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

11 SAN DIEGO PATIENTS COOPERATIVE)
12 CORP, et. al.,)

13 Plaintiffs,)

14 vs.)

15 RAZUKI INVESTMENTS LLC, et. al.,)

16 Defendants.)
17)
18)
19)
20)

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

**OPPOSITION TO EX-PARTE
APPLICATION FOR INTERVENTION**

DATE: April 6, 2021
TIME: 8:30 a.m.
DEPT: 67

21 Defendants Razuki Investments, LLC, Salam Razuki and Keith Henderson submit their
22 Opposition To The Ex-Parte Application For Intervention as follows:
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1 **I. Preliminary Statement**

2 This case does not involve the sale of the Balboa marijuana dispensary property (with its
3 Conditional Use Permit (“CUP”). It involves an alleged oral joint venture agreement for
4 Plaintiffs to allegedly operate the Balboa marijuana dispensary.

5 There were discussions that Plaintiffs might operate the marijuana dispensary, but no
6 agreement was ever reached. Even if Plaintiffs can prove their alleged “agreement to agree” for
7 operation of the Balboa marijuana dispensary, which Defendants dispute, the damages are not
8 lost profits of the venture but their alleged reliance damages which Defendants cannot prove.
9 *See, Copeland v. Baskin Robbins USA* (2002) 96 Cal. App. 4th 951. Plaintiffs were unwilling to
10 pay the hundreds of thousands of dollars that it would take to fight the Business Owners
11 Association for the Balboa Property who had passed an amendment to their CC&R’s which
12 prohibited a marijuana dispensary.

13
14 **II. The Forgery Allegations Raise The Issue, That Should Be Decided On Full
15 Briefing, That The Balboa Property (With Its CUP) Cannot Be Sold At This
16 Time**

17 Claims regarding Plaintiff Harcourt forging documents to sell the Balboa Property (with
18 its CUP) should be addressed on full briefing by all parties before the Balboa Property (with its
19 CUP) is sold.

20 **III. The Application For Intervention Is Not Timely**

21 The Record Of Actions reflects that Amy Sherlock (“Sherlock”) reserved an ex-parte
22 hearing on March 23, 2021. Sherlock has not given any explanation for why she did not inform
23 all parties and their counsel for **13 days** regarding her impending ex-parte application for
24 intervention. It seems clear that Sherlock did so as a litigation tactic to try and give the
25 responding parties and their counsel only hours to respond.

26 This case was filed in 2017. Both mandatory and permissive intervention must be sought
27 "upon timely application." *See, CCP § 387(d); See also, Northern Cal. Psychiatric Society v.*
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1 *City of Berkeley* (1986) 178 Cal.App.3d 90, 109. "It is settled that any unreasonable delay in
2 filing a petition for leave to intervene is a sufficient ground for a denial of the petition." *In re*
3 *Yokohama Specie Bank, Ltd.* (1948) 86 Cal.App.2d 545, 554-555, citing *Allen v. California*
4 *Water & Tel. Co.* (1947) 31 Cal.2d 104, 108 ["[I]t is the general rule that a right to intervene
5 should be asserted within a reasonable time and that the intervenor must not be guilty of an
6 unreasonable delay after knowledge of the suit."].)

7 Defendants Razuki Investments, LLC, Salam Razuki and Keith Henderson should be
8 given the opportunity to fully brief the dispositive issue for intervention of Sherlock's untimely
9 petition.

10
11 **IV. Sherlock Has Failed To Meet Her Burden To Make The Showing Necessary**
12 **For Mandatory Or Permissive Intervention**

13 Defendants Razuki Investments, LLC, Salam Razuki and Keith Henderson should be
14 given the opportunity to fully brief the dispositive issues for intervention that Sherlock has failed
15 to meet her burden to make the showing necessary for mandatory or permissive intervention.

16 **A. No Mandatory Intervention**

17 To establish a right to mandatory intervention Sherlock must: (1) show a protectable
18 interest in the subject of the action, (2) demonstrate that the disposition of the action may impair
19 or impede her ability to protect that interest; and (3) demonstrate that her interests are not
20 adequately represented by the existing parties. *See, Edwards v. Heartland Payment Systems, Inc.*
21 (2018) 29 Cal. App. 5th 725, 732. These criteria are virtually identical to those for compulsory
22 joinder of an indispensable party. *See, CCP § 389(a).*

23 Sherlock fails to recognize in the ex-parte application in this action that this case does not
24 involve any disposition regarding the sale of the Balboa CUP. It involves an alleged oral joint
25 venture agreement for Plaintiffs to allegedly operate the Balboa marijuana dispensary. "The
26 'interest' mentioned in section 387 which entitles a person to intervene in a suit between other
27 persons must be 'in the matter in litigation and of such a direct and immediate character that the
28 intervenor will either gain or lose by the direct legal operation and effect of the judgment' (Elliott

1 v. Superior Court, 168 Cal. 727 [145 P. 101]); it must be ‘direct and not consequential’ (Isaacs
2 v. Jones, 121 Cal. 257, 261 [53 P. 793, 1101]). See, also, Bechtel v. Axelrod, 20 Cal.2d 390, 392
3 [125 P.2d 836]; La Mesa etc. Irr. Dist. v. Halley, 195 Cal. 739 [235 P. 990]; Lindsay-Strathmore
4 Irrig. Dist. v. Wutchumna Water Co., 111 Cal.App. 707 [296 P. 942]; 20 Cal.Jur. p. 520, § 25;
5 39 Am.Jur. p. 935, § 61; 30 Cal. L.Rev. 478.” *Allen v. California Water Tel. Co.* (1947) 31 Cal.
6 2d 104, 109. Sherlock’s alleged claim to the proceeds from the sale of the Balboa Property and
7 its CUP (when this action does not involve the sale of the Balboa Property and its CUP), is not a
8 protectable interest in the subject of this action.

9 Sherlock also admits that her interests have been adequately represented by existing
10 parties for nearly 4 years. There is nothing about the sale of the Balboa Property with its CUP
11 that changes that in this action, which does not involve the sale of the Balboa Property with its
12 CUP.

13 B. No Permissive Intervention

14 To establish discretionary intervention, Sherlock must show (1) the proper procedures
15 have been followed; (2) the nonparty has a direct and immediate interest in the action; (3) the
16 intervention will not enlarge the issues in the litigation; and (4) the reasons for the intervention
17 outweigh any opposition by the parties presently in the action. *See, Edwards v. Heartland*
18 *Payment Systems, Inc.* (2018) 29 Cal. App. 5th 732, 736.

19 Sherlock has not followed the proper procedures, she does not have a direct and
20 immediate interest in this action, the intervention will clearly enlarge the issues in this litigation
21 (Sherlock alleges forgery for the first time against Plaintiff Harcourt although the expert report to
22 counsel for Sherlock which is attached to the proposed Complaint In Intervention is dated
23 February 21, 2020), and the reasons for intervention do not outweigh the opposition by the
24 parties presently in the action.

