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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 RICKY PHELPS,) Case No. 08cv2092-L (BLM)
12)
13) Movant,)
14 v.) **ORDER (1) GRANTING RESPONDENT'S**
15) **APPLICATION TO FILE OPPOSITION**
16) **TO MOTION TO QUASH AND**
17) **SUPPORTING DECLARATION IN**
18) **CAMERA, (2) DIRECTING THE CLERK**
19) **OF COURT TO FILE THE OPPOSITION**
20) **AND DECLARATION UNDER SEAL, AND**
21) **(3) DENYING MOVANT'S MOTION TO**
22) **QUASH**
23) [Doc. Nos. 1 & 4]
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25)
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28)

19 Ricky Phelps, who is proceeding *pro se*, seeks to quash a Social
20 Security Administration subpoena directed to Washington Mutual Bank,
21 which requests documents from four of his bank accounts. Doc. No. 1.
22 By order dated March 10, 2009, the district judge ordered Respondent to
23 file a sworn response to Mr. Phelps' motion [Doc. No. 2] and Respondent
24 did so on March 24, 2009 [see Doc. No. 4].

25 Having considered the arguments presented and all supporting
26 documents submitted, and for the reasons set forth below, Respondent's
27 application [Doc. No. 4] is **GRANTED** and Mr. Phelps' motion to quash
28 [Doc. No. 1] is **DENIED**.

1 **LEGAL STANDARD**

2 Under the Right to Financial Privacy Act ("RFPA"), 12 U.S.C. § 3401
3 *et seq.* (1978), a financial institution may disclose a customer's
4 financial records if such records are properly requested by a
5 governmental authority via an administrative summons or judicial
6 subpoena. 12 U.S.C. § 3402(2) & (4). If the customer objects to the
7 disclosure of his financial records, he must file a motion to quash the
8 summons or subpoena and timely serve the government entity with the
9 motion. 12 U.S.C. § 3410(a); see also S.E.C. v. Jerry T. O'Brien, Inc.,
10 467 U.S. 735, 745 (1984) (noting that "[a] customer's ability to
11 challenge a subpoena [under the RFPA] is cabined by strict procedural
12 requirements"). The motion must contain an affidavit or sworn statement
13 confirming that the applicant is a customer of the financial institution
14 and "stating the applicant's reasons for believing that the financial
15 records sought are not relevant to the legitimate law enforcement
16 inquiry stated by the Government authority in its notice, or that there
17 has not been substantial compliance with the provisions of [chapter 35
18 of title 12]." 12 U.S.C. § 3410(a)¹. If, as in this case, the Court
19 orders the government authority to reply to the motion to quash, the
20 government authority must file a sworn response. Id. at 3410(b).

21 In ruling on the motion, the court relies on the parties' sworn
22 statements and any additional proceedings the court finds appropriate.
23 Id. The RFPA directs the court to deny the motion if either the
24 applicant is not the customer whose financial records are being
25 requested or "there is a demonstrable reason to believe that the law

26 _____
27 ¹ The RFPA makes clear that this procedure "constitute[s] the sole judicial
28 remedy available to a customer to oppose disclosure of financial records" under this
Act. 12 U.S.C. § 3410(e).

1 enforcement inquiry is legitimate and a reasonable belief that the
2 records sought are relevant to that inquiry." Id. at 3410(c); Rodriguez
3 v. Fed. Sav. and Loan Ins. Corp., 712 F.Supp. 159, 162 (N.D. Cal. 1989).
4 "The ultimate burden of showing that the records sought are relevant to
5 a legitimate law enforcement inquiry is on the government." In re
6 Blunden, 896 F.Supp. 996, 999 (C.D. Cal. 1995) (quoting Collins v.
7 Commodity Futures Trading Comm., 737 F.Supp. 1467, 1480 (N.D. Ill.
8 1990)). "For purposes of an administrative subpoena, the notion of
9 relevancy is a broad one." Sandsend Fin. Consultants, Ltd. v. Fed. Home
10 Loan Bank Bd., 878 F.2d 875, 882 (5th Cir. 1989); S.E.C. v. Nicita, 2007
11 WL 1704585, *3 n.4 (S.D. Cal. June 13, 2007). An administrative agency
12 with statutory authority to engage in investigative and accusatory
13 duties may "investigate merely on suspicion that the law is being
14 violated, or even just because it wants assurance that it is not." U.S.
15 v. Morton Salt Co., 338 U.S. 632, 642-43 (1950).

16 DISCUSSION

17 On or about November 2, 2008, the Social Security Administration,
18 Office of the Inspector General, Office of Investigations ("SSA") sent
19 Mr. Phelps a certified letter informing him that it intended to subpoena
20 his financial records from Washington Mutual Bank. Pet. to Quash at 4.
21 Mr. Phelps timely moved to quash the subpoena on November 12, 2008. See
22 12 U.S.C. § 3410(a) (requiring a motion to quash an administrative
23 subpoena or summons to be filed within ten days of service or fourteen
24 days of mailing). In his sworn statement, Mr. Phelps confirms that he
25 presently is a customer of Washington Mutual Bank and is the customer
26 whose records are being requested by the SSA. Pet. to Quash at 1, 3;
27 12 U.S.C. § 3410(a). He argues that the records sought are not relevant
28 to a legitimate law enforcement inquiry because (a) he has not engaged

1 in illegal activity and (b) the SSA already has taken money out of his
2 "SSI check" and cut off his "SSA check" completely. Pet. to Quash at
3 2-3. He also states that he has a privacy right in his financial
4 information, that he does not authorize anyone to access his financial
5 records, and that he is merely saving money to improve his education and
6 living standards. Id.

7 On March 24, 2009, the SSA filed an application for leave to file
8 its opposition to Mr. Phelps' motion to quash, and a supporting
9 declaration, *in camera* pursuant to 12 U.S.C. § 3410(b).² Doc. No. 4.
10 For purposes of ruling on Mr. Phelps' motion to quash, the Court has
11 reviewed *in camera* all of the submitted documents.

12 Turning to the merits of Mr. Phelps' motion, the Court must
13 determine whether (1) Mr. Phelps is the customer whose financial records
14 are being requested, (2) the law enforcement inquiry is legitimate, and
15 (3) the records sought are relevant to the law enforcement inquiry. 12
16 U.S.C. § 3410(c); Rodriguez, 712 F.Supp. at 162. The first prong of
17 this test is satisfied because Mr. Phelps admits in his sworn statement
18 that he is a customer of Washington Mutual Bank and is the holder of the
19 four bank accounts in question. Mot. to Quash at 1, 3.

20 The next question is whether the SSA's law enforcement inquiry is
21 legitimate. The RFPFA defines a law enforcement inquiry as "a lawful
22 investigation or official proceeding inquiring into a violation of, or
23 failure to comply with, any criminal or civil statute or any regulation,
24 rule, or order issued pursuant thereto." 12 U.S.C. § 3401(8). In this
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27 ² The SSA concurrently lodged with Chambers the opposition and declaration
28 to be considered *in camera*. After reviewing the SSA's application and the documents
lodged with Chambers, the Court **GRANTS** the SSA's application and **ORDERS** that the Clerk
of Court file the opposition and supporting declaration under seal.

1 case, the inquiry is lawful because the Inspector General Act of 1978,
2 as amended, authorizes the Office of the Inspector General (a) to
3 initiate any investigations necessary to further proper administration
4 of Social Security programs and (b) to serve subpoenas for records and
5 other account information in furtherance of this goal. 5 U.S.C. app.
6 3 § 6(a)(2), (4) (2008); see also 42 U.S.C.A. § 902(e) (1996) (providing
7 for appointment of an Inspector General of the Social Security
8 Administration in accordance with the Inspector General Act of 1978).
9 Because the instant investigation relates to "the possible fraudulent
10 or otherwise improper receipt and/or use of Social Security benefits"
11 (Mot. to Quash at 5), the Court finds that the investigation falls
12 squarely within SSA's statutory authority to investigate potential
13 violations of the laws governing administration of Social Security
14 programs. The Court, therefore, concludes that the subpoena issued to
15 Washington Mutual Bank is part of a legitimate law enforcement inquiry.
16 12 U.S.C. § 3410(c); Rodriquez, 712 F.Supp. at 162.

17 In regard to whether or not the subpoenaed records are relevant to
18 the law enforcement inquiry, see 12 U.S.C. § 3410(c), the burden is on
19 the SSA to make a sufficient showing, see In re Blunden, 896 F.Supp. at
20 999. To satisfy this burden, the SSA submitted an Opposition to Motion
21 to Quash Inspector General Subpoena and a declaration signed under
22 penalty of perjury by Special Agent Sarah Miller. Having reviewed *in*
23 *camera* the SSA's opposition and declaration, the Court concludes that
24 the SSA has met its burden of demonstrating its basis for suspecting
25 that Mr. Phelps has violated one or more laws and/or failed to comply
26 with an applicable criminal or civil statute, regulation or order, see
27 Morton Salt Co., 338 U.S. at 642, as well as a reasonable basis for
28 believing that the subpoenaed records are relevant to determining

1 whether such violations have, in fact, occurred.

2 In sum, the Court concludes that the SSA's subpoena for Mr. Phelps'
3 account records, held by Washington Mutual Bank, was issued as part of
4 a legitimate law enforcement inquiry and seeks records that are relevant
5 to that inquiry.

6 **CONCLUSION**

7 For the foregoing reasons, the Court **DENIES** Mr. Phelps' motion to
8 quash.

9 **IT IS SO ORDERED.**

10 DATED: March 26, 2009

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12 BARBARA L. MAJOR
13 United States Magistrate Judge
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