

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

-----)
SALAM RAZUKI,)
)
Plaintiff/Respondent,)
) FROM SAN DIEGO COUNTY
vs.) HON. EDDIE C. STURGEON
)
NINUS MALAN, et al.,) COA NO. D075028
) SUPERIOR COURT NO.
Defendants/Appellants.) 37-2018-
-----) 00034229-CU-BC-CTL

REPORTER'S TRANSCRIPT ON APPEAL

Monday, August 20, 2018

(Pages 326 through 443, Inclusive)

Volume 4

330 West Broadway, Department 67
San Diego, California

Reported By:
Leyla S. Jones
CSR No. 12750

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION

SALAM RAZUKI, an
individual,

Plaintiff,

vs.

NINUS MALAN, an individual;
MONARCH MANAGEMENT
CONSULTING, INC., a
California corporation;
SAN DIEGO UNITED HOLDING
GROUP, LLC, a California
limited liability company;
MIRA ESTE PROPERTIES, LLC,
a California limited
liability company; ROSELLE
PROPERTIES, LLC, a
California limited
liability company; and
DOES 1-100, inclusive,

Defendants.

Hon. Eddie C. Sturgeon

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

Hearing

TRANSCRIPT OF PROCEEDINGS

August 20, 2018

2:03 p.m.

330 West Broadway, Dept. 67

San Diego, California

REPORTED BY:

Leyla S. Jones

CSR No. 12750

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16 Devilish Delights, and Flip Management, LLC:

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17 Also present: Michael Essary
18 Ninus Malan
19 Chris Berman
20 Daniel Spillane
21 Michael Hickman
22 Doug Jaffe
23 Sylvia Gonzales
24 Chris Hakim
25 Salam Razuki

26

27

28

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(None.)

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DESCRIPTION

PAGE

(None marked.)

1 SAN DIEGO, CALIFORNIA;
2 MONDAY, AUGUST 20, 2018; 2:03 P.M.

3
4 THE COURT: Okay. Let's do some work.
5 First, I read all of it. I read it, so I kind of
6 know who every party is. Most of you were --
7 there's a lot of LLCs. People are here and there's,
8 like, ten of them. There's LLCs here or there.

9 So what I'd like to do first, so I can kind
10 of get everybody's name and who you represent,
11 because there's a lot of parties here, and then I'm
12 going to ask to make sure one of the -- so here we
13 go.

14 Thank you for bringing a court reporter.
15 Very important on a case like this. Let's just
16 start at that end of the table, then I'll go across,
17 and then we'll go to the back.

18 MR. LACHANT: Aaron Lachant from Nelson
19 Hardiman for SoCal Building Ventures and San Diego
20 Building Ventures.

21 MR. ZIMMITTI: Good afternoon, Your Honor.
22 Salvatore Zimmitti for Plaintiffs in intervention,
23 SoCal Building Ventures and San Diego Building
24 Ventures, LLCs.

25 THE COURT: There's two.

26 MR. JOSEPH: Good afternoon, Your Honor.
27 James Joseph on behalf of the plaintiff Salam
28 Razuki.

1 THE COURT: One second. Thank you.

2 MS. GRIFFIN: Maura Griffin on behalf of
3 Plaintiff Salam Razuki.

4 THE COURT: Razuki. Got it.

5 MR. ELIA: Steven Elia on behalf of
6 Plaintiff Salam Razuki, who's present in the
7 courtroom.

8 THE COURT: Yeah. We're going to go
9 through everybody in the courtroom so I know who
10 everybody is.

11 MR. WATTS: Daniel Watts for Defendant
12 Ninus Malan.

13 THE COURT: Malan.

14 MS. LEETHAM: Tamara Leetham and Gina
15 Austin for Ninus Malan, who's present before the
16 Court, as well as -- I have a lot of them,
17 Your Honor. San --

18 THE COURT: Okay. Hold on.

19 MS. LEETHAM: I have a lot of the entities.
20 San Diego United Holdings Group.

21 THE COURT: SD United. Go.

22 MS. LEETHAM: California Cannabis.

23 THE COURT: Cannabis.

24 MS. LEETHAM: Balboa Avenue -- Ave
25 Cooperative.

26 THE COURT: Say that one again.

27 MS. LEETHAM: Balboa Ave Cooperative.

28 THE COURT: I know who that is.

1 MS. LEETHAM: Devilish Delights.

2 THE COURT: I know who that is.

3 MS. LEETHAM: Flip Management.

4 THE COURT: I know who that is.

5 MS. LEETHAM: Just double-check here.

6 THE COURT: We've still got more.

7 MS. LEETHAM: I think Mr. Gorla has some.

8 THE COURT: Oh, you represent --

9 MR. GORLA: I represent a few, Your Honor,
10 yes. Charles Gorla for Chris Hakim, who's present
11 in court.

12 THE COURT: Thank you.

13 MR. GORLA: And Monarch Management
14 Consulting, Inc., for which Mr. Hakim is the
15 president.

16 THE COURT: Got it.

17 MR. GORLA: Mira Este Properties, LLC, of
18 which he's the managing member, and Roselle
19 Properties, LLC, which he's also the managing
20 member.

21 THE COURT: There we go. Thank you.

22 I got a call Thursday or Friday from
23 Judge Taylor, a case of S&H -- that group is
24 suing -- hold on. I have it here. Is suing
25 Mr. Malan, correct?

26 MR. WATTS: Suing American Lending and
27 Holding.

28 MR. ELIA: And also Mr. Malan.

1 THE COURT: Yeah, those two. And that is
2 on a residence someplace down south, correct?

3 MR. ELIA: Correct.

4 THE COURT: And that is for a TRO to stop a
5 foreclosure, correct?

6 MR. ELIA: Yes, Your Honor.

7 THE COURT: Okay. Let's just make sure --
8 let's start with this. Let's start on the main
9 case.

10 MS. LEETHAM: Your Honor?

11 THE COURT: Yes, ma'am.

12 MS. LEETHAM: Just to make a clear record,
13 there's also a low number matter you have in a third
14 case --

15 THE COURT: Didn't know -- okay.

16 MS. LEETHAM: -- a related case.

17 THE COURT: Thank you.

18 MS. LEETHAM: There's a hearing tomorrow
19 morning. I have the case number if you would like
20 it.

21 THE COURT: I would.

22 MS. LEETHAM: It's 37-2018-00022710. Do
23 you want the letters?

24 THE COURT: Just tell me the case name.

25 MS. LEETHAM: It's Avail Shipping vs.
26 Razuki Investments, et al. On June 27th, I actually
27 filed a cross-complaint for quiet title on the
28 Balboa Avenue Properties.

1 THE COURT: Is that case pending?

2 MS. LEETHAM: We have an ex parte tomorrow
3 morning.

4 THE COURT: But is it pending?

5 MS. LEETHAM: Yes, Your Honor.

6 THE COURT: And has everybody been served?

7 MS. LEETHAM: You would have to ask the
8 plaintiff. I'm the cross-complainant, so yes.

9 THE COURT: We'll find out. Does anyone
10 represent -- is it Avail Shipping? I think I read
11 something about that.

12 MS. LEETHAM: The law firm is Hickman &
13 Robinson.

14 THE COURT: And I assume they're not here.

15 MS. LEETHAM: They are not. They have the
16 papers and they called me today.

17 THE COURT: You know what? I'll be here at
18 8:30 tomorrow morning.

19 All right. I want to know who everybody is
20 in the courtroom. So let's start on this side. If
21 you're the public, you're welcome. But if you're an
22 entity -- oh, no. We have to finish. Keep going.

23 MR. ESSARY: Good afternoon, Your Honor.
24 Michael Essary, receiver.

25 THE COURT: Okay.

26 MR. GRISWOLD: Good afternoon, Your Honor.
27 Richardson Griswold, counsel for receiver.

28 THE COURT: I don't want to know who the

1 public is. But if I have litigants here, I would
2 like to know who they are, and if they could stand.

3 MR. BERMAN: Chris Berman from SoCal
4 Building Ventures.

5 THE COURT: SoCal.

6 MR. SPILLANE: Dan Spillane, SoCal.

7 THE COURT: SoCal.

8 MR. HICKMAN: Good afternoon, Your Honor.
9 Michael Hickman, not related to the other Hickman
10 she just mentioned. I'm here, although we're not a
11 party, on behalf of RM Property Holdings.

12 THE COURT: I know who that is. Thank you.

13 MR. JAFFE: Doug Jaffe, Your Honor. I'm an
14 attorney on the Avail Shipping case that you're
15 dealing with tomorrow.

16 THE COURT: Welcome.

17 MS. GONZALES: Sylvia Gonzales, broker
18 compliance officer for Mr. Razuki.

19 THE COURT: And that's Mr. -- and, ma'am --
20 okay. That's Mr. -- and who are you again?

21 MS. GONZALES: I'm a broker and I've been
22 helping him out with property management.

23 THE COURT: Got it. And what --

24 Did you get her name, Ms. Reporter?

25 THE REPORTER: Yes.

26 THE COURT: Thank you. Okay.

27 MR. HAKIM: Hi. I'm Chris Hakim, here for
28 Mira Este Properties and Roselle.

1 THE COURT: Welcome.

2 MR. MALAN: Ninus Malan, Your Honor.

3 THE COURT: Thank you. And you're the
4 public?

5 MR. RAZUKI: You could say that.

6 THE COURT: Have a seat.

7 MR. RAZUKI: Thank you.

8 THE COURT: I appreciate it. Here we go.
9 That's Mr. Hakim -- I mean, that's Mr. Razuki,
10 right?

11 MR. RAZUKI: Salam Razuki, yes, Your Honor.

12 THE COURT: Okay. Let's talk about 170.6s
13 first. So the case of -- who's S&H? Is S&H here?

14 MR. ELIA: Yes, Your Honor. I'm counsel
15 for S&H.

16 THE COURT: Okay. That case has been
17 transferred down. You both got notice, hopefully.
18 Did you know that this case was being -- that that
19 case was coming from Judge Taylor's department to my
20 department?

21 MR. ELIA: Yes.

22 THE COURT: And then who represents Mr. --

23 MR. WATTS: Ninus Malan and American
24 Holdings -- American Lending and Holding.

25 THE COURT: Any challenges to the current
26 Court?

27 MR. WATTS: No, Your Honor.

28 MR. ELIA: No, Your Honor.

1 THE COURT: Welcome. Let's talk about now
2 how I'm going to treat this hearing. Obviously, I
3 have read many variations of what happened in
4 department -- Judge Medel's department and Judge
5 Strauss' department, whether it's been rescinded,
6 whether it hasn't.

7 My thought process is this -- because I
8 don't want to get into an argument, was there a
9 valid order. No. I don't want to do that. We're
10 starting fresh today. Today. So I don't want to
11 rehash old history. There may be a couple of points
12 you want to bring up in old history, but I'm not --
13 we're not going to do that. I don't have that much
14 time. Okay? So that would be the first thing I
15 think we should do.

16 For the parties, I like it when you come to
17 court. I'm going to make a decision today that's
18 going to impact all of you, and I think it's a good
19 idea having who the judge is -- you know, who's this
20 person in the black robe that's going to make a very
21 important decision that may have a great effect on
22 your lives.

23 So I always invite you to do that, because
24 you get a sense of who I am, what I am, and I'll try
25 to give you my thought process as I go along. Okay.
26 So welcome, and I really mean that. You ought to
27 come to every hearing that you can, based on
28 everything that I've read, because there is a lot to

1 cover today.

2 Okay. Shall we start with this: Your --
3 who's the moving party that wants a TRO?

4 That ain't you, is it?

5 MR. ELIA: Good morning, Your Honor. We
6 wanted -- we requested our receiver and a TRO.

7 THE COURT: Yeah. Who's the moving party?

8 MR. ELIA: Mr. Razuki is.

9 THE COURT: Then whoever it is, let's go.

10 MR. ELIA: I'll start. May I sit,
11 Your Honor?

12 THE COURT: You may.

13 MR. ELIA: Okay. Your Honor, there's a ton
14 of information on this case. So what I'd like to do
15 is just kind of give you a -- background
16 information, because I think that will help you not
17 only in this case, but also in the foreclosure case.

18 THE COURT: We're going to do that second.
19 I just want to focus -- understand. Different
20 hearing. Go.

21 MR. ELIA: And Mr. Razuki met Mr. Malan
22 sometime in 2014. Mr. Razuki is a -- owned
23 substantial assets. He's got many shopping centers,
24 gas stations, real estate. Suffice it to say, he's
25 a wealthy individual. His net worth is anywhere
26 from 15 to \$20 million.

27 He met Mr. Malan, who is a real estate
28 agent, sometime in 2014. And Mr. Malan went to work

1 for him and assisted him in managing properties and
2 things of that nature.

3 Now, in -- you'll see, Your Honor, you've
4 got a stack of paperwork in front of you. We've
5 submitted a tremendous amount of paperwork
6 evidencing Mr. Razuki's contributions. And you'll
7 see that Mr. Malan -- there's not one document that
8 evidences any cash that he put in himself.

9 Now, we're requesting the receiver because
10 my client has a property interest in the
11 three dispense -- the two dispensaries that are
12 operating now and the one that isn't operating.

13 In the Balboa location, my client has put
14 in \$920,000 in cash and obtained financing for
15 2.2 million. We have a declaration from Mr. Salas
16 (phonetic), who's a hard money lender, that says,
17 For the last 15 years, I've known Mr. Razuki and the
18 only reason I funded this loan is because of
19 Mr. Razuki's credit.

20 And I just want to note for the record that
21 Mr. Hakim, who's also here, has acknowledged that he
22 doesn't have a property interest in the Balboa
23 operations.

24 As far as the Mira Este location, my
25 client, Mr. Razuki, put in \$750,000 in cash -- and
26 we produced documents -- and also obtained financing
27 from the loan company, along with Mr. Hakim, for
28 \$3.3 million.

1 My client not only pledged three properties
2 to secure that note, but also an LLC that he owns
3 called San Diego Private Investments Group, which
4 owns 22 properties and there's a value of about
5 \$8 million.

6 So my client has secured this loan by --
7 with 25 properties. Mr. Hakim has secured it with
8 one property. And Mr. Malan has given no collateral
9 whatsoever.

10 THE COURT: Let's talk about the -- may I
11 interrupt for a second?

12 MR. ELIA: Yes.

13 THE COURT: Let's talk about the three
14 properties for a bit. Let's talk about grant deeds.
15 Okay?

16 MR. ELIA: Okay.

17 THE COURT: Who is the grant deed owner on
18 9212 Mira Este Court?

19 MR. ELIA: I believe that's Mira Este, LLC.

20 THE COURT: And who's -- that's the way I
21 look at it. Who's part of that LLC?

22 MR. ELIA: Mr. Hakim owns 50 percent.
23 Mr. Malan, on paper, owns the remaining -- other
24 50 percent, which we contend we own 75 percent of
25 that 50 percent.

26 THE COURT: So are there legal documents
27 that support that?

28 MR. ELIA: Yes, Your Honor. There's a

1 fully executed eight-page settlement agreement with
2 two pages of recitals that --

3 THE COURT: Oh, I've read that. I got the
4 settlement agreement. I want to know if there is a
5 separate document that shows that the LLC owns that
6 property -- no, who the owners of the LLC are, not
7 the settlement document.

8 Is there a separate LLC document that
9 actually says who the owners are?

10 MR. ELIA: It's my understanding that the
11 operating agreement would have Mr. Malan as a
12 50 percent owner and Mr. Hakim as the other
13 50 percent owner.

14 THE COURT: So then let's just look at that
15 for a moment. So then the analysis is, as far as so
16 far legally, on the grant deed is MEP, correct?

17 MR. ELIA: Correct.

18 THE COURT: The owners of MEP are Mr. Hakim
19 and Mr. Malan, correct?

20 MR. ELIA: Only on paper, Your Honor, on
21 the operating agreement.

22 THE COURT: Only on paper?

23 MR. ELIA: Right.

24 THE COURT: Okay. Paper -- sometimes paper
25 means a lot, Counsel. But then we have this other
26 agreement, right?

27 MR. ELIA: Correct.

28 THE COURT: Called the settlement

1 agreement, where somebody's going to put some
2 property into this other entity, correct?

3 MR. ELIA: RM.

4 THE COURT: Let me just ask one question.
5 Did anybody put any property into RM?

6 MR. ELIA: No.

7 THE COURT: I know the answer, Counsel.

8 MR. ELIA: The answer is no.

9 THE COURT: Yeah. So here -- people are
10 claiming ownership into an entity. Well, Judge --
11 did we do it?

12 No, we didn't do anything.

13 Okay. I got questions on both sides, but I
14 just want to make sure I understand the facts.
15 Okay. Real quick -- so that takes care of
16 Mira Mesa [sic].

17 Who's the owner of Roselle?

18 MR. ELIA: Roselle, similarly, is --
19 Mr. Hakim owns 50 percent.

20 THE COURT: All right.

21 MR. ELIA: And the owner would be Roselle,
22 I believe, the LLC.

23 THE COURT: Correct. It's Roselle
24 Properties, LLC.

25 MR. ELIA: That's the one, yeah.

26 THE COURT: And if you look at title, or
27 however you want to say it, under the LLC, parties
28 in the LLC are?

1 MR. ELIA: I believe title is vested in the
2 LLC, and I think the operating agreement says that
3 Mr. Malan is 50 percent owner and Mr. Hakim is the
4 other 50 percent owner.

5 THE COURT: Correct again, based on what
6 I've read. Does your client assert any interest
7 into Roselle?

8 MR. ELIA: Yes, Your Honor. He asserts
9 75 percent interest in Mr. Malan's 50 percent
10 interest.

11 THE COURT: And again, that would be under
12 the settlement agreement, correct?

13 MR. ELIA: Yes, Your Honor, and all the
14 funding evidences that as well. And under the --

15 THE COURT: We'll get to that in just a
16 minute. You -- and then -- and then who owns
17 Balboa?

18 MR. ELIA: Balboa is SD United Holdings.
19 Mr. Malan is -- on the operating agreement owns
20 100 percent of that, and title is vested in that
21 LLC. We contend that we own 75 percent of that.

22 THE COURT: And again, I assume that
23 analysis is done under the settlement agreement to
24 get to that 75 percent, correct?

25 MR. ELIA: Correct, and the oral agreement
26 that is evidenced by the settlement agreement.

27 THE COURT: Let me interrupt one more time.
28 Do we have anyone representing Far West

1 Management, LLC, here?

2 MS. AUSTIN: No, Your Honor.

3 THE COURT: Okay. Do we have anyone from
4 Golden State Greens here?

5 MR. ELIA: No, Your Honor.

6 THE COURT: All right. Sorry for
7 interrupting. Go ahead, Counsel.

8 MR. ELIA: I wanted to back up, Your Honor.
9 As far as RM, my client did put \$24,000 in -- into
10 the account, so there was some capitalization of RM.
11 And there's an e-mail from the attorney that we have
12 that drafted -- or formed the LLC that asked
13 Mr. Gorja's firm sometime in -- I believe it was
14 March, requested that they put in the assets.

15 And they came back and said, Well, we're in
16 the middle of doing, you know, the agreements with
17 SoCal and we think that might hurt it, so we don't
18 want to do it now.

19 So I just wanted to say that.

20 THE COURT: Well, wasn't your client also
21 going to put in some property, Counsel?

22 MR. ELIA: Yes.

23 THE COURT: Did he do that?

24 MR. ELIA: No.

25 THE COURT: Got it. Go.

26 MR. ELIA: Sometime in -- well, let's get
27 to the -- let me just go over briefly the settlement
28 agreement and why I think it's important,

1 Your Honor.

2 THE COURT: There you go.

3 MR. ELIA: Okay. I think -- Your Honor, we
4 think that this settlement agreement -- we think we
5 win on this because we think it sets forth the
6 intent. And it's got two pages of recitals that
7 describe in intricate detail what the partnership
8 assets are, and those are the SD United that owns
9 Balboa. It's the Mira Este property. It's -- and
10 it's also the Roselle property.

11 So it's got two full pages of recitals, and
12 Section 1.2 is the most important. It says Razuki
13 and Malan have an understanding. It says that
14 regardless of which party --

15 THE REPORTER: Can you slow down a little
16 bit when you read, please.

17 MR. ELIA: Sorry. I do that in a lot of
18 hearings. I apologize.

19 THE COURT: Uh-huh.

20 MR. ELIA: It says Razuki and Malan have an
21 understanding such that regardless of which party or
22 entity holds title and ownership to the partnership
23 assets, Razuki is entitled to a 75 percent interest
24 in the capital, profits, and losses of each
25 partnership asset, and Malan is entitled to
26 25 percent interest. And no party is entitled to
27 receive any profits whatsoever until and unless the
28 parties have first been repaid their investment in

1 full, hereinafter, the partnership assets -- that's
2 a defined term. It refers to the -- all the parties
3 that are in dispute today.

4 Now, Your Honor, they contend that these
5 recitals are incorporated into the agreement in a
6 different section. The signatories to this
7 agreement are two people, Mr. Razuki and Mr. Malan.
8 They contend that my client doesn't have a property
9 interest, that he shouldn't be here, that he doesn't
10 have rights.

11 Well, there's, again, only two individuals.
12 RM is not an actual party to this agreement, so
13 we've sued to enforce this agreement. And we think
14 we win on this, but let's set it aside for argument
15 purposes and let's say this is void.

16 Even if this is void, it sets forth and is
17 evidence of the oral partnership agreement that they
18 had, which is further evidenced by the millions and
19 millions of dollars that my client put in, while
20 Mr. Malan put in virtually no money at all.

21 Sometime in -- I believe it was May,
22 Your Honor, my client started to get suspicious of
23 what was going on with the dispensaries. He was
24 being told they weren't really making any money. So
25 he contacted SoCal, had a meeting with SoCal, and
26 that was the first time that SoCal learned that my
27 client had a 75 percent interest.

28 So SoCal sent a letter dated May 24th to

1 Mr. Malan and Mr. Hakim, and they said, Hey, what
2 the heck's going on? We have somebody that says he
3 owns 75 percent of this and it was not disclosed.
4 Please produce all the paperwork that shows who the
5 true ownership is. And they didn't.

6 So what happened was -- everything was
7 fine. SoCal started operating in October until
8 June -- or I believe it was July 10th that they
9 locked them out. So for ten months, there was no
10 complaint whatsoever about SoCal, that they smoked
11 weed or that they did this or that they had a felon
12 working for them. No complaints whatsoever. It's
13 when SoCal stopped paying because of what was going
14 on that they were locked out.

15 THE COURT: What did they pay?

16 MR. ELIA: I'm sorry?

17 THE COURT: What did they pay?

18 MR. ELIA: I believe it was --

19 MR. ZIMMITTI: Your Honor --

20 MR. ELIA: -- \$50,000 just on the Balboa
21 property, Your Honor.

22 THE COURT: Who said "Your Honor"?

23 MR. ZIMMITTI: Your Honor, Salvatore
24 Zimmitti for SoCal. Your Honor, we -- if I may just
25 sort of jump in on sort of the SoCal piece of this.
26 We do support Mr. Razuki's request for a receiver.
27 Basically, you know, there's a lot going on here,
28 and I appreciate the complexity the Court has to

1 face.

2 THE COURT: That's okay.

3 MR. ZIMMITTI: From SoCal's point of view,
4 I think I can sort of just take a high level
5 approach of how we fit into things.

6 THE COURT: Can you hold on that --

7 MR. ZIMMITTI: Sure.

8 THE COURT: -- and let him finish?

9 Two questions. Did you make a monthly
10 payment for consulting fees?

11 MR. ZIMMITTI: We made -- we made monthly
12 payments under the agreements. As far as I know, we
13 made all the required payments. You know, your
14 monthly guarantee --

15 THE COURT: It's a very specific question.
16 Maybe you can do a little research.

17 MR. ZIMMITTI: Okay.

18 THE COURT: I want to know if you made
19 specific payments monthly for consulting fees that
20 went to an LLC -- that's what I read, correct -- or
21 did it not?

22 Number 2, did you pay management fees above
23 and beyond -- besides SoCal, who to and how much
24 monthly?

25 If you could kind of research that if you
26 could while he works. You got two attorneys there.
27 One can do that and the other one can listen. Fair
28 enough?

1 Do you have any idea what I'm talking
2 about, Counsel, when I say that?

3 MR. ZIMMITTI: Your Honor --

4 THE COURT: If you don't, it's okay.

5 MR. ZIMMITTI: Well, I -- there's a lot
6 of -- a lot of money being paid. I have a -- I have
7 a register of what we paid, and I have --

8 THE COURT: I'm looking at a fee of \$50,000
9 a month. Does that ring a bell?

10 MR. ZIMMITTI: Yes.

11 THE COURT: Does \$60,000 ring a bell?

12 MR. ZIMMITTI: I'll get you all the numbers
13 you'd like, Your Honor.

14 THE COURT: And I want to know what they
15 did to earn that fee.

16 I digress. Go, Counsel.

17 MR. ELIA: So, Your Honor, under -- under
18 this management agreement that they entered into
19 without my client's consent -- when I say "they," I
20 refer to Mr. Hakim and Mr. Malan.

21 Now, again, Your Honor, Mr. Hakim has no
22 interest in the -- Balboa, yet under this settlement
23 agreement, under Section 2.2.8, there's \$35,000 a
24 month that goes to Monarch, an entity that is owned
25 by Mr. Hakim and Mr. Malan. And to date, they have
26 not provided an explanation as to why in the world
27 money is going to Monarch when it should be going to
28 Flip.

1 THE COURT: Because it's a management
2 consulting LLC, isn't it? That's what I'm talking
3 about, Counsel. Go ahead.

4 MR. ELIA: The understanding, Your Honor,
5 was that Flip Management was supposed to get that
6 money, not Monarch.

7 THE COURT: That's one theory.

8 MR. ELIA: Let me tell Your Honor why we're
9 asking for the receiver right now.

10 THE COURT: Okay.

11 MR. ELIA: We contend that we funded these
12 properties, that we have an ownership interest,
13 75 percent. These two individuals already entered
14 into an agreement where they transferred and gave
15 options and were paid a substantial amount of money
16 to provide options for real estate properties in
17 which they don't own. That's Number 1.

18 Number 2 --

19 THE COURT: Let me interrupt again.

20 SoCal, do you claim that you have an option
21 to purchase in these -- these business entities?

22 MR. ZIMMITTI: Yes, Your Honor, we do.

23 THE COURT: Does anyone here assert that
24 Far West company may also have options to
25 participate? Anyone want to comment on that?

26 MR. ELIA: I do, Your Honor.

27 THE COURT: Yeah.

28 MR. ELIA: The day that they locked them

1 out, that was 7/10. The receiver took over on 7/17.
2 We found an agreement to Far West that had a clause
3 in there, Section 1.7, that said "long-term
4 agreement."

5 Now, what happens if they enter into a deal
6 with Far West at the same time they have put
7 \$2.8 million in? And they're not just going to let
8 that 2.8 million go with property rights, so it
9 creates a situation -- and it's clear that their
10 intent is to enter into these agreements. And it
11 creates a situation where there's going to be a
12 multiplicity of lawsuits.

13 And what even is even scarier is that they
14 have just entered into an agreement with Synergy
15 with the same exact 1.7 section. And in addition to
16 that, what they did was they gave rights of
17 royalties in perpetuity in that agreement. And I
18 can read that to Your Honor.

19 THE COURT: Is that Synergy?

20 MR. ELIA: Yes. There's -- and I can read
21 that section for Your Honor.

22 THE COURT: As you're doing that, is Far
23 West managing anything now?

24 MR. ELIA: The Balboa operations.

25 THE COURT: Okay.

26 MR. ELIA: Section -- Article 3, Section B,
27 for the Synergy agreement says that following
28 termination -- so even if this agreement is

1 terminated -- manager will be entitled to
2 receive 2 1/2 -- and then it says "5" in
3 parentheses -- of the net profits of the facility
4 generated by the manager's contracts every month.

5 So this goes into perpetuity on assets they
6 don't own. So now we've got Synergy, we've got
7 SoCal, and we've got Far West. And this is going to
8 lead to a big lawsuit, and it subjects the
9 partnership assets to liability of millions of
10 dollars. And that's why we asked for the receiver
11 to step in so that there's no waste.

12 In addition to that, what we're concerned
13 about is Mr. Malan currently owns the assets in his
14 name. He can sell those. In the other case, he
15 sold one property, which we'll get to later on.

16 THE COURT: When you say "assets," be more
17 specific. What are you talking --

18 MR. ELIA: San Diego --

19 THE COURT: The equipment?

20 MR. ELIA: No, Your Honor. I'm talking
21 about SD United. I'm talking about the real
22 property. I'm talking about the Mira Este real
23 property. I'm talking about the Roselle real
24 property. And those are in his name, and we just
25 simply have zero trust. And the fact that he's
26 already sold a property for half of what the value
27 is in the other case, which we'll get to later, is
28 an issue.

1 The loan for the -- Mira Este of
2 3.3 million is in default. Their -- the monthly
3 payments are current, but there was a \$200,000
4 payout that hasn't been made. And what happens is
5 my client secured that loan with 25 properties. And
6 that's in default and that's an issue that terrifies
7 us, frankly.

8 The reason we cannot trust Mr. Malan or
9 Mr. Hakim is because Mr. Malan has violated two
10 court orders, Your Honor. The last time we were
11 here, you mentioned on two occasions -- you said, I
12 want the bank accounts frozen and I mean frozen and
13 that not even a bill was to be paid.

14 And that same day, Your Honor, as he sat in
15 this courtroom, Mr. Malan contacted BBVA Compass and
16 sent Judge Strauss' order vacating the receiver to
17 that bank and asked them to unfreeze the account.
18 That's the -- that's one blatant violation of a
19 court order.

20 The second one occurred on the day the
21 receiver took over when I argued before Judge Medel.
22 I was in his courtroom. Ms. Austin was there. He
23 granted the receiver. Two hours later, Ms. Austin
24 spoke to the receiver and told them, I'm not going
25 to -- I'm not going to follow the order, and I'm
26 going to instruct my clients not to follow the
27 order, and I'm not -- I'm going to further instruct
28 them not to cooperate with the receiver.

1 And what happened after there [sic],
2 Your Honor, was caught on video and I brought it
3 with me. And it's only 28 seconds, and I'd ask that
4 Your Honor take a look at the video.

5 THE COURT: Is that the backdoor situation?

6 MR. ELIA: Yes, Your Honor. Suffice it to
7 say --

8 THE COURT: I don't need it right now.

9 MR. ELIA: Okay. All right. And so --

10 THE COURT: You'll get your chance. I
11 promise.

12 MR. ELIA: We got -- we have no confidence
13 that they'll ever provide truthful numbers. This is
14 an all-cash business, and we need some form of
15 internal controls.

16 And you got a sense of the gravity of the
17 sales and the money that this -- these locations
18 generate in a weekend. I think they said \$200,000
19 on Mira Este in a weekend, and I think it was
20 100,000 at Balboa. It's a tremendous amount of
21 money. It's cash.

22 And what they want to do is they want to
23 pretend that we have an imaginary interest, although
24 we funded millions and millions of dollars and put
25 up 25 properties. Mr. Malan and even Mr. Hakim in
26 his declaration says that my client did fund it, and
27 he didn't want to be on the paperwork.

28 The only person in this courtroom that says

1 that we have an imaginary interest is Mr. Malan, and
2 that's after we put in millions of dollars. We
3 encumbered 25 properties, and he's put in
4 virtually -- not one piece of paper that shows that
5 he put in any cash whatsoever. He wants to take all
6 that from us and then SoCal's \$2.8 million and
7 pretend that we have no interest whatsoever.

8 So we have irreparable harm because of the
9 multiplicity of lawsuits and then giving options on
10 properties they don't own and royalty agreements in
11 perpetuity and things of this nature, and we need
12 internal controls.

13 Two things I want to say about Judge
14 Strauss and Judge Medel's order, and I'll make it
15 very, very brief, Your Honor. There was a discovery
16 hearing in a related case. And coincidentally, that
17 case was before Judge Medel, and that was four days
18 after the receiver was appointed. Ms. Leetham
19 appeared. Ms. Austin appeared at that hearing. It
20 was a discovery hearing. It was on the San Diego
21 Patients case versus some of the same parties here.

22 They appeared. And in that case, Mr. Jaffe
23 is counsel and he doesn't know anything about this
24 case. I wasn't there. And they made a complaint
25 that everything was in, you know, ruins and there's
26 all these problems and issues, and they spoke for 17
27 pages about how the receiver was creating a problem.

28 So Judge Medel, understandably, said -- and

1 he didn't hear from me, because I wasn't there. But
2 he said, You know what? I have some anxiety and I
3 want to revisit the issue.

4 They took that statement and they argued to
5 Judge Strauss that he was going to sua sponte vacate
6 the order. Judge Strauss never read my 19-page
7 ex parte application. He never read my 91 pages of
8 exhibits, and the reason he didn't is because that
9 ex parte was filed in Judge Medel's hearing, not
10 Judge Strauss.

11 He didn't read my paperwork. He read their
12 paperwork. And that's on the record, and we got the
13 transcript. And they went into court and they said
14 that I misled Judge Medel. And I didn't have the
15 transcript in Judge Strauss' hearing, but I have it
16 today and I highlighted it and I cited it in our
17 brief.

18 What we asked Judge Medel is we wanted to
19 preserve the status quo for the last ten months,
20 which was when SoCal was in operations. SoCal was
21 at that hearing. They had an ex parte to intervene
22 into that hearing and they spoke in that hearing.

23 I did not mislead any judge, Your Honor. I
24 don't mislead judges, and I certainly don't drive
25 getaway cars either. But I just wanted to note that
26 for the record. And I think had Judge Strauss read
27 my ex parte application and had I been present at
28 the discovery hearing with Judge Medel and he would

1 have heard our side, as he did in the first ex parte
2 when I argued it and he granted it, I think there
3 would have been a different outcome before Judge
4 Strauss.

5 Thank you, Your Honor.

6 THE COURT: No. For my mindset, your -- I
7 want to hear -- who's counsel for Malan? That's who
8 I want.

9 And then, SoCal, you'll be next.

10 And then you're --

11 MR. GORIA: Hakim.

12 THE COURT: You'll be after that.

13 MR. GORIA: Okay.

14 THE COURT: And then you'll be last. Or
15 who else? All right. Let's go. Here we go.
16 Let's -- talk to me about Mr. Malan.

17 MR. WATTS: All right. Can I address the
18 court orders that -- the last couple things he said?

19 THE COURT: The court orders?

20 MR. WATTS: Yeah, the way that we responded
21 to court orders.

22 THE COURT: If you want it for the record,
23 of course. I'm treating this as a brand-new
24 hearing. So whatever happened in Judge Medel's
25 department, Judge Strauss' department --

26 MR. WATTS: This is just a couple days ago
27 when our client contacted BBVA. He wanted to get
28 copies of the checks that the receiver had written.

1 He asked them for access to the account, not to
2 spend money. Access. He didn't ask them to
3 unfreeze the account. He said, "Look, there's no
4 receiver in place. I should be able to look at the
5 account." That's what we asked for.

6 On the --

7 THE COURT: Did you do that or did your
8 client do it?

9 MR. WATTS: Our -- the client did that.

10 THE COURT: He called. Okay. Did he fax
11 them Judge Strauss' order?

12 MR. WATTS: I think it was attached to the
13 e-mail. I didn't see his original e-mail. I got it
14 forwarded afterwards. Judge Medel said that -- he
15 used the words "sua sponte" in the -- in the hearing
16 when he said that he would take another look at
17 that.

18 MS. LEETHAM: Can I address that? I was
19 the one there, Your Honor. And I actually take
20 issue. I try to be as genuine to the Court as I
21 can.

22 I appeared at that hearing to let Judge
23 Medel know that our interpretation of that
24 receivership order precluded me from representing my
25 clients in that litigation. It had divested me of
26 my ability to oppose a motion to compel, and I
27 explained to him it came from his ruling. So there
28 was some back-and-forth about the implications of my

1 standing in court when, arguably, Mr. Essary had
2 that choice on who to allow to retain. As the Court
3 knows, we have four pieces of ongoing litigation.

4 And so I was in a very awkward position,
5 and I let him know I felt deeply uncomfortable
6 advocating for my client at that hearing, which is
7 when he said he had considered sua sponte relief,
8 because there was (inaudible) --

9 THE REPORTER: Because there was what
10 issue?

11 MS. LEETHAM: Sua.

12 THE REPORTER: I got that, "sua sponte
13 relief because there was" -- and you trailed off.

14 MS. AUSTIN: Notice.

15 MS. LEETHAM: Notice.

16 Thank you.

17 THE COURT: Thank you.

18 MR. WATTS: So on the merits of this for
19 the receivership, the contract under which they're
20 claiming that their client has a property interest,
21 we argued in the paperwork that it is invalid.
22 That's the source of their property interest.

23 He's now brought in the fact -- his
24 allegation that he's made -- taken out loans
25 involving the properties, that he's invested
26 millions of dollars in it.

27 An investment in something isn't an
28 ownership of it. It means that you invested money

1 in it. But on paper, if he doesn't have anything to
2 evidence that he was given ownership in response or
3 in exchange for that, then he doesn't have an
4 ownership interest in that property.

5 The settlement contract is illegal because
6 at the time that it was made, as we argued in our
7 brief, it dealt with the revenues from -- from
8 businesses that are operating in a way that's
9 illegal under federal law. And the public policy in
10 California we cited in a published appellate
11 decision is that --

12 THE COURT: When you said "illegal,"
13 explain that to me.

14 MR. WATTS: This
15 sale/manufacture/distribution of marijuana. And it
16 was clear in the settlement agreement. It said that
17 marijuana was -- that that's the purpose of these
18 businesses. So this contract at the time -- now,
19 it's different today.

20 THE COURT: It's the time. I got it,
21 Counsel.

22 MR. WATTS: Okay. And even if -- even if
23 the contract -- even if that weren't a problem, you
24 can still enforce the contract. We have the problem
25 that the business was never capitalized. It wasn't
26 capitalized at the time that the lawsuit was filed.

27 The operating agreement for RM Holdings
28 says that unless these partners make these initial

1 capital contributions, none of them have membership
2 interests in it. No one owns that company.

3 Those initial capital contributions were
4 \$750 [sic] from their client, 250 from ours. Those
5 were not made. Our client's declaration says that
6 they were not made. They have not produced
7 membership certificates showing that they own
8 RM Holdings, LLC.

9 Until that is made -- until those capital
10 contributions are made, these people aren't members.
11 Until an accounting is performed -- that's another
12 thing that the settlement agreement says. Until an
13 accounting is performed with the partners'
14 respective investments in these properties, the
15 partners aren't entitled to derive profits, losses,
16 or capital from the properties.

17 No accounting was made. They don't claim
18 that an accounting was made. They claim that the
19 settlement agreement says the parties were supposed
20 to work together within the first 30 days to try to
21 finish an accounting, but they didn't do that.

22 And also, a -- it's not just our client's
23 responsibility to contribute things to the
24 settlement agreement. As you mentioned, Super 5
25 Consulting Group and also Sunrise, which his client
26 owns -- he was supposed to contribute those to the
27 group.

28 Now, a -- the parties' material breach of

1 the agreement excuses the other parties' future
2 performance of the agreement. He admits his client
3 has not contributed those LLC percentages to the
4 agreement, and so he doesn't have an ob -- the right
5 to force our client to perform his obligations under
6 the agreement.

7 Neither of these guys performed their
8 obligations under the agreement, and the reason is
9 that they rescinded the agreement in February of
10 this year. As our client explains in his
11 declaration, the two parties came together and
12 said -- as he said, they had an oral agreement that
13 talked about many other properties that they had
14 worked on over the years. They were going to put
15 many properties into this holding group.

16 But when my client went into Mr. Razuki's
17 lawyer's office and was presented with this and told
18 that he needs to sign this today, pressured by
19 attorneys, without his counsel present, he signed
20 the agreement, and then later discussed with Razuki,
21 well, what about the other agree -- what about the
22 other properties? Why aren't -- why aren't they in
23 here? And he said, Oh, those will be put in later.

24 And "later" became later and later. And
25 eventually, our client asked Mr. Razuki, finally,
26 Put the -- we need to put this in here; otherwise,
27 we're not going do this.

28 And Mr. Razuki said, Fine. You keep what

1 you have in your name, and I'll keep what I have in
2 my name.

3 All this is in our client's latest
4 declaration that we filed in support.

5 THE COURT: Which I did read.

6 MR. WATTS: Which you read. So the --
7 RM Holdings wasn't capitalized, so nobody owns it.
8 The settlement agreement -- these preconditions
9 weren't complied with. Neither party contributed
10 their money. His client didn't contribute this
11 capital. Nobody has membership shares, and they
12 haven't done an accounting yet. And so they're not
13 entitled to any -- any profits from the companies
14 that are supposed to be put in the agreement.

15 Even if they were -- let's say everything
16 was in RM Holdings, that money -- he's not entitled
17 to ownership of the group's control of the
18 businesses. He's not entitled to prevent them
19 from -- the business managers from signing options
20 and things like that. There's nothing about that in
21 the settlement agreement.

22 As for SoCal, now, SoCal makes claims too
23 in this. They claim that their management agreement
24 gives them the option to buy the properties. It
25 did. That option expired at the end of June of this
26 year for Balboa, which was the only one of the three
27 management agreements where they actually paid the
28 \$75,000 that was necessary to buy that option. The

1 other two management agreements, they didn't pay.

2 So they never had those options to begin with.

3 And the Balboa agreement expired at the end
4 of June. They asked to extend it. They asked to
5 extend it because of this -- this conflict between
6 Mr. Razuki and Mr. Malan about who allegedly owns
7 the Balboa properties. And Mr. Malan said, No, I'm
8 not going to extend it. The agreement is what it
9 is. Also, here's 25 days' notice that you're in
10 default of making your payments under the agreement.

11 So their option agreement has expired.
12 They no longer have a property interest in there.
13 They were fired with 25 days' notice, as required
14 under the management agreement.

15 Now, these -- when it's his turn to argue,
16 he's going to argue that he is entitled to manage
17 that agreement for -- or manage that property until
18 the end of time and that the only way that he can be
19 fired is if we go through mediation and then
20 arbitration, and then he can be fired.

21 But there's a Thirteenth Amendment in this
22 country and -- the slavery one, and we're allowed to
23 breach -- we're allowed to terminate people and fire
24 them. Mr. Malan can say, "You no longer work here."
25 He can give 25 days' notice and then cancel the
26 agreement, because that's what the agreement says in
27 Section 6.2. What he's referring to is an
28 arbitration clause.

1 Now, I've been on a cruise ship and bought
2 a ticket, and it says that I have to solve all the
3 disputes in arbitration. But that doesn't mean that
4 they can't kick me off the ship if I'm, you know,
5 smoking weed and drinking on the -- when I'm there.
6 They can kick me off. And then if they decide to
7 sue me, then we go to arbitration.

8 So what SoCal is describing -- it says that
9 any disputes have to be resolved in arbitration.
10 That doesn't mean that they can't be fired. That
11 means that if they want to sue us, as they did in
12 this case, they should have done it in arbitration.
13 They should have done it in mediation. That's what
14 an arbitration clause is. That's what it means when
15 it talks about disputes, because Section 6.2 says
16 that you give 25 days' notice that you're failing to
17 make payments. If you don't cure, you're fired.

18 And they proved that they failed to make
19 payments. The interim report from the receiver says
20 that they made a payment to the receiver of money
21 owed -- it was in the receiver's report -- of over
22 \$100,000, \$120,000, something like that.

23 Incidentally, the day that we gave ex parte
24 notice that we were dissolving the receivership, the
25 receiver spent \$100,000, 17,000 on himself, 7,000 to
26 his attorneys, paid an LLC that one of the partners
27 at Nelson Hardiman is in charge of, more than
28 \$10,000 into that. And you know the other facts on

1 that.

2 So the -- putting the receiver in place --
3 frankly, the companies can't afford the receiver.
4 They -- the receiver spent \$100,000 in a day. He
5 was in there for two weeks, and he spent \$30,000
6 paying himself and on all these other insiders.

7 It's an obscene amount of money, and it's
8 all the money -- practically all the money that was
9 in the bank account at the time after SoCal made
10 their payments that they owed.

11 Do you have anything to add?

12 MS. LEETHAM: We have different spheres of
13 knowledge, so --

14 THE COURT: And you represent Malan,
15 though, don't you?

16 MS. LEETHAM: Malan and all the entities,
17 so we have a slightly different thing. So I thought
18 a lot of cliches when I was sitting there trying to
19 figure out how to wrap this all together.

20 Where's the beef? We have millions of
21 dollars in contributions, and we don't have
22 evidentiary support for it. We have loans where
23 Mr. Malan is actually obligated on those same loans.
24 He's an guarantor. He's an obligor. So if we're
25 talking about a commitment to a loan as being an
26 investment of a million dollars, my client owns just
27 as much as Mr. Razuki does.

28 I've also thought of the pot calling the

1 kettle black, maybe talking out both sides of your
2 mouth to where you're coming into court -- I made
3 the argument in my paper -- with unclean hands.

4 So you're saying, "I want the benefit of
5 everything that you have, even though I can't show
6 anything on paper that says I get it, but I don't
7 want to give you anything I have," which is why
8 Super 5 isn't here. It's why Sunrise isn't here.
9 It's why RM Property Holdings isn't here.

10 So even if we were to step back and say,
11 "Can the Court fashion relief today?" the answer is,
12 unequivocally, no, because the Court does not have
13 the ability to take those nonparty entities and
14 require them to do the same thing that all our
15 defendants are required to do, which is account.

16 I would also say that we've asked the Court
17 in our papers to see these as discrete issues. The
18 plaintiff has put them all together. We have -- we
19 have SoCal in bed with Razuki.

20 And really, until May 24th, when SoCal
21 hired a private investigator to go find
22 Mr. Razuki -- they met, they colluded, and here we
23 are. Not once did they come to my client and say,
24 "Hey, what's going on with Mr. Razuki?" No. We hit
25 red zone ten. And on June -- July 17th, we got
26 ambushed with a receiver, which leads me to the
27 purpose of the receiver and the harm.

28 It is a drastic remedy. The case laws talk

1 about it. The impact of what happened in the two
2 weeks the receiver was in possession of the
3 properties was significant.

4 First of all, Mr. Gorla will talk about
5 Mira Este and Roselle. Those entities are in the
6 red. They were not functioning. There was nothing
7 to speak of in terms of revenues.

8 With respect to Balboa, the Court has
9 numerous examples in our pleadings of malfeasance,
10 and I actually thought maybe the best way to do that
11 would be to run through the management services
12 agreement for Balboa and talk about the breaches.
13 And I highlighted them all in green. If the Court
14 wants me to go through that, I can.

15 They did not -- well, actually, let's talk
16 about the money.

17 THE COURT: That's number one on my list.

18 MS. LEETHAM: Let's talk about the money.
19 Section 1.6 of the Balboa management agreement talks
20 about initial contributions. It is the
21 consideration for SoCal's right to come in and run
22 that dispensary.

23 They were required to pay 125,000 for
24 FF&E -- which I always forget -- furniture,
25 fixtures, and equipment. I believe they did, but
26 they had to. It was part of their consideration.

27 They paid 44,000, which is said it will
28 serve as a credit against the purchase price if --

1 if the manager exercises its option under Section 8
2 below. That's the 125-.

3 It then goes on to say, Managers shall
4 lend -- not invest -- lend the company an additional
5 44,000, which was interlineated from an original
6 83,000, reimbursement for old inventory, which sat
7 in the dispensary because we were shut down by
8 Judge Styn. So there's been some talk about waste.

9 THE COURT: Styn?

10 MS. LEETHAM: Yes. The homeowners
11 association litigation was in Judge Styn's --

12 THE COURT: There we go.

13 MS. LEETHAM: And so there was some talk
14 about waste and sales, right. So they were
15 reimbursed for old inventory they could not sell.
16 That was a lend too. They were to be repaid.

17 If you go on, it also says, Manager shall
18 pay the old operators, Mr. Hakim and Mr. Malan, for
19 reimbursement of legal and mitigation costs 66,000.
20 Except for the 15,000 monthly payments which
21 Your Honor referenced earlier, those were all loans.
22 Those didn't give them an equity or any right to
23 anything. That's what they had to pay.

24 If you go on and you look at their
25 accounting, there's a sheet that has accounting
26 today, which I don't remember whose declaration it
27 was attached to. Maybe Jim Townsend's.

28 MR. ZIMMITTI: Yes.

1 MS. LEETHAM: It breaks down an itemization
2 of expenses. Now, if you look at the Balboa
3 accounting, there's a minimum guarantee of 35,000,
4 and there is a -- rent of 15,000 that were to be
5 paid by SoCal.

6 SoCal paid my client out of the
7 dispensary's own sales. So my client was paying my
8 client, if that makes sense. SoCal didn't make
9 those payments. My client paid himself.

10 So when you go and you do the accounting,
11 you're going to find that, in fact, SoCal owes my --
12 Balboa about \$180,000 for the minimum guarantee and
13 the Balboa rent that they should not have paid
14 themselves.

15 Trying not to go through all my green
16 lines, Your Honor. Just give me a moment.

17 THE COURT: The money that SoCal
18 invested --

19 MS. LEETHAM: Right.

20 THE COURT: And maybe that's a word we need
21 to look at. They said they put in 936,000 to Balboa
22 and about 1.7 -- almost 1.8 to Mira Este. How do
23 you -- is that a loan? Is that a capital con --
24 what is that, Counsel?

25 MS. LEETHAM: Well, first of all, that
26 figure is disputed. Our math shows -- I have notes
27 on my sheet of 466,000.

28 THE COURT: So there was no one point -- go

1 ahead. I interrupted you.

2 MS. LEETHAM: No. I mean, I don't know if
3 they're aggregating their numbers or what they're
4 doing with them. We asked for evidence of it. So
5 if you take out the 180-, they were required to pay
6 some of it, which was a loan. The only arguable
7 equitable contribution would be the 125-, which was
8 intended to go toward the FF&E.

9 THE COURT: So this is about -- that leaves
10 about 2.4 million. I'm ballparking. That's what
11 they said was paid. You have no idea where that
12 money came from?

13 MS. LEETHAM: Balboa is fairly
14 self-sustaining, and we had -- it was entitled. The
15 tenant improvements were done. It was open but for
16 the ongoing HOA litigation with Judge Styn. So when
17 SoCal came in, they paid the 125-. They loaned the
18 66,000 and 44,000, nonrefundable. That's a loan.
19 And then I don't know what they did. There's money
20 in here that --

21 THE COURT: So that's about 180,000.

22 MS. LEETHAM: I will make it -- they did
23 pay the 75,000 for the option?

24 THE COURT: All right. That's 275- --
25 250-.

26 MS. LEETHAM: That's about where we end up.

27 THE COURT: Did I read that wrong? Is
28 it -- SoCal, are you claiming that you invested -- I

1 want to say 2.6?

2 MR. ZIMMITTI: Yes, Your Honor.

3 THE COURT: And they're claiming you put in
4 250-.

5 MR. ZIMMITTI: Your Honor, that's just
6 grotesquely inaccurate.

7 THE COURT: I assume we have checks.
8 Somebody has some checks, right?

9 MR. ZIMMITTI: Your Honor, yes.

10 THE COURT: Okay. All right.

11 What do you say -- that 2.5 million before
12 me, what was that? Is that all equipment?

13 MR. ZIMMITTI: No, Your Honor. No,
14 Your Honor. Equipment we've -- as I said, we have
15 about 410- currently locked up and some more --

16 THE COURT: I'll come back to that. I'm
17 going to let her finish, Counsel. I want to know
18 where the 2.4 million went.

19 MS. LEETHAM: I don't think it went into
20 Balboa. I don't know if that's an aggregate or what
21 that is.

22 THE COURT: No. They break it down. It's
23 900,000.

24 MS. LEETHAM: They're saying that
25 approximately 751,000 went to Balboa.

26 THE COURT: That's not what I wrote down,
27 but close enough. They show \$936,245 by my notes.

28 MS. LEETHAM: Oh, they have another -- they

1 have another line item with 180-.

2 THE COURT: Okay.

3 MS. LEETHAM: We're at opposite ends of the
4 spectrum, which leads me back to why we're here.
5 There is no urgency to this. This is an accounting
6 issue. These claims are compensable at law. If the
7 parties dispute it, at the end of the day, there's a
8 fact finder that's going to say, You paid or you
9 didn't pay.

10 And there's a judgment and there's a way to
11 get their money. There's nothing that needs to
12 happen today, which leads me back to the harm my
13 clients went through with the receiver. And this is
14 an awkward situation, but, you know, we've detailed
15 it in our papers that some questionable decisions
16 were made during that time frame. I think we've
17 outlined it enough that, unless the Court has
18 questions for me, I don't know that I need to go
19 into it.

20 Suffice it to say, he emptied the bank
21 account on July 30th and left the clients insolvent.
22 So there's lesser remedies. Even if the Court is
23 contemplating something --

24 THE COURT: What bank account was emptied?

25 MS. LEETHAM: I'm talking about the
26 receiver's accounting. So I know he closed the
27 San Diego United account.

28 THE COURT: Okay.

1 MS. LEETHAM: He, I believe, had closed the
2 Mira Este and Roselle account.

3 THE COURT: What were the total of those
4 amounts that he took?

5 MS. LEETHAM: So the two San Diego United
6 accounts had \$17,765. SoCal infused 170,000 in. So
7 they basically put money in, and then they shuffled
8 it right back out to themselves in insider payments.

9 THE COURT: It's my understanding to run
10 these businesses, it takes \$100,000 a week, correct?

11 MS. LEETHAM: It takes a competent
12 management team, I suppose.

13 THE COURT: You know, that's a good answer
14 too, Counsel.

15 MS. LEETHAM: Which we have in there now,
16 Your Honor.

17 THE COURT: Who is it? And that is?

18 MS. LEETHAM: That would be Far West.

19 THE COURT: Well, we're going to talk about
20 that too. I'm concerned -- well, I agree, Counsel.
21 I don't -- not sure I have all the indispensable
22 parties here, which is a concern.

23 Let me just ask. Is it your client's
24 position that Far West, LLC -- I'll just -- LLC. Do
25 they have options in all this?

26 MS. LEETHAM: I do not believe so. They're
27 just a management company.

28 THE COURT: So in their contract, there's

1 no provision for options?

2 MS. LEETHAM: It's a short-term contract,
3 and I don't --

4 THE COURT: I'll take that as a no then.

5 MS. LEETHAM: No. It's a no.

6 MR. GORIA: Your Honor, that's the same
7 thing with Synergy. Synergy has no options in
8 Mira Este.

9 MS. LEETHAM: One thing I can represent to
10 the Court about Far West is they're a local
11 dispensary. They've been licensed here. They were
12 one of the first in District 2, since 2015
13 operating, and they understand San Diego. They
14 understand land use. They know what's going on.
15 And again, in our declarations we've given to the
16 Court, they're fine.

17 And the other thing I will add is that the
18 Court saw that the homeowners association has now
19 given us a notice of default. And all of those
20 things happened during SoCal's watch, and that,
21 Your Honor, is the irreparable harm. My client is
22 the one that's about to be irreparably harmed. It's
23 compensable law. Thank you.

24 THE COURT: Just a yes or no. I've read in
25 some declaration there were hundreds -- okay. Not
26 hundreds. Fifty. Somebody alleged that Far West
27 had options. Who was that?

28 Is that you?

1 MR. ELIA: No. They had an intent to do,
2 you know -- I read it into the record. Let me tell
3 you what it was. It was paragraph 1.7 in the
4 agreement that said --

5 THE COURT: That's the interest, Counsel.

6 MR. ELIA: That's the long-term agreement.
7 That showed their intent to enter it, but they don't
8 have options. Now, the other one --

9 THE COURT: You're good.

10 MR. ELIA: Okay.

11 THE COURT: Okay.

12 MS. LEETHAM: And just one last thing. We
13 have no problem telling the Court that we won't sell
14 assets or sell the businesses. If the Court read
15 the HOA settlement agreement, we can't.

16 THE COURT: Thank you. One last --

17 MS. LEETHAM: I'll try to use a yes or no.
18 It's very hard for me.

19 THE COURT: Counsel, you don't have to.
20 It's my -- first of all, Roselle is not being
21 operated, right?

22 MS. LEETHAM: Correct.

23 MR. GORIA: Correct.

24 THE COURT: It's been leased to a third
25 party, correct?

26 MS. LEETHAM: Correct.

27 THE COURT: And can you ballpark? What's
28 the lease for?

1 MR. GORIA: It's 4700 per month, and the
2 debt service is 6600 per month.

3 THE COURT: Okay. And, Counsel, who
4 collects that? Is it your client?

5 MR. GORIA: Yes, Mr. Hakim.

6 THE COURT: Okay. And that -- is there any
7 anticipation it's going to become a dispensary?

8 MR. GORIA: There's a hope.

9 THE COURT: Down the road?

10 MR. GORIA: Down the road, right.

11 THE COURT: All right. Thank you.

12 Now we're going to go to SoCal. Your turn.

13 MR. ZIMMITTI: Thank you, Your Honor. And
14 I'll just sort of pick up on the theme where
15 counsel -- defense counsel left off. We were not
16 just a management company, and I want to stress
17 that.

18 So -- and we set forth, you know, the
19 chronology of events. But basically, we got into
20 this deal under some letters of intent that
21 ultimately turned out -- there turned out to be
22 fraudulent representations in those. I don't want
23 to get down that rabbit hole right now.

24 But suffice it to say, we started funding
25 these projects in October 2017. Again, here in
26 Exhibit B, the Jim Townsend's declaration, we have
27 an itemization. We dispute that these were loans or
28 anything like that. Okay. We started paying.

1 Okay. Nine months go by. Everything is great.

2 All is --

3 THE COURT: Let me interrupt. So what were
4 they? What was the --

5 MR. ZIMMITTI: They're payments -- they're
6 payments for -- to -- under the agreement as
7 required, in which --

8 THE COURT: Which agreement?

9 MR. ZIMMITTI: The management agreements
10 with the rights -- the option rights within them.
11 There are three agreements. So --

12 THE COURT: Option to do what?

13 MR. ZIMMITTI: Option to buy 50 percent of
14 the facilities, including the real property.

15 THE COURT: Who was that agreement made
16 with?

17 MR. ZIMMITTI: It -- they -- it was
18 slightly different with every agreement.

19 THE COURT: Give me Balboa.

20 MR. ZIMMITTI: So Balboa would be -- Balboa
21 Ave Cooperative, San Diego United Holdings, Monarch
22 Managing [sic] Consulting, Inc., Chris Hakim, Ninus
23 Malan, and SoCal, and then -- with the other party.

24 THE COURT: Refresh my mind. Is that in
25 writing?

26 MR. ZIMMITTI: It is. The agreement is in
27 writing, sir.

28 THE COURT: Go.

1 MR. ZIMMITTI: Okay. So we operate -- we
2 entered into three agreements, okay, after getting
3 in the -- you know, setting forth the letter of
4 intent. One of the agreement -- one of the
5 facilities -- there are four we contemplated
6 purchasing. One of them fell out because it turns
7 out Mr. Malan and Mr. Hakim misrepresented that they
8 owned any interest in those facilities.

9 THE COURT: Which one fell out?

10 MR. ZIMMITTI: Sunrise facility. They
11 represented in writing -- okay. Fine. So in other
12 words, so we ended up entering into three
13 agreements, one for Mira Este, one for Balboa, and
14 one for Roselle. Each one of them had options to
15 buy 50 percent of the facilities, including the real
16 property. It's all in writing. It's all there.
17 Even before those agreements --

18 THE COURT: Go ahead.

19 MR. ZIMMITTI: Even before those agreements
20 were executed, we had started funding the
21 properties. And again, Mr. Townsend's accounting
22 shows payments starting as of 10 -- October 2017.

23 THE COURT: And when you say "they,"
24 Counsel -- when you say "funded the properties,"
25 what do you mean?

26 MR. ZIMMITTI: I mean putting in rent --
27 you know, so for Balboa, we paid the option --
28 minimum guarantees, tenant improvements. You know,

1 we pay for legal fees, Gina Austin's legal fees.
2 You know, it's all right here and I can read it. I
3 don't see -- I looked for consulting fees. I don't
4 see those.

5 THE COURT: But you wouldn't categorize
6 that as a purchase of the property?

7 MR. ZIMMITTI: Let me back up, Your Honor.
8 So under this agreement, basically all the net
9 income -- so under 5.1 of the agreement, all net
10 income, revenue, cash flow, and other distributions
11 from operations will be held by manager as a
12 management fee.

13 So -- so that was -- we're getting paid to
14 manage on the one hand, but we also are putting
15 money that's ours into these properties. So we're
16 putting it back into these properties as well.

17 THE COURT: And the theory is to be a
18 50 percent owner, correct?

19 MR. ZIMMITTI: Correct, Your Honor.

20 THE COURT: Go.

21 MR. ZIMMITTI: Okay. So again, we're
22 making these payments from -- starting from October.
23 Things are going well. In fact, we basically
24 improved Balboa, which was the only operating
25 dispensary. You know, a great turnaround in that
26 where our management was great.

27 Nothing -- no sign of any problems
28 whatsoever, Your Honor, until May. We -- we were

1 approached by Mr. Razuki, who apparently noticed
2 that we were doing a great job on Balboa, because
3 there's a common CPA, Mr. Yeager, John Yeager.

4 THE COURT: And is that O'Brian? How do
5 you pronounce that?

6 MR. ZIMMITTI: I'm sorry?

7 THE COURT: What's his company's name?

8 MR. ZIMMITTI: YH or --

9 THE COURT: No. H --

10 MR. ZIMMITTI: JYH. I think so. I got it.
11 So ultimately, you know, we -- Mr. Razuki found out
12 about us based on our performance at Balboa. We
13 meet in May, late May.

14 And essentially, we find out from
15 Mr. Razuki that he has this -- interests in these
16 properties, all the properties, by virtue of the
17 agreements you heard today and those interests.

18 And then we also found out -- also found
19 out that there was another case in which Mr. Malan
20 and Razuki were parties that had claim to the Balboa
21 property. And again, you know, this caused us
22 alarm, because we have reps and warranties that very
23 plainly say, you know, you -- you know, you
24 represent there's no pending or threatening
25 litigation that would impact any facilities. So
26 right there -- you know, we found out in May, after
27 being, you know, deep into this deal, that there are
28 these competing interests.

1 So what happened is that we basically
2 approached defendants with a letter May 24, Hey,
3 give us the full story on this thing. You know, we
4 heard some alarming stuff. Please provide us
5 information.

6 As soon as the defendants were outed -- so
7 I almost feel like this is a situation where, you
8 know, a guy is hitting on two girls. The two girls
9 meet and they're like, "Oh, who's your boyfriend?"
10 Oh, that's -- it's the same guy.

11 So, you know, Mr. Razuki and our client
12 basically realized they were both getting duped. My
13 client goes and says, What's the deal here? What's
14 up with this? We have these reps and warranties.

15 And all of a sudden, we -- they --
16 Defendants go into, like, warp speed trying to
17 manufacture some grounds for termination.

18 And then the very first thing in writing --
19 now, you must have 1,000 pages of documents before
20 you, Your Honor. And I'll tell you what. The
21 first -- the first hint of anything in writing where
22 my clients were accused of anything that resembles a
23 default is a June 1 letter from the Gorla law firm.

24 Jim Townsend, in his supplemental
25 declaration, discredits all that sort of -- the
26 vague, "You didn't pay us this." For example,
27 bouncing a check that we cured by wire the next day.
28 Defendants don't want to mention that. They can't

1 be honest enough to just admit, you know, you
2 bounced a check and paid it the next day.

3 At any rate, June 1, Your Honor -- so we
4 have -- we have, like, a nine-month stretch where
5 everything is hunky-dory. And then all of a sudden,
6 they get outed and they go -- again, they're frantic
7 to set up some termination.

8 And let's talk about -- let's talk about
9 that for a second, and let's talk about our
10 agreements and our options, which you heard
11 Mr. Watts stand up there proudly and say that our
12 option has expired under Balboa.

13 This is totally incorrect, Your Honor. And
14 you know what? You don't have to listen to me.
15 Listen to defendant Ninus Malan. So again -- and I
16 want to stress --

17 THE COURT: Well, hold on. When you say
18 that, are you -- are you predicating that these
19 options are alive because of some alleged statement
20 that Mr. Malan made, or is it in writing, Counsel?

21 MR. ZIMMITTI: It's in writing, Your Honor.
22 If you'll let me get to that, I --

23 THE COURT: I keep interrupting. Go on. I
24 apologize.

25 MR. ZIMMITTI: You really do, but that's
26 okay. They're good interruptions.

27 So, Your Honor, basically -- so we learn
28 about -- again, in May now -- May and June we know

1 about these -- this case is pending. It had been
2 filed a year earlier. Okay? A year earlier. No
3 reason it shouldn't have been mentioned. Plenty of
4 time.

5 In fact -- and Mr. Malan and defendants to
6 this day never explained why they didn't mention it
7 to us, why they violated reps and warranties. At
8 any rate, we don't have to worry about the option on
9 that -- on that Balboa facility expiring. And it
10 is -- under the agreement, I believe it might have
11 had a June 1 -- 1st date.

12 However, what Mr. -- Mr. Watts fails to
13 mention completely and disregards is Mr. Malan's
14 letter to SoCal dated June 19 in which he admits to
15 the existence of this litigation, never says, "You
16 know what? Oops. I had a good reason for not
17 mentioning that. You know, we have litigation.
18 Gee, I should have brought that up. It slipped my
19 mind," nothing like that.

20 What we have is a letter saying, "As you
21 know, SoCal Building Ventures was granted an option
22 to purchase a 50 percent ownership in the facility,
23 as defined by the management services agreement
24 option dated January 2nd."

25 Okay. "Pursuant to 8.2, the final option
26 exercise date is June 30, 2018," which is correct.
27 However, he goes on. "As we discussed today, over
28 the last couple weeks, there is pending litigation

1 at San Diego County that involves the facility. The
2 case name is San Diego Patients Cooperative --
3 Cooperation, et al., Razuki Investments," and I'll
4 stop there. "The litigation involves Balboa Ave
5 Cooperative and San Diego United Holdings Group."

6 And here's where it gets more interesting,
7 Your Honor. "This letter memorializes San Diego
8 United Holding Group's agreement to extend manager's
9 option on the facility pursuant to 8.2.

10 Specifically, San Diego United Holding Group agrees
11 that the option will be extended to 15 calendar days
12 following written notice to manager that the
13 litigation has been privately settled or there's a
14 decision after trial."

15 So in writing -- and it's signed by, "Very
16 truly yours, Ninus Malan, president." So he
17 basically tolled the agreement pending the outcome
18 of that San Diego case.

19 So to stand up here, not mention this
20 letter, and purport to tell your -- the Court that
21 our option expired is emblematic of the failure to
22 tell the truth in this case. This is classic.

23 And let's talk about the options on the
24 other two agreements, Your Honor. Let's talk about
25 those. Okay. Each one of them -- each one of them
26 has a contingent -- a cont -- a condition precedent,
27 and that is the grant of a CUP. So let me just read
28 it to you.

1 Okay. It's at 8.6, for example, of
2 Mira Este. They're jumping up and down. They
3 didn't pay -- they didn't pay the option. They
4 didn't do the -- okay. Let's read that.

5 8.6: Notwithstanding anything else
6 contained in this agreement, no obligation, passage
7 of time, or other matter with respect to options
8 shall become effective until the City of San -- City
9 of San Diego has granted the facility a conditional
10 use permit permitting company's operation to the
11 satisfaction -- a satisfaction clause no less. In
12 that regard, each of the dates set forth in 8.2
13 above are tolled until the 30th, 90th, and 50th day,
14 respectively.

15 Okay. So, Your Honor, basically, those
16 don't even go into effect until we have a COP [sic].
17 Okay. So to stand up here and say all our options
18 are gone, again, it's just ignoring the agreement
19 and ignoring their own correspondence on Balboa
20 tolling agreement.

21 So what happened here is basically that we
22 got taken to the cleaners. We were treated like an
23 ATM for nine months. And then as soon as they got
24 wind that we understood that we were being ripped
25 off and we were being cheated, they set up a
26 termination.

27 And again, the termination -- you know, we
28 can have another hearing about this, but the bottom

1 line is none of it -- none of it's true. Okay. We
2 have paid under the agreement. There are -- as I
3 said, we have bounced checks. We -- I submitted a
4 declaration that clears that confusion up.

5 THE COURT: I read it, Counsel.

6 MR. ZIMMITTI: So, you know, what we have
7 here is essentially our -- my client being
8 essentially kicked out of the premises. Okay. We
9 have an exclusive right to manage these companies,
10 and we have an option. We sunk lots of money. We
11 poured our heart and soul into this thing, and we
12 did a good job, notwithstanding what they're telling
13 now, which is conveniently incorrect.

14 And so we have a case of a new manager
15 coming in -- just -- I'm going to quote -- just a
16 management company, managing properties that we have
17 options on, and they're breaching the agreements,
18 Your Honor.

19 And also, you know, we just scratched the
20 surface on some more theft. I mean, we've already
21 pointed out some theft. And I don't want to go over
22 this if Your Honor doesn't want to, but there's also
23 money in bank accounts that disappeared. There's
24 a lot going on. And it's happening so quickly,
25 Your Honor, that we can't get our hands around it.

26 And so, you know -- and then in terms of
27 our equipment -- so again, I think this is, you
28 know, just -- you know, par for the course with

1 defendants is that they are just looking for every
2 opportunity to, you know, take whatever they can.

3 This equipment -- there's been -- there's
4 no basis to hold onto this equipment, especially if
5 they're saying that we're out of there. Okay.
6 There is -- this is the equipment we've put in. So
7 this -- we're talking -- there's equipment in
8 Balboa, but the bulk of it that we're aware of right
9 now that we have an inventory of is in Mira Este.

10 And it's expensive, delicate equipment used
11 to manufacture cannabis products, you know,
12 freezers, cryofreezers, ovens, all these things, lab
13 equipment. We brought that in there. We purchased
14 it. We submitted proof, and they're essentially
15 just holding it from us.

16 And, you know, Your Honor, you're fine --
17 we're fine to contin -- we want to continue working
18 and we're happy to use our own equipment for our
19 purposes, but it is absurd and there's no basis to
20 contend that the equipment that we're using to carry
21 out our duties and obligations is -- is their
22 property suddenly just because it's on their site.

23 There's nothing in the agreement that gives
24 them that right, and it's just -- it's just a
25 facially absurd interpretation of any -- anything in
26 the agreement.

27 So, you know, the way -- we've been
28 essentially just hung out to dry here, Your Honor.

1 And we performed our duties. We stand ready to
2 perform our duties. We sunk a lot of money.

3 I don't have an accountant with me today.
4 I'd love to put John Yeager up on the stand. He can
5 tell you everything about this money. But the
6 difference is -- is that right now we're in a
7 situation where the theft is occurring so quickly,
8 the waste is occurring so quickly.

9 Mr. Hakim has already explained he's got a
10 manager in Mira Este. First -- first -- the
11 contention in the first declaration is that they
12 made \$200 of revenue -- no, 200,000 of revenue.
13 Then it's 200,000 in orders.

14 And so, you know, it's hard to keep track
15 of -- you know, their lies just seem to sort of
16 morph. And so all I -- all we know is my clients
17 are basically getting taken to the cleaners. They
18 have sunk a lot of money. They're not just
19 managers. And they just want to press pause on this
20 thing, Your Honor.

21 Now let me --

22 THE COURT: Wrap it up.

23 MR. ZIMMITTI: -- just finish up with to
24 the extent there's a breach. Okay. So we do have a
25 dispute resolution clause. And essentially, it
26 is -- is -- does not just limit itself to, you know,
27 whatever they think -- whatever they think applies.

28 It applies to anytime there's an alleged

1 breach or default, whether or not one is current,
2 period. And this makes sense because we -- again,
3 we sunk a lot of money into this property as a
4 long-term investment. It's a long-term
5 relationship.

6 So to say that they could merely claim a
7 breach and kick us out and then we sue for damages
8 is ridiculous, because we all know when it comes to
9 property, okay, it is presumed that a breach of an
10 agreement to transfer real property cannot be
11 adequately relieved by pecuniary compensation.

12 So the remedy at law is presumptively no
13 good here, Your Honor. We have no other remedy.
14 It's loud and clear defendants will charge ahead.
15 They're going to get new managers. They're going to
16 sell off or give them residuals for life or
17 whatever. This is our only hope at stopping and
18 getting us a chance at our 50 percent ownership, for
19 which we upheld our end of the bargain.

20 THE COURT: Thank you.

21 Counsel?

22 MR. GORIA: Thank you, Your Honor. I don't
23 know quite where to start. There were a lot of
24 misstatements there. But let's just start, first of
25 all, with the options. I'm not sure if that's of
26 concern to the Court.

27 THE COURT: It is.

28 MR. GORIA: And keep in mind that I'm just

1 speaking in terms of Mira Este and Roselle, because
2 that side of this table here represents the Balboa
3 interests.

4 THE COURT: Right.

5 MR. GORIA: Okay. So first of all, let's
6 go back to that provision that counsel referenced
7 and actually read to the Court, 8.6. And this is --
8 this is a provision. I believe it's an identical
9 contract in that respect for both Roselle and
10 Mira Este.

11 Now, actually, I should ask the Court to
12 turn back a page to 8.1, and that's the grant of the
13 option. The grant of the option is distinguished
14 from the exercise of the option, of course. The
15 grant of the option requires that the manager pay
16 \$75,000 -- regardless of the CUP, pay \$75,000 by
17 March 15, 2018. That was for both Roselle and
18 Mira Este. That wasn't done. They lost any right
19 to acquire the option. Forget about exercise. They
20 lost the right to acquire.

21 Okay. 8.6 just allows for the extension
22 pending the grant of the CUP for the exercise of the
23 option. In other words, the date given for the
24 exercise of the option is extended if the CUP is
25 delayed, not for the actual purchase of the option.
26 I'm hoping the Court can follow me on that one.

27 THE COURT: I understand.

28 MR. GORIA: Okay. So there is a

1 distinction. They never paid the 75,000. They did
2 for Balboa, but they never paid 75- for Roselle,
3 never paid 75- for Mira Este. We contend that they
4 lost their right to acquire the option.

5 Now, if we get into a contract dispute as
6 to the interpretation of 8.6, that's certainly not
7 something that could be decided on an ex parte
8 application for a receiver.

9 As I think Tamara said, SoCal, at most,
10 would have a claim for damages for breach of
11 contract that could be handled at a later date.
12 They're not under any kind of urgency or they're not
13 facing any irreparable harm for the current manager,
14 which is Synergy, to be left in place.

15 They can -- Synergy is the current manager
16 of Mira Este. They were hired recently, and they
17 were the ones that generated \$200,000 in orders.
18 And Mira Este is now operating. Mira Este is
19 operating.

20 THE COURT: So Far West is suing Balboa?

21 MS. LEETHAM: Correct, Your Honor.

22 MR. GORIA: For a different manager,
23 different manager.

24 THE COURT: Yeah. That's Far West.

25 MS. LEETHAM: Yes.

26 THE COURT: So I've got Synergy and --

27 MR. GORIA: Yeah. Okay. Now, of course my
28 client doesn't have any dog in the fight between

1 Mr. Razuki and Mr. Malan. Nobody disputes the fact
2 that my client is a 50 percent owner of the Roselle
3 facility and a 50 percent owner of the Mira Este
4 facility. And there is absolutely no reason to put
5 a receiver over his interests in those facilities,
6 which is what would happen.

7 If a receiver were appointed, his interests
8 would be affected. His right to distributions would
9 be impaired. And we, of course, adamantly oppose
10 any appointment of a receiver. As Tamara indicated,
11 the appointment of a receiver in itself is a very
12 drastic remedy. And the appointment of a receiver
13 should not occur where you have other alternative
14 measures to protect the rights of the plaintiff in
15 this case or SoCal, plaintiff in intervention.

16 And the Court certainly has ample powers to
17 impose preliminary injunctive orders to protect
18 whatever property interests are at stake here. And
19 we have no problem with an order that prevents the
20 sale or encumbering or transferring of any of the
21 assets in Mira Este or Roselle. We just don't want
22 my client's interests in the distributions to be
23 impaired, because nobody disputes -- there is no
24 dispute that my client is entitled to those
25 distributions.

26 Now, in terms of SoCal, I was kind of
27 biting my lip on where the money went that SoCal
28 paid. You have to understand, basically, how the

1 management agreement with SoCal worked, at least as
2 far as Mira Este goes. Nothing happened as far as
3 Roselle goes. They haven't paid any money in terms
4 of Roselle. They have paid money towards Mira Este.

5 And Mr. Townsend has prepared an accounting
6 which is erroneous. There's several points that --
7 several payments that he says were made that were
8 not made. But be that as it may -- be that as it
9 may be, the payments made in connection with Roselle
10 were for the management agreement, management fee,
11 and the minimum guarantee. Those two fees -- those
12 two amounts totaled over \$100,000.

13 Now, why in the world would SoCal be paying
14 \$100,000 for this? They are receiving 100 percent
15 of the net profits after that. Okay. Pretty sweet
16 deal. I mean, they're getting everything after they
17 pay the minimum guarantee and the -- and the
18 management fees.

19 THE COURT: How much was the minimum
20 guaranteed? A hundred thousand?

21 MR. ZIMMITTI: From Mira Este?

22 MR. GORIA: I believe the minimum
23 guaranteed was, I believe 50,000, and the other was
24 60,300.

25 THE COURT: Who does that go to?

26 MR. GORIA: Mira Este Properties.

27 THE COURT: And who owns it?

28 MR. GORIA: Mr. Malan and Mr. Hakim.

1 THE COURT: What did they're do to do
2 that -- to -- their management, what did they do for
3 \$110,000?

4 MR. GORIA: They said, Come in. Come in.
5 You can operate this facility. You can pocket
6 100 percent of the net profits and operate this as a
7 marijuana facility.

8 THE COURT: And so --

9 MR. GORIA: They gave them that right.
10 It's a contract right that they gave them.

11 THE COURT: And so for ten months they
12 collected \$110,000 per month, correct?

13 MR. GORIA: No.

14 THE COURT: How many months?

15 MR. GORIA: They collected probably about
16 five months. And starting in -- and we have
17 detailed this in Mr. Hakim's supplemental
18 declaration. Failure to pay the June 2018
19 management fee of 60,300. May, failure to pay the
20 minimum guarantee of 50,000. July, failure to pay
21 the July '18 management fee of 60,300.

22 And then in fail -- another payment due in
23 June of the minimum guarantee payment of 50,000,
24 failure to pay that. Failure to pay utilities in
25 the amount of 12,000. Again, since SoCal was
26 getting 100 percent of the net profits, they had the
27 obligation to pay the expenses.

28 THE COURT: What were the net profits?

1 MR. GORIA: They didn't open. They delayed
2 the opening of Mira Este. They never opened it.

3 THE COURT: So there were no net profits?

4 MR. GORIA: No. There was no profits or no
5 revenues, no revenues at all, because they delayed
6 the opening of it. Synergy came into the picture.
7 They opened it right away.

8 THE COURT: Okay.

9 MR. GORIA: And they -- let's see. There
10 were other failures to pay. Total -- the total that
11 we came up with was 450,000 -- 451,000 as of
12 June 10, 2018, when Tamara sent the termination
13 letter. So it's a total falsehood that they were
14 current.

15 Now, they make the argument, Well, we were
16 kind of worried about Mr. Razuki's position in all
17 of this. But their management agreement wasn't with
18 Mr. Razuki or RM Holdings or Mr. Malan. It was with
19 Mira Este Properties. They -- that's who they owed
20 the obligation to, and they didn't make -- they
21 didn't fulfill that obligation.

22 Now, in that respect, they're claiming
23 that, well, there was a breach of the
24 representations and warranties. Not so. On the
25 litigation warranty -- it's 4.3.7 and he didn't read
26 that. I note that.

27 But he says the warrant -- the
28 representation says there's no litigation or

1 proceeding pending or threatened against company,
2 not against Mr. Malan, not against Mr. Hakim, not
3 against anybody other than Mira Este Properties.
4 And, of course, this was signed in January. So at
5 that time, that warranty was absolutely 100 percent
6 true.

7 As far as the equipment issue goes,
8 Section 4 -- this is another rep and warranty. But
9 Section 4.3.6 says, Company is the sole owner of the
10 real property on which the facility is located and
11 is the sole owner of the improvements comprising the
12 facility and all real and personal property located
13 therein.

14 So based on that, there's at least an
15 argument to be made that SoCal doesn't own all this
16 equipment or doesn't have a complete ownership
17 interest in it. We're not going to do anything with
18 the equipment. We're not going to sell it. We
19 wouldn't sell it even without a court order
20 preventing us from selling it, but we're not going
21 to sell it.

22 But we have a claim. We have a colorable
23 claim to that equipment. And it's not something,
24 again, that can be decided on an ex parte
25 application for a receivership.

26 Finally, just -- finally, if I may, the
27 agreement with Synergy -- the agreement with Synergy
28 requires Synergy to pay rent in the amount of

1 \$35,000. There was no such requirement on the part
2 of the SoCal agreement.

3 Well, rent in the amount of 35,000 is --
4 would be enough to cover the debt service on the
5 Mira Este facility of 25,000, not including taxes
6 and insurance, and the debt service on the Roselle
7 property, because that's running on a negative, 4700
8 rent, 6600 debt service. So we need that Synergy
9 monthly payment of rent to maintain the Roselle and
10 Mira Este loans, to keep them current.

11 So again, to undo that -- to undo the
12 management agreement with Synergy I think would
13 be -- it would actually be detrimental to
14 Mr. Razuki's position as well, because these loans
15 could be foreclosed on. And then the facilities
16 would be lost, and he'd lose his argument.

17 Thank you, Your Honor.

18 THE COURT: Thank you, Counsel.

19 Mr. Essary, what do you got? Or
20 Mr. Griswold. Who's going to speak?

21 MR. GRISWOLD: I'll speak, Your Honor.
22 First, I don't think it's any surprise to anyone
23 that my client was thrown into a true hornet's nest
24 on July 17th. Now, that's -- he's not asking for
25 sympathy. That's what he does. He's been doing it
26 for decades here in this county and lots of the
27 courts.

28 But I make that point to -- if the Court

1 needs any explanation or wants explanation regarding
2 his -- you know, the duties he took that were court
3 ordered. I remind the Court that any payments that
4 he made that, again, ordered by the Court while he
5 was the receiver during that brief two-week period
6 was to run those operations.

7 Of course, the normal course of a
8 receiver's business is to pay all invoices that are
9 owed to consultants, accountants, security services,
10 security technology and video equipment, payroll for
11 folks that are actually working 9:00-to-5:00s at
12 these dispensaries, and all those payments were
13 made.

14 We hastily put together an interim
15 accounting report for informational purposes for all
16 of the parties to look at. We expected a thorough
17 examination and comment, and we certainly got that
18 today.

19 But I would remind the Court that
20 Mr. Essary -- again, being in that hornet's nest, I
21 can only imagine the arguments that could have been
22 made if Mr. Essary didn't pay certain unpaid
23 invoices to certain consultants that were owed even
24 prior to Mr. Essary being appointed.

25 And if after July 31st, when the
26 receivership was vacated and the receiver walked out
27 of that receivership with a bunch of unpaid bills,
28 there's also the counterargument that would have

1 been made today that he walked in, didn't pay any
2 bills, and so he's no use to any of the parties or
3 the businesses involved.

4 I also would point out that some of these
5 folks that were paid as vendors and professionals,
6 such as accountants like Mr. Yeager, payments to
7 payroll for folks that work at SoCal, has been
8 discussed for the last hour and a half, these were
9 all folks that were trusted, hired, paid for several
10 months.

11 Now, we all know everything exploded, and
12 that's why Mr. Essary was brought in as a receiver
13 initially. But to flip the argument now and point
14 to Mr. Essary for paying what I think are called
15 insiders who are somehow, I guess, in collusion with
16 the Court's officer, Mr. Essary, I certainly want to
17 get on the record that, as Mr. Essary's counsel, I
18 take exception to that.

19 He was simply doing his court-ordered
20 duties for a two-week period before another
21 explosive hearing, and then some gray area as to
22 what bills he should be paying or what duties he
23 should be fulfilling until we're here today.

24 And I give you -- one more example is that
25 it was certainly argued by many of the parties at
26 counsel table that after July 31st, of course,
27 Mr. Essary was out of the picture. No more
28 receivership. Receiver is dismissed.

1 At the same time we have parties that
2 August 2nd, 3rd, and 4th demanding that the receiver
3 take responsibility for certain payments, important
4 payments, such as mortgage payments on properties.
5 Totally understandable that somebody needs to get
6 that paid.

7 But I think some mention of folks arguing
8 out both sides of their mouths -- we had situations
9 where when it suited some parties' interests, it
10 was, "Step down, receiver. You're out," while at
11 the same time, maybe later that afternoon, "Hey,
12 receiver. Do your job. Get these invoices paid in
13 this pile."

14 So as stated in the interim receiver's
15 report, the receiver stands ready to follow these
16 Court's orders, if there are any that involve him.
17 He's ready to do so. Not going to shy away from
18 this group or this complicated situation and is
19 ready to take these court orders. That's all,
20 unless the Court had anything particular.

21 THE COURT: Where's \$68,000?

22 MR. GRISWOLD: Say again.

23 THE COURT: Where is \$68,000?

24 MR. GRISWOLD: Sixty-eight thousand
25 dollars?

26 THE COURT: Went out, allegedly, in a trash
27 bag. Am I making sense?

28 MR. GRISWOLD: Yes, Your Honor. It --

1 THE COURT: Mr. Essary, you can speak.

2 MR. ESSARY: There was allusion to a video
3 that was taken on the Balboa dispensary's cameras,
4 which I did get ahold of after I took possession
5 against the will, if you will -- without the
6 cooperation of the defendants.

7 On that video, there were people locked in
8 the back room, where there are four or five safes,
9 which when we did take possession and get back
10 there, the back door had been left open. That's how
11 we got in. Those safes were empty.

12 THE COURT: Every one of them?

13 MR. ESSARY: Well, we found about \$1200 a
14 couple days later jammed into one of the slots. We
15 found about 4,000 out of the ATM in 20s.

16 MR. WATTS: Your Honor, I object and ask
17 that he be put under oath if he's testifying. He's
18 not an attorney.

19 THE COURT: No. I'm not going to do that.
20 There's a court reporter right there. That's why I
21 had him brought in. I'm not going to put him under
22 oath, at least at this stage.

23 MR. ESSARY: I did not know the amounts of
24 money or what the items were exactly that were
25 removed, but the employees there did put things in
26 bags and containers and go out the back door, and
27 they were picked up by Ms. Austin. I saw her. She
28 drove around and we have it on camera. So that's

1 what happened to the 68,000. Somebody else took
2 account of that. I don't --

3 THE COURT: So you don't know if it was
4 68,000?

5 MR. ESSARY: I do not know the amount,
6 Your Honor, exactly, but it was -- there were bags
7 and containers that -- I saw them on video, and we
8 do have that video.

9 THE COURT: Tell me what you would do in
10 this situation.

11 MR. ESSARY: There seems to be a lot of
12 energy and effort from one side to maintain control
13 over things that the other side didn't even know
14 existed or what the amounts were or -- again, you
15 know, I don't -- I'm not part of the action. I'm
16 just there a -- a function of what you need me to do
17 to control assets. I believe there are assets that
18 need to be controlled.

19 THE COURT: Such as?

20 MR. ESSARY: The dispensary --

21 THE COURT: Both of them?

22 MR. ESSARY: They generate a lot of money.

23 THE COURT: Both of them?

24 MR. ESSARY: The other one was not
25 operational. Sorry. That was a production site.
26 There are rents also.

27 There's also five other units that are
28 owned by San Diego United in that same building. I

1 did meet with the gentleman who sold them to the
2 defendants, and he collects rent from the other four
3 tenants and pays it to them. It's about 5,000 a
4 month. I was just getting ready to start collecting
5 that until the 31st hearing, which I backed out of
6 it.

7 So there's rents from Roselle also. I
8 believe there's a lot of -- a potential for a lot of
9 money, and I just question who deserves to get that
10 money. And that's --

11 THE COURT: I keep hearing about money, but
12 I don't seem to be seeing it. Maybe that's not your
13 fault.

14 Let me just -- and don't -- everyone, just
15 calm down. I'm going to say something, and you're
16 all going to go (gasping sound). So take a breath.
17 What if I kick everybody out, bring in a whole new
18 team? Talk to me about that.

19 MR. ESSARY: A whole new team with --

20 THE COURT: To manage --

21 MR. ESSARY: -- to manage and operate
22 everything?

23 THE COURT: Yeah. Just -- I assume there's
24 someone in San Diego that can operate a marijuana
25 dispensary, correct?

26 MR. ESSARY: Contrary to some of the
27 declarations made by the defendants, I -- even
28 though I don't have any previous experience, as

1 Your Honor knows, I run a lot of business that I
2 don't actually run in my past, but I have people
3 that I can use, consultants. I can take it over.

4 We were in the process of making sure we
5 were above the line on everything, including CUP
6 process, licenses and applications, conformity to
7 all the local rules. We got a B rating from a --
8 from an inspection in our dispensary after only
9 being open for, like, 12 days. It was -- we were
10 running it properly, and I believe that other people
11 could run it properly too.

12 You all -- you do know that the reason I
13 chose -- not because I knew anything about the
14 objection to SoCal, is because the original order
15 issued appointing me mentioned to put -- redo the
16 contract or re-recognize the contract with SoCal,
17 which seemed logical since they'd been running it
18 for nine months before.

19 THE COURT: What do you know about Synergy?

20 MR. ESSARY: I know nothing about them
21 directly.

22 THE COURT: What do you know about
23 Far West?

24 MR. ESSARY: I believe that's the Greens
25 company. They call it California Greens. Is that
26 the one? They were operating it before when I came
27 in and took over. They don't listen to court
28 orders. They didn't turn over possession.

1 But other than that -- I don't know about
2 their operations, but I do agree with you there are
3 multiple options for running these types of
4 operations both in San Diego County and in
5 Los Angeles County, which is very common too.

6 THE COURT: Thank you.

7 MR. ESSARY: You're welcome.

8 THE COURT: Mr. Griswold, another question
9 for you. I read some -- I think it was in the
10 defendant's moving papers that there's a question of
11 whether the receiver is appropriate or legal to do
12 it.

13 I think I've read that -- there was a
14 supplemental declaration that I think you say you
15 feel now that under the law, there's an exception
16 for the Court to appoint a receiver and not have to
17 go through the licensing. Did I read that right?

18 MR. GRISWOLD: You did, Your Honor, and it
19 cites to -- I have it here. This is the Bureau of
20 Cannabis Control, Section 5024, which contemplates
21 the incapacity of the licensee to operate the
22 business. And it specifically cites to when a
23 receiver would be appointed, and then it calls for a
24 notice to be provided by that receiver to the Bureau
25 of Cannabis Control, which was done within ten days
26 of the appointment by Mr. Essary.

27 THE COURT: So it's your position he can
28 continue?

1 MR. GRISWOLD: Yes.

2 THE COURT: Legally?

3 MR. GRISWOLD: Yes.

4 THE COURT: Do we know what happened at the
5 C -- I think I read this too. On August the 15th,
6 it passed, right? So we're good to go?

7 MS. LEETHAM: At the hearing officer level.
8 But there's an appeal process where it could end up
9 before the planning commission, and Ms. Austin
10 attended that.

11 THE COURT: So who appeals it or is it
12 automatic?

13 MS. AUSTIN: Oh, this would be the
14 conditional use permit for Mira Este, and that would
15 be appealed by any interested party. Anybody in the
16 public could choose to --

17 THE COURT: Like another competitor?

18 MR. JOSEPH: Right, exactly. So within ten
19 business days, they have the right to appeal. Since
20 the City's only issuing 40 of them, it is very
21 likely that there will be an appeal.

22 THE COURT: Are you both experts in this
23 field? Did I read that right?

24 MS. AUSTIN: I am.

25 THE COURT: Obviously, a concern for the
26 Court, no matter what I do, is that these remain
27 viable businesses. What I wouldn't want to do as a
28 Court is blow it up. Maybe that's not the proper

1 word, but have everybody -- okay, you all lose.

2 I think there's money to be made here, and
3 my sense -- we'll find all this out on who owns what
4 and stuff like that, but I guess my concern is not
5 to blow it all up. Can you give me a little insight
6 into that, if you could?

7 MS. AUSTIN: Yeah. Actually, I can. I
8 would -- Mr. Griswold is correct that Mr. Essary
9 took the first step in managing it by noticing the
10 Bureau, but there are two or three more steps that
11 5024 contemplates, which includes having an
12 application in your own name.

13 The Bureau's concept in this, if you looked
14 at the draft of regulations as they were promulgated
15 over time, was that, well, what happens, because the
16 license is not transferable. It can't go to
17 somebody else, because you have to have background
18 checks and all of this. This is at the state level,
19 different than the city level.

20 And so the Bureau contemplates yes, if you
21 give us notice, you can do that, but it's at the
22 Bureau's discretion. And you must also file
23 these -- you must file an application in your own
24 name. You must continue to move forward, and then
25 the Bureau will -- to make that determination.

26 Those subsequent steps have not occurred.
27 Does that mean the Bureau would shut them down
28 immediately? I don't know. They haven't come out

1 and said one way or the other. There was an
2 investigation during -- there was some report -- and
3 I believe it might have been from the City, but I
4 don't know who made a report to the Bureau stating
5 that the Balboa dispensary during the time of
6 Mr. Essary's control was operating improperly with
7 improper guards.

8 So I got an e-mail from the Bureau this
9 morning asking me to clarify, provide them
10 information. And I said, I'll let you know after
11 this hearing today what else I can provide you.

12 But it is a -- an on -- a very complex
13 process, and that's the state level. There's a
14 separate process at the city level.

15 THE COURT: Have you worked with Synergy
16 before?

17 MS. AUSTIN: I have worked with some of the
18 principals of Synergy.

19 THE COURT: Have you worked with Synergy
20 before?

21 MS. AUSTIN: No. I think it's a brand-new
22 corporation.

23 THE COURT: Have you worked with Far West
24 before?

25 MS. AUSTIN: Yes, Your Honor.

26 THE COURT: These are all new. Tell me
27 about it.

28 MS. AUSTIN: Far West Management is a

1 management company that also operates Golden State
2 Greens on Hancock Street.

3 THE COURT: That means nothing to me.

4 MS. LEETHAM: Point Loma.

5 MS. AUSTIN: Well, Point Loma. So it's a
6 Point Loma dispensary. It was one of the first
7 entitled here in San Diego.

8 THE COURT: Okay.

9 MS. AUSTIN: They also have entitlements in
10 Santa Barbara and several others. They're
11 experienced operators with dispensaries.

12 THE COURT: Can I assume Synergy has
13 nothing to do with these parties? I mean, I have a
14 management fee signed by one of the defendants,
15 correct?

16 MS. AUSTIN: Right.

17 THE COURT: But other than that, they don't
18 have any interest? There's no alleged --

19 MS. AUSTIN: Not a --

20 THE COURT: -- options, nothing like that,
21 right?

22 MS. AUSTIN: I don't know of any options,
23 Your Honor, but I do believe that there are members
24 of Synergy that are also members in this dispute.

25 THE COURT: Like who?

26 MS. AUSTIN: Is that correct?

27 MR. GORIA: Not that I know of, no.

28 THE COURT: So Mr. Hakim, Mr. --

1 MS. LEETHAM: Malan.

2 THE COURT: -- Malan, they're not members
3 of Synergy?

4 MS. AUSTIN: I don't know. Like I said,
5 I --

6 THE COURT: Turn around and ask them.

7 UNIDENTIFIED SPEAKER IN THE AUDIENCE: No.

8 MS. AUSTIN: No, they're not members.

9 THE COURT: Good answer. How about
10 Far West?

11 MS. AUSTIN: They're not.

12 MR. ZIMMITTI: Your Honor, if I may?

13 THE COURT: Yeah. And then I'm getting
14 there, people. I'll tell you that right now.

15 MR. ZIMMITTI: Actually, Mr. Lachant with
16 me is also a cannabis regulatory expert, and I'll
17 let him jump in in a second.

18 THE COURT: Well, you talk to me then.

19 MR. ZIMMITTI: But can I -- can I just --
20 can I just insert this issue?

21 THE COURT: Counsel, of course you can.

22 MR. ZIMMITTI: Thank you, Your Honor. On
23 the -- on the -- again, the equipment, so again, I
24 want to stress on Mira Este, which we all heard
25 makes no profit, yet we sunk a lot of money in this
26 facility, this equipment is very, very expensive,
27 very -- easily broken, and there is no basis to be
28 holding onto it.

1 And you heard Mr. Gorla mention this
2 provision in the agreement. And I just -- you know,
3 Your Honor can read it himself. However, basically,
4 this is among the reps and warranties, so this is
5 right above the section about no litigation. It's
6 essentially the company just warranting it's a sole
7 owner of the real property, the personal property in
8 the facility at the time.

9 So it's not con -- it's not -- this
10 equipment came afterwards. So all it's saying is,
11 you know, if I have a refrigerator in there when you
12 come in and look at the facility, I own this
13 refrigerator. This says nothing about all this
14 expensive equipment necessary to run this facility.
15 It's ours.

16 So, Your Honor, if -- to the extent someone
17 else is running this facility, we are not
18 comfortable with them using it, breaking it, selling
19 it, whatever.

20 THE COURT: No one is going to be
21 comfortable with what I do today. All of you are
22 going to be unhappy with me today. Well -- no, none
23 of you will be happy. And I say that respectfully,
24 Counsel. I think I'm getting to where I want to be.

25 But I would assume, SoCal, that, Judge, if
26 we really have an interest in here, we want that
27 business making some money, even if they're using
28 our equipment, as long as they don't destroy it,

1 encumber it, or sell it, correct, SoCal?

2 MR. ZIMMITTI: Correct, Your Honor. We're
3 committed to making this work if at all possible.

4 THE COURT: Thank you. I understand that.

5 MR. WATTS: Your Honor, there is a comment
6 that he made earlier about the option and whether it
7 was still alive, and he alleged that our client had
8 agreed to extend the option.

9 THE COURT: He did in a letter.

10 MR. WATTS: Yeah, in the letter. So the
11 letter he read to the Court was Exhibit D to
12 Mr. Bornstein's declaration. That's a letter from
13 his client to my client rejecting my client's offer
14 to extend the option for 15 days.

15 THE COURT: Don't mind me.

16 MR. WATTS: He wrote that one sentence he
17 read that said, We received your letter dated
18 June 19th, 2018, wherein you, et cetera -- you agree
19 to offer to extend the deadline. He said, We
20 received your letter. And then the very next
21 sentence says, While we appreciate the
22 accommodation, that lawsuit's but one of many.
23 Instead, I propose the following. And then on the
24 second page of this letter, it says, To preserve
25 these options, to preserve the possibility, we are
26 asking you to sign the tolling agreement that
27 suspends the option deadline on each property
28 pending resolution of all pending issues regarding

1 the litigation. Our client never responded to that,
2 so that tolling agreement was never signed.

3 THE COURT: I got it.

4 MR. ZIMMITTI: Your Honor, one last thing,
5 one last thing.

6 THE COURT: And this is it, people.

7 MR. ZIMMITTI: I'm sorry, Your Honor.

8 THE COURT: You're both making good
9 arguments. I got it. Go.

10 MR. LACHANT: Your Honor, if I -- I'm going
11 to jump in for Mr. Zimmitti. I was working with the
12 receiver with respect to notifying state agencies --

13 THE COURT: Good.

14 MR. LACHANT: -- about the appointment of
15 the receivership. I was -- there's been a lot of
16 rhetoric thrown around that the receiver doesn't
17 have authority to operate these businesses, that
18 it's illegal.

19 As soon as I was introduced to the
20 receiver, I reached out to the BCC, the Bureau of
21 Cannabis Control. They made it very clear that they
22 didn't ask him to submit a second application. They
23 instructed me that all he had to do was provide
24 the -- what was required in the regulatory notice,
25 the proof of receivership, as well as the receiver's
26 information. And then any additional steps that
27 would be necessary, they would contact the receiver
28 directly and tell him what to do.

1 The reason it's important is because
2 there's been several allegations against the
3 receiver for mismanagement. I went to the Balboa
4 facility. I've been to probably 100 retailers --
5 cannabis retailers in the state, and I found it to
6 be a well-run facility. They were doing as good as
7 anyone was in transitioning to these new
8 regulations. They had a caring management team in
9 place who were trying to follow the rules in a
10 meaningful way. Like everyone, there's areas where
11 they could improve, but it wasn't a disastrous
12 operation by any means.

13 And SoCal, to the extent the Court's going
14 to make its ruling on Mira Este -- I just spoke with
15 a gentleman from SoCal. If the Court's not going to
16 allow SoCal to operate Mira Este, they have this
17 equipment that they want to use at a licensed
18 location in Los Angeles. So I think that's really
19 important that they get this equipment that they
20 paid for and it's their equipment.

21 THE COURT: Well said. Okay. Let me just
22 ask -- and I forget everybody's name. I apologize.
23 I'm going to call you SoCal. I'm going to call you
24 Malan.

25 Are we satisfied that Synergy is legally,
26 according to the State of California, operating
27 this? I don't care how they're doing it. Actually,
28 I do care. But are they legal? Do you understand

1 my question?

2 MS. AUSTIN: Yes, I do.

3 THE COURT: And the answer is?

4 MS. AUSTIN: Yes.

5 THE COURT: Thank you.

6 Your answer

7 MR. LACHANT: Your Honor, I don't know
8 anything about Synergy, so I --

9 THE COURT: Fair answer.

10 MR. LACHANT: -- can't comment.

11 THE COURT: There's one answer.

12 The other one is Far West. Are they legal
13 in the state of California, so they have met the
14 licensing and all that stuff?

15 MS. AUSTIN: Yes, Your Honor.

16 THE COURT: Thank you, Counsel.

17 MR. LACHANT: Again, I -- when you say, Are
18 they legal, have they met the licensing, I don't
19 know if they have been disclosed to the State. I
20 don't know if they have been disclosed as a
21 financially interested party to the State.

22 THE COURT: Do your homework. Do your
23 homework.

24 Because I -- first of all, you are all
25 officers of the court, and I take that real
26 seriously. Counsel, she's an officer of the court,
27 and you're saying, Judge, they're licensed. And
28 you're the expert.

1 MS. AUSTIN: That's correct.

2 THE COURT: I take her word for it, but do
3 your homework. Okay?

4 MR. LACHANT: Sure.

5 THE COURT: Okay. I think I know where I'm
6 going, so bear with the Court, because -- and let's
7 just talk about it. This is going to get real
8 expensive, people. I'm talking to you and you.
9 Real expensive. And you're going to see how. Okay?

10 And I mean, this is a TRO. No matter what
11 I do here, we're going to revisit this in 21 days,
12 to which if I grant a TO, there's going to be a
13 bond. One wonders how big that might be if I am --
14 and I grant the TRO.

15 One last issue I want to talk about to your
16 client.

17 I hate to point, Mr. Gorla.

18 Tell me why I should include Roselle in
19 this. Roselle, they're in the property for three
20 years. He can do an accounting. Do we need Roselle
21 if I do it?

22 Mr. Essary, yes or no?

23 MR. ESSARY: On the basis of the complexity
24 of the other two operations, I did not serve
25 Roselle, because I was told by Mr. Yeager that it
26 merely was a rents and profits with minimal income.
27 So therefore, they're not aware of the receivership.

28 THE COURT: And they're in the lawsuit,

1 right? Right?

2 MR. ELIA: Yes.

3 THE COURT: But do I need to have them if I
4 do grant a receiver? Do I?

5 MR. GORIA: We certainly don't think
6 Roselle --

7 THE COURT: I don't think so either.

8 MR. GORIA: -- should be included.

9 THE COURT: Should I? Tell me. Let him
10 finish.

11 MR. ELIA: The only concern I have is as
12 Mira Este just started, Roselle will eventually
13 start.

14 THE COURT: Eventually. Let me know what
15 it happens.

16 MR. ELIA: Okay.

17 MR. ZIMMITTI: Your Honor, our concern,
18 obviously, is before, you know, we can get things to
19 be moving forward, it will be sold or encumbered or
20 further, you know, displaced from us, so --

21 THE COURT: I'll make an order not to sell
22 it, but I'm going to let him do the work. Who's
23 him? Mr. Hakim.

24 MR. HAKIM: Yes, sir.

25 THE COURT: Talk to your client. I think
26 I'm cutting them out. Not cutting them out, but I
27 don't want him to sell it. But he's got to do the
28 rent and all that stuff. Make sure he's comfortable

1 with that.

2 MR. GORIA: Will do, Your Honor.

3 MR. ELIA: Your Honor, if I may, just real
4 quick?

5 THE COURT: And then I'm going to order.
6 Here we go. Go.

7 MR. ELIA: If I may, if Roselle is going to
8 enter into some agreement, we would just ask that we
9 review it first before they do that.

10 THE COURT: Just collect the rent. Don't
11 sell it. Don't encumber it. Don't lease it. Well,
12 it's leased for three years. Did I read that right?

13 MR. GORIA: Yes, Your Honor.

14 THE COURT: Two years?

15 MR. GORIA: Yes.

16 THE COURT: So just -- who knows if this
17 litigation will be done by then, but let's hope.
18 Okay?

19 MS. AUSTIN: Jesus.

20 THE COURT: Welcome to --

21 MR. GORIA: Your Honor, in that regard --

22 THE COURT: -- civil.

23 MR. GORIA: -- the tenant has indicated a
24 willingness to sell the balance of his term in order
25 to facilitate --

26 THE COURT: Get out of here. Go ahead.
27 Here it is. Ready? Don't sell or encumber it, sell
28 it, lease it. If you want to sell it, bring it to

1 the Court.

2 MR. GORIA: All right.

3 THE COURT: I can make that decision.

4 MR. ZIMMITTI: So, Your Honor, are the
5 status of our agreements under -- do they pertain to
6 Roselle?

7 THE COURT: He's not going to sell it.
8 That's still going to be litigated. He's just going
9 to do the accounting, Counsel. Do you understand?
10 It's okay if you don't agree, but do you understand
11 what I'm doing, sir?

12 MR. ZIMMITTI: Yes, Your Honor.

13 THE COURT: Appreciate that. Thank you.
14 Okay. Here we go. Listen up. Let the record
15 reflect the Court has considered everything. As you
16 know, I have to make a determination at this stage,
17 Number 1, of whether there is a likelihood that the
18 plaintiff will prevail on the case. I'm making that
19 likelihood, as he looks at the plaintiff.

20 Second thing I got to do is determine
21 whether there is imminent harm, irreparable harm.
22 The Court's made that finding based on the amount of
23 money that allegedly have been put into this case.

24 This case will be reviewed in -- I got to
25 set it within 15 to 20 days. I'll put it on a
26 Friday afternoon. Twenty-one days. How about the
27 7th, 1:30, this department?

28 MS. AUSTIN: September 7th?

1 THE COURT: Yes, Counsel, September 7th.

2 MS. AUSTIN: Sorry.

3 MR. ELIA: That's fine with me, Your Honor.

4 THE COURT: Mr. Essary?

5 MR. ESSARY: Yes, sir, Your Honor.

6 THE COURT: Here's my thoughts. You're
7 appointed now. I don't know if I'm going to appoint
8 you in 21 days. Do your work, and it better be
9 unencumbered. I want to make sure they really
10 understood what I said there. He better be given
11 access. He better be allowed to do his job, period.
12 I can't stress it too much.

13 I'm going to tell you I want Synergy in. I
14 want Far West in. See if they're competent. I
15 don't know. Do your job.

16 MR. ESSARY: Under -- with SoCal, I had a
17 management agreement to operate, under which it
18 dictated payment of --

19 THE COURT: That's suspended right now --

20 MR. ESSARY: I understand.

21 THE COURT: -- by the Court.

22 MR. ESSARY: Do I have that same document
23 or those guidelines so I know what to expect for my
24 contractors?

25 THE COURT: Explain that to me.

26 MR. ESSARY: You have two different
27 entities --

28 THE COURT: Right.

1 MR. ESSARY: -- running two different
2 facilities under a management agreement, which I've
3 been told is similar to what SoCal had. It has
4 probably fixed payments. It has -- they have made
5 profits. There's probably a percentage of profits
6 that goes back. I would need those for --

7 THE COURT: For the next 21 days, the
8 answer is yes.

9 MR. ESSARY: Okay.

10 THE COURT: So let's be real clear. So am
11 I going to make the management payment if the money
12 is there? Am I going to make the -- help me -- rent
13 payment?

14 MS. LEETHAM: Minimum guarantee.

15 THE COURT: Minimum guarantee. Pay those
16 if the money is there. I want this -- it's only for
17 21 days.

18 MR. ESSARY: But I was really talking about
19 what the vendors would be paying to the entities,
20 which would be me, the receiver. So I need to know
21 what I'm expected to collect from them. It was very
22 easy with SoCal because I had their agreement.

23 THE COURT: Well, I'm sure they'll tell you
24 what. If they're running it, they should know what
25 they're making. Look at their P&L. I assume these
26 people have a P&L.

27 MS. LEETHAM: They have an accountant,
28 Your Honor.

1 THE COURT: Perfect.

2 MS. LEETHAM: Clarification. So we have
3 a lot of litigation.

4 THE COURT: You think?

5 MS. LEETHAM: A lot. And I feel extremely
6 uncomfortable that the receiver gets to make a
7 decision on who represents my clients when I don't
8 know that. So where does that leave our litigation?
9 I need to appear tomorrow before Your Honor on
10 behalf of the entity that the receiver -- do you
11 understand what I'm saying? Am I allowed to do
12 that?

13 THE COURT: So who do you want to appear
14 for tomorrow?

15 MS. LEETHAM: I need to appear for
16 San Diego United. I have a discover -- I have an
17 ex parte in the San Diego Patients case tomorrow. I
18 have all this litigation.

19 THE COURT: Why couldn't you appear for
20 them?

21 MR. GRISWOLD: Your Honor, I have the same
22 question. The receiver's in control of the
23 marijuana operations that we've been talking about
24 for the last two hours.

25 THE COURT: Right.

26 MR. GRISWOLD: There is other litigation
27 about -- I don't even know how many other issues.
28 All of those entities have counsel of record, which

1 I understand is counsel sitting at the table.
2 There's no obstruction or requesting that they don't
3 represent the interests of their clients in those
4 issues, be it discovery disputes or --

5 MS. LEETHAM: The first order was just so
6 broad that I felt extremely uncomfortable. But as
7 long as --

8 MS. AUSTIN: I --

9 THE COURT: Here's my thought. No, no.
10 Hold on. Shh. I don't mean to interrupt. You have
11 a good point, Counsel. Right now I don't see any
12 red flags. If I do, I'll let you know. That's a
13 very ethical thing to do, by the way, Counsel.

14 MS. LEETHAM: Thank you.

15 THE COURT: I appreciate that.

16 MS. LEETHAM: Thank you.

17 MS. AUSTIN: Your Honor, if I could
18 dovetail on that, I have a hearing before the
19 planning group this evening on one of the
20 entitlements for this same process for the Mira Este
21 property. I have multiple balls in the air
22 regarding the state entitlements and local
23 entitlements. Am I allowed to continue to move
24 forward with those?

25 THE COURT: Absolutely. I would expect
26 that.

27 MS. AUSTIN: Okay.

28 THE COURT: And hold on. Let's make it

1 clear what I'm doing right now.

2 Mr. Essary, you heard what I just said?

3 MR. ESSARY: Yes.

4 THE COURT: So I assume when counsel is
5 saying, Judge, I still got to work on the C -- CUP,
6 et cetera, for Mira --

7 MS. AUSTIN: I've got a CUP for Mira Este
8 and the appeal hearing that is likely to occur on
9 Balboa Avenue, the state applications for
10 distribution, manufacturing, and retail for all
11 three entities.

12 THE COURT: Keep working. Court order.

13 MR. GRISWOLD: Can I add? I completely
14 support that and I would just ask maybe that we
15 encourage that we work together and keep -- that the
16 receiver is informed and updated regarding the
17 hopeful great progress that's made there, and we
18 support that. We just want to make sure that we're
19 working together and not shifting blame. So
20 we're happy to --

21 THE COURT: I'm sure counsel will.

22 MS. LEETHAM: Mr. Griswold is very easy to
23 work with. I have no problem doing that.

24 MS. AUSTIN: We would like one more -- I'm
25 sorry to be so difficult. There's so many --

26 THE COURT: You're not doing --

27 MS. AUSTIN: -- agencies that I'm working
28 with. The dispensary, Balboa, is currently

1 undergoing an audit by MGO to provide the financial
2 data for the period of time that SoCal was in there
3 from January 1 to April for the first quarter of
4 this year.

5 They're require -- requesting all of the
6 data on the accounting, which was in the software
7 database called Trees, which we don't have access
8 to. But in order to give us access, they wanted
9 to -- "they" being -- Mr. Griswold's proposal, which
10 I think was a good proposal, but it's going to end
11 up costing us more money, was to freeze the data in
12 time because there's no way to -- if they gave us
13 access today -- if Trees was to allow me to have
14 access today, then, theoretically, my client could
15 manipulate the data. So they had to freeze it in a
16 certain time. That was going to cost a certain
17 amount of money. We just need access to it because
18 we need to give it to the State.

19 MR. GRISWOLD: Your Honor, I'll take that.
20 So Trees is a -- I guess a software -- kind of
21 revenue generation software to run the business.
22 When I said -- again, as you can imagine, a lot of
23 competing arguments and claims by e-mail by all the
24 parties as to how this should work.

25 What I proposed -- all it was was a
26 proposal -- was that Mr. Malan and whoever else he
27 designated as his agents and vendors certainly
28 getting -- I think it was maybe a license or user

1 name issued so they could use this software to track
2 the business.

3 What I also said, because there was lots of
4 swirling claims, not made by the receiver, by some
5 of the parties, that there would be some sort of
6 manipulation of historical data on the revenue. So
7 what I proposed and asked the software provider was,
8 Can we make it, like, a digital copy, just a -- of
9 those records?

10 THE COURT: Hold on. Stop. I want to make
11 sure counsel listens.

12 MS. LEETHAM: I'm listening.

13 THE COURT: Go ahead.

14 MR. GRISWOLD: I propose that the software
15 rep make a digital copy of whatever those records
16 were at that time. I just -- "archive" was the word
17 that the software guy used. I said, That sounds
18 like a great idea. How much would that cost? He
19 said it would be \$1,000 per month. So I said, Let's
20 do that. I proposed that to them. They had some
21 reservations. I think we under -- we liked the idea
22 of giving Mr. Malan access. There was the thousand
23 dollars a month that became the hiccup. I still
24 believe it's a good proposal.

25 MS. AUSTIN: I don't -- I was -- when I
26 turned around -- I don't know whether we need access
27 to Trees on an ongoing basis or we just needed data
28 dump.

1 UNIDENTIFIED SPEAKER IN THE AUDIENCE: Data
2 dump.

3 MS. AUSTIN: Just the data dump. So if we
4 can just get a data dump, then we're done.

5 THE COURT: How much will that cost?

6 MR. GRISWOLD: I don't --

7 MS. AUSTIN: That should be part of our
8 subscription. We just need to get in, get the data,
9 and then --

10 MR. GRISWOLD: It seems like something easy
11 to do.

12 MS. AUSTIN: I think we can resolve it.

13 THE COURT: Make sure it's a copy.

14 MS. AUSTIN: Yeah, a copy.

15 MR. GRISWOLD: Yes.

16 THE COURT: I hope you're writing all this
17 down, because this is going to be a court order, as
18 best you can.

19 MR. GRISWOLD: Working on it.

20 MR. ZIMMITTI: Your Honor --

21 THE COURT: Hold on. Let me think of one
22 more thing.

23 Mr. Essary?

24 MR. ESSARY: Yes, Your Honor.

25 THE COURT: I want to know how much --
26 everyone keeps telling me there's a lot of money.
27 Give me a -- can you -- I want to know how much
28 money is coming into these businesses.

1 MR. ESSARY: Could I ask the defendants a
2 question?

3 THE COURT: You may.

4 MR. ESSARY: Do you all have any opposition
5 to retaining Mr. Yeager, since he seemed to have
6 been involved --

7 MS. LEETHAM: Absolutely.

8 MS. AUSTIN: Absolutely.

9 THE COURT: You didn't read their
10 declaration. They're going to have --

11 MR. ESSARY: I guess I missed that one
12 then.

13 THE COURT: They're going to have a big
14 opposition.

15 MS. LEETHAM: Just a point of clarification
16 on the cash --

17 THE COURT: Let me finish. Let me -- hold
18 on.

19 I just want -- I want to know how much
20 money comes in. I'll take care of how it goes out.
21 I'm hearing some huge numbers, and yet I don't see
22 enough money. I'll be quite honest. I hear all
23 these numbers, and yet we can't pay our rent?
24 Hello? That's beyond me. I'm talking about there's
25 a hundred thousand -- each weekend, a hundred
26 thousand. Where's the money? Mr. Essary, find out
27 for me.

28 MR. ESSARY: My issue is that it is --

1 there -- as the defendants have said and the
2 plaintiffs, it's a very complex -- as Your Honor
3 said, there's many entities. There's money in bank
4 accounts going every which way.

5 My reason for using Mr. Yeager previously
6 is that he was working for the defendants and
7 working for the plaintiffs --

8 THE COURT: Okay.

9 MR. ESSARY: -- both of them. So I felt
10 that was a nice compromise. I still feel that
11 there's a rapport that I have with him and I do
12 trust him because he's given me good advice what
13 they didn't do and should have done and what they
14 did and shouldn't have done. I've gotten really
15 good feedback from him. I'm uncomfortable using an
16 accountant that they have chosen merely for their
17 own operation only because I don't have that same
18 rapport.

19 MS. LEETHAM: Your Honor, Justus Henkes
20 (phonetic), we hired. He is reputable and he worked
21 for some big companies in accounting. He's been
22 Far West management's accountant for years. He's
23 independent. He's extremely professional, and
24 there's -- he does Golden State Greens' books.
25 There's no reason why he's not capable of doing it,
26 and I think the receiver will find he will be
27 extremely professional with him. We absolutely
28 object to John Yeager. We fired him.

1 MR. ESSARY: I can make things work. It's
2 just I'll spend -- I think I'll spend less money and
3 less time if I'm able to use Mr. Yeager. I'll leave
4 it up to the Court.

5 THE COURT: I want somebody new.

6 MR. ESSARY: Okay.

7 THE COURT: Yeager's out. And I know you
8 want him. I --

9 MR. ESSARY: No, I know. But do I --

10 THE COURT: This is a decision by the
11 Court. I'm going to live with it. Yeager is out.

12 MR. ESSARY: Do I --

13 THE COURT: And he may have done a great
14 job. I'm not disparaging him. I read their dec. I
15 want somebody that -- hold on.

16 So who is this? Did you say Justus? He's
17 a former judge?

18 MS. LEETHAM: No. His name is Justus,
19 J-u-s-t-u-s, Henkes, H-e-n-k-e-s.

20 THE COURT: Ready?

21 MR. ESSARY: Yes, sir.

22 THE COURT: You'll see how expensive this
23 is going to get.

24 MR. ZIMMITTI: Your Honor, can I -- sorry.

25 THE COURT: Go.

26 MR. ZIMMITTI: Your Honor, we haven't
27 talked again about the equipment.

28 THE COURT: I'll get there.

1 MR. ZIMMITTI: You know, we put a lot of
2 effort in it -- in Mira Este, and we're not -- we
3 would object to --

4 THE COURT: You want to pull it.

5 MR. ZIMMITTI: -- another operator using
6 it, another operator basically benefiting from our
7 equipment.

8 THE COURT: I got it.

9 MR. ELIA: May I quickly just make a quick
10 comment, real quickly, Your Honor?

11 THE COURT: All right.

12 MR. ELIA: Your Honor, the only concern I
13 have is I ask that if you're going to appoint
14 someone, it would be someone that they don't know
15 and that we don't know, because, frankly, we don't
16 trust their side.

17 THE COURT: I know. I got it.

18 So, Mr. Essary, here's your deal. Here it
19 is.

20 Who is it that's doing their books, Far
21 West?

22 MS. LEETHAM: His name is Justus Henkes.
23 He has no dog in the fight, Your Honor.

24 THE COURT: I got it. Check him out. See
25 if he's good. But I also want him to do Mira Este.
26 Now, let's say it goes south. You ever heard of
27 Reagan & Associates (phonetic)?

28 MR. ESSARY: Yes.

1 THE COURT: Yeah, well known in San Diego.
2 Extremely expensive, but they are the best in
3 San Diego. Use them.

4 MR. ESSARY: I will interview their
5 accountant and --

6 THE COURT: If you're not satisfied, go to
7 Reagan & Associates. Tell them how I want it. They
8 have been in my courtroom 20 years, and they're the
9 best in San Diego.

10 MR. GORIA: Your Honor, just a quick point
11 here for the receiver. There are three separate
12 properties, three separate ownerships. We would
13 prefer -- or we would ask the Court to require the
14 accountant not to be spending income or revenue for
15 Mira Este on Balboa or vice versa.

16 But we're concerned that he's going to
17 intermingle or commingle the funds, because Synergy
18 pays approximately -- their situation is different.
19 They don't pay as much as SoCal does. And the money
20 that Synergy pays is going to have to be used to pay
21 the mortgage payments on Mira Este. Otherwise, the
22 loan's going to go into default. Loan payments are
23 due on the 5th of each month.

24 MR. ESSARY: I was -- it was early in the
25 game. I opened up a central account, which I will
26 be able to open up individual accounts. As
27 Your Honor knows, opening up bank accounts is not
28 always an easy thing to do when you're dealing with

1 cannabis operations. I'm able to with your court
2 order allowing me -- authorizing me to open them. I
3 do it in my own name personally so that there's no
4 relationship to the cannabis, but I put the name of
5 the entity along with it. And so I can open up two
6 different accounts.

7 THE COURT: Sounds very reasonable.

8 MR. GORIA: Sounds fine.

9 MS. AUSTIN: I would ask if the accounts
10 can't be used by the defendants or anybody, why do
11 they need to open up new accounts?

12 THE COURT: Because I want it in his name.

13 MR. ESSARY: I actually do have control
14 over two accounts that have less than \$3,000 at
15 Torrey Pines Bank. I believe one of those -- that's
16 Roselle and Mira Este. It's not the Balboa. Those
17 were all shut down by B of A. They didn't give me a
18 choice to keep them open.

19 THE COURT: Well, there's been a lot out
20 about how much money these entities bring in. I
21 want to see it.

22 MR. WATTS: Sunrise and Super 5 aren't
23 included in this, I assume?

24 THE COURT: They are not.

25 MR. WATTS: And which LLCs exactly are
26 included in it?

27 THE COURT: All the ones that have an
28 ownership or partial ownership in those two

1 properties. That's pretty broad, isn't it, Counsel?

2 MS. GRIFFIN: Your Honor, to clarify, the
3 cooperatives are, I think, a primary issue in terms
4 of they're necessary to operate the storefronts.

5 THE COURT: Explain that to me.

6 MR. JOSEPH: Your Honor, to explain, Balboa
7 Avenue Cooperative, Devilish Delights, California
8 Cannabis Groups, they're the State license holders.
9 They don't have an ownership in the land, the dirt,
10 or anything like, but they are necessary to run the
11 dispensary and they're necessary to run Mira Este.
12 So I just want to clarify. Would your order include
13 the receiver having power over those cooperatives as
14 well?

15 THE COURT: My gut reaction is yeah. But
16 he's going to have them continue to run it, right?
17 The answer is yes, he has power.

18 MR. JOSEPH: So just to clarify --

19 THE COURT: Well, hold on. They're named
20 defendants. They're under my order. Counsel,
21 they're named defendants.

22 MR. JOSEPH: Yes.

23 THE COURT: They're included.

24 MR. JOSEPH: Okay. You just clarified
25 that, Your Honor.

26 THE COURT: Yeah. It's okay. And no
27 disposal of any personal property, period,
28 especially the property on what address, Counsel?

1 MR. ZIMMITTI: Mira Este.

2 THE COURT: Mira Este. No destroy, no
3 waste, no nothing.

4 MS. AUSTIN: Are we going to send you more
5 trees before this next hearing or are we done?

6 THE COURT: Well, hold on. You know, I
7 think I got it. I got the whole gist here, Counsel.
8 What I need is Mr. Essary. Unless you all want --
9 you want to do supplemental briefing? I'll let you
10 do it. Do you want to spend more attorney fees?
11 I'll allow it. I'll happily do that down the road.

12 Okay. Let's do this. Mr. Essary, just get
13 your report. Can you do it two days before the
14 hearing so they have a chance to digest it?

15 MR. ESSARY: Yes, Your Honor.

16 THE COURT: Thank you. This is for the
17 parties' sake again. Counsel has been very polite
18 today, and I really appreciate this. I hope you get
19 a sense. Literally, this could take two years and
20 cost a couple hundred thousand just in attorney
21 fees. I've done these -- well, not exactly, but
22 I've done big partnerships. You'll spend \$100,000
23 on accountants. I'm just -- be prepared for what --
24 the path that you all -- I'm not talking to the
25 counsel here. I'm talking to your parties.

26 Listen, be prepared to go that distance if
27 that's what you really want to do. That's all I'm
28 telling you. Because you're going to spend a whole

1 bunch of money. And maybe it's the right thing to
2 do. I don't know. But you know what? Eventually
3 the truth comes out. I promise you that. The truth
4 does come out. I've done this -- I've been on the
5 bench 30 years. Been there, done that. I'll just
6 tell you that. It does come out. You've all been
7 polite.

8 Mr. Griswold, I want you to make me a court
9 order that this order goes into effect right now.
10 The Court -- all the parties have been in front of
11 me. The attorneys have been in front of me. This
12 order goes in effect forthwith, period. Anything
13 else?

14 MS. LEETHAM: The bond.

15 THE COURT: Ah, that will be at the next
16 hearing. Absolutely, Counsel. And let me tell you.
17 I look over on this side of the -- it ain't going to
18 be the minimum bond.

19 MS. AUSTIN: We would like to brief that,
20 Your Honor.

21 THE COURT: Huh?

22 MS. AUSTIN: We would like to brief that.

23 THE COURT: You don't have to. But here's
24 what you should brief, the amount.

25 MS. AUSTIN: That's what I'm referring to.

26 THE COURT: Absolutely. Oh, absolutely,
27 both sides of the table. And I'm already kind of
28 giving a heads-up here. It ain't going to be

1 \$10,000. "Ain't" is a bad word. It isn't going to
2 be \$10,000. I will tell you that.

3 Let's see. I think I'm only going to be
4 down to two parties now. So again, you've all been
5 very polite. I do what I think is best. We're just
6 beginning. Next big hearing is the 21st to see if
7 I'm going to leave this order in effect. And I tell
8 you, I don't know. His report is going to have a
9 big deal and, of course, the arguments of counsel.

10 So thank you for your -- still one hand.

11 MR. JOSEPH: Very minor issue. Briefing
12 schedule, Your Honor, for the bond amount?

13 THE COURT: Four days before the hearing.
14 That takes me two minutes.

15 MR. ZIMMITTI: So, Your Honor, your order
16 as to SoCal is we leave the equipment? Everything
17 stays in Mira Este?

18 THE COURT: Everything is a status quo.

19 MR. ZIMMITTI: Okay. And then our
20 contracts, our obligations, and everything under
21 those are suspended?

22 THE COURT: Stayed. Better word.
23 "Suspended" is not the right word. It could be
24 interpreted wrong. Stayed. And, SoCal, I got your
25 position. Trust me. I got it. But I'm trying to
26 keep a semi-status quo here, and let's see what
27 happens in 21 days. And then after that, you're
28 stuck for a year, year and a half, as you know.

1 Okay. You've been --

2 Well, you're a nonparty. I don't mean to
3 be rude.

4 MR. HICKMAN: I just want --

5 THE REPORTER: I don't know who this is,
6 Your Honor.

7 MR. HICKMAN: It's Michael Hickman for
8 (inaudible) --

9 THE REPORTER: Can you please stand up at
10 least or maybe come up to counsel table so I can
11 hear you.

12 MR. HICKMAN: Sure. Four days before the
13 7th is Labor Day, so --

14 THE COURT: I'm working. Hold on. Does
15 anyone -- I think what he's saying is can everybody
16 be here that day?

17 MR. HICKMAN: Well, no. What I'm saying is
18 you set a briefing for that.

19 THE COURT: Okay. Three days. Thank you.

20 MR. HICKMAN: That's my one contribution.

21 THE COURT: Three days. All right. Now, I
22 need -- so everybody, thank you for coming, except
23 S&H -- what is it?

24 MR. ELIA: S&H West Point.

25 THE COURT: West Point and?

26 MR. WATTS: Ninus Malan and American
27 Lending & Holding.

28 THE COURT: Bingo. We're going to take a

1 five-minute recess.

2 (Whereupon the proceedings concluded at 4:16 p.m.)

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1 STATE OF CALIFORNIA)
2 COUNTY OF SAN DIEGO)

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4 I, Leyla S. Jones, a Certified Shorthand
5 Reporter, do hereby certify:

6 That prior to being examined, the witness
7 in the foregoing proceedings was by me duly sworn to
8 testify to the truth, the whole truth, and nothing
9 but the truth;

10 That said proceedings were taken before me
11 at the time and place therein set forth and were
12 taken down by me in shorthand and thereafter
13 transcribed into typewriting under my direction and
14 supervision;

15 I further certify that I am neither counsel
16 for, nor related to, any party to said proceedings,
17 nor in any way interested in the outcome thereof.


18 In witness whereof, I have hereunto
19 subscribed my name.

20

21 Dated: August 23, 2018

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Leyla S. Jones

CSR No. 12750

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