

1 Superior Court Case No. SC117126

2 US District Court Case No. 2:14-CV-09780 (REMANDED 6/17/2015)

3  
4 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

5 COUNTY OF LOS ANGELES

6 **MARINA J BOYD**

7 PETITIONER/PLAINTIFF

8 vs.

9 **LOS ANGELES SUPERIOR COURT WEST DISTRICT DEPT. O**

10 **1725 South Main Street, Santa Monica, California 90401**

11 **Honorable Lisa Hart Cole, Presiding**

12 **310-255-1866**

13 RESPONDANT

14 **CITIMORTGAGE, INC., SKYWAY REALTY, MARK ALSTON**

15 DEFENDANT/REAL PARTIES AT INTEREST

16 Review of September 11, 2015 order Denying Petitioner/Plaintiffs Motion to Compel Further  
17 Responses and Motion to Compel the Deposition of Travis Nurse and Demand for Sanctions  
18 Respectively

19 **PETITION FOR WRIT OF MANDATE, PROHIBITION OR**  
20 **OTHER EXTRAORDINARY RELIEF**

21 Marina J. Boyd  
22 10951 National Blvd., #302  
23 Los Angeles, California 90064  
310-663-4811

24 *Petitioner/Plaintiff in Pro Per*

Cathy L Granger, Esq. (SBN 156453)  
Stuart B Wolfe, Esq. (SBN 156471)  
Wolfe & Wyman, LLP  
2301 Dupont Drive, Suite 300  
Irvine, California 92612  
Ph: 949-475-9200 \* Fax: 949-475-9203

25 Rik Tozzi, Esq. and Bryant Balogh, Esq.  
26 Burr Foreman, LLP  
420 North 20<sup>th</sup> Street, Suite 3400  
27 Birmingham, Alabama 35209  
Ph: 205-251-3000 \* Fax: 205-458-5100  
28 *Attorneys for Defendant Citimortgage, Inc.*

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*(Memorandum of Points & Authorities in Support thereof)*

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**STATEMENT OF THE CASE**

This case involves a civil lawsuit for damages against Citimortgage, Inc., Skyway Realty and Mark Alston for the theft of Petitioner/Plaintiffs’ Personal Property which they subsequently destroyed. Petitioner/Plaintiff alleges a conspiracy between certain employees of “CMI” and Mark Alston, Real Estate Broker/owner of Skyway Realty.

Plaintiff alleges that “CMI” and Mark Alston conspired to discard Plaintiffs personal property for, among other reasons, to prevent Plaintiff from successfully challenging the trustee sale based on having obtained a mortgage modification from the previous first lienholder. “CMI” maintains that they disposed the Petitioner/Plaintiffs Personal Property according to code.

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**PETITION FOR REVIEW**

Marina J Boyd, Petitioner/Plaintiff in the afore referenced case respectfully request a Writ of Mandate, Prohibition or other Extraordinary Relief as is deemed proper to correct the actions of an inferior tribunal denying Petitioner/Plaintiffs Motion to Compel Further Responses and Motion to Compel the Deposition of Travis Nurse and Demand for Sanctions respectively, without benefit of proper hearing.

Writ of Mandate is the appropriate remedy in this case because the Trial Court committed a prejudicial abuse of discretion by not proceeding in the manner required by law in denying Petitioner/Plaintiffs Discovery Motions. California Code of Civil Procedure §1094.5(b) *“The inquiry in such a case shall extend to the questions .....whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.”*

*“The standard of review for a discovery order is abuse of discretion”.* (Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725, 733 [101 Cal. Rptr. 3d 758, 219 P.3d 736]) *“The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason”* (Shamblin v. Brattain (1988) 44 Cal.3d 474, 478–479 [243 Cal. Rptr. 902, 749 P.2d 339]). *“The abuse of discretion standard ... measures whether, given the established evidence, the act of the*

1 *lower tribunal falls within the permissible range of options set by the legal criteria and action that*  
2 *transgresses the confines of the applicable principles of law is outside the scope of discretion.”*  
3 (Department of Parks & Recreation v. State Personnel Bd. (1991) 233 Cal.App.3d 813, 831 [284  
4 Cal. Rptr. 839].)

5 In its ruling, the trial court ignored properly proffered evidence that “CMI” failed to  
6 produce documents responsive to Plaintiffs two Request for Production of Documents, and that  
7 they engaged in an ongoing pattering of discovery abuses by refusing to meet and confer regarding  
8 discovery disputes and refusing to produce documents in response to Plaintiffs request.

9 Further, the Courts ruling on Petitioner/Plaintiffs motions are contrary to California  
10 Statutes governing discovery in litigation and it is established that “*when a trial court's decision*  
11 *rests on an error of law, that decision is an abuse of discretion.”* (People v. Superior Court  
12 (Humberto S.) (2008) 43 Cal.4th 737, 746 [76 Cal. Rptr. 3d 276, 182 P.3d 600].) “*It is an abuse*  
13 *of discretion to apply the wrong legal standard.”* (Bank of America, N.A. v. Superior Court, 212  
14 Cal. App. 4th 1076 (Cal. App. 4th Dist. 2013).

### 15 16 **ISSUES PRESENTED**

- 17 1. The Court abused its discretion by refusing to consider the merits of Petitioner/Plaintiffs  
18 Motion to Compel Further Discovery Responses and by summarily denying  
19 Petitioner/Plaintiffs Motion without requiring proper opposition by Defendant,  
20 Citimortgage, Inc. and allowing proper opportunity for Petitioner/Plaintiff to submit Reply  
21 to Defendants opposition.
- 22 2. The Court abused its discretion by refusing to consider the merits of Petitioner/Plaintiffs  
23 Motion to Compel the Deposition of Travis Nurse by summarily denying  
24 Petitioner/Plaintiffs Motion without requiring proper opposition by Defendant,  
25 Citimortgage, Inc. and allowing proper opportunity for Petitioner/Plaintiff to submit  
26 Replay to Defendants opposition.

- 1 3. The Court abused its discretion by refusing to award sanctions to Petitioner/Plaintiffs for  
2 abuse of the discovery process in violation of California Code of Civil Procedure §2023.  
3 Petitioner/Plaintiff is a Pro Se litigant and determining the amount and type of sanctions  
4 for such egregious discovery abuse as occurred in this case is not well settled.
- 5 4. That expiration of Jurisdictional time cannot occur/or accrue to the prejudice of a party  
6 who's case was removed to Federal Court during the period of time in which the Superior  
7 Court does not have Jurisdiction to take action in the matter.
- 8

9 **THIS PETITION FOR REVIEW IS PROPER AND TIMELY**

10 The ruling from Superior Court of the State of California, County of Los Angeles denying  
11 Petitioners two discovery motions was entered on September 11, 2015. This Petition for Review  
12 is timely filed without seeking additional redress from the Superior Court because time for  
13 bringing a Motion to Reconsider has expired and no new facts are at issue.

14 The standard of review for a discovery order is abuse of discretion. (Costco Wholesale  
15 Corp. v. Superior Court (2009) 47 Cal.4th 725, 733 [101 Cal. Rptr. 3d 758, 219 P.3d 736], and the  
16 Courts ruling in this matter was a prejudicial abuse of discretion because it applied the wrong legal  
17 standard in ruling Petitioner/Plaintiffs Motion to Compel Further Responses was untimely, it also  
18 failed to apply the proper legal standard in determining whether Travis Nurse should be compelled  
19 to this Jurisdiction for Deposition. The Courts ruling denied Petitioner/Plaintiff the opportunity to  
20 be properly heard on all of the relief request in the two discovery motions and in doing so, is  
21 effectively blocking Petitioners access to important discovery needed to prepare for trial in the  
22 absence of the resources which would be needed to depose as many as ten witnesses who may or  
23 may not have clear recollection of events from several years back.

24 Petitioners have no plain, speedy or adequate remedy in the course of ordinary law unless  
25 this Court shall issue a Writ of Mandate to respondent court to vacate/set aside their ruling of  
26 September 11, 2015 and shall, upon the evidence submitted with the Petition, direct the Court to  
27 enter an order effecting the proper relief to which Petitioner/Plaintiff is entitled. *Thus, when there*

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1 *is no other adequate remedy, mandamus is available to review rulings on the pleadings when an*  
2 *issue of sufficient importance to warrant extraordinary relief is presented* (internal citations  
3 omitted) (Cedars-Sinai Medical Center v. Superior Court, 18 Cal. 4th 1 (Cal. 1998))  
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## 5 **CHRONOLOGY OF IMPORTANT PROCEDURAL BACKGROUND**

6 Petitioner/Plaintiff filed suit against Citimortgage, Inc. and Skyway Realty on May 18,  
7 2012 alleging the Defendants conspired to convert Petitioner/Plaintiffs Personal Property  
8 following a Trustee Sale and Eviction of Petitioner/Plaintiff from 12321 Ocean Park Blvd., Unit  
9 1, Los Angeles, California 90064.

10 On/or around October, 2013, Citimortgage, Inc. initiated discovery by serving Form  
11 Interrogatories, Special Interrogatories, Request for Admissions, Request for Production of  
12 Documents and Notice of Deposition and Demand for Documents at the time of Deposition to  
13 Petitioner/Plaintiffs Marina J Boyd, Anita Faye Boyd and Alexis Boyd-Holling, who is a minor.

14 Each of the discovery request contained request for IDENTICAL information and/or  
15 disclosure. Petitioner/Plaintiffs responded to all of the discovery propounded by “CMI”.

16 In November 2013, Petitioner/Plaintiff Marina J Boyd was deposed by “CMI” and in  
17 March 2014, Alexis Boyd-Holling (who is a minor) was deposed by “CMI”.

18 On or about March 9, 2014, Petitioner/Plaintiff served upon “CMI” Request for  
19 Admissions, Form Interrogatories and Request for Production of Documents. Petitioner/Plaintiff  
20 subsequently gave “CMI” two 30 day extension to May 9, 2014, then June 9, 2014.

21 On June 9, 2014, “CMI” followed through on their threat to serve boilerplate objections  
22 in response to Petitioner/Plaintiffs discovery if Petitioner/Plaintiff refused to give them a third  
23 thirty day extension (EXHIBIT 10).

24 In July 2014, Petitioner/Plaintiffs met with Samantha Lamm, counsel for “CMI” in an  
25 attempt to informally resolve discovery disputes (EXHIBIT 1.D).  
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1 On September 18, 2014, “CMI” served discovery responses to Petitioner/Plaintiff verified  
2 by Travis Nurse, however after hours of diligent review and comparison of the documents,  
3 Petitioner/Plaintiff observed that the Production was incomplete because the documents were  
4 converted from the format which they are kept in the normal course of business to a format which  
5 was not printable, rendering it unusable, the production contained significant blocks of  
6 conversations which were redacted, but not identified as privileged, there were references to  
7 attachments and conversations in the e-mails produced which were not included in the production,  
8 and there were e-mails in the possession of Mark Alston which would have been included under  
9 the Petitioner/Plaintiffs document request which was not included in “CMI’s” production.

10 These discrepancies prompted Petitioner/Plaintiff to send a letter to Samantha Lamm on  
11 October 15, 2014 in an effort to resolve the discrepancies in their production (EXHIBIT 1.E),  
12 however, Samantha Lamm, neither acknowledged nor responded to Petitioner/Plaintiffs October  
13 15, 2014 communication.

14 On or about November 20, 2014, Petitioner/Plaintiff sent to “CMI” a signed Stipulation to  
15 Resolve Discovery Informally, however this was ignored by Counsel for “CMI” (EXHIBIT 1.F).

16 On or about December 8, 2014 Petitioner/Plaintiff filed called Samantha Lamm in an effort  
17 to ascertain if “CMI” intended to cooperate with Plaintiffs discovery request, Ms. Lamm  
18 responded with an unprofessional personal attack of which would become a pattern by counsel of  
19 “CMI” when Petitioner/Plaintiff persisted in attempts to obtain discovery.

20 On or about December 15, 2014 Petitioner/Plaintiff filed a request for Informal Discovery  
21 Conference with LA Superior Court, however, “CMI” ignored this communication (EXHIBIT  
22 1.G).

23 On December 22, 2014, “CMI” removed this action to US District Court Central District  
24 of California and Petitioner/Plaintiff was simultaneously advised that Cathy Granger of Wolfe &  
25 Wyman was assuming the duties of Samantha Lamm in representing “CMI” in this case.  
26  
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1           Petitioner/Plaintiff immediately begin attempts to meet and confer with Cathy Granger  
2 regarding outstanding discovery studying extensively to become familiar with new rules of Civil  
3 Procedure in applicable in Federal Court.

4           On February 23, 2015, Petitioner/Plaintiff served a second Request for Production of  
5 specifying a request for e-mail documents in electronic format with Metadata, requesting again  
6 job description (Request for Production Set One, No. 2) and compensation structure information  
7 (Request for Production Set One, No. 3) for certain “CMI” employees involved in the disposal of  
8 Petitioner/Plaintiffs Personal Property and “CMI” methodology on vendor selection (Request for  
9 Production Set One, No. 6) along with three new separate request for document which were  
10 unrelated to any other request.

11           On March 6, 2015, Plaintiff/Petitioner filed a Motion to Compel Further Responses in  
12 Federal Court (which “CMI” Opposed) after multiple meetings with counsel for “CMI” failed to  
13 lead to the production of the missing documents.

14           On March 30, 2015, “CMI” served boilerplate objections to all of the documents in  
15 Petitioner/Plaintiffs February 23, 2015 Request for Production of Documents (EXHIBIT 1.J).

16           On April 1, 2015, “CMI” served a 2<sup>nd</sup> Set of Further Responses to Plaintiffs Request for  
17 Production (EXHIBIT 8)<sup>1</sup>.

18           On April 2, 2015, the US District Court denied, without prejudice, Petitioner/Plaintiffs  
19 Motion to Compel Further Responses on procedural error (Petitioner/Plaintiff did not include Joint  
20 Stipulation Regarding Discovery Meet and Confer as required by Local Rules 37-2).

21           Upon careful review of the documents submitted by “CMI” AFTER Petitioner/Plaintiff  
22 filed a Motion to Compel, it was clear that there were no documents included that meet the standard  
23 of “sensitive, confidential or proprietary”<sup>2</sup>. Further, to the extent any information was provided  
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27 <sup>1</sup> The “proprietary” documents are not included in the exhibit pursuant to the protective order, however, Petitioner/Plaintiff encourages the Court  
28 to request an in camera review of the documents in question if it finds such review may be relevant to this action.  
<sup>2</sup> Petitioner/Plaintiff has not included documents referenced pursuant to the court order, but encourages the Court in its discretion to arrange for in  
camera view of the documents in question.

1 that could, in any conceivable way, be perceived as such, was information which exceeded the  
2 scope of Petitioner/Plaintiff.

3 On April 28, 2015 “CMI” served Notice of Continued Deposition and Request for  
4 Production of Documents at the time of Deposition and Request for Production of Documents Set  
5 Two to Petitioner/Plaintiff Marina J Boyd. These discovery request combined contained more  
6 than 50 additional document request, many of which were substantially the same as those to which  
7 “CMI” had objected<sup>3</sup>.

8 On May 6, 2015, Petitioner/Plaintiff forwarded to “CMI” a Joint Stipulation regarding  
9 Discovery (LR 37-2) which is a procedural requirement for bringing a Motion to Compel Further  
10 Responses in US District Court Central District of California, and on May 11, 2015 sent an editable  
11 file, however, “CMI” never included their position and signed the Stipulation.

12 On May 15, 2015, “CMI” again served a 3<sup>rd</sup> set of Further Responses to  
13 Petitioner/Plaintiffs Request for Production of Documents Set One (EXHIBIT 9).

14 On or about June 4, 2015, and after continued efforts to meet and confer with “CMI”  
15 regarding the missing e-mail documents, Petitioner/Plaintiff advised “CMI” of the intent to file a  
16 renewed Motion to Compel Further Responses, however Petitioner/Plaintiff also advised that if  
17 “CMI” maintained that production of documents were complete, then Petitioner/Plaintiff would  
18 instead, seek to depose Travis Nurse, the “CMI” employee who verified their discovery responses  
19 to determine if “CMI” had sufficiently executed their duty to preserve relevant documents in an  
20 ongoing litigation (See EXHIBIT 1.M, Page 2-3, ¶4), that “CMI” sufficiently searched and  
21 produced all documents responsive to Petitioner/Plaintiffs request (See EXHIBIT 1.M, Page 3-4,  
22 ¶8), to ascertain if spoliation of evidence had occurred (See EXHIBIT 1.M, Page 3, ¶5).

23 On/or about June 17, 2015, Petitioner/Plaintiff attempted to file a renewed Motion to  
24 Compel Further Responses, but at that time learned that the case had been remanded to State Court.  
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27 <sup>3</sup> This subsequent, arguable abusive, discovery request by “CMI” contained significant overlap to the 183 document request served on Plaintiffs  
28 Marina J Boyd, Anita Faye Boyd and Alexis Boyd-Holling in 2013, and substantially consumed Petitioner/Plaintiffs time in which to bring a renewed motion to Compel further Responses.

1 On at least four separate occasions, following the Remand of this case to State Court,  
2 Petitioner/Plaintiff sought to meet and confer with counsel for “CMI” regarding the Deposition  
3 of Travis Nurse, however “CMI” was generally dismissive of Petitioner/Plaintiffs efforts and  
4 would not agree to any date or terms for taking the deposition. Instead, “CMI” vacillated between  
5 insisting that production was complete, and when Petitioner/Plaintiff then informed “CMI” of  
6 their wish to depose Travis Nurse to ascertain the credibility of “CMI’s” claims that document  
7 production was complete, “CMI” would claim to need additional time to search for additional  
8 documents responsive to Petitioner/Plaintiffs Request for Production. “CMI” continued to make  
9 such conflicting statements until Petitioner/Plaintiff served a Notice of Deposition for Travis Nurse  
10 on August 5, 2015 and filed a Motion to Compel Further Responses on August 6, 2015 and again  
11 as recently as September 3, 2015, where “CMI” again asked for more time, although they could  
12 not specify how much, to review and ensure production was complete.  
13

14 My final attempt to meet and confer regarding the deposition of Travis Nurse prior to  
15 serving the notice on August 5, 2015, was August 4, 2015 following a status conference which had  
16 been scheduled by the Court after the remand of which Cathy Granger appeared for “CMI” and  
17 following the hearing Ms. Granger inquired if there was anything we needed to discuss. I advised  
18 Ms. Granger that since I had nether obtained the documents missing from production, nor had they  
19 been willing to discuss deposition terms for Travis Nurse, I had no choice but to bring another  
20 Motion to Compel Further Responses because I was out of time.

21 Ms. Granger indicated that she was willing to agree to an extension of time to file a motion  
22 to compel in order to try and work the dispute out, however that offer was subsequently exposed  
23 as a sham in effort to cause Plaintiff/Petitioner to miss the deadline for bringing the Motion as  
24 subsequent communication consisted of “CMI” erroneous calculation of the cutoff for bringing  
25 the motion to Compel Further Responses (EXHIBIT 1.S).

26 On August 5, 2015, Petitioner/Plaintiff noticed the Deposition of Travis Nurse (EXHIBIT  
27 2) to take place on August 31, 2015 at the offices of Wolfe and Wyman, LLC on August 5, 2015  
28

1 and on August 6, 2015 filed a motion to Compel Further Response Demand for Sanctions  
2 (EXHIBIT 1).

3 On August 26, 2015 Petitioner/Plaintiffs received notice from “CMI” of their objection to  
4 the Deposition of Travis Nurse (EXHIBIT 4) and Petitioner/Plaintiff immediately sent an e-mail  
5 to Cathy Granger, Rik Tozzi and Bryan Balogh seeking to meet and confer regarding the  
6 deposition. “CMI” made no effort to meet and confer with Petitioner/Plaintiff before serving their  
7 objections just days before the Deposition was schedule to take place.

8 Petitioner/Plaintiff immediately sent an e-mail to Cathy Granger, Rik Tozzi and Bryan  
9 Balogh (EXHIBIT 2.E) after receiving objections to the Deposition of Travis Nurse, however,  
10 counsel for “CMI” did not respond to or otherwise acknowledge this communication.

11 After receiving NO response to the e-mail from any of the “CMI” attorneys,  
12 Petitioner/Plaintiff place calls to Cathy L Granger on Friday August 27, 2015, and calls to Bryan  
13 Balogh and Rik Tozzi on Monday August 31, 2015, neither Ms. Granger, Mr. Tozzi or Mr. Balogh  
14 acknowledged or responded to Petitioner/Plaintiffs e-mail or phone calls by the Tuesday  
15 September 2, 2015, so at that time Petitioner/Plaintiff advised “CMI” that there would be a Motion  
16 to Compel the Deposition of Travis Nurse and gave ex-parte notice of an Application to Shorten  
17 Time wherein Petitioner/Plaintiff would ask the court to hear both discovery motions on shortened  
18 notice.

19 Consistent with their pattern of behavior, it was only AFTER Petitioner/Plaintiff ex-parte  
20 notice regarding the Discovery Motions that Cathy Granger responded to Petitioner/Plaintiffs e-  
21 mail asking to meet and confer regarding the deposition of Travis Nurse to which  
22 Petitioner/Plaintiff agreed, however again this request was exposed as a sham.

23 While “CMI” has represented the subsequent phone call on September 3, 2015 as meeting  
24 and conferring, it was simply efforts by counsel for “CMI” to explain away the shockingly obvious  
25 deficiencies in their document production and when Petitioner/Plaintiff persisted, counsel for  
26 “CMI” resorted to bullying and personal attacks on Petitioner/Plaintiff.  
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1 On September 4, 2015, Petitioner/Plaintiff brought an Ex-Parte Application for Order  
2 Shortening Time (EXHIBIT 3) to hear Petitioner/Plaintiffs Motion to Compel Further Responses  
3 and Demand for Sanctions filed on August 6, 2015 and from February 17, 2016 to October 6, 2015,  
4 and to Shortening the Time to hear Petitioner/Plaintiffs forthcoming Motion to Compel the  
5 Deposition of Travis Nurse and Documents to be Produced at the Time of Deposition and Demand  
6 for Sanctions from February 2, 2015 (the date reserved in the Court Reservation System) to  
7 October 6, 2015.

8 On September 4, 2015, the Court continued Petitioner/Plaintiffs application to September  
9 11, 2015 to allow Defendant, “CMI” opportunity to file responsive documents to  
10 Petitioner/Plaintiffs Application.

11 On September 9, 2015, “CMI” submitted their opposition (EXHIBIT 4) to  
12 Petitioner/Plaintiffs Application for Order Shortening Time.

13 On September 10, 2015, the Court issued a Tentative Ruling (EXHIBIT 5), GRANTING  
14 Petitioner/Plaintiffs Application for Order Shortening Time to hear discovery Motions to  
15 September 11, 2015, and denying both of Petitioner/Plaintiffs discovery motions.

16 In the tentative ruling, Petitioner/Plaintiffs Motion to Compel Further Responses and  
17 Demand for Sanctions was denied as untimely (Pursuant to Code of Civil Procedure §2013.310(c),  
18 however this section of the CCP does not pertain to discovery and has no subsections as indicated  
19 by the courts ruling) and the Motion to Compel Deposition was denied because the  
20 Petitioner/Plaintiffs sought to depose an employee of “CMI”, party to the action, at a location  
21 more than 75 miles from his residence.

22 In oral arguments at the hearing on the aforementioned matters, Petitioner/Plaintiff argued  
23 that the Motion to Compel Further Responses was timely based on the following: 1) “CMI’s”  
24 responses to the Request for Production of Documents which were the subject of  
25 Petitioner/Plaintiffs Motion to Compel Further Responses were serve by mail to  
26 Petitioner/Plaintiffs on March 30, 2015 and May 15, 2015 respectively. 2) Counting forty-five  
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1 days from the date the Los Angeles Superior Court resumed Jurisdiction of this case (June 17,  
2 2015) and adding five additional days because the responses were served by Mail, the last day to  
3 file a motion to Compel Further Responses was August 6, 2015, which was the date  
4 Petitioner/Plaintiff filed the motion.

5 In further oral arguments, Petitioner/Plaintiffs asked the Court for a hearing on the Merits  
6 of Petitioner/Plaintiffs demand for discovery sanctions, however the court rejected  
7 Petitioner/Plaintiffs arguments and adopted the tentative ruling (*See Declaration of Marina J Boyd*  
8 *regarding Hearings on September 4, 2015 and September 15, 2015*).

9 “CMI” has responded with a plethora of meritless boilerplate objections to virtually every  
10 discovery request from Petitioner/Plaintiff. Further, they object to discovery before and without  
11 any effort to confer regarding the nature of the request to determine if it can be resolved and  
12 Petitioner/Plaintiff brings this Petition for extraordinary relief because of the believe that it was an  
13 extreme abuse of discretion for the Trial Court to ignore the action of “CMI” in their failure to  
14 comply with discovery.

## 15 LEGAL STANDARD

### 16 A. The Courts Denial of Petitioner/Plaintiffs Discovery Motions Denied

#### 17 Petitioner/Plaintiff Right to Be Heard

##### 18 a. Motion to Compel Further Responses and Demand for Sanctions

19 Petitioner/Plaintiffs made their first discovery request of “CMI” in March 2014. This  
20 matter was removed to Federal Court on December 22, 2014, and discovery continued throughout  
21 the Federal Court proceedings with “CMI” serving the last of their further responses to  
22 Petitioner/Plaintiffs March 2014 Request for Production of Document on May 15, 2015. Further,  
23 Petitioner/Plaintiffs propound additional Request for Production of Documents for e-discovery to  
24 “CMI” on February 23, 2015. On June 17, 2015, this case was remanded to State Court, thus  
25 Petitioner/Plaintiff set forth the calculation of time to bring a Motion to compel Further Responses  
26 based on this courts resumption of jurisdiction of the matter (*See Exhibit 1, Page 10, Line 1-17*).

1 California Code of Civil Procedure § 2031.310(c) states “Unless notice of this motion is  
2 given within 45 days of the service of the response, or any supplemental response, the demanding  
3 party waives any right to compel a further response.....and higher courts have held this time is  
4 Jurisdictional.” Further California Code of Civil Procedure §1013 provides that “any period of  
5 notice and any right or duty to do any act or make any response within any period or on a date  
6 certain after service of the document, which time period or date is prescribed by statute or rule of  
7 court, shall be extended by . . . five days if mailed within California”.

8 The time for Petitioner/Plaintiff to bring their Motion to Compel Further Responses is  
9 properly tolled while the court jurisdiction is suspended and “CMI’s” further responses were  
10 served by mail, the period from June 17, 2015 and August 6, 2015 would make the motion timely  
11 filed on the 50<sup>th</sup> day. The Courts have held that the period in which a party can compel further  
12 responses is a jurisdictional, therefore it would be impossible for jurisdictional time to be  
13 exhausted when the Court does not have Jurisdiction. Following removal, it has been held that  
14 “the state court's jurisdiction is reacquired when the district court clerk gives notice to the state  
15 court clerk in the form of a certified copy of the remand order” It further states “Exclusion of the  
16 time prior to the mailing of the certified copy of the order of remand was automatic” (Spanair S.A.  
17 v. McDonnell Douglas Corp., 172 Cal. App. 4th 348 (Cal. App. 2d Dist. 2009).

18 In oral arguments, Petitioner/Plaintiff reiterated their position that, based on this Court  
19 having resumed jurisdiction of this matter on June 17, 2015, the Notice of Motion which was filed  
20 on August 6, 2015, was timely (“CMI” served the further responses on May 15, 2015 by mail)  
21 even if the court disregarding the agreement of the parties on August 4, 2015 (see EXHIBIT 1.S)  
22 which extended the deadline for bring a motion to compel for two weeks to August 18, 2014.

23 The Court in its ruling, simply accepted “CMI’s” statement that the motion was untimely  
24 and gave no basis for such ruling. The only theory argued by “CMI’s” regarding the timeliness  
25 was that Petitioner/Plaintiff “admitted” that the Request for Production was served on March 9,  
26 2013 and that they served INITIAL responses to Petitioner/Plaintiffs March 9, 2014 Request for  
27 Production of Documents on September 18, 2014 even though it is undisputed that “CMI” served  
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1 further responses to the request as late at May 15, 2015 and that Petitioner/Plaintiff served another  
2 Request for Production of Documents on February 23, 2015 which was also the subject of the  
3 Motion to Compel Further Responses, However had the Court properly reviewed the evidence in  
4 Petitioner/Plaintiffs Motion to Compel Further Responses, it would have been clear this was  
5 untrue.

6 In oral arguments Petitioner/Plaintiff inquired of the Court what date it was relying to  
7 support the ruling that the Motion to Compel Further Responses was untimely, however, the Courts  
8 reply was simply “I am adopting my tentative ruling”. Properly, the court cannot not advocate on  
9 behalf of “CMI” by seeking to determine a date by which the motion was due, independent of the  
10 dates argued by the parties. Therefore, the Courts denial of Petitioner/Plaintiffs Motion to Compel  
11 Further Responses as untimely, in the absence of any arguments or authorities which supported  
12 the ruling, is an abuse of discretion.

13 All objective evidence suggest that “CMI’s” misuse of the discovery process is wilful,  
14 however, even if the Court finds evidence insufficient for a finding of willfulness, it is not required  
15 to warrant sanctions according to Clemente, which states “*There is no requirement that misuse of*  
16 *the discovery process must be willful for a monetary sanction to be imposed. “Conduct frustrates*  
17 *the goal of a self-executing discovery system when it requires the trial court to become involved*  
18 *in discovery because a dispute leads a party to move for an order compelling a response”*  
19 (Clemente v. Alegre, 177 Cal. App. 4th 1277 (Cal. App. 1st Dist. 2009). Indeed if one were to  
20 look at the whole picture of “CMI’s” discovery conduct they would find extreme abuses which  
21 cannot be legally or ethically explained.

22 **b. Petitioner/Plaintiffs is Entitled to a Hearing on the Merits of their Motion to**  
23 **Compel the Deposition of Travis Nurse**

24 The Courts outright denial of Petitioner/Plaintiffs Motion to Compel the Discovery of  
25 Travis Nurse based on his being resident in O’Fallon, Missouri ignores several very important  
26 statutory facts, the most important of which is the Motion was brought because “CMI” REFUSED  
27 to respond to Petitioner/Plaintiffs multiple attempts to meet and confer after serving  
28

1 Petitioner/Plaintiffs with objections to the Deposition Notice (*See Petitioner/Plaintiffs’*  
2 *Declaration in Support of Petitioner/Plaintiffs Motion to Compel the Deposition of Travis Nurse,*  
3 *Page 2, Line 11-19).*

4 The California Code of Civil Procedure provides for exceptions by which the Court may  
5 compel the Deposition of a party to occur more than 75 miles from their residence. California  
6 Code of Civil Procedure §2025.260(a) states “*A party desiring to take the deposition of a natural*  
7 *person who is a party to the action or an officer, director, managing agent, or employee of a party*  
8 *may make a motion for an order that the deponent attend for deposition at a place that is more*  
9 *distant than that permitted under §2025.250*”. Petitioner/Plaintiff was denied the opportunity to  
10 be heard on any arguments pursuant to CCP §2025.260.

11 In denying Petitioner/Plaintiffs Motion to Compel the Deposition of Travis Nurse, the  
12 Court only took into consideration the statements of “CMI” that the motion should be denied  
13 because Travis Nurse lived more than 75 miles from the location where the Deposition was noticed  
14 to take place. The Court stated no other grounds for denial of the motion even though Petitioners  
15 Motion did not specify that Petitioner/Plaintiff intended the Court to Order the Deposition to take  
16 place at a specific location.

17 This could have been avoided had the Court provided for proper opposition and reply to  
18 the Motion as Petitioner/Plaintiff had requested in the Application for Order Shortening Time.  
19 Instead, the Court based its ruling solely on “CMI’s” improperly placed arguments against  
20 Petitioners motion in their opposition to Petitioner/Plaintiffs Application for Order Shortening  
21 Time because the 75 mile limit is not absolute.

22 It is settled that “*every brief should contain a legal argument with citation of authorities*  
23 *on the points made*” and “*If none is furnished on a particular point, the court may treat it as*  
24 *waived, and pass it without consideration*”. (McComber v. Wells (1999) 72 Cal.App.4th 512,  
25 522). The Court actions gave the appearance of bias against Petitioner/Plaintiff by denying  
26 Petitioner/Plaintiffs motion without being informed of the relief Petitioner/Plaintiff sought,  
27 without requiring “CMI” to make this argument properly supported by points and authorities in a  
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1 responding/opposing pleading and allowing Petitioner/Plaintiffs the opportunity to Reply. Not  
2 only did that result in financial and other burden being improperly placed on Petitioner for having  
3 to bring the motion, it exempted “CMI” from having to expend any significant resources to  
4 properly oppose.

5 By refusing to properly consider Petitioner/Plaintiffs Motion to Compel the Deposition of  
6 Travis Nurse, Petitioner/Plaintiff was denied the opportunity to be heard on the other relief  
7 requested in addition to Monetary Sanctions. Petitioner/Plaintiff also ask the Court to issue  
8 evidence sanctions by striking the discovery verifications of Travis Nurse (*See Exhibit 2, Notice*  
9 *of Motion to Compel the Deposition of Travis Nurse, Page 2, Line 2-3*) and “CMI’s” July 22, 2015  
10 Demurrer and Motion to Strike and to vacate their subsequent orders (*See Exhibit 2, Notice of*  
11 *Motion to Compel the Deposition of Travis Nurse, Page 2, Line 11-16*).

12 Petitioner/Plaintiff sought to depose Travis Nurse because his declarations that discovery  
13 was accurate and complete was not consistent with the discrepancies that existed in the documents  
14 Petitioner/Plaintiff collected from all sources. The Court, after notice to any affected party, person,  
15 may, in addition to Monetary sanctions, “*impose an evidence sanction by an order prohibiting any*  
16 *party engaging in the misuse of the discovery process from introducing designated matters in*  
17 *evidence*” (California Code of Civil Procedure §2023.030(b). Accordingly, striking the discovery  
18 verifications of Travis Nurse would have the effect of prohibiting “CMI” from introducing their  
19 “verified responses” as evidence that they have fully complied with their discovery obligations in  
20 response to Petitioner/Plaintiffs Request for Production of Documents. As a general matter, “*when*  
21 *an individual verifies discovery responses, further discovery can be directed to that individual to*  
22 *determine the sources for the initial responses*” (Melendrez v. Superior Court, 215 Cal. App. 4th  
23 1343 (Cal. App. 2d Dist. 2013) as such, the Court should have considered in totality the relief  
24 requested by Petitioner/Plaintiff in their Motion to Compel the Deposition of Travis Nurse and the  
25 actions of “CMI” in their refusal to meet and confer prior to, and subsequent to the Notice of  
26 Deposition and “CMI’s” failure to meet and confer prior to, or subsequent to their objection  
27 (objection to the Deposition of Travis Nurse and then subsequent refusal to meet and confer to  
28

1 resolve the objections cannot be overcome by “CMI” by pretending to meet and confer only  
2 AFTER they are notified of Petitioners Motion to Compel), and made an informed ruling  
3 consistent with the Rules of Procedure and Standard of Judicial Ethics.

4 Further, “CMI” should not be permitted to benefit from their discovery abuses by chipping  
5 away at Petitioner/Plaintiffs causes of action which are the subject of documents they are  
6 improperly withholding from their discovery responses and they should be divested of and denied  
7 all litigation advantages or privileges which they have obtained while engaging in the abuse of the  
8 discovery process.

9 **B. Petitioner/Plaintiff has a Statutory Entitlement to Sanctions on Both Motions for**  
10 **Discovery Abuses of “CMI”**

11 During these proceedings, “CMI” has committed every violation specified in the  
12 Discovery Act and more. They have propounded Request for Admissions, Form Interrogatories,  
13 Special Interrogatories, Request for Production of Documents and Request for Documents at the  
14 time of Deposition in TRIPLICATE by serving identical discovery request on Marina J Boyd,  
15 Anita Faye Boyd and Alexis Boyd-Holling, who is a minor, in violation of California Code of  
16 Civil Procedure 2023.010(c) “*Employing a discovery method in a manner or to an extent that*  
17 *causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense.*”

18 Ignoring Petitioner/Plaintiffs efforts to meet and confer in October, November and  
19 December 2014 regarding the documents they produced in September 2014. Ongoing refusal to  
20 meet and confer with Petitioner/Plaintiff in their efforts to set a date and terms for the Deposition  
21 of Travis Nurse since June 2015, refusing to produce e-mail communications regarding the  
22 handling of Petitioner/Plaintiffs Personal Property, redacting, without cause or explanation non-  
23 privileged portions of discovery which has been produced, in violation of California Code of Civil  
24 Procedure 2023.010 (d) “*Failing to respond or to submit to an authorized method of discovery.*”

25 Additional discovery abuses include “CMI” threatening to, and the actually serving  
26 boilerplate objections on June 9, 2014 to ALL of Petitioners March 9, 2014 discovery request,  
27 which included Form Interrogatories, Request for Admissions and Request for Production of  
28

1 Documents if Petitioner/Plaintiff refused to grant a third extension of 30 days to provide  
2 responses), objections to Petitioner/Plaintiffs Subpoena to Les Zieve and Associates and RES.NET  
3 and Petitioner/Plaintiffs second set of request for production of documents in violation of CCP  
4 §2023.010(e) *“Making, without substantial justification, an unmeritorious objection to discovery”*  
5 and §2023.020 which states *“Notwithstanding the outcome of the particular discovery motion, the*  
6 *court shall impose a monetary sanction ordering that any party or attorney who fails to confer as*  
7 *required pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of*  
8 *that conduct”*.

9       Regarding the documents which are the primary subject of Petitioners Motion to Compel  
10 Further Responses, **“CMI”** has made statements under oath which call into question the credibility  
11 and certainty, that they have produced all documents within their control responsive to  
12 Petitioner/Plaintiffs request in violation of CCP §2023.010(f) *“making an evasive response to*  
13 *discovery”*.

14       Additionally, **“CMI”** has attempted to manipulate the meet and confer process by offering  
15 then withdrawing extensions of deadlines to bring motions to compel to prevent Petitioner/Plaintiff  
16 from making timely motions to compel in violation of CCP §2023.010(i) *“Failing to confer in*  
17 *person, by telephone, or by letter with an opposing party or attorney in a reasonable and good*  
18 *faith attempt to resolve informally any dispute concerning discovery”*.

19       In addition, **“CMI”** has falsely accused Petitioner/Plaintiff of abusing the discovery  
20 process by propounding the same discovery twice, and filing an untimely motion to compel further  
21 responses, however, a review of the history in this case will demonstrate this to be a backwards  
22 malicious claim. Petitioner/Plaintiff has responded to substantially all of **“CMI”** discovery  
23 request, including duplicative discovery, and is the only party to this litigation who has conferred  
24 in good faith and has made repeated concessions in effort to avoid bring a discovery dispute to  
25 The Court for resolution.

1                   **a. The Court Should Issue a Writ Directing the Trial Court to Grant**  
2                   **Petitioner/Plaintiffs Motion to Compel the Deposition of Travis Nurse and to**  
3                   **Award Monetary Sanctions**

4                   California Code of Civil Procedure §2023.030 states “*after notice to any affected party,*  
5 *person, or attorney, and after opportunity for hearing, [the Court] may impose [Monetary*  
6 *Sanctions] against anyone engaging in conduct that is a misuse of the discovery process.* It further  
7 states that “*if a monetary sanction is authorized by any provision of this title, the court shall impose*  
8 *that sanction unless it finds that the one subject to the sanction acted with substantial justification.*”

9                   During oral arguments on September 11, 2015, Petitioner/Plaintiff inquired about the  
10 demand for sanctions, however the Court determined that Petitioner/Plaintiff was not entitled to  
11 sanctions because the motion was denied. Petitioner/Plaintiff attempted to make arguments to the  
12 contrary, however, the Court dismissed Petitioner/Plaintiffs arguments and adopted the tentative  
13 ruling stating that it found “**CMI**” has “substantial justification” for not complying. This ruling  
14 is not supported by the evidence, or arguments and is contrary to “**CMI’s**” claim that they *have*  
15 complied with discovery and production of documents (*See Declaration of Marina J Boyd*  
16 *regarding Hearings on September 4, 2015 and September 15, 2015*).

17                   During the hearing or otherwise, “**CMI**” has never provided any explanation for their  
18 refusal to meet and confer regarding the Deposition of Travis Nurse, either before the notice of  
19 deposition or before objecting to the deposition and having submitted on the tentative, have failed  
20 to preserve any right to further hearing on this matter.

21                   “**CMI’s**” misplaced arguments in opposition to Petitioner/Plaintiffs Motions to Compel  
22 are analogous, to standing case law wherein “*Appellant did not even file points and authorities in*  
23 *opposition to the motion to quash the deposition subpoenas, and instead filed only a letter to the*  
24 *court stating its position that the motion to quash was untimely, leaving the court with little*  
25 *alternative but to impose the monetary sanctions*” (Cal. Shellfish v. United Shellfish Co., 56 Cal.  
26 App. 4th 16 (Cal. App. 1st Dist. 1997)).

1 Therefore the Court abused its discretion in failing to award Petitioner/Plaintiff the  
2 sanctions demanded based only on “CMI’s” misplaced statements in opposition which were  
3 unsupported by any points and authorities.

4 **b. The Court should Issue a Writ Directing the Trial Court to Grant**  
5 **Petitioner/Plaintiffs Motion to Compel Further Responses and Impose**  
6 **Monetary Sanctions**

7 California Code of Civil Procedure §1094.5 states “*Where the court finds that there is*  
8 *relevant evidence that, in the exercise of reasonable diligence, could not have been produced or*  
9 *that was improperly excluded at the hearing before respondent, it may enter judgment .....in cases*  
10 *in which the court is authorized by law to exercise its independent judgment on the evidence, the*  
11 *court may admit the evidence at the hearing on the writ without remanding the case”.*

12 In this case, Petitioner/Plaintiff believes that the evidence of discovery abuse is clear and  
13 that, the evidence put forth in Petitioner/Plaintiffs Motion to Compel Further Responses  
14 demonstrates that “CMI’s” production of documents is not complete (See EXHIBIT 1, Separate  
15 Statement in Support of Motion to Compel Further Responses). Further, “CMI” made no attempt  
16 at legitimate arguments in opposition of Petitioner/Plaintiffs calculation of timeliness of their  
17 Motion to Compel Further Responses.

18 “CMI” has a never explained how they determined the timeliness of Petitioner/Plaintiffs  
19 Motion to Compel Further Responses in light of the fact that they DID served further responses  
20 (which were labeled as such) on April 30, 2015 (EXHIBIT 8) and May 15, 2015 (EXHIBIT 9).  
21 “CMI” has also argued that Petitioner/Plaintiffs Second Request for Production of Documents  
22 was a duplicate of the first and/or that it somehow demonstrates that Petitioner/Plaintiff “reneged”  
23 on a previous discovery concessions, however, they fail to mention that between the time of  
24 Petitioner/Plaintiff made these concessions related to the first Request for Production of  
25 Documents and the subsequent Request for Production of Documents, there was an Amended  
26 Complaint filed which alleged a new cause of action for Conspiracy to Commit Conversion, (the  
27 Court granted Plaintiffs Motion for Order Granting Leave to Amend in November 2014), and that

1 properly accounted for the expanded request for E-mail records. Further, they never actually  
2 presented any facts to support that argument. In addition, “CMI’s” arguments ignore that at the  
3 time Petitioner/Plaintiff served the subsequent Request for Production of Documents, they had  
4 NOT YET serve any of the documents in response to Request for Production 2, 3 and 6 as agreed  
5 in the concessions they continually reference and they have never given any explanation for why  
6 they were STILL serving documents responsive to Plaintiffs March 9, 2014 request in May of  
7 2015. Finally, “CMI” has never provided an explanation as to why Mark Alston was in possession  
8 of e-mail documents which would have been covered by Petitioner/Plaintiffs request for  
9 Production to “CMI” were missing from the documents they produced. The Court abused its  
10 discretion by denying plaintiffs motion without requiring “CMI” to respond to these issues, timely  
11 raised in Petitioner/Plaintiffs Motion to Compel Further Responses, and allowing for a reply from  
12 Petitioner/Plaintiff.

13 **C. Extraordinary Relief Is Required To Prevent Further Undue Prejudice to**  
14 **Petitioner/Plaintiff**

15 The entire success of the Discovery Act depends on the willingness of the courts to enforce  
16 and impose sanctions. *“It is also beyond dispute that the rules of discovery have serious potential*  
17 *for abuse and it is for this reason that the lower court is vested with wide discretion to prevent*  
18 *abuse.”* (Williams v. Volkswagenwerk Aktiengesellschaft, 180 Cal. App. 3d 1244 (Cal. App. 2d  
19 Dist. 1986). While it is preferred to have cases adjudicated on the merits, “CMI” had made it  
20 perfectly clear, they either won’t or more likely can’t defend this action, despite having assembled  
21 a dream team of four Partners and/or Sr. Partners, with combined experience well over 50 years,  
22 from two law firms to litigate against a single pro se Plaintiff.

23 “CMI’s” abuses of the discovery process in this case are far from trivial, and are obviously  
24 wilful. *“Only two facts are absolutely prerequisite to imposition of the sanction: (1) there must*  
25 *be a failure to comply, and (2) the failure must be willful.”* (R.S. Creative, Inc. v. Creative Cotton,  
26 Ltd., 75 Cal. App. 4th 486 (Cal. App. 2d Dist. 1999). “CMI” has sought to derail every discovery  
27 avenue sought by the Petitioner/Plaintiff through objections and just blatant refusal to comply and  
28



1 if the restrictions of discovery sanctions allow “CMI” to enjoy “discount” in monetary sanctions  
2 because Plaintiff is Pro Per, then imposition of terminating sanctions would be proper to “*vindicate*  
3 *the interest of the litigant who [has been] denied access to information.*” (Caryl Richards, Inc. v.  
4 Superior Court (1961) 188 Cal.App.2d 300, 305 [10 Cal.Rptr. 377]). A refusal to grant sanctions  
5 commensurate with “CMI’s” egregious abuses, will announce the arrival of unfettered abuse of  
6 process as a legitimate litigation strategy to deplete then defeat the opposition of limited resources  
7 (whether financial, intellectual or time resources) regardless of the merits of the dispute. Therefore  
8 Petitioner/Plaintiffs request for extraordinary relief in the amount of \$76,115.00 in monetary  
9 sanctions, or in the alternative, terminating sanctions, must be granted. This amount represents  
10 the minimum EXTRA resources expended by Petitioner/Plaintiff because cause of the discovery  
11 abuses of “CMI” over the past two years. Petitioner/Plaintiff concedes that the amount of time it  
12 takes to prepare the discovery motions exceeds the time that an attorney would spend doing the  
13 same work, which accounts in significant part for the size of the sanctions demanded, however, if  
14 “CMI” took the risk of bearing the responsibility of reimbursing these cost when they chose to  
15 engage in abusive discovery tactics. It could be argued that these sanctions represent “CMI’s”  
16 lost the bet that they would be able get away with their misuse of the process because of the extra  
17 resources Petitioner/Plaintiff would need to exhaust to research and prepare discovery motions.

18 This Court is allowed, if not expected to conclude that “CMI” has resisted or refused to  
19 submit to all methods of discovery sought by Petitioner/Plaintiffs because doing so would not be  
20 in their favor. “*The evidentiary inference that evidence which one party has destroyed or rendered*  
21 *unavailable was unfavorable to that party*” Cedars-Sinai Medical Center v. Superior Court, 18  
22 Cal. 4th 1 (Cal. 1998).

23 As presently set forth in Evidence Code § 413, this inference is as follows: “*In determining*  
24 *what inferences to draw from the evidence or facts in the case against a party, the trier of fact may*  
25 *consider, among other things, the party's willful suppression of evidence relating thereto.*”

26 California Supreme Court has made one thing is abundantly clear; “*the public perception*  
27 *of fairness in the legal system is of [great] moment*” and “*The system would be one-sided, and*  
28

1 *would be viewed by the public as unfair, if one party ..... could qualify for a fee award”* and it  
2 *would be palpably unjust for one of them .....to remain eligible for an attorney fee award,*  
3 *while the other becomes ineligible. (Trope v. Katz, supra, 11 Cal. 4th at p. 286, original italics.)*

4 As such, consideration of the appropriate sanctions to award is of importance beyond just  
5 this case. It must operate to ensure that no litigant is choosing to abuse the discovery process based  
6 on a belief that the advantage gained from suppressing evidence outweighs the likelihood that they  
7 will ever suffer any significant sanctions.

8  
9 **CONCLUSION**

10 It is the position of Petitioner/Plaintiff that the Courts September 11, 2015 rulings in this  
11 case are statutorily incorrect, and were reached without providing Petitioner/Plaintiff a fair  
12 opportunity to be heard.

13 The manner in which the hearing was conducted and the subsequent rulings gave the  
14 appearance that the court had already determined the outcome of the proceedings without the need  
15 for any coherent arguments or briefing from “CMI” in response to Plaintiffs Motions and  
16 regardless of the merit of Plaintiffs arguments.

17 The Court afforded “CMI” unlimited time to make arguments, much of which was of no  
18 relevance to facts put forth in Petitioner/Plaintiffs discovery motions, but blatantly refused such  
19 courtesy to Petitioner/Plaintiff, even when Petitioner/Plaintiffs arguments were specifically related  
20 to the motions at hand. Further, the Court never once required or even asked “CMI” to address  
21 the discovery abuses raised by Petitioner/Plaintiffs, such as whether or not they had failed to meet  
22 and confer with Petitioner/Plaintiff regarding the deposition of Travis Nurse, and why, or if they  
23 had indeed served further responses Petitioner/Plaintiffs Request for Production of Documents  
24 after the September 2014. Further the Court seemed unconcerned by “CMI’s” sudden eagerness  
25 and preparation (the “client representative” who they DIDN’T want to fly out was now  
26 miraculously present in court) to engage in a settlement conference, in which they didn’t want to  
27  
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1 engage and asked for the cancellation of, only one week earlier (*See Declaration of Marina J Boyd*  
2 *regarding Hearings on September 4, 2015 and September 15, 2015*).

3 California Counsel of Judicial Ethics states “*A judge shall diligently discharge the judge’s*  
4 *administrative responsibilities impartially, on the basis of merit, without bias or prejudice*”, and  
5 *further states that they “shall not, in the performance of administrative duties, engage in .....*  
6 *conduct that would reasonably be perceived as bias or prejudice.*

7 The Courts failure to hold “CMI” accountable for their actions and dismissive behavior  
8 towards Petitioner/Plaintiffs motions which were properly before the court, should not be  
9 overlooked or casually dismissed and is worthy of a referral to the California Counsel on Judicial  
10 Ethics for investigation, in addition to granting Petitioner/Plaintiffs prayer for relief as follows:

11  
12 **PRAYER FOR RELIEF**

13 WHEREFORE, Petitioners pray for judgment as follows:

14 Issue a peremptory writ of mandate without a hearing (Brown, Winfield & Canzoneri, Inc.  
15 v. Superior Court (2010) 47 Cal.4<sup>th</sup> 1233; Palma v. U.S. Industrial Fasteners, Inc. (1984) 36 Cal.3d  
16 171), or with such further hearing or notice as the Court deems proper directing the trial court to  
17 perform the following actions

18 Vacate and set aside their order denying Petitioner/Plaintiff Motion to Compel Further  
19 Responses.

20 DEEMING the Petitioners Motion to Compel Further Responses and Demand for  
21 Sanctions timely, and GRANTING Petitioner/Plaintiffs Motion for Terminating Sanctions,  
22 effective as to the Fourth Amended Complaint before the Court on August 6, 2015, or;

23 If the court finds that the discovery abuses of “CMI” do not rise to the level of the most  
24 severe sanctions, or that substantial justification exist for their failure to comply, that a writ shall  
25 issue GRANTING Petitioners Motion to Compel Further Responses to Request for Production of  
26 Documents.

1 GRANTING Petitioner/Plaintiffs demand for Monetary Sanctions in the amount of  
2 \$68,515 against "CMI" and their Counsel for misuse of the discovery process and for cost of  
3 Petitioner/Plaintiff having to bring two Motion to Compel Further Responses.

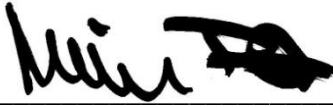
4 Vacate and set aside its order denying Petitioner/Plaintiff Motion to Compel the Deposition  
5 of Travis Nurse.

6 GRANTING Petitioners Motion to Strike the Discovery Verifications of Travis Nurse and  
7 awarding Petitioner/Plaintiff \$9,600.00 in Monetary Sanctions against "CMI" and its counsel for  
8 refusal to meet and confer to resolve their objections to the Deposition of Travis Nurse requiring  
9 Petitioner/Plaintiff to prepare a Motion to Compel.

10 GRANTING Petitioner/Plaintiff its costs of these proceedings; and

11 GRANTING other such other relief as may be just and proper to protect Petitioner/Plaintiff  
12 from retaliation and further prejudice by the Trial Court.

13  
14 Date: October 5, 2015

15  
16 By  \_\_\_\_\_  
17 MARINA BOYD  
18 Petitioner/Plaintiff in Pro Per  
19  
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1                    **DECLARATION OF MARINA J BOYD REGARDING HEARINGS ON**  
2    **SEPTEMBER 4, 2015 AND SEPTEMBER 11, 2015**

3  
4                    I, Marina J Boyd, declare, I am a Plaintiff in Superior Court Case #SC117126 and Petitioner  
5 in the Petition for Writ of Mandate, Prohibition or other Extraordinary Relief.

6                    The information contain in this declaration is based on my own personal knowledge and if  
7 called to testify, I could, and would, testify competently thereto.

8                    On September 2, 2015, I caused notice to be given to Cathy L Granger of Wolfe and  
9 Wyman, LLP and Rik Tozzi of Burr Foreman, LLP both counsel for “CMI” of Ex-Parte  
10 Application for Order Shortening Time to hear Petitioner/Plaintiffs Discovery Motion filed August  
11 6, 2015 and Motion to Compel the Deposition of Travis Nurse and Documents at the time of  
12 Deposition, the latter motion of which was to be filed concurrently with the Application to Shorten  
13 Time thereof.

14                    On September 4, 2015, the court call this ex-parte matter, wherein Petitioner/Plaintiff  
15 submitted, in courtroom in accordance with ex-parte procedures an Application for Order  
16 Shortening Time, and Notice of Motion and Motion to Compel the Deposition of Travis Nurse.

17                    No official transcript of these proceedings exist because I was not able to cover the cost of  
18 the services of a Court Reporter for the hearing, therefore I am submitting this declaration so that  
19 the reviewing Court may be informed of the facts and evidence submitted by oral arguments which  
20 at the hearings on September 4, 2015 and September 11, 2015.

21                    The Court received for reference the Motion to Compel the Deposition of Travis Nurse  
22 prior to Court being called to order, but would not file it because a Petitioner/Plaintiff reservation  
23 receipt was not the proper format. The Motion was returned to me at the conclusion of the hearing.

24                    On September 4, 2015, Court was called to order with the Honorable Lisa Hart Cole  
25 presiding. Shortly thereafter, Court called this matter. I, Marina J Boyd, Petitioner/Plaintiff,  
26 appeared, in Pro Per, Cathy L Granger, of Wolfe and Wyman, LLP appeared in court on behalf of  
27  
28

1 “CMI” and Rik Tozzi of Burr Foreman, LLP appeared on behalf of “CMI” by phone.

2 In brief oral arguments, I explained to the Court that I believed it would make since to have  
3 the pending motions to compel heard on shortened notice because of the protracted period in which  
4 the discovery issues had been in dispute and because of the difficulty in getting “CMI” to meet  
5 and confer regarding discovery.

6 The Court asked if I had noticed the Deposition of Travis Nurse, when I had done so and  
7 for which date, of which I advised the court that I had noticed the Deposition on August 5, 2015  
8 to take place on August 31, 2015.

9 Ms. Granger, in her oral arguments, advised the Court that Petitioner/Plaintiff, possibly  
10 because she is Pro Per or some other reason, had often fallen short procedurally, had defied the  
11 Courts orders and had filed documents late which had resulted in greatly increased cost and  
12 prolonged proceedings. She further stated that I had sat on my rights to make a motion to compel  
13 further responses, that my motion was untimely and I had reneged on previous meet and confer  
14 concessions.

15 The Court asked me to respond to which I advised that Ms. Grangers comment were not  
16 true, and advised that I believed my motion was timely as was laid out in my motion. I continued  
17 by advising the Court that I was NOT seeking to have the discovery matter heard on that day, but  
18 to shorten the time (both motions had been set for hearing in February) for hearing the motions.

19 I further responded that I was confident that I had properly calculated the timeliness of my  
20 motion based on the date which the Court had resumed jurisdiction after remand from federal court  
21 and that my calculation was put forth in my motion.

22 Ms. Granger further expressed concern that she didn’t believe that I would be fully engaged  
23 in the settlement conference which was schedule for September 11, 2015 and she had an attorney  
24 and client representative flying in from out of town and that she didn’t want to move forward with  
25 the settlement conference if I was not fully engaged.

26  
27 Jude Hart Cole inquired if I would or would not be fully engaged in the settlement  
28

1 conference and stated that if I was not, she was “not going to have her fly people out from all over  
2 the country”.

3 I responded, that, at the time I agreed to the settlement conference, I was scheduled to take  
4 the deposition of Travis Nurse on August 31, 2015<sup>4</sup>, and I advised the Court that when I agreed to  
5 “CMI’s settlement conference request, I expected that deposition to go forward, however since it  
6 did not (I received “CMI’s” objections to the deposition on August 26, 2015), I did not expect I  
7 could be fully engaged.

8 The Court then advised they would take the settlement conference off calendar and the  
9 hearing on the Application to Shorten Time to Hear the Discovery Motions was continued to  
10 September 11, 2015 to give “CMI” a chance to respond, however “CMI” did not make any oral  
11 or written motion to continue the hearing or for the opportunity to respond to it.

12 Upon appearing in court on September 11, 2015 for the continued hearing on the  
13 Application to Shorten Time, I was advised by the Clerk that there was a tentative ruling posted  
14 (EXHIBIT 5).

15 On September 11, 2015, court was called to order. I, Marina J Boyd, appeared in Pro Per,  
16 Cathy L Granger of Wolfe and Wyman and Rik Tozzi of Burr Foreman were both in appearance  
17 for “CMI”.

18 After reviewing the tentative ruling, I observed that the Application for Order Shortening  
19 Time was GRANTED, and that the discovery motion would be heard “today” (September 11, 2015  
20 instead of October 6, 2015 which I had requested in my Application). The tentative further stated  
21 that Plaintiffs Motion to Compel Further Responses was denied as untimely pursuant to CCP  
22 §2013.310(c)<sup>5</sup>. It also stated that the Motion to Compel the Deposition of Travis Nurse was denied  
23 because he lived in O’Fallon, Missouri, more than 75 miles from the place of deposition. The  
24

25  
26  
27 <sup>4</sup> The settlement conference was requested by “CMI” during the August 19, 2015 hearing on their Demurrer and Motion to Strike and the Notice  
of Deposition for Travis Nurse had been served about two weeks prior to that hearing, on August 5, 2015

28 <sup>5</sup> I am unable to find and such Code of Civil Procedure§2013.310(c). CCP §2013 is not related to discovery, but addresses affidavits and I was  
not able to identify any subsections thereto.

1 tentative ruling was silent on the demand for various sanctions which were included in both  
2 discovery motions.

3 In oral arguments, I again explained the method I used for calculating the timeliness of my  
4 Motion to Compel Further Responses, which was based on counting 50 days (45 days plus five  
5 days because the responses were served by mail), from July 17, 2015, which was the day the Court  
6 resumed jurisdiction of this case following Removal to Federal Court and subsequent Remand.

7 I further inquired to the Court about sanctions demanded in both motions, as there was no  
8 mention of sanctions in the tentative ruling. Judge Hart Cole stated “well if I’m denying the motion  
9 there would be no sanctions”. I argued that I believed that the law allowed for sanctions even if  
10 the motions were denied on merit, and that I believed I was entitled to sanctions because of  
11 “CMI’s” failure to meet and confer. I advised the Court that I had begun attempting to secure a  
12 date for the deposition of Travis Nurse as early as June 2015, and had also attempted to meet and  
13 confer following the receipt of their objections to the deposition, before filing the motion to  
14 compel.  
15

16 In response, Rik Tozzi submitted on the tentative, but argued that according to my own  
17 admission my request for Production of Documents was served March 9, 2014 and further argued  
18 “that’s an admission” that I had missed my deadline for bringing a Motion to Compel Further  
19 Responses.

20 Mr. Tozzi continued that “CMI” opposed the Motion to for Order Shortening Time for  
21 hearing the Motion to Compel the Deposition of Travis Nurse because he was fairly new to the  
22 case and that the case had a “tortured history” of filings and he believe it was time for the case to  
23 get to a well-deserved conclusion.

24 Mr. Tozzi further argued that he did not want to put forth Travis Nurse for deposition while  
25 the Motion to Compel Further Responses was pending, but also stated that he had personally  
26 reviewed the production and that everything had been produced.

27 Mr. Tozzi then advised the Court that Cathy Woodwagner, a represented from “CMI” was  
28



1 in appearance if I wished to have settlement talks, but also expressed his displeasure that Ms. Boyd  
2 had mis-represented his statements by saying that “CMI” would not oppose the Application for  
3 Order Shortening Time, when what he actually said was that the purpose of his meet and confer  
4 efforts (which happened after he received notice of my intent to bring the Motion to Compel the  
5 Deposition) was not to convince me to withdraw the motions<sup>6</sup>.

6 Mr. Tozzi further argued that I had submitted a duplicate Request for Production of  
7 Documents and referenced a meet and confer letter which I wrote which he argued limited the e-  
8 mail conversations for which I was seeking. He further stated with regard to my subsequent  
9 request for production of documents (which specifically requested production of documents in  
10 their native format with metadata), “that’s just not how ESI works”.

11 Mr. Tozzi again reminded the Court Ms. Woodwagner, from “CMI” was present to have  
12 settlement conference if I was interested.

13 Ms. Granger argued for “CMI” that they served responses to my Request for Production  
14 in September 2014 and that my time to file a Motion to Compel further Responses expired before  
15 the case was removed to Federal Court. She stated that I argued that the proceeding in Federal  
16 Court had somehow tolled all that time<sup>7</sup>

17 I argued in response, that “CMI” had made FURTHER responses to that same request for  
18 production of documents in May of 2015 (EXHIBIT 9), and that the time period for motion to  
19 compel was from that date of production and not from the time I served the Request or from the  
20 date they served initial responses.

21 The Court then stated that it would adopt the tentative ruling and sanctions were denied  
22 because “CMI” had shown “substantial justification” for not complying. The Court then inquired  
23

24  
25 <sup>6</sup> Mr. Tozzi’s apparently misunderstood what I said in my Declaration, Page 9, Line 7-10 of my Application for Order Shortening Time, states:  
26 “On September 3, 2015, I spoke with Cathy L. Granger and Rik Tozzi, attorneys for “CMI” and based on our conversation, it is my understanding  
27 that Ms. Granger will appear in court on behalf of “CMI” for the hearing, and that Mr. Tozzi may appear telephonically, but that they do not plan  
28 to oppose this application. I was careful to say “it was my understanding” and intentionally so, because I was not sure of their intent following  
the call, but that was my interpretation of the statements made when placed in the context of the entire call.

<sup>7</sup> Ms. Granger’s statements mischaracterize my arguments. I have only argued that the time from which I begin to count the 45 days to file a  
Motion to Compel Further Responses should be from the date of their Supplemental Responses in May 2015, NOT from the time of their INITIAL  
RESPONSES in September 14, 2014. That would have been the case not withstanding removal. The only tolling included in my calculation is the  
period between May 15, 2015 when “CMI” served Supplemental Responses and June 17, 2015 when the case was remanded.

1 if I was interested in settlement conference. I advised that I was, as always, willing to sit down  
2 with them and attempt to settle, but I advised the Court, that I had a question for clarification to  
3 which Judge Hart Cole stated “I’m not going to be answering any more questions on this motion”  
4 and asked if I was interested I having the settlement conference.

5 I reminded the Court that I was not the one who ask for the settlement conference to be  
6 taken off calendar and advised the Court that I had always remained open to sit down with “CMI”  
7 to discuss settlement, but that I didn’t not believe I would be available the remainder of the  
8 morning.

9 Judge Hart Cole interjected that the settlement conference had to be in the morning and ask  
10 me why I was not available. I advised the Court that when I left home for the morning court  
11 proceedings, my visiting mother had been quite ill and I felt the need to return and check on her  
12 well-being. I offered to the Court, if they would allow, I would attempt to reach my mother by  
13 phone, to which Judge Hart Cole responded, “Why don’t you do that and let me know”.

14 The Court then ruled that it would adopt the tentative ruling and would not award any  
15 sanctions and stated to me, “Okay, why don’t you check to see if you are available and then come  
16 back and let me know and we can set a trial date, if necessary.”

17 When the case was recalled, the Judge Hart Cole stated that it appeared we were not able  
18 to reach any agreement. I advised the court that I could not stay the morning for settlement  
19 conference because I was unable to reach my mother.

20 At that time, Judge Hart Cole ask me when I would be ready for Trial, to which I replied  
21 there was a lot of depositions so probably about July. Judge Hart Cole responded “I’m not setting  
22 it out that far” and indicated that it would need to be within about four month of today’s date, in  
23 February or March. Mr. Tozzi interjected that he would like to ask one question to which Judge  
24 Hart Cole responded “sure”. Mr. Tozzi continued that he was concerned about the 105 day rule.  
25 Judge Hart Cole asked if he was going to “make such a motion” and Mr. Tozzi responded yes.  
26 Judge Hart Cole asked if it was “ready to go” to which he replied it was not because “Ms. Boyd  
27  
28

1 hasn't taken all the depositions, nor have we".

2 The Court then advised Mr. Tozzi that if he intended to make a Motion for Summary  
3 Judgment to please reserve that date now, and stated, "So then I can accommodate Ms. Boyd".

4 Trial was set for June 27, 2016 at 9:30am and Final Status Conference was set for June 24,  
5 2016 also at 9:30am and the matter was then concluded.

6  
7 I declare under penalty of perjury under the laws of the State of California that the  
8 foregoing is true and correct to the best of my knowledge.

9  
10 Dated: October 5, 2015

11  
12  
13 

14  
15 

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MARINA JOY BOYD

**VERIFICATION**

I, MARINA JOY BOYD, declare,

I, am the Plaintiff in the Superior Court Case #SC117126, Boyd vs. CitiMortgage, Inc. and Petitioner in this instant action.

I have prepared the foregoing Petition for Writ of Mandate, Prohibition or other Extraordinary Relief and know its contents.

The matters contained in this petition are known to me personally, except as to those matters stated on my information and belief, and as to those matters I believe to be true and if called upon to testify as to such matters under oath in a court of law, I could and would do so competently.

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

Executed thisn the 5th day of October, 2015 at Los Angeles, California.



---

MARINA JOY BOYD  
Petitioner/Plaintiff/Petitioner

1 **CERTIFICATION OF WORD COUNT**

2 I hereby certify that I have checked the length of this computer-generated brief using  
3 the word count feature of my word-processing application. (Rule 8.204, subd. (c)(1), C.R.C.)  
4  
5 The brief as currently constituted, excluding tables, indices and this certificate, contains  
6  
7 10,070 words.

8 

9  
10 

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MARINA JOY BOYD

**PROOF OF SERVICE**

I, Earlie R. Jones, am a resident of Los Angeles County, state of California. I am over the age of 18 and not a party to this action. My address is 12321 Ocean Park Boulevard, Los Angeles, California 90064.

On October 6, 2015, I served the document(s) described as PETITION FOR WRIT OF MANDATE, PROHIBITION OR OTHER EXTRAORDINARY RELIEF to all interested parties in said action by placing a true copy thereof in a sealed envelope addressed as stated on the attached SERVICE LIST.

- BY Mail as follows: I caused such documents to be deposited with the U.S. Postal Service with postage thereon fully prepaid at Los Angeles, California.
- BY FACSIMILE as follows: I caused such documents to be transmitted to the telephone facsimile number of the address listed below, by use of facsimile machine telephone number 818-. The facsimile machine used complied with California Rules of Court, Rule 2004 and no error was presorted by the machine. Pursuant to California Rules of Court, Rule 2006(d), a transmission record of the transmission was printed. (#1 Only)
- BY PERSONAL SERVICE as follows: I caused a copy of such envelope to be delivered by hand to the offices of the addressee between the hours of 9:00am and 5:00p.m. (#2 Only)
- BY OVERNIGHT COURIER SERVICE as follows: I caused such documents to be delivered by overnight courier service to the offices of the addressee. The envelope was deposited in or with a facility regularly maintained by the overnight courier service with delivery fees paid or provided for.

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

Executed on October 6, 2015 at Los Angeles, California.

\_\_\_\_\_  
**Earlie R. Jones**

1 **SERVICE LIST**

2  
3 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
4 COUNTY OF LOS ANGELES WEST DIVISION  
5 DEPARTMENT O, HON. LISA HART COLE PRESIDING  
6 1725 MAIN STREET  
7 SANTA MONICA, CA 90401  
8 Ph: 310-255-1866

**Respondent**

9 **CITIMORTGAGE, INC.**  
10 CATHY L. GRANGER, ESQ.  
11 STUART B. WOLFE, ESQ.  
12 WOLFE & WYMAN, LLC.  
13 2301 DUPONT DRIVE, SUITE 300  
14 IRVINE, CA 92612  
15 Ph: 949-475-9200 \* Fax: 949-475-9203

**Real Party at Interest**

16 **CITIMORTGAGE, INC.**  
17 BRYAN O. BALOGH, ESQ.  
18 RIK S. TOZZI, ESQ.  
19 BURR FORMAN  
20 420 NORTH 20<sup>th</sup> STREET, SUITE 3400  
21 BIRMINGHAM, AL 35209  
22 Ph: 205-251-3000 \* Fax: 205-458-5100

**Real Party at Interest**

23 **SKYWAY REALTY**  
24 MARK EDWARD ALSTON  
25 1508 CENTINELA AVENUE, UNIT B  
26 INGLEWOOD, CA 90302  
27 Ph: 310-665-8694

**Real Party at Interest**