

JAMES HOCHBERG, AAL LLC  
James Hochberg, Bar No. 3686  
700 Bishop Street, Suite 2100  
Honolulu, Hawaii 96813  
Telephone: (808) 534-1514  
Facsimile: (808) 538-3075  
Local Counsel

SUMMER R. LEE\*  
TX Bar No. 240462283  
Assistant Attorney General  
General Litigation Division  
Office of the Texas Attorney General  
P.O. Box 12548 MC019  
Austin, Texas 78711-2548  
(512) 475-4031/Telephone  
(512) 370-9387/Facsimile  
\*Admitted *Pro Hac Vice*  
Attorney for Defendant Ken Paxton

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

WHOLE WOMAN’S HEALTH; et al.,  
Plaintiffs,

vs.

KEN PAXTON, Attorney General of  
Texas; et al,  
Defendants.

MC Case No. 1:17-mc-00303

DEFENDANT KEN PAXTON’S MOTION  
TO EXPEDITE APPEAL OF ORDER  
GRANTING JANE DOE, M.D.’S MOTION  
TO QUASH DEPOSITION SUBPOENA  
ISSUED BY DEFENDANTS PAXTON, ET  
AL., OR ALTERNATIVE *EX PARTE*  
APPLICATION TO SHORTEN TIME

**DEFENDANT KEN PAXTON’S MOTION TO EXPEDITE APPEAL OF ORDER  
GRANTING JANE DOE, M.D.’S MOTION TO QUASH DEPOSITION SUBPOENA  
ISSUED BY DEFENDANTS PAXTON, ET AL., OR ALTERNATIVE *EX PARTE*  
APPLICATION TO SHORTEN TIME**

Defendant Ken Paxton, Attorney General of Texas (“Defendant Paxton”) respectfully requests this Court to expedite the appeal and/or applies to this Court *ex parte* to shorten the time for Dr. Doe to file a response to his appeal of the Magistrate’s Order granting Jane Doe, M.D.’s

Motion to Quash Deposition Subpoena, *see* ECF 25, filed concurrently herewith.

Defendant Paxton has been attempting to depose Dr. Doe since noticing her deposition on September 20, 2017, for October 6, 2017. *See* ECF 8, 9-1, 13. After negotiating in good faith with her legal counsel for several weeks, Defendant Paxton re-noticed Dr. Doe's deposition to October 26, 2017, a date counsel previously stated she was available. *See* ECF 8-6, at 4. After agreeing to accept service of the Subpoena on behalf of Dr. Doe, *see* ECF 8-6, at 1, counsel for Dr. Doe filed a motion to quash on October 23, 2017, *see* ECF 4-1, they filed an *ex parte* application to shorten time for a hearing on their motion to quash on October 23, 2017, *see* ECF 4, and they served Defendant Paxton with a copy of the motion to quash on October 24, 2017, approximately three hours and thirteen minutes until the Magistrate's deadline to file a response. *See* ECF 9-1, at 3. On October 25, 2017, the Magistrate ordered Defendant Paxton to file a full response to the motion to quash by 10 a.m. HST that day, and ordered the parties to appear for a hearing on the motion to quash at 8:30 a.m. HST on October 26, 2017. Magistrate Chang granted Dr. Doe's motion to quash on October 26, 2017, at 12:07 p.m. HST. *See* ECF 25.

The underlying matter in the Western District of Texas is being litigated on an expedited basis. Discovery is ongoing and trial is set to begin in this matter on November 2, 2017, in Austin. Dr. Doe possesses unique knowledge about policies and documents that were produced in discovery in the underlying case, including documents produced just this week. *See* ECF 13. Thus, the expeditious resolution of this matter is vital to timely depose Dr. Doe, who has factual information that is relevant to the underlying matter.

Expedited and/or *ex parte* relief is warranted on Defendant Paxton's appeal of the Magistrate's Order because of the above reasons and because under Local Rule 74.1, a response to the appeal would not be due from Dr. Doe until November 9, 2017, which is after the trial of

the underlying matter will have concluded. As set out in Local Rule 74.1, the response period of 14 days may be altered by the district judge. The *ex parte* application is made pursuant to Federal Rules of Civil Procedure 6 and 7, Local Rule 6.2, the facts and arguments set out in the pleadings, exhibits, and argument by counsel at the hearing on October 26, 2017.

Good cause being shown, Defendant Paxton respectfully requests that the Court consider the appeal of the Magistrate's ruling issued today at 12:07 p.m. on an expedited basis, and order any responses or hearing necessary to consideration of the appeal to occur at such time to permit resolution of this matter by the end of the day tomorrow, October 27, 2017.

DATED: Honolulu, Hawai'i, this 26th day of October, 2017.

/s/ Summer R. Lee  
SUMMER R. LEE\*  
Assistant Attorney General  
General Litigation Division  
Office of the Texas Attorney General  
P.O. Box 12548 MC019  
Austin, Texas 78711-2548  
(512) 475-4031/Telephone  
(512) 370-9387/Facsimile  
*Attorney For Respondent Ken Paxton*  
*\*Admitted Pro hac vice*

JAMES HOCHBERG, AAL LLLC  
Bar No. 3686  
700 Bishop Street, Suite 2100  
Honolulu, Hawaii 96813  
Telephone: (808) 534-1514  
Facsimile: (808) 538-3075  
*Local Counsel*

JAMES HOCHBERG, AAL LLLC  
Bar No. 3686  
700 Bishop Street, Suite 2100  
Honolulu, Hawaii 96813  
Telephone: (808) 534-1514  
Facsimile: (808) 538-3075  
*Local Counsel*

SUMMER R. LEE\*  
TX Bar No. 240462283  
Assistant Attorney General  
General Litigation Division  
Office of the Texas Attorney General  
P.O. Box 12548 MC019  
Austin, Texas 78711-2548  
(512) 475-4031/Telephone  
(512) 370-9387/Facsimile  
\* Admitted *Pro Hac Vice*  
*Attorney for Defendant Ken Paxton*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

WHOLE WOMAN'S HEALTH; et al.,  
Plaintiffs,

vs.

KEN PAXTON, Attorney General of  
Texas; et al,  
Defendants.

MC Case No. 1:17-mc-00303

[Case No. 1:17-CV-00690-LY,  
Pending in the Western District of  
Texas Austin Division]

CERTIFICATE OF SERVICE

## CERTIFICATE OF SERVICE

I certify that a copy of *DEFENDANT KEN PAXTON'S MOTION TO EXPEDITE APPEAL OF ORDER GRANTING JANE DOE, M.D.'S MOTION TO QUASH DEPOSITION SUBPOENA ISSUED BY DEFENDANTS PAXTON, ET AL., OR ALTERNATIVE EX PARTE APPLICATION TO SHORTEN TIME* was served by the Court's electronic filing system and by email on the 26th day of October 2017, upon the following individuals:

Lisa W. Munger  
Nicole Y.C.L. Altman  
Goodsill Anderson Quinn & Stifel LLLP  
lmuner@goodsill.com  
naltman@goodsill.com

Patrick J. O'Connell  
Law Offices of Patrick J. O'Connell PLLC  
pat@pjofca.com

Janet Crepps  
Molly Duane  
Center for Reproductive Rights  
jcrepps@reprorights.org  
mduane@reprorights.org

J. Alexander Lawrence  
Morrison & Foerster LLP  
alawrence@mofo.com

Melissa Cohen  
Planned Parenthood Federation of America  
melissa.cohen@ppfa.org

DATED: Honolulu, Hawai'i, October 26, 2017.

/s/Summer R. Lee

SUMMER R. LEE\*

Assistant Attorney General

General Litigation Division

Office of the Texas Attorney General

P.O. Box 12548 MC019

Austin, Texas 78711-2548

(512) 475-4031/Telephone

(512) 370-9387/Facsimile

*Attorney For Respondent Ken Paxton*

*\*Admitted Pro hac vice*

JAMES HOCHBERG, AAL LLC

Bar No. 3686

700 Bishop Street, Suite 2100

Honolulu, Hawaii 96813

Telephone: (808) 534-1514

Facsimile: (808) 538-3075

*Local Counsel*