

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 15-21326-CIV-GOODMAN
[CONSENT]

UNITED STATES OF AMERICA,

Plaintiff,

v.

CERY PERLE,

Defendant.

_____ /

**ORDER DENYING UNITED STATES' MOTION FOR
ORDER REQUIRING GARNISHEE MERLOLA INDUSTRIES,
LLC TO ANSWER WRIT OF GARNISHMENT AND
WITHHOLD PROPERTY BELONGING TO DEBTOR CERY PERLE**

This matter is before the Court upon Plaintiff United States of America's Motion to Require the Garnishee Merlola Industries, LLC ("Merlola Industries") to Answer the Issued Writ of Garnishment and to Withhold Property Belonging to the Judgment Debtor Cery Perle. [ECF No. 36]. Because Plaintiff's motion seeks relief for which there is no statutory basis, its motion is **denied**. However, as explained below, the Undersigned is scheduling a hearing pursuant to 28 U.S.C. § 3205(c)(6).

The Undersigned previously granted Plaintiff's Application for a Continuing Writ of Garnishment. [ECF No. 31]. The Order required Garnishee, Merlola Industries, to answer the writ within ten days of service and to withhold and retain any property in

which the debtor has a substantial nonexempt interest and for which the Garnishee is or may become indebted to the judgment debtor pending further order of the Court. *Id.* It was explained that “[i]f the Garnishee fails to answer this writ or withhold property in accordance with this writ, the United States of America may petition the Court for an Order requiring the Garnishee to appear and explain the reason for not abiding by this writ.” *Id.*

Indeed, as cited by Plaintiff, under 28 U.S.C.A. § 3205(c)(6),

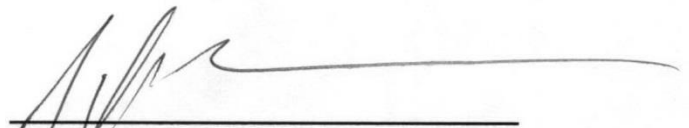
If a garnishee fails to answer the writ of garnishment or to withhold property in accordance with the writ, the United States may petition the court for an order requiring the garnishee to appear before the court to answer the writ and to so withhold property before the appearance date. If the garnishee fails to appear, or appears and fails to show good cause why the garnishee failed to comply with the writ, the court shall enter judgment against the garnishee for the value of the judgment debtor's nonexempt interest in such property (including nonexempt disposable earnings). The court may award a reasonable attorney's fee to the United States and against the garnishee if the writ is not answered within the time specified therein and a petition requiring the garnishee to appear is filed as provided in this section.

Because Plaintiff has not requested the correct relief -- an order requiring the garnishee to appear before the Court -- its motion is denied. Nonetheless, because the garnishee was properly served with the writ [ECF Nos. 34; 35] and has failed to timely submit its answer [ECF No. 36], the Undersigned is setting the matter for a hearing under 28 U.S.C.A. § 3205(c)(6).

Accordingly, after due consideration, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiff's Motion is **DENIED**;
2. Plaintiff and the Garnishee, Merlola Industries, shall appear for an in-person hearing on Friday, August 12, 2022, at 10:30 AM in the Miami Division before the Undersigned. Merlola Industries is required to appear both in person (with a corporate representative) and with counsel. Merlola Industries shall be prepared to show good cause why it failed to answer the writ and also to explain whether it, as required by the writ, properly withheld all subject property.
3. Plaintiff shall serve a copy of this Order on Merlola Industries at least one week before the hearing and shall also file a status report concerning service by August 10, 2022.

DONE AND ORDERED in Chambers, at Miami, Florida, on July 19, 2022.



Jonathan Goodman
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
Counsel of Record