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and BRADFORD HARCOURT

11  
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF SAN DIEGO**

14 SAN DIEGO PATIENTS COOPERATIVE )  
15 CORPORATION, INC., a California )  
cooperative corporation, and BRADFORD )  
16 HARCOURT, an individual, )  
17 )  
18 )  
19 RAZUKI INVESTMENTS, L.L.C., a )  
California limited liability company; )  
20 BALBOA AVE COOPERATIVE, a )  
California cooperative corporation; )  
21 AMERICAN LENDING AND )  
HOLDINGS, LLC, a California limited )  
22 liability company; SAN DIEGO UNITED )  
HOLDINGS GROUP, LLC, a California )  
23 limited liability company; CALIFORNIA )  
CANNABIS GROUP, a nonprofit mutual )  
24 benefit corporation; SALAM RAZUKI, an )  
individual; NINUS MALAN, an individual, )  
25 KEITH HENDERSON, an individual, AND )  
DOES 1-20, INCLUSIVE, )

26 )  
27 )  
28 )  
Defendants. )

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**06/28/2023** at 03:01:00 PM  
Clerk of the Superior Court  
By Malka Manneh, Deputy Clerk

Case No. 37-2017-00020661-CU-CO-CTL

Honorable Eddie C. Sturgeon, Dept. C-67

**MEMORANDUM OF POINTS AND  
AUTHORITIES RE: PLAINTIFF SAN  
DIEGO PATIENTS COOPERATIVE  
CORPORATION, INC.'S MOTION FOR  
SANCTIONS AGAINST DEFENDANTS  
NINUS MALAN; AMERICAN LENDING  
AND HOLDINGS, LLC; AND SAN DIEGO  
UNITED HOLDINGS GROUP, LLC**

Date: December 8, 2023

Time: 9:00 a.m.

Courtroom: C-67

Complaint Filed: June 7, 2017

Trial Date: August 25, 2023

**MEMO OF P'S & A'S RE PLAINTIFF SAN DIEGO PATIENTS COOPERATIVE CORPORATION,  
INC.'S MOTION FOR SANCTIONS AGAINST DEFENDANTS NINUS MALAN; AMERICAN  
LENDING AND HOLDINGS, LLC; AND SAN DIEGO UNITED HOLDINGS GROUP, LLC**

1 Plaintiff San Diego Patients Cooperative Corporation, Inc. (“Plaintiff”) respectfully  
2 submits this Memorandum of Points and Authorities in support of its motion for sanctions  
3 against defendants Ninus Malan (“Malan”); American Lending and Holdings, LLC (“American  
4 Lending”); and San Diego United Holdings Group, LLC (“San Diego United”) (collectively,  
5 “Defendants”) for their disobedience of the Court’s Order compelling them to respond to  
6 Plaintiff’s supplemental discovery requests and to pay monetary sanctions.

## 7 I. INTRODUCTION

8 In this fraud action, plaintiffs San Diego Patients Cooperative Corporation, Inc. and  
9 Bradford Harcourt allege that defendants Salam Razuki and Ninus Malan, along with several of  
10 their affiliated companies, violated a joint venture agreement to share in the profits from the  
11 operation of a legal medical marijuana dispensary in San Diego.

12 This matter is set for trial on August 25, 2023, with a discovery and motion cut-off date  
13 of July 28, 2023.

14 In the years that this action has been pending, the parties have exchanged numerous sets  
15 of written discovery requests. Late last year, Plaintiff served supplemental discovery requests,  
16 asking several of the defendants to supplement their prior responses to Plaintiff’s interrogatories  
17 and requests for production.

18 Because Plaintiff considered the objections initially served by Defendants to be without  
19 merit, and because Defendants failed to supplement those responses, despite agreeing to do so,  
20 Plaintiff filed several motions to compel Defendants to provide substantive responses to  
21 Plaintiff’s supplemental discovery requests.

22 At the May 11, 2023, hearing on Plaintiff’s *ex parte* application to advance the hearing  
23 date on those motions to compel, Defendants’ counsel stipulated that Defendants would provide  
24 further responses to Plaintiff’s supplemental discovery requests within thirty days.

25 Accordingly, the Court ordered Defendants to do so. The Court also ordered Defendants to pay  
26 Plaintiff sanctions in the amount of \$3000.

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1 Despite their stipulation to do so, the Court’s Order, and multiple requests from Plaintiff,  
2 each of Malan, American Lending, and San Diego United has failed both to serve further  
3 responses to Plaintiffs’ supplemental discovery requests and to pay the sanctions award.  
4 Defendants have not proffered any purported justification for their failure to obey the Court’s  
5 Order. Therefore, Defendants’ non-compliance must be considered to constitute willful  
6 disobedience, which warrants both a finding of contempt and the imposition of relatively severe  
7 sanctions.

8 For the foregoing reasons, each of Malan, American Lending, and San Diego United  
9 should be found in contempt, and evidentiary and further monetary sanctions should be imposed  
10 against each of them.

11 **II. RELEVANT PROCEDURAL AND FACTUAL HISTORY**

12 The trial of this matter is scheduled to begin on August 25, 2023, and the motion and  
13 discovery completion deadline is July 28, 2023. (Cavanagh Decl., ¶ 2.)

14 On September 28, 2022, Plaintiff served a supplemental interrogatory and a  
15 supplemental request for production on each of Malan, American Lending, and San Diego  
16 United. (Cavanagh Decl., ¶ 3.)

17 On April 16, 2023, Plaintiff filed motions to compel each of Malan, American Lending,  
18 and San Diego United to provide substantive responses to Plaintiff’s supplemental discovery  
19 requests. (Cavanagh Decl., ¶ 4.) Plaintiff requested sanctions in the amount of \$3160 in  
20 connection with each of the six motions to compel that it filed against Defendants. (*Id.*)

21 Because the Court’s earliest availability to hear the motions to compel was after the  
22 current trial date, Plaintiff filed an *ex parte* application to advance the hearing date. (Cavanagh  
23 Decl., ¶¶ 5-6.)

24 At the May 11, 2023, hearing on Plaintiff’s *ex parte* application, counsel for Malan,  
25 American Lending, and San Diego United stipulated that each would provide substantive  
26 responses to Plaintiff’s supplemental discovery requests within thirty days. (Cavanagh Decl.,  
27 ¶ 7.)



1 A. Evidentiary Sanctions Against Defendants Are Warranted.

2 “Disobeying a court order to provide discovery” is a “misuse of the discovery process.”  
3 Cal. Civ. Proc. Code § 2023.010(g). Accordingly, a court “may make those orders that are just”  
4 if a party fails to obey a prior discovery order. *See* Cal. Civ. Proc. Code § 2030.300(e).  
5 Numerous cases have held that severe sanctions are warranted for failure to comply with a  
6 court’s discovery order, particularly where the failure is willful. *See, e.g., R.S. Creative, Inc. v.*  
7 *Creative Cotton, Ltd.*, 75 Cal. App. 4<sup>th</sup> 486, 495 (1999); *Vallbona v. Springer*, 43 Cal. App. 4<sup>th</sup>  
8 1525, 1545 (1996); *Biles v. Exxon Mobil Corp.*, 124 Cal. App. 4<sup>th</sup> 1315, 1327 (2004); *Aghaian*  
9 *v. Minassian*, 64 Cal. App. 5<sup>th</sup> 603, 618-620 (2021).

10 Here, Defendants’ failures to provide further responses to Plaintiff’s supplemental  
11 discovery requests and to pay the sanctions award must be characterized as willful  
12 disobedience. The supplemental discovery requests at issue were served by Plaintiff back on  
13 September 28, 2022. (Cavanagh Decl., ¶ 3.) After Defendants were afforded more-than-  
14 sufficient time to provide substantive responses to those requests, but failed to do so, despite  
15 promises that they would, Plaintiff filed several motions to compel on April 16, 2023.  
16 (Cavanagh Decl., ¶ 4.) On May 11, 2023 – at a hearing on Plaintiff’s *ex parte* application to  
17 advance the hearing date on Plaintiff’s motions to compel – Defendants *stipulated* before the  
18 Court that they would serve further responses to Plaintiff’s supplemental discovery requests  
19 within thirty days. (Cavanagh Decl., ¶ 7.) Accordingly, the Court ordered Defendants to  
20 provide further responses to Plaintiff’s supplemental discovery requests within thirty days.  
21 (Cavanagh Decl., ¶ 7 & Ex. A.) The Court also ordered Defendants to pay Plaintiff sanctions in  
22 the amount of \$3000. (*Id.*) After both stipulating and being ordered to serve their further  
23 discovery responses within thirty days – i.e., by June 10, 2023 – Defendants not only knowingly  
24 allowed that deadline to pass without compliance, but also have failed to proffer any excuse or  
25 justification for their non-compliance. (Cavanagh Decl., ¶¶ 8-14 & Ex. B.) Under these  
26 circumstances, Defendants’ non-compliance must be viewed not merely as a failure to obey but  
27 as an example of willful disobedience.

1 In deciding whether and which sanctions to impose for disobedience to discovery orders,  
2 a court may consider several factors, including the time elapsed since the discovery was served;  
3 whether the party received extensions of time to respond; and the existence of, and compliance  
4 with, prior court orders compelling discovery. *See Deyo v. Kilbourne*, 84 Cal. App. 3d 771, 796  
5 (1978). Among other things a court is authorized to prohibit a disobedient party from  
6 introducing designated matters into evidence. *See* Cal. Civ. Proc. Code § 2023.030(c); *see also*  
7 *Waicis v. Superior Court*, 226 Cal. App. 3d 283, 287 (1990); *Deeter v. Angus*, 179 Cal. App. 3d  
8 241, 255 (1986); *Vallbona v. Springer*, 43 Cal. App. 4<sup>th</sup> 1525, 1545 (1996).

9 Here, given the failure of Defendants to provide substantive responses to Plaintiff's  
10 supplemental discovery requests, an appropriate evidentiary sanction for their willful  
11 disobedience would be to preclude them from introducing at the trial of this matter any evidence  
12 that is not disclosed in the written discovery responses they served and/or the documents they  
13 produced in this litigation prior to the filing of this motion – i.e., June 28, 2023.

14 B. Plaintiff Is Entitled To Additional Monetary Sanctions Against Defendants.

15 In addition to any other sanction that may be imposed, a court is authorized to order a  
16 disobedient party to pay the reasonable expenses, including attorneys' fees, incurred as a result  
17 of the failure to obey. *See* Cal. Civ. Proc. Code § 2023.030(a).

18 When Plaintiff filed its motions to compel on April 16, 2023, Plaintiff requested  
19 monetary sanctions of \$3160 for each of its six motions. (Cavanagh Decl., ¶ 4.)

20 At the hearing on Plaintiff's *ex parte* application to advance the hearing date on  
21 Plaintiff's motions to compel, after Defendants' counsel stipulated to serving further responses  
22 to Plaintiff's supplemental discovery requests within thirty days, the Court ordered Defendants  
23 jointly to pay a total of only \$3000 (i.e., \$500 per motion) in sanctions. (Cavanagh Decl., ¶ 7 &  
24 Ex. A.)

25 In light of Defendants' willful disobedience with the Court's prior Order, Defendants  
26 should be ordered not only to compensate Plaintiff for the fees incurred in bringing the instant  
27 motion, but also to compensate Plaintiff for the bulk of the fees that it incurred in making its  
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1 prior motions to compel. *See Deyo v. Kilbourne*, 84 Cal. App. 3d 771, 796 (1978) (purpose of  
2 allowing courts to issue monetary sanctions against a disobedient party in addition to other  
3 sanctions that may be imposed is to compensate the requesting party for the costs and fees  
4 incurred in enforcing discovery).

5 In connection with this motion, Plaintiff's counsel reasonably spent approximately two  
6 and three-quarter hours drafting this Memorandum of Points and Authorities, drafting his  
7 Declaration, preparing the Separate Statement, drafting the Notice of the Motion, and preparing  
8 the Proposed Order. (Cavanagh Decl., ¶ 15.) In addition, Plaintiff's counsel anticipates  
9 reasonably spending a total of approximately 1 hour reviewing the expected Opposition and the  
10 legal authorities cited therein, a total of approximately 2 hours preparing Plaintiff's reply brief,  
11 and a total of approximately 1.5 hours preparing for and attending the hearing on Plaintiff's  
12 motion. (Cavanagh Decl., ¶ 16.) Thus, at counsel's customary and reasonable hourly rate of  
13 \$395 (Cavanagh Decl., ¶ 17), Plaintiff will have incurred approximately \$2863.75 in fees in  
14 connection with this motion.

15 As noted above, Plaintiff previously requested monetary sanctions in the amount of  
16 \$3160 in connection with each of its prior six motions to compel – one each against Malan,  
17 American Lending, and San Diego Holdings for failure to provide appropriate responses to  
18 Plaintiff's supplemental interrogatories and one each against Malan, American Lending, and  
19 San Diego Holdings for failure to provide appropriate responses to Plaintiff's supplemental  
20 requests for production. Of that \$18,960 total, the Court initially awarded only \$3000, or \$500  
21 per motion to compel.

22 Plaintiff requests now the balance of its initial request – i.e., \$16,960 – plus the  
23 additional \$2863.75 incurred in connection with this motion, for a total of \$18,823.75, or  
24 approximately \$6000 against each of Malan, American Lending, and San Diego United.

#### 25 **IV. CONCLUSION**

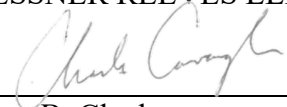
26 For the foregoing reasons, each of Malan, American Lending, and San Diego United  
27 should be (1) precluded from offering at the trial of this matter any evidence that is not  
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disclosed in the written discovery responses they served and/or the documents they produced in this litigation prior to the filing of this motion; and (2) ordered to pay additional monetary sanctions in the amount of \$6000.

Dated: June 28, 2023

MESSNER REEVES LLP



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Allan B. Claybon  
Mark Collier  
Charles C. Cavanagh  
Attorneys for Plaintiffs



1 **PROOF OF SERVICE**

2 I am employed in the County of Denver, Colorado. I am over the age of eighteen years  
3 and not a party to the within entitled action; my business address is 1550 Wewatta Street, Suite  
4 710, Denver, Colorado 80202.

5 On June 28, 2023, I caused to be served the foregoing document described as:

6 **MEMORANDUM OF POINTS AND AUTHORITIES RE: PLAINTIFF SAN DIEGO**  
7 **PATIENTS COOPERATIVE CORPORATION, INC.’S MOTION FOR SANCTIONS**  
8 **AGAINST DEFENDANTS NINUS MALAN; AMERICAN LENDING AND HOLDINGS,**  
9 **LLC; AND SAN DIEGO UNITED HOLDINGS GROUP, LLC** on the interested parties as  
10 follows:

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19 [x] ELECTRONIC-SERVICE/E-MAIL: Pursuant to California Rules of Court, Rule  
20 2.251(b)(1)(B), a court order or by consent/agreement of the parties to accept service by e-mail  
21 and/or electronic submission, I cause the above-referenced document(s) to be sent to the persons  
22 indicated above at the email address set forth above from either the Court’s electronic filing  
23 service or by personal email.

22 [x] BY OVERNIGHT DELIVERY [CCP §1013(a)] By placing [ ] the original [x] a true  
23 copy thereof enclosed in a sealed envelope(s) addressed as to the above-named counsel of record  
24 or parties in propria persona. I caused such envelope to be deposited in the Federal Express box  
25 at 11620 Wilshire Blvd., Los Angeles, CA 90025, which is regularly maintained by Federal  
26 Express, with delivery fees pre-paid and provided for, addressed to the person on whom said  
27 document is to be served.

25 I declare under penalty of perjury under the laws of the State of Colorado that the  
26 forgoing is true and correct.

27 DATED: June 28, 2023

*/s/ Tara L. Nelson*  
\_\_\_\_\_  
Tara L. Nelson