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4 Attorney for Plaintiff  
DENNIS MENTOLE

7 SUPERIOR OF CALIFORNIA, COUNTY OF SAN DIEGO  
8 NORTH COUNTY JUDICIAL DISTRICT

9 DENNIS MENTOLE,  
10 Plaintiff,  
11 vs.  
12 ATLANTIC AIRLINES, INC., A Florida  
corporation; DAVID E. NORTH, an  
13 individual;  
and DOES 1 THROUGH 50, inclusive,  
14 Defendants.

Case No. N77736  
  
POINTS AND AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S MOTION FOR ASSIGNMENT  
ORDER AND ORDER RESTRAINING JUDGMENT  
DEBTOR  
  
DATE: 5/20/99  
TIME: 3:00 p.m.  
DEPT.:  
(Telephonic Ruling - No Appearance  
Required)

17 **I. FACTS**

18 Defendant DAVID E. NORTH is the CEO of defendant ATLANTIC AIRLINES, INC.  
19 and of defendant XYZ, INC., a California corporation. The North Family  
20 Irrevocable Trust owned 100% of the stock of XYZ, Inc., which in turn owns 51% of  
21 the ATLANTIC SOUTHWEST AIRLINES, INC. (**Exs. 4.1-4.4** to the Notice of Lodgment)  
22 He is also a lieutenant commander in the U.S. Naval Reserves receiving over  
23 \$400.00 per month from the government. (¶ 3 of David jansen decl.) The judgment  
24 in this case was entered on 3/2/99 because defendants ATLANTIC AIRLINES and DAVID  
25 E. NORTH defaulted in their payment program in the Conditional Settlement and

1 Dismissal and Order Thereon and Settlement Agreement on file with the court. (II 3  
2 of Mark Kroner decl.) Plaintiff is entitled to an assignment of his wages from  
3 the U.S. Naval Reserves until this judgment is satisfied in full.

4 **II. THE COURT MAY ORDER THE JUDGMENT DEBTOR TO ASSIGN A RIGHT TO PAYMENT TO THE**  
5 **JUDGMENT DEBTOR.**

6 CCP § 708.510(a) states in part:

7 "...upon application of the judgment creditor or noticed motion, the  
8 court may order the judgment debtor to assign to the judgment creditor  
9 ...all or part of a right to payment due or to become due, whether or  
10 not the right is conditioned on future developments, including but not  
11 limited to the following types of payment:

12 (1) Wages due from the federal government that are subject to  
13 withholding under an earnings withholding order."

14 Although the court may take into consideration all relevant factors, the  
15 sole constraints placed on the court are that the right to payment be assigned  
16 only to the extent necessary to satisfy the judgment creditor's money judgment  
17 and that, where part of the payments are exempt, the amount of the payments  
18 assigned should not exceed the difference between the gross amount of the  
19 payments and the exempt amount. CCP § 708.510 (c), (d), (e) and (f).

20 **A. THE RIGHT TO PAYMENT MAY BE ASSIGNED UP TO THE FULL AMOUNT OF THE**  
21 **JUDGMENT.**

22 As shown in the accompanying declaration of Mark P. Kroner, the unsatisfied  
23 portion of the judgment as of 5/20/99, the date of the hearing, will be  
24 \$36,940.43. (II 10 of MK decl.) This \$36,940.43 continues to accrue interest at  
25 the rate of 10% per annum. CCP § 685.010 (a) Therefore, the court may order  
26 assignment of the right of payment in an amount necessary to pay off the judgment  
27 in full including accrued interest.

28 **B. AN ASSIGNMENT ORDER MAY BE ISSUED BECAUSE THE JUDGMENT MAY BE ENFORCED.**

Since the judgment was entered and/or renewed less than 10 years ago, and  
since no order exists staying enforcement of the judgment, this Court is

1 authorized to issue an assignment order for the judgment creditor. (¶ 10 of MK  
2 decl.)

3 **c. THE COURT MAY RESTRAIN THE JUDGMENT DEBTOR.**

4 CCP § 708.520 authorizes the Court to restrain the judgment debtor from  
5 assigning or otherwise disposing of the right to payment sought to be assigned  
6 upon a showing of need. In this case, restraint is necessary because the  
7 judgment debtor apparently has numerous other creditors and numerous other debts.  
8 (¶ 11 of MK decl.) If not restrained, DAVID E. NORTH may transfer or assign his  
9 rights to receiving this military pay to avoid satisfying this debt to Plaintiff.  
10 In the instant case, writs of execution have been issued for Los Angeles and  
11 Orange Counties on 2/4/99 and for San Diego County on 3/15/99. The entire amount  
12 of the judgment except for payment from one bank levy of \$32.31 remains  
13 unsatisfied. (¶ 8 of MK decl.) There is a need for this order since there are  
14 no other known assets available to satisfy this judgment.

15 The judgment creditor's claim meets all requirements for an assignment  
16 order and order restraining the judgment debtor under CCP § 708.510. The  
17 property sought to be assigned is military reserve pay and is assignable per §  
18 708.510. The judgment creditor is seeking the assignment only to the extent  
19 necessary to satisfy this money judgment including accrued interest at 10% per  
20 annum as allowed per CCP § 685.010(a). Finally, the judgment creditor has shown  
21 a need to issue a restraining order so that the judgment debtor does not assign  
22 or encumber his rights to this military reserve pay.

22 **III. CONCLUSION**

23 Judgment creditor DENNIS MENTOLE respectfully requests that this court  
24 grant his request for an assignment order and order restraining debtor until the  
25 judgment together with accrued interest is paid in full.

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Dated: \_\_\_\_\_

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Mark  
P. Krones, Attorney for Judgment  
Creditor