

FILED
#21 file
9/26/08

1 Eugene E. Forte
2 688 Birch Court
3 Los Banos, CA, 93635
4 Telephone: (209) 829-1116
5 Facsimile: (209) 829-1952

6
7 In Propria Persona

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF MONTEREY**

10 EUGENE FORTE,
11 Plaintiff,

Case No. CU150880

12 vs.

**PLAINTIFF'S OPPOSITION TO
MOTION FOR PROTECTIVE ORDER
RESTRICTING DISCOVERY;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
EUGENE FORTE IN SUPPORT
THEREOF**

14 TOMMY JONES, et al.

15
16
17
18 Defendant.

**Date: October 9, 2008
Time: 8:15 a.m.
Dept: Courtroom 4, Judge Hansen
Trial: TBD**

19
20 **INTRODUCTION**

21 Plaintiff Forte ("Forte") hereby opposes the Motion for Protective Order Restricting
22 Discovery noticed by Mr. Bill Vaughn, counsel for Los Banos City Councilmen, Tom Faria,
23 Anna Brooks, and Mike Villalta, Los Banos City Manager Steve Rath, and Planning
24 Commissioner Steve Hammond. Forte submits that there exists a reasonable expectation that
25 depositions of these witnesses will likely lead to the discovery of admissible evidence regarding
26 Forte's allegations, but any restriction will prejudice his case.

27 Movants' motion was filed prematurely, despite notice to their counsel, Mr. Bill Vaughn,
28

1 that Forte was making a motion to amend the complaint. See Exhibit 1 of Decl. Of Forte. Mr.
2 Vaughn's motion does not address nor include the much wider area of allegations not included in
3 the complaint, i.e., the continuing defamation by defendant, and the cause of action of intentional
4 infliction of emotional distress.

5 Forte submits that limiting any of these depositions will prejudice his case, and that Mr.
6 Vaughn made hardly any objections (if any) to any line of questioning during Souza's deposition,
7 despite Mr. Vaughn's unhappiness with the length of the deposition that day. In fact, it was his
8 choice to finish in one day rather than resume the next day.

9 Mr. Vaughn represents third non-party witnesses and is not an attorney representing a
10 party to this case. As such, Mr. Vaughn was not present at the deposition of Defendant Tommy
11 Jones ("Jones"), and is not in the position to be able to judge whether the testimony of City
12 Councilman Joe Souza was relevant or not. Forte submits that without knowing the testimony of
13 other witnesses, i.e., Jones, or the other evidence in the case, Mr. Vaughn has no idea whether
14 Souza's or any other of his clients' testimony is irrelevant, and/or serves to support Forte's
15 allegations, disprove Jones' testimony, impeach Jones, etc. Perhaps, Mr. Vaughn is more
16 concerned with revealing his clients' participation in covering up Jones' acts.

17 18 **BACKGROUND**

19 On December 18, 2007, Plaintiff Forte ("Forte") filed this complaint alleging defamation
20 based on an incident that occurred on May 2, 2007 at the Los Banos May Day Parade. In
21 summary, Forte alleged that Defendant Tommy Jones, who is Mayor of Los Banos, knowingly
22 and willfully harmed plaintiff by making false statements, in a public place in very close
23 proximity to all the City Council members and others, accusing Forte of being a dangerous
24 member of the KKK. Forte alleges that Jones did so after Forte commented upon Jones'
25 avoidance of an interview in an article published by the Badger Flats Gazette which also
26 referenced Jones' previous lawsuit against the City of Los Banos and the Los Banos Police
27 Department arising from Jones' arrest when he was a City Councilman for the possession of
28 crack cocaine.

1 The complaint also alleges that Jones continued to defame Forte by lying to the Los
2 Banos Enterprise (LBE) newspaper which wrote a front page article regarding Forte's claim
3 against Jones for defamation filed with the city. Jones told the LBE that he did not speak to
4 plaintiff at the parade at all. The result of the LBE quoting Jones' statement that he did not speak
5 to Forte was that Forte would be discredited to the public at large as an outright liar.

6 Since the filing of the complaint, several events took place which gave rise to additional
7 causes of action, and Forte received permission on September 12, 2008 from the court to file the
8 First Amended Complaint. This amended complaint added the following facts and cause of
9 action for intentional infliction of emotional distress.

10 First, on or about March 19, 2008, Forte published an article in the Badger Flats Gazette
11 pertaining to Defendant Jones' undisclosed loans from real estate developer Greg Hostetler. The
12 article showed that Jones perjured himself on FPPC 700 forms in 2004 when he failed to identify
13 these loans. In voting on annexation issues regarding Hostetler properties in January of 2005, he
14 also broke conflict of interest laws.

15 At the City Council meeting on March 19, 2008, several persons spoke. First, a citizen, a
16 Mr. Nathan Leon, stood up to speak in the public forum, and stated that he had read the Badger
17 Flats Gazette and the article regarding Jones' undisclosed loans. Next, Forte spoke regarding the
18 loans and the breaking of conflict of interest laws, and requested that Jones tender his
19 resignation. Later, during that same meeting, Defendant Jones addressed the audience and stated,
20 "There were times if you try to do certain things you have been lynched with a rope. This time I
21 got lynched with words." Forte submits that Jones' use of the word "lynched" is a continuation
22 of his defamatory accusation that Forte is a dangerous member of the Ku Klux Klan. The word
23 "lynch" has been associated historically with actions of the KKK against African Americans.

24 The videotaped City Council meetings are played and replayed many times on the local
25 government station where many people had the opportunity to view the meeting. The viewers
26 would understand that Forte's article in the Badger Flats Gazette revealed undisclosed loans of
27 Jones', and that Jones stated that he "got lynched with words" following his theme that Forte was
28

1 a dangerous member of the KKK.

2 Second, after McClatchy Newspapers published an article dated March 22, 2008 through
3 Associated Press, Jones' undisclosed loans were revealed by articles published across the nation.
4 Forte and 20 other proponents signed a Notice of Intent to Recall Mayor Jones based upon his
5 acts that brought humiliation upon the City of Los Banos.
6

7 On or about May 7, 2008, Forte exercised his rights as a citizen to bring the Notice of
8 Intent to Recall Mayor Jones to the knowledge of the people by standing up at the public forum
9 and reading both the Notice and Jones' Answer to the Notice. All citizens are allowed five
10 minutes to speak. In fact, in the past, citizens have been allowed to speak beyond their five
11 minutes.
12

13 After Forte spoke for approximately two minutes and fifteen seconds, Defendant Jones
14 told Forte his time was up, proceeded to ignore Forte's explanation that the five minutes were
15 NOT up, ignored Forte stating, "Pardon me, sir," and upon Los Banos City Attorney Bill Vaughn
16 stating to Jones that Forte's time was not up, Jones insisted Forte's time was up and had Los
17 Banos Police Chief Gallagher push and shove Forte out of the City Council room, intentionally
18 inflicting emotional distress upon Forte when Forte was doing something within his rights as a
19 citizen. Jones' supporters, which filled the room, jeered and cheered as Forte was physically
20 forced out of the building.
21

22 As a result of Jones' actions, Forte suffered emotional anguish which caused Forte to
23 become ill and have to go to the Los Banos Community Hospital Emergency room that evening.
24

25 It is Forte's belief that Jones has repeatedly stated derogatory and defamatory remarks to
26 the public at large, and continues to do so; Jones has been maliciously slandering Forte due to his
27 anger at Forte for uncovering facts that Jones would rather have continued to "hide."
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ARGUMENT

Forte believes that discovery will show the reasons for Jones' malicious actions against him including but not limited to the exposure of Jones' prior arrest, Jones' previous actions revealing violations of conflicts of interest laws as a public official, the recall effort by multiple prominent citizens of Los Banos, and issues of the Badger Flats Gazette which Jones continuously says (in his deposition) are nothing but garbage and lies.

In preparation for trial, Forte needs to discover and understand what Jones and other witnesses will testify to regarding related issues surrounding the allegations in the complaint. For example, what Jones has told other witnesses is very germane to this complaint for defamation, disregarding what the conversation may have revolved around. Suppose Jones discussed the MTBe contamination with Souza at some time, and made a comment regarding Forte's involvement in reporting on the MTBe. Questions to Souza such as, "What did Jones say about Forte in such conversation?" would definitely be relevant. Did Jones tell Souza not to believe anything regarding the MTBe situation written in the Badger Flats Gazette because Forte just lies and writes garbage, that Forte is a person of no character and no value? Such line of questioning would certainly be in the realm of relevance to this complaint.

Movants state that the depositions will cause "unwarranted annoyance, embarrassment, or oppression, and/or undue burden and expense" unless the scope is limited. Forte submits that movants have not illustrated how any of these things will occur. For example, Forte did not repetitively cover the same area over and over at Joe Souza's deposition (no "unwarranted annoyance"). Forte did not ask questions of an intimate nature, i.e., how is Souza's relationship with his wife (no embarrassment). Forte did not "harangue" or "oppress" Souza (Mr. Vaughn made no objections and did not halt the deposition.) Forte is the one bearing the expense of the

1 videotaped deposition. (Is Mr. Vaughn saying that the expense of gas in going to the deposition
2 is burdensome on Souza? Is he saying that the cost for Mr. Vaughn's time spent at deposition
3 which an insurance company is paying for burdensome on Souza? Is Mr. Vaughn saying that
4 Souza's time is monetary loss to him when he is retired?)
5

6 Forte originally believed that each deposition would take no more that 3 - 4 hours, and he
7 scheduled two depositions a day due to his belief. (See Exhibit B to Decl. of Vaughn, p. 4 of
8 motion). However, the deposition notice stated that it would continue the deposition if
9 necessary, a very wide and common practice. A deposition of nine hours is not excessive,
10 particularly when it became evident from Souza's testimony that he was being less than honest.
11

12 Movants claim that the "primary factor is the **lack of relevance** of the subject matter of
13 plaintiff's inquiries to the elements or defenses in a defamation action." (P. 8:7 of Motion).

14 Forte submits that movants have the opportunity to object at the deposition (which Vaughn did
15 not).

16 Movants then claim that the court may "exclude evidence if its probative value is
17 substantially outweighed by the probability that its admission will necessitate undue consumption
18 of time or create substantial danger of undue prejudice, confusion of issues, or of misleading the
19 jury." (P. 8:9-12 of Motion). Forte submits that this "exclusion" of evidence takes place at the
20 time of trial, not before deposition is taken. Admissibility at trial is not a requirement to be able
21 to take deposition testimony.
22

23 Movants also complain that Forte subpoenaed production of documents which were
24 "manifestly overbroad" (p. 8:17). Souza did not object to his subpoena, did not object to any
25 request for production, and did not produce one single document or requested item. (Forte will
26 be filing a motion to compel if Souza does not produce his telephone and cell records and other
27
28

1 requested documents as he agreed to in his deposition.)

2 Mr. Vaughn, movants' counsel, goes into an extensive discussion regarding what the
3 admissibility of evidence will be by the trial court. (P.10:19-12:10). This argument is irrelevant.

4 Forte submits that Mr. Vaughn and his clients are not in a position to be able to judge
5 whether the testimony elicited is irrelevant as he claims. The deposition of Souza of nine hours
6 is not excessive, and Forte, in opposition to Mr. Vaughn's accusations, is entitled to pursue his
7 right to a fair trial and to obtain justice for harm brought upon him by another. As a writer for
8 the Badger Flats Gazette, he has a right to freedom of speech, and certainly, the topics he has
9 written on have a bearing on Jones' actions toward him.

10 Mr. Vaughn's accusation that Forte "has difficulty understanding and following
11 appropriate rules of procedure, or giving respectful consideration for the assertion of them on
12 behalf of others involved in the process..." is absolutely without foundation. Forte has had to
13 uphold to the standard of an attorney, even though not an attorney, by far more illustrious
14 opposing counsel that constantly remind him of such. Forte submits that he is entitled to
15 unfettered discovery unless it is proven and determined by a court that he has done something in
16 the depositions that violate legislative law and public policy.

17 In fact, movants provide no specific evidence, i.e., excerpts of deposition pages, that
18 show Forte being abusive, oppressive, or otherwise acting improperly. The declaration of
19 attorney Mr. Vaughn attesting to the topics that Forte asked questions about are so general and
20 from a position of "being in the dark" that it is impossible for Mr. Vaughn to assess the relevancy
21 of Forte's questions. Forte certainly has obtained testimony from Souza that when laid side by
22 side to Jones' testimony, will attack Jones' credibility. Since Mr. Vaughn has not read Jones'
23 deposition nor is he familiar to the case as a party, he certainly cannot know what is or is not
24

1 Sousa and could splice them together and make them available for public showing at these
2 events,” (p.6;20-22) Mr. Vaughn does not portray what Forte said in an accurate light. If the
3 video is viewed of the city council meeting, it will show that Forte was joking (he absolutely
4 never intended on showing them on “movie night”) and making reference to the inaccurate
5 statements of Jones, that when the appropriate portion of Souza’s testimony is played after Jones,
6 anyone would be able to see the lies made by Jones.
7

8 It is not Forte’s duty at this point to reveal his case strategy to Mr. Vaughn, nor to explain
9 why he asks a question to the deponents. At this stage, Forte has a right to conduct discovery and
10 has done nothing inappropriate. Movants cannot merely claim that they are going to be annoyed,
11 burdened, oppressed, etc based on their belief, they must have proof that Forte has conducted
12 depositions inappropriately. They do not.
13

14 MEMORANDUM OF POINTS AND AUTHORITIES

15 It is well known by the legal community that discovery statutes are to be liberally
16 construed. One central precept of the discovery system is that, in order to accomplish the various
17 legislative purposes of discovery law, the several statutes must be construed liberally in favor of
18 disclosure. Obregon v. Superior Court (App. 2 Dist. 1998) 79 Cal.Rptr.2d 62, 67 Cal.App.4th
19 424.

20 The Civil Discovery Act must be construed liberally in favor of disclosure unless request
21 is fairly improper by virtue of well-established causes for denial. Doak v. Superior Court for Los
22 Angeles County (1968) 65 Cal.Rptr. 193, 257 Cal.App.2d 825, 27 A.L.R.3d 1362; Greyhound
23 Corp. v. Superior Court In and For Merced County (1961) 15 Cal.Rptr. 90, 364 P.2d 266, 56
24 Cal.2d 355. (For example, medical records since the time of birth are protected by law.)

25 The California Code of Civil Procedure §2017(a) states:

26
27 “.....*any party may obtain discovery regarding any matter, not privileged, that is*
28 *relevant to the subject matter involved in the pending action or to the*
determination of any motion made in that action, if the matter either is itself

1 ***admissible in evidence or appears reasonably calculated to lead to the discovery***
2 ***of admissible evidence.*** Discovery may relate to the claim or defense of the party
3 seeking discovery or of any other party to the action. Discovery may be obtained
4 of the identity and location of persons having knowledge of any discoverable
5 matter, as well as of the existence, description, nature, custody, condition, and
6 location of any document, tangible thing, or land or other property.” [emphasis
7 added]

8 In establishing the statutory methods of obtaining discovery in the Civil Discovery Act,
9 it was the intent of the Legislature that discovery be allowed whenever consistent with justice
10 and public policy. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (App. 2
11 Dist. 2007) 55 Cal.Rptr.3d 751, 148 Cal.App.4th 390

12 Purposes of discovery statutes are, among other things, to assist parties and trier of fact
13 in ascertaining the truth, to encourage settlement by educating parties as to strengths of their
14 claims and defenses, to expedite and facilitate preparation and trial, to prevent delay, and to
15 safeguard against surprise. *Plunkett v. Spaulding* (App. 3 Dist. 1997) 60 Cal.Rptr.2d 377, 52
16 Cal.App.4th 114

17 ***Any doubt about discovery is to be resolved in favor of disclosure.*** *Advanced Modular*
18 *Sputtering, Inc. v. Superior Court* (App. 2 Dist. 2005) 33 Cal.Rptr.3d 901, 132 Cal.App.4th 826
19 For purposes of discovery statute allowing disclosure of any matter, not privileged, that is
20 relevant to subject matter involved, ***information is relevant to “subject matter” of an action if***
21 ***information might reasonably assist party in evaluating the case, preparing for trial, or***
22 ***facilitating settlement.*** *Jessen v. Hartford Cas. Ins. Co.* (App. 5 Dist. 2003) 3 Cal.Rptr.3d 877,
23 111 Cal.App.4th 698. [emphasis added]

24 Discovery should be liberally granted. *Borse v. Superior Court In and For Sacramento*
25 *County* (App. 3 Dist. 1970) 86 Cal.Rptr. 559, 7 Cal.App.3d 286. ***Matters sought are properly***
26 ***discoverable if they will aid in a party's preparation for trial.*** *Puerto v. Superior Court* (App. 2
27 Dist. 2008) 70 Cal.Rptr.3d 701, 158 Cal.App.4th 1242. [emphasis added]

28 For purposes of discovery statute allowing disclosure of any matter, not privileged, that
is relevant to subject matter involved, ***extent of pertinent subject matter can vary with size and***
complexity of particular case, and scope of permissible discovery is one of reason, logic and

1 *common sense. Jessen v. Hartford Cas. Ins. Co.* (App. 5 Dist. 2003) 3 Cal.Rptr.3d 877, 111
2 Cal.App.4th 698 [emphasis added]

3 *Matters sought are properly discoverable if they will aid in a party's preparation for*
4 *trial. Forthmann v. Boyer* (App. 2 Dist. 2002) 118 Cal.Rptr.2d 715, 97 Cal.App.4th 977

5 Because all issues and arguments that will come to light at trial often cannot be ascertained at
6 time when discovery is sought, courts may appropriately give an applicant substantial leeway,
7 especially when precise issues of litigation of governing legal standards are not clearly
8 established. *Forthmann v. Boyer* (App. 2 Dist. 2002) 118 Cal.Rptr.2d 715, 97 Cal.App.4th 977

9 *A claim that discovery is not warranted because the evidence disclosed would not*
10 *itself be admissible is untenable; it is settled that admissibility is not prerequisite to discovery.*

11 *Volkswagen of America, Inc. v. Superior Court* (App. 1 Dist. 2006) 43 Cal.Rptr.3d 723, 139
12 Cal.App.4th 1481. [emphasis added] *Admissibility is not test of whether discovery should be*
13 *allowed, and information, unless privileged, is discoverable if it might reasonably lead to*
14 *admissible evidence. Gonzalez v. Superior Court* (App. 2 Dist. 1995) 39 Cal.Rptr.2d 896, 33
15 Cal.App.4th 1539 [emphasis added]

16 California Code of Civil Procedure 2017(c) states:

17 “The court shall impose a monetary sanction under Section 2023 against any party,
18 person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless
19 it finds that the one subject to the sanction acted with substantial justification or that other
20 circumstances make the imposition of the sanction unjust.”

21 Forte has taken four hours to prepare this opposition, an hour at the courthouse, for a
22 total of \$40.00 (calculated at minimum wage) and it will cost \$30.00 in gas to attend the motion.
23 Plaintiff believes that even though he is not entitled to any “attorneys fees” in representing
24 himself, he should be entitled at minimum \$8.00 an hour, the equivalent of minimum wage, for
25 his time, even though his time has been valued by previous employers at a rate exceeding
26 \$500/hour.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION


In summary, movants have not made their motion based on the First Amended Complaint which they were noticed was going to be filed, but instead on an obsolete complaint. Movants give no specific examples of Forte abusing his discovery rights. Movants' argument that the information would not be admissible is not relevant since admissibility has no bearing on whether a deposition may be taken or restricted.

Movants admit they are public officials who have a responsibility to be open and accountable to the public in how they perform their civic duties. Documents authored and public statements made by Forte are his right and do NOT establish that Forte is using the discovery process for improper purposes. Movants disregard that any document in a judicial proceeding is public, and by the fact of being a public official, they understand that they are "in the limelight" by virtue of their position. Public officials have a duty to the public to tell the truth and nothing but the whole truth, in fact, probably to a higher standard than the ordinary citizen.

Forte submits that if a public official has involved themselves in corruption, well, it is not Forte's fault if it is revealed in a deposition – they are public officials and should be accountable to the public, which includes Forte, for any crimes committed. If the public official has done nothing wrong, then why not be willing to answer questions?

For the above reasons, Forte requests that this court deny this request for protective order and grant sanctions to Plaintiff Forte in the amount of \$70.00.

Dated: September 26, 2008



Eugene Forte
In Propria Persona

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF EUGENE FORTE

I, Eugene Forte, declare:

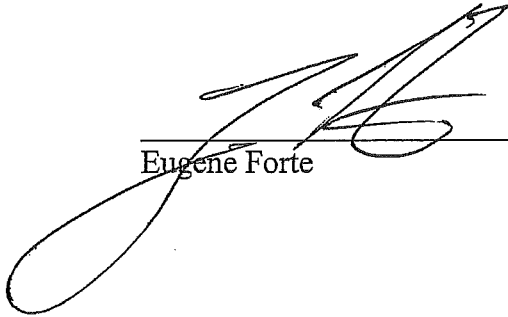
1. I am the plaintiff in this subject complaint and am representing myself.

2. Attached as Exhibit 1 is a true and correct copy of a letter I wrote to Mr. Bill Vaughn dated August 24, 2008.

3. Attached as Exhibit 2 is a true and correct copy of an excerpt from the deposition of Tommy Jones on July 14, 2008 of pages 415-416.

4. I have taken four hours to prepare this opposition, and an hour at the courthouse, for a total of \$40.00 (calculated at minimum wage), and it will cost \$30.00 in gas to attend the motion.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 26th day of September, 2008 at Los Banos, California.



Eugene Forte

Exhibit "1"

Badger Flats Gazette

Sunday, August 24, 2008

Mr. William Vaughn
Los Banos City Attorney
525 J Street, Suite A
Los Banos, California 93635

FAXED/EMAIL

Re: Response to your Purported Meet & Confer, #150880

Dear Mr. Vaughn:

I write this letter in response to somewhat of an incoherent rambling letter from you purporting to be a meet and confer. It seems to seek my stipulation to unduly and prejudicially limit my taking of the depositions of some private citizens who also happen to be city councilmen under the watchful eye of Mayor Tommy Jones.

I found it quite amusing how you wholly misstated my case and then divined what was relevant or what would lead to relevant admissible evidence. Fortunately, you are not my attorney or the judge. I will not agree to any such limitation and add that I will always stay well within the scope of proper discovery questions.

With that said, I cannot fail to point out that your letter and email to me was shortly after I had a conversation with Mr. Benjamin Ratliff, Mayor Jones' counsel. Mr. Ratliff was again bantering about how he could not attend the deposition dates of the councilmen while at the same time asking me to agree to making myself available for a myriad of deposition dates.

Mr. Ratliff was reminded that he was a multi-attorney law office and should make arrangements for other counsels (or paralegals as he once said he would send) to be at Mr. Jones' deposition if necessary. Mr. Ratliff said that his client would not permit it. I informed Mr. Ratliff that was between him and his client, not me.

For the record, the deposition of Mr. Sousa was conducted as expediently and efficiently as possible given the nature of his testimony. When the deposition of Mayor Jones and Mr. Sousa are laid side-by-side, it will show that Mr. Sousa was attempting to both cover-up for Mayor Jones and keep himself out of trouble.

Honest and reasonable testimony by Mr. Sousa would have saved you and him many hours, and I much expense. I suggest you remind the future deponents of such. You are informed if there is any more nonsensical disingenuous testimony, I will suspend the deposition and seek sanctions against the deponents (and their counsel).

As to the mechanics of moving deposition dates, I see no problem working together to find some mutual dates. I should let you know that I will not afford much comity to Mr. Ratliff, who affords me absolutely none.

Therefore, I cannot permit you to stall matters, even if unintentionally, in a way that prejudices my discovery and case with Mr. Ratliff.

It seems reasonable to wait until after the Motion to Amend the complaint to discuss future deposition dates. I will not stipulate to your proposal of unduly limiting my discovery and we can work toward a mutual dates for your filing of a Motion for Protective Order.

If you have any questions, please feel free to call. Thanks.

Sincerely,


Gene Forte

Exhibit "2"

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCED

---oOo---

EUGENE FORTE,)
)
Plaintiff,)
)
vs.) No: 150880
)
TOMMY JONES, an individual,)
and DOES,)
)
Defendants.)
_____)

**CERTIFIED
COPY**

DEPOSITION OF TOMMY CORNIEL JONES

VOLUME II

July 15, 2008 at 9:05 a.m.


Before: GILBERT E. MARTINEZ
C.S.R. 7460

Taken at the offices of:

AL CALA & ASSOCIATES
1601 I Street, Suite 410
Modesto, CA 95354

Pursuant to Notice

The original of this transcript will be held in this office for reading and signing by witness until 9-2-08 unless advised differently.



AL CALA & ASSOCIATES
CERTIFIED SHORTHAND REPORTERS
P.O. Box 1930, Modesto, CA 95353 (209) 521-5316
Email: alcala1@pacbell.net

1 ahead and get back to him, did you state that honestly, in
2 other words, did you really intend to get back to Mr. Forte?

3 A Yes.

4 Q And it's your testimony that you decided not to get back
5 to him after you had conversations with other individuals?

6 A Correct.

7 Q And it's also your testimony you can't remember the names
8 of any of those individuals you had those conversations with?

9 A No.

10 MR. RATLIFF: Which conversations are you
11 referring to? Objection, vague.

12 Go ahead.

13 THE WITNESS: No, I don't remember.

14 MR. FORTE: Q Can you say they weren't --
15 that the members that you had -- that the individuals you had
16 conversations with were they had told you -- Excuse me.

17 I may have asked this question already and I admit to
18 that.

19 Did those individuals tell you, advise you, not to
20 interview with Mr. Forte?

21 A I think I answered that already.

22 MR. RATLIFF: You can go ahead and respond.

23 THE WITNESS: They responded that if I
24 interviewed with you or I talked with you, you would lie and
25 twist the truth and do things to damage me and family which

1 you did.

2 MR. FORTE: Q Now, when you say, "They
3 responded," do they respond to your asking the question if you
4 should interview with him?

5 A I went over that again. I don't remember.

6 Q But you just said, "They responded."

7 A That's not what I said.

8 MR. FORTE: Would you read back his answer,
9 please. Not the most recent one, but previously.

10

11 (Record read.)

12

13 MR. FORTE: Q So Mr. Jones, I'm asking you
14 when you say, "They responded" --

15 A I said responded or talked to them.

16 MR. RATLIFF: I couldn't tell.

17 THE WITNESS: Yeah, that's what I said,
18 "responded or talked."

19 MR. FORTE: Okay. One second.

20 MR. CALA: This concludes Tape 10. The time
21 is 11:36.

22 We're off record.

23

24 (Recess was taken.)

25

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss.
4 COUNTY OF MERCED)

5 I, the undersigned, declare that I am employed in the County of Merced, State of
6 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.

7 On September 26, 2008, I served the foregoing **PLAINTIFF'S OPPOSITION TO**
8 **MOTION FOR PROTECTIVE ORDER RESTRICTING DISCOVERY; MEMORANDUM**
9 **OF POINTS AND AUTHORITIES; DECLARATION OF EUGENE FORTE IN SUPPORT**
THEREOF on the parties in this action by:

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

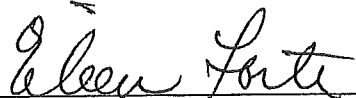
11 x Facsimile machine pursuant to Rule 2008. Said document was sent to the
12 below listed party(ies). The fax number I used was: **(209) 829-1952**. The
13 facsimile machine I used complied with Rule 2004, and no error was
14 reported by the machine. Pursuant to Rule 2006(d), I caused the machine to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

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

17
18 By Mail and Fax:
19 **Mr. Benjamin L. Ratliff, Esq.**
20 **The Law Firm of Weakley, Ratliff, Arendt,**
21 **& McGuire, LLP**
1630 East Shaw Avenue, Suite 176
Fresno, CA 93710

By Personal Service:
Mr. William Vaughn, City Attorney
525 J Street, Suite A
Los Banos, CA 93635
Telephone: (209) 826-3531

22
23 I declare under penalty of perjury that the foregoing is true and correct and that this
24 declaration was executed on September 26, 2008, in Los Banos, California.

25
26 
27 _____
Eileen Forte