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7
8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

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11 UNITED STATES,
12 Plaintiff,
13 v.
14 DONALD MITCH SHIVELEY,
15 Defendant and Judgment Debtor,
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17 S&D CARWASH MANAGEMENT, LLC,
18 Garnishee.

Case No.: 2:15-MC-00093-MCE-CKD
**STIPULATION RE GARNISHMENT;
AND ORDER THEREON**
[No Hearing Requested]
Criminal Case No.: 2:06-CR-00273-MCE

19
20 Plaintiff United States and defendant and judgment debtor Donald Mitch Shiveley, (collectively
21 the “Parties”), hereby stipulate to a final resolution of the United States’ pending garnishment action
22 against Mr. Shiveley as follows:

23 1. On August 24, 2015, the United States sought, and the Clerk issued, a writ of
24 garnishment against Mr. Shiveley’s wages and other monetary compensation. MC ECF Nos. 4 and 5,
25 respectively. Mr. Shiveley works as a store manager and receives semi-monthly wages, earnings and
26 bonuses from the garnishee, S&D Carwash Management, LLC (S&D Carwash).

27 2. By its writ, the United States sought to enforce the restitution order issued by the Court in
28 Mr. Shiveley’s sentencing in Case No. 2:06-CR-00273-MCE and incorporated in the Amended

1 Judgment in a Criminal Case filed on January 31, 2007. CR ECF No. 35. Per the amended judgment,
2 Mr. Shiveley was ordered to pay \$1,990,154.00 in restitution plus a \$100 assessment. *Id.* Mr.
3 Shiveley's restitution order remains unpaid.

4 3. The United States served the writ of garnishment on S&D Carwash on August 24, 2015.
5 MC ECF No. 4. S&D Carwash served its Acknowledgment and Answer (the Answer) to the United
6 States' writ on September 15, 2015. MC ECF No. 8. The Answer states that Mr. Shiveley receives
7 semi-monthly wages in the gross amount of \$1,733.33. After tax and other withholdings, Mr. Shiveley
8 receives semi-monthly net wages of \$1,548.50. *Id.* These wages represent Mr. Shiveley's disposable
9 earnings as a store manager.

10 4. S&D Carwash has been withholding 25% of Mr. Shiveley's non-exempt, disposable
11 earnings, wages and bonuses since September 2015. The 25% withholding amount comports with the
12 Consumer Credit Protection Act's 25% garnishment cap on a debtor's non-exempt disposable earnings.
13 15 U.S.C. § 1673(a)(1).

14 5. The Parties notified the Court on October 23, 2015 that they had agreed to a settlement
15 of this garnishment action. MC ECF No. 10. To effectuate this agreement, the Parties agree that the
16 Court can and should enter an order as follows:

17 A. Garnishing 10% of Mr. Shiveley's non-exempt, disposable (net) semi-monthly
18 S&D Carwash earnings, wages and bonuses from the date S&D Carwash began withholding these
19 payments plus any amounts payable to him until April 30, 2016;

20 B. Garnishing 25% of Mr. Shiveley's non-exempt, disposable (net) semi-monthly
21 S&D Carwash earnings, wages and bonuses after May 1, 2016 and continuing thereafter until further
22 order of Court; and

23 C. Directing S&D Carwash to pay the garnishment amounts to the Clerk of the Court
24 as stated more specifically in the accompanying order.

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1 7. This is a continuing writ of garnishment against Mr. Shiveley's S&D Carwash earnings,
2 wages and bonuses which shall remain in place until further Court order. The Court shall retain
3 jurisdiction to resolve matters through ancillary proceedings in the case, if necessary.

4 Respectfully submitted,

5 FOR THE UNITED STATES:

6 BENJAMIN B. WAGNER
7 United States Attorney

8 Dated: November 13, 2015

9 By: /s/ Kurt A. Didier
KURT A. DIDIER
Assistant United States Attorney

10 FOR THE DEFENDANT:

11 Dated: November 13, 2015

12 By: /s/ Donald M. Shiveley
13 DONALD M. SHIVELEY, in pro per
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1 **ORDER**

2 The Court, having reviewed the court files and the Parties' Stipulation re Garnishment (the
3 "Stipulation"), and good cause appearing therefrom, hereby APPROVES the Stipulation. Accordingly,
4 IT IS ORDERED that:

5 1. The United States' application for a final order of garnishment is GRANTED.

6 2. S&D Carwash Management, LLC shall garnish defendant Donald Mitch Shiveley's semi-
7 monthly non-exempt, earnings, wages and bonuses at the rate of 10% from each payment from the date
8 it received the United States' writ of garnishment through April 30, 2016.

9 3. Beginning on May 1, 2016, S&D Carwash shall garnish Defendant's semi-monthly non-
10 exempt, disposable earnings, wages and bonuses at the rate of 25% from each payment until: the
11 restitution amount is paid in full; further order of this Court; or S&D Carwash no longer has custody,
12 possession or control of any property belonging to Defendant.

13 4. S&D Carwash shall DELIVER, within twenty (20) days of the filing of this Order, a
14 cashier's check, money order or company draft in the sum of 10% of Defendant's earnings, wages and
15 bonuses previously withheld by S&D Carwash pursuant to the writ of garnishment, made payable to the
16 Clerk of Court. S&D Carwash shall also state the docket number (Case No.: 2:06-CR-00273-MCE) on
17 the payment instrument and, if it desires a payment receipt, shall include a self-addressed, stamped
18 envelope with the payment.

19 5. S&D Carwash shall also provide the United States a written accounting of the amounts
20 withheld from Defendant's payments during the period from service of the writ of garnishment to entry
21 of this final order.

22 6. Following its payment of the withheld amount as stated in paragraph 4, above, S&D
23 Carwash shall thereafter DELIVER, on a monthly basis, payments to the Clerk of Court consistent with
24 this order. S&D Carwash shall NOTIFY the United States, within 30 days, of any change: in the
25 amount of Defendant's earnings, wages and bonuses; in the Defendant's employment status; or affecting
26 S&D Carwash's status as garnishee under this order.

27 7. This is a CONTINUING writ of garnishment against Defendant's S&D Carwash
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1 earnings, wages and bonuses which shall remain in place until further Court order. The Court shall
2 RETAIN jurisdiction to resolve matters through ancillary proceedings in the case, if necessary.

3 8. All payments shall be made payable to the "Clerk of the Court" at the Office of the Clerk,
4 United States District Court, Eastern District of California, 501 I Street, Suite 4-200, Sacramento,
5 California 95814. S&D Carwash shall also state the docket number (Case No.: 2:06-CR-00273-MCE)
6 on the payment instrument and, if it desires a payment receipt, shall include a self-addressed, stamped
7 envelope with the payment.

8 IT IS SO ORDERED.

9 Dated: November 17, 2015



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11 CAROLYN K. DELANEY
12 UNITED STATES MAGISTRATE JUDGE
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