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21 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
22 COUNTY OF LOS ANGELES

23 MARCIA BAKER, an individual; et al.,

24 Plaintiffs,

25 v.

26 PLATINUM LAW GROUP, INC., a  
27 corporation; et al.,

28 Defendants.

Case No.: BC508727

**PLAINTIFFS' CASE SUMMARY IN  
SUPPORT OF APPLICATION FOR  
DEFAULT JUDGMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
APPLICATION FOR DEFAULT  
JUDGMENT**

Hearing: TBD  
Time: TBD  
Location: Department 36  
Judge: Hon. Gregory W. Alarcon

Action Filed: May 13, 2013  
Trial Date: TBD

*Accompanying Documents:*

- *Plaintiffs' Application for Default Judgment Against Defaulting Defendants*
- *Evidence in Support of Plaintiffs' Application for Default Judgment*
- *Memorandum of Costs*
- *[Proposed] Judgment and [Proposed] Requests for Dismissal*
- *Proof of Service*

1 **SUMMARY OF THE CASE**

2 Pursuant to Rule 3.1800(a)(1) of the California Rules of Court, Plaintiffs Marcia Baker,  
3 Denise Burns, Juanita Craig, Michael Craig, Julia Cringle, Carol Frost, Dwight Reep, and Roberto  
4 Velasquez (collectively, "Plaintiffs") submit the following brief summary of the case ("Case  
5 Summary") in support of their concurrently filed Application for Default Judgment against  
6 Defendants Jerry Stevenson, David Gomez, Jeff Marklein, Platinum Law Group, Inc., Modern  
7 Media Services, Inc., Platinum Law Center, A Professional Corporation, HLM Consulting, Inc.,  
8 Priority Realty Group, Inc., Priority Financial Group, Priority Mortgage Group, Inc., LaBrea Group  
9 LLC, and Baldwin Property Partners LLC (collectively, the "Defaulting Defendants").

10 **A. INTRODUCTION**

11 Plaintiffs are victims of the Defaulting Defendants' unlawful conspiracy to scam  
12 homeowners who need to modify or refinance existing home mortgages. Plaintiffs seek the return  
13 of unlawful up-front fees, other compensatory damages such as late-payment fees, permanent  
14 injunctive relief, statutory damages, punitive damages, and fees and costs.

15 Over the past several years, the Defaulting Defendants, a network of related entities and  
16 individuals, have engaged in a wide-ranging scheme to defraud homeowners, including Plaintiffs  
17 and countless others, who desperately need to refinance and modify their existing home mortgages,  
18 by illegally charging thousands of dollars in up-front fees expressly forbidden by statute, falsely  
19 guaranteeing successful results backed by full money-back guarantees, and failing to provide loan  
20 modification services or issue agreed-upon refunds.

21 Plaintiffs brought this lawsuit, not just to recover for the damages they sustained personally,  
22 but also to ensure that other homeowners are not similarly victimized by the Defaulting Defendants'  
23 unlawful scheme.

24 **B. PROCEDURAL HISTORY**

25 Plaintiffs filed their Complaint on May 13, 2013. (McMonagle Decl. ¶ 2, Ex. 1.) The  
26 Complaint sets forth detailed allegations concerning the nature and extent of Defendants' unlawful  
27 conspiracy, the circumstances of Plaintiffs' dealings with Defendants, and the harms Plaintiffs  
28 suffered at the hands of the Defendants. The Complaint alleges eleven common law and statutory

1 causes of action, and seeks various forms of relief, such as actual and consequential damages,  
2 restitution, punitive damages, statutory fines, treble damages, attorneys' fees and costs, interest, and  
3 an injunction barring the Defendants from perpetuating their unlawful scheme.

4 Promptly after filing the Complaint, Plaintiffs began their attempts to locate and serve the  
5 Defendants. In May and June 2013, Plaintiffs served the following Defaulting Defendants, whose  
6 defaults were entered as follows, after they failed to timely respond to the Complaint or otherwise  
7 appear in this action: (i) June 20, 2013 (Defendants Jerry Stevenson, Platinum Law Center, HLM  
8 Consulting, and Modern Media Services); (ii) June 27, 2013 (Defendants Priority Realty Group and  
9 LaBrea Group); and (iii) July 9, 2013 (Defendants David Gomez, Priority Financial Group, Baldwin  
10 Property Partners, Platinum Law Group, and Priority Mortgage Group). (*Id.* ¶¶ 3-4.) Plaintiffs  
11 thereafter sought and obtained several extensions of time to serve the remaining un-served  
12 Defendants. (*Id.* ¶¶ 8-9.) In December 2013, Plaintiffs located and served Defendant Jeff Marklein,  
13 whose default was entered on February 11, 2014. (*Id.* ¶ 15, Ex. 8.) At the time they were served  
14 with the Complaint, Summons, and other case-initiating papers, each of the Defaulting Defendants  
15 was also served with the Notice of Punitive Damages required under Code of Civil Procedure  
16 section 425.115. (*Id.* ¶¶ 3, 13, 15; Exs. 5, 8.) Plaintiffs also served each Defaulting Defendant with  
17 Plaintiffs' respective Request for Entry of Default against them, attached to which was an additional  
18 copy of Plaintiffs' Notice of Punitive Damages. (*Id.* ¶¶ 4, 17; Exs. 2, 8.)

19 Despite no Defendant appearing to defend this action, Plaintiffs have attempted to obtain  
20 discovery regarding, among other topics, Defendants' unlawful scheme, service information for the  
21 un-served Defendants, and the identities of any Doe Defendants. In early June 2013, Plaintiffs  
22 served interrogatories and document requests on Defendants Stevenson and Gomez, and on each of  
23 the entity Defendants, none of whom responded to any of those requests. (*Id.* ¶ 5.) Around that  
24 time, Plaintiffs also noticed depositions of Defendant Stevenson and of a third-party agent for some  
25 of the Defendants for late July 2013. (*Id.* ¶¶ 6, 11.) Although the deponents initially did not appear  
26 for those depositions, Plaintiffs were able to reschedule and take those depositions. (*Id.* ¶¶ 6, 10,  
27 11.) In December 2013, after locating and serving Defendant Marklein, and after learning of new  
28 contact information for Defendant Gomez, Plaintiffs noticed depositions for each of those

1 Defendants to take place in December 2013. (*Id.* ¶¶ 13, 15.) Neither Defendant Gomez nor  
2 Defendant Marklein, however, appeared at their respective deposition. (*Id.* ¶¶ 14, 15, Exs. 6, 7.)

3 In the meantime, Plaintiffs timely requested and were granted extensions of time to obtain  
4 default judgment, pending Plaintiffs' continuing efforts to locate un-served Defendants. (*Id.* ¶¶ 12,  
5 16.) Plaintiffs' current deadline for default judgment is March 24, 2014, which is also the date set  
6 for a Case Management Conference and OSC re Service. (*Id.* ¶ 16.) Now, Plaintiffs having  
7 exhausted their efforts to locate un-served Defendants, bring their Application for Default Judgment  
8 against the Defaulting Defendants. Pursuant to Rule 3.1800 of the California Rules of Court, in the  
9 event Default Judgment is entered against the Defaulting Defendants, Plaintiffs request that the  
10 remaining un-served Defendants be dismissed without prejudice. The un-served Defendants are as  
11 follows: Diana Ambriz, Daniel Ardon, John de la Garza, Raudel Guerrero, Paul Hernandez, Jay  
12 Jackson, Charlie Melendez, Michael Morga, John Romero, and Martha Tapia.

### 13 C. ALLEGATIONS OF PLAINTIFFS' COMPLAINT

14 Plaintiffs' Complaint sets forth a comprehensive and detailed set of allegations describing  
15 Defendants' unlawful scheme, Plaintiffs' course of dealings with Defendants, the harms Plaintiffs  
16 suffered at the hands of the Defendants, and the various forms of relief sought. Upon entry of  
17 default, those allegations "are deemed admitted[.]" *Steven M. Garber & Assoc. v. Eskandarian*, 150  
18 Cal. App. 4th 813, 823 (2007).

#### 19 1. Overview of Defendants' Scheme to Scam Plaintiffs and Other 20 Homeowners

21 The scheme Defendants employed to defraud Plaintiffs and other homeowners operates as  
22 follows: First, they create a corporate entity claiming to provide loan modification services.  
23 (Compl. ¶¶ 57-58.) Then, they aggressively and misleadingly market the entity's services. (Compl.  
24 ¶¶ 57, 59; *see also infra* at 5-8.) Next, they guarantee loan modifications, enter into written  
25 contracts designed to disguise the fraud, and require clients to pay thousands of dollars in illegal up-  
26 front fees. (Compl. ¶¶ 57, 61; *see also infra* at pp. 5-8.) Defendants thereafter perform few or no  
27 services, thereby ensuring that no loan modification would be obtained, avoid communications with  
28 clients, and refuse to issue refunds. (Compl. ¶¶ 57, 65-66; *see also infra* at pp. 5-8.) Lastly,

1 Defendants create a different corporate entity or change the existing entities' names in order to  
2 attempt to continue their fraudulent loan modification practices. (Compl. ¶¶ 57, 68; McMonagle  
3 Decl. ¶ 11, Ex. 4.) Moreover, the Individual Defendants created and maintained the various Entity  
4 Defendants as sham corporations to operate their loan modification scheme. (Compl. ¶¶ 56, 69-70;  
5 McMonagle Decl. ¶ 11, Ex.4) Defendants acted in concert with each other, within the scope and in  
6 furtherance of their unlawful scheme. (Compl. ¶¶ 54-55; McMonagle Decl. ¶ 10, Ex. 3)  
7 Accordingly, Defendants, and each of them, are jointly and severally liable for the acts and  
8 omissions of each of the other Defendants. (Compl. ¶¶ 54-56, 69-70; McMonagle Decl. ¶¶ 10, Exs.  
9 3-4.)

10 **2. Each Plaintiff Was a Victim of and Harmed by Defendants' Unlawful**  
11 **Scheme**

12 Plaintiffs are individual homeowners living in California who retained and relied on the  
13 Defendants to provide home loan modification services, paid the up-front fees Defendants  
14 demanded, and were similarly victimized when Defendants failed to perform the promised services.  
15 As set forth in greater detail in the Complaint and Plaintiffs' concurrently filed declarations,  
16 Defendants engaged in various forms of misleading, unlawful, and otherwise deceptive conduct  
17 toward each of the Plaintiffs, which included the following:

- 18 • Sending unsolicited advertisements in the mail, or making unsolicited phone calls to  
19 Plaintiffs, offering loan modification services. Some of those solicitations  
20 misleadingly and falsely state that Defendants are affiliated with Plaintiffs' lenders.  
(Compl. ¶¶ 59, 169 & Ex. A at pp. 6-7; Baker Decl. ¶ 2; Burns Decl. ¶ 2; J. Craig  
21 Decl. ¶ 3; Cringle Decl. ¶ 3; Frost Decl. ¶ 3; Velazquez Decl. ¶ 4.)
- 22 • When Plaintiffs call to inquire about Defendants' services, Defendants'  
23 representatives touted Defendants' expertise and high success rate in negotiating  
24 loan modifications. (Compl. ¶¶ 60, 76, 110, 135, 148, 170; Baker Decl. ¶4; Burns  
25 Decl. ¶ 3; J. Craig Decl. ¶ ¶3; Cringle Decl. ¶ 3; Frost Decl. ¶ 3; Reep Decl. ¶ 6;  
26 Velazquez Decl. ¶ 7.)
- 27 • Before agreeing to perform any loan modification services, Defendants and their  
28 representatives demanded that Plaintiffs first pay thousands of dollars in upfront  
29 fees, and insisted that Plaintiffs make these payments by providing Defendants with  
30 Electronic Funds Transfer authorization forms, which allowed Defendants to  
31 withdraw funds directly from Plaintiffs' checking accounts without notice to  
32 Plaintiffs. (Compl. ¶¶ 61, 78, 90, 112, 125, 136, 171, 175; Baker Decl. ¶¶ 4, 5, Ex.  
33 1; Burns Decl. ¶¶ 3, 5, Ex. 1; J. Craig Decl. ¶ 4, Ex. 1; Cringle Decl. ¶ 4, Ex. 1;  
34 Frost Decl. ¶ 4; Reep Decl. ¶ 7; Velazquez Decl. ¶ 9, Ex. 1.)

- 1 • Plaintiffs paid these upfront fees, in the following amounts: (i) Ms. Baker -- \$2,250;  
2 (ii) Ms. Burns -- \$3,690; (iii) Mr. and Mrs. Craig -- \$1,735.20; (iv) Ms. Cringle --  
3 \$1,795; (v) Ms. Frost -- \$1,500; (vi) Mr. Reep -- \$2,848; and (vii) Mr. Velasquez --  
4 \$2,250. (Compl. ¶¶ 79, 95, 113, 127, 136, 153, 175; Baker Decl. ¶ 7; Burns Decl. ¶  
5 8; J. Craig Decl. ¶ 6; Cringle Decl. ¶ 6; Frost Decl. ¶ 4; Reep Decl. ¶ 9; Velazquez  
6 Decl. ¶ 10, Ex. 2.)
- 7 • Defendants also offered 100% money back guarantees to Plaintiffs if Defendants  
8 were unable to obtain loan modifications. (Compl. ¶¶ 78, 89, 135, 148; Baker Decl.  
9 ¶ 5, Ex. 1; Burns Decl. ¶ 5, Ex. 1; Frost Decl. ¶ 3; Reep Decl. ¶ 6, Ex. 1.)
- 10 • After Plaintiffs signed and returned the services contracts and other documents  
11 Defendants required, Defendants failed to return executed copies of those documents  
12 to Plaintiffs. (Compl. ¶¶ 78, 94, 103, 112, 115, 117, 126, 136-37, 151, 173; Baker  
13 Decl. ¶ 5<sup>1</sup>; Burns Decl. ¶ 5, Ex. 1; J. Craig Decl. ¶ 5; Cringle Decl. ¶ 5; Reep Decl. ¶  
14 6; Velazquez Decl. ¶ 9, Ex. 1.)
- 15 • Defendants also advised Plaintiffs to cease making mortgage payments to their  
16 lenders, and some Plaintiffs followed those instructions. (Compl. ¶¶ 113, 129, 138,  
17 155, 172; J. Craig Decl. ¶ 7; Cringle Decl. ¶ 9; Frost Decl. ¶ 6; Reep Decl. ¶ 11;  
18 Velazquez Decl. ¶ 11.)
- 19 • Defendants thereafter failed to submit, follow up on, or complete loan modification  
20 applications on behalf of Plaintiffs; failed to communicate with and inform Plaintiffs  
21 about the status of their loan modification applications; and/or failed to respond to  
22 Plaintiffs' attempts to inquire about the status of those applications. (Compl. ¶¶ 80-  
23 82, 96-97, 117-18, 128, 139-40, 154-65, 179-80; Baker Decl. ¶¶ 8-10; Burns Decl. ¶¶  
24 9, 10, Ex. 4; J. Craig Decl. ¶ 9; Cringle Decl. ¶ 7; Frost Decl. ¶ 7; Reep Decl. ¶¶ 12,  
25 16, 167; Velazquez Decl. ¶ 12.)
- 26 • Defendants failed to obtain the loan modifications for which Plaintiffs retained them.  
27 (Compl. ¶¶ 85, 107, 120, 128, 139, 165, 179; Baker Decl. ¶ 11; Burns Decl. ¶ 13; J.  
28 Craig Decl. ¶ 14; Cringle Decl. ¶¶ 9, 10; Frost Decl. ¶ 7; Reep Decl. ¶ 18; Velazquez  
Decl. ¶ 14.)
- Defendants failed to return the upfront fees Plaintiffs paid, despite Plaintiffs'  
requests to do so. (Compl. ¶¶ 85, 107, 119, 131, 141, 165, 180; Baker Decl. ¶ 11;  
Burns Decl. ¶ 13; J. Craig Decl. ¶ 14; Cringle Decl. ¶ 11; Frost Decl. ¶¶ 9, 10; Reep  
Decl. ¶ 18; Velazquez Decl. ¶ 14.)

In addition to the conduct summarized above, pertinent facts concerning each Plaintiff include the following:

**a. Marcia Baker**

Ms. Baker contracted with Defendant Platinum Law Group for loan modification services, and her points of contact with the company were agents Michael Morga and Paul Hernandez (Baker Decl. ¶¶ 4, 5.) Over the course of her time dealing with Platinum Law Group in 2011, the only

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<sup>1</sup> Platinum Law Group did return a countersigned money-back guarantee to Ms. Baker. *Id.*

1 “update” she ever received regarding loan modification services was a letter from Platinum Law  
2 Group informing her that it would no longer assist her with her home loan modification, and  
3 advising her to contact her lender herself. (*Id.* ¶ 10.) When she demanded a refund of the illegal  
4 upfront fee that she paid, Platinum Law Group agent, Defendant Hernandez, refused, describing the  
5 fee as a non-refundable retainer. (*Id.* ¶ 11.)

6 **b. Denise Burns**

7 Ms. Burns contracted with Defendant Platinum Law Group for loan modification services,  
8 and her point of contact with the company was agent Daniel Ardon. (Burns Decl. ¶¶ 2, 3.) Unlike  
9 other Plaintiffs, Ms. Burns actually exchanged e-mail communications with Defendant Stevenson  
10 on numerous occasions regarding the status of her loan modification, and each time he assured her  
11 that he would check on her application, but never took any steps to actually do so. (*Id.* ¶¶ 9, 10, Ex.  
12 4.) Both Defendant Stevenson and Platinum Law Group agent, Defendant John De La Garza,  
13 threatened to cease working on her loan modification when she requested a refund of the illegal  
14 upfront fees that she paid to Platinum Law Group. (*Id.* ¶ 12.)

15 **c. Juanita and Michael Craig**

16 Mr. and Mrs. Craig contracted with Defendant Platinum Law Group for loan modification  
17 services, and their point of contact with the company was John Romero. (J. Craig Decl. ¶¶ 3, 4.) At  
18 the time of contracting, Mr. Craig, who is a veteran of the Vietnam War, was receiving Social  
19 Security Disability payments since being deemed disabled and unable to work by the United States  
20 Department of Veterans Affairs in 2003. (M. Craig Decl. ¶ 3.) At the time of contracting, Mrs.  
21 Craig was over 65 years of age. (J. Craig Decl. ¶ 2.) Nearly a year after contracting with Platinum  
22 Law Group, and having not received a loan modification, Mrs. Craig contacted a representative  
23 from the United States Department of Housing and Urban Development (“HUD”). (*Id.* ¶ 9.) After  
24 that meeting, she was informed by the HUD representative that no loan modification had been  
25 completed on her behalf. (*Id.*) A few months later, the Craigs were contacted by Defendant  
26 Romero, who told them Platinum Law Group had obtained a loan modification for them and that  
27 their case was closed. (*Id.* ¶ 10.)  
28

1 It was not until February 2012 that the Craigs received a trial payment period plan for a  
2 home loan modification, with payments that were \$400.00 more per month than their payments  
3 were before contracting with Defendant Platinum Law Group. (*Id.* ¶ 11.) They resumed making  
4 mortgage payments in March 2012, but the damage from Defendant Platinum Law Group's failure  
5 to meet its obligations had already been done: the Craigs had incurred \$48,388.19 in penalties for  
6 late mortgage payments. (*Id.* ¶ 12.)

7 **d. Julia Cringle**

8 Julia Cringle contracted with Defendant Platinum Law Group for home loan modification  
9 services, and her point of contact with the company was agent Jeff Marklein. (Cringle Decl. ¶ 3.)  
10 After learning that a loan modification application had been submitted on her behalf and had been  
11 rejected, she contacted Defaulting Defendant Marklein and asked for a refund. (*Id.* ¶ 8.) She also  
12 requested this refund from Defendant John Romero and Defaulting Defendant Stevenson. (*Id.*)  
13 Defaulting Defendant Marklein advised her to cease making mortgage payments, which he assured  
14 her would assist her in obtaining a loan modification. (*Id.* ¶¶ 8, 9.) Ms. Cringle took Defaulting  
15 Defendant Marklein's advice and ceased making payments from May 2011 to May 2012. (*Id.* ¶ 9.)  
16 But his advice only caused her lender to initiate foreclosure proceedings against her. (*Id.* ¶ 9.) Ms.  
17 Cringle later simply negotiated a loan modification on her own. (*Id.* ¶ 10.)

18 **e. Carol Frost**

19 Ms. Frost contracted with Defendant Priority Financial Group for home loan modification  
20 services, and her point of contact with the company was agent Martha Tapia. (Frost Decl. ¶ 3.) Ms.  
21 Frost was over sixty-five years of age at the time. (*Id.*) Defendant Tapia advised Ms. Frost to cease  
22 making loan payments to her lender starting in January 2010, which she did. (*Id.* ¶ 6.) In May  
23 2010, Ms. Frost's lender began foreclosure proceedings against her and her house was later sold.  
24 (*Id.* ¶ 8.)

25 **f. Dwight Reep**

26 Mr. Reep contracted with Priority Realty Group and Priority Financial Group, and his points  
27 of contact within the company were Linda Shieh, and Raudel Guerrero. (Reep Decl. ¶¶ 5, 10.) Mr.  
28 Reep contracted with Priority for loan modifications on two mortgage loans in 2008. (*Id.* ¶ 8, Ex.



1 1.) Mr. Reep did receive a loan modification in 2010 on his first loan, but never received a  
2 modification on his second loan. (*Id.* ¶¶ 11 - 18.) After numerous delays, Defendant Guerrero in  
3 fact claimed that he had secured a modification of Mr. Reep's second loan and instructed Mr. Reep  
4 that he could begin making monthly payments of \$600 to his lender. (*Id.* ¶ 13.) Mr. Reep made  
5 those lower payments for approximately six months, during which time he could not reach  
6 Defendant Guerrero at all. (*Id.* ¶ 16.) Mr. Reep's lender explained to him that no modification had  
7 been approved. (*Id.* ¶¶ 14-17.) As a result of Priority's actions, Mr. Reep incurred \$8,906.32 in  
8 insufficient monthly payments and advances on his second mortgage as of December 2012. (*Id.* ¶  
9 20.)

10 **g. Roberto Velasquez**

11 Mr. Velasquez contracted with Defendant Platinum Law Group for home loan modification  
12 services, and his point of contact with the company was agent Jay Jackson. (Velasquez Decl. ¶ 5.)  
13 His first contact with Platinum Law Group was when he received an unsolicited flyer in the mail  
14 from them advertising loan modification services in both English and Spanish and featuring the  
15 logo of his lender. (*Id.* ¶ 4.) Though Mr. Velasquez speaks English, his primary language is  
16 Spanish. (*Id.* ¶ 2.) None of the documents he ultimately executed with Platinum Law Group were  
17 ever provided to him in Spanish. (*Id.* ¶ 9, Ex. 1.)

18 **D. PLAINTIFFS' CLAIMS FOR DAMAGES AND OTHER RELIEF**

19 Plaintiffs' Complaint alleges the following eleven common law and statutory causes of  
20 action: (i) unfair competition, in violation of California Business and Professions Code sections  
21 17200, *et seq.*; (ii) breach of contract; (iii) breach of implied covenant of good faith and fair dealing;  
22 (iv) breach of fiduciary duty; (v) fraudulent misrepresentation; (vi) constructive fraud; (vii) false  
23 advertising; (viii) violation of Civil Code section 2944.7; (ix) violation of the Mortgage Foreclosure  
24 Consultants Act; (x) financial abuse of an elder; and (xi) violation of the Consumer Legal Remedies  
25 Act ("CLRA).

26 In their Application for Default Judgment, Plaintiffs seek entry of judgment solely with  
27 respect to the following causes of action: (a) unfair competition, in violation of California Business  
28 and Professions Code sections 17200, *et seq.*; (b) breach of contract; (c) breach of implied covenant

1 of good faith and fair dealing; (d) breach of fiduciary duty; (e) constructive fraud; (f) financial  
2 abuse of an elder; and (g) violation of the CLRA. As reflected in Plaintiffs' Proposed Judgment, in  
3 the event Default Judgment is entered on the foregoing causes of action, Plaintiffs are willing to  
4 dismiss, without prejudice, the following causes of action against the Defaulting Defendants: (a)  
5 fraudulent misrepresentation; (b) false advertising; (c) violation of Civil Code section 2944.7; and  
6 (d) violation of the Mortgage Foreclosure Consultants Act.

7       **Unfair Competition.** Plaintiffs' cause of action for unfair competition under California  
8 Business and Profession Code section 17200, *et seq.*, is based on Defendants' unfair pattern and  
9 practice of charging illegal upfront fees for loan modification services, and misrepresenting the  
10 services Defendants would provide (or fail to provide), the progress of loan modification  
11 applications, and that refunds would be issued if loan modifications were not obtained. Pursuant to  
12 that claim, Plaintiffs seek injunctive relief barring Defendants from engaging in such prohibited  
13 activities. The full text of Plaintiffs' proposed injunction is set forth in the Complaint, and is  
14 repeated in Plaintiffs' Proposed Judgment. Plaintiffs also seek the restitution of all upfront fees  
15 paid, in the following amounts: (i) Ms. Baker -- \$2,250; (ii) Ms. Burns -- \$3,690; (iii) Mr. and Mrs.  
16 Craig -- \$1,735.20; (iv) Ms. Cringle -- \$1,795; (v) Ms. Frost -- \$1,500; (vi) Mr. Reep -- \$2,848; and  
17 (vii) Mr. Velasquez -- \$2,250.

18       **Breach of Contract.** Plaintiffs' cause of action for breach of contract is based on  
19 Defendants' breaches of various services and covenants contained in the services contracts and  
20 related agreements between the parties, including Defendants' agreements to perform the  
21 contracted-for loan modification services and to issue money-back guarantees in the event loan  
22 modifications were not obtained. Pursuant to that claim, Plaintiffs seek the following actual and  
23 consequential damages: (i) Ms. Baker -- \$2,250; (ii) Ms. Burns -- \$3,690; (iii) Mr. and Mrs.  
24 Craig -- \$1,735.20; (iv) Ms. Cringle -- \$1,795; (v) Ms. Frost -- \$1,500; (vi) Mr. Reep -- \$2,848; and  
25 (vii) Mr. Velasquez -- \$2,250.

26       **Breach of Implied Covenant of Good Faith and Fair Dealing.** Plaintiffs' cause of action  
27 for breach of the implied covenant of good faith and fair dealing is based on Defendants' unfair  
28 interference with Plaintiffs' rights to receive the benefits of their contracts with Defendants, such as

1 by failing to timely initiate, maintain, and/or complete loan modification applications. Pursuant to  
2 that claim, Plaintiffs seek the following actual and consequential damages: (i) Ms. Baker -- \$2,250;  
3 (ii) Ms. Burns -- \$3,690; (iii) Mr. and Mrs. Craig -- \$1,735.20; (iv) Ms. Cringle -- \$1,795; (v) Ms.  
4 Frost -- \$1,500; (vi) Mr. Reep -- \$2,848; and (vii) Mr. Velasquez -- \$2,250. Plaintiffs also seek  
5 punitive damages, as set forth below.

6 **Breach of Fiduciary Duty.** Plaintiffs' cause of action for breach of fiduciary duty is based  
7 on Defendants' failures to act as reasonably careful agents for Plaintiffs in negotiating home loan  
8 modifications. Pursuant to that claim, Plaintiffs seek the following actual and consequential  
9 damages: (i) Ms. Baker -- \$2,250; (ii) Ms. Burns -- \$3,690; (iii) Mr. and Mrs. Craig -- \$1,735.20;  
10 (iv) Ms. Cringle -- \$1,795; (v) Ms. Frost -- \$1,500; (vi) Mr. Reep -- \$2,848; and (vii) Mr.  
11 Velasquez -- \$2,250. Plaintiffs also seek punitive damages, as set forth below.

12 **Constructive Fraud.** Plaintiffs' cause of action for constructive fraud is based on  
13 Defendants' deceptive concealment or failure to disclose to Plaintiffs, as their fiduciaries, various  
14 facts regarding the services Defendants would provide (or fail to provide), the progress of loan  
15 modification applications, and that refunds would be issued if loan modifications were not obtained.  
16 Pursuant to that claim, Plaintiffs seek the following actual and consequential damages: (i) Ms.  
17 Baker -- \$2,250; (ii) Ms. Burns -- \$3,690; (iii) Mr. and Mrs. Craig -- \$1,735.20; (iv) Ms. Cringle --  
18 \$1,795; (v) Ms. Frost -- \$1,500; (vi) Mr. Reep -- \$2,848; and (vii) Mr. Velasquez -- \$2,250.  
19 Plaintiffs also seek punitive damages, as set forth below.

20 **Financial Abuse of an Elder.** Plaintiffs Juanita Craig's and Carol Frost's cause of action  
21 for violation of financial abuse of an elder is based on Defendants' illegal acceptance of upfront  
22 fees for home loan modification services. Pursuant to that claim, Plaintiffs Craig and Frost seek the  
23 following actual and consequential damages: (i) Mrs. Craig -- \$1,735.20; and (ii) Ms. Frost --  
24 \$1,500. Plaintiffs also seek punitive damages, as set forth below.

25 **Violation of the CLRA.** Plaintiffs' cause of action for violation of the CLRA is based on  
26 Defendants' unfair, unlawful, and deceptive acts and practices in providing home loan modification  
27 services, including by falsely telling Plaintiffs that those services were subject to a money-back  
28 guarantee, including illegal provisions in their contracts, and falsely informing Plaintiffs about the

1 status of their loan modification applications. Pursuant to that claim, Plaintiffs seek injunctive relief  
2 barring Defendants from engaging in such prohibited activities. The full text of Plaintiffs' proposed  
3 injunction is set forth in the Complaint, and is repeated in Plaintiffs' Proposed Judgment.

4 **Punitive Damages.** Plaintiffs seek an award of punitive damages, pursuant to their causes  
5 of action for breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty,  
6 constructive fraud, and, in the case of Plaintiffs Juanita Craig and Carol Frost, pursuant to their  
7 claim for financial abuse of an elder, on the basis that Defendants acted with "oppression, fraud, or  
8 malice," and an award of punitive damages should be awarded "for the sake of example and by way  
9 of punishing" the Defendants (Cal. Civ. Code § 3294), in the following amounts (as stated in  
10 Plaintiffs' Notice of Punitive Damages): (i) Ms. Baker -- \$6,825.00; (ii) Ms. Burns -- \$11,070.00;  
11 (iii) Mrs. Craig -- \$2,602.80; (iv) Mr. Craig -- \$2,602.80; (v) Ms. Cringle -- \$5,385.00; (vi) Ms.  
12 Frost -- \$4,500.00; (vii) Mr. Reep -- \$8,544.00; and (viii) Mr. Velasquez -- \$7,500.00.

13 **Civil Penalties.** Plaintiffs Juanita Craig, Michael Craig, and Carol Frost also seek civil  
14 penalties pursuant to Civil Code section 1780(b)(1) for violations of the CLRA against a senior  
15 citizen or disabled person in the following amounts: (i) Mrs. Craig - \$5,000; (ii) Mr. Craig --  
16 \$5,000; and (iii) Ms. Frost -- \$5,000.

17 **Treble Damages.** Plaintiffs Juanita Craig, Michael Craig, and Carol Frost seek the trebling  
18 of any statutory fines or other penalties or punitive damages awarded to them, pursuant to Civil  
19 Code section 3345, in the following amounts: (i) Mrs. Craig -- \$22,808.40; (ii) Mr. Craig --  
20 \$22,808.40; and (iii) Ms. Frost -- \$28,500.00.

21 **Attorneys' Fees.** Plaintiffs also seek an award of reasonable attorneys' fees, pursuant to  
22 California Civil Code section 1780(e) and Los Angeles Superior Court Rules 3.207 and 3.214, in  
23 the amount of \$140,000.00. Pursuant to Los Angeles Superior Court Rules 3.207 and 3.214(d), an  
24 itemization of Plaintiffs' request for an award of attorneys' fees greater than those recoverable  
25 under the Rule 3.214(a) schedule for a default case is set forth in the Memorandum of Points and  
26 Authorities, below.

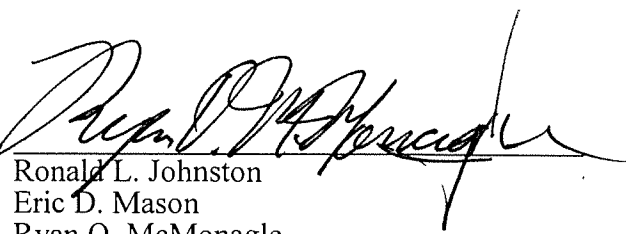
1           Costs. Plaintiffs also seek an award of costs, pursuant to California Code of Civil Procedure  
2 section 1032, in the amount of \$10,494.86 as set forth in Plaintiffs' concurrently filed Memorandum  
3 of Costs.

4           In sum, the total monetary damages, including compensatory damages, punitive damages,  
5 civil penalties, and treble damages requested by Plaintiffs individually are as follows: \$16,068.20  
6 in compensatory damages, \$49,029.60 in punitive damages, \$15,000.00 in civil penalties, and  
7 \$74,116.80 in treble damages, for a total of \$154,214.60 in total monetary damages and penalties.  
8 Plaintiffs also seek an award of \$10,494.86 in costs and \$140,000 in reasonable attorneys' fees, for  
9 a total monetary award of \$304,709.46. Plaintiffs also seek entry of an injunction to permanently  
10 bar the Defaulting Defendants from perpetuating their unlawful loan modification scam.

11 Dated: March 21, 2014

Respectfully submitted,

12  
13  
14 By:



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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF LOS ANGELES

14 MARCIA BAKER, an individual; et al.,

15 Plaintiffs,

16 v.

17 PLATINUM LAW GROUP, INC., a  
18 corporation; et al.,

19 Defendants.

Case No.: BC508727

**PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF APPLICATION FOR  
DEFAULT JUDGMENT**

Hearing: TBD  
Time: TBD  
Location: Department 36  
Judge: Hon. Gregory W. Alarcon

Action Filed: May 13, 2013

Trial Date: TBD

*Accompanying Documents:*

- *Plaintiffs' Application for Default Judgment Against Defaulting Defendants*
- *Evidence in Support of Plaintiffs' Application for Default Judgment*
- *Memorandum of Costs*
- *[Proposed] Judgment and [Proposed] Requests for Dismissal*
- *Proof of Service*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Pursuant to California Code of Civil Procedure section 585(b), Plaintiffs Marcia Baker,  
3 Denise Burns, Juanita Craig, Michael Craig, Julia Cringle, Carol Frost, Dwight Reep, and Roberto  
4 Velasquez (collectively, "Plaintiffs") submit the following Memorandum of Points and Authorities,  
5 in support of their concurrently filed Application for Entry of Default Judgment against defaulting  
6 defendants Jerry Stevenson, David Gomez, Jeff Marklein, Platinum Law Group, Inc., Modern  
7 Media Services, Inc., Platinum Law Center, A Professional Corporation, HLM Consulting, Inc.,  
8 Priority Realty Group, Inc., Priority Financial Group, Priority Mortgage Group, Inc., LaBrea Group  
9 LLC, and Baldwin Property Partners LLC (collectively, the "Defaulting Defendants").

10 **INTRODUCTION**

11 Plaintiffs submit this Memorandum to set forth the legal bases for the various forms of relief  
12 sought in their Application for Default Judgment. The facts supporting that relief are set forth in the  
13 Complaint and in the concurrently filed declarations, and are summarized in the preceding Case  
14 Summary. For the reasons set forth below, Plaintiffs are entitled to entry of judgment, individually,  
15 against each of the Defaulting Defendants on a joint and several basis, for the full amount of actual  
16 and consequential damages alleged in the Complaint, punitive damages in an amount three times  
17 those actual damages, a permanent injunction barring the Defaulting Defendants from continuing  
18 their unlawful practices, an award of attorneys' fees and costs, and, in the case of certain Plaintiffs,  
19 civil penalties and a trebling of their punitive damages and penalties awards.

20 **ARGUMENT**

21 **A. Standard for Default Judgment**

22 Upon entry of default, "the allegations of the complaint . . . are deemed admitted[.]" *Steven*  
23 *M. Garber & Assoc. v. Eskandarian*, 150 Cal. App. 4th 813, 823 (2007). Defendants' defaults have  
24 "the same effect as an express admission of the matters well pleaded in the complaint." *Id.* By  
25 failing to answer, Defendants are "presumed to have acceded to the proposition embraced in the  
26 complaint and to have consented that plaintiff[s] should obtain the relief therein prayed for, upon  
27 the conditions and facts set forth in the complaint." *Id.* n.10 (quotation omitted). *See also Kim v.*  
28 *Westmoore Partners, Inc.*, 201 Cal. App. 4th 267 (2011) ("Because the default confesses those

1 properly pleaded facts, plaintiff has no responsibility to provide the court with sufficient evidence to  
2 prove them -- they are treated as true for purposes of obtaining a default judgment.”).

3 Relief that may be awarded on default judgment is generally limited to that set forth in the  
4 complaint. Plaintiffs seeking judgment by default must “prove up” the right to relief by presenting  
5 sufficient evidence to support the damages and other relief requested. *See* Cal. Civ. Proc. Code  
6 § 585(b); Hon. William F. Rylaarsdam, et al., California Civil Procedure Before Trial § 5.213.1  
7 (The Rutter Group 2013) (“Where a cause of action is stated in the complaint, plaintiff merely needs  
8 to introduce evidence establishing a prima facie case for damages.”). Plaintiffs may recover  
9 punitive damages on default judgment, where, as here, they timely serve a Notice of Punitive  
10 Damages pursuant to California Code of Civil Procedure section 425.115.

11 **B. The Defaulting Defendants Are Jointly and Severally Liable**

12 As described above, Defendants acted in concert with each other to create, implement, and  
13 in furtherance of an unlawful scheme, to defraud homeowners seeking loan modification assistance.  
14 Moreover, the Individual Defendants created and maintained the various Entity Defendants as sham  
15 corporations to operate their loan modification scheme. For example, Defendant Platinum Law  
16 Group engaged in illegal transactions with Plaintiffs -- namely, contracting for loan modification  
17 services and accepting unlawful upfront payment for those services. Accordingly, the Defaulting  
18 Defendants, and each of them, are jointly and severally liable for the acts and omissions of each of  
19 the other Defendants. *See generally Greenspan v. Ladit, LLC*, 185 Cal. App. 4th 1413, 1448 (2010);  
20 *Kesmodel v. Rand*, 119 Cal. App. 4th 1128, 1141 (2004).

21 To establish that a corporate entity is merely the “alter ego” of an individual defendant, a  
22 plaintiff need only “allege sufficient facts to show a unity of interest and ownership, and an unjust  
23 result if the corporation is treated as the sole actor.” *Leek v. Cooper*, 194 Cal. App. 4th 399, 415  
24 (2011). Among the factors considered by the court are, “the failure to maintain minutes or adequate  
25 corporate records . . . ; sole ownership of all of the stock in a corporation by one individual or  
26 members of a family . . . ; the use of a corporation as a mere shell, instrumentality or conduit for a  
27 single venture or the business of an individual; . . . the concealment and misrepresentation of the  
28 identity of the responsible ownership, management and financial interest, or concealment of

1 personal business activities; . . . the disregard of legal formalities; . . . [and] the contracting with  
2 another with intent to avoid performance by use of a corporate entity as a shield against personal  
3 liability, or the use of a corporation as a subterfuge of illegal transactions.” *Zoran Corp. v. Chen*,  
4 185 Cal. App. 4th 799, 811-812 (2010).

5 Plaintiffs have made a more than adequate showing that Platinum Law Group was the alter  
6 ego of Defendants Stevenson and Gomez. First, the Statement of Information filed by Platinum  
7 Law Group with the California Secretary of State lists David Gomez’s mother, Agentha Quartey-  
8 Key, as the CEO, Secretary, and sole Director of the company, as well as the signatory for the form  
9 itself. But Ms. Quartey-Key had never seen the form, did not prepare it, never worked for Platinum  
10 Law Group, and had never attended a board meeting. (McMonagle Decl., Ex. 4, pp. 42-46.) To  
11 compound this, Defendant Stevenson also testified that he was the “sole owner and shareholder of  
12 Platinum Law Center, and that Platinum Law Center was doing business as Platinum Law Group.  
13 (*Id.* Ex. 3, pp.8, 77.) Similarly, Platinum Law Group’s amended Articles of Incorporation, filed  
14 March 30, 2012 with the Secretary of State, lists Ruby Izquierdo -- Defendant Gomez’s wife -- as  
15 the President and Secretary of Platinum Law Group, despite the fact that she was apparently a  
16 schoolteacher. (*Id.*, Ex. 4, pp. 58-59.)

17 **C. Plaintiffs Are Entitled to Entry of Judgment on the Causes of Action Alleged in**  
18 **Their Complaint**

19 **1. Unfair Competition**

20 California’s Unfair Competition Law (“UCL”) prohibits “any unlawful, unfair or fraudulent  
21 business act or practice.” Cal. Bus. & Prof. Code § 17200. Among other things, Section 17200  
22 “borrows violations of other laws and treats them as unlawful practices that the [UCL] makes  
23 independently actionable.” A violation of “virtually any law . . . can serve as a predicate” for a  
24 UCL action (*Ticconi v. Blue Shield of Cal. Life & Health Ins. Co.*, 160 Cal. App. 4th 528 539  
25 (2008)), including but not limited to any violation of the CLRA. *Durell v. Sharp Healthcare*, 183  
26 Cal. App. 4th 1350, 1361 (2010). Any person who has been injured as a result of such unfair  
27 competition is entitled to restitution and injunctive relief. Cal. Bus. & Prof. Code §§ 17203, 17204.  
28

1 The Complaint's well-pleaded allegations state a claim for violations of the UCL, and  
2 Plaintiffs' evidence submitted in support of their default judgment application establishes their right to  
3 recover restitution for these violations, as well the right to a permanent injunction enjoining  
4 Defendants from engaging in such unlawful business practices. Here, each Entity Defendant  
5 demanded and accepted upfront compensation from each Plaintiff for loan modification services,  
6 which is flatly prohibited by law, and therefore a compensable UCL violation. Cal. Civ. Code  
7 § 2944.7(a) ("[I]t shall be unlawful for any person who negotiates, attempts to negotiate, arranges,  
8 attempts to arrange, or otherwise offers to perform a mortgage loan modification . . . to . . . claim,  
9 demand, charge, collect, or receive any compensation until after the person has fully performed each  
10 and every service the person contracted to perform or represented that he or she would perform.").

11 Specifically:

- 12 • Defendant Platinum Law Group demanded, and Plaintiff Marcia Baker paid, \$2,250  
13 in upfront fees to Platinum Law Group by direct withdrawal from her checking  
account. (Baker Decl. ¶¶ 4, 7.)
- 14 • Defendant Platinum Law Group demanded, and Plaintiff Denise Burns paid, \$3,690  
15 in upfront fees to Platinum Law Group by direct withdrawal from her checking  
account. (Burns Decl. ¶¶ 4, 8, Ex. 1.)
- 16 • Defendant Platinum Law Group demanded, and Plaintiffs Michael and Juanita Craig  
17 paid, \$1,735.20 in upfront fees to Platinum Law Group by direct withdrawal from  
their checking account. (J. Craig Decl. ¶¶ 4, 6, Ex. 1.)
- 18 • Defendant Platinum Law Group demanded, and Plaintiff Julia Cringle paid, \$1,795  
19 in upfront fees to Platinum Law Group by direct withdrawal from her checking  
account. (Cringle Decl. ¶¶ 4, 6, Ex. 1.)
- 20 • Defendant Priority Realty Group demanded, and Plaintiff Carol Frost paid, \$1500 in  
21 upfront fees to Priority Realty Group by direct withdrawal from her checking  
account. (Frost Decl. ¶¶ 3, 4.)
- 22 • Defendant Priority Realty Group demanded, and Plaintiff Dwight Reep paid, \$2,848  
23 in upfront fees to Priority Realty Group by personal check. (Reep Decl. ¶ 9.)
- 24 • Defendant Platinum Law Group demanded, and Plaintiff Roberto Velasquez paid,  
25 \$2,250 in upfront fees to Priority Realty Group by direct withdrawal from his  
checking account. (Velasquez Decl. ¶ 10, Ex. 2.)

26 Moreover, as explained below in connection with Plaintiffs' cause of action for constructive  
27 fraud, the Defaulting Defendants' actions were fraudulent. *See infra* at pp. 8-9. Thus, Defendants'  
28 illegal and fraudulent acts provide the predicate violations necessary to establish a UCL violation.

1 That Plaintiffs were injured by those practices, and lost money or property (specifically the illegal  
2 upfront fees paid), is also established, as set forth above. Accordingly, Plaintiffs should be awarded  
3 restitution of their upfront fees and permanent injunctive relief barring the Defaulting Defendants  
4 from further engaging in their unfair practices. The full terms of Plaintiffs' requested injunction are  
5 set forth in the Complaint and in Plaintiffs' concurrently filed Proposed Judgment.

## 6                   2.        **Breach of Contract**

7                To establish claims for breach of contract, Plaintiffs must establish that (1) each of them  
8 entered into a contract with a Defendant; (2) Plaintiffs did all, or substantially all, of the significant  
9 things that the contract required them to do, or they were excused from having to do those things;  
10 (3) all conditions required for Defendants' performance had occurred or were excused;  
11 (4) Defendants failed to do something that the contracts required them to do; and (5) the Plaintiffs  
12 were harmed by that failure. CACI 303.

13               The Complaint's well-pleaded allegations state a claim for breach of contract, and Plaintiffs'  
14 evidence submitted in support of the default judgment application establishes their right to recover  
15 compensatory damages for this claim. Each Plaintiff entered into a contract with the Defendants for  
16 home loan modification services, which included, for nearly all Plaintiffs, a money-back guarantee  
17 in the event no loan modification was obtained. *See supra* Case Summary at pp. 4-9. Plaintiffs also  
18 paid Defendants the upfront fees demanded, and sent the other paperwork Defendants requested for  
19 the loan modification applications. *See id.* Despite having all the information needed to diligently  
20 apply for loan modifications on behalf of Plaintiffs, the Defaulting Defendants failed to perform the  
21 contracted-for services, thus depriving Plaintiffs of the benefit of the fees paid. *See id.* The  
22 Defaulting Defendants also refused to provide refunds of the upfront fees, breaching the money-  
23 back guarantees they previously made. *See id.*

24               Moreover, each contract by its terms was styled as an "Attorney-Client Fixed Fee Agreement"  
25 promising that "At the completion of each Service, Attorney will mail, email or fax Client a bill for the  
26 Service rendered . . . Client is NOT obligated to enter into a contract for additional Services until each  
27 prior Service is completed." (Baker Decl. ¶ 5, Ex. 1); Burns Decl. ¶ 5, Ex. 1; JJ. Craig Dec. ¶ 4, Ex. 1;  
28 Cringle Decl. ¶ 4, Ex. 1; Velasquez Decl. ¶ 9, Ex. 1; *see also* Reep Decl., Ex. 1;.) Each Plaintiff

1 executed this form contract and, in each case, Platinum Law Group never countersigned or returned a  
2 fully executed copy to them. *See supra* Case Summary at pp.4-9. Defendant Platinum Law Group  
3 and its principals -- Defaulting Defendants Stevenson and Gomez -- demanded and accepted upfront  
4 payment for the first two contracted-for “services” to be rendered before those services were actually  
5 rendered. This was not only in breach of the terms of the agreement (specifically the clause above), it  
6 was illegal under Cal. Civ. Code §§ 2944.6 and 2945.7. Moreover, though each Contract warrants that  
7 “Attorney has not advised Client to cease making mortgage payments,” Platinum Law Group  
8 thereafter advised Plaintiffs Juanita Craig, Julia Cringle, and Roberto Velasquez to do exactly that.  
9 (J. Craig Decl. ¶¶ 7, 8; Cringle Decl. ¶ 9; Velasquez Decl. ¶ 11.)

10 As a direct and proximate result of these breaches, Plaintiffs are entitled to the following  
11 actual and consequential damages: (i) Ms. Baker -- \$2,250; (ii) Ms. Burns -- \$3,690; (iii) Mr. and  
12 Mrs. Craig -- \$1,735.20; (iv) Ms. Cringle -- \$1,795; (v) Ms. Frost -- \$1,500; (vi) Mr. Reep --  
13 \$2,848; and (vii) Mr. Velasquez -- \$2,250.

### 14 3. Breach of Implied Covenant of Good Faith and Fair Dealing

15 To establish claims for breach of the implied covenant of good faith and fair dealing,  
16 Plaintiffs must establish that (1) each of them entered into a contract with a Defendant; (2) Plaintiffs  
17 did all, or substantially all, of the significant things that the contract required them to do, or they  
18 were excused from having to do those things; (3) all conditions required for Defendants’  
19 performance had occurred or were excused; (4) Defendants, or any of them, unfairly interfered with  
20 Plaintiffs’ respective rights to receive the benefits of the contract; and (5) Plaintiffs were harmed by  
21 Defendants’ conduct. CACI 325.

22 The Complaint’s well-pleaded allegations state a claim for breach of the implied covenant of  
23 good faith and fair dealing, and Plaintiffs’ evidence submitted in support of the default judgment  
24 application establishes their right to recover compensatory damages for this claim. As explained  
25 above, Plaintiffs entered into contracts with the Defaulting Defendants for home loan modification  
26 services, which included, in the majority of cases, a money-back guarantee in the event no loan  
27 modification was obtained, and Plaintiffs paid Defendants the upfront fees demanded, and sent the  
28 other paperwork Defendants requested for the loan modification applications. *See supra* Case



1 Summary at p. 5. Despite having all the information needed to diligently apply for loan  
2 modifications on behalf of Plaintiffs, the Defaulting Defendants deprived Plaintiffs of the benefits  
3 of their contracts with Defendants by failing to timely initiate, maintain, and/or complete loan  
4 modification applications. *See id.* As a direct and proximate result of these breaches, Plaintiffs are  
5 entitled to the following actual and consequential damages: (i) Ms. Baker -- \$2,250; (ii) Ms.  
6 Burns -- \$3,690; (iii) Mr. and Mrs. Craig -- \$1,735.20; (iv) Ms. Cringle -- \$1,795; (v) Ms. Frost --  
7 \$1,500; (vi) Mr. Reep -- \$2,848; and (vii) Mr. Velasquez -- \$2,250. Plaintiffs also are entitled to  
8 recover punitive damages on this claim. *See infra* at p. 11.

#### 9 4. Breach of Fiduciary Duty

10 To establish a claim for breach of fiduciary duty, Plaintiffs must establish: (1) the existence  
11 of a fiduciary relationship; (2) breach of that duty; and (3) damage proximately caused by the  
12 breach. *Oasis West Realty, LLC v. Goldman*, 51 Cal. 4th 811, 820 (2011); *see also* CACI 4106.

13 The Complaint's well-pleaded allegations state a claim for breach of fiduciary duty by  
14 Defendants, and Plaintiffs' evidence submitted in support of the default judgment application  
15 establishes their right to recover compensatory damages for this claim. Plaintiffs and the Defaulting  
16 Defendants were in fiduciary relationships, whereby the Defendants were retained to act and acted  
17 as Plaintiffs' agents for the purpose of applying for and negotiating home loan modifications. *See*  
18 *supra* Case Summary at 4-9; *see also* *People ex rel. Harris v. Rizzo*, 214 Cal. App. 4th 921, 950  
19 (2013) ("A fiduciary relationship has been defined as 'any relation existing between parties to a  
20 transaction wherein one of the parties is . . . duty bound to act with the utmost good faith or the  
21 benefit of the other party.'). At the time of the parties' dealings, Defendant Stevenson was an  
22 attorney, and acted as such in his dealings with Plaintiffs for the purpose of applying for and  
23 negotiating home loan modifications. (Compl. ¶ 43; McMonagle Decl., Ex. 3, pp. 24-25.)  
24 Similarly, at the time of the parties' dealings, Defendant Gomez was a licensed real estate broker.  
25 (*Id.* ¶ 35.) Thus, Defendants Stevenson and Gomez were subject to a number of statutorily-defined  
26 fiduciary duties to their clients, including Plaintiffs. *See generally* *Wyatt v. Union Mortgage Co.*,  
27 24 Cal. 3d 773 (1979). Among those fiduciary duties are duties of fidelity and to communicate,  
28 duties that also bind the other Defaulting Defendants, as Plaintiffs' agents for purposes of applying

1 for and negotiating home loan modifications. *Cf. Hannon v. W. Title Co.*, 211 Cal. App. 3d 1122  
2 (1989) (“An escrow holder has a fiduciary duty ‘to communicate to his principal knowledge  
3 acquired in the course of his agency with respect to material facts which might affect the principal's  
4 decision as to a pending transaction, particularly where ... he knows that the principal is looking to  
5 him for protection as to those very facts of which he has knowledge.’”).

6 The Defaulting Defendants breached those fiduciary duties by, among other things, failing  
7 to use reasonable care and diligence in preparing, making, and/or pursuing loan modifications on  
8 behalf of Plaintiffs, and by failing to adequately communicate with Plaintiffs and/or Plaintiffs’  
9 lenders regarding the status of the loan modification applications. *See supra* Case Summary at pp.  
10 4-9. As a direct and proximate result of these breaches, Plaintiffs are entitled to the following actual  
11 and consequential damages: (i) Ms. Baker -- \$2,250; (ii) Ms. Burns -- \$3,690; (iii) Mr. and Mrs.  
12 Craig -- \$1,735.20; (iv) Ms. Cringle -- \$1,795; (v) Ms. Frost -- \$1,500; (vi) Mr. Reep -- \$2,848; and  
13 (vii) Mr. Velasquez -- \$2,250. Plaintiffs also are entitled to recover punitive damages on this claim.  
14 *Michelson v. Hamada*, 29 Cal. App. 4th 1566, 1582 (1994) (“[P]unitive damages are appropriate for  
15 a breach of fiduciary duty.”). *See also infra* at 11.

## 16 **5. Constructive Fraud**

17 To establish claims for constructive fraud, Plaintiffs must establish that (1) Defendants were  
18 in a fiduciary relationship with Plaintiffs, as Plaintiffs’ attorneys or agents for purposes of  
19 negotiating home loan modifications; (2) Defendants actively concealed or intentionally failed to  
20 disclose one or more important facts to Plaintiffs; (3) Plaintiffs did not know of the concealed  
21 fact(s); (4) Defendants intended to deceive Plaintiffs by concealing the fact(s); (5) Plaintiffs  
22 reasonably relied on Defendants’ deception; (6) Plaintiffs were harmed; and (7) Defendants’  
23 concealment was a substantial factor in causing Plaintiffs’ harm. CACI 1901.

24 The Complaint’s well-pleaded allegations state a claim for constructive fraud, and evidence  
25 submitted in support of the default judgment application establishes Plaintiffs’ right to recover actual  
26 and consequential damages for this claim. As discussed above, Plaintiffs were in fiduciary  
27 relationships with the Defaulting Defendants, wherein the Defaulting Defendants were subject to a  
28 duty to disclose material information to Plaintiffs, including that Defendants did not intend to submit

1 and/or complete loan modification applications on Plaintiffs' behalf, that Defendants misrepresented  
2 the "high success rate" they had in obtaining loan modifications, that Defendants would negotiate a  
3 loan modification with Plaintiffs' lenders, and that Plaintiffs would receive their money back if loan  
4 modifications were not obtained. *See Case Summary at 3-9; see also Los Defensores, Inc. v. Gomez,*  
5 *223 Cal. App. 4th 377, 396 (2014)* ("[C]oncealment or partial suppression of material facts  
6 constitutes fraud when there is a duty to disclose those facts. The duty to disclose requires a  
7 relationship grounded in 'some sort of transaction between the parties.')" (quotation omitted). As a  
8 direct and proximate result of these breaches, Plaintiffs are entitled to the following actual and  
9 consequential damages: (i) Ms. Baker -- \$2,250; (ii) Ms. Burns -- \$3,690; (iii) Mr. and Mrs. Craig --  
10 \$1,735.20; (iv) Ms. Cringle -- \$1,795; (v) Ms. Frost -- \$1,500; (vi) Mr. Reep -- \$2,848; and (vii) Mr.  
11 Velasquez -- \$2,250. Plaintiffs also are entitled to recover punitive damages. *See infra* at 11.

## 12 **6. Financial Abuse of an Elder**

13 Under the Elder Abuse Act, a person or entity commits "financial abuse" of an elder ("any  
14 person residing in this state, 65 years of age or older" (Cal. Welf. & Inst. Code § 15610.27)), where  
15 he or she (1) "takes, secretes, appropriates, obtains, or retains real or personal property of an elder  
16 or dependent adult for a wrongful use or with intent to defraud or both"; (2) "assists" in doing any  
17 of the above; or (3) does any of the above by exerting "undue influence." *Id.* § 15610.30(a)(1)-(3).  
18 "Wrongful use" is conclusively presumed where the defendant commits any of the above acts and  
19 "knew or should have known that [the] conduct is likely to be harmful to the elder[.]" *Id.*  
20 § 15610.30(b); *see also See Knox v. Dean*, 205 Cal. App. 4th 417, 423-24 (2012) (plaintiff properly  
21 pleaded cause of action for elder financial abuse under Cal. Welf. & Inst. Code § 15610.30(b)).

22 The Complaint's well-pleaded allegations state claims for financial abuse of an elder against  
23 Defendant Priority Financial Group by Plaintiff Carol Frost, and against Defendant Platinum Law  
24 Group by Plaintiff Juanita Craig, and these Plaintiffs' evidence submitted in support of the default  
25 judgment application establishes their right to recover compensatory damages for this claim.  
26 Defendants' illegal acceptance of upfront fees for home loan modification services violates the  
27 Elder Abuse Act, entitling Plaintiffs Carol Frost and Juanita Craig to recover the following actual  
28 and consequential damages: (i) Mrs. Craig -- \$1,735.20; and (ii) Ms. Frost -- \$1,500.

1                                   **7.       Violation of the CLRA**

2                   The CLRA provides that any consumer of services who is injured by the use of an act or  
3 practice “declared to be unlawful by [Civil Code] Section 1770” may sue to enjoin such acts or  
4 practices. As discussed below, Civil Code section 1770(a) proscribes a number of acts or practices  
5 that Defendants used to harm Plaintiffs and other homeowners. *See generally* Civ. Code § 1770(a)(3),  
6 (5), (7), (9), (14), (16) & (19). Defendants’ loan modification and related services, which were offered  
7 to Plaintiffs for their personal, residential use, fall within the broad definition of “services” under the  
8 CLRA, which is defined as “work, labor, and services for other than a commercial or business use[.]”  
9 Civ. Code § 1761(b).

10                  The Complaint’s well-pleaded allegations state claims for violations of the CLRA, and  
11 Plaintiffs’ evidence submitted in support of the default judgment application establishes the right to  
12 recover injunctive relief for this claim. Specifically, Plaintiffs were injured by the following illegal  
13 acts or practices perpetrated by Defendants:

- 14                   a) falsely informing Plaintiffs that the contracted-for loan modification services were  
15 subject to a money-back guarantee if Defendants could not obtain loan modifications  
16 on Plaintiffs’ behalves (*see* Compl. ¶¶ 78, 89, 135, 148; Baker Decl. ¶ 5, Ex. 1;  
17 Burns Decl. ¶ 5, Ex. 1; Frost Decl. ¶ 3; Reep Decl. ¶ 6);
- 18                   b) including illegal and unconscionable provisions in their contracts with Plaintiffs that  
19 purport to limit Defendants’ liability (*see* Compl. ¶ 37; Baker Decl. Ex. 1; Burns  
20 Decl., Ex. 1; J. Craig Decl., Ex. 1; Cringle Decl., Ex. 1; Reep Decl., Ex. 1;  
21 Velazquez Decl., Ex. 1);
- 22                   c) including illegal and unconscionable provisions in their contracts with Plaintiffs that  
23 purport to require arbitration of disputes arising under those contracts (*see* Compl. ¶  
24 37; Baker Decl. Ex. 1; Burns Decl., Ex. 1; J. Craig Decl., Ex. 1; Cringle Decl., Ex. 1;  
25 Reep Decl., Ex. 1; Velazquez Decl., Ex. 1);
- 26                   d) falsely claiming to be affiliated with official government-sponsored mortgage relief  
27 programs, including the Making Home Affordable program (*see* Compl. ¶¶ 37, 124;  
28 Cringle Decl. ¶ 3);
- e) promising Plaintiffs that their lenders would approve specific loan modification  
terms when Defendants were in no position to make such promises (*see* Compl. ¶¶  
37, 110, 117-18, 158-61, 169-70; Baker Decl. ¶ 4; Burns Decl. ¶ 4; J. Craig Decl. ¶¶  
3, 10-11; Reep Decl. ¶¶ 11-15; Velazquez Decl. ¶ 4); and
- f) falsely claiming to have negotiated or secured loan modifications for Plaintiffs when  
neither had occurred (*see* Compl. ¶¶ 80-82, 96-97, 117-18, 128, 139-40, 154-65,  
179-80; Baker Decl. ¶¶ 8-10; Burns Decl. ¶¶ 9, 10, Ex. 4; J. Craig Decl. ¶ 9; Cringle  
Decl. ¶ 7; Frost Decl. ¶ 7; Reep Decl. ¶¶ 12, 16, 167; Velazquez Decl. ¶ 12.).

1 See Cal. Civ. Code § 1770(a)(3), (5), (7), (9), (14), (16), (19).

2 As a result, and to ensure that the Defaulting Defendants stop engaging in these prohibited  
3 activities to the detriment of Plaintiffs and other homeowners, entry of a permanent injunction  
4 barring the Defaulting Defendants from engaging in these practices is warranted. See Civ. Code §  
5 1780(a)(2). The full terms of Plaintiffs' requested injunction are set forth in the Complaint and in  
6 Plaintiffs' concurrently filed Proposed Judgment.

7 Furthermore, Plaintiffs Carol Frost, Juanita Craig, and Michael Craig are each entitled to a  
8 civil penalty for violations of the CLRA perpetrated against a senior citizen or disabled person. Cal.  
9 Civ. Code § 1780(b)(1). Ms. Frost and Mrs. Craig were each 65 years of age or older at the time  
10 they were injured by Defendants' illegal conduct (see Compl. ¶¶ 109, 122, 133, 143; J. Craig Decl.  
11 ¶ 2; Frost Decl. ¶ 2), and thus each is a "senior citizen" as defined in the CLRA. Civ. Code §  
12 1761(a)(f). Mr. Craig was receiving Social Security Disability payments since being deemed  
13 disabled and unable to work by the U.S. Department of Veterans Affairs in 2003 (see Compl. ¶¶  
14 109, 122; M. Craig Decl. ¶ 3), and thus is a "disabled person" under the CLRA. Civ. Code §  
15 1761(a)(g). The relevant factors set forth in Civil Code sections 1780(b)(1) and 3345(b) are met  
16 here: each of these Plaintiffs suffered substantial economic damages from Defendants' conduct (see  
17 Case Summary at 4-9) and Defendants knew or should have known that each of these Plaintiffs was  
18 a senior citizen or disabled at the time of that conduct (see *id.*; J. Craig Decl., Ex. 1).

19 **D. Plaintiffs Also Are Entitled to Punitive Damages and, in Some Instances,**  
20 **Treble Damages**

21 Plaintiffs seek an award of punitive damages, pursuant to their causes of action for breach of  
22 the implied covenant of good faith and fair dealing, breach of fiduciary duty, constructive fraud, and,  
23 in the case of Plaintiffs Juanita Craig and Carol Frost, financial abuse of an elder. The allegations of  
24 the Complaint and Plaintiffs' concurrently submitted evidence establish that Defendants acted with  
25 the requisite "oppression, fraud, or malice," and that an award of punitive damages should be  
26 awarded "for the sake of example and by way of punishing" the Defendants. Cal. Civ. Code § 3294.  
27 As further explained above, the Defaulting Defendants initiated and perpetuated a wide-ranging  
28

1 scheme to lure and defraud vulnerable homeowners, including Plaintiffs, with false promises of  
2 timely help in securing loan modifications. *See* Case Summary at 4-9.)

3 Plaintiffs have complied with the requirements of Civil Procedure Code section 425.115 and  
4 timely served each Defaulting Defendant with a Notice of Claim for Punitive Damages, stating that  
5 Plaintiffs seek the following amounts as punitive damages: (i) Ms. Baker -- \$6,825.00; (ii) Ms.  
6 Burns -- \$11,070.00; (iii) Mrs. Craig -- \$2,602.80; (iv) Mr. Craig -- \$2,602.80; (v) Ms. Cringle --  
7 \$5,385.00; (vi) Ms. Frost -- \$4,500.00; (vii) Mr. Reep -- \$8,544.00; and (viii) Mr. Velasquez --  
8 \$7,500.00. These amounts should be awarded.

9 **E. Plaintiffs Are Entitled to an Award of Costs and Reasonable Attorneys' Fees**

10 Pursuant to California Code of Civil Procedure section 1032, Plaintiffs as prevailing parties  
11 are entitled to their costs. Plaintiffs' request for an award of costs is set forth in their concurrently  
12 filed Memorandum of Costs.

13 Plaintiffs also seek an award of reasonable attorneys' fees, which may be awarded as costs to  
14 a prevailing party when authorized by contract, statute, or law. Cal. Code. Civ. Proc. §§ 1032,  
15 1033.5(a)(10). An award of attorney's fees and costs to a prevailing plaintiff is mandatory under the  
16 CLRA. Cal. Civ. Code § 1780(e) ("The court shall award court costs and attorney's fees to a  
17 prevailing plaintiff in litigation filed pursuant to this section."). An award of attorney's fees to a  
18 prevailing plaintiff is also available under the Elder Abuse Act when "it is proven by a preponderance  
19 of the evidence that a defendant is liable for financial abuse." Cal. Welf. & Inst. Code § 15657.5(a).

20 Plaintiffs request an award of attorneys' fees in an amount greater than those recoverable  
21 under the Rule 3.214(a) schedule for a default case. Under that schedule, if the Court were to enter  
22 judgment in favor of Plaintiffs on all the monetary relief and costs requested, which total  
23 \$164,710.06, the attorneys' fee award would be limited to \$3,537.10. That amount does not  
24 reasonably reflect the extraordinary services rendered by Plaintiffs' attorneys in this case, which  
25 involved a large, complex, and interconnected group of individual and entity defendants organized  
26 in a common scheme both to defraud Plaintiffs and other homeowners and to evade liability by,  
27 among other things, changing corporate names and locations.

1 Plaintiffs, therefore, submit the following itemized statement of the services rendered by  
2 their attorneys that Plaintiffs ask be included in a fee award. The itemized activities have been  
3 selected as indicative of the extraordinary nature of the circumstances of this case, and of the  
4 services rendered by Plaintiffs' counsel. The amounts set forth below represent a significant  
5 discount from the actual time Plaintiffs' counsel spent pursuing and developing this case on behalf  
6 of their clients, even with respect to the specified activities.

7 **1. Investigation and Preparation of the Complaint.** Plaintiffs' counsel spent hundreds  
8 of hours investigating with Plaintiffs, and other injured homeowners, their dealings with the Entity  
9 and Individual Defendants, in preparation to draft, and in drafting the Complaint. That investigation  
10 spanned several months and consisted of numerous interviews of victims of the scam, the gathering  
11 of relevant documents, searches for documents and other information related to the corporate  
12 identities, and efforts to locate both other victims and other perpetrators of the fraud. Those efforts  
13 culminated in the drafting of the Complaint, which comprehensively sets forth the nature and extent  
14 of Defendants' unlawful loan modification scheme in over 200 paragraphs, and details the course of  
15 Plaintiffs' dealings with the Defendants and the harms that Defendants caused Plaintiffs. In light of  
16 those substantial and significant efforts, Plaintiffs request an award of \$80,000.00 in attorneys' fees  
17 for that endeavor. *See Stokus v. Marsh*, 217 Cal. App. 3d 647, 656 (1990) (affirming as reasonable  
18 an award of pre-filing attorneys' fees). As noted in the McMonagle Declaration, the amount  
19 requested represents a substantial discount from the total time actually spent in pre-filing  
20 investigation and preparation of the Complaint. (*See* McMonagle Decl. ¶¶ 19-23.)

21 **2. Preparation of written discovery requests.** In order to uncover further evidence of  
22 Defendants' unlawful scheme, determine the locations of un-served Defendants, and identify any  
23 Doe Defendants, in June 2013, Plaintiffs' counsel prepared and served requests for production of  
24 documents, form interrogatories, and special interrogatories on each of the eleven Defendants who  
25 had been served at the time. None of those Defendants, however, responded to Plaintiffs' requests.  
26 Plaintiffs request an award of \$5,000.00 in attorneys' fees for preparation of those requests. That  
27 amount reflects a significant discount from the actual time Plaintiffs' counsel spent preparing those  
28 requests. (*See id.* ¶ 20.)

1           **3. Preparation of deposition notices and third-party subpoenas, and taking**  
2 **depositions of Defendant Stevenson and Defendants' third-party agent.** As explained in the  
3 McMonagle Declaration, Plaintiffs' counsel attempted to depose several key Defendants and third  
4 party witnesses in this case. (*See* McMonagle Decl. ¶ 21.) Those deponents included Defaulting  
5 Defendants Stevenson, Gomez, and Marklein, and a third-party agent for some of the Defendants,  
6 Agnetha Quartey-Key. Plaintiffs' deposition notices and subpoenas also requested production of  
7 documents relevant to Plaintiffs' investigation and preparation of their case. (*Id.*) Defendants Gomez  
8 and Marklein never appeared for their properly noticed depositions. (*Id.* ¶¶ 14-15.) Plaintiffs' counsel  
9 were able to depose Defaulting Defendant Stevenson and Ms. Quartey-Key, each of whom provided  
10 testimony that substantiated the allegations in the Complaint including, among other things, that the  
11 Defendants should be jointly and severally liable for each other's conduct and liability in this case.  
12 (*See id.* ¶¶ 10-11, Exs. 3-4.) Accordingly, Plaintiffs request an award of \$5,000.00 in attorneys' fees  
13 for preparation of the several deposition notices and subpoenas issued by Plaintiffs' counsel. Plaintiffs  
14 further request an award of \$30,000.00 in attorneys' fees for preparing to take and taking the  
15 depositions of Defaulting Defendant Stevenson, which took place in San Diego, California, and Ms.  
16 Quartey-Key, which took place in Upland, California. These amounts reflect a significant discount  
17 from the actual time Plaintiffs' counsel spent drafting the deposition notices and preparing for and  
18 taking those key depositions. (*See Id.* ¶ 21.)

19           **4. Case management efforts.** Because this case involved a wide-ranging  
20 scheme by the Defaulting Defendants and others to scam Plaintiffs and other homeowners located  
21 throughout California, Plaintiffs' counsel needed additional time to, among other things, identify the  
22 locations of un-served Defendants and attempt to obtain discovery from served Defendants and  
23 other sources. Accordingly, Plaintiffs' counsel requested, and was granted, on an *ex parte* basis, a  
24 number of extensions of the deadlines to serve the Complaint and/or obtain default judgment, in  
25 order to complete their investigation. Those case management efforts required investment of  
26 significant additional attorney resources that would not otherwise be required in a less complicated  
27 matter. Accordingly, Plaintiffs request an award of \$2,500.00 in attorneys' fees for preparation of  
28 the case management statements and *ex parte* applications filed by Plaintiffs' counsel, and a further



