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8 COUNSEL FOR THE UNITED STATES  
9 OF AMERICA, PLAINTIFF

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

11 UNITED STATES OF AMERICA, )  
12 Plaintiff, )  
13 v. )  
14 JOE D. HODGE aka JOE HODGE, )  
15 Defendant, )  
16 and )  
17 SAN JOSE STATE UNIVERSITY, )  
18 Garnishee. )  
19 \_\_\_\_\_ )

Case No. 08-3373 M

**WRIT OF CONTINUING  
GARNISHMENT**

20 TO: Payroll Department  
21 SAN JOSE STATE UNIVERSITY  
22 1 WASHINGTON SQUARE  
23 SAN JOSE, CA 95192

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

28 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           JOE D. HODGE aka JOE HODGE  
3           SAN JOSE STATE UNIVERSITY  
4           1 WASHINGTON SQUARE BLDG.  
5           MUSIC FLOOR#1-RM 187  
6           SAN JOSE, CA 95192

7           This Writ has been issued at the request of the United States of America to  
8           enforce the collection of a civil judgment entered in favor of the United States against  
9           the debtor for a defaulted student loan in the amount of \$35,466.51. There is a  
10          balance of \$35,571.98 due on the judgment, which amount includes costs and interest  
11          computed through November 28, 2008.

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

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

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

28           a.       Whether or not you have in your custody, control, or possession, any  
                  property owned by the debtor in which the debtor has a substantial  
                  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                           Clerk, United States District Court  
15                           450 Golden Gate Avenue, 16th Floor  
16                           San Francisco, CA 94102

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

19                           JOE D. HODGE aka JOE HODGE  
20                           SAN JOSE STATE UNIVERSITY  
21                           1 WASHINGTON SQUARE BLDG.  
22                           MUSIC FLOOR#1-RM 187  
23                           SAN JOSE, CA 95192

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

24           Please note that the attached form Answer contains a certificate of service  
25 which needs to be completed by the person mailing the copies of the answer to the  
26 debtor and the attorney for the United States, and which needs to be filed along with  
27 the Answer.  
28

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

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

17 Dated: DEC 3 2008

18 By:   
19 Deputy Clerk  
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1 DO NOT WITHHOLD THE EXEMPT PORTION OF THE EMPLOYEE'S EARNINGS

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

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

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

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

17	18	19	20	21	22	23	24	25	26	27	28
Pay Period:	Weekly or oftener	Every 2 weeks	Twice a month	Once a month							
<b>Disposable earnings:</b>	\$ 0 to \$199.50	\$ 0 to \$399.00	\$ 0 to \$432.25	\$ 0 to \$864.50							
<b>Withhold:</b>	Nothing (entire earnings are exempt)										
<b>Disposable earnings:</b>	\$199.51 to \$266.00	\$399.01 to \$532.00	\$432.26 to \$576.33	\$864.51 to \$1,152.67							
<b>Withhold:</b>	Amt. over \$199.50	Amt. over \$399.00	Amt. over \$432.25	Amt. over \$864.50							
<b>Disposable earnings:</b>	\$266.01 or more	\$532.01 or more	\$576.34 or more	\$1,152.68 or more							
<b>Withhold:</b>	25% of disposable earnings (balance is exempt)										

Based on the Federal Minimum Wage Earnings of \$6.55 an hour, effective 07/24/2008  
 Writ of Continuing Garnishment cand 08-3373 M

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

UNITED STATES OF AMERICA,	)	Case No. 08-3373 M
Plaintiff,	)	
v.	)	
JOE D. HODGE aka JOE HODGE,	)	
Defendant,	)	
and	)	
SAN JOSE STATE UNIVERSITY,	)	<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 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 \_\_\_

- 1 b. The Defendant's pay period is \_\_\_\_ weekly, \_\_\_\_ bi-weekly,
- 2 \_\_\_\_ semi-monthly, \_\_\_\_ monthly.
- 3 c. The Defendant's present pay period began on \_\_\_\_\_ (date).
- 4 ("Present" means the pay period in which the Writ of Continuing
- 5 Garnishment was served.)
- 6 d. The Defendant's present pay period ends on \_\_\_\_\_ (date).
- 7 e. The Defendant's net wages are as calculated below:

7	(1) Gross Pay	\$ _____
8	(2) Federal income tax	\$ _____
9	(3) F.I.C.A. tax	\$ _____
10	(4) State income tax	\$ _____
11	(5) SDI	\$ _____
12	Total tax withholdings	\$ _____
13	Net Wages	\$ _____
14	(gross pay minus above withheld taxes)	

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

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

17 garnishment:

18 \_\_\_\_\_

19 \_\_\_\_\_

20 \_\_\_\_\_

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

22 Yes \_\_\_\_ No \_\_\_\_ If the answer is yes, provide the reason why such money will be

23 owed, the amount of money that will be owed, and the date or dates on which each

24 payment will be due:

26	<u>Type of</u>		<u>Date Payment</u>
27	<u>Payment</u>	<u>Amount</u>	<u>Will be Due</u>
28	1. _____	_____	_____

1 2. \_\_\_\_\_

2 3. \_\_\_\_\_

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

7	Description of Property	Approximate Value	Description of Defendant's Interest
8	_____	_____	_____
9	1. _____	_____	_____
10	2. _____	_____	_____
11	3. _____	_____	_____
12	4. _____	_____	_____

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

18	Description of Property	Approximate Value	Description of Defendant's Interest	Date Will Obtain Property
19	_____	_____	_____	_____
20	1. _____	_____	_____	_____
21	2. _____	_____	_____	_____
22	3. _____	_____	_____	_____
23	4. _____	_____	_____	_____

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

27 \_\_\_\_\_  
28 \_\_\_\_\_

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On behalf of SAN JOSE STATE UNIVERSITY, 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)

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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.

JOE D. HODGE aka JOE HODGE  
SAN JOSE STATE UNIVERSITY  
1 WASHINGTON SQUARE BLDG.  
MUSIC FLOOR#1-RM 187  
SAN JOSE, CA 95192

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: SAN JOSE STATE UNIVERSITY

## **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.