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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  
20 RAZUKI, an individual; and DOES 1  
through 25, inclusive;

21 Defendants.  
22

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

Assigned to Judge: Honorable Ronald L. Styn

**DECLARATION OF NINUS MALAN 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

23 I, Ninus Malan, declare:

24 1. I am over the age of 18 and am a party to this action. I have personal knowledge  
25 of the facts stated in this declaration. If called as a witness, I would testify competently thereto. I  
26 provide this declaration in support of defendants San Diego United Holdings Group, LLC, Balboa  
27 Ave Cooperative, and Ninus Malan's opposition to plaintiff Montgomery Field Business  
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1 Condominiums Association's ("Association" or "Plaintiff") request for preliminary injunction  
2 ("Plaintiff's Motion").

3 2. I am a principal of San Diego United Holdings Group, LLC ("San Diego United")  
4 and have decision making authority for San Diego United.

5 3. I am the Chief Executive Officer for Balboa Ave Cooperative ("Balboa") and have  
6 decision making authority for Balboa.

7 4. San Diego United owns real property located at 8863 Balboa Ave, Suite E and  
8 8861 Balboa Ave, Suite B, San Diego, CA 92123 ("Property"). (A true and correct copy of the  
9 deeds for the Property are attached to Plaintiff's Notice Of Lodgment In Support Of Plaintiff's  
10 Motion For Preliminary Injunction ("Plaintiff's NOL") as Exhibits 2(A) and 2(C) and  
11 incorporated by reference.)

12 5. In May 2015, the City of San Diego ("City") authorized a Conditional Use Permit  
13 for operation of a medical marijuana consumer cooperative ("MMCC CUP") at the Property. The  
14 MMCC CUP was recorded July 2015. (A true and correct copy of the MMCC CUP is attached to  
15 Plaintiff's NOL as Exhibit "3" and incorporated by reference.) Balboa is the operator/responsible  
16 person for the MMCC CUP. (A true and correct copy of Balboa's status as the MMCC CUP  
17 operator is attached to Defendants' Request for Judicial Notice In Support Of Opposition To  
18 Plaintiff's Motion For Preliminary Injunction ("RJN") as Exhibit "1" and incorporated by  
19 reference.)

20 6. Prior to January 2017, the MMCC had not opened at the Property as the original  
21 applicant had passed away and it took some time to settle things.

22 7. In January 2017, Property construction commenced according to City approved  
23 plans to complete the MMCC CUP's requirements.

24 8. In or about late March 2017, construction was completed and the City signed off  
25 on construction and issued a certification of occupancy.

26 9. In April 2017, the MMCC opened at the Property and has continued to operate  
27 since.

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1           10. Defendants have expended significant resources in order to open the MMCC and  
2 the MMCC CUP is valuable as it is properly issued by the City and once it is lost, it is virtually  
3 impossible to get another one.

4           11. The MMCC has members that have medical needs and these individuals will be  
5 left without a place to get their medicines if the preliminary injunction is granted.

6           12. We also employ over 60 people who will all lose their jobs immediately.

7           13. The Association has attached information in support of the injunction that the  
8 Association will be harmed if the MMCC is allowed to operate because it will lose its insurance.  
9 This is not the case. First, the insurance policy will not cancel, if at all, until October 2017, and  
10 this is IF the 2015 Amendment if found to be lawfully done. Last week, I inquired into insurance  
11 alternatives and found at least one company that will insure legally licensed dispensaries, such as  
12 Balboa. I discussed with this company working on a policy to cover the Association in the event  
13 the Association chooses to accept such policy.

14           14. Also, Defendants, particularly San Diego United, has the ability to self-insure and  
15 can self-insure. Both of these alternatives eliminate the Association's claimed harm.

16           15. When Balboa became the MMCC CUP operator, and thereafter when San Diego  
17 United purchased the Property, it was represented to me, and it was my belief that the 2015  
18 Amendment was invalid as the Association had not followed its governing documents and the law  
19 to pass the 2015 Amendment. I was aware that the documentation was improper and that the vote  
20 that passed the 2015 Amendment was insufficient to comply with the Association's CC&Rs.

21           16. Further, the Association had not taken legal action for years. In late 2013 or early  
22 2014, the MMCC CUP Application was submitted and when Balboa became the MMCC CUP  
23 operator in January 2017, the Association had not filed any legal action. When San Diego United  
24 purchased the Property in March 2017 and construction was complete, the Association still had  
25 not taken any legal action. I felt that in the event Daniel Burkowski, acting through the  
26 Association, used the Association to sue Defendants, it could, and should, be overcome.

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17. The costs associated with the Property and the MMCC CUP are tremendous. To date, costs include over \$600,000 on the complete clinic style build out and there is more than \$250,000 in product on the shelves for the MMCC's patients who depend on the medicine.

18. Defendants have acquired debt of over \$2,000,000 related to the MMCC CUO, real estate, fixtures, and equipment. The debt is owed regardless of the MMCC's operational status and if the Court grants the injunction, Defendants are left without the ability to repay their creditors.

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



\_\_\_\_\_  
Ninus Malan