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UNITED STATES DISTRICT COURT

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DISTRICT OF ARIZONA

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Lawrence J. Warfield, as Receiver,

No. CV-03-2390-PHX-JAT (LOA)

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Judgment Creditor,

ORDER TO SHOW CAUSE

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vs.

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Michael Alaniz; Robert Carroll; et al.,

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Judgment Debtors,

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Penn Treaty Network America Insurance
Co.,

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Garnishee.

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This matter arises on Judgment-Creditor Lawrence J. Warfield's

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Application for Judgment on Garnishment and Notice of Lodging Proposed Judgment on

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Garnishment, filed on December 26, 2007. (docket # 827) Judgment-Creditor Warfield

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seeks entry of Judgment against Garnishee Penn Treaty Network America Insurance Co.

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(“Penn Insurance”), in the sum of \$350.25 which purportedly represents non-earnings

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belonging to Judgment-Debtor Robert Carroll held by Penn Insurance. Plaintiff Warfield

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and Garnishee Penn Insurance also stipulate and agree that because “Garnishee

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anticipates additional monies may be paid to Judgment Debtor [Robert Carroll],” that a

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1 form of Garnishment Judgment be entered that provides that Garnishee Penn Insurance
2 shall pay to Plaintiff Warfield “any money due Robert Carroll payable by the Garnishee.”
3 *Id.* at 2-3. Judgment-Debtor Robert Carroll has neither filed an objection to the
4 Application or proposed order nor stipulated in writing to the subject garnishment and
5 request for a continuing lien.
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7 On August 24, 2007, Plaintiff Warfield served Garnishee Penn Insurance
8 with writs of garnishment for both earnings and non-earnings of Judgment-Debtor Robert
9 Carroll. (docket # 774; Exhibit (“Exh”) 4) Answering only the Writ of Garnishment for
10 Non-Earnings, Garnishee Penn Insurance indicates that the money it currently owes
11 Judgment-Debtor Robert Carroll are “Non-Earnings” and represents “two commission
12 checks (totaling \$341.28),” presumably earned by Judgment-Debtor Robert Carroll
13 selling Garnishee’s insurance product. (docket # 798 at 1, 3) Plaintiff Warfield’s
14 Application contends that “Garnishee does not consider the Judgment Debtor an
15 employee, but rather an independent contractor.” (docket # 827 at 2) No such
16 representation, however, is made in Garnishee’s verified Answer nor does Garnishee’s
17 Answer state “[w]hether the judgment debtor was employed by the garnishee on the date
18 the writ was served” as required by A.R.S. § 12-1598.08(B)(1). The significance of
19 whether Garnishee Penn Insurance is holding earnings owed or belonging to Judgment-
20 Debtor Robert Carroll is that A.R.S. § 33-1131(B)¹ exempts 75% of his “disposable
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26 ¹ A.R.S. § 33-1131(B) provides:

27 B. Except as provided in subsection C, the maximum part of the disposable earnings of a
28 debtor for any workweek which is subject to process may not exceed twenty-five per cent
 of disposable earnings for that week or the amount by which disposable earnings for that

1 earnings” from a judgment-creditor’s garnishment. In Arizona, “disposable earnings”
2 include “a debtor’s wages, salary or compensation for his personal services, including
3 bonuses and *commissions*” A.R.S. § 33-1131(A) (emphasis added).
4

5 Arizona’s statutes distinguish garnishment of “earnings” from garnishment
6 of “monies which are not earnings.” *Frazer, Ryan, Goldberg, Keyt & Lawless v. Smith*,
7 184 Ariz. 181, 183, 907 P.2d 1384, 1386 (Ariz. Ct. App.1995). A.R.S. § 12-1598.01
8 provides that its provisions apply “to indebtedness owed to a judgment debtor by a
9 garnishee for monies which are earnings as defined in § 12-1598, paragraph 4.” A.R.S. §
10 12-1598 (4) defines “Earnings” as:
11

12 compensation paid or payable for personal services, whether these
13 payments are called wages, salary, *commission*, bonus or otherwise.
14 Earnings include periodic payments pursuant to a pension or retirement
15 program.

16 A.R.S. § 12-1598(4) (emphasis added). Moreover, A.R.S. § 12-1598.01(B) does not
17 expressly exclude the garnishment of an independent contractor’s earnings (commissions)
18 from Arizona’s statutory scheme which seeks to protect a portion of a worker’s earnings.
19 As to a request for a continuing lien which eliminates a writ every time a worker or
20 commission is paid, Arizona law sets for the requirements, procedure and limitations on a
21 continuing garnishment lien. A.R.S. §§ 1598.10-12. Plaintiff Warfield’s Application
22 makes no reference to this authority and how it complies with Arizona law.
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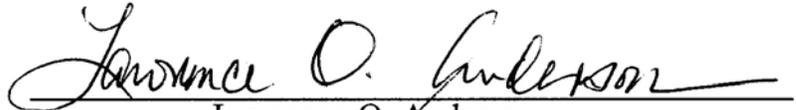
25 Generally, a federal writ of garnishment is governed by the law of the state

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27 week exceed thirty times the minimum hourly wage prescribed by federal law in effect at the
28 time the earnings are payable, whichever is less.

1 in which the district court sits. Fed.Rule Civ.P. 69(a)²; *Hilao v. Estate of Marcos*, 95 F.3d
2 848 (9th Cir. 1996). It appearing that Plaintiff Warfield's Application and proposed
3 order may not comply with Arizona law,
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5 **IT IS ORDERED** that Judgment-Creditor Warfield show cause is writing
6 with citation to controlling case law and statutory authority **on or before Tuesday,**
7 **February 19, 2008** why this Court should not recommend to the assigned District Judge
8 that Judgment-Creditor Lawrence J. Warfield's Application for Judgment on
9 Garnishment, docket # 827, be denied.
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11 Dated this 4th day of February, 2008.

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14 Lawrence O. Anderson
15 United States Magistrate Judge
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23 ² Rule 69(a), FED.R.CIV.P., provides in relevant part:
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25 In General. Process to enforce a judgment for the payment of money shall
26 be a writ of execution, unless the court directs otherwise. The procedure on
27 execution, in proceedings supplementary to and in aid of a judgment, and in
28 proceedings on and in aid of execution **shall be in accordance with the
practice and procedure of the state in which the district court is held,**
existing at the time the remedy is sought,. . . (emphasis added).