

1 David Merritt and Salma Merritt
2 660 Pinnacles Terrace
3 Sunnyvale, CA 94085
4 dymerritt@hotmail.com
5 Tel: 408.469.5584

6 **SUPERIOR COURT OF CALIFORNIA**
7 **COUNTY OF SANTA CLARA**

8 SALMA MERRITT et al,

9 Plaintiffs,

10 v.

11 ANGELO MOZILO, DAVID SAMBOL;
12 KEN LEWIS; JOHN STUMPF; MICHAEL
13 COLYER; JOHNNY CHEN; JOHN
14 BENSON; DOE 1; DOES 2-100, inclusive;
15 COUNTRYWIDE FINANCIAL CORP.;
16 COUNTRYWIDE HOME LOANS, INC., BANK
17 OF AMERICA; WELLS FARGO;

18 Defendants.

Case No. 109CV159993

**PLAINTIFFS' MEMORANDUM AND
POINTS OF AUTHORITIES IN
SUPPORT OF MOTION FOR
PROTECTIVE ORDER TERMINATING
DEPOSITIONS OF SALMA AND DAVID
MERRITT**

[Supporting Declarations of Porter Johnson,
David Merritt with verified DVD References,
Salma Merritt, Ronald Merritt and Darlene
Merritt]

Date: August 17, 2012
Time: 9:00 AM
Dept.: 9
Hon. James Stoelker

Date Action Filed: December 22, 2009
Trial Date: Not Set

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I. INTRODUCTION**

21 Mr and Mrs Merritt has lost more than \$200,000 directly and more than \$1,000,000
22 proximately, due to being targeted by the largest Predatory Brokerage operation in U.S. history.

23 This Court overruled Countrywide Defendants demurrer as to fraud and 4 distinct types of
24 Unfair Business Practices. The Court of Appeals has held that Countrywide Defendants are shown
25 to be part of a systemic conspiracy to defraud the Merritts. In an obvious desperate attempt to
26 coerce the Merritts to dismiss this case under duress, Defendants are using depositions with such
27 aims.
28

1 **II. STATEMENT OF FACTS**

2 Plaintiffs currently have discovery issues being reviewed by 6th District Court of Appeals
3 H038420 and California Supreme Court H038400.

4 On June 9, 2012, the Merritts were served with Notice of Deposition and did not object to
5 the taking of depositions. On June 22, 2012, Defendants presented *ex parte* application to Court
6 requesting it prematurely order Plaintiffs to be subjected to “day by day” depositions and insisted
7 for Mrs Merritt be deposed before Mr Merritt. The Defendants did not present Court with any law
8 authorizing such prior demonstrating a need for such. Declaration David Merritt.

9 On July 16, 2012, Plaintiffs arrived at deposition address with family and friends and Mr
10 James Goldberg launched into a wild frenzy like rage against them all, yelling and screaming that
11 no one other than Plaintiffs could be present and no videotaping would be allowed. Plaintiffs had
12 given 3 day prior notice of videotaping and Defense agreed in writing. Plaintiffs also showed
13 authority Mr Merritt introduced everyone and stated that Defense had agreed to their taping
14 depositions as well the Court ordering such. That they had a right to bring family and guest to be
15 there and that they were ready to proceed. See all Declarations attached hereto.

16 Mr Goldberg spewed out violent invectives at the Plaintiffs and their visitors threatening
17 that if they did not leave he would forcibly remove them, as he pushed by Mr Merritt and started
18 pushing on his sister who pushed back. The sister and Mr Merritt were asking Mr Goldberg what
19 was wrong with him and to calm down. He next approached the other side of table and forcibly
20 grabbed the father by left arm and began to violently shake and manhandle him before slamming
21 door into father’s face, chest and feet which produced a yell from Sister to not assault their father.
22 See all Declarations attached hereto.

23 Mr Merritt swiftly came, grabbed Mr Goldberg by arms, pinned him to table and loudly
24 repeated “Jim calm down!” and once Mr Goldberg stopped struggling, Mr Merritt released him
25 and after yelling in each other’s faces, Mr Goldberg returned to his side of the desk declaring that
26 he was refusing to start the deposition. See all Declarations attached hereto.

27 Mr Merritt tried to reason with him to depose Mrs Merritt and finally gave up, but told Mr
28 Goldberg that they would wait in lobby for one hour and thereafter consider the deposition over

1 and leave because “the clock is running.” *Ibid.*

2 The parties appeared before this Court late afternoon July 16, 2012 where the Court told
3 Mr Goldberg that Plaintiffs video was authorized and that it would exclude Mr Johnson and Sister
4 from attending. The Court also informed the Plaintiffs to return to it after the second day so the
5 Court could evaluate whether more deposition time was actually needed.

6 On July 17, 2012, the Plaintiffs appeared for second day of deposition where Mr Goldberg
7 repeatedly asked obvious privileged information questions that Plaintiffs repeatedly objected to.
8 Repeatedly yelled at Mr Merritt to not speak at all and threaten Plaintiffs with improper promises
9 of Court intervention if they resisted his will. Out of frustration regarding Plaintiffs objections, Mr
10 Goldberg became more and more hostile, disrespectful, insulting, argumentative and
11 unprofessional. He spent enormous amounts of the time arguing with Plaintiffs, who begged him
12 to move on to unobjectionable questions and leave the objectionable questions for last so that the
13 entire deposition would be completed rapidly. Mr Goldberg persisted in asking privileged and
14 privacy protected questions. Declarations David and Salma Merritt and DVD Summary.

15 Mrs Merritt was exhausted from the arguing and began to take its toll upon her; however,
16 when Mr Merritt suggested to her that they return to court in order to get the Court to conclude the
17 deposition, she insisted that they just return a third day in order to conclude it and be done with it.
18 *Ibid* and the Still Video clips found within *Exhibits A, B and C* of David Merritt Declaration.

19 Plaintiffs returned for third day of deposition July 18, 2012, and Mr Goldberg focused on
20 confirming signatures on more than a foot of loan documents and a few other relevant, non-
21 objectionable issues. He was able to question Mrs Merritt on every loan document that is at issue
22 in this case. Once he saw how rapidly and smoothly he was able to complete interrogation of
23 documents, he began to return to objectionable questions and when he could not manipulate Mrs
24 Merritt to answer the way he wished, he returned to browbeating and coercing her. See all
25 Declarations of David and Salma Merritt.

26 Mr Goldberg at one point asked Mrs Merritt “what is your religion,” “Do you have
27 diamonds... in your safe deposit box” “what is your medical condition that makes you
28 disabled” and other doctor-patient privileged questions. *Ibid.*

1 Mr Goldberg continued attacking Mrs Merritt with the same questions until the tension
2 became so compound that Mrs Merritt had a very severe relapse of her condition which caused her
3 to collapse in the corridor, as she tried to make it to an empty room. *Ibid.*

4 With Mrs Merritt lying supine on floor, Mr Merritt ran back asking the stenographer to go
5 to her assistance while he ran for water—the father had the sleeping child—Mr Goldberg leaped to
6 his feet pointing violently at the stenographer “You stay there! And go nowhere!” and told Mr
7 Merritt that he would not permit her to help Mrs Merritt because she was his hired help and not the
8 Plaintiffs. All Declarations of Ronald, David and Salma Merritt.

9 **A. GOOD FAITH MEET & CONFER**

10 Plaintiffs conducted significant and repeated talks to resolve issues herein. See Declaration
11 of David Merritt.

12 **B. Detailed Videotaped Evidence References**

13 The Defendants hired Esquire Solutions to videotape the depositions and they produced
14 Volumes 1 and II each with disc 1 and 2. Plaintiffs produced ten Mini DVDs. In total there are
15 nearly twelve (12) hours of recording time. Instead of lodging raw footage with Court, Plaintiffs
16 generated Verified Summaries of them all, with Still Images captured from DVDs as well and
17 submitted as Exhibits A, B and C of David Merritt’s Declaration.

18 As the Court will see, the video recordings demonstrate more than 50 separate instances of
19 annoying, embarrassing, oppressing actions, questions and conditions created by Defendants.

20 The DVDs themselves shall be securely held within the custody of Plaintiffs, regarding
21 their DVDs, and Plaintiffs as well as Defendants regarding Defendants DVDs. It shall be made
22 available to the Court on hearing date or any other time that the Court orders them to provide them
23 for review.

24 **III. THE COURT SHOULD ISSUE A PROTECTIVE ORDER CONCERNING**
25 **DEPOSITION OF PLAINTIFF SALMA MERRITT BECAUSE GOOD CAUSE**
26 **HAS BEEN SHOWN AND THE ORDER IS REQUIRED BY JUSTICE TO**
27 **PROTECT MRS MERRITT FROM ANY ADDITIONAL ANNOYANCE,**
28 **EMBARRASSMENT, OPPRESSION, OR UNDUE BURDEN AND EXPENSE**

The law authorizes this Court to make *any Order* concerning a deposition that justice

1 requires to protect any party, deponent, natural person from unwarranted annoyance,
2 embarrassment, oppression or undue burden and expense as long as the deponent makes *good*
3 *cause* showing. *CCP* § 2025.420(b). Attorneys are bound by the standards of conduct mandated in
4 *Bus. & Prof.Code* §§6000-6238 which, in part, insist for them to refrain from argumentative
5 questions and answers and when they are harassing or embarrassing deponent, the Court should
6 sustain objection thereto or act *sua sponte* to protect deponent. *Evid.Code* § 765.

7 Good Cause is officially, and simply, defined as “A legally sufficient reason.” *Black’s Law*
8 *Dictionary* (11th Ed.2009).

9 For purposes of this motion either “annoyance, embarrassment, oppression or undue
10 burden and expense,” are the legally sufficient reasons for granting Protective Order.

11 ANNOYANCE

12 The evidence provided by: 1) Multiple Declarations of eye-witnesses; and, 2) entirely
13 objective videotapes positively demonstrates that Defense was being an annoyance to Mrs Merritt
14 yes, but they also show annoyance to Mr Merritt as well.

15 For example Mr Goldberg repeatedly and continuously asked Mrs Merritt about privileged
16 information as her disability, doctor-patient, financial information, contents of safe deposit box
17 and *even religion!* Declaration of David Merritt and Salma Merritt.

18 Under no stretch of the imagination would religion even come close to being admissible,
19 relevant or proper in this action of fraud and unfair business practices. The Court records show
20 that Defendants were quite bent on bringing a preemptory motion to the Court convincing it to
21 issue order for the Merritts to subject themselves to an unspecified period of time for depositions.
22 i.e. “day to day” until the Defendants decided it was enough. The Court however, told the Merritts
23 to return after day to so it could evaluate whether to terminate deposition or not. *Ibid.*

24 The facts identified herein shows that on day one the Plaintiffs were attacked without
25 provocation and still went on to attempt amicable resolution. *Declarations of David Merritt,*
26 *Salma Merritt, Ronald Merritt, Porter Gene Johnson.*

27 As Declaration of David Merritt delineates over 50 instances of abuses, is only a few of
28 them occurred and Defendants went on to conduct themselves decently or even perhaps if this

1 experience was not representative of the 3-year practice of being combative, argumentative,
2 insulting et cetera, the Plaintiffs would not be contemplating motion for protective order.
3 However, as this list demonstrates, along with confirmation from DVDs, the Defendants inflicted
4 upon the Plaintiffs an onslaught of behavior which can be characterized as grossly annoying,
5 embarrassing, oppressive, insulting and assaulting. *Ibid.*

6 As a matter of law, CCP § 2017.020(a) authorizes this Court to limit the scope of
7 discovery; CCP § 2019.030(a) limits the frequency or extent of particular discovery method and of
8 court CCP § 2025.420(b)(1) to (16) is inclusive of all power. Each of these sets of argumentative
9 statements, questions and attacks embarrassed, annoyed and was constant nuisance to Mrs and Mr
10 Merritt attempt to exercise their rights afforded them by California law and Defendants partially
11 successful effort to abrogate their rights in an egregious way.

12 **OPPRESSION**

13 The facts herein further illustrate that Defense acted oppressively. See *Declarations of*
14 *David Merritt, Salma Merritt, Ronald Merritt, Porter Gene Johnson* and DVDs Summaries.

15 Mr Goldberg’s behavior demonstrates “despicable conduct ... and unjust hardship in
16 disregard of “ Plaintiffs rights. This meets the legal definition of oppression. CC § 3294(c)(2).
17 However, as an alternative, it is well settled that oppression can be “inferred from the
18 circumstances” of a defendants conduct. *Monge v. Superior Court* (1986) 176 Cal.App.3d 503,
19 511. As a matter of law, CCP § 2017.020(a) authorizes this Court to limit the scope of discovery;
20 CCP § 2019.030(a) limits the frequency or extent of particular discovery method and of court CCP
21 § 2025.420(b)(1) to (16) permits the Court to fashion the order that is needed here based on such
22 outrageous behavior.

23 To top all of this oppression off, it is profoundly unjust that Plaintiffs have been compelled
24 to expend over 95 hours combating this by way of this motion for protective order and Defense
25 own motion to get the Court to abrogate their rights. This in and of itself is fundamentally unjust
26 and despicable.

27 **EMBARRASSMENT**

28 Plaintiffs embarrassment can be seen from the entire 3-day affair where the Plaintiffs are

1 shown to be the only ones asking, pleading and even pleading for Defense to behave civilly and
2 resolve things amicably.

3 What this demonstrates to objective observers, is that the Defendants are not interested in
4 deposing the Merritts for purposes of identifying relevant and admissible evidence, but to abuse,
5 irritate and bully them into submission in order to coerce them into ceasing their prosecution.

6 Plaintiffs have provided the Court with *Verified DVD Summaries* which provides direct
7 evidence that annoyance, embarrassment and oppression has clearly been inflicted after Mr
8 Goldberg told this Court on July 16, 2012 that he was considered by all deponents to be “the most
9 gentle and respectful” lawyers they experienced. This deception and proclivity for misrepresenting
10 what is going on behind the scene, begs for this Court to terminate the entire oral deposition
11 process and restrict it solely to written, if anything further at all.

12 Pertinent to this motion the law permits Court to order that deposition be: (1) taken only on
13 certain specified terms and conditions—*CCP* §2025.420(b)(5); (2) only by written, instead of oral,
14 examination—*CCP* § 2025.420(b)(6); (3) taken without inquiring into certain matters—*CCP* §
15 2025.420(b)(9); (4) limited to certain matters—*CCP* § 2025.420(b)(10); and, (5) termination of
16 examination of deponent.

17 The Court has a duty to prevent abuse of the discovery process per *CCP* §§ 2025.420 and
18 2025.470 and must protect a party who factually demonstrates abuse. *Greyhound Corp. v.*
19 *Superior Court* (1961) 56 Cal.2d 355, 373, 383. This means that a factual exposition of a
20 reasonable basis for the order sought. *Goodman v. Citizens Life & Cas. Ins. Co.* (1967) 253
21 Cal.App.2d 807, 819.

22 **A. THE FACTS DEMONSTRATE THAT TERMINATION OF FURTHER**
23 **DEPOSITION UPON MRS MERRITT IS WARRANTED & JUSTIFIED**

24 (i) **Protective Order Should Issue When The Depositions Are Being**
25 **Conducted Solely For A Pretrial Disposition as Summary Judgment**

26 A significant point that Defendants have admitted to this Court orally on July 13, 2012
27 (Thomas Lee) and July 16, 2012 (James Goldberg) is that they were seeking to conduct
28 depositions specifically and *only* to file a Summary Judgment motion against Plaintiffs. In other

1 words, their motivations do not stem from, in anyway, to prepare for trial, but solely to lay pretrial
2 attack on the claims.

3 Such being the case, the deposition should have only focused upon materially relevant
4 information and not the massive amounts of irrelevant information, or issues that could more
5 efficiently been conducted via admissions. E.g. Whether signature was or was not Mrs Merritt's.

6 It has been long ago established that the taking of deposition for pretrial disposition as
7 summary judgment for immaterial information should not be permitted and trial courts should
8 prohibit such. See *Bender Points and Authorities Oral Deposition Matters*, § 83.81[1](E). Also,
9 *Pacific Arghitects Collaborative v. State of California* (1979) 100 Cal.App.3d 110, 126.

10 Hence, this Court should exercise such discretion and prohibit any further improper
11 questioning whether by written or oral depositions.

12 Defense has used up at least a total of 3 hours on documents that could have been
13 answered via admissions. Plaintiffs do not suggest to advise Defendants on this approach, but they
14 should not be penalized with such a broad waste of time because that is the approach Defendants
15 employed.

16 (ii) **Grounds Exist For A Protective Order Prohibiting Discovery of**
17 **Privileged or Irrelevant Matters, or Matters Not Reasonably**
18 **Calculated To Lead To The Discovery of Admissible Evidence**

19 "Unless otherwise limited by order of the court in accordance with this title, any party may
20 obtain discovery regarding any matter, not privileged, that is relevant to the subject matter
21 involved in the pending action, if the matter either is itself admissible in evidence or appears
22 reasonably calculated to lead to the discovery of admissible evidence." *CCP* § 2017.010 and the
23 court "shall limit the scope of discovery" if it is a burden, expense or intrusiveness that outweighs
24 the likelihood that it will be admissible evidence. *CCP* § 2017.020(a).

25 One important point however is that even relevant evidence falls under the purview of
26 courts discretion to define the scope and limit it. *TBF Ins. Services Corp. v. Superior Court* (2002)
27 96 Cal.App.4th 443, 454.

28 **a. Information Regarding Physician-Patient Privilege**

"Subject to Section 912 [waiver] and except as otherwise provided in this article, the

1 patient, whether or not a party, has a privilege to refuse to disclose, and to prevent another from
2 disclosing, a confidential communication between patient and physician. . ." *Evid. Code* § 994.

3 The evidence identified in this motion explicitly show that Defendants repeatedly asked,
4 and continues to return, questions about Mrs Merritt's disability, the medical conditions
5 surrounding it and the information which is part of her communications with doctors. Under
6 California law *Patient-Physician* privilege creates a zone of privacy whose purposes are to
7 preclude humiliation of the patient which might follow disclosure of his ailments and to encourage
8 a patient's full disclosure to the physician of all information necessary for effective diagnosis and
9 treatment. *Board of Medical Quality Assurance v. Gherardini*, 93 Cal. App. 3d 669, 678-79, 156
10 Cal. Rptr. 55 (4th Dist. 1979).

11 Right before this Court, on several occasions, Defendants have sought to question and
12 hence, embarrass and bring shame upon Mrs Merritt for being disabled, and asks' her to prove her
13 medical condition. So far this Court has tolerated such, but Plaintiffs now assert that it is time to
14 draw the line, and not only prohibit further questioning into this area, but wholly terminate further
15 depositions precisely because such time could have been used to obtain admissible evidence. By
16 continuing depositions, Plaintiffs are being penalized for Defendants abuse of deposition time.

17 Furthermore, the Federal and State Governments, *inter alia*, have long ago determined that
18 Mrs Merritt is disabled. It is not a question of this action, and therefore should have never come
19 up, making it quite irrelevant. Although the Court has not fallen for Defendants ruse altogether, it
20 had gone along with ordering day-to-day depositions *and* also Ordered for Mrs Merritt to be
21 deposed first. Defendants' insistence on these points was based on their now apparent strategy to
22 wear her down with insults and attacks in hopes that she will call for dismissing claims. This can
23 be inferred from Defense behavior. In the end, it has zero relevancy on the claims.

24 In *Britt v. Superior Court* (1978) 20 Cal.3d 844, 863, the Supreme Court mandated that
25 defendants must frame any discovery narrowly so that they do not improperly impinge on
26 privileged information. *Ibid.* n.7 which involves medical information. This has not occurred.

27 **b. Information Regarding Religious Practice Private and Irrelevant**

28 "No evidence is admissible except relevant evidence." *Evid. Cod* § 350. And "Relevance

1 means evidence ... having any tendency in reason to prove or disprove any disputed fact that is of
2 consequence to the determination of the action." *Evid. Code* § 210.

3 This is not a case where Plaintiffs are charging religious discrimination or anything
4 involving religious practice. That makes any such questions irrelevant.

5 **c. Information Regarding Disability Is Irrelevant**

6 Plaintiffs are *not* charging Defendants with causing their disability, owing them disability
7 income, disability insurance, or causing disability. To spend over 30 minutes on such questions,
8 and to repeatedly raise the issue with the Court in an attempt to cast doubt about the disability, is a
9 basic form of Disability Discrimination that many disabled persons undergo at the hands of those
10 of us who are not disabled. The Court should no longer tolerate such.

11 **d. Information Regarding Finances Is Irrelevant**

12 The evidence herein reflects that over 30 minutes was repeatedly spent on the Plaintiffs
13 current and past finances. The allegations only state that Plaintiffs had enough funds to put down
14 5% and could have obtained more if need be. The financial records were provided to Defendants
15 in 2006 show that Plaintiffs were capable of putting 5% down. Hence, whether they did or did not
16 have diamonds or millions of dollars in their safe deposition box or bank is of no relevancy at all,
17 because they are not the ones being prosecuted with fraud or tax evasion.

18 Plaintiffs who put their financial worth in issue only waives right to privacy to the extent
19 necessary for a fair resolution of the action, and do not waive presumptive right to protective order
20 limiting access to the discovered information. *Moskowitz v. Superior Court* (1982) 137
21 Cal.App.3d 313, 317-18. Hence, Defendants records are sufficient to answer all financial issues
22 raised in the 4th Amended Complaint. Even if plaintiff fails to show annoyance, embarrassment or
23 oppression, presumptive right is not waived. *Ibid* 317.

24 **(iii) Protective Order Is Also Necessary To Protect The Privacy Rights Of**
25 **Plaintiffs And Their Parents From Unreasonable And Oppressive**
26 **Demands**

27 "California accords privacy the constitutional status of an inalienable right, on a par with
28 defending life and possessing property. Courts must balance right of civil litigants to discover

1 relevant facts against privacy interests of persons subject to discovery." (*California Constitution*,
2 Article I, §1; *Vinson v. Superior Court*, 43 Cal. 3d 833, 239 Cal. Rptr. 292, 740 P.2d 404, 41 Ed.
3 Law Rep. 330 (1987).

4 **a. Educational/Academic Information**

5 One of the repeated things that the Court will be able to make out from DVDs is that
6 Defense pretends to be the ultimate authority on the law while being wrong mostly every time.
7 Hence, Defense is committing fraud upon Plaintiffs by knowingly misrepresenting the law. When
8 Mrs Merritt objected to questions about her education and academic credentials and records, Mr
9 Goldberg falsely represented that these were normal "background" questions that the law entitled
10 him to. Upon preparing for this motion Plaintiffs have since learned that there is codified laws
11 protecting citizens from such invasions of privacy. E.g. *Evid. Code* § 1010.5 (educational psych
12 records); *Evid. Code* § 1040 (regarding official records); and, *Ed. Code* § 49076 (academic
13 records).

14 An opening example of Defendants comprehensive abuse of the Deposition process.

15 **b. Disclosure of Association and Affiliations**

16 The discovery sought seeks to invade the right of privacy with regard to associations and
17 affiliations. To justify disclosure of private association, affiliations and activities, not only must
18 such disclosure "serve a 'compelling' state purpose, but such purpose cannot be pursued by means
19 that broadly stifle fundamental personal liberties when the end can be more narrowly achieved."
20 *Shelton v. Tucker*, 364 U.S. 479, 81 S. Ct. 247, 5 L. Ed. 2d 231 (1960), cited in *Britt v. Superior*
21 *Court*, 20 Cal. 3d 844, 143 Cal. Rptr. 695, 574 P.2d 766 (1978).

22 Whether or not Mrs Merritt is or was or shall be a Muslim is a direct and profound
23 violation of her privacy. Mr Goldberg's intrusion into such is another indication to the Court just
24 how out-of-control Defense is. For they are not State actors, but are defending the nation's most
25 unscrupulous predatory Brokers and Lenders, not the People (State) of California.

26 **c. Disclosure of Financial Information**

27 Information regarding a party's personal financial affairs falls under a protected zone of
28 privacy under Article I, §1 of the California Constitution. *Cobb v. Superior Court* (1979) 99 Cal.

1 App. 3d 543, 160 Cal. Rptr. 561. It is a presumptive right to protection. *Moskowitz v. Superior*
2 *Court* (1982) 137 Cal.App.3d 313, 317-18. Also, *Richards v. Superior Court* ((1978) 86
3 Cal.App.3d 265, 272.

4 All video tapes demonstrate that Plaintiffs had to repeatedly object to questions about bank
5 account, contents of Safe Deposition Box, Parents and their own assets currently and in 2006 or
6 before. Every time, Defendants became argumentative and would either immediately come with a
7 variation of the previous question, or wait a while and come out with another version.

8 In addition to this basic right being explicit, there is currently a direct appeal regarding the
9 financial information that Defendants spent another 30 plus minutes upon. Further, the Defendants
10 keep saying that since Plaintiffs provided Countrywide with financial information when securing
11 their loan that they somehow waived their right to financial privacy.

12 **d. Declosure Of Personnal Records/Information**

13 Another area that Defendants tricked Plaintiffs into disclosing is the area of personnel
14 information. Under the *Constitution of California*, the right exists to maintain privacy there;
15 however, Defense questioned Mrs Merritt on this area some 15 minutes, even though it is a
16 privacy protected area, and again pretended that it was entirely normal and proper for them to
17 delve into her intimate work records, including her financial earnings. Neither of which are at
18 issue in this case.

19 Personnel documents and information, communicated with employer in confidence are
20 covered by communicator's constitutional right of privacy. *Board of Trustees v. Superior Court*,
21 119 Cal. App. 3d 516, 174 Cal. Rptr. 160 (1st Dist. 1981

22 **e. Declosure Of Medical History**

23 The discovery sought seeks to invade the right of privacy with regard to medical issues
24 unrelated to the subject of this litigation. "A person's medical profile is an area of privacy
25 infinitely more intimate, more personal in quality and nature than many areas already judicially
26 recognized and protected." *Board of Medical Quality Assurance v. Gherardini* (1979) 93 Cal.
27 App. 3d 669, 156 Cal. Rptr. 55.
28

1 The DVDs of Defendants and Plaintiffs is *prima facie* proof of serious breach of medical
2 privacy rights. This is not a case where Plaintiffs are alleging that Defendants caused a disability
3 or the medical condition regarding disability, but where Plaintiffs were defrauded.

4 A question should arise: Why are Defendants pursuing such?

5 Mr Goldberg claims that he spent over 30 minutes on such questioning because allegations
6 indicate that Mrs Merritt was disabled in 2006; however, he keeps questioning whether Mrs
7 Merritt is really disabled, as if he has better insight than Federal and State Governments. In the
8 end, this Court needs to step in and terminate any further questioning because Mr Goldberg has no
9 respect for discovery process.

10 **B. ALTERNATIVELY, THE FACTS AT MINIMUM JUSTIFIES FOR THE**
11 **COURT TO LIMIT ANY FURTHER DEPOSITION TO WRITTEN**
12 **DEPOSITIONS UPON MRS MERRITT WHICH ARE REASONABLE IN**
BOTH ITS QUALITY AND QUANTITY

13 The evidence provided herein shows an abuse of the discovery process warranting the
14 termination of any further oral depositions of Mrs Merritt for certain, and possibly even Mr
15 Merritt, since it will most likely be much of the same wasted time. Nonetheless, if the Court
16 somehow wishes to extend unwarranted kindness to Defendants, the Plaintiffs requests that at
17 minimum that it limit any further depositions to be in writing.

18 First, Mrs Merritt has already been inflicted with three days of insults and hostilities.
19 About half the time was spent between argumentative, insulting, threatening, and irrelevant
20 questions and statements. If Defendants have any further questions, they should be restricted to
21 only written for her and should be no more than 20 or 30 questions at most.

22 For Mr Merritt, if the Court insists on permitting Defendants to conduct deposition upon
23 him, it should be in writing as it would totally eliminate any further direct abuse and would save
24 the Court and parties substantial time and money. The Court should not permit Plaintiffs to be
25 further victimized by Defendants plan to harass and herry them until they dismiss the case.

26 *CCP § 2025.420(b)(6)* authorizes the Court to limit deposition to written ones. In accord,
27 *Beverly Hills Nat'l Bank & Trust Co. v. Superior Court* (1961) 195 Cal.App.2d 861, 867.

1 **IV. MONETARY SANCTIONS SHOULD BE AWARDED AGAINST MR**
2 **GOLDBERG OR DEFENDANTS FOR PERSISTING OVER OBJECTIONS IN**
3 **SEEKING THE ABOVE AREAS OF DISCOVERY AND FOR OPPOSING**
4 **THIS MOTION FOR PROTECTIVE ORDER FROM SUCH ABUSES**

4 "Misuses of the discovery process include, but are not limited to, . . .

5 (a) Persisting, over objection and without substantial justification, in an attempt to obtain
6 information or materials that are outside the scope of permissible discovery (b) Using a
7 discovery method in a manner that does not comply with its specified procedures. . . (c)
8 Employing a discovery method in a manner or to an extent that causes unwarranted annoyance,
9 embarrassment, or oppression, or undue burden and expense. . . . (h) . . .opposing,
10 unsuccessfully and without substantial justification, a motion. . .to limit discovery. . . (i) Failing to
11 confer. . .in a reasonable and good faith attempt to resolve informally any dispute concerning
12 discovery....” CCP § 2023.010.

13 Of course, CCP § 2020.420(d) clearly mandates sanctions unless substantial justification
14 exist for Defendants opposing this motion.

15 First, the evidence is overwhelming that substantial abuses have taken place. Mr Merritt
16 constantly asked Mr Goldberg to refrain from privacy protected and other objectionable questions
17 until he exhausted all the non-objectionable ones. The videotapes clearly show how whenever Mr
18 Goldberg limited his questions to these areas, that neither Mr nor Mrs Merritt voiced any
19 objections. In fact, a great number of questions were answered during these periods.

20 So why would a seriously party return over and over to areas that they knew tensions and
21 objections would be raised? Based on Mr Goldberg’s penchant for attacking Mrs Merritts
22 disability state, the persistence in wanting to depose Mrs Merritt before Mr Merritt, the illogical
23 and repeated insistence that Plaintiffs be prohibited from videotaping, the cry to the Court to
24 prohibit Plaintiffs from having friends and family present, Defendants own refusal to provide
25 discovery to Plaintiffs after three years of requests, posing questions both irrelevant and protected
26 by privacy and other laws, Mr Goldberg gloating over how he caused Mrs Merritt to collapse in
27 severe relapse and his explicit orders to stenographer to not assist in aiding Mrs Merritt’s
28

1 recovery, it can be inferred or presumed, that Mr Goldberg wishes to use discovery to traumatize
2 Mrs Merritt and only nominally to ascertain any relevant and admissible evidence.

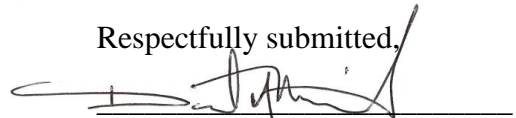
3 The Plaintiffs have spent more than 56 hours directly preparing for this motion for
4 protective order and numerous other hours related to it. They are asking this Court for a minimum
5 of \$11,200, to compensate them for all this unnecessary work and attention they are compelled to
6 contend with which directly diminishes Mr Merritt's ability to focus on his corporation's duties
7 valued at \$200 per hours, in addition to additional hours lost on other pressing litigation matters
8 which have even greater worth.

9 **V. CONCLUSION**

10 For all the above reasons, it is respectfully requested that the Court issue a Protective
11 Order which terminates Deposition of Salma Merritt, or alternatively limit any further questions to
12 writing; and restrict Deposition of David Merritt to written, or alternatively prohibit all of the
13 behavior, questions and statements that Mr Goldberg has exhibited when deposing him. And to
14 award monetary sanctions of \$11,200.

15 Dated: July 30, 2012

Respectfully submitted,


David Merritt

17 Dated: July 30, 2012


Salma Merritt