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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**12/13/2023** at 12:51:00 PM  
Clerk of the Superior Court  
By Andrea Naranjo, Deputy Clerk

5 Attorneys for Razuki Investments, LLC  
and Salam Razuki  
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO - CENTRAL

10 SAN DIEGO PATIENTS COOPERATIVE ) Case No.: 37-2017-00020661-CU-CO-CTL  
11 CORP, et. al., )  
12 Plaintiffs, ) **OPPOSITION TO PLAINTIFFS' EX-**  
13 vs. ) **PARTE APPLICATION RE: ENTRY OF**  
14 RAZUKI INVESTMENT L.L.C., et. al., ) **JUDGMENT**  
15 Defendants. ) DATE: December 14, 2023  
16 ) TIME: 8:30 a.m.  
17 ) DEPT.: 67  
18 ) JUDGE: Hon. Eddie Sturgeon  
19 ) ATTACHED: Jaffe Declaration  
20 )

21 Defendants Razuki Investments, LLC and Salam Razuki (the “Razuki Defendants”)  
22 submit their Opposition To Plaintiffs’ Ex-Parte Application Re: Entry Of Judgment as follows:

23 **I. There Are No Exigent Circumstances Or Statutory Basis**  
24 **Supporting Ex-Parte Relief**

25 “Various court rules govern ex parte proceedings, which are designed to afford relief on  
26 an essentially emergency basis. ‘A court will not grant ex parte relief ‘in any but the plainest and  
27 most certain of cases.’ (*People ex rel. Allstate Ins. Co. v. Suh* (2019) 37 Cal.App.5th 253, 257,  
28 249 Cal.Rptr.3d 500 ( *People ex rel. Allstate Ins. Co.*  ).) Substantively, ‘[a]n applicant must  
make an affirmative factual showing in a declaration containing competent testimony based on  
personal knowledge of irreparable harm, immediate danger, or any other statutory basis for

1 granting relief ex parte.’ ( Cal. Rules of Court, rule 3.1202(c)”. *Newsom v. Superior Court*, 51  
2 Cal.App.5th 1093, 1097 (Cal. Ct. App. 2020).

3 Plaintiffs have failed to make such an affirmative factual showing of irreparable harm,  
4 immediate danger, or any other statutory basis for granting relief ex parte. Counsel for Plaintiffs  
5 admits that he waived the time limits of CCP section 664. *See*, Cavanaugh Declaration at  
6 paragraph 4.

7 Plaintiffs have also failed to state a statutory basis supporting ex-parte relief by Plaintiffs  
8 seeking to try and control the Court’s time and resources regarding when and how the Court  
9 considers the proposed judgments and objections.

10 Many litigants are waiting for the entry of Orders by the Court. There is no reason for  
11 Plaintiffs to jump ahead of them and not allow the Court the full time needed to review the  
12 proposed judgments and objections to proposed judgments, especially given the extremely  
13 deficient judgment proposed by Plaintiffs as set forth below which was not even served on  
14 counsel for Malan and/or Henderson.

15  
16 **II. The Ex Parte Application Was Not Served At The First Reasonable**  
17 **Opportunity**

18 “Parties appearing at the ex parte hearing must serve the ex parte application or any  
19 written opposition on all other appearing parties at the first reasonable opportunity. Absent  
20 exceptional circumstances, no hearing may be conducted unless such service has been made.”  
21 Court Rule 3.1206.

22 Plaintiffs reserved the ex-parte hearing date on December 5, 2023. *See*, ROA # 752.  
23 Plaintiffs then failed until December 12, 2023 to give notice of the ex-parte hearing (at 8:46  
24 a.m.) and serve the ex-parte application (at 11:09 a.m.). *See*, ROA # 754 and 755. Clearly the  
25 ex-parte application was prepared well in advance of giving notice of the application. Plaintiffs  
26 did not serve the ex-parte application at the first reasonable opportunity.

1           **III. Plaintiffs' Proposed Judgment Is Both Procedurally And Substantively**  
2           **Deficient**

3           Plaintiffs failed to serve Plaintiffs' Proposed Judgment on counsel for Malan and/or  
4 Henderson. *See*, Exhibit A hereto (which has a proof of service as the last page). All  
5 Defendants were therefore not given the opportunity to respond to Plaintiffs' Proposed Judgment  
6 and provide their comments and proposed changes before it was submitted to the Court.

7           Counsel for Malan has indicated in emails that he has not seen Plaintiffs' Proposed  
8 Judgment. Basic due process required Plaintiff's Proposed Judgment to be served on all parties.

9           Plaintiffs' Proposed Judgment is also deficient due to all of the following:

10          1)       Plaintiffs have not properly met and conferred regarding the proposed judgment.  
11 The Razuki Defendants sent comments and proposed changes to the proposed judgment to  
12 counsel for Plaintiffs (on the date of receipt of the proposed judgment), but Plaintiffs failed to  
13 address and/or include the comments and proposed changes in the proposed judgment submitted  
14 by Plaintiffs to the Court;

15          2)       Plaintiffs' Proposed Judgment improperly fails to fully include and properly  
16 reference the non-suit rulings (C.C.P. section 581c), and dismissals with prejudice (C.C.P.  
17 section 581(e)), in favor of Defendants;

18          3)       Plaintiffs' Proposed Judgment improperly fails to include the language of the jury  
19 verdict for questions decided by the jury;

20          4)       Judgment should not be entered until the Court hears Razuki Investments'  
21 motions for new trial and/or motion for judgment notwithstanding the verdict; and

22          5)       The Court made no determination of prevailing party status. Some or all of  
23 Defendants will be seeking fees and costs.

1           **IV. The Judgment Proposed By The Razuki Defendants Properly Sets Forth The**  
2           **Determinations At Trial**

3           The Razuki Defendants' Proposed Judgment appropriately includes references to claims  
4 and parties that were dismissed. The dismissals were with prejudice pursuant to CCP section  
5 581(d) and/or (e). A dismissal with prejudice is considered a judgment on the merits preventing  
6 subsequent litigation between the parties on the dismissed claims. *See, Torrey Pines Bank v.*  
7 *Superior Court*, 216 Cal.App.3d 813, 820 (Cal. Ct. App. 1989).

8           The Razuki Defendants' Proposed Judgment appropriately includes that the jury was  
9 polled regarding the Jury Verdicts and the initial poll regarding the amount of damages was 8-4.  
10 That is an accurate statement of what happened at the trial. Plaintiffs improperly want to  
11 include the polling but not that the initial poll regarding the amount of damages was 8-4.

12           The Razuki Defendants' Proposed Judgment appropriately states that Defendant Salam  
13 Razuki, Ninus Malan, and Razuki Investments (with regard to claims by San Diego Patients  
14 against Razuki Investments) are entitled to judgment in their favor as the Court and jury  
15 determined there was no support for Plaintiffs' claims against them.

16           The Razuki Defendants' Proposed Judgment appropriately states, "Attorneys' fees  
17 and/or costs, if any, shall be addressed subsequently by the appropriate motion(s) and/or  
18 memorandum(s) of costs." This is a case where the Court needs to determine prevailing party  
19 status pursuant to CCP sections 1717 and/or 1032 on a party by party basis which requires full  
20 briefing by the parties seeking fees by a fee motion, and/or costs on a motion to strike or tax  
21 costs. The Court will recall that Plaintiffs asserted claims pursuant to an alleged lease  
22 agreement that has an attorney's fees clause. Plaintiffs dismissed the claims with prejudice  
23 pursuant to the lease and Defendants have rights to assert a claim for fees and/or costs pursuant  
24 to, without limitation, *Santisas v. Goodin* (1998) 17 Cal. 4<sup>th</sup> 599.  
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1 The ex-parte application should be denied in its entirety.

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3 Dated: December 13, 2023

LAW OFFICES OF DOUGLAS JAFFE

4 By: *Douglas Jaffe*  
5 Douglas Jaffe  
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1           7.     Counsel for Malan has indicated in emails that he has not seen Plaintiffs’  
2 Proposed Judgment. Basic due process required Plaintiff’s Proposed Judgment to be served on  
3 all parties.

4           8.     Plaintiffs’ Proposed Judgment is also deficient due to all of the following:

5           a)     Plaintiffs have not properly met and conferred regarding the proposed judgment.  
6 The Razuki Defendants sent comments and proposed changes to the proposed judgment to  
7 counsel for Plaintiffs (on the date of receipt of the proposed judgment), but Plaintiffs failed to  
8 address and/or include the comments and proposed changes in the proposed judgment submitted  
9 by Plaintiffs to the Court.

10          b)     Plaintiffs’ Proposed Judgment improperly fails to fully include and properly  
11 reference the non-suit rulings (C.C.P. section 581c), and dismissals with prejudice (C.C.P.  
12 section 581(e)), in favor of Defendants;

13          c)     Plaintiffs’ Proposed Judgment improperly fails to include the language of the jury  
14 verdict for questions decided by the jury;

15          d)     Judgment should not be entered until the Court hears Razuki Investments’  
16 motions for new trial and/or motion for judgment notwithstanding the verdict; and

17          e)     The Court made no determination of prevailing party status. Some or all of  
18 Defendants will be seeking fees and costs.

19           9.     The Razuki Defendants’ Proposed Judgment appropriately includes references to  
20 claims and parties that were dismissed. The dismissals were with prejudice pursuant to CCP  
21 section 581(d) and/or (e). A dismissal with prejudice is considered a judgment on the merits  
22 preventing subsequent litigation between the parties on the dismissed claims. *See, Torrey Pines*  
23 *Bank v. Superior Court*, 216 Cal.App.3d 813, 820 (Cal. Ct. App. 1989).

24           10.    The Razuki Defendants’ Proposed Judgment appropriately includes that the jury  
25 was polled regarding the Jury Verdicts and the initial poll regarding the amount of damages was  
26 8-4. That is an accurate statement of what happened at the trial. Plaintiffs improperly want to  
27 include the polling but not that the initial poll regarding the amount of damages was 8-4.  
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