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FILED
MERCED COUNTY

2009 SEP 29 AM 9:52

CLERK OF THE SUPERIOR COURT

BY ~~XXXXXXXXXX~~ DEPUTY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF MERCED

10 EUGENE E. FORTE,

11 Plaintiff

12 vs.

13 TOMMY JONES, an individual, and does 1-
14 100, et al,

15 Defendants.

) CASE NO. 150880

) DEFENDANT'S OPPOSITION TO
) PLAINTIFF'S MOTION FOR
) PROTECTIVE ORDER RESTRICTING
) DISCOVERY OF JORDAN FORTE

) DATE: October 10, 2008
) TIME: 8:15 a.m.
) DEPT.: 4

)
Complaint Filed: December 18, 2007

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19 Defendant, TOMMY JONES (hereinafter "Defendant") hereby submits the following
20 Opposition to Plaintiff, EUGENE FORTE's (hereinafter "Plaintiff") Motion for Protective Order
21 Restricting Discovery Re Jordan Forte.

22 I

23 INTRODUCTION

24 On December 18, 2007, Plaintiff filed a complaint with the Superior Court of California,
25 County of Merced for defamation. A First Amended Complaint adding other causes of action was
26 filed on or about September 16, 2008. Plaintiff identified Jordan Forte, his son, as one of three
27 witnesses to an incident described in the complaint. See, *Memorandum of Points and Authorities*
28 attached to *Motion for Protective Order*, 3:13-18; also see, *Exhibit I to Declaration of Eugene*

Defendant's Opposition to Plaintiff's Motion for Protective
Order Restricting Discovery Re Jordan Forte

Fax

1 *Forte* (“*Forte Decl.*”).

2 On August 25, 2008 Plaintiff sent a letter to counsel for defendant stating that he had no
3 objection to the deposition of Jordan Forte being taken. See Exhibit A attached to the *Declaration*
4 *of Ben Ratliff, para. 2* (“*Ratliff Decl.*”) Thereafter, on August 28, 2008, Defendant served a notice
5 of deposition and subpoena on Jordan Forte pursuant to Code of Civil Procedure 2020.310,
6 requiring Jordan Forte to appear in person to testify as a non-party witness in this action on October
7 17, 2008 at 1:30 p.m. in Fresno, California. See, *Exhibit 2 to Forte Decl.* On September 17, 2008,
8 Plaintiff filed a Motion For Protective Order Restricting Discovery Re Jordan Forte. On September
9 22, 2008 counsel for Defendant advised Plaintiff by mail that Defendant could not agree to depose
10 Jordan Forte by the use of written questions but would agree to depose Jordan Forte on a Saturday
11 so as not to interfere with Jordan Forte’s class schedule. *Ratliff Decl. ,para. 3.*

12 **II.**

13 **ARGUMENT**

14 Defendant opposes Plaintiff’s motion on the basis that Plaintiff has failed to provide any
15 evidence that he would be affected or jeopardized by the deposition of Jordan Forte. Furthermore,
16 because Plaintiff has identified Jordan Forte as a material witness, Defendant is entitled to take
17 Jordan Forte’s deposition to discover any evidence which is relevant to the allegations contained
18 in the First Amended Complaint to which no claim of privilege is being made.

19 **A. Plaintiff Has Not Shown That His Rights Are Affected Or Jeopardized**

20 Code of Civil Procedure §2017.010 provides that “[u]nless otherwise limited by order of
21 the court in accordance with this title, any party may obtain discovery regarding any matter, not
22 privileged, that is relevant to the subject matter involved in the pending action or to the
23 determination of any motion made in that action, if the matter either is itself admissible in evidence
24 or appears reasonably calculated to lead to the discovery of admissible evidence... Discovery may
25 be obtained of the identity and location of persons having knowledge of any discoverable matter...”

26 As noted above, Plaintiff, rather than Jordan Forte filed this instant motion. Plaintiff is not
27 licensed to practice law and has not been appointed as guardian ad litem to represent Jordan Forte
28 in this action. Therefore, Plaintiff lacks the standing to oppose the deposition of Jordan Forte unless

1 he can make a clear demonstration that his rights will be affected or jeopardized.

2 A protective order may be granted on the motion of the deponent, or any party or third
3 person who could be affected by the disclosure of a matter disclosed in the deposition. *Code Civ.*
4 *Proc. § 2025.420(a)*. In *Vaugham* the court held, “A party may not obtain a protective order to
5 protect rights of a witness unless the party can demonstrate that his or her own rights are
6 jeopardized.” See, e.g., *Vaugham v. Taylor* (1986) 718 P.2d 1387.

7 In this case, Plaintiff fails to provide any facts indicating that the deposition of Jordan Forte
8 will affect or jeopardize his rights. There is no indication that the deposition of Jordan Forte would
9 disclose anything sensitive or privileged about Plaintiff that would cause him to be affected.
10 Indeed, Plaintiff makes no such claim. Plaintiff simply argues that Defendant’s counsel “intends
11 to badger Jordan” and “disrupt the harmonious relationship” between Plaintiff and his son. *Forte*
12 *Decl., para. 25-26*. The fact that Jordan Forte’s deposition could cause some stress between
13 Plaintiff and Jordan Forte’s relationship is speculative and does not indicate jeopardy to Plaintiff’s
14 protected rights. On these facts, Plaintiff is not entitled to seek a protective order, and his motion
15 should be denied.

16 **B. Plaintiff Has Failed to Demonstrate Good Cause**

17 Code of Civil Procedure §2025.420(b) provides that the court, “for good cause shown may
18 make any order that justice requires to protect any party, deponent or other natural person or
19 organization from unwarranted annoyance, embarrassment, or oppression or undue burden and
20 expense.” “A strong showing of good cause is required before a party will be denied entirely the
21 right to take a deposition.” *Beverly Hills National Bank & Trust Co. v. Superior Court* (1961) 195
22 Cal.App.2d 861, 867. However, situations will “seldom arise where an order that a deposition shall
23 not be taken will be appropriate.” *Id.* at 867.

24 In opposing the deposition, Plaintiff claims that an “oral deposition of a fifteen year old
25 minor by opposing counsel regarding his father in a civil litigation is extremely burdensome,
26 intrusive, and stressful on the minor’s state or well being.” *Notice of Motion for Protective Order*
27 *Restricting Discovery Re Jordan Forte*, 2:3-6. In support of his claims, Plaintiff asserts that Jordan
28 Forte “is stressed at the thought of having to be questioned in oral deposition” (*Memorandum of*

1 *Points & Authorities attached to Notice of Motion for Protective Order, 3:22-23)* and Jordan Forte
2 “would have to miss his classes.” *Memorandum of Points & Authorities attached to Notice of*
3 *Motion for Protective Order, 4:2.* Plaintiff’s claim of stress is nothing more than a common
4 response generally felt by deponents and does not amount to a showing of good cause. Good cause
5 exists where justice requires protection of a party from any annoyance, embarrassment, oppression,
6 or undue burden. Stress at the thought of being deposed does not establish good cause. Indeed,
7 minors far younger and less sophisticated than Jordan Forte (See, *Forte Decl.*, Exhibits 3-5) are
8 commonly deposed in civil litigation. Further, Plaintiff has offered to reschedule Jordan Forte’s
9 deposition to accommodate Jordan Forte’s class schedule. As such, there is no showing as to how
10 Jordan Forte would be subjected to unwarranted annoyance, embarrassment, oppression or undue
11 burden.

12 Alternatively, taking Jordan Forte’s deposition is clearly justified. Plaintiff has specifically
13 identified his son as a material witness, and Jordan Forte has gone as far as signing a declaration
14 under penalty of perjury. Issuing a protective order as to the deposition of Jordan Forte would
15 seriously and unfairly impair Defendant’s right to discovery, thereby precluding the defense from
16 verifying the credibility of Jordan Forte’s testimony, and preventing Defendant’s counsel from
17 asking follow-up questions to understand the circumstances surrounding Jordan Forte’s declaration.

18 In sum, Plaintiff has failed to show good cause why the protective order should be granted,
19 and his motion should be denied.

20 III.

21 REQUEST FOR SANCTIONS

22 Code of Civil Procedure section 2025.410(d) authorizes the court to award sanctions against
23 any party who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it
24 finds that the one subject to the sanctions acted with substantial justification or that other
25 circumstances make the imposition of the sanction unjust. Defendant submits that there is not legal
26 or factual basis for the filing of the subject motion. As noted in the Ratliff Declaration, a total of
27 3.9 hours were incurred by law clerk Maribel Hernandez in preparing the opposition to plaintiff’s
28 motion. Ms. Hernandez’ hourly rate is \$120.00. Further, it is expected that counsel for defendant

1 will spend 2.5 hours to prepare for and attend the hearing at an hourly rate of \$180.00. Therefore,
2 it is requested that the court award the sum of \$828.00 as sanctions against Eugene Forte.

3 IV.

4 CONCLUSION

5 For all the foregoing reasons, Defendant respectfully requests this Court deny Plaintiff's
6 motion in its entirety and that defendant be awarded the sum of \$828.00 in monetary sanctions. In
7 the alternative, if the Court is inclined to grant Plaintiff's motion, Defendant requests that the Court
8 disallow Jordan Forte from testifying at trial.

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10 DATED: September 26, 2008.

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12 WEAKLEY, RATLIFF, ARENDT & McGUIRE, LLP

13
14 By: 

15 Benjamin L. Ratliff

16 Attorney for Defendant

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PROOF OF SERVICE

I, the undersigned, hereby certify that I am employed in the County of Fresno, State of California, over the age of eighteen years and not a party to the within action; my business address is 1630 East Shaw Avenue, Suite 176, Fresno, California 93710.

On the date set forth below, I placed in a sealed envelope and served a true copy of the within

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR
PROTECTIVE ORDER RESTRICTING DISCOVERY OF
JORDAN FORTE**

addressed as follows:

Mr. Eugene Forte
688 Birch Court
Los Banos, California 93635
(209) 829-1116
Plaintiff In Pro Per

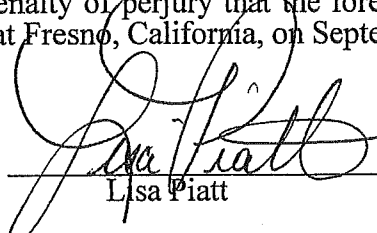
BY MAIL I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited in the ordinary course of business.

I caused each envelope, with postage fully prepaid, to be placed in the United States mail, at Fresno, California.

BY HAND I hand delivered each envelope to the office listed above.

BY FACSIMILE I served the above-mentioned document from Facsimile Machine No.: (559) 221-5262 to the interested parties at the facsimile numbers listed above.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury that the foregoing is true and correct, and that this proof of service was executed at Fresno, California, on September 26, 2008.



Lisa Piatt