

EDWARD H. KUBO, JR. (2499)
United States Attorney
DERRICK K. WATSON (CA Bar No. 154427)
Assistant United States Attorney
District of Hawaii

RONALD J. TENPAS
Assistant Attorney General
ANDREW A. SMITH (NM Bar #8341)
Trial Attorney
United States Department of Justice
Environment and Natural Resources Division
c/o U.S. Attorneys Office
P.O. Box 607
Albuquerque, New Mexico 87103
Telephone: (505) 224-1468
Facsimile: (505) 346-7205
E-mail: andrew.smith@usdoj.gov

Attorneys for Federal Defendants
U.S. DEPARTMENT OF ENERGY
and NATIONAL SCIENCE FOUNDATION

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

LUIS SANCHO and
WALTER L. WAGNER,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF ENERGY, *et al.*,

Defendants.

) Civil No. 08-00136-HG-KSC
)
) **FEDERAL DEFENDANTS' EX**
) **PARTE APPLICATION TO STRIKE**
) **PLAINTIFFS' UNTIMELY**
) **RESPONSES TO FEDERAL**
) **DEFENDANTS' MOTION TO DISMISS**
) **OR, IN THE ALTERNATIVE, FOR AN**
) **OPPORTUNITY TO REPLY;**
) **DECLARATION OF DERRICK K.**
) **WATSON**
)
) **EXPEDITED CONSIDERATION**
) **REQUESTED**
)

Federal Defendants United States Department of Energy ("DOE") and the National Science Foundation ("NSF") respectfully request that the Court strike Plaintiffs' untimely August 22, 2008 27-page "Memorandum of Law in Opposition to 'Combined Motion to Dismiss and for Summary Judgment,'" Dkt. No. 49; Plaintiffs' August 26, 2008 17-page "Affidavit of Walter L. Wagner in Support of Opposition to 'Combined Motion to Dismiss and for Summary Judgment'" and attachments, Dkt. No. 54; Plaintiffs' August 26, 2008 29-page "Affidavit of Luis Sancho in Support of Opposition to 'Combined Motion to Dismiss and for Summary Judgment'" and attachments, Dkt. No. 55; and Plaintiffs' improper August 26, 2008 "Rebuttal to 'Federal Defendants' Reply in Support of Combined Motion to Dismiss and for Summary Judgment," Dkt. No. 52. In the alternative, if the Court does not strike these untimely and improper papers, Federal Defendants respectfully request that the Court reschedule the September 2, 2008 hearing on Federal Defendants' "Combined Motion to Dismiss and Motion for Summary Judgment," Dkt. No. 14 (hereinafter "Federal Defendants' Motion"), to allow Federal Defendants a minimum of three weeks to reply to Plaintiffs' voluminous untimely and improper opposition filings.

Federal Defendants respectfully request that the Court consider this Application in an *ex parte* and expedited manner because Federal Defendants'

Motion is currently set for hearing on September 2, 2008. Lead counsel for Federal Defendants resides in Albuquerque, New Mexico, and representatives of the federal defendant agencies reside in the Washington, D.C. area, and thus must arrange or rearrange long-distance travel plans to attend any hearing in Hawaii. Plaintiffs' failure to comply with the Local Rules by filing untimely and improper papers has raised serious questions as to whether and how the hearing on September 2 can go forward. Expedited consideration of this Application--at least with respect to whether the September 2 hearing will be continued--is needed to provide Federal Defendants with reasonable notice of what materials the Court considers properly before it for that hearing, or whether that hearing is to be continued, so that Federal Defendants can reasonably prepare and make appropriate travel and other arrangements.

In support of this *Ex Parte* Application, Federal Defendants state as follows:

Federal Defendants filed their "Combined Motion to Dismiss and Motion for Summary Judgment," Dkt. No. 14, and supporting materials, see Dkt. Nos. 15-20, on June 24, 2008. On June 25, 2008, the Court set a hearing on Federal Defendants' Motion for September 2, 2008. Dkt. No. 21. Pursuant to Local Rule 7.4, Plaintiffs' opposition to Federal Defendants' Motion was due on or before August 15, 2008. See L.R. 7.4 ("An opposition to a motion set for hearing shall be

served and filed not less than eighteen (18) days prior to the date of hearing.").

In their August 26, 2008 "Rebuttal," Plaintiffs assert that it is not clear whether Local Rule 7.4 governs the timing of responses to Federal Defendants' Motion. Local Rule 7.2, however, explicitly dictates that "all" motions (except for certain identified motions not relevant here) shall be set for hearing not less than 28 days after service of the motion, and the 18-day deadline provision of Local Rule 7.4, in turn, applies to any opposition to "a motion set for hearing." Local Rule 7.4 also requires that "the opposition shall include affidavits or declarations and a memorandum of law." Nothing in these rules or Local Rule 56.1 or Federal Rule of Civil Procedure 56 indicates that summary judgment opposition briefs and supporting papers are not governed by the 18-day rule and may be filed at the opposing party's whim.

Moreover, Plaintiffs' assertions ignore the fact that Federal Defendants moved for summary judgment only on their statute of limitations argument. The bulk of Federal Defendants' Motion is a motion to dismiss for lack of jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1), not Federal Rule of Civil Procedure 56. Plaintiffs' August 26 declarations do not dispute the facts supporting Federal Defendants' statute of limitations arguments, and thus Federal Rule of Civil Procedure 56 provides Plaintiffs no cover for filing their opposition

papers out of time.

Under the Local Rules, Plaintiffs had almost two months to prepare and file a response to Federal Defendants' Motion. Nonetheless, Plaintiffs failed to file or serve any opposition to Federal Defendants' Motion by their August 15 deadline. On the afternoon of August 22, 2008, however--the same day that Federal Defendants' reply in support of Federal Defendants' Motion was due pursuant to the local rules--the United States Attorney's Office in Hawaii received by U.S. mail a copy of a 27-page brief purporting to be Plaintiffs' opposition to Federal Defendants' Motion. Declaration of Derrick K. Watson ("Watson Decl.") at ¶2. This brief, which did not appear on the Court's docket until August 25, 2008, Dkt. No. 49, is dated August 20, 2008, was postmarked to the United States Attorney's Office on August 21, 2008, and is signed only by *pro se* Plaintiff Walter L. Wagner.

Plaintiffs waited even longer to file two new affidavits in support of their untimely opposition to Federal Defendants' Motion. These affidavits, one by Plaintiff Sancho and one by Plaintiff Wagner, Dkt. Nos. 54 and 55, were not filed until yesterday, August 26, 11 days after they were due and just one week before the scheduled September 2 hearing. Federal Defendants still have not received service of these affidavits from Plaintiffs, which are lengthy and contain numerous

attachments. Watson Decl., ¶3.

Federal Defendants had no notice that Plaintiffs would be filing their opposition brief a week after its due date, or their opposition affidavits even later than that. Plaintiffs did not contact Federal Defendants to advise them that Plaintiffs needed additional time to prepare their opposition papers, and Federal Defendants are not aware of any contact that Plaintiffs may have had with the Court seeking or obtaining leave to file their opposition papers out of time. Watson Decl., ¶4. Plaintiffs have provided no credible reason for failing to meet their very lenient due date under the Local Rules for filing an opposition to Federal Defendants' Motion.¹

Because Plaintiffs have not obtained leave to file their opposition papers out of time and have provided no credible excuse for missing their due date, the Court should strike Plaintiffs' brief. Although Plaintiffs are appearing *pro se*, their opposition brief and affidavits accurately reflect the hearing date on Federal Defendants' Motion. Therefore, Plaintiffs should be presumed to have been aware of their deadline for filing their opposition papers, as well as the potential

¹ Federal Rule of Civil Procedure 6(b)(2) provides that after the expiration of the specified time period to act, a motion for an extension of time must demonstrate that the failure to act was the result of "excusable neglect." Here, Plaintiffs have not even requested an extension of time, let alone made any showing of excusable neglect.

ramifications of missing that deadline without an excused extension.² Because Federal Defendants did not receive a copy of Plaintiffs' 27-page opposition brief until just hours before Federal Defendants' reply brief was due, and because Plaintiffs' 17- and 29-page declarations were not filed until days after Federal Defendants' reply brief was due, Federal Defendants would plainly be prejudiced were the Court to consider Plaintiffs' untimely submissions. This is particularly true because Plaintiffs' opposition brief and declarations raise new legal and factual theories for Plaintiffs' claim of standing.³

Plaintiffs' "Rebuttal" dated August 23, 2008, and filed in response to Federal Defendants' August 22, 2008 "Reply in Support of Combined Motion to Dismiss

² Plaintiffs' untimely filing of their opposition brief is not the first time that Plaintiffs have failed to meet court deadlines in this case. Pursuant to the Court's March 21, 2008 "Order Setting Rule 16 Scheduling Conference," Dkt. No. 2, and Local Rule 16.2(b), Plaintiffs were required to file a Scheduling Conference Statement on or before June 9, 2008. Without explanation, however, Plaintiffs did not file their statement until June 12, 2008, just two days before the conference with the Court.

³ For example, Plaintiffs' claim of physical injury in their Complaint was based on their lay-person speculation about the creation of "strangelets," "micro black holes," and "magnetic monopoles" that Plaintiffs allege might destroy the planet. See Complaint, Dkt. No. 1, ¶¶ 13(a), (b), ©. In their opposition papers, however, Plaintiffs do not address how these speculative threats establish Plaintiffs' standing, but instead suggest for the first time (again, based on their lay-person speculation) that operation of the Large Hadron Collider might create a "thermonuclear explosion." See Pls. Opp. at 21 n.31.

and Motion for Summary Judgment," Dkt. No. 48, also violates the Local Rules and should be stricken. After setting forth the time frame and content for reply briefs in support of motions, Local Rule 7.4 states that "[n]o further or supplemental briefing shall be submitted without leave of court." Local Rule 7.4 could be no clearer: The filing of a reply brief closes briefing on a motion, and any further briefs may only be filed with leave of the Court. Plaintiffs violated this Local Rule by filing their "Rebuttal," which not only argues that Plaintiffs timely filed their opposition brief, but also raises new arguments that Federal Defendants' Motion should not be considered because Federal Defendants failed to file a "Concise Statement" as required by Local Rule 56.1, Plfs. Rebuttal at 4-5,⁴ and that the Court is "obligated" to scour the case file for "all the factual affidavits on file herein no matter when filed" to determine whether a genuine issue of material fact prevents the entry of summary judgment, *id.* at 5.⁵ These defenses to Federal

⁴ Plaintiffs' assertion that Federal Defendants failed to file a "Concise Statement" is perplexing. Federal Defendants filed and served a plainly labeled "Concise Statement" with their summary judgment papers on June 24, 2008, citing Local Rule 56.1, and that document is clearly identified on the Court docket. *See* Dkt. No. 16.

⁵ Plaintiffs are, of course, wrong on this point as well. *See, e.g., Forsberg v. Pacific N.W. Bell Tel. Co.*, 840 F.2d 1409, 1418 (9th Cir. 1988) (holding that a district court is "not required to comb the record to find some reason to deny a motion for summary judgment" and that "[i]f a party wishes the court to consider (continued...)

Defendants' Motion could have been raised in a timely manner before the expiration of Plaintiffs' August 15 due date. Plaintiffs' "Rebuttal" should therefore be stricken.

In addition, the Court should strike Plaintiffs' opposition and "Rebuttal" briefs because they purport to present claims and defenses, and to seek relief, on behalf of both Plaintiffs, although they are signed only by Plaintiff Walter L. Wagner. See, e.g., Plfs. Opp. at 10 (arguing that summary judgment is "entirely inapplicable as against the plaintiffs"); id. at 14 (arguing that the Court should "*sua sponte* enter summary judgment in favor of plaintiffs"); id. at 15-18 (arguing that plaintiffs have standing); id. at 18-21 (arguing that plaintiffs' claims are not moot); id. at 23 (arguing that plaintiffs' claims are not time-barred); Plfs. Rebuttal at 1 ("Plaintiffs respectfully rebut . . ." and "Plaintiffs relied upon Local Rule 56.1 . . ."). On information and belief, Mr. Wagner is not a licensed attorney and is not admitted to practice law before this Court. It is well settled that a *pro se* plaintiff may not file papers purporting to represent the claims or interests of others. See,

^{5/}(...continued)

an affidavit for more than one issue, the party should bring that desire to the attention of the court"); Local Rule 56.1(f) ("When resolving motions for summary judgment, the court shall have no independent duty to search and consider any part of the court record not otherwise referenced in the separate concise statements of the parties.").

e.g., C.E. Equity Trust v. United States, 818 F.2d 696, 697 (9th Cir. 1987)

("Although a non-attorney may appear *in propria persona* in his own behalf, that privilege is personal to him [and h]e has no authority to appear as an attorney for others than himself.") (citations omitted); see also Fed. R. Civ. P. 11(a),⁶ 28 U.S.C. § 1654.

By signing and filing Plaintiffs' opposition brief on behalf of both himself and Mr. Sancho, Mr. Wagner engaged in the unauthorized practice of law.

Therefore, the Court should strike Plaintiffs' opposition brief and admonish Mr. Wagner not to file any further papers that are signed only by him and purport to present arguments, positions, or requests for relief on behalf of both Plaintiffs.⁷

⁶ See Warren v. Guelker, 29 F.3d 1386, 1390 (9th Cir. 1994) (holding that Federal Rule of Civil Procedure 11 applies to parties not represented by attorneys, and that a court cannot decline to impose sanctions under Rule 11 "simply because plaintiff is proceeding *pro se*").

⁷ Plaintiffs' opposition brief is not the first or only paper that Mr. Wagner improperly signed and filed on behalf of both Plaintiffs. For instance, Plaintiffs' August 5, 2008 motion for a default judgment and permanent injunction against CERN and memorandum in support were signed only by Mr. Wagner. See Dkt. Nos. 29 and 31; see also Dkt. Nos. 9, 24 (other papers filed on behalf of Plaintiffs but signed only by Mr. Wagner). Although Mr. Wagner filed an "erratum" on August 11, 2008 purporting to correct this problem, see Dkt. No. 34, the original papers were still filed in violation of the rule against *pro se* parties practicing law without a license, and Mr. Wagner tacitly recognized this violation by filing the "erratum," which itself is also improperly signed only by Mr. Wagner. The filed version of Plaintiffs' opposition brief contains a written notation next to Mr.

(continued...)

See, e.g., Moran v. A/C Financial, Inc., 2006 WL 2815491 at *3 (S.D. Ohio 2006) (striking response brief that was untimely and filed on behalf of plaintiffs that was signed by one *pro se* plaintiff but not the other plaintiffs, because "any attempt to represent others constitutes the unauthorized practice of law that should not be permitted").

Although *pro se* plaintiffs are generally afforded some leeway in litigating cases in federal court, "[p]ro se litigants must follow the same rules of procedure that govern other litigants." King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Moreover, here Plaintiff Walter L. Wagner is not an unsophisticated *pro se* litigant. According to Mr. Wagner's March 31, 2008 declaration in support of Plaintiffs' Complaint, Mr. Wagner obtained a law degree in Sacramento, California in 1978. Dkt. No. 1, Attch. 3, ¶ 1. Although Mr. Wagner does not state whether he took (or passed) a bar exam or whether he has ever been admitted to the practice of law, Mr. Wagner has and continues to represent himself *pro se* in numerous cases in

²⁷(...continued)

Wagner's signature stating that "Dr. Sancho signature to arrive via an 'Erratum' separately." Plfs. Opp. at 27. This notation is not on the version received by the United States Attorney's Office, and it is not indicated who made the notation. Plainly, however, the notation further emphasizes that Mr. Wagner is aware of the impropriety of his signing and filing papers on behalf of both Plaintiffs without both signatures. Plaintiffs' August 23 "Rebuttal," is also improperly signed only by Mr. Wagner.

several jurisdictions, including at least the following, just in the past ten years:

Federal Cases

Wagner v. U.S. Dep't of Energy, Civ. No. C99-2226 MMC (N.D. Cal.)
(Mr. Wagner *pro se* plaintiff)

Wagner v. Brookhaven Science Assocs., LLC., Civ. No. 00-1656 (S.D.N.Y.)
(Mr. Wagner *pro se* plaintiff)

Wagner v. Brookhaven Assocs., Case No. 00-CV-1672 (JG) (E.D.N.Y.)
(Mr. Wagner *pro se* plaintiff)

Wagner v. Kaplan, Civ. No. 1:02-cv-00722-DAE-BMK (D. Haw.)
(Mr. Wagner *pro se* plaintiff)

Wagner v. Kaplan, 3:03-cv-02476 (N.D. Cal.) (Mr. Wagner *pro se* plaintiff)

Wagner v. Flippo, 3:05-cv-02863-JSW (N.D. Cal.) (Mr. Wagner *pro se*
plaintiff) (Westlaw opinions at 2005 WL 3260789 and 2005 WL 2999369)

State of Hawaii (Circuit Court of the Third Circuit) cases (information from
Hawai'i State Judiciary's Public Access to Court Information,
<http://hoohiki1.courts.state.hi.us/jud/Hoohiki/main.htm>)

State of Hawai'i v. Wagner, Cr. No. 3PC08-1-00097 (Mr. Wagner *pro se*
(initially) defendant)

Alderson v. Wagner, Civ. No. 3CC08-1-000007 (Mr. Wagner *pro se*
defendant)

Indymac Bank FSB v. Wagner, Civ. No. 3CC08-1-000003 (Mr. Wagner *pro se*
defendant in foreclosure case)

World Botanical Gardens, Inc. v. Wagner, Civ. No. 3SP07-1-000026
(Mr. Wagner *pro se* defendant)

Perkins v. World Botanical Gardens, Inc., Civ. No. 3CC07-1-000015
(Mr. Wagner *pro se* plaintiff)

World Botanical Gardens, Inc. v. Wagner, Civ. No. 3SP06-1-000058
(Mr. Wagner *pro se* defendant)

Perkins v. Francik, Civ. No. 3CC06-1-000384 (Mr. Wagner *pro se* plaintiff)

Office of Hawaii Prosecuting Attorney v. Wagner, Civ. No. 3SP06-1-
000001 (Mr. Wagner *pro se* movant) (opinion on appeal at 114 Hawai'i 301,
162 P.3d 17 (Table))

Wagner v. Title Guaranty Escrow Serv., Civ. No. 3CC05-1-000406
(Mr. Wagner *pro se* plaintiff)

Wagner v. Canda, Civ. No. 3CC05-1-000337 (Mr. Wagner *pro se* movant)

Miller v. Wagner, Civ. No. 3CC05-1-000325 (Mr. Wagner *pro se* defendant)

World Botanical Gardens, Inc. v. Wagner, Civ. No. 3CC05-1-000210
(Mr. Wagner *pro se* defendant) (opinion on appeal 2006 WL 1215190)

Wagner v. World Botanical Gardens, Inc., Civ. No. 3CC04-1-000232
(Mr. Wagner *pro se* plaintiff)

Vietas v. Wagner, Civ. No. 3CC03-1-000033 (Mr. Wagner *pro se* defendant)

Wagner v. Cohen, Civ. No. 3CC00-1-000468 (Mr. Wagner *pro se* plaintiff)
(opinion on appeal 2003 WL 21288621)

|||

|||

|||

State of California cases

Morton v. Wagner, Civ. No. DVH1325 (Cal. Superior Court, Monterey County) (Mr. Wagner *pro se* defendant) (opinions on appeal 2003 WL 21456517 and 156 Cal. App. 4th 963, 67 Cal. Rptr. 3d 818 (Cal. App., 6 Dist., 2007))

Mr. Wagner has even filed *pro se* a petition for writ of certiorari before the Supreme Court of the United States in a case arising out of State Court in Nevada. See Wagner v. World Botanical Gardens, Inc., 2008 WL 2492161 (U.S. Apr. 12, 2008). In light of his law degree and these numerous recent cases in which Mr. Wagner has represented himself in court, he should be well aware of court procedures.

For the foregoing reasons, the Court should strike Plaintiffs' August 22, 2008 opposition brief, Dkt. No. 49; August 26, 2008 affidavits, Dkt. Nos. 54 and 55; and August 26, 2008 "Rebuttal," Dkt. No. 52. In the alternative, if the Court does not strike these filings, Federal Defendants respectfully request that the Court reschedule its September 2, 2008 hearing date on Federal Defendants' Motion and afford Federal Defendants a minimum of three weeks to reply to these new papers. In addition to raising numerous legal arguments, Plaintiffs' opposition brief and declarations raise several factual issues that Federal Defendants need sufficient time to address properly in responsive expert declarations. Federal Defendants

should be afforded a reasonable time to prepare and file responsive papers prior to the Court's hearing on the Motion. In accordance with Local Rule 7.4, the Court should also advise Plaintiffs that Plaintiffs may file no further papers in opposition to Federal Defendants' Motion without prior leave of the Court.

Dated this 27th day of August 2008.

Respectfully submitted,
EDWARD H. KUBO, JR. (2499)
United States Attorney
District of Hawaii

/s/ Derrick K. Watson

DERRICK K. WATSON
(CA Bar No. 154427)
Assistant United States Attorney
District of Hawaii

RONALD J. TENPAS
Assistant Attorney General
Env't & Natural Resources Div.
ANDREW A. SMITH (N.M. Bar #8341)
Trial Attorney
Natural Resources Section
Env't & Natural Resources Div.
United States Department of Justice
Attorneys for Federal Defendants
U.S. Department of Energy and
National Science Foundation

Of Counsel:

Caroline M. Blanco
Assistant General Counsel
Office of the General Counsel
National Science Foundation
Arlington, VA

Steve Dove
Attorney
Office of the General Counsel
U.S. Department of Energy
Washington, D.C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 27, 2008, true and correct copies of the foregoing were served on the following individuals by United States mail, first class postage prepaid:

LUIS SANCHO
P.O. Box 411
Honolulu, Hawaii 96728

WALTER L. WAGNER
P.O. Box 881
Pepeekeo, Hawaii 96783

MARTIN S. KAUFMAN
Atlantic Legal Foundation
2039 Palmer Avenue
Larchmont, New York 10538

and by the Court's ECF System on:

ROBERT M. KOHN
Price Okamoto Himeno & Lum
rkohn@pohlhawaii.com

and by email on:

WALTER L. WAGNER
lhdefense@hotmail.com
mbbg2005@hotmail.com

/s/ Derrick K. Watson

DERRICK K. WATSON
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

LUIS SANCHO and
WALTER L. WAGNER,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF ENERGY, *et al.*,

Defendants.

) Civil No. 08-00136-HG-KSC
)
) **DECLARATION OF DERRICK K.**
) **WATSON IN SUPPORT OF**
) **FEDERAL DEFENDANTS' EX**
) **PARTE APPLICATION TO STRIKE**
) **PLAINTIFFS' UNTIMELY**
) **RESPONSES TO FEDERAL**
) **DEFENDANTS' MOTION TO DISMISS**
) **OR, IN THE ALTERNATIVE, FOR AN**
) **OPPORTUNITY TO REPLY**
)
)
)

I, Derrick K. Watson, declare that:

1. I am an Assistant United States Attorney for the District of Hawaii, and am counsel for the Federal Defendants in the above-entitled action. I have personal knowledge of the facts set out herein, and I am authorized to make this declaration.

2. On the afternoon of August 22, 2008, I first received by U.S. Mail a copy of Plaintiffs' 27-page "Memorandum of Law in Opposition to 'Combined Motion to Dismiss and for Summary Judgment,'" Dkt. No. 49. This Memorandum was postmarked the previous day, August 21, 2008.

3. The Federal Defendants have yet to receive a service copy of Plaintiffs' August 26, 2008 17-page "Affidavit of Walter L. Wagner in Support of Opposition to 'Combined Motion to Dismiss and for Summary Judgment'" and attachments, Dkt. No. 54, or Plaintiffs' August 26, 2008 29-page "Affidavit of Luis Sancho in Support of Opposition to 'Combined Motion to Dismiss and for Summary Judgment'" and attachments, Dkt. No. 55. The Federal Defendants only received notice of these two affidavits once they were posted by the Court through the ECF system, in which Plaintiffs do not participate.

4. Neither I, nor, to my knowledge, any other defense counsel, has received a request or other inquiry from Plaintiffs regarding their need for additional time to respond to Federal Defendants' dispositive motion.

5. Lead defense counsel and federal defendant agency representatives who will attend the hearing on Federal Defendants' Combined Motion to Dismiss and for Summary Judgment will be traveling to Honolulu from Albuquerque, New Mexico and the Washington, D.C. area.

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

Executed on August 27, 2008 at Honolulu, Hawaii.

/s/ Derrick K. Watson

DERRICK K. WATSON

Motions

1:08-cv-00136-HG-KSC Sancho v. U.S. Department of Energy et al

U.S. District Court

District of Hawaii

Notice of Electronic Filing

The following transaction was entered by Watson, Derrick on 8/27/2008 at 11:54 AM HST and filed on 8/27/2008

Case Name: Sancho v. U.S. Department of Energy et al

Case Number: 1:08-cv-136

Filer: U.S. Department of Energy
Fermilab
National Science Foundation

Document Number: 56

Docket Text:

MOTION to Strike *FEDERAL DEFENDANTS' EX PARTE APPLICATION TO STRIKE PLAINTIFFS' UNTIMELY RESPONSES TO FEDERAL DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR AN OPPORTUNITY TO REPLY; CERTIFICATE OF SERVICE* Derrick K. Watson appearing for Defendants U.S. Department of Energy, Fermilab, National Science Foundation (Attachments: # (1) Declaration of Derrick K. Watson)(Watson, Derrick)

1:08-cv-136 Notice has been electronically mailed to:

Andrew A. Smith andrew.smith@usdoj.gov, andrew.smith6@usdoj.gov

Derrick K. Watson derrick.watson@usdoj.gov, ann.yuuki@usdoj.gov, suzanne.lofton@usdoj.gov

1:08-cv-136 Notice will not be electronically mailed to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1095854936 [Date=8/27/2008] [FileNumber=553249-0]
[08597bd033c38ba63157a31cb005faa6a52029c178fa1e979944463dca78f5796298
65424196336cfe568e8667400e5026da223afbaf62526f8a3abf59cfd8d7]]

Document description:Declaration of Derrick K. Watson

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1095854936 [Date=8/27/2008] [FileNumber=553249-1]
[50987139b12209a4531fd9250658e6b2d8b3cf71630f8bc0e21c1863cf94bcc3248b
fa290849fa6f6e7462ca1668717f0a30e7ca4b50d6d5c1a65ec817c507fe]]