

1 Gina M. Austin (SBN 246833)
E-mail: *gaustin@austinlegalgroup.com*
2 Tamara M. Leetham (SBN 234419)
E-mail: *tamara@austinlegalgroup.com*
3 AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-101
4 San Diego, CA 92110
Phone: (619) 924-9600
5 Facsimile: (619) 881-0045

6 Attorneys for Plaintiff
Austin Legal Group

FILED
CIVIL BUSINESS OFFICE-32
CENTRAL DIVISION

2019 MAY 20 P 1:52

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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

10 AUSTIN LEGAL GROUP, APC, a
11 California professional corporation,

12 Plaintiff,

13 vs.

14 NINUS MALAN, an individual;
15 AMERICAN LENDING AND
16 HOLDINGS, LLC, a California limited
17 liability company; BALBOA AVE
18 COOPERATIVE, a California cooperative
19 corporation; CALIFORNIA CANNABIS
20 GROUP, a California corporation; FLIP
21 MANAGEMENT, LLC, California limited
22 liability company; MONARCH
23 MANAGEMENT AND CONSULTING,
24 INC., a California corporation; SAN
25 DIEGO UNITED HOLDINGS GROUP
26 LLC, a California limited liability
27 company; MIRA ESTE PROPERTIES,
28 LLC, a California limited liability
company; ROSELLE PROPERTIES, LLC,
a California limited liability company; and
DOES 1 through 10, inclusive;

Defendants.

CASE NO. 37-2019-00025668-CU-BC-CTL

**VERIFIED COMPLAINT FOR BREACH
OF CONTRACT - ATTORNEYS' FEES
AND - COSTS**

Unlimited Jurisdiction

[Imaged File]

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-101
San Diego, CA 92110

1 Plaintiff Austin Legal Group, APC alleges as follows:

2 **GENERAL ALLEGATIONS**

3 1. Plaintiff Austin Legal Group, APC ("ALG") is and, at all times relevant was, a
4 professional corporation incorporated under California law, authorized to do business in
5 California, and authorized to do, and does, business in San Diego County, California, as a law
6 firm. ALG attorneys Gina M. Austin and Tamara M. Leetham are licensed in California to
7 practice law, and at all times relevant to this Complaint were licensed to practice law in
8 California and performed a significant amount of legal work for the benefit of defendants.

9 2. Defendant Ninus Malan ("Malan") is an individual residing in San Diego
10 County, California. ALG represents Malan pursuant to a written hourly fee agreement
11 ("Contract") in connection with obtaining San Diego City land use entitlements to include
12 conditional use permits to operate marijuana businesses and representing Malan in four separate
13 lawsuits with third parties (collectively, the "Matters").

14 3. Defendant American Lending and Holdings, LLC ("ALH") is a California
15 limited liability company with its principal offices located in San Diego County. Malan is the
16 sole Manager and, to the knowledge of ALG, the sole member of ALH and requested ALG to
17 do work for ALH under the same terms as the Contract.

18 4. Defendant Balboa Ave Cooperative ("Balboa") is a California cooperative
19 corporation with its principal offices located in San Diego County. Malan is the sole officer and
20 director and acted as the sole owner, and requested ALG to do work for Balboa under the same
21 terms as the Contract.

22 5. Defendant California Cannabis Group ("CCG") is a California corporation with
23 its principal offices located in San Diego County. Malan is the sole officer and director and
24 acted as the sole owner, and requested ALG to do work for CCG under the same terms as the
25 Contract.

26 6. Defendant Flip Management, LLC ("Flip") is a California limited liability
27 company with its principal offices located in San Diego County. Malan is the sole Manager and,
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1 to the knowledge of ALG, the sole member of Flip and requested ALG to do work for Flip
2 under the same terms as the Contract.

3 7. Defendant Monarch Management and Consulting, Inc. ("Monarch") is a
4 California corporation with its principal offices located in San Diego County. Malan is one of
5 two Directors of Monarch and requested ALG to do work for Monarch under the same terms as
6 the Contract.

7 8. Defendant San Diego United Holdings Group LLC ("SDUHG") is a California
8 limited liability company with its principal offices located in San Diego County. Malan is the
9 sole Manager and, to the knowledge of ALG, the sole member of SDUHG and requested ALG
10 to do work for SDUHG under the same terms as the Contract.

11 9. Defendant Mira Este Properties, LLC ("MEP") is a California limited liability
12 company with its principal offices located in San Diego County. Malan is one of two Managers
13 of MEP and owns some percentage of MEP up to 50%. Malan requested ALG to do work for
14 MEP under the same terms as the Contract.

15 10. Defendant Roselle Properties, LLC ("Roselle" and, collectively with ALH,
16 Balboa, CCG, Flip, Monarch, SDUHG, and MEP, the "Malan Entities") is a California limited
17 liability company with its principal offices located in San Diego County. Malan is one of two
18 Managers of Roselle and owns some percentage of Roselle up to 50%. Malan requested ALG
19 to do work for Roselle under the same terms as the Contract.

20 11. Malan, the Malan Entities, and Does 1-10 (collectively "Defendants") owe ALG
21 an outstanding balance pursuant to the Contract; ALG files this Complaint to recover that
22 outstanding balance.

23 12. ALG is ignorant of the true names and capacities of defendants sued herein as
24 Does 1 through 10 inclusive, and therefore sues these defendants by such fictitious names.
25 ALG reserves the right to amend this Complaint to allege their true names and capacities when
26 ascertained. ALG is informed and believes and alleges that each of the fictitiously named
27 defendants whose true names and capacities ALG does not know at this time are legally
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1 responsible in some manner for the occurrences and omissions herein alleged, and injuries and
2 damages as herein alleged.

3 13. ALG is informed and believes and thereon alleges that the Defendants, and each
4 of them, are the principal, agent, master, servant, employer, and employee of each of the other,
5 acting within the scope and authority of his/her or its agency or employment with full
6 knowledge and approval of each of their actions as herein alleged.

7 14. ALG believes that the Malan Entities and Malan are and were all relevant times
8 the alter egos of one another. Each defendant is liable for the conduct of the other as alleged in
9 this Complaint, because each of these entities was and is the alter ego that Malan and the Malan
10 Entities used to carry out their respective businesses.

11 15. At all relevant times a unity of interest and ownership existed between Malan
12 and the Malan Entities, such that adherence to the fiction of separate existence would render an
13 injustice under the facts and circumstances of this case:

14 16. Alter ego liability arises from the following:

15 a. Defendants share a unity of interest in carrying out the business and
16 enjoying their respective profits;

17 b. Malan disregarded the formal distinctions with the Malan Entities,
18 effective and in practice treating the entire collective as a single entity with a sole purpose;

19 c. Defendants assets were commingled and Defendants, by Malan, were
20 involved in that commingling of assets, directing or diverting the income and assets of the other
21 Defendants without regard to corporate form;

22 d. Defendants were commonly controlled and used each other to carry out
23 the operations of the Malan Entities and/or related pursuits;

24 e. The Malan Entities were undercapitalized and potentially incapable of
25 satisfying their liabilities. On information belief, Defendants now have sufficient assets to cover
26 ALG's fees.

27 f. One or more Defendants shares the same office space;

28 g. The Malan Entities share executives and directors, or Malan;

1 h. ALG would suffer injustice if required to adhere to the fiction of separate
2 existences of Defendants. Defendants have engaged in an intentional pattern of conduct to avoid
3 their respective obligations while still operating in effect as the same entity or operation that
4 incurred those obligations;

5 i. Because Defendants individually do not possess sufficient assets to
6 satisfy their obligations and given the foregoing allegations, ALG would be prejudiced and
7 unable to recover its damages if it were prohibited from proceeding against all Defendants.

8 17. On or about December 13, 2016, Malan retained ALG to represent him in the
9 Matters.

10 18. In pertinent part, ALG agreed to provide legal services to Malan and the Malan
11 Entities in the Matters on an hourly fee basis.

12 19. Malan agreed, on behalf of himself and the Malan Entities, to pay an hourly fee
13 for services and pay an initial retainer. Malan further agreed to keep ALG informed and to pay
14 ALG's bills for costs on time. Specifically, Malan agreed to pay an hourly rate for attorneys
15 ranging from \$175 to \$300 per hour and a paralegal and law clerk rate ranging from \$75.00 to
16 \$95.00 per hour.

17 20. ALG explained the Contract fully and offered fair and reasonable terms. ALG
18 provided Malan a copy of the written hourly fee agreement and gave him an opportunity to seek
19 independent legal advice. ALG secured the written consent of the Malan Entities, through the
20 Malan's written consent, when Malan signed the written hourly fee agreement on December 13,
21 2016 and requested ALG to take on additional work on behalf of Malan and the Malan Entities.

22 21. After Malan signed the Contract, ALG, on his behalf and on behalf of the Malan
23 Entities, investigated applicable land use permit requirements, conditional use permits
24 requirements, filed applications for the same at Malan's request, and represented Malan and the
25 Malan Entities in four separate lawsuits. ALG diligently represented Malan and the Malan
26 Entities in the Matters.

27 22. Malan and the Malan Entities currently owe ALG a balance in connection with
28 the Matters as well as late fees for failing to pay amounts due.

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23. ALG has attempted to contact Malan to resolve the outstanding balance to no avail. Malan and the Malan Entities currently owe ALG approximately \$172,669 for services provided and \$19,470 for late payment fees accrued pursuant to the Contract.

FIRST CAUSE OF ACTION

**Breach of Contract- Attorney's Fees/Costs
(Against Defendants)**

24. Plaintiff incorporates by reference the allegations of paragraphs 1-23 inclusive as if set forth fully herein.

25. ALG represented Malan and the Malan Entities on an hourly fee basis pursuant to the Contract and in connection with the Matters.

26. Malan and the Malan Entities agreed to pay ALG an hourly fee for ALG's representation in qualifying for, applying for, and obtaining land use permits and conditional use permits from the City of San Diego as well as representation in four separate lawsuits.

27. ALG's Contract provided for payment of attorneys' fees and costs on a monthly basis and assessing a late fee equal to one and a half percent (1.5%) of any unpaid balance due if such balance due was not paid within thirty (30) days.

28. ALG represented Malan and the Malan Entities through completion of the Matters pursuant to the Contract. ALG has performed all work required by the Contract.

29. Malan and the Malan Entities have failed to pay according to the Contract and have failed to communicate with ALG according to the Contract.

30. As a direct and proximate result of Malan and the Malan Entities' wrongful conduct, failing to pay legal fees pursuant to the Contract, ALG has been damaged in an amount to be determined at trial but a minimum of \$191,527.99.

31. ALG is entitled to recover in contract for its fees including any costs advanced on behalf of Malan and the Malan Entities.

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PRAYER FOR RELIEF

Based upon the foregoing, ALG prays for judgment against Ninus Malan, the Malan Entities, and Does 1-10 as follows:

1. For damages pursuant to the Contract;
2. For costs of suit herein;
3. For such other and further relief as the court may deem to be just and proper;

Dated: May 20, 2019

Respectfully Submitted,

AUSTIN LEGAL GROUP, APC



By: Gina M. Austin/Tamara M. Leetham
Attorneys for Austin Legal Group

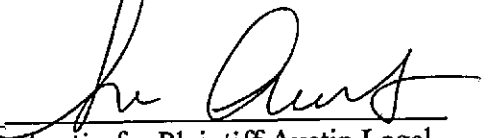
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VERIFICATION

I, Gina Austin, am over the age of 18 and hereby declare:

I am an attorney at plaintiff Austin Legal Group, APC, a California professional corporation. I have read the foregoing Complaint and know its contents. The information in this Complaint is based on my own personal knowledge. The information contain in this Complaint is true except as to matters that are based upon information and belief and as to those matters, I am informed and believe they are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Diego, California this 20th day of May, 2019.

By: 
Gina Austin for Plaintiff Austin Legal Group, APC

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