

1 MICHAEL COSENTINO SBN 83253  
2 ATTORNEY AT LAW  
3 PO BOX 129  
4 ALAMEDA, CA 94501  
5 Telephone: (510) 523-4702

6  
7  
8 COUNSEL FOR THE UNITED STATES  
9 OF AMERICA, PLAINTIFF  
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  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Tucker H. Davis aka Davis H. Tucker,

Defendant,

and

Concord Garden Equipment Company,

Garnishee.

Case No. C98-03667M

**WRIT OF CONTINUING  
GARNISHMENT**

TO: Payroll Department  
Concord Garden Equipment Company  
2451 Monument Blvd.  
Concord, CA 94520

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

The name and last known address of the person who is the defendant-  
judgment debtor (hereinafter "debtor") in this action and whose property is subject to

1 this Writ are as follows:

2 Tucker H. Davis aka Davis H. Tucker  
3 233 Merganser Dr.  
4 Oakley, CA 94561

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 \$9,013.42. There is a balance  
8 of \$14,650.80 due on the judgment, which amount includes costs and interest  
9 computed through 10/27/2009.

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

1 nonexempt interest, including nonexempt, disposable earnings;

2 b. a description of such property and the value of such property;

3 c. a description of any previous garnishments to which such property is  
4 subject and the extent to which any remaining property is not exempt;  
5 and

6 d. the amount of the funds you anticipate owing to the debtor in the future  
7 and whether the period for payment will be weekly or another specified  
8 period.

9 For your convenience, a form which addresses the above-requested information is  
10 attached and may be used to Answer the Writ.

11 3. After you complete the answer under oath, pursuant to 28 U.S.C. §  
12 3205(c)(2)(E) & (c)(4), within ten (10) days after service of this Writ upon you, you  
13 must mail or deliver the original Answer bearing the original signature of the person  
14 preparing the answer to the Court at the following address:

15 Clerk, United States District Court  
16 450 Golden Gate Avenue, 16th Floor  
17 P. O. Box 36060  
San Francisco, CA 94102

18 At the same time that you mail or deliver the original answer to the Court, you must  
19 also mail or deliver a copy of the original Answer to both the debtor and attorney for  
20 the United States at the following respective addresses:

21 Tucker H. Davis aka Davis H. Tucker  
22 233 Merganser Dr.  
Oakley, CA 94561

23 Michael Cosentino, Attorney at Law  
24 P.O. Box 129  
Alameda, CA 94501

25 Please note that the attached form Answer contains a certificate of service which  
26 needs to be completed by the person mailing the copies of the answer to the debtor  
27 and the attorney for the United States, and which needs to be filed along with the

1 Answer.

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

15 RICHARD W. WIEKING, Clerk  
16 United States District Court  
17 for the Northern District of California

18 Dated: November 5, 2009

By:   
Deputy Clerk

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

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

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

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

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

Pay Period:	Weekly or oftener	Every 2 weeks	Twice a month	Once a month
<b>Disposable earnings:</b>	\$ 0 to \$217.50	\$ 0 to \$435.00	\$ 0 to \$471.25	\$ 0 to \$942.50
<b>Withhold:</b>	Nothing (entire earnings are exempt)			
<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
<b>Withhold:</b>	Amt. over \$217.50	Amt. over \$435.00	Amt. over \$471.25	Amt. over \$942.50
<b>Disposable earnings:</b>	\$290.01 or more	\$580.01 or more	\$628.34 or more	\$1,256.68 or more
<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

Garnishee.

## ANSWER OF GARNISHEE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

---

---

---

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

Yes \_\_\_\_ No \_\_\_\_ If the answer is yes, provide the reason why such money will be 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</u> <u>Payment</u>	<u>Amount</u>	<u>Date Payment</u> <u>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</u> <u>Property</u>	<u>Approximate</u> <u>Value</u>	<u>Description of</u> <u>Defendant's Interest</u>
12			
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</u> <u>Property</u>	<u>Approximate</u> <u>Value</u>	<u>Description of</u> <u>Defendant's Interest</u>	<u>Date Will</u> <u>Obtain</u> <u>Property</u>
23				
24	1. _____	_____	_____	_____
25	2. _____	_____	_____	_____
26	3. _____	_____	_____	_____
27	4. _____	_____	_____	_____
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

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

---

---

---

---

---

On behalf of Concord Garden Equipment Company, I hereby certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
(Sign above and type or print name below)

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.

Tucker H. Davis aka Davis H. Tucker  
233 Merganser Dr.  
Oakley, CA 94561

Michael Cosentino  
Attorney at Law  
P.O. Box 129  
Alameda, CA 94501

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

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

\_\_\_\_\_  
(sign above and type or print name  
below)

TO: Concord Garden Equipment Company

## **INSTRUCTIONS TO GARNISHEE**

ENCLOSED IS A WRIT OF GARNISHMENT REQUESTING THAT YOU DETERMINE WHETHER OR NOT YOU HAVE IN YOUR POSSESSION, CUSTODY OR CONTROL ANY OF THE PROPERTY OF THE DEBTOR LISTED THEREIN, OR ANY OTHER PROPERTY OF THE DEBTOR. YOU ARE REQUIRED BY LAW TO SERVE A WRITTEN ANSWER TO THIS WRIT. YOU ARE FURTHER REQUIRED TO WITHHOLD AND RETAIN ANY PROPERTY IN WHICH THE DEBTOR HAS A SUBSTANTIAL NON-EXEMPT INTEREST. A LIST OF EXEMPTIONS WHICH ARE NOT SUBJECT TO THE WRIT OF GARNISHMENT IS ATTACHED TO THE CLERK'S NOTICE ENCLOSED WITH THIS PAPER.

IF YOU FAIL TO ANSWER THIS WRIT OR TO WITHHOLD PROPERTY IN ACCORDANCE WITH THE WRIT, THE COURT MAY MAKE YOU LIABLE FOR THAT AMOUNT OF THE DEBTOR'S NON-EXEMPT PROPERTY WHICH YOU FAIL TO WITHHOLD. ADDITIONALLY, YOU MAY BE HELD LIABLE FOR A REASONABLE ATTORNEY'S FEE TO THE UNITED STATES OF AMERICA IF THE UNITED STATES FILES A PETITION TO THE COURT REQUESTING AN EXPLANATION FOR YOUR FAILURE TO COMPLY WITH THIS WRIT.

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE LAW OFFICE OF MICHAEL COSENTINO, AT 510-523-4702, OR BY MAIL AT P.O. BOX 129, ALAMEDA, CA 94501.