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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

NATIONAL LABOR RELATIONS BOARD, Applicant, v. SECURITAS SECURITY SERVICES USA, INC. Respondent,	Civil No. _____ APPLICATION FOR ORDER REQUIRING OBEDIENCE TO SUBPOENA <i>DUCES TECUM</i>
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APPLICATION FOR ORDER REQUIRING OBEDIENCE TO
SUBPOENA *DUCES TECUM*

The National Labor Relations Board (the Board), an administrative agency of the United States Government created pursuant to the National Labor Relations Act (the Act), as amended, 29 U.S.C. Sec. 151 et. seq., by its General Counsel and by Jill H. Coffman, Regional Director for Region 20 of the Board

(Region 20),¹ respectfully applies to this Honorable Court, pursuant to Section 11(2), 29 U.S.C. Sec. 161(2), of the Act for an order requiring Securitas Security Services USA, Inc. (Respondent) to obey Subpoena *Duces Tecum* B-1-10V90DH. This subpoena *duces tecum* was issued by the Board on behalf of an agent of the Board, and the subpoena *duces tecum* was duly served on Respondent in the manner provided by law. The subpoena seeks evidence that is relevant to the investigation of two unfair labor practice charges before the Board. In support of said application, upon information and belief, the Board respectfully alleges as follows:

(a) The Board is empowered and directed to administer the provisions of the Act, including the investigation of unfair labor practices alleging violations of Section 8 of the Act, 29 U.S.C. Sec. 158.

(b) This Court has jurisdiction over the subject matter of the proceeding, and over Respondent, by virtue of Section 11(2) of the Act, 29 U.S.C. Sec. 161(2), in that the proceeding in aid of which the subpoenas were issued is being carried on within this judicial district. The subpoenas were duly served on Respondent.

¹ The Board's Honolulu, Hawaii office (Subregion 37) is a sub-office of Region 20 and functions under the direction of Region 20's Regional Director.

(c) Pursuant to the provisions of Section 6 of the Act, 29 U.S.C. Sec. 156, the Board has issued Rules and Regulations, Series 8, as amended, effective November 13, 1959, (the Rules and Regulations), governing the conduct of its operations, which Rules have been duly published in the Federal Register (24 C.F.R. 9095) as provided for in the Administrative Procedures Act, 5 U.S.C. Sec. 1002, and are reported at 29 C.F.R. Section 102.1, et seq. This Court may take judicial notice of said Rules by virtue of 44 U.S.C. Sec. 307.

(d) Pursuant to the provisions of Section 10(b) of the Act, 29 U.S.C. Sec. 160(b), there is now pending before the Board two unfair labor practice charges designated as Board Cases 20-CA-215028 and 20-CA-215743. Case 20-CA-215028 was filed by the International Union, Security, Police and Fire Professionals of America, Local 650 (Union), and served in the manner and form required by law and Sections 102.9, 102.10, 102.12 and 102.14 of the Board's Rules. Case 20-CA-215743 was filed by Dawn Michelle Koki, an individual, and served in the manner and form required by law and Sections 102.9, 102.10, 102.12 and 102.14 of the Board's Rules. At all times relevant to this Application, the Board, through its Subregion 37 office in Honolulu, Hawaii, has been conducting an investigation of the allegations contained in the charges duly filed by the Union and Ms. Koki. The

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allegations set forth in the charges remain under investigation. The purpose of the investigation is to determine whether the Respondent suspended and discharged Ms. Koki about September 2017 in violation of Sections 8(a)(1), 8(a)(3), and 8(a)(4) of the Act. [29 U.S.C. Sec. 158(a)(1), 158(a)(3), and 158(a)(4)].

(e) In furtherance of the investigation of the charge, on April 18, 2018, the Board issued Subpoena *Duces Tecum* B-1-10V90DH under the authority of, and in the manner and form provided for in Section 11(1) of the Act, 29 U.S.C. Section 161(1), and Sections 102.31 and 102.113 of the Board's Rules and Regulations.

(f) Subpoena *Duces Tecum* B-1-10V90DH was received by Respondent on April 20, 2018. Subpoena *Duces Tecum* B-1-10V90DH required Lorraine Duque-Reyes, Respondent's Area Human Resources Manager, and/or Respondent's Custodian of Records to personally appear on May 3, 2018, at 10:00 a.m., before a designee of the Regional Director, at the Board's Subregional Office in Honolulu, and to there and then produce documents relevant to the investigation of the unfair labor practice charges.

(g) On April 30, 2018, Respondent filed a petition to revoke Subpoena *Duces Tecum* B-1-10V90DH with the Regional Director of Region 20, in accordance with Section 11(1) of the

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Act, 29 U.S.C. Section 161(1), and with Section 102.31(b) of the Board's Rules and Regulations.

(h) On May 3, 2018, Respondent failed to appear at the Subregion 37 offices, as required by Subpoena *Duces Tecum* B-1-10V90DH.

(i) On May 4, 2018, the Regional Director issued an Order Referring Petition to Revoke Subpoena *Duces Tecum* B-1-10V90DH to the Board. The field attorney investigating Board Cases 20-CA-215028 and 20-CA-215743 for Subregion 37, Region 20, Trent K. Kakuda, also filed an Opposition to Petition to Revoke Subpoena *Duces Tecum* B-1-10V90DH with the Board that same day.

(j) On June 13, 2018, the Board issued its Order denying Respondent's petition to revoke Subpoena *Duces Tecum* B-1-10V90DH.

(k) On June 14, 2018, Field Attorney Kakuda sent an e-mail to Respondent's attorney, Richard M. Rand, asking when Respondent could produce the responsive documents.

(l) On June 14, 2018, Mr. Rand did not inform the Field Attorney Kakuda when Respondent could produce responsive documents.

(m) On June 18, 2018, Field Attorney Kakuda sent an e-mail to Mr. Rand requesting that the responsive documents be produced by the close of business on June 25, 2018.

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(n) On June 25, 2018, Mr. Rand sent a letter to Field Attorney Kakuda via hand delivery with Respondent's response to the subpoena *duces tecum*. Attached to the letter were documents described by Mr. Rand in his letter as constituting the following:

- (1) Ms. Koki's personnel file;
- (2) Security Officers Handbook; and
- (3) Three Letters of Termination of other employees for workplace violence.

Mr. Rand's letter also indicated that further documents might be produced.

(o) On June 26, 2018, Field Attorney Kakuda sent an e-mail to Mr. Rand requesting all responsive documents by the close of business on June 28, 2018. Field Attorney Kakuda also informed Mr. Rand that depending on the production, Respondent may need to produce Ms. Duque-Reyes and/or the Custodian of Records for an affidavit before a Board Agent.

(p) On June 27, 2018, Mr. Rand sent a letter to Field Attorney Kakuda via hand delivery with documents attached. Mr. Rand's letter described the attached documents as constituting the underlying "To/From" forms and related documents for the incidents involving the three employees whose letters of

termination were produced by Mr. Rand on June 25, 2018.

Respondent produced no more documents after June 27, 2018.

(q) On June 29, 2018, Field Attorney Kakuda sent an e-mail to Mr. Rand requesting that Respondent produce Ms. Duque-Reyes and/or its Custodian of Records for an affidavit before a Board Agent to answer questions about Respondent's document production pursuant to the subpoena *duces tecum*. Field Attorney Kakuda advised Mr. Rand that Ms. Duque-Reyes and/or the Custodian of Records must appear for an affidavit before a Board Agent by July 9, 2018.

(r) To date, Respondent has not responded to Field Attorney Kakuda's e-mail to Mr. Rand, dated June 29, 2018, and it has not made Ms. Duque-Reyes and/or its Custodian of Records available for an affidavit before a Board Agent.

(s) Respondent's failure to produce Ms. Duque-Reyes and/or its Custodian of Records for an affidavit to provide sworn testimony about the documents it produced in response to Subpoena *Duces Tecum* B-1-10V90DH constitutes conduct which has impeded and continues to impede the Board in the conclusion of the matters before it and has prevented, and is preventing, the Board from carrying out its duties and functions under the Act.

WHEREFORE, Applicant, National Labor Relations Board, respectfully prays:

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(1) That this Court enter an Order to Show Cause why its Application should not be granted forthwith, and a subsequent Order requiring Respondents to comply with Subpoena *Duces Tecum* B-1-10V90DH by appearing before the Regional Director of Region 20 of the Board, or her agent, at such time and place as the Regional Director may designate, and to then and there provide all the documents responsive to Subpoena *Duces Tecum* B-1-10V90DH, and to give sworn testimony and answer any and all questions relevant and material to the documents in question in the proceedings before the Board; and

(2) That the Applicant, National Labor Relations Board, have such other further relief as may be necessary and appropriate.

DATED AT Honolulu, Hawaii, this 31st day of July, 2018.

/s/Dale K. Yashiki_____

Dale K. Yashiki
Officer-in-Charge
National Labor Relations Board,
Subregion 37

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