

October 27, 2008

ALSO FAXED TO: (415) 433-7311

Mr. Karl Olson/LEVY, RAM & OLSON LLP
639 Front Street, 4th Floor
San Francisco, CA 94111

Re: *Forte v. Jones*, Merced Superior Court Case No.: CU150880

Dear Mr. Olson:

The following is in response to your objection to the deposition subpoena served upon Minerva Perez on October 9, 2008.

1. The attached copy of Deposition Subpoena For Personal Appearance served to you on October 16, 2008 as an attachment to the Notice of Taking Deposition of Minerva Perez is not a subpoena for personal appearance and production of documents as you state in your objection. No documents have been requested. CCP §1987.5 which you cite states the following:

§ 1987.5. Subpoena duces tecum; conditions to validity; original affidavit; deposition subpoenas for production of business records [emphasis added]

“..... In the case of a subpoena duces tecum *which requires appearance and the production of matters and things at the taking of a deposition*, the subpoena shall not be valid unless a copy of the affidavit upon which the subpoena is based and the designation of the materials to be produced, as set forth in the subpoena, is attached to the notice of taking the deposition served upon each party or its attorney” [emphasis added]

Therefore, your statement that the subpoena is invalid because it is not accompanied by an affidavit is false. It does not apply.

2. Evidence Code §1070 states:

“§ 1070. Refusal to disclose news source

(a) A publisher, editor, reporter, or other person connected with or employed upon a newspaper..... cannot be adjudged in contempt by a judicial, legislative, administrative body, or any other body having the power to issue subpoenas, *for refusing to disclose*, in any proceeding as defined in Section 901, *the source of any information procured* while so connected or employed for publication in a newspaper, magazine or other periodical publication, *or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.*

(b) Nor can a radio or television news reporter be so adjudged in contempt *for refusing to disclose the source of any information procured* while so connected or employed for news or news commentary purposes on radio or television, *or for refusing to disclose any unpublished information* obtained or prepared in gathering, receiving or processing of information for communication to the public.

(c) As used in this section, *“unpublished information” includes information not disseminated to the public by the person from whom disclosure is sought*, whether or not related information has been disseminated and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated.” [emphasis added]

Reading this code, it appears you have made a quantum leap from what this code specifies as the refusal to disclose the source of any information procured and any unpublished information to the refusal to provide any testimony at all and the refusal to appear for deposition in accordance with a court ordered subpoena. As indicated on the deposition subpoena, the matters upon which Ms. Perez is to be examined are non-privileged information regarding Perez’ article of May 18, 2007 entitled, “\$1 million claim filed against Mayor, city.” (See subpoena p. 1, #2).

I need to verify and authenticate the article’s statements written by Minerva Perez. There is no issue as to the source of the published information as she states exactly where all her sources come from in the article itself, nor do I seek any “unpublished information.” All information sought directly relates to this subject case against Tommy Jones which revolves around Jones’ defamatory and tortuous actions against myself including the incident of May 7, 2007. Ms. Perez’ testimony is very reasonably calculated to lead to admissible evidence, and her compliance with appearing for deposition would not be burdensome nor oppressive.

Your objections as to the demands violating the rights of privacy of Ms. Perez, the Los Banos Enterprise, and third parties are misplaced since the deposition subpoena is not requesting any production of documents.

You have stated in your objection that Ms. Perez will not appear for deposition. In light of this response, I am hoping that she will reverse her decision and avoid contempt and/or monetary sanctions.

If Ms. Perez does not inform me by 12:00pm on October 29, 2008 that she will appear for deposition, then I will move the court for an order compelling her to oral deposition and request the Court award monetary and/or contempt sanctions, as well as forfeiture and damages pursuant to C.C.P. §1992 (for non-compliance of subpoena), against her and/or you, for willful misuse of the discovery process which includes unreasonable refusal to comply with the deposition subpoena by not appearing.

Evidence Code §1070 does not apply to her disobedience to a court issued subpoena for appearance at deposition, it applies to her refusal to disclose certain privileged information.

Sincerely,


Gene Forte

Cc: Benjamin Ratliff ✓

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Eugene Forte 688 Birch Court Los Banos, CA 93635 TELEPHONE NO.: 209-829-1116 FAX NO. (Optional): 209-829-1952 E-MAIL ADDRESS (Optional): geneforte@badgerflats.com ATTORNEY FOR (Name): In Propria Persona	FOR COURT USE ONLY CASE NUMBER: CU150880
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Merced STREET ADDRESS: 627 West 21st Street MAILING ADDRESS: CITY AND ZIP CODE: Merced, 95340 BRANCH NAME: Merced	
PLAINTIFF/ PETITIONER: Eugene Forte DEFENDANT/ RESPONDENT: Tommy Jones	
DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE	

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
 Minerva Perez, 1253 West "I" Street, Los Banos, CA, 93635 (209) 826-3831

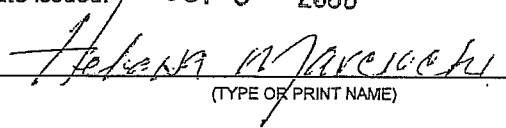
1. YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following date, time, and place:

Date: October 30, 2008	Time: 9:00 am	Address:
Al Cala & Assoc, 1601 I Street, #410, Modesto, CA		


- a. As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 2. (Code Civ. Proc., § 2025.220(a)(6).)
 - b. This deposition will be recorded stenographically through the instant visual display of testimony, and by audiotape videotape.
 - c. This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025.620(d).
2. If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are as follows:
 Non-privileged information regarding Perez's Article of May 18, 2007 entitled, "\$1 million claim filed against mayor, city".

3. At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition.

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: **OCT 8 2008**


 (TYPE OR PRINT NAME)



 (SIGNATURE OF PERSON ISSUING SUBPOENA)

 (TITLE)



(Proof of service on reverse)

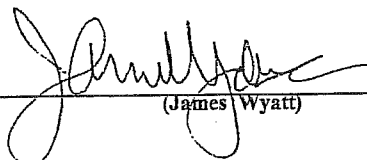
Attorney or Party without Attorney: EUGENE FORTE 688 BIRCH CT Los Banos, CA 93635 Telephone No: 209-829-1116				For Court Use Only	
Attorney for: Plaintiff				Ref. No. or File No.:	
Insert name of Court, and Judicial District and Branch Court: MERCED COUNTY SUPERIOR COURT					
Plaintiff: FORTE Defendant: JONES					
PROOF OF SERVICE DEPOSITION SUBPOENA		Hearing Date: Thu, Oct. 30, 2008	Time: 9:00AM	Dept/Div:	Case Number: CU150880

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE
3. a. Party served: MINERVA PEREZ
b. Person served: party in item 3.a. (HISP, F, 35, BLK, 5'5", 135LBS)
4. Address where the party was served: THE ENTERPRISE
1253 West I St
Los Banos, CA 93635
5. I served the party:
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: Fri., Oct. 10, 2008 (2) at: 9:40AM
 - b. I received this subpoena for service on: Thursday, October 09, 2008
6. Witness fees were not demanded or paid.
7. Person Who Served Papers:

<ol style="list-style-type: none"> a. James Wyatt b. WYATT'S LEGAL SERVICE P. O. BOX 2560, Registration # 98 Los Banos, CA 93635 c. (209)826-0225 	<p style="text-align: right;">Recoverable Cost Per CCP 1033.5(a)(4)(B)</p> <ol style="list-style-type: none"> d. The Fee for Service was: \$45.00 e. I am: (3) registered California process server <ol style="list-style-type: none"> (i) Owner (ii) Registration No.: 98 (iii) County: Merced (iv) Expiration Date: Thu, Jan. 01, 2009
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8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Fri, Oct. 10, 2008


(James Wyatt)