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4 Attorneys for Defendant
5 ERIC J. PARK

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

NOV 05 2008

ALAN CARLSON, Clerk of the Court

R. Lucey
BY R. LUCEY

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

10
11 BRIAN FARMER,
12 Plaintiff,
13 vs.
14 ERIC J. PARK, an individual,
and DOES 1 through 10 inclusive,
15 Defendants.
16

CASE NO: 30-2008 00103341

Assigned for all purposes to
Hon. Sheila Fell, Judge
Dept: C22

**OPPOSITION TO MOTION TO
COMPEL RESPONSES TO REQUEST
FOR INSPECTION AND
PRODUCTION OF DOCUMENTS**
[Code Civ. Proc. § 2031.010 et seq.]

Date: November 19, 2008
Time: 10:00 a.m.
Dept: C22

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19 Defendant ERIC J. PARK hereby opposes the Motion to Compel Responses to Request
20 for Inspection and Production of Documents filed by Plaintiff BRIAN FARMER in this matter,
21 as follows:

22 **Introduction**

23 This case involves Requests for Production of Documents purportedly served by mail on
24 July 14, 2008. For whatever reason, the Request was never received by counsel for Defendant.
25 In addition, it had first been discovered on the weekend of July 4, 2008, that the custodian of the
26 requested records, a Mr. Thomas Mamelson, had died with the records in his home office, and
27 his body had been decomposing for some time prior to discovery. In all likelihood Plaintiff
28 knew of these events at the time the Requests were supposedly mailed.

1 Counsel for Defendant was not made aware that Requests for Production of Documents
2 had been purportedly mailed in July, until counsel for Plaintiff sent a fax on August 21, 2008.
3 On August 26, 2008, counsel for Defendant requested and first received a copy of the Requests
4 for Production of Documents by email. Defendant ERIC J. PARK was also unaware of the
5 Requests until that date. In the following week, counsel for Defendant was also first made aware
6 that the custodian of the records had previously died.

7 The records had been removed by Mr. Park from the scene of the death by mid-July.
8 However, due to their proximity to the decomposing body, Mr. Park had been advised by the
9 Orange County Coroners office that the papers and records potentially constituted a bio-hazard
10 and would need to be handled appropriately. Although the records had been organized and
11 stored in file cabinets by the custodian, the exigency of the death scene and handling required
12 that the documents be placed in and removed in plastic bags. Masks and gloves were required
13 for this process.

14 Mr. Park retained the records in the plastic bags in his garage until the first of September,
15 when the request of Plaintiff first became known. Due to the potential bio-hazard concern, the
16 records could not be turned over to defense counsel. For the past several weeks, Mr. Park has
17 exposed the papers to air and sanitizing spray according to the Coroners directions.

18 Both Plaintiff and his counsel are aware the production request encompasses all of the
19 possible business records maintained by the company for a period of over fifteen years. The
20 remaining records have now been partially sorted by Mr. Park, and comprise 17 bankers boxes
21 of materials. Some of the records may have been seized by the police officials investigating the
22 death scene. Up to 7 boxes comprise records that would really be pertinent, that is business
23 records, bank statements, billings, receipts, and payments to the business.

24 Defense counsel has finalized the response to the production request (Exhibit "A"), and
25 is prepared make all the remaining records available to Plaintiff and his counsel.

26 For all of the foregoing reasons, it is submitted that this is not an instance of any abuse
27 of the discovery process by Defendant or defense counsel. Sanctions would thus not be
28 appropriate.

**WHETHER OR NOT THE REQUESTS WERE ACTUALLY MAILED,
SUCH WERE NOT ACTUALLY RECEIVED BY DEFENSE COUNSEL.**

It is undisputed that counsel for Plaintiff has provided a proof of service by mail. Although a letter properly mailed is presumably received, the mail does not represent an infallible method of delivery in all instances. Letters become lost. Mistakes can be made.

To start with, the timing of the Requests are somewhat suspicious in the first place. Second, the Request for Production does not have any printed date anywhere on the document. When inquiry was first made, counsel for Plaintiff did not have any print copy of the Request for Production; rather he furnished only an electronic copy by email. The electronic copy indicated that no print copy had been made since April 25, 2008. If such is true, then counsel could have been mistaken as to whether or not he actually mailed the item.

In any event, counsel for Plaintiff should have afforded a reasonable time to comply with the request before he made the motion to compel. Here, counsel for Plaintiff asserts:

Mr. Homsey called the next day and left a voice message with Mr. Ryan's office, stating that the Requests were fine and that both written responses would be E-mailed on Friday August 29, 2008, and that the documents would be provided on that day as well.

The assertion lacks proof and credibility. There is no proof that counsel for Defendant promised to provide all the documents within three (3) days of first finding out about the Requests. Second, the exigent circumstances in relation to the death of the custodian made it completely unreasonable for defense counsel to have both completed a response without objections, and provide Plaintiff with copies of all of the subject documents by his deadline of Friday, August 29, 2008.

Rather, it appears that counsel for Plaintiff had no genuine interest in amicably resolving the dispute, and simply filed the present motion without concern as to whether or not his Requests had been received.

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II

THERE HAS BEEN NO ABUSE OF THE DISCOVERY PROCESS IN THIS INSTANCE.

Misuse of discovery process may be cause for sanctions. To the extent authorized by a section governing a particular discovery method or other provisions of the Civil Discovery Act, and after notice to affected parties, persons, or attorneys and an opportunity for hearing, trial courts may impose sanctions against anyone engaging in conduct that is a misuse of the discovery process. [Code Civ. Proc., § 2023.030]

Misuses of discovery under the act include, but are not limited to the following: [Code Civ. Proc., § 2023.010]

- (1) persisting, over objection and without substantial justification, in attempts to obtain information or materials that are outside the scope of permissible discovery;
- (2) using a discovery method in a way that does not comply with specified procedures;
- (3) employing a discovery method in a way or to an extent that causes unwarranted annoyance, embarrassment, oppression, or undue burden and expense;
- (4) failing to respond or submit to an authorized discovery method;
- (5) making, without substantial justification, an objection to discovery that is unmeritorious;
- (6) making an evasive response to discovery;
- (7) disobeying a court order to provide discovery;
- (8) making or opposing, unsuccessfully and without substantial justification, a motion to compel or limit discovery; and
- (9) failing to confer in person, by telephone, or by letter with an opposing party or attorney in a reasonable, good-faith effort to informally resolve any discovery dispute, if the section governing a particular discovery motion requires the filing of a declaration stating facts showing that such an attempt has been made.

Plaintiff has not demonstrated any evasiveness or misuse of discovery processes by Defendant or his counsel here.

II

MONETARY SANCTIONS ARE NOT WARRANTED AGAINST DEFENDANT OR HIS COUNSEL.

Courts may impose monetary sanctions ordering one engaging in misuse, an attorney advising such conduct, or both, to pay reasonable expenses, including attorney's fees, incurred by anyone as a result of the conduct. (Code Civ. Proc., § 2023.030, subd. (a).)

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1 The purpose of discovery sanctions is not to provide a weapon for punishment, forfeiture,
2 or avoidance of trial on the merits. Rather, the sanctions are designed to prevent abuses in the
3 discovery process and to correct the problem presented in a specific case. The penalty imposed
4 should not exceed that which is required to protect the interest of the party entitled to, but
5 denied, discovery. The sanction should not operate to put the prevailing party in a better
6 position than that party would have been in if he or she had obtained the discovery sought and
7 it had been completely favorable to the party's case. (*McGinty v. Superior Court* (1994) 26
8 Cal.App.4th 204, 210-216, 31 Cal.Rptr.2d 292.)

9 Discovery sanctions should be appropriate to the dereliction and should not exceed that
10 which is required to protect the interests of the party entitled to but denied discovery. The court
11 may not impose sanctions which are designated not to accomplish the objects of discovery but
12 to impose punishment. (*Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545, 51 Cal.Rptr.
13 2d 311.)

14 **Conclusion**

15 For the foregoing reasons, it is respectfully requested that the motion be denied.

16 Dated: November 5, 2008

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19 FREDERICK W. LEE,
20 Attorney for Defendant
21 ERIC J. PARK
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1 5. I was unaware of the need for any records in this litigation until late August, when
2 I made my counsel aware of the death of Mr. Mamelson. I had retained the records in the plastic
3 bags in my garage until the first of September, when the request of Plaintiff first became known.
4 Due to the potential bio-hazard concern, the records could not be turned over to my counsel. For
5 the past several weeks, I have exposed the papers to air and sanitizing spray according to the
6 Coroners directions. This has been a very difficult and time consuming process requiring masks
7 and gloves.

8 6. The production request encompasses all of the possible business records
9 maintained by my company for a period of over fifteen years. The remaining records have now
10 been partially sorted, and comprise 17 bankers boxes of materials. Some of the records may
11 have been seized by the police officials investigating the death scene. Up to 7 boxes comprise
12 records that would really be pertinent, that is business records, bank statements, billings,
13 receipts, and payments to the business. Except for the complications of the death scene, I have
14 always been willing to make the records available.

15 I declare under the penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct. Executed this 5th day of November 2008 at Buena Park, California.

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Eric J. Park

EXHIBIT
A

EXHIBIT A

1 Frederick W. Lee Bar No: 201516
Eric M. Sasahara Bar No: 188883
2 5821 Beach Boulevard
Buena Park, California 90621
3 Phone: (714) 739-1234
Fax: (714) 739-5870

4 Attorneys for Defendant
5 ERIC J. PARK

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
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11 BRIAN FARMER,
12 Plaintiff,
13 vs.
14 ERIC J. PARK, an individual,
and DOES 1 through 10 inclusive,
15 Defendants.
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CASE NO: 30-2008 00103341

Assigned for all purposes to
Hon. Sheila Fell, Judge
Dept: C22

**RESPONSES TO REQUEST FOR
INSPECTION AND PRODUCTION OF
DOCUMENTS PROPOUNDED BY
BRIAN FARMER TO DEFENDANT
ERIC J. PARK**
[Code Civ. Proc. § 2031.010 et seq.]

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19 **PROPOUNDING PARTY:** Plaintiff BRIAN FARMER
20 **RESPONDING PARTY:** Defendant ERIC J. PARK
21 **SET NUMBER:** One (1) [Request for Production]

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- 1 **RESPONSE TO REQUEST NO. 1:**
2 Responding party will produce the requested documents.
- 3 **RESPONSE TO REQUEST NO. 2:**
4 Responding party will produce the requested documents.
- 5 **RESPONSE TO REQUEST NO. 3:**
6 Responding party will produce the requested documents.
- 7 **RESPONSE TO REQUEST NO. 4:**
8 Responding party will produce the requested documents.
- 9 **RESPONSE TO REQUEST NO. 5:**
10 Responding party will produce the requested documents.
- 11 **RESPONSE TO REQUEST NO. 6:**
12 Responding party will produce the requested documents.
- 13 **RESPONSE TO REQUEST NO. 7:**
14 Responding party will produce the requested documents.
- 15 **RESPONSE TO REQUEST NO. 8:**
16 Responding party will produce the requested documents.
- 17 **RESPONSE TO REQUEST NO. 9:**
18 Responding party will produce the requested documents.
- 19 **RESPONSE TO REQUEST NO. 10:**
20 Responding party will produce the requested documents.
- 21 **RESPONSE TO REQUEST NO. 11:**
22 Responding party will produce the requested documents.
- 23 **RESPONSE TO REQUEST NO. 12:**
24 Responding party will produce the requested documents.
- 25 **RESPONSE TO REQUEST NO. 13:**
26 Responding party will produce the requested documents.
- 27 **RESPONSE TO REQUEST NO. 14:**
28 Responding party will produce the requested documents.

- 1 **RESPONSE TO REQUEST NO. 15:**
2 Responding party will produce the requested documents.
- 3 **RESPONSE TO REQUEST NO. 16:**
4 Responding party will produce the requested documents.
- 5 **RESPONSE TO REQUEST NO. 17:**
6 Responding party will produce the requested documents.
- 7 **RESPONSE TO REQUEST NO. 18:**
8 Responding party will produce the requested documents.
- 9 **RESPONSE TO REQUEST NO. 19:**
10 Responding party will produce the requested documents.
- 11 **RESPONSE TO REQUEST NO. 20:**
12 Responding party will produce the requested documents.
- 13 **RESPONSE TO REQUEST NO. 21:**
14 Responding party will produce the requested documents.
- 15 **RESPONSE TO REQUEST NO. 22:**
16 Responding party will produce the requested documents.
- 17 **RESPONSE TO REQUEST NO. 23:**
18 Responding party will produce the requested documents.
- 19 **RESPONSE TO REQUEST NO. 24:**
20 Responding party will produce the requested documents.
- 21 **RESPONSE TO REQUEST NO. 25:**
22 Responding party will produce the requested documents.
- 23 **RESPONSE TO REQUEST NO. 26:**
24 Responding party will produce the requested documents.
- 25 **RESPONSE TO REQUEST NO. 27:**
26 Responding party will produce the requested documents.
- 27 **RESPONSE TO REQUEST NO. 28:**
28 Responding party will produce the requested documents.

1 **RESPONSE TO REQUEST NO. 29:**

2 Responding party will produce the requested documents.

3 **RESPONSE TO REQUEST NO. 30:**

4 Responding party will produce the requested documents.

5 **RESPONSE TO REQUEST NO. 31:**

6 Responding party will produce the requested documents.

7 **RESPONSE TO REQUEST NO. 32:**

8 Responding party will produce the requested documents.

9 **RESPONSE TO REQUEST NO. 33:**

10 Responding party is partially unable to comply with the particular demand for inspection, even
11 though a diligent search and a reasonable inquiry has been made in an effort to comply with that
12 demand. This inability to comply is because portions of the particular item or category is no
13 longer in the possession, custody, or control of the responding party. Responding party will
14 produce the requested documents to the extent such still exist.

15 **RESPONSE TO REQUEST NO. 34:**

16 Responding party is partially unable to comply with the particular demand for inspection, even
17 though a diligent search and a reasonable inquiry has been made in an effort to comply with that
18 demand. This inability to comply is because portions of the particular item or category is no
19 longer in the possession, custody, or control of the responding party. Responding party will
20 produce the requested documents to the extent such still exist.

21 **RESPONSE TO REQUEST NO. 35:**

22 Responding party will produce the requested documents.

23 **RESPONSE TO REQUEST NO. 36:**

24 Responding party will produce the requested documents.

25 Dated: November 5, 2008

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FREDERICK W. LEE,
Attorney for Defendant
ERIC J. PARK

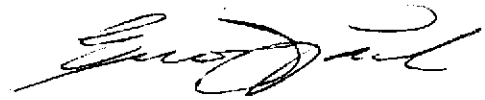
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VERIFICATION

I, Eric J. Park, am a party Defendant in the above-entitled action. I have read the foregoing RESPONSES TO REQUEST FOR INSPECTION AND PRODUCTION OF DOCUMENTS and know the contents thereof.

The matters stated in the foregoing document are true to my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 5, 2008, at Buena Park, California.



ERIC J. PARK

EXHIBIT

B

EXHIBIT B

FREDERICK W. LEE

ATTORNEY AT LAW

*5821 Beach Boulevard
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Phone: (714) 739-1234
Fax: (714) 739-5870*

*Frederick W. Lee
Steven Johnson*

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

