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E-FILED on 11/05/08

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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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SAN JOSE DIVISION

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STEVE TRACHSEL et al.,

No. C-08-02248 RMW

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Plaintiffs,

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v.

ORDER GRANTING APPLICATION FOR  
ORDER COMPELLING COMPLIANCE  
WITH AUGUST 8, 2008 ORDER

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RONALD BUCHHOLZ et al.,

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Defendants.

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Plaintiffs apply for an order compelling defendants to comply with this court's August 8,

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2008 order regarding depositions. For the reasons stated below, the court grants the motion.

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**I. BACKGROUND**

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This suit arises out of an allegedly fraudulent real estate investment scheme involving the

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purchase, renovation, and resale of a high-rise condominium property. Plaintiffs have applied for a

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right to attach order and for an order for issuance of a writ of attachment. At a hearing on August 8,

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2008 on that motion, the parties stipulated to participate in limited discovery. Each side agreed to

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conduct three depositions limited to (1) whether the securities are exempt under Corp. Code §

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251012 (f) and/or are subject to rescission; and (2) the issues set forth in plaintiffs' motion to

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conduct early discovery.

ORDER GRANTING APPLICATION FOR ORDER COMPELLING COMPLIANCE WITH AUGUST 8, 2008 ORDER —No.  
C-08-02248 RMW

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1 After initial notices and scheduling discussions, plaintiffs noticed the depositions of Ronald  
2 Bucholz (“Bucholz”) and Charice Fischer (“Fischer”) for October 7 and October 2, 2008,  
3 respectively. On September 30, 2008, defendants' counsel Andrew August sent an email to all  
4 counsel stating that all depositions were temporarily off calendar, because plaintiffs counsel, Jesshill  
5 Love, had refused to produce plaintiffs' financial documents in connection with their depositions.  
6 The depositions have not taken place, and plaintiffs move to compel the depositions of Bucholz and  
7 Fischer.

## 8 II. ANALYSIS

9 The Federal Rules of Civil Procedure permit no discovery “from any source before the  
10 parties have conferred as required by Rule 26(f)” except when authorized by the rules, a stipulation,  
11 or a court order. Fed. R. Civ. Pro. Rule 26(d)(1). The parties August 8, 2008 stipulation, read into  
12 the record during a hearing, states:

13 The parties stipulate to conduct three depositions per side within the next sixty days limited  
14 to, one, whether the securities are exempt under Corp. Code Section 25102(f) and/or are  
15 subject to rescission; and, two, the issues set forth in Plaintiffs' motion to conduct early  
16 discovery.

16 Plaintiffs shall take the depositions of Ronald Bucholz, . . . Charice Fischer, also a named  
17 Defendant, and Valerie Bunnell. . . Defendants shall take the depositions of Plaintiff Tom  
18 Cirrito, Plaintiff Michael Cirrito, and Plaintiff Steve Trachsel. Plaintiffs shall produce the  
19 Cirrito Defendants in California. The depositions shall be taken without prejudice to the  
20 parties' rights to conduct formally noticed depositions of deponents pursuant to FRCP at a  
21 later date.

21 The parties shall submit supplemental briefings inclusive of motion opposition and reply at  
22 the conclusion of the 60-day period pursuant to a briefing schedule to be determined by the  
23 Court.

21 Response to Pls.’ Reply in Support of Ex Parte Application Ex. D, 21-22. The stipulation allows  
22 both parties to conduct the stated depositions. Relying on the stipulation, plaintiff moves to compel.  
23 Defendant responds that plaintiffs’ counsel has failed to produce financial documents in connection  
24 with defendants deposition of Tom Cirrito, Michael Cirrito, and Steve Trachsel. Because of this  
25 refusal, defendants' counsel argues, the motion to compel should be denied.

26 The court finds, first, that the stipulation unambiguously permits the requested depositions.  
27 The parties’ instant dispute concerns only whether it allows accompanying documentary discovery.  
28 For the depositions of Bucholz and Fischer, for whom no documentary discovery is requested, this

1 dispute is not relevant. Plaintiffs' purportedly obstructionist refusal to produce financial records  
2 does not effect the propriety of deposing defendants, which is explicitly permitted in the August 8,  
3 2008 stipulation. The motion to compel is therefore granted.

4 Defendants' opposition focuses on plaintiffs refusal to provide financial documents in  
5 connection with their deposition. As stated above, the instant dispute takes place against the  
6 background of Rule 26(d)(1)'s bar on pre-26(f)-conference discovery. The parties agree that the  
7 stipulation includes no explicit permission to discover documents. Defendants argue that the court's  
8 discussion, and plaintiff's counsel's comments, "reflect an unstated understanding that documents  
9 are needed to address the issues before the Court on the Writ Application."

10 The court cannot find any such understanding in the transcript or stipulation. The issue on  
11 which defendants seek discovery, whether plaintiffs are accredited investors, appears preliminarily  
12 ascertainable with questions alone. *See* Pls.' Ex Parte Application For Order Compelling  
13 Compliance With 8/8/08 Order 5. At the very least, defendants do not justify their request for "[all]  
14 of the financial information about the Cirritos. All investment portfolios, real estate holdings, tax  
15 returns, etc." Decl. Of Andrew August in Opp. To Pls.' Ex Part Application, Ex. C, 40. The court  
16 therefore finds that the stipulation allows only depositions, and that the documentary discovery  
17 defendants request is foreclosed at this time.

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19 **III. ORDER**

20 Plaintiffs motion to compel compliance with the August 8, 2008 order is granted.

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24 DATED: 11/05/08

  
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RONALD M. WHYTE  
United States District Judge

