

*R. Chandy*

1 Sanford Shatz (CA State Bar No. 127229)  
2 Todd A. Boock (CA State Bar No. 181933)  
3 5220 Las Virgenes Road, MS: AC-11  
4 Calabasas, California 91302  
5 Telephone: (818) 871-6062  
6 Facsimile: (818) 871-4669

7 BRYAN CAVE LLP  
8 John W. Amberg (CA State Bar No. 108166)  
9 Keith D. Klein (CA State Bar No. 184846)  
10 Jenna Moldawky (CA State Bar No. 246109)  
11 120 Broadway, Suite 300  
12 Santa Monica, California 90401-2386  
13 Telephone: (310) 576-2100  
14 Facsimile: (310) 576-2200

15 Attorneys for Countrywide Home Loans, Inc.

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 FOR THE COUNTY OF LOS ANGELES, WEST DISTRICT

18 NIVIE SAMAAAN, et al.,  
19 Plaintiffs,  
20 vs.  
21 JOSEPH ZERNIK, et al.,  
22 Defendants.

) Case No.: SC087400  
)  
) Hon. Jacqueline A. Connor  
)  
) File Date: October 25, 2005  
) Trial Date: September 7, 2007  
)  
) *EX PARTE* APPLICATION FOR  
) PROTECTIVE ORDER;  
) MEMORANDUM OF POINTS AND  
) AUTHORITIES; DECLARATION OF  
) TODD A. BOOCK; DECLARATION OF  
) JENNA MOLDAWSKY; [PROPOSED]  
) ORDER THEREON  
)  
) Date: July 6, 2007  
) Time: 9:00 a.m.  
) Dept: WEI

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1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on July 6, 2007 at 9:00 a.m., or as soon thereafter as  
3 the matter may be heard, in Department WEI of the Los Angeles Superior Court, West  
4 District, located at 1725 Main Street, Santa Monica, California 90401, Countrywide Home  
5 Loans, Inc. ("Countrywide"), a non-party who has complied with defendants' repeated  
6 discovery requests, will and hereby does apply *ex parte* for a protective order directing  
7 Defendant Joseph Zernik ("Zernik") to communicate solely with Countrywide's designated  
8 counsel regarding this action, and no other Countrywide officers, employees or associates.

9 Countrywide applies for *ex parte* relief because Zernik continues to harass represented  
10 employees of Countrywide and shows no signs of stopping, despite repeated requests by  
11 Countrywide's counsel that he desist from such improper contacts. Zernik also has  
12 contacted personal associates and religious leaders of Countrywide's executives at charities  
13 and synagogues, and has spread negative information about the company's business practices  
14 in an effort to pressure Countrywide. His improper conduct has continued right through the  
15 recent holiday -- following Countrywide's July 3 notice of its intention to present this *ex parte*  
16 application, Zernik emailed a Countrywide officer on July 4 with a copy of a purported press  
17 release containing potentially libelous statements about Countrywide and its officers. The  
18 alleged press release stated, in part: **"FOR IMMEDIATE RELEASE/COUNTRYWIDE**  
19 **(NYSE:CFC) SUB-PRIME LEADER [sic] SEEKS PROTECTIVE ORDER**  
20 **AGAINST DR. JOSEPH ZERNIK/Countrywide's Mozilo and Samuels Complicit in**  
21 **Real Estate Fraud."** In the alternative, Countrywide requests that the Court issue an order  
22 shortening time to hear a motion for a protective order.


23 This Application is brought pursuant to Code of Civil Procedure sections 2023.010  
24 and 2031.060 on the grounds that good cause exists for the issuance of a protective order  
25 because Zernik: (1) has repeatedly communicated with represented Countrywide employees  
26 about the subject matter of this litigation; (2) has refused to communicate solely with counsel  
27 for Countrywide, despite Countrywide's repeated requests; and (3) has made offensive,  
28 unfounded, and potentially libelous statements about Countrywide's business practices and

1 procedures to personal associates of Countrywide's officers and employees during the  
2 discovery process. Countrywide responded to all four of Zernik's third-party subpoenas for  
3 documents, and has strived to maintain a professional working relationship with Zernik.  
4 However, Zernik's repeated improper communications with represented persons other than  
5 Countrywide's counsel has made this extremely difficult. Thus, Zernik should be ordered to  
6 communicate only with Countrywide's designated counsel.

7 Notice of this *ex parte* application was duly prescribed to all parties on July 3, 2007 via  
8 email and fax. This Application will be based on the Memorandum of Points and Authorities  
9 and the Declarations of Todd A. Boock and Jenna Moldawsky attached hereto, the  
10 [Proposed] Order lodged herewith, the file and record in this action, and such other and  
11 further oral and/or documentary evidence as may be presented at the hearing on this  
12 Application.

13  
14 DATED: July 6, 2007

By: \_\_\_\_\_

  
JOHN W. AMBERG  
KEITH D. KLEIN  
JENNA MOLDAWSKY  
Attorneys for  
Countrywide Home Loans, Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Countrywide Home Loans, Inc. (“Countrywide”) is not a party to this lawsuit, but Countrywide and its officers and employees, and their personal associates, are the targets of a campaign of harassment by Defendant Joseph Zernik (“Zernik”). Countrywide respectfully requests that the Court issue a protective order directing Zernik to communicate solely with its designated counsel regarding this litigation. Countrywide has complied fully and in good faith with four document subpoenas from Zernik. However, Zernik now maintains that Countrywide did not comply, and he continues to harass Countrywide employees on a regular basis, including the July 4 holiday.

If Zernik believed that Countrywide had not fully complied with his discovery requests, he could have filed a motion to compel, but never did so. Instead, Zernik has bombarded Countrywide’s employees with threatening emails, letters, and phone calls, despite repeated requests by Countrywide’s in-house attorney, Todd A. Boock, that Zernik refrain from contacting Countrywide employees directly.

Zernik has also contacted personal associates of Countrywide’s officers regarding the lawsuit. Thus, Zernik sent a letter concerning this litigation to one of Countrywide’s senior officers in care of Bet Tzedek, a charity organization where the Countrywide officer currently serves as President. Zernik also personally communicated with a rabbi at the same officer’s synagogue, in which Countrywide believes he insulted and defamed the company’s business practices. On July 4, after he received Countrywide’s July 3 notice of its intention to present this *ex parte* application, Zernik emailed a Countrywide officer with a purported press release containing potentially libelous statements about Countrywide and its officers, accusing them of complicity in the company’s “fraud”. It is unknown to whom the press release was sent.

Zernik has expressed no intention to cease his harassing behavior, despite repeated requests by Countrywide’s lawyer. In fact, as Zernik’s July 4 email to the Countrywide officer demonstrates, his campaign of harassment has escalated. Therefore, Countrywide respectfully requests the Court to grant a protective order directing Zernik to communicate

1 solely with Countrywide's designated counsel regarding this litigation, and not with  
2 represented officers, directors or employees.

3 II. Factual Background

4 A. Zernik's Communications with Represented Countrywide Employees.

5 On March 28, 2007, in response to numerous emails and voice-mail messages  
6 directed personally to Mariela Garcia, a paralegal in Countrywide's legal department and a  
7 custodian of records, Countrywide in-house attorney Todd A. Boock emailed Zernik and  
8 advised him that since Countrywide and its employees are represented by counsel, Zernik  
9 should direct all communication to him. Boock Decl., ¶ 2, Ex. A. Zernik replied via email  
10 that if Ms. Garcia supplied her attorney's email address, he would forward communications  
11 to her attorney. Boock Decl., ¶ 3, Ex. B. In his email, Zernik also threatened Ms. Garcia  
12 with "consequences," including her paralegal license and even suggested she retain her own  
13 attorney. Id.

14 That same day, March 28, 2007, Boock sent Zernik another email, specifically stating:  
15 "I represent Ms. Garcia, and I again reiterate that any communications to Countrywide or its  
16 employees should be directed solely to me." Boock Decl., ¶ 4, Ex. C. However, on March  
17 29, 2007, Zernik left several voicemails for Ms. Garcia relating to the litigation. Boock Decl.,  
18 ¶ 5. Zernik sent another letter to Boock on March 29, 2007, copying not only Mariela  
19 Garcia, but also Angelo Mozilo, Countrywide's Chairman of the Board, and Sandor Samuels,  
20 Countrywide's Chief Legal Officer. Boock Decl., ¶ 5, Ex. D. Zernik also contacted two  
21 individuals in the Countrywide customer service department, Nathalie Quesade and Alverta  
22 Bayliss, and attempted to interrogate them and encourage them to make various admissions  
23 about Countrywide's business practices. Boock Decl., ¶ 6. In response, Boock sent another  
24 email to Zernik, asking that he refrain from contacting Countrywide employees. Boock  
25 Decl., ¶ 7, Ex. E. Around this time, Zernik was leaving daily voicemails for Ms. Garcia,  
26 sometimes several each day. Zernik also left Boock lengthy voicemails intimating fraud.  
27 Boock Decl., ¶ 8.

28 Zernik refused to comply with Countrywide's request to contact Boock directly.

1 Prior to late March or early April, Zernik repeatedly called Diane Frazier, a former  
2 Countrywide underwriter, about the subject matter of this litigation. Boock Decl., ¶ 9.  
3 Zernik informed Ms. Frazier that he had done a background check on her, and told her that  
4 he knew certain things about her that made her uncomfortable. Id. Zernik called Ms.  
5 Frazier's home so frequently that her husband had to firmly demand that Zernik never  
6 contact them again. Id.

7 In response to Zernik's continued harassment of Countrywide employees, Boock was  
8 forced to send emails to Zernik on April 2, 2007, April 13, 2007, and April 16, 2007, again  
9 asking him to communicate solely with Countrywide's counsel regarding all matters relating  
10 to this case. Boock Decl., ¶ 10, Ex. F, G and H. On April 14, 2007, Zernik specifically  
11 demanded to meet with Mariela Garcia personally. Boock Decl., ¶ 11.

12 Furthermore, Zernik's communications to Boock and other Countrywide employees  
13 have become wholly inappropriate and insulting. In his June 15, 2007 email, Zernik attacked  
14 the way Boock practices his religion, claiming it was "disgusting," and that he was "appalled"  
15 by the lawyer's request that Zernik continue an ex parte hearing for one day so that Boock  
16 could attend a Passover seder with his family. Boock Decl., ¶ 12, Ex. I. Zernik berated  
17 Samuels' religious practices as "disgusting" as well. Id.

18 Zernik's efforts to harass Countrywide employees have not ceased. On June 23,  
19 2007, Zernik emailed Angelo Mozilo, Chairman and Chief Executive Officer of  
20 Countrywide, demanding that he personally ensure that Zernik receive a declaration  
21 regarding the production of documents. Boock Decl., ¶ 13, Ex. J. On June 25, 2007, Zernik  
22 emailed Sandor Samuels, Countrywide's Chief Legal Officer, demanding the same relief.  
23 Boock Decl., ¶ 13, Ex. K. Zernik again contacted Mozilo and Samuels regarding this  
24 litigation on June 29, 2007. On July 4, 2007, Zernik sent new emails to Samuels, attaching  
25 purported press releases containing potentially libelous statements about the company's  
26 business records. In short, Zernik has not refrained from communicating directly with  
27  
28

1 represented Countrywide employees regarding the production of documents.<sup>1</sup>

2 B. Zernik's Communications with Personal Associates of Countrywide  
3 Employees.

4 Zernik has also initiated communications with personal associates of Countrywide  
5 employees. Specifically, Zernik has targeted a charitable organization affiliated with one of  
6 Countrywide's employees, as well as a rabbi at the employee's synagogue. On June 26, 2007,  
7 Zernik sent an email to Samuels and copied Rabbi Joseph Shusterman, questioning Samuels'  
8 commitment to fighting real estate fraud. Boock Decl., ¶ 14, Ex. L. On or around June 27,  
9 2007, Zernik left a letter for Countrywide's Chief Legal Officer Sandor Samuels at Bet  
10 Tzedek, a charitable organization where Samuels serves as President. Boock Decl., ¶ 15.  
11 Additionally, on or around June 28, 2007, Zernik personally contacted a rabbi at Samuels'  
12 synagogue, Rabbi Joseph Shusterman, in an attempt to discuss the present action. Boock  
13 Decl., ¶ 16. During the unsolicited meeting, it is Countrywide's understanding that Zernik  
14 made offensive remarks about Countrywide's alleged business practices and charged that the  
15 company was engaged in fraudulent behavior. *Id.* Zernik again wrote to Angelo Mozilo and  
16 Sandor Samuels on June 29, 2007. Boock Decl., ¶ 17, Ex. M. He copied Rabbi Jonathan  
17 Bernhard, Rabbi Joseph Shusterman, The Honorable R. William Schoettler, and "others in  
18 the legal and Jewish community in Los Angeles." *Id.*

19 This pattern of harassment continued even after Countrywide notified Zernik on July  
20 3 of its intention to present this *ex parte* application for a protective order. In apparent  
21 retaliation, on the July 4th holiday, Zernik sent two outrageous emails containing potentially  
22 libelous statements in a purported press release to undisclosed recipients, with a copy to  
23 Sandor Samuels. The subject line of the emails states: "PLEASE ASK SANDOR  
24 SAMUELS TO STOP REAL ESTATE FRAUD." Boock Decl., ¶ 18, Ex. N and O. The

25  
26 <sup>1</sup> Zernik also impermissibly seeks discovery after discovery is closed. In his email dated June 15,  
27 2007, Zernik indicated that discovery in his case had been cut off. However, Zernik demanded that  
28 Countrywide produce documents on June 20, 2007, after the discovery deadline. His continued  
pursuit of discovery after the deadline is thereby improper and harassing.