

1 Ronald Wilcox, Esq., State Bar No. 176601  
 2 1900 The Alameda, Suite 530  
 3 San Jose, CA 95126  
 4 Tel: (408) 296-0400  
 5 Fax: (408) 296-0486  
 6 Email: ronaldwilcox@post.harvard.edu

7 ATTORNEY FOR PLAINTIFF Narcizo Guillen

8 **UNITED STATES DISTRICT COURT**  
 9 **NORTHERN DISTRICT OF CALIFORNIA**  
 10 **SAN JOSE DIVISION**

11 NARCIZO ZAVALA GUILLEN,

CIV. NO. 10-05825 EJD PSG

12 Plaintiff,

**MOTION FOR ADMINISTRATIVE  
 RELIEF FOR ORDER TO ALLOW  
 DEPOSITION BY TELEPHONE/VIDEO  
 CONFERENCE**

13 vs.

14 BANK OF AMERICA CORPORATION,  
 15 EXPERIAN INFORMATION SOLUTIONS,  
 16 INC, TRANSUNION LLC, CORELOGIC  
 17 CREDCO, LLC., f/k/a First American  
 18 Credco, a division of First American Real  
 19 Estate Solutions, LLC,, SRA ASSOCIATES,  
 20 INC., EQUIFAX INFORMATION  
 21 SERVICES,LLC., and DOES 1-10,

HON. PAUL GREWAL

22 Defendants.

23 **I. INTRODUCTION**

24 Plaintiff has noticed the deposition of Defendant Bank of America's' employee, Rhonda  
 25 Weston, for Tuesday, September 20, 2011, in Buffalo, NY. The deposition notice and subpoena  
 is attached as **Exhibit 1**. Plaintiff seeks an order allowing the deposition be conducted and  
 recorded via remote means (via telephone and/or Skype telephone and video), as noticed.

Plaintiff's counsel has conducted five (5) Skype video depositions this year, including  
 two recently, ordered by the Hon. Paul Grewal; the method is effective and efficient.

1           However, on July 28, 2011 Bank of America insisted that if Plaintiff wanted to take the  
2 deposition by remote means he would need to obtain a Court order.<sup>1</sup> Further meet and confer  
3 efforts have been unsuccessful.

4           With the date of the depositions fast approaching, and the necessary arrangements  
5 needing to be made, Plaintiff was forced to file this Motion for Administrative Relief.

6 **II. LEGAL DISCUSSION**

7           Pursuant to Fed. R. Civ. P. 30(b)(4) the parties may stipulate- or the court may on motion  
8 order- that a deposition be taken by telephone or other remote means. Plaintiff would like to  
9 minimize costs. A videoconference deposition is cost-effective since it avoids or minimizes  
10 expensive travel time and costs. **Federal Civil Procedure Before Trial** (2007), The Rutter  
11 Group, 11:1470, 11-170. Leave to take depositions by telephone is granted liberally. *Brown v.*  
12 *Carr*, 253 F.R.D. 410, 412 (S.D. TX 2008). A desire to save money constitutes good cause to  
13 depose out-of-state witnesses telephone or remote means. The burden is on the opposing party to  
14 show how they would be prejudiced. *Id.* at 11:472, citing *Cressler v. Neuenschwander*, 170  
15 F.R.D. 20, 21 (D. KS 1996).

17           Furthermore, Courts have stated that experimentation in new methods of recording  
18 depositions should be encouraged. *Rice's Toyota World, Inc. v Southeast Toyota Distributors,*  
19 *Inc.*, 114 FRD 647 (MD NC 1987)(the court also refused to limit video depositions to important  
20 witnesses who might be unavailable for trial since plaintiff was not requesting that regular  
21 stenographer be dispensed with, thus sharply reducing risks of video deposition). Also see, *Riley*  
22 *v. Murdock*, 156 FRD 130 (ED NC 1994)(allowing videotaped deposition), and *Fanelli v.*  
23 *Centenary College*, 211 F.R.D. 268 (D. NJ 2002)(anxiety over videotaping not god cause  
24

---

25 <sup>1</sup> Citing Fed. R. Civ. P. 30(b)(4).

1 sufficient to warrant a protective order).

2 **III. EFFORTS TO RESOLVE THIS MATTER**

3 On July 28, 2011, the parties discussed the deposition, and Plaintiff indicated he would  
4 conduct it via remote means (via telephone and/or Skype telephone/videoconference which also  
5 allows a recording), with the court reporter being in the presence of the witness in Buffalo, NY.  
6 Bank of America insisted Plaintiff needed to obtain a Court order.

7 On the mornings of August 29 and 30, 2011, Plaintiff attempted to meet and confer  
8 further by telephone and email. Despite being informed Bank of America's counsel would be in  
9 the office on August 29, 2011, Plaintiff has yet to hear back from the bank.

10 **IV. RELIEF REQUESTED**

11 With the deposition date of September 20, 2011, fast approaching Plaintiff respectfully  
12 seeks an order from the court permitting the depositions be conducted and recorded via remote  
13 means (via telephone and/or Skype telephone and video).  
14

15 /s/Ronald Wilcox 8/31/11  
16 Ronald Wilcox Date  
17 Attorney for Plaintiff

18 **DECLARATION**

19 I declare under penalty of perjury under the laws of the State of California that each of  
20 the above facts, and references to Exhibits are true and correct.

21 /s/Ronald Wilcox 8/31/11  
22 Ronald Wilcox Date  
23 Attorney for Plaintiff  
24  
25

**ORDER**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Plaintiff's Motion to conduct the deposition of Rhonda Weston via telephone and/or

Skype video conference (and simultaneously record such) is hereby **GRANTED**. The suggestion that a court order was required here is plainly false. See Fed. R. Civ. P. 30(b)(4). The parties are encouraged to stipulate to such matters in the future to avoid unnecessarily burdening the court.

Date: 8/31/2011

*Paul S. Grewal*

---

U.S. MAGISTRATE JUDGE  
HON. PAUL GREWAL