CASE NO. DO75028

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION 1

SALAM RAZUKI, an individual,
Plaintiff and Respondent,

v.

NINUS MALAN; MONARCH MANAGEMENT CONSULTING, INC.; SAN DIEGO UNITED HOLDINGS GROUP, LLC; FLIP MANAGEMENT, LLC; BALBOA AVE COOPERATIVE, a California nonprofit mutual benefit corporation; CALIFORNIA CANNABIS GROUP, a California nonprofit mutual benefit corporation; DEVILISH DELIGHTS, INC. a California nonprofit mutual benefit corporation,
Defendants and Appellants.

CHRIS HAKIM; MIRA ESTE PROPERTIES LLC; ROSELLE PROPERTIES, LLC
Defendants and Cross-Appellants.

On Appeal from the Superior Court, County of San Diego,
Honorable Eddie C. Sturgeon, Department C-67; Tel. 619-450-7067
San Diego Superior Court Case No. 37-2018-00034229-CU-BC-CTL

PETITION OF CROSS-APPELLANTS FOR WRIT OF SUPERSEDEAS OR OTHER APPROPRIATE STAY ORDER; REQUEST FOR IMMEDIATE STAY; POINTS AND AUTHORITIES; RELATED APPEAL PENDING

Charles F. Goria, Esq. (SBN68944)
GORIA, WEBER & JARVIS
1011 Camino del Rio South
Suite 210
San Diego, CA 92108
Tel.: (619) 692 3555
Fax: (619) 296 5508
Attorneys for Defendants and Cross-Appellants CHRIS HAKIM, MIRA ESTE PROPERTIES, LLC and ROSELLE PROPERTIES LLC

TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL FOURTH APPELLATE DISTRICT, DIVISION 1	COURT OF APPEAL CASE NUMBER: D075028
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: SBN68944 NAME: Charles F. Goria FIRM NAME: Goria, Weber & Jarvis STREET ADDRESS: 1011 Camino del Rio S., #210 CITY: San Diego STATE: CA ZIP CODE: 92108 TELEPHONE NO.: 619-692-3555 FAX NO.: 619-296-5508 E-MAIL ADDRESS: chasgoria@gmail.com ATTORNEY FOR (*name*): Chris Hakim, Mira Este Properties LLC, Roselle Properties LLC	SUPERIOR COURT CASE NUMBER: 37-2018-00034229-CU-BC-CTL
APPELLANT/ PETITIONER: Chris Hakim, Mira Este Properties LLC, Roselle Properties LLC RESPONDENT/ REAL PARTY IN INTEREST: Salam Razuki	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(*Check one*): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): Chris Hakim, Mira Este Properties LLC, Roselle Properties

2. a. [ ] There are no interested entities or persons that must be listed in this certificate under rule 8.208.
   b. [X] Interested entities or persons required to be listed under rule 8.208 are as follows:

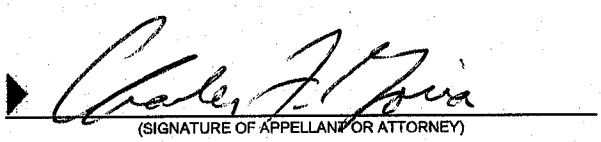
Full name of interested entity or person	Nature of interest (*Explain*):
(1) Ninus Malan	50% Owner/member-Mira Este Properties LLC and Roselle Properties LLC
(2) Ninus Malan	50% Owner-California Cannabis Group
(3) Chris Hakim	50% Owner/member-Mira Este Properties LLC and Roselle Properties LLC
(4) Chris Hakim	50% Owner-California Cannabis Group
(5)	

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: 2/1/2019

Charles F. Goria, Esq.
(TYPE OR PRINT NAME)


(SIGNATURE OF APPELLANT OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-008 [Rev. January 1, 2017]

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Cal. Rules of Court, rules 8.208, 8.488
www.courts.ca.gov

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form Save this form Clear this form

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Miscellaneous

PETITION OF CROSS-APPELLANTS FOR WRIT OF SUPERSEDEAS OR OTHER APPROPRIATE STAY ORDER; REQUEST FOR IMMEDIATE STAY; POINTS AND AUTHORITIES; RELATED APPEAL PENDING; SAN DIEGO SUPERIOR COURT CASE NUMBER 37-2018-00034229-CU-BC-CTL; FOURTH DISTRICT COURT OF APPEAL, DIVISION ONE, CASE NO. D075028

TO THE HONORABLE PRESIDING JUSTICE AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION ONE:

The December 17, 2018 Minute Order of the San Diego County Superior Court has stymied and prevented Cross-Appellants from exercising their right to obtain a stay of the Superior Court's September 26, 2018 Order Appointing Receiver. The trial court's imposition of unreasonable and unauthorized conditions, amounts of bonds, and requirements in specifying that each and every one of ten largely unrelated parties and entities (one of which has not even appealed) to post an undertaking in order to obtain the stay of the receivership at either of two separate businesses necessitates the intervention of this Court.

Petitioners and Cross-Appellants Chris Hakim ("Hakim"), Mira Este Properties, LLC ("MEP") and Roselle Properties LLC ("Roselle"), (collectively, "Cross-Appellants"), petition this court for a writ of supersedeas to: (a) stay enforcement of the September 26, 2018 order of the Superior Court of California, County of San Diego, the Honorable Eddie C. Sturgeon, Judge presiding, entitled, "Order Confirming Receiver and Granting Preliminary Injunction" dated September 26, 2018 ("9/26/2018 Order", attached

as Exhibit A to Cross-Appellants Exhibit Index) as it applies to the cannabis manufacturing and production facility located at 9212 Mira Este Court, San Diego, California, 92126 ("Mira Este Facility"), and in particular, to vacate the receivership at the Mira Este Facility on the condition of the posting of a reasonable undertaking by the owners of the Mira Este Facility, MEP and appellant California Cannabis Group ("CCG"), as alleged below, until final adjudication of the 9/26/2018 Order; and (b) in connection with the stay and the posting of a reasonable undertaking, to modify the December 17, 2018 Minute Order of the Superior Court of California, County of San Diego, the Honorable Eddie C. Sturgeon, Judge presiding ("12/17/2018 Minute Order", attached as Exhibit J to Cross-Appellants Exhibit Index), concerning the amounts and conditions imposed by the trial court relative to the required undertakings in order to stay the 9/26/2018 Order and to vacate the receiver from the Mira Este Facility, and allege:

A. Introduction and Procedural Background.

1. The 9/26/2018 Order appointed a receiver to "retain control and possession" of two different facilities and six different entities. (Exh. A at p. CAEI 0005). One of the facilities that was put under the control and possession of the receiver is the **Mira Este Facility, which is a cannabis manufacturing and production facility that manufactures cannabis products or enters into sublicenses with other manufacturers and producers for the production of cannabis products.** (Exh. A at p. CAEI 0005). These sublicensees pay

substantial fees to properly licensed facilities such as the Mira Este Facility for the right to manufacture their products at those premises.

The other facility that was put under the control and possession of the receiver is a retail cannabis facility or dispensary that sells cannabis products to the public and is located at 8861 Balboa Ave., Suite B, San Diego, CA 92123 and 8863 Balboa Ave., Suite E, San Diego, CA 92123 ("Balboa Ave Dispensary"). (Exh. A at p. CAEI 0005).

The business operations of the Mira Este Facility, which is in essence a wholesale producer, and the Balboa Ave Dispensary, which is a retail outlet for cannabis products, are completely different. They are located miles apart, and each is owned by different entities. The Mira Este Facility is owned by MEP, and the business tax license permitting the operation of that facility is owned by CCG. The Balboa Ave Dispensary is owned by San Diego United Holdings Group LLC ("SD United"). Licensing at the Balboa Ave Dispensary is owned by Balboa Ave Cooperative, a California nonprofit mutual benefit corporation ("Balboa Co-op").

A third facility, another cannabis manufacturing and production facility located at 10685 Roselle Street, San Diego, California 92121 ("Roselle Facility") and owned by Roselle, was excluded from the scope of the receivership but as indicated below, is apparently impacted by the 9/26/2018 Order nonetheless.

2. The 9/26/2018 Order also specified that a number of entities were put under the supervision of the receiver, as follows: MEP; defendants and appellants Flip Management, LLC ("Flip"); SD United; Balboa Co-op; Devilish

Delights, Inc., a California nonprofit mutual benefit corporation ("Devilish"); and CCG. (Exh. A at p. CAEI 0005).

3. Appellants and defendants Ninus Malan ("Malan"), Monarch Management Consulting, Inc. ("Monarch"), Flip, SD United, Balboa Co-op, Devilish, and CCG filed their notice of appeal from the 9/26/2018 Order on or about October 30, 2018. A copy of the notice of appeal filed by Malan, Monarch, Flip, SD United, Balboa Co-op, Devilish, and CCG is attached as Exhibit B to Cross-Appellants Exhibit Index.

4. Cross-Appellants Hakim, MEP, and Roselle filed their notice of cross-appeal from the 9/26/2018 Order on or about November 2, 2018. A copy of the notice of cross-appeal filed by Hakim, MEP, and Roselle is attached as Exhibit C to Cross-Appellants Exhibit Index.

5. Hakim is a managing member of MEP and Roselle. Although neither Hakim nor Roselle were placed under the control or possession of the receiver under the 9/26/2018 Order, the 9/26/2018 Order impacted them in other ways. In regards to Hakim, the 9/26/2018 Order obligated Hakim, among other defendants, to notify the receiver about certain information and turn over documents concerning the Mira Este Facility (Exh. A at p. CAEI 0009). The 9/26/2018 Order also enjoined Hakim and Roselle, among other defendants, from engaging in a number of acts (Exh. A at p. CAEI 0010).

Additionally, and on August 28, 2018, the trial court issued a temporary restraining order appointing the receiver, with a return date of September 7, 2018

for the hearing on the application of plaintiff and respondent Salam Razuki ("Razuki") for a preliminary injunction. A copy of the temporary restraining order, filed August 28, 2018 ("TRO") is attached as Exhibit D to Cross-Appellants Exhibit Index. The TRO ordered Roselle and Hakim not to sell or encumber the Roselle Facility during the pendency of the action "until further order of the court". (Exhibit D at ¶3, p. CAEI 0026). However, there was no mention of this restriction on selling or encumbering the Roselle Facility in the 9/26/2018 Order. Whether the restriction placed on Roselle and Hakim in the TRO survives even though not stated in the 9/26/2018 Order is uncertain. Adding to the uncertainty, however, is that Devilish is the licensing entity for the Roselle Facility. Devilish was placed under the control of the receiver under the 9/26/2018 Order, thereby effectively restricting Roselle from undertaking any actions concerning the operation of the planned cannabis production facility on its own and without receiver approval. (Exhibit A at p. 0005). Therefore, Roselle and Hakim have joined in the cross-appeal because of the uncertain status created by the TRO and the 9/26/2018 Minute Order.[1]

---

[1] The Roselle Facility was acquired in 2016 by the newly-formed limited liability company, Roselle Properties LLC ("Roselle"). Roselle was formed solely to acquire the facility as a cannabis manufacturing facility. Again, the only members of Roselle were Malan and Hakim. Razuki chose not to be a record owner of the Roselle Facility. The Roselle Facility was never licensed as a cannabis production and manufacturing facility. The Roselle Facility is currently being rented out to a third party tenant not involved in this litigation. Rental income from the Roselle Facility is insufficient to cover debt service. Hakim and Malan are covering the shortfall.

6. In November 2018, Cross-Appellants filed their motion for order setting bond on appeal. The moving papers consisted of two submissions. The first, attached to Cross-Appellants Exhibit Index as Exhibit E, consisted of the Notice of Motion for Order Setting Bond on Appeal of Order Appointing Receiver; Declaration of Charles F. Goria; Points and Authorities. The second submittal (attached as Exhibit F to Cross-Appellants Exhibit Index) was the Declaration of Chris Hakim in Support of Motion for Order Setting Bond on Appeal of Order Appointing Receiver ("Hakim Declaration").

Razuki filed opposition papers consisting of a Memorandum of Points and Authorities and a declaration of his counsel, James Joseph. Razuki's opposition papers are collectively attached to Cross-Appellants Exhibit Index as Exhibit G.

Cross-Appellants filed reply papers consisting of a request for judicial notice and a Memorandum of Points and Authorities in Reply to Razuki's

---

Defendant and appellant Devilish was formed as a nonprofit corporation to obtain and hold the governmental licensing for the Roselle Facility. However, the management company, plaintiff in intervention Socal Building Ventures, LLC, a Delaware Limited Liability Company and San Diego Building Ventures, LLC, a Delaware Limited Liability Company (collectively "Socal") never took any steps to obtain the proper licensing for the Roselle Facility. Since it never became operational, Roselle was not included among the cannabis production facilities that were placed under the control of the receiver. And since the Roselle Property was never developed as a cannabis production facility, Devilish has not engaged in any business activity. Nevertheless, as noted, the 9/26/2018 order impacted Roselle, and it has joined in the appeal of that order. However, neither Roselle nor Devilish has any connection to either the Mira Este Facility or the Balboa Ave Dispensary. Therefore, they should not have been required to post a bond as a condition for the removal of the receivership at the Mira Este Facility.

Opposition. Cross-Appellants' reply papers are collectively attached to Cross-Appellants Exhibit Index as Exhibit H.

The motion was heard on December 14, 2018, at the same time as the similar motion by appellants Malan, Monarch, Flip, SD United, Balboa Co-op, Devilish, and CCG was heard. A copy of the transcript of said hearing on December 14, 2018 is attached as Exhibit I to Cross-Appellants Exhibit Index.

7. On December 17, 2018, the trial court issued a Minute Order setting the amounts and conditions of the bonds on appeal. In pertinent part, the 12/17/2018 Minute Order states:

"The court sets the appellate bond as follows:

Ninus Malan appellate bond is set at $350,000.

San Diego United Holdings Group's appellate bond is set at $350,000.

American Lending and Holdings LLC's appellate bond is set at $350,000.

Flip Management LLC's appellate bond is set at $350,000.

Balboa Ave Cooperative's appellate bond is set at $50,000.

Devilish Delights Inc.'s appellate bond is set at $50,000.

California Cannabis Group's appellate bond is set at $50,000.

Chris Hakim's appellate bond is set at $350,000.

Mira Este Properties LLC's appellate bond is set at $350,000.

Roselle Properties LLC's appellate bond is set at $350,000.

Based upon various representations during oral argument that all parties must cooperate in order to be effective, in order to vacate the receiver, each party must post bond."

A copy of the 12/17/2018 Minute Order is attached as Exhibit J to Cross-Appellants Exhibit Index.

8. **The consequence of the 12/17/2018 Minute Order is to require all 10 of the listed parties to post a bond in order for the receivership to be vacated at either facility. Thus, *if any of the 10 listed parties are unwilling or unable to post a bond in the specified amount, then the receivership will not be vacated at either facility.* This result is particularly unfair and unjust since the majority of parties listed in the 12/17/2018 Minute Order have no ownership interest whatsoever in the Mira Este Facility, the two facilities are separate and distinct businesses, and the two facilities have different owners.** Also, and although Cross–Appellants strongly believe that the $350,000 bond amount required of MEP and even $50,000 bond amount required of CCG is excessive, unsupported by any evidence, and otherwise arbitrary, they are nonetheless ready, willing, and able to post a bond in the amount of $350,000 for MEP. Cross-Appellants are informed and believe and thereon allege that CCG is also ready, willing, and able to post the bond amount of $50,000 in order to vacate the receivership at the Mira Este Facility. However, Cross-Appellants do not have the ability to post a bond in favor of each and every one of the other parties designated in the 12/17/2018 Minute Order even if each of those parties was willing to act in concert with and cooperate with Cross-Appellants to allow for the posting of a bond on their behalf.

Further, **the 12/17/2018 Minute Order required American Lending and Holdings LLC to post a bond in the amount of $350,000 in order for the receivership to be vacated at either facility.** ***American Lending and Holdings LLC is not a party to the appeal. It is also not a party to the 9/26/2018 Order. American Lending and Holdings LLC does not own any interest in either the Balboa Ave Dispensary or the Mira Este Property.*** It is a limited liability company owned by Malan and listed as a cross-complainant on the cross-complaint filed by Malan. Nevertheless, American Lending and Holdings LLC is listed in the 12/17/2018 Minute Order as one of the parties that is required to post a bond. (Exh. J at p. CAEI 0321).

B. Statement of the Case.

9. The statement of the case and nature of the action generally arise from business disputes between Razuki and Malan. Those business disputes escalated to the point of criminal charges being filed against Razuki apparently due in part to Malan's filing of the Notice of Appeal in this case. (Exh. H at p. 0188). Razuki was charged in a federal criminal complaint with conspiracy to kill, murder, maim, and kidnap Malan. He is awaiting trial on that criminal complaint in the United States District Court for the Southern District of California. Exh. H at pp. 0185-0192).

Petitioners are informed and believe and thereon declare that in or about October 2016, Razuki, through his wholly owned limited liability company, Razuki Investments LLC, purchased two commercial condominium units at 8861

Balboa Ave., Suite B, San Diego, CA 92123 and 8863 Balboa Ave., Suite E, San Diego, CA 92123, for the purpose of merging the two units and engaging in the retail sale of cannabis products. In or about March 2017, the two commercial condominium units were then transferred to SD United, a company owned by Malan. These two units were then developed into the Balboa Ave Dispensary that is now under the control of the receiver pursuant to the 9/26/2018 Order. Appellant and defendant Balboa Co-op is the nonprofit business entity that holds the licensing for the Balboa Ave Dispensary. Other than SD United and Balboa Co-op, no other party has any interest in the Balboa Ave Dispensary.

In or about July 2016, the other property that is under the control of the receiver and which is the subject of this petition, the Mira Este Facility, was acquired. The Mira Este Facility, consisting of approximately 16,000 square feet of improvements on an approximate one-half acre lot, was purchased by MEP. MEP is a limited liability company whose record owners are Hakim and Malan. (A copy of the Operating Agreement for MEP is attached as Exhibit 1 to Hakim's Declaration, which is attached as Exhibit F to Cross-Complainants Exhibit Index.) The Operating Agreement for MEP requires Hakim, as managing member, to distribute all net income equally to himself and Malan. (Exh. F at pp. 0069-0070, §§4.1, 4.3, 4.5, 4.6). There is no connection, privity, or obligation that either Hakim or MEP owes to Razuki. Appellant and defendant CCG is the business entity that holds the licensing for the Mira Este Property. Other than MEP and CCG, no other party has any interest in the Mira Este Facility.

Based on Razuki's filings in this case and in particular, his First Amended Complaint filed in July 2018, Razuki's sole claim as it relates to the properties subject to the receivership is for a portion of the net profits earned by the Balboa Ave Dispensary and the Mira Este Facility. A copy of Razuki's Amended Complaint filed in this case is attached to Cross-Appellants Exhibit Index as Exhibit K. The alleged profit-sharing agreement between Razuki and Malan that forms the gravamen of Razuki's claims was executed in 2017 and is only between Malan and Razuki. The 2017 document ("RM Holdings Agreement"), attached as an exhibit to Razuki's First Amended Complaint (at Exh. K, beginning at p. 0357), was executed in 2017 by Malan and Razuki ***after*** the Mira Este Facility was acquired. The RM Holdings Agreement purports to form a separate entity, RM Holdings LLC, to receive title to the various assets identified in the 2017 agreement. (Exh. K at p. 0357-0359). However, the RM Holdings Agreement does not even mention Hakim or MEP, and is of questionable enforceability even as against Malan. The RM Holdings Agreement was never delivered to Hakim or MEP. Malan never notified MEP to transfer his interest in MEP to RM Holdings. In essence, Razuki claims that profits that Malan received from the Mira Este Facility and the Balboa Ave Dispensary were not shared with Razuki in line with the RM Holdings Agreement. Notwithstanding that Razuki's only claim for failing to share net profits from these facilities is against Malan, the trial court appointed a receiver to take control and possession of both facilities pending trial. As manager of the Mira Este Facility, Hakim's only duty regarding distributions

of profits was to divide and distribute profits to himself and Malan and not to any non-member such as Razuki. The division of Malan's share of profits between himself and Razuki was completely separate and apart from the operation of the Mira Este Facility. In short, there was and has been no showing of any errors, malfeasance, or irregularity in connection with the operation of the Mira Este Facility or concerning any distribution made by MEP or Hakim to Malan.

Razuki was not intended to be nor has he alleged in the First Amended Complaint that he was entitled to be either a member or shareholder of any of the entities that own the Balboa Ave Dispensary or the Mira Este Facility. His only alleged interest was in a share of profits that were initially distributable to Malan as either member or shareholder of those facilities.

The 12/17/2018 Minute Order disregards the role and functions of each of the 10 listed parties in requiring each of them to post a bond in order for the receivership to be stayed at the Mira Este Facility. The 12/17/2018 Minute Order also conflates the positions of each of the other entities who must post a bond with that of MEP and CCG, the only owners of the Mira Este Facility and the only parties that should be obligated to post undertakings in order to vacate the receivership at the Mira Este Facility. For example, as alleged in Razuki's First Amended Complaint, defendant and appellant Flip owns no interest in either the Balboa Ave Dispensary or the Mira Este Facility. It is a limited liability company owned entirely by Malan and formed to operate an ATM machine at the Balboa Ave Dispensary. (Exh. K at pp. 0330, 0331). Flip is listed in the 12/17/2018

Minute Order as one of the parties that is required to post a bond in the amount of $350,000.00 in order for the receiver to be removed from the Mira Este Facility.

Similarly, defendants and appellants Monarch, SD United, Balboa Co-op, and Devilish own no interest in the Mira Este Facility. Roselle also owns no interest in the Mira Este Facility. Yet, the 12/17/2018 Minute Order requires each of these entities to post a bond as a condition for vacating the receiver at the Mira Este Facility.

Even Malan and Hakim own no interest in the Mira Este Facility itself. These individuals only own an interest in the entity that owns the Mira Este Facility, namely, MEP. Yet, the 12/17/2018 Minute Order requires each of these individuals to post a bond in the amount of $350,000 as a condition for vacating the receiver at the Mira Este Facility.

10. The proceedings in the Superior Court since Razuki filed his initial complaint in early July 2018 have been irregular, to say the least. Razuki first applied for the appointment of a receiver on an ex parte basis on or about July 17, 2018, before the Honorable Kenneth Medel, judge presiding, in Department C – 66 of the San Diego County Superior Court. The ex parte application was granted and the receiver was appointed.

A few days later, defendants and appellants challenged Judge Medel, and the matter was transferred to Department C – 75, the Hon. Richard E. L. Strauss, judge presiding. Malan filed an ex parte application to vacate the order appointing

the receiver. The application was granted by Judge Strauss on or about July 31, 2018, and the receivership was vacated.

Thereafter, the matter was transferred again when Razuki challenged Judge Strauss. The case was transferred to Department C – 67, the Honorable Eddie C. Sturgeon, judge presiding. Razuki filed another ex parte application for the appointment of a receiver, and as noted, his ex parte application was granted in late August 2018, with the hearing on preliminary injunction set for September 7, 2018.

11. The cross-appeal from the 9/26/2018 Order is based on a number of different grounds, including but not limited to the trial court's lack of jurisdiction under Code of Civil Procedure section 564 to appoint a receiver; the trial court's abuse of discretion in appointing the receiver when a less drastic remedy would have been equally effective; Razuki's unclean hands[2]; and the unenforceability of the agreement between Malan and Razuki for the division or distribution of profits between them.

C. Necessity of Writ and Basis for Relief.

12. Issuance of the writ is necessary for the following reasons:

---

[2]As noted, after the notice of appeal was filed in this action, Razuki was charged and indicted in federal court for conspiracy to murder Malan. According to the probable cause statement, at least one of the reasons for the murder for hire plot was based on the filing of the appeal by Malan. (Exh. H at p. CAEI 0188). This bizarre and evil malfeasance of Razuki was raised in connection with cross-appellant's motion to set bond motion as supporting the defense of unclean hands and establishing that a only minimal bond should have been required since Razuki's claim for equitable relief was barred by his unclean hands. (Exh. H at pp. CAEI 0206-0211). The trial court did not address this contention in its remarks at the 12/14/2018 hearing or in the 12/17/2018 Minute Order.

The 12/17/2018 Minute order requires that each of the ten parties listed in said order post a substantial bond, regardless of that party's relationship or affiliation to the two separate businesses. The bond amounts are $350,000 for each party, except in the case of the three nonprofit corporations, CCG, Balboa Co-op, and Devilish. The bond amounts for each of those entities is $50,000 each. This requires that defendants and appellants and cross-appellants post bonds totaling $2.6 million in order to vacate the receivership at either facility.

While all ten parties listed in the 12/17/2018 Minute Order are parties to this litigation, only four parties have any interest in the businesses subject to the receivership. In particular, as alleged by Razuki himself, the only owner of the Balboa Ave Dispensary is SD United and the only owner of the license for the Balboa Ave Dispensary is Balboa Co-op. (Exh. K at p. 330, 331). The only owner of the Mira Este Property is MEP. The only owner of the license for the Mira Este Property is CCG. Therefore, bond amounts for only SD United and Balboa Co-op should have been required in order to remove the receivership at the Balboa Ave Dispensary. And bond amounts for only MEP and CCG should have been required in order to stay the receivership at the Mira Este Property. Both Razuki's counsel and appellant's counsel argued at the hearing on December 14, 2018 that the bond amounts should not be aggregated, but should be separately applied to each facility. (Exh. I at pp. 0228-0232). Notwithstanding the statements of counsel that the bonds be separated based on each facility, the trial court set bonds for all of the appellants as well as for a party not appealing and not

even covered by the 9/26/18 Order (American Lending and Holdings LLC). The trial court then imposed the onerous and even impossible condition that all ten appellants post bonds in order for the receivership to be vacated at either facility.

Further, the bond amounts set by the trial court are excessive and unnecessary given the substantial losses incurred by both businesses as a direct result of the receivership. Only minimum bonds should have been required. The status of the operations at the two businesses are more particularly described as follows:

A. Mira Este Facility: The business at the Mira Este Facility has been operating at a loss ever since the receiver was appointed. The forensic accounting firm appointed by the trial court, Brinig Taylor Zimmer, reported that the Mira Este Property lost $132,097 for the period from approximately July to the end of October 2018. The receiver was in control and possession of the Mira Este Facility during this entire period with the exception of approximately two weeks following Judge Strauss' order vacating the receivership. A portion of the Amended Schedule 5, Receiver's Amended Second Report dated November 13, 2018, prepared by Brinig Taylor Zimmer, is attached to Cross-Appellant's Exhibit Index as Exhibit K.

Debt service on the loans encumbering the Mira Este Property are approximately $25,000 per month. There is also additional and extensive overhead for the Mira Este Facility beyond debt service. Overhead expenses include staffing, security, and services are required to be provided to sub

licensees operating at the Mira Este Facility regardless of the number of sub licensees at the Facility.

During the time that the receiver has been supervising the Mira Este Facility, there have been no less than eleven separate manufacturers who have expressed a strong interest in locating their manufacturing processes at the Mira Este Property, but who ultimately decided against it solely because of the receivership at the property. Not a single producer or manufacturer has been willing to locate its production operation at the Mira Este Facility during the receivership.[3] This evidence was brought before the trial court through the declaration of Jerry Baca, president of Synergy Management Company ("Synergy") in his September 4, 2018 declaration. (Synergy was appointed manager of the Mira Este Facility in early August 2018 at a time after the receivership had been vacated by Judge Strauss and before the receivership was re–appointed by Judge Sturgeon. A copy of Mr. Baca's declaration is attached to the Reply to Razuki's Opposition (Exh. H at p. 0194-0201). In pertinent part, Mr. Baca stated (at Exh. H at pp. 0197-0200):

"10. Based on our respective contacts in the cannabis industry, Chris Hakim and I developed a list of producers and manufacturers for

[3] The only manufacturer who has located its production operation at the Mira Este Property has been a company known as Edipure. However, Edipure contracted with the Mira Este Facility in early August 2018 at a time after the receivership had been vacated by Judge Strauss and before the receivership was re–appointed by Judge Sturgeon. The $30,000 monthly minimum payment by Edipure is the only income that has been generated at the Mira Este Property since the receiver was appointed. That amount is insufficient to meet debt service and overhead at the Mira Este Property.

sublicensing at the Mira Este Facility. Through a series of ongoing discussions that we have had with these contacts in efforts to procure them as sub licensees for the Facility over the last several weeks, the existence of a receivership over the Facility essentially blocks these potential sub licensees from entering into sublicense agreements of the type made by Edipure. Before the receiver was appointed, almost all of our contacts expressed significant interest and willingness to enter into a sublicense agreement. After the receiver was re-appointed on or about August 20, 2018, none of our contacts expressed interest or a willingness to enter into a sublicense agreement when it was disclosed that a receiver was overseeing the Facility. Without sub licensees and producers and manufacturers such as Edipure, the Mira Este Facility will become insolvent. The following is a list of the companies with whom Mr. Hakim and I had discussions about a sublicense agreement (also included are a description of cannabis products made by the company, comments by company principals once it was disclosed that a receiver was in charge of the Facility, and potential revenues lost):

A. Conscious Flowers (see accompanying declaration of Robert Torrales). (Exh. H at pp. 0203-0204).

B. Eureka Oil (Vape Cartridges): I was told by the principal of Eureka Oil that having a third-party receiver would be a "deal breaker." He made

it clear he will only work directly with Mr. Hakim. Potential revenues lost amount to more than $40,000 per month based on anticipated sales.

C. Bomb Xtracts (Vape Cartridges, Pre Rolls, Flower, Moonrocks, Candy, Concentrates, Drinks, Edibles and chip). I was told by the principal that he refused to work with any receiver. He stated that his company had too many trade secrets and recipes that could potentially be monitored and copied by a receiver. Potential revenues lost amount to more than $70,000 per month based on anticipated sales.

D. 10X (Cannabis infused drinks). I was told by the principal that he was not willing to share trade secret to the knowledge of the business with a third party receiver. Potential lost revenue amounts to approximately $20,000 per month.

E. Cannabis PROS ((Candy Company). I was told by the principal that any sublicense agreement would have to wait until all legal issues are resolved and ownership other than the receiver is in place. Potential lost revenue amounts to approximately $25,000 per month.

F. Royal Vape (Vape Cartridges, Pre Rolls, Edibles). I was told by the principal that he was unwilling to work with the receiver. He did not give a reason. Potential lost revenue amounts to more than $30,000 per month.

G. LOL Edibles (Candy, Chips and more). I was told by the principal that he was not pleased about having to work with a receiver and is still

waiting to decide whether or not to proceed with the sublicense agreement. Potential lost revenue is more than $30,000 per month.

H. Xtreme Vape (Vape Oil manufacturing and Vape Cartridges). I was told by the principal that he is not willing to work with a receiver. Negotiations for sublicense agreement will be restarted once the receiver is removed or the lawsuit is complete. Potential lost revenue is more than $20,000 per month.

I. Bloom Farms (Vape Cartridges). I was told by the principal that because of the turmoil caused by the litigation, he has decided to go elsewhere for his production facility. Potential lost revenue is more than $30,000 per month.

J. Cannabis Presidentials (Premium Pre Rolls, Vape Cartridges, Flower, Moonrocks,

Candies). I was told by the principal that he is not willing to work with a third-party receiver and that "once things are cleared up", they would be willing to sign a sublicense agreement. I was also told by the principal that he is concerned that his company's trade secrets would be jeopardized with a receiver or other third-party overseeing the Facility. Potential lost revenue is between $40,000 and $70,000 per month."

Because of the existence of the receivership, MPE has been unable to attract producers and manufacturers. This has led to substantial losses as detailed in the Amended Second Report of Receiver. (Exh. F at p. 0092 and Exh. G at p.

0144). These losses totaling more than $132,000 during the tenure of the receiver easily could have been avoided had the receiver been removed at any point after the receiver's appointment. Once the receiver is removed, it is very likely that at least some of these sublicensees will still enter into sublicenses with the Mira Este Facility. However, there was no evidence submitted to the trial court to show that any potential sublicensees would transact sublicense agreements with the receiver in place. Otherwise stated, Razuki has not and cannot show any likely damage will occur if the receiver is removed from the Mira Este Facility. It is far more likely that profitability would return to the Mira Este Facility if the receivership were vacated. Indeed, the 12/17/2018 Minute Order imposing onerous requirements and unreasonable bond amounts as conditions for the stay of the receivership order at the Mira Este Facility is unsupported by any evidence and is therefore arbitrary. Because of the lack of any damage that will result to Razuki if the receiver is removed from the Mira Este Facility, the bond amount to stay the receivership at the Mira Este Facility should be minimal.

B. Balboa Ave Dispensary: During the time that the receiver has been supervising the Balboa Ave Dispensary, that business has not only lost substantial sums of money, but it has had to close its operations because of lack of funding, lack of product, and lack of sales. There was no evidence that Razuki would likely suffer damages if the receiver were vacated from the Balboa Ave Dispensary. It is far more likely that profitability would return to the Balboa Ave Dispensary if the receivership were vacated.

D. Irreparable Harm:

13. Irreparable harm will result to Cross-Appellants if the within writ is not issued. ***Requiring parties who have no interest in either facility to post a bond in the specified amount in order to vacate the receivership at either facility will simply result in the receiver remaining in place during the entire pendency of this appeal.*** Additionally, and as noted, the receiver's presence at the Mira Este Facility has destroyed the ability of the business to procure sublicensees. Without income from sublicensees, the Mira Este Facility cannot survive from its operations given the amount of monthly debt service and overhead expense that must be met. The only way that the Mira Este Facility has remained open at all and has not otherwise been subject to foreclosure proceedings by its lenders is because of individual loans made by Hakim to meet debt service and expenses.

Further, if the within writ is not issued, Cross-Appellants will be deprived of their right to have the receivership stayed at the Mira Este Facility. In that regard, it is mandated by law and it is entirely reasonable to require only those parties who own the Mira Este Facility, which is limited to Cross-Appellant MEP as the owner of the facility and CCG as the licensee, to post the specified undertaking in order to vacate the receiver from the business. Given the undisputed circumstance that the Mira Este Facility has operated at a significant loss and will likely be subjected to foreclosure proceedings if the receiver is left in place, the amount of the undertakings for MEP and CCG should be minimal.

E. No request for stay in trial court.

14. Cross-Appellants have not requested a temporary stay of the receivership order in the trial court, because the 12/17/2018 Minute Order already concerns a stay of the receivership order on conditions that are being challenged in this petition.

F. Authenticity of Exhibits.

15. All exhibits accompanying this petition are true copies of original documents on file with the trial court, except for the Reporter's Transcript prepared by Leyla Jones and attached as Exhibit I to Cross-Appellants' Exhibit Index. Ms. Jones was appointed by the Court at the 12/14/2018 Hearing to report the hearing, but to petitioner's knowledge, the transcript of said hearing has not been filed with the Court. The exhibits are incorporated herein by reference as though fully set forth in this petition. The exhibits are paginated consecutively, and page references in this petition are to the consecutive pagination.

WHEREFORE, Petitioners, Defendants, and Cross-Appellants pray this court:

1. Issue a writ of supersedeas modifying the trial court's 12/17/2018 Minute Order by reducing the amount of the undertaking required of MEP and CCG to the minimum amounts of $10,000 each in order to reflect the actual likelihood (or lack thereof) that Razuki will suffer damages as a result of the stay of the receivership appointment at the Mira Este Facility; and further modifying the trial court's 12/17/2018 Minute Order by disaggregating the undertakings, and requiring only those parties with an ownership interest in the Mira Este Facility,

namely, MEP and CCG, be required to post undertakings in order that the receivership be vacated from the Mira Este Facility.

2. Award Petitioners and Cross-Appellants their costs;

3. Grant a temporary stay of the receivership and all proceedings thereon, pending determination of this petition; and,

4. Grant such other relief as may be just and proper.

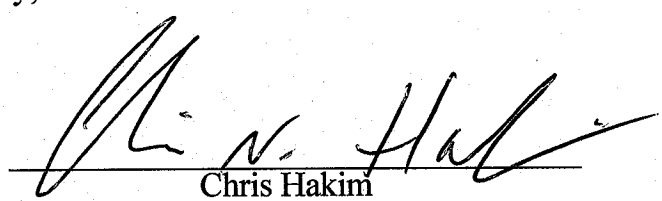
GORIA, WEBER & JARVIS

Dated: 2/1/19

By: _____
Charles F. Goria
Attorneys for
Defendants/Cross-
Appellants/Petitioners
CHRIS HAKIM, MIRA ESTE
PROPERTIES, LLC, and ROSELLE
PROPERTIES LLC

VERIFICATION

I, Chris Hakim, am one of the Petitioners, Defendants, and Cross-Appellants in the above-entitled matter. I am a managing member of Defendants, Cross-Appellants and Petitioners Mira Este Properties, LLC and Roselle Properties LLC. I have read the foregoing petition and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed this 1st day of February 2019 at San Diego County, California.



Chris Hakim

MEMORANDUM OF POINTS AND AUTHORITIES

1. A WRIT OF SUPERSEDEAS IS NECESSARY IN THIS CASE TO MAINTAIN THE STATUS QUO AND PROTECT APPELLATE JURISDICTION.

Cross-Appellants bring the within petition for writ of supersedeas to correct the order of the trial court imposing certain conditions and setting various amounts of bonds required in order to stay the trial court's appointment of a receiver at the Mira Este Facility. Without the requested relief, Cross-Appellants will be unable to post the necessary undertakings for all ten parties listed in the trial court's 12/17/2018 Minute Order. Indeed, since the interests of appellants and cross-appellants regarding this appeal do not necessarily coincide, any one of the appellants can easily thwart the posting of all bonds required by the trial court for the removal of the receivership at the Mira Este Facility by refusing to allow Cross-Appellants to post the required bond on his or its behalf. In effect, the 12/17/2018 Minute Order deprives Cross-Appellants of their right to post a bond in order to vacate the receivership at the Mira Este Facility.

As detailed in the accompanying petition, the receivership needs to be removed from the Mira Este Facility in order for that facility to have a chance at survival. As noted, the Balboa Ave Dispensary has already closed because of the presence of the receiver.

The evidence establishing that the existence of the receivership at the Mira Este Facility has seriously jeopardized the continued existence of that business is undisputed. No sublicensee-manufacturer will willingly work under a receivership, as made clear in the petition. As such, the Mira Este Facility is in serious jeopardy of closing. Once it closes, there will be no need for this appeal.

In that regard, it is noteworthy that the appeal filed by appellants has not progressed. They have not sought any similar writ because the Balboa Ave Dispensary has closed since they filed their notice of appeal. In short, the existence of the receivership at the Balboa Ave Dispensary has destroyed that business, and has made it unnecessary for any appellate intervention.

To avoid the same result with the Mira Este Facility and to protect this court's appellate jurisdiction, the 12/17/2018 Minute Order must be modified. Cross-Appellant MEP and appellant CCG should be allowed to post a reasonable bond and retrieve their business without regard to whether any other appellant or cross-appellant posts a bond.

A writ of supersedeas may issue to correct the amount of the bond required. (See *Gallardo v. Specialty Restaurants Corp.* (2000) 84 Cal.App.4th 463, 469. See, also, *Nielsen v. Stumbos,* 226 Cal. App. 3d 301, 303; 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 219, pp. 225-226; and Code of Civil Procedure Section 923. That section reads as follows:

> "The provisions of this chapter shall not limit the power of a reviewing court or of a judge thereof to stay proceedings during the pendency of an appeal or to issue a writ of supersedeas or to suspend or modify an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo, the effectiveness of the judgment subsequently to be entered, or otherwise in aid of its jurisdiction."

This court should issue a discretionary stay pending appeal under Code of Civil Procedure section 923. As the Supreme Court has explained, the purpose of a discretionary stay, like an automatic stay, is to preserve the status quo pending appeal: "'[T]he rule now is that in aid of their appellate jurisdiction the courts will grant supersedeas in appeals where to deny a stay would deprive the appellant of the benefit of a reversal of the judgment against him, provided, of course, that a proper showing is made.'" (*People ex rel. San Francisco Bay Conservation & Development Com. v. Emeryville* (1968) 69 Cal.2d 533, 537.) "'On principle, it would be a terrible situation if in a proper case an appellate court were powerless to prevent a judgment from taking effect during appeal, if the result would be a denial of the appellant's rights if his appeal were successful.'" (*Ibid.*)

Discretionary supersedeas is appropriate where (1) the appeal presents substantial issues, and (2) failure to issue a stay is more likely to injure the appellant than issuance of a stay is likely to injure the respondent. (*Davis v. Custom Component Switches, Inc.,* 13 Cal.App.3d 21, 27-28; accord, *Estate of Murphy*, 16 Cal.App.3d 564, 569.) Both factors are present here.

A. The cross-appeal presents substantial issues.

The appeal from the 9/26/2018 Order presents substantial issues concerning the basic jurisdiction of the trial court to impose the drastic remedy of receivership over a business such as the Mira Este Facility where the complaining party has no ownership interest. The only interest asserted by Razuki is some type of profit-sharing arrangement with one of the members of the limited liability company. No ownership interest in the property, business, or limited liability company itself is even alleged by Razuki.

Further, the trial court's rush to impose a receiver over the Mira Este Facility on ex parte application by issuing the August 20, 2018 TRO represents an incredibly drastic measure given that there was not a scintilla of evidence that Hakim or MEP were guilty of malfeasance or even misfeasance in distributing profits. Indeed, there has still been no evidence of any irregularity or impropriety by Hakim or MEP in distributing profits in accordance with the provisions of the MEP operating agreement governing distribution of profits. Thus, the trial court's resort to the drastic remedy of receivership without adequate evidentiary basis presents yet another substantial issue for this court on appeal.

Moreover, the strength of Cross-Appellants' appeal as it relates to the Mira Este Facility is shown by a review of the requirements of Code of Civil Procedure Section 564 pertaining to the appointment of receivers. That section establishes the parameters of the court's jurisdiction to appoint a receiver, and without a showing bringing the receiver within one of the provisions of Section 564, a court's order appointing a receiver is void. *Turner v. Superior Court* (Cal. App.

5th Dist. Aug. 24, 1977), 72 Cal. App. 3d 804.

In the present case, plaintiff has not shown entitlement to a receiver under any of the provisions of CCP section 564. Section 564 lists some twelve different categories of cases in which an appointment of a receiver may be available. The facts in the present case do not fall within any of those twelve categories. Even the broad, catchall provisions of 564(b)(1) and (b)(9) are inapplicable. Subsection (b)(1) refers to actions between partners or others claiming joint ownership of monies where the monies are in danger of being lost, removed, or materially injured. Subsection (b)(9) supports the appointment of a receiver to protect or preserve the rights or property of a party.

In the present case, plaintiff does not claim any joint ownership of monies belonging to MEP or Hakim. Plaintiff's only claim regarding the Mira Este Facility is predicated upon the RM Holdings Agreement, which supposedly entitles plaintiff to receive a portion of the profits that Malan receives. At most, however, plaintiff would be entitled to some degree of protection ***after net profits have been distributed by MEP to Malan***. Clearly, Razuki should not be entitled to have a receiver appointed over the Mira Este Facility to insure that Malan shared his profits with plaintiff.[4]

---

[4] By way of example, if Malan and plaintiff had a similar profit sharing agreement regarding dividends paid by AT&T, and if Malan retained the dividends and did not share them in accordance with such agreement with plaintiff, plaintiff would not be entitled to have a receiver appointed over the business of AT&T. At most, plaintiff might be entitled to some relief to protect his interest in dividends paid by AT&T.

Similarly, there is no claim by plaintiff that he is an owner of the Mira Este Facility, only that he is entitled to a share of the profits and distributions made to Malan. Therefore, the appointment of a receiver over the Mira Este Facility under subsection (b)(9) is equally unavailing to plaintiff.

Since plaintiff cannot qualify for the appointment of a receiver under any of the provisions of CCP section 564, at least as to the Mira Este Facility, the receiver should not have been appointed because the court lacked jurisdiction to do so.

Regarding the distribution of profits at the Mira Este Facility, Cross-Appellant Hakim, as managing member of MEP, did exactly what the Operating Agreement required him to do. He distributed the profits equally among the members, namely himself and Malan. Razuki knew of and at least implicitly approved the Mira Este Properties LLC Operating Agreement. According to his amended complaint, Razuki deposited cash monies into escrow to allow for the closing of the sale of the Mira Este Facility to MEP in August 2016. He knew that he was not a listed member of MEP and that all net profit distributions were to be made to Hakim and Malan as the only two members. Razuki's only claim is based on the alleged failure of Malan to share his distributions with Razuki. Since Hakim and MEP had no obligation to make any distributions to Razuki or account to Razuki under the terms of the Operating Agreement, Razuki has no basis for a

receiver at the Mira Este Facility.

Further, even if the trial court had jurisdiction to appoint the receiver, the trial court's appointment of a receiver was an abuse of discretion in that a remedy far less drastic than receivership was available to plaintiff that would have adequately protected plaintiff. (*A.G. Col Co. v. Superior Court* (1925) 196 Cal. 604, 613; *Dabney Oil Co. v. Providence Oil Co.* (1913) 22 Cal. App 233).

As an obvious and far less drastic alternative to the appointment of a receiver, the trial court could have made injunctive orders requiring regular accountings by MEP. The trial court could also have issued an injunctive order blocking any distributions to the members without court approval. This was urged on several occasions, but the trial court refused to do so.

Since the overwhelming evidence weighs against the validity of the receivership appointment at Mira Este Facility, this factor as well weighs against a substantial bond requirement on Cross-Appellants.

For these reasons, the 12/17/2018 Minute Order should be modified to require only the two interested parties, namely MEP and CCG, to post a bond in a reasonable amount as a condition to the removal of the receiver at the Mira Este Facility.

B. The failure to issue a stay is more likely to injure Cross-Appellants than issuance of a stay is likely to injure the respondent.

The second basis for the need for a writ of supersedeas to correct the trial court's 12/17/2018 Minute Order is also present. Without a modification of the

12/17/2018 Minute Order, Cross-Appellants will be prevented from posting the necessary undertaking to remove the receivership at the Mira Este Facility pending this court's determination of the appeal. If the receiver remains at the Mira Este Facility, Cross-Appellants will be injured far more than Razuki will be injured if the receiver is removed.

Indeed, Razuki has never provided any evidence of a "likely" injury if the receiver is removed from the Mira Este Facility. If Razuki is able to prove any entitlement to a share of profits from the Mira Este Facility, then removing the receiver will actually benefit him far more by substantially increasing the likelihood that the Mira Este Facility will become profitable. Needless to say, the Mira Este Facility has lost substantial sums of money and will very likely continue to suffer losses because of the presence of the receivership.

Of critical importance in this writ proceeding is that the 12/17/2018 Minute Order will make it virtually impossible for Cross-Appellants to post the required bonds in order for the receivership to be vacated at the Mira Este Facility. As noted, the 12/17/2018 Minute Order requires all appellants and Cross-Appellants to post bonds relative to both businesses before the receivership will be vacated at either business. The trial court even required a non-appealing party, American Lending and Holdings LLC, to post a bond in order for the receivership to be removed from either facility. Obviously, American Lending and Holdings LLC will not post such a bond since it has no interest in doing so. Similarly, with the closing of the Balboa Ave Dispensary, there is little likelihood that any appellant

with an ownership interest in the Balboa Ave Dispensary will post the required bond. There would be no reason to post a bond, given that the Balboa Ave Dispensary is closed and will not benefit from the removal of the receivership at this late date.

2. THE BOND REQUIREMENT TO VACATE THE RECEIVER AT THE MIRA ESTE FACILITY PENDING AN APPEAL SHOULD BE IMPOSED ONLY ON MEP AND CCG, SINCE THEY ARE THE ONLY PARTIES WHO ARE ENTITLED TO A RETURN OF THE MIRA ESTE FACILITY.

The 12/17/2018 Minute Order states in part that in order to vacate the receiver at either facility, each and every one of the 10 parties listed in that order must post a bond, a so-called "aggregation condition". The trial court stated that this extremely unusual and questionable aggregation condition was, " Based upon various representations during oral argument that all parties must cooperate in order to be effective." (Exh. J at p. 0321). The condition that aggregates each and all of these 10 parties together and requires all of them to post an undertaking in order for the receivership to be vacated at either facility also includes a non-appealing party (American Lending and Holdings LLC) (Exh. J at p. 0321). This erroneous specification renders the order defective *a fortiori*, even if it were proper to aggregate different parties filing different appeals concerning different facilities for purposes of posting an undertaking.

The oral argument at the December 14, 2018 hearing on the setting of the

bond does not support the aggregation condition in the 12/17/2018 Minute Order. There was certainly no stipulation to that effect. Indeed, although the argument of plaintiff's counsel seemed to waffle on who should be required to post an undertaking, the initial contention argued by plaintiff's counsel was in line with the authorities to the effect that only the owners of each of the facilities would post a bond. The bonds would be different in amount, based on the different claims of Razuki. Thus, plaintiff's counsel argued that because Razuki was entitled to 75% of the net profits in the Balboa Ave Dispensary, the bond should be set in an amount equal to 75% of the value of that facility. Similarly, since Razuki claimed 37 1/2% of the net profits in the Mira Este Facility, the bond should be set in an amount equal to 37 1/2% of the value of the Mira Este Facility. Of course, plaintiff never submitted any evidence whatsoever that the likely damages to Razuki would be the entire loss of all of his interest in the net profits of that facility. Nevertheless, plaintiff's counsel James Joseph, representing Razuki, had the following exchange with the Court at the December 14, 2018 hearing on the motion to set the bond amount:

> "THE COURT: So my first question is: Are we going to have a stipulation, Judge, we're going to let you do it, that, Judge, everybody must post a bond to get a vacate of the order? And if not, that's fine, we'll go through and I'll start giving everybody one. Everybody understand? I'll listen to argument on that issue.
>
> Go.

MR. JOSEPH: To -- our position on that, Your Honor -- I think our briefing papers and the way that the parties have dealt with it is we've always been treating Balboa as one sort of group of people and then Mira Este as one sort of group.

And our specific requests requested a $9 million bond for the Balboa entities, which would be San Diego United, Flip, Balboa Avenue Cooperative, all of those entities that control that business. And then for Mira Este, we have a different bond amount for those entities." (Exh. I at p. 0230).

Similarly, counsel for appellants, Tamara Leetham argued at the hearing that the appeal rights of the parties on appeal are different. She mentioned that the First Amended Complaint does not even charge CCG or Devilish in any of the causes of action. As such, the appeal rights are going to run differently to different entities, and it would not be appropriate to "lump them in as one" when they are not. (Exh. I at pp. 0231-0232).

The law is in accord that the posting of a bond in the context of a receivership over multiple entities or parties should not be aggregated. The reasoning is that the receiver has essentially taken away control and possession of a business or property from a party at the request of another party pending the resolution of a dispute over entitlement to the business or property. **When the receivership ends or is vacated by the posting of a bond, the receiver is obligated to restore the business or property to the person from whom it was**

taken. *Baughman v. Superior Court of Calaveras County*, 72 Cal. 572, 575.

In this case, the only party or parties entitled to receive back the Mira Este Facility once the receivership is vacated are MEP and CCG. Therefore, the only two parties that should be required to post a bond in order to vacate the receivership at the Mira Este Facility are MEP and CCG.

From a slightly different perspective, the authorities indicate that where a receiver is appointed over more than one property or more than one business, and the trial court imposes a bond requirement for each business owner, the posting of a bond by one business-owner will stay the order appointing the receiver over that business even if the business-owners of the other businesses do not file a stay bond.

This particular point was addressed by the Fourth District Court of Appeal in *Highland Sec. Co. v. Superior Court of Orange County*, 119 Cal. App. 107, 111-112. In that case, as in the present case, there were two separate businesses run by two separate defendants, both of which were placed in the hands of a receiver. As in this case, both defendants appealed the order appointing the receiver but only one of said defendants filed a stay bond. The court there held that even though both defendants had not filed a stay bond, the receivership would be stayed and the court's jurisdiction over the receivership proceedings against the party posting the bond would be suspended during the pendency of the appeal.

In the present case, Cross-Appellants are appealing from the 9/26/2018 Order insofar as it established the receivership over the Mira Este Facility. **Once**

the owners of the Mira Este Facility post the stay bond, then the jurisdiction of the court over the receivership proceedings at the Mira Este Facility is suspended. Whether a bond is posted by the owners of the Balboa Ave Dispensary should not be considered by the court in fixing the bond for the Mira Este Facility.

3. SINCE THE MIRA ESTE FACILITY HAS BEEN LOSING SUBSTANTIAL MONIES UNDER THE RECEIVERSHIP AND PLAINTIFF WILL NOT BE PREJUDICED OR DAMAGED BY HAVING THE RECEIVER REMOVED, THE TRIAL COURT SHOULD HAVE IMPOSED ONLY THE MINIMUM BOND AMOUNT OF $10,000.

Under Code of Civil Procedure section 917.5, the court is empowered to set the amount of bond on appeal of an order appointing a receiver. Under that section, the bond amount is to be the amount of damages that the respondent may sustain by the removal of the receiver pending the appeal of the order appointing the receiver.

In their moving and reply papers submitted in support of the motion to set bond amount (copies of which are attached to Cross-Appellants Exhibit Index as Exhibits M and O), Cross – Appellants submitted detailed evidence showing the losses suffered at the Mira Este Facility during the receivership. Cross-Appellants' moving and reply paperwork also submitted detailed declarations establishing the reason for such losses as being directly attributable to the presence of the receivership. As indicated in the petition and the moving and reply paperwork,

none of the manufacturing customers that would otherwise enter into profitable sub-license agreements with the Mira Este Facility was willing to do so as long as the receivership existed there.

Cross-Appellants' evidence consisted of the forensic accounting produced by the court – appointed forensic accountants as well as a detailed declaration from Jerry Baca, the principal at Synergy that handled negotiations with prospective sublicensees. The evidence even consisted of a declaration from one of the manufacturers, Robert Torrales, stating in his own words why he would not deal with receiver. (Exh. H at pp. 0203-0204). From that evidence, it can readily be seen that the existence of the receivership has seriously damaged the Mira Este Facility, and that the removal of the receivership will likely result in a return to profitability of that facility.

Contrariwise, the evidence that plaintiff submitted in its opposition paperwork to the motion to set the amount of the bond consisted entirely of a provision in the management agreement between MEP and SoCal. That provision dealt with an offer to SoCal for an option to purchase a portion of the Mira Este Facility. The option price was $5 million for a 50% interest. Of noteworthiness is that the option price was set before the Mira Este Facility was even opened for operations. Further, SoCal never even purchased the option, much less exercised it. Plaintiff also failed to submit any evidence to establish that his claimed interest in 37 1/2% of the net profits at the Mira Este Facility was somehow equal to an interest in the facility as a whole, including the real estate and improvements.

However, most significantly, plaintiff utterly failed to submit any evidence that the removal of the receivership at the Mira Este Facility would cause him to suffer the complete loss of any claim that he has in the net profits at the Mira Este Facility. The undisputed evidence from the forensic accounting is that the Mira Este Facility has not enjoyed a single dollar of net profit but has lost some $132,000 during the tenure of the receiver. Plaintiff has not and cannot show that the removal of the receiver will somehow deprive him of net profits when there have been no net profits to be distributed during the receivership.

4. CONCLUSION.

For all of the foregoing reasons, it is requested that the Court grant Cross-Appellants' petition for writ of supersedeas, fix a more reasonable bond amount for the owners of the Mira Este Facility, MEP and CCG, further modify the 12/17/2018 Minute Order by eliminating any requirement that all parties listed in that order post a bond in order to vacate the receivership at either facility, and impose a stay of the receivership at the Mira Este Facility

Respectfully submitted,

GORIA, WEBER & JARVIS

Dated:_____

By:_____
Charles F. Goria
Attorneys for
Defendants/Cross-
Appellants/Petitioners
CHRIS HAKIM, MIRA ESTE
PROPERTIES, LLC, and ROSELLE
PROPERTIES LLC

CERTIFICATE OF WORD COUNT

I, Charles F. Goria, am counsel for Petitioners and Cross-Appellants in the above – referenced matter. The foregoing writ and brief consists of 10,155 words. I am relying on the computer program Microsoft Word for this word count.

Dated: 2/1/19

Charles F. Goria
Attorneys for
Defendants/Cross-
Appellants/Petitioners
CHRIS HAKIM, MIRA ESTE
PROPERTIES, LLC, and ROSELLE
PROPERTIES LLC

CERTIFICATE OF WORD COUNT

I, Charles F. Goria, am counsel for Petitioners and Cross-Appellants in the above – referenced matter. The foregoing writ and brief consists of 10,525 words. I am relying on the computer program Microsoft Word for this word count.

Dated: 2/1/19

Charles F. Goria
Attorneys for
Defendants/Cross-
Appellants/Petitioners
CHRIS HAKIM, MIRA ESTE
PROPERTIES, LLC, and ROSELLE
PROPERTIES LLC

al)

[X] Mail [ ] Personal Service

Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) before completing this form. Do not use this form for proof of electronic service. See form APP-009E.

Case Name: Salam Razuki (Pltff./Respondent) v. Ninus Malan et al., Defs/Appellants

Court of Appeal Case Number: D075028

Superior Court Case Number: 37-2018-00034229-CU-BC-CTL

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My [ ] residence [X] business address is *(specify)*:
   1011 Camino del Rio S., Suite 210, San Diego, CA 92108
3. I mailed or personally delivered a copy of the following document as indicated below *(fill in the name of the document you mailed or delivered and complete either a or b)*:
   Petition for Writ of Supersedeas or Other Appropriate Stay Order;Request for Immediate Stay; Points and Authorities
   a. [X] **Mail.** I mailed a copy of the document identified above as follows:
      (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**
         (a) [ ] **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.
         (b) [X] **placed** the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.
      (2) Date mailed: 2/1/2019
      (3) The envelope was or envelopes were addressed as follows:
         (a) Person served:
            (i) Name: Office of the Clerk, San Diego County Superior Court
            (ii) Address:
            330 West Broadway
            San Diego, CA 92108
         (b) Person served:
            (i) Name:
            (ii) Address:
         (c) Person served:
            (i) Name:
            (ii) Address:
         [ ] Additional persons served are listed on the attached page *(write "APP-009, Item 3a" at the top of the page)*.
      (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (city and state):

Form Approved for Optional Use
Judicial Council of California
APP-009 [Rev. January 1, 2017]

PROOF OF SERVICE
(Court of Appeal)

Case Name:	Court of Appeal Case Number:
	Superior Court Case Number:

3. b. ☐ **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:
(a) Name:
(b) Address where delivered:

(c) Date delivered:
(d) Time delivered:

(2) Person served:
(a) Name:
(b) Address where delivered:

(c) Date delivered:
(d) Time delivered:

(3) Person served:
(a) Name:
(b) Address where delivered:

(c) Date delivered:
(d) Time delivered:

☐ Names and addresses of additional persons served and delivery dates and times are listed on the attached page *(write "APP-009, Item 3b" at the top of the page).*

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

Date: February 1, 2019

Chrales F. Goria, Esq.
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

PROOF OF ELECTRONIC SERVICE (Court of Appeal)

Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) before completing this form.

Case Name: Salam Razuki (Pltff./Resopndent) v. Ninus Malan et al. (Defs./Appellants
Court of Appeal Case Number: D075028
Superior Court Case Number: 37-2018-00034229-CU-BC-CTL

1. At the time of service I was at least 18 years of age.
2. a. My [ ] residence [X] business address is *(specify)*:
   1011 Camino del Rio S., Suite 210, San Diego, CA 92108
   b. My electronic service address is *(specify)*: Chasgoria@gmail.com
3. I electronically served the following documents *(exact titles)*:
   (See Attachment for identification of documents served, and names, addresses, and dates and places of service)
4. I electronically served the documents listed in 3. as follows:
   a. Name of person served:
   On behalf of *(name or names of parties represented, if person served is an attorney)*:
   b. Electronic service address of person served:
   c. On *(date)*:

[X] The documents listed in 3. were served electronically on the persons and in the manner described in an attachment *(write "APP-009E, Item 4" at the top of the page)*.

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

Date: February 1, 2019

Charles F. Goria
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

Form Approved for Optional Use
Judicial Council of California
APP-009E [New January 1, 2017]

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

APP-009E, Item 3 and Item 4

ATTACHMENT TO PROOF OF ELECTRONIC SERVICE (COURT OF APPEAL)

3. I electronically served the following documents:

Petition for Writ of Supersedeas or Other Appropriate Stay Order; Request for Immediate Stay; Points and Authorities; Related Appeal Pending;
Cross-Appellants Exhibit Index, Volume 1;
Cross-Appellants Exhibit Index, Volume 2;

4. I electronically served the documents listed in item 3, as follows and on the following addressees:

Steven A. Elia (steve@elialaw.com) Maura Griffin (maura@elialaw.com) James Joseph (james@elialaw.com) Law Offices of Steven Elia 2221 Camino del Rio S., #207 San Diego, CA 92108 Tel. (619) 444-2244 Fax (619) 440-2233 Attorneys for Plaintiff/Respondent	Daniel Watts (dwatts@galuppolaw.com) Galuppo & Blake 2792 Gateway Road, Suite 102 Carlsbad, California 92009 Tel.: (760) 431-4575 Fax (760) 431-4579 Attorneys for Defendants/Appellants Ninus Malan et al.
Gina M. Austin (gaustin@austinlegalgroup.com) Tamara M. Leetham (tamara@austinlegalgroup.com) Austin legal Group 3990 Old Town Avenue, Suite A-112 San Diego, CA 92110 Tel. (619) 924-9600 Fax. (619) 881-0045 Attorneys for Defendants/Appellants Ninus Malan et al.	Richardson C. Griswold (rgriswold@griswoldlawsandiego.com) Griswold Law 444 S. Cedros Avenue, Suite 250 Solana Beach, CA 92075 Tel. (858) 481-1300 Fax. (888) 624-9177 Attorney for Receiver Michael Essary

XX VIA ELECTRONIC FILING SERVICE: Complying with Code of Civil Procedure section 1010.6, my electronic business address is chasgoria@gmail.com and I caused such document(s) to be electronically served through the One Legal e-service system for the above entitled case to those parties on the Service List maintained on its website for this case on February 1, 2019. The file transmission was reported as complete and a copy of the Filing/Service Receipt will be maintained with the original document(s) in our office.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on February 1, 2019, at San Diego County, California.

Charles F. Goria