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ADD #21

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Gene E. Forte  
688 Birch Court  
Los Banos, CA, 93635  
Telephone: (209) 829-1116  
Facsimile: (209) 829-1952

In Propria Persona

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF MERCED**

GENE FORTE,  
  
Plaintiff,

Case No. CU150880

vs.

**MOTION TO QUASH DEPOSITION  
SUBPOENA OF MEDICAL RECORDS,  
OR TO LIMIT IT, OR HAVE THE  
RECORDS INSPECTED IN CAMERA;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATION OF  
GENE FORTE**

TOMMY JONES, et al.

Defendant.

**Date: October 10, 2008  
Time: 8:15pm  
Dept: Law and Motion  
Trial: December 16, 2008**

OPP due  
9/29

**MEMORANDUM OF POINTS & AUTHORITIES**

*I. PRELIMINARY STATEMENT*

This is an action for defamation and intentional infliction of emotional distress arising out of actions by defendant Tommy Jones. On or about May 5<sup>th</sup>, 2007, at the May Day Parade, defendant, who is the Mayor of Los Banos and African American, stated in public to plaintiff and another witness that he knew for a fact that plaintiff was a dangerous member of the Ku Klux Klan.

1 Subsequently, plaintiff filed a claim with the city, and a reporter of the Los Banos  
2 Enterprise reported in a front page story that quoted defendant Jones saying that he did not speak  
3 to plaintiff at all, implying that plaintiff was lying. Plaintiff requested defendant to publicly  
4 apologize for making such defaming statement accusing plaintiff of being a dangerous member  
5 of the KKK, but defendant refused, and plaintiff therefore filed this subject lawsuit on or about  
6 December 18<sup>th</sup>, 2007.

7 On or about March 19<sup>th</sup>, 2008, defendant again perpetuated his defamation of plaintiff by  
8 stating at a public hearing, which was repetitively televised, that he (defendant Jones) was  
9 “lynched” with words due to the article written by plaintiff in the Badger Flats Gazette.

10 On or about May 7<sup>th</sup>, 2008, when plaintiff was at the televised public forum of the City  
11 Council meeting and speaking at the podium, defendant Jones interrupted plaintiff’s five minutes  
12 at about 2 minutes and 15 seconds, and had the Los Banos Police Chief Gallagher shove and  
13 push plaintiff Forte out of the room. Defendant’s friends, who filled the room, cheered and  
14 jeered as Forte was physically forced out.

15 The cumulation of the above actions by defendant against Forte resulted in Forte  
16 becoming ill with anxiety resulting in abnormally high blood pressure and having to go to the  
17 emergency room at the Los Banos Memorial Hospital.

18 Defendant recently served a subpoena for plaintiff’s complete medical records from Los  
19 Banos Memorial Hospital/Memorial Medical Plaza/Billing. (See Exhibit 1 to Declaration of  
20 Gene Forte).

21 The medical records sought by defendant from Los Banos Memorial Hospital/Memorial  
22 Medical Plaza/Billing are largely irrelevant to plaintiff’s injuries. The only limited relevance  
23 they may have is that plaintiff suffered anxiety and emotional distress causing extremely high  
24 blood pressure requiring hospitalization on the eve of May 7<sup>th</sup>, 2008 and early morning hours of  
25 May 8<sup>th</sup>, 2008 due to defendant’s public humiliating treatment of plaintiff and violation of his  
26 civil rights. Plaintiff disputes that any of the other records are relevant and contends that  
27 allowing production of the records would constitute an unreasonable invasion of plaintiff’s  
28 privacy.

1 Plaintiff attempted to informally resolve the dispute but defendant refused to withdraw or  
2 modify the subpoenas in any way. (See Declaration of Gene Forte and Exhibit 2, 3, and 4  
3 attached thereto.) Plaintiff requests that the court grant the motion and quash or modify the  
4 subpoenas. Alternatively, plaintiff requests that the court review the records in camera at  
5 defendant's expense for a court reporter.

6  
7 *II. DEFENDANT'S SUBPOENA IS OVERBROAD AND REQUESTS IRRELEVANT AND*  
8 *PRIVATE INFORMATION*

9 California Code of Civil Procedure Section 1987.1 states:

10 "When a subpoena requires the attendance of a witness or the production of  
11 documents or other things before the Court, or at trial of an issue therein, or at the  
12 taking of a deposition, the Court, upon motion reasonably made by the party, the  
13 witness, or any other consumer...may make an order quashing the subpoena  
14 entirely, modifying it or directing compliance with it upon such terms and  
15 conditions as the court shall declare. In addition, the Court may make any other  
16 order as may be appropriate to protect the parties, the witness or the consumer  
17 from unreasonable or oppressive demands including unreasonable violations of a  
18 witness's or consumer's right of privacy."

19 Defendants have requested any and all medical records from the birth date of plaintiff to the  
20 present that have nothing to do with plaintiff's injuries sustained in this incident. Defendant has  
21 not provided any argument as to the relevance of those records and has refused to respond to  
22 plaintiff's correspondence regarding such.

23 Materials sought by a subpoena must be directly relevant to the issues in the case. Davis  
24 v. Superior Court (1992) 7 Cal.App.4th 1008, 1019. There is no possible showing of relevance  
25 that can be made for all these records. Furthermore, a plaintiff has a constitutional right to  
26 privacy, a right which includes both federal and state recognition. Vinson v. Superior Court  
27 (1987) 43 Cal.3d. 833, 841.

1           The Supreme Court has long held that filing a lawsuit does not automatically waive  
2 plaintiff's privacy in every matter. Although filing may implicitly bring about a "partial waiver"  
3 of one's constitutional right to privacy, "(t)he scope of such 'waiver' must be narrowly rather  
4 than expansively construed, so that plaintiffs will not be unduly deterred from instituting lawsuits  
5 by the fear of exposure of their private associational affiliations and activities". Britt v. Superior  
6 Court (1978) 20 Cal.3d 844, 859.

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8           In Mendez v. Superior Court (1988) 206 Cal.App.3d 557, defendants in a sexual  
9 harassment suit attempted to discover evidence of plaintiff's sexual history with third persons. In  
10 denying the request, the court determined that filing a sexual harassment suit, even one which  
11 alleges severe emotional distress, does operate as an implicit waiver of plaintiff's right to privacy  
12 in sexual matters. Id. at 566.

13  
14           In Palay v. Superior Court (1993) 18 Cal.App.4th 919, defendants in a medical  
15 malpractice action sought discovery of records relating to the mother and child's prenatal care.  
16 Although allowing discovery of these records, the Court of Appeal held, "Defendants have no  
17 cognizable interest in medical records unrelated to Mother's pregnancy, nor should they... The  
18 scope of methods used must be tailored to avoid disclosure of protected records." Id. at 934.

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20           Plaintiff has alleged that his emotional distress culminated from the time defendant  
21 publicly stated to plaintiff that he knew for a fact that plaintiff Forte was a dangerous member of  
22 the KKK on or about May 5, 2007. Since that time, plaintiff believes that defendant was and is  
23 spreading defamatory remarks throughout the community, i.e., Forte is a dangerous member of  
24 the KKK, that he is a man of bad character. In fact, as of July 14, 2008, at his deposition,  
25 defendant communicated to Forte his belief that Forte may have "threatened" the other  
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1 proponents of the Recall Petition of Mayor Jones to sign it, that Forte writes “garbage and lies,”  
2 that Forte would “beat up his wife and children,” that Forte was a man of “no value”, that  
3 defendant Jones does not listen to anything Forte says at City Council meetings.

4 The humiliation and obloquy suffered by plaintiff was and is emotionally distressing.  
5 Finally, as the last straw that broke the camel’s back on May 7, 2008, the stress and anxiety  
6 caused by defendant Jones’ behavior towards plaintiff Forte at the public City Council hearing  
7 whereby Jones had Police Chief Gallagher physically shove and push Forte out of the building  
8 before his time to speak was expired, Forte fell ill and found it necessary to go to the emergency  
9 room.  
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11 Allowing discovery of plaintiff’s entire lifelong medical history and record of fifty-six  
12 years which is unrelated to the claims described in this complaint would constitute a disclosure  
13 of protected, irrelevant medical records.  
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17 *III. DEFENDANTS' SUBPOENA REQUEST VIOLATES PLAINTIFF'S CONSTITUTIONAL*  
18 *RIGHT TO PRIVACY AS DEFENDANTS CANNOT SHOW A COMPELLING STATE INTEREST*  
19 *TO OVERCOME THIS PROTECTION*

20 The California Constitution protects the information sought in Defendants' subpoenas  
21 from discovery. California Constitution Article I, §§ 1 states, “All people are by nature free and  
22 independent and have inalienable rights. Among these are enjoying and defending life and  
23 liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety,  
24 happiness, and privacy.” CA. Const. art. I, §§ 1. The Supreme Court has interpreted this article as  
25 being expansive in the area of privacy. The Supreme Court ruled that the enactment of the  
26 Constitutional provision indicates an intent to expand the right of privacy previously recognized  
27

1 by various court decisions. Porten v. University of San Francisco, 64 Cal. App. 3d 825, 829  
2 (1976). Courts have interpreted this to protect information even that is not protected by statutory  
3 privilege. Davis v. Williams, supra, 7 Cal. App. 4th at 1014.

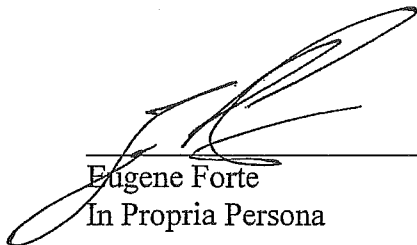
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5 In Britt, supra, the plaintiffs were ordered to make unlimited discovery regarding their  
6 past medical histories. Plaintiffs gave the defense all medical information that related to their  
7 physical and emotional injuries for which they were seeking recovery, however they objected to  
8 giving information related to all past medical conditions. The Supreme Court held that the  
9 plaintiffs were “entitled to retain the confidentiality of all unrelated medical or psychotherapeutic  
10 treatment they may have undergone in the past.” Id. at 864. The Supreme Court stated that the  
11 trial court obviously erred in ordering plaintiffs to disclose to the information. Id. at 864.

12  
13 The court in Davis concluded that “even when discovery of private information is directly  
14 relevant to the litigation, it will not be automatically allowed; there must be a balancing of the  
15 compelling public need for discovery against the fundamental right of privacy.” Id. at 1014.

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18 *IV. CONCLUSION*

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20 Based on the foregoing, plaintiff requests that the court issue an order quashing the  
21 subpoena or modifying it so it relates only to relevant records and not to others including any  
22 disclosure of a social security number or private information. Alternatively, plaintiff requests that  
23 the court inspect the records in camera prior to disclosure at defendant’s expense for a court  
24 reporter.

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26  
27 Dated: September 5, 2008

  
\_\_\_\_\_  
Eugene Forte  
In Propria Persona

28 Forte v. Jones, CU150880

Motion to Quash Deposition Subpoena of Medical  
Records, or to Limit It, or Have the Records  
Inspected In Camera



Exhibit "1"

Attorney or Party Without Attorney (Name, State Bar Number and Address):  
**Benjamin Ratliff, Esq.** (Bar# 113708)  
**WEAKLEY, RATLIFF, ARENDT & MCGUIRE, LLP.**  
 1630 East Shaw Avenue Ste. 176  
 Fresno, CA 93710  
 TELEPHONE NO.: (559) 221-5256 FAXNO.: (559) 221-5262  
 ATTORNEY FOR (Name): TOMMY JONES, DEFENDANT

FOR COURT USE ONLY

CASE NUMBER:  
 150880

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MERCED  
 STREET ADDRESS:  
 MAILING ADDRESS: 2222 M Street  
 CITY AND ZIP CODE: Merced 95340--  
 BRANCH NAME:

PLAINTIFF/PETITIONER: EUGENE FORTE  
 DEFENDANT/RESPONDENT: TOMMY JONES

**DEPOSITION SUBPOENA**  
**For Production of Business Records**

**THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):**  
 LOS BANOS MEMORIAL HOSPITAL, 520 West I Street, Los Banos, CA 93635 (209) 826-0591

**1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:**

To (name of deposition officer): Appleby & Company, Inc., Deposition Notaries  
 On (date): 09/15/2008 At (time): 9:00 a.m.  
 Location (address): 2828 N. Wishon Avenue, Fresno, CA 93704

**Do not release the requested records to the deposition officer prior to the date and time stated above.**

- a.  by delivering a true, legible, and durable copy of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and a date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
  - b.  by delivering a true, legible, and durable copy of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
  - c.  by making the original business records described in item 3 available for inspection at your business address by the attorney's representative and permitting copying at your business address under reasonable conditions during normal business hours.
2. The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.
3. The records to be produced are described as follows:


RE: EUGENE FORTE  
 DOB:02/26/1952 SS#:

- Continued on Attachment 3.
4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

**DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.**

Date issued: 08/20/2008

Benjamin Ratliff, Esq.  
 (TYPE OR PRINT NAME)

  
 (SIGNATURE OF PERSON ISSUING SUBPOENA)  
 Attorney For DEFENDANT  
 (TITLE)

(Proof of service on reverse)

**DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS**

### Attachment 3

Any and all medical records including, but not limited to, both inpatient and outpatient records, computer generated records, microfilmed records x-rays, x-ray reports, soap notes, chart notes, physical therapy prescriptions, all statements, bills, actual amount of charges for services rendered, payments by patient or identified (named) other source (s), such as workers compensation carriers, private insurance, adjustments, and/or third party administrator, amounts written off by provider, payment history, relating to or connected with the care, treatment and diagnosis pertaining to the individual named below.

\*If Chiropractic records are being obtained include private and industrial records, treatment cards, etc.

NOTE: Although x-rays must be produced, you need NOT produce them at this time; please await further instructions from the subpoenaing party as to the date when the x-rays must be produced.

Records  
Pertaining To: EUGENE FORTE  
From Date: 02/26/1952  
To Date: Present Date

# Exhibit "2"

# Badger Flats Gazette

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Monday, August 25, 2008

Mr. Benjamin Ratliff  
Weakley Ratliff Arendt & McGuire LLP  
1630 East Shaw Avenue, Suite #176  
Fresno, CA 93710

FAXED ONLY

Re: #150880

Dear Mr. Ratliff:

I write this letter in response to your letter dated August 25<sup>th</sup>, 2008 which is replete with inaccurate statements. The first I will point out, and will reserve comment upon all of the other areas, is your proffering that Mr. Clinton Galloway is avoiding service. Not so, and quite frankly you are a blatant liar.

Now, I could have used more eloquent words such as disingenuous or mistaken to describe what you are doing but that would go along with your ruse of being an ethical attorney. You are not.

With that said, you will find attached two letters to you from Mr. Galloway indicating that he in no way has been avoiding your service and has been in communication with you. You have in fact served him late notice each time. You also have not responded to Mr. Galloway by phone. Mr. Galloway will make himself available on September 25<sup>th</sup>, 2008 in Los Angeles, and I will make myself available for you for the remainder of the day of the 25<sup>th</sup>, in Los Angeles and continue onto the following day if necessary on September 26<sup>th</sup>, 2008.

As far as your taking the deposition of Ms. Eileen Forte, she will not be voluntarily produced and I request that prior to your issuing such subpoena you provide me an outline of what area you believe you are going to question my spouse upon. The purpose of an advance meet and confer upon the matter is that I will file a Motion to Quash your subpoena of her.

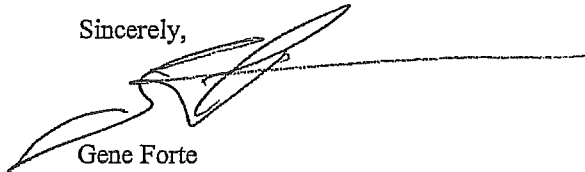
I have no problem in producing Mr. Jordan Forte for deposition provided there are reasonable questions asked. The second you in any way attempt to badger Master Forte, I will call an end to the deposition and seek an order from the court pinning your ears back and asking the awarding of your tail by way of sanctions.

On another note, consider this a meet and confer requesting that you voluntarily limit your request to my medical records or state the relevance of my medical records when I was 6 years old. If you do not do so, I will seek an order from the court quashing such subpoena.

Provide me also with available dates for the taking of the deposition of all of the deponents you have been notice of except for Mr. Charles Guest. Mr. Guest's deposition is unmovable and will be kept for September 4<sup>th</sup>, 2008.

Your prompt response is requested.

Sincerely,



Gene Forte

Encl: Galloway letters to Ratliff

Exhibit "3"

THE LAW FIRM OF  
**WEAKLEY, RATLIFF, ARENDT & MCGUIRE, LLP**

---

JAMES D. WEAKLEY  
BENJAMIN L. RATLIFF  
JAMES J. ARENDT  
ROSEMARY T. MCGUIRE  
LESLIE M. DILLAHUNTY  
MICHAEL R. LINDEN  
ERICA M. CAMARENA

1630 East Shaw Avenue, Suite 176  
Fresno, California 93710  
Telephone (559) 221-5256  
Facsimile (559) 221-5262  
E-mail: ben@wrlaw.com

August 27, 2008

Via Facsimile and Mail  
(209) 829-1952

Mr. Eugene Forte  
688 Birch Court  
Los Banos, California 93635

**Re: Eugene Forte v. Tommy Jones, et al.**  
**Merced Superior Court Case No: 150880**

Dear Mr. Forte:

I am in receipt of your fax dated August 25, 2008.

I would like to depose Eileen Forte regarding the issues raised in my motion for summary judgment. You should be receiving a copy any day now. Please provide me with dates that both of you are available so the deposition can be scheduled. As to Jordan Forte, please provide dates you are available for the taking of his deposition and confirm that I do not have to subpoena him.

As to the subpoena for medical records, I will stipulate that any medical records prior to your 21<sup>st</sup> birthday are irrelevant and will not be used or offered at any proceeding.

Yours very truly,

WEAKLEY, RATLIFF, ARENDT & MCGUIRE, LLP



Benjamin L. Ratliff

BLR:lp

Exhibit "4"

# Badger Flats Gazette

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Wednesday, August 27, 2008

Mr. Benjamin Ratliff  
Weakley Ratliff Arendt & McGuire LLP  
1630 East Shaw Avenue, Suite #176  
Fresno, CA 93710

FAXED

Re: Response to letter of August 27<sup>th</sup>, 2008

Dear Mr. Ratliff:

I write this letter in response to your fax this morning received at 10:16AM. It does not appear to be a response to my courtesy fax copy to you of the communications between myself, Mr. Karl Olson and your co-counsel Mr. James Harrison.

Let me make this clear once again. Ms. Eileen Forte will not provide you any dates to have her deposition taken and I will file a Motion to Quash any deposition subpoena served upon her. You are also informed that you will need to serve Mr. Jordan Forte with a subpoena so there is a clear record on file with the court that it is you who wanted to depose him. You may do so by having your process server contact me at 209-829-1116 and I will arrange for Master Jordan to be present at home after school so that service can be easily done. I will do the same for Ms. Forte.


I will not stipulate to your having access to all of my medical records after my 21<sup>st</sup> birthday. The objections of burdensome, oppressive, invasion of privacy and irrelevant come to mind. Perhaps, we could enter into a stipulation? You can obtain all of my medical records from birth (as you are now asking for) provided that Mayor Jones produces all his medical records evidencing any treatments for drug and alcohol abuse or attendance at AA meetings?

With that said, I suggest that you arrange for Ms. Forte and Master Forte to be served with their subpoenas in the process that I suggested above. I will then file the appropriate Motions for Protective Orders and Motions to Quash on their depositions and upon the medical records that you are seeking.

Consider this a meet and confer to be responded to be 11:00AM August 28<sup>th</sup>, 2008.

Thank you.

Sincerely,

  
Gene Forte

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**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF MERCED )

I, the undersigned, declare that I am employed in the County of Merced, State of California; I am over the age of 18 years and not a party to the within action; my business address is 688 Birch Court, Los Banos, California, 93635.

On September 5, 2008, I served the foregoing ***MOTION TO QUASH DEPOSITION SUBPOENA OF MEDICAL RECORDS, OR TO LIMIT IT, OR HAVE THE RECORDS INSPECTED IN CAMERA; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF GENE FORTE*** on the parties in this action by:


\_\_\_\_\_ personal service on the below-named party(ies) at the address(es) given.

\_\_\_\_\_ Facsimile machine pursuant to Rule 2008. Said document was sent to the below listed party(ies). The fax number I used was: ***(209) 829-1952***. The facsimile machine I used complied with Rule 2004, and no error was reported by the machine. Pursuant to Rule 2006(d), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

  x   depositing the sealed envelope(s) with the United States Postal Service with postage fully prepaid.

***Mr. Benjamin L. Ratliff, Esq.  
The Law Firm of Weakley, Ratliff, Arendt, & McGuire, LLP  
1630 East Shaw Avenue, Suite 176  
Fresno, CA 93710***

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 5, 2008, in Los Banos, California

  
\_\_\_\_\_  
EILEEN FORTE