

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

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6 SALAM RAZUKI,)
7 Plaintiff and Respondent,) HON. RICHARD E.L. STRAUSS
8 vs.) JUDGE
9 NINUS MALAN, et al.,) COURT OF APPEAL
10 Defendants and Appellants,) NO. D075028
11) SUPERIOR COURT
12) NO. 37-2018-00034229
13) CU-BC-CTL
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REPORTER'S TRANSCRIPT OF RECORD ON APPEAL

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July 31, 2018

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CERTIFIED TRANSCRIPT

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO
DEPARTMENT 75 BEFORE HON. RICHARD E.L. STRAUSS, JUDGE

SALAM RAZUKI,)
)
 Plaintiff,) No. 37-2018-00034229-CU-BC-CTL
)
 vs.)
)
 NINUS MALAN,)
)
 Defendants.) EX PARTE HEARING

REPORTER'S TRANSCRIPT

July 31, 2018

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1 SAN DIEGO, CALIFORNIA; TUESDAY, JULY 31, 2018; 9:12 A.M.

2
3 THE COURT: Good morning, everyone.

4 THE BAILIFF: And Your Honor, on Items 1 and 2,
5 Razuki vs. Malan. And these matters are being reported.

6 THE COURT: All right.

7 MR. ELIA: Good morning, Your Honor. Steven Elia
8 appearing on behalf of Plaintiff Salam Razuki.

9 MR. JOSEPH: James Joseph on behalf of plaintiff.

10 MR. ZIMMITTI: Good morning, Your Honor.
11 Salvatore Zimmitti on behalf of plaintiffs in intervention
12 So-Cal Building Ventures, LLC and San Diego Building
13 Ventures, LLC.

14 MR. GRISWOLD: Good morning, Your Honor.
15 Richardson Griswold, counsel for receiver Mike Essary,
16 who's present.

17 MR. ESSARY: Good morning, Your Honor. Michael
18 Essary, receiver.

19 MR. WATTS: Good morning, Your Honor. Daniel
20 Watts of Galuppo & Blake on behalf of Defendant Ninus
21 Malan.

22 MS. LEETHAM: Good morning, Your Honor. Tamara
23 Leetham from Austin Legal Group, along with Gina Austin,
24 also here for Ninus Malan. We would also be here for
25 San Diego United Holdings Group, Balboa Avenue
26 Cooperative, and California Cannabis Group, but for the
27 receiver.

28 MR. GRANT: Good morning, Your Honor. Miles

1 Grant for the defendant Chris Hakim. We're also here
2 representing his interest in Roselle and Mira Este, which
3 has been named in the receiver order.

4 THE COURT: All right. Thank you, everybody.

5 All right. I received this yesterday, which I've
6 read. I received this opposition this morning, which I've
7 read. The opposition indicates that this is -- there's no
8 basis for this hearing.

9 Comments about that in terms of procedure?

10 MR. ZIMMITTI: Well, Your Honor, if I may, our
11 position is that this is an improper motion for
12 reconsideration. Your Honor, defendants are trying to
13 gain new rights they would not have had otherwise had they
14 not exercised a peremptory challenge.

15 There's a perfectly good, valid order that Judge
16 Medel issued in that defendants could have moved to
17 reconsider or done whatever they chose to do to have that
18 order revisited. They chose not to. They chose to
19 immediately exercise a peremptory challenge. And now
20 they're coming back for a second bite of the apple, in
21 violation of the strict rules governing motions for
22 reconsideration.

23 So, Your Honor, given that, we -- it's our
24 position Your Honor does not have jurisdiction to
25 entertain this motion.

26 MS. LEETHAM: Your Honor, we never had a first
27 bite at the apple. I think that's what's critically
28 important. It was documented we weren't served with the

1 papers. We weren't given proper ex parte notice. I
2 received an e-mail Friday that said they were coming in I
3 don't know what. I don't know why.

4 On Monday, around lunchtime, we got this request.
5 And I continued to say we had not been served, nor was I
6 authorized at that time to accept service. So we didn't
7 have a first bite at the apple.

8 THE COURT: Nevertheless, there was an order
9 issued. And the question is can I this morning, under
10 this ex parte arrangement, do anything about it or does it
11 require some other type of action so that I can act on it?

12 MR. WATTS: Your Honor, a void order is void.
13 This order was -- we're not asking you to reconsider an
14 order. We're asking to vacate a void order that was void
15 the day that it was entered, because --

16 THE COURT: Why was it void?

17 MR. WATTS: It was void because it -- the
18 statutes that govern the appointment of a receiver
19 specifically say that a receiver can't have a prior
20 arrangement with one of the parties. In their application
21 for the receiver, they said that the receiver will
22 reappoint a criminally negligent management company, and
23 then the receiver went and go -- went ahead and
24 reappointed them, showing that there was an arrangement,
25 and they can't have that. The receiver is not supposed to
26 have that power. The order itself tells the receiver to
27 wind up and dissolve the companies, and that is not --

28 THE COURT: Several companies.

1 MR. WATTS: Several companies. They were with --
2 on ex parte notice, several companies were thrown into the
3 receivership. The elements of the statute for appointing
4 of a receiver weren't even met. He doesn't -- the
5 plaintiff doesn't actually claim ownership interest in the
6 businesses that were thrown in here. He claims shares of
7 a holding company that allegedly has a contract for, at
8 some point in the future, shares in these other companies
9 to be transferred to that holding company. I own shares
10 in Apple. That doesn't give me the right to throw out
11 Apple's management on an ex parte basis.

12 THE COURT: I read where you said that in the
13 papers.

14 MR. WATTS: Yes. And it remains true. So we're
15 asking the Court not to -- not to reconsider, but to
16 vacate an order that was void ab initio. And that was
17 something that sua sponte the other judge was going to do
18 and also this Court could do sua sponte. Even if we
19 needed to file a motion for reconsideration, this Court
20 has the inherent power to vacate --

21 THE COURT: Well, I'm concerned about this order.
22 I'll tell you that. Because it goes way beyond what was
23 discussed at the hearing. This is not a stand-still
24 order.

25 MR. ELIA: Your Honor, may I be heard?

26 THE COURT: Sure.

27 MR. ELIA: I represent Plaintiff Salam Razuki.
28 Everything counsel just said is false. Let me tell you

1 why. First of all --

2 THE COURT: And everything you're saying he's
3 going to tell me is false. That's the way this is going.

4 MR. ELIA: Well, maybe we should have a noticed
5 motion or evidentiary hearing so that the facts come out.

6 But basically, there was no prior arrangement.
7 We requested that So-Cal come back because the defendants
8 have three management agreements with options to purchase,
9 and they resorted to self-help and kicked them out when
10 So-Cal found out that my client was a 75 percent owner,
11 and he is.

12 What the defendants don't tell you about or
13 mention in the ex parte application, they say that we have
14 this mysterious interest, this imaginary interest.
15 There's an eight-page settlement agreement signed by
16 Mr. Malan and Mr. Razuki with two pages, two full pages,
17 of recitals that explain in crystal clear detail what the
18 partnership assets are, which include the defendant
19 entities.

20 And they come in this court and they say we have
21 no property right or interest in these dispensaries when
22 my client financed \$5 million for these entities, and
23 their client put in zero or nearly zero.

24 MS. LEETHAM: It's significant --

25 MR. ELIA: What they're trying to do, Your Honor,
26 is they're trying to kick out So-Cal because So-Cal found
27 out that my client's an owner. They're trying to kick out
28 So-Cal so they can continue stealing with another company

1 to kick my client out of the dispensaries that he financed
2 over \$5 million, and that's what this case is about.

3 MS. LEETHAM: The moving party bears the burden
4 to come into court by a preponderance and show the Court
5 in this case significant harm. They have no
6 documentation. They have no evidence. They have hearsay,
7 self-serving declarations. That's it. Two declarations
8 that claim a purported interest.

9 They gave no evidence of the loans, no evidence
10 of an ownership interest in Sunrise, which is a permitted
11 dispensary that does business under the trade name Goldn
12 Bloom, that was supposed to capitalize RM Holdings, which
13 also is not a defendant.

14 So we're -- not only are we improper in that
15 there's no evidence, we're missing the party who claims to
16 have the right to the other entities.

17 MR. WATTS: That settlement agreement is very
18 specific, as he said. And it says that the interests in
19 these companies are supposed to be transferred to a
20 holding company in which both parties own shares.

21 His client does not claim an interest in the
22 businesses that were thrown into the receivership. It's
23 RM Holdings, LLC that his client claims has an interest.
24 RM Holdings did not make this motion. RM Holdings is not
25 a party to this lawsuit. RM Holdings is not asking for
26 the receiver to hang on to its assets. RM Holdings isn't
27 here. His client is, a shareholder of RM Holdings
28 allegedly under an agreement that we're going to file a

1 cross-complaint to rescind because of fraud. So he hasn't
2 shown his client has these -- these interests.

3 And for So-Cal Management, this is a company --
4 it's a management company. And in the opposition, they
5 talk about self-help and how they were kicked out of the
6 building. It's a management company. They didn't have a
7 lease. They have no tenancy rights. There's no self-help
8 here.

9 They gave them 25 day's notice as required under
10 the management agreement and then fired them for criminal
11 incompetence. They were smoking marijuana on the job. We
12 have multiple declarations showing they were stealing
13 product, eating -- gobbling up pot cookies in the
14 building. And the HOA that governs this building was
15 going to revoke their special use variance because of
16 that. They -- but still, Ninus and the companies that he
17 runs went through the process, gave 25 days' notice and
18 terminated it.

19 If San Diego -- or So-Cal Building Ventures wants
20 to cross-complain as they have, fine, they can intervene
21 and cross-complain for breach of contract. But that
22 doesn't mean you throw his companies that everybody agrees
23 he owns 100 percent, that you throw that into
24 receivership. That's not the point of the receivership
25 statute when there's -- there's alternatives to this, too.
26 There's lesser remedies available.

27 That's another reason why the order was void.
28 The Court could ask him to turn over financials or to show

1 bank account statements or something, or they could even
2 ask for a writ of attachment levied against all of these.
3 But instead, they come in ex parte without serving a
4 summons or a complaint on anyone, and they're going to say
5 that they did it -- when they came in ex parte, they
6 handed it to her, but she wasn't their agent of service.
7 She wasn't authorized to accept on behalf of the multiple
8 companies that were thrown into receivership.

9 So there's lesser remedies available. Their
10 client doesn't claim an interest in anything except
11 RM Holdings. And the -- because the statute wasn't
12 complied with, the receivership order was void ab initio
13 and should be vacated.

14 MS. LEETHAM: I want to make a couple of other
15 points, and then I'll give Mr. Elia the floor.

16 I think it is compelling that So-Cal Building
17 Ventures was managing the property and did control the
18 finances and were obligated under the management
19 agreements to provide quarterly reports to my client, and
20 they did not. So this lack of financial information that
21 they claim comes from themselves and their mismanagement
22 of the finances.

23 Secondly, we have evidentiary admissions by
24 Mr. Razuki after this purported agreement was entered into
25 where he clearly states "I do not have an interest in
26 San Diego United Holdings Group." In addition, the HOA
27 settlement agreement, which really conducts the parties'
28 dealings at the Balboa dispensary, was signed in February

1 of 2018. That is also after this purported entity was
2 capitalized.

3 And nowhere in any of these documents do we hear
4 anything about this partnership that came out today when
5 he got mad. And this is all post hoc. This is hindsight.

6 MR. ELIA: Your Honor, our ex parte paperwork had
7 this attached as Exhibit D, and that was done -- I believe
8 it was filed around July 10th. It says, if I could just
9 read one sentence -- and these are in the recitals -- it
10 says, "Razuki and Malan have an understanding such that
11 regardless of which party or entity holds title and
12 ownership to the partnership assets, Razuki is entitled to
13 a 75 percent interest in the capital profits and losses of
14 each partnership assets, and Malan is entitled to 25
15 percent." This is executed by both parties. We sued to
16 enforce this agreement.

17 MR. WATTS: Not ownership.

18 MR. ELIA: I'm not done, Counsel. There's plenty
19 more that you raised that I haven't responded to.

20 Your Honor, I did give notice. I gave four days'
21 notice. In fact, I called two litigation law firms. I
22 called David Jarvis's office. I had a conversation with
23 him for 15 minutes. I left a voicemail for Ms. Leetham.
24 And then I sent a notice on Friday giving them four days'
25 notice to both firms that we're going to go ex parte. The
26 following Monday, they were served with all the paperwork.

27 This is a bogus argument that they didn't have
28 notice. They did. They even told me that they had

1 already downloaded a copy of the complaint. All the
2 defendants that are subject to the receivership order had
3 been served one day after the order was granted. One day
4 later, we served them.

5 So that's not true that they haven't been served.
6 That's absolutely false. And we have the proof of service
7 here if Your Honor would like to take a look at it.

8 MR. ZIMMITTI: Your Honor, I'd also like to chime
9 in since there were many representations made about my
10 clients So-Cal, the So-Cal entities. And I think this is
11 the classic case of pot calling the kettle black talking
12 about self-serving statements.

13 This binder, Your Honor, with this so-called ex
14 parte is full of self-serving statements. We object to
15 all of it. It's speculative. It lacks foundation. It's
16 just not good evidence.

17 Your Honor, what we have here is in addition to
18 Mr. Razuki, my clients are not just sort of managers.
19 They're not there for a few months. They were there under
20 agreements in which they sank \$2.6 million of their own
21 funds in these entities for which they were holding
22 options for 50 percent ownership.

23 This is not just some management company that
24 they can, quote/unquote, "fire." This is -- this is
25 malarkey, okay? Under these agreements, we have rights to
26 these facilities which we're entitled to manage. And this
27 contin- -- and this option to exercise 50 percent
28 ownership --

1 THE COURT: She tells me that it was mismanaged
2 and they were about to be terminated.

3 MR. ZIMMITTI: Well, Your Honor, that's why we
4 have disputes of fact and that's why we have evidence and
5 we have --

6 THE COURT: So what was the urgency that led to a
7 TRO?

8 MS. LEETHAM: We fired So-Cal Building Ventures.
9 We fired them as the manager. It is well within our
10 rights when you're in material breach of a contract. It
11 was well within my client's rights.

12 We had an open code enforcement case because they
13 can't do it. We had issues with the HOA. They're also in
14 breach at Mira Este. So if the Court recalls, there's
15 actually three separate agreements. The agreements are
16 tethered to specific locations that are entitled through
17 the City.

18 So with respect to Mira Este, they were -- and
19 Mr. Grant might be better to speak to this -- half a
20 million dollars behind in payments. So they were required
21 to make those payments. They did not make those payments.

22 My client and Mr. Hakim, I believe, stepped up to
23 make -- the mortgage alone is over \$62,000, okay? And
24 this has gone on.

25 With Balboa, we negotiated a settlement agreement
26 with the -- it's a commercial homeowners' association who
27 adamantly fought the dispensary. We were in Judge Styn's
28 department. We got the injunction dissolved. We got them

1 back open under very specific terms. Once that is gone,
2 it will never be retrieved. It is irreparable.

3 So even if you're looking at the harm, they're
4 out money. They have an adequate remedy of law. My
5 clients do not. That -- that entitlement is not
6 transferable. It cannot change names. It cannot change
7 entities.

8 So we have a management company with no rights
9 misperforming, eating product, selling product that
10 doesn't comply with the law, and yet they claim to be
11 there. So we fired them and we put in a new management
12 company who is well-reputable in the community. And we
13 submitted Heidi Reising's declaration, I think, is the
14 most compelling. We submitted all their financials for
15 that one week. The Court saw how much paper was generated
16 in that one week of managing that dispensary, and the
17 operators for eight months have zero.

18 MR. ZIMMITTI: Your Honor, can I just jump --
19 this can go on all day long. These are just nonsense
20 statements contending -- let's talk about breaches. Under
21 our agreements, we have the right to again acquire an
22 ownership in these facilities and a right to management in
23 the interim. Managing and having an ownership, a right to
24 exercise ownership, 50 percent ownership of the property
25 that we can't manage --

26 THE COURT: What was the urgency that led to a
27 TRO?

28 MR. ZIMMITTI: Because we were kicked out

1 notwithstanding our rights under the agreement to manage
2 these facilities.

3 MR. ELIA: There's more, Your Honor.

4 MR. ZIMMITTI: Our option to exercise a purchase.

5 THE COURT: That's no urgency.

6 MR. ELIA: Let me tell you what the urgency was,
7 Your Honor. These folks -- Mr. Malan does not own
8 property rights that he's selling. He's kicked out
9 So-Cal, which he's contractually obligated to give them
10 rights to ownership, and he's brought in another entity to
11 sell assets he does not own. That's number one.

12 MR. ZIMMITTI: And, Your Honor, can I just add
13 one thing on that? These properties, if they're not
14 managed carefully, strictly in compliance with law, they
15 become illegal enterprises.

16 THE COURT: Was there some sale pending?

17 MS. LEETHAM: No, Your Honor, there's not. I
18 don't know what they're talking about.

19 THE COURT: What's the urgency?

20 MR. ZIMMITTI: The urgency, there's a new dubious
21 management company that's basically --

22 MR. ELIA: There's more than that.

23 MR. ZIMMITTI: -- polluting the assets.

24 MR. ELIA: Your Honor, they --

25 THE COURT: Is doing what?

26 MR. ELIA: Polluting the assets.

27 THE COURT: Polluting?

28 MR. ELIA: Yes.

1 THE COURT: In what way? Explain that.

2 MR. ELIA: So, in other words, Your Honor, if
3 those companies aren't managed strictly in accordance with
4 the law, they could become in violation of state and local
5 laws.

6 THE COURT: Is this put before Medel? Because he
7 said in the transcript there's no urgency.

8 MR. ELIA: No, Your Honor. There is. I'd like
9 to be heard on this, because --

10 THE COURT: What did -- what was Medel told was
11 the urgency?

12 MR. ELIA: The urgency is that they --

13 THE COURT: What was he told?

14 MR. ELIA: I'm telling you, Your Honor. They
15 sold furnitures, fixtures, and equipment that they do not
16 own. And if they bring in a new company --

17 THE COURT: Where is that in the transcript?

18 MS. LEETHAM: We did not sell anything.

19 MR. ELIA: That's in the papers, Your Honor.

20 MR. ZIMMITTI: Your Honor --

21 MS. LEETHAM: We brought in a new management
22 company.

23 THE COURT: One at a time.

24 MS. LEETHAM: I apologize, Your Honor. It's
25 just -- we brought in a new management company because
26 they were in material breach. This is a damages case. If
27 they invested \$2.6 million, one would think the Court
28 would have a record of that, and they are silent on that.

1 There's no evidence of that.

2 We gave you evidence of code violations. We gave
3 you evidence that the security company, CCW, was revoked.
4 Not to mention the fact that we haven't talked about
5 Sunrise and the profits that should properly be going into
6 the receivership that Mr. Razuki has in Sunrise.

7 MR. WATTS: I can read to you what the transcript
8 says what was told to Medel. They -- Mr. Elia told Medel
9 that So-Cal has paid \$2.6 million, which he said again
10 today. He said that some of that money was supposed to go
11 to an entity called Flip. He said that Mr. Malan and
12 Mr. Hakim set up another entity called Monarch. He said
13 that they paid a million dollars to Monarch. He said that
14 So-Cal was supposed to pay \$100,000 a month under these
15 management agreements. That So-Cal is supposed to be
16 paying that.

17 They said that our -- her client, Mr. Malan,
18 locked out So-Cal, resorts to self-help. And again, as
19 we've shown, they gave 25 days' notice, as the management
20 agreement requires. There is no self-help. They're not a
21 tenant. They brought in a new operator. That's true.

22 So-Cal has already paid millions of dollars.
23 Again, this is money. It's not irreparable harm. A writ
24 of attachment would solve that. They've paid \$225,000 for
25 these options to buy half of these operations. Again,
26 that's not irreparable harm. That's not an emergency.

27 The new operator has no idea that my client owns
28 75 percent of these operations. Apparently, they do now.

1 MR. GRANT: Your Honor, Mr. Elia has made a false
2 statement saying his client owns 75 percent of the
3 operations. There are two business entities, Mira Este
4 and Roselle. Each of those are owned 50 percent by Ninus
5 Malan and 50 percent by my client Chris Hakim. And
6 there's no dispute as to that.

7 The claim is that Salam Razuki has a 75 percent
8 interest in the 50 percent interest that Ninus has.
9 That's what the settlement agreement says. My client is
10 not a party to the settlement agreement. There's no
11 dispute that my client owns 50 percent of Mira Este and
12 50 percent of Roselle. And my client has no contractual
13 relationship whatsoever with Salam Razuki.

14 So even if everything that the plaintiff told you
15 were true that would give him rise to a 75 percent claim
16 in the 50 percent interest that Ninus has, that's
17 37.5 percent. My client -- and there's no dispute as to
18 that. My client has a 50 percent interest in these
19 businesses with no relationship with plaintiff.

20 They're putting a receiver in charge of
21 businesses that my client owns 50 percent of, and he's the
22 managing partner of two of them. That's what's
23 outrageous.

24 MR. ELIA: Your Honor, most of the dispute arises
25 over the retail location.

26 THE COURT: What about what he said?

27 MR. ELIA: I'm explaining that.

28 Most of this dispute relates to the retail

1 location. That's 90 percent of everything. His client
2 doesn't own any rights to it, yet has admitted that he has
3 funneled at least \$87,000 -- we think it's more like over
4 a million dollars -- that he doesn't own anything.

5 The other two locations, there's not much going
6 on with those, and that's what he's referring to. But
7 Mr. -- Mr. Ninus Malan and his client have formed this
8 entity called Monarch where instead of money going to Flip
9 that it was supposed to go to, they diverted millions of
10 dollars. And that's what this dispute is about. That's
11 why the receivership was appropriate.

12 Now, Your Honor, for ten months when they were
13 operating --

14 THE COURT: Who --

15 MR. ELIA: -- there was never a complaint about
16 anything.

17 THE COURT: Who diverted millions of dollars?

18 MR. ELIA: Ninus Malan and Chris Hakim formed a
19 company called Monarch to divert money that was coming in
20 from So-Cal. And they told my client that it was not a
21 profitable business. They weren't making any money. When
22 my client found out and notified So-Cal and So-Cal learned
23 of what was going on, they stopped making payments.

24 MR. GRANT: Not a shred of evidence to support.
25 Not a shred. In the bank accounts of Monarch, which they
26 don't have, from beginning to end, less than 100,000 --

27 MR. ELIA: Your Honor, I don't think you've
28 stated that you've read my ex parte application, and

1 that's because it was in another department. But we laid
2 everything out. There was never a dispute as to any
3 problems with So-Cal until they found out of my client's
4 ownership interest, stopped making payments, and all of a
5 sudden they were kicked out so that they can put another
6 management company in to steal the money.

7 THE COURT: What's the evidence that they were
8 stealing money?

9 MR. WATTS: None.

10 MR. ELIA: I have the receiver here, Your Honor.
11 He's got a video of it.

12 MR. GRANT: No. Stealing from Mono, no.

13 THE COURT: No, no.

14 MS. LEETHAM: There's none.

15 MR. ELIA: Your Honor, they've admitted that
16 they've taken -- I have the letter from counsel saying --

17 THE COURT: You said millions.

18 MR. ELIA: I say it's millions. They say it's
19 87,000. Regardless, they should not --

20 THE COURT: What's the evidence that they stole
21 millions?

22 MR. ELIA: Well, they've put in --

23 MR. GRANT: None.

24 MS. LEETHAM: None.

25 MR. ELIA: -- \$2.8 million, and we haven't seen a
26 penny.

27 MS. LEETHAM: Not a shred of documentary
28 evidence. Not a shred.

1 MR. ELIA: That's not true, Your Honor. We have
2 declarations. Counsel is here.

3 MR. ZIMMITTI: Your Honor --
4 (Multiple speakers.)

5 THE COURT: One at a time, Counsel, or I'm going
6 to shut it down.

7 MS. LEETHAM: Your Honor, just to give the Court
8 a little information and why the dispensary's run this
9 way, as the Court probably knows, the cannabis retail
10 operations can't bank. So they employ a management
11 company to deal with the day-to-day operations; employees,
12 payroll, security payments.

13 So with Balboa, we have this company called Flip
14 Management. So for all intents and purposes, Flip
15 Management is running the dispensary. So-Cal Building
16 Ventures runs Flip Management. So they run that bank
17 account.

18 And this is where I come back around to the
19 burden of the evidence. They have access to the bank
20 accounts. They have access to their equitable
21 contributions in the event they exist. And there's none
22 of that. There's none of that. They had the money.

23 So how my client stole the money I have no idea.
24 All I know is they're half a million dollars behind in
25 their payments. There's irreparable harm to my client
26 because they're going to possibly be in breach of that
27 loan, the mortgage payment.

28 There is a -- I have Ms. Austin here, because she

1 does the land use entitlement process. There's a pending
2 conditional use permit at both locations that's in
3 jeopardy.

4 MR. ELIA: Your Honor, none of this is in
5 jeopardy. The receiver can speak to that. He's filed all
6 the appropriate paperwork.

7 Would you like to hear from the receiver, Your
8 Honor?

9 THE COURT: I want to know why, for instance, his
10 client is involved in this.

11 MR. ELIA: Because his client -- there's three
12 locations, one of which has the retail operations. That's
13 called Balboa. His client has zero ownership interest.
14 They've admitted that. Yet they formed a company called
15 Monarch and diverted \$2.8 -- or \$2.6 million.

16 THE COURT: Where's the evidence of the
17 diversion?

18 MR. ELIA: I'm sorry?

19 THE COURT: Where is the evidence of the
20 diversion?

21 MR. ELIA: Bank -- the receiver will have it.
22 They will testify. They have testified. Your Honor, we
23 literally just received this yesterday, okay? We just
24 received these yesterday.

25 THE COURT: No, no, no.

26 MR. ELIA: They paid 100,000 a month, Your Honor,
27 for ten months.

28 THE COURT: Wait. It's not what you received

1 yesterday. It's what you knew when you went to Judge
2 Medel. Now, you're saying that they diverted this large
3 sum of money.

4 What is the evidence of that?

5 MR. ELIA: Checks. \$100,000 from So-Cal that
6 were coming in for ten months that we haven't seen a penny
7 of because it was diverted from Flip Management into
8 Monarch that's owned 50 percent by his client.

9 THE COURT: Who owns Flip Management?

10 MR. GRANT: Wait a minute.

11 MR. ELIA: My client owns 75 percent, and
12 Mr. Ninus Malan owns the other 25.

13 MR. GRANT: That money went to Mira Este, not to
14 Balboa. The 100,000 a month from So-Cal went to my
15 client's company. My client's company.

16 THE COURT: Sit down.

17 Go ahead.

18 MR. GRANT: Your Honor, So-Cal has a management
19 agreement with Mira Este. It pays a minimum of 100- -- I
20 think it's \$110,000 a month to Mira Este. My client owns
21 50 percent of Mira Este. All that money went to Mira Este
22 and went to my client and went to Ninus. If Ninus didn't
23 pay his fair share to plaintiff, plaintiff has a claim for
24 damages. Damages. That's what this lawsuit is about, not
25 appointment of a receiver, not taking over businesses.

26 We run a processing business for cannabis. With
27 their interference, we're going to lose our CUP license.
28 That license will put us out of business if we don't keep

1 that license. They don't have a right to run the
2 business. We have to run it. The license is in our name.

3 MR. JOSEPH: Very briefly, Your Honor, the
4 evidence that money has been diverted is in the management
5 agreement themselves. Flip Management is not a party to
6 any of these management agreements, and there's nothing
7 that says Flip Management gets any money.

8 THE COURT: You heard what he said where the
9 money went.

10 MR. JOSEPH: Money goes to Mira Este, and then
11 money goes to Monarch. We have alleged in our
12 complaint -- first amended complaint and ex parte papers
13 that Mr. Malan told my client Mr. Razuki that "The money
14 is going to be going into Flip. Don't worry. You're
15 going to have cash flow."

16 Later on, my client found out that no money was
17 going to Flip and that the contracts were always written
18 to go to Monarch. That in itself is evidence of an
19 attempt to divert. Even the Mira Este contract, some
20 money goes to Mira Este, but there's a minimum guaranteed
21 monthly payment that is required to go to Monarch, an
22 entity that they have never contested -- 400 pages of
23 declarations, they have never contested that Mr. Malan
24 told my client something else. That money that was going
25 to Monarch was supposed -- that he said the money was
26 going to Flip when it actually was going to Monarch.

27 MR. GRANT: Your Honor --

28 MR. JOSEPH: That is evidence itself of an

1 attempt to divert.

2 MR. GRANT: They don't have the bank records of
3 Monarch. I've seen the bank records of Monarch. I'm
4 telling the Court as a representative of the court there's
5 been less than \$100,000 from beginning to end that's
6 actually gone in to the bank account of Monarch. Less
7 than 100,000. I think it's less than 50-.

8 What they were told and what actually happened
9 are two different things, and my client didn't tell them
10 any of this. And my client owns 50 percent of Mira Este
11 and 50 percent of Roselle, and they have no contractual
12 relationship with my client, the managing member of the
13 two entities that are in receivership.

14 MR. JOSEPH: Your Honor, to respond to that as
15 well, Monarch is receiving money coming from Balboa, Mira
16 Este, and Roselle. His client, Mr. Hakim, has no interest
17 whatsoever in the Balboa retail operation, and yet his
18 client is receiving distributions from Monarch regarding
19 cash flow to the Balboa operation.

20 He has no right to that, and he's admitted that
21 he has no right to that. That right there is evidence
22 that there is attempted fraud. The reason we wanted to
23 have urgency in here is because So-Cal, their \$2 million
24 of investment was completely lost to them. They were
25 locked out of the building. And --

26 MR. GRANT: Where's the evidence?

27 MR. JOSEPH: -- there's continuous money that is
28 going out of our -- that is not going to our entities, but

1 is going to Monarch, an entity that we have no control
2 over and that we'll never have control over.

3 MR. GRANT: Your Honor, we need an accounting.

4 MS. LEETHAM: Right.

5 MR. ZIMMITTI: We filed a complaint in
6 intervention.

7 MR. GRANT: We need an accounting, not a
8 receiver. As the Court noted over and over again, there's
9 no emergency. They're claiming money has been diverted.
10 Great. Let's have an accounting. Let the Court order a
11 full accounting. Let's -- full disclosure of all the
12 money in and out from all the business entities. And then
13 the Court can determine what to do about it. If money has
14 been diverted, they have a claim for damages.

15 THE COURT: His turn.

16 MR. ZIMMITTI: So, Your Honor, our complaint in
17 intervention, we basically lay this out, lay out how the
18 agreements work. And you do have, I believe, copies of
19 the agreements attached to the papers here, although it
20 would be hard to find them in this stack.

21 However, Your Honor, it's true that none of these
22 monies -- all these monies were going to Monarch among
23 other facilities, none of them were going to Flip.

24 Furthermore, the issue is if we're going to talk
25 about contractual breaches, my clients signed up for these
26 agreements, okay, to manage -- again, manage these
27 facilities. They were entitled to manage the facilities
28 and they were entitled to exercise options to acquire

1 50 percent ownership in them.

2 Part of these representations and warranties, we
3 later realized that they were basically falsely made.
4 Defendant Malan had misrepresented that there were pending
5 claims to the properties. And so meanwhile, my clients
6 are going forward sinking all this time, money, and effort
7 to sort of cultivate these dispensaries and facilities so
8 that they would have value at the end of the day when they
9 exercise their options.

10 THE COURT: From what they say, they're going to
11 have no value.

12 MS. LEETHAM: Correct.

13 MR. ZIMMITTI: Your Honor -- if I may, Your
14 Honor, they're going to say -- they're going to just sit
15 here and sort of, you know, exchange self-serving stories
16 all day long. But, Your Honor, this is why we have
17 evidence and hearings and actual declarations that have
18 evidentiary value.

19 Your Honor, we can -- this is exactly why we
20 intervened. And we've pled our case, and we're saying
21 that we have rights to these agreements -- under these
22 agreements and these facilities which would be irreparably
23 lost. There's no way to recoup damages for dispensaries
24 that essentially become void and illegitimate because of
25 some other third party managing them incompetently. That
26 was -- we were entitled to do that.

27 Furthermore, we say -- we had a million dollars
28 of equipment which we put in the complaint that they are

1 essentially taking as their own and stealing. And, Your
2 Honor, when it comes to breaching the agreements, I think
3 it's pretty outrageous that they're talking about abiding
4 by agreements when essentially they took these self-help
5 measures.

6 The agreements -- let's talk about the
7 agreements. There are robust dispute resolution
8 procedures in them, okay? And it was intended that way so
9 that they couldn't just summarily terminate them and kick
10 us out and deprive us of the benefit of our bargain, again
11 which is a fragile asset.

12 MR. GRANT: That's not what the agreement says.

13 MR. WATTS: I have it.

14 MR. ZIMMITTI: Your Honor, again, we can get into
15 the agreements. But, you know what? This is -- this is
16 not --

17 MR. GRANT: Let's get into the agreement,
18 Counsel. The agreement gives the right to terminate if
19 they don't pay within 25 days of the written notice.

20 MR. ZIMMITTI: Let's continue on. Let's read it.
21 If the Court gives me a chance to get a copy, we can go
22 through the agreement and we can spend all afternoon doing
23 it. We'd be happy to do it.

24 MR. WATTS: One sentence: "This agreement may be
25 terminated at the option of the company upon the failure
26 by manager to make any payments as are required herein and
27 such failure has gone uncured for 25 days following notice
28 to manager by company and/or old operators."

1 MR. GRANT: And that notice was given --

2 MR. WATTS: It's a disputed fact, Your Honor.

3 MR. GRANT: -- and they didn't make the payment
4 and they were terminated under the contract.

5 MR. ZIMMITTI: That's a disputed fact.

6 MR. WATTS: It's undisputed. There's no
7 evidence --

8 MR. ZIMMITTI: I'm disputing it.

9 MR. WATTS: By oral argument, that's not
10 disputing the fact.

11 THE COURT: One at a time.

12 MR. WATTS: The evidence, the actual evidence
13 that's before the Court, it's undisputed. He has no
14 evidence other than his own oral argument, which is not
15 evidence, disputing that fact that the proper notice was
16 given, they failed to cure, and then the management
17 agreement was terminated.

18 But again, even if it hadn't been, breach of
19 contract damages is their claim, not what they're asking
20 for, which is to throw these companies into a receivership
21 and have themselves reinstated and not -- they're not
22 paying out the money that's owed to Ninus and to
23 Mr. Hakim.

24 MS. LEETHAM: Thank you, Your Honor.

25 I think I'm going to come back to it again. They
26 have the burden when they asked for it. They have the
27 financials. They were not submitted. They have the
28 documentation that they have spent all of this money. We

1 have asked for it. I submitted e-mails in my declaration
2 where I asked the accountant for the financial
3 information. We weren't -- it was not given to us.

4 When you -- when you look at the equities, right,
5 this is a remedy of law. So even if we're in an
6 injunction hearing -- and let's just assume arguendo that
7 they prevail on the merits. The harm is so detrimental on
8 this side that the Court would -- I would ask the Court to
9 deny an injunction, let alone a receivership. It's
10 irreparable.

11 These are land use entitlements. They cost
12 significant time. They cost significant money. Not to
13 mention the fact that the use variance with the
14 homeowners' association requires payments, and they
15 haven't been paying that either.

16 So not only are they not paying Mira Este, we've
17 been paying those payments. They're behind on electric
18 bills.

19 By the way, Mr. Malan is present before the
20 Court. I should have said that at the very beginning.

21 We've been making those payments up until now to
22 keep that relationship with the homeowners' association in
23 some kind of a standing to where they don't take us to
24 court under 664.6.

25 MR. WATTS: We have a declaration from the
26 homeowners' association explaining the problems when
27 So-Cal Building Ventures was managing it and explaining
28 that it had gotten better when they were replaced.

1 THE COURT: I saw that.

2 MR. ZIMMITTI: Your Honor --

3 MR. ELIA: Under the three management agreements,
4 Mr. Malan has sold furnitures, fixtures, and equipment
5 which belong to us. That's irreparable. If he brings
6 another operator in -- and not only that, if he brings
7 another operator --

8 THE COURT: What did he sell?

9 MR. ELIA: For 225,000, he sold furnitures,
10 fixtures, and equipment. That's in there. There was
11 75,000 for each location, and that's in there. And that's
12 in the agreements, Your Honor.

13 MS. LEETHAM: I'm not sure what he's talking
14 about. Again, it's compensable.

15 MR. ELIA: But if they were to bring a new
16 operator in, what's going to happen is we're going to have
17 a multiplicity of lawsuits. And furthermore, Mr. Malan is
18 the record owner on title of all these entities, and he
19 can sell them and we're out of luck. That's irreparable
20 injury.

21 THE COURT: Well, what you asked Judge Medel to
22 do and then the order that you had him sign are night and
23 day.

24 MR. ELIA: Well, Your Honor, we submitted an ex
25 parte application that was very lengthy. And I don't
26 think Your Honor had an opportunity to review that.

27 But if you're worried about, you know, land use
28 issues, the receiver has complied with all the law. He's

1 hired cannabis counsel. He has his own attorney here. If
2 you'd like to hear from the receiver, he's here with his
3 counsel.

4 THE COURT: What about the HOA problem?

5 MR. ELIA: I don't think there is an HOA problem.
6 There was never a complaint about anything until they
7 stopped making a payment. And all of a sudden, there was
8 "You're smoking weed and you're doing this and you're
9 doing that." There wasn't a complaint for ten months.

10 MR. ZIMMITTI: Your Honor, if I may. If I may,
11 Your Honor, I think that the contention that the receiver
12 is unable to manage these properties, that is baloney from
13 our point of view. The receiver can do a fine job
14 managing the properties with counsel. And there's no
15 reason, there's no immediate jeopardy with the receiver in
16 place.

17 Without the receiver in place, there's immediate
18 jeopardy, including people violating court orders, running
19 out of the back of shops with money in hand. And
20 furthermore, to go to this contract that they selectively
21 quoted from, let's look at 9.3. This is the dispute
22 resolution process. It's identical in all three
23 agreements with my clients.

24 And it says "In the event any disagreement,
25 dispute, or claim arises among the parties hereto," and
26 then it goes on "with respect to the enforcement or
27 interpretation of this agreement or any specific terms and
28 provisions hereof or with respect to whether an alleged

1 breach or default hereof has or has not occurred, such
2 dispute shall be settled in accordance with the following
3 procedures." There's a meet and confer procedure, there's
4 a mediation procedure, and then there's an arbitration
5 procedure.

6 Your Honor, the parties did not want to unwind
7 this thing with someone sort of just claiming -- waving
8 around some sort of letter claiming a breach and then they
9 can just go move to the next management company overnight.
10 The parties did this because they knew they had a
11 relationship. My clients would not have entered the
12 agreement if they thought these would be abandoned, these
13 procedures, and that they would be just usurped with some
14 dubious new company.

15 MR. WATTS: He's describing a mandatory
16 arbitration clause. If you keep reading that, that's
17 about lawsuits that are filed. It's not about whether you
18 can terminate the agreement. When it's talking about
19 disputes, it's --

20 MR. ZIMMITTI: It talks about breach. You're
21 alleging a breach.

22 MR. WATTS: In a lawsuit. That whole section is
23 about mediation and arbitration.

24 MR. ZIMMITTI: Why don't we read it?

25 MS. LEETHAM: Ms. Austin --

26 THE COURT: I understand. Go ahead.

27 MS. AUSTIN: Your Honor, I would like to just put
28 some clarity onto the land use issues. There have been

1 some representations that they've hired a cannabis
2 attorney or that they can control the dispensaries and the
3 other uses.

4 And from my declaration -- I'm sure you read
5 it -- that's simply not the case. There are state law
6 requirements and local law requirements, and both of those
7 have to be met in order to continue. The state law
8 requirements, there's currently an application. They go
9 through a two-phase process. Phase 1 is a temporary
10 application. Phase 2 is your annual application.

11 Both -- the dispensary location has the Phase 1
12 application in, but it has Ninus Malan as the controlling
13 person. That would have to be changed with background
14 checks in order for the receiver to even be open. He's
15 been open for the last two weeks or the last week without
16 that being changed at the state level.

17 There are local level requirements that require
18 the CUP that's currently at that location as well as the
19 BTC which is at the Mira Este location to have the
20 responsible person have both background checks, to have
21 a -- what's called a DS-191 permit. None of that has been
22 changed by the receiver. They've been open and operating,
23 in violation of city law.

24 Code Enforcement has indicated that they are
25 going to go back down and potentially shut the dispensary
26 down and shut the BTC location down because of their
27 failure to comply with the requirements.

28 The risk of having the receiver put in there, the

1 modifications being made at the state level that are
2 required and the local level is a process that is a
3 multi-, multi-month process -- multi-month-long process in
4 order to even accomplish, and that would require them to
5 be closed for that period of time. That is an additional
6 harm. They cannot even be making money to make the
7 payments during those periods of time.

8 THE COURT: So you're telling me that the
9 receiver cannot possibly operate legally --

10 MS. AUSTIN: Not without filing a lot of
11 documentation.

12 THE COURT: -- for a long time to come.

13 MS. AUSTIN: For several months.

14 MR. GRISWOLD: Your Honor, if I could, as counsel
15 for the receiver, we've intentionally stayed out of all of
16 the arguments this morning, but just to speak to that.

17 The receiver has engaged several efforts since
18 his appointment just two weeks ago and is feverishly
19 working to carry out the Court's orders as his duties as
20 the receiver including, but not limited to, jumping
21 headfirst into all the local and state requirements;
22 giving the appropriate notice to the proper state
23 agencies; making demands to all the parties involved to
24 get proper documentation; bringing the appropriate
25 consultants, multiple consultants so far, including
26 specific consultants that are working with the receiver on
27 cannabis compliance at the state and local level. We've
28 actually already requested and received --

1 THE COURT: So how long will it be before the
2 receiver can operate legally?

3 MR. GRISWOLD: As to what counsel just stated,
4 the formal notice has been issued and signed by the
5 receiver, including a background Livescan check, which is
6 required. That was submitted last week. And we've gotten
7 confirmation from the appropriate state agency of receipt
8 of that notice. We are within hours reacting to and
9 providing all documentation that's necessary.

10 THE COURT: So it should be closed now; is that
11 correct?

12 MS. LEETHAM: It should be closed. And that's
13 extremely troubling that we're bearing the cost of this as
14 well. This is -- it's not closed. It should be closed,
15 right? They're not compliant with the law.

16 THE COURT: How long -- my question, Counsel,
17 is how long before the receiver could operate legally?

18 MR. GRISWOLD: It's our position he is operating
19 legally currently.

20 THE COURT: That doesn't help me.

21 MR. ZIMMITTI: Your Honor, I don't -- it's not
22 fair to characterize the dispensary as operating currently
23 illegally. We've got an experienced management company in
24 there with So-Cal, and we have a receiver. And, in fact,
25 So-Cal has been paying monies into the facility through
26 the receiver now that it knows it can trust somebody with
27 the money. So it just totally -- it's totally absurd to
28 be contesting the legality of the operations as they

1 exist.

2 And Your Honor, again, this is a case where, you
3 know, essentially we're going to hear arguments -- a lot
4 of lip service here, and it's just not an appropriate
5 forum to essentially buy one narrative that, in fact, is
6 sort of set up by an ambush ex parte motion that's
7 hundreds of pages long.

8 THE COURT: Well, talk about ambush motion.

9 MR. ZIMMITTI: Well, Your Honor, they have notice
10 of our order, and they decided to not seek relief from it,
11 not seek to modify it. They chose to kick the judge and
12 just disobey --

13 THE COURT: It goes way beyond what you told
14 Judge Medel that you were looking for. Way beyond.

15 MR. GRANT: I've got to make one more comment,
16 Your Honor. All of the discussion has been about --
17 there's only three businesses. The Balboa store, which is
18 a retail pot dispensary, but Mira Este and Roselle, which
19 are the businesses my client owns 50 percent of, do not
20 generate a penny of revenue. A penny. Roselle has a
21 tenant in there paying rent. They don't do any other
22 business. Mira Este is -- has a license to operate a
23 cannabis processing center, but it's never generated a
24 penny of revenue.

25 Why is there a receiver over two businesses that
26 aren't running? But they're my client's businesses and
27 affecting my client's ability to get necessary licenses to
28 get them up and running. It makes no sense. They've

1 thrown my client in the pot because of their complaints
2 with another person, and that's just outrageous.

3 MR. ELIA: Your Honor, with regards to Mira Este,
4 they put a million dollars of equipment in there and they
5 locked them out and they kicked them out. The reason we
6 put a receiver on Mira Este and Roselle is because they --
7 his client, along with Mr. Malan, have stolen the money
8 for the last year. We have not seen a penny, although
9 \$2.8 million has come in. Where did the money go?

10 MR. GRANT: You don't have a right to the money.
11 So-Cal has the complaint, not your client. If So-Cal put
12 money in, So-Cal should have filed the lawsuit. We kicked
13 So-Cal out. We didn't kick Salam Razuki out. Yet he's
14 the plaintiff. He's getting the receiver appointed, Your
15 Honor. This is -- it's just outrageous.

16 MR. ELIA: All you need to do, Your Honor, is
17 read the settlement agreement. It's very clear as to what
18 happened. We have a 75 percent interest in the marijuana
19 dispensary.

20 MR. GRANT: No. You have 75 percent interest of
21 Ninus's interest, not --

22 THE BAILIFF: Counsel, address the Court, please.

23 MR. GRANT: Sorry, Your Honor.

24 You have 75 percent interest of Ninus's interest,
25 not my client's interest. You have zero of my client's
26 interest, and my client owns 50 percent of the business.

27 MR. ELIA: While that's true, that doesn't give
28 his client the right to steal money from Balboa, an entity

1 which he doesn't have any ownership interest in. You
2 admitted to at least taking \$87,000. We think it's more,
3 over a million dollars. Why did you take \$87,000 of an
4 entity you don't even own?

5 MR. GRANT: I sent you a settlement letter.
6 You're talking about what's in a settlement letter to the
7 Court. That's totally inappropriate.

8 MS. LEETHAM: Again, they had control of the
9 money. They had control of the finances. They've had
10 control of the dispensary. We've given the Court a huge
11 stack of papers trying to chronicle for Your Honor how
12 severe and irreparable the receiver order was.

13 They came in with an ambush, with improper
14 notice. They didn't have but that much of a stack. And I
15 have a list of everything they attached to Mr. Razuki's
16 declaration, and it most certainly was not an accounting.

17 MR. WATTS: This receiver order says that the
18 receiver understands that the marijuana operations shall
19 cease to carry on business except to the extent necessary
20 for the beneficial winding up thereof and that the
21 receiver is supposed to give notice to all the
22 shareholders that he's dissolving the businesses and
23 selling them off.

24 The receiver order does not comport with what
25 they're saying the receiver is supposed to do. It should
26 be vacated. It's -- they misrepresented to the judge what
27 it said.

28 MR. ELIA: Your Honor, that's a clause in every

1 receivership order that says he's got the authority. It
2 doesn't mean he's going to say it. It's an authority. He
3 first has to seek consent from the Court before he does
4 that. It's a standard, boilerplate provision --

5 MR. WATTS: Doesn't need to be in there.

6 MR. ELIA: And it doesn't give them the right to
7 just wind up, and that's not what we're seeking. We do
8 have a cause of action for involuntary dissolution in the
9 complaint. But at this point, we want to protect the
10 status quo.

11 There is no harm. The receiver is in control.
12 The money is being funneled into the receiver. Their
13 client is not taking it. We're not taking it. We're not
14 asking to take the money. We just need internal
15 controls to ensure that my client's \$5 million and their
16 \$2.6 million is not going to be wasted. Because his
17 client is selling assets he doesn't own to other people,
18 which is going to lead to a multiplicity of lawsuits.

19 MS. LEETHAM: The dissolution should be of
20 RM Holdings. So that's the other curious part about this.
21 If we're talking about a judicial windup, a
22 court-supervised petition for dissolution, it would be of
23 this holding company that was never capitalized. And
24 again, they're not a party. So we're talking about --
25 we're talking about a situation that cannot be
26 accomplished.

27 MR. ELIA: No, Your Honor. We're talking about
28 the partnership assets as defined on Page 1 of the

1 settlement agreement. The partnership assets include
2 these entities, and it says my client has a 75 percent
3 interest. It's clear.

4 MR. WATTS: You know that --

5 MR. ELIA: It's Exhibit E, and I have it right
6 here if Your Honor would like to take a look at it.

7 MR. WATTS: They even put the wrong LLC in here.
8 They write San Diego United Property Holdings, LLC. It's
9 not even a company that's sued in this lawsuit. It's not
10 even the right LLC. The order puts a nonexistent company
11 into receivership. And on a \$10,000 bond. They're
12 claiming there's millions of dollars, but they only had to
13 post a \$10,000 bond? That doesn't make any sense either.

14 MS. LEETHAM: I think I would just remind the
15 Court, too, when I was in front of Judge Medel last week
16 in a related case which the receiver has control over --
17 and we haven't talked about the receiver's behavior that
18 afternoon. And it's a little awkward with him standing
19 here, but he has a fiduciary obligation to those entities.
20 And he went in having taken zero time. He -- there was
21 no -- no -- there was complete bias.

22 He took not an ounce of time to go and look at
23 what happened. He didn't take a moment to pause to figure
24 out the financial information. And then when I was in
25 front of Judge Medel on Friday, I attached the transcript.
26 He said that that order gave him some anxiety and he was
27 considering taking sua sponte relief because of that
28 order. And he was focused also on the notice issue. And

1 that's attached to my declaration, that transcript, as
2 Exhibit A. He said that.

3 THE COURT: I saw that.

4 MS. LEETHAM: And I think that's very telling.

5 MR. ELIA: Your Honor, again, we're not required
6 to give notice, but we did give notice. We gave four
7 days' notice to two different law firms. And speak about
8 behavior, Your Honor. I think the receiver could explain
9 what happened clearly on that day that he took over.

10 MR. ESSARY: Well, I told Ms. Austin I was going
11 to the dispensary.

12 MR. WATTS: I object. He's not under oath. He's
13 not sworn in. He's just talking. He's represented by
14 counsel. I object to him saying anything.

15 MR. ELIA: Your Honor, I think you want to hear
16 this.

17 THE COURT: Well, they say he's breaking in with
18 a thug with a gun, and he says he was merely trying to
19 take control of the property under a valid court order. I
20 know what he's going to say.

21 MR. ESSARY: They refused to let me in so I could
22 discuss what was going on and possibly come up with a
23 compromise. They just locked me out and took everything
24 and escaped.

25 MS. LEETHAM: And as we provided in declarations,
26 these are third parties. They had no idea what was going
27 on.

28 MR. JOSEPH: Your Honor, third parties that are

1 clients of --

2 MR. ZIMMITTI: Now there's actual knowledge of a
3 valid court order, Your Honor. And to just willfully
4 disobey it and stick your head in the sand, you don't need
5 to be -- a valid order, it could be binding on that
6 individual without service. This is black letter law.

7 Not only was Ms. Austin present in the courtroom,
8 she was being -- she actually called and was called back
9 by the receiver who told her exactly what was going to
10 happen. There was no third party people showing up. The
11 receiver was coming, okay? That's what they knew was
12 going to happen.

13 THE COURT: Well, I don't like that order. I'll
14 tell you that.

15 MR. ZIMMITTI: Your Honor -- one moment, Your
16 Honor. I appreciate Your Honor's concern. However, what
17 could have been done is a modification of the order
18 perhaps narrowing it. There are a lot of things that
19 could have been done. You don't just disobey an order
20 flatly.

21 THE COURT: So you're saying it's too late to do
22 anything?

23 MR. ZIMMITTI: Well, not necessarily. We have --
24 Your Honor can set a hearing, and we can revisit the
25 issue, perhaps as Judge Medel intended, and spare the
26 order that Your Honor is comfortable with.

27 And from our point of view, Your Honor, having
28 the receiver in place is key. And -- now, the sale of

1 assets and winding up, we're not even there yet. You
2 know, that is something we can talk about. But just
3 throwing out the order after defendants flat out disobeyed
4 it, I mean, I don't understand how you can do that, Your
5 Honor. Again --

6 THE COURT: Oh, I can do it.

7 MR. ZIMMITTI: Your Honor -- and again, I would
8 just -- I would just mention, Your Honor, that again, we
9 feel this is just an improper motion on its face. And
10 it's essentially an invalid motion for reconsideration
11 brought ex parte no less.

12 And so, Your Honor, given the harms, we have a
13 receiver in place who's doing a good job. Every -- you
14 know, we have a status quo. There's nothing being wound
15 up right now. There's no danger of anything be wound up
16 or anything like that. So-Cal had been managing the
17 facilities. So-Cal is still managing the facilities.
18 This is the status quo.

19 What is not the status quo is inserting Golden
20 State somebody in there overnight painting the walls,
21 putting a new sign up front, and then just basically
22 telling us to go take a hike. "Take a hike with your
23 \$1 million. Take a hike with your \$2.6 million you put in
24 there and your future interest, optional interest, in
25 these facilities that you were cultivating, grooming for
26 purchase."

27 So in terms of status quo, we've got a receiver.
28 There's no reason to mis- -- to judge -- misjudge the

1 receiver's credibility. In fact, the receiver went to
2 effectuate a valid order, and defendants flatly disobeyed
3 the order with actual knowledge of it and now come seeking
4 to invalidate as ab initio.

5 So, you know, this is one of those situations
6 where you scratch your head. Is it a valid -- is the
7 order no good? If it isn't, then why are we here in the
8 first place?

9 So, Your Honor, I feel like in terms -- if you
10 want to judge the harms and you want to look at who's been
11 acting appropriately thus far, the receiver is in place,
12 and we have status quo. We have the same management
13 company that was in there before, and we're running the
14 business. The business is complying with state and local
15 law.

16 MR. GRANT: I have a proposal, Your Honor. The
17 Court has already noted this should not have been done in
18 the first instance ex parte. It just shouldn't have.
19 Their position is "Well, it's been done, so tough luck.
20 You can't change it ex parte." And the Court has already
21 noted you can do whatever the Court chooses to do that's
22 appropriate.

23 We need a do-over. What should have been done
24 and what I'm going to request the Court to do is have a
25 restraining order in place. So we put everything back to
26 the status quo the way it was before the receiver was in
27 place, but no money can be taken or used except for the
28 ordinary course of all the businesses, a hundred percent

1 transparency, a hundred percent accounting, and then let's
2 have a motion for if a receiver should be in place on a
3 noticed motion with an order shortening time. That way
4 everyone really is protected.

5 MS. LEETHAM: And when we talk about the status
6 quo, it would be not with So-Cal, because we have no faith
7 in their ability to manage the dispensary.

8 The declarations we submitted to the Court were
9 intended to give you information on the deplorable state
10 that that location was in, not to mention the fact that --
11 I think we're sort of skipping that they had a valid court
12 order, and I think the declarations are clear these are
13 not parties to this lawsuit. They're literally
14 third-party percipient witnesses who found butcher knives
15 in a dispensary that was filthy dirty, being used as a
16 stoner crash pad.

17 And this guy shows up with a gun, they're
18 pounding on the doors, they're telling them they're the
19 cops, they're using all kinds of profanity. So what would
20 a person do? I would run and hide.

21 MR. ZIMMITTI: Well, you run to your attorney's
22 car waiting in the back alley rather than call the police.

23 THE COURT: I'm going to do what you suggested.
24 I think that's appropriate. And then we can --

25 MR. ELIA: Your Honor --

26 THE COURT: -- sort this out with real evidence
27 of whether there's any money missing or not, and everybody
28 will have access to all of the information. This proposed

1 order, I'm not sure that does this.

2 MR. ELIA: May I be heard, Your Honor?

3 THE COURT: Yes.

4 MR. ELIA: My proposal, Your Honor, would be to
5 keep the receivership order --

6 THE COURT: I'm not going to do that.

7 MS. LEETHAM: And, Your Honor, I will represent
8 to the Court that my client will not sell anything in Mira
9 Este. I have never seen an accounting or an inventory of
10 the property that they claim is there. So it would
11 be great to have that.

12 THE COURT: This whole receivership situation --
13 and I don't blame the receiver, don't misunderstand me --
14 is contrary to what Judge Medel was told. And we're going
15 to undo it and we're going to do it right.

16 MR. WATTS: Your Honor, if the proposed order --
17 what you described, I think if you -- Paragraphs 5 through
18 8 are not what you described. And so crossing those out.
19 And then if you wanted to put language in there about the
20 transparency or the accounting.

21 THE COURT: You all prepare an order.

22 MS. LEETHAM: Yes, Your Honor.

23 THE COURT: Maybe you'd better prepare it.

24 MR. GRANT: Yes, Your Honor.

25 MS. LEETHAM: And the one thing that I would want
26 to add is there has to be some reasonable compensation to
27 the parties themselves, because this is their livelihood.
28 And they know this. So they choked my client's finances

1 off. And I think that was a huge intent of this order.
2 So I would anticipate or expect that the accounting would
3 include some reasonable -- reasonable compensation to the
4 individuals running this dispensary.

5 THE COURT: Well, I don't expect people to work
6 for free, but what's reasonable compensation?

7 MS. LEETHAM: I understand that's a --

8 MR. GRANT: I'll get an order to everybody today,
9 Your Honor.

10 MR. ZIMMITTI: Your Honor --

11 THE COURT: And then you can decide how you want
12 to proceed with this in an orderly manner.

13 MR. GRISWOLD: Your Honor, one housekeeping issue
14 from the receiver's perspective. There was one other ex
15 parte application that was filed by the receiver. And
16 frankly, it was just to get approval for the receiver to
17 employ counsel. Regardless of if we're going to do some
18 sort of stay or hold until some further noticed motions, I
19 would hope the Court would agree that the receiver needs
20 legal counsel at this point.

21 THE COURT: Not for that.

22 MS. LEETHAM: It's moot at this point, Your
23 Honor.

24 THE COURT: Not for that he doesn't.

25 MR. GRISWOLD: Okay, Your Honor. Well, he's
26 going to need legal counsel to at least review the order.
27 Right now, the receiver -- I know it sounds like we're
28 going to change potentially the nature of this case, but

1 currently right now and as counsel even stated there are
2 hard deadlines coming up to issue for license
3 applications. I've attempted to cooperate with
4 Ms. Austin.

5 MS. LEETHAM: If they cooperate in returning that
6 back over to my law firm, we represent those entities and
7 that licensing, and Ms. Austin is more than competent to
8 pick up right away.

9 MR. ZIMMITTI: Your Honor, if I may, because
10 So-Cal, again, is managing these facilities currently, as
11 it has been, that was the status quo, Your Honor.

12 MS. LEETHAM: No, it was not.

13 MR. ZIMMITTI: Listen, Your Honor, I understand
14 defendant's position that we breached. I get that. And
15 we're saying we didn't breach. And --

16 THE COURT: We're going to go back to the way it
17 was before Judge Medel issued his TRO and go from there.

18 MS. LEETHAM: Thank you, Your Honor.

19 THE COURT: And if they improperly terminated the
20 contract, we'll get to that, too.

21 MR. GRISWOLD: I just want to state for the
22 record, Your Honor, I have concern for my client, the
23 receiver. I think everyone got a taste of the
24 contentiousness here. I'm concerned that literally in the
25 next hours and days before this potential proposed order
26 gets agreed to, on behalf of the receiver, I will
27 certainly cooperate to get whatever that order is in front
28 of this Court as soon as possible.

1 THE COURT: Okay.

2 MR. GRISWOLD: I have grave concerns for the
3 receiver.

4 THE COURT: You should be compensated for your
5 time in taking care of those things so we can get past
6 this.

7 MR. ELIA: To clarify, is there a TRO in place
8 and do we have a future date to come back?

9 THE COURT: Not having a TRO in place.

10 MS. LEETHAM: Nothing.

11 THE COURT: You need to proceed -- you set it out
12 in your proposed order as to what's going to happen.

13 MR. GRANT: Yes. There's going to be -- all the
14 money that comes in the business is going to be used only
15 in the ordinary course of business. There's going to be
16 complete transparency, complete accounting. So everyone's
17 going to know every penny that's coming in and out of all
18 the businesses.

19 THE COURT: And you proceed by whatever
20 appropriate motion, petition, whatever you want to do to
21 get all of this resolved, including if you want a motion
22 for an injunction, that's fine, and we'll look at it.

23 MS. AUSTIN: Your Honor, for clarification to
24 ensure compliance, it's important -- and we will put this
25 in the order -- that the dispensary close immediately and
26 then reopen in proper format, which could be a day or two.

27 THE COURT: Well, I don't want it running
28 illegally.

1 MS. AUSTIN: Right. So as part of this order, I
2 just want to make sure that everybody's on the same page.

3 THE COURT: Well, whatever needs to be done so
4 that it operates legally.

5 MR. ZIMMITTI: Well, Your Honor, we're operating
6 legally, Your Honor. And we have a receiver in place. By
7 allowing the defendants to come in and sort of resume this
8 self-help, again, this is jeopardizing the facilities.

9 THE COURT: I'm not convinced of that.

10 MS. LEETHAM: Thank you, Your Honor.

11 MR. ELIA: Can we get an order shortening time on
12 a noticed motion?

13 THE CLERK: Your Honor, so the third ex parte,
14 which is plaintiff's ex parte for scheduling, is moot at
15 this time?

16 THE COURT: Do you know how you want to proceed?

17 MR. ELIA: Your Honor, may we get an order
18 shortening time on a noticed motion for the appointment of
19 a receiver and a TRO, preliminary injunction?

20 MS. LEETHAM: I think they should do that -- file
21 the motion and come in on an ex parte basis for the order
22 shortening time. That's the problem, is we have
23 procedures in place that are meant to protect the parties,
24 and they continue to bypass those. And I would ask them
25 to serve their papers and then allow us to come in and
26 deal with that at that time.

27 MR. WATTS: I have a proposed order. I deleted
28 Paragraphs 5 through 8 and deleted --

1 MS. LEETHAM: No. We're going to do it.

2 MR. WATTS: You're going to do it? Okay. Never
3 mind.

4 THE COURT: When you're ready to file whatever it
5 is you're going to file, we'll see what kind of date we
6 can give you. And we'll make it as soon as possible, but
7 I don't know what that is exactly.

8 MS. LEETHAM: Thank you, Your Honor.

9 THE COURT: All right. Thank you.

10 - - -

11 (The proceedings were adjourned at 10:10 a.m.)

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STATE OF CALIFORNIA)
 : SS.
COUNTY OF SAN DIEGO)

I, Paula A. Rahn, RPR, CSR NO. 11510, hereby certify that I reported in shorthand the above proceedings on Tuesday, July 31, 2018, and I do further certify that the above and foregoing pages numbered 201 to 254-[301], inclusive, contain a true and correct transcript of said proceedings.

Pages 255 through 301 are utilized for block numbering. Volume 3 begins on page 302. Nothing has been omitted.

I further certify that I am a disinterested person and am in no way interested in the outcome of said proceeding.

Dated: February 28, 2019.

A rectangular box containing a handwritten signature in cursive script that reads "Paula Rahn".

Paula A. Rahn
RPR, CSR No. 11510