DR. ORLY TAITZ ESQ CA BAR LICENSE 223433 ATTORNEY PRO SE 29839 SANTA MARGARITA, CA 92688 PH 949-683-5411 FAX 949-766-7603 ORLY.TAITZ@GMAIL.COM FILED IN THE UNITED STATES DISTRICT COURT DISTRICT OF HAWAII

AUG 0 8 2011

SUE BEITIA, CLERK

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII

DR. ORLY TAITZ, ESQ, PRO SE,

Plaintiff,

v.

Misc. Action N.C. 11 100158 SOM

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MICHAEL ASTRUE, COMMISSIONER: OF THE SOCIAL SECURITY:

ADMINISTRATION,

Defendant.

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

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII

DR. ORLY TAITZ, ESQ, PRO SE,

Plaintiff,

Misc. Action No.

v.

MICHAEL ASTRUE, COMMISSIONER OF THE SOCIAL SECURITY ADMINISTRATION,

Defendant.

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.
- 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. III.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. III. 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.
- 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.

- 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:

Dr. Orly Taitz, ESQ

Attorney-pro se

29839 Santa Margarita pkwy, ste 211

Rancho Santa Margarita, CA 92688

Ph 949-683-5411

Orly.Taitz@gmail.com

EXHIBIT A

United States District Court for the District of Hawaii Taitz Plaintiff v. Astrue Civil Action No. 1: 11-CU-0040 (If the action is pending in another district, state where: US DC District of Colum SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION To: My Lore the Fuddy Director of Health, State of Health Department of Health 10 Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the follow documents electronically started information and place set forth below the follow documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling material: OF 19 49 & 1961 typewis, then birth cortificate #1061 BRIACK OBORNA, III ISSUED OB, OB, 1961, SISMED OF OF OS SINCEQUIS, Stanley ANN DUNKAN OBANTA OSANTA TO THE STORE OF THE Place: Health Department glue stake gluingian Espainted in the Health Department and Time: August 8, 20 Place: Health Department of the stake gluingian Espainted in the Health Department of the stake gluingian Espainted in the Health Department of the stake gluingian Espainted in the Health Department of the stake gluingian Espainted in the Health Department of the stake gluingian Espainted in the Health Department of the stake gluingian Espain E ☐ Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, o other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it. Place: Date and Time: The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and f

45 (d) and (e), relating to your duty to respond to this subpoent and the potential consequences of not doing so, are

OR

Attorney's signature

attached.

Date: 0705,2011

CLERK OF COURT

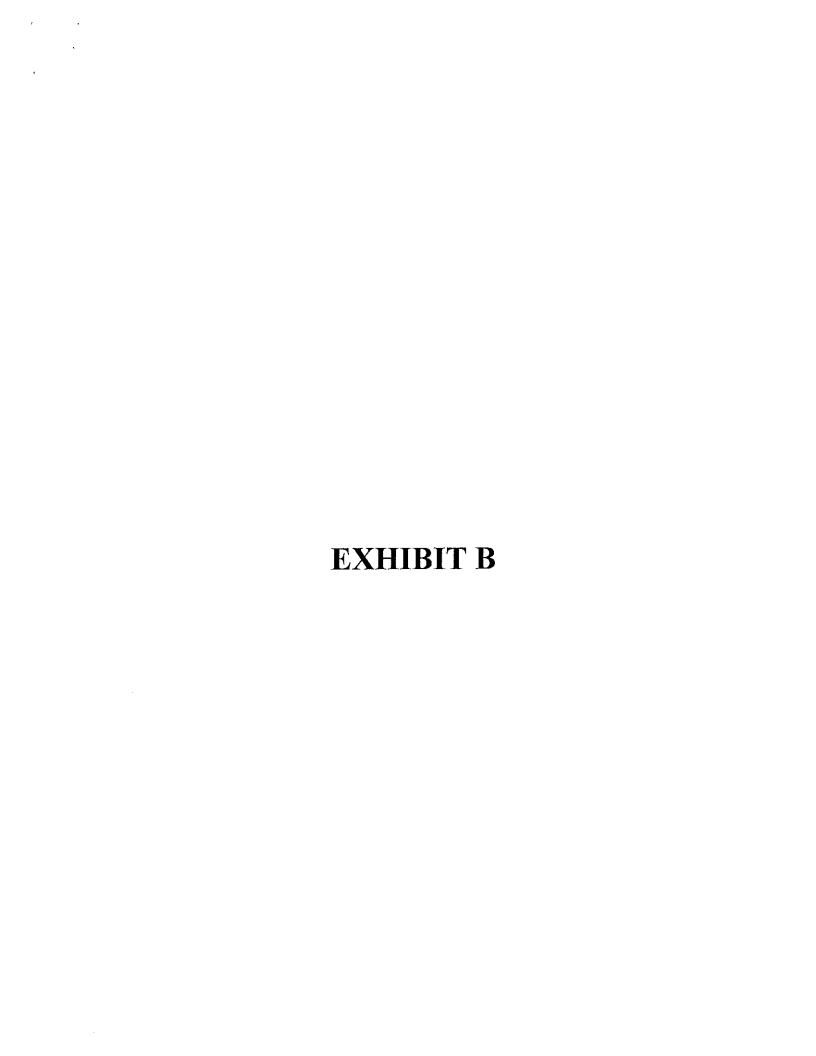
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE (This section should not be filed with the court unless required by Fed. R. Civ. P. 45.) This subpoena for (name of individual and title, if any) Loretta Fieldy was received by me on (date) 07.05.2011 Described the subpoena by delivering a copy to the named person as follows: by cortifical referring a copy to the named person and copy to the I returned the subpoena unexecuted because: Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have all tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of My fees are \$ I declare under penalty of perjury that this information is thuc. Date: 07.05.2011

> Law Offices of Orty Taitz, Esq. 29839 Santa Margarita Pkwy, Ste \$00 Rancho Santa Margarita, CA 92688

Additional information regarding attempted service, etc:



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EXHIBIT C

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LAW OFFICES OF DR. ORLY TAITZ ESQ 29839 SANTA MARGARITA PKWY, STE 100 RANCHO SANTA MARGARITA CA 92688 PH. 949-683-5411 FAX 949-766-7603 Orly.taitz@gmail.com 07.27.2011

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Personal and Confidential
Attention Loretta Fuddy
Director Health Department
State of Hawaii
1250 Punchbowl str Room-325
Honolulu, HI 96813
Dear Ms. Fuddy,

On July 5, 2011 a subpoena was issued by the US District Court for the District of Hawaii and signed by the clerk of the court, directing you to allow on August 8, 2011 inspection of the original 1961 typewritten birth certificate # 10641for Barack Obama, II issued 08.08.1961, signed by Dr. David Sinclair, Stanley Ann Dunham Obama and registrar Lee, stored in the Health Department of the State of Hawaii from 08.08.1961 until now. (exhibit 1 attached).

Due to the fact that Deputy Attorney General of Hawaii, Jill T. Nagamine, advised me, that she is representing you in this matter, as she was the one to respond to a prior subpoena, issued by me as an attorney; and as a courtesy to you, I served you with this, July 5 subpoena, through your attorney, Deputy Attorney General Nagamine. According to the certified mail receipt Ms. Nagamine received the subpoena on July 11, 2011. She had 14 days to file an opposition to this court issued subpoena. It has been 16 days, since the subpoena was received by Ms. Nagamine, however there is no record of any opposition filed. As such, it is my understanding, that you will comply with the subpoena and I would like to confirm this. As my experts and I do not reside on the islands of Hawaii, and since we needs to make arrangements for flights, hotel and other accommodations, and in light of the fact, that you, according to your attorney, refused to comply with the prior subpoena, I am writing this letter and I am trying to ascertain:

- 1. Whether Ms. Nagamine put you on notice of this July 5, 2011 subpoena signed by the clerk of the court.
- Whether you will comply with the subpoena and will allow inspection of the original birth certificate
 for Mr. Obama, or whether you refuse to comply with the subpoena signed by the clerk of the US
 District Court for the District of Hawaii.

As the time is of the essence, this letter is being shipped to you by FedEx and will be received by you on Thursday 07.28.2011. I request a response with the above information in regards to compliance with the subpoena by the end of the work day on 07.29.2011 via e-mail to be sent to my e-mail address at orly.taitz@gmail.com Sincerely,Dr. Orly Taitz, ESQ Exhibit 1 July 5, 2011 Subpoena

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Date: 0705.2011

CLERK OF COURT Signature of Clerk or Deputy Clerk Attorney's signature

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Civil Action No.

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Law Offices of Orty Taltz, Esq. 29839 Santa Margarita Pkwy, Sta \$00 Rancho Santa Margarita, CA 92688

Additional information regarding attempted service, etc: