case the entire amount may be exempt.
13. Money not to exceed \$500,000 in present value, held in:
 - (a) An individual retirement arrangement which conforms with the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A;

-
- (b) A written simplified employee pension plan which conforms with the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408;
 - (c) A cash or deferred arrangement that is a qualified plan pursuant to the Internal Revenue Code;
 - (d) A trust forming part of a stock bonus, pension or profit-sharing plan that is a qualified plan pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.;
and
 - (e) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.
- 14. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.
 - 15. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.
 - 16. Regardless of whether a trust contains a spendthrift provision:
 - (a) A present or future interest in the income or principal of a trust, if the interest has not been distributed from the trust;
 - (b) A remainder interest in the trust whereby a beneficiary of the trust will receive property from the trust outright at some time in the future under certain circumstances;
 - (c) A discretionary power held by a trustee to determine whether to make a distribution from the trust, if the interest has not been distributed from the trust;
 - (d) The power to direct dispositions of property in the trust, other than such a power held by a trustee to distribute property to a beneficiary of the trust;
 - (e) Certain powers held by a trust protector or certain other persons;
 - (f) Any power held by the person who created the trust; and
 - (g) Any other property of the trust that has not been distributed from the trust. Once the property is distributed from the trust, the property is subject to execution.
 - 17. If a trust contains a spendthrift provision:
 - (a) A mandatory interest in the trust in which the trustee does not have discretion concerning whether to make the distribution from the trust, if the interest has not been distributed from the trust;
 - (b) A support interest in the trust in which the standard for distribution may be interpreted by the trustee or a court, if the interest has not been distributed from the trust; and
 - (c) Any other property of the trust that has not been distributed from the trust. Once the property is distributed from the trust, the property is subject to execution.
 - 18. A vehicle for use by you or your dependent which is specially equipped or modified to provide mobility for a person with a permanent disability.

19. A prosthesis or any equipment prescribed by a physician or dentist for you or your dependent.
20. Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.
21. Payments received as compensation for wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.
22. Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.
23. Payments received as restitution for a criminal act.
24. Personal property, not to exceed \$1,000 in total value, if the property is not otherwise exempt from execution.
25. A tax refund received from the earned income credit provided by federal law or a similar state law.
26. Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

These exemptions may not apply in certain cases such as a proceeding to enforce a judgment for support of a person or a judgment of foreclosure on a mechanic's lien. You should consult an attorney immediately to assist you in determining whether your property or money is exempt from execution. If you cannot afford an attorney, you may be eligible for assistance through Nevada Legal Services. If you do not wish to consult an attorney or receive legal services from an organization that provides assistance to persons who qualify, you may obtain the form to be used to claim an exemption from the Clerk of the Court.

PROCEDURE FOR CLAIMING EXEMPT PROPERTY

If you believe that the money or property taken from you is exempt, you must complete and file with the Clerk of the Court an executed claim of exemption. A copy of the claim of exemption must be served upon the Las Vegas Township Constable, the garnishee, and the judgment creditor within 10 days after the notice of execution or garnishment is served on you by mail pursuant to NRS 21.076 which identifies the specific property that is being levied on. The property must be released by the garnishee or the Las Vegas Township Constable within 9 judicial days after you serve the claim of exemption upon the Las Vegas Township Constable, garnishee, and judgment creditor, unless the Las Vegas Township Constable or garnishee receives a copy of an objection to the claim of exemption and a notice for a hearing to determine the issue of exemption. If this happens, a hearing will be held to determine whether the property or money is exempt. The objection to the claim of exemption and notice for the hearing to determine the issue of exemption must be filed within 8 judicial days after the claim of exemption is served on the judgment creditor by mail or in person and served on the judgment debtor, the Las Vegas Township Constable, and any garnishee not less than 5 judicial days

before the date set for the hearing. The hearing to determine whether the property or money is exempt must be held within 7 judicial days after the objection to the claim of exemption and notice for the hearing is filed. You may be able to have your property released more quickly if you mail to the judgment creditor or the attorney of the judgment creditor written proof that the property is exempt. Such proof may include, without limitation, a letter from the government, an annual statement from a pension fund, receipts for payment, copies of checks, records from financial institutions, or any other document which demonstrates that the money in your account is exempt.

IF YOU DO NOT FILE THE EXECUTED CLAIM OF EXEMPTION WITHIN THE TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE JUDGMENT CREDITOR, EVEN IF THE PROPERTY OR MONEY IS EXEMPT.
NRS 21.075 (2011).

1 **WRITE**
2 **F. THOMAS EDWARDS, ESQ.**
3 Nevada Bar No. 9549
4 E-mail: tedwards@nevadafirm.com
5 **ANDREA M. GANDARA, ESQ.**
6 Nevada Bar No. 12580
7 E-mail: agandara@nevadafirm.com
8 **HOLLEY DRIGGS WALCH**
9 **FINE WRAY PUZEY & THOMPSON**
10 400 South Fourth Street, Third Floor
11 Las Vegas, Nevada 89101
12 Telephone: 702/791-0308
13 Facsimile: 702/791-1912

14 *Attorneys for Plaintiff*

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 **FAR WEST INDUSTRIES, a California**
18 **corporation,**

19 **Plaintiff,**

20 **v.**

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

26 **Defendants.**

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

27 **WRIT OF EXECUTION**

28 ☒ **Earnings** ☐ **Other Property**
☐ **Earnings, Order of Support**

29 **THE STATE OF NEVADA TO THE SHERIFF/CONSTABLE – CLARK COUNTY,**
30 **GREETINGS:**

31 On April 27, 2012, a judgment, upon which there is due in United States Currency the
32 following amounts, was entered in this action in favor of Plaintiff Far West Industries as
33 judgment creditor and against Michael J. Mona, Jr. as judgment debtor. Interest and costs have
34 accrued in the amounts shown. Any satisfaction has been credited first against total accrued
35 interest and costs, leaving the following net balance, which sum bears interest at 10% per annum,
36 \$4,967.308 per day from issuance of this writ to date of levy and to which sum must be added all

1 commissions and costs of executing this Writ.

2 JUDGMENT BALANCE

AMOUNTS TO BE COLLECTED BY LEVY

Judgment	\$17,777.562.18	NET BALANCE	\$25,611,068.27
Attorney's Fees	\$327,548.84	Fee this Writ	
Costs	\$25,562.56	Garnishment Fee	5
JUDGMENT TOTAL	\$18,130,673.58	Levy Fee	30
Accrued Costs		Mileage	12
Accrued Interest	\$7,540,373.24	Storage	
Less Satisfaction	\$59,978.55	Interest from	
		Date of Issuance	
NET BALANCE	\$25,611,068.27	SUB-TOTAL	25,611,115.27
		Commission	128,108.08
		TOTAL LEVY	25,739,223.35

15 NOW THEREFORE, you are commanded to satisfy the judgment for the total amount
16 due out of the following described personal property and if sufficient personal property cannot be
17 found, then out of the following described real property: "Earnings," which means
18 compensation paid or payable for personal services performed in the regular course of business,
19 including, without limitation, compensation designated as income, wages, tips, a salary, a
20 commission or a bonus, of Judgment Debtor Michael J. Mona, Jr., paid by CannaVEST Corp.

21 (See below for exemptions which may apply)

1 **EXEMPTIONS WHICH APPLY TO THIS LEVY**
2 **(Check appropriate paragraph and complete as necessary)**

3 ☐ Property other than wages. The exemption set forth in NRS 21.090 or in other applicable
4 Federal Statutes may apply, consult an attorney.

5 ☒ Earnings

6 The amount subject to garnishment and this writ shall not exceed for any one pay period
7 the lessor of:

8 A. 25% of the disposable earnings due the judgment debtor for the pay period, or

9 B. The difference between the disposable earnings for the period of \$100.50 per week for
10 each week of the pay period.

11 ☐ Earnings (Judgment or Order of Support)

12 A Judgment was entered for amounts due under a decree or order entered on ,
13 20 , by the for support of , for the period from , 20 , through
14 , 20 , in installments or \$.

15 The amount of disposable earnings subject to garnishment and this writ shall not exceed for any
16 one pay period:

17 ☐ A maximum of 50 percent of the disposable earnings of such judgment debtor who is
18 supporting a spouse or dependent child other than the dependent named above;

19 ☐ A maximum of 60 percent of the disposable earnings of such judgment debtor who is not
20 supporting a spouse or dependent child other than the dependent named above;

21 ☐ Plus an additional 5 percent of the disposable earnings of such judgment debtor if and to
22 extent that the judgment is for support due for a period of time more than 12 weeks prior
23 to the beginning of the work period of the judgment debtor during which the levy is made
24 upon the disposable earnings.

25 NOTE: Disposable earnings are defined as gross earnings less deductions for Federal Income
26 Tax Withholding, Federal Social Security Tax and Withholding for any State, County or
27 City Taxes.

28 You are required to return this Writ from date of issuance not less than 10 days or more than 60

1 days with the results of your levy endorsed thereon.

2
3 Submitted By:

4 *Ameg...*
5 (SIGNATURE)

STEVEN D. GRIERSON, CLERK OF COURT

By: PATRICIA AZUCENA **DISTRICT COURT SEAL** 24 2016
Deputy Clerk Date

6 F. THOMAS EDWARDS, ESQ.
7 Nevada Bar No. 9549
8 ANDREA M. GANDARA
9 Nevada Bar No. 12580
10 HOLLEY DRIGGS WALCH
11 FINE WRAY PUZEY & THOMPSON
12 400 South Fourth Street, Third Floor
13 Las Vegas, Nevada 89101
14 Telephone: 702/791-0308
15 Facsimile: 702/791-1912
16 *Attorneys for Plaintiff*

RETURN

Not satisfied	\$	
Satisfied in sum of	\$	
Costs retained	\$	
Commission retained	\$	
Costs incurred	\$	
Commission incurred	\$	
Costs Received	\$	
REMITTED TO JUDGMENT CREDITOR	\$	

17 I hereby certify that I have this date
18 returned the foregoing Writ of Execution
19 with the results of the levy endorsed
20 thereon.

21 SHERIFF/CONSTABLE - CLARK
22 COUNTY

23 By:

24 Deputy

25 Date

Exhibit H

1 **WRTG**
2 **F. THOMAS EDWARDS, ESQ.**
3 Nevada Bar No. 9549
4 E-mail: tedwards@nevadafirm.com
5 **ANDREA M. GANDRA, ESQ.**
6 Nevada Bar No. 12580
7 E-mail: agandara@nevadafirm.com
8 **HOLLEY DRIGGS WALCH**
9 **FINE WRAY PUZEY & THOMPSON**
10 400 South Fourth Street, Third Floor
11 Las Vegas, Nevada 89101
12 Telephone: 702/791-0308
13 Facsimile: 702/791-1912

14 *Attorneys for Plaintiff For West Industries*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 **FAR WEST INDUSTRIES, a California**
18 **corporation,**

19 **Plaintiff,**

20 **v.**

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

26 **Defendants.**

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

This WRIT must be answered,
signed and returned to:
The Office of the
Ex-Officio Constable
302 E. Carson Avenue, 5th Floor
Las Vegas, NV 89155

27 **WRIT OF GARNISHMENT**

28 **THE STATE OF NEVADA TO:**

29 **MICHAEL MONA, RESIDENT AGENT AND PRESIDENT**
30 **CANNAVEST CORPORATION**
31 **2688 SOUTH RAINBOW BOULEVARD**
32 **SUITE B**
33 **LAS VEGAS, NV 89146**

34 You are hereby notified that you are attached as garnishee in the above entitled action
35 and you are commanded not to pay any debt from yourself to Michael J. Mona, Jr.,
36 ("Defendant"), and that you must retain possession and control of all personal property, money,
37 credit, debts, effects and choses in action of said Defendant in order that the same may be dealt
38 with according to law. Where such property consists of wages, salaries, commissions or

1 bonuses, the amount you shall retain be in accordance with 15 U.S.C. § 1673 and NRS 31.295.
2 Plaintiff, Far West Industries believes that you have property, money, credits, debts, effects and
3 choses in action in your hands and under your custody and control belonging to said Defendant
4 described as: "Earnings," which means compensation paid or payable for personal services
5 performed in the regular course of business, including, without limitation, compensation
6 designated as income, wages, tips, a salary, a commission or a bonus, of Judgment Debtor
7 Michael J. Mona, Jr., paid by CannaVEST Corp.

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

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

18 ...
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28 ...

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 _____, 2016.

Issued at direction of:

SHERIFF/CONSTABLE - CLARK COUNTY

By:

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

1 STATE OF NEVADA)
2 COUNTY OF CLARK) ss:

3 The undersigned, being duly sworn, states that I received the within WRIT OF
4 GARNISHMENT on the ____ day of _____, 2016, and personally served the same on
5 the ____ day of _____, 2015 by showing the original WRIT OF GARNISHMENT,
6 informing of the contents and delivering and leaving a copy, along with the statutory fee of
7 \$5.00, with _____ at _____, County of Clark, State of
8 Nevada.

9 By: _____

10 Title: _____

11
12 **INTERROGATORIES TO BE ANSWERED BY THE GARNISHEE UNDER OATH:**

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

16 ANSWER: NO

17
18 2. Are you an employer of the Defendant? If so, state the length of your pay period
19 and the amount of disposable earnings, as defined in NRS 31.295, which each Defendant
20 presently earns during a pay period. State the minimum amount of disposable earnings that is
21 exempt from this garnishment which is the federal minimum hourly wage prescribed by section
22 6(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 206(a)(1), in effect at the
23 time the earnings are payable multiplied by 50 for each week the pay period, after deducting any
24 amount required by law to be withheld.

25 Calculate the garnishable amount as follows:

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

27 [A] Weekly: ____ [B] Biweekly: ☒ [C] Semimonthly: ____ [D] Monthly: ____

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

1 (2) Deductions required by law (not including child support).....\$ 3272.09
 2 (3) Disposable Earning [Subtract line 2 from line 1]\$ 8266.37
 3 (4) Federal Minimum Wage.....\$ 7.25
 4 (5) Multiply line 4 by 50.....\$ 362.50
 5 (6) Complete the following direction in accordance with the letter selected above:
 6 [A] Multiply line 5 by 1\$ N/A
 7 [B] Multiply line 5 by 2\$ 725.00
 8 [C] Multiply line 5 by 52 and then divide by 24.....\$ N/A
 9 [D] Multiply line 5 by 52 and then divide by 12.....\$ N/A
 10 (7) Subtract line 6 from line 3.....\$ 7541.37

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

13 ANSWER: 25% of \$7541.37 = \$1885.34. There is biweekly
 14 SPOUSAL Support of \$4615.39. Also, see the attached Claim of Exemption.

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

19 ANSWER: other than the earnings detailed above, NO.
 20

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

25 ANSWER: NO.
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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:

ANSWER: Terry A. Coffing, Esq., 1001 Park Run Drive
Las Vegas, 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.

Kathleen Kellner
Garnishee

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STATE OF NEVADA)
COUNTY OF CLARK)

ss:

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

Kathleen Kelleher
Garnishee

SUBSCRIBED AND SWORN to before me this

19th day of July, 2014.

Barbara Tsatsa
NOTARY PUBLIC



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

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 **FAR WEST INDUSTRIES, a California**
corporation,

11 Plaintiff,

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

12 vs.

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

16 Defendants.

17 **CLAIM OF EXEMPTION**

18 Defendant Michael J. Mona ("Mona"), through the law firm of Marquis Aurbach
19 Coffing, submits this Claim of Exemption from Execution and states as follows:

20 1. On or about July 12, 2015, Marquis Aurbach Coffing received correspondence to
21 Mona from the Office of the Ex-Officio Constable. The correspondence was dated July 5, 2015
22 and indicated in part: "In accordance with NRS 21.075, we are sending you a copy of the *Notice*
23 *of Execution after Judgment* and the *Writ of Execution* on your case." (Emphasis in original).

24 2. The correspondence appears to relate to Far West's Writ of Execution and related
25 Writ of Garnishment to "CannaVEST Corp." for "earnings" being paid to Mona.

26 3. On information and belief, the property or money taken (or to be taken) from
27 Mona pursuant to the Writ of Execution is exempt from execution. Mona makes the following
28

MARQUIS AURBACH COFFING

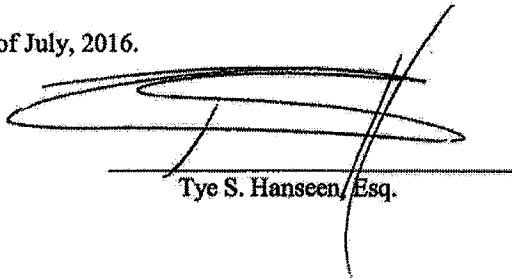
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 objections/claims the following exemptions: NRS 21.090(g), NRS 31.295, NRS 31.296, NRS
2 31.200, NRS 31.249, NRS 31.045, 15 U.S.C. § 1673, 28 U.S.C. § 3205(8), generally.

3 4. I declare under penalty of perjury under the law of the State of Nevada that the
4 foregoing is true and correct.

5 EXECUTED this 15th day of July, 2016.

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Tye S. Hanseen, Esq.

CERTIFICATE OF SERVICE

I hereby certify that **CLAIM OF EXEMPTION** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 15th day of July, 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
Norma	nmoseley@nevadafirm.com
Tilla Nealon	tnealon@nevadafirm.com
Tom Edwards	tedwards@nevadafirm.com

Santoro Whitmire

Contact	Email
Asmeen Olila-Stoilov	astoilov@santoronevada.com
James E. Whitmire, Esq.	jwhitmire@santoronevada.com
Joan White	jwhite@santoronevada.com

Garman Turner Gordon

Contact	Email
Dylan Ciciliano	dciciliano@gtg.legal
Erika Pike Turner	eturner@gtg.legal
Rebecca Post	rpost@gtg.legal

I further certify that I served a copy of this document by emailing a true and correct copy thereof to:


The Office of the Ex-Officio Constable
302 East Carson Avenue
5th Floor
Box 552110
Las Vegas, Nevada 89101

CannaVEST Corp.
2688 South Rainbow
Suite B
Las Vegas, Nevada 89146

/s/ Rosie Wesp
an employee of Marquis Aurbach Coffing

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).

Exhibit I


CLERK OF THE COURT

Marquis Aurbach Coffing
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Tye S. Hanseen, Esq.
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thanseen@maclaw.com
Attorneys for Michael J. Mona, Jr.

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

CLAIM OF EXEMPTION

Defendant Michael J. Mona ("Mona"), through the law firm of Marquis Aurbach Coffing, submits this Claim of Exemption from Execution and states as follows:

1. On or about July 12, 2015, Marquis Aurbach Coffing received correspondence to Mona from the Office of the Ex-Officio Constable. The correspondence was dated July 5, 2015 and indicated in part: "In accordance with NRS 21.075, we are sending you a copy of the *Notice of Execution after Judgment* and the *Writ of Execution* on your case." (Emphasis in original).

2. The correspondence appears to relate to Far West's Writ of Execution and related Writ of Garnishment to "CannaVEST Corp." for "earnings" being paid to Mona.

3. On information and belief, the property or money taken (or to be taken) from Mona pursuant to the Writ of Execution is exempt from execution. Mona makes the following

MARQUIS AURBACH COFFING

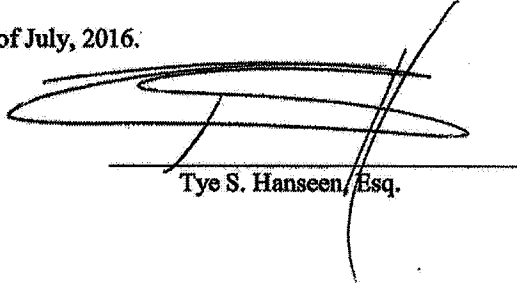
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-3816

1 objections/claims the following exemptions: NRS 21.090(g), NRS 31.295, NRS 31.296, NRS
2 31.200, NRS 31.249, NRS 31.045, 15 U.S.C. § 1673, 28 U.S.C. § 3205(8), generally.

3 4. I declare under penalty of perjury under the law of the State of Nevada that the
4 foregoing is true and correct.

5 EXECUTED this 15th day of July, 2016.

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Tye S. Hanseen, Esq.

CERTIFICATE OF SERVICE

I hereby certify that **CLAIM OF EXEMPTION** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 15th day of July, 2016. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

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I further certify that I served a copy of this document by emailing a true and correct copy thereof to:

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/s/ Rosie Wesp
an employee of Marquis Aurbach Coffing

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1 bill, the current 120 day expiration period was proposed, passed, and enacted. *Id.* at p. 53 and
2 NRS 31.296.

3 As the Court can see from the above legislative history, garnishments in Nevada expire.
4 Further, the idea that a creditor may remain in first position indefinitely was expressly rejected.
5 Exhibit A and NRS 31.296. Thus, as of April 29, 2016, Far West's wage garnishment no longer
6 had priority. The support order took its place in first position as the sole withholding and Far
7 West cannot now two months later cut in line. Moreover, the Legislative History above refutes
8 the argument that the date of the judgment/date the obligation was incurred determines priority.
9 Rather, priority is determined by the date of the garnishments themselves until expiration. As
10 seen above, the various Townships/Sherriff's offices touched on this point in their comments and
11 letters detailed in the Legislative History. Exhibit A; *see also e.g., Voss Products, Inc. v.*
12 *Carlton*, 147 F. Supp. 2d 892, 896 (E.D. Tenn. 2001) (between garnishments of the same type,
13 the prior in time is to be satisfied first); 28 U.S.C. § 3205(8) (writs issued under this section shall
14 have priority over writs which are issued later in time).

15 Moreover, neither equity nor policy serve to disregard Nevada law regarding the
16 expiration of Far West's garnishment, disregard the Legislature's rejection of Far West's
17 position, or disregard a support obligation in favor of an expired wage garnishment – the case
18 law detailed in Section III.C. below further supports this position.

19
20 **2. Multiple States Across the Country Hold that Spousal Support
Orders Take Priority Over All Other Creditor Garnishments.**

21 Although Nevada does not currently have a statute that requires support obligations to
22 take priority over wage garnishments, such a concept is persuasive considering the amount of
23 other states that do have such laws. Indeed, Nevada's garnishment restrictions have not been
24 amended since 1989. And, when the Legislature amended the restrictions in 1989, the main
25 issue was whether wage garnishments should continue until judgment satisfaction or expire after
26 a period of time. However, the Federal Government and other states have been more progressive
27 and have provided persuasive guidance for this Court in determining priority for spousal support
28 orders. For example:

1 ***Federal Debt Collection***

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

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

7 See 28 U.S.C. § 3205(8).

8 ***Arizona***

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

11 Garnishments, levies and wage assignments which are not for the support of a
12 person are inferior to wage assignments for the support of a person. Garnishments
13 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).

14 And, under subsection C:

15 if a judgment debtor's earnings become subject to more than one writ of
16 garnishment pursuant to this article, and because of the application of the
17 priorities set forth in subsections A and B a judgment creditor recovers no
18 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).

19 ***California***

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

22 ***Florida***

23 Florida collection law requires that spousal support take priority over a judgment
24 creditor's wage garnishment. For example, when a creditor garnished income, which was the
25 source of alimony and child support, the Florida appellate court held that the trial court has "full
26 authority to stay, modify, or condition the writ to assure (a) that alimony and child support
27 payments have priority, and (b) that the husband has funds remaining on which to live." *Bickett*
28 *v. Bickett*, 579 So. 2d 149, 150 (Fla. Dist. Ct. App. 1991) (citing *Young, Stern & Tannenbaum*,

1 *P.A. v. Ernst*, 453 So.2d 99, 102-03 (Fla. 3d DCA 1984); *Garcia v. Garcia*, 560 So.2d 403 (Fla.
2 3d DCA 1990); § 61.1301, Fla.Stat. (1989); Fla.R.Civ.P. 1.550(b).

3 *Illinois*

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

9 *Indiana*

10 In *Miller v. Owens*, the appellate court stated:

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

15 953 N.E.2d 1079, 1085 (Ind. Ct. App. 2011) (citing I.C. § 24-4.5-5-105). Thus, a support order
16 takes priority. *Id.* Further, consistent with Federal and Nevada law, the only way that a
17 secondary garnishment has any impact is if the disposable earnings subject to the support order
18 do not exceed the related statutory maximum withholding percentage. *Id.*

19 *New Jersey*

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

23 *New York*

24 As between creditor garnishments and support order garnishments, New York gives
25 priority to those for support, regardless of the timing of those garnishments. *General Motors*
26 *Acceptance Corp. v. Metropolitan Opera Ass'n*, 98 Misc.2d 307, 413 N.Y.S.2d 818 (App.Term,
27 1st Dep't 1978); *Gertz v. Massapequa Public Schools*, N.Y.L.J., Nov. 17, 1980, at 17
28 (Sup.Ct.Nas.Co.1980).

1 *Pennsylvania*

2 “An order of attachment for support shall have priority over any other attachment,
3 execution, garnishment or wage assignment.” *See* Consolidated Statutes of Pennsylvania, Title
4 42 § 8127(b).

5 *Rhode Island*

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

9 *Tennessee*

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

15 *Texas*

16 “An order or writ of withholding under this chapter [spousal maintenance] has priority
17 over any garnishment, attachment, execution, or other order affecting disposable earnings, except
18 for an order or writ of withholding for child support under Chapter 158.” Tex. Fam. Code §
19 8.105; see also 17 West’s Tex. Forms, Family Law § 6:261 (3d ed.) (“An order or writ of
20 withholding for spousal maintenance . . . has priority over any garnishment, attachment,
21 execution, or other order affecting disposable earnings, except for an order or writ of withholding
22 for child support under Tex. Fam. Code Ann. Ch. 158.”).

23 *Washington*

24 “A notice of payroll deduction for support shall have priority over any wage assignment,
25 garnishment, attachment, or other legal process.” RCW 26.23.060. Further, an “order for wage
26 assignment for spousal maintenance entered under this chapter shall have priority over any other
27 wage assignment or garnishment, except for a wage assignment, garnishment, or order to
28

1 withhold and deliver . . . for support of a dependent child, and except for another wage
2 assignment or garnishment for maintenance.” RCW 26.18.110.

3 *Wyoming*

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

5 *Summary of Spousal Support Priority from Federal Law and Other States*

6 As the Court can see, multiple states give priority to spousal support orders. And, Mona
7 believes that the above provides further persuasive support to deem the support order as the first
8 priority. Furthermore, Wisconsin, Colorado, Oklahoma, Maine, Idaho, and Nebraska, as well as
9 others, also give priority to spousal support orders over wage garnishments. And, when there are
10 equal garnishments (i.e. creditor versus creditor garnishments), the priority is determined by the
11 timing of the writs (i.e. first come first served until expiration, if applicable). The priority
12 determination has nothing to do with the dates of the underlying judgments when dealing with
13 garnishments. Thus, the laws of the states above provide further guidance for this Court to give
14 priority to the support order

15 3. Priority Conclusion.

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

25 Indeed, the support order has priority over Far West’s wage garnishment. Far West’s
26 garnishment expired on April 29, 2016; multiple states across the country hold that spousal
27 support orders take priority over all other creditor garnishments; the Family Court entered its
28

1 Order determining priority; and, pursuant to Nevada law, Far West's July 2015 garnishment now
2 sits indefinitely behind an ongoing support order.

3 Because Far West's garnishment expired and no longer has priority, applying Federal and
4 Nevada law to determining the appropriate withholdings becomes clear. This process and the
5 appropriate scenario are detailed below.

6 **B. TO DETERMINE THE APPROPRIATE WITHHOLDINGS, IT IS**
7 **IMPORTANT TO BEGIN WITH FEDERAL GARNISHMENT**
8 **RESTRICTIONS BECAUSE UNDER THE SUPREMACY CLAUSE**
9 **NEITHER NEVADA LAW NOR THE PROCEEDINGS IN THIS CASE**
10 **MAY BE BROADER THAN FEDERAL LAW.**

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

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

21 (1) *25 per centum* of his disposable earnings for that week, or

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

25 whichever is less. In the case of earnings for any pay period other than a
26 week, the Secretary of Labor shall by regulation prescribe a multiple of
27 the Federal minimum hourly wage equivalent in effect to that set forth in
28 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.

...

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

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

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

11 ...

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

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

17 15 U.S.C. § 1673 (emphasis added). As a result, under Federal collection law, the maximum
18 amount of disposable earnings that may be withheld is 25% for a typical wage garnishment and
19 50% or 60% for a spousal support obligation, depending on whether the debtor is supporting an
20 additional spouse or child unrelated to the support order. *Id.* Further, *no court or state may*
21 *make or enforce any order or process that violates these restrictions. Id.*

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

1 **C. OTHER COURTS HAVE PROVIDED GUIDANCE FOR APPLYING THE**
2 **GARNISHMENT RESTRICTIONS IN CASES WHEN BOTH A SUPPORT**
3 **OBLIGATION AND CREDITOR GARNISHMENT ARE AT ISSUE AT**
4 **THE SAME TIME.**

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

12 Below, Mona sets forth four cases explaining in detail the law and this application
13 process. Although these cases are not Nevada cases, they are still applicable because they
14 discuss the related Federal garnishment restrictions, which Nevada state law may limit further
15 but may not broaden. Also, in large part, Nevada law mirrors the Federal law and there are no
16 Nevada cases discussing the application of garnishment restrictions in similar detail. In short,
17 *there cannot be a result against Mona in this case that exceeds what would be allowed under*
18 *Federal law* and, as a result, these Federal law cases are persuasive and applicable.

19 **Long Island Trust v. U.S. Postal Service**

20 In *Long Island Trust Co. v. U.S. Postal Serv.*, the Second Circuit Court of Appeals dealt
21 with an issue similar to that which is presently in front of this Court. 647 F.2d 336, 337-42 (2d
22 Cir. 1981). Specifically, the Long Island Trust recovered a judgment against Donald Cheshire
23 and served Cheshire's employer, the United States Postal Service ("USPS"), with an income
24 garnishment – just like Far West did here with Mona. *Id.* at 338-339. However, the USPS
25 refused to comply with the wage execution claiming that more than 25% of the debtor's
26 disposable income was being withheld for court ordered support payments and the Consumer
27 Credit Protection Act barred any further deductions. *Id.*

28 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

1 subsequently moved for summary judgment on the basis that 42% of Cheshire's earnings were
2 being garnished pursuant to a support order issued by the Nassau County Family Court. *Id.* The
3 USPS argued that the Consumer Credit Protection Act prohibited garnishment where earnings
4 were already being withheld to the extent of 25% or more. *Id.* Long Island Trust argued that the
5 law allowed for simultaneous withholdings for family support and judgment creditors, even
6 when the amount of the support withholding exceeded 25%. *Id.* The district court agreed with
7 USPS, adopted USPS's interpretation of the Consumer Credit Protection Act, and entered
8 judgment in its favor. *Id.* Long Island Trust appealed. *Id.*

9 On appeal, Long Island Trust argued that support obligations should be considered
10 entirely independently of creditor garnishments and that the Act should be construed as reserving
11 25% of the earnings for creditors, leaving 75% for satisfaction of family support orders. *Id.* The
12 appellate court disagreed with Long Island Trust stating: "We find no basis for this argument
13 either in the language of the statute or in its legislative history." *Id.* (emphasis added). The
14 appellate court concluded that 15 U.S.C. § 1673 placed a ceiling of 25% on the amount of
15 disposable earnings subject to creditor garnishment, with an exception being that the ceiling
16 could be raised to as high as 65% percent if the garnishment was to enforce a support order. *Id.*
17 In other words, no more than 25% may be withheld when garnishments are sought only by
18 creditors and as much as 65% may be withheld when garnishments are sought only to enforce
19 support orders. *Id.*

20 The appellate court then acknowledged that the Act was less clear as to the
21 interrelationship when both creditor and support garnishments are at issue. *Id.* To clarify the
22 proper application in such scenarios, the appellate court discussed the purpose of the Act
23 indicating that the principal purpose in passing the Consumer Credit Protection Act was not to
24 protect the rights of creditors, "*but to limit the ills that flowed from the unrestricted*
25 *garnishment of wages.*" *Id.* (emphasis added). The appellate court explained that when it
26 enacted the Consumer Credit Protection Act, Congress was concerned with the increasing
27 number of personal bankruptcies, which it believed put an undue burden on interstate commerce,
28 and it observed that the number of bankruptcies was vastly higher in states that had harsh

1 garnishment laws. *Id.* Therefore, *the Act was designed to sharply curtail creditors' rights to*
2 *garnish wages with a concern for the welfare of the debtor.* *Id.* To this end, the Act restricted,
3 and in no way expanded, the rights of creditors. *Id.* Indeed, as the *Long Island Trust* court
4 noted, the express goal of the Act as a whole was to "restrict the availability of garnishment as a
5 creditors' remedy." *Id.* (citations omitted).

6 Further, the *Long Island Trust* court found "no merit in Long Island Trust's argument that
7 25 percent of an employee's disposable earnings are reserved for creditors and that up to 65
8 percent more may be garnished to enforce a support order." *Id.* The court reasoned that
9 subsections (a) entitled "maximum allowable garnishment" and (b) setting forth "exceptions" do
10 not support Long Island Trust's interpretation of the Act. *Id.* "And in view of Congress's
11 overall purpose of restricting garnishments in order to decrease the number of personal
12 bankruptcies, it would be unjustifiable to infer that the general ceiling and its exceptions were
13 intended to be cumulated to allow garnishments of disposable income to the total extent of 90
14 percent."

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

17 Compliance with the provisions of section (1673)(a) and (b) may offer problems
18 when there is more than one garnishment. In that event the priority is determined
19 by State law or other Federal laws as the CCPA contains no provisions controlling
20 the priorities of garnishments. However, in no event may the amount of any
21 individual's disposable earnings which may be garnished exceed the percentages
22 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)).

23 Id. (citing 29 C.F.R. § 870.11).

24 In conclusion, the *Long Island Trust* court indicated that it was "mindful of the argument
25 that the statute as thus construed may help debtors to evade payment of their just debts if they
26 collusively procure orders of support that exceed the general statutory maximum of 25 percent."

27 Id. The court intimated that this point, however, was considered and vigorously debated in
28 Congress prior to the passage of the Act. *Id.* (citing H.R.Rep.Reprint at 1978; remarks of

1 Representative Jones, 114 Cong.Rec. 1834-35 (1968)). Further, the court noted that the decision
2 did not leave Long Island Trust powerless to collect on its judgment because there are a variety
3 of means available to creditors to enforce judgments. *Id.* Due to the support obligation, the
4 Consumer Credit Protection Act merely prohibited further garnishment of the employee's wages.
5 *Id.*

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

7 The *Union Pacific Railroad* court also dealt with a case that involved both a support
8 obligation and a creditor garnishment. 2002 WY 165, ¶¶ 14-16, 57 P.3d 1203, 1208-09 (Wyo.
9 2002). In handling the case, the court indicated that under 15 U.S.C. § 1672(c) (a section of the
10 Act), the "term 'garnishment' means any legal or equitable procedure through which the earnings
11 of any individual are required to be withheld for payment of any debt." *Union Pac. R.R. v.*
12 *Trona Valley Fed. Credit Union*, 2002 WY 165, ¶¶ 14-16, 57 P.3d 1203, 1208-09 (Wyo. 2002)
13 (quoting 15 U.S.C. § 1672(c)); *see also Koethe v. Johnson*, 328 N.W.2d 293, 297 (Iowa 1982);
14 *Marshall v. District Court for Forty-First-b Judicial District of Michigan*, 444 F.Supp. 1110,
15 1116 (E.D. Mich. 1978); *Donovan v. Hamilton County Municipal Court*, 580 F.Supp. 554, 556
16 (S.D. Ohio 1984).

17 Moreover, according to the *Union Pacific Railroad* court, the statutes limit a garnishment
18 to 25% of a person's disposable earnings with an exception for support obligations, which may
19 take up to 65% of the disposable earnings. *Id.* And, if a garnishor or garnishee treated a support
20 withholding as an amount "required by law to be withheld" prior to calculating the 25% of a
21 person's "disposable earnings," the resulting amount withheld would be contrary to the clear and
22 unambiguous language of the Federal (which mirrors Nevada) and Wyoming (also mirrors
23 Nevada) statutes. *Id.* Such an approach would mean that up to 65% of the earnings could be
24 withheld for support and subtracted to determine "disposable earnings." *Id.* Then, 25% of those
25 "disposable earnings," on top of the 65% already withheld, could be garnished by creditors. *Id.*
26 (citing *Koethe*, 328 N.W.2d at 298; *Long Island Trust*, 647 F.2d at 339-40). And, this is not the
27 proper application because creditor garnishments may be imposed only to the extent support
28 garnishments that take priority do not exceed the general 25% limit for garnishments. *Id.*

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

15 *Com. Edison v. Denson*

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

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

22 *Com. Edison v. Denson*, 144 Ill. App. 3d 383, 384-89, 494 N.E.2d 1186, 1188-90 (1986). The
23 *Com. Edison v. Denson* court discussed Federal law and the Supremacy Clause (Article VI, U.S.
24 Constitution) indicating that the garnishment restrictions in the Consumer Credit Protection Act
25 pre-empt state law to the extent state law permits recovery in excess of 25% of an individual's
26 disposable earnings. *Id.* The court then reiterated the 25% general limitation for creditor wage
27 garnishments and 60% limitation exception when a support order is applicable. *Id.*; see also 15
28 U.S.C. § 1673.

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

6 We find no basis for this argument either in the language of the statutes or in their
7 legislative history. Our conclusion is reinforced by the manner in which 15
8 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.*

9 The court further elaborated indicating "*in no event may the amount of any individual's*
10 *disposable earnings which may be garnished exceed the percentages specified in section*
11 *1673.*" *Id.* (emphasis added) The *Com. Edison* court cited an example:

12 To illustrate: If 25% or more of an individual's disposable earnings were withheld
13 pursuant to a garnishment for support, and the support garnishment has priority in
14 accordance with State law, the Consumer Credit Protection Act does not permit
15 the withholding of any additional amounts pursuant to an ordinary garnishment
16 which is subject to the restrictions of section (1673(a))." 29 C.F.R., Sec. 870.11.
17 Furthermore, we think this conclusion is consistent with the decisions of Federal
18 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).

19 In conclusion, the *Com. Edison* court, like other courts, acknowledged that it was "mindful of the
20 plaintiff's argument that the statutes as thus construed may help debtors to evade payment of
21 their debts if they collusively procure orders of support that exceed the statutory maximums."
22 *Id.* The court further indicated, however, that "this point was considered and indeed vigorously
23 debated in Congress prior to the passage of the Act." *Id.* (citing H.R. Rep. No. 1040, 90th Cong.
24 2nd Sess. (1968); U.S. Code & Admin. News 1968, p. 1962; Remarks of Representative Jones,
25 114 Cong. Rec. 1834-35 (1968); Remarks of Representative Sullivan, 114 Cong. Rec. 14388
26 (1968) quoted in *Long Island Trust Co.*, 647 F.2d at 442, fn. 8.³ And, the *Com. Edison* court was

27
28 ³ "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

1 not willing to tamper "with the way in which Congress has chosen to balance the interests of
2 the debtor, his family, and his creditors" pointing out that the result did not leave plaintiffs
3 powerless to collect on their judgments, but merely precluded garnishment of wages in excess of
4 the statutory maximums. *Id.* (emphasis added).

5 *Voss Products, Inc. v. Carlton*

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

9 If support, withheld pursuant to a court order, were included in the definition of
10 'amounts required by law to be withheld,' the result would be contrary to the
11 purposes of the Act. Up to 65 percent of the employee's after-tax earnings could
12 be withheld for support, 15 U.S.C. § 1673(b), and since this amount would be
13 subtracted to determine 'disposable earnings,' an additional 25 percent of these
14 disposable earnings would be garnished by general creditors. This hypothetical
15 result is clearly an incorrect reading of the Act. It would be inconsistent with
16 Congress's overall purpose of restricting garnishment to cumulate the sections of
17 15 U.S.C. § 1673 to allow garnishment of up to 90 percent of an employee's after-
18 tax income. *Voss Products, Inc. v. Carlton*, 147 F. Supp. 2d 892, 896-98 (E.D.
19 Tenn. 2001) (citing *Long Island Trust Co.*, 647 F.2d at 341).

20 As a result, the *Voss Products* court also found that § 1673 places a 25% percent ceiling on the
21 amount of disposable earnings subject to garnishment, "with the exception that the ceiling may
22 be raised as high as 65 percent if the garnishment is to enforce family support orders." *Id.*
23 Further, the court stated that it found "no merit in plaintiff's argument that 25 percent of an
24 employee's disposable earnings are reserved for creditors and that up to 65 percent more may be
25 garnished to enforce a support order." *Id.* Further the court stated that certainly "the structure of
26 the section—with subsection (a) entitled 'Maximum allowable garnishment' and subsection (b)
27 setting forth 'Exceptions' for support garnishments—does not suggest such an interpretation."
28 *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*

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."

1 *income to the total extent of 90 percent.” Id.* (emphasis added). As other courts did, the *Voss*
2 *Products* court stated the Secretary of Labor’s comments, who is charged with enforcing the
3 provisions of the Act, supported this conclusion. *Id.* The court concluded that the subject
4 support order fully absorbed the maximum of disposable earnings subject to garnishment and
5 nothing could be withheld pursuant to the plaintiff’s garnishment application. *Id.*

6 *In re Borochoy*

7 In *In re Borochoy*, the court also addressed an issue similar to the one in this case. The
8 court stated:

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

17 2008 WL 2559433, at *1 (Bankr. D. Haw. June 23, 2008). In addressing this scenario, which is
18 exactly similar to the present case, the court discussed the Consumer Credit Protection Act
19 stating:

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

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

1 § 870.11(b)(2), and with the policy of protecting consumers from excessive garnishments. *Id.* In
2 conclusion, the court ordered that any amounts paid under the support order to first be applied to
3 the 25% limit imposed by section 1673(a) and if the support payments exhaust the applicable
4 limit under section 1673(a), the ordinary creditor is not entitled to any payments on account of
5 the garnishment. *Id.* In conclusion, the court recognized that the holding did not prohibit state
6 law from further limiting the creditor's rights. *Id.*

7 *Donovan v. Hamilton Cty. Mun. Court*

8 In *Donovan v. Hamilton Cty. Mun. Court*, 580 F. Supp. 554, 557-58 (S.D. Ohio 1984),
9 the court concluded that "the language of § 1673(a) is self-executing, and that therefore *the court*
10 *order authorizing the withholding of an amount in excess of twenty-five percent of the*
11 *debtor's disposable income is a violation of this section.*" *Id.* The court indicated that if state
12 law, statutory or otherwise, permitted garnishment of a greater amount of an employee's
13 disposable earnings than permitted under § 303(a) of Title III of the Consumer Credit Protection
14 Act (15 U.S.C. § 1673(a)), then it violated federal standards. *Id.* (citing *Hodgson v. Hamilton*
15 *Municipal Court*, 349 F.Supp. 1125, 1140 (S.D. Ohio 1972). The court indicated this conclusion
16 was consistent with decisions of other courts. *Id.* (citing *Long Island Trust Co. v. United States*
17 *Postal Service*, 647 F.2d 336 (2d Cir.1981); *Marshall v. District Court for Forty-First-B Judicial*
18 *District*, 444 F.Supp. 1110 (E.D. Mich. 1978); *Hodgson v. Hamilton Municipal Court*, 349
19 F.Supp. 1125, 1140 (S.D. Ohio 1972); *Hodgson v. Cleveland Municipal Court*, 326 F.Supp. 419
20 (N.D. Ohio 1971). The court further indicated that in reaching this decision it was affording the
21 Department of Labor the deference it is entitled to as the interpreting agency of the Act. *Id.*
22 (citing *Griggs v. Duke Power Co.*, 401 U.S. 424, 434, 91 S.Ct. 849, 855 (1971); *Udall v.*
23 *Tallman*, 380 U.S. 1, 16, 85 S.Ct. 792, 801 (1965)). Based on the above, the court concluded
24 that because the Municipal Court's approach resulted in the garnishment of an amount in excess
25 of 25 percent of the disposable earnings, it violated federal standards. *Id.*

26 The court then considered whether it needed to go so far as to permanently enjoin the
27 Municipal Court and its clerk from doing anything that had the practical effect of subjecting an
28 amount of greater than 25 percent of the employee's disposable earnings to garnishment in any

1 given pay period. *Id.* Citing and referencing the judge's commentary in *Hodgson*, 349 F.Supp.
2 at 1137, the court indicated that §§ 1673(c) and 1676 may be *fairly read to constitute express*
3 *authorization from Congress to issue an injunction against a State court* and "that the
4 Consumer Credit Protection Act 'can be given its intended scope only by the stay of state court
5 proceedings if that is necessary.'" *Id.* (citing *Hodgson* at 1137). The *Donovan* court then stated
6 that it had no assurances that the parties were willing to comply with Federal law on garnishment
7 restrictions and, as a result, concluded that injunctive relief was necessary. *Id.* Accordingly, the
8 *Donovan court enjoined the lower court*, its clerk, and its employees from issuing garnishments:

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

12 *Lough v. Robinson*

13 The *Lough* court confirmed once again that "garnishment" is defined as "any legal or
14 equitable procedure through which the earnings of any individual are required to be withheld for
15 payment of any debt." *Lough v. Robinson*, 111 Ohio App. 3d 149, 153, 675 N.E.2d 1272, 1274
16 (1996) (citing 15 U.S.C. § 1672(c)). A support order, as mentioned in U.S. Code, Section
17 1673(b), Title 15 is a debt and therefore falls within the meaning of garnishment in Section 15
18 U.S.C. 1672(c). *Id.* (citing *Marshall v. Dist. Court for the Forty-First Judicial Dist.*, 444
19 F.Supp. 1110, 1116 (E.D. Mich. 1978); *Marco v. Wilhelm*, 13 Ohio App.3d 171, 173, (1983);
20 *Long Island Trust Co.*, 647 F.2d at 341). To hold otherwise would frustrate the intention of
21 Congress in drafting the Consumer Credit Protection Act. *Id.* (citing *Long Island Trust Co.*,
22 *supra*). Moreover, if "support orders" were not included within the meaning of "garnishment,"
23 up to ninety percent of appellant's income — sixty-five percent for a support order and twenty-
24 five percent for a garnishment — could be withheld. *Id.* This would likely lead appellant or one
25 in his position to the bankruptcy courthouse door, which would further frustrate the intention of
26 Congress to reduce bankruptcies caused by garnishment orders. *Id.*

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

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

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

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

24 Summary Regarding Application of Garnishment Restrictions

25 The above cases are applicable to this case because they detail and discuss the correct
26 application of the Federal garnishment restrictions, which Nevada state law, not only mirrors, but
27 may not broaden. In other words, *under the Supremacy Clause and 15 U.S.C. § 1673(c), Mona*
28 *can end up no worse under Nevada law than he does under the Consumer Protection Act.*
And, under Federal law, when a support obligation and creditor garnishment are in play at the

1 same time, no withholding of wages is allowed for the creditor garnishment if the support
2 obligation takes priority and exceeds 25% of the debtor's disposable earnings. Nevada state law
3 may limit these percentages more, but may not broaden or enforce any process in violation of
4 these percentages.

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

7 **D. NEVADA GARNISHMENT RESTRICTIONS MIRROR THE CONSUMER**
8 **CREDIT PROTECTION ACT AND, LIKEWISE, DISALLOW FAR**
9 **WEST'S GARNISHMENT EFFORTS ON MONA'S WAGES.**

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

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

17 NRS 31.295(2). Thus, exactly like 15 U.S.C. § 1673, Nevada limits withholdings from creditor
18 garnishments to 25% of disposable earnings. *Compare* NRS 31.295(2) and 15 U.S.C. § 1673(a).
19 Like 15 U.S.C. § 1673, NRS 31.295 also contains support obligation exceptions to the 25%
20 limitation. Pursuant to subsections 3 and 4 of NRS 31.295, the 25% restriction does not apply in
21 the case of any "order of any court for the support of any person." NRS 31.295(3)(a). In such a
22 situation, the maximum amount of disposable earnings subject to withholding to enforce any
23 order for the support of any person may not exceed 60%, which mirrors the Federal limitation in
24 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
25 result, the Nevada and Federal limitations mirror one another. Thus, the results when
26 determining garnishment limitations under Nevada law should mirror Federal law limitations.

27 **E. IF FAR WEST RECEIVES THE WITHHOLDING IT IS SEEKING, THE**
28 **RESULT WILL VIOLATE FEDERAL AND NEVADA LAW.**

To show the violation of Nevada and Federal law that will result if Far West receives the
withholding it is seeking, Mona has provided the illustrations below. Specifically, Mona is

subject to a support order withholding of \$10,000 per month (\$4,615.39 bi-weekly) and his bi-weekly earnings are \$11,538.46. Thus, as the Court knows from the law detailed above, to handle this scenario:

- First, Mona's disposable earnings must be determined (\$8,266.37).
- Second, there must be a calculation of the support withholding in relation to the disposable earnings (currently 56% calculated as follows: \$4,615.39 [support withholding] / \$8,266.37 [disposable earnings] = .558).
- Third, the resulting percentage in step two above must be compared to the limitations set forth in NRS 31.295 and 15 U.S.C. § 1673(b)(2)(B).
- Fourth, if on comparison, the resulting percentage in step two (56%) exceeds 25%, then Far West is not entitled to any withholding and its wage garnishment is invalid under Nevada and Federal law.

To further emphasize this conclusion, Mona has included an illustration below to summarize and depict the correct and appropriate withholdings and calculations.

1. Proposed Withholdings Calculations Violating Federal and Nevada Law

Biweekly salary	\$11,538.46	
Deductions	-\$3,272.09	(income tax and social security)
Disposable earnings	\$8,266.37	
25% of disp. earnings	-\$2,066.59	(\$8,266.37 [disposable earnings] X .25 [25% restriction] = \$2,066.59) (demanded amt. to Far West)
Spousal support	-\$4,615.39	\$10,000 per month as the Divorce Decree orders and calculated to a bi-weekly amount of \$4,615.39)
Remaining amounts to Mona	\$1,584.39	This equates to 81% of Mona's disposable earnings being withheld (\$6,681.98 [total withholdings of \$2,066.59 to Far West and \$4,615.39 to Rhonda] / \$8,266.37 [disposable earnings] = .808). The statutory maximum is 60%.

The calculations above represent the result if the Court denies the Claim of Exemption. This result violates Federal and Nevada law because it represents 81% (25% to Far West and 56% to Rhonda) of Mona's disposable earnings when the maximum withholding is limited to 60% under NRS 31295(4)(b) and 15 U.S.C. § 1673(b)(2)(B).

The following illustration represents the proper withholdings necessary to comply with Nevada and Federal law in this case.

Biweekly salary	\$11,538.46
<u>Deductions</u>	<u>-\$3,272.09 (income tax and social security)</u>
Disposable earnings	\$8,266.37

Spousal support	\$4,615.39	This equates to 56% of Mona's disposable earnings $(\$4,615.39 \text{ [spousal support]} / \$8,266.37 \text{ [disposable earnings]} = .558 \text{ or } 56\% \text{ of disposable earnings})$
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Amt. to Far West \$0 (because Mona's withholdings already exceed 25%)

Remaining amounts to Mona	\$3,650.97	(This equates to Mona receiving 44% of his disposable earnings, which is acceptable under Nevada and Federal law)
---------------------------	------------	---

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. Far West is not entitled to anything because Rhonda's withholding exceeds 25%. Mona is entitled to the remaining \$3,650.97.

As discussed in detail above, if Far West's proposal (its wage garnishment has priority over the support order) is allowed to proceed, the result will violate Federal and Nevada law. If the 81% of Mona's disposable earnings will be withheld when the maximum withholding under a support order is in play is 60%. NRS 31.295(4)(b) and 15 U.S.C. § 1673(b)(2)(B). And, the 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 affirm Mona's Claim of violation.

In the event Far West argues the Claim of Exemption is not sufficient and Mona was supposed to address NRS 31.045 and NRS 31.200, Mona has done so below. Specifically, pursuant to NRS 31.045(2), Mona is entitled to file a motion requesting the discharge of the writ.

1 And, part of the basis of the claim of exemption, in addition to the arguments above, is that the
2 writ is improper and should have never been issued; the wages proposed to be withheld are
3 exempt because they are in excess of statutory maximums; and, the wages proposed to be
4 withheld are excessive under Federal and Nevada. See NRS 31.200. The substance of these
5 arguments is detailed above and throughout the exhibits attached hereto and is incorporated
6 herein by reference. Nevertheless, out of an abundance of caution, Mona reiterates and
7 summarizes the points below.

8 **1. Far West Improperly and Improvidently had the Writ Issued.**

9 Far West knows that its garnishment expired after 120 days. This is why it issued
10 another garnishment. Far West also knows that Mona has an ongoing support obligation to
11 Rhonda Mona that replaced Far West's garnishment in first position once the garnishment
12 expired on April 29, 2016. As a result, Far West improperly sought and obtained the current
13 garnishment because with the support obligation taking first position, the garnishment has no
14 impact without violating Nevada and Federal law. Indeed, Mona established and argued
15 repeatedly above that because the support order took priority and equated to more than 25% of
16 Mona's disposable earnings, which is the maximum amount that could be subject to a wage
17 garnishment under Federal and Nevada law, that Far West was not entitled to anything. See
18 NRS 31.295(2) and 15 U.S.C. § 1673(a). Thus, Mona's brief has addresses the impropriety of
19 Far West's garnishment and he again incorporates herein by reference said arguments.

20 **2. The Wages Far West is Proposing to Garnish are Exempt from**
21 **Execution Because they Exceed Allowed Statutory Maximums.**

22 Federal and Nevada law set forth garnishment restrictions and exemptions of which
23 Mona will not receive the benefit if Far West gets what it demands. Mona addressed repeatedly
24 throughout this brief that his wages are exempt from execution because the support order now
25 has priority and exceeds 25% of his disposable earnings. After all, a significant portion of this
26 brief has been dedicated to establishing that Far West's proposal will result in 81% of Mona's
27 disposable earnings being withheld when 25% is the maximum for wage garnishments. In
28 summary, Nevada's limitations are found in NRS 31.295. Pursuant to NRS 31.295(2), the:

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

3 NRS 31.295(2). Thus, exactly like 15 U.S.C. § 1673, Nevada limits withholdings from creditor
4 garnishments to 25% of disposable earnings. *Compare* NRS 31.295(2) and 15 U.S.C. § 1673(a).
5 Like 15 U.S.C. § 1673, NRS 31.295 also contains support obligation exceptions to the 25%
6 limitation. Pursuant to subsections 3 and 4 of NRS 31.295, the 25% restriction does not apply in
7 the case of any "order of any court for the support of any person." NRS 31.295(3)(a). In such a
8 situation, the maximum amount of disposable earnings subject to withholding to enforce any
9 order for the support of any person may not exceed 60%, which mirrors the Federal limitation in
10 15 U.S.C. § 1673(b)(2)(B). *Compare* NRS 31.295(4)(b) and 15 U.S.C. § 1673(b)(2)(B).
11 Therefore, the Nevada and Federal limitations mirror one another and so should the results when
12 determining garnishment limitations under Nevada and Federal law. As a result, the
13 withholdings Far West demands are exempt.

14 **3. The Levy Resulting from Far West's Proposal is Excessive.**

15 One of Mona's primary arguments herein is that the garnishment will result in excessive
16 withholdings. To illustrate this point, Mona identified and explained the garnishment restrictions
17 and analyzed them in relation to the circumstances of this case. The result, based on Far West's
18 proposal, was an 81% withholding of Mona's disposable earnings. This is excessive and Mona
19 incorporates herein the related arguments throughout the brief.

20 **IV. CONCLUSION.**

21 Any earnings Far West attempts to withhold from Mona at this point are exempt from
22 execution. Far West's most recent garnishment expired on April 29, 2016. Thus, since April 30,
23 2016, Mona's spousal support obligation to his ex-wife has sat in first position and has been the
24 sole withholding from Mona's wages. The spousal support obligation equates to 56% of Mona's
25 disposable earnings. Under Federal and Nevada law, because the spousal support obligation
26 exceeds 25% of Mona's disposable earnings, once it took first position and became the sole
27 withholding from Mona's wages, Mona's wages became exempt from any further withholdings
28 from creditor garnishments.

1 Far West did not serve the invalid garnishment that is the subject of the Claim of
2 Exemption until early July 2015 and Nevada law, as well as Legislative History, is clear that
3 garnishments in Nevada do not endure in perpetuity – they expire. In fact, the Legislature flatly
4 rejected the proposal to have garnishments endure forever when it enacted the current law
5 allowing garnishments to last for only 120 days. Therefore, the Court should affirm the Claim of
6 Exemption and enter an Order that Far West's July 1, 2015 wage garnishment and all subsequent
7 wage garnishments are void unless and until the spousal support obligation no longer occupies
8 first position as a withholding.

9 Dated this 29th day of July, 2016.

10
11 MARQUIS AURBACH COFFING

12
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CLAIM OF EXEMPTION AND DISCHARGE was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 29th day of July, 2016. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:⁴

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

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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).

Exhibit A

N E L I S

DETAIL LISTING
FROM FIRST TO LAST STEP

TODAY'S DATE: Mar. 21, 19 5
TIME : 1:17 pm
LEG. DAY: 89 Regular
PAGE : 1 OF 1

1989

AB 247

By Judiciary

GARNISHMENT

Provides for continuing garnishment under certain circumstances. (BDR 3-388)

Fiscal Note: Effect on Local Government: No. Effect on the State or on Industrial Insurance: No.

02/22 27 Read first time. Referred to Committee on Judiciary. To printer.

02/23 28 From printer. To committee.

02/23 28 Dates discussed in committee: 2/28, 3/28, 4/11 (A&DP) 6/7

04/11 59 From committee: Amend, and do pass as amended.

04/11 59 (Amendment number 181.)

✓04/12 60 Read second time. Amended. To printer.

04/13 61 From printer. To engrossment.

04/13 61 Engrossed. First reprint. ✓

✓04/14 62 Read third time. Passed, as amended. Title approved, as amended. (27 Yeas, 14 Nays, 1 Absent, 0 Excused,

0 Not Voting.) To Senate.

04/17 63 In Senate.

04/17 63 Read first time. Referred to Committee on Judiciary. To committee.

04/17 63 Dates discussed in Committee: 4/27, 5/26, 5/24, 5/31, 6/2 (A&DP)

06/02 97 From committee: Amend, and do pass as amended.

06/02 97 (Amendment number 1094.)

✓06/03 98 Read second time. Amended. To printer.

06/05 99 From printer. To re-engrossment.

06/05 99 Re-engrossed. Second reprint. ✓

06/05 99 Placed on General File.

✓06/05 99 Read third time. Passed, as amended. Title approved. (20 Yeas, 1 Nays, 0 Absent, 0 Excused, 0 Not Voting.) To Assembly.

06/06 100 In Assembly.

06/07 101 Senate amendment concurred in. To enrollment.

06/09 103 Enrolled and delivered to Governor.

06/15 108 Approved by the Governor.

06/16 109 Chapter 338.

Effective October 1, 1989.

6/2-After passage discussion, Senate Judiciary.

6/7-After passage discussion, Assembly Judiciary Committee.

(* = instrument from prior session)

1. Later investigation and testimony could come from any number of sources. It would then become confusing to determine who contributed the information on which the citation was issued, and whom to subpoena in either a criminal or case later arising. As the law presently operated, the citation had to be issued by personal knowledge of the officer; and
2. NRS 44.801 presently had no limiting language as to when the citation might be issued.

Also opposing the bill, as written, was Halina Jones, representing the Nevada Division of the California State Automobile Association. She agreed with comments made by Mr. Kilburn, as well as the objection made by Mr. Carpenter and Mr. Gaston. Ms. Jones opined that from the motorists standpoint, the proposed bill could encourage delays in auto accident investigations; and these delays would work to the detriment of the motorist.

No further testimony was offered on A.B. 242 and the hearing was opened on A.B. 247.

ASSEMBLY BILL NO. 247 - Allows for continuing garnishment until amount demanded in writ is satisfied.

As prime sponsor of A.B. 247, Assemblyman Matthew Callister was asked to clarify for the committee the intent of the bill and difference between "attachment" and "garnishment." Mr. Callister stated the present system was cumbersome for all parties, particularly for wage garnishments that would have to be repeated; and streamlining the process would ameliorate the cost, for both judgment debtor and judgment creditor.

Julien Sourwine and James O'Reilly, representing the State Bar of Nevada, agreed with Mr. Callister's testimony. Mr. O'Reilly said, "It [present statute] makes the effective use of a Nevada judgment very limited in terms of collecting money from those who truly owe money and have been adjudicated responsible to the plaintiff. The idea is very simple. Those who have had their day in court should pay what has been determined by our courts, and the bureaucratic process should not be an impediment to collecting the money."

Mr. Gaston felt it was important to understand that A.B. 247 would allow a "win/win" situation. Presently, he added, garnishments were made on a one-at-a-time basis, each instance garnering only a portion of the whole judgment. Keeping in mind each instance could be as much as \$75 in costs, the resultant expense to all parties was significant.

There were two schools of thought exposed in discussion. Several committee members expressed concern for the employee's rights, whereas others were concerned about employers' rights. At issue, especially, was section 4 dealing with the employer's obligations and penalties for not carrying out those obligations. While Mr. Sourwine stated the Bar Association took no stand on section 4, several committee members were opposed to any imposition of sanctions to the employer in the exercise of garnishment. This objection was based upon their belief that an employer had the right to discharge an employee and operate his business as he saw proper. Mr. Callister was adamant, however, that section 4 remain intact, saying, "It's critical to have an explicit statement of state policy that it would be absolutely inappropriate for any employer to sanction an employee because he had had financial difficulties that resulted in a judgment against him. I think that's why the language is there and that's why it's been lifted from 31A and parroted again here."

It was suggested by Mr. Regan that a fee be allowed the employer for making the collection. The following discussion resulted in a suggestion by Mr. O'Reilly that the entire bill be redrafted using the terms of "judgment creditor" and "judgment debtor," rather than plaintiff and defendant. Chairman Sader asked Mr. Callister to work with him to rewrite substantive issues dealing with the status of the employer and creating causes of action against the employer, as well as clarifying technical and wording problems with the bill.

Final testimony was taken from Charlotte Shaber, President of National Factors (a collection agency in Carson City), and also representing the Nevada Collectors' Association. There were two areas which Ms. Shaber addressed:

1. Ms. Shaber asserted the Interrogatories contained in section 6 (current statutory language) were unnecessary exercises and should be eliminated from the law.

2. The Federal Fair Debt Collection Practices Act, Ms. Shaber said, provided that an employer could not terminate a debtor for one garnishment. For reasons of garnishment, an employee could be terminated only after the third instance, and this Act did, in fact, apply to all judgments, both state and federal.

In summary, Ms. Shaber said she was just suggesting that those reworking the law should consider existing federal law, as well as all aspects of state law.

ASSEMBLY BILL NO. 249 - Clarifies scope of exemption from elimination of joint and several liability for concerted acts of defendants

Chairman Sader said that problems dealing with concerted acts had arisen which had not been foreseen or agreed to by either side in the debate on tort reform proposals during the previous session. This law arose from a "compromise" in the 1987 session. The clarification of concerted acts of health care providers was within the intent of 1987 legislation. Mr. Sader said he did not consider A.B. 249 a new substantive change -- only a clarification.

Opening testimony in support was heard from Larry Matheis, Executive Director of the Nevada State Medical Association, who read a statement into the record (see Exhibit C).

The next testimony was heard from Dr. John Scott, Chairman of the Nevada Medical Association's Committee on Governmental Affairs. Dr. Scott read a statement into the record (see Exhibit D), and added there was an additional problem with S.B. 511 (from the 1987 Legislative Session) which concerned the early settlement by one or more of the parties involved. If one of the parties settled, that could leave the non-settling party liable for more than his true percentage of attributable negligence. Dr. Scott said he did not believe this was the intent of negotiations in 1987. He suggested this could be rectified in A.B. 249, line 18, by bracketing "not thereafter" and changing "nor" (in the same line) to "and."

Additional supporting testimony was taken from Robert Byrd, President of Nevada Medical Liability Insurance Co., who said, "On behalf of my company, we are in favor of A.B. 249. ... I intended to say I think the intent was clear, but

MINUTES OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Sixty-fifth Session
March 28, 1989

The Assembly Committee on Judiciary was called to order by Chairman Robert M. Sader at 8:05 am on Tuesday, March 28, 1989, in Room 240 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda, Exhibit B is the Attendance Roster.

MEMBERS PRESENT:

Robert M. Sader, Chairman
John C. Carpenter
Vonne Chowning
Renee L. Diamond
Robert E. Gaston
James Gibbons
Bill Kissam
Gene Porter
Mike McGinness
John Regan
Gaylyn J. Spriggs
Vincent L. Triggs
Wendell P. Williams
Jane A. Wisdom

MEMBERS ABSENT:

None

STAFF MEMBERS PRESENT:

Jennifer Stern, Legislative Counsel Bureau

OTHERS PRESENT:

Marc J. Fowler-Washoe County Sheriff
Dan Ernst-Sparks Constable
Jim Spencer-Department of Administration
Judy Matteucci-Department of Administration
Rochelle Summers-Department of Administration
Marianne Aragon-Washoe County Sheriff's office
Charlotte Shaber-National Business Factors
George McNally-Nevada Trial Lawyers
Bill Bradley-Nevada Trial Lawyers
Fred Hillerby-NV Manufacturers Association
John Sande III-NV Bankers Association
John Pappageorge-Clark County

Following roll call, the chairman opened the hearing on AB 247.

ASSEMBLY BILL 247- Allows for continuing garnishment until amount demanded in writ is satisfied.
(BDR 3-388)

Assemblyman Matt Callister, Clark County-District 1, led the testimony as the bill's prime sponsor.

"When you, the plaintiff, sue someone," he began, "and after due process obtain a judgment, the tricky part becomes how to collect upon that judgment."

He testified the simplest method of collection was to garnish the paycheck of an employee at the employer level. He stated as an attorney it was unfortunate to have to go through that process and then bill his client, the plaintiff, for the expenditure, but it often was the only way at this time to be able to offer the judgment creditor recovery on the judgment.

Using the example of an employee of Caesar's Palace having a judgment, he continued it was necessary to prepare two legal documents in order to collect. The first document was a writ of garnishment, and the second, written instructions to the sheriff or constable. The documents, along with the appropriate fees are filed with the county, who in turn sends the sheriff or constable to serve the writ upon the employer, Caesar's Palace.

Caesar's Palace must either respond in writing that the individual is no longer employed with them, or attach the employee's paycheck up to 25 percent of net proceeds, send the garnished wages back to the sheriff, who in turn delivers it to Mr. Callister's firm for the plaintiff.

"It is an unduly circuitous and burdensome procedure, and I think it is very expensive," Mr. Callister iterated, "But it is very important to note there are two particular costs involved-one at the county level, and the other for serving the writ of garnishment..."

He proposed the writ remain in effect until the judgment was satisfied in full in lieu of repeating the procedure every pay cycle. Admitting it would mean a reduction in income to sheriffs and constables, Mr. Callister noted the time reduction involved for their staffs.

He said the federal government already had continuing garnishments, and in some instances the state provided for them, such as failure to pay child support. He opined the proposal simplified a lengthy process and allowed for streamlining.

1003

The Chairman told the committee he had received word from the Welfare Division of new federal requirements which would mandate changes in the present wage withholding law on child support. He asked Mr. Callister if the necessary language could be included in this bill, to which Assemblyman Callister replied he had no objection.

Marc J. Fowler and Marianne Aragon, representing the Washoe County Sheriff's Office-Civil Division, testified in opposition to the bill. (Exhibit C). Mr. Fowler explained Washoe County would lose \$14,000 per year in repeat garnishment revenue if AB 247 was passed. Stating approximately 80 percent of garnishments were repeats, he clarified it was the sheriff, not the attorney, who prepared the writs of garnishment in Washoe County and then served them, adding the average fee for this service was \$15.

An on-going garnishment, he continued, would tie one debtor to one creditor indefinitely. Other creditors would have to wait as long as six years, on the first debt served by garnishment. Collection on multiple judgments would be delayed indefinitely.

Mr. Sader asked Mr. Fowler if a subsequent creditor would have any voice in prioritizing garnishment debts, adding Mr. Callister's suggestion was to leave the issue of prioritizing up to the court's discretion since a formula could prove to be inflexible.

Mr. Fowler answered his procedure now was "first in time," that is, first come, first served. He added his office would also lose the commissions they were allowed to charge for executions, which would amount to approximately \$6,000 per year if the bill was passed, and the public would have to pay for the collection of private debts.

Mr. Carpenter asked the witness if he now served garnishments every two weeks. Mr. Fowler answered he did not, adding the procedure was generally repeated on a monthly basis.

"If you garnish 25 percent of someone's paycheck every two weeks, we could be forcing some of these people into bankruptcy," opined Mr. Fowler.

Another issue troubling Mr. Fowler was the mountain of paper work under current law which still had to be completed if the bill passed. He added if the sheriff's office would still complete it, there would be no income intake.

Mr. Kissam spoke in support of the bill.

Minutes of the Nevada State Legislature
Assembly Committee on Judiciary
Date: March 28, 1989
Page: 4

Mr. Gibbons asked Mr. Fowler if his office was not required to repeatedly serve garnishments, would his work load substantially drop.

Mr. Fowler answered repeat garnishments were only a small percentage of his office's duties, and were filtered in with services provided to other governmental agencies.

Dan Ernst, Constable of Sparks Township, spoke in opposition to the bill. He referred to a letter from the Constable of North Las Vegas. (See Exhibit D). He testified Washoe County could lose as much as \$35,000 in fees alone. Citing the mountains of paperwork necessary to process paychecks under a continuing garnishment, he complained he would receive no revenue if the bill passed.

Chairman Sader asked the witness if his office took a commission on the writs when served. Mr. Ernst replied his office was allowed to take 2 percent, but did not.

"Would you prefer," began Mr. Sader, "if we pass this bill, not to have the bookkeeping at all, or to have it and take the commission?"

It was Mr. Ernst's belief taking commissions was unfair to the defendant, and he preferred not to do so.

Mr. Fowler preferred to keep the books and take the commission. Both Mr. Fowler and Mr. Ernst wanted the paperwork, but neither wanted it without remuneration.

Mr. Ernst pointed out several counties in California had discovered continuing garnishment did not work, and had discontinued the practice.

Mr. Sader agreed there could be significant problems with the practice, including debtors claiming not to have received their money. "What if we raised the fees," the chairman asked the witnesses. "Would you prefer a flat fee or a percentage fee?"

Mr. Ernst replied he would prefer a flat fee, stating the amount of paper work and responsibility to the court was the same no matter what amount was being garnished. He said all types of notices took the same amount of time to handle and suggested a \$10 fee.

John Sande, on behalf of the Nevada Banker's Association, testified in support of any legislation which would streamline the process of garnishment.

Fred Hillerby, representing the Nevada Manufacturing Association, also supported the bill and its concepts. He

1170

commented, however, that garnishing up to 25 percent was a major problem with a large population of minimum-wage workers. He suggested a sliding scale fee schedule.

John Pappageorge, representing Clark County, testified the fiscal impact for Clark County was an estimated \$100,000 if the bill was passed.

Chalotte Shaber, National Business Factors, voiced concern over continuing garnishment being a hardship on those garnished. She suggested 90 days was a reasonable length of time for the writ to be in effect. She also suggested the potential problem of the creditor denying receiving payment could be avoided with an affidavit going directly to the court instead of the sheriff, thereby simplifying the process.

The hearing was closed on AB 247 and opened on AB 320.

ASSEMBLY BILL 320- Provides for indemnification of certain independent contractors with state who provide medical services. (BDR 3-4)

No one testified in support of AB 320.

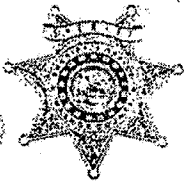
Mary Finnell, State Risk Manager, spoke against the bill, stating it would have a fiscal impact and should be referred to Ways and Means. She testified the bill originated from the reluctance of insurance companies to work with doctors who contracted medical services to the prisons in the 1987 legislative session. She informed the committee the Department of Prisons had been amended out of the statute, and voiced concern that the Division of Mental Health and Retardation consisted of an entirely different area of liability and must be studied.

Bill Bradley from the Nevada Trial Lawyers voiced opposition to granting immunity to any providers not already enumerated in the statute. He opined the bill was directed at those people who needed protection the most, those in mental hospitals. He stated abuse was a known problem in such places, and the way to solve the problem was not to grant more individuals freedom from liability, which would foster the problem, saying "...immunity breeds contempt..."

The hearing was closed on AB 330 and opened on AB 411.

ASSEMBLY BILL 411- Clarifies state's right of subrogation under program for compensation of victims of crime. (BDR 16-569)

1171



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WASHOE COUNTY SHERIFF'S OFFICE

VINCENT G. SWINNEY
Sheriff

911 PARR BOULEVARD
RENO, NEVADA 89512 - 1000
TELEPHONE: (Area 702) 828-3600

March 27, 1989

Assemblyman Robert Sader
Chairman, Assembly Judiciary Committee
Capitol Complex
Assembly Chambers
Carson City, Nevada 89701

Dear Sir:

This letter is to state our objections to Assembly Bill 247, An Act relating to garnishment.

Under this bill the bookkeeping extends indefinitely for the Sheriff/Constable, with no fee due to the sheriff or constable for the bookkeeping, deposits made, returns to the court or disbursement of funds.

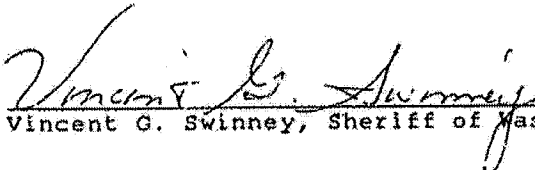
Our collected fees under AB 247 would then have to be absorbed by the tax payer and public employees for collection of private debts, hence the Fiscal Note showing no effect on local government is in error.

This bill would also allow for a single plaintiff to tie up a defendant for his debt alone, preventing any other plaintiff from obtaining a garnishment under execution until satisfaction of the existing claim. This would benefit collection services primarily, and could prevent the ordinary citizen from remedy.

Approximately 80% of the garnishments currently served by this office are repeats of prior services. These generate approximately \$14,000.00 per year in revenue for Washoe County or 15% of all revenue generated by service of civil process. The fee for each service is, with mileage, approximately \$15.00 which pays for delivery of the process, bookkeeping and related functions.

I offer to you the testimony of my staff on this matter and will have them available to you and your committee on March 28, 1989.

Sincerely,



Vincent G. Swinney, Sheriff of Washoe County

EXHIBIT C

LOUIS A. TABAT
CONSTABLE

CONSTABLE'S OFFICE

NORTH LAS VEGAS TOWNSHIP

1916 North Bruce Street

North Las Vegas, Nevada 89030

TELEPHONE
702-455-7800

CHAPTER 31 NRS

AB 247

SECTION 2

We understand that this bill was introduced by the private process service agencies. As it stands the server must now have his office fill out a Writ of Execution and a Writ of Garnishment and then bring it to the court and pay a filing fee. When they finish with the court they have the writs served by the Constable's office. It is the Constable's duty to serve the garnishment because it is a court order. What the process servers are doing is cutting the cost for themselves by not paying extra filing fees. They would make one copy which is served to the employer and stays in effect until judgment is paid in full or judgment expires after six years unless renewed. That is how the law would read if this law is passed. Lets say that a garnishment is served by Sears, Roebuck & Co. and down the road another company or individual has a garnishment to serve on the same party he has no chance of collecting any part of it because the law states that only one collection can be made on anyone person per pay period, this is not right as it is now whoever serves the garnishment first would be the recipient, except for the IRS and Child Support Division they take priority. I think that AB 247 is a one sided bill and should be put to rest.

If the process server was allowed to serve the wage garnishment you would not have this bill before you. This is a court order and a Constable or Sheriff must serve it. If this section was to pass where there is a one time service of the Writ of Garnishment, that type of service would put the burden on the employer i.e. Casino's, Construction companies, School District, Motels, Hotels, etc. It is making the employer a collection agent and if the writs were to be served every pay period it would be a constant reminder to the employer. This bill is also penalizing the County of revenues. Justice court would lose anywhere from \$50,000 to \$60,000.00 dollars and District Court averages \$60,000.00 to \$70,000.00 dollars per year. The total combined is a lost to the County of approximately \$120,000.00 to \$130,000.00 in filing fees per year, which is required plus the Deputy Constable and his Deputies are not salaried, this is there livelihood and therefore is not a cost factor to the taxpayers. This bill would also penalize the employer, should he miss a payment and have to go to Court and perhaps pay a heavy fine because he failed to be a good collection agent. The employer is now burdened with many other collections for his employees such as withholding taxes and child support garnishments.

MINUTES OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Sixty-fifth Session
April 11, 1989

The Assembly Committee on Judiciary was called to order by the Chairman, Robert Sader at 8:05 a.m. on Tuesday, April 11, 1989, in Room 240 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda, There was no Attendance Roster.

MEMBERS PRESENT:

Robert Sader, Chairman
John C. Carpenter
Vonne Chowning-Excused
Renee L. Diamond
Robert E. Gaston
James Gibbons
Bill Kissam
Mike McGinness
Gene Porter, Vice Chairman
John Regan
Gaylyn J. Spriggs
Vincent L. Triggs
Wendell P. Williams
Jane A. Wisdom

MEMBERS ABSENT:

None

STAFF MEMBERS PRESENT:

Jennifer Stern, Legislative Counsel Bureau

OTHERS PRESENT:

Assemblyman Courtenay Swain, District 28
Assemblyman Matt Callister, District 1

Minutes of the Nevada State Legislature
Assembly Committee on Judiciary
Date: April 11, 1989
Page: 7

Assembly Bill 452- Authorizes financial institution to establish authenticity of its records by affidavit of custodian of records. (BDR 4-537)

There were minor technical amendments only.

ASSEMBLYMAN DIAMOND MOVED TO AMEND AND DO PASS.

SECONDED BY ASSEMBLYMAN REGAN.

MOTION CARRIED UNANIMOUSLY.

The workshop opened on AB 247.

Assembly Bill 247- Allows for continuing garnishment until amount demanded in writ is satisfied. (BDR 3-388)

The bill's prime sponsor, Assemblyman Matt Callister, Clark County District 1, explained amendment number 181 to AB 247. (Exhibit E). He testified a cap of 180 days was added in which the continuing garnishment could be in effect. If at the end of that time the writ was not satisfied, the procedure would need to be repeated.

Chairman Sader asked the witness how to stop the process.

Mr. Callister stated there was an official procedure in place to be served on the employer to stop garnishment. He continued the court determined the priority of claims, but child support must come first.

Mrs. Diamond raised the concern who would keep track of the paper trail.

Mr. Callister replied the Sheriff or Constable would have the same paper trail, but only every 180 days.

Mr. Regan asked about the fiscal note to the counties.

Mr. Sader answered there would be little income loss to those counties with sheriffs, but there would be a loss in old townships which had unsalaried constables.

ASSEMBLYMAN PORTER MOVED AMEND AND DO PASS OF AB 247.

SECONDED BY ASSEMBLYMAN WISDOM.

There was discussion between Mrs. Spriggs and Mr. Callister regarding income loss to counties.

Minutes of the Nevada State Legislature
Assembly Committee on Judiciary
Date: April 11, 1989
Page: 8

Mr. Gaston pointed out constables may lose income, but if the bill did not pass, it would continue to be those garnished who were in fact paying their salaries.

MOTION PASSED. ASSEMBLYMEN CHOWNING, SPRIGGS AND SADER
VOTED NO.

The Chairman distributed amendment number 372 to AB 3.

Assembly Bill 3- Authorizes court to require parent in arrears in payment of support for children to make security deposit to secure future payments.
(BDR 11-558)

Mr. Sader reminded the committee that concepts were taken from other bills and put into AB 3. In addition, there were various technical changes.

Mr. Porter questioned the ability of the Welfare Division or District Attorney's office to petition for a review, and added, "...If the parents don't have a gripe, then why should the state be allowed...to bring these people back into court for review."

Mr. Sader concurred with Mr. Porter, saying the amendment was not worded closely enough, but he could think of two areas in which the state would have legitimate interest. The first would be if the state were involved in the enforcement of the order, and the second, if the state had expended sums on behalf of the child.

Mr. Triggs suggested the bill be amended to be consistent with statutes for handicapped children.

ASSEMBLYMAN WISDOM MOVED AMEND TO INCLUDE MR. PORTER'S
AND MR. TRIGGS' CONCERNS AND DO PASS

SECONDED BY ASSEMBLYMAN GIBBONS.

Mrs. Spriggs went on record in opposition to the bill, saying she suggested going after the non-custodial parents who were in default already.

Mr. Regan pointed out the committee had previously intended to add a provision allowing the custodial parent to place a lien in order to prevent using bankruptcy as a shield. This was not included in the amendment.

The chairman responded the protections were adequate without additional language.

4-14-1989

Roll call on Assembly Bill No. 195:

YEAS—41.

NAYS—None.

Absent—Sheerin.

Assembly Bill No. 195 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 209.

Bill read third time.

Remarks by Assemblyman Callister.

Roll call on Assembly Bill No. 209:

YEAS—41.

NAYS—None.

Absent—Sheerin.

Assembly Bill No. 209 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 247.

Bill read third time.

Remarks by Assemblymen Callister, Evans, Swain, Adler, Brookman, Sader and McGaughey.

Assemblyman Nevin moved that Assembly Bill No. 247 be taken from the General File and placed on the Chief Clerk's desk.

Remarks by Assemblyman Nevin.

Motion lost on a division of the house.

Remarks by Assemblyman Myrna Williams.

Roll call on Assembly Bill No. 247:

YEAS—27.

NAYS—Banner, Bogaert, Brookman, Chowning, Humke, Kerns, McGaughey, Nevin, Price, Regan, Sader, Schofield, Swain, Mr. Speaker—14.

Absent—Sheerin.

Assembly Bill No. 247 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 297.

Bill read third time.

Remarks by Assemblyman Sader.

Roll call on Assembly Bill No. 297:

YEAS—41.

NAYS—None.

Absent—Sheerin.

Assembly Bill No. 297 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 343.

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-fifth Session

April 27, 1989

The Senate Committee on Judiciary was called to order by Chairman Sue Wagner, at 8:00 a.m., on Thursday, April 27, 1989, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Sue Wagner, Chairman
Senator R. Hal Smith, Vice Chairman
Senator Joe Neal
Senator Nicholas J. Horn
Senator Mike Malone
Senator Charles W. Joerg
Senator Dina Titus

STAFF MEMBERS PRESENT:

Jennifer Stern, Legal Counsel
Marilyn Hofmann, Committee Secretary

ASSEMBLY BILL 247 - Provides for continuing garnishment under certain circumstances.

Testimony of Julien G. (Jay) Sourwine, State Bar of Nevada.

Mr. Sourwine stated the bar supported the concept of the bill, which provides for a garnishment to be effective for 180 days. He said he understood there was opposition to the measure, at least with respect to the portion which provides payment collected under the writ would go directly to the garnishor or the garnishor's attorney. He added the State Bar of Nevada takes no position on that aspect of the bill. Mr. Sourwine continued: "It is the view of the State Bar [of Nevada] that both the judgment creditors and the judgment debtors would be better served if the writ did not have to be served every time you wanted to try to collect." He explained a garnishment is used to collect wages, after a judgment has been rendered, and collection is limited to 25 percent of net disposable earnings. Mr. Sourwine added: "The service of a writ of garnishment on an every time basis requires that you carefully time the service of the writ in order to have it served on an employer on or immediately before payday. Every time you

1465

serve [the writ] there are additional charges which are tacked onto the debt, so the debtor ends up paying a substantial amount more than the original [amount] of the debt, for the administrative costs in connection with the writ."

Mr. Sourwine indicated the bill, as passed by the Assembly, allows the writ of garnishment to continue for 180 days after it is served. He stated: "We think that is a reasonable period of time. If that doesn't result in complete satisfaction of the debt, then the writ would have to be re-served. The State Bar [of Nevada] believes the present process is far too cumbersome and far too expensive, particularly for the debtors. We support the measure, without taking a position on where the money ought to go...we have no problem with the money going to the sheriff or constable...so that the accounting can be kept by an independent third party."

Testimony of Assemblyman Matthew Callister.

Mr. Callister, the sponsor of A.B. 247, explained the bill was "simply an attempt to reduce the manpower and dollar costs of what I think is a rather archaic system of collecting on judgments. I think we would do well to adopt the federal system, which is the continuing garnishment system...the system which is employed by most progressive jurisdictions that have sought to reduce this costly system of service and re-service...by creating a much simpler vehicle for the collection of indebtedness. We have had success in Nevada with a continuing garnishment system, which is at present the vehicle available if you are collecting upon the Uniform Child Support Act...we know that it works."

Mr. Callister indicated the committee would hear testimony from several constables, "...who view this as a change in procedure that will have a net reduction in their income...because constables make money off of serving and re-serving these writs of garnishment. I don't have an easy answer for you, except to suggest that I think it is better policy to reduce the burden financially on a debtor who could not pay his bills to begin with, and as such, has now been adjudicated a judgment debtor. It is important to realize that this cost is always uniformly passed along to the judgment debtor."

Mr. Callister noted in 80 percent or more of the instances where a person's wages are garnished, "...you now have his attention, and if the debt is not satisfied, he will consult with counsel for the plaintiff...he will structure a voluntary payment schedule. That is a better, cheaper, more cost-

effective procedure." Mr. Callister referred to the section of the bill relating to accounting practices, and stated: "I can tell you that in Clark County, there is no accounting procedure going on...there is no one in the sheriff's civil bureau who is watching the reducing, declining balance. There is no one totaling that up to verify, as the garnishments come through the sheriff's office...if the amount being garnished or sought is greater or less than the total remaining balance due. That doesn't happen. The people who watch that are the plaintiff's counsel and the defendant's counsel. All that the garnishment passing through the sheriff's office accomplishes, is a guarantee that there is a paper trail. I would suggest that same paper trail will still exist...."

Mr. Callister said since the court system is incapable of monitoring payments against a judgment, "...it is a bit of a red herring to say having the payments going directly to the plaintiff is somehow unsafe...in 80 percent of the cases, that is what already is happening." Senator Malone pointed out a major portion of the income of the various constables comes from the handling of garnishments. He said he believed in Clark County the sum of \$200,000 per year generated by the sheriff's office was placed in the county general fund.

Mr. Callister elaborated on the procedure involved in collecting garnishment funds: "Under the present system...if the sheriff must make a second trip, pick up [the papers] take them back to the sheriff's office...the sheriff's office files the returned writ, separates the check and mails it back to the attorney's office. It is important to note, that the procedure does not entail anyone totaling up the checks...." Mr. Callister responded to Senator Malone's statement regarding the \$200,000 generated by the sheriff's office, which would be reduced by virtue of passage of A.B. 247, and said: "My answer would be there is going to be an equivalent reduction in obligation for work to be performed...the police department would have better use for those officers...."

Testimony of John Sande, Nevada Bankers Association.

Mr. Sande indicated the association would support "...anything which would expedite the garnishment process, and provide less cost to the defendant."

Testimony of Charlotte W. Shaber, National Business Factors, Inc., Collection Service.

Ms. Shaber stated she felt the concept of the legislation was a good one, but there were some concerns. She said Mr. Callister's statement regarding accounting procedures was

true. She said there was nothing precluding the ability of the garnishee to send the answer to the writ directly to the court, indicating the sums collected were forwarded to the plaintiff, without going through the sheriff. Ms. Shaber said the other area of concern was the 180-day provision set forth in the bill. She stated other states had ruled 90 days was much more equitable. Ms. Shaber added: "If you have not caught their attention in 90 days, they are going to be one of the people that will have to be garnished every time. We are also concerned with bankruptcies. If we keep [the debtors] so tight for so long, they are going to seek other alternatives...."

Ms. Shaber referred to the requirement for interrogatories as a part of the garnishment process, and stated: "These interrogatories are an extra piece of paper that is needed for nothing. It just costs the employer more time and annoyance." She reiterated her opposition to §10 of the bill. Senator Neal asked Ms. Shaber what would happen in a situation where an employer is holding a garnishment, and the defendant makes an arrangement to pay the debt directly to the plaintiff. Ms. Shaber replied a "Release of Garnishment" is filed and served upon the employer.

Senator Wagner asked Mr. Callister how he felt about a 180-day time frame as opposed to a 90-day period of time. Mr. Callister said the bill as originally drafted, had no cap at all. He reiterated earlier testimony that in 80 percent to 90 percent of the time, a debtor, after having wages attached once or twice, will take care of the debt. He added: "It is less expensive for the creditor up front, and the debtor ultimately, to have that kind of arrangement." He said it was important to remember that the law would not expand or reduce a person's exemption. Mr. Callister indicated they wished to create a maximum period of time for those few number of cases in which a continuing garnishment procedure is necessary. He concluded: "If you were to make [the provision] 90 days, then we are not making quite as much of a change as we could."

Mr. Callister referred to §8 of the bill, regarding the discharge of an employee because of a garnishment action. He said the language had been "lifted" from language which was already in the uniform child support-collection statutes. He continued: "At the request of some assemblymen, and over my preferences, it was substantially reduced. I find myself in the odd position of not now representing the best interests of who someone might suspect I was...instead I am trying to say, let's not take some poor guy's job away just because he has not been able to pay his bills. There was a much stiffer sanction initially...I had suggested there ought to be a civil

penalty for an employer who terminates someone exclusively because he had the bad luck to not be able to pay some bills, and now has a judgment rendered against him. At the request of some of my colleagues, I downgraded that to the language [now in the bill], which is a generic expression of legislative intent. I think we need to have something in the law. You cannot fire somebody just because he was not able to pay his bills."

Mr. Callister then referenced §9.5 of A.B. 247, regarding priority of claims. He said the problem is not a new one, but "...one that exists under the present system. For example, in the area of commercial litigation...when a business fails to pay one bill, it probably has not paid a lot of bills, and there will probably be multiple lawsuits against that defendant...it is kind of a race to see who can get his judgment first, and attempt to collect on that judgment first. Not infrequently, you will find writs...will be served on the same day. A judge has to make a determination of who gets the first crack...under the present law, there is no statute that deals with that." He added he believed the judge should be the arbiter in a multiple-creditor scenario. Mr. Callister said the language of §9.5, states: "...if the named garnishee is the subject of more than one writ of garnishment...the court shall determine the priority...unless the garnishment is for child support...it shall be given first priority."

Mr. Sourwine referred to earlier testimony by Ms. Shaber, that the interrogatory provision in the bill should be removed, and said, "I submit that is not appropriate. The writ of garnishment is used in other situations besides the employment context...you can serve a writ...upon anyone that you think either is holding property that belongs to the judgment debtor, or owes something...you may not be sure. These interrogatories are the way you find out, because the person served is obliged to answer and state whether they are indebted...to the judgment debtor. We don't think it is a useless piece of paper." Senator Malone asked if the interrogatories could be condensed. Mr. Sourwine indicated some of the questions might be combined, but pointed out that the proposed amendment added a question to the interrogatories. Mr. Callister stated he joined with Mr. Sourwine in his opinion. He said he was certain it was a burden to an employer to have to respond to the interrogatories, but the alternative might be a multi-page set of interrogatories written by an attorney, or possibly a subpoena to appear in a courtroom. He concluded: "I think this remedy is the least expensive and most effective remedy we have...."

1469

Testimony of Fidel Salcedo, Justice of the Peace, Reno Township.

The Judge stated he was not "for or against" the bill, but wished to set forth the following concerns: "\$6.2, regarding a \$3 fee per pay period that the garnishee is entitled to...how do they collect it or whom do they collect it from? There is the potential for a hearing...the concerns I have are the potential hearings, additional to the court; \$7.2...again there are additional hearings created for the judiciary...because we have situations where employers do not respond, and the plaintiffs bring actions back to the court; \$9...it is great to 'let the judge make the decision,' but we have a lot of decisions to make, and this creates another scenario where there are additional hearings before the court; \$11.4...there is a potential for many, many hearings to come out of this one, because we are talking about sending money directly to plaintiffs. I think I can state with conservatism that plaintiffs...in some cases, are not the most reliable people either...." Judge Salcedo reiterated all of his concerns dealt with the additional hearings which he believed would be created by passage of A.B. 247.

Testimony of Rod Barbash, President, Nevada Collectors' Association.

Mr. Barbash indicated his organization was an association comprised of bill collectors in the state. He said they were in agreement with the concept of the bill, but were against the way it was written. He said in his office alone, they send out over 300 executions each month. Mr. Barbash disagreed with Mr. Callister's testimony, and said when a paycheck is attached, "...very few...come back and make an arrangement to pay." He continued: "If we garnish someone's paycheck, and it is on there for 180 days, I would be a fool to release the paycheck if they did come back and want to make arrangements. If I did release it, my competitor or someone else with a judgment might come in...I would have to go back to the end of the line." He indicated the association believed a 90-day continuing garnishment would be a better solution.

Mr. Barbash testified his company pays over \$5,000 each month to the sheriff's department and to the constables for delivering papers, and added: "When the bill says it has no effect on local government, I don't agree with that. There is definitely a monetary effect...." He said in Washoe County and other parts of northern Nevada, "...the constable or sheriff serves the papers...the employers return the money to their offices...they file an affidavit with the court that

shows how much was paid, so the court at all times knows what is going on." He concluded he believed it would "create a complete chaotic state in the court, if they didn't know what was going on."

Testimony of Ernest Nielsen, Washoe Legal Services.

Mr. Nielsen stated Washoe Legal Services was a nonprofit law firm which represents low income individuals. He supplied the committee with a prepared statement, which is attached hereto as Exhibit C. He stated: "My testimony suggests a potential remedy for what I see as a major dilemma...that is to amend A.B. 247 by adding some changes to the current garnishment wage exemption laws. The changes I am proposing affect the garnishment exemption in two ways: (1) it eliminates the regressive nature of the exemption; and (2) it raises the floor (30 times the minimum wage)." He continued to discuss his proposal set forth in Exhibit C. He indicated he was providing it to the committee, "...because I think it is a workable way of addressing one of the negative side effects of continuing garnishment...."

Testimony of Constable Louis A. Tabat, North Las Vegas Township.

Constable Tabat provided the committee with a letter, set forth herein as Exhibit D. He said he disagreed with Mr. Callister's testimony that the constable's office "...did not keep an accurate accounting of the monies coming in...we have to, by law. There is no way you can keep an accurate account, when the checks are being forwarded to the plaintiff." He reiterated the first and foremost problem with A.B. 247, would be the revenues lost to the counties. He pointed out the constables are not salaried employees, but rather receive commissions from their services.

Senator Wagner asked Mr. Tabat if testimony such as his had been offered to the Assembly Committee on Judiciary. He indicated he had forwarded copies of his letter to the committees, and other constables had testified.

Testimony of Constable John J. Hart, Reno Township.

Constable Hart handed the committee a short statement, attached hereto as Exhibit E. He added: "We beat this bill 2 years ago in the committee, and we thought we were through with it." He said he had contacted all the constables in Washoe County, and they were all against A.B. 247. Constable Hart said he did not believe the bill was fair to the low income workers, because "...it will hit every paycheck they

1471

get." He also said the constables are responsible for transferring the funds collected to the plaintiff, "...and I can't see any better way."

Testimony of Constable Daniel R. Ernst, Sparks Township.

Constable Ernst presented to the committee a letter, dated April 21, 1989, which is attached as Exhibit F. He then showed the committee a copy of the interrogatories referred to in earlier testimony (Exhibit G), and said he believed they were "very simple." He reiterated the constable's office is in "total control...and knows what is going on." He added they know the entire procedure for doing garnishment actions. The constable also mentioned testimony regarding a state law dealing with the firing of an employee because his wages have been garnished. Constable Ernst said there was no state law, but rather a federal law governing this issue. He concluded by asking the committee to please read the letter he had provided to them (Exhibit F).

Testimony of Lieutenant (Lt.) Randy Oakes, Clark County Sheriff's Office.

He said the Clark County Sheriff's Office, Civil Bureau, estimates a fiscal impact, if A.B. 247 is passed, in excess of \$100,000. Lt. Oakes stated he believed their other concerns had been addressed in earlier testimony. In response to a question from Senator Malone, Lt. Oakes said there were deputy sheriffs assigned to the civil bureau, who were hired specifically to handle the service of garnishment actions. Senator Malone pointed out "...they were not taking anybody off the street to do this process," and Lt. Oakes agreed.

Testimony of Sergeant (Sgt.) Marc J. Fowler, Washoe County Sheriff's Office, Civil Section.

Sgt. Fowler indicated most of the department's concerns had been brought up "...by everyone who has spoken in opposition." He also referred to the matter of interrogatories, and said he believed they were a necessity, but could be written more simply. Sgt. Fowler said they have a lot of questions arise from employers who do not understand the legal terminology. He also stated his office accounts for the money they receive. Sgt. Fowler also indicated they felt their concern was being a "mediator" between the parties involved, so there would be an accurate accounting.

Mr. Callister asked to respond briefly to some of the points set forth by opponents. He stated: "Other than the opposition from Clark and Washoe County, which I did not have

on the other side, I pretty much anticipated most of the comments...I think it is important to not be fooled...to understand how the system operates. A number of questions have been raised about accountability. I would ask anyone here to show me a copy of a declining balance ledger card that is maintained." One of the constables present indicated he would provide that to Mr. Callister. Mr. Callister reiterated he was not aware that was routinely done. He continued to say language needs to be adopted to deal with the "priority problem," and stated: "I think you have heard adequate testimony here today that there is no statutory law dealing with the priority problem...I think that shows the need. The 'first come, first served' rule strikes me as rather unjust. I think there needs to be some statutory language to address that." Mr. Callister indicated the 180-day period set forth in the bill might be reduced to 90 days. He said there might be some sense in "...reducing the gaps of time that would exist in the paper trail...but I think if you go much below 100 days, you run into a problem of making the statute, as proposed, meaningless."

Mr. Callister concluded: "Finally, I think we have to address what is the obvious confrontation here today. There has been some intimation that this is special interest legislation, because attorneys have to pay this cost. I would suggest to you exactly the reverse. This is a cost...that statutorily is passed on to he who can least afford it...the judgment debtor, who could not pay his bills...." He stated: "As policy makers, we need to look to who the real special interest is...those who reap a financial benefit on the backs of the poor." With respect to earlier testimony of Mr. Nielsen regarding the exemption issue, Mr. Callister responded: "This bill does not deal with exemptions. It doesn't try to reduce the amount of anyone's exemption. This legislation focuses on the procedure for garnishment...it doesn't change the amount of the garnishment. My suggestion is, if there is a problem, in Washoe County or elsewhere, that ought to be dealt with in a separate bill that addresses the exemptions per se. I don't want to get what I perceive to be a fairly clean bill targeted to accomplish one goal, confused with a separate side issue...."

There was no further testimony, and the hearing was closed on A.B. 247.

TESTIMONY
BEFORE SENATE JUDICIARY COMMITTEE
CONCERNING AB 247 - CONTINUING GARNISHMENT
APRIL 27, 1989

Prepared by Ernest K. Nielsen
Washoe Legal Services
630 Tahoe Street
Reno, Nevada 89509
702/329-2727

Generally I support AB 247. The continuing garnishment avoids the \$5 garnishment fee (in Justice Court only) plus cost of service (\$10-\$15) associated with each garnishment which simply gets passed on to the debtor.

However, it was not until this bill passed out of the Assembly that I was educated about a serious side effect of a continuing garnishment.

Currently because of the non continuous nature of garnishment (at least in Washoe County) a weekly wage earner may be subject to a garnishment only once in every three weeks. My office staff has looked into why this is. It does not appear to be the required result. However, at least the Reno Justice Court refuses to process a subsequent garnishment until the preceding one is complete. Regardless of whether that is an appropriate process, the unfortunate result in Washoe County will be that the weekly wage earner will now have their check garnished every week. Even though continuous garnishment does not erode legal protections, it does change the status quo such that up to three times the amount formerly garnished will now be garnished.

We propose an amendment to AB 247 (e.g. N.R.S. 31.295 and N.R.S. 21.090). We prefer the proposal described in I.

I

This first approach makes the new exemption floor 150% of the minimum wage times 30 (150.75). Only 25% of the dollars above that 150% floor could be taken.

N.R.S. 31.295 - Maximum amount of earnings subject to garnishment.

1. As used in this section, the term "disposable earnings" means that part of the earnings of any person remaining after the deduction from those earnings of any amounts required by law to be withheld.
2. The maximum amount of the aggregate disposable earnings of a person which are subject to garnishment may not exceed [(a)] 25% of his disposable earnings in excess of 150% of 30 times

1487

EXHIBIT "C"

the federal minimum hourly wage prescribed by Section 6(a)(1) of the Federal Fair Labor Standards Act of 1938 in effect at the time the earnings are payable for the relevant pay period, [; or (b) the amount by which his disposable earnings for each week of that period exceed 150% of 30 times the federal minimum hourly wage prescribed by Section 6(a)(1) of the federal Fair Labor Standards Act of 1938 in effect at the time the earnings are payable, whichever is less.]

N.R.S. 21.090, Property Exempt from Execution,

"g" One hundred and fifty percent (150%) of 30 times the minimum hourly wage prescribed by Section 6(a)(1) of the federal Fair Labor Standards Act of 1938 in effect at the time the earnings are payable plus 75% of the disposable earnings of a judgment debtor during this period which exceed 150% of 30 times minimum hourly wage described above. [For any pay period, 75% of the disposable earnings of a judgment debtor during this period, or for each week of the period 150% of 30 times the minimum hourly wage prescribed by Section 6(a)(1) of the Federal Fair Labor Standards Act of 1938 and in effect at the time the earnings are payable whichever is greater.] The exemption provided in this paragraph does not apply in the case of any order of a court of competent jurisdiction for the support of any person, any order of a court of bankruptcy or of any debt due for any state or federal tax. As used in this paragraph, "disposable earnings" means that part of the earnings of a judgment debtor remaining after the deduction from those earnings of any amounts required by law, to be withheld...

II

This second approach makes the exemption floor simply the minimum wage times 30 (100.50%). Only 25% of the dollars above that floor could be taken.

N.R.S. 31.295 - Maximum amount of earnings subject to garnishment.

1. As used in this section, the term "disposable earnings" means that part of the earnings of any person remaining after the deduction from those earnings of any amounts required by law to be withheld.
2. The maximum amount of the aggregate disposable earnings of a person which are subject to garnishment may not exceed [(a)] 25% of his disposable earnings in excess of 30 times the federal minimum hourly wage prescribed by Section 6(a)(1) of the Federal Fair Labor Standards Act of 1938 in effect at the time the earnings are payable for the relevant pay period, [; or (b) the amount by which his disposable earnings for each week of that period exceed 30 times the

1488

federal minimum hourly wage prescribed by Section 6(a)(1) of the federal Fair Labor Standards Act of 1938 in effect at the time the earnings are payable, whichever is less.]

N.R.S. 21.090, Property Exempt from Execution,

"g" Thirty (30) times the minimum hourly wage prescribed by Section 6(a)(1) of the federal Fair Labor Standards Act of 1938 in effect at the time the earnings are payable plus 75% of the disposable earnings of a judgment debtor during this period which exceed the 30 times minimum hourly wage described above. [For any pay period, 75% of the disposable earnings of a judgment debtor during this period, or for each week of the period 30 times the minimum hourly wage prescribed by Section 6(a)(1) of the Federal Fair Labor Standards Act of 1938 and in effect at the time the earnings are payable whichever is greater.] The exemption provided in this paragraph does not apply in the case of any order of a court of competent jurisdiction for the support of any person, any order of a court of bankruptcy or of any debt due for any state or federal tax. As used in this paragraph, "disposable earnings" means that part of the earnings of a judgment debtor remaining after the deduction from those earnings of any amounts required by law, to be withheld...

III

Justifications for the Proposals in I and II

A. Justification for II:

1. Regressive nature of current exemption e.g. marginal dollars over \$100.50 per week up to \$134 are fully garnished and then it levels off at 25% of each dollar greater than \$134.
2. Continuous garnishment has the effect of garnishing weekly wage earner weekly rather than once every three weeks or so according to information gathered in Washoe County.

B. Additional Justification for Proposal I:

3. The federal floor has not changed for years. The cost of living, however, has increased (at least 130%). Therefore, it is appropriate to increase the floor to make normal costs of living affordable.
4. Nevada's costs including housing costs, are very high relative to persons at or near poverty level. For example, the gross wage of a family with a single full time wage earner at minimum wage is slightly less than \$7,000.00. The gross wage of a family with a single

1489

full time wage earner at 150% of minimum wage is near \$10,500.00. For a three person household that is just slightly above 100% of the poverty level. The poverty level for a family of three is \$10,060.00.

Given the discussion concerning the minimum wage taking place at both the state and federal level, we could, regarding Option I, substitute "\$150 or 30 times the minimum hourly wage, whichever is greater," for "150% of 30 times minimum wage."

Also, we think that since the cost of living rises more quickly for poor people than it does for the average consumer, that the figure 150% of minimum wage rather than 130% of minimum wage (which would be dictated by the increase in the consumer price index since 1981) is appropriate. 1981 was the last year the federal minimum wage was adjusted.

LOUIS A. TABAT
CONSTABLE

CONSTABLE'S OFFICE

NORTH LAS VEGAS TOWNSHIP

1916 North Bruce Street
North Las Vegas, Nevada 89030

TELEPHONE
(702) 455-7800

April 14, 1989

Senator Thomas J. Hickey
Capitol Complex
Legislative Building
C/O Mail Room
Carson City, Nevada 89710

SHOULD THIS BILL PASS, CLARK
COUNTY STANDS TO LOSE AROUND
155,000 DOLLARS PER YEAR IF
NOT MORE IN REVENUES PLUS
COMMISSION FEES, FOR CONSTABLE
AND HIS DEPUTIES. THIS BILL
WAS SUBMITTED BY ASSEMBLYMAN,
CALLISTER, WHO IS A ATTORNEY
REPRESENTING COLLECTION AGENCY'S.

RE: CHAPTER 31 NRS, AB 247,
SECTION 2

I feel that AB247 is a one sided bill and not enough
thought has been given to the impact it would have on the
Justice Courts, District Courts, Constable Office's,
Sheriff's Civil Bureau, or the State in general.

If the private process servers were allowed to serve wage
garnishments you can be sure that this bill would never
have been put before you.

A wage garnishment is a court order which only a
Constable or Sheriff can serve. A service fee and
mileage fee is charged for each execution served which
generates revenue for the constables office, sheriffs
office and county. If only one wage garnishment is
served on each case it would drastically cut revenues and
among other things cause a personnel lay off.

This bill also says that employers would send checks
directly to the plaintiffs rather than going through the
Constable or Sheriff's office. This would raise many
questions such as: who is to keep the records of the
accounts? The plaintiff, the defendant, the employer?
Who provides the information to the court? Will the
information be kept up to date, will it be correct? What
happens when a garnishment is paid off? Is the employer,
or the plaintiff responsible to notify the court? What
is to take place if they don't? What if their records
are inaccurate?

What happens when a defendant goes to buy a house or try
to establish credit and the credit reports (such as TRW)
show judgments against him which he thought had been
satisfied but the responsible party (whoever that might
be) has neglected to contact or file the proper paperwork

1491

EXHIBIT "D"

April 14, 1989

with the court?

As it is now, only one garnishment can be honored by an employer per pay period. If this bill is passed changing a one time garnishment to a continuing writ and more than one person or company has a judgment against a defendant the employer would honor the first garnishment they receive leaving the others out of receiving any of their money until the first persons garnishment is paid in full. It is understood that this bill would put a six month cap on the garnishment. Now, how are the other creditors going to know the six months are up (think of the record keeping) and what is to keep the present creditor from turning around and immediately refiling on the defendant again leaving the others out in the cold and who is to decide which creditor is next in line to file their garnishment?

Another consideration for rejection of the bill AB247 may be compassion to the defendant himself. If Writs of Execution were to stay the way they are it gives the defendant a breathing period so to speak to keep up with their rent, util. etc. before being executed upon again. If the Legislature decides to pass AB247 it can and will cause some real hardships upon the defendant. It is rough for a person who is down and out to keep up his rent, utilities and every day living expenses when every check he receives has a big cut out of it due to a wage garnishment. The fact is that they are being attached because they do not have enough money to pay bills in the first place.

Officer Lou Lust of Phoenix, Arizona stated that their Legislature adopted a one time Writ of Garnishment procedure about 1 year ago and it has caused nothing but utter chaos for everyone concerned. Some of the problems they are confronted with are:

- #1 Approximately \$180,000.00 loss in revenues for the county.
- #2 Small businesses as well as large aren't able to comprehend the law so are being penalized as they now have the responsibility of being the collection agency.
- #3 Locks out all other creditors completely until garnishment is paid in full and in some instances that can take years.

1492

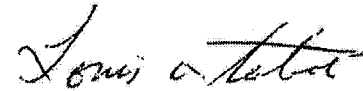
April 14, 1989

- #4 It has come to the point where even attorneys do not want to be bothered with wage garnishments.

Officer Lou Lust is happy to talk to anyone who wishes to know how the 1 time garnishment has affected Arizona. You can reach him at (602) 967-1569 or (602) 261-5958.

The passage of this bill should be stopped. The repercussions would be astronomical.

Sincerely,


Louis A. Tabat, Constable
North Las Vegas Township

1493



JOHN J. HART
Constable of Reno Township

Washoe County Courthouse
P.O. BOX 11150
RENO, NEVADA 89520

785-1221

April 24, 1989

TO: Sue Wagner, Chairwoman Senate Judiciary Committee
Hal Smith, Vice Chairman
Mike Malone, Member
Charles Joerg, Member
Joe Neal, Member
Nick Horn, Member
Dina Titus, Member

The Constables of Washoe County are opposed to the passage of Assembly Bill #247 which allows for continuing garnishment until the amount demanded in the Writ is satisfied.

It is our contention that the present system of serving garnishments is fair to both the plaintiff and the defendant and should not be changed.

FROM: John J. Hart, Constable Reno Township
Dan Ernst, Constable Sparks Township
George Powning, Constable Verdi Township
Russ McKlem, Constable Incline Village Township
Dave Carter, Constable Gerlach Township
C.E. Polfus, Constable Wadsworth Township

1494
EXHIBIT "E"

April 21, 1989

Senate Legislative Committee
Capitol Complex
Legislative Building
Carson City, NV 89710

Re: AB247

Dear Senators,

AB247 provides for continuing wage attachments against debtors who have been sued in court due to non-payment of outstanding debts.

On the average 50%-70% of most cases filed by creditors are for medical expenses. Most of the defendants have little or no medical insurance and the expenses incurred are usually for minor children.

Nevada's garnishment laws at the present time, call for a one time wage attachment. These debtors are paying 25% of one paycheck, leaving the balance of their checks to pay rent, utilities, food and child care. If AB247 were to be enacted, the debtor would lose 25% of his or her monthly income.

Currently, it is not uncommon for a debtor to contact the garnishing Plaintiff, make arrangements for regular monthly payments and receive a release of attachment. Under the proposed AB247, the Plaintiffs would not be willing to make arrangements for releases and payment plans as they would stand a chance of losing their place in line should another Plaintiff have a judgment against the same debtor. In many cases, there is more than one Plaintiff competing for the same defendant's paycheck. Why would a Plaintiff want to risk losing his ability to collect from the defendant, for up to 6 months, by taking a defendant's word that he will keep up the payment arrangement. The defendant would be pushed into a corner in which he could not escape.

Losing 25% of one's take home pay will not only make it impossible to meet any other medical bills incurred, it would also make it impossible for many of them to pay their everyday living expenses, thus pushing them further and further into debt. Many will be unable to fend off landlords demanding payment of rent, and will be faced with eviction from their homes, therefore, causing the overloading of the court calendar. This is done in a desperate attempt to retain their shelter as long as possible. They will be forced to either quit their jobs, file bankruptcy, skip town or go on welfare. Now who pays? "The taxpayer."

1495

EXHIBIT "F"

Most of the people who are being garnished are in debt because they simply do not have the funds to pay. Granted, there are a few that are in debt due to their own excessive spending on non-necessities and unpaid credit cards etc., but they are the minority. The people that will be hit the hardest will be the ones that are already at the end of their financial ropes. If the average defendant had a normal take home pay of \$800.00 per month and then had a continuing garnishment hit their check, they would be losing \$200.00 each month. Who can live on the remaining \$600.00? Why should they continue to work if they have children to support? They could not begin to pay for child care. It would be much easier to go on welfare and have their living expenses paid. At least, they would not have to worry about having a roof over their heads and food on the table.

Another group of individuals should also be taken into account. There is a small percentage, 15%-20%, who are not only being garnished due to civil judgments, but, they are also paying fines for court citations and other criminal matters. What happens when one of these individuals finds his paycheck being continually garnished and has to choose between a court fine and eating or paying rent? If the court fine doesn't get paid, and the individual is jailed on a bench warrant, unable to post bail, once again, who pays? The Courts will be unable to collect their fines, the plaintiffs will not get paid and the taxpayer will now pay the living expenses of these people.

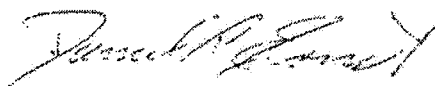
It is impossible to see who will benefit from passage of this bill. It may save the debtors the costs of having a plaintiff refile for each attachment. However, if the defendant is unable to meet other obligations due to a continually short paycheck, he will have more law suits filed against him and will incur more legal expenses as a result.

The plaintiff will be at risk of losing assets to attach should the debtor be pushed into quitting his job to escape the continuing hardship or resort to bankruptcy. Government revenues will go down due to the extreme decrease in the issuance of attachments. The Sheriffs and Constables will lose work due to the decrease of writs to be served.

Finally, who is to keep the court informed of the status of an attachment since the money will be going directly to the Plaintiff. Are they to report to the court each and every time they receive a payment from an employer? The Courts already have problems with Plaintiffs failing to file a satisfaction of judgment. Occasionally, an employer will take out the normal 25% from the employee's paycheck, not noticing that the balance due is less than the 25% mandated. Who is going to make sure the plaintiff refunds the excess to the defendant?

There are too many problems with AB247 as it stands. Passage of this bill would result in utter chaos for all parties involved. Please consider the above, when deciding whether or not to sign this bill into law.

Respectfully yours,



Daniel P. Ernst
Constable, Sparks Township

1496

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-fifth Session

May 24, 1989

The Senate Committee on Judiciary was called to order by Chairman Sue Wagner, at 8:00 a.m., on Wednesday, May 24, 1989, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Sue Wagner, Chairman
Senator R. Hal Smith, Vice Chairman
Senator Joe Neal
Senator Nicholas J. Horn
Senator Mike Malone
Senator Charles W. Joerg
Senator Dina Titus

STAFF MEMBERS PRESENT:

Jennifer Stern, Legal Counsel
Marilyn Hofmann, Committee Secretary

ASSEMBLY BILL 507 - Expands circumstances under which estate for years may be encumbered by deed of trust.

Testimony of Julien "Jay" Sourwine, State Bar of Nevada (State Bar).

Mr. Sourwine stated A.B. 507 had been requested by the Business Law Committee of the State Bar, and was approved by the Board of Governors of that organization. He said it addresses a "somewhat obscure statute" that restricts the ability to take a lease as security. Mr. Sourwine indicated the language of the statute presently requires that a lease, or any document creating an estate for years, must specifically allow it to be taken as security, a subject which is not normally addressed. He said lessees usually feel they have a right to encumber their leasehold interests, unless they have specifically bargained on that subject with their landlord. Mr. Sourwine stated many large financing transactions, will frequently involve lease financing.

2063

ASSEMBLY BILL 247 - Provides for continuing garnishment
under certain circumstances.

Senator Wagner asked Assemblyman Callister to discuss the amendments which the committee had received pertaining to the bill. Mr. Callister apologized for not providing the amendments at an earlier time. He reminded the committee of his earlier testimony: "The notion of continuing garnishment would be as follows: the garnishment would be served upon the judgment debtor by the existing court officers, whether that is a constable or a sheriff...that garnishment would then remain in effect in perpetuity until it was paid off...under the original proposal, each time the pay period came up, the funds could be sent directly to the counsel, as opposed to siphoning back through the court. After careful consideration, and meeting with representatives of both Washoe County and Clark County, I have agreed to make the following proposed amendments:

1. The garnishment would still be served by the appropriate court officer...the constable or sheriff...however, it would have a cap of 4 months...120 days...;

2. The funds would always come back via the court...;

That substantially reduces the financial impact of the bill...."

Mr. Callister indicated he had spoken with representatives of the Washoe County Sheriff's Civil Division, and "...they think that is an acceptable proposal." He said the Las Vegas Sheriff's Civil Division, "...can also live with it. No one is anxious to reduce their total work load in fear it will have an impact on their jobs...I can understand that in relationship to the constables...I cannot help but admit this is going to reduce the number of services [of process]...all I can do is urge the members of this committee to remember that the cost of those multiple services is, in each instance, passed along to the judgment debtor...the person who couldn't pay his bills to begin with...."

Senator Neal referred to certain amendments requested by Washoe County Legal Services. Mr. Callister said that organization had filed a class action suit in the United States District Court, naming the county clerk of each of the various counties in the state, seeking to have the entire garnishment process determined to be unconstitutional for lack of adequacy of notice. Mr. Callister indicated he had spoken

2068

to the representatives of Washoe County Legal Services. He said: "There is a possibility I may have to come back to this committee, presuming that A.B. 247 meets with your favor, with some nominal amendments that do not deal with that issue at all...but that I would want to tack on because I want to clarify the garnishment procedure in total...but at this point in time that is on the sidelines...it will be dealt with in a judicial setting."

Senator Wagner asked Mr. Callister if she should hold A.B. 247, so it could be used as a "vehicle" for the amendments he was discussing. Mr. Callister answered: "If there is an appetite to move the bill with these amendments, I think we ought to...as you are aware, the state bar has also introduced its own version of a continuing garnishment [legislation]...I would not have introduced mine, if I had known they were going to do the same. I think it is in the best interest of this bill to move it out...."

Senator Neal asked Mr. Callister if he had talked to the representatives of Washoe County Legal Services, "...to see what it would take to clear this up?" Mr. Callister stated their concern was not the issue of the "continuing garnishment." He said he believed they agreed continuing garnishment was less expensive for the type of clientele they represent. He continued: "Their concern is...in Washoe County, for whatever reason, at least in the Justice Court in Washoe County, there has been a limitation imposed by one or more of their justices of the peace on the number of times you can garnish a paycheck within a monthly period. That is not a function of what is in our statute...it is just some, in my estimation, an aberration, and I don't think it deals with the same issues at all...but, they don't like the idea of the possibility that a continuing garnishment may have the net effect of allowing more garnishments per month...but because they have some judges who deal with it differently." Mr. Callister pointed out he has not asked for any changes to the existing exemption laws. He reiterated: "There is nothing in this bill that will have any impact on the state and federal exemptions...this bill does not impose any change whatsoever on the amount of a judgment debtor's salary that is available for execution or collection...."

There was no further discussion regarding the proposed amendments to A.B. 247.

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-fifth Session
May 31, 1989

The Senate Committee on Judiciary was called to order by Chairman Sue Wagner, at 8:10 a.m., on Wednesday, May 31, 1989, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Sue Wagner, Chairman
Senator R. Hal Smith, Vice Chairman
Senator Joe Neal
Senator Nicholas J. Horn
Senator Mike Malone
Senator Charles W. Joerg
Senator Dina Titus

STAFF MEMBERS PRESENT:

Jennifer Stern, Legal Counsel
Judi Bishop, Committee Secretary

BILL DRAFT REQUEST 14-2110 - Extends period in which to prosecute sexual abuse of child.

SENATOR HORN MOVED FOR COMMITTEE INTRODUCTION OF BDR 14-2110.

SENATOR SMITH SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY. (SENATOR NEAL WAS ABSENT FOR THE VOTE.)

* * * * *

SENATE BILL 480 - Prohibits abuse, neglect or exploitation of mentally retarded persons.

Testimony of Brian Lahren, Administrator for the Division of Mental Hygiene and Mental Retardation (MHMR), and Manual Wedge, Administrator of the Washoe Association for Retarded Citizens.

2204

SENATOR JOERG SECONDED THE MOTION.

Discussion ensued as to the proper way to delete the language on lines 22 through 27. Ms. Stern suggested new language, reciting:

You could state 'this interference with state laws has been caused by the federal courts, whose process of review is extended and repetitive,' because I think you took offense to the term dilatory, 'as illustrated by the case Neuschafer vs. Whitley.'

SENATOR SMITH WITHDREW HIS MOTION TO AMEND AND DO PASS A.J.R. 32.

SENATOR JOERG WITHDREW HIS SECOND.

* * * * *

SENATOR SMITH MOVED TO AMEND AND DO PASS A.J.R. 32, AMENDING LANGUAGE ON LINES 22 THROUGH 27 AS PER RECOMMENDED BY LEGAL COUNSEL.

SENATOR JOERG SECONDED THE MOTION.

Senator Titus registered her objection to this bill, pointing out there have been several bills already enacted which allows speedier state processing. She added this is inappropriate as habeas corpus is one of the few rights which is actually in the body of the constitution, not added by amendment. Senator Titus advised she could not support this bill.

THE MOTION CARRIED. (SENATORS HORN AND NEAL WERE ABSENT FOR THE VOTE. SENATOR TITUS VOTED NO.)

* * * * *

ASSEMBLY BILL 247 - Provides for continuing garnishment under certain circumstances.

The Chairman requested Ms. Stern to explain the proposed amendments, which had previously been distributed to the committee. Ms. Stern directed her comments on the amendments to the first reprint, line 16 of page 1, deleting 180 days and reducing that figure to 120 days, so that the writ of garnishment would continue for 120 days rather than 180 days. Also, on page 4, she said the entire section 11 would be deleted and replaced with a new section 11 which would require that,

2222

Senate Committee on Judiciary
May 31, 1989
Page 20

within 5 days after receipt of actual notice of the levy, it be served on the sheriff and judgment creditor.

SENATOR JOERG MOVED TO AMEND AND DO PASS A.B. 247, PER AMENDMENTS REFERRED TO ABOVE BY MS. STERN.

SENATOR SMITH SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HORN AND NEAL WERE ABSENT FOR THE VOTE. SENATOR MALONE VOTED NO.)

Senator Joerg stated, "Let the record show one more time we helped the little guy." The Chairman also requested the record show the committee has helped the working person.

* * * * *

ASSEMBLY BILL 296 - Adopts Uniform Premarital Agreement Act.

SENATOR TITUS MOVED TO DO PASS A.B. 296.

SENATOR JOERG SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HORN AND NEAL WERE ABSENT FOR THE VOTE.)


* * * * *

There being no further business to come before the committee, the hearing was adjourned at 10:20 a.m.

RESPECTFULLY SUBMITTED:


JUDI BISHOP,
Committee Secretary

APPROVED:


SENATOR SUE WAGNER, Chairman

DATED: 6/19/89

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-fifth Session

June 2, 1989

The Senate Committee on Judiciary was called to order by Chairman Sue Wagner, at 8:00 a.m., on Friday, June 2, 1989, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Sue Wagner, Chairman
Senator R. Hal Smith, Vice Chairman
Senator Nicholas J. Horn
Senator Mike Malone
Senator Charles W. Joerg
Senator Dina Titus

COMMITTEE MEMBERS ABSENT:

Senator Joe Neal (Excused)

STAFF MEMBERS PRESENT:

Jennifer Stern, Legal Counsel
Marilyn Hofmann, Committee Secretary

ASSEMBLY BILL 552 - Requires order for support of child to include order for withholding or assignment of wages and commissions of responsible parent.

Testimony of Nancy Angres, Deputy Attorney General, Welfare Division, State of Nevada; and K. Zunino, Chief, Child Support Enforcement Program, Welfare Division, State of Nevada (Welfare Division).

Ms. Angres stated A.B. 552 was designed to meet federal requirements which were newly enacted in October 1988, as part of the Family Support Act. She said those requirements stress the collection of child support, to assist families who are on welfare, become independent. Ms. Angres provided the committee with a document containing an explanation of the Family Support Act of 1988 (Exhibit C). She said two issues are being addressed in A.B. 552, "Immediate Income Withholding," which must be in effect by November 9, 1990, and

2259

ASSEMBLY BILL 247 - Provides for continuing garnishment
under certain circumstances.

The Chairman discussed an amendment to the bill, which addresses the concerns regarding the collection of funds, which will be processed through the sheriffs' offices. Senator Wagner also indicated the continuing lien on wages would be set at 90 days. The committee approved the amendment.

ASSEMBLY BILL 389 - Requires payment of restitution to victim
of crime as condition of parole.

SENATOR TITUS MOVED DO PASS A.B. 389.

SENATOR HORN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR NEAL WAS ABSENT
FOR THE VOTE.)

* * * * *

ASSEMBLY BILL 458 - Revises provisions governing approval for
adoption or relinquishment of child for
adoption.

Jennifer Stern reviewed the provisions of the bill, and indicated it would require the consent of a legal custodian, if any, to a specific adoption. Senator Titus indicated she believed the intent was to keep foster parents from circumventing the adoption procedure.

SENATOR HORN MOVED DO PASS A.B. 458.

SENATOR JOERG SECONDED THE MOTION.

The committee resumed a discussion of the bill. Senator Malone stated if a foster parent had taken care of a child for a long period of time, "...there is no reason why a grandparent, or anyone else, should be able to step in and adopt the child. Senator Wagner indicated she was not certain that was the intent of the legislation. She suggested the committee summon the sponsor of the bill, Assemblyman Jane Wisdom, for the purpose of additional testimony.

Testimony of Assemblyman Jane Wisdom and Thom Riley, Chief of
Social Services, Nevada State Welfare Division.

Mr. Riley reviewed A.B. 458: "What the bill does...before you can file a petition to adopt a child, you need to have the

2267

MINUTES OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Sixty-fifth Session
June 7, 1989

The Assembly Committee on Judiciary was called to order by Vice Chairman, Gene Porter at 8:10 a.m. on Wednesday, June 7, 1989, in Room 240 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda, Exhibit B is the Attendance Roster.

MEMBERS PRESENT:

Robert M. Sader, Chairman
Gene T. Porter, Vice Chairman
John C. Carpenter
Vonne Chowning
Renee L. Diamond
Robert E. Gaston
James Gibbons
Bill Kissam
Mike McGinness
John Regan
Gaylyn J. Spriggs
Vincent L. Triggs
Wendell P. Williams
Jane A. Wisdom

STAFF MEMBERS PRESENT:

None

OTHERS PRESENT:

Capt. Enrico Togneri, Washoe County Sheriff's Office
Dan Reiser, Deputy Attorney General, Gaming Division
Lawrence Semenza, Nevada Trial Lawyers' Association

Minutes of the Nevada State Legislature
Assembly Committee on Judiciary
Date: June 7, 1989
Page: 5

THE MOTION CARRIED UNANIMOUSLY.

ASSEMBLY BILL NO. 247 - Allows for continuing garnishment until amount demanded in writ is satisfied.

Discussing the Senate Amendment No. 1094 to A.B. 247, Deputy Legislative Counsel, Jennifer Stern reminded the committee the bill, as well as the amendment, had been requested by Assemblyman Callister. As a result of negotiations between the sheriffs and Mr. Callister the bill had been amended in that rather than having a continuing garnishment for a period of 180 days, this had been changed to 120 days. A new section 11 had also been added, which required these returns to go through the Sheriff's office. The Sheriff would then be able to charge a fee thus ameliorating the financial impact on their office.

Chairman Sader reported there were certain constables who were opposed to the total bill, and also evidence that Ernie Nielsen, Washoe Legal Services, objected to the bill even though there had been compromises made. Mr. Nielsen's objections were that the bill would serve to "make poor people poorer."

ASSEMBLYMAN PORTER MOVED TO CONCUR WITH SENATE AMENDMENT NO. 1094 TO ASSEMBLY BILL NO. 247.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

ASSEMBLY BILL NO. 828 - Extends provisions concerning unlawful detainer to recreational vehicle parks.

Amendment No. 1085 (Exhibit G) was introduced and Ms. Stern told the committee the focus of the bill was to account for recreational vehicles that might be in a mobile home park. The original bill spoke to recreational vehicles in recreational vehicle parks, although there were some mobile home parks that had designated lots to be recreational vehicle lots. The amendment would amend the statutes to include that. Ms. Stern then made a section by section explanation of the amendment.

Assembly Bill No. 247—Committee on Judiciary

CHAPTER 338

AN ACT relating to garnishment; allowing continuing garnishment of earnings for certain period; prohibiting an employer from discharging or disciplining an employee under certain circumstances; revising the procedure for the collection of garnished wages; and providing other matters properly relating thereto.

[Approved June 15, 1989]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 28 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *"Defendant" includes a party against whom a counterclaim, crossclaim or third party complaint is filed.*

Sec. 3. *"Plaintiff" includes a party who files a counterclaim, crossclaim or third party complaint.*

Sec. 4. NRS 28.010 is hereby amended to read as follows:

28.010 As used in this Title, unless the context otherwise requires, the words and terms defined in NRS 28.020 to 28.130, inclusive, and sections 2 and 3 of this act, have the meanings ascribed to them in those sections.

Sec. 5. Chapter 31 of NRS is hereby amended by adding thereto the provisions set forth as sections 6, 7 and 8 of this act.

Sec. 6. 1. *Except as otherwise provided in subsection 3, if the garnishee indicates in his answer to garnishee interrogatories that he is the employer of the defendant, the writ of garnishment served on the garnishee shall be deemed to continue for 120 days or until the amount demanded in the writ is satisfied, whichever occurs earlier.*

2. *In addition to the fee set forth in NRS 31.270, a garnishee is entitled to a fee from the plaintiff of \$3 per pay period, not to exceed \$12 per month, for each withholding made of the defendant's earnings. This subsection does not apply to the first pay period in which the defendant's earnings are garnished.*

3. *If the defendant's employment by the garnishee is terminated before the writ of garnishment is satisfied, the garnishee:*

(a) *Is liable only for the amount of earned but unpaid, disposable earnings that are subject to garnishment.*

(b) *Shall provide the plaintiff or the plaintiff's attorney with the last known address of the defendant and the name of any new employer of the defendant, if known by the garnishee.*

Sec. 7. 1. *If without legal justification an employer of the defendant refuses to withhold earnings of the defendant demanded in a writ of garnishment or knowingly misrepresents the earnings of the defendant, the court may order the employer to appear and show cause why he should not be subject to the penalties prescribed in subsection 2.*

2. *If after a hearing upon the order to show cause, the court determines that an employer, without legal justification, refused to withhold the earnings of a defendant demanded in a writ of garnishment or knowingly misrepresented the earnings of the defendant, the court shall order the employer to pay the plaintiff, if the plaintiff has received a judgment against the defendant,*

the amount of arrearages caused by the employer's refusal to withhold or his misrepresentation of the defendant's earnings. In addition, the court may order the employer to pay the 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 the defendant's earnings or has misrepresented the earnings.

Sec. 8. *It is unlawful for an employer to discharge or discipline an employee exclusively because the employer is required to withhold the employee's earnings pursuant to a writ of garnishment.*

Sec. 9. NRS 31.249 is hereby amended to read as follows:

31.249 1. No writ of garnishment in aid of attachment may issue except on order of the court. The court may order the writ of garnishment to be issued:

(a) In the order directing the clerk to issue a writ of attachment; or

(b) If the writ of attachment has previously issued without notice to the defendant and the defendant has not appeared in the action, by a separate order without notice to the defendant.

2. The plaintiff's application to the court for an order directing the issuance of a writ of garnishment must be by affidavit made by or on behalf of the plaintiff to the effect that the affiant is informed and believes that the named garnishee [is] :

(a) *Is the employer of the defendant; or*

(b) *Is indebted to or has property in his possession or under his control belonging to the defendant, and that [the indebtedness or property is,] to the best of the knowledge and belief of the affiant, the defendant's future wages, the garnishee's indebtedness or the property possessed is not by law exempt from execution. If the named garnishee is the State of Nevada, the writ of garnishment must be served upon the state controller.*

3. The affidavit by or on behalf of the plaintiff may be contained in the application for the order directing the writ of attachment to issue or may be filed and submitted to the court separately thereafter.

4. Except as *otherwise* provided in this section, the grounds and procedure for a writ of garnishment are identical to those for a writ of attachment.

5. *If the named garnishee is the subject of more than one writ of garnishment regarding the defendant, the court shall determine the priority and method of satisfying the claims, except that any writ of garnishment to satisfy a judgment for the collection of child support must be given first priority.*

Sec. 10. NRS 31.290 is hereby amended to read as follows:

31.290 1. The interrogatories to the garnishee may be in substance as follows:

INTERROGATORIES

Are you in any manner indebted to the defendants,

.....
or either of them, 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:.....

Are you an employer of one or all of the defendants? If so, state the length of your pay period and the amount each defendant presently earns during a pay period.

Answer:.....

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, goods, chattels, rights, credits or choses in action of the defendants, or either of them, or in whichhe..... interested? If so, state its value, and state fully all particulars.

Answer:.....

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

Answer:.....

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:.....

Garnishee

I (insert the name of the garnishee), do solemnly swear (or affirm) that the answers to the foregoing interrogatories by me subscribed are true.

(Signature of garnishee)

SUBSCRIBED and SWORN to before me this day of 19....

2. The garnishee shall answer the interrogatories in writing upon oath or affirmation and file his answers or cause them to be filed in the proper court within the time required by the writ. If he fails to do so, he shall be deemed in default.

Sec. 11. NRS 21.112 is hereby amended to read as follows:

21.112 1. In order to claim exemption of any property levied on, the judgment debtor shall, within 5 days after receipt of actual notice of the levy, serve on the sheriff and judgment creditor and file with the clerk of the court issuing the writ of execution an affidavit setting out his claim of exemption.

2. When such affidavit is served, the sheriff shall release the property if the judgment creditor, within 5 days after written demand by the sheriff fails to give the sheriff an undertaking executed by two good and sufficient sureties which:

(a) Is in a sum equal to double the value of the property levied on; and

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL J. MONA, JR., an individual,

Appellant,

vs.

FAR WEST INDUSTRIES, a California
corporation,

Respondent.

Case No.: 73815

Electronically Filed
Jan 09 2018 04:48 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

APPELLANT'S APPENDIX
(Volume 15, Bates Nos. 3328-3560)

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INDEX TO APPELLANT'S APPENDIX

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

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

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

	Exhibits to Ex Parte Application for Examination of Judgment Debtor Examination of Michael J. Mona, Individually, and as Trustee of the Mona Family Trust Dated February 12, 2002, and Rhonda Mona as Trustee of the Mona Family trust Dated February 12, 2002	
Exhibit	Document Description	
1	Definitions	Volume 1 Bates Nos. 173–179
	Order Regarding Motion for Protective Order on Order Shortening Time (filed 06/17/15)	Volume 1 Bates Nos. 180–182
	Notice of Entry of Order Regarding Motion for Protective Order on Order Shortening Time (filed 06/17/15)	Volume 1 Bates Nos. 183–187
	Ex Parte Application for Order to Show Cause why Accounts of Rhonda Mona Should not be Subject to Execution and Why the Court Should Not Find the Monas in Contempt (filed 06/29/15)	Volume 1 Bates Nos. 188–204
	Exhibits to Ex Parte Application for Order to Show Cause why Accounts of Rhonda Mona Should not be Subject to Execution and Why the Court Should Not Find the Monas in Contempt	
Exhibit	Document Description	
1	Post-Marital Property Settlement Agreement	Volume 1 Bates Nos. 205–217
2	Judgment Debtor Examination of Michael J. Mona	Volume 1 Bates Nos. 218–223
3	Rough Draft Transcript of Deposition of Rhonda H. Mona	Volume 1 Bates Nos. 224–233
4	Judgment and Findings of Fact and Conclusions of Law	Volume 2 Bates Nos. 234–254
	Order to Show Cause Why Accounts of Rhonda Mona should not be Subject to Execution and Why the Court Should Not Find the Monas in Contempt (filed 06/30/15)	Volume 2 Bates Nos. 255–257

Notice of Entry of Order to Show Cause Why Accounts of Rhonda Mona Should not be Subject to Execution and Why the Court Should Not Find the Monas in Contempt (filed 06/30/15)		Volume 2 Bates Nos. 258–263
Response to Order to Show Cause Why Accounts of Rhonda Mona should not be Subject to Execution and Why the Court Should Not Find the Monas in Contempt (filed 07/07/15)		Volume 2 Bates Nos. 264–278
	Exhibits to Response to Order to Show Cause Why Accounts of Rhonda Mona should not be Subject to Execution and Why the Court Should Not Find the Monas in Contempt	
Exhibit	Document Description	
A	Findings of Fact and Conclusions of law (filed 03/06/12 in Superior Court of California Riverside)	Volume 2 Bates Nos. 279–295
B	Post-Marital Property Settlement Agreement	Volume 2 Bates Nos. 296–308
C	Declaration of Mike Mona in Support of Response to Order to Show Cause	Volume 2 Bates Nos. 309–310
Supplement to Response to Order to Show Cause Why Accounts of Rhonda Mona should not be Subject to Execution and Why the Court Should Not Find the Monas in Contempt (filed 07/08/15)		Volume 2 Bates Nos. 311–316
Declaration in Support of Request for Contempt (filed 07/08/15)		Volume 2 Bates Nos. 317–324
Order Regarding Order to Show Cause Why Accounts of Rhonda Mona should not be Subject to Execution and Why the Court Should Not Find the Monas in Contempt (filed 07/15/15)		Volume 2 Bates Nos. 325–335
Notice of Entry of Order to Show Cause Why Accounts of Rhonda Mona should not be Subject to Execution and Why the Court Should Not Find the Monas in Contempt (filed 07/16/15)		Volume 2 Bates Nos. 336–349
Motion to Compel Application of Particular Assets Toward Satisfaction of Judgment (filed 07/16/15)		Volume 2 Bates Nos. 350–360

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

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

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

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

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

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

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

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

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

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

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

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

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

	Exhibits to Appendix of Exhibits Attached to Memorandum of Points and Authorities in Support of Claim of Exemption and Motion for Discharge of Garnishment (cont.)	
Q	NRS 31.260	Volume 16 Bates Nos. 3792–3793
R	NRS 31.270	Volume 16 Bates Nos. 3794–3795
S	NRS 31.295	Volume 16 Bates Nos. 3796–3797
T	NRS 31.296	Volume 16 Bates Nos. 3798–3799
U	EDCR 2.20	Volume 16 Bates Nos. 3800–3801
Claim of Exemption from Execution (filed 11/10/16)		Volume 17 Bates Nos. 3802–3985
Far West Industries’ Objection to Claim of Exemption from Execution on an Order shortening Time and Motion for Attorney Fees and Costs Pursuant to NRS 18.010(2)(b) (filed 11/21/16)		Volume 17 Bates Nos. 3986–4002
	Exhibits to Far West Industries’ Objection to Claim of Exemption from Execution on an Order shortening Time and Motion for Attorney Fees and Costs Pursuant to NRS 18.010(2)(b)	
Exhibit	Document Description	
1	Findings of Fact and Conclusions of Law (filed 03/06/12 Superior Court of California, County of Riverside)	Volume 17 Bates Nos. 4003–4019
2	Order Regarding Plaintiff Far West Industries’ Motion for Determination of Priority of Garnishment and Defendant Michael J. Mona’s Countermotion to Discharge Garnishment and for Return of Proceeds (filed 06/21/16)	Volume 17 Bates Nos. 4020–4026
3	Writ of Execution	Volume 17 Bates Nos. 4027–4035
4	Documents from the Office of the Ex–Officio Constable	Volume 17 Bates Nos. 4036–4039
Affidavit of Service upon CV Sciences, Inc. FKA Cannavest Corp. (filed 11/23/16)		Volume 17 Bates Nos. 4040–4041

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

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

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

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

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

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

	Exhibits to Appendix of Exhibits Attached to Memorandum of Points and Authorities in Support of Claim of Exemption and Motion to Discharge Garnishment (cont.)	
Q	NRS 31.260	Volume 20 Bates Nos. 4725–4726
R	NRS 31.270	Volume 20 Bates Nos. 4727–4728
S	NRS 31.295	Volume 20 Bates Nos. 4729–4730
T	NRS 31.296	Volume 20 Bates Nos. 4731–4732
U	EDCR 2.20	Volume 20 Bates Nos. 4733–4734
V	Check to Mike Mona, Writ of Execution, and Writ of Garnishment	Volume 20 Bates Nos. 4735–4751
W	Check to CV Sciences, Writ of Execution, and Writ of Garnishment	Volume 20 Bates Nos. 4752–4768
X	Affidavit of Service regarding March 15, 2017 service of Writ of Execution, and Writ of Garnishment from Laughlin Township Constable’s Office	Volume 21 Bates Nos. 4769–4770
Y	Affidavit of Service regarding April 3, 2017 service of Writ of Execution, and Writ of Garnishment from Laughlin Township Constable’s Office	Volume 21 Bates Nos. 4771–4788
Stipulation and Order Regarding Amended Nunc Pro Tunc Order Regarding Plaintiff Far West Industries’ Motion to Reduce Sanctions Order to Judgment (filed 04/24/17)		Volume 21 Bates Nos. 4789–4791
Notice of Entry Stipulation and Order Regarding amended Nunc Pro Tunc Order regarding Plaintiff Far West Industries’ Motion to Reduce Sanctions Order to Judgment (filed 04/25/17)		Volume 21 Bates Nos. 4792–4797
Plaintiff Far West Industries Objection to Claim of Exemption from Execution on an Order Shortening Time and Motion for Attorney Fees and Costs Pursuant to NRS 18.010(2)(b) (filed 05/02/17)		Volume 21 Bates Nos. 4798–4817


	Exhibits to Plaintiff Far West Industries Objection to Claim of Exemption from Execution on an Order Shortening Time and Motion for Attorney Fees and Costs Pursuant to NRS 18.010(2)(b)	
Exhibit	Document Description	
1	Findings of Fact and Conclusions of law (filed 03/06/12 Superior Court of California Riverside)	Volume 21 Bates Nos. 4818–4834
2	Order Regarding Plaintiff Far West Industries’ Motion for Determination of Priority of Garnishment and Defendant Michael J. Mona’s Countermotion to Discharge Garnishment and for Return of Proceeds (filed 06/21/16)	Volume 21 Bates Nos. 4835–4841
3	Nevada Secretary of State Entity Details for CV Sciences, Inc.	Volume 21 Bates Nos. 4842–4845
4	Answers to Interrogatories	Volume 21 Bates Nos. 4846–4850
Stipulation and Order Regarding Writ of Garnishment Served 04/03/17 and Claim of Exemption , and Vacating Related Hearing without Prejudice (filed 05/15/17)		Volume 21 Bates Nos. 4851–4854
Notice of Entry of Stipulation and Order Regarding Writ of Garnishment Served 04/03/17 and Claim of Exemption , and Vacating Related Hearing without Prejudice (filed 05/16/17)		Volume 21 Bates Nos. 4855–4861
Claim of Exemption from Execution (filed 05/23/17)		Volume 21 Bates Nos. 4862–4868
Appendix of Exhibits Attached to Memorandum of Points and Authorities in Support of Claim of Exemption and Motion to Discharge Garnishment (filed 05/23/17)		Volume 21 Bates Nos. 4869–4871
	Exhibits to Appendix of Exhibits Attached to Memorandum of Points and Authorities in Support of Claim of Exemption and Motion to Discharge Garnishment	
Exhibit	Document Description	
A	Nevada Assembly Bill 247, Chapter 338, Page 699 (1989)	Volume 21 Bates Nos. 4872–4920
B	Decree of Divorce dated July 23, 2015	Volume 21 Bates Nos. 4921–4927
C	Rhonda’s Opposition to Motion to Intervene dated September 28, 2015	Volume 21 Bates Nos. 4928–4940

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

	Exhibits to Appendix of Exhibits Attached to Memorandum of Points and Authorities in Support of Claim of Exemption and Motion to Discharge Garnishment (cont.)	
U	EDCR 2.20	Volume 21 Bates Nos. 5009–5010
V	Check to Mike Mona, Writ of Execution, and Writ of Garnishment	Volume 22 Bates Nos. 5011–5027
W	Check to CV Sciences, Writ of Execution, and Writ of Garnishment	Volume 22 Bates Nos. 5028–5044
X	Affidavit of Service regarding March 15, 2017 service of Writ of Execution, and Writ of Garnishment from Laughlin Township Constable’s Office	Volume 22 Bates Nos. 5045–5046
Y	Affidavit of Service regarding April 3, 2017 service of Writ of Execution, and Writ of Garnishment from Laughlin Township Constable’s Office	Volume 22 Bates Nos. 5047–5064
Z	Writ of Execution and Writ of Garnishment served May 9, 2017	Volume 22 Bates Nos. 5065–5078
Memorandum of Points and Authorities in Support of Claim of Exemption and Motion to Discharge Garnishment (filed 05/23/17)		Volume 22 Bates Nos. 5079–5114
Plaintiff Far West Industries Objection to Claim of Exemption from Execution on an Order Shortening Time and Motion for Attorney Fees and Costs Pursuant to NRS 18.010(2)(b) (filed 06/05/17)		Volume 22 Bates Nos. 5115–5131
	Exhibits to Plaintiff Far West Industries Objection to Claim of Exemption from Execution on an Order Shortening Time and Motion for Attorney Fees and Costs Pursuant to NRS 18.010(2)(b)	
Exhibit	Document Description	
1	Findings of Fact and Conclusions of law (filed 03/06/12 in Superior Court of California Riverside)	Volume 22 Bates Nos. 5132–5148
2	Order Regarding Plaintiff Far West Industries’ Motion for Determination of Priority of Garnishment and Defendant Michael J. Mona’s Countermotion to Discharge Garnishment and for Return of Proceeds (filed 06/21/16)	Volume 22 Bates Nos. 5149–5155

	Exhibits to Plaintiff Far West Industries Objection to Claim of Exemption from Execution on an Order Shortening Time and Motion for Attorney Fees and Costs Pursuant to NRS 18.010(2)(b) (cont.)	
3	Affidavit of Service by Laughlin Township Constable's Office	Volume 22 Bates Nos. 5156–5157
4	Affidavit of Service by Laughlin Township Constable's Office	Volume 22 Bates Nos. 5158–5159
Notice of Entry of Order Sustaining Plaintiff Far West Industries' Objection to Claim of Exemption from Execution (filed 07/19/17)		Volume 22 Bates Nos. 5160–5165
Ex Parte Motion for Order Allowing Judgment Debtor Examination of Michael J. Mona, Jr., Individually, and as Trustee of the Mona Family Trust Dated February 12, 2002 (filed 08/16/17)		Volume 22 Bates Nos. 5166–5179
Notice of Appeal (filed 08/18/17)		Volume 22 Bates Nos. 5180–5182
	Exhibits to Notice of Appeal	
Exhibit	Document Description	
1	Notice of Entry of Order Sustaining Plaintiff Far West Industries' Objection to Claim of Exemption from Execution (filed 07/19/17)	Volume 22 Bates Nos. 5183–5189
2	Notice of Entry of Order Regarding Plaintiff Far West Industries' Motion for Determination of Priority of Garnishment and Defendant Michael J. Mona's Countermotion to Discharge Garnishment and for Return of Proceeds (filed 06/21/16)	Volume 22 Bates Nos. 5190–5199
Order for Examination of Judgment Debtor Michael J. Mona, Jr., Individually, and as Trustee of the Mona Family Trust dated February 12, 2002 (filed 08/18/17)		Volume 22 Bates Nos. 5200–5211
Far West Industries' Reply to CV Sciences Inc.'s Answers to Writ of Garnishment Interrogatories and Ex parte Request for Order to Show Cause Why CV Sciences Inc. Should Not be Subjected to Garnishment Penalties (filed 11/20/17)		Volume 22 Bates Nos. 5212–5223

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



CLERK OF THE COURT

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7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 FAR WEST INDUSTRIES, a California
10 corporation,

11 Plaintiff,

12 vs.

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

16 Defendants.

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

Hearing Date: May 5, 2016
Hearing Time: 9:00 a.m.

17 **SUPPLEMENTAL BRIEF REGARDING JUDICIAL ESTOPPEL AND REDUCING**
18 **THE SANCTION ORDER TO JUDGMENT**

19 Defendant Michael J. Mona, Jr. ("Mona"), through the law firm of Marquis Aurbach
20 Coffing, hereby submits his Supplemental Brief Regarding Judicial Estoppel and Reducing the
21 Sanction Order to a Judgment. This Supplement is made and based on the attached

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Memorandum of Points 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 22nd day of April, 2016.

MARQUIS AURBACH COFFING

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

I. INTRODUCTION.

On March 30, 2016, this Court heard oral argument regarding various requests from the Parties – one being Far West’s request to reduce the Sanction Order to a \$3.4 million judgment against Rhonda Mona. During oral argument, Far West’s counsel asserted that the Monas were taking inconsistent positions before different judges. The Monas disagreed with Far West and summarily refuted this argument. At the conclusion of the hearing, the Court requested supplemental briefing from the Parties on various issues, including judicial estoppel related to Far West’s allegations of inconsistent positions.¹

Judicial estoppel does not apply to this case because neither the elements nor gravity of the circumstances required for the doctrine to apply are present. The record shows that Defendants did not take inconsistent positions. Also, the record shows that Judge Bare did not adopt, accept as true, or base any decision on any inconsistent position or Far West’s allegation that the Defendants represented to Judge Bare a final judgment had been entered. Further, any

¹ Marquis Aurbach Coffing (“MAC”) no longer represents Rhonda Mona, but was involved in the case as Rhonda’s counsel at the time Far West alleges the inconsistent positions arose. As a result, MAC is addressing the judicial estoppel issue.

1 position that could have fallen under some guise as an inconsistent position was overwhelmingly
2 clarified and refuted in Defendants' own documents and at oral argument.

3 In the end, neither the record nor Defendants' related representations even begin to tilt
4 the judicial estoppel meter. After all, according to the Nevada Supreme Court, judicial estoppel
5 is an "extraordinary remedy" courts should "cautiously" apply and only when an inconsistent
6 position arises from intentional wrongdoing or an attempt to obtain an unfair advantage. Mainor
7 v. Nault, 120 Nev. 750, 765-66, 101 P.3d 308, 318-19 (2004), as corrected on denial of reh'g
8 (Apr. 13, 2005) (citations omitted). And, further, judicial estoppel does not preclude changes in
9 position so long as they are not intended to sabotage the judicial process. Id. The circumstances
10 here cannot satisfy this standard. Therefore, judicial estoppel does not apply and the Court
11 should deny Far West's attempt to reduce to judgment an Order that is the subject of upcoming
12 en banc oral argument.

13 **II. STATEMENT OF RELEVANT FACTS.**

14 The Court is aware of the facts that surround this case and this Supplement. Thus, rather
15 than regurgitate the facts again, Mona incorporates the facts, arguments, and exhibits from the
16 Writ Petition and related briefings pending before the Supreme Court as if fully set forth herein.
17 See July 17, 2015 Petition for Writ of Mandamus, Appendices Volumes 1-2, and Reply in
18 Support Petition for Writ of Mandamus on file with the Nevada Supreme Court. In addition, the
19 facts below are relevant.

20 **A. JUDGMENT, RELATED DOMESTICATION, AND IMPROPER ACTION**

21 **AGAINST RHONDA MONA.**

22 Far West is a California corporation that possesses a California Judgment against Mike
23 Mona. Rhonda Mona is Mike Mona's ex-wife. The California Judgment is against Mike Mona
24 only. The original California Judgment amount was approximately \$18,000,000, but interest has
25 allegedly been accruing at about \$5,000 per day since 2012 – bringing the total Judgment to
26 approximately \$24 million.

27 On October 18, 2012, Far West domesticated the Judgment in Nevada (this case, referred
28 to herein as the "Judge Hardy case") and began collection activities. As part of Far West's

1 efforts against Mike Mona, Far West made fraudulent transfer allegations against Rhonda Mona
2 and Mike Mona in the Judge Hardy case. Specifically, Far West asserted that Mike and
3 Rhonda's division of \$6.8 million in community property received from a stock sale equated to a
4 fraudulent transfer. The Monas divided the proceeds through a Post-Marital Property
5 Agreement, which Nevada Revised Statute 123.080 expressly authorizes.

6 This Court disagreed with the Monas' division of the funds based on NRS 123.080,
7 agreed with Far West's position, and, on July 15, 2015, entered an Order (the "Sanction Order")
8 against Mike Mona and Rhonda Mona. The Sanction Order concluded that Rhonda Mona
9 engaged in a fraudulent transfer and sanctioned her, even though she is not a party to this case.
10 The Monas respectfully disagreed with the Sanction Order and filed a Writ Petition, which the
11 Supreme Court is preparing to set for en banc oral argument in the coming weeks. Other than
12 asserting that the \$6.8 million stock sale and related Post-Marital Settlement Agreement
13 represented a fraudulent transfer, Far West did not assert in this case that any other dealings
14 between Mike, Rhonda, or anyone else represented a fraudulent transfer.

15 **B. THE DIVORCE ACTION, FAR WEST'S FAILURES, AND FEES AND**
16 **COSTS AGAINST FAR WEST.**

17 On July 23, 2015, Mike Mona and Rhonda Mona finalized their divorce and, in so doing,
18 divided the couples' property and debt ("Divorce Action"). There is a carve out in the Divorce
19 Decree related to this Court's Sanction Order specifically related to the \$3.8 million and the
20 Supreme Court's eventual decision regarding the Writ.

21 In the Divorce Action, Far West untimely attempted to intervene making various
22 allegations of fraudulent transfer. See Pltf's September 24, 2015 Motion to Intervene in case No.
23 D-15-517425 at 3:17-25. However, the Family Court denied Far West's Motion to Intervene to
24 make its claims of fraudulent transfer. See November 25, 2015 Order in case No. D-15-517425.
25 Not only did the Family Court deny Far West's attempts to make untimely fraudulent transfer
26 claims within the Divorce Action, but it also awarded Mike Mona and Rhonda Mona, separately,
27 the attorney fees and costs they each incurred in opposing Far West's attempts. See November
28 25, 2015, November 30, 2015, and December 2, 2015 Orders in case No. D-15-517425.

1 **C. FAR WEST FILES A NEW FRAUDULENT TRANSFER ACTION, THIS**
2 **TIME BEFORE JUDGE BARE, INCLUDING THE SAME ALLEGATION**
3 **AGAINST THE MONAS FOR THE DIVISION OF \$6.8 MILLION IN**
4 **COMMUNITY PROPERTY.**

5 Far West filed a new and separate Complaint against the Monas, which it followed on
6 September 14, 2015 with an Amended Complaint. See September 14, 2015 Amended Complaint
7 on file in Case No. A724490. The Amended Complaint alleged, similar to Far West's
8 allegations in this case, that Mike Mona and Rhonda Mona (his wife at the time) divided \$6.8
9 million dollars in community property and this somehow equates to a fraudulent transfer. Id. at
10 4:18-28 and 10:24-11:5. Defendants moved to dismiss the Amended Complaint and, based on
11 the Sanction Order, Far West filed a Countermotion for Summary Judgment against Rhonda
12 Mona.

13 Judge Bare heard oral argument on the Motion to Dismiss and Countermotion for
14 Summary Judgment. See February 2, 2016 Transcript of Proceedings on file in Case No.
15 A724490 (filed April 6, 2016). Due to the procedural posture of the Writ before the Supreme
16 Court (the Writ is being set for en banc oral argument), Judge Bare believed it was reasonable to
17 deny the Countermotion for Summary Judgment and, without taking a position as to the merits,
18 allowed leave for Far West to re-file the request for judgment against Rhonda before this Court.
19 Id. and March 16, 2016 Order in Case No. A724490.

20 **D. THE CURRENT MOTION FOR JUDGMENT AGAINST RHONDA**
21 **BEFORE THIS COURT AND THE COURT'S REQUEST FOR**
22 **SUPPLEMENTAL BRIEFING.**

23 On February 19, 2016, Far West moved its request to obtain a judgment against Rhonda
24 back to this Court. The Parties filed opposing briefs and, on March 30, 2016, this Court heard
25 oral argument regarding the request. During oral argument, Far West's counsel asserted that the
26 Monas were taking inconsistent positions before different judges. The Mona's disagreed with
27 and refuted this argument. In the end, the Court requested supplemental briefing on various
28 issues, including judicial estoppel related to Far West's allegations of inconsistent positions.

1 As indicated, Marquis Aurbach Coffing ("MAC") no longer represents Rhonda Mona,
2 but was involved in the case as Rhonda's counsel at the time Far West alleges some of the
3 inconsistent positions arose. As a result, MAC addresses the judicial estoppel issue herein.

4 **III. LEGAL ARGUMENT.**

5 Judicial estoppel does not apply to this case because neither the elements nor gravity of
6 the circumstances required for the doctrine to apply are present. The purpose of judicial estoppel
7 is to protect the judiciary's integrity. Mainor v. Nault, 120 Nev. 750, 765-66, 101 P.3d 308, 318-
8 19 (2004), as corrected on denial of reh'g (Apr. 13, 2005) (citing Drain v. Betz Laboratories,
9 Inc., 69 Cal.App.4th 950, 81 Cal.Rptr.2d 864, 867 (1999). And, "[j]udicial estoppel is an
10 extraordinary remedy" that courts should apply cautiously and only when "a party's inconsistent
11 position [arises] from intentional wrongdoing or an attempt to obtain an unfair advantage." Id.
12 (citing Kitty-Anne Music Co. v. Swan, 112 Cal.App.4th 30, 4 Cal.Rptr.3d 796, 800 (2003).
13 Further, judicial estoppel "does not preclude changes in position not intended to sabotage the
14 judicial process." Id. (citing U.S. v. Real Property Located at Incline Village, 976 F.Supp. 1327,
15 1340 (D.Nev.1997); Breliant v. Preferred Equities, 112 Nev. 663, 669, 918 P.2d 314, 318 (1996);
16 see also NOLM, LLC v. Cty. of Clark, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004).

17 Considering the above, judicial estoppel may apply when (1) a party has taken two
18 positions; (2) the positions were taken in judicial proceedings; (3) the party was successful in
19 asserting the first position (i.e. the court adopted the position or accepted it as true); (4) the two
20 positions are inconsistent; and (5) the party did not take the first position as a result of ignorance,
21 fraud, or mistake. Id. (citing Furia v. Helm, 111 Cal. App. 4th 945, 4 Cal. Rptr. 3d 357, 368
22 (2003) (further citations omitted); see also Marcuse v. Del Webb Cmty's., Inc., 123 Nev. 278,
23 287, 163 P.3d 462, 468-69 (2007) (citing the elements for judicial estoppel); Delgado v. Am.
24 Family Ins. Grp., 125 Nev. 564, 570, 217 P.3d 563, 567 (2009) (judicial estoppel will bar a party
25 from raising an argument only when this "conjunctive test is satisfied.")
26
27
28

1 Here, the elements necessary for the Court to apply judicial estoppel are not present for
2 four reasons. First, the Defendants have not taken inconsistent positions. Second, Judge Bare
3 did not adopt, accept as true, or base his decision on any inconsistent position or Far West's
4 allegation that the Defendants represented to Judge Bare a final judgment had been entered.
5 Third, any position that could have fallen under some guise as an inconsistent position was
6 refuted by the record and, as a result, was at worst a mistake. Fourth, Defendants' actions and
7 related representations do not even begin to tilt the judicial estoppel meter. Each of these
8 arguments is discussed in detail below.

9
10 **A. THE DEFENDANTS HAVE NOT TAKEN TWO INCONSISTENT POSITIONS.**

11 To support its estoppel argument, Far West has cherry picked a couple of lines of text out
12 of the universe of documents related to this matter and has analyzed them in a vacuum without
13 consideration for the circumstances of the related cases or the entirety of the record. To refute
14 Far West's position, Mona identifies the genesis of the argument, uses the record to identify the
15 truth and show why Far West's argument is baseless, and explains why the Defendants' position
16 is entirely consistent with the procedural posture and circumstances of the case.

17 **1. The Genesis – Far West Attempts to Gain an Unfair Advantage by**
18 **Analyzing a Statement in a Vacuum Without Consideration for the**
Remainder of the Record.

19 Far West's counsel argued at the March 30 hearing that judgment against Rhonda Mona
20 in this case was proper because the Motion to Dismiss the Monas filed before Judge Bare
21 indicated:

22 The first element regarding a final judgment in a previous action is satisfied
23 because there are currently final judgments in the Divorce and Fraudulent
Transfer Actions.

24 See December 4, 2015 Motion to Dismiss in Case No. A724490 at 8:4-5. In addition to this
25 sentence, Far West also referenced the following paragraph:

26 Far West's second cause of action is for the alleged fraudulent transfer of \$3.4
27 million from Mike Mona to Rhonda, which is half of \$6.8 million the Monas
received through a stock sale. See Pltf's Amended Complaint at 10:26-11:25.
28 Far West has already asserted and obtained an Order/Judgment regarding this
exact same claim against Mike Mona and Rhonda Mona in case No. A-12-

670352. Id. at 3:22-24, 4:18-28, and 6:26-7:10. The Court concluded that Mike Mona agreeing to split the \$6.8 million with Rhonda Mona through the Post-Marital Settlement Agreement was a fraudulent transfer. Id. The Court's Order is now the subject of a pending appeal before the Nevada Supreme Court. Id. at 7:50. Therefore, Far West is barred from bringing the exact same claim, which has been decided and is the subject of an appeal. Id. at 9:8-16.

See December 4, 2015 Motion to Dismiss in Case No. A724490 at 8:4-5. Taking the above references out of context, Far West's counsel asserted at the March 30 hearing that because of these statements from the Monas, he supposedly told Judge Bare he did not care who entered judgment against Rhonda Mona and was fine with going before this Court to seek a judgment.²

Far West's rationale before this Court at the March 30 hearing was it is only asking for the Court to enter the \$3.4 million judgment against Rhonda Mona that the Monas allegedly told Judge Bare this Court already entered, which is not true. "What's the big deal" Far West's counsel exclaimed. The "big deal" is everything encompassed in the Writ regarding the Sanction Order, which has some level of merit or the Supreme Court would not be considering it en banc. In addition, as to estoppel, Far West has essentially taken one sentence referencing final judgments related to the Divorce Action and this case; a second sentence indicating Far West is barred from bringing the same claim that is already the subject of an appeal; has combined the two sentences; and, ignoring the rest of the record, is twisting these two sentences into a \$3.4 million judgment against Rhonda.

2. **The Truth – Considering the Entirety of the Record, There was No Inconsistent Position and the Monas Did Not Represent to Judge Bare That There was a "Final Judgment" against Rhonda in This Case.**

The complete record, as opposed to a couple of lines cherry picked text, establishes the Defendants did not assert to Judge Bare that this Court had entered a "final judgment" against the Monas. Rather, the opposite is true. Defendants were very clear with Judge Bare that this Court simply entered an Order, which was not a final judgment, and the Order is the subject of a Writ

² Mona does not believe this assertion is entirely forthcoming. Rather, Mona believes Far West realized Judge Bare was not going to grant the Countermotion for Summary Judgment and, rather than walk away empty handed with nowhere to go, Far West worked to open the door for a secondary option to bring the request for judgment before this Court.

1 Petition pending before the Supreme Court. To demonstrate this point, Mona has provided
2 below multiple citations to the record.

3 Very telling are the excerpts from the transcript from the oral argument before Judge
4 Bare. Counsel for both Mike and Rhonda Mona were clear that there was not a "final judgment"
5 against Rhonda Mona. For example:

6 MR. COFFING: So, this [the Writ Petition] is not an appeal. I don't get to
7 appeal anything in front of . . . Judge Hardy, because there's nothing to appeal. I
had to take a Writ.

8 THE COURT: Writ, right.

9 MR. COFFING: And, so, it's not a typical case. And what he [Far West] wants
10 you to say is, yeah, just ignore the fact that the Supreme Courts going to rule on
this, they've set it for en banc hearing, and you just go ahead and enter a
11 judgment, but we'll just forget about it if -- if we're wrong.

12 We have not had our opportunity to fully and fairly address those issues. It's been
briefed, and we want the Supreme Court to weigh in on this issue . . .

13 THE COURT: All right. Let me see if I have this right. And if I should know
14 this, sorry, I don't have a full understanding of it. But in regard to the Judge
Hardy Order, you filed a Writ.

15 MR. COFFING: Correct.

16 THE COURT: And the court [the Supreme Court] asked for answer, and --

17 MR. COFFING: Correct.

18 THE COURT: -- you went through the whole process on that. There --

19 MR. COFFING: There was an initial stay --

20 THE COURT: There --

21 MR. COFFING: -- and then the court sent it back and said, we'll determine a
22 bond amount. Judge Hardy determined the bond amount while briefing was
going on and my client could not post it.

23 THE COURT: All right.

24 MR. COFFING: So now it's been -- we've been told its being considered en
25 banc. We don't have a hearing date . . . unless you know something I don't . . .

26 See February 2, 2016 Transcript of Proceedings on file in Case No. A724490 at 45:12-46:5 (filed
27 April 6, 2016). Thus, as the Court can see, Mike Mona's counsel was clear that there was
28 nothing "final." Although all counsel in this case have at times referred to the Writ Petition as an

1 "appeal," Mona's counsel was clear that there was "nothing to appeal." Rather, Mona's counsel
2 made abundantly clear to Judge Bare that it was a Writ, which makes the Sanction Order
3 interlocutory in nature.

4 The above is not the end or even the most revealing. Mike and Rhonda's respective
5 attorneys made it even more clear to Judge Bare that there was no "final judgment." They
6 expressly told Judge Bare that there was no judgment, final or otherwise, against Rhonda.

7 MR. COFFING: *There is no judgment -- and I'll let Mr. Whitmire -- there is no*
8 *judgment against Rhonda Mona. There is just an Order* saying that her assets,
9 her separate property could be subject to execution. *So there's no judgment*
10 *pending against her. The only judgment is against my client* [Mike Mona].

11 And so, I think it would be appropriate until the Supreme Court does make a
12 ruling that you stay these proceedings, as it doesn't prejudice their right to collect
13 against Mr. Mona.

14 They've been garnishing his wages for over a year, they've taken other collection
15 actions and they'll continue to do so, I have no doubt about that. *But we have a*
16 *situation where we have competing courts, and I don't think it's appropriate for*
17 *this Court to proceed until the Supreme Court has gone forward.* And I -- Mr.
18 Whitmire obviously wants to address Rhonda Mona's issues.

19 THE COURT: Do you want to say anything else?

20 MR. WHITMIRE: I would, Your Honor. And these comments are addressed to
21 the Countermotion --

22 THE COURT: Right.

23 MR. WHITMIRE: -- for Summary Judgment.

24 ...

25 MR. WHITMIRE: -- its alleged. And I come back to the comment in Mr.
26 Edwards presentation that the genesis of Judge Hardy's Sanctions Order, and
27 that's I think in quotations --

28 THE COURT: Yeah.

MR. WHITMIRE: -- is Michael Mona's lies, purportedly. That's distinct from
Rhonda. And my segway into all of this, it goes into the claim preclusion, issue
preclusion sort of analysis, is *was there a final Order; final judgment? No. If*
there was, they wouldn't be in this court seeking to reduce Judge Hardy's
Sanctions Order to a judgment. I mean, that just is obvious on its face.

The commentary that Mr. Edwards I think was pulling out of breach before I got
involved in the case related to the notion of, wait, Judge Bare, don't rule on the
second claim for relief because the issue is up on appeal in the -- in the fraudulent
transfer action, or whatever the -- or the judgment collection action, excuse me.
That's the right terminology. *So there is no final judgment* on the merits.

1 Now, let me address that issue.

2 THE COURT: Okay.

3 MR. WHITMIRE: Final judgment on the merits. *There is no ruling on the*
4 *merits*. There wasn't even a fraudulent transfer. That wasn't the issue in case one,
or case two, whatever in front of Judge Hardy.

5 THE COURT: Yeah.

6 MR. WHITMIRE: I'll use Judge Hardy to keep it simple. Fraudulent transfer was
7 not the issue in the case. That issue came about -- it spun out of a sanctions issue
that turned into a case-terminating Sanctions Order without any analysis of the
8 Ribeiro factors, without an evidentiary hearing.

9 And, you know, I've got the list of -- of -- let's ignore the following points, is the
10 Far West position. Let's ignore the fact that Rhonda Mona was not a party. Let's
ignore the fact that she was not personally served. Let's ignore the fact that there
11 was no personal jurisdiction as to her. Let's ignore the fact that there was no
evidentiary hearing.

12 Let's ignore the fact that there were de facto or actual case-terminating sanctions
without an analysis of the Ribeiro factors. Let's ignore the fact that there was no
13 judgment. Let's ignore the fact that there's an ongoing appeal.

14 Let's ignore the fact that a separate proceeding was required. And mind you, for
the record, I did mention in the Opposition to the Countermotion, I'm saying it's
15 theoretically true, a separate proceeding was required and that's an issue on
appeal.

16 THE COURT: Right.

17 MR. WHITMIRE: So, I don't have fundamentally this hang-up with a case being
in front of Judge Bare. However, I do have an issue of saying that you can
18 completely do the divorce action -- do a do-over. And the secondary issue is, we
have a problem with the notion of just transforming hocus-pocus, I'm going to
19 take Judge Hardy's Sanctions Order and I'm going to reduce it to judgment
without the fundamental due process.

20 THE COURT: Okay.

21 MR. WHITMIRE: Those issues are on appeal. I think the argument was, Your
22 Honor, you shouldn't have to dive into appellate issues because it may create
inconsistent rulings. I'll --

23 THE COURT: All right. Mr. Whitmire, let me interrupt you. *The argument has*
24 *been very helpful to me* . . .

25 MR. WHITMIRE: Okay.

26 Id. at 47:5-51:13 (emphasis added). Judge Bare's ultimate response to all of this argument, the
27 Writ, and the Sanctions Order:

28

1 THE COURT: . . . *I have a pretty good understanding of everything Judge*
2 *Hardy.*

3 Id. 51:22-23 (emphasis added). As a result, Judge Bare understood the arguments and was well
4 aware the Defendants were not asserting that there was a "final judgment." Further, Far West
5 was at the hearing; it knows what the representations were and what Judge Bare understood. Far
6 West is simply walking a fine line of candor to the Court to try and get an unfair advantage over
7 Rhonda Mona.

8 Indeed, when looking at the entirety of the record, there was no inconsistent position. As
9 set forth above, Rhonda Mona's counsel indicated that he did not have a problem with the case in
10 front of Judge Bare, but that the hang-up was transforming or reducing the Sanctions Order to a
11 judgment without fundamental due process. Further, Mike Mona's counsel indicated that he
12 thought it would be appropriate to hold off on any further judgment regarding the \$3.4 million
13 until the Supreme Court made a ruling because there are similar claims in competing courts.
14 Moreover, based on the representations to Judge Bare and Judge Bare's express understanding of
15 this case, there is no legitimate argument that the Monas intended to sabotage the judicial
16 process. Mainor v. Nault, 120 Nev. at 765-66 (judicial estoppel "does not preclude changes in
17 position not intended to sabotage the judicial process.") (citing U.S. v. Real Property Located at
18 Incline Village, 976 F.Supp. 1327, 1340 (D.Nev.1997); Breliant v. Preferred Equities, 112 Nev.
19 663, 669, 918 P.2d 314, 318 (1996). Therefore, judicial estoppel does not apply.

20 3. Far West Knows the Defendants' Position has been Consistent
21 Throughout.

22 The Monas' arguments have been consistent throughout the related proceedings. The
23 attorneys for the Monas have consistently asserted that they agree with the need for a separate
24 action against Rhonda Mona, which argument was made to the Supreme Court. The Monas,
25 however, have disagreed with Far West's position that it may pursue Rhonda for the same claim
26 before Judge Hardy in this action and before Judge Bare in a separate action. In other words, a
27 separate action would have been proper, but the same claim against Rhonda Mona in this case
28 and a second case is not appropriate. Thus, when Far West made the initial decision to avoid the

1 separate action and, instead, pursue Rhonda before this Court, it chose its course and now has to
2 live with the related Order and results, which are now pending en banc oral argument before the
3 Supreme Court. And, the procedural posture of the Writ Petition does not authorize Far West to
4 file a new lawsuit to cover its procedural mistakes. There is nothing inconsistent about this
5 position, the chronology of which is further detailed below.

6 The genesis of this situation began when this Court entered the Sanction Order finding
7 that the Post-Marital Property Agreement between Mike and Rhonda Mona, which divided the
8 community property proceeds of a \$6.8 stock sale, was a fraudulent transfer. The Court entered
9 this Sanction Order against Rhonda Mona despite the fact that Rhonda was not a party to the
10 action. The Monas respectfully disagreed with the Sanction Order and filed a Writ Petition with
11 the Nevada Supreme Court. One of the arguments that the Monas made to the Supreme Court
12 was that Far West was required to file a separate action against Rhonda.

13 Likely realizing that the Monas were right, Far West then filed, during the pendency of
14 the Supreme Court's consideration of the Writ Petition, a separate action against Rhonda – this is
15 the case before Judge Bare. Even though the Monas argued to the Supreme Court that a separate
16 action was necessary, the Monas argued to Judge Bare that the procedural posture of the
17 Sanction Order and Writ Petition now precluded Far West's attempts to go after Rhonda for the
18 same claim in a separate action. The rationale was/is that Far West cannot have it both ways. It
19 cannot pursue Rhonda before this Court and before Judge Bare for the same claim.

20 As a result of these circumstances, the Monas argued before Judge Bare that the
21 procedural posture of the Writ made it inappropriate for Judge Bare to enter a judgment against
22 Rhonda based on the same claim encompassed in the Sanction Order. Judge Bare agreed that
23 given the procedural posture of the Writ Petition, it was appropriate for him to deny the
24 Countermotion for Summary Judgment against Rhonda. Therefore, the Monas have not taken
25 inconsistent positions. Judge Bare's decision and related basis is further discussed below.

1 **B. JUDGE BARE DID NOT ADOPT, ACCEPT AS TRUE, OR BASE HIS**
2 **DECISION ON ANY INCONSISTENT POSITION OR FAR WEST'S**
3 **ALLEGATION THAT THE DEFENDANTS REPRESENTED A FINAL**
4 **JUDGMENT HAD BEEN ENTERED AGAINST RHONDA.**

5 Judge Bare did not adopt or accept as true any inconsistent position for at least two
6 reasons. First, as detailed in Section III.A.1.b-c above, no inconsistent position existed. The
7 Defendants' position was consistent with the overall procedural status of the related cases.
8 Second, Judge Bare did not decide to deny Far West's Countermotion for Summary Judgment
9 based on any inconsistent position or allegation that a "final judgment" had been entered against
10 Rhonda. Rather, Judge Bare denied the Countermotion primarily because of the Writ and
11 upcoming en banc oral argument. Judge Bare stated:

12 Yeah, I'm just basically saying that *I have a pretty good understanding as to*
13 *what Judge Hardy did, why he did it and what's going on with that.*

14 See February 2, 2016 Transcript in Case No. A724490 at 53:6-8 (filed April 6, 2016) (emphasis
15 added). Thus, as a threshold issue, based on his own representations, Judge Bare was aware of
16 the procedural posture and circumstances of this case. He was not confused or misled; he
17 understood what had transpired. Deja Vu Showgirls of Las Vegas, LLC v. State, Dep't of
18 Taxation, 130 Nev. Adv. Op. 72, 334 P.3d 387, 391-92 (2014) (concluding that judicial estoppel
19 did not apply when there was no attempt to mislead the court). Judge Bare further stated:

20 THE COURT: . . . the situation with the Judge Hardy case, I have to tell you, it
21 seems reasonable for me to not do anything right now, *given the procedural*
22 *posture of the Judge Hardy decision.*

23 In other words, *the idea of staying aspects of our case relevant to what may*
24 *happen having to do with Writ activity in the Supreme Court on that seems -*
25 *seems reasonable to me.*

26 I mean, *it seems reasonable to see what ultimately happens with the fact that a*
27 *contemporary district judge ordered a \$3.4 million sanction*, because that's the
28 sanction that I understand was ordered, and that the Supreme Court, Mr. Coffing
tells me, has en banc arguments scheduled having to do with that.

MR. COFFING: They've accepted en banc. There's no argument set yet, Your Honor.

THE COURT: Yeah.

MR. COFFING: I'm sorry.

1 THE COURT: I mean, but given that that is a basis upon which you want me to -
2 - the plaintiffs want me to give sort of a partial summary judgment on that, that in
3 conjunction with the fact that, as I understand it, the plaintiffs are indifferent in
any event having to do with who does the Order. I mean, *you don't have a legal
or practical reason for it to be me; it could ultimately be Judge Hardy.*

4 That's another reason for me to leave it -- *leave that whole issue of the 3.4*
5 *million to Hardy to figure out, and for the Supreme Court to figure out.* So, I
6 agree with the defense side on that. And so I can at least share that as a partial
order here.

7 Id. at 57:14-58:18 (emphasis added). As this Court can see, in making his decision to deny Far
8 West's Countermotion for Summary Judgment against Rhonda Mona, Judge Bare did not adopt
9 or accept as true any position regarding some alleged inconsistent position about a "final
10 judgment." Rather, Judge Bare expressly stated that given the procedural posture of the Sanction
11 Order, he preferred to leave the issue for the Supreme Court to "figure out." In other words, due
12 to the Supreme Court entertaining the Writ and setting en banc oral argument, Judge Bare
13 preferred not to get involved at this point in time.

14 Therefore, there was no circumstance where Judge Bare adopted a position that the
15 Sanction Order was a "final judgment," which is required to satisfy the third element of judicial
16 estoppel. Mainor, 120 Nev. at 765-66 (the third required element of judicial estoppel is that the
17 party must be successful in asserting the first inconsistent position i.e. the court adopted the
18 position or accepted it as true). Further, there was no dialogue involving Judge Bare that would
19 even begin to suggest some inconsistent position arising from an intentional wrong doing or
20 attempt to get an unfair advantage. Mainor v. Nault, 120 Nev. at 765-66 ("Judicial estoppel is an
21 extraordinary remedy" that courts should apply cautiously and only when "a party's inconsistent
22 position [arises] from intentional wrongdoing or an attempt to obtain an unfair advantage." Id.
23 (citing Kitty-Anne Music Co. v. Swan, 112 Cal.App.4th 30, 4 Cal.Rptr.3d 796, 800 (2003)).
24 Thus, judicial estoppel does not apply to these circumstances.

1 **C. ANY POSITION THAT COULD HAVE FALLEN UNDER SOME GUISE**
2 **AS AN INCONSISTENT POSITION WAS A MISTAKE AS IT WAS**
3 **REFUTED IN DEFENDANTS' OWN DOCUMENTS AND AT ORAL**
4 **ARGUMENT.**

5 There is no doubt that all parties, including Far West, have used the word "appeal" when
6 referring to the Writ Petition. This is the case even though everyone involved knows the Writ
7 Petition is not technically an "appeal." In fact, at the March 30 hearing, Far West's counsel
8 himself repeatedly referred to the Writ Petition as an "appeal." As this was occurring, everyone
9 involved knew Far West's counsel was referring to the Writ Petition and no one took issue with
10 it – even though, "technically" speaking, Far West's counsel was making a mistake.

11 This is important here because the fifth element for the Court to consider regarding
12 judicial estoppel is whether some position was the result of a mistake or ignorance. See Mainor,
13 120 Nev. at 765-66 (the fifth element for judicial estoppel is whether an inconsistent position
14 was taken as a result of ignorance or mistake) (citing Furia v. Helm, 111 Cal. App. 4th 945, 4
15 Cal. Rptr. 3d 357, 368 (2003) (further citations omitted). If the position is a mistake or based on
16 ignorance, judicial estoppel does not apply. Id. And, at worst, the Defendants limited reference
17 to any finality of any judgment was overwhelmingly refuted with references to the "Writ
18 Petition," which presupposes an interlocutory order, "Sanction Order," and the "Order." Thus,
19 similar to all of the Parties mistaken, but accepted, reference to the Writ Petition as an "appeal,"
20 the Monas lacked perfect consistency in referring to the Sanction Order. And, if the Court
21 desires, certainly the Defendants can file an errata to achieve perfect consistency, as was offered
22 at the March 30 hearing.

23 **D. DEFENDANTS' REPRESENTATIONS DO NOT RISE TO THE LEVEL**
24 **REQUIRED FOR JUDICIAL ESTOPPEL.**

25 As stated in the introduction to this legal argument section, the purpose of judicial
26 estoppel is to protect the judiciary's integrity. Mainor, 120 Nev. at 765-66 (citations omitted).
27 "Judicial estoppel is an extraordinary remedy" that courts should apply cautiously and only when
28 "a party's inconsistent position [arises] from intentional wrongdoing or an attempt to obtain an

1 unfair advantage.” Id. (citations omitted). Further, judicial estoppel “does not preclude changes
2 in position not intended to sabotage the judicial process.” Id. (citations omitted).

3 Here, judicial integrity has not been compromised. There are no inconsistent positions to
4 speak of. No court has adopted or made a decision based on an inconsistent position. And, all
5 possible references that could be perceived as an inconsistent position are clarified
6 overwhelmingly by the record. These circumstances do not lend to applying an extraordinary
7 remedy that the Nevada Supreme Court states should be applied cautiously and only when there
8 is intentional wrongdoing or an attempt to gain an unfair advantage. Indeed, Far West has taken
9 a couple of lines of language in a brief out of context and has analyzed them in a vacuum without
10 consideration for the entirety of the record. Thus, judicial estoppel does not apply.

11 **IV. CONCLUSION.**

12 Judicial estoppel does not apply to this case because neither the elements nor gravity of
13 the circumstances required for the doctrine to apply are present. The record shows that
14 Defendants did not take inconsistent positions. Also, the record shows that Judge Bare did not
15 adopt, accept as true, or base any decision on any inconsistent position or Far West’s allegation
16 that the Defendants represented to Judge Bare a final judgment had been entered. Further, any
17 position that could have fallen under some guise as an inconsistent position was overwhelmingly
18 clarified and refuted in Defendants’ own documents and at oral argument.

19 Moreover, neither the record nor Defendants’ actions and related representations even
20 begin to tilt the judicial estoppel meter. After all, according to the Nevada Supreme Court,
21 judicial estoppel is an “extraordinary remedy” courts should cautiously apply and only when an
22 inconsistent position arises from intentional wrongdoing or an attempt to obtain an unfair
23 advantage. And, judicial estoppel does not preclude changes in position so long as they are not
24 intended to sabotage the judicial process. Therefore, the Court should deny Far West’s attempts

25 ///

26 ///

27 ///

28 ///

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1 to take advantage of and capitalize on an Order, based on judicial estoppels, that is the subject of
2 upcoming en banc oral argument.

3 Dated this 22nd day of April, 2016.

4 MARQUIS AURBACH COFFING

6 By /s/ Tye S. Hanseen

7 Terry A. Coffing, Esq.
8 Nevada Bar No. 4949
9 Tye S. Hanseen, Esq.
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13 Attorneys for Defendant
14 Michael J. Mona, Jr.

CERTIFICATE OF SERVICE

I hereby certify that SUPPLEMENTAL BRIEF REGARDING JUDICIAL ESTOPPEL AND REDUCING THE SANCTION ORDER TO JUDGMENT AGAINST RHONDA MONA was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 22nd day of April, 2016. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:³

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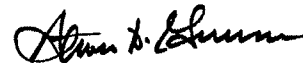
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I further certify that I served a copy of this document by emailing a true and correct copy thereof to:

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/s/ Tye S. Hanseen
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³ 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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Attorneys for Plaintiff Far West Industries

DISTRICT COURT

CLARK COUNTY, NEVADA

FAR WEST INDUSTRIES, a California
corporation,

Plaintiff,

v.

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

Defendants.

Case No: A-12-670352-F

Dept. No.: XV

Hearing Date: March 30, 2016

Hearing Time: 9:00 a.m.

**ORDER REGARDING PLAINTIFF FAR WEST INDUSTRIES' MOTION:
(1) FOR DEFAULT JUDGMENT AGAINST ROEN VENTURES, LLC FOR
UNTIMELY ANSWERS TO WRIT OF GARNISHMENT INTERROGATORIES;
AND (2) TO COMPEL ROEN VENTURES, LLC'S TURNOVER OF PAYMENTS
MADE TO, ON BEHALF OF, OR FOR THE BENEFIT OF MICHAEL J. MONA, JR.**

The Court held a hearing regarding Plaintiff Far West Industries' Motion: (1) For Default Judgment Against Roen Ventures, LLC for Untimely Answers to Writ of Garnishment Interrogatories; and (2) To Compel Roen Ventures, LLC's Turnover of Payments Made to, on Behalf of, or for the Benefit of Michael J. Mona, Jr. (the "Motion") and Roen Ventures LLC's Countermotion for Attorneys' Fees and Costs (the "Countermotion") on March 30, 2016, at 9:00 a.m. F. Thomas Edwards, Esq. and Andrea M. Gandara, Esq., of the law firm Holley Driggs Walch Fine Wray Puzey & Thompson, appeared on behalf of Plaintiff Far West Industries ("Far

APR 15 2016

1 West). Dylan T. Ciciliano, Esq., of the law firm Garman Turner Gordon LLP, appeared on
2 behalf of Roen Ventures, LLC ("Roen"). Terry A. Coffing, Esq. and Tye S. Hanseen, Esq., of
3 the law firm Marquis Aurbach Coffing, appeared on behalf of Defendant Michael J. Mona, Jr.
4 ("Mr. Mona").

5 Having reviewed the papers and pleadings on file herein, hearing the argument of counsel
6 and good cause appearing:

7 **IT IS HEREBY ORDERED** that the Motion is **GRANTED IN PART AND DENIED**
8 **IN PART;**

9 **IT IS FURTHER ORDERED** that, pursuant to NRS 21.320, Roen shall turn over to Far
10 West any and all payments made to, on behalf of, or for the benefit of Mr. Mona that are
11 currently due and that may come due under the Management Agreement between Mr. Mona and
12 Roen, dated November 23, 2013 (the "Management Agreement"), attached as Exhibit 4 to the
13 Motion.

14 **IT IS FURTHER ORDERED** that, to the extent any party claims that the payments
15 made to, on behalf of, or for the benefit of Mr. Mona are exempt and the parties are unable to
16 reach an agreement as to the claimed exemption(s), the Court will entertain additional briefing
17 on the issue(s).

18 **IT IS FURTHER ORDERED** that all other relief sought in the Motion is denied.

19 **IT IS FURTHER ORDERED** that the Countermotion is **DENIED**.

20 **IT IS SO ORDERED.**

21 Dated this 25th day of April, 2016.

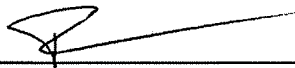
22 
23 DISTRICT COURT JUDGE
24 MB

1 Submitted by:

Approved as to form by:

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

GARMAN TURNER GORDON

4 
5 F. THOMAS EDWARDS, ESQ.
6 Nevada Bar No. 9549
7 ANDREA M. GANDARA, ESQ.
8 Nevada Bar No. 12580
9 400 South Fourth Street, Third Floor
10 Las Vegas, NV 89101

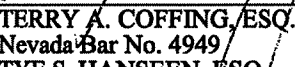
ERIKA PIKE TURNER, ESQ.
Nevada Bar No. 6454
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650 White Drive, Suite 100
Las Vegas, Nevada 89119

8 *Attorneys for Plaintiff Far West Industries*

Attorneys for Roen Ventures, LLC

9 Approved as to form by:

10 **MARQUIS AURBACH COFFING**

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12 TERRY A. COFFING, ESQ.
13 Nevada Bar No. 4949
14 TYE S. HANSEEN, ESQ.
15 Nevada Bar No. 10365
16 10001 Park Run Drive
17 Las Vegas, Nevada 89145

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

16

17

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1 Submitted by:
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3 **FINE WRAY PUZEY & THOMPSON**

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10 Las Vegas, NV 89101


11 *Attorneys for Plaintiff Far West Industries*

12 Approved as to form by:
13 **MARQUIS AURBACH COFFING**

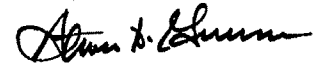
14
15 TERRY A. COFFING, ESQ.
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21 *Attorneys for Defendant Michael J. Mona, Jr.*
22
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Approved as to form by:
GARMAN TURNER GORDON


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650 White Drive, Suite 100
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Attorneys for Roen Ventures, LLC



CLERK OF THE COURT

1 **ORDR**

2
3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**
6

7 FAR WEST INDUSTRIES, a California
8 corporation,

9 Plaintiff,

10 vs.

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

16 Defendants.

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

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

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

27 Plaintiff obtained a judgment of over \$18 million from a California state court against
28 Defendant on April 27, 2012.¹ Plaintiff domesticated the judgment in Nevada and has been

¹ See Judgment, attached as Exhibit 1 to Plaintiff's Motion.

1 garnishing Defendant's wages since December 2013 at approximately \$1,950 on a bi-weekly basis.²
2 In December 2015, Plaintiff obtained a new Writ of Execution for Defendant's earnings, which was
3 served on Defendant's employer on January 7, 2016.³ On January 28, 2016, Plaintiff received
4 Defendant's Interrogatories in response to the Writ of Garnishment indicating that Defendant's
5 weekly gross earnings totaled \$11,538.56, with deductions required by law totaling \$8,621.62.⁴ The
6 deductions required by law excluded from Defendant's gross earnings comprised of federal income
7 tax, Social Security, Medicare, and \$4,615.39 in alimony payments to Defendant's ex-wife, Rhonda
8 Mona ("Ms. Mona").⁵ Based on those deductions, payments to Plaintiff decreased to less than \$750.
9 Plaintiff subsequently filed its Motion for Determination of Priority of Garnishment requesting that
10 this Court establish priority between Plaintiff's garnishment and Ms. Mona's alimony claim.
11

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

13 Under federal law the maximum amount of wages that may be garnished in any workweek
14 may not exceed either (1) 25% of an individual's disposable earnings or (2) the amount by which the
15 individual's disposable earnings for that week exceed thirty times the Federal minimum hourly
16 wage, whichever is less.⁶ In the event of a garnishment pursuant to an order for the support of a
17 person, the maximum aggregate disposable earnings of an individual, where such individual is not
18 supporting a spouse or dependent child, may not exceed 60% of the individual's disposable earnings
19 for that week.⁷ When an issue arises as to multiple garnishments, priority is determined by state law
20 or other federal law.⁸
21

22 Nevada law mirrors the provisions set forth in 15 U.S.C. § 1673, and states that the aggregate
23 disposable earnings subject to garnishment may not exceed 25%, with a maximum of 60% where
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25 ² See Application of Foreign Judgment, filed on October 18, 2012 in Case No. A-12-670325-F.

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

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

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

⁶ 15 U.S.C. § 1673(a).

⁷ 15 U.S.C. § 1673(b)(2)(B).

⁸ 29 C.F.R. 870.11.

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

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

12 II. Priority of Garnishments

13 Nevada case law regarding priority of garnishments is limited. However, in *First Interstate*
14 *Bank of California v. H.C.T.*, the Nevada Supreme Court held that priority depends on "which
15 interest is first in time," and agreed with a Sixth Circuit case that "the rights of the parties are
16 determined from the date of the award."¹¹ In this case, Plaintiff's April 27, 2012 judgment clearly
17 pre-dates the July 23, 2015 Divorce Decree. Even if the date of Plaintiff's first garnishment is used
18 as the date for determining priority, Plaintiff's interest would still be first in time, as Plaintiff's first
19 garnishment of Defendant's wages occurred on December 13, 2013.¹²

21 The Court in *First Interstate* further provided that as between an assignment and a
22 garnishment, an assignment "takes priority over a writ of garnishment only to the extent that the

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24 ⁹ NRS 31.295.

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

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

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

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

8 **III. Expiration**

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

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

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

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

27 ¹³ *First Interstate Bank of California v. H.C.T.*, 108 Nev. 242, 246 (1992).

28 ¹⁴ See Decree of Divorce 3:12-16, attached as Exhibit 7 to Plaintiff’s Motion.

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

¹⁶ See Defendant’s Opposition and Countermotion at 28:1-11.

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

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

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

17 Based on the foregoing, and good cause appearing:

18
19 **IT IS HEREBY ORDERED** that Plaintiff's garnishment is entitled to take priority over Ms.
20 Mona's alimony claim.

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

24
25 ¹⁷ See Defendant's Opposition 28:9-11.

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

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

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

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

5 DATED this 21st day of June, 2016.

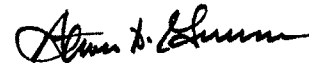
6
7 
8 JOE HARDY
9 DISTRICT JUDGE
10 DEPARTMENT XV

11 **CERTIFICATE OF SERVICE**

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

15 Thomas Edwards, Esq. tedwards@nevadafirm.com
16 Terry Coffing, Esq. tcoffing@maclaw.com
17 James Whitmire, III, Esq. jwhitmire@santoronevada.com
18 Erika Pike Turner, Esq. eturner@gtg.legal
19 William Urga, Esq. wru@juwww.com

20 
21 Judicial Executive Assistant
22
23
24
25
26
27
28



CLERK OF THE COURT

1 **NEOJ**
F. THOMAS EDWARDS, ESQ.
2 Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
3 ANDREA M. GANDARA, ESQ.
Nevada Bar No. 12580
4 E-mail: agandara@nevadafirm.com
HOLLEY DRIGGS WALCH
5 FINE WRAY PUZEY & THOMPSON
400 South Fourth Street, Third Floor
6 Las Vegas, Nevada 89101
Telephone: 702/791-0308
7 Facsimile: 702/791-1912

8 *Attorneys for Plaintiff Far West Industries*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 FAR WEST INDUSTRIES, a California
corporation,

12 Plaintiff,

13 v.

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

17 Defendants.

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

**NOTICE OF ENTRY OF 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**

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

23 ///

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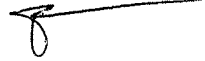
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28 ///

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

3 Dated this 21st day of June, 2016.

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

6 

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

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CERTIFICATE OF SERVICE

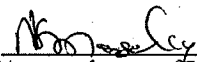
I hereby certify that I am an employee of Holley Driggs Walch Fine Wray Puzey & Thompson, and that on the 21st day of June, 2016, I served via electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve, a true copy of the foregoing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

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

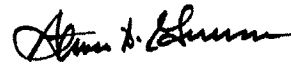
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 Las Vegas, Nevada 89145
*Attorneys for Defendant
 Michael J. Mona, Jr.*

Erika Pike Turner, Esq.
 Dylan Ciciliano, Esq.
GARMAN TURNER GORDON
 650 White Drive, Suite 100
 Las Vegas, Nevada 89119
Attorneys for Roen Ventures, LLC

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



 An employee of Holley Driggs Walch
 Fine Wray Puzey & Thompson



CLERK OF THE COURT

1 **ORDER**

2
3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**
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7 FAR WEST INDUSTRIES, a California
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9 Plaintiff,

10 vs.

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16 Defendants.

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

**ORDER REGARDING PLAINTIFF
FAR WEST INDUSTRIES' MOTION
FOR DETERMINATION OF
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¹ See Judgment, attached as Exhibit 1 to Plaintiff's Motion.

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

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⁶ 15 U.S.C. § 1673(a).

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5 However, applying such a priority to Ms. Mona's alimony is not supported by Nevada law, which
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28 ¹¹ *First Interstate Bank of California v. H.C.T.*, 108 Nev. 242 (1992) citing *Marion Mfg. Co. v. Long*, 588 F.2d 538, 541
(6th Cir. 1978).

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

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

8 **III. Expiration**

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

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

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

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

27 ¹³ *First Interstate Bank of California v. H.C.T.*, 108 Nev. 242, 246 (1992).

28 ¹⁴ See Decree of Divorce 3:12-16, attached as Exhibit 7 to Plaintiff’s Motion.

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

¹⁶ See Defendant’s Opposition and Countermotion at 28:1-11.

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

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

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

16 Based on the foregoing, and good cause appearing:

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

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

22
23
24
25 ¹⁷ See Defendant's Opposition 28:9-11.

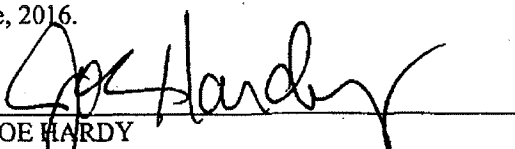
26 ¹⁸ Defendant cites *Lough v. Robinson*, 111 Ohio App.3d 149, 155-156 (1996), which states "the entire amount that was
27 withheld by the employer for the creditor garnishment was excess and should have been returned to appellant."
28 However, *Lough* does not clarify who must return the funds to the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

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

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

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

5 DATED this 21st day of June, 2016.

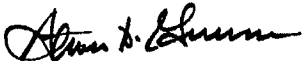
6 
7
8 JOE HARDY
9 DISTRICT JUDGE
10 DEPARTMENT XV

11 **CERTIFICATE OF SERVICE**

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

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18 Erika Pike Turner, Esq. eturner@gtg.legal
19 William Urga, Esq. wru@juvv.com

20 
21
22 Judicial Executive Assistant
23
24
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26
27
28



CLERK OF THE COURT

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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

NOTICE OF ENTRY OF ORDER
SHORTENING TIME AND
NOTICE OF HEARING

Please take notice that an Application for an Order Shortening Time on Roen Ventures, LLC's Motion to Deposit Payments with the Clerk of the Court (the "Motion") was filed on the 6th day of July, 2016, a copy of which is attached hereto.

Please also take notice that the hearing on said Motion has been set on shortened time and will be held on July 14, 2016, at the hour of 9:00 a.m. or as soon thereafter as counsel may be heard, in Department XV in the above-referenced court.

DATED this 7th day of July, 2016.

GARMAN TURNER GORDON LLP

/s/ Dylan Ciciliano

ERIKA PIKE TURNER

Nevada Bar No. 6454

DYLAN T. CICILIANO

Nevada Bar No. 12348

Attorneys for Third Party Roen Ventures, LLC

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER SHORTENING TIME AND NOTICE OF HEARING** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 7th day of July, 2016. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

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/s/ Rebecca Post

Rebecca Post, an employee of
GARMAN TURNER GORDON

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).


CLERK OF THE COURT

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12 Attorneys for Third Party
13 Roen Ventures, LLC

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 FAR WEST INDUSTRIES, a California
11 corporation,

12 Plaintiff,

13 vs.

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

19 Defendants.

CASE NO. A-12-670352-F
DEPT. XV

Date of Hearing:
Time of Hearing:

18 APPLICATION FOR AN ORDER SHORTENING TIME

19 Roen Ventures, LLC ("Roen") by and through counsel, Erika Pike Turner, Esq. and
20 Dylan Ciciliano, Esq. of the law firm of Garman Turner Gordon, LLP, filed its Motion to
21 Deposit Payments with the Clerk of the Court (the "Motion"). This application (the
22 "Application") requesting this Court issue an Order Shortening Time to hear the Motion on
23 shortened time.

24 ///

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28 ///

JUL 01 2016

1 The Ex Parte Application is made based on the following Memorandum of Points and
2 Authorities and supporting exhibits thereto; the Declaration of Dylan T. Ciciliano incorporated
3 herein; the other papers on file herein; and any oral argument the Court may permit at the
4 hearing of this matter.

5 DATED this 1st day of July, 2016.

6 GARMAN TURNER GORDON LLP

7
8 
9 ERIKA PIKE TURNER

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Attorneys for Third Party Roen Ventures, LLC


13 **ORDER SHORTENING TIME**

14 Good Cause Appearing Therefore,

15 IT IS HEREBY ORDERED that the time for hearing of the Motion for Sanctions is
16 shortened to be heard on the 14th day of July, 2016, at the hour of 9:00
17 o'clock a.m., or as soon thereafter as counsel may be heard in Dept. XV.

18 IT IS HEREBY ORDERED this 5th day of July, 2016,

19 *Copy of this application must be*
20 *served promptly pursuant to*
21 *EDCF 2.26.*


DISTRICT COURT JUDGE

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23
24 **DECLARATION OF DYLAN T. CICILIANO, ESQ. IN SUPPORT OF**
25 **APPLICATION FOR ORDER SHORTENING TIME**

26 I, Dylan T. Ciciliano, Esq., declare as follows:

- 27 1. I am over the age of 18, am mentally competent, have personal knowledge of the
28 facts in this matter, and if called upon to testify, could and would do so.
2. I am an attorney with the law firm of Garman Turner Gordon, counsel for Third-

1 Party Roen Ventures, LLC, in the above-captioned matter and duly licensed to practice law in
2 the State of Nevada.

3 3. On or about January 7, 2016, Far West served a Writ of Garnishment on Roen,
4 seeking to garnish the wages of Judgment Debtor Michael J. Mona, Jr. The Court entered its
5 order denying Far West's application to take default judgment against Roen (the "Order re:
6 Garnishment"). In the Order re: Garnishment, the Court ordered that Roen shall turn over future
7 payments "made to, on behalf of, or for the benefit of Mr. Mona" under the Management
8 Agreement, pursuant to NRS 21.320. The Court, however, recognized that those payments may
9 be exempt from execution and that it would entertain additional briefing on the issue of claimed
10 exemptions if the parties could not agree to the exemption. (*Id.*).

11 4. Despite having made multiple inquiries, I am informed and believe that Plaintiff
12 Far West Industries ("Far West") and debtor Michael Mona Jr. have been unable to reach an
13 agreement as to the amount of the exemption. Far West and Mr. Mona have completely contrary
14 views as to the amount of the exemption, with Far West claiming that no exemption applies and
15 Mr. Mona claiming that the entire amount of the payment is exempt. Neither have filed
16 additional briefing with the Court.

17 5. In the Court's Order Regarding Plaintiff Far West Industries' Motion for
18 Determination of Priority of Garnishment and Defendant Michael J. Mona's Countermotion to
19 Discharge Garnishment and for Return of Proceeds ("Order, re: Priority of Garnishment"), *on*
20 *file herein*, the Court indicated that certain exemptions may apply to Mr. Mona's earnings,
21 including those enumerated in NRS 31.295(2). Far West has raised concern that, among other
22 things, the payments under the Management Agreement may not be earnings.

23 6. As set forth in the Motion, grounds exist for the clerk to hold the funds until the
24 Court determines if an exemption applies. However, if the Court declines to have the clerk retain
25 the funds pending a determination of the exemptions, Roen will have to make a determination as
26 to what exemptions the Court is likely to apply to avoid further litigation with Far West and Mr.
27 Mona.

28 ///

1 7. In light of the highly litigious nature of this dispute and the fact that Third-Party
2 Roen merely requests that the Court retain the disputed funds until it makes a determination as to
3 any claimed exemption, good cause exists for the Court to hear the Motion on shortened time,
4 prior to the current July 28, 2016 hearing date.

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

7 DATED this 1st day of July, 2016.

8 
9 _____
10 DYLAN T. CICILIANO, ESQ.
11
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28

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPLICATION FOR AN ORDER SHORTENING TIME** was submitted electronically for filing and service with the Eighth Judicial District Court on the 10th day of July, 2016. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

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Rebecca Post, an employee of
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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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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

JOINT CASE APPEAL STATEMENT

Electronically Filed
07/14/2016 03:31:21 PM

CLERK OF THE COURT

MAC:04725-003 2846922_2 7/14/2016 3:15 PM

1 Defendant Michael J. Mona, Jr., by and through his attorneys of record, Marquis Aurbach
2 Coffing, and Non-Party Rhonda Helene Mona,¹ by and through her attorneys of record, Santoro
3 Whitmire and Lemons, Grundy & Eisenberg, hereby file this Joint Case Appeal Statement.

- 4 1. Name of appellant filing this Case Appeal Statement:
5 Defendant Michael J. Mona, Jr. and Non-Party Rhonda Helene Mona.
6 2. Identify the Judge issuing the decision, judgment, or order appealed from:
7 Honorable Joe Hardy, Jr.
8 3. Identify each appellant and the name and address of counsel for each appellant:

9 **Appellant:** Defendant Michael J Mona, Jr.

10 Terry A. Coffing, Esq.
11 Tye S. Hanseen, Esq.
12 Marquis Aurbach Coffing
13 10001 Park Run Drive
14 Las Vegas, Nevada 89145

15 **Appellant:** Non-Party Rhonda Helene Mona

16 James E. Whitmire, Esq.
17 Santoro Whitmire
18 10100 W. Charleston Blvd., Suite 250
19 Las Vegas, Nevada 89135

20 and

21 Robert L. Eisenberg, Esq.
22 Lemons, Grundy & Eisenberg
23 6005 Plumas Street, Third Floor
24 Reno, Nevada 89519

25 ¹ Rhonda Mona is not a party in this case. Thus, a judgment cannot be entered against her, and
26 there is a legitimate question as to whether she would be considered an “aggrieved party” for
27 purposes of appeal. Nonetheless, although the order from which this appeal is taken is not
28 entitled a “judgment,” it could possibly be interpreted as a judgment against Rhonda Mona.
Because of this uncertainty, Rhonda Mona’s attorneys have joined in the notice of appeal, to
protect Rhonda Mona’s right to challenge the order in Nevada appellate courts. *See Fernandez*
v. Infusaid Corp., 110 Nev. 187, 192-93, 871 P.2d 292 (1994) (recognizing protective notice of
appeal where right to appeal is uncertain). Additionally, by joining in this case appeal statement
under these unusual circumstances, Rhonda Mona in no way intends to enter a general
appearance in this case.

1 4. Identify each respondent and the name and address of appellate counsel, if known,
2 for each respondent (if the name of a respondent's appellate counsel is unknown, indicated as
3 much and provide the name and address of that respondent's trial counsel):

4 **Respondent:** Far West Industries

5 F. Thomas Edwards, Esq.
6 Andrea M. Gandara, Esq.
7 Holley Driggs Walch
8 Fine Wray Puzey & Thompson
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

9 5. Indicate whether any attorney identified above in response to question 3 or 4 is
10 not licensed to practice law in Nevada and, if so, whether the district court granted that attorney
11 permission to appear under SCR 42 (attach a copy of any district court order granting such
12 permission):

13 N/A.

14 6. Indicated whether appellant was represented by appointed or retained counsel in
15 the district court:

16 Retained.

17 7. Indicate whether appellant is represented by appointed or retained counsel on
18 appeal:

19 Retained.

20 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and
21 the date of entry of the district court order granting such leave:

22 N/A.

1 9. Indicate the date the proceedings commenced in the district court (e.g., date
2 complaint indictment, information, or petition was filed):

3 October 18, 2012.

4 10. Provide a brief description of the nature of the action and result in the district
5 court, including the type of judgment or order being appealed and the relief granted by the
6 district court:

7 The underlying action is a foreign judgment collection case. Respondent Far
8 West obtained a California judgment against Appellant Michael J. Mona,
9 domesticated the judgment in Nevada, and began collection activities. In the
Nevada judgment collection case, Far West sought a judgment against non-party
Rhonda Mona, Michael J. Mona's ex-wife.

10 Because Rhonda Mona is not a party in the underlying judgment collection action,
11 a judgment cannot be entered against her. Nonetheless, the District Court entered
12 an order that could be interpreted as a judgment against Rhonda Mona because it
allows for execution against her in the amount of \$490,000.00.

13 11. Indicate whether the case has previously been the subject of an appeal to or
14 original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
15 number of the prior proceeding:

16 This case gave rise to the pending Writ Petition in Case No. 68434, *Rhonda*
17 *Helene Mona and Michael J. Mona, Jr. v. Eight Judicial District Court (Far West*
Industries).

18 12. Indicate whether this appeal involves child custody or visitation:

19 N/A.

20 ///

21 ///

22 ///

MARQUIS AURBACH COFFING

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Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 13. If this is a civil case, indicate whether this appeal involves the possibility of
2 settlement:

3 This appeal involves the possibility of settlement.

4 Dated this 14th day of July, 2016.

5 **MARQUIS AURBACH COFFING**

6 By: /s/ Tye S. Hanseen
7 Terry A. Coffing, Esq.
8 Nevada Bar No. 4949
9 Tye S. Hanseen, Esq.
10 Nevada Bar No. 10365
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12 Las Vegas, Nevada 89145
13 *Attorneys for Defendant*
14 *Michael J. Mona, Jr.*

SANTORO WHITMIRE

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Rhonda Helene Mona

11 **LEMONS, GRUNDY & EISENBERG**

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16 Reno, Nevada 89159
17 *Attorneys for Non-Party*
18 *Rhonda Helene Mona*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **JOINT CASE APPEAL STATEMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 14th day of July, 2016. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:

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/s/ Rosie Wesp

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

JOINT NOTICE OF APPEAL

MAC:04725-003 2828624_2

Defendant Michael J Mona, Jr., by and through his attorneys of record, Marquis Aurbach Coffing, and Non-Party Rhonda Helene Mona, by and through her attorneys of record, Santoro Whitmire and Lemons, Grundy & Eisenberg, hereby jointly appeal to the Supreme Court of Nevada from the Amended Nunc Pro Tunc Order Regarding Plaintiff Far West Industries' Motion to Reduce Sanctions Order to Judgment, which was filed on June 13, 2016, and Noticed on June 15, 2016, and is attached as **Exhibit 1**.

Defendant Michael Mona and Non-Party Rhonda Mona acknowledge that the Nevada Supreme Court, sitting En Banc on July 6, 2016, heard oral argument regarding their Writ Petition (Docket No. 68434), which is directly related to the attached Order from which they are appealing. Nevertheless, to ensure no rights are waived and out of an abundance of caution, they are filing this Notice of Appeal.¹

Dated this 14th day of July, 2016.

MARQUIS AURBACH COFFING

By: /s/ Tye S. Hanseen

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LEMONS, GRUNDY & EISENBERG

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¹ Rhonda Mona is not a party in this case. Thus, a judgment cannot be entered against her, and there is a legitimate question as to whether she would be considered an "aggrieved party" for purposes of appeal. Nonetheless, although the order from which this appeal is taken is not entitled a "judgment," it could possibly be interpreted as a judgment against Rhonda Mona. Because of this uncertainty, Rhonda Mona's attorneys are joining in this notice of appeal, to protect Rhonda Mona's right to challenge the order in Nevada appellate courts. *See Fernandez v. Infusaid Corp.*, 110 Nev. 187, 192-93, 871 P.2d 292 (1994) (recognizing protective notice of appeal where right to appeal is uncertain). Additionally, by joining in this notice of appeal under these unusual circumstances, Rhonda Mona in no way intends to enter a general appearance in this case.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **JOINT NOTICE OF APPEAL** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 14th day of July, 2016. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:

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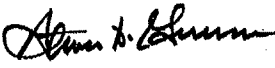
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CLERK OF THE COURT

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14 *Attorneys for Plaintiff Far West Industries*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 FAR WEST INDUSTRIES, a California
18 corporation,

19 Plaintiff,

20 v.

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

26 Defendants.

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

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

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

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HOLLEY•DRIGGS•WALCH
FINE•WRAY•PUZEY•THOMPSON
HDW

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

3 Dated this 15th day of June, 2016.

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

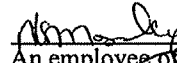
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7 F. THOMAS EDWARDS, ESQ. (NBN 9549)
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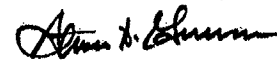
CERTIFICATE OF SERVICE

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

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

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


An employee of Holley Driggs Walch
Fine Wray Puzey & Thompson



CLERK OF THE COURT

1 AMOR

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6
7 FAR WEST INDUSTRIES,

8 Plaintiffs,

9 vs.

10 RIO VISTA NEVADA, LLC, et al.,

11 Defendants.

Case No: A670352

Dept No.: XV

12
13
14 **AMENDED NUNC PRO TUNC ORDER REGARDING PLAINTIFF FAR WEST**
15 **INDUSTRIES' MOTION TO REDUCE SANCTIONS ORDER TO JUDGMENT**

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

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

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

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

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

13 **FINDINGS OF FACT**

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

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

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

25 ///

26 ///

27 ///

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 The Sanctions Order further stated:

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

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

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

...

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

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

2 B. Writ Petition Regarding Sanctions and Stay Pending Writ

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

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

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

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

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

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

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

27 2.

28 ///

///

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

C. Execution of Sanctions Order

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

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

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

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

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

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

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

D. Mona Fraudulent Transfer Action

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

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

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

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

22 E. The Monas' Inconsistent Positions During Litigation

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

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

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

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

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

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

3 **Conclusions of Law**

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

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

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

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

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

27 ///

28

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

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

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

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

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

10 Based on the foregoing, and good cause appearing:


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

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

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

19 **IT IS SO ORDERED.**

20 Dated this 13th day of June, 2016.

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22 
23 JOE HARDY, JR.
24 DISTRICT COURT JUDGE
25 DEPARTMENT 15
26
27
28

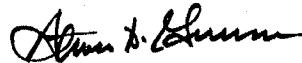
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2 **CERTIFICATE OF SERVICE**

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

7 Thomas Edwards, Esq. tedwards@nevadafirm.com
8 Terry Coffing, Esq. tcoffing@maclaw.com
9 James Whitmire, III, Esq. jwhitmire@santoronevada.com
10 Erika Pike Turner, Esq. eturner@gtg.legal
11 William Urga, Esq. wru@juww.com

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Judicial Executive Assistant



CLERK OF THE COURT

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

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 FAR WEST INDUSTRIES, a California
10 corporation,

11 Plaintiff,

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

12 vs.

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

16 Defendants.

17 **CLAIM OF EXEMPTION**

18 Defendant Michael J. Mona ("Mona"), through the law firm of Marquis Aurbach
19 Coffing, submits this Claim of Exemption from Execution and states as follows:

20 1. On or about July 12, 2015, Marquis Aurbach Coffing received correspondence to
21 Mona from the Office of the Ex-Officio Constable. The correspondence was dated July 5, 2015
22 and indicated in part: "In accordance with NRS 21.075, we are sending you a copy of the *Notice*
23 *of Execution after Judgment* and the *Writ of Execution* on your case." (Emphasis in original).

24 2. The correspondence appears to relate to Far West's Writ of Execution and related
25 Writ of Garnishment to "CannaVEST Corp." for "earnings" being paid to Mona.

26 3. On information and belief, the property or money taken (or to be taken) from
27 Mona pursuant to the Writ of Execution is exempt from execution. Mona makes the following
28

MARQUIS AURBACH COFFING

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

MARQUIS AURBACH COFFING


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objections/claims the following exemptions: NRS 21.090(g), NRS 31.295, NRS 31.296, NRS 31.200, NRS 31.249, NRS 31.045, 15 U.S.C. § 1673, 28 U.S.C. § 3205(8), generally.

4. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 15th day of July, 2016.



Tye S. Hanseen, Esq.

CERTIFICATE OF SERVICE

I hereby certify that **CLAIM OF EXEMPTION** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 15th day of July, 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
Norma	nmoseley@nevadafirm.com
Tilla Nealon	tnealon@nevadafirm.com
Tom Edwards	tedwards@nevadafirm.com

Santoro Whitmire

Contact	Email
Asmeen Olila-Stoilov	astoilov@santoronevada.com
James E. Whitmire, Esq.	jwhitmire@santoronevada.com
Joan White	jwhite@santoronevada.com

Garman Turner Gordon

Contact	Email
Dylan Ciciliano	dciciliano@gtg.legal
Erika Pike Turner	eturner@gtg.legal
Rebecca Post	rpost@gtg.legal

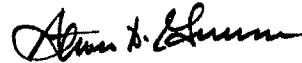
I further certify that I served a copy of this document by emailing a true and correct copy thereof to:

The Office of the Ex-Officio Constable
302 East Carson Avenue
5th Floor
Box 552110
Las Vegas, Nevada 89101

CannaVEST Corp.
2688 South Rainbow
Suite B
Las Vegas, Nevada 89146

/s/ Rosie Wesp
an employee of Marquis Aurbach Coffing

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).



CLERK OF THE COURT

1 **OBJ**

2 F. THOMAS EDWARDS, ESQ.

3 Nevada Bar No. 9549

4 E-mail: tedwards@nevadafirm.com

5 ANDREA M. GANDARA, ESQ.

6 Nevada Bar No. 12580

7 E-mail: agandara@nevadafirm.com

8 HOLLEY DRIGGS WALCH

9 FINE WRAY PUZEY & THOMPSON

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Telephone: 702/791-0308

Facsimile: 702/791-1912

Attorneys for Plaintiff Far West Industries

DISTRICT COURT

CLARK COUNTY, NEVADA

FAR WEST INDUSTRIES, a California
corporation,

Plaintiff,

v.

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

Defendants.

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

**PLAINTIFF FAR WEST INDUSTRIES' OBJECTION TO CLAIM OF
EXEMPTION FROM EXECUTION ON AN ORDER SHORTENING TIME**

Pursuant to Chapter 21 of the Nevada Revised Statutes, Plaintiff Far West Industries ("Far West" or "Judgment Creditor"), by and through its counsel, F. Thomas Edwards, Esq. and Andrea M. Gandara, of the law firm of Holley Driggs Walch Fine Wray Puzey & Thompson, hereby files this Objection to Claim of Exemption ("Objection") filed by Defendant Michael J. Mona, Jr. ("Mr. Mona" or "Judgment Debtor"), based upon the following grounds and the following reasons: (1) Mr. Mona has failed to meet his burden of establishing that his earnings from CannaVest Corp. ("Cannavest" or "Garnishee") are entitled to exemption because he has not provided any detail as to the specific bases for his alleged exemption under the various

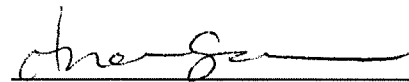
1 Nevada and federal statutes he cites in a blanket manner and because he has not provided an
2 amount he claims is exempt or a calculation for the alleged exempt portion of his earnings; (2)
3 Mr. Mona is untimely attempting to seek reconsideration of this Court's Order Regarding
4 Plaintiff Far West Industries' Motion for Determination of Priority of Garnishment and
5 Defendant Michael J. Mona's Countermotion to Discharge Garnishment and for Return of
6 Proceeds ("Priority Order"), entered on June 21, 2016, in which the Court ruled that Far West's
7 garnishment has priority over Rhonda Mona's ("Ms. Mona") alimony payments; and (3) Mr.
8 Mona's earnings at most are exempt up to 75% during a workweek under NRS 21.090(1)(g) and
9 15 U.S.C. § 1673(a), and as a result, only a portion of Mr. Mona's earnings are eligible for the
10 exemption.

11 Plaintiff further requests that this matter be heard on shortened time pursuant to
12 EDCR 2.26, as NRS 21.112(6) requires that this Objection be heard within seven judicial days
13 after filing with the related notice of hearing.

14 This Objection is further supported by the Memorandum of Points and Authorities, the
15 Declaration of Andrea M. Gandara, Esq. in support of the Objection ("Declaration"), any
16 exhibits incorporated herein, the papers and pleadings on file herein, and any such oral argument
17 as this Court may entertain.

18 Dated this 20th day of July, 2016.

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

21 

22 F. THOMAS EDWARDS, ESQ.
23 Nevada Bar No. 9549
24 ANDREA M. GANDARA, ESQ.
25 Nevada Bar No. 12580
26 400 South Fourth Street, Third Floor
27 Las Vegas, Nevada 89101

28 *Attorneys for Far West Industries*


1 **ORDER SHORTENING TIME**

2 This Court, having examined the Plaintiff Far West Industries' Objection to Claim of
3 Exemption From Execution on an Order Shortening Time ("Objection") and the supporting
4 Declaration of Andrea M. Gandara, Esq. in support of the Objection and request for an order
5 shortening time, and being fully advised in the matter, and good cause appearing,

6 **IT IS HEREBY ORDERED** that the hearing on the Objection shall be heard on the 1st
7 day of August, 2016, at the hour of 9 : 00 a.m. in Department 15 of
8 this Court.

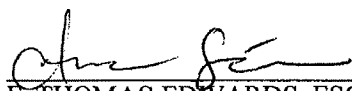
9 **IT IS FURTHER ORDERED** that the Objection with this Order Shortening Time shall
10 be served no later than the 22nd day of July, 2016.

11
12 Dated this 21st day of July, 2016.

13
14 
15 **DISTRICT COURT JUDGE**

16 Respectfully Submitted by:

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

19 
20 **F. THOMAS EDWARDS, ESQ.**
21 Nevada Bar No. 9549
22 **ANDREA M. GANDARA, ESQ.**
23 Nevada Bar No. 12580
24 400 South Fourth Street, Third Floor
25 Las Vegas, Nevada 89101

26 *Attorneys for Far West Industries*
27
28

1 **DECLARATION OF ANDREA M. GANDARA, ESQ. IN SUPPORT OF OBJECTION TO**
2 **CLAIM OF EXEMPTION FROM EXECUTION ON AN ORDER SHORTENING TIME**

3 I, ANDREA M. GANDARA, ESQ., pursuant to NRS 53.045, declare as follows:

4 1. I am an attorney duly licensed to practice law in the state of Nevada and I am an
5 associate of the law firm of Holley Driggs Walch Fine Wray Puzey & Thompson. I am one of
6 the attorneys for Plaintiff Far West Industries ("Far West" or "Judgment Creditor") in the above-
7 captioned matter.

8 2. I am over eighteen (18) years of age and competent to testify to the matters set
9 forth herein.

10 3. I make this Declaration based upon my personal knowledge except as to those
11 matters indicated to be based upon information and belief and, as to those matters, I believe them
12 to be true and correct.

13 4. I am submitting this Declaration in support of Plaintiff's Objection to Claim of
14 Exemption from Execution on an Order Shortening Time ("Objection").

15 5. On or about April 27, 2012, Far West obtained a fraud Judgment of
16 \$18,130,673.58 against Mr. Mona and others. *See generally* Judgment, attached to Applica[t]ion
17 for Foreign Judgment, filed in the above-captioned matter on October 18, 2012.

18 6. During judgment collection proceedings, Far West sought to obtain a
19 determination from the Court regarding the priority of its garnishments of Mr. Mona's earnings
20 from his employer, CannaVest Corp. ("Cannavest" or "Garnishee") over alimony payments to
21 Mr. Mona's ex-wife Rhonda Mona ("Ms. Mona"). *See* Plaintiff Far West Industries' Motion for
22 Determination of Priority of Garnishment ("Garnishment Priority Motion"), filed on February
23 16, 2016.

24 7. Mr. Mona filed an Opposition to Far West's Garnishment Priority Motion and
25 Countermotion to Discharge Garnishment and for Return of Proceeds ("Opposition and
26 Countermotion") on March 4, 2016. *See* Opposition and Countermotion, filed March 4, 2016.

1 8. On March 14, 2016, Far West filed its reply to Mr. Mona's Opposition and
2 Counter-motion. See Plaintiff Far West Industries' Reply to Mona's Opposition and
3 Counter-motion, filed on March 14, 2016.

4 9. The Court held argument regarding the Garnishment Priority Motion and
5 Counter-motion on March 30, 2016.

6 10. On June 21, 2016, the Court entered its Order Regarding Plaintiff Far West
7 Industries' Motion for Determination of Priority of Garnishment and Defendant Michael J.
8 Mona's Counter-motion to Discharge Garnishment and for Return of Proceeds ("Priority Order").
9 See Priority Order, entered on June 21, 2016. In its Priority Order, the Court ordered "that [Far
10 West]'s garnishment takes priority over Ms. Mona's alimony claim." See Priority Order, 5:19-
11 20. The Court further Ordered "that [Far West] is entitled to garnish 25% of [Mr. Mona]'s
12 disposable earnings, calculated by subtracting federal taxes, Social Security, and Medicare from
13 [Mr. Mona]'s biweekly earnings. Any amount in excess of 25% of [Mr. Mona]'s disposable
14 earnings may be applied to satisfy Ms. Mona's alimony claim." See Priority Order, 5:21-6:2.

15 11. On or about July 1, 2016, Plaintiff served Cannavest with a Writ of Garnishment
16 for Mr. Mona's earnings after obtaining a Writ of Execution from the Clerk of the Court. See
17 Writ of Garnishment, reflecting service at Page 4, attached hereto as **Exhibit 1**, and Writ of
18 Execution, attached hereto as **Exhibit 2**.

19 12. On or about July 15, 2016, Mr. Mona filed a Claim of Exemption related to the
20 Writ of Garnishment and Writ of Execution for his Cannavest earnings. See Claim of
21 Exemption, filed July 15, 2016, ¶ 2.

22 13. The Claim of Exemption states, "On information and belief, the property or
23 money being taken (or to be taken) from Mona pursuant to the Writ of Execution is exempt from
24 execution. Mona makes the following objections/claims the following exemptions: NRS
25 21.090(g) [sic], NRS 31.295, NRS 31.296, NRS 31.200, NRS 31.249, 15 U.S.C. § 1673, 28
26 U.S.C. § 3205(8), generally." See Claim of Exemption, filed July 15, 2016, ¶ 3.

27 14. Mr. Mona provides no further detail as to how his Cannavest earnings that are
28 subject to the Far West's Writ of Garnishment are exempt from execution nor does he provide

1 any detail as to the amount he claims is exempt or the appropriate exemption calculation. *See*
2 *generally* Claim of Exemption, filed July 15, 2016.

3 15. Pursuant to NRS 21.112(6), “[u]nless the court continues the hearing for good
4 cause, the hearing on an objection to a claim of exemption to determine whether the property or
5 money is exempt must be held within 7 judicial days after the objection to the claim and notice
6 for hearing is filed.”

7 16. The seven-day deadline for a hearing on Far West’s Objection requires a hearing
8 on shortened time.

9 17. Therefore, Far West respectfully requests that this Court allow the Objection to be
10 heard on shortened time.

11 I declare under penalty of perjury that the foregoing is true and correct.

12 DATED this 20th day of July, 2016.

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15 _____
16 ANDREA M. GANDARA, ESQ.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**¹

3 The issue of priority and the amount Far West can garnish from Mr. Mona's earnings has
4 already been litigated and decided by the Court. On June 21, 2016, the Court entered its Order
5 Regarding Plaintiff Far West Industries' Motion for Determination of Priority of Garnishment
6 and Defendant Michael J. Mona's Countermotion to Discharge Garnishment and for Return of
7 Proceeds ("Priority Order"). See Priority Order, entered on June 21, 2016. In its Priority Order,
8 the Court ordered "that [Far West]'s garnishment takes priority over Ms. Mona's alimony
9 claim." See Priority Order, 5:19-20. The Court further Ordered "that [Far West] is entitled to
10 garnish 25% of [Mr. Mona]'s disposable earnings, calculated by subtracting federal taxes, Social
11 Security, and Medicare from [Mr. Mona]'s biweekly earnings. Any amount in excess of 25% of
12 [Mr. Mona]'s disposable earnings may be applied to satisfy Ms. Mona's alimony claim." See
13 Priority Order, 5:21-6:2.

14 On or about July 15, 2016, Mr. Mona filed a Claim of Exemption related to the Writ of
15 Garnishment and Writ of Execution for his Cannavest earnings. See Claim of Exemption, filed
16 July 15, 2016, ¶ 2. The Claim of Exemption appears to be nothing more than an untimely
17 attempt or seek reconsideration of the Priority Order, as the ten day deadline for reconsideration
18 has already expired under EDCR 2.24(b).² On this basis alone, the Claim of Exemption should
19 be overruled.

20 The Claim of Exemption states, "On information and belief, the property or money being
21 taken (or to be taken) from Mona pursuant to the Writ of Execution is exempt from execution.
22 Mona makes the following objections/claims the following exemptions: NRS 21.090(g) [sic],
23 NRS 31.295, NRS 31.296, NRS 31.200, NRS 31.249, 15 U.S.C. § 1673, 28 U.S.C. § 3205(8),
24 generally." See Claim of Exemption, filed July 15, 2016, ¶ 3. Notably, many of these are the

25 ¹ Far West incorporates by reference the DECLARATION OF ANDREA M. GANDARA, ESQ.
26 IN SUPPORT OF OBJECTION TO CLAIM OF EXEMPTION FROM EXECUTION ON AN
ORDER SHORTENING TIME as though set forth herein in its entirety.

27 ² Notice of Entry of the Priority Order was served electronically upon Mr. Mona on June 21,
28 2016. Adding three days for electronic service, the deadline to seek reconsideration of the
Priority Order expired on July 8, 2016. EDCR 2.24(b).

1 same statutes upon which Mr. Mona relied in the briefing related to the Priority Order that the
2 Court has already considered. However, in the Claim of Exemption, Mr. Mona provides no
3 explanation as to how his Cannavest earnings that are subject to the Far West's Writ of
4 Garnishment are exempt from execution nor does he provide any detail as to the amount he
5 claims is exempt or the appropriate exemption calculation. *See generally* Claim of Exemption,
6 filed July 15, 2016. Mr. Mona's bare citations to the statutes without any explanation does not
7 comply with EDCR 2.20(i) and, on this basis, the Court should decline to consider the Claim of
8 Exemption. ("A memorandum of points and authorities which consists of bare citations to
9 statutes, rules, or cause authority does not comply with this rule and the court may decline to
10 consider it."). For these reasons, Mr. Mona's Claim of Exemption should be overruled.

11 II. LEGAL ARGUMENT

12 A. Mr. Mona Bears the Burden to Prove He Is Entitled to the Claimed Exemption.

13 Under NRS 21.112(6), "[t]he judgment debtor has the burden to prove that he or she is
14 entitled to the claimed exemption at such a hearing [regarding an objection to a claim of
15 exemption]."

16 Here, Mr. Mona's Claim of Exemption cites "NRS 21.090(g) [sic], NRS 31.295, NRS
17 31.296, NRS 31.200, NRS 31.249, 15 U.S.C. § 1673, 28 U.S.C. § 3205(8)" as grounds for his
18 exemption without providing any further information about how or why the earnings subject to
19 Far West's Writ of Garnishment are exempt from execution. Mr. Mona's bare citations to the
20 statutes without any explanation does not comply with EDCR 2.20(i) and, on this basis, the
21 Court should decline to consider the Claim of Exemption. He also does not provide an amount
22 he claims is exempt or an exemption calculation. It appears then that Mr. Mona is seeking to
23 exempt all of his earnings from Cannavest in contravention of the applicable Nevada and federal
24 exemption statutes.

25 NRS 21.090 governs property exempt from execution, and provides as follows regarding
26 disposable earnings of a judgment debtor:

- 27 1. The following property is exempt from execution, except
28 as otherwise specifically provided in this section or required by
federal law:

1
2

3 (g) For any workweek, 75 percent of the disposable earnings of a
4 judgment debtor during that week, or 50 times the minimum
5 hourly wage prescribed by section 6(a)(1) of the federal Fair Labor
6 Standards Act of 1938, 29 U.S.C. § 206(a) (1), and in effect at the
7 time the earnings are payable, whichever is greater. Except as
8 otherwise provided in paragraphs (o), (s) and (t), the exemption
9 provided in this paragraph does not apply in the case of any order
10 of a court of competent jurisdiction for the support of any person,
11 any order of a court of bankruptcy or of any debt due for any state
12 or federal tax.

13 As used in this paragraph:

14 (1) "Disposable earnings" means that part of the earnings of a
15 judgment debtor remaining after the deduction from those earnings
16 of any amounts required by law to be withheld.

17 (2) "Earnings" means compensation paid or payable for personal
18 services performed by a judgment debtor in the regular course of
19 business, including, without limitation, compensation designated
20 as income, wages, tips, a salary, a commission or a bonus. The
21 term includes compensation received by a judgment debtor that is
22 in the possession of the judgment debtor, compensation held in
23 accounts maintained in a bank or any other financial institution or,
24 in the case of a receivable, compensation that is due the judgment
25 debtor.

26 NRS 21.090(1)(g).

27 As this Court has previously determined, Far West is entitled to garnish 25% of Mr.
28 Mona's disposable earnings from Cannavest calculated by subtracting only federal taxes, Social
Security, and Medicare from his biweekly earnings. See Priority Order, 5:21-6:1. This
percentage also comports with the limitations of earnings garnishments set forth in NRS
31.295(2) and 11 U.S.C. § 1673(a). Therefore, at best, Mr. Mona can seek to exempt 75% of his
disposable earnings.

Based upon the foregoing, Mr. Mona's vague challenge to the Writs of Garnishment and
Execution should be overruled and Cannavest directed to pay Far West 25% of Mr. Mona's
disposable earnings.

**B. Mr. Mona Should Be Prohibited from Seeking Reconsideration of the Court's
Priority Order.**

Where there is a dispute as to priority between multiple garnishments, state law or other

1 federal law controls. *See* Priority Order, 2:20-21. Nevada law mirrors the applicable federal
2 statute as to the 25% limitation for wage garnishments. *See* Priority Order, 2:22-3:1. Nevada
3 law grants the courts discretion to determine garnishment priority under NRS 31.249(5), and
4 here, after considering the filings of the parties and allowing argument, the Court ruled that Far
5 West's garnishment is entitled to priority. *See generally* Priority Order.

6 The Claim of Exemption appears to be nothing more than an untimely attempt to seek
7 reconsideration of the Priority Order, as the ten day deadline for reconsideration has already
8 expired under EDCR 2.24(b). Notice of Entry of the Priority Order was served electronically
9 upon Mr. Mona on June 21, 2016. Adding three days for electronic service, the deadline to seek
10 reconsideration of the Priority Order expired on July 8, 2016. EDCR 2.24(b). Thus, Mr. Mona's
11 attempt to seek reconsideration of the Priority Order is untimely and the Claim of Exemption
12 should be overruled.

13 **C. An Order Shortening Time Is Appropriate In Light of the NRS 21.112.**

14 Pursuant to EDCR 2.26, Plaintiff should be granted an order shortening time for the
15 hearing regarding the Objection because good cause has been presented through the foregoing
16 Declaration. As indicated in the Declaration, NRS 21.112(6) states that "[u]nless the court
17 continues the hearing for good cause, the hearing on an objection to a claim of exemption to
18 determine whether the property or money is exempt must be held within 7 judicial days after the
19 objection to the claim and notice for hearing is filed."

20 The seven-day deadline for a hearing on Far West's Objection requires a hearing on
21 shortened time. Decl. ¶ 16. Therefore, Far West respectfully requests that this Court allow the
22 Objection to be heard on shortened time. Decl. ¶ 17.

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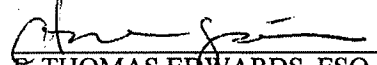
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III. CONCLUSION

In conclusion, Far West respectfully requests that this Court: (1) hold a hearing regarding the Claim of Exemption on shortened time, and (2) enter an order overruling the Claim of Exemption and directing Cannavest to remit 25% of Mr. Mona's disposable earnings to Far West.

Dated this 20th day of July, 2016.

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


F. THOMAS EDWARDS, ESQ.

Nevada Bar No. 9549

ANDREA M. GANDARA, ESQ.

Nevada Bar No. 12580

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Attorneys for Far West Industries

EXHIBIT 1

EXHIBIT 1

1 **WRTG**

2 **F. THOMAS EDWARDS, ESQ.**

3 Nevada Bar No. 9549

4 E-mail: tedwards@nevadafirm.com

5 **ANDREA M. GANDRA, ESQ.**

6 Nevada Bar No. 12580

7 E-mail: agandara@nevadafirm.com

8 **HOLLEY DRIGGS WALCH**

9 **FINE WRAY PUZEY & THOMPSON**

10 400 South Fourth Street, Third Floor

11 Las Vegas, Nevada 89101

12 Telephone: 702/791-0308

13 Facsimile: 702/791-1912

14 *Attorneys for Plaintiff Far West Industries*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 **FAR WEST INDUSTRIES, a California**
18 corporation,

19 Plaintiff,

20 v.

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

26 Defendants.

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

27 **WRIT OF GARNISHMENT**

28 **THE STATE OF NEVADA TO:**

29 **MICHAEL MONA, RESIDENT AGENT AND PRESIDENT**
30 **CANNAVEST CORPORATION**
31 **2688 SOUTH RAINBOW BOULEVARD**
32 **SUITE B**
33 **LAS VEGAS, NV 89146**

34 You are hereby notified that you are attached as garnishee in the above entitled action
35 and you are commanded not to pay any debt from yourself to Michael J. Mona, Jr.,
36 ("Defendant"), and that you must retain possession and control of all personal property, money,
37 credit, debts, effects and choses in action of said Defendant in order that the same may be dealt
38 with according to law. Where such property consists of wages, salaries, commissions or

1 bonuses, the amount you shall retain be in accordance with 15 U.S.C. § 1673 and NRS 31.295.
2 Plaintiff, Far West Industries believes that you have property, money, credits, debts, effects and
3 choses in action in your hands and under your custody and control belonging to said Defendant
4 described as: "Earnings," which means compensation paid or payable for personal services
5 performed in the regular course of business, including, without limitation, compensation
6 designated as income, wages, tips, a salary, a commission or a bonus, of Judgment Debtor
7 Michael J. Mona, Jr., paid by CannaVEST Corp.

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

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

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

3 Dated this _____ day of _____, 2016.

4 Issued at direction of:


SHERIFF/CONSTABLE - CLARK COUNTY

5
6 By: _____

Title

Date

7 HOLLEY DRIGGS WALCH
8 FINE WRAY PUZEY & THOMPSON

9 
F. THOMAS EDWARDS, ESQ., NV Bar No. 9549

E-mail: tedwards@nevadafirm.com

10 ANDREA M. GANDARA, ESQ., NV Bar No. 12580

E-mail: agandara@nevadafirm.com

11 400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

12 Telephone: 702/791-0308

13 Attorneys for Plaintiff

1 STATE OF NEVADA }

2 COUNTY OF CLARK }

ss:

3 The undersigned, being duly sworn, states that I received the within WRIT OF
 4 GARNISHMENT on the 29 day of JUNE, 2016, and personally served the same on
 5 the 01 day of JULY, 2016 by showing the original WRIT OF GARNISHMENT,
 6 informing of the contents and delivering and leaving a copy, along with the statutory fee of
 7 \$5.00, with KATHLEEN KELLENBACH 2600 SOUTH, County of Clark, State of
 8 Nevada. RATNER BARLAINE

9 By: [Signature] 7572

10 Title: _____

11
12 **INTERROGATORIES TO BE ANSWERED BY THE GARNISHEE UNDER OATH:**

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

16 **ANSWER:** _____

17
 18 2. Are you an employer of the Defendant? If so, state the length of your pay period
 19 and the amount of disposable earnings, as defined in NRS 31.295, which each Defendant
 20 presently earns during a pay period. State the minimum amount of disposable earnings that is
 21 exempt from this garnishment which is the federal minimum hourly wage prescribed by section
 22 6(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 206(a)(1), in effect at the
 23 time the earnings are payable multiplied by 50 for each week the pay period, after deducting any
 24 amount required by law to be withheld.

25 **Calculate the garnishable amount as follows:**

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

27 [A] Weekly: ___ [B] Biweekly: ___ [C] Semimonthly: ___ [D] Monthly: ___

28 (1) Gross Earnings.....\$ _____

EXHIBIT 2

EXHIBIT 2

CLERK OF THE COURT

JUN 27 2012

RECEIVED

1 **WRTE**
2 F. THOMAS EDWARDS, ESQ.
3 Nevada Bar No. 9549
4 E-mail: tedwards@nevadafirm.com
5 ANDREA M. GANDARA, ESQ.
6 Nevada Bar No. 12580
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12 Telephone: 702/791-0308
13 Facsimile: 702/791-1912

14 *Attorneys for Plaintiff*

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 FAR WEST INDUSTRIES, a California
18 corporation,

19 **Plaintiff,**

20 **v.**

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

Defendants.

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

WRIT OF EXECUTION

☒ **Earnings** ☐ **Other Property**
☐ **Earnings. Order of Support**

THE STATE OF NEVADA TO THE SHERIFF/CONSTABLE - CLARK COUNTY,
GREETINGS:

On April 27, 2012, a judgment, upon which there is due in United States Currency the following amounts, was entered in this action in favor of Plaintiff Far West Industries as judgment creditor and against Michael J. Mona, Jr. as judgment debtor. Interest and costs have accrued in the amounts shown. Any satisfaction has been credited first against total accrued interest and costs, leaving the following net balance, which sum bears interest at 10% per annum, \$4,967.308 per day from issuance of this writ to date of levy and to which sum must be added all

1	commissions and costs of executing this Writ.			
2	JUDGMENT BALANCE	AMOUNTS TO BE COLLECTED BY LEVY		
3				
4	Judgment	\$17,777,562.18	NET BALANCE	\$25,611,068.27
5	Attorney's Fees	\$327,548.84	Fee this Writ	
6	Costs	\$25,562.56	Garnishment Fee	
7	JUDGMENT TOTAL	\$18,130,673.58	Levy Fee	
8	Accrued Costs		Advertising	
9	Accrued Interest	\$7,540,373.24	Storage	
10	Less Satisfaction	\$59,978.55	Interest from	
11			Date of Issuance	
12	NET BALANCE	\$25,611,068.27	SUB-TOTAL	
13			Commission	
14			TOTAL LEVY	Total

15 NOW THEREFORE, you are commanded to satisfy the judgment for the total amount
16 due out of the following described personal property and if sufficient personal property cannot be
17 found, then out of the following described real property: "Earnings," which means
18 compensation paid or payable for personal services performed in the regular course of business,
19 including, without limitation, compensation designated as income, wages, tips, a salary, a
20 commission or a bonus, of Judgment Debtor Michael J. Mona, Jr., paid by CannaVEST Corp.

21 (See below for exemptions which may apply)

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EXEMPTIONS WHICH APPLY TO THIS LEVY
(Check appropriate paragraph and complete as necessary)

☐ Property other than wages. The exemption set forth in NRS 21.090 or in other applicable Federal Statutes may apply, consult an attorney.

☒ Earnings

The amount subject to garnishment and this writ shall not exceed for any one pay period the lessor of:

A. 25% of the disposable earnings due the judgment debtor for the pay period, or

B. The difference between the disposable earnings for the period of \$100.50 per week for each week of the pay period.

☐ Earnings (Judgment or Order of Support)

A Judgment was entered for amounts due under a decree or order entered on _____, 20____, by the _____ for support of _____, for the period from _____, 20____, through _____, 20____, in _____ installments or \$ _____.

The amount of disposable earnings subject to garnishment and this writ shall not exceed for any one pay period:

☐ A maximum of 50 percent of the disposable earnings of such judgment debtor who is supporting a spouse or dependent child other than the dependent named above:

☐ A maximum of 60 percent of the disposable earnings of such judgment debtor who is not supporting a spouse or dependent child other than the dependent named above;

☐ Plus an additional 5 percent of the disposable earnings of such judgment debtor if and to extent that the judgment is for support due for a period of time more than 12 weeks prior to the beginning of the work period of the judgment debtor during which the levy is made upon the disposable earnings.

NOTE: Disposable earnings are defined as gross earnings less deductions for Federal Income Tax Withholding, Federal Social Security Tax and Withholding for any State, County or City Taxes.

You are required to return this Writ from date of issuance not less than 10 days or more than 60

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days with the results of your levy endorsed thereon.

Submitted By:


(SIGNATURE)

STEVEN D. GRIERSON, CLERK OF COURT

By: 
Deputy Clerk
PATRICIA AZUCENA

JUN 24 2016

Date

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
ANDREA M. GANDARA
Nevada Bar No. 12580
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

RETURN

Not satisfied	\$	
Satisfied in sum of	\$	
Costs retained	\$	
Commission retained	\$	
Costs incurred	\$	
Commission incurred	\$	
Costs Received	\$	

I hereby certify that I have this date
returned the foregoing Writ of Execution
with the results of the levy endorsed
thereon.


SHERIFF/CONSTABLE - CLARK
COUNTY

By:

REMITTED TO
JUDGMENT CREDITOR \$

Deputy

Date



CLERK OF THE COURT

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

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 **FAR WEST INDUSTRIES, a California**
11 **corporation,**

12 **Plaintiff,**

13 **vs.**

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

19 **Defendants.**

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

Hearing Date: August 1, 2016
Hearing Time: 9:00 a.m.

20 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CLAIM OF**
21 **EXEMPTION AND DISCHARGE**

22 Defendant Michael J. Mona, Jr. ("Mona"), through the law firm of Marquis Aurbach
23 Coffing, hereby submits his Memorandum of Points and Authorities in Support of Claim of
24 Exemption. This Memorandum is made and based on the following Points and Authorities,
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1 the pleadings and papers on file herein, and any oral argument allowed by the Court at a hearing
2 on this matter.

3 Dated this 29th day of July, 2016.

4
5 MARQUIS AURBACH COFFING

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

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I. INTRODUCTION.**

18 Any earnings Far West attempts to withhold from Mona at this point are exempt from
19 execution. Far West's most recent garnishment expired on April 29, 2016. Thus, since April 30,
20 2016, Mona's spousal support obligation to his ex-wife has sat in first position and has been the
21 sole withholding from Mona's wages. The spousal support obligation equates to 56% of Mona's
22 disposable earnings. Under Federal and Nevada law, because the spousal support obligation
23 exceeds 25% of Mona's disposable earnings, once it took first position and became the sole
24 withholding from Mona's wages, Mona's wages became exempt from any further withholdings
25 from creditor garnishments.

26 Far West did not serve the invalid garnishment that is the subject of the Claim of
27 Exemption until early July 2015 and Nevada law, as well as Legislative History, is clear that
28 garnishments in Nevada do not endure in perpetuity – they expire. In fact, the Legislature flatly
rejected the proposal to have garnishments endure forever when it enacted the current law
allowing garnishments to last for only 120 days. Therefore, the Court should affirm the Claim of
Exemption and enter an Order that Far West's July 1, 2015 wage garnishment and all subsequent

1 wage garnishments are void unless and until the spousal support obligation no longer occupies
2 first position as a withholding.

3 **II. FACTS AND BACKGROUND.**

4 The following facts are relevant:

- 5 • 1989—Nevada enacted the 120 day expiration period related to garnishments,
6 which is found in NRS 31.296. *See* Legislative History related to 120 day
7 expiration period attached as Exhibit A (Nevada Assembly Bill 247, Chapter 338,
8 Page 699 (1989)).

9 The original Bill proposed to have garnishments endure in perpetuity. *Id.*
10 However, the Legislature rejected the proposal and enacted the 120 day expiration
11 period. *Id.*

- 12 • July 23, 2015—Mike and Rhonda Mona divorced. *See* Exhibit B. Pursuant to the
13 Divorce Decree, Mike is obligated to pay Rhonda \$10,000 per month in spousal
14 support. *Id.* at 3:14.
- 15 • September 4, 2015—Far West attempted to intervene to challenge the divorce
16 between Mike and Rhonda.
- 17 • September 28, 2015—Rhonda opposed Far West's attempt to intervene in the
18 divorce and Mike joined in the Opposition. *See* Exhibits C and D.
- 19 • November 25, 2015—The court denied Far West's attempt to intervene in the
20 divorce and awarded Mike and Rhonda the fees they incurred in opposing Far
21 West's intervention attempt. *See* Exhibit E.
- 22 • April 29, 2016—Pursuant to NRS 31.296, Far West's garnishment regarding
23 Mona's wages expired. *See* Exhibit F.
- 24 • July 2015—Far West served the invalid garnishment that is the subject of the
25 Claim of Exemption. *See* Exhibits G and H.
- 26 • July 15, 2015—Mona filed the Claim of Exemption. *See* Exhibit I.

27 In addition to the above, the parties briefed and argued a prior garnishment priority
28 dispute, which, although a different issue, has some applicability to the current dispute before the
Court. However, because the Court is well versed in the history, law, arguments, and facts
surrounding this matter and because time is limited as a result of this matter being set and heard
on an Order Shortening Time, Mona will not regurgitate herein the entirety of the related prior
proceedings. Rather, Mona cites to and incorporates herein by reference as if fully set forth
herein the contents of the following: Mona's Opposition to Far West's Motion for
Determination of Garnishment Priority and Countermotion for Discharge and for Return

1 Proceeds and Mona's Reply in Support of Countermotion to Discharge and for Return of
2 Proceeds. *See* Exhibits J and K, respectively.

3 **III. LEGAL ARGUMENT.**

4 A withholding from Mona's wages consistent with what Far West demands will result in
5 a violation of Federal and Nevada law. Under the Consumer Protection Credit Act's
6 garnishment restrictions, Far West has not been entitled to any monies via wage withholdings
7 since the date its garnishment expired on April 29, 2016. Once the garnishment expired, the
8 support order Mona is subject to became the sole withholding from Mona's wages and
9 unequivocally took first position.¹

10 When determining garnishment restrictions, the allowed percentile withholding from
11 disposable earnings differs depending on what is at issue. For example, when a support order is
12 solely at issue, the maximum withholding from disposable earnings is 60%. When a creditor
13 garnishment is solely at issue, the maximum withholding from disposable earnings is 25%.
14 When both a support order and creditor garnishment are at issue at the same time, they overlap
15 and the maximum withholding remains at 60%. However, if the support order takes priority and
16 exceeds 25% of the disposable earnings, then the creditor garnishment is barred.

17 In this case, Far West's garnishment that is the subject of the Claim of Exemption is
18 barred. To establish this conclusion, Mona details and explains below the expiration of
19 garnishments in Nevada and the Legislative History rejecting Far West's position; demonstrates
20 why the support order must have priority over Far West's wage garnishment; details the relevant
21 Federal law and Nevada law; and, establishes that the Court should affirm the Claim of
22 Exemption and discharge the garnishment.

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27 ¹ When determining garnishment restrictions, a support order is considered a "garnishment." *See* 15
28 U.S.C. § 1672(c) (stating: "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.").

1 **A. THE SUPPORT OBLIGATION HAS PRIORITY OVER FAR WEST'S**
2 **GARNISHMENT.**

3 Priority between the support obligation and Far West's garnishment has already been
4 determined by operation of Nevada law. Pursuant to Nevada law, Far West's December 2015
5 wage garnishment expired on April 29, 2016. Thus, as of April 29, 2016, Far West lost first
6 priority² and now sits behind an ongoing support order. Thus, indeed, there is nothing for the
7 Court to decide regarding priority because Nevada law has already done so. Nevertheless, if the
8 Court believes for some reason that it has some obligation to determine priority under NRS
9 31.249, then Nevada law, the law of other jurisdictions, and the fact that the Family Court
10 implicitly already determined priority, all provide clear and detailed guidance that the support
11 obligation should take priority.

12 1. **Nevada Law Expressly Rejects Far West's Contention that it Has**
13 **First Priority in Perpetuity Until Satisfaction of its Judgment.**

14 NRS 31.296 allowed Far West's December 2015 garnishment to continue for only 120
15 days. NRS 31.296. Pursuant to NRS 31.296, the garnishment expired on April 29, 2016. Thus,
16 as of April 30, 2016, the support obligation to Rhonda was the sole withholding and
17 unequivocally took first position. Far West advocates for a position contrary to NRS 31.296.
18 Specifically, Far West believes the expiration of its garnishment means nothing; that its
19 garnishment continues forever until its judgment is satisfied; and, that a creditor who has a writ
20 issued first in time will always have priority irrespective of its diligence in pursuing collection
21 and irrespective of whether the writ has expired and other creditors are waiting in line.

22 Indeed, the Nevada Legislature flatly rejected Far West's position when it enacted the
23 120 day expiration period in NRS 31.296. The original bill allowed for continual garnishment
24 until the applicable judgment was satisfied, just as Far West is proposing. Specifically,
25 Assemblyman Mathew Callister, the primary sponsor of the bill, proposed that writs:

26
27 ² Mona contends that even Far West's December 2015 did not have priority, but for the sake of continued
28 argument is not addressing that issue herein.

1 remain in effect until the judgment was satisfied in full in lieu of repeating the
2 procedure every pay period." Exhibit A at p. 12.

3 There was, however, immediate and significant opposition to Mr. Callister's proposal. For
4 example, Marc J. Fowler, representing the Washoe County Sherriff's Office stated:

5 An on-going garnishment . . . would tie one debtor to one creditor indefinitely.
6 Other creditors would have to wait in line as long as six years [unless a judgment
7 was renewed], on the first debt served by the garnishment. Collection on multiple
8 judgments would be delayed indefinitely. *Id.* at p. 13.

9 When asked about priority of garnishments, Mr. Fowler indicated that the procedure was first
10 come first served. *Id.* The Sheriff's office provided written opposition as well stating:

11 This bill would also allow for a single plaintiff to tie up a defendant for his debt
12 alone, preventing any other plaintiff from obtaining a garnishment under
13 execution until satisfaction of the existing claim. *Id.* at p. 16 (Exhibit C to Bill).

14 In addition, the North Las Vegas Township submitted written opposition stating:

15 They [process server] would make one copy which is served to the employer and
16 stays in effect until the judgment is paid in full or judgment expires after six years
17 unless renewed. That is how this law would read if this law was passed. Lets
18 [sic] say that a garnishment is served by Sears . . . and down the road another
19 company or individual has a garnishment to serve on the same party, he has no
20 chance of collecting any part of it because the law states that only one collection
21 can be made on any one person . . . this is not right as it is now whoever serves
22 the garnishment first would be the recipient, except for the IRS and Child Support
23 Division, they take priority. I think AB 247 is a one sided bill and should be put
24 to rest. *Id.* at p. 17 (Exhibit D to Bill).

25 And:

26 As it is now, only one garnishment can be honored by an employer per pay
27 period. If this bill is passed changing a one-time garnishment to a continuing writ
28 and more than one person or company has a judgment against a defendant the
employer would honor the first garnishment they receive leaving the others out of
receiving any of their money until the first person's garnishment is paid in full. It
is understood that this bill would put a six month cap on the garnishment. Now,
how are the other creditor's going to know the six months are up . . . *Id.* at p. 46.

29 Further, Dan Ernst from the Constable of Sparks Township "pointed out several counties in
30 California had discovered continuing garnishment did not work, and had discontinued the
31 practice" *Id.* at p. 14. As a result of these discussions, Charlotte Shaber, Nevada Business
32 Factors, recommended a 90 day expiration period. *Id.* at p. 15. Mr. Callister responded with a
33 180 day expiration period. *Id.* at p. 19. After substantial back and forth about the merits of the