

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): McDonough Holland & Allen, PC Richard W. Osen (#42566)/Stephen M. Lerner, (CA #176688) 555 Capitol Mall, 9th Floor Sacramento, CA 95814 TELEPHONE NO.: 916.444.3900 FAX NO. (Optional): 916.444.3249 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff Sierra Corporate Design	FOR COURT USE ONLY           CASE NUMBER: 1-05-cv-050898
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 N. First Street MAILING ADDRESS: 191 N. First Street CITY AND ZIP CODE: San Jose, CA 95113	
PETITIONER: SIERRA CORPORATE DESIGN RESPONDENT: DAVID RITZ, et al.	
DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS	

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):  
 Ed Falk, 600 Fairmont Avenue, Mountain View, California 94041-2135

**1. YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following date, time, and place:**

Date: November 7, 2005	Time: 10:00 a.m.	Address: McDonough Holland & Allen 1901 Harrison Street, 9th Floor, Oakland, CA 94612
------------------------	------------------	------------------------------------------------------------------------------------------

- a.  As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 2. (Code Civ. Proc., § 2025.220(a)(6)).
  - b.  You are ordered to produce the documents and things described in item 3.
  - c.  This deposition will be recorded stenographically  through the instant visual display of testimony, and by  audiotape  videotape
  - d.  This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025.620(d).
2. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
3. The documents and things to be produced and any testing or sampling being sought are described as follows:  
**Produce, for the purpose of allowing plaintiff to make a forensic image, all computers, hard drives, floppy disks and other storage devices, including magnetic storage devices you have used in 2004 and 2005.**  
 Continued on Attachment 3.
4. If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are described as follows:  
 Continued on Attachment 4.
5. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.
6. At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition.

**DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.**

Date issued: October 26, 2005

STEPHEN M. LERNER, ESQ.  
 (TYPE OR PRINT NAME)

  
 (SIGNATURE OF PERSON ISSUING SUBPOENA)

(Proof of service on reverse)

PLAINTIFF/PETITIONER: Sierra Corporate Design, Inc.	CASE NUMBER: 1-05-cv-050898
DEFENDANT/RESPONDENT: David Ritz, et al.	

**PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE  
AND PRODUCTION OF DOCUMENTS AND THINGS**

1. I served this *Deposition Subpoena for Personal Appearance and production of Documents and Things* by personally delivering a copy to the person served as follows:

a. Person served (name):

b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. Witness fees and mileage both ways (check one):

- (1)  were paid. Amount: .....\$ \_\_\_\_\_
- (2)  were not paid.
- (3)  were tendered to the witness's public entity employer as required by Government Code section 68097.2. The amount tendered was (specify): ..... \$ \_\_\_\_\_

f. Fee for service: ..... \$ \_\_\_\_\_

2. I received this subpoena for service on (date):

3. Person serving:

- a.  Not a registered California process server.
- b.  California sheriff or marshal.
- c.  Registered California process server.
- d.  Employee or independent contractor of a registered California process server.
- e.  Exempt from registration under Business and Professions Code section 22350(b).
- f.  Registered professional photocopier.
- g.  Exempt from registration under Business and Professions Code section 22451.
- h. Name, address, telephone number, and, if applicable, county of registration and number:

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

Date:

\_\_\_\_\_  
(SIGNATURE)

(For California sheriff or marshal use only)  
I certify that the foregoing is true and correct.

Date:

\_\_\_\_\_  
(SIGNATURE)

IN DISTRICT COURT, COUNTY OF CASS, STATE OF NORTH DAKOTA

<p>Sierra Corporate Design, Inc.,  Plaintiff,  v.  David Ritz and Ed Falk,  Defendants.</p>	<p>File No. 09-05-C-01660  <b>ORDER TO EXPEDITE DISCOVERY AND PRODUCE DOCUMENTS AND THINGS</b></p>
-----------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------

The above-captioned matter came on for hearing before the Honorable John C. Irby on the 22nd day of September, 2005, on Plaintiff's motion for expedited discovery of Plaintiff Sierra Corporate Design, Inc. ("Sierra").

Appearing for Plaintiff were Christopher J. Harristhal, Larkin Hoffinan Daly & Lindgren, Ltd., 1500 Wells Fargo Plaza, 7900 Xerxes Avenue South, Bloomington, Minnesota 55431 and Timothy O'Keeffe, Kennelly & O'Keeffe, Alerus Financial Building, 15 Broadway, Suite 604, Fargo, North Dakota 58102.

Appearing for Defendant David Ritz were Michelle C. Winkis, Vogel Law Firm, 215 30th Street North, P.O. Box 1077, Moorhead, Minnesota 56551 and Michael D. Huitink, Godfrey & Kahn, S.C., 780 North Water Street, Milwaukee, Wisconsin 53202.

~~Appearing for Defendant Ed Falk was~~ made no appearance

The Court, having heard the arguments of counsel and having considered the submitted memoranda of law and affidavits, and based on all of the files and records herein, makes the following order:

THE FOLLOWING IS HEREBY ORDERED:

1. Sierra's motion for production is GRANTED.

DISTRICT COURT  
SEP 22 2005  
CASS COUNTY, ND

68-

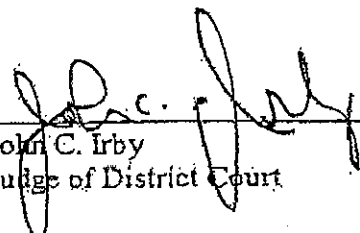
2. Defendant Falk shall produce responsive items and documents as demanded in Plaintiff's First Request for Production of Documents and Things as modified herein, and cooperate in inspection thereof, to wit:

Produce for the purpose of allowing plaintiff to make a forensic image, all computers, hard drives, floppy disks and other storage devices, including magnetic storage devices, Falk has used in 2004 and 2005.

3. Plaintiff, through its expert witness John DeLozier, shall be permitted to image and copy all computers and storage devices produced pursuant to this order.
4. Plaintiff's expert shall be permitted to search the hard drives of Defendant Falk. He shall exclude search terms that would yield production of health information or anything of a privileged nature that reflects discussions between Falk and any attorney representing him at the time.
5. Falk, or his representative, may attend the review and observe the search of the computer images by Sierra's expert at the offices of Sierra's expert.
6. Falk and Ritz shall be entitled to receive, at their own expense, copies of all records copied by the plaintiff in this action.

BY THE COURT:

Date: 9/22/05

  
\_\_\_\_\_  
John C. Irby  
Judge of District Court

1030083.1

I, Dorothy Howard, Clerk of the District Court, Cass County, State of North Dakota, do hereby certify that this is a true and complete copy of the original instrument filed in this office. IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court at my office, in Fargo, North Dakota this 17 day of October 2005

DOROTHY HOWARD  
Clerk of the District Court  
By J. K. [Signature] Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):  
 Stephen M. Lerner (CA #178688)  
 McDONOUGH HOLLAND & ALLEN PC  
 555 Capitol Mall, 9th Floor.  
 Sacramento, CA 95814  
 TELEPHONE NO.: (916) 444-3900 FAX NO.: (916) 444-3249  
 ATTORNEY FOR (Name): Plaintiffs SIERRA CORPORATE DESIGN, INC.

FOR COURT USE ONLY

ENDORSED FILED

05 OCT 19 AM 8:39

WILL TORRE  
 CHIEF CLERK/CLERK  
 SUPERIOR COURT OF CA,  
 COUNTY OF SANTA CLARA  
 BY [Signature]

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
 STREET ADDRESS: 191 N. First Street  
 MAILING ADDRESS: 191 N. First Street  
 CITY AND ZIP CODE: San Jose, CA 95113  
 BRANCH NAME: Downtown Superior Court

CASE NAME: SIERRA CORPORATE DESIGN, INC. v. DAVID RITZ and ED FALK

**CIVIL CASE COVER SHEET**

Unlimited (Amount demanded exceeds \$25,000)  Limited (Amount demanded is \$25,000 or less)

**Complex Case Designation**

Counter  Joinder

Filed with first appearance by defendant (Cal. Rules of Court, rule 1B11)

CASE NUMBER: **105 CV 050898**

JUDGE: \_\_\_\_\_  
 DEPT: \_\_\_\_\_

All five (5) items below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Auto Tort</b></p> <p><input type="checkbox"/> Auto (22)</p> <p><input type="checkbox"/> Uninsured motorist (46)</p> <p><b>Other P/DPD/W (Personal Injury/Property Damage/Wrongful Death) Tort</b></p> <p><input type="checkbox"/> Asbestos (04)</p> <p><input type="checkbox"/> Product liability (24)</p> <p><input type="checkbox"/> Medical malpractice (45)</p> <p><input type="checkbox"/> Other P/DPD/W (23)</p> <p><b>Non-P/DPD/W (Other) Tort</b></p> <p><input type="checkbox"/> Business tort/unfair business practice (07)</p> <p><input type="checkbox"/> Civil rights (08)</p> <p><input type="checkbox"/> Defamation (13)</p> <p><input type="checkbox"/> Fraud (16)</p> <p><input type="checkbox"/> Intellectual property (19)</p> <p><input type="checkbox"/> Professional negligence (25)</p> <p><input type="checkbox"/> Other non-P/DPD/W tort (35)</p> <p><b>Employment</b></p> <p><input type="checkbox"/> Wrongful termination (36)</p> <p><input type="checkbox"/> Other employment (15)</p> | <p><b>Contract</b></p> <p><input type="checkbox"/> Breach of contract/warranty (06)</p> <p><input type="checkbox"/> Collections (09)</p> <p><input type="checkbox"/> Insurance coverage (18)</p> <p><input type="checkbox"/> Other contract (37)</p> <p><b>Real Property</b></p> <p><input type="checkbox"/> Eminent domain/inverse condemnation (14)</p> <p><input type="checkbox"/> Wrongful eviction (33)</p> <p><input type="checkbox"/> Other real property (26)</p> <p><b>Unlawful Detainer</b></p> <p><input type="checkbox"/> Commercial (31)</p> <p><input type="checkbox"/> Residential (32)</p> <p><input type="checkbox"/> Drugs (38)</p> <p><b>Judicial Review</b></p> <p><input type="checkbox"/> Asset forfeiture (05)</p> <p><input type="checkbox"/> Petition re: arbitration award (11)</p> <p><input type="checkbox"/> Writ of mandate (02)</p> <p><input type="checkbox"/> Other judicial review (39)</p> | <p><b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812)</b></p> <p><input type="checkbox"/> Antitrust/Trade regulation (03)</p> <p><input type="checkbox"/> Construction defect (10)</p> <p><input type="checkbox"/> Mass tort (40)</p> <p><input type="checkbox"/> Securities litigation (28)</p> <p><input type="checkbox"/> Environmental /Toxic tort (30)</p> <p><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)</p> <p><b>Enforcement of Judgment</b></p> <p><input type="checkbox"/> Enforcement of judgment (20)</p> <p><b>Miscellaneous Civil Complaint</b></p> <p><input type="checkbox"/> RICO (27)</p> <p><input checked="" type="checkbox"/> Other complaint (not specified above) (42)</p> <p><b>Miscellaneous Civil Petition</b></p> <p><input type="checkbox"/> Partnership and corporate governance (21)</p> <p><input type="checkbox"/> Other petition (not specified above) (43)</p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

2. This case  is  is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a.  Large number of separately represented parties d.  Large number of witnesses
- b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e.  Coordination with related actions pending in one or more courts
- c.  Substantial amount of documentary evidence f.  Substantial post-judgment judicial supervision
3. Type of remedies sought (check all that apply):
- a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive
4. Number of causes of action (specify): \_\_\_\_\_
5. This case  is  is not a class action suit.

Date: October 18, 2005  
 Stephen M. Lerner

[Signature: Stephen M. Lerner]  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate, Family, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

1 McDONOUGH HOLLAND & ALLEN PC  
Attorneys at Law  
2 STEPHEN M. LERNER (CA #176688)  
555 Capitol Mall, 9th Floor  
3 Sacramento, CA 95814  
Phone: 916.444.3900  
4 Fax: 916.444.8334

5 Attorneys for Plaintiff  
6 SIERRA CORPORATE DESIGN, INC.

7  
8 IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
9

10  
11 SIERRA CORPORATE DESIGN, INC., )

Case No.

12 Plaintiff, )

13 v. )

**DECLARATION OF STEPHEN M.  
LERNER RE OUT OF STATE  
COMMISSION RE FALK SUBPOENA**

14 DAVID RITZ and ED FALK, )

15 Defendants. )  
16

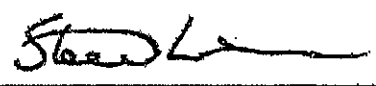
17 I, Stephen M. Lerner, declare as follows:

18 1. I am an attorney licensed to practice before all courts of the State of California and  
19 am an attorney with McDonough, Holland & Allen PC, local counsel for Plaintiff Sierra Corporate  
20 Design, Inc. ("Sierra"). I make this declaration in support of Sierra's Request that the clerk of the  
21 Santa Clara County Superior Court issue a deposition subpoena to Defendant Edward Falk ("Falk").  
22 I also make this declaration on the basis of my own personal knowledge and, if called upon to do so,  
23 would and could competently testify to the matters contained herein.

24 2. Attached as Exhibit "A" is a certified copy of an out-of-state commission and/or  
25 order issued by the Cass County District Court, State of North Dakota. The commission and/or  
26 order authorizes the issuance of a deposition subpoena to Falk that requires him to "*Produce, for the*  
27 *purpose of allowing plaintiff to make a forensic image, all computers, hard drives, floppy disks*  
28 *and other storage devices, including magnetic storage devices you have used in 2004 and 2005.*"

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on October 18, 2005, at Sacramento, California.



Stephen M. Lerner

