

1 DOWNEY BRAND LLP
 2 WILLIAM R. WARNE (Bar No. 141280)
 3 RICHARD K. SUEYOSHI (Bar No. 186189)
 4 621 Capitol Mall, 18th Floor
 5 Sacramento, CA 95814-4731
 Telephone: (916) 444-1000
 Facsimile: (916) 444-2100
 bwarne@downeybrand.com
 rsueyoshi@downeybrand.com

6 Attorneys for Plaintiffs
 7 RONALD J. MALIK and VAN DER MEER, LLC

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SOLANO

11 RONALD J. MALIK and VAN DER
 12 MEER, LLC,

13 Plaintiffs,

14 v.

15 COUNTY BANK, a California
 16 corporation; WESTAMERICA BANK, a
 California corporation; and DOES 1-20,
 inclusive,

17 Defendants.

CASE NO. FCS034030

BY FAX

DECLARATION OF WILLIAM R.
 WARNE IN SUPPORT OF
 SUPPLEMENTAL REPLY IN SUPPORT
 OF PLAINTIFFS' REPLY RE ORDER TO
 SHOW CAUSE RE: FRELIMINARY
 INJUNCTION

Date: August 31, 2009
 Time: 1:30 p.m.
 Dept: 1
 Judge: Paul L. Beeman

BY FAX

20 I, WILLIAM R. WARNE, declare as follows:

21 1. I am a partner in the law firm of Downey Brand LLP, and the lead litigation
 22 counsel for Ron Malik and his company Van der Meer, LLC, relating to all issues involving his
 23 loans from County Bank, which were recently assumed by WestAmerica Bank.

24 2. I have reviewed Ms. Wineman's August 20, 2009, declaration in supplemental
 25 opposition to my clients' Motion for a Preliminary Injunction regarding WestAmerica's
 26 unfortunate efforts to institute foreclosure proceedings against Mr. Malik's properties.

27 3. Ms. Wineman's declaration is only partially true, and confuses our discussions
 28 regarding Darrell Souza with the status of my clients' efforts regarding County Bank's promise to

1 provide an appraisal on Mr. Malik's property. If called upon to testify, I would provide as
2 follows:

3 4. In late February of 2008, Mr. Pitts -- a former officer of County Bank, and present
4 consultant to Mr. Malik -- informed me that he had learned from Ms. Wineman that Mr. Souza
5 had been in contact with WestAmerica Bank and Ms. Wineman in an effort to purchase
6 Mr. Malik's loans at a discount.

7 5. Hearing this from Mr. Pitts alarmed me in light of the nature of Mr. Malik's
8 litigation against Mr. Souza. Specifically, Mr. Malik was suing Mr. Souza for civil extortion
9 because Mr. Souza used fraud and forgery to place deeds of trust on Mr. Malik's properties so
10 that he could then make a variety of bogus claims for payment from Mr. Malik at the same time
11 he revealed the existence of these deeds of trust. Mr. Souza was hoping that his fraudulent deeds
12 would cause Mr. Malik to pay him a ransom in exchange for removing them. Mr. Souza
13 miscalculated.

14 6. When Mr. Malik instead chose to fight Mr. Souza's fraudulent scheme in court, I
15 viewed the information from Mr. Pitts as evidence that Mr. Souza was instituting a second phase
16 of his effort to extort Mr. Malik. If he was able to gain control of Mr. Malik's loans with
17 WestAmerica, he would be able to name his price, or sell Mr. Malik's properties to the highest
18 bidder.

19 7. Thus, after hearing from Mr. Pitts that Mr. Souza was attempting to purchase
20 Mr. Malik's notes from WestAmerica, I immediately contacted Ms. Wineman and apprised her of
21 the nature of the litigation between Mr. Malik and Mr. Souza. After informing her of Mr. Malik's
22 case against Mr. Souza, and his refusal to be extorted by Mr. Souza's criminal conduct, I
23 indicated that any participation by her bank with Mr. Souza's scheme would be viewed as aiding
24 and abetting, and that I would have no choice but to bring her Bank into the same litigation.

25 8. Ms. Wineman is not correct when she states that I told her that the fraudulent
26 deeds of trust were the "real reason" that Mr. Malik was unable to obtain financing on his
27 property. My discussions with her were carefully focused on the consequences to WestAmerica
28 in the event that it aided Mr. Souza after being fully apprised of his criminal actions. Mr. Souza's

1 scheme was so blatant, the forged signatures so obvious, and his claims for payment so absurd,
2 that Mr. Malik was able to minimize the negative impact of Mr. Souza's criminal actions to
3 prospective lenders. For instance, he was able to share with these lenders certain documents
4 which clearly showed that Mr. Souza had cut and pasted Mr. Malik's actual signature from a
5 2007 document to a fabricated 2003 letter. Indeed, I shared the same information with
6 Ms. Wineman and her own notes therefore reflect that she also viewed the deeds as forgeries.
7 Souza was not an issue regarding refinancing. Money from a new loan would be set aside in
8 escrow or with the court until litigation was completed or settled. The new funding source would
9 get clear title. Thankfully, these deeds of trust were removed by defendant Souza and the case
10 resolved on August 11, the first day of trial.

11 9. In any event, while Mr. Malik was successful in minimizing the importance of
12 Mr Souza's deeds of trust, he lacked what he needed -- a bank directed, arms length appraisal, as
13 promised by County Bank. Any appraisal commissioned by him would not have the same
14 strength and effectiveness as the Bank's appraisal, which was precisely why County Bank's
15 promise of a bank directed appraisal was so critical to his refinancing efforts.

16 10. While Ms. Wineman can state in her declaration that the appraisal was for her
17 Bank, there is nothing in the Extension Agreement which so provides, and her numerous
18 communications with Mr. Malik and his consultants belie her present efforts to suggest that the
19 appraisal was never meant for Mr. Malik. Indeed, in addition to the Extension Agreement's own
20 recitals, the record demonstrates that Ms. Wineman interacted with Mr. Malik and his agents by
21 email and phone in a manner which confirms that she understood the importance of the appraisal
22 to Mr. Malik, as she promised time and time again that the Bank would provide the appraisal to
23 Mr. Malik within a certain amount of time, only to repeatedly fail to follow through on those
24 representations.

25 11. Finally, the fact that Mr. Malik was on the verge of obtaining a commitment letter
26 from one lender, as discussed in Ms. Wineman's declaration, does nothing to diminish the fact, as
27 revealed by the declarations of Irwin Schier and Michael Dunbar, that there were a number of
28 lenders who were unwilling to move forward with refinancing without the promised bank directed

1 appraisal. Indeed, Mr. Schier expressed confidence that he would have obtained financing had
2 the Bank followed through on delivering its promised appraisal.

3 I declare under penalty of perjury pursuant to the laws of the State of California that the
4 foregoing is true and correct and that this Declaration was executed on August 24, 2009, at
5 Sacramento, California.



WILLIAM R. WARNE