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In the

Court of Appeal

of the

State of California

FOURTH APPELLATE DISTRICT
DIVISION ONE

D075028

SALAM RAZUKI,

Plaintiff-Respondent,

v.

NINUS MALAN, SAN DIEGO UNITED HOLDINGS GROUP, LLC, FLIP MANAGEMENT, LLC, BALBOA AVE COOPERATIVE, CALIFORNIA CANNABIS GROUP, DEVILISH DELIGHTS, INC., CHRIS HAKIM, MIRA ESTE PROPERTIES, LLC and ROSELLE PROPERTIES, LLC,

Defendants-Appellants.

APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY
HONORABLE EDDIE C. STURGEON · CASE NO. 37-2018-000034229-CU-BC-CTL

APPELLANTS' OPENING BRIEF

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

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

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

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

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

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

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

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

[ ] Continued on attachment 2.

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

Date: July 2, 2019

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

(SIGNATURE OF APPELLANT OR ATTORNEY)

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

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Defendants and Cross-Appellants Chris Hakim, Mira Este Properties, LLC and Roselle Properties LLC respectfully submit the following opening brief on appeal from the San Diego County Superior Court's Order and Preliminary Injunction dated September 26, 2018 Appointing Receiver at the Mira Este Facility:

INTRODUCTION

Within a matter of days after filing this action in July 2018, plaintiff and respondent Salam Razuki (Razuki) sought by ex parte application the appointment of a receiver to take control of three properties in San Diego and the businesses located thereon. (1 AA 227). One of the businesses and properties is located at 9212 Mira Este Court, San Diego, California ("Mira Este Facility" or "Facility"). (1 AA 230 ¶3b). The trial court ultimately granted the ex parte application and also granted the preliminary injunction appointing the receiver on September 26, 2018 ("9/26/2018 Order"). (13 AA 4399). The trial court granted the 9/26/2018 Order notwithstanding that the trial court lacked jurisdiction; that Razuki lacked standing to have a receiver appointed; that Razuki was barred by the unclean hands doctrine; that the "probability of success factor" favored cross-appellants; that the harm caused by the appointment and operation of the receivership outweighed the benefit provided by the receivership; and that a lesser remedy than receivership was available.

The appointment and continuation of the receivership was incorrect. As a matter of law, plaintiff did not have standing, the trial court did not have jurisdiction to appoint and continue the receivership, and plaintiff's application was barred by the unclean hands doctrine. Also, there was an abuse of discretion in appointing the receiver and continuing the receiver because the likelihood of harm to cross-appellants caused by the appointment and continuation of the receivership far outweighed any

benefit to plaintiff; the probability of success factor clearly favored cross-appellants; and a lesser remedy than receivership would have adequately protected plaintiff. This court should therefore reverse the order appointing the receiver at the Facility and order the return of the Facility to the parties entitled thereto.

STATEMENT OF CASE

A. NATURE OF ACTION AND RELIEF SOUGHT

Razuki's unverified First Amended Complaint (FAC) filed July 13, 2018, alleges that the within action arose from business disputes between Razuki and defendant and appellant Ninus Malan (Malan). (See, e.g., 1 AA 121, 126 ¶19, 127-128, ¶¶26-29). Not included in the FAC, however, is that those business disputes escalated to the point of criminal charges being filed against Razuki apparently due in part to Malan's filing of the Notice of Appeal in this case. (18 AA 5898-5903; 19 AA 6422-6432). Razuki was charged in a federal criminal complaint with conspiracy to kill, murder, maim, and kidnap Malan and is currently awaiting trial in the United States District Court for the Southern District of California. (19 AA 6422-6432). Also not included in the FAC is that Razuki threatened to burn down the Facility in June 2017, and further threatened to render Malan homeless and post his homeless condition on social media. (18 AA 6233 ¶7).

Razuki's FAC alleges claims for breach of contract, fraud, interference with contract, interference with prospective economic advantage, accounting, breach of fiduciary duty, conversion, constructive trust, declaratory relief, injunctive relief, and dissolution of RM Property Holdings LLC, a California limited liability company ("RM"). (1 AA 121-160). RM was allegedly formed by Razuki and Malan to hold certain properties that Razuki and Malan had purportedly acquired and to receive net profits from these properties. (1 AA 18 ¶¶31, 32).

The FAC and Malan's verified cross-complaint together place in issue the ownership of approximately 49 properties acquired over the years by Malan and/or Razuki. (1 AA 126, 153, 154; 11 AA 3867-3877 ¶47). Title was taken in the names of Malan, Razuki, or entities owned and controlled by Malan and Razuki. (*Ibid.*) While most of the properties were owned solely by Malan and/or Razuki or their entities, some were acquired with third parties. (*Ibid.*) One such property that was acquired with a third party was the Facility. (*Ibid*.) Although Razuki and Malan have vigorously fought over their respective ownership in these approximate 49 properties, neither Malan nor Razuki has ever denied that defendant and cross-appellant Mira Este Properties LLC (MEP) was and is the owner of the Facility (1 AA 126 ¶21(c)) or that defendant and appellant California Cannabis Group, a California nonprofit mutual benefit corporation (CCG) holds the licensing for the Facility. (1AA 127 ¶2 (a). And neither Razuki nor Malan has ever contested that defendant and cross-appellant Chris Hakim (Hakim) was and is the owner of a 50% interest in MEP (1 AA 127 ¶23) and that Hakim was and is the managing member of MEP. (6 AA 1679 ¶2).

The proceedings in the Superior Court since Razuki filed his initial complaint in early July 2018 have been uneven. Razuki first applied for the appointment of a receiver on an ex parte basis on or about July 17, 2018, before the Honorable Kenneth Medel, judge presiding, in Department C – 66 of the San Diego County Superior Court. (1 AA 227). The ex parte application was granted and the receiver was appointed. (2 AA 339).

A few days later, a peremptory challenge to Judge Medel was filed. (2 AA 338). The matter was transferred to Department C – 75, the Honorable Richard E. L. Strauss, judge presiding. Defendants and appellants then filed an ex parte application to vacate the order appointing

the receiver. (2 AA 465). The application was granted by Judge Strauss on or about July 31, 2018, and the receivership was vacated. (4 AA 1101).

Thereafter, the matter was transferred again when a peremptory challenge was filed against Judge Strauss. (4 AA 1098). The case was transferred to Department C–67, the Honorable Eddie C. Sturgeon, judge presiding, and Razuki filed another ex parte application for a temporary restraining order for the appointment of a receiver. Razuki's ex parte application was granted by order dated August 28, 2018. (8 AA 2499). The hearing on Razuki's application for preliminary injunction was also set for September 7, 2018. (8 AA 2405). The preliminary injunction was then granted by order dated September 26, 2018 (9/26/2018 Order). (13 AA 4399-4406).

Cross-appellants timely filed their cross-appeal on or about November 2, 2018. (14 AA 4612).

Cross-appellants have also applied ex parte on three different occasions to have the receivership removed from the Mira Este Facility. The first application was filed on or about October 24, 2018. (13 AA 4520). It ultimately was denied on December 14, 2018. The reason provided by the trial court was lack of jurisdiction based on the pendency of this appeal. (Cross-Appellants' Motion to Augment (MTA) at Exhibit (Ex.) A, p. 13 (MTA, Ex. A 0013, 0022-0023).

The second application was filed on March 11, 2019. (18 AA 5917). The trial court determined on that occasion that it had jurisdiction notwithstanding the appeal because no bond had been filed by cross-appellants. Nevertheless, the trial court denied the application without explanation. (MTA. Ex. B 0114-0115).

The third application was filed on May 9, 2019. That application was heard on May 31, 2019, and was also denied. (MTA Ex. C 0348).

The cross-appeal from the 9/26/2018 Order and subsequent refusals of the trial court to remove the receiver from the Mira Este Facility is based on a number of grounds, including but not limited to the trial court's lack of jurisdiction under Code of Civil Procedure section 564 to appoint a receiver; Razuki's lack of standing to apply for the receiver in the first place; Razuki's unclean hands; cross-appellant's probability of success at trial; the dire condition that the receivership at the Mira Este Facility has rendered that business; and the trial court's abuse of discretion in appointing the receiver when a less drastic remedy would have been equally effective.

Cross-appellants therefore seek the intervention of this court to reverse the order appointing the receiver, remove the receiver from the Mira Este Facility, and return the assets, including the licensing and real property improvements to the parties entitled to them, namely, MEP as to the Facility and (CCG) as to the licensing.

B. SUMMARY OF FACTS

A review of the pertinent background matters in this litigation shows the following:

(1) Formation of Mira Este Properties LLC and Acquisition of Mira Este Facility and Roselle Facility.

MEP was formed on or about July 8, 2016. (18 AA 6230 ¶2, 6244). The Mira Este Facility was acquired by MEP in August 2016. (6 AA 1679 ¶2). The Facility consists of approximately 16,000 square feet of improvements in the nature of a warehouse. (8 AA 2531 ¶5).

The purchase price for the Mira Este Facility was approximately $2,625,000.00, including a purchase money loan. (18 AA 6220-6221). The lender that made the loan to enable MEP to acquire the Facility did so because of Hakim's participation as the qualified borrower. (8 AA 2539).

The purchase price consisted of a down payment of approximately $637,500.00, and a new loan in the approximate amount of $1,987,500.00. (18 AA 6220-6221). Hakim paid from his own personal funds the amount of $420,000.00 towards the down payment of $637,500.00. (Ibid.)

MEP consists of two members, Hakim and Malan. The Operating Agreement is between the only two designated members of MEP, Hakim and Malan. (18 AA 6244). The Operating Agreement specifies that Hakim is the owner of a 50% membership interest and Malan is the owner of the other 50% membership interest. (18 AA 6270). The Operating Agreement for MEP requires Hakim, as managing member, to distribute all net income equally to himself and Malan. (18 AA 6250-6251 §4.1). Under the terms of the MEP Operating Agreement, there is no connection, privity, or obligation that either Hakim or MEP owes to Razuki relative to the Mira Este Facility. (18 AA 6232-6259).

Hakim, Malan, and Razuki all participated in the formation of MEP, and all participated in the structure of the MEP Operating Agreement. (18 AA 6230-6231 ¶2). The three parties arranged that Hakim would own a 50% membership interest in MEP, and Malan would own the other 50% membership interest in MEP. *(Ibid.)* At the same time, Razuki communicated to Hakim and Malan that Razuki did not want to be a member of MEP or a shareholder of CCG, and that his only involvement was to be through Malan, based on their longstanding relationship.[1] (*Ibid.*).

[1] Hakim was never advised of the exact nature of the relationship or any details of any arrangements between Malan and Razuki. (18 AA 6220 ¶2). Hakim was led by Razuki to believe that the Razuki-Malan relationship was to be considered as a single unit, much in the same way as a married couple might be viewed in a business transaction with a third party. Indeed, Hakim was never advised of the existence of the alleged 2017 RM agreement until this litigation was commenced in July 2018. (18 AA 6235 ¶11).

As noted, CCG owns the licensing for the Mira Este Facility. Other than MEP and CCG, no other party owns any of the assets of the Mira Este Facility. (11 AA 3859-3860 ¶7).

A second proposed cannabis manufacturing and production facility located at 10685 Roselle Street, San Diego, California 92121 ("Roselle Facility") was acquired in or about October 2016. (9 AA 2925 ¶30; 11 AA 3536). The Roselle Facility is owned by Roselle Properties LLC ("Roselle"). The only two members of Roselle are Hakim and Malan. (11 AA 3860 ¶8). Roselle was never developed as a cannabis manufacturing and production facility, and the Roselle Facility was never licensed as such. The Roselle Facility has been and still is being rented out to a third party user. (6 AA 1680 ¶¶5-6).

Defendant and appellant Devilish Delights Inc., a California mutual benefit corporation (Devilish) was formed to hold the cannabis manufacturing licensing for the Roselle Facility. (11 AA 3859 ¶4). However, no such licensing was ever obtained because the Roselle Facility was never developed as a cannabis manufacturing and production facility. (6 AA 1680 ¶¶5-6). Other than Roselle, no other party owns any of the assets of the Roselle Facility.

Because it was never developed as a cannabis manufacturing and production facility, Roselle was excluded from the receivership estate. (13 AA 4400). However, for unknown reasons, Devilish was included in the receivership estate. (13 AA 4400). There is no connection, privity, or obligation that either Hakim or Roselle owes to Razuki relative to the Roselle Facility. (11 AA 3860 ¶8).

Razuki's claims in his FAC as they relate to the Mira Este Facility are essentially based on misappropriation of revenues and the failure of Malan to transfer his 50% interest in MEP to RM. (1 AA 121, 134, 138, 139, 144, 145). As noted, Razuki's claims are based on an alleged profit-

sharing agreement between Razuki and Malan signed in November 2017. (1 AA 153-160). The alleged profit sharing agreement purportedly required Malan to transfer his membership interests in MEP and Roselle to RM. *(Ibid.)* The alleged profit sharing agreement also purportedly required Malan to transfer profits he received from MEP and Roselle to RM. *(Ibid.)*

The alleged 2017 RM agreement was signed long after the execution of the Operating Agreement for MEP. (18 AA 6230 ¶2, 6244). The MEP Operating Agreement contained detailed requirements and conditions for a transfer of a membership interest from one member to a third party. (18 AA 6230-6231 ¶2; 18 AA 6264). At no time did Malan seek to transfer any interest in his membership interest in MEP to RM or to anyone else, and at no time did RM, Razuki, Malan, or anyone else notify Hakim about the 2017 RM agreement. (18 AA 6231).

As manager of the Mira Este Facility, Hakim's only duty under the Operating Agreements regarding distributions of profits was to divide and distribute profits to himself and Malan and not to any non-member such as RM or Razuki. (18 AA 6230 ¶2). Even if the 2017 RM agreement required some type of allocation of profits received by Malan that was a matter that affected only the distributions made to Malan. It did not impact the obligations of Hakim to make the distribution to Malan in the first instance under the MEP Operating Agreement. (18 AA 6250-6251 ¶4.1).

The Operating Agreement, at section 8.8, specified certain conditions under which Malan could transfer all or part of his membership interest to Razuki or another third party.[2] (18 AA 6264). However, at no

[2] Conspicuously absent from Razuki's FAC or any of Razuki's voluminous paperwork filed in this case is any suggestion that section 8.8 is not valid or is not controlling. Indeed, section 8.8 vitiates any claim that Razuki has against Hakim or MEP in this litigation.

time was Hakim ever provided with any agreement or other documentation to effectuate a transfer of Malan's membership interest to Razuki or RM under section 8.8. (18 AA 6231 ¶2). Section 8.8 of the MEP Operating Agreement provides:

> "**8.8. Transfer of Economic Interest From Member Ninus Malan to Salam Razuki.** Notwithstanding anything in this Agreement to the contrary, by signing this Agreement, the Manager, and each Member approves the absolute right to the Transfer of a Membership Interest, Transferable Interest, and/or the Economic Interest held by Member Ninus Malan, as Assigning Member, to Salam Razuki or his designee, as Assignee, on terms agreed upon between them at any time from and after the date of this Agreement. Such Transfer shall be on terms agreed upon between them, and the Manager and each Member further approve the terms and conditions of such Transfer, and waive all rights, prohibitions and procedures otherwise set forth in this Article 8 to that Transfer. Provided, however, such Transfer between Member Ninus Malan and Salam Razuki shall not materially affect the ownership interest of the other Member(s), increase, or materially alter the Manager's duties and obligations, and Member Ninus Malan and Salam Razuki agree to release the Manager and the other Member(s) from any liabilities relating to such Transfer. On behalf of the Company, the Manager agrees to acknowledge receipt of a copy of the agreement between Member Ninus Malan and Salam Razuki, and agrees that the Company shall be bound by and comply with the provisions contained therein, including, but not limited to, those regarding distributions to Member Ninus Malan or his successor in interest. Any new Member of the Company further agrees to execute a consent to be bound to the terms and conditions of this Agreement as a condition to becoming a Member of the Company." (18 AA 6264).

As noted, Hakim was never advised of either the 2017 RM agreement or any other agreement between Malan and Razuki concerning any purported transfer of Malan's interest in the Facility. (18 AA 6231 ¶2). At no time was Hakim even asked by Razuki to make any distributions to Razuki instead of Malan. *(Ibid.)* At no time did either RM or Razuki

execute any consent to be bound by the terms of the Operating Agreement. *(Ibid.)*

Further, §8.8 expressly releases Hakim from any liabilities arising from any such transfer of Malan's membership interest. (18 AA 6264).

Moreover, since Hakim was never apprised of the actual accounting between Razuki and Malan as to their approximate 49 investments in properties and businesses, Hakim was not in any position to determine who was indebted to whom as between Malan and Razuki. (18 AA 6231 ¶2). For all Hakim knew, Razuki was indebted to Malan for these various investments, and therefore was allowing Malan to retain all of the distributions from MEP as repayment of that indebtedness. *(Ibid.)*

By its terms, the 2017 RM agreement did not assign or otherwise entitle RM to any protectable interest in the Facility or in MEP or CCG. (4 AA 1209-1217). It certainly did not entitle Razuki to any protectable interest in the Facility or in MEP or CCG. *(Ibid.)* At most, the alleged RM agreement specified that both Malan and Razuki would use their "best efforts to effectuate the transfer of the Partnership Assets" to RM. (*Ibid*.)

Indeed, Malan has taken the position that the 2017 RM agreement was and is invalid and unenforceable, and therefore, he never had the obligation to transfer his membership interest to RM. (18 AA 6235 ¶11).[3] In that regard, and significantly, RM has not sought the appointment of a receiver, only Razuki.

Notwithstanding that Hakim owned a 50% membership interest in the Facility, that Hakim was the managing member of the Facility, and that Hakim has never deviated from his obligation to distribute monies pursuant

[3]The purported RM agreement entitled Razuki to 75% and Malan to 25% of any net profits collected by RM and earned at certain properties including the Facility. As noted, Hakim was never advised of the purported RM agreement. At no time was Hakim ever advised of the purported split of profits in the RM agreement until the within action was filed in July 2018.

to the MEP Operating Agreement, the trial court appointed a receiver to take possession and control of the Facility on or about August 20, 2019. The receiver has been in possession and control continuously since then.

(2) June 2017 Second Trust Deed Loan, Razuki's Threats, and SoCal's participation.

The 16,000 square foot Mira Este Facility was designed to accommodate different types of production and distribution activities. (8 AA 2531-2532). One type of manufacturing activity was production of cannabis products by MEP itself or its designee, under the umbrella license of CCG. *(Ibid).* An approximate 1200 square foot section of the Facility was set aside for MEP production operations. (18 AA 6232 ¶4). Another type of manufacturing activity at the Facility was the sublicensing of third party manufacturers who would manufacture their own products under the CCG license and pay CCG and/or MEP for the right to operate at the Facility. distribution of cannabis products. (8 AA 2531-2532. Distribution of cannabis products either produced by MEP or its designee, or by CCG's sublicensee was also envisioned. (8 AA 2531-2532.

Prior to June 2017, CCG obtained cannabis manufacturing licensing for the Facility. (18 AA 6232 ¶5). Once licensing was obtained, it was decided that additional funds would be procured through a second trust deed note on the Facility. *(Ibid).* The additional funds would be used to undertake improvements to the Facility and to purchase equipment to begin production at the Facility in the section allocated to MEP. (*Ibid.*) It was contemplated at that time that MEP or its affiliated company would manage the Facility itself, and not contract with an outside management company. *(Ibid.)* In connection with that intention to handle the management of the Facility "in-house", a new corporation, Monarch Management Consulting, Inc. ("Monarch"), was formed. (18 AA 6233-6234 ¶8). At all times,

Hakim was and is the president of Monarch. Malan and Hakim are the sole shareholders of Monarch.[4] *(Ibid.)*

In or about June 2017, a new second trust deed "cash out" loan was obtained from the Loan Company. (18 AA 6233). The "cash out" proceeds amounted to approximately $1.036 million. *(Ibid).* Pursuant to the MEP Operating Agreement, two checks were drafted and issued directly from escrow, one to Hakim and the other to Malan. *(Ibid.)* Each check was for $518,000.00. (*Ibid.)*

Razuki was well aware of the refinance and the two checks paid by escrow. (18 AA 6233). In fact, at the time that the checks were delivered from escrow to Hakim at the Facility, Razuki was present at the Facility. *(Ibid.)* At that time, Razuki was in the process of attempting to acquire certain real property in a court proceeding wherein the property was apparently being auctioned in open court. *(Ibid.)* Razuki brazenly asked Hakim to give him Hakim's check for $518,000 so that he could deposit it into his account. *(Ibid.)* Razuki made the request in order to be able to present to the court documentation from his bank establishing that he had adequate funds in his bank account to acquire the property being auctioned. *(Ibid.)* When Hakim declined to do so, Razuki became irate. He first threatened to contact the FBI to have the Facility closed. When Hakim told him that the Facility had already obtained licensing and the Facility could not be closed, Razuki then angrily threatened to burn down the Facility. *(Ibid.)* At that point, Hakim escorted Razuki off the premises. *(Ibid.)*

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[4] The formation of Monarch had nothing to do with trying to conceal or divert monies away from Razuki, as Razuki has alleged in the FAC. The purpose was to create an MEP-affiliated management company to handle the management activities at the Facility.

A few months after the formation of Monarch and before equipment was purchased by MEP, Hakim began negotiations with a management company, SoCal Building Ventures, LLC ("SoCal") to manage the Facility. (18 AA 6233 ¶9). SoCal was ultimately hired instead of having Monarch manage the Facility itself. (18 AA 6234 ¶10). SoCal was to supervise the manufacturing in the 1200 square foot space for and on behalf of MEP and CCG. (11 AA 3888-3889; 12 AA 4102-4106). Although SoCal began managing the Facility in late 2017, SoCal and MEP did not sign a management agreement until in or about January or February 2018. *(Ibid.)*

Because MEP no longer intended to use proceeds from the second trust deed loan to purchase equipment, not all of the proceeds from the June 2017 cash-out loan were re–invested into the Mira Este Facility. (18 AA 6234-6235). For example, Razuki and Malan used their portion of the cash-out loan to invest in certain cannabis licenses in California City, in an amount in excess of $400,000. *(Ibid.)*

After the June 2017 incident where Razuki threatened to burn down the Facility, Hakim's relationship with Razuki became strained. (18 AA 6235 ¶11). Communication between Razuki and Hakim became infrequent. *(Ibid.)* After this action was filed in July 2018, however, Hakim began having further contacts with Razuki in or about October 2018. *(Ibid.)* During the course of the conversations in October and early November 2018, Razuki repeatedly threatened to render Malan insolvent and homeless, and then post his homeless condition on social media. *(Ibid.)*

SoCal was the manager of the Mira Este Facility from approximately October 1, 2017 to July 10, 2018. (6 AA 1682). SoCal was obligated to make payments to MEP totaling approximately $100,000.00 per month. In exchange, SoCal was entitled to retain most of the profits generated at the Facility. *(*11 AA 3862-3863 ¶23, 12 AA 4099-4117). SoCal made some

of the monthly payments but some of the checks that it paid were returned because of insufficient funds. (6 AA 1682, 1686-1687).

As alleged by Razuki in paragraph 42 of the FAC, Razuki met with SoCal's principal, Dean Bornstein, in mid May 2018. (1 AA 130, ¶42). Razuki wrongfully told Bornstein that he owned a substantial interest in the Mira Este Facility, notwithstanding that the sole owner of the Mira Este Facility was and always has been MEP. (1 AA 253 ¶25-26).

Based at least in part on Razuki's misrepresentations and misinformation, SoCal ceased making any payments to MEP. (6 AA 1682). Thereafter, and on or about July 10, 2018, SoCal was terminated. *(Ibid.)*

At the time of SoCal's termination and because the Mira Este Facility was not operational, Hakim was put in the position of needing to quickly negotiate a management agreement with a new manager. (6 AA 1682-1683 ¶10). The new manager would need to make the Facility operational and then attempt to procure producers and manufacturers to locate their operations at the Facility. *(Ibid.)* Hakim turned to Synergy Management Partners LLC ("Synergy") in early August 2018. *(Ibid.)*

(3) During the interim after Judge Strauss had vacated the receivership and before Judge Sturgeon had re-appointed the receiver, MEP hired Synergy, and Edipure begins operations at the Facility.

In early August 2018, MEP entered into a management agreement with Synergy to manage the Mira Este Facility. (6 AA 1683, 1689-1700).

Almost immediately, and in sharp contrast to SoCal, Synergy opened the Mira Este Facility and contracted with a sub licensee, Edipure, to locate its operations at the Facility. (8 AA 2543). As soon as the sub license agreement with Edipure was made, Edipure invested between $50,000 and $100,000 in equipping its space at the Facility. *(Ibid.)* Under its sub

license agreement, Edipure was paying approximately $30,000 per month or 10% of its revenues, whichever was greater, for its use of the Facility. *(Ibid.)* Also, the sublicense agreement specified that the Facility would provide security, staffing, testing, and other overhead. *(Ibid.)* The sub license agreement with Edipure was entered into after the order for initial appointment of the receiver was vacated and before the re-appointment of the receiver was made on or about August 20, 2018. *(Ibid.)*

During the same time period in early August 2018, Hakim and the principal of Synergy, Jerry Baca (Baca) engaged in promising negotiations with more than ten cannabis producers and manufacturers. The negotiations were productive, and each of the producers and manufacturers were very close to reaching an agreement for a sub license agreement with CCG similar to Edipure's sub license agreement. (8 AA 2533-2536 ¶10). However, as a result of the appointment of the receiver on August 20, 2018, not one of these producers and manufacturers with whom Hakim and Baca were negotiating continued negotiations. *(Ibid.)* But for the appointment of the receiver on or about August 20, 2018, there would be no doubt that the Mira Este Facility would have been fully occupied with up to the targeted number of four sub licensees, each paying at least the substantial minimum payments to MEP as Edipure was doing. *(Ibid.)*

The Synergy management agreement required that Synergy maintain extensive accounting, recordkeeping, and reporting requirements on a monthly basis and pay itself management fees and distributions on the 5th of each month. (8 AA 2536 ¶13, 2545-2546). At section 3.4 of the Synergy management agreement, Synergy was required to deposit all revenues into a "Dedicated Bank Account". Any checks or withdrawals from the Dedicated Bank Account had to be signed by both a representative of MEP and Synergy. (14 AA 4544¶11, 4581 ¶3.4).

With the accounting requirements of the Synergy management agreement, Razuki's position and any alleged interest in net profits or distributions from MEP or CCG could easily have been protected by the safeguards under which Synergy operated without the damaging effects of the receivership.

Until in or about March 2019, Edipure was the only sub licensee at the Mira Este Facility operating under a written sublicense agreement. (18 AA 6282). In March 2019, Edipure ceased operations, and there is currently no producer under a signed license agreement. *(Ibid.)* Synergy has had something of a "handshake" production agreement with another third-party producer, BTG. (18 AA 6282). Again, however, that producer is also indebted to the Facility for past due payments in the amount of between $80,000 and $100,000. *(Ibid.)* In short, there is little dispute that the very existence of the receivership at the Facility is blocking the procurement of sublicensees. (8 AA 2534). The reasons given by prospective sublicensees to Hakim and Baca for their respective decisions to cease negotiations shortly after the receiver was appointed in August 2018 were as follows:

A. **Conscious Flowers:** Its principal stated that he did not want his production trade secrets "to be exposed to a third party receiver";

B. **Eureka Oil** (Vape Cartridges): Its principal stated that having a third-party receiver would be a "deal breaker." He made it clear he will only work directly with Mr. Hakim. Potential revenues lost amounted to more than $40,000 per month based on anticipated sales.

C. **Bomb Xtracts** (Vape Cartridges, Pre Rolls, Flower, Moonrocks, Candy, Concentrates, Drinks, Edibles and chip). Its principal stated that he refused to work with any receiver. He stated that his company had too many trade secrets and recipes that could

potentially be monitored and copied by a receiver. Potential revenues lost amounted to more than $70,000 per month based on anticipated sales.

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

E. **Cannabis PROS** (Candy Company). Its principal stated that any sublicense agreement would have to wait until all legal issues were resolved and ownership other than the receiver was in place. Potential lost revenue amounted to approximately $25,000 per month.

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

G. **LOL Edibles** (Candy, Chips and more). Its principal stated that he was not pleased about having to work with a receiver and is still waiting to decide whether or not to proceed with the sublicense agreement. Potential lost revenue was more than $30,000 per month.

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

I. **Bloom Farms** (Vape Cartridges). Its principal stated that because of the turmoil caused by the litigation, he has decided to go

elsewhere for his production facility. Potential lost revenue was more than $30,000 per month.

J. **Cannabis Presidentials** (Premium Pre Rolls, Vape Cartridges, Flower, Moonrocks, Candies). Its principal stated that he was not willing to work with a third-party receiver and that "once things are cleared up", they would be willing to sign a sublicense agreement. The principal also stated that he was concerned that his company's trade secrets would be jeopardized with a receiver or other third-party overseeing the Facility. Potential lost revenue was between $40,000 and $70,000 per month." (8 AA 2532-2536 ¶10).

(4) Trial Court Order of September 26, 2018 granted Razuki's Application for preliminary injunction appointing receiver pendente lite.

On September 26, 2018, the trial court signed the order granting Razuki's application for preliminary injunction. (13 AA 4399-4406). The 9/26/2018 Order appointed a receiver to "retain control and possession" of two different facilities and six different entities, including MEP, the owner of the Facility, and CCG, the licensing entity of the Facility. *(Ibid.)*

In addition, the 9/26/2018 Order directed the receiver to take possession and control of a retail cannabis business and property (Retail Store) in which Razuki claimed an interest. *(Ibid.)* The Retail Store is located at 8861 and 8863 Balboa Avenue, San Diego, California. The property is owned by defendant and appellant San Diego United Holding Group, LLC, a California limited liability company (SD United). SD United was and is a company owned entirely by Malan. (2 AA 480 ¶10, 499). Defendant and appellant Balboa Ave Cooperative, a California nonprofit mutual benefit corporation ("Balboa Coop") also owned by Malan, owns the business at the Retail Store. Defendant and Appellant

Management, LLC ("Flip") also was placed under receivership, although Flip owns no interest in any of the properties at issue in this action. *(Ibid.)*

Devilish, the proposed licensing entity for the Roselle Facility, was also placed under receivership. *(Ibid.)* As noted, Devilish never obtained any licenses and was never capitalized because the Roselle Facility never obtained the proper permits to allow it to manufacture cannabis products. (6 AA 1680 ¶¶5-6).

Appellants and defendants Malan, Flip, SD United, Balboa Coop, Devilish, and CCG filed their notice of appeal from the 9/26/2018 Order on or about October 30, 2018. (14 AA 4596). Cross-Appellants Hakim, MEP, and Roselle filed their notice of cross-appeal from the 9/26/2018 Order on or about November 2, 2018. (14 AA 4612).

Although neither Hakim nor Roselle were placed under the control or possession of the receiver under the 9/26/2018 Order, the 9/26/2018 Order impacted them in other ways. (13 AA 4399-4406). In regards to Hakim, the 9/26/2018 Order obligated Hakim, among other defendants, to notify the receiver about certain information and turn over documents concerning the Mira Este Facility. *(Ibid.)* The 9/26/2018 Order also enjoined Hakim and Roselle, among other defendants, from engaging in a number of acts. *(Ibid.)* Therefore, Roselle and Hakim have joined in the cross-appeal.

(5) Razuki's Murder for Hire Conspiracy.

Shortly thereafter, and after Malan filed his appeal in this action on or about November 1, 2018, and cross-appellants filed their cross-appeal on or about November 2, 2018, Razuki decided to have Malan murdered. (19 AA 6425-6429). At least one of the reasons was that it "looks like they're going to appeal". (19 AA 6425). Of course, with the filing of an appeal and once the appellate bonds were posted, the receiver would be removed from both the Balboa Dispensary and the

Mira Este Facility. At that point, Malan would be reinstated as sole operator at the Balboa Dispensary. That would free Malan to continue to operate the Balboa Dispensary during the pendency of this action without the interference of the receiver. That prospect apparently inflamed Razuki. He "hatched" the murder for hire plot shortly after the appeal and cross-appeal were filed in early November 2018. *(Ibid.)*

Razuki is currently awaiting trial in Federal Court. He has been charged with violating Title 18, U.S.C., Sec. 956 (Conspiracy to Kill in a Foreign Country) and Title 18, U.S.C., Sec. 1201(c) (Conspiracy to Kidnap).[5] (19 AA 6423-6424).

(6) Failure of receiver to protect Mira Este Facility or to generate any profits.

The failure of the receiver, Michael Essary, to operate the Facility on a profitable basis or to perform elementary accounting tasks are noteworthy. They include but are not limited to the following:

a. Failure to procure a single sub-licensee to enter into a written sublicense agreement for production at the Mira Este Facility since the receiver's appointment in August 2018; (18 AA 6293-6294).

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[5] Ironically, the trial court made an order setting bond amounts relative to the appeal and cross-appeal that effectively prevented appellants and cross-appellants from posting bonds to remove the receivership. In particular, on December 17, 2018, the trial court ordered that seven appellants and three cross – appellants must each file a bond in amounts ranging from $50,000-$350,000 in order to remove the receiver at ***either facility***. (18 AA 5908). As a result of the 12/17/2018 Order, no bonds have been posted, and the receivership has therefore remained intact at both facilities.

In or about February 2019, cross-appellants filed in this court a petition for writ of supersedeas, challenging the December 17, 2018 Order Setting Bond Amounts. This court summarily denied the petition later in February 2019.

b. Procurement of only one sub licensee (BTG") to locate its production operations at the Facility on a "handshake" arrangement; *(Ibid.)*;

c. Failure to pay Franchise Tax Board fees and file the required return for CCG, leading to the suspension of CCG's corporate powers from approximately November 2018 through early May 2019; (18 AA 6205-6207).

d. Failure to obtain the reinstatement of CCG's corporate powers for a period of approximately 6 months (from November 2018 to May 2019) despite having been alerted to the suspension of CCG's corporate powers in November 2018. *(Ibid.)*

(7) Cross-appellants' ex parte applications to remove receivership.

(a) October 24, 2018 application:

During the month of October 2018, and despite the fact that the existence of the receivership acted as a barrier to procurement of producers, Hakim and Baca continued to attempt to negotiate with producers to locate their operations at the Facility. (14 AA 4538 ¶9-10). One such producer was Cream of the Crop ("COTC"). *(Ibid.)* Negotiations progressed to the point where COTC appeared willing to sign a sublicense agreement which would have generated some $50,000 per month for the Facility. *(Ibid.)* However, during the negotiations, COTC did not grasp the fact that the Facility was under a receivership. *(Ibid.)* When COTC realized that the Facility was under the receivership, COTC, on the advice of its counsel, stated that it would not proceed with the sublicense agreement until and unless the receivership was removed. *(Ibid.)*

Given the sizable fee payable to the Facility under the proposed COTC sublicense agreement, cross appellants immediately filed an ex parte application for an order removing the receivership so that the COTC sublicense agreement could be salvaged. (13 AA 4520). The application

was filed October 24, 2018. *(Ibid.)* Because of a series of other events, including the disclosure of the "murder for hire plot" and the filing of the within appeals, the trial court did not consider this ex parte application until December 14, 2018. (MTA, Ex. A 0013, 0022-0023). The court then ruled that it lacked jurisdiction to rule on the application because of the pendency of the appeal, even though no bond had been filed to stay the enforcement of the order appointing the receiver. (*Ibid*.).

(b) March 11, 2019 application:

Cross-appellants filed a second ex parte application on or about March 1, 2019. (18 AA 5928). The urgency triggering the ex parte application was the announced intention of the only signed sub licensee at the Facility, Edipure, to vacate the Facility effective March 8, 2019. (18 AA 5929). This would cause a significant and perhaps fatal blow to the Facility because the only other producer in the Facility, BTG, was operating under a "handshake agreement". The court decided that it had jurisdiction to entertain the application because there had been no bond filed to stay enforcement of the 9/26/2018 Order pending appeal. (MTA Ex. B 0112). However, the court then denied the application without explanation. (MTA Ex. B 0114).

(c) May 8, 2019 application:

Cross-appellants filed a third ex parte application in early May 2019. (18 AA 6183). The "trigger" causing the filing of the ex parte application was the continuing suspension of CCG caused by the receiver's failure to pay the requisite Franchise Tax Board annual fee. (18 AA 6184). As noted, the suspension originally occurred in November 2018, which was brought to the attention of the receiver at that time. However, the fact that the receiver still had not undertaken any measures to obtain the reinstatement of CCG was not discovered until early May 2019. (18 AA 6205-6207), As a suspended corporation, CCG was unable to transact

corporate business. Therefore, all of the sales by BTG and Edipure under the umbrella license of CCG were seriously tainted with the prospect of invalidity because of CCG's suspended status from at least November 2018 to May 2019. Again, however, the court denied the application without explanation.[6] (MTA Ex. C 0348).

The trial court has steadfastly refused to remove the receiver from the Mira Este Facility. At this point, Edipure has vacated the Mira Este Facility (18 AA 6293 ¶8), and BTG, still operating on a handshake agreement, is the only producer left. (18 AA 6293 ¶9). However, BTG is also in arrears in its payments. *(Ibid.)*

The operation of the Facility cannot be sustained. The only income is from BTG in the amount of $30,000, the same amount as was being paid by Edipure. (18 AA 6293). However, debt service on the loans encumbering the Facility and other overhead expenses, including staffing, security, maintenance, and testing services that are required to be provided to sub licensees regardless of the number of sub licensees at the Facility, far exceed $30,000.00. (14 AA 4543-4544 ¶9).

The appointment of the receiver over the Facility beginning in August 2018 has led to disastrous consequences even if the original appointment had been correct. The trial court's subsequent denial of three separate applications by Hakim and MEP to remove the receiver were also incorrect. The receivership at the Facility has constituted a ruinous burden that has caused the Facility to become insolvent. It was also completely

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[6] In a sordid and bad faith effort to thwart the May 2019 ex parte application, the receiver and Razuki introduced various declarations from disgruntled employees trying to establish that a "black-market" operation had existed at the Facility. The receiver and Razuki also attempted to implicate Hakim, even though they had absolutely no evidence that Hakim participated in the black-market operation or even knew about it.(MTA Ex. C 0301, 0311).

unnecessary since Razuki's interest in the net profits from the Facility, even assuming he had any such interest, could easily have been protected by an appropriate injunctive order to Hakim as managing member to simply withhold the net profits that would otherwise be distributed to Malan until the matter was resolved.

Defendants and Cross-appellants seek a reversal of the trial court's appointment of the receiver and a return of the assets seized by the receiver to the parties entitled to their return, namely MEP and CCG.

C. ORDER OF THE SUPERIOR COURT

The Superior Court of California, County of San Diego, by the Honorable Eddie C. Sturgeon, judge, rendered its order granting Razuki's application for the appointment of a receiver over the Mira Este Facility and the owners of its assets, MEP and CCG, by written order dated September 26, 2018. This cross-appeal was timely filed on November 2, 2018, within 60 days after the September 26, 2018 order was rendered. The cross-appeal is from the preliminary injunction and order appointing the receiver on September 26, 2018 and continuation of the receivership. [7]

D. STANDARD OF REVIEW

An order or judgment appointing a receiver is appealable. (Code Civ. Proc. §§ 904.1(a)(7). An order or judgment granting a preliminary injunction is also appealable. (Code Civ. Proc. §§ 904.1(a)(6). An order granting a preliminary injunction appointing a receiver normally would be reviewed under the abuse of discretion standard. (*City and County of San Francisco v. Daley*, (1993) 16 Cal. App. 4th 734, 744). An abuse of

[7] As noted, Cross appellants also brought three separate ex parte applications to remove the receiver from the Mira Este Facility, all of which have been denied.

discretion is demonstrated if the court's decision was not supported by substantial evidence or the court applied an improper legal standard or otherwise based its determination on an error of law. (*McGuire v. Employment Development Dept.* (2012) 208 Cal.App.4th 1035, 1041. "The question on appeal is whether the evidence reveals substantial support—contradicted or uncontradicted—for the trial court's conclusion that the weight of the evidence supports its findings of fact. The trial court's findings are upheld unless they so lack evidentiary support that they are unreasonable.'" (*Richardson v. City and County of San Francisco Police Com.* (2013) 214 Cal.App.4th 671, 692).

However, under the substantial evidence test, if the record demonstrates the trial judge did not weigh the evidence, the presumption of correctness is overcome. The substantial evidence rule thus operates only where it can be presumed that the court has performed its function of weighing the evidence. If analysis of the record suggests the contrary, the rule should not be invoked. *Affan v. Portofino Cove Homeowners Assn.,* (2010) 189 Cal. App. 4th 930, 944–945.

Here, there was no weighing of the evidence or explanation of the basis for its rulings on such critical issues as whether any lesser remedy would protect plaintiff without the drastic impact of the receivership; or on the issue of the negative impact of the receivership on potential sublicensees of the Facility; or on the issue of the nature or even existence of any protectable property interest of Razuki in the Facility; or on the issue of whether there was any danger of the assets of the Facility being lost, stolen, or damaged to the detriment of plaintiff.

Beyond the inapplicability of the substantial evidence test relative to these issues, independent review applies in at least three other circumstances applicable herein.

First, the Court of Appeal reviews lack of jurisdiction independently. *Dabney Oil Co. v. Providence Oil Co.*, (1913) 22 Cal. App. 233, 237. In particular, the jurisdictional issue in the present case is whether there is substantial evidence to establish that the case falls within one or more of the provisions of Code of Civil Procedure Section 564, and if not, then no authority or jurisdiction of the trial court exists for the appointment of the receiver.

Secondly, the Court of Appeal also reviews lack of standing de novo. *Charpentier v. L.A. Rams Football Co.*, (1999) 75 Cal. App. 4th 301, 306-307. Here, Razuki has no standing to assert claims that belong to a different party. He also cannot seek and obtain the drastic remedy of receivership to aid in his pursuit of claims that he does not own.

Thirdly, the Court of Appeal reviews independently whether the moving party had "unclean hands" that would render his or her application for the appointment of a receiver inequitable. Whether the unclean hands doctrine can be applied to a particular transaction is a legal issue reviewed de novo. (*Brown v. Grimes,* (2011) 192 Cal. App. 4th 265, 274).

All three of these exceptions to the deferential standard apply here.

E. ARGUMENT

(1) THE TRIAL COURT EXCEEDED ITS JURISDICTION IN APPOINTING A RECEIVER AT THE MIRA ESTE FACILITY BECAUSE NONE OF THE BASES FOR JURISDICTION UNDER CCP §564 EXISTED.

The appointment of a receiver may be attacked at any stage of the proceedings as being void for lack of jurisdiction. The requirements of CCP §564 pertaining to the appointment of receivers are jurisdictional, and without a showing of the basis under CCP §564 for the appointment of a receiver, the court's order appointing a receiver is void. *Turner v. Superior Court,* (1977) 72 Cal. App. 3d 804, 811.

In the present case, Razuki suggests in his FAC that the basis for his request for the appointment of a receiver is CCP §564(b) (1). (1 AA 140, ¶127). He alleges that the "Partnership Assets" (including the disputed 50% interest in the Facility) are in danger of being lost, removed, or materially injured". Section 564(b) (1) empowers the court to appoint a receiver:

> "(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the creditor's claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured."

However, Razuki has no ownership interest in the Mira Este Facility, since that is owned exclusively by MEP. Razuki does not even own any recognizable interest in MEP. At most, Razuki's interest only goes to a membership interest in RM. And it is RM and not Razuki that has any colorable claim to a share of the profits, but only ***after*** those profits are distributed to Malan. Further, under the terms of the Operating Agreement, such distributions could only occur if and when Hakim, as managing member, decided in his discretion and consistent with the MEP Operating Agreement, to authorize such distributions. There have been no distributions made to Hakim and Malan since May 2018, more than four months before the appointment of the receiver.

Moreover, Razuki cannot point to any partnership dispute involving MEP, because Razuki is not a partner or member of MEP, and has no contractual relationship or partnership relationship with Hakim or with MEP.

In short, Razuki cannot and has not established any basis under CCP §564(b) (1) for the trial court's jurisdiction to appoint a receiver over the

Mira Este Facility or Mira Este Properties LLC or the licensing entity, CCG.

Even if Razuki could establish some type of "joint interest" in the Facility, in order for a receiver to be appointed under Code of Civil Procedure Section 564(b)(1), it is necessary that the party show that the property is in danger of loss, removal, or material injury (*Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp.* (1953) 116 Cal. App. 2d 869, 873; *Dabney Oil Co. v. Providence Oil Co.* (1913) 22 Cal. App. 233, 237*; Rondos v. Superior Court* (1957) 151 Cal. App. 2d 190, 195).

Far from making this showing, Razuki has only argued that Malan has failed to provide Razuki or RM with a share of the distributions made to Malan from MEP. That showing is insufficient to establish the required proof that the Facility itself is in danger of loss, removal or material injury. While an order requiring MEP to withhold Malan's share of profits might be an appropriate preliminary injunctive order if Razuki could establish any entitlement to those profits, the appointment of a receiver to take possession of the entire Facility when Razuki has no property interest in the Facility and when the Facility is not in danger of loss, removal, or material injury is clearly in excess of the trial court's jurisdiction under CCP §564(b) (1).

In *Dabney Oil Co. v. Providence Oil Co.* (1913) 22 Cal. App. 233*,* plaintiff corporation attempted to place in receivership certain real property, a portion of which was oil-producing property leased to defendant corporation. In reversing the trial court's order appointing the receiver, the court of appeal found that the case clearly fell within the provisions of Code Civ. Proc. § 564(b)(1), as an action to recover property, together with a fund consisting of the proceeds derived from the operation of the property. Thus, the only purpose of the order appointing the receiver was to sequester the property's net income by requiring defendants to pay it to the receiver (*22 Cal. App. 233, 238)*. Because this purpose could have been

achieved by injunctive relief restraining the defendants from paying out the net profits in dispute during the pendency of the action, the court of appeal ruled that the appointment of a receiver was not authorized under 564(b)(1).

In the present case, the only purpose of the appointment of the receiver was to protect Razuki's alleged claim in profits allocated to Malan. Just as in *Dabney, supra*, however, the threat to those distributions does not translate into a threat to the assets of the Facility from being lost, removed, or damaged. As such, section 564(b) (1) does not support the appointment of the receiver, and the trial court therefore acted in excess of its jurisdiction to appoint a receiver under that subsection.

In *Rondos v. Superior Court* (1957) 151 Cal. App. 2d 190, the court of appeal granted defendant's writ of prohibition to prevent the trial court from enforcing its order appointing a receiver. In that case, the receiver had been appointed to take possession of partnership property notwithstanding that there was a dispute concerning the plaintiff's partnership interest. In particular, the plaintiff's alleged partnership interest arose from his purported purchase of an interest in an existing partnership business. The purchase was still subject to a condition precedent when the existing partnership sought to cancel the purchase and sale agreement with plaintiff. The trial court granted plaintiff's application for the appointment of the receiver. The court of appeal reversed, holding that under the terms of the purchase agreement, there were still unfulfilled conditions, thus bringing into question plaintiff's alleged interest in the partnership under CCP §564(b)(1). In particular, the court of appeal ruled that the order appointing the receiver was made without jurisdiction for want of the required property interest and was equally void for want of proof of the danger to a property interest involved if such interest had existed. (*151 Cal. App. 2d 190, 195)*. The court also held that a party seeking appointment must demonstrate both that he or she has a probable right to or interest in the property sought to be

placed in receivership, and that the property is in danger of loss, removal, or material injury (*151 Cal. App. 2d 190, 195)*. Where the applicant cannot show by a preponderance of the evidence that conditions listed under CCP§564(b) (1) exist, no jurisdiction is conferred upon the court to appoint a receiver. (*Ibid.* at 195).

In the present case, Razuki has utterly failed to establish any ownership interest in MEP or the Mira Este Facility. But even if he had some type of equitable interest in MEP, any such interest was and is subject to the MEP Operating Agreement. That Operating Agreement obligated Hakim to distribute monies only to Malan and Hakim. Razuki has not and cannot avoid the effect of the MEP Operating Agreement. Since Razuki has no claim on any of the assets of MEP itself, but only a rather weak and indirect claim (through RM) on any distributions made to Malan, Razuki has failed to establish any basis under CCP §564(b)(1) to authorize the trial court to appoint a receiver. As such, the trial court lacked jurisdiction to appoint a receiver, and the order appointing the receiver was and is void.

CCP section 564(b) (9) also is no help to Razuki. That section generally states that the appointment of a receiver may be made at any time to protect a party's interest or rights. That section is inapplicable in the present case since the FAC does not allege facts showing that section applies. As noted, the FAC alleges that the appointment of a receiver was necessary to prevent assets in which Razuki claimed an interest from being "lost, removed, or materially injured". (1 AA 140, ¶127). The more general provision of Section 564(b) (9) cannot be invoked where the complaint alleges facts clearly placing it within one of the more specific subsections of §564. *Dabney Oil Co. v. Providence Oil Co.* (1913) 22 Cal. App. 233, 237.

However, even if Razuki had alleged the applicability of §564(b) (9), that section would still not apply. Razuki has utterly failed to establish

any rights or interest in the Facility itself. At most, Razuki's claim is for an ownership interest in RM, not for any ownership interest in either the Facility or MEP.

By extension, if the agreement between Razuki and Malan involved dividend payments from AT&T instead of distributions from the Mira Este Facility, Razuki would not be entitled to a receivership over AT&T assets if Malan failed to pay Razuki his share of the AT&T dividends. In that case, Razuki could not be heard to argue that he had a property interest in AT&T sufficient to support the appointment of a receiver.

Similarly, Razuki's claim to profits pursuant to the RM agreement does not establish a property interest in Razuki relative to the Facility or MEP. As such, the trial court was without jurisdiction to appoint a receiver under §564(b) (9) as well.

(2) RAZUKI LACKED STANDING TO APPLY FOR THE APPOINTMENT OF A RECEIVER AT THE MIRA ESTE FACILITY BECAUSE RAZUKI HAD NO PROTECTABLE INTEREST IN THE FACILITY.

A complaint that fails to disclose the right to sue is not only subject to a general demurrer (or to a motion for judgment on the pleadings) but may also be challenged at trial by an objection to the introduction of any evidence (*Parker v. Bowron* (1953) 40 Cal. 2d 344, 351), or by a motion for nonsuit (*see Pillsbury v. Karmgard* (1994) 22 Cal. App. 4th 743, 757-758), or on appeal, despite a failure to demur (*Parker v. Bowron* (1953) 40 Cal. 2d 344,351); *see also Klopstockv. Superior Court* (1941) 17 Cal. 2d 13, 18; and *Color-Vue, Inc. v. Abrams* (1996) 44 Cal. App. 4th 1599, 1604 (lack of standing not waived by failure to timely object; lack of standing can be raised at any time, even for first time on appeal).

Here, Razuki's lack of standing to sue MEP, Hakim, or Roselle is predicated on the lack of any duty owing from Hakim or MEP or Roselle to Razuki.

First and notably, the Operating Agreement of MEP was only between the members, Hakim and Malan. Razuki decided not to become a member, and therefore, removed himself from the scope of any duties owed by Hakim as managing member of MEP to Razuki with regard to the operations of the Mira Este Facility. Hakim's obligation as managing member runs only to Malan as the other member of MEP.

Of the six causes of action alleged against MEP or Hakim, all are precluded by the lack of nexus or duty owed by Hakim and MEP to Razuki. Thus, Razuki's Fourth Cause of Action against Hakim for breach of fiduciary duty does not lie because no such duty existed between Hakim and Razuki. Similarly, the Sixth Cause of Action for Money Had and Received, the Seventh Cause of Action for Conversion, and the Eighth Cause of Action for an Accounting also do not lie because Razuki was not a member of MEP, and no duty relative to any distributions from MEP was owed to Razuki.

The remaining two causes of action alleged in the FAC against Hakim or MEP, the Fourteenth Cause of Action for Interference Prospective Economic Advantage and Fifteenth Cause of Action for Interference with Contract are the most far-fetched. Razuki claims that he was damaged because MEP and Roselle terminated their management agreement with SoCal. Obviously, Razuki had no contract with SoCal and had no prospective economic advantage with SoCal that could be the subject of interference. Also, MEP and Roselle clearly owed no duty to Razuki not to terminate SoCal.

In short, none of the causes of action of the FAC directed against Hakim or MEP or Roselle empower the court to appoint a receiver to take over the Facility on behalf of Razuki.

Further, the absence of duty is also based on the allegations of the FAC asserting that RM, not Razuki, was the only party entitled to share any distributions with Malan. Thus, even if Razuki could get around the fact that he was not a member of MEP and had no entitlement to any distributions directly from MEP, Razuki's FAC alleges that the right to such distributions had been assigned by him and Malan to RM. Therefore, according to Razuki's FAC itself, only RM had any purported right to share in distributions made to Malan.

In short, the trial court erred in granting Razuki's application for the appointment of the receiver because Razuki had no standing and right to sue MEP for any distributive net profits and had no protectable interest in the Mira Este Facility.

Moreover, since Hakim was never apprised of the actual accounting between Razuki and Malan on their 49 properties and investments, and in particular, who might have been indebted to whom, Hakim was entitled to rely on the presumption that the party in whose name the membership interest was taken, namely Malan, was and is presumed to be the beneficial owner. (See, e.g., Evidence Code Section 662: "The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof.")

Even if it be conceded that Razuki paid a portion of the purchase price, it still would not give Razuki any beneficial interest or entitlement to distributions as something of a beneficiary of a resulting trust. Razuki's alleged contributions to the acquisition of the Mira Este Facility might just as readily be considered a loan to Malan; or alternatively, a repayment of monies owed to Malan on their other investments. In either case, no

resulting trust would arise. (See, e.g., *Haskell v. Wood*, (1967) 256 Cal. App. 2d 799, 805 ("(W)here the grantee of the deed borrows the money, and the lender seeks a resulting trust on account of the loan and the use of the proceeds of the loan to pay for the land, the courts universally deny the lender the benefit of a resulting trust. (cit. omit.) Thus, in California, "[no] trust results in favor of one who lends money to another with which to buy land.")

In short, Razuki's claims in his FAC fail to establish that Razuki had any right to sue MEP or Hakim or Roselle for matters relating to the Mira Este Facility or Roselle Facility, including any right to distributions from MEP. Without standing, Razuki was not entitled to the appointment of a receiver over the Mira Este Facility.

(3) RAZUKI'S "UNCLEAN HANDS" BARRED HIS REQUESTED RELIEF FOR A PRELIMINARY INJUNCTION AND APPOINTMENT OF RECEIVER AT THE MIRA ESTE FACILITY.

The essence of the unclean hands doctrine is to protect the court's interests by preventing a wrongdoer from enjoying the fruits of his transgressions. (*Kendall-Jackson Winery, Ltd. v. Superior Court,* (1999) 76 Cal. App. 4th 970, 978-979). It is available to protect the court from having its powers used to bring about an inequitable result in the litigation before it. (*Ibid. at 985.)* Not every wrongful act constitutes unclean hands. But, the misconduct must be of a character to violate conscience, or good faith, or other equitable standards of conduct**.** (*DeRosa v. Transamerica Title Ins. Co.* (1989) 213 Cal. App. 3d 1390, 1395-1396.

Razuki as the beneficiary of the receivership in the present case, is hardly the victimized plaintiff that deserves the incredible leverage afforded him by the receivership. In June 2017, and in response to the refusal of Hakim to loan him money, Razuki threatened to burn down the Mira Este

Facility. This in turn led to a "cooling" of the relationship between Hakim and Razuki, and resulted in a number of retaliatory acts by Razuki. These acts included the interference by Razuki with the SoCal management agreements in which Razuki misrepresented to SoCal a number of facts that contributed to SoCal stopping its payments to MEP in May 2018.

Further, beginning in October 2018, Razuki repeatedly denounced Malan and told Hakim that Razuki was going to "get" Malan, put him "out on the street", and then post Malan's homeless condition on social media.

Most egregiously, when Malan filed the appeal and Razuki calculated that the receiver would be removed once the appeal was filed, Razuki escalated his retaliatory actions. In November 2018, Razuki was arrested in a "murder-for-hire" plot directed at Malan. He is currently awaiting trial on a federal criminal indictment for conspiracy and on the murder for hire plot.

The Probable Cause Statement in the Federal Criminal Complaint establishes that Razuki is guilty of the worst type of misconduct in connection with this litigation. That statement reads in part as follows:

> "On or about October 17, 2018, SALAM RAZUKI and SYLVIA GONZALES met with a Confidential Human Source (CHSl) requesting CHSl arrange to kill one of their business associates, N.M.. . . According to RAZUKI and GONZALES, they had invested in multiple properties and business ventures together and were now involved in a civil dispute over their assets. RAZUKJ and GONZALES told CHS1 that they wanted CHS1 to "shoot him [N.M.] in the face," "to take him to Mexico and have him whacked," or kill him in some other way. RAZUKI and GONZALES provided CHS1 a picture of N.M., which CHS1 provided to the FBI.
>
> On or about November 5, 2018, CHSl met with GONZALES at The Great Maple in San Diego, CA. During the meeting, GONZALES asked if CHS1 could "get rid of Salam's [RAZUKI] other little problem, [N.M.], because it looks like they're going to appeal.... "GONZALES said the

> civil dispute between her, RAZUKI, and N.M. was over $44 million dollars. GONZALES went on to say, "It's no joke, Salam [RAZUKI] has a lot of money tied up right now, and he's paying attorney fees. You need to get rid of this asshole [N.M.], he's costing me too much money!" GONZALES wanted this to occur before the next court date in their civil suit scheduled on or about November 15, 2018. . . ."

Again, the probable cause statement reflected gross misconduct that went to the very heart of this civil litigation. The motive as clearly expressed in the Probable Cause statement was that Razuki wanted Malan murdered because Malan was going to appeal; because Malan was costing Razuki too much money in attorney's fees; and that it needed to happen before the next hearing date in the litigation scheduled for November 15, 2018.

The murder for hire plot was triggered by the subject litigation and represented the clearest of examples of the nexus between the misconduct and the subject matter of the action.

The nexus element of the clean hands doctrine was explained by the court of appeal in *Unilogic, Inc. v. Burroughs Corp.*, (1992) 10 Cal. App. 4th 612. There, Unilogic Inc. (Unilogic) alleged that Burroughs Corporation (Burroughs) tortiously converted certain new technology for a personal computer developed by Unilogic pursuant to a contract it had with Burroughs. Burroughs answered Unilogic's conversion claim with the affirmative defense of unclean hands, claiming that the underlying contract was fraudulently procured by Unilogic. Although the fraudulent procurement of the contract was not part of the conversion claim and not even directly involved in the conversion claim, the court of appeal upheld the finding of unclean hands as a defense to the conversion claim. The court held that the doctrine applied so long as the inequitable conduct occurred in a transaction directly related to the matter before the court and

affects the equitable relationship between the litigants. (10 Cal.App.4th 621).

See, also, *Kendall-Jackson Winery, Ltd. v. Superior Court*, (1999) 76 Cal. App. 4th 970, 985, and *Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP*, (2005) 133 Cal. App. 4th 658. In the latter case, the Fourth District Court of Appeal delimited the nexus element in phrasing the relevant inquiry as whether the unclean conduct relates directly "to the transaction concerning which the complaint is made, i.e., to the subject matter involved and not whether it is part of the basis upon which liability is being asserted.

In the present case, the probable cause statement in the federal criminal complaint establishes the necessary nexus. The murder for hire plot was triggered by the substantial litigation costs being incurred by Razuki. It was also generated by the likelihood that an appeal of the order appointing the receiver would lead to the removal of the receivership once the bond amount was posted. That prospect inflamed Razuki.

Far more than in *Unilogic*, the misconduct here was a direct outgrowth of the lawsuit, and not simply an ancillary fact. Indeed, in *Unilogic*, Unilogic's unclean hands in the formation of the contract did not constitute any part of Unilogic's conversion claim against Burroughs for the conversion of Unilogic's proprietary information. Nevertheless, the court there determined that the unclean hands doctrine will apply if the misconduct that constitutes unclean hands relates to the subject matter before the court.

That is certainly the case here. The murder for hire plot occurred in the same context as the subject litigation in that the murder for hire plot was triggered by the expense, attorney's fees, and likelihood of appeal in the litigation. Each of these factors was specifically mentioned by Razuki and his co-defendants to the undercover agent. Paraphrasing *Unilogic*, the

murder for hire plot occurred in the same dispute as the civil lawsuit, namely, the dispute over properties, the extensive attorney's fees incurred by the parties in this litigation, and the filing of the appeal. The murder for hire plot is inextricably intertwined with the subject litigation, and that is enough of a relationship to bring into play the unclean hands doctrine.

(4) THE TRIAL COURT ABUSED ITS DISCRETION IN APPOINTING A RECEIVER BECAUSE THE PROBABILITY OF SUCCESS AT TRIAL BETWEEN RAZUKI ON THE ONE HAND AND MEP AND CCG ON THE OTHER HAND INDISPUTABLY FAVORS MEP AND CCG.

The 9/26/2018 Order was fashioned as an "Order Confirming Receiver and Granting Preliminary Injunction". One of the factors to be evaluated by the trial court before deciding whether to issue the injunction appointing the receiver is the likelihood that the plaintiff will prevail on the merits at trial. Another factor to be evaluated by the trial court before deciding whether to issue the injunction appointing the receiver is whether the interim harm plaintiff is likely to sustain if the injunction is denied is greater than the harm the defendant is likely to suffer if the preliminary injunction is granted. *Teachers Ins. & Annuity Assn. v. Furlotti* (1999) 70 Cal. App. 4th 1487, 1493.

The trial court did not evaluate, or at least did not explain any evaluation of these two factors on the record before deciding to issue the preliminary injunction appointing the receiver.

Initially, it should be noted that Razuki has not even alleged a claim against CCG in his FAC. Therefore, it can hardly be said that Razuki has established a probability of success against CCG. As such, making CCG subject to the harsh injunctive appointment of the receiver is without any support in the FAC or in the facts of the case.

Beyond that, the claims asserted by Razuki against MEP and Hakim are similarly groundless and do not support the original appointment or continuation of the receiver at the Mira Este Facility. Simply put, neither Hakim nor MEP owed any duty to Razuki.

Even if it be conceded that Razuki paid a portion of the purchase price to acquire the Facility, it would still not give Razuki any beneficial interest or entitlement to distributions as something of a beneficiary of a resulting trust. Razuki's alleged contributions to the acquisition of the Mira Este Facility might just as readily be considered a loan to Malan; or alternatively, a repayment of monies owed to Malan on their other investments. In either case, no resulting trust would arise. See, e.g., *Haskell v. Wood,* (1967) 256 Cal. App. 2d 799, 805; *Perry* v. *Ross,* (1894) 104 Cal. 15, 18; and *Vogel* v. *Bankers Bldg. Corp.,* (1952) 112 Cal.App.2d 160, 168.

In the present case, the money allegedly paid by Razuki towards the purchase of the Facility could just as easily be considered a payment by Razuki to entitle RM to share in the net profits from the Facility after distributions were made pursuant to the MEP Operating Agreement. As noted, since neither Razuki nor RM were members of MEP, neither of them were entitled to any type of ownership in the Facility itself. In either case, Hakim was entitled to rely on the presumption under Evidence Code Section 662 that the beneficial ownership of Malan's membership interest was presumed to be in Malan, since Razuki did not want anything to do with record ownership. As such, Razuki's claims against the owners of the assets of the Facility, MEP and CCG are flimsy at best.

More particularly, and as noted, the FAC does not allege any claims against CCG. And the charging allegations of the FAC against MEP and

Hakim are devoid of merit and do not support the continuation of the receivership at the Facility, as follows[8]:

(1) At paragraph 27 through paragraph 29, the FAC alleges that MEP borrowed money secured by the loan in the amount of approximately $1,080,000. (1 AA 127-128). The loan was intended for building renovations at the Mira Este Facility. *(Ibid.)* However, after the funds were deposited into the Mira Este account, Malan misappropriated $390,000 of the funds and Hakim misappropriated $540,000 of the funds for their personal use. *(Ibid.)*

Even if true, these allegations are insufficient to establish any recognizable claim in Razuki. Since the alleged misconduct was based on some type of unlawful distributions being made from the MEP bank account by Hakim as the managing member of MEP, only the members of MEP would have the right to sue.

As noted, however, the actual facts were quite different. First, because the entire loan transaction was in the name of MEP, distributions of the loan proceeds had to be made in accordance with the MEP Operating Agreement, namely, one half to Malan and one half to Hakim. The amount distributed to Malan of $518,000.00 was identical to the amount distributed to Hakim.

Further, while the subject loan was initially intended for equipment and renovations to the Mira Este Facility, it was decided by all three parties (Hakim, Razuki, and Malan) that the funds would and could be utilized for different purposes. In fact, the loan proceeds distributed to Malan were

[8] Of course, since the FAC was unverified, its allegations cannot provide evidentiary support for the granting of the preliminary injunction or the appointment of the receiver even if there were adequate allegations to support Razuki's position against MEP, CCG, and Hakim. See, e.g., CCP 527.

actually used by both Malan and Razuki, as longtime partners, to purchase licenses for their other cannabis production operations in California City. This alleged "misconduct" of Hakim or MEP or CCG cannot and does not support any of the claims alleged by Razuki in his FAC.

(2) At paragraph 34 of the FAC, it is alleged that shortly after the alleged RM Holdings "settlement agreement" was executed on November 9, 2017, Hakim was made aware of it. The FAC goes on to allege that because of such knowledge, Hakim was part of a civil conspiracy with Malan.

However, even if Hakim was aware of the RM agreement, which Hakim denies, Hakim still owed no duty to either RM or Razuki. Section 8.8 of the Operating Agreement requires that any assignee of any membership interest agree in writing to be bound by the Operating Agreement as a condition to becoming a member. (18 AA 6264). No such written consent (or any other type of consent) was ever provided by either RM or Razuki. In essence, there is no basis for any allegation that Hakim or MEP ever conspired with Malan to deprive Razuki or RM of any benefits or distributions made by MEP.

Moreover, Hakim's sole duty regarding distributions was to distribute monies in accordance with the MEP Operating Agreement, which required all distributions to be made to Malan and himself until such time as Malan assigned or transferred all or a portion of his membership position to Razuki under section 8.8 of the MEP Operating Agreement. Since that never happened and still has not happened, Hakim as managing member and MEP as the limited liability company must follow the Operating Agreement and make all distributions to Hakim and Malan.

(3) The FAC also alleges misconduct in several places arising from the creation of Monarch. In particular, it is alleged that neither Hakim nor Malan informed Razuki of the existence of Monarch. It is further alleged

that Monarch was used as something of a "vehicle" to conceal and divert profits away from Razuki. (18 AA 135, 139).

Again, however, Hakim had no duty to disclose the existence of Monarch to Razuki. In fact, since Razuki was not a member of MEP and also was not an officer, director, or shareholder of Monarch, disclosure obligations to third parties would have been improper as a disclosure of private corporate or limited liability company affairs.

Practically speaking, because of the incident involving Razuki's threat to burn down the Facility in June 2017, communications between Razuki and Hakim were strained. Also, Malan and Razuki were still on "good terms" at the time of the formation of Monarch in or about July 2017. As such, Hakim could reasonably assume that Malan would communicate any information that needed to be communicated to Razuki.

Further, the creation of Monarch had nothing to do with Razuki and especially had nothing to do with the purported concealment of profits from Razuki. Indeed, whether the distributions of profits were made directly to Malan and Hakim pursuant to the MEP Operating Agreement; or were made indirectly by payments to Monarch, Razuki's claim is the same. That claim is predicated upon the failure of Malan to either account for or otherwise pay monies over to Razuki in accordance with the alleged RM agreement. It has nothing to do with the operations of Monarch or MEP.

Since the claims in the FAC against MEP, CCG and Hakim are either nonexistent or flimsy at best, the likelihood that Razuki will prevail against any of these parties is remote. On that basis as well, the trial court abused its discretion in ordering the appointment of a receiver over the Facility.

(5) THE TRIAL COURT ABUSED ITS DISCRETION IN APPOINTING THE RECEIVER AND CONTINUING THE RECEIVERSHIP AT THE MIRA ESTE FACILTY BECAUSE SUBSTANTIALLY MORE HARM THAN GOOD RESULTED FROM THE APPOINTMENT AND CONTINUATION OF THE RECEIVERSHIP.

When it appears that no reasonably certain benefit will result to one litigant and a distinct disadvantage will result to another, courts should weigh carefully the propriety of appointing a receiver, and should not make the appointment when there is no benefit or advantage to be gained thereby (*Elson v. Nyhan* (1941) 45 Cal. App. 2d 1, 5*; Lowe v. Copeland* (1932) 125 Cal. App 315, 324).

Here, the very existence of the receivership has seriously damaged the profitability of the Facility. More than any other factor, the receivership has blocked producers from operating at the Facility. Because of the decisions of the trial court in appointing and continuing the receivership, foreclosure on the existing encumbrances at the Facility totaling approximately $3.3 million is imminent. Since the existence of the receivership has essentially stripped the Facility of any money –making operations much less any potential for profitability, the ability to obtain new financing is also problematic, to say the least.

In *Lowe v. Copeland* (1932) 125 Cal. App 315*,* the court of appeal affirmed the trial court's refusal to appoint a receiver, holding that a receiver should not be appointed when no benefit or advantage is to be gained thereby. In that case as in the present case, the profitability of the business over which the receivership was sought was nonexistent. There were no funds in the company's treasury, no means of raising funds from its stockholders, and no business prospect that would bring any funds into the treasury to enable it to carry on the business (*Id.* at 125 Cal. App 324)

In the present case, at the time that the receiver was initially appointed in late July 2018, SoCal had already reneged on its management agreement, and there was no income whatsoever being generated at the Facility. When Judge Strauss removed the receiver and Hakim hired Synergy as manager, they were able to negotiate a sublicense agreement with Edipure in early August 2018. However, the monthly payment from Edipure was less than that needed to pay debt service and overhead before the receiver was appointed.

The appointment of the receiver on an ex parte basis in late August 2018, which was made into a preliminary injunction on September 26, 2018, was completely unnecessary because after SoCal was terminated on July 10, 2018, the Facility has not generated any profits. There have been no distributions since May 2018. No benefit or advantage has resulted since the receiver was appointed. No profit has been generated since the appointment of the receiver because no other producers or manufacturers have been willing to enter into a sublicense agreement so long as the receiver is in place.

(6) THE TRIAL COURT ABUSED ITS DISCRETION IN APPOINTING THE RECEIVER AND CONTINUING THE RECEIVERSHIP AT THE MIRA ESTE FACILTY BECAUSE LESSER REMEDIES THAN THE DRASTIC REMEDY OF RECEIVERSHIP EXISTED TO PROTECT WHATEVER INTEREST RAZUKI CLAIMED IN THE FACILITY.

In *Golden State Glass Corp. v. Superior Ct.* (1939) 13 Cal. 2d 384, a stockholders' derivative suit, defendants sought a writ of prohibition to prevent the enforcement of respondent court's ex parte order appointing a receiver and its subsequent orders denying their motion to vacate the appointment and confirming the appointment. The Supreme Court issued the writ, finding that no sufficient grounds existed for continuing the

receivership during litigation and that the trial court exceeded its jurisdiction in confirming its ex parte order appointing the receiver (*13 Cal. 2d 384, 396)*. The Court noted the drastic character of the remedy of receivership and held that, ordinarily, if there is any other remedy less severe in its results that will adequately protect the rights of the parties, a court should not take property out of the hands of its owners (*13 Cal. 2d 384, 393)*. See, also, *A.G. Col Co. v. Superior Court* (1925) 196 Cal. 604, 613; and *Dabney Oil Co. v. Providence Oil Co.* (1913) 22 Cal. App 233, 239.

In *Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp*., (1953) 116 Cal. App. 2d 869, the plaintiff asserted that it was the owner of a mine and equipment and that a lease to defendant for the mine and equipment was voidable. Plaintiff rescinded the lease, but defendant refused to return possession. On plaintiff's request, the court appointed a receiver. On appeal, the court of appeal reversed. Citing *Dabney Oil Co.* v. *Providence Oil Co*., (1913) 22 Cal.App. 233, the court of appeal held that plaintiff's interest as landlord could be protected with other injunctive relief, and that where an injunction will protect all the rights to which the applicant for the appointment of a receiver appears to be entitled, a receiver will not be appointed.

In the present case, a preliminary injunction to require MEP to either retain one half of the net profits or to transfer to the Receiver one half of the net profits generated at the Facility would fully protect the rights and interests of Razuki.

Indeed, Razuki's only alleged interest is in the net profits of the Facility through RM. Razuki's decision to avoid any formal or managerial role in the Facility at its inception meant that even if Razuki had standing, his claim would at most be for a 37 ½ % share of the distributions pursuant to the November 2017 RM agreement. Razuki would have no entitlement

to any assets of the Facility. Razuki's claim for a portion of the net profits can therefore be protected without the drastic remedy of receivership.

CONCLUSION

The order granting the preliminary injunction and appointing the receiver at the Mira Este Facility should be reversed, and the Facility should be forthwith returned to its owners, CCG and MEP.

Dated: July 2, 2019

Respectfully submitted,

GORIA, WEBER & JARVIS

By: /s/ Charles F. Gloria
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I, Charles F. Goria, appellate counsel to Mira Este Properties LLC, Roselle Properties LLC, and Chris Hakim, certify that the foregoing brief is prepared in proportionally spaced Times New Roman 13 point type and, based on the word count of the word processing system used to prepare the brief, the brief is 13,964 words long (not including the cover page, Table of Contents, Table of Authorities, and this certificate). I am relying on the computer program Microsoft Word for this word count.

Dated: July 2, 2019

/s/ Charles F. Gloria
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