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8 Attorneys for Defendant, TOMMY JONES

9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF MERCED**

11 EUGENE E. FORTE,

12 Plaintiff

13 vs.

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

15 Defendants.

) Case No. 150880
) [Stanislaus Superior Court Case No.
) 637857]

) **MEMORANDUM OF POINTS**
) **AND AUTHORITIES IN**
) **SUPPORT OF DEFENDANT'S**
) **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
)

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1 I. PRELIMINARY STATEMENT

2 Plaintiff Eugene Forte is a pro per litigant who is misusing the Court's resources to vex
3 and harass its judges, courtroom staff, its attorneys and other public officials, including the
4 defendant in this case, Mr. Tommy Jones. [See Exhibits "E", "G", "H", "I", "J", "L", "M", "P",
5 "R", "S", "X", "Y", "Z", "AA", "AF", "AG", "AI", "AJ", "AK", "AL", "AM", "AV", "AW",
6 "AX", "AZ", "BA", "BC", "BD", "BE", "BG", "BH", "BL", "BM", "BP", "BS", "BT", "BU",
7 "BW", "BX", "BY", "BZ" and "CC" to the Declaration of Benjamin L. Ratliff (hereinafter
8 "Ratliff Dec.".)]
9

10 The conduct of Plaintiff is wasting large amounts of public time and taxpayer money,
11 with the effect of interrupting and interfering with the performance of essential public duties.
12 Plaintiff has, on several occasions and in several different cases, provided this court with the very
13 evidence which demonstrates his extreme vexatiousness. Plaintiff's behavior has become
14 extreme and outrageous, gaining momentum over the years. He has gone from the use of threats,
15 such as "a hangman's rope knows no judicial immunity" to lunging at a judge pro tem and
16 presenting a physical threat to resisting arrest when he attempted to "sneak" recording devices
17 into a courtroom. [See Exhibits "CA", "CB" and "CC" to Ratliff Dec.]
18

19 The pro per Plaintiff's unmeritorious and frivolous papers, pleadings and unnecessary
20 discovery filed in this case include, but are not limited to, the following:
21

22 1. Engaging in repeated character attacks upon Mr. Jones, the judges of the Merced
23 County Superior Court and other public officials in the Merced County area characterizing them
24 as having been engaged in a conspiracy to fix the results of various litigations against him. [See
25 Exhibits "A", "B", "C", "E", "F", "H", "I", "J", "U", "Y", "AM", "AO", "AU", "AX", "BD",
26 "BF", "BG", "BH", "BL", "BM", "BP", "BS", "BT", "BU", "BW", "BY", "BZ", "CA", "CB"
27 and "CC" to Ratliff Dec.]
28

- 1
- 2 (1) In the immediately preceding seven-year-period have commenced,
- 3 prosecuted, or maintained in propria persona at least five litigations
- 4 other than in small claims court that have been (i) finally determined
- 5 adversely to the person or (ii) unjustifiably permitted to remain
- 6 pending at least two years without having been brought to trial or
- 7 hearing;
- 8 (2) After a litigation has been finally determined against the person,
- 9 repeatedly relitigates or attempts to relitigate, in propria persona, either
- 10 (i) the validity of the determination against the same defendant or
- 11 defendants as to whom the litigation was finally determined or (ii) the
- 12 cause of action, claim, controversy, or any issues of fact or law,
- 13 determined or concluded by the final determination against the same
- 14 defendant or defendants as to whom the litigation was finally
- 15 determined;
- 16 (3) In any litigation while acting in propria persona, repeatedly files
- 17 unmeritorious motions, pleadings, or other papers, conducts
- 18 unnecessary discovery, or engages in other tactics that are frivolous or
- 19 solely intended to cause unnecessary delay;
- 20 (4) Has previously been declared to be a vexatious litigant by any state or
- 21 federal court of record in any action or proceeding based upon the
- 22 same or substantially similar facts, transaction, or occurrence.”

23 **i. Plaintiff is a Vexatious Litigant Under Section 391(b)(3)¹.**

24 The stack of documents contained in Plaintiff’s multiple court filings, as well as the

25 declaration and exhibits accompanying this motion, demonstrate that Plaintiff is a vexatious

26 litigant within the meaning of section 391(b)(3). [See Exhibits “A” through “CB” to Ratliff Dec.]

27 The attached exhibits do not include any of Plaintiff’s filings from the concurrent case he has

28 against several public officials from Merced County, nor do they include the numerous,

unmeritorious filings Plaintiff has made in his cases in Monterey County.

As summarized above, Plaintiff has repeatedly filed and served unnecessary discovery

and voluminous, unmeritorious and scandalous pleadings and papers in this case. [See Exhibits

“A”, “B”, “C”, “E”, “F”, “K”, “L”, “M”, “N”, “T”, “U”, “W”, “AJ”, “AK”, “AL”, “AQ”, “AR”,

“AS”, “AT”, “AV”, “AW”, “AX”, “AZ”, “BB”, “BC”, “BD”, “BE”, “BI”, “BK”, “BO”, “BP”,

“BR”, “BS”, “BT”, “BU”, “BV”, “BX”, “CA” and “CB” to Ratliff Dec.] Most recently, he has

served a motion to disqualify a Stanislaus Superior Court judge, the Honorable William A.

¹ All reference to Code sections are to the California Code of Civil Procedure unless indicated otherwise.

1 Mayhew, and when it was denied, Plaintiff filed an appellate writ of mandate to have it
2 overturned. [See Exhibits “BO” through “BX” to Ratliff Dec.] All of Plaintiff’s pleadings as to
3 why judges should be disqualified rarely, if ever, have anything to do with the judges themselves.
4 Plaintiff is under an ego-centric and fanciful belief that he is the center of a governmental
5 conspiracy and uses this as his reasoning to have judges disqualified in his cases. He has and
6 will continue to file motions to disqualify judges until he had disqualified an entire County’s
7 bench. [See Exhibit “BD” to Ratliff Dec.] The only way to stop Plaintiff’s filing of such motions
8 and keep him from unnecessarily delaying litigation is by establishing that he is a vexatious
9 litigant and applying suitable remedies, including a prefiling order. *See Urban Pacific Equities*
10 *Corp. v. Superior Court* (1997) 59 Cal.App.4th 688 (cannot subpoena court reporter to obtain
11 transcript).

12 There is no likelihood that Plaintiff will prevail in this action – or his planned future
13 actions against court and public officials.² Plaintiff is under a false and paranoid presumption
14 that all public officials in this State are corrupt and working against him in his pursuit of justice.
15 The public officials that he is filing suit against enjoy immunity from liability to protect against
16 exactly what is occurring here - a vengeful assault by a disgruntled litigant, fixated on harassment
17 and retaliation. (Cal.Gov.Code §820, et. seq.; *Meester v. Davies* (1970) 11 Cal.App.3d 342, 346;
18 *Kilgore v. Younger* (1982) 30 Cal.3d 770, 779 and 781-782 quoting *Barr v. Mateo* (1958) 360
19 U.S. 564, 571.)

20 **B. PLAINTIFF SHOULD BE REQUIRED TO POST SECURITY PURSUANT TO**
21 **SECTION 391.1 AS A CONDITION FOR PROCEEDING WITH THE**
22 **INSTANT ACTION.**

23 To curb the misuse of the court system by individuals acting in propria persona who
24 repeatedly file unmeritorious lawsuits and appeals, the Legislature enacted section 391.1, which
25 provides in relevant part that:

26 “[i]n any litigation pending in any court of this state, at any time
27 until final judgment is entered, a defendant may move the court

28 ² This is discussed in greater detail in section II(a).

1 upon notice and hearing, for an order requiring the plaintiff to
2 furnish security.”³ *Bravo v. Ismaj* (2002) 99 Cal.App.4th 211, 224.

3 The moving party must only show that the plaintiff is a vexatious litigant and that there is
4 no reasonable probability that plaintiff will prevail in the litigation. (Code Civ. Proc. §391.1.) In
5 *Devereaux v. Latham and Watkins* (1995) 32 Cal.App.4th 1571, 1582, the court held that
6 defendant can satisfy his burden that the plaintiff has no reasonable possibility of prevailing by
7 showing that “the plaintiff’s recovery is foreclosed as a matter of law or that there are insufficient
8 facts to support recovery by the plaintiff on its legal theories, even if all the plaintiff’s facts are
9 credited.” Once this showing has been made, the trial court “shall order the plaintiff to furnish,
10 for the benefit of the moving defendant, security in such amount and within such time as the
11 court shall fix.” (Code Civ. Proc. §391.3; *McColm v. Westwood Park Assn.* (1998) 62
12 Cal.App.4th 1211, 1215.) It is of no relevance that the plaintiff may financially be unable to post
13 security. (*Devereaux, supra*, 32 Cal.App.4th at 1588.) To preclude further game playing by the
14 litigious pro per, section 391.4 provides that if the security is not furnished as ordered, then the
15 litigation shall be dismissed as to the party “for whose benefit it was ordered furnished.” (Code
16 Civ. Proc. §391.4; *McColm, supra*, 62 Cal.App.4th at 1215.)

17 As discussed above, it is abundantly clear that Plaintiff meets the statutory definition of a
18 “vexatious litigant”. As set forth below, Mr. Forte has no reasonable probability of prevailing in
19 his pending action, as the lawsuit is barred under the Government Tort Claims Act and due to the
20 fact Mr. Jones’ statements were absolutely privileged by way of Mr. Forte’s consent to their
21 publication.

22 Defendant requests that this court order Mr. Forte to post security in an amount to be
23 determined by the Court, as set forth in section 391.3. Furthermore, the pending lawsuit should
24 be stayed until Plaintiff posts this security. In the event that he fails to post this security in the
25 amount and by the date so ordered by this Court, then the pending action should be dismissed
26 with prejudice in accordance with section 391.4.

27 ³ “Security” is defines as set forth in Section 391(c) of the Code of Civil Procedure and pursuant to this section
28 means “an understanding to assure payment, to the party for whose benefit the undertaking is required to be
furnished, of the party’s reasonable expenses, including attorney’s fees and not limited to taxable costs, incurred or
in connection with a litigation instituted, caused to be instituted, or maintained or caused to be maintained by a
vexatious litigant.”

1 **i. Plaintiff Has No Reasonable Probability of Prevailing On the Merits of His**
2 **Claims**

3 **a. Plaintiff consented to the publication of Mr. Jones' statement and to**
4 **the re-publication of the statement in the Badger Flats Gazette**

5 “One of the oldest and most widely recognized defenses to the publication of defamatory
6 matter is the doctrine of consent, which has been classified as a form of absolute privilege.”
7 (*Royer v. Steinberg* (1979) 90 Cal.App.3d 490, 498.) “One of the primary purposes of the
8 doctrine of consent in defamation law is to prevent a party from inviting or inducing indiscretion
9 and thereby laying the foundation of a lawsuit for his own pecuniary gain.” (*Royer, supra*, 90
10 Cal.App.3d at p. 499.) “This rule applies when the plaintiff asks the defendant to repeat the
11 statement to others and when the plaintiff himself repeats the statements to others.” (*Royer,*
12 *supra*, 90 Cal.App.3d at p. 498.) In order for Plaintiff to show that his repetition of the statement
13 was a coerced self-publication, he will have to show that he was under a duty to repeat it. (*Live*
14 *Oak Publishing Co. v. Cohagan* (1991) 234 Cal.App.3d 1277, 1284.)

15 On May 7, 2007, after the alleged defamatory statement was made to Plaintiff, Plaintiff
16 found his friend, Clinton Galloway, and by Plaintiff's own admission, requested that Mr. Jones
17 repeat the statement to Mr. Galloway. [See Exhibits “B”, “C”, “CA” and “CB” to Ratliff Dec.]
18 Plaintiff also admits to repeating the statement to several people on May 7, 2007, even though he
19 was under no compulsion to do so. [See Exhibits “CA(1)” article entitled “Mayor Jones
20 Viciously States Forte is Dangerous KKK Member” and “CB” to Ratliff Dec.] Plaintiff also
21 printed the events of May 7, 2007, as he remembers them, in the Badger Flats Gazette even
22 though he was under no compulsion to do so. [See Exhibit “CA(1)” and “CB” to Ratliff Dec.]

23 **b. Plaintiff Failed to File a Claim with The City of Los Banos for the**
24 **Second Cause of Action for Defamation and the Third Cause of Action**
25 **for Intentional Infliction of Emotional Distress**

26 Plaintiff filed a claim with the City of Los Banos on May 7, 2007 with regard to
27 statements made by Mr. Jones at the May Day Fair Parade, which Mr. Jones was attending as the
28 Mayor for the City of Los Banos. [See Exhibit “A” to Ratliff Dec.] The claim was rejected. [See

1 Exhibits "B" through "D" to Ratliff Dec.] Plaintiff then filed this lawsuit for defamation within
2 six months of the rejection on December 18, 2007. [See Exhibit "F" to Ratliff Dec.]

3 On August 8, 2008, Plaintiff made a motion for permission to amend his Complaint in
4 this case, which was granted. [See Exhibits "T", "U", "W" and "AH" to Ratliff Dec.] The First
5 Amended Complaint (hereinafter FAC) includes a second count for defamation based upon
6 statements Mr. Jones made at a March 19, 2008 Los Banos City Council meeting. [See Exhibit
7 "U" to Ratliff Dec.] It is an uncontroverted fact that Mr. Jones was at this meeting in his official
8 capacity as the Mayor of Los Banos and presided over this meeting as such. [See Exhibit "T" to
9 Ratliff Dec.]

10 Also included in the Plaintiff's FAC is a Second Cause of Action for Intentional Infliction
11 of Emotional Distress. This is based upon events that took place at a Los Banos City Council
12 meeting on May 7, 2008. [See Exhibits "J" and "U" to Ratliff Dec.] Plaintiff's time to speak at
13 the public meeting was cut short due to an operator error with the timer on the microphone.
14 Plaintiff alleges that he was forcefully taken away from the podium by Los Banos Police Chief
15 Gallagher at the direction of Mr. Jones. [See Exhibits "J" and "U" to Ratliff Dec.] Plaintiff
16 alleges that this act caused him severe emotional distress. Again, it is an uncontroverted fact that
17 Mr. Jones was at this meeting in his official capacity as the Mayor of Los Banos and presided
18 over this meeting as such. [See Exhibit "J" to Ratliff Dec.] Plaintiff's failure to file a claim with
19 the City of Los Banos prior to amending his complaint to include this cause of action is fatal to
20 his Second Cause of Action.

21 Plaintiff's failure to file a claim with the City of Los Banos prior to amending his
22 complaint to include the aforementioned causes of action is fatal to his second and third counts
23 against Mr. Jones. In general, the claims procedures and the statute of limitations applicable to
24 actions against public employees and officers are the same for actions against public entities.
25 (See Cal. Govt. Code §950-950.6; *Rogers v. Centrone* (1968) 261 Cal.App.2d 367; and *Burgdorf*
26 *v. Funder* (1966) 246 Cal.App.2d 443.) Compliance with this requirement is an integral part of a
27 plaintiff's cause of action that must be pleaded and proved. (*Magistretti Co. v. Merced Irrig.*
28

1 *Dist.* (1972) 27 Cal.App.3d 270, 274; *Neal v. Gatlin* (1973) 35 Cal.App.3d 871; *Miller v.*
2 *Hoagland* (1966) 247 Cal.App.2d 57.) The operative fact triggering the claims-presentation
3 requirement of California Government Code §950.2 is that, at the time of the alleged tortious act
4 or omission, the defendant was within the scope of employment as a public officer. When this
5 fact appears from the pleadings and when compliance with the claims-presentation requirements
6 is not shown, dismissal of the action is warranted. (*Leake v. Wu* (1976) 64 Cal.App.3d 668; *Neal*
7 *v. Gatlin* (1973) 35 Cal.App.3d 871; *Meester v. Davies* (1970) 11 Cal.App.3d 342.)

8 **c. Plaintiff Cannot Prove His Second Count for Defamation**

9 In order for Plaintiff to prove his second count for defamation, he will have to show that
10 Mr. Jones' statements at the City Council meeting on March 19, 2008, was of or concerning
11 Plaintiff. (*Palm Springs Tennis Club v. Rangel* (1999) 73 Cal.App.4th 1, 5.) At the March 19,
12 2008 City Council meeting, Plaintiff spoke during the public comments section which was about
13 eighteen minutes into the meeting. [See Exhibit "I" to Ratliff Dec.] Mr. Jones' statement was
14 made well over two hours after Plaintiff spoke. [See Exhibit "I" to Ratliff Dec.] Mr. Jones made
15 no mention of Plaintiff during his statement; this statement was made in a historical context with
16 regard to the struggle African-Americans have face for equal treatment in this Country. No
17 reasonable person in attendance at this City Council meeting would have thought this statement
18 was directed toward Plaintiff on a personal level.

19
20 California Civil Code section 47(c) grants a conditional privilege against defamation to
21 communications made without malice on subjects of mutual interest. A privileged publication is
22 made "without malice, to a person interested therein, (1) by one who is also interested, or (2) by
23 one who stands in such a relation to the person interested as to afford a reasonable ground for
24 supposing the motive for the communication to be innocent, or (3) who is requested by the
25 person interested to give the information." Civil Code section 48 provides that, with respect to
26 section 47 (c), "malice is not inferred from the communication." "...[M]alice has been defined
27 as 'a state of mind arising from hatred or ill will, evidencing a willingness to vex, annoy or injure
28 another person.'" (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 723.)

1 "One of the oldest and most widely recognized defenses to the publication of defamatory
2 matter is the doctrine of consent, which has been classified as a form of absolute privilege."
3 (*Royer v. Steinberg* (1979) 90 Cal.App.3d 490, 498.) "One of the primary purposes of the
4 doctrine of consent in defamation law is to prevent a party from inviting or inducing indiscretion
5 and thereby laying the foundation of a lawsuit for his own pecuniary gain." (*Royer, supra*, 90
6 Cal.App.3d at p. 499.) "This rule applies when the plaintiff asks the defendant to repeat the
7 statement to others and when the plaintiff himself repeats the statements to others." (*Royer,*
8 *supra*, 90 Cal.App.3d at p. 498.)

9 Plaintiff voluntarily re-published Mr. Jones' statements from the March 19, 2008 Los
10 Banos City Council meeting in his June/July 2008 edition of the Badger Flats Gazette and, by his
11 own admission, distributed approximately five thousand copies of this publication. [See Exhibits
12 "CA(4)" article entitled "Good Evening, Los Banos!" on page 3 and "CB" to Ratliff Dec.)
13 Plaintiff was under no compulsion to do so. Plaintiff consented to the republication of the
14 statement and cannot recover for defamation.

15 **d. Plaintiff Cannot Prove His Second Cause of Action for Intentional**
16 **Infliction of Emotional Distress**

17 "The elements of the tort of intentional infliction of emotional distress are: '(1) extreme
18 and outrageous conduct by the defendant with the intention of causing, or reckless disregard of
19 the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme
20 emotional distress; and (3) actual and proximate causation of the emotional distress by the
21 defendant's outrageous conduct.'" (*Christensen v. Superior Court* (1991) 54 Cal.3d 868.)
22 "Conduct to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in
23 a civilized community." (*Davidson v. City of Westminster* (1982) 32 Cal. 3d 197, 209.) "It is
24 generally held that there can be no recovery for mere profanity, obscenity, or abuse, without
25 circumstances of aggravation, or for insults, indignities or threats which are considered to amount
26 to nothing more than mere annoyances." (*Yurick v. Superior Court* (1989) 209 Cal.App.3d 1116,
27 1128.)
28

1 Mr. Jones' conduct at the May 7, 2008 Los Banos City Council meeting was not
2 outrageous and extreme by the aforementioned legal definitions. Mr. Jones' conduct was that of
3 a public official trying to maintain decorum at a public meeting when a citizen was disrupting the
4 process. [See Exhibit "J" to Ratliff Dec.]

5 "Severe emotional distress [is] emotional distress of such substantial quantity or enduring
6 quality that no reasonable man in a civilized society should be expected to endure it." (*Fletcher v.*
7 *Western Life Insurance Co.* (1970) 10 Cal.App.3d 376, 397.)

8 "Whether treated as an element of the prima facie case or as a matter of defense, it must
9 also appear that the defendant's conduct was unprivileged." (*Fletcher v. Western National Life*
10 *Insurance Co.* (1970) 10 Cal.App.3d 376, 394.) The statutory privileges that Civil Code section
11 47 affords to certain oral and written communications are applicable to claims for intentional
12 infliction of emotional distress. (*Agostini v. Strycula* (1965) 231 Cal.App.2d 804, 808.) "A
13 privileged publication or broadcast is one made: (a) In the proper discharge of an official duty.
14 (b) In any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding
15 authorized by law, or (4) in the initiation or course of any other proceeding authorized by law..."
16 (California Civil Code §47.)

17
18 As the Mayor of Los Banos, Mr. Jones presides over the City Council meetings and is
19 charged with maintaining order and decorum in these meetings.

20 **C. A PREFILING ORDER IS NECESSARY TO PREVENT FUTURE ABUSE, IN**
21 **ADDITION TO A SECURITY REQUIREMENT**

22 Plaintiff has demonstrated by his own filings that unless a prefiling order is entered in this
23 case, he will likely continue his vexatious litigation in this and successive actions – against any
24 other public officials he *perceives* as having wronged him. In fact, Plaintiff is already in the
25 process of using the videotaped depositions of public officials, taken in this case, to put together
26 a "film" making light of their testimony. [See Exhibits "CA(5)" article entitled "Introducing
27 Badger Flats Mystery Theatre" on page 3 and "CB" to Ratliff Dec.]
28

1 Consequently, in addition to a security requirement, a prefiling order is requested as a
2 preventative measure, as authorized by Code of Civil Procedure section 391.7, which provides in
3 pertinent part:

4 “(a) In addition to any other relief provided in this title, the court
5 may, on its own motion or the motion of any party, enter a prefiling
6 order which prohibits a vexatious litigant from filing any new
7 litigation in the courts of this state in propria persona without first
8 obtaining leave of the presiding judge of the court where the
9 litigation is proposed to be filed. Disobedience of the order by a
10 vexatious litigant may be punished as contempt of court.”

11 **III. CONCLUSION**

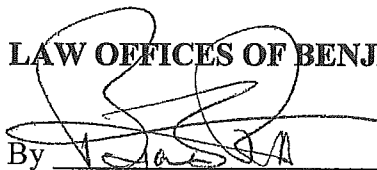
12 Plaintiff is using this lawsuit against Mayor Jones to further his personal vendetta against
13 public officials in Merced and Monterey Counties. Plaintiff has no possibility of prevailing on
14 the merits of this case, even if all of his allegations were taken as true. Plaintiff has filed
15 numerous papers in connection with this case that are unmeritorious and has taken and continues
16 to try and take unnecessary depositions and engages in frivolous discovery requests. As such,
17 Defendant requests the following be granted:

- 18 1. Enter a prefiling order against Plaintiff pursuant to Code of Civil Procedure section
19 391.7, prohibiting Plaintiff from filing any new litigation in the courts of this State in propria
20 persona without first obtaining leave of the presiding judge of the court where the litigation is
21 proposed to be filed;
- 22 2. Require Plaintiff, pursuant to Code of Civil Procedure section 391.3 to furnish security in
23 the sum of \$15,000.00 for the benefit of the moving Defendant on the grounds that there is no
24 reasonable probability of his prevailing, and because Plaintiff is a vexatious litigant; and
- 25 3. Require Plaintiff to furnish said security within ten days of the entry of the order or face
26 dismissal of the action pursuant to Code of Civil Procedure section 391.4.

27
28 ///

1 DATED: January 6, 2010

LAW OFFICES OF BENJAMIN L. RATLIFF

2
3 By 
4 Benjamin L. Ratliff
5 Attorney for Defendant
6 TOMMY JONES
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1 PROOF OF SERVICE

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

5 On the date indicated below, I served the foregoing document(s) described as:
6 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S**
7 **MOTION TO DECLARE PLAINTIFF A VEXATIOUS LITIGANT (CCP SECTION 391-**
8 **391.7); FOR ENTRY OF PREFILING ORDER AND TO POST \$15,000 SECURITY** on all
9 interested parties in this action by placing a true copy thereof enclosed in a sealed envelope
10 addressed as follows:

11 Mr. Eugene Forte
12 688 Birch Court
13 Los Banos, California 93635
14 (Via Overnight Delivery)

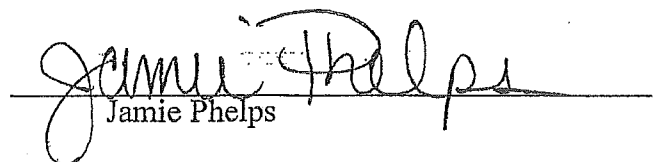
15 Thomas Holsinger, Research Attorney
16 Stanislaus County Superior Court
17 801 Tenth Street, Fourth Floor
18 Modesto, California 95354
19 (Via Hand Delivery)

20 Stanislaus County Superior Court
21 Ceres Branch
22 2744 Second Street
23 Ceres, California 95307
24 (Via Hand Delivery)

- 25 [] (BY MAIL) I am readily familiar with the business' practice for collection and
26 processing of correspondence for mailing, and that correspondence, with postage thereon
27 fully prepaid, will be deposited with the United States Postal Service on the date noted
28 below in the ordinary course of business, at Fresno, California.
- [X] (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).
- [X] (BY OVERNIGHT COURIER) I caused the above-referenced envelope(s) to be
delivered to an overnight courier service for delivery to the addressee(s).

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

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

35 
36 Jamie Phelps