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11 UNITED STATES DISTRICT COURT
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 13 SOUTHERN DIVISION
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15	ALAN KEYES, Ph.D., WILLEY S.)	No. SACV 09-00082 DOC (Anx)
16	DRAKE, AND MARKHAM ROBINSON,)	
	Plaintiffs,)	
17	v.)	DATE: July 13, 2009
	BARACK H. OBAMA, <i>et al.</i> ,)	TIME: 8:30 a.m.
18	Defendants.)	CTRM: 9D
19		
20		Hon. David O. Carter

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 23 **STATEMENT OF INTEREST OF**
 24 **THE UNITED STATES**
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1 COMES NOW the United States, pursuant to 28 U.S.C. § 517, by
2 and through its undersigned counsel, and respectfully files this
3 Statement of Interest:

4 I.

5 **Plaintiffs Are Required To Comply With The Service Provisions**
6 **Contained In Rule 4(i) Of The Federal Rules Of Civil Procedure**

7 While the Complaint is not a model of clear pleading, when
8 distilled to its essence, it appears that this case seeks a
9 judgment declaring whether Barack H. Obama is eligible to be
10 President of the United States. See, e.g., ¶¶ 36 and 37 of the
11 Complaint. As such, it is indisputable that this case constitutes
12 an action against an "Officer of the United States." Fed.R.Civ.P.
13 4(i). It follows ineluctably, therefore, that service must be
14 effected pursuant to the provisions of Rule 4(i) of the Federal
15 Rules of Civil Procedure.

16 II.

17 **The Requirements For Service Of Process Provided In Rule 4(i)**
18 **Have Not been Met**

19 Plaintiffs cannot allege that they have complied with the
20 service requirements of Rule 4(i). As Plaintiffs acknowledge, Rule
21 4(i) requires, among other things, that "a party must serve the
22 United States *and also* serve the officer or employee under Rule
23 4(e), (f), or (g)." See Plaintiffs' Motion for Reconsideration, 2,
24 quoting Rule 4(i)(3) (emphasis added). In other words, to effect
25 proper service a party must serve *both* the officer or employee *and*
26 the United States. In order to properly serve the United States,
27 however, a party must serve the United States Attorney for the
28 District in which the suit is pending. See Fed.R.Civ.P.

1 4(i)(1)(A)(i) and (ii). Among other defects, Plaintiffs have never
2 served the Office of the United States Attorney for the Central
3 District of California as required by Rule 4(i). On this ground
4 alone the Court should find that the service of process
5 requirements under the Federal Rules have not been met.

6 **III.**

7 **Even Assuming, Arguendo, That Plaintiffs Were Only Required To**
8 **Comply With The Service Requirements Of Rule 4(e),**
9 **They Have Not Done So**

10 Throughout their moving papers, Plaintiffs assert that,
11 notwithstanding the fact that they are contesting the eligibility
12 of President Obama under Article II, they are not suing President
13 Obama in his official capacity, but, rather, merely as an
14 individual. From this, Plaintiffs further assert that they are,
15 therefore, required only to comply with the service requirements
16 contained in Rule 4(e) of the Federal Rules of Civil Procedure.
17 Plaintiffs finally assert in this regard that they have complied
18 specifically with Rule 4(e)(2)(C).

19 In support of their assertion that they have complied with
20 Rule 4(e)(2)(C), Plaintiffs proffer the "General Affidavit" of Mary
21 Ann McKiernan. In this document, which Plaintiffs attach to their
22 Motion, Ms. McKierman states that on February 10, 2009, she
23 attempted to serve "a Pleading" (not further identified) to
24 President Obama at the White House. She further states that she
25 gave the envelope with "the Pleading" to a Secret Service Agent at
26 a gate just outside the White House. She thereafter avers that the
27 Secret Service Agents told her that she could not serve the papers
28 there. She states that she then called the White House, and was

1 informed by White House legal counsel that she needed to serve the
2 papers "to the Department of Justice." Thereafter, she alleges
3 that she went to the Department of Justice, and ultimately served
4 the papers upon a "male Mail Clerk."

5 The facts set forth in Ms. McKiernan's "General Affidavit"
6 constitute the sole basis for Plaintiffs' contention that they have
7 properly served President Obama, in his private capacity, with the
8 Summons and Complaint herein under Rule 4(e)(2)(C).

9 Even assuming, *arguendo*, that only Rule 4(e) applied here,
10 Plaintiffs have not shown, nor can they show, that a mail clerk at
11 the Department of Justice to whom Ms. Mckiernan gave some
12 unspecified "Pleading" was authorized, by appointment or by law, to
13 receive service of process on behalf of Barack H. Obama in lawsuits
14 where he was sued in his private, individual capacity. Indeed, it
15 strains credulity past the breaking point to conclude that an
16 otherwise unidentified mail clerk in the Department of Justice
17 would have been authorized through appointment by Defendant Obama,
18 or by law, to receive service of process on Defendant Obama's
19 behalf in cases where he was sued only in his private, individual
20 capacity.

21 Based upon the foregoing, it is clear that, even assuming for
22 purposes of argument that only Rule 4(e) applied to this case, the
23 provisions of that Rule have not been met.

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IV.

Plaintiffs' Motion Is Without Merit And Should Be Denied Forthwith

As the foregoing discussion demonstrates, Plaintiffs' Motion for Reconsideration is without merit factually, legally or logically, and it should be denied forthwith. Moreover, the questions presented by the Motion are so frivolous and insubstantial that they do not merit an interlocutory appeal pursuant to 28 U.S.C. § 1292.

V.

Conclusion

Accordingly, it is submitted that Plaintiffs' Motion for Reconsideration Or In The Alternative To Certify Question For Appeal under 28 U.S.C. § 1292 is completely without merit, and should be denied.

Respectfully submitted,

DATED: July 7, 2009

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