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7 CONDOMINIUMS ASSOCIATION

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**12/14/2018** at 12:01:00 PM  
Clerk of the Superior Court  
By Richard Day, Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN DIEGO, HALL OF JUSTICE

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

13 Plaintiff,

14 v.

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

20 Defendants.

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

Case Assignment: Honorable Ronald L. Styn

**PLAINTIFF MONTGOMERY FIELD  
BUSINESS CONDOMINIUMS  
ASSOCIATION'S NOTICE OF  
APPLICATION AND APPLICATION TO  
ENFORCE SETTLEMENT;  
DECLARATION OF JOHN PEEK FILED  
HEREWITH; NOTICE OF LODGMENT  
FILED HEREWITH; AND [PROPOSED]  
ORDER AND JUDGMENT LODGED  
HEREWITH**

Date: January 10, 2019

Time: 8:30 a.m.

Dept.: C-74

Judge: Hon. Ronald L. Styn

Complaint Filed: May 26, 2017

[IMAGED FILE]

24 ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

25 PLEASE TAKE NOTICE that on January 10, 2019 at 8:30 a.m. in Department C-74 of  
26 the San Diego Superior Court, located at 330 West Broadway, San Diego, California 92101,  
27 Plaintiff, MONTGOMERY FIELD BUSINESS CONDOMINIUMS ASSOCIATION

1 (“Association”) will and does bring this application, for good cause shown, requesting the  
2 following relief: (1) to set aside dismissal entered in the above-entitled case on March 26,  
3 2018; (2) to enforce the Settlement Agreement and Stipulation for Court to Retain Jurisdiction  
4 to Enforce Settlement Upon Default ... and Order Thereon filed in the above-entitled action on  
5 March 26, 2018 (“Settlement Agreement”); (3) confirm revocation by the Association of the  
6 Use Variance for Marijuana Activities; and (4) for entry of judgment against Defendants  
7 BALBOA AVE COOPERATIVE (“Balboa”), SAN DIEGO UNITED HOLDINGS GROUP,  
8 LLC(“SDUHG”), NINUS MALAN (“Malan”), RAZUKI INVESTMENTS, LLC (“Razuki  
9 Inv.”), and SALAM RAZUKI (“Razuki”) pursuant to the terms of the Settlement Agreement  
10 and Stipulation as agreed to by the parties and pursuant to Code of Civil Procedure section  
11 664.6.

12 This application is based on this Notice, the referenced Stipulation on file herein and  
13 the exhibits attached thereto, the Memorandum of Points and Authorities filed herewith, the  
14 Declaration of John Peek filed herewith, and the exhibits attached thereto, any other  
15 supporting declarations filed herewith and in support of this application, and any other oral or  
16 additional evidence presented at the hearing.

17  
18 Dated: December 10, 2018

EPSTEN GRINNELL & HOWELL, APC

19  
20 By: 

Mandy D. Hexom  
Attorneys for Plaintiff  
MONTGOMERY FIELD BUSINESS  
CONDOMINIUMS ASSOCIATION

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTUAL BACKGROUND AND GROUNDS FOR ENFORCEMENT**

3 On and about February 13, 2018, the parties entered into the Settlement Agreement and  
4 Stipulation for Court to Retain Jurisdiction to Enforce Settlement Upon Default Pursuant to  
5 Code of Civil Procedure Section 664.6 and Entry of Judgment Upon Default; Order Thereon,  
6 dated March 26, 2018 (“Stipulation”), resolving this underlying lawsuit. On February 14,  
7 2018, the Stipulation was signed by all parties and their respective attorneys and filed with the  
8 court. On March 26, 2018, the Stipulation was signed by the court, wherein the court agreed to  
9 retain jurisdiction to enforce the Settlement and to enter judgment thereon pursuant to Code of  
10 Civil Procedure Section 664.6. (A true and correct copy of the Settlement Agreement with  
11 attachments including the Stipulation and Proposed Judgment is attached as Exhibit A to the  
12 Notice of Lodgment (“NOL”) filed concurrently herewith; a true and correct copy of the  
13 Stipulation executed by the court is attached as Exhibit B to the NOL.) A dismissal without  
14 prejudice was also entered by the court on March 26, 2018.

15 Under the terms of the Settlement, Defendants, as indicated below, were required to do  
16 the following, which they have failed to do:

17 A. **Malan** (Section 2.1.2): Nonpayment of settlement sums in the monthly sum of  
18 \$6,171.47, which are past due as of November 1, 2018. Total due is **\$12,342.94**. Assuming no  
19 payments will be made until the hearing on January 10, 2019, the total amount due will be  
20 **\$18,514.41**. After January 10, 2019, there will be five more monthly payments (in the amount  
21 of \$6,171.47) remaining through June 1, 2019, totaling an additional sum of \$30,857.35.

22 B. **Balboa, SDUHG, Malan, Razuki Inv., Razuki** (Section 2.3.3): Nonpayment  
23 of the Association’s insurance premiums totaling **\$19,452.09** for the remainder of the  
24 premiums not paid for the 2018-2019 insurance year.

25 C. **Balboa, SDUHG, Malan, Razuki Inv., Razuki** (Section 2.4): Nonpayment of  
26 Association water and sewer utilities totaling **\$13,901.45** as of the end of December 2018.

1           D.     Balboa, SDUHG, Malan, Razuki Inv., Razuki (Section 2.7): Nonpayment of  
2 sewer line repairs/replacement costs in the amount of **\$82,347**.

3           On November 13, 2018, the first demand letter was sent to SDUHG and Malan by the  
4 Association Board President John Peek on behalf of the Association. On November 29, 2018,  
5 a second demand letter was sent by Mandy D. Hexom of Epsten Grinnell & Howell, APC,  
6 counsel for the Association, outlining the defaults or breaches of the Settlement Agreement. (A  
7 true and correct copy of the Demand Letters, dated November 13, 2018 and November 29,  
8 2018 are attached as Exhibits C and D to NOL). To date and as of the filing of this application,  
9 no payments have been received for any of the requested sums set forth above to cure any of  
10 the defaults.

11           In consideration of the terms in Sections 2.1.2, 2.3.3, and 2.4 in the Settlement  
12 Agreement, among other terms, the Association agreed to provide a Use Variance to allow  
13 Defendants to run and operate Marijuana Activities within the Association despite the recorded  
14 enforceable restrictions that prohibit Marijuana Activities within the Association. (See Section  
15 2.2 in the Settlement Agreement attached to the NOL at Ex. A.) The Settlement Agreement  
16 states the following in part:

17           The Use Variance shall be in effect as long as Defendants are in  
18 compliance with this Agreement, the Stipulation, any applicable  
19 Conditional Use Permit, and state and local laws pertaining to  
20 Marijuana Activities. In the event of a dispute between the  
21 Parties related to the Use Variance, the Parties agree that such  
22 dispute shall be made pursuant to an application or motion (with  
at least 16 court days prior notice) to enforce this Agreement  
which allows the non-moving party the opportunity to file an  
opposition. If the Association prevails on such a motion or  
application, Judgment shall be entered and the use Variance will  
be deemed revoked.

23 (Settlement Agreement, Ex. 1, pg. 3, Sec. 2.2.)

24           It was agreed to by the parties that if the Defendants failed to perform any of the  
25 Section 2 terms set forth in the Settlement Agreement, the Association can revoke the Use  
26 Variance, have the dismissal set aside and seek enforcement of the Settlement including ex  
27 parte entry of judgment against Defendants, as set forth at paragraph 2.2.2, 2.12, 2.17 in the  
28

1 Settlement Agreement, and pursuant to Sections 2, 6, 7 and 8 of the Stipulation. Furthermore,  
2 the court shall award the Association its attorney's fees and costs incurred to enforce the  
3 Settlement Agreement pursuant to Section 2.17.3 of the Settlement Agreement and Sections 3  
4 and 9 of the Stipulation.

5 **II. ENFORCEMENT OF THE SETTLEMENT**

6 Per Section 6 of the Stipulation, on November 13, 2018 and November 29, 2018, the  
7 Association and the Association's counsel sent a notice letter to the Defendants' and/or their  
8 respective attorneys. (NOL, Exs. C, D.) More than ten (10) days has passed since the letters  
9 were delivered to the Defendants' or their attorneys and none of the defaults have been cured.  
10 Accordingly, the Association turns to the court to enforce the terms of the Settlement  
11 Agreement and to enter judgment against the Defendants, confirm revocation of the Use  
12 Variance, and award the Association its attorney's fees and costs.

13 California Code of Civil Procedure section 664.6 states that:

14 If parties to pending litigation stipulate, in a writing signed by the parties  
15 outside the presence of the court or orally before the court, for settlement of  
16 the case, or part thereof, the court, upon motion, may enter judgment  
17 pursuant to the terms of the settlement. If requested by the parties, the court  
18 may retain jurisdiction over the parties to enforce the settlement until  
19 performance in full of the terms of the settlement.

20 (C.C.P. § 664.6.)

21 The court in *Wackeen v. Malis* (2002) 97 Cal. App. 4th 429, 439, held that dismissal by the  
22 trial court is not a bar to the court retaining both personal and subject matter jurisdiction in order to  
23 enforce the terms of the settlement, until such time as all of its terms has been performed. The  
24 court further made clear that the request that jurisdiction be retained until the settlement has been  
25 fully performed must be made either in a writing signed by the parties themselves, or orally before  
26 the court by the parties themselves. (*Wackeen, supra*, 97 Cal. App. 4th at pp. 440- 441.)

27 Since Defendants have breached the terms of the Settlement Agreement, and the court  
28 affirmatively agreed to retain jurisdiction under Code of Civil Procedure section 664.6, the



1 Association requests that the court set aside the dismissal and enter Judgment as proposed against  
2 Defendants.

3 **III. REWARD OF ATTORNEY'S FEES AND COSTS UPON DEFAULT:**

4 The court shall award the Association its attorney's fees and costs incurred to enforce  
5 the Settlement Agreement pursuant to Section 2.17.3 and Sections 3 and 9 of the Stipulation.  
6 The total amount of attorney's fees and costs is \$4,880.

7 **IV. CONCLUSION**

8 Accordingly, Plaintiff MONTGOMERY FIELD BUSINESS CONDOMINIUMS  
9 ASSOCIATION herein requests that the Court grant the following relief: (1) to set aside  
10 dismissal entered in the above-entitled case on March 26, 2018; (2) to enforce the Settlement  
11 Agreement and Stipulation for Court to Retain Jurisdiction to Enforce Settlement Upon  
12 Default ... and Order Thereon filed in the above-entitled action on March 26, 2018  
13 ("Settlement"); (3) confirm revocation by the Association of the Use Variance for Marijuana  
14 Activities as set forth in the Settlement; and (4) for entry of Judgment against Defendants  
15 BALBOA AVE COOPERATIVE ("Balboa"), SAN DIEGO UNITED HOLDINGS GROUP,  
16 LLC("SDUHG"), NINUS MALAN ("Malan"), RAZUKI INVESTMENTS, LLC ("Razuki  
17 Inv."), and SALAM RAZUKI ("Razuki").

18 To summarize, the current amounts owed and past due (as of the filing of these papers),  
19 making Defendants in default of the Settlement Agreement, which has not been timely cured,  
20 (not including the other settlement terms set forth in the Settlement Agreement) are the  
21 following:

- 22 • Malan currently owes \$12,342.94 as of the date of this filing.
- 23 • All Defendants currently owe \$33,353.54 as of the date of this filing.

24 Furthermore, the owners of the units, SDUHG, are currently past due in paying the  
25 Association's assessments.

26 The Association's request is based upon this application, the memorandum of points  
27 and authorities in support thereof, the Declaration of John Peek (Association Board President),  
28

1 the Notice of Lodgment filed herewith, on the [proposed] Order granting the application  
2 lodged herewith, the Proposed Judgment (also lodged herewith), and on all pleadings and other  
3 documents on file with the court, the arguments of counsel at the hearing, and all matters of  
4 which this court may take judicial notice.


5

6 Dated: December 10, 2018

EPSTEN GRINNELL & HOWELL, APC

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By:   
Mandy D. Hexom  
Attorneys for Plaintiff  
MONTGOMERY FIELD BUSINESS  
CONDOMINIUMS ASSOCIATION

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