

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

CHRISTOPHER PUCKETT,	)	
	)	
Plaintiff	)	CIVIL ACTION FILE NO.
	)	
v.	)	1:06-CV-2382-BBM
	)	
KELLEY S. POWELL in her official	)	
capacity as Probate Judge for	)	
Henry County, Georgia	)	
	)	
Defendant.	)	

**DEFENDANT’S MOTION FOR EMERGENCY RELIEF TO FILE OUT  
OF TIME RESPONSE TO PLAINTIFF’S MOTION FOR CONTEMPT**

COMES NOW, Defendant, the Honorable Kelley S. Powell, in her official capacity as Probate Judge for Henry County, Georgia, by and through her counsel of record and shows the Court as follows:

1. Defendant seeks this Court’s permission to file an out of time response to Plaintiff’s Motion for Contempt.
2. Defendant shows that, due to excusable neglect, counsel for Defendant failed to file a timely response to said motion.
3. In particular, Plaintiff’s Motion for Contempt was originally filed on June 12, 2008. [Doc. 47].

4. On the following day, June 13, 2008, Plaintiff withdrew said motion [Doc. 48] and almost contemporaneously therewith, filed a nearly identical motion. [Doc. 49].
5. Due to the timing of these events, Defendant's counsel erroneously (and inadvertently) believed that Plaintiff's motion had been completely withdrawn.
6. Defendant's counsel did not discover this error until yesterday's date when he received notice that Plaintiff's Motion for Contempt had been submitted to the Judge for consideration.
7. Defendant's counsel respectfully requests that this Court permit the filing of an out of time response to the Motion for Contempt as attached hereto.
8. Defendant has a valid and substantive defense to the allegations set forth in the Motion for Contempt and should not be unduly penalized due to the inadvertence of her counsel.

WHEREFORE, Defendant prays that the instant Motion for Emergency Relief be inquired into and thereafter, granted.

This 15th day of July, 2008.

/s/ Patrick D. Jaugstetter  
Patrick D. Jaugstetter  
Georgia State Bar No. 389680  
Counsel for Defendant  
[pjaugstetter@co.henry.ga.us](mailto:pjaugstetter@co.henry.ga.us)

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CHRISTOPHER PUCKETT, )

Plaintiff )

v. )

KELLEY S. POWELL in her official )  
capacity as Probate Judge for )  
Henry County, Georgia )

Defendant.

CIVIL ACTION FILE NO.

1:06-CV-2382-BBM

**DEFENDANT’S RESPONSE TO PLAINTIFF’S  
MOTION FOR CONTEMPT**

COMES NOW, Defendant, the Honorable Kelley S. Powell, in her official capacity as Probate Judge for Henry County, Georgia, by and through her counsel of record and shows the Court as follows:

**BRIEF FACTUAL SUMMARY**

Plaintiff filed suit against Defendant on October 5, 2006, alleging that Defendant was liable under 42 U.S.C. Sec. 1983 “for violations of Plaintiff’s privacy rights as protected by the Federal Privacy Act of 1974 and the Fourteenth Amendment of (sic) the United States Constitution.” [Doc. 1; Doc. 13]. Plaintiff alleged among other things, that “Defendant violated [his] privacy rights by requiring Plaintiff to disclose his private SSN in order to obtain the rights, benefits, and privileges afforded persons under [Georgia law]” and by “fail[ing] to provide

Plaintiff the warning required by the Privacy Act when Defendant required Plaintiff to disclose his SSN.” [Doc. 13]. Plaintiff also asserted a state law claim arising under the Georgia Firearms statute (O.C.G.A. Sec. 16-11-129).

On August 2, 2007, this Court entered a preliminary Order finding that Defendant had violated the Privacy Act and certain technical provisions of the Georgia Firearms Statute. [Doc. 36]. A final Order was entered on August 21, 2007. [Doc. 43].

Plaintiff has now filed a Motion for Contempt alleging that Defendant has violated the Court’s prior Order. [Doc. 49]. For the reasons that follow, Plaintiff’s motion should be denied.

### **ARGUMENT AND CITATION OF AUTHORITY**

#### **1. Judge Powell Has Not Violated This Court’s Prior Orders.**

In support of his Motion for Contempt, Plaintiff relies upon the affidavits of two (2) individuals who applied for a firearms license with the Henry County Probate Court and “*from whom Defendant [allegedly] requested their SSNs without advising them by what statutory or other authority their SSNs were requested.*” (See Declarations of Kenneth Sanderson, para. 5; and Rodney Rapes, para. 5 at Doc. 49).

Contrary to Plaintiff’s assertions, Defendant shows that each of these individuals were provided with written notice of their rights under the Privacy Act

as it pertained to the disclosure of their social security numbers at the time they applied for their firearms license. (See **attached Application for Firearms License of Kenneth Sanderson; and Application for Firearms License of Rodney Rapes**). Each such application was accompanied by a disclosure of the provisions of the Privacy Act of 1974. In addition, each applicant **voluntarily provided his social security number** after reviewing this disclosure. (See Declaration of Kelley S. Powell). Accordingly, neither these individuals nor Plaintiff can be heard to complain that they were not informed of their rights because Defendant's actions were **wholly consistent** with the prior directives of this Court.

To establish a *prima facie* case of civil contempt, the petitioner must prove by clear and convincing evidence that the respondent violated a prior court order. **Jordan v. Wilson, 851 F.2d 1290, 1292 (11th Cir.1988)**. Plaintiff has failed to meet this evidentiary burden. In the Court's August 2, 2007 Order, this Court stated the following:

**"...[T]he Court hereby DIRECTS Defendant to comply in the future with all federal law binding upon her, including §7(b) of the Privacy Act, which provides that if she "requests an individual to disclose his social security account number[, she] shall inform that individual whether that disclosure is mandatory or**

**voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.” [Order at Doc. 36, p. 11].**

The attached disclosures accompanying the firearms applications of Declarants Kenneth Sanderson and Rodney Rapes provide *clear and convincing evidence* that **Defendant has fully complied** with this Court’s Order. (See Declaration of Kelley S. Powell). Accordingly, Plaintiff’s motion should be denied.

**2. Plaintiff Seeks Remedies That Far Exceed The Scope of The Prior Orders of This Court.**

In addition to the foregoing, Plaintiff’s motion should be denied because it seeks to enlarge the scope of this Court’s original orders by asserting relief that was not contemplated therein. “Civil contempt is a mechanism designed to coerce compliance with court orders.” **In re Lawrence, 279 F.3d 1294, 1300 (11th Cir.2002)**. It is not, as Plaintiff seeks, a tool to be used to impose remedies or sanctions not contemplated by the original order.

In its present motion, Plaintiff “suggests a two-pronged remedy” requiring the Defendant to expunge all of the social security numbers of persons who have provided such information in the firearms application process and the appointment of a monitor “*to oversee the GFL application process in Henry County.*” Such a request is far beyond the scope of the relief granted in the original suit and more

importantly, is not warranted by the facts presently alleged by Plaintiff or the facts of the original lawsuit.

Plaintiff has not presented any evidence that would establish that Defendant is not providing the requisite disclosure to current firearms applicants. Moreover, there is simply no basis in law or fact that would justify a court appointed “monitor” to oversee the operations of the Henry County Probate Court as it pertains to the processing of these applications. Notwithstanding Plaintiff’s present allegations (which have been demonstrated to be without merit), the original suit involved the single allegation of Plaintiff as opposed to any allegations of widespread practices of Defendant in failing to comply with the federal Privacy Act or the Georgia firearms statute. As such, Plaintiff’s proposed “remedy” far exceeds the scope of the original proceeding and should be denied.

### **CONCLUSION**

For all of the foregoing reasons, Plaintiff’s Motion To Compel should be denied.

This 15th day of July, 2008

/s/ Patrick D. Jaugstetter  
Patrick D. Jaugstetter  
Georgia State Bar No. 389680  
Counsel for Defendant  
[pjaugstetter@co.henry.ga.us](mailto:pjaugstetter@co.henry.ga.us)



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**IN THE UNITED STATE DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
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CHRISTOPHER PUCKETT,  
Plaintiff

]

Vs.

]

Civil Action No.  
1:06-2382-BBM

KELLEY S. POWELL, in her  
official capacity as Probate Judge  
For Henry County, Georgia

]

]

**DECLARATION OF KELLEY S. POWELL**

Pursuant to 28 U.S.C. §1746, Kelley S. Powell, states the following:

1. I am over the age of 18 and have personal knowledge of the matters contained herein.
2. I am the Judge of the Henry County Probate Court. In that capacity, I am authorized by Georgia law to process firearms license applications. I am also the custodian of firearms applications filed in my office.
3. According to the records maintained in my office, Kenneth Arnold Sanderson completed an Application For Firearms License with my office on May 27, 2008. At that time, Mr. Sanderson was provided with a “Notice required under section 7(b) of the Federal Privacy Act of 1974” advising him of his rights thereunder. Upon being provided with this

- information, Mr. Sanderson voluntarily provided his social security number to my office as evidenced by his signature on this disclosure form. A true and correct copy of Mr. Sanderson's application and the disclosure form (with the social security number redacted) is attached hereto as **Exhibit A**.
4. According to the records maintained in my office, Rodney Shay Rapes completed an Application for Firearms License with my office on February 14, 2008. At that time, Mr. Rapes was provided with a "Notice required under section 7(b) of the Federal Privacy Act of 1974" advising him of his rights thereunder. Upon being provided with this information, Mr. Rapes voluntarily provided his social security number to my office as evidenced by his signature on this disclosure form. A true and correct copy of Mr. Rapes' application and the disclosure form (with the social security number redacted) is attached hereto at **Exhibit B**.
  5. The processing of each of the aforementioned applications was not contingent upon whether the applicants provided their social security numbers.
  6. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Kelley S. Powell 7/15/08  
Kelley S. Powell

### **Local Rule 7.1D Certification**

I certify that the foregoing DEFENDANT'S MOTION FOR EMERGENCY RELIEF TO FILE OUT OF TIME RESPONSE TO PLAINTIFF'S MOTION FOR CONTEMPT and DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR CONTEMPT were prepared using Times New Roman 14 point, a font and point selection approved in LR 5.1B.

/s/ Patrick D. Jaugstetter  
[pjaugstetter@co.henry.ga.us](mailto:pjaugstetter@co.henry.ga.us)

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**CERTIFICATE OF FILING**

I hereby certify that on the date shown below, I presented **Defendant's Emergency Motion To File Out of Time Response To Plaintiff's Motion To Compel** with attachments to the Clerk of the Court for filing and uploading to the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record:

John Monroe, Esq.  
9640 Coleman Road  
Roswell, Georgia 30075

This 15<sup>th</sup> day of July, 2008.

/s/ Patrick D. Jaugstetter  
Patrick D. Jaugstetter  
Georgia State Bar No. 389680  
Counsel for Defendant  
[pjaugstetter@co.henry.ga.us](mailto:pjaugstetter@co.henry.ga.us)

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