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9 Attorneys for Plaintiffs
10 SAN DIEGO PATIENTS COOPERATIVE CORPORATION, INC.;
and BRADFORD HARCOURT
11

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN DIEGO**

14 SAN DIEGO PATIENTS COOPERATIVE)
15 CORPORATION, INC., a California)
cooperative corporation, and BRADFORD)
16 HARCOURT, an individual,)
17 Plaintiffs,)
18 v.)
19 RAZUKI INVESTMENTS, L.L.C., a)
California limited liability company;)
20 BALBOA AVE COOPERATIVE, a)
California cooperative corporation;)
21 AMERICAN LENDING AND)
HOLDINGS, LLC, a California limited)
22 liability company; SAN DIEGO UNITED)
HOLDINGS GROUP, LLC, a California)
23 limited liability company; CALIFORNIA)
CANNABIS GROUP, a nonprofit mutual)
24 benefit corporation; SALAM RAZUKI, an)
individual; NINUS MALAN, an individual,)
25 KEITH HENDERSON, an individual, AND)
DOES 1-20, INCLUSIVE,)
26 Defendants.)
27

Case No. 37-2017-00020661-CU-CO-CTL
Honorable Eddie C. Sturgeon, Dept. C-67

**DECLARATION OF CHARLES
CAVANAGH IN SUPPORT OF PLAINTIFF
SAN DIEGO PATIENTS COOPERATIVE
CORPORATION, INC.'S MOTION FOR
SANCTIONS AGAINST DEFENDANTS
NINUS MALAN; AMERICAN LENDING
AND HOLDINGS, LLC; AND SAN DIEGO
UNITED HOLDINGS GROUP, LLC**

Date: December 8, 2023
Time: 9:00 a.m.
Courtroom: C-67

Complaint Filed: June 7, 2017
Trial Date: August 25, 2023

1 I, Charles Cavanagh, declare and state as follows:

2 1. I am a partner of the law firm of Messner Reeves, LLP, counsel of record in this
3 matter for plaintiff San Diego Patients Cooperative Corporation, Inc. (“Plaintiff”). I make this
4 declaration based upon my own personal knowledge and can testify truthfully to the facts set
5 forth herein if called to do so.

6 2. On March 3, 2023, this Court continued the trial of this matter to August 25,
7 2023, and extended the motion and discovery completion deadline to July 28, 2023.

8 3. On September 28, 2022, I caused to be served on each of defendants Ninus
9 Malan (“Malan”); American Lending and Holdings, LLC (“American Lending”); and San
10 Diego United Holdings Group, LLC (“San Diego United”) a supplemental interrogatory and a
11 supplemental request for production.

12 4. On April 16, 2023, I prepared and filed a total of six motions to compel each of
13 Malan, American Lending, and San Diego United to respond to Plaintiff’s supplemental
14 interrogatories and supplemental requests for production. As detailed in my declarations in
15 support of those motions to compel, I reasonably spent, or anticipated spending, sufficient time
16 preparing and supporting those motions to incur approximately \$3160 in fees for each motion.

17 5. The hearing on the motions to compel was initially set for October 27, 2023,
18 which was the earliest available hearing date at the time.

19 6. On April 19, 2023, I prepared and filed an *ex parte* application to advance the
20 hearing date on the motions to compel. That application was set to be heard on May 11, 2023.

21 7. On May 11, 2023, I appeared on Plaintiff’s *ex parte* application to advance the
22 hearing date on Plaintiff’s motions to compel. David Demergian appeared on behalf of Malan,
23 American Lending, and San Diego United. At that hearing, Mr. Demergian stipulated that
24 Malan, American Lending, and San Diego United would provide substantive responses to
25 Plaintiff’s supplemental discovery requests within thirty days. Accordingly, the Court ordered
26 Malan, American Lending, and San Diego United to provide their responses to Plaintiff’s
27 supplemental discovery requests within 30 days. The Court also ordered Malan, American
28

1 Lending, and San Diego United, jointly, to pay Plaintiff sanctions in the amount of \$3000. A
2 true and correct copy of the Court’s Minute Order regarding the May 11, 2023 hearing is
3 attached hereto as **Exhibit A**.

4 8. By June 10, 2023 – i.e., within thirty days of the Court’s Order regarding
5 Plaintiff’s motions to compel – I had not received responses from any of Malan, American
6 Lending, or San Diego United to Plaintiff’s supplemental discovery requests. I also had not
7 received payment of the \$3000 sanctions award.

8 9. On June 14, 2023, I sent an email to Mr. Demergian, alerting him that I had not
9 yet received either Defendants’ responses to Plaintiff’s supplemental discovery requests or
10 payment of the sanctions amount. In my email, I asked that Mr. Demergian promptly provide
11 all of the discovery responses and the sanctions payment, so that would could avoid revisiting
12 the issue with the Court. A true and correct copy of my June 14 email to Mr. Demergian is
13 included in the email chain that is attached hereto as **Exhibit B**.

14 10. I never received any response to my June 14 email.

15 11. On June 19, 2023, I sent another email to Mr. Demergian, asking him to let me
16 know as soon as possible when I could expect to receive Defendants’ responses to Plaintiff’s
17 supplemental discovery requests and payment of the sanctions award. In my email, I also
18 advised Mr. Demergian that Plaintiff reserved the right to move for all applicable sanctions and
19 other relief – including issue sanctions, evidentiary sanctions, contempt sanctions, and/or
20 terminating sanctions – if Defendants did not promptly provide all of the discovery responses
21 and the sanctions payment. A true and correct copy of my June 19 email to Mr. Demergian is
22 included in the email chain that is attached hereto as **Exhibit B**.

23 12. I never received any response to my June 19 email.

24 13. On June 27, 2023, I sent another email to Mr. Demergian, reminding him that I
25 had not yet received either Defendants’ responses to Plaintiff’s supplemental discovery requests
26 or payment of the sanctions award. In my email, I informed Mr. Demergian that, in light of his
27 clients’ disobedience of the Court’s prior discovery Order, Plaintiff planned to move for
28

1 evidentiary sanctions – precluding his clients from offering any testimony or evidence not
2 disclosed in their prior written discovery responses and document productions – and additional
3 monetary sanctions. I also requested that Mr. Demergian contact me at his earliest availability
4 to discuss the matter. A true and correct copy of my June 27 email to Mr. Demergian is
5 included in the email chain that is attached hereto as **Exhibit B**.

6 14. As of the filing of this Declaration, I have not received any response to my email
7 of June 27.

8 15. On June 28, 2023, I reasonably spent approximately 30 minutes reviewing the
9 file to prepare this Motion, I reasonably spent approximately 30 minutes drafting this
10 Declaration, I reasonably spent approximately 60 minutes preparing the Memorandum of Points
11 and Authorities in support of the Motion, I reasonably spent approximately 15 minutes
12 preparing the Separate Statement, I reasonably spent approximately 15 minutes preparing the
13 Notice of the Motion, and I reasonably spent approximately 15 minutes preparing the Proposed
14 Order granting the Motion.

15 16. I anticipate reasonably spending a total of approximately 1 hour reviewing the
16 expected Opposition to the Motion and the legal authorities cited therein, a total of
17 approximately 2 hours preparing Plaintiff’s Reply Brief, and a total of approximately 1.5 hours
18 preparing for and attending the hearing on Plaintiff’s Motion.

19 17. My customary and reasonable hourly rate is \$395.

20
21 I swear and declare under penalty of perjury under the laws of the State of California
22 that the foregoing is true and correct.

23 Executed this 28th day of June, 2023, at Denver, Colorado.

24
25 

26 _____
Charles Cavanagh

1 **PROOF OF SERVICE**

2 I am employed in the County of Denver, Colorado. I am over the age of eighteen years
3 and not a party to the within entitled action; my business address is 1550 Wewatta Street, Suite
4 710, Denver, Colorado 80202.

5 On June 28, 2023, I caused to be served the foregoing document described as:

6 **DECLARATION OF CHARLES CAVANAGH IN SUPPORT OF PLAINTIFF SAN**
7 **DIEGO PATIENTS COOPERATIVE CORPORATION, INC.’S MOTION FOR**
8 **SANCTIONS AGAINST DEFENDANTS NINUS MALAN; AMERICAN LENDING AND**
9 **HOLDINGS, LLC; AND SAN DIEGO UNITED HOLDINGS GROUP, LLC** on the
10 interested parties as follows:

11 Douglas Jaffe
12 LAW OFFICES OF DOUGLAS JAFFE
13 501 West Broadway, Suite 800
14 San Diego, CA 92101
15 T.:(619) 400-4945
16 F.: (619) 400-4947
17 E.: dougjaffelaw@gmail.com
18 Attorney for Defendants Razuki Investments,
19 L.L.C. and Keith Henderson and
20 Defendant/Cross-Complainant Salam Razuki
21 Balboa Ave Cooperative
22 8963 Balboa Avenue, Unit E
23 San Diego, CA 92123

David K. Demergian
DEMERGIAN LAW
501 West Broadway, Suite 800
San Diego, CA 92101
T: (619) 239-3015
F: (619) 239-3029
E: david@demergianlaw.com
Attorney for Defendants/Cross-Defendants
Ninus Malan, San Diego United Holdings,
LLC, American Lending and Holdings, LLC
California Cannabis Group
1011 Camino Del Rio S #210
San Diego, CA 92108

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
24 indicated above at the email address set forth above from either the Court’s electronic filing
25 service or by personal email.

22 [x] BY OVERNIGHT DELIVERY [CCP §1013(a)] By placing [] the original [x] a true
23 copy thereof enclosed in a sealed envelope(s) addressed as to the above-named counsel of record
24 or parties in propria persona. I caused such envelope to be deposited in the Federal Express box
25 at 11620 Wilshire Blvd., Los Angeles, CA 90025, which is regularly maintained by Federal
26 Express, with delivery fees pre-paid and provided for, addressed to the person on whom said
27 document is to be served.

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

26 DATED: June 28, 2023

/s/ Tara L. Nelson

Tara L. Nelson

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 05/11/2023

TIME: 08:30:00 AM

DEPT: C-67

JUDICIAL OFFICER PRESIDING: Eddie C Sturgeon

CLERK: Herlinda Chavarin

REPORTER/ERM:

BAILIFF/COURT ATTENDANT: M. Micone

CASE NO: **37-2017-00020661-CU-CO-CTL** CASE INIT.DATE: 06/07/2017

CASE TITLE: **San Diego Patients Cooperative Corporation Inc vs Razuki Investments LLC**

[IMAGED]

CASE CATEGORY: Civil - Unlimited CASE TYPE: Contract - Other

EVENT TYPE: Ex Parte

APPEARANCES

CHARLES C CAVANAGH, counsel, present for Respondent on Appeal,Plaintiff(s) via remote video conference.

David K Demergian, counsel, present for Defendant(s).

The court hears from counsel on plaintiff's ex parte request to shorten time on the discovery motions currently set for October 27. Attorney Demergian informs the court and counsel he will stipulate to providing plaintiff with responses within 30 days. The court and counsel discuss the stipulation and sanctions. The court having heard from counsel, orders defendant to compel discovery responses to plaintiff as stated in the motions within 30 days. Defendants are ordered to pays sanctions in the amount of \$3,000 to plaintiff.

The court, on its own motion, vacates the discovery motions set for October 27.

Notice is waived.

Eddie C. Sturgeon

Judge Eddie C Sturgeon

EXHIBIT

A

From: Charles C. Cavanagh
Sent: Tuesday, June 27, 2023 3:11 PM
To: David Demergian
Subject: RE: San Diego Patients v. Razuki, et al.

Dave:

I am writing to follow up with my messages below, to which I have not received a response. To date, we have received neither your clients' responses to Plaintiffs' supplemental discovery requests nor payment of the sanctions award. Please allow this email to serve as my request to meet-and-confer regarding Plaintiffs' contemplated motion for sanctions in light of your clients' disobedience of the Court's prior discovery order. Through their contemplated motion for sanctions, Plaintiffs will request evidentiary sanctions (precluding your clients from offering any testimony or evidence not disclosed in their prior written discovery responses and document productions) and additional monetary sanctions. Please contact me at your earliest availability, so we may confer further about the contemplated motion.

Best regards,
Charles

CHARLES C. CAVANAGH

Partner

Messner Reeves LLP

D: 303.454.2144 **O:** 303.623.1800 **E:** ccavanagh@messner.com
1550 Wewatta Street, Suite 710 Denver, CO 80202

From: Charles C. Cavanagh <ccavanagh@messner.com>
Sent: Monday, June 19, 2023 10:14 AM
To: David Demergian <david@demergianlaw.com>
Subject: RE: San Diego Patients v. Razuki, et al.

Dave:

I am writing to follow up with my message below, to which I have not received a response. Please let us know if we can soon expect your clients' responses to Plaintiffs' supplemental discovery requests and payment of the sanctions award. We reserve the right to move for all applicable sanctions and other relief (including issue sanctions, evidentiary sanctions, contempt sanctions, and/or terminating sanctions) in the event that your clients do not promptly provide the discovery responses and pay the sanctions award.

Best regards,
Charles

CHARLES C. CAVANAGH

Partner

Messner Reeves LLP

D: 303.454.2144 **O:** 303.623.1800 **E:** ccavanagh@messner.com

**EXHIBIT
B**

From: Charles C. Cavanagh <ccavanagh@messner.com>
Sent: Wednesday, June 14, 2023 9:25 AM
To: David Demergian <david@demergianlaw.com>
Subject: San Diego Patients v. Razuki, et al.

Dave:

I am writing to follow up regarding the discovery hearing that we attended on May 11. At that hearing, you agreed on behalf of your clients – and were ordered by the Court – to provide within 30 days responses to Plaintiffs’ supplemental discovery requests. The Court also ordered payment of sanctions in the amount of \$3000 within 30 days. To date, I have not received any of the supplemental discovery responses or the sanctions payment. Please provide all of the supplemental discovery responses and the sanctions payment forthwith, so we may avoid revisiting these issues with the Court.

Best regards,
Charles

CHARLES C. CAVANAGH

Partner

D: 303.454.2144 **O:** 303.623.1800 **E:** ccavanagh@messner.com

1550 Wewatta Street, Suite 710 Denver, CO 80202

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DENVER | GREENWOOD VILLAGE | COLORADO SPRINGS | CHEYENNE | NEW YORK CITY