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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JEANNE BERG,

Plaintiff,

v.

CITY OF CARLSBAD; OFFICER PANNINI;
OFFICER DOE 1; OFFICER DOE 2;
OFFICER DOE 3; AND OFFICER DOE 4

Defendants.

Civil No. 09cv2669- JAH (BGS)

**ORDER TO SHOW CAUSE RE:
BRANDON DAVIS AND ALFRED
DAVIS**

(Doc. No 15)

Defendants, City of Carlsbad and Officer Fanene (erroneously sued as Officer Pannini), filed an ex parte application for an Order to Show Cause why witnesses Brandon Davis and Alfred Davis should not be held in contempt pursuant to Federal Rule of Civil Procedure Rule 45. Rule 45(e) states:

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

In support of this application, Defendants submitted a declaration stating that Alfred Davis was personally served with two separate subpoenas for depositions that were to take place on June 24, 2010, and July 28, 2010. These depositions were to take place within 100 miles of Alfred Davis' residence. Alfred Davis did not appear at either deposition, and offered no excuse for not appearing.

Brandon Davis was also personally served with a deposition subpoena for a deposition that was to take place on July 28, 2010. The deposition was to take place within 100 miles of Brandon Davis' last know address. On the date of the scheduled deposition, Brandon Davis spoke to counsel and stated

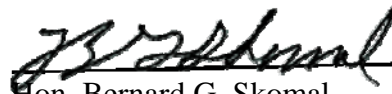
1 that he did not have a ride to the deposition. Brandon Davis agreed to cooperate in rescheduling his
2 deposition, but defense counsel states that he has failed to do so.

3 A hearing shall be held on **November 16, 2010**, at **2:00 p.m.** in Courtroom 12 of the above-
4 entitled court. Alfred Davis and Brandon Davis shall show cause why the above allegations should not
5 be certified to the District Court judge to proceed with contempt hearings for failure to obey the
6 subpoenas without adequate excuse. 28 U.S.C § 636(e)(6); *see In Re Kitterman*, 696 F. Supp. 1366
7 (D. Nev. 1988).

8 **IT IS ORDERED** that on the above date Alfred Davis and Brandon Davis shall appear in
9 Courtroom 12 to explain to the Court why they did not show up for their depositions, and why they
10 should not be held in contempt.

11 **IT IS FURTHER ORDERED** that on or before **October 28, 2010**, defense counsel shall
12 personally serve this order on Alfred Davis and Brandon Davis. Counsel shall provide the Court with
13 proof of service.

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16 DATED: October 25, 2010

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19 Hon. Bernard G. Skomal
20 U.S. Magistrate Judge
21 United States District Court
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