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SAN DIEGO PATIENTS COOPERATIVE CORPORATION, INC.;
14 *and* BRADFORD HARCOURT

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF SAN DIEGO**

18 SAN DIEGO PATIENTS COOPERATIVE)
CORPORATION, INC., *et al.*,)

19 Plaintiffs,)

20 v.)

21 RAZUKI INVESTMENTS, L.L.C., *et al.*,)

22 Defendants.)

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

Honorable Michael T. Smyth, Dept. C-67

MEMORANDUM OF POINTS AND
AUTHORITIES RE: JUDGMENT
CREDITOR BRADFORD HARCOURT'S
MOTION FOR SANCTIONS AGAINST
JUDGMENT DEBTOR RAZUKI
INVESTMENTS, LLC AND ITS COUNSEL

Date: January 17, 2025

Time: 9:00 a.m.

Courtroom: C-67

Complaint Filed: June 7, 2017

Trial Date: October 27, 2023

1 Judgment Creditor Bradford Harcourt (“Judgment Creditor”) respectfully submits this
2 Memorandum of Points and Authorities in support of his motion for sanctions against Judgment
3 Debtor Razuki Investments, LLC (“Judgment Debtor”) and its counsel, Douglas Jaffe, for their
4 disobedience of the Court’s Order compelling further responses to Judgment Creditor’s
5 discovery requests and to pay monetary sanctions.

6 **I. INTRODUCTION**

7 In this fraud action, plaintiffs San Diego Patients Cooperative Corporation, Inc. and
8 Bradford Harcourt alleged that Razuki Investments, LLC and others violated a joint venture
9 agreement to share in the profits from the operation of a legal medical marijuana dispensary in
10 San Diego. The matter was tried to a jury, and, on February 14, 2024, this Court (the Honorable
11 Eddie C. Sturgeon presiding) entered judgment in favor of Judgment Creditor and against
12 Judgment Debtor in the amount of \$2,500,000.00.

13 Shortly thereafter, Judgment Creditor served upon Judgment Debtor a set of
14 interrogatories and a set of requests for production. When Judgment Debtor failed to provide
15 any substantive responses, or to produce any documents responsive, to the discovery requests,
16 Judgment Creditor promptly moved to compel compliance.

17 On July 19, 2024, this Court heard and granted Judgment Creditor’s motions to compel,
18 ordering that “[a]ll responses and production of documents shall be served within 30 days of
19 this order.” The Court also ordered Judgment Debtor to pay Judgment Creditor sanctions in the
20 amount of \$4,246.25.

21 To date, Judgment Debtor has neither served further responses to Judgment Creditor’s
22 discovery requests nor indicated any intention of doing so. Judgment Debtor has also failed to
23 pay the monetary sanctions issued against it.

24 Because the failure of Judgment Debtor and its counsel to comply with this Court’s
25 Orders is unjustified, their non-compliance must be considered to constitute willful
26 disobedience, which warrants both a finding of contempt and the imposition of relatively severe
27 sanctions.

28 For the foregoing reasons, Judgment Creditor respectfully requests that this Court enter

1 an Order finding Judgment Debtor and its counsel, Douglas Jaffe, in contempt and imposing
2 further monetary sanctions against them jointly. Judgment Debtor should also be ordered to
3 comply immediately with the terms of this Court’s Minute Order dated July 19, 2024.

4 **II. RELEVANT PROCEDURAL AND FACTUAL HISTORY**

5 On February 14, 2024, this Court, the Honorable Eddie C. Sturgeon presiding, entered a
6 Judgment On Jury Verdict, which, among other things, entered judgment in favor of Judgment
7 Creditor and against Judgment Debtor Razuki Investments, LLC (“Judgment Debtor”) in the
8 amount of \$2,500,000.00. (Cavanagh Decl., ¶ 2.)

9 On February 16, 2024, Judgment Creditor served on Judgment Debtor a first set of
10 interrogatories and a first set of requests for the production of documents. (Cavanagh Decl.,
11 ¶ 3.)

12 On March 20, 2024, Judgment Debtor served on Judgment Creditor its responses to the
13 interrogatories and the requests for production. (Cavanagh Decl., ¶ 4.) However, each of the
14 responses consisted entirely of objections. (*Id.*) Judgment Debtor did not respond substantively
15 to any of the interrogatories or to any of the requests for production, and Judgment Debtor did
16 not produce any responsive documents. (*Id.*)

17 On April 5, 2024, Judgment Creditor moved to compel Judgment Debtor to provide
18 further, substantive responses to each of Judgment Creditor’s interrogatories and requests for
19 production. (Cavanagh Decl., ¶ 5.) The Motions To Compel were set to be heard on July 19,
20 2024, such that any Oppositions were to be filed by no later than July 8, 2024. (*Id.*) When
21 Judgment Debtor did not timely file Oppositions to either of Judgment Creditor’s Motions To
22 Compel, Judgment Creditor filed Notices of Non-Opposition. (Cavanagh Decl., ¶ 6.)
23 Thereafter, the Court allowed Judgment Debtor belatedly to file Oppositions to the two Motions
24 To Compel, and the hearing proceeded as scheduled on July 19, 2024. (Cavanagh Decl., ¶ 7.)
25 Mr. Jaffe appeared for, and argued on behalf of, Judgment Debtor at the hearing. (Cavanagh
26 Decl., ¶ 8.)

27 After hearing argument of counsel, the Court granted Judgment Creditor’s motions to
28 compel (but limited the date range of responsive information and documents to June 7, 2017, to

1 present), and imposed sanctions against Judgment Debtor in the amount of \$4,246.25.
2 (Cavanagh Decl., ¶ 9 & Ex. A.) The Court also expressly ordered that “[a]ll responses and
3 production of documents shall be served within 30 days of this order.” (*Id.*)

4 On July 19, 2024, immediately after the hearing, Judgment Creditor’s counsel sent an
5 email to Mr. Jaffe, informing him that Judgment Creditor’s counsel was “[f]ollowing up on the
6 hearing that was just completed on [Judgment Creditor’s] motions to compel Razuki
7 Investments to provide further responses to his judgment debtor discovery requests,” that
8 Judgment Creditor’s counsel would “look forward to receiving the substantive discovery
9 responses and document production from Razuki Investments by no later than August 19,
10 2024,” and inquiring “when [Judgment Creditor] can expect payment from Razuki Investments
11 of the discovery sanctions (\$4246.25) entered against it at today’s hearing.” (Cavanagh Decl.,
12 ¶ 10 & Ex. B.) In his email message, Judgment Creditor’s counsel also reiterated his
13 willingness to stipulate to the applicability and enforceability of the Protective Order entered in
14 this action in January 2018 to the judgment debtor discovery but also invited Mr. Jaffe to
15 propose a different form of Protective Order if he so preferred. (*Id.*)

16 During the evening of August 19, 2024 – i.e., the date that Judgment Debtor’s responses
17 were due to be produced – Judgment Debtor’s counsel sent an email stating, in its entirety:

18 We did not waive notice of entry of the Court’s Order regarding post-judgment
19 discovery, and we have not received any notice of entry. I have not received a
20 copy of the Court’s final order. We also feel the protective order needs a
21 provision for attorneys eyes only.

22 (Cavanagh Decl., ¶ 12.)

23 The next morning, Judgment Creditor’s counsel sent Mr. Jaffe an email message,
24 reminding him that Judgment Creditor had given notice of the Court’s Orders through the email
25 sent to him immediately after the July 19 hearing. (Cavanagh Decl., ¶ 13 & Ex. B.). Judgment
26 Creditor’s counsel nevertheless also attached to his August 20 email a formal Notice of Entry of
27 Order. (Cavanagh Decl., ¶ 13 & Ex. C.) Judgment Creditor’s counsel also reminded Mr. Jaffe
28 that the Court’s Order that Judgment Debtor must provide its further responses, and documents

1 responsive, to Judgment Creditor’s discovery requests within 30 days of the date of the Order
2 was not conditioned either on Judgment Creditor giving formal notice of the Order or on the
3 parties entering into a new Protective Order. (Cavanagh Decl., ¶ 13 & Ex. B.) Judgment
4 Creditor’s counsel therefore asked Mr. Jaffe to confirm that Judgment Debtor’s responses and
5 document production would be produced immediately and advised that, if they were not,
6 Judgment Creditor would return to Court to demand immediate compliance and to request
7 sanctions against both Judgment Debtor and Mr. Jaffe. (*Id.*) Judgment Creditor’s counsel also
8 asked Mr. Jaffe to advise as to when Judgment Creditor could expect payment of the discovery
9 sanctions that had previously been imposed against Judgment Debtor. (*Id.*)

10 The next day, Mr. Jaffe responded by implying that compliance with the Court’s Orders
11 was not necessary because he had not earlier received formal notice of the same and because a
12 new Protective Order had not been entered. (Cavanagh Decl., ¶ 14 & Ex. B.)

13 To date, Judgment Debtor has neither responded to Judgment Creditor’s discovery
14 requests nor produced any responsive documents. (Cavanagh Decl., ¶ 16.) To date, Judgment
15 Debtor also has not paid any portion of the \$4,246.25 in discovery sanctions previously issued
16 against it. (*Id.*)

17 III. ARGUMENT

18 Once a party has been ordered to answer discovery or to produce documents, more
19 severe sanctions are available for a continued failure to make discovery. Specifically, “[i]f a
20 party ... fails to obey an order compelling further response to interrogatories, the court may
21 make those orders that are just, including the imposition of an issue sanction, an evidence
22 sanction, or a terminating sanction....” *See* Cal. Civ. Proc. Code § 2030.300(e). In addition to
23 any such sanction, “the court may impose a monetary sanction....” *Id.*

24 The moving party need only show the failure to obey an earlier discovery order;
25 thereafter, the burden of proof shifts to the party seeking to avoid sanctions to establish a
26 satisfactory excuse for its conduct. *See Corns v. Miller*, 181 Cal. App. 3d 195, 201 (1986);
27 *Williams v. Russ*, 167 Cal. App. 4th 1215, 1227 (2008).

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1 A. Evidentiary Sanctions Against Judgment Debtor And Its Counsel Are Warranted.

2 “Disobeying a court order to provide discovery” is a “misuse of the discovery process.”
3 Cal. Civ. Proc. Code § 2023.010(g). Accordingly, a court “may make those orders that are just”
4 if a party fails to obey a prior discovery order. *See* Cal. Civ. Proc. Code § 2030.300(e).
5 Numerous cases have held that severe sanctions are warranted for failure to comply with a
6 court’s discovery order, particularly where the failure is willful. *See, e.g., R.S. Creative, Inc. v.*
7 *Creative Cotton, Ltd.*, 75 Cal. App. 4th 486, 495 (1999); *Vallbona v. Springer*, 43 Cal. App. 4th
8 1525, 1545 (1996); *Biles v. Exxon Mobil Corp.*, 124 Cal. App. 4th 1315, 1327 (2004); *Aghaian*
9 *v. Minassian*, 64 Cal. App. 5th 603, 618-620 (2021).

10 Here, the failures to provide further responses to Judgment Creditor’s discovery requests
11 and to pay the sanctions previously awarded must be characterized as willful disobedience. The
12 discovery requests at issue were served back on February 16, 2024. (Cavanagh Decl., ¶ 3.) In
13 response, Judgment Debtor served only unmeritorious objections. (Cavanagh Decl., ¶ 3.)
14 Therefore, Judgment Creditor moved to compel further, substantive responses. (Cavanagh
15 Decl., ¶ 5.) After initially failing to oppose the motions to compel, Judgment Debtor was
16 afforded the opportunity to file belated Oppositions, and Mr. Jaffe argued Judgment Debtor’s
17 positions. (Cavanagh Decl., ¶¶ 6-8.)

18 This Court, however, did not find Judgment Debtor’s arguments persuasive and granted
19 Judgment Creditor’s motions to compel. (Cavanagh Decl., ¶ 9 & Ex. A.) Specifically, the
20 Court ordered that “[a]ll responses and production of documents shall be served within 30 days
21 of this order” and imposed sanctions against Judgment Debtor in the amount of \$4,246.25. (*Id.*)

22 Notwithstanding the Court’s clear Order, Judgment Debtor and its counsel not only
23 knowingly allowed the 30-day deadline to pass without compliance, but also have failed to
24 proffer any valid justification for their non-compliance. (Cavanagh Decl., ¶¶ 10-16 & Exs. B-
25 C.)

26 It is expected that Judgment Debtor will argue that it was excused from compliance
27 because Judgment Creditor failed to provide notice of the Court’s July 19 Order and/or because
28 a new Protective Order has not been entered. Both arguments would lack merit. First,

1 compliance with the Court’s Order to serve responses and to produce documents within 30 days
2 was not conditioned on either service of notice of the Court’s Order or entry of a new Protective
3 Order. (Cavanagh Decl., Ex. A.) Second, Judgment Creditor did give written notice of the
4 Court’s July 19 Orders immediately after the hearing – which Mr. Jaffe attended – concluded.
5 (Cavanagh Decl., ¶ 10 & Ex. B.) Third, as this Court has previously recognized (Cavanagh
6 Decl., Ex. A), Judgment Creditor has repeatedly stipulated that Judgment Debtor’s responses
7 and document production may be governed by the Protective Order previously entered by Judge
8 Sturgeon (Cavanagh Decl., ¶ 10 & Ex. B).

9 Under these circumstances, the non-compliance of Judgment Debtor and its counsel
10 must be viewed not merely as a failure to obey but as an example of willful disobedience.

11 In deciding whether and which sanctions to impose for disobedience to discovery orders,
12 a court may consider several factors, including the time elapsed since the discovery was served;
13 whether the party received extensions of time to respond; and the existence of, and compliance
14 with, prior court orders compelling discovery. *See Deyo v. Kilbourne*, 84 Cal. App. 3d 771, 796
15 (1978).

16 Here, given that this matter has already proceeded through trial, evidentiary sanctions
17 would be inapplicable. However, Judgment Creditor remains entitled to prompt compliance
18 with the Court’s Minute Order dated July 19, 2024, including prompt service of Judgment
19 Debtor’s discovery responses, prompt production of Judgment Debtor’s documents, and prompt
20 payment of the monetary sanctions previously imposed.

21 **B. Plaintiff Is Entitled To Additional Monetary Sanctions.**

22 In addition to any other sanction that may be imposed, a court is authorized to order a
23 disobedient party to pay the reasonable expenses, including attorneys’ fees, incurred as a result
24 of the failure to obey. *See* Cal. Civ. Proc. Code § 2023.030(a).

25 When Judgment Creditor filed its motions to compel on April 5, 2024, it requested
26 monetary sanctions of \$4,246.25 for each of its two motions. (Cavanagh Decl., ¶ 5.) After
27 hearing the motions to compel, the Court ordered Judgment Debtor to pay a total of only
28 \$4,246.25 in sanctions. (Cavanagh Decl., ¶ 9 & Ex. A.)

1 In light of the willful disobedience with the Court's prior Order, Judgment Debtor and
2 its counsel should be ordered not only to compensate Judgment Creditor for the fees incurred in
3 bringing the instant motion, but also to compensate Judgment Creditor for the remainder of the
4 fees that it incurred in making its prior motions to compel. *See Deyo v. Kilbourne*, 84 Cal. App.
5 3d 771, 796 (1978) (purpose of allowing courts to issue monetary sanctions against a
6 disobedient party in addition to other sanctions that may be imposed is to compensate the
7 requesting party for the costs and fees incurred in enforcing discovery).

8 In connection with this motion, Judgment Creditor's counsel reasonably spent
9 approximately two and three-quarter hours drafting this Memorandum of Points and
10 Authorities, drafting his Declaration, drafting the Notice of the Motion, and preparing the
11 Proposed Order. (Cavanagh Decl., ¶ 17.) In addition, Judgment Creditor's counsel anticipates
12 reasonably spending a total of approximately 1 hour reviewing the expected Opposition and the
13 legal authorities cited therein, a total of approximately 2 hours preparing Judgment Creditor's
14 reply brief, and a total of approximately 1.5 hours preparing for and attending the hearing on
15 this motion. (Cavanagh Decl., ¶ 18.) Thus, at counsel's customary and reasonable hourly rate
16 of \$395 (Cavanagh Decl., ¶ 19), Judgment Creditor will have incurred approximately \$2,863.75
17 in fees in connection with this motion.

18 As noted above, Judgment Creditor previously requested monetary sanctions in the
19 amount of \$4,246.25 in connection with each of its two prior motions to compel, but the Court
20 awarded sanctions totaling only \$4,246.25.

21 Judgment Creditor requests now the balance of its initial request – i.e., \$4,246.25 – plus
22 the additional \$2,863.75 incurred in connection with this motion, for a total of \$7,110 against
23 Judgment Debtor and its counsel, Mr. Jaffe, jointly. In addition, Judgment Creditor should be
24 ordered to pay promptly the outstanding sanctions amount of \$4,246.25.

25 **IV. CONCLUSION**

26 For the foregoing reasons, Judgment Creditor respectfully requests that Judgment
27 Debtor be ordered to serve immediately substantive written responses, without objections, to
28 each of Judgment Creditor's interrogatories and requests for production, to produce

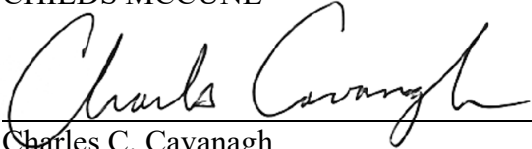
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immediately all documents responsive to each of Judgment Creditor’s requests for production, and to pay immediately the monetary sanctions already imposed against it – i.e., \$4,246.25.

Judgment Creditor further respectfully requests that Judgment Debtor and Mr. Jaffe be ordered to pay promptly additional monetary sanctions in the amount of \$7,110.

Dated: August 26, 2024

PARK LAWLESS & TREMONTI LLP
MESSNER REEVES LLP
CHILDS MCCUNE

By: 

Charles C. Cavanagh
Allan B. Claybon
Mark Collier
Attorneys for Plaintiffs

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, California. I am over the age of eighteen
3 years and not a party to the within entitled action; my business address is 515 South Flower
4 Street, 18th Floor, Los Angeles, CA 90071.

5 On August 26, 2024, I caused to be served the foregoing document described as:

6 **MEMORANDUM OF POINTS AND AUTHORITIES RE: JUDGMENT CREDITOR**
7 **BRADFORD HARCOURT’S MOTION FOR SANCTIONS AGAINST JUDGMENT**
8 **DEBTOR RAZUKI INVESTMENTS, LLC AND ITS COUNSEL** on the interested parties as
9 follows:
10

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21 [x] ELECTRONIC-SERVICE/E-MAIL: Pursuant to California Rules of Court, Rule
22 2.251(b)(1)(B), a court order or by consent/agreement of the parties to accept service by e-mail
23 and/or electronic submission, I cause the above-referenced document(s) to be sent to the persons
indicated above at the email address set forth above from either the Court’s electronic filing
service or by personal email.

24 I declare under penalty of perjury under the laws of the State of California that the
25 forgoing is true and correct.

26 DATED: August 26, 2024

27 
28 Paulina J. Resendez