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UNITED STATES DISTRICT COURT

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FOR THE EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,

No. 2:16-mc-107-WBS-EFB

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Plaintiff,

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v.

FINDINGS AND RECOMMENDATIONS

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JOSEPH GEORGE,

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Defendant and
Judgment Debtor.

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PRINCIPAL LIFE INS. CO., PRINCIPAL
FINANCIAL GROUP,

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Garnishee.

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This matter is before the court on the government's request pursuant to section 3205(c)(7) of the Federal Debt Collection Procedure Act ("FDCPA"), 28 U.S.C. §§ 3001, *et seq.*, for a final order garnishing disability insurance benefits defendant Joseph George receives from garnishee Principal Life Insurance Company, Principal Financial Group ("Principal Life").¹ ECF No. 11. For the reasons explained below, the request must be granted.

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¹ This case is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(7). *See* 28 U.S.C. § 636(b)(1).

1 I. Background

2 Defendant Joseph George pleaded guilty to one count of mail fraud. A judgment of
3 conviction on that offense was entered against him on November 18, 2003. *United States v.*
4 *George*, Case No. 2:02-cr-00325-WBS, ECF No. 82. The judgment required George to pay
5 \$622,545.32 in restitution and a \$100 special assessment. *Id.* at 5.

6 George failed to pay and the government commenced this collection proceeding by filing
7 an application for a Writ of Continuing Garnishment against monthly disability insurance
8 payments George receives from Principal Life. ECF No. 1. The Clerk of Court subsequently
9 issued a writ of continuing garnishment, and the government served the writ and its attachments
10 on Principal Life. ECF No. 4. The government also served George with copies of the writ and its
11 attachments. ECF No. 5. George was also served with a notice and instructions regarding his
12 rights in this collection action, including instructions on how to: object to an acknowledgment of
13 service and answer filed by the garnishee, file a claim exemption to the proposed garnishment,
14 and request a hearing in this case.² *Id.*

15 Thereafter, Principal Life filed an Acknowledgment of Service and Answer of Garnishee,
16 indicating that it pays George \$2,750.00 a month under a disability insurance policy. ECF No. 9.
17 Principal Life further indicated that it served a copy of its answer on George, his counsel, and the
18 United States on June 23, 2016. George did not file any objections, nor did he file a claim of
19 exemption or request for hearing. The government now seeks a final order of continuing
20 garnishment. ECF No. 11.

21 II. Application for Final Order of Continuing Garnishment

22 Under the Mandatory Victim Restitution Act (“MVRA”), “the government may collect on
23 a restitution judgment using the procedures available for the collection of criminal fines outlined
24 in 18 U.S.C. § 3613(a), *see* 18 U.S.C. §§ 3613(f), 3664(m), and ‘may enforce a judgment
25 imposing a fine in accordance with the practices and procedures for the enforcement of a civil

26 ² With plaintiff’s counsel’s agreement, the United States emailed counsel a copy of these
27 documents after the government learned that counsel had moved office locations and had not
28 retrieved the first service package that had been set aside for him at the United States Post Office
in El Dorado Hills, California. ECF No. 11 ¶ 6.

1 judgment under Federal law or State law,' *id.* § 3613(a)." *United States v. Berger*, 574 F.3d
2 1202, 1205 (9th Cir. 2009). The FDCPA "provides the exclusive civil procedures for the United
3 States to . . . recover a judgment on a debt." 28 U.S.C. § 3001(a)(1). Under the FDCPA, a "debt"
4 includes "[a]n amount that is owing to the United States on account of . . . restitution" 28
5 U.S.C. § 3002(3)(B).

6 The FDCPA requires the government to provide the judgment debtor with notice of the
7 commencement of garnishment proceedings as provided by 28 U.S.C. § 3202(b). The judgment
8 debtor has twenty days after receipt of the notice to request a hearing. *Id.* If a garnishment
9 hearing is held, it is limited to the issues of (1) "the probable validity of any claim of exemption
10 by the judgment debtor;" (2) "compliance with any statutory requirement for the issuance of the
11 postjudgment remedy granted; and (3) if the judgment is by default . . . to -- (A) the probable
12 validity of the claim for the debt which is merged in the judgment; and (B) the existence of good
13 cause for setting aside such judgment." 28 U.S.C. § 3202(d).

14 The court finds that the United States has complied with the FDCPA's requirements
15 regarding an application for writ of garnishment. George and his attorney were served notice of
16 the writ of garnishment directed to Principal Life and seeking continuing garnishment of 25
17 percent of George's disability insurance payment. Further, George has not timely filed a request
18 for a hearing pursuant to 28 U.S.C. § 3202(d), nor otherwise responded to the government's
19 application. Accordingly, the United States' application for a final order of continuing
20 garnishment should be granted.

21 III. Conclusion

22 Accordingly, it is hereby RECOMMENDED that:

- 23 1. Defendant Joseph George's disability insurance benefits be garnished.
- 24 2. The United States recover ten percent (10%) litigation surcharge authorized under 28
25 U.S.C. § 3011(a) in addition to the unpaid judgment balance.
- 26 3. Principal Life deliver, within fifteen (15) days of the date of any order adopting these
27 findings and recommendations, a cashier's check or money order to the Clerk of Court in the
28 amount of twenty-five percent (25%) of the disability benefits defendant received from Principal

1 Life from June 23, 2016, the date Principal Life acknowledged receipt of the United States' writ
2 of garnishment, through the date of any order adopting these findings and recommendations.

3 4. Thereafter, Principal Life shall deliver to the Clerk of Court monthly payments in the
4 amount of twenty five percent (25%) of the monthly disability insurance benefits it pays
5 defendant until the later of the judgment debt and surcharge being paid in full, or the date
6 Principal Life no longer pays defendant any benefits, compensation or earnings. Principal Life
7 shall notify Michelle Lecroy of the United States Attorney's Office, Eastern District of California,
8 Financial Litigation Unit, if any of defendant's monthly entitlements cease.

9 5. Principal Life make the ordered payments payable to the "Clerk of the Court" at the
10 Office of the Clerk, United States District Court, Eastern District of California, 501 I Street,
11 Room 4-200, Sacramento, California 95814. Principal Life shall also state the criminal docket
12 number (Case No.: 2:02-cr-00325-WBS) on the payment instrument and, if it desires a payment
13 receipt, shall include a self-addressed, stamped envelope with the payment.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
16 after being served with these findings and recommendations, any party may file written
17 objections with the court and serve a copy on all parties. Such a document should be captioned
18 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
19 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
20 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

21 DATED: May 17, 2017.

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23 EDMUND F. BRENNAN
24 UNITED STATES MAGISTRATE JUDGE
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