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9 **SUPERIOR COURT OF CALIFORNIA**
COUNTY OF SAN DIEGO

10 AVAIL SHIPPING, INC., a California
11 corporation,

12 Plaintiff,

13 v.

14
15 RAZUKI INVESTMENTS, LLC, a California)
limited liability company; SALAM RAZUKI,)
an individual; NINUS MALAN, an individual;)
16 MARVIN RAZUKI, an individual;)
17 AMERICAN LENDING AND HOLDINGS,)
LLC, a California limited liability company;)
18 SAN DIEGO PRIVATE INVESTMENTS,)
LLC, a California limited liability company;)
19 SH WESTPOINT GROUP, LLC, a California)
limited liability company; SAN DIEGO)
20 UNITED HOLDINGS GROUP, LLC, a)
California limited liability company; and)
21 DOES 1-100, inclusive,)

22 Defendants.)

23
24 SALAM RAZUKI, an individual,)

25 Plaintiff,)

26 v.)

) Case No: 37-2018-00022710-CU-FR-CTL
)
) Judge: Hon. Eddie C. Sturgeon
)
)

) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF SAN**
) **DIEGO UNITED HOLDINGS GROUP,**
) **LLC'S MOTION TO CONSOLIDATE**

) Case No. 37-2018-00034229-CU-BC-CTL
)
) Judge: Hon. Eddie C. Sturgeon

) Judge: Hon. Eddie C. Sturgeon
) Dept.: C-67
) Date: February 1, 2019
) Time: 9:00 a.m.

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28)
SAN DIEGO UNITED HOLDINGS GROUP, LLC'S POINTS AND AUTHORITIES IN SUPPORT OF
MOTION TO CONSOLIDATE

1 NINUS MALAN, an individual; CHRIS)
2 HAKIM, an individual; MONARCH)
3 MANAGEMENT CONSULTING, INC., a)
4 California corporation; SAN DIEGO UNITED)
5 HOLDINGS GROUP, LLC, a California)
6 limited liability company; FLIP)
7 MANAGEMENT, LLC, a California limited)
8 liability company; MIRA ESTE)
9 PROPERTIES, LLC, a California limited)
10 liability company; ROSELLE PROPERTIES,)
11 LLC, a California limited liability company;)
12 BALBOA AVE COOPERATIVE, a California)
13 nonprofit mutual benefit corporation;)
14 CALIFORNIA CANNABIS GROUP, a)
15 California nonprofit mutual benefit)
16 corporation; DEVILISH DELIGHTS, INC., a)
17 California nonprofit mutual benefit)
18 corporation; and DOES 1-100, inclusive;)
19 Defendants.)
20)
21)
22)
23)
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I. INTRODUCTION

Pending before the San Diego County Superior Court are several actions related to real property and marijuana business and the persons or entities legally entitled to their exclusive use and possession, legal entitlement to profits, and allocation of losses. The actions all claim some interest, whether in whole or in part, whether legal or equitable, in various parcels of real property. Prominent among these are two properties: the first, located at 8861 Balboa Avenue, Suite B, San Diego, California, 92123; the second, located at 8863 Balboa Avenue, Suite E, San Diego, California, 92123, collectively, the (“Balboa Properties”). (Leetham Decl. ¶ 7.) An additional eleven properties are common to the following actions and are collectively referred to herein as the “Common Properties.” (Leetham Decl. ¶ 8.)

The first action, the Avail Action, concerns Razuki Investments (owned and controlled by Salam Razuki) fraudulent transfer of numerous parcels of real property to other entities and individuals, without receiving compensation, with the alleged intent to prevent Avail, a creditor, from collecting on its judgment against Razuki Investments. The Balboa Properties comprise two of the alleged fraudulent transfers.

1 The second action, the Avail Cross-Complaint, concerns cross-complainant San Diego
2 United Holdings Group's quiet title and declaratory relief action against Razuki and Razuki
3 Investments to determine the interests and ownership in the Balboa Properties.

4 The third action, the "Razuki Action" (containing the Razuki Complaint and Razuki First
5 Amended Complaint), concerns a claim of ownership, or interest, in the Balboa Properties as
6 well as additional properties and companies. The Razuki Action alleges a failure to share profits
7 and interests in the various named companies and properties and disputes ownership of the
8 Balboa Properties and a marijuana dispensary operating out of one of the Balboa Properties.

9 The fourth action, the Razuki Cross-Complaint, contradicts the previous claims of
10 ownership and entitlement to the Balboa Properties, in addition to contradicting the other claims
11 of ownership, interest, and right to profits in various related companies and properties.

12 Common to the aforementioned actions is who rightfully holds title to the Balboa
13 Properties and who may profit therefrom.

14 **II. STATEMENT OF FACTS**

15 On May 08, 2018, Avail Shipping, Inc. ("Avail") filed a complaint in San Diego County
16 Superior Court against Razuki Investments, LLC (or "RI"), Salam Razuki ("Razuki"), Ninus
17 Malan ("Malan"), Marvin Razuki (or "MR"), American Lending and Holdings, LLC (or
18 "ALH"), San Diego Private Investments, LLC (or "SDPI"), SH Westpoint Group, LLC (or
19 "SHWG"), and San Diego United Holdings Group, LLC (or "SDUHG"), case number 37-2018-
20 00022710-CU-FR-CTL (the "Avail Action"). The Complaint alleged claims for Avoidance of
21 Fraudulent Transfer, Damages Arising from Conspiracy to Effect Fraudulent Transfer, and for a
22 Resulting Trust. The case was assigned to the honorable Timothy Tailor.

23 On June 26, 2018, Avail, Malan, ALH, and SDUHG reached a negotiated settlement
24 agreement and mutual release of claims (the "Settlement Agreement") in the Avail Action.

25 On June 27, 2018, SDUHG filed a Verified Cross-Complaint in the Avail Action (the
26 "Avail Cross-Complaint"). The Cross-Complaint alleged claims against Razuki Investments and
27 Razuki for Quiet Title and Declaratory Relief regarding the Balboa Properties.

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1 On July 09, 2018, the Avail Action was reassigned to the honorable Eddie C. Sturgeon.

2 On July 10, 2018, Razuki filed a Complaint in San Diego County Superior Court against
3 Malan; SDUHG; Flip Management, LLC (“Flip”); Monarch Management Consulting, Inc.
4 (“Monarch”); Mira Este Properties, LLC (“Mira Este”); and Roselle Properties, LLC
5 (“Roselle”), case number 37-2018-00034229-CU-BC-CTL, (the “Razuki Complaint”). The
6 Razuki Complaint alleges claims of Breach of Contract, Breach of Implied Covenant of Good
7 Faith and Fair Dealing, Breach of Oral Agreement, Breach of Fiduciary Duty, Fraud and Deceit,
8 Money Had and Received, Conversion, Accounting, Appointment of Receiver, Injunctive
9 Relief, Declaratory Relief, Constructive Trust, and Dissolution. The case was assigned to the
10 honorable Kenneth J. Medel.

11 On July 13, 2018, Razuki filed a First Amended Complaint (the “Razuki FAC”) in the
12 Razuki Action. The Razuki FAC added new defendants: Chris Hakim (“Hakim”); Balboa Ave
13 Cooperative (“Balboa”); California Cannabis Group (“Cal. Cannabis”); and Devilish Delights,
14 Inc. The Razuki FAC also added two new claims for Intentional Interference with an Economic
15 Relationship, and Intentional Interference with a Contractual Relationship.

16 On July 17, 2018, the Razuki Action was reassigned to the honorable Richard E. L.
17 Strauss. Then, on August 06, 2018, the Razuki Action was reassigned to the honorable Eddie C.
18 Sturgeon.

19 On September 20, 2018, SDUHG, Malan, American Lending and Holdings, Cal.
20 Cannabis, Devilish Delights, Balboa, Monarch, and Flip filed a Verified Cross-Complaint
21 (“Razuki Cross-Complaint”) in the Razuki Action against Razuki, Razuki Investments, Marvin
22 Razuki, Sarah Razuki, Matthew Razuki, SH Westpoint Group, El Cajon Investments Group,
23 LLC (“El Cajon Inv.”), San Diego Private Investments, Stonecrest Plaza, LLC (“Stonecrest”),
24 Sunrise Property Investments, LLC (“Sunrise”), Lemon Grove Plaza, LP (“Lemon Grove”),
25 SoCal Building Ventures, LLC (“SoCal”), RM Property Holdings, LLC (“RM”), and Melrose
26 Place, Inc. (“Melrose”).

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1 The Razuki Cross-Complaint alleges claims for Declaratory Relief, Reformation of
2 Contract, Rescission of Contract, Breach of Contract (Transfer Agreement), Breach of Contract
3 (Balboa Management Agreement), Breach of Contract (Mira Este Agreement), Breach of
4 Contract (Roselle Management Agreement), Intentional Interference with Contract, Quiet Title,
5 Winding Up and Dissolution of Partnership, Expulsion of Partner, Partnership Accounting,
6 Constructive Trust, Slander of Title, Negligence (SoCal), Fraud, Conversion, Appointment of a
7 Receiver, Dissolution of Limited Liability Company, Quantum Meruit, Breach of Fiduciary
8 Duty (Razuki), Sale of Partnership Assets, Promissory Estoppel, Negligence (Razuki),
9 Cancellation of Instrument, Breach of Oral Contract, and Breach of Fiduciary Duty (SoCal).

10 Central to the Razuki Cross-Complaint is a claim of ownership in the Balboa Properties,
11 as well as a claimed interest in the Common Properties alleged in the Avail Action to have been
12 fraudulently transferred.

13 The cases are currently postured with Razuki, Razuki Investments, Marvin Razuki, San
14 Diego Private Investments, and SH Westpoint Group as defendants in the Avail Action, and
15 SDUHG as a cross-complainant against Razuki and Razuki Investments. In the Razuki Action,
16 SDUHG is a defendant and cross-complainant, while Razuki, Razuki Investments, Marvin
17 Razuki, San Diego Private Investments, and SH Westpoint Group are all cross-defendants and
18 Razuki is the plaintiff. Avail is the plaintiff in the Avail Action and is not currently a party to the
19 Razuki Action.

20 In the Avail Action, the complaint alleges that Razuki, Razuki Investments, Marvin
21 Razuki, American Lending and Holdings, Malan, San Diego United Holdings Group, SDUHG,
22 and SH Westpoint Group collectively conspired amongst one another, and transferred the
23 Balboa Properties and the Common Properties to third parties, in a scheme to improperly shield
24 Razuki and Razuki Investments from the reach of its creditor, Avail. However, the claims as to
25 Malan, SDUHG, and American Lending and Holding's involvement have all been settled and
26 released by Avail. Then, in the Avail Cross-Complaint, SDUHG alleges Razuki and Razuki
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1 Investments have no entitlement to the Balboa Properties whatsoever because SDUHG
2 purchased, and perfected title to, the Balboa Properties.

3 In the Razuki Action, Razuki claims an ownership interest in an entity that purports to
4 own the Balboa Properties and claims entitlement to a share of the profits therefrom. In addition,
5 Razuki claims an ownership interest in the Common Properties that Avail claims were
6 fraudulently transferred and alleges that he has not been adequately compensated according to
7 that interest. However, in the Razuki Cross-Complaint, SDUHG once again claims a one-
8 hundred percent ownership interest in the Balboa Properties, and completely contradicts all of
9 Razuki's claims to ownership, or interest in, the Balboa Properties. Additionally, the Cross-
10 Complaint claims ownership rights, or interest, in a number of properties, including the
11 Common Properties which Avail claims were fraudulently transferred. The Cross-Complaint
12 refutes Razuki's ownership claims and, by extension, the amount of profits he is due from the
13 properties.

14 Common to all of the complaints and cross-complaints are the Balboa Properties. In
15 addition, both actions claim interests in the Common Properties for various reasons such as:
16 constructive trust, breach of contract, accounting, and declaratory relief. Any judicial
17 determination of the rights and interests in the properties in one case necessarily affects the
18 other. For example, if Avail were to secure a lien on any of the aforementioned properties to
19 satisfy its judgment, the lien may adversely affect the property rights of innocent parties if the
20 rights to the various properties are not established in the same proceeding.

21 In both actions, the parties are the same, the witnesses are the same, and the deeds and
22 documents to prove or disprove the claims are the same. Moreover, both cases are currently
23 assigned to the honorable Eddie C. Sturgeon. A judicial decision in one case will carry a
24 substantial effect in the other case and contrary decisions will cause significant prejudice to the
25 parties. Neither case has been set for trial at a Case Management Conference and, as of the date
26 this motion is filed, there has been no discovery propounded. (Leetham Decl. ¶ 9.) There has
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1 been extensive briefing in the Razuki Action related to plaintiff Salam Razuki's motion for a
2 receiver and a preliminary injunction, related to the Balboa Properties. (Leetham Decl. ¶ 10.)

3 **III. THE COURT HAS THE AUTHORITY TO CONSOLIDATE THE AVAIL ACTION**
4 **WITH THE RAZUKI ACTION PURSUANT TO CODE OF CIVIL PROCEDURE**

5 **SECTION 1048(a)**

6 Code of Civil Procedure section 1048(a) states in pertinent part "[w]hen actions
7 involving a common question of law or fact are pending before the court, it may order a joint
8 hearing or trial of any or all the matters in issue in the actions; it may order all the actions
9 consolidated and it may take such orders concerning proceedings therein as may tend to avoid
10 unnecessary costs or delay." The Court's authority to order consolidation was confirmed in
11 *McArthur v. Honorable H.S. Shaffer, Judge of the Superior Court* (1943) 59 Cal.App.2d 724. In
12 *McArthur*, the court found that "where separate actions shall be consolidated for trial ... is a
13 matter within the discretion of the trial court." (*Id.* at 727.)

14 In the Avail Action, the Avail Cross-Complaint and the Razuki Action (including the
15 Razuki Cross-Complaint) share common questions of law and fact. Claims of ownership, rights,
16 and interests in real property underlie each of the actions, whether it be the object of the action,
17 or the avenue to its remedy. Consolidation will not prejudice any of the parties, create any
18 complexity, nor will it delay the trial of either of the cases involved.

19 **A. The Avail Action And The Razuki Action Involve Common Questions of Law**
20 **and Fact**

21 Consolidation is appropriate when actions involve a common question of law or fact.
22 (Code Civ. Proc. § 1048(a); see, e.g., *Johnson v. Western Air Express Corp.* (1941) 45
23 Cal.App.2d 614, 622; *Todd-Stenberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal.App.4th
24 976, 979-80.) Where actions arise from the same series of events, there is but one cause of
25 action. (See *Stanton v. Superior Court for Los Angeles County* (1927) 202 Cal. 478, 481,
26 disapproved on another ground in *Phelan v. Superior Court for the County of San Francisco*
27 (1950) 35 Cal.2d 363.)

1 The Avail Cross-complaint and the Razuki Action arise out of common questions of law
2 and fact. They both involve law and fact regarding ownership rights and interests in the Balboa
3 Properties, and the additional Common Properties that Avail claims were fraudulently
4 transferred. Additionally, the transfer, sale, assignment, and/or conveyance of property rights in
5 the Balboa Properties is an issue pleaded in each of the complaints, and relate to a succession of
6 events that all parties have contributed to. In the Razuki Action and the Avail Cross-complaint,
7 SDUHG claims an interest in the Balboa Properties as does plaintiff Salam Razuki. The rights
8 and interests in the Balboa Properties must be established in order for the parties in each case to
9 ascertain the Balboa Properties ownership. Any singular determination of the rights in the
10 Balboa Properties in one action would necessarily preclude interested parties from exercising
11 their right to be fully heard on identical issues in the other action.

12 The legal and factual issues that must be resolved in order to obtain resolution of these
13 claims are inextricably linked. Determining legal title to the Balboa Properties, and the Common
14 Properties, concerns questions of law and fact common to all of the complaints and should be
15 heard and ruled on simultaneously.

16 **B. The Court Should Consolidate The Avail Action And The Razuki Action**

17 **Because It Will Not (1) Prejudice the Parties; (2) Create Any Undue**

18 **Complexity; Or (3) Cause Any Undue Delay**

19 There is no deadline for ordering consolidation; indeed, cases may even be consolidated
20 on the eve of trial. (See *Well & Brown, The Rutter Group*, “Civil Procedure Before Trial”
21 PARA 12:357). Courts use the following factors to determine when consolidation is appropriate:
22 (1) Prejudice, i.e., whether consolidation would harm or adversely affect the rights of any party;
23 (2) The complexity of the situation, i.e., whether joining the actions would make the trial too
24 confusing or complex for the jury; and (3) Timeliness of the consolidation request, i.e., whether
25 granting consolidation would delay the trial of any of the cases involved or whether discovery in
26 one or more of the cases has proceeded without all parties present. (See *Realty Constr. &*
27 *Mortgage Co. v. Superior Court* (1913) 165 Cal. 543, 543-47; *Todd – Stenberg v. Dalkon Shield*
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1 *Claimants Trust* (1996) 48 Cal.App.4th 976, 979 -80; Weil & Brown, *The Rutter Group*, "Civil
2 Procedure Before Trial" PARA 12:362). These factors favor consolidation in this case.

3 1. Consolidation Will Not Prejudice Any Party

4 Consolidation will not result in prejudice to the substantial rights of any of the parties.
5 Both the Avail Action and the Razuki Action are at the pleading stage. As of the date this
6 motion is filed, there is no trial date in either case, there has not been a case management
7 conference in either case, there has been no discovery conducted, and the only law in motion
8 rulings to date concern the receivership and preliminary injunctions in the Razuki Action.
9 (Leatham Decl. ¶¶ 6-10.) Consolidation will benefit the parties in both cases by efficiently
10 addressing the same issues in a single inclusive action. Consolidation will also preclude the
11 potential for contradictory rulings if the cases are separately litigated, which would be extremely
12 prejudicial.

13 Conversely, declining to consolidate will prejudice the moving parties, at a minimum, by
14 allowing for issue preclusion. Issue preclusion bars relitigation of an issue of fact or law identical
15 to an issue decided in a previous proceeding. *See, e.g. George Arakelian Farms, Inc. v. Agric.*
16 *Labor Relations Bd.* (1989) 49 Cal.3d 1279. There is a substantial danger of irreparable harm if
17 the parties in either of the Actions are able to be heard on, and a determination is made regarding,
18 the issues common to the Actions; namely, the true owners of the various Properties. For instance,
19 a judicial determination of the rightful owner of the Balboa Properties in the Avail Action would
20 preclude the parties in the Razuki Action from litigating their rights to the Properties. Indeed, a
21 failure to grant the Order to Shorten Time all but guarantees the occurrence of inconsistent
22 judgments, waste of judicial resources, and profound unfairness to whichever Action is ultimately
23 heard second.

24 It is paramount that the claims regarding ownership of the Properties be heard
25 concurrently because the facts upon which these cases are based, and the issues raised in both
26 Actions, are inextricably intertwined. In order to preserve the rights of the respective parties, the
27 Order to Shorten Time on the Motion to Consolidate should be granted. Otherwise, a great
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1 inequity may befall SGUHG, and the remaining parties to the two Actions, due to the possibility
2 that their substantive rights will be extinguished by an adverse determination in the other Action.

3 2. Consolidation Will Not Create Any Undue Complexity

4 Consolidation is improper if joining the actions would make the trial needlessly
5 confusing or complex for a jury. (See *Todd-Stenberg v. Dalkon Shield Claimants Trust, supra*,
6 48 Cal.App.4th at 980; *State Farm Mut. Auto. Ins. Co. v. Superior Court* (1956) 47 Cal.2d 428,
7 431-32.)

8 Here, consolidation will not make the issues complex or confusing. Instead,
9 consolidation will streamline the process and illustrate succinctly the relationships between the
10 parties and the timeline of the events and claims. Avail alleges that the transfer of the Common
11 and Balboa Properties was a fraudulent transfer intended to shield Razuki and Razuki
12 Investments from the reach of its creditors. SDUHG claims title to the Balboa Properties as the
13 result of a bona fide purchase from Razuki Investments. Razuki then claims an interest in the
14 Balboa Properties and Common Properties as part of a partnership interest in a separate entity.
15 SDUHG refutes these claims as a result of its previous purchase of the Balboa Properties, and its
16 ownership claim along with other cross-complainants, of the Common Properties. The issues,
17 parties, witnesses, and evidence are the same, and only become complex when presented in a
18 piece-meal fashion.

19 Consolidating the Avail Cross-complaint and the Razuki Action streamlines the litigation
20 and makes for less complexity and confusion because it will allow for one resolution to the same
21 set of issues, using the same facts, in a single proceeding. Consolidation enables the parties to
22 present a complete picture of the timeline of events and claims to the Balboa and Common
23 Properties, which will resolve confusion, rather than amplify it.

24 3. Consolidation Will Not Cause Any Undue Delay

25 A court will examine “whether granting consolidation would delay the trial of any of the
26 cases involved, or whether discovery in one or more of the cases has proceeded without all
27 parties present.” (*Todd-Stenberg v. Dalkon Shield Claimants Trust, supra*, 48 Cal.App.4th at
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1 979-980.) There is no trial date set in the Avail Action or the Razuki Action and discovery has
2 yet to commence in either. (Leetham Decl. ¶ 9.) Consolidating the Avail Cross-complaint and
3 Razuki Action will not cause undue delay with respect to trial or discovery.

4 **IV. CONCLUSION**

5 San Diego United Holdings Group, LLC respectfully requests the Court order
6 consolidation for all purposes of the Avail Cross-complaint and the Razuki Action.
7 Consolidation will not prejudice or adversely affect the parties' rights. Consolidation will not
8 cause undue complexity or confusion. To the contrary, consolidation will promote judicial
9 efficiency and economy and streamline litigation on the shared issues and evidence. San Diego
10 United Holdings Group timely makes this request and reiterates that granting consolidation will
11 not delay trial or discovery. These factors favor consolidation and consolidation should be
12 ordered.

13 Dated: October 12, 2018

AUSTIN LEGAL GROUP, APC

Gina M. Austin/Tamara Leetham,
Attorneys for San Diego United Holdings
Group

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