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6 Attorneys for Defendants
San Diego United Holdings Group, LLC, Ninus Malan
7 And Balboa Ave Cooperative

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/21/2017 at 03:07:00 PM

Clerk of the Superior Court
By E- Filing, Deputy Clerk

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO- CENTRAL DIVISION**

11
12 MONTGOMERY FIELD BUSINESS
CONDOMINIUMS ASSOCIATION, a
13 California Nonprofit Mutual Benefit
Corporation,

14 Plaintiff,

15 vs.

16 BALBOA AVE COOPERATIVE, a
California corporation; SAN DIEGO
17 UNITED HOLDINGS GROUPS, LLC, a
California limited liability company;
18 NINUS MALAN, an individual; RAZUKI
INVESTMENTS, LLC, a California
19 limited liability company; SALAM
RAZUKI, an individual; and DOES 1
20 through 25, inclusive;

21 Defendants.

CASE NO. 37-2017-00019384-CU-CO-CTL

Assigned to Judge: Honorable Ronald L. Styn

**DECLARATION OF GINA AUSTIN IN
SUPPORT OF DEFENDANTS BALBOA
AVE COOPERATIVE, SAN DIEGO
UNITED HOLDINGS GROUP, LLC, AND
NINUS MALAN'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

[IMAGED FILE]

DATE: September 1, 2017

TIME: 8:30 a.m.

DEPT: C-62

22
23
24 I, Gina M. Austin, declare:

25 1. I am a member in good standing of the California state bar and am the Managing
26 Attorney at Austin Legal Group, APC. I make this declaration in support of defendants San
27 Diego United Holdings Group, LLC, Balboa Ave Cooperative, and Ninus Malan's Opposition To
28 Plaintiff's Motion For Preliminary Injunction. I have personal knowledge of the facts stated in

1 this declaration, except as to those facts stated upon information and belief, which facts I believe
2 to be true.

3 2. Attached hereto as Exhibit 1 is a true and correct copy of Exhibit B from Plaintiff's
4 CC&R's that details the number of votes attributable to each unit in the Association.

5 3. Attached hereto as Exhibit 2 is a true and correct copy of the Association's Tally
6 Sheet from the vote that Plaintiff claims passed the 2015 Amendment to the CC&R's.

7 4. Attached hereto as Exhibit 3 is a true and correct copy of the instruction sheet to
8 Association members explaining the vote that Plaintiff claims passed the 2015 Amendment to the
9 CC&Rs including the February 6, 2015 response deadline.

10 5. Attached hereto as Exhibit 4 is a true and correct copy of of a redacted envelope
11 from the vote that Plaintiff claims passed the 2015 Amendment with a February 9, 2015 postage
12 stamp.

13 6. On or about August 3, 2017, San Diego United, as the Owner and Member,
14 requested to inspect and copy Association documents pursuant to the Bylaws. By August 11,
15 2017, my office had received over 1,000 pages of documents from the Association. These
16 documents did not include a single record of annual meetings or special meetings EXCEPT for
17 those related to the 2015 Amendment and 4 other meetings regarding amendment of the bylaws
18 around the same time. There were no minutes signed by the Secretary. The minutes appear to
19 have been drafted by a service the Association says it uses to manage its documents.

20 7. On or about August 16, 2017, I inspected unredacted ballots and unredacted
21 envelopes relating to the 2015 Amendment at the Association's attorneys' offices. I subsequently
22 confirmed that the record owner for 8861 A did not sign the proxy or the ballot and I confirmed
23 that the Chapter 7 Bankruptcy Trustee did not vote for 8855 Suites A-H.

24 8. Attached hereto as Exhibit 5 is a true and correct copy of the "Certificate of Board
25 President and Secretary" related to the 2015 Amendment. Ed Quinn signed as the Secretary
26 despite the fact that he is not and was not Secretary.

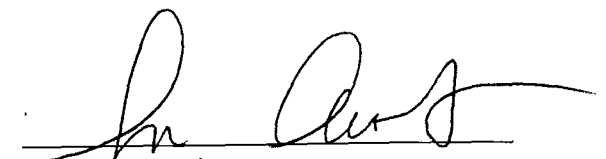
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Attached hereto as Exhibit 6 is a true and correct copy of special meeting minutes dated February 13, 2015 discussing the vote totals for the 2015 Amendment.

I declare under penalty of perjury under California state law that the foregoing is true and correct. Executed on August 21, 2017.


Gina M. Austin

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110

Exhibit 1

EXHIBIT B

Bldg	Unit	Approximate Total Interior Square Footage	Approximate Interior Square Footage to Nearest 50 Square Feet	Unit	Percentage Of Total Annual and Special Assessments Attributable to Unit
8855:	A	488.44	500	10	1.351%
	B	543.02	550	11	1.485
	C	543.99	550	11	1.485
	D	487.47	500	10	1.351
	E	490.71	500	10	1.351
	F	489.69	500	10	1.351
	G	595.92	600	12	1.622
	H	486.17	500	10	1.351
8859:	A	943.71	950	19	2.568
	B	974.89	950	19	2.568
	C	963.68	950	19	2.568
	D	963.68	950	19	2.568
	E	963.68	950	19	2.568
8861:	A	942.24	950	19	2.568
	B	975.37	950	19	2.568
	C	971.96	950	19	2.568
	D	974.40	950	19	2.568
8863:	A	945.66	950	19	2.568
	B	940.30	950	19	2.568
	C	940.30	950	19	2.568
	D	940.30	950	19	2.568
	E	1048.45	1050	21	2.837
8865:	A	486.50	500	10	1.351
	B	544.96	550	11	1.485
	C	544.96	550	11	1.485
	D	486.50	500	10	1.351
	E	486.50	500	10	1.351
	F	544.96	550	11	1.485
	G	544.96	550	11	1.485
	H	486.50	500	10	1.351
8869:	A	945.17	950	19	2.568
	B	974.89	950	19	2.568
	C	974.40	950	19	2.568
	D	974.40	950	19	2.568
	E	940.78	950	19	2.568
8871:	A	964.66	950	19	2.568
	B	964.66	950	19	2.568
	C	964.66	950	19	2.568
	D	971.48	950	19	2.568
8873:	E	944.19	950	19	2.568
	A	961.73	950	19	2.568
	B	962.22	950	19	2.568
	C	962.22	950	19	2.568
	D	961.73	950	19	2.568
	E	961.73	950	19	2.568
			TOTAL	740	100%

61 81-
Nº 242889

Exhibit 2

MONTGOMERY FIELD BUSINESS CONDOS
SIGN IN ROSTER

OWNER ID	OWNER NAME	SIGNATURE	BALLOTS	
000001-05	[REDACTED]	[REDACTED]	X	✓
	84 votes 8 ballots	8855 BALBOA AVE STE A-H		
000002-02	[REDACTED]	[REDACTED]	X	✓
	95 votes 5 ballots	8859 BALBOA AVE STE A-E		
00003A-04	[REDACTED]	[REDACTED]	X	✓
	19 votes 1 ballot	8861 BALBOA AVE STE A		
00003B-04	[REDACTED]	[REDACTED]	X	✓
	19 votes 1 ballot	8861 BALBOA AVE STE B		
00003C-02	[REDACTED]	[REDACTED]	X	✓
	19 votes 1 ballot	8861 BALBOA AVE STE C		
00003D-01	[REDACTED]	[REDACTED]	X	✓
	19 votes 1 ballot	8861 BALBOA AVE STE D		
00003E-01	[REDACTED]	[REDACTED]	X	✓
	19 votes 1 ballot	8861 BALBOA AVE STE E		
00004C-01	[REDACTED]	[REDACTED]	X	✓
	19 votes 1 ballot	8863 BALBOA AVENUE STE C		
000004-02	[REDACTED]	[REDACTED]	X	✓
	38 votes 2 ballots	8863 BALBOA AVE UNIT A B		
00004A-02	[REDACTED]	[REDACTED]	X	✓
	19 votes 1 ballot	8863 BALBOA AVE STE D		
000005-03	[REDACTED]	[REDACTED]	X	✓
	21 votes 1 ballot	8863 BALBOA AVE STE E		
00005A-03	[REDACTED]	[REDACTED]	X	✓
	42 votes 4 ballots	8865 BALBOA AVE # A-D		
00005E-01	[REDACTED]	[REDACTED]	X	✓
	21 votes 2 ballots	8865 BALBOA AVE # E F		
00005G-01	[REDACTED]	[REDACTED]	X	✓
	21 votes - 2 ballots	8865 BALBOA AVE STE G H		
000009-01	[REDACTED]	[REDACTED]	X	✓
	57 votes 3 ballots	8869 BALBOA AVE # A-C		
000006-02	[REDACTED]	[REDACTED]	X	✓
	38 votes 2 ballots	8869 BALBOA AVE D+E		
000007-01	[REDACTED]	[REDACTED]	X	✓
	95 votes 5 ballots	8871 BALBOA AVE A-E		
000008-01	[REDACTED]	[REDACTED]	X	✓
	95 votes 5 ballots	8873 BALBOA AVE STE A-E		

ACTIVE OWNERS: 18

V	0
21	56-01
19	3A-04

mailed 1/22/2015

MONTGOMERY FIELD BUSINESS CONDOS
SIGN IN ROSTER

OWNER ID	OWNER NAME	SIGNATURE	BALLOTS
000001-05	[REDACTED]	84 votes 8 ballots 8855 BALBOA AVE STE A-H	
000002-02	[REDACTED]	95 votes 5 ballots 8859 BALBOA AVE STE A-E	
00003A-04	[REDACTED]	19 votes 1 ballot 8861 BALBOA AVE STE A	
00003B-04	[REDACTED]	19 votes 1 ballot 8861 BALBOA AVE STE B	
00003C-02	[REDACTED]	19 votes 1 ballot 8861 BALBOA AVE STE C	
00003D-01	[REDACTED]	19 votes 1 ballot 8861 BALBOA AVE STE D	
00003E-01	[REDACTED]	19 votes 1 ballot 8861 BALBOA AVE STE E	
00004C-01	[REDACTED]	19 votes 1 ballot 8863 BALBOA AVENUE STE C	
000004-02	[REDACTED]	38 votes 2 ballots 8863 BALBOA AVE UNIT A B	
00004A-02	[REDACTED]	19 votes 1 ballot 8863 BALBOA AVE STE D	
000005-03	[REDACTED]	2 votes 1 ballot 8863 BALBOA AVE STE E	
00005A-03	[REDACTED]	42 votes 4 ballots 8865 BALBOA AVE # A-D	
00005E-01	[REDACTED]	21 votes 2 ballots 8865 BALBOA AVE # E F	
00005G-01	[REDACTED]	21 votes - 2 ballots 8865 BALBOA AVE STE G H	
000009-01	[REDACTED]	57 votes 3 ballots 8869 BALBOA AVE # A-C	
000006-02	[REDACTED]	38 votes 2 ballots 8869 BALBOA AVE D+E	
000007-01	[REDACTED]	95 votes 5 ballots 8871 BALBOA AVE A-E	
000008-01	[REDACTED]	95 votes 5 ballots 8873 BALBOA AVE STE A	

ACTIVE OWNERS: 18

Exhibit 3

WRITTEN BALLOT TO AMEND CC&RS
MONTGOMERY FIELD BUSINESS CONDOMINIUMS ASSOCIATION

The Board is sending the enclosed written ballot to amend the CC&Rs of Montgomery Field Business Condominiums. This purpose of this BALLOT is to vote on language to be added to the CC&Rs to clarify that, in addition to prohibiting the operation of marijuana collectives, dispensaries, cooperatives and the like, the possession, cultivation, manufacture or growth of marijuana in a Unit will also be prohibited.

This ballot is being sent to all members under the authority of Corporations Code Section 7513 and Article XIII, Section 2 of the CC&Rs. Each owner is entitled to one vote for every 50 square feet owned, in accordance with Exhibit B of the CC&Rs. To approve the proposed amendment, owners in the aggregate possessing not less than seventy-five percent (75%) of the voting power of the Association (i.e., 555 "YES" votes, subject to possible suspension of voting rights) must vote to approve. (CC&Rs, Article XIII, Section 2.) To meet quorum, votes from owners entitled to cast fifty-one percent (51%) of the votes (i.e., 375 votes, unless some voting rights have been suspended) must be received. (Bylaws, Article IV, Section 4.4.) The text of the proposed amendment is set forth in the attached Exhibit "A." Items to be added to the existing CC&Rs are set forth in **bold font**.

INSTRUCTIONS:

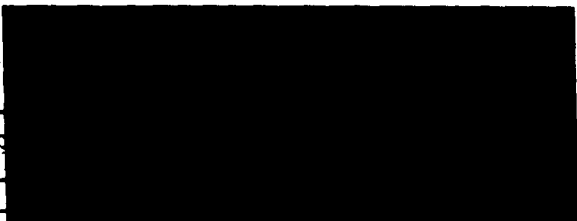
1. Please complete items [A] and [B] below, sign where indicated, and
2. Return this ballot in the envelope provided so that it is received by the Association no later than **February 6, 2015**.

The Inspectors of Elections, if any, or the Board of Directors, may extend this deadline if necessary to allow the maximum return of ballots on this issue.

If you own more than one unit,
please fill out a separate ballot for each unit.

Exhibit 4

Owner name: _____
Address of prop: _____



Telephone #: _____
Email Address: _____

I authorize the Inspectors of Election to act as my proxy for the purpose of establishing a quorum to count the enclosed.

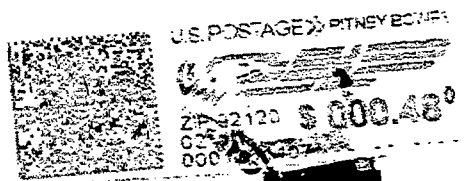
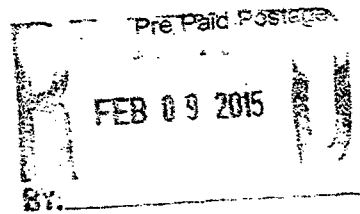
Date: _____

Signed: _____



1/31/15

Montgomery Field Business
Condos (#18)
CC&R Amendment
Return BEFORE FEB 6, 2015



INSPECTORS OF ELECTION
c/o ASSOCIATED PROFESSIONAL SERVICES
PO Box 602090
SAN DIEGO, CA 92160-2090

Exhibit 5

CERTIFICATE OF BOARD PRESIDENT AND SECRETARY

OF

MONTGOMERY FIELD BUSINESS CONDOMINIUMS ASSOCIATION

A California Nonprofit Mutual Benefit Corporation

We, the undersigned, do hereby certify:

That we are the duly elected President and Secretary, respectively, of Montgomery Field Business Condominiums Association, a California non-profit, mutual benefit corporation.

That the foregoing 2015 Amendment to Article VI of the "Declaration of Covenants, Conditions and Restrictions for Montgomery Field Business Condominiums," recorded on July 31, 1981 in the Official Records of the San Diego County Recorder as Document No. 81-242889, was approved by a majority vote of the membership on February 13, 2015 and was recorded on NA, 2015 as Document No. 2015-NA, in the Official Records of San Diego County, California, and affects the real property legally described in Exhibit A to the 2015 Amendment.

MONTGOMERY FIELD BUSINESS CONDOMINIUMS ASSOCIATION
a California nonprofit mutual benefit corporation

By: Tom Burakowski
DAN BURAKOWSKI, President

By: Edward Quinn
Edward Quinn, Secretary

Exhibit 6

Montgomery Field Business Condos

Special Meeting Minutes February 13, 2015

CALL TO ORDER

The Special Meeting was called to order at 4:00PM and held at the offices of Associated Professional Services located at 7007 Mission Gorge Road, Suite 201, San Diego CA 92120.

QUORUM:

A quorum was established with over fifty-one percent of votes from owners entitles to cast votes, or a total of 700 out of 740 total votes represented by ballot. Present was Amber Myers of Associated Professional Services.

BALLOT TO AMEND CC&RS

The ballot to amend the CC&Rs was sent to all members under the authority of Corporations Code Section 7513 and Article XIII, Section 2 of the CC&Rs. The proposed amendment would prohibit the use of Units for sale or distribution of medical marijuana or the operation of a medical marijuana collective, a medical marijuana cooperative, or a medical marijuana dispensary.

700 of 740 total votes were received from owners entitle to vote in this election establishing a quorum over 51%. To approve the proposed amendment, owners in the aggregate possessing not less than seventy-five percent of the voting power of the Association, or 555 "Yes" votes must vote in favor. Amber Myers served as the Inspector of Elections and the results of the ballots received is as follows:

660 Votes In Favor of the Proposed Amendment
40 Votes Against the Proposed Amendment

With a majority of voters voting to pass the assessment, the CC&Rs will be amended in accordance with the vote of a majority of owners.

ADJOURNMENT

There being no additional business to discuss, the Meeting was unanimously adjourned at 5:00 PM

Respectfully submitted by: Amber Myers - Associated Professional Services