

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

PHILIP J. BERG, ESQUIRE, on his own
BEHALF and on BEHALF of the
GOVERNMENT OF THE UNITED STATES
OF AMERICA,

Relator,

vs.

BARACK HUSSEIN OBAMA,

Defendant.

Case No. 08-cv-1933

CASE UNDER SEAL

**RELATOR'S REPLY TO THE UNITED STATES RESPONSE TO THIS
HONORABLE COURT'S ORDER TO SHOW CAUSE AND THE UNITED
STATES OPPOSITION TO THE RELATOR'S MOTION TO UNSEAL AND
PERMIT RELATOR TO PROCEED WITH THE COMPLAINT PURSUANT TO
THE FALSE CLAIMS ACT**

Philip J. Berg, Esquire, on his own behalf and as Relator on behalf of the Government of the United States [hereinafter "Relator"] in this matter files the within Reply to the Government of the United States [hereinafter "Government"] Response to this Honorable Court's Order to Show Cause and to the Government's Opposition to Relator's Motion to Unseal and Permit Relator to proceed with his Complaint pursuant to the Federal False Claims Act.

In the Government's Response they claim:

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NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

1. Relator has not met the statutory requirements to initiate a *qui tam* suit [the Government's Response, p. 2, ¶1];

2. Relator has not satisfied the False Claims Act's requirements to initiate the above-captioned *qui tam* suit...the Relator must formally serve the complaint and disclosure upon the United States Attorney for the district where the action is filed and on the Attorney General [the Government's Response, p. 2 ¶3];

3. In this case, a search of the service records of the Attorney General and the United States Attorney for the District of Columbia has produced no record that this *qui tam* complaint was served on the Attorney General or on the United States Attorney...It does appear that a summons and complaint in this action were received by another component of the Department of Justice, but it is unclear how those documents were delivered [the Government's Response, p. 3 ¶4];

4. According to the Relator, he served the United States Attorney at two locations, but he does not describe those locations [the Government's Response, p. 4 ¶1];

5. After some confusion, the undersigned counsel from the Civil Division of the Department of Justice and the United States Attorney's Office, who are responsible for handling this *qui tam* action, now have that summons and complaint, despite

what appears to have been improper service [the Government's Response, p. 4 ¶2]; and

6. We regret not informing the Court sooner of the situation with regard to service [the Government's Response, p. 5, footnote 2].

The Government was in fact properly served. Relator used a professional service company, Same Day Process Service, located in Washington, D.C. and filed with this Court is the proof of service.

In one paragraph, counsel for the Government argues they were not served, in another paragraph they claim they were in fact served however, not properly. Then the Government in their footnote tells this Court they regret not raising the issue of service sooner.

The Government could have, at any time, raised said issues of service; if in fact they existed, which they do not, at any time during the sixty (60) day period of time. However, they failed to do so and openly admit it.

The United States Attorney General maintains the same address as the United States Department of Justice, which is 950 Pennsylvania Avenue, NW, Washington, D.C.

20530. The United States Attorney address for service is located at 501 3rd Street NW, Washington, D.C. 20001.

Despite what the Government is saying today, both of these locations were properly served and their agent for process of service accepted service on their behalf. See the Affidavit of Process Server, Michael Jones, Same Day Process Service, 1322 Maryland Avenue, NE, Washington, D.C. 20002, filed in this action for both locations served. Relator requests this Court to take Judicial Notice of the two [2] Affidavits of Process Server Michael Jones.

The government must respond to the Complaint at the conclusion of the sixty [60] day sealing period. Section 3730 gives the government, expressly or impliedly, five options:

- (i) request an extension of the 60-day period, § 3730(b)(3);
- (ii) intervene in the action, § 3730(b)(4)(A);
- (iii) decline intervention and allow the Relator to conduct the action, § 3730(b)(4)(B);
- (iv) move to dismiss the action, § 3730(c)(2)(A); or
- (v) attempt to settle the action before formally intervening. Boese, CIVIL FALSE CLAIMS and QUI TAM ACTIONS § 4.05[B].

None of which the Government utilized.

If however the Government fails to take any action prior to the expiration of the sixty [60] days, as in this case, the Relator may proceed with the prosecution of the case as the Government's silence is deemed to have declined intervention. Once the Government has declined to intervene, the case is unsealed and the Relator proceeds with the prosecution of the action, 31 U.S.C.A. Secs. 3730(c)(3) and (d)(2).

The Relator, in the within action, caused proper service upon the Government as outlined in the Affidavits of the Process Server. The Government failed to respond within the sixty [60] day time frame and thus declined to intervene.

It was not until this Honorable Court issued an Order to Show Cause upon the Government, which was after the filing of the Relator's Motion to Unseal the Action and allow the Relator to proceed, that the Government now claims they did not have the summons, complaint and other documents. The Government goes on further claiming service was conducted, but improperly. However, in the same Response, the Government admits they received said documents and states they regret not informing the Court sooner of the situation with regard to service. This clearly shows the Government had the ability to respond or request an extension of time within the sixty [60] day time period as required pursuant to the statute, but blatantly refused to do so.

The Government's sixty [60] day time period expired on or about January 9, 2009. It has now been 105 days since the Government was served with the Relator's *qui tam* Action and the Government is just now requesting an additional sixty [60] days to

allow them to decide whether or not they are going to Intervene, which is unacceptable and should not be allowed.

The Government by their own admission [the Government's Response, p. 5, footnote 2] could have moved for a continuance or raised any issues of concern within the appropriate time frame, which is sixty [60] days, however, they failed to do so and therefore have declined to intervene.

For the above aforementioned reasons, the Relator's Motion to Unseal the within Action and be Allowed to Proceed should be granted.

Respectfully submitted,



Philip J. Berg, Esquire, Relator

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