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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

SEP 20 2011

at 3 o'clock and 20 min. P.M.
SUE BEITIA, CLERK

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

_____	:	
	:	
DR. ORLY TAITZ,	:	
	:	
Plaintiff,	:	Case #: 1:11-cv-00519-SOM-RLP
	:	The Honorable Susan Oki Mollway
v.	:	The Honorable Richard L. Puglisi
	:	
MICHAEL ASTRUE,	:	PENDING IN THE DISTRICT
Commissioner of the Social	:	of Columbia
Security Administration,	:	Civil Action No. 11-cv-00402-rcf
	:	The Honorable Royce C.
	:	Lamberth
Defendant.	:	
_____	:	Hearing on Docket #1
	:	Date: November 21, 2011

Time: 10:00 AM

Judge: The Hon. Richard L. Puglisi

**PLAINTIFF'S REPLY TO LORETTA FUDDY'S MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S MOTION TO
COMPEL ATTENDANCE FOR PRODUCTION OF DOCUMENTS**

This matter is before the Court on Plaintiff's Ex Parte Emergency Motion for Emergency Order to Show Cause and to Compel Attendance for Production of Documents and for Attorney's Fees and Costs [1], which the Court directed be heard as a Motion to Compel in the normal course, which it Noticed for Hearing on November 21st, 2011 [4], and in reply to third-party witness Fuddy's opposition thereto [9].

I. INTRODUCTION

Plaintiff, Dr. Orly Taitz, seeks an order pursuant to F.R.C.P. Rule 45 compelling third party witness Loretta Fuddy's (hereinafter "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.

The underlying action in the United States District Court for the District of Columbia, Civil Action No. 11-CV-00402-RCL, decided August 30, 2011 but not yet final, (motion for reconsideration and motion to stay judgment pending appeal are being submitted within ten days) 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, or the subsequent fraudulent use of that SSN by a different and illegal holder.

II. ARGUMENT

A. The Subpoena Was Properly Served.

Fuddy was subpoenaed to appear at the offices of the Health Department, State of Hawaii, 1250 Punchbowl Street, Room 325, Honolulu, HI 96813 on August 8, 2011 and produce documents and things. *See* EXHIBIT A. The subpoena was properly issued and served upon Fuddy, by Federal Express 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 Requested to Fuddy's attorney, Deputy Attorney General Jill Nagamine and by Federal Express directly to Fuddy. *See* Exhibits B, C.

Fuddy's own Exhibit B establishes that she actually received the subpoena on July 28, 2011. Fuddy now exalts form over substance, a position that should not be permitted to stand in the face of her failure to timely file and serve her Opposition to Plaintiff's Motion to Compel.

Such method of service by mail or courier is designed to and did result in actual notice of the subpoena to Fuddy. Neither Fuddy nor her agent Jill T. Nagamine contacted plaintiff or otherwise sought relief from the subpoena, and multiple efforts by Plaintiff to contact Fuddy and Nagamine personally

were unavailing. See attached Declaration of Plaintiff Dr. Orly Taitz, Esq.

Nagamine's failure to return those calls, evidently part of a scheme to avoid declaring the Attorney General's position on service of the subpoena, may in fact have been in violation of local Bar rules.

In the letter of July 27th Fuddy was advised of the substantial costs that would be incurred in plaintiff's travel to Hawaii, and that of two experts retained to inspect, copy, test, or sample the subpoenaed document(s), and requested to advise if she would refuse to comply, so that damages could be mitigated. Fuddy did not reply.

On the morning of August 8, 2011, having received the subpoena, properly issued under Rule 45, Fuddy failed to appear as ordered by the subpoena and she failed to produce any documents or things. Instead of

having the subpoenaed document(s) produced for her, Joshua Wisch, special assistant to the attorney general, in a display of gamesmanship based in the Attorney General's heretofore unstated objection to the manner of service of the subpoena, Asked Taitz if there was anything she wanted to serve on the Director or myself [Yamamoto] as the Director's designee (Yamamoto Declaration), and then handed plaintiff a letter addressed to her from Jill T. Nagamine, Deputy Attorney General for the State of Hawaii, Fuddy's agent as described above, dated August 8, 2011. See Fuddy's Exhibit A. That letter, purporting to be a written objection pursuant to Rule 45(c)(2)(B), Federal Rules of Civil Procedure, did not describe the nature of the withheld documents . . . in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim@ pursuant

to Rule 45(d)(2)(A)(ii), Federal Rules of Civil Procedure. Plaintiff has incurred substantial damages as a result of Fuddy's failure to comply with these Rules.

B. Disclosure of the Records Sought by Plaintiff is Permitted Under Hawaii State Law.

If the document subpoenaed is, as it has been purported to be, a Certificate of Live Birth issued by the Hawaii Department of Health in connection with the birth of Barack Hussein Obama, II on August 6, 1961, plaintiff's right to inspect or obtain a copy of the record can be established by order of this Court as a court of competent jurisdiction, pursuant to Hawaii Revised Statutes Section 338-18(b)(9). Further, any claim of privilege or confidentiality has been waived by a) dissemination by Barack Obama of a

purported copy through the White House website. See Exhibit E, attached¹, and b) release by Barack Obama to the Democratic National Committee of a purported copy of that document, for reproduction and sale on coffee mugs, See Exhibit F, attached, and c) the waiver for its release executed by Barack Obama, as processed by his counsel, Judith L. Corley, Esq.² See Exhibit H, attached. These actions constitute a waiver of privilege under Hawaiian law.

This principle has been recognized in *Metzler Contracting Co. LLC v. Stephens*, 642 F.Supp2d 1192, 1203 (U.S.D.C. D Hawaii 2009): Voluntary disclosure of privileged information to a third-party results in a waiver of the privilege as to communications on that subject.

¹http://www.whitehouse.gov/sites/default/files/rss_viewer/birth-certificate-long-form.pdf

²http://www.whitehouse.gov/sites/default/files/rss_viewer/birth-certificate-correspondence.pdf

C. The Information Sought by Plaintiff is Relevant to the Underlying Lawsuit.

Section B, above, establishes that the information sought is no longer privileged. The only remaining issue addressed by Fuddy, it being questionable whether Fuddy has standing to raise this issue not being a party to the underlying lawsuit, is whether the matter sought is relevant to any party's claim or defense including the . . . identity of persons who know of any discoverable matter. Federal Rules of Civil procedure Rule 26(b)(1). That is exactly the issue the subject of the underlying lawsuit . . . Who is this person, apparently alleged to be born in Hawaii, who obtained a Social Security Number in a series allocated to Connecticut, issued at the time when number sequences were based on geographic location, who had no known connection with the State of Connecticut.

III. CONCLUSION

Inspection, copying, testing, or sampling of the subpoenaed document(s) to include, but not be limited to, analysis of paper and/or ink to establish the authenticity of the document(s), is required to verify the accuracy of the information released in the purported copy, which is relevant to the subject of the underlying action here. Expert examination of that copy has resulted in uniform opinion that it has been created by various processes not consistent with making a copy of an existing document, and is not a true copy of the original record. *See Exhibits H, I, attached.*

On August 30th this court had a hearing with District judge Hon. Susan Mollway. At the hearing Defendants raised and issue of the order by the USDC in the district of Columbia to grant the Defendant's motion to dismiss.

Plaintiff responded, that a motion for reconsideration is being filed. Plaintiff attached herein the motion for reconsideration,(Exhibit J) which shows that compliance with above subpoena is essential and serves in crime prevention, represents necessity in the interest of the National security in furtherance of this court's oath of office to preserve and protect the U.S. constitution.

WHEREFORE, plaintiff prays that the Motion to Compel attendance for production of documents be granted and the requested relief be ordered, and that third party witness Fuddy should be barred from now filing any further opposition to the pending Motion to Compel, and a later hearing be scheduled on plaintiff' s motion for attorneys' fees and costs.

Respectfully submitted:

A handwritten signature in black ink, appearing to be 'Orly Taitz', is written above a horizontal line.

/s/ Dr. Orly Taitz, Esq.

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