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6 Attorneys for Defendants  
Ninus Malan  
7

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**07/30/2018** at 10:35:00 AM  
Clerk of the Superior Court  
By Richard Day, Deputy Clerk

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

11 SALAM RAZUKI, an individual,

12 Plaintiff,

13 vs.

14 NINUS MALAN, an individual; CHRIS  
15 HAKIM, an individual; MONARCH  
MANAGEMENT CONSULTING, INC., a  
16 California corporation; SAN DIEGO  
UNITED HOLDINGS GROUP, LLC, a  
17 California limited liability company; FLIP  
MANAGEMENT, LLC, a California  
18 limited liability company; ROSELLE  
PROPERTIES, LLC, a California limited  
19 liability company; BALBOA AVE  
COOPERATIVE, a California nonprofit  
20 mutual benefit corporation; CALIFORNIA  
CANNABIS GROUP, a California  
21 nonprofit mutual benefit corporation;  
DEVILISH DELIGHTS, INC. a California  
22 nonprofit mutual benefit corporation; and  
DOES 1-100, inclusive;

23 Defendants.  
24

**CASE NO. 37-2018-00034229-CU-BC-CTL**

**DECLARATION OF GINA M. AUSTIN**

[Imaged File]

1 I, Gina M. Austin, declare:

2 1. I am attorney admitted to practice before this Court and all California courts and,  
3 along with Tamara M. Leetham, represent defendant Ninus Malan (“Malan”) in this matter. I  
4 make this declaration in support of Malan’s ex parte application to vacate order appointing  
5 receiver. Unless otherwise stated, all facts testified to are within my personal knowledge and, if  
6 called as a witness, I would and could competently testify to them.

7 2. I am an expert in cannabis licensing and entitlement at the state and local levels  
8 and regularly speak on the topic across the nation.

9 3. I have represented Ninus Malan, San Diego United Holdings Group, Balboa Ave  
10 Cooperative, and California Cannabis Group in multiple matters in San Diego County Superior  
11 Court.

12 4. My firm also performs additional legal services for these defendants to include  
13 corporate transactions and structuring, land use entitlements and regulations related to cannabis,  
14 and state compliance related to cannabis.

15 5. On Tuesday July 17, 2018, I specially appeared in Judge Medel’s department in  
16 response to an ex parte application by Salam Razuki to appoint a receiver and for a temporary  
17 restraining order in the instant litigation. The purpose of my special appearance was to inform the  
18 court that none of the defendants had been served, that our office had not been retained to  
19 represent any of the defendants in this matter, and request that the court set the matter for a proper  
20 noticed hearing after the defendants had been served. A true and correct copy of the transcript  
21 from that hearing is attached as Exhibit A and incorporated by reference.

22 6. Judge Medel summarily granted the application and Plaintiff’s request to appoint  
23 Mr. Essary as the receiver. There was no discussion of the proposed order or any response from  
24 the court regarding the lack of notice, service, or harms that would create a need for immediate  
25 relief.

26 7. Outside the courtroom I asked opposing counsel to send me a courtesy copy of the  
27 order as soon as it was signed. I did not receive a courtesy copy of the order until late that  
28 evening.

1           8.       At approximately noon on July 17, 2018, Heidi Rising, the manager of a separate  
2 dispensary Golden State Greens and then contract operator of the Balboa dispensary, called me  
3 and informed me that the prior operators of the Balboa dispensary were outside and harassing  
4 customers and that the prior security guard was there brandishing a gun. Golden State Greens is a  
5 separate client of Austin Legal Group. I instructed Ms. Rising to call the police and drove up to  
6 the dispensary to meet with police when they arrived to explain the events that had happened in  
7 court earlier that morning.

8           9.       At approximately 2pm, upon reviewing a copy of the register of actions in this  
9 case, I telephoned Mr. Essary to (i) request a copy of the order and the bond, (ii) discuss the  
10 issues in the case, and (iii) determine the process for moving forward. Mr. Essary informed me  
11 that he was going to immediately “take possession of all assets” including the dispensary and put  
12 the prior operator back in control of the dispensary. I informed him that I could not allow him to  
13 do that until the defendants had been served with an order. I specifically informed Mr. Essary  
14 that neither my office nor any of the defendants had been served with the court’s order appointing  
15 the receiver. Mr. Essary informed me that he had years of experience and taken control of  
16 millions of dollars and would take possession of the dispensary immediately. In response to my  
17 objections that none of the parties had been served with the order or bond, Mr. Essary stated that  
18 he didn’t have to serve anyone as he had a court order appointing him the receiver and that was  
19 enough.

20           10.       Around 3 pm on July 17<sup>th</sup>, Heidi rising telephoned me because a man was  
21 pounding on the dispensary’s door and demanding he be let in. Heidi did not feel safe leaving the  
22 dispensary. The man with a gun was outside, and people working with him were sitting on her  
23 car. I drove to the dispensary to pick her up and help her escape.

24           11.       When I arrived at the dispensary I was speaking with Ms. Rising on the phone to  
25 determine where to pick her up. She stated that the people outside were trying to break down the  
26 front door and we agreed I would pick her and two other Golden State Greens employees up in  
27 the back of the dispensary. When I arrived the people outside had just broken down the front  
28 door of the dispensary and there were people running around the corner of the dispensary towards

1 my car as if to attack us. Out of fear, as soon as Heidi and her two other associates were in my  
2 car, I drove away as fast as I could. We were chased by the man who had been at the dispensary  
3 earlier in the day brandishing his gun.

4 12. Despite the fact that none of the defendants had been served with the court's order,  
5 on July 19, 2018 I emailed Mr. Essary and informed him of the issues I believed to need  
6 immediate attention. A true and correct copy of this email is attached as Exhibit I to the  
7 Declaration of Tamara M. Leatham. In a response email on July 19, 2018, Mr. Essary  
8 acknowledged receipt of my email and stated that he had retained an attorney Mr. Griswold.

9 13. I am informed and believe that either Mr. Essary or Mr. Griswold or both have  
10 taken possession of the Balboa dispensary and have placed the prior operator SoCal Building  
11 Ventures as operator.

12 14. Allowing Mr. Essary to control the dispensary is a violation of State law. The  
13 Bureau of Cannabis Control ("BCC") requires all owners to submit detailed information to the  
14 BCC as part of the licensing process. An owner is defined as:

- 15 (1) A person with an aggregate ownership interest of 20 percent  
16 or more in the person applying for a license or a licensee,  
unless the interest is solely a security, lien, or encumbrance.
- 17 (2) The chief executive officer of a nonprofit or other entity.
- 18 (3) A member of the board of directors of a nonprofit.
- 19 (4) ***An individual who will be participating in the direction,  
control, or management of the person applying for a license***  
[emphasis added].

20 Cal. Bus. Prof Code § 26001(al).

21 15. Based upon the definition of an Owner, Mr. Essary would be deemed by the BCC  
22 to be an owner and would have to submit all the requisite information required by Title 16  
23 Chapter 42 of the California Code of Regulations before he would be allowed to legally take  
24 possession and control of the Balboa dispensary.

25 16. Based upon the definition of Owner, SoCal Building Ventures would also be  
26 deemed an owner. I am informed and believe that its re-appointment as operator of the Balboa  
27 dispensary is also a violation of state law as none of the CCR Title 16 information has been  
28 submitted to the BCC.

1            17.     Allowing Mr. Essary to control the dispensary is also a violation of the San Diego  
2 Municipal Code (“SDMC”). The SDMC requires all *responsible persons* to have a background  
3 checks and a valid Marijuana Outlet Operating Permit. (SDMC Article 2, Division 15.) A true  
4 and correct copy of SDMC Article 2, Division 15 is attached hereto as Exhibit B.

5            18.     The SDMC defines *Responsible Person* as “a person who a Director determines is  
6 responsible for causing or maintaining a public nuisance or a violation of the Municipal Code or  
7 applicable state codes. The term Responsible Person includes but is not limited to a property  
8 owner, tenant, person with a Legal Interest in real property or person in possession of real  
9 property.” (SDMC §11.0210). The term also includes “a permittee and each person upon whom a  
10 duty, requirement or obligation is imposed by this Article, or who is otherwise responsible for the  
11 operation, management, direction, or policy of a police-regulated business. It also includes an  
12 employee who is in apparent charge of the premises.” (SDMC 33.0201.)

13           19.     Mr. Essary and SoCal Building Ventures are responsible persons and are in  
14 violation of the SDMC for failure to obtain the requisite background checks and permits.

15           20.     I am informed and believe that SoCal Building Ventures has caused the Balboa  
16 dispensary to be in violation of the SDMC and the City of San Diego has issued various notices  
17 of violation that if left uncured will threaten the ability of Balboa to maintain its Conditional Use  
18 Permit to operate. A true and correct copy of the current code enforcement action pending against  
19 the Balboa dispensary is attached hereto as Exhibit C.

20           21.     I am informed and believe that upon the appointment of Mr. Essary as the receiver,  
21 the Balboa dispensary has engaged in additional violations of the SDMC by failing to provide two  
22 security guards during operating hours and one security guard during non-operating hours.

23           22.     The Balboa dispensary is currently in the process of a compliance and tax audit by  
24 the City of San Diego. The City has demanded responses by Friday August 3<sup>rd</sup>. Failure to  
25 provide these responses included financial data from the databases that are in the exclusive  
26 control of Mr. Essary and/or SoCal Building Ventures could cause irreparable harm and a loss of  
27 the Balboa dispensary’s right to operate.

28           23.     There are two hearings scheduled before the Hearing Officer for the City of San

1 Diego for land use entitlements for the properties located at 8859 Balboa (“8859 CUP”) and 9212  
2 Mira Este (“9212 CUP”). These hearings are of critical importance to the future rights and  
3 privileges of those two properties. Approval by the Hearing Officer at each of these hearings  
4 requires specific knowledge and skills of the City of San Diego licensing process and historical  
5 facts that neither Mr. Essary or SoCal Building Ventures has.

6 24. The 8859 CUP is scheduled for a public hearing on August 15, 2018. Ninus  
7 Malan and the various entities that he is a member of will be irreparably harmed if this hearing is  
8 delayed or if they are not adequately represented. The City of San Diego is only issuing 40  
9 permits. If the 8859 CUP is not heard by the Hearing Office on August 15, 2018, it is possible  
10 that the 8859 CUP would be unable to be approved in the future.

11 25. The 9212 CUP is scheduled for a public hearing in early September. Ninus Malan  
12 and the various entities that he is a member of will be irreparably harmed if this hearing is  
13 delayed or they are not adequately represented. Due to the permit number limitations, if the 9212  
14 CUP is not heard by the Hearing Office in early September, it is possible that the 9212 CUP  
15 would be unable to be approved in the future as there are more than 60 applications for only 40  
16 permits.

17 26. Our office has been responsible for processing the state applications related to  
18 cannabis operations at both the Balboa dispensary and 9212 Mira Este. Processing of these  
19 applications requires specific knowledge and skill of the state licensing requirements as well as  
20 the current state cannabis rules and regulations. An immediate response is required by the BCC  
21 from the Balboa dispensary and the Mira Este operations. It is my opinion that neither Mr.  
22 Griswold nor Mr. Essary have the knowledge and skills relevant to state cannabis law to  
23 effectively process these applications. Failure to immediately respond to the BCC and California  
24 Department of Public Health will likely jeopardize the permits and the ability to legally operate at  
25 these locations.


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I declare under penalty of perjury under California state law that the foregoing is true and correct. Executed in San Diego, California, on July 30, 2018.

  
Gina M. Austin

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

**EXHIBIT A**

**EXHIBIT A**



In The Superior Court Of The State Of California  
In And For The County Of San Diego  
Department 66; Hon. KENNETH MEDEL, Judge

SALAM RAZUKI, )  
 )  
 ) Plaintiff, )  
 )  
 ) vs. ) Case No. 37-18-00034229  
 )  
 )  
 ) NINUS MALAN )  
 )  
 ) Defendants. )  
 )

Reporter's Transcript  
JULY 17, 2018

Appearances:

For the Plaintiff: STEVEN ELIA, ESQ.  
2221 CAMINO DEL RIO S. #207  
SAN DIEGO, CALIFORNIA 92108

For the Defendant: GINA AUSTIN, ESQ.  
3990 OLD TOWN AVENUE, A-112  
SAN DIEGO, CALIFORNIA 92110

Darla Kmety, RPR, CSR 12956  
Official Court Reporter  
San Diego Superior Court  
San Diego, California 92101

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1 JULY 17, 2018; San Diego, California; 1:30 P.M.

2 -- 00o --

3 THE COURT: Item 4. Razuki versus Malan.

4 MR. ELIA: Good morning. Steven Elia on behalf  
5 of Mr. Razuki.

6 MS. GRIFFIN: Maura Griffin on behalf of  
7 plaintiff.

8 THE COURT: Mr. Elia.

9 MS. AUSTIN: Your Honor? Gina Austin specially  
10 appearing on behalf of all defendants.

11 THE COURT: When you say "specially," what does  
12 that mean?

13 MS. AUSTIN: It means we're here only to oppose  
14 this and protect their interests. They have been served.  
15 We are not retained as counsel yet for this matter.

16 THE COURT: All right. Counsel, tell me --  
17 flush this out for me. I need a little more history. I  
18 only had a peripheral chance to read your papers.

19 MR. ELIA: Yes, your Honor. It's a lengthy set  
20 of facts. I'll do my best to summarize.

21 This case is about three properties that operate  
22 three legal dispensaries: There's a retail location at  
23 Balboa. There's a manufacturing, cultivation at the  
24 Murriesta. And there is a third location which hasn't  
25 engage in operations at this moment. We're really dealing  
26 with the two operations.

27 My client invested millions of dollars. Her  
28 client invested nothing. If he did, it's a nominal

1 amount.

2 THE COURT: What was the role of her client?

3 MR. ELIA: To be the operator. But the deal was  
4 that my client would be 75 percent owner; her client would  
5 be 25 percent owner after my client recouped his  
6 investment, which hasn't happened.

7 THE COURT: Okay.

8 MR. ELIA: This oral agreement was memorialized  
9 into a settlement agreement where both sides were  
10 represented by an attorney. They met several times as  
11 Exhibit D. It's very clear as to what the ownership of  
12 the assets are. There's no ambiguity.

13 At this point, Mr. Malan, who is the defendant,  
14 and Mr. Hakim want to cut my client out of the deal  
15 completely. Essentially, they want to steal these  
16 operations. So in October of 2017, they brought in a  
17 management company, a professional management company,  
18 that would operate these operations. Counsel is here on  
19 behalf of SoCal. And they entered into three agreements  
20 for the three locations.

21 SoCal has paid about \$2.6 million so far. That  
22 money -- some of that money was supposed -- probably about  
23 a million dollars of it -- was supposed to go to an entity  
24 called Flip. My client was a 50 percent -- I'm sorry --  
25 75 percent owner, and her client would be a 25 percent  
26 owner, as I previously stated.

27 What Mr. Malan did, what Mr. Hakim did is they  
28 set up another entity called Monarch. Didn't tell my

1 client about it and funneled over a million dollars of  
2 that amount.

3 Now, under these three management agreements,  
4 SoCal was supposed to pay a hundred thousand dollars a  
5 month. So 50,000 per location. It's a substantial amount  
6 of money we're talking about. This was since October of  
7 2017.

8 Now, when SoCal eventually found out about a  
9 month ago that Mr. Razuki, my client, had a substantial  
10 interest in these operations, they sent a letter over to  
11 her client saying, what is this all about? Tell us why  
12 you didn't tell us Mr. Razuki had this ownership interest.  
13 Then they withhold payments.

14 So what her client does is he locks them out.  
15 Resorts to self-help, locks them out. Although they've  
16 got a million dollars worth of machinery at the  
17 cultivation location. Locks him out. Locks him out of  
18 the retail establishment. Brings in a new operator.

19 SoCal has already paid million of dollars, and  
20 her client has granted options under this agreement.  
21 They've paid \$225,000 for these options to purchase half  
22 of these operations, and they just locked him out and  
23 brought in a new operator.

24 They did this to conceal the fact and to cut my  
25 client out of the transaction. The new operator has no  
26 idea that my client owns 75 percent of these operations.

27 Now, we're asking for a receiver because these  
28 are extraordinary circumstances and conduct by the

1 defendants. All we're asking for is to preserve the  
2 status quo that we've had the last ten months with the  
3 defendants. We're just asking for the appointment of a  
4 receiver that would take over the marijuana operations,  
5 temporary restraining order so they don't commit waste.  
6 The problem, your Honor --

7 THE COURT: What underlying suit do you have?

8 MR. ELIA: The complaint?

9 THE COURT: Yeah.

10 MR. ELIA: It's basically to enforce the  
11 settlement agreement that's attached as Exhibit D.

12 THE COURT: There was a settlement in this case?

13 MR. ELIA: There was a settlement.

14 THE COURT: It's not agree -- they agreed to.

15 MR. ELIA: Yes. Exhibit D to our moving papers.  
16 That and for damages of the millions of dollars their  
17 clients have taken not told us about. They told us, Look.  
18 They're not really paying. In fact, they did pay.  
19 They're paying a hundred thousand dollars a month. They  
20 paid 225,000 for options we never knew about. All this  
21 money needs to be accounted for.

22 We're not asking for any harm to anybody. We  
23 just want a receiver to take over so that we can stop the  
24 wasting. We need some internal controls so that her  
25 clients don't continue to steal and put in a new operator  
26 that is eventually going to end up joining this complaint,  
27 and then we have a multiplicity of lawsuits.

28 THE COURT: You want an injunction.

1 MR. ELIA: Yes, your Honor.

2 THE COURT: The injunction it to maintain the  
3 status quo.

4 MR. ELIA: Maintain the status quo, to not  
5 waste. And one of things, your Honor, her client is the  
6 record owner on the LLCs; however, the settlement  
7 agreement says no matter who owns it, the deal is 75/25.  
8 He's free to sell the properties.

9 In fact, when we look at the management  
10 agreements, he's sold furniture, fixtures, and equipment  
11 that belonged to my client. He can't sell something that  
12 he doesn't own. There's irreparable harm. He's free to  
13 sell -- transfer the properties tomorrow. My client is  
14 guarantor on millions of dollar of real estate loans on  
15 this.

16 THE COURT: Another party wanted to intervene  
17 today.

18 MR. ELIA: Yes, your Honor. Rob Fuller. We  
19 filed our motion today ex parte.

20 THE COURT: You did that today without a --

21 MR. ELIA: We filed ex parte before  
22 10:00 yesterday. Gave notice. Should have been with the  
23 court.

24 THE COURT: I don't have it, but isn't that  
25 supposed to be a full-blown motion? Can I do that on an  
26 ex parte basis?

27 MR. ELIA: I believe it's appropriate for ex  
28 parte under the rules. We cite that in our brief.

1 THE COURT: Counsel?

2 MS. AUSTIN: Good morning, your Honor. As I  
3 mentioned, I am specially appearing on behalf of all the  
4 defendants. None of the defendants have been served with  
5 either the motion or the complaint intervention, nor the  
6 underlying complaints for this ex parte. We're here to  
7 protect their rights.

8 THE COURT: You have not served them?

9 MR. ELIA: Your Honor, we haven't located them,  
10 but I did speak to their counsel on Friday. He told me at  
11 10:00 a.m. on Friday he downloaded the complaint. He  
12 represented he represents both sides and that I asked  
13 him -- I had a 15-minute conversation with him, fully  
14 explained everything. I told him -- asked him to please  
15 let your clients know, and he assured me that he would.

16 MS. AUSTIN: Your Honor, the person he spoke to  
17 is not a litigation counsel. He does, as I understand it,  
18 he does represent some of the defendants in some business  
19 transactional work but does not represent them in this. I  
20 don't know the nature of that nor do I --

21 THE COURT: Did you not know them beforehand?

22 MS. AUSTIN: Did I not know who?

23 THE COURT: Did you have no relationship with  
24 the moving parties beforehand?

25 MS. AUSTIN: No. I only have relationship with  
26 -- no. I have relationship with Ninus Malan in other  
27 matters, so we may end up representing them, but we  
28 haven't done conflicts checks.

1           we have another attorney we're talking to,  
2 George Fleming, who is looking at but hasn't done  
3 conflicts checks. We're not even sure the nature of the  
4 complaint. The notice we received for their ex parte  
5 which was in email on Friday, didn't even tell us the  
6 nature of the ex parte.

7           THE COURT: All right.

8           MS. GRIFFIN: That's the Number 1 thing is we  
9 haven't been served. The second thing is there's no  
10 urgency here. I briefly read the papers as we were  
11 sitting out there -- or sitting here waiting, listening  
12 and there's no urgency. What is going on today has been  
13 going on for -- Ninus Malan having control of the  
14 entities, which he's entitled to, has been going on a very  
15 long time. There's no evidence of any urgency in this  
16 particular matter.

17           And I think most importantly here is that as  
18 I skimmed through the declaration, which is Mr. Razuki,  
19 which is all hearsay, none of it shows just why there is a  
20 need to change anything today.

21           If we were able to get into the factual matter  
22 of this, we -- you would get evidence presented to you  
23 that would show that, in fact, SoCal Builders was -- the  
24 reason that they had to be terminated was because of  
25 mismanagement, was because the HOA was looking at revoking  
26 the permit, because they weren't doing proper permits  
27 under the state licensing.

28           I don't want to get into all the merits. We



1 don't represent them yet. We don't know that we will.

2 THE COURT: Okay. Thank you. Anything further,  
3 counsel?

4 MR. FULLER: Yes, your Honor. I found the  
5 citation. Code of Civil Procedure 387(c) that says it can  
6 be brought ex parte.

7 THE COURT: I'm going to grant your motion to  
8 intervene.

9 MR. FULLER: Thank you, your Honor.

10 THE COURT: On yours, the only thing is the  
11 receivership?

12 MR. FULLER: May I address that briefly?

13 THE COURT: Yes.

14 MR. FULLER: We believe that we have a very  
15 long, detailed authored dispute resolution clause in our  
16 contracts.

17 THE COURT: Detailed --

18 MR. FULLER: This seller undercut. We're in the  
19 position we've got until next Tuesday, July 24, to make  
20 \$170,000 of payments. Right now, we have the unavailable  
21 task to decide whether to give to Mr. Malan and  
22 Mr. Hakim, or whether Mr. Razuki should get a hundred  
23 percent or 75 percent of that. We don't know where to put  
24 that money. We feel more comfortable giving it to the  
25 receiver.

26 MR. ELIA: Your Honor, I brought the receiver in  
27 court, Mr. Essary. I've had Judge Sturgeon appoint sua  
28 sponte without anyone asking for it. He's trusted by

1 other judges here. I know some judges have reservations  
2 with receiver, but Mr. Essary would be appropriate for  
3 this case.

4 MS. AUSTIN: Your Honor, we haven't seen  
5 briefing on this. We don't know anything about what is  
6 going on. If they don't know where to put the money, we  
7 suggest they interplead with the court.

8 THE COURT: All right. I'm going to grant the  
9 relief requested. The injunction is granted.  
10 Receivership is appointed. Hope you all can sort this  
11 out. I would have some really good communication with  
12 people. See if you can work out --

13 MS. AUSTIN: Your Honor, you're granting the  
14 receivership? We're not even served. How are we going --  
15 we don't even know if this is the case.

16 THE COURT: Well, the order is granted at this  
17 point.

18 MR. ELIA: Thank you, your Honor. Appreciate  
19 it.

20

21 [whereupon the proceeding concluded.]

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1 STATE OF CALIFORNIA

2 COUNTY OF SAN DIEGO

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5 I, Darla Kmety, Court-Approved Official Pro Tem  
6 Reporter for the Superior Court of the State of  
7 California, in and for the County of San Diego, do hereby  
8 certify:

9

10 That as such reporter, I reported in machine  
11 shorthand the proceedings held in the foregoing case;

12

13 That my notes were transcribed into typewriting  
14 under my direction and the proceedings held on  
15 July 17, 2018, contained within pages 1 through 10, are a  
16 true and correct transcription.

17

18

19 This Day 20th of July 2018

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\_\_\_\_\_  
Darla Kmety, CSR 12956

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**EXHIBIT B**

**EXHIBIT B**

**Article 2: Health Regulated Businesses and Activities**

**Division 15: Marijuana Outlets, Marijuana Production Facilities,  
and Transportation of Marijuana**

*(“Medical Marijuana Consumer Cooperatives” added 4-27-2011  
by O-20043 N.S.; effective 5-27-2011.)*

*(Retitled from “Medical Marijuana Consumer Cooperatives” to “Marijuana  
Outlets” on 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)*

*(“Retitled from “Marijuana Outlets” to “Marijuana Outlets, Marijuana Production Facilities, and  
Transportation of Marijuana” and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)*

**§42.1501 Purpose and Intent**

It is the intent of this Division to promote and protect the public health, safety, and welfare of the citizens of San Diego by allowing but strictly regulating the retail sale of marijuana at *marijuana outlets*, and the raising, harvesting, processing, wholesaling, distributing, storing, and producing of *marijuana* and *marijuana* products at *marijuana production facilities* in accordance with state law. It is further the intent of this Division to ensure that *marijuana* is not diverted for illegal purposes, and to limit its use to those persons authorized under state law. Nothing in this Division is intended to authorize the cultivation, sale, distribution, possession of *marijuana*, or other transaction, in violation of state law.

It is not the intent of this Division to supersede or conflict with state law, but to implement the Compassionate Use Act (California Health and Safety Code section 11362.5), the Medical Marijuana Program Act (California Health and Safety Code sections 11362.7-11362.83), the Medicinal and Adult-Use Cannabis Regulation and Safety Act, and the Adult Use of Marijuana Act.

*(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)*

*(Amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)*

*(Amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)*

**§42.1502 Definitions**

For the purpose of this Division, the following definitions shall apply and appear in italicized letters:

*Marijuana* has the same meaning as cannabis in California Business and Professions Code section 26001.

*Marijuana outlet* means a retail establishment operating with a Conditional Use Permit in accordance with section 141.0504, where *marijuana*, *marijuana* products, and *marijuana* accessories, as defined in California Health and Safety Code sections 11018, 11018.1, and 11018.2, respectively, are sold to the public in accordance with dispensary or retailer licensing requirements contained in the California Business and Professions Code sections governing *marijuana* and *medical marijuana*. A *marijuana outlet* shall not include clinics licensed by the State of California pursuant to Chapters 1, 2, 3.01, 3.2, or 8 of Division 2 of the California Health and Safety Code.

*Marijuana production facility* means individual or combined uses, operating with a Conditional Use Permit in accordance with section 141.1004, engaged in the agricultural raising, harvesting, and processing of *marijuana*; wholesale distribution and storage of *marijuana* and *marijuana* products; and production of goods from *marijuana* and *marijuana* products consistent with the requirements of State of California Statutes and the California Departments of Food and Agriculture, Consumer Affairs, and Public Health regulations.

*Primary caregiver* means the individual designated by the *qualified patient* who has consistently assumed responsibility for the housing, health, or safety of the *qualified patient*, in accordance with state law, including California Health and Safety Code section 11362.5. As explained in *People v. Mentch*, 45 Cal. 4th 274 (2008), a *primary caregiver* is a person who consistently provides caregiving to a *qualified patient*, independent of any assistance in taking medical *marijuana*, at or before the time he or she assumed responsibility for assisting with medical *marijuana*.

*Qualified patient* means a California resident having the right to obtain and use *marijuana* for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of *marijuana* in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which *marijuana* provides relief, in accordance with state law, including California Health and Safety Code section 11362.5.

*Responsible person* has the same meaning as in San Diego Municipal Code section 11.0210, and includes an employee and each person upon whom a duty, requirement or obligation is imposed by this Division, or who is otherwise responsible for the operation, management, direction, or policy of a *marijuana outlet* or a *marijuana production facility*. It also includes an employee who is in apparent charge of a *marijuana outlet* or a *marijuana production facility*.

*State identification card* means the card issued to a *qualified patient* or *primary caregiver* in accordance with California Health and Safety Code sections 11362.71-11362.76.

*Violent felony* means the same as it does in California Penal Code section 667.5(c) as may be amended from time to time.

*(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)*

*(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)*

*(Amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)*

*(Amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)*

#### **§42.1504 Marijuana Outlets and Marijuana Production Facilities—Permit Required**

- (a) It is unlawful for any person to operate any *marijuana outlet* without a *Marijuana Outlet Permit* or a *marijuana production facility* without a *Marijuana Production Facility Permit* issued pursuant to this Division.
- (b) *Marijuana outlets* and *marijuana production facilities* shall designate one officer or manager to act as a responsible managing officer. The responsible managing officer may complete and sign the permit application on behalf of the *marijuana outlet* or a *marijuana production facility*.
- (c) The issuance of a *Marijuana Outlet Permit* or *Marijuana Production Facility Permit* pursuant to this Division does not relieve any person from obtaining any other permit, license, certificate, or other similar approval that may be required by the City, the County of San Diego, or state or federal law.
- (d) A permit applicant must obtain a Conditional Use Permit as required by sections 141.0504 and 141.1004 prior to obtaining a permit under this Division.
- (e) Applications for *Marijuana Outlet Permits* and *Marijuana Production Facility Permits* shall be filed with the City Manager.

- (f) The City Manager shall act upon the application within thirty calendar days, except that notice of an incomplete application shall be given within five business days.
- (g) *Marijuana Outlet* Permits and *Marijuana Production Facility* Permits issued pursuant to this Division shall be valid for one year.
- (h) An application for a *Marijuana Outlet* Permit or a *Marijuana Production Facility* Permit shall be denied if the applicant has had any permit issued pursuant to this Division revoked by the City Manager within the past twelve months of the date of application.

*(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)*

*(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)*

*(Retitled from “Cooperatives–Permit Required” to “Outlets–Permit Required” and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)*

*(Retitled from “Outlets–Permit Required” to “Marijuana Outlets and Marijuana Production Facilities–Permit Required” and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)*

**§42.1505 Exemptions**

- (a) This Division does not apply to the cultivation of *marijuana* by a *qualified patient* at that patient’s home, so long as the patient is only growing for his or her own personal medical needs in a manner consistent with state law.
- (b) This Division does not apply to the cultivation of six or fewer *marijuana* plants within a private residence or an accessory structure to that residence that is fully enclosed and secure. For the purposes of this section, a private residence means a house, apartment unit, mobile home, or other similar dwelling.

*(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)*

*(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)*

*(Amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)*



**§42.1506 Marijuana Outlets and Marijuana Production Facilities–Cost Recovery Fees**

Notwithstanding any other provision of this Code, the City may recover its costs in the form of a permit fee for the costs of permitting and regulating *marijuana outlets* and *marijuana production facilities*.

*(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)*

*(Retitled from “Cooperatives–Cost Recovery Fees” to “Outlets–Cost Recovery Fees” and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)*

*(Retitled from “Outlets–Cost Recovery Fees” to “Marijuana Outlets and Marijuana Production Facilities–Cost Recovery Fees” and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)*

**§42.1507 Marijuana Outlets and Marijuana Production Facilities–Background Checks and Reporting Convictions**

- (a) Prior to acting as a *responsible person* in a *marijuana outlet* or a *marijuana production facility*, all persons shall undergo fingerprinting. The fingerprints shall be provided to and kept on file with the City.
- (b) The City shall conduct a background check of all *responsible persons*. Any person who has been convicted of a *violent felony* or a crime of moral turpitude within the past seven years, cannot act as a *responsible person* for a *marijuana outlet* or a *marijuana production facility*.

A conviction is complete upon entry of judgment upon a finding of guilty, or upon entry of a plea of guilty, or upon entry of a plea of nolo contendere or “no contest,” regardless of the pendency of any appeal, or expungement pursuant to California Penal Code section 1203.4, 1203.4a, or 1203.41.

- (c) It is unlawful for any *responsible person* to act as a *responsible person* for a *marijuana outlet* or a *marijuana production facility* if he or she:
  - (1) fails to provide their fingerprints to the City; or
  - (2) has been convicted of a *violent felony* or crime of moral turpitude within the past seven years.
- (d) The cost of the fingerprinting and attendant background check shall be borne by the *responsible person*.

- (e) A *responsible person* who is convicted of a *violent felony* or crime of moral turpitude shall report the conviction to the City Manager within 48 hours.

*(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)*

*(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)*

*(Retitled from “Cooperatives–Background Checks” to “Outlets– Background Checks” and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)*

*(Retitled from “Outlets–Background Checks” to “Marijuana Outlets and Marijuana Production Facilities–Background Checks and Reporting Convictions” and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)*

**§42.1508 Marijuana Outlets and Marijuana Production Facilities–Operational Requirements**

- (a) Verification and Documentation

*A marijuana outlet and a marijuana production facility shall maintain and provide upon request by the City a current list of all responsible persons.*

- (b) Age Limitations

- (1) No person under the age of twenty-one is allowed at or in any *marijuana outlet* or *marijuana production facility* unless the person is a *qualified patient* or *state identification card* holder, and if under the age of eighteen, is accompanied by a parent, legal guardian, or a *primary caregiver* who is over the age of eighteen.

- (2) No person under the age of twenty-one may be employed by or act as a *responsible person* on behalf of a *marijuana outlet* or a *marijuana production facility*.

*(Retitled from “Cooperatives–Verification and Documentation” to “Cooperatives–Operational Requirements” and amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)*

*(Retitled from “Cooperatives–Operational Requirements” to “Outlets–Operational Requirements” and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)*

*(Retitled from “Outlets–Operational Requirements” to “Marijuana Outlets and Marijuana Production Facilities–Operational Requirements” and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)*

**§42.1509 Marijuana Outlets and Marijuana Production Facilities—Regulatory Actions on Permit**

- (a) In addition to any penalties and remedies provided by law, and any other bases for regulatory action provided by law, a *Marijuana Outlet Permit* and a *Marijuana Production Facility Permit* are subject to regulatory actions for the following reasons:
  - (1) non-compliance with this Division or any condition of this permit;
  - (2) conviction of any crime which would have been grounds for denial of the permit;
  - (3) failure to take corrective action after timely written notice of a violation;
  - (4) failure to supervise the business, resulting in a pattern of violations of the San Diego Municipal Code or other provisions of law by the *responsible persons* or patrons, or both. A revocation based on the act or omission of a patron may be based on a determination that a *responsible person* caused or condoned the act or omission, or failed to take reasonable corrective action after a timely written notice of violation; or
  - (5) violation of any state or local law or regulation pertaining to the business.
- (b) Regulatory action includes the following:
  - (1) Issuance of a verbal warning;
  - (2) Issuance of a written warning;
  - (3) Issuance of a notice of violation;
  - (4) Placing conditions upon the permit which are reasonably related to any violation. Unless otherwise stated as part of the condition, all such conditions expire when the permit expires, excluding any time stayed during an appeal;

- (5) Suspension of the *Marijuana Outlet* Permit or the *Marijuana Production Facility* Permit; or
- (6) Revocation of the *Marijuana Outlet* Permit or the *Marijuana Production Facility* Permit.
- (c) Written notice of the regulatory actions taken pursuant to section 42.1509(b)(2) through (b)(6) shall be provided to the individual identified as the responsible managing officer pursuant to section 42.1504(b).
- (d) A request for an appeal hearing of the regulatory actions taken pursuant to section 42.1509(b)(2) through (b)(6) may be made by the responsible managing officer.
- (e) The request for an appeal hearing must be made in writing to the City Manager within ten calendar days of the receipt of the notice of regulatory action.
- (f) Upon receiving the request for a hearing, the City Manager shall set hearing not more than thirty calendar days from the date of the receipt of the request, unless a later date is agreed to by the City and the responsible managing officer in writing.
- (g) The City Manager shall notify the responsible managing officer of the date, time, and place of the hearing by means of registered or certified mail, or hand delivery.
- (h) The hearing shall be conducted by a hearing officer provided by the City Manager.
- (i) The hearing officer may affirm, deny, or modify the regulatory action, and shall furnish the reason for the decision to the responsible managing officer in writing within thirty calendar days of the conclusion of the hearing.
- (j) The regulatory action shall be suspended while an appeal is pending, or until the time for filing such an appeal has expired, except for regulatory action taken when the City Manager determines there is a need to take immediate action to protect the public from injury or harm or when the *Marijuana Outlet* Permit or the *Marijuana Production Facility* Permit was based on material misrepresentations in the application and the permit would not have been issued but for the material misrepresentations.

*(Retitled from “Cooperatives–Not-for-Profit” to “Cooperatives-Regulatory Actions on Permit” and amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)*

*(“Retitled from “Cooperatives–Regulatory Actions on Permit” to “Outlets–Regulatory Actions on Permit” and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)*

*(“Retitled from “Outlets–Regulatory Actions on Permit” to “Marijuana Outlets and Marijuana Production Facilities–Regulatory Actions on Permit” and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)*

**§42.1510 Transportation**

The transportation of *marijuana* and *marijuana* products between facilities licensed by the State of California pursuant to Business and Professions Code, Division 10, is permitted.

*(“Transportation” added 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)*

**EXHIBIT C**

**EXHIBIT C**



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Record CE-0501875:

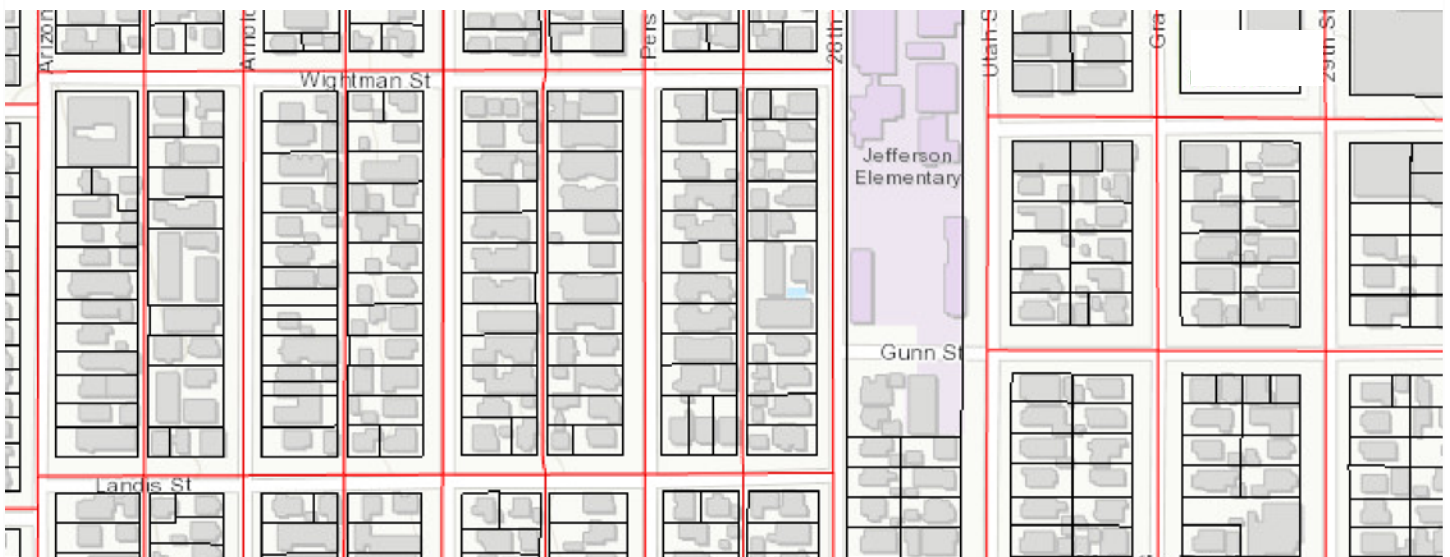
# Complaint

Record Status: Active Enforcement

Record Info ▾

## Work Location

8863 Balboa Av  
 E  
 San Diego CA 92123





## Record Details

### Project Description:

Zoning-Discretionary Permit Violations  
Online - SMR "RLS- CUP Violations. Signage electrical and potential others. Site Visit conducted at MO. Met with Manager (James) who stated only one security guard, new signage seen which some include electrical. No permits seen in PTS."

### Owner:

SAN DIEGO UNITED HOLDINGS GROUP LLC  
7977 Broadway  
Lemon Grove Ca  
Lemon Grove CA 91945

### ▼ More Details

- Application Information
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Record CE-0501875:

# Complaint

Record Status: Active Enforcement

Record Info 

## Processing Status

  Case Opened

Due on **06/04/2018**, assigned to TBD  
Marked as Assigned on **06/05/2018** by Rowdy Sperry

  Prep Research

Due on **06/05/2018**, assigned to Rowdy Sperry  
Marked as Ready for Investigator Action on **06/05/2018** by Rowdy Sperry

Due on **06/05/2018**, assigned to TBD  
Marked as Research Complete on **06/05/2018** by Rowdy Sperry

  Investigator Action

Due on **06/05/2018**, assigned to Rowdy Sperry  
Marked as Civil Penalty Notice and Order on **06/05/2018** by Rowdy Sperry

*Due on 06/05/2018, assigned to Rowdy Sperry  
Marked as Note on 06/05/2018 by Rowdy Sperry*

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*Due on 06/11/2018, assigned to Rowdy Sperry  
Marked as Note on 06/06/2018 by Lisa Poston*

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*Due on 06/05/2018, assigned to Rowdy Sperry  
Marked as Note on 06/06/2018 by Rowdy Sperry*

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*Due on 06/11/2018, assigned to Rowdy Sperry  
Marked as Note on 06/07/2018 by Joana Flores*

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*Due on 06/11/2018, assigned to Rowdy Sperry  
Marked as Note on 06/07/2018 by Rowdy Sperry*

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*Due on 06/11/2018, assigned to Rowdy Sperry  
Marked as Note on 06/15/2018 by Crystal Andrade*

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*Due on 06/11/2018, assigned to Rowdy Sperry  
Marked as Note on 06/15/2018 by Crystal Andrade*

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*Due on 06/11/2018, assigned to Rowdy Sperry  
Marked as Note on 07/03/2018 by Amalia Ontiveros*

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*Due on 06/11/2018, assigned to Rowdy Sperry  
Marked as Note on 07/03/2018 by Amalia Ontiveros*

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*Due on 07/13/2018, assigned to Denney J Bryan  
Marked as TBD on TBD by TBD*

Closed