



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SubRegion 37
300 Ala Moana Boulevard, Room 7-245
P.O. Box 50208
Honolulu, HI 96850

Telephone: (808) 541-2814
Facsimile: (808) 541-2818
Website: www.nlr.gov

March 7, 2013

Via E-Filing:

The Honorable Gerald Etchingham
Associate Chief Administrative Law Judge
National Labor Relations Board
San Francisco Division of Judges

Re: **Stephens Media, LLC d/b/a Hawaii
Tribune-Herald
Case No. 37-CA-007043 et al.**

Dear Judge Etchingham,

On March 7, 2013, the State of Hawaii ("State") submitted a petition to revoke a subpoena and subpoena duces tecum issued by counsel for Stephens Media, LLC d/b/a Hawaii Tribune-Herald ("Respondent") to the Custodian of Records, Hilo Unemployment Office, in the aforementioned case. A compliance hearing in this matter is scheduled to begin on March 12, 2013, in Honolulu, Hawaii. Pursuant to Section 102.31(b) of the NLRB's Rules and Regulations, the Region is referring the State's petition to revoke the subpoena and subpoena duces tecum to the Division of Judges.

Sincerely,

Trent K. Kakuda
Counsel for the Acting General Counsel

Enclosures

Cc: L. Michael Zinser, Esq. (via e-mail)
Glenn Plosa, Esq. (via e-mail)
Barbara Camens, Esq. (via e-mail)
Frances E.H. Lum, Esq. (via e-mail)

DAVID M. LOUIE 2162
Attorney General of Hawaii

FRANCES E. H. LUM 2951
Deputy Attorney General
Department of Attorney
General, State of Hawaii
Labor Division
425 Queen Street
Honolulu, Hawaii 96813
Telephone: 586-1450
E-mail: Frances.E.Lum@hawaii.gov

Attorneys for Department of Labor
and Industrial Relations, State of Hawaii

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NLRB SUB-REGION 37
2013 MAR - 7 PM 12: 51
HONOLULU, HAWAII

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

SUBREGION 37

| | | |
|-------------------------------|---|------------------------------------|
| STEPHENS MEDIA LLC dba HAWAII |) | CASE NO. 37-CA-7043 |
| TRIBUNE HERALD and HAWAII |) | |
| NEWSPAPER GUILD, LOCAL 39117, |) | MOTION TO REVOKE SUBPOENA AND |
| COMMUNICATIONS WORKERS OF |) | SUBPOENA DUCES TECUM ISSUED ON |
| AMERICA, AFL-CIO. |) | JANUARY 2, 2013 TO CUSTODIAN OF |
| |) | RECORDS, HILO UNEMPLOYMENT |
| |) | OFFICE; MEMORANDUM IN SUPPORT |
| |) | OF MOTION; DECLARATION OF PATTI- |
| |) | ANN L. KANESHIRO; DECLARATION OF |
| |) | FRANCES E. H. LUM; EXHIBITS A - C; |
| |) | CERTIFICATE OF SERVICE |
| |) | |
| |) | |

**MOTION TO REVOKE SUBPOENA AND SUBPOENA DUCES TECUM ISSUED ON
JANUARY 2, 2013 TO CUSTODIAN OF RECORDS, HILO UNEMPLOYMENT
OFFICE**

The Department of Labor and Industrial Relations (“DLIR”), by and through
David M. Louie, Attorney General of the State of Hawaii, and Frances E. H. Lum, Deputy
Attorney General, moves to revoke the subpoena and subpoena duces tecum (collectively

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

SUBREGION 37

| | | |
|-------------------------------|---|-----------------------|
| STEPHENS MEDIA LLC dba HAWAII |) | CASE NO. 37-CA-7043 |
| TRIBUNE HERALD and HAWAII |) | |
| NEWSPAPER GUILD, LOCAL 39117, |) | MEMORANDUM IN SUPPORT |
| COMMUNICATIONS WORKERS OF |) | |
| AMERICA, AFL-CIO. |) | |
| _____ |) | |

MEMORANDUM IN SUPPORT

The Custodian of Records of the Hilo Unemployment Office of the Department of Labor and Industrial Relations was served with a subpoena and subpoena duces tecum (collectively referred to as subpoenas) by FedEx on March 1, 2013, directing the production of records relating to a David Smith from March 2006 to the present. The Department of Labor and Industrial Relations objects to producing the information and records and requests revocation of the subpoenas because: (1) Service of the subpoenas was not effectuated in the manner required by 29 CFR § 102.113(c); (2) Mileage fees (in this case airfare) was not provided pursuant to 29 CFR § 102.32 and/or 29 CFR § 102.66(f); (3) The information sought may not be disclosed pursuant to section 383-95, Hawai'i Revised Statutes (HRS), and precedent in the Ninth Circuit Court of Appeals in NLRB cases; and (4) Assuming the applicability of Rule 501 of the Federal Rules of Evidence, section 383-95, HRS, provides a privilege that should be recognized.

A. The subpoenas were not properly served pursuant to 29 CFR § 102.113(c).

29 CFR § 102.113(c) provides as follows:

(c) Service of subpoenas. Subpoenas shall be served upon the recipient either personally or by registered or certified mail or by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served.

(Emphasis added.) In this case, the subpoenas were neither served personally nor by registered or certified mail. Rather, it was delivered by FedEx to the Hilo Unemployment Office on March 1, 2013. See Declaration of Patti-Ann L. Kaneshiro. Thus, service of the subpoenas was not made in accordance with the rules applicable to these proceedings and the recipient is not under an obligation to comply with the subpoenas.

B. The cost of mileage (in this case airfare) was not provided to the witness.

Pursuant to 29 CFR § 102.66(f), "Witness fees and mileage shall be paid by the party at whose instance the witness appears." See also 29 CFR § 102.32. The subpoenas were accompanied with a check in the amount of \$100.00, presumably as a witness fee, but no fee to cover mileage. Because Hilo is on a different island from the Honolulu National Labor Relations Board's office, airfare should have been, but was not, provided. For that reason, the Custodian of Records should not be required to appear in Honolulu without having the expenses for the travel covered.

C. Section 383-95, HRS, clearly requires the Department to keep confidential and not disclose information obtained in connection with the administration of the employment security law.

The court's "foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself." Farmer v. Administrative Director of Court, 94 Haw. 232, 236, 11 P.3d 457, 461 (2000). Further, "a statute should be so interpreted to give it effect; and we must start with the presumption that our legislature intended to enact an effective law, and it is not to be presumed that legislation is in vain effort, or a nullity." Levy v. Kimball, 51 Haw. 540, 545, 465 P.2d 580, 583 (1970). "Where the language of the statute is plain and unambiguous, . . . [the court's] only duty is to give effect to the statute's plain and obvious meaning. Iddings v. Mee-Lee, 82 Haw. 1,

6-7, 919 P.2d 263, 268-69 (1996) (citations and footnote omitted); International Sav. & Loan Ass'n v. Wiig, 82 Haw. 197, 199, 921 P.2d 117, 118 (1996).

Under the plain language of the statute, the records being sought by the subpoenas may not be disclosed based on section 383-95, HRS. Section 383-95 provides as follows:

(a) Except as otherwise provided in this chapter, information obtained from any employing unit or individual pursuant to the administration of this chapter and determinations as to the benefit rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant (or the claimant's legal representative) shall be supplied with information from the records of the department to the extent necessary for the proper presentation of the claimant's claim in any proceeding under this chapter. Subject to such restrictions as the director may by rule prescribe, and costs incurred in furnishing the information are reimbursed to the department and all safeguards are established as are necessary to ensure that information furnished by the department is used only for authorized purposes, the information and determinations may be made available to:

- (1) Any federal or state agency charged with the administration of an unemployment compensation law or the maintenance of a system of public employment office,
- (2) The Bureau of Internal Revenue of the United States Department of Treasury,
- (3) Any federal, state or municipal agency charged with the administration of a fair employment practice or anti-discrimination law; and
- (4) Any other federal, state or municipal agency if the director deems that the disclosure to the agency serves the public interest; and
- (5) Any federal, state, or municipal agency if the disclosure is authorized under section 303 of the Social Security Act and section 3304 of the Internal Revenue Code of 1986, as amended.

(Emphasis added.)

The statute makes clear that the Department is *required* to withhold the "information obtained from any employing unit or individual" in the course of administering the Employment Security Law and also withhold any "determinations as to the benefit rights of any individual," except in the five enumerated circumstances. All of the documents and information relating to David Smith held by the Custodian of Records of the Hilo Unemployment Office were obtained from either the employing unit or the unemployment insurance benefit claimant in the course of administering the Employment Security Law or because determinations regarding the claimant's benefit rights were made. Thus, the documents sought fall squarely within the parameters of section 383-95(a), HRS, and must be kept confidential.

Moreover, the records are being sought by the Hawai'i Tribune Herald; it is not an entity to which records may be disclosed under section 383-95, HRS, and does not satisfy any of the purposes permitted under any of the enumerated exceptions. As the Hawai'i Tribune Herald candidly admits, the records are sought for the purpose of calculating back pay. There being no statutory exception allowing disclosure of the unemployment insurance records under this circumstance, the Department may not disclose the information without the possibility of being subject to the penalties and sanctions set out in section 383-144, HRS.¹

There is support in case law to grant this motion. In an NLRB proceeding, NLRB v. Adrian Belt Co., 578 F.2d 1304 (9th Cir. 1978), unemployment benefit records were sought,

¹ Section 383-144, HRS, provides as follows:

If any employee or member of the department of labor and industrial relations, or the referee, in violation of section 383-95, makes any disclosure of information obtained from any employing unit or individual in the administration of this chapter, . . . he shall be fined not less than \$20 nor more than \$200, or imprisoned not more than ninety days, or both.

but were not produced because the California Unemployment Insurance Code made such records confidential. On review of the Regional Director's decision not to enforce the subpoena, the Ninth Circuit Court held that "the state agencies asserted a specific statutory privilege against disclosure of the subpoenaed materials, and the courts have recognized that such a claim may constitute a valid reason for the Board [NLRB] to revoke or to decline to enforce a subpoena." Id. at 1310.

In another NLRB case, John J. Canova dba Canova Moving & Storage Co. v. NLRB, 708 F.2d 1498 (9th Cir. 1983), the Ninth Circuit Court upheld the revocation of a subpoena issued to the California Employment Development Department for records relating to the employees' efforts to seek interim employment during the backpay period. The Court observed,

This case is governed by *NLRB v. Adrian Belt Co.*, 578 F.2d 1304 (9th Cir. 1978), wherein this court upheld the revocation of a subpoena for California unemployment and disability records. The state agency subject to the subpoena had invoked the same statutory privilege under litigation in the present case. This court held that the claimed privilege "may constitute a valid reason for the Board to revoke or decline to enforce a subpoena." 578 F.2d at 1310. The *Adrian Belt* court also found that the subpoenaed material was of minimal probative value and that the employers were not prejudiced by their inability to obtain the records.

Id. at 1502. Canova was followed by the NLRB in a case heard in Hawai'i, Rainbow Tours, Inc., dba Rainbow Coaches, 280 NLRB No. 17 (1986). Although the Department does not know what other evidence is available, it would appear that evidence as to whether unemployment benefits were collected, the period it was collected, as well as other employment, can be adduced from Mr. Smith. Under such a scenario, the records from the Department would appear to have little probative value except to impeach Mr. Smith, as was the case in Adrian Belt and Canova. Thus,

there is precedent in this circuit to revoke the subpoenas issued for unemployment insurance records.

D. Even under Rule 501 of the Federal Rules of Evidence, the Board should recognize a privilege and revoke the subpoenas.

Even assuming that Rule 501 of the Federal Rules of Evidence must be applied to this case, the Board should construe section 383-95, HRS, as a privilege. Rule 501 provides as follows:

The common law -- as interpreted by United States courts in the light of reason and experience -- governs a claim of privilege unless any of the following provides otherwise:

- the United States Constitution;
- a federal statute; or
- rules prescribed by the Supreme Court.

But in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision.

Section 383-95, HRS, is grounded in the federal law and is nearly identical to the recommendation made by the United States Department of Labor.² As explained by the United States Department of Labor, confidentiality is necessary because

the disclosure of information received from an employer about a claimant or of personal information given by a claimant would tend to discourage workers from exercising their full rights in filing claims. Likewise, employers and applicants would tend to withhold information necessary for the successful operation of a public employment service unless they were confident that it would be used only for the purposes for which it is given. . . .

² Manual of State Employment Security Legislation, Rev'd. Sept. 1950 by United States Department of Labor, Manpower Administration. See Exhibit C. The United States Department of Labor recommended statutory provisions which, if adopted by the state, would conform to the requirements of federal law. Conformity with federal law is required "in order to secure for the State and the citizens thereof the grants and privileges available thereunder." HRS § 383-166.

Failure to include such a provision may mean that the agency will be harassed (to the detriment of its efficiency) by requests for information about individuals and their personal affairs.

Manual of State Employment Security Legislation, Rev'd. Sept. 1950 by United States Department of Labor, Manpower Administration. See Exhibit C. So important is confidentiality in the unemployment insurance context that it was analogized to the privilege between an attorney and client or physician and patient. Id.

In other contexts and in order to determine whether Rule 501 should recognize state law, the court has weighed the need for truth against the importance of the relationship or policy sought to be furthered by the privilege against the likelihood that recognition of the privilege will in fact protect that relationship in the factual setting of the case. Tutman v. WBBM-TV/CBS Inc., 1997 WL 548556 or LEXIS 13281 (N.D. Ill. 1977) at 2.

In Tutman, the Court ruled that the transcript of the unemployment insurance hearing should be released to Defendant CBS because: 1) CBS was entitled to be present at the hearing and would have heard the testimony, 2) the factual circumstances of the claims for unemployment insurance benefits and for discrimination derived from the same nucleus of facts, and 3) a protective order would protect the State's interest in confidentiality.

In contrast, the factors in this case weigh in favor of keeping the information confidential. First, it appears that Respondent has been found in violation of certain labor laws and the issue is now whether and to what extent former employees are entitled to back pay. Any actions or statements made to the Department in connection with the former employees' ongoing eligibility for unemployment benefits are generally not statements to which Respondent would have been privy. Second, the information sought do not appear to be tied to the same "nucleus of facts" surrounding the underlying NLRB proceedings.

Third, as discussed above, confidentiality of unemployment insurance information is very important to the Department. It is grounded in the federal law and even analogized to the attorney-client or physician-patient privileges and, as explained by the U.S. Department of Labor, it facilitates the administration of the unemployment insurance program.

Fourth, requiring the appearance of a representative of the Department would take the employee away from the important job of processing unemployment insurance claims, especially at a time when unemployment is high. Avoiding the diversion of resources was one reason that confidentiality of unemployment insurance information was required by the U.S. Department of Labor. ("Failure to include such a [confidentiality] provision may mean that the agency will be harassed (to the detriment of its efficiency) by requests for information about individuals and their personal affairs." See Exhibit C.)

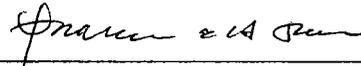
Because the factors in favor of the Department outweigh the Respondent's need to obtain the unemployment insurance information, in light of the Department's interest and strong policy expressed by the Hawaii legislature to protect unemployment insurance information, and the non-disclosure will in fact protect that relationship between the Department and all those who interact with the Department in unemployment insurance matters, this Court should not permit the disclosure of the information sought either in the form of documentary evidence or testimony.

CONCLUSION

In conclusion, the Department respectfully requests that the NLRB revoke the subpoena and subpoena duces tecum issued on January 2, 2013 to the Custodian of Records, Hilo Unemployment Office.

DATED: Honolulu, Hawai'i, MAR - 7 2013 .

DAVID M. LOUIE
Attorney General,
State of Hawaii



FRANCES E. H. LUM
Deputy Attorney General

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
SUBREGION 37

STEPHENS MEDIA LLC dba HAWAII) CASE NO. 37-CA-7043
TRIBUNE HERALD and HAWAII)
NEWSPAPER GUILD, LOCAL 39117,) DECLARATION OF PATTI-ANN L.
COMMUNICATIONS WORKERS OF) KANESHIRO
AMERICA, AFL-CIO.)
)
)
)

DECLARATION OF PATTI-ANN L. KANESHIRO

I, PATTI-ANN L. KANESHIRO, hereby declare as follows:

1. I am employed by the State of Hawaii, Department of Labor and Industrial Relations' Unemployment Insurance Division, in the Hilo District Office as an Unemployment Insurance Specialist V.

2. On March 1, 2013, I received a cover letter from a Glenn E. Plosa and a subpoena directed to the Custodian of Records of the Hilo Unemployment Office. The subpoena was delivered by FedEx. Accompanying the subpoena was a check in the amount of \$100.00. See Exhibit A which is a true and correct copy of the documents I received by FedEx.

3. In order for me to appear before the National Labor Relations Board in Honolulu, Hawai'i, it would be necessary for airfare to be provided to me.

4. At this time, the only records available are computer records. Paper records, if any, would be in storage and would not be retrievable by March 12, 2013.

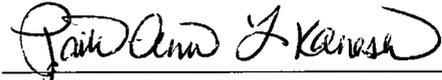
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I declare under penalty of perjury that the foregoing is true and correct.

DATED: Hilo, Hawai'i, 3/6/13.



PATTI-ANN L. KANESHIRO

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

SUBREGION 37

STEPHENS MEDIA LLC dba HAWAII) CASE NO. 37-CA-7043
TRIBUNE HERALD and HAWAII)
NEWSPAPER GUILD, LOCAL 39117,) DECLARATION OF FRANCES E. H. LUM
COMMUNICATIONS WORKERS OF)
AMERICA, AFL-CIO.)
_____)

DECLARATION OF FRANCES E. H. LUM

I, FRANCES E. H. LUM, hereby declare as follows:

1. I am a deputy attorney general assigned to represent the Department of Labor and Industrial Relations in the above-captioned matter.
2. Attached as Exhibit B and C are true and correct copies from the Manual of State Employment Security Legislation, Revised – September 1950, pages 93-94 and pages C115-C116, respectively.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, MAR - 7 2013.



FRANCES E. H. LUM



414 Union Street, Suite 1200
Bank of America Plaza
Nashville, Tennessee 37219
TELEPHONE 615.244.9700
FACSIMILE 615.244.9734
www.zinserlaw.com

February 27, 2013

(Via FedEx)

Custodian of Records
Hilo Unemployment Office
1990 Kinoole Street
Hilo, HI 96720

OF COUNSEL
William H. Bruckner
Bruckner Burch PLLC
Houston, Texas
Licensed in Texas, Nebraska and Oklahoma

Patrick J. Sullivan
Law Offices of Patrick J. Sullivan
Oceanside, California
Licensed in California only

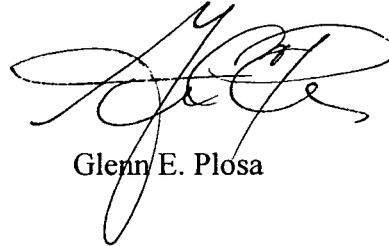
RE: NLRB SUBPOENA FOR DAVID SMITH

Dear Sir or Madam:

Enclosed please find a subpoena *duces tecum* and subpoena *ad testificandum* on behalf of *Hawaii Tribune-Herald* requiring the production of documents and the presence of a witness for a Compliance Specification Hearing before the National Labor Relations Board in Honolulu, Hawaii, on March 12, 2013, at 9:00 a.m. These document requests pertain to a former *Hawaii Tribune-Herald* employee, David Smith, whom *Hawaii Tribune-Herald* discharged on or about March 9, 2006. The requested information pertains to calculating backpay to which Mr. Smith may or may not be due, by *Hawaii Tribune-Herald*.

Please feel free to contact our office with any questions you may have about these subpoenas.

Very truly yours,



Glenn E. Plosa

GEP/mlm

Attch.

cc: L. Michael Zinser

SUBPOENA

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

To Custodian of Records, Hilo Unemployment Office
1990 Kinoole Street, Hilo, Hawaii 96720

As requested by L. Michael Zinser
The Zinser Law Firm, PC

whose address is 414 Union Street, suite 1200 Nashville, TN 37219
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE _____
an Administrative Law Judge of the National Labor Relations Board

at Room 7-241, 300 Ala Moana Boulevard

in the City of Honolulu, Hawaii

on the 5th 12th day of March 20 13 at 9:00 (a.m.) (p.m.) or any adjourned

or rescheduled date to testify in Hawaii Tribune-Herald, 37-CA-7043, et al
(Case Name and Number)

In accordance with the Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings), objections to the subpoena must be made by a petition to revoke and must be filed as set forth therein. Petitions to revoke must be received within five days of your having received the subpoena. 29 C.F.R. Section 102.111(b) (3). Failure to follow these regulations may result in the loss of any ability to raise such objections in court.

A - 943724

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at San Francisco, California

this 2nd day of January 20 13



Leslie A. Neltzer

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

To Custodian of Records, Hilo Unemployment Office
1990 Kinoole St. Hilo, Hawaii 96720

As requested by L. Michael Zinser, The Zinser Law Firm, PC
whose address is 414 Union Street, Suite 1200 Nashville, TN 37219
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE _____
an Administrative Law Judge _____ of the National Labor Relations Board

at Room 7-241, 300 Ala Moana Boulevard

in the City of Honolulu, Hawaii

on the ~~5th~~ 12th day of March 20 13 at 9:00 (a.m.) (p.m.) or any adjourned

or rescheduled date to testify in Hawaii Tribune-Herald, 37-CA-7043, et al

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

See Attachment A & B

In accordance with the Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings), objections to the subpoena must be made by a petition to revoke and must be filed as set forth therein. Petitions to revoke must be received within five days of your having received the subpoena. 29 C.F.R. Section 102.111(b) (3). Failure to follow these regulations may result in the loss of any ability to raise such objections in court.

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

B - 638191

Issued at San Francisco, California

this 2nd day of January 20 13



Lesfer A. Neltzer

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

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ATTACHMENT A INSTRUCTIONS

1. As used in this request, the term “document” means, without limitation, the following items, whether printed or recorded or reproduced by any other mechanical process, or written or produced by hand or computer: agreements, communications, reports, correspondence, electronic mail (E-mail), telegrams, memoranda, summaries or records of telephone conversations, summaries of records of personal conversations or interviews, diaries, notebooks, notes, charts, plans, summaries or records of meetings or conferences, transcripts or summaries or reports of investigations or negotiations, books, magazines, brochures, pamphlets, advertisements, circulars, press releases, articles, drafts, letters, internal or inter-office memoranda or correspondence, questionnaires or surveys and responses thereto, employment applications, employment or personnel files, job descriptions, lists, and marginal comments appearing on any document, computer files and paper copies thereof, computer disks (floppy or hard), video tapes, compact disks, audio cassette tapes, digital video disks, recordings and transcriptions or summaries thereof and all other writings or recordings of any variety.

a. This document request includes, but is not limited to documents contained on any computer, including the computer hard drive.

- i. When computer disks are produced, a printout of the pertinent materials therefrom should also be produced.
- ii. When a printout is made from computer records, whenever possible, items should be arranged in chronological order (for example, dates

of hire, discharge, discipline, payroll), or, for events occurring the same date, items should be arranged in alphabetical order by last name.

2. “You,” “Your,” and “Yours” includes, you, the County of Hawaii, State of Hawaii, your agents, your employees, your members, their agents, their employees, your attorneys, your accountants, your investigations, and anyone else acting on your behalf.
3. Whenever used herein, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular; the masculine shall be deemed to include the feminine and the feminine shall be deemed to include the masculine; the conjunctive “and” shall be deemed to include the disjunctive “or”; and each of the words “each,” “every,” “any,” and “all” shall be deemed to include each of the other words.
4. Unless otherwise stated, this document request relates to and/or concerning documents from December 8, 2008, to the present.
5. In responding to these Requests, furnish all documents, however obtained, that are available to you and information known by or in possession of yourself, your agents, your attorney or appearing in your records. If you cannot respond to a Request fully because information has been lost, destroyed, or is otherwise presently unavailable, respond as completely as you can and explain:
 - a. the scope of your investigation, and;
 - b. why you cannot fully respond to the Request.

2. "David Smith" means an individual who had a mailing address of P.O. Box 492600, Keaau, Hawaii, 96749.

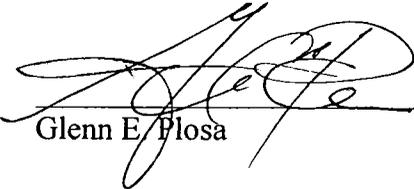
ATTACHMENT B

1. All documents related to applications for unemployment by David Smith from March 2006 to the present.
2. All documents reflecting efforts made by David Smith to obtain employment from March 2006 to the present.
3. All documents reflecting David Smith's employment status from March 2006 to the present.
4. All documents reflecting communications between you and David Smith regarding his retirement and receipt of pension benefits effective September 1, 2007.
5. All documents reflecting David Smith's compliance with reporting requirements under the Hawaii Employment Security Law, including Chapter 5, Title 12-5-47 "Voluntary Separation."

CERTIFICATE OF SERVICE

I hereby certify that the foregoing SUBPOENA *DUCES TECUM* AND *AD TESTIFICANDUM* was served via FedEx on this 27th day of February 2013, on the following:

Custodian of Records
Hilo Unemployment Office
1990 Kinoole Street
Hilo, HI 96720


Glenn E. Flosa

THE ZINSER LAW FIRM

A PROFESSIONAL CORPORATION

OPERATING ACCOUNT

414 UNION ST. SUITE 1200 615-244-9700

NASHVILLE, TN 37219-1723

10654

87-2640 TN

323

DATE 24 Feb 2013

PAY TO THE ORDER OF

CUSTODIAN OF RECORDS, TILD UNEMPLOYMENT OFFICE

\$ 100.00

one Hundred Dollars & 00/100

DOLLARS

Bank of America

FOR Subpoena B-638191-A-943724

Barbara Zinsler

AC LABOR DIVISION

Legal Sec. Dept.
of Labor
and Relations

MANUAL OF
STATE EMPLOYMENT SECURITY
LEGISLATION

Revised September 1950

(Issued for reference purposes August 1970)

UNITED STATES DEPARTMENT OF LABOR

EMPLOYMENT SECURITY ADMINISTRATION

UNEMPLOYMENT INSURANCE SERVICE

WASHINGTON, D. C. 20340

Section 13(g)(3)

concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(h) Representation of agency in court.--(1) In any civil action to enforce the provisions of this Act and in any proceeding for judicial review pursuant to sections 6(1) and 9(g), the commissioner, the board of review, and the State may be represented by any qualified attorney who is employed by the commissioner and is designated by him for this purpose; or, at the commissioner's request, by the attorney general, or if the action is brought in the courts of any other State, by any attorney qualified to appear in the courts of that State.

(2) All criminal actions for violation of any provision of this Act, or of any rules or regulations issued pursuant thereto, shall be prosecuted by the attorney general of the State; or, at his request and under his direction, by the prosecuting attorney of any county in which the employing unit concerned has a place of business or the violator resides.

(1) Disclosure of information.--Except as otherwise provided in this Act, information obtained from any employing unit or individual pursuant to the administration of this Act, and determinations as to the benefit rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner revealing the individual's or the employing unit's identity. Any

Section 13(1)

claimant (or his legal representative) shall be supplied with information from the records of the department, to the extent necessary for the proper presentation of his claim in any proceeding under this Act with respect thereto. Subject to such restrictions as the commissioner may by regulation prescribe, (1) information may be made available to any agency of this or any other State, or any Federal agency, charged with the administration of an unemployment insurance program or the maintenance of a system of public employment offices, or for purposes of the Federal Unemployment Tax Act to the Bureau of Internal Revenue of the United States Department of the Treasury, and (2) information obtained in connection with the administration of the employment service may be made available to persons or agencies only for purposes related to the operation of a public employment service. Upon request therefor, the commissioner shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this Act. The commissioner may request the Comptroller of the Currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this Act, and may in connection with such request transmit any such report or return to the Comptroller of the Currency of the United States as provided in section 1606(c) of the Federal Unemployment Tax Act.

(j) Federal-State cooperation.--(1) In the administration of

Commentary - Section 13(h)

(h) Representation of agency in court.—In presenting issues involving the interpretation and application of the employment security law to the courts, the commissioner should be represented by counsel who is thoroughly familiar with the problems arising in the administration of the Act, and able to devote his undivided efforts to the preparation and presentation of the agency's case. Section 13(h)(1) provides such representation. The commissioner may employ an attorney (or in the larger States attorneys) as a regular salaried member (or members) of the staff of the agency to advise generally on legal matters and also to represent the agency and the State in litigation arising under the Act. In addition the commissioner is authorized to call upon the attorney general for assistance in appropriate cases. Where constitutional provisions require that the State be represented in all litigation by the attorney general, the regular salaried attorney of the agency can be designated by the attorney general as a deputy for the purpose of appearing for the State in civil litigation on unemployment insurance.

In criminal proceedings, however, the regularly constituted prosecuting agencies are in a better position to handle the cases. Paragraph (2), therefore, directs the attorney general of the State either to prosecute all criminal actions for violation of the Act or to request prosecution, under his direction, by the prosecuting attorney of the county in which the employing unit concerned has a place of business or the violator resides.

(1) Disclosure of information.—Section 13(1) restricts the disclosure of information received by the agency by limiting its use to the purposes of the Act. With the power to require information for use in the administration of the law goes the responsibility for using the information only for the purposes intended. Compliance with reporting requirements would be difficult to enforce if the information obtained in the reports were open to public inspection or made available to other public agencies in the administration of unrelated statutes. The importance of maintaining the confidential character of information given in connection with tax returns has long been recognized. To permit the information to become public would defeat the purpose of the law by deterring the taxpayer from revealing what frequently could not be learned from any other source. Section 13(1) is tantamount to the State's pledge that if a taxpayer makes full disclosure of all facts affecting the tax, the facts will be kept inviolate except for the purpose for which they were given.

Moreover, the disclosure of information received from an employer about a claimant or of personal information given by a claimant would tend to discourage workers from exercising their full rights in filing claims. Likewise, employers and applicants would tend to withhold information necessary for the successful operation of a public employment service unless they were confident that it would be used only for the purposes for which it is given. The privileged and confidential nature of information given a lawyer by his client or a physician by his patient

Commentary - Section 13(1)

has long been recognized in law and tradition. The wisdom of confidential treatment of such information has been proved in practice. A requirement for confidential treatment of the claimant's information is in effect in the public assistance program and the history of workmen's compensation has demonstrated the necessity for maintaining records in confidence. The same need exists in this program. The provision is a protection also to the commissioner and the agency. Failure to include such a provision may mean that the agency will be harassed (to the detriment of its efficiency) by requests for information about individuals and their personal affairs. For these reasons section 13(1) provides that information obtained from any employing unit or individual and determinations of benefit rights may be released only:

- (1) to a claimant as necessary for the proper presentation of a claim;
- (2) to State and Federal agencies charged with the administration of an unemployment insurance program or the maintenance of an employment service, such as other State employment security agencies, the Secretary of Labor, the Railroad Retirement Board, the Veterans' Administration, and the Maritime Commission;
- (3) to the Federal Bureau of Internal Revenue, for purposes of the Federal Unemployment Tax Act; and
- (4) to Federal agencies administering public works and public assistance through public employment, as required by section 303(a)(7) of the Social Security Act.

Information obtained in connection with the administration of the employment service may be made available to persons or agencies only for purposes related to the operation of a public employment service.

The section provides also that that the commissioner may request the Comptroller of the Currency of the United States to examine the correctness of any report which he has received from a national banking association. This reference to the examination of reports from national banking associations is in line with section 1606(c) of the Federal Unemployment Tax Act. That section authorizes the State to require the submission of reports from national banking associations but imposes responsibility for examination of the correctness of the reports upon the Comptroller of the Currency, thus avoiding conflict on the question of State jurisdiction over national banks.

Section 14(e) provides penalties for any unauthorized disclosure of information.

(j) Federal-State cooperation.—Section 13(j) is an expression of the State's intention to give its citizens the full advantage of Federal legislation as enacted in the Social Security Act, section 1601

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

SUBREGION 37

STEPHENS MEDIA LLC dba HAWAII) CASE NO. 37-CA-7043
TRIBUNE HERALD and HAWAII)
NEWSPAPER GUILD, LOCAL 39117,) CERTIFICATE OF SERVICE
COMMUNICATIONS WORKERS OF)
AMERICA, AFL-CIO.)
_____)

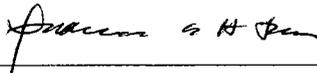
CERTIFICATE OF SERVICE

I hereby certify that the Department of Labor and Industrial Relations, State of Hawaii's Motion to Revoke Subpoena and Subpoena Duces Tecum Issued on January 2, 2013 to Custodian of Records, Hilo Unemployment Office; Memorandum in Support; Declaration of Patti-Ann L. Kaneshiro; Declaration of Frances E. H. Lum; Exhibits A - C was duly served by depositing the same in the United States mail, postage prepaid and by facsimile as follows:

The Zinser Law Firm
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Nashville, TN 37219

Facsimile: 615.244.9734

DATED: Honolulu, Hawai'i, MAR - 7 2013.



FRANCES E. H. LUM