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SUPERIOR COURT OF CALIFORNIA
CENTRAL JUSTICE CENTER

SEP 09 2008

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

SEP 09 2008

ALAN CARLSON, Clerk of the Court
[Signature]
BY D DUNNING

Attorney for Plaintiff BRIAN FARMER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

BRIAN FARMER

Plaintiff,

vs.

ERIC J. PARK, an individual;
and Does 1 to 10 inclusive,

Defendants.

Case No.: 30-2008-00103341

**AMENDED NOTICE OF MOTION AND
MOTION TO COMPEL RESPONSES TO
REQUEST FOR INSPECTION AND
PRODUCTION OF DOCUMENTS
[SET ONE]; REQUEST FOR SANCTIONS**

DATE: NOVEMBER 19, 2008

TIME: 10:00 AM

JUDGE: SHEILA FELL

DEPT: C-22

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: PLEASE TAKE

NOTICE that on November 19, 2008, at approximately 10:00 A.M., or as soon thereafter as may be heard in the above-entitled Court, Superior Court of California, County of Orange, Central Justice Center, 700 Civic Center Drive West, Santa Ana, California 92701, Department C-22, the Honorable Sheila Fell presiding, James F. Ryan, counsel for Plaintiff, Brian Farmer, will appear to seek an Order Compelling defendant ERIC J. PARK to provide Responses to Plaintiff's Request for Inspection and Production of Documents (Set One), and Request for Sanctions as follows:

1 1. On July 14, 2008, Plaintiff's counsel served on defendant: "Plaintiff's Request
2 for Inspection and Production of Documents" (Set One) consisting of thirty six (36) categories;
3 written responses and the documents were due to be received by August 18, 2008. The
4 categories of documents requested consisted generally of:

5
6 a.) All WRITINGS that evidence, refer, relate, or pertain to any and all possible
7 investment or sales negotiations conducted by YOU, or anyone acting at your direction, of
8 AUTOPEDIA with the Tribune Company, or any other entity, by authority you allege was
9 granted to you by the "AGREEMENT", to negotiate the terms of any investment or buyout on
10 behalf of you and/or the other shareholders, as described in YOUR response "General Denial", to
11 Plaintiff's Form Interrogatory No. 15.1, page 6.

12
13 b.) All WRITINGS that evidence, refer, relate, or pertain to any negotiations between
14 Plaintiff FARMER, YOU, and/or Rick Coulthurst, stating that *at all times* it was clear that the
15 obligation to pay Plaintiff FARMER, and his obligation to transfer the shares was *contingent*
16 upon AUTOPEDIA, INC. receiving an offer to sell shares, as described in YOUR response
17 "General Denial", to Plaintiff's Form Interrogatory No. 15.1, page 6.

18
19 c.) All WRITINGS that evidence, refer, relate, or pertain to any and all documents
20 including but not limited to the "AGREEMENT" reflecting all terms of the *final expression* of
21 YOUR agreement with Plaintiff FARMER, that was entered into by Plaintiff FARMER and
22 yourself ERIC J. PARK, on or about October 27, 1998, for the express stated purpose of YOU,
23 ERIC J. PARK, purchasing a majority of BRIAN FARMER'S interest and ownership in
24 AUTOPEDIA, INC., as described in YOUR response "First Affirmative Defense", to Plaintiff's
25 Form Interrogatory No. 15.1, page 7; and

26
27 d.) All WRITINGS that evidence, refer, relate, or pertain to any and all sales or
28

1 financial data reflecting the actual cash value of all shares of AUTOPEDIA, INC. at the time the
2 written agreement entitled "Stock Purchase Agreement" (hereinafter "the Agreement") was
3 entered into by Plaintiff FARMER and yourself ERIC J. PARK, on or about October 27, 1998,
4 for the express stated purpose of you, ERIC J. PARK, purchasing a majority of BRIAN
5 FARMER'S interest and ownership in AUTOPEDIA, INC.. This "Stock Purchase Agreement"
6 (hereinafter "the Agreement") attached as Exhibit "A" to the Complaint on file in this action, etc.

7
8 2. Having received no responses whatsoever to the aforementioned Plaintiff's
9 Request for Inspection and Production of Documents (Set One) on the due date of August 18,
10 2008, nor ever having received any prior verbal, telephonic or written requests for an extension
11 of time to respond to these requests; on **August 19, 2008**; Plaintiff's counsel made a telephone
12 call to defense counsel Frederick W. Lee's office and left a message with defense counsel's
13 office secretary named "Young", requesting that Mr. Lee return his call regarding the fact that no
14 responses to Plaintiff's Request for Inspection and Production of Documents had been received.
15 Plaintiff's counsel waited two (2) days for a return call. Having received none; he sent a letter
16 via facsimile and U.S. Mail to Mr. Lee, reiterating that no responses had been received, no "meet
17 and confer" phone calls had been received, and that pursuant to **C.C.P. Section § 2023.010**, Mr.
18 Lee was in violation of said code section by:

- 19
20
21
22 **(d) failing to respond or submit to an authorized method of discovery; and**
23 **(i) failing to confer by telephone with an opposing attorney in a reasonable**
and good faith attempt to resolve any dispute concerning discovery.

24 Plaintiff's counsel letter went on to inform Mr. Lee that Mr. Ryan had calendared a
25 Motion to Compel Responses to the Request for Inspection and Production of Documents, and
26 request for sanctions for October 15, 2008, and that: "Absent receipt of full and complete
27 responses to our discovery requests on or before August 26, 2008, the Motion will go forward."
28

1 3. Finally on the afternoon of August 26, 2008, a "legal assistant" named "Dave
2 Homsey" in the employ of defense counsel Mr. Lee, called Plaintiff's counsel's office and left a
3 voice message to the effect that he, "Mr. Homsey" and Mr. Lee, had never received these
4 "Request for Inspection and Production of Documents". Mr. Homsey E-Mailed a letter
5 repeating this assertion later that day. Mr. Ryan called Mr. Homsey and informed him, in no
6 uncertain terms, that these Requests were properly and timely served by mail on July 14, 2008;

7
8 **Code of Civil Procedure Section § 1013 (a) states:**

9
10 **"In case of service by mail, the notice or other paper shall be deposited**
11 **in a post office, mailbox, or other like facility regularly maintained by**
12 **the U.S. Postal Service, in a sealed envelope, with postage paid, addressed**
13 **to the person on whom it is to be served, at the office address as last given**
14 **by that person on any document filed in the cause and served on the party**
15 **making the service by mail. The service is complete at the time of the deposit."**

16
17 **Evidence Code Section § 641: Letter Received in Ordinary Course of Mail: states:**

18 **"A letter correctly addressed and properly mailed is**
19 **presumed to have been received in the ordinary course of mail."**

20 that the written responses and the documents were due to be received on August 18, 2008; that
21 all objections had been waived by their failure to respond to the Requests in a timely manner,
22 that on August 19, 2008; Plaintiff's counsel made a telephone call to defense counsel Frederick
23 W. Lee's office requesting that Mr. Lee return his call regarding the fact that no responses to
24 Plaintiff's "Request for Inspection and Production of Documents" had been received; that
25 Plaintiff's counsel had received neither a return call nor a response to his letter of August 21,
26 2008; and that Mr. Ryan found their statement of never having received the Requests to be
27 patently false; especially in light of Mr. Ryan's previous experience with Mr. Homsey's previous
28 false statements regarding when the defendant's responses to Plaintiff's Form Interrogatories
 would be provided (due on June 4, 2008, Homsey agreeing to provide by June 6, 2008;

1 Responses not mailed until June 20, 2008). Mr. Ryan informed Mr. Homsey that absent receipt
2 of the written responses and the requested documents, the Motion to Compel Responses would
3 go forward on October 15, 2008.

4
5 4. Without giving any credence to Mr. Homsey's statements, Mr. Ryan, (at Mr.
6 Homsey's request), E-mailed the Requests to Dave@Daveslaw.com , and faxed a copy of the
7 Proof of Service to Mr. Lee's office. Mr. Homsey called the next day and left a voice message
8 with Mr. Ryan's office, stating that the Requests were fine and that both the written responses
9 would be E-mailed on Friday August 29, 2008, and that the documents would be provided on
10 that day as well. Neither the written responses, nor the documents have been received by August
11 30, 2008.

12
13 **Code of Civil Procedure Section § 2023.010;** provides in pertinent part:

14 "Misuses of the discovery process include, but are not limited to, the following:

15 (d) failing to respond or submit to an authorized method of discovery;

16 (i) Failing to confer in person, by telephone, or by letter with an opposing party or
17 attorney in a reasonable and good faith attempt to resolve informally any dispute
concerning discovery."

18 Plaintiff moves for an order compelling defendant's response to the demand pursuant to

19 **Code of Civil Procedure Section § 2031.300;** which provides in pertinent part:

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

21 (a) The party to whom the inspection demand is directed waives any objection to the
22 demand...

23 (b) The party making the demand may move for an order compelling response to the
inspection demand.

24 (c) The Court shall impose a monetary sanction under Chapter 7 (Commencing with
25 Section 2023.010) against any party, person, or attorney who unsuccessfully makes or
opposes a motion to compel a response to an inspection demand.

26 5. Plaintiff further requests that this Court, pursuant to **Code of Civil Procedure**
27 **Sections §§ 2023.020, .030, .040,** et seq., due to defendant and his defense counsel, Frederick W.
28

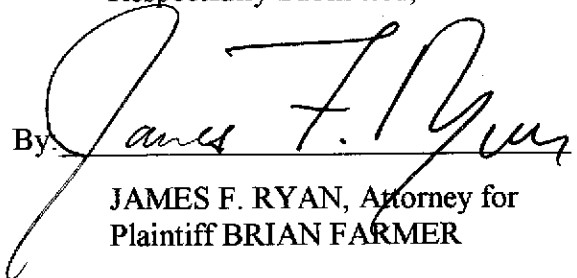
1 Lee, Esq., deliberating engaging in these misuses of the discovery process and failing to respond
2 or submit to an authorized method of discovery; and by failing to confer in person, by telephone,
3 or by letter with an opposing party or attorney **in a reasonable and good faith attempt** to
4 resolve informally any dispute concerning discovery, impose a monetary sanction against
5 defendant and his attorney, Mr. Lee, ordering them to pay the attorney's fees (approximately
6 \$1,700.00) and motion filing fee (\$40.00) incurred by Plaintiff as a result of their conduct.
7

8 This Motion is based on this Notice, the declaration of James F. Ryan, and the Exhibits
9 submitted herewith, the Memorandum of Points and Authorities, submitted herewith, such oral
10 and documentary evidence presented at the hearing, and all papers on file with this Court.
11

12 **PLEASE ALSO TAKE NOTICE**, that pursuant to California Rule of Court 3.1308; a
13 tentative ruling will be posted on the Orange County Superior Court website: (www.occourts.org)
14 Tuesday at 12:00 P.M. (or soon thereafter) on the day before the scheduled hearing.
15

16
17 Respectfully Submitted,

18
19 DATED: 9-05- 2008

20 By 
21 JAMES F. RYAN, Attorney for
22 Plaintiff BRIAN FARMER
23
24
25
26
27
28

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): JAMES F. RYAN SBN 169980 ATTORNEY AT LAW 8667 VIA MALLORCA, SUITE 72 LA JOLLA, CALIFORNIA 92037 TELEPHONE NO.: (858) 455-6898 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): BRIAN FARMER	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 CIVIC CENTER DRIVE WEST MAILING ADDRESS: P.O. BOX 838 CITY AND ZIP CODE: SANTA ANA, CALIFORNIA 92702-0838 BRANCH NAME: CENTRAL JUSTICE CENTER	
PETITIONER/PLAINTIFF: BRIAN FARMER RESPONDENT/DEFENDANT: ERIC J. PARK	
PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL	CASE NUMBER: <p style="text-align: center; font-size: 1.2em;">30-2008-00103341</p>

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. I am over 18 years of age and **not a party to this action**. I am a resident of or employed in the county where the mailing took place.

2. My residence or business address is:
 8667 VIA MALLORCA, SUITE 72
 LA JOLLA, CALIFORNIA 92037

3. On (date): 9-06-2008 I mailed from (city and state): **SAN DIEGO, CALIFORNIA**
 the following documents (specify):

AMENDED NOTICE OF MOTION AND MOTION TO COMPEL RESPONSES TO REQUEST FOR INSPECTION AND PRODUCTION OF DOCUMENTS [SET ONE]; REQUEST FOR SANCTIONS.

The documents are listed in the Attachment to Proof of Service by First-Class Mail—Civil (Documents Served) (form POS-030(D)).

4. I served the documents by enclosing them in an envelope and (check one):

- a. **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.
- b. **placing** the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

5. The envelope was addressed and mailed as follows:

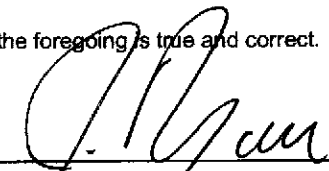
- a. **Name** of person served: **FREDERICK W. LEE, ESQ.**
- b. **Address** of person served:
5821 BEACH BLVD.
BUENA PARK, CALIFORNIA
90621

The name and address of each person to whom I mailed the documents is listed in the Attachment to Proof of Service by First-Class Mail—Civil (Persons Served) (POS-030(P)).

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

Date: **SEPTEMBER 6, 2008**

JAMES F. RYAN
 (TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)


 (SIGNATURE OF PERSON COMPLETING THIS FORM)