

2000

# Gary and Kathleen McFadden v. russell and Paua Diefenderfer : Brief of Appellant

Utah Court of Appeals

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Russell J. Diefenderfer; appellant pro se .

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IN THE COURT OF APPEALS, THE STATE OF UTAH

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Gary and Kathleen McFadden,

Plaintiff and Appellee,

Vs

Russell and Paula Diefenderfer

Defendant and Appellant.

Case Number: 2000611-CA  
Trial Court Number: 990902659

PRIORITY 15

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BRIEF OF APPELLANT

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Appeal from the Order Overruling Defendant's Objections  
To garnishment of his personal bank account, of the Third Judicial  
District Court, Salt Lake County, the Honorable Glenn K. Iawaski,  
Judge Presiding

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**FILED**  
- Utah Court of Appeals

NOV 03 2000

Paulette Stagg  
Clerk of the Court

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### **Statement of the Issues Presented on Appeal**

As stated in the original Docketing Statement, filed with the Supreme Court, there are four main issues before this court. The first deals with the burden of proof placed on the Appellant and whether or not he met that burden. In Civil cases the burden of proof is either, "clear and convincing" or "by preponderance of evidence". The question to be addressed is not only whether or not the Court required a different level of proof; but also whether the evidence was sufficient to support that, or any level of proof. In addition the Appellant will show that the Appellee's presented no evidence in support of their claims. The second issue to be addressed is whether or not the Appellee's violated the Appellant's rights by seizing his personal bank account without first identifying those monies as assets. In addition, the Appellant will show that in collecting these monies the Appellee's violate the Fair Debt Collection Practices Act, as well as several of Utah Rules of Civil Procedure and did so intentionally. The FDCP Act establishes what Creditor's can do and can not do during the collection of a debt. The third issue is related to the first and that is whether or not the court erred in granting the entire bank account to the Appellee's in light of UCA §§ 70C-7-103 et seq., the Consumer Protection Act, and the Fair Debt Collection Practices Act. And finally, did the court err in requiring the Appellant to adhere strictly to the rules while at the same time allowing the Appellee's a great deal of latitude despite the fact that both parties were appearing Pro Se. It is the intent of the Appellant to not only show that the Appellee's were required to adhere to the rules and procedures of the court but that the Appellee's did willfully violate the directives of the court in an effort to deprive the Appellant of his rights and entitlements. These are the issues to be addressed in this appeal.

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### Statement of the Facts

The facts in this case are quite simple. The Appellee's issued several Writs of Continuing Garnishment as well as a Writ of Garnishment. The Writs of Continuing Garnishment were issued, as the record will show, on or about May 17, 2000. The above-mentioned Writs were served on the Appellant's employer, by the Sheriff's department, on or about May 19, 2000. A Writ of Garnishment was also issued by the Appellee, on May 17, 2000, and served on Key Bank on May 18, 2000. The Writ of Garnishment was re-issued and served on June 7, 2000 because the Appellees failed to fill in the amount in the originally issued writ. The basis for this Writ was that the monies contained within the Appellant's Bank Account, which at the time totaled \$1,008.22, were not derived from wages for personal services.

On June 7, 2000 Key Bank removed from the personal account of the Appellant the sum total of \$1,008.22. Appellant became aware of this fact several days later when he checked his balance. As a result of this revelation, the Appellant did, on or about June 16, 2000, file with the clerk of the Third Judicial District Court, a request for a hearing on the matter. The basis for that hearing was the fact that the monies in the personal bank account *WERE* derived from wages for personal services, contrary to the claims of the Appellee. A hearing was set for June 28, 2000. All parties in question were notified and appeared before the court, Pro Se.

At the hearing the Appellant presented to the court Copies of Bank records that were expected to support his claim. Appellees presented no evidence nor did they object to or contradict the information presented by Appellant. Despite the evidence presented by the Appellant, the Court issued an order over-ruling the Appellant's objection and awarded the monies in the Appellant's bank account to the Appellees. The basis for the Court decision was that the Appellant failed to provide to the Courts satisfaction that the monies going into the



account were coming from direct deposits of payroll as asserted by the Appellant. Appellees were directed to submit an order to the court for signature. On or about June 28, 2000 the Appellee's, using a Generic Garnishee order went to Key Bank and upon presentation of that order received the funds on hold at that time. It should be noted that a copy of the order used to release the funds being held by Key Bank is NOT a part of the file. It is this order that was appeal despite the fact that it does not exist in the file.

On June 30, 2000 Appellants properly filed a timely appeal in this case. As of the time of the filing of the appeal, an order had not been submitted to the court for signature, nor has the Appellant been given a copy of whatever was filed. On July 18, 2000 newly acquired Counsel for the Appellee's submitted to the Judge an Order to be executed because the documents used by the Appellee's was, in his estimation, insufficient. The record will show that the order submitted by Counsel was executed on August 8, 2000, some 41 days after receiving the funds.

## **ARGUMENT**

### **POINT #1**

***Did the Defendant/Appellant present sufficient evidence to support his claim that the money going into his bank account was coming from Direct Deposit Payroll; given the fact that the Plaintiff/Appellee presented no contradicting evidence whatsoever?***

Because this is something that Utah court have yet to rule on, it is extremely important that we assume nothing. Under Rule 301 of the Rules of Evidence, unless otherwise specified by statute or by the Rules of Evidence themselves, there is a presumption that the burden to prove a fact is true or false is upon the "party against whom it is directed". This, as understood by the

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Appellant, means that the burden of proving the money going into the bank account is not as stated by the Appellee is upon him, the Appellant. This would also mean that if the Appellant presents sufficient evidence that clearly disputes the Appellee's claim and contradictor evidence is not presented or is not sufficient to dispute Appellant's claims, than the Court is obligated to rule in favor of the Appellant. In addition to who has the burden we must also consider what standard of proof is to be used.

As understood by the Appellant, the standard of proof required in Civil Cases is one of two standards, either "*clear and convincing*" or by a "*preponderance of evidence*". Black's Law Dictionary distinguishes between these two standards of proof. The "*clear and convincing*" standard is one in which the evidence results in "reasonable certainty of the truth of the ultimate fact in controversy" (Black's Law Dictionary, 1991, p. 172). The standard is more stringent than the "*preponderance of evidence*" standard, but less stringent than the "*beyond a reasonable doubt*" standard. The "*preponderance of evidence*" standard is "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it." (Blacks Law Dictionary, 1991, p. 819). It would appear, based on the transcripts and other factors the standard of proof used by the trial court was "*beyond a reasonable doubt*" and not one of the standards normally used for civil cases. From this we can conclude that the duty of the Appellant is to present evidence that is sufficient enough to allow the Court to be "reasonable certainty" of the fact that the monies going into the Appellant's Bank Account were actually from wages as stated by the Appellant. With that stated let us begin by examining the presumptions of this case.

There are two primary presumptions; First, that the monies going into the bank account were coming from a source other than wages for personal services; and second, the Appellant

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failed to present evidence that was sufficient enough to refute the claim of the Appellees? To answer these questions the court must have at its disposal, the same evidence presented to the trial court for its consideration. This evidence is attached as an addendum and marked "Exhibit A". It will also require an examination of the Transcripts from the June 28, 2000 hearing date. And finally, there must be a clear understanding of how Direct Deposits work. There are factors that the court considered that, at this time, are not important and that would be the amounts. This will be addressed but a bit later. What is important is, whether or not the deposits in question are direct deposits and is the source of those deposits, payroll.

A quick overview of Exhibit "A" shows that it is a record of all transactions from the Appellant's checking account between April 21, 2000 and June 14, 2000. Looking at the first line on page 2 of this document, and highlighted for the Courts convenience, we clearly see that the transaction that took place on May 4, 2000 was a "direct deposit" and that it was from "Callware Technologies, payroll". It even states that the amount was for \$1,519.71. On page 3 we see a similar entry indicating that there was a second "direct deposit" from "Callware Technologies payroll", this time in the amount of \$1,382.95. The date of this transaction was May 18, 2000. From this we can see that between April 21, 2000 and May 18, 2000 two direct deposits were made into the Appellant's bank account by Callware Technologies, and that the monies came from payroll. Examination of the record will show that the employer served by the Appellee's, on May 19, 2000, was in fact Callware Technologies, Inc.

There are two more direct deposits made to the account. One was made on May 30, 2000 and a second on June 14, 2000 (Exhibit A pages 4 & 6). It is important to note that both of these records say that the monies, whatever the amount, were direct deposits from Payroll as well. Since these are records obtained directly from the bank, we can presume that they are accurate

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copies of the transactions that had taken place. We can also presume that those transactions that are marked “direct deposit ... payroll”, regardless of what the employer was, must have come from wages and could not have come from any other source. Does this evidence support the conclusion that the monies going into the Appellant’s account was coming from Direct Deposited Payroll? Based on the documentation we can conclude nothing else. However, did it prove it to the court? To answer this question we need only turn to the Transcripts and see what Judge Iwasaki himself said.

In the transcripts Judge Iwasaki stated that:

“Mr. Diefenderfer does have a point that there is an exception – an exception as to the amounts that can be garnished, if it is due strictly to wages. Now, the problem I’m having is that the burden is on Mr. Diefenderfer to show me that and while he has shown me a document entitled “direct deposits”, I don’t have anything to correlate what those deposits may or may not be, the source of it. I don’t know if it’s a direct deposit from something else; plus, with the amounts that have been blacked out, there is no way for me to examine what the wages were and what was deposited.”(Transcript dated June 28, 2000 page 6; 9-20) (Emphasis mine).

The critical aspect of this statement is the fact that the Court was not able to discern what the “source of it” may be. The evidence clearly shows that the monies were not only direct deposits, but that it came from “payroll”. It shows that he had not examined the evidence closely enough to clearly understand what it said, and it indicates that he did not fully understand how direct deposits work. A statement “direct deposit, Callware Technology, payroll” clearly establishes that the money was from “payroll”. The evidence does not allow us to infer that the deposits were from any other source other than payroll, nor can we disregard that these monies were coming from “payroll”. What Judge Iwasaki’s comments showed, concerning correlating the amounts of the deposits with something else, shows that he was not aware of how direct deposit works. A brief explanation of how direct deposit work is in order.

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Anyone who has had payroll checks directly deposited is fully aware of the fact that the amount deposited is ALWAYS the individuals net pay or in terms related to garnishment, disposal earnings. All required deductions have been taken. This would not be limited to just those deductions required by law i.e. taxes, insurance, etc; but, would also included any garnishments that have been properly served upon an employer. For example, let us suppose that a Writ of Continuing Garnishment was issued to the Appellants employer, in this case, Callware Technology; and this Writ was issued prior to the Appellant's pay period. For purposes of this argument let us also assume that the Appellant has a Gross pay of \$1,500.00 per pay period and a net pay of \$1,250.00. Under normal circumstances, that is without the Garnishment, the total directly deposited into our hypothetical employee bank account would be \$1,250.00. This is the employee's net pay or disposal earnings. This is because Companies that offer direct deposit will deposit the employee's net pay into their accounts. They do not send any funds to the employee but only a statement of the deposit.

Now, assuming that a garnishment was properly served and it was served prior to the employee's payday, than before any monies are deposited, the allowable 25% would be deducted, and what would remain would be deposited. It should be noted that the Appellant has had direct deposit for several years. Every company that has offered this "benefit" has always handled it exactly this way. Direct Deposit simply put is the Electronic Transfer of funds from the employer's account to the employee's account. It is quick, easy, and one of the greatest benefits is that the funds are usually available immediately.

Under Rule 401 of the Rules of Evidence, any evidence that has a tendency to make a claim more probable than it would be without that information constitutes relevant evidence. Therefore the evidence presented by the Appellant constitutes relevant evidence. The evidence

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presented by the Appellant clearly shows, regardless of which standard of proof is applied, that the monies going into the Defendant's bank account was clearly coming from direct deposits of wages. This evidence clearly makes the Appellant's claim more probable than the Appellee's claim. Thus, the Appellant met the Burden of proof under Rule 301 and the presumption that the money came from somewhere other than wages was successfully rebutted.

In meeting the burden set-forth under the Rules of Evidence, the Appellant had established a 'prima facie' showing that the monies in the account are in fact from wages. The burden now shifts to the Appellee to present evidence that would contradict that which was clearly established by the Appellant. The question is did the Appellee accomplish this? Answer, NO.

As the Transcripts from June 28, 2000 clearly shows, the Appellee's simply stated that they believed that bank accounts were permitted to be seized (Transcripts, June 28, 2000, page 5, lines 22 to 24, page 6, line 1 to 7). The whole thrust of the Appellee's argument stemmed from their beliefs and were not based on Statute or Rules. No evidence was presented. There was no disputing the evidence presented by the Appellant, and there were no objections to that evidence. Since, no evidence was presented to rebut the claims of the Appellant; the presumption that the monies were derived from direct deposits of payroll remains intact. The Appellee's failed to establish that their claim was more probable than the claims of the Appellant. Hence, the court was obligated to rule in favor of the Appellee. To challenge the trial courts findings especially on appeal; the Appellant must show that the evidence supports his or her position and that despite that evidence the decision of the Trial Court was so lacking of support that they are clearly erroneous. (see Lefavi v. Bertoch and Poulson; 2000 Utah Ct. App. 5).

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This concept can be taken one step further. The Appellee's infer from their own statements that they are in fact contradicting themselves. The record shows, the Appellee's generated three different Writs on May 17, 2000. The first Writ served was a Writ of Garnishment that was served on May 18, 2000 to Key Bank, the Appellant's bank. In the Application for that Writ, the Appellee's stated that the monies being held by Key bank, and belonging to the Appellant, were "monies not from wages for personal services" (Exhibit "B", p. 2). The second and third Writs were both Writs of Continuing Garnishment and were served on Callware Technologies on May 19, 2000 (Exhibit "C" and Exhibit "D" respectively). By their own testimony, the Appellee's stated that the Appellant was employed (Transcripts, June 28, 2000, page 7 lines 20 to 24). The fact that the Appellee's were able to serve an employer clearly means that the Appellant was receiving monies as "wages for personal services". A reasonable person would conclude that an employed individual would deposit his or her wages into a bank account. It is ludicrous to believe that the average person will not have a bank account in which to "store" their money. One might also conclude that the monies going into the Appellant's bank account were coming from the Appellants employment. Given these facts and the obvious assumptions we can conclude that at least a portion of the funds the Appellee's were trying to garnish was actually coming from wages for personal services. Therefore at minimum at least a portion of the Appellant's bank account came from wages.

UCA 78-23 et seq. establishes what is and isn't exempt from execution. In addition there is a list of exemptions that must be provided by the Garnishee to the Appellant pursuant to Rule 64D(d)(i)(iii) of the Rules of Civil Procedure. One item on that list is "wages or other earnings from personal services" (Exhibit "E"). Taking all of the facts and given the obvious assumptions and the fact that the Appellee's were acting on the advice of their attorney, the claim that all the

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monies in the bank were “not from wages for personal services”, is a blatant lie. One fact that can be extrapolated from the record is the obvious fact that if one has an employer than at least some, if not all, of their earnings would be deposited into some type of bank account. Which raises the question, If the monies in the bank account was not from wages for personal services, where did the money come from? Rule 64D(i) of the Utah Rules of Civil Procedure clearly states that a third party, in this case the Bank, is required to hold and not pay out to the Appellant, any “NON-EXEMPT” monies. Conversely this means that any Exempt monies can not be withheld from their rightful owner. From this we can conclude that withholding exempt monies would be a violation of the Rules as well as result in harm. Which leads us to the next point.

## **POINT #2**

***Did the Appellee’s violate the Appellant’s Fifth Amendment Rights by seizing the Appellant’s entire bank account without first having supplemental hearings to identify seizable assets?***

It is well established and the Appellant agrees that it is not necessary to conduct hearings to issue a Writ of Garnishment. However, during the course of this hearing, an assumption was made that was perpetuated by the Appelles through the rest of the hearing. That assumption was that prior to the Writ of Garnishment being served on the bank, supplemental proceedings were conducted that identified these assets as not exempt. Supplemental proceedings require notice and opportunity to be heard. We see the assumption made by the court emerge when the Judge stated, in response to the claims of the Appellees, that:

“... if you need to have more information, you can do ***another*** supp order, I guess to bring him in, or if Mr. – if you want to takes some time now and talk with him,

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you may, Mr. Diefenderfer, but that's up to you all." (Transcripts, June 28, 2000; page 8; line 2 to 6.)

The statement "do ANOTHER supp order" implies that the Appellees had conducted previous supplemental hearings. The index clearly shows that until August 11, 2000, the Appellees filed no motion for supplemental hearings. The first and only supplemental hearing was held in response to the Motion filed on August 11, 2000. Furthermore this assumption is contradicted by the Appellees claim that "The Diefenderfers have continued to elude us, it's been a year-and-a-half ..." (Transcripts, June 28, 2000; page 7; line 11 and 12). This statement, assuming that it is truthful, would indicate that the Appellees had been unable to serve the Appellants. No service, no supplemental proceedings. Without supplemental proceedings, the Appellees could not have stated, with such assurance, that the funds in the Appellant's bank account were "not from wages for personal services". The definitive nature of this statement raises serious question as to the basis for their claim.

As was previously stated Rule 64D(d)(i), in part, requires that "such person is attached as garnishee in the action, and commanding each of them not to pay or deliver any *non-exempt* Property Subject to Garnishment...". The Appellees stated in their argument that:

*"... it's our understanding and our position* that we can garnish bank accounts. We realize that there's restrictions on garnishment of wages directly but *it is our feeling* that there's not restrictions on garnishing the bank account.

If one could say, you can't garnish my bank account 'cause they came from wages, one could make that claim about every account and yet, you're allowed to garnish accounts." (Transcripts; June 28, 2000; page 5; lines 22 to 25; page 6; lines 1 to 5)

The basis for their position is not rooted in any known or presumed statute, but is based entirely on their personal feelings. Based on this argument one could literally seize 100% of a persons monies leaving them without any way to survive. The Appellees presented no legal basis for their conclusion that bank accounts can be garnished. Following this philosophy we can only

conclude that slavery is still be practiced. Anyone who is owed money can clean out a person's account without identifying is as non-exempt. Based on this contention, the Appellee's based on their beliefs, are entitled to what ever they want and they are under no obligation to determine what is and isn't exempt. Again we must ask, where than did these funds come from?

The Appellant believes that the Appellees were attempting to "cash" in on a claim for Supplemental Security Income. According to the Court, and confirmed by the Appellee's Attorney of record, the claim of Mrs. Diefenderfer was "still pending in Federal Court" (Transcripts, October 12, 1999; page 15; lines 7 & 8). The claim that this refers to is a SSI claim for an injury sustained by Appellant's wife. This claim was filed in September of 1993 prior to the Appellants association with the Appellees. It should also be noted that Appellees, through their attorney, indicated that this action had been "pending since 1993" (Transcripts, October 12, 1999; page 15; line 5). During that same hearing the Appellant made it clear to the court that the Appellee's had knowledge of this since the very beginning (Transcripts, October 12, 1999; page 17; line 9 to 11). Given this information a reasonable person could very well reach the same conclusion as the Appellant.

As previously stated the Appellees claimed that the Diefenderfer's had "eluded them for a year and a half". The index of the record shows that between November 2, 1999 and May 17, 2000 no filings occurred. Therefore we can conclude that after the October 12<sup>th</sup> hearing the Appellees made no effort to contact the Appellants. But they did wait what might be considered amply time for the Federal Court to issue it decision and then tried to "cash" in on it. They seized the Appellants bank account by claiming that it was monies "not from wages for personal services". Had they conducted supplemental proceedings and identified assets, they would have learned that not only were the monies going into the bank account from wages, but that SSI

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benefits, assuming that the Appellant's wife was receiving them, were also exempt under State Law (UCA Title 78-23-5(1)(a)(iii)). The Appellees did testified in court that:

“... we followed the procedure exactly to do that, and – and it's our feeling that the monies in there are eligible to be garnished. *So, we garnished his wages*, according to our lawyer, his advice ...” (Transcripts, June 28, 2000; page 6; line 5 to 7; page 7; line 21 to 22)(emphasis mine).

This statement clearly shows that they had knowledge that the monies going into the bank account did in fact come from wages. It also states that they had the advice of counsel.

There are several other factors this statement indicates. According to the Appellees they followed the “procedure” exactly. Pursuant to Rule 5(a)(1) and Rule 5(b)(2)(B) the Appellees are required by law to serve upon the Appellant:

“... *every* judgment, *every* order required by its terms to be served, *every* pleading subsequent to the original complaint, *every* paper relating to discovery, *every* written motion other than one which may be heard ex parte, and *every* written notice, appearance, demand, offer of judgment, and *similar paper*” (Rule 5(a)(1))

“Unless otherwise directed by the court ... every other pleading or paper required by this rule to be served shall be served by the party preparing it; and ...”(Rule 5(b)(2)(B).

In addition there is a document contained within the packet put together by the Court for Writ of Garnishment called “Notice of Garnishment and Exemptions Notice”. This document, a copy of which is attached and labeled Exhibit “F”, clearly says that the person receiving this notice has 10 days from the “date the Plaintiff mailed or delivered this notice to you” to challenge the Garnishment. The record will show that the Appellees have NEVER mailed or delivered a copy of any of the Writs filed with the court.

If they have failed to meet the service requirements of the Rules of Civil Procedure than they can not claim that they have followed the Procedure for handling Writs “exactly”. Since the

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Appellees had the guidance of Counsel, even though they were acting Pro Se, there is no excuse for their failure to meet these rules. We can therefore conclude that it was done deliberately to deny the Appellant his rights. If the Appellant never knows that his account was garnished and there are no objections they could literally walk away with 100% of the Appellants funds.

How does this translate into violation of the Appellants Fifth Amendment rights? The 5<sup>th</sup> Amendment prevents against the seizure of ones personal property without due process of law. Utah's Rules of Civil Procedure establish the how and way things are to be accomplished. URCP 64D(a)(iii) establishes what property that is subject to garnishment. It specifically states that certain property can be attached or executed upon providing that it is "not exempt from garnishment or exempt under any *applicable provisions of state OR federal law*". This statement would appear to require that only that property which has been identified as not exempt is up for grabs. This would also require that such property, especially in the control of a third party, be identified as not exempt. Which would require a hearing. Which would require notice and opportunity to be heard. Which would require service. Which means that the Appellants would have to have knowledge of what was going on. None of this happened in this case. Therefore, the only logical conclusion that one can come to is that by their actions or in some cases inaction, the Appellees deliberately violated the Appellant's 5<sup>th</sup> Amendment Rights by seizing monies that were exempt under URCP 64D(a)(iii) and UCA §§ 78-23-1 et seq.

### Point #3

*Did the court err in giving the Appellee's 100% of the Appellant's wages in light of UCA § 70C-7-103 and 15 USC. Section 1673(a)?*

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Given the argument presented under Point #1, this question is critical. If it is determined that the monies going into the bank account was coming from wages than this becomes a major issue. URCP 64D(d)(viii) and URCP 64D(d)(viii)(A), 15 USC Section 1673(a) states that:

“The *maximum portion* of the aggregate disposable earnings of defendant (if an individual) becoming due the defendant which is subject to garnishment is the *lesser of*:

*Twenty-five per centum of defendant's disposable earnings computed for the pay period for which the earnings accrued; or*” (emphasis mine)

What does this mean?

There are two main statements in this rule that clearly show the position to be taken with regard to wages. First, is the fact that this clearly states that there is a “MAXIMUM” amount that could be taken and that amount is 25% of the individuals aggregate disposable earnings. And secondly, it specifies that it can only be taken for the pay period in which the “earnings accrued”. Simply put the maximum one can take from an individual is 25% of his earnings. This is to prevent any creditor from leaving a person without any of their earnings to survive on. Fact: The Appellee’s stated that they knew of these limitations and in spite of that declared all monies in the bank as not exempt in an effort to seize it all, thereby making their actions deliberate and intentional.

For the purpose of argument, let us assume that the monies in the bank came from wages. We know that the Appellee’s filed their Writ of Garnishment with the bank on May 18, 2000. We also know, from the documents presented to the court by the Appellant, that the monies paid to him were directly deposited into the Bank on May 18, 2000 as well. And, for the sake of argument, let us assume that the Appellee’s served the Appellant’s employer prior to May 18, 2000.

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If we assume that the above information is accurate than, we would conclude that the amount of money directly deposited into the Appellant's bank account would have been his net pay less the 25% allowed for garnishment. Which means that the remaining monies in the bank account would be from the 75% left over after deducting for the garnishment. What we have would be something like the following:

Total Net Pay	Deducted for Garnishment	Total Direct Deposited
\$1,382.95	\$345.74	\$1,037.21

Disposable Earnings	Percentage of Garnishment	Percentage Deposited
100%	25%	75%

The total disposable earnings for this period would be \$1,382.95 (100%). Net pay is the same as "disposable earnings". The total possible amount for garnishment would be \$345.74 (25%), leaving a total deposited to the bank account of \$1,037.21(75%). Now, on the Writ of Garnishment, let us assume that the Appellee's stated that the monies being held in the account were "not from wages for personal service" and that the amount requested was, for argument purposes, \$6,000.00. Because the Bank believes that the request is for Non-exempt property they will hold, and remove from the account of the Appellant, \$1,008.21 for the garnishment and \$25.00 litigation fee, for a total of \$1,037.21 or the balance deposited in the account. What the Appellee's have received is a grand total of \$1,353.95 or roughly 97.2% of the disposable earnings of the Appellant. The remaining 1.8% went to fees that Garnishee's are permitted to charge their patrons for executing on a garnishment. This is exactly what happened in this situation, with some major differences.

First, the bank was served with defective documents causing the Appellee's to re-file their Writ three weeks later. Secondly, they filed Two Writs of Continuing Garnishment on the

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Appellant's employer one day after he was paid and received payment on one of them, but not until June 5, 2000. Thirdly, the amount taken and delivered to the Appellees included not only money from Callware Technologies, Inc., but other monies earned PRIOR to the issuance of the corrected Writ. And finally, the Appellees were fully aware of the fact that there was a limitation on the amount they could garnish. Armed with this knowledge and the knowledge that the money being deposited was coming from wages the Appellees not only took the Appellant's entire bank account, they took monies earned prior to the issuance of the any of their Writs. The total amount taken, less litigation fee, was \$1,008.22. In essence they took 100% of the earnings of the Appellant, not because it was proper, but because they "believed" they could.

Looking at this from a slightly different position one could argue that the money going into the bank account is no longer wages, but simply a bank account. Again, if we look at the documents included with the Writ of Garnishment that is supposed to be sent to the Defendant, we find a document entitled, "Request for Hearing". This document contains a list of reasons that a Defendant can have for objecting to a seizure of his or her funds in a bank account. What is interesting about this document is that it does not look at the account from the perspective of a bank account but instead looks at where the funds came from. It states that one of the reasons for claiming an exemption is that the funds in the account seized are "Wages or other earnings from personal services" (Exhibit "E"). It is clear from this document that the source of the funds is more important than their current location. Other jurisdictions may allow for the seizure of bank accounts but they too look at the source as well as the owners of the funds. In addition, many courts do not consider the total removal of all of a persons funds especially if that would leave the debtors family in a position where they would be unable to meet their "minimal subsistence" levels (*Perkins v. Perkins*; 888 P.2d 1033 (Okl. App. 1994).

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In presenting their position they cited no particular statute that gave them the authority to engage in this behavior, nor did they offer any evidence to support their position that the money did not come from wages. Since the Appellees failed to present any evidence to support their position and because of doubt on the part of the Judge it would have been more appropriate for the Court to issue an order in favor to the Appellant (*In re Anderson*; 932 P.2d 1110, (Okl. 1996)). They simple believed they could do so they did. A belief can not be used to support a legal action.

#### Point #4

*Did the court err in requiring the Appellant, who was acting Pro Se, to strictly adhere to the rules, while allowing the Appellee's a greater deal of latitude, even though they were also appearing Pro Se?*

During the course of this case the Trial Court made it perfectly clear to the Appellant that he was expected to adhere to the same rules as opposing counsel. In the October 12, 1999 Transcript the Court went out of its way to thank the Appellant for following its directives (Transcript October 12, 1999; pg. 4; Line 17 & 18). The Appellees, even when represented by council did not follow the Courts directives. For example, the court instructed the Appellees to draft an order for the release of the funds. More specifically the Court said:

“So, draft up the – whatever papers are necessary.”

“You must have an order denying the objections to the garnishment and then that, with the previous garnishment, that the Key Bank is holding, then they will release the funds to you.” (Transcripts; June 28, 2000; p. 9; line 17, 18, 20 to 23)

Until the Appellant obtained a copy of the order used by the Appellees to have the bank release the money the only copy available was with the bank. The order, a copy of which is attached

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and marked Exhibit "G", states that the Appellees called the hearing and that the Appellant did not file any objections. Since the Appellees seemed only to be interested in getting the money that day (Transcript June 28, 2000; pgs. 9 and 10) and any order drafted would have to be served on the Appellant, and the Appellant would have 10 days to object to that order, one can conclude that the entire purpose of the order used was to circumvent this procedure. This conclusion is supported by the fact that on July 18, 2000 current Counsel for the Appellees did file an appropriate order with the Court, which was later signed on August 8, 2000 (Exhibit "H"). The Appellant believes, the sole purpose of this order was to cover-up the June 28, 2000 order used to obtain the funds held by Key Bank.

An examination of the Record will show that this is a pattern of behavior exhibited by the Appellees whether they had counsel or not. For example, in the October 12, 1999 hearing the Court Directed opposing counsel for the Appellees to provide a costing break down to the Appellants. The Appellants never received this information. When the Judgment was issued, a copy of that was never provided to the Appellants. The Appellees have never served upon the Appellants any of the Writs of Garnishments. The order used to release the bank funds was never served on the Appellants nor was the order signed by the Judge on August 8, 2000. The only time the Appellees serve the Appellants with any documents is when they want them to appear in Court, otherwise nothing. Appellants believe that such behavior is being done to unjustly enrich themselves, the Appellees, and to deliberately deny the Appellants what they are rightfully entitled to, i.e. the right to appeal, the right to object, and the right to challenge.

### **Conclusions**

It has been shown that the documents presented to the Court clearly showed that the monies being deposited into the Appellant's bank account was indeed coming from direct deposited payroll. The fact that the court clearly stated that the Appellant was correct in his interpretation of the law and that bank accounts composed entirely of wages would be exempt lends to the conclusion that the only issue we need examine is the sufficiency of the evidence. Also given the fact that the Appellee's present no contradictory evidence clearly shows that the question of sufficiency has been met. An individual's beliefs do not constitute legal basis for taking action.

Secondly, the Appellant believes that he has shown that the burden of proof the court required of him to establish his claim was in fact excessive, considering the type of action being reviewed. It appears that the Court required "proof beyond reasonable doubt". This, the Appellant, believes is excessive. In addition, the Appellant believes that he has shown that the Court also required of him a higher level of compliance to the rules than that expected of the Appellees.

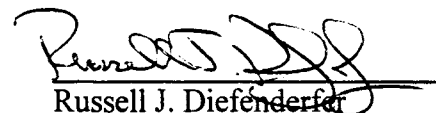
Lastly, the Appellant believes that he has successfully shown that the Appellees had violated his 5<sup>th</sup> Amendment rights. Not because they failed to serve him with notice prior to garnishment, but because they had failed to serve upon him, as required by the Utah Rules of Civil Procedure, a copy of the garnishments, a copy of the order which released his money to them, and other such papers as required by law or the court. The Appellant believes that this was a deliberate act in an effort to delay or deny the Appellant his right to appeal, his right to challenge any documents, and his right to dispute filings.

WHEREFORE, the Appellant believes that he has successfully challenged and disputed the Courts decision and has shown that all the monies going into the bank account were exempt. In addition he has shown that the actions of the Appellees was deliberate and intentional, thereby causing him harm. It is therefore the prayer of the Appellant that the court grant to him the following relief:

- (1) Return of the \$1, 008.22 seized by they Appellees and award to them by the Court, and;
- (2) Because the actions taken were in direct violation of UCA § 70C-7-103 and pursuant to UCA § 70C-7-201 the Appellant respectfully requests that the Court penalize the Appellees by assessing them 10 times the excessive monies seized or the sum of \$10,082.20, and;
- (3) Pursuant to 15 U.S.C. 1692k, real damages in the amount of \$225.00 bank fees for overdrafts, \$200.00 for returned check, \$200.00 lost security deposit on credit card account, \$600.00 lost credit card used for business travel, \$520.68 overdrafts, or the sum total of \$1,745.68, and;
- (4) Punitive damages in the amount of \$500,000.00, and;
- (5) Costs for this appeal.

Dated this 3<sup>rd</sup> day of November, 2000.

Respectfully submitted by:



Russell J. Diefenderfer  
Appearing Pro Se  
P.O. Box 520714  
Salt Lake City, UT. 84152  
Telephone: (801) 484-7039

# APPENDIX

FT MT TION OD CODE DDA ACCT RR CODE TN POST EFFECTIVE CHECK NUMBER TRAN AMOUNT D/C BALANCE

STFD 1 THE TRANSACTION STMT FORMAT MS 50852 ACTION COMPLETE

CO [REDACTED] OP [REDACTED] C0ID [REDACTED] SHORT NAME DIFENDERFER RUSSELL J/PA

SEARCH FROM 100/04/21 THRU 100/04/26

PAGE 1

TRACE ID DESCRIPTION

\* 04/21 T-PDR1000421223549 POS MAC HARMONS-BRICKY SALT LAKE UT

\* 04/21 D 002100042176658111 CHECK # 2260

\* 04/24 T-PDR1000424121353 POS MAC SMITH'S #40023 SALT LAKE UT

\* 04/24 D-XXLNW 001154651380 BLOCKBUSTER VIDEO #490 SALT LK CITY UT

\* 04/24 D-ACHNW 001154179868 DIRECT WITHDRAWAL, LINCOLN BENEFIT CK4INSPYMT

\* 04/24 D-ACHNW 001154179869 DIRECT WITHDRAWAL, LINCOLN BENEFIT CK4INSPYMT

\* 04/25 D-XXLNW 001165029632 PETSMART INC.0172 SALT LAKE CIT UT

\* 04/25 D 002100042578316363 CHECK # 2254

4-BOT 5-SWAP 6-IND 7-SB 8-SF 9-NXT 10-ASUM 11-STSM

FT MT TION OD CODE DDA ACCT RR CODE TN POST EFFECTIVE CHECK NUMBER TRAN AMOUNT D/C BALANCE

STFD 1 THE TRANSACTION STMT FORMAT 00/06/15 12.20.22 MS 50852 ACTION COMPLETE

CO [REDACTED] OP [REDACTED] C0ID [REDACTED] SHORT NAME DIFENDERFER RUSSELL J/PA

SEARCH FROM 100/04/21 THRU 100/05/04

PAGE 2

TRACE ID DESCRIPTION

\* 04/26 D-XXLNW 001175420587 VIRTU VITES THORNTON CO

\* 04/26 D 002100042676208880 CHECK # 2261

\* 04/27 T-PDR1000427223241 POS MAC SMITH'S #40023 SALT LAKE UT

\* 04/27 D-XXLNW 001185749043 SNEETCH ENTERPRISES WESTMINSTER CA

\* 04/28 T-PDR1000428215532 POS MAC BLOCKBUSTE SALT LK CI UT

\* 05/01 D-XXLNW 001226184281 ALLDIRECT.COM SC

\* 05/02 T-PDR1000502112552 POS MAC SMITH'S #40083 SALT LAKE UT

\* 05/03 D-XXLNW 001247492138 ALLDIRECT.COM SC

4-BOT 5-SWAP 6-IND 7-SB 8-SF 9-NXT 10-ASUM 11-STSM

## EXHIBIT "A"

COPY

TMT CD [REDACTED] MS 50852 ACTION [REDACTED]

CTION COID [REDACTED]

RDD CODE DDA ACCT [REDACTED] SHORT NAME DIFENDERFER RUSSELL J/PA

URR CODE PAGE 3 SEARCH FROM 100/04/21 THRU 100/05/08

ICTN POST EFFECTIVE CHECK NUMBER TRAN AMOUNT D/C BALANCE

TRACE ID DESCRIPTION

\* 05/04 1,519.71 L  
C-ACHNW 001257557699 DIRECT DEPOSIT, CALLWARE TECHNOLPAYROLE

\* 05/05  
T-PDR1000505104745 POS MAC SMITH'S #40083 SALT LAKE UT

\* 05/05  
T-STR1000505222207 POS STR BLOCKBUSTE SALT LK CI UT

\* 05/05  
D-ACHNW 001257685485 DIRECT WITHDRAWAL, INS PAYMNT

\* 05/08  
T-UTL1000508120630 ATM KEY 2299 HIGHLAND DR SALT LAKE UT

\* 05/08  
T-PDR1000508125407 POS MAC SMITH'S #40023 SALT LAKE UT

\* 05/08  
D-XXLNW 001298337548 PRIME VITALITY POWAY CA

\* 05/08  
D-XXLNW 001298337546 IHERB LTD 6263563922 CA

PF: 4-BOT 5-SWAP 6-INQ 7-SB 8-SF 9-NXT 10-ASUM 11-STSM

THFT STMT CD [REDACTED] STFD 1 THE TRANSACTION STMT FORMAT 00/06/15 12.21.14

ACTION COID [REDACTED] MS 50852 ACTION COMPLETE

PROD CODE DDA ACCT [REDACTED] SHORT NAME DIFENDERFER RUSSELL J/PA

CURR CODE PAGE 4 SEARCH FROM 100/04/21 THRU 100/05/15

ACTN POST EFFECTIVE CHECK NUMBER TRAN AMOUNT D/C BALANCE

TRACE ID DESCRIPTION

\* 05/08 2259  
D 002100050876307481 CHECK # 2259

\* 05/09 2266  
D 002100050976639536 CHECK # 2266

\* 05/10 2264  
D 002100051076738117 CHECK # 2264

\* 05/10 2262  
D 002100051076735936 CHECK # 2262

\* 05/10 2263  
D 002100051076692169 CHECK # 2263

\* 05/11  
D-XXLNW 001320600969 VITAMIN LIFE

\* 05/11 2265  
D 002100051176803493 CHECK # 2265

\* 05/12  
T-PDR1000512230528 POS MAC HARMONS-BRICKY SALT LAKE UT

PF: 4-BOT 5-SWAP 6-INQ 7-SB 8-SF 9-NXT 10-ASUM 11-STSM

CTION [REDACTED] COID [REDACTED]  
 ROD CODE DDA ACCT [REDACTED] SHORT NAME DIEFENDERFER RUSSELL J/PA  
 CURR CODE PAGE 5 SEARCH FROM 100/04/21 THRU 100/05/13  
 ACTN POST EFFECTIVE CHECK NUMBER TRAN AMOUNT D/C BALANCE  
 TRACE ID DESCRIPTION  
 \* 05/15 [REDACTED] D [REDACTED]  
 T-UTL1000515113211 ATM KEY 2299 HIGHLAND DR SALT LAKE UT  
 \* 05/15 [REDACTED] D [REDACTED]  
 T-POR1000515115801 POS MAC SMITH'S #40023 SALT LAKE UT  
 \* 05/16 [REDACTED] D [REDACTED]  
 T-POR1000515111941 POS MAC SMITH'S #40133 SALT LAKE UT  
 \* 05/16 [REDACTED] D [REDACTED]  
 D-XXLNW 001371776925 OFFICE MAX 00004507 MURRAY UT  
 \* 05/17 [REDACTED] D [REDACTED]  
 I-GEN100051700004300 ENCLOSE ITEMS WITH STATEMENT CHARGE  
 \* 05/17 [REDACTED] D [REDACTED]  
 I-GEN100051700004301 MAINTENANCE SERVICE CHARGE  
 05/18 [REDACTED] 1,382.95 C [REDACTED]  
 C-ACHNW 001392205805 DIRECT DEPOSIT, CALLWARE TECHNOLPAYROLL  
 05/18 [REDACTED] D [REDACTED]  
 T-UTL1000518112737 ATM KEY 5101 S STATE ST DU MURRAY UT  
 PF: 4-BOT 5-SWAP 6-ING 7-SB 8-SF 9-NXT 10-ASUM 11-STSM

THFT STMT CO 4451 CP STFD 1 THF TRANSACTION STMT FORMAT 00/06/15 12.21.48  
 ACTION COID 4451 MS 50852 ACTION COMPLETE  
 PROD CODE DDA ACCT 651737561 SHORT NAME DIEFENDERFER RUSSELL J/PA  
 CURR CODE PAGE 6 SEARCH FROM 100/04/21 THRU 100/05/23  
 ACTN POST EFFECTIVE CHECK NUMBER TRAN AMOUNT D/C BALANCE  
 TRACE ID DESCRIPTION  
 05/18 [REDACTED] D [REDACTED]  
 T-STR1000518222909 POS STR BLOCKBUSTE SALT LK CI UT  
 05/19 [REDACTED] D [REDACTED]  
 T-POR1000519201221 POS MAC SMITH'S #40023 SALT LAKE UT  
 05/22 [REDACTED] D [REDACTED]  
 T-STR1000522121818 POS STR KMART SALT LAKE UT  
 05/22 [REDACTED] D [REDACTED]  
 D-XXLNW 001433213994 SHOPKO 110 SALT LAKE CIT UT  
 05/22 [REDACTED] D [REDACTED]  
 D-XXLNW 001433213992 MAIL BOXES ETC. #1986 SALT LAKE CI UT  
 05/22 [REDACTED] D [REDACTED]  
 D 002100052276071936 CHECK # 2270  
 05/22 [REDACTED] D [REDACTED]  
 D 002100052276068253 CHECK # 2271  
 05/23 [REDACTED] D [REDACTED]  
 T-POR1000523105157 POS MAC REAMS FOOD STO SALT LAKE UT  
 PF: 4-BOT 5-SWAP 6-ING 7-SB 8-SF 9-NXT 10-ASUM 11-STSM

COPY

ACTION COID [REDACTED] SHORT NAME DIFENDERFER RUSSELL [REDACTED]  
 JD CODE DDA ACCT [REDACTED] PAGE 7 SEARCH FROM 100/04/21 THRU 100/05/30  
 TR CODE [REDACTED]  
 TN POST EFFECTIVE CHECK NUMBER TRAN AMOUNT D/C BALANCE  
 TRACE ID DESCRIPTION  
 05/23 2269 [REDACTED] D [REDACTED]  
 D 002100052376255283 CHECK # 2269 [REDACTED] D [REDACTED]  
 05/23 2267 [REDACTED] D [REDACTED]  
 D 002100052376293148 CHECK # 2267 [REDACTED] D [REDACTED]  
 05/24 2268 [REDACTED] D [REDACTED]  
 D 002100052476394639 CHECK # 2268 [REDACTED] D [REDACTED]  
 05/24 2272 [REDACTED] D [REDACTED]  
 D 002100052476394821 CHECK # 2272 [REDACTED] D [REDACTED]  
 05/24 2273 [REDACTED] D [REDACTED]  
 D 002100052476385565 CHECK # 2273 [REDACTED] D [REDACTED]  
 05/24 [REDACTED] D [REDACTED]  
 D-ACHNW 001453589371 DIRECT WITHDRAWAL, LINCOLN BENEFIT CK4INSPYMT [REDACTED] D [REDACTED]  
 05/24 [REDACTED] D [REDACTED]  
 D-ACHNW 001453589372 DIRECT WITHDRAWAL, LINCOLN BENEFIT CK4INSPYMT [REDACTED] D [REDACTED]  
 05/25 2275 [REDACTED] D [REDACTED]  
 D 002100052576480684 CHECK # 2275 [REDACTED]  
 PF: 4-BOT 5-SWAP 6-ING 7-SB 8-SF 9-NXT 10-ASUM 11-STEM

HFT STFD 1 THE TRANSACTION STMT FORMAT 00/06/15 12.22.25  
 JMT CO [REDACTED] MS 50852 ACTION COMPLETE  
 ACTION COID [REDACTED]  
 ROD CODE DDA ACCT [REDACTED] SHORT NAME DIFENDERFER RUSSELL J/PA  
 TR CODE [REDACTED] PAGE 8 SEARCH FROM 100/04/21 THRU 100/06/05  
 VTN POST EFFECTIVE CHECK NUMBER TRAN AMOUNT D/C BALANCE  
 TRACE ID DESCRIPTION  
 05/30 [REDACTED] C [REDACTED]  
 C-ACHNW 001474364978 DIRECT DEPOSIT, [REDACTED] PAYROLL [REDACTED]  
 05/30 [REDACTED] D [REDACTED]  
 T-PDR1000530112406 PDS MAC SMITH'S #40023 SALT LAKE UT [REDACTED]  
 05/30 [REDACTED] D [REDACTED]  
 T-PDR1000530115049 PDS MAC HARMONS-BRICKY SALT LAKE UT [REDACTED]  
 05/30 2276 [REDACTED] D [REDACTED]  
 D 002100053076020835 CHECK # 2276 [REDACTED] D [REDACTED]  
 05/31 [REDACTED] D [REDACTED]  
 T-UTL1000531104837 ATM KEY 30 S MAIN SALT LAKE UT [REDACTED]  
 06/01 [REDACTED] D [REDACTED]  
 T-STR1000601192426 POS STR BLOCKBUSTE SALT LK CI UT [REDACTED]  
 06/01 2277 [REDACTED] D [REDACTED]  
 D 002100060176292830 CHECK # 2277 [REDACTED] D [REDACTED]  
 06/05 [REDACTED] D [REDACTED]  
 T-PDR1000605114155 POS MAC SMITH'S #40023 SALT LAKE UT [REDACTED]  
 PF: 4-BOT 5-SWAP 6-ING 7-SB 8-SF 9-NXT 10-ASUM 11-STEM

COPY



ACTION COID [REDACTED]  
 PROD CODE DDA ACCT [REDACTED] SHORT NAME DIFENDERFER RUSSELL J/PA  
 JRR CODE PAGE 9 SEARCH FROM 100/04/21 THRU 100/06/07  
 CTN POST EFFECTIVE CHECK NUMBER TRAN AMOUNT D/C BALANCE  
 TRACE ID DESCRIPTION  
 06/05 [REDACTED] D [REDACTED]  
 T-PDR1000605150524 POS MAC HARMONS-BRICKY SALT LAKE UT  
 06/05 [REDACTED] D [REDACTED]  
 T-PDR1000605151210 POS MAC WAL-MART MIDVALE UT  
 06/05 [REDACTED] D [REDACTED]  
 D-XXLW 001577148719 WINGATE INN [REDACTED]  
 06/05 [REDACTED] D [REDACTED]  
 D-XXLW 001577148717 MEDIA PLAY 08181224 MIDVALE UT  
 06/05 [REDACTED] D [REDACTED]  
 D-XXLW 001576751701 PETSMART INC. 0172 SALT LAKE CIT UT  
 06/06 2283 [REDACTED] D [REDACTED]  
 D 002100060676776176 CHECK # 2283 [REDACTED]  
 06/06 2280 [REDACTED] D [REDACTED]  
 D 002100060676791704 CHECK # 2280 [REDACTED]  
 06/07 740607 1,008.22 D 25.00  
 ALLENCHP UTAH GARN VS DR. MCFADDEN  
 PF: 4-BOT 5-SWAP 6-INFO 7-SB 8-SF 9-NXT 10-ASUM 11-STSM

HFT STMT CO [REDACTED] STFD 1 THE TRANSACTION STMT FORMAT 00/06/15 12.22.58  
 ACTION COID [REDACTED] MS 50852 ACTION COMPLETE  
 PROD CODE DDA ACCT [REDACTED] SHORT NAME DIFENDERFER RUSSELL J/PA  
 JRR CODE PAGE 10 SEARCH FROM 100/04/21 THRU 100/06/08  
 CTN POST EFFECTIVE CHECK NUMBER TRAN AMOUNT D/C BALANCE  
 TRACE ID DESCRIPTION Balance after  
 06/07 25.00 D 1st 1.00  
 ALLENCHP LITIGATION FEE Garnishment  
 06/07 15.94 D 15.94-  
 D-XXLW 001577859574 COMPUSA #264 SALT LAKE CTY UT  
 06/08 06/07/00 2278 75.00 D 90.94-  
 D 002100060776850908 CHECK # 2278  
 06/08 38.32 D 129.26-  
 T-PDR1000608205823 POS MAC HARMONS-BRICKY SALT LAKE UT  
 [REDACTED]  
 06/08 2279 65.60 D 244.86-  
 D 002100060876138808 CHECK # 2279  
 06/08 2284 11.26 D 256.12-  
 D 002100060876143233 CHECK # 2284  
 PF: 4-BOT 5-SWAP 6-INFO 7-SB 8-SF 9-NXT 10-ASUM 11-STSM Bank Fees

CTION  
 ROD CODE DDA ACCT SHORT NAME DIFENDERFER RUSSELL J/PA  
 JRR CODE PAGE 11 SEARCH FROM 100/04/21 THRU 100/06/14  
 CTN POST EFFECTIVE CHECK NUMBER TRAN AMOUNT D/C BALANCE  
 TRACE ID DESCRIPTION

[REDACTED]

06/09 2281 300.00 D 631.12

D-008100040821141148 CHECK # 2281

[REDACTED]

06/12 14.56 D 870.68

D-XXLNW 001648587852 FEDEX SHP 05/30/00 AB# 821-739809969 TN

[REDACTED]

06/14 C [REDACTED]

C-ACHNW 001659087165 DIRECT DEPOSIT, [REDACTED] PAYROLL.

F: 4-BOT 5-SWAP 6-IND 7-SB 8-SF 9-NXT 10-ASUM 11-STSM

COPY

FILED  
DISTRICT COURT  
District Court, State of Utah  
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

14M 11/15/04  
CONSTABLE REITZ SALT LAKE COUNTY, UTAH  
DEPUTY  
255-5408

Dr. Gary J. McFadden  
Kathleen McFadden  
vs.  
Russell J. Diefenderfer

Plaintiff

Defendant

Julian B. Hanker  
WRIT OF GARNISHMENT  
(not for Garnishment of  
earnings for personal service)

Case No. 990902659

Judge: Glen Iwasaki

THE STATE OF UTAH TO:

Key Bank 505 Main, SLC, UT  
Garnishee.

You are hereby ordered and commanded by the Court to hold, until further order of this Court, and not pay to Defendant all money and other personal property of the Defendant(s) in your possession or under your control, whether now due or hereafter to become due, which are not exempt from execution, up to the amount remaining due on the judgment or order plus court approved costs in this matter (or in the case of a prejudgment writ, the amount claimed to be due), being \$ \_\_\_\_\_

Not Filled in by  
Plaintiff

You are required to answer the attached questions called interrogatories, and file your answer with the Clerk of the Court within five business days of the date this Writ is served upon you. The address of the Clerk is 450 So. State, Salt Lake City, Utah 84111. You are also required to send a copy of your answers to the Plaintiff at the following address:

1664 E. Sunnyside Ave  
Salt Lake City, UT 84105-1635

If you fail to answer, the judgment creditor may ask the Court to make you pay the amount you should have withheld.

If you are indebted to or hold property or money belonging to the Defendant, you shall immediately mail by first class mail a copy of the Writ of Garnishment and your answer to the Interrogatories, the Notice of Garnishment and Exemptions and two (2) copies of the Request for Hearing to the Defendant and to anyone else who, according to your records, may have an ownership or other interest in the property or money at the last known address of the Defendant or such other persons shown on your records at the time of the service of this Writ. In lieu of mailings, you may hand-deliver a copy of these documents to the Defendant and other persons entitled to copies.

EXHIBIT "B"

COPY

# Third District Court, State of Utah

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

FILED  
DISTRICT COURT  
MAY 17 PM 5:08

DR. GARY J. McFADDEN <sup>Plaintiff</sup>  
KATHLEEN McFADDEN

APPLICATION FOR GARNISHMENT  
(Post Judgment)

~~RUSSELL~~ J.  
RUSSELL A. DIEFENDERFER <sup>Defendant</sup>  
SSN 208-42-0479  
KEY BANK <sup>Garnishee</sup>  
CK. ACCT# 651737561

Case No. 990902659

Judge: GLEN IWASAKI

The Plaintiff hereby applies for a writ of garnishment based upon the following:

1. That a judgment has been entered in the above-entitled action requiring the payment of money.

The remaining amount due on the judgment is:

6,100.01 + interest of 6.5136%  
\$398.65 + fees of \$25  
\$6,343.66

2. That the person sought to be charged as garnishee is: KEY BANK

- 3 ( check appropriate box(es)

☐ That said property consists in whole of earnings from personal services (wages).

☐ That said property consists in part of earnings from personal services.

☒ That said property does not consist of earnings from personal services.

☐ The writ sought is a *Continuing Writ of Garnishment* for earnings from personal services.

Dated this 17 day of May

Gary J. McFadden  
Gary J. McFadden  
Plaintiff or Attorney for Plaintiff  
Kathleen McFadden  
Kathleen McFadden

WRIT OF GARNISHMENT (Non-Wage)

Page 2 of 2

Case No: <sup>9.</sup> 990902/659  
Defendant: Russell Diefenderfer  
Garnishee: KeyBank

YOU MAY DELIVER to the officer serving this Writ the portion of Defendant(s)' earnings or income to be held as shown by your answers. You will then be relieved from further liability in this case unless your answers are successfully disputed. You may, in the alternative, hold the money until further order of the Court.

If you do not receive an order from the Court regarding this Writ and the property you held pursuant to this Writ within sixty (60) days after filing your answers to the attached Interrogatories, this Writ shall expire and you may ignore it.

DATED this 17 day of May 2020

CLERK OF THE COURT

By

DEPUTY CLERK  
DISTRICT COURT

FOR PREJUDGMENT WRITS ONLY:

Date & Time of Expiration of Writ:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

COPY

INTERROGATORIES TO GARNISHEE

(Not for Earnings for Personal Services)

Page 1 of 3

\* Order Invalid  
No Amount Stated

Case No: 990902659

Defendant: Russell J. Diefenderfer

Garnishee: Key Bank

(Give your answers in the spaces provided and attach additional sheets if necessary.)

1. Are you indebted to the Defendant(s) either in property or money?

ANSWER: \_\_\_\_\_

2. What is the nature of the indebtedness?

ANSWER: \_\_\_\_\_

3. What is the total amount of the indebtedness?

ANSWER: \_\_\_\_\_

4. Is the indebtedness now due?

ANSWER: \_\_\_\_\_

5. If not, when is it to become due?

ANSWER: \_\_\_\_\_

6. Have you in your possession, in your charge or under your control any property or money in which Defendant(s) has/have an interest other than as set forth in your answers above?

ANSWER: \_\_\_\_\_

7. If so, identify or describe such property or money and value of Defendant's interest in it.

Identification or Description

Amount or Value of Defendant's Interest

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Do you know of any debts owing or which may be owing from any other person to Defendant(s), whether due or not, or of any property of Defendant(s) or in which Defendant(s) has/have an interest in any other person's possession or control?

ANSWER: \_\_\_\_\_

(RETURN ORIGINAL TO COURT)

SP-AE0355  
COPY


INTERROGATORIES TO GARNISHEE - CONTINUED

(Not for Earnings for Personal Services)

Page 3 of 3

Case No: 990902659  
Defendant: Russell G. Dickenderfe  
Garnishee: Key Bank

Person Address Date mailed or delivered

KeyBank National Association Special Court Claims Dept. (01-00-0412) 2025 Ontario Ave. - 4th Floor Cleveland, OH 44115	 Signature of Garnishee or Authorized Agent Signature on Behalf of Garnishee	KeyBank National Association Special Court Claims Department MAY 22 2000 Leah A. Smalley-Holstein 1877-3708177
---	---	---

SUBSCRIBED AND SWORN to before me this 22 day of MAY 20 00.

NOTARY PUBLIC

Residing at: Dennis E. Duck, Jr.

My Commission Expires:

FEB 22, 2005

DENNIS E. DUCK, JR.  
Notary Public, State of Ohio  
Recorded in Cuyahoga County  
My Commission Expires Feb. 22, 2005

(RETURN ORIGINAL TO COURT)

COPY

Plaintiff's Address:

1664 E. Sunnyside Ave.  
Salt Lake City, UT 84105-1635

Daytime Phone 801-582-6711

Pager 249-4598 (Gm)

Pager 339-6428 (Kw)

780990

Jul Ann B. Hanko

Third District Court, State of Utah

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

19 MAY 00  
DATE MAY 14 147 PM  
PCN 889130 SANDY PKW  
CONSTABLE BERT SAL LAKE COUNTY, UTAH  
BOBBY  
WAT BERTSON

DR GARY + KATHLEEN McFADDEN  
Plaintiff(s)

RUSSELL J. DIEFENDERFER  
Defendant(s)

Callware Technologies  
Garnishee  
8891 South Sandy Parkway  
Address and Phone of Garnishee  
Salt Lake City, UT 84070  
(801) 486-9922  
THE STATE OF UTAH TO GARNISHEE:

WRIT OF CONTINUING  
GARNISHMENT

Case No. 990902659

Judge: GLEN IWASAKI

(S. 450W)

You are hereby ordered by the Court to hold a portion of Defendant(s)' pension, wages or other income (not to exceed the outstanding amount owed on the judgment or order and court approved costs in this matter, totalling \$ 6396.33 due at the next payday and continuing at each payday thereafter for a period of 120 days from the date this Writ was served upon you or, in the case of multiple garnishments, from the date this garnishment becomes effective, as calculated pursuant to the attached questions, which are called Interrogatories or the attached *Affidavit of Garnishee as to Continuing Garnishment*. To determine the income available for garnishment at the next (first) payday, you are required to answer the attached Interrogatories and file your answer (*original copy*) with the Clerk of the Court within five (5) business days of the date this Writ is served upon you or, in the case of multiple garnishments, within five (5) business days after this Writ becomes effective. For each subsequent payday thereafter until the termination of this Writ, you are required to complete the attached *Affidavit of Garnishee as to Continuing Garnishment* and file said Affidavit with the Clerk of the Court within five (5) business days after such payday. Before using the attached Affidavit of Garnishee as to Continuing Garnishment, you should make enough copies to be used for all subsequent paydays while this Writ of Continuing Garnishment is in effect. The address of the Clerk is: Third District Court, 450 So. State, P.O. Box 1860, Salt Lake City, Utah 84111. You are also required to send a copy of your initial Interrogatory answers and subsequent Affidavits to the Plaintiff at the address as shown above.

(Continue to Reverse Side)

COPY



**District Court, State of Utah**  
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

DR. GARY McLEODEN Plaintiff(s)  
KATHLEEN McLEODEN

RUSSELL J. DILFENDERFER Defendant(s)  
PAULA DILFENDERFER (spouse)

CALLWARE TECHNOLOGIES Garnishee  
8891 South Sandy Parkway Defendant  
Salt Lake City, UT 84070 (450 W.)  
(801) 486-9922

TO THE GARNISHEE DEFENDANT

**GARNISHEE  
ORDER TO SHOW CAUSE**

Case No. 990902659

Iwasaki

It appearing from the record in the above entitled matter that a Writ of Garnishment was issued out of this Court requiring the garnishee defendant to answer as to the employment, earnings, or assets of the defendant, and although said Writ was served upon the garnishee defendant, said garnishee defendant has failed to answer or otherwise respond to said Writ as required.

It is therefore ORDERED, that the garnishee defendant appear before a Judge of the Small Claims Court to show cause why the Judgment of said garnishee defendant should not be entered.

Date: \_\_\_\_\_, 19\_\_\_\_ Time: \_\_\_\_\_

Place: SCOTT M. MATHESON COURTHOUSE  
450 South State, Salt Lake City, Utah 84111

Dated: \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
District Court Judge

Attest Clerk of the District Court

By \_\_\_\_\_  
Deputy Clerk

COPY

Third District Court, State of Utah  
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

FILED DISTRICT COURT  
Third Judicial District  
MAY 17 2000

DR. GARY + KATHLEEN McFADDEN

Plaintiff

vs

RUSSELL J. DIEFENDERFER

SSN: 208-42-0479

Defendant

CALLWARE TECHNOLOGIES

Garnishee

APPLICATION FOR GARNISHMENT  
(Post Judgment)

Case No. 990902659

Judge: GLEN IWASAKI

The Plaintiff hereby applies for a writ of garnishment based upon the following:

1. That a judgment has been entered in the above-entitled action requiring the payment of money.

The remaining amount due on the judgment is: \$6,198.01 (including fees) +

\$6,396.66

2. That the person sought to be charged as garnishee is: callware technologies.

- 3 (check appropriate box(es))

[ ] That said property consists in whole of earnings from personal services (wages).

[ ] That said property consists in part of earnings from personal services.

[ ] That said property does not consist of earnings from personal services.

[X] The writ sought is a Continuing Writ of Garnishment for earnings from personal services.

Dated this 17th day of May 17, 2000

GARY McFADDEN

KATHLEEN McFADDEN

Plaintiff or Attorney for Plaintiff

Kathleen McFadden

COPY

RUSSELL J. DIEFENDERFER

I, DALE HITESMAN

do first duly sworn on oath and say: I am a duly appointed Deputy Constable, SALT LAKE County, State of UTAH, a citizen of the United States over the age of 21 years at the time of service herein, and not a part of or interested in the within action.

I received the within and hereto annexed,

WRIT OF GARNISHMENT  
(CONTINUING)

May 18, 2000, and served the same upon  
CALLWARE TECHNOLOGIES

within named Garnishee by personally delivering said article(s) and leaving with

BOBBI WARBURTON (EMPLOYEE)  
fully authorized employee of said Garnishee at  
8891 S SANDY PARKWAY, SALT LAKE CITY

Further certify that at the time of service of the said article(s), I endorsed the date and place of service and added my name and official title thereto. I also left the Garnishee Fee with the person served.

on May 19, 2000

  
Deputy SL 817

ROBERT J. "BOB" REITZ, CONSTABLE, SALT LAKE County  
7304 SOUTH 300 WEST SUITE 203, MIDVALE, UTAH 84047, 255-5468

POSTAGE AND HANDLING:	1.00
MILEAGE CHARGE:	14.00
SERVICE CHARGES:	6.00
TOTAL CHARGES:	\$21.00

NOTES

COPY

MAY 15 2000

Plaintiff's Address:

1664 E. Sunnyside Ave  
Salt Lake City, UT 84103-1635  
Daytime Phone (801) 582-1671

Page 249-4598 (Gm)  
Page 339-6428 (Kw)  
SALT LAKE DEPARTMENT 780991

FILED  
DATE 5/15/00 TIME 1:45 PM  
BY 8891 SO Sma/As  
UPON 135015 War/Bart  
CONSTABLE RICK SALT LAKE COUNTY, UTAH  
RECEIVED

Third District Court, State of Utah  
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

DR. GARY + KATHLEEN McFADDEN  
Plaintiff(s)

RUSSELL J. DIEFFENDERFER  
Defendant(s)

Callware Technologies  
Garnishee  
8891 South Sandy Parkway  
Address and Phone of Garnishee  
Salt Lake City, UT 84070  
(801) 486-9922

WRIT OF CONTINUING GARNISHMENT BOBBY WARBARTON

Case No. 998900496

Judge: ROBIN W. REESE

THE STATE OF UTAH TO GARNISHEE:

You are hereby ordered by the Court to hold a portion of Defendant(s)' pension, wages or other income (not to exceed the outstanding amount owed on the judgment or order and court approved costs in this matter, totalling \$5,433.35) due at the next payday and continuing at each payday thereafter for a period of 120 days from the date this Writ was served upon you or, in the case of multiple garnishments, from the date this garnishment becomes effective, as calculated pursuant to the attached questions, which are called Interrogatories or the attached Affidavit of Garnishee as to Continuing Garnishment. To determine the income available for garnishment at the next (first) payday, you are required to answer the attached Interrogatories and file your answer (original copy) with the Clerk of the Court within five (5) business days of the date this Writ is served upon you or, in the case of multiple garnishments, within five (5) business days after this Writ becomes effective. For each subsequent payday thereafter until the termination of this Writ, you are required to complete the attached Affidavit of Garnishee as to Continuing Garnishment and file said Affidavit with the Clerk of the Court within five (5) business days after such payday. Before using the attached Affidavit of Garnishee as to Continuing Garnishment, you should make enough copies to be used for all subsequent paydays while this Writ of Continuing Garnishment is in effect. The address of the Clerk is: Third District Court, 450 So. State, P.O. Box 1860, Salt Lake City, Utah 84111. You are also required to send a copy of your initial Interrogatory answers and subsequent Affidavits to the Plaintiff at the address as shown above.

(Continue to Reverse Side)

Third District Court, State of Utah  
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

THIRD DISTRICT COURT  
Third Judicial District  
May 17 2000  
SALT LAKE COUNTY

GARY + KATHLEEN MCFADDEN  
Plaintiff

vs SSN: 208-42-0479  
USSELL J. DIEFENDERFER  
AULA DIEFENDERFER (wife)  
Defendants

CALLWARE TECHNOLOGIES  
Garnishee

APPLICATION FOR GARNISHMENT  
(Post Judgment)

Case No. 998900496

Judge: ROBIN W. REESE

The Plaintiff hereby applies for a writ of garnishment based upon the following:

1. That a judgment has been entered in the above-entitled action requiring the payment of money. The remaining amount due on the judgment is: \$ 4982.75 + 405.60 interest + fees 45<sup>00</sup> = 5,433.35
2. That the person sought to be charged as garnishee is: CALLWARE TECHNOLOGIES
- 3 ( check appropriate box(es) )
  - ☐ That said property consists in whole of earnings from personal services (wages).
  - ☐ That said property consists in part of earnings from personal services.
  - ☐ That said property does not consist of earnings from personal services.
  - ☒ The writ sought is a Continuing Writ of Garnishment for earnings from personal services.

Dated this 17th (KW) day of May 17 2000

GARY J. MCFADDEN  
KATHLEEN MCFADDEN

DR. GARY J. MCFADDEN  
Plaintiff or Attorney for Plaintiff  
KATHLEEN MCFADDEN

COPY

# Third District Court, State of Utah

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

450 South State, P.O. Box 1860

Salt Lake City, Utah 84111-1860

**FILED DISTRICT COURT**  
Third Judicial District

FEB 25 1999

Name Dr. Gary McFadden & Kathleen McFadden, Plaintiff )

SALT LAKE COUNTY

~~SMALL CLAIMS~~

JUDGMENT

Street Address \_\_\_\_\_ )

City, State, Zip \_\_\_\_\_ Phone \_\_\_\_\_ )

vs

Name Russell J. Diefenderfer & Paula Diefenderfer, Defendant )

Case No. 998900496

Social Security Number \_\_\_\_\_ )

Street Address \_\_\_\_\_ )

City, State, Zip \_\_\_\_\_ Phone \_\_\_\_\_ )

Date of trial 2/25/99

Parties Appearing: ☒ Plaintiff ☐ Defendant

The Court Orders Judgement as Follows:

☒ For Plaintiff

\$ 4890.75 Principal

\$ 86.00 Court Costs

\$ 4976.75 Total Judgement, with interest as allowed by Section 15-1-4 UCA until paid.

This judgment is effective for 8 years.

☐ For Defendant

☐ No Cause of Action

☐ Dismissal with Prejudice (plaintiff may not refile case)

☐ Dismissal without Prejudice (plaintiff may refile case)

☐ Judgement on Counter Affidavit \$ \_\_\_\_\_

Dated 2/25, 19 99

Judge

By

STAMP USED AT DIRECTION OF JUDGE

I ☐ mailed ☒ delivered a copy of this Judgement to

☒ Plaintiff

☐ Defendant

Dated 2/25/99, 19 99

Return original to court

Signature of Plaintiff, Defendant or

Deputy Clerk

COPY



Third District Court, State of Utah

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

450 So State, P.O.Box, 1860, Salt Lake City, UT 84119

FILED DISTRICT COURT

THIRD JUDICIAL DISTRICT  
SALT LAKE COUNTY

Name of Plaintiff(s) Dr. Gary + Kathleen McFadden

Agent & Title Thomas F. Rogan, Attorney

Street Address 1664 E. Sunnyside Ave

City, State, Zip Salt Lake City

Day Phone 582-6711

UT 84105

339-6428 day pager

Name of Defendant(s) Russell G. + Paula Diefenderfer

Case No. 99 89000496

Social Security Number 208-42-8439 / 261-21-7887

Agent & Title

Street Address 4004 So. 1300 E.

City, State, Zip Salt Lake City, UT

Day Phone 264-9739

94124-1331

AFFIDAVIT

Plaintiff swears that the following is true:

(1) Defendant owes plaintiff \$ 4850.75 plus a filing fee and a service fee.

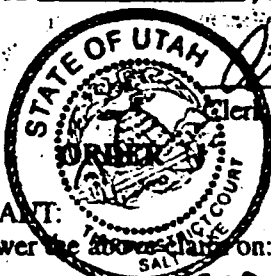
This debt arose on March 1997 through Feb 1999, for rental of 4 bedroom, 2 bath duplex

(2) Plaintiff has asked defendant to pay the debt, but it has not been paid.

(3) Defendant resides OR the claim arose within the jurisdiction of this court.

Plaintiff

SUBSCRIBED and SWORN to before me on 2-10, 19 99



Deputy or Notary

THE STATE OF UTAH TO THE DEFENDANT:

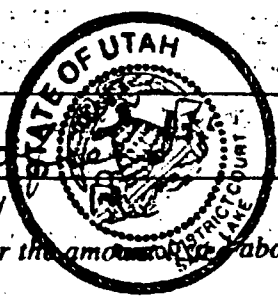
You are directed to appear at a trial and answer the above claim on:

Date: February 26, Time 5:30 P

Place: 450 So. State, Salt Lake City, UT.

Dated February 10, 19 99

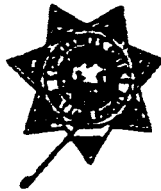
Clerk or Deputy



COPY

If you fail to appear at the trial, judgment may be entered against you for the amount of \$ 4850.75 above.

READ THE INSTRUCTIONS ON THE BACK OF THIS FORM.



JAY WEAVER, CONSTABLE  
SALT LAKE COUNTY  
PO Box 538  
Sandy, UT 84091  
Tel (801) 571-7211  
Fax (801) 571-1461

CONSTABLE'S RETURN OF SERVICE  
STATE OF UTAH  
SALT LAKE COUNTY

Received: 2-10-1999  
Client: MCF

Served Russell J. Diefenderfer  
and Paula Diefenderfer  
at 4004 South 1300 East

with: SUMMONS AND COMPLAINT  
AFFIDAVIT AND ORDER  
SUBPOENA

BENCH WARRANT  
ORDER TO SHOW CAUSE  
OTHER:

MOTION AND ORDER IN  
SUPPLEMENTAL PROCEEDINGS

THE UNDERSIGNED PERSON HEREBY CERTIFIES:

I am a duly qualified and acting Deputy Constable for the County of Salt Lake, State of Utah, or a citizen of the United States of America over the age of 18, and not a party to this action. I served the attached process in the manner indicated below, and I endorsed the date of service and my name and official title on each copy so served.

(X) Personally, by leaving and delivering a copy to the above named individual in person: Paula

( ) Substitute service at the resident's address listed above, by leaving and delivering a copy to

PAULA - for husband Russell  
who is a person of suitable age and discretion, and resides at the dwelling house or usual place of abode of the person so served.

DATE OF SERVICE 2-11 1999

SERVICE FEE : \$6.00

2ND SERVICE FEE : \$6.00

MILEAGE : \$14.00  
MILES 7  
TRIPS 2

2ND ADDRESS : \$

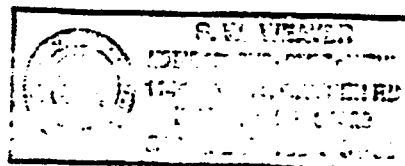
TOTAL : \$26.00

Fee charged per UCA 17-25a-4-2  
Fee not sworn to by server

T. Weaver  
DEPUTY CONSTABLE

Subscribed to me this day: 2/11 1999

S.W. Weaver  
NOTARY PUBLIC



\*\*\*\*\*

264-9734

COPY



# Third District Court, State of Utah

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

450 So State, P.O. Box 1860, Salt Lake City, UT 84110

PH 3:17

THIRD JUDICIAL DISTRICT  
SALT LAKE COUNTY

Name of Plaintiff(s)

Dr. Gary + Kathleen McFadden

Agent & Title

Thomas F. Rogan, Attorney

Street Address

1664 E. Sunnyside Ave

City, State, Zip

Salt Lake City

Day Phone 582-6711

UT 84105

339-6428 dig. pager

Name of Defendant(s)

Russell G. + Paula Diefenderfer

Case No.

9989000496

Social Security Number

208-42-8479/261-21-7887

Agent & Title

Street Address

4004 So. 1300 E.

City, State, Zip

Salt Lake City, UT

Day Phone 264-9734

94124-1331

SMALL CLAIMS  
AFFIDAVIT AND ORDER

## AFFIDAVIT

Plaintiff swears that the following is true:

(1) Defendant owes plaintiff \$ 4850.75 plus a filing fee and a service fee.

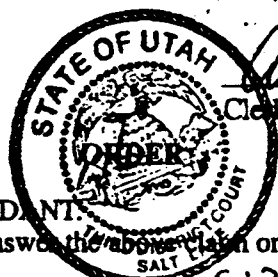
This debt arose on March 1997 through Feb. 1999, for: rental of  
4 bedroom, 2 bath duplex

(2) Plaintiff has asked defendant to pay the debt, but it has not been paid.

(3) Defendant resides OR the claim arose within the jurisdiction of this court.

Plaintiff

SUBSCRIBED and SWORN to before me on 2-10, 19 99



Clerk, Deputy or Notary

THE STATE OF UTAH TO THE DEFENDANT:

You are directed to appear at a trial and answer the above claim on:

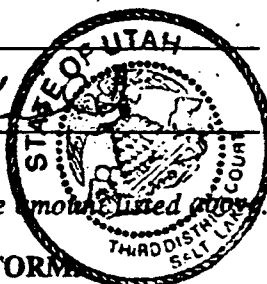
Date: February 25

Time 5:30 P

Place: 450 So. State, Salt Lake City, UT.

Dated February 10, 1999.

Clerk or Deputy



If you fail to appear at the trial, judgment may be entered against you for the amount listed above.

READ THE INSTRUCTIONS ON THE BACK OF THIS FORM

COPY

I, **DALE HITESMAN**

do first duly sworn on oath and say: I am a duly appointed Deputy Constable, SALT LAKE County, State of UTAH, a citizen of the United States over the age of 21 years at the time of service herein, and not a part of or interested in the within action.

received the within and hereto annexed,

**WRIT OF GARNISHMENT  
(CONTINUING)**

May 18, 2000, and served the same upon  
**CALLWARE TECHNOLOGIES**

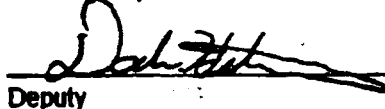
him named Garnishee by personally delivering said article(s) and leaving with

**BOBBI WARBURTON (EMPLOYEE)**

an authorized employee of said Garnishee at  
**8891 S SANDY PARKWAY, SALT LAKE CITY**

her certify that at the time of service of the said article(s), I endorsed the date and place of service and added my name and official title thereto. I also left the Garnishee Fee with the person served.

on May 19, 2000

  
Deputy

SL 817

**ROBERT J. "BOB" REITZ, CONSTABLE, SALT LAKE County**  
**7304 SOUTH 300 WEST SUITE 203, MIDVALE, UTAH 84047, 255-5468**

POSTAGE AND HANDLING:	1.00
MILEAGE CHARGE:	14.00
SERVICE CHARGES:	6.00
<b>TOTAL CHARGES:</b>	<b>\$21.00</b>

---

**NOTES****COPY**

# Third District Court, State of Utah

SALT LAKE COUNTY, SALT LAKE DEPARTMENT  
450 SOUTH STATE, P.O. BOX, SALT LAKE CITY, UTAH 84111

	)	
	)	
	)	
vs	)	REQUEST FOR HEARING
	)	
	)	Case No. _____
Defendant,	)	
	)	
	)	Judge: _____
Garnishee,	)	

1. Complete paragraph one if funds in your account were garnished.

☐ (a) I believe that the Writ of Garnishment was issued improperly. (Explain)

☐ (b) I believe that the Answers to Interrogatories are inaccurate. (Explain)

☐ (c) The funds in my account are exempt from garnishment because they are:

(Check applicable boxes)

☐ Social Security Benefits

☐ Supplemental Security Income (SSI)

☐ Veterans' Benefits

☐ Unemployment Benefits

☐ Worker's Compensation Benefits

☐ Public Assistance (Welfare)

☐ Alimony or Child's Support

☐ Pensions

☐ Wages or other earnings from personal services

☐ Owned by another person

☐ Partly owned by me

☐ Other (describe)

What is exempt from  
Garnishment

(Continue to Reverse Side)

**REQUEST FOR HEARING - CONTINUED**

☐ (d) Check one box:

☐ All funds in my account are exempt

☐ I believe the following amount of money in my account is exempt \$ \_\_\_\_\_  
(fill in amount of funds you believe to be exempt).

☐ (e) Check if applicable: I claim ownership of all or part of the money or property taken and I am not one of the persons against whom a judgment has been entered.

☐ (f) Check if applicable: I have attached copies of the documents that show that my money is exempt.

2. Complete paragraphs two if all or part of your wages were garnished.

☐ (a) I believe that the Writ of Garnishment was issued improperly. (Explain)

\_\_\_\_\_

☐ (b) I believe that the Answers to Interrogatories are inaccurate. (Explain)

\_\_\_\_\_

☐ (c) I believe that all or part of my wages are exempt from garnishment. (Explain)

\_\_\_\_\_

**I REQUEST THAT THIS MATTER BE SET FOR A HEARING. THE STATEMENTS MADE IN THIS REQUEST ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.**

Name \_\_\_\_\_

Address \_\_\_\_\_

Daytime Phone \_\_\_\_\_

## NOTICE OF GARNISHMENT AND EXEMPTIONS NOTICE

**IMPORTANT: YOUR MONEY MAY BE TAKEN TO PAY A CREDITOR. PLEASE READ THIS CAREFULLY.**

The attached Writ of Garnishment and Answers to Garnishee Interrogatories have been issued on request of a creditor (the Plaintiff) who sued you and won and got a judgment against you or a prejudgment Writ of Garnishment has been issued against you). This means that money held for you by the garnishee (such as your bank or employer) may be taken by the Plaintiff to pay a judgment against you. If you are not sued but own an account with someone who was sued, read this Notice too.

The law provides that certain money cannot be taken to pay judgments. Such money is said to be exempt. The following is a partial list of funds that are exempt:

1. Social Services Benefits
2. Supplemental Security Income Benefits (SSI)
3. Veterans' Benefits
4. Unemployment Benefits
5. Workers' Compensation Benefits
6. Public Assistance (Welfare)
7. Alimony or Child Support
8. Certain Pensions
9. Part of your wages (all of your wages if the Writ of Garnishment is issued prior to any judgment being rendered against you)
10. Property or money of a person who did not have a judgment entered against them.

There may be additional exemptions. There is no exemption solely because you are having difficulty paying your debts.

The above exemptions may not apply to judgments for alimony and child support.

The law also recognizes that if the money or property taken belongs to you but the judgment is not against you, your money should not be taken.

If you are a co-owner of the property taken, you should request a hearing to protect your share.

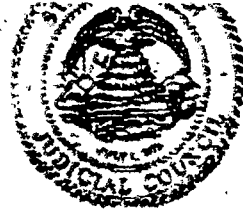
**IF THE MONEY IN AN ACCOUNT DOES NOT BELONG TO YOU, OR IF YOU ARE AWARE OF OTHER REASONS WHY THIS MONEY SHOULD NOT BE TAKEN, YOU MAY WANT TO CONSULT AN ATTORNEY.**

Because of the garnishment, your place of employment or your financial institution or other person was required to hold the amount of money claimed by the Plaintiff. This means that you may not now withdraw or get this money.

If you believe that the Writ of Garnishment was issued improperly, that the answers to Interrogatories are inaccurate, or you are entitled to an exemption, **DO THE FOLLOWING IMMEDIATELY.** You have a deadline of ten (10) days from the date the Plaintiff mailed or delivered this notice to you.

**EXHIBIT "F"**

COPY



**District Court, State of Utah**  
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

DR. GARY J. McFADDEN  
KATHLEEN McFADDEN Plaintiff  
vs.  
RUSSELL J. DIERENDERFER Defendant

**GARNISHEE ORDER**

Case No. 990902659

Judge: GLEN IWASAKI

KEY BANK Garnishee

This matter came on for hearing on the date of JUNE 28, 2000 on the motion of Plaintiff for an order against the garnishee. A Writ of Garnishment, directed to garnishee, has been duly issued and served upon the garnishee. Pursuant to the Writ of Garnishment, the garnishee has filed Answers to Interrogatories stating that at the time of the service of the Writ he had in his possession or under his control personal property belonging to and due Defendant and that garnishee was indebted to Defendant in the sum of \$ 1100.01. The Defendant has been notified of his right to a hearing and has not requested a hearing to determine exempt property.

IT IS ORDERED that garnishee pay the sum of \$ 1008.22, to: (check one) ☒ plaintiff, ☐ plaintiff's attorney, or ☐ other \_\_\_\_\_; and the garnishee is hereby relieved from any demands by the Defendant for money or property delivered by the garnishee pursuant to this order.

IT IS FURTHER ORDERED that the garnishee deliver said personal property to the Sheriff of Salt Lake County, State of Utah, who shall sell upon execution so much of it as may be necessary to satisfy Plaintiff's judgment against Defendant, with costs.

DATED this 28 day of June, 2000.

**EXHIBIT "G"**

**COPY**

Gary A. Weston  
Earl Jay Peck  
Neil R. Sabin  
Harold C. Verhaaren  
Mark H. Anderson  
Richard M. Hymas  
John K. Mangum  
Richard K. Hinds  
Noel S. Hyde  
J. Craig Smith  
Jay R. Mohlman  
David B. Hartvigsen  
Marilynn K. Burningham  
Philip S. Lott  
Scott M. Ellsworth  
Daniel J. McDonald  
D. Scott Crook



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Edwin W. Senior (1862-1925)  
Clair M. Senior (1901-1965)  
Raymond T. Senior (1903-1995)  
Arthur H. Nielsen (1914-1997)

Of Counsel  
Harold A. Ranquist  
Clark R. Nielsen  
Edward P. Powell  
Wesley M. Lang  
Jannette F. Sorensen

August 3, 2000

Judge Glen Iwasaki  
Third District Court  
450 South State Street  
Salt Lake City, Utah 84111

**Re: McFadden v. Diefenderfer; Civil No. 990902659**

Dear Judge Iwasaki:

I have recently made an appearance for the Plaintiffs in the above referenced matter. Before my involvement a hearing was held on June 28, 2000 addressing Defendants Objection to Plaintiffs' Garnishment; both parties appeared *pro se* at the hearing. After the hearing, the Court Clerk's Office prepared a standard form Garnishee Order. I do not feel the Garnishee Order accurately reflects the order of the Court from that hearing. Accordingly, I have prepared an Order which I believe reflects, at least from my understanding, your ruling from the June 28, 2000 hearing. Accordingly, submitted herewith is the proposed order. You will note that the order was mailed to the Defendants on July 18, 2000. The time provided for objections under Rule 4-504 has expired and I have not heard of any concerns or objections from the Defendants. If the Order meets with your approval, please execute and cause the same to be filed with the Court Clerk. If you have questions or concerns regarding this Order, or if you would like this matter handled in another way, please feel free to have your office contact me.

Your very truly,

Jay R. Mohlman

JM:df  
Enclosure  
cc: Russell and Paula Diefenderfer

109013.MC283.001

EXHIBIT "H"

COPY

Jay R. Mohiman (#5113)  
NIELSEN & SENIOR, P.C.  
1100 Eagle Gate Tower  
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Salt Lake City, Utah 84111  
Telephone: (801) 532-1900  
Facsimile: (801) 532-1913

**FILED DISTRICT COURT**  
Third Judicial District

AUG - 8 2000

SALT LAKE COUNTY

By W. Banks Deputy Clerk

*Attorneys for Defendant/Counterclaimant*

---

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

GARY J. McFADDEN and KATHLEEN  
McFADDEN,

Plaintiffs

v.

RUSSELL J. DIEFENDERFER and  
PAULA DIEFENDERFER,

Defendants

**ORDER**

Civil No. 990902659

Judge Glen Iwasaki

---

The above matter came before the Court for hearing on Defendants' objections to garnishment on June 28, 2000, at 8:45 a.m. The Plaintiffs were present, appearing *pro se*, and Defendants appeared *pro se*. The Court, having reviewed the pleadings on file herein, having heard the evidence and arguments of the parties, and being fully apprised in the premises, hereby

**ORDERS, ADJUDGES AND DECREES that:**

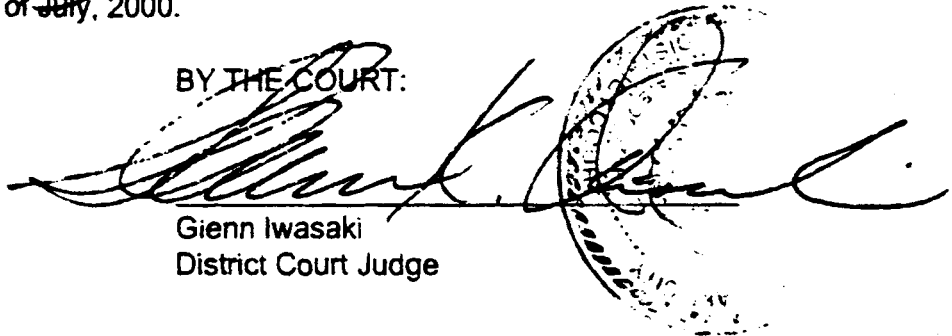
1. The funds on deposit at Key Bank are subject to garnishment and are not exempt and, therefore, the garnishment is proper.



2. The property subject to the garnishment is to be immediately released to the Plaintiffs, i.e., the funds being held by Key Bank, Garnishee, in the amount of \$1,008.22 are to be immediately paid to Plaintiffs.

DATED this 8 <sup>Aug.</sup> day of July, 2000.

BY THE COURT:

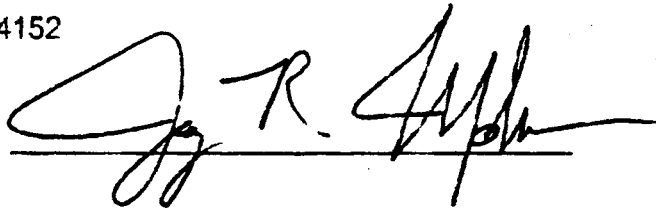


Gienn Iwasaki  
District Court Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on this 18th day of July, 2000, I caused to be mailed, first class, postage paid, a true and correct copy of the foregoing **ORDER** addressed as follows:

Russell J. Diefenderfer and Paula Diefenderfer  
P.O. Box 530714  
Salt Lake City, UT 84152



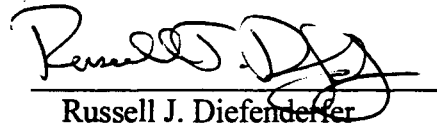
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CERTIFICATE OF SERVICE

I Russell J. Diefenderfer certify, that on November 3<sup>rd</sup>, 2000, I served a true and correct copy of the APPELLANT'S BRIEF, by First Class mail, with sufficient postage prepaid to the Following addresses:

Gary and Kathleen McFadden  
1664 E. Sunnyside Avenue  
Salt Lake City, Utah. 84105

Dated this 3<sup>rd</sup> November, 2000



Russell J. Diefenderfer  
Appearing Pro Se  
P.O. Box 520714  
Salt Lake City, UT.  
84152-0714  
801-484-7039

COPY