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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 United States of America,  
10  
11 Plaintiff,

12 v.

13 Robert A. DeFazio,  
14 Defendant.

No. CV-11-00529-PHX-DGC

**ORDER**

15 Because of unpaid student loans, Defendant Robert DeFazio owes approximately  
16 \$280,000 to the federal government. The government has obtained a judgment for this  
17 debt. Doc. 14. The government has also sought to garnish the money that DeFazio is  
18 receiving from CRRS, LLC (“garnishee”). After issuing a writ of garnishment to CRRS  
19 (Doc. 17), the Court entered a Garnishment Disposition Order stating:

20 Garnishee shall pay over Defendant’s non-exempt property withheld  
21 pursuant to the Writ of Garnishment, and continue withholding Defendant’s  
22 [n]on-exempt property and paying it over to Plaintiff until the debt to  
23 Plaintiff is paid in full or until Garnishee no longer has possession of any  
24 non-exempt property belonging to Defendant or until further Order of this  
25 Court.

26 Doc. 29. CRRS, the garnishee, now asks the Court to answer three questions regarding  
27 the Disposition Order. Doc. 36. The government has responded. Doc. 37.

28 CRRS’ first question is: “whether Defendant’s IRS Form 1099-MISC . . . contract  
payments are considered ‘earnings’ for purposes of the Order.” Form 1099 is submitted  
by an employer who pays at least \$600 to an independent contractor over a year. *See* 26

1 C.F.R. § 1.6041-1. Thus, the Court interprets CRRS’ question to be whether payments  
2 made to an independent contractor – as opposed to an employee – constitute “earnings”  
3 under the Disposition Order. The Order was entered pursuant to the Federal Debt  
4 Collection Procedures Act (“Act”) (28 U.S.C. §§ 3001 *et seq.*), and the answer can be  
5 found there.<sup>1</sup>

6 Payments to an independent contractor are “earnings” under the Act. The Act  
7 defines “earnings” as “compensation paid or payable for personal services, whether  
8 denominated as wages, salary, commission, bonus, or otherwise, and includes periodic  
9 payments pursuant to a pension or retirement program.” 28 U.S.C. § 3002(6). The Act  
10 does not distinguish the earnings of an independent contractor from those of an  
11 employee. Thus, inasmuch as an independent contractor receives compensation for  
12 personal services, he receives “earnings” under the Act. The government argues to the  
13 contrary. But the cases cited by the government do not address the precise question  
14 before the Court. *See In re Carter*, 182 F.3d 1027, 1029-32 (9th Cir. 1999) (discussing  
15 whether under California law a person was an “employee,” and whether a corporation’s  
16 payment to an employee constituted “earnings”); *Spicer Accounting, Inc. v. United*  
17 *States*, 918 F.2d 90, 93-94 (9th Cir. 1990) (discussing whether under federal tax law a  
18 person had earned “wages” and whether he was an “independent contractor”).<sup>2</sup>

19 CRRS’ second question is: “if [the payments are earnings], what percentage of the  
20 earnings are considered ‘nonexempt’ disposable earnings subject to withholding.” The  
21 Act defines “nonexempt disposable earnings” as “25 percent of disposable earnings,  
22 subject to section 303 of the Consumer Credit Protection Act.” 28 U.S.C. § 3002(9).  
23 Section 303 of the Consumer Credit Protection Act (“CCPA”) contains a garnishment-  
24 protection provision that limits what garnishers may collect. *See* 15 U.S.C. § 1673(a).  
25 Thus, the Court understands CRRS’ question to be whether the garnishment-protection

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27 <sup>1</sup> The Act “provides the exclusive civil procedures for the United States . . . to  
recover a judgment on a debt[.]” 28 U.S.C. § 3001(a).

28 <sup>2</sup> The government also cites A.R.S. § 23-351 in support of its argument, but does  
not explain its relevance.

1 provision of the CCPA applies to what DeFazio earns as an independent contractor.

2 As have other courts, the Court finds that “the CCPA’s garnishment protection  
3 applies to individuals working as independent contractors as well as employees as long as  
4 the earnings are compensation for personal services.” *In re Jones*, 318 B.R. 841, 851  
5 (Bankr. S.D. Ohio 2005). Under the CCPA, the most that can be garnished from a  
6 debtor’s weekly earnings is the lesser of: (1) twenty-five percent of the debtor’s weekly  
7 disposable earnings, or (2) the amount by which those earnings exceed thirty times the  
8 federal minimum wage. 15 U.S.C. § 1673(a). The CCPA defines “earnings” as does the  
9 Act. For that reason, the CCPA applies to what DeFazio earns as an independent  
10 contractor and the government may garnish no more than what the CCPA allows.<sup>3</sup>

11 CRRS’ third question is “whether the Order applies to contract payments due to  
12 Defendant as of the date of service of the Writ of Garnishment . . . or whether the Order  
13 is intended to be a continuing lien on any payments due within ninety (90) days of service  
14 of the Writ.” The text of the Disposition Order is clear and answers the question. The  
15 Disposition Order applies to all payments from CRRS to DeFazio, beginning on the date  
16 of the writ and continuing until “the debt to Plaintiff is paid in full or until Garnishee no  
17 longer has possession of any non-exempt property belonging to Defendant or until further  
18 Order of this Court.” Doc. 29 at 1.

19 In sum, the Court clarifies that: (1) DeFazio’s earnings as an independent  
20 contractor are “earnings” under the Disposition Order, so long as those earnings are  
21 compensation paid for personal services; (2) Garnishment of DeFazio’s earnings is  
22 subject to 15 U.S.C. § 1673(a); and (3) The Disposition Order applies to payments from  
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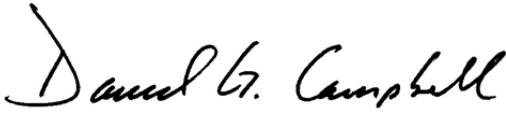
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24 <sup>3</sup> Arguing to the contrary, the government focuses on the CCPA’s definition of  
25 disposable earnings: “The term ‘disposable earnings’ means that part of the earnings of  
26 any individual remaining after the deduction from those earnings of any amounts required  
27 by law to be withheld.” 15 U.S.C. § 1672(b). The government reads the statute as saying  
28 *unless* a debtor’s earnings are subject to deductions or withholdings, those earnings are  
not disposable earnings. But the statute does not support this reading. Rather, under this  
statute, disposable earnings are earnings minus the required deductions or withholdings,  
regardless of whether any deductions or withholdings are in fact required. The Court  
agrees that for the CCPA to apply, the debtor must earn “disposable earnings.” But this  
phrase does not mean what the government thinks.

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CRRS to DeFazio beginning on and continuing after the date of the writ of garnishment.

Dated this 30th day of April, 2015.



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David G. Campbell  
United States District Judge