

1 Benjamin L. Ratliff, Esq. Bar No. 113708

2 THE LAW FIRM OF
3 WEAKLEY, RATLIFF,
4 ARENDT & McGUIRE, LLP
1630 East Shaw Avenue, Suite 176
Fresno, California 93710

5 Telephone: (559) 221-5256
6 Facsimile: (559) 221-5262

7 Attorneys for Defendant, TOMMY JONES

FILED
MERCED COUNTY

2008 SEP 29 AM 9:52

CLERK OF THE SUPERIOR COURT

BY _____
COURT REPORTER DEPARTMENT

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF MERCED

11 EUGENE E. FORTE,

12 Plaintiff

13 v.

14 TOMMY JONES, an individual, and does 1-
15 100, et al,

16 Defendants.

) CASE NO. 150880

) DECLARATION OF BENJAMIN L.
) RATLIFF IN 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 I, Benjamin L. Ratliff, declare as follows:

20
21 1. I am a partner with the Law Firm of Weakley, Ratliff, Arendt & McGuire,
22 counsel for defendant TOMMY JONES (hereinafter "JONES") in the above-captioned action. I
23 am licensed to practice before the courts of the State of California. I have personal knowledge
24 of the matters set forth herein, except those matters stated on information and belief, and would
25 so testify.

26 2. Attached hereto as Exhibit "A" is a true and correct copy of a letter received
27 from Eugene Forte on August 25, 2008 agreeing to the deposition of Jordan Forte.

28 3. Attached hereto as Exhibit "B" is a true and correct copy of the letter I mailed to
EUGENE FORTE (hereinafter "FORTE") on September 22, 2008 in responding to his Motion for

Declaration of Benjamin L. Ratliff

Fax

1 Protective Order.

2 4. The opposition to plaintiff's motion was prepared by Maribel Hernandez who is
3 employed as a law clerk with my firm. Ms. Hernandez has graduated from law school and is
4 awaiting the results of the California Bar Exam. Ms. Hernandez spent 3.9 hours reviewing,
5 researching and preparing the opposition at a billable rate of \$120.00. Additionally, counsel for
6 defendant expects to spend 2.5 hours to prepare for and attend the upcoming hearing on plaintiff's
7 motion. Defense counsel's billable rate is \$180.00 an hour. It is therefore, requested that a total
8 of \$828.00 be awarded as sanctions against plaintiff.

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct and that this Declaration was executed on September 26, 2008 at
11 Fresno, California.

12
13 By:  _____

14 Benjamin L. Ratliff
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EXHIBIT "A"

File

Badger Flats Gazette

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 25th, 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 25th, 2008 in Los Angeles, and I will make myself available for you for the remainder of the day of the 25th, in Los Angeles and continue onto the following day if necessary on September 26th, 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.

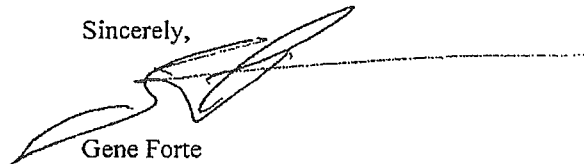
I have no problem in producing Mr. Jordan Forte for deposition provided there are reasonable questions asked. The second you in any way attempt to badger Master Forte, I will call an end to the deposition and seek an order from the court pinning your ears back and asking the awarding of your tail by 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 4th, 2008.

Your prompt response is requested.

Sincerely,



Gene Forte

Encl: Galloway letters to Ratliff

EXHIBIT "B"

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

September 22, 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:

Your letter dated September 17, 2008 has been received, along with the motion for protective order which was received on September 18, 2008.

This will confirm that on September 16, 2008 you called and requested that I take Jordan Forte's deposition by way of written questions instead of an oral examination. I told you I could not do that because I have many questions to ask Jordan Forte and I would not be able to ask follow-up questions in the event an unsatisfactory answer is given. Also, it would be burdensome and oppressive for me to attempt to ask the questions in written form because I expect the deposition will last about two hours and the use of written questions is not suitable in this case because I will not be able to judge your son's credibility or evaluate what type of witness he makes.

Jordan Forte submitted a sworn declaration signed by him, and likely prepared by you, to support the governmental tort claim which you filed in May of 2007. You have identified him as one of three witnesses to one of the incidents described in the complaint. And, as you know, Jordan Forte will definitely be called as a witness should this case be tried to a jury.

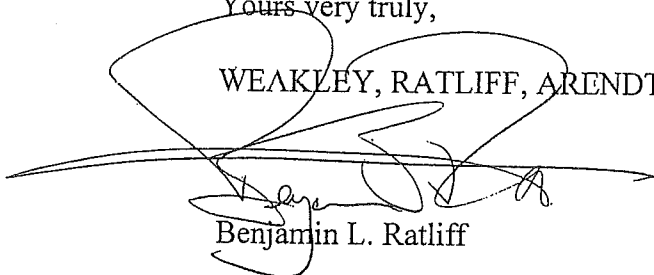
September 22, 2008 - Page 2

In sum, I do not believe my client will be properly served by taking Jordan Forte's deposition using written questions. I am agreeable to deposing Jordan Forte on a Saturday so as to not interfere with his studies, however, I would request that you waive service of a subpoena. And, if the court reporter charges an additional fee for a weekend deposition, I would request you pay that fee before the commencement of the deposition.

I am requesting that you withdraw your motion so my client does not have to incur the expense of filing a response. If the motion is not withdrawn, I will be seeking monetary and/or other appropriate sanctions.

Yours very truly,

WEAKLEY, RATLIFF, ARENDT & MCGUIRE, LLP



Benjamin L. Ratliff

BLR:lp

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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

**DECLARATION OF BENJAMIN L. RATLIFF IN 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

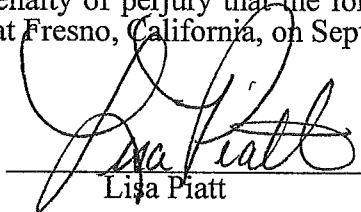
BY MAIL I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited in the ordinary course of business.

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