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AND

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MERCED COUNTY

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CLERK OF THE SUPERIOR COURT
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4 In Propria Persona /Cross Defendant & Cross Complainant

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

TETRA TECH, INC.,
Plaintiff,
vs.
M.G. SANTOS, INC., et al.
Defendants.

Case No. CU150938

**DECLARATION OF EUGENE FORTE
IN SUPPORT OF CHALLENGE FOR
CAUSE REQUESTING RECUSAL OR
DISQUALIFICATION OF THE
HONORABLE WILLIAM A. MAYHEW
AS TRIAL JUDGE (CCP § 170.3)**

M.G. SANTOS, INC. , et al.
Cross-complainant
and Defendant,
vs.
TETRA TECH, INC, et al.
Cross-defendants.

GENE FORTE
Cross-Defendant
And Complainant
Vs.
TETRA TECH, INC, et al.
Cross-Defendants.

H/MT

Py to Tisa 3/5/09 MT

1 I, Eugene Forte, declare:

2 1. I am the Cross-Defendant and Complainant representing myself in propria persona.

3 2. On December 2, 2008, I had arranged a court call for \$95.00 to appear at the Case
4 Management Conference which I believed was to be heard in Judge Carol Ash' courtroom,
5 and called court call five minutes before the hearing as instructed.

6 3. The court call operator confirmed with the court that I was on the line awaiting pickup by
7 the judge.

8 4. After 30 minutes, I had my wife call court call on my other phone line because I was still
9 waiting. Court call informed me that the hearing was over, that the judge never picked up
10 the line I was waiting on, but that they would refund my \$95.

11 5. A week later, I received a minute order on the Case Management Conference indicating to
12 me for the first time that a Pro Tem judge, Mr. Padron, heard the case management
13 conference.

14 6. Attached as Exhibit 1 is a true and correct copy of a document I filed on December 3, 2008
15 in this subject case entitled, DECLARATION OF EUGENE FORTE DATED DECEMBER
16 3RD, 2008, IN SUPPORT OF OBJECTION TO HEARING OF DECEMBER 2ND, 2008
17 AND OBJECTION TO HEARING DATE OF JANUARY 13TH, 2009 AND OBJECTION
18 TO THE ASSIGNMENT OF ANY RETIRED JUDGE TO THE CASE BY DEFENDANT
19 CHIEF JUSTICE RONALD GEORGE.

20 7. The above named declaration in ¶6 gives a background to the recusal of the Merced County
21 bench, the objection by myself to any judge assigned to my cases by Chief Justice Ronald
22 George, and the objection to any pro tem judge.

23 8. Attached as Exhibit 2 is a true and correct copy of the OBJECTION TO PRO TEM JUDGE;
24 REQUEST FOR ASSIGNMENT OF JUDGE FOR ALL PURPOSES; DECLARATION OF
EUGENE FORTE document I filed on January 12, 2009.

At the Case Management Conference on January 13, 2009, I decided that in order to avoid
missing the conference due to any error, intentional or otherwise by the court, I would

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attend in person. I arrived at the assigned place of Room 1202, a 6 by 8 foot room, with a desk and a man dressed in a suit sitting inside.

10. An acquaintance of mine, Mr. Dave Brown, accompanied me and stood right outside the door.

11. The opposing counsel was already talking on court call, but stopped when I walked in. I introduced myself, listened to them speak for a minute, and during a pause, stated that I would like to make a statement for the record. I was intending on letting the counsel and the court, (the unknown man), that Mr. Shawn Mills, attorney for Defendant Marion Santos would not be able to attend the conference due to a surgery. The man did not let me speak and told me sharply that there is no record and that the case management conference was over. I asked him to wait a second and who was he? He then proceeded to threaten to call a peace officer. I again asked him who he was, and he responded by calling a peace officer to escort me out.

12. When Officer Rogers arrived, I understood that if I did not leave, I would be arrested. I asked Officer Rogers who the man was that called him. Rogers said he did not know.

13. I then proceeded to walk with Officer Rogers to the main entrance of the courthouse whereupon I was greeted by the security guards I have frequently talked to when coming into the courthouse.

14. I asked that Officer Rogers call his superior. Shortly thereafter, an Officer Hymiller arrived and I told him that I was attending a settlement conference and that a person who I did not know told me that if I didn't leave, he would have an officer come down and arrest me.

15. I informed Officer Hymiller that Officer Rogers did not know who the person was.

16. Officer Rogers said that he had only been assigned to the courthouse for about five days.

17. Other security officers and sheriffs started to gather around while we were talking and a few of them laughed at the fact that Officer Rogers had removed me at the direction of someone that he did not know who he was.

- 1 18. I then described Padron as being a very short man with dark hair with a ruddy type of
2 complexion. All of the Officers present including Hymiller said they knew of no one that fit
3 that description. I then half joked and said "Well the guy is probably still up there, let's go
4 and get him. Officer Hymiller said that he couldn't do that.
- 5 19. I then asked Hymiller to prepare an incident report and he told me that they didn't do those
6 type of things.
- 7 20. On January 20, 2009, I attended the Forte v. Jones, CU150880, hearing in Merced Superior
8 Court Judge Ash's courtroom. I put on record the incident on January 13, 2009 with Padron
9 and asked her to investigate the matter. Judge Ash told me to file a complaint with the
10 proper people, not her. I asked who to do that with but she would not say. Judge Ash said
11 she had nothing to do with the case due to the bench recusal and could not investigate
12 matters.
- 13 21. A man came up to me in the hall as I was leaving and told me to go to the Administrator of
14 the Court. I found the administrator's office, and spoke to her. The administrator (whose
15 name I do not remember at this time) gave me a complaint form to fill out. I did not fill out
16 the complaint.
- 17 22. On February 2, 2009, Judge Mayhew of the Stanislaus Superior Court was assigned to this
18 case by Chief Justice George.
- 19 23. Attached as Exhibit 3 is a true and correct copy of the assignment of Judge Mayhew of
20 Stanislaus County by Chief Justice Ronald George to the two cases of Tetra Tech v. M.G.
21 Santos (Forte Cross-Defendant and Complainant), and Forte v. Jones.
- 22 24. Attached as Exhibit 4 is a true and correct copy of the second objection I filed on February
23 20, 2009 entitled, OBJECTION TO PRO-TEM JUDGE AND ANY CASE
24 MANAGEMENT CONFERENCES HELD IN MERCED COUNTY DUE TO RECUSAL.
25. The following account I am providing is a summary to relate the occurrences at the third
Case Management Conference held on February 24, 2009. It is not meant to be all inclusive
of details, just those to inform the court the gist of the occurrences on that day.

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26. On February 24, 2009, having received no indication from the court that the case management conference was continued or changed due to my objection, I and my wife went to the Merced Superior Court. We arrived at 8:55am, and requested Officer Prock, who was sitting near the entrance where they do the security check, to accompany us due to the previous difficulty at the last Case Management Conference on January 13, 2009.

27. When we arrived at Room 1202 at 9:00am at the scheduled time, the same man from the previous conference was already on conference call with the opposing attorneys on court call. He indicated for me to sit down, asked who my wife was who was standing one step on the inside of the door. When I told him who she was, he said she had to get out of the room. She stepped just outside the open door.

28. He continued to listen on his telephone, nodding and saying a few words. When he paused, I asked if I could say something. I was intending on stating my objection to his being pro tem on the case and to point out the objection I recently filed. He looked at me, said a few more words into the phone, and hung up. He looked at me again, stood up, and said it's over and to leave.

29. I said to wait a second, I wanted to say something and know what was going on, but the man, who I now assume was the disqualified Pro Temp Judge Padron, said he would call the officer as he had before if I didn't leave. I told him that wasn't necessary because I had requested an officer to come up here with me. I stuck my head out of the room and called to Officer Prock to return as he had begun to walk back down the hall.

30. When Officer Prock returned, Padron said to remove me. I stepped out of the room and, as Padron closed the door, I spoke to Officer Prock.

31. I told the Officer that I believed that Padron, in refusing to allow me to participate in the Case Management Conferences, three times to date, was denying me my rights and obstructing justice.

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32. I told Officer Prock that I intended on doing a citizen's arrest on Padron and that I was requesting his aid to accept Padron in custody and make sure that no physical harm was done to me should Padron refuse to come quietly.
33. Officer Rogers now joined us and their supervisor, Officer Hymiller, arrived. First, all of them went into Room 1202 with Padron and spoke for about 15 minutes. When they came out they stated that Padron said I was late and missed the meeting, that it was not ex parte communications because it was continued.
34. The officers attempted to diffuse my intentions and asked me to file a complaint with the Administrative Offices of the Courts instead. I refused saying that it was in my rights by law to enact a citizen's arrest, that I, not the officers, was assuming responsibility for false arrest should Padron sue for such, and that Officer Hymiller must help me perform the arrest.
35. I proceeded to wait until Padron was finished with his case management conferences and came out of the room. I observed various people going in and out of the room. I did not block any person from entering or leaving the room.
36. At approximately 9:40am, with Officer Rogers, Prock, and Hymiller standing in front of the door to Room 1202, I now sat down on the bench and proceeded to call District Attorney Larry Morse. I spoke to Angie, his secretary, who informed me that the DA Morse was stepping out to lunch. I told her to tell him that I was attempting to enact a citizen's arrest on a pro tem judge, and that the Sheriff's Officers were not cooperating, or words to that effect. She said she would tell DA Morse.
37. When Padron came out of the room to go to the next room for some reason, I told the officers that I did not want him getting away before I could do a citizen's arrest on him. Officer Hymiller said he was not leaving.
38. Padron returned a few minutes later, and I attempted to follow him into the room to tell him I was doing a citizen's arrest on him. I was standing in the doorway as he tried to slam the

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door shut on me. He kept pushing the door closed as I was trying to talk to him. I allowed the door to shut and went back to the bench to wait for him to come out.

39. Throughout the morning, I noticed two to three officers standing at the end of the hall watching and listening to the incident. I believe they were listening through their microphones attached at their shoulders because I saw several officers speak into them and believe that the transmission was on.

40. At approximately 10:15am, I told Officer Hymiller again that when Padron came out, I was going to tell him I was enacting a citizen's arrest and to come peacefully. I told Officer Hymiller that if the officers refused to help me and Padron did not come peacefully I would have to use whatever force necessary to hand him over to the police station.

41. Officer Hymiller attempted to convince me to leave and file a complaint at the Administrative Office of the Court. I asked if he would file an incident report on the incident to have a record of what had happened. He said he would not.

42. Because he would not take an incident report, I felt that I needed to continue with my intent on effectuating a citizen's arrest in order to document exactly what Padron had done to me and to start a procedure for investigation.

43. Officer Hymiller went to speak to a supervisor. At 10:35am, I stood facing Officer Rogers and Prock as I dialed Marion Santos' attorney in this case, Shawn Mills, who also happens to be a criminal attorney, and put him on the speaker of my cell phone.

44. I introduced Officer Rogers and Prock to Mr. Mills and briefly explained the situation and that when Padron came out I was going to tell Padron that I was enacting a citizen's arrest on him and to come peacefully. I further stated that if Padron did not come peacefully, I would have to use whatever force necessary to hand him over to the officers or the police station if the officers refused to help.

45. I asked Mr. Mills if it was my right to do this. He explained to us all, including Officer Prock and Rogers that it was. He went further and cited some laws on it.

- 1 46. After the phone call, I stood in front of the bench facing the door to Room 1202 as another
2 Officer, who I later discovered was Officer Pickinish (or something like that), came up to
3 me with another officer, (who I later discovered was Officer Jaskowiak), from the end of the
4 hall where they were previously listening, and stood with his chest touching my crossed
5 arms and his face an inch or two from mine. I asked him what he was doing and told him to
6 back off. He did not move. I repeated myself. He did not respond or move. I asked him if
7 it was his intention to try to get me to push him back so that he could arrest me for assault. I
8 stated that the witnesses, and there were many in the hallway, could see what he was doing.
9 In fact, I asked an officer who was standing at right angles to Office Pickinish a foot away
10 from us and who was blocking the view from several attorneys sitting on the next bench to
11 my right if he could step back so that the people could see what was happening for my
12 protection. I later discovered that this Officer was Officer Jaskowiak. He said he would not
13 step back.
- 14 47. Although I did not speak in an intentionally lowered voice as the Officers were, I only spoke
15 at normal voice volume, which I believe everyone would agree easily carries down the
16 hallway. I did so intentionally because I felt that I was being threatened by Officer
17 Pickinish's act in standing in my face and Officer Jaskowiak's close proximity and
18 prevention of witnesses to see what was happening. I felt threatened, but stood my rightful
19 ground to be there.
- 20 48. I then told them, okay, then I was going to sit down. I turned and sat.
- 21 49. From the bench, I repeated to Officer Pickinish and Jaskowiak my intentions of enacting a
22 citizen's arrest on Padron and that I was going to ask Padron to come peacefully. If the
23 Officers refused to help me ensure a peaceful arrest, then I would be required to use
24 whatever force necessary to arrest Padron should he resist in being handed to the officers. I
repeated myself several times.
50. I never yelled nor stated any obscenities or swear words. I was calm and intent on fulfilling
my legislative right in enacting a citizen's arrest.

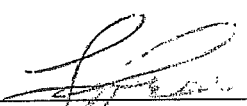
- 1 51. At approximately 10:45am, Padron opened the door and stepped out. He asked the Officers
2 for an escort out of the building.
- 3 52. It was now one hour and 45 minutes that I had been waiting for Padron to finish his business
4 so that I could enact a citizen's arrest upon him.
- 5 53. I stood up, facing Padron with Officer Pickinish directly in front of me. I leaned to the
6 right, looking around the body of Officer Pickinish, and began to tell Padron that I was
7 enacting a citizen's arrest on him.
- 8 54. Before I could finish, Officer Pickinish grabbed my arms, yanked me across the hall and
9 pushed me against the far wall of the hallway. I looked at his hand on my arms and asked
10 me what he was doing and to take his hands off me. Next thing I knew, approximately 6 or
11 7 officers converged on me, yanked my arm behind me as they dragged me across the hall
12 again. I again said what were they doing and that my arms were down. Now we were all in
13 front of the next bench where three attorneys and another man were sitting.
- 14 55. I asked the men on the bench if I raised my hands or arms. The civilian man emphatically
15 said no. I was handcuffed and turned to tell my wife who was standing behind the crowd of
16 officers to get the names of the witnesses on the bench.
- 17 56. I was booked and by 1:00pm, I was told that I would be released on my own recognizance.
- 18 57. Attached as Exhibit 5 is a true and correct copy of the FACE SHEET first given me.
- 19 58. By the time my wife got there at 1:20pm, I was told that the charges were changed and my
20 bail was now \$117,000.
- 21 59. Attached as Exhibit 6 is a true and correct copy of the FACE SHEET given me later.
- 22 60. My wife, Eileen Forte, told me later that at approximately 11:45am, she had called DA
23 Morse who was not there, but spoke with Angie, his secretary. My wife told me that when
24 she said, "You know this morning when Gene called and said he was going to do a citizen's
arrest? Well, he was arrested," Angie asked if the man was arrested, and my wife said, no,
Gene was. Angie said, "Gene was arrested for performing a citizen's arrest?" My wife told

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her that I was arrested as I was informing the man that I was arresting him. Angie told my wife that she would inform DA Morse when he returned from lunch.

- 61. DA Larry Morse is a defendant in this subject case.
- 62. California Chief Justice Ronald George is a defendant in the complaint Forte v. Knight Ridder, Northern California District Court Case No. C06-03948JW.
- 63. Attached as Exhibit 7 is a true and correct copy of the cover page of the complaint of Forte v. Knight Ridder, C06-03948JW showing that Chief Justice George is a defendant in a case wherein I am a plaintiff.
- 64. On February 25, 2009, the Merced Sun-Star/McClatchy Newspapers printed an article entitled, "Los Banos man arrested after reportedly lunging at judge" written by Corey Pride of the Los Banos Enterprise (also of McClatchy Newspapers) of which a true and correct copy is attached as Exhibit 8.
- 65. McClatchy Newspapers is also a defendant in the federal case of Forte v. Knight Ridder, C06-03948JW, (see Exhibit 7) which they did not inform readers of in their article.
- 66. Neither the author of the article, Corey Pride, nor any other reporter contacted me regarding the incident. The article is inaccurate and misstates the material facts of the incident.

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 March 3, 2009 at Los Banos, California.



Eugene Forte