

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

10	UNITED STATES OF AMERICA,)	Case No. C06-80204 MISC
11)	
12	Plaintiff,)	
13	v.)	
14	WILLIAM KUSHNER III,)	WRIT OF CONTINUING
15)	GARNISHMENT
16	Defendant,)	
17	and)	
18	SAN QUENTIN STATE PRISON,)	
19	HEALTH CARE SERVICES-)	
	PERSONNEL,)	
	Garnishee.)	

20 TO: Payroll Department
 21 SAN QUENTIN STATE PRISON, HEALTH CARE SERVICES- PERSONNEL
 22 1 MAIN STREET
 23 SAN QUENTIN, CA 94964

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 WILLIAM KUSHNER III
3 1028 PHOENIX STREET
4 DANVILLE, CA 94506

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 \$98,848.63. There is a
8 balance of \$135,365.59 due on the judgment, which amount includes costs and
9 interest computed through 02/06/09.

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 WILLIAM KUSHNER III
22 1028 PHOENIX STREET
DANVILLE, CA 94506

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: March 11, 2009

By: 
Deputy Clerk

FRANK JUSTILIANO

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 that¹ 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 AMOUNT¹ :

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

¹Based on the Federal Minimum Wage Earnings of \$6.55 an hour, effective 07/24/2008

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. C06-80204 MISC
Plaintiff,)	
)	
v.)	
)	
WILLIAM KUSHNER III,)	
)	
Defendant,)	
)	
and)	
)	
SAN QUENTIN STATE PRISON,)	
HEALTH CARE SERVICES-)	
PERSONNEL,)	ANSWER OF GARNISHEE
)	
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

1 the Defendant. Yes____ No____

2 4. The Garnishee expects to obtain custody, control, or possession of earnings
3 of the Defendant in the foreseeable future. Yes____ No____

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

6 a. Defendant was in my/our employ. Yes____ No____

7 b. The Defendant's pay period is ____ weekly, ____ bi-weekly,
8 ____ semi-monthly, ____ monthly.

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

11 d. The Defendant's present pay period ends on _____ (date).

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

13 (1) Gross Pay \$ _____

14 (2) Federal income tax \$ _____

15 (3) F.I.C.A. tax \$ _____

16 (4) State income tax \$ _____

17 (5) SDI \$ _____

18 Total tax withholdings \$ _____

19 Net Wages \$ _____
20 (gross pay minus above withheld taxes)

21 6. Are there any other garnishments currently in effect? Yes ____ No ____

22 If the answers is yes, describe below and attach to this Answer a copy of each
23 garnishment:
24

25 _____
26 _____
27 _____

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

1 Yes ____ No ____ If the answer is yes, provide the reason why such money will be
 2 owed, the amount of money that will be owed, and the date or dates on which each
 3 payment will be due:

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

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

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

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

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

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

4. _____

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 SAN QUENTIN STATE PRISON, HEALTH CARE SERVICES-PERSONNEL, 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)

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.

WILLIAM KUSHNER III
1028 PHOENIX STREET
DANVILLE, CA 94506

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)