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8 **UNITED STATES DISTRICT COURT**

9 EASTERN DISTRICT OF CALIFORNIA

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11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 ASHLEY MADDOX,
15 Defendant and Judgment Debtor.
16 JOHN HANCOCK RETIREMENT PLAN
17 SERVICES, LLC,
18 Garnishee.

Case No.: 1:20-mc-00089-SAB

ORDER DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN A DISTRICT JUDGE TO
THIS ACTION

FINDINGS AND RECOMMENDATIONS
RECOMMENDING GRANTING REQUEST FOR
FINAL ORDER OF GARNISHMENT

ORDER REQUIRING THE GOVERNMENT TO
SERVE A COPY OF THE FINDINGS AND
RECOMMENDATIONS

(ECF Nos. 9, 11, 12)

OBJECTIONS DUE WITHIN TWENTY-ONE
DAYS

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21 Currently pending before the Court is the United States' application pursuant to Section 3205(c)(7)
22 of the Federal Debt Collection Procedure Act ("FDCPA") 28 U.S.C. § 3001, *et seq.*, for a final order
23 garnishing the property and account of Defendant and Judgment Debtor Ashley Maddox ("Defendant").
24 The matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302(c)(7).

25 **I.**

26 **BACKGROUND**

27 On November 4, 2019, after pleading guilty pursuant to a plea agreement to a single count of
28 Aiding and Abetting the Sexual Exploitation of Minors, in violation of 18 United States Code, Section

1 2251(a) and (e) and Section 2, Defendant was sentenced in the criminal case United States v. Ashley
2 Maddox, no. 1:17-cr-00167-DAD-BAM, and ordered to pay a statutory assessment of \$100.00, and a
3 special assessment of \$5,000.00 under the Justice for Victims of Trafficking Act (“JVTA”), 18 U.S.C. §
4 3014. United States v. Ashley Maddox, no. 1:17-cr-00167-DAD-BAM, (ECF Nos. 90, 114, 115).¹

5 To collect the assessments owed, on October 2, 2020, the Government filed an application for a
6 writ of garnishment on a retirement account of Defendant through her employment with the Educational
7 Employees Credit Union that is administered by the Garnishee John Hancock Retirement Plan Services,
8 LLC (“Garnishee”). (ECF No. 1.) On October 6, 2020, the clerk’s notice of instructions to judgment
9 debtor issued; and on October 13, 2020, the writ of garnishment issued. (ECF Nos. 4, 5.)

10 On October 14, 2020, the Government filed a certificate of service demonstrating the Garnishee
11 and the Educational Employees Credit Union were served with the application for a writ of garnishment
12 and associated materials on October 14, 2020. (ECF No. 6.) On October 16, 2020, the Government filed
13 a certificate of service demonstrating that Defendant was served with (1) the application for writ of
14 garnishment; (2) the issued writ of garnishment; (3) the clerk’s notice of instructions to judgment debtor
15 re: writ of garnishment; (4) instructions to judgment debtor re: objecting to the answer of garnishee; (5)
16 judgment debtor’s request for hearing form; (6) instructions to defendant/judgment debtor on how to claim
17 exemptions and claim for exemption form; (7) a notice of availability of a magistrate judge to exercise
18 jurisdiction and appeal instructions; and (8) a consent or decline jurisdiction of a United States magistrate
19 judge form. (ECF No. 7.)

20 On November 2, 2020, an acknowledgment of service and answer was filed by John Hancock
21 Retirement Plan Services LLC. (ECF No. 8.) In the filed answer, the Garnishee stated the Ashley Maddox
22 is a terminated participant in the Plan and the verified amount in her vested account is \$25,169.42. (ECF
23 No. 8 at 2.) The Garnishee stated that they serve as a record keeper and do not have any discretionary
24 authority to control management of the Plan and had forwarded the writ of garnishment to the plan
25 sponsor, Educational Employees Credit Union. (Id. at 3.) Neither Educational Employees Credit Union
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27 ¹ Judicial notice may be taken “of court filings and other matters of public record.” Reyn’s Pasta Bella, LLC v. Visa USA,
28 Inc., 442 F.3d 741, 746 n.6 (9th Cir. 2006); Lee v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001). The Court takes
judicial notice of United States v. Ashley Maddox, no. 1:17-cr-00167-DAD-BAM (E.D. Cal.).

1 or the debtor have responded to the writ of garnishment.

2 On November 27, 2020, the Government filed the instant request for findings and
3 recommendations for a final order of garnishment. (ECF No. 9.) On December 7, 2020, an order issued
4 requiring the Government to file supplemental briefing regarding how the anti-alienation provision of
5 Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001–1461, would affect
6 the ability to recoup the assessments from the retirement accounts. (ECF No. 10.) On December 17,
7 2020, a supplemental brief was filed along with an amended request for findings and recommendations.
8 (ECF Nos. 11, 12.) The Court, having reviewed its files and the application, recommends that the request
9 be granted for the reasons explained below.

10 **II.**
11 **DISCUSSION**

12 Title 18 provides for the imposition of special assessments for those convicted of an offense against
13 the United States. 18 U.S.C. § 3013(a). Section 3013 states that “such amount so assessed shall be
14 collected in the manner that fines are collected in criminal cases.” 18 U.S.C. § 3013(b).

15 Pursuant to the JVTA, “in addition to the assessment imposed under section 3013, the court shall
16 assess an amount of \$5,000 on any non-indigent person” convicted of certain enumerated offenses which
17 includes offenses relating to the sexual abuse or other exploitation of children. 18 U.S.C. § 3014(a). The
18 special assessments are to “be collected in the manner that fines are collected in criminal cases, including
19 the mandatory imposition of civil remedies for satisfaction of an unpaid fine as authorized under section
20 3613, where appropriate.” 18 U.S.C. § 3014(f).

21 Section 3613 provides that “the United States may enforce a judgment imposing a fine in
22 accordance with the practices and procedures for the enforcement of a civil judgment under Federal law
23 or State law. Notwithstanding any other Federal law. . . , a judgment imposing a fine may be enforced
24 against all property or rights to property of the person fined,” with certain enumerated exceptions. 18
25 U.S.C. § 3613(a). Id.

26 Here, the Government is seeking to collect from Defendant’s retirement account which falls under
27 ERISA, regulating private pension plans. The Government contends that the assessments are not subject
28 to the anti-alienation provision of ERISA for the same reasons that restitution is not. Accordingly, the

1 Court shall first address whether the ERISA account is an allowable source to be garnished.

2 In United States v. Novak, 476 F.3d 1041, 1043 (9th Cir. 2007), the Ninth Circuit considered how
3 the circumstances under which a criminal defendant’s retirement benefits can be accessed as a source of
4 funds to compensate crime victims. In doing so, the Court had to reconcile two federal statutory schemes,
5 the Mandatory Victims Restitution Act of 1996 (“MVRA”), which governs the payment of restitution to
6 crime victims, and ERISA. Novak, 476 F.3d at 1043. The Court concluded “that criminal restitution
7 orders can be enforced by garnishing retirement funds, but with the funds only payable when the defendant
8 has a current, unilateral right to receive payments under the terms of the retirement plan.” Id.

9 Similar to the statutes that are at issue here, the MVRA provides that restitution orders are
10 enforceable in the same manner as criminal fines and considered the language of section 3613. Id. at
11 1044. The Court began by reconciling the MVRA’s broad enforcement provision and ERISA’s stringent
12 prohibition on alienation of pension benefits by considering the language of MVRA which allows the
13 enforcement of criminal restitution orders against “all property or rights to property,” “[n]otwithstanding
14 any other Federal law.” Novak, 476 F.3d at 1046 (quoting 18 U.S.C. § 3613(a) (emphases added)). The
15 Court found that Congress had made it quite clear that the totality of the defendant’s assets were subject
16 to the restitution order. Novak, 476 F.3d at 1046. In squaring the conflict between this clear intent of
17 Congress and ERISA’s anti-alienation provision, the Court considered the “notwithstanding” clause by
18 taking into account the whole of the statutory context in which it appears and found that two factors
19 weighed in favor of giving it full effect. Id. “In particular, two contextual aspects of the restitution
20 enforcement provision found in 18 U.S.C. § 3613(a)—its treatment of other types of otherwise inalienable
21 property and, most importantly, its replication of the language authorizing tax levies—make it clear that
22 MVRA’s criminal restitution enforcement orders do override ERISA’s alienation restrictions.” Id. at
23 1047. The Court also found that the “treatment in § 3613(a) of other federal statutory anti-alienation
24 provisions indicates that Congress intended to override ERISA’s anti-alienation provision and allow the
25 government to reach defendants’ ERISA-covered retirement plan benefits when enforcing criminal
26 restitution orders.” Novak, 476 F.3d at 1048-49.

27 The Court considered “a second, critical indication in the language and structure of § 3613(a) that
28 the criminal restitution enforcement provision overrides ERISA’s anti-alienation provision: Section

1 3613(a) contains language nearly replicating language used in a parallel statute specifying the property
2 subject to tax levy. That language was understood before the enactment of § 3613(a) to permit levying
3 on ERISA-covered retirement plan benefits.” Novak, 476 F.3d at 1049. The Court found two reasons
4 critical to understanding the interaction between the two statutes. Id. First, relying on the plain language
5 of the tax levy provision and “ERISA’s saving clause provision, which specifies ‘[n]othing in this
6 subchapter [which includes the anti-alienation provision] shall be construed to alter, amend, modify,
7 invalidate, impair, or supersede any law of the United States[,]” the Ninth Circuit has construed the tax
8 levy language as rendering ERISA’s anti-alienation provision inapplicable.² Id. at 1050.

9 “Second, Congress’s choice to import the tax levy language into the restitution order enforcement
10 statute is significant, independent of the propriety of our decision in McIntyre, because courts had
11 uniformly construed the tax levy statute to supersede ERISA’s anti-alienation provision before the
12 ‘notwithstanding’ language was added to § 3613(a).” Novak, 476 F.3d at 1051. In sum, the Court held
13 that “all standard principles of statutory construction support the conclusion that MVRA authorizes the
14 enforcement of restitution orders against retirement plan benefits, the anti-alienation provision of ERISA
15 notwithstanding.” Novak, 476 F.3d at 1053.

16 Similarly, other courts have found that “the language of § 3613(a) indicates that the government
17 may satisfy criminal fines and court-ordered restitution against all of a criminal debtor’s property except
18 certain limited types of property ‘which would be exempt from a levy for the payment of federal income
19 taxes.’ ” United States v. First Bank & Tr. E. Texas, 477 F.Supp.2d 777, 780 (E.D. Tex. 2007) (quoting
20 United States v. Rice, 196 F.Supp.2d 1196, 1199 (N.D. Okla. 2002)).

21 Section 6331 of the Internal Revenue Code (“IRC”) sets forth the basic procedures for the
22 collection of outstanding tax liabilities following notice and demand. See 26 U.S.C. §
23 6331. The Internal Revenue Service (“IRS”) is authorized to levy upon all property and
rights to property belonging to a taxpayer, subject to certain enumerated exemptions in §
6334, in order to satisfy outstanding tax liabilities. See 26 U.S.C. § 6331(a). Such a broad

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25 ² ERISA’s anti-alienation provision requires that any ERISA-governed pension plan must “provide that benefits provided
under the plan may not be assigned or alienated.” In re McIntyre, 222 F.3d 655, 659 (9th Cir. 2000) (quoting 29 U.S.C. §
26 1056(d)(1)). “[T]he Internal Revenue Code expressly indicates that no other federal law shall exempt property from the
IRS’s authority to levy a delinquent taxpayer’s property under § 6331.” In re McIntyre, 222 F.3d at 659 (citing 26 U.S.C. §
27 6334(c)). Further, “ERISA’s anti-alienation clause cannot prevent the IRS from undertaking what would otherwise be a valid
exercise of its levy authority under 26 U.S.C. § 6331, because ERISA itself has a saving clause that states: ‘Nothing in this
28 subchapter [which includes the anti-alienation provision] shall be construed to alter, amend, modify, invalidate, impair, or
supersede any law of the United States.’ ” In re McIntyre, 222 F.3d at 660 (quoting 29 U.S.C. § 1144(a)).

1 definition indicates “that Congress meant to reach every interest in property that a taxpayer
2 might have.” Medaris v. United States, 884 F.2d 832, 833 (5th Cir. 1989) (quoting United
3 States v. National Bank of Commerce, 472 U.S. 713, 720, 105 S.Ct. 2919, 86 L.Ed.2d 565
4 (1985)). The IRC also expressly states that no other federal law shall exempt property or
5 rights to property from the IRS’s authority to levy on a delinquent taxpayer’s property
6 under § 6331. See 26 U.S.C. § 6334(c). Moreover, the text of ERISA provides that
7 “[n]othing in this subchapter [which includes the anti-alienation provision] shall be
8 construed to alter, amend, modify, invalidate, impair, or supersede any law of the United
9 States.” 29 U.S.C. § 1144(d); see also Shanbaum v. United States, 32 F.3d 180, 182–83
10 (5th Cir. 1994) (noting that, when “[r]eading the unambiguous language of Internal
11 Revenue Code section 6334(c) with the mandate contained in section 1144(d) of ERISA,
12 [the] argument that the IRS levy authority yields to the later enacted non-alienation
13 provision is without merit”).

14 First Bank & Tr. E. Texas, 477 F.Supp.2d at 781. The Court finds that the anti-alienation provision of
15 ERISA does not preclude the Government from collecting the assessment from the defendant’s retirement
16 account.

17 Defendant is currently incarcerated and no longer employed by the plan sponsor. (Compl. 2, 3,
18 ECF No. 1.) She is 100% vested in the plan and upon termination the plan provides that she may elect to
19 receive a lump-sum payment. (Id. at 3.) Therefore, she has a current, unilateral right to receive payments
20 under the terms of the retirement plan. Novak, 476 F.3d at 1043.

21 The FDCPA provides that “[a] court may issue a writ of garnishment against property (including
22 nonexempt disposable earnings) in which the debtor has a substantial nonexempt interest and which is in
23 the possession, custody, or control of a person other than the debtor, in order to satisfy the judgment
24 against the debtor.” 28 U.S.C. § 3205(a). The special assessments imposed in the criminal action are a
25 debt under the FDCPA. See 28 U.S.C. § 3002(3) (under the FDCPA “debt” means “an amount that is
26 owing to the United States on account of a . . . fine, assessment, penalty, restitution. . . .”).

27 Under the FDCPA, the government is required to provide the judgment debtor with notice of the
28 commencement of garnishment proceedings. 28 U.S.C. § 3202(b)-(c). The judgment debtor has twenty
days after receipt of the notice to request a hearing, at which the judgment debtor may move to quash any
order granting the garnishment or move for exemption of property. 28 U.S.C. § 3014(b); 28 U.S.C. §
3202(b)(2). If a garnishment hearing is held, it is limited to the issues of: (1) “the probable validity of any
claim of exemption by the judgment debtor;” (2) “compliance with any statutory requirement for the
issuance of the postjudgment remedy granted; and (3) if the judgment is by default . . . to—(A) the
probable validity of the claim for the debt which is merged in the judgment; and (B) the existence of good

1 cause for setting aside such judgment.” 28 U.S.C. § 3202(d).

2 Among other things, the documents served on Defendant on October 16, 2020, advised her of her
3 rights to claim exemptions to garnishment, to object to the Garnishee’s acknowledgement of service and
4 the Garnishee’s answer, and to request a hearing. (ECF No. 7.) Specifically, Defendant was advised that
5 she had twenty (20) days from the date she received the Garnishee’s answer to claim exemptions or request
6 a hearing in opposition as required by 28 U.S.C. § 3202(d). (ECF No. 7-3.) Defendant has not filed any
7 opposition to this garnishment proceeding, has not claimed exemptions, has not objected to the answer,
8 and has not requested a hearing. The time to do so has expired.

9 Pursuant to the FDCPA, “[a]fter the garnishee files an answer and if no hearing is requested within
10 the required time period, the court shall promptly enter an order directing the garnishee as to the
11 disposition of the judgment debtor’s nonexempt interest in such property.” 28 U.S.C. § 3205(c)(7).
12 Accordingly, the Court recommends that the Government’s application for a final garnishment order be
13 granted.

14 III.

15 ORDER AND RECOMMENDATIONS

16 Accordingly, the Clerk of the Court is HEREBY DIRECTED to randomly assign a District Judge
17 to this action.

18 Further, for the reasons explained above, IT IS HEREBY RECOMMENDED that the United
19 States’ request for findings and recommendations for final order of garnishment be GRANTED.

20 IT IS HEREBY ORDERED that the Government shall serve a copy of this findings and
21 recommendations on Defendant Ashley Maddox and file notice of service within **three (3) days** from the
22 date of entry of this findings and recommendations on the docket.

23 This findings and recommendations is submitted to the district judge assigned to this action,
24 pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 304. Within **twenty one (21) days** of
25 service of this recommendation, any party may file written objections to this findings and
26 recommendations with the court and serve a copy on all parties. Such a document should be captioned
27 “Objections to Magistrate Judge’s Findings and Recommendations.” The district judge will review the
28 magistrate judge’s findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are

1 advised that failure to file objections within the specified time may result in the waiver of rights on appeal.
2 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
3 (9th Cir. 1991)).

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5 IT IS SO ORDERED.

6 Dated: January 4, 2021


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UNITED STATES MAGISTRATE JUDGE