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 SAN FRANCISCO UNIFIED SCHOOL DISTRICT

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 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA

17 SYLVIA FITCH,
 18 Plaintiff,

19 v.

20 SAN FRANCISCO UNIFIED SCHOOL
 21 DISTRICT,
 22 Defendants.

Case No. 3:15-cv-02769-SI

Case filed: 06/19/15
 Case reassigned: 08/14/15, 09/11/15
 Trial date: 03/13/17

**APPLICATION FOR ORDER REGARDING
 DEPOSITION OF ABDUL LATIF IN OCTOBER;
~~PROPOSED~~ ORDER**

Hon. Susan Illston

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 24
 25 The parties hereby apply to the Court for an order directing non-party Abdul Latif to appear for
 26 deposition on October 17, 25, 26 or 28, 2016. In orders filed on June 9, 2016 and June 29, 2016, the
 27 Court held Mr. Latif in contempt for his failure to obey two subpoenas to appear for deposition. Copies
 28 of the orders are attached as Exhibit A.

1 The June 29, 2016 order directed Mr. Latif to appear for deposition on June 29, 2016 and that if
2 he failed to do so he would be subjected to further sanctions. Mr. Latif did not appear as directed.

3 On June 29, 2016, the Court held a status conference in this case and found it appropriate to order
4 the U.S. Marshal to serve Mr. Latif with copies of the June 9, 2016 and June 29, 2016 orders.

5 The June 29, 2016 order also directed Mr. Latif to appear for deposition on July 28, 2016 at 1:30
6 p.m. The U.S. Marshal has been unable to effect service because it appears that Mr. Latif is evading
7 service.

8 Mr. Latif will return to work in August. Plaintiff's counsel has requested that Mr. Latif's
9 deposition be set for a date in October. As Mr. Latif will be at work, the District can assist with service.
10 Because the District and plaintiff have been unable to successfully secure Mr. Latif's appearance, it is
11 appropriate to order the United States Marshal Service to serve Mr. Latif with a copy of this order, as
12 well as the June 9, 2016 and June 29, 2016 orders. One U.S. Marshal shall be sufficient to effectuate
13 service. Plaintiff shall pay the U.S. Marshal Service the fees and costs for service, which is \$65 per hour
14 for the Marshal and \$.54 per mile for mileage.

15 Both plaintiff's counsel and the District's counsel are available on October 17, 25, 26 or 28. A
16 status conference shall be set for the same date as the deposition to determine what sanctions may be
17 warranted should Mr. Latif fail to appear.

18
19 Dated: July 28, 2016

LAW OFFICE OF RICHARD M. ROGERS

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21 By: /s/ Richard Rogers
22 Richard M. Rogers
23 Attorney for Plaintiff
 SYLVIA FITCH

24 Dated: July 28, 2016

BERTRAND, FOX, ELLIOT, OSMAN & WENZEL

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26 By: /s/ Eugene Elliot
27 Eugene B. Elliot
28 Attorney for Defendant
 SAN FRANCISCO UNIFIED SCHOOL DISTRICT

ATTORNEY ATTESTATION

I, EUGENE ELLIOT, am the ECF User whose ID and password are being used to file this APPLICATION FOR ORDER RE DEPOSITION OF ABDUL LATIF; [PROPOSED] ORDER. I have obtained concurrence in and authorization of the filing of this document from Richard M. Rogers, attorney for Plaintiff SYLVIA FITCH. I shall maintain records to support this concurrence for subsequent production for the Court if so ordered or for inspection upon request by a party.

Dated: July 28, 2016

BERTRAND, FOX, ELLIOT, OSMAN & WENZEL

By: /s/ Eugene Elliot

Eugene B. Elliot
Attorney for Defendant
SAN FRANCISCO UNIFIED SCHOOL DISTRICT

ORDER

Mr. Latif is hereby ORDERED to appear for his deposition on October 17, 2016 at 10:00 at Courtroom 1 on the 17th Floor, 450 Golden Gate Avenue, San Francisco. If Mr. Latif appears for his deposition, he will “purge” this finding of civil contempt. If Mr. Latif fails to appear for his deposition, the Court will hold a hearing on October 17, 2016 at 10:00^{am} to determine what sanctions, including an order into custody and/or monetary sanctions, are warranted. The Court informs Mr. Latif that disobedience of a court order is a serious matter and that further contumacious conduct will have significant consequences.

The Court finds it appropriate to order the United States Marshal Service to serve Mr. Latif with a copy of this order, as well as the June 9, 2016 and June 29, 2016 orders. The Court finds one U.S. Marshal shall be sufficient to effectuate service. Plaintiff shall pay the U.S. Marshal Service the fees and costs for service, which is \$65 per hour for the Marshal and \$.54 per mile for mileage.

IT IS SO ORDERED.

Dated: 7/29/16

By: 
Susan Illston
UNITED STATES DISTRICT COURT JUDGE

EXHIBIT A

EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SYLVIA FITCH,
Plaintiff,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT,
Defendant.

Case No. [15-cv-02769-SI](#)

**ORDER HOLDING ABDUL LATIF IN
CIVIL CONTEMPT AND ORDERING
MR. LATIF TO APPEAR FOR
DEPOSITION ON JUNE 29, 2016 AT 10
AM IN COURTROOM 1**

United States District Court
Northern District of California

On June 9, 2016, the Court held a hearing on plaintiff's motion for an order to show cause why non-party Abdul Latif should not be held in contempt for his failure to obey two subpoenas to appear for deposition. Mr. Latif is an employee of defendant San Francisco Unified School District. Counsel for plaintiff and defendant attended the hearing. Counsel for defendant stated that defendant had personally served Mr. Latif with the Court's orders setting the June 9, 2016 hearing. Mr. Latif did not appear at the hearing, nor has Mr. Latif contacted the Court to provide any explanation for his failure to appear for deposition.

According to plaintiff's motion and supporting declaration, Mr. Latif failed to appear for deposition on April 18, 2016, despite having been personally served with a subpoena on March 9, 2016, and after having avoided nine attempts for service at his place of employment in February, 2016. The parties agreed that defendant would serve a new subpoena setting Mr. Latif's deposition for May 18, 2016. Defense counsel confirmed on May 16, 2016, that Mr. Latif had been served. Mr. Latif again failed to appear for deposition on May 18, 2016.

Subpoenas issued by attorneys are issued on behalf of the court and are treated as court orders. See *United States Sec. & Exh. Comm'n v. Hyatt*, 621 F.3d 687, 693 (7th Cir. 2010).

United States District Court
Northern District of California

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Federal Rule of Civil Procedure 45(g) allows a court to "hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it." "A civil contempt order must be accompanied by a 'purge' condition allowing the contemnor an opportunity to comply with the order before payment of a fine or other sanction becomes due." *Martínez v. City of Pittsburg*, No. C11-01017 SBA(LB), 2012 WL 699462, at *3 (N.D. Cal. Mar. 1, 2012).

To establish civil contempt, plaintiff must show by clear and convincing evidence that Mr. Latif violated a specific order of the court (here, the two subpoenas). The Court finds that plaintiff has made that showing. Mr. Latif has not provided any explanation for his failure to appear for his deposition. In response to the Court's question, counsel for defendant stated he was unaware of any explanation for Mr. Latif's failure to appear for deposition.

Accordingly, upon this record the Court finds that Mr. Latif is in contempt of court. **Mr. Latif is hereby ORDERED to appear for his deposition on June 29, 2016 at 10:00 a.m. at Courtroom 1 on the 17th floor, 450 Golden Gate Ave., San Francisco. If Mr. Latif appears for his deposition, he will "purge" this finding of civil contempt. If Mr. Latif fails to appear for his deposition, the Court will hold a hearing on June 29, 2016 at 11:00 a.m. to determine what sanctions, including an order into custody and/or monetary sanctions, are warranted. The Court informs Mr. Latif that disobedience of a court order is a serious matter and that further contumacious conduct will have significant consequences.**

IT IS SO ORDERED.

Dated: June 9, 2016



SUSAN ILLSTON
United States District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SYLVIA FITCH,
Plaintiff,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT,
Defendant.

Case No. [15-cv-02769-SI](#)

**ORDER DIRECTING U.S. MARSHAL
SERVICE TO SERVE CONTEMNOR
ABDUL LATIF AND ORDERING MR.
LATIF TO APPEAR FOR DEPOSITION
ON JULY 28, 2016 AT 1:30 PM IN
COURTROOM 1**

United States District Court
Northern District of California

In an order filed on June 9, 2016, the Court held non-party Abdul Latif in contempt for his failure to obey two subpoenas to appear for deposition. That order also ordered Mr. Latif to appear for his deposition on June 29, 2016, and informed Mr. Latif that if he failed to do so he would be subject to further sanctions. A copy of the June 9, 2016 order is attached to this order.

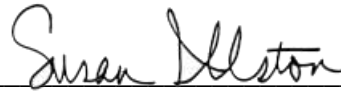
On June 29, 2016, the Court held a status conference in this case. Counsel for plaintiff and defendant appeared at the conference. Plaintiff's counsel informed the Court that the process server had been unable to serve the June 9, 2016 order on Mr. Latif because the person at the address provided for Mr. Latif is avoiding service. As plaintiff has made numerous unsuccessful attempts to serve Mr. Latif with the June 9, 2016 order, the Court finds it appropriate to order the United States Marshal Service to serve Mr. Latif with a copy of this order as well as the June 9, 2016 order. The Court finds that one U.S. Marshal shall be sufficient to effectuate service. Plaintiff shall pay the U.S. Marshal Service the fees and costs for service, which is \$65 per hour for the Marshal and \$.54 per mile for mileage.

Mr. Latif is hereby ORDERED to appear for his deposition on July 28, 2016 at 1:30 p.m. at Courtroom 1 on the 17th floor, 450 Golden Gate Ave., San Francisco. If Mr. Latif

1 appears for his deposition, he will "purge" this finding of civil contempt. If Mr. Latif fails to
2 appear for his deposition, the Court will hold a hearing on July 28, 2016 at 1:30 p.m. to
3 determine what sanctions, including an order into custody and/or monetary sanctions, are
4 warranted. The Court informs Mr. Latif that disobedience of a court order is a serious
5 matter and that further contumacious conduct will have significant consequences.

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7 **IT IS SO ORDERED.**

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9 Dated: June 29, 2016

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12 SUSAN ILLSTON
13 United States District Judge
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United States District Court
Northern District of California