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Tax and Fee Administration*

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
06/12/2023 at 04:02:00 PM
Clerk of the Superior Court
By Mary Kaneshiro, Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

13 **SALAM RAZUKI, an individual,**
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Plaintiffs,

v.

**NINUS MALAN, an individual,
MONARCH MANAGEMENT
CONSULTING, INC. a California
Corporation; SAN DIEGO UNITED
HOLDING GROUP, LLC, a California
limited liability company; FLIP
MANAGEMENT, LLC, a California limited
liability company; MIRA ESTE
PROPERTIES, LLC, a California limited
liability company; MIRA ESTE
PROPERTIES, LLC, a California limited
liability company; ROSELLE
PROPERTIES, LLC, a California limited
liability company and DOES 1-100,
inclusive,**

Defendants.

Case No. 37-2018-00034229-CU-BC-CTL
CONSOLIDATED WITH: Case No. 37-
2018-00039388-CU-OR-CTL

**CALIFORNIA DEPARTMENT OF TAX
AND FEE ADMINISTRATION'S BRIEF
RE DISBURSEMENT OF FUNDS;
DECLARATION OF RYAN SLAUSON**

Date: July 28, 2023
Time: 2:00 p.m.
Dept: C-67
Judge: The Honorable Eddie C.
Sturgeon

Action Filed: July 10, 2018

1 Pursuant to the Court’s order on May 18, 2023, creditor California Department of Tax and
2 Fee Administration (CDTFA), submits the following brief regarding distribution of funds held by
3 the Receiver until further direction from the Court.

4 **I. INTRODUCTION**

5 On February 2, 2023, the Court entered an order terminating the receivership, and
6 discharging Michael Essary from his responsibilities as a court-appointed receiver for San Diego
7 United Holdings Group, LLC, Mira Este Properties, LLC, Balboa Ave Cooperative, California
8 Cannabis Group, Devilish Delights, Inc., and Flip Management LLC. (ROA 2363.) The Court
9 ordered all funds to be held by the Receiver pending further direction by the Court. (*Ibid.*) Prior to
10 the termination of the receivership, on July 22, 2022, the Receiver filed a motion for discharge of
11 receiver and exoneration of surety. (ROA 2242.) Said motion indicated that as of the date of his
12 filing, “Balboa Ave Cooperative owe[d] an additional \$230,430.29 in taxes, interest and
13 penalties” to CDTFA. (*Id.* at p. 3.) The Receiver recommended that all outstanding taxes owed to
14 CDTFA be paid in full. (*Ibid.*) On October 31, 2022, the Receiver filed a supplemental reply to
15 his motion for discharge, and again recommended that CDTFA’s outstanding tax liability be paid
16 from the sale of the Balboa Ave property. (ROA 2319.)

17 **II. THE COURT HAS AUTHORITY TO DISTRIBUTE FUNDS TO CDTFA**

18 The Court has authority to distribute funds to CDTFA for payment of the tax liabilities
19 owed by Balboa Ave Cooperative (Balboa Ave). Revenue and Taxation Code section 6757,
20 subdivision (a), provides in pertinent part that “[i]f any person fails to pay any amount imposed
21 under this part at the time that it becomes due and payable, the amount thereof, including
22 penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected
23 and enforceable state tax lien.” (Rev. & Tax Code, § 6757, subd. (a).) Here, Balboa Ave is
24 indebted to CDTFA for delinquent sales and use taxes. On July 22, 2022, CDTFA issued a Notice
25 of Determination against Balboa Ave for unpaid sales and use tax, interest and penalties totaling
26 \$245,138.78 for tax periods July 1, 2018 through June 30, 2021. (Slauson Decl., ¶ 4.) The Notice
27 of Determination became final on August 24, 2022. (*Ibid.*)
28

1 Government Code section 7170, subdivision (a), provides that “a state tax lien attaches to
2 all property and rights to property whether real or personal, tangible or intangible, including all
3 after-acquired property and rights to property, belonging to the taxpayer and located in this state.”
4 (Gov. Code, § 7170, subd. (a).) On February 28, 2023, CDTFA filed a Notice of State Tax Lien
5 against Balboa Ave with the California Secretary of State, Document No. U230015051721.
6 (Slauson Decl., ¶ 5.) On March 3, 2023, CDTFA also recorded a valid Notice of State Tax Lien
7 against Balboa Ave for \$275,541.50, with the San Diego County Recorder’s Office, Document
8 No. 2023-0055115. (*Id.*, ¶ 6.)

9 Additionally, CDTFA’s Certificate of Delinquency indicates that as of April 24, 2023, the
10 Balboa Ave sales and use tax liability totals \$278,380.32 (\$212,911.00 in tax, \$43,228.22 in
11 interest, \$21,291.10 in penalties and \$950 in collection fee/cost). (Slauson Decl., ¶ 7.) A
12 Certificate of Delinquency in a sales and use tax collection action is “prima facie evidence of the
13 determination of the tax or the amount of tax, of the delinquency of the amounts set forth, and of
14 the compliance by the [CDTFA] with all the provisions of this part in relation to the computation
15 and determination of the amounts.” (Rev. & Tax Code § 6714.) Additional interest on the above
16 amounts of tax continues to accrue after April 30, 2023 at the modified adjusted rate under
17 Revenue and Taxation Code section 6591.5. Accordingly, since CDTFA has a valid and
18 enforceable state tax lien against Balboa Ave, CDTFA has the right to payment from the surplus
19 funds resulting from the sale of the Balboa Ave property.

20 **III. CDTFA HAS PRIORITY FOR PAYMENT OF THE OUTSTANDING TAX LIABILITY**

21 It is settled law that a sales tax liability incurred during the operation of an estate by a court-
22 appointed fiduciary is entitled to the highest priority in payment. (*State Board of Equalization v.*
23 *Stewart* (1969) 272 Cal.App.2d 345, 349.) Indeed, the Receiver recommended on multiple
24 occasions that the surplus funds from the sale of the Balboa Ave property be used to pay the
25 outstanding tax liability owed to CDTFA. (ROA 2242, 2319.) Additionally, under the Revenue
26 and Taxation Code, sales tax obligations “shall be satisfied first” whenever an entity is insolvent.
27 (Rev. & Tax Code, § 6757, subd. (a).) Because Balboa Ave cannot satisfy its obligations to all
28 creditors, it is insolvent. Therefore, taxes take precedence over other expenses of the

1 administration. (*In re Morris' Estate* (1940) 37 Cal.App.2d 155, 157-158.) This is because “retail
2 sales taxes ... due from the estate are not be classified merely as ordinary expenses of
3 administration. On the contrary, they constitute an excise tax imposed by the state for the
4 privilege of conducting a business and for selling at tangible personal property.” (*Id.* at p. 157.)
5 “Our statutes impose a specific duty upon the Receiver to pay outstanding sales tax ... as
6 expenses of administration of first priority.” (*Stewart, supra*, 272 Cal.App.2d at p. 348.) Pursuant
7 to the Court’s order on February 2, 2023, all funds are to be held by the Receiver pending further
8 direction by the Court. (ROA 2363.) Accordingly, CDTFA respectfully requests that the Court
9 order that the outstanding tax liability owed by Balboa Ave to CDTFA be paid prior to any other
10 payments to creditors.

11 **IV. CONCLUSION**

12 For the reasons set forth above, CDTFA respectfully requests that the Court issue an order
13 for the full payment of the outstanding tax liability owed to CDTFA.

14
15 Dated: June 2, 2023

Respectfully submitted,

16 ROB BONTA
17 Attorney General of California
18 BRIAN D. WESLEY
19 Supervising Deputy Attorney General



20
21 ANNA BARSEGYAN
22 Deputy Attorney General
23 *Attorneys for Claimant*
24 *California Department of Tax and Fee*
25 *Administration*

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28 LA2023801025

1 **DECLARATION OF RYAN SLAUSON**

2 I, Ryan Slauson, declare as follows:

3 1. I am employed by the California Department of Tax and Fee Administration
4 (CDTFA) as a Business Taxes Administrator I. I am authorized to make this declaration on behalf
5 of CDTFA and make this declaration in my official capacity as a CDTFA employee and not
6 otherwise. The following statements are based on my personal knowledge and upon my review of
7 records maintained by CDTFA in the ordinary course of its business practice. If called as a
8 witness, I could testify competently thereto.

9 2. I have personal knowledge of the manner in which CDTFA's records are kept. Each
10 of the records upon which I rely was made in the ordinary course of business at or near the time
11 of the act, condition or event. The sources of information at the time of preparation are such that I
12 believe CDTFA's records to be trustworthy.

13 3. I have reviewed CDTFA's files and records pertaining to the corporation Balboa Ave
14 Cooperative (Balboa Ave).

15 4. On July 22, 2022, CDTFA issued Balboa Ave a Notice of Determination for unpaid
16 sales and use tax totaling \$245,138.78 (tax of \$212,911 and interest of \$32,227.78) for tax periods
17 July 1, 2018 through June 30, 2021. The Notice of Determination became final on August 24,
18 2022. A true and correct copy of the Notice of Determination is attached hereto as Exhibit A.

19 5. On February 28, 2023, CDTFA filed a Notice of State Tax Lien against Balboa Ave
20 with the California Secretary of State, Document No. U230015051721. A true and correct copy
21 of the Notice of State Tax Lien filed with the Secretary of State is attached hereto as Exhibit B.

22 6. On March 3, 2023, CDTFA also recorded a Notice of State Tax Lien against Balboa
23 Ave with the San Diego County Recorder's Office, Document No. 2023-0055115. A true and
24 correct copy of the Notice of State Tax Lien recorded with the San Diego County Recorder's
25 Office is attached hereto as Exhibit C.

26 7. As of April 24, 2023, the tax liability owed by Balboa Ave totals \$278,380.32
27 (\$212,911.00 in tax, \$43,228.22 in interest, \$21,291.10 in penalties, and \$950 in collection
28

1 fee/cost). A true and correct copy of the Certificate of Delinquency issued by CDTFA is attached
2 hereto as Exhibit D.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct.

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6 Executed on this 2nd day of June, 2023 at Sacramento, California.

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Ryan Slauson

Ryan Slauson

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EXHIBIT A



CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

PO BOX 942879, SACRAMENTO, CA 94279-0001
 1-800-400-7115 • FAX 1-916-928-6241
www.cdtfa.ca.gov

GAVIN NEWSOM
 Governor

AMY TONG
 Secretary, Government Operations Agency

NICOLAS MADUROS
 Director

ATTN: NEIL SHEAFFER
 BALBOA AVE COOPERATIVE
 705 N VULCAN AVE
 ENCINITAS CA 92024-2137

Letter Date: July 22, 2022
 Letter ID: L0015715030
 Account Type: Sales and Use Tax
 Account Number: 103-009445
 Audit ID: A157518
 Audit Period From: July 1, 2018
 Audit Period To: June 30, 2021

Notice Service Date: July 25, 2022
 Finality Date: August 24, 2022

NOTICE OF DETERMINATION

Why we are contacting you:

The California Department of Tax and Fee Administration (CDTFA) has determined that you are liable for tax, interest, and penalties. The balance below reflects the amount you owe.

Tax	\$212,911.00
Interest	32,227.78
Penalty	0.00
Other	0.00
Payments/Credits	0.00
Total	<u>\$245,138.78</u>

What you must do:

You must pay in full unless you are in a payment plan for the amounts listed. Payment is due in full by the finality date shown above. Failure to pay this notice may result in additional penalties and/or interest. If you disagree with the assessment, you may file a petition for redetermination with the CDTFA within 30 days after the notice service date shown above. If the above total is zero, no payment is due.

What will happen if you do not comply:

Failure to pay this notice may result in additional penalties and/or interest. If you disagree with the assessment, you have the right to file a petition for redetermination within 30 days after the notice service date shown above.

Payment options:

To make a payment online, go to our website at www.cdtfa.ca.gov, and select *Make a Payment*. If you are paying by check, please write your account number and letter ID (shown above) on your check, and include the attached *Statement of Account* payment voucher. Keep the original notice for your records. Make your check payable to the California Department of Tax and Fee Administration, and mail it to P.O. Box 942879, Sacramento, CA 94279-3535. If you need additional help, please call the telephone number shown above.

Interest:

Additional interest will accrue on the unpaid tax each month at the rate of 6 percent annually. Interest of \$1,064.56 will accrue if the tax is not paid on or before July 31, 2022.



0015715030 01

Penalty for failure to pay when due:

Generally, a penalty of 10 percent attaches to the unpaid amount of tax due if this determination is not paid on or before the finality date.

Petition for redetermination:

This determination becomes final 30 days after the notice service date, unless a petition for redetermination is filed. Any person against whom a determination is made may petition for redetermination. The petition must be in writing and state the specific grounds upon which it is founded. If an appeals conference is desired, it should be requested in the petition. To file your petition online, log in with your username and password at onlineservices.cdtfa.ca.gov.

Prompt payment of the undisputed portion(s) of the liability should be made. This will prevent the accrual of additional interest and will not in any way affect the protested portion(s).

A petition may not be filed prior to the notice service date. Any action taken prior to that date does not constitute a petition for redetermination.

For more information about filing a petition for redetermination and where to file your petition, please visit our website at www.cdtfa.ca.gov.

EXHIBIT B

RECORDING REQUESTED BY

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF TAX AND
FEE ADMINISTRATION

AND WHEN RECORDED MAIL TO

CALIFORNIA DEPARTMENT OF TAX AND
FEE ADMINISTRATION
PO BOX 942879
SACRAMENTO, CALIFORNIA 94279-0055

For Office Use Only

-FILED-

File No.: U230015051721

Date Filed: 2/28/2023

NOTICE OF STATE TAX LIEN

Chapter 14 (Commencing with Section 7150
of Division 7 of Title 1 of the Government Code)

Filed with: SOS - Secretary of State

Certificate No. 259704

The California Department of Tax and Fee Administration, hereby certifies that the following named taxpayer(s)
BALBOA AVE COOPERATIVE
A CORPORATION

whose last known address was 8304 CLAIREMONT MESA BLVD STE 207 SAN DIEGO CA 92111-1315

is (are) liable to the State of California for amounts due from and required to be paid by said taxpayer(s) and duly levied and determined under the provisions of the California Sales and Use Tax Law, Part 1, 1.5 and where applicable, Part 1.6; and Article 9.5 Chapter 8 of Part 2 of Division 4 of Public Resource Code.

Account Number	Tax Period	Assessment	Balance
103-009445	July 1, 2018 - June 30, 2021	August 24, 2022	\$275,541.50
TOTAL			\$275,541.50

Additional interest may accrue at the modified adjusted rate established pursuant to Section 6591.5 or 19521 of the Revenue and Taxation Code. Further, additional penalties and collection cost recovery fees may accrue by operation of law. The California Department of Tax and Fee Administration further certifies that it has complied with all of the provisions of the above-cited law, act, or ordinance in its determination of the amounts required to be paid. The liability above set forth is a lien upon all personal property and rights to such property, including all after-acquired property and rights to property belonging to the above-named taxpayer(s).

The California Department of Tax and Fee Administration has duly authorized the undersigned to execute this Notice in its name.



Lien ID: 641827

Dated February 21, 2023
At Sacramento, California

The agency has adopted the use of a facsimile signature as shown below:

By
Gina Fong, Authorized Representative

B1529-1703 02/28/2023 5:00 PM Received by California Secretary of State

EXHIBIT C

RECORDING REQUESTED BY

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF TAX AND
FEE ADMINISTRATION

AND WHEN RECORDED MAIL TO

CALIFORNIA DEPARTMENT OF TAX AND
FEE ADMINISTRATION
PO BOX 942879
SACRAMENTO, CALIFORNIA 94279-0055

DOC# 2023-0055115



Mar 03, 2023 11:55 AM
OFFICIAL RECORDS
JORDAN Z. MARKS,
SAN DIEGO COUNTY RECORDER
FEES: \$0.00 (SB2 Atkins: \$0.00)

PAGES: 1

NOTICE OF STATE TAX LIEN

Chapter 14 (Commencing with Section 7150
of Division 7 of Title 1 of the Government Code)

Filed with: SAN DIEGO COUNTY

Certificate No. 207120

The California Department of Tax and Fee Administration, hereby certifies that the following named taxpayer(s)
BALBOA AVE COOPERATIVE
A CORPORATION

whose last known address was 8304 CLAIREMONT MESA BLVD STE 207 SAN DIEGO CA 92111-1315

is (are) liable to the State of California for amounts due from and required to be paid by said taxpayer(s) and duly levied and determined under the provisions of the California Sales and Use Tax Law, Part 1, 1.5 and where applicable, Part 1.6; and Article 9.5 Chapter 8 of Part 2 of Division 4 of Public Resource Code.

Account Number	Tax Period	Assessment	Balance
103-009445	July 1, 2018 - June 30, 2021	August 24, 2022	\$275,541.50
TOTAL			\$275,541.50

Additional interest may accrue at the modified adjusted rate established pursuant to Section 6591.5 or 19521 of the Revenue and Taxation Code. Further, additional penalties and collection cost recovery fees may accrue by operation of law. The California Department of Tax and Fee Administration further certifies that it has complied with all of the provisions of the above-cited law, act, or ordinance in its determination of the amounts required to be paid. The liability above set forth is a lien upon all real property and rights to such property, including all after-acquired property and rights to property belonging to the above-named taxpayer(s).

The California Department of Tax and Fee Administration has duly authorized the undersigned to execute this Notice in its name.



Lien ID: 641826

Dated February 21, 2023
At Sacramento, California

The agency has adopted the use of a facsimile signature as shown below:

By
Gina Fong, Authorized Representative

EXHIBIT D

CERTIFICATE OF DELINQUENCY

**Under section 6714 of the
SALES AND USE TAX LAW**

Account Number: 103-009445

State of California)
) ss.
County of Sacramento)

The California Department of Tax and Fee Administration does hereby certify:

That the person named below is delinquent in the payment of amounts imposed upon this person under the provisions of the California Sales and Use Tax Law and, where applicable, Uniform Local Sales and Use Tax Ordinances, and Transit District Transactions (Sales) and Use Tax Ordinances.

That the name of this person, the last known address, and the amounts with reference to which this person is now delinquent are as follows:

Name of person: C/O CALSUR MGMT, MIKE ESSARY
 BALBOA AVE COOPERATIVE
 8304 CLAIREMONT MESA BLVD STE 207
 SAN DIEGO CA 92111-1315

Period for which
liability accrued: July 1, 2018 to and including June 30, 2021.

Amounts now due and delinquent:	Tax	\$212,911.00
	Interest	43,228.22
	Penalties	21,291.10
	Collection Fee/Cost	950.00
	Total	\$278,380.32


The additional interest on the above amount of tax will accrue after April 30, 2023 at the modified adjusted rate established under the Revenue and Taxation Code.

That the above person is indebted to the State of California in the total amount indicated above; that no part of this indebtedness has been paid and that the entire amount is due, owing and unpaid from this person to the State of California; that the California Department of Tax and Fee Administration has fully complied with all provisions of the Sales and Use Tax Law relating to the computation and levy of the amounts shown above.

IN WITNESS WHEREOF, the California Department of Tax and Fee Administration has requested this Certificate to be executed in its name and on its behalf and its seal to be affixed here by its duly authorized representative.

Dated: April 24, 2023
Letter ID: L0020471994

CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

By 
Liz Riddle, Authorized Representative

DECLARATION OF SERVICE BY E-MAIL

Case Name: **Razuki v. Malan**
No.: **37-2018-00034229-CU-BC-CTL**
CONSOLIDATED WITH: Case No. 37-2018-00039388-CU-OR-CTL

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013-1230. I am familiar with the business practice at the Office of the Attorney General.

On June 12, 2023, I served the attached **CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION'S BRIEF RE DISBURSEMENT OF FUNDS; DECLARATION OF RYAN SLAUSON** by transmitting a true copy via electronic mail addressed as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on June 12, 2023 at Los Angeles, California.

R. Hill

Declarant

/s/ R. Hill

Signature

SERVICE LIST

Razuki v. Malan (In re Balboa Ave Cooperative)

Case No. 37-2018-00034229-CU-BC-CTL

CONSOLIDATED WITH: Case No. 37-2018-00039388-CU-OR-CTL

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and

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Neil R. Sheaffer, Esq.
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Email: rgriswold@griswoldlawca.com;
nsheaffer@griswoldlawca.com

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Attorney for Roots Properties Inc.