

1 Benjamin L. Ratliff, Bar No. 113708

2 **LAW OFFICES OF**

3 **BENJAMIN L. RATLIFF**

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6 Attorneys for Defendant, TOMMY JONES

7 **SUPERIOR COURT OF CALIFORNIA**

8 **COUNTY OF MERCED**

10 EUGENE E. FORTE,

11 Plaintiff

12 vs.

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

15 Defendants.

) Case No. 150880

) [Stanislaus Superior Court Case No.

) 637857]

) **DECLARATION OF BENJAMIN**  
) **L. RATLIFF IN SUPPORT OF**  
) **MOTION TO DECLARE**  
) **PLAINTIFF A VEXATIOUS**  
) **LITIGANT [CCP §391-391.7]; FOR**  
) **ENTRY OF PREFILING ORDER**  
) **AND TO POST \$15,000**  
) **SECURITY**

) Date: February 4, 2010

) Time: 8:30 a.m.

) Dept.: 21

) Judge: Hon. William A. Mayhew

) Action Filed: December 18, 2007

21  
22 I, Benjamin L. Ratliff, declare as follows:

23 1. I am an attorney at law authorized to practice before all of the courts of the State  
24 of California and am one of the attorneys representing Defendant, TOMMY JONES. I make this  
25 declaration of my own personal knowledge.

26 2. Attached as **Exhibit "A"** is a true and correct copy of the Claim Form filed on  
27 May 7, 2007, by Plaintiff, Eugene Forte, with the City of Los Banos.  
28

1           3. Attached as **Exhibit "B"** is a true and correct copy of the written declaration of  
2 Clinton E. Galloway, a friend of Plaintiff and alleged witness to the events of May 7, 2007.

3           4. Attached as **Exhibit "C"** is a true and correct copy of a second Claim Form filed  
4 on June 7, 2007, by Plaintiff with the City of Los Banos.

5           5. Attached as **Exhibit "D"** is a true and correct copy of a June 22, 2007 letter to  
6 Plaintiff making him aware that the City of Los Banos had rejected his Claim.

7           6. Attached as **Exhibit "E"** is a true and correct copy of a November 13, 2007  
8 letter from Plaintiff to Mayor Tommy Jones requesting that the Mayor pay for a full page  
9 advertisement in the Los Banos Enterprise newspaper to apologize to Plaintiff in order to keep  
10 Plaintiff from filing this lawsuit.

11           7. Attached as **Exhibit "F"** is a true and correct copy of Plaintiff's Complaint for  
12 Defamation filed on December 18, 2007 in Merced County Superior Court.

13           8. Attached as **Exhibit "G"** is a true and correct copy of a meet and confer letter  
14 sent to Defendant's counsel by Plaintiff evidencing the difficulty of dealing with Plaintiff in this  
15 case.

16           9. Attached as **Exhibit "H"** is a true and correct copy of facsimile message sent  
17 from Plaintiff to Defendant's counsel. This letter requests personal information from Mayor  
18 Jones which is not related to the subject of this lawsuit.

19           10. Attached as **Exhibit "I"** is a true and correct copy of selected statements made at  
20 the Los Banos City Council meeting on March 19, 2008, as transcribed by our office and a copy  
21 of the digital video recording of this meeting. The transcribed statements are contained on Track  
22 1 at the encoded time displayed as 15:30-17:45 for Nathan Leon, 17:56-21:57 for Gene Forte,  
23 26:17-28:23 for Gregg Hostetler and 2:35:18-2:40:23 for Mayor Tommy Jones.

24           11. Attached as **Exhibit "J"** is a true and correct copy of selected statements made at  
25 the Los Banos City Council meeting on May 7, 2008, as transcribed by our office and a copy of  
26 the digital video recording of this meeting. The transcribed statements are contained on Track 2  
27 at the encoded time displayed as 51:25-55:38.  
28

1           12. Attached as **Exhibit "K"** is a true and correct copy of an Ex Parte Application I  
2 filed to continue the depositions of Mayor Jones and Joseph Sousa until a date when the parties  
3 were available because Plaintiff was unwilling to work with the deponents on their schedule.

4           13. Attached as **Exhibit "L"** is a true and correct copy of an Ex Parte Application  
5 filed by Plaintiff, requesting sanctions, and further evidencing his unwillingness to work with the  
6 deponents' schedules.

7           14. Attached as **Exhibit "M"** is a true and correct copy of a Supplement to Case  
8 Management Statement filed by Plaintiff, purporting to keep Defendant from filing a motion for  
9 Protective Order prior to Defendant's deposition date.

10           15. Attached as **Exhibit "N"** is a true and correct copy of the Case Management  
11 Conference Findings and Order, filed on July 29, 2008 in Merced County Superior Court. At  
12 this time trial had been set for December 16, 2008.

13           16. Attached as **Exhibit "O"** is a true and correct copy of an unsigned letter  
14 purporting to be from Clinton E. Galloway, which was faxed from Gene Forte's number  
15 (209)829-1952 on August 25, 2008.

16           17. Attached as **Exhibit "P"** is a true and correct copy of a facsimile transmission  
17 from Plaintiff sent on August 6, 2008. This communication further evidences the difficulties  
18 Defendant's counsel has faced in dealing with Plaintiff and his continuous tactical delays.

19           18. Attached as **Exhibit "Q"** is a true and correct copy of a facsimile transmission  
20 from Plaintiff sent on August 7, 2008, which continues to evidence the difficulties Defendant's  
21 counsel has faced in dealing with Plaintiff and his continuous tactical delays.

22           19. Attached as **Exhibit "R"** is a true and correct copy of a letter sent to Plaintiff by  
23 Defendant's counsel, trying to accommodate Plaintiff in the rescheduling of his deposition.

24           20. Attached as **Exhibit "S"** is a true and correct copy of a facsimile transmission  
25 from Plaintiff sent on August 8, 2008 evidencing his "turnabout is fair play" way of dealing with  
26 all discovery issues.  
27

1           21. Attached as **Exhibit "T"** is a true and correct copy of Plaintiff's Motion for  
2 Leave to File a First Amended Complaint and the First Amended Complaint attached thereto.

3           22. Attached as **Exhibit "U"** is a true and correct copy of Plaintiff's First Amended  
4 Complaint.

5           23. Attached as **Exhibit "V"** is a true and correct copy of a signed letter purporting  
6 to be from Clinton E. Galloway, which was faxed from Gene Forte's number (209)829-1952 on  
7 August 25, 2008.

8           24. Attached as **Exhibit "W"** is a true and correct copy of Plaintiff's Amended  
9 Notice of Motion for Leave to File Plaintiff's First Amended Complaint. It is unclear why  
10 Plaintiff found it necessary to amend the notice.

11           25. Attached as **Exhibit "X"** is a true and correct copy of a letter sent from  
12 Defendant's counsel to Plaintiff in an effort to schedule Plaintiff's deposition.

13           26. Attached as **Exhibit "Y"** is a true and correct copy of a letter sent from the  
14 attorney for the City of Los Banos, William A. Vaughn, to Plaintiff in an effort to limit the  
15 depositions of the City Council members to the matters relevant to this case.

16           27. Attached as **Exhibit "Z"** is a true and correct copy of a letter sent to Plaintiff  
17 from Defendant's counsel on August 25, 2008, in an effort to clear dates for the deposition of  
18 Plaintiff and his witnesses, Eileen Forte, Jordan Forte, and Clinton Galloway.

19           28. Attached as **Exhibit "AA"** is a true and correct copy of a letter sent from  
20 Plaintiff to Defendant's counsel in which he makes demands for outlines of the topics upon  
21 which his witnesses will be deposed, among other things.

22           29. Attached as **Exhibit "AB"** is a true and correct copy of a letter sent from  
23 Defendant's counsel to Plaintiff in an effort to set the deposition of Plaintiff's witness, Clinton  
24 Galloway.

25           30. Attached as **Exhibit "AC"** is a true and correct copy of a letter sent from  
26 Defendant's counsel to Mr. Galloway in an effort to set his deposition.  
27  
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1           31. Attached as **Exhibit "AD"** is a true and correct copy of a facsimile transmission  
2 sent from Plaintiff to Defendant's counsel in which he disputes the dates suggested for the  
3 deposition of Mr. Galloway.

4           32. Attached as **Exhibit "AE"** is a true and correct copy of a letter sent from  
5 Defendant's counsel to Plaintiff in an effort to set the depositions of Eileen Forte and Jordan  
6 Forte, both of whom Plaintiff identified as witnesses in this case.

7           33. Attached as **Exhibit "AF"** is a true and correct copy of a letter sent from  
8 Plaintiff to Defendant's counsel in which Plaintiff is attempting to threaten a non-party deponent  
9 with sanctions and contempt charges for refusing to be deposed and produce privileged  
10 documents.

11           34. Attached as **Exhibit "AG"** is a true and correct copy of a letter sent from  
12 Plaintiff to Defendant's counsel in which Plaintiff refuses to have his witness', Eileen Forte's,  
13 deposition taken and refuses to produce his medical records unless Mr. Jones produces all of his.  
14 This is even more egregious considering that Plaintiff is making an emotional distress claim  
15 based upon his stay in the hospital after a Los Banos City Council meeting.

16           35. Attached as **Exhibit "AH"** is a true and correct copy of Defendant's response to  
17 Plaintiff's motion for leave to file a First Amended Complaint showing no opposition to  
18 Plaintiff's request.

19           36. Attached as **Exhibit "AI"** is a true and correct copy of a facsimile transmission  
20 sent from Plaintiff to Defendant's counsel showing Plaintiff's tendency for harassment at every  
21 stage of the proceedings.

22           37. Attached as **Exhibit "AJ"** is a true and correct copy of Plaintiff's motion to  
23 quash the deposition subpoena for his medical records.

24           38. Attached as **Exhibit "AK"** is a true and correct copy of the Plaintiff's points and  
25 authorities in support of his motion to quash a deposition subpoena for his medical records.  
26  
27  
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1           39. Attached as **Exhibit "AL"** is a true and correct copy of Motion for Protective  
2 Order restricting discovery filed on behalf of the Los Banos City Council members. The  
3 attorney for the City of Los Banos states in his declaration that Plaintiff is deposing the City  
4 Council members on videotape to make a movie allegedly showing official corruption.

5           40. Attached as **Exhibit "AM"** is a true and correct copy of a letter sent from  
6 Plaintiff to Defendant's counsel requesting a stipulation that Jordan Forte's deposition be  
7 limited.

8           41. Attached as **Exhibit "AN"** is a true and correct copy of letter sent to Plaintiff  
9 from Defendant's counsel explaining why a stipulation cannot be agreed upon as Plaintiff  
10 requested.

11           42. Attached as **Exhibit "AO"** is a true and correct copy of September 22, 2008,  
12 letter from Plaintiff to Defendant's counsel requesting that Jordan Forte's deposition be limited  
13 to a maximum of ninety (90) minutes among other demands.

14           43. Attached as **Exhibit "AP"** is a true and correct copy of a September 26, 2008  
15 letter sent from Defendant's counsel to Plaintiff requesting overdue responses to discovery.

16           44. Attached as **Exhibit "AQ"** is a true and correct copy of Plaintiff's Opposition to  
17 the City Council deponents' Motion for Protective Order in which Plaintiff confuses this case  
18 with another Merced County case he is involved in and tries to argue that he does not have to  
19 "reveal his case strategy" to conduct depositions.

20           45. Attached as **Exhibit "AR"** is a true and correct copy of Defendant's Opposition  
21 to Plaintiff's Motion for Protective Order regarding the deposition of Jordan Forte. Plaintiff  
22 brought this motion without standing as he is not an attorney and cannot represent Jordan Forte  
23 in this case.

24           46. Attached as **Exhibit "AS"** is a true and correct copy of my Declaration in  
25 Opposition to Plaintiff's Motion for Protective Order. This declaration shows that Plaintiff had  
26 agreed to Jordan Forte's deposition being taken on or about August of 2008 and then recanted in  
27 September of 2008.  
28

1           47. Attached as **Exhibit "AT"** is a true and correct copy of my Declaration in  
2 Support of Response to Plaintiff's Motion to Quash Deposition Subpoena. This declaration  
3 evidences the need for Plaintiff's medical records.

4           48. Attached as **Exhibit "AU"** is a true and correct copy of a September 30, 2008  
5 letter sent to Plaintiff by Defendant's counsel requesting a date to set the completion of  
6 Plaintiff's deposition because Plaintiff walked out on his Deposition on September 29, 2008.

7           49. Attached as **Exhibit "AV"** is a true and correct copy of Plaintiff's reply brief in  
8 support of his Motion for Protective Order Restricting Jordan Forte's deposition.

9           50. Attached as **Exhibit "AW"** is a true and correct copy of Plaintiff's reply brief in  
10 Support of Motion to Quash Deposition Subpoena of Medical Records.

11           51. Attached as **Exhibit "AX"** is a true and correct copy of Plaintiff's Request to  
12 Filing Clerk to provide filed exhibits in support of verified statement requesting recusal of the  
13 Honorable Hugh Flanagan as trial judge in this case.

14           52. Attached as **Exhibit "AY"** is a true and correct copy of an October 10, 2008  
15 letter sent from Defendant's counsel to Plaintiff evidencing Plaintiff's refusal to complete his  
16 own deposition.

17           53. Attached as **Exhibit "AZ"** is a true and correct copy of Plaintiff's Motion to  
18 Compel Compliance with Deposition Subpoena against third party deponent, Charles Guest.

19           54. Attached as **Exhibit "BA"** is a true and correct copy of an October 27, 2008  
20 letter sent from Plaintiff to Defendant's counsel regarding the deposition of a third party, Ms.  
21 Minerva Perez, who is a newspaper reporter for the Los Banos Enterprise.

22           55. Attached as **Exhibit "BB"** is a true and correct copy of Plaintiff's Reply Brief in  
23 Support of Motion to Compel Compliance with Deposition Subpoena for Charles Guest, a third  
24 party deponent who runs a blog site named "Our Los Banos".

25           56. Attached as **Exhibit "BC"** is a true and correct copy of Plaintiff's Opposition to  
26 and Request to Strike Motion for Protective Order by third party deponent Charles Guest.  
27  
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1            57. Attached as **Exhibit "BD"** is a true and correct copy of the November 5, 2008  
2 recusal of the entire bench of the Merced County Superior Court, which was forced by Plaintiff.

3            58. Attached as **Exhibit "BE"** is a true and correct copy of my Declaration filed on  
4 behalf of third party deponent Charles Guest. This declaration evidences my knowledge of the  
5 length and unnecessary scope of city councilman Joe Sousa's deposition.

6            59. Attached as **Exhibit "BF"** is a true and correct copy of a November 25, 2008  
7 letter sent by Plaintiff to Defendant's counsel stating that he would submit to completing his  
8 deposition if there was a video service there taping me, instead of the deponent. This letter also  
9 evidences Plaintiff's paranoia that *all* judges are out to get him as a result of an ongoing case he  
10 has in Monterey County.

11           60. Attached as **Exhibit "BG"** is a true and correct copy of a December 1, 2008  
12 letter sent from Plaintiff to the Honorable John Kirihara, Judge of Merced County Superior  
13 Court. This letter evidences Plaintiff's belief that he will have to disqualify other judges in this  
14 case before he even knows who they are.

15           61. Attached as **Exhibit "BH"** is a true and correct copy of December 3, 2008 email  
16 from Phillip R. McMurray (counsel for Charles Guest) pointing out the inconsistencies in  
17 Plaintiff's letter to Judge Kirihara.

18           62. Attached as **Exhibit "BI"** is a true and correct copy of an Order Regarding  
19 Motion for Protective Order by Plaintiff and others following a December 16, 2008 hearing on  
20 the matters. This order stayed discovery pending an appointment of a Judge for All Purposes.  
21

22           63. Attached as **Exhibit "BJ"** is a true and correct copy of a January 5, 2009 letter to  
23 Plaintiff from Defendant's counsel in which the conditions for the completion of Plaintiff's  
24 deposition were agreed to and a stipulation was prepared.

25           64. Attached as **Exhibit "BK"** is a true and correct copy of a stipulation prepared to  
26 complete the deposition of Plaintiff.

1           65. Attached as **Exhibit "BL"** is a true and correct copy of a facsimile transmission  
2 to my associate, Shantelle Andrews, from Plaintiff's Administrative Assistant, Crystal Powser.  
3 In this letter, Plaintiff refused to provide Defendant's counsel with a copy of his Motion for  
4 Disqualification of Judge Mayhew. Ms. Andrews was forced to drive to Merced in order to  
5 obtain a copy from the clerk's office.

6           66. Attached as **Exhibit "BM"** is a true and correct copy of a March 13, 2009 email  
7 correspondence between Phillip McMurray (Counsel for Charles Guest) and Plaintiff. In this  
8 email, Plaintiff refuses to provide Mr. McMurray with a copy of his Motion for Disqualification  
9 of Judge Mayhew.

10           67. Attached as **Exhibit "BN"** is a true and correct copy of a Minute Order re-setting  
11 hearings on the protective orders in this case for March 6, 2009.

12           68. Attached as **Exhibit "BO"** is a true and correct copy of the assignment of this  
13 case to the Honorable William Mayhew in Stanislaus County Superior Court, dated January 26,  
14 2009.

15           69. Attached as **Exhibit "BP"** is a true and correct copy of the Declaration of  
16 Plaintiff in Support of Challenge for Cause of the Honorable William A. Mayhew as Trial Judge  
17 filed on March 3, 2009. Plaintiff's entire argument for recusal is based upon events that  
18 happened with a judge pro tem in Merced County Superior Court.

19           70. Attached as **Exhibit "BQ"** is a true and correct copy of a Minute Order dated  
20 March 27, 2009, denying Plaintiff's Challenge for Cause and setting the Motions for Protective  
21 Orders for hearing on April 17, 2009.

22           71. Attached as **Exhibit "BR"** is a true and correct copy of Plaintiff's Supplemental  
23 Opposition to Charles Guest's Motion for Protective Order.

24           72. Attached as **Exhibit "BS"** is a true and correct copy of Plaintiff's Verified  
25 Challenge for Cause against Judge William A. Mayhew filed on April 16, 2009 prior to the  
26 hearings on the Motions for Protective Orders.  
27  
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1           73. Attached as **Exhibit "BT"** is a true and correct copy of Plaintiff's Declaration in  
2 Support of Challenge for Cause Against Judge William A. Mayhew.

3           74. Attached as **Exhibit "BU"** is a true and correct copy of Plaintiff's Supplemental  
4 to Verified Challenge for Cause Filed Against Judge William A. Mayhew, filed on April 17,  
5 2009 at the time of the hearings on Motions for Protective Orders.

6           75. Attached as **Exhibit "BV"** is a true and correct copy of The Honorable William  
7 A. Mayhew's Declaration in Response to CCP 170.3 Motion.

8           76. Attached as **Exhibit "BW"** is a true and correct copy of selected statements  
9 made at the Los Banos City Council meeting on June 3, 2009, as transcribed by our office and a  
10 copy of the digital video recording of this meeting. Mr. Forte's statement is contained at the  
11 encoded time displayed as 23:33.

12           77. Attached as **Exhibit "BX"** is a true and correct copy of Plaintiff's Objection to  
13 Judge Mayhew Signing Orders pending a Writ of Mandate regarding the Ruling on CCP 170.6 in  
14 the Merced County Superior Court case of *Tetra Tech v. Santos*.

15           78. Attached as **Exhibit "BY"** is a true and correct copy of selected statements made  
16 at the Los Banos City Council meeting on September 16, 2009, as transcribed by our office and a  
17 copy of the digital video recording of that meeting. Mr. Forte's statement is contained at the  
18 encoded time displayed as 9:15.


19           79. Attached as **Exhibit "BZ"** is a true and correct copy of selected statements made  
20 at the Los Banos City Council meeting on October 7, 2009, as transcribed by our office and a  
21 copy of the digital video recording of this meeting. The selected statements are contained at the  
22 encoded time displayed as 39:42 and 44:54.

23           80. Attached as **Exhibit "CA"** is a true and correct copy of Defendant's Request for  
24 Admission Set No. One sent to Plaintiff, requesting Plaintiff to admit the genuineness of the  
25 attached documents.  
26  
27  
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1           81. Attached as **Exhibit "CB"** is a true and correct copy of Plaintiff's responses to  
2 Request for Admission Set No. One, admitting the genuineness of all of the documents with the  
3 exception of a few missing or misprinted pages.

4           82. Attached as **Exhibit "CC"** are true and correct copies of excerpts from the  
5 deposition of plaintiff's son, Jordan Forte. At pages 44:22-45:13, 46:13-50:11 and 142:4-14:12,  
6 plaintiff repeatedly referred to defense counsel and the court by derogatory names and threatened  
7 to sue defense counsel because of his representation of defendant in this case.

8           I declare under penalty of perjury under the laws of the State of California that the  
9 foregoing is true and correct to the best of my knowledge, and that this declaration was  
10 executed on January 6, 2010, in Fresno, California.

11  
12  
13  
14           By: 

15           Benjamin L. Ratliff  
16           Attorney for Defendant  
17           TOMMY JONES

**PROOF OF SERVICE**

My business address is 1100 West Shaw Avenue, Suite 124, Fresno, California 93711. I am employed in Fresno County, California. I am over the age of 18 years and am not a party to this case.

On the date indicated below, I served the foregoing document(s) described as: **DECLARATION OF BENJAMIN L. RATLIFF IN SUPPORT OF DEFENDANT'S MOTION TO DECLARE PLAINTIFF A VEXATIOUS LITIGANT (CCP SECTION 391-391.7); FOR ENTRY OF PREFILING ORDER AND TO POST \$15,000 SECURITY** on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Mr. Eugene Forte  
688 Birch Court  
Los Banos, California 93635  
(Via Overnight Delivery)

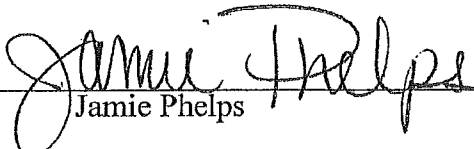
Thomas Holsinger, Research Attorney  
Stanislaus County Superior Court  
801 Tenth Street, Fourth Floor  
Modesto, California 95354  
(Via Hand Delivery)

Stanislaus County Superior Court  
Ceres Branch  
2744 Second Street  
Ceres, California 95307  
(Via Hand Delivery)

- (BY MAIL) I am readily familiar with the business' practice for collection and processing of correspondence for mailing, and that correspondence, with postage thereon fully prepaid, will be deposited with the United States Postal Service on the date noted below in the ordinary course of business, at Fresno, California.
- (BY PERSONAL SERVICE) I caused delivery of such envelope(s), by hand, to the office(s) of the addressee(s).
- (BY ELECTRONIC MAIL) I caused such documents to be scanned into PDF format and sent via electronic mail to the electronic mail addressee(s) of the addressee(s) designated.
- (BY FACSIMILE) I caused the above-referenced document to be delivered by facsimile to the facsimile number(s) of the addressee(s).
- (BY OVERNIGHT COURIER) I caused the above-referenced envelope(s) to be delivered to an overnight courier service for delivery to the addressee(s).

EXECUTED ON January 7, 2010, at Fresno, California.

- (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- (FEDERAL) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I declare that I am employed in this office of a member of the bar of this court at whose direction this service was made.

  
\_\_\_\_\_  
Jamie Phelps