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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Barton Colson, individually,)

No. CV-08-2150-PHX-MHM

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Plaintiff,)

**ORDER FOR ISSUANCE OF
PROVISIONAL REMEDY
(PREJUDGMENT GARNISHMENT)
WITH NOTICE**

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vs.)

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Javad Ghaemmaghmi and Marie) DeBernardi Ghaemmaghmi, husband and) wife; Javad and Marie Ghaemmaghmi) d/b/a Scottsdale Lamborghini and/or) Scottsdale Motorsports; Lamborghini of) Scottsdale L.L.C., an Arizona limited) liability company; Motor Sports of) Scottsdale, Inc., an Arizona corporation;) Motorsports of Scottsdale No. 2 L.L.C., an) Arizona limited liability company; and) Automobili Lamborghini America, L.L.C.,) a Delaware Corporation,)

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Defendants.)

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Automobili Lamborghini Holding, S.P.A.,) Automobili Lamborghini, S.P.A., and) Automobili Lamborghini America, L.L.C.,))

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Crossclaimants,)

23

vs.)

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Motorsports of Scottsdale, Inc., d/b/a) Lamborghini America Scottsdale, L.L.C.;) Motorsports of Scottsdale No. 2, L.L.C.;) Javad Ghaemmaghmi and Marie) Ghaemmaghmi, husband and wife.)

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Crossdefendants.)

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1 Pursuant to Rules 64 and 69, FED.R.CIV.P., and the referral by the assigned
2 District Judge, the Court held an evidentiary hearing on February 5, 2009 on Plaintiff Barton
3 Colson's ("Colson") Verified Emergency Application for Provisional Remedy (Garnishment)
4 with Notice, docket # 5, filed on November 20, 2008.

5 After finding this District Court has colorable jurisdiction pursuant 28 U.S.C.
6 § 1332(a) to warrant proceeding further with this litigation, the Court considered Colson's
7 Complaint, docket # 3, Application for Provisional Remedy, and Memorandum Pursuant to
8 Order to Show Cause, docket # 58, including the exhibits therein; Defendants
9 Ghaemmaghami's¹ Answer and admissions therein, docket # 44; the absence of any written
10 opposition to Colson's Application for Provisional Remedy by Defendants Ghaemmaghami;
11 and the written arguments of Colson's counsel in support thereof.

12 The Court **FINDS** that:

13 1. Plaintiff Colson has stipulated and agreed that he is not seeking a
14 provisional remedy (prejudgment garnishment) against Defendants Lamborghini.² (docket
15 # 51)

16 2. Plaintiff Colson and Defendants Ghaemmaghami³ were present and
17 represented by counsel at today's hearing and were given an opportunity to be heard and
18 present evidence in opposition to Colson's Application for Garnishment;

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20 ¹ Collectively these Defendants are: Javad Ghaemmaghami and Marie DeBernardi
21 Ghaemmaghami, husband and wife; Javad and Marie Ghaemmaghami d/b/a Scottsdale
22 Lamborghini and/or Scottsdale Motorsports; Lamborghini of Scottsdale L.L.C., an Arizona
23 limited liability company; Motor Sports of Scottsdale, Inc., an Arizona corporation; and
24 Motorsports of Scottsdale No. 2, L.L.C., an Arizona limited liability company.

25 ² Collectively Defendant and Crossclaimants are: Automobili Lamborghini America,
26 L.L.C., Automobili Lamborghini Holding, S.P.A., and Automobili Lamborghini, S.P.A.

27 ³ Contrary to the Court's February 2, 2009 Order, Marie DeBernardi Ghaemmaghami
28 was not physically present at the February 5th hearing. Javad Ghaemmaghami, however,
represented in open court that he had his wife's full and express authority to speak on her
behalf and bind their marital community. See, LRCiv 83.7.

1 3. Plaintiff Colson is a “Judgment Creditor” within the meaning of Arizona
2 Revised Statute (“A.R.S.”) § 12-1570(4) (“ ‘Judgment Creditor’ means a person . . . that has
3 . . . an order pursuant to chapter 14 of this title [Section 12-2401 *et seq*] allowing him to
4 garnish monies . . . before final judgment on the underlying action.”

5 4. Defendants Ghaemmaghmi and their counsel stipulated and agreed in open
6 court on the record to the entry of this Order without the necessity of conducting a formal
7 § 12-2410 hearing and that this Order may issue without Plaintiff Colson’s posting a bond
8 required by A.R.S. § 12-1573.

9 5. Plaintiff Colson served his Application for Garnishment on Defendants
10 Ghaemmaghmi as required by, and has otherwise complied with, A.R.S. §§ 12-1572, 12-
11 2403, 12-2404 and 12-2406;

12 6. Independent of Defendants Ghaemmaghmi’s stipulation, there is probable
13 cause to believe that Defendants Ghaemmaghmi are indebted to Plaintiff Colson in, at least,
14 the sum of \$1,381,000.00, and that said debt is likely just, due, and unpaid;

15 7. Based on the written evidence, it is likely that Plaintiff Colson will prevail
16 at trial on his claims to recover said debt;

17 8. There is good reason to believe that Garnishees Wells Fargo Bank and Bank
18 of America, more particularly identified in Plaintiff Colson’s Application for Garnishment,
19 are indebted to Defendants Ghaemmaghmi and/or have non-exempt monies in their
20 possession belonging to Defendants Ghaemmaghmi.

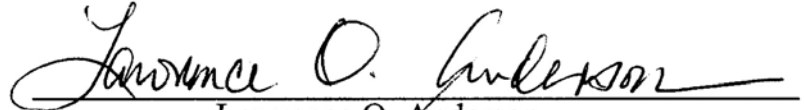
21 Accordingly,

22 **IT IS ORDERED** that Plaintiff Colson’s Verified Emergency Application for
23 Provisional Remedy (Garnishment) with Notice, docket # 5, is **GRANTED** and hereby
24 directing the Clerk of the Court to issue forthwith a Writ for Provisional Remedy
25 (Prejudgment Garnishment) and Summons.

26 **IT IS FURTHER ORDERED** that the United States Marshal Service or other
27 officer authorized by law to serve process in Maricopa County, Arizona, shall serve and
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1 summons the Garnishees to answer under oath as required by A.R.S. §§ 12-1578.01 and 12-
2 1579.

3 Dated this 5th day of February, 2009.

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6 Lawrence O. Anderson
7 United States Magistrate Judge
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