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8 IN THE UNITED STATES DISTRICT COURT
 9 EASTERN DISTRICT OF CALIFORNIA
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11 UNITED STATES OF AMERICA,
 12 Plaintiff,
 13 v.
 14 JOE RESENDEZ,
 15 Defendant and Judgment Debtor.

Case No.: 2:15-MC-0040-MCE-CKD

**APPLICATION FOR A FINAL ORDER OF
 CONTINUING GARNISHMENT (WAGES);
 AND PROPOSED ORDER**

Criminal Case No.: 2:07-CR-00459-MCE

[No Hearing Requested]

16
 17 ALIANZA RECYCLING AND RECOVERY,
 18 Garnishee.

19
 20 Plaintiff United States respectfully moves, pursuant to section 3205(c)(7) of the Federal Debt
 21 Collection Procedure Act, 28 U.S.C. § 3001, et seq., (FDCPA), for a Final Order of Continuing
 22 Garnishment against the non-exempt earnings of the defendant and judgment debtor, Joe Resendez. The
 23 United States seeks the order based on the following grounds:

24 1. On May 29, 2008, the Clerk entered Judgment against the Defendant in the criminal case
 25 referenced above. The Judgment includes a payment order for a \$100 special assessment and \$28,637 in
 26 restitution. CR ECF No. 19. The Court did not impose interest on the restitution amount.

27 2. Defendant's restitution order remains unpaid. To enforce the order, the United States filed an
 28 application for Writ of Continuing Garnishment on May 6, 2015, against the Defendant's non-exempt

1 earnings from his employer, garnishee Alianza Recycling and Recovery. Misc. ECF No. 3. At the time
2 the United States sought the writ, Defendant owed his victims \$28,282.77 in unpaid restitution.

3 3. The United States also seeks recovery of the ten (10) % litigation surcharge authorized by
4 section 3011(a) of the FDCPA. This surcharge is warranted when, as occurred here, Defendant failed to
5 respond to the United States' demand for payment. Thus, Defendant's total debt is \$31,111.04,
6 representing the unpaid restitution of \$28,282.77 plus the \$2,828.27 surcharge.¹

7 4. The Clerk issued a Writ of Continuing Garnishment on May 6, 2015. The following day,
8 the United States served Alianza Recycling and Recovery with the Writ and its attachments. Misc. ECF
9 No. 6.

10 5. On May 14, 2015, the United States served the Defendant with a copy of the Writ of
11 Continuing Garnishment, its attachments, and notified him of his right to a hearing to object to the
12 proceeding and/or claim exemptions. Misc. ECF No. 7. The Defendant had 20 days from the date he
13 received the writ documents to request a hearing objecting to the garnishment proceeding and/or file
14 claims of exemption. Section 3202(d), FDCPA. Defendant has not requested a hearing, and the time for
15 doing so has now expired.

16 6. On May 14, 2015, Alianza Recycling and Recovery filed its Acknowledgment of Service
17 and Answer of Garnishee (the Answer). The Answer identifies Defendant as a wage earning employee
18 and states it served Defendant on May 11, 2015 with a copy of the Answer. Misc. ECF No. 8. The
19 Defendant had twenty (20) days from the date the garnishee served its Answer to request a hearing
20 objecting to the Answer. Section 3205(c)(5), FDCPA. Defendant has not objected to the Answer or
21 requested a hearing thereon, and the time for doing so has also lapsed.

22 7. All conditions to the issuance of a Final Order of Garnishment against the non-exempt
23 earning are satisfied and, accordingly, the Court can and should enter an order directing garnishee
24 Alianza Recycling and Recovery to pay to the Clerk of the United States District Court:

25 A. All nonexempt disposable wages and earnings presently being withheld pursuant
26

27
28 ¹ The application for writ of garnishment states the total amount due as \$31,001.04. The correct
amount due is \$31,111.04 as stated in paragraph 3, above. See, the declaration of Kurt A. Didier, filed
and served concurrently herewith.

1 to the pending writ of garnishment; and, thereafter,

2 B. 25% of Defendant's monthly nonexempt disposable wages and earnings until the
3 earlier of Defendant's full satisfaction of the restitution amount plus litigation surcharge
4 (\$31,111.04), or the termination of the writ as set forth in 28 U.S.C. § 3205(c)(10).

5 Respectfully submitted,

6 BENJAMIN B. WAGNER
7 United States Attorney

8
9 Dated: July 8, 2015

By: ~~/s/ Kurt A. Didier~~ _____
10 KURT A. DIDIER
11 Assistant United States Attorney

1 **ORDER**

2 The Court, having reviewed the court files and the United States' Application for a Final Order
3 of Continuing Garnishment [Wages] (the Application), and good cause appearing therefrom, hereby
4 GRANTS the Application. Accordingly, IT IS ORDERED that:

5 1. Garnishee, Alianza Recycling and Recovery, its successors, transferees and assigns
6 (Alianza), pay at least monthly, to the Clerk of the United States District Court, twenty-five percent
7 (25%) of Defendant's disposable wages, earnings and compensation until: the judgment and surcharge
8 amount of \$31,111.04 is paid in full; further order of this Court; or Alianza no longer has custody,
9 possession or control of any property belonging to Defendant. Alianza shall also provide the United
10 States with written notice if the amount or form of compensation to Defendant changes while this order
11 is in effect or if Alianza no longer has custody, possession or control of Defendant's property.

12 2. All amounts previously withheld by Alianza pursuant to the Writ of Garnishment shall be
13 paid to the Clerk of Court within fifteen (15) days of the date this order is filed. Alianza shall also
14 provide the United States a written accounting, by pay period, of the amounts withheld from
15 Defendant's wages during the period from service of the Writ to entry of this final order.

16 3. All payments shall be made payable to the "Clerk of the Court" at the Office of the Clerk,
17 United States District Court, Eastern District of California, 501 I Street, Suite 4-200, Sacramento,
18 California 95814. Alianza shall also state the docket number (Case No.: 2:07-CR-00459-MCE) on the
19 payment instrument and, if it desires a payment receipt, shall include a self-addressed, stamped envelope
20 with the payment.

21
22 Dated: July 8, 2015

23 
24 _____
25 CAROLYN K. DELANEY
26 UNITED STATES MAGISTRATE JUDGE
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