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SUPERIOR COURT OF CALIFORNIA  
CENTRAL JUSTICE CENTER

NOV 13 2008

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

NOV 13 2008

ALAN CARLSON, Clerk of the Court  
*Eleanor Sutter*  
BY E SUTTER

1 James F. Ryan, SBN 169980  
2 Attorney at Law  
3 8667 Via Mallorca, Suite 72  
4 La Jolla, CA 92037  
5 (858) 455-6898

6 Attorney for Plaintiff BRIAN FARMER

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

9 BRIAN FARMER

10 Plaintiff,

11 vs.

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

14 Defendants.

Case No.: 30-2008-00103341

DECLARATION OF JAMES F. RYAN

RE: REPLY TO DEFENDANT'S  
OPPOSITION TO 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

15 I, JAMES F. RYAN, declare:

16 I am an attorney at law, admitted to practice before all the Courts of the State of  
17 California. I am the attorney of record for the Plaintiff, BRIAN FARMER, in the above-entitled  
18 action, and if called upon, would testify as to the truth of the matters asserted herein as follows:

19 1. Plaintiff's "Request for Inspection and Production of Documents" have been  
20 served on Defendant three (3) times now: The original Request properly served by U.S. Mail  
21 on July 14, 2008; served again by E-Mail at defense counsel's request on August 26, 2008, and  
22 finally, a set was served yet again with this Motion on September 2, 2008.

1           2.       To date, I have not received any appropriate responses, nor any of the requested  
2 documents whatsoever to the aforementioned Plaintiff's Request for Inspection and Production  
3 of Documents (Set One); nor ever having received any prior verbal, telephonic or written  
4 requests for an extension of time to respond to these requests. Defense counsel, **Mr. Lee has**  
5 **never telephoned my office nor returned any of my calls to his office** to discuss this dispute,  
6 despite my repeated requests that he do so; thus deliberately engaging in misuses of the  
7 discovery process, pursuant to C.C.P. Section § 2023.010:  
8

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

12           I have only spoken with a legal assistant named "Dave Homsey" regarding this dispute.  
13

14           3.       I maintain that defense counsel's and defendant's refusal to comply with these  
15 authorized discovery requests and any of their implausible excuses to the contrary, are deliberate  
16 and deceitful and for the sole purpose of delaying the progress of this litigation. I maintain that  
17 the August 26, 2008, letter from a "legal assistant" named "Dave Homsey" in the employ of  
18 defense counsel Mr. Lee, (Attached as **Exhibit "C"** to my original Declaration supporting this  
19 Motion), asserting that they never received the Requests **to be patently false**; especially in light  
20 of my previous experience with Mr. Homsey's **previous false statements** regarding when the  
21 defendant's responses to Plaintiff's Form Interrogatories would be provided (due on June 4,  
22 2008; Homsey agreeing to provide by June 6, 2008; Responses not mailed until June 20, 2008,  
23 (Attached as **Exhibit "D"** to my original Declaration supporting this Motion is a true and correct  
24 copy of Plaintiff's Page One (1) of Form Interrogatories and Proof of Service dated April 30,  
25 2008 and defendant's Page One (1) Responses to Form Interrogatories and Proof of Service  
26  
27  
28

///

1 dated June 20, 2008). I informed Mr. Homsey that absent receipt of the written responses  
2 without objections, and the requested documents, the Motion to Compel would go forward.

3  
4 4. After August 26, 2008, when I, (at Mr. Homsey's request), E-mailed the Requests  
5 to Dave@Daveslaw.com, and faxed a copy of the Proof of Service to Mr. Lee's office; Mr.  
6 Homsey called my office on the afternoon of August 28, 2008 @ 12:42 PM and left a voice  
7 message with my office, stating that he saw no problem with promptly complying with the  
8 Requests and that they were fine and that both the written responses would be E-mailed on  
9 Friday August 29, 2008, and that the documents would be provided shortly thereafter.

10  
11 5. I, having received neither the promised written responses nor any documents by  
12 August 29, 2008; prepared this Motion, and served it on defense counsel on **September 2, 2008**,  
13 and had it filed with the Court on **September 4, 2008**.

14  
15 6. On September 5, 2008, **after the Motion had been served and filed**, I received a  
16 letter from **Mr. Lee**, again confirming receipt of the Request for Inspection and Production of  
17 Documents, and again repeating the false assertion of Mr. Homsey that the Requests were never  
18 received; going on to state: (Attached as **Exhibit "E"** is a true and correct copy of this letter).

19 **"We will endeavor to complete a response within the next few days,**  
20 **and thereafter provide all available records as expeditiously as possible"**

21 **This Motion has been filed and served for over two (2) months.** Neither any appropriate  
22 responses, nor any of the requested documents have been received by this date.

23  
24 7. I further request that this Court, in addition to ordering defense counsel to  
25 promptly produce both the required appropriate written responses and the requested documents,  
26 without objection, that the Court further order, pursuant to **Code of Civil Procedure**  
27 **Sections §§ 2023.020, .030, .040**, et seq., due to defendant and his defense counsel,  
28

1 Frederick W. Lee, Esq., deliberating engaging in these misuses of the discovery process and  
 2 failing to respond or submit to an authorized method of discovery; and by failing to confer in  
 3 person, by telephone, or by letter with an opposing party or attorney in a reasonable and good  
 4 **faith attempt** to resolve informally any dispute concerning discovery; impose a monetary  
 5 sanction against defendant and his attorney, Mr. Lee, ordering them to pay the attorney's fees  
 6 (approximately \$2,000.00) and motion filing fee (\$40.00) incurred by Plaintiff by their conduct.

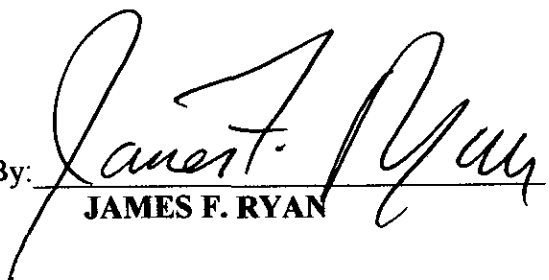
8 **8.** Pursuant to Code of Civil Procedure Sections §§ 2023.020, .030, .040, et seq.,  
 9 my time spent in "meet and confer" efforts with defense counsel's office, and his employees,  
 10 preparation of this Motion to Compel, dealing with any opposition and the prospective court  
 11 appearance, are as follows: **LEGAL SERVICES** **HOURS**

T/calls w/defense counsel, Court clerk, Plaintiff, etc.	1.0
Legal Research	1.0
Draft "Meet and Confer" letter to defense counsel	.5
Review case file documents, prepare Exhibits.	1.0
Draft Notice, Motion, Declarations, Memorandum of P & A	4.0
Review Opposition & Draft Reply and JFR Declaration	1.5
<u>Attend Court hearing on November 19, 2008.</u>	<u>1.0</u>
<b>ATTORNEY HOURS</b>	<b>10.0</b>
<b>HOURLY RATE</b>	<b>\$200.00</b>
<b><u>MOTION FILING FEE</u></b>	<b><u>\$40.00</u></b>
<b>TOTAL FEES/EXPENSES REQUESTED</b>	<b>\$2,040.00</b>

20 I respectfully request that the Court order them to pay the full amount of my attorney's  
 21 fees (approximately \$2,000.00) and motion filing fee (\$40.00) incurred by Plaintiff.

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

26 DATED: 11-10 - 2008

27 By:   
**JAMES F. RYAN**

EXHIBIT

E

EXHIBIT "E"

**FREDERICK W. LEE**

**ATTORNEY AT LAW**

*5821 Beach Boulevard  
Buena Park, California 90621  
Phone: (714) 739-1234  
Fax: (714) 739-5870*

*Frederick W. Lee  
Steven Johnson*

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September 2, 2008

**SENT VIA U.S. MAIL**

James F. Ryan  
Attorney at Law  
8667 Via Mallorca, Suite 72  
La Jolla, California 92037

**Re: Farmer vs. Park  
Orange County Superior Court, case no. 30-2008 00103341**

Dear Mr. Ryan:

This will confirm our receipt of your Request for Inspection and Production of Documents in this matter by email on August 26, 2008. As you are aware, we recently relocated our offices and have been in the process of reorganizing for the past few weeks. Although we have now been able to make a thorough search for the original request, it appears that it was never received. Although we are unable to contest the validity of your proof of service, it does appear that the request is calculated to be highly burdensome in several respects. As you are aware the request encompasses all of the possible records maintained by the company for a period of over ten years. We are also advised by Mr. Park that the custodian of the records in Huntington Beach had recently died, and that it was still being ascertained what records remained after the authorities had investigated the scene. Whether or not Mr. Farmer was aware of the situation before you initiated the request is unknown to us. Lastly, the attorney in charge of the corporate records, Dennis Ickes, is located outside of California. For the above reasons, it was not reasonable for us to have both completed a response without objections, and provide you with copies of all of the subject documents by your deadline of last Friday, August 29, 2008. We will endeavor to complete a response within the next few days, and thereafter provide all available records as expeditiously as possible.

Thank you for your attention.

Very truly yours,

  
FREDERICK W. LEE  
Attorney at Law

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

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

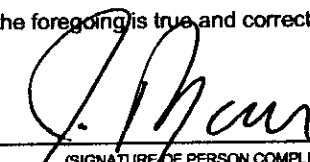
1. I am over 18 years of age and not a party to this action. I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is:  
**8667 VIA MALLORCA, SUITE 72**  
**LA JOLLA, CALIFORNIA 92037**
3. On (date): **November 10, 2008** I mailed from (city and state): **SAN DIEGO, CALIFORNIA**  
 the following documents (specify):  
**DECLARATION OF JAMES F. RYAN RE: REPLY TO DEFENDANT'S OPPOSITION TO 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: **NOVEMBER 10, 2008**

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

  
 (SIGNATURE OF PERSON COMPLETING THIS FORM)