

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
Plaintiff,)	Civil Action No. 08-1345 (RMC)
)	ECF
v.)	
)	Plaintiff's Opposition to Movants'
8 GILCREASE LANE, QUINCY)	Motion to Quash Subpoenas
FLORIDA 32351,)	
)	
AND)	
)	
ONE CONDO LOCATED ON)	
NORTH OCEAN BOULEVARD IN)	
MYRTLE BEACH, SOUTH)	
CAROLINA,)	
)	
AND)	
)	
ALL FUNDS, INCLUDING)	
APPROXIMATELY \$60 MILLION,)	
HELD ON DEPOSIT AT BANK OF)	
AMERICA ACCOUNTS IN THE NAMES)	
OF (1) THOMAS A. BOWDOIN, JR.,)	
SOLE PROPRIETOR, DBA)	
ADSURFDAILY, (2) CLARENCE)	
BUSBY, JR. AND DAWN STOWERS,)	
DBA GOLDEN PANDA AD BUILDER,)	
AND (3) GOLDEN PANDA)	
AD BUILDER,)	
Defendants.)	
_____)	
)	
Thomas A. Bowdoin, Jr.,)	
Bowdoin/Harris Enterprises, Inc. &)	
Adsurfdaily, Inc.,)	
Claimants.)	
_____)	

**PLAINTIFF'S OPPOSITION TO CLAIMANTS'
MOTION TO QUASH SUBPOENAS**

Plaintiff, the United States of America, by its attorney, the United States Attorney for the

District of Columbia, respectfully submits this “Opposition” to the motion to quash subpoenas.

Claimants Ad Surf Daily, Inc. ("ASD") and its President, Thomas A. Bowdoin, Jr., have sought an emergency hearing to address whether this Court should grant their emergency request for relief. The relief they seek is to have funds that have been sued for forfeiture released to claimants prior to final adjudication of their forfeitability at trial (assuming discovery establishes that a trial is warranted). Without conceding the validity of either claim, the government has consented to the claimants' request that the Court explore whether they can prove entitlement to the emergency relief they request under 18 U.S.C. 983(f) – the applicable law.

On September 24, 2008, civil counsel for ASD and Thomas A. Bowdoin, Jr., filed a motion to quash two subpoenas that the government issued to secure the attendance of (1) the President ASD, Thomas A. Bowdoin, Jr., and (2) the Chief Executive Officer of ASD, Juan Fernandez. Mr. Bowdoin is not just ASD's President, he is a claimant – the funds at issue were seized from his bank accounts. ASD purports Mr. Fernandez to be one of its other senior managing officials. Therefore, as the government explained to ASD's counsel, Mr. Bowdoin was a party and both he and Mr. Fernandez were officers of a party, meaning that they fell outside the geographic limitations that Rule 45 imposed to protect mere witnesses from being required to travel across state lines and more than 100 miles to attend civil proceedings. See, e.g., American Fed. of Gov't Emps. Local 922 v. Ashcroft, 354 F. Supp.2d 909, 915 (E.D. Ark. 2003) (court may compel trial testimony of parties and, where party is a corporation or entity, its high-level employees or officers) (citing cases); In re Ames Dept. Stores, Inc., 2004 WL 1661983 (Bkrtcy, S.D.N.Y. 2004) (lengthy analysis of Rule 45 with cases); Ferrell v. IBP, Inc., 2000 WL 34032907 (N.D. Iowa 2000) (rejecting Land O' Lakes 100 mile limitation w/r/t parties and citing cases).

Yesterday, in a motion to quash filed on behalf of “THOMAS A. BOWDOIN, JR. ('Andy Bowdoin') and JUAN FERNANDEZ, by counsel” the Akerman Senterfitt law firm indicated that it represents these individuals in their individual capacities, too, and that as their attorneys it was for the first time informing this Court, and the government, that both individuals “would be asserting their Constitutional right not to testify if compelled to appear at the hearing.” Based on this new information, which now is a matter of record, the government hereby informs counsel for these individuals, and this Court, that the subpoenas are withdrawn.

CONCLUSION

For the foregoing reasons, the United States respectfully submits that movants’ Motion to Quash should be DENIED as moot.

Respectfully submitted,

/s/
JEFFREY A. TAYLOR, DC Bar #498610
United States Attorney

/s/
WILLIAM R. COWDEN, DC Bar # 426301
VASU B. MUTHYALA
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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Opposition to be served by means of

the Court's ECF system on this 25th day of September 2008 upon claimants' counsel of record.

/s/

William R. Cowden

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FOR THE DISTRICT OF COLUMBIA**

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ORDER

Upon consideration of movants' Motion to Quash, the Opposition thereto, and the entire record herein, it is this ____ day of _____, 2008

HEREBY Ordered that movants' motion is DENIED as moot.

ROSEMARY M. COLLYER
United States District Judge