

1 Gina M. Austin (SBN 246833)
E-mail: *gaustin@austinlegalgroup.com*
2 Tamara M. Leetham (SBN 234419)
E-mail: *tamara@austinlegalgroup.com*
3 AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
4 San Diego, CA 92110
Phone: (619) 924-9600
5 Facsimile: (619) 881-0045

6 Attorneys for Defendants
Ninus Malan

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
08/17/2018 at 03:29:00 PM
Clerk of the Superior Court
By Ines Quirarte, Deputy Clerk

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

11 SALAM RAZUKI, an individual,

12 Plaintiff,

13 vs.

14 NINUS MALAN, an individual; CHRIS
15 HAKIM, an individual; MONARCH
MANAGEMENT CONSULTING, INC., a
16 California corporation; SAN DIEGO
UNITED HOLDINGS GROUP, LLC, a
17 California limited liability company; FLIP
MANAGEMENT, LLC, a California
18 limited liability company; ROSELLE
PROPERTIES, LLC, a California limited
19 liability company; BALBOA AVE
COOPERATIVE, a California nonprofit
20 mutual benefit corporation; CALIFORNIA
CANNABIS GROUP, a California
21 nonprofit mutual benefit corporation;
DEVILISH DELIGHTS, INC. a California
22 nonprofit mutual benefit corporation; and
DOES 1-100, inclusive;

23 Defendants.

CASE NO. 37-2018-00034229-CU-BC-CTL

**SUPPLEMENTAL DECLARATION OF
GINA M. AUSTIN**

[Imaged File]

1 I, Gina M. Austin, declare:

2 1. I am attorney admitted to practice before this Court and all California courts and,
3 along with Tamara M. Leetham, represent defendant Ninus Malan (“Malan”) in this matter. I
4 make this supplemental declaration in support of Malan’s ex parte application to vacate order
5 appointing receiver. Unless otherwise stated, all facts testified to are within my personal
6 knowledge and, if called as a witness, I would and could competently testify to them.

7 2. I am an expert in cannabis licensing and entitlement at the state and local levels
8 and regularly speak on the topic across the nation.

9 3. I have represented Ninus Malan, San Diego United Holdings Group, Balboa Ave
10 Cooperative, and California Cannabis Group in multiple matters in San Diego County Superior
11 Court.

12 4. My firm also performs additional legal services for these defendants to include
13 corporate transactions and structuring, land use entitlements and regulations related to cannabis,
14 and state compliance related to cannabis.

15 5. The purpose of this declaration is to address the inaccuracies in the various
16 pleadings and declarations provided by Plaintiff-In-Intervention SoCal. All of the facts
17 previously testified to in my declaration of June 30, 2018 remain true and accurate.

18 6. On or about August 2, 2017, Judge Styn granted a temporary restraining order
19 prohibiting any interior or exterior alterations or improvements to the property located at 8861
20 Balboa Ave., Unit B, and 8863 Balboa Ave., Unit E, San Diego, CA 92127 (the “Property”) in
21 Superior Court case number 37-2017-00019384-CU-CO-CTL (“HOA Litigation”). A true and
22 correct copy of the order is attached hereto as Exhibit A. This order shut down all operations of
23 the dispensary because the additional improvements were required by the City of San Diego in
24 order to operate the dispensary.

25 7. On or about September 8, 2017, Judge Styn ordered a preliminary injunction
26 enjoining the operation of a medical marijuana consumer cooperative on the Property. A true and
27 correct copy of the minute order is attached hereto as Exhibit B.

28 8. On or about November 8, 2018, Judge Styn modified the preliminary injunction

1 allowing the dispensary to re-open on the Property so long as there were no armed guards on the
2 Property. A true and correct copy of the order is attached hereto as Exhibit C.

3 9. On or about February 12, 2018, the parties entered into a Stipulation and
4 Settlement for dismissal of the HOA Litigation. The Stipulation and Settlement provided for
5 retention of jurisdiction by the Superior Court pursuant to Code of Civil Procedure section 664.6.
6 A true and correct copy of the Stipulation and Settlement is attached hereto as Exhibit D.

7 10. As a result of the HOA Litigation the Balboa dispensary was not operational from
8 approximately August 2, 2017 until approximately December 11, 2017 which is 103 days. When
9 this number of days is used to calculate the daily average there is less than a \$100 per day
10 difference between the sales during SoCal's operation of the dispensary and the prior operation of
11 the dispensary.

12 11. The City of San Diego notice of violation against the Balboa dispensary is related
13 to more than just sign violations. See exhibit C to the Declaration of Gina M. Austin dated June
14 30, 2018. It is has never been the practice of the City to close a dispensary for sign violations. It
15 is the violations related to lack of proper security guards that pose the risk of shutting down the
16 dispensary.

17 12. The City of San Diego through its contractor MGO is in the middle of a tax and
18 compliance audit of the Balboa dispensary. I have been working with MGO to determine what
19 information is required to be provided and have agreed on what is to be produced. However, all
20 of the information was in the exclusive control of SoCal or Mr. Essary.

21 13. I am informed and believe that during the time of Mr. Essary's control of the
22 Balboa dispensary he did not comply with all of the requirements of the Readopted Emergency
23 Regulations of the Bureau of Cannabis Control because he did not apply for a new license.
24 Section 5024 (c) of Title 16 Division 42 of the California Code of Regulations provides in
25 relevant part that:

26 The Bureau may give the successor in interest written approval
27 to continue operations on the licensed business premises for a
28 period of time specified by the Bureau:

- (1) If the successor in interest or another person has applied for a license from the Bureau for the licensed premises and that application is under review;
- (2) If the successor in interest needs additional time to destroy or sell cannabis goods; or
- (3) At the discretion of the Bureau.
- (d) The owner's successor in interest is held subject to all terms and conditions under which a state cannabis license is held pursuant to the Act.

14. I am informed and believe that Mr. Essary did not follow proper procedures with regard to the requirements by the City of San Diego because he did not apply for a Marijuana Operating Permit within the City of San Diego.

15. When I spoke to Mr. Essary on the phone on July 17, 2018, I informed him that I could not allow him to enter the Balboa property until defendants had been served with the order. I also told him that I needed copies of the bonds because the Order was not effective until the bonds were posted. To date, neither Mr. Essary nor his attorney have provided copies of the bonds despite numerous requests.

16. A Conditional Use Permit for a marijuana production facility located on the Mira Este property is set for public hearing in September 2018. Ninus Malan and the various entities that he is a member of will be irreparably harmed if this hearing is delayed or they are not adequately represented. It is my opinion, based on Mr. Essary's prior actions, he is unable to adequately represent these interests at the public hearing.

17. An application for a Conditional Use Permit by San Diego United Holdings, LLC for a marijuana production facility located on the same parcel as the Balboa dispensary was approved by the Hearing Officer on August 15, 2018. It is highly likely that the permit will be appealed to the Planning Commission. It is my opinion, based on Mr. Essary's prior actions, that he is unable to adequately represent the interests of the applicant in an appeal hearing.

18. California Cannabis Group currently holds temporary state licenses for cannabis distribution and manufacturing. The temporary licenses are renewed in three month increments so long as the applicant is making adequate progress in responding to the State's comments and questions. I am informed and believe that during the time of Mr. Essary's control of California

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Cannabis Group, no responses were provided to the state agencies. It is my opinion, that Mr. Essary is unable to adequately represent the interests of California Cannabis Group.

I declare under penalty of perjury under California state law that the foregoing is true and correct. Executed in San Diego, California, on August 16, 2018.

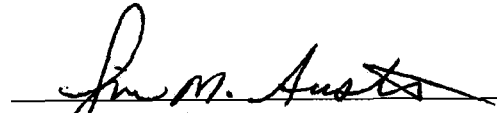

Gina M. Austin

EXHIBIT A

1 Rian W. Jones, Bar No. 118830
2 Mandy D. Hexom, Bar No. 216390
3 EPSTEN GRINNELL & HOWELL APC
4 10200 Willow Creek Road, Suite 100
5 San Diego, California 92131
6 (858) 527-0111/ Fax (858) 527-1531
7 rjones@epsten.com
8 mhexom@epsten.com

9 Attorneys for Plaintiff,
10 MONTGOMERY FIELD BUSINESS
11 CONDOMINIUM OWNERS ASSOCIATION

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN DIEGO, CENTRAL DIVISION

14 MONTGOMERY FIELD BUSINESS
15 CONDOMINIUMS ASSOCIATION, a
16 California Nonprofit Mutual Benefit
17 Corporation,

18 Plaintiff,

19 v.

20 BALBOA AVE COOPERATIVE, a
21 California corporation; SAN DIEGO
22 UNITED HOLDINGS GROUP, LLC, a
23 California limited liability company; NINUS
24 MALAN, an individual; RAZUKI
25 INVESTMENTS, LLC, a California limited
26 liability company; SALAM RAZUKI, an
27 individual; and DOES 1 through 25,
28 inclusive,

Defendants.

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

Case Assignment: Honorable Ronald L. Styn

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S TEMPORARY
RESTRAINING ORDER**

Date: August 2, 2017

Time: 9:30 a.m.

Dept.: C-62

Judge: Hon. Ronald L. Styn

Trial Date: Not Scheduled.

Complaint Filed: May 26, 2017

[IMAGED FILE]

23 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEY'S OF RECORD:

24 On August 2, 2017, Plaintiff, MONTGOMERY FIELD BUSINESS
25 CONDOMINIUMS ASSOCIATION'S ("Association") Ex Parte Application for Temporary
26 Restraining Order ("Application") came on for hearing before the above-entitled Court with
27 the Honorable Ronald L. Styn presiding in Department C62, on the Court's 9:30 a.m. calendar.
28 Mandy D. Hexom and Rian W. Jones of Epsten Grinnell & Howell, APC appeared on behalf

1 of Plaintiff Association. Other appearances are as follows: Douglas Jaffee, attorney for
2 Defendants RAZUKI INVESTMENTS, LLC and SALAM RAZUKI;

3 ~~attorney for Defendants, BALBOA AVE COOPERATIVE, SAN DIEGO~~
4 ~~UNITED HOLDINGS GROUP, LLC, and NINUS MILAN.~~

5 Having read the Application papers filed by Plaintiff or any other party, including any
6 declarations, and having heard argument of counsel, and satisfactory evidence being presented
7 to the Court, the Court finds that Plaintiff is entitled to a temporary restraining order as
8 follows:

9 **TEMPORARY RESTRAINING ORDER**

10 IT IS ORDERED THAT Plaintiff's Application is granted. Defendants, BALBOA
11 AVE COOPERATIVE and UNITED HOLDINGS GROUP, LLP, NINUS MILAN, ~~RAZUKI~~
12 ~~INVESTMENTS, LLC, SALAM RAZUKI,~~ and their agents, servants, employees, partners,
13 associates, officers, representatives, tenants, occupants, invitees, and guests are prohibited and
14 enjoined from the following: making any further interior and exterior alterations,
15 improvements or modifications to the property located at 8861 Balboa Avenue, Unit B, San
16 Diego, California 92127 without prior written Board approval from the Board of Directors of
17 Plaintiff, MONTGOMERY FIELD BUSINESS CONDOMINIUMS ASSOCIATION.

18 IT IS FURTHER ORDERED THAT the Court will retain jurisdiction for the purpose
19 of enabling any of the parties to this order to apply to this Court at any time for such order or
20 directions that may be necessary or appropriate for the construction, operation or modification
21 of the Order, or for the enforcement or compliance with this Order.

22 The Court reserves jurisdiction to modify or dissolve the temporary restraining order
23 prior to a hearing on a preliminary injunction as may be required by the interests of justice.

24 */// The Plaintiff must file a bond for the*
25 */// temporary restraining order in the amount*
26 */// of \$10,000 which must be filed by ^{noon on} 8/3/2017.*
27 */// Notwithstanding the bond requirement, the*
28 */// temporary restraining order is effective immediately*

OSC

HEARING ON PRELIMINARY INJUNCTION

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This shall be the order of this Court pending a hearing on the ^{motion for} ~~preliminary injunction~~ ^{Order to Show Cause} ~~motion~~, which shall be heard on 8/11, 2017 at 8:30 a.m./p.m. in Department C62

of this Court. Plaintiff is to provide notice of the hearing to Defendants. ~~Defendants to~~

~~file papers by 8/8/2017 with the Court *~~

IT IS SO ORDERED:

DATED: Aug 2, 2017

[Signature]
JUDGE OF THE SUPERIOR COURT

AUG 02 2017

* Plaintiffs to file and serve supplemental brief by August 4, 2017, with a courtesy copy delivered to Dpt. 62.

Defendants to file opposition by August 8, 2017, with a courtesy copy delivered to Dpt. 62.

Any Reply to be filed by 10:30 a.m. on Aug 10, 2017 with a courtesy copy delivered to Dpt. 62.

All parties shall serve all pleadings in this matter by email.

EXHIBIT B

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 09/08/2017

TIME: 02:43:00 PM

DEPT: C-62

JUDICIAL OFFICER PRESIDING: Ronald L. Styn

CLERK: Kim Mulligan

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: 37-2017-00019384-CU-CO-CTL CASE INIT.DATE: 05/26/2017

CASE TITLE: **Montgomery Field Business Condominiums Association vs. Balboa Ave Cooperative [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Contract - Other

EVENT TYPE: Motion Hearing (Civil)

APPEARANCES

The Court, having taken the above-entitled matter under submission on 09/08/17 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

After taking this matter under submission the court rules as follows.

Plaintiff Montgomery Field Business Condominium Owners Association's motion for preliminary injunction is granted.

After review of the papers and supplemental papers, and consideration of the arguments raised by the parties, and after taking testimony on September 1, 2017 and September 8, 2017, the court finds that Defendants San Diego United Holdings Group, LLC, Nunus Malan and Balboa Ave Cooperative caused the cancellation of Plaintiff's insurance in violation of the Declaration of Covenants, Conditions and Restrictions for Montgomery Field Business Condominiums Association. Based on the evidence before the court, there is no obvious replacement insurance available to Plaintiff Association. Considering the evidence now before the court, the court grants Plaintiff's motion for preliminary injunction. The court enjoins Defendants San Diego United Holdings Group, LLC, Nunus Malan and Balboa Ave Cooperative from operation of a Medical Marijuana Consumer Cooperative on property located within the Montgomery Field Business Condominium Association as described in Conditional Use Permit No. 1296130. This injunction shall be effective upon Plaintiff posting a bond in the amount of \$50,000.00.

IT IS SO ORDERED.



Judge Ronald L. Styn

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO


Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: Montgomery Field Business Condominiums Association vs. Balboa Ave Cooperative [IMAGED]

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2017-00019384-CU-CO-CTL

I certify that I am not a party to this cause. I certify that a true copy of the attached minute order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 09/08/2017.

Clerk of the Court, by: , Deputy

GINA M AUSTIN
AUSTIN LEGAL GROUP APC
3990 OLD TOWN AVENUE # A-112
SAN DIEGO, CA 92110

MANDY HEXOM
10200 WILLOW CREEK ROAD # 100
SAN DIEGO, CA 92131

Additional names and address attached.

EXHIBIT C

1 Rian W. Jones, Bar No. 118830
Mandy D. Hexom, Bar No. 216390
2 EPSTEN GRINNELL & HOWELL APC
10200 Willow Creek Road, Suite 100
3 San Diego, California 92131
(858) 527-0111/ Fax (858) 527-1531
4 rjones@epsten.com
mhexom@epsten.com

5 Attorneys for Plaintiff,
6 MONTGOMERY FIELD BUSINESS
CONDOMINIUM OWNERS ASSOCIATION

FILED
Clerk of the Superior Court

NOV 08 2017

By: K. Mulligan, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN DIEGO, CENTRAL DIVISION

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

13 Plaintiff,

14 v.

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

20 Defendants.

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

Case Assignment: Hon. Ronald L. Styn

~~[PROPOSED]~~ ORDER RE
MODIFICATION OF PRELIMINARY
INJUNCTION

Date: November 3, 2017

Time: 2:00 p.m.

Dept.: C-62

Judge: Hon. Ronald L. Styn

Trial Date: Not Scheduled.

Complaint Filed: May 26, 2017

[IMAGED FILE]

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22 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEY'S OF RECORD:

23 On October 10, 2017, October 12, 2017, October 27, 2017, and on November 3, 2017,
24 Plaintiff, MONTGOMERY FIELD BUSINESS CONDOMINIUMS ASSOCIATION'S
25 ("Association") Ex Parte Application for Clarification or Modification of Preliminary
26 Injunction or, Alternatively, for a Temporary Restraining Order ("Application") came on for
27 hearings before the above-entitled court with the Honorable Ronald L. Styn presiding in
28 Department C-62. Mandy D. Hexom and Rian W. Jones of Epsten Grinnell & Howell, APC

- 1 -
[PROPOSED] ORDER

17 NOV 05 AM 10:41

1 appeared on behalf of Plaintiff Association. Other appearances are as follows: Douglas Jaffe,
2 attorney for Defendants RAZUKI INVESTMENTS, LLC and SALAM RAZUKI; Gina Austin
3 and Tamara Leetham of Austin Legal Group, attorneys for Defendants BALBOA AVE
4 COOPERATIVE, SAN DIEGO UNITED HOLDINGS GROUP, LLC and NINUS MALAN.

5 Having read the ex parte Application papers filed by Plaintiff, including any
6 declarations, and supplemental pleadings and supplemental declarations, and having reviewed
7 opposition papers filed by Defendants, having heard argument of counsel and testimony from
8 witnesses at the multiple hearings for this matter, the court modifies the preliminary injunction
9 as follows:

10 **MODIFIED PRELIMINARY INJUNCTION**

11 The court enjoins Defendants San Diego United Holdings Group, LLC, Ninus Malan
12 and Balboa Ave Cooperative from having any armed guards or armed security that have any
13 weapon on property located within the Montgomery Field Business Condominiums
14 Association. This injunction shall be effective immediately upon execution of this order by the
15 court and upon delivery of a signed declaration from Ninus Malan stating that no armed guards
16 with any weapon shall be present on property located within the Association.

17 **IT IS SO ORDERED:**

18 DATED: NOV 08 2017

19 **RONALD L. STYN**
20 JUDGE OF THE SUPERIOR COURT
21 **RONALD L. STYN**

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17 NOV 6 AM 10:41

SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SAN DIEGO, CENTRAL DIVISION		FOR COURT USE ONLY
TITLE OF CASE (ABBREVIATED): Montgomery Field Business Condominiums Assoc. v. Balboa Ave Cooperative, et al.		FILED Clerk of the Superior Court NOV 08 2017 By: K. Mulligan, Deputy
ATTORNEY(S) NAME AND ADDRESS: Rian W. Jones, Esq. (SBN: 118830) Mandy D. Hexom, Esq. (SBN 216390) Epsten Grinnell & Howell, APC 10200 Willow Creek Rd., Suite 100 San Diego, California 92131	TELEPHONE (858) 527-0111 FACSIMILE (858) 527-1531	
ATTORNEYS FOR: Montgomery Field Business Condominium Assoc.	HEARING: DATE-TIME-DEPT November 3, 2017; 11am; Dept. 62	CASE NUMBER 37-2017-00019384-CU-CO-CTL

DECLARATION OF SERVICE

I, Mandy D. Hexom., declare: that I am, and was at the time of service of the papers herein referred to, over the age of 18 years, and not a party to the action; and I am employed in the County of San Diego, California, within which county the subject service occurred. My business address is 10200 Willow Creek Rd., Suite 100, San Diego, California 92131. On November 6, 2017, I served the following document(s):

PROPOSED ORDER RE MODIFICATION OF PRELIMINARY INJUNCTION

of which the original document(s), or a true and correct copy, is attached, by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

(BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on CCP §1010.6 authorizing service by email or electronic transmission, I caused the documents to be sent to the person at the e-mail address listed in the above Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Gina M. Austin, Esq./Tamara M. Leetham, Esq. Austin Legal Group, APC 3990 Old Town Avenue, Ste., A-112 San Diego, CA 92110 (619) 924-9600/ Fax: (619) 881-0045 gaustin@austinlegalgroup.com tamara@austinlegalgroup.com	Attorneys for Balboa Ave Cooperative; San Diego Holdings Group, LLC and Ninus Malan
Douglas Jaffe Law Offices of Douglas Jaffe 501 West Broadway, Suite 800 San Diego, California 92101 (619) 400-4945/ Fax: (619) 400-4947 douglasjaffe@aol.com	Attorneys for Razuki Investments, LLC, Salam Razuki

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

Executed on November 6, 2017, at San Diego, California.



Mandy D. Hexom

VIA FAX

VIA FAX

SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SAN DIEGO, CENTRAL DIVISION		FOR COURT USE ONLY
TITLE OF CASE (ABBREVIATED): Montgomery Field Business Condominiums Assoc. v. Balboa Ave Cooperative, et al.		
ATTORNEY(S) NAME AND ADDRESS: Rian W. Jones, Esq. (SBN: 118830) Mandy D. Hexom, Esq. (SBN 216390) Epsten Grinnell & Howell, APC 10200 Willow Creek Rd., Suite 100 San Diego, California 92131	TELEPHONE (858) 527-0111 FACSIMILE (858) 527-1531	
ATTORNEYS FOR: Montgomery Field Business Condominium Assoc.	HEARING: DATE-TIME-DEPT November 3, 2017; 11am; Dept. 62	CASE NUMBER 37-2017-00019384-CU-CO-CTL

DECLARATION OF SERVICE

I, Shelly J. Gray., declare: that I am, and was at the time of service of the papers herein referred to, over the age of 18 years, and not a party to the action; and I am employed in the County of San Diego, California, within which county the subject service occurred. My business address is 10200 Willow Creek Rd., Suite 100, San Diego, California 92131. On November 9, 2017, I served the following document(s):

ORDER RE MODIFICATION OF PRELIMINARY INJUNCTION

of which the original document(s), or a true and correct copy, is attached, by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

- (BY E-MAIL OR ELECTRONIC TRANSMISSION)** Based on CCP §1010.6 authorizing service by email or electronic transmission, I caused the documents to be sent to the person at the e-mail address listed in the above Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- (BY MAIL)** I caused a true copy of each document, placed in a sealed envelope with postage fully paid, to be placed in the United States mail at San Diego, California. I am "readily familiar" with this firm's business practice for collection and processing of mail, that in the ordinary course of business said document(s) would be deposited with the U.S. Postal Service on that same day. I understand that the service shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained on this affidavit.

Gina M. Austin, Esq. / Tamara M. Leetham, Esq. Austin Legal Group, APC 3990 Old Town Avenue, Ste., A-112 San Diego, CA 92110 (619) 924-9600/ Fax: (619) 881-0045 gaustin@austinlegalgroup.com tamara@austinlegalgroup.com	Attorneys for Balboa Ave Cooperative; San Diego Holdings Group, LLC and Ninus Malan
Douglas Jaffe Law Offices of Douglas Jaffe 501 West Broadway, Suite 800 San Diego, California 92101 (619) 400-4945/ Fax: (619) 400-4947 douglasjaffe@aol.com	Attorneys for Razuki Investments, LLC, Salam Razuki

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

Executed on November 9, 2017, at San Diego, California.


Shelly J. Gray

EXHIBIT D

1 Rian W. Jones, Bar No. 118830
Mandy D. Hexom, Bar No. 216390
2 EPSTEN GRINNELL & HOWELL APC
10200 Willow Creek Road, Suite 100
3 San Diego, California 92131
(858) 527-0111/ Fax (858) 527-1531
4 rjones@epsten.com
mhexom@epsten.com
5

6 Attorneys for Plaintiff,
MONTGOMERY FIELD BUSINESS
7 CONDOMINIUMS ASSOCIATION

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO, CENTRAL DIVISION

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

13 Plaintiff,

14 v.

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

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

**STIPULATION FOR COURT TO RETAIN
JURISDICTION TO ENFORCE
SETTLEMENT UPON DEFAULT
PURSUANT TO CODE OF CIVIL
PROCEDURE SECTION 664.6 AND
ENTRY OF JUDGMENT UPON
DEFAULT; [PROPOSED] ORDER
THEREON**

Case Assignment: Honorable Ronald L. Styn
Complaint Filed: May 26, 2017
Trial Date: March 9, 2018

[IMAGED FILE]

22 IT IS HEREBY STIPULATED by and between Plaintiff, MONTGOMERY FIELD
23 BUSINESS CONDOMINIUMS ASSOCIATION, a California Non-Profit Corporation
24 ("Plaintiff" or "Association") and Defendants, BALBOA AVE COOPERATIVE, SAN
25 DIEGO UNITED HOLDINGS GROUP, LLC, NINUS MALAN, RAZUKI INVESTMENTS,
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1 LLC and SALAM RAZUKI (collectively, the “Defendants”) as follows:¹

2 1. Recitals. On or about May 26, 2017, the Association commenced this action
3 against the Defendants for causes of action related to the enforcement of the Association’s
4 Declaration of Covenants, Conditions and Restriction for Montgomery Field Business
5 Condominiums recorded on July 31, 1981 as Documents No. 1981-242889 in the Official
6 Records of the San Diego County Recorder’s Office (“CC&Rs”) and the Association’s 2015
7 Amendment to Declaration of Covenants, Conditions and Restrictions for Montgomery Field
8 Business Condominiums Association recorded on March 2, 2015 as Document No. 2015-
9 0093872 in the Official Records of the San Diego County Recorder’s Office (“2015
10 Amendment”). The complaint in this action also demanded attorney’s fees and costs incurred
11 by the Association to enforce the CC&Rs and 2015 Amendment.

12 2. Settlement Agreement. The Parties to this action and to this Stipulation have
13 entered into a Settlement Agreement (“Settlement Agreement”) providing, in part, at Section
14 2.2.1, that upon default or breach of the Settlement Agreement, the Association may have the
15 dismissal in this action set aside and Judgment (in an agreed-form attached herewith as Exhibit
16 A unless as otherwise modified by the court) filed and entered on its behalf as hereafter
17 provided by a noticed motion pursuant to Code of Civil Procedure section 1005.

18 3. Payment of Attorney’s Fees and Costs. Pursuant to Section 2.1 of the
19 Settlement Agreement, Defendant, MALAN agrees to pay and agree to be liable for the
20 Association’s attorney’s fees and costs incurred in this action in the total amount set forth in
21 Section 2.1 of the Settlement Agreement. The Parties agree that if the Association enforces
22 Section 2.1 of the Settlement Agreement, such payment is not to be considered a penalty.

23 4. Retention of Jurisdiction. The Parties agree that, pursuant to Section 664.6 of
24 the California Code of Civil Procedure, the San Diego Superior Court shall retain jurisdiction
25 over this case, and the performance of the obligations to be undertaken pursuant to the terms of
26 this Stipulation and the Settlement Agreement for as long as the court agrees to retain

27 ¹ The Association, Balboa Ave Cooperative, San Diego United Holdings Group, LLC, Ninus
28 Malan, Razuki Investments, LLC and Salam Razuki may be referred to as a “Party”
individually or “Parties” collectively in this Stipulation.

1 jurisdiction, and the Parties agree to submit to said jurisdiction. In the event any obligation
2 imposed by the Stipulation or the Settlement Agreement is not fulfilled as prescribed herein,
3 the court may set aside the dismissal entered in this action and, upon reasonable notice and
4 after hearing set forth herein, enforce the terms of this Stipulation and the Settlement
5 Agreement pursuant to Code of Civil Procedure section 664.6, and enter judgment against
6 either Party for violations of any of the terms set forth in this Stipulation and/or the Settlement
7 Agreement. This Stipulation and Settlement Agreement memorializes the settlement terms
8 entered into by the Parties, and is signed by all Parties to this action.

9 5. Default Terms. It is hereby agreed by the Parties that Defendants will be in
10 default under the terms of the Settlement Agreement should they fail to comply with any of the
11 terms set forth in Section 2 of the Settlement Agreement. It is further agreed by the Parties that
12 any Party will be in default under the terms of the Settlement Agreement should they fail to
13 comply with any of the Settlement Agreement's terms that he/she or it is obligated to perform.

14 6. Entry of Judgment Upon Default. Should any Party allege a breach or default of
15 any of the terms of the Settlement Agreement, the non-breaching Party will give the alleged
16 breaching Party written notice, via first class mail, which will be sent pursuant to the Required
17 Notices provision of the Settlement Agreement at Section 3.1. If the deficiencies, breach or
18 default of the Settlement Agreement is not corrected within ten (10) days from the date of said
19 written notice, then the non-breaching Party may apply or move the court on with at least 16
20 court days prior notice to the other Party, for enforcement of the Settlement Agreement and
21 other relief as the court deems just and proper.

22 7. If the breach or default is adjudicated against MALAN as to Section 2.1 of the
23 Settlement Agreement, Judgment will be entered against MALAN as set forth and attached as
24 Exhibit A unless otherwise modified by the court as it deems just and necessary.

25 8. In addition, upon a finding by the court that Defendants are in breach or default
26 of any terms set forth in Section 2 of the Settlement Agreement, the Association will be
27 entitled to and may seek, as part of a Judgment, a permanent injunction order prohibiting
28 Defendants, or any other persons or entities on behalf of Defendants or its successors, from

1 performing Marijuana Activities or having armed guards within the Association. This order
2 will also require Defendants and their agents or successors from immediately and permanently
3 ceasing any and all "Marijuana Activities" as defined in Section 20 of the Association's
4 CC&Rs and/or as defined in the 2015 Amendment and will be prohibited from having any
5 armed guards within the Association.

6 9. The Association is entitled to, and may seek, as part of the Judgment, the
7 Association's reasonable attorney's fees and costs incurred to enforce the terms of this
8 Stipulation and Settlement Agreement including the attorney's fees and costs to prepare and
9 file the default notice, the notice of motion, any related documents or pleadings, and to attend
10 a hearing to file and enter Judgment. The Parties stipulate and agree that the amounts for these
11 attorney's fees and costs may be inserted by the Association or the court in the Judgment upon
12 the filing of this Stipulation in support of an ex parte application or motion to set aside
13 dismissal and enforce the Settlement Agreement. The Parties agree that if a Party enforces
14 Section 2.17 of the Settlement Agreement or this provision of the Stipulation and the court
15 requires payment of such attorney's fees and costs to enforce the Settlement Agreement, such
16 obligation is not to be considered a penalty.

17 10. Dismissal without Prejudice. The Parties agree and state that this action may be
18 dismissed without prejudice and with a reservation of power and jurisdiction of the court to set
19 aside said dismissal and order entry of judgment in the manner provided in this Stipulation and
20 Settlement Agreement and pursuant to Code of Civil Procedure Section 664.6. If any
21 enforcement is necessary or a dispute arises after entry of any dismissal, the court reserved
22 jurisdiction to reinstate this action nuc pro tunc as of the date of this Stipulation and Order so
23 that the court can issue orders as set forth herein.

24 11. Defendants waive findings of fact, conclusions of law, any right to appeal from
25 any Judgment entered pursuant to this Stipulation and Settlement Agreement, the right to
26 move for a new trial, and any notices of hearings except as set forth herein.

27 12. If any provision or term of this Stipulation is determined to be invalid, such
28 invalidity shall not affect other provisions or terms which can be given effect without the

1 invalid provisions or terms; and to this end the provisions and terms of this Stipulation shall be
2 severable.

3 13. The Parties also agree that in the event of any dispute in the case, or as to the
4 language or meaning of the terms of this Stipulation, the court shall have sole and exclusive
5 power to render any decision related to such dispute.

6 14. This Stipulation and Settlement Agreement shall be effective upon its execution
7 by all Parties.

8 15. The Parties represent and warrant that (i) they have read and understand the
9 terms of this Stipulation and the Settlement Agreement, and (ii) have entered into this
10 Stipulation and Settlement Agreement for reasons of their own and not based upon
11 representations of any other Party hereto.

12 16. By executing this Stipulation and Settlement Agreement, each of the Parties
13 represents that it has the right, legal capacity, power and authority to enter into this Stipulation
14 and to perform its obligations hereunder, without the consent, approval or authorization of any
15 person, entity, tribunal or other regulatory or governmental authority.

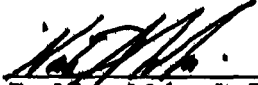
16 17. At all times material hereto the Parties have had an opportunity to consult with
17 legal counsel of their own choosing concerning their rights with respect to the form and
18 content of this Stipulation and Settlement Agreement and the advisability of executing the
19 same.

20 18. This Stipulation and Settlement Agreement shall be binding on, and inure to the
21 benefit of the Parties hereto, and where applicable, their respective parents, subsidiaries,
22 affiliates, divisions, officers, directors, owners, associates, predecessors, successors, heirs,
23 assigns, agents, partners, employees, insurers, and representatives.


24 19. This Stipulation and Settlement Agreement may be executed in counterparts
25 and all such counterparts when so executed shall together constitute the final Stipulation as if
26 one document had been signed by all of the Parties. This Stipulation and Settlement
27 Agreement may be executed by e-mail or facsimile copy and each signature thereto shall be
28 and constitute an original signature, again as if all Parties had executed a single original

1 document. No modification of any provision of this Stipulation and Settlement Agreement
2 shall be effective unless the same is in writing and signed by all Parties, and then such
3 modification shall be effective only in the specific instance or for the purpose for which given.

4 20. Each of the Parties to this Stipulation and Settlement Agreement agree to
5 execute and deliver to the other Parties such other documents, instruments, and writings
6 reasonably necessary to effectuate this Stipulation and shall undertake such other actions to
7 cause the consummation of the transactions contemplated by this Stipulation and Settlement
8 Agreement.

9
10 Dated: February 12th, 2018 BALBOA AVE COOPERATIVE
11 
12 By: Ninus Malan, Its President

13
14 Dated: February 12th, 2018
15 
16 NINUS MALAN

17
18 Dated: February 12th, 2018 SAN DIEGO UNITED HOLDINGS GROUP,
19 LLC
20 
21 Ninus Malan, Its Managing Member

22 Dated: February _____, 2018 MONTGOMERY FIELD BUSINESS
23 CONDOMINIUMS ASSOCIATION, a
24 California Non-Profit Corporation
25 By: _____
26 Daniel Burakowski, Board President
27
28

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8 Agreement.

9

10 Dated: February ____, 2018

BALBOA AVE COOPERATIVE

11

12 _____
By: Ninus Malan, Its President

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14 Dated: February ____, 2018

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16 _____
NINUS MALAN

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18 Dated: February ____, 2018

SAN DIEGO UNITED HOLDINGS GROUP,
LLC

19

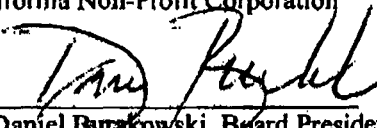
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Ninus Malan, Its Managing Member

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22 Dated: February 14, 2018

MONTGOMERY FIELD BUSINESS
CONDOMINIUMS ASSOCIATION, a
California Non-Profit Corporation

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24 _____
By: 
Daniel Buraskowski, Board President

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Dated: February 14, 2018

MONTGOMERY FIELD BUSINESS
CONDOMINIUMS ASSOCIATION, a
California Non-Profit Corporation

By: X X X X X X X

By: Glen Strand
Glen Strand, Vice-President

Dated: February 14, 2018

MONTGOMERY FIELD BUSINESS
CONDOMINIUMS ASSOCIATION, a
California Non-Profit Corporation

By: Chris Williams
Chris Williams, Secretary

Dated: _____

RAZUKI INVESTMENTS, LLC

By: _____
Title: _____

Dated: _____

SALAM RAZUKI

APPROVED AS TO FORM AND CONTENT:

Dated: February ____, 2018

EPSTEN, GRINNELL & HOWELL, APC

Mandy D. Hexom
Attorneys for Plaintiff,
MONTGOMERY FIELD BUSINESS
CONDOMINIUMS ASSOCIATION

Dated: February ____, 2018

AUSTIN LEGAL GROUP, APC

Gina Austin
Tamara Leetham
Attorneys for Defendants,
BALBOA AVE COOPERATIVE, NINUS
MALAN, and SAN DIEGO UNITED
HOLDINGS GROUP, LLC

1 Dated: February _____, 2018

MONTGOMERY FIELD BUSINESS
CONDOMINIUMS ASSOCIATION, a
California Non-Profit Corporation

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3 By: _____

By: _____
Glen Strand, Vice-President

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5 Dated: February _____, 2018

MONTGOMERY FIELD BUSINESS
CONDOMINIUMS ASSOCIATION, a
California Non-Profit Corporation

6
7
8 Dated: 02/13/18

By: _____
Chris Williams, Secretary

9 RAZUKI INVESTMENTS, LLC

10 By: _____
11 Title: President

12 Dated: 02/13/18

SALAM RAZUKI

13
14 APPROVED AS TO FORM AND CONTENT:

15 Dated: February 14, 2018

16 EPSTEN, GRINNELL & HOWELL, APC

17
18 Mandy D. Hexom
19 Attorneys for Plaintiff,
20 MONTGOMERY FIELD BUSINESS
CONDOMINIUMS ASSOCIATION

21 Dated: February 12, 2018

AUSTIN LEGAL GROUP, APC

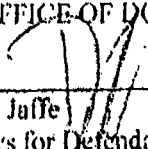
22 Tamara Leatham
23 Gina Austin
24 Tamara Leatham
25 Attorneys for Defendants,
26 BALBOA AVE COOPERATIVE, NINUS
27 MALAN, and SAN DIEGO UNITED
28 HOLDINGS GROUP, LLC

7
STIPULATION FOR ENTRY OF JUDGMENT UPON DEFAULT

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Dated: February 15, 2018

LAW OFFICE OF DOUGLAS JAFFE



Douglas Jaffe
Attorneys for Defendants.
RAZUKI INVESTMENTS, LLC, and SALAM
RAZUKI

IT IS SO ORDERED:

Dated:

JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SAN DIEGO, CENTRAL DIVISION		FOR COURT USE ONLY
TITLE OF CASE (ABBREVIATED): Montgomery Field Business Condominiums Assoc. v. Balboa Ave Cooperative, et al.		
ATTORNEY(S) NAME AND ADDRESS: Rian W. Jones, Esq. (SBN: 118830) Mandy D. Hexom, Esq. (SBN 216390) Epsten Grinnell & Howell, APC 10200 Willow Creek Rd., Suite 100 San Diego, California 92131	TELEPHONE (858) 527-0111 FACSIMILE (858) 527-1531	
ATTORNEYS FOR: Montgomery Field Business Condominium Assoc.	HEARING: DATE-TIME-DEPT	CASE NUMBER 37-2017-00019384-CU-CO-CTL

DECLARATION OF SERVICE

I, Stephanie Hart, declare: that I am, and was at the time of service of the papers herein referred to, over the age of 18 years, and not a party to the action; and I am employed in the County of San Diego, California, within which county the subject service occurred. My business address is 10200 Willow Creek Rd., Suite 100, San Diego, California 92131. On February 28, 2018, I served the following document(s):

STIPULATION FOR COURT TO RETAIN JURISDICTION TO ENFORCE SETTLEMENT UPON DEFAULT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 664.6 AND ENTRY OF JUDGMENT UPON DEFAULT; [PROPOSED] ORDER THEREON

of which the original document(s), or a true and correct copy, is attached, by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

(BY MAIL) I caused a true copy of each document, placed in a sealed envelope with postage fully paid, to be placed in the United States mail at San Diego, California. I am "readily familiar" with this firm's business practice for collection and processing of mail, that in the ordinary course of business said document(s) would be deposited with the U.S. Postal Service on that same day. I understand that the service shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained on this affidavit.

Gina M. Austin, Esq. / Tamara M. Leetham, Esq. Austin Legal Group, APC 3990 Old Town Avenue, Ste., A-112 San Diego, CA 92110 (619) 924-9600/ Fax: (619) 881-0045 gaustin@austinlegallgroup.com tamara@austinlegallgroup.com	Attorneys for Balboa Ave Cooperative; San Diego Holdings Group, LLC and Ninus Malan
Douglas Jaffe, Esq. Law Offices of Douglas Jaffe 501 West Broadway, Suite 800 San Diego, California 92101 (619) 400-4945/ Fax: (619) 400-4947 douglasjaffe@aol.com	Attorneys for Razuki Investments, LLC, Salam Razuki

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

Executed on February 28, 2018, at San Diego, California.



Stephanie Hart