

[attorney name redacted], Esq. (CSBN ////////////////)
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Attorneys for Defendant Mary Hinds

Note: all names have been changed.

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

Ted Simons and
Phillip Haas,
Plaintiffs

v.

Mary Hinds,
Defendant

Case Number: [redacted]
Complaint Filed: [redacted]

**DEFENDANT’S NOTICE OF MOTION AND MOTION
FOR AN ORDER COMPELLING ANSWERS TO
INTERROGATORIES AND FOR MONETARY
SANCTIONS; MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF ATTORNEY**

*Proof of Service filed concurrently herewith;
[Proposed] Order lodged herewith.*

Hearing Date _____
Hearing Time 8:30 a.m.
Hearing Department _____

Discovery Cut-Off Date: None Set
Motion Cut-Off Date: None Set
Trial Date: None Set

TO THE COURT, PLAINTIFFS TED SIMONS AND PHILLIP HAAS, AND HER
COUNSEL OF RECORD:

PLEASE TAKE NOTICE AND NOTICE IS HEREBY GIVEN THAT on
_____, 2008 at 8:30 a.m., in Department _____ of the Los Angeles Superior
Court, Santa Monica Courthouse, located at [redacted], Defendant Mary Hinds (hereinafter

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3 “HINDS”), will, and hereby does, move the court for an for an order compelling Plaintiffs
4 Ted Simons (hereinafter “SIMONS”) and Phillip Haas (hereinafter “HAAS,” and
5 collectively with SIMONS, “PLAINTIFFS”) to answer the following interrogatories:

6 Form Interrogatories to Ted Simons, Set One (hereinafter the “SIMONS
7 FORM ROGGS”) consisting of 2 interrogatories and set forth in
8 Exhibit A attached hereto;

9 Special Interrogatories to Ted Simons, Set One (hereinafter the “SIMONS
10 SPECIAL ROGGS”) consisting of 6 interrogatories and set forth in
11 Exhibit B attached hereto;

12 Form Interrogatories to Phillip Haas, Set One (hereinafter the “HAAS FORM
13 ROGGS”) consisting of 2 interrogatories and set forth in Exhibit C
14 attached hereto; and

15 Special Interrogatories to Jamie William, Set One (hereinafter the “HAAS
16 SPECIAL ROGGS”) consisting of 6 interrogatories and set forth in
17 Exhibit D attached hereto,

18 all of which were lawfully served on PLAINTIFFS on December 17, 2007, and imposing a
19 \$1,550 monetary sanction against PLAINTIFFS for their misuse of the discovery process,
20 which sum is the reasonable costs and attorney fees incurred by HINDS for bringing this
21 motion. The proof of service for the SIMONS FORM ROGGS and the SIMONS SPECIAL
22 ROGGS is set forth in Exhibit E attached hereto, and the proof of service for the HAAS
23 FORM ROGGS and the HAAS SPECIAL ROGGS is set forth in Exhibit F attached hereto.
24 Hereinafter, these four said sets of interrogatories are collectively referred to as the
25 “INTERROGATORIES.” Unlabeled section numbers herein refer to the Code of Civil
26 Procedure. The Motion is made on the following grounds:

27 (a) HINDS propounded the INTERROGATORIES and other discovery on
28 PLAINTIFFS for the purpose of obtaining admissible evidence, or to

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3 lead to the discovery of admissible evidence, that is relevant to
4 HINDS’S defense against this action.

5 (b) HINDS has complied with the “Grabbag Rule of 35” set forth in § 94(a)—
6 with the other discovery (consisting of 14 production demands on
7 SIMONS and 14 production demands on HAAS)—HINDS has served
8 a total of 22 items on each Plaintiff (2 form interrogatories + 6 special
9 interrogatories + 14 production demands = 22).

10 (c) PLAINTIFFS failed to respond to the INTERROGATORIES or the other
11 discovery, failed to request additional time to respond; failed to make
12 any effort to meet and confer either themselves or through counsel,
13 and failed to move for a protective order.

14 (d) Although not required by law, after the 35 days for PLAINTIFFS to
15 respond had lapsed, as a courtesy to them, on January 31, 2008,
16 HINDS’S counsel served a meet and confer letter (hereinafter the “**M/
17 C LETTER**”), but PLAINTIFFS failed to respond thereto either
18 themselves or through counsel. The M/C LETTER is set forth in
19 **Exhibit G** attached hereto.

20 (e) By failing to respond, PLAINTIFFS have forced HINDS to bring this
21 motion. This comprises an abuse of discovery by PLAINTIFFS for
22 which a monetary sanction is warranted under CCP 2030.290(c).

23 This Motion is made pursuant to § 2030.290(b) and is based upon this Notice of
24 Motion and Motion, the accompanying Memorandum of Points and Authorities, the
25 accompanying Declaration of Attorney [redacted] (hereinafter the “**ATTORNEY
26 DECLARATION**”), the INTERROGATORIES (Exhibits A, B, C and D), the proofs of
27 service thereof (Exhibits E and F), the M/C LETTER (Exhibit G), the [Proposed] Order
28 lodged herewith, the entire file in this matter, and any other and further oral and/or

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documentary evidence that this court may chose to consider at the time of the hearing on this Motion.

Respectfully Submitted,

Date: _____

Law Office of [redacted]

Attorneys for Defendant Mary Hinds

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Memorandum of Points and Authorities

Definitions set forth in the foregoing Notice of Motion and Motion are incorporated herein. Unlabeled section numbers herein refer to the Code of Civil Procedure.

1. Introduction

This action by PLAINTIFFS is utterly without merit. As supported by ATTORNEY DECLARATION ¶ 4, It is the fourth action PLAINTIFFS have taken against HINDS on the same subject matter—*they have lost three times and have now come back a fourth time with the very same meritless allegations.*

As supported by ATTORNEY DECLARATION ¶ 5, PLAINTIFFS’ first attempt was an administrative action they filed with Los Angeles Housing Department (hereinafter “**LAHD**”), case number [redacted]. They lost. LAHD determined that HINDS had lawfully evicted them. **Exhibit H** attached hereto sets forth a true and correct copy of an email, sent internally within LAHD, indicating that the said case was closed in favor of HINDS.

As supported by ATTORNEY DECLARATION ¶ 6, PLAINTIFFS’ second attempt was another administrative action they filed with LAHD, case number [redacted]. They lost again. LAHD again determined that HINDS had lawfully evicted them. **Exhibit I** attached hereto sets forth a true and correct copy of an email, sent internally within LAHD, indicating that the said case was closed in favor of HINDS.

As supported by ATTORNEY DECLARATION ¶ 7, PLAINTIFFS’ third attempt was a lawsuit filed in the Los Angeles Superior Court, case number [redacted]. They lost yet again. The court dismissed the action. **Exhibit J** attached hereto sets forth a true and correct copy of the minute order issued on April 9, 2007 granting HINDS’s motion to quash service of the summons and dismiss the action. **Exhibit K** attached hereto sets forth a true and correct copy of the minute order issued on May 14, 2007 denying PLAINTIFFS’ motion for reconsideration thereof.

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3 Becoming increasingly vexatious, the PLAINTIFFS then filed this meritless action
4 based on the very same set of facts. HINDS is entitled to due process, which includes the
5 right to propound discovery, including the INTERROGATORIES, to obtain evidence from
6 PLAINTIFFS in her defense. However, as supported by ATTORNEY DECLARATION ¶¶
7 12 and 14, when served with the INTERROGATORIES and other discovery by HINDS,
8 HAAS failed to respond after actually receiving it, and SIMONS refused to receive it, much
9 less respond (the discovery sent via Certified Mail to SIMONS was returned “unclaimed” by
10 the Postal Service). Nor did they respond to the M/C LETTER. This conduct is totally
11 unbecoming of any serious plaintiff—particularly in what is now their fourth round of attack
12 on HINDS—and it proves that *the PLAINTIFFS know very well their case has no merit.*

13 By now it is transparent that *the PLAINTIFFS’ sole purpose is harassment*, including
14 forcing HINDS to bring this motion to compel, thereby incurring attorney fees. And, while
15 they have not succeeded in obtaining any “relief” from HINDS, *they have indeed succeeded*
16 *at harassing her.* As supported by ATTORNEY DECLARATION ¶ 8, the PLAINTIFFS’
17 vexatious course of conduct has caused substantial emotional distress to HINDS, and quite
18 reasonably so.

19 As supported by ATTORNEY DECLARATION ¶ 9, the INTERROGATORIES are
20 targeted to obtain admissible evidence, and/or to lead to the discovery of admissible
21 evidence, that is relevant to HINDS’S defense against this action.

22 **3. The INTERROGATORIES Were Lawfully Propounded.**

23 After being served with process, a defendant in a civil action may propound discovery
24 at any time without leave of court—*see* § 2030.020 as to interrogatories.

25 In a limited civil action, discovery must comply with the “Grabbag Rule of 35” set
26 forth in § 94(a), which caps the total number of interrogatories, plus production demands,
27 plus requests for admissions, at 35 items per answering party. As supported by Exhibits A
28 through D and ATTORNEY DECLARATION ¶ 10, SIMONS and HAAS were each served

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3 with 2 form interrogatories, 6 special interrogatories, 14 production demands, and no
4 requests for admissions—totaling 22 items for SIMONS and 22 items for HAAS.

5 **4. PLAINTIFFS have Failed to Serve a Timely Response to the**
6 **INTERROGATORIES.**

7 As supported by ATTORNEY DECLARATION ¶ 11, the INTERROGATORIES
8 were served on PLAINTIFFS by mail on December 17, 2007. The time for PLAINTIFFS to
9 respond was therefore within 35 days—30 days, plus 5 days due to the mailing within
10 California. “Within 30 days after service of interrogatories, the party to whom the
11 interrogatories are propounded shall serve the original of the response to them on the
12 propounding party” § 2030.260(a). “In case of service by mail, ... any ... duty to ... make any
13 response within any period ... after the service of the document, which time period ... is
14 prescribed by statute ..., shall be extended five calendar days, upon service by mail, ...” §
15 1013(a). “Section 1013 applies to any method of discovery ...” § 2016.050. The 35th day
16 after December 17, 2007 was January 21, 2008—which was the last day for PLAINTIFFS to
17 timely respond.

18 As supported by ATTORNEY DECLARATION ¶ 13, the M/C LETTER was served
19 on PLAINTIFFS by mail on January 31, 2008. This was done *as a courtesy to them*—no
20 meet and confer letter is required for a motion to compel responses to interrogatories when
21 there has been no response. “[M]eet-and-confer’ requirement of former Cal. Rules of Court,
22 rule 222.1 (now embodied in § 2030.300, subd. (b)) did not apply when propounding party
23 sought order compelling responses to interrogatories and sanctions for responding party's
24 failure to respond ‘within the statutorily permitted time’” Sinaiko Healthcare Consulting,
25 Inc. v. Pacific Healthcare Consultants 148 Cal.App.4th 390 @ 411.

26 As supported by ATTORNEY DECLARATION ¶ 14, PLAINTIFFS have neither
27 served any response to the INTERROGATORIES, nor contacted HINDS to “meet and
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3 confer,” nor had any counsel representing them contact HINDS, nor filed any motion for a
4 protective order.

5 Therefore, PLAINTIFFS have failed to timely respond to the INTERROGATORIES.

6 **5. PLAINTIFFS have Waived Their Rights to Object**
7 **or to Seek a Protective Order.**

8 “If a party to whom interrogatories are directed fails to serve a timely response, the
9 following rules apply: (a) The party to whom the interrogatories are directed waives... any
10 objection to the interrogatories,...” § 2030.290, emphasis added. The party also waives the
11 right to seek a protective order. “When interrogatories have been propounded, the
12 responding party.... may promptly move for a protective order.” § 2030.090(a), emphasis
13 added. “If a protective order is to be obtained, relief must be sought: [¶] “Promptly”....; and
14 [¶] *Before* expiration of the 30–day period within which to respond to the interrogatories....”
15 California Practice Guide Civil Procedure before Trial (2008) The Rutter Group ¶ 8:1013,
16 italics in original. Thus, by failing to serve a timely response, PLAINTIFFS have waived
their rights to object or to seek a protective order.

17 **6. The Court Has Authority Grant the Motion and Compel PLAINTIFFS to**
18 **Respond to the INTERROGATORIES.**

19 § 2030.290 provides, “If a party to whom interrogatories are directed fails to serve a
20 timely response ... (b) The party propounding the interrogatories may move for an order
21 compelling response to the interrogatories.” Since the INTERROGATORIES have been
22 lawfully propounded and PLAINTIFFS have not responded, the Court has the authority to
grant the Motion and compel them to respond.

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3 **7. If the Motion is Granted, the Court Must Order PLAINTIFFS to Pay**
4 **HINDS Her Expenses and Attorney Fees Incurred in Making the Motion,**
5 **Even If PLAINTIFFS Serve Responses.**

6 § 2030.290(c) provides, “The court **shall** impose a monetary sanction.... against any
7 party,.... who unsuccessfully.... opposes a motion to compel a response to interrogatories....”
8 (Emphasis added.) § 2023.010 provides, “Misuses of the discovery process include ... (d)
9 Failing to respond ... to an authorized method of discovery.” § 2023.030(a) provides for “a
10 monetary sanction ordering that one engaging in the misuse of the discovery process ... pay
11 the reasonable expenses ... incurred by anyone as a result of that conduct.” (Emphasis added.)
12 “The court may award sanctions ... even though no opposition to the motion was filed, ... or
13 the requested discovery was provided ... after the motion was filed.” California Rules of
14 Court rule 3.1030(a). As supported by ATTORNEY DECLARATION ¶ 15, HINDS’S
15 reasonable costs in making the motion are \$80, and her reasonable attorney fees for counsel
16 to represent him at the hearing hereon are \$1,470. Therefore, if the motion is granted, the
17 Court must order PLAINTIFFS to pay HINDS her costs of \$80 and attorney fees of \$1,470
18 incurred in making the motion, *even if they serve responses.*

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22 **8. Conclusion.**

23 For the foregoing reasons, the Court should GRANT the motion.

24 Respectfully submitted,

25 Dated: _____

26 Law Office of [redacted]

27 _____
28 Attorneys for Defendant Mary Hinds

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3 **Declaration by Attorney [redacted]**

4 I, [redacted], declare:

5 1.The following is based on my own personal knowledge and if called to testify, I
6 could, and would, testify competently thereto.

7 2.I am incorporating herein the definitions set forth in the foregoing Notice of Motion
8 and Motion.

9 3.I am the attorney of record for Defendant Mary Hinds (HINDS) in the above
10 entitled action.

11 4.This action comprises the PLAINTIFFS’ fourth attempt to recover from HINDS
12 based on her lawfully evicting them.

13 5.The PLAINTIFFS’ first attempt was an administrative action they filed with
14 LAHD, case number [redacted]. LAHD determined that HINDS had lawfully evicted
15 them. **Exhibit H** attached hereto sets forth a true and correct copy of an email, sent
16 internally within LAHD, indicating that the said case was closed in favor of HINDS.

17 6.The PLAINTIFFS’ second attempt was another administrative action they filed
18 with LAHD, case number [redacted]. LAHD again determined that HINDS had lawfully
19 evicted them. **Exhibit I** attached hereto sets forth a true and correct copy of an email,
20 sent internally within LAHD, indicating that the said case was closed in favor of HINDS.

21 7.The PLAINTIFFS’ third attempt was a lawsuit filed in the Los Angeles Superior
22 Court, case number [redacted]. The court dismissed the action. **Exhibit J** attached
23 hereto sets forth a true and correct copy of the minute order issued on April 9, 2007
24 granting HINDS’s motion to quash service of the summons and dismiss the action.
25 **Exhibit K** attached hereto sets forth a true and correct copy of the minute order issued on
26 May 14, 2007 denying PLAINTIFFS’ motion for reconsideration thereof.

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3 8.The PLAINTIFFS' vexatious course of conduct has caused substantial emotional
4 distress to HINDS.

5 9.The INTERROGATORIES are targeted to obtain admissible evidence, and/or to
6 lead to the discovery of admissible evidence, that is relevant to HINDS'S defense against
7 this action.

8 10.In addition to the INTERROGATORIES, I also served 14 production demands on
9 SIMONS and 14 production demands on HAAS. No requests for admissions were
10 served.

11 11.On December 17, 2007, I separately served the INTERROGATORIES on
12 SIMONS and on HAAS via certified mail. True and correct copies of the
13 INTERROGATORIES as served are set forth in **Exhibits A, B, C and D** attached hereto.
14 The production demands were enclosed in the same envelope. True and correct copies of
15 the proofs of service thereof are attached hereto as **Exhibits E and F**.

16 12.I received a delivery receipt signature card back from the Postal Service that was
17 signed by HAAS on December 29, 2007, a true and correct copy of which is attached
18 hereto as **Exhibit L**, indicating receipt of the discovery. SIMONS either refused the
19 envelope mailed to her or failed to claim it from the Postal Service, and it was returned to
20 me—a true and correct copy of the still-sealed envelope is attached hereto as **Exhibit M**.

21 13.On January 31, 2008, I separately served the M/C LETTER on SIMONS and on
22 HAAS. A true and correct copy of the M/C LETTER as served is set forth in **Exhibit G**
23 attached hereto.

24 14.As of the date of signing hereof, I have received no response to either the
25 INTERROGATORIES or to the M/C LETTER or to any of the other discovery. Nor
26 have I received any notice of motion for a protective order. On March 25, 2008, my
27 office checked the Case Summary page on the Court web site
28 (<http://www.lasuperiorcourt.org/civil>) for case number [redacted], and, under

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3 “Documents Filed” there was no motion for a protective order. Nor have I received any
4 other communication from PLAINTIFFS or from any counsel representing
5 PLAINTIFFS.

6 15. As a result of PLAINTIFFS’S failure to respond to the INTERROGATORIES and
7 other discovery, HINDS has necessarily incurred the following reasonable costs. This
8 Motion is one of two concurrently filed discovery motions. The accounting below is
9 shared among both discovery motions, and is identically stated in my declaration
10 accompanying the other motion. My regular rate is \$210 per hour.

Motion filing fees (2 motions)	\$80
Attorney fees for motion preparation and appearance (7 hours)	\$1,470
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Total costs and attorney fees	<u>\$1,550</u>

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14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct.

16 Dated: _____

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Exhibit A
SIMONS FORM ROGGS

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Exhibit B
SIMONS SPECIAL ROGGS

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Exhibit C
HAAS FORM ROGGS

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Exhibit D
HAAS SPECIAL ROGGS

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Exhibit E
Proof of service of the Discovery on SIMONS

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Exhibit F
Proof of service of the Discovery on HAAS

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Exhibit G
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Exhibit H
Email Indicating Closure of LAHD Case Number [redacted]

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Exhibit I
Email Indicating Closure of LAHD Case Number [redacted]

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Exhibit J
Minute Order Issued on April 9, 2007

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Exhibit K
Minute Order Issued on May 14, 2007

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Exhibit L
Delivery Receipt Signature Card Back from the Postal Service

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Exhibit M
Copy of the Still-Sealed Envelope Mailed to SIMONS

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[attorney name redacted], Esq. (CSBN ////////////////)
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Attorneys for Defendant Mary Hinds

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

Ted Simons and
Phillip Haas,
Plaintiffs

v.

Mary Hinds,
Defendant

Case Number: [redacted]
Complaint Filed: [redacted]

**[PROPOSED] ORDER COMPELLING ANSWERS TO
INTERROGATORIES AND IMPOSING MONETARY
SANCTIONS**

Hearing Date _____
Hearing Time _____
Hearing Department _____

The motion by Defendant Mary Hinds (hereinafter “**HINDS**”), for an order compelling Plaintiffs Ted Simons (hereinafter “**SIMONS**”) and Phillip Haas (hereinafter “**HAAS**,” and collectively with SIMONS, “**PLAINTIFFS**”) to answer the following interrogatories:

Form Interrogatories to Ted Simons, Set One (hereinafter the “**SIMONS FORM ROGGS**”);

Special Interrogatories to Ted Simons, Set One (hereinafter the “**SIMONS SPECIAL ROGGS**”);

Form Interrogatories to Phillip Haas, Set One (hereinafter the “**HAAS FORM ROGGS**”); and

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3 Special Interrogatories to Jamie William, Set One (hereinafter the “**HAAS**
4 **SPECIAL ROGGS**”),

5 came on regularly for noticed hearing on _____ in Department ____ of this
6 Court. HINDS appeared by counsel [redacted]. SIMONS appeared *in pro per* appeared
7 by counsel _____ did not appear. HAAS appeared *in pro*
8 *per* appeared by counsel _____ did not appear.

9 On proof made to the satisfaction of the Court that the motion ought to be granted,

10 **IT IS ORDERED** that the motion is GRANTED. SIMONS is ordered to prepare and
11 serve on HINDS on or before _____ complete, verified answers without
12 objections to the SIMONS FORM ROGGS and the SIMONS SPECIAL ROGGS. HAAS is
13 ordered to prepare and serve on HINDS on or before _____ complete,
14 verified answers without objections to the HAAS FORM ROGGS and the HAAS SPECIAL
15 ROGGS.

16 **IT IS FURTHER ORDERED** that PLAINTIFFS shall pay monetary sanctions to
17 HINDS in the amount of \$ _____ on or before _____. SIMONS and HAAS are
18 each ordered to pay half of that amount.

19 IT IS SO ORDERED.

20 Dated: _____

21 _____
22 Judge of the Superior Court
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