

BONNEVILLE COUNTY  
IDAHO

Bryan N. Zollinger ISB # 8008

Jon M. Bonnesen ISB # 10363

SMITH, DRISCOLL & ASSOCIATES, PLLC

414 Shoup Avenue

P.O. Box 50731

Idaho Falls, Idaho 83405

(208) 524-0731

2018 JAN -2 PM 3:34

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company

Plaintiff,

vs.

[REDACTED]

Defendant.

Case No. [REDACTED]

COMPLAINT

Fee: \$166.00

**THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION  
OBTAINED WILL BE USED FOR THAT PURPOSE**

COMES NOW plaintiff, Medical Recovery Services, LLC, and for a claim against  
defendants, alleges as follows:

1. The plaintiff is an Idaho limited liability company qualified to do business in the State of Idaho.
2. The defendant, [REDACTED], is an individual residing in the State of Idaho.
3. At all times mentioned herein the plaintiff was, and still is, a licensed and bonded collector under the laws of the State of Idaho, and before the commencement of this action the debt and all contractual rights herein sued upon were assigned by Intermountain Emergency Physicians to the plaintiff for the purpose of collection. The plaintiff is now the holder thereof

for such purposes, and the Defendant cannot discharge his obligation by paying the assignor because any payment must now be made to the Plaintiff.

4. The defendant is indebted to the plaintiff by reason of the allegations herein and owe the plaintiff in the following stated amounts:

<b>INTERMOUNTAIN EMERGENCY PHYSICIANS</b>	
Principal Amount Owing	\$ 294.00
Prejudgment Interest	<u>\$ 167.41</u>
Subtotal	\$ 461.41
TOTAL	\$ 461.41

5. The plaintiff is entitled to further prejudgment interest from the date the complaint is filed, until judgment is entered.

6. Despite the plaintiff's requests and demands, and without offering any reason or objection to the bill, the defendant has failed to pay the indebtedness in full.

7. To obtain payment of the obligation due, the plaintiff has been required to retain the services of Smith, Driscoll & Associates PLLC, attorneys at law.

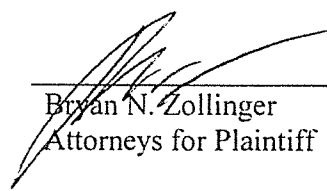
8. This action arises from an open account and/or from services provided and written demand for payment on the defendant has been made more than 10 days prior to commencing this action. Additionally, pursuant to Idaho Code § 12-120(1), 12-120(3), and I.R.C.P. 54(e)(1), the plaintiff is entitled to recover the plaintiff's attorney's fees incurred herein in the sum of \$410.00 if judgment is taken by default and such greater amount as may be evidenced to the court if this claim is contested. Pursuant to Idaho Rules of Civil procedure § 54(d)(1) the plaintiff is further entitled to recover the plaintiff's costs incurred herein.

WHEREFORE, the plaintiff demands judgment against the defendant, for the principal sum of \$294.00, together with legal interest on said sum in the amount of \$167.41, the filing fee of \$166.00 and attorney's fees incurred herein in the sum of \$410.00, for a combined total of

\$1,037.41 plus the costs of suit to be proven to the court, and for such other and further relief as is equitable and just.

DATED this 2nd day of January, 2018

SMITH, DRISCOLL & ASSOCIATES, PLLC



---

Bryan N. Zollinger  
Attorneys for Plaintiff



Bryan N. Zollinger *ISB # 8008*  
Jon M. Bonnesen *ISB # 10363*  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

BONNEVILLE COUNTY, IDAHO

2018 FEB -5 PM 4:24

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

Defendant.

Case No. [REDACTED]

DECLARATION IN SUPPORT OF  
APPLICATION FOR DEFAULT  
JUDGMENT

Pursuant to I. C. § 9-1406, I hereby declare as follows:

1. I, Jon M. Bonnesen, represent the plaintiff and have actual knowledge of the facts stated herein. I obtained a Juris Doctorate degree from University of Idaho College of Law in 2017 and have been actively practicing law since then.

2. The plaintiff filed a complaint against the Defendant on January 2, 2018.

3. My billing rate on the above-referenced matter is \$165.00 per hour. I believe that this hourly rate is reasonable, especially given the amount involved and the result obtained, the desirability of the case, the nature and length of my professional relationship with my client, awards in similar cases, my experience (particularly in the area of law involved in this case), and the rates charged by other attorneys with comparable experience in comparable cases in the

southeastern Idaho area. The attorney's fees in this case have been incurred for preparing (1) the complaint and summons; (2) the application for entry of default; (3) the application for default judgment; (4) the declaration in support of application for default judgment; (6) the default; (7) the order for default entry; (8) the default judgment and (9) for reviewing the declaration of service.

4. The billing rate on the above-referenced matter for my paralegal is \$95.00 per hour. I believe that this hourly rate is reasonable, especially given the amount involved and the result obtained, the desirability of the case, awards in similar cases, their experience (particularly in the area of law involved in this case), and the rates charged by other attorney paralegals with comparable experience in comparable cases in the southeastern Idaho area. The paralegal fees in this case have been incurred for time spent assigning the case a file number, running a conflict check for the account, calculating interest for the account, entering the account into the server in multiple programs, preparing a letter and check to the court clerk for filing the complaint, preparing letter to defendant, scanning and filing the complaint and summons, preparing a letter to process server, notarizing the declaration(s) of service, issuing a check to the process server, preparing an invoice for client, notarizing declaration in support of application for default judgment, preparing letter to court clerk and abstract of judgment with check for recorder, and preparing invoice for client.

5. Pursuant to Idaho Code § 28-22-104, interest has been calculated at 12% per year or the contractually agreed upon amount, and began accruing three months after the date the services were incurred.

6. Each of the accounts identified in the Complaint has been assigned to the Plaintiff for the purpose of collection, the Plaintiff is now the holder thereof, as stated in the Complaint.

7. The amount due from the Defendant is the sum certain of \$1,092.41, said amount being itemized as follows, to-wit:

Principal	\$294.00
Interest	\$167.41
Attorney's fee	\$410.00
Filing fee	\$166.00
Service fee	\$55.00
Amount Paid	\$-0.00
TOTAL	<hr/> \$1,092.41

8. The amount shown by the above accounting is justly due and owing, and no part of said balance has been paid except as otherwise shown; the disbursements sought to be taxed have been made in this action or will necessarily be made or incurred herein.

9. To the best of my knowledge the Defendant(s) is not an infant, incompetent person, nor is the defendant serving in the United States Military.

10. Accordingly, the plaintiff requests that the court enter a default judgment in the total amount of \$1,092.41 pursuant to the Application For Default Judgment on file herein.

I hereby declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Further sayeth your affiant naught.

DATED this 5th day of February, 2018.

SMITH, DRISCOLL & ASSOCIATES, PLLC



Jon M. Bonnesen

Bryan N. Zollinger ISB # 8008  
Jon M. Bonnesen ISB # 10363  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

BONNEVILLE COUNTY  
IDAHO

2018 FEB -8 AM 8:28

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

[REDACTED]

Defendant.

Case No. [REDACTED]

ORDER FOR DEFAULT ENTRY

The plaintiff, Medical Recovery Services, LLC, by its attorneys of record, having moved this Court for a determination and entry of default and judgment against the above-entitled defendant(s), [REDACTED] and the Court having reviewed the Court's file and all of the pleadings therein, the Court makes the following findings:

That the Defendant, [REDACTED] were duly and regularly served with process pursuant to Rule 4 of the Idaho Rules of Civil Procedure, as shown by the declaration of Service on file herein;

That the time prescribed by Rule 4 of the Idaho Rules of Civil Procedure, for appearance and answer or other pleading by the said Defendant, [REDACTED], has elapsed without the defendants' appearance or filing a pleading of any nature whatsoever;

That the plaintiff's Complaint is deemed admitted pursuant to Idaho Rules of Civil Procedure, Rule 8(d), for failure to respond by the defendants;

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PER \_\_\_\_\_

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That there is due and owing from the said defendant(s) to the said plaintiff the sum of \$1,092.41, plus all applicable accrued prejudgment interest, pursuant to the Application for Judgment on file herein;

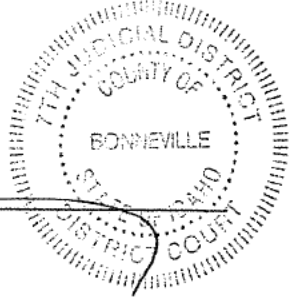
Based upon the above findings, it is hereby;

ORDERED, ADJUDGED AND DECREED, AND THIS DOES ORDER, ADJUDGE AND DECREE that the Default of the said defendants, be, and hereby is, determined and adjudged, and the Clerk is directed to enter the default of record in this action.

DATED this 6 day of Feb 2018



Magistrate Judge



CERTIFICATE OF SERVICE

I hereby certify that I am the clerk of the above-entitled court, and that on the 7 day of Feb, 2018, I served a true and correct copy of the foregoing **ORDER FOR DEFAULT ENTRY** on the persons listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

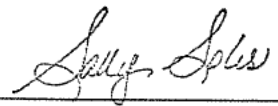
Persons Served:

Bryan N. Zollinger  
Smith, Driscoll & Associates PLLC  
P.O. Box 50731  
Idaho Falls, Idaho 83405

Box     Mail



Hand     Mail



Clerk





Bryan N. Zollinger ISB # 8008  
Jon M. Bonnesen ISB # 10363  
SMITH, DRISCOLL, & ASSOCIATES, PLLC  
414 Shoup Ave.  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

BONNEVILLE COUNTY, IDAHO

2018 FEB 21 PM 4:09

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

Defendant.

Case No. [REDACTED]

BRIEF IN SUPPORT OF MOTION FOR  
RECONSIDERATION

I. INTRODUCTION.

The Plaintiff, Medical Recovery Services, LLC, ("MRS") submits to the Court its Motion for Reconsideration on the Judgment dated February 6, 2018 in which this Court reduced MRS' requested attorney's fees.

II. THIS COURT HAS AWARDED MRS ATTORNEY'S FEES OF \$400 IN THE PAST.

In this case MRS requested \$410.00 in attorney's fees in its prayer for relief pursuant to Idaho Code Section 12-120. The Court reduced MRS' award of attorney's fees down to \$294.00. However, no reasoning was given as to why the Court would not enter judgment for attorney's fees for the entire amount. On previous default judgments this Court has previously

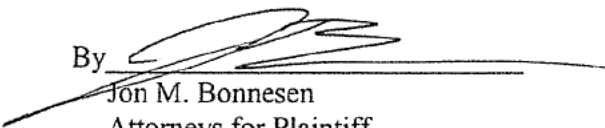
awarded MRS \$400.00 in cases where MRS requested \$410.00 in attorney's fees. *See* Declaration of Jon Bonnesen. Consequently, MRS requests that this Court award MRS \$400.00 in attorney's fees as it has previously done in the past.

IV. CONCLUSION.

For all the reasons set forth above, MRS respectfully requests that this Court reconsider its decision awarding MRS \$294.00 for attorney's fees and enter an amended judgment reflecting an award of \$400.00 for attorney's fees.

DATED this 21 day of February, 2018.

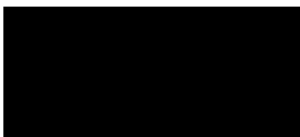
SMITH, DRISCOLL & ASSOCIATES, PLLC

By   
Jon M. Bonnesen  
Attorneys for Plaintiff

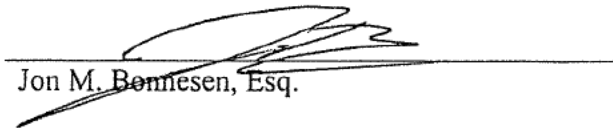
CERTIFICATE OF SERVICE

I hereby certify that I am the attorney for the plaintiff, and that on February 21, 2018 I served a true and correct copy of the foregoing **BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION** on the persons listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Persons Served:



( ) Hand (X) Mail

  
Jon M. Bonnesen, Esq.

2018 APR -6 PM 3:57

Bryan N. Zollinger ISB # 8008  
Jon M. Bonnesen ISB # 10363  
SMITH, DRISCOLL, & ASSOCIATES, PLLC  
414 Shoup Ave.  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

[Redacted]

Defendant.

Case No. [Redacted]

AMENDED DEFAULT JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

The plaintiff recovers from the defendant the sum of \$1,082.41, said amount being itemized as follows, to-wit:

Principal	\$294.00
Interest	\$167.41
Attorney's fee	\$400.00
Filing fee	\$166.00
Service fee	\$55.00
Amount Paid	\$-0.00
TOTAL	\$1,082.41

upon which sum interest shall accrue at the rate provided by law, and upon which judgment execution may issue.

DATED this 5 day of Apr, 2018.

/s/ Michelle R. Mallard  
Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that I am the clerk of the above entitled court, and that on the 6 day of Apr, 2018, I served a true and correct copy of the foregoing AMENDED JUDGMENT on the persons listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Persons Served:



Bryan N. Zollinger  
Smith Driscoll & Associates, PLLC  
414 Shoup Ave.  
Idaho Falls, ID 83405

Hand  Mail

Hand  Mail  
 Email



\_\_\_\_\_  
Clerk

Bryan N. Zollinger ISB #8008  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731  
jrs@eidaholaw.com

2018 APR 18 AM 7:55

BONNEVILLE COUNTY  
SHERIFF'S OFFICE  
IDAHO FALLS, IDAHO  
RECEIVED

Attorneys for Plaintiff

COPY

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

Defendant.

Case No. [REDACTED]

WRIT OF EXECUTION AND ORDER  
FOR CONTINUING GARNISHMENT

THE PEOPLE OF THE STATE OF IDAHO: To the Sheriff of Bonneville County:

WHEREAS, the plaintiff, **Medical Recovery Services, LLC**, recovered judgment in the said District Court, of BONNEVILLE County, against [REDACTED] on April 6, 2018, for the sum of \$1,082.41, with interest at the legal rate for judgments as prescribed by Idaho Code § 28-22-104 until paid, together with costs and disbursements at the date of said judgment and accruing costs as appear on record; and

WHEREAS the sum of \$1,082.41 with interest in the amount of \$1.30, plus costs of \$22.00, less payments of \$0.00 for a total of \$1,105.71 is now—as of April 13, 2018—actually due on said judgment, as follows:

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Judgment	\$ 1,082.41
Costs	\$ 22.00
Interest	\$ 1.30
Payments	\$ 0.00
<b>Total</b>	<b>\$ 1,105.71</b>

NOW, THEREFORE, YOU, the said Sheriff, are hereby required to make the said sums due on said judgment with interest as aforesaid, and costs and accruing costs, to satisfy said judgment in full out of the personal property of said debtor, or if sufficient personal property of said debtor cannot be found, then out of the real property in your County belonging to the debtor on the day whereon said judgment was docketed in said County, or at any time thereafter. Pursuant to Idaho Code § 11-702 you may make return hereon not less than 10 nor more than 90 days after your receipt hereof, with what you have done endorsed thereon; and

WHEREAS, the Plaintiff filed an application on April 13, 2018, entitled "APPLICATION FOR ORDER OF CONTINUING GARNISHMENT" against the employer of [REDACTED] the Court hereby grants the application and ORDERS:

That the Sheriff of Bonneville, Idaho shall continuously garnish the maximum amount of [REDACTED] disposable earnings from Melaleuca (3910 S. Yellowstone Hwy, Idaho Falls, ID 83402) at each disbursement interval until the JUDGMENT, plus interest, is paid in full.

WITNESS HON. Michael R. Mallard Judge  
of the said District Court, at the Courthouse in the  
County of BONNEVILLE, this 16 of  
APRIL, 2018.

ATTEST my hand and seal of said Court the day  
and year last above written.

Penny Manning

Clerk

Deputy Clerk [Signature]

## ACKNOWLEDGEMENT OF RECEIPT OF GARNISHMENT

⇒⇒⇒⇒ **EMPLOYERS** ⇐⇐⇐⇐  
 Answer, sign, and return to the Bonneville County Sheriff's Office within 5 days.  
 Failure to do so may allow the Plaintiff to take judgment against you.

Defendant: \_\_\_\_\_

Sheriff's Number: \_\_\_\_\_

**PLEASE USE THIS NUMBER AND DEFENDANT'S LAST NAME ON ALL CHECKS AND CORRESPONDENCE SENT TO THE BONNEVILLE COUNTY SHERIFF'S OFFICE**

I certify that this business is a (check one), and that I am (check one below):

<input type="checkbox"/> SOLE PROPRIETORSHIP	<input type="checkbox"/> PARTNERSHIP	<input checked="" type="checkbox"/> CORPORATION	<input type="checkbox"/> LIMITED LIABILITY COMPANY
Owner	Partner	Corporate officer	LLC Member
<input type="checkbox"/> Authorized agent of the owner	<input type="checkbox"/> Authorized agent of the partnership	<input type="checkbox"/> Corporate registered agent or authorized agent	<input type="checkbox"/> Authorized agent

**I CERTIFY THAT I RECEIVED THE GARNISHMENT IN THE ABOVE ENTITLED ACTION:**

Date received: 4/27/18

Company Name: Melauca, Inc.

By: Andy Jackson

*If payroll is processed in another location, please supply us with the correct address and telephone numbers.*

**NOTICE OF CONTINUOUS GARNISHMENT**

ANSWER, SIGN AND RETURN THIS ACKNOWLEDGEMENT ALONG WITH THE STATUTORY INTERROGATORIES TO:  
**BONNEVILLE COUNTY SHERIFF'S OFFICE**  
**CIVIL PROCESSING DIVISION**  
 within 5 days.

\$ 1,146.<sup>66</sup>

is now due on this wage garnishment. ***Interest & Sheriff's fees will accumulate during payoff.*** Please inquire at 208-529-1371 when the amount listed above is close to paying off. We will quote you a final amount due on the writ. Thank you.

**RETURN THIS ACKNOWLEDGMENT TO  
 BONNEVILLE COUNTY SHERIFF'S OFFICE  
 ATTN: CIVIL PROCESSING,  
 605 N. CAPITAL, IDAHO FALLS, ID 83402  
 FAX: 208-529-1483  
 EMAIL ADDRESS: [BCSOCivil@co.bonneville.id.us](mailto:BCSOCivil@co.bonneville.id.us)  
 PHONE: (208) 529-1371**

FAXED FROM: 208-529-2053

COMPANY: Melauca, Inc.

NUMBER OF PAGES: 3

PHONE #: 208-522-0700      FAX #: 208-529-2053

**\*\*PLEASE FAX BOTH SIDES OF THIS DOCUMENT WHEN FAXING TO COMPANY PAYROLL OR TO THE CORPORATE OFFICE!**

**IMPORTANT NOTICE TO EMPLOYERS AND PAYROLL SPECIALISTS**

To assist the Bonneville County Sheriff's Office in processing this garnishment, it is vital that the following information be included with any correspondence or payment being submitted to our office. Please make sure all numbers and names are correct.

1. **SHERIFF'S NUMBER**  
(Stamped on the top right hand corner of paperwork starting with the number 20XX0XXXX)
2. **COURT CASE NUMBER**  
(Found on the front of the Writ of Execution starting with CV)
3. **FIRST AND LAST NAME of your employee**
4. **THE AMOUNT TO BE APPLIED TO EACH CASE**  
(In the event of multiple employees being garnished)
5. **TERMINATION DATE**  
(This information is needed to close the case if the employee leaves employment and still has an outstanding balance on the case)

**\*Answer, sign, and return to the Bonneville County Sheriff's Office within 5 days. Failure to do so may allow the Plaintiff to take judgment against you.**

**\*Please send all payments and correspondence to Bonneville County Sheriff, Attn: Civil Process, 605 N Capital, Idaho Falls, ID 83402**  
**Email: BCSOCivil@co.bonneville.id.us**  
**Fax: 208-529-1483**

If you have any questions, please feel free to contact our office weekdays between the hours of 8:00 A.M. and 5:00 P.M. at 529-1371.

Thank you for your cooperation.



Bryan N. Zollinger ISB #8008  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731  
jrs@eidaholaw.com

2018 APR 18 AM 7:54

BONNEVILLE COUNTY  
SHERIFF'S OFFICE  
IDAHO FALLS, IDAHO  
RECEIVED

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

v.

Defendant.

Case No. [REDACTED]

NOTICE OF CONTINUING  
GARNISHMENT

TO: **Melaleuca**  
**3910 S. Yellowstone Hwy**  
**Idaho Falls, ID 83402**

RE: [REDACTED] SSN: [REDACTED]

Whereas, the MAGISTRATE Division of the District Court of the SEVENTH Judicial District, in and for BONNEVILLE County, Idaho, entered a JUDGMENT against [REDACTED] on April 6, 2018; and

Whereas, the Clerk of the Court issued a WRIT OF EXECUTION against [REDACTED] and

Whereas, the WRIT OF EXECUTION requires me to satisfy the JUDGMENT, plus

interest, out of the personal property of [REDACTED] and, if sufficient personal property cannot be found, then out of the real property of [REDACTED] and

Whereas, the MAGISTRATE Division of the District Court of the SEVENTH Judicial District, in and for BONNEVILLE County, Idaho, executed an order entitled "ORDER OF CONTINUING GARNISHMENT"; and

Whereas, the ORDER OF CONTINUING GARNISHMENT requires me to garnish the maximum amount of [REDACTED] disposable earnings from Melaleuca at each disbursement interval until the JUDGMENT, plus interest, is paid in full; and

Now, therefore, you are hereby notified that the Defendant's earnings are attached pursuant to and in accordance with the WRIT OF EXECUTION and ORDER OF CONTINUING GARNISHMENT. You must withhold the maximum amount of [REDACTED] disposable earnings at each disbursement interval until the JUDGMENT, plus interest is paid in full. The garnishment shall operate continuously until the JUDGMENT, plus interest is paid in full.

Please note the following:

1. Idaho Code Section 11-206(1) defines the word "earnings" as follows:

"Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

2. Idaho Code Section 11-206(2) defines the phrase "disposable earnings" as follows:

"Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

3. Idaho Code Section 11-207(1) states, in pertinent part, the following:


The maximum amount of the aggregate disposable earnings of an individual for any work week which is subjected to garnishment shall not exceed (a) twenty-five percent (25%) of his disposable earnings for that

week, or (b) the amount which his disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage prescribed by 29 U.S.C.A. Section 206(a) (1) in effect at the time the earnings are payable, whichever is less. In the case of earnings for any pay period other than a week, the Idaho Commissioner of Labor shall by regulation prescribe a multiple of the federal minimum hourly wage equivalent in effect to that set forth in (b) of this subsection.

Please answer the following Interrogatories:

Dated the \_\_\_\_\_ day of APR 18 2018, 20\_\_\_\_.

**PAUL J. WILDE, SHERIFF**

  
\_\_\_\_\_  
Sheriff of Bonneville County

Bryan N. Zollinger ISB #8008  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731  
jrs@eidaholaw.com

2018 APR 18 AM 7:55

BONNEVILLE COUNTY  
SHERIFF'S OFFICE  
IDAHO FALLS, IDAHO  
RECEIVED

Attorneys for Plaintiff

COPY

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

Defendant.

Case No. [REDACTED]

WRIT OF EXECUTION AND ORDER  
FOR CONTINUING GARNISHMENT

THE PEOPLE OF THE STATE OF IDAHO: To the Sheriff of Bonneville County:

WHEREAS, the plaintiff, **Medical Recovery Services, LLC**, recovered judgment in the said District Court, of BONNEVILLE County, against [REDACTED] on April 6, 2018, for the sum of **\$1,082.41**, with interest at the legal rate for judgments as prescribed by Idaho Code § 28-22-104 until paid, together with costs and disbursements at the date of said judgment and accruing costs as appear on record; and

WHEREAS the sum of \$1,082.41 with interest in the amount of \$1.30, plus costs of \$22.00, less payments of \$0.00 for a total of \$1,105.71 is now—as of April 13, 2018—actually due on said judgment, as follows:

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Judgment	\$ 1,082.41
Costs	\$ 22.00
Interest	\$ 1.30
Payments	\$ 0.00
<b>Total</b>	<b>\$ 1,105.71</b>

NOW, THEREFORE, YOU, the said Sheriff, are hereby required to make the said sums due on said judgment with interest as aforesaid, and costs and accruing costs, to satisfy said judgment in full out of the personal property of said debtor, or if sufficient personal property of said debtor cannot be found, then out of the real property in your County belonging to the debtor on the day whereon said judgment was docketed in said County, or at any time thereafter. Pursuant to Idaho Code § 11-702 you may make return hereon not less than 10 nor more than 90 days after your receipt hereof, with what you have done endorsed thereon; and

WHEREAS, the Plaintiff filed an application on April 13, 2018, entitled "APPLICATION FOR ORDER OF CONTINUING GARNISHMENT" against the employer of [REDACTED], the Court hereby grants the application and ORDERS:

That the Sheriff of Bonneville, Idaho shall continuously garnish the maximum amount of [REDACTED] disposable earnings from Melaleuca (3910 S. Yellowstone Hwy, Idaho Falls, ID 83402) at each disbursement interval until the JUDGMENT, plus interest, is paid in full.

WITNESS HON. Michelle R. Mallard Judge  
of the said District Court, at the Courthouse in the  
County of BONNEVILLE, this 16 of  
April, 2018.

ATTEST my hand and seal of said Court the day  
and year last above written.

Penny Manning  
Clerk

[Signature]  
Deputy Clerk

**The Federal Wage Garnishment Law,  
Consumer Credit Protection Act's Title 3 (CCPA)**

<b>MAXIMUM GARNISHMENT OF DISPOSABLE EARNINGS UNDER NORMAL CIRCUMSTANCES* FOR THE \$7.25 MINIMUM WAGE</b>			
<b>Weekly</b>	<b>Biweekly</b>	<b>Semimonthly</b>	<b>Monthly</b>
If the employee makes \$217.50 or less: NONE	If the employee makes \$435.00 or less: NONE	If the employee makes \$471.25 or less: NONE	If the employee makes \$942.50 or less: NONE
If the employee makes more than \$217.50 but less than \$290.00, send the difference over \$217.50	If the employee makes more than \$435.00 but less than \$580.00, send the difference over \$435.00	If the employee makes more than \$471.25 but less than \$628.33, send the difference over \$471.25	If the employee makes more than \$942.50 but less than \$1256.67, send the difference over \$942.50
If the employee makes \$290.00 or more: garnish 25% (net).	If the employee makes \$580.00 or more: garnish 25% (net).	If the employee makes \$628.33 or more: garnish 25% (net).	If the employee makes \$1256.67 or more: garnish 25% (net).

\*These restrictions do not apply to garnishments for child and/or spousal support, bankruptcy, or actions to recover state or federal taxes. The amount of disposable earnings exempt from garnishment must be paid to the employee or garnishee on the regular payday for the pay period in which the wages were earned.

The amount of pay subject to garnishment is based on an employee's "disposable earnings," which is the amount left after legally required deductions are made. Examples of such deductions include federal, state, and local taxes, the employee's share of State Unemployment Insurance and Social Security. It also includes withholdings for employee retirement systems required by law.

The CCPA prohibits an employer from firing an employee whose earnings are subject to garnishment for any one debt, regardless of the number of levies made or proceedings brought to collect that debt, because of the single garnishment. Under provision of this law, the employer may be prosecuted criminally and fined up to \$1,000 or imprisoned for not more than one year, or both. The Act does not prohibit discharge because an employee's earnings are separately garnished for two or more debts.

A section or provision of the state law that requires a larger amount to be garnished than the federal law permits is considered pre-empted by the federal law. On the other hand, the state law provisions are to be applied if they result in a smaller garnishment amount (I.C. 28-45-104).

NOTE: The amount of disposable earnings subject to garnishment is determined by the restrictions which are in effect at the time such earnings are payable.

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4-USWAGE (1-866-487-9243).

**U.S. Department of Labor,  
Frances Perkins Building  
200 Constitution Avenue, NW  
Washington, DC 20210**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

The preceding restrictions are in effect as of July 24, 2009

IN THE DISTRICT COURT OF THE 1th JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF Bonneville

CIVIL [REDACTED]  
WARRANT # [REDACTED]

2018 APR 25 AM 9:54

BONNEVILLE COUNTY  
SHERIFF'S DEPT.  
IDAHO FALLS, IDAHO  
RECEIVED

Med Recovery  
Plaintiff,

Case No. [REDACTED]

NOTICE/INTERROGATORIES  
TO GARNISHEE

[REDACTED]  
Defendant.

SHERIFF OF BONNEVILLE COUNTY, IDAHO

To: Melaleuca

Take Notice that all money, wages, goods, rents due and owing and all other personal property in your possession or under your control, belonging to the defendant named in the attached copy of the writ of execution is levied upon and you are hereby notified not to pay or transfer the same to anyone but the office of the sheriff. Wages are subject to maximum garnishment provisions. Refer to the attached page labeled Federal Wage Garnishment Law.

DATE: APR 25 2018

Sheriff PAUL J. WILDE, SHERIFF

BY: [Signature]  
Deputy

You must answer these Interrogatories within five (5) days from the date served as required by I.C. § 11-719. If you fail to respond the creditor can request a judgment against you for the amount owed by the Defendant.

INSTRUCTIONS

- A. You are requested to provide all information known by you or available to you.
- B. If you cannot answer any of the Interrogatories completely, provide whatever information you have.
- C. Once completed and signed make a copy for yourself, and send the original to the Bonneville County Sheriff, Attn: Civil Process, 605 N Capital, Idaho Falls, ID 83402

ANSWER OF GARNISHEE:

1. FINANCIAL INSTITUTIONS:  
Do you have in your possession or under control any money or property belonging to the defendant(s)?  
Yes \_\_\_ No \_\_\_ Amount \$ \_\_\_ please see attached response
2. Is the Defendant your employee? Full-time \_\_\_ Part-Time \_\_\_ Contract \_\_\_ NIA
3. What is his/her average take home pay? \$ \_\_\_ When is he/she paid? \_\_\_ NIA
4. Do you owe the Defendant any money? YES \_\_\_ NO \_\_\_ NIA  
If so, how much \$ \_\_\_ When did it become due? \_\_\_ NIA  
If not yet due, when will it become due? \_\_\_ NIA
5. Has the Defendant assigned his/her wages? YES \_\_\_ NO \_\_\_ NIA If yes, when and to whom was the assignment made? \_\_\_ NIA
6. Are you honoring any other garnishments? YES \_\_\_ NO \_\_\_ NIA If so, what state and county served the garnishment? \_\_\_ NIA
7. If the Defendant no longer works for you, when did his employment end? \_\_\_ NIA  
Who does he/she work for now? \_\_\_ NIA

CERTIFICATION UNDER PENALTY OF PERJURY  
I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Date: 4/30/18 Title: LEGAL Signature: [Signature]

Melaleuca, Inc.'s Response to Interrogatory No. 1

1. Melaleuca, Inc. ("Melaleuca") does not have in its possession or under its control any money or property belonging to a [REDACTED] the defendant named in case no. [REDACTED]. While Melaleuca has an employee whose Social Security number matches the Social Security number on the Notice of Continuing Garnishment, that employee's name is not [REDACTED] in Melaleuca's records. Moreover, Melaleuca has no knowledge that this employee is the true judgment debtor in the above-referenced case. And Melaleuca is not in a position to resolve any discrepancies with Plaintiff's garnishment documents or Plaintiff's other records as to the true identity of the judgment debtor.

2018 MAY -1 PM 1:05  
BONNEVILLE COUNTY  
SHERIFF'S OFFICE  
IDAHO FALLS, IDAHO  
RECEIVED

"S"



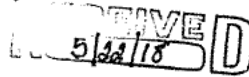
LAW OFFICES OF  
SMITH, DRISCOLL & ASSOCIATES, PLLC

BRYAN D. SMITH  
B.J. DRISCOLL  
BRYAN N. ZOLLINGER

414 SHOUP AVE.  
POST OFFICE BOX 50731  
IDAHO FALLS, IDAHO 83405

TELEPHONE (208)524-0731  
FAX (208) 529-4166  
e-mail: info@eidaholaw.com

May 18, 2018



Melaleuca, Inc.  
4609 W. 65th S.  
Idaho Falls, ID 83402

Dear Melaleuca, Inc.:

Our law firm represents Medical Recovery Services, LLC in connection with collecting on a judgment against [REDACTED]. In this regard, records from the Bonneville County Sheriff's Department show that you were served with the following documents on April 8, 2018:

1. An original Writ of Execution;
2. A Notice of Continuing Garnishment;
3. An Order of Continuing Garnishment; and
4. Interrogatories to Garnishee.

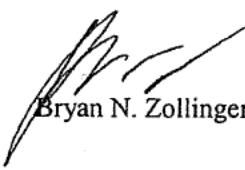
Idaho Code Sections 11-715, 11-704, and 11-719 required you to do the following:

1. Within five days after service, answer the Interrogatories under oath;
2. Deliver or transfer to the Sheriff 25% of net wages you owed to [REDACTED] at the time you were served with the documents; and
3. Deliver or transfer to the Sheriff 25% of net future wages you owed to [REDACTED] after service of the documents until the time that the total amount shown in the Writ of Execution was paid in full.

Our investigation shows that although you have returned the Interrogatories as required by Idaho law, you have failed to pay the sheriff wages you owed to [REDACTED] as under Idaho law, you were to deliver or transfer wages you owed [REDACTED] at the time of service and thereafter pursuant to the documents listed above.

Accordingly, we hereby make demand on Melaleuca, Inc. for payment of \$1,152.01. If we do not receive payment within ten days, we are authorized to file suit against the Melaleuca, Inc. to seek recovery of the amount owed, attorney's fees, costs, and statutory interest.

Sincerely,

  
Bryan N. Zollinger, Esq.



Legal Department

May 29, 2018

Bryan N. Zollinger, Esq.  
414 Shoup Ave.  
P.O. Box 50731  
Idaho Falls, ID 83405


Mr. Zollinger,

Melaleuca received your May 18, 2018 letter on May 22, 2018. Melaleuca respectfully rejects your demand for payment.

Melaleuca is not liable for the debts of the judgment debtor, [REDACTED] under Idaho law. As Melaleuca explained in its interrogatory response, Melaleuca has no record of employing someone with the name [REDACTED]. Nevertheless, in its interrogatory response, as a show of good faith, Melaleuca noted a potential discrepancy in your client's paperwork with respect to the identity of the judgment debtor. Unfortunately, Melaleuca is not in a position to resolve that possible conflict, nor is it required to by law. Melaleuca therefore rejects your demand for payment of the judgment debtor's debt.

Melaleuca believes that litigation will only escalate this dispute without resulting in a positive outcome for your client. To that end, Melaleuca remains willing to discuss this issue, if you would like. I can be reached at (208) 522-0700 or via email at [REDACTED]

Sincerely,

  
Aaron D. Eddington  
General Counsel

COPY

Bryan N. Zollinger Esq. *ISB # 8008*  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

Vs.

Defendant.

Case No. [REDACTED]

NOTICE OF TAKING DEPOSITION  
PURSUANT TO RULE 60(B)(6)

TO: MELALEUCA, INC.

PLEASE TAKE NOTICE that plaintiff, Medical Recovery Services, LLC, by and through its counsel of record, Bryan N. Zollinger, Esq., of the firm Smith, Driscoll, & Associates, PLLC, will take the deposition of Melaleuca, Inc., upon oral examination at the offices of Smith, Driscoll, & Associates, PLLC, 414 Shoup Avenue, Idaho Falls, Idaho, on Thursday, July 12, 2018, at 2:00 p.m. on said date, at which time you are notified to appear.

**YOU ARE INSTRUCTED** to designate one or more officers, directors, managing agents, or other persons to testify on behalf of Melaleuca, Inc. to matters known or reasonably

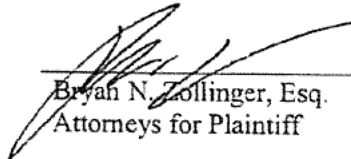
F:\CLIENTS\BDS\Collections\MRS\Files\7341.17621\Pleadings\180605 Notice of Taking  
Deposition.docx

available to said corporation pursuant to Rule 30(b)(6) of the Idaho Rules of Civil Procedures on the following matters:

1. The employment of [REDACTED] also identified by her social security number of [REDACTED]
2. Payroll history of [REDACTED], also identified by her social security number of [REDACTED]

DATED: June 5, 2018

SMITH, DRISCOLL & ASSOCIATES, PLLC

  
Bryan N. Zollinger, Esq.  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 5<sup>th</sup> day of June, 2018, I caused a true and correct copy of the foregoing **NOTICE OF TAKING DEPOSITION** to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

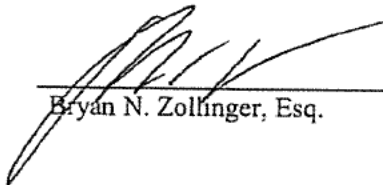
Persons Served:

[REDACTED]

Mail  Hand  Fax  
 Email

T & T Reporting  
477 Shoup Ave.  
Idaho Falls, ID 83402

Mail  Hand  Fax  
 Email

  
Bryan N. Zollinger, Esq.

COPY

Bryan N. Zollinger *ISB # 8008*  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

Vs.

Defendant.

Case No. [REDACTED]

SUBPOENA DUCES TECUM PURSUANT  
TO RULE 30(b)(6)

**THE STATE OF IDAHO TO:** Melaleuca, Inc., 4609 W. 65th S., Idaho Falls, ID 83402

**YOU ARE COMMANDED** to appear at Smith, Driscoll & Associates, PLLC, located at 414 Shoup Ave., Idaho Falls, ID, 83402, for the taking of your deposition on Thursday, July 12, 2018 at 2:00 p.m., to testify regarding the case of Medical Recovery Services, LLC v. [REDACTED] now pending in the Seventh Judicial District Court of the State of Idaho, in and for the County of Bonneville.

**YOU ARE INSTRUCTED** to designate one or more officers, directors, managing agents, or other persons to testify on behalf of Melaleuca, Inc. to matters known or reasonably available to said corporation pursuant to Rule 30(b)(6) of the Idaho Rules of Civil Procedures on the following matters:

F:\CLIENTS\BDS\Collections\MRS\Files\7341.17621\Pleadings\180605 Subpoena Duces Tecum.docx

Ex. F-1

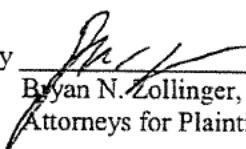
1. The employment of [REDACTED] also identified by her social security number of [REDACTED]
2. Payroll history of [REDACTED] also identified by her social security number of [REDACTED]

**YOU ARE FURTHER COMMANDED** to bring with you all DOCUMENTS including but not limited to letters, writings, reports, mailings, emails, ledgers, accounts, memos, notes, message, notices, checks, check registers, check stubs, payroll information, spreadsheets, books, receipts, and books of account whether in paper or electronic form, regarding each of the categories listed above for which you must designate one or more officers, directors, managing agents, or other persons to testify on behalf of Melaleuca, Inc.

**YOU ARE FURTHER NOTIFIED** that if you fail to appear at the place and time specified above, you may be held in contempt of court, and that the aggrieved party may recover from you the sum of \$100.00 and all damages which it may sustain by your failure to produce.

DATED this <sup>5<sup>th</sup></sup> day of June, 2018.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By   
Bryan N. Zollinger, Esq.  
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

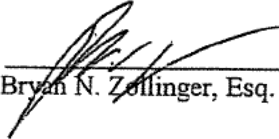
I HEREBY CERTIFY that on this 6<sup>th</sup> day of June, 2018, I caused a true and correct copy of the foregoing **SUBPOENA DUCES TECUM PURSUANT TO RULE 30(b)(6)** to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

Persons Served:



T & T Reporting  
477 Shoup Ave.  
Idaho Falls, ID 83402

- U.S. Mail
- Facsimile Transmission
- Hand Delivery
- Overnight Delivery
  
- U.S. Mail
- Facsimile Transmission
- Hand Delivery
- Overnight Delivery

By:   
Bryan N. Zollinger, Esq.

**From:** [Andrew Law](#)  
**To:** "[bnz@eidaholaw.com](mailto:bnz@eidaholaw.com)"  
**Subject:** [REDACTED]  
**Date:** Wednesday, June 20, 2018 1:50:00 PM

---

Bryan,

I write to recap our conversation from earlier today. During our call, I explained that Melaleuca has looked at your Notice and Subpoena and believes they are not proper under Idaho law. I noted that Melaleuca had already informed you that it has no record of employing someone named [REDACTED] and that, as a result, it answered the garnishment interrogatories the way it did. I further explained that Melaleuca, as a show of good faith, stated that it has an employee with the Social Security number found in your garnishment documents, but that Melaleuca has no way of knowing who the true judgment debtor is.

You explained that it is your position that Melaleuca does know who the judgment debtor is based on the Social Security number alone and that it was not critical that Melaleuca had no record of employing someone with the name of the judgment debtor from the pleadings. I indicated that Melaleuca's position was that it is the judgment creditor who bears the burden of submitting accurate garnishment documents, and that Melaleuca could not resolve any discrepancy in your records. You explained that your records didn't have a name other than [REDACTED] and that you'd have to bear the expense and burden of examining the judgment debtor to learn any other names of the judgment debtor. I responded, again, that it is not Melaleuca's responsibility to ensure that your documents are accurate.

I indicated that Melaleuca is willing to work with you and that Melaleuca doesn't believe it is necessary to take this dispute to the court. I further stated that Melaleuca could have simply said that it doesn't employ anyone with the name of the judgment debtor but that Melaleuca has tried to be accommodating by providing you information to suggest a potential discrepancy in your records. I indicated, however, that unless you had another proposal to resolve this dispute, we'd be filing a motion for protective order and/or to quash. You agreed to consider providing Melaleuca a proposal that might resolve this dispute. And Melaleuca remains willing to consider such a proposal.

Please let me know if you'd like to discuss this issue further.

Thanks,

Andrew

J. Andrew Law  
Associate General Counsel  
Melaleuca, Inc.  
4609 West 65th South  
Idaho Falls, ID 83402  
(208) 522-0700  
[REDACTED]



Richard R. Friess, ISB #7820  
THOMSEN HOLMAN WHEELER, PLLC  
2635 Channing Way  
Idaho Falls, ID 83404  
Telephone: (208) 522-1230  
Fax: (208) 522-1277  
friess@thwlaw.com

J. Andrew Law, ISB #10296  
MELALEUCA, INC.  
4609 West 65<sup>th</sup> South  
Idaho Falls, ID 83402  
Telephone: (208) 522-0700  
Fax: (208) 534-2063

Attorneys for Non-Party Melaleuca, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

<p>MEDICAL RECOVERY SERVICES, LLC, an Idaho limited liability company,</p> <p>Plaintiff,</p> <p>vs –</p> <p>[REDACTED]</p> <p>Defendant.</p>	<p>Case No. [REDACTED]</p> <p>MOTION OF NON-PARTY MELALEUCA, INC. FOR PROTECTIVE ORDER AND/OR TO QUASH PLAINTIFF'S NOTICE OF DEPOSITION AND SUBPOENA DUCES TECUM</p>
--	--

COMES NOW Melaleuca, Inc. ("Melaleuca"), nonparty to this proceeding, pursuant to Rules 26 and 45 of the Idaho Rules of Civil Procedure, and Idaho Code § 11-722, and hereby respectfully submits this Motion of Non-Party Melaleuca, Inc. for Protective Order and/or to Quash Plaintiff's Notice of Deposition and Subpoena Duces Tecum, which were served on Melaleuca by Plaintiff Medical Recovery Services, LLC ("Plaintiff") on or about June 7, 2018.

Melaleuca specifically requests that the Court issue an order to:

1 - MOTION OF NON-PARTY MELALEUCA, INC. FOR PROTECTIVE ORDER AND/OR TO QUASH PLAINTIFF'S NOTICE OF DEPOSITION AND SUBPOENA DUCES TECUM


1. Declare that Melaleuca's Garnishment Answer is "true and sufficient" for purposes of Plaintiff's garnishment attempts against [REDACTED] pursuant to Idaho Code § 11-722;
2. Declare that Melaleuca is discharged from any liability under the garnishment statute at the cost of Plaintiff for purposes of Plaintiff's garnishment attempts against [REDACTED] [REDACTED] pursuant to Idaho Code § 11-722;
3. Enter a protective order that prohibits Plaintiff from serving or taking additional discovery of Melaleuca in the above-captioned case, including via Plaintiff's *Notice of Taking Deposition Pursuant to Rule 60(B)(6)* ("Notice") and *Subpoena Duces Tecum Pursuant to Rule 30(b)(6)* ("Subpoena");
4. Quash the Notice and Subpoena; and
5. Permit Melaleuca to seek its reasonable expenses in connection with its Garnishment Answer and this motion pursuant to Rules 26(c)(3) and 37(a)(5) of the Idaho Rules of Civil Procedure and Idaho Code § 11-722.

This motion is supported by the Memorandum in Support of Motion of Non-Party Melaleuca, Inc. for Protective Order and/or to Quash Plaintiff's Notice of Deposition and Subpoena Duces Tecum, the Affidavit of J. Andrew Law in Support of Motion of Non-Party Melaleuca, Inc. for Protective Order and/or to Quash Plaintiff's Notice of Deposition and Subpoena Duces Tecum ("Law Affidavit"), as well as the pleadings and records on file herein, and such other evidence as may be presented at or prior to any hearing on this Motion. Oral argument is requested, and a hearing date has been reserved. As explained in the Law Affidavit, on June 20, 2018, attorneys for Melaleuca and Medical Recovery Services, LLC conferred about

this dispute, as required by Idaho Rule of Civil Procedure 26(c)(1), without being able to come to a resolution.


DATED this 2<sup>nd</sup> day of July, 2018.


By:

  
Richard R. Friess

**CERTIFICATE OF SERVICE**

I hereby certify that on July 2, 2018, I caused a true and correct copy of the foregoing MOTION OF NON-PARTY MELALEUCA, INC. FOR PROTECTIVE ORDER AND/OR TO QUASH PLAINTIFF'S NOTICE OF DEPOSITION AND SUBPOENA DUCES TECUM to be served on those listed below using the delivery method(s) indicated:

  BRYAN N. ZOLLINGER SMITH DRISCOLL & ASSOCIATES, PLLC 414 SHOUP AVENUE PO BOX 50731 IDAHO FALLS, ID 83405	<input checked="" type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> Email  <input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Email
---	--

By:   
Richard R. Friess

RRF/4550/002 MOTION PO QUASH

Richard R. Friess, ISB #7820  
THOMSEN HOLMAN WHEELER, PLLC  
2635 Channing Way  
Idaho Falls, ID 83404  
Telephone: (208) 522-1230  
Fax: (208) 522-1277  
friess@thwlaw.com

J. Andrew Law, ISB #10296  
MELALEUCA, INC.  
4609 West 65<sup>th</sup> South  
Idaho Falls, ID 83402  
Telephone: (208) 522-0700  
Fax: (208) 534-2063

Attorneys for Non-Party Melaleuca, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs —

Defendant.

Case No. [REDACTED]

MEMORANDUM IN SUPPORT OF  
MOTION OF NON-PARTY  
MELALEUCA, INC. FOR PROTECTIVE  
ORDER AND/OR TO QUASH  
PLAINTIFF'S NOTICE OF DEPOSITION  
AND SUBPOENA DUCES TECUM

Non-party Melaleuca, Inc. ("Melaleuca") respectfully requests entry of a protective order and/or an order quashing the *Notice of Taking Deposition Pursuant to Rule 60(B)(6)* ("Notice") and *Subpoena Duces Tecum Pursuant to Rule 30(b)(6)* ("Subpoena"), issued by Plaintiff Medical Recovery Services, LLC ("Plaintiff"), as required and permitted by Idaho Rules of Civil Procedure 26 and 45 and Idaho Code § 11-722.

1 - MEMORANDUM IN SUPPORT OF MOTION OF NON-PARTY MELALEUCA, INC.  
FOR PROTECTIVE ORDER AND/OR TO QUASH PLAINTIFF'S NOTICE OF  
DEPOSITION AND SUBPOENA DUCES TECUM

## INTRODUCTION

More than two months ago, non-party Melaleuca answered garnishment interrogatories (the “Garnishment Answer”) served on the company by the Bonneville County Sheriff’s Office (“BCSO”) as part of Plaintiff’s collection efforts against Defendant [REDACTED]. The Garnishment Answer made clear that (1) Melaleuca does not have any money or property belonging to the judgment debtor named in the pleadings or judgment, i.e. [REDACTED] and (2) Melaleuca does not know the identity of the judgment debtor whose wages Plaintiff seeks to garnish. Under Idaho law, and as a practical matter, the Garnishment Answer is “true and sufficient”—meaning it is necessarily accurate, adequate, and enough.

Despite this, Plaintiff now seeks additional discovery from Melaleuca, presumably in an effort to correct Plaintiff’s incomplete or inaccurate records and garnishment. But this additional discovery is unreasonably cumulative, is meant to annoy or oppress, and is duplicative, as it contains topics for which Melaleuca has already provided an accurate and complete answer. As such, the discovery is unduly burdensome and improperly seeks to shift Plaintiff’s burden of ensuring that its garnishment documents contain complete information to Melaleuca. For these reasons, Melaleuca respectfully requests that the Court issue a protective order against and/or quash Plaintiff’s Notice and Subpoena.

## STATEMENT OF FACTS

In late April 2018, the BCSO sent to Melaleuca a Writ of Execution and Order for Continuing Garnishment; Notice of Continuing Garnishment; and Notice/Interrogatories to Garnishee (“Interrogatories”) (collectively, “Garnishment Documents”). *Affidavit of J. Andrew Law in Support of Motion of Non-Party Melaleuca, Inc. for Protective Order and/or to Quash Plaintiff’s Notice of Deposition and Subpoena Duces Tecum* (“Law Aff.”), Ex. A. Each of the

Garnishment Documents, including the Writ of Execution and Order for Continuing Garnishment, identifies the judgment debtor as [REDACTED],<sup>1</sup> *Id.*

The BCSO stamped the Notice/Interrogatories to Garnishee (“Interrogatories”) with the date April 25, 2018. *Id.*, Ex. A at 9. The Interrogatories commanded Melaleuca to answer “within five (5) days” per Idaho Code § 11-719. *Id.* The Interrogatories further stated:

Take notice that all money, wages, goods, rents due and owing and all other personal property in your possession or under your control, *belonging to the defendant named in the attached copy of the writ of execution* is levied upon and you are hereby notified not to pay or transfer the same to anyone but the office of the sheriff.

*Id.* (emphasis added).

The Interrogatories required Melaleuca to respond to certain questions, including the following: “Do you have in your possession or under control [sic] any money or property belonging to the defendant(s)?” *Id.* Melaleuca served the following response:

*Melaleuca, Inc. (“Melaleuca”) does not have in its possession or under its control any money or property belonging to a [REDACTED] the defendant named in case no. [REDACTED]. While Melaleuca has an employee whose Social Security number matches the Social Security number on the Notice of Continuing Garnishment, that employee’s name is not [REDACTED] in Melaleuca’s records. Moreover, Melaleuca has no knowledge that this employee is the true judgment debtor in the above-referenced case. And Melaleuca is not in a position to resolve any discrepancies with Plaintiff’s garnishment documents or Plaintiff’s other records as to the true identity of the judgment debtor.*

*Id.*, Ex. B at 2 (emphasis added). Because Melaleuca did not have record of employing the judgment debtor, it answered the remaining questions in the Interrogatories with the notation “N/A” (i.e., not applicable). *Id.*, Ex. B at 3.

Melaleuca returned its Garnishment Answer to the Interrogatories on April 30, 2018. *Id.*, Ex. B at 3. On information and belief, Plaintiff received a copy of the Garnishment Answer on

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<sup>1</sup> The Social Security number [REDACTED] is mentioned once in the Garnishment Documents—in the Notice of Continuing Garnishment—and not at all in the Notice/Interrogatories to Garnishee. Law Aff., Ex. A.

May 2, 2018. *Id.*, Ex. C at 2. And on May 3, 2018, the BCSO filed the Garnishment Answer with the Court. *Id.*, Ex. B; *id.*, Ex. H at 2. Plaintiff did not at that time (or at any other time) object to or deny the Garnishment Answer via a filing with this Court.

Plaintiff sent a letter to Melaleuca on May 18, 2018, which Melaleuca received on May 22, 2018. *Id.*, Ex. C. That letter demands payment from Melaleuca for [REDACTED]'s debt, and states:

Our investigation shows that although *you have returned the Interrogatories as required by Idaho law*, you have failed to pay the sheriff wages you owed to [REDACTED] as under Idaho law, you were to deliver or transfer wages you owed [REDACTED] at the time of service and thereafter pursuant to the documents listed above.

*Id.*, Ex. C at 1 (emphasis added). In its letter, Plaintiff did not specifically dispute the substance of the Garnishment Answer. *Id.*

Melaleuca responded to Plaintiff's demand via letter on May 29, 2018. *Id.*, Ex. D. In its letter response, Melaleuca explained:

Melaleuca is not liable for the debts of the judgment debtor, [REDACTED] under Idaho law. As Melaleuca explained in its [Garnishment Answer], *Melaleuca has no record of employing someone with the name [REDACTED]*. Nevertheless, in its [Garnishment Answer], as a show of good faith, Melaleuca noted a potential discrepancy in your client's paperwork with respect to the identity of the judgment debtor. Unfortunately, Melaleuca is not in a position to resolve that possible conflict, nor is it required to by law. Melaleuca therefore rejects your demand for payment of the judgment debtor's debt.

*Id.*, Ex. D at 1 (emphasis added). Plaintiff did not respond to this letter or file anything with the Court objecting to the Garnishment Answer. *Id.*, Ex. H.

On June 7, 2018, Plaintiff served on Melaleuca a *Notice of Taking Deposition Pursuant to Rule 60(B)(6)*<sup>2</sup> ("Notice") and *Subpoena Duces Tecum Pursuant to Rule 30(b)(6)*

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<sup>2</sup> "Rule 60(B)(6)" appears to be a mistaken reference to Rule 60(b)(6). But Rule 60(b)(6) provides for relieving a party from a final judgment for "any other reason that justifies relief." It is not a rule pursuant to which a deposition may be taken. From the body of the Notice, Melaleuca gathers that Plaintiff intends to notice a Rule 30(b)(6)

4 - MEMORANDUM IN SUPPORT OF MOTION OF NON-PARTY MELALEUCA, INC.  
FOR PROTECTIVE ORDER AND/OR TO QUASH PLAINTIFF'S NOTICE OF  
DEPOSITION AND SUBPOENA DUCES TECUM



("Subpoena"). *Id.* ¶¶ 6-7, Ex. E, Ex. F. The Notice and Subpoena list July 12, 2018, as the date of compliance. *Id.*, Ex. E at 1, Ex. F at 1. The Notice and Subpoena contain the following topics:

1. The employment of [REDACTED] also identified by her social security [sic] number of [REDACTED].
2. Payroll history of [REDACTED] also identified by her social security [sic] number of [REDACTED].

*Id.*, Ex. E at 2, Ex. F at 2.

On June 20, 2018, attorneys for Melaleuca and Plaintiff conferred via telephone, pursuant to Rule 26(c)(1) of the Idaho Rules of Civil Procedure. *Id.* ¶ 8, Ex. G. Melaleuca explained to Plaintiff that its Notice and Subpoena were not proper under Idaho law. *Id.* Melaleuca expressed willingness to consider a proposal from Plaintiff that would obviate the need for Melaleuca's motion. *Id.* Plaintiff has provided no such proposal. *Id.* Because Melaleuca and Plaintiff were unable to come to a resolution, Melaleuca files its motion for protective order and/or to quash Plaintiff's Notice and Subpoena.

## ARGUMENT

### I. Melaleuca's Motion for Protective Order Should Be Granted and/or the Notice and Subpoena Should be Quashed

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deposition ("Notice or Subpoena Directed at an Organization"). Melaleuca notes this error not as a gratuitous criticism but to point out that throughout its collection efforts, Plaintiff seems to be less than fully concerned with ensuring that its documents are correct, and to highlight that creditors have the burden of being precise or they risk "suffer[ing] the penalty of their own negligence." *Yacht Club Sales & Serv., Inc. v. First Nat'l Bank of N. Idaho*, 101 Idaho 852, 858, 623 P.2d 464, 470 (1980) (quoting *German Nat'l Bank v. Nat'l State Bank*, 39 P. 71, 72 (Colo. App. 1895)).

Idaho Rule of Civil Procedure 26 provides that a “person from whom discovery is sought” may move for a protective order to prevent “annoyance, . . . oppression, or undue burden or expense.” *Id.* 26(c)(1). Moreover, Rule 26 provides that the Court *must* limit discovery if it determines that “the discovery sought is unreasonably cumulative or duplicative.” I.R.C.P. 26(b)(1)(C)(i). The Court may enter an order “forbidding the disclosure or discovery” or “forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters.” *Id.* 26(c)(1)(A), (D). For its part, Rule 45 permits the Court to quash a subpoena “if it is unreasonable, oppressive, . . . or subjects a person to undue burden.” *Id.* 45(d)(1). Under these Rules, Plaintiff’s Notice and Subpoena should be prohibited and/or quashed.

**a. Melaleuca’s Garnishment Answer Is True and Sufficient, and Requiring Further Discovery of Melaleuca Would Constitute an Annoyance, Oppression, or Undue Burden**

Under Idaho law, and as a practical matter, Melaleuca’s Garnishment Answer to the Interrogatories is “true and sufficient,” and Melaleuca should not now be required to expend resources responding to additional discovery from Plaintiff where Plaintiff has failed to “except to” or “deny” the Garnishment Answer.

The Idaho Supreme Court has agreed that “[c]reditors are supposed to know the names of their debtors,” and that in attempting to collect on a debt, creditors risk “suffer[ing] the penalty of their own negligence” for failing to properly name the judgment debtor. *Yacht Club Sales & Serv., Inc. v. First Nat’l Bank of N. Idaho*, 101 Idaho 852, 858, 623 P.2d 464, 470 (1980) (quoting *German Nat’l Bank v. Nat’l State Bank*, 39 P. 71, 72 (Colo. App. 1895)). In contrast, the Idaho Supreme Court has noted, a “garnishee is totally unaffected by any notice which may be served upon him, unless it properly runs with an accurate description against the individual to

whom he may be indebted,” absent the garnishee’s actual knowledge of the identity of the judgment debtor. *Id.* (emphasis added). Further, the Idaho Supreme Court has explained that where a garnishee receives a notice of garnishment that does not match a name in the garnishee’s records, the garnishee may simply respond that it has no funds of the judgment debtor. *Id.* 101 Idaho at 858; 623 P.2d at 470. Alternatively, where the garnishee has information that suggests a potential error in the judgment creditor’s paperwork, the garnishee may alert the judgment creditor of that possibility, but by doing so, the garnishee is under no obligation to hold funds for the judgment creditor.<sup>3</sup> *Id.*

If a judgment creditor is dissatisfied with a garnishee’s answer to a notice of garnishment for whatever reason, the onus is on the judgment creditor to take further action. *Id.* 101 Idaho at 858-59, 623 P.2d at 470-71. To that end, Idaho Code provides that the judgment creditor may “except to” (I.C. § 11-720) or “deny” (I.C. § 11-721) the garnishee’s answer to interrogatories with the Court. *Yacht Club*, 101 Idaho at 858-59, 623 P.2d at 470-71. Critically, under Idaho Code § 11-722—a rule of discovery unique to garnishment proceedings—a judgment debtor must “except to” or “deny” a garnishee’s answer “*within three (3) days after its filing,*” unless a Court grants an extension for good cause. (Emphasis added.) Failure to “except to” or “deny” a garnishee’s answer means that the answer must be “taken to be *true and sufficient.*” I.C. § 11-722 (emphasis added). Moreover, where the garnishee denies liability “and the denial is uncontroverted, the garnishee *shall be discharged* at the cost of the judgment creditor.” *Id.* (emphasis added).

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<sup>3</sup> While Plaintiff may claim that the availability of the “claim of exemption” proceeding (I.C. § 11-711)—which provides a method for the judgment debtor to contest a garnishment—suggests that a garnishee should blindly collect against anyone who looks like they have even the most remote possibility of being the true judgment debtor, such a position turns garnishment proceedings on their head by permitting the judgment creditor to escape any obligation of accuracy—to garnish first and never ask questions, as it were. *See Yacht Club*, 101 Idaho at 858, 623 P.2d at 470.

Here, Melaleuca's Garnishment Answer must be taken as "true and sufficient" and further discovery is not appropriate against the company. Melaleuca received garnishment documents from the BCSO that did not contain an accurate description of any Melaleuca employee in its records. Because Melaleuca had no record of employing the named judgment debtor, Melaleuca responded to the Interrogatories accurately by stating that Melaleuca "does not have in its possession or under its control any money or property belonging to a [REDACTED] [REDACTED]' the defendant named in case no. [REDACTED]." Law Aff. ¶ 3, Ex. B at 2. Nevertheless, as a show of good faith, Melaleuca attempted to assist the judgment creditor by explaining that it had an employee whose Social Security number matched a Social Security number found in one of the Garnishment Documents. *Id.* Melaleuca made clear, however, that it had no knowledge that this employee was the judgment debtor and that it was not in a position to resolve any potential discrepancy in Plaintiff's records regarding the true identity of the judgment debtor. *Id.* As a practical matter, Melaleuca has no more information to give regarding the judgment debtor [REDACTED]<sup>4</sup> And consistent with the Idaho Supreme Court's decision in *Yacht Club*, the Garnishment Answer went beyond Melaleuca's obligations, but did not give rise to any liability for Melaleuca nor did it create a duty on Melaleuca's part to resolve for Plaintiff the true identity of the judgment debtor.

If Plaintiff was dissatisfied with the Garnishment Answer, the proper remedy was for Plaintiff to "except to" or "deny" it through a filing in this Court *within three days of*

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<sup>4</sup> This is a standalone reason to vacate the Notice and Subpoena. *See Wilkins v. Vaughn*, 2015 WL 10913526, at \*5 (E.D.N.C. Apr. 17, 2015) (issuing protective order under the similar federal rule against interrogatories where the "interrogatories [sought] information already provided within Defendants' responses to Plaintiff's document requests").

*Melaleuca's Answer being filed with the Court on May 3, 2018.*<sup>5</sup> I.C. § 11-722; Law Aff., Ex. B; *id.*, Ex. H at 2. Plaintiff failed to make such a filing. Law Aff., Ex. H. And even now, nearly two months later, Plaintiff has not so much as hinted—in any context—that there was good cause for its failure to “except to” or “deny” the Garnishment Answer. The plain language of Idaho Code § 11-722 is clear as to what should happen at this point: the Garnishment Answer must be “taken to be true and sufficient”—i.e., accurate, adequate, and enough. I.C. § 11-722. In other words, with respect to the Garnishment Answer, there is no more controversy: the company’s response is definitive and final. Moreover, because Melaleuca denied all liability, Melaleuca must be “discharged at the cost of the judgment creditor.” *Id.*

Because the Garnishment Answer is necessarily “true and sufficient,” and because Melaleuca must be discharged in this case, requiring a Melaleuca employee to spend time traveling and sitting for a deposition, and requiring Melaleuca to respond to the Subpoena would necessarily constitute an “annoyance, . . . oppression, or undue burden or expense” under Rule 26(c)(1), and be “unreasonable, oppressive, . . . or subject[ Melaleuca] to undue burden” under Rule 45(d)(1). That is, because the Garnishment Answer is accurate, adequate, and enough, further discovery plainly aimed at testing the Garnishment Answer—as Plaintiff’s Notice and Subpoena seek to do—is simply improper.<sup>6</sup> *See Selkirk Seed Co. v. Forney*, 134 Idaho 98, 105,

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<sup>5</sup> Even ignoring that it was sent *fifteen days* after Melaleuca’s Garnishment Answer was filed with the Court, Plaintiff’s May 18, 2018 letter does not constitute an “exception to” or “denial” of Melaleuca’s Garnishment Answer. To begin, the letter states that Melaleuca “returned the Interrogatories as required by Idaho law.” Law Aff., Ex. C at 1. Moreover, Plaintiff’s letter does not expressly “except to” or “deny” anything in the Garnishment Answer. *See id.* Lastly, Idaho Code necessarily contemplates a filing *with the Court* to “except to” (I.C. § 11-720) or “deny” (I.C. § 11-721) the Garnishment Answer.

<sup>6</sup> The “employment” and “payroll history” of the named judgment debtor [REDACTED]—the topics raised in the Notice and Subpoena—are not relevant under I.R.C.P. 26(b)(1) to any claim or defense Plaintiff has against the judgment debtor as Plaintiff already has a default judgment for a sum certain against the judgment debtor. Instead, it appears that Plaintiff is attempting through its Notice and Subpoena to bolster its claim that Melaleuca has stepped into the shoes of the judgment debtor (*see* Law Aff., Ex. C at 1). But, as a practical matter, Melaleuca has already made clear it has no information about the named judgment debtor [REDACTED]. And under Idaho Code § 11-9 - MEMORANDUM IN SUPPORT OF MOTION OF NON-PARTY MELALEUCA, INC. FOR PROTECTIVE ORDER AND/OR TO QUASH PLAINTIFF’S NOTICE OF DEPOSITION AND SUBPOENA DUCES TECUM

996 P.2d 798, 805 (2000) (holding, in part, that the district court did not abuse its discretion under I.R.C.P. 26(c) in issuing a protective order that vacated depositions related to another court proceeding because the other proceeding was final, issues from the other proceeding were not at issue in the current proceeding, and the Plaintiff could have pursued the “proper remedy” through other means). Melaleuca thus requests that the Court issue a protective order to prevent the need for Melaleuca to expend resources responding to Plaintiff’s Notice and Subpoena.

**b. The Court Should Likewise Enter a Protective Order and/or Quash the Notice and Subpoena Because Plaintiff’s Discovery is Unreasonably Cumulative and Duplicative or Could Be Had from Defendant**

In addition to being an annoyance, oppression, or undue burden, Plaintiff’s Notice and Subpoena seek responses to discovery topics to which Melaleuca has already responded or that Plaintiff could seek from a less burdensome source: the judgment debtor-Defendant.

Idaho Rule of Civil Procedure 26(b)(1)(C)(i) *requires* that the Court protect Melaleuca from discovery that is “unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive.”

Plaintiff’s Notice and Subpoena seek discovery for which Melaleuca has already provided a response. Specifically, Plaintiff seeks information about the “employment” and “payroll history” of [REDACTED] also identified by her social security [sic] number of [REDACTED] [REDACTED]” Law Aff., Ex. E at 2, Ex. F at 2. Importantly, Plaintiff’s discovery topics *do not* seek information about [REDACTED] *and/or* any Melaleuca employee with the Social Security number of [REDACTED]. In other words, Plaintiff’s Notice and Subpoena can only be interpreted as seeking discovery of a [REDACTED] with the Social Security number of [REDACTED]. As Melaleuca has already explained to Plaintiff, it has no record of employing a

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722, Melaleuca is discharged from any liability for the named judgment debtor’s debt and discovery aimed at Melaleuca for such a claim is not proper.

██████████ Law Aff., Ex. B at 2-3; *id.*, Ex. D at 1. And Melaleuca likewise made clear that its employee with the Social Security number of ██████████ is *not* named ██████████ ██████████ in Melaleuca's records. *Id.* Consequently, if Melaleuca were to send someone to the deposition, that employee would have no documents to bring and no information to provide about a ██████████ with the Social Security number of ██████████. In short, because Melaleuca has already made its lack of records and knowledge clear to Plaintiff in its Garnishment Answer and related correspondence, permitting Plaintiff's Notice and Subpoena to go forward as formulated would only subject Melaleuca to "unreasonably cumulative or duplicative"—and ultimately futile—discovery. *See ACI Worldwide Corp. v. MasterCard Techs., LLC*, 2016 WL 3647850, at \*3, \*5 (D. Neb. July 1, 2016) (prohibiting duplicative depositions and document subpoena to non-party under similar federal rules).

Even if Plaintiff's Notice and Subpoena are intended to help Plaintiff learn whether the named judgment debtor has an alternative name (despite not actually saying so), further discovery of Melaleuca is not appropriate. As explained above, Plaintiff bears the burden of ensuring that its pleadings and garnishment documents accurately name the judgment debtor—not Melaleuca. *Yacht Club*, 101 Idaho at 858, 623 P.2d at 470 (explaining that creditors are under an obligation like "strict accountability" "to be certain of the names of their debtors"). And if Plaintiff believes that the judgment debtor has an alias, the judgment debtor herself—not non-party Melaleuca—is the best source of information on that subject. *See Price v. Pearson*, 2014 WL 12687411, at \*3-\*4 (C.D. Cal. Apr. 8, 2014) ("Plaintiff had the opportunity through written discovery and [defendant's] deposition to inquire of . . . the agency that is most likely to have the information requested. There is no justification for subjecting DOJ employees who have less or no information about the incident in issue to be subjected to a deposition."); *Nidec*

*Corp. v. Victor Co. of Japan*, 249 F.R.D. 575, 577 (N.D. Cal. 2007) (“[T]he vast majority of the discovery sought from [the non-party] is discovery obtainable from a source more direct, convenient, and less burdensome—namely, from Defendants. . . . There is simply no reason to burden nonparties when the documents sought are in possession of the party defendant.”). Accordingly, Plaintiff’s attempt to burden Melaleuca with discovery is improper where Plaintiff has not already sought information from the best source: the judgment debtor-Defendant herself.<sup>7</sup>

### CONCLUSION

For the reasons stated above, Melaleuca requests that the Court issue an order to:

1. Declare that Melaleuca’s Garnishment Answer to the Interrogatories is “true and sufficient” for purposes of Plaintiff’s garnishment attempts against [REDACTED] pursuant to Idaho Code § 11-722;
2. Declare that Melaleuca is discharged from any liability under the garnishment statute at the cost of Plaintiff for purposes of Plaintiff’s garnishment attempts against [REDACTED] [REDACTED] pursuant to Idaho Code § 11-722;
3. Enter a protective order that prohibits Plaintiff from serving or taking additional discovery of Melaleuca in the above-captioned case, including via the Notice and Subpoena;

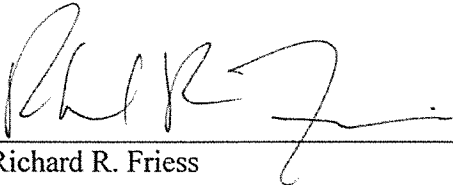
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<sup>7</sup> If, after discovery from the judgment debtor-Defendant, Plaintiff wishes to send amended garnishment documents to Melaleuca, Melaleuca will fairly evaluate those garnishment documents and garnish wages as appropriate—something Melaleuca has done on numerous occasions for Plaintiff. *See, e.g., Med. Recovery Servs., LLC v. Gonzales*, No. CV-18-1140 (7th Jud. Dist. Idaho filed Feb. 21, 2018) (garnishment received Apr. 30, 2018); *Med. Recovery Servs., LLC v. Halford*, No. CV-18-572 (7th Jud. Dist. Idaho filed Jan. 24, 2018) (garnishment received June 4, 2018); *Med. Recovery Servs., LLC v. Glodo*, No. CV-18-469 (7th Jud. Dist. Idaho filed Jan. 17, 2018) (garnishment received Apr. 30, 2018); *Med. Recovery Servs., LLC v. Hernandez*, No. CV-17-3773 (7th Jud. Dist. Idaho filed June 27, 2017) (garnishment received Oct. 16, 2017); *Med. Recovery Servs., LLC v. Aston*, No. CV-16-6784 (7th Jud. Dist. Idaho filed December 19, 2016) (garnishment received Mar. 6, 2018); *Med. Recovery Servs., LLC v. Escareno*, No. CV-16-6084 (7th Jud. Dist. Idaho filed Nov. 7, 2016) (garnishment received Jan. 31, 2017); *Med. Recovery Servs., LLC v. Cruz*, No. CV-16-2923 (7th Jud. Dist. Idaho filed June 2, 2016) (garnishment received June 18, 2018).



4. Quash the Notice and Subpoena; and
5. Permit Melaleuca to seek its reasonable expenses in connection with its Garnishment Answer and this motion pursuant to Rules 26(c)(3) and 37(a)(5) of the Idaho Rules of Civil Procedure and Idaho Code § 11-722.

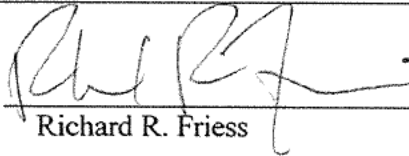
DATED this 2<sup>nd</sup> day of July, 2018.

By:   
Richard R. Friess

**CERTIFICATE OF SERVICE**

I hereby certify that on July 2, 2018, I caused a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION OF NON-PARTY MELALEUCA, INC. FOR PROTECTIVE ORDER AND/OR TO QUASH PLAINTIFF'S NOTICE OF DEPOSITION AND SUBPOENA DUCES TECUM to be served on those listed below using the delivery method(s) indicated:

<div style="background-color: black; width: 150px; height: 40px; margin-bottom: 10px;"></div> <p>BRYAN N. ZOLLINGER SMITH DRISCOLL &amp; ASSOCIATES, PLLC 414 SHOUP AVENUE PO BOX 50731 IDAHO FALLS, ID 83405</p>	<p><input checked="" type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> Email</p> <p><input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Email</p>
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By:   
Richard R. Friess

RRF/4550/001 MEMO ISO MOT PO

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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND  
FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC, an  
Idaho limited liability company,

Plaintiff,

Vs.

Defendant.

Case No. [REDACTED]

**OPPOSITION TO MOTION OF NON-PARTY  
MELALEUCA, INC. FOR PROTECTIVE ORDER  
AND/OR TO QUASH PLAINTIFF'S NOTICE OF  
DEPOSITION AND SUBPOENA DUCES  
TECUM**

Plaintiff, Medical Recovery Services, LLC, ("MRS") submits this Opposition to Motion of Non-Party Melaleuca, Inc. for Protective Order and/or to Quash Plaintiff's Notice of Deposition and Subpoena Duces Tecum.

**I. INTRODUCTION.**

Non-party Melaleuca, Inc. ("Melaleuca") is seeking a broad protective order prohibiting MRS from conducting any additional discovery of Melaleuca, quashing MRS' notice of taking deposition and subpoena, and asks this Court to improperly "declare that Melaleuca is

discharged from liability under the garnishment statute at the cost of Plaintiff.” MRS hereby objects to Melaleuca’s motion for the following reasons.

II. **MELALEUCA’S REQUEST FOR DECLARATION DISCHARGING IT FROM LIABILITY IS PREMATURE, IMPROPER AND UNNECESSARY AT THIS TIME.**

MRS has not filed any action against Melaleuca and is not currently seeking to hold Melaleuca liable under Idaho garnishment statutes. Both Idaho Code §§ 11-720 and 11-721 allow a judgment creditor the discretionary option of excepting or denying the answer of garnishee. I.C. § 11-722 allows the court or judge, for good cause shown, to allow a longer time to except or deny an answer of a garnishee. At this point in time, MRS is not exempting or denying Melaleuca’s answer to the writ of execution. MRS is simply exercising the legal right granted in I.R.C.P. 26 & 30 and specifically provided for by I.C. § 11-717. Melaleuca’s argument that its answer be taken as “true and sufficient is not relevant to MRS’ discovery requests. Even assuming MRS does consider Melaleuca’s answer to be true and sufficient, MRS has a very specific legal right to depose or examine Melaleuca regarding the personal property or credits of the judgment debtor it has control over.

Had MRS sought to challenge Melaleuca’s answer, then pursuant to I.C. § 11-723, MRS would have file a motion and serve Melaleuca “due notice of the said motion” and then the court “at the hearing thereof” could “render such judgment as shall be conformable to law and the facts shown to exist.” However, at this point MRS has not moved to exempt or deny Melaleuca’s answer or to hold Melaleuca liable for any act of bad faith. Because MRS has not exempted or denied the Melaleuca’s answer at this time, it would be improper, premature and unnecessary for the court to rule on Melaleuca’s liability.

III. MELALEUCA'S GARNISHMENT ANSWER IS NOT RELEVANT TO MRS' DISCOVERY MOTIONS AND MRS' DISCOVERY MOTIONS ARE VERY NARROWLY DRAFTED TO AVOID ANY ANNOYANCE, OPPRESSION OR UNDUE BURDEN.

I.R.C.P. 26(b)(1)(A) sets out the general broad scope of permissible discovery, that rule states:

General Scope of Discovery. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense, including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

I.R.C.P. 26(b)(1)(A). The burden of showing necessity of a protective order is on the party seeking the protective order. "A party who requests a protective order to limit discovery **must show good cause.**" *Westby v. Schaefer*, 157 Idaho 616, 622 (2014). In explaining what is required for a court to find good cause and issue a protective order, the Idaho Supreme Court explained that "trial courts must cite a reason for good cause and cannot rely on broad, non-factual requests and conclusory statements." *Id.* at 622. Additionally, courts have held that "[b]road allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test." *Id.* "A party asserting good cause bears the burden, for each particular document it seeks to protect, of showing that specific prejudice or harm will result if no protective order is granted." *Id.*

In this case MRS is simply seeking very limited discovery regarding an employee or potential employee of Melaleuca, the discovery requests are very narrowly drafted as to not create any undue burden on Melaleuca. Obviously, pursuant to I.R.C.P. 30, MRS has the right to

“depose any person” and it “may name as the deponent a public or private corporation” exactly as it has done in this case. Additionally, MRS is legally entitled to seek any relevant information and specifically, Rule 26 allows MRS to seek information about the “identity and location of persons who know of any discoverable matter.” Here, Melaleuca has declared that it is employing someone using the social security number MRS used to identify the judgment debtor in this case and the information Melaleuca possess is not only relevant to MRS’ case but is essential.

MRS also has a specific legal entitlement to examine Melaleuca pursuant to Idaho’s garnishment statutes. Specifically, I.C. § 11-717 provides:

**Any person owing debts to the judgment debtor, or having in his possession or under his control, any credits or other personal property belonging to the judgment debtor, may *be required to attend before the court or judge, or a referee appointed by the court or judge, and be examined on oath respecting the same. If the garnishee be a corporation the officer or agent thereof having knowledge of the fact sought to be established may be required to attend and give evidence thereof.*** The judgment debtor may also be required to attend for giving information respecting his property and may be examined on oath.

Idaho Code Ann. § 11-717 (Emphasis added). Based upon Melaleuca’s answer to garnishment there is substantial reason to believe that Melaleuca has under its control credits and or personal property of the judgment defendant. from Melaleuca as a party with knowledge of information that is relevant to MRS’ case against the judgment debtor. For these reasons, the information MRS is seeking through its narrowly drafted discovery requests is very relevant and are reasonably calculated to lead to the discovery of admissible evidence. Issuing a protective order which “would disallow inquiry that is reasonably calculated to lead the discovery of admissible evidence” would be an abuse of discretion by this Court. *McCann v. McCann*, 152 Idaho 809, 822 (2012).

Melaleuca has not shown any specific prejudice or harm it will suffer as a result of responding to MRS' subpoena and sitting for a brief deposition. Instead, Melaleuca has only alleged "broad allegations of harm, unsubstantiated by specific examples or articulated reasoning." *Westby v. Schaefer*, 157 Idaho 616, 622 (2014). In fact, it is almost certain that Melaleuca has spent more time and resources seeking this protective order than it would have by simply complying with MRS' discovery requests.

IV. **CONCLUSION.**

Because MRS has not and is not currently seeking to except or deny Melaleuca's answer to garnishment, this court should deny Melaleuca's seeking a declaration of non-liability as such is premature, unnecessary and inappropriate. Additionally, this court should deny Melaleuca's requests for protective order and motion to quash as MRS has shown the discovery sought is relevant or will result in discovery of relevant information and Melaleuca has failed to show any specific harm it will suffer as a result of MRS' discovery requests.

DATED this \_\_\_ day of July, 2018.

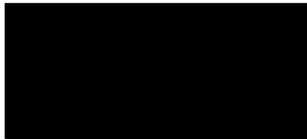
SMITH, DRISCOLL & ASSOCIATES, PLLC

By \_\_\_\_\_  
Bryan N. Zollinger, Esq.  
Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this \_\_\_\_\_ day of July, 2018, I caused a true and correct copy of the foregoing **OPPOSITION TO MOTION OF NON-PARTY MELALEUCA, INC. FOR PROTECTIVE ORDER AND/OR TO QUASH PLAINTIFF'S NOTICE OF DEPOSITION AND SUBPOENA DUCES TECUM** to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

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Richard R. Friess  
THOMSEN HOLMAN WHEELER, PLLC  
2635 Channing Way  
Idaho Falls, ID 83404

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J. Andrew Law  
Melaleuca, Inc.  
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Idaho Falls, ID 83402

- U.S. Mail
- Facsimile Transmission
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By: \_\_\_\_\_  
Bryan N. Zollinger, Esq.



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FILED 2019 JUL 13 PM 4:23

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Attorneys for Non-Party Melaleuca, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs –

Defendant.

Case No. [REDACTED]

REPLY IN SUPPORT OF MOTION OF  
NON-PARTY MELALEUCA, INC. FOR  
PROTECTIVE ORDER AND/OR TO  
QUASH PLAINTIFF'S NOTICE OF  
DEPOSITION AND SUBPOENA DUCES  
TECUM

COMES NOW, Non-Party Melaleuca, Inc., by and through counsel of record, and submits the following Reply in Support of Motion for Protective Order and/or To Quash Plaintiff's Notice of Deposition and Subpoena Duces Tecum.

**INTRODUCTION**

Good cause exists to enter a protective order against and/or to quash Plaintiff's Notice and Subpoena issued to Melaleuca, Inc. ("Melaleuca"). Melaleuca stated in its Garnishment

1 - REPLY IN SUPPORT OF MOTION OF NON-PARTY MELALEUCA, INC. FOR  
PROTECTIVE ORDER AND/OR TO QUASH PLAINTIFF'S NOTICE OF DEPOSITION  
AND SUBPOENA DUCES TECUM

Answer that it does not have in its possession or under its control any money or property belonging to the judgment debtor in this case. Plaintiff recognizes in its Opposition that it did not “except to,” “deny,” or otherwise controvert that response in a filing before the Court. As a consequence, the Garnishment Answer must now be taken as “true and sufficient”—that is accurate, adequate, and complete—and Melaleuca should be discharged from any liability in this case pursuant to Idaho Code § 11-722.

Additionally, Plaintiff’s discovery *must* be prohibited under Rule 26 because (1) those discovery requests are unreasonably cumulative or duplicative of what it has already asked Melaleuca (i.e., Plaintiff seeks, again, to discover information about the named judgment debtor ██████████—someone Melaleuca has already said it has no record of employing); and (2) Plaintiff has not sought discovery (or advanced an argument that it cannot do so) from the source that can give it a definitive answer as to the identification of the judgment debtor: the judgment debtor herself.

Melaleuca thus requests that the Court enter Melaleuca’s proposed protective order and/or quash Plaintiff’s Notice and Subpoena.

### ARGUMENT

**A. Because Idaho Code § 11-722 Provides That Melaleuca’s Garnishment Answer Is “True and Sufficient,” Good Cause Exists to Enter Melaleuca’s Proposed Protective Order and/or an Order to Quash the Notice and Subpoena.**

Plaintiff recognizes that it failed to “except to” or “deny” Melaleuca’s Garnishment Answer within three days of that Garnishment Answer being filed with the Court on May 3, 2018. Rather than accept the consequence of that failure to challenge the Garnishment Answer, Plaintiff argues instead that the Garnishment Answer is “not relevant” and that a protective order discharging Melaleuca from liability is “premature.” *Plaintiff’s Opp.* § II. Plaintiff is wrong.

Plaintiff's failure to challenge Melaleuca's Garnishment Answer is plainly relevant to Plaintiff's attempt to take additional discovery of Melaleuca, and a protective order discharging Melaleuca from liability is not premature at this stage. Under the garnishment statute's unique discovery rules, if a judgment creditor is not satisfied with the garnishee's response to interrogatories, the judgment creditor may "except to" or "deny" the garnishment answer.<sup>1</sup> I.C. § 11-720, -721. Failure by the judgment creditor to "except to" or "deny" the garnishment answer *within three days* after its filing with the Court (or seek an extension of time to file such an exception or denial) has consequences: (1) the garnishment answer must "be taken to be true and sufficient," and (2) "[i]f all liability is denied, and the denial is uncontroverted, the garnishee shall be discharged at the cost of the judgment creditor." I.C. § 11-722. There is no requirement in Idaho Code § 11-722 that the judgment creditor must first "move[] to exempt [sic] or deny" the garnishment answer before the statute applies, as Plaintiff suggests. *Plaintiff's Opp.* at § II. To the contrary, Idaho Code § 11-722 becomes operative precisely because the judgment creditor fails to act.

Given this statutory scheme, permitting additional discovery beyond what is provided for in the garnishment statute is inappropriate. As mentioned, the garnishment statute provides that where a judgment creditor fails to "except to" or "deny" a garnishment answer, that answer "shall be taken to be true and sufficient." I.C. § 11-722. That a garnishment answer is "true" necessarily means that it is an accurate statement—it is a *fact*. And that the garnishment answer is "sufficient" necessarily means that a judgment creditor has no further opportunity to "except

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<sup>1</sup> Plaintiff's statement that it could have "sought to challenge Melaleuca's [Garnishment Answer]" by filing a motion "pursuant to I.C. § 11-723" is incorrect. *Plaintiff's Opp.* § II. Idaho Code § 11-723 applies where the garnishee "admits in his answer that he is indebted to the judgment debtor, or has money or property of the judgment debtor in his hands, or under his control." Melaleuca has in no way admitted that it is indebted to the named judgment debtor or has any money or property of the judgment debtor—quite the opposite: it has disclaimed all liability. See *Affidavit of J. Andrew Law in Support of Motion of Non-Party Melaleuca, Inc. for Protective Order and/or to Quash Plaintiff's Notice of Deposition and Subpoena Duces Tecum* ("Law Aff."), Ex. B at 2.

to,” “deny,” or otherwise challenge the garnishment answer—it is adequate and complete for purposes of the garnishment proceedings. For this reason, allowing further discovery after a garnishee has given a “true and sufficient” garnishment answer would give the judgment creditor indefinite control over a garnishee responding to interrogatories in good faith. In effect, such an interpretation would enable a judgment creditor to demand discovery whenever it is convenient for the judgment creditor, even where the judgment creditor has unreasonably delayed action or been sloppy in its garnishment efforts—a result directly at odds with the Legislature’s plain language in Idaho Code § 11-722.<sup>2</sup>

This case demonstrates precisely why Idaho Code § 11-722 operates to foreclose additional discovery. Plaintiff acknowledges that it failed to “except to” or “deny” Melaleuca’s Garnishment Answer within three days after that answer was filed with the Court. *Plaintiff’s Opp.* § II. Plaintiff likewise failed to ask for more time to submit “exceptions” or a “denial” to Melaleuca’s Garnishment Answer.<sup>3</sup> The consequence is clear: Melaleuca’s Garnishment Answer is “true and sufficient”—accurate, adequate, and complete—and Melaleuca, having denied all liability, *must* be discharged. I.C. § 11-722. This is so under the statute even though Plaintiff has not challenged Melaleuca’s Garnishment Answer; in fact, it is precisely because Plaintiff has not controverted Melaleuca’s Garnishment Answer that Melaleuca’s Garnishment Answer is “true and sufficient” and discharge is required.

Moreover, the Garnishment Answer is relevant to Plaintiff’s Notice and Subpoena—and works to foreclose those discovery attempts. Plaintiff makes clear in its Opposition that the

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<sup>2</sup> Notably, the Legislature amended garnishment provisions in a bill just last year. S.B. 1202, 64th Leg., 1st Reg. Sess. (Idaho 2017). Legislators could have changed Idaho Code § 11-722 at that time, but chose not to do so.

<sup>3</sup> Despite Melaleuca’s motion, Plaintiff has still not suggested that there was “good cause” under Idaho Code § 11-722 for its failure to “except to” or “deny” the Garnishment Answer, or to ask for more time to submit such an “exception” or “denial.”

reason it is seeking additional discovery of Melaleuca is because it does not take the Garnishment Answer to be “true and sufficient,” arguing that “[b]ased upon Melaleuca’s answer to garnishment there is substantial reason to believe that Melaleuca has under its control credits and or [sic] personal property of the judgment defendant.” *Plaintiff’s Opp.* § III. But if Plaintiff truly believed this, it could have challenged the Garnishment Answer within three days. I.C. § 11-722. Plaintiff failed to do so. Plaintiff cannot escape the consequences of its failure to controvert (or seek more time to do so) the Garnishment Answer as provided for in Idaho Code § 11-720 and -721 by propounding additional discovery on Melaleuca. Such an attempted end-run around the garnishment statute is simply improper.

Plaintiff’s argument that it has a “specific legal entitlement” (*Plaintiff’s Opp.* § III) to seek additional discovery of Melaleuca based on Idaho Code § 11-717, likewise misses the mark. That statute provides that a garnishee (including a garnishee corporation) “may be required to attend before the court or judge . . . and be examined on oath.” I.C. § 11-717. Crucially, that statute only permits inquiry of a garnishee “owing debts to the judgment debtor, or having in his possession or under his control, any credits or other personal property belonging to the judgment debtor.” *Id.* Here, it is a fact by operation of Idaho Code § 11-722 (and as a practical matter) that Melaleuca *does not* have under its control any money or property belonging to the named judgment debtor. As a result, Idaho Code § 11-717 provides no “specific legal entitlement” for Plaintiff to take additional discovery.

Plaintiff’s invocation of general discovery rules as a basis for its ability to seek discovery fares no better. *Plaintiff’s Opp.* § III. While Idaho Rules of Civil Procedure 26 and 30 permit certain discovery generally, that discovery must not annoy, oppress, or pose an undue burden. I.R.C.P. 26(c)(1). As Melaleuca has shown, where it has already given a “true and sufficient”

garnishment answer, requiring it to sit for a deposition and produce documents is not consistent with general discovery rules. *See Melaleuca Memo. ISO Mot.* at 6-10. Indeed, because Melaleuca has already submitted a “true and sufficient” Garnishment Answer, there is “good cause” to protect Melaleuca from the “annoyance, . . . oppression, [and] undue burden” that would come from permitting Plaintiff additional discovery to challenge Melaleuca in this matter. I.R.C.P. 26(c)(1); *see also id.* 45(d)(1).

Additionally, it is not premature to enter an order discharging Melaleuca from liability for the judgment creditor’s claim. It appears that Plaintiff intends to pursue Melaleuca for the underlying debt, despite Melaleuca’s “true and sufficient” statements that it has no money or property of the judgment debtor and that it has no information about the named judgment debtor

██████████ *Law Aff.*, Ex. B at 2. This is apparent from the following:

1. Plaintiff has demanded money from Melaleuca, stating that it has stepped into the shoes of the judgment debtor. *Law Aff.*, Ex. C at 1 (“[W]e hereby make demand on Melaleuca, Inc. for payment of \$1,152.01. If we do not receive payment within ten days, we are authorized to file suit against the [sic] Melaleuca, Inc. to seek recovery of the amount owed, attorney’s fees, costs, and statutory interest.”).
2. From what appears in the docket, Plaintiff has not attempted to seek discovery related to the identification of the judgment debtor from the judgment debtor herself (or claim that doing so is impossible). Rather, it seems that Plaintiff has sought discovery only of Melaleuca in this matter. *Law Aff.*, Ex. H.
3. The qualified language in Plaintiff’s Opposition suggests that Plaintiff has Melaleuca in its crosshairs. *See, e.g., Plaintiff’s Opp.* § II (“[Plaintiff] is not *currently* seeking to hold Melaleuca liable”; “*At this point in time*, [Plaintiff] is not exempting [sic] or denying Melaleuca’s answer”; “*at this point* [Plaintiff] has not moved to exempt [sic] or deny Melaleuca’s answer or to hold Melaleuca liable for any act of bad faith” (emphasis added)); *see also Plaintiff’s Opp.* § III (Plaintiff’s contention, despite Melaleuca’s denial, that “there is substantial reason to believe that Melaleuca has under its control credits and or [sic] personal property of the judgment defendant.”).

Accordingly, without a protective order, Melaleuca faces the real harm that comes from Plaintiff (improperly) seeking to hold Melaleuca liable for the debt of the judgment debtor, including

through the initial step of pursuing the Notice and Subpoena at issue here. As a result, it is not premature to apply Idaho Code § 11-722 to discharge Melaleuca at this stage.

In light of the above, far from being irrelevant, Idaho Code § 11-722 applies and dictates that Plaintiff is barred from conducting further discovery of Melaleuca. What is more, Melaleuca's proposed protective order seeking discharge is not premature given the indications that Plaintiff is attempting to hold Melaleuca liable for the judgment debtor's debt. In short, the facts of this case, set forth by Melaleuca through affidavit and exhibits, demonstrate that good cause exists for the Court to apply Idaho Code § 11-722 and prohibit Plaintiff's further discovery.

**B. Plaintiff's Discovery Is Unreasonably Cumulative and Duplicative.**

Plaintiff does not specifically dispute Melaleuca's characterization of the Notice and Subpoena as seeking information for which Melaleuca has already provided a response. *See Melaleuca's Memo. ISO Mot.* at 10-11. Instead, Plaintiff's discovery simply presumes that the judgment debtor is a Melaleuca employee. But Melaleuca has already made clear that it lacks record and knowledge of the named judgment debtor [REDACTED] *Law Aff.*, Ex. B at 2. And further discovery related to the named judgment debtor will not yield a different response. Plaintiff's discovery is thus unreasonably cumulative and duplicative (and futile) and the Court must prohibit or quash the Notice and Subpoena. I.R.C.P. 26(b)(1)(C)(i).

**C. Plaintiff Must Pursue Discovery Related to the Identification of the Judgment Debtor From the Judgment Debtor Herself.**

Plaintiff bears the burden of ensuring that its garnishment documents accurately identify the judgment debtor. *See Yacht Club Sales & Serv., Inc. v. First Nat'l Bank of N. Idaho*, 101 Idaho 852, 858, 623 P.2d 464, 470 (1980). While Plaintiff argues that it is "essential" that it seek discovery of Melaleuca, *Plaintiff's Opp.* § III, Plaintiff does not specifically refute Melaleuca's

position that if Plaintiff intends to seek discovery related to the identification of the judgment debtor, it should not seek first to burden Melaleuca with discovery.<sup>4</sup> Plaintiff has not so much as hinted that discovery from the judgment debtor is not a viable option or that it has pursued *any* other means to learn if the judgment debtor has an alias. More importantly, Melaleuca cannot resolve definitively the identification of the judgment debtor, as it said in its “true and sufficient” Garnishment Answer. *Law Aff.*, Ex. B at 2. In contrast, the judgment debtor can conclusively state any aliases she might have and where she is employed. Because a “less burdensome” source exists, the Court “must limit” Plaintiff’s discovery. I.R.C.P. 26(b)(1)(C)(i).

### CONCLUSION

For the reasons above, and for the reasons stated in its opening memorandum, Melaleuca requests that the Court enter a protective order against Plaintiff’s discovery and/or quash Plaintiff’s discovery.

DATED this 13th day of July, 2018.

MELALEUCA, INC.

By: \_\_\_\_\_

Richard R. Friess


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<sup>4</sup> Plaintiff is also incorrect to suggest that it seeks “very limited discovery” that is “very narrowly drafted.” *Plaintiff’s Opp.* § III. Plaintiff noticed a 30(b)(6) deposition along with a document production related to the open-ended topics of the “employment” and “payroll history” of [REDACTED]—someone Melaleuca already has denied having any record of employing. *Law Aff.*, Ex. B at 2; *id.* Ex. D at 1; *id.* Ex. E at 2; *id.* Ex. F at 2. Given the broad and inapposite nature of the Notice and Subpoena, those discovery requests are not “very narrowly drafted.” More importantly, throughout this matter, Melaleuca has attempted to accommodate Plaintiff and avoid having to file this motion. For example, Melaleuca provided *more* information than it was required to provide in its Garnishment Answer to assist Plaintiff in evaluating the accuracy of its garnishment documents and other records. *See Melaleuca’s Memo. ISO Mot.* at 8; *Law Aff.*, Ex. D at 1. And after Plaintiff served the Notice and Subpoena, Melaleuca invited Plaintiff to propose an alternative path forward, which could have consisted of a single, simple discovery request (a lone interrogatory, perhaps), but Plaintiff chose not to take Melaleuca up on its offer. *Id.* ¶ 8, Ex. G. In short, Plaintiff has ignored every chance to make this matter simple and efficient, and it is disingenuous for Plaintiff to now claim that it has propounded only narrow discovery.



**CERTIFICATE OF SERVICE**

I hereby certify that on July 13, 2018, I caused a true and correct copy of the foregoing REPLY IN SUPPORT OF MOTION OF NON-PARTY MELALEUCA, INC. FOR PROTECTIVE ORDER AND/OR TO QUASH PLAINTIFF'S NOTICE OF DEPOSITION AND SUBPOENA DUCES TECUM to be served on those listed below using the delivery method(s) indicated:

  BRYAN N. ZOLLINGER SMITH DRISCOLL & ASSOCIATES, PLLC 414 SHOUP AVENUE PO BOX 50731 IDAHO FALLS, ID 83405	<input checked="" type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> Email  <input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Email
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By:   
Richard R. Friess

RRF/4550/006 REPLY ISO MOT PO

9 - REPLY IN SUPPORT OF MOTION OF NON-PARTY MELALEUCA, INC. FOR PROTECTIVE ORDER AND/OR TO QUASH PLAINTIFF'S NOTICE OF DEPOSITION AND SUBPOENA DUCES TECUM

1 Legal 3-2019  
2 Judge Michelle Mallard, Attorney Brian Smith, Attorney Andrew Law

3  
4 Judge Mallard

5 Case number [Inaudible: 0:00:04] recovery services versus [REDACTED]. This is a time  
6 date set, excuse me, on hearing, set for hearing on nonparty Melaleuca's motion for protective  
7 order, excuse me. I've reviewed the motions and the briefs. So this is your motion, Mr. Law, go  
8 ahead.

9  
10 Andrew Law

11 Okay. Thank you, Your Honor, may it please the court, Andrew Law on behalf of non-  
12 party Melaleuca, Incorporated. We're here today, Your Honor, because plaintiffs have not been  
13 careful in how they pursued their garnishment efforts in this case. First, plaintiff did not  
14 carefully ensure that his garnishment documents accurately named a Melaleuca employee as the  
15 judgment debtor. Second, after Melaleuca's garnishment answer was filed with the court,  
16 plaintiff did not carefully accept to deny or otherwise controvert any part of Melaleuca's  
17 garnishment answer within three days after the garnishment answer was filed with the court.  
18 Plaintiff likewise did not seek an extension of time in order to controvert Melaleuca's  
19 garnishment answer, and as a result of plaintiff's failure to object to or seek more time to object  
20 to Melaleuca's garnishment answer, that garnishment answer became true and sufficient under  
21 Idaho code second 11722. And under that statute discharge of Melaleuca from all liability is  
22 appropriate. Rather than accept Melaleuca's garnishment answer, rather than accept it and  
23 become true and sufficient, the plaintiff simply propounded additional discovery on Melaleuca  
24 and that discovery is squarely intended to challenge Melaleuca's garnishment answer. Third,  
25 moving forward and even ignoring the roadblock that is section 11722, plaintiff's discovery was  
26 not careful, carefully formulated, specifically plaintiff propounded unreasonably cumulative and  
27 duplicative discovery, and discovery that is available from a more convenient and less  
28 burdensome source. Finally, plaintiff has not been careful in considering Melaleuca's offer to  
29 resolve this matter short of this motion and hearing. Specifically, Melaleuca invited plaintiff to  
30 promote the solution that is less burdensome than a notice and deposition and a subpoena to  
31 produce documents. That solution could have consisted of a simple discovery request, but  
32 plaintiff chose not to take Melaleuca up on that invitation. And because plaintiff has not been  
33 careful in pursuing its clutching efforts in this case, good cause exists to enter a protective order  
34 and to quash plaintiff's notice and subpoena. And, Your Honor, it's important to make clear  
35 here that Melaleuca is not being hypercritical for the plaintiff. Melaleuca has helped plaintiff by  
36 garnishing the wages of its employees on many, many occasions and, you know, Melaleuca has a  
37 responsibility to protect its employees, and so its pushing back here where the garnishment  
38 documents don't accurately identify a Melaleuca employee. Melaleuca simply can't guess at  
39 who the judgment debtor is and it doesn't bear the burden of doing so under the Idaho code. And  
40 because it is inevitable that plaintiff will submit additional garnishment documents, Melaleuca  
41 must push back where plaintiff has not been careful, in order to protect itself and to protect its  
42 employees from wrongful garnishments. In short, there are numerous reasons to enter  
43 Melaleuca's proposed protective order and to quash the notice and subpoena.

44 I'd like to first turn to plaintiff's failure to carefully prepare its garnishment documents  
45 and its failure to object to Melaleuca's garnishment answer. The Idaho Supreme Court has made  
46 clear that creditors are supposed to know the names of their debtors, and that in attempting to  
47 collect on a debt, creditors risk "suffering the penalty of their own negligence" for failing to  
48 properly name a judgment debtor. And because Melaleuca had no record of an employing the  
49 named judgment debtor, they responded accurately that it doesn't have any money or property in  
50 its possession or under its control belong to a [REDACTED], the named judgment debtor, in case  
51 number [REDACTED]. But as a show of good faith to accommodate plaintiffs and to help them  
52 evaluate the accuracy of their records, plaintiff identified that the Social Security number found  
53 in one of the garnishment documents matched the Social Security number of one of Melaleuca's  
54 employees. Melaleuca made clear, however, that it had no knowledge that its employee was, in  
55 fact, the judgment debtor, and Melaleuca also made clear that it could not resolve any  
56 discrepancy in plaintiff's records as the identity of the judgment debtor. Melaleuca's  
57 garnishment answer was filed with the court on May 3, 2018, and if plaintiff was dissatisfied  
58 with the garnishment answer, that is, if plaintiff believed that Melaleuca actually did employ the  
59 judgment debtor, plaintiff should at that time have accepted to or denied or otherwise objected to  
60 Melaleuca's garnishment answer pursuant to the garnishment statute, that is within three days  
61 after Melaleuca's garnishment answer being filed with the court. Plaintiff failed to do so and as  
62 a result under Idaho code 11722, Melaleuca's garnishment answer became true and sufficient as  
63 a matter of law. And because plaintiff failed to controvert Melaleuca's denial of liability in its  
64 garnishment answer, section 11722 also requires that Melaleuca be discharged from all liability  
65 at the cost of the judgment creditor.

66 I'd like to talk a little bit about what it means to be true and sufficient, that Melaleuca's  
67 garnishment answer is true means that it is a factual statement, that if, by law, it is a fact that  
68 Melaleuca does not have any money or property belonging to the named judgment debtor, by  
69 laws [Inaudible: 0:06:18] that Melaleuca has no knowledge that its employee with the same  
70 Social Security number ending in [REDACTED] is in fact the judgment debtor. And it's also a fact that  
71 Melaleuca cannot resolve any discrepancy in plaintiff's records and that the garnishment answer  
72 is sufficient necessarily means that it is adequate, complete, it's enough for the purposes of these  
73 garnishment proceedings. Plaintiff's discovery, its notice and subpoena disregard that  
74 Melaleuca's garnishment answer is now true and sufficient. Indeed, plaintiff seeks to test  
75 Melaleuca's garnishment answer, especially the statement that Melaleuca no longer, that  
76 Melaleuca no, has no money or property belonging to the judgment debtor, specifically in its  
77 opposition plaintiff states that, "Based upon Melaleuca's answer to garnishment, there is  
78 substantial reason to believe that Melaleuca has under its control, credits, and/or personal  
79 property of the judgment defendant. But if, again, if plaintiff wanted to test Melaleuca's  
80 garnishment answer of whether did in fact have credits of the judgment debtor it should have  
81 tested that answer by accepting to it or denying it as provided for in the garnishment statute. But  
82 again, plaintiff failed to do so, and plaintiff cannot now make an end run around the garnishment  
83 statute by propounding general discovery in this matter.

84 Given that plaintiff seeks to challenge Melaleuca's garnishment answer, an answer that is  
85 now adequate, accurate and complete, good cause exists to prohibit further discovery of  
86 Melaleuca based on the operation of Idaho code 11722. Moreover, because Melaleuca has

87 already made clear that it has no information about the named judgment debtor requiring it to  
88 send an employee to a deposition to respond to a document subpoena necessarily constitutes an  
89 annoyance suppression or undue burden under rule 26C1 and it is unreasonable, oppressive or  
90 subjects Melaleuca to an undue burden under rule 45D1.

91 Plaintiffs argue that they have a specific legal entitlement under Idaho code 11717 to  
92 more discovery in this case, but that is simply not accurate. Section 11717 provides for  
93 examination of a garnishee including a corporate garnishee “owing debts to the judgment debtor  
94 or having in its possession or under its control any credits or other personal property belonging to  
95 the judgment debtor.” But as Melaleuca has explained and is now a fact by operation of Idaho  
96 Code 11722 and as a practical matter, that Melaleuca does not have money, sorry, does not have  
97 under control, under its control any money or property belonging to the named judgment debtor  
98 is established. As a result, Idaho code 11717 provides no specific legal entitlement for plaintiff  
99 to take additional discovery from Melaleuca.

100 Your Honor, it’s also important to make clear at this point that it is not premature to enter  
101 a protective order that discharges Melaleuca from liability. This is so because it is claimed that  
102 plaintiff intends to pursue Melaleuca for the underlying debt in this case. Indeed, plaintiff has  
103 already said, has already demanded money from Melaleuca in its May 18, 2018 letter and  
104 plaintiff has not, as far as Melaleuca is aware, is not discovering from any other source. It’s only  
105 focused on Melaleuca here. And plaintiff uses qualified language in its opposition that plainly  
106 suggests that it is going after Melaleuca. For example, plaintiff states that it is not, “Currently  
107 seeking to hold Melaleuca liable.” Plaintiff also says that, “At this point, plaintiff is not  
108 exempting or denying Melaleuca’s answer”, indicating that it will soon. In short, plaintiffs have  
109 made clear that while it hasn’t pulled the trigger yet, Melaleuca is certainly in plaintiff’s  
110 crosshairs, and because Melaleuca is plaintiff’s target here for the underlying debt, it is proper  
111 that the court apply Idaho code 11722 to discharge Melaleuca from liability.

112 Moving forward, plaintiff’s [Inaudible: 0:10:28] and subpoena should also be prohibited  
113 under the mandatory language of rule 26B1Ci which requires that the court limit discovery that  
114 is “unreasonably cumulative or duplicative or it could be obtained from some other source that is  
115 more convenient, less burdensome or less expensive.” Here plaintiff’s discovery seeks  
116 information about the employment and payroll history of “██████████, also identified by her  
117 Social Security number” ending in ██████████. Plaintiff does not seek discovery about ██████████  
118 and/or any Melaleuca employee that has the Social Security number ending in ██████████. In other  
119 words, plaintiff’s notice and subpoena can only be interpreted by seeking discovery of a ██████████  
120 ██████████ with the Social Security number ending in ██████████. But again, as Melaleuca has made clear  
121 and as is now an unassailable fact, Melaleuca does not employ someone with the name ██████████  
122 ██████████ and the Social Security number ending in ██████████. Thus, if Melaleuca sent someone to the  
123 deposition, that person would have no information to provide and no documents to bring  
124 regarding ██████████ with a Social Security number ending in ██████████. Plaintiff’s discovery is  
125 unreasonably cumulative and duplicative and ultimately futile and should be quashed under rule  
126 26B1Ci. And importantly, plaintiff has made no argument otherwise in its opposition.

127 Additionally, assuming the plaintiff’s discovery is aimed at learning the true identity of  
128 the judgment debtor despite not actually saying so, plaintiff has not sought discovery from the  
129 best source of information, the judgment debtor herself. Melaleuca cannot definitively answer

130 plaintiff's queries as to the true identity of the judgment debtor, and plaintiff has not argued at  
131 any point up until just a few moments ago that it is impossible to seek discovery of the judgment  
132 debtor herself. And because there is a more convenient, less burdensome source and ultimately a  
133 much more reliable source, the judgment debtor herself, plaintiff's discovery must be quashed  
134 under rule 26B1Ci.

135 In conclusion, Your Honor, plaintiff's failure to carefully prepare this garnishment  
136 document, to object to Melaleuca's garnishment answer in a timely fashion, to carefully propound  
137 discovery and to carefully consider Melaleuca's invitation to find a simple, efficient solution to  
138 this dispute, provide good cause to enter Melaleuca's proposed protective order and to quash the  
139 notice and subpoena. And unless the court has any questions, I'll reserve my time.

140

141 Judge Mallard

142 Thank you. Go ahead, Mr. Smith.

143

144 Attorney Brian Smith

145 Thank you, Your Honor. So what we have here, Your Honor, is a misunderstanding by  
146 Melaleuca, and it may be because they don't do this kind of work, I can understand that, few  
147 people do it. They completely get the statutes wrong, I'll show the court how that's the case. I  
148 don't blame them, I don't talk about their negligent work, not doing it right, they just don't have  
149 the statutes right. So what happens is, and I'll let the court know that Mr. Zollinger sits on the  
150 Judicial Rules Committee. This last year we were able to get some of the garnishment statutes,  
151 in fact, all of them, moved. They used to be in section 8509 etcetera, and they were in section  
152 11. So now they all appear in section 11. It took us three years to get them to do that so we  
153 didn't have to hunt them around because they've been created over the years. They are now in  
154 section 11. And let me just tell the court that originally, these statutes appeared in section 8 and  
155 they were enacted in the late 1800s. They've been around a long, long time. So if the court, I  
156 don't know if the court has the rules, these, these rules in front of it by any chance.

157

158 Judge Mallard

159 Yes, I do.

160

161 Attorney Brian Smith

162 Okay. 11719.

163

164 Judge Mallard

165 The rule or the statute?

166

167 Attorney Brian Smith

168 The statute, I'm sorry. 11719 deals with the case where the garnishee doesn't respond at  
169 all. That's usually what happens is a garnishee just doesn't respond. And in that case, it's a bad  
170 statute. It says you can go after the garnishee by default, you don't have to serve anything on  
171 them, it's messed up. But the point is, is that 11719, the statute deals with the issue when the  
172 garnishee doesn't respond. The rest of the statutes in that code section 720, 721, 722 and 723 all

173 deal with the issue in this case, and that is what do you do when the garnishee responds but  
174 you're buying the response. Okay. What happened in this case was, and I don't know how it  
175 happened, but there was a miscommunication in my office. They sent the letter believing this  
176 was 11719 case. So they did get a letter saying hey, look, we may challenge this, do you really  
177 want to go down this path? But in fact, we only do that for 11719 when they don't respond at  
178 all. We've only had one other case in the history of the business that we do where somebody has  
179 responded saying we're not going to pay you. I think that's why there was miscommunication,  
180 because it just never happens. But under 11720 through 11723, those are the code sections that  
181 lay out the procedure on what a creditor would do if they get a response that they don't like.  
182 They think yeah, they're not giving us everything. And these code sections together with  
183 sections 11715 will impose liability on the garnishee. What that requires is that within three  
184 days of – the word is kind of strange – three days after the filing. Well, the sheriff gets it and  
185 never files it, so we're not sure what that –

186

187 Judge Mallard

188       Never files the answer?

189

190 Attorney Brian Smith

191       Yes. Unless the court has got it.

192

193 Judge Michelle Mallard

194       I, I've got it.

195

196 Attorney Brian Smith

197       Okay.

198

199 Judge Michelle Mallard

200       [Inaudible: 0:16:34] shows the file stamp on it from the sheriff's office.

201

202 Attorney Brian Smith

203       Okay.

204

205 Judge Michelle Mallard

206       And I always get those.

207

208 Attorney Brian Smith

209       Okay. But in any event, you've got three days after its filing. Well, I guess what I'm  
210 talking about is it's hard to say whether it's file with the sheriff or file with the court, but it  
211 doesn't really matter. The point is we never did invoke closed section 1120 through 1123. We  
212 never did challenge, so if the court looks at 1121 for example, it says the judgment creditor may  
213 deny the answer of the garnishee and allege, especially the grounds upon which a recovery is  
214 sought against the garnishee. And the issue presented by the denial, they can file a reply and it  
215 shall be tried as ordinary issues between the judgment creditor and the judgment debtor. If the

216 court looks at 11723, the judgment creditor may move the court out of which the writ issued on  
217 or before the return day thereof for judgment against the garnishee for the amount of such  
218 admitted debt. The point is, we never invoked that procedure. Didn't happen. So all the  
219 arguments that they're raising, how they're like collaterally to stop or judicial estoppel or  
220 something to that effect, this has been litigated, it's finished, it's completed as a matter of law,  
221 absolutely bogus. We never did invoke that procedure. We looked at their response and we said,  
222 well, they've got a [REDACTED]. We've already gotten the best information we can from her.  
223 She says that's her name. We also have a Social Security number. And so we sent it over to  
224 them, and it's not going to do us any good to talk to her again, she may give us yet another name.  
225 So instead of invoking this procedure where we could be held liable for cost or they might be  
226 liable for costs and attorney's fees, we are invoking another procedure. They keep saying the  
227 other procedure we're invoking is further discovery. In fact, he said it today, he said additional  
228 discovery, more discovery. We haven't conducted any discovery with Melaleuca on this issue.  
229 We simply did a garnishment procedure, they responded. That's not discovery.

230  
231 Judge Michelle Mallard

232 But I have a notice of deposition from you.

233  
234 Attorney Brian Smith  
235 That's correct.

236  
237 Judge Michelle Mallard  
238 What I have [Inaudible: 0:18:47].

239  
240 Attorney Brian Smith  
241 What I'm saying is up to the point of that notice of deposition there hasn't been any  
242 discovery for them. In other words, the writ procedure is not discovery.

243  
244 Judge Michelle Mallard  
245 Right.

246  
247 Attorney Brian Smith  
248 They are calling 11720 through 11723 discovery procedures. That's not true. Those are  
249 execution procedures. So back in 1881 we got Idaho code section enacted 1117, 11717 okay?

250  
251 Judge Michelle Mallard  
252 What you said doesn't apply here.

253  
254 Attorney Brian Smith  
255 No, he said it didn't apply. I never said that. No, it could apply, because here's what it  
256 is.

257  
258 Judge Michelle Mallard

259 But I thought you said that you send the wrong answer under 11.717.

260

261 Attorney Brian Smith

262 No, 11719.

263

264 Judge Michelle Mallard

265 So you asked [Inaudible: 0:19:30].

266

267 Attorney Brian Smith

268 Yeah, so let's be clear about this.

269

270 Judge Michelle Mallard

271 Okay.

272

273 Attorney Brian Smith

274 Under 11719, that code section provides the procedure if a garnishee does not respond at  
275 all.

276

277 Judge Michelle Mallard

278 Okay.

279

280 Attorney Brian Smith

281 Okay. We have a procedure for that because we get that quite a bit. The rest of the code  
282 sections 11720 through 11723, those are the procedures when they respond but you don't think  
283 it's an adequate response. We never filed anything, a motion, a complaint a petition. We never  
284 served it on them, there's never been that issue, they never filed a reply, it's never been tried. So  
285 those procedures don't apply. We sent a letter in response to what we thought was 11719, but  
286 that's not the same as 11721 through 11723. You actually have to file something challenging. It  
287 says right there in 11721, "The judgment creditor may deny the answer of the garnishee and  
288 allege specifically the grounds upon which a recovery is sought against the garnishee." We're  
289 not seeking a recovery against Melaleuca. We haven't filed that. We aren't invoking those.  
290 And that is 90 percent of their argument today, is oh, you guys are bound by having not objected  
291 within three days. Okay. As to that writ that we served on them, we're done with that. Water  
292 under the bridge. We'll take that as sufficient or whatever it is for that procedure. We're not  
293 seeking any liability against Melaleuca for that writ.

294

295 Judge Michelle Mallard

296 So then how do you have any authority to seek anything from them?

297

298 Attorney Brian Smith

299 Okay. That's what I'm getting to right now, okay? Under 11717 it says, "Any person  
300 owning debts to the judgment debtor." Okay. What we know from their response is, is that they  
301 have an employee with the Social Security number. We believe the Social Security number is



302 accurate. All right? If that's accurate, that means we now believe that there is a person in  
303 Melaleuca that owes money to the judgment debtor, meaning wages, or having in his possession  
304 control of any credits or other personal property belonging to the judgment debtor. We think  
305 Melaleuca owes wages to the person with that Social Security number. And the law is pretty  
306 clear, I know that they cite a case that deals with banking law. That bank case that they cite  
307 would have been completely different if the judgment creditor had identified an account number.  
308 We gave them the equivalent of an account number. We gave them a Social Security number.  
309 We think that that Social Security number matches the judgment debtor and it's one of their  
310 employees. Therefore, based on the information they've provided, they fall within 117, and that  
311 means that we, they may be required to attend before the court or judge and be, or a referee  
312 appointed by the court judge, and be examined on oath respecting the same. So instead of  
313 getting an order of exam on the judgment debtor, we could actually get an order of exam on  
314 Melaleuca, bring them to the court room, put them on the stand, and ask all these questions under  
315 11717. What would I ask them? Who is the employee with this Social Security number? What  
316 is their name? Do you have anybody there with a name closely resembling [REDACTED]?  
317 What is that person's Social Security number? I could do this under this code section, absolutely  
318 clear, and they don't even make an argument saying that we couldn't, except what they said was  
319 because we didn't follow the procedure in 11720 through 11723, we now can't do it. That's not  
320 the case.

321

322 Judge Michelle Mallard

323 So what you're saying is that I can give them the relief they're requesting to the extent  
324 that they cannot be liable for her debt. But that, but that you have the right to examine them  
325 about what [Inaudible: 0:23:32].

326

327 Attorney Brian Smith

328 Okay. What I'm saying is I don't care if you do that. What I'm saying is they just made  
329 the motion to quash. You can't come in preemptively and say we want the judge to rule and say  
330 we're immune from fault on that garnishment.

331

332 Judge Michelle Mallard

333 Okay.

334

335 Attorney Brian Smith

336 If you want to do that I don't care. It doesn't matter to me.

337

338 Judge Michelle Mallard

339 Well, they're also asking if they'd be discharged from any liability.

340

341 Attorney Brian Smith

342 Yeah, well, yeah, they, they, well, they, that meant, but it would be on that writ, right? I  
343 can go get another writ and serve them. So if the court wants to discharge them for liability on  
344 their writ I don't care. And the reason we kept saying, well, we haven't yet, is because we

345 haven't yet. But we're not, but if they, if they, if we get the right Social Security number  
346 matched to [REDACTED] and we find out. And it may also be the case. I don't care if, I don't care if  
347 the court discharges them. But it may very well be the case that this [REDACTED] name might  
348 be spelled wrong. They are very, very word-smithy when they talk about these things, very  
349 careful. We don't have anybody with the name [REDACTED] exactly. We're going to get to the  
350 bottom of this and we're going to find out that the [REDACTED], it's going to be very, very  
351 close, it's going to be the same Social Security number, they're going to know who it is. And I  
352 don't know why really, they're making such a big deal out of it. But if the –

353

354 Judge Michelle Mallard

355 What if it's because their employee with the Social Security was named Sarah Smith?

356

357 Attorney Brian Smith

358 Well, we're not going to know until we take the deposition or we do this procedure. So  
359 let me just, let me get to that. So what we're trying to seek in this case is I'm not so interested in  
360 pursuing them on the, the writ that we sent out. But what I need is I need to either employee  
361 1117, and it says I get to do that, and I would do it just like a writ of execution or an order of  
362 examination, instead of serving it on the debtor I'd serve it on these guys and then we would  
363 come here and we would do it. But given that that statute was engaged in 1881, we actually have  
364 another way to do it that's not so cumbersome, doesn't involve the court, and that is a deposition.  
365 So under rule 26, discovery, general provisions governing discovery. It says, "Parties may  
366 obtain discovery regarding any non-privilege matter including the" – sorry, I'll give the court a  
367 chance to get there. It's 26.

368

369 Judge Michelle Mallard

370 Go ahead.

371

372 Attorney Brian Smith

373 26B1A. You get to conduct discovery to determine the identity and location of persons  
374 who know any discoverable matter. So this is why we sent, it's a 30B6, it was mischaracterized  
375 as a 6 is a typo, but a 30B6 asking them to designate the person. And we say here's what we  
376 want. We want the person or persons most knowledgeable about "[REDACTED]" in quotes,  
377 meaning whoever that person is with this Social Security number. Tell the court under rule 30  
378 depositions, under rule 30A1 without leave. Not to come to court and ask for permission like we  
379 do on a supplemental exam for a nonparty. A party may, by oral question, depose any person  
380 including a party without leave, blah, blah, blah, blah, blah. And you can also do a nonparty.

381 So here we are, okay? I'm not seeking liability under that initial, at this point I'm not,  
382 and I don't plan to. Now, if I find out that the [REDACTED], they're just playing games with us,  
383 we may evaluate our options. They know who this person's name is and they could tell it to us  
384 and they could say, oh, but that's confidential. Remember, with all these guys they can't give  
385 me a stipulative protective order from the court, we could do that. What we're going to find out  
386 is, I believe, is [REDACTED], the judgment debtor, is the same [REDACTED] that works for  
387 them with the matching Social Security number. I don't know why they're making such a big

388 deal out of this, I don't understand. It may be because my office sent out the wrong letter under  
389 that separate code section where people don't respond and maybe they think that's what it is.  
390 The point is this –

391

392 Judge Michelle Mallard

393 And maybe that doesn't appear to them that their employee is the same person and that  
394 [REDACTED] has been using their employee, employee's Social Security number and they don't  
395 want their employee to be subjected to these actions of someone who may have already taken her  
396 identity.

397

398 Attorney Brian Smith

399 It's all great speculation, we don't, we don't know. But we're going to get to the bottom  
400 of it. So instead of coming to my office for a deposition for an hour with two guys against one  
401 guy, we come to a court and file multiple pages, thousands of dollars in effort instead of just  
402 coming to the office, doing it under oath. We could make the whole deposition stipulated and  
403 confidential, we could do that, so I wouldn't use it for anything else except this case. There's  
404 ways to do this. I do not understand why we're doing all this.

405

406 Judge Michelle Mallard

407 Well, Mr. Smith, of all people, you understand people wanting to stand on their legal  
408 rights, no matter what the cost.

409

410 Attorney Brian Smith

411 Oh, I know. That's why, that's why we're all equal under the law, and what the law says  
412 under 11717, if they prefer, if the court prefers, we will do an examination in the court under  
413 oath just like we do a supplemental exam on the bench with somebody from Melaleuca. We  
414 clearly have that right. Or we'll do it in my office. What they want to say is, nope, we want to  
415 be discharged from liability, we don't want to do it in the court room, we don't want you to  
416 depose this person. And the reason for that is, this is too expensive, too difficult, too duplicative.  
417 You could go ask it from her, which we already have, that's the name we've got. And so right  
418 now our best option to get this resolved is to have Melaleuca just tell us, well, who is [REDACTED]  
419 [REDACTED]? You've got somebody there in quotes, so it's kind of like that, and you do acknowledge  
420 you have an employee with the Social Security number. Just tell us who that is. And then what  
421 we'll do is, is we'll send our garni-, if it, if it is, for example the Social Security number turns out  
422 to be a [REDACTED] or a [REDACTED] or whatever her name is, then we can  
423 make an evaluation on how to proceed.

424

425 They said that creditors are supposed to know the names of the debtors. Yeah, we are.  
426 But it probably doesn't come as a shock to the court that debtors play fast and loose with their  
427 names. Happens all the time. So we do the very best we can, I'm now trying to get that  
428 information. The debtor hasn't given it to us, we have reason to believe that we're not going to  
429 get the accurate name. But with a matching Social Security number, that's almost like a DNA  
430 match, we've got somebody, unless there's been identity theft, and if they tell us that we can  
figure out who it is, then we can move on. So that's why we're asking the court.

431

432 Judge Michelle Mallard

433 How do you know, say there's a Sarah Smith working at Melaleuca with the same  
434 security, Social Security number that you're seeking, how then do you know whether or not  
435 she's your judgment creditor?

436

437 Attorney Brian Smith

438 Okay. So, so part of it is –

439

440 Judge Michelle Mallard

441 If somebody is using that Social Security number falsely to obtain credit.

442

443 Attorney Brian Smith

444 So here's, here's how that works, it's easy to do. That's a different issue than how  
445 Melaleuca extricates itself from the problem that's been created. So if we determine that, and we  
446 have ways, we have medical records, we have descriptions of what the person looks like, we  
447 have a Social Security number. If we have a Social Security number that matches our person and  
448 their person and the person is described as a, you know, 5'4" female with blonde hair and the  
449 medical record or, that we get information from that. A processor has also served them, so we  
450 know what they look like. But the key here is, is how to get Melaleuca's concern solved, and the  
451 way to do that is let us get the exact information that we need so they don't have any heartburn  
452 over this, then their hands are tied. If we say, let's suppose the name turns out to be like Sally  
453 Smith with this Social Security number, and we determine that [REDACTED] is Sally Smith,  
454 then what happens is, is we'll send out a garnishment saying Sally Smith with this Social  
455 Security number. They're going to go bingo. And whether it's right or not, that becomes our  
456 problem but then they're absolved and they're off the hook. Then what happens is, is that we  
457 take their money. If they don't think it's them, then they can file a claim of exemption and say  
458 hey, that's not me. But if it is them and they know that they've changed their name or, or they  
459 stole an identity or whatever the issue is, they then get to choose. They're in control.

460 The real issue today is Melaleuca is saying yeah, we've got a matching Social Security  
461 number, we don't have somebody by the name of "[REDACTED]" in quotation marks, which  
462 means it's probably close to that, so we're not going to comply. Okay. Just tell me what it is.  
463 Well, we can't tell you. Okay. Let's do a deposition. No, we're not going to do that. Well, we  
464 want you to do it another way with interrogatories or with something else. We just want to do  
465 the deposition. There may need to be follow up questions. I anticipate it will be very, very  
466 short, much shorter than today's hearing.

467 So for those reasons, Your Honor, it's not oppressive, it's not overly burdensome. We  
468 clearly have a right to obtain this information from a discoverable source, they've got it. We  
469 can't get it from her, we've got the best we've gotten. And so we would ask the court to either  
470 let us do our deposition in my office, or again, if they're concerned about confidentiality, we'll  
471 make the whole deposition stipulated to be confidential. You can even sign a court order so we  
472 don't expose anybody. Or let's bring them in here so I can get them under oath to ask questions  
473 about who this [REDACTED] is in relation to Social Security number. And then we'll have,

474 we'll be done. And then we'll send out another garnishment, and the first garnishment is just  
475 water under the bridge. Unless the court has any questions for me.

476  
477 Judge Michelle Mallard

478 It still just seems to me that you're getting the cart before the horse. I mean, even under  
479 11717 you assume that this [REDACTED] is the [REDACTED], is their employee. It says any person  
480 owning debts to this judgment debtor may essentially be examined. And so you're assuming that  
481 they do have that money.

482  
483 Attorney Brian Smith

484 Your Honor, they have told us we have a Social, we have a Social Security number for  
485 the judgment debtor.

486  
487 Judge Michelle Mallard

488 Right.

489  
490 Attorney Brian Smith

491 Okay. They have told us they have an employee with that Social Security number. I  
492 don't care what the person's name is. Let's call her John Doe or Jane Doe. Doesn't matter.  
493 With a matching Social Security number means they're paying an employee and we have a  
494 Social Security number that says hey, our judgment debtor has got this employee, we've got this  
495 number. That gets me easily past a rule 11 allegation, easily we're acting in good faith, so would  
496 they be. And so the point is, is I'm not assuming it, I'm doing it based on what they told me.  
497 And the code section says that we get to, any person owing debts to the judgment debtor. Since  
498 we have a Social Security number for our judgment debtor that matches one of their employees –  
499 there's no dispute about that – it thus appears that in fact Melaleuca does have money in its  
500 possession owed to the judgment debtor. The only thing we're fighting over is the technicality  
501 of what is the person's name. That's what I'm trying to get to. So we're not, we're not stepping  
502 on a limb whatsoever by this.

503  
504 Judge Michelle Mallard

505 Although you admit that lots of people use false Social Security numbers –

506  
507 Attorney Brian Smith

508 No.

509  
510 Judge Michelle Mallard

511 – belonging to other people.

512  
513 Attorney Brian Smith

514 No, we've seen it –

515  
516 Judge Michelle Mallard

517           It's not uncommon in your business to have Social Security numbers used by two people  
518 or different people, wrong people.

519

520 Attorney Brian Smith

521           So here's what we see. We do see different, we will see, for example, two Social  
522 Security numbers being used by one person. But what we see 100 to 1 to that is people changing  
523 their names. So in terms of Social Security, the court seems to be fixed on, well, maybe the  
524 Social Security is wrong, number is wrong. All the information we have is that that is the right  
525 Social Security number. The information that we've got is she's using a different name. So if  
526 we would have sent our garnishment and just said we want to garnish the wages of the employee  
527 with this Social Security number, I'll bet you they would have responded. We're sorry, we're  
528 not even sure what her name is. And this is the Social Security number, the judgment debtor,  
529 this is what we want. They may have very well responded. So the point is, is that we do have  
530 not just a good faith basis, we've got an admission from Melaleuca that the Social Security  
531 number for our judgment debtor is somebody that works for them. All we're fighting over now  
532 is, is the technical way to tell them what the person's name is that they're using today. The only  
533 ones that really have that, well, the judgment debtor has, but they haven't been truthful so far  
534 giving it to us, forthcoming I should say, is Melaleuca. They've got it. If they just tell us what  
535 the magic words are then we would say okay, we want this Social Security number for this  
536 person. You've told us who it is and those match. If that person turns out not to be the right one,  
537 they can file a claim of exemption, and if we get it wrong, we have statutes that protect them and  
538 they can get attorney's fees and whatever it is and there's liability for us. That's where the issue  
539 is.

540

541 Judge Michelle Mallard

542           All right. Thank you. Mr. Law.

543

544 Attorney Andrew Law

545           Your Honor, I just would like to address a couple of points. First, Melaleuca has already  
546 invited plaintiff to close a simple solution, and when Melaleuca proposed that, frankly, opposing  
547 counsel laughed at Melaleuca and was not interested in proposing a simple solution that seems to  
548 be suggested here today. Moreover, opposing counsel makes clear that if they think Melaleuca  
549 has been playing games here, they're going to pursue Melaleuca for liability, and under the  
550 statute, as I explained Melaleuca simply can't be liable for the underlying debt here. So we're  
551 still amenable to a solution short of a notice of deposition and a subpoena. However –

552

553 Judge Michelle Mallard

554           What is the solution you are proposing?

555

556 Attorney Andrew Law

557           If they sent us a simple, single interrogatory that simply asked what the name for our  
558 employee was with the Social, we would have responded to that, as long as we're going to be

559 discharged from liability first. Like the statute says. Your Honor, there is, I'd also like to correct  
560 the record as to what –

561

562 Judge Michelle Mallard

563 So, Mr. Smith, you don't like the idea of sending them a one-line phrase saying what is  
564 the name of the employee who has the Social Security number?

565

566 Attorney Brian Smith

567 Two things. One is if we do that, they can be hyper technical and not give us exactly  
568 what we need. So a couple of follow up questions might be helpful. So in practice of law, in  
569 thirty years, very good trial attorneys never send out written depositions to third parties because  
570 they're like interrogatories. Unless you can sit there and ask follow up questions, you really  
571 don't get good information. Secondly, did you hear what he just said? We'll give you an  
572 interrogatory provided you release us from liability. Your Honor, the court ought to, at this  
573 point, be wondering well why are they so worried about liability? I think there's something very  
574 technical going on. We haven't sought liability, but we also, this isn't the proceeding today to  
575 decide that.

576

577 Judge Michelle Mallard

578 Do you think Melaleuca is afraid of the liability of the one or two thousand dollars?

579

580 Attorney Brian Smith

581 I think that they'd be more concerned about being liable for anything and how that would  
582 look publicly than they do about money. They obviously don't care about money. But if they  
583 wrongfully withheld the garnishment and that would be litigated or determined, that might be a  
584 big problem for them. And I'm not interested in embarrassing anybody or doing anything like  
585 that. I want to just get my garnishment done. But he's just said it, we'll give you an  
586 interrogatory if they agree to discharge us from liability. But we don't have to do that because  
587 we have, we didn't even seek the procedure for them to get discharged from liability, because we  
588 never sought to litigate liability.

589

590 Attorney Andrew Law

591 Your Honor, I'd like to address.

592

593 Attorney Brian Smith

594 And this is not the procedure today on a motion to quash to even address the issue.

595

596 Attorney Andrew Law

597 Your Honor, I'd like to address that, that exact issue. Reading Idaho code 11722 there is  
598 no requirement that any exemption proceedings or any exception proceedings or any denial  
599 proceedings have taken place. There is simply no requirements that the judgment creditor first  
600 move to exempt or accept or to otherwise deny the garnishment answer before that statute  
601 applies. If they miss the three day window, Your Honor, the consequence is that Melaleuca's

602 garnishment answer is true and sufficient. Moreover, the consequence is that Melaleuca must be  
603 discharged from liability. That is simply the case. And, Your Honor, to say that the general  
604 discovery statues somehow permit an end run around the garnishment statute is simply incorrect,  
605 even though the legislature passed this statute more than 100 years ago – it could have been  
606 changed last year, like counsel mentioned, but it wasn't, and consequence is Melaleuca must be  
607 discharged from liability in this case. Thank you.

608  
609 Attorney Brian Smith

610 If the court has any lingering questions over this that I could, that you would want me to  
611 respond to. I will tell the court that there has been no case brought before this court challenging  
612 the sufficiency of what they did in that writ, therefore there is no procedure. All they filed is a  
613 motion for protective order in which they seek to prevent us from doing the deposition and throw  
614 in. Oh, and we'd like to be discharged from liability. Under what, 11722? There's been no  
615 procedure filed under 11721 –

616  
617 Attorney Andrew Law

618 Again, Your Honor –  
619

620 Attorney Brian Smith

621 – that would allow that.  
622

623 Attorney Andrew Law

624 There is no requirement.  
625

626 Judge Michelle Mallard

627 Remember, one person at a time.  
628

629 Attorney Andrew Law

630 Excuse me, Your Honor. There's simply no requirement under the statute that they have  
631 to first bring proceedings. That simply is not found in the language and you can read it –  
632

633 Attorney Brian Smith

634 Do you want to read it?  
635

636 Attorney Andrew Law

637 – [Inaudible: 0:41:58] if we want to.  
638

639 Judge Michelle Mallard

640 Stop, Mr. Smith. Don't interrupt, Mr. Law, either. I, I've heard plenty from both of you.  
641

642 Andrew Brian Smith

643 Okay.  
644



645 Attorney Andrew Law  
646 Thank you, Your Honor.

647  
648 Judge Michelle Mallard  
649 All right. Here's what I'm going to do. While it's tempting just to [Inaudible: 0:50:12]  
650 Melaleuca's motion and then let the parties appear and duke it out in District Court, I'm going to  
651 try and craft a solution that I think both abides by the law and decides the dispute so that nobody  
652 has to incur more costs. I'm looking at page 2 of the motion filed by Melaleuca on the 22<sup>nd</sup>.  
653 And I'm going to grant the motion as regards to paragraph one and paragraph two, paragraph  
654 four. I'm going to not rule on paragraph five at this point in time. Under paragraph three, I'm  
655 going to enter an order requiring Melaleuca to answer an interrogatory from MRS that requests  
656 the name of the employee whose Social Security number is the one that has already been  
657 [Inaudible: 0:51:46]. That's the Social Security number ending in – do you have it right there?

658  
659 Attorney Andrew Law  
660 [REDACTED], Your Honor.

661  
662 Judge Michelle Mallard  
663 [REDACTED]. Any questions or verifications about that, Mr. [Inaudible: 0:52:21] or Mr. Law,  
664 excuse me?

665  
666 Attorney Andrew Law  
667 No, Your Honor.

668  
669 Judge Michelle Mallard  
670 Mr. Zollinger?

671  
672 Attorney Brian Smith  
673 Yeah, Mr. Smith.

674  
675 Judge Michelle Mallard  
676 Sorry.

677  
678 Attorney Brian Smith  
679 I would ask the court to state its grounds for denying us our ability to take a deposition.  
680 What are the specific grounds that, that motion was granted?

681  
682 Judge Michelle Mallard  
683 I'm relying on the grounds stated in the motion filed by Melaleuca.

684  
685 Attorney Brian Smith  
686 Okay. Thank you, Your Honor.

687

688 Attorney Andrew Law  
689 And, Your Honor, if I could ask a clarifying question of the court.  
690  
691 Judge Michelle Mallard  
692 Sure.  
693  
694 Attorney Andrew Law  
695 Is it just the one interrogatory, but the court is letting us to answer? I just want to be clear  
696 so we're not [Inaudible: 0:52:57].  
697  
698 Judge Michelle Mallard  
699 Yes.  
700  
701 Attorney Andrew Law  
702 One interrogatory.  
703  
704 Attorney Brian Smith  
705 Just one?  
706  
707 Judge Michelle Mallard  
708 I think that under 722, Melaleuca's arguments are all accurate. I think it's also probably  
709 true that Mr. Smith – it would be helpful if your names weren't both Brian. But I think Mr.  
710 Smith is probably also correct that even if I grant you this relieve, he can come back in under  
711 32.717 if he believes that you have.  
712  
713 Attorney Brian Smith  
714 11717?  
715  
716 Judge Michelle Mallard  
717 Sorry, 11, 11717. What did I say?  
718  
719 Attorney Brian Smith  
720 32. We have [Inaudible: 0:53:37] I just wanted to clarify the number [Inaudible: 0:53:37]  
721 that you're allowing.  
722  
723 Judge Michelle Mallard  
724 Yes.  
725  
726 Attorney Brian Smith  
727 And, Your Honor, just to be clear, are you saying that we are unable as judgment  
728 creditors to pursue our rights under 11717 and only are allowed to send interrogatory to  
729 Melaleuca?  
730

731 Judge Michelle Mallard

732 I am saying that under 11722, you did not properly file the three day notice of objection  
733 after they had filed their response. But that under 11717 if you believe or if you can show, I  
734 guess I should say, that they owe debts to [REDACTED] whose Social Security number is  
735 whatever was put on there.

736

737 Attorney Brian Smith

738 The judgment debtor.

739

740 Judge Michelle Mallard

741 Yes. That you may still be able to get discovery from them. Like you said, you know,  
742 we can respond to this writ and you can send another writ saying, you know, garnish the  
743 paycheck of the person whose security, Social Security number is this. That question is not  
744 [Inaudible: 0:55:05] so I'm not sure that you can do that, and you argue that you can do that,  
745 Melaleuca may have other things to say about that. But that's not my question. I still believe  
746 that you may have the cart before the horse. I mean, you may have to prove that they actually  
747 owe debts to your judgment creditor, not just an employee with that Social Security number,  
748 before you can actually engage in further discovery. That's why I'm limiting the discovery to  
749 you asking them what is the name of their employee with that Social Security number.

750

751 Attorney Brian Smith

752 And that's my question. Are you saying that's all we can do? We do not, if I don't want  
753 to do that for various reasons, if I want, because I think that that's not what I want to do. As a  
754 plaintiff –

755

756 Judge Michelle Mallard

757 Because you want it to stand on your legal rights?

758

759 Attorney Brian Smith

760 Well, we get. The plaintiff, that's the great thing about a plaintiff. A plaintiff gets to  
761 choose how to litigate his case, and I really appreciate counsel telling us well here's what we're  
762 willing to do and not willing to do. But the law really controls what a person does. So I just  
763 want to make sure that if – I appreciate the court saying this is what you're going to do. In terms  
764 of the motion to quash, you're saying we can't do a deposition, but we are allowed to do an  
765 interrogatory which we always have.

766

767 Judge Michelle Mallard

768 Which I have authority to do under the rules to limit discovery, correct?

769

770 Attorney Brian Smith

771 That's correct.

772

773 Judge Michelle Mallard

774 And that's what I am doing, and under the rules is limiting discovery to avoid cumulative  
775 –

776  
777 Attorney Brian Smith  
778 And I [Inaudible: 0:56:29].

779  
780 Judge Michelle Mallard  
781 – cost to [Inaudible: 0:56:31].

782  
783 Attorney Brian Smith  
784 That's why I'm trying to clarify this because rule 11717 is not a discovery tool. It is a –

785  
786 Judge Michelle Mallard  
787 No, it's not.

788  
789 Attorney Brian Smith  
790 So I'm wondering, and so I just want to know, if I decide I want to pursue that instead of  
791 in lieu of or both of them, if I want to do that instead of sending an interrogatory, which I now  
792 could do, I might hear –

793  
794 Judge Michelle Mallard  
795 My order will prevent that.

796  
797 Attorney Brian Smith  
798 Okay. So my question is, is what, what is it that – they never even made a motion that  
799 we couldn't seek a, not discovery. All they're trying to discover. We now, if we want to do an  
800 Order of Examination of Melaleuca under 11717 which is a writ procedure, it's an examination  
801 procedure, is the court saying that we can't do that either?

802  
803 Judge Michelle Mallard  
804 Mr. Law?

805  
806 Attorney Andrew Law  
807 Melaleuca's position would be that no, they cannot. As the statute says, it has to be the  
808 case that Melaleuca owes money or property, and by operation of 11722, it's true and sufficient  
809 that Melaleuca does not owe money or property to the named judgment debtor, so that's simply  
810 not a tool that's available to them in interrogatory.

811  
812 Attorney Brian Smith  
813 Your Honor –

814  
815 Judge Michelle Mallard

816 I understand you disagree with that analysis, but that is the same analysis as mine, that  
817 they have denied that they have this money.

818

819 Attorney Brian Smith

820 No, they haven't.

821

822 Judge Michelle Mallard

823 Okay. They've denied, they've denied. They've made, they've made an objection to the  
824 writ that you issued, the writ of garnishment. They've made an objection and said we don't have  
825 a person with this name employed by us.

826

827 Attorney Brian Smith

828 Correct.

829

830 Judge Michelle Mallard

831 You did not, you did not object to that and that –

832

833 Attorney Brian Smith

834 I don't have to.

835

836 Judge Michelle Mallard

837 Well, I understand you say that, but I'm disagreeing with you and agreeing with  
838 Melaleuca that you do in order to –

839

840 Attorney Brian Smith

841 In order to do discovery?

842

843 Judge Michelle Mallard

844 In order to further proceed.

845

846 Attorney Brian Smith

847 Wow. Would the court please identify one statute or rule that says that we cannot  
848 proceed unless we've –

849

850 Judge Michelle Mallard

851 [Inaudible: 0:58:32] Melaleuca.

852

853 Attorney Brian Smith

854 Follow, unless we follow an exception under this rule, because I'll tell the court I know  
855 I'm aware of nothing in the process that says that. Under 11722 there's nothing in there that says  
856 that we can't proceed with discovery if we didn't invoke that exemption, that, that write  
857 procedure. Nothing. And there's nothing in there that says that if we don't do that, then we're  
858 then precluded under 1171 from bringing them into court to get additional information.

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Judge Michelle Mallard

Is there anything unclear about my ruling?

Attorney Brian Smith

Yes.

Judge Michelle Mallard

Mr. Smith, I've granted their motion paragraph one, two, four, I'm withholding five and I'm granting it in three to the extent that they have a protective order saying that you cannot permit, you cannot pursue further discovery except to send them an interrogatory saying what is the name of your employee with this Social Security number.

Attorney Brian Smith

The only thing that's left unclear is we haven't conducted any discovery.

Judge Michelle Mallard

Okay.

Attorney Brian Smith

So it's not a further discovery or more discovery. The court has bought into their argument –

Judge Michelle Mallard

All right.

Attorney Brian Smith

– that all that's discovery.

Judge Michelle Mallard

Then I would say you can, you can engage in discovery to the extent of one interrogatory that says what is the name of the employee whose Social Security number –

Attorney Brian Smith

And I understand that.

Judge Michelle Mallard

[Inaudible: 0:59:49].

Attorney Brian Smith

And I accept that order. What I do, still do not understand is under 11717, that is an examination procedure before the court. Is the court saying that the court's order is broad enough that we cannot even do that?

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Judge Michelle Mallard

That is what I'm saying, because I'm agreeing with their argument.

Attorney Brian Smith

Okay. And that's the only part I'm left unclear. I'm not trying to be difficult. What is the basis in law to say because we did not accept under 11722, we're now precluded from proceeding under 11717? That's all I'm asking for.

Judge Michelle Mallard

As I am not a witness on a stand, I am not going to answer that. I think I've fully explained my decision.

Attorney Brian Smith

Perhaps opposing counsel can say what their basis is, because I haven't heard any offered today.

Judge Michelle Mallard

I think it's clearly explained in their briefs. Mr. Law, anything else?

Attorney Andrew Law

No, Your Honor.

Judge Michelle Mallard

I'm going to ask you to prepare the order. Is there any clarification you need before you can draft such an order?

Attorney Andrew Law

No, Your Honor.

Judge Michelle Mallard

When can you have it to me?

Attorney Andrew Law

I'll have it today, Your Honor.

Judge Michelle Mallard

All right [Inaudible: 1:00:50].

Attorney Andrew Law

Thank you.

Attorney Brian Smith

945           May I be excused, Your Honor?

946

947   Judge Michelle Mallard

948           Once again, I thank both parties for bringing at least an interesting legal issue before me,  
949   which is rare in my [Inaudible: 1:00:57] position.

950

951   Attorney Brian Smith

952           Thank you, Your Honor.

953

954   Judge Michelle Mallard

955           We'll be in recess. And if I could see Mr. Tolson. Mr. Tolson, did you have opposing  
956   counsel here? [Inaudible: 1:01:11].



Thompson Helman ...

BONNEVILLE COUNTY  
IDAHO

2018 JUL 24 AM 8:56

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

<p>MEDICAL RECOVERY SERVICES, LLC, an Idaho limited liability company,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs --</p> <p style="text-align: center;">[REDACTED]</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. [REDACTED]</p> <p>ORDER</p>
---	---

THE COURT, having received the *Motion of Non-Party Melaleuca, Inc.* ("Melaleuca") for Protective Order and/or to Quash Plaintiff's Notice of Deposition and Subpoena Duces Tecum ("Motion"), and finding good cause to enter such an order pursuant to Idaho Code § 11-722 and for the reasons stated in Melaleuca's Motion and accompanying briefing, HEREBY ORDERS as follows:

1. Melaleuca's Garnishment Answer is "true and sufficient" for purposes of Plaintiff's garnishment attempts against [REDACTED] pursuant to Idaho Code § 11-722.
2. Melaleuca is discharged from any liability under the garnishment statute for purposes of Plaintiff's garnishment attempts against [REDACTED] pursuant to Idaho Code § 11-722.

3. Plaintiff is permitted to propound a single interrogatory on Melaleuca that asks the name of the Melaleuca employee that has the Social Security number ending in [REDACTED] (which number is found in full in Plaintiff's Notice of Garnishment). Plaintiff may not seek any other discovery of Melaleuca in this matter. And to make clear, Plaintiff may not seek to examine Melaleuca pursuant to Idaho Code § 11-717.
4. Plaintiff's *Notice of Taking Deposition Pursuant to Rule 60(B)(6)* and *Subpoena Duces Tecum Pursuant to Rule 30(b)(6)* are quashed.
5. The Court reserves judgment on whether Melaleuca may seek its reasonable expenses in connection with its Garnishment Answer and this motion pursuant to Rules 26(c)(3) and 37(a)(5) of the Idaho Rules of Civil Procedure and Idaho Code § 11-722.

DATED this 19 day of July, 2018.

/s/ Michelle R. Mallard

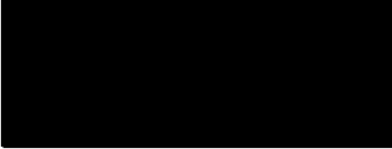
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Hon. Michelle R. Mallard

CLERK'S CERTIFICATE OF SERVICE

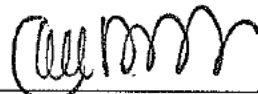
I hereby certify that on July 24, 2018, I caused a true and correct copy of the

foregoing to be mailed to those listed below or placed in their courthouse box:



RICHARD R. FRIESS  
THOMSEN HOLMAN WHEELER, PLLC  
2635 CHANNING WAY  
IDAHO FALLS, ID 83404

BRYAN N. ZOLLINGER  
SMITH DRISCOLL & ASSOCIATES, PLLC  
414 SHOUP AVENUE  
PO BOX 50731  
IDAHO FALLS, ID 83405

By:   
Clerk

RRF/4550/007 ORDER ON MOT PO

Bryan N. Zollinger Esq. *ISB # 8008*  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

Vs.

Defendant.

Case No. [REDACTED]

PLAINTIFF'S FIRST SET OF  
INTERROGATORIES TO MELALEUCA,  
INC.

**TO: MELALEUCA, INC., NON-PARTY, and Richard R. Friess, Esq., and  
J. Andrew Law, Esq., its counsel of record:**

COMES NOW Plaintiff, Medical Recovery Services, LLC, and requires non-party  
MELALEUCA, INC., to answer under oath, within thirty (30) days from the date of  
service hereof, the following Interrogatories; pursuant to Rule 33 of the Idaho Rules of Civil  
Procedure, at the offices of Smith, Driscoll & Associates, PLLC, Attorneys at Law, 414  
Shoup Avenue, P. O. Box 50731, Idaho Falls, Idaho 83405-0731.

INSTRUCTIONS AND DEFINITIONS

The following terms, words, and phrases shall be the following meaning in this  
discovery pleading:

**PLAINTIFF'S FIRT SET OF INTERROGATORIES AND TO MELALEUCA,  
INC. – Page 2**

F:\CLIENTS\BDS\Collections\MRS\Files\7341.17621\Pleadings\180717 Plaintiff's First Set of  
Interrogatories to Melaleuca, Inc..docx

1. The term “you” and “your” refers to the individual answering the discovery, and all agents, employees, representatives (including insurers), investigators, consultants and attorneys of the answering party.

2. The term “document” shall mean any kind of written, printed, typed, graphic photographic, or electronic matter of any kind or nature, however produced or reproduced, and all mechanical and electronic sound recordings and written transcripts thereof, however produced or reproduced whether in your control or not, and including without limitation, originals, all file copies, all other copies no matter how and by whom prepared and all drafts of such documents whether used or not.

3. The term “identify”, when used with respect to a document, or the description or identification of a document, shall be deemed to request the nature and substance of the document with sufficient particularity to enable the same to be precisely identified, including the date, if any, which the document bears, the names of all persons authorizing the document, and the name and address of the custodian(s) of the original or, if none, a legible copy of the documents.

4. The term “identify” when used with respect to a person, shall be deemed to request the person’s full name, the person’s last known business address (if a natural person), the person’s last known address, and the person’s business and resident telephone number.

5. The term “identify” when used with respect to oral communications, shall be deemed to request, whether said communication was in person or by telephone, an identification (as provided in definition 4) of each person who participated in or heard any part of said communication and the substance of what was said by each person who participated in said communication.

6. These interrogatories are continuing in character so as to require you to file supplementary answers in a seasonal manner if you obtain further or different information before trial.

7. Where knowledge or information in possession of a party is requested, such request includes information and knowledge either in your possession, under your control, within your dominion, or available to you, regardless of whether this information is in your personal possession, or is possessed by your agent, attorneys, servants, employees, independent contractors, representatives, insurers or others with whom you have a relationship or from whom you are capable of deriving information, documents or material.

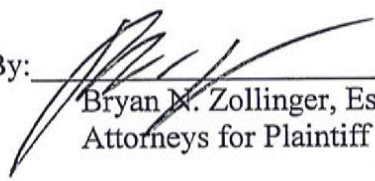
**INTERROGATORY NO. 1:** Please state with specificity the full name of any employee current or past using the social security number [REDACTED] and the dates of employment.

Plaintiff reserves the right to ask additional interrogatories and/or take oral depositions; further, the foregoing interrogatories shall be considered continuing and at such time as additional information becomes available to non-party Melaleuca, Inc., supplemental answers should be filed with respect to the appropriate interrogatories hereinabove set forth.

DATED this 24 day of July, 2018.

SMITH, DRISCOLL & ASSOCIATES, PLLC

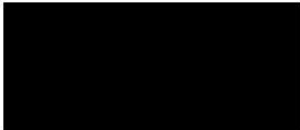
By: \_\_\_\_\_

  
Bryan N. Zollinger, Esq.  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24 day of July, 2018, I caused a true and correct copy of the foregoing **PLAINTIFF'S FIRST SET OF INTERROGATORIES** to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

Persons Served:



Mail [ ] Hand [ ] Fax  
[ ] Email

Richard R. Friess, Esq.  
Thomsen Holman Wheeler, PLLC  
2635 Channing Way  
Idaho Falls, ID 83404

Mail [ ] Hand [ ] Fax  
[ ] Email

J. Andrew Law, Esq.  
Melaleuca, Inc.  
4609 West 65<sup>th</sup> South  
Idaho Falls, ID 83402

Mail [ ] Hand [ ] Fax  
[ ] Email

  
\_\_\_\_\_  
Bryan N. Zollinger, Esq.

**PLAINTIFF'S FIRT SET OF INTERROGATORIES AND TO MELALEUCA,  
INC. – Page 5**

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Interrogatories to Melaleuca, Inc..docx

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4609 West 65<sup>th</sup> South  
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Fax: (208) 534-2063

Attorneys for Non-Party Melaleuca, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

<p>MEDICAL RECOVERY SERVICES, LLC, an Idaho limited liability company,</p> <p>Plaintiff,</p> <p>vs –</p> <p>[REDACTED]</p> <p>Defendant.</p>	<p>Case No. [REDACTED]</p> <p>RESPONSE AND OBJECTIONS TO PLAINTIFF’S FIRST SET OF INTERROGATORIES TO MELALEUCA, INC.</p>
--	--

Melaleuca, Inc. (“Melaleuca”), by and through its undersigned counsel, hereby responds to Plaintiff’s First Set of Interrogatories to Melaleuca, Inc. (“Interrogatories”), which it received on July 27, 2018, in connection with the above-captioned action and pursuant to the Court’s July 19, 2018 Order (“Order”). Melaleuca responds to the Interrogatories as follows:



### **General Objection**

Melaleuca objects to the definition of “you” and “your” in the Interrogatories. Melaleuca will respond to the Interrogatories only on behalf of itself, Melaleuca, Inc.

Melaleuca hereby incorporates by reference the foregoing general objection into the specific response and objections listed below.

### **Specific Response and Objections**

Melaleuca responds and objects to the Interrogatories as follows:

**INTERROGATORY NO. 1:** Please state with specificity the full name of any employee current or past using the social security number [REDACTED] and the dates of employment.

**RESPONSE TO INTERROGATORY NO. 1:** Melaleuca objects to this Interrogatory because it consists of more than one interrogatory and/or seeks more information than what is permitted by the Court’s Order. The Court permitted Plaintiff “to propound a single interrogatory on Melaleuca that asks the name of the Melaleuca employee that has the Social Security number ending in [REDACTED]” Beyond that, the Court ordered, “Plaintiff may not seek *any other* discovery of Melaleuca in this matter.” (Emphasis added.) Here, the Interrogatory seeks the “full name of any [Melaleuca] employee current or past” with the Social Security number ending in [REDACTED] *and* “the dates of employment.” Given the Court’s Order, which is limited to seeking a name only, Melaleuca will not respond to any portion of the Interrogatory that seeks more than a name. Moreover, Melaleuca objects to the Interrogatory to the extent that Plaintiff states in a paragraph following the Interrogatory that it “reserves the right to ask additional interrogatories and/or take oral depositions.” Again, as stated in the Court’s Order, “Plaintiff may not seek any other discovery of Melaleuca in this matter.” Melaleuca further objects to the

Interrogatory to the extent that it seeks information that is in the possession of or is more easily obtained from the named defendant [REDACTED]. Melaleuca likewise objects to the Interrogatory to the extent that it seeks information protected by the attorney-client privilege, the work product doctrine, and/or other legal standards providing exemptions from disclosure.

Subject to and without waiving the foregoing general and specific objections, Melaleuca responds as follows: According to its records, Melaleuca employs an individual with the Social Security number of [REDACTED] with the name [REDACTED]. Melaleuca makes clear, however, what it has already informed Plaintiff of in this matter: Melaleuca has no knowledge that its employee with the Social Security number ending in [REDACTED] is, in fact, the judgment debtor in this matter. Accordingly, Melaleuca's response to this Interrogatory is not confirmation that the named judgment debtor is an employee of Melaleuca.

Additionally, Melaleuca notes that the Idaho Supreme Court has explained to creditors that "it is not asking too much" to require that a judgment debtor "should be so designated as to leave no doubt in regard to the [judgment debtor's] identity." *Yacht Club Sales & Serv., Inc. v. First Nat'l Bank of N. Idaho*, 101 Idaho 852, 858, 623 P.2d 464, 470 (1980) (quoting *German Nat'l Bank v. Nat'l State Bank*, 39 P. 71, 72 (Colo. App. 1895)) (emphasis added). Moreover, the Idaho Supreme Court has made clear that a garnishee "served with a writ of execution cannot be held [liable to a judgment-creditor unless it handles funds in the name of the judgment-debtor (i. e. [sic] the defendant named in the writ of execution)." *Id.* 101 Idaho at 857, 623 P.2d at 469. Thus, contemplating that Plaintiff might revise its garnishment documents in this matter, Melaleuca states that it is under no obligation to honor a garnishment for anyone other than the "defendant named in the writ of execution," *id.* (emphasis added), that is, named in the caption of the writ of execution and related documents.

Lastly, Melaleuca reserves the right to seek its attorney fees in connection with having to bring its motion for protective order and/or to quash in this matter pursuant to Idaho Code § 11-722 and IRCP 37(a)(5).

DATED this 27th day of August, 2018.

---

Richard R. Friess

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>th</sup> day of August, 2018 I caused a true and correct copy of the foregoing RESPONSE AND OBJECTIONS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO MELALEUCA, INC. to be served on those listed below using the delivery method(s) indicated:

Bryan N. Zollinger  
Smith, Driscoll & Associates, PLLC  
404 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, ID 83405  
[bnz@idaholaw.com](mailto:bnz@idaholaw.com)

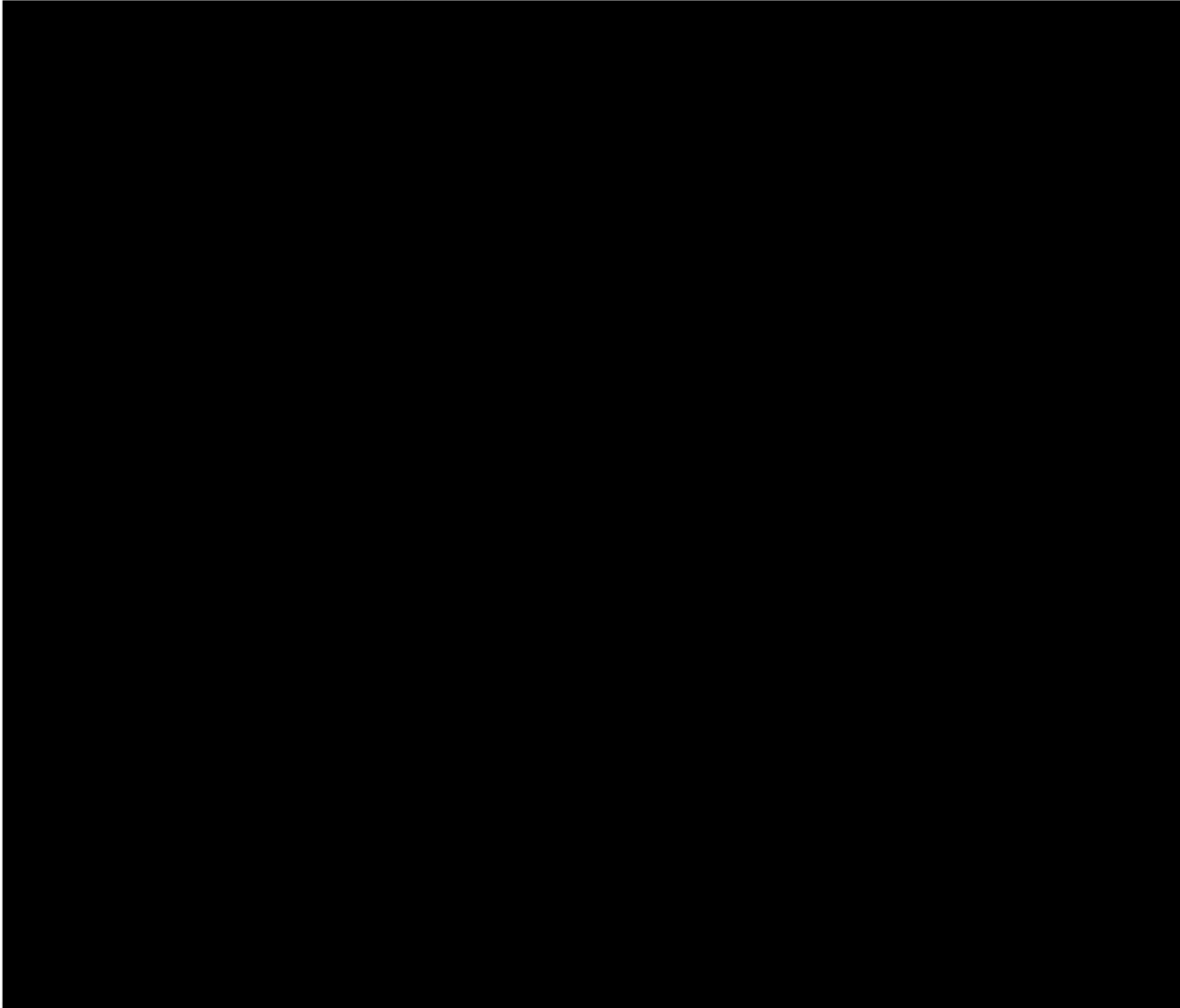
U.S. Mail  
 Facsimile  
 E-mail  
 Overnight Delivery

---

Richard R. Friess

VERIFICATION

STATE OF IDAHO                    )  
  :SS  
COUNTY OF BONNEVILLE )



# ACKNOWLEDGEMENT OF RECEIPT OF GARNISHMENT

⇒⇒⇒⇒ EMPLOYERS ⇐⇐⇐⇐  
**Answer, sign, and return to the Bonneville County Sheriff's Office within 5 days.  
Failure to do so may allow the Plaintiff to take judgment against you.**

Defendant: \_\_\_\_\_ *- aka's listed on next page -*

Sheriff's Number: \_\_\_\_\_

**PLEASE USE THIS NUMBER AND DEFENDANT'S LAST NAME ON ALL CHECKS AND CORRESPONDENCE SENT TO THE BONNEVILLE COUNTY SHERIFF'S OFFICE**

I certify that this business is a (check one), and that I am (check one below):

- |  |  |   |  |
|--|--|---|--|
| <input type="checkbox"/> SOLE PROPRIETORSHIP           | <input type="checkbox"/> PARTNERSHIP                         | <input type="checkbox"/> CORPORATION                                    | <input type="checkbox"/> LIMITED LIABILITY COMPANY |
| <input type="checkbox"/> Owner                         | <input type="checkbox"/> Partner                             | <input type="checkbox"/> Corporate officer                              | <input type="checkbox"/> LLC Member                |
| <input type="checkbox"/> Authorized agent of the owner | <input type="checkbox"/> Authorized agent of the partnership | <input type="checkbox"/> Corporate registered agent or authorized agent | <input type="checkbox"/> Authorized agent          |

**I CERTIFY THAT I RECEIVED THE GARNISHMENT IN THE ABOVE ENTITLED ACTION:**

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

Company Name: \_\_\_\_\_

By: \_\_\_\_\_

*If payroll is processed in another location, please supply us with the correct address and telephone numbers.*

**NOTICE OF CONTINUOUS GARNISHMENT**

ANSWER, SIGN AND RETURN THIS ACKNOWLEDGEMENT ALONG WITH THE STATUTORY INTERROGATORIES TO:  
**BONNEVILLE COUNTY SHERIFF'S OFFICE  
CIVIL PROCESSING DIVISION**  
within 5 days.

\$ 1,272.55

is now due on this wage garnishment. ***Interest & Sheriff's fees will accumulate during payoff.*** Please inquire at 208-529-1371 when the amount listed above is close to paying off. We will quote you a final amount due on the writ. Thank you.

**RETURN THIS ACKNOWLEDGMENT TO  
BONNEVILLE COUNTY SHERIFF'S OFFICE  
ATTN: CIVIL PROCESSING,  
605 N. CAPITAL, IDAHO FALLS, ID 83402  
FAX: 208-52 *9-1483*  
EMAIL ADDRESS: [BCSOCivil@co.bonneville.id.us](mailto:BCSOCivil@co.bonneville.id.us)  
PHONE: (208) 529-1371**

FAXED FROM:	_____
COMPANY:	_____
NUMBER OF PAGES:	_____
PHONE #:	_____
FAX #:	_____

## **IMPORTANT NOTICE TO EMPLOYERS AND PAYROLL SPECIALISTS**

**To assist the Bonneville County Sheriff's Office in processing this garnishment, it is vital that the following information be included with any correspondence or payment being submitted to our office. Please make sure all numbers and names are correct.**

1. **SHERIFF'S NUMBER**  
(Stamped on the top right hand corner of paperwork starting with the number 20XX0XXXX)
2. **COURT CASE NUMBER**  
(Found on the front of the Writ of Execution starting with CV)
3. **FIRST AND LAST NAME of your employee**
4. **THE AMOUNT TO BE APPLIED TO EACH CASE**  
(In the event of multiple employees being garnished)
5. **TERMINATION DATE**  
(This information is needed to close the case if the employee leaves employment and still has an outstanding balance on the case)

**\*Answer, sign, and return to the Bonneville County Sheriff's Office within 5 days. Failure to do so may allow the Plaintiff to take judgment against you.**

**\*Please send all payments and correspondence to Bonneville County Sheriff, Attn: Civil Process, 605 N Capital, Idaho Falls, ID 83402**  
**Email: BCSOCivil@co.bonneville.id.us**  
**Fax: 208-529-1483**

If you have any questions, please feel free to contact our office weekdays between the hours of 8:00 A.M. and 5:00 P.M. at 529-1371.

Thank you for your cooperation.

COPY



Bryan N. Zollinger ISB #8008  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731  
filing@eidaholaw.com

2018 SEP 19 PM 12:11

BONNEVILLE COUNTY  
SHERIFF'S OFFICE  
IDAHO FALLS, IDAHO  
RECEIVED

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

v.

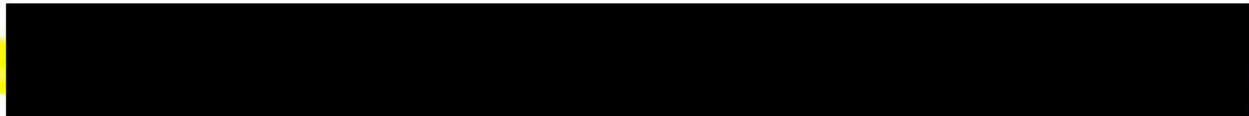


Defendant.

Case No.

NOTICE OF CONTINUING  
GARNISHMENT

TO: **Melaleuca, Inc.**  
**4609 W. 65th S.**  
**Idaho Falls, ID 83402**



Whereas, the MAGISTRATE Division of the District Court of the SEVENTH Judicial District, in and for BONNEVILLE County, Idaho, entered a JUDGMENT against on April 6, 2018; and

Whereas, the Clerk of the Court issued a WRIT OF EXECUTION against

SS#

; and

Whereas, the WRIT OF EXECUTION requires me to satisfy the JUDGMENT, plus interest, out of the personal property of [REDACTED] and, if sufficient personal property cannot be found, then out of the real property of [REDACTED] and

Whereas, the MAGISTRATE Division of the District Court of the SEVENTH Judicial District, in and for BONNEVILLE County, Idaho, executed an order entitled "ORDER OF CONTINUING GARNISHMENT"; and

Whereas, the ORDER OF CONTINUING GARNISHMENT requires me to garnish the maximum amount of [REDACTED] [REDACTED] [REDACTED]'s disposable earnings from **Melaleuca, Inc.** at each disbursement interval until the JUDGMENT, plus interest, is paid in full; and

Now, therefore, you are hereby notified that the Defendant's earnings are attached pursuant to and in accordance with the WRIT OF EXECUTION and ORDER OF CONTINUING GARNISHMENT. You must withhold the maximum amount of [REDACTED] [REDACTED] [REDACTED]'s disposable earnings at each disbursement interval until the JUDGMENT, plus interest is paid in full. The garnishment shall operate continuously until the JUDGMENT, plus interest is paid in full.

Please note the following:

1. Idaho Code Section 11-206(1) defines the word "earnings" as follows:

"Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise,



and includes periodic payments pursuant to a pension or retirement program.

2. Idaho Code Section 11-206(2) defines the phrase “disposable earnings” as follows:

“Disposable earnings” means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

3. Idaho Code Section 11-207(1) states, in pertinent part, the following:

The maximum amount of the aggregate disposable earnings of an individual for any work week which is subjected to garnishment shall not exceed (a) twenty-five percent (25%) of his disposable earnings for that week, or (b) the amount which his disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage prescribed by 29 U.S.C.A. Section 206(a) (1) in effect at the time the earnings are payable, whichever is less. In the case of earnings for any pay period other than a week, the Idaho Commissioner of Labor shall by regulation prescribe a multiple of the federal minimum hourly wage equivalent in effect to that set forth in (b) of this subsection.

Please answer the following Interrogatories:

Dated the \_\_\_\_\_ day of SEP 19 2018, 20\_\_\_\_\_.

Paul J. Wilde, Sheriff  
Sheriff of Bonneville County



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND  
FOR THE COUNTY OF BONNEVILLE MAGISTRATE DIVISION

2018 SEP 19 PM 12:1

MEDICAL RECOVERY SERVICES, LLC, an Idaho  
limited liability company,

Plaintiff,

vs.

[Redacted]

Defendant.

Case No. [Redacted]

INTERROGATORIES TO GARNISHEE

BONNEVILLE COUNTY  
SHERIFF'S OFFICE  
IDAHO FALLS, IDAHO  
RECEIVED

TO: Melaleuca, Inc.

TAKE NOTICE that all money, wages, goods, credits, effects, rents due, and all other personal property in your possession or under your control, belonging to the defendant named in the attached copy of the writ of execution is levied upon and you are hereby notified not to pay or transfer the same to anyone but the office of the sheriff. WAGES are subject to maximum garnishment provisions of Title III of the Consumer Credit Protective Ave (15 USC 1673)

You must answer these Interrogatories within five (5) days from the date served as required by I.C. § 11-719. If you fail to respond to the judgment creditor can request a judgment against you for the amount owed by the defendant.

INSTRUCTIONS

- You are requested to provide all information known by you or available to you.
- If you cannot answer any of the Interrogatories completely, provide whatever information you have.
- Once completed and signed make a copy for yourself, and send the original and any funds to the Bonneville Sheriff located at 605 N. Capital Ave., Idaho Falls, ID 83402.

ANSWER OF GARNISHEE:

- Do you have in your possession or under your control any money or property belonging to the defendant(s)?  
Yes \_\_\_ No \_\_\_ Amount \_\_\_\_\_
- Is the Defendant your employee? Yes \_\_\_ No \_\_\_  
\_\_\_ Full Time \_\_\_ Part Time \_\_\_ Contract \_\_\_\_\_
- What is his/her average take home pay? \_\_\_\_\_ When paid? \_\_\_\_\_
- Do you owe the Defendant any money? Yes \_\_\_ No \_\_\_  
If so, how much and when did it become due? \_\_\_\_\_  
If not yet due, when will it become due? \_\_\_\_\_
- Has the defendant assigned his/her wages? Yes \_\_\_ No \_\_\_  
When and to whom was the assignment made? \_\_\_\_\_
- Are you honoring any other garnishments? Yes \_\_\_ No \_\_\_  
If so, what state and county served the garnishment? \_\_\_\_\_
- If the Defendant no longer works for you, when did his/her employment end?  
\_\_\_\_\_  
Who does he/she work for now? \_\_\_\_\_

CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

\_\_\_\_\_  
Garnishee

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## The Federal Wage Garnishment Law, Consumer Credit Protection Act's Title 3 (CCPA)

<b>MAXIMUM GARNISHMENT OF DISPOSABLE EARNINGS UNDER NORMAL CIRCUMSTANCES* FOR THE \$7.25 MINIMUM WAGE</b>			
<b>Weekly</b>	<b>Biweekly</b>	<b>Semimonthly</b>	<b>Monthly</b>
If the employee makes \$217.50 or less: NONE	If the employee makes \$435.00 or less: NONE	If the employee makes \$471.25 or less: NONE	If the employee makes \$942.50 or less: NONE
If the employee makes more than \$217.50 but less than \$290.00, send the difference over \$217.50	If the employee makes more than \$435.00 but less than \$580.00, send the difference over \$435.00	If the employee makes more than \$471.25 but less than \$628.33, send the difference over \$471.25	If the employee makes more than \$942.50 but less than \$1256.67, send the difference over \$942.50
If the employee makes \$290.00 or more: garnish 25% (net).	If the employee makes \$580.00 or more: garnish 25% (net).	If the employee makes \$628.33 or more: garnish 25% (net).	If the employee makes \$1256.67 or more: garnish 25% (net).

\*These restrictions do not apply to garnishments for child and/or spousal support, bankruptcy, or actions to recover state or federal taxes. The amount of disposable earnings exempt from garnishment must be paid to the employee or garnishee on the regular payday for the pay period in which the wages were earned.

The amount of pay subject to garnishment is based on an employee's "disposable earnings," which is the amount left after legally required deductions are made. Examples of such deductions include federal, state, and local taxes, the employee's share of State Unemployment Insurance and Social Security. It also includes withholdings for employee retirement systems required by law.

The CCPA prohibits an employer from firing an employee whose earnings are subject to garnishment for any one debt, regardless of the number of levies made or proceedings brought to collect that debt, because of the single garnishment. Under provision of this law, the employer may be prosecuted criminally and fined up to \$1,000 or imprisoned for not more than one year, or both. The Act does not prohibit discharge because an employee's earnings are separately garnished for two or more debts.

A section or provision of the state law that requires a larger amount to be garnished than the federal law permits is considered pre-empted by the federal law. On the other hand, the state law provisions are to be applied if they result in a smaller garnishment amount (I.C. 28-45-104).

NOTE: The amount of disposable earnings subject to garnishment is determined by the restrictions which are in effect at the time such earnings are payable.

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4-USWAGE (1-866-487-9243).

**U.S. Department of Labor,  
Frances Perkins Building  
200 Constitution Avenue, NW  
Washington, DC 20210**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

The preceding restrictions are in effect as of July 24, 2009

Bryan N. Zollinger ISB #8008  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731  
Attorneys for Plaintiff

**COPY**

2018 SEP 19 PM 12:11

BONNEVILLE COUNTY  
SHERIFF'S OFFICE  
IDAHO FALLS, IDAHO  
RECEIVED

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,  
Plaintiff,  
vs.  
[REDACTED]  
Defendant.

Case No. [REDACTED]

WRIT OF EXECUTION AND ORDER  
FOR CONTINUING GARNISHMENT

THE PEOPLE OF THE STATE OF IDAHO: To the Sheriff of Bonneville County:

WHEREAS, the plaintiff, **Medical Recovery Services, LLC**, recovered judgment in the said District Court, of BONNEVILLE County, against [REDACTED] on **April 6, 2018**, for the sum of **\$1,082.41**, with interest at the legal rate for judgments as prescribed by Idaho Code § 28-22-104 until paid, together with costs and disbursements at the date of said judgment and accruing costs as appear on record; and

WHEREAS the sum of \$1,082.41 with interest in the amount of \$27.99, plus costs of \$119.00, less payments of \$0.00 for a total of \$1,229.40 is now—as of September 4, 2018—actually due on said judgment, as follows:

Judgment	\$ 1,082.41
Costs	\$ 119.00
Interest	\$ 27.99
Payments	\$ 0.00
<b>Total</b>	<b>\$ 1,229.40</b>

NOW, THEREFORE, YOU, the said Sheriff, are hereby required to make the said sums due on said judgment with interest as aforesaid, and costs and accruing costs, to satisfy said judgment in full out of the personal property of said debtor, or if sufficient personal property of said debtor cannot be found, then out of the real property in your County belonging to the debtor on the day whereon said judgment was docketed in said County, or at any time thereafter. Pursuant to Idaho Code § 11-702 you may make return hereon not less than 10 nor more than 90 days after your receipt hereof, with what you have done endorsed thereon; and

WHEREAS, the judgment debtor has or is also known as [REDACTED]

[REDACTED]  
[REDACTED]; and

WHEREAS, the Plaintiff filed an application on September 4, 2018, entitled "APPLICATION FOR ORDER OF CONTINUING GARNISHMENT" against the employer of [REDACTED] the Court hereby grants the application and ORDERS:

That the Sheriff of Bonneville, Idaho shall continuously garnish the maximum amount of [REDACTED] disposable earnings from Melaleuca, Inc. (4609 W. 65th S., Idaho Falls, ID 83402) at each disbursement interval until the JUDGMENT, plus interest, is paid in full.

WITNESS HON. Mallard Judge  
of the said District Court, at the Courthouse in the  
County of BONNEVILLE,  
Dated: 9/13/18  
ATTEST my hand and seal of said Court the day  
and year last above written.  
Penny Manning  
Clerk  
MH  
Deputy Clerk



September 26, 2018

To: 

Re: Garnishment

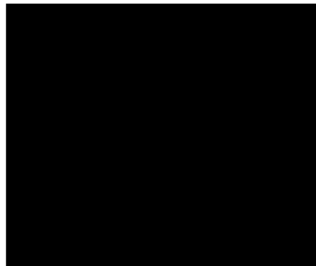
We received a new garnishment order from the Bonneville County Sheriff's Office on 09/21/2018. The order is for \$1,272.55 and will be deducted at 25% of your disposable income beginning on your next paycheck of 10/05/18.

This action is kept confidential in the Payroll office.

Enclosed is a copy of the order.

Please let me know if you have any questions or concerns.

Regards,



Bryan N. Zollinger, Esq. ISB # 8008  
Bryan D. Smith, Esq. ISB # 4411  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

Defendant.

Case No. [REDACTED]

**MEMORANDUM OF SUPPLEMENTAL  
ATTORNEY'S FEES AND COSTS**

COMES NOW the above-named plaintiff, by and through undersigned counsel of record and pursuant to Idaho Rules of Civil Procedure, Rule 54(d)(5), and submits the following Cost Bill:

I. ATTORNEY'S FEES.

Plaintiff hereby claims as total attorney's fees: \$5,464.25

**TOTAL FEES: \$5,464.25**

II. COSTS.


Plaintiff hereby claims as total costs: \$119.00

**TOTAL COSTS \$119.00**

**TOTAL COSTS AND FEES: \$5,583.25**

DATED: March 15, 2019

SMITH, DRISCOLL & ASSOCIATES, PLLC



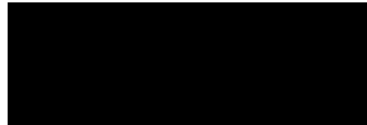
---

Bryan D. Smith, Esq.  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 15th day of March, 2019, I caused a true and correct copy of the foregoing **MEMORANDUM OF SUPPLEMENTAL ATTORNEY'S FEES AND COSTS** to be served by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or by hand delivery, facsimile transmission, or overnight delivery, addressed to the following:

- U.S. Mail
- Facsimile
- Overnight Delivery
- Hand Delivery



---

Bryan D. Smith, Esq.  
Attorneys for Plaintiff



Bryan N. Zollinger, Esq. ISB # 8008  
Bryan D. Smith, Esq. ISB # 4411  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731  
Attorneys for Plaintiff  
jrs@eidaholaw.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

Defendant.

Case No. [REDACTED]

**DECLARATION IN SUPPORT OF  
APPLICATION FOR AWARD OF  
SUPPLEMENTAL ATTORNEY'S FEES  
AND COSTS**

Pursuant to I. C. § 9-1406, I hereby declare as follows:

BRYAN D. SMITH, Esq. of the firm Smith, Driscoll & Associates, PLLC, being  
first duly sworn on oath, deposes and states as follows:

1. I am one of the attorney's for Plaintiff in the above-styled action. I  
obtained a Juris Doctorate degree from the University of the Pacific McGeorge School of  
Law in 1989 and have been actively practicing law since then.

2. I am licensed to practice law in the Courts of Idaho, and the United States  
District Court for the District of Idaho. A substantial portion of my practice has been  
devoted to civil litigation.

3. I submit this Declaration in Support of Plaintiff's Application for Award of Supplemental Attorney's Fees and Costs and further in support of Plaintiff's Memorandum of Supplemental Attorney's Fees and Costs.

4. Judgment was entered herein on the 6th day of April, 2018 in the sum of \$1,082.41. The cause of action arose after July 1, 1987, and therefore, the judgment thereon bears interest at the rate which is in effect on the date of entry of the judgment. The applicable interest rate for the judgment in this matter is 6.25 percent per annum, the amount that has accrued to date is \$50.50. In an attempt to collect on the judgment plaintiff has incurred costs totaling \$119.00. A true and correct copy of all these costs are attached hereto and marked as Exhibit "A". To the best of my knowledge and belief, these cost items are correct and claimed in compliance with I.R.C.P. 54(d). Moreover, these costs were necessary and exceptional costs reasonably incurred to collect on the judgment and the court should assess them against the defendant in the interest of justice.

5. My rate of billing on the above-referenced matter is \$275.00 per hour. I believe that this hourly rate is reasonable, especially given the amount involved and the result obtained, the desirability of the case, the nature and length of my professional relationship with my client, awards in similar cases, my experience (particularly in the area of law involved in this case), and the rates charged by other attorneys with comparable experience in comparable cases in the southeastern Idaho area.

6. The rate of billing on the above-referenced matter for Jon M. Bonnesen is \$165.00 per hour. I believe that this hourly rate is reasonable, especially given the amount involved and the result obtained, the desirability of the case, the nature and length of my professional relationship with my client, awards in similar cases, my experience

(particularly in the area of law involved in this case), and the rates charged by other attorneys with comparable experience in comparable cases in the southeastern Idaho area.

7. The rate of billing on the above-referenced matter for Bryan N. Zollinger is \$250.00 per hour. I believe that this hourly rate is reasonable, especially given the amount involved and the result obtained, the desirability of the case, the nature and length of my professional relationship with my client, awards in similar cases, my experience (particularly in the area of law involved in this case), and the rates charged by other attorneys with comparable experience in comparable cases in the southeastern Idaho area.

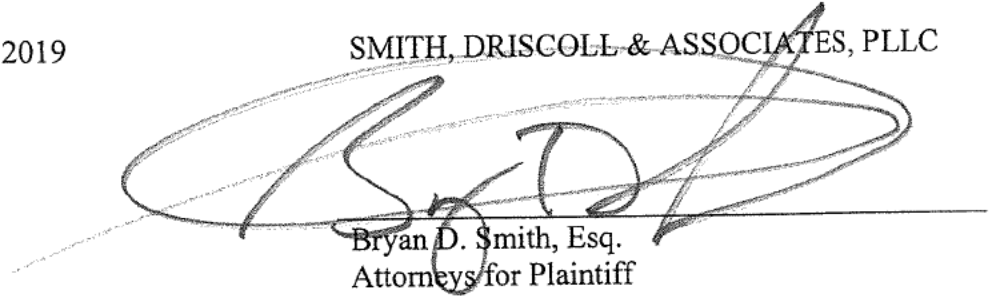
8. The rate of billing on the above-referenced matter for my paralegal is \$95.00 per hour. I believe that this hourly rate is reasonable, especially given the amount involved and the result obtained, the desirability of the case, awards in similar cases, and their experience (particularly in the area of law involved in this case).

10. After the court entered judgment in this case, my firm has spent time in an effort to collect on the judgment. The time spent is both reasonable and necessary to recover on the judgment. In this regard, the time I and my paralegal have spent is set forth in time entries into our firm billing system. These time entries record the time spent in recovering on the judgment. A true and correct copy of all these time entries are attached hereto and marked as Exhibit "B." My time entries are identified as "BDS". Jon Bonnesen's entries are identified as "JMB". Bryan N. Zollinger's time entries are identified as "BNZ". My paralegal's time entries are identified as "PLT".

I hereby declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED: March 15, 2019

SMITH, DRISCOLL & ASSOCIATES, PLLC



Bryan D. Smith, Esq.  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 15th day of March, 2019, I caused a true and correct copy of the foregoing **DECLARATION IN SUPPORT OF APPLICATION FOR AWARD OF SUPPLEMENTAL ATTORNEY'S FEES AND COSTS** to be served by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, addressed to the following:

- U.S. Mail
- Facsimile



Bryan D. Smith, Esq.

# Exhibit “A”

<b>Costs</b>	
Description	Amount
Recording Fees	\$20.00
Execution Fees	\$4.00
Sheriff Fees	\$40.00
Services Fees	\$55.00
<b>Total Costs</b>	<b>\$119.00</b>

# Exhibit “B”

**Smith, Driscoll & Associates, PLLC**  
**414 Shoup Avenue**  
**P.O. Box 50731**  
**Idaho Falls, ID 83405**  
**TIN: 82-0518512**  
**(208) 524-0731**

Invoice Submitted to: **Medical Recovery Services, LLC**

Dated: March 1, 2019

RE: MRS v. [REDACTED] Acct: 79918

<b>Date</b>	<b>Professional Services Rendered</b>	<b>Hours</b>	<b>Amount</b>
02/13/18	(PLT) Receipt and review of judgment (.10); and calendar last day to renew judgment (.10);	0.20	\$ 19.00
02/13/18	(BNZ) Prepare Motion for Reconsideration (.25); Brief in Support of Motion for Reconsideration (.50); Declaration of Jon M. Bonnesen (.50); and Notice of Hearing (.25);	1.50	\$ 375.00
02/13/18	(PLT) Letter to court clerk (.10);	0.10	\$ 9.50
03/27/18	(BDS) Attendance at hearing on motion for reconsideration (.75);	0.75	\$ 206.25
04/06/18	(PLT) Letter to court clerk (.10);	0.10	\$ 9.50
04/06/18	(PLT) Receipt and review of Amended Judgment (.10); and calendar last day to renew judgment (.10);	0.20	\$ 19.00
04/13/18	(BNZ) Prepare application for continuing garnishment (.25); and prepare affidavit in support of writ of execution (.25);	0.50	\$ 125.00
04/13/18	(PLT) Prepare writ of execution (.10); prepare order for continuing garnishment (.10); letter to court clerk (.10); and issue check for writ (.10);	0.40	\$ 38.00
04/17/18	(PLT) Receipt and review of original writ of execution (.10); prepare notice of continuing garnishment (.10); prepare statutory interrogatories (.10); prepare claim of exemption (.10); letter to sheriff (.10); and issue check for garnishment (.10);	0.60	\$ 57.00
05/03/18	(PLT) Receipt and review of unsatisfied return of service from sheriff's office (.10);	0.10	\$ 9.50
05/17/18	(BNZ) Letter to employer (.25);	0.25	\$ 62.50
06/01/18	(BNZ) Receipt and review response to the letter to employer (.25);	0.25	\$ 62.50
06/05/18	(BNZ) Prepare Notice of Taking Deposition (.25); Subpeona Duces Tecum (.25); and Notice of Service of Subpeona Duces Tecum (.25);	0.75	\$ 187.50
06/05/18	(PLT) Letter to court clerk (.10);	0.10	\$ 9.50
06/07/18	(PLT) Issue check to process server for service of Subpeona Duces Tecum and Notice of Taking Deposition Duces Tecum (.10); and receipt and review of affidavit of service from process server (.10);	0.20	\$ 19.00
07/03/18	(BNZ) Receipt and review of Affidavit of J. Andrew Law in Support of Motion of Non-Party Melaleuca, Inc. for Protective Order and/or to Quash Plaintiff's Notice of Deposition and Subpeona Duces Tecum (.15); Memorandum in Support of Motion of Non-Party Melaleuca, Inc. for Protective Order and/or to Quash Plaintiff's Notice of Deposition and Subpeona Duces Tecum (1.50); Motion of Non-Party Melaleuca, Inc. for Protective Order and/or to Quash Plaintiff's Notice of Deposition and Subpeona Duces Tecum (.15); and Notice of Hearing on Motion for Protective Order (.15);	1.95	\$ 487.50
07/09/18	(BNZ) Prepare Opposition to Motion of Non-Party Melaleuca, Inc. for Protective Order and/or to Quash Plaintiff's Notice of Deposition and Subpeona Duces Tecum (.3.75);	3.75	\$ 937.50
07/09/18	(PLT) Letter to court clerk (.10);	0.10	\$ 9.50
07/10/18	(BNZ) Receipt and Review letter from Attorney (.15); and research regarding garnishment issues (1.75);	1.90	\$ 475.00



Andrew Hawes, ISB #5183  
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[ahawes@swlaw.com](mailto:ahawes@swlaw.com)

Attorneys' for Defendant, [REDACTED]

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

MEDICAL RECOVERY SERVICES, LLC,  
An Idaho limited liability company,

Plaintiff,

vs.

[REDACTED]

Defendant.

Case No. [REDACTED]

**MEMORANDUM IN SUPPORT OF  
MOTION TO DISALLOW PLAINTIFF'S  
SUPPLEMENTAL ATTORNEYS' FEES  
AND COSTS**

Defendant [REDACTED], now known as [REDACTED] (“[REDACTED]” or “Defendant”), by and through her counsel of record, hereby files this Memorandum in Support of her Motion to Disallow Plaintiff Medical Recovery Services, LLC ‘s (“MRS”) Supplemental Attorneys’ Fees and Costs (Fee and Cost Application) submitted by MRS (the “Application”). MRS’s supplemental attorneys’ fees and costs should be disallowed because (1) the Application was not properly

**MEMORANDUM IN SUPPORT OF MOTION TO DISALLOW PLAINTIFF’S SUPPLEMENTAL  
ATTORNEYS’ FEES AND COSTS**

submitted in accordance with the Idaho Rules of Civil Procedure and (2) even if MRS properly pursued these fees and costs in accordance with the Idaho Rules of Civil Procedure, the fees and costs sought by MRS are unreasonable.

### **BACKGROUND FACTS**

MRS seeks a supplemental award of attorneys' fees and costs in the amount of \$5,583.25 for collection efforts on a default judgment for a \$294 debt. In January 2018, MRS filed a Complaint against "[REDACTED]," seeking to collect \$294 (the "principal amount owing") plus interest on a "debt and all contractual rights" assigned by "Intermountain Emergency Physicians" to MRS "for the purpose of collection." *Complaint*. Shortly after filing the Complaint, in early February 2018, MRS obtained a default judgment against Defendant in the amount of \$976.41, which included the principal, interest, and attorneys' fees of \$294. *Default Judgment; Plaintiff's Brief in Support of Motion for Reconsideration*. On April 6, 2018, this Court granted MRS's Motion for Reconsideration and issued an Amended Default Judgment in the amount of \$1,082.41, which included additional attorneys' fees and other costs. *Amended Default Judgment*.

Unbeknownst to Defendant, on April 13, 2018, MRS issued a Writ of Execution and Order for Continuing Garnishment in the amount of \$1,105.71, which included the judgment amount, interest, and costs. *Writ of Execution and Order for Continuing Garnishment*. In late April 2018, Melaleuca received the garnishment documents from the Bonneville County Sheriff's Office ("BCSO") in the amount of \$1,146.66. *Affidavit of J. Andrew Law in Support of Motion of Non-Party Melaleuca, Inc. for Protective Order and/or Quash Plaintiff's Notice of Deposition and Subpoena Duces Tecum ("Law Aff.")*, Exhibit A. Also, unbeknownst to Defendant, Melaleuca responded to the garnishment stating that it did not have in its possession or under its control any

money or property belonging to a [REDACTED],” the defendant named in this instant action. *Id. at Exhibit. B-2.*

On June 20, 2018, counsel for Melaleuca reached out to MRS’s counsel to inform MRS that the Subpoena and Notice was not proper under Idaho law. *Id. at Exhibit G.* Melaleuca’s counsel invited Mr. Zollinger to propose a solution that would resolve the dispute. Mr. Zollinger did not respond to this invitation. *Law Aff at ¶ 8.*

Sometime thereafter, MRS served on Melaleuca a “Subpoena Duces Tecum Pursuant to Rule 30(b)(6)” and a “Notice of Taking Deposition Pursuant to Rule 30(b)(6).” *Law Aff. at Exhibits E, F.* On July 2, 2018, Melaleuca filed a motion with this Court seeking, among other things, to have the Court “[d]eclare that Melaleuca is discharged from any liability under the garnishment statute at the cost of Plaintiff for purposes of Plaintiff’s garnishment attempts against [REDACTED].” *Motion of Non-Party Melaleuca for Protective Order and/or to Quash Plaintiff’s Notice of Deposition and Subpoena Duces Tecum.* MRS opposed this Motion.

After full briefing by the parties and a hearing that was held on July 17, 2018, this Court (1) Declared that “Melaleuca’s Garnishment Answer [was] ‘true and sufficient’” under Idaho Code § 11-722; (2) Discharged Melaleuca from any liability in this case; (3) Permitted plaintiff to ask Melaleuca the name of the employee with the Social Security number found in Plaintiff’s Notice of Garnishment.; (4) Quashed Plaintiff’s Subpoena and Notice; and (5) Reserved judgment on whether Melaleuca could seek its reasonable expenses in connection with its motion.

Thereafter, MRS (via BCSO) served Melaleuca a second set of garnishment documents in the amount of \$1,272.55 on or about September 21, 2018. Based upon this second garnishment, a

MEMORANDUM IN SUPPORT OF MOTION TO DISALLOW PLAINTIFF’S SUPPLEMENTAL ATTORNEYS’ FEES AND COSTS

portion of Defendant's paycheck has been garnished to pay the judgment amount.

On March 15, 2019, MRS filed the Application seeking supplemental attorneys' fees and costs in the amount of \$5,583.25, of which \$5,329.25 includes:

1. \$4,333.25 in fees related to MRS's dispute with Melaleuca (including re-obtaining/serving garnishment documents);
2. \$581.25 in fees related to MRS's efforts to increase the initial attorney fee award by \$106;
3. \$47.50 for "[r]eceipt and processing of garnishment payment[s]."; and
4. \$244.25 in attorneys' fees and cost incurred by MRS in pursuing collection of fees and cost under the application.
5. \$119.00 in "costs" identified on Exhibit "A" to the Declaration in Support of Application for Award of Supplemental Attorneys' Fees.
6. An award of [REDACTED] attorneys' fees, expenses, and costs, pursuant to Idaho Code Sections 12-101 and 12-121, together with such additional rules and/or statutes as may be applicable, as she has been required to retain counsel to file this Motion.
7. All other relief to which [REDACTED] may be entitled and such further relief as the Court determines is warranted.

#### **BASIS FOR OBJECTION AND DISSALLOWANCE**

#### **I. MRS's Application for Supplemental Attorneys' Fees Was Not Properly Submitted in Accordance with the Idaho Rules of Civil Procedure.**

In its Application, MRS seeks, pursuant to Idaho Code Sections 12-120 (5) and (3), and I.R.C.P. 54(d)(1), an award of supplemental attorneys' fees and costs.

Idaho Code Section 12-120(5) provides that when a party is entitled to reasonable

attorneys' fees and costs under subsection (3), such party shall also be entitled to reasonable postjudgment attorneys' fees and costs incurred in attempting to collect the judgment. However, the proper mechanism to pursue attorneys' fees pursuant to Idaho Code Section 12-120 is under I.R.C.P. 54(e)(1), which provides that a party may seek an award of reasonable attorneys' fees that may be awarded pursuant to a statute. As stated above, in its Application, MRS seeks an award of attorneys' fees (and costs) pursuant to I.R.C.P. 54(d), not I.R.C.P. 54(e)(1). This is an improper basis to seek attorneys' fees as I.R.C.P. 54(d) permits a party only to seek costs, not attorneys' fees.

Accordingly, MRS's request for an award of attorneys' fees under I.R.C.P. 54(d) should be disallowed because MRS's pursuit for attorneys' fees under this rule is improper.

**II. Even if MRS Properly Pursued Attorneys' Fees, the Attorneys' Fees and Costs Sought are Unreasonable and Should be Disallowed.**

In determining the reasonableness of MRS's postjudgment collection, the Court may consider the party's efforts as set by I.R.C.P. 54(e)(3), including the time and labor required, the prevailing charges for like work, the amount involved, the results obtained, and any other factor which the court deems appropriate in the particular case.

It cannot be ignored that if MRS would have had the correctly named "[REDACTED]" as a defendant (as opposed to [REDACTED]), or accepted Melaleuca's offer to work on a solution, MRS would have been in a position to effectuate the original garnishment and avoid incurring unnecessary fees and costs. Instead, MRS unnecessarily (and unsuccessfully) litigated Melaleuca's original Garnishment Answer, which this Court found was unequivocally "true and

sufficient”, and even reserved judgment on whether Melaleuca could seek its reasonable expenses in connection with its motion.

MRS’s failed attempt to take Melaleuca to task on its Garnishment Answer should not be considered a reasonable effort to collect on Defendant’s judgment for a \$294 debt. Accordingly, even if MRS is allowed to amend or resubmit its Application properly under I.R.C.P. 54(e)(1), this Court should disallow all fees and costs incurred by MRS in contesting and litigating the sufficiency of Melaleuca’s original Garnishment Answer. MRS seeks to recover a total of \$4,333.25 for its unsuccessful garnishment efforts. These amounts are itemized from MRS’ attorneys’ May17, 2018 billing entry through its September 4, 2018 billing entry. *See Exhibit “B” Bryan D. Smith’s Declaration of support of the Application.* Additionally, this Court should disallow the itemized costs under Exhibit “A” that relate to MRS’ unsuccessful challenge to the sufficiency of Melaleuca’s Garnishment Answer. Further, because a bulk of the fees and costs sought by MRS relate to unnecessary costs incurred by its contesting the Garnishment Answer, Defendant cannot be responsible for fees and costs incurred by MRS in pursuing the collection of such fees under a postjudgment application, which to date, amount to \$244.25 in attorneys’ fees and to the extent of such costs incurred by MRS as itemized under Exhibit “A” of Bryan D. Smith’s Declaration of Support of the Application.

Additionally, MRS seeks an award which includes \$47.50 for reviewing and processing of garnishment payments. These costs should be disallowed because they are unreasonable as this function is purely administrative and requires no legal skill or experience to perform.

Finally, the Court should disallow \$581.25 in fees related to MRS’s efforts to increase the initial attorney fee award by \$106. By any standard of reasonableness, [REDACTED] should not be required

to be responsible in \$581.24 in attorneys' fees incurred by RMS to increase its attorney fee award by a mere \$106.

**REQUEST FOR RELIEF**


As detailed herein, Defendant respectfully requests that the Court disallow MRS from recovering \$5,329.25 in attorneys' fees and costs it seeks in its Application.

DATED this 2nd day of April, 2019.

SNELL & WILMER L.L.P.

/s/ Andrew Hawes

Andrew Hawes

Attorney for 

**CERTIFICATE OF MAILING**

I hereby certify that on this 2nd day of April 2019, a true and correct copy of the foregoing, **MEMORANDUM IN SUPPORT OF MOTION TO DISALLOW ATTORNEYS' FEES AND COSTS** was served via E-mail and U.S. Mail addressed as follows:

Brian N. Zollinger, Esp.  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
414 Shoup Ave.  
P.O. Box 50731  
Idaho Falls, ID 83405  
[bnz@eidaholaw.com](mailto:bnz@eidaholaw.com)

/s/ Andrew Hawes  
Andrew Hawes

MEMORANDUM IN SUPPORT OF MOTION TO DISALLOW PLAINTIFF'S SUPPLEMENTAL  
ATTORNEYS' FEES AND COSTS



Bryan N. Zollinger, Esq. ISB # 8008  
Bryan D. Smith, Esq. ISB # 4411  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

Defendant.

Case No. [REDACTED]

**AMENDED MEMORANDUM OF  
SUPPLEMENTAL  
ATTORNEY'S FEES AND COSTS**

COMES NOW the above-named plaintiff, by and through undersigned counsel of record and pursuant to Idaho Rules of Civil Procedure, Rule 54(d)(4) and (e)(5), and submits the following Cost Bill:

I. ATTORNEY'S FEES.

Plaintiff hereby claims as total attorney's fees: \$5,464.25

**TOTAL FEES: \$5,464.25**

II. COSTS.

Plaintiff hereby claims as total costs: \$119.00

**TOTAL COSTS \$119.00**

**TOTAL COSTS AND FEES:**

**\$5,583.25**

DATED: April 5, 2019

SMITH, DRISCOLL & ASSOCIATES, PLLC



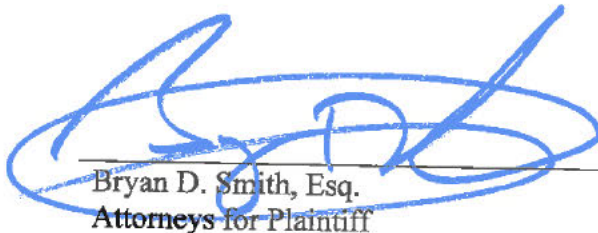
Bryan D. Smith, Esq.  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 5th day of April, 2019, I caused a true and correct copy of the foregoing **AMENDED MEMORANDUM OF SUPPLEMENTAL ATTORNEY'S FEES AND COSTS** to be served by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or by hand delivery, facsimile transmission, or overnight delivery, addressed to the following:

- U.S. Mail
- Facsimile Transmission
- Hand Delivery
- Email

Andrew Hawes  
Snell & Wilmer L.L.P.  
Key Business Center  
702 W. Idaho St., Ste. 1100  
Boise, ID 83702  
ahawes@swlaw.com



Bryan D. Smith, Esq.  
Attorneys for Plaintiff

Bryan N. Zollinger, Esq. ISB # 8008  
Bryan D. Smith, Esq. ISB # 4411  
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414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731  
Attorneys for Plaintiff  
filing@eidaholaw.com

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE  
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,  
an Idaho limited liability company,

Plaintiff,

vs.

Defendant.

Case No. [REDACTED]

**OPPOSITION TO DEFENDANT'S  
MOTION TO DISALLOW  
PLAINTIFF'S SUPPLEMENTAL  
ATTORNEY FEES AND COSTS**

COMES NOW, Plaintiff, Medical Recovery Services, LLC, by and through its counsel of record, Bryan N. Zollinger, Esq., of the firm of Smith, Driscoll & Associates, PLLC, and opposes Defendant's Motion to Disallow Supplemental Attorney Fees and Costs.

I. INTRODUCTION AND BACKGROUND FACTS.

On July 8, 2013, the provider, Intermountain Emergency Physicians, "IEP", assigned the debt in question to Medical Recovery Services, LLC, "MRS." MRS' collection efforts took place between July 9, 2013 and November 21, 2017. During that time MRS mailed out 47 collection notices and made 5 phone calls in an effort to collect the debt. The defendant did not respond to any of MRS' attempts.

On December 29, 2017, MRS turned the IEP account over to Smith, Driscoll & Associates, PLLC for legal action. A complaint and summons was issued on January 2, 2018, and served on the defendant on January 14, 2018. When the Plaintiff requested default judgment this Court, without explanation, reduced the attorney fees MRS sought from \$410 to \$294. MRS filed a Motion for Reconsideration on February 21, 2018 to obtain attorney fees reflective of the work MRS' attorney had done on the case. As a result of that Motion for Reconsideration and subsequent hearing, an Amended Judgment was then entered for \$1,082.41 on April 6, 2018.

Having received no response from the defendant after the judgment was mailed to her, MRS issued a Writ of Execution and Continuing Garnishment on April 13, 2018. On April 24, 2018, attorney Joy Cobb contacted the office of Smith, Driscoll & Associates, PLLC to inform them that Melaleuca was refusing to issue the garnishment because the defendant's last name was no longer [REDACTED]. On May 7, 2018, MRS issued a demand letter to Melaleuca for failure to respond to the garnishment. Melaleuca continued to refuse to process the garnishment, stating the last name did not match that of their employee. On July 2, 2018, MRS served a Notice of Taking Deposition and Subpoena Duces Tecum on Melaleuca. In response, counsel for Melaleuca filed a Memorandum, Motion of Non-Party Melaleuca, Inc. for Protective Order and/Or to Quash Plaintiff's Notice of Deposition and Subpoena Duces Tecum, Affidavit in Support of said motion, and a Notice of Hearing for July 17, 2018. MRS then filed an opposition to Melaleuca's motion on July 10, 2018. On July 13, 2018, Melaleuca issued a Reply in Support of Motion of Non-Party Melaleuca, Inc. for Protective Order and/or to Quash Plaintiff's Notice of Deposition and Subpoena Duces Tecum.

On July 17, 2018, the Court denied the protective order sought by Melaleuca, but also limited MRS' request for discovery to a single interrogatory. On August 29, 2018, MRS issued a

Meet and Confer letter to Melaleuca due to no response to the interrogatory. After speaking with Counsel for Melaleuca, MRS identified that the defendant had gone by the following surnames:

[REDACTED]

On September 4, 2018, MRS issued a Writ of Execution to be issued on all 4 potential aliases the defendant had gone by. Only then did Melaleuca agree to process the garnishment.

On March 15, 2019, MRS filed an Application for Award of Supplemental Attorney's Fees, Declaration in Support of Motion, Memorandum, and Notice of Hearing. On April 2, 2019, Attorney Andrew Hawes filed a Notice of Appearance, Motion to Disallow Plaintiff's Attorney's Fees and Costs, Memorandum, and Notice of Hearing. On April 5, 2019, MRS filed an Amended Application for Award of Supplemental Attorney's Fees & Costs and Memorandum.

II. MRS HAS AMENDED ITS MOTION FOR SUPPLEMENTAL FEES TO INCLUDE THE CORRECT IDAHO RULE OF CIVIL PROCEDURE AS THE BASIS FOR ITS REQUESTED FEES.

MRS had originally submitted its Motion for Supplemental Attorney Fees and Costs on March 15, 2019. That filing consisted of an application, declaration, and memorandum in support of an award of supplemental attorney fees. Defendant has correctly pointed out that in that initial filing, MRS incorrectly stated the standard under which it would be seeking supplemental fees. However, as of April 5, 2019, MRS has amended its application and memorandum to accurately reflect the proper authority. As such, MRS' application for an award of supplemental fees is procedurally correct.

III. THE FEES SOUGHT BY MRS ARE COMPLETELY REASONABLE CONSIDERING THE TIME AND LABOR EXPENDED BECAUSE OF THE UNCOOPERATIVE NATURE OF MELALEUCA.

The standard for determining an award of supplemental attorney's fees is well established in Idaho law. Idaho Code § 12-120(5) states:

In all instances where a party is entitled to reasonable attorney's fees and costs under subsection (1), (2), (3) or (4) of this section, such party ***shall also be entitled to reasonable post judgment attorney's fees and costs incurred in attempting to collect on the judgment.*** (Emphasis added).

The standard set forth by this statute was further interpreted and expounded upon by the Idaho Court of Appeals. *Action Collection Services, Inc., v. Bingham*, 146 Idaho 286 (Ct. App. 2008). *Bingham* is instructive in interpreting and applying Section 12-120(5):

The statute establishes a policy in favor of compensating a party for reasonable legal expenses incurred in attempts to collect on a judgment when the party was entitled to attorney fees and costs in obtaining the judgment. Although a trial court must not award excessive legal fees incurred as a result of attorney "churning" in efforts to collect on a judgment, ***the statute requires the trial court to award attorney fees and costs incurred during reasonable attempts to collect on the judgment. Thus, the attorney fees and costs need not be less than the amount of debt due in the judgment or the amount contained in the particular source of funds pursued by the party so long as the efforts to collect are reasonable under the circumstances.***

*Id.* at 291. (Emphasis Added).

In *Bingham*, the Magistrate Court refused to award post-judgment attorney's fees arising from a motion to contest a claim of exemption. The Magistrate Court found that an award of any post-judgment attorney's fees would be unreasonable because the garnished amount after the claim of exemption provided the plaintiff with only a \$40 payment on the judgment. The Idaho Court of Appeals reversed the holding because the Magistrate Court's analysis did not focus on whether the party acted reasonably in its attempts to collect on the judgment and on the time and work the plaintiff's attorney actually expended. Instead, the Magistrate Court weighed whether the attempts to collect on the judgment were worth the effort.

A two-step approach for awarding post-judgment attorney's fees emerges from Idaho Code § 12-120(5) and *Bingham*. First, the court must make a determination whether the work

performed by the attorney was reasonably “incurred in attempting to collect on the judgment.” This first factor simply requires that the court review the work done attempting to collect on the judgment. Sending a wage or bank garnishment and conducting a supplemental examination are actions reasonably “incurred in attempting to collect on the judgment.” Conversely, a court acts outside its bounds of discretion if it factors into its decision the ultimate fruitfulness of the attempt to collect on the judgment. Second, the court must determine whether the amount charged for that work was reasonable. As to this second factor, the court must consider the actual time and actual labor expended by the attorney. *Bingham*, 146 Idaho at 290.

As part of the two-step approach outlined by the *Bingham* court, there is another key factor that is very applicable to this case. The court in *Bingham* stated that, “[t]he reasonableness of the attorney fees incurred by Action in challenging the claimed exemption turns, in large part, on Bigham's *level of cooperation* with Action in its attempts to collect on the judgment.” *Id.* at 291. In that case, the Court recognized that if a defendant were to purposefully dodge the efforts made by the collection agency, then a higher fee would be reasonable and necessary to collect on the debt. If the defendant cooperates with the efforts to collect, then minimal work would be necessary and a resulting lower supplemental fee would result.

In this case, MRS received no cooperation from either Defendant, nor her employer Melaleuca and received considerable opposition from Melaleuca. Melaleuca knew, or should have reasonably known, that MRS was garnishing the right person. MRS had provided the correct first name and social security number of Defendant, but Melaleuca refused to honor the garnishment because Defendant had changed her last name. Defendant incorrectly points out that if MRS had sent the correct last name or “accepted Melaleuca’s offer to work on a solution” that MRS would not have incurred such a high supplemental attorney fee request.

However, it cannot be denied that Melaleuca knew that MRS was seeking a garnishment on the right person. Had Melaleuca conferred with Defendant it could have ascertained the legitimacy of MRS' garnishment. Had Defendant denied owing this debt to MRS, Defendant and/or Melaleuca could have followed the proper procedure and filed a claim of exemption. Had Defendant or Melaleuca followed the proper procedure and filed a claim of exemption, this matter would have been resolved with little or no additional work. If, as Defendant claims, she never knew about the garnishment sent to Melaleuca, then Melaleuca has acted in bad faith in not disclosing the garnishment to their employee as required by law. The bottom line is that MRS did the best it could with the information it had to collect the judgment.

Defendant constantly relies on "should haves" and hypothetical outcomes to support her assertion that this fee request is unreasonable. MRS has supplied this court with law and precedent to make a determination on the reasonableness of its request. As shown above, *Bingham* has outlined a two-step process for determining what a reasonable post-judgment attorney fee award should be in this case.

Defendant also often refers to the fact that MRS never "accepted" the offer to work out a solution without litigation. MRS can find no law or precedent that would support this assertion. Melaleuca was the party that diverted from the legally outlined procedure for filing a claim of exemption. No party is under any obligation to negotiate a settlement outside the courtroom. The fact that MRS and Melaleuca were unable to come to an agreement without further litigation holds no weight in whether the supplemental attorney fee request is reasonable. If this Court decides to accept this notion, then it should also consider the fact that if Defendant had just paid the bill then there would have been no need to negotiate with Melaleuca. Also, if Melaleuca had just honored the garnishment or even paid for an attorney for Defendant to file the claim of



exemption, instead of refusing to honor the garnishment and seeking a protective order, then this would not have gone this far.

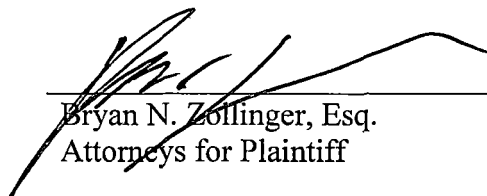
Those arguments aside, MRS has made reasonable attempts to collect its judgment. MRS did everything legally within its power to collect its judgment, despite the efforts and non-efforts of Melaleuca and the defendant to prevent MRS from collecting. At the end of the day, MRS served a garnishment on the right defendant to the right employer. Even after all the feeble efforts to block the garnishment, MRS got the information it needed and successfully collected the debt.

IV. CONCLUSION

Instead of owning up the fact that the uncooperative nature of her employer lead to the high attorney fee request, Defendant has asked this Court to disallow the reasonable fees. MRS acted completely reasonable and is seeking supplemental fees that accurately reflect the uncooperative nature of Melaleuca and Defendant. At any point in time, Defendant could have come forward, admitted the debt was hers, and paid the judgment. However, no such admission came, so MRS utilized the law to collect on its judgment.

DATED: April 15, 2019

SMITH, DRISCOLL & ASSOCIATES, PLLC



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Bryan N. Zollinger, Esq.  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 15th day of April, 2019, I caused a true and correct copy of the foregoing **OPPOSITION TO DEFENDANT'S MOTION TO DISALLOW PLAINTIFF'S SUPPLEMENTAL ATTORNEY FEES AND COSTS** to be served by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or by hand delivery, facsimile transmission, or overnight delivery, addressed to the following:

- U.S. Mail
- Facsimile Transmission
- Hand Delivery
- Email

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Attorneys for Defendant, [REDACTED]

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

MEDICAL RECOVERY SERVICES, LLC,  
An Idaho limited liability company,

Plaintiff,

vs.

[REDACTED]

Defendant.

Case No. [REDACTED]

**MOTION TO DISALLOW  
PLAINTIFF'S AMENDED  
APPLICATION FOR AWARD OF  
SUPPLEMENTAL ATTORNEYS' FEES  
AND COSTS**

COMES NOW [REDACTED], also known as [REDACTED] ("[REDACTED]"), pursuant to I.R.C.P. 54(e)(6), 54(d)(6) and I.R.C.P. 7(b)(1), and hereby submits this Motion to Disallow Plaintiff's Amended Application for Supplemental Attorneys' Fees and Costs as submitted by Plaintiff in Plaintiff's Amended Application for Award of Supplemental Attorneys' Fees and Costs.

MOTION TO DISALLOW PLAINTIFF'S AMENDED APPLICATION FOR AWARD OF  
SUPPLEMENTAL ATTORNEYS' FEES AND COSTS

\4847-7821-8388

█ specifically requests the Court issue an order disallowing the following fees submitted in Plaintiffs Amended Application for Award of Supplemental Attorneys' Fees and Costs:

1. \$4,333.25 in fees related to Plaintiffs' dispute with Melaleuca in contesting and litigating the sufficiency of Melaleuca's Garnishment Answer;

2. \$585.25 in fees related to Plaintiff's efforts to increase the initial attorney fee award by \$106.

3. \$47.50 in costs associated in receiving and processing garnishment payments;

4. \$244.25 in attorneys' fees and costs incurred by Plaintiff in pursuing collection of fees and costs under the Application for Award of Attorneys' fees and costs.

5. \$119.00 in costs identified on Exhibit "A" to the Declaration in Support of Application for Award of Attorney's fees, to the extent such costs were incurred by Plaintiff's in pursuing the items 1-4 as outlined above.

6. Any fees and costs incurred and identified by Plaintiff in submitting and pursuing Plaintiff's Amended Application for Award of Supplemental Attorneys' Fees and Costs.

7. Any fees and costs incurred and identified by Plaintiff in engaging in discovery and/or participating in an evidentiary hearing as to the reasonableness of the fees and costs described above, if leave is granted to allow Defendant to pursue discovery and/or the Court holds an evidentiary hearing as to the reasonableness of fees and costs.

█ also specifically requests:

8. An award of █' attorneys' fees, expenses, and costs, pursuant to Idaho Code Sections 12-101 and 12-121, together with such additional rules and/or statutes as may be applicable, as she has been required to retain counsel to file this motion.

9. All other relief to which [REDACTED] is entitled and such further relief as the Court determines is warranted.

This Motion is supported by the Memorandum in Support of Motion to Disallow Plaintiff's Amended Application for Award of Supplemental Attorneys' Fees and Costs, as well as the pleadings and records filed herein, and such other evidence as may be presented at or prior to any hearing on this Motion. Oral argument is requested, and a hearing date has been reserved. Plaintiff's counsel has not objected to the filing of this Motion.

DATED this 16th day of April, 2019.

SNELL & WILMER L.L.P.

/s/ Andrew Hawes

Andrew Hawes

Attorney for [REDACTED]

**CERTIFICATE OF MAILING**

I hereby certify that on this 16th day of April 2019, a true and correct copy of the foregoing, **MOTION TO DISALLOW PLAINTIFF'S AMENDED APPLICATION FOR AWARD OF SUPPLEMENTAL ATTORNEYS FEES' AND COST** was served via Idaho Court Electronic Filing System and U.S. Mail addressed as follows:

Brian N. Zollinger, Esp.  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
414 Shoup Ave.  
P.O. Box 50731  
Idaho Falls, ID 83405

/s/ Andrew Hawes  
\_\_\_\_\_

Andrew Hawes

# Medical debt nightmare: Why a local woman could end up paying over \$5,550 for her \$294 doctor's visit



Nate Eaton & Nate Sunderland, [EastIdahoNews.com](http://EastIdahoNews.com)

**Local** Posted: Apr 16, 2019, 8:00 am  
Updated: May 4, 2019, 10:51 pm

*EDITOR'S NOTE: This is the first part in a series of stories about medical debt and Medical Recovery Services.*

*Here are the other installments:*

- Part 2. [Man fights 5-year legal battle with debt collection company after doctor's error](#)
- Part 3. [How Medical Recovery Services takes care of business](#)
- Part 4. [Medical debt, collections and the fees you've probably never heard of](#)

IDAHO FALLS — She only got a few stitches — nothing glamorous or lifesaving.

And yet, years later, Mary Johnson is still feeling the impact of that doctor's visit.

Johnson agreed to talk with [EastIdahoNews.com](http://EastIdahoNews.com) if her real name was not used because she is worried about the legal repercussions she may face for speaking out. She is fighting a local debt collection company over a now-paid \$294 bill and may be required to pay as much as \$5,583.25 depending on a

judge's ruling. The massive increase is in large part due to attorney fees and legal battles largely beyond her control.

This week EastIdahoNews.com is taking an in-depth look at Medical Recovery Services, a company that appears to be making a lot of money from attorney fees and debts that have often been satisfied.

Here is Johnson's story.

## The debt

Johnson isn't sure she actually remembers the doctor's visit that started the chain of events. She believes it was from a 2011 trip to an emergency room or urgent care where she needed stitches for an injury.

Everything seemed fine and after the dust settled, court documents say she owed \$294 to Intermountain Emergency Physicians, a billing agency that handles payments for local doctors.

Johnson claims she never received a bill for the service and forgot about the visit.

The unpaid balance ended up at Medical Recovery Services, an Idaho Falls-based debt collection company. Attorneys Bryan Smith and Bryan Zollinger handle debt collection for Medical Recovery Services. Zollinger also serves in the Idaho House of Representatives.



*Attorneys Bryan Zollinger, left, and Bryan Smith handle cases for Medical Recovery Services.*

Between July 2013 and July 2017, Medical Recovery Services aggressively pursued Johnson's debt. Smith says the collection agency sent 47 written notices for payment and attempted to collect by phone five times. It's unknown how many letters or calls Johnson actually received and Smith claims the woman was using as many as four aliases.



Eventually, they did track her down and in 2018 filed a lawsuit against Johnson for the unpaid debt.

As is the case in the majority of debtor claims, Johnson didn't respond to the lawsuit. As a result, a judge issued a default judgment against Johnson for a total of \$976.41. That's the original debt, plus interest and attorney fees.

Smith and Zollinger then received a court order to garnish Johnson's wages from Melaleuca, where she was employed.

That's when things became complicated.

## **The lawsuit**

A problem arose almost immediately. Even though Medical Recovery Services had a court order, it didn't have the correct information to pursue the debt.

"Melaleuca received a garnishment document that didn't match any name of any employee," Melaleuca attorney Andrew Law tells EastIdahoNews.com. "Melaleuca couldn't guess, and potentially guess wrongly, as to who the true judgment debtor was."

The Social Security number on the garnishment was Johnson's, but the last name didn't match hers.

Melaleuca proposed that Medical Recovery Services send the Wellness Company a legal notice, called an interrogatory, asking the name of the employee with the Social Security number printed on the garnishment. Melaleuca would then respond with the information, and the garnishment could move forward.

Legal filings show Law called Medical Recovery Services on June 20, 2018, and then followed up with an email.

"I indicated that Melaleuca is willing to work with you and that Melaleuca doesn't believe it is necessary to take this dispute to the court," Law wrote.

**[CLICK HERE TO READ THE EMAIL MELALEUCA SENT TO MEDICAL RECOVERY SERVICES](#)**

Smith and Zollinger refused and the case ended up in court.

## **Court proceedings**

On July 17, Smith and Law appeared before Magistrate Judge Michelle Mallard in Bonneville County.

"We're here today your honor because plaintiffs have not been careful in how they've pursued their garnishment efforts in this case," Law said, according to court recordings obtained by EastIdahoNews.com. "Plaintiff did not carefully ensure its garnishment documents accurately named a Melaleuca employee as the judgment debtor."

Law continued, "Melaleuca invited (the) plaintiff to propose a solution...that could have consisted of a simple discovery request, but plaintiff chose not to take Melaleuca up on that invitation."

Smith called the matter a "misunderstanding" and argued that Melaleuca attorneys misunderstood legalities.

“It may be because they don’t do this kind of work. I can understand that – few people do it,” Smith said. “They completely get the statutes wrong. I’ll show the court how that’s the case.”

Smith wondered aloud why Melaleuca was “making such a big deal out of this,” and Mallard responded that Melaleuca might be concerned about identity theft.

“Maybe that doesn’t appear to them that their employee is the same person and that (Johnson) has been using their employee’s Social Security number, and they don’t want their employee to be subjected to these actions of someone who may have already taken her identity,” Mallard said.

Smith replied, “It’s all rank speculation. We don’t know. But we’re going to get to the bottom of it.”

And they did. Mallard ruled against Medical Recovery Services and said Melaleuca’s response to the garnishment was “true and sufficient,” discharged the company from any liability and told Smith he could ask Melaleuca the name of the employee – something the company had already offered.

Court documents show Smith sent an interrogatory, learned the employee’s name, garnished her wages and obtained \$1,272.55 — nearly \$1,000 more than the original bill.

But the case has just gotten started.

[LISTEN TO THE ENTIRE HEARING HERE](#)

Medical Recovery Services and Melaleuca court heari...



## Fees and more fees

Legal documents show Smith filed an application in March 2019 to be awarded supplemental attorney’s fees. That means he wants someone to pay for the time Medical Recovery Services spent on

Johnson's case after it was supposedly settled.

Smith is requesting that Johnson pay him \$5,583.25 – nearly 20 times the amount of the original medical bill.

“Under the law, we get to ask the court for what’s called post-judgment attorney fees for the work we had to do after the judgment to satisfy the judgment,” Smith told EastIdahoNews.com in a phone interview last week. “It is kind of her fault because she could have come in and made payments. She could have told the lawyers at Melaleuca, ‘Don’t fight this, guys, because I don’t want to have to pay.’”

Smith argues that Melaleuca should have asked Johnson if she was the person listed on the garnishment and tell her Medical Recovery Services was trying to collect her wages.

“Melaleuca put up a huge fight, and the only reason this happened is that Andrew (Law, Melaleuca’s attorney) didn’t go to her and say, ‘This isn’t worth the fight. You’re going to have to pay it eventually anyway, so let’s just go ahead and let them take the garnishment.’ That’s what he should have done,” Smith says.

Law says Melaleuca has responded to garnishment requests from Smith in the past without any problems, but this was a different set of circumstances.

“Debt collectors have a duty to ensure they know the true identity of the debtor,” Law says of Smith’s argument. “Employers don’t have that duty, and employers can’t guess lest they expose themselves to potential liability and problems with the employee.”

Even though the judge ruled against Smith, he stands by his actions.

When asked if his firm did anything wrong in this case, he quickly responded, “Absolutely not.”

## **What next?**

Smith believes Johnson should pay him \$5,583.25 for the time he says he spent on his case, and he will make that argument in front of Judge Mallard on April 22.

Melaleuca is providing help for Johnson to fight the lawsuit.

“Melaleuca believes that turning a few hundred dollar debts into more than \$5,000 in attorney fees is simply unreasonable,” Law says. “For that reason, Melaleuca has worked with the judgment debtor, in this case, to help her secure competent counsel so she can defend herself.”

*Johnson is just one of many people Medical Recovery Services has sued over the years. Tomorrow on EastIdahoNews.com, hear from a man sued by MRS over a mistake his doctor made. He fought all the way to the Idaho Supreme Court and won. Then later this week, hear from people who say their legal battles with MRS weren't so bad. If you have a debt collection story you believe the public should know about, email [news@eastidahonews.com](mailto:news@eastidahonews.com).*

*DISCLAIMER: In 2015, Melaleuca CEO Frank VanderSloot provided the seed money to launch EastIdahoNews.com. For a short time, he was an owner. He has never had anything to do with the operations of EastIdahoNews.com. Over a year ago, he totally divested his ownership.*

[SUBMIT A CORRECTION](#)

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Attorneys for Defendant [REDACTED]

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

MEDICAL RECOVERY SERVICES,  
LLC,  
An Idaho limited liability company,

Plaintiff,

vs.

[REDACTED],

Defendant.

Case No. [REDACTED]

**LIMITED OBJECTION TO  
PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION TO  
DISALLOW PLAINTIFF'S  
SUPPLEMENTAL ATTORNEY FEES  
AND COSTS**

COMES NOW [REDACTED], now known as [REDACTED] (“[REDACTED]” or

“Defendant”), by and through counsel of record, and hereby submits this limited objection to Plaintiff Medical Recovery Services, LLC’s (“MRS”) *Opposition to Defendant’s Motion to Disallow Plaintiff’s Supplemental Attorney Fees and Costs* (“Opposition”).

**LIMITED OBJECTION TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO  
DISALLOW PLAINTIFF'S SUPPLEMENTAL ATTORNEY FEES AND COSTS**

## **I. RELEVANT BACKGROUND**

On March 15, 2019, MRS filed its *Application for Award of Supplemental Attorney's Fees and Costs* (the "Original Application"), seeking \$5,464.25 in attorney's fees and \$119.00 in costs, a total of \$5,583.25. On April 2, 2019, [REDACTED] filed her *Motion to Disallow Plaintiff's Supplemental Attorneys' Fees and Costs* ("Original Motion to Disallow"). On April 5, 2019, MRS filed its *Amended Application for Award of Supplemental Attorney's Fees and Costs* (the "Amended Application") to correct a mistake MRS made in the Original Application. Thereafter, on April 15, 2019, MRS filed its Opposition challenging the Original Motion to Disallow. MRS did this despite the fact that it already had filed its Amended Application, which essentially replaced the Original Application. But since the Opposition contains inaccuracies, [REDACTED] submits this limited objection to correct the record.

## **II. OBJECTION**

In an effort to correct the record, [REDACTED] respectfully submits this limited objection to MRS's Opposition. In the Opposition, MRS makes the following claims:

1. "On May 7, 2018, MRS issued a demand letter to Melaleuca for failure to respond to the garnishment." (Opposition, at 2.)
2. "Melaleuca continued to refuse to process the garnishment, stating that the last name did not match that of their employee." (*Id.*)
3. "On July 2, 2018, MRS served a Notice of Taking Deposition and Subpoena Duces Tecum on Melaleuca." (*Id.*)
4. "On July 17, 2018, the Court denied the protective order sought by Melaleuca, but also limited MRS' request for discovery to a single interrogatory." (*Id.*)

**LIMITED OBJECTION TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISALLOW PLAINTIFF'S SUPPLEMENTAL ATTORNEY FEES AND COSTS**

5. “On August 29, 2018, MRS issued a Meet and Confer letter to Melaleuca due to no response to the interrogatory.” (*Id.* at 2-3.)

6. “After speaking with Counsel for Melaleuca, MRS identified that the defendant had gone by the following surnames: [REDACTED].” (*Id.* at 3.)

7. “On September 4, 2018, MRS issued a Writ of Execution to be issued on all 4 potential aliases the defendant had gone by.” (*Id.*)

These claims are inaccurate. First, [REDACTED] cannot find any record that MRS sent a demand letter on May 7, 2018, or any correspondence from MRS that was based upon Melaleuca’s “failure to respond to the garnishment.” (Opposition, at 2.) However, [REDACTED] was able to obtain a copy of a May 18, 2018 letter from MRS to Melaleuca, wherein MRS claimed that “although [Melaleuca] ha[d] returned the Interrogatories as required by Idaho law, you have failed to pay the sheriff wages you owed to [REDACTED] as under Idaho law . . . .” (05/18/2018 Letter from Bryan Zollinger to Melaleuca, a copy of which is attached hereto as Exhibit “A.”) In this letter, MRS expressly admits that Melaleuca responded to the garnishment in compliance with Idaho law.

Second, despite MRS’s assertion to the contrary, Melaleuca did not refuse to process the garnishment. Melaleuca processed the garnishment by responding to the garnishment interrogatories. In its garnishment response, Melaleuca stated that it did “not have in its possession or under its control any money or property belonging to a [REDACTED] . . . .” (Melaleuca’s Garnishment Response, a copy of which is attached hereto as Exhibit “B.”) Melaleuca then stated that it “has an employee whose Social Security number matches the

Social Security number on the Notice of Continuing Garnishment, that employee's name is not '██████████' in Melaleuca's records." (*Id.*) Melaleuca appropriately processed the garnishment and responded to the interrogatories. In fact, the Court has previously held that "Melaleuca's Garnishment Answer is 'true and sufficient' . . . . [and] Melaleuca is discharged from any liability under the garnishment statute for any purposes of Plaintiff's garnishment attempts against '██████████' . . . ." (7/24/2018 Order.)

Third, MRS represents that it "served a Notice of Taking Deposition and Subpoena Duces Tecum on Melaleuca" on July 2, 2018. (Opposition, at 2.) In reality, MRS served its deposition notice on June 8, 2018. (*See* Notice of Taking Deposition Pursuant to Rule 60(B)(6) [sic], a copy of which is attached hereto as Exhibit "C.")

Fourth, MRS inaccurately represents that "the Court denied the protective order sought by Melaleuca . . ." (Opposition, at 2.) The Court did just the opposite. It granted the protective order and held that "Plaintiff's *Notice of Taking Deposition Pursuant to Rule 60(b)(6)* [sic] and *Subpoena Duces Tecum Pursuant to Rule 30(b)(6)* are quashed." (7/24/2018 Order.)

Fifth, ████████ cannot find any record that MRS sent a Meet and Confer letter to Melaleuca on August 29, 2018 "due to no response to the interrogatory." (Opposition, at 2-3.) And the record is clear that Melaleuca responded to MRS's supplemental interrogatory on August 27, 2018. (*See* Response and Objections to Plaintiff's First Set of Interrogatories to Melaleuca, Inc., a copy of which is attached hereto as Exhibit "D.") Thus, there would be no need for an August 29, 2018 meet and confer letter.

Sixth, MRS seems to imply that it learned that ████████ had gone by different surnames

from Melaleuca “[a]fter speaking with Counsel for Melaleuca.” (Opposition, at 3.) This is inaccurate. On September 19, 2018, MRS first identified other surnames that [REDACTED] may have had in her life. (See Notice of Continuing Garnishment, a copy of which is attached hereto as Exhibit “E.”) And MRS’s representation that the garnishments was “issued on all 4 potential aliases the defendant had gone by” is inaccurate. (Opposition, at 3.) [REDACTED] has had three different surnames: her maiden name, her first married name, and her second married name. (See Affidavit of [REDACTED], at ¶¶ 2-7, a copy of which is attached hereto as Exhibit “F”.) These were [REDACTED]’ legal names, not aliases. (*Id.* at ¶ 6.) [REDACTED] has never gone by the name [REDACTED], and she has never changed her last name other than after a marriage or divorce. (*Id.* at ¶ 7.) [REDACTED] strongly objects to MRS’s attempts to mischaracterize the facts.

### **III. CONCLUSION**

As detailed herein, MRS’s Opposition contains many inaccuracies. Accordingly, [REDACTED] submits this Limited Objection to correct the record in advance of the hearing scheduled on April 22, 2019.

DATED this 19th day of April, 2019.

SNELL & WILMER L.L.P.

/s/ Andrew Hawes

Andrew Hawes

Attorney for [REDACTED]



**CERTIFICATE OF MAILING**

I hereby certify that on this 19th day of April 2019, a true and correct copy of the foregoing, **LIMITED OBJECTION TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISALLOW PLAINTIFF'S SUPPLEMENTAL ATTORNEY FEES AND COSTS** was served via E-mail and U.S. Mail addressed as follows:

Brian N. Zollinger, Esp.  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
414 Shoup Ave.  
P.O. Box 50731  
Idaho Falls, ID 83405  
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/s/ Andrew Hawes  
\_\_\_\_\_  
Andrew Hawes

**LIMITED OBJECTION TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISALLOW PLAINTIFF'S SUPPLEMENTAL ATTORNEY FEES AND COSTS**

04/22/2019 Motion Hearing ▾

Judicial Officer

**Mallard, Michelle Radford**

Hearing Time

**02:00 PM**

Cancel Reason

**Vacated**

Comment

**Motion for Supplemental Attorney's Fees (BZ-NOH) & Motion to Disallow Attorney's Fees and Costs (Snell Wilmer-NOH)**

04/23/2019 Order ▾

Comment

**Granting Motion for Pro Hac Vice Admission**

04/25/2019 Notice ▾

Comment

**of Withdrawal of Amended Application for Award of Supplemental Attorney's Fees and Costs**

05/08/2019 Motion Hearing ▾

Judicial Officer

**Mallard, Michelle Radford**

Hearing Time

**1:30 PM**

Cancel Reason

**Vacated**

Comment

**Motion for Supplemental Attorney's Fees (BZ-NOH) & Motion to Disallow Attorney's Fees (Snell Willmer-NOH)**

05/08/2019 Satisfaction of Judgment