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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

Friday, September 7, 2018

(Pages 444 through 602, Inclusive)

Volume 5

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

September 7, 2018

1:55 p.m.

330 West Broadway, Dept. 67

San Diego, California

REPORTED BY:

Leyla S. Jones

CSR No. 12750

1 APPEARANCES:

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25 Also present: Michael Essary
26 Ninus Malan
27 Christopher Berman
28 Chris Hakim
Salam Razuki
Adam Knopf
Justus Henkes
Jerry Baca

INDEX OF WITNESSES

(None.)

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DESCRIPTION

PAGE

(None marked.)

1 SAN DIEGO, CALIFORNIA;

2 FRIDAY, SEPTEMBER 7, 2018; 1:55 P.M.

3

4 THE COURT: Good afternoon. Nice to see
5 everybody. All right. Let's go on the record. Two
6 cases in front of me. The case we're going to do
7 first would be Razuki -- Razuki vs. Malan, et al.
8 And that case -- let me get my chart out. Can I
9 have full appearances so I know who everybody is and
10 who you represent?

11 We'll start on this side of the table.

12 MR. ZIMMITTI: Good afternoon, Your Honor.
13 Salvatore Zimmitti for Plaintiffs in Intervention
14 SoCal Building Ventures and San Diego Building
15 Ventures, LLC.

16 THE COURT: Thank you.

17 MR. JOSEPH: James Joseph on behalf of the
18 plaintiff Salam Razuki.

19 MR. ELIA: Steve Elia on behalf of the
20 plaintiff Salam Razuki.

21 MS. GRIFFIN: Maura Griffin on behalf of
22 the plaintiff Salam Razuki.

23 THE COURT: Okay.

24 MR. WATTS: Daniel Watts for defendant
25 Ninus Malan.

26 MS. LEETHAM: Good afternoon, Your Honor.
27 Tamara Leetham for defendants -- I have to go
28 through my list -- Ninus Malan, San Diego United

1 Holdings Group, Balboa Avenue Cooperative, Flip
2 Management, California Cannabis Group, Devilish
3 Delights. I also would like to note for the record
4 Mr. Malan is present before the Court.

5 THE COURT: I like that.

6 MS. LEETHAM: I also have for Your Honor
7 Justus Henkes here.

8 THE COURT: Who?

9 MS. LEETHAM: He's the accountant,
10 Your Honor.

11 THE COURT: Where? And how do you spell
12 the last name?

13 MS. LEETHAM: H-e-n --

14 THE COURT: Stop right there. I know who
15 it is.

16 MS. LEETHAM: Okay. I also have the
17 principal for Far West Management here.

18 THE COURT: Oh, I like that too. Who's
19 that?

20 MS. LEETHAM: Adam Knopf --

21 THE COURT: Far West is here. Thank you.

22 MS. LEETHAM: -- K-n-o-p-f. I also have
23 Jerry Baca here, who is the principal for Synergy.
24 Actually, Mr. Gorla brought him, but --

25 THE COURT: Who's that? Synergy? Thank
26 you for coming.

27 MS. LEETHAM: I think that's everybody,
28 Your Honor.

1 THE COURT: Thank you. Like I say, I like
2 to have people that -- besides attorneys.

3 MS. LEETHAM: And Ms. Austin is also here
4 for --

5 THE COURT: No offense. Welcome.

6 Make your appearance, though, Counsel.

7 No, no.

8 Go ahead.

9 MS. AUSTIN: Gina Austin on behalf of the
10 same defendants.

11 THE COURT: Thank you.

12 MR. GORIA: Good afternoon, Your Honor.
13 Charles Goria for Chris Hakim; Roselle Properties,
14 LLC; and Mira Este Properties, LLC.

15 THE COURT: There you go.

16 MR. GORIA: And Mr. Hakim is also here.

17 THE COURT: Thank you. I appreciate
18 everybody coming.

19 Okay. And is Mr. Razuki here?

20 MR. ELIA: Yes, Your Honor.

21 THE COURT: Thank you. Thank you.

22 MR. ZIMMITTI: I'm sorry, Your Honor. For
23 SoCal, we have Christopher Berman here and Daniel
24 Spillane. And then also we have --

25 THE COURT: Welcome, SoCal.

26 MR. ZIMMITTI: We have Aaron Lachant on
27 behalf of MMLG also in the audience.

28 THE COURT: On behalf of who?

1 MR. ZIMMITTI: MMLG Consulting.

2 MR. LACHANT: Consultants for the receiver.

3 THE COURT: Yeah, I knew that. I got ya.

4 All right. Here we go. Well, it's not finished.

5 We still got a couple more.

6 MR. GRISWOLD: Richardson Griswold, counsel
7 for receiver, Michael Essary.

8 MR. ESSARY: Good afternoon, Your Honor.
9 Michael Essary, receiver.

10 THE COURT: Thank you.

11 All right. Can I assume that the -- one
12 issue before the Court this afternoon, right? That
13 is whether the Court will issue a preliminary
14 injunction in this case; is that correct, Counsel?
15 Can we agree on that?

16 MR. GORIA: Yes, Your Honor. For Mira Este
17 Properties, definitely.

18 THE COURT: Thank you. There's one.
19 Hearing silence on everybody else, I'll take that as
20 a --

21 MS. GRIFFIN: Yes, Your Honor.

22 MR. ZIMMITTI: Yes, Your Honor.

23 THE COURT: -- go-ahead.

24 Thank you. Here's -- we can go in any
25 order, and we've got plenty of time. I mean that
26 seriously. And just for everybody's sake, big
27 decision. I will tell you this. I read and I read
28 and (descriptive sound). I don't know how to put

1 that in the record. One side says one thing, and
2 the other side says just the opposite. And now I've
3 got where a forgery was done. I mean, this case is
4 just spinning, as far as the Court is concerned.

5 I mean, there's -- I read serious
6 allegations in here. You all know that. I assume
7 you've read it. So, man, you sense my feeling when
8 I read that type of material. Okay. I won't say
9 anything more.

10 I think what I'd like to do -- first of
11 all, it's your motion. When I say "your motion,"
12 I'm pointing to the plaintiff. So I'm going to let
13 you go first, and then I'm going to move to the
14 defense.

15 You'll go second.

16 Then I'm going to -- Mr. Hakim, I'll let
17 you go third.

18 SoCal, you'll go fourth.

19 Okay. Where's my notes?

20 Matthew, look on my couch. There's no
21 notes. I remember what I -- what they are, but they
22 should be -- it will be a yellow pad of personal
23 notes.

24 All right. Let's do some work.

25 I've read your report. Mr. Essary made a
26 report, and then I have one simple question.

27 MR. ESSARY: Yes, Your Honor.

28 THE COURT: Where's the money? Go.

1 MR. ESSARY: I've been unable to locate all
2 the sources. I haven't been provided information
3 that I requested many times, mostly from the
4 Defendants' side. I'm trying to get control of bank
5 accounts. I still don't know some of the bank
6 account numbers.

7 There seems to have been a lot of money
8 before when I had statements from Torrey Pines and
9 such. I don't know where it's at now. And I have
10 requests for me to pay or release funds that I'm
11 holding from this first receivership, because they
12 didn't have enough money to pay bills. And my
13 question was: Where do you get this money to pay
14 the bills? So I -- at this point, Your Honor, I
15 need to do more digging. I don't know.

16 THE COURT: In reviewing your report --

17 MR. ESSARY: Yes.

18 THE COURT: -- the Torrey Pines Bank, I
19 looked at a couple of months. Additions, 194,000.
20 Another addition, 200,000. Subtract -- and that is
21 for Mira Este Properties. So it looks like a couple
22 hundred thousand went into those accounts the months
23 before.

24 MR. ESSARY: Yes, Your Honor.

25 THE COURT: Where's this month's \$200,000?
26 Where's last month's \$200,000?

27 MR. ESSARY: I don't know. And there
28 wasn't 200,000 when I took over that account,

1 Your Honor.

2 THE COURT: Okay. It's represented that
3 there needed to be \$80,000 because somebody's making
4 \$100,000 a week in sales. Any evidence of \$100,000
5 a week in sales?

6 MR. ESSARY: I've not seen any income
7 number since our last appointment. I have seen some
8 approval or requests from the defendants and their
9 accountant for paying of bills, which I reviewed and
10 approved, out of monies they had.

11 I have control of the Flip Management
12 account, but I don't -- they haven't sent me
13 statements yet, even though they've been requested
14 three times. And the only other money source I had
15 was a partial bank statement given to me by the
16 defendant, and it had 20-something thousand --

17 THE COURT: Okay. At the last hearing, I
18 released \$80,000, did I not?

19 MR. ESSARY: Two times.

20 THE COURT: Two times. Was that money
21 released?

22 MR. ESSARY: I have no idea.

23 THE COURT: Okay. Fair enough. So if I
24 remember reading it right, you've got how much
25 money?

26 MR. ESSARY: I have a balance in the
27 receiver account that I control of about 20 -- 28-
28 or something, I think, 26-. And then I have a small

1 account at Torrey Pines, less than a thousand. I
2 turned over the money for Roselle.

3 Other than that, the money in Flip
4 Management, which I tried to make available via
5 approving and adding the defendant on so they could
6 use that money to pay bills.

7 THE COURT: Okay. Who's Flip?

8 MS. LEETHAM: I am, Your Honor.

9 THE COURT: No. I don't want to talk to --
10 I want to talk to the money person. Is that your
11 client, though?

12 MS. LEETHAM: It would be Ninus Malan, but
13 Mr. Henkes would be doing it --

14 THE COURT: I'll get to you.

15 Oh, Mr. Henkes --

16 MS. LEETHAM: -- I believe.

17 THE COURT: -- are you the accountant?

18 MR. HENKES: Yeah. I've been engaged to
19 help them with their books and records.

20 THE REPORTER: I can't hear him, Your
21 Honor.

22 THE COURT: Okay. I need you to -- I'm
23 going to ask you a few questions, and then we're
24 going to go. But just what I've read, I want to get
25 straight.

26 State your name for the record, sir. Why
27 don't you just come stand up here, sir, if you
28 would.

1 MR. HENKES: Sure.

2 THE COURT: I appreciate this, by the way.
3 State your name for the record.

4 MR. HENKES: Justus Henry Henkes IV.

5 THE COURT: I like the IV. That's nice.
6 Okay. Tell me -- and who are you the accountant
7 for?

8 MR. HENKES: I've been engaged by Ninus and
9 Chris for different entities, one on behalf of Mira
10 Este and the California Cannabis Group, which is the
11 manufacturing and distribution, and then on behalf
12 of the Balboa Co-op as well.

13 THE COURT: Let's talk about Balboa.
14 They're the dispensary, right?

15 MR. HENKES: Correct.

16 THE COURT: How long have you been working
17 there?

18 MR. HENKES: Less than two weeks.

19 THE COURT: How much money has come in?

20 MR. HENKES: We -- approximately -- in
21 sales per week, it's been going up every week. But,
22 you know, when we took over, there's been some
23 cutoff. When we came in it was about 40,000 a week.
24 Then it was 41-. Now it's up to \$49,000 a week.

25 THE COURT: Did you get a request from the
26 receiver to turn those numbers over?

27 MR. HENKES: Pardon?

28 THE COURT: Did you get a request from that

1 receiver to give him those numbers?

2 MR. HENKES: I have had a request to send
3 him some financials that are not complete yet.
4 We're still building those.

5 THE COURT: And when will they be complete?

6 MR. HENKES: Probably within the next
7 couple of weeks.

8 THE COURT: Why does it take that long? I
9 want to -- can you just say, Here's what we brought
10 in in a week?

11 MR. HENKES: Well, we can have that, but
12 there's some gaps. We have to load up some
13 beginning numbers. Like, we don't know how much
14 money was in the ATM machine when we first took it
15 over. So, you know, I'm not prepared to turn things
16 over until they're fully vetted.

17 THE COURT: Just one more question, then
18 counsel, what they argue. So it's bringing in,
19 let's say, in the last two weeks, 80,000 ballpark?

20 MR. HENKES: Sure.

21 THE COURT: Ballpark. Did you distribute
22 any of that money?

23 MR. HENKES: It's used by the management
24 company for operations. So obviously, they have
25 payroll, management fees. They're doing purchasing.
26 There's, you know, security expenses of 9200, 8,000.
27 Approximately \$15,000 a week in management fee and
28 payroll, workers' comp, insurance. They're also

1 starting to do some more marketing, which is helping
2 driving sales.

3 THE COURT: And who's the management?

4 MR. HENKES: That would be Adam Knopf.

5 THE COURT: And was there another dis -- I
6 think there was one management team. Then did you
7 also do the consultant fee?

8 MR. HENKES: So I'm a principal in Far West
9 Management, which helps manage other dispensaries in
10 town, and we've been engaged to help with Balboa.
11 We earn a management fee from Far West related to
12 our services for running the dispensary.

13 I've been engaged separately to help with
14 the books and records with all these different
15 entities. You've got San Diego United. You have
16 Flip Management. You have entities that own
17 properties. So there's a multitude of entities that
18 we're talking about here.

19 THE COURT: And again, your company is?

20 MR. HENKES: Justus Henry Henkes IV, Inc.

21 THE COURT: And you're not a litigant in
22 this party, correct?

23 MR. HENKES: Nope.

24 THE COURT: So I don't have any
25 jurisdiction over you, do I?

26 MR. HENKES: I'm not sure. I'm not an
27 attorney. I'm just a dumb accountant.

28 THE COURT: We'll talk about that. First,

1 thank you for coming.

2 MR. HENKES: Sure.

3 THE COURT: And I really mean that. Thank
4 you for answering questions. You can have a seat
5 now. I appreciate it.

6 Okay. Everyone's answered my quest --
7 wait. Hold on. Just one more for your client.

8 It was represented, I think, in whose -- in
9 the declaration of Mr. Malan, I believe -- it was a
10 supplemental declaration -- he indicated that
11 Sunshine [sic] was making a million dollars a month.
12 Is that correct, Mr. Gorla?

13 MR. GORLA: That was not on my side of the
14 equation. I think Ms. --

15 MS. LEETHAM: Your Honor, that was ours.

16 THE COURT: I know. It was Mr. Malan that
17 said it.

18 MS. LEETHAM: Correct.

19 THE COURT: I'm asking you. Who's
20 Sunshine?

21 MS. LEETHAM: Razuki.

22 MR. WATTS: Sunrise.

23 MS. LEETHAM: That's Sunrise.

24 THE COURT: All right. He says you're
25 making a million dollars a month. Is that right?
26 That's all I want to know.

27 MR. ELIA: Your Honor, we don't represent
28 that entity. It has separate owners. And

1 Mr. Razuki's -- we have no idea. They're not a
2 party in this litigation.

3 THE COURT: Okay. Never mind. We'll
4 probably come back to that one. All right. Let's
5 do some work.

6 I've read it. I went back and looked at my
7 notes from the previous hearing. Tell me -- and
8 let's really make sure. One side says, Judge, you
9 got to do it today. Other side says, Judge, if I do
10 do it today, the business is going to crash.

11 Fair analysis?

12 MS. LEETHAM: Fair.

13 THE COURT: That it's going to crash.
14 Everybody that put in tons of money, everybody
15 loses. That's kind of -- so do I or do I not?
16 First of all, always thanks for bringing the court
17 reporter. Very important for any type of appellate
18 review.

19 With that being said, understanding that's
20 what I'm faced with here, tell me why I should
21 appoint a -- no. I've done that -- why there should
22 be a preliminary injunction receiver. Go.

23 MR. ELIA: Your Honor, thank you. I was in
24 a bench trial this morning, so I'll defer to my
25 colleague, Ms. Griffin.

26 THE COURT: Sure. Take your time, Counsel.

27 MS. GRIFFIN: I think, Your Honor, there's
28 a few preliminary matters that we'd like to address

1 first. As a preliminary matter, we urge the Court
2 to refuse to consider the untimely filed
3 supplemental briefing and supporting documents filed
4 by the Malan defendants, as well as a verified
5 cross-complaint and exhibits, for purposes of this
6 hearing for the reasons willfully described in our
7 objection. Hopefully, you received that and had an
8 opportunity to review it.

9 THE COURT: I have not.

10 MS. GRIFFIN: Okay. I do have a copy if
11 you'd like, but I can go over the -- basically, the
12 gist of it.

13 We filed the objections late last evening.
14 The late filing of these papers has caused great
15 prejudice to plaintiff and particularly me, and the
16 evidence suggests that the reason they were filed
17 late was because they were drafted after the
18 September 4th deadline and -- so that they could
19 include arguments and opposition to those of ours,
20 as well as Socal's timely filings.

21 Of note, these were not small filings. The
22 notice of lodgement and P and -- P&As filed -- filed
23 on [sic] 5 o'clock on September 5th consisted of 688
24 pages, approximately. The verified cross-complaint,
25 which was filed late last night, consisted of
26 another 347 pages.

27 There's evidence that the -- Malan's late
28 filing was purposeful and not simply caused by a

1 server crash, as represented by Ms. Leetham. They
2 timely submitted three declarations on September 4th
3 at approximately 5 o'clock p.m. They were not
4 accompanied by a memorandum of points and
5 authorities, which is atypical in my experience.

6 The notice of lodgement itself is dated
7 September 5th, 2018, and the metadata shows that the
8 document was actually created on September 5th at
9 2:30 p.m. and not on September 4th or anytime before
10 the deadline.

11 Malan has a history of filing late,
12 specifically their last briefing for the August 20th
13 hearing, which was filed 3 1/2 hours after the noon
14 deadline. I'm curious whether their servers crashed
15 that day too. The Grippi declaration was also
16 untimely filed. It's also dated September 5th.

17 If -- Ms. Leetham represented that they
18 attempted to file on -- timely, but the servers went
19 down and that she discovered the filing mishap in
20 the morning on September 5th. Why she was not able
21 to file and serve us shortly thereafter instead of
22 at 5:00 p.m. on September 5th is a question mark for
23 me, especially given that -- well, I know why,
24 because some of the documents were actually created
25 later in the day.

26 The reasoning she provides in her
27 declaration regarding the late filing says that
28 the re -- says that she believes that the server

1 issue contributed to the filing issues and that the
2 notice of lodgement and supplemental brief did not
3 get filed for reasons she can't explain.

4 So I can't exactly reconcile those two
5 explanations. Was it because their servers were
6 down or is it some other unknown, inexplicable
7 reason?

8 In addition, Hakim's supplemental
9 declaration, which was apparently filed on
10 September 4th -- it's only 42 pages so that's
11 good -- which was purportedly served on the
12 parties -- we have regular e-mail by Mr. Gorla. And
13 not -- One Legal was actually a duplicate of
14 Mr. Hakim's points and authorities and not his
15 actual declaration.

16 When I was reviewing the documents
17 yesterday at approximately 1:20, I discovered that.
18 I e-mailed Mr. Gorla requesting a copy of the
19 declaration. I didn't hear any response of any kind
20 yesterday. At 9:37 this morning, Mr. Gorla
21 responded by serving a copy of the declaration on
22 all parties.

23 When I inquired as to why it took so long
24 for him to respond after my e-mail requesting that
25 document, Mr. Gorla had responded that he was out of
26 the office all day yesterday afternoon, and then had
27 the audacity to turn it around and ask me why it
28 took me so long to discover the error since it was

1 served on Tuesday. I was a little offended by that.
2 I'm curious whether this was an error or just a
3 random coincidence --

4 MR. ZIMMITTI: Your Honor --

5 MS. GRIFFIN: -- given these late filings.
6 These appear to be more efforts by Defendants to
7 collectively sandbag Plaintiffs -- you know,
8 Plaintiffs in limitation at this hearing.

9 Again, the filings that were late consisted
10 of over approximately a thousand pages of documents,
11 these binders. So I was up all night. My daughter
12 spent the night at grammy's. And, you know, we
13 couldn't conduct as thorough of a review as we would
14 have liked.

15 In the interest of judicial efficiency, I
16 won't address all of the arguments we made on behalf
17 of Plaintiff at the other hearings. I think you're
18 well versed in what's going on. You [sic] can
19 address any questions regarding those arguments
20 if -- you know, if you have questions about them.
21 And I'll focus largely on the new issues that are
22 presented or have been presented since --

23 THE COURT: Okay. Now she's getting to
24 the -- did you --

25 MR. ZIMMITTI: I just wanted to add
26 something, Your Honor. Ms. Griffin did a great job
27 explaining the issue with the filing. I just want
28 to mention that this issue of servers going down,

1 e-mail servers, really doesn't make sense because
2 these things are uploaded. You have the Web
3 connection. They upload. It has nothing to do with
4 servers, which is basically document storage. It
5 has nothing to do with their e-mail. So frankly,
6 Your Honor, it just doesn't add up.

7 THE COURT: So noted for the record.
8 Normally -- normally, I would say, "Do you want a
9 quick continuance so you can do this?" But because
10 of the magnitude of this case, I'm going forward
11 today.

12 MS. GRIFFIN: Yes, Your Honor.

13 THE COURT: I'm not going to continue it.
14 There's going to be a decision. So -- hopefully,
15 there will be a decision. There will. So, Counsel,
16 you've laid a good record, okay?

17 MS. GRIFFIN: Yes.

18 THE COURT: But let's get to the meat.

19 MS. GRIFFIN: No problem. And we will also
20 address some of the arguments, of course,
21 addressed -- made by Defendants in their
22 supplemental briefing.

23 THE COURT: Thank you. And I've read them.
24 That's also an issue. Go ahead.

25 MS. GRIFFIN: You know, this recent filing
26 I've noticed in everyone's papers it's -- there's
27 some deflection away from the original issue that we
28 have, which is the basis of the agreements between

1 Plaintiff and Malan, our client, Mr. Razuki.

2 THE COURT: Okay. When you say that,
3 you're referring to the partnership agreement?

4 MS. GRIFFIN: I'm referring to the
5 settlement agreement, which --

6 THE COURT: I got it.

7 MS. GRIFFIN: -- at the very least
8 memorializes the oral agreement between the parties.
9 I just want to remind the Court, because it is a
10 little distracting. There's a lot of information
11 and a lot of things going on, but that's really the
12 fundamental basis of our case at this point.

13 We need a receiver because we don't trust
14 Defendants and counsel at this point, and we're
15 getting distracted from that point, which -- there's
16 a settlement agreement showing that our client owns
17 a 75 percent interest in these entities.

18 THE COURT: How much?

19 MS. GRIFFIN: Seventy-five percent of
20 Mr. Malan's --

21 THE COURT: I thought you said 7.5.

22 MS. GRIFFIN: Oh, no. Seventy-five.

23 THE COURT: I got it.

24 MS. GRIFFIN: And there's been really no
25 arguments why, at the very least, the oral agreement
26 is not enforceable, much less the settlement
27 agreement.

28 I believe Mr. Malan is now saying on the

1 one hand that he didn't have proper representation
2 in terms of proper counsel advising him regarding
3 the execution of that. We have a conflict waiver
4 from the attorney who prepared that settlement
5 agreement on behalf of both of them, both Plaintiff
6 Razuki and Mr. -- Mr. Malan.

7 For -- and I want to address the issue
8 which to us was most concerning in the last couple
9 of week -- well, there's two issues that were really
10 concerning.

11 In regards to the use of Far West and
12 Synergy for management of the Balboa dispensary and
13 the Mira Este operations, we strongly believe that
14 it is inappropriate for the receiver to continue to
15 use these company -- companies, especially given the
16 nature of the cases -- nature of the cash businesses
17 and the relationship between the parties. It's
18 quite incestuous over here in terms of the
19 relationships between Far West, Mr. Henkes,
20 Mr. Malan, and Synergy and Mr. Malan's counsel.

21 It's indisputable at this point that
22 Far West and Synergy are not neutral or independent
23 parties, represented by Mr. Malan's counsel at the
24 last hearing. Both use Mr. Henkes as their
25 accountant. Mr. Henkes is not independent, as
26 Ms. Leetham represented to this Court very clearly.
27 She should have known this. She has admitted that
28 she represented Far West.

1 Mr. Henkes disclosed to the receiver that
2 he is actually a 10 percent owner of Far West, which
3 means to us that there's quite a greater likelihood
4 that he'll skew accounting to favor either Far West
5 and/or defendants.

6 She -- Ms. Leetham also represented that
7 Mr. Henkes and Far West -- or I apologize.
8 Ms. Leetham represented Mr. Henkes and Far West in a
9 lawsuit filed in 2017, and her firm prepared a
10 declaration on -- in -- on his behalf in that
11 lawsuit wherein Mr. Henkes declared under penalty of
12 perjury that he was the manager, registered agent
13 for service of process, and accountant for Far West
14 as of January 26th, 2018.

15 And at least as of May 16th, 2017, we know
16 he was also the CFO of Far West per the Secretary of
17 State filings. And he even signed a settlement
18 agreement on behalf of Far West in November of 2017.
19 I think the Court should consider whether there's an
20 ulterior motive in Defendants wanting the receiver
21 to use Mr. Henkes so badly.

22 And not to dwell on past incidents, but it
23 was also Ms. Austin who advised Far West employees
24 to leave the premises of the Balboa dispensary on
25 the day the receiver was initially appointed and
26 then drove the getaway car as they absconded with
27 cash from the Balboa dispensary.

28 The current order already provides that the

1 receiver can retain the services of Brinig &
2 Associates if he decides against retaining Henkes,
3 and we believe his immediate removal as accountant
4 for both businesses is justified and necessary,
5 especially given there was quite a lot of
6 attention -- a lot of attention by the Court at the
7 August 20th hearing about the bias, perhaps, of some
8 of -- for example, Mr. Yeager, who was being used by
9 the receiver prior to the use of Mr. Henkes as the
10 accountant.

11 Also, per paragraph 24, the receiver's
12 report, Mr. Henkes disclosed that Mira Este has
13 leased space to another third-party cannabis
14 producer, Epi -- EdiPure at the Mira Este property,
15 and Epi -- Epidure [sic] paid \$30,000 in prepaid
16 rent in cash. We have no idea where these funds
17 are.

18 THE COURT: I read that.

19 MS. GRIFFIN: I ran a business search
20 yesterday and could not find any businesses --
21 business entity with that name registered in
22 California, so we have no idea who this entity is,
23 what relationship it has to the parties.

24 Also, I'm aware that Mr. Hakim argues that
25 Mira Este is about to go under. I'm a little
26 confused with that given that the last hearing they
27 represented the first week they were open they made
28 \$200,000. So I also can't reconcile his argument or

1 his declaration, the facts regarding that in his
2 declaration, and the facts that he presented to the
3 Court regarding the \$200,000, which I don't think
4 the receiver has located yet.

5 Again, Defendants' counsel have made
6 blatantly false representations to this Court. This
7 is just the kind of misrepresentation that has
8 plagued this action since it was filed. This has
9 happened so many times, Your Honor, I've lost track,
10 to be honest. We really hope that at some point the
11 Court will stop them from flagrantly abusing this
12 Court and recognize that any representations they
13 make should be questioned at this point.

14 The Austin Group represents or has
15 represented not only Mr. Henkes and Far West, but
16 also Synergy. Ms. Austin at the last hearing, upon
17 a direct question from the Court, represented that
18 she had never worked for Synergy before. That was
19 August 20th. Four days prior to that, articles of
20 organization for Synergy were filed with the
21 Secretary of State listing her as the agent for
22 service of process.

23 It goes on and on, Your Honor. It's a
24 little frustrating. So that's four days before the
25 hearing, and she represented to this Court very
26 clearly, as the transcript says, that she did not
27 work for Synergy. She had worked for some of the
28 principals, but not Synergy itself. Hard to imagine

1 that Synergy listed her as the agent of service of
2 process if she wasn't already working for them.
3 Again, a blatant misrepresentation in response to a
4 direct question from this Court.

5 In addition to having now had a better
6 opportunity to review the Far West and Synergy
7 management agreements, it's clear that Defendants
8 and these entities have negotiated payments to be
9 made directly to Mr. Malan in the amount of 8500 per
10 month as to Balboa and Mr. Malan or Mr. Hakim in the
11 amount of \$35,000 per month as to Mira Este.

12 Despite this -- and it's phrased in the
13 Far West and Synergy management agreements -- I
14 think it's Section 3.3 -- these monies are going to
15 be paid to a principal in either the company in one
16 respect -- that's Mira Este -- or the cooperative in
17 the other respect, and that's Balboa. And the
18 principals, of course, are Mr. Hakim and Mr. Malan.

19 Despite this abuse and on -- the
20 representations -- misrepresentations to the Court
21 at the August 20th hearing, Defendants were able to
22 convince the Court to allow Far West and Synergy to
23 remain as managers versus reinstalling SoCal. And
24 understandably, to -- you know, the receiver had to
25 have an opportunity to figure it out, and these
26 things were discovered since.

27 However, we'd strongly urge the Court to
28 reconsider canceling the Far West and Synergy

1 contracts. There's -- they waived breach of
2 contract claims in those contracts, and we'd request
3 that we place them back with SoCal or another
4 management company chosen by the receiver. We
5 prefer SoCal because they're familiar with the
6 operations and apparently cooperated with the
7 receiver in the initial phases of the receivership.

8 Most importantly, though, for us is that
9 install -- reinstalling SoCal would limit our
10 client's potential liability for any breach of
11 contract claims SoCal might have -- bring in
12 relation to the three management contracts.

13 And that brings me to the newly discovered
14 evidence regarding the fraudulent invoice that we
15 believe Hakim sent to SoCal for reimbursement, which
16 clearly shows that Hakim, presumably in concert with
17 Malan, fabricated this bid to fraudulently obtain
18 reimbursement for SoCal in the amount of \$125,000
19 for tenant improvements that were never actually
20 incurred.

21 Defendants weren't smart enough to delete
22 the metadata related to Mr. Hakim's electronic
23 signature, which showed it was signed the very day
24 it was sent to SoCal for reimbursement in March of
25 2018. It's my understanding that the bid from
26 Mr. Grippi and Element Builders was actually
27 submitted to them in June of 2017.

28 The fact that the invoice was fraudulently

1 prepared is confirmed by Mr. Grippi in a declaration
2 he was willing to sign for us. In that, he attests
3 the fact that he never prepared the bid submitted.
4 In fact, based on his declaration, his actual bid
5 for the Mira Este tenant improvements was
6 approximately \$82,500 less than that of the bid that
7 Mr. Hakim signed and submitted to SoCal for
8 reimbursement. And that bid was 270 -- 60 -- the
9 bid that was submitted by Mr. Hakim was in the
10 amount of \$267,000.

11 Mr. Grippi has also confirmed that Element
12 Builders performed absolutely no work at Mira Este.
13 Although the Malan defendants belatedly filed a
14 subsequent declaration from Mr. Grippi, it really
15 doesn't dispel the fact that Mr. Hakim prepared the
16 fraudulent invoice. It doesn't affect the reality
17 that that was not his invoice. It was not prepared
18 by him, and it was not the amount of the bid that he
19 submitted to Mr. Hakim and Mr. Malan for work at
20 Mira Este.

21 I'm not sure how Defendants are actually
22 going to explain that away. And as discussed
23 further in SoCal's papers, its refusal to make
24 payments on that fraudulent invoice is largely what
25 Defendants base their allegations that SoCal was in
26 default of the management agreements.

27 However, despite our preference that SoCal
28 be reinstated as managers, we would of course

1 respect the opinion of the -- or the decision of the
2 Court and/or the receiver to replace Far West and
3 Synergy with an unrelated, truly neutral third-party
4 management company. This does beg for a breach of
5 contract claim by SoCal, however, which would not
6 benefit any of the parties here.

7 It really comes down to money, money,
8 money, Your Honor, right? Where is it? You hit the
9 nail on the head with that one. The amount of money
10 going in and out of just the Mira Este account in
11 the Torrey Pines Bank account statements that we
12 have from December 2017 to June 2018 show quite a
13 bit of money coming in and out. We want to know
14 where it is, who was paid.

15 The bank statements show large transfers to
16 unknown accounts. We believe it's absolutely
17 necessary to figure out where that money was coming
18 from. We are now informed and believe upon the
19 review of the 688-page notice of lodgement that I
20 spent all night reviewing last night that Mr. Malan
21 does have an account at Torrey Pines, and some of
22 the bank account transfers were to other
23 Torrey Pines accounts.

24 It's speculation at this point, but I think
25 it's -- we would like the authority to -- or to give
26 the authority to the receiver to conduct a full past
27 audit to figure out where that money went, whose
28 accounts it went into, and why, whether they were

1 real expenses.

2 In addition, obviously, at the last
3 hearing, they said \$200,000 was made the first week
4 Mira Este was open. Now they're crying poor. I
5 don't know how to reconcile that. I just don't.

6 Also, the bank statements show that there
7 was commingling between the three marijuana
8 operations. You have Mira Este paying for SD United
9 issues, Balboa-related issues. You have Mira Este
10 paying for Roselle issues, money going back and
11 forth.

12 This is also confirmed by checks that were
13 submitted in the notice of lodgement that I reviewed
14 last night; that for whatever reason, San Diego
15 United is writing checks to Mira Este, to Flip, to
16 Roselle, and in the case of the bank accounts, vice
17 versa.

18 Why is SD United, the owner of the Balboa
19 properties, which my client has an interest in,
20 paying money to Mira Este? I don't know. Mira Este
21 is now operational again, bringing in \$200,000 a
22 week by their own admission at the last hearing.

23 And if I recall correctly, Defendants --
24 you were very clear. The defendants were supposed
25 to provide a full accounting of expenditures since
26 it became operational. But based on the receiver's
27 report, none has yet been provided, despite
28 requests. And the order appointing receiver

1 required them to turn over those financials within
2 48 hours of the execution of the order, which was
3 August 28th.

4 This is obviously largely a cash business
5 susceptible to conversion by unscrupulous business
6 partners. Cash is easier to hide. There's no doubt
7 about that. And we absolutely need this
8 receivership to account for where that money went
9 and where it continues to go.

10 The receiver should be, again, empowered to
11 hire Brinig & Associates or any other legitimate CPA
12 firm to conduct a full forensic accounting of where
13 the money has gone, why, and to whom.

14 Bank statements show transfers, again, of
15 large significant sums to unknown accounts. Maybe
16 they're legitimate. I don't know. But we need to
17 find out. And I think given the questionable
18 invoice that was submitted, I think it's -- I think
19 that just requires that investigation by the
20 receiver even more.

21 Also, bank statements show that Mira Este
22 paid huge sums of money to Austin Legal Group from
23 December 1st, 2017, through July -- June 31st [sic],
24 2018. I'm no math genius, but I calculated that --
25 over \$250,000 of payments in that time period. I
26 don't know what those are for, and at this point
27 it's speculation.

28 But we need to know where that money was

1 for, what it paid for, was it paying for other
2 expenses and other businesses, were they legitimate
3 legal fees, were they to reimburse for costs related
4 to the licensing.

5 That's a huge amount of money going to
6 Ms. Austin, and that is simply Mira Este. We don't
7 know what happened to Balboa, and Balboa has been
8 operational for quite a bit -- a lot longer.

9 I am curious what we're going to find if
10 the receiver is able to get into Balboa and see
11 where their money went. Again, the very little
12 money that the receiver has been able to collect to
13 date is extremely concerning, and a forensic
14 accountant should be able to determine the
15 legitimacy of those monies paid.

16 There's also the issue of the \$65,000
17 missing after the hostile takeover from SoCal. We
18 still don't know where that is. And based on the
19 conduct of Mr. Malan and Ms. Austin on July 17, it
20 was probably the bags that her Golden Greens clients
21 had when they jumped in her getaway car.

22 THE COURT: Watch your language, Counsel.

23 MS. GRIFFIN: Presumably -- Balboa has been
24 operational for quite a long time at this point.
25 Presumably, they're making money. Where is it?
26 Again, there's also the ongoing lack of cooperation
27 from the defendants. I don't know quite why,
28 because the Court was very clear last hearing that

1 they were to turn over and be transparent with
2 everything. And the receiver's report clearly
3 states the defendants have failed to turn over
4 documents.

5 There's no proof of insurance regarding
6 Balboa, despite the fact that Malan and Hakim have
7 represented that there is insurance. They -- that's
8 not been provided to the receiver. There's been no
9 direct documentation regarding Balboa's bills due
10 for mortgages, HOA, or other expenses, and there's
11 been no report -- accounting reports from Mira Este.

12 I would like to address briefly -- you
13 know, Malan claims that he put a lot of money into
14 the marijuana operations. He provided a lot of
15 copies of checks. There's no canceled checks.
16 There's no correlating bank statements to see if
17 those checks were actually issued. We have no idea
18 if they were actually -- you know, if they were ever
19 cashed. They're just copies of checks.

20 I would like to point out that there's one
21 check in particular I noticed. It's a June -- June
22 2018 check that -- from Mira Este for -- from
23 Mr. Malan to Mira Este, purportedly. But when you
24 compare it to the Torrey Pines Bank account
25 statement, there's no correlating deposit. I don't
26 know what -- it's just a question. It just supports
27 the need for the receiver, as well as the forensic
28 accounting.

1 He -- he also -- Mr. Malan also uses the
2 term "I paid," quote/unquote, very loosely as the
3 evidence he provided shows SD United paid most of
4 these bills. The question becomes where did SD
5 United get the money to pay the bills, and
6 especially in terms of the mortgage payments, which
7 most of the checks reflect mortgage or loan
8 payments?

9 For Balboa, it should be SD United paying
10 the bills. So it doesn't really correlate to me
11 that Mr. Malan was the one where the money really
12 came from. We need to figure that out.

13 Most of the -- most of the alleged payments
14 by Mr. Malan in the notice of lodgement are
15 relatively small. They're electric bills, things
16 like that. There are some larger ones. Again, we
17 need to confirm that they were actually paid.

18 There were several instances where
19 Mr. Malan provides escrow closing statements with
20 some -- it appears to be a interjection or something
21 added later by counsel saying, "Ninus Malan paid,"
22 but there's no backup support. You know, I'm not an
23 accountant, but I couldn't figure out how that
24 proved Mr. Malan paid anything. So we need further
25 investigation on those as well.

26 Again, Mr. Malan paid -- claims payment for
27 a lot of invoices that don't actually have proof of
28 any payment by him or were paid by American Lending

1 Holdings -- Lender Holdings or Flip, not him. But
2 he says in his declaration he paid them. I don't
3 know if, you know, he's confused, but those are
4 entities, not him personally.

5 And as to the bond amount, we believe
6 Defendants' request to increase the bond to
7 6 million is really, really ridiculous.

8 THE COURT: Six --

9 MS. GRIFFIN: (Indiscernible crosstalk.)

10 THE COURT: -- or ten?

11 THE REPORTER: I didn't hear that,
12 Your Honor.

13 THE COURT: I said, "Six or ten?" I
14 thought I read ten.

15 MS. GRIFFIN: Mr. Malan --

16 MR. GORIA: We asked for a \$10 million bond
17 from Mira Este.

18 THE COURT: Just trying to get a straight
19 line. Okay. Go ahead.

20 MS. GRIFFIN: Yes. Mr. Malan proposed
21 6 million. Mr. Hakim proposed 10 million. It would
22 essentially bar any plaintiff in this case from ever
23 being able to get a receivership if the bonds were
24 that high.

25 In fact, we were informed yesterday that
26 any plaintiff's bond over \$50,000 would require full
27 collateralization. And therefore, we would request
28 that if the Court feels it appropriate to increase

1 the bond, it increase it -- and we understand. The
2 bond should be increased. We don't believe that
3 their numbers are anywhere in the range of what it
4 should be increased to.

5 THE COURT: So what's your number, Counsel?

6 MS. GRIFFIN: We would request that it be
7 increased to 50,000.

8 Furthermore, Malan argues that the bonds
9 should be based on the value of the so-called --
10 SoCal options. I'm not quite sure. For whatever
11 reason, I think in Mr. Malan's papers he says the
12 value of the Balboa option should be doubled, but I
13 don't believe she provides any reasoning for that.
14 I don't know why. And they have consistently argued
15 that the options have expired, so I don't know why
16 the bond would be based on the options themselves.
17 We'll leave them that -- that to them to explain.

18 But in the end, Your Honor, we come to the
19 point of there's just too much money going in and
20 out and disappearing. I mean, by their own
21 representations on August 25th -- or on August 20th,
22 Balboa should be making \$100,000 a week, and
23 Mira Este should be making \$200,000 a week. Where
24 is that money?

25 The only way we will ever figure it out is
26 if the receiver maintains receivership, has control
27 of everything, has a little more time to
28 investigate, and the documents -- defendants

1 cooperate by turning over the documents he needs to
2 do his job. And we would request that he be allowed
3 to do so. We'd request that Mr. Henkes be removed
4 as the accountant, and he -- the receiver, in his
5 best judgment, choose another CPA firm.

6 We'd also request that Far West and Synergy
7 be removed, as they're clearly related to Defendants
8 and Defendants' counsel. And I think that was
9 Your Honor's -- somewhat of a problem with SoCal at
10 the last hearing, but I think the relationship
11 between Far West and Synergy and Defendants and
12 Defendants' counsel at this point is much more
13 concerning at this point.

14 Thank you, Your Honor.

15 THE COURT: Ms. Reporter, how are you
16 doing?

17 THE REPORTER: Okay.

18 THE COURT: We're going to -- this will
19 probably go at least a half-hour, and then we'll
20 take a five-minute break for the court reporter.
21 This is straight reporting, so she's working hard.
22 Take whatever time you need, though, Counsel, and
23 then we're going to take a five-minute break.

24 MS. LEETHAM: So --

25 THE COURT: Go. It's all yours.

26 MS. LEETHAM: That's a pretty bad picture.

27 THE COURT: Huh?

28 MS. LEETHAM: That's a pretty bad picture.

1 I'm aghast. I'm a liar. Gina is a criminal. My
2 client's corrupt. Everything we say is a lie.
3 Nothing we've given to the Court is true. I
4 actually -- I don't even know what to say. I've
5 been practicing for 14 years. I've been in front of
6 Your Honor on numerous cases. I have never lied to
7 the Court. I am deeply offended, deeply offended.

8 It's been exhausting. We've had four
9 hearings, three judges, reams of paper, reams of
10 paper, thousands and thousands of pages. The
11 acrimonious contempt with which the plaintiff has
12 treated me, my client, my partner, my co-counsel,
13 Chris Hakim's counsel, everybody in this courtroom
14 is -- is brazen. I don't even know what to say
15 about it.

16 I guess what I would say is it's a smear
17 campaign. And I'm sorry. I am so upset. My voice
18 is shaking. I don't even really know what to say,
19 but it's a smear campaign designed to hide the fact
20 that Plaintiff Salam Razuki and Plaintiffs in
21 Intervention lack sufficient reliable documentary --
22 not evidentiary -- documentary support to
23 demonstrate millions of dollars, millions.

24 I sat down and I went through every
25 exhibit, every single one. I have a yellow pad here
26 with probably 15 pages of what they all filed.
27 Razuki's papers contain approximately 76 exhibits,
28 and I say 76 lest I get accused if it's 77. Of

1 those -- find my paper here -- there is a small
2 stack, this.

3 This represents the sum total of financial
4 evidence Mr. Razuki has submitted to show this Court
5 a \$5 million investment. Who -- I get more paper
6 when I buy a fridge. How is this credible proof
7 that he can prevail on the merits of a \$5 million
8 investment? Where is it?

9 I'm going to back up and try to calm down.
10 I want to highlight a couple of evidentiary issues
11 and some procedural issues. There are some exhibits
12 that have been filed, and there was some financial
13 information that was not redacted. I've got to take
14 a breath.

15 THE COURT: Thank you. Do you want to take
16 five, or are you good?

17 MS. LEETHAM: Can I give it two minutes and
18 see if I can -- thank you.

19 For example, in Mr. Essary's September 7th
20 declaration, at Exhibit J, he submitted Mira Este
21 banking information that's not redacted. There's
22 account numbers on checks. Ms. Griffin's
23 declaration similarly contains unredacted banking
24 information at Exhibit 5.

25 I had subpoenaed records from Sunrise and
26 Super 5, these entities that are kind of sitting out
27 there that should be parties to try to get some kind
28 of a handle on what Mr. Razuki is making. Their

1 attorney was rightfully concerned about financial
2 information.

3 We stipulated to a protective order. I
4 would ask that the parties in this case do the same
5 and that we take whatever steps we need to take to
6 rectify the record to remove that financial
7 information so that it's not visible to the public.
8 Those are open accounts and it's Mira Este's.

9 With respect to my statement that I -- that
10 there's no dog in this fight with Mr. Henkes, he
11 doesn't have a dog in this fight. He's not a party
12 to this litigation. I absolutely meant that when I
13 said that to the Court. He runs an accounting
14 business independent of any ownership he has in
15 Far West Management, which he actually told the
16 Court. He was very forthcoming on that.

17 He's obligated to the California Board of
18 Accountancy. He's obligated to maintain
19 professional standards, just like we are. He's
20 obligated to oversight. So why he would lie and
21 mislead the Court and the parties as to Balboa's
22 financials is beyond me. There is no reason for him
23 to cook the books. That does him no good. It does
24 nobody any good. It's counterintuitive to suggest
25 that somehow he will create a false monetary
26 situation. Everybody wants Balboa to thrive.

27 The Court, on the August 20th hearing --
28 it's Exhibit 1 to the supplemental declaration of

1 Maura Griffin, and I'm on page 103 on lines 19
2 through 27. Your Honor said, "I want to know how
3 much money comes in."

4 And what I took away from that hearing is
5 the Court needs to know about the money. We need to
6 know about the money. And the money is twofold.
7 Okay? The money is Mr. Razuki, \$5 million; SoCal
8 [sic], \$2.6 million. Nothing from SoCal, nothing.

9 The second piece of that is where's the
10 money from Balboa? And there's a lot of rhetoric
11 about my client not giving financial information, my
12 client not being forthcoming. But, Your Honor,
13 SoCal had possession of that, and I don't know why
14 this is not crystal clear.

15 SoCal was obligated to maintain the books
16 and records up through and including the day they
17 were terminated. Any financial information the
18 receiver needs they should have and Mr. Yeager
19 should have.

20 I'm going to read an e-mail, and I'm going
21 to hand a copy to counsel, Mr. Elia. I'm going to
22 hand a copy to Mr. Richardson Griswold, the Court.
23 Sorry.

24 THE COURT: Everybody gets one, all
25 counsel.

26 MS. LEETHAM: I ran out of copies for
27 Mr. Griswold, but I can hand him one after I read
28 it.

1 THE COURT: We'll make --

2 MS. AUSTIN: I showed it to him first.

3 THE COURT: We'll make copies. Go. You
4 can read it.

5 MS. LEETHAM: So as the Court is aware, the
6 dispensary is in the middle of a City audit.

7 THE COURT: Uh-huh.

8 MS. LEETHAM: And we were required to
9 submit documentation to support, as I understand it,
10 sales tax. And Ms. Austin is the one that's been
11 liaisioning with the City.

12 This morning Ms. Austin reached out to the
13 City, because we did one release of information from
14 the Treez database, T-r-e-e-z, which is what SoCal
15 was using to manage the inventory. The City came
16 back and said there was a discrepancy. There was a
17 discrepancy in what they paid versus what SoCal --
18 SoCal registered.

19 They said, Whatever -- and maybe Gina is
20 the best one to do this. But anyway, she reached
21 out this morning to the City and said, "Can you
22 please let me know if you have received information
23 regarding the sales discrepancy for Q1 from anyone
24 as of today?" And this was this morning, and I can
25 wait for Your Honor if you want a copy.

26 THE COURT: Go ahead.

27 MS. LEETHAM: Okay. "Also, can you confirm
28 whether or not information remains outstanding?"

1 The City's response: "Grigor,"
2 G-r-i-g-o-r," "Gevorgyan" -- I probably massacred
3 that -- G-e-v-o-r-g-y-a-n, "Hi, Gina. We have only
4 received the sales data you previously e-mailed to
5 us, and no information was received regarding the
6 discrepancy noted within. All other documents are
7 still pending."

8 That information is not information we have
9 possession of. It would be SoCal and John Yeager.
10 We can't pull these pieces of financial information
11 out of the air. These were not ours to create.
12 They were SoCal's. It's not some Enron pyramid
13 scam, Your Honor. SoCal and John Yeager managed to
14 fail to save \$173,000 in a tax liability that was
15 generated during SoCal's tenure.

16 And I want to clear up some dates for the
17 record on when Balboa was opened, and I know this
18 because I've represented them for the last year and
19 a half. Balboa did a soft opening in about April or
20 May of 2017, operated for a little while. They
21 operated for a little while, and then we were shut
22 down by an injunction ordered by Judge Styn.

23 We were allowed to open back up on or about
24 November 9th of 2017. However, we didn't get
25 insurance right away, so we did not open back up
26 until on or about December -- I don't know the
27 date -- 2017. By that time, SoCal was there and
28 they were there the entirety of the time they were

1 open.

2 My client did not have control of the
3 finances. And I don't know how to say this in a way
4 that's meaningful. SoCal had full operational
5 control of the dispensary that entire time. They
6 have all the books and records. They have all the
7 inventory. They have everything Mr. Essary would
8 need to do his accounting.

9 THE COURT: Up until when?

10 MS. LEETHAM: Up until July 10th when we
11 fired them.

12 THE COURT: July 10th of?

13 MS. LEETHAM: 2018.

14 THE COURT: Thank you.

15 MS. LEETHAM: But then the Court has to
16 remember that the receiver was in July 17th through
17 July 31st, and then we had another brief period
18 where my client had control of his business again.

19 And in prior pleadings, I've submitted
20 Far West Management's documentation that they keep
21 for their -- just their management structure. I
22 submitted another example of it to the Court, I
23 believe in Mr. Malan's declaration. Just for the
24 week or two that Far West is operating, we have a
25 stack as thick as the stack Mr. Razuki gave for his
26 \$5 million.

27 So I find it incredible when somehow my
28 clients are accused of not turning anything over

1 when for the two or three weeks that Far West was
2 operating, all the financials are there. The
3 inventory is there. The payroll figures are there.
4 The management fee is there. All of that
5 information there. It is completely transparent and
6 it's in the record.

7 Again, Mr. Henkes is here. He's willing to
8 answer any of the Court's questions. It is
9 incumbent upon him, as it was incumbent upon SoCal,
10 to maintain strict internal accounting controls in
11 order to save the businesses and preserve the
12 licenses. SoCal didn't do that. That's why they
13 were fired.

14 I'm going to talk a little bit about the
15 accusations against me and my professionalism and my
16 ineptness if the Court wants to, but I --

17 THE COURT: No. No.

18 MS. LEETHAM: I do think I need a quick
19 break, Your Honor, please.

20 THE COURT: Sure. Five minutes.

21 (Brief recess.)

22 THE COURT: Let's go back on the record.
23 Counsel?

24 MS. LEETHAM: Thank you, Your Honor, for
25 accommodating me.

26 THE COURT: You're welcome.

27 MS. LEETHAM: And the one thing I want to
28 say is I'm -- Mr. Watts is going to be also

1 addressing the Court more specifically on behalf of
2 Mr. Malan.

3 THE COURT: Sure.

4 So you're going to be next, then Mr. Hakim,
5 then SoCal.

6 MS. AUSTIN: At some point I need to get my
7 two cents in.

8 THE COURT: There we go.

9 MS. AUSTIN: That's fine, whenever it is.
10 I just need three sentences.

11 THE COURT: We're going to do all of
12 Mr. Malan, et al., et al., et al., in one shot. So
13 you work out who goes next. Let's go.

14 MS. LEETHAM: Okay. So substantively,
15 there are issues. Plaintiff in the interveners
16 obfuscate the root financial issues with their
17 allegations of misdeeds, so we spend most of our
18 time talking about how bad we are. We don't spend
19 our time talking about the money.

20 And it doesn't make sense, and I say this
21 because Razuki's dogged alignment with SoCal -- it
22 doesn't make sense if Razuki's interest is truly in
23 ensuring success of the businesses. And I say that
24 because he must be considered independently of
25 SoCal. They have sort of webbed themselves
26 together, but their interests and their claims are
27 different and the level of proof is different.

28 The receiver is the third component that is

1 considered kind of in the totality of this whole
2 situation. And so as the Court knows, the burden is
3 on the moving party to show success on the merits.
4 It's also compensable at law. And I know I've been
5 saying that over and over and over again, but
6 damages can compensate all of these claims.

7 And what Ms. Griffin is talking about, this
8 need for information, it's called discovery. It's
9 something the parties get to do. It's called expert
10 witnesses. It's something we get to hire. The
11 issues they have with my client are issues we have
12 with their businesses, and we have now brought them
13 into the litigation. So I am hoping all the parties
14 are present in front of the Court.

15 The money should be considered with respect
16 to what Razuki has not shown. He has submitted very
17 little reliable comprehensive documentary evidence
18 that shows he contributed \$5 million, and I've
19 talked about this already.

20 And you know what's ironic about this,
21 Your Honor, is both Mr. Malan and Mr. Razuki agree
22 that there was an oral modification to the
23 partnership agreement. They have both testified
24 that something about that changed. All right. They
25 disagree about what it was.

26 So we have a written contract. We have an
27 oral modification. We go to parol evidence. If you
28 look at the parol evidence and you look at the

1 totality -- sorry, court reporter -- of how the
2 parties have dealt, it -- the logic follows my
3 client's story and here's why.

4 They split up February 2017, right? We
5 have this date somewhere in early -- I'm sorry --
6 2018 where they both seem to admit we had some
7 issues. We changed the agreement. Razuki goes to
8 Sunrise. Mr. Malan goes to Balboa, Mira Este,
9 Roselle.

10 It shows -- through the debt service
11 payments, it shows that Mr. Malan paid insurance.
12 It shows he paid for CUP costs. He managed the City
13 and State permitting process competently, by the
14 way, because all these facilities are licensed.
15 It's extremely hard to do that.

16 He acted as a signatory for corporate
17 paperwork and documents. He negotiated the HOA
18 settlement. And even though Mr. Razuki was part of
19 that lawsuit, he played no part in those
20 negotiations. My client settled that lawsuit, and
21 he's made all the payments on that.

22 Mr. Malan has -- controls the bank accounts
23 in all the entities' names. It's also evidenced by
24 Razuki's complete absence from Balboa he has not
25 been there. He has not been at the manufacturing
26 facility. There is no evidence that either one of
27 them attempted to reconcile. There's none. They
28 said their good-bye. They went their separate ways.

1 Razuki took Sunrise. Malan took Balboa.

2 Other than loans, some of which don't even
3 apply to the entities in this litigation, there is
4 no evidence of ownership. There's no
5 instrumentalities of ownership, and the Court takes
6 all that into account when it makes a decision and a
7 determination on the merits.

8 So if we follow Razuki's logic, I think
9 what he's saying is that because he is a guarantor
10 on loans and by virtue of his guarantee, he is
11 somehow entitled to a greater weight of ownership.
12 I don't know. But if you follow that logic,
13 Mr. Malan is entitled to more because the entities
14 he owns and controls are the actual borrowers on
15 those notes.

16 So you're, of course, looking at me. But
17 you have a note and you have the borrower, and the
18 borrower is obligated on it. That would be my
19 clients, not Mr. Razuki. You have a personal
20 guarantee. They're both obligated. So I don't
21 understand how it works in his favor when my
22 client's actually even more on the hook.

23 So if we have a default, if the dispensary
24 goes under, they both lose, both of them. It's
25 illogical. Not only is it illogical from
26 capitalization, it's illogical just from a practical
27 standpoint that you're going to deep-six your
28 company.

1 So we have two harms on my side. We have
2 loss of the entitlements, and we have loss of the
3 real property if the receiver stays and if the
4 companies go under. So if we go into -- if we can't
5 make the debt service payments, we lose the
6 property, right. If we have a negligent operator in
7 there, we lose the entitlement. So either way, we
8 lose that value.

9 The Court knows my theory of liability is
10 that this is actually a derivative. The improper
11 parties are before the Court, that the true -- the
12 true party with the interest would be RM Property
13 Holdings, because that is, by all accounts, where
14 the parties initially intended to transfer it.

15 Razuki is not entitled to this. By his
16 theory of liability, RM Property Holdings is
17 entitled to the assets. Malan and Razuki are
18 entitled to a portion of RM Holdings. RM Holdings
19 is not here. I think their counsel was here at some
20 point. They're not a party, and they're the main
21 party. They're the most important party.

22 The last thing I'll say is they act stunned
23 that Mr. Malan would want to make a living,
24 Your Honor. This is what he does. He runs the
25 businesses. He manages them. He deals with the
26 entitlement process, and they know this.

27 So when the receiver is placed and he can't
28 get paid, he can't -- he has four kids. He has a

1 family. He hasn't been paid, and they act like it's
2 illogical for him. You know the receiver in the --
3 probably the aggregated four weeks he's been in
4 has --

5 THE COURT: Let me interrupt.

6 MS. LEETHAM: Yes.

7 THE COURT: So when you say he hasn't been
8 paid, he hasn't been paid a management fee?

9 MS. LEETHAM: Anything.

10 THE COURT: Hasn't been -- just for the
11 record, he hasn't been paid a consultant fee?

12 MS. LEETHAM: My understanding is no.

13 THE COURT: Okay.

14 MS. LEETHAM: Have you been paid?

15 THE COURT: That's your representation,
16 Counsel.

17 MS. LEETHAM: Have you been paid?

18 MR. MALAN: No, ma'am.

19 THE COURT: So in the last two months, he
20 hasn't been paid any management fees or consultant
21 fees, correct?

22 MR. MALAN: Yes, Your Honor.

23 THE COURT: Okay. So that answer is no.
24 I'll come back to the receiver on that.

25 And to you, Mr. Henkes, I want your
26 response on that too.

27 MR. HENKES: I --

28 THE COURT: Not right now. I'm not going

1 to interrupt counsel. Thank you, though.

2 MS. LEETHAM: And I raise that because I --
3 obviously, I don't know what the Court's going to
4 do. I wish I did.

5 THE COURT: Wouldn't that be nice?

6 MS. LEETHAM: It would be nice.

7 THE COURT: And you know what? I don't
8 know what I'm going to do yet.

9 MS. LEETHAM: It's extremely complicated.

10 THE COURT: It is. A lot's on the line.

11 MS. LEETHAM: It's very serious. And what
12 I would say to that is there are remedies that can
13 be crafted that are less intrusive and that could --

14 THE COURT: Give me an idea.

15 MS. LEETHAM: Give you an idea? Reporting,
16 accounting. Each side -- so -- Daniel has an idea.

17 MR. WATTS: A writ of attachment, a
18 permanent -- or a preliminary injunction telling
19 them to put them as names on the bank accounts so
20 they can see the money going in and out, appointment
21 of an independent accounting -- accountant that can
22 see all the assets of all the businesses and report
23 it, a lis pendens if he thinks he's entitled
24 to the -- okay. Not a lis pendens.

25 THE COURT: That just makes further
26 litigation.

27 MR. WATTS: But there --

28 THE COURT: Hold on.

1 MR. WATTS: But there's lots of other
2 things --

3 THE COURT: I want you to listen.

4 MR. WATTS: -- less --

5 THE COURT: Let me interrupt.

6 I want you to listen.

7 Could you repeat what you just said? I
8 heard, but I want to make sure --

9 You were listening? I think you were
10 working. I want to make sure you heard what he just
11 said.

12 Say it again.

13 MR. WATTS: Writ of attachment? Lis
14 pendens?

15 THE COURT: No, neither of those.
16 Accounting.

17 MR. WATTS: Accounting.

18 THE COURT: Bring in a separate --

19 MR. WATTS: Bring a separate accountant,
20 have that person have their name on all of the bank
21 accounts, have them have keys to the safe, whatever,
22 and have them have full access to walk around and
23 look at everything that's everywhere and --

24 THE COURT: That's Mr. Essary's job, right?

25 MR. JOSEPH: Exactly, Your Honor.

26 MR. ZIMMITTI: We came full circle.

27 MR. WATTS: It's without putting companies
28 into receivership. It's without putting someone in

1 charge of it that gets to make decisions.

2 THE COURT: I'm spending a lot of money up
3 here. I know the impact on all the parties.

4 MS. LEETHAM: And that's -- the greatest
5 concern is that we can craft a remedy, whether it's
6 reporting obligations to each other. Because keep
7 in mind we have no idea what Super 5 and Sunrise
8 have made. And theoretically, my -- RM Property
9 Holdings is entitled to Mr. Razuki's share of that,
10 and we don't talk about that.

11 And that is so important because that
12 dispensary makes far more money than Balboa, and we
13 have no idea. And we -- we just kind of push it off
14 like, oh, it doesn't matter because there's all this
15 malfeasance. But it's quid pro quo, right? If one
16 side has do it, why not the other?

17 And so my thought was, you know, there's
18 got to be an accounting mechanism that can be put in
19 place for the parties that's far less intrusive than
20 the receiver. And I'll get a little bit further
21 into that. So I want to move to SoCal.

22 Mr. Watts --

23 THE COURT: Uh-huh. Let's go.

24 MS. LEETHAM: Let's go. Mr. Watts is going
25 to cover some of the law, and I'll try to speed it
26 up for Your Honor. In SoCal's most recent papers,
27 they have made a request to come back in, and this
28 should not and cannot happen.

1 First, again, any claims are compensable at
2 law. They are money damages. There is a -- by
3 their account, there is a paper trail and there will
4 be liability or not, depending on how they acted or
5 what my client did. That does not warrant an
6 injunction. There is no irreparable harm to them.
7 They can be paid back. They can get their equipment
8 back. They have receipts for it.

9 THE COURT: Can I stop you right there?

10 MS. LEETHAM: Yes.

11 THE COURT: Can they get their equipment
12 back maybe tomorrow?

13 MR. GORIA: If that were the cost of
14 getting rid of the receiver for Mira Este,
15 Your Honor, that can be done.

16 THE COURT: I may not go that far, but that
17 was going to be one of my questions.

18 MR. ZIMMITTI: That's a great argument.

19 THE COURT: That was one of my questions,
20 so be prepared for it. They're saying, Judge, no
21 matter what you do, they want the property back.

22 MR. GORIA: Well, Your Honor, I don't want
23 to steal Tamara's show, but --

24 THE COURT: Okay. Let's get there. I want
25 an answer to that. Okay? Thank you, sir.

26 I interrupted, Counsel. You may proceed.

27 MS. LEETHAM: Thank you, Your Honor. So I
28 guess what I'll say about SoCal is it's like trying

1 to force divorcing parties back together. It's not
2 going to work, right? I mean, that bridge is so far
3 burned that if the receiver is in -- it's obvious
4 why they want to work with Mr. Essary. They have a
5 good rapport with him. He put them back in. He
6 didn't give them much oversight. They were allowed
7 to operate and work with him. They did not have to
8 work with my client.

9 So it was a perfect situation for them,
10 because if my client's running his business, they're
11 not there and they can't work together. They
12 just -- it's logically and practically impossible.

13 If the receiver is in and my client's out
14 and they're in, there's no problem for them. It's
15 like a new girlfriend, you know. And I'm making a
16 relationship analogy because it's very appropriate.
17 And that is why they're pushing so hard for the
18 receiver, because they're not going -- they're not
19 going to get back in otherwise and they're not going
20 to be able to get along with my client otherwise.
21 They have the utmost contempt for my client.

22 THE COURT: Aren't you making an assumption
23 there, though, Counsel?

24 MS. LEETHAM: On the receiver?

25 THE COURT: No.

26 MS. LEETHAM: Oh, on their ability to play
27 nice?

28 THE COURT: Yeah.

1 MS. LEETHAM: Absolutely I am.

2 THE COURT: Okay.

3 MS. LEETHAM: I am. Just given the
4 rhetoric from all sides and experience with this, I
5 just don't think it would go well.

6 Again, with SoCal, I guess what I would --
7 I'm sorry. I'm full of adages and quips and
8 metaphors today. But there was that lovely little
9 commercial from the '80s from Wendy's, and the lady
10 says, "Where's the beef?" And I continue to come
11 back to that. It's probably inappropriate. But
12 where is it?

13 When you have parties come to court
14 claiming a collective \$7 1/2 million -- that is so
15 much money. And you would expect to see boxes and
16 reams of whatever it was they have to show that was
17 a physical cash outlay, and they haven't.

18 And we've had four hearings where they have
19 had the opportunity to give the Court, to bear their
20 burden, financial information that shows they made
21 those outlays. And that is what this is all
22 predicated upon. It's predicated upon Mr. Razuki's
23 claim that he invested millions and millions of
24 dollars and he's at jeopardy of losing it. And
25 SoCal's claim is the same. I believe theirs is at
26 2.7 million.

27 THE COURT: 2.6?

28 MS. LEETHAM: It's 2.6 or 2.7.

1 MR. ZIMMITTI: 2.7.

2 MS. LEETHAM: 2.7. Mr. Zimmitti corrected
3 me. It's well documented in the file, our
4 allegations of mismanagement. The most recent one
5 would be the \$173,000 tax liability that they have
6 strapped my client with.

7 And then the other thing I will say toward
8 Far West Management's operations, they have shown an
9 historical increase in the brief time they have been
10 there with the money that they have made. But what
11 the Court has to remember is if they're up from
12 40,000 to 50,000, that's gross. So we have all the
13 overhead and all the expenses that go along with
14 that.

15 The other thing that's critically important
16 for the dispensaries is to have a marketing plan.
17 And so when Your Honor asks where the money is, we
18 have evidence now that the money is there, but the
19 money is being spent on the business and that's
20 where it should be spent. It shouldn't be given to
21 RM or Razuki. We need to reinvest it in the
22 business to grow the business, and Mr. Knopf is very
23 adept at that. He has an extremely successful
24 dispensary he manages in Point Loma. And again,
25 everybody is incentivized to make this work. Nobody
26 benefits if it fails.

27 And next I'll move to the receiver, and
28 this is -- this is awkward, because typically, you

1 give -- I've never actually had to negatively treat
2 a receiver's behavior. And I say this actually
3 liking Mr. Essary and Mr. Richardson, but I think
4 some of the things and the way they happened were
5 inappropriate.

6 So without maligning him, what's happened
7 in the case is the parties -- they do have a deep
8 distrust for each other. That's not one-sided. And
9 my side has a deep distrust for Mr. Essary and --
10 rightly or wrongly, they do. And I think there are
11 reasons why it's fair for them to feel that way.

12 And I say that because if the Court is
13 considering appointing another receiver, we would
14 ask it be someone else. It has been, even today --
15 you know, he's very friendly with the plaintiffs and
16 not very friendly with us, and I understand.
17 There's been allegations thrown at him. There's
18 been allegations thrown at me. But it's a little
19 bit like SoCal at this point, I think, and it's an
20 assumption.

21 I'm just going to review my notes and cut
22 it.

23 THE COURT: Then let's hear from one of
24 those two, and let's be succinct.

25 MS. LEETHAM: So I guess what I'll add is
26 that there's been a lot of blame placed on my
27 clients for the lack of financial information, and I
28 just want to build the record to say that that's not

1 my clients' fault.

2 SoCal should have turned this information
3 over to the receiver. To the extent he doesn't have
4 financial information currently, Mr. Henkes
5 responded to that and the Court's obviously free to
6 inquire upon him. I'm not going to put words in his
7 mouth about why or why not.

8 My client can run his own business. He's
9 been very adept at it with respect to the permitting
10 and everything else. The totality of this is the
11 cost that the receiver and the consultant and the
12 receiver's attorney and all the professionals that
13 come in and the accountant that comes is my client's
14 going to lose his livelihood.

15 And I would implore the Court to come up
16 with a remedy, to the extent you feel one is
17 necessary, that is much less intrusive. An
18 accounting? I don't know -- there's ways we can
19 craft an accounting or something like that.

20 I want to go to the bond.

21 THE COURT: Uh-huh.

22 MS. LEETHAM: SoCal ascribed a 50 percent
23 value to Balboa, and so what we did was we doubled
24 it to 100 percent. And, you know, when you come
25 into court and you want to play, you have to be
26 prepared to play. And Razuki doesn't like the
27 outcome of having to post a large bond, and I'm
28 going through this in another case. You got what

1 you wanted, but you don't want to play your part.
2 So you don't want to give your accounting. You
3 don't want to post your bond.

4 By all accounts, he's been supposedly very
5 wealthy. I don't know. I have no idea. So why he
6 would not want to do that when -- at the end of the
7 day, he's going to lose out just as much as my
8 client if he's right. It's gone. It's all gone.

9 And I leave the Court with that. Thank you
10 for your patience with me.

11 THE COURT: Sure.

12 MR. WATTS: Daniel Watts for Ninus Malan.
13 I want to talk about the law briefly. To get a
14 receiver, they -- it's their burden to prove a
15 likelihood of success on the merits, reparable harm.
16 Inadequacy of lesser remedies, that's an element.
17 And they -- since it's an equitable remedy, a
18 preliminary injunction, they also have to come into
19 court with clean hands.

20 It is literally impossible for them to
21 succeed on the claims that they actually allege in
22 their complaint. They -- the contract that this is
23 based on -- all of their claims are derived from
24 this one contract. That contract requires Razuki to
25 perform an accounting before he's entitled to any
26 shares in RM Property Holdings. He didn't do that.

27 He's -- he has to perform this accounting
28 before Malan or Razuki have to transfer their shares

1 in these different companies to RM Property
2 Holdings. There's no evidence that accounting was
3 done. It's supposed to be an accounting of the
4 respective investments in this partnership.

5 They -- the contract requires Mr. Razuki to
6 transfer his interests in Sunrise and Super 5 to
7 RM Property Holdings. He doesn't mention that in
8 his complaint because the evidence is undisputed
9 that that never happened. He never transferred that
10 in there.

11 Now, he says in his complaint that he's
12 excused from performing or he -- he actually alleges
13 he performed all the conditions required of him
14 under the breach of contract or he's excused from
15 performing or it was waived.

16 But although performance can be pled
17 generally with general allegations if it's supported
18 by the facts, excuse for nonperformance has to be
19 specifically pled. He did not specifically plead
20 the facts showing his excuse for nonperformance. He
21 doesn't specifically plead that. And his
22 performance -- he doesn't plead the facts supporting
23 it.

24 So he hasn't pled any facts showing he
25 performed his burden under the contract, which is a
26 prerequisite for trying to force Mr. Malan to
27 perform his, and he doesn't specifically plead
28 excuse or the waiver. He says in there just --

1 there's a boilerplate language saying that also
2 Malan waived everything, but there's no facts
3 supporting that in the facts section of the
4 complaint.

5 So under Hunt vs. Superior Court, the Court
6 can't issue a preliminary injunction regardless of
7 the harm that would result if the plaintiff can't
8 show a probability of success. So it's not just
9 these -- it's not two interrelated factors of equal
10 weight. If the probability of success is not there,
11 it doesn't matter how much harm would result. It
12 doesn't matter if there's irreparable harm. The
13 Court can't issue a preliminary injunction. So that
14 contract requires Razuki to prove these elements.
15 He hasn't proved it.

16 Durell vs. Sharp Healthcare is a case that
17 we cited in our brief that says that excuse must be
18 specifically pleaded. And in Durell, it explains
19 just exactly what their burden is. In Durell, the
20 plaintiff there used the same kind of language they
21 did. The plaintiff says that they have fulfilled
22 their obligations and complied with all conditions
23 of the contracts they are required to perform or
24 have been excused from fully performing because the
25 other side has prevented them from doing so.

26 That's almost identical to the language
27 they used, and the Appellate Court said that was
28 insufficient. That does not adequately plead an

1 excuse. So their complaint, if we had time to demur
2 to it, which we will eventually when all these
3 pre-things are done, would fail as a matter of law.
4 They cannot prove that that contract -- that they're
5 entitled to any relief under that. Every cause of
6 action is derived from that contract.

7 The contract is also unenforceable because
8 an equitable remedy, which -- what they're asking
9 for is an equitable remedy, preliminary injunction,
10 requires you to come into court with clean hands.
11 We've submitted evidence to the Court showing that
12 in another case, Mr. Razuki has testified that he
13 had no business relationship with Mr. Malan, no
14 marijuana dispensary with him, was not a part of
15 San Diego United. Under penalty of perjury, he said
16 that. I have the video on my phone, but the
17 transcript is in front of the Court. He can't lie
18 in one case and then come in the other case and
19 change his mind when it's convenient to him.

20 He also doesn't have clean hands because,
21 like I said, he hasn't performed under the contract.
22 He hasn't done his duties under the contract, so he
23 can't force Malan to do his duties, and he can't get
24 the equitable relief of a preliminary injunction.

25 The contract is also unenforceable because
26 it was void when it was signed. And I brought this
27 up at an earlier hearing, and I want to reiterate it
28 again. When the contract was signed in November of

1 2017, federal law prohibited marijuana, prohibited
2 the sale/manufacture/distribution of marijuana.

3 It was black letter California law at the
4 time the contract was signed that if a *law has an
5 illegal object under federal law, California courts
6 will not enforce that contract. That contract is
7 void as a matter of public policy. Bovard vs.
8 American Horse Enterprises held that.

9 Kashani reaffirmed that later that that's
10 black letter law for all contracts in California and
11 that when you look to see what the public policy is,
12 the relevant public policy, you look back at the
13 date the contract was executed, not today's public
14 policy, but the date that it was executed. And at
15 that time contracts that dealt with the distribution
16 for marijuana sales were illegal, and they could not
17 be enforced in California because of the federal
18 illegality.

19 Now, they have argued that California Civil
20 Code 1550 changed that -- sorry -- that 1550 changed
21 that. But that was a law that went in effect in
22 January of 2018, and that statute specifically said
23 that now contracts dealing with licensed, legitimate
24 medical marijuana dispensaries are not unenforceable
25 as void against public policy. That law didn't go
26 into effect until several months after this contract
27 was signed.

28 They say the public policy changed before

1 the law went into effect. That's not how it works.
2 The law, by its very nature, changed public policy
3 and, by its very nature, didn't go into effect until
4 January. That's why we had to pass the law in
5 California. If the legislature needed it to be an
6 emergency law that would take immediate effect, they
7 can do that. They can put those provisions in the
8 law so that the law changes like that. They did
9 not. So at the time this contract was signed, it
10 was void. It specifically mentions medical
11 marijuana dispensaries in the contract itself, and
12 it was an unenforceable contract in California on
13 the day it was signed.

14 The contract also isn't integrated. It
15 requires -- it references the parties' respective
16 investments that have to repaid before either person
17 is entitled to derive proceeds from RM Property
18 Holdings. It says the parties will work together in
19 good faith to figure out how much money that is.

20 But what if they don't? What if they don't
21 work together? What if they don't perform the
22 accounting? Then how much money needs to be paid
23 back to these people before Mr. Razuki can get his
24 profits, or his losses, by the way. The contract
25 also doesn't entitle Mr. Razuki to money. It
26 entitles him to a share of the losses of RM Property
27 Holdings.

28 So when they're saying, Oh, I invested all

1 this money and I'm entitled to get it back, those --
2 as she explained, these companies have taken out
3 large loans. And if they're right and it's, like,
4 \$6 million worth of loans, RM Property Holdings and
5 these companies aren't going to be profitable for
6 quite some time.

7 So his interest in this isn't actually
8 going to benefit him at all if these companies turn
9 out to be unprofitable. He will actually need to
10 recapitalize RM Property Holdings to the tune of
11 \$6 million, if that's what he thinks it is.

12 The plaintiff, by the way, doesn't sue
13 Balboa Avenue, Devilish Delights, or California
14 Cannabis. They're not mentioned in the cause of
15 action for -- or a receiver. So putting them in a
16 receiver doesn't -- receivership doesn't even make
17 sense.

18 The only cause of action that's alleged
19 against these companies really is the sixth cause of
20 action, money had and received. That's against
21 San Diego United, Flip, Mira Este, and Roselle, but
22 that one is pled in the alternative to the
23 settlement agreement. And it says if the settlement
24 agreement is void, then Mr. Razuki wants his money
25 back. He wants his -- whatever amount of money he
26 thinks that he gets back.

27 Why did he give that money to them?
28 Because he expected to get -- according to

1 paragraph 92, that the entities would transfer
2 ownership to him under the terms of the settlement
3 agreement. So the sixth cause of action is
4 self-contradictory. It says on one hand, I'm
5 entitled to money back if the settlement agreement
6 is unenforceable, if and only if it's unenforceable.
7 Why am I entitled to it? Because I gave them money
8 under a settlement agreement, and the settlement
9 agreement says I get that money back. So that cause
10 of action doesn't make sense.

11 The cause of action -- the appointment for
12 the receiver, that is not a cause of action in
13 itself. That is a remedy. And those -- those
14 companies in there -- San Diego, United, Flip,
15 Roselle, Mira Este, and Monarch -- those -- they
16 asked me to put those in receivership.

17 But again, the only cause of action alleged
18 against most of those companies is the sixth cause
19 of action for money had and received, which is
20 something you do if you give somebody money to buy a
21 car, not if you take a -- if they take out a loan
22 from you. That's not money had and received.
23 There's loan documents. He loaned money to them.
24 He didn't just dump a whole bunch of money there.

25 The evidence that is before the Court is
26 that Ninus Malan and Razuki are close signatories on
27 loans, right? So these are loans. It's not just
28 money handed over that he gets back. Those loans --

1 there's term sheets there, and it explains how he
2 gets his money back.

3 Now, she represents the companies there who
4 are not named in most of these causes of action.
5 There is no -- there are no real allegations of
6 wrongdoing against any of these companies. They're
7 separate defendants, and they deserve to be treated
8 separately. They shouldn't be thrown into
9 receivership because their shareholders didn't
10 transfer shares to another shareholder.

11 Razuki's claim in this case essentially is
12 that Mr. Malan, who has these LLC membership shares
13 in the different corporations, didn't hand over his
14 shares to them. Now, I'm a shareholder in Apple
15 computer. And if I promise to give you my shares in
16 Apple computer and I don't do that, that doesn't
17 entitle you to sue me and then gain control over
18 Apple computer and throw it into receivership until
19 I give you my shares, which is what he's asking to
20 do here. So that doesn't make sense. There's no
21 allegations that these separate entities here --
22 San Diego United, Flip, Roselle, and Mira Este --
23 that they themselves have done anything wrong. It's
24 not in their complaint.

25 SoCal's claims -- they're going to make
26 claims under their -- their claim is basically that
27 they shouldn't have been fired and that firing them
28 was illegal, that they have -- they have a right to

1 be managers forever until we go through mediation,
2 arbitration, and then maybe a trial.

3 But the section of this that they're going
4 to cite, which I brought it before in past hearings,
5 is 9.3, dispute resolution. That's an arbitration
6 clause. All that does is give us the chance to
7 compel them to go to arbitration. It gives us the
8 chance to sue them for breach of the contract,
9 because they filed this lawsuit as a plaintiff in
10 intervention without going through the dispute
11 resolution process that they are adamant has to be
12 followed for every single dispute.

13 But that dispute resolution process here
14 refers to lawsuits, mediation, arbitration,
15 third-party mediators. It is not about firing
16 people. Firing people is this objective 6.2 that
17 says that a person can be -- that a manager can be
18 terminated if they're given notice, given a letter
19 in advance. They were doing that. That was done.
20 The letters are in the record.

21 They also claim that they have an option
22 and that by firing them, they didn't get to exercise
23 their option or something. The options expired
24 before they filed the lawsuit. Every one of these
25 options had expired, and they're only entitled to
26 that option if they purchased it. They didn't
27 purchase the option for Mira Este or for Roselle.
28 They purchased the option for Balboa, but it expired

1 on June 30th, 2018, according to Section 8.2 of the
2 Balboa management agreement.

3 They will come up here next, and they will
4 argue that there's a letter saying that they get to
5 extend that option. That letter actually is
6 followed by -- it was an offer that our client made
7 to them saying, We'll extend that for you. And they
8 actually rejected it. That letter is also in the
9 record.

10 And in that rejection letter, they said,
11 No, I will not agree to this tolling of the option
12 date unless you also agree to toll the option dates
13 for Mira Este and Roselle. Why? Because they
14 couldn't afford the \$3 million purchase price under
15 the options. They wanted to wait until they had
16 more money. We didn't agree to that, and they're --
17 you'll find nothing in the record saying that we
18 did. So those options have all expired. SoCal
19 doesn't have a case. Their whole case is based on
20 misinterpreting what the contract is.

21 And finally, the -- a legal issue with the
22 receiver -- or with this receiver is Rule 3.1179
23 that says that the parties seeking the appointment
24 of a receiver may not directly or indirectly require
25 any understanding with any receiver whom it intends
26 to nominate, and the receiver may not enter into any
27 such contract concerning its role -- the receiver's
28 role, how they'll administer the receivership, how

1 much they'll charge, or which third parties they'll
2 hire.

3 When they came into court and asked for
4 this receivership, they said, We have an arrangement
5 with the receiver that they will rehire SoCal,
6 SoCal, a party, a party to this action. In their
7 moving papers -- this whole thing started with
8 that -- they said the receiver will hire SoCal. It
9 was a legal avenue issue. That violates 3.1179.

10 And then the receiver did hire SoCal. So
11 not only did they have an arrangement with Razuki to
12 hire SoCal, they also now have an arrangement with
13 SoCal, a party to the case, to rehire them. Today,
14 again, they have asked that the receiver be allowed
15 to rehire SoCal. That's an arrangement with the
16 receiver they're not allowed to have. It's an
17 arrangement that SoCal has with the receiver that
18 they're not allowed to have.

19 The receiver is a neutral -- they're not
20 supposed to act for the benefit of any party. SoCal
21 is a party. They're at this table. If they're
22 rehired, it violates the whole purpose of the
23 receivership. They're a party to this case. And so
24 appointing this receiver or allowing SoCal to become
25 the manager again, being hired by the receiver,
26 would violate the whole point of a receiver, which
27 is to hold the property in trust for the Court. And
28 they owe a fiduciary duty to all the parties.

1 And we filed a cross-complaint yesterday
2 that explains that -- the oral agreement that they
3 mention in their complaint. In our verified
4 cross-complaint, we explain the extent of that
5 agreement. It -- they -- these guys have known each
6 other far longer than the couple of years that is
7 implied in their pleadings, and they're -- their
8 relationship encompasses dozens of properties. This
9 is a quiet title action that goes down to a number
10 of MMM, something like that.

11 There's a lot more to this than just these
12 dispensaries. So those other properties would need
13 to be put in receivership if we're going to start
14 putting the things that are arguably part of this
15 partnership in there, Sunrise and Super 5 at the
16 very least, which they don't mention any of that.

17 They don't mention Sunrise or Super 5 in
18 their pleadings because they don't want to -- he
19 doesn't want to give that up. He's trying to take
20 Malan's stuff without having to put any of his own
21 stuff into the receivership.

22 So legally, their claims fail. The
23 receiver -- this receiver shouldn't be appointed,
24 and those are the points that I wanted to make.

25 THE COURT: Just one question. Counsel,
26 how many real properties have been transferred into
27 RH [sic] Holdings?

28 MR. WATTS: As far as I know, none have

1 been transferred into RM Properties.

2 THE COURT: That's my answer too, none.

3 All right.

4 MS. AUSTIN: I have a few quick points.

5 THE COURT: Can you do this in five
6 minutes, because --

7 MS. AUSTIN: Or less.

8 THE COURT: Ah, that's nice, Counsel,
9 because I want to give them at least a couple
10 minutes.

11 MS. AUSTIN: Right. I think that Mr. Watts
12 did a great explanation of the law. Ms. Leetham did
13 a great explanation of the facts, and I just want to
14 clear up three quick issues.

15 Number 1, as the Court is well aware, there
16 is a huge difference between -- in corporate law
17 between a financial interest and a control interest.
18 And even if Mr. Razuki got everything he wanted, he
19 got 75 percent of Mr. Malan's interest in everything
20 that Mr. Malan owns, there would still be a
21 50 percent interest by Mr. Hakim and a 25 percent
22 interest by Mr. Malan at least in Mira Este, which
23 is a controlling interest.

24 Mr. Razuki would have zero ability
25 whatsoever to have any control over Mira Este at any
26 point in time. He'd have financial gains or losses
27 if he won, yes, and if it was all his way. Yes,
28 that would happen, but he would have zero control.

1 So there's no point of a receiver in a place to have
2 control over the actions of what's going on when he
3 wouldn't even be entitled to that, to make those
4 decisions if he had everything he wanted. That's
5 the first point that I want to make.

6 The second point that I want to make is
7 that -- with regard to Mr. Yeager and the
8 accounting. "Where is the money?" is this ongoing
9 theme. Where's the money? Who's going to get it?

10 When -- before all of this transpired, I
11 met with Mr. Yeager many times over what is required
12 to the City of San Diego, what is required during --
13 for -- to make -- when they were all playing nice
14 together in the sandbox, to make this transaction
15 work.

16 And in that approximate four-month period,
17 not one document, not one financial accounting was
18 produced by Mr. Yeager to Mr. Malan. I don't know
19 what he gave to SoCal, but he never provided any
20 financial information to us. We asked for
21 accountings. We asked for documents. We still
22 didn't get any of that.

23 So the idea that in two weeks, Mr. Henkes
24 hasn't been able to provide the total summary
25 report -- I don't know what Mr. Yeager was doing in
26 there, but two weeks is a very short period of time.
27 Money is coming in. Money is being spent. That
28 should continue to be allowed to occur. If we want

1 to know where the money is going, we don't need
2 somebody to control the money. We need somebody to
3 tell the Court what's going on.

4 And we would ask that if the Court is
5 moving down this path of a receiver, one, we need a
6 different receiver. But, two, we need only somebody
7 to tell the Court what's going on with the money.
8 You had already said in the prior hearing that you
9 would tell us how to spend the money. You just
10 wanted somebody to tell us where the money was.
11 So --

12 THE COURT: How much.

13 MS. AUSTIN: So how much money is coming
14 in. And we know that there is a -- the dollar
15 figure you have in the records of what has been
16 received by Balboa. It is a marketing driven
17 industry. That sounds so hard to believe, but --

18 THE COURT: It does.

19 MS. AUSTIN: -- it absolutely is. Sign
20 twirlers, which will be banned soon. But sign
21 twirlers, billboards, Weedmaps, which is an online
22 service, if you're not familiar with it. Probably
23 not.

24 THE COURT: I'm not.

25 MS. AUSTIN: Weedmaps, other online
26 marketing services. Those things are expensive.
27 That's what drives revenue. The marketing budget
28 that Mr. Knopf can tell you for his -- the other

1 dispensary he manages in Point Loma is a huge
2 portion of their budget. So that has to be
3 brought -- accounted for in this whole process.

4 The last thing I will say -- and I will
5 just say it very briefly, and you can ask me
6 questions later if you want -- I did not represent
7 Synergy at the time that I made that statement. I
8 did not represent Synergy until the engagement
9 letter. I had the office pull it. It was signed on
10 August 27th. I have authority from Synergy to
11 disclose that to the Court.

12 And on -- another attorney -- we have
13 several attorneys in the office. On the date that
14 the operating or -- I'm sorry -- the articles of
15 organization was filed -- filed, and as we generally
16 do, when we're going to represent a client, because
17 we had done business with Jerry Baca in the past --
18 thank you. I was drawing a blank.

19 THE COURT: I know who Mr. Baca is too.

20 MS. AUSTIN: Because we had done business
21 with him in the past, Richard in my office went
22 ahead and filled out the articles of organization,
23 asks, "Do you want us to be the agent for service
24 for process?" They say yes. We're not a registered
25 agent, so they put me down individually. I didn't
26 even know about it until I read the papers this
27 morning.

28 THE COURT: Your turn.

1 MS. AUSTIN: Under five minutes.

2 THE COURT: Very good, Counsel.

3 MR. GORIA: Thank you, Your Honor. It
4 seems like one of the big points the Court has been
5 concerned about is money at Mira Este. Plaintiff's
6 counsel has repeatedly distorted this issue of this
7 \$200,000. Let me clear that up first, because
8 that's really a digression. That's really not where
9 I really want to go with the time I have, but let me
10 clear that up to at least explain to the Court what
11 was happening and what is happening in Mira Este.

12 THE COURT: Please.

13 MR. GORIA: When Synergy took over the
14 first week in August, they did something that SoCal
15 had not done in seven or eight months. They opened
16 the facility. They opened it for business. They
17 started negotiating with producers and manufacturers
18 to come in, set up your operation, and this is the
19 deal we're offering: We will take 10 percent of
20 your gross revenues or -- in the case
21 of EdiPure, 10 percent of your gross revenues or
22 \$30,000, whichever is more.

23 Okay. So as I explained in our paperwork,
24 EdiPure had \$200,000 in preorders. Okay.

25 So 10 percent of 200,000, higher math tells me
26 that's 20,000. Instead of the 20,000, Mira Este
27 Properties was able to receive 30,000 for the first
28 month of operation by EdiPure at the facility.

1 EdiPure goes ahead and spends 50- to
2 \$100,000, because that's what it costs for these
3 manufacturers to set up shop in tenant improvements
4 and other expenses. So EdiPure is in there.
5 They're the only manufacturer at the facility. They
6 have paid the 30,000 in cash. They have given it to
7 Mr. Baca. Mr. Baca has paid overhead expenses to
8 the tune of about 20,000, I believe, 22,000. He's
9 got about 7- or \$8,000 left. That's it. That's
10 where this 200,000 came in.

11 The whole point of even raising the 200,000
12 wasn't to show that this is net profit. It was
13 never represented to be net profits to Mira Este.
14 It was represented just to be this is the kind of
15 profitability that this facility can generate. Look
16 how quickly Synergy got it done.

17 THE COURT: Let me interrupt. Is -- it's
18 EdiPure? Am I saying it correctly?

19 MR. GORIA: EdiPure.

20 THE COURT: E-d-i-p-u-r-e, right?

21 MR. GORIA: Correct. As I understand it --

22 MS. AUSTIN: Yes, it's EdiPure.

23 MR. GORIA: -- it's a brand.

24 MS. AUSTIN: It's a brand.

25 THE COURT: Is -- currently, today, is
26 EdiPure the only entity in Mira --

27 MR. GORIA: Yes.

28 THE COURT: Period?

1 MR. GORIA: Right, period.

2 THE COURT: Is the equipment from SoCal
3 still there?

4 MR. GORIA: Yes.

5 THE COURT: Next question: Is it being
6 used?

7 MR. GORIA: No.

8 THE COURT: Thank you. Go.

9 MR. GORIA: Okay. So that brings me to the
10 real thrust of my client's position and something
11 that the Court alluded to at the beginning when it
12 said that on the one hand, one side says, If you
13 leave the receiver in, it's going to spell death to
14 the facilities. If you take it out, it's death to
15 the facilities.

16 Well, one thing -- you know, Ms. Griffin
17 covered a whole lot of ground. A lot of feathers
18 were ruffled. But one thing she didn't even mention
19 was the fact that not one single manufacturer or
20 producer will deal with the receiver. That's the
21 real thrust of the matter as far as Mira Este goes.

22 We have listed -- in Mr. Baca's
23 declaration, we listed ten different people that
24 they were negotiating with, they were on the verge
25 of closing the deal with, until August 20 comes
26 along and the receiver gets appointed and they back
27 off on it.

28 And it's understandable now. I wish this

1 had happened before August 20, but it's
2 understandable, in hindsight, why it happened.
3 These producers are spending 50- to 100,000 of their
4 own money to start up the operation. But secondly,
5 even with that at risk with the receiver, who may or
6 may not end up liquidating the facility -- even
7 without that uncertainty, most of them said they
8 don't want to deal with the receiver for fear of
9 trade secret infringement, for fear of losing the
10 confidentiality.

11 Let me read to you, if I can, briefly a
12 couple of comments by these producers. This is from
13 the horse's mouth, so to speak. Robert Torrales
14 (phonetic), who, as he put it in his declaration,
15 says, quote, We were extremely close in putting
16 together an agreement, but I recently found out I
17 would be dealing with a third-party receiver instead
18 of Chris Hakim. Cannabis is a sensitive business
19 and I have several trade secrets I would not want
20 exposed to a third-party receiver. At this time all
21 negotiations had been on hold until the receiver is
22 definitely removed from the Mira Este facility.

23 In Mr. Baca's declaration, I have listed --
24 what is it? -- A through J -- yeah, A through J
25 different companies that they were negotiating with
26 and were on the verge of closing the deal with to
27 bring them in under the same basic deal as EdiPure,
28 10 percent of the gross revenues versus 20,000 or

1 30,000 minimum. That would have generated \$120,000
2 minimum -- minimum per month up to 400,000,
3 depending on the sales of these companies. Instead
4 we're left with EdiPure's 30,000, which is not even
5 enough to cover debt service.

6 You know, Synergy is going to be out. If
7 they're stuck with the receiver, they can't --
8 there's no way they can profit. There's no way they
9 can generate enough money to pay themselves with
10 EdiPure. EdiPure is the only one they can count on,
11 and we don't know how long that's going to be. But
12 30,000 from EdiPure each month is just not going do
13 it. So the debt service alone is 25,000 principal
14 and interest. Taxes and insurance exceed 30-, and
15 then that doesn't even cover overhead.

16 And on top of that, there was a statement
17 here to the effect that Synergy is required to pay
18 35,000 in rent. Well, the 35,000 is supposed to
19 come from the revenues generated from producers and
20 manufacturers. That's not going to happen. That's
21 certainly not going to happen, so the rent's not
22 going to get paid.

23 So again, it's not hyperbole or an
24 exaggeration to say that Mira Este is going to have
25 to close. In fact, if I could just make that
26 point -- and I'm not saying this just by way of
27 argument. My client's marching orders here were if
28 the Court doesn't remove the receiver, then the next

1 best approach -- the next best thing from our
2 standpoint is just to sell the facility. We
3 can't -- it can't be worked with the receiver in
4 place. It just can't be worked. So we would want a
5 sale of the facility.

6 Now, you know, there was some --

7 THE COURT: My thought is, anybody want to
8 buy it?

9 MR. ZIMMITTI: We got some on the way. We
10 got plenty of money.

11 MR. GORIA: I think there may be some talk
12 in that regard. But the reality is that, as
13 Mr. Watts explained, the claims of the plaintiff are
14 colorable, and I don't think they would support a
15 receiver even if we could work deals with
16 manufacturers, but the simple point of it is we
17 can't.

18 THE COURT: I gotcha.

19 MR. GORIA: And that has not -- there's
20 been nothing said from the other side about that.
21 Nobody has said, "Oh, yes, you can. Yes, you can.
22 You're the receiver. Here are the manufacturers
23 that will come in." So that's an unrebutted,
24 undisputed point.

25 And in terms of Mr. Razuki's position
26 here -- and again, my client in a way doesn't have a
27 dog in the fight between Mr. Razuki and Mr. Malan.
28 But my client put most of the money, the majority of

1 money, into this Mira Este plant. He put 420,000
2 cash into this deal. He was the qualified borrower
3 to get the \$2 million loan. He's been working for
4 the better part of two years himself getting these
5 licenses and doing all kinds of other things. And
6 what is he facing? He's facing a complete loss of
7 all of that money if the -- if the receiver is left
8 in place.

9 For that reason mainly and because of the
10 risk to the facilities' viability, we're asking that
11 the Court impose a bond based on the value of the
12 facility. That's what my client stands to lose.
13 He's got 420,000.

14 There was an estimate given by -- a pretty
15 viable and believable estimate given by SoCal that
16 they would pay \$10 million for that facility.
17 Five million was the option price after January --
18 June 30th of 2018. That's in the management
19 agreement between SoCal and Mira Este.

20 If they're going to -- if the Court is
21 going to continue the receiver, then my client's
22 facing a complete loss of his investment, and that
23 should be the bond or at least half of that to
24 represent his interest.

25 That's one other point, Your Honor. There
26 has never been a challenge to the fact that my
27 client is entitled to one half of the profits -- one
28 half of the entire facility at Mira Este. Nobody's

1 challenging that. Plaintiff isn't challenging that.
2 SoCal isn't challenging that my client's entitled to
3 half interest, and yet the appointment of a receiver
4 is going to damage and very likely irreparably
5 damage his interest in that facility.

6 Now, I guess I should mention a couple of
7 other points that were the subject of some malicious
8 distortions by the plaintiff's counsel. I don't
9 think -- I think they're red herrings, but I'll just
10 mention them just in case they had some kind of an
11 impact on the Court.

12 This whole business of this contract
13 proposal, it is a red herring. What happened was my
14 client and Mr. Malan never hired this contractor to
15 actually do the work. That proposal was dated, I
16 believe, in June of 2017. Okay. So the proposal
17 was never followed through with, but it was an
18 itemized proposal that listed, you know, in an
19 itemized fashion, the labor and materials that this
20 contractor was going to provide.

21 My clients went ahead and subcontracted out
22 the work. They actually spent more than the
23 contract proposal, but they used the proposal to
24 inform SoCal of the kind of work, labor, and
25 materials that went into the project, because what
26 they did ultimately was somewhat similar to what
27 that contractor had proposed.

28 There was no -- there was no attempt to

1 defraud SoCal. I'm not sure -- you know, my client
2 acted aboveboard on that, as well as all the other
3 things. He hasn't done anything that even
4 approaches any kind of fraud or embezzlement or
5 anything like that.

6 What he's got here, though, is a facility
7 that's worth potentially \$10 million, and he's faced
8 with a receiver who's going to kill the business.
9 And that's, frankly, where we're at. So it's our
10 request that -- let me make one other point that I
11 was wanting to make on this in terms of other orders
12 the Court can make.

13 The deal with Synergy requires that all
14 monies go into a designated account, okay, deposited
15 into a designated account that can only be withdrawn
16 by the dual signatures of Synergy and Mira Este
17 Properties, LLC.

18 So our proposal was this: Look, even if
19 Mr. Razuki has a viable claim to one -- to
20 37 percent of Mira Este, which is the way it is --

21 THE COURT: I got it.

22 MR. GORIA: -- three-quarters of a half,
23 37 percent -- not even 51 percent, 37 1/2 percent.
24 Okay. What we propose is put that 37 1/2 percent
25 plus, you know, even Mr. Malan's 12 percent, which
26 I'm sure Mr. Malan and his counsel would object
27 to -- but be that as it may, put their half and
28 leave it in the designated account with a court

1 order saying that money will remain in the
2 designated account pending further order of the
3 Court. Don't touch it.

4 I mean, I'm talking about the net profits
5 that make up 50 percent of the total net profits
6 earned by Mira Este. Leave it in that designated
7 account. You can make the order binding on both
8 Synergy and Mira Este properties and Mr. Hakim.
9 Leave it in there. Don't touch it. We'll await
10 further order of the Court.

11 That is really all that Mr. Razuki is
12 entitled to is a share of the profits. He's not
13 entitled to any ownership in Mira Este Properties,
14 LLC that -- for the reasons that Mr. Watts said.

15 So that would be our suggestion as to an
16 alternative, preliminary injunctive order that would
17 fully protect the plaintiff and allow the operation
18 of the facility to succeed.

19 THE COURT: Wouldn't that include, though,
20 the payment of the management fees, Counsel, or
21 would it not?

22 MR. GORIA: The --

23 THE COURT: It's, like, 40 grand a month,
24 isn't it?

25 MR. GORIA: No.

26 THE COURT: Thirty thousand a month? It's
27 one of those.

28 MS. GRIFFIN: Thirty-five.

1 MR. GORIA: Thirty-five thousand, but that
2 does cover debt service, the management fee.

3 THE COURT: And what is the debt service?

4 MR. GORIA: The debt -- 25,000, rough --
5 23,000 plus taxes and insurance.

6 THE COURT: Okay. And what's the other
7 then -- if it's 35-, what's the other 12,000?

8 MR. GORIA: I think the 35,000 is the rent
9 that would be paid from the manager to Mira Este. I
10 think that's what we're dealing with. The
11 management agreement requires rental of 35,000 to be
12 paid to Mira Este, LLC, and I believe that 35,000
13 would then go into the designated account. I think
14 that's how -- I back up.

15 THE COURT: Let's make sure.

16 MR. GORIA: I'm not sure, Your Honor. I
17 apologize. In fact, I think it's not that way. It
18 actually gets paid to a separate entity. But
19 again --

20 THE COURT: Do we know who that entity is?

21 MR. GORIA: I think -- it's not been
22 designated in the management agreement. But
23 again --

24 THE COURT: Someone.

25 MR. GORIA: Yes. And I think that that
26 35,000 would actually be used to pay debt service.
27 But again, these can all be subject to injunctive
28 orders by the Court. If you want to have one half

1 of that for debt service set aside, that is far more
2 beneficial not only to my client but also to
3 Mr. Razuki, because I don't think he's -- I don't
4 think he benefits from a failure of that facility.

5 THE COURT: Under that analysis, do you
6 think there would be any net profit?

7 MR. GORIA: Absolutely. Absolutely. We
8 have -- we have --

9 THE COURT: Monthly?

10 MR. GORIA: Absolutely. We have
11 manufacturers and producers lining up to get in.
12 There aren't that many facilities.

13 THE COURT: Slow down. So you're telling
14 me -- you know, Counsel, you know, a lot happens in
15 these hearings, so I'm just trying to get a feel
16 here. So, you know, you may not know. Let's be
17 honest. Okay?

18 But I -- but you're telling the Court,
19 Judge, listen, if you go this other way, there will
20 be money and some of that money, whatever it is,
21 will be put into Razuki -- an account for Razuki,
22 because there will be a profit? Because I'll tell
23 you right now I've seen no profit. I've heard
24 numbers, but I haven't seen dime one. And it's not
25 you, Counsel. It's just -- do you understand?

26 MR. GORIA: I understand. But let me --

27 THE COURT: So in terms of put it in net
28 profit, I think, well, that's zero. That's what I

1 think. Now, I could be dead wrong, Counsel. But
2 respond to that.

3 MR. GORIA: Yes. Synergy was in there one
4 week and they got a commitment from EdiPure to pay
5 30,000 or 10 percent of their revenues. EdiPure has
6 performed. They paid 30,000.

7 THE COURT: And how much of that went into
8 the profits?

9 MR. GORIA: There were no profits because
10 we have four or five other --

11 THE COURT: Oh, yeah.

12 MR. GORIA: -- facilities -- or four or
13 five other manufacturers that we need that will make
14 it profitable, and we have them lining up. We have
15 them lining up. And we've presented evidence to the
16 Court that none of these other producers and
17 manufacturers will deal with the receiver. So we
18 won't make a profit if the receiver is in there, but
19 we have -- we cited the Court to ten different --

20 THE COURT: I read it.

21 MR. GORIA: All right.

22 THE COURT: Are they still viable?

23 Mr. Baca?

24 MR. BACA: Yes, they are.

25 THE COURT: So you're telling me you can
26 have ten more -- how do you describe these?

27 MR. GORIA: Producers, manufacturers.

28 THE COURT: Producers. They're ready to

1 go?

2 MR. BACA: Yes, we have some that are ready
3 to sign.

4 MS. AUSTIN: If I could make a little
5 clarification, just so that it doesn't -- the way
6 that sounds, it's, like, ten people are coming in.

7 MR. BACA: Yeah, not ten people. But, you
8 know, we're in negotiations.

9 MS. AUSTIN: Ten people cannot come in
10 because there's not enough space in that facility.

11 THE COURT: I got it.

12 MS. AUSTIN: There's -- those are options,
13 and I think they could probably fit three.

14 THE COURT: Okay.

15 MR. GORIA: We figured at least four.

16 THE COURT: That would possibly be another
17 hundred thousand, if it's, like, 30,000, correct?
18 Is my math right?

19 MR. BACA: Yes, maybe about 120- to --

20 THE COURT: I gotcha.

21 MR. BACA: And depending on how much they
22 grow, maybe up to 400,000, depending on their sales.

23 THE COURT: I just hear these numbers and
24 it just -- I won't say anything more.

25 Mr. -- you may have an idea there.

26 MR. GORIA: At least give it a chance,
27 because we have --

28 THE COURT: You may have an idea.

1 MR. GORIA: We have these producers lined
2 up.

3 THE COURT: Well, I mean -- no, I got it.

4 MR. GORIA: We have them lined up. And
5 there aren't that many other facilities that they
6 can turn to, but they're not willing to deal with
7 the receiver.

8 THE COURT: All right. I got it.

9 MR. GORIA: If the Court has any questions
10 of either --

11 THE COURT: No.

12 MR. GORIA: -- myself or Mr. Hakim or
13 Mr. Baca --

14 THE COURT: No. Let's leave plenty of time
15 for SoCal.

16 So take a minute.

17 MR. ZIMMITTI: Thank you. Thank you,
18 Your Honor. I'm going to try to just be concise.
19 You've heard a lot today.

20 THE COURT: I have.

21 MR. ZIMMITTI: Ms. Griffin did a great job
22 summarizing a lot of this case, and she stayed up
23 last night. I didn't. And I'm -- furthermore, I'm
24 very comfortable admitting what I don't know. I'll
25 tell you what I do know.

26 THE COURT: There we go.

27 MR. ZIMMITTI: And I know you know what's
28 coming. Calling felony forgery a red herring -- you

1 know, I almost fell out of my chair when I heard the
2 word -- the phrase "unclean hands" being battered
3 [sic] around. How could you have dirtier hands,
4 Your Honor?

5 Felony forgery. Okay. It's a wobbler, so
6 \$950 is where it wobbles into a felony. What we
7 have here, okay, and the reason why Mr. Gorla didn't
8 touch on it and saved it to the end and called it a
9 red herring, because they have no excuse for trying
10 to defraud my client, okay, of \$125,000 by not
11 only -- not only taking a pre-existing invoice --
12 okay. This thing was generated long before. Never
13 used it. But they actually inflated it.

14 This -- it's absurd to stand up here and
15 defend a criminal act and call it a nothing, a
16 nothing burger. This is exactly what we're talking
17 about, Your Honor. This is fraud. This is classic.
18 This is -- and the reason why I want to start with
19 this is because this is a pattern.

20 SoCal entered into these agreements. Okay.
21 And no -- and as we set forth, they learned that
22 there was Mr. Razuki's interests. And Mr. Malan can
23 say -- you know, he may not agree with Razuki's
24 interests, but he could have told my client, "Hey,
25 there's this guy Razuki. I think he owns all of
26 it."

27 Okay. There was also a pending lawsuit.
28 It had been pending for a year already. Didn't

1 mention it to my client. We've got reps and
2 warranties in these agreements. You think if we're
3 going to sink millions of dollars we'd like to know
4 if someone's got pending claims on the property?
5 Yeah, we'd like to know.

6 As a matter of fact, Mr. Malan had to suck
7 it up and admit it in a June 19 letter that you know
8 what? You got me. You know, fine, yeah, okay. You
9 know, he admitted to violating the rep and warranty.
10 This is an upstream fraud, and we can even go
11 further upstream into this sort of representation of
12 the Sunrise facility. We don't even have to go
13 there today, Your Honor. But the point is talk
14 about unclean hands. These contracts were breached.
15 They were procured by fraud.

16 And then you have -- and this is just
17 almost too ironic to pass up. You have counsel
18 sitting here, okay, and in declarations, so under
19 penalty of perjury, saying that this \$125,000 debt
20 was why we get to cancel, why we get to terminate
21 this agreement.

22 So we can go through the agreement. I can
23 spend all day with the agreement, Your Honor, and we
24 can talk about how it works. But basically, they're
25 picking up on this provision that talks about a
26 default triggering a termination.

27 And we can go through the dispute
28 resolution process, and it clearly embraces any

1 dispute under the contract. Calling it mandatory
2 arbitration -- of course it's mandatory. It covers
3 anything.

4 Nevertheless, this default -- this is sort
5 of -- was their crown jewel of explaining why they
6 get to terminate the agreement. And it was -- and
7 this is based on a fraud. This is the 125 -- these
8 are the tenant improvements. So this was submitted
9 to my client in March, signed by Mr. Hakim, 266,000.
10 This is saying yes, this is what we put into it.
11 Pay us the 125-.

12 Okay. Now, listen. You know what? If we
13 did not happen to pull up this document and look at
14 the DocuSign properties --

15 And you know what? If you're going to
16 backdate something and sign it, maybe you ought to
17 consider not using an electronic signature. Okay?
18 But you did.

19 And so what we did is we went to
20 Mr. Grippi. Mr. Grippi says, Guess what? I never
21 did any work. Furthermore, I've never even seen
22 this invoice.

23 I said two. One was for about 190,000.
24 And then Mr. Grippi, thinking this was legitimate,
25 went back a second time and said, You know what? I
26 changed the ceiling tiles. Here's 180,000, thinking
27 these were, like, legitimate businessmen who wanted
28 his business.

1 No. They sat on it and then they took it
2 and then they altered it, and they beefed it up.
3 Okay. Then they signed it, and then they sent it to
4 my client saying, "Here's proof."

5 My client is asking, Well, we have -- our
6 agreement says proof of receipts. You know, we need
7 a receipt for expenses incurred.

8 Makes perfect sense to me.

9 No, you don't get that. We pay in cash.
10 We pay stuff in cash. There's no receipts for that.

11 Your Honor, this is what we're talking
12 about. This is why we're here today. Okay. We got
13 taken for a ride. There's no defense to it.
14 Honestly, if someone accused my client of felony
15 forgery, you know, I would lead with that point. I
16 wouldn't sit there and, like, relegate it to some
17 little red herring. Your Honor, there's no excuse
18 for this. And this -- again, this is a pattern.

19 We have -- we have -- you know, you don't
20 have to believe us. You don't have to believe us.
21 In fact, if I was you, I would be doubt -- I'd be
22 doubting everyone. Absolutely. And as you should.

23 But you know what, Your Honor? How is
24 everyone lying? Is Mr. Grippi, the owner of Element
25 Contractors, whose invoices went for a ride? Is he
26 lying?

27 Mr. Essary, from day one, they kicked him
28 out of -- they didn't let him in the facility.

1 They're absconding with cash in the back, claiming
2 the gunman story.

3 Do you remember the gunman story? Maybe --
4 that's -- fell out of favor recently, just like the
5 125,000 debt. We're not hearing too much about
6 that. So we want to --

7 THE COURT: Counsel, address the Court.

8 MR. ZIMMITTI: Okay. Your Honor, I'm
9 sorry. I'm sorry. I --

10 THE COURT: It's okay. It's your passion.
11 Take it down a notch. Thank you.

12 MR. ZIMMITTI: So let's do that.

13 THE COURT: Thank you.

14 MR. ZIMMITTI: So let's go -- let's go back
15 to the facts here. We have Mr. Essary trying to
16 effectuate the Court's orders. He tried to
17 effectuate Judge Medel's orders as well. He was not
18 allowed to. Every step of the way, Mr. Essary has
19 been blocked.

20 Listen, I don't know Mr. Essary. He
21 seems -- he seems straightforward. He seems honest
22 to me. And he's a court-appointed agent.
23 Mr. Essary has no reason to lie. Mr. Grippi didn't
24 have a reason to lie. Mr. Essary actually had to
25 submit -- I hope Your Honor read it -- a
26 supplemental declaration.

27 THE COURT: I read it.

28 MR. ZIMMITTI: So we have -- we have

1 defendants basically accusing Mr. Essary of saying
2 things he did not say. Your Honor, please, if
3 you're going to believe anyone, let's believe
4 Mr. Essary.

5 Now, let's go to this -- this notion of,
6 you know, Mira Este. And, you know, we hear this
7 parade of horrors that essentially once you get a
8 receiver in there, this thing is going to fall
9 apart. You know, my clients (unintelligible).

10 THE REPORTER: Your clients will what?

11 THE COURT: Yeah. Say that again.

12 MR. ZIMMITTI: My clients, SoCal, will run
13 Mira Este with a receiver, as they did it
14 previously.

15 And furthermore, they're going to provide
16 information and transparency. Mr. Essary said -- it
17 was stated here that we're not providing
18 information. This is throwing stones from a glass
19 house, because defendants have not provided
20 information Mr. Essary asked for. When Mr. Essary
21 asked for the information --

22 THE COURT: Okay. Here we go. Let me
23 interrupt you when you take a breath.

24 MR. ZIMMITTI: Sure.

25 THE COURT: I appreciate that.

26 MR. ZIMMITTI: We provided bank accounts,
27 proof of insurance, insurance we paid \$43,000 on so
28 far for Mira Este. We already provided an

1 accounting. Balboa -- Mr. Yeager provided
2 information directly to Mr. Essary. Mr. Essary can
3 speak for himself, and I think it's not fair to say
4 that Defendants -- Defendants are not providing
5 information. It's literally a black box.

6 THE COURT: Let me interrupt for a second.

7 MR. ZIMMITTI: Sure.

8 THE COURT: Did you run Balboa?

9 MR. ZIMMITTI: We did run Balboa.

10 THE COURT: Managed it, right?

11 MR. ZIMMITTI: Correct.

12 THE COURT: And I'm going to say roughly
13 May 2017 up and -- there was a little break then,
14 but up and through July 2018, correct?

15 MR. ZIMMITTI: Up until July 10, correct,
16 Your Honor.

17 THE COURT: Thank you very much. Did you
18 turn over all -- well, first of all, did Mr. Essary
19 ask for all the accounting documents for, like,
20 those months?

21 MR. ZIMMITTI: He asked for pretty much
22 everything. It was a very broad request,
23 Your Honor.

24 THE COURT: And did you turn them over?

25 MR. ZIMMITTI: I -- as far as I know, John
26 Yeager turned that over directly to Mr. Essary.

27 THE COURT: Let me interrupt for a second.

28 Mr. Essary?

1 MR. ESSARY: Yes, Your Honor.

2 THE COURT: Did you get all the financial
3 status from, say, 2017 through July 2018 --

4 MR. ESSARY: I got --

5 THE COURT: -- on Balboa from SoCal?

6 MR. ESSARY: I got -- in my report, there's
7 a copy of a financial statement provided by
8 Mr. Yeager for the Balboa operation for this year,
9 2018, up until May, and that was the last reporting
10 information that he got after SoCal was --

11 THE COURT: And that obviously came from
12 SoCal?

13 MR. ESSARY: It came from Yeager via SoCal.

14 THE COURT: Yeah, I got it.

15 MR. ESSARY: Yes, Your Honor.

16 THE COURT: Continue, Counsel.

17 MR. ZIMMITTI: Yes, Your Honor. And so I
18 think, you know, a couple things. Again, I think
19 it's not fair to dispute and attack Mr. Essary's
20 professionalism here, and I think his -- you know,
21 to the extent you would believe anyone here, I would
22 believe Mr. Essary.

23 Furthermore, we have operated
24 transparently. We are ready to do so. This -- you
25 know, under the Mira Este agreement that we had, we
26 were paying \$50,000 a month. Okay. It was -- let's
27 call it a good deal. And I think in the
28 declarations, Defendants admitted -- they indicate

1 it was arm's length. It was a good, fair deal. My
2 client put money in. We can show this. We have
3 shown this.

4 Okay. And so the notion that this thing
5 can't operate with a receiver -- we happily will
6 take over and run with a receiver. This is false
7 compromise. Either, you know, you take the
8 receiver -- oh, it's just going to fall apart.
9 Well, this is just flatout nonsense.

10 Our -- and to the extent that we were not
11 operational -- okay. And we have a very confusing
12 discussion about 200 in revenues, profits. And
13 frankly, I just -- maybe I didn't get enough sleep,
14 but I just -- I just -- I don't know. I didn't get
15 it. I didn't understand it.

16 But what I can tell you is that SoCal sunk
17 tremendous amounts of money in this facility in good
18 faith, including equipment. And also -- in fact, I
19 have here in my hand a July 9 proposal. Okay. They
20 didn't pay this yet, but it's a proposal for
21 \$198,000 -- actually, 199- if you round up -- for a
22 sprinkler system.

23 Why an automated sprinkler system? Because
24 this is, under the fire code, a Group A occupancy --
25 occupant -- occupancy, include -- which basically
26 includes use of a building or a structure or a
27 portion thereof that involves manufacturing,
28 processing, generating, or storage of materials that

1 constitute a physical or health hazard. And
2 ethanol, which is used in these manufacturing
3 processes, 98 percent, is a combustible liquid under
4 the fire code.

5 So, you know, this notion that we're out,
6 you know, taking this organization for a ride and,
7 like, trying to -- you know, that's not what we're
8 doing. The numbers prove it. We were basically
9 sinking our time and effort. We wanted this thing
10 to thrive.

11 And, Your Honor, I heard a lot of
12 metaphors. And listen, I love metaphors, okay, as
13 much as the next person.

14 Now, talking about -- now, Ms. Leetham
15 said, Well, you know, we want -- you know,
16 Mr. Razuki should want this to thrive, and we're all
17 aligned and what's the big deal here?

18 You know, there's a difference between
19 wanting something to thrive because you want it to
20 thrive or something you want to just survive so you
21 can maybe divert profits for yourself.

22 What we're saying is let's just see what we
23 have here, where all the money is going, and where
24 it went, Your Honor. We have a clear case -- again,
25 a clear case of felony forgery. Okay. And you did
26 not hear anything from counsel to mitigate that.

27 I just don't know what else constitutes
28 good cause, not only to have a receiver in place --

1 and there's absolutely nothing wrong with keeping
2 Mr. Essary in -- but also going and performing a
3 forensic accounting.

4 Look, if a third-party accountant says, you
5 know, SoCal was -- you know, look at all these
6 payments SoCal didn't make, let's talk about it. We
7 have nothing to hide, Your Honor. What the forensic
8 accountant is going to find is that SoCal, a
9 legitimate company, was doing its best. And then we
10 have just a big old black box over here, okay, that,
11 frankly, I don't even understand.

12 And we are not Mr. Razuki. We are separate
13 and we have a contract, and we have -- and ours is
14 in many ways a simpler case, and we've been,
15 basically, the victims of fraud.

16 Now, I want to also touch on this notion
17 that keeps coming up about -- you know, Mr. Watts
18 is, like, Well, damages and adequate remedies, and
19 all this stuff.

20 And listen, let's -- I don't need to tell
21 Your Honor that when you talk about property, real
22 property, money is not an adequate compensation for
23 property. I said this the last time. I'm going to
24 keep saying it. You don't just go in there and say,
25 you know, "Sue us for damages later. Just forget
26 about it."

27 You know, we have ownership rights to
28 properties. Mr. Razuki has ownership rights to

1 properties. Okay. Talking about adequate remedy of
2 law, you're in the wrong world. Okay. This is
3 just -- save it for a different case.

4 Furthermore, this notion that, you know, we
5 have irreparable harm, we have -- there's all this
6 stuff spinning around. Mr. Watts basically gave us
7 his demurrer to the complaint. We don't need to go
8 there, Your Honor, because it's actually quite
9 simple.

10 The appointment of a receiver -- and I'm
11 actually reading from *Sachs v. Killeen*,
12 165 Cal.App.2d 205 (1958). It's in my papers.
13 Appointment of -- of a receiver pendently is a
14 matter for the sound discretion of the trial court.
15 Where there is evidence that the plaintiff has at
16 least a probable right or interest in the property
17 sought to be placed in receivership and that
18 property is in danger of destruction, removal, or
19 misappropriation, the appointment of a receiver will
20 not be disturbed on appeal.

21 And actually, that's a great case, because
22 actually, some of the themes come up in here, same
23 type of thing. And if you bear with me, Your Honor,
24 I just want to read some of this opinion.

25 "Appellants contend that there was no evidence that
26 plaintiff had an interest in the property placed
27 under receivership. The argument is without merit.
28 The verified compliant and affidavit submitted by

1 plaintiff furnished ample evidentiary support for a
2 conclusion that Sachs had at least a probable
3 interest in the described property. Appellants urge
4 that the written agreement created neither a
5 partnership nor a joint venture, hence Sachs is in
6 the position of an unsecured creditor suing at law
7 to recover a debt," much like we heard today.

8 The action is not one at law, but it is
9 essentially an equitable action to obtain an
10 accounting and establish a constructive trust.
11 Further, it is immaterial whether the 1951 agreement
12 created a partnership or a joint venture. Under the
13 agreement, Sachs was to receive 50 percent of the
14 net profits from the sale of the speed control
15 device. It cannot be doubted that he had an
16 interest in the net profits.

17 And then one more -- one more point. It is
18 next -- it is next contended that Plaintiff made no
19 showing that the property put in receivership was in
20 danger of loss, removal, or material injury. The
21 argument cannot be maintained. The Court can
22 reasonably conclude from the evidence of continuous
23 misappropriation and diversion of speed control
24 profits into the assets held by the Killeens in
25 their own names, and from their concealment of the
26 actual profits, that those assets were in danger of
27 being lost to Sachs and placed beyond his reach.
28 This was a sufficient showing.

1 Okay. Again, Your Honor, what we have here
2 is a black box. Mr. Essary has not been given
3 information. We have Mr. Essary being attacked
4 personally. He's being stonewalled. We have my
5 client, a victim of fraud in -- several instances of
6 fraud. Defendants have been caught red-handed with
7 one invoice that they forged.

8 Okay. This, as far as we're concerned, is
9 essentially the tip of the iceberg, Your Honor. And
10 we cannot stand up here, melodrama aside, and talk
11 about what people are owed and, you know, You owe me
12 this and you breached because you didn't pay some
13 amount.

14 And we have actual fraud, felony forgery
15 being used to prop up a claim for a breach of
16 contract. And I want to remind Your Honor, this is
17 when we went off the tracks status quo-wise, okay.
18 When Defendants realized that they'd been
19 discovered, they manufactured this breach to kick us
20 out. That's fine. This isn't about us being a
21 party to the litigation. This was the last time the
22 businesses were run in a consistent manner, when we
23 were there. All this stuff that went on later, it
24 just -- it's a fraud. It's a fraud, like the
25 invoice is a fraud, Your Honor.

26 So -- and I -- I have to say it's also
27 quite -- quite ironic that we ended up coming full
28 circle here today, if you notice, in that

1 everyone -- you know, we're talking about an
2 accounting. I think an accounting is a great idea.
3 In fact, we need one and we need a forensic one and
4 we need one done by disinterested people, not an
5 accountant with a 10 percent interest in one of the
6 entities or that is the manager of the parent
7 company, okay, or one that signs a -- settlement
8 agreements on behalf of the management company.

9 Synergy, again -- let's talk about Synergy.
10 Mr. Gorla said Synergy cannot operate with a
11 receiver. That's a convenient position. It's just
12 not true. Synergy not only -- Synergy, as far as
13 we're concerned, is just a recent creation that's
14 set up as an instrumentality for Defendants.

15 Okay. We -- we have been running --

16 THE COURT: Explain that.

17 Synergy's here, aren't you? Who's Synergy?

18 MR. ZIMMITTI: I believe --

19 THE COURT: Mr. Baca, are you Synergy?

20 MR. BACA: Yes, sir.

21 THE COURT: Thank you, sir.

22 MR. ZIMMITTI: So Ms. Griffin, in her
23 papers -- and I can let her give you the detail.

24 Basically, Synergy just came into being
25 very recently; is that not -- is that correct?

26 MS. GRIFFIN: That's correct.

27 MR. ZIMMITTI: So Synergy is -- sort of
28 just springs up out of the ether right as we

1 approach this receiver -- notice of receiver.

2 Again, it's not tenable, Your Honor. Don't believe
3 it. You don't have reason to believe it. You've
4 heard a lot and you've heard a lot of sort of fancy
5 footwork here.

6 We are -- SoCal is completely comfortable
7 with someone who's truly a third party, but
8 Mr. Henkes -- and I'm not attacking him
9 personally -- just by virtue of his affiliations is
10 not that person.

11 Now, let's just -- you know, let's talk
12 about the equipment for a second --

13 THE COURT: Yeah.

14 MR. ZIMMITTI: -- because, you know, I've
15 never heard from day one an actual argument why it's
16 being held. We heard -- we heard a frivolous
17 contract interpretation argument. I think I dealt
18 with that in the papers. And if you have it -- and
19 I can talk about it. But essentially, now what
20 we've heard is, Well, we may give it back if there's
21 no receiver. I mean, Your Honor, we are, like,
22 crazy town here.

23 THE COURT: You want?

24 MR. ZIMMITTI: So here's what we want, and
25 I want to be very clear about this. SoCal is ready
26 to step back in and handle -- and run this property
27 and make it profitable and do it in the right way
28 and honor its agreement, and it would like to use

1 its own equipment and be happy to do so. They'd
2 like to come back in Balboa, full transparency, and
3 run these -- these facilities.

4 If -- in the event Your Honor does not
5 allow that -- and again, from our point of view, it
6 was the status quo. Status quo, again, was a
7 product of fraud, like, actual fraud, forgery.
8 Okay. It's that simple.

9 However, if Your Honor, notwithstanding,
10 wants to credit that argument -- and I think it
11 shouldn't be -- then we want our equipment back.
12 You know, if Your Honor wants to appoint another --
13 again, we do not recommend Synergy and Far West, for
14 obvious reasons.

15 If Your Honor wanted to appoint another
16 entity -- but again -- which would have its own
17 issues, because they would have to come in and learn
18 things, whatever. We can live with that. We don't
19 want it, but we want our -- we need our equipment.
20 It's sitting there.

21 Counsel is saying it's not even being used.
22 I don't know if that's true, but that's even more of
23 an argument to give it back to us and not to hold
24 onto it. There's no -- there should be no leverage.
25 But again, sadly, this is consistent with basically
26 everything we've seen in this case, Your Honor.

27 THE COURT: And that's about \$400,000 worth
28 of --

1 MR. ZIMMITTI: Just over 400,000. I want
2 to also stress that we don't have an accounting; we
3 haven't been -- in Balboa. We've been kicked out.
4 There's also equipment in Balboa.

5 What I would propose is that if we're going
6 to get our equipment back, we can go in there with
7 the receiver and we can do this peacefully with the
8 receiver. We don't want any showdowns over there.
9 We want to do this right.

10 THE COURT: Thank you.

11 MR. ELIA: Your Honor, I have the burden.
12 May I just have two minutes on the law, just two
13 minutes?

14 THE COURT: You have a couple more than
15 that.

16 MR. ELIA: Okay. Thank you, Your Honor.
17 Your Honor, I'm going to reply to Mr. Watts'
18 argument about the law. Now, we have to show that I
19 have a property -- that my client has a property
20 interest.

21 THE COURT: Uh-huh.

22 MR. ELIA: There's a settlement agreement,
23 and it's got two pages of recitals. And it
24 identifies the properties, the Balboa property,
25 where the dispensary is, and the Mira Este property.
26 And they're saying, Well, forget this contract. If
27 it's void, then, you know, it's void. It doesn't
28 apply, but --

1 THE COURT: Can I interrupt just for one
2 second?

3 MR. ELIA: Yes, Your Honor.

4 THE COURT: Let me finish -- and I'm sorry.
5 Just real quick, what is SoCal's contention as to
6 whether the options are viable or not, yes or no?

7 MR. ZIMMITTI: They're viable, Your Honor,
8 and I can explain that.

9 THE COURT: No, you don't have to.

10 MR. ZIMMITTI: Okay.

11 THE COURT: I know your argument. I think
12 I do.

13 MR. ZIMMITTI: I can -- if you're not
14 sure --

15 THE COURT: I'm positive.

16 MR. ZIMMITTI: All right. I want you to be
17 positive.

18 THE COURT: Go ahead, Counsel.

19 MR. ELIA: So, Your Honor, we were aware
20 that this argument would be made. That's why in our
21 complaint we pled in the alternative. We pled that
22 everything should be into RM and that -- if this
23 contract is held to be unenforceable, at least then
24 we have a partnership interest evidenced by an
25 eight-page settlement agreement with two pages of
26 recitals that specifies exactly the partnership
27 assets. It's even defined as partnership assets.

28 It's clear as daylight that my client

1 funded -- there are documents that we have submitted
2 to the Court that show that my client put in 5 or
3 \$6 million, Your Honor, into these dispensaries. We
4 have documents. Now, they may be that thick, but we
5 were being efficient.

6 What they showed is this much documents,
7 and what those are are the electric bills and things
8 like that that they used to operate while they were
9 in with the money that we funded. Now, I say this
10 with all respect to Mr. Malan. But when my client
11 met Mr. Malan in 2012, my client paid his child
12 support obligations. Okay? Not only did he --

13 THE COURT: I'm done with the history,
14 Counsel. I've read it.

15 MR. ELIA: My client put in 5 or
16 \$6 million. It's there. For them to say it's not
17 there -- all you have to do is look at that.

18 Now, in addition to that, in Mira Este,
19 Mr. Gorla -- Mr. Gorla said that in Mira Este that
20 his client put in more money. That's not true. My
21 client paid \$200,000 for the business tax
22 certificate. He put in another 200,000 in cash.
23 They each put in approximately \$400,000.

24 In addition to that, my client encumbered
25 22 properties to obtain the loan. They have
26 \$8 million in equity. This loan is currently in
27 default. Mr. Hakim put in one property that's got a
28 couple hundred thousand dollars in equity. We put

1 in \$8 million of equity and 22 properties, and
2 that's in default.

3 Now, why is there irreparable injuries?
4 They are granting options to people on properties
5 they don't own. They gave Synergy royalties in
6 perpetuity on properties they don't own. That's
7 irreparable. We stand to lose not only our
8 properties but another 22 properties, and then we
9 have encumbered more properties on the Balboa.

10 Mr. Malan has not put in one red cent. He
11 has not put in or encumbered one property. That is
12 a fairy tale, Your Honor. We have provided the
13 paperwork. Everything is there. At the last
14 hearing, Your Honor found that the likelihood of
15 success was in the plaintiff's favor.

16 Now, when SoCal was in operation,
17 Your Honor, they operated peacefully for ten months.
18 There was no issues. There was only an issue,
19 remember, when they found out about Mr. Razuki's
20 interest and they falsified this, Oh, well, you
21 didn't pay us, you know, this reimbursement of 125-
22 You're out. But for ten months, they operated and
23 they made money and there were no problems.

24 Now, Your Honor, they came here and they
25 said, Well, there's all these alternative remedies.
26 You can do this -- other less restrictive ways you
27 can do it. We had a receiver in and that didn't
28 work. Do you think for a second that if we do a

1 writ of attachment or ask for an accounting these
2 folks are going to actually provide accurate
3 financials to us? Not in a million years. It will
4 never happen.

5 And you know why, Your Honor. Because
6 things get falsified. Court orders get violated
7 four hours after Mr. Malan sits here. He tries to
8 trick the -- and violate your own order. Your
9 Honor, these are the people we're dealing with. Do
10 you think for a second we're going to go anywhere
11 with alternative remedies? They blocked the
12 receiver.

13 Now, a receiver is an extension of
14 Your Honor. He says he only has problems with this
15 side. He doesn't have any problems with us. That,
16 Your Honor, is very telling.

17 Now, there -- Mr. Gorla made this argument
18 that we only own 37.5 percent of Mira Este. That's
19 not true. If RUPA applies, The Revised Uniform
20 Partnership Act, then under that act, my client has
21 the majority and gets to make the decisions for that
22 50 percent.

23 If we're to enforce the settlement
24 agreement, if the property gets put into RM -- and
25 under that operating agreement, my client is the
26 majority owner and he controls that 50 percent. So
27 with his 50 percent that my client controls, either
28 way -- and Mr. Hakim's 50 percent, they're

1 deadlocked. That's -- so if you have a deadlock,
2 you need an independent -- either a receiver or a
3 provisional director to break the deadlock.

4 There was some mention about an accounting
5 in the settlement agreement that required my client
6 to do an accounting of the settlement agreement.
7 They said both parties. It's clear. Your Honor can
8 read it. There was no obligation -- a one-sided
9 obligation against Mr. Razuki. It said very clearly
10 both parties.

11 And, Your Honor, we are here today -- we
12 would be happy to put our interest in Sunrise and
13 our interest in Super 5 into RM so long as they put
14 theirs. And there was a letter -- this whole thing
15 that they went their separate ways in February is
16 nonsense.

17 A letter was sent by the attorney that
18 drafted the settlement agreement -- and I believe it
19 was April or May -- to Mr. Gorja's firm saying, Hey,
20 what the heck's going on? Why haven't you put in
21 your stuff? We're ready to put in our stuff. Why
22 haven't you put in yours?

23 Oh, well, you know, we're in talks with
24 SoCal and we're trying to do these deals, and we
25 don't want to muddy it up. That tells the story
26 right there. That explains what happened. We never
27 went our separate ways. We never -- there was no
28 oral modification of this agreement. That didn't

1 happen.

2 What is trying to happen is so long as they
3 control the dispensaries, vendors won't do business
4 with the receiver. Why is that? It's not going to
5 be the receiver. It's going to be another manager.
6 Why wouldn't they do business? They did business
7 for ten months. But they're telling you that
8 because it's their buddies and, you know, that's
9 what they told their buddies to say.

10 What is happening is really very clear in
11 this case, Your Honor. We -- my client has
12 substantial assets. He funded everything. It's
13 evidenced by a settlement agreement, and what
14 Mr. Malan is trying to do is steal this away from
15 him.

16 And so long as there's no receiver and so
17 long as they control a cash business, we're never
18 ever going to get a true accounting. And we don't
19 trust these folks to manage millions and millions of
20 dollars of our assets.

21 Thank you, Your Honor.

22 THE COURT: Mr. Richardson and Mr. Essary,
23 what do you say? You've now heard 2 1/2 hours of
24 argument. Do you want to say anything to the Court?

25 MR. GRISWOLD: Sure, Your Honor.
26 Richardson Griswold, counsel for the receiver.

27 THE COURT: Here's a concern.

28 MR. GRISWOLD: Sure.

1 THE COURT: On the one hand, I'm being
2 told, Judge, if I leave the receiver in, they're
3 going to go out of business.

4 Is that a fair statement, Mr. Baca?

5 MR. BACA: It makes it very difficult, yes.

6 THE COURT: I appreciate that. He says he
7 can't do business. He's got ten people who want to
8 come in, and they're only going to do it if there's
9 not a receiver. What's your response or is there a
10 response?

11 MR. GRISWOLD: Right. I can't speak from
12 any sort of industry knowledge or what those
13 businesses fear or assume if they work with a
14 receiver. I heard something about trade secret
15 fear. I'm not sure that's really a concern. But
16 of course, that could be rectified by, of course, a
17 nondisclosure agreement, certainly as an officer of
18 the court, if they felt they would even be
19 disclosing trade secret information, as a -- it
20 sounds like a subproducer working under a contract
21 with a management company, like Synergy. So I don't
22 see the concern there.

23 But again, I think -- I read the
24 declarations. I read declarations from third
25 parties that claim that they don't want to work for
26 a receiver, but I also heard that there's some sort
27 of clamoring, because there's a limited amount of
28 places that you can produce or manufacture these

1 products.

2 So I'm not sure if this is a market issue
3 whereby if -- if all folks simply would not work
4 with the receiver because they're concerned about
5 trade secrets. I didn't hear anything else other
6 than the trade secret aspect. So I can speak
7 legally to feel that that can be rectified from a
8 trade secret concern. I didn't hear anything else
9 specifically to the industry that would cause
10 concern as to why working with the receiver would be
11 a complete block.

12 If the arrangement would be that everyone
13 would be making money, which it sounds like it is
14 the hypothetical situation, that everyone would be
15 making money and be successful, I'm not exactly sure
16 what the roadblock is.

17 THE COURT: Mr. Essary, do you want to say
18 anything?

19 MR. ESSARY: Well, Your Honor, again, I've
20 had to weather, like all of us have in this room,
21 several accusations and statements and things and
22 that sort of thing. I'm a big boy, but my concern
23 really is -- and I don't have a bias. My only bias
24 really is what you want me to do, as always.

25 But I can tell you that it's easier to get
26 along with some parties who cooperate, and it's
27 really hard to get along with other parties who
28 don't cooperate. I've had a hard time doing my job.

1 THE COURT: All right. Everybody, you all
2 got five minutes apiece. I'm going to start --

3 Well, you've had your five minutes.

4 So five minutes, five minutes, five
5 minutes, and then the Court is going to make an
6 order, hopefully.

7 MS. AUSTIN: You've got a bunch of things
8 to say, but I've got --

9 THE COURT: Did Patty go?

10 THE BAILIFF: I'm not sure. Do you want me
11 to go check?

12 THE COURT: Yeah. We're still going to go,
13 though. I think she leaves at 4:30. That's
14 all right. Don't bother.

15 MS. AUSTIN: I have two things to say, and
16 then I'm going to let Mr. Watts talk. One is that
17 there was a claim that Synergy sprung out of the
18 ether and that they're all affiliated with us. This
19 is an incestuous industry. We're all related in one
20 way or another. Every one of the San Diego
21 operations is -- one way or the another, they're
22 tied to one another. So I made the introduction. I
23 made the introduction of one client to another
24 client. That's how they sprung out of the ether.

25 THE COURT: How long has Synergy been in
26 business?

27 MS. AUSTIN: Synergy just started, but I
28 had a person working at this facility looking for a

1 person in another facility. So there was -- now
2 Synergy comes in and says, Hey, I found all of these
3 new clients. That is a --

4 THE COURT: I didn't understand that,
5 Counsel.

6 MS. AUSTIN: Synergy was formed on the
7 20th -- 27th, 26th -- 23rd of August, 2018, but
8 Mr. Baca has been a client of mine for four or
9 five --

10 MR. BACA: Five years.

11 MS. AUSTIN: -- five years. And so he's
12 got a company he's going to start. And he says, Oh.

13 I said, Hey, you need space. Here's the
14 issue.

15 That's the second part of the equation is
16 the need of space. It is a demand today, because
17 and only because -- in San Diego, it's a demand
18 today for space because there's not very many
19 licenses issued. There's only the BTCs.

20 The City has approved four -- five in the
21 last two weeks for manufacturing facilities that
22 will be up and running. It's in the process of
23 approving 35 more. Those will all be approved by
24 the end of December, in which case those guys will
25 get up and running. The demand will go away. Those
26 were my two points.

27 And then you can finish up.

28 THE COURT: Thank you.

1 MR. WATTS: I'll respond to a couple things
2 that Mr. Elia said. His client does not claim in
3 their complaint that Mr. Razuki actually has
4 ownership interest in any of these LLCs. He claims,
5 at most, that he has a theoretical right to derive
6 profits from RM Property Holdings, LLC, to which
7 these other companies should have been transferred
8 if he also transferred his companies to there.

9 But before Mr. Razuki has the right to
10 derive these profits, there must be profits, not
11 from these companies, but from RM Holdings. They
12 have not proven that RM Property Holdings is
13 profitable; therefore, they can't get profits from
14 it.

15 He also hasn't proven that he capitalized
16 on our buildings, which their operating agreement
17 requires, before he gets any ownership interest in
18 it whatsoever, that -- they haven't done the
19 accounting. And he's right. Both parties have to
20 do an accounting.

21 And the -- you'll notice that he didn't
22 dispute the fact that neither party has done an
23 accounting, which means neither Mr. Razuki or
24 Mr. Malan has an obligation to transfer their
25 ownership interests to RM Property Holdings.

26 The -- RM Property Holdings should have
27 been sued in this case. That's the company that we
28 should have be in receivership. That's the only

1 company that he has a right to profits in, and they
2 didn't sue them. They named them in a cause of
3 action, but they didn't sue them. They named them
4 in the 13th cause of action and asked to dissolve
5 RM Property Holdings.

6 So he doesn't even claim that he has a
7 right to own RM Property Holdings. He thinks
8 RM Property Holdings should be wound up and
9 dissolved. That's -- but they're not even a
10 defendant in the case.

11 And that -- that's really the point. They
12 can't succeed on the merits of any of their causes
13 of actions, not least because they asked to dissolve
14 the very company that he would theoretically have an
15 ownership in. If he had proven and pleaded that he
16 had complied with the terms of the operating
17 agreement and the transfer agreement, they would
18 finally give him the right to have some ownership
19 interest in RM Property Holdings.

20 THE COURT: Thank you.

21 MS. LEETHAM: Just -- I think we have one
22 more minute left, so --

23 THE COURT: One more minute.

24 MS. LEETHAM: Okay. Mine are more thoughts
25 toward -- I am speculating into the future that the
26 Court is going to do something.

27 THE COURT: I am going to do something
28 today, guaranteed.

1 MS. LEETHAM: I'm prescient. So there's
2 concern from SoCal that there are options out on the
3 properties. We can agree -- we do not have an
4 option at Balboa. They're -- enjoin an option.
5 Enjoin a sale. These are issues that can be dealt
6 with in an injunction. My client has no problem
7 saying, "I won't sell it." It would violate the HOA
8 use variance. That's something that --

9 THE COURT: Haven't options been extended
10 to other groups?

11 MS. LEETHAM: Not at Balboa.

12 THE COURT: Mira?

13 MR. GORIA: No. That's -- Your Honor,
14 that's a bogus argument that Mr. Baca and Synergy
15 have some kind of an option, an unlimited option.
16 It's -- if you look at the management agreement, all
17 they're given is the right to receive -- I believe
18 the right to receive income from clients that they
19 bring into the business. They have no option to
20 acquire any interest.

21 THE COURT: I thought I read that, but I'll
22 take it back.

23 MR. ZIMMITTI: It's in perpetuity.

24 MS. LEETHAM: Right. So in terms of --

25 THE COURT: Hold on, though. That's for
26 profits, right?

27 MR. ELIA: Right, but this goes forever.

28 THE COURT: No, I got that. I got that.

1 MS. LEETHAM: So we can come to an
2 agreement on that. My client would be perfectly
3 willing to say, "Yeah, I won't grant an option on
4 Balboa." It would violate the use variance anyway.

5 The use variance the homeowners -- the
6 business condominium association granted Balboa
7 precludes sale or transfer. That facility has to
8 operate, as the settlement agreement states, through
9 San Diego United Holdings Group. It can't change
10 hands.

11 We -- Mr. Gorja --

12 I think I say your name right.

13 MR. GORJA: That's fine.

14 MS. LEETHAM: -- talked about this account
15 where we would sequester, essentially, 50 percent of
16 the net profit that, theoretically, the Razuki/Malan
17 defendants would be entitled to.

18 My client has to survive. We can take the
19 25 percent and agree to put Razuki's percent over,
20 but I -- it is imperative that somehow there is an
21 accommodation to allow my client to pay his bills.
22 That's it.

23 THE COURT: Thank you.

24 MR. GORJA: Your Honor, just briefly, first
25 of all, putting SoCal back into Mira Este or
26 Roselle -- I'm not going to speak to Balboa. But
27 putting them back into Mira Este or Roselle I think
28 would be a disaster. They had -- they were in there

1 for the better part of -- what? -- a year, almost a
2 year. They couldn't get it going. They couldn't
3 get it up and running at all.

4 And then they -- but okay. That was fine,
5 because they were using their investor money, the
6 people that had invested in SoCal, to make these
7 payments of the minimum guarantee. Okay. Then they
8 stopped making them in May, and my client was stuck.
9 He had no money coming from SoCal. He couldn't do
10 anything with the business. SoCal hadn't opened it
11 yet, so he had no -- there was no other alternative
12 but to terminate SoCal and bring in another manager.

13 They brought in another manager. They're
14 on the verge of making this work if we can get the
15 receiver out of Mira Este. We have a viable plan
16 with these people lined up -- these customers,
17 basically, lined up to buy the product, to get into
18 the facility and we can't do it. We're being
19 blocked by the receiver.

20 Now, I appreciate Mr. Griswold's comments,
21 but it's not just the trade secret, although that's
22 a major factor for these people. It's also the
23 risk, the risk that they would be undertaking in
24 investing 50- to \$100,000 in this facility to start
25 their business up with the possibility that the
26 receiver might end up liquidating it.

27 Now, whether that's a real risk or not, I
28 mean -- but let's face it. A receiver is usually

1 going to end up liquidating a business, and I think
2 that they have a real fear and a lot of them voiced
3 that concern.

4 We have evidence before the Court that that
5 is the concern that these customers, these
6 manufacturers, believe, and that's why they're not
7 going to deal with the receiver. So my client is
8 stuck. SoCal wasn't paying. He can't bring in
9 manufacturers or producers because the receiver is
10 there, so he's stuck. The business at Mira Este is
11 on -- in its death bed, really, quite frankly.

12 Now, the last time we were here, the Court,
13 as far as the Roselle facility, said, Look, nothing
14 is happening there. Mr. Hakim, go ahead and take
15 care of it. We're not going to put the receiver
16 over Roselle.

17 I think the Court should take the same
18 approach with Mira Este. Look, we need to get the
19 Mira Este facility up and running. Give it a try.
20 See what you can do. Bring in those producers and
21 manufacturers. If there are -- and we'll fully
22 account to whoever wants the accounting. Put half
23 or 25 percent, if you will, of the net profits in
24 the designated account. Total transparency. Leave
25 it up to the plaintiffs to come in and review the
26 accounting if they want and see how that goes.

27 If there are any shenanigans that happen at
28 that point, there's always time to bring in a

1 receiver. But at this point, bringing in a receiver
2 would be drastic and would basically kill the
3 business of Mira Este.

4 MR. ZIMMITTI: Your Honor, to sum up, I
5 think this, what we've seen here today is Your Honor
6 gave defendants the benefit of the doubt. And
7 unfortunately, we believe this is a mistake.

8 You just heard -- and Mr. Gorla keeps
9 saying SoCal stopped making payments. They're
10 not -- apparently, that's just a -- I mean, that's a
11 self-evident truth. But was it because of the fraud
12 or should we be paying forged invoices, paying for
13 expenses that never were incurred?

14 Is that part of our obligation?

15 THE COURT: Address the Court.

16 MR. ZIMMITTI: You're right, Your Honor.
17 Sorry.

18 Let's talk about payments. Mr. Gorla said
19 we stopped making payments in May. I'm looking at
20 an accounting by Jim Townsend that was filed long
21 ago. I'm looking at Mira Este, actually, which
22 totals 1 point -- almost 1.8 million just on
23 Mira Este. I'm looking at May rent, \$60,000,
24 Mira Este, 5/21; Gina Austin Legal, 33,300;
25 Mira Este, main minimum guarantee, 50,000. July 7,
26 Mira Este June rent, 60,300. July -- June 15,
27 15,400 for Mira Este CUP. I mean, it goes on and
28 on.

1 Your Honor, we have -- we made payments.
2 We have continued making payments. It is absurd and
3 it's deeply offensive to my clients to say that we
4 have not made payments. We -- barring these
5 fraudulent expenses, we have done good on this
6 contract. But we have been taking -- we have been
7 defrauded. And this is -- and you've heard
8 Mr. Gorla say, you know -- again, it's a lot of very
9 calculated ways to say --

10 I think you mentioned we're on the verge of
11 making this work.

12 Your Honor, the only reason why Mira Este
13 wasn't operational when my clients sunk massive
14 amounts of money is because we wanted this thing
15 done right. We wanted to put the right
16 infrastructure. We bought the expensive equipment.

17 And, you know, it is true. The CUP for
18 Mira Este is very tenuous, because they're not going
19 to be handing that out -- that many out. This thing
20 has to be done right. That's why things like fire
21 codes, all -- there's a lot of details there.

22 And what you're hearing from clients is --
23 and again, this is what my clients heard, "Strapped
24 for cash. Strapped for cash." They never could get
25 enough cash, and no one knows where it's going.

26 My clients -- the -- my clients should be
27 given the benefit of the doubt this time. Let them
28 run these properties. They can go in. They can

1 pick up where they were -- they left off months ago,
2 as Mr. Elia pointed out, without any significant --
3 without incident.

4 Let them -- let Mr. Essary watch over us.
5 Let us be transparent. Let's prove to Your Honor
6 that not only will a receiver not kill the business,
7 but these businesses could be run properly and
8 transparently.

9 In the meantime, again, Your Honor, this is
10 what we're asking for. However, in the event
11 Your Honor wants to appoint some other third-party
12 management companies -- again, we do not recommend
13 going with the current ones -- then we respectfully
14 ask for our equipment back and that Your Honor order
15 Defendants to allow us to reclaim it.

16 Thank you, Your Honor.

17 THE COURT: My pleasure. Thank you.

18 MS. LEETHAM: I have to add one more. I'm
19 sorry.

20 THE COURT: No. Go ahead for the record,
21 but then I'm ready.

22 MS. LEETHAM: I know. I just have to add
23 that 8859 Balboa was -- that is a manufacturing
24 facility in the same association as the dispensary.
25 It was granted its conditional use permit --

26 MS. AUSTIN: The 15th.

27 MS. LEETHAM: -- the 15th of August. So we
28 have the capability now of bringing somebody into

1 that space. But obviously, we haven't done anything
2 with it.

3 THE COURT: Hold on. Take that one step
4 further. Explain that to me. You said you have the
5 capability of bringing someone?

6 MS. LEETHAM: Well, we haven't vetted
7 anybody yet because the CUP was just approved and
8 we've been in flux.

9 THE COURT: In what capacity?

10 MS. LEETHAM: I'm sorry. What do you mean?

11 THE COURT: As a dispensary?

12 MS. LEETHAM: A manufacturing facility.

13 THE COURT: As a manufacturer.

14 MS. AUSTIN: So if I could just speak to
15 the --

16 THE COURT: I just want to know -- first of
17 all, answer that question. As a dispensary?

18 MS. AUSTIN: No, as a manufacturer or
19 distribution facility.

20 THE COURT: Okay. That's all I needed.
21 But if you want to add anything --

22 MS. AUSTIN: Oh, I just -- nothing's been
23 done on it because of the court order, so you --

24 THE COURT: That's a -- okay. I'm sorry.
25 Go ahead.

26 MS. AUSTIN: At the last hearing, it was,
27 like, yeah, go ahead and go and perfect the CUP,
28 which I did. The CUP has been issued, and now it's

1 being recorded. The next one is set to go -- the
2 actual CUP for Mira Este is set to go to hearing
3 October 3rd. We'll perfect that. But in terms of
4 right now, they can submit building plans and make
5 changes and get people in there. We just have done
6 nothing for that second manufacturing location.

7 THE COURT: Thank you. Let the record
8 reflect that the Court has read numerous documents.
9 Let the record reflect the Court has considered all
10 the arguments of the counsel. Obviously, the Court
11 has a lot of concerns. So I hope the business
12 survives for everyone so that someday I'll be
13 dividing that money while doing damages, and I
14 really mean that sincerely.

15 You can imagine what's going through the
16 mind is the impact of this decision -- it's going to
17 have on the parties. And I want you all to know I
18 gave it -- I guess that's why I'm a judge. Somebody
19 has to make these decisions, and it's my job and I'm
20 going to do it.

21 And so here we go, but it's going to be
22 modified just a little bit. Let me tell you what I
23 want to do and I think I have the discretion to do
24 it. Well, I'm pretty sure I have the discretion to
25 do it.

26 All right. Here we go. Mr. Essary, I'm
27 going to go ahead and appoint you as a receiver
28 under a preliminary injunction. I want you to bring

1 in Brenagin & Company. Call them today. I know
2 them. Tell them it's for me. They have been in my
3 courtroom hundreds of times. I want this done so
4 fast, because here's my thoughts. I want to review
5 this probably in 60 days, because I don't know if
6 I'm going to keep you, Mr. Essary.

7 But I mean that -- you've been in my
8 courtroom. You know that, but I got concerns. But
9 at this point, for the record, I'm finding there's a
10 likelihood of success on the merits by the
11 plaintiff, that there would be irreparable harm
12 based on the filings.

13 Mr. Baca, help the Court. All right? Get
14 it rented. All right?

15 MR. BACA: Okay.

16 THE COURT: Yeah, come on. I'm not going
17 to bite anybody as a judge up here in that thing.
18 So here we go. So people keep saying there's a lot
19 of money. I still don't see it. I still don't see
20 it. That's all I want to know. Where's the money?
21 Can somebody answer that for me?

22 In fact, now I'm hearing from the defense
23 you didn't even put in 2.6 million. That's what
24 they just said, right? Yeah. I hear that you
25 didn't put in your money too. I know. So now, I
26 mean, it's -- so let's do some work. So here's what
27 we're going to do. Do your job. I don't care what
28 it takes. Get it done.

1 Mr. --

2 MS. LEETHAM: Henkes.

3 THE COURT: Thank you.

4 No check goes out without his approval. No
5 check goes out. I don't care if it's for an
6 electric bill. You talk to the receiver before you
7 issue any checks, period. Is there any other
8 account that I've got to make that order to? If
9 there is, let me know. I'll do the same thing.

10 MS. LEETHAM: No, Your Honor.

11 THE COURT: That's very kind. But the
12 point is -- and this is without prejudice -- you're
13 coming back in 60 days, 6-0.

14 MS. AUSTIN: Sixty.

15 THE COURT: So whatever -- 6-0. Did I say
16 six?

17 MS. AUSTIN: No. You said 60. I said at
18 least we get 60.

19 THE COURT: Sixty days to do your -- let me
20 finish. And then we'll -- I end another whole
21 Friday afternoon.

22 And I'll put it on the record. I don't
23 know if I'm going to keep you or not, Mr. Essary.
24 Yeah, I know. You'll live either way.

25 But what I worry about is the business, and
26 I want you to know that. This could be a thriving
27 business, but -- well, I'm not going to say it.
28 Look what's going on in my courtroom, and I'm going

1 to stop right there. Okay. Here we go. Sixty days
2 would be then?

3 THE CLERK: November 16th. I just don't
4 know what your afternoon looks like.

5 THE COURT: Make it 1:30. I'll fit it in.
6 Can I assume -- and will the licensing be done then?

7 MS. AUSTIN: We will have moved through --
8 the licensing for Mira Este will be heard on
9 October 3rd. So if it's appealed, then there's a
10 chance that we could still be going to the planning
11 commission. The Balboa appeal period has almost
12 run, so we'll know for sure on that one. And so
13 we'll be close to the end of the licensing period.

14 THE COURT: Close. I'd like a report on
15 that, obviously.

16 MS. AUSTIN: Okay. Absolutely. And to
17 clarify, I'm still working on that, right?

18 THE COURT: Yeah. Got to have a license.

19 MS. LEETHAM: Can --

20 THE COURT: Let me finish, and then you all
21 can ask questions.

22 You want your equipment? I'm not going to
23 put you back in.

24 MR. ZIMMITTI: We do, Your Honor.

25 THE COURT: I know you disagree with that.
26 I respect that. Wouldn't it make sense to let him
27 take his equipment where you have more space for new
28 people?

1 MS. AUSTIN: Yes.

2 THE COURT: Did I get that one right? The
3 answer is yes, right?

4 MS. AUSTIN: Yes, it is, Your Honor.

5 THE COURT: Well, let's talk about --

6 MS. AUSTIN: I know, but I know the
7 operations, so --

8 MR. GORIA: We obviously believe we have an
9 interest in that equipment. But if that's the
10 Court's order, we're going to go ahead --

11 THE COURT: Do you want to pick it up?

12 MR. ZIMMITTI: Your Honor, we want it for
13 both facilities, Mira Este and also Balboa. There's
14 equipment there as well.

15 MS. LEETHAM: I have no idea what they
16 think is theirs at Balboa, so I disagree with that.

17 MR. ZIMMITTI: Well, obviously, they don't
18 want to give us anything. You're hearing --

19 THE COURT: Okay. Hold on. You're going
20 to pick up the -- with the receiver, pick up the
21 equipment from Mira Mesa -- Mira Este. What's in
22 Balboa?

23 MR. ZIMMITTI: I know we have some fixtures
24 in there. We couldn't do an accounting. We
25 couldn't do an inventory. We haven't been in there
26 for a while.

27 THE COURT: Send it to Mr. Essary. He'll
28 look at it.

1 MS. AUSTIN: Your Honor, can we be present
2 at both of those?

3 THE COURT: Sure. Well, hold on. I'm only
4 ordering one at this time. I want to make sure
5 that --

6 MS. AUSTIN: Well, I think if there's
7 equipment at Balboa --

8 THE COURT: And Mr. Essary says it's okay,
9 you can pick it up. You have a right to be present
10 at both.

11 MR. ZIMMITTI: So, Your Honor, just to be
12 clear, we can do this forthwith, as soon as we set
13 it up with Mr. Essary?

14 THE COURT: Yeah, you know, within a week
15 or so. Not Monday, but within a week, because that
16 clears space. Am I missing something? No.
17 Everybody got it? Hold on. We're not done. And I
18 still got to set a bond, which I'm going to do
19 today. Okay?

20 Mr. Richardson [sic], you wanted to say
21 something to the Court?

22 MR. GRISWOLD: I did. I just wanted to
23 clarify. You had mentioned you wanted Mr. Essary to
24 hire Brenagin & Company.

25 THE COURT: Yeah.

26 MR. GRISWOLD: You also mentioned to direct
27 Mr. Henkes to clear cutting checks with Mr. Essary.
28 So should I take that as Mr. Henkes will continue

1 his role as more of kind of a bookkeeping aspect?

2 THE COURT: Yeah.

3 MR. GRISWOLD: And Brenagin & Company is
4 going to do --

5 THE COURT: The analysis.

6 MR. GRISWOLD: The analysis.

7 THE COURT: Yeah. Brenagin is not going
8 in, at least at this time, to take over the
9 accounting procedures. What I want Brenagin to go
10 there for is to do a forensic accounting. They know
11 when I say that what I want. They have done it for
12 me.

13 MR. GRISWOLD: Balboa and Mira Este?

14 THE COURT: Yeah.

15 MR. ESSARY: One point I'd like to make,
16 Your Honor. The feed of information from
17 Mr. Henkes -- again, I hired the CPAs. I'm going to
18 be duplicating what I want him to get too. It's not
19 just the past you want me to look at; you want me to
20 look at the current and the future?

21 THE COURT: Absolutely.

22 MR. ESSARY: Okay. Thank you.

23 THE COURT: I want as much information as I
24 can.

25 MR. ZIMMITTI: Your Honor, just to be
26 clear, when you ordered the accounting, we're
27 talking about all of it, including my client, what
28 they paid, what, you know, defendants represented

1 they should have paid? We're going --

2 THE COURT: That is a forensic accounting.

3 MR. ZIMMITTI: Thank you, Your Honor.

4 THE COURT: Everything. And it may take
5 him a longer time. I'm going to -- that's going to
6 be tough for him to do in 60 days, but I'm hoping.

7 MS. LEETHAM: So the record is clear, that
8 would require Mr. Razuki to also -- a forensic
9 accounting?

10 THE COURT: Everybody.

11 MS. LEETHAM: Everybody.

12 THE COURT: I want to know if he put in up
13 to 6 million. You know, hold on. Let's make it
14 real clear.

15 Mr. Richardson, notice the words I say.
16 Forensic accounting, including Mr. Razuki, including
17 SoCal, everybody.

18 MR. WATTS: Your Honor --

19 THE COURT: He won't get that done in 60
20 days. I'll just continue -- it's not going to
21 happen, but I still want to see you all in 60 days.

22 MR. WATTS: Could you state specifically
23 which companies are going to be in the receivership,
24 which of the entities?

25 THE COURT: Yeah. We're going to have
26 someone write -- Mr. Richardson is going to write
27 the orders. So what entities should be in?

28 MR. ELIA: Same as before, Your Honor.

1 THE COURT: Huh?

2 MR. ELIA: It should be the same as before.

3 THE COURT: And who was that? Refresh the
4 Court's mind.

5 MR. JOSEPH: That would be SD United,
6 Mira Este, Roselle, California Cannabis Group,
7 Balboa Avenue Cooperative, Devilish Delights, and
8 Flip Management.

9 MR. WATTS: Your Honor, the ninth cause of
10 action for appointment of a receiver only lists
11 San Diego United, Flip, Roselle, Mira Este, and
12 Monarch. And some of those other ones -- Devilish
13 Delights, California Cannabis -- are not parties to
14 this case. They haven't been sued. They're not --
15 they are not involved.

16 MR. GORIA: And, Your Honor, you may recall
17 that at the last hearing, Roselle was not part of
18 the receivership.

19 MR. JOSEPH: Excuse me. I meant to exclude
20 Roselle in that --

21 THE COURT: Roselle is out. Why do I need
22 Devilish Delights? I don't --

23 MR. JOSEPH: Your Honor, Devilish
24 Delights --

25 THE COURT: Hold on. Let him finish.

26 MR. JOSEPH: Devilish Delights, California
27 Cannabis Group, and Balboa Avenue Cooperative are
28 the state license holders, is our understanding. So

1 they would need to be working in concert with the
2 CBU license holders, which are the real estate
3 property holders. It does not make sense to not
4 have them all under the receivership. The receiver
5 would need control over all of those entities in
6 order to legally operate the business.

7 MS. LEETHAM: For Roselle --

8 MR. ZIMMITTI: Your Honor --

9 THE COURT: Shh.

10 MS. LEETHAM: Can I jump in?

11 THE COURT: You may. And then, Mr. --

12 MR. ESSARY: My concern would be losing
13 legal control of the entity by not having a
14 nonprofit.

15 THE COURT: Okay.

16 MS. LEETHAM: Your Honor, we can do that as
17 officers of the Court. It makes it more complicated
18 to do the licensing with numerous parties involved.

19 MS. AUSTIN: With the three nonprofit
20 entities, which are the licensing entities, a
21 receiver creates problems with the State and with
22 the locals. I will -- I can report daily if
23 Your Honor would like as to the process with that.
24 I can go through another five cases of paper, but I
25 would strongly request and urge the Court not to put
26 those three in there.

27 I will give him whatever information he
28 needs. If he needs to come in ex parte, I will show

1 up with bells on. But I -- putting those three
2 nonprofits, which are the licensing entities,
3 creates so many complications at the state level, I
4 can't even begin to explain.

5 THE COURT: Yeah. But then wouldn't the
6 argument be that then he doesn't have authority
7 because he's not the licensee's agent, therefore
8 what -- he still is invalid? Would that be the
9 argument, Counsel?

10 MS. AUSTIN: The money is all going into --
11 I mean, we can take an order that says no money, no
12 nothing, no transactions, revolved around the
13 nonprofits. The nonprofit is only a licensing
14 entity with no dollars, no nothing. Everything else
15 you can put into the other accounts. All of that
16 can be taken care of.

17 But if I have control -- if he has control,
18 we have to deal with that. Even with the new bills
19 at the state that the governor is about to sign
20 granting an extension for provisional licensing, it
21 is -- it could seriously impact our ability to get
22 the state licensing necessary. I could probably
23 work around the locals, but I don't think I could
24 work around the state.

25 MR. JOSEPH: Your Honor, very briefly, I
26 would just like to point out that the receiver hired
27 a consultant, Adam Lachant --

28 THE REPORTER: Adam? Speak up a little

1 bit, please.

2 MR. LACHANT: Aaron.

3 MR. JOSEPH: Aaron Lachant. I apologize
4 for that. And he has already provided a declaration
5 saying he worked with the receiver, the state is
6 aware of his takeover of these entities and has
7 said, We'll let you know if we need anything else.
8 I do not see the problem since we've already been
9 operating with Mr. Essary as the person in control
10 of those entities.

11 THE COURT: Mr. Richardson?

12 MR. GRISWOLD: Yes. So as stated in both
13 the interim report before the last hearing and in
14 the receiver's report before this hearing,
15 Mr. Essary reported and provided copies in his
16 report of the notifications to the State.

17 We went over this at the last hearing. You
18 heard from the outside consultant that Mr. Essary is
19 working with there is nothing inappropriate,
20 certainly not illegal, for Mr. Essary, as a
21 receiver, to be the person in charge of the license.
22 The consultant spoke with a representative from the
23 State, says there was a nonissue. If there was an
24 issue, they would of course contact us.

25 And as a part of, specifically, the request
26 that Mr. Essary has been making to comply with the
27 order and provide information, I've been
28 communicating with Ms. Austin and asking

1 specifically for any statuses/notices from any
2 licensing agencies regarding the receivership. I
3 have not received any of the -- I guess it sounds
4 like daily concerns she's hearing about.

5 So if there are concerns, of course let's
6 deal with them. But if we're just assuming there
7 might be concerns, I'm not so sure that it should be
8 too concerning for the Court.

9 MS. AUSTIN: I have to address those
10 issues. First is I have had additional
11 communication. I provided a two-page summary of the
12 status of all the licenses to Mr. Griswold, so all
13 of that information is there. We don't have any --
14 any -- their phone calls. Their -- we do get some
15 reports, but I -- and I didn't send them over. I
16 didn't even see that those would be necessary where
17 they said, Give us all this additional information.

18 If you would like those reports -- I was
19 trying to keep the fees down, but I am happy to send
20 over an e-mail that says, We want all of this
21 additional information.

22 The fact that Mr. Lachant, who -- I mean,
23 they're a respectable firm. My problem is not with
24 Mr. Lachant and MMLG. It's the issue of the
25 association with them being the defense counsel.
26 But the -- they made an initial phone call. There
27 are more steps. I did call the bureau and there are
28 more steps that needed to be done. They just wanted

1 to know what the status was, because it was
2 preliminary at the first step.

3 THE COURT: All right.

4 MS. LEETHAM: The one other thing I want to
5 add is that we just added an inordinate expense that
6 my clients are bearing the burden of, not the
7 plaintiffs. They are not being required to bear
8 this cost. Right? I mean, the order -- who's
9 paying for the forensic accountant? My client.
10 Right? Are we sharing the cost? I mean, that's
11 what's not clear.

12 So Mr. -- Ms. Austin has been allowed to do
13 the state licensing. The receiver is still
14 consulting with Mr. Lachant at an added expense to
15 the entities. We have someone here who can do it.
16 And if she's willing to report and has reported and
17 we can keep the core monetary entities, for lack of
18 a better term, in the receivership, that's really
19 what they want. Correct me if I'm wrong. The
20 license entities don't generate the income or take
21 the income.

22 MS. AUSTIN: And the licensing process has
23 been -- that is a flat fee. The numbers were all
24 wrong earlier, but that is a flat fee they have
25 already paid for. They have already paid for us to
26 process the state licensing on at least the Balboa
27 and Mira Este facility.

28 THE COURT: So he's going to run a

1 marijuana operation and not have the license?

2 That's what you're saying.

3 MS. AUSTIN: No. He can have -- he can
4 be -- yeah, he's going to run it without having the
5 license.

6 THE COURT: That license. I got it.

7 MR. ZIMMITTI: Your Honor, I just want to
8 point out the irony in calling Mr. Lachant aligned
9 when Gina -- Ms. Austin is actually defense counsel
10 and, you know -- I mean, I think it's just not --

11 THE COURT: I got it.

12 Mr. Essary, what's your position?

13 MR. ESSARY: I object to the concept of
14 separating, because I've been told both by the
15 defense's counsel and by Mr. Lachant that those two
16 are integral. You can't operate a functional
17 cannabis operation without the nonprofit with the
18 license but the CUP for the real estate.

19 And some of the confusion, obviously, is
20 where does the money go? The money usually -- or
21 doesn't go to the nonprofit. It's a nonprofit. But
22 we had -- I had Mr. Lachant check and I am capable
23 of taking over both entities and then holding that
24 operation. I think that's what the judge wants.

25 THE COURT: Thank you. Anything else?

26 MR. ZIMMITTI: Your Honor, if I -- just
27 so -- so wait a minute. In the interim, the -- my
28 clients' contracts and the options, what is the

1 status? I know Your Honor --

2 THE COURT: That's a very good question,
3 Counsel. That's got to be litigated. That's my
4 answer.

5 MR. ZIMMITTI: So -- and does it depend on
6 what the Brenagin company turns up in terms of their
7 audit? because at this point, I mean -- and I
8 understand Your Honor --

9 THE COURT: Counsel, you're being polite.
10 Go ahead and say it. It's all right.

11 MR. ZIMMITTI: So essentially, our -- we
12 were terminated from our contracts.

13 THE COURT: Yes, you are.

14 MR. ZIMMITTI: Okay. That's our position
15 and we produced evidence that's uncontroverted. So
16 what, in effect, will happen if this goes on is
17 Your Honor's essentially just adopting their
18 argument that we breached based on fraud, under
19 fraudulent representation about --

20 THE COURT: I didn't even understand that.

21 MR. ZIMMITTI: So in other -- so,
22 Your Honor, we -- they terminated our agreement
23 summarily based on failure to pay \$125,000 that they
24 fraudulently represented was an actual real
25 bona fide debt.

26 THE COURT: That's your position.

27 MR. ZIMMITTI: Right.

28 THE COURT: I got it.

1 MR. ZIMMITTI: Okay. So -- and therefore,
2 if we -- just to be clear, is our contract in
3 suspension or is it just -- is it actually --

4 THE COURT: Sue them. Hello. All I'm
5 doing -- and I mean that very, very respectfully. I
6 didn't mean to say that. I apologize. Counsel, let
7 me be -- it's getting late. Let me slow down.

8 The only thing I am doing today -- only
9 thing -- is making a determination of whether
10 there's going to be a preliminary injunction in this
11 case with the appointment of the receiver. That
12 answer is yes. The three nonprofits are included.
13 That answer is yes. If it causes a problem, it
14 causes a problem. I can only do so much.

15 So -- and I didn't mean to be so flippant,
16 and I apologize for that. But I understand your
17 argument. It's not before me today. If you think
18 you have valid claims, (descriptive sound) file.

19 MR. ZIMMITTI: Thank you, Your Honor.

20 MS. AUSTIN: Your Honor --

21 THE COURT: Let me finish. One more thing.
22 It's getting late. I want to set a bond. I want to
23 set a bond. I've heard 10 million. I've heard
24 6 million and I've heard 50,000.

25 Anybody else want to say anything before I
26 pick a number?

27 MS. AUSTIN: Two?

28 THE COURT: It won't be that much. It

1 ain't going to be 50,000, Plaintiff.

2 MR. ELIA: Your Honor, we're okay with a
3 hundred or 200,000. That --

4 THE COURT: It's going to be more than
5 that.

6 MS. LEETHAM: That's not enough,
7 Your Honor.

8 THE COURT: Shh. I'm going to determine
9 what enough is. It's going to be more than that.

10 MR. ELIA: Just -- Your Honor, just taking
11 into account that it may be very difficult to get a
12 bond if it's high.

13 THE COURT: I got it. I had a number
14 before you even said all that, just so you know.

15 Anybody want to say anything else?

16 MS. LEETHAM: A million.

17 MR. ELIA: Just one thing, Your Honor.
18 Just -- I just want to make sure that it's clear on
19 the record that not only the receiver, but Brenagin
20 & Company has unfettered and unencumbered access,
21 because the last time we were here, Your Honor said
22 it three times and it didn't happen.

23 MS. LEETHAM: This is a reciprocal order,
24 though.

25 THE COURT: Absolutely it is, and I will
26 tell you this. For any accountant, anybody, if
27 there comes a report that, Judge, we didn't get this
28 from any account, anybody, I'll take it from them.

1 I don't have jurisdiction over it, but I'll say,
2 Brenagin, come in and do it all. And boy, you want
3 to see fees then? That's about (descriptive sound).

4 MS. AUSTIN: Before we get to the bond, I
5 just want to -- I understand the nonprofits are in.

6 THE COURT: Yes.

7 MS. AUSTIN: And that's fine. Is there a
8 way that we can just make them part of the nonprofit
9 so that we're not changing ownership at all? The
10 receiver -- make the receiver a member of the
11 nonprofit, and then he's got control but we're not
12 changing ownership. And then those problems go --

13 THE COURT: They don't want ownership.
14 He --

15 MS. AUSTIN: Well, he's an owner by
16 default, because he has control under the state
17 rules.

18 MR. GRISWOLD: As counsel, I would not
19 agree to having the Court-appointed receiver as a
20 member --

21 THE COURT: Yeah.

22 MR. GRISWOLD: -- of the nonprofit on many
23 liability grounds. And no, that's -- the
24 receivership, he's in control -- there's already
25 actually -- I think the statute even cites to when a
26 receiver has been put in control of an entity, if
27 they submit the notice to the state agency, so I
28 don't -- I object.

1 MS. AUSTIN: We'll try to figure something
2 out.

3 THE COURT: Good attitude. Ready?

4 MS. AUSTIN: Yes, sir.

5 THE COURT: 350,000. That's it. Have a
6 nice day.

7 MR. GORIA: Judge, I did have one question
8 about Mira Este --

9 MS. AUSTIN: Do you --

10 MR. GORIA: -- if I could, if I could ask
11 the question.

12 THE COURT: For sure. I don't know if I'll
13 answer it, but --

14 MR. GORIA: Okay. I'm assuming that
15 Mira Este is included --

16 THE COURT: Absolutely.

17 MR. GORIA: -- in the receivership.

18 THE COURT: Absolutely.

19 MR. GORIA: So we have a -- one producer
20 manufacturer, EdiPure, who's paying 30,000 in cash
21 to Mr. Baca.

22 THE COURT: Right.

23 MR. GORIA: So -- and that's to cover a
24 whole bunch of overhead that Mr. Baca is in charge
25 of providing, Synergy is in charge of providing.

26 THE COURT: It is.

27 MR. GORIA: So I'm not sure how that
28 figures into the receiver, whether that 30,000 has

1 to go to the receiver, and then, you know, all the
2 overhead is paid. That probably will spell a quick
3 end to Synergy, if I'm not mistaken, but --

4 THE COURT: Nah.

5 MR. BACA: I have a question.

6 THE COURT: He's going to go out and have
7 20 more leases.

8 MR. BACA: How fast will he be able to
9 respond to requests for money? Like if we have to
10 do a -- changing a bulb, you said even we have to
11 account for that, right?

12 THE COURT: Pretty close.

13 MR. BACA: So how long do we have to let
14 that bulb be out before he says yes?

15 THE COURT: He says -- how fast can you
16 do --

17 MR. ESSARY: Well, I have two examples
18 previously paying bills that were submitted to me
19 immediately approving them the same day. I turned
20 over -- I'm not planning on writing the checks
21 myself, Your Honor.

22 THE COURT: No. Just approve them.

23 MR. ESSARY: I'll approve them and you'll
24 have signature on the account, but I also will
25 signature on the account, right?

26 THE COURT: Correct. And I just hope
27 there's enough money to pay the bills. That's what
28 I'm hoping for. I hope there's enough money to pay

1 the bills. Let's see where this goes. All right?
2 You know, you've all been very patient with the
3 Court.

4 Mr. Richardson, did you write down all my
5 orders?

6 MR. GRISWOLD: I did. I did.

7 THE COURT: You may want to get a
8 transcript.

9 MR. GRISWOLD: Yes, Your Honor.

10 THE COURT: All right. Sixty days, I'm
11 going to revisit everything. And I want to make
12 this really clear. Listen to me loud. Including
13 the continuation of the receiver. That is still on
14 the table.

15 MS. LEETHAM: And obviously, the injunction
16 is not effective until they post the bond? That's
17 normally how that works.

18 THE COURT: It does, but there better not
19 be any money going from accounts.

20 MS. LEETHAM: Okay. It's just if he
21 doesn't post it, it goes away.

22 THE COURT: Absolutely. No, no. I'm with
23 you.

24 MR. WATTS: Is there a deadline for them to
25 post it?

26 MR. JOSEPH: Your Honor, just to clarify,
27 we would work with our clients to get it posted as
28 soon as possible. We already have a bond for the

1 temporary receivership that can hold off until we
2 get it by sometime next week, early next week.

3 THE COURT: I'll give you two weeks,
4 fourteen days.

5 MR. JOSEPH: Thank you, Your Honor.

6 THE COURT: But let's -- counsel is
7 absolutely right, though. Hold on. If it's not
8 posted, that means no. You know that. I don't have
9 to tell you what the law is.

10 MR. GORIA: Your Honor, another point on
11 the bond. There are two entities with different
12 ownership groups here, and damages would accrue to
13 each ownership group differently. We'd like to have
14 that bond divided up if we can, because the
15 Mira Este ownership, which is being placed in the
16 receivership, may suffer damages independently of
17 Balboa.

18 THE COURT: I can take care of that,
19 Counsel. I'm not going to do that at this stage.

20 MR. GORIA: And also, the previous order of
21 the Court was -- that was directed to Mr. Essary was
22 to maintain separate accounts for the facilities --
23 for the different facilities. Is that also going to
24 be continued?

25 THE COURT: I would hope, absolutely.

26 MR. ESSARY: They're going to have access
27 to pay expenses immediately once they're approved.

28 THE COURT: Thank you, sir. That -- let's

1 make it clear. That answer is yes.

2 Sir?

3 MR. GORIA: All right.

4 THE COURT: So.

5 MR. ESSARY: Your Honor, one last question,
6 please. I have an order now and it's a fairly good
7 order. Shall I use that until this new one is
8 executed?

9 THE COURT: Correct.

10 MR. ESSARY: Okay. Thank you, Your Honor.

11 THE COURT: You're still a receiver.

12 MR. ESSARY: Thank you.

13 THE COURT: Have patience, all of you. I
14 really mean this. Have patience with the Court.
15 You've been very polite and I appreciate that. And
16 just so you know, I understand the magnitude of this
17 decision. I just hope for your sakes -- I'll say
18 everybody -- that the business survives. Thank you.

19 (The proceedings concluded at 5:07 p.m.)

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1 STATE OF CALIFORNIA)
2 COUNTY OF SAN DIEGO)

3

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: September 27, 2018

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Leyla S. Jones

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CSR No. 12750

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