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COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE

SALAM RAZUKI, )  
Plaintiff and Respondent, ) HON. EDDIE STURGEON  
 ) JUDGE  
vs. ) COURT OF APPEAL  
 ) NO. D075028  
 )  
NINUS MALAN, et al., ) SUPERIOR COURT  
 ) NO. 37-2018-00034229  
Defendants and Appellants, ) CU-BC-CTL  
 )  
 )

REPORTER'S TRANSCRIPT OF RECORD ON APPEAL

VOLUME 6 of 7

September 27, 2018

Pages 603 through 671-[703]

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Respondent:**

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**REPORTED BY:**

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**CERTIFIED TRANSCRIPT**



## 1 APPEARANCES (continued)

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42 OFFICIAL REPORTER PRO TEMPORE

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1 SAN DIEGO, CALIFORNIA; FRI, SEPTEMBER 27, 2018; 8:42 A.M.

2  
3 THE COURT: All right. Let's do Razuki.  
4 Everybody up.

5 MR. FULLER: Your Honor, if I might grab a chair.

6 THE COURT: Absolutely, or we'll get you one.  
7 We'll get you another.

8 (Pause in proceedings.)

9 THE COURT: All right. Nice to see everybody  
10 again. Let's go with full appearances across the board.

11 MR. FULLER: Rob Fuller on behalf of San Diego  
12 Building Ventures, Your Honor.

13 MR. JOSEPH: James Joseph on behalf of the  
14 plaintiff Salam Razuki.

15 MS. GRIFFIN: Laura Griffin on behalf of  
16 plaintiff Salam Razuki.

17 MR. ELIA: Steven Elia on behalf of plaintiff  
18 Salam Razuki.

19 THE COURT: Okay.

20 MR. GRISWOLD: Richardson Griswold for receiver  
21 Michael Essary.

22 THE COURT: Is Mr. Essary going to be here today?

23 MR. GRISWOLD: He's not in town.

24 MS. LEETHAM: Fair enough.

25 MS. AUSTIN: Gina Austin on behalf of -- I don't  
26 know.

27 MS. LEETHAM: I can do it. Tamara Leetham for  
28 Ninus Malan, San Diego United Holdings Group, Flip

1 Management, Balboa Ave Cooperative, California Cannabis  
2 Group, and Devilish Delights, Inc. I have Mr. Malan  
3 present before the Court. I also did bring Justus Henkes  
4 to the hearing again today in case the Court has questions  
5 about the money, the accountant.

6 THE COURT: We're going to have some questions.  
7 Oh, yes.

8 MR. GORIA: Good morning, Your Honor. Charles  
9 Goria for Chris Hakim. I'm sorry, Dan, I didn't want to  
10 step on your position here.

11 MR. WATTS: No problem. Go ahead.

12 MR. GORIA: Charles Goria on behalf of Chris  
13 Hakim, Mira Este Properties, Roselle Properties, and  
14 Monarch Management Consulting.

15 MR. WATTS: Daniel Watts for Ninus Malan.

16 THE COURT: Forgive me, Counsel. Who do you  
17 represent?

18 MR. FULLER: San Diego Building Ventures, Your  
19 Honor. It's a subsidiary of SoCal Building Ventures.

20 THE COURT: I'm familiar with SoCal.

21 MR. FULLER: We'll refer to it as SoCal.

22 THE COURT: It makes it easier for me. I'll tell  
23 you that. Thank you.

24 Okay. Let's do something. Two things. There's  
25 an order that I have before me. I'm not too sure I'm the  
26 judge that needs to sign it. I've signed the other  
27 orders. It starts out on this. This is the order that  
28 was presented to me.

1           Am I the judge that should sign this? That's the  
2 question. "Based on the ex parte application of Defendant  
3 Ninus Malan, supporting and opposing documents and  
4 declarations, and after the evidence and argument  
5 presented on August 20th hearing, the Court hereby orders  
6 the order appointing Michael Essary as receiver which was  
7 vacated remains vacated. Michael Essary is dismissed as  
8 receiver. Judge Strauss's minute order is reaffirmed."

9           Who did that?

10          MS. LEETHAM: That sounds like the order from  
11 maybe three hearings ago.

12          THE COURT: That's what I'm thinking. But who  
13 did it?

14          MS. LEETHAM: Submitted the order?

15          THE COURT: No. Who was the judge?

16          MS. LEETHAM: Judge Strauss vacated the  
17 receivership, and then we were in your department on  
18 August 14th, 20th, September 7th, and then today.

19          MR. WATTS: So at this point, you were the judge,  
20 but you hadn't held a hearing yet and we didn't have a  
21 signed --

22          MS. LEETHAM: Order.

23          MR. WATTS: -- signed order. We just had Judge  
24 Strauss's oral minute order vacating the receivership.

25          THE COURT: And so it's my understanding this  
26 should be -- that's my point. This should be signed by  
27 Judge Strauss, should it not? That's my point.

28          MS. LEETHAM: Well, what happened is they

1 exercised the peremptory challenge before Judge Strauss  
2 could sign that, which is how we ended up here rehearing  
3 all of these issues numerous times.

4 THE COURT: Okay. Anyone have any objection,  
5 then, if I sign it?

6 MR. FULLER: Yes, Your Honor. We --

7 MS. LEETHAM: We have the --

8 (Laughter.)

9 MR. FULLER: The order has been effectively  
10 vacated by your subsequent orders, so So-Cal objects to  
11 you signing that order.

12 MS. GRIFFIN: Plaintiffs as well.

13 THE COURT: Well, hold on. Isn't it part of the  
14 record?

15 MS. LEETHAM: That was the issue that we were  
16 trying to brief when we were here. And I believe what  
17 you -- what Your Honor ended up signing was I think  
18 August 28th. And my representation, and counsel may  
19 agree, was that order actually became the first temporary  
20 restraining order that got signed after the original  
21 July 17th order.

22 MR. GRISWOLD: I'm not disagreeing with what  
23 you're saying. But maybe just to help refresh everyone's  
24 recollection, so we came in here on or about the 20th. We  
25 kind of introduced ourselves to your Court. You said,  
26 "Okay, I've got a lay of the land of everyone. Let's all  
27 come back in" -- I think approximately about a week. Then  
28 we had our first kind of full-blown, two-plus-hour

1 hearing. You directed me to draft a proposed order.  
2 That's not what you're looking at in front of you there.

3 THE COURT: No.

4 MR. GRISWOLD: And you signed the proposed order  
5 that I submitted to the Court. We then had a follow-up  
6 hearing on September 7th, which was the last hearing we  
7 had. Your Honor made some rulings. I drafted a proposed  
8 order at your direction, and I believe at this point we're  
9 still waiting for that order.

10 THE COURT: It was signed yesterday.

11 MR. GRISWOLD: It was signed yesterday. Okay.

12 THE COURT: I'm worried about this one. It  
13 appears to me -- it looks like it's Judge Strauss's.  
14 That's my only concern.

15 MS. LEETHAM: He didn't sign it -- on July 31st,  
16 he didn't sign it. We circulated it. So he grant- -- he  
17 vacated the receivership. This was our proposed order.  
18 We found out right after the hearing one of the plaintiffs  
19 filed a peremptory challenge. So at that point, it got  
20 very sticky as to who should sign that order and it never  
21 got signed, which beget the argument that the receivership  
22 was never vacated, which put us back here on August 14th.

23 MR. WATTS: This order was prepared after Judge  
24 Strauss ordered previous counsel for Mr. Hakim to prepare  
25 the order. And we tried to do that in the hallway after  
26 the hearing. His handwriting was bad, so we had to do it  
27 over e-mail. And that took a while. And then we had  
28 Mr. Elia's objections. I think that's what's attached to



1 that -- the plaintiffs' objections to the order. That's  
2 why it looks so long. And that's how we came about with  
3 this. But by the time we got it in front of the Court,  
4 things had changed because they had challenged Judge  
5 Strauss.

6 MS. GRIFFIN: Yes, Your Honor. We agree that  
7 that order is now rendered basically moot given the  
8 subsequent hearings that took place with you.

9 THE COURT: Is there an order -- okay. We need a  
10 complete record. That's my number one concern.

11 MS. LEETHAM: Correct.

12 THE COURT: Is there an order in place of what  
13 Judge Strauss did?

14 MS. LEETHAM: No, Your Honor. It never got --  
15 there's a minute order which we made the argument became  
16 the order when -- when plaintiffs --

17 MR. WATTS: That is the law.

18 MS. LEETHAM: Right. And so this order never got  
19 signed. So we don't have anything other than the minute  
20 order from that hearing.

21 MS. GRIFFIN: And, Your Honor, that was an issue  
22 that we discussed at that next hearing with you. We  
23 presented all the law substantiating the fact that that  
24 minute order was not effective as a final order because  
25 the judge ordered that there be a proposed order submitted  
26 after hearing, which renders the minute order not a final  
27 order under the law.

28 MR. WATTS: And that's not true. The case law

1 that they cited says the opposite. And we were prepared  
2 to argue that at the time, but it didn't come up since you  
3 took over the case and you're making your own orders.

4 THE COURT: Don't we need some type of order of  
5 what happened in Judge Strauss's department?

6 MS. LEETHAM: Yes, Your Honor, we would  
7 absolutely agree. Obviously, the record on appeal, if  
8 there is, is extremely important.

9 THE COURT: I would agree.

10 MR. WATTS: We have --

11 THE COURT: Can -- I understand. Can the record  
12 just be void? I don't think so; right?

13 MS. GRIFFIN: Your Honor, we don't believe that  
14 there was ever a final order issued by Judge Strauss. So  
15 to sign a final order at this point does not -- I  
16 understand the concern of the Court with making the record  
17 clear. But unfortunately, under the circumstances there  
18 was no -- there was no ruling by you, as far as I'm aware,  
19 at the subsequent hearing as to whether Judge Strauss's  
20 indication in the minute order and oral argument -- orally  
21 indicating that he was going to vacate the receivership.  
22 I don't think you ever ruled on whether it was actually  
23 vacated or not. You simply reinstated him at the next  
24 hearing, if I'm recalling correctly. So -- or didn't  
25 reinstate him, just --

26 MR. WATTS: Judge Strauss vacated the  
27 receivership. We have the record. She's --

28 THE COURT: I got it. I'll take care of it. I'm

1 probably going to sign it, but I've got to look at it, all  
2 right? Thank you.

3 And the reason -- there needs to be a record.  
4 And I understand everyone's got their position. "Judge,  
5 there was no order." I got that. You can argue that.  
6 Good luck to both of you. All of you can do that. But I  
7 think there needs to be a record, and I'll take care of  
8 it.

9 Let's move on to today, okay? And the issues  
10 before the Court are to dissolve, modify injunctions;  
11 correct?

12 MS. LEETHAM: Yes, Your Honor.

13 THE COURT: Anything else?

14 All right. I'm going to ask -- listen to my  
15 words carefully. You are all officers of the court. You  
16 know what that entails. I'm going to ask a question. I  
17 want no argument. And I want to ask every attorney that's  
18 in front of me.

19 And you're an attorney; right?

20 MR. HENKES: Absolutely not.

21 MS. LEETHAM: CPA, Your Honor.

22 THE COURT: Just a question, okay? And then  
23 we'll see where we are. And it even goes for you,  
24 Counsel. I want everybody to answer this question.

25 Within the last three weeks, has any counsel  
26 before this Court contacted a bank in Arkansas? A bank in  
27 Arkansas. We're going to go right across this table.

28 Madam, you know who everybody is; right?

1           Just "Yes" or "No."

2           MR. FULLER: Your Honor, not with respect to this  
3 matter. I own apartment buildings in Fort Smith, and I've  
4 been redoing my mortgage on those apartments with Bank  
5 South in Fort Smith.

6           THE COURT: That's not it.

7           MR. JOSEPH: No, Your Honor.

8           MS. GRIFFIN: No, Your Honor

9           MR. ELIA: No, Your Honor.

10          MR. GRISWOLD: No, Your Honor.

11          MS. AUSTIN: No, Your, Honor.

12          MS. LEETHAM: No.

13          MR. WATTS: No.

14          MR. GORIA: No, Your Honor.

15          THE COURT: Now, we're going to talk -- that's  
16 very interesting. Let's talk about -- and I have to  
17 disclose this -- an ex parte communication from a bank in  
18 Arkansas. I don't mean to put my -- boy, that got  
19 everybody's attention, didn't it? I don't mean to put my  
20 clerk, which informed me, of which I immediately told her  
21 that's an ex parte communication, now she's got to put on  
22 the record of a phone call she received.

23                 Madam Clerk, I hate to put you in the middle of  
24 this, but --

25                 THE CLERK: I have it on the printout. I  
26 received an e-mail.

27                 THE COURT: Ah.

28                 THE CLERK: And I printed it out.

1 THE COURT: Just tell me what it is.

2 THE CLERK: It's right here, Your Honor. It's  
3 highlighted right here. I tagged it for you. I received  
4 a phone call and an e-mail from a representative.

5 THE COURT: And let's put the date down. So this  
6 was sent to this Court on September the 26th, which is --

7 MR. ELIA: Yesterday.

8 THE COURT: But I think there was a message  
9 before that, wasn't there, Patty?

10 THE CLERK: There was a voice message. Yes, a  
11 voicemail and an e-mail.

12 THE COURT: Here we go. I'm going to read it  
13 directly. And this is -- this is a Ms. Kara Price, legal  
14 department, paralegal, 15 South 20th Street, Suite 1802,  
15 Birmingham. It's from Alabama. What did I say, Arkansas?  
16 AL. That's Alabama, isn't it?

17 MR. FULLER: Yes, Your Honor.

18 THE COURT: Let me back up and ask the question  
19 again.

20 Has anyone contacted Alabama?

21 MR. FULLER: No, Your Honor.

22 MR. ELIA: No.

23 MR. JOSEPH: No, Your Honor.

24 MS. GRIFFIN: No, Your Honor.

25 MR. GRISWOLD: No, your Honor.

26 MR. WATTS: No.

27 MS. LEETHAM: No.

28 MR. GORIA: No.

1           THE COURT: Here we go. "You left me a voicemail  
2 at the end of last week in response to the question I left  
3 for you. We are holding funds pursuant to a preliminary  
4 injunction in this matter that was issued by Judge Medel.  
5 It's my understanding this matter has now been moved to  
6 Judge Sturgeon's court. The order I have is stamped  
7 July 17th, 2018. I do not know how it was served on us or  
8 where it came from. Our legal department is in  
9 Birmingham, Alabama. So if service was completed on a  
10 branch in California, it is possible all the attachments  
11 did not make it.

12           "I do not have complete access to the online  
13 docket because I am in another state. I saw several  
14 motions to quash, et cetera, after the date of this order.  
15 We are roughly holding \$30,000, and I would like to know  
16 if the judge would like us to mail the funds to the  
17 receiver or to the Court or release. I would also like a  
18 confirmation of who the receiver is if that is where the  
19 funds to go. Any information can be helpful. I would  
20 hate to send money to the wrong place or release it if --  
21 or not release it if that is the Court's desire. Thank  
22 you."

23           I instructed my clerk to say, "Freeze  
24 everything." And I think that was communicated to the  
25 bank?

26           THE CLERK: Yes.

27           THE COURT: Madam Clerk, well done.

28           Okay. Does anyone know anything about this?

1 MS. AUSTIN: No, Your Honor.

2 THE COURT: What I want to know about is how did  
3 they get my order?

4 MR. GRISWOLD: Your Honor, I don't know anything  
5 specific to what you just summarized. I would say in  
6 general that Mr. Essary did serve a copy of previous  
7 appointment orders on banks pursuant to the actual  
8 language in the -- in the appointment orders, which  
9 effectively freezes money that's held by certain  
10 defendants' and plaintiffs' accounts that are subject to  
11 the receivership.

12 Now, again, these were what I believe were  
13 dropping off a copy of the order to a local branch here in  
14 San Diego County, and that's effectively been done that  
15 all parties have been aware of subject to this Court's  
16 order. But, no, there's been no contact with anyone in  
17 Alabama, and I'm not even sure what bank this is referring  
18 to.

19 THE COURT: It doesn't say.

20 MR. ELIA: May I?

21 THE COURT: Hold on.

22 THE CLERK: I believe it does under her name.

23 THE COURT: It says legal department. Corporate  
24 headquarters.

25 THE CLERK: May I see that, Your Honor.

26 THE COURT: It probably is BBVA Compass.

27 THE CLERK: Yes.

28 MR. HENKES: That would be Flip Management's

1 company. So Michael Essary was working on --

2 THE COURT: So Mr. Essary sent that.

3 MR. HENKES: Probably.

4 THE COURT: Why would he send Judge Medel's  
5 order?

6 MR. ELIA: Your Honor, when we first filed this  
7 complaint, we had Judge Medel, and he filed --

8 THE COURT: I knew that.

9 MR. ELIA: And he did grant the order. So  
10 when -- and the receiver did take over at that time. And  
11 at that time, I think the receiver took over for 20 days.  
12 So he did -- Mr. Essary did send Judge Medel's order --

13 THE COURT: Okay.

14 MR. ELIA: -- to the bank.

15 THE COURT: I got it. So at least I know now  
16 where 30,000 is; correct?

17 MR. GRISWOLD: Yes. And I -- I don't want to  
18 speak for anyone else here, but it's been I think common  
19 knowledge among all the parties that there was a BBVA  
20 account that was frozen, and I think -- I want to say  
21 about \$30,000 -- \$26-, \$27,000. And it's been frozen.  
22 And yes, I've never --

23 THE COURT: That cleared it up.

24 MR. GRISWOLD: There you go. So --

25 THE COURT: Obviously, I've got a big concern  
26 when I get a call from a bank out of state.

27 MR. GRISWOLD: Absolutely.

28 THE COURT: But now it makes sense, now that it



1 was explained. That was probably served here on a bank in  
2 San Diego. Okay. Thank you.

3 All right. Let's go.

4 THE CLERK: Do you want -- I need to respond to  
5 her.

6 THE COURT: That's a good question. Two minutes.  
7 What are we going to do with the 30,000?

8 MR. ELIA: It should be given to the receiver,  
9 Your Honor, would be our position.

10 MR. GRISWOLD: I think we've all been kind of  
11 cooperating together as to utilizing those funds. I think  
12 we even have been in e-mail communication with Mr. Malan  
13 and the attorneys to -- the account was frozen, and then  
14 over the course of the last hearing we had, which was that  
15 the receiver will allow the defendants to utilize certain  
16 funds with the receiver's approval for payment of certain  
17 expenses, et cetera.

18 And I believe we have a good working arrangement  
19 right now by which those funds are going to be utilized  
20 only at the receiver's -- with the receiver's approval for  
21 expenses of the marijuana operation. So I believe we're  
22 on the same page as to those funds.

23 THE COURT: So what I'm hearing, if I make a  
24 minute order -- I'm trying to think of the most efficient  
25 way -- that I'm going to tell Ms. Price, who's legal  
26 counsel for the bank, that the funds will only be released  
27 upon approval of the receiver.

28 MR. GRISWOLD: That would work, Your Honor.

1 THE COURT: Everybody good?

2 MS. LEETHAM: I think the way it's been working  
3 is Mr. Essary and my client and I think Mr. Henkes all  
4 have access to an account. Also, Brian Brinig.

5 So what happens is at the last hearing, Your  
6 Honor said the money comes in, nothing goes out without  
7 Mr. Essary's approval. People are writing checks other  
8 than Mr. Essary, but there should be an e-mail paper trail  
9 where they say "Here's the invoice. Here's the money  
10 due." And Mr. Essary will e-mail back and say "Approved"  
11 or, I don't know, he may have a question. It seems to be  
12 working. And I think that Flip should probably be handled  
13 that same way, but nothing has ever --

14 THE COURT: What's the biggest check that Flip's  
15 written? Who's Flip? Who am I talking to?

16 MS. LEETHAM: Flip Management is me, and it's  
17 Mr. Malan's entity.

18 THE COURT: So what's the biggest check they  
19 wrote without the permission of the --

20 MS. LEETHAM: They've had the permission of  
21 everything. Mr. Essary is not always writing the checks.  
22 We're physically writing the checks, and he's approving  
23 everything just to cut down on the administrative process.

24 THE COURT: So all money that's being released  
25 Mr. Essary knows about and he's just saying "Paid."

26 MS. LEETHAM: Correct.

27 THE COURT: That's not a problem, then, Counsel.

28 MS. LEETHAM: Okay.

1 THE COURT: You can continue that.

2 MS. LEETHAM: Okay.

3 THE COURT: All right. Now let's get to the  
4 motion, which I believe is this side of the table. I've  
5 read it. Comments from -- two things. Where's your  
6 client? I'd like to say something to both parties. I  
7 know your client. I'm getting to know you, your client.

8 MR. ELIA: Your Honor, he wasn't able to come  
9 this morning.

10 THE COURT: All right. And I'm sure you'll pass  
11 it along.

12 MR. ELIA: I will.

13 THE COURT: I now said -- and this isn't for you,  
14 Counsel. This is not for you. But it's been made very  
15 clear to the parties how expensive this gets. You hear  
16 me, Mr. Malan. And the gentleman next to you, I got it.  
17 I tried -- you know, I kind of gave you a forewarning "Let  
18 your client know, too." You're going to burn through  
19 money when you start this heavy litigation with this many  
20 attorneys. And then I just appointed not only a receiver,  
21 I just appointed Brian Brinig, who's the best in  
22 San Diego. Wait until you get his bill.

23 Wouldn't it be nice -- and just food for thought,  
24 you know, I'm here every day, I do my job -- if you could  
25 get to a retired judge quickly, and I mean like within the  
26 next week, and get this resolved. No more said. You hear  
27 me. You know me. I'll stop right there. But maybe it  
28 could save everybody a ton of money, respectfully.

1           Go. Here we go.

2           MS. AUSTIN: All right. Thank you, Your Honor.  
3 Gina Austin.

4           When we left the court on September 7th, I  
5 indicated to the Court that I would do my best to make  
6 your order work with the agencies. And let me -- and I've  
7 done my best, but I've got a few modifications -- requests  
8 for modifications to the order that I now understand you  
9 signed yesterday. We did not know that. So we do have  
10 proposed orders in the packet.

11           Because there -- there are four areas. Before I  
12 get to those four areas, though, I want to briefly discuss  
13 the bond. We were just informed this morning by your  
14 clerk that the physical bond actually has been received by  
15 the Court as of today. Or yesterday.

16           THE CLERK: We received it on September 20th, but  
17 I just got it in the department today.

18           MS. AUSTIN: Just got it in the department, okay.

19           So we had no knowledge of that information. And  
20 so -- and our understanding was it hadn't been posted in  
21 time and that was the purpose for that argument. So at  
22 that point, if it has been received, it is in the  
23 department, that argument is moot.

24           THE COURT: So the bond for 350,000, if I  
25 remember correctly, has been posted.

26           MS. AUSTIN: The only -- the only issue I have  
27 with that is that the name on the bond is incorrect as is  
28 one of the names as it is in the pleadings. It is

1 San Diego United Holdings, plural, not Holding. And if we  
2 are to prevail, I do not want to have any issues with  
3 regard to collecting on the bond. So we would request  
4 that it be amended, modified, corrected, whatever the  
5 process is, to correct the name on the bond.

6 THE COURT: Let's get the right name.

7 MR. ELIA: Will do, Your Honor.

8 THE COURT: Thank you. I appreciate that.  
9 Nonissue. It's going to be done.

10 MS. AUSTIN: Perfect.

11 THE COURT: Good. We're making progress.

12 MS. AUSTIN: So the four issues that I have are  
13 with regard -- two of them are with regard to the  
14 processing of the application. The Court had said that I  
15 was to continue to process the application and rejected my  
16 request to keep -- put the receiver into one of the  
17 entities to allow that to occur.

18 So using our best practices, the practices that  
19 we use with all of our other clients, we sent over a power  
20 of attorney to the receiver to sign in order to effectuate  
21 our ability to communicate with the State agencies. The  
22 State agencies absolutely will not communicate with us.  
23 They will not answer an e-mail. They will not accept our  
24 communications. They will not return phone calls. I have  
25 exhibits to my declaration that show what the State said.

26 And Mr. Griswold, on behalf of the receiver, said  
27 that at this point in time, he would prefer that Mike  
28 Essary be the only point of contact for the application.

1 That creates some substantial problems for us. Because at  
2 this point, aside from the one or the two owner  
3 authorizations that were submitted to the State that  
4 Mr. Essary provided us copies of, we have no idea what the  
5 status of the applications are.

6 The last information we sent to the State was on  
7 August 26th and August 17th. And there's no rhyme or  
8 reason to when the State actually responds. As a general  
9 rule, they'll respond within 30 days. But our process on  
10 our side for all of our other -- we're processing  
11 somewhere around 40 applications at the State level -- is  
12 to follow up within 30 days if we don't hear from the  
13 State.

14 And then also our second follow-up is that within  
15 six -- I'm sorry -- within six weeks of the time that the  
16 application is about to expire, the temporary permits, we  
17 would then also follow up. So we have two follow-up  
18 triggers with the State, which we are not able to do,  
19 which are back-and-forth communications. They're not  
20 something that lend itself easily to send an e-mail to  
21 Mr. Essary, Mr. Essary forward the e-mail to the State,  
22 the State send an e-mail back to Mr. Essary then forward  
23 that, and that adds to this enormous amount of costs.

24 So at this point in time, we have the Balboa  
25 temporary permit due to expire on October 13th. We've had  
26 no communication from the State, no communication from  
27 Mr. Essary. We have no idea what the status is.

28 THE COURT: What date will it expire?

1 MS. LEETHAM: It will expire October 13th if it's  
2 not extended.

3 THE COURT: Thank you.

4 MS. AUSTIN: And then the CCG, California  
5 Cannabis Group, permits for manufacturing at Mira Este  
6 will expire November 5th and the one for distribution on  
7 November 28th. And again, the same applies. No  
8 communication from the State. No idea what the status is.  
9 No way of following up.

10 And so what we're requesting from the Court is  
11 an amendment to the order that al- -- that requires  
12 Mr. Essary to appoint me or my office with power of  
13 attorney as we do with all of our other applications and  
14 all of the other processes so that we can continue to  
15 communicate with the State.

16 We have no problem cc'ing Mr. Essary on that. It  
17 doesn't preclude Mr. Essary from communicating with the  
18 State. But it does allow us to continue our business in  
19 the regular course. So that would be our first request.

20 I didn't know if I could continue.

21 THE COURT: I got the first thing.

22 MS. AUSTIN: Our second request would be an  
23 amendment with regard to the confidential information.  
24 There is a variety of confidential information that's  
25 provided to the State, and it's not your legal -- legally  
26 defined attorney-client privileged communication that I'm  
27 referring to, but rather standard operating procedures;  
28 the way that they do their operations within the Mira Este

1 facility, the way that they do their operations within the  
2 Balboa facility.

3 And when we provide that information to the  
4 State, we would mark it as confidential, which prevents  
5 that information from being disclosed in a Public Records  
6 Request Act from the State. I have requested from  
7 Mr. Essary, who referred it to Mr. Griswold, to apply that  
8 same procedure to information. Because everything I  
9 submit to the State -- at this point, I'm not submitting  
10 anything to the State. He is. But prior to that,  
11 everything I submitted to the State, I would cc Mr. Essary  
12 on or give him copies of. That information, once in  
13 Mr. Essary's hands, is no longer confidential.

14 And so our operating procedures, our mechanisms  
15 for extracting oil, for example, a variety of other pieces  
16 of information, are not being -- are not being treated as  
17 confidential. I understand Mr. Essary's need to have the  
18 information, but what I'm requesting is that the order be  
19 modified. Mr. Griswold said they would not treat it as  
20 confidential. To treat that information, if deemed by our  
21 office as confidential as the experts in the space, to be  
22 confidential, to be able to be disclosed, obviously, to  
23 Brinig, to be able to be disclosed to his attorney, and  
24 they would be bound by the same confidential requirements.

25 It doesn't seem unreasonable. There's no burden  
26 or harm to SoCal or Mr. Razuki. Because if it is deemed  
27 confidential at this point and they ultimately prevail at  
28 the end, they're going to receive all of this information.



1 So we're the ones processing the application. There's no  
2 harm. And if those tenants leave, they certainly don't  
3 want SoCal to have their confidential information. So  
4 that would be the second request that we would have.

5 And the idea of a protective order, I -- again,  
6 the increase in costs. But I'm not sure that the Court  
7 wants me to come in here every other day and ask for a  
8 protective order over information that I would like not to  
9 be disclosed to a variety of people. But, I mean, I guess  
10 if that was the last-case scenario, we would have to go by  
11 that, in which case I would like to set another ex parte  
12 as soon as possible.

13 The next issue that we would like amended would  
14 be with regard to the consultants. As you are well aware,  
15 this is becoming a very expensive case very quickly. And  
16 I -- we will take to heart your suggestion of getting in  
17 front of a mediator as quickly as possible. However, in  
18 the interim, we're requesting that some of the advisors  
19 that Mr. Essary is using be precluded, eliminated,  
20 stopped, specifically the advisor of Mr. Lachant and  
21 Mr. Yeager.

22 Mr. Essary continues to cc Mr. Lachant on every  
23 single piece of communication to our office regarding  
24 licensing. This creates an undue burden and undue expense  
25 on my client for no reason whatsoever other than to give  
26 Mr. Essary a sense of -- as he put it, he wants to  
27 double-check my work. Those weren't his exact words.  
28 That's a paraphrase of what he said in the hallway.

1           And as the expert in this field and actually  
2 speaking on panels with Mr. Lachant's firm, there's no  
3 need for that. There's no -- there's no evidence in the  
4 record anywhere that we're doing anything to subvert the  
5 process. We want the permit. They want the permit. It's  
6 just an increased unreasonable cost on -- that is being  
7 incurred with Mr. Lachant.

8           So we request that Mr. Essary no longer be  
9 entitled to pay out of the fees from our group to  
10 Mr. Lachant. And the same holds true for Mr. Yeager. We  
11 have all of the information we can possibly get from  
12 Mr. Yeager. Mr. Henkes is now involved. He's involved in  
13 providing the information to the City of San Diego in the  
14 MGO audit. He is actively involved in any information  
15 that is available. He has -- there's no reason to  
16 communicate with Mr. Yeager any longer, and we'd request  
17 that Mr. Essary be precluded from increasing unreasonable  
18 expenses on behalf of our client by communicating with  
19 these two entities.

20           We understand that Mr. Griswold is Mr. Essary's  
21 attorney, but there seems to be an -- advising him as to  
22 the legality of issues that he's doing, Mr. Essary is  
23 doing. But when I ask Mr. Essary a question in an e-mail  
24 and the response is to cc everybody, Mr. Yeager,  
25 Mr. Griswold, Mr. Lachant, to answer the question, then  
26 every one of them is billing a .1 or a .2 for a question  
27 that Mr. Griswold has nothing to do with.

28           And so I would request that there just be a level

1 of reasonableness assigned to -- directed to Mr. Essary in  
2 terms of the people that he's bringing involved. We came  
3 in here because there were complaints of using funds,  
4 disbursing funds, abusing funds by Mr. Razuki to our  
5 clients. And at this point -- I'm sorry. And at this  
6 point, we're seeing a little bit of the opposite going on  
7 where Mr. Essary -- it's not his money, and it's just  
8 being --

9 THE COURT: Hold on.

10 (Pause in proceedings.)

11 THE COURT: Proceed.

12 MS. AUSTIN: So we would request that the  
13 amendment be Mr. Lachant and Mr. Yeager will no longer be  
14 utilized by Mr. Essary and Mr. Griswold be utilized as  
15 needed instead of on every communication.

16 Finally, the last issue that I'd like to request  
17 be amended has to do with the scope of the accounting.  
18 When we were here the 7th, the last time we were here,  
19 there was discussion as to who's involved in the Brinig  
20 accounting -- forensic accounting, who's going to be --  
21 and I believe the comment from Your Honor was something to  
22 the effect "I want to know where the \$6 million -- if the  
23 \$6 million was put in by Mr. Razuki."

24 Our position is that Mr. Razuki is claiming some  
25 of that \$6 million came in as part of his ownership in the  
26 settlement agreement of Super 5 and/or Sunrise. And so as  
27 such, Super 5 and/or Sunrise, at least Mr. Razuki's  
28 ownership in that, needs to be part of the forensic

1 accounting. We can't -- they're part of the settlement  
2 agreement. And as such, they would necessarily need to be  
3 part of the forensic accounting.

4 Plaintiffs' counsel objects to including Super 5  
5 and Sunrise because they're not part of the receivership,  
6 I think. I don't want to put words in his mouth, and I'm  
7 sure he'll explain to you why he objects. But we would  
8 request that those two -- Mr. Razuki's interest in those  
9 entities, because they're part of the settlement  
10 agreement, because they potentially and I think do -- are  
11 part of the claim of where the \$6 million came from, be  
12 part of the forensic accounting.

13 And finally with regard to that, we would request  
14 that the cost for this enormous endeavor that we are  
15 moving forward be split equally among the parties. Maybe  
16 it's taken out of the bond. I'm not sure what that  
17 process is. But for Mr. Malan to be the sole -- the sole  
18 person responsible for putting forward the -- to be able  
19 to cover all of these expenses for the forensic  
20 accounting, for the attorneys, for everything that needs  
21 to come out of these entities is unfair and overly  
22 burdensome to Mr. Malan himself.

23 If we're in litigation, everybody is claiming an  
24 interest. Everybody should be required to split these  
25 fees at least 25-25 -- I think the proposed order we have  
26 in there has it split 25 each; 25 to Mr. Malan, 25 to  
27 Mr. Hakim, 25 to SoCal, and 25 to Mr. Razuki. In that  
28 way, at the end of the day, if one prevails and the rest

1 lose, they can recover their costs through that process.  
2 But in the interim, not one plaintiff or defendant is  
3 being overly burdened by the costs of the accounting and  
4 the attorneys and the receiver.

5 And I believe that is all I have for my requests.

6 THE COURT: Thank you.

7 Response?

8 MR. ELIA: Yes, Your Honor. I'll defer to my  
9 colleague.

10 Do you want to hear from our side first or the  
11 receiver?

12 THE COURT: I'm going to have the question again.

13 Where's the money? I expect there to be \$3-,  
14 \$400,00 in Mr. Essary's account. Let's see if that's  
15 true.

16 MR. JOSEPH: Your Honor, for plaintiff, we'll  
17 address -- I'll specifically address the protective order  
18 and the scope of the accounting. I'll defer to  
19 Mr. Griswold regarding the specifics regarding power of  
20 attorney and the consultants, because he's more familiar  
21 with the day-to-day ongoing with the receiver.

22 Regarding the protective order, if Ms. -- we've  
23 always talked and said and agreed that Ms. Austin can  
24 provide a protective order. It does not require coming in  
25 every single day to the Court and saying, "Are these  
26 documents confidential?" We can establish a procedure  
27 where she declares "I find these documents to be  
28 confidential." And if there's an objection, then we can

1 levy an objection or anything of that matter.

2 More importantly, I think the Court has already  
3 addressed this issue that it's not a concern of trade  
4 secrets or anything of these other entities. The receiver  
5 has a duty by the Court as well as a duty to the companies  
6 that he is being receiver to. He has no authority to  
7 disclose those trade secrets. He has a duty to keep those  
8 trade secrets to himself. There's not a risk. There's no  
9 harm of confidential information becoming unconfidential  
10 just because the receiver is being learned -- is privy to  
11 this information.

12 So if Ms. Austin is worried about litigation  
13 strategy or anything of that matter, we can have a  
14 protective order about any documents that she's turning  
15 over to the receiver to ensure that it's protected for  
16 litigation's sake. In terms of any trade secrets issues,  
17 I believe the receiver's oath already covers those  
18 documents and would ensure that he's not allowed to  
19 disclose any trade secrets or any other confidential  
20 information that Mr. Malan or the companies under  
21 receivership would be disclosing to the State. I don't  
22 understand the issue. And from talking with the receiver  
23 on this issue, he has said that there's been no issues  
24 with the State and that he's been able to maintain these  
25 documents as confidential.

26 Now, regarding to the scope of the accounting --

27 THE COURT: One second.

28 Any -- what if we have a protective order? Would

1 that work, Ms. Austin, in your idea or not?

2 MS. AUSTIN: No, Your Honor. The protective  
3 order he's referring to is a litigation protective order.  
4 I'm talking about specific information that we would  
5 provide to the State. For example, "This is how we -- in  
6 our standard operating procedures, this is how we extract  
7 our oil." That's proprietary information. We submit that  
8 to the State. We stamp it confidential. The State can't  
9 do a PRA.

10 If they -- if somebody else, SoCal, for example,  
11 decided to subpoena Mr. Essary and subpoena the documents  
12 that have been submitted to him, he would be required to  
13 give them all of this information. And so on a  
14 case-by-case basis, we are also handling all of the  
15 information that gets submitted to the State. It includes  
16 information regarding the two -- Synergy and Far West  
17 Management, who are the operators in the two. And they're  
18 not under the Court's order. They're not part of the  
19 receivership.

20 And so this information also becomes public  
21 knowledge simply by giving it to the receiver, which seems  
22 completely unfair to the -- to both Synergy and Far West,  
23 as well as to Mr. Malan.

24 THE COURT: Response.

25 MR. JOSEPH: Your Honor, if this were the case, a  
26 receiver could never handle any business with any trade  
27 secrets. Of course the receiver is an agent of the Court,  
28 but the receiver is still bound to the duties of the

1 company to protect trade secrets. He's not allowed to  
2 just disclose proprietary information.

3 THE COURT: So he won't give it to SoCal?

4 MR. JOSEPH: Excuse me. Which information?

5 THE COURT: The information that you just said,  
6 like maybe how they extract the oil.

7 MR. JOSEPH: In terms of that, there's no reason  
8 to give that to SoCal for this. It's proprietary  
9 information for the businesses. Like we said, if we win  
10 litigation, we'd be entitled to those documents and  
11 everything. But in terms of the application process, the  
12 receiver is just simply there to ensure transparency,  
13 which is the most important reason why we have this  
14 receiver.

15 If this were the case, Your Honor, it would be  
16 impossible to ever have a receiver over any business with  
17 trade secrets or proprietary information. It would simply  
18 be impossible.

19 MS. AUSTIN: Your Honor, usually that information  
20 is protected. And in this instance, we already know the  
21 receiver is regularly sending the information because  
22 they're sending it to Mr. -- he's sending it to  
23 Mr. Lachant. Every communication that I send to the  
24 receiver he then forwards and cc's to Mr. Lachant. So we  
25 know that information is out there. Mr. Lachant is not  
26 under any duty of confidentiality, and it's continuing to  
27 perpetuate.

28 MR. JOSEPH: Your Honor, again, if that is their



1 concern, I'm sure every party will sign a protective  
2 order. The attorneys are not going to disclose the  
3 information to their clients. That's a standard  
4 protective order that comes into these trade secret cases.  
5 This is exactly what we said. If we want a protective  
6 order that we're not going to tell our clients and tell  
7 the trade secrets, we can do that.

8 THE COURT: Including Mr. Lachant?

9 MR. FULLER: Yes, Your Honor, including  
10 Mr. Lachant.

11 THE COURT: Mr. Griswold?

12 MR. GRISWOLD: I have no problem with that at  
13 all. I would just reaffirm we're talking about a  
14 hypothetical situation. The only thing submitted to the  
15 State since the receiver has been involved have been  
16 simply applications to notify the State that there's a  
17 receiver involved.

18 And I have to point out that during this  
19 conversation about private and confidential information,  
20 the only information that the receiver has submitted to  
21 the State has been information about himself. And I have  
22 to point out that Exhibit I to Ms. Austin's declaration is  
23 Mr. Essary's application, including his Social Security  
24 number, his date of birth, and a copy of his driver's  
25 license.

26 So the irony is a little troubling when we're  
27 talking about confidential and private information being  
28 submitted and shared with not only all the parties here,

1 but a public filing.

2 But as to the point of trade secrets being  
3 provided and any sort of restriction as to who the  
4 receiver can share it with, we're at the mercy of the  
5 Court. We have no position, by the way. We'll withhold  
6 it from this party, that party, that -- we have no problem  
7 with that.

8 THE COURT: So work out a protective order and be  
9 done with this.

10 MR. JOSEPH: Which is what we're completely okay  
11 with, Your Honor, of course.

12 MS. AUSTIN: And my proposal to Mr. Essary and  
13 Mr. Griswold was when I stamp it "confidential," it would  
14 remain confidential and it would only go to these -- and  
15 Mr. Griswold said "No."

16 MR. GRISWOLD: Sorry. Your Honor, we had a  
17 back-and-forth on e-mail. Then it got into a discussion  
18 of "Well, who can I share it with?" Because I don't want  
19 to disclose anything. And this is all a hypothetical  
20 conversation. I have no interest on behalf of Mr. Essary  
21 sharing anything that they consider to be trade secret or  
22 proprietary.

23 However, that conversation was expanded to things  
24 that they consider to be attorney work product. I cannot  
25 declare what is attorney work product and what is not.  
26 And I think a big concern here and the gray area is that  
27 Ms. Austin is counsel for a party to this matter --

28 THE COURT: That's an issue.

1           MR. GRISWOLD: -- and she is also acting as, in a  
2 sense, a consultant to the receiver. And wearing those  
3 two hats, she'll regret it. That's difficult. But as the  
4 receiver's counsel, deciphering what she's holding back  
5 because it's work product, maybe attorney-client  
6 privilege, maybe litigation strategy versus what is -- now  
7 we're talking a bit more about trade secret, proprietary  
8 extraction methods, that's a whole different bag of items  
9 that we're discussing.

10           So if the parties were able to come up with, like  
11 you said, a reasonable protective order and some  
12 guidelines, the receiver would be happy to have a clear  
13 path as to what's confidential and what's in each bag.

14           MS. AUSTIN: And if I can -- I -- just to  
15 clarify, I am not talking about attorney work product at  
16 this point. I -- Mr. Griswold had asked me. I had  
17 submitted some billing. I had redacted some information  
18 in terms of, you know, the scope of services. He -- we  
19 came to a compromise that I would summarize it.

20           That's fine. I'm not talking about attorney work  
21 product at this point at all. I am only talking about  
22 confidential information related to Synergy, related to  
23 Far West Management, related to Balboa Avenue Cooperative.

24           And you're right, nothing has been submitted to  
25 the State because we've been precluded from doing so since  
26 the time. We don't know what the State needs because we  
27 can't talk to them.

28           THE COURT: So prepare a protective order for the

1 Court to sign. You two work it out.

2 MS. AUSTIN: Yes, Your Honor.

3 MR. GRISWOLD: Yes, Your Honor.

4 THE COURT: Done.

5 MR. JOSEPH: Your Honor, for the second point  
6 regarding the scope of the forensic accounting --

7 THE COURT: They want to include Sunrise.

8 MR. JOSEPH: First off, Mr. Razuki has not  
9 declared that part of that \$5- to \$6 million investment  
10 was the Sunrise and Super 5 contribution. Our argument  
11 for that is that we've invested \$5- to \$6 million in the  
12 Balboa dispensary, the Balboa manufacturing, those five  
13 units in Balboa, Mira Este, and Roselle.

14 He was showing those documents. And in his  
15 declarations, his communications with the lenders, the  
16 collateral he's put up in total, in terms of cash and  
17 collateral, was \$5 million. When it came to Sunrise, he  
18 invested in that. And now we provided the Court with the  
19 certificates to show his ownership into those entities.

20 Sunrise, the LLC, has only been named a party  
21 about one day before your initial receivership order on  
22 September 6th. Super 5 is still not a named party in this  
23 case whatsoever. There is no need to do an entire  
24 forensic auditing of those -- of those two businesses when  
25 they have not had any issue, when there's no receivership  
26 order by the Court, and one of them is not even a party to  
27 this case.

28 Our argument has always been we -- in order to

1 show that the oral agreement that Mr. Razuki had with  
2 Mr. Malan was valid, we are -- we are showing all the  
3 money that he has to show that this conduct was consistent  
4 with that oral agreement. And we are welcoming a forensic  
5 accounting to show exactly the collateral he put up to buy  
6 the Balboa properties, the collateral he put up to buy the  
7 Mira Este, the cash he put up, the wire transfers, all of  
8 that. We are welcome to that.

9 But there's no reason -- as both parties admit,  
10 there's no reason to make this forensic audit even more  
11 expensive and to go into Sunrise and Super 5 and discover  
12 all of their financial dealings and everything of that  
13 matter.

14 As we've mentioned before, we've already shown we  
15 own it. Like the forensic accountant, if anything, they  
16 can ask Mr. Razuki "Show me your contributions that you  
17 made to purchase Sunrise and Super 5 into this matter as  
18 well," and Mr. Razuki will show those documents and he  
19 will show that -- the money that he put into there.

20 More importantly, Your Honor, if they are still  
21 curious about the documents regarding Sunrise and Super 5,  
22 that is a matter for regular discovery. This is an  
23 extraordinary measure where the Court has asked this  
24 forensic auditing to make sure that we get down to what's  
25 going on with this to help the receiver understand where  
26 the money is and everything.

27 And the question is not the money that was put  
28 into Sunrise and Super 5. The question is the money over

1 the entities Mira Este, Balboa, and Roselle. Who owns  
2 those properties? So that's the point of the scope of the  
3 forensic audit. There is no need to actually expand it  
4 and make it ever more expensive.

5 Second, as to the costs, Mr. Malan is not  
6 personally liable for the costs. The businesses are. The  
7 businesses are the people who are going to be paying for  
8 the cost of forensic audit. And at the end of this  
9 litigation, whoever is deemed to be the owner of these  
10 businesses at the end of the day, they'll be stuck with  
11 the bill.

12 This is not an issue that Mr. Malan is taking on  
13 all the costs for himself. It is rather the businesses  
14 who are taking on the costs. And as defendants have  
15 indicated to us, these are somewhat profitable businesses  
16 that can incur these costs and take on these costs in  
17 order to make sure that the receiver does -- the  
18 accounting is accurate.

19 So therefore, we would still object to splitting  
20 the costs or anything of that matter. If the Court does  
21 require some allocation, we reserve the right to modify  
22 that allocation at a later date to ensure that -- to  
23 ensure that the businesses are the ones who are paying for  
24 the costs of Brinig and Taylor -- Brinig and Associates to  
25 pay for the forensic audit.

26 But generally speaking, Your Honor, we would say  
27 that the businesses who are under the receivership are the  
28 ones who are responsible for that cost. Because that

1 is -- nobody wants those entities to lose money. We're  
2 trying to engage in settlement agreements as it is right  
3 now. We're trying to save money. But Mr. Malan is not on  
4 the hook. It's these businesses. So therefore, he is --  
5 there is no risk of him incurring all of these costs, and  
6 that's not an undue burden on him specifically.

7 THE COURT: Thank you.

8 MS. LEETHAM: So I vacillate between wanting to  
9 laugh and scream and stomp my feet and yell and just shake  
10 everybody and say, "We're fighting over a business that  
11 has a burn rate that will cause us to close the doors  
12 right now." And it's why I brought Mr. Henkes. So they  
13 say nobody wants them to lose money. We are hemorrhaging  
14 money.

15 We have -- Ninus Malan's declaration, Balboa  
16 Avenue is well over \$300,000 in debt completely  
17 independent of this litigation. And when that money comes  
18 in the door, there are bills owed to Far West. We're  
19 talking ability to pay wages; right? They don't have the  
20 ability to pay wages.

21 And the Court keeps saying, "I expect 300,000 in  
22 the receiver's account." Judd knows how much is there.  
23 It's not there. They owe Far West Management \$45,000.  
24 They owe the HOA \$60,000. They owe the State tax  
25 \$175,000.

26 I was at a meeting at Brian Brinig's office for  
27 two hours on September 18th; myself, Mr. Henkes,  
28 Mr. Griswold, Mr. Essary, Mr. Brinig, and his associate

1 Marilyn Weber or Weber [pronouncing]. We are paying for  
2 that, every dime of it. Every dime, Richardson sends an  
3 email. Every dime. They're not paying for that.

4 And at the end of the day, the irony of this is  
5 all they're left with is Super 5 and Sunrise. By their  
6 own admission, my client owns 25 percent of what they  
7 have, and we know nothing about those financials. He's  
8 not received a dime from that entity. We don't know what  
9 Razuki gets.

10 And isn't my client theoretically entitled to  
11 25 percent of his interest? By their own admission in  
12 their complaint, he is. And they continue to fight access  
13 to any of that. And I ask the Court why?

14 Even more curious, the prayer for relief in the  
15 complaint -- I'm going to slow down -- appointment of a  
16 receiver as to San Diego United, Flip, Mira Este, Roselle,  
17 and Monarch, which are the entities that are outlined in  
18 the settlement agreement, which is Exhibit 1 to the  
19 complaint, all of a sudden every business my client has  
20 any ownership interest has been subsumed by this  
21 litigation.

22 He doesn't get paid. They don't get paid. The  
23 only people getting paid are the professionals associated  
24 with the receivership, I guess. I don't know if they've  
25 even been paid. That's why I brought Mr. Henkes. Because  
26 he can explain to you that \$300,000 is a negative  
27 \$300,000. And I would posit to the Court the only money  
28 coming into this joint venture is from Sunrise. So we



1 need that money.

2 The fundamental unfairness of this is almost  
3 beyond the pale. And I'd ask the Court to allow my client  
4 to get paid. He's not getting paid. I've asked the Court  
5 to --

6 THE COURT: That's \$40,000 a month?

7 MS. LEETHAM: No. Just something to live off of.  
8 He has four kids.

9 THE COURT: Well, does he -- did I read that  
10 right, \$40,000 a month?

11 MS. LEETHAM: That who gets paid, Your Honor?

12 THE COURT: Your client.

13 MS. LEETHAM: No.

14 THE COURT: Wasn't there a consulting fee, a  
15 monthly consulting fee.

16 MS. LEETHAM: Under the SoCal agreements, there  
17 was a minimum guaranty payment, an arm's length  
18 transaction, it was \$35,000.

19 THE COURT: There we go.

20 MS. LEETHAM: Yes. And actually, that money was  
21 not being paid by SoCal. It was being paid by the  
22 dispensary itself. So that's an issue for another day.  
23 My point is that if the costs continue, there will be  
24 nothing left to fight over but Sunrise. And perhaps  
25 that's what they want.

26 So we need to know what's going on -- basically  
27 what we're here to do today with you, Your Honor, is try  
28 to minimize the hemorrhaging. Again, that's why I have

1 Mr. Henkes here. He can tell you right now what Balboa  
2 looks like.

3 THE COURT: Okay.

4 MR. JOSEPH: Briefly responding, Your Honor,  
5 first off, I believe -- I forgot if it was two hearings  
6 ago or three hearings ago we were hearing about \$100,000 a  
7 week clearing at these businesses, \$200,000 for another  
8 business. Now we're hearing that they're in financial  
9 ruin.

10 If anything, we just need this forensic  
11 accounting to happen tomorrow, as soon as possible,  
12 because we have no idea what's going on. My client has  
13 been locked out of these businesses for a long time. He  
14 has no idea what's going on there.

15 As for Sunrise and Super 5, a forensic accounting  
16 as to what Mr. Razuki has received from those businesses  
17 will show whatever Mr. Malan is owed. We don't need to go  
18 investigate and bring in two other companies that are  
19 not -- one of them is not even a named party in this case.

20 So, if anything, forensic accounting can say,  
21 "Mr. Razuki, what have you received from your 27 percent  
22 interest in Sunrise and 20 percent interest in Super 5?"  
23 That's what Mr. Malan is entitled to, if anything. He's  
24 not entitled to anything else under the settlement  
25 agreement.

26 But more importantly, Your Honor, the businesses  
27 have been represented to us as being very profitable and  
28 swimming in cash, and now is the first time I'm hearing

1 that they're actually hemorrhaging money and Mr. Henkes is  
2 going to testify to that. I obviously have nothing to  
3 counteract that.

4 THE COURT: I thought they were making \$100,000 a  
5 weekend.

6 MR. HENKES: Absolutely not. All of that is  
7 smoke and mirrors. I mean, the only money that they made  
8 before on the Mira Este side was SoCal paying a minimum.  
9 They weren't selling any products to anybody. The first  
10 product that was sold at Mira Este was last month in  
11 August, and the company made \$30,000. The brand that's  
12 operating under them, did not even have enough sales to go  
13 over that minimum. So they made \$30,000 in one month,  
14 okay? They have debt service that is in excess of that.  
15 I don't know where their numbers are coming from. In  
16 fact --

17 THE COURT: Well, it was represented to the Court  
18 they needed \$80,000 to have product to sell.

19 Where did that go?

20 MR. HENKES: I don't know what was represented to  
21 the Court then. I would have to look --

22 THE COURT: It was. I remember.

23 MR. HENKES: -- at that specific transaction.

24 THE COURT: I remember.

25 MR. HENKES: But they didn't even make money  
26 under SoCal, I would argue. I haven't seen the  
27 financials. But they didn't pay the \$175,000 tax bill.

28 THE COURT: State your name for the record. I

1 want to make sure the court reporter gets it.

2 MR. HENKES: Justus Henkes, IV.

3 MS. LEETHAM: Do you want him to come up here to  
4 the microphone?

5 THE COURT: Yeah, come up on. I have a couple  
6 minutes.

7 MR. FULLER: Your Honor, SoCal's only interest in  
8 this is that we object to the allocation of costs to us.  
9 This audit seems to not involve us at all.

10 THE COURT: I got it.

11 Mr. Henkes, how are you?

12 MR. HENKES: I'm excellent. How are you?

13 THE COURT: Ever since this case has hit my  
14 department, I just want to know where the money is. And  
15 no one can tell me, sir.

16 MR. HENKES: Sure.

17 THE COURT: No one.

18 MR. HENKES: Yep. I can tell you --

19 THE COURT: Money is flowing into these places.  
20 Not flowing, but they're making money.

21 MR. HENKES: It's not. From what I've seen,  
22 again, there is one person that's working at Mira Este  
23 under their license. It's ediPure. They have a contract  
24 that they have to pay \$30,000. They have paid that  
25 minimum. When I was out with forensic accountants, the  
26 second payment hadn't even been made in this month.

27 But again, that's only \$30,000 a month in total  
28 income, okay? Whatever SoCal was paying before, there

1 have been no sales of any kind of marijuana products from  
2 Mira Este except for in August of 2018. Now, there's some  
3 that are going to go out again in September. But again,  
4 we're probably not even going to meet that minimum. So  
5 Mira Este is not for the last couple of months making any  
6 money.

7 THE COURT: How about Balboa?

8 MR. HENKES: Balboa is also losing money to the  
9 tune of about \$14- or \$15,000 a week. We're building  
10 sales. So sales have gone from 39,000 one week to 41- to  
11 46- to 48- to 54- to 55-. So they keep going up every  
12 week.

13 But we're reinvesting in marketing, whether it's  
14 *Reader* ads, whether it's Weedmaps so we get the gold stars  
15 so people can find us. Again, we're not getting paid, the  
16 management company. And it's about -- our bill a week is  
17 about \$15,000, and that's about what they're negative.

18 But 9,000 of that is for workers' comp, payroll,  
19 and employee costs that are just a direct cost of people  
20 that are being charged over with no markup. And 6,000 of  
21 that is our fee for the week of the \$25,000 fee.

22 So again, they're losing money each week.  
23 They're a growing business, but there's not hundreds of  
24 thousands of dollars of sales. It's typical of what  
25 happened with our dispensary on Hancock. You know, we  
26 lost money for the first couple of months. We had to  
27 continue to infuse money and put back to the business to  
28 invest in marketing, to build inventory.

1           So there's not this ton of cash anywhere. I can  
2 show you exactly. And that's what I would argue, is, you  
3 know, I do have a good relationship working with Michael.  
4 I think it is costly. And I'm not sure that it's  
5 necessary, right? Again, all the money is being accounted  
6 for.

7           This is to me -- and I'm not an attorney, but  
8 this is a civil issue between these people. They can sue  
9 each other all they want and figure this out with a lot  
10 less cost, or they can go down this road with a receiver  
11 and they can keep it in place and there's going to be less  
12 of a pie to split up at the end.

13           I tell people when they're getting a divorce, "If  
14 you guys fight about it, you can pay all the money to the  
15 attorneys or you can do what's right for your kids and  
16 come to an agreement and you're going to have more money  
17 left over for whichever way that you guys want to go."

18           So it's my argument that, again, I don't really  
19 see the value. I understand why a receiver is needed.  
20 But again, Michael can testify that there's been no issues  
21 with the money or the funds since we've taken over.  
22 Again, everything is being accounted for. We can show the  
23 financial statements to the other side if the court would  
24 want us to do that or I could submit the financial  
25 statements to you.

26           THE COURT: Did you know about the \$30,000 in  
27 Alabama?

28           MR. HENKES: I didn't know about Alabama, but I

1 think I know what it relates to. It relates to BBVA  
2 Compass, and it relates to Michael. Absolutely we know  
3 about that.

4 THE COURT: So you knew about the 30,000?

5 MR. HENKES: We knew that 30,000 was frozen in  
6 the Flip Management account. There's a ton of e-mails  
7 between Michael and Ninus trying to unfreeze that account.

8 THE COURT: How much other money is frozen?

9 MR. HENKES: That's it, to my knowledge.

10 THE COURT: What's the gross monthly income of  
11 Mira Este?

12 MR. HENKES: Gross income has been \$30,000 a  
13 month for the last two months.

14 THE COURT: So that's all product they've sold,  
15 is 30,000; correct?

16 MR. HENKES: Well, it's actually a minimum  
17 license fee that ediPure pays them, and then they have an  
18 agreement that they're either going to pay a percentage of  
19 sales or 30,000 minimum, whichever is greater. The first  
20 month, the sales were under that threshold, so they got  
21 the 30,000. So they did get 30,000 of income that they  
22 reported.

23 THE COURT: Do you know what the gross sales  
24 were?

25 MR. HENKES: 176,000.

26 MR. GRISWOLD: \$200,000, Your Honor.

27 THE COURT: Thank you.

28 And how about for Balboa? Any sales there?

1 MR. HENKES: The sales -- well, I gave you the  
2 numbers. You know, the week of August 5th was 39,000.  
3 The week of August 12th was 41,3-. The week of August  
4 25th was, you know, 46,6-. The following week was 48,000,  
5 54,000. The week ending 9/15 was 55,7-.

6 THE COURT: So 160,000.

7 MR. HENKES: I have 322- over my period that  
8 we've been operating, but that includes sales tax as well.

9 THE COURT: I just did it for a month. You've  
10 done it for like five, six weeks. So there's a couple  
11 hundred thousand dollars coming in.

12 MR. HENKES: There's money coming in, right? But  
13 it's being absorbed by expenses, right? Still, after you  
14 pay the expenses of the business, you have security, you  
15 have payroll expenses. You have, you know, 9,200 a  
16 week -- or every couple weeks in security. 8,500  
17 insurance payments. There's -- you know, the money is  
18 being absorbed by the business.

19 THE COURT: And forgive me. How long have you  
20 been doing this?

21 MR. HENKES: We've been in place -- we were in  
22 place a little bit in July. We were put in place, we were  
23 removed, we came back in place on August 3rd, and we've  
24 been in place since August 3rd.

25 THE COURT: Thank you. Hold on. I'm not done.

26 Give me a sense of -- let's start with the  
27 plaintiff. Have the plaintiffs infused any money into any  
28 of these businesses?



1 MR. HENKES: Not since I've been involved.

2 THE COURT: That's all I want to know is you.

3 Has the defendant infused any money?

4 MR. HENKES: I believe there's been a couple of  
5 payments from their personal funds on --

6 THE COURT: I want you. I don't want him. I  
7 want you.

8 MR. HENKES: Again, I'm just recalling all the  
9 e-mails, but I believe there's been a couple payments by  
10 Chris and Ninus from the personal funds.

11 THE COURT: Can you ballpark it?

12 MR. HENKES: I want to say under \$20,000.

13 THE COURT: Okay.

14 MR. GORIA: Your Honor, if I might, Mr. Hakim and  
15 Mr. Malan have made mortgage payments on Mira Este for  
16 June, July, August, and September that represents  
17 approximately \$100,000, \$50,000 each.

18 MR. HENKES: Again, some before my time.

19 THE COURT: You're very helpful, sir. And I mean  
20 that. You can see how complicated this is.

21 MR. HENKES: Extremely complicated.

22 THE COURT: And the last thing I want to do is  
23 drive these people so it doesn't exist. But obviously, we  
24 seem to be going down that path, which is a great concern.

25 MR. HENKES: It's is. It's a growing --  
26 basically, it's a startup business. Even though they had  
27 operated the dispensary before, they had some problems  
28 with the HOA. They never really built their sales. They

1 didn't start like Hancock Street, the dispensary that I'm  
2 involved in, where, you know, we started in August of '17  
3 and, you know, we haven't stopped growing, basically.

4 THE COURT: Thank you for coming.

5 MR. HENKES: Thank you.

6 MR. JOSEPH: Your Honor, if I can just briefly  
7 respond to that.

8 THE COURT: Of course.

9 MR. JOSEPH: Realistically, I don't have any  
10 specific numbers to give you, obviously, because I'm not  
11 as involved in the business as Mr. Henkes. But I can tell  
12 you previous declarations by John Yeager when SoCal was in  
13 there, they were getting about 7,000 in sales a day, which  
14 would be about -- over 200,000 of sales a month just at  
15 the dispensary alone. All of a sudden this is the first  
16 time we have truly heard about this business being in any  
17 catastrophe. It is simply coincidental.

18 And if anything, Your Honor, Your Honor predicted  
19 potentially this issue happening, which is why you wanted  
20 a forensic accounting to be done. If anything, they're  
21 just trying to accelerate your November 16th hearing to  
22 today and trying to eliminate the receiver today when  
23 instead we've already decided that we're going to hear all  
24 this on November 16th.

25 We'll get a full accurate reporting from an  
26 independent accountant and everything as well as -- and  
27 frankly, Your Honor, I understand Mr. Henkes's -- I don't  
28 know exactly what his procedures are. All I do know is

1 that he is a 10 percent owner in the parent company of Far  
2 West. He's involved with this company.

3 I would prefer if we have Brinig telling us  
4 exactly what's going on with the numbers, comparing it to  
5 how it has done historically, to how it has done after the  
6 receivership. If anything, Your Honor, this just means we  
7 hold off this entire discussion until November 16th.

8 THE COURT: Well, I'm going to make some orders  
9 today, though. A few.

10 Okay. Let's talk about -- let me talk to the  
11 receiver first. Let's talk about making -- what's the  
12 position of giving a power of attorney to Ms. Austin?

13 MR. GRISWOLD: Yes, Your Honor. So obviously,  
14 after our hearing on September 7th -- and it sounds like  
15 the order was signed yesterday.

16 THE COURT: It was.

17 MR. GRISWOLD: Yes. So Ms. Austin, I respect her  
18 expertise and experience with dealing with the State  
19 licensing board. After that hearing on September 7th, we  
20 walked outside and we talked and we said, "Ms. Austin, I  
21 want you to continue doing all the actual leg work, the  
22 substantive work, the strategy work, all of those things  
23 towards licensing." And we still agree that's the best  
24 path forward.

25 Now, what we're talking about, I think, is a very  
26 narrow logistical issue. Who is the person that will  
27 receive an e-mail or receive a phone call from the  
28 representative from the State?

1 THE COURT: Yeah.

2 MR. GRISWOLD: And right now, that is Mr. Essary.  
3 Because Mr. Essary is the actual holder of the license  
4 currently as the receiver. Now, everything I've heard  
5 today and in the papers again are hypothetical concerns or  
6 fears that there's something going on at the State that  
7 they might have concerns and those concerns are not being  
8 relayed to Ms. Austin in a efficient manner.

9 Well, Mr. Essary is the contact person. He has  
10 not received any of those concerns. There are no concerns  
11 coming from the State. And on top of that, the  
12 application that was required of Mr. Essary was submitted  
13 timely with a confirmation from the State that it is  
14 received, with Mr. Essary responding again saying "If  
15 there are any concerns, questions, or issues, I am your  
16 contact person. Let me know."

17 That's where we are today. There are  
18 hypothetical concerns about -- it sounds like we heard  
19 cost and we also heard, I guess, maybe some confusion  
20 through the communication lines. Cost, like we just  
21 talked about, if we get an e-mail from the State, you  
22 better believe we are going to Ms. Austin to talk about  
23 it. There has been no issue from the State that we've had  
24 to discuss with Ms. Austin.

25 THE COURT: Okay.

26 MR. GRISWOLD: So that's the position we're in  
27 now.

28 MS. AUSTIN: Your Honor, it's not just logistical

1 or hypothetical. And I'm not asking to be the sole  
2 contact. But the State will not talk to me as you -- as  
3 evidenced by one of the exhibits to my declaration. They  
4 won't even give us a status update.

5 So to find out what the next step is, I have to  
6 go to Mr. Essary, who has to then send an e-mail to the  
7 State, who then will send the e-mail back to Mr. Essary,  
8 which will then send the e-mail back to us, and then to  
9 respond to that.

10 So we're not asking for exclusive control. We  
11 just want them to be able to communicate with us when we  
12 pick up the phone and call them. We have, as I said,  
13 40-some-odd applications in with the State agencies. If  
14 we're on the phone with them with one client, we take the  
15 opportunity to ask about another one if it's the same  
16 licensing agent. I can't do that. They won't speak to  
17 me. I can't do anything.

18 THE COURT: Got it.

19 MS. AUSTIN: So all I'm asking is just for us to  
20 be added to be able to talk. We can narrow the POA. We  
21 can do whatever. But we need to be able to communicate  
22 with the State directly.

23 THE COURT: Thank you. I've got that issue  
24 resolved.

25 MR. GRISWOLD: Thank you, Your Honor.

26 THE COURT: Okay. So let's see. Let's do the  
27 last. So I've resolved the confidential, I know what I'm  
28 going to do on the scope of the accounting, and I'm going

1 to resolve the power of attorney. Last, but not least,  
2 they want advisors Mr. Yeager and Mr. Lachant removed.

3 MR. JOSEPH: I believe Mr. Griswold can handle  
4 that issue.

5 MR. GRISWOLD: I'd like to take that. So I  
6 believe it was two hearings ago this Court addressed  
7 Mr. Yeager, and you instructed Mr. Essary not to use  
8 Mr. Yeager on a go-forward basis as the accountant for the  
9 marijuana operations.

10 After that hearing, Mr. Essary instructed  
11 Mr. Yeager "You are no longer the accountant for the  
12 marijuana operations." And since then, on a go-forward  
13 basis, we've been working with Mr. Henkes.

14 Now, Mr. Essary is contacting and working with  
15 Mr. Yeager for a very limited reason, and that's for  
16 historical work that he accomplished or didn't accomplish.  
17 And we have to get down to the bottom of that pursuant to  
18 a City audit that is currently pending.

19 So the contact that Mr. Essary is having with  
20 Mr. Yeager is "Hey, Mr. Yeager, you were the accountant  
21 back in January 2018. We need some cleanup work done  
22 because we have questions that the City is asking of us.  
23 And we need you to do your job, find that information for  
24 us, and get it to us."

25 And to be honest, those e-mails have included  
26 Mr. Malan, Mr. Henkes, Ms. Austin because we all have the  
27 shared goal of figuring that accounting issue out  
28 historically so we can provide answers. That's the extent

1 of Mr. Yeager being involved in any sort of work on this  
2 project.

3 THE COURT: Sounds reasonable.

4 MS. AUSTIN: Sounds reasonable. At this point,  
5 we know from Mr. Yeager he knows nothing. So at this  
6 point, there's no point in communicating with him any  
7 further.

8 THE COURT: So he was the accountant before and  
9 he knows nothing?

10 MR. GRISWOLD: Your Honor, I have to respond to  
11 that. That is in progress currently. And the  
12 complication here is that it's in the moving papers, too.  
13 They're arguing both sides of it. They're saying, "He  
14 knows nothing. He did a horrible job. Why are you even  
15 talking to him? And it's costing money."

16 But at the same time, they're saying, "Mr. Yeager  
17 was on the job. He should have known what's going on.  
18 He's the only person that has the information, as well as  
19 SoCal. So get that information, Mr. Essary."

20 THE COURT: All right.

21 MS. AUSTIN: At this point, subsequent to those  
22 conversations, Mr. Yeager has said, "I don't have it. It  
23 was on some server." That server has now -- nobody knows  
24 where that server is. And so there's nothing at this  
25 point any further that Mr. Yeager can do.

26 We're going to have to negotiate with NGO, we're  
27 going to have to find a solution, and the solution is  
28 going to have to be something that relates to data that

1 either SoCal has or doesn't have but Mr. Yeager clearly  
2 does not have.

3 THE COURT: Thank you.

4 MR. GRISWOLD: One more note on Mr. Yeager, just  
5 so we're all clear on the record, is that Mr. Yeager is  
6 also involved, to the extent that we have requested his  
7 assistance, with Mr. Brinig's forensic audit. We invited  
8 him to a meeting because Mr. Brinig's forensic audit is,  
9 again, looking backwards. So questions we have we are  
10 going to be demanding information from Mr. Yeager to give  
11 the full picture to the Court within that forensic audit.

12 MS. LEETHAM: My concern about that is that we do  
13 not have to pay for Mr. Yeager to do that. He was paid  
14 \$30,000 on July 31st.

15 (Pause in proceedings.)

16 MS. LEETHAM: Again, the theme of my part of this  
17 presentation is obviously costs and costs and costs. We  
18 should not be having to pay Mr. Yeager again for something  
19 he should have had. And I realize it's a bit of a circle  
20 in our papers. He should have it. He doesn't have it.  
21 It's really making the point that he should have it. He  
22 doesn't have it. If he needs to recreate it, we should  
23 not have to pay for it because we've already paid him to  
24 do it. And I don't know what else to say. Again, it gets  
25 extremely circular.

26 So I understand if they want to talk to him. We  
27 had a very productive meeting at Mr. Brinig's office. I  
28 understand that. I just don't think my client should have



1 to pay for Mr. Yeager's time.

2 MR. GRISWOLD: If I may, Your Honor. And I  
3 understand the concern about costs. The receiver is  
4 trying to do his job within the Court's order. And I  
5 would just remind everyone that at the time of the final  
6 accounting, there's going to be lots of arguments as to  
7 how the receivership cost should be allocated. I don't  
8 know that we need to advance that argument to today. As  
9 to each time any consultant is spoken with, who's going to  
10 pay for that, how that's going to be allocated, that would  
11 certainly, I think, be too burdensome for the Court and  
12 all parties involved.

13 THE COURT: Hello.

14 MR. FULLER: Hi, Your Honor. I just wanted to  
15 add that we believe and we'll bring forward on the 16th of  
16 November evidence that the Hakim Malan parties were  
17 responsible for the missing server going missing and  
18 software not being upkept if there's going to be an issue  
19 there. So there is missing data, and we believe it's  
20 going to be the defendants' issue.

21 THE COURT: Thank you.

22 Let's talk about Mr. Lachant.

23 MR. GRISWOLD: Yes, Your Honor. So again, after  
24 our last hearing September 7th, we all walked out in the  
25 hallway. There was Ms. Austin, Mr. Lachant, Mr. Malan,  
26 myself, Mr. Essary. We all agreed that a team effort can  
27 only help us all. If we've got two experts that know the  
28 licensing and know this industry, fantastic.

1           Now, we also agreed, as I reiterated, Ms. Austin  
2 was taking the lead on the licensing issues. That is what  
3 she's doing. Now, if Mr. Essary who had been working with  
4 Mr. Lachant in the early stages of this receivership when  
5 there wasn't a whole lot communication between all the  
6 parties and the receiver, Mr. Essary has gotten valuable  
7 insight from consultant Mr. Lachant.

8           He includes Mr. Lachant and asks questions of him  
9 from time to time as Mr. Essary is complying with all of  
10 his obligations as the receiver in charge of these  
11 operations. My understanding is that approximately six to  
12 eight weeks ago -- and the parties are aware of this --  
13 Mr. Essary paid a retainer fee to Mr. Lachant of  
14 approximately \$10,000.

15           Mr. Lachant has certainly not billed through  
16 that, and I don't have -- I will on November 16th, but I  
17 don't have the accurate number of what's been charged so  
18 far. But we're certainly not in a situation where the  
19 receivership is paying out money to Mr. Lachant on an  
20 ongoing basis for any of his services.

21           And I would say the only contact, again, that  
22 Mr. Essary has had with the State licensing board is  
23 submitting I believe two applications via e-mail, and  
24 Mr. Lachant was involved I think on a kind of cc basis for  
25 those submissions.

26           So I can't tell you without seeing his bill right  
27 now. But in my experience -- and it's been explained on a  
28 lot of these e-mails -- it doesn't appear that Mr. Lachant

1 is doing a whole lot of heavy lifting.

2 THE COURT: Thank you.

3 Insight.

4 MS. AUSTIN: That was the understanding, that  
5 Mr. Lachant received a \$10,000 retainer. And out in the  
6 hallway, we did discuss this. And I specifically said  
7 there is no need to continue to go to Mr. Lachant. If the  
8 retainer is nonrefundable, then fine. I mean, I don't  
9 know what we're going to do to get that money back from  
10 him.

11 I would find it highly unusual that Mr. Lachant  
12 hadn't billed through that 10,000 at this point, but  
13 perhaps he hasn't. I have no facts to the contrary. The  
14 point is there's no need to continue to use him. We have  
15 been paid a flat fee for the processing of the State  
16 application. So all of Mr. Essary's questions are covered  
17 under that flat fee. There's no additional expense to  
18 them for him to use our office to answer every one of his  
19 questions and no need for Mr. Lachant.

20 MR. GRISWOLD: We'll speak after the hearing, but  
21 the receiver is receiving bills for compliance and  
22 licensing services.

23 THE COURT: I've got all the issues except one.  
24 Let's talk about who's going to pay all the money.  
25 Because right now it's coming from this side. It's coming  
26 from the defense side, is it not? Who's paying for all  
27 this?

28 MR. GRISWOLD: You're asking --

1 THE COURT: The receiver.

2 MR. GRISWOLD: Well, the receiver, let's see,  
3 approximately six to eight weeks ago was able to take  
4 control of three to four bank accounts. That, in a sense,  
5 coupled with an infusion of money from SoCal, which was  
6 their, I think, maybe final payment under the obligation  
7 in the Mira Este operations, their management fee, and I  
8 think rent obligations, this was shown in the accounting  
9 report that was discussed at the last hearing.

10 Other than those funds, there's no money coming  
11 into the receivership account from any of the marijuana  
12 operations or from any of the plaintiffs or defendants to  
13 fund this receivership. The receivership -- and I  
14 apologize. I don't have this right in front of me.  
15 Certainly will on November 16th. But my ballpark estimate  
16 as to how much money the actual receiver has in control  
17 right now is maybe in the \$30- to \$40,000 range, and  
18 that's it.

19 MR. WATTS: Your Honor, the receiver's report, if  
20 I recall, said that they paid his law office over \$10,000  
21 and the receiver something like \$17,000. That money did,  
22 to answer your question shortly, come from the defendants.  
23 It came from the companies that he took. That SoCal  
24 payment he's talking about is money SoCal had owed to  
25 defendants and was supposed to pay them -- was withholding  
26 before the lawsuit was filed. Then once the receiver was  
27 in, SoCal paid them the money that they'd owed them in the  
28 past.

1           So all of the money, all of the burden, all of  
2 the costs from the receivership is being paid for by the  
3 defendants. Mr. Razuki and SoCal haven't contributed any  
4 money.

5           THE COURT: When you say "the defendants," do you  
6 refer to the companies or to the parties?

7           MS. LEETHAM: It would be whatever the accounts  
8 received. So San Diego United Holdings Group had a bank  
9 account. Flip Management had a bank account. Mira Este  
10 Properties had a bank account. I believe those are the  
11 only three, because the licensed entities cannot bank and  
12 do not bank.

13           THE COURT: Okay.

14           MR. GORIA: Your Honor, just on that point,  
15 Mr. Griswold is right. SoCal paid to the receiver 170,000  
16 which should have gone to Mira Este. That was money that  
17 was owed to Mira Este. But instead of paying it to Mira  
18 Este to meet bills, to pay mortgage payments, whatever,  
19 SoCal paid it over to the receiver when the receiver was  
20 appointed, okay?

21           That has had the effect of forcing Mr. Malan and  
22 Mr. Hakim to come out of pocket, as I said before, to pay  
23 the mortgage payments. The order that the Court said it  
24 signed calls for the receiver to make the mortgage  
25 payments on Mira Este and Balboa. Well, the receiver  
26 hasn't paid a single mortgage payment and -- out of that  
27 170,000 that it was given. And apparently, most of those  
28 funds are now gone, none of which went to pay the mortgage

1 payments.

2 So that's kind of where we're at. We're on the  
3 brink of closing the doors. And if it weren't for the  
4 fact that Mr. Malan and Mr. Hakim were making the mortgage  
5 payments, both properties would be in foreclosure right  
6 now.

7 MR. GRISWOLD: Your Honor, to summarize, we met  
8 with Mr. Henkes with Mr. Brinig in his office, and  
9 Mr. Henkes has been providing information in a helpful  
10 manner and continues to do so with Mr. Brinig.

11 But the -- I say stories and documents that we're  
12 receiving and reviewing is that, as Mr. Henkes said, Mira  
13 Este has a -- one \$30,000 incoming payment coming in a  
14 month. And Balboa, I guess, based on marketing expenses  
15 is losing money.

16 So there's -- the receivership doesn't have the  
17 money to pay mortgages. I just want to make that clear.  
18 It's not making choices not to. It doesn't have the money  
19 to keep up with all the expenses, management fees,  
20 consulting fees, et cetera, that are all subject to the  
21 receivership in a hypothetical world if the receiver  
22 actually had the money to pay for this.

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

24 THE COURT: Of course.

25 MR. ELIA: Your Honor, we all know this is a cash  
26 business. These dispensaries, they're cash businesses.  
27 You know when, SoCal was in operation, they were bringing  
28 in volumes of money. Now that the preliminary injunction

1 was granted by Your Honor, all of a sudden we don't have  
2 any money.

3 And I suspected when Mr. Henkes was going to be  
4 involved, the problem with this is that we don't have  
5 internal controls. This is a cash business. They're in  
6 control of it. They're saying they're paying for  
7 everything. They ought to pay for everything. The  
8 businesses ought to pay for the expenses.

9 And I think based on the testimony we've heard  
10 before, the businesses are very profitable. It's an  
11 all-cash business. And we simply don't trust the  
12 defendants. And, you know, the thing is that when SoCal  
13 was there, they were paying more money. They had better  
14 contracts than what they have now.

15 And I was not -- you know, I'm not involved in  
16 the business, and none of our side is. So we don't know  
17 where the money is. And that's, I think, the problem, is  
18 it's a cash business. And they say now they're broke when  
19 all of a sudden hundreds of thousands -- when before  
20 hundreds of thousands of dollars were being made.

21 THE COURT: Thank you. Let's do some work.

22 Anything else?

23 MS. LEETHAM: I just needed to make a record  
24 really quick.

25 THE COURT: Now is the time.

26 MS. LEETHAM: Probably going to be a little bit  
27 boring. I'm going to stand up here.

28 So just so the record is clear that the first

1 amended complaint for damages, there's a breach of  
2 contract claim which is I would say more the subject of  
3 the restraining order against Mr. Malan only related to  
4 the written settlement agreement which is attached as  
5 Exhibit 1 to the complaint.

6 Again, to enforce Exhibit 1 to the complaint  
7 would only be to exert control over San Diego United  
8 Holdings Group, Mira Este Properties, Flip Management,  
9 Sunrise, and Super 5. There is no mention in the written  
10 settlement agreement or the complaint of an agreement to  
11 exercise control of or split California Cannabis Group,  
12 Balboa Avenue Cooperative, or Devilish Delights.

13 I would go on to say that in terms of the claims  
14 against California Cannabis Group, Devilish Delights, and  
15 Balboa Avenue Cooperative, it is only Causes of Action 14  
16 for intentional interference with an economic relationship  
17 and 15, which is intentional interference with contractual  
18 relationship. Those are compensable at law. I keep  
19 coming back to that with the Court, that all of these  
20 claims are compensable at law.

21 I think that was the last I wanted to say. And I  
22 guess what I would tell you is I think that at the end of  
23 the day, there's going to be nothing to split. So I would  
24 leave with that.

25 THE COURT: Last but not least.

26 MR. JOSEPH: Hopefully under 30 seconds, Your  
27 Honor. We discussed this matter over who should  
28 control -- or should the receiver control California



1 Cannabis Group, Devilish Delights, and Balboa Avenue  
2 Cooperative. Henkes mentioned it how can the receiver  
3 operate these businesses without the license? That's the  
4 only reason why they're in. So I just wanted to make sure  
5 we're clear.

6 THE COURT: Let the record reflect the Court has  
7 read everything. The Court has listened to good argument  
8 on all sides of the table. The Court will make the  
9 following orders:

10 No. 1, the request for power of attorney for  
11 Ms. Austin is denied. The confidential -- there will be a  
12 protective order done by the parties involved. Work that  
13 out.

14 As to the consultant of Mr. Yeager, his  
15 consultant or however you want advise strictly limited to  
16 the past actions that he did. Nothing in the future. He  
17 isn't consulting -- he is not consulting the receiver in  
18 any way, only to try to find out to get an accounting of  
19 what happened in the past, period.

20 As to Mr. Lachant, he's limited to the \$10,000  
21 retainer, period. Doesn't sound like he's doing much.  
22 Period.

23 As to the scope of the accounting, the Court will  
24 add Sunrise. The Court will not add Super 5. The Court  
25 will add -- everybody got it? -- Sunrise. The Court will  
26 not add Super 5.

27 As to who is going to provide the costs, that  
28 decision will be made on November the 16th.

1 MS. GRIFFIN: Your Honor, point of clarification  
2 on Super 5 -- or excuse me -- Sunrise, it's my  
3 understanding there are other members of the LLC. To the  
4 extent the forensic accounting includes Sunrise, we would  
5 request that it be limited to Mr. Razuki's financial  
6 contribution or distributions to him and not  
7 necessarily -- I mean, I don't think that the Court wants  
8 to delve into the private finances of the other LLC  
9 members.

10 THE COURT: I do not. But what I'm more  
11 interested in is is what Sunrise is making and not making.  
12 So as for the other limited members --

13 It's an LLC; right?

14 MS. GRIFFIN: Uh-huh.

15 THE COURT: I don't care about them,  
16 respectfully. But -- Razuki, yes. But more importantly,  
17 is it making money, what the expenses are.

18 MS. GRIFFIN: Right.

19 THE COURT: And you know what? Mr. Brinig is  
20 going to find that out for me.

21 MS. GRIFFIN: Sure. Sure. We would perhaps want  
22 to include the financial information of the LLC in the  
23 protective order just in terms of to the extent that it  
24 delves into or reflects other members --

25 THE COURT: Reasonable. Come on.

26 MR. ELIA: For the record, we -- our firm does  
27 not represent Sunrise or Super 5.

28 MS. LEETHAM: A little -- well, they're in our

1 cross-complaint.

2 THE COURT: Hold on. Let me stop with that  
3 situation. So they're unrepresented here.

4 MR. ELIA: They have not appeared, Your Honor.

5 MR. FULLER: They have not appeared.

6 MR. ELIA: And that's the concern; is if they  
7 haven't appeared, how will --

8 THE COURT: Have they been sued?

9 MS. LEETHAM: Your Honor, Sunrise has been sued.  
10 They were personally served yesterday. And what I also  
11 want to add is I subpoenaed these records six weeks ago.  
12 I've been in communication with their attorney,  
13 Mr. Aljabi, A-l-j-a-b-i, who co-offices with Mr. Elia.  
14 Mr. Aljabi has also represented Mr. Razuki. He has shown  
15 willingness to give me the records, but we don't have a  
16 stipulated protective order. And I circulated the request  
17 to all counsel some time ago to crickets. So I have one  
18 drafted.

19 THE COURT: Excellent.

20 MS. LEETHAM: So I will recirculate that.

21 MR. ELIA: We never received it, but --

22 THE COURT: Say the name again.

23 MS. LEETHAM: His name is Rick Aljabi,  
24 A-l-j-a-b-i. My understanding is he represents Sunrise  
25 and Super 5.

26 THE COURT: Is he going to represent those in  
27 this litigation?

28 MR. ELIA: I don't think so, Your Honor. I

1 think -- he also represented Mr. Malan and Mr. Razuki per  
2 a conflict waiver. I think he's conflicted out. So I  
3 don't think he will.

4 THE COURT: Okay. My, my, my.

5 Okay. Clearly, they've been served; right?

6 MR. ELIA: I don't know.

7 MS. LEETHAM: They were served yesterday.

8 THE COURT: Thank you, Counsel. Appreciate that.

9 Let me give you my thoughts. I'm reluctant to  
10 add them at this time until they have representation. I  
11 need somebody to look at it and say, "Judge, let me hear  
12 my argument [sic]." So I'll stay the adding of Sunrise  
13 until they get representation. Please do that as soon as  
14 possible, because I probably -- I'm not prejudging, but I  
15 probably will end up adding Sunrise. It makes sense to  
16 the Court. And if you can reach a stipulation, that would  
17 make my life easier.

18 Everybody got it?

19 THE CLERK: Do you want a written order?

20 THE COURT: Mr. Griswold is going to do that.

21 Nor as to SoCal.

22 MR. FULLER: Thank you, Your Honor.

23 THE COURT: Got it?

24 MR. ELIA: Thank you, Your Honor.

25 - - -

26 (The proceedings were adjourned at 10:10 p.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 Friday, September 27, 2018, and I do further certify that the above and foregoing pages numbered 603 to 671-[703], inclusive, contain a true and correct transcript of said proceedings.

Pages 672 through 703 are being utilized for block numbering. Volume 7 begins on page 704. 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.



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Paula A. Rahn  
RPR, CSR No. 11510