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 TRUE GEOTHERMAL ENERGY CO.,
 TRUE GEOTHERMAL DRILLING CO., and
 MID-PACIFIC GEOTHERMAL, INC.

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL No. 89-089
)	
Plaintiff,	)	DEFENDANTS TRUE GEOTHERMAL
	)	ENERGY CO., TRUE GEOTHERMAL
vs.	)	DRILLING CO., AND MID-PACIFIC
	)	GEOTHERMAL, INC.'S MEMORANDUM
WILLIAM PATY, in his capacity	)	IN OPPOSITION TO PLAINTIFF
as Chairman of the Board	)	PELE DEFENSE FUND'S MOTION FOR
of Land and Natural Resources,	)	AN ORDER COMPELLING DISCOVERY
State of Hawaii, MOSES	)	AND FOR SANCTIONS, DATED JUNE
KEALOHA, DOUGLAS ING, LEONARD	)	7, 1993; AFFIDAVIT OF CURTIS T.
ZALOPANY, JOHN ARISUMI and	)	TABATA; EXHIBIT "A"; CERTIFICATE
HERBERT ARATA, in their	)	OF SERVICE
capacity as members of the)	
Board of Land and Natural)	
Resources; The Estate of)	
JAMES CAMPBELL, Deceased,)	
FRED E. TROTTER, W.H. McVAY,	)	Hearing: June 22, 1993
P.R. CASSIDAY, and HERBERT C.	)	Time: 4:00 p.m.
CORNUELLE, in their fiduciary	)	Judge: Riki May Amano
capacity as Trustees under)	
the Will of James Campbell,)	
Deceased, TRUE ENERGY)	
GEOTHERMAL CORP., TRUE	)	Trial: July 19, 1993
GEOTHERMAL DRILLING CO., and)	
MID-PACIFIC GEOTHERMAL, INC.,)	
)	
Defendants.)	

DEFENDANTS TRUE GEOTHERMAL ENERGY CO.,
TRUE GEOTHERMAL DRILLING CO., AND MID-PACIFIC
GEOTHERMAL, INC.'S MEMORANDUM IN OPPOSITION TO
PLAINTIFF PELE DEFENSE FUND'S MOTION FOR AN ORDER
COMPELLING DISCOVERY AND FOR SANCTIONS, DATED JUNE 7, 1993

I. INTRODUCTION

On April 7, 1993, TRUE GEOTHERMAL ENERGY CO., TRUE GEOTHERMAL DRILLING CO. and MID-PACIFIC GEOTHERMAL, INC. ("Defendants True"), received a file-marked copy of Plaintiff's Notice of Taking Depositions Upon Oral Examination dated March 26, 1993. Attached to said Notice as Exhibit "A" was a Subpoena Duces Tecum issued to Allan G. Kawada. Said Exhibit "A" contained the following requests:

1. The lease or other legal document embodying the legal relationship between True Geothermal and Campbell Estate, or other document embodying the right of True Geothermal to enter onto the premises of the Campbell lands for geothermal or other exploration and/or development activities;
2. The current True Geothermal plan of operations for geothermal exploration and/or development activities at Wao Kele 'O Puna and adjoining lands;
3. All permits, issued by the State of Hawaii or the County of Hawaii, or other governmental subdivision of the state, for activities relating to the construction of the first access road into Wao Kele 'O Puna, and the first and second well sites at Wao Kele 'O Puna and adjoining lands;
4. All permit applications for any or all activities beyond the first access road and well sites one and two in Wao Kele 'O Puna and adjoining lands;
5. Copies of any and all correspondence and/or other documentation with all State or County of Hawaii agencies relating to geothermal exploration and/or development activities in Wao Kele 'O Puna and adjoining lands; and
6. Copies of any and all correspondence, internal memoranda, or other documents (i.e., instructions to security guards, etc.) relating to True's policies concerning access to Wao Kele 'O Puna and

adjoining lands by native Hawaiians for purposes of exercising rights under Section 1-1, Hawaii Revised Statutes, and Article XII, Section 7 of the Hawaii Constitution. (emphasis added).

On April 12, 1993, Defendants True filed its Motion for Protective Order or In The Alternative to Quash Subpoena Duces Tecum. On that same day, The Estate of James Campbell, Deceased, W. H. McVay and P. R. Cassiday, Trustees under the Will and of the Estate of James Campbell, Deceased, acting in their fiduciary and not in their individual capacities, Herbert C. Cornuelle and F. E. Trotter filed their Joinder to Defendants True's Motion for Protective Order or In The Alternative to Quash Subpoena Duces Tecum.

On April 15, 1993, Defendants True received Plaintiff's Memorandum In Opposition to Defendants' Motion for Protective Order or In The Alternative to Quash Subpoena Duces Tecum.

On April 16, 1993, Defendants' motion was heard before this Honorable Court, wherein counsel for Defendants True was instructed to provide the Court with its reasons for excluding paragraphs and clauses in the sublease between the Estate of James Campbell and True/Mid-Pacific Geothermal Venture dated 12/03/86.

On May 10, 1993, Defendants True provided to the Court their list of reasons for excluding selected portions of the sublease based upon certain grounds of relevance and/or confidentiality, including but not limited to business secrets, bargained for terms, expert work product and commercial information.

On May 11, 1993, Defendants True received Plaintiff's Motion for Leave to File Second Amended Complaint for Declaratory and Injunctive Relief.

On May 17, 1993, Defendants True filed their Memorandum In Opposition to Plaintiff's Motion for Leave to File Second Amended Complaint for Declaratory and Injunctive Relief.

On May 19, 1993, the Honorable Riki May Amano denied Plaintiff's Motion for Leave to File Second Amended Complaint for Declaratory and Injunctive Relief.

On May 27, 1993, the Honorable Riki May Amano issued her letter ruling, stating that of the 67 listed reasons in Defendants True's May 10, 1993 letter, only reasons 21 through 24 were excludable.

On June 2, 1993, Defendants True filed their Motion for Reconsideration of Letter Ruling Dated May 27, 1993.

On June 9, 1993, Defendants True received Plaintiff's Motion for an Order Compelling Discovery and for Sanctions.

II. ARGUMENT

A. Defendants True's Motion For Reconsideration Is Not Violative of Rule 11

Plaintiff argues that Defendants True's Motion for Reconsideration of Letter Ruling Dated May 27, 1993 is not well grounded in fact, law and filed for an improper purpose, all in violation of Rule 11 of the Hawaii Rules of Civil Procedure ("HRCP"). Plaintiff is incorrect on all three grounds.

HRCP Rule 11 provides in pertinent part the following:

The signature of an attorney...constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.... If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction....

HRCP Rule 11 is virtually identical to Rule 11 of the Federal Rules of Civil Procedure. De Silva v. Burton, 832 P.2d 284, 286 (1992).

The Supreme Court has recently clarified that the central purpose of Rule 11 is to "deter baseless filings." Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 110 S.Ct. 2447, 2454 (1990). Under the recently amended Rule 11, submitted papers which warrant sanctions fall into two categories: factually frivolous (not "well grounded in fact") or legally frivolous (not "warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law"); and papers "interposed for an improper purpose." Fed. R. Civ. P. 11; Business Guides v. Chromatic Com. Enterprises, 892 F.2d 802, 808 (9th Cir. 1989).

In order to determine if Defendants True's motion for reconsideration constitutes a "baseless filing" the court must look to the applicable standard for a reconsideration motion.

While a motion for reconsideration is addressed to the court's discretion, the court will not relitigate old matter. K. M. Young & Assoc., Inc. v. Cieslik, 4 Haw. App. 657, 666 (1983).

Here, Defendants True's motion for reconsideration is supported by new matter.

The focus of Defendants True's motion for reconsideration was based upon the narrowing of the case to a single issue, i.e. whether there is a continued denial of access into Wao Kele 'O Puna to native Hawaiian PDF members who seek access for customarily and traditionally exercised subsistence, cultural and religious practices. Pele Defense Fund v. Paty, ___ Haw. ___, ___, 837 P.2d 1247, 1268 (1992). (original emphasis). This basis, however, was raised and brought into dispute by Plaintiff's filing of its motion for leave to amended its complaint, dated May 11, 1993, one month after Defendants True's motion for protective order was filed April 12, 1993. Plaintiff argued in its motion for leave to amended its complaint that "Rule 15(a) thus allows the amendment of pleadings to enable the party to assert matters which were overlooked at the time the complaint was filed, to request leave in order to change the nature or theory of this claim, or to state an additional claim." See Page 4 of Plaintiff's Memorandum In Support of Motion attached to its Motion for Leave to File Second Amended Complaint for Declaratory and Injunctive Relief, dated May 11, 1993.

In response to Plaintiff's motion for leave to amend its complaint, Defendants True filed their memorandum in opposition to said motion on May 17, 1993, setting forth their argument that the scope of this case has been narrowed to the single issue sent down on remand in Pele Defense Fund v. Paty, ___ Haw. ___, 837 P.2d 1247 (1992).

Hence, Defendants True could not have been aware that Plaintiff would argue that the scope of this case should be expanded beyond the parameters of its First Amended Complaint. If Defendants True had been aware of Plaintiff's motion for leave to amend its complaint, Defendants True would have incorporated the bases in their motion for reconsideration into their motion for protective order. However, Plaintiff's motion for leave to amend its complaint was filed after Defendants True filed their motion for protective order.

Defendants True's reliance on this new matter, raised by Plaintiff, is indicative throughout Defendants True's motion for reconsideration, where the issue of relevance is thoroughly argued due to Plaintiff's expansive view of this case.

Furthermore, Defendants True's motion for reconsideration incorporates a different prayer from their motion for protective order. Defendants True's motion for reconsideration alters the scope of those portions of the sublease which should be protected and also requests that those portions of the sublease which are produced be done so in a designated way. Both new matters incorporated in the prayer of Defendants True's motion for reconsideration arise from the dispute raised by Plaintiff's Motion for Leave to File Second Amended Complaint for Declaratory and Injunctive Relief, the heart of which concerns the scope of relevance in this case.

Finally, Plaintiff argues that Defendants True's motion for reconsideration was filed for an improper purpose. This

argument relies upon a letter dated May 28, 1993 written by Defendants True's counsel Stephanie A. Rezens to Plaintiff's counsel Yuklin Aluli. The relevant portion of said letter relied upon by Plaintiff provides the following:

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.

Obviously, the intent expressed in Ms. Rezens letter was to extend an offer of common courtesy to Plaintiff's counsel. Ms. Rezens was in no way obligated to extend an accommodating offer to Plaintiff's counsel and only acted as such to anticipate a potential scheduling difficulty that could have arisen for Plaintiff. Plaintiff's tactic in using this extension of courtesy as an argument for undue delay is not only unfounded, but inappropriate under the circumstances.

Thus, as Defendants True's motion for reconsideration is supported by new matter raised after their motion for protective order, said motion for reconsideration was well grounded in both fact and law, and not interposed for an improper purpose, and consequently, not in violation of HRCF Rule 11.

B. Defendants True Could Not Produce The Sublease On May 28, 1993

HRCF Rule 59(e) states "[a] motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment." However, this court's letter ruling of May 27, 1993 required Defendants True to produce portions of the sublease by May 28, 1993. Thus, although Defendants True did not produce the

stated portions of the sublease, Defendants True did so only in seeking entitled to relief via a motion for reconsideration. Defendants True's decision in not producing the sublease was not a refusal to comply with this court's order, but the only plausible interpretation of the letter ruling.

Logically, Defendants True could not produce the sublease and seek reconsideration. The effort would be meaningless. Defendants True's interpretation of the letter ruling was the only reasonable interpretation available.

Therefore, Defendants True should not be sanctioned for not producing the stated portions of the sublease on May 28, 1993.

C. Defendants True Should Not Be Compelled to Produce The Sublease as Defendants True's Motion For Reconsideration Is Still Pending

Defendants True's authorities and arguments as to why selected portions of the sublease should not be produced is set forth in their motion for reconsideration, filed June 2, 1993, a true and correct copy of which is attached hereto and incorporated herein by reference as Exhibit "A". Said motion for reconsideration has been consolidated with Plaintiff's subject motion to compel, and both are scheduled to be heard on June 22, 1993 at 4:00 p.m.

Because both motions concern the same issue, i.e. whether portions of the sublease should be produced, Defendants True hereby rely on the authorities and arguments contained in their motion for reconsideration to June 23, 1993 at 7:45 a.m.

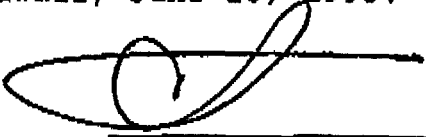
Therefore, based upon the authorities and arguments of Defendants True's motion for reconsideration, selected portions of the sublease should not be produced, or if this court determines that the sublease must be produced, then only in the designated way provided in said motion for reconsideration.

III. CONCLUSION

For the foregoing reasons, Defendants True respectfully requests that Plaintiff's Motion for an Order Compelling Discovery and for Sanctions be denied.

DATED: Honolulu, Hawaii, June 18, 1993.

OF COUNSEL:
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)	
Plaintiff,)	AFFIDAVIT OF CURTIS T. TABATA
)	
vs.)	
)	
WILLIAM PATY, in his capacity)	
as Chairman of the Board)	
of Land and Natural Resources,)	
State of Hawaii, MOSES)	
KEALOHA, DOUGLAS ING, LEONARD)	
ZALOPANY, JOHN ARISUMI and)	
HERBERT ARATA, in their)	
capacity as members of the)	
Board of Land and Natural)	
Resources; The Estate of)	
JAMES CAMPBELL, Deceased,)	
FRED E. TROTTER, W.H. McVAY,)	
P.R. CASSIDAY, and HERBERT C.)	
CORNUELLE, in their fiduciary)	
capacity as Trustees under)	
the Will of James Campbell,)	
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GEOHERMAL CORP., TRUE)	
GEOHERMAL DRILLING CO., and)	
MID-PACIFIC GEOHERMAL, INC.,)	
)	
Defendants.)	

AFFIDAVIT OF CURTIS T. TABATA

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

CURTIS T. TABATA, being first duly sworn on oath, deposes and states:

1. That he is licensed to practice law in all courts of the State of Hawaii;
2. That he is an attorney with the law firm of MATSUBARA, LEE & KOTAKE, attorneys for Defendants True Geothermal Energy Co., True Geothermal Drilling Co. and Mid-Pacific

Geothermal, Inc. ("Defendants True") in connection with the above-captioned matter;

3. That attached to Defendants True's Memorandum In Opposition To Plaintiff Pele Defense Fund's Motion For An Order Compelling Discovery And For Sanctions, Dated June 7, 1993 as Exhibit "A" is a true and correct copy of Defendants True's Motion for Reconsideration of Letter Ruling, Dated May 27, 1993.

Further Affiant sayeth naught.



CURTIS T. TABATA

Subscribed and sworn to before me
this 18th day of June, 1993.



Notary Public, State of Hawaii

My commission expires: 12/16/96

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Plaintiff,)	CERTIFICATE OF SERVICE
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GEOTHERMAL DRILLING CO., and)	
MID-PACIFIC GEOTHERMAL, INC.,)	
)	
Defendants.)	
)	
)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document
was duly served via facsimile to the following:

ALAN T. MURAKAMI, ESQ.
PAUL F. N. LUCAS, ESQ.
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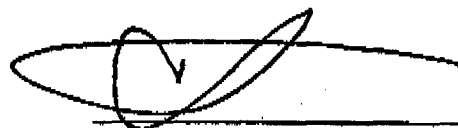
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THE ESTATE OF JAMES CAMPBELL, Deceased,
W.H. McVAY and P.R. CASSIDAY, Trustees
under the Will and of the Estate of
James Campbell, Deceased, Acting in their
Fiduciary and not in their Individual Capacities,
HERBERT C. CORNUELLE and F. E. TROTTER

DATED: Honolulu, Hawaii, June 18, 1993.

OF COUNSEL:
MATSUBARA, LEE & KOTAKE
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