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7 SUPERIOR COURT OF CALIFORNIA
8 IN AND FOR THE COUNTY OF MERCED

9 EUGENE E. FORTE,

10 Plaintiff,

11 vs

12 TOMMY JONES, et al.

13 Defendants.

) Case No.: 150880

) NOTICE OF MOTION AND MOTION FOR
) PROTECTIVE ORDER RESTRICTING
) DISCOVERY; SUPPORTING
) DECLARATION OF WILLIAM A. VAUGHN
) AND MEMORANDUM OF POINTS &
) AUTHORITIES

) Date: October 9, 2008 - *enc.*

) Time: 8:15 a.m.

) Location: Courtroom 4

) Judge: Ronald W. Hansen

) Date Action Filed: December 18, 2007

) Trial Date: December 16, 2008

17 To the plaintiff, EUGENE E. FORTE, *in propria persona*:

18 NOTICE IS HEREBY GIVEN that on October 9, 2008, at 8:15 a.m., or as soon thereafter
19 as the matter may be heard, in Courtroom 4 of this court, located at located at 2260 N. Street,
20 Merced, California. deponents Michael Villalta, Anna Brooks, Tom Faria, Steve Rath, and
21 Steve Hammond, will, and hereby do, move for a protective order:

- 22 (1) that the depositions of these individuals which are noticed to be taken or
23 commencing at a date and time to be arranged during the week of October 13, 2008,
24 at Al Cala and Associates, 1601 I Street, Suite 410, Modesto, California, 95354, be
25 limited by narrowing the scope of the examination to questions of fact relevant to
26 the elements of plaintiff's action for defamation or any affirmative defense set forth
27 in defendant's answer, or likely to lead to the discovery of admissible evidence of
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1 such facts, and also be limited by prohibiting examination with regard to the
2 following subjects:

- 3 (a) Issues related to the defendant's prior arrest, litigation against or settlement
4 with the City;
- 5 (b) Issues concerning defendant's prior loans or other financial dealings, alleged
6 conflicts of interest, or alleged violation of disclosure or reporting
7 requirements within the jurisdiction of the Fair Political Practices
8 Commission;
- 9 (c) Issues related to the recall petition, circulation, submission, legal sufficiency,
10 ballot argument or campaign either for or against the recall of the mayor;
- 11 (d) Issues reported or opinions expressed by the plaintiff or others in the *Badger*
12 *Flats Gazette*, other than as expressly and directly related to plaintiff's
13 defamation action;

14 (2) That the scope of documents subject to production by the City deponents
15 pursuant to the plaintiff's deposition subpoena Attachment 3, Items 1 – 8, be
16 limited in time or subject matter to the events or subject matter forming the
17 basis for plaintiff's cause of action for defamation as set forth in the complaint,
18 as follows:

- 19 (a) the City deponents' knowledge of statements alleged to have been made by
20 the defendant on or about May 5, 2007 concerning the plaintiff or plaintiff's
21 alleged association with the Ku Klux Klan or characterization of plaintiff as
22 being dangerous;
- 23 (b) the City deponents' knowledge of facts or other information bearing upon
24 the truth or falsity of plaintiff's alleged association with the Ku Klux Klan or
25 characterization of plaintiff as being dangerous;
- 26 (c) the City deponents' knowledge of facts or other information regarding
27 damage to plaintiff's reputation in the Los Banos community occurring from
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1
2 or after May 5, 2007, resulting from alleged statements made by the
3 defendant concerning plaintiff's alleged association with the Ku Klux Klan
4 or characterization of plaintiff as being dangerous;

5 (d) the City deponents' knowledge of facts or other information regarding
6 plaintiff's alleged shame or mortification from or after May 5, 2007, resulting
7 from defendant's alleged statements as alleged in the complaint;

8 (e) that no documents in Attachment 3, Items 9 or 10 need be produced because
9 they are not relevant admissible evidence and are not likely to lead to the
10 discovery of relevant admissible evidence concerning the claims or defenses
11 in the action.

12 The motion for protective order will be made on the ground that good cause exists for
13 this order for the reasons more fully set forth in the attached Declaration of William A.
14 Vaughn and the Memorandum of Points and Authorities filed in support of this motion.
15 Justice requires that the court issue an order to protect deponents, Tom Faria, Anna Brooks,
16 and Mike Villalta, who are City Council members of the City of Los Banos, City Manager
17 Steve Rath, Planning Commissioner Steve Hammond and the City of Los Banos, from
18 unwarranted annoyance, embarrassment, or oppression and/or undue burden and expense
19 by allowing the plaintiff to proceed further with the depositions without instructions limiting
20 the scope to the subject matter of the litigation for which they are to be taken.

21 The motion will be based on this notice of motion, on the declaration of William A.
22 Vaughn and the memorandum served and filed herewith, on the papers and records on file
23 herein or of which the court may take judicial notice, and on such oral and documentary
24 evidence as may be presented at the hearing of the motion.

25 Dated: September 11, 2008

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27 William A. Vaughn, Attorney for deponents
28 Joe Sousa, Tom Faria, Mike Villalta, Anna Brooks,
Steve Rath, Steve Hammond and the City of Los
Banos

1 SUPPORTING DECLARATION OF WILLIAM A. VAUGHN

2 I, William A. Vaughn, declare:

3 1. I am an attorney at law duly admitted to practice before all the courts of the State of
4 California and the attorney for deponents, or potential deponents Joe Sousa, Tom Faria,
5 Michael Villalta, Anna Brooks, all of whom are members of the City Council of the City of
6 Los Banos, City Manager Steve Rath and Planning Commissioner Steve Hammond
7 (collectively "City deponents"), and I am the City Attorney of the City of Los Banos.

8 2. The Verified Complaint in this action states a single cause of action for defamation
9 against the defendant, TOMMY JONES, then and still the elected Mayor of the City of Los
10 Banos. JONES is African-American. JONES is alleged to have told the plaintiff in a loud
11 voice within public earshot that JONES "knew for a fact that he [FORTE] was a member of
12 the Ku Klux Klan" at the City of Los Banos May Day parade. JONES is also alleged to have
13 repeated that statement to an African-American friend of the plaintiff, with the addition that
14 the plaintiff was "dangerous". Further, JONES is alleged to have defamed plaintiff by stating
15 to a local newspaper that he, JONES, never spoke to the plaintiff at the May Day parade,
16 which plaintiff contends by implication was a public accusation that plaintiff was a liar.
17 Plaintiff also alleges that JONES knew that plaintiff was not a member of the Ku Klux Klan,
18 and that his statement to the newspaper denying that he spoke to plaintiff at the parade was
19 also false. Plaintiff generally asserts that as a result of JONES' knowingly false statements
20 that plaintiff's reputation was harmed and he was subjected to shame and mortification. A
21 true and correct copy of the Verified Complaint is attached as Exhibit "A" to the Request for
22 Judicial Notice separately filed in support of this motion.

23 3. The City deponents are seeking a protective order from this court concerning the
24 depositions or other discovery method addressed to the City deponents to be conducted by
25 the plaintiff in the future. A true and correct copy of the deposition notices of City deponents
26 are attached as Exhibit "B" to the Request for Judicial Notice separately filed in support of
27 this motion.

1 4. Good cause exists for the order sought by City deponents. I was present at the
2 deposition conducted by the plaintiff of Joe Sousa on July 30, 2008. The deposition lasted for
3 ten hours, with a one hour lunch break. I would estimate that approximately two hours of
4 the nine hours of plaintiff's examination of Council member Sousa concerned the witness's
5 knowledge of the statements alleged to have been made by defendant Jones to the plaintiff in
6 the presence of City officials on May 5, 2007, whether the statements were knowingly false or
7 intentionally defamatory, or whether plaintiff suffered damages. I have reviewed the
8 reporter's transcript of the deposition which is 328 pages in length. Based upon my review of
9 the transcript I have identified approximately 69 pages which reflect questions relevant to the
10 claims or defenses involved in this action, or which could be fairly argued might lead to
11 discovery of relevant evidence. As to the balance of the deposition the plaintiff conducted a
12 wide-ranging examination which included:

- 13 a) the deponent's knowledge or opinion concerning the defendant Jones'
14 credibility, as reflected by allegations of specific facts that plaintiff's questions
15 assumed to be true, or based on plaintiff's quotation of selected portions of
16 what he represented to be the transcript of the defendant's deposition;
- 17 b) questions concerning a prior lawsuit filed by the defendant Jones against the
18 City of Los Banos arising out of an arrest by the Los Banos Police Department
19 of defendant Jones in 1999;
- 20 c) questions concerning alleged FPPC violations by defendant Jones revolving
21 around loans he received from a local developer;
- 22 d) questions concerning a Recall Petition initiated by plaintiff Forte against
23 defendant Jones;
- 24 e) questions concerning a May 7, 2008 incident during a city council meeting when
25 plaintiff Forte was not given the allotted five minutes to speak during the
26 public forum portion of the meeting;

1 f) questions concerning a claim by a Los Banos resident against the County of
2 Merced regarding MTBE ground water contamination.

3 5. The plaintiff is the publisher of an occasional journal of political commentary and
4 his description of his dealings with government officials called *The Badger Flats Gazette*, which
5 he circulates in and around the City of Los Banos. A consistent theme of the *Gazette* is the
6 official corruption of government and the judiciary in Monterey and Merced Counties. Mr.
7 Forte contends that other officials responsible to investigate or prosecute this alleged
8 corruption including the State Attorney General, the Governor, the Chief Justice of the
9 California Supreme Court, an assistant United States Attorney, and the acting assistant
10 director of the criminal investigative division of the Federal Bureau of Investigation (FBI),
11 and publishers of mainstream media, are responsible for allowing the corruption to
12 continue. A true copy of Vol. 1, No. 3 of *The Badger Flats Gazette* – “Five Card Badger”
13 referenced in paragraphs 8 – 10 of plaintiff’s Verified Complaint is attached as Exhibit “C” to
14 the Request for Judicial Notice separately filed in support of this motion. During Mr. Sousa’s
15 deposition, the plaintiff posed many questions concerning Mr. Sousa’s familiarity with
16 articles appearing in various issues of *The Badger Flats Gazette*, most of which had no
17 relevance to plaintiff’s lawsuit against defendant Jones.

18 6. The plaintiff regularly appears during the public comment portion of meetings of
19 the Los Banos City Council at which I have been present. On August 6, 2008, the plaintiff
20 commented on a citizen’s proposal to hold “movie nights” to screen family movies at city
21 parks. He stated that he had videos of the depositions of the mayor and councilman Sousa
22 and could splice them together and make them available for public showing at these events.

23 7. On August 22, 2008, I sent plaintiff a letter by email attachment and regular mail
24 requesting that he stipulate to narrow the scope of his future deposition questioning of City
25 deponents to issues relevant to his defamation claims or the affirmative defenses, to avoid
26 irrelevant topics, such as of the defendant’s 1999 arrest and subsequent settlement with the
27 City, the recall, plaintiff’s FPPC complaint against the defendant, and the like. I was
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1 informed by defendant Jones' counsel that plaintiff filed a motion for leave to file an
2 amended complaint scheduled to be heard by the court on September 12, 2008, and proposed
3 putting the depositions over until after that date, and to provide time for a hearing on a
4 motion for a protective order, if we were unable to stipulate to narrow the scope of future
5 depositions. I requested a response by Tuesday, August 26, 2008. A true copy of my letter,
6 the plaintiff's response dated August 25, 2008, my confirming letter and plaintiff's reply are
7 attached as Exhibit "D" to the Request for Judicial Notice separately filed in support of this
8 motion. In short, the plaintiff has agreed to continue the depositions to mutually agreed
9 future dates after the hearing on the motion for leave to amend, during the week of October
10 13, 2008. However, the plaintiff refused to stipulate to set a mutually convenient date for the
11 hearing on this motion for a protective order, which he characterized as, "totally unfounded,
12 meritless and sanctionable."

13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct. Signed September 11, 2008 at Los Banos, California.

15
16 
17 WILLIAM A. VAUGHN

18 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF**
19 **CITY DEONENTS MOTION FOR A PROTECTIVE ORDER**

20 **Introduction** The plaintiff in this action, EUGENE E. FORTE ("FORTE", or
21 "plaintiff"), sued defendant, TOMMY JONES ("JONES"), in his individual capacity, for
22 defamation. JONES is alleged to have slandered the plaintiff during or immediately after the
23 City-sponsored May Day Parade on May 5, 2007, while "within earshot" of the general public
24 and un-named City officials. Although plaintiff is suing JONES as an individual, he recites
25 that he presented a claim for damages resulting from JONES' alleged slanderous statements
26 to the City of Los Banos, and that the claim was denied. JONES is the elected mayor of the
27 City of Los Banos. FORTE served deposition subpoenas with an extensive demand for
28 production of documents on City Council members Joe Sousa, Tom Faria, Anna Brooks and

1 Mike Villalta, City Manager Steve Rath and Planning Commissioner Steve Hammond (the
2 "City deponents") who are the moving parties in this motion for a protective order.

3 This motion focuses on two factors within the discretion of the court to balance in
4 considering the interests of the plaintiff to conduct discovery to fully and fairly litigate his
5 case, and the interests of non-party witnesses to protection from the burden, expense and
6 intrusiveness of discovery where there is little if any likelihood that the information sought
7 will lead to the discovery of admissible evidence. The primary factor is the lack of relevance
8 of the subject matter of plaintiff's inquiries to the elements or defenses in a defamation action.
9 The court may exclude evidence if its probative value is substantially outweighed by the
10 probability that its admission will necessitate undue consumption of time or create
11 substantial danger of undue prejudice, confusion of issues, or of misleading the jury. (Evid.
12 Code, § 352.) The secondary factor is the court's authority to prevent abuse of the discovery
13 process when it may cause unwarranted annoyance, embarrassment, oppression or undue
14 burden and expense for the witnesses. (Code Civ. Proc., § 2017.020, subd. (a); § 2023.010,
15 subd. (c).)

16 The plaintiff, EUGENE E. FORTE, is not an attorney subject to discipline by the State
17 Bar of California or Rules of Court applicable to litigation conduct by attorneys. Plaintiff
18 FORTE's manifestly overbroad notice to produce documents unrelated to the subject of his
19 complaint, and the 10-hour deposition of Los Banos City Council member Joe Sousa plaintiff
20 conducted on July 30, 2008, and his response to attempts to meet and confer regarding
21 discovery, demonstrate that he will not voluntarily confine the scope of his questioning to
22 subject matter that is relevant to the underlying defamation action, or that is likely to lead to
23 the production of relevant evidence in this action, despite objections made by attorneys for
24 the defendant and/or the deponent.

25 Plaintiff clearly views discovery as granting him a "fishing license" to ask about
26 anything and everything that involves JONES and City affairs that the plaintiff believes will
27 place JONES in a bad light. He sees efforts to provide representation to non-party City
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1 official witnesses to protect their rights as taking sides in support of the mayor, and the
2 request to limit the scope of inquiry to subjects relevant to his defamation claim as covering
3 up or protecting the mayor from accountability, rather than a matter of preventing the
4 unwarranted expenditure of time and effort of officials who have a great many demands on
5 their time and attention. Since the City deponents' efforts to respectfully reason with the
6 plaintiff have proven insufficient, they file this motion seeking an order from the court.
7

8 **PLAINTIFF'S DISCOVERY FAILS TO FOCUS ON RELEVANT EVIDENCE**
9 **THAT IS ADMISSIBLE IN A DEFAMATION ACTION**

10 The plaintiff misapprehends the purpose and permissible scope of discovery – which
11 is to elicit information that is relevant to the subject matter involved in the pending action if it
12 is itself admissible in evidence in support of a claim or defense, or if it appears reasonably
13 calculated to lead to the discovery of relevant admissible evidence from other sources. (Code
14 Civ. Proc., § 2017.010.) Relevant evidence includes testimony, writings, material objects or
15 other things presented to the senses, includes those things concerning the credibility of a
16 witness, having any tendency in reason to prove or disprove any material fact that is of
17 consequence to the determination of the action. (Evid. Code, § 140, § 210.) Thus, there are
18 two broad areas for discovery that are permissible in this case – 1) facts tending to prove or
19 disprove an element of a cause of action or a defense; and 2) facts which bear upon the
20 credibility of witnesses.

21 **Discovery Relevant to Defamation** The pending action involves a single cause of
22 action for defamation. The legal elements of defamation are set forth in Civil Code, §§ 44 –
23 48.8. The plaintiff's specific allegations are that Mr. Jones orally uttered to the plaintiff in the
24 presence of others and the general public the allegedly false statement that Jones knows for a
25 fact that plaintiff is a member of the Ku Klux Klan, and that he is dangerous. Because it
26 involves an oral utterance, the type of defamation involved is slander, which must fall within
27 one of the five categories set forth in Civil Code § 46, and not be privileged. These statements
28 do not involve a statement that plaintiff committed a crime, has an infectious, contagious or

1 loathsome disease or that he is impotent or unchaste. It therefore remains the possibility that
2 the plaintiff may seek to establish that the statement tends directly to injure him with respect
3 to his office, profession, trade or business, either because he does not meet the requirements
4 of that trade or profession or that would have a natural tendency to lessen the profits of that
5 trade or possession. Alternatively, the plaintiff must prove that the natural consequence of
6 the allegedly false statement causes him actual damages.

7 Accordingly, relevant evidence consists of testimony or documents tending to prove or
8 disprove the facts, such as: 1) what did Mr. Jones say? 2) Did persons other than the plaintiff
9 hear him say it, and if so, under what circumstances? 3) Did Mr. Jones know the statement
10 was false, or have reckless disregard for whether or not the statement may be false? 4) Is the
11 statement in fact false? 5) was the statement made in a context in which, even if false, was
12 privileged? 6) Did the statement cause the plaintiff an actual loss of reputation, shame,
13 mortification or hurt feelings, or lessen the profits of plaintiff's trade or profession? 7)
14 Would a reasonable person feel shame, mortification or hurt feelings as a result of the
15 allegedly false statement being made in public, or did the statement intentionally address a
16 particular vulnerability or sensitivity the plaintiff may have of which Mr. Jones was aware?
17 8) Are there facts supporting that Jones made the statements maliciously and with the intent
18 to harm the plaintiff?

19 Discovery Relevant to Credibility Plaintiff alleges in his complaint that JONES
20 denies having ever made the allegedly defamatory statements. During the course of the
21 Sousa deposition, plaintiff asserted that JONES continued to deny having made the statement
22 during JONES's deposition. Therefore, it is fair to say that JONES's credibility as a witness in
23 his own defense is likely to be a significant issue in the litigation if it goes to trial.

24 In determining the credibility of a witness, the trier of fact may consider any matter
25 having any tendency in reason to prove or disprove the truthfulness of the testimony of a
26 witness (Evid. Code, § 780). Specific examples of the type of evidence that may be considered
27 are listed in Section 780, subdivision (a) – (k), e.g. demeanor, recollection, perception, honesty
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1 or veracity, bias or interest, prior inconsistent statements. While the list is not exclusive, the
2 trial court has considerable discretion to exclude evidence of collateral matters if its probative
3 value is significantly outweighed by the probability that its admission will necessitate undue
4 consumption of time or it would create a substantial danger of undue prejudice, confusion of
5 issues or misleading the jury. (Evid. Code, § 352; *People v. Alfaro* (2nd Dist. 1976) 61 Cal App
6 3d 414, *People v. Thornton* (2007) 41 Cal 4th 391, *Winfred D. v. Michelin North America, Inc.* (2nd
7 Dist. 2008) 165 Cal App 4th 1011.) The 1965 Law Revision Commission Comments explain:

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9 “Section 780 is a general catalog of those matters that have any
10 tendency in reason to affect the credibility of a witness. So far as the
11 admissibility of evidence relating to credibility is concerned, Section 780 is
12 technically unnecessary because Section 351 declares that “all relevant
13 evidence is admissible.” However, this section makes it clear that matters that
14 may not be “evidence” in a technical sense can affect the credibility of a
15 witness, and it provides a convenient list of the most common factors that
16 bear on the question of credibility. See *Davis v. Judson* (1910) 159 Cal. 121,
17 113 Pac. 147, 1910 Cal. LEXIS 241; *La Jolla Casa de Manana v. Hopkins* (1950)
18 98 Cal. App.2d 339, 219 P.2d 871, 1950 Cal. App. LEXIS 1853. See generally
19 *Witkin, California Evidence* §§ 480-485 (1958). Limitations on the
20 admissibility of evidence offered to attack or support the credibility of a
21 witness are stated in Article 2 (commencing with Section 785).

22 “There is no specific limitation in the Evidence Code on the use of
23 impeaching evidence on the ground that it is ‘collateral’. The so-called
24 ‘collateral matter’ limitation on attacking the credibility of a witness excludes
25 evidence relevant to credibility unless such evidence is independently
26 relevant to the issue being tried. It is based on the sensible notion that *trials*
27 *should be confined to settling those disputes between the parties upon which*
28 *their rights in the litigation depend.* Under existing law, this ‘collateral
matter’ doctrine has been treated as an inflexible rule excluding evidence
relevant to the credibility of the witness. See, e.g., *People v. Wells* (1949) 33
Cal.2d 330, 202 P.2d 53, 1949 Cal. LEXIS 199, and cases cited therein.”

“The effect of Section 780 (together with Section 351) is to eliminate
this inflexible rule of exclusion. This is not to say that all evidence of a
collateral nature offered to attack the credibility of a witness would be
admissible. Under Section 352, the court has substantial discretion to exclude

1 collateral evidence. The effect of Section 780, therefore, is to change the
2 present somewhat inflexible rule of exclusion to a rule of discretion to be
3 exercised by the trial judge." [Emphasis added]

4 A witness may be asked to express an opinion concerning the general reputation of a
5 party or another witness for truth and honesty in the community. Evidence of character traits
6 other than honesty or veracity, or their opposites, is inadmissible to attack or support the
7 credibility of a witness. (Evid. Code § 786.) In civil matters, evidence of specific instances of
8 conduct relevant only as tending to prove a character trait for purposes of attacking or
9 supporting the credibility of a witness, other than properly admitted evidence of a felony
10 conviction, is inadmissible. (Evidence Code § 787; (may be inapplicable in criminal cases,
11 "Right to Truth in Evidence" provision of Prop. 8, Cal Const Art I § 28.)

12 Inquiries into Mr. Jones' prior arrest record, his suit against the City and subsequent
13 settlement, the plaintiff's recall campaign against Mr. Jones, the plaintiff's complaint against
14 Mr. Jones to the Fair Political Practices Commission for alleged violations of disclosure or
15 conflict of interest statutes resulting from investments, gifts or loans to or by a public official,
16 the incident at the City council meeting of May 7, 2008, general inquiries regarding matters of
17 City policy or a City Council person's personal thoughts about their deliberative process in
18 reaching a decision on how to vote on a particular matter -- all of which plaintiff is seeking
19 from City deponents -- are so remote and collateral to his claim for defamation -- that this
20 court may find they are not sufficiently relevant to constitute admissible evidence, nor are
21 they likely to lead to the discovery of admissible evidence.

22 **PLAINTIFF'S DISCOVERY, IF NOT SUBJECT TO REASONABLE LIMITS, IS**
23 **BURDENSOME, COSTLY AND INTRUSIVE FOR NON-PARTY CITY DEONENTS**

24 The plaintiff seeks to engage the entire City Council and City Manager in days of
25 deposition and contention over production of documents that are burdensome, expensive in
26 time, effort and money, and are intrusive of the deponents' lives and the privileged
27 deliberations or communications with legal counsel which are incident to their service as City
28 officials. The plaintiff is unable or unwilling to make a good faith showing as to how the

1 monumental discovery effort he seeks to impose on the City deponents could lead to
2 discovery or relevant admissible evidence. Therefore, good cause exists for this court to enter
3 a protective order to narrow plaintiff's discovery tactics to avoid the unwarranted annoyance,
4 embarrassment, oppression, and undue burden and expense upon the City deponents that
5 plaintiff's unmoderated discovery efforts will otherwise clearly entail.

6 **Legal Standard for a Protective Order** Deponents, or any other affected
7 organization, are authorized to move for protective orders regarding the conduct of
8 depositions by Code of Civil Procedure, section 2025.420 (a). The court shall limit the scope
9 of discovery if it determines that the burden, expense or intrusiveness of that discovery
10 clearly outweighs the likelihood that the information sought will lead to the discovery of
11 admissible evidence. (Code Civ. Proc., §2017.020, subd. (a).) The motion must be
12 accompanied by a meet and confer declaration under Section 2016.040 showing a reasonable
13 and good faith attempt at an informal resolution of each issue presented by the motion. The
14 motion is made before the court in which the action is pending (Code Civ. Proc. §
15 2016.020(b).)

16 Upon a showing of good cause, the court has broad discretion to make any
17 order that justice requires to protect the deponents or organization from unwarranted
18 annoyance, embarrassment, oppression or undue burden and expense. (Code Civ. Proc., §
19 2025.420 (b).) The optional provisions for a protective order are enumerated in that
20 subsection, and include that the deposition be taken only on specified terms, that certain
21 matters not be inquired into and that the scope of the examination be limited to certain
22 matters. The imposition of discovery on non-parties regarding issues of limited or no
23 probative value are among the factors the court may weigh in exercising its discretion to
24 enter orders limiting or narrowing discovery. (*Calcor Space Facility v. Superior Court* (4th Dist.
25 1997) 53 Cal. App. 4th 216, 219.)

26 The attorney for the moving parties sent plaintiff a letter requesting him to stipulate to
27 reasonable limits on the scope of further depositions to the elements of the cause of action in
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1 the complaint or to affirmative defenses set forth in the answer. Plaintiff refused, claiming
2 without explanation that the letter misstates his case and the nature of relevant evidence, and
3 that the cause of the length of the Sousa deposition was the witness's "nonsensical
4 disingenuous testimony." Plaintiff fails to state with particularity how the proposed limits
5 would "unduly and prejudicially" limit his planned depositions.

6 Argument In invoking the court's power to grant protective orders, the City
7 deponents are mindful that they are public officials who have a responsibility to be open and
8 accountable to the public in how they perform their civic duties. A certain amount of
9 "annoyance" and "embarrassment" goes with the job. However, when the tactics employed
10 go beyond the ordinary rough and tumble of local politics, and extend to utilizing court
11 process to compel the deponents' involuntary appearance and submission to plaintiff's
12 irrelevant and undisciplined questioning for hours on end, the court may legitimately
13 intervene.

14 While the First Amendment and litigation privileges protect the right of the plaintiff to
15 freely express his beliefs in his publication and in public forums, to make complaints of the
16 violation of statutes governing the conduct of public officials to the agencies charged with
17 their investigation and enforcement, and to state even non-meritorious claims for ultimate
18 adjudication in state and federal courts, the law does not require that non-parties haplessly
19 submit to abuse of the discovery process without limitation or remedy.


20 The documents authored and public statements made by the plaintiff further establish
21 that he is using the discovery process for improper purposes. Plaintiff is using the
22 depositions to force public officials to submit to interviews on wide-ranging topics for
23 selective quotation in his self-published occasional chronicle of his political and legal
24 activities and opinion, *The Badger Flats Gazette*. The plaintiff seeks to use the deposition to
25 further his political campaign to recall the mayor of the City of Los Banos. The plaintiff
26 perceives the deposition of City officials in this action as another means to promote his self-
27 proclaimed mission to expose and root out corruption of public officials.

1 Mr. Forte no doubt honestly and passionately believes in his causes, to which he has
2 devoted countless hours and extraordinary effort. However, his passionately held beliefs
3 also lead plaintiff to perceive that any effort to curb his enthusiasm and focus it on the issues
4 at hand is yet another manifestation of official cover-up and corruption, leading him to be
5 even more intractable and aggressive in his tactics. The plaintiff is, of course, entitled to his
6 beliefs, but court intervention is necessary to prevent plaintiff from inappropriate use of court
7 process and abuse the rights of others by attempting to coerce them to expend time and effort
8 not reasonably justified by the issues in the litigation for which the discovery is being
9 undertaken.

10 The moving parties do not doubt plaintiff's sincerity, intelligence or tenacity.
11 However, the plaintiff has amply demonstrated that he has difficulty understanding and
12 following appropriate rules of procedure, or giving respectful consideration for the assertion
13 of them on behalf of others involved in the process if they don't accord with his views or
14 purposes. The conditions requested will permit the plaintiff to obtain relevant admissible
15 evidence in support of his case, and as the complaint may be permitted to be amended by the
16 court, without unduly burdening the City deponents with plaintiff's other causes or
17 preoccupations.

18 **Conclusion** The City deponent moving parties have shown through plaintiff's
19 conduct in this litigation and his response to efforts to meet and confer in good faith, that
20 good cause exists and justice requires that the court impose reasonable limitations on the
21 plaintiff focusing his efforts in discovery on admissible evidence relevant to a defamation
22 claim. The City deponents respectfully request this court to enter a protective order
23 substantially in the form of the proposed order submitted with this motion.

24
25 Dated: September 11, 2008

26 
27 William A. Vaughn, Attorney for deponents
28 Joe Sousa, Tom Faria, Mike Villalta, Anna Brooks,
Steve Rath, Steve Hammond and the City of Los
Banos

Certificate of Service

I, Denise M. Areias, declare as follows:

I am employed in the County of Merced, California, and I am not a party to this action. My business address is 525 J Street, Suite A, Los Banos, California, 93635.

On September 11, 2008, I served the foregoing document described as:

NOTICE OF MOTION AND MOTION FOR PROTECTIVE ORDER RESTRICTING DISCOVERY; SUPPORTING DECLARATION OF WILLIAM A. VUAGHN AND MEMORANDUM OF POINTS AND AUTHROTIES

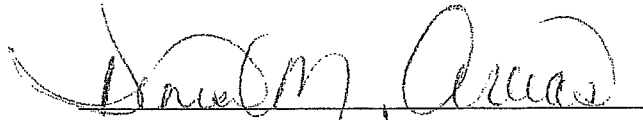
on the parties or their attorney[s], addressed as follows, by the means checked below:

Eugene Forte
688 Birch Court
Los Banos, CA 93635

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

- BY MAIL: On this date I placed a true copy in a sealed envelope with postage fully pre-paid and deposited it in the mail in a box or facility served by the U.S. Postal Service.
- BY MAIL IN THE ORDINARY COURSE OF BUSINESS: I placed a true copy in a sealed envelope addressed as indicated above on the above-mentioned date. I am familiar with the firm's business practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing stated above.
- BY PERSONAL SERVICE: I placed a true copy in a sealed envelope addressed to each person[s] named at the address[es] shown and personally delivered it to them or an adult person at their residence or place of business before 5:00 p.m. on the above-mentioned date.
- BY FEDEX NEXT DAY AIR: On the above-mentioned date, I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons listed on the attached service list. I placed the envelope or package for collection and overnight delivery following our ordinary business practices.

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2 BY FACSIMILE TRANSMISSION OR EMAIL ATTACHMENT: The parties having
3 agreed in writing to service by this means, I transmitted the document on the above date
4 to the party identified above by facsimile transmission at the number shown, or by email
5 attachment to the email address shown, with delivery confirmation.

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Denise M. Areñas