

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

11/3/08

file

ADD

In Propria Persona /Plaintiff

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MERCED

EUGENE FORTE

Case No. CU150880

Plaintiff,

**OPPOSITION TO AND REQUEST TO
STRIKE MOTION FOR PROTECTIVE
ORDER BY THIRD-PARTY GUEST;
MEMORANDUM OF POINTS AND
AUTHORITIES; AND DECLARATION
OF EUGENE FORTE**

vs.

TOMMY JONES, et al.

Defendants.

Date: November 6, 2008
Time: 8:15am
Dept: TBD

Plaintiff Forte objects to the NOTICE OF MOTION AND MOTION FOR PROTECTIVE ORDER RESTRICTING SCOPE OF DISCOVERY AND FOR MONETARY SANCTIONS and accompanying documents based on untimely notice of motion and hearing, and hereby requests the court to strike the motion.

1 **ARGUMENT**

2 Third party Charles Guest was served a subpoena on August 5, 2008 to appear for
3 deposition and produce documents on September 4, 2008. Guest did not timely file any motion for
4 protective order, did not obtain any stipulation from plaintiff, and did not object to any request for
5 discovery as identified on his subpoena, therefore, he has waived his rights, and plaintiff is entitled
6 to have this subject motion for protective order stricken.

7 When Guest did not obey the subpoena properly issued to him, and waived his rights,
8 plaintiff properly and timely served Guest with a motion to compel set on November 6, 2008
9 requesting that the court order that Guest must comply with the subpoena and that the court set a
10 date for such compliance between November 10, 2008 and November 21, 2008 (a range being
11 given to accommodate opposing counsel and client). Such request is not a re-notice of deposition
12 to Guest for November 10, 2008 as counsel McMurray states in his motion papers.

13 Due to the fact that this motion was served by personal service to plaintiff on October 26,
14 2008 for a hearing on November 6, 2008, Plaintiff Forte has not had sufficient time to properly
15 research and oppose this motion, but is submitting the following Memorandum of Points and
16 Authorities to support his request to strike the motion.

17 Charles Guest must, by statute, appear for deposition and produce documents.

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 1. Henry Mayo Newhall Memorial Hosp. v. Superior Court, 146 Cal.Rptr. 542
20 Cal.App.2.Dist.,1978, "Failure to make timely objection to request for discovery *constitutes*
21 *waiver.*"

22 2. C.C.P. § 2017.010:
23 Generally, witnesses are not permitted to decline to participate in civil discovery, even when the
24 information sought from them is personal or private.

25 3. California Code of Civil Procedure § 2031.300. Untimely responses; waiver; motion to
26 compel response; monetary sanctions:

27 "If a party to whom an inspection demand is directed fails to serve a timely response
28 to it, the following rules apply:

1 (a) The party to whom the inspection demand is directed *waives any objection to the*
2 *demand, including one based on privilege* or on the protection for work product
under Chapter 4

3 4. California Code of Civil Procedure § 1005. Written notice for motions; service and filing of
4 moving and supporting papers:

5 “(a) Written notice shall be given, as prescribed in subdivisions (b) and (c), for the
6 following motions:

7 (13) Any other proceeding under this code in which notice is required and no other
8 time or method is prescribed by law or by court or judge.

9 (b) Unless otherwise ordered or specifically provided by law, *all moving and*
10 *supporting papers shall be served and filed at least 16 court days before the*
11 *hearing. The moving and supporting papers served shall be a copy of the papers*
12 *filed or to be filed with the court.* However, if the notice is served by mail, the
13 required 16-day period of notice before the hearing shall be increased by five
14 calendar days if the place of mailing and the place of address are within the State of
15 California....”

16 5. Cal. Prac. Guide Civ. Pro. Before Trial Ch. 8F-4, Chapter 8. Discovery, F. Interrogatories

17 “4. Protective Orders

18 d. Procedure

19 (1) [8:1013] **Must be sought ‘promptly’:** *If a protective order is to be obtained,*
20 *relief must be sought:*

21 • ‘Promptly’ (CCP § 2030.090(a)); and

22 • *Before expiration of the 30-day period within which to respond to the*
23 *interrogatories (CCP § 2030.260 (a)), because otherwise the grounds for objection*
24 *may be waived (CCP § 2030.290(a), ¶ 8:1030).*

25 (2) [8:1014] **Noticed motion:** Protective orders may be issued only “pursuant to a
26 motion” by an interested party or person. [CCP §§ 2017.020(a), 2019.030(b)]
27 “Motion” means a formal, noticed motion.....”

28 CONCLUSION

Plaintiff timely and properly filed a motion to compel Guest to deposition and to produce
documents. Plaintiff submits that the law prohibits third party Charles Guest from bringing forth
this motion for protective order due to his waiver and requests that this court rule accordingly. This
motion should be stricken according to the violation of procedural rules.

Dated: November 3, 2008


Eugene Forte, In Propria Persona

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 California; I am
6 over the age of 18 years and not a party to the within action; my business address is 688 Birch
Court, Los Banos, CA, 93635.

7 On November 3, 2008, I served the following document:

8 ***OPPOSITION TO AND REQUEST TO STRIKE MOTION FOR PROTECTIVE ORDER BY***
9 ***THIRD-PARTY GUEST; MEMORANDUM OF POINTS AND AUTHORITIES; AND***
10 ***DECLARATION OF EUGENE FORTE***

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

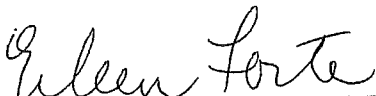
12 _____ facsimile machine pursuant to Rule 2008. Said document was sent to the below
13 listed party(ies). The fax number I used was: (209) 829-1952. The facsimile
14 machine I used complied with Rule 2004, and no error was reported by the machine.
Pursuant to Rule 2006(d), I caused the machine to print 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 postage
16 fully prepaid, addressed as follows:

17 By mail:
18 *Mr. Benjamin L. Ratliff, Esq.*
19 *The Law Firm of Weakley, Ratliff,*
20 *Arendt, & McGuire, LLP*
21 *1630 East Shaw Avenue, Suite 176*
Fresno, CA 93710
(559) 221-5256 phone
(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

22
23 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
24 and correct and that this declaration was executed on November 3, 2008 at Los Banos, California.

25 
26 _____
Eileen Forte