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Attorneys for Plaintiff
PELE DEFENSE FUND
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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,)
)
Plaintiff,)
)
vs.)
)
WILLIAM PATY, in his capacity)
as Chairman of the Board of)
Land and Natural Resources)
State of Hawaii, et al.,)
)
Defendants.)
_____)

CIVIL NO. 89-089 (Hilo)
(Declaratory Judgment/
Injunction)

PLAINTIFF PELE DEFENSE FUND'S
MOTION FOR AN ORDER COMPELLING
DISCOVERY AND FOR SANCTIONS;
MEMORANDUM IN SUPPORT OF MOTION
FOR AN ORDER COMPELLING
DISCOVERY AND FOR SANCTIONS;
AFFIDAVIT OF YUKLIN ALULI;
AFFIDAVIT OF ARNOLD L. LUM;
EXHIBITS "A" THROUGH "G";
NOTICE OF HEARING MOTION;
CERTIFICATE OF SERVICE

Hrg. Date: June 23, 1993
Time: 7:45 a.m.

Judge: Honorable Riki May Amano

TRIAL: July 19, 1993

PLAINTIFF PELE DEFENSE FUND'S MOTION FOR AN ORDER
COMPELLING DISCOVERY AND FOR SANCTIONS

Plaintiff Pele Defense Fund, through counsel, hereby moves for an order compelling Defendants Estate of James Campbell, True Geothermal Energy Corporation, True Geothermal Drilling Company and Mid-Pacific Geothermal, Inc., to produce the Wao Kele O Puna sublease between the Estate of James Campbell and the True Defendants ("sublease").

Plaintiff also moves for Rule 11 sanctions in the form of Plaintiff's attorney fees and costs for time expended in relation to the dispute regarding disclosure of the sublease, in the amount of \$5,959,76, plus fees and costs for attendance at the hearing on this motion. These fees and costs are requested to be assessed against True Geothermal Energy Corporation, True Geothermal Drilling Company and Mid-Pacific Geothermal, Inc., for failure to comply with the Court's May 27, 1993 ruling ordering disclosure of the requested document. Finally, Plaintiff moves for an order in limine preventing Campbell Estate and the True Defendants from either introducing the sublease into evidence or offering, through the testimony of their representatives, evidence of the same, for the purpose of supporting their defenses.

This motion is brought pursuant to Rules 11 and 37(a) of the Hawaii Rules of Civil Procedure, and is based upon Plaintiff's

memorandum in support of motion, the affidavits and exhibits attached hereto, and the records and files in this case.

DATED: Honolulu, Hawaii, June 7, 1993.



PAUL F. NAHOA LUCAS
ARNOLD L. LUM
YUKLIN ALULI
STEVEN C. MOORE
Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089 (Hilo)
	)	(Declaratory Judgment/
Plaintiff,	)	Injunction)
)	
vs.)	
	)	MEMORANDUM IN SUPPORT OF MOTION
WILLIAM PATY, in his capacity	)	FOR AN ORDER COMPELLING
as Chairman of the Board of	)	DISCOVERY AND FOR SANCTIONS
Land and Natural Resources)	
State of Hawaii, et al.,)	
)	
Defendants.)	
)	

MEMORANDUM IN SUPPORT OF MOTION FOR AN ORDER
COMPELLING DISCOVERY AND FOR SANCTIONS

I. INTRODUCTION

Plaintiff Pele Defense Fund seeks an order compelling Defendant Estate of James Campbell (hereinafter "Campbell") and Defendants True Geothermal Energy Corp., True Geothermal Drilling Co., and Mid-Pacific Geothermal, Inc. (hereinafter collectively "True" and together, "Defendants"), to produce, at the law office of Plaintiff's counsel, Yuklin Aluli, the Wao Kele O Puna sublease between Campbell and True ("sublease") which was previously requested by subpoena duces tecum served by Plaintiff upon Campbell and True on April 28, 1993, with the exception of those portions of the sublease excluded from discovery pursuant to the Court's in camera inspection and ruling on May 27, 1993. As set forth in the statement of facts below, Campbell has failed and True has refused to release the sublease to Plaintiff's counsel. A motion to compel the release of the subpoenaed sublease is therefore warranted.

Moreover, monetary sanctions should be imposed against True pursuant to Rule 11 of the Hawaii Rules of Civil Procedure, due to True's refusal to comply with the Court's May 27, 1993 Order to produce for inspection by attorney Aluli at 9:00 A.M. on Friday, May 28, 1993, a copy of the requested sublease, except as deleted pursuant to the Court's May 27th ruling. Although True apparently contends that it is not required to comply with the Court's ruling, because it is seeking reconsideration of the same, it is clear that True's refusal to produce the sublease, in reliance upon its filing of a motion for reconsideration is not well grounded in fact, not warranted by law, and interposed for the improper purpose of delay, all of which are grounds for the imposition of sanctions under Rule 11.

In addition, sanctions in the form of an order in limine, should also be imposed against both Defendants, preventing them from introducing the withheld sublease into evidence for the purpose of supporting their defenses, and also preventing the Defendants, through their representatives, from otherwise supporting their defenses through testimony relating to the sublease.

II. STATEMENT OF FACTS

On April 12, 1993, Plaintiff served on True and Campbell subpoenae duces tecum. Campbell and True responded by filing a motion for protective order, which was heard by this Court on April 16, 1993. The outcome of that hearing is embodied in the Court's June 1, 1993 Order Granting in Part and Denying in Part Defendants True Geothermal Energy Co., etc., Motions for Protective Order or

in the Alternative to Quash Subpoena Duces Tecum filed April 12, 1993. After the hearing on Defendants' motion for protective order, Plaintiff served on both Defendants revised subpoenae duces tecum, filed April 28, 1993, which requested for production on May 24, 1993, only those documents ordered to be produced by the Court at the April 16, 1993 hearing.

After the date of that hearing, counsel for True and Plaintiff exchanged detailed correspondence (Exhibits "A" - "E") relating to the production of the subpoenaed permits, permit applications and sublease. Plaintiff's counsel also delivered copies of all correspondence requesting production of the sublease directly to counsel for Campbell. Although True produced the subpoenaed permits and permit applications on May 24, 1993, it refused to produce the sublease, pending the Court's ruling following an in camera inspection of the document. However, after the Court on May 27, 1993 ordered the release of the sublease, except for certain deleted portions (Exhibit "F"), True refused to produce the document (Exhibit "G"). Although Campbell has not moved for reconsideration, it has not produced the sublease with the deletions ordered by the Court.

III. ARGUMENT

A. Campbell and True Should Be Compelled to Produce the Sublease

The provisions pertaining to discovery in the Hawaii Rules of Civil Procedure were adopted to put an end to the "sporting theory of justice," by which the result depends on the fortuitous

availability of evidence or the skill and strategy of counsel. Thus, they reflect a basic philosophy that prior to trial, every party to a civil action is entitled to the disclosure of all relevant information in the possession of any person, unless the information is privileged. DiCenzo v. Izawa, 68 Haw. 528, 534-35 (1986).

In the case at bar, Campbell and True have, despite the Court's May 27th ruling, either failed (Campbell) or refused to produce (True) the sublease. Campbell obviously has a copy of the sublease; however, it did not make the document available to Plaintiff's counsel after the Court on May 27th ruled on True's motion for protective order, in which Campbell had previously joined. Although True was directed by the Court to produce the sublease, it has brazenly refused to do so, claiming instead that it will not release the document until the Court rules on its motion for reconsideration.

There is ample cause for the Court to issue an order immediately compelling discovery of the requested document. As Defendants are abundantly aware, the discovery cut off in this case is June 19, 1993.¹ If the sublease discloses matters which may thereafter require further discovery by Plaintiff, there will be no time available, absent a motion to enlarge the discovery cut off date, in which to complete discovery. Accordingly, there is a

¹ Although the discovery cut off date is thirty days before trial (Rule 12, Hawaii Circuit Court Rules), Plaintiff notes that because the cut off date falls on a Saturday, Rule 6, H.R.C.P., extends the cut off date to the next working day, June 21, 1993.

compelling reason to warrant the issuance of an order directing Defendants to produce immediately the requested document.

B. True's Refusal To Produce A Copy of The Sublease
Pursuant To the Court's May 27, 1993 Order Warrants
The Imposition of Sanctions

Although the imposition of sanctions pursuant to Rule 37(b), H.R.C.P., normally requires that the Court first enter an order compelling discovery pursuant to Rule 37(a), the facts in the case at bar clearly warrant the imposition of sanctions against True pursuant to Rule 11, H.R.C.P. Rule 11, H.R.C.P., like its federal counterpart, generally provides for the imposition of sanctions where pleadings submitted are either: (1) not well grounded in fact; (2) not warranted by law; or (3) for an improper purpose. See, e.g., Zaldivar v. City of Los Angeles, 780 F.2d 823, 830-32 (9th Cir. 1986).

It is undisputed in this case that, despite the Court's Order of May 27, 1993, requiring True to produce a copy of the sublease at attorney Aluli's office on May 28, 1993 at 9:00 A.M., there was no attempt by True to comply with the Order. Instead, counsel for True, approximately three hours after the date and time when the sublease was to be produced, sent by facsimile a letter addressed to attorney Aluli, notifying her and the Court that it was declining to produce the sublease and instead would file a motion for reconsideration of the Court's ruling.² Not only has True failed to produce the requested sublease pursuant to the Court's

² True's motion for reconsideration was filed on June 2, 1993.

Order, but it has also filed a pleading that will violate all three of the above-described Rule 11 criteria.

Addressing the Rule 11 criteria for imposing sanctions seriatim, True's motion for reconsideration violates the first criterion, because it is not well grounded in fact. At this juncture, it is important to bear in mind that there is in fact an express judicial standard to be applied to motions for reconsideration. Such motions, to be properly presented, must set forth new matters which could not have been presented as part of a prior motion. K. M. Young & Assoc. v. Cieslik, 4 Haw. App. 657, 666 (1983). True's motion for reconsideration is totally unsupported by any facts that would form new grounds for its refusal to produce the requested sublease. True has therefore advanced absolutely no new facts in its motion for reconsideration from the Court's ruling on its motion for protective order. Accordingly, because a motion for reconsideration "will not lie to relitigate old matters", ibid., True's motion for reconsideration is ipso facto not well grounded in fact. Again, such a motion must involve new facts arising after the motion for protective order was presented to the Court, and none are present here.

In addition, the holding of the Intermediate Court of Appeals in Cieslik, very clearly stands for the proposition that True's motion for reconsideration, unless supported by new facts that could not have been presented in its motion for protective order, is not warranted as a matter of law, the second Rule 11 criterion. Therefore, because a motion for reconsideration is not, under the

circumstances of this case, warranted by law, Rule 11 sanctions should also be imposed against True on this basis.

Finally, True tips its hand as to the real purpose of its motion for reconsideration, when it states in the second paragraph of its May 28, 1993 letter to attorney Aluli, that if the Court does not dispose of its motion for reconsideration by the scheduled date for the deposition of True's representative, Mr. Kawada, his deposition may be rescheduled at the mutual convenience of the parties. Again, given the impending June 19, 1993 discovery cut off date, it is apparent that True is simply trying to delay the taking of Mr. Kawada's deposition through the filing of a motion for reconsideration. As Judge Heen commented in the Cieslik case:

Although motions for rehearing ought not to be discountenanced, there has been a growing tendency here to treat them as an ordinary step in the course of the case; and this tendency, I think, should be discouraged. Too often we see motions to rehear of a purely repetitious nature. Again, we find them predicated upon factual or legal grounds that could or should have been presented at the original hearing. In both instances, a necessary result is delay and wasted effort by the court and counsel.

Id. at 667 (emphasis added). The plain purpose of True's motion for reconsideration is to interpose delay, and the proof of that improper purpose is contained in its own admission.

- C. Sanctions In This Case Should Include An Award To Plaintiff of Its Attorney Fees, Imposed Against True, And A Order In Limine Preventing Both True and Campbell From Introducing The Sublease Into Evidence For the Purpose of Proving Their Defenses

In the instant case, sanctions against True are warranted because it has violated all three Rule 11 sanction-related

criteria. The filing of a pleading for any one of the purposes deemed impermissible by Rule 11, of itself warrants the imposition of sanctions. Zaldivar, supra, 780 F.2d at 831. Since True's motion for reconsideration violates all three Rule 11 criteria, even when measured by an objective "reasonableness" standard, ibid, it is incumbent upon the Court to impose as a sanction against True at least the amount of Plaintiff's attorney fees incurred in bringing this motion. The basis for Plaintiff's request for attorney fees and costs in the amount of \$5,958.76, plus fees and costs in regard to the hearing on this motion, is set forth in the attached affidavits of Plaintiff's counsel.


It is also appropriate for the Court to at this time issue an order under Rule 11, H.R.C.P., prohibiting both True and Campbell from introducing the sublease into evidence in support of any defenses raised by them, and precluding their representatives from basing their testimony, in so far as it is offered to support the defenses raised, on the withheld document. This type of sanction is particularly warranted because as previously noted, both Defendants have either failed or refused to furnish Plaintiff's counsel with a copy of the requested sublease. Although not specifically provided for under Rule 11, H.R.C.P., this type of sanction is expressly authorized by Rule 37(b)(2)(B). Preclusion of evidence and defenses is also a well recognized form of sanction that has traditionally been imposed under Rule 37(b)(2)(B) of the Federal Rules of Civil Procedure. See, e.g., Ohio v. Arthur Andersen & Co., 570 F.2d 1370 (10th Cir. 1978), cert. denied 437

U.S. 833 (accounting firm's deliberate and willful refusal to comply with discovery requests without justification was properly sanctioned by trial court, which prohibited defendant from introducing any evidence opposing plaintiff's claims through the use of the requested documents). This type of sanction has also been approved by our Intermediate Court of Appeals. Thus, where counsel agrees to provide opposing counsel with copies of relevant documents and then fails to honor the agreement, it is not error for the trial court to prohibit the opposing party from introducing such documents into evidence. Doe v. Roe, 3 Haw. App. 15, 18 (1982). Defendants' behavior in this case is no less egregious than the behavior of counsel in Doe v. Roe. Accordingly, the same type of in limine sanction should be imposed.

IV. CONCLUSION

For the reasons set forth above, Plaintiff Pele Defense Fund respectfully requests that the Court impose sanctions against True by ordering True to pay Plaintiff's attorney fees incurred in bringing this motion, and sanctions against True and Campbell precluding both Defendants from relying upon the sublease in support of any defense raised in this case.

DATED: Honolulu, Hawaii, June 7, 1993.



PAUL F. NAHOA LUCAS
ARNOLD L. LUM
YUKLIN ALULI
STEVEN C. MOORE
Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089 (Hilo)
	)	(Declaratory Judgment/
Plaintiff,	)	Injunction)
)	
vs.	)	AFFIDAVIT OF YUKLIN ALULI
)	
WILLIAM PATY, et al.,)	
)	
Defendants.)	
_____)	

AFFIDAVIT OF YUKLIN ALULI

STATE OF HAWAII)
	: SS.
CITY AND COUNTY OF HONOLULU)

YUKLIN ALULI, being first duly sworn on oath, deposes and says:

1. She is an attorney licensed to practice before all the courts in the State of Hawaii.
2. She is one of the attorneys of record for Plaintiff Pele Defense Fund.
3. Her standard billing rate is \$175.00 per hour.
4. She has performed the following tasks in opposing Defendants' Motion for Protective Order, subpoenaing and noticing the depositions of Defendants' custodians of record and Rule 30(b)(6) representatives, communicating with Defendants' counsel concerning the scheduling of said depositions (both written and oral), settlement of the order viz April 16, 1993 hearing, and preparation of the Motion to Compel, as follows:

04/15/93	Research; prepare memorandum in opposition to motion for protective order; phone call w/Nahoa Lucas and Steven Moore
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8.00


04/16/93	Travel to Hilo and attend hearing	7.50
04/21/93	Prepare subpoena duces tecum on Defendant True; prepare Order	1.80
05/05/93	Letter to Michael Gibson and Stephanie Rezens re: discovery	.30
05/06/93	Letter from Stephanie Rezens	.10
05/07/93	Letter to Michael Gibson and Stephanie Rezens	.20
05/10/93	Phone call w/Michael Gibson; letter from Stephanie Rezens; notice of depositions	.70
05/12/93	Review Rule 30(b)(6) notices	.25
05/17/93	Phone call w/Michael Gibson	.20
05/28/93	Letter from Judge Amano and Stephanie Rezens; phone call w/Nahoa Lucas	.50
06/01/93	Phone call w/Arnold Lum re: motion to compel	.40
06/01/93	Research at law library	.50
06/02/93	Prepare and review memorandum in support of motion to compel	3.50
06/03/93	Review memo from Michael Gibson	.10
	TOTAL	24.05

or \$4,208.75 in attorneys fees.


5. Affiant has expended \$137.50 in airfare, sheriff's fees and witness fees relating to the ordered discovery.

6. Affiant will be attending the scheduled hearing on this motion to compel and Defendant True's motion for reconsideration. Affiant will submit a supplemental billing for time and costs incurred in these matters.

Further Affiant Sayeth Naught.


YUKLIN ALULI

Subscribed and sworn to before
me this 4th day of June, 1993.


Notary Public, State of Hawaii
My commission expires: 06/21/96



IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089 (Hilo)
	)	(Declaratory Judgment/
Plaintiff,	)	Injunction)
)	
vs.	)	AFFIDAVIT OF ARNOLD L. LUM
)	
WILLIAM PATY, in his capacity)	
as Chairman of the Board of)	
Land and Natural Resources)	
State of Hawaii, et al.,)	
)	
Defendants.)	
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AFFIDAVIT OF ARNOLD L. LUM

STATE OF HAWAII)	
)	SS:
CITY AND COUNTY OF HONOLULU)	

ARNOLD L. LUM, being first duly sworn upon oath, hereby deposes and says:

1. I am an attorney employed by the Native Hawaiian Legal Corporation and represent Plaintiff Pele Defense Fund in this case;

2. I am licensed to practice law in California, Massachusetts and Hawaii, the District Court of Hawaii, and the Court of Appeals for the Ninth Circuit;

3. I have been employed by the Native Hawaiian Legal Corporation as a staff attorney since February, 1993;

4. I have practiced law for 17 years, with an emphasis on natural resources law and environmental litigation;

5. Prior to joining the Native Hawaiian Legal Corporation, I was an attorney at the law firm of Moon, O'Connor, Tam, & Yuen;

6. My standard billing rate at Moon, O'Connor, Tam & Yuen was \$175.00 per hour;

7. I have performed the following tasks in support of Plaintiff's motion for an order compelling discovery and for sanctions, with the time spent indicated below:

<u>Date</u>	<u>Task</u>	<u>Time</u>
May 28, 1993	prepare memorandum to Yuklin Aluli, re: Rule 11 sanctions, <u>PDF v. Paty</u>	1.5 hours
June 1, 1993	prepare motion and memorandum to compel and for sanctions, <u>PDF v. Paty</u>	4.5 hours
June 2, 1993	revise memorandum, <u>PDF v. Paty</u>	1.5 hours
June 3, 1993	final revisions to memorandum, <u>PDF v. Paty</u>	2.5 hours

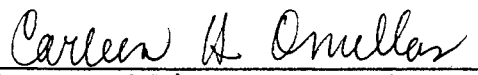
8. I am requesting that Defendants be ordered to pay the Native Hawaiian Legal Corporation \$1,750.00 in attorney fees, and also the fees and costs incurred in arguing this motion to compel and for sanctions.

FURTHER AFFIANT SAYETH NAUGHT.



ARNOLD L. LUM

Subscribed and sworn to before me
this 7th day of June, 1993.



Notary Public, State of Hawaii
My Commission Expires: 9/12/93



YUKLIN ALULI
ATTORNEY AT LAW
415-C ULUNIU STREET
KAILUA, HAWAII 96734
TEL 262-5900
FAX 262-5810

May 5, 1993

VIA FACSIMILE

Michael W. Gibson, Esq.
Ashford & Wriston
Suite 1400, Alii Place
1099 Alakea Street
Honolulu, Hawaii 96813

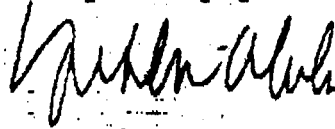
Stephanie A. Rezents, Esq.
Matsubara, Lee & Kotake
Suite 800, Kendall Building
888 Mililani Street
Honolulu, Hawaii 96813

Re: PDF v. Paty, et al.
Civil No. 89-089 (Hilo)

Dear Mike and Stephanie:

I understand Judge Amano has overruled your relevance objections viz exclusion of portions of the lease. Therefore, I will expect the lease and whatever other subpoenaed documents your custodians have ready to be produced on May 10, 1993 at 10:00 a.m. and 11:00 a.m. at Powers and Associates. Trial is set for July 19, 1993 and defendants have had several weeks to get the records together. What is not available on that date I will ask the custodians to identify and agree to a date no later than May 19, 1993.

Very truly yours,



Yuklin Aluli

YA:ld

cc: Paul Nahoa Lucas, Esq.
Steven C. Moore, Esq.

EXHIBIT A

MATSUBARA, LEE & KOTAKE

ATTORNEYS AT LAW

A LAW CORPORATION

CHARLES R. KENDALL BUILDING
888 MILILANI STREET, EIGHTH FLOOR
HONOLULU, HAWAII 96813-2918

COUNSEL

JASON M. YOSHIDA

TELEPHONE (808) 824-8866
FACSIMILE (808) 838-9840

BENJAMIN M. MATSUBARA
GARY B. K. T. LEE
MERVYN M. KOTAKE
STEPHANIE A. REZENTS
HOWARD M. HOSUNAGA
CURTIS T. TABATA

May 5, 1993

FACSIMILE TRANSMITTAL
(808) 262-5610

Yuklin Aluli, Esq.
415 C Uluniu Street
Kailua, Hawaii 96734

Re: PDF v. Paty, et al.,
Civil No. 89-089 (Hilo)

Dear Yuklin:

The statements raised in your letter dated May 5, 1993 do not accurately reflect Judge Amano's ruling on May 5, 1993. Judge Amano had asked Mr. Gibson and myself to submit to the Court no later than May 10, 1993, portions of the lease which counsel believe are objectionable due to business secrets or confidentiality. Judge Amano will be reviewing the portions objected to and will release to counsel for PDF a "sanitized" version of the lease.

In addition, Judge Amano informed Mr. Christiansen and Mr. Lucas who were present for the hearing to cooperate in rescheduling the May 10th documents depositions to the end of the month to allow me to properly prepare for the depositions in Mr. Lee's place.

Please contact Mr. Gibson and myself to arrange a mutually agreeable date to reschedule the records deposition.

Very truly yours,

MATSUBARA, LEE & KOTAKE

Stephanie A. Rezent

Stephanie A. Rezent

SAR/st

cc: Mr. Allan Kawada
Michael Gibson, Esq.

EXHIBIT 13

YUKLIN ALULI
ATTORNEY AT LAW
415-C ULUNIU STREET
KAILUA, HAWAII 96734
TEL. 262-5800
FAX 262-5810

May 7, 1993

VIA FACSIMILE

Michael W. Gibson, Esq.
Ashford & Wriston
Suite 1400, Alii Place
1099 Alakea Street
Honolulu, Hawaii 96813

Stephanie A. Rezens, Esq.
Matsubara, Lee & Kotake
Suite 800, Kendall Building
888 Mililani Street
Honolulu, Hawaii 96813

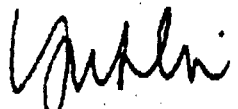
Re: PDF v. Paty, et al.
Civil No. 89-089 (Hilo)

Dear Mike and Stephanie:

Thank you for your letter. My understanding is that Judge Amano is to receive from you no later than May 10, 1993 the lease. In the meantime, the permits and permit applications can be produced. Is there some reason why these items cannot be produced on May 10, 1993 -- the Judge made an oral ruling on April 16, 1993 and I cannot understand why there should be a delay. I propose that the permits and permit applications be produced May 10, 1993 and we can work out a production of the lease and "leftovers" to take place May 20, 1993 at 10:00 a.m. The subpoenas are being done on written interrogatories so there should be no need for counsel to attend.

Also remaining is the need to reschedule the Rule 30(b)(6) oral depositions of representatives of Defendants True and Campbell. I would like to propose June 10, 11, 14, 15 or 18, 1993. Please advise.

Very truly yours,


Yuklin Aluli

YA:ld

cc: Paul Nahoa Lucas, Esq.
Steven C. Moore, Esq.

EXHIBIT C

MATSUBARA, LEE & KOTAKE

ATTORNEYS AT LAW

A LAW CORPORATION

CHARLES R. KENDALL BUILDING
888 MILILANI STREET, EIGHTH FLOOR
HONOLULU, HAWAII 96813-2818

COUNSEL

JASON M. YOSHIDA

TELEPHONE (808) 528-2508
FACSIMILE (808) 528-3840

BENJAMIN M. MATSUBARA
DARY S.M.T. LEE
MERVYN M. KOTAKE
STEPHANIE A. REZENTS
HOWARD M. NOBUNAGA
CURTIS T. TABATA

May 7, 1993

FACSIMILE TRANSMITTAL
(808) 262-5610

Yuklin Aluli, Esq.
415 C Uluniu Street
Kailua, Hawaii 96734

Re: PDF v. Paty, et al.;
Civil No. 89-089 (Hilo)

Dear Yuklin:

In response to your letter to me dated May 7, 1993, which raised the question of producing permits and permit applications, again it is my position that Judge Amano had informed counsel for PDF to work with Mr. Gibson and myself to reschedule the entire documents depositions scheduled for May 10, 1993 to allow me to review all documents which are to be produced at the deposition. Therefore no documents will be produced on Monday, May 10, 1993.

Please contact me about this matter.

Very truly yours,

MATSUBARA, LEE & KOTAKE

Stephanie A. Rezents
Stephanie A. Rezents

SAR/st

cc: Michael Gibson, Esq.
Mr. Allan Kawada

EXHIBIT D

YUKLIN ALULI
ATTORNEY AT LAW
415-C ULUNIU STREET
KAILUA, HAWAII 96734
TEL. 262-5900
FAX 262-5810

May 13, 1993

VIA FACSIMILE

Michael W. Gibson, Esq.
Ashford & Wriston
Suite 1400, Alii Place
1099 Alakea Street
Honolulu, Hawaii 96813

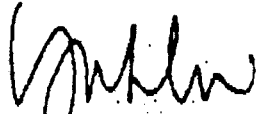
Stephanie A. Rezents, Esq.
Matsubara, Lee & Kotake
Suite 800, Kendall Building
888 Mililani Street
Honolulu, Hawaii 96813

Re: PDF v. Paty, et al.
Civil No. 89-089 (Hilo)

Dear Mike and Stephanie:

This will confirm I will be deposing a representative of Campbell Estate on June 15, 1993 at 9:00 a.m. I have renoticed Defendant True's representative for June 10, 1993 at 9:00 a.m. May I expect to have a production of the lease, permits and permit applications on May 24, 1993 at 9:00 a.m. at the offices of Powers & Associates?

Very truly yours,



Yuklin Aluli

YA:ld

cc: Paul Nahoia Lucas, Esq.
Steven C. Moore, Esq.

EXHIBIT E



CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII
STATE OFFICE BUILDING
75 AUPUNI STREET
HILO, HAWAII 96720

file
donors
Cass
Vance
PNL
ALUM
CCC
AL

THE HONORABLE SHUNICHI KIMURA
Judge, First Division **Riki May Amano**

THE HONORABLE ~~ERNEST HUSOTA~~
Judge, Second Division

THE HONORABLE RONALD IBARRA
Judge, Third Division

LESTER D. OSHIRO
Chief Clerk

May 27, 1993

VIA FACSIMILE

Stephanie A. Rezens
Matsubara, Lee & Kotake
888 Mililani Street, 8th Floor
Honolulu, Hawaii 96813-2918

Re: Pele Defense Fund vs. William Paty,
et al.; Civil No. 89-89

Dear Ms. Rezens:

I have reviewed in camera the sublease in conjunction with your proposed exclusions and reasonings therefor.

Pursuant to the Court's order, the only area of exclusion which I believe to be protected as possible "business secrets" pertain to "reasonings" number 21 through and including 24.

Accordingly, please block out the appropriate portions and arrange to have the sublease delivered to plaintiff no later than 9:00 a.m. Friday, May 28, 1993. By copy of this letter, Yuklin Aluli is asked to prepare an appropriate order.

The sublease and your "reasonings" would be sealed and made part of the file in the event of an appellate's review.

Sincerely yours,

Riki May Amano

RIKI MAY AMANO *for RMA*

cc: Yuklin Aluli
Michael Gibson

EXHIBIT F

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AL

MATSUBARA, LEE & KOTAKE

ATTORNEYS AT LAW

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COUNSEL

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TELEPHONE (808) 526-9566

FACSIMILE (808) 538-3840

May 28, 1993

FACSIMILE TRANSMITTAL

(808) 262-5610

Yuklin Aluli, Esq.
415 C Uluniu Street
Kailua, Hawaii 96734

Re: PDF v. Paty, et al.;
Civil No. 89-089 (Hilo)

Dear Yuki:

This letter is to inform you that my client has instructed me to file a Motion For Reconsideration of Judge Amano's ruling as evidenced by her letter dated May 27, 1993 pertaining to the release of the sublease between True/Mid-Pacific Geothermal Venture and the Estate of James Campbell dated December 3, 1986. A copy of the sublease will therefore not be released to you until the Court has issued an order on the motion for reconsideration. I intend to file the motion by Tuesday, June 1, 1993.

If the motion for reconsideration has not been disposed of by the Court by the time of Mr. Kawada's scheduled oral deposition on June 10, 1993, I will, of course, agree to reschedule Mr. Kawada's deposition to a later time convenient to all parties.

Very truly yours,

MATSUBARA, LEE & KOTAKE

Stephanie A. Rezens

Stephanie A. Rezens

SAR/st

cc: Judge Riki M. Amano
Paul Lucas, Esq.
Michael Gibson, Esq.

EXHIBIT G

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089 (Hilo)
	)	(Declaratory Judgment/
Plaintiff,	)	Injunction)
)	
vs.	)	NOTICE OF HEARING MOTION;
	)	CERTIFICATE OF SERVICE
WILLIAM PATY, in his capacity)	
as Chairman of the Board of)	
Land and Natural Resources)	
State of Hawaii, et al.,)	
)	
Defendants.	)	Hrg. Date: June 23, 1993
	)	Time: 7:45 a.m.
	)	Judge: Honorable Riki May Amano

NOTICE OF HEARING MOTION

TO: WAYNE NASSER, ESQ.
MICHAEL W. GIBSON, ESQ.
Ashford & Wriston
Alii Place, 14th Floor
P. O. Box 131
Honolulu, Hawai'i 96813

Attorneys for Defendants Campbell Estate

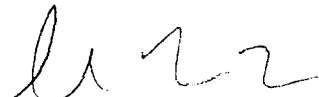
GARY B.K.T. LEE, ESQ.
STEPHANIE A. REZENTS, ESQ.
Kendall Building, 8th Floor
888 Mililani Street
Honolulu, Hawai'i 96813

Attorneys for Defendants True Geothermal Energy
Corp., True Geothermal Drilling Co., and Mid-Pacific
Geothermal, Inc.

PLEASE TAKE NOTICE that the foregoing motion will be
heard before the Honorable Riki May Amano, Judge of the above-
entitled courtroom, Hilo Circuit Court, 75 Aupuni Street, Hawaii

96720, on Wednesday, June 23, 1993, at 7:45 a.m., or as soon thereafter as counsel may be heard.

DATED: Honolulu, Hawai'i, June 7, 1993.




PAUL F. NAHOA LUCAS
ARNOLD L. LUM
YUKLIN ALULI
STEVEN C. MOORE
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served upon those parties listed on the attached Notice of Hearing Motion by U.S. Mail, postage prepaid, to their last known address.

DATED: Honolulu, Hawai'i, June 7, 1993.



ARNOLD L. LUM
Attorney for Plaintiff