

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

**DR. ORLY TAITZ, ESQ., BRIAN FEDORKA,
LAURIE ROTH, LEAH LAX, and TOM
MacLERAN**

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:12-cv-280 HTW-LRA

**DEMOCRAT PARTY OF MISSISSIPPI,
SECRETARY OF STATE MISSISSIPPI,
BARAK HUSSEIN OBAMA, OBAMA
FOR AMERICA, NINCI PELOSI,
DR. ALVIN ONAKA, LORETTA FUDDY,
MICHAEL ASTRUE, JOHN DOES, JOHN
DOES 1-100**

DEFENDANTS

**MISSISSIPPI DEMOCRATIC PARTY EXECUTIVE COMMITTEE'S
RESPONSE IN OPPOSITION TO PLAINTIFFS' "DEMAND FOR TERMINATION OF
UNLAWFUL PROCEEDINGS" IN FEDERAL COURT**

COMES NOW the Defendant, the Mississippi Democratic Party, through its governing entity, the Mississippi Democratic Party Executive Committee ("MDEC"), and by and through its undersigned counsel, and hereby responds in opposition to Plaintiffs' demand to terminate the federal court proceedings and for sanctions against the Mississippi Secretary of State ("MSOS") and his attorneys and would show as follows:

1. The "demand," or motion, appears to be set forth in the form of a letter to the assigned District Judge and signed by the lead Plaintiff, Orly Taitz. *See* Document No. 11. Although extremely difficult to follow, the MDEC will treat this letter as a motion to remand the case to state court pursuant to 28 U.S.C. § 1447.
2. On April 14, 2012 Plaintiffs filed and served on the Defendants MSOS and MDEC the First Amended Complaint ("FAC") by mail. The FAC included a federal RICO action, 28 U.S.C. § 961

et seq., against the MDEC and the newly added Defendants, which consist of President Obama, Obama for America (the President's principal political campaign committee), Nancy Pelosi (now the minority leader of the U.S. House of Representatives and former chair of the 2008 Democratic National Convention), Dr. Alvin Onaka (Registrar of the Hawaii Department of Health), Loretta Fuddy (Director of the Hawaii Department of Health) and Michael Astrue (Commissioner of the United States Social Security Administration).

3. On April 14, 2012 the MSOS timely removed Plaintiffs' civil action to this Honorable Court based on the existence of a federal question arising from the federal RICO claim, included for the first time in the FAC. The Notice of Removal also pleaded supplemental jurisdiction over any purported state law claims alleged in the FAC under 28 U.S.C. § 1367 and 28 U.S.C. § 1441. The MDEC later filed a joinder of the removal.
4. Civil RICO actions filed in state court may be timely removed under 28 U.S.C. § 1446. *Bogosian v. CR Title Services, Inc.*, 2011 WL 3607892 *2 (N.D. Cal. 2001); *Rechberger v. Hurlburt*, 2010 WL 742198 *1 (W.D. N.Y. 2010).
5. Removal by the MSOS and the MDEC joinder were timely under 28 U.S.C. 1446(b)(3).
6. The Plaintiffs argue that because the case was lodged with the Mississippi Supreme Court as an "interlocutory appeal" the case could not be removed. There was no judgment entered by the Circuit Court which was "appealed" by the Plaintiffs so as to deprive the Circuit Court of jurisdiction. Rather, the "interlocutory appeal" was to cause the disqualification of the trial judge. Notably, on Friday, May 4, 2012 the Supreme Court entered an Order staying all state court proceedings because the case had been removed to this Honorable Court. A copy of the Supreme Court Order is attached as Exhibit "A."

7. Even though the MSOS is not named in the RICO action, he is still entitled to remove the case.

Cartwright v. Thomas Jefferson Univ. Hosp., 99 F.Supp.2d 550, 553 (E.D. Penn. 2000).

Alternatively, the MDEC, by filing its joinder of the removal, exercised its own right to remove the case and did not need to file its own notice of removal. *Ellerbee v. Union Zinc, Inc.*, 881 F.Supp. 162, 164 (E.D. Penn. 1995).

8. The removal is also timely and proper as regards to the RICO action being raised in the FAC, under the “revival exception” set forth in *Johnson v. Heublin, Inc.*, 227 F.3d. 236, 241 (5th Cir. 2000) and its progeny.

WHEREFORE, PREMISES CONSIDERED, the Mississippi Democratic Party Executive Committee hereby prays that the Plaintiffs’ motion will be denied.

THIS the 8th day of May, 2012.

Respectfully submitted,

**THE MISSISSIPPI DEMOCRATIC PARTY
EXECUTIVE COMMITTEE**

By: /s/ Samuel L. Begley
Samuel L. Begley (MSB No. 2315)

By: /s/ Scott J. Tepper
Scott J. Tepper (Admitted *pro hac vice*)

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date set forth hereinafter, a true and correct copy of the above and foregoing document was electronically filed with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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THIS the 8th day of May, 2012.

/s/ Samuel L. Begley
SAMUEL L. BEGLEY