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9 **UNITED STATES DISTRICT COURT**  
 10 **EASTERN DISTRICT OF CALIFORNIA**

11 **DAVID F. JADWIN, D.O.,**

12 Plaintiff,

13 v.

14 **COUNTY OF KERN, et al.,**

15 Defendants.

16 Case No. 1:07-cv-00026 OWW TAG

17 **DECLARATION OF EUGENE D. LEE re:**  
 18 **INABILITY TO SECURE COOPERATION**  
 19 **OF DEFENDANTS' COUNSEL TO**  
 20 **PREPARE AND EXECUTE JOINT**  
 21 **STATEMENT re: MOTION TO COMPEL**  
 22 **DEPOSITIONS**

23 Date: August 5, 2008

24 Time: 9:30 a.m.

25 Place: U.S. District Court, Bankruptcy Courtroom  
1300 18th St., Bakersfield, CA

26 Date Action Filed: January 6, 2007

27 Discovery Cut-off: August 18, 2008

28 Date Set for Trial: December 2, 2008

1 Plaintiff submits this Declaration of Eugene D. Lee pursuant to Local Rule 37-251(d) in lieu of a  
2 joint statement re discovery disagreement.

3 I, Eugene D. Lee, declare as follows:

4 1. I am an attorney at law duly licensed to practice before the Federal and State Courts of  
5 California and admitted to practice before the United States District Court for the Eastern District of  
6 California. I am the attorney representing Plaintiff David F. Jadwin in this matter.

7 2. I am making this declaration in support of Plaintiff David F. Jadwin, D.O.'s Motion to  
8 Compel Depositions & Request for Sanctions. The facts stated herein are personally known to me and if  
9 called as a witness, I could and would competently testify to the truth of the facts set forth in this  
10 declaration.

11 3. Pursuant to Local Rule 37-251, I attempted to secure the cooperation of Defendants'  
12 counsel, Mark Wasser, to prepare and execute a joint statement re discovery disagreement. On July 25,  
13 2008, I both mailed (via certified mail with return receipt requested) and faxed Mr. Wasser a draft  
14 version of the Joint Statement (with all exhibits attached), requesting his input. I explained that the draft  
15 was a work in progress and remained subject to change. Mr. Wasser never responded. Attached hereto  
16 as Attachment A is a true and correct copy of the draft Joint Statement which I had prepared.

17  
18 I declare under penalty of perjury under the laws of the State of California and the United States  
19 that the foregoing is true and correct.

20  
21 Executed on: July 31, 2008

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24 /s/ Eugene D. Lee

25 EUGENE D. LEE  
26 Declarant

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ATTACHMENT A

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 17 Abraham, Scott Ragland, Toni Smith, and William Roy.

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25 Attorneys for Plaintiff DAVID F. JADWIN, D.O.

26 **UNITED STATES DISTRICT COURT**  
 27 **EASTERN DISTRICT OF CALIFORNIA**

28 **DAVID F. JADWIN, D.O.,**

Plaintiff,

v.

**COUNTY OF KERN, et al.,**

Defendants.

Case No. 1:07-cv-00026 OWW TAG

**JOINT STATEMENT re: DISCOVERY  
 DISAGREEMENT re: PLAINTIFF'S  
 MOTION TO COMPEL DEPOSITIONS**

Date: August 5, 2008

Time: 9:30 a.m.

Place: U.S. District Court, Bankruptcy Courtroom  
 1300 18th St., Bakersfield, CA

Date Action Filed: January 6, 2007

Discovery Cut-off: August 18, 2008

Date Set for Trial: December 2, 2008

1 This joint statement re: discovery disagreement is submitted pursuant to Local Rule 37-251(a) in  
2 advance of the August 5, 2008 hearing on Plaintiff's motion to compel depositions and for sanctions.

3 **I. DETAILS OF THE PARTIES' DISCOVERY CONFERENCES**

4 On July 3, 2008, Plaintiff served 17 deposition notices on Defendants, setting depositions of  
5 party Defendants, defense experts and key witnesses identified in Defendants' discovery responses.  
6 Defendants objected that the depositions were excessive in number. On July 10, just days before the first  
7 deposition was scheduled to take place, Defendants informed Plaintiff that they would not be producing  
8 any deponents. The parties met and conferred several times, at which times Plaintiff explained  
9 repeatedly that Defendants did not have the right to stay the depositions in the absence of a court order  
10 and that the depositions must proceed. Defendants ignored Plaintiff's statements and repeated their  
11 refusal to produce deponents. Plaintiff was left no choice but to bring a motion to compel seeking  
12 sanctions.

13 **II. A STATEMENT OF THE NATURE OF THE CASE AND FACTUAL DISPUTES**

14 Plaintiff David F. Jadwin, D.O., F.C.A.P., former Chair of Pathology at Kern Medical Center  
15 ("KMC") and senior pathologist from October 24, 2000 to October 4, 2007, filed a Complaint with this  
16 Court on January 6, 2007. Plaintiff contends that various defendants retaliated against and defamed him  
17 for reporting his concerns about patient care quality issues and regulatory violations at KMC. As a  
18 result, Plaintiff was forced to take medical and recuperative leave for disabling chronic clinical  
19 depression in early 2006. While Plaintiff was on leave, Defendants demoted him in June 2006 to a staff  
20 pathologist for "unavailability", imposed a more than \$100,000 reduction in Plaintiff's base salary, and  
21 refused to reinstate him upon his return to work on October 4, 2006. On December 7, 2006, he was  
22 placed on involuntary administrative leave and restricted to his home during working hours until May 1,  
23 2007. Around May 1, 2007, Defendant informed Plaintiff of its decision to either "buy out" the  
24 remaining term of his contract (due to expire on October 4, 2007) or simply let the contract "run out".  
25 On October 4, 2007, Defendants did not renew Plaintiff's employment contract.

26 Plaintiff's Complaint alleges whistleblower retaliation, disability discrimination, medical leave  
27 interference and retaliation, defamation and deprivation of compensation and professional fees without  
28 procedural due process.

1 Defendants contend that the dispute arose out of Plaintiff's tenure as a pathologist at Kern  
2 Medical Center. Plaintiff's relationship with other members of the medical staff deteriorated to the point  
3 of intimidation, hostility and antagonism. Defendants claim, to the extent the workplace was hostile, the  
4 hostility was caused by Plaintiff and, 10 the extent his reputation was damaged, Plaintiff inflicted the  
5 damage on himself. Plaintiff seeks unspecified damages for personal injury and loss of compensation.

6 **III. THE CONTENTION OF EACH PARTY AS TO THE CONTESTED ISSUE**

7 **A. PLAINTIFF'S CONTENTIONS**

8 Defendants have told Plaintiff that no deponent will be attending any of the 17 depositions  
9 noticed by Plaintiff. Defendants have in effect issued themselves a stay on the depositions pending  
10 hearing of their motion for protective order. That is not permissible in the absence of a court order.  
11 Plaintiff seeks to compel the taking of these depositions under Rule 30 and requests sanctions. These  
12 depositions were reasonably and properly noticed. More importantly, Plaintiff has a right to depose party  
13 Defendants, defense experts and key witnesses named by Defendants in their discovery responses.

14 Plaintiff met and conferred with Defendants as to dates of availability prior to noticing the  
15 depositions. Defendants were aware at least by May 5, 2008, that Plaintiff intended to conduct as many  
16 as 20 depositions but voiced no objections until now. Plaintiff further requests the Court's assistance in  
17 re-setting the depositions which Defendants improperly stayed.

18 1. Background

19 Defendants knew of Plaintiff's intention to depose as many as 20 more deponents as early as  
20 May 5, 2008. In the "Declaration of Mark A. Wasser in Support of Defendants' Ex Parte Application for  
21 Order Shortening Time re Motion for Permission to Serve Experts Reports After May 5, 2008", filed  
22 May 5, 2008 (Doc. 118), Mr. Wasser stated "Also, discovery is not nearly complete. Plaintiff has  
23 announced the intention to take as many as 20 more depositions." (Doc. 118, 2:18-19).

24 On June 30, 2008, Plaintiff sent an email to Defendants requesting dates of availability for  
25 depositions of 17 party and non-party deponents.

26 On July 1, Defendants emailed Plaintiff, stating:

27 I am in trial July 29 to July 31 but will be available after that. I have not yet heard from  
28 Allen but will keep following up. I have a deposition in another case on July 11 and a  
pretrial conference in that same case on July 18. So, those dates do not work for me. If

1 we postpone the July 14 hearing on the motion to transfer then I can do Levison on the  
2 14th.

3 Plaintiff immediately sent a reply email, stating: "I still need to hear dates from you on the non-  
4 expert depositions and Dr. Allen. I suggest we handle everything at once." Plaintiff then re-sent to Defendants  
5 his email of June 30.

6 On July 2, Defendants faxed a letter (which was cut-off) wherein Defendants objected for the  
7 first time to the number and nature of depositions requested as excessive. Defendants refused to provide  
8 any dates of availability for the requested depositions.

9 Plaintiff immediately sent an email to Defendants stating that "Plaintiff will proceed with  
10 noticing the depositions."

11 On July 3, Plaintiff served 17 deposition subpoenas by fax on Defendants, scheduling them for  
12 every Tuesday, Wednesday and Thursday between July 15 and August 14, 2008.

13 On July 10, just days before the first deposition was scheduled to take place, Defendants faxed a  
14 letter to Plaintiff stating: "You have made no attempt to discuss this issue [of deposition scheduling] or  
15 to meet and confer"; "I am not available the week of July 14 because I am in Court and in depositions  
16 out of town in other matters". Defendants also stated that "No one will be appearing at any of the  
17 depositions you have noticed and the Defendant will file a motion for a protective order tomorrow,  
18 Friday, July 11, 2008". That motion was not filed on July 11.

19 On July 11, 2008, Plaintiff sent Defendants two emails, one stating: "Motioning the court is fine,  
20 but that doesn't mean defendants can deny plaintiff the right to depose defendants and key witnesses  
21 prior to the hearing." The other email stated Plaintiff's request for Defendants' stipulation to shorten  
22 time on Plaintiff's motion to compel. Defendants then sent a fax to Plaintiff stating that they agreed to so  
23 stipulate.

24 On July 13, 2008, Plaintiff sent Defendants a draft stipulation and asked for their signature by no  
25 later than 2 p.m. on July 14, 2008. The deadline was necessary so as to ensure Plaintiff had sufficient  
26 time to file an ex parte application in the event Defendants decided not to sign the stipulation (which is  
27 exactly what transpired). The parties subsequently exchanged emails wherein Defendants reiterated their  
28 intention not to produce any deponents at any of the noticed depositions.

1 To date, Plaintiff has not been permitted to conduct any of the 17 noticed depositions. When  
2 Plaintiff asked to set a PMK deposition, Defendants refused citing upcoming hearing on their motion for  
3 protective order.

4 2. Argument

5 Defendants are not permitted to issue themselves a stay on depositions pending their motion for  
6 protective order. They cannot summarily refuse to attend properly-noticed depositions. In *Pioche Mines*  
7 *Consol., Inc. v. Dolman*, 1964 U.S. App. LEXIS 5312, 29-30 (9th Cir. Nev. 1964), the Ninth Circuit  
8 considered a trial court's order of default judgment against a defendant who had failed to appear at his  
9 deposition. The defendant there argued that his nonappearance was excused by his earlier filing of a  
10 motion to quash. The Ninth Circuit flatly rejected this contention and upheld the trial court's order of  
11 default judgment:

12 Counsel's view seems to be that a party need not appear if a motion under Rule 30(b),  
13 F.R.Civ.P. is on file, even though it has not been acted upon. Any such rule would be an  
14 intolerable clog upon the discovery process. Rule 30(b) places the burden on the  
15 proposed deponent to get an order, not just to make a motion. And if there is not time to  
16 have his motion heard, the least that he can be expected to do is to get an order  
17 postponing the time of the deposition until his motion can be heard. He might also  
18 appear and seek to adjourn the deposition until an order can be obtained. (Rule 30(d)).  
19 But unless he has obtained a court order that postpones or dispenses with his duty to  
20 appear, that duty remains. Otherwise, as this case shows, a proposed deponent, by  
21 merely filing motions under Rule 30(b), could evade giving his deposition indefinitely.  
22 Under the Rules, it is for the court, not the deponent or his counsel, to relieve him of the  
23 duty to appear.

24 Plaintiff has fulfilled his duties under Rule 30 to notice the depositions; however, Defendants'  
25 have refused to attend any of them. Defendants imposed this stay on depositions in anticipation of a  
26 motion for protective order which they had not yet even filed. To date, no court order has issued  
27 imposing a stay on the depositions. When Plaintiff later asked to conduct a PMK deposition, Defendants  
28 similarly refused citing the same stay. Although Plaintiff had repeatedly informed Defendants that the  
stay was improper in the absence of a court order; Defendants persisted. To date, Plaintiff's 17 noticed  
depositions have yet to occur. With discovery in this action due to close on August 18, Plaintiff has been  
materially prejudiced.

Plaintiff gave reasonable notice to Defendants of his intention to conduct the depositions months  
ago. In fact, Defendants knew of Plaintiff's intentions by at least May 5, 2008. At no time did



1 Defendants state any objections to such depositions or their number. In fact, at one point, Defendants  
2 even argued to the Court that Plaintiff's 20 depositions were strategically necessary to Defendants so  
3 that they might then "know the theories Plaintiff is pursuing before [defense expert] Dr. Olson-  
4 Buchanan can complete her report." (Doc. 118, 2:19-20).

5 Beginning June 30, Plaintiff met and conferred with Defendants as to specific dates of  
6 availability for depositions. When Defendants refused to provide any such dates and objected to the  
7 depositions, Plaintiff promptly informed Defendant that same day that "Plaintiff will proceed with  
8 noticing the depositions."

9 On July 3, Plaintiff served the deposition subpoenas on Defendants by fax.

10 Finally, on July 10, just days before the first deposition was to begin, Defendants sent Plaintiff a  
11 fax stating "No one will be appearing at any of the depositions you have noticed and the Defendant will  
12 file a motion for a protective order tomorrow, Friday, July 11, 2008". Defendants' fax is notable for the  
13 numerous distortions and false statements it contained. Salient examples are:

- 14 • The fax stated: "You have made no attempt to discuss this issue [of deposition  
15 scheduling] or to meet and confer". Not true. Plaintiff made several attempts to do so  
16 starting on June 30.
- 17 • The fax stated: "I am not available the week of July 14 because I am in Court and in  
18 depositions out of town in other matters". Not true. In their email of July 1, Defendants  
19 had stated the exact opposite, that they were available: "I have a deposition in another  
20 case on July 11 and a pretrial conference in that same case on July 18. So, those dates do  
21 not work for me. If we postpone the July 14 hearing on the motion to transfer then I can  
22 do [Plaintiff expert] Levison on the 14<sup>th</sup>." In any case, Defendants never filed a notice of  
23 unavailability.
- 24 • Defendants did not file a motion for protective order on July 11.

25 Given that discovery closes on August 18, 2008, Plaintiff had set up a dense schedule of  
26 depositions which took up every Tuesday, Wednesday and Thursday remaining in discovery. The first  
27 depositions were scheduled to occur as early as July 15. Nearly a month later, depositions have yet to  
28 occur due to Defendants' stay. Plaintiff had applied to the Court ex parte to shorten time on this motion

1 in an attempt to minimize the prejudice caused by Defendants' inappropriate actions; however, the Court  
2 denied the application and so this regularly-noticed motion is being heard just 13 days before discovery  
3 is due to close. With so little time now remaining in discovery, Plaintiff has been materially prejudiced.

4 3. Conclusion

5 Plaintiff prays that the Court issue an order compelling Defendants to submit to the depositions  
6 as noticed by Plaintiff. Regarding the depositions that had originally been scheduled for the three weeks  
7 preceding this regularly-noticed hearing, Plaintiff requests the Court's assistance in setting up alternate  
8 dates. Finally, Plaintiff prays that the Court sanction Defendants' for their inappropriate, bad faith delay  
9 tactics in the amount of \$5,880.

10 The party who prevails on a motion to compel is entitled to his or her expenses, including  
11 reasonable attorney fees, unless the losing party was substantially justified in making or opposing the  
12 motion (or other circumstances make such an award unjust). FRCP 37(a)(5); *H. K. Porter Co., Inc. v.*  
13 *Goodyear Tire & Rubber Co.* (6th Cir. 1976) 536 F2d 1115, 1124-1125.

14 Plaintiff has met and conferred several times with Defendants, making it exceedingly clear that  
15 Defendants are not permitted to issue themselves a stay on the depositions in the absence of a court  
16 order. Despite this, Defendants has insisted on refusing to produce any deponents. As recently as July  
17 25, Defendants refused to permit a PMK deposition to be scheduled, pending hearing on their motion for  
18 protective order. Plaintiff requests this court compel Defendant to produce the deponents without delay.

19 Defendants' conduct is undeniably undertaken in bad faith. They were repeatedly made aware  
20 that their refusal to produce any deponents was improper, yet they persisted in a ploy to prejudice  
21 Plaintiff and force a continuance of this action. Pursuant to Rule 37, plaintiff therefore seeks attorney  
22 fees in the amount of \$5,880 in consideration of the time which Plaintiff's counsel has spent meeting  
23 and conferring, preparing this motion and anticipates spending attending the hearing on this motion.  
24 Plaintiff also requests whatever other sanctions this court deems proper and just.

25 **B. DEFENDANTS' CONTENTIONS**

26 Plaintiff has noticed 17 additional depositions on top of the 16 he has already taken. He has also  
27 indicated the desire to depose Defendants' experts and supplemental experts. This will probably lead to  
28 another 5 or 6 depositions. That would bring the total number of depositions by Plaintiff to more than

1 40.

2 Defendants believe there is nothing about this case that justifies the number of depositions and  
3 interrogatories Plaintiff has taken and served.

4 Defendants believe the depositions Plaintiff has taken to date have failed to elicit any relevant  
5 evidence regarding his claims and have been largely a waste of time. Plaintiff has elected to depose  
6 witnesses who have only the most marginal and remote connection to the case, He has not even  
7 attempted to reconvene the two depositions he adjourned, despite asking this Court for relief, because  
8 they were both a waste of time before Plaintiff adjourned them. The depositions Plaintiff has taken have  
9 been burdensome and abusive.

10 It is the wasteful nature of Plaintiffs discovery that requires intervention from the Court more so  
11 than the sheer number of depositions and interrogatories. But, under any standard, the sheer number is  
12 unreasonable. Nothing about this case warrants so many depositions or interrogatories.

13 **IV. CONCLUSION**

14 Despite the extensive correspondence between the parties, it does not appear that this dispute can  
15 be resolved without assistance from the Court. Plaintiff has done its utmost to avert this imposition on  
16 the Court's time, to no avail.

17 Plaintiff believes the Court's immediate intervention is required to stem the continuing prejudice  
18 to Plaintiff. Defendants' bad faith refusal to produce any deponents in the little time remaining before  
19 the August 18 discovery cutoff has made a shambles of Plaintiff's deposition schedule and denied  
20 Plaintiff the fundamental right to depose party Defendants, defense experts and key witnesses named by  
21 Defendants in their discovery responses. Defendants do so in an obvious ploy to force a continuance of  
22 this action.

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Respectfully submitted,

Dated: July \_\_, 2008

LAW OFFICES OF MARK A. WASSER

By: \_\_\_\_\_  
Mark A. Wasser,  
Attorney for Defendants  
COUNTY OF KERN, PETER BRYAN, IRWIN  
HARRIS, EUGENE KERCHER, JENNIFER  
ABRAHAM, SCOTT RAGLAND, TONI SMITH,  
AND WILLIAM ROY

Dated: July \_\_, 2008

LAW OFFICE OF EUGENE LEE

By: \_\_\_\_\_  
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Attorney for Plaintiff  
DAVID F. JADWIN, D.O.

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14 Attorneys for Defendants County of Kern, Peter Bryan, Irwin Harris, Eugene Kercher, Jennifer  
15 Abraham, Scott Ragland, Toni Smith, and William Roy.

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17 **EASTERN DISTRICT OF CALIFORNIA**

18 **DAVID F. JADWIN, D.O.,**

19 Plaintiff,

20 v.

21 **COUNTY OF KERN, et al.,**

22 Defendants.

Case No. 1:07-cv-00026 OWW TAG

**EXHIBITS TO JOINT STATEMENT re:  
DISCOVERY DISAGREEMENT re:  
MOTION TO COMPEL DEPOSITIONS**

Date: August 5, 2008

Time: 9:30 a.m.

Place: U.S. District Court, Bankruptcy Courtroom  
1300 18th St., Bakersfield, CA

Date Action Filed: January 6, 2007

Discovery Cut-off: August 18, 2008

Date Set for Trial: December 2, 2008

**EXHIBITS TO DECLARATION OF EUGENE D. LEE**

- EXHIBIT 1. Doc. 118 – Declaration of Mark Wasser
- EXHIBIT 2. Meet and confer email from Plaintiff’s attorney to Defendants’ attorney, dated 6/30/08
- EXHIBIT 3. Meet and confer emails between Plaintiff’s attorney and Defendants’ attorney, dated 7/1/08
- EXHIBIT 4. Meet and confer fax from Defendants’ attorney to Plaintiff’s attorney, dated 7/2/08
- EXHIBIT 5. Meet and confer email from Plaintiff’s attorney to Defendants’ attorney, dated 7/2/08
- EXHIBIT 6. Plaintiff’s Deposition Subpoenas, served by fax on 7/3/08
- EXHIBIT 7. Meet and confer fax from Defendants’ attorney to Plaintiff’s attorney, dated 7/10/08
- EXHIBIT 8. Meet and confer email from Plaintiff’s attorney to Defendants’ attorney, dated 7/11/08
- EXHIBIT 9. Meet and confer emails between Plaintiff’s attorney and Defendants’ attorney, dated 7/13/08

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**EXHIBIT 1:**  
Doc. 118 – Declaration of Mark Wasser

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9  
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 Peter Bryan, Irwin Harris, Eugene Kercher,  
 11 Jennifer Abraham, Scott Ragland, Toni Smith  
 and William Roy

12  
 13 **UNITED STATES DISTRICT COURT**  
 14 **EASTERN DISTRICT OF CALIFORNIA**

15  
 16 **DAVID F. JADWIN, D.O.**

17 Plaintiff,

18 vs.

19 **COUNTY OF KERN, et al.,**

20 Defendants.

) Case No.: 1:07-cv-00026-OWW-TAG

) **DECLARATION OF MARK A. WASSER**  
 ) **IN SUPPORT OF DEFENDANTS' EX**  
 ) **PARTE APPLICATION FOR ORDER**  
 ) **SHORTENING TIME RE MOTION FOR**  
 ) **PERMISSION TO SERVE EXPERTS**  
 ) **REPORTS AFTER MAY 5, 2008**

) Date Action Filed: January 6, 2007  
 ) Trial Date: December 3, 2008

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 22  
 23  
 24 I, Mark A. Wasser, declare as follows:

25 1. I am counsel of record for Defendants and I am familiar with this proceeding. The  
 26 facts in this declaration are true and correct of my own personal knowledge and I can testify  
 27 competently to them if called as a witness.  
 28



1           2. The original scheduling order (filed May 31, 2007) was modified by stipulation of the  
2 parties and Order of this Court on November 20, 2007 (“Scheduling Order”). A true and correct  
3 copy of the Scheduling Order is attached hereto as Exhibit A.

4           3. Under the Scheduling Order, expert witnesses are to be disclosed on May 5, 2008, a  
5 date that is 180 days before trial. Under Rule 26, the default disclosure date is only 90 days  
6 before trial.

7           4. Defendants have retained three expert witnesses and timely disclosed their names,  
8 addresses, qualifications and hourly rates to Plaintiff as required by the Scheduling Order and  
9 Rule 26(a)(2)(B).

10           5. However, Defendants need additional time to prepare and serve their expert reports.  
11 Defendants need to conduct a Rule 35 examination of Plaintiff. The importance of the  
12 examination only became known to Defendants after the conclusion of Plaintiff’s deposition on  
13 March 12, 2008. Examination of Plaintiff is a key component in the defense of this case and the  
14 reports of two of Defendants’ expert witnesses (Dr. Robert Burchuk and Dr. Rick Sarkasian) are  
15 dependent on Plaintiff’s examination. Defendants are continuing to work with Plaintiff’s  
16 counsel to arrange those examinations as soon as possible, however, the parties have not yet been  
17 able to agree on scheduling the examinations.

18           6. Also, discovery is not nearly complete. Plaintiff has announced the intention to take  
19 as many as 20 more depositions. Defendants must know the theories Plaintiff is pursuing before  
20 Dr. Olson-Buchanan can complete her report. The depositions Plaintiff has taken to date have  
21 focused on Defendants’ affirmative defenses and Plaintiff has done little to develop any evidence  
22 to support the allegations in his complaint.

23           7. Defendants intend to schedule the examination of Plaintiff, either by noticed motion  
24 under Rule 35 or stipulation, before the Supplemental Disclosure on June 4, 2008. The reports  
25 should be available shortly after the examinations.

26           8. It is not clear that the reports of examining physicians are subject to the disclosure  
27 requirements of Rule 26(a)(2)(B). Although the Ninth Circuit does not appear to have addressed  
28

1 this issue, this District has. In *Minnard v. Rotech Healthcare Inc.*, CIV. NO. S-06-1460 GEB  
 2 GGH, 2008 U.S. Dist. LEXIS 6149;(E.D. Cal. Jan. 15, 2008), the Honorable Gregory G.  
 3 Hollows discussed the interplay between Rule 26 and Rule 35 and, on the facts in *Minnard*, ruled  
 4 that the Defendant could rely on information “including a Rule 35 examination, taken after  
 5 designation and report issuance.” *Minnard*, 2008 U.S. Dist. LEXIS 6149, at \*11. Other Districts  
 6 have split on the issue. See, e.g., *Waggoner v. Ohio Central Railroad, Inc.* 242 F.R.D. 413, 414  
 7 (S.D. OH, 2007); *Furlong v. Circle Line Statute of Liberty Ferry, Inc.*, 902 F.Supp. 65  
 8 (S.D.N.Y., 1995); and *Shumaker v. West*, 196 F.R.D. 454 (S.D.W.VA, 2000).

9 9. Thus, the reports of Dr. Burchuk and Dr. Sarkasian may be exempt from the Rule 26  
 10 disclosure obligation. Defendants included these two physicians in their list of expert witnesses  
 11 out of a desire for full disclosure even though the Rule 35 exams have not yet occurred.

12 10. Defendants anticipate that Dr. Olson-Buchanan’s report will be available before the  
 13 June 4 deadline for supplemental disclosures.

14 11. Pursuant to Local Rule 6-144(c), Defendants have tried to resolve this issue by  
 15 negotiation with Plaintiff but no agreement has been reached on either the ex parte application or  
 16 the underlying motion.

17 12. In an attempt to further reduce any prejudice to Plaintiff, I suggested to Plaintiff’s  
 18 counsel that Plaintiff delay disclosing Plaintiff’s expert reports so both parties’ reports could be  
 19 disclosed concurrently. Plaintiff declined.

20 13. A copy of the Motion and Declaration of Mark A. Wasser for permission to serve  
 21 expert reports after May 5, 2008 is attached hereto as Exhibit B.

22 14. Defendants respectfully suggest the following filing, service and hearing dates for the  
 23 motion:

Filing of Motion:	May 5, 2008.
Plaintiff’s Opposition, if any:	May 12, 2008.
Defendants’ Reply:	WAIVED.
Hearing on Motion:	_____.

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15. Pursuant to Local Rule 6-144(b), one prior continuance was granted upon stipulation of the parties and order of the Court, as noted above. The Defendants do not propose to modify any of the dates in the Scheduling Order.

16. The ex-parte application, this Declaration and exhibits, and the Proposed Order were served on Plaintiff's counsel electronically and by facsimile on May 5, 2008, before 5:00 p.m.

I certify under penalty of perjury that the foregoing is true and correct.

Executed this 5th day of May, 2008, in Sacramento, California.

By: /s/ Mark A. Wasser  
Mark A. Wasser

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EXHIBIT 2:  
Meet and confer email from Plaintiff's attorney to Defendants' attorney, dated 6/30/08

**Eugene D. Lee**

**From:** Eugene D. Lee [elee@LOEL.com]  
**Sent:** Monday, June 30, 2008 2:31 PM  
**To:** 'mwasser@markwasser.com'  
**Subject:** Depositions

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Mark,

I asked you for dates of availability to depose your experts last Monday. One week later, I've received one date from you -- July 7 -- for Dr. Burchuk, and nothing more. After I explained I'm not available on July 7, I didn't back heard from you. It shouldn't take this long to give me dates of availability for your experts. I will go ahead and notice their depositions today since my attempt to work the dates out with you has failed.

It is unfortunate that you are unwilling to cooperate with me on something as simple as scheduling expert depositions, but it comes as no surprise given your conduct in this action to date.

I have heard back from Ms. Rizzardi. She is available to be deposed all of next week, from 7/7 to 7/11, and also on 7/14 to 7/16. At this point, I'm still trying to reach Dr. Weiss, who was traveling last I heard. I hope to hear back from him soon though. I've already supplied you dates for Dr. Reading and Ms. Levison but haven't heard back from you.

Also, Plaintiff would like to depose:

Supervisor Ray Watson (4 hours)  
Supervisor Barbara Patrick (4 hours)  
Peter Bryan (full day)  
David Culberson (4 hours)  
Irwin Harris (full day)  
Scott Ragland (4 hours)  
Jennifer Abraham (4 hours)  
Royce Johnson (4 hours)  
Joseph Mansour (4 hours)  
Maureen Martin (4 hours)  
Albert McBride (4 hours)  
Philip Dutt (full day)  
Savita Shertudke (4 hours)  
Sandra Chester (4 hours)  
Toni Smith (4 hours)  
Karen Barnes (full day)  
Arlene Ramos Aninion (4 hours)

If it would ease scheduling conflicts for Defendants, Plaintiff is willing to waive the stipulation to having depositions only on T/W/Th and is willing to consider any day of the week.

Please let me know no later than Wednesday where things stand regarding the foregoing. Time is running short and Plaintiff cannot wait a week for Defendants to come back to Plaintiff with nothing more than a single date for a single deponent.

Sincerely,

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EXHIBIT 3:  
Meet and confer emails between Plaintiff's attorney and Defendants' attorney, dated 7/1/08

**Eugene D. Lee**

**From:** Eugene D. Lee [elee@LOEL.com]  
**Sent:** Tuesday, July 01, 2008 4:29 PM  
**To:** 'mwasser@markwasser.com'  
**Subject:** Nonexpert Depos  
**Attachments:** Depositions

Mark,

Please see attached email.

Sincerely,

Gene Lee

---

**LAW OFFICE OF EUGENE LEE**  
**EMPLOYMENT LAW**  
555 WEST FIFTH ST., STE. 3100  
LOS ANGELES, CA 90013  
Tel: (213)992-3299  
Fax: (213)596-0487  
E-mail: [elee@LOEL.com](mailto:elee@LOEL.com)  
Website: [www.LOEL.com](http://www.LOEL.com)  
Blog: [www.CaLaborLaw.com](http://www.CaLaborLaw.com)

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**California Labor & Employment Law Blog**

Bigotry Gets Subtle - Code Word Slurs in the

July 1, 2008

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**From:** Mark Wasser [mailto:mwasser@markwasser.com]  
**Sent:** Tuesday, July 01, 2008 4:24 PM  
**To:** elee@LOEL.com  
**Subject:** RE: Dr. Reading

Gene,

What non-expert depos?

I agree we should handle everything at once but I do not recall any non-expert depos that you have requested.

Have I missed something?

Mark

---

**From:** Eugene D. Lee [mailto:elee@LOEL.com]  
**Sent:** Tuesday, July 01, 2008 4:12 PM  
**To:** mwasser@markwasser.com  
**Subject:** RE: Dr. Reading

Mark,

Weiss said he's available first week of August. You now have dates of availability on all of Plaintiff's experts.

I still need to hear dates from you on the non-expert depositions and Dr. Allen. I suggest we handle everything at once.

Sincerely,

Gene Lee

~~~~~  
**LAW OFFICE OF EUGENE LEE**

**EMPLOYMENT LAW**  
555 WEST FIFTH ST., STE. 3100  
LOS ANGELES, CA 90013  
Tel: (213)992-3299  
Fax: (213)596-0487  
E-mail: [elee@LOEL.com](mailto:elee@LOEL.com)  
Website: [www.LOEL.com](http://www.LOEL.com)  
Blog: [www.CaLaborLaw.com](http://www.CaLaborLaw.com)

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**California Labor & Employment Law Blog**

Bigotry Gets Subtle - Code Word Slurs in the

July 1, 2008

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**From:** Mark Wasser [<mailto:mwasser@markwasser.com>]

**Sent:** Tuesday, July 01, 2008 2:34 PM

**To:** [elee@LOEL.com](mailto:elee@LOEL.com)

**Subject:** RE: Dr. Reading

Gene,

Sarkisian is available July 23 and 24. We can set Burchuk for after his return from vacation. He returns on July 27. I am in trial July 29 to July 31 but will be available after that. I have not yet heard from Allen but will keep following up.

I have a deposition in another case on July 11 and a pretrial conference in that same case on July 18. So, those dates do not work for me. If we postpone the July 14 hearing on the motion to transfer then I can do Levison on the 14<sup>th</sup>.

So, we have possible dates for Sarkisian, Levison and Burchuk. We still need dates for Reading, Weiss and Allen.

Mark

---

**From:** Eugene D. Lee [<mailto:elee@LOEL.com>]

**Sent:** Monday, June 30, 2008 3:56 PM

**To:** [mwasser@markwasser.com](mailto:mwasser@markwasser.com)

**Subject:** Dr. Reading



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EXHIBIT 4:  
Meet and confer fax from Defendants' attorney to Plaintiff's attorney, dated 7/2/08

**The Law Offices of Mark A. Wasser**  
400 Capitol Mall, Suite 2640  
Sacramento, California 95814  
Office: 916-444-6400  
Fax: 916-444-6405

# Fax

To: <b>Eugene Lee</b>	From: <b>Mark A. Wasser</b>
Fax: <b>(213) 596-0487</b>	Pages: <b>3 (including cover page)</b>
Phone: <b>(213) 992-3299</b>	Date: <b>7/2/08</b>
Re: <b>Jadwin v. County of Kern</b>	CC:

Urgent     For Review     Please Comment     Please Reply     Please Recycle

● **Comments:**

Please see attached letter.

**MARK A. WASSER**

400 Capitol Mall, Suite 2640  
Sacramento, California 95814  
Office: 916-444-6400 Fax: 916-444-6405  
[mwasser@markwasser.com](mailto:mwasser@markwasser.com)

July 2, 2008

**VIA FACSIMILE AND FIRST CLASS MAIL**

Eugene Lee  
Law Offices of Eugene Lee  
555 West Fifth Street, Suite 3100  
Los Angeles, California 90013-1010

*Re: Jadwin v. County of Kern, et al.*

Dear Gene:

It appears we have come face-to-face with the discovery limitations again. As you know, Rule 30 limits to 10 the number of depositions that can be taken in a case. As you also know, the Scheduling Order memorializes Defendants' agreement to grant Plaintiff "relief" from that limitation. As we were with the interrogatories a few weeks ago, we are now at a point where we need to visit this issue.

By my count, Plaintiff has taken 16 depositions. Clearly Plaintiff has been granted "relief" from the 10-deposition limit. Your e-mail of June 30 proposes taking another 17 depositions and does not reference the expert depositions you have asked me to schedule. You have requested to take three expert depositions and, after Defendants' supplemental expert disclosures, I expect you will want to take several more. So, adding all these up, Plaintiff appears to want to schedule more than 20 additional depositions on top of the 16 already taken. Nothing about this case warrants the taking of 36 depositions by one side.

The Defendants have so far taken one deposition and anticipate taking approximately 5 more. Reviewing the list of deponents you included in your June 30 e-mail, I note you are proposing to take the depositions of two County supervisors – one current and one former. Given the extent to which supervisors' testimony is protected by legislative immunity, it is questionable how useful their depositions will be. Your list also includes Karen Barnes, who, as you know, is one of the Defendants' attorneys. Her deposition may be of limited use.

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EXHIBIT 5:  
Meet and confer email from Plaintiff's attorney to Defendants' attorney, dated 7/2/08

**Eugene D. Lee**

**From:** Eugene D. Lee [elee@LOEL.com]  
**Sent:** Wednesday, July 02, 2008 10:13 PM  
**To:** 'mwasser@markwasser.com'  
**Subject:** Depositions

Mark,

Your fax of today was cut off. I couldn't read it.

Nevertheless, from the fragment that did transmit, I gather you are complaining that Plaintiff is requesting too many depositions. As you may recall, that argument didn't work with the interrogatories and it won't work with depositions.

The notion that Plaintiff's request to depose defendants is somehow abusive lacks merit. The other deponents are key witnesses for obvious reasons which Plaintiff has discussed with Defendants almost from the beginning of discovery.

If Defendants were willing to stipulate to certain facts, that would be a different story. If Defendants were willing to stipulate to authentication and business records exception of documents, some depositions might not be necessary. However, Defendants have made it a point to be as uncooperative and obstructive as possible, refusing to stipulate to even the simplest of things. As a result, there have been exceedingly few stipulations in this action. The most recent example of this is defendants refusal to stipulate to Plaintiff's filing of the Second Amended Complaint. Now Defendants complaint Plaintiff is requesting too many depositions. Defendants cannot have it both ways. It is Defendants who have chosen to make this action as costly and burdensome as possible for all concerned.

Plaintiff will proceed with noticing the depositions. If this needs to go to motion litigation, that would be a patent waste of the Court's time. However, it would be entirely consistent with Defendants' longstanding strategy of patently obstructing and abusing the discovery process and forcing even the smallest disputes to go to motion litigation. In any case, if that is what is necessary, then so be it.

At the conclusion of this action, Plaintiff fully intends to seek statutory attorney fees for the time spent dealing with Defendants' abusive tactics and intentional obstructionism.

Sincerely,

Gene Lee

~~~~~  
**LAW OFFICE OF EUGENE LEE**

**EMPLOYMENT LAW**  
555 WEST FIFTH ST., STE. 3100  
LOS ANGELES, CA 90013  
Tel: (213)992-3299  
Fax: (213)596-0487  
E-mail: [elee@LOEL.com](mailto:elee@LOEL.com)  
Website: [www.LOEL.com](http://www.LOEL.com)  
Blog: [www.CaLaborLaw.com](http://www.CaLaborLaw.com)

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July 2, 2008

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**EXHIBIT 6:**  
Plaintiff's Deposition Subpoenas, served by fax on 7/3/08

(213) 992-3299  
TELEPHONE

**LAW OFFICE OF  
EUGENE LEE**  
555 WEST FIFTH STREET SUITE 3100  
LOS ANGELES, CALIFORNIA 90013-1010

ELEE@LOEL.COM  
EMAIL  
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WWW.LOEL.COM  
WEBSITE

(213) 596-0487  
FACSIMILE

# FAX

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**To:**

**From:** Law Office of Eugene Lee

**Fax Number:** 2135960487

**Date:** 07/03/2008

**Pages:** 11 (including cover page)

**Re:** Jadwin/KC: Deposition Subpoenas/Notices

---

**Comments:**

Mark,

Attached are depo subpoenas for 17 non-expert deponents - in four fax installments.

Please contact me if you have questions.

Have a pleasant 4th of July weekend.

AOSS (Rev. 12/06) Subpoena in a Civil Case

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# UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

CALIFORNIA

David F. Jadwin, D.O., F.C.A.P.

## SUBPOENA IN A CIVIL CASE

V.

County of Kern

Case Number:<sup>1</sup> 1:07-cv-26-OWW-TAG

TO: Royce Johnson, M.D.

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	Holiday Inn, 801 Truxton Ave, Bakersfield, CA 93301, (661) 323-1900	DATE AND TIME	7/24/2008 9:00 am
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
	7/3/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER  
Eugene D. Lee, Law Office of Eugene Lee, 555 West Fifth St., Suite 3100, Los Angeles, CA 90013; (213) 992-3299

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.



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SERVED

7/3/2008

Law Offices of Mark Wasser, 400 Capitol Mall, Ste 2640, Sacramento, CA 95814

SERVED ON (PRINT NAME)

MANNER OF SERVICE

Royce Johnson, M.D., by and through, Mark Wasser

Facsimile & U.S. Mail, First Class to Mark Wasser per stipulation

SERVED BY (PRINT NAME)

TITLE

Eugene D. Lee

Principal, Law Office of Eugene Lee

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

7/3/2008

DATE

SIGNATURE OF SERVER

Eugene D. Lee

ADDRESS OF SERVER

555 W 5th St., Ste. 3100, Los Angeles, CA 90013

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

AOSS (Rev. 12/06) Subpoena in a Civil Case

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# UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

CALIFORNIA

David F. Jadwin, D.O., F.C.A.P.

## SUBPOENA IN A CIVIL CASE

V.

County of Kern

Case Number:<sup>1</sup> 1:07-cv-26-OWW-TAG

TO: Jennifer Abraham, M.D.

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	Holiday Inn, 801 Truxton Ave, Bakersfield, CA 93301, (661) 323-1900	DATE AND TIME	8/6/2008 2:00 pm
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
	7/3/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER  
Eugene D. Lee, Law Office of Eugene Lee, 555 West Fifth St., Suite 3100, Los Angeles, CA 90013; (213) 992-3299

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

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SERVED	7/3/2008	Law Offices of Mark Wasser, 400 Capitol Mall, Ste 2640, Sacramento, CA 95814
SERVED ON (PRINT NAME)		MANNER OF SERVICE
Jennifer Abraham, M.D., by and through, Mark Wasser		Facsimile & U.S. Mail, First Class to Mark Wasser per stipulation
SERVED BY (PRINT NAME)		TITLE
Eugene D. Lee		Principal, Law Office of Eugene Lee

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on 7/3/2008  
DATE

  
SIGNATURE OF SERVER

Eugene D. Lee  
ADDRESS OF SERVER

555 W 5th St., Ste. 3100, Los Angeles, CA 90013

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

AOSS (Rev. 12/06) Subpoena in a Civil Case

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# UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

CALIFORNIA

David F. Jadwin, D.O., F.C.A.P.

## SUBPOENA IN A CIVIL CASE

V.

County of Kern

Case Number:<sup>1</sup> 1:07-cv-26-OWW-TAG

TO: Arlene Ramos Aninion

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	Holiday Inn, 801 Truxton Ave, Bakersfield, CA 93301, (661) 323-1900	DATE AND TIME	7/22/2008 1:00 pm
---------------------	---	---------------	-------------------


YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
-------	---------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
	7/3/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER  
Eugene D. Lee, Law Office of Eugene Lee, 555 West Fifth St., Suite 3100, Los Angeles, CA 90013; (213) 992-3299

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

## PROOF OF SERVICE

Document hosted at JDSUPRA<sup>®</sup>

DATE

PLACE

<http://www.jdsupra.com/post/documentViewer.aspx?fid=85f0590a-1c6b-41df-ab72-0400df94bdcc>

SERVED

7/3/2008

Law Offices of Mark Wasser, 400 Capitol Mall, Ste  
2640, Sacramento, CA 95814

SERVED ON (PRINT NAME)

MANNER OF SERVICE

Arlene Ramos Aninion, by and through Mark Wasser

Facsimile & U.S. Mail, First Class to Mark Wasser per  
stipulation

SERVED BY (PRINT NAME)

TITLE

Eugene D. Lee

Principal, Law Office of Eugene Lee

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

7/3/2008

DATE

SIGNATURE OF SERVER

Eugene D. Lee

ADDRESS OF SERVER

555 W 5th St., Ste. 3100, Los Angeles, CA 90013

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

MTC000026

AOSS (Rev. 12/06) Subpoena in a Civil Case

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Issued by the

UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

CALIFORNIA

David F. Jadwin, D.O., F.C.A.P.

SUBPOENA IN A CIVIL CASE

V.

County of Kern

Case Number:<sup>1</sup> 1:07-cv-26-OWW-TAG

TO: Peter Bryan

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	Holiday Inn, 801 Truxton Ave, Bakersfield, CA 93301, (661) 323-1900	DATE AND TIME	7/17/2008 9:00 am
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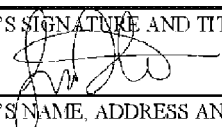
YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
-------	---------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
	7/3/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Eugene D. Lee, Law Office of Eugene Lee, 555 West Fifth St., Suite 3100, Los Angeles, CA 90013; (213) 992-3299

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.



PROOF OF SERVICE

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DATE

http://www.jdsupra.com/post/documentViewer.aspx?fid=85f0590a-1c6b-41df-ab72-0400df94bdcc

SERVED	7/3/2008	Law Offices of Mark Wasser, 400 Capitol Mall, Ste 2640, Sacramento, CA 95814
SERVED ON (PRINT NAME)		MANNER OF SERVICE
Peter Bryan, by and through, Mark Wasser		Facsimile & U.S. Mail, First Class to Mark Wasser per stipulation
SERVED BY (PRINT NAME)		TITLE
Eugene D. Lee		Principal, Law Office of Eugene Lee

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on 7/3/2008 DATE

SIGNATURE OF SERVER (Handwritten signature)

Eugene D. Lee

ADDRESS OF SERVER 555 W 5th St., Ste. 3100, Los Angeles, CA 90013

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

AOSS (Rev. 12/06) Subpoena in a Civil Case

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# UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

CALIFORNIA

David F. Jadwin, D.O., F.C.A.P.

## SUBPOENA IN A CIVIL CASE

V.

County of Kern

Case Number:<sup>1</sup> 1:07-cv-26-OWW-TAG

TO: Sandra Chester

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	Holiday Inn, 801 Truxton Ave, Bakersfield, CA 93301, (661) 323-1900	DATE AND TIME	8/12/2008 9:00 am
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
-------	---------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
	7/3/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Eugene D. Lee, Law Office of Eugene Lee, 555 West Fifth St., Suite 3100, Los Angeles, CA 90013; (213) 992-3299

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.



PROOF OF SERVICE

Document hosted at JDSUPRA

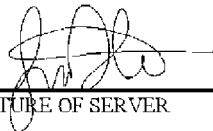
http://www.jdsupra.com/post/documentViewer.aspx?fid=85f0590a-1c6b-41df-ab72-0400df94bdcc

	DATE	PLACE
SERVED	7/3/2008	Law Offices of Mark Wasser, 400 Capitol Mall, Ste 2640, Sacramento, CA 95814
SERVED ON (PRINT NAME)		MANNER OF SERVICE
Sandra Chester, by and through Mark Wasser		Facsimile & U.S. Mail, First Class to Mark Wasser per stipulation
SERVED BY (PRINT NAME)		TITLE
Eugene D. Lee		Principal, Law Office of Eugene Lee

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on 7/3/2008  
DATE

  
SIGNATURE OF SERVER

Eugene D. Lee  
ADDRESS OF SERVER

555 W 5th St., Ste. 3100, Los Angeles, CA 90013

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

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(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

(213) 992-3299  
TELEPHONE

**LAW OFFICE OF  
EUGENE LEE**  
555 WEST FIFTH STREET SUITE 3100  
LOS ANGELES, CALIFORNIA 90013-1010

ELEE@LOEL.COM  
EMAIL  
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WWW.LOEL.COM  
WEBSITE

(213) 596-0487  
FACSIMILE

# FAX

---

**To:**

**From:** Law Office of Eugene Lee

**Fax Number:** 2135960487

**Date:** 07/03/2008

**Pages:** 11 (including cover page)

**Re:** Jadwin/KC: Deposition Subpoenas/Notices

---

**Comments:**

Mark,

More depo subpoenas.

AOSS (Rev. 12/06) Subpoena in a Civil Case

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# UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

CALIFORNIA

David F. Jadwin, D.O., F.C.A.P.

## SUBPOENA IN A CIVIL CASE

V.

County of Kern

Case Number:<sup>1</sup> 1:07-cv-26-OWW-TAG

TO: David Culberson

- YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

- YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	Holiday Inn, 801 Truxton Ave, Bakersfield, CA 93301, (661) 323-1900	DATE AND TIME	7/23/2008 9:00 am
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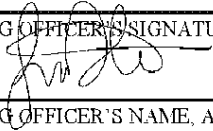
- YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
-------	---------------

- YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
	7/3/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER  
Eugene D. Lee, Law Office of Eugene Lee, 555 West Fifth St., Suite 3100, Los Angeles, CA 90013; (213) 992-3299

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

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DATE

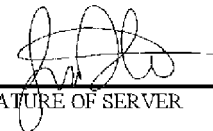
http://www.jdsupra.com/post/documentViewer.aspx?fid=85f0590a-1c6b-41df-ab72-0400df94bdcc

SERVED	7/3/2008	Law Offices of Mark Wasser, 400 Capitol Mall, Ste 2640, Sacramento, CA 95814
SERVED ON (PRINT NAME)		MANNER OF SERVICE
David Culberson, by and through Mark Wasser		Facsimile & U.S. Mail, First Class to Mark Wasser per stipulation
SERVED BY (PRINT NAME)		TITLE
Eugene D. Lee		Principal, Law Office of Eugene Lee

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on 7/3/2008  
DATE

  
SIGNATURE OF SERVER

Eugene D. Lee  
ADDRESS OF SERVER

555 W 5th St., Ste. 3100, Los Angeles, CA 90013

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

AOSS (Rev. 12/06) Subpoena in a Civil Case

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# UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

CALIFORNIA

David F. Jadwin, D.O., F.C.A.P.

## SUBPOENA IN A CIVIL CASE

V.

County of Kern

Case Number:<sup>1</sup> 1:07-cv-26-OWW-TAG

TO: Phillip Dutt, M.D.

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	Holiday Inn, 801 Truxton Ave, Bakersfield, CA 93301, (661) 323-1900	DATE AND TIME	8/7/2008 9:00 am
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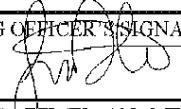
YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
-------	---------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
	7/3/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Eugene D. Lee, Law Office of Eugene Lee, 555 West Fifth St., Suite 3100, Los Angeles, CA 90013; (213) 992-3299

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

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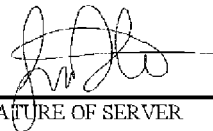
http://www.jdsupra.com/post/documentViewer.aspx?fid=85f0590a-1c6b-41df-ab72-0400df94bdcc

SERVED	7/3/2008	Law Offices of Mark Wasser, 400 Capitol Mall, Ste 2640, Sacramento, CA 95814
SERVED ON (PRINT NAME)		MANNER OF SERVICE
Phillip Dutt, M.D., by and through, Mark Wasser		Facsimile & U.S. Mail, First Class to Mark Wasser per stipulation
SERVED BY (PRINT NAME)		TITLE
Eugene D. Lee		Principal, Law Office of Eugene Lee

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on 7/3/2008  
DATE



SIGNATURE OF SERVER  
Eugene D. Lee  
ADDRESS OF SERVER

555 W 5th St., Ste. 3100, Los Angeles, CA 90013

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).



AOSS (Rev. 12/06) Subpoena in a Civil Case

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# UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

CALIFORNIA

David F. Jadwin, D.O., F.C.A.P.

## SUBPOENA IN A CIVIL CASE

V.

County of Kern

Case Number:<sup>1</sup> 1:07-cv-26-OWW-TAG

TO: Irwin Harris, M.D.

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Holiday Inn, 801 Truxton Ave, Bakersfield, CA 93301, (661) 323-1900

DATE AND TIME

7/16/2008 9:00 am

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE

DATE AND TIME

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

7/3/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Eugene D. Lee, Law Office of Eugene Lee, 555 West Fifth St., Suite 3100, Los Angeles, CA 90013; (213) 992-3299

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

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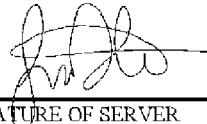
http://www.jdsupra.com/post/documentViewer.aspx?fid=85f0590a-1c6b-41df-ab72-0400df94bdcc

	DATE	PLACE
SERVED	7/3/2008	Law Offices of Mark Wasser, 400 Capitol Mall, Ste 2640, Sacramento, CA 95814
SERVED ON (PRINT NAME)		MANNER OF SERVICE
Irwin Harris, M.D., by and through, Mark Wasser		Facsimile & U.S. Mail, First Class to Mark Wasser per stipulation
SERVED BY (PRINT NAME)		TITLE
Eugene D. Lee		Principal, Law Office of Eugene Lee

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on 7/3/2008  
DATE



SIGNATURE OF SERVER

Eugene D. Lee

ADDRESS OF SERVER

555 W 5th St., Ste. 3100, Los Angeles, CA 90013

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

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(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).



AOSS (Rev. 12/06) Subpoena in a Civil Case

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# UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

CALIFORNIA

David F. Jadwin, D.O., F.C.A.P.

## SUBPOENA IN A CIVIL CASE

V.

County of Kern

Case Number:<sup>1</sup> 1:07-cv-26-OWW-TAG

TO: Joseph Mansour, M.D.

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	Holiday Inn, 801 Truxton Ave, Bakersfield, CA 93301, (661) 323-1900	DATE AND TIME	8/5/2008 9:00 am
---------------------	---	---------------	------------------

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
-------	---------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
	7/3/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER  
Eugene D. Lee, Law Office of Eugene Lee, 555 West Fifth St., Suite 3100, Los Angeles, CA 90013; (213) 992-3299

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

## PROOF OF SERVICE

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DATE

PLACE

<http://www.jdsupra.com/post/documentViewer.aspx?fid=85f0590a-1c6b-41df-ab72-0400df94bdcc>

SERVED

7/3/2008

Law Offices of Mark Wasser, 400 Capitol Mall, Ste  
2640, Sacramento, CA 95814

SERVED ON (PRINT NAME)

MANNER OF SERVICE

Joseph Mansour, M.D., by and through, Mark Wasser

Facsimile & U.S. Mail, First Class to Mark Wasser per  
stipulation

SERVED BY (PRINT NAME)

TITLE

Eugene D. Lee

Principal, Law Office of Eugene Lee

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

7/3/2008

DATE



SIGNATURE OF SERVER

Eugene D. Lee

ADDRESS OF SERVER

555 W 5th St., Ste. 3100, Los Angeles, CA 90013

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

MTC000039

AOSS (Rev. 12/06) Subpoena in a Civil Case

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# UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

CALIFORNIA

David F. Jadwin, D.O., F.C.A.P.

## SUBPOENA IN A CIVIL CASE

V.

County of Kern

Case Number:<sup>1</sup> 1:07-cv-26-OWW-TAG

TO: Maureen Martin, M.D.

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	Holiday Inn, 801 Truxton Ave, Bakersfield, CA 93301, (661) 323-1900	DATE AND TIME	8/5/2008 2:00 pm
---------------------	---	---------------	------------------


YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
-------	---------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
	7/3/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Eugene D. Lee, Law Office of Eugene Lee, 555 West Fifth St., Suite 3100, Los Angeles, CA 90013; (213) 992-3299

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

## PROOF OF SERVICE

Document hosted at JDSUPRA<sup>®</sup>

DATE

PLACE

<http://www.jdsupra.com/post/documentViewer.aspx?fid=85f0590a-1c6b-41df-ab72-0400df94bdcc>

SERVED

7/3/2008

Law Offices of Mark Wasser, 400 Capitol Mall, Ste  
2640, Sacramento, CA 95814

SERVED ON (PRINT NAME)

MANNER OF SERVICE

Maureen Martin, M.D., by and through, Mark Wasser

Facsimile & U.S. Mail, First Class to Mark Wasser per  
stipulation

SERVED BY (PRINT NAME)

TITLE

Eugene D. Lee

Principal, Law Office of Eugene Lee

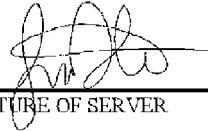
## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

7/3/2008

DATE



SIGNATURE OF SERVER

Eugene D. Lee

ADDRESS OF SERVER

555 W 5th St., Ste. 3100, Los Angeles, CA 90013

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

MTC000041

(213) 992-3299  
TELEPHONE

**LAW OFFICE OF  
EUGENE LEE**  
555 WEST FIFTH STREET SUITE 3100  
LOS ANGELES, CALIFORNIA 90013-1010

ELEE@LOEL.COM  
EMAIL  
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WWW.LOEL.COM  
WEBSITE

(213) 596-0487  
FACSIMILE

# FAX

---

**To:**

**From:** Law Office of Eugene Lee

**Fax Number:** 2135960487

**Date:** 07/03/2008

**Pages:** 11 (including cover page)

**Re:** Jadwin/KC: Deposition Subpoenas/Notices

---

**Comments:**

Mark,

More depo subpoenas.

AOSS (Rev. 12/06) Subpoena in a Civil Case

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# UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

CALIFORNIA

David F. Jadwin, D.O., F.C.A.P.

## SUBPOENA IN A CIVIL CASE

V.

County of Kern

Case Number:<sup>1</sup> 1:07-cv-26-OWW-TAG

TO: Albert McBride, M.D.

- YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

- YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	Holiday Inn, 801 Truxton Ave, Bakersfield, CA 93301, (661) 323-1900	DATE AND TIME	7/22/2008 9:00 am
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- YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
-------	---------------

- YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
	7/3/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Eugene D. Lee, Law Office of Eugene Lee, 555 West Fifth St., Suite 3100, Los Angeles, CA 90013; (213) 992-3299

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.



PROOF OF SERVICE

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SERVED	7/3/2008	Law Offices of Mark Wasser, 400 Capitol Mall, Ste 2640, Sacramento, CA 95814
SERVED ON (PRINT NAME)		MANNER OF SERVICE
Albert McBride, M.D., by and through, Mark Wasser		Facsimile & U.S. Mail, First Class to Mark Wasser per stipulation
SERVED BY (PRINT NAME)		TITLE
Eugene D. Lee		Principal, Law Office of Eugene Lee

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

7/3/2008

DATE

SIGNATURE OF SERVER

Eugene D. Lee

ADDRESS OF SERVER

555 W 5th St., Ste. 3100, Los Angeles, CA 90013

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

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(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

AOSS (Rev. 12/06) Subpoena in a Civil Case

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Issued by the

UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

CALIFORNIA

David F. Jadwin, D.O., F.C.A.P.

SUBPOENA IN A CIVIL CASE

V.

County of Kern

Case Number:<sup>1</sup> 1:07-cv-26-OWW-TAG

TO: Barbara Patrick

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	Holiday Inn, 801 Truxton Ave, Bakersfield, CA 93301, (661) 323-1900	DATE AND TIME	8/14/2008 1:00 pm
---------------------	---	---------------	-------------------


YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
-------	---------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
	7/3/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER  
Eugene D. Lee, Law Office of Eugene Lee, 555 West Fifth St., Suite 3100, Los Angeles, CA 90013; (213) 992-3299

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.



PROOF OF SERVICE

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DATE

http://www.jdsupra.com/post/documentViewer.aspx?fid=85f0590a-1c6b-41df-ab72-0400df94bdcc

SERVED	7/3/2008	Law Offices of Mark Wasser, 400 Capitol Mall, Ste 2640, Sacramento, CA 95814
SERVED ON (PRINT NAME)		MANNER OF SERVICE
Barbara Patrick, by and through Mark Wasser		Facsimile & U.S. Mail, First Class to Mark Wasser per stipulation
SERVED BY (PRINT NAME)		TITLE
Eugene D. Lee		Principal, Law Office of Eugene Lee

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

7/3/2008

DATE

SIGNATURE OF SERVER

Eugene D. Lee

ADDRESS OF SERVER

555 W 5th St., Ste. 3100, Los Angeles, CA 90013

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

AOSS (Rev. 12/06) Subpoena in a Civil Case

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# UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

CALIFORNIA

David F. Jadwin, D.O., F.C.A.P.

## SUBPOENA IN A CIVIL CASE

V.

County of Kern

Case Number:<sup>1</sup> 1:07-cv-26-OWW-TAG

TO: Scott Ragland, M.D.

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Holiday Inn, 801 Truxton Ave, Bakersfield, CA 93301, (661) 323-1900

DATE AND TIME

8/13/2008 9:00 am

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE

DATE AND TIME

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

7/3/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Eugene D. Lee, Law Office of Eugene Lee, 555 West Fifth St., Suite 3100, Los Angeles, CA 90013; (213) 992-3299

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

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SERVED	7/3/2008	Law Offices of Mark Wasser, 400 Capitol Mall, Ste 2640, Sacramento, CA 95814
SERVED ON (PRINT NAME)		MANNER OF SERVICE
Scott Ragland, M.D., by and through, Mark Wasser		Facsimile & U.S. Mail, First Class to Mark Wasser per stipulation
SERVED BY (PRINT NAME)		TITLE
Eugene D. Lee		Principal, Law Office of Eugene Lee

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

7/3/2008

DATE

SIGNATURE OF SERVER

Eugene D. Lee

ADDRESS OF SERVER

555 W 5th St., Ste. 3100, Los Angeles, CA 90013

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

AOSS (Rev. 12/06) Subpoena in a Civil Case

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# UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

CALIFORNIA

David F. Jadwin, D.O., F.C.A.P.

## SUBPOENA IN A CIVIL CASE

V.

County of Kern

Case Number:<sup>1</sup> 1:07-cv-26-OWW-TAG

TO: Savita Shertudke, M.D.

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Holiday Inn, 801 Truxton Ave, Bakersfield, CA 93301, (661) 323-1900

DATE AND TIME

7/15/2008 9:00 am

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE

DATE AND TIME

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

7/3/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Eugene D. Lee, Law Office of Eugene Lee, 555 West Fifth St., Suite 3100, Los Angeles, CA 90013; (213) 992-3299

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

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SERVED	7/3/2008	Law Offices of Mark Wasser, 400 Capitol Mall, Ste 2640, Sacramento, CA 95814
SERVED ON (PRINT NAME)		MANNER OF SERVICE
Savita Shertudke, M.D., by and through Mark Wasser		Facsimile & U.S. Mail, First Class to Mark Wasser per stipulation
SERVED BY (PRINT NAME)		TITLE
Eugene D. Lee		Principal, Law Office of Eugene Lee

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

7/3/2008

DATE

SIGNATURE OF SERVER

Eugene D. Lee

ADDRESS OF SERVER

555 W 5th St., Ste. 3100, Los Angeles, CA 90013

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

AOSS (Rev. 12/06) Subpoena in a Civil Case

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# UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

CALIFORNIA

David F. Jadwin, D.O., F.C.A.P.

## SUBPOENA IN A CIVIL CASE

V.

County of Kern

Case Number:<sup>1</sup> 1:07-cv-26-OWW-TAG

TO: Toni Smith, R.N.

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	Holiday Inn, 801 Truxton Ave, Bakersfield, CA 93301, (661) 323-1900	DATE AND TIME	8/6/2008 9:00 am
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
-------	---------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
	7/3/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Eugene D. Lee, Law Office of Eugene Lee, 555 West Fifth St., Suite 3100, Los Angeles, CA 90013; (213) 992-3299

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.



## PROOF OF SERVICE

Document hosted at JDSUPRA<sup>®</sup>

DATE

PLACE

<http://www.jdsupra.com/post/documentViewer.aspx?fid=85f0590a-1c6b-41df-ab72-0400df94bdcc>

SERVED

7/3/2008

Law Offices of Mark Wasser, 400 Capitol Mall, Ste  
2640, Sacramento, CA 95814

SERVED ON (PRINT NAME)

MANNER OF SERVICE

Toni Smith, R.N., by and through, Mark Wasser

Facsimile & U.S. Mail, First Class to Mark Wasser per  
stipulation

SERVED BY (PRINT NAME)

TITLE

Eugene D. Lee

Principal, Law Office of Eugene Lee

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

7/3/2008

DATE

SIGNATURE OF SERVER

Eugene D. Lee

ADDRESS OF SERVER

555 W 5th St., Ste. 3100, Los Angeles, CA 90013

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

MTC000052

(213) 992-3299  
TELEPHONE

**LAW OFFICE OF  
EUGENE LEE**  
555 WEST FIFTH STREET SUITE 3100  
LOS ANGELES, CALIFORNIA 90013-1010

ELEE@LOEL.COM  
EMAIL  
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# FAX

---

**To:**

**From:** Law Office of Eugene Lee

**Fax Number:** 2135960487

**Date:** 07/03/2008

**Pages:** 5 (including cover page)

**Re:** Jadwin/KC: Deposition Subpoenas/Notices

---

**Comments:**

Mark,

Last set of depo subpoenas.



AOSS (Rev. 12/06) Subpoena in a Civil Case

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Issued by the

# UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

CALIFORNIA

David F. Jadwin, D.O., F.C.A.P.

## SUBPOENA IN A CIVIL CASE

V.

County of Kern

Case Number:<sup>1</sup> 1:07-cv-26-OWW-TAG

TO: Ray Watson

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

Holiday Inn, 801 Truxton Ave, Bakersfield, CA 93301, (661) 323-1900

DATE AND TIME

8/14/2008 9:00 am

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE

DATE AND TIME

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

7/3/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Eugene D. Lee, Law Office of Eugene Lee, 555 West Fifth St., Suite 3100, Los Angeles, CA 90013; (213) 992-3299

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

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DATE

PLACE

http://www.jdsupra.com/post/documentViewer.aspx?fid=85f0590a-1c6b-41df-ab72-0400df94bdcc

SERVED

7/3/2008

Law Offices of Mark Wasser, 400 Capitol Mall, Ste 2640, Sacramento, CA 95814

SERVED ON (PRINT NAME)

MANNER OF SERVICE

Ray Watson, by and through Mark Wasser

Facsimile & U.S. Mail, First Class to Mark Wasser per stipulation

SERVED BY (PRINT NAME)

TITLE

Eugene D. Lee

Principal, Law Office of Eugene Lee

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

7/3/2008

DATE

SIGNATURE OF SERVER

Eugene D. Lee

ADDRESS OF SERVER

555 W 5th St., Ste. 3100, Los Angeles, CA 90013

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

AOSS (Rev. 12/06) Subpoena in a Civil Case

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Issued by the

UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

CALIFORNIA

David F. Jadwin, D.O., F.C.A.P.

SUBPOENA IN A CIVIL CASE

V.

County of Kern

Case Number:<sup>1</sup> 1:07-cv-26-OWW-TAG

TO: Tai Yoo, M.D.

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

Holiday Inn, 801 Truxton Ave, Bakersfield, CA 93301, (661) 323-1900

DATE AND TIME

7/23/2008 3:00 pm

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE

DATE AND TIME

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

7/3/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Eugene D. Lee, Law Office of Eugene Lee, 555 West Fifth St., Suite 3100, Los Angeles, CA 90013; (213) 992-3299

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

Document hosted at JDSUPRA

DATE

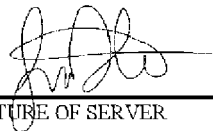
http://www.jdsupra.com/post/documentViewer.aspx?fid=85f0590a-1c6b-41df-ab72-0400df94bdcc

SERVED	7/3/2008	Law Offices of Mark Wasser, 400 Capitol Mall, Ste 2640, Sacramento, CA 95814
SERVED ON (PRINT NAME)		MANNER OF SERVICE
Tai Yoo, M.D., by and through Mark Wasser		Facsimile & U.S. Mail, First Class to Mark Wasser per stipulation
SERVED BY (PRINT NAME)		TITLE
Eugene D. Lee		Principal, Law Office of Eugene Lee

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on 7/3/2008  
DATE

  
SIGNATURE OF SERVER

Eugene D. Lee  
ADDRESS OF SERVER

555 W 5th St., Ste. 3100, Los Angeles, CA 90013

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

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**EXHIBIT 7:**  
Meet and confer fax from Defendants' attorney to Plaintiff's attorney, dated 7/10/08

The Law Offices of Mark A. Wasser  
400 Capitol Mall, Suite 2640  
Sacramento, California 95814  
Office: 916-444-6400  
Fax: 916-444-6405

# Fax

To: <b>Eugene Lee</b>	From: <b>Mark A. Wasser</b>
Fax: <b>(213) 596-0487</b>	Pages: <b>3 (including cover page)</b>
Phone: <b>(213) 992-3299</b>	Date: <b>7/10/08</b>
Re: <b>Jadwin v. County of Kern</b>	CC:

Urgent     For Review     Please Comment     Please Reply     Please Recycle

● **Comments:**

Please see attached letter.

**MARK A. WASSER**

400 Capitol Mall, Suite 2640  
Sacramento, California 95814  
Office: 916-444-6400 Fax: 916-444-6405  
[mwasser@markwasser.com](mailto:mwasser@markwasser.com)

July 10, 2008

**VIA FACSIMILE AND FIRST CLASS MAIL**

Eugene Lee  
Law Offices of Eugene Lee  
555 West Fifth Street, Suite 3100  
Los Angeles, California 90013-1010

*Re: Jadwin v. County of Kern, et al.*

Dear Gene:

You transmitted 17 deposition subpoenas to me by fax at 5:09 p.m. on Thursday, July 3, 2008. Although you disclosed your desire to take these depositions in an e-mail to me dated June 30, 2008, at no time did you discuss scheduling the depositions or either my availability or the deponents' availability. Further, as I wrote in my letter of July 2, 2008, the Defendants do not believe the Scheduling Order allows Plaintiff to take as many depositions as you are noticing. Granting Plaintiff "relief" from the 10-deposition limit does not mean Plaintiff can take upwards of 30 depositions.

You have made no attempt to discuss this issue or to meet and confer.

I am not available the week of July 14 because I am in Court and in depositions out of town in other matters. No one will be appearing at any of the depositions you have noticed and the Defendant will file a motion for a protective order tomorrow, Friday, July 11, 2008. The motion will be set for hearing on shortened time so as to expedite the hearing as much as possible. My assistant will be in contact with Magistrate Judge Goldner's chambers to determine Judge Goldner's availability and we will let you know as soon as Judge Goldner's clerk has given us a date. If you will stipulate to shortened time let us know. If not, we will obtain the requisite order shortening time for service and hearing of the motion.

You also served on July 8, 2008, a third set of written interrogatories. We have discussed this issue earlier. During our discussions regarding Plaintiff's second set of interrogatories, Plaintiff agreed that he would not serve any more interrogatories if Defendants withdrew their motion for protective order on the second set. We did. The Defendants do not intend to respond to the third set of interrogatories and will include a

Eugene Lee

July 10, 2008

Page 2

request for a protective order on the third set in the motion that we file tomorrow. At no point have you met and conferred with me on this issue.

You also served, on July 8, 2008, 290 requests for admissions regarding authentication of documents. As I have discussed with you on several occasions, authentication of documents is premature because discovery has not closed. It is typically handled at the joint pre-trial conference. We will thus also include a request for relief from the requests in our motion for protective order.

I am out of the office in depositions and have authorized my assistant to send you this letter. If you have any questions, please call my assistant and she will relay any messages to me.

Very Truly Yours,



Mark A. Wasser

cc: Karen Barnes (via e-mail)



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EXHIBIT 8:  
Meet and confer email from Plaintiff's attorney to Defendants' attorney, dated 7/11/08

**Eugene D. Lee**

**From:** Eugene D. Lee [elee@LOEL.com]  
**Sent:** Friday, July 11, 2008 11:21 AM  
**To:** 'mwasser@markwasser.com'  
**Subject:** Mx Prot Order

Mark,

I got your fax of yesterday. It is full of the usual lies and distortions which, regrettably, have come to characterize most of your communications. We'll deal with that at the hearing.

Plaintiff will stipulate to shorten time on your motion for protective order provided Defendants stipulate to shorten time on Plaintiff's motion to compel the depositions and hear both motions at the same ex parte hearing. That's more efficient for everybody and ensures a complete resolution of a common issue.

Please let me know.

Sincerely,

Gene Lee

-----  
**LAW OFFICE OF EUGENE LEE**  
**EMPLOYMENT LAW**  
555 WEST FIFTH ST., STE. 3100  
LOS ANGELES, CA 90013  
Tel: (213) 992-3299  
Fax: (213) 596-0487  
E-mail: [elee@LOEL.com](mailto:elee@LOEL.com)  
Website: [www.LOEL.com](http://www.LOEL.com)  
Blog: [www.CaLaborLaw.com](http://www.CaLaborLaw.com)

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**California Labor & Employment Law Blog**

'Desk Rage' on the Rise

July 10, 2008

POWERED BY FEEDBURNER

The Law Offices of Mark A. Wasser  
400 Capitol Mall, Suite 2640  
Sacramento, California 95814  
Office: 916-444-6400  
Fax: 916-444-6405

# Fax

To: Eugene Lee	From: Mark A. Wasser
Fax: (213) 596-0487	Pages: 2 (including cover page)
Phone: (213) 992-3299	Date: 7/11/08
Re: Jadwin v. County of Kern	CC:

Urgent     For Review     Please Comment     Please Reply     Please Recycle

● Comments:

Please see attached letter.

**MARK A. WASSER**

400 Capitol Mall, Suite 2640  
Sacramento, California 95814  
Office: 916-444-6400 Fax: 916-444-6405  
mwasser@markwasser.com

July 11, 2008

**VIA FACSIMILE AND FIRST CLASS MAIL**

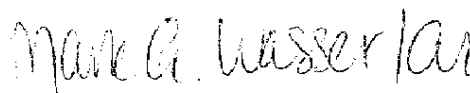
Eugene Lee  
Law Offices of Eugene Lee  
555 West Fifth Street, Suite 3100  
Los Angeles, California 90013-1010

***Re: Jadwin v. County of Kern, et al.***

Dear Gene:

I am out of the office however, my assistant read me your e-mail about shortening time. We will stipulate to shortening time for your motion to compel and suggest that both motions be set for hearing on July 22, 2008. We will relay this to the Court.

Very Truly Yours,



Mark A. Wasser

cc: Karen Barnes (via e-mail)

**Eugene D. Lee**

**From:** Eugene D. Lee [elee@LOEL.com]  
**Sent:** Friday, July 11, 2008 4:28 PM  
**To:** 'mwasser@markwasser.com'  
**Subject:** Depos

Mark,

I got your fax of today. Just to be clear, we intend to proceed with the depositions as scheduled and expect deponents to show up. The first few depositions are of defendants Harris and Bryan. We have a right to depose them and have asked you for dates of availability since 6/30, two weeks ago. You mention you have a trial in the week of 7/14, but earlier you told me it was at the end of July. You had scheduled a deposition of Plaintiff's expert, Regina Levison, for 7/14. So when exactly is this trial? Plaintiff requests an offer of proof.

Motioning the court is fine, but that doesn't mean defendants can deny plaintiff the right to depose defendants and key witnesses prior to the hearing.

Also, why set the ex parte hearing for 7/22, which is 11 days away. It should be set much sooner than that. There is only 1 month left in discovery. This smacks of an intentional delay tactic by defendants.

Please get back to me quickly regarding the above. Plaintiff intends to reserve a court reporter, a room at the holiday inn and otherwise prepare for the depositions as scheduled. Defendants have no grounds at present to deny plaintiff the right to depose the defendants and key witnesses as currently scheduled.

Sincerely,

Gene Lee

~~~~~  
**LAW OFFICE OF EUGENE LEE**  
**EMPLOYMENT LAW**  
555 WEST FIFTH ST., STE. 3100  
LOS ANGELES, CA 90013  
Tel: (213)992-3299  
Fax: (213)596-0487  
E-mail: [elee@LOEL.com](mailto:elee@LOEL.com)  
Website: [www.LOEL.com](http://www.LOEL.com)  
Blog: [www.CaLaborLaw.com](http://www.CaLaborLaw.com)

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**California Labor & Employment Law Blog**  
**'Desk Rage' on the Rise**  
**July 10, 2008**

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**EXHIBIT 9:**  
Meet and confer emails between Plaintiff's attorney and Defendants' attorney, dated 7/13/08

**Eugene D. Lee**<http://www.jdsupra.com/post/documentViewer.aspx?fid=85f0590a-1c6b-41df-ab72-0400df94bdcc>

**From:** Eugene D. Lee [elee@LOEL.com]  
**Sent:** Sunday, July 13, 2008 12:51 AM  
**To:** 'mwasser@markwasser.com'  
**Subject:** Stip Shorten Time MPO/MTC  
**Attachments:** Stipulation - Shorten Time MTC\_MPO Deposs\_080714.doc

**Importance:** High

Mark,

Attached is a stipulation to shorten time re the parties' respective discovery motions. Please let me know if it is acceptable to you as to form. I will call Judge Golder's chambers tomorrow to confirm her availability.

I need to know by 2 p.m. Monday (7/14/08) whether Defendants will sign the stip so that Plaintiff has time to file an ex parte application with the Court in case Defendants refuse.

Thank you kindly.

Sincerely,

Gene Lee

-----  
**LAW OFFICE OF EUGENE LEE**  
**EMPLOYMENT LAW**  
555 WEST FIFTH ST., STE. 3100  
LOS ANGELES, CA 90013  
Tel: (213) 992-3299  
Fax: (213) 596-0487  
E-mail: [elee@LOEL.com](mailto:elee@LOEL.com)  
Website: [www.LOEL.com](http://www.LOEL.com)  
Blog: [www.CaLaborLaw.com](http://www.CaLaborLaw.com)

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**California Labor & Employment Law Blog**

'Desk Rage' on the Rise

July 10, 2008

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9  
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17 **UNITED STATES DISTRICT COURT**  
 18 **EASTERN DISTRICT OF CALIFORNIA**

<p>20 <b>DAVID F. JADWIN, D.O.</b></p> <p>21 Plaintiff,</p> <p>22 vs.</p> <p>23 <b>COUNTY OF KERN, et al.,</b></p> <p>24 Defendants.</p>	<p>) Case No.: 1:07-cv-00026-OWW-TAG</p> <p>)</p> <p>) <b>STIPULATION TO SHORTEN TIME re:</b></p> <p>) <b>DEFENDANTS’ MOTION FOR</b></p> <p>) <b>PROTECTIVE ORDER &amp; PLAINTIFF’S</b></p> <p>) <b>MOTION TO COMPEL DEPOSITIONS</b></p> <p>)</p> <p>) Action Filed: January 6, 2007</p> <p>) Trial Date: December 3, 2008</p> <p>)</p> <p>)</p> <p>)</p>
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1 IT IS HEREBY STIPULATED by and between the parties through their respective  
2 counsel, as follows:

3 1. The time for service, briefing and hearing of Defendants' Motion for Protective  
4 Order re Depositions, Interrogatories Set Three and Requests for Admission Set One, on the one  
5 hand, and Plaintiff's Motions to Compel Depositions, on the other, be as follows:

- 6 1. Filing of Motions: [July 14, 2008]
- 7 2. Oppositions (if any) [July 16, 2008]
- 8 3. Replies: [Waived]
- 9 4. Hearing: [July 18, 2008]

10 Dated: July 14, 2008 LAW OFFICES OF MARK A. WASSER

11  
12 By: \_\_\_\_\_  
13 Mark A. Wasser  
14 Attorney for Defendants County of Kern, et al.

15 Dated: July 14, 2008 LAW OFFICE OF EUGENE LEE

16  
17 By: \_\_\_\_\_  
18 Eugene D. Lee  
19 Attorney for Plaintiff, David F. Jadwin, D.O.

20 **ORDER**

21 The parties having stipulated as hereinabove set forth and good cause appearing,  
22 IT IS SO ORDERED.  
23

24 \_\_\_\_\_  
25 Honorable Theresa A. Goldner  
26 U.S. Magistrate Judge  
27  
28

**Eugene D. Lee**

**From:** Eugene D. Lee [elee@LOEL.com]  
**Sent:** Sunday, July 13, 2008 10:55 AM  
**To:** 'mwasser@markwasser.com'  
**Cc:** 'Karen Barnes'; 'Assistant to Mark A. Wasser'  
**Subject:** RE: Depos

Mark,

Actually, I did attempt, repeatedly, to meet and confer on dates with you. As for your unavailability, you may recall the parties have a stipulation that Tuesdays, Wednesdays and Thursdays would be left open for depositions in this action. If you are unavailable, then why not have Mark Nations fill in for you as he has in the past? Or Karen Barnes, who has been attending nearly every deposition and who has appeared on the record before Judge Goldner at past hearings? As for moving for a protective order, that does not permit Defendants to grant themselves a stay in the absence of an order. That is well-settled law and is sanctionable, as you well know.

As for paying for Mr. Bryan's travel costs, that violates our earlier agreement. Plaintiff had paid for the costs Mr. Bryan incurred last time when his deposition was cancelled. That was because you gave Plaintiff a choice: either pay for the costs for the cancelled depo this time OR pay for the costs of his future depo next time. In typical fashion, you have conveniently forgotten our agreement and now attempt to have it both ways. As for Dr. Harris, what prejudice did he suffer from the last deposition? You failed to ask for reimbursements of his charges then, as you did with Mr. Bryan, because he did not incur any. If he did, Plaintiff asks for an offer of proof in the form of receipts. Plaintiff might even be able to make an exception for him and hold his deposition at a location in Santa Barbara.

As for the stip, I will check with Judge Goldner on Monday morning as to her availability. If you have changes you want to make to the stip's language, you need to make them now. The urgency of this situation was created by Defendants' decision to wait until July 10 to notify Plaintiff of their decision not to attend the depositions. It was not created by Plaintiff. If the stip isn't signed by 2 pm Monday, Plaintiff will have no choice but to immediately proceed with an ex parte application to the Court. Plaintiff has been prejudiced by Defendants' bad faith actions and the disruption to Plaintiff's deposition schedule needs to be minimized to the extent possible.

Please contact me any time if you wish to discuss this further.

Sincerely,

Gene Lee

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**LAW OFFICE OF EUGENE LEE**

**EMPLOYMENT LAW**

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**From:** Mark Wasser [mailto:mwasser@markwasser.com]  
**Sent:** Sunday, July 13, 2008 9:40 AM  
**To:** elee@LOEL.com  
**Cc:** Karen Barnes; Assistant to Mark A. Wasser  
**Subject:** RE: Depos

Gene,

I have depositions the week of July 14 in Orange County in one case and an appearance in Mendocino County in another case. I am committed all week. The depositions you noticed are not happening for two reasons. One, I am not available. You made no attempt to clear any of the dates with me. The depositions in my Orange County case have been set for weeks. Two, we are moving for a protective order to prevent the depositions you have noticed.

Although those are the reasons the depositions are not happening, just to be clear, because of those two reasons, I have not checked with either Mr. Bryan or Mr. Harris to determine their availability. They may or may not be available. With regard to Mr. Bryan, he is not flying to Bakersfield from Denver without advance payment of his travel costs from you. If memory serves me, this is the 3<sup>rd</sup> or 4<sup>th</sup> time you have scheduled his deposition. You cancelled all the previous sessions. Mr. Harris is in Santa Barbara and is no longer employed by the County. He will also require payment of travel costs. I believe you have set his deposition two or three times before and cancelled them. We will need an agreement on travel payment in place before either deposition happens.

No one will show up on the dates you have noticed. If you proceed to book a room and reserve a reporter you do so knowing no one will show up.

With regard to setting the hearing on the motions, it is possible I could get to Bakersfield by the afternoon of the 18<sup>th</sup>. If Judge Goldner is available late in the day on the 18<sup>th</sup>, they perhaps we could set our hearing then. I have a pretrial conference with opposing counsel in Orange County the morning of the 18<sup>th</sup>. That is why I proposed setting it for the next week. I have availability that week.

If Judge Goldner can hear our motions at 3:00 p.m. on the 18<sup>th</sup>, we can set them then. If not, they have to set for the following week. I will be out of my office all day on the 14<sup>th</sup> for an out-of-town court appearance. If you can find out Judge Goldner's availability on the 18<sup>th</sup> and let my assistant know, she can relay the information to me. We can then proceed to draft an appropriate stipulation. On that subject, we should provide for a joint statement of discovery dispute since the Local Rules require that.

Mark