

1 MICHAEL COSENTINO State Bar No. 83253  
Counsel for the United States  
2 P.O. Box 129  
Alameda, CA 94501

3  
4 Telephone: (510) 523-4702  
Facsimile: (510) 747-1640

5 Attorney for Plaintiff  
United States of America  
6

7  
8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11 **UNITED STATES OF AMERICA,**

Case No. **C97-3423 M**

12 Plaintiff,

13 v.

14 **TROY L. SCHMITT,**

**WRIT OF CONTINUING  
GARNISHMENT**

15 Defendant,

16 and

17 **PARADISE VALLEY SPAS,**

18 Garnishee.  
19 \_\_\_\_\_/

20 TO: Payroll Department  
PARADISE VALLEY SPAS  
21 1872 Rollins Road  
Burlingame, CA 94010  
22

23 YOU ARE HEREBY COMMANDED TO GARNISH FOR THE BENEFIT OF  
24 THE UNITED STATES OF AMERICA THE WAGES, SALARY, OR COMMISSION IN  
25 YOUR CUSTODY, CONTROL, OR POSSESSION IN WHICH THE DEFENDANT-  
26 JUDGMENT DEBTOR HAS AN OWNERSHIP INTEREST.

27 The name, SSN XXX-XX-4907, and last known address of the person who is  
28 the defendant-judgment debtor (hereinafter "debtor") in this action and whose property

1 is subject to this Writ are as follows:

2 TROY L. SCHMITT  
3 1397 Santa Paula Avenue  
4 San Jose, CA 95110

5 This Writ has been issued at the request of the United States of America to  
6 enforce the collection of a civil judgment entered in favor of the United States against  
7 the debtor for a defaulted student loan in the amount of \$2,118.79. There is a balance  
8 of \$4,190.47 due on the judgment, which amount includes costs and interest  
9 computed through October 30, 2019; interest continues to accrue until paid in full.

10 The following are the steps that you must take to comply with this Writ. If you  
11 have any questions, you should consult with your attorney.

12 1. Pursuant to 28 U.S.C. § 3205(c)(2)(F), if you have in your custody, control,  
13 or possession any property of the debtor, including wages, salary, or commissions, in  
14 which the debtor has a substantial nonexempt interest, or if you obtain custody,  
15 control, or possession of such property while this Writ is in effect, you must  
16 immediately withhold such property from the debtor and retain it in your possession  
17 until you receive instructions from the Court which will tell you what to do with the  
18 property. The United States has requested that the sum of 25% of the debtor's  
19 disposable earnings, which under California law represents the nonexempt portion of  
20 the debtor's earnings, be withheld from the defendant's earnings.

21 2. Pursuant to 28 U.S.C. § 3205(c)(2)(E), you are required to answer this Writ  
22 within 10 days after service of this Writ upon you. You must answer the Writ even if  
23 you do not have in your custody, control, or possession any property of the debtor.  
24 Pursuant to 28 U.S.C. § 3205(c)(4), your answer must state, under oath, the following  
25 information:

26 a. Whether or not you have in your custody, control, or possession, any  
27 property owned by the debtor in which the debtor has a substantial  
28 nonexempt interest, including nonexempt, disposable earnings;

- 1           b.     a description of such property and the value of such property;
- 2           c.     a description of any previous garnishments to which such property is
- 3                 subject and the extent to which any remaining property is not exempt;
- 4                 and
- 5           d.     the amount of the funds you anticipate owing to the debtor in the future
- 6                 and whether the period for payment will be weekly or another specified
- 7                 period.

8 For your convenience, a form which addresses the above-requested information is

9 attached and may be used to Answer the Writ.

10           3. After you complete the answer under oath, pursuant to 28 U.S.C. §

11 3205(c)(2)(E) & (c)(4), within ten (10) days after service of this Writ upon you, you

12 must mail or deliver the original Answer bearing the original signature of the person

13 preparing the answer to the Court at the following address:

14                         Civil Clerk, United States District Court  
15                         450 Golden Gate Avenue, 16th Floor  
                              San Francisco, CA 94102

16 At the same time that you mail or deliver the original answer to the Court, you must

17 also mail or deliver a copy of the original Answer to both the debtor and attorney for

18 the United States at the following respective addresses:

19 TROY L. SCHMITT  
20 1397 Santa Paula Avenue  
San Jose, CA 95110

21 Michael Cosentino, Counsel for the United States  
22 P.O. Box 129  
Alameda, CA 94501

23 Please note that the attached form Answer contains a certificate of service which

24 needs to be completed by the person mailing the copies of the answer to the debtor

25 and the attorney for the United States, and which needs to be filed along with the

26 Answer.

27           **IF YOU FAIL TO ANSWER THIS WRIT OR FAIL TO WITHHOLD PROPERTY**

28

1 IN ACCORDANCE WITH THIS WRIT, THE UNITED STATES MAY PETITION THE  
2 COURT FOR AN ORDER REQUIRING YOU TO APPEAR BEFORE THE COURT TO  
3 ANSWER THE WRIT AND TO WITHHOLD PROPERTY IN ACCORDANCE WITH  
4 THE WRIT BEFORE THE APPEARANCE DATE. IF YOU FAIL TO APPEAR OR DO  
5 APPEAR AND FAIL TO SHOW GOOD CAUSE WHY YOU FAILED TO COMPLY  
6 WITH THIS WRIT, THE COURT WILL ENTER A JUDGMENT AGAINST YOU FOR  
7 THE VALUE OF THE DEBTOR'S NONEXEMPT INTEREST IN SUCH PROPERTY  
8 (INCLUDING NONEXEMPT DISPOSABLE EARNINGS). THE COURT MAY ALSO  
9 AWARD A REASONABLE ATTORNEY'S FEE TO THE UNITED STATES AND  
10 AGAINST YOU IF THE WRIT IS NOT ANSWERED WITHIN THE TIME SPECIFIED  
11 HEREIN AND IF THE UNITED STATES FILES A PETITION REQUIRING YOU TO  
12 APPEAR.

13 SUSAN Y. SOONG, Clerk  
14 United States District Court  
15 for the Northern District of California

16 Dated: 11/4/2019

17 By:   
18 Deputy Clerk Mark Romyn



19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 DO NOT WITHHOLD THE EXEMPT PORTION OF THE EMPLOYEE'S EARNINGS

2  
3 1. Earnings include any money (whether called wages, salary, commissions,  
4 bonuses, or anything else) paid for personal services, pension, or retirement.  
5 Vacation or sick pay is earnings subject to withholding as it is *received* by the  
6 employee.

7 2. Disposable earnings are different from gross pay or take-home pay. They  
8 are the earnings left after deducting the part which state or federal law requires an  
9 employer to withhold as mandatory deductions. Generally, these mandatory  
10 deductions are federal income tax, social security (FICA) tax, state income tax, state  
11 disability insurance, and payments to public employee retirement systems.  
12 Disposable earnings can change from pay period to pay period, whenever gross pay  
13 or required deductions change.

14 To determine earnings that<sup>1</sup> are eligible for withholding, and therefore must be  
15 withheld, see the chart below.

16 USE THE CHART BELOW TO DETERMINE NONEXEMPT DISPOSABLE  
17 EARNINGS AND THE APPLICABLE WITHHOLDING AMOUNT<sup>1</sup> :

18	19	20	21	22
Pay Period:	Weekly or oftener	Every 2 weeks	Twice a month	Once a month
23	<b>Disposable earnings:</b> \$ 0 to \$217.50	\$ 0 to \$435.00	\$ 0 to \$471.25	\$ 0 to \$942.50
24	<b>Withhold:</b> Nothing (entire earnings are exempt)			
25	<b>Disposable earnings:</b> \$217.51 to \$290.00	\$435.01 to \$580.00	\$471.26 to \$628.33	\$942.51 to \$1,256.67
26	<b>Withhold:</b> Amt. over \$217.50			
27	<b>Disposable earnings:</b> \$290.01 or more	\$580.01 or more	\$628.34 or more	\$1,256.68 or more
28	<b>Withhold:</b> 25% of disposable earnings (balance is exempt)			

<sup>1</sup>Based on the Federal Minimum Wage Earnings of \$7.25 an hour, effective 07/24/2009

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	
	)	Case No. C97-3423 M
Plaintiff,	)	
	)	
v.	)	
	)	
TROY L. SCHMITT,	)	
	)	
Defendant,	)	
	)	
and	)	
	)	
PARADISE VALLEY SPAS,	)	<b>ANSWER OF GARNISHEE</b>
	)	
Garnishee.	)	

I, \_\_\_\_\_, being first duly sworn, hereby state the following:

1. I am the \_\_\_\_\_ (Official Title) of the Garnishee named in the above caption. I am authorized to prepare this Answer on behalf of the Garnishee.

2. The Garnishee was served with the Writ of Continuing Garnishment on \_\_\_\_\_ (date) in this action.

3. The Garnishee currently has custody, control, or possession of earnings of the Defendant. Yes\_\_\_\_ No\_\_\_\_

4. The Garnishee expects to obtain custody, control, or possession of earnings

1 of the Defendant in the foreseeable future. Yes\_\_\_\_ No\_\_\_\_

2 5. For the pay period in effect on the date of service of this Writ of Continuing  
3 Garnishment, the Garnishee states as follows:

4 a. Defendant was in my/our employ. Yes\_\_\_\_ No\_\_\_\_

5 b. The Defendant's pay period is \_\_\_\_ weekly, \_\_\_\_ bi-weekly,  
6 \_\_\_\_ semi-monthly, \_\_\_\_ monthly.

7 c. The Defendant's present pay period began on \_\_\_\_\_ (date).  
8 ("Present" means the pay period in which the Writ of Continuing  
Garnishment was served.)

9 d. The Defendant's present pay period ends on \_\_\_\_\_ (date).

10 e. The Defendant's net wages are as calculated below:

11 (1) Gross Pay \$ \_\_\_\_\_

12 (2) Federal income tax \$ \_\_\_\_\_

13 (3) F.I.C.A. tax \$ \_\_\_\_\_

14 (4) State income tax \$ \_\_\_\_\_

15 (5) SDI \$ \_\_\_\_\_

16 Total tax withholdings \$ \_\_\_\_\_

17 Net Wages \$ \_\_\_\_\_  
18 (gross pay minus above withheld taxes)

19 6. Are there any other garnishments currently in effect? Yes \_\_\_\_ No \_\_\_\_

20 If the answers is yes, describe below and attach to this Answer a copy of each  
21 garnishment:  
22

23 \_\_\_\_\_  
24 \_\_\_\_\_  
25 \_\_\_\_\_

26 7. Will the Garnishee owe the Defendant money in the foreseeable future?

27 Yes \_\_\_\_ No \_\_\_\_ If the answer is yes, provide the reason why such money will be  
28 owed, the amount of money that will be owed, and the date or dates on which each

1 payment will be due:

2

3	<u>Type of Payment</u>	<u>Amount</u>	<u>Date Payment Will be Due</u>
4	1. _____	_____	_____
5	2. _____	_____	_____
6	3. _____	_____	_____

7 8. Does the Garnishee currently have custody, control or possession of property  
8 (other than earnings) such as bank accounts, pensions, thrift plans, etc., in which the  
9 Defendant maintains an interest? Yes \_\_\_ No \_\_\_ If the answer is yes, then  
10 provide the following information for each item of such property:

11	<u>Description of Property</u>	<u>Approximate Value</u>	<u>Description of Defendant's Interest</u>
13	1. _____	_____	_____
14	2. _____	_____	_____
15	3. _____	_____	_____
16	4. _____	_____	_____

17 9. Does the Garnishee expect to obtain in the foreseeable future custody,  
18 control or possession of property (other than earnings) such as bank accounts,  
19 pensions, thrift plans, etc., in which the Defendant maintains an interest? Yes \_\_\_  
20 No \_\_\_ If the answer is yes, then provide the following information for each item of  
21 such property:

22	<u>Description of Property</u>	<u>Approximate Value</u>	<u>Description of Defendant's Interest</u>	<u>Date Will Obtain Property</u>
24	1. _____	_____	_____	_____
25	2. _____	_____	_____	_____
26	3. _____	_____	_____	_____
27	4. _____	_____	_____	_____

28



1           10. Does the Garnishee have any objections or defenses to the Writ of  
2 Continuing Garnishment? Yes\_\_\_\_ No\_\_\_\_ If the answer is yes, list the nature  
3 and basis of each objection and/or defense:

4 \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_  
8 \_\_\_\_\_

9           On behalf of PARADISE VALLEY SPAS, I hereby certify under penalty of perjury  
10 under the laws of the United States of America that the foregoing is true and correct.

11

12 Telephone # \_\_\_\_\_

13

14 Fax # \_\_\_\_\_

15

16

17 Dated: \_\_\_\_\_

By: \_\_\_\_\_

18

(Sign above and type or print name below)

19

20

21

22

23

24

25

26

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I, \_\_\_\_\_, declare:

That I am a citizen of the United States and employed in the County of \_\_\_\_\_, California; that my business address is \_\_\_\_\_; that I am over the age of eighteen years; and that I am not a party to the above-entitled action;

That on \_\_\_\_\_ (date), I deposited in the United States mail, in envelopes bearing the requisite postage, a copy of:

**ANSWER OF GARNISHEE**

addressed to each of the following, at their last known addresses, at which place there is service by United States mail.

TROY L. SCHMITT  
1397 Santa Paula Avenue  
San Jose, CA 95110

Michael Cosentino  
Counsel for the United States  
P.O. Box 129  
Alameda, CA 94501

I have caused, or will cause, the original of the ANSWER OF GARNISHEE to be filed in the United States District Court pursuant to the instruction for same in paragraph # 3 of the Writ.

This Certificate was executed on \_\_\_\_\_ (date), at \_\_\_\_\_ (city), \_\_\_\_\_ (state).

I certify under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_

(sign above the line and type or print name below)