

1 DOUGLAS JAFFE, ESQ. Bar No. 170354
2 LAW OFFICES OF DOUGLAS JAFFE
3 501 West Broadway, Suite 800
4 San Diego, California 92101
5 Telephone: (619) 400-4945
6 Facsimile: (619) 400-4810

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/29/2023 at 11:40:00 PM
Clerk of the Superior Court
By Treva Cutts, Deputy Clerk

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 JUDGMENT
NOTWITHSTANDING THE VERDICT**

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 Judgment Notwithstanding The Verdict as follows:
20

21 **I. Preliminary Statement**

22 The Court should enter judgment in favor of Razuki Investments notwithstanding the
23 verdict due to, without limitation, each of the following issues¹:

24 1) Improper testimony by Plaintiffs’ expert (allowed over a motion in limine and
25 objections at trial) which resulted in improper and excessive damages to be awarded. *See,*
26

27 ¹ The issues raised are without limitation to issues which can be raised on appeal and which do not require a motion
28 for judgment notwithstanding the verdict.

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 Code of Civil Procedure section 629 states, “The court, before the expiration of its power
10 to rule on a motion for a new trial, either of its own motion, after five days' notice, or on motion
11 of a party against whom a verdict has been rendered, shall render judgment in favor of the
12 aggrieved party notwithstanding the verdict whenever a motion for a directed verdict for the
13 aggrieved party should have been granted had a previous motion been made”. A motion for a
14 directed verdict "is in the nature of a demurrer to the evidence, and is governed by practically the
15 same rules,....". *Estate of Lances*, 216 Cal. 397, 400-01 (1932) (citations omitted), cited in
16 *Sancez-Corea v. Bank of America*, 38 Cal.2d 892 (1985).

17 Code of Civil Procedure section 657 states, “The verdict may be vacated and any other
18 decision may be modified or vacated, in whole or in part, and a new or further trial granted on all
19 or part of the issues, on the application of the party aggrieved, for any of the following causes,
20 materially affecting the substantial rights of such party: . . . 6. Insufficiency of the evidence to
21 justify the verdict or other decision, or the verdict or other decision is against law. 7. Error in
22 law, occurring at the trial and excepted to by the party making the application” (Emphasis
23 added).

24 **III. Excessive Damages/Improper Expert Testimony**

25 Plaintiff’s expert Christopher Stefan (“Stefan”) was designated by Harcourt as an expert
26 regarding the financial value of the cannabis dispensary in this case and the financial value of
27 Harcourt’s alleged interest in that dispensary.
28

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

4 Stefan admitted:

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

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

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

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

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

15 A. Well, the information regarding all dispensaries in the city of San Diego
16 would include the dispensary in this case, so it would be specific and general to
17 all dispensaries in San Diego, **which would include the dispensary in this case**
18 (Emphasis added).

19 *See*, Jaffe Declaration at Exhibit C.

20 Stefan further testified and admitted that he needed and requested, but did not receive.
21 dispensary profit and loss statements, tax returns, product type mix sold at the store, traffic
22 counts, average basket size, and average daily volumes. *See*, Jaffe Declaration at Exhibit B,
23 pages 485-487.

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

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

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

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

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

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

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

14 The Court expressly stated:

15 The Court spent considerable time last night reviewing all its personal
16 notes. The Court specifically reviewed the allegations contained in the operative
17 complaint. The Court also has reviewed a number of exhibits to the court of what
18 -- just the exhibits. The Court is well aware of the standard on a nonsuit. The
19 Court will just make a few facts first; then you'll get rulings specifically to
20 everybody.

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

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

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

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

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

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

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

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

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

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

11 What does that mean? "All terms in the agreement to be negotiated."

12 That sounds like it hasn't been done to me.

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

15 Then we go to the MOU, which is item 33. Let's look at that document.
16 It's a little more expansive. Adds a lot more, Counsel, but let's look at the
17 signatures on this one. This is after the agreement. Now it's Harcourt alone and
18 it's Razuki Investments. But let's look at that agreement just a little bit more.
19 Let's look at page 30- -- it's the next to last page. I show it as 320.

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

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

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

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

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

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

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

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

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

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

7 That's the testimony. And for the record, none of these were executed.
8 Parties changed according to these documents. Terms changed according to these
documents. Now, could that be evolving? Could it be -- could that be a jury
9 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.

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

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

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

17 At best for Harcourt this was an agreement to agree for which damages are limited to
18 reliance damages. *See, Copeland v. Baskin Robbins U.S.A.*, 96 Cal.App.4th 1251 (Cal. Ct. App.
19 2002). Harcourt admitted that reliance damages were less than \$5,000. *See*, Jaffe Declaration at
20 Exhibit F. Trial Transcript at page 277 ("Q. You only said that there were \$5,000 in your reliance
21 cost as a result of this transaction with Razuki and Razuki Investments not going through, right?
22 A. Yeah. That was what was spent on a retainer with an attorney to draft documents. Q. That
23 was it, just 5,000, right? A. That's correct.").

1 **V. Conclusion**

2 Razuki Investments requests this Court grant the motion, and for such other and further
3 relief as this Court deems proper.

4
5 Dated: December 29, 2023

LAW OFFICES OF DOUGLAS JAFFE

6 /s/ Douglas Jaffe
7 Douglas Jaffe