

**IN THE UNITED STATES DISTRICT COURT
WASHINGTON, DC**

CareToLive,
a not for profit corporation

Plaintiff,

Case No. (Misc)

vs.

United States Southern District of Ohio
Case No.: 2:07 CV 729

Andrew von Eschenbach,
Commissioner of the FDA, et al.

Defendants.

PETITION TO ENFORCE SUBPOENA

Now comes the Plaintiff through their undersigned counsel who hereby seeks to enforce the subpoena power of this court upon the editors and owners of a business being called the Cancer Letter, (Paul and Kirsten Goldberg) and it is further respectfully requested that in the interests of judicial and plaintiff economy that this court schedule this matter for a very brief miscellaneous hearing at 9:30 a.m., on Monday August 13, 2007 as set forth in the attached memorandum.

Respectfully submitted,

Kerry M. Donahue (0061105)
BELLINGER & DONAHUE
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Dublin, Ohio 43016
(614) 761-0402
(614) 789-9866 facsimile

MEMORANDUM

On the morning of Thursday August 3, 2007 Plaintiff's counsel spoke to Paul Goldberg the owner operator of a business called the "Cancer Letter", which he runs out of the basement of his home, along with his wife Kirsten Goldberg.

Counsel requested documents related to this action, which are extremely important to Plaintiffs case. This request came as no great surprise to Mr. Goldberg, as various persons within and outside the press, has previously attempted to obtain the information/documents from Mr. Goldberg, since April of 2007.

Counsel explained to Mr. Goldberg that he would send him a subpoena for the documents if needed. Mr. Goldbegr responded that he was glad the FDA was being sued regarding this matter and said that his attorney would call counsel that day. Mr. Goldberg also requested a copy of the civil complaint which was immediately e-mailed to Mr. Goldberg, as he requested.

Neither Mr. Goldberg nor any counsel called Plaintiffs counsel as promised. Since Plaintiff's counsel had no further response two subpoenas were faxed to Mr. Goldberg requesting in the first that documents be produced to the offices of Plaintiffs counsel (there are only a couple of documents) by noon on August 6th by facsimile, e-mail or regular mail or if that was a problem then counsel for Plaintiff would travel from Dublin Ohio to Washington DC on Monday August 13, 2007

and inspect the documents himself at 10:30 a.m., per the second subpoena. A follow up e-mail was sent to the Cancer Letter at the address provided by Mr. Goldberg, asking if they were going to comply with the subpoenas or provide the information requested. Again no response was provided.

On Sunday August 5, 2007 Plaintiff attempted personal service upon Paul Goldberg of the subpoena already sent by facsimile (“Exhibit A”). According to the process servers they believed Paul Goldberg was in the house but that he twice sent his daughter to the door to say he was not there. Another e-mail concerning the documents was sent to Mr. Goldberg without any response.

On Monday August 6, 2007 a letter was sent from Mr. Goldberg’s attorney, acknowledging that they had received the faxed subpoenas but that they were not properly served so they were not going to comply with them. The correspondence back and forth between counsel is attached hereto as “Exhibit B”.

Counsel for Mr. Goldberg indicated that if counsel for Plaintiff showed up in Washington DC on August 13, 2007, that he would not be permitted to inspect the documents and counsel further suggested that Plaintiff seek enforcement in this Washington DC Court before they would comply with any subpoena, no matter how it was served.

Subpoenas have been reissued by personal service despite counsel’s previous acknowledgement of receipt of same (Exhibit C).

Counsel for Mr. Goldberg has suggested that he will also seek to quash the subpoena on the grounds of privilege. This court should be aware that the evidence that is sought will show that Federal Employees improperly and unlawfully “leaked” the letters which are the subject of the inquiry to the Goldbergs. There is no privilege for anyone to protect federal employees, who contrary to Federal Regulations, have “leaked” information from within the FDA to sources outside the FDA for their own purposes including but not limited to the reason that they wanted to negatively affect an immunotherapy approval process, that at the time was pending within the FDA. There is no privilege to protect wrong doers within the Federal Government.

Because counsel for Plaintiff plans to be at the Cancer Letter’s offices in Washington DC on Monday August 13, 2007, at considerable expense, and counsel for the Cancer Letter (Goldbergs) has indicated access will be denied no matter what, Plaintiff needs intervention from this court.

Any delay provides further chance that the Cancer Letter will unlawfully destroy, hide or delete valuable evidence in this matter.

WHEREFORE it is requested that this court order compliance with both the subpoenas as issued and/or hold a miscellaneous hearing on Monday August 13th so that if enforcement is ordered that counsel for Plaintiff can immediately travel to

3821 Woodley Rd. NW, Washington, DC following the hearing and inspect the premises as set forth in the subpoena.

Respectfully submitted,

Kerry M. Donahue (0061105)
BELLINGER & DONAHUE
Trial Counsel for Plaintiff, CareToLive
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Dublin, Ohio 43016
(614) 761-0402
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CERTIFICATE OF SERVICE

It is hereby certified that a copy of this motion was sent to counsel for Paul Goldberg (DBA the Cancer Letter), Steven Lieberman, 1425 K Street, N.W., Suite 800, Washington, D.C. 20005 this 7th day of August, 2007 by regular US mail, postage prepaid and by facsimile.

Kerry M. Donahue

EXHIBIT A

EXHIBIT B

EXHIBIT C