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Attorney for Defendants ERNEST BREDE, LUIS CONTRERAS, PAUL KOEHLER, LARRY LAVERDURE, DONALD SHOWERS, AARON LUCAS, STEVE MISTERFELD, ALAN SHUSTER, and RICHARD ASHE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

JONATHAN D. COBB, SR., and
WALTER ARLEN ST. CLAIR,

Plaintiffs,

v.

ERNEST BREDE, LUIS CONTRERAS,
PAUL KOEHLER, LARRY LAVERDURE,
DONALD SHOWERS, AARON LUCAS,
STEVE MISTERFELD, ALAN SHUSTER,
and RICHARD ASHE,

Defendants.

) Case No.: 3:10-CV-03907-MEJ

) **JUDGE: Honorable Maria-Elena James**

) **DECLARATION OF ANTHONY V.**
) **SMITH RE REQUEST TO EXTEND**
) **DISCOVERY DEADLINE TO**
) **COMPLETE DEPOSITION OF JASON**
) **COBB & TO EXTEND DATE FOR**
) **FILING OF MOTION TO COMPEL**
) **DEPOSITION TESTIMONY AND/OR**
) **FOR SANCTIONS AS AGAINST JASON**
) **COBB**

) Original Complaint Filed: August 31, 2010
) Discovery Cut-Off: October 6, 2011
) Settlement Conference Date: October 18, 2011

I, Anthony V. Smith, Esq., declare:

1. I am an attorney licensed to practice before all courts in the State of California including the United States District Court, Northern District of California. I have personal knowledge of the facts contained in this declaration and could competently testify to the same if

1 called upon to do so in a court of law. I represent all currently named defendants sued by
2 plaintiffs in this action.

3 2. As the court is aware, last week the court issued an Order Compelling Jason
4 Cobb to appear for his deposition on October 5, 2011, at 9:30 a.m. Mr. Cobb appeared as did
5 the undersigned. However, due to an apparent mix-up with the court reporter agency, no court
6 reporter appeared for the deposition. Eventually, the deposition commenced on Tuesday,
7 October 11, 2011. For the reasons stated below, the deposition was not completed. Pursuant to
8 this court's order of October 5, 2011, defendants were granted leave to complete the deposition
9 to up to and including October 13, 2011.
10

11 3. During the course of Jason Cobb's Cobb deposition, several matters arose that
12 required the undersigned to following Judge James' standing order relating to disputes that arise
13 during the course of a deposition. In fact, as Judge James' Courtroom Deputy (Brenda Tolbert)
14 and Law Clerk (Chris Nathan) are aware, Jason Cobb and I had two (2) conference calls with
15 the court staff relating to the disputes that arose during the course of the deposition. Pursuant to
16 Judge James' standing order, Mr. Cobb and I agreed to draft a joint letter that states our
17 respective positions relating to, among other things, Mr. Cobb's refusal to sign the protective
18 order issued by Judge James on September 26, 2011.
19

20 4. During the course of the deposition, Mr. Cobb refused to answer a significant
21 number of deposition questions (most questions of which Plaintiffs and George Stock answered
22 without objection during their respective depositions). During the course of his refusal to
23 answer these questions, Mr. Cobb would assert objections which I viewed as baseless, frivolous
24 and asserted without any genuine or legitimate legal basis.
25

26 5. In the latter part of the afternoon (somewhere around 3:30 p.m. – 4:00 p.m.), Mr.
27 Cobb indicated that he would only provide a specific number of hours for completion of the
28

1 deposition. Around this same time period, he also claimed that he was not feeling well despite
2 the fact that he stated at the beginning of the deposition that he was prepared to go forward. At
3 one point he stated that "we're done" or words to that affect. Despite the fact that he aware that
4 I was required to complete his deposition by Thursday, October 13, 2011, he said that he was
5 not available on any other day this week because he had "other legal matters and deadlines" or
6 words to that affect. Therefore, the deposition was ended without being completed or
7 arrangements set for the continuation of the deposition. The complete transcript of Mr. Cobb's
8 deposition will be available in about two (2) weeks.

10 6. Therefore, defendants request that time to complete the deposition of Jason Cobb
11 be extended to a date after the settlement conference in this matter which is set for Tuesday,
12 October 18, 2011. Defendants further request that the date for the filing and the hearing on a
13 motion to compel further testimony and for sanction as against Jason Cobb be extended to a date
14 after the settlement conference. In light of the pending settlement conference, I would suggest
15 that the court schedule a telephone/status conference after the settlement conference should the
16 case not settle at that time.

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

20 Date: *October 13, 2011*

Any discovery disputes must be presented in compliance
with the undersigned's discovery standing order.

21 *agvs*

23 Anthony V. Smith, Esq.

24 LAW OFFICE OF ANTHONY V. SMITH

25 Attorney for Defendants ERNEST BREDE, LUIS CONTRERAS

26 PAUL KOEHLER, LARRY LAVERDURE, DONALD SHOWN

27 AARON LUCAS, STEVE MISTERFELD, ALAN SHUSTER

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