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Attorneys for Razuki Investments, LLC, and Salam Razuki

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

10 SAN DIEGO PATIENTS COOPERATIVE)
11 CORPORATION, INC., et. al.)

12 Plaintiffs,)

13 vs.)

14 RAZUKI INVESTMENTS, LLC, et. al.,)

15 Defendants.)
16)
17)

Case No.: 37-2017-00020661-CU-CO-CTL

**MEMORANDUM IN SUPPORT OF
MOTION FOR NEW TRIAL**

DATE: January 26, 2024

TIME: 1:30 p.m.

DEPT: C-67

JUDGE: Hon. Eddie Sturgeon

18 Defendant Razuki Investments, LLC (“Razuki Investments”) submits its Memorandum In
19 Support Of The Motion For New Trial as follows:

20 **I. Preliminary Statement**

21 Razuki Investments should be granted a new trial due to, without limitation, each of the
22 following issues¹:

23 1) Improper testimony by Plaintiffs’ expert (allowed over a motion in limine and
24 objections at trial) which resulted in improper and excessive damages to be awarded. *See,*

25 _____
26 ¹ The issues raised are without limitation to issues which can be raised on appeal and which do not require a motion
27 for new trial.
28

1 *People v. Sanchez* (2016) 63 Cal. 4th 665; *Sargon Enters, Inc. v. University of S. Cal* (2012) 55
2 Cal. 747; Evidence Code section 801; and

3 2) Plaintiffs failed to properly prove who entered into a verbal joint venture with
4 Razuki Investments, the material terms of the joint venture, and there was only at best an
5 agreement to agree for which damages are limited to reliance damages, which Plaintiff Bradford
6 Harcourt (“Harcourt”) admitted were less than \$5,000. See, *Copeland v. Baskin Robbins U.S.A.*,
7 96 Cal.App.4th 1251 (Cal. Ct. App. 2002).

8 **II. Legal Standard**

9 CCP § 657, in pertinent part, provides the following grounds for new trial:

10 1. Irregularity in the proceedings of the court, jury or adverse party, or any order of the court or
11 abuse of discretion by which either party was prevented from having a fair trial; . . . 3. Accident
12 or surprise, which ordinary prudence could not have guarded against; . . . 6. Insufficiency of the
13 evidence to justify the verdict or other decision, or the verdict or other decision is against law;
14 and 7. Error in law, occurring at the trial and excepted to by the party making the application.

15 In jury trials, each party in fact has two hearings, one before the jury and the other before
16 the court as “a thirteenth juror.” *Norden v. Hartman* (1952) 111 Cal.App.2d 751, 758; *Green v.*
17 *Soule* (1904) 145 Cal. 96, 103. It is not just the right, but also the duty, of the Court to reweigh
18 the evidence. *Tice v. Kaiser Co.* (1951) 102 Cal.App.2d 44, 46. “In weighing and evaluating the
19 evidence, the court is a trier-of-fact and is not bound by factual resolutions made by the jury.”
20 *Candido v. Huitt* (1984) 151 Cal.App.3d 918, 923.

21 “An ‘irregularity in the proceedings’ is a catchall phrase referring to any act that (1)
22 violates the right of a party to a fair trial and (2) which a party ‘cannot fully present by
23 exceptions taken during the progress of the trial, and which must therefore appear by affidavits.’”
24 *Montoya v. Barragan* (2013) 220 Cal.App.4th 1215, 1229-1230 (quoting *Gay v. Torrance* (1904)
25 145 Cal. 144, 149). Errors in law warrant a new trial where the error “materially affected the
26 substantial rights of the party moving for a new trial . . .” *Bell v. Bayerische Motoren Werke*
27 *Aktiengesellschaft* (2010) 181 Cal.App.4th 1108, 1124. This ground includes erroneous or
28

1 misleading jury instructions. *Harb v. City of Bakersfield* (2015) 233 Cal.App.4th 606, 621. A
2 judgment is against law where the evidence is without conflict in any material point and is
3 insufficient as a matter of law to support the verdict. *McCown v. Spencer* (1970) 8 Cal.App.3d
4 216, 229. If a decision is based on insufficient evidence, the Court has no discretion to deny a
5 motion for new trial. *Marriage of Beilock* (1978) 81 Cal.App.3d 713, 728.

6 III. Excessive Damages/Improper Expert Testimony

7 Plaintiff's expert Christopher Stefan ("Stefan") was designated by Harcourt as an expert
8 regarding the financial value of the cannabis dispensary in this case and the financial value of
9 Harcourt's alleged interest in that dispensary.

10 Stefan's testimony demonstrated that it was based on hearsay as not allowed in *People v.*
11 *Sanchez* (2016) 63 Cal. 4th 665. *See*, Jaffe Declaration at Exhibit A (Trial Exhibit 180) and
12 Exhibit B (Stefan Trial Testimony).

13 Stefan admitted:

14 Q. What are the documents that you relied upon in forming your opinions in
15 this case?

16 A. Generally the most important information that we derived was from the
17 taxing authorities in the City of San Diego for the tax receipts and the number of
18 existing dispensaries in the market.

19 Q. Are you saying that is tax information specifically regarding the
20 dispensary in this case?

21 A. Specifically regarding all the dispensaries within San Diego.

22 Q. So it's -- your answer is not specifically about the dispensary in this case,
23 correct?

24 A. Well, the information regarding all dispensaries in the city of San Diego
25 would include the dispensary in this case, so it would be specific and general to
26 all dispensaries in San Diego, **which would include the dispensary in this case**
27 (Emphasis added).
28

See, Jaffe Declaration at Exhibit C.

Stefan further testified and admitted that he needed and requested, but did not receive.
dispensary profit and loss statements, tax returns, product type mix sold at the store, traffic

1 counts, average basket size, and average daily volumes. *See*, Jaffe Declaration at Exhibit B,
2 pages 485-487.

3 Stefan was also improperly allowed to testify that he allegedly received emails regarding
4 the tax information (again hearsay), which he failed to produce in compliance with his Notice Of
5 Deposition. *See*, Jaffe Declaration.

6 Harcourt improperly used Stefan to give financial valuation opinions. The Court must
7 review experts' opinions and act as gatekeeper to ensure that improper opinions are not offered,
8 particularly speculative ones. *See, Sargon Enters, inc. v. University of S. Cal* (2012) 55 Cal. 747.
9 *See also*, Evidence Code section 801. The testimony and opinions by Stefan should not have
10 been allowed.

11 Defendants requested by motion in limine, but was denied, to be allowed examination of
12 Stefan outside the presence of the jury to demonstrate his speculative opinions. *See*, Jaffe
13 Declaration.

14 Stefan also improperly failed to include in his opinions the public sale of the dispensary
15 by the Court. The Court improperly refused to allow Haith Razuki to respond regarding
16 whether Razuki Investments received any money from that sale. *See*, Jaffe Declaration at
17 Exhibit D, Trial Transcript at page 1033-1034.

18 There was no proper, admissible evidence to support an award of damages in this case in
19 the amount of 2.5 million dollars.

20 **IV. Harcourt Failed To Prove His Individual Entitlement To Damages, And**
21 **Failed To Prove The Material Terms Of The Alleged Joint Venture**

22 Harcourt failed to properly prove he individually entered into a verbal joint venture with
23 Razuki Investments, and failed to prove the material terms of the alleged joint venture.

24 The Court expressly stated:

25 The Court spent considerable time last night reviewing all its personal
26 notes. The Court specifically reviewed the allegations contained in the operative
27 complaint. The Court also has reviewed a number of exhibits to the court of what
28 -- just the exhibits. The Court is well aware of the standard on a nonsuit. The

1 Court will just make a few facts first; then you'll get rulings specifically to
2 everybody.

3 In looking at this, the Court looked at the exhibits that were presented by
4 both parties and received. We will start with Exhibit 32, which plaintiff just said,
5 this is the agreement.

6 Did I get that right, Counsel? This was the agreement, Plaintiff, that you
7 say is the agreement that was reached because this was done at the cafe, and this
8 was the one that was outlined by Mr. Henderson. You just said that this was the
9 agreement -- or the oral agreement. I want to make sure I understood that. Is that
10 correct? That's what you just said, so I assume that's what you're saying, correct?

11 MR. CAVANAGH: Yes. I mean, it gets refined, but that is -- those terms
12 never change. Those are the key terms of the joint venture.

13 THE COURT: Let's talk about -- thank you, Counsel.

14 Let's talk about the language that is used in this court when it comes to --
15 first of all, everyone knows, to reach an agreement, you have to have a meeting of
16 the minds. Let's just start with that. Or orally.

17 And, Counsel, I've heard testimony that there were changes made.
18 "Judge, it's evolving." One witness said that. Another witness said, "Judge, these
19 are just details. We're going to work out the details later."

20 And then the Court asked, "Are these material facts or not?"

21 And as we just said, "Well, Judge, that's where it starts, but then it
22 moved."

23 Okay. Well, let's just look at that, all right?

24 Exhibit 32, it says -- we're going to key in on two things. I read the --
25 what the contents were. It says -- it's a draft agreement -- "Final agreement
26 should be written and all terms to be negotiated."

27 What does that mean? "All terms in the agreement to be negotiated."
28 That sounds like it hasn't been done to me.

But most important, let's look at the signatures. Harcourt, and it does have
San Diego Patients LLC, and Razuki and Razuki Investments.

Then we go to the MOU, which is item 33. Let's look at that document.

It's a little more expansive. Adds a lot more, Counsel, but let's look at the
signatures on this one. This is after the agreement. Now it's Harcourt alone and
it's Razuki Investments. But let's look at that agreement just a little bit more.

Let's look at page 30- -- it's the next to last page. I show it as 320.

Here's what it says: "This letter" -- keyword letter -- "constitutes the entire
agreement between the parties and supercedes any oral or written agreements,
understanding, representatives" -- ends with warranties -- "and courses of conduct
when dealing with the parties."

That's what it says. Pretty clear. So one wonders if that supercedes it?

Then we go to another memorandum of understanding. This is Exhibit
34. And, again, in this one, the contract memo is only to be signed by Mr.
Harcourt or Mr. Razuki and their assignees.

1 Again, the language is pretty basic in there. It does add, I consider -- it
2 does add terms, whether you want to call it evolving or anyone wants to -- it does
3 add additional terms.

4 Then we go to Exhibit 35, which is another different -- it's not different
5 than 38. I know that -- different one. And let's look at this one. This is another
6 memorandum of understanding, and, again, paragraph 7 states: "This letter
7 constitutes the entire agreement between the parties and supercedes any oral or
8 written agreements."

9 Let's look at the signature lines on this agreement, which is the
10 understanding now of the contract. Razuki Investments, Equity Capital, Charlie
11 Madison, Renny Bowden. All of those were supposed to sign it. Again, none of
12 these were on execute when we talked about it.

13 Then we go to Exhibit 80. This is another memorandum of understanding
14 between the parties. And let's look at the signature lines on this one. This is the
15 one that Mr. Hayford prepared, and this is to be signed by Razuki Investments and
16 Equity Relief, which is Mr. Harcourt, and then signed by Mr. Madison.

17 Now, this could be construed as who's going to be the operating
18 agreement. But, again, it says the terms "allegedly" of the agreement. It starts off
19 with: "Razuki agreed to purchase" -- "agreed to purchase the property."

20 And, again -- well, that's the next one. And then we have Mr. Bowden's
21 testimony, "Judge, final agreement. I've read it," he testified. I checked my
22 notes, item 38. This is the operating agreement, which is extensive.

23 And, again, if you go to page 33: "This agreement constitutes the entire
24 agreement between the parties and all prior contracts and agreements with
25 respects whether written or oral supercedes them all."

26 That's the testimony. And for the record, none of these were executed.
27 Parties changed according to these documents. Terms changed according to these
28 documents. Now, could that be evolving? Could it be -- could that be a jury
question? The answer is no. No. I have to be determined and the Court has to be
that there's some evidence to show that there is a meeting of the minds.

(Emphasis added). *See*, Jaffe Declaration at Exhibit E.

There was no meeting of the minds on the material terms of any alleged joint venture.

Harcourt admitted that he individually did not have an interest in obtaining the
conditional use permit. It was Equity Capital that loaned money to San Diego Patients
Consumer Cooperative for obtaining the conditional use permit. *See*, Jaffe Declaration at
Exhibit F, Trial Transcript p. 276-277. Harcourt individually had no ownership interest in any
alleged "joint venture" property.

1 At best for Harcourt this was an agreement to agree for which damages are limited to
2 reliance damages. See, *Copeland v. Baskin Robbins U.S.A.*, 96 Cal.App.4th 1251 (Cal. Ct. App.
3 2002). Harcourt admitted that reliance damages were less than \$5,000. See, Jaffe Declaration at
4 Exhibit F. Trial Transcript at page 277 (“Q. You only said that there were \$5,000 in your reliance
5 cost as a result of this transaction with Razuki and Razuki Investments not going through, right?
6 A. Yeah. That was what was spent on a retainer with an attorney to draft documents. Q. That
7 was it, just 5,000, right? A. That's correct.”).

8 **V. Conclusion**

9 Razuki Investments requests this Court grant the motion thereby granting a new trial, and
10 for such other and further relief as this Court deems proper.

11
12 Dated: December 29, 2023

LAW OFFICES OF DOUGLAS JAFFE

13 /s/ Douglas Jaffe

14 Douglas Jaffe
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