

1 Edward E. Yates, Esquire, SB# 135138
2 LAW OFFICE OF EDWARD E. YATES
3 1000 Fourth St., Suite 800
4 San Rafael, CA 94901
5 Telephone: (415) 526-6314
6 Email: eyates@marinlandlaw.com

7 Attorney for Petitioner
8 COMMUNITY VENTURES PARTNERS, INC.

FILED

JUN 24 2015

KIM LUKNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: R. Smith, Deputy

9 **SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF MARIN**

11 COMMUNITY VENTURES PARTNERS,)
12 INC.,)
13 Petitioner/Plaintiff,)
14 v.)
15 COUNTY OF MARIN,)
16 Respondent/Defendant.)

Case No.: CV 1404718
NOTICE OF MOTION AND MOTION FOR
ORDER TO COMPEL DEFENDANTS BRIAN
CRAWFORD, KATIE RICE, JUDY ARNOLD
TO ATTEND AND TESTIFY AT DEPOSITION
AND PRODUCE DOCUMENTS AND
ELECTRONICALLY STORED INFORMATION,
AND TO REQUEST TO IMPOSE MONETARY
SANCTIONS; SUPPORTING DECLARATION
OF EDWARD YATES; AND MEMORANDUM
OF POINTS AND AUTHORITIES

[Code of Civ. Pro. § 2025.410, § 2025.450,
§2023.020]

Next CMC Date: June 29, 2015

Time: 8:30 am

Dept.: B

Honorable Roy O. Chernus

7/22/15

23 To COUNTY OF MARIN and to its attorney of record:

24 NOTICE IS HEREBY GIVEN that as soon as the matter may be heard, in this court, located at 3501 Civic
25 Center Drive, San Rafael, CA, Plaintiff, Community Ventures Partners, Inc., will, and hereby does, move
26 for an order to compel Brian Crawford, Katie Rice and Judy Arnold to attend and testify at their
27 depositions and to produce those documents, electronically stored information, and/or tangible things
28

1 described in the deposition notice attached hereto as Exhibit A. Moving party, Plaintiff Community
2 Ventures Partners, Inc. will further move for an order imposing monetary sanctions against County of
3 Marin and/or its attorneys, Stephen Woodside and David Zaltsman in favor of Community Ventures
4 Partners, Inc. in the amount of \$4830.00.

5
6 The motion to compel will be made on the ground that Brian Crawford, Katie Rice and Judy Arnold
7 failed and refused to attend and testify at the deposition as scheduled and to produce for inspection those
8 documents, electronically stored information, and/or tangible things described in the deposition notice,
9 which was served on County of Marin on June 12, 2015, a copy of which is attached hereto as Exhibit A.

10
11 The motion will be based on this notice of motion, on the declaration of Edward E. Yates and the
12 memorandum set forth below, on the records and file herein, and on such evidence as may be presented
13 at the hearing of the motion.

14 Dated this 24th day of June, 2015

LAW OFFICES OF EDWARD E. YATES

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18 Edward E. Yates
19 Attorney for Petitioner
20 Community Ventures Partners, Inc.

1 4. Deponents, Brian Crawford, Katie Rice and Judy Arnold are all employees of Respondent
2 County of Marin and spoke at the August 19, 2014 Board of Supervisors meeting. Katie Rice and Judy
3 Arnold submitted affidavits as evidence to support County of Marin's arguments in this case.

4
5 5. Petitioner, Community Ventures Partners, served Marin County with a Deposition Notice for Brian
6 Crawford, Katie Rice and Judy Arnold to discover the underlying facts supporting the statements made in
7 the affidavits. (See Exhibit A.)

8 6. Respondent County of Marin did not timely serve a valid objection to the Deposition Notice on June
9 22, 2015, three days prior to the noticed deposition, pursuant to CCP § 2025.410. (See Exhibit D.)

10
11 7. Respondent County of Marin did not move for an order staying the taking of the deposition and
12 quashing the deposition notice or comply with the requirement to meet and confer to address any
13 objections to the Deposition Notice pursuant to Section 2016.040. (See Exhibit D.)

14 8. On June 23, 2015 I emailed David Zaltsman to inquire into deponent's refusal to appear and to meet
15 and confer with the opposing party in a reasonable and good-faith attempt to resolve informally the issues
16 covered by the motion. Mr. Zaltsman refused to discuss any objections or other issues regarding the
17 Deposition Notice at issue in this motion. (See Exhibit D.)

18
19 9. Respondent County of Marin has informed the Petitioner that Brian Crawford, Katie Rice and Judy
20 Arnold will NOT attend and testify at the deposition as scheduled or produce the documents described in
21 the Deposition Notice. (See Exhibit D.)

22
23 10. Good cause exists for the production of documents, electronically stored information, and/or tangible
24 things specified in the Deposition Notice as follows: any and all documents related to the instant action,
25 including, but not limited to, mail, emails, phone or any other logs, books, papers, calendars, notes, or
26 other forms of written communication and/or other things that are in your possession and/or under your
27 control.
28

1 Depositions and a more general request for production of documents were noticed because County
2 of Marin alleges that no documents exist regarding this case and because Petitioner, Community Ventures
3 Partners, Inc., needs to question the deponents:

- 4 • To discover the underlying facts purportedly supporting the statements contained in the
5 affidavits,
- 6 • To compare the consistency of the affidavits with the other facts in the case including
7 statements made at the August 19, 2014 hearing of the County of Marin Board of
8 Supervisors which appear to be in conflict, and
- 9 • To determine the overall credibility of the two affidavits which are curiously identical,

10
11
12 11. I remain willing to meet and confer to hopefully resolve this before the hearing date on this or a
13 possible motion by the County to terminate discovery.

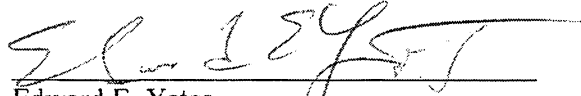
14 12. Community Ventures Partners, Inc. bases its request for the imposition of monetary sanctions in the
15 amount of \$4,830 on the basis 13.80 total hours, including 12.0 hours of my work at the rate of \$350 per
16 hour, which includes: .60 hours of correspondence with co-counsel with expertise in discovery motions,
17 7.4 hours drafting of the notice of motion, declaration, request for sanctions and memorandum of points
18 and authorities, 3.0 estimated hours to prepare a reply brief, 1.0 estimated hour to attend a hearing on this
19 subject; .60 hours for service and filing done personally by me due to staffing issues; only .60 hours is
20 charged to reflect a cost similar to a process company; and 1.2 hours of co-counsel time for advice and
21 editing at \$350 per hour;

22
23
24
25 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
26 correct.

27 //
28

1 Dated this 24th day of June, 2015

LAW OFFICES OF EDWARD E. YATES

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5 Edward E. Yates
6 Attorney for Petitioner
7 Community Ventures Partners, Inc.
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EXHIBIT A

1 Edward E. Yates, Esquire, SB# 135138
2 LAW OFFICE OF EDWARD E. YATES
3 1000 Fourth St., Suite 800
4 San Rafael, CA 94901
5 Telephone: (415) 526-6314
6 Email: eyates@marinlandlaw.com

7 Attorney for Petitioner
8 COMMUNITY VENTURES PARTNERS, INC.
9

10 **SUPERIOR COURT OF CALIFORNIA**

11 **COUNTY OF MARIN**

12	COMMUNITY VENTURES PARTNERS,)	Case No.: CV 1404718
13	INC.,)	PLAINTIFF'S NOTICE OF
14	Petitioner/Plaintiff,)	TAKING OF DEPOSITION OF
15)	DEFENDANTS
16	v.)	<i>[Code of Civ. Pro. Section 2025.010]</i>
17	COUNTY OF MARIN,)	
18	Respondents/Defendants.)	
19)	

20 **PLEASE TAKE NOTICE** that pursuant to Code of Civil Procedure Sections 2025.010, et seq., on
21 Thursday, June 25, 2015, at the Law Offices of Edward E. Yates, located at 1000 Fourth St., Suite 800,
22 San Rafael, California, 94901, County of Marin, plaintiff, COMMUNITY VENTURES PARTNERS,
23 INC., will take the depositions of defendants, Katie Rice, Judy Arnold, and Brian Crawford, whose address
24 and telephone numbers are known to their attorneys, upon oral examination before a court reporter of the
25 State of California, authorized to administer an oath. Petitioner intends to record the testimony by video
26 and audio technology.
27
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1 Said depositions will upon the following schedule:

2 Judy Arnold: 9:00 A.M.;

3 Brian Crawford: 10:30 A.M.; and

4 Katie Rice: 1:00 P.M.

5
6 **THIS NOTICE REQUIRES THE PRODUCTION OF BOOKS, DOCUMENTS, AND**
7 **OTHER THINGS. IF THEY ARE NOT PRODUCED, THE DEPOSITION MAY BE**
8 **ADJOURNED AND SANCTIONS WILL BE SOUGHT.**

9 **DEPONENT AND DEPONENT'S ATTORNEYS OR RECORD ARE FURTHER**
10 **NOTIFIED** to produce at the depositions any and all documents related to the instant action, including,
11 but not limited to, mail, emails, phone or any other logs, books, papers, calendars, notes, or other forms
12 of written communication and/or other things that are in your possession and/or under your control.

13
14 In lieu of providing the requested documents at the time and date specified above, the responding
15 parties may forward legible copies of said documents to plaintiff's attorneys at any time prior to the date
16 for production.

17
18 Dated this 12 day of June, 2015

LAW OFFICES OF EDWARD E. YATES

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Edward E. Yates
Attorney for Petitioner
Community Ventures Partners, Inc.

EXHIBIT B

1 Edward E. Yates, Esquire SB# 135138
2 LAW OFFICE OF EDWARD E. YATES
3 1000 Fourth St., Suite 800
4 San Rafael, CA 94901
5 Telephone: (415) 526-6314
6 Email: eyates@marinlandlaw.com

7 Attorney for Petitioner
8 COMMUNITY VENTURES PARTNERS, INC.

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN

10
11 COMMUNITY VENTURES PARTNERS,)
12 INC.,)

13 Petitioner/Plaintiff,)

14 vs.)

15)
16 COUNTY OF MARIN,)

17 Respondent/Defendant.)

Case No.: CV 1404718

**PETITIONER'S REQUEST FOR
PRODUCTION OF DOCUMENTS AND
THINGS, SET ONE**

[Code of Civ. Pro. Section 2031.010]

CMC Date: May 21, 2015

Time: 8:30 am

Dept.: B

Honorable Roy O. Chernus

18
19 **REQUESTING PARTY: PETITIONER, COMMUNITY VENTURES PARTNERS, INC.**

20 **RESPONDING PARTY: RESPONDENT, COUNTY OF MARIN**

21 **SET NUMBER: ONE**

22 **TO RESPONDENT, COUNTY OF MARIN, AND TO ITS ATTORNEY OF RECORD HEREIN:**

23 COMES NOW Petitioner, COMMUNITY VENTURES PARTNERS, INC., and requests that
24 Respondent, COUNTY OF MARIN ("COUNTY"), produce and permit the inspection and copying or
25 photographing, pursuant to Code of Civil Procedure, Section 2031.010, of all documents within the
26 Respondents' control or in the control of Respondents' attorney, specified as below. COUNTY shall make
27 such production within thirty (30) days at Law Office of Edward E. Yates, at 1000 Fourth Street, Suite
28 800, San Rafael, CA 94901.

1 In lieu of providing the requested documents at the time and date specified above, the responding
2 parties may forward legible copies of said documents to Petitioner's attorneys at any time prior to the date
3 for production.

4 INSTRUCTIONS

5 In producing documents or things pursuant to these demands, please identify the documents and
6 things as set out below under the term "Identify" under Definitions.

7 A written response under oath to this demand is also required of respondents within thirty (30)
8 days after service of this demand, consisting of a statement that respondents will comply with this demand
9 or a statement that respondents lack the ability to comply with this demand, or an objection to this demand
10 either in its entirety or in some particular respect. If objection is made to only part of an item or category
11 of item requested in this demand, said response shall contain a statement of compliance or a representation
12 of inability to comply with respect to the remainder of that item or category.

13 A statement that respondents will comply with this demand shall state that the production and
14 inspection will be allowed either in whole or in part and that all documents or things in a demanded
15 category which are in possession, custody or control of respondents and to which no objection is being
16 made will be included in production.

17 A representation of inability to comply with any particular item or category of times demanded
18 shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with the
19 demand and the statement shall also specify whether the inability to comply is because of the particular
20 item or category of item, (a) has never existed; (b) has been destroyed; (c) has been lost, misplaced, or
21 stolen; or (d) has never been, or is no longer in the possession, custody or control of respondents, as well
22 as the name and address of any natural person or organization known or believed by respondents to have
23 possession, custody or control of that item or category of item.

24 DEFINITIONS

25 For the purpose of this request, the terms used herein are defined as follows:

26 "Documents" includes written reports, letters, books, telegrams, memoranda, drawings, notes,
27 tape recording, photographs or any other written or graphic material or communication, however
28

1 denominated. This includes any documents that exist on any computer hard drives that have been deleted
2 or discarded elsewhere.

3 "Identify," when used with reference to a document or writing, means to:

4 (a) State the date of preparation, author, title (if any), subject matter, number of pages and
5 type of document (e.g., contract, letter, report, etc.);

6 (b) Identify each and every person who prepared or participated in the preparation of the
7 document or writing;

8 (c) Identify each and every person who received a copy of the document;

9 (d) State the present location of the document or writing;

10 (e) Identify each and every person having custody or control of the document or writing;

11 (f) State whether any copy of the document or writing is not identical to the original by
12 reason of shorthand or other written notes, initials or any other modifications;

13 (g) State, if the document or writing has been destroyed, the circumstances surrounding
14 and the reason for the destruction; and

15 (h) Identify, if the document or writing has been destroyed, each and every person who
16 destroyed or participated in, ordered, suggested or was informed of the destruction of it.

17 "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other
18 means of recording upon any tangible thing, any form of communication or representation, including
19 letters, words, pictures, sounds or symbols or combinations thereon, as defined in Section 250 of the
20 Evidence Code.

21 **REQUESTS FOR PRODUCTION**

22 1. Any and all documents and communications, including, but not limited to, emails, notes,
23 mail or other forms of written communication initiated or received by Ms. Katie Rice, Ms. Judy Arnold
24 and their staff, Mr. Matthew Hymel and his staff or Mr. Bryan Crawford and his staff, regarding Mr.
25 Hymel's and Mr. Crawford's addressing, discussing, presenting, or reporting on any aspect of the 2015-
26 2023 Housing Element at the COUNTY Board of Supervisors' meeting on August 19, 2015;

27 2. Any and all documents and communications, including, but not limited to, emails, notes,
28 mail or other forms of communications initiated or received by Ms. Katie Rice, Ms. Judy Arnold and their

1 staff, Mr. Matthew Hymel and his staff or Mr. Bryan Crawford and his staff,, regarding any County of
2 Marin Supervisors addressing, discussing, presenting, or reporting on any aspect of the 2015-2023
3 Housing Element at the COUNTY Board of Supervisors meeting on August 19, 2015; and

4 3. Any and all documents and communications, including, but not limited to, emails, notes,
5 mail or other forms of written communication initiated or received by Ms. Katie Rice, Ms. Judy Arnold,
6 Mr. Matthew Hymel or Mr. Bryan Crawford, from January 1, 2014 to December 31, 2014, regarding
7 letters sent to COUNTY from Bob Silvestri, President, Community Ventures Partners.

8 4. Any and all documents and communications that state the COUNTY's entire and current
9 records/document/file retention policy.

10 Dated this 15th day of April, 2015

LAW OFFICE OF EDWARD E. YATES


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14 Edward E. Yates
15 Attorney for Petitioner
16 Community Ventures Partners
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EXHIBIT C

1 STEVEN M. WOODSIDE, COUNTY COUNSEL
2 DAVID L. ZALTSMAN, Deputy (SBN 113053)
3 3501 Civic Center Drive, #275
San Rafael, CA 94903
Tel.: (415) 499-6117, Fax: (415) 499-3796

4 Attorney(s) for Defendants COUNTY OF MARIN
5 MARIN COUNTY BOARD OF SUPERVISORS
6 AND MARIN COUNTY PLANNING COMMISSION

7
8
9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN

10
11 Community Ventures Partners, Inc.,

12 Petitioner/Plaintiff,

13 v.

14 County of Marin,

15 Respondent/Defendant.

Case No.: CV 1404718

RESPONSE TO DEMAND FOR INSPECTION

Next CMC Date: June 29, 2015

Time: 8:30 a.m.

Dept.: B

Judge: Hon. Rov O Chernus

17 **Demanding Party: Petitioner, Community Venture Partners, Inc.**

18 **Responding Party: Respondent County of Marin**

19 **Set Number: One**

20 COUNTY OF MARIN Respondent herein, responds under CCP sections 2031.210 – 2031.250 to
21 petitioner's first Demand for Inspection herein as follows:

- 22 1. With respect to item number 1, respondent has made a diligent search and a reasonable
23 inquiry for the documents and other communications but is unable to comply with the
24 demand because no such documents or other communications have ever existed.
- 25 2. With respect to item number 2, respondent has made a diligent search and a reasonable
26 inquiry for the documents and other communications but is unable to comply with the
27 demand because no such documents or other communications have ever existed.
- 28

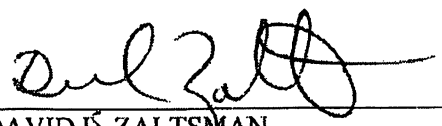
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- 3. With respect to item number 3, respondent has made a diligent search and a reasonable inquiry for the documents and other communications but is unable to comply with the demand because no such documents or other communications have ever existed.
- 4. With respect to item number 4, the relevant documents and policies are contained on the County of Marin's website at <http://www.marincounty.org/depts/is/county-records-retention-schedule> Each County departmental websites has their particular policies as well

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

DATE: May 28, 2015.

STEVEN M. WOODSIDE
COUNTY COUNSEL



DAVID L. ZALTSMAN
Deputy County Counsel
Attorneys for Defendant, County of Marin

EXHIBIT D



Edward Yates <eyates@marinlandlaw.com>

Depo Notice

Zaltsman, David <DZaltsman@marincounty.org>
To: Edward Yates <eyates@marinlandlaw.com>

Tue, Jun 23, 2015 at 11:13 AM

Ed:

Correct.

D.Z.

From: Edward Yates [mailto:eyates@marinlandlaw.com]
Sent: Tuesday, June 23, 2015 10:52 AM
To: Zaltsman, David
Subject: Re: Depo Notice

Dave,

Then I take it that you will be filing a motion to terminate discovery and do not want to have a call to discuss the notice and the depositions themselves?

Ed

On Tue, Jun 23, 2015 at 10:29 AM, Zaltsman, David <DZaltsman@marincounty.org> wrote:

No. I disagree that the Judge has "allowed" discovery to go forward. All he has done is deny a motion for judgment on the pleadings. I will bring my motion.

D.Z.

From: Edward Yates [mailto:eyates@marinlandlaw.com]
Sent: Tuesday, June 23, 2015 10:25 AM

To: Zaltsman, David
Subject: Re: Depo Notice

David,

Judge Chernus has already heard the County's view that discovery is not necessary because of the County's contention that there is no material issue of fact. I responded that discovery would help me prove my case and he allowed discovery to go forward.

Discovery would not be limited to the issues you identify. Discovery is to determine the credibility of the affidavits submitted by the County, the consistency of the affidavits with the other facts in the case, and facts surrounding whether a brief report was made.

So, since I have now responded to your conditions/question about discovery, are you available to discuss the notice and the depositions themselves?

Ed

On Tue, Jun 23, 2015 at 9:29 AM, Zaltsman, David <DZaltsman@marincounty.org> wrote:

Ed:

If you can tell me what "material issue" the depos could possibly lead to, I would be happy to discuss. As we have discussed previously, whether the Board was only interested in providing a report to the public, or whether there was some desire to argue against your clients assertions in the letter you cite, is completely irrelevant to the issue of whether the report came within the exception under the Brown Act.

So my proposal remains to set a briefing schedule and resolve this matter.

D.Z.

From: Edward Yates [mailto:eyates@marinlandlaw.com]

Sent: Tuesday, June 23, 2015 9:24 AM

To: Zaltsman, David

Subject: Re: Depo Notice

Dave,

Let's keep the CMC.

Also, although I am disappointed in your unilateral decision to not comply with the deposition notices and are proposing another unusual motion, I remain available to meet and resolve this dispute informally.

Ed

On Tue, Jun 23, 2015 at 9:17 AM, Zaltsman, David <DZaltsman@marincounty.org> wrote:

Ed:

Do you still want to appear on Monday for the CMC, or would you prefer to see if we can postpone it to coincide with the hearing on my motion?

Dave Zaltsman

From: Edward Yates [mailto:eyates@marinlandlaw.com]
Sent: Monday, June 22, 2015 9:11 PM
To: Zaltsman, David
Subject: Re: Depo Notice

Dave,

Based on your email stating that your clients refuse to attend the depositions I noticed, I am canceling the depositions in order to avoid costs to my client.

Ed

Sent from my iPhone

On Jun 22, 2015, at 3:01 PM, Zaltsman, David <DZaltsman@marincounty.org> wrote:

Ed:

Please be advised that we will be filing a motion to terminate discovery and order a briefing schedule this week.

Therefore my clients will not be appearing pursuant to the Notice of Deposition.

Dave Zaltsman

From: Edward Yates [mailto:eyates@marinlandlaw.com]
Sent: Saturday, June 13, 2015 5:51 PM
To: Zaltsman, David

Subject: Depo Notice

David,

The attached papers were served on your office yesterday.

Ed

--

Law Office of Edward E.Yates

1000 Fourth Street, Suite 800

San Rafael, CA 94901
415-990-4805

www.marinlandlaw.com

This communication (including any attachments) contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive messages for the addressee), you may not use, copy or disclose to anyone the message or any information contained in the communication. If you have received the communication in error, please advise the sender by reply e-mail and delete the communication.

Email Disclaimer: <http://www.marincounty.org/main/disclaimers>

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--

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Telephone: (415) 526-6314
Email: eyates@marinlandlaw.com

5 Attorney for Petitioner
6 COMMUNITY VENTURES PARTNERS, INC.

7
8 **SUPERIOR COURT OF CALIFORNIA**
9
10 **COUNTY OF MARIN**

11 COMMUNITY VENTURES PARTNERS,)
12 INC.,)
13 Petitioner/Plaintiff,)
14 v.)
15)
16 COUNTY OF MARIN,)
17 Respondent/Defendant.)

Case No.: CV 1404718
MEMORANDUM IN SUPPORT OF MOTION
FOR ORDER COMPELLING DEONENTS,
BRIAN CRAWFORD, KATIE RICE, JUDY
ARNOLD TO ATTEND AND TESTIFY AT
DEPOSITION AND PRODUCE DOCUMENTS,
AND ELECTRONICALLY STORED
INFORMATION, AND TO IMPOSE
MONETARY SANCTION

18) *[Code of Civ. Pro. § 2025.410, § 2025.450,*
19) *§2023.020]*
20) CMC Date: June 29, 2015
21) Time: 8:30 am
22) Dept.: B
23) Honorable Roy O. Chernus

24 AFTER SERVICE OF A DEPOSITION NOTICE BRIAN CRAWFORD, KATIE RICE AND JUDY
25 ARNOLD, OFFICERS OF or DIRECTORS OF or EMPLOYEES OF AN ORGANIZATION THAT IS
26 A PARTY TO THE ACTION, FAILED TO APPEAR FOR THE EXAMINATION and TO PROCEED
27 WITH THE EXAMINATION and TO PRODUCE FOR INSPECTION ANY DOCUMENT,
28 ELECTRONICALLY STORED INFORMATION, OR TANGIBLE THING DESCRIBED IN THE DEP-

1 OSITION NOTICE, AND THUS THE COURT SHOULD GRANT THE MOTION TO COMPEL THE
2 DEPONENT TO ATTEND AND TO TESTIFY AND TO PRODUCE FOR INSPECTION ANY
3 DOCUMENT, ELECTRONICALLY STORED INFORMATION, OR THING DESCRIBED IN THE
4 DEPOSITION NOTICE, AND THE COURT SHOULD IMPOSE MONETARY SANCTION ON
5 RESPONDENT COUNTY OF MARIN.
6

7
8 **A. COUNTY Failed to Properly Respond to Motion to Compel Attendance, Testimony, or**
9 **Production at Deposition.**

10 If, after service of a deposition notice, a party to the action, or an officer, director, managing agent,
11 or employee of a party, or a person who is designated to appear by a party organization under Code of
12 Civil Procedure Section 2025.230, without having served a valid objection under Code of Civil Procedure
13 Section 2025.410, fails to appear for examination, or to proceed with it, or to produce for inspection any
14 document, electronically stored information, or tangible thing described in the deposition notice, the
15 party who gave the deposition notice may move for an order compelling the deponent's attendance and
16 testimony, and the production for inspection of any document or thing described in the deposition notice
17 (Code Civ. Proc. § 2025.450(a)).
18

19
20 In the case at hand, on June 12, 2015, Community Ventures Partners, Inc. ("CVP") served the
21 deponent, County of Marin ("COUNTY"), Brian Crawford, Katie Rice, and Judy Arnold with a notice to
22 take their depositions on May 25, 2015. A true and correct copy of this notice is attached to this motion
23 as Exhibit A. On May 22, 2015, Counsel for COUNTY, David Zaltsman, informed Counsel for CVP by
24 email that "Please be advised that we will be filing a motion to terminate discovery and order a briefing
25 schedule this week. Therefore my clients will not be appearing pursuant to the Notice of Deposition."
26
27
28

1 (See Exhibit D.) Such a communication would not be considered an objection, a motion for a
2 protective order or an attempt to meet and confer.

3 COUNTY Did Not File a Timely Objection. The communication by Mr. Zaltsman on June 22,
4 2015 is not an objection, because it does not reference any objection to either the Notice or the Depositions
5 themselves but instead asserts that a motion for termination of discovery will later be filed. (See Exhibit
6 D.) No objections were asserted or timely submitted regarding the actual notice and depositions that are
7 the subject of this Motion. Discussion of one other topic – material issues of fact – was done after June
8 22 and was initiated by Mr. Yates. (Ibid.) Thus, COUNTY has not filed a timely objection and has failed
9 to attend or produce items at the depositions without having served a valid objection to the notice of
10 deposition under Code Civ. Proc. § 2025.410. n11.

11 COUNTY Did Not File a Required Protective Order. The communication by Mr. Zaltsman on
12 June 22, 2015 is not a motion for protective order, which is required if a deponent is to not appear for a
13 noticed deposition. Code Civ. Proc. §2017.020(b) states that “[t]he *court* may make this determination
14 pursuant to a motion for protective order by a party or other affected person. This motion shall be
15 accompanied by a meet and confer declaration under Section 2016.040.” (Emphasis added.) If the party
16 is seeking to limit the scope of discovery, then it must show that the burden, or intrusiveness of that
17 discovery clearly outweighs the likelihood that the information sought will lead to do the discovery of
18 admissible evidence. But it is only the court that can issue a protective order. Code Civ. Proc.
19 §2017.020(b). Similarly Code Civ. Proc. §2031.060 only allows a *court* to determine if a party can ignore
20 a request to produce documents. By refusing to attend the depositions and produce documents, without
21 filing a protective order, COUNTY has usurped the powers of the court to make the determination whether
22 a protective order is warranted and therefore, has made this decision unilaterally in violation of the cited
23 provisions of the California Code of Civil Procedure.
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1 COUNTY Did Not Initiate and Refused to Participate in Any Meet and Confer. The
2 communication by Mr. Zaltsman on June 22, 2015 is not a good faith attempt to meet and confer to resolve
3 these issues but again, is an assertion that due to a later motion, deponents will not appear. Further, counsel
4 for CVP attempted to engage counsel for COUNTY in an attempt to resolve the issues that are the subject
5 of this motion, as set out in Code Civ. Proc. §2016.040, but counsel for COUNTY refused. Counsel for
6 CVP made three such attempts and was rebuffed each time. These refusals include Mr. Zaltsman’s
7 response on June 23, 2015, “[t]hat is correct” when Mr. Yates asked, “I take it that you ... do not want to
8 have a call to discuss the notice and depositions themselves?” (See Exhibit D.) Implicit in the requirement
9 of Code Civ. Proc. § 2025.450(b)(2) that counsel contact the deponent about a nonappearance is the
10 requirement that counsel listen to the reasons offered and make a good faith at-tempt to resolve the issue.
11 *Blago Leko v. Cornerstone Home Inspection* (2001) 86 Cal. App. 4th 1109. Good faith attempts to resolve
12 issues were not initiated or attempted by COUNTY.

13 **B. State Law Directs a Court to Impose Monetary Sanctions Absent Specified Findings.**


14 If the motion is granted, the court may impose a monetary sanction under Code of Civil Procedure
15 §§ 2023.020 (failure to meet and confer) and 2023.030 (misuse of the discovery process) against the
16 deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the
17 sanction acted with substantial justification or that other circumstances make the imposition of the
18 sanction unjust (Code Civ. Proc. § 2025.450(g)). Similarly Code Civ. Proc. §2031.060 allows a court to
19 assess sanctions for failure to respond, or obtain a protective order when the opposing party has made a
20 request to produce documents.

21 In this case, sanctions are merited because of COUNTY’S failure to object, failure to obtain a
22 protective order, and failure to meet and confer with CVP. Such practices are considered misuse of the
23 discovery process under: Code Civ. Proc. § 2023.010(d), “failing to respond or to submit to an authorized
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1 method of discovery;" Code Civ. Proc. § 2023.010(f), "making an evasive response to discovery;" and
2 Code Civ. Proc. § 2023.010(i), "failing to confer in person, by telephone, or by letter with an opposing
3 party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning
4 discovery." The attached declaration states facts showing that an attempt at informal resolution has been
5 made by CVP. Specifically, the evidence demonstrated in the email communications from COUNTY
6 show that CVP requested meet and confer and that the COUNTY attorney refused to engage in meet and
7 confer regarding any issues or objections regarding the actual notice and depositions. (See Exhibit D.)
8 Thus, COUNTY engaged in misuse of the discovery process by failure to respond or submit to an
9 authorized method of discovery and making evasive response to discovery as shown under Section A.
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13 Respectfully submitted this 24th day of June, 2015 by:

14 LAW OFFICES OF EDWARD E. YATES

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17 Edward E. Yates
18 Attorney for Petitioner

19 Community Ventures Partners, Inc.
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