

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

DR. ORLY TAITZ, ESQ, PRO SE,	:	
	:	
Plaintiff,	:	Misc. Action No.
	:	
v.	:	
	:	
MICHAEL ASTRUE, COMMISSIONER	:	PENDING IN THE DISTRICT OF
OF THE SOCIAL SECURITY	:	COLUMBIA
ADMINISTRATION,	:	Civil Action No.: 11-cv-00402-RCL
	:	The Honorable Royce C. Lamberth
Defendant.	:	

**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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