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6 Attorneys for Defendants  
Ninus Malan

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**09/04/2018** at 05:46:00 PM  
Clerk of the Superior Court  
By E- Filing, Deputy Clerk

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO- CENTRAL DIVISION**

10  
11 SALAM RAZUKI, an individual,

12 Plaintiff,

13 vs.

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

23 Defendants.  
24

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

**SUPPLEMENTAL DECLARATION OF  
GINA M. AUSTIN FOR SEPTEMBER 7,  
2018 HEARING**

[Imaged File]

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

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I, Gina M. Austin, declare:

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

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

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

4. The purpose of this declaration is to provide additional information related to the events that have transpired since the last hearing on August 20, 2018. All of the facts previously testified to in my declaration of June 30, 2018 and August 20, 2018 remain true and accurate.

5. I spoke with Mr. Essary immediately after the hearing in this matter on August 20, 2018 and suggested that an independent cannabis expert not affiliated with either the plaintiff or defendant would be a better solution in order to avoid an actual or apparent conflict of interest by Mr. Lachant. I informed Mr. Essary that while I could provide any cannabis licensing information he required, both sides would probably appreciate an independent third party. I recommended Pamela Epstein of Greenwise Consulting.

6. Both Ninus Malan and Pamela Epstein informed me on August 27, 2018 that Mr. Essary was going to continue to use Mr. Lachant despite our objections. On August 27, 2018 I followed up with an email to Mr. Essary that we oppose the use of Mr. Lachant given the fact that Mr. Lachant is a partner with Nelson Hardiman and counsel for plaintiff-in-intervention. A true and correct copy of the email is attached hereto as Exhibit A.

7. There is no need for Mr. Essary to manage or control any part of state application process. The only fee associated with the Balboa Dispensary state license will not occur until the annual license is issued. Based upon expected revenues of \$2.5 to \$7.5 the fee to the Bureau of

1 Cannabis Control will be \$64,000. So long as Ninus Malan and Balboa Ave Cooperative are the  
2 identified “owners” and applicants for the state licensing for the Balboa Dispensary there is no  
3 need to change any information at the state level. However, if a consultant is needed I am willing  
4 to provide the necessary assistance.

5 8. If Mr. Essary remains the receiver he would be deemed an “owner” of the Balboa  
6 Dispensary and an additional application would need to be filed pursuant to Section 5024 (c) of  
7 Title 16 Division 42 of the California Code of Regulations. This additional application would  
8 unnecessarily increase expenses for the Balboa Dispensary as the application would need to be  
9 submitted anew with the receiver as an “owner” and then again once the litigation is complete. It  
10 will also cause a delay that could potentially prevent the Balboa Dispensary from operating in  
11 2019 if the annual application is not approved. If SB 1459 is signed by the governor (allowing  
12 for provisional licenses for those who hold temporary licenses) the change of ownership may also  
13 affect the ability of Balboa Ave Cooperative to obtain a provision license.

14 9. There is no need for Mr. Essary to manage or control any part of state application  
15 process for the distribution or manufacturing license at the Mira Este property. The only fee  
16 associated with the Mira Este state licenses will not occur until the annual licenses are issued.  
17 The fees will be \$7,500 to California Department of Public Health for manufacturing so long as  
18 revenue is not over \$500,000 and \$1,200 for distribution so long as annual revenue is not over  
19 \$3,000,000 for manufacturing. As long as Ninus Malan, Chis Hakim and California Cannabis  
20 Group are the identified “owners” and applicants for the state licensing for the Mira Este property  
21 there is no need to change any information at the state level. However, if a consultant is needed I  
22 am willing to provide the necessary assistance.

23 10. If Mr. Essary remains the receiver he would be deemed an “owner” and additional  
24 filing requirements must be met for both the distribution and manufacturing applications.

25 11. During the time that SoCal was operating the Balboa Dispensary they were using a  
26 point of sale system called Treez. The City of San Diego through its contractor MGO is in the  
27 middle of a tax and compliance audit of the Balboa dispensary. I have been working with MGO  
28 to determine what information is required to be provided and have agreed on what is to be

1 produced. On August 24, 2018 I received the sales report from Treez for the sales occurring  
2 during January through March 2018 while SoCal was operating the dispensary. A true and  
3 correct copy of the email is attached hereto as Exhibit B. I did not attach the excel spread sheets  
4 as they are over 1000 pages.

5 12. I immediately forwarded this information to MGO for their review. Mr. Grigor  
6 Gevorgyan of MGO informed me that there is a discrepancy between the tax form that was filed  
7 by Mr. Essary and the sales data reported on the spreadsheets of approximately \$100,000. A true  
8 and correct copy of the email from Mr. Gevorgyan is attached hereto as Exhibit C.

9 13. I informed Mr. Essary of the discrepancy. On August 27, 2018 Mr. Essary sent an  
10 email stating that he would have to contact Mr. Yaeger to determine why there is a discrepancy.  
11 As of the drafting of this declaration MGO has not received a response from Mr. Yaeger or Mr.  
12 Essary as to the basis for the discrepancy. A true and correct copy of MGO's request for  
13 clarification is attached hereto as Exhibit D.

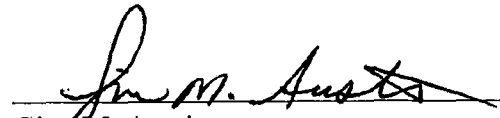
14 14. On August 15, 2018, I was attending the hearing for the Conditional Use Permit  
15 for a marijuana production facility located on 8859 Balboa Ave, Suites A-E. San Diego United  
16 Holdings, LLC is the applicant. The application was approved and was not appealed. The permit  
17 will be recorded by the City of San Diego within the next 10 business days. The temporary and  
18 annual state application for this location must be prepared. The expense for the application  
19 process is \$25,000. This expense will be covered by the operating group that San Diego United  
20 Holdings contracts with to conduct operations at this facility. It is critical that the operating entity  
21 be secured as quickly as possible to allow for the timely filing of a state application. All of the  
22 potential operating entities that we have had conversations with will not enter into an agreement  
23 so long as there is a receiver in control.

24 15. An application for a Conditional Use Permit by Mira Este Properties, LLC for a  
25 marijuana production facility located at 9212 Mira Este Court is set to go before the Hearing  
26 Officer on October 3, 2018. It is highly likely that the permit will be appealed to the Planning  
27 Commission because the City will only be issuing 40 licenses and approximately half will have  
28 been issued by this time. It is my opinion that successful approval of this application is

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contingent on our office attending the hearing.

I declare under penalty of perjury under California state law that the foregoing is true and correct. Executed in San Diego, California on September 4, 2018.

  
Gina M. Austin

**EXHIBIT A**

## **Austin, Gina**

---

**From:** Austin, Gina  
**Sent:** Monday, August 27, 2018 1:52 PM  
**To:** Mike (calsur@aol.com); Richardson Griswold (rgriswold@griswoldlawsandiego.com)  
**Cc:** Leetham, Tamara; Daniel T. Watts (dwatts@galuppolaw.com); charles gorla (chasgoria@gmail.com)  
**Subject:** Cannabis consultant

Mike,

I spoke with Pamela Epstein today on a different matter and she stated that you may not be engaging her as you have a rapport with Adam at MMLG. While I appreciate MMLG as a cannabis consultant generally, we vehemently oppose the retention of any cannabis consultant affiliated Nelson Hardiman and Adam is a partner with the Nelson Hardiman firm. For the same reasons that it is inappropriate to use our firm as your advisor it is inappropriate to use an arm of Nelson Hardiman.

In the hearing on the 31st the court was very specific that ALG was to continue to process the applications so I am not sure what questions you actually have. There is no need for a receiver to get involved in the application processing at any level as there are no fees or monies that need to be transferred at this time. In addition, it is our position is that it would detrimentally impact the application process.

In light of the above, on behalf of all entities that Ninus Malan has an interest in, we object to the receiver using any funds to retain, pay, engage or otherwise utilize the services of MMLG or Adam Lachant. If you choose to do so despite our opposition, please include a copy of this email with your report to the court.

Thank you

Gina

Gina M. Austin

AUSTIN LEGAL GROUP, APC | 3990 Old Town Ave., Ste A112, San Diego, CA 92110 |  
Ofc: 619-924-9600 | Cell 619-368-4800 | Fax 619-881-0045

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**EXHIBIT B**



## Austin, Gina

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**From:** Hope Le <hope@treez.io>  
**Sent:** Friday, August 24, 2018 12:53 PM  
**To:** Mike E  
**Cc:** Don Jennings; Austin, Gina; rgriswold@griswoldlawsandiego.com  
**Subject:** Re: Balboa?  
**Attachments:** BALBOAINVENTORY.xlsx; BALBOASALES.xlsx

Hey All,

Please find the requested sales and inventory reports attached for Treehouse Balboa. As I understand it, these two reports are for the City.

Can an expected timeframe be provided for the "data dump" as it will require some assistance from our engineers?

Best,

Hope

**Hope Le**

833.497.4500 ext. 109

**Customer Success**



On Fri, Aug 24, 2018 at 10:41 AM, <calsur@aol.com> wrote:  
Muchas Gracias Don - appreciate the help!

Mike

In a message dated 8/24/2018 10:20:18 AM Pacific Standard Time, [don@treez.io](mailto:don@treez.io) writes:

Mike,

I am still in Mexico. I have briefed Hope Le, our support manager (cc'd). She will help with the user  
I'd  
And is scoping the "data dump" and report.

Best,

Don

Sent from [BlueMail](#)

On Aug 24, 2018, at 10:53 AM, [calsur@aol.com](mailto:calsur@aol.com) wrote:  
Any updates on this Gina/Don?

Thanks

Mike

In a message dated 8/23/2018 5:25:48 PM Pacific Standard Time, [gaustin@austinlegalgroup.com](mailto:gaustin@austinlegalgroup.com) writes:

Don,

No one has contacted me or provided the requisite information. The City is getting ready to fine us. I need that information asap. Do you have an eta?

Gina

Gina M. Austin

AUSTIN LEGAL GROUP, APC | 3990 Old Town Ave., Ste A112, San Diego, CA 92110 |

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**EXHIBIT C**

## Austin, Gina

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**From:** Grigor Gevorgyan <ggevorgyan@mgocpa.com>  
**Sent:** Friday, August 24, 2018 3:20 PM  
**To:** Austin, Gina; Jasmine Costa  
**Subject:** RE: SD - Balboa Coop.

Hi Gina,

We would like to have all of the documents uploaded onto ShareFile, our secure file sharing site to ensure sensitive documents are not transferred through email.

I have given you access to the site (you will receive an invite link to register) and the direct link is:  
<https://mgocpa.sharefile.com/f/fo135507-ae4a-4298-8f74-0b6e577276a8>

Also, at a glance, the sales detail does not appear to have the full three months of data. Per the remittance forms to the City, I noted a total of \$599,075.08 while the sales detail shows \$497,813.47 (from Jan. to March).

Thank you,

**GRIGOR GEVORGYAN, CPA**  
**SENIOR CONSULTANT**

+1 (213) 408-8671  
[ggevorgyan@mgocpa.com](mailto:ggevorgyan@mgocpa.com)  
mgocpa.com

---

**From:** Austin, Gina [<mailto:gaustin@austinlegalgroup.com>]  
**Sent:** Friday, August 24, 2018 1:43 PM  
**To:** Grigor Gevorgyan <[ggevorgyan@mgocpa.com](mailto:ggevorgyan@mgocpa.com)>; Jasmine Costa <[jcosta@mgocpa.com](mailto:jcosta@mgocpa.com)>  
**Subject:** Balboa

Good afternoon Grigor,

I have finally received these two files from Treez. I have no idea what you mean by the secure site. However, I wanted to provide them to you as soon as we received them.

Gina

Gina M. Austin  
AUSTIN LEGAL GROUP, APC | 3990 Old Town Ave., Ste A112, San Diego, CA 92110 |  
Ofc: 619-924-9600 | Cell 619-368-4800 | Fax 619-881-0045

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**From:** Hope Le [<mailto:hope@treez.io>]  
**Sent:** Friday, August 24, 2018 12:53 PM  
**To:** Mike E  
**Cc:** Don Jennings; Austin, Gina; [rgriswold@griswoldlawsandiego.com](mailto:rgriswold@griswoldlawsandiego.com)  
**Subject:** Re: Balboa?

Hey All,

Please find the requested sales and inventory reports attached for Treehouse Balboa. As I understand it, these two reports are for the City.

Can an expected timeframe be provided for the "data dump" as it will require some assistance from our engineers?

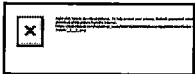
Best,

Hope

**Hope Le**

833.497.4500 ext. 109

**Customer Success**



**EXHIBIT D**

## Austin, Gina

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**From:** Grigor Gevorgyan <ggevorgyan@mgocpa.com>  
**Sent:** Tuesday, September 4, 2018 8:44 AM  
**To:** calsur@aol.com; Austin, Gina; ninusmalan@yahoo.com;  
rgriswold@griswoldlawsandiego.com  
**Cc:** Jasmine Costa  
**Subject:** RE: SD - Balboa Coop.

Good morning Michael,

I appreciate you forwarding my request to John. Please let me know if there are any questions regarding my inquiry.

Thank you,

**GRIGOR GEVORGYAN, CPA**  
**SENIOR CONSULTANT**

+1 (213) 408-8671  
[ggevorgyan@mgocpa.com](mailto:ggevorgyan@mgocpa.com)  
mgocpa.com

**From:** [calsur@aol.com](mailto:calsur@aol.com) [<mailto:calsur@aol.com>]  
**Sent:** Monday, August 27, 2018 8:17 AM  
**To:** [gaustin@austinlegalgroup.com](mailto:gaustin@austinlegalgroup.com); Grigor Gevorgyan <[ggevorgyan@mgocpa.com](mailto:ggevorgyan@mgocpa.com)>; Jasmine Costa <[jcosta@mgocpa.com](mailto:jcosta@mgocpa.com)>; [ninusmalan@yahoo.com](mailto:ninusmalan@yahoo.com); [rgriswold@griswoldlawsandiego.com](mailto:rgriswold@griswoldlawsandiego.com)  
**Subject:** Re: SD - Balboa Coop.

Grigor,

This is Michael Essary the court receiver. That filing was prepared by John Yaegar. I will forward your comments to him for response/correction.

Mike

In a message dated 8/25/2018 5:45:17 PM Pacific Standard Time, [gaustin@austinlegalgroup.com](mailto:gaustin@austinlegalgroup.com) writes:

Grigor,

That isn't something this office would be doing. I will coordinate with the receiver to see who he wants to deal with these tasks. As he directed someone to file the tax return I will have to seek an explanation of the sales discrepancy from them.

My goal was simply to get you data as soon as possible to avoid any penalties.

Gina

Sent from my T-Mobile 4G LTE Device