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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

10
11 PEOPLES TEMPLE OF THE DISCIPLES
OF CHRIST, a nonprofit corpora-
12 tion, JEAN BROWN, and JAMES
McELVANE,

13 Plaintiffs,

14 v.

15 TIMOTHY OLIVER STOEN,

16 Defendant.

No. 740531

MEMORANDUM OF POINTS AND AUTHOR-
ITIES IN SUPPORT OF MOTION FOR
PROTECTIVE ORDER THAT DEPOSITION
NOT BE TAKEN

Date: November 7, 1978

Time: 9:30 A.M.

Department: 9 Law and Motion

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18 Defendant submits the following points and authorities in sup-
19 port of his motion for a protective order that the deposition sched-
20 uled for November 9 and 10 not be taken and for reasonable expenses
21 and attorney's fees. Alternatively, defendant seeks a protective
22 order that the scope of examination of the deposition be limited to
23 current balances in the name of defendant, and for reasonable expen-
24 ses and attorney's fees.

25 I. ON A SHOWING OF GOOD CAUSE, THE COURT MAY MAKE AN DISCOVERY
26 ORDER THAT JUSTICE REQUIRES TO PROTECT THE MOVING PARTY FROM ANNOY-

BB-31-6-160

1 ANCE, EMBARRASSMENT, OR OPPRESSION.

2 A. Code of Civil Procedure, Section 2019 (b)(1):

3 "Upon motion seasonably made by any party or by
4 the person to be examined or notified to produce
5 books, documents, or other things and upon notice,
6 or upon the court's own motion and after giving
7 counsel an opportunity to be heard, and in either
8 case for good cause shown, the court in which the
9 action is pending may make an order that the depo-
10 sition not be taken,..., or that certain matters
11 shall not be inquired into, or that the scope of
12 the examination shall be limited to certain mat-
13 ters, books, documents, or other things....; or
14 the court may make any other order which justice
15 requires to protect the party or witness from an-
16 noyance, embarrassment, or oppression. In grant-
17 ing or refusing such order the court may impose
18 upon either party or upon the witness the require-
19 ment to pay such costs and expenses, including
20 attorney's fees, as the court may deem reasonable."

13 II. DISCOVERY IS RESTRICTED TO INFORMATION WHICH IS RELEVANT
14 TO THE SUBJECT MATTER INVOLVED IN THE PENDING ACTION.

15 A. Code of Civil Procedure, Section 2016 (b):

16 "Unless otherwise ordered by the court..., the de-
17 ponent may be examined regarding any matter, not
18 privileged, which is relevant to the subject mat-
19 ter involved in the pending action,... It is not
20 ground for objection that the testimony will be
21 inadmissible at the trial if the testimony sought
22 appears reasonably calculated to lead to the dis-
23 covery of admissible evidence."

21 B. The concept of subject matter relevancy is not unlimited.
22 Discovery may be denied as being irrelevant if the information sought
23 is so remote from the subject matter of the action that its disclo-
24 sure would be of little or no practical benefit to the party seeking
25 it. Ryan v. Superior Court (1960) 186 CA2d 813, 9 CR 147, quoted
26 with approval in Columbia Broadcasting Sys., Inc. v. Superior Court

1 (1968) 263 CA2d 12, 69 CR 348. Unless one of the issues in a law-
2 suit requires apportionment of income or deposits (which is not the
3 situation in the instant case), the only financial records which are
4 relevant are those which show current "financial condition and as-
5 sets", and this would be solely on the issue of punitive damages.
6 See Doak v. Superior Court (1968) 257 CA2d 825, 65 CR 193.

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8 III. A PROTECTIVE ORDER SHOULD ISSUE AGAINST THE PEOPLES TEMPLE
9 DEPOSITION BECAUSE THE INFORMATION SOUGHT FAR EXCEEDS CURRENT FINAN-
10 CIAL CONDITION AND THE TIMING SHOWS ITS PURPOSE SOLELY IS TO ANNOY,
11 EMBARRASS, AND OPPRESS.

12 A. It is apparent from the face of plaintiff's Notice of Dep-
13 osition that it seeks private financial information far beyond current
14 financial condition. The November 9 Notice is addressed to the Cus-
15 todian of Records of five separate banks and asks for the following
16 information from each:

17 "Every detail, every entry, every transaction,
18 every deposit and every disbursement relating to
19 this individual [Timothy O. Stoen], either in his
20 own name or as trustee * * * ; complete and entire
records relating to all transactions, stocks bought
and sold, any instructions therein and the dates."

21 The November 10 Notice asks for "all correspondence."

22 There is absolutely no justification for the aforesaid requests.
23 They are designed to oppress defendant into taking the trouble and
24 expense of preparing and filing a protective order. Past deposits
25 and disbursements, instructions for stock purchases, correspondence--
26 what possible relevance is such information as to defendant's finan-

1 cial condition and ability to respond to punitive damages? There is
2 none whatever.

3 Furthermore, defendant respectfully contends that even asset
4 information is irrelevant at this point. The court's attention is
5 called to all of the pleadings of plaintiff in this action, which
6 suggest that the whole proceeding is shameful and oppressive. Given
7 the discretion granted to a trial court by CCP § 2019 (b)(1), fair-
8 ness requires that information which invades a defendant's financial
9 privacy should be divulgable only after the deposing party has com-
10 plete in good faith its discovery on issues of liability. The ulter-
11 ior motives of Peoples Temple is suggested by the fact this is the
12 very first deposition they have sought.

13 The declaration of defendant attached hereto indicates that the
14 real purpose of Peoples Temple in seeking entries of past financial
15 transactions is to learn the names of people defendant has been deal-
16 ing with so that threats and other types of pressure can be applied
17 to them in getting defendant to withdraw from the cases he has filed
18 against Peoples Temple. Defendant's declaration shows his belief in
19 a second oppressive purpose, i.e., for Peoples Temple to gain infor-
20 mation for a totally separate lawsuit which it has publicly announced
21 it plans to file against defendant, falsely alleging he was an agent
22 of the FBI and CIA while a member of Peoples Temple.

23 B. FOR THE AFORESAID REASONS, Defendant respectfully requests
24 the following protective order from the Court:

25 1. That the deposition of the persons named in the Notices
26 of Deposition for November 9 and 10 not be taken; and

1 2. That defendant be awarded reasonable costs and attor-
2 ney's fees incurred in this proceeding.

3 Alternatively, defendant respectfully requests that the follow-
4 ing protective order be issued:

5 1. That the scope of examination of the depositions be
6 limited to existing balances in the name of defendant, and that the
7 date of taking such depositions be continued until such time as plain-
8 tiff files a notice that it has completed all discovery on questions
9 of liability; and

10 2. That defendant be awarded reasonable costs and attor-
11 ney's fees incurred in this proceeding.

12 DATED: October 31, 1978.

13 Respectfully submitted,

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PATRICK SANSFIELD HALLINAN
Attorney for Defendant