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

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Superior Court of California,
County of San Diego
01/02/2019 at 12:34:00 PM
Clerk of the Superior Court
By Valeria Contreras, 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

Case Assignment: Honorable Ronald L. Styn

**DECLARATION OF NINUS MALAN IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFF'S
APPLICATION FOR ENFORCEMENT OF
SETTLEMENT**

[IMAGED FILE]

DATE: January 10, 2019

TIME: 8:30 a.m.

DEPT: C-74

JUDGE: Hon. Ronald L. Styn

22
23 I, Ninus Malan, declare:

24 1. I am over the age of 18 and I 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") application for enforcement of
2 settlement agreement ("Plaintiff's Application").

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. A duly licensed commercial cannabis
9 dispensary is located on the aforementioned real property (the "Balboa Dispensary").

10 5. The Balboa Dispensary is located within the Montgomery Field Business
11 Condominiums Association (the "Association" or "Plaintiff"), and subject to its Covenants,
12 Conditions and Restrictions (CC&Rs).

13 6. On or about May 26, 2017, the Association filed a complaint in the Superior Court
14 of California, County of San Diego, case no.: 37-2017-00019384-CU-CO-CTL, captioned
15 "*Montgomery Field Business Condominiums Association v. Balboa Ave Cooperative, et. al.*" (the
16 "Complaint"). (*See Declaration of Tamara Leetham*, filed concurrently herewith).

17 7. Generally, the dispute centered around whether the operation of the Balboa
18 Dispensary violated the Association's CC&Rs, prohibiting the operation of a commercial
19 cannabis business on the property.

20 8. On or about February 13, 2018, the parties in the above-captioned dispute entered
21 into a Settlement Agreement (the "Agreement") and Stipulation for Entry of Judgment Upon
22 Default ("Stipulation"), which established the terms resolving the dispute. (*See Leetham*
23 *Declaration*).

24 9. Under the terms of the Agreement, I agreed to pay a number of different fees in
25 exchange for a use variance granted by the Association to operate a duly licensed, legal,
26 commercial cannabis dispensary at the location.

27 10. Failure to abide by the terms of the Agreement can lead to a default. Amongst
28 other penalties, default under the Agreement allows the Association to revoke the use variance

1 that allows the Balboa Dispensary to operate. Without the variance, the Balboa Dispensary cannot
2 operate a commercial cannabis business at all.

3 11. Settling the dispute with the Association was incredibly costly, time consuming,
4 and stressful. Obtaining the use variance from the Association was the only reason we could ever
5 open the doors at the Balboa Dispensary. The use variance, and the license for the Dispensary are
6 truly the two most valuable assets of the Balboa Dispensary.

7 12. On or about August 20, 2018, the Court appointed a Receiver to take control of
8 San Diego United Holdings Group, and Balboa Ave Cooperative, among other entities, in a
9 related case between myself, and co-defendant Salam Razuki, in the above-captioned matter. (*See*
10 *Leetham Declaration*).

11 13. Since the Receiver was put in place to manage and operate the Balboa Dispensary,
12 and to control all of its revenues and assets, I have been under extreme financial hardship. But
13 what is worse, I have had my hands tied and been completely unable to control which bills are
14 paid for the Balboa Dispensary.

15 14. Until the Receiver took control of the Balboa Dispensary, I had never failed to
16 meet an obligation required of me under the Agreement. I made all necessary payments and
17 complied with the terms in their entirety. It has always been of the utmost importance to me to
18 ensure that relations with the Association remain amicable, and I in good standing with them,
19 because the Association all but controls whether or not my business can even operate.

20 15. Despite numerous attempts to get the Receiver to pay the Association's past due
21 obligations, the payments were not made.

22 16. During the initial phase of the Receiver's control I attempted to finance the
23 businesses obligations personally through loans, and promissory notes, but I could not sustain this
24 effort for long.

25 17. Without personal financing, I have been subject to the discretion of the Receiver to
26 run the Balboa Dispensary, and to make payments how he sees fit. Needless to say, we are in
27 extreme disagreement about which payments should be made before all others.

28 18. I cannot adequately describe the incredible frustration and anguish I have felt,

1 watching my business crumble under the Receiver's control, without any way to remedy the
2 harm. If I had control of the business, I never, ever, would have let the obligations under the
3 terms of the Agreement go unfulfilled.

4 19. On or about October 30, 2018, I, along with a number of other entities under the
5 Receiver's Order, appealed the Receiver Order in place. (*See Leetham Declaration*).

6 20. Then, on or about December 17, 2018, the Court set appellate bond amounts for
7 the defendants, and defendant entities in the *Razuki v. Malan* matter subject to the Receiver
8 Order. (*See Leetham Declaration*).

9 21. The Receiver Order will be vacated upon the defendants posting appeal bonds to
10 stay enforcement of the Order while our appeal is pending.

11 22. Compliance with the Agreement has always been my top priority, but due to forces
12 outside my control, I have been unable to fulfill those obligations personally.

13 23. I am confident that as soon as the Receiver Order is stayed pending appeal, I will
14 once again be able to comply with the obligations under the Agreement.

15 24. The use variance should not be revoked until I am restored with the opportunity to
16 actually comply with the terms of the Agreement, and to demonstrate to the Association, that it
17 was my intent to do so all along.

18 I declare under penalty of perjury under California state law that the foregoing is true and
19 correct. Executed in San Diego, California, on December 20, 2018.

20 *Ninus Malan*

21 _____
22 Ninus Malan
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