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

*DANIEL T. WATTS, ESQ. (277861)
LOUIS A. GALUPPO, ESQ. (143266)
G10 GALUPPO LAW, APLC
2792 Gateway Road, Suite 102
Carlsbad, California 92009
(760) 431-4575 Telephone
(760) 431-4579 Facsimile

Attorneys for Appellants,
Ninus Malan, San Diego United Holdings Group, LLC, Flip Management, LLC, Balboa Ave Cooperative, California Cannabis Group and Devilish Delights, Inc.

[REDACTED] CERTIFICATE OF INTERESTED PERSONS OR ENTITIES

Pursuant to California Rules of Court, Rule 8.208, the following persons or entities that have an interest in the outcome of this appeal:

Dated: July 2, 2019

/s/ Daniel T. Watts
Daniel T. Watts

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

COURT RULES

STATUTES

OTHER AUTHORITIES

1.0. SUMMARY OF ARGUMENT AND INTRODUCTION

The receivership statute is jurisdictional, and a trial court does not have jurisdiction to appoint a receiver unless the plaintiff meets each statutory element. To wrest control of a defendant's property away from him, a plaintiff must show a probable ownership interest in the property, a likelihood of success on the merits of his claim, inadequacy of lesser remedies, and equitable considerations favor the appointment. None of them was met here.

Plaintiff-Respondent Salam Razuki's first amended complaint does not claim he owns a property interest in any of the businesses in receivership. He claims a *contingent* interest in the profits and losses of a third-party holding company. Like a shareholder in a mutual fund, the Plaintiff had no property interest in the individual companies whose shares comprise the holding company. He therefore had no right to a receiver, and the court had no jurisdiction to appoint him.

On the question of success on the merits, it is impossible to succeed; he sues for breach of a contract for the sale of illegal narcotics, a contract void at the moment it was signed.

On the equity question, he acted with unclean hands; he threatened to burn down the businesses, convinced the operator of the businesses to breach its contract, and then tried to murder one of the defendants in November 2018 to prevent this appeal from going forward. A party seeking equitable relief like a receiver appointment must come into court with clean hands, and there are hands no more unclean than those soaked in blood.

Finally, even if the Plaintiff's claims could succeed, an injunction against a sale of the businesses would have sufficed to protect his "interests"; with lesser remedies available, the trial court should not have

appointed a receiver ex parte, nor confirmed the receiver at a preliminary injunction hearing nearly two months later.

Even if the Plaintiff had proven the elements of the receivership statute, the court should not have appointed this particular receiver, Michael Essary.

A court cannot appoint a receiver who has an arrangement with the plaintiff about who he will hire or how he will run the business in receivership. This receiver had such an arrangement: He promised Plaintiff Razuki that he would hire another Plaintiff, SoCal Building Ventures, LLC ("SoCal"), to run all the Defendants in receivership. It is a conflict of interest for a Plaintiff to manage a Defendant, and it's a breach of the receiver's fiduciary duties to the Defendants to allow – to *promise* – such an arrangement.

2.0. STATEMENT OF THE CASE

Plaintiff-Respondent Salam Razuki filed this lawsuit on July 10, 2018. 1 AA 86-111 (complaint). He amended the complaint three days later. 1 AA 121-151 (amended complaint). Four days after that, on July 17, 2018, without serving the summons or complaint on any party, Plaintiff Razuki appeared ex parte and asked the court to appoint a receiver to control Defendants-Appellants San Diego United Holdings Group, LLC, Devilish Delights, Inc., Balboa Ave Cooperative, Flip Management, LLC, and Monarch Management Consulting, and Cross-Appellants/Defendants Roselle Properties, LLC, Mira Este Properties, LLC, California Cannabis Group. 1 AA 227; 2 AA 339. Razuki's complaint alleged that Defendant-Appellant Ninus Malan promised to transfer his interests in the LLCs to a holding company, RM Property Holdings, LLC. 1 AA 122:10-18.

At the same ex parte hearing, SoCal Building Ventures, LLC and San Diego Building Ventures, LLC ("SoCal") – a former operator of some

of the defendants' marijuana businesses – appeared with Razuki and asked for leave to file a complaint in intervention. The judge granted both applications, appointing a receiver and allowing Plaintiff-in-intervention SoCal to file its complaint. No defendant had yet been served with the summons and complaint. 1 R.T. 8:2-28. To this day, no Defendant has been personally served with the summons or complaint. Nevertheless, on July 17, 2018, the Honorable Kenneth Medel granted the ex parte applications, appointed the receiver, and allowed SoCal to file its complaint-in-intervention. 1 AA 227; 2 AA 339.

Defendants exercised a peremptory challenge to Judge Medel. 2 AA 338. This case was reassigned to the Honorable Richard Strauss. Judge Medel stated on the record in related litigation that he had reconsidered the appointment sua sponte. 4 AA 830-831. Nevertheless, the case has been reassigned to Judge Strauss.

Defendants-appellants immediately filed an ex parte application to vacate the order appointing the receiver. 2 AA 465. Judge Strauss granted the application on July 31, 2018, and vacated the receiver. 4 AA 1101-1102 (order). The court found that the proposed order Plaintiffs had asked Judge Medel to sign was "contrary to what Judge Medel had been told." 2 R.T. 248:12-15. Judge Strauss did not set any additional hearings; he directed the parties to "proceed via a noticed motion" if they sought to re-litigate the question of the receiver. 4 AA 1102.

Plaintiff SoCal exercised a peremptory challenge to Judge Strauss on July 31, 2018, after Judge Strauss vacated the receivership. 4 AA 1098. The case was reassigned again, this time to the Honorable Eddie C. Sturgeon.

Acting sua sponte with no request from any party and no noticed motion filed, Judge Sturgeon set a hearing on August 14, 2018. At that

hearing, he made no rulings, but set a hearing for August 20th to determine whether to re-appoint a receiver. 3 R.T. 318-321. No ex parte application had been filed. No motion had been filed. The hearing was set entirely on the court's own motion.

On August 20, 2018, the parties appeared for Judge Sturgeon's sua sponte hearing. The court appointed the receiver, Michael Essary, again. Over objections, the court signed a written order appointing the receiver on August 28, 2018. 8 AA 2499. The court deemed the receiver's $10,000 bond sufficient, and did not require Plaintiff Razuki to post a bond. 8 AA 2500:11-12. The court set a hearing for September 7, 2018 on whether to issue a preliminary injunction keeping the receiver in place. Id.

The court held a hearing on September 7, 2018 and issued a preliminary injunction appointing the receiver, giving him control of San Diego United Holdings Group, LLC, Flip Management, LLC, Balboa Ave Cooperative, Mira Este Properties, LLC, California Cannabis Group, and Devilish Delights, Inc. 5 R.T. 578-579. The court ordered the receiver to hire an accounting firm to conduct a forensic accounting of the Defendants in receivership. 5 R.T. 584. The court told the receiver to operate under the previous temporary restraining order until the court signed a new one. 5 R.T. 601:11 ("You're still a receiver").

In the written preliminary injunction order, which the court did not sign until September 26, 2018, the court ordered these companies into receivership without the Plaintiff first posting a bond. 13 AA 4399-4406. The order gave Plaintiff until September 21, 2018 to post a $350,000 injunction bond; it did not require Plaintiff to post the bond before getting the receiver. 13 AA 4400:15-16. The order was signed September 26, 2018. 13 AA 4399-4406.

Appellants timely appealed on October 30, 2018. 14 AA 4596. Cross-appellants filed their cross-appeal on November 2, 2018. 14 AA 4612.

Plaintiff Razuki posted a bond on September 20, 2018, but did not name the correct beneficiaries. 6 R.T. 622:16-623:9. At a hearing on September 27, 2018, the court called it a "nonissue." *Id*. Plaintiff later filed a corrected bond.

In November 2018, the court held a status conference where the judge announced that Plaintiff Razuki had been arrested for hiring a hit man to murder Defendant Ninus Malan to prevent this appeal from going forward. A grand jury indicted Razuki for murder-for-hire. 18 AA 5898-5903; 19 AA 6422-6432. He awaits trial.

During and after Razuki's attempt to murder Malan, Defendants asked the court several times to remove the receiver, including because of Razuki's unclean hands. 13 AA 4241 (Sept. 26, 2018 ex parte to modify injunction); 13 AA 4520 (Oct. 24, 2018 ex parte application to vacate receiver); 15 AA 4917 (Nov. 15, 2018); 7 R.T. 769:25-772 (arguing lack of jurisdiction at Nov. 30, 2018 hearing); 18 AA 5928 (March 11, 2019 request to vacate receiver); 18 AA 6183-6185 (May 8, 2019 request). The court denied all the requests. See, e.g., 18 AA 6182 (denying March 11th request).

Appellants asked the court to set an appellate bond to stay the trial court's order pending appeal in an ex parte application on November 5, 2018. 14 AA 4616. The court denied the request. They asked again on November 30, 2018. 7 R.T. 722:9-17. The court refused, continuing the question of the bond to December 14, 2018. 7 R.T. 847:14-23.

On December 17, 2018, the court finally set appellate bonds, but made them interdependent; "all parties must cooperate in order to be

effective, in order to vacate the receiver, each party must post bond." 18 AA 5908. This effectively set a $2.6 million bond to get Devilish Delights, Inc. – a defunct company with no current relationship to the other businesses – out of receivership. It also forced the other companies to *rely* on Devilish Delights – a defunct company with no money – posting its $50,000 share of the $2.6 million appellate bond.

In January 2019, the manager of RM Property Holdings, LLC filed certificates of dissolution and cancellation. 18 AA 5915-5916. Today the company is dissolved and cancelled.

In this appeal, Appellants ask this court to vacate the preliminary injunction appointing the receiver and remand with instructions to return the properties, assets, and companies in receivership to the people and businesses from whom they were seized.

3.0. STATEMENT OF APPEALABILITY

An order appointing a receiver is appealable. Code Civ. Proc. §904.1(a)(7). An order granting a preliminary injunction is also appealable. Code Civ. Proc. §904.1(a)(6). The orders denying motions to modify the preliminary injunction are also appealable. Id.

4.0. FACTUAL BACKGROUND

Years before this lawsuit was filed, Defendant Ninus Malan and Plaintiff Salam Razuki were business partners. 9 AA 2923-2924. They acquired properties and businesses together. After acquiring the properties, they would occasionally transfer ownership of them, selling one or another property or business to each other or to one of their respective companies. *Id*.

4.1. Razuki Investments, LLC sells Balboa dispensary to Defendants.

In 2017, for example, Razuki noticed one of his company's contemplated marijuana dispensaries, Balboa, was having trouble getting off the ground. Two years earlier, the City of San Diego had issued a conditional use permit to sell cannabis at 8863 and 8861 Balboa Ave., San Diego, CA ("Balboa Land"). 2 AA 482:14-18, 528-542 (permit). There was no dispensary operating there at the time, though; it was a vacant building. 2 AA 482:19-21. The owner of this land since October 2016 was Razuki Investments, LLC – not Plaintiff Razuki. 2 AA 482:14-18. From 2016 to March 2017, Razuki Investments, LLC did nothing with the Balboa Land. They did not open a dispensary or improve the property. *Id*. Profits, if any, were months or years away – if they would materialize at all.

Plaintiff Salam Razuki, the owner of Razuki Investments, LLC, wanted out, and not just because the business was unprofitable. He had been convicted of operating an illegal marijuana dispensary elsewhere in San Diego, and as part of the terms of the stipulated judgment against him, he is prohibited from owning or operating an unlicensed dispensary. 4 AA 1201:22-1202:8 (Razuki declaration admitting as much).

So he offered to sell Razuki Investments, LLC's interest in Balboa Land to Defendants Balboa Ave Cooperative and San Diego United Holdings Group, LLC – companies owned by Defendant Ninus Malan – in exchange for a promissory note, which would make Balboa Ave Cooperative the sole owner. 4 AA 1203:1-6. Defendants were reluctant; the business was not exactly thriving, and it would take a lot of work to get it running. Foremost among the hurdles was the commercial common interest development owners association, or "HOA". The HOA's rules

banned cannabis dispensaries, making it impossible for the Balboa dispensary to open its doors without immediate risk of a lawsuit. Razuki sweetened the deal; he would accept payment in the form of a $1.575 million promissory note – but the note would include a contingency: Balboa Ave Cooperative would not have to pay back the note if it took longer than 90 days to get approval from the Montgomery Fields Business Association to open the marijuana shop for business. 2 AA 515. Payment of the note "is contingent on buyer being able to operate the business within 90 days," and if buyer cannot operate within 90 days "due to homeowner's association or city restrictions and regulations," then the note is "void" and does not need to be paid off. 2 AA 515 ("Payment Contingency" clause).

Defendants agreed to this condition. The parties opened an escrow, signed a purchase and sale agreement, and transferred ownership of the Balboa Ave Dispensary and its land from Razuki Investments, LLC to Defendants Balboa Ave Cooperative and San Diego United Holdings Group, LLC. 2 AA 480:10-16; 9 AA 2760-2761 (Razuki's deposition testimony describing transfer); 4 AA 1203:4-6, 1204:6-15. Escrow closed on March 10, 2017, and Balboa Ave Cooperative took possession on March 20, 2017. 2 AA 483. Per the parties' agreement, Razuki Investments, LLC recorded a grant deed transferring ownership of the Balboa Land to San Diego United Holdings Group, LLC, a company wholly owned by Malan. 2 AA 500. As of March 10, 2017, Balboa Ave Cooperative and San Diego United Holdings Group, LLC, run by their sole managing member Ninus Malan, owned 100% of the land, building, and business that would eventually become the Balboa dispensary. *Id.*; 2 AA 480:10-16. The Balboa Ave Cooperative hired Defendant Flip

Management, LLC to operate the business in March or April 2017. 2 AA 484:11-14.

4.2. Owners' association sues to stop Balboa dispensary from operating, and Defendants settle with the association.

As predicted, the HOA sued in May 2017 to stop the marijuana business from operating. 2 AA 483-484. As the promissory note says in one of its provisions, the HOA's policies banned marijuana businesses. Because this meant the HOA had not changed its policies within 90 days, the promissory note was rendered void by its own terms. 2 AA 515 ("Payment Contingency" clause). With the note void, Balboa Ave Cooperative did not need to repay Razuki Investments, LLC. *Id*. It still needed to deal with the HOA, though.

The HOA obtained a court order preventing the shop from operating in August 2017, an order which was confirmed in September 2017. 3 AA 546; 7 AA 1823:18-25, 1828-1830 (August order), 1832 (September order). After months of negotiations, in December 2017 Defendant Ninus Malan managed to convince the HOA to settle the lawsuit and grant a one-time use variance for the Balboa dispensary. 3 AA 547. This was more than six months after the 90-day period beyond which the promissory note, according to its terms, would become void and not need to be repaid. 2 AA 515 ("Payment Contingency" clause).

Under the settlement agreement with the HOA, Malan – and only Malan – agreed to pay more than $142,000 to the HOA so his companies, Balboa Ave Cooperative and San Diego United Holdings Group, LLC, could operate. 3 AA 547. Starting May 2018, he would also start paying the HOA's insurance premiums. 3 AA 548; 2 AA 483:20-484:9. The settlement warns that the HOA will revoke the use variance if San Diego United Holdings Group, LLC or the Balboa business is transferred or sold.

2 AA 484:1-9. Defendant Malan personally paid $142,572 to the HOA. 2 AA 483:20-21. There is no evidence Razuki paid any of this.

4.3. Defendants Malan and Hakim form Mira Este Properties, LLC.

Meanwhile, Defendant Malan and his business partner, Defendant Chris Hakim, formed another business venture to manufacture marijuana-derived products. The two of them formed Mira Este Properties, LLC in July 2016. 14 AA 4547-4573 (Mira Este operating agreement). The operating agreement stated Mira Este Properties, LLC would own and manage real property. 14 AA 4551:§2.4. The operating agreement states the manager is and always will be Chris Hakim. 14 AA 4551:§2.6. It allows, but does not obligate, Malan to transfer his interest to Plaintiff Salam Razuki at some point in the future, as long as the transfer does not affect Hakim's management powers. 14 AA 4567:§8.8. To buy the membership interest, Malan contributed $325,000 and purchase rights for real property. 14 AA 4573. Hakim contributed $450,000. 14 AA 4573. Razuki contributed nothing and obtained no membership interest. *Id*.

4.4. Defendants Malan and Hakim continue to own Defendant LLCs and cooperatives.

Throughout 2017 and continuing until today, Plaintiff Razuki has owned no part of any of the Defendants in receivership. California Cannabis Group, Devilish Delights, Inc., and Balboa Ave Cooperative are nonprofit mutual benefit corporations of which Razuki is not a member. Co-defendants Malan and Hakim are president and vice president, respectively, of Devilish Delights, while Malan is the president of California Cannabis and the sole managing member of Balboa Ave Cooperative. 2 AA 479:9-25. Malan and Hakim jointly own Mira Este Properties, LLC, Roselle Properties, LLC and Monarch Management

Consulting, Inc. 2 AA 479:23-480:3, 480:17-19. Malan solely owns Flip Management, LLC and San Diego United Holdings Group, LLC. 2 AA 480:1-9. Razuki does not own, and never has owned, any part of any of those companies. *Id*. He confirmed he was a "former" owner of Balboa on September 6, 2017. 9 AA 2745:3-5.

4.5. Plaintiff Razuki and Defendant Malan – but not Hakim – sign "Transfer Agreement" in November 2017, when such agreements were illegal.

In November 2017, Plaintiff Salam Razuki and Defendant Ninus Malan signed the contract ("Transfer Agreement") that forms the basis of this lawsuit. 4 AA 1210-1217. Malan and Razuki had talked about putting a couple dozen properties and businesses into a single holding company. Their intent was to combine the marijuana businesses along with other real properties and companies acquired over several years. 6 AA 1735:21-24. One day in November 2017, Razuki called Malan into an office with a lawyer named Rick Aljabi, who represents Sunrise Property Investments, LLC and Super 5 Consulting Group, LLC. 6 AA 1735:25. Although Razuki and his lawyer knew Malan was represented by counsel, they insisted he sit down and sign a contract without his attorneys present. 4 AA 1735-1736. They pushed a contract in front of Malan and told him to sign it. They said it would combine dozens of businesses into a single holding company, and any omissions would be corrected later. Razuki and his attorney pressured Malan to sign it immediately. 4 AA 1736:1-9.

4.6. Transfer Agreement requires Plaintiff Razuki to submit to an accounting and transfer properties within 30 days to a holding company, which he never did.

The Transfer Agreement did not combine the dozens of properties and businesses Razuki had promised. It focuses solely on marijuana businesses; it discusses how Razuki and Malan "engaged in several

business transactions…related to…various medical marijuana businesses." 4 AA 1210:§1.1. The marijuana businesses include "San Diego United Holding[s] Group, LLC," Flip Management, LLC, half of Roselle Properties, LLC and Mira Este Properties, LLC, and a portion of Sunrise Property Investments, LLC and Super 5 Consulting Group, LLC. 4 AA 1209-1210. Of those LLCs, Malan had ownership interests in San Diego United Holdings Group, Flip, Roselle, and Mira Este, while Razuki had ownership interests in Sunrise and Super 5. *Id*.

Within 30 days of signing the contract, Malan and Razuki must:

1) submit to a financial accounting of their respective contributions to these businesses, and

2) transfer their ownership interests in the marijuana LLCs to a holding company.

4 AA 1212:§2.1-2.2. After that, the Transfer Agreement would waive Razuki and Malan's "claims" against each other arising from the "Partnership Agreement." 4 AA 1212:§3.1. The "Partnership Agreement" is defined as Razuki and Malan's "understanding" that Razuki is "entitled" to 75% of the "capital, profits, and losses" of the marijuana businesses, Malan gets 25% of the same, and neither of them get anything until they have been repaid their initial investment – whatever that turns out to be after the accounting. 4 AA 1211:§1.2.

After getting repaid their initial financial contributions, Razuki would bear 75% of the holding company's losses and Malan would bear 25%, as well as equivalent shares of its profits, if there were any. 4 AA 1212§2.3. First, though, the holding company would need to repay each party his respective financial contribution – hence the prerequisite of the financial accounting to figure out how much that would be. 4 AA 1212§2.3. "No Party is entitled to receive any profits whatsoever until, and

unless the Parties have first been repaid their investment in full." 4 AA 1211§1.2. If they completed those conditions precedent – conducting an accounting and transferring ownership to the holding company – then the holding company, if it derived sufficient profits from the marijuana sales, would start repaying the parties their initial financial contributions to the marijuana businesses. 4 AA 1212§2.3. When the Transfer Agreement was signed, neither party had yet "recouped their financial investments in" the marijuana businesses. 4 AA 1211§1.4.

There is no evidence in the record that either of them fulfilled the conditions precedent. Neither party submitted to a financial accounting, and neither party transferred their ownership interests to the holding company. As of March 2018, Razuki was testifying in depositions that he had no business relationship with Malan, Malan did not owe him money, and he had no interest in San Diego United Holdings Group, LLC or any marijuana businesses with Malan. 9 AA 2752-2761. This was because the parties decided to rescind the Transfer Agreement.

4.7. Plaintiff Razuki and Defendant Malan rescind the Transfer Agreement.

In early 2018, a couple months since they signed the agreement, Defendant Malan, now having read the agreement, asked Plaintiff Razuki about all the other properties and businesses he was supposed to include in the deal. He asked Razuki why he did not put other properties and businesses into the agreement. Razuki said he did not want to part with those businesses anymore, so he said they should cancel the deal and each of keep the businesses and properties he already owns. 4 AA 1736:10-24. Malan agreed, and they canceled the Transfer Agreement. 4 AA 1736:15-16.

It turned out that Razuki was incapable of performing under the Transfer Agreement. 3 AA 480:20-481:9. For example, the agreement says Razuki has to transfer his ownership interests in Sunrise Property Investments, LLC and Super 5 Consulting Group, LLC into "RM Property Holdings, LLC" within 30 days of executing the agreement. 4 AA 1212:§2.1. He was supposed to submit to a "financial accounting" to determine how much money, if any, he contributed to the businesses owned by Malan, also within 30 days. 4 AA 1212:§2.2. Razuki was unable or unwilling to do that; he never transferred those businesses or performed the accounting. 3 AA 480:20-481:9. He was not even able to prove he owned the businesses. 3 AA 480:20-481:9. Malan and Razuki mutually agreed to rescind the Transfer Agreement in early 2018 because Razuki was incapable of complying with its material terms and did not want to transfer anything to the holding company, RM Property Holdings, LLC. 3 AA 480:20-481:9.

Plaintiff Razuki now disputes this, and claims he "orally agreed" to extend the time in which to transfer the businesses to the holding company – although he does not claim he extended the time in which to perform a financial accounting, and he does not claim they agreed in writing to extend the time. 1 AA 252:6-14. He does not claim he himself performed.

4.8. Defendants hire Plaintiff-in-intervention SoCal to get marijuana operations up and running at Balboa, Mira Este, and Roselle.

After terminating the Transfer Agreement, Malan continued to work to get the businesses running while Razuki – who owned no part of them – did nothing.

In January 2018, Defendants Balboa Ave Cooperative and San Diego United Holdings Group, LLC hired Plaintiff-in-intervention SoCal

Building Ventures, LLC ("SoCal") to manage the Balboa dispensary. 2 AA 484:15-22; 16 AA 5084 (Balboa management agreement). Defendants-Appellants California Cannabis Group, Devilish Delights, Inc., and Mira Este Properties, LLC also hired SoCal to manage a second facility ("Mira Este Facility"). The Mira Este Facility was supposed to manufacture cannabis-related products, not sell them. 2 AA 484:15-22. Defendant Roselle Properties, LLC hired SoCal to manage a third incipient facility, the "Roselle Facility." 2 AA 484:15-22. SoCal signed three management agreements for the three facilities. 3 AA 606-622 (Balboa management agreement), 623-641 (Mira Este management agreement), 643-659 (Roselle management agreement)

4.9. Management agreements gave Plaintiff-in-intervention SoCal an option to buy dispensaries, but SoCal never exercised the options, so they expired.

Under the Balboa management agreement, SoCal promised to pay taxes and management fees, maintain security guards, and run the dispensary competently and in compliance with local and state law. 16 AA 5087-5090. (Federal law was another matter entirely.) In exchange, SoCal would receive a portion of "profits" at the dispensary. The management agreement also gave SoCal a temporary right to buy an option to acquire an interest in the business. They could buy the option for $75,000 by March 15, 2018, and the option – if they bought it – allowed them to buy 50% of the dispensary for $2.7 million to 3.0 million, depending on the date they exercised it. 16 AA 5093:§8.2. They had to pay the $75,000 option fee by March 15th and exercise it by June 30, 2018, however; otherwise, the option would expire. 16 AA 5093:§8.4. SoCal timely paid the option fee but did not exercise the option, so the option expired on July 1, 2018. Id.; 4 AA 1737:19-24. The management agreement said the

owners could fire SoCal for failure to make payments due or otherwise fail to cure defaults after 25 days' notice. 16 AA 5092:§6.2.

Under the Mira Este management agreement, SoCal promised to pay taxes and management fees, maintain security guards, and run the facility competently and in compliance with local and state law. 3 AA 629-630, 631:§5.2. In exchange, SoCal would receive a portion of "profits" at the facility. 3 AA 631:§5.1. The operating agreement also gave SoCal a temporary right to buy an option to acquire an interest in the business. They could buy the option for $75,000, and the option – if they bought it – allowed them to buy 50% of the Mira Este business for $4.5 million to $5.0 million, depending on the date of exercise. 3 AA 633:§8.2. They had to buy the option by March 15th and exercise it by June 30, 2018, however; otherwise, the option would expire. *Id*. SoCal never bought the option, so it expired by its terms on July 1, 2018. *Id*.; 4 AA 1737:17-19.

The Roselle management agreement was similar. Malan, Hakim, and Roselle Properties, LLC hired SoCal to get it up and running in exchange for the right to buy an option and get profits. 3 AA 644-648 (Roselle management agreement). For $75,000, SoCal could buy an option to acquire 50% of the Roselle business for $2.25 million to $2.5 million. 3 AA 651-652. They had to buy the option by March 15th and exercise it by June 30, 2018, however; otherwise, the option would expire. 3 AA 652:§8.4. SoCal never bought the option, so it expired by its terms on July 1, 2018. 4 AA 1737:17-19.

SoCal and Malan discussed the possibility of extending the deadline for SoCal to buy the option. No agreement was reached, however. SoCal expressly refused to consent to the extension on the terms suggested by Malan, so the Balboa option expired on July 1, 2018. 4 AA 1737:19-24.

SoCal's ability to buy the options for Mira Este and Roselle expired on March 15, 2018 because SoCal never paid the option fees. 4 AA 1737:13-18.

4.10. SoCal employees smoke weed on the job, drank alcohol, and committed other crimes for which they were fired as manager in June 2018.

SoCal was not a competent manager. They never got the Roselle facility operational; as of July 2018, Roselle Properties, LLC was nothing more than a commercial landlord to ordinary commercial tenants, despite its aspirations to be a cannabis manufacturing facility. 6 AA 1680:12-17, 1682:22-23. The Mira Este facility was generally nonfunctional as well; not until August 2018, after SoCal had been fired, did it begin operating. 6 AA 1679:17-24, 1680:18-23.

As for Balboa, although SoCal opened the doors and kept it running, they stopped paying the taxes, rent, HOA settlement, and management fees owed. 2 AA 485-486; 6 AA 1682:4-23. The employees they hired never underwent criminal background checks as required. 2 AA 484:24-25. The employees stole marijuana and smoked it on the premises. 2 AA 485:1-8. They "lost" almost 50% of inventory on some days; any discrepancy larger than 5% is cause for the state revoking the license. Id.; 3 AA 749:14-750:2; 3 AA 809:17-27. They did not pay their employees using formal records, failed to pay overtime, and failed to withhold taxes. 2 AA 485:9-15. They stored marijuana in an unpermitted location, incurring a code violation notice from the City of San Diego. 2 AA 485:19-486:5; 3 AA 699-702. They hired a security guard with a prior conviction and outstanding warrant for his arrest. 2 AA 486:6-20; 4 AA 1188:1-4 (declaration from guard acknowledging warrant remained outstanding until August 3, 2018), 1193-1194. They left garbage all over the building.

Most significantly, SoCal did not pay the minimum guaranteed payments as they had promised in the three management agreements. They owed $55,000-$60,300 per month in rent to Mira Este Properties, LLC (2 AA 299:§5.2), another $56,000-$63,000 per month to Monarch Management Consulting, Inc. for operating Mira Este (2 AA 394:§2.2.8), $50,000 per month to Monarch Management Consulting, Inc. for operating Roselle (2 AA 316:§2.2.8), and $35,000 per month to Monarch Management Consulting, Inc. for operating Balboa (2 AA 414:§2.2.8). They stopped making these payments in May 2018, two months before they were terminated. 17 AA 5561:1-15; 8 AA 2401:16-2402:24 (describing SoCal's failure to pay $451,554 owed to Mira Este).

SoCal had stopped paying money owed to Defendants because Plaintiff Salam Razuki told them he secretly owned Defendants, and would cut SoCal in on some profits if they starved out Defendants' current owners. 6 AA 1682. SoCal agreed to withhold money and collaborated with Plaintiff Razuki to file this lawsuit. 1 AA 130:¶42, 239:14-21 (stating SoCal withheld money because Razuki told SoCal he owned the Defendants), 252:19-21 (describing meeting with SoCal), 253:8-17 (same).

Defendants began giving SoCal notices to cure starting in March 2018. 2 AA 488:18-21. Defendants sent formal 25-day written notices to cure on June 1st and 28th, 2018. 2 AA 488:11-21; 3 AA 602-604, 678-679. SoCal did not cure its defaults, so Defendants fired them on July 9th, banned them from the premises on July 10th, and replaced them with a new management company. 2 AA 488-489; 4 AA 822:5-15, 852 (termination letter), 856. As of mid-July 2018, the new management company was doing fine, cleaning up SoCal's mess. 3 AA 749-750, 809:12-810:3.

4.11. Throughout 2018, Plaintiff Razuki testifies repeatedly he does not own any of the Defendants.

Meanwhile, Plaintiff Razuki had been generally leaving Mira Este, Balboa, and Roselle alone after calling off the Transfer Agreement. He was busy with other lawsuits, including one in which he testified he did not have any ownership of the Defendants or any relationship with Malan:

1. "San Diego United Holding Group, LLC, I don't have nothing to do with that." 9 AA 2758:12-15.
2. "I don't have any interest, as I say, in San Diego United Holding." 9 AA 2760:1-7.
3. "I am saying I don't have a direct interest in San Diego United Holding." 9 AA 2760:5-7.
4. "[Q:] You are engaged in a marijuana dispensary with Ninus Malan; is that correct? [A:] This is incorrect." 9 AA 2752:25-2753:4.
5. Other than Ninus Malan, Razuki "doesn't know" who else might have an ownership interest in San Diego United Holdings Group, LLC. 9 AA 2761:8-11.

4.12. Plaintiff Razuki starts claiming he owns Defendants and files this lawsuit in July 2018.

The parties' détente ended in June 2018, when Malan learned that Razuki had been telling people, including SoCal, that Razuki owned San Diego United Holdings Group, LLC and the Balboa dispensary – contradicting his deposition testimony from March 2018 and his statements in this very lawsuit. 2 AA 490:10-17; 1 AA 253:8-22. Defendant San Diego United Holdings Group, LLC was forced to file a cross-complaint in a separate lawsuit to quiet title against Razuki in June 2018. 3 AA 664-676 (complaint for quiet title).

On July 10, 2018, Plaintiff Salam Razuki filed this lawsuit. 1 AA 86-111 (complaint). He amended the complaint three days later. 1 AA 121-

151 (amended complaint). Three days after that, without serving the summons or complaint on any party, Plaintiff Razuki appeared ex parte and asked the court to put Malan's companies into receivership. 1 AA 227. Plaintiff's counsel told the court he had not served any of the defendants he was asking to put into receivership. 1 R.T. 8:2-28.

The lawsuit and the ex parte application were based on the Transfer Agreement. The first amended complaint and the ex parte application says Malan did not transfer the companies into the holding company as promised. They do not say, though, that Razuki transferred his own companies into the holding company. The complaint mentions a previous "oral agreement" to split Razuki's and Malan's companies 75%/25% between them, but the written Transfer Agreement says "any prior discussions and negotiations, if any, are superseded by this Agreement." 1 AA 90:14-19, 96 (third cause of action), 269:§4.1 ("Integration" clause of Transfer Agreement).

4.13. Razuki appears ex parte to appoint receiver Michael Essary, who promises to hire SoCal again – which, at this point, is a Plaintiff itself.

Plaintiff Razuki appeared ex parte on July 17, 2018 and asked the court to appoint receiver Michael Essary to control Defendants-Appellants. 1 AA 239-240.

In the ex parte application, Razuki admitted he had not performed under the Transfer Agreement; he claimed he was excused from performing to "accommodate Malan." 1 AA 242:19-27. He said he "orally agreed" to extend the "time in which to transfer" the marijuana businesses to the holding company, RM Property Holdings, LLC. 1 AA 251:11-24. The Transfer Agreement, however, says "No modification, waiver,…or

any change of this Agreement shall be valid unless the same is in writing and signed…." 1 AA 269:§4.3 ("Modification").

In the ex parte application to appoint the receiver, Plaintiff Razuki argued he was entitled to a receiver because:

1. Plaintiff SoCal paid $75,000 for an option to acquire the Balboa dispensary.
2. The "Marijuana Operations" generated $100,000 per month, which Razuki was not receiving.
3. Defendants Ninus Malan and Chris Hakim fired SoCal as manager of the marijuana businesses.
4. The new manager of the marijuana businesses "risks irreparable harm to SoCal and Razuki" because it will "disrupt SoCal's business operations and strategy." 1 AA 239:8-13. It will irreparably harm Razuki because "there is no guarantee a new buyer will offer the same purchase price" for the Balboa dispensary as SoCal supposedly "offered" at some point. 1 AA 239:14-21.

1 AA 239-240.

The ex parte application offered no evidence that the businesses were in danger of collapse or would go to waste without a receiver.

In the application, Plaintiff Razuki promised that the receiver he suggested, Michael Essary, would "allow[] SoCal Building to run the Marijuana Operations…." 1 AA 241:8-13. SoCal appeared simultaneously and became a Plaintiff on the same day. At the hearing, Plaintiff's counsel promised the judge the proposed order – which the judge said he had read "only peripheral[ly]" – would "preserve the status quo." 1 R.T. 3:16-18, 6:1-6.

Plaintiff's counsel told the court that Plaintiff Razuki "owns 75 percent of these operations," despite the complaint alleging (1) Malan owns the operations, and (2) Malan was supposed to transfer them to the

holding company, not Razuki. 1 R.T. 5:24-26; 1 AA 92-93. In the complaint and the written ex parte paperwork, Plaintiff admitted Defendant Malan owns 100% of these companies. 1 AA 247-248. He admitted he had no claim to profits from Balboa Ave Cooperative, Monarch Management, California Cannabis Group, or Devilish Delights. 1 AA 234:16-26, 249:1-7. He nevertheless wanted to add them to the receivership because he thought they had contracts with San Diego United Holdings Group, LLC, Flip Management, LLC, Mira Este Properties, LLC, and Roselle Properties, LLC – companies in which Razuki also did not claim any ownership. 1 AA 242:15-27. None of these reasons were explained to the judge at the ex parte hearing. 1 R.T. 1-12.

Not coincidentally, Plaintiff SoCal appeared ex parte at the same time as Razuki. 1 AA 161. With Plaintiff Razuki's express consent, Plaintiff SoCal asked for leave to file its complaint-in-intervention. 1 AA 173:1-19 (declaration from SoCal's attorney stating Razuki consented to SoCal becoming a plaintiff five days before it happened), 231:14-16 (declaration from Razuki's attorney confirming conversation with SoCal). SoCal became a Plaintiff.

4.14. Within ten days of appointment, Receiver Michael Essary hires Plaintiff to manage Defendants and spends 80% of Defendants' money paying himself and Plaintiff – ignoring taxes and mortgage due.

The receiver hired whom Salam Razuki told him to hire. First he hired Plaintiff SoCal to manage the Defendants. Then he hired a convict working for Razuki to provide security: "Salam Razuki contacted [security guard with warrant for his arrest, Jorge Aguilar] on or around July 16, 2018," and told him "he would need security at one of his retail dispensaries": Balboa. 4 AA 1188:11-17. This was the same time the receiver was in charge of that dispensary. Aguilar "provided security for

the Balboa dispensary from July 17, 2018 until July 31, 2018" – the beginning and end dates of the receiver's initial appointment. 4 AA 1188:15.

On July 25, 2018, less than ten days after his appointment, the receiver gave $10,000 to the attorneys working for Plaintiff SoCal, hiring them as his "consultants." 8 AA 2381:1-11 (attorney Aaron Lachant, of Nelson Hardiman firm, declaring receiver hired him), 2380:1-8 (signature block showing Nelson Hardiman representing Plaintiff SoCal). Although Balboa owed $175,000 in back taxes, receiver Michael Essary spent tens of thousands paying himself, his attorney, and Plaintiff SoCal. 9 AA 2921:19-2922:5. When he was re-appointed in August, he paid $30,000 to a malfeasant accountant that the court specifically ordered him not to pay. 9 AA 2935:23-2936:4. He spent $10,000 on SoCal's attorneys' consulting firm within two days of taking control. 15 AA 5047 (charge for $10,000 to MMLG). Within five days, he'd spent $17,000 on himself. Id. (item #26). He spent more than $50,000 on his own attorney and other consultants. Id. (items 27, 28, 31, 32, 33). He gave another $50,000 to his attorney and a third-party accounting firm a week later. 15 AA 5048 (items 48, 50, 52, 54). None of these charges were approved by the court in advance. The court never gave permission to spend these amounts.

While he was spending money on himself and SoCal insiders, the receiver consistently failed to pay the mortgage on the properties in receivership. 19 AA 6360-6361; 15 AA 4939:17-4941:19 (chronicling receiver's failure to pay bills and improper prioritization of paying himself instead of mortgages, settlement payments, and other bills); 15 AA 5002 (list of expenses receiver did not pay), 5004 (receiver admitting he used funds to pay his own fees and attorney's fees instead of mortgage), 5009 (receiver claiming "ALL other expenses are secondary to" his own fees).

He should be removed. As of June 2019, the mortgage lenders were threatening to foreclose on the properties because the receiver had not paid the mortgage.

4.15. Holding company dissolves.

Despite asking the court to force Malan to transfer property to the holding company, Plaintiff's first amended complaint also asks to wind up and dissolve RM Property Holdings, LLC. Defendant Malan filed a cross-complaint asking for the same relief.

RM Property Holdings, LLC's operating agreement says no one gets his membership interests or distributions of profits until he transfers the capital contributions to the LLC. 12 AA 3937:§1.9, 3947:§6.1, 3952:§7.3, 3956:§9.1. The capital contributions consist of cash and the interests in Sunrise Property Investments, Super 5 Consulting Group, and the other marijuana LLCs. 12 AA 3960-3962. Because neither Malan nor Razuki transferred the capital contributions, neither received a membership interest in the holding company.

In January 2019, the holding company's manager and sole organizer, Malan, filed documents with the Secretary of State dissolving and canceling the company. Today the holding company, RM Property Holdings, LLC, is a cancelled and dissolved company, whose privileges and powers have ceased. 18 AA 5915-5916 (certificates of cancellation and dissolution).

4.16. Court removes receiver, but after a peremptory challenge, a new judge re-appoints him sua sponte.

After a peremptory challenge to the judge who appointed the receiver, a second judge vacated the receivership on July 31, 2018. 2 AA 338, 465; 4 AA 1101-1102 (order). The court found that the proposed order Plaintiffs had asked the first judge to sign was "contrary to what

Judge Medel had been told." 2 R.T. 248:12-15. The second judge directed the parties to "proceed via a noticed motion" if they sought to re-litigate the question of the receiver. 4 AA 1102.

Plaintiff SoCal exercised a peremptory challenge to that judge, and the case was reassigned to Hon. Eddie C. Sturgeon. 4 AA 1098.

Acting sua sponte with no request from any party and no noticed motion filed, Judge Sturgeon set a hearing on August 14, 2018. At that hearing, he made no rulings, but set a hearing for August 20th to determine whether to re-appoint a receiver. 3 R.T. 318-321. No ex parte application had been filed. No motion had been filed. The hearing was set entirely on the court's own motion.

On August 20, 2018, the parties appeared for Judge Sturgeon's sua sponte hearing. On August 20, 2018, the court found: "Second thing I got to do is determine whether there is imminent harm, irreparable harm. The Court's made that finding based on the amount of money that allegedly have been put into this case." 4 R.T. 422:20-24. The court appointed the receiver, Michael Essary, again. Over objections, the court signed a written order appointing the receiver on August 28, 2018. 8 AA 2499. The court deemed the receiver's $10,000 bond sufficient, and did not require Plaintiff Razuki to post a bond. 8 AA 2500:11-12. The court set a hearing for September 7, 2018 on whether to issue a preliminary injunction keeping the receiver in place. *Id*.

The court held a hearing on September 7, 2018 and issued a preliminary injunction appointing the receiver, giving him control of San Diego United Holdings Group, LLC, Flip Management, LLC, Balboa Ave Cooperative, Mira Este Properties, LLC, California Cannabis Group, and Devilish Delights, Inc. 5 R.T. 578-579. The court ordered the receiver to hire an accounting firm to conduct a forensic accounting of the Defendants

in receivership. 5 R.T. 584. The court told the receiver to operate under the previous temporary restraining order until the court signed a new one. 5 R.T. 601:11 ("You're still a receiver").

In the written preliminary injunction order, which the court did not sign until September 26, 2018, the court ordered these companies into receivership without the Plaintiff first posting a bond. 13 AA 4399-4406. The order gave Plaintiff until September 21, 2018 to post a $350,000 injunction bond; it did not require Plaintiff to post the bond before getting the receiver. 13 AA 4400:15-16. The order was signed September 26, 2018. 13 AA 4399-4406.

4.17. Defendants-Appellants file this appeal, so Plaintiff Razuki tries to murder Defendant Ninus Malan to stop the appeal.

After Defendants filed this appeal, Plaintiff Razuki decided to try to murder Defendant Malan. 19 AA 6425-6429; 6362-6365. At least one of the reasons was that it "looks like they're going to appeal". 19 AA 6425.

In October 2018, Plaintiff Razuki and an employee met with who they thought was a hit man. 19 AA 6425-6429. (In reality, he was an FBI informant.) They said they had invested in multiple properties and business ventures with Defendant Malan and were now involved in a civil dispute over their assets. They wanted to "shoot him [Malan] in the face," "to take him to Mexico and have him whacked," or kill him in some other way. *Id*. They gave the hit man a picture of Defendant Malan, which the hit man/informant provided to the FBI.

On November 5, 2018, the hit man met with Razuki's employee, who asked if the hit man could "get rid of Salam's [Razuki] other little problem, [Malan], because it looks like they're going to appeal." She said

the civil dispute between her, Razuki, and Malan, and Malan involved over $44 million. She said, “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 [Malan], he's costing me too much money!" They wanted this to occur before the next court date in this lawsuit, scheduled on or about November 15, 2018. 19 AA 6425-6429. The plot was foiled and Malan was taken into protective custody.

Plaintiff Razuki has never denied trying to hire a hit man to murder Ninus Malan as a litigation tactic.

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). 19 AA 6423-6424.

4.18. Court refuses to remove receiver despite several requests.

On November 30, 2018, the court denied a request to remove the receiver, saying “My decision is being influenced by this, Counsel, okay, by Mr. Brinig's report. And I'll tell you. It's -- a considerable amount of it.” 7 R.T. 852:7-14. Brian Brinig is an account hired by the receiver. His “report” consists entirely of hearsay statements about what attorneys and the parties told him about how much money they paid to each other. Defendants-Appellants objected: “Just for the record, Your Honor, we object to consideration of the report in that it's hearsay based on hearsay” 7 R.T. 713:9-13. The court overruled the objection and relied on the report anyway. 7 RT 713:12-13.

5.0. STANDARD OF REVIEW

Whether Plaintiff Salam Razuki lacks standing to appoint a receiver to control businesses which, under Plaintiff’s theory of the case, are actually the property of a cancelled, dissolved, third party holding company, is a

question reviewed de novo. *Charpentier v. L.A. Rams Football Co.* (1999) 75 Cal. App. 4th 301, 306-307.

"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. Razuki hired a hit man to kidnap Malan, bring him to Mexico, and murder him to prevent this appeal from going forward because this litigation was "costing him a lot of money," according to the FBI.

Whether the trial court lacked jurisdiction to appoint a receiver, or perform any other act, is a legal question reviewed de novo when the jurisdictional facts are not in dispute. *Dabney Oil Co. v. Providence Oil Co.*, 22 Cal. App. 233, 237; *Robbins v. Foothill Nissan* (1994) 22 Cal.App.4th 1769, 1774.

If the trial court had jurisdiction, the Plaintiff had standing, and unclean hands does not bar equitable relief, then this court applies a hybrid substantial evidence/abuse of discretion test to the trial court's appointment of the receiver.

Though the trial court is vested with discretion in deciding whether to appoint a receiver, this court closely scrutinizes an appointment order because it deprives the appellant of property without a trial, and "abuse of discretion" is not the sole standard of review. "An abuse of 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." *City of Crescent City v. Reddy* (2017) 9 Cal.App.5th 458, 466. When evaluating factual findings supporting the trial court's decision, the appellate court is "applying the substantial evidence test on appeal," and only after finding substantial evidence does the court review the appointment for abuse of discretion. *Id*. The two

standards are intertwined when the drastic remedy of a receiver is the subject of review.

And when the record does not show the trial court made findings of fact, this court, when applying the substantial evidence test, will not presume the correctness of the trial court's decision. "Where a respondent argues for affirmance based on substantial evidence, the record must show the court *actually performed* the factfinding function. Where 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.

The trial court here did not weigh the evidence, make findings of fact, or explain the basis of any of its rulings. It did not find, for example, that a lesser remedy was inadequate. It did not weigh whether the receivership would hurt the businesses more than it would help them. The court did not find Plaintiff Razuki had a probable property interest in any of the businesses in receivership – an impossibility, since Razuki himself claims only the right to derive dividends from the businesses profits, not an ownership interest. The court did not find that the property was at risk of irreparable harm without a receiver, except to say "the amount of money that allegedly have been put into this case" shows irreparable harm; and, legally, it does not. 4 R.T. 422:20-24. Money is *reparable* harm compensable with money damages. Because the trial court did not properly make findings of fact, its decision should not be afforded deference.

6.0. LEGAL ARGUMENT

A court's powers to appoint receivers are circumscribed by the Code of Civil Procedure: "The requirements of Code of Civil Procedure section 564 are jurisdictional, and without a showing bringing the receiver within one of the subdivisions of that section the court's order appointing a receiver is void." *Turner v. Superior Court* (1977) 72 Cal.App.3d 804, 811. "Receivers are often legal luxuries, frequently representing an extravagant cost to a losing litigant. 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." *City and County of San Francisco v. Daley* (1993) 16 Cal.App.4th 734, 744. In exercising its discretion, "a trial court must consider the availability and efficacy of other remedies in determining whether to employ the extraordinary remedy of a receivership." *City and County of San Francisco v. Daley* (1993) 16 Cal.App.4th 734, 745.

Plaintiff Salam Razuki failed to satisfy any of the subdivisions of Section 564, and a preliminary injunction against sale of the businesses would have sufficed, but the trial court appointed the receiver anyway. The court lacked jurisdiction to appoint the receiver, so its order is void.

6.1. Receiver was appointed without an order requiring applicant to post a bond, voiding the original appointment order and all derivative orders.

The September 2018 order confirming the receiver is void on its own merits, and also because it is a continuation of two earlier void orders from July 2018 and August 2018. The validity of an order appointing a receiver "must be determined by the proceedings upon which it is based." *Bibby v. Dieter* (1910) 15 Cal.App. 45, 48. If the original order appointing a receiver is void, "in such case the appointment is an absolute nullity" and "could not

be validated by any subsequent proceeding." *Bibby*, supra, 15 Cal.App. at 48. This is especially true if the original order was granted ex parte, and still true even if a court affirms it on noticed motion. *Id*.

"Section 566 of the Code of Civil Procedure provides: 'If a receiver is appointed upon an ex parte application, the court, before making the order, must require from the applicant an undertaking.'" *Id*. The receiver must also post a bond, but the Code requires the *applicant* to post an undertaking as well. "If a receiver is appointed upon an ex parte application, the court, **before** making the order, must require from the applicant an undertaking in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages the defendant may sustain by reason of the appointment of the receiver…." Code Civ. Proc. §566(b).

In *Bibby v. Dieter*, the court appointed a receiver ex parte, but did not require an undertaking from the applicant: "Here it was, as we have seen, an ex parte application and the order was made without an undertaking being required. These inferences, therefore, necessarily follow from the admitted situation: The order is void and it could not be validated by any subsequent proceeding." *Bibby*, supra, 15 Cal.App. at 48.

Here, as in *Bibby*, the order appointing the receiver in July 2018 did not require an undertaking from the applicant before the order would take effect. The Plaintiff appeared ex parte without serving the summons and convinced the court to sign an order appointing a receiver without requiring the applicant to post a bond. The court appointed the receiver and gave Plaintiff five days to file a $10,000 bond – a five-day grace period which is illegal. 2 AA 353:18-22. As in *Bibby*, this "order is void and it could not be validated by any subsequent proceeding." *Id*.

In August 2018, after a two-week period in which the court vacated the receivership, the court again appointed the same receiver sua sponte. Despite Section 566's mandate that the court require an undertaking "**before** making the order," the August 20th order appointed the receiver without first demanding an undertaking from the applicant. 4 RT 439:8-18 (order goes into effect, bond to be decided in September). The court's written order on that same hearing, signed August 28th, notes that the *receiver* posted a receiver's bond of $10,000, but says nothing about the *applicant's* statutory obligation to post a bond. 8 AA 2500:11-12. This order was also void because it violates Section 566, exceeding the court's jurisdiction.

On September 7th, the court orally issued a preliminary injunction affirming the appointment. This order was void because it was based on the July and August 2018 orders, which were issued without a bond requirement. It's also void because the September 7th order, while it required the applicant to post a bond, did not require him to post it *before* the receiver would be appointed. Instead the court appointed the receiver without a bond in place, and allowed the Plaintiff 14 more days to post the bond. 5 RT 599:24-600:9. This violates Section 566 and makes the order void.

Plaintiff did not post a $350,000 bond until September 20th. 6 RT 622:16-17. Even then, the posted bond did not name the correct beneficiaries, in violation of the court's September 7th order and the Code of Civil Procedure. 6 RT 622:26-623:9. Without a bond in place, the receiver could not serve. He should have been removed and Defendants' property immediately returned to them.

On September 26th, the court signed a written order prepared by the receiver's counsel, confirming the oral order from the September 7th

hearing. 13 AA 4399. It affirmed the appointment of the receiver and gave the Plaintiff until September 20th – a date which had already passed – to post the $350,000 bond. 13 AA 4400:15-16. The written order did not require the Plaintiff to post the bond before the receiver would be appointed, however, so it too is void for violating Section 566.

If the original order appointing a receiver is void, "in such case the appointment is an absolute nullity" and "could not be validated by any subsequent proceeding." *Bibby v. Dieter* (1910) 15 Cal.App. 45, 48. Every order appointing, re-appointing, or confirming the receiver is void because it took effect before Plaintiff Razuki had to post a bond.

6.2. Plaintiff failed to serve the complaint on all adverse parties as required by Rule 3.1176(b)-(c), so the court should not have appointed the receiver.

When an applicant obtains a receivership ex parte, the applicant has five days to serve on each adverse party the complaint, the memorandum supporting the application, and the supporting declarations. Rule 3.1176(b). If a party "has failed to exercise diligence to effect service upon the adverse parties as provided" in the Rules, the court "may discharge the receiver." Rule 3.1176(c). Plaintiff never served the summons or complaint on Defendants. To this day, Plaintiff still has not served the summons or complaint. The order appointing the receive is void and should be vacated.

6.3. The court appointed the receiver ex parte and kept him in place for more than 22 days without a hearing or bond, violating Rule 3.1176(a) and Code Civ. Proc. §566.

"Whenever a receiver is appointed without notice, the matter must be made returnable upon an order to show cause why the appointment should not be confirmed." Cal. Rules of Court, Rule 3.1176(a). "The order to show cause must be made returnable on the earliest date that the business

of the court will admit, but not later than 15 days or, if good cause appears to the court, 22 days from the date the order is issued." *Id*.

The court did not do that, so the order - granted ex parte - is void, and all derivative orders based on it are also void. On July 17, 2018, on Plaintiff's ex parte application, the court appointed the receiver and set a hearing for August 10, 2018 – 24 days later. No good cause justified the extension beyond 15 days, but even if there were cause for another week of receivership, the hearing was still supposed to happen within 22 days. 24 days is longer than the Rules allow. The July 2018 order appointing the receiver is therefore void.

On August 20, 2018, the court again appointed the receiver – sua sponte. This time, the court set a hearing for September 7th, once again beyond the 15-day period allowed by the Rules. On September 7th, the court orally issued a preliminary injunction without discharging the order to show cause. It kicked the can down the road, maintaining the receiver until September 26th, when it finally signed a written order appointing the receiver.

By September 26th, the receiver had been in place, off and on, since July 17th without a formal hearing on whether to confirm his appointment. The court's July, August, and September orders are void for violating Rule 3.1176(a) and Section 566, a jurisdictional statute.

6.4. The Transfer Agreement is void for violating public policy at the time it was created, so Plaintiff has not shown the requisite likelihood of success on the merits.

An agreement with an illegal object is unenforceable, and a Plaintiff cannot get a receiver appointed based on an invalid contract. Civ. Code §1668, §1608 (unlawful consideration voids entire contract). "No principle of law is better settled than that a party to an illegal contract cannot come

into a court of law and ask to have his illegal objects carried out." *Yoo v. Jho* (2007) 147 Cal.App.4th 1249, 1251. "In determining whether the subject of a given contract violates public policy, courts must rely on the state of the law as it existed at the time the contract was made." *Bovard v. American Horse Enterprises, Inc*. (1988) 201 Cal.App.3d 832, 840 fn.3.

Here, the contract was made in November 2017, a time when the "state of the law" in California was that courts would refuse to enforce contracts for profits or ownership of businesses selling goods banned under federal law, like marijuana. "A violation of federal law is a violation of law for purposes of determining whether or not a contract is unenforceable as contrary to the public policy of California." *Kashani v. Tsann Kuen China Enterprise Co*. (2004) 118 Cal.App.4th 531, 543. When "the evidence establishe[s] both parties entered into the business purchase agreement with the knowledge that the business was substantially involved in the sale of [illegal] goods, and buyer specifically intended to continue selling such merchandise after taking over the business," courts will not enforce the contract. *Yoo, supra*, at 1255.

In *Bovard*, the parties agreed on the sale of a business manufacturing marijuana paraphernalia. The court held the contract was against public policy, based on "a statute prohibiting possession, use and transfer of marijuana." *Bovard*, supra, at 839-840. In November 2017 (and today), federal law still bans the manufacture, sale, distribution, and possession of marijuana for any purpose. 21 U.S.C. §§ 812 – Sch. I, §(c)(10), 841(a)(1), 844(a); see generally, *Gonzales v. Raich* (2005) 545 U.S. 1. Because the court must look at what the law said at the time the contract was made, rather than what it says today, to determine if the contract is enforceable, the court cannot enforce this contract for profits from the sale of marijuana.

Civil Code §1550.5(b) does not save this contract.

Civil Code §1550.5(b) states that commercial activity relating to medicinal cannabis is a "lawful object of a contract" only if "conducted in compliance with California law and any applicable local standards, requirements, and regulations." Civ. Code §1550.5(b). Otherwise, it is illegal, and contracts relating to it are unenforceable.

First, Section 1550.5(b) took effect in January 2018. "In determining whether the subject of a given contract violates public policy, courts must rely on the state of the law as it existed at the time the contract was made." *Bovard v. American Horse Enterprises, Inc*. (1988) 201 Cal.App.3d 832, 840 fn.3. This contract was created in November 2017, when the public policy of the state forbade such contracts. It cannot save the contract because it was not in effect at the time the contract was signed.

Second, Plaintiff offered no evidence that the marijuana activities are "conducted in compliance with California law and any applicable local standards". Civ. Code §1550.5(b). The Transfer Agreement says "Razuki is entitled to a seventy-five percent…interest in the capital, profits, and losses of each Partnership Asset". 4 AA 1211:§1.2. The "Partnership Assets" include Malan's partial ownership of Mira Este, Flip Management, and Roselle Properties, and Razuki's minority interest in Sunrise Property Investments, LLC and Super 5 Consulting Group, LLC. 4 AA 1211:§1.1(a). Sunrise and Super 5 consist of "various medical marijuana businesses," and "Super 5…is the operator of a medical marijuana dispensary…." 4 AA 1211:§1.1(f). Plaintiff argues that the other businesses are also engaged in selling marijuana. Because the Transfer Agreement related to profits derived indirectly from "various medical marijuana businesses," it is illegal and unenforceable unless Plaintiff shows that the activities of the businesses are conducted in compliance

with state and local law – and that's only if Civil Code §1550.5 applies. Because Civil Code §1550.5 was not in effect at the time the contract was signed, it does not save the contract even if the dispensaries were operating under state and local law.

Plaintiff's motion and complaint conveniently failed to mention Sunrise and Super 5; he says nothing about whether they are operating legally. Because the Transfer Agreement affirmatively states that all the businesses are "medical marijuana businesses," he needed to show these companies were operating in accordance with local law. There is no evidence in the record that the Sunrise and Super 5 marijuana businesses are operating legally, so Civil Code §1550.5 does not save this contract.

6.5. Plaintiff lacks standing because he sues as an individual to enforce the rights of a third party LLC that has since dissolved.

Plaintiff claims Defendant Malan failed to transfer property to an LLC, RM Property Holdings, LLC. Plaintiff Salam Razuki has no standing to assert this claim. *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). The claim belongs to the LLC, not to him. This lawsuit should have been brought derivative action, and Razuki has no standing to maintain it.

When "the essence of [a] plaintiffs' claim is that the assets of [an LLC] were fraudulently transferred without any compensation being paid to the LLC," "This constitutes an injury to the company itself. Because members of the LLC hold no direct ownership interest in the company's assets (Corp.Code, § 17300), the members cannot be directly injured when the company is improperly deprived of those assets. The injury was essentially a diminution in the value of their membership interest in the

LLC occasioned by the loss of the company's assets. Consequently, any injury to plaintiffs was incidental to the injury suffered by [RM Property Holdings, LLC].” *PacLink Communications Intern., Inc. v. Superior Court* (2001) 90 Cal.App.4th 958, 964–965.

This is not a close question. “An individual [stockholder] may not maintain an action in his own right ... for destruction of or diminution in the value of the stock,” which is what Razuki has done. *PacLink Communications Intern., Inc. v. Superior Court* (2001) 90 Cal.App.4th 958, 964–965 9 citing *Rankin v. Frebank Co.* (1975) 47 Cal.App.3d 75, 95).

Razuki sued in his individual capacity. But under Razuki’s theory of the case, the gravamen of his action is derivative, as it seeks to recover for injury caused to RM Property Holdings, the alleged owner of any member interests in some of the Defendants in receivership. Because the claims alleged properly belong to RM Property Holdings, and RM Property Holdings was not a plaintiff or defendant when the receiver was appointed, the relief Razuki seeks is improper. Razuki seeks to benefit individually when he should derive no benefit except the indirect result of getting dividends from assets that supposedly belong to RM Property Holdings. He cannot succeed on the merits of his claim, and without showing a likelihood of success, he should not have obtained a receiver.

Incidentally, Razuki cannot fix this problem. He does not own shares in the LLC because he has not made the capital contributions required by the RM Property Holdings, LLC operating agreement. He failed to transfer his own shares in Super 5 and Sunrise, as explained elsewhere in this brief. “California has a statute that imposes stock ownership requirements for standing to pursue a shareholder's derivative suit. …No action may be instituted or maintained in right of any domestic or foreign corporation by any holder of shares ... unless ...:[¶] (1) The plaintiff alleges in the

complaint that plaintiff was a shareholder, of record or beneficially ... at the time of the transaction or any part thereof of which plaintiff complains or that plaintiff's shares ... thereafter devolved upon plaintiff by operation of law from a holder who was a holder at the time of the transaction or any part thereof complained of." *Grosset v. Wenaas* (2008) 42 Cal.4th 1100, 1110. He does not own shares, does not claim to own shares, and even if he did own shares, he does not state as much in his complaint. He cannot maintain this lawsuit or the receivership appointment.

6.6. The receiver was not a neutral fiduciary, but rather an admitted agent of the Plaintiffs, and his appointment violates the maxim that a receiver must act as a fiduciary.

Even if a receiver were theoretically permissible, this particular receiver is not. Michael Essary is an agent of the Plaintiffs who should not have been allowed to keep control of Defendants.

6.6.1. It is illegal for a receiver to make arrangements with Plaintiff about how to run a business in receivership, and that is what this receiver has done, so the court should not have appointed him.

A receiver is supposed to be an "agent of the court, not of the parties," and "is under the control and continuous supervision of the court." *Turner v. Superior Court* (1977) 72 Cal.App.3d 804, 813. The receiver must be neutral and owes a fiduciary duty to the parties and the court. Rule 3.1179(a); *Highland Securities Co. v. Super. Ct.* (1931) 119 Cal. App. 107, 112; *City of Chula Vista v. Gutierrez* (2012) 207 CA4th 681, 685 ("receiver is also a fiduciary"). "Confidential and fiduciary relations are, in law, synonymous, and may be said to exist whenever trust and confidence is reposed by one person in the integrity and fidelity of another." *Estate of Cover* (1922) 188 Cal. 133, 143. In a fiduciary relationship, "the party in whom the confidence is reposed, if he voluntarily accepts or assumes to

accept the confidence, can take no advantage from his acts relating to the interest of the other party without the latter's knowledge or consent." *Wolf v. Superior Court* (2003) 107 Cal.App.4th 25, 29.

"When a fiduciary enters into a transaction with a beneficiary whereby the fiduciary's position is improved, or he obtains a favorable opportunity, or where he otherwise gains, benefits, or profits, it may fairly be said that an advantage has been obtained." *Bradner v. Vasquez* (1954) 43 Cal.2d 147, 152. The party seeking a receiver "may not, directly or indirectly" enter any "arrangement **or understanding**" concerning the receiver's role in "**who the receiver will hire**, or seek approval to hire, to perform services." Rule 3.1179(b).

From the beginning, this receiver has not acted neutrally, violating Rule 3.1179(b), which states "the party seeking the appointment of the receiver may not, directly or indirectly…enter into any…arrangement…concerning…who the receiver will hire, or seek approval to hire, to perform necessary services." Before his appointment, this receiver entered an illegal arrangement with Plaintiff Razuki concerning who the receiver will hire to manage Defendants' businesses. Plaintiff Razuki's ex parte application brazenly disclosed he had obtained the receiver's promise to re-hire the other Plaintiff, SoCal Building Ventures, a negligent management company, to "perform necessary services" at the Balboa dispensary:

> "If a receiver is appointed over all Marijuana Operations, the receiver can reinstate SoCal Building as the operator…" 1 AA 240:17-19. "A receiver will merely reestablish the status quo by allowing SoCal Building to run the Marijuana Operations." Id. at 241:9-11. "Razuki is attempting to reinstate SoCal Building as the operator of the Marijuana Operations…." Id. at 241:25-27.

This was an illegal arrangement in violation of Rule 3.1179(b). The receiver did in fact re-hire Plaintiff SoCal. This receiver, who disregarded his duty to act independently of Plaintiff, cannot serve.

Plaintiff Razuki has argued in the past that he did not enter an arrangement with the receiver and SoCal. That is belied by his own declaration on July 16, 2018, in which he states: "A true and correct copy of Michael Essary's CV and Rate Sheet are attached…I have been advised by my counsel that Mr. Essary is…well-equipped to handle this receivership if the court grants my application." 1 AA 256:11-13. He hand-picked the receiver and attached his CV to the ex parte application for his appointment. He spoke to the receiver before he was appointed and confirmed that he would hire the other Plaintiff: SoCal. We know this because he says so. 2 AA 356:3-5. Plaintiff Razuki filed a proposed order with Judge Medel, the first judge assigned to this action, directing the receiver to appoint Plaintiff SoCal to control Defendants: "The Receiver will have the authority and power to bind the Marijuana Operations to the terms of the Management Agreements (a copy of which is attached as Exhibits A, B, and C, hereto) with SoCal Building Ventures, LLC." 2 AA 356:3-5.

Plaintiff SoCal is not just a negligent operator fired for malfeasance. They are also a plaintiff, and the receiver cannot hand over Defendants' property *to the Plaintiff*. That is a breach of his fiduciary duties *to the Defendants*. The receiver cannot hire a party with whom he had any sort of "arrangement", and he *definitely* had an arrangement with them – he hired them within 24 hours of being appointed back in July, at the express request of Plaintiff Razuki. From the very beginning, this receiver has not acted neutrally. He is not acting like Defendants' fiduciary. Receiver Michael Essary must be dismissed.

6.7. The receiver cannot be appointed because Plaintiff has not shown a probable interest in Defendants' property; he cannot succeed on claims for breach until the contract's conditions precedent have been satisfied, and he has not satisfied them.

Defendant Ninus Malan is one of only two parties to the transfer agreement. None of the other defendants signed the agreement, so Plaintiff cannot succeed on claims against them as a matter of law – because he *has* no claims against them. Defendants Balboa Ave Cooperative, Devilish Delights, California Cannabis Group, San Diego United Holdings Group, Mira Este Properties, and Flip management must be released from receivership because Plaintiff can show no likelihood of success against companies that did not do anything wrong. Balboa Ave Cooperative, Devilish Delights, and California Cannabis are not even mentioned in the Transfer Agreement; they are non-profit mutual benefit corporations who cannot be owned by Plaintiff or RM Property Holdings as a matter of law. In non-profit cooperatives, "No member may transfer a membership or any right arising therefrom." Corp. Code §12410(a)(1). Defendant Malan does not have the lawful power to transfer ownership of non-profit mutual benefit cooperatives even if he wanted to.

Against Defendant Malan, Plaintiff's claims fail because Plaintiff did not satisfy the contract's conditions precedent before suing on it. "Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his part to the obligation of the other party" (Civ. Code, § 3392), and Plaintiff Razuki has not performed conditions precedent. Before Malan must transfer anything, Plaintiff must:

1. Transfer Plaintiff's shares in Super 5 and Sunrise to RM Property Holdings.

2. Perform an accounting of Plaintiff's finances and properties and determine how much of them is owned by Malan.

3. Capitalize RM Property Holdings.

1 AA 155:§§2.1, 2.2, 2.3; 1 AA 154:§1.1(e)-(f).

Plaintiff did not do any of this. His failure to perform has a few consequences.

First, the court cannot find Malan in breach because "a party's failure to perform a condition precedent will preclude an action for breach of contract." *Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1192. If Plaintiff wants to sue for breach, he needs to perform an accounting and transfer his shares within 30 days of signing the contract – and it is too late for him to perform now.

Second, even if Malan were in breach, the court could not order him to specifically perform because Plaintiff's own promise "has not been substantially fulfilled." Civ. Code §3391(3).

Third, without Plaintiff's promised shares and an accounting, the contract's consideration fails, so there can be no breach and the court cannot order Malan to perform. Civ. Code §3391(1).

Plaintiff should tend his own garden before invading someone else's. He did not transfer his shares in Sunrise and Super 5 within the 30-day deadline, so he cannot specifically enforce the contract.

6.8. Plaintiff cannot obtain a receiver under the catchall provision of Section 564(b)(9) because the complaint alleges facts invoking a more specific subdivision – which elements he does not satisfy.

In his moving papers, Plaintiff asked for a receiver under Section 564(b)(9), which allows a receiver "to preserve the property or rights of any party."

But the catch-all provision of Section 564(b)(9) cannot be invoked where the complaint alleges facts placing it within one of the more specific subsections of §564. *Dabney Oil Co. v. Providence Oil Co*. (1913) 22 Cal. App. 233, 237. The first amended complaint says the basis for the receiver is Code Civ. Proc. §564(b)(1), a more specific provision. 1 AA 140:¶127. Under this subdivision, the court may appoint a receiver only "in an action…between partners," when 'the property or fund is in danger of being lost, removed, or materially injured." *Id*. To get a receiver, Razuki was supposed to prove the property was at risk of loss; he did not prove that, so the receiver should not have been appointed under the only clause available, Section 564(b)(1).

But even if Section 564(b)(9) applied, a careful reading of Plaintiff's moving papers and first amended complaint shows that Plaintiff claims no property interest or right in Balboa, Mira Este, or Roselle. Plaintiff says he's a partial owner of *RM Property Holdings, LLC*, a different company. He says RM Holdings is supposed to own Balboa, Mira Este, and Roselle. But RM Holdings did not ask for a receiver, and Plaintiff is not acting on its behalf. Plaintiff therefore fails to meet the basic prerequisite of a receiver request: That the moving party has an interest in the property sought to be placed in the receivership. Plaintiff has no interest, and doesn't even claim an interest. Without meeting this first element of Section 564(b)(9), the order must be vacated. And because he does not show a danger of loss, Section 564(b)(1) is not satisfied either.

6.8.1. Even if subdivision (b)(9) applied, it still requires Plaintiff to prove imminent injury to his property, but he does not claim that any of the businesses in receivership are his property.

Assuming Section 564(b)(9) applies, the Plaintiff still has to show a receiver is necessary "to preserve the property or rights of any party." Code Civ. Proc. §564(b)(9). The Defendants in receivership are not Plaintiff's property, though. Plaintiff claims he will someday have the right to 75 percent of the profits and losses of RM Property Holdings, a company which was not a party to this action when the receiver was appointed. It is RM Property Holdings that has a potential claim to own *part* of *some* of the Defendants, not Plaintiff Razuki. Defendants are *not Plaintiff's property* – and Plaintiff's complaint does not allege that they are. If we accept 100 percent of Plaintiff's allegations, he will have the right to share in the losses of RM Property Holdings *after* he performs an accounting of his and Malan's assets, pays money to capitalize RM Property Holdings, and transfers his own shares in Sunrise and Super 5 to RM Property Holdings – *not before*. Even if he emerges victorious, triumphant in his ability to share in the losses of RM Property Holdings, the companies in receivership will not be his property. They will be owned in part by RM Property Holdings.

The same situation presented itself in *Rondos v. Superior Court, Solano County* (1957) 151 Cal.App.2d 190, 191–195. The trial court put a business called the Stork Club in receivership because the plaintiff came into court waving around a contract. The contract said the defendants agreed to sell the Stork Club to the plaintiff. They also agreed to form a holding company to operate the business – just like RM Property Holdings here. The parties' agreement said the defendants' interest would transfer upon close of escrow. But escrow never closed. Because the condition

precedent was not satisfied, the defendants rescinded the agreement, just like Malan rescinded the transfer agreement in this case. The plaintiff sued to force the sale, dissolve the holding company, perform an accounting, and distribute the assets according to each partner's interests – just like Plaintiff Razuki. The plaintiff asked for a receiver to manage Stork Club, which the trial court appointed. On appeal, the court "concluded that the order appointing the receiver is void." *Id*. at 193. The plaintiff did not own the Stork Club business or its assets, the appellate court held, because "by express stipulation of the contract title to…the business and its assets was not to pass until [close of escrow]," an event that never occurred. *Id*. "The result, therefore, is 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. The requirements of the statute are jurisdictional." *Id*. The order appointing the receiver was void.

Plaintiff Razuki demands control of Devilish Delights, Balboa Ave Cooperative, and California Cannabis Group – *member*-owned and *member*-operated mutual benefit corporations. 6 AA 1738:19-1739:4. He asks for control of these two corporations because he thinks he is entitled to their profits – even though he admits each is "a **non-profit** entity". See, e.g., 1 AA 92:1-3.

The complaint does not allege that Razuki owns any of these companies. It alleges only that he and Malan promised to transfer their interests in various companies to RM *Property* Holdings, LLC *after* they

"work together to calculate" an accounting of their "respective[1] cash investment amounts". 1 AA 128:¶32(b), 155:§2.2. After the accounting, the parties "shall execute an amendment or exhibit" to the Agreement – which means the agreement *was not finalized* and is thus not enforceable. After RM Property Holdings repays "the parties' cash contribution" – an indeterminate, unspecified amount – only then will RM Property Holdings begin distributing to Razuki 75% of the profits and losses **from RM Property Holdings** – not from the eight companies he wants in receivership. 1 AA 155:§2.3. The fact that the holding company would own shares in those eight companies does not give it the right to manage them, or to determine if any other shareholders have a right to their profits.

To summarize:

- Plaintiff Razuki is not entitled to profits from any of the companies listed in the application for receivership. 1 AA 155:§2.3 ("Razuki shall receive seventy five percent…of the profits and losses of the Company [i.e. RM Property Holdings]").
- The settlement says the parties must perform an accounting. Agreement 1 AA 155:§2.2.
- *After* they perform the accounting, the parties will transfer their interests in various companies to RM Property Holdings. Id. §2.2.
- RM Property Holdings must repay both parties' respective "cash investments," an unknown figure, before they receive any profits. Id. §2.2.
- *After* RM Property Holdings repays this unknown amount, Razuki will receive 75% of the profits and losses – but only profits/losses from RM Property Holdings. Id. §2.3. He is *never* entitled to profits or losses from any of the companies in receivership. He is entitled only to the profits of RM Property Holdings – a company which is

---

[1] The complaint's allegations say they only need to account for "Razuki's cash investment," but the settlement, attached as Exhibit A to the complaint, says they need to calculate *both* parties' investments.

> not in receivership, which Razuki wants to dissolve, which *has* dissolved, and which Razuki himself does not yet own any part of.

Plaintiff Razuki does not show that he owns any of the Defendants in receivership. He claims to own the right to the *losses* of RM Property Holdings, LLC, a company which is *not* in receivership and which has not asked for a receiver. Not even RM Property Holdings owns the companies at this point, because the conditions precedent have not been satisfied.

In briefing in the trial court, Razuki argued he gave money to Malan when Malan bought some of the properties in the receivership. He says this money gives him an ownership of those properties. But that's not the law in California. A lender of money does not own the property that the borrower spends the money on. Razuki's alleged contributions – most of which consist not of his own money, but of loans from even more remote parties, loans on which Malan is a co-signer – are, at best, loans. When a property owner borrows 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." *Haskell v. Wood*, (1967) 256 Cal. App. 2d 799, 805. In California, "[no] trust results in favor of one who lends money to another with which to buy land." *Id*.; see also *Perry* v. *Ross* (1894) 104 Cal. 15, 18; and *Vogel* v. *Bankers Bldg. Corp.,* (1952) 112 Cal.App.2d 160, 168. Plaintiff's purported status as a lender or investor does not make him an owner. The companies are not his property, so he cannot get a receiver under Code Civ. Proc. §564(b)(9), even if it applied.

6.9. Receivership statute – which is jurisdictional – requires Plaintiff to prove the receiver is necessary to prevent imminent injury, and there was no evidence the receiver would prevent any injury.

Plaintiff asked for a receiver under Code Civ. Proc. §564(b)(1), allowing a receiver only "in an action…between partners," when 'the property or fund is in danger of being lost, removed, or materially injured." *Id*.

Although subdivision (b)(9) of Section 564 allows a receiver in all other cases where "necessary to preserve the property or rights" of a party, this subdivision "cannot be invoked in a case presented by a complaint which alleges facts bringing it within one of the preceding subdivisions." *Dabney Oil Co. v. Providence Oil Co. of Arizona* (1913) 22 Cal.App. 233, 237. Plaintiff pleads a partnership, bringing this case under subdivision (b)(1) and obligating Plaintiff to prove a danger of irreparable injury.

First, there is no evidence the businesses needed a receiver. No one was destroying the businesses; Malan, Hakim, and the management were trying to grow them. Plaintiff Razuki argued at one point that Malan was trying to sell the businesses, but the non-profit cooperatives cannot be sold – they are owned by their members.[2] The for-profit businesses – San Diego United, Mira Este Properties, and Flip Management – could theoretically be sold, but there is no evidence that Malan had any plans to sell them. Even if there were, a preliminary injunction preventing the sale of those

---

[2] The court cannot specifically enforce "An agreement to perform an act which the party has not power lawfully to perform when required to do so." Civ. Code, § 3390. In non-profit cooperatives, "No member may transfer a membership or any right arising therefrom." Corp. Code §12410(a)(1). Malan does not have the lawful power to transfer ownership of non-profit mutual benefit cooperatives.

for-profit businesses would suffice to protect Plaintiff's imagined interests; a receiver was not necessary.

The receiver has damaged the businesses, not preserved them. 15 AA 4939:17-4941:19 (chronicling receiver's failure to pay bills and improper prioritization of paying himself instead of mortgages, settlement payments, and other bills); 15 AA 5002 (list of expenses receiver did not pay), 5004 (receiver admitting he used funds to pay his own fees and attorney's fees instead of mortgage), 5009 (receiver claiming "ALL other expenses are secondary to" his own fees). There was no threat of injury to the businesses until the receiver took over; the trial court's only finding of irreparable injury was "the amount of money that allegedly have been put into this case." 4 R.T. 422:20-24. That's not irreparable injury – that's *reparable* injury, money damages, and there was no evidence the money was going to imminently vanish without the receiver. Today the only threat to the businesses is the receiver himself. He should be removed.

6.10. Receivership is improper because Plaintiff's claims are compensable at law with money damages, obviating the drastic equitable remedy of receivership.

Plaintiff's claims are compensable – if at all – through money damages, so a receiver is not necessary.

"A receivership pending suit is a provisional, *equitable* remedy." *O'Flaherty v. Belgum* (2004) 115 Cal.App.4th 1044, 1092, as modified on denial of reh'g (Feb. 26, 2004) (citing Ahart, Cal. Practice Guide: Enforcing Judgments and Debts (The Rutter Group 2003) ¶ 4:850, p. 4–157.) Since a receivership is an equitable remedy, the equitable considerations governing injunction proceedings apply: There must be a showing of irreparable injury and inadequacy of other legal or equitable remedies. *Alhambra-Shumway Mines v. Alhambra Gold Mine Corp.* (1953)

116 Cal.App.2d 869, 873; *Bennallack v. Richards* (1899) 125 Cal. 427, 433 (holding party seeking receivership appointment must come into court with "clean hands").

All of Plaintiff's claims are compensable in money damages. Injunctive relief is unnecessary because Plaintiff does not claim to own anything unique. He does not claim to own real property. He does not even claim to own the holding company. He claims only a contingent right to future profits *and losses* from RM Property Holdings, LLC. If he feels like he's being deprived of those profits, he can try to prove damages at trial. But he does not need injunctive relief.

Plaintiff's claims are compensable at law, so the receiver is not necessary. The Transfer Agreement says Plaintiff is eventually entitled to 75 percent of the profits and losses of RM Property Holdings. Profits and losses are ***money***. They are not shares – they are not businesses, or conditional use permits, or marijuana dispensaries, or real property, or any other irreplaceable things. They are *money*. The complaint says Plaintiff is entitled to *money* – that's it. And he is allegedly entitled to money *from Malan* – not from the Defendants in receivership. The Defendants in receivership are not Plaintiff's property. If he proves his claims, the best he can hope for is damages against Malan, not ownership of the Defendants. Putting these other Defendants in receivership is not necessary to preserve Plaintiff's ability to get a damage award against Malan, which is the only relief available for his claims.

6.11. To get a receiver, Plaintiff needs to prove lesser remedies are insufficient, but Plaintiff did not do that, and lesser remedies like an injunction against sale would suffice to protect Plaintiffs' imagined interests.

"Because the remedy of receivership is so drastic in character, ordinarily, if there is any other remedy, less severe in its results, which will adequately protect the rights of the parties, a court should not take property out of the hands of its owners." *Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp.* (1953) 116 Cal.App.2d 869, 873. "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." *Id*. "At all events, it was an abuse of discretion on the part of the court to appoint a receiver, when the purpose sought could be accomplished and the rights of the parties more adequately protected by the granting of an injunction upon the giving of an undertaking required by statute." *Dabney Oil Co. v. Providence Oil Co. of Arizona* (1913) 22 Cal.App. 233, 239.

If Plaintiff could show a real threat of irreparable harm to property he actually owns, he would still need to show other remedies are inadequate, and he never did that. A writ of attachment, a lis pendens, or a temporary restraining order preventing the liquidation of assets could protect Plaintiff's (wholly imaginary) interests without a receiver. A receivership is an extraordinary remedy used only when no other remedy will work, and the burden is on the Plaintiff to prove inadequacy of other remedies. *Id*. Plaintiff never did that.

In *Golden State Glass Corp. v. Superior Ct.* (1939) 13 Cal. 2d 384, a stockholders' derivative suit, defendants sought a writ of prohibition to vacate a receivership. The Supreme Court issued the writ, finding the trial court exceeded its jurisdiction in appointing the receiver Id. at 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. Id. at 393; *A.G. Col Co. v. Superior Court* (1925) 196 Cal. 604, 613.

In *Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp*., 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*., 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.

Ironically, the trial court here implied that less drastic remedies would suffice, but appointed the receiver anyway. 5 RT 499-501. Defense counsel suggested the Plaintiff record a lis pendens, apply for a writ of attachment, ask for financial discovery to scrutinize expenditures, or ask the court to enjoin sale of the businesses, all of which would protect Plaintiff's interests without a receiver. 5 RT 499:17-24. The court said, "That's [Receiver] Essary's job, right?" 5 RT 499:24. Defense counsel agreed: That's the same relief Plaintiff would get with a receiver – except "without putting the companies into receivership." 5 RT 499:27-500:3. All the other attorneys made similar comments to the effect of "exactly" and "we've come full circle. 5 RT 499-500. The court confirmed the receiver appointment anyway, despite available lesser remedies.

6.12. Plaintiff acted with unclean hands by trying to murder Defendant Malan to frustrate this appeal, so he is not entitled to the equitable remedy of a receiver.

Trying to murder a defendant to gain the upper hand in litigation is inequitable conduct preventing the insipient murderer from obtaining equitable relief against that defendant. A party seeking equity must come into court with clean hands. 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. Id. at 985. Not every wrongful act constitutes unclean hands; 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. Attempted murder qualifies. "'Whether the particular misconduct is a bar to the alleged claim for relief depends on (1) analogous case law, (2) the nature of the misconduct, and (3) the relationship of the misconduct to the claimed injuries." *Brown v. Grimes* (2011) 192 Cal.App.4th 265, 274.

Plaintiff Razuki started off this litigation by intentionally interfering with SoCal's contract with Defendants, convincing SoCal to stop paying money it owed in order to starve out Defendants. This was inequitable conduct in itself.

The attempted murder was worse.

When Malan filed this appeal and Razuki realized the receiver could be removed, Razuki escalated to violence. In November 2018, Razuki was arrested in a conspiracy to hire a hit man to kidnap, maim, and murder

Ninus Malan. He is currently awaiting trial on a federal criminal indictment for conspiracy and on the murder for hire plot.

The unclean hands doctrine bars equitable relief 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. *Unilogic, Inc. v. Burroughs Corp*. (1992) 10 Cal.App.4th 621. In *Unilogic, Inc.*, the court granted an unclean hands defense to a defendant accused of tortiously converting technology from the plaintiff, a party with whom it had a contract. The defendant claimed the plaintiff fraudulently procured the contract. The contract was not relevant to the conversion claim; its existence was not material to the conversion. Nevertheless, the court affirmed the unclean hands defense because it was still related, in some sense, to the transaction. *Id*. at 618-622. The inequitable conduct does not have to be part of the same transaction as the plaintiff's claim; it is enough that "the inequitable conduct occurred in a transaction directly related to the matter before the court and affects the equitable relationship between the litigants." *Id*. In short, "the misconduct must infect the cause of action before the court." *Carman v. Athearn* (1947) 77 Cal.App.2d 585, 598.

"The question is 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." *Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal.App.4th 658, 681 (internal citations omitted).

On November 5, 2018, the hit man met with Razuki's employee, who asked if the hit man could "get rid of Salam's [Razuki] other little problem, [Malan], because it looks like they're going to appeal." She said the civil dispute between her, Razuki, and Malan, and Malan involved over $44 million. She said, "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 [Malan], he's costing me too much money!" They wanted this to occur before the next court date in this lawsuit, scheduled on or about November 15, 2018. 19 AA 6425-6429.

The subject matter of this case – the appeal – and the basis for the murder are the same. The murder for hire plot was designed to interfere with this litigation, as shown by the direct quotes from Razuki's henchwoman. 19 AA 6425-6429.

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.

6.13. Plaintiff cannot succeed on the merits because he failed to join indispensable parties.

Plaintiff failed to name three indispensable parties: RM Property Holdings, LLC, Sunrise Property Investments, LLC and Super 5 Consulting, LLC. The contract says Plaintiff must transfer his own shares in Sunrise and Super 5 to RM Property Holdings, so all three companies are indispensable. The law on indispensable parties is clear: "a person is an indispensable party ... when the judgment to be rendered must necessarily affect his rights." *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 808-809. If indispensable parties are not named, the plaintiff is supposed to explain in the complaint why they were not named. Code Civ. Proc. § 389(c). When a plaintiff fails to do that, the action "should be dismissed without prejudice, the absent person being thus regarded as indispensable." Code Civ. Proc. §389(b). This lawsuit affects these companies, none of which Plaintiff names as a defendant – though, ironically, Plaintiff's first amended complaint asks to dissolve RM Property Holdings, LLC. The claims cannot succeed without them, so Plaintiff has not shown a likelihood of success on the merits, eliminating his ability to appoint a receiver.

7.0 CONCLUSION

The order appointing the receiver is void because Plaintiff did not show a likelihood of success or irreparable injury to his property – as opposed to the hypothetical property rights of RM Property Holdings, LLC. Plaintiff showed only that he *could have been* entitled to 75% of RM Property Holdings' *losses* if Plaintiff had first (a) performed an accounting, (b) capitalized RM Property Holdings, and (c) transferred Plaintiff's interests in Sunrise and Super 5 to RM Property Holdings within 30 days. He did not do that, so the receivership statute – which is

jurisdictional – does not allow appointment of a receiver. The contract on which Plaintiff sues is void for violating public policy in November 2017 when it was signed. The trial court failed to make findings on whether lesser remedies were available, and ignored Plaintiff's unclean hands and the receiver's breaches of his fiduciary duty. The court should vacate the void order appointing the receiver and remand with instructions forbidding the trial court from re-appointing a receiver in this case.

Dated: July 2, 2019 Respectfully submitted,

/s/ Daniel T. Watts

Daniel T. Watts
Attorneys for Appellants, Ninus Malan, San Diego United Holdings Group, LLC, Flip Management, LLC, Balboa Ave Cooperative, California Cannabis Group and Devilish Delights, Inc.

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) or 8.504(d)(1) 0f the California Rules of Court, the enclosed Brief of appellants is produced using 13 point or greater - Roman type including footnotes and contains 16,751 words, which is within the amount of words specified in the Appellant's Application for Leave to File an Over-length Brief filed herewith pursuant to Rule 8.204(c)(5). Counsel relies on the count of the computer program used to prepare this brief.

Dated: July 2, 2019 Respectfully submitted,

/s/ Daniel T. Watts

Daniel T. Watts
Attorneys for Appellants, Ninus Malan, San Diego United Holdings Group, LLC, Flip Management, LLC, Balboa Ave Cooperative, California Cannabis Group and Devilish Delights, Inc.

State of California)
County of Los Angeles)
)

Proof of Service by:
✓ US Postal Service
Federal Express

I, Kirstin Largent , declare that I am not a party to the action, am over 18 years of age and my business address is: 626 Wilshire Blvd., Suite 820, Los Angeles, California 90017.

On 7/2/2019 declarant served the within: Appellants' Opening Brief **upon:**

Copies FedEx USPS

ELECTRONICALLY SERVED ON:
To Each on Attached Service List.

1 Copies FedEx ✓ USPS

Clerk for the Honorable Eddie C. Sturgeon
SUPERIOR COURT OF CALIFORNIA
County of San Diego - Hall of Justice
330 West Broadway, Fourth Floor
San Diego, California 92101

Trial Court Judge

Copies FedEx USPS

Electronically Served on the
SUPREME COURT OF CALIFORNIA,
per Rule 8.212(c)(2)

Copies FedEx USPS

the address(es) designated by said attorney(s) for that purpose by depositing **the number of copies indicated above,** of same, enclosed in a postpaid properly addressed wrapper in a Post Office Mail Depository, under the exclusive custody and care of the United States Postal Service, within the State of California, or properly addressed wrapper in an Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of California

I further declare that this same day the **original and** copies has/have been hand delivered for filing OR the **original and** copies has/have been filed by third party commercial carrier for next business day delivery to:

ELECTRONICALLY FILED ON THE
CALIFORNIA COURT OF APPEAL
Fourth Appellate District, Division One

I declare under penalty of perjury that the foregoing is true and correct:

Signature: /s/ Kirstin Largent

SERVICE LIST

Steven Anmar Elia, Esq. Law Offices Of Steven A. Elia, APC 2221 Camino Del Rio South, Suite 207 San Diego, California 92108 steve@elialaw.com *Attorney for Respondent,* *Salam Razuki*	Maura Griffin, Esq. ATTORNEY AT LAW 2221 Camino Del Rio South, Suite 203 San Diego, California 92108 mg@mauragriffinlaw.com *Attorney for Respondent,* *Salam Razuki*
James Joseph, Esq. Elia Law Firm, APC 2221 Camino Del Rio South, Suite 207 San Diego, California 92108 james@elialaw.com *Attorney for Respondent* *Salam Razuki*	Charles F. Goria, Esq. Goria, Weber & Jarvis 1011 Camino del Rio South, Suite 210 San Diego, California 92108 chasgoria@gmail.com *Attorney for Appellants,* *Chris Hakim, Mira Este Properties, LLC and Roselle Properties, LLC*

STATE OF CALIFORNIA California Court of Appeal, Fourth Appellate District Division 1	***PROOF OF SERVICE*** **STATE OF CALIFORNIA** California Court of Appeal, Fourth Appellate District Division 1

Case Name: **Razuki v. Malan et al.**
Case Number: **D075028**
Lower Court Case Number: **37-2018-000034229-CU-BC-CTL**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **ahall@galuppolaw.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
APPENDIX - JOINT APPENDIX	709372_tst_apx_vol01 b
APPENDIX - JOINT APPENDIX	709372_tst_apx_vol17 b
APPENDIX - JOINT APPENDIX	709372_tst_apx_vol18 b
BRIEF - APPELLANT'S OPENING BRIEF	709372_tst_brf
MOTION - MOTION (FEE PREVIOUSLY PAID)	709372_tst_mot
MOTION - MOTION (FEE PREVIOUSLY PAID)	709372_tst_mot_application
APPENDIX - JOINT APPENDIX	709372_tst_apx_vol10 b
APPENDIX - JOINT APPENDIX	709372_tst_apx_vol16 b
APPENDIX - JOINT APPENDIX	709372_tst_apx_vol08 b
APPENDIX - JOINT APPENDIX	709372_tst_apx_vol14 b
APPENDIX - JOINT APPENDIX	709372_tst_apx_vol06 b
APPENDIX - JOINT APPENDIX	709372_tst_apx_vol02 b
APPENDIX - JOINT APPENDIX	709372_tst_apx_vol19 b
APPENDIX - JOINT APPENDIX	709372_tst_apx_vol07 b
APPENDIX - JOINT APPENDIX	709372_tst_apx_vol15 a
APPENDIX - JOINT APPENDIX	709372_tst_apx_vol05 b
APPENDIX - JOINT APPENDIX	709372_tst_apx_vol11 b
APPENDIX - JOINT APPENDIX	709372_tst_apx_vol03 b
APPENDIX - JOINT APPENDIX	709372_tst_apx_vol09 b
APPENDIX - JOINT APPENDIX	709372_tst_apx_vol12 b
APPENDIX - JOINT APPENDIX	709372_tst_apx_vol13 b
APPENDIX - JOINT APPENDIX	709372_tst_apx_vol04 b

Service Recipients:

Person Served	Email Address	Type	Date / Time
Andrew Hall Galuppo & Blake	ahall@galuppolaw.com	e-Serve	7/2/2019 4:07:21 PM
Daniel Watts G10 GALUPPO LAW, APLC	dwatts@galuppolaw.com	e-Serve	7/2/2019 4:07:21 PM
Charles Goria Goria, Weber & Jarvis	chasgoria@gmail.com	e-Serve	7/2/2019 4:07:21 PM
Steven Blake G10 Galuppo Law, APLC	sblake@galuppolaw.com	e-Serve	7/2/2019 4:07:21 PM
Steven Anmar Elia	steve@elialaw.com	e-Serve	7/2/2019 4:07:21 PM
Maura Griffin	mg@mauragriffinlaw.com	e-Serve	7/2/2019 4:07:21 PM
James Joseph	james@elialaw.com	e-Serve	7/2/2019 4:07:21 PM
Charles F. Goria	chasgoria@gmail.com	e-Serve	7/2/2019 4:07:21 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

7/2/2019

Date

/s/Linda Koller

Signature

Hall, Andrew (257547)

Last Name, First Name (PNum)

Galuppo & Blake

Law Firm