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13 Attorneys for Federal Defendants Michael Astrue, William Chatfield, Janet Napolitano, Eric  
14 Holder, Clay D. Land, and Patrick Donahoe

15 UNITED STATES DISTRICT COURT  
16 FOR THE CENTRAL OF CALIFORNIA  
17 SOUTHERN DIVISION

18 KEITH JUDD, *et al.*,

Case No. SACV 12-1507 DOC (AN)

19 Plaintiffs,

DATE: November 19, 2012

20 v.

TIME: 8:30 a.m.

COUTROOM: 9D

22 BARACK OBAMA, *et al.*,

23 Defendants.

Hon. David O. Carter

26 **NOTICE OF MOTION AND MOTION TO DISMISS;**  
27 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**  
28

**NOTICE OF MOTION AND MOTION TO DISMISS  
TO PLAINTIFFS AND TO THEIR COUNSEL OF RECORD:**

You and each of you will please take notice that on the 19<sup>th</sup> day of November, 2012, at 8:30 a.m., Defendants Michael Astrue, William Chatfield, Janet Napolitano, Eric Holder, Clay D. Land, and Patrick Donahoe will bring on for hearing the within Motion To Dismiss before the Honorable David O. Carter, United States District Judge, in his courtroom, located at 411 W. 4<sup>th</sup> Street, Santa Ana, California 92701.

The above named Defendants, for themselves alone and for no others, by and through undersigned counsel, hereby move this court to dismiss this case pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), 12(b)(3), 12(b)(4), 12(b)(5), and 12(b)(6) on the grounds that this court lacks subject matter jurisdiction of this action, that as to certain Defendants this court lacks personal jurisdiction, on the further grounds of improper venue, insufficient process, insufficiency of service of process, and failure by Plaintiffs to state a claim upon which relief may be granted.

This motion is made and based upon the attached Memorandum of Points and Authorities, pleadings, exhibits, and upon such other and further arguments, documents, and grounds as may be advanced to the Court in the future. This

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1 motion is made following the conference of counsel pursuant to Local Rule 7-3  
2 which took place on October 9, 2012.

3 Respectfully submitted:

4  
5 DATED: October 11, 2012

6 ANDRÉ BIROTTE JR.  
7 United States Attorney  
8 LEON W. WEIDMAN  
9 Assistant United States Attorney  
10 Chief, Civil Division

11 \_\_\_\_\_  
12 /s/

13 ROGER E. WEST  
14 Assistant United States Attorney  
15 First Assistant Chief, Civil Division

16 \_\_\_\_\_  
17 /s/

18 DAVID A. DeJUTE  
19 Assistant United States Attorney  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Orly Taitz, acting as both lawyer and plaintiff, and seeking certification as  
5 lead plaintiff of the purported class of all similarly situated aggrieved citizens,  
6 seeks judicial redress, again, for the alleged failure of President Barack Obama to  
7 meet the qualification required for office. Taitz apparently attributes her repeated  
8 failures to obtain any judicial redress as evidence of some vast conspiracy  
9 involving numerous federal and state officials and various members of the media.  
10 Taitz makes these allegations in a lengthy and rambling 105 page complaint, with  
11 several hundred pages of “exhibits.” Taitz originally instituted this action in State  
12 Court, and she herself then removed the case to this Court.

13 Plaintiff Taitz’ removal of her own case to this Court was completely  
14 impermissible as a matter of law, and this court therefore lacks subject matter  
15 jurisdiction. As this Court is aware, jurisdiction must first be established in all  
16 removed cases. See United Investors Life Ins. Co. v. Waddell & Reed Inc., 360  
17 F.3d 960, 967 (9<sup>th</sup> Cir. 2004) (A “district court ha[s] a duty to establish subject  
18 matter jurisdiction over the removed action *sua sponte*, whether the parties raised  
19 the issue or not.”). Because the removal by Plaintiff of her own case is improper  
20 and divests the court of jurisdiction, this Court is respectfully requested to dismiss  
21 the action.

22 **II.**

23 **STATEMENT OF THE CASE**

24 Plaintiffs Keith Judd, Thomas MacLeran, Larry Rappaport, David Farrar,  
25 Carol Vita, Lucian Vita, Leah Lax and Orly Taitz, who represents all of the named  
26 plaintiffs including herself, filed suit in the California Superior Court for the  
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1 County of Orange sometime in July of 2012<sup>1</sup>. On August 28, 2012, Plaintiffs  
2 purported to remove this action to this Court. See Docket No. 8. On September  
3 11, 2012, the United States Attorney’s Office for the Central District of California  
4 was served with Plaintiffs’ First Amended Complaint, thereby making a responsive  
5 pleading due for the federal defendants on or before November 13, 2012.

6 Plaintiffs’ complaint is in large measure indecipherable, and clearly violates  
7 Rule 8 insofar as moving defendants are concerned, because as to them, it fails to  
8 contain a short and plain statement of the grounds for the court’s jurisdiction, and a  
9 short and plain statement showing that plaintiffs are entitled to any relief. See  
10 Fed.R.Civ.P. 8. Plaintiffs appear to seek to bring a multitude of claims sounding in  
11 tort and for violations of statutory law, generally alleging that President Obama is  
12 using “forged and fraudulently obtained identification papers” to run for elected  
13 office. See Complaint, 10. The Federal Defendants responding herein, namely,  
14 Michael Astrue, Commissioner of the Social Security Administration, William  
15 Chatfield, former Director of the Selective Service, Janet Napolitano, Secretary of  
16 the Department of Homeland Security, Eric Holder, United States Attorney  
17 General, Clay D. Land, District Judge, and Patrick Donahoe, Postmaster General,  
18 are each sued in his or her official capacity.

19 Plaintiffs seek declaratory and injunctive relief in connection with the 2012  
20 primary and general elections and unspecified damages.

21 **III.**

22 **ARGUMENT**

23 **I. This Court Lacks Subject Matter Jurisdiction**

24 As stated above, Plaintiff Taitz, acting as counsel herein, originally filed this  
25 action in the Orange County Superior Court. On or about August 28, 2012,  
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27 <sup>1</sup> It is impossible to state with specificity Plaintiffs’ actions prior to removal, as they have failed  
28 to file in this Court, or to provide to any of these Federal Defendants, any of the documents in  
the California Superior Court.

1 Plaintiff filed a Notice of Removal, purporting to remove her case to this court.  
2 Plaintiff Taitz asserted in her Notice of Removal that the case was “properly  
3 removable under 28 U.S.C. § 1441, as the complaint alleges claims based on  
4 federal law....” See Notice of Removal, a copy of which was filed by Plaintiff on  
5 August 28, 2012, Docket No. 8, at Page 4.

6 None of the Plaintiffs herein has any right or ability to remove this case, as they  
7 have attempted to do under 28 U.S.C. § 1441. See *Shamrock Oil and Gas Corp. v.*  
8 *Sheets*, 313 U.S. 100, 61 S.Ct. 868, 85 L.ED. 1214 (1941); *Bush v. Cheaptickets*,  
9 425 F.3d 683, 686 (9<sup>th</sup> Cir. 2005) (“the removal statute, 28 U.S.C. § 1441, is quite  
10 clear that only a ‘defendant’ may remove the action to Federal Court”); Am. Int’l  
11 Underwriters (Phil) Inc.v. Continental Ins. Co., 843 F.2d 1253, 1260 (9<sup>th</sup> Cir. 1988)  
12 (“the right to remove a State Court case to Federal Court is clearly limited to  
13 defendants”); Egg Producers v. Andrew, 458 F.2d 382, 383 (9<sup>th</sup> Cir. 1972) (“a  
14 plaintiff who commences his action in a State Court cannot effectuate removal to a  
15 Federal Court even if he could have originated the action in a Federal Court”).

16 By virtue of the foregoing, this Court clearly lacks subject matter  
17 jurisdiction of this case, which was improperly removed by Plaintiffs.  
18 Accordingly, this action should be dismissed for lack of subject matter jurisdiction.

19 II. This Action is Barred by the Doctrines of Res Judicata and  
20 Collateral Estoppel

21 To the extent that Plaintiffs seek to raise issues herein previously raised and  
22 decided against them, or which could have been raised by them, in Drake v.  
23 Obama, 654 F.3d 774 (9<sup>th</sup> Cir. 2011), and/or in similar cases decided against  
24 Plaintiffs, and each of them, in Districts and Circuits throughout the United States,  
25 this suit is barred by the doctrines of res judicata and collateral estoppel.

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1        III.    To the Extent that Plaintiffs have Failed to Properly Effect  
2                    Service on Some or All of the Moving Defendants, This  
3                    Action Should be Dismissed

4        Plaintiffs have not filed complete returns of service with the court *in re* these  
5 moving Defendants. To the extent that Plaintiffs have failed to properly effect  
6 service as required by Rule 4(i) of the Federal Rules of Civil Procedure, the action  
7 should be dismissed.

8        IV.    This Action Must be Dismissed as to Defendants Chatfield  
9                    and Land for Lack of Personal Jurisdiction and Improper  
10                    Venue

11        The complaint does not allege, nor could it allege, that this court has any  
12 personal jurisdiction over Defendants Chatfield and Land. Neither of these  
13 Defendants is alleged to be a resident of the State of California, and the complaint  
14 does not allege, nor could it, that either of these Defendants had any contact  
15 whatever with this State, let alone the requisite minimum contacts required for  
16 exercise of personal jurisdiction over either of them. See *International Shoe*  
17 *Company v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L.ED. 95 (1945).  
18 Similarly, venue is improper herein as to these Defendants. Regarding Defendant  
19 Land, 28 U.S.C. § 1391(e) only applies to suits against officers of the Executive  
20 Branch. Regarding Defendant Chatfield, § 1391(e) does not apply to suits against  
21 former U.S. government officials. See *Sutaain v. Shapiro and Leberman*, 678 F.2d  
22 115, 117 (9<sup>th</sup> Cir. 1982).

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1 **IV.**

2 **CONCLUSION**

3 For the forgoing reasons, this Court is respectfully requested to dismiss  
4 Plaintiffs' improperly removed action.

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6 Respectfully submitted,

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8 DATED: October 11, 2012

9 ANDRÉ BIROTTE JR.  
10 United States Attorney  
11 LEON W. WEIDMAN  
12 Assistant United States Attorney  
13 Chief, Civil Division

14 \_\_\_\_\_  
15 /s/  
16 ROGER E. WEST  
17 Assistant United States Attorney  
18 First Assistant Chief, Civil Division

19 \_\_\_\_\_  
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21 DAVID A. DeJUTE  
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