

Gene Forte
688 Birch Court
Los Banos, California, 93635
Telephone: (209) 829-1116
Facsimile: (209) 829-1952

In Propria Persona /Plaintiff

10/30/08

file

ADD

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MERCED

EUGENE FORTE

Plaintiff,

vs.

TOMMY JONES, et al.

Defendants.

Case No. CU150880

**REPLY BRIEF IN SUPPORT OF
MOTION TO COMPEL COMPLIANCE
WITH DEPOSITION SUBPOENA AND
REQUEST FOR ORDER AWARDING
MONETARY SANCTIONS AGAINST
CHARLES GUEST IN THE SUM OF
\$981;**

**MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
EUGENE FORTE IN SUPPORT
THEREOF**

DATE: November 6, 2008

TIME: 8:15 a.m.

DEPT: TBD

I. INTRODUCTION

According to Guest's response to Plaintiff Forte's motion to compel compliance with the deposition subpoena properly and timely issued and served upon him, Guest is claiming that this subject motion is "completely unnecessary," and abusive. (p. 1, In 27 of Response). Forte replies that it is his right to make such motion when a subpoena has not been obeyed. There is no law that states that he MUST accommodate an unavailability of an attorney, especially when Guest had Forte v. Jones, et al.

1 plenty of time (30 days) to obtain counsel that was available. With almost 200,000 active members
2 of the State Bar, his excuse that he could not find an attorney available for that deposition date is
3 merely that, an excuse evidenced by the fact that Forte was willing to continue the deposition date if
4 he responded to the request for production of documents. He did not produce any documents.

5 Although Guest argues that he “is and has been willing to submit to deposition by Mr. Forte,
6 and he is further prepared to provide Mr. Forte with any non-protected information within his
7 control that has been published on the www.ourlosbanos.com website,” (p. 2, ln 1-3 of Response)
8 Forte submits that Guest’s request for continuance was merely a stall tactic in an attempt to buy
9 more time to file a motion for protective order.
10

11 Guest’s excuse that Forte was requesting privileged information is inadequate since Forte,
12 as commonly done in requests for production of documents, informed him in the subpoena that if
13 there are documents which Guest claims are privileged, he was to list it on a privilege log.

14 II. REPLY TO GUEST’S DISCUSSION

15 1. **Guest has not acted with good faith.**

16 Guest’s attorney, Mr. McMurray submits that “Mr. Guest has indicated his willingness to
17 attend his deposition and produce non-protected documents.” P. 3, line 1-2 of Response.
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19 Despite Mr. McMurray’s persistent cry that Guest was willing to attend deposition and
20 produce documents, the fact remains he did not show and that nothing has been produced. Mr.
21 McMurray certainly understands that Guest is required to respond to the request for production,
22 how he may object to a specific request if he believes it is privileged, and how he may list
23 documents on a privilege log if he claims that the document is protected. None of the above have
24 been done nor produced to Forte. Forte has received nothing, therefore Forte submits that Guest
25 and his counsel’s meet and confer were not done in good faith, but as a ruse to postpone any
26 response to the subpoena so that they could have more time than that provided by statute to file a
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1 motion for protective order. (NOTE: A motion for protective order filed after the violation of a
2 subpoena does not negate the violation.)

3 **2. Guest's animus toward Forte/Forte's right to discovery**

4 In addition, Forte submits that Guest has consistently acted with animus toward Forte
5 despite his pretense that he has been "acting with good faith." Forte submits that Guest attempts to
6 create the illusion that he is a third party, uninvolved personally, working in good faith to protect
7 his "anonymous" posters on his website, when in actuality, he himself has acted with discrimination
8 and hostility towards Forte. In addition, contrary to Guest's portrayal, the posters on his website
9 are not anonymous. This is evidenced by the following:

- 11 1) Never having received a warning, Forte was suddenly banned one day from being able to
12 post on Guest's website www.ourlosbanos.com.
- 13 2) Forte has evidence that Guest has removed any posts and prevented any posters from
14 mentioning Forte's name or his website, www.badgerflats.com, or commenting on either by other
15 posters.
- 16 3) Forte believes that Guest has privately contacted other posters to instruct them that they are
17 not allowed to mention Forte's name or his website in their postings.
- 18 4) Another poster had at one time, posted a message to which Guest himself responded by post
19 that he thought it might be considered a physical threat to Forte.
- 20 5) Forte believed this to be a threat and had contacted the police for his protection.
- 21 6) This poster has not been banned from the website.
- 22 7) Charles Guest knows who these supposedly "anonymous" posters are, therefore, they are
23 not anonymous.
- 24 8) It is understood that at least 32 of these posters know each other due to the get together
25 planned and publicized to take place on or about November 1, 2008. Posters have also referred to
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1 their past face to face meetings in their posts. Many of the posters reveal their name, and also know
2 who the other posters are. Therefore, it is not an anonymous posting forum.

3 9) Another poster has been issued multiple warnings by Guest for the hostile content of their
4 posts, in particular, posts directed at Forte.

5 10) This poster has not been banned from the site.

6 The posters on this website are not protected by the first amendment right when they have
7 already revealed their identities to many others.

8
9 Considering that the substance of this lawsuit revolves around the allegation that Tommy
10 Jones, who is currently the Mayor of Los Banos and believed to be or have been a member of
11 Guest's website, has and is continuing to defame Forte by saying that Forte is a dangerous member
12 of the KKK, that he tells garbage and lies, that Forte is a person that would beat him and his family
13 up, and who knows what else, etc., it is certainly in the realm of possibility that Guest, who
14 certainly knows Jones, has either been actively defaming Forte to others, or has heard defamatory
15 statements from his posters originating from Jones.

16
17 Because Forte has been banned from the website, it is difficult to contact any posters
18 directly. According to statute, Forte has a right to discover the names of people who may be able to
19 provide evidence to support his claim.

20 **3. Subpoenaed appearance at deposition and production of documents were appropriate,**
21 **therefore Forte entitled to sanctions.**

22 No response to the properly subpoenaed request for production of documents was produced.
23 Guest made no "good faith" action in providing such. Mr. McMurray seems to feel that a party
24 MUST reschedule a deposition if requested to, even when the deposition has been subpoenaed and
25 timely served. He is wrong.
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1 Guest violated a subpoena, and Forte is entitled to the sanctions he has requested regardless
2 of the recently filed but untimely Motion for Protective Order. There is no substantial justification
3 for Guest's non-appearance at the deposition nor for his failure to respond to the request for
4 production of documents.

5 Guest had 30 days to find an attorney if he wanted one to be available for attendance at
6 deposition. It would be folly for this court to adhere to and/or set the standard that a subpoenaed
7 witness can avoid having to attend a deposition by shopping around for an attorney that cannot
8 attend on the deposition date. This would allow all subpoenaed witnesses "a way out" of
9 complying with a subpoena to appear for deposition, and giving them "substantial justification" to
10 disobey the subpoena.

11 Forte's costs are reasonable and certainly not avoidable. The last email from Forte to
12 McMurray instructed Guest that he was expected to appear at the deposition as compelled by
13 subpoena, and that Forte would be there. There was no response to this detailed email from Forte
14 informing Guest what his costs would be and that Forte would be seeking such costs incurred at the
15 deposition if he did not appear. If Forte was not there, and Guest appeared, Forte would potentially
16 lose his right to take Guest's deposition.

17 Even though Mr. McMurray insists that "Mr. Forte chose to attend the deposition on his
18 own," Mr. Forte was acting on his right to take Guest's deposition based upon the properly and
19 timely served subpoena. There was no protective order, and without any stipulation regarding the
20 deposition, Guest was required to appear. Just because someone claims they won't be there, does
21 not remove their obligation.

22 The dollar amount for Forte's own time is not in any way "attorney's fees," it is a more than
23 reasonable compensation based upon minimum wage for a person's time. (Just try finding anyone
24 providing legal representation at \$8/hour.) It was clearly not the court's intent that parties' with

1 counsel are advantaged, thereby able to act inappropriately without fear of retribution in an action
2 where the other party is in propria persona, by not having to pay any attorney's fees awarded in
3 sanctions, as opposed to parties in propria persona having to be liable for the opposing parties'
4 attorney's fees as in this case of an amount in excess of \$4,900. (In fact, it appears that the issue
5 may be an issue that should be taken up in federal court on Constitutional Rights for Equal
6 Protection.)

7 According to Mr. McMurray's argument, Forte is preempted to any sanctions for Guest not
8 obeying a court issued subpoena because it is reasonable (he claims) that Guest can just tell Forte,
9 sorry I'm not available, you have to move it, and if I am found to be wrong, oh well, I still don't
10 have to pay anything to you for the time and monies you wasted because you have to continue the
11 deposition because I want you to and you have no choice or rights as an in pro per.
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13 Mr. McMurray fails to acknowledge that Forte did not stipulate to any continuance of the
14 deposition.
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16 MEMORANDUM OF POINTS AND AUTHORITIES

17 Forte submits that Guest's attempt to throw in his motion for protective order as a response
18 to this motion to compel is inappropriate. His motion for protective order cannot be included nor
19 considered in this motion. In fact, insofar as he attempts to use his motion as part of his opposition
20 to this subject motion, Forte requests this court to strike any reference to his motion for protective
21 order.

22 A. Neither Mr. McMurray nor Guest made a timely objection to the production of documents
23 requested by Forte. A request to limit discovery is not an objection. Therefore, Guest has waived
24 his rights. [Failure to make timely objection to request for discovery constitutes waiver. Henry
25 Mayo Newhall Memorial Hosp. v. Superior Court, 146 Cal.Rptr. 542 Cal.App.2.Dist.,1978] Guest
26 must now be compelled to appear for deposition and to produce documents as subpoenaed.

27 B. All requests for documents were reasonable and not overly burdensome, not harassing, nor
28 oppressive. Mr. McMurray conveniently glosses over the fact that Forte is primarily requesting

1 documents **which refer to or involve Forte**. Unfortunately for him, just because Guest may have
2 to look through documents he has to determine which ones referred to Forte, it is not a reason to
3 justifiably refuse to produce the relevant documents. The eleven requests are as follows:
4 Request #1 asks for communications and/or recordings between Guest and Forte or Jones, the
5 parties to this action. This is very reasonable.
6 Request #2 asks for any notes, notations or recordings which memorialize #1 above. This is very
7 reasonable.
8 Request #3 asks for written communications and/or recordings between Guest and other persons
9 **regarding Forte**. Unless Guest discussed Forte all the time with everybody, this is not burdensome
10 or oppressive and even if he did, this request is still reasonable in light of the allegations of the
11 complaint.
12 Request # 4 asks for any notes, etc. memorializing #3 above, again **only those regarding Forte**.
13 This is not unreasonable, harassing, oppressive, nor burdensome.
14 Request # 5 and # 6 are reasonable request for entries of any diaries, calendars, and daytimers only
15 from October 2006 to May, 2008, a request frequently done in requests for production of
16 documents. In this case, it is relevant to, and includes but is not limited to as an example, whether
17 Guest met with Jones, and/or other members of the website, and/or other persons who may be
18 witnesses to the alleged defamation of Forte by Jones.
19 Request # 7 requests any documents, tapes, etc. **which relate to Forte**. This is not unreasonable
20 nor over burdensome.
21 Request # 8 requests telephone bills from October 2006 to May 1, 2008 which should not be
22 difficult to obtain. Any conversations that took place with Jones, and/or other potential witnesses in
23 this case are relevant.
24 Request # 9 requests deposition transcripts taken of Guest pertaining to the specific case of Jones v.
25 LB Police Dept and the City of Los Banos. These should not be difficult to obtain if they exist, and
26 are not burdensome nor costly as Forte would copy and pay for them.

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1 Request #10 requests any documents relating to any gifts, loans, etc. between Jones and Mr. Greg
2 Hostetler. Unless there were so many gifts and loans between the two that they provided to Guest,
3 Forte surmises that this request is not over burdensome.

4 Request #11 requests any evidence Guest has or knows exists, that establish that plaintiff is a
5 dangerous member of the Ku Klux Klan, a reasonable and relevant request.

6 C. The disclosure of names and addresses of potential witnesses is a routine and essential part
7 of pretrial discovery. *Puerto v. Superior Court* (App. 2 Dist. 2008) 70 Cal.Rptr.3d 701, 158
8 Cal.App.4th 1242. In *Puerto*, the Appellate Court considered the Application of Privacy
9 Framework to the Discovery Request and Order. They ruled the following in part:

10 “ Generally, witnesses are not permitted to decline to participate in civil discovery, even when
11 the information sought from them is personal or *1257 private.^{FN6} Compliance with subpoenas is
12 not optional; if a witness receiving a subpoena wishes to resist it, the witness cannot merely opt out,
13 but must make a motion to quash or modify that subpoena. (§ 1987.1.) Simple disobedience may be
14 punished as contempt. (§ 1991.) When a subpoena is served seeking the personal records of a
15 nonparty consumer under section 1985.3, the party seeking discovery is not required to obtain the
16 consumer's affirmative consent to the release of those records. If the nonparty consumer wishes to
17 object to the release of the records, he or she must “serve on the subpoenaing party, the witness, and
18 the deposition officer, a written objection that cites the specific grounds on which production**713
19 of the personal records should be prohibited.” (§ 1985.3, subd. (g).) Similarly, when a subpoena is
20 served that seeks the production of a nonparty employee's employment records, a nonparty
21 employee contesting the release of those records must serve a specific, written objection on the
22 subpoenaing party, the deposition officer, and the witness that articulates the grounds on which the
23 nonparty employee contends production of the employment records should be prohibited. (§
24 1985.6, subd. (f)(2).)”

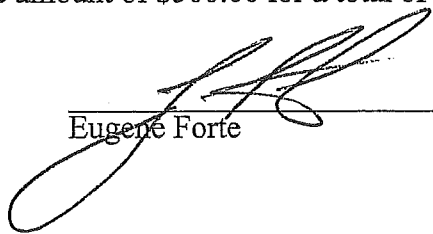
26 CONCLUSION

27 In view of the facts and authorities included herein and in the motion, plaintiff respectfully
28 requests that the Court issue an Order directing Charles Guest to appear for deposition and to

1 produce all documents specified in the deposition subpoena, commencing at 9:00 a.m. on
2 November 10, 2008 or no later than November 21, 2008 to be continued until completed.

3 Plaintiff again respectfully submits that the court should award monetary and/or contempt
4 sanctions against Charles Guest and his counsel, Mr. McMurray, and in favor of plaintiff Forte for
5 the incurred costs of \$481, and forfeiture in the amount of \$500.00 for a total of \$981.

6 DATED: October 30, 2008


Eugene Forte

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DECLARATION OF EUGENE FORTE

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2 1. I, Eugene Forte, am the plaintiff representing myself in propria persona. This declaration is
3 submitted in support of my Reply Brief in Support of the Motion to Compel nonparty witness,
4 Charles Guest, to comply with a deposition subpoena properly served on August 5, 2008, by
5 directing the witness to appear for deposition to answer questions and produce relevant documents
6 specified in the deposition subpoena. The following facts are within my personal knowledge and, if
7 called as a witness herein, I can and will competently testify thereto. I declare the following:

8 2. I inadvertently left out the exhibits to my declaration attached to the Amended Notice of
9 Motion and Motion to Compel Compliance with Deposition Subpoena filed on October 21, 2008
10 and therefore, am attaching them herein.

11 3. On August 5, 2008 , I served a deposition subpoena on Charles Guest, requesting attendance
12 of the witness at deposition pursuant to C.C.P. §§ 1985 et seq. and C.C.P. §§ 2020.010 et seq. (A
13 true and correct copy of the deposition subpoena is attached hereto as Exhibit 1.) As shown by the
14 proof of service attached to Exhibit 1, the deposition subpoena was served by personal service in
15 accordance with C.C.P. § 2020.220(c), and service was effected a sufficient time in advance of the
16 deposition to provide the deponent a reasonable opportunity to locate and produce the documents
17 and things requested by the subpoena. (C.C.P. § 2020.220(a).) Payment of the required witness fees
18 was going to be made at the commencement of the deposition. (C.C.P. § 2020.230(a).)

19 4. The deponent is a material witness in this case. His testimony and the production of the
20 records and other tangible things specified in the deposition subpoena are necessary for my
21 preparation in my case and to avoid surprise at trial, in that Guest operates a website called
22 www.ourlosbanos.com on which supposedly anonymous posters on his chat forums have shown
23 hostility to me. I believe that Guest's testimony will lead to discoverable evidence regarding the
24 allegations in the first amended complaint including the names of the anonymous posters who I
25 suspect may either be Jones himself, his relatives, and/or his friends and associates who has been
26 repeating defamatory statements and spreading ill will towards me as a result of Jones' defamation
27 of me.

1 5. Notice of this motion was given to all parties and the deponent in accordance with C.C.P. §
2 2025.480(c). As shown by the attached proof of service of the moving papers herein, this motion
3 has been duly served by personal service upon the nonparty deponent.

4 6. As the result of Charles Guest's failure to comply with the deposition subpoena by failing to
5 appear and by failing to produce the documents and things required by the deposition notice, I have
6 had to write letters and make phone calls in attempts to resolve these issues. I have also been
7 compelled to make the instant motion.

8 7. The deposition, as indicated on the subpoena (Exhibit 1) was scheduled for September 4,
9 1008.

10 8. On August 22, 2008, I received an email from Charles Guest, of which a true and correct
11 copy is attached as Exhibit 2 (bottom half of page), requesting a stipulation to strictly limit the
12 scope of the subpoena.

13 9. On that same day of August 22, 2008, I responded to Mr. Guest by reply email, of which a
14 true and correct copy is attached as Exhibit 2 (upper half of page), and did not stipulate to his
15 request.

16 10. Attached as Exhibit 3 is a true and correct copy of a letter from Mr. Phillip McMurray, new
17 counsel to Mr. Guest, to myself dated August 27, 2008 requesting a rescheduling of the deposition.

18 11. Attached as Exhibit 4 is a true and correct copy of a letter from Mr. Phillip McMurray to
19 myself dated August 29, 2008 informing me that he could not make it to the deposition of
20 September 4, 2008, and therefore Mr. Guest will not be there either.

21 12. Mr. Guest had a full 30 days to prepare for deposition and to produce documents, including
22 retaining an attorney that could appear on September 4, 2008.

23 13. Attached as Exhibit 5 is a true and correct copy of an email from Mr. McMurray to myself
24 and my reply on September 2, 2008 at approximately 5:33 pm. Mr. McMurray requested to have
25 the deposition rescheduled, and I refused based upon the timely service of the subpoena. I notified
26 him that if Mr. Guest was not at the deposition, I would seek an order for contempt against the both
27 of them.

1 14. Attached as Exhibit 6 is a true and correct copy of an email I received from Mr. McMurray
2 on September 3, 2008 at approximately 12:17pm, and my reply. Mr. McMurray offered the dates
3 of September 29, 2008, September 30, 2008, and October 3, 2008 (contingent on the availability of
4 Mr. Ratliff), to which I replied that I would consider rescheduling the deposition if Mr. Guest
5 produced all the documents requested by 4:00pm that day, September 3, 2008 at my office. I told
6 him that if he does not produce the documents, then I expected him to be present at the deposition.

7 15. Attached as Exhibit 7 is a true and correct copy of an email I received from Mr. McMurray
8 on September 3, 2008 at approximately 3:39 pm and my reply. Mr. McMurray cited case law
9 stating that it was actionable conduct to purposefully schedule a conflicting proceeding without
10 good cause. In summary, I replied that the case law did not apply, that he was disrupting my
11 discovery, that the dates he offered were dates I was in deposition already (two of which were with
12 Mr. Ratliff), and that it appeared that he was working with Mr. Ratliff. I informed him that I would
13 be at the deposition with the court reporter and videographer, and if Mr. Guest did not show, I
14 would seek sanctions against both Mr. Guest and Mr. McMurray.

15 16. Attached as Exhibit 8 is a true and correct copy of the invoice from Al Cala & Associates
16 for \$95 incurred for the court reporting of the videotaped deposition of Charles Guest on September
17 4, 2008.

18 17. Attached as Exhibit 9 is a true and correct copy of the invoice from Al Cala & Associates
19 for \$155 incurred for the videographer at the videotaped deposition of Charles Guest on September
20 4, 2008.

21 18. I never received a warning when I was suddenly banned one day from being able to post on
22 Guest's website www.ourlosbanos.com.

23 19. I have seen posts which mentioned me and my website which were later deleted by guest. I
24 believe that Guest has privately contacted other posters to instruct them that they are not allowed to
25 mention my name or the website www.badgerflats.com in their postings.

26 20. Another poster had at one time, posted a message, to which Guest himself responded by
27 post that he thought it might be considered a physical threat to me. I believed that the post was a
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1 threat against me and I had contacted the police for my protection. This poster has not been banned
2 from the website.

3 21. Charles Guest knows who these supposedly "anonymous" posters are, in fact I know that at
4 least 32 of these posters know each other due to the get together, planned and publicized on the
5 website which I have seen, to take place on or about November 1, 2008. Posters have also referred
6 to their past face to face meetings in their posts. Many of the posters reveal their name, and also
7 know who the other posters are.

8 22. I have seen another poster being warned multiple times by Guest for the hostile content of
9 their posts, in particular, posts directed at me.

10 23. This poster has not been banned from the site, but although I can read the posts, I am not
11 able to post anything and have not for some time.

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13 I declare under penalty of perjury under the laws of the State of California that the foregoing
14 is true and correct and that this declaration was executed on October 30, 2008 at Los Banos,
15 California.

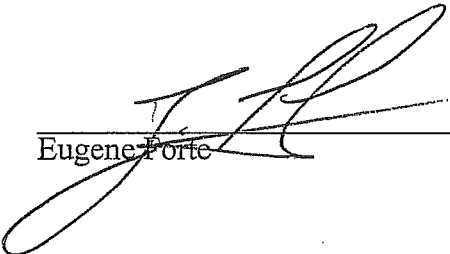
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Exhibit "1"

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Eugene Forte 688 Birch Court Los Banos, CA 93635 TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): <u>geneforte@badgerflats.com</u> ATTORNEY FOR (Name): <u>In Propria Persona</u>	FOR COURT USE ONLY CASE NUMBER: <p style="text-align: center; font-size: 1.2em;">CU150880</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <u>Merced</u> STREET ADDRESS: <u>627 West 21st Street</u> MAILING ADDRESS: CITY AND ZIP CODE: <u>Merced, 95340</u> BRANCH NAME: <u>Merced</u>	
PETITIONER: <u>Eugene Forte</u> RESPONDENT: <u>Tommy Jones</u>	
DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS	

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
 Charles Guest, address unknown, (owner of losbanos.com)

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

Date: <u>Sept. 4, 2008</u>	Time: <u>9:00 am</u>	Address: <u>Al Cala & Assoc, 1601 I Street, #410, Modesto, CA</u>
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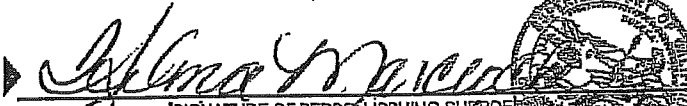

- a. As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 4. (Code Civ. Proc., § 2025.220(a)(6)).
 - b. You are ordered to produce the documents and things described in item 3.
 - c. This deposition will be recorded stenographically through the instant visual display of testimony, and by audiotape videotape
 - d. This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025.620(d).
2. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
3. The documents and things to be produced and any testing or sampling being sought are described as follows:
 See Attachment 3.
- Continued on Attachment 3.
4. If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are described as follows:

 Continued on Attachment 4.
5. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.
6. 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: **JUL 28 2008**

HELEN MARCIOCHI
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PERSON ISSUING SUBPOENA)

 (TITLE)



ATTACHMENT 3

Unless expressly excluded by the terms of the particular request, the following definitions shall be considered a part of each and every request herein:

DEFINITIONS AND INSTRUCTION

1. "You" or "Your" (whether or not capitalized or underlined in the text of this request) means the deponent specified in this Deposition Subpoena, and any other persons acting on behalf of said responding parties, including without limitation, attorneys, accountants, bankers, brokers, representatives, agents, employees, and advisors.
2. If you are a corporation, association, sole proprietorship, partnership, joint venture, or public entity, "you" includes your divisions, departments, subsidiaries, affiliates, predecessors, present or former officers, directors, shareholders, partners, owners, employees, agents and all persons acting or purporting to act on your behalf. If you are an individual, "you" includes your employees, agents, representatives, and all persons acting or purporting to act on your behalf.
3. "Document" means the original (as defined in California Evidence Code section 255) of any written, printed, typed, drawn, recorded, graphic or photographic matter of any kind or nature however produced or reproduced, whether sent or received or either, including all drafts and copies bearing notations, marks, or matter not found on the original, including, but not limited to, all writings (as defined in California Evidence Code section 250), contracts, agreements, representations, warranties, certificates, opinions, tapes, letters or other forms of correspondence or communications, including, but not limited to, envelopes, notes, telegrams, cables, telex messages, reports, notes, notations and memoranda of or related to telephone conversations or conferences, memoranda, reports, notes, transcripts, studies, analyses, evaluations, test results, books, tapes, records, journals, ledgers, invoices, statements, accounts, lists, comparisons, questionnaires, surveys, summaries, desk calendars, appointment books, diaries, articles, press releases, magazines, newspapers, booklets, circulars, bulletins, notices, all meetings, photographs, microfilms, tapes or other records, punch cards, magnetic tapes, discs, drums, print-outs and other data compilations from which information can be obtained (translated, if necessary, through detection or decoding devices into usable form).
4. "All documents" means every document as above-defined known to you and every such document which can be located or discovered by reasonably diligent efforts. Any documents partially relating to matters herein shall also be produced. All designated documents are to include all attachments and enclosures.
5. The terms "refer," "relating," or "pertaining to" any given subject as used herein means, in whole or in part, constituting, containing, embodying, reflecting, identifying, stating or referring to the given subject.
6. "Identify" in the case of a "document" means the date, title, subject matter, e.g., contract, letter, tape recording, etc. its title, if any, and parties to each such document (together with

any other information reasonably necessary to enable the undersigned to identify the document in a notice calling for its production), together with name, address, and telephone number of the person presently having custody thereof.

DOCUMENTS FOR WHICH PRIVILEGE IS CLAIMED

For each document requested herein which you contend is privileged, provide the following information:

- A. The place, approximate date and manner of preparing the document;
- B. The name, position and/or title of the sender and the name and title of each of the recipients of the document;
- C. The name and position of each person or persons (other than clerical or stenographic assistants) participating in the preparation of the document;
- D. The name and position of each person or persons to whom the contents of the document have heretofore been communicated by copy, exhibition, reading, reference or substantial summarization;
- E. A statement of the basis upon which the privilege is claimed, and whether or not the subject matter of the contents of the document is limited to the legal advice or information provided for the purpose of legal advice; and
- F. The number of the request to which the document is responsive.

ITEMS TO BE PRODUCED FOR INSPECTION

REQUEST NUMBER:

1. All written communications or recordings between yourself and any parties (Eugene Forte or Tommy Jones) named in this case, without limitation as to whether transmitted by internet e-mail, by postal service, by hand delivery, or otherwise, whether maintained in hard paper copy or maintained on computer storage devices;
2. All notes or notations or recordings which memorialize communications between yourself and the parties named in this case, whether maintained in hard paper copy or maintained on computer storage devices;
3. All written communications or recordings between yourself and any other person or entity including, but not limited to, Tom Faria, Joe Sousa, Michael Villalta, Steve Rath, Anna Brooks, Charles Guest, Jerry O'Banion, William Vaughn, Michael McAdams, Chet Guintini, any anonymous members/posters of ourlosbanos.com, Greg Hostetler, Gene Lieb of the Los Banos Enterprise, and Minerva Perez of the Los Banos Enterprise regarding Plaintiff Forte without limitation as to whether transmitted by internet e-mail, by postal service, by hand delivery, or otherwise, whether maintained in hard paper copy or maintained on computer storage devices;
4. All notes or notations or recordings which memorialize communications between yourself and any other person or entity including, but not limited to, Tom Faria, Joe Sousa, Michael Villalta, Steve Rath, Anna Brooks, Charles Guest, Jerry O'Banion, William Vaughn, Michael McAdams, Chet Guintini, any anonymous members/posters of ourlosbanos.com, Greg Hostetler, Gene Lieb of the Los Banos Enterprise, and Minerva Perez of the Los Banos Enterprise regarding Plaintiff Forte without limitation as to whether transmitted by internet

e-mail, by postal service, by hand delivery, or otherwise, whether maintained in hard paper copy or maintained on computer storage devices.

5. All diaries maintained by you between the time period of October 2006 to May 1, 2008, whether maintained in hard paper copy or maintained on computer storage devices;
6. All calendaring systems and/or daytimers maintained by you since October 2006 to May 1, 2008, whether maintained in hard paper copy or maintained on computer storage devices;
7. Any documents, tapes, other tangible things or copies of such of the file that you have retained or have in your possession relating to Plaintiff Forte, whether maintained in hard paper copy, tapes, or computer storage devices;
8. Any and all telephone bills, long distance carrier bills which include your home telephone number, home business number, cell phone number and fax numbers for the period between October 2006 and May 1, 2008 which show telephone calls regarding Plaintiff Forte including, but not limited to those made to or received from Tom Faria, Joe Sousa, Michael Villalta, Steve Rath, Anna Brooks, Charles Guest, Jerry O'Banion, any anonymous members/posters of ourlosbanos.com, Greg Hostetler, Gene Lieb, of the Los Banos Enterprise, and Minerva Perez of the Los Banos Enterprise.
9. Any and all deposition transcripts taken of you and settlement agreements pertaining to the case of Tommy Jones vs. The Los Banos Police Department and the City of Los Banos. et al.
10. Any and all documents pertaining to any gifts, loans, etc. between Tommy Jones and Mr. Greg Hostetler.
11. Any and all evidence you have within your possession, or that you know exists, that establishes that plaintiff is a dangerous member of the Ku Klux Klan.

<i>Attorney or Party without Attorney:</i> EUGENE FORTE 688 BIRCH CT Los Banos, CA 93635 Telephone No: 209-829-1116				<i>For Court Use Only</i>	
<i>Attorney for: Plaintiff</i>				Ref. No. or File No.:	
<i>Insert name of Court, and Judicial District and Branch Court:</i> MERCED COUNTY SUPERIOR COURT					
<i>Plaintiff:</i> FORTE <i>Defendant:</i> JONES					
PROOF OF SERVICE DEPOSITION SUBPOENA		<i>Hearing Date:</i> Thu, Sep. 04, 2008	<i>Time:</i> 9:00AM	<i>Dept/Div:</i>	<i>Case Number:</i> 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- Personal Appearance and Production of Documents and things
3. *a. Party served:* CHARLES GUEST
b. Person served: party in item 3.a. (CAU, M, 45, REDDISH, 5'7", 160LBS)
4. *Address where the party was served:* 2144 ARROYO CT
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: Tue., Aug. 05, 2008 (2) at 9:50AM
 - b. *I received this subpoena for service on:* Friday, August 01, 2008
6. *Witness fees were not demanded or paid.*
7. *Person Who Served Papers:*
 - a. James Wyatt
 - b. WYATT'S LEGAL SERVICE
P. O. BOX 2560, Registration # 98
Los Banos, CA 93635
 - c. (209)826-0225
 - d. *The Fee for Service was:* Recoverable Cost Per CCP 1033.5(a)(4)(B) \$50.00
 - e. I am: (3) registered California process server
 - (i) Owner
 - (ii) *Registration No.:* 98
 - (iii) *County:* Merced
 - (iv) *Expiration Date:* Thu, Jan. 01, 2009

8. *I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.*

Date: Tue, Aug. 05, 2008

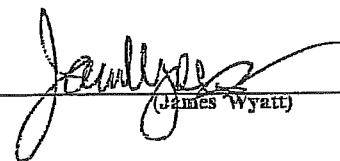

(James Wyatt)

Exhibit "2"

Ré: [Gene Forte Communication] Regarding Your Subpoena

Subject: Re: [Gene Forte Communication] Regarding Your Subpoena
From: Gene Forte <geneforte@sbcglobal.net>
Date: Fri, 22 Aug 2008 12:40:09 -0700
To: tenarius@memorableplaces.com

Mr. Guest:

You can state your reasons at the deposition or seek whatever legal remedies you believe you have available.

I look forward to receiving all documents requested.

See you at the deposition

Thanks.

Gene Forte

tenarius@memorableplaces.com wrote:

Mr. Charles Guest
2144 Arroyo Crt.
Los Banos, CA 93635

August 22, 2008

Mr. Gene Forte
688 Birch Court
Los Banos, CA 93635

Dear Mr. Forte:

This is an attempt to negotiate a resolution of a discovery dispute.

You have subpoenaed most of the records for OurLosBanos.com web site, and some of my own private records.

I believe you have asked for records to which you are not entitled including personal communications between me and private individuals and communications between me and my friends. I think that all of your requests are overbroad and not calculated to lead to admissible evidence. Accordingly, I request that you agree to strictly limit the scope of your subpoena. If I do not hear back from you by Tuesday, August 26, I will have no choice but to seek a protective order from the Court to restrict the inquiry to the alleged defamation incident and limit the deposition to one hours. Please contact me at your earliest opportunity.

Very Truly Yours,

Charles Guest

Exhibit "3"

LAW OFFICES OF
LINNEMAN, BURGESS, TELLES, VAN ATTA, VIERRA,
RATHMANN, WHITEHURST & KEENE

EUGENE J. VIERRA
DIANE V. RATHMANN
ALFRED L. WHITEHURST
THOMAS J. KEENE

PHILLIP R. McMURRAY

JAMES E. LINNEMAN, OF COUNSEL

L. M. LINNEMAN (1902-1983)
JOSEPH B. BURGESS (1902-1990)
JAY H. WARD (1942-1995)
C. E. VAN ATTA (1919-1997)
JESS P. TELLES, JR. (1920-2004)

654 K STREET
P. O. BOX 1364
LOS BANOS, CA 93635
(209) 826-4911
FAX (209) 826-4766

1820 MARGUERITE STREET
P. O. BOX 156
DOS PALOS, CA 93620
(209) 392-2141
FAX (209) 392-3964

312 WEST 19TH STREET
P. O. BOX 2263
MERCED, CA 95344
(209) 723-2137
FAX (209) 723-0899

August 27, 2008.

Reply to our:
Los Banos office

Eugene Forte
688 Birch Court
Los Banos, CA 93635

Re: Eugene Forte v. Tommy Jones
Our Client: Charles Guest
Merced County Court Case No.: 150880

Dear Mr. Forte:

Please be advised that this office has recently been retained by Mr. Charles Guest. Our representation of Mr. Guest relates to the complaint that you have filed against Tommy Jones, mayor of Los Banos, for defamation.

It has come to my attention that you have scheduled the deposition of Mr. Guest for September 4, 2008 at 9:00am. I am unfortunately unavailable on that date because of previously scheduled commitments. Because I am unavailable to represent Mr. Guest at this deposition, I am requesting that this deposition be rescheduled to a later date. Also, because we have just recently been retained, I believe that rescheduling the deposition is appropriate to allow me more time to review the facts and circumstances of this case.


Please call my office at your earliest convenience to confirm that you are willing to reschedule Mr. Guest's deposition. Your courtesy in this matter is appreciated.

Very truly yours,

LINNEMAN, BURGESS, TELLES, VAN ATTA, VIERRA,
RATHMANN, WHITEHURST & KEENE

By

Phillip McMurray



PRM

Cc: Charles Guest

Exhibit "4"

LAW OFFICES OF
LINNEMAN, BURGESS, TELLES, VAN ATTA, VIERRA,
RATHMANN, WHITEHURST & KEENE

EUGENE J. VIERRA
DIANE V. RATHMANN
ALFRED L. WHITEHURST
THOMAS J. KEENE

PHILLIP R. McMURRAY

JAMES E. LINNEMAN, OF COUNSEL

L. M. LINNEMAN (1902-1983)
JOSEPH B. BURGESS (1902-1990)
JAY H. WARD (1942-1995)
C. E. VAN ATTA (1919-1997)
JESS P. TELLES, JR. (1920-2004)

654 K STREET
P. O. BOX 1364
LOS BANOS, CA 93635
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312 WEST 19TH STREET
P. O. BOX 2263
MERCED, CA 95344
(209) 723-2137
FAX (209) 723-0899

August 29, 2008

Reply to our:
Los Banos office

Eugene Forte
688 Birch Court
Los Banos, CA 93635

Re: Eugene Forte v. Tommy Jones
Our Client: Charles Guest
Merced County Court Case No.: 150880

Dear Mr. Forte:

Please let this letter serve as a follow up to my 8/27/08 letter to you regarding the deposition of Mr. Guest that you have scheduled for September 4, 2008 at 9:00am. My previous letter asked you to agree to reschedule the deposition since we have just recently been retained and I am not unavailable on that particular date. I have not heard from you, and must follow up with you in light of the timeline we are dealing with here.

Applicable caselaw provides that scheduling a deposition at a time when opposing counsel is not available is not permitted. I am more than happy to make myself and Mr. Guest available for deposition, but I am not able to be there on September 4, therefore please be advised that Mr. Guest will not be there either.

It is important that you call my office as soon as possible to confirm that you are willing to reschedule Mr. Guest's deposition. Your courtesy in this matter is appreciated.

Very truly yours,

LINNEMAN, BURGESS, TELLES, VAN ATTA, VIERRA,
RATHMANN, WHITEHURST & KEENE

By

Phillip McMurray



PRM

Cc: Charles Guest
Benjamin Ratliff, attorney for Tommy Jones

Exhibit "5"

Response to your email with typos corrected/Forte v. Jones

Subject: Response to your email with typos corrected/Forte v. Jones

From: Gene Forte <geneforte@badgerflats.com>

Date: Tue, 02 Sep 2008 17:33:35 -0700

To: "Phillip R. McMurray" <pmcmurray@linnemanlaw.com>

Phillip R. McMurray wrote:

Dear Mr. Forte,

Please let this e-mail serve as a follow up to my 2 previous letters. My letters to you were dated 8/27/08 and 8/29/08.

I am writing you this to confirm that you are willing to reschedule the deposition of Mr. Guest, relating to your lawsuit against Tommy Jones. Our office has just recently been retained, and I am unavailable to participate in the deposition on 9/4/08, which is this Thursday. I will therefore not be attending the deposition as scheduled. Mr. Guest will also not be present. Please call my office immediately to confirm.

Very truly,

Phillip R. McMurray
Linneman Law Offices

209-826-4911

Dear Mr. McMurray:

I have received one letter from you. I regret that I am not able to accommodate your request to move the deposition of Mr. Guest.

Mr. Guest was served his deposition subpoena on August 5th, 2008, in plenty of time for him to retain counsel in advance of his deposition.

His waiting until the 11th hour is nothing but a stall tactic orchestrated by an individual that ducked service and refused to communicate with me about deposition dates when respectfully requested to do so on many occasions.

You had your remedies to pursue, i.e., motion to quash deposition and production of documents etc., but did not.

Therefore if Mr. Guest is not at his scheduled deposition I will seek an order for contempt requesting sanctions against both you and he.

A final note, you certainly have a telephone and could have called me instead of waiting until August 27 and 29th, 2008 to send me snail mail (obviously you also had my email but did not attempt to correspond with me in such way until TODAY at 4:28PM September 2nd, 2008).

The deposition is on for September 4th, 2008, and Mr. Guest will be held liable for any costs incurred if he does not appear.

Thank you.

Gene Forte

Exhibit "6"

Re: Forte v. Tommy Jones

Subject: Re: Forte v. Tommy Jones
From: Gene Forte <geneforte@badgerflats.com>
Date: Wed, 03 Sep 2008 12:17:27 -0700
To: "Phillip R. McMurray" <pmcmurray@linnemanlaw.com>

Phillip R. McMurray wrote:

Mr. Forte, thank you for your quick response, although I am disappointed that you are not willing to accomodate my request to reschedule the deposition. As I have informed you, I am unable to be present for the deposition as scheduled. Mr. Guest will therefore not be present either.

Mr. Guest and I continue to be willing to reschedule, and can suggest the following dates of availability: 9/29/08, 9/30/08 or 10/3/08. My agreement to these dates is contingent upon the availability of Mr. Jones attorney, Mr. Benjamin Ratliff, on those dates as well.

Very truly,

Phillip R. McMurray
Linneman Law Offices

Mr. McMurray:

There is no legally justifiable reason why you and Mr. Guest waited since his being served his subpoena on August 5th, 2008 to contact me.

I will only consider re-scheduling the deposition under one condition.

If you have Mr. Guest produce all of the documents requested by 4:00PM today at my office of 688 Birch Court, Los Banos, I will agree to re-schedule the deposition (but not at the whims of Mr. Ratliff).

It is my schedule that Mr. Guest and you need to adhere to. You can extend Mr. Ratliff comity on your own time, not mine, from me he deserves none.

If I do not have all of the documents requested of Mr. Guest to me by 4:00PM today I then expect Mr. Guest to be present with you, or without you tomorrow.

If he is not there I will seek sanctions against both you and he.

Thanks.

Gene Forte

8 6

Exhibit "7"

Re: Forte v. Tommy Jones

Subject: Re: Forte v. Tommy Jones
From: Gene Forte <geneforte@badgerflats.com>
Date: Wed, 03 Sep 2008 15:39:50 -0700
To: "Phillip R. McMurray" <pmcmurray@linnemanlaw.com>

Phillip R. McMurray wrote:

Mr. Forte, neither I, nor Mr. Guest will attend the deposition scheduled for tomorrow, Sept. 4. The primary reason, as I have informed you, is that I am unavailable. You are, of course, free to take whatever action you see fit. However, under applicable case law, including *Tenderloin Housing Clinic v. Sparks*, 8 Cal.App.4th 299 (1992), it is sanctionable conduct to purposefully schedule a conflicting proceeding without good cause.

I remain available to choose a mutually agreeable date for the deposition of Mr. Guest. This is intended as a good faith attempt to informally resolve a discovery dispute.

Very truly,

Phillip R. McMurray
Linneman Law Offices
209-826-4911 - Los Banos office
209-392-2141 - Dos Palos office

Quoting Gene Forte <geneforte@badgerflats.com>:

> Phillip R. McMurray wrote:

>>

>> Mr. Forte, thank you for your quick response, although I am >> disappointed that you are not willing to accomodate my request to >> reschedule the deposition. As I have informed you, I am unable to >> be present for the deposition as scheduled. Mr. Guest will >> therefore not be present either. Mr. Guest and I continue to be >> willing to reschedule, and can suggest the following dates of >> availability: 9/29/08, 9/30/08 or 10/3/08. My agreement to these >> dates is contingent upon the availability of Mr. Jones attorney, >> Mr. Benjamin Ratliff, on those dates as well.

>>

>> Very truly,

>>

>> Phillip R. McMurray
>> Linneman Law Offices

>>

> Mr. McMurray:

>

> There is no legally justifiable reason why you and Mr. Guest waited
> since his being served his subpoena on August 5th, 2008 to contact me.

>

> I will only consider re-scheduling the deposition under one condition.

>

> If you have Mr. Guest produce all of the documents requested by 4:00PM
> today at my office of 688 Birch Court, Los Banos, I will agree to
> re-schedule the deposition (but not at the whims of Mr. Ratliff). It is
> my schedule that Mr. Guest and you need to adhere to. You can extend
> Mr. Ratliff comity on your own time, not mine, from me he deserves
> none.

>

> If I do not have all of the documents requested of Mr. Guest to me by
> 4:00PM today I then expect Mr. Guest to be present with you, or without
> you tomorrow.

>

> If he is not there I will seek sanctions against both you and he.

>

Re: Forte v. Tommy Jones

> Thanks.
>
> Gene Forte

Mr. McMurray:

I've never seen an Unavailability of Counsel filed by you in the case of Forte v. Jones? Did you for some bizarre reason file one?

I would also suggest you check your case law better. Only under the most dire situations is a counsel let off the hook from attending a trial due to a conflicting trial date.

I have never heard of a deponent and counsel who picked their nose for 24 days after service of a subpoena ridiculously citing /Tenderloin Housing Clinic v. Sparks/, 8 Cal.App.4th 299 (1992) as a reason for sanctions and basis for not appearing at a deposition..

Is that from your "Fool the Stupid In Pro Per" files?

You have not attempted to resolve a discovery dispute. You are attempting to disrupt my discovery.

I also suggest that you go out and buy a Lotto Ticket. Incredibly you suggested alternative dates for Mr. Guest's deposition of 9/29/08, 9/30/08 or 10/3/08, all three days I am in deposition already. Two of which are in depositions scheduled with Mr. Rat. Have the two of you spoken? Be honest.....Now I know that is difficult given your profession, but give it a try.

Your mantra of not being available does not sway me. It is the problem that Mr. Guest created for himself. You certainly have other counsels available without disrupting my discovery schedule.

I will be present for the deposition tomorrow at 9:00AM along with the court reporter and the videographer.

If Mr. Guest is not present I will seek sanctions from the court against yourself and Mr. Guest for the costs of my gas back and forth to Modesto, the minimum charges for the court reporter and the minimum costs of the videographer, copies of DVDs, filing fees for the motion and any other dollars granted by the court.

This is my last communicate to you on this matter. I need to prepare for Mr. Guest's depo.

Be there or be prepared to fight a motion for sanctions.

Regards,

Gene Forte

Exhibit "8"

Al Cala & Associates
 Certified Shorthand Reporters
 P.O. Box 1930
 Modesto, CA 95353
 Tax ID #77-0000084 (209) 521-5316

Invoice

Date	Invoice #
9/17/2008	14487

Firm Name	Case Name
Eugene Forte 688 Birch Court Los Banos, California 93635 Attn: Eugene Forte	FORTE vs JONES

Date of Service
9/4/2008

Description	Amount
Re: Videotaped Deposition of CHARLES GUEST	
Statement of Non-appearance	95.00
Copy of Exhibits	1.75
Postage & Handling (No Charge)	0.00
Total	\$96.75

Exhibit "9"



AL CALA & ASSOCIATES

CERTIFIED SHORTHAND REPORTERS

- Legal Videography
- Complimentary Suites
- Electronic Transcripts

P.O. Box 1930, 1601 I Street, Suite 410
 Modesto, California 95353
 Telephone: (209) 521-5316

Fax (209) 521-9898

www.alcaladepo.com

Invoice: #VCA-690

Invoice Date: 10-13-08

Service Date: 9-04-08

Eugene Forte
 688 Birch Court
 Los Banos, California 93635

RE: LEGAL VIDEO SERVICES

Attn: Eugene Forte

Case: **FORTE**
 vs.
JONES, et al.

Videotaped Deposition of: CHARLIE GUEST

Arrival Time: 8:30 AM
 Set up by: 9:00 AM
 Start Time: 9:34 AM
 Lunch:
 Finish Time: 9:38 PM

Total Hours: (3 Hour Minimum)	3 x 60.00 =	\$180.00
Convert tape to DVD format	1 x 35.00 =	\$35.00
Courtesy Discount	-1 x 60.00 =	(\$60.00)

Total \$155.00

PROOF OF SERVICE

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

4 I, the undersigned, declare that I am employed in the County of Merced, State of California; I am
5 over the age of 18 years and not a party to the within action; my business address is 688 Birch
6 Court, Los Banos, CA, 93635.

7 On October 30, 2008, I served the following document:

8 **REPLY BRIEF IN SUPPORT OF MOTION TO COMPEL COMPLIANCE WITH**
9 **DEPOSITION SUBPOENA AND REQUEST FOR ORDER AWARDING MONETARY**
10 **SANCTIONS AGAINST CHARLES GUEST IN THE SUM OF \$981;**
11 **MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF EUGENE**
12 **FORTE IN SUPPORT THEREOF**

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

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

19 x depositing the sealed envelope(s) with the United States Postal Service with postage
20 fully prepaid, addressed as follows:

21 By mail:
22 *Mr. Benjamin L. Ratliff, Esq.*
23 *The Law Firm of Weakley, Ratliff,*
24 *Arendt, & McGuire, LLP*
25 *1630 East Shaw Avenue, Suite 176*
26 *Fresno, CA 93710*
27 *(559) 221-5256 phone*
28 *(559) 221-5262 fax*

By personal service:
Mr. Phillip McMurray
Linneman, Burgess, Telles, Van Atta, Vierra,
Rathmann, Whitehurst, & Keene
654 K Street
Los Banos, CA 93635
Phone: (209) 826-4911
Fax: (209) 826-4766

I declare under penalty of perjury under the laws of the State of California that the foregoing is true
and correct and that this declaration was executed on October 30, 2008 at Los Banos, California.


Eileen Forte