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6 Attorneys for Defendants
San Diego United Holdings Group, LLC, Ninus Malan
7 And Balboa Ave Cooperative

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

09/06/2017 at 02:58:00 PM

Clerk of the Superior Court
By E- Filing, Deputy Clerk

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO- CENTRAL DIVISION**

11
12 MONTGOMERY FIELD BUSINESS
CONDOMINIUMS ASSOCIATION, a
13 California Nonprofit Mutual Benefit
Corporation,

14 Plaintiff,

15 vs.

16 BALBOA AVE COOPERATIVE, a
California corporation; SAN DIEGO
17 UNITED HOLDINGS GROUPS, LLC, a
California limited liability company;
18 NINUS MALAN, an individual; RAZUKI
INVESTMENTS, LLC, a California
19 limited liability company; SALAM
RAZUKI, an individual; and DOES 1
20 through 25, inclusive;

21 Defendants.

CASE NO. 37-2017-00019384-CU-CO-CTL

Assigned to Judge: Honorable Ronald L. Styn

**SUPPLEMENTAL DECLARATION OF
NINUS MALAN IN SUPPORT OF
DEFENDANTS BALBOA AVE
COOPERATIVE, SAN DIEGO UNITED
HOLDINGS GROUP, LLC, AND NINUS
MALAN'S OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

[IMAGED FILE]

DATE: September 8, 2017

TIME: 11:00 a.m.

DEPT: C-62

22
23 I, Ninus Malan, declare:

24 1. I am over the age of 18 and am a party to this action. I have personal knowledge
25 of the facts stated in this declaration. If called as a witness, I would testify competently thereto. I
26 provide this supplemental declaration in support of defendants San Diego United Holdings
27 Group, LLC, Balboa Ave Cooperative, and Ninus Malan's opposition to plaintiff Montgomery
28

1 Field Business Condominiums Association's ("Association" or "Plaintiff") request for preliminary
2 injunction ("Plaintiff's Motion").

3 2. On September 1, 2017, Arthur Hopkins and I spoke over the phone about the
4 Association's insurance policy. Mr. Hopkins informed me that the Association has coverage
5 issues because there are open cases related to the permanent restraining order against Association
6 board member and president Daniel Burakowski for harassing one of Defendant's employees (last
7 week, Daniel Burakowski violated the restraining order and the police were called and informed
8 me that they would forward the violation along to the district attorney's office), there was a roof
9 claim in 2015, there is a claim related to this litigation, and there is a claim related to the
10 challenge to the 2015 Amendment. (A true and correct copy of the police report is attached as
11 Exhibit "1" and incorporated by reference.)

12 3. I have been working with Louie Avila of Strong Tie Insurance Services, Inc. to
13 investigate coverage for the Association. I am informed that Balboa Ave is insurable and that
14 Balboa Avenue Cooperative will not prevent the Association from obtaining insurance.

15 4. Yesterday, I received what is attached as Exhibit "2," which is a former board
16 members resignation from the Association's board because of Daniel Burakowski's behavior.

17 5. I believe the Daniel Burakowski has violated the Association's guidelines for many
18 years and he continues to violate them at will in order to prove he is right. I believe he will say
19 and do anything he can to prove he is right whether it is right or wrong.

20 I declare under penalty of perjury under California state law that the foregoing is true and
21 correct. Executed in San Diego, California, on September 6, 2017.

22
23 
24 Ninus Malan

Exhibit 1

SAN DIEGO REGIONAL CRIME/INCIDENT REPORT

INCIDENT NUMBER 1708004941
CASE NUMBER 17033617

CRIME REPORT

BEAT 313	RELATED RPT #S	DATE 08/31/2017	DAY OF WEEK Thursday	PAGE 1 of 4	TIME 12:52
CODE SECTION AND DESCRIPTION PC / 186(A)(4) / CONTEMPT OF COURT; DISOBEY COURT ORDER					
LOCATION OF INCIDENT (OR ADDRESS) 8863 BALBOA AV					
					CITY SAN DIEGO

VICTIM / WITNESS

V	RP	W TYPE 06	NAME (LAST, FIRST, MIDDLE SUFF / OR ORGANIZATION) Ayala-Martin, Anthony David					
RESIDENCE ADDRESS								
			CITY	STATE	ZIP			
RACE H	SEX M	DATE OF BIRTH	VICTIM INJURED	EXTENT OF TREATMENT	INTERPRETER REQUIRED	LANGUAGE	VICTIM RELATION TO SUSPECT ACQT	V/W ASSIST N
CONTACT								
CELL PHONE ()								
ID								
DL								
STATUS EMP	EMPLOYER (RANK IF MILITARY) Marijuana Dispensary Security		BUSINESS ADDRESS 8863 BALBOA AV #E		CITY SAN DIEGO	STATE CA	ZIP 92123	
ADDITIONAL INFORMATION								

M.O. INFORMATION

TOTAL # OF WITNESSES AT CRIME 0	PLACE OF ATTACK 4. Lot/Park/Yard	SURROUNDING AREA 2. Business
TYPE OF STRUCTURE NON-RESIDENTIAL		
0. N/A		
TARGET(S) 5. Person		
POINT OF ENTRY 0. N/A		
SECURITY USED 0. N/A		
TYPE LOCK ATTACKED 0. N/A		
SUSPECT ACTIONS 00. Other: harassed		
VICTIM INJURED	EXTENT OF TREATMENT	SIC No ADULT

SUSPECT(S)

ARRESTED N	SUSPECT NAME (LAST, FIRST MIDDLE SUFF) Burakowski, Daniel Francis				NICKNAME/AKA			
RACE W	SEX M	AGE 58	DOB	HEIGHT 6'00" -	WEIGHT 210 -	BUILD NDR -	HAIR COLOR GRY	EYE COLOR BRO
SUSPECT'S ADDRESS								
			CITY	STATE	ZIP			
ID								
INFORMATION / FURTHER SUSPECT DESCRIPTION (I.E. GLASSES, TATTOOS, TEETH, BIRTHMARKS, JEWELRY, SCARS, ETC.)								
SUSPECT'S CLOTHING unknown								
HAIR LENGTH/TYPE UNKNOWN 6. OTHER	HAIR STYLE 0. UNKNOWN	FACIAL HAIR 0. UNKNOWN	COMPLEXION 0. UNKNOWN	GENERAL APPEARANCE 0. UNKNOWN	DEMEANOR 0. UNKNOWN	SPEECH 0. UNKNOWN	VOICE 0. UNKNOWN	

I certify that the information requested will be used solely for those limited purposes stated and will not be used to harass, degrade or humiliate any person. The requesting agency or person hereby agrees to indemnify and hold harmless the San Diego Police Department and the City of San Diego for any liability arising out of the improper use of the information provided.

REPORTING OFFICER JENNIFER FOXWORTHY	I.D. # 6925	DIVISION E2	AGENCY SDPD	DATE OF REPORT 8/31/2017	TIME 15:40
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(Revised 08/2013 Electronic)

CONTINUED FROM
CRIME REPORT

SAN DIEGO REGIONAL CRIME/INCIDENT REPORT

INCIDENT NUMBER 17080049841
PAGE 2 of 4
CASE NUMBER 17033517

EVIDENCE

Body Camera No Body Camera Evidence Collected	
EVIDENCE OBTAINED	TAG NUMBERS None
See Evidence Collection Section for Details	
WITNESS CHECK	

OFFICER ASSAULT (OAK)

VEHICLE TYPE	NUMBER OFFICERS WITH PERSONAL INJURY	ACTIVITY WHEN ASSAULT OCCURRED
	NUMBER OFFICERS WITHOUT PERSONAL INJURY	

ARSON

ARSON TYPE	DESCRIPTION	CONTENT LOSS \$	STRUCT LOSS \$	ABANDONED
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EVIDENCE COLLECTION

Officer's Investigation I conducted the following attempts to locate, collect, and preserve evidence from the crime scene at			
8863 BALBOA AV	SAN DIEGO	CA	92123
LATENT PRINTS: I made attempts to lift latent prints: N If NO, explain:			
OTHER PHYSICAL EVIDENCE: I made attempts to locate other physical evidence at the scene: N If NO, explain:			

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REPORTING OFFICER JENNIFER FOXWORTHY	I.D. # 6925	DIVISION E2	AGENCY SDPD	DATE OF REPORT 8/31/2017	TIME 15:40
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(Revised 08/2013 Electronic)

CONTINUED FROM
CRIME REPORT

**SAN DIEGO REGIONAL
CRIME/INCIDENT REPORT**

INCIDENT NUMBER 17080049941
PAGE 3 of 4
CASE NUMBER 17033517

I certify that the information requested will be used solely for those limited purposes stated and will not be used to harass, degrade or humiliate any person. The requesting agency or person hereby agrees to indemnify and hold harmless the San Diego Police Department and the City of San Diego for any liability arising out of the improper use of the information provided.

SYNOPSIS:

On August 30th, 2017, at approximately 1252 hours, Daniel Burakowski violated a served civil harassment order in which he was the restrained party and Anthony Avila was the protected party. Both parties were in the vicinity of their place of employment at the time of the incident.

No one is in custody at the time of this investigation.

ORIGIN:

On August 30th, 2017, at approximately 1542 hours, while in full uniform and in a marked patrol vehicle, I responded to a radio call regarding a disturbance at 8863 Balboa Avenue. The reporting party was Anthony Avila. Initial comments on the call indicated Anthony Avila's neighbor violated a restraining order.

INVESTIGATION:

Upon my arrival, I contacted Anthony Avila, who provided his contact information and told me he worked at the marijuana dispensary located on the premises. Avila provided his below-listed statement, and showed me a copy of court documents for a restraining order listing him as the protected party and a tenant at a neighboring business, Daniel Burakowski, as the restrained party. The case number was 37-2017-00020519-CU-HR-CTL, issued 07/21/2017, and expiring 07/20/2020. A later records check confirmed the restraining order was served and lists terms including no contact and a stay away yardage reduction to 20 yards away from the protected party when at their place of employment.

Avila confirmed the suspect and restrained party left the area prior to our arrival on scene.

After obtaining Avila's statement, I provided him a Marsy's Card and case number.

Statement of Anthony Avila (Victim / Reporting Party):

Anthony Avila essentially told me the following:

I was in unit #B, where we store some of our items for the dispensary. I let a co-worker, Sarah, inside the unit. From about one hundred feet away, I saw Burakowski walking out of his unit and say to us, "Why don't you guys just get the fuck out of here." He had his dog with him. I told him I was going to call the police. He said, "Why don't you stop being a pussy and do something right now?" I shut the door, when back inside the unit, and called 9-1-1.

REPORTING OFFICER JENNIFER FOXWORTHY	I.D. # 8925	DIVISION E2	AGENCY SDPD	DATE OF REPORT 8/31/2017	TIME 15:40
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(Revised 09/2013 Electronic)

CONTINUED FROM
CRIME REPORT

SAN DIEGO REGIONAL CRIME/INCIDENT REPORT

PAGE	INCIDENT NUMBER
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CASE NUMBER	
17033517	

used solely for those limited purposes stated and will not be used to harass, degrade or humiliate any person. The requesting agency or person hereby agrees to indemnify and hold harmless the San Diego Police Department and the City of San Diego for any liability resulting from the improper use of the information provided.

About thirty minutes later, it started getting really hot inside the unit, so I opened the door. Burakowski was about thirty feet away and had his dog off the leash. The dog is some kind of Australian Shepherd, I think. Burakowski said to his dog, "Get 'em, boy!" Sarah pushed me back and said, "He just tried to sic his dog on us." I called the police again. He left about five minutes later in his truck.

I think this harassment is racially motivated, because during his first negative encounter with me, he told me to, "Go back where you came from." I think he thought I was Middle Eastern. Another time prior to my obtaining the restraining order, he threatened me while referencing the street I live on, so I believe he has followed me home, because that is the only way he could have figured out where I live. That is why I think the restraining order was granted, because the judge said it appeared he was personally singling me out.

EVIDENCE:

None.

INJURIES:

None reported or observed.

PROPERTY DAMAGE:

None.

FOLLOW-UP:

None.

RELATED REPORTS:

See Incident # 17060051338, Case #17-025264 for a previous case involving the same parties.

Approved By: A/Sgt. M. Wallace #6404

REPORTING OFFICER JENNIFER FOXWORTHY	I.D. # 6925	DIVISION E2	AGENCY SDPD	DATE OF REPORT 8/31/2017	TIME 18:40
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(Revised 09/2013 Electronic)

Exhibit 2

W.S. HARRIS, CPA
Tax Counseling & Planning Inc.
8865 BALBOA AVE, STE F
SAN DIEGO CA 92123
PHONE 858.277.3282///FAX 858.268.2875
E Mail wshcpa@pacbell.net

Fax Cover Sheet

Date : September 26, 2014
Pages : 1
To : Board of Directors
Company : Montgomery Field Bus. Condos
Fax Number :
From : Spencer Harris
Subject : Resignation

Effective immediately, this is my resignation for the Board of Directors and as an officer of Montgomery Field Business Condominiums Association.

I can no longer deal with "Dictator" Dan and his personal decisions, that affect both the association, other owners, as well as lessees and customers, without consulting with other board members and other affected parties at the condo location.