

*Yes by 2/11 97  
PERSON*

1 CHARLES R. GARRY  
2 GARRY, DREYFUS, McTERNAN, BROTSKY,  
3 HERNDON & PESONEN, INC.  
4 1256 MARKET STREET AT CIVIC CENTER  
5 SAN FRANCISCO, CALIFORNIA 94102  
6 TEL: 864-3131

7 Attorneys for Plaintiffs

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

10	PEOPLES TEMPLE OF THE DISCIPLES	)	NO. 740 531
11	OF CHRIST, a nonprofit corpora-	)	DECLARATION AND
12	tion, JEAN BROWN, and JAMES McELVANE,	)	PLAINTIFFS' MEMORANDUM
13	Plaintiffs,	)	OF POINTS AND AUTHORI-
14	vs.	)	TIES IN OPPOSITION TO
15	TIMOTHY OLIVER STOEN,	)	DEFENDANT'S MOTION FOR
16	Defendant.	)	PROTECTIVE ORDER
		)	Date: Nov. 7, 1978
		)	Time: 9:30 A.M.
		)	Dept.: Law and Motion
		)	(9)

17 COME NOW plaintiffs through their undersigned counsel  
18 and submit the within Points and Authorities in Opposition to  
19 Defendant's motion under CCP § 2019(b)(1) for Protective Order,  
20 seeking to quash certain noticed depositions of the Custodian  
21 of Records of financial institutions in the City of San Francisco  
22 and seeking sanctions.

23 The gist of this action turns on the acts of defendant,  
24 an attorney, in exploiting his prior confidential relationship  
25 with plaintiff for personal gain.

26 The records sought will demonstrate (1) that defendant

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1 enjoyed the confidence and trust of plaintiffs to the extent that  
2 defendant was entrusted with the most intimate and vulnerable  
3 aspects of plaintiffs' financial affairs while defendant was acting  
4 as counsel for plaintiffs and (2) that even before the events  
5 alleged in the complaint had occurred, defendant abused his  
6 position of trust and confidence for his personal gain.

7 The evidence sought by the noticed depositions is thus  
8 relevant and likely to lead to relevant evidence.

9 It is relevant directly to the issue of defendant's  
10 unlawful intentions respecting his future exploitation of his  
11 position of trust and confidence.

12 The records sought to be obtained may also lead to the  
13 discovery of relevant evidence in that any deposition of defendant  
14 Stoen can not be properly prepared without the records sought in  
15 the noticed depositions which are subject to this motion.

16 This latter purpose also disposes of defendant's  
17 suggestion that the court control the order of discovery and force  
18 plaintiffs to await completion of discovery on the liability case  
19 before seeking these records. The records are essential to plain-  
20 tiffs' proper preparation of the case on liability.

21 There's no question that evidence of prior acts is  
22 admissible to show a subsequent intention. Evidence Code § 1101(b)  
23 1104, 1105; People v. Alcalde, 24 C.2d 177, 185 (1944), Scott v.  
24 Times-Mirror Co., 181 Cal. 345 (1919), Wright v. Rogers, 172  
25 C.A.2d 349, 363 (1959), State Rubbish Collectors Assoc. v.  
26 Siliznoff, 38 C.2d 330, 339 (1952).

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1 Code of Civil Procedure § 2019(b)(1), under which defend-  
2 ant brings the instant motion, requires that whether the motion be  
3 made by the party, the deponent, or the court itself, in each case  
4 the motion may only be granted "for good cause shown."

5 The accompanying Declaration of Charles R. Garry, esta-  
6 blishes that the depositions which are subject to the motion are  
7 brought in good faith for the purpose of properly preparing the  
8 instant case, and not for collateral purposes. Defendant has made  
9 no showing of good case and presented nothing except intemperate  
10 speculation respecting the plaintiffs' motives. Such matter,  
11 verging on the contumacious, can not support the drastic relief  
12 defendant now seeks.

13 Dated: November 2, 1978

14 Respectfully submitted,

15 GARRY, DREYFUS, McTERNAN, BROTSKY,  
16 HERNDON & PESONEN, INC.

17 By Charles R Garry  
18 CHARLES R. GARRY  
19 Attorney for Plaintiffs  
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DECLARATION OF CHARLES R. GARRY  
IN OPPOSITION TO DEFENDANT'S MOTION FOR  
PROTECTIVE ORDER

I, CHARLES R. GARRY, declare:

I am an attorney at law duly admitted and licensed to practice before all courts of this state and I have my professional office at 1256 Market Street, San Francisco, CA.

I am one of the attorneys of record for plaintiffs in the above-entitled matter.

I am informed by my clients that for a number of years before the events alleged in the within complaint, defendant Timothy Oliver Stoen was entrusted with substantial funds belonging to plaintiffs for the purpose of investment and security. Upon information and belief substantial sums so entrusted to defendant remain unaccounted for.

It is my good faith belief that the records sought under the noticed depositions of the Custodians of Records of the Toronto Dominion Bank of Canada, the Bank of America (1301 Market Street office), Barclays Bank of California, the Bank of Nova Scotia, the Chartered Bank of London, and the Bank of America, International Division; will reveal evidence of a prior scheme, plan and intention by defendant Stoen to abuse his position of trust and confidence with plaintiffs to his own personal gain.

Further, upon receipt of the records sought in said depositions, I intend to notice the deposition of defendant Stoen.

I can not properly prepare for such a deposition without

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1 the records sought to be suppressed by the present motion.

2 Executed on November 2, 1978 at San Francisco, California

3 I declare under penalty of perjury that the foregoing is  
4 true and correct.

5 Dated: November 3, 1978

6  
7  
8 By Charles R. Garry  
9 CHARLES R. GARRY  
10 Attorney for Plaintiffs

GARRY, DREYFUS, MERTZMAN, BROTSKY,  
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DECLARATION OF PERSONAL SERVICE (CCP § 415.10)

I, LOUISE HARDY, under penalty of perjury, hereby declare that I am and was on the dates herein mentioned, a citizen of the United States, over the age of eighteen years, and not a party to this action; that I caused the within Declaration and Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendant's Motion for Protective Order on the following person(s) on the date and at the address set forth below.

Patrick Sarsfield Hallinan  
Hallinan & Blum  
345 Franklin Street  
San Francisco, CA. 94102

Executed on November 3, 1978, at San Francisco, California.

By *Louise Hardy*  
LOUISE HARDY

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BB-31-b-170