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2 Marrienne Humphries
3 Law Offices of Marrienne Humphries
4 [redacted]
5 [redacted]
6 [redacted]

7
8 Attorney for all Plaintiffs

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10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

12 **NORTH DISTRICT, ANTELOPE VALLEY COURTHOUSE—UNLIMITED**

13 Fernando Hernandez, et al,
14 Plaintiffs

15 vs.

16 Jean White, et al,
17 Defendants

18 Case Number: [redacted]
19 Dept.: [redacted]
20 Judge: [redacted]
21 Trial Date: [redacted]

22 **REPLY BY PLAINTIFFS TO**
23 **OPPOSITION TO APPLICATION FOR**
24 **TEMPORARY PROTECTIVE ORDER,**
25 **ISSUANCE OF RIGHT TO ATTACH**
26 **ORDER AND WRIT OF ATTACHMENT;**
AFFIDAVIT BY ATTORNEY
MARRIANNE HUMPHRIES IN SUPPORT

Hearing Date: _____
Hearing Time: _____

1 **1. Defendants Offer No Evidence Whatsoever.**

2 Defendant Jean White (hereinafter “JEAN”) reveals in her Opposition—by what she
3 fails to present—that she is indeed guilty of the egregious acts alleged in the First Amended
4 Complaint (hereinafter “FAC”), the original Complaint and the Application for a Right to
5 Attach Order. TO WIT: the she fails to offer any evidence or explanation to refute

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2 allegations that *she stole two parcels of real property and stole mortgage funds pursuant to a*
3 *third parcel* thereby severely damaging the Plaintiffs.

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5 At the ex parte in this matter on [redacted], 2006, this Court ruled, in item 2(g) of the
6 Temporary Protective Order (hereinafter “**TPO**”), “The requirements of Code of Civil
7 Procedure section 485.220 are satisfied...” The Court’s primary stated reason for issuing the
8 TPO, rather than the Right to Attach Order (hereinafter “**RAO**”), was that it wanted to hear
9 the Defendants’ side of the story but could not because they had not been served or notified
10 of the hearing. All the defendants named in the FAC have now been served and notified.
11 JEAN is the only defendant whose property is affected by the TPO and requested RAO. At
12 the ex parte in this matter on [redacted], 2006, JEAN appeared with her attorney, and this
13 Court gave JEAN the opportunity to tell her side of the story by filing an opposition to the
14 RAO. And in her opposition, what evidence does JEAN offer to explain her side of the
15 story? None whatsoever. She does not even offer an unsupported explanation refuting
16 Plaintiffs’ allegations of felonious conduct by her.

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18 Instead of attacking the merits of the Plaintiffs’ case, JEAN’ attorney argues mere
19 technicalities. This is analogous to a public defender, who must defend a guilty grand
20 larceny defendant, resorting to technical questions of whether the police had proper authority
21 to seize certain items of evidence—*because no defense exists on the merits.*

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23 In a criminal proceeding, the defendant has a Fifth Amendment right to remain silent
24 and must be convicted beyond a reasonable doubt. The requirements for issuance of a RAO
25 are vastly less stringent. The Court has already determined that those requirements have

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2 been met, but gave JEAN a chance to be heard before issuing a RAO. Yet, JEAN chose to
3 remain silent about the allegations against her *as if* she were a guilty felony defendant.

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5 The Court should ISSUE the RAO because JEAN offers neither evidence, nor the
6 slightest explanation addressing the merits, as to why it should not.

7 **2. Upside-Down Statutes of Limitations Defense**

8 In her Opposition, JEAN’ attorney at first appears to assert a statutes of limitations
9 defense, but the argument is upside down. What she is actually doing is asserting, quite
10 pointedly, that no statute of limitations defense exists. She has *waived* any statute of
11 limitations defense. Plaintiffs *accept* said waiver.

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13 The point of her upside down argument is not that the Complaint was filed too late,
14 but that *Plaintiffs had ample time remaining to file their Complaint*, and, as such, either (a)
15 the defendants should have been served sooner, or (b) the Complaint should have been filed
16 later.

17 Yet, her statutes of limitations discussion is sloppy, at best. She repeatedly misquotes
18 the Code of Civil Procedure (hereinafter “CCP”). “Conspiracy to Defraud: Code of Civil
19 Procedure Section 338 ‘An action for damages of conspiracy to defraud is governed by a
20 three year statute of limitations.’” (Opposition, p.4, lines 16-18.) CCP § 338 says *nothing*
21 about conspiracy. Indeed, the word “conspiracy” appears *nowhere in the entire CCP*.
22 “Breach of contract: Code of Civil Procedure Section 337 ‘If the action is on a written
23 contract the applicable limitations period is four years from the date of the breach.’”
24 (Opposition, p.4, lines 3-5.) CCP § 337 does pertain to contracts, but contains no such
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2 wording. “Fraud: Code of Civil Procedure Section 338 ‘The statute of limitations for fraud is
3 three years from the time the cause of action accrues.’” (Opposition, p.4, lines 13-15.) CCP
4 § 338 does pertain to fraud, but contains no such wording. CCP § 343, a very short section,
5 is three times cited by her, twice correctly (Opposition, p.4, lines 10-12 and 21-23), and once
6 blatantly incorrectly, “Breach of Fiduciary Duty: Code of Civil Procedure Section 443 ‘The
7 statute of limitations for breach of fiduciary duty is four years.’” (Opposition, p.4, lines 6-8).
8 The phrase “fiduciary duty” appears *nowhere in the entire CCP*.

9
10 By erroneously citing numerous three- and four-year statutes of limitations, JEAN
11 endeavors to distract the Court from the crucial two-year statute in this matter which is,
12 “Within two years: 1. An action upon a contract, obligation or liability not founded upon an
13 instrument of writing...” CCP § 339. Plaintiffs allege in paragraph 35 of the original
14 Complaint, filed on 04/12/2006, and also in paragraph 40 of the FAC, “On an evening in
15 April 2004, HECTOR made a cold sales call by knocking at JOSE and DOLORES’S front
16 door... JOSE and DOLORES agreed to purchase the service and gave HECTOR a check that
17 evening for \$100 payable to ‘[JEAN].’” The contract JOSE and DOLORES entered with the
18 Defendants was oral, and is therefore governed by CCP § 339. Had Plaintiffs waited until
19 May, 2006, to file the Complaint, then JOSE and DOLORES’s causes of action that sound in
20 contract could be dismissed pursuant to CCP § 339.

21 JEAN’ upside-down statutes of limitations argument is bogus and meritless.

22 **3. The Court Extended Time for Serving the Defendants.**

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24 JEAN’ objects that the defendants were not served timely pursuant to California
25 Rules of Court (hereinafter “**CRC**”) rule 201.7(b) and (f). However, at the ex parte in this

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2 matter on [redacted], 2006, Plaintiff’s attorney explained orally why the delay occurred in
3 serving the defendants. In response, the Court ordered, at TPO item 3(c), “Plaintiff[s] shall
4 serve the defendant[s] forthwith....” and issued the TPO. The Court also granted, in part,
5 Plaintiff’s motion to continue the Case Management Conference, but only until [redacted],
6 2006. These actions by the Court amount to its granting an extension of time for serving the
7 defendants pursuant to California Rules of Court (hereinafter “CRC”) rule 201.7(e), “The
8 court, on its own motion or on the application of a party, may extend or otherwise modify the
9 times provided in (b)-(d).” Pursuant to the Court’s order, the named defendants were all
10 served forthwith, thereby rendering this objection moot.

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12 **4. Plaintiffs Filed the Original Complaint in Time to Beat the Statute**
13 **of Limitations but Were Then Delayed by Other Obstacles before**
14 **Filing the Application for a RAO.**

15 The Plaintiffs are not wealthy. The net worth Plaintiffs previously owned was mostly
16 stolen by the Defendants. A surplus of cash to pour into attorney fees, investigations and
17 other litigation costs does not exist.

18 As supported by, and detailed in, the Affidavit of attorney Marianne Humphries
19 (hereinafter the “HUMPHRIES”), the concept of this lawsuit gelled in February, 2006. The
20 plan was to file the initial complaint immediately to beat the statute of limitations deadline,
21 and then to address other matters, primarily financial. HUMPHRIES informed them that,
22 while her attorney fees were subject to such negotiation, other costs and fees were not—
23 Plaintiffs would have to cover costs because HUMPHRIES is not in a position to do so. On
24 or about May 3, 2006, HUMPHRIES contacted a private investigator and provided the
25 specifications for the investigation. On or about May 15, 2006, the investigator informed

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2 HUMPHRIES of the cost. The Plaintiffs had differing abilities to pay, which differences had
3 to be resolved. By mid-June, the investigator had a partial report prepared, but was unwilling
4 to release it to HUMPHRIES without full payment. Plaintiffs were not collectively able to
5 pay this cost until mid-July. After paying the investigator, the partial report arrived on July
6 21, 2006 and the balance of the report on July 30, 2006. HUMPHRIES then worked out a
7 contingency fee-based arrangement with the Plaintiffs. Without delay, HUMPHRIES then
8 prepared the Application for RAO and appeared ex parte on [redacted], 2006. If the Lopez
9 Plaintiffs had not faced a statute of limitations deadline, all of this investigation and
10 negotiation would have been done before filing the original Complaint.

11 **5. Plaintiffs are NOT Guilty of Latches.**

12 “[L]atches defense....requires proof of (1) lack of diligence by the party against whom
13 the defense is asserted, and (2) prejudice to the party asserting the defense.” *National R.R.*
14 *Passenger Corp. v. Morgan* (2002) 536 U.S. 101@122 [122 S.Ct. 2061; 153 L.Ed.2d 106].
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16 Lack of diligence does not exist. As set forth *ante*, the Plaintiffs have endeavored,
17 with the best of their ability, including their financial ability *as constrained by the defendants*
18 *stealing their assets*, to move this matter forward. Nor is there any prejudice to the
19 defendants. Indeed, as a consequence of any delay by Plaintiffs, the defendants have enjoyed
20 additional the use of the assets they stole from the Plaintiffs.

21 **6. Defendants’ CCP § 484.090(a)(3) Arguments Have No Merit.**

22 Defendants argue that the Plaintiffs’ position has not changed in the past four months,
23 and that Plaintiffs ought to have requested the RAO back in April. Based on the foregoing
24 discussion supported by the HUMPHRIES Affidavit, this argument is without merit.
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2 Defendants argue it is unfair that the TPO, and (presumably) the requested RAO, is
3 only as to the property of JEAN and not the other defendants. JEAN is the principal culprit
4 in this matter, as is obvious from reading the verified FAC. Furthermore, the investigator's
5 report did not reveal sufficient property owned by the other defendants to cover the general
6 damages. With appropriate protections, including as an extension of the TPO and the
7 payment of attorney fees, Plaintiff are willing to negotiate with the defendants as to a
8 different distribution of attached assets that total the requested amount.

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10 **7. Defendants' CCP § 484.090(a)(2) Arguments Have No Merit.**

11 Defendants waste the Court's time by repeating a lengthy, 13-line quotation of CCP §
12 484.090(a) (Opposition p. 7, lines 17-28, and again at p. 9, lines 7-18).

13 Defendants argue that Plaintiffs have not "proved up" any papers. This is primarily
14 because JEAN, in her nefarious business dealings, *refused to give copies of anything to*
15 *Plaintiffs* despite their repeated demands for copies. The FAC is verified by all five
16 Plaintiffs, and includes the following exemplary statements: "JEAN did not give them any
17 copies of the paper. They asked for copies, but JEAN gave excuses rather than copies."
18 (FAC p.10, lines 20-21); "Over the ensuing seven months (October 2004 through May 2005),
19 ANGELA and OSCAR each made at least fifteen separate demands on JEAN to obtain
20 copies of the In-N-Out Burger pages, but were never given such copies." (FAC p.16, lines 8-
21 10). The allegations against the Defendants are supported by verifications and affidavits of
22 all five Plaintiffs, as well as the testimony of PALTERA. Defendants' argument is not only
23 without merit, it is upside down. What is missing here is not evidence in support of
24 Plaintiffs' allegations, but defensive evidence. Indeed, it is the defendants who are in

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2 possession of all the needed papers, which Plaintiffs will need to obtain via discovery. If
3 such papers prove the defendants are innocent, why is *not even one* attached as an exhibit to
4 the Opposition? As set forth *ante*, the lack of evidence refuting the Plaintiffs’ allegations
5 implicates the defendants *at least* to the level of establishing “probable validity of the claim”
6 pursuant to CCP § 484.090(a)(2).

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8 Defendants argue that the moving papers are vague and lack specifics. This is
9 nonsense. The FAC is well pleaded, complete, and verified. The motion, and each of the
10 affidavits attached thereto, make reference to the FAC *to save the Court’s time*. The facts in
11 this matter are complex, and there is no need to restate them again and again.

12 Defendants argue that the FAC contains insufficient documentary evidence.
13 Plaintiffs are laboring because JEAN refused to provide them with copies. Discovery and
14 additional investigation are needed to produce the necessary documents. In the meantime,
15 the sworn verifications and affidavits of five Plaintiffs, unrefuted by any evidence
16 whatsoever from the Defendants, establishes “probable validity of the claim” pursuant to
17 CCP § 484.090(a)(2).

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19 Defendants argue that the police report was never followed up on by police and that
20 the Tinnerellos are not Plaintiffs. The standard of proof in a criminal proceeding is high—
21 beyond a reasonable doubt. Perhaps the police felt they did not yet have sufficient evidence
22 to proceed pursuant to that high standard. Lack of police follow up does not exonerate the
23 defendants. Here, the standard of proof is far less—a preponderance of evidence. As for the
24 Tinnerellos, they may yet join as plaintiffs. They too were robbed of their wealth by the

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2 defendants, which limits their ability to meet the costs of participation, notwithstanding
3 HUMPHRIES’s willingness to proceed on a contingency-fee basis.

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5 Defendants argue that the Plaintiffs “resided for up to a year or more after being in
6 foreclosure not paying rent, mortgage, taxes or anything else yet they are asserting rights as if
7 they were responsible paying owners of the property.” (Opposition p. 10, line 26 to p. 11,
8 line 2.) First, the deceptive phrase “up to a year or more” is meaningless as it can be any
9 amount of time from a day to a decade. Second, the Plaintiffs were the lawful owners of
10 their properties, notwithstanding the foreclosures, and as such had all the rights of an owner
11 in foreclosure. Third, the Defendants did not hold any lawful right in the properties.
12 Foreclosure does not bestow any “right” onto a thief to steal real property.

13 **8. If the TPO Imposes “Severe Damage” on JEAN, Then JEAN**
14 **Should Resolve This Matter Post Haste.**

15 Plaintiffs do not disagree that the TPO and the requested RAO impose a hardship on
16 JEAN. Indeed, such hardship arises from what JEAN did to Plaintiffs. Evidently, JEAN was
17 unconcerned about the hardship she imposed on them when she stole their real property and
18 mortgage funds. JEAN repeatedly refused to resolve these matters with the Plaintiffs, which
19 is why this action got filed. She has their wealth and now cries that she will be “damaged”
20 by the Court freezing that wealth pending adjudication of this matter. Yet, she offers no
21 evidence in her defense. If JEAN wishes to avoid such hardship, then she should resolve this
22 matter post haste, thereby saving the Court’s time.

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2 **9. JEAN Presents No Basis for Increasing the Surety.**

3 JEAN argues that if she does not sell her property at [redacted], Palmdale, CA 93551
4 before March, 2007, she will incur “losses” in an unspecified amount but she presents no
5 evidence. An increase in surety is governed by CCP § 489.220, and pursuant thereto, the
6 Court must “consider evidence as to all material factors” *North Hollywood Marble Co. v.*
7 *Superior Court* (2nd Dist. ,1984) 157 Cal.App.3d 683@691 [204 Cal.Rptr. 55].

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9 Instead of evidence, she advances the dubious theory that (a) the mortgage payments
10 will increase in March, 2007, which she cannot afford, forcing to let the property foreclose,
11 (b) to prevent foreclosure she needs to put the property on the market immediately and sell it,
12 and (c) the TPO would prevent her from so selling it. This argument is utterly without merit.
13 First, it is supported by no evidence. Second, it indicates no amount of such “losses” as a
14 basis for the Court to calculate any increase in the surety. Third, the TPO will cannot remain
15 for more than forty days, CCP § 486.090. Fourth, while the TPO does block JEAN from
16 selling the property, the writ of attachment sought by Plaintiffs does not—it merely forms
17 another lien against the property just like a mortgage. When the property is sold, the amount
18 of the attachment lien will be paid to the Sheriff, who will hold the funds in trust pending
19 final judgment.

20 Defendants have presented no legitimate basis for increasing the surety. Instead, they
21 are attempting to create additional hardship on the Plaintiffs, who are already pressed for
22 cash to proceed with this litigation—to *recover what the Defendants stole from them*.

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24 The Court should GRANT the Application and ISSUE the Right to Attach Order.

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Respectfully submitted,

Dated: _____

Marrienne Humphries

Attorney for all Plaintiffs

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2 **AFFIDAVIT OF ATTORNEY MARRIANNE HUMPHRIES**

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5 I, Marianne Humphries, declare as follows:

6 I am the attorney of record representing Plaintiffs Fernando Hernandez, Maria

7 Hernandez, Jose Lopez, Dolores Lopez, and Angela Garcia in the above-captioned case.

8 The Plaintiffs are not wealthy. A surplus of cash to pour into attorney fees,

9 investigations and other litigation costs does not exist.

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11 The Plaintiffs, and other victims who are not (as yet) plaintiffs, got to know each

12 other through Hector Paltera (“PALTERA”), whom I represent in Case No. [redacted]. As

13 PALTERA introduced the Plaintiffs to me, the concept of a joint lawsuit gradually evolved

14 and gelled in February, 2006. Because of the looming statute of limitations deadline, it was

15 decided to draft and file the original Complaint as rapidly as possible, and to figure out

16 everything else later. Negotiations were necessary to determine who would, and would not,

17 be plaintiffs, and how the initial costs would be born. Significant effort was then needed to

18 develop the original Complaint, including numerous in-depth discussions with each Plaintiff.

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20 The original Complaint was filed on the basis of attorney fees paid to me by the

21 Plaintiffs just for that initial portion of the litigation, with the understanding that the Plaintiffs

22 and I would subsequently need to negotiate financing the rest of the litigation. I informed

23 them that, while my attorney fees were subject to such negotiation, other costs and fees were

24 not—Plaintiffs would have to cover them because I am not in a position to do so.

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2 After the original Complaint was filed on April 12, 2006, I met with the Plaintiffs in
3 late April, 2006, and advised them that, unless the defendants hold assets that can ultimately
4 be reached by a judgment for Plaintiffs, the entire lawsuit would be a waste of their time and
5 money. Therefore, we needed to hire a private investigator to locate the defendants' assets.
6 It was decided that if no such assets could be identified, Plaintiffs would simply drop the suit,
7 rather than pouring money into a case that would produce a judgment in their favor but yield
8 no financial justice.

9
10 On or about May 3, 2006, I contacted a private investigator and provided the
11 specifications for the investigation. On or about May 15, 2006, the investigator informed me
12 of the cost of the investigation, and I passed this information to the Plaintiffs. The Plaintiffs
13 had differing abilities to pay, which differences had to be resolved. By mid-June, the
14 investigator had a partial report prepared, but was unwilling to release it to me without full
15 payment. I further pressured the Plaintiffs to produce the money, but Plaintiffs were not
16 collectively able to pay this cost until mid-July. Upon receipt of these funds from the
17 Plaintiffs, I immediately paid the investigator and received the partial report on July 21,
18 2006. The investigator then completed the investigation, and I received the balance of the
19 report on July 30, 2006.

20 I then met with the Plaintiffs in early August, 2006, and informed them that the
21 defendants do have sufficient assets in real property to cover the general damages, mostly
22 owned by JEAN. I then worked out a contingency fee-based attorney fee arrangement with
23 the Plaintiffs. Without delay, I then prepared the Application for a Right to Attach Order and
24 appeared ex parte, with all five Plaintiffs, on August 9, 2006.

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If Plaintiffs Jose and Dolores Lopez had not faced a statute of limitations deadline, all of this investigation and negotiation would have been done before filing the original Complaint.

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

Dated: _____

Marriane Humphries