

ORIGINAL

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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

AUG 22 2011

at 2 o'clock and 25 min. / M.
SUE BEITIA, CLERK



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Dr. ORLY TAITZ, ESQ, PRO SE

§ Misc. action

§ MC11 00158 SOM RLP

Plaintiff,

§ Pending in the District of

§ Columbia

v.

§ 11-cv-00402 RCL

§

Michael Astrue, Commissioner of the

§

Social Security Administration,

§

Respondent

§

Proof of Service

I, Lila Dubert, am not a party to above action, I am over 18 years old and attest under penalty of perjury that parties listed below were served by certified mail with

Notice of September 14, 2011, 10 am hearing before Hon Judge Puglisi US District Court, District of Hawaii, on the following Plaintiffs motion:

“Motion for order to show cause and compel attendance and provide documents described in the subpoena which was issued and served upon Loretta Fuddy, Director of Health, Department of Health, State of HI and failing that production to show cause, if she can, why the documents in question should not be produced and for attorneys’ fees and costs as incurred by Plaintiff in bringing this action before court, should not be granted.”

1. Witness Loretta Fuddy

**Director of Health
Department of Health
State of Hawaii
1250 Punchbowl Ave, Room 325
Honolulu HI 96813**

I served on August 12, 2011 by certified mail, receipt attached

2. Defendant Michael Astrue

Commissioner of Social Security Administration

**Served through his attorney
Patrick Nemeroff
Assistant U.S. Attorney
For the District of Columbia
555 4th str NW
Washington DC, 20530**

I served on August 15, 2011 by certified mail, receipt attached

3. Courtesy notice was given to Jill T. Nagamine

Deputy Attorney General

State of HI

465 South King Str, Room 200

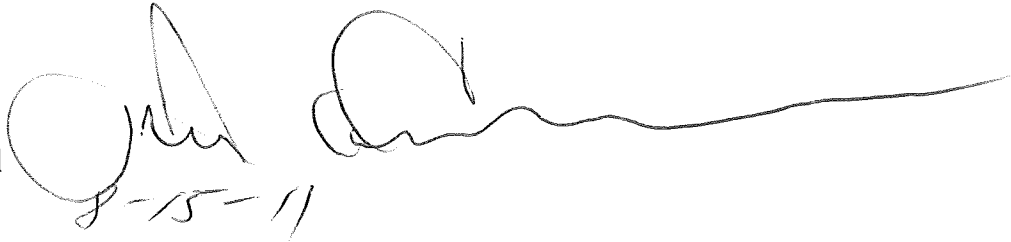
Honolulu, HI 96813

I served by certified mail on August 15, 2011 by certified mail , receipt attached

I declare under penalty of perjury, that this information is true and correct.

Signed

Dated

Handwritten signature and date. The signature is a cursive scribble. Below it, the date "8-15-11" is written in cursive.

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 City, State, ZIP+4: *Washington 20535 Hen.*

PS Form 3800, August 2006 See Reverse for Instructions

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 Street, Apt., No. or PO Box No.: *Homewood, HI 96815*
 City, State, ZIP+4: *Deputy Attorney General*
William T. Nagamine Healey
and Human Services 405 South King St.

PS Form 3800, August 2006 See Reverse for Instructions

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Sent To: *U.S. Attorney's Office District*
 Street, Apt., No. or PO Box No.: *Attorney Niemi 555*
 City, State, ZIP+4: *Att St N.W. Washington DC*

PS Form 3800, August 2006 See Reverse for Instructions

Notices

1:11-mc-00158-SOM -RLP Taitz v. Astrue

U.S. District Court

District of Hawaii

Notice of Electronic Filing

The following transaction was entered on 8/8/2011 at 11:45 AM HST and filed on 8/8/2011

Case Name: Taitz v. Astrue
Case Number: 1:11-mc-00158-SOM -RLP
Filer:
Document Number: 3(No document attached)

Docket Text:

NOTICE of Hearing on [1] MOTION to Compel is set for 9/14/2011 at 10:00 AM in Courtroom 6 before JUDGE RICHARD L. PUGLISI. Plaintiff to provide notice of the hearing to Loretta Fuddy, Health Department, State of Hawaii. (agh)

CERTIFICATE OF SERVICE

Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry.

1:11-mc-00158-SOM -RLP Notice has been electronically mailed to:

1:11-mc-00158-SOM -RLP Notice will not be electronically mailed to:

Orly Taitz
29839 Santa Margarita Pkwy, Ste 100
Santa Margarita, CA 92688

cc: ~~SOM RLP~~

ORIGINAL

DR. ORLY TAITZ ESQ
CA BAR LICENSE 223433
ATTORNEY PRO SE
29839 SANTA MARGARITA, CA 92688
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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

AUG 08 2011

at 10 o'clock and 52 min. AM
SUE BEITIA, CLERK

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

DR. ORLY TAITZ, ESQ, PRO SE,

Plaintiff,

v.

MICHAEL ASTRUE, COMMISSIONER:
OF THE SOCIAL SECURITY
ADMINISTRATION,

Defendant.

Misc. Action No.

11-100158-SOM-RLP

PENDING IN THE DISTRICT OF
COLUMBIA
Civil Action No.: 11-cv-00402-RCL
The Honorable Royce C. Lamberth

**[PROPOSED] ORDER ON EX-PARTE EMERGENCY MOTION FOR
EMERGENCY ORDER TO SHOW CAUSE AND
TO COMPEL ATTENDANCE FOR PRODUCTION OF DOCUMENTS
AND
FOR ATTORNEYS' FEES AND COSTS**

This court, having considered plaintiff's motion for an order to show cause, and to compel attendance for production of documents, and for attorneys' fees and costs, the memoranda of the parties, and the whole record herein:

It is hereby ORDERED that Loretta Fuddy, Health Department, State of Hawaii, 1250 Punchbowl Street, Honolulu, HI 96813, appear in the United States

District Court, in and for the District of Hawaii, in Judge

_____ courtroom on the 9 day of August, 2011, at
_____ AM/PM, and produce the documents described in the subpoena which
was issued and served upon Fuddy, and, failing that production, show cause, if she
can, why the documents in question should not be produced and for attorneys' fees
and costs as incurred by plaintiff in bringing this action before the court, should not
be granted.

Honolulu, Hawaii this the _____ day of _____, 2011.

JUDGE

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

DR. ORLY TAITZ, ESQ, PRO SE,

Plaintiff,

v.

MICHAEL ASTRUE, COMMISSIONER
OF THE SOCIAL SECURITY
ADMINISTRATION,

Defendant.

Misc. Action No.

PENDING IN THE DISTRICT OF
COLUMBIA
Civil Action No.: 11-cv-00402-RCL
The Honorable Royce C. Lamberth

**EMERGENCY EXPARTE MOTION FOR EMERGENCY ORDER TO
SHOW CAUSE AND
TO COMPEL ATTENDANCE FOR PRODUCTION OF DOCUMENTS
AND
FOR ATTORNEYS' FEES AND COSTS**

NOW INTO COURT, comes Plaintiff, DR. ORLY TAITZ,ESQ, attorney pro se, who respectfully seeks an order pursuant to F.R.C.P. Rule 45 compelling third party witness Loretta Fuddy ["Fuddy"], Health Department, State of Hawaii, 1250 Punchbowl Street, Room 325, Honolulu, HI 96813 attendance for production of documents as previously scheduled in the subpoena which was issued and served upon Fuddy, and failing that for an order pursuant to F.R.C.P. Rule 45(e) to show cause why Fuddy should not comply with the subpoena, and for an award of plaintiff's attorneys' fees and costs incurred in bringing this action before the court, as follows:

1. The underlying action involves a refusal of the Social Security Administration ("SSA") to produce a Form SS-5 requested under the Freedom of Information Act. Evidence suggests that the Social Security Number ("SSN") issued as a result of that application was fraudulently obtained or has been fraudulently used by someone other than the person to whom issued. The SSA, citing privacy concerns and 5 U.S.C. § 552(b)(6), has refused to supply the information requested. Plaintiff reasonably believes that the birth records the subject of the subpoena in issue here are relevant to and may have been the basis of the SSN application the

subject of the superior action in the United States District Court for the District of Columbia, or the subsequent fraudulent use of that SSN by a different and illegal "holder".

2.

Fuddy was subpoenaed to appear and produce documents and things on August 8, 2011, at the offices of the Health Department, State of Hawaii, 1250 Punchbowl Street, Room 325, Honolulu, HI 96813. See EXHIBIT A. The subpoena was properly issued and served upon Fuddy, both through the Office of the Attorney General of HI, 485 South King Str. Room 200, Honolulu, HI 96813 and directly at the offices of the Health Department, State of Hawaii, 1250 Punchbowl Street, Room 325, Honolulu, HI 96813. Service was done both by Certified mail return receipt and Federal Express. Exhibit B, C. Fuddy received the subpoena, properly issued under Rule 45, yet she failed to appear and she failed to produce any documents or things.

3.

Fuddy received the subpoena on 07.11.2011. Such a method of service is designed to and did result in actual notice of the subpoena to Fuddy. *Doe v. Hersemann*, 155 F.R.D. 630 [N.D. Ind. 1994]; *King v. Crown Plastering Corp.*, 170 F.R.D. 355, 356 [E.D. N.Y 1997] [holding that Rule 45's language does not require "in-hand service", but only service in a manner that "reasonably insures actual of the subpoena by the witness"]; *Hartford Fire Ins. Co. v. Perinovic*, 152 F.R.D. 128, 130 [N.D. Ill.1993] [upholding service of process on doorman of residence of defendant who was evading service]; *Abbott v. Kidder, Peabody & Co.*, 1997 WL 337228 [U.S.D.C. N. D. Ill. 6/16/97]; Fed.R.Civ.Proc. 45.

4.

Fuddy failed to appear as ordered by the subpoena. Fuddy did not contact plaintiff's counsel or otherwise seek relief from the subpoena. On 07.28.2011 Fuddy received a Fed Ex letter from the counsel, advising her, that the counsel and two experts will need to travel from the mainland to HI and will spend thousands of dollars on airfare, hotel, car rental and other costs and fees and Fuddy was requested to advise the counsel, whether she will refuse to comply with the subpoena, so that the counsel can mitigate damages. Exhibit D. Fuddy did not respond. On 08.08.2011 Fuddy refused to comply with the subpoena. Experts are scheduled to fly back to the continental US tomorrow evening.

5.

Due to exigency and tremendous expenses and costs, Plaintiff respectfully seeks an EMERGENCY ORDER TO SHOW CAUSE to be returned tomorrow, on 08.09.2011 compelling Fuddy's attendance tomorrow, August 9, 2011 at the

emergency hearing for production of documents as previously scheduled in the subpoena which was issued and served upon Fuddy. Plaintiff seeks to have Loretta Fuddy ordered to appear and produce the documents subpoenaed.

6.

Failing Fuddy's appearance and production of the documents subpoenaed, plaintiff respectfully seeks an order holding Fuddy in contempt of this court, and further directing the issuance of a bench warrant for the arrest of Loretta Fuddy.

7.

Plaintiff respectfully seeks an order assessing Loretta Fuddy for plaintiff's attorneys' fees and costs incurred in bringing this action before the court, and for such further relief as this court may deem just and appropriate.

8.

Plaintiff respectfully does not submit a separate memo as it would be redundant.

WHEREFORE Plaintiff PRAYS that this emergency ex parte motion for an emergency order to show cause and compel attendance for production of documents and for attorneys' fees and costs be granted and that the requested relief be ordered.

Respectfully submitted:



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