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Clerk of the Superior Court
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Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO-CENTRAL DIVISION

Case No. 37-2020-00045859-CU-BC-CTL

IMAGED FILE

**EXHIBITS 1 AND 2 WITH REQUEST
FOR JUDICIAL NOTICE IN SUPPORT
OF DEMURRER BY DEFENDANT
NINUS MALAN TO COMPLAINT BY
PLAINTIFF CHRIS HAKIM**

Date: May 28, 2021
Time: 11:00 a.m.
Judge: Hon. Katherine Bacal
Dept.: C-69

Date Filed: December 14, 2020
Trial Date: Not Set

Exhibit 1: Supplemental Declaration of Chris Hakim re Ex Parte Hearing on Order Vacating Appointment of Receiver filed in case number 37-2018-00034229-CU-BC-CTL in the Superior Court of the State of California, County of San Diego, Central Division.

**EXHIBITS 1 AND 2 AND REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
DEMURRER BY DEFENDANT NINUS MALAN TO COMPLAINT BY PLAINTIFF
CHRIS HAKIM**

1 Exhibit 2: Defendant Chris Hakim's Memorandum of Points and Authorities re Ex
2 Parte Hearing on Order Vacating Appointment of Receiver filed in case number 37-2018-
3 00034229-CU-BC-CTL in the Superior Court of the State of California, County of San Diego,
4 Central Division.

5 **REQUEST FOR JUDICIAL NOTICE**

6 Respondent requests that the Court take judicial notice of Exhibits 1 and 2, above,
7 under California *Evidence Code* §§452(d) and 453.

8 Dated: February 23, 2021


9 By: 
10 Ninus Malan
11 In Pro Per
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EXHIBIT 1

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Attorneys for Defendant CHRIS HAKIM

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION**

**SALAM RAZUKI, an individual
Plaintiff**

vs

**NINUS MALAN, an individual; CHRIS
HAKIM, an individual; MONARCH
MANAGEMENT CONSULTING, INC.,
California corporation; SAN DIEGO
UNITED HOLDINGS GROUP, LLC, a
California limited liability company; FLIP
MANAGEMENT, LLC, a California limited
liability company; MIRA ESTE
PROPERTIES LLC, a California limited
liability company; ROSELLE PROPERTIES,
LLC, a California limited liability company;
BALBOA AVE COOPERATIVE, a
California nonprofit mutual benefit
corporation; CALIFORNIA CANNABIS
GROUP, a California nonprofit mutual
benefit corporation; DEVILISH DELIGHTS,
INC. a California nonprofit mutual benefit
corporation; and DOES 1-100, inclusive;**

Defendants.

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

(Unlimited Civil Action)

**SUPPLEMENTAL
DECLARATION OF CHRIS HAKIM
RE EX PARTE HEARING ON ORDER
VACATING APPOINTMENT OF
RECEIVER**

Hearing Date: August 20, 2018

Time: 2:00 PM

Dept.: C-67

I/C Judge: Hon. Eddie C. Sturgeon

Complaint Filed: July 10, 2018

Trial Date: Not Set

IMAGED FILE

1 I, Chris Hakim, declare:

2 1. I am one of the defendants in the above – referenced matter, and I am over the
3 age of 18.

4 2. At all times herein mentioned, I have been and still am one of the owners of
5 Mira Esta Properties LLC (MEP). At all times since MEP was formed, I have been and still
6 am the managing member of MEP.
7

8 3. As I stated in my prior declaration filed on or about August 13, 2018,
9 beginning on or about August 3, 2018, MEP began operating a business consisting of the
10 production of various byproducts of cannabis for distribution to retail dispensaries and other
11 such establishments. As I also stated in my August 13, 2018 declaration, I negotiated an
12 agreement with Synergy Management Partners, LLC ("Synergy"). Synergy began
13 management activity at Mira Este on or about August 3, 2018. On or about August 10,
14 2018, the agreement with Synergy was reduced to writing. A true and correct copy of this
15 new management agreement for Mira Este is attached hereto as Exhibit 1 and, by this
16 reference, made a part hereof. As I also specified in my August 13, 2018 declaration, and
17 almost immediately after it began its operations, Synergy generated more than \$200,000 in
18 orders during the first week of its operations. The orders have not as yet been filled,
19 however, so the monies have not been paid to Synergy or to MEP.
20

21 3. As specified in the management agreement between Synergy and MEP (at
22 section 3.4 of management agreement), checks drawn on the bank account to be utilized by
23 Synergy requires the signature of both a representative of Synergy and a representative of
24 MEP. For purposes of any preliminary injunctive order, therefore, an order restricting
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1 expenditures from the Mira Este operation and directed at MEP will restrict expenditures
2 from the subject business account notwithstanding that Synergy is not a party to this
3 litigation.

4 4. I have reviewed the declaration of Jim Townsend, managing member of
5 SoCal building ventures LLC ("SoCal"), as well as the attachments to that declaration. The
6 declaration and attachments are noteworthy in several respects. First, Townsend's
7 declaration and accounting show a transfer of \$170,600 on July 19, 2018 to the receiver for
8 and on account of MEP. (See Exhibit B to declaration of Jim Townsend). As previously
9 noted in my August 13, 2018 declaration, these funds were commingled and
10 misappropriated by the receiver for a number of expenses completely unrelated to MEP. As
11 a result, the August 2018 mortgage payments due on loans encumbered by MEP's real
12 property could not be paid by the receiver. I was required to pay them from my personal
13 funds.
14

15 5. The declaration of Jim Townsend and attachments thereto are also inaccurate
16 and also fail to show SoCal's defaults and "bounced" checks that existed at the time that
17 SoCal was terminated on July 10, 2018. Pursuant to the management agreement between
18 SoCal and MEP, SoCal agreed to pay expenses, a minimum guarantee, and a management
19 fee. A true and correct copy of the management agreement between SoCal and MEP is
20 attached hereto as Exhibit 2 and, by this reference, made a part hereof. SoCal was in default
21 of that agreement as of July 10, 2018, as follows:
22

23 A. Failure to pay the June 2018 management fee of \$60,300;

24 B. Failure to pay the May 2018 minimum guarantee payment of \$50,000;
25

1 C. Failure to pay the July 2018 management fee of \$60,300;
2 D. Failure to pay the June 2018 minimum guarantee payment of \$50,000;
3 E. Failure to pay utilities in the amount of \$12,000;
4 F. Failure to pay SoCal's portion of the CUP cost in the amount of
5 \$18,954 (section 5.5 of Exhibit 3);
6

7 G. Failure to pay SoCal's reimbursement of the tenant improvements due
8 March 2, 2018 of \$125,000 (section 5.4 of Exhibit 3);

9 H. Failure to pay the option fee of \$75,000 due March 15, 2018 (section
10 8.1 of Exhibit 3).

11 The total of these defaults as of July 10, 2018, was \$451,554. As previously stated in my
12 August 13, 2018 declaration, notice of certain of these defaults was specified in
13 correspondence from my counsel, Gorla, Weber and Jarvis, by David Jarvis, in his letter of
14 June 1, 2018. These defaults persisted for more than 25 days. That is significant because
15 the management agreement between SoCal and MEP provides for termination "at the option
16 of the Company upon the failure of the Manager to make any payments as are required
17 herein, and such failure has gone uncured for twenty-five (25) days following notice to
18 Manager by Company and/or Old Operators" (section 6.2, Exhibit 2). Additionally, on or
19 about June 29, 2018, Mr. Ninus Malan and I sent a letter to SoCal advising SoCal of its
20 defaults and demanding that they be cured. A true and correct copy of said June 29, 2018
21 correspondence is attached hereto as Exhibit 3 and, by this reference, made a part hereof.
22 SoCal failed to cure these defaults at any time before July 10, 2018.
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1 6. Townsend's accounting also states that SoCal made the payment for "June
2 rent" on June 4, 2018 in the amount of \$60,300. That is false. SoCal never made that
3 payment. Townsend's accounting also states that SoCal made the CUP payment for Mira
4 Este in the amount of \$15,400. That is also false. SoCal never made that payment.
5 Townsend's accounting also does not show the three "bounced" checks that it delivered to
6 MEP. True and correct copies of three checks returned due to insufficient funds are
7 collectively attached hereto as Exhibit 4 and, by this reference, made a part hereof. 7.

8
9 7. SoCal never paid MEP the nonrefundable option fee of \$75,000 (regardless of
10 whether the option was ever exercised) that was due on March 15, 2018, pursuant to section
11 8.1 of Exhibit 3. (This is also evidenced by the lack of any such entry on Townsend's
12 accounting for Mira Este).

13
14 8. Townsend's declaration states that equipment at the facility belonged to
15 SoCal. However, the management agreement between SoCal and MEP specifies that all real
16 and personal property at the facility belong to MEP. See, e.g., section 4.3.6 of the
17 management agreement between SoCal and MEP.

18 9. In various documents submitted by SoCal, assertions have been made SoCal
19 did not make these payments because there was uncertainty about "who were the owners".
20 The management agreement is clear, however, that the contracting party in the management
21 agreement was MEP. There is absolutely no disagreement that MEP owns the facility and
22 has owned it at all times. There is also no dispute that MEP is the sole owner of the real
23 property in which the facility is located and is sole owner of the improvements comprising
24 the facility and all real and personal property located therein, pursuant to section 4.3.6 of
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1 Exhibit 3. The only alleged dispute or alleged uncertainty is whether or not plaintiff has
2 some type of claim against Ninus Malan that would allow Mr. Razuki to claim some type of
3 equitable interest in Mr. Malan's ownership interest in MEP. That dispute or uncertainty
4 has no bearing whatsoever on SoCal's obligations under the management agreement with
5 MEP. SoCal's obligations to MEP existed regardless of who the owners of MEP were or
6 are.
7

8 10. In various papers and declarations submitted by plaintiff, accusations have
9 been made that I have conspired with defendant Malan to steal monies from the Balboa
10 facility. There is no validity to these accusations. I have no ownership interest in the
11 Balboa facility, and there has been no theft, misappropriation, or embezzlement of funds by
12 me in connection with the Balboa operation. I located SoCal as a manager, and participated
13 in the negotiation of the management agreement between SoCal and Balboa. Based on that
14 work, I was paid one half of the \$35,000 guaranteed monthly payment made by SoCal to
15 Balboa, or \$17,500, for a period of 5 months. The total amount that I received for locating
16 and negotiating the management agreement with SoCal was \$87,500. I have not received
17 any other or further sums in connection with the Balboa operation.
18

19 11. There is no dispute and plaintiff does not claim otherwise that I am now and
20 always have been entitled to 50% of all assets, distributions, and profits of MEP. Therefore,
21 to the extent that the court imposes any type of restraining order or injunctive order during
22 these proceedings, request is made that the injunctive order not impact monies that would
23 otherwise be distributed to me. I rely on monies from Mira Este to meet living expenses,
24
25 / / /

1 and an interruption of these monies would be extremely detrimental to me.

2 I declare under penalty of perjury that the foregoing is true and correct except as to
3 those matters stated on information and belief and as to those matters I believe it to be true.

4 This declaration was executed this 16th day of August, 2018, at San Diego County,
5 California.
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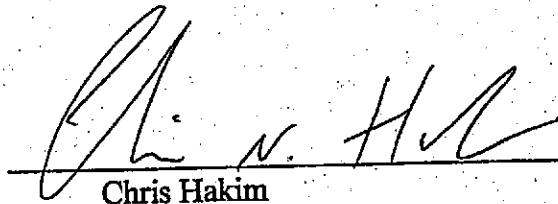
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Chris Hakim

EXHIBIT 2

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

SALAM RAZUKI, an individual
Plaintiff

vs

NINUS MALAN, an individual; CHRIS
HAKIM, an individual; MONARCH
MANAGEMENT CONSULTING, INC.,
California corporation; SAN DIEGO
UNITED HOLDINGS GROUP, LLC, a
California limited liability company; FLIP
MANAGEMENT, LLC, a California limited
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PROPERTIES LLC, a California limited
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benefit corporation; DEVILISH DELIGHTS,
INC. a California nonprofit mutual benefit
corporation; and DOES 1-100, inclusive;

Defendants.

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

(Unlimited Civil Action)

DEFENDANT CHRIS HAKIM'S
MEMORANDUM OF POINTS AND
AUTHORITIES RE EX PARTE
HEARING ON ORDER VACATING
APPOINTMENT OF RECEIVER

Hearing Date: August 20, 2018

Time: 2:00 PM

Dept.: C-67

I/C Judge: Hon. Eddie G. Sturgeon

Complaint Filed: July 10, 2018

Trial Date: Not Set

IMAGED FILE

1 Defendant Chris Hakim respectfully submits the following memorandum of points
2 and authorities relative to the ex parte proceedings involving the appointment of a receiver
3 and the subsequent vacating of the order appointing the receiver:

4 **1. INTRODUCTION**

5 Notwithstanding the hyperbole in the paperwork submitted by plaintiff in
6 intervention, SoCal Building Ventures LLC ("SoCal") and plaintiff Salam Razuki
7 ("plaintiff"), there is no dispute by any party that defendant Chris Hakim owns 50% of Mira
8 Este Properties, LLC ("MEP"), which in turn owns all of the property, improvements, and
9 facility at 9212 Mira Este Court, San Diego ("MEP Facility"). There is likewise no dispute
10 that defendant Hakim owns 50% of Roselle Properties LLC ("Roselle"), which in turn owns
11 all of the property and improvements at 10685 Roselle Street, San Diego, California 92121.
12 There is no basis to appoint a receiver to control and operate Mr. Hakim's ownership
13 interest in MEP and Roselle, since no one claims entitlement to Mr. Hakim's interest in
14 those assets. Indeed, preliminary or injunctive orders that restrict or curtail Mr. Hakim's
15 ownership interests and entitlement to distributions or profits from MEP or Roselle would
16 likewise be insupportable, since no showing has been or could be made that Mr. Hakim is
17 not entitled to those profits or distributions.

18 A brief review of the pertinent matters in this litigation involving Mr. Hakim shows
19 the following:

20 1. Although Mr. Hakim has been named as a defendant, he does not really have a
21 "dog in the fight" between plaintiff and defendant Ninus Malan. Mr. Hakim has no interest in
22 the Balboa facility. As noted, Mr. Hakim is a 50% owner of MEP and a 50% owner of Roselle

1 and neither plaintiff, SoCal, nor Mr. Malan disputes Mr. Hakim's ownership interests in
2 Mira Este or Roselle.

3 2. When MEP and Roselle were being formed and the properties were being
4 acquired, plaintiff had every opportunity to "step up" at that time and make his position legal and
5 of record. He knew when the properties were being acquired because he participated in their
6 acquisition. Further, plaintiff was actually the owner of Balboa before transferring it to Mr.
7 Malan in 2017. He now claims that he is entitled to equitable interests in these properties.
8 However, for various reasons that actually may very well give rise to a defense of unclean hands,
9 he chose to remain silent.¹ MEP and Roselle were formed and the properties were acquired
10 without plaintiff's purported interests being made of record.

11 3. Mr. Hakim also has no "axe to grind" with SoCal, except that they were not
12 performing their end of the management agreements with MEP and Roselle. As specified in Mr.
13 Hakim's Supplemental Declaration, there were no less than eight defaults by SoCal in payments
14 that were due in May, June and July 2018. These defaults totaled in excess of \$450,000 relative
15 to Mira Este alone. The defaults were not cured. Moreover, one of the defaults was the failure
16 of SoCal to pay for the option in the amount of \$75,000 that was due on March 15, 2018. Any
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20 ¹ To the extent that Mr. Razuki was trying to avoid his creditors in keeping these properties out of his own name,
21 equity will not aid him. See, e.g., *Tognazzi v. Wilhelm*, 6 Cal. 2d 123, 125:

22 "...[E]quity will not lend its aid to establish a trust or enforce a contract which is tainted with fraud. As
23 stated in *Saint v. Saint*, 120 Cal. App. 15, 22 [7 Pac. (2d) 374], "he who executes a conveyance of property
24 for the purpose of hindering, delaying or defrauding his creditors, cannot by any action in equity obtain a
25 reconveyance from his grantee, nor can anyone claiming under him, except an innocent purchaser". We
26 pause to cite but a few of the innumerable authorities containing declarations to this effect: *Bennett v.*
27 *Brown*, 206 Cal. 424, 428 [274 Pac. 532]; *Faria v. Faria*, 100 Cal. App. 177, 181 [280 Pac. 187]; *Allstead*
v. Laumeister, 16 Cal. App. 59 [116 Pac. 296].

1 claim by SoCal that it still has any option rights relative to MEP is incorrect. Any right of SoCal
2 to acquire an option in the MEP Facility ended on March 15, 2018, when they failed to pay for
3 the option. In addition, Mr. Hakim was advised that SoCal employees at the Balboa facility were
4 caught smoking marijuana on the job. Also, SoCal did not take any action to advance the CUP
5 regarding the Roselle facility. There are only a very limited number of CUP's that the city is
6 issuing, and SoCal's failure to take a proactive and diligent effort to obtain a CUP for Roselle
7 might very well prevent Roselle from even obtaining a CUP. For all of those reasons, SoCal was
8 terminated on July 10, 2018.
9

10 4. On July 19, 2018, some nine (9) days after it was terminated, SoCal paid the
11 receiver \$170,600 on account of and earmarked for the MEP Facility. Notwithstanding that the
12 \$170,600 was earmarked for Mira Este, the receiver took it upon himself to apply the majority of
13 that money to other expenses unrelated to the MEP Facility. When it came time to pay the
14 mortgage on Mira Este on August 5, Mr. Hakim requested that the receiver use this \$170,600 to
15 pay the loan payments. However, by then, the receiver had "blown through" \$170,600 and there
16 was only \$15,000, an insufficient amount to cover the mortgage payments on Mira Este.
17

18 5. In early August 2018, Mr. Hakim entered into a new management agreement for
19 Mira Este with Synergy Management Partners, LLC ("Synergy"). In the first week of the
20 management agreement with Synergy, the facility generated in excess of \$200,000 in orders.
21 Contrariwise, in the more than seven (7) months that SoCal managed the MEP Facility, SoCal
22 was so dilatory in its performance that it did not get around to even opening the MEP Facility for
23 operations.
24

25 6. Under the new management agreement between MEP and Synergy, Synergy has
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1 to maintain the strictest of records and accounting. These records and accounting are ample
2 enough to protect both plaintiff and SoCal's claims in that they will provide a complete and
3 detailed accounting of all income and expenses of the facility. To the extent that there is any
4 validity to SoCal's or plaintiff's claims for damages based on lost profits from the MEP Facility,
5 the detailed accounting will leave intact any claims for damages for lost profits without the need
6 for an expensive and unnecessary receiver.

7
8 7. SoCal also claims that it has substantial equipment at the Mira Este facility.
9 However, the management agreement between MEP and SoCal specifies that all property, both
10 real and personal, belongs to MEP (at section 4.3.6).

11 As will be seen *infra*, the drastic remedy of a receiver is completely unnecessary and
12 even counterproductive not only to the interests of Mr. Hakim, but also to the interests of SoCal
13 and plaintiff. The highly questionable performance of the receiver thus far in misappropriating
14 monies earmarked for Mira Este and using the funds for alternative purposes, not to mention the
15 exorbitant fees that the receiver has paid thus far, represents a significant waste of assets to the
16 detriment of all parties.

17
18 Further, the prospect of having a receiver supervising the Roselle facility is unreasonable,
19 to say the least. There is no income from Roselle except for rentals that are not even sufficient to
20 cover the mortgage payment and other carrying costs.

21
22 In short, putting a receiver in charge of either Mira Este or Roselle would be completely
23 unnecessary and even counterproductive because of the cost factor and questionable accounting
24 practices of the current receiver.

25 **2. CODE OF CIVIL PROCEDURE SECTION 564 DOES NOT AUTHORIZE A**
26 **RECEIVERSHIP IF THERE ARE OTHER LESS DRASTIC MEANS OF PROTECTING**

1 **ALLEGED RIGHTS OR INTERESTS OF THE PARTY SEEKING THE RECEIVER.**

2 Code of Civil Procedure section 564 authorizes the appointment of a receiver in some
3 eleven different circumstances. The only basis referenced in the paperwork submitted by SoCal
4 and plaintiff is the "catchall" provision of CCP section 564(b)(9) that a receiver may be
5 appointed "where necessary to preserve the property or rights of any party". However, the
6 appointment of a receiver under section 564 is significantly restricted by the oft-cited rule
7 that because of the drastic nature of a receivership, a less severe remedy will be utilized if
8 adequate to protect the subject property or rights of a party.
9

10 In 6 Witkin Cal. Proc. Prov Rem § 420, the author discussed the remedy of receiver as
11 follows:

12
13 "The appointment of a receiver is a harsh and drastic remedy, granted only in cases of
14 extreme necessity and when no other legal or equitable remedy is available. While the
15 appointment of a receiver is generally within the discretion of the trial court, decisions
16 upholding the denial of a receiver tend to emphasize the extraordinary nature of the
17 remedy. It is said to be "harsh" and "drastic," to be granted only in cases of extreme
18 necessity, when no other legal or equitable remedy is available and the need is great.
19 Hence, while it is a discretionary remedy, the discretion to deny is much more likely to be
20 upheld than the discretion to grant. (See C.E.B. 2 Civil Proc. Before Trial 4th, §33.7;
21 Rutter Group, Civil Proc. Before Trial §9:743 et seq.; 65 Am.Jur.2d (2001 ed.), Receivers
22 §18, 19.)

23 The pointed remarks in *Elson v. Nyhan* (1941) 45 C.A.2d 1, 113 P.2d 474, are worth
24 noting: "Receivers are often legal luxuries, frequently representing an extravagant cost to
25 a losing litigant. When it appears that no reasonably certain benefit will result to one
26 litigant, and a distinct disadvantage will result to another, courts should weigh carefully
27 the propriety of appointing a receiver." (45 C.A.2d 5.) . ." (Emphasis added)

28 In *Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp.*, 116 Cal. App. 2d 869,
29 the plaintiff asserted that it was the owner of a mine and equipment and that it was entitled to the
30 possession of the mine and equipment. Plaintiff also asserted that a lease to defendant for the
31

1 mine and equipment was voidable and that plaintiff had rescinded the lease, but defendant
2 refused to return possession. On plaintiff's request, the court appointed a receiver. On appeal,
3 the court of appeal reversed, notwithstanding evidence that defendant continued to operate the
4 mine and deplete the ore and minerals from the mine. The court of appeal explained that
5 plaintiff's alleged rights in the mine and equipment could be protected by a far less drastic
6 procedure than the appointment of a receiver. The court of appeal also determined that plaintiff
7 had not met its burden of proof that the appointment of a receiver was necessary to protect the
8 property from being lost, removed, or materially damaged in the event that a judgment was
9 obtained by the plaintiff. At 116 Cal. App. 2d 873, the court stated:

11 "And because the remedy of receivership is so drastic in character, "Ordinarily, if there is
12 any other remedy, less severe in its results, which will adequately protect the rights of the
13 parties, *a court should not take property out of the hands of its owners.* (A. G. Col Co.
14 v. Superior Court, 196 Cal. 604 [238 P. 926]; Fischer v. Superior Court, 110 Cal. 129
15 [42 P. 561]; Dabney Oil Co. v. Providence Oil Co., 22 Cal.App. 233 [133 P. 1155]; 53
16 C.J., p. 25.)" (Golden State Glass Corp. v. Superior Court, 13 Cal.2d 384, 393 [90 P.2d
17 75].) CA(3) (3) Or, as stated in the Dabney case, *supra*, "Where an injunction will
18 protect all the rights to which the applicant for the appointment of a receiver appears to
19 be entitled, a receiver will not be appointed." (Citing cases.) (Emphasis added).

21 In the present case, in the present case, the Balboa and Mira Este facilities are
22 operational. The property and facilities cannot be operated by a receiver as effectively or
23 inexpensively as they are being operated now. Any purported interest that plaintiff or SoCal may
24 assert in these facilities can easily be protected by preliminary injunctive orders preventing the
25 transfer or sale of any assets other than in the normal course of business. Further, any
26 distributions or profits to which plaintiff or SoCal might be entitled can also be easily protected
27 based on the detailed records that are required to be kept at Balboa and Mira Este.

28 In regards to Roselle, there is even less a need for any preliminary orders. Roselle is

1 possessed by a third party tenant, and there has been little movement towards turning that facility
2 into an operational cannabis business. Rentals from the third party tenant can easily be
3 accounted for and net rental, if any, can be distributed in accordance with ownership interests as
4 they are determined at a later date.

5 It should also be kept in mind that there is no question that Mr. Hakim is entitled to 50%
6 of all assets, including profits and distributions, of Mira Este and Roselle. No one disputes that
7 entitlement. Therefore, there should be no preliminary orders made by the court in regards to
8 Mr. Hakim's ownership interest in Mira Este and Roselle.
9

10 **3. THE WITHIN EX PARTE APPLICATION IS WITHOUT MERIT BECAUSE**
11 **PLAINTIFF HAS NOT PROVIDED ANY SHOWING IN HIS MOVING PAPERS OF**
12 **ANY IRREPARABLE HARM, IMMEDIATE DANGER, OR OTHER STATUTORY**
13 **BASIS FOR THE EX PARTE APPOINTMENT OF A RECEIVER AND WITHOUT A**
14 **NOTICED MOTION OR ORDER TO SHOW CAUSE.**

15 Ex parte applications are governed by California Rules of Court, Rules 3.1201 et sequel.
16 Rule 3.1202 requires that an applicant "must make an affirmative factual showing in a
17 declaration containing competent testimony based on personal knowledge of irreparable harm,
18 immediate danger, or any other statutory basis for granting relief ex parte.) Emphasis added.

19 In the present case, plaintiff has made no showing of irreparable harm or immediate
20 danger. All monies being generated by the Balboa and Mira Este facilities as well as rent from
21 Roselle are subject to detailed accounting requirements. Any entitlement of plaintiff or SoCal to
22 these monies will be compensable in damages without the need for any interim orders. Further,
23 any right to ownership that plaintiff or SoCal might ultimately be able to prove also does not
24 require any interim or preliminary orders. Additionally, there has been absolutely no showing
25 that defendants intend to sell or encumber these properties for the simple reason that no such
26 intention exists. In short, no judicial intervention is required at this time to protect any
27

1 questionable rights that either plaintiff or SoCal has in these facilities.

2 Moreover, it has long been the law in California that an ex parte appointment of a
3 corporate receiver is so dangerous that it should only be done in cases of the greatest emergency
4 and where, without such appointment, irreparable injury will inevitably result; and where a less
5 stringent remedy will not protect the rights of all the parties. *Fischer v. Superior Court of San*
6 *Francisco*, 110 Cal. 129. See, also, 6 Witkin Cal. Proc. Prov Rem § 445, which reads in part as
7 follows:

8
9 "It has been pointed out that the remedy of receivership is available only on a strong
10 showing of necessity and lack of other adequate remedy. (See supra, §420.) An ex parte
11 order is still more harsh and should be issued only in an emergency that makes
12 immediate action imperative. Several cases have held the showing insufficient.
13 (See *A.G. Col Co. v. Superior Court* (1925) 196 C. 604, 613, 238 P. 926, supra,
14 §422; *McCall v. McCall Bros. Co.* (1933) 135 C.A. 558, 559, 27 P.2d 648; *Rogers v.*
15 *Smith* (1946) 76 C.A.2d 16, 21, 172 P.2d 365, supra, §422; *Turner v. Superior Court*
16 (1977) 72 C.A.3d 804, 810, footnote 2, 140 C.R. 475, infra, §456, quoting the text.) (On
17 preservation of status quo where court does not grant ex parte order, see *Rutter Group*,
18 *Civil Proc. Before Trial* §9:756.)" (Emphasis added).

19 The showing required to support the appointment of a receiver ex parte was explained at
20 6 Witkin Cal. Proc. Prov Rem § 446 as follows:

21 "The required showing ... is amplified by C.R.C., Rule 3.1175. In addition to any other
22 matters, the applicant "must show in detail by verified complaint or declaration" the
23 following:

- 24 (1) The type of emergency and why the applicant would suffer irreparable injury during
25 the time needed for a noticed hearing. (C.R.C., Rule 3.1175(a)(1).)
 - 26 (2) The names, addresses, and telephone numbers of the individuals in actual possession
27 of the property for which a receiver is requested, or of the president, manager, or
principal agent of a corporation in possession. (C.R.C., Rule 3.1175(a)(2).)
 - (3) The manner in which the persons in possession are using the property. (C.R.C., Rule
3.1175(a)(3).)
 - (4) If the property is part of the plant, equipment, or stock in trade of a business, the
nature and approximate size or extent of the business, and facts sufficient to show
whether the taking of the property by a receiver would stop or seriously interfere with the
operation of the business. (C.R.C., Rule 3.1175(a)(4).)
- If any of these matters is unknown and cannot be ascertained by due diligence, the

1 applicant must specify what information is unknown, and the steps that have been taken
2 to acquire that information. (C.R.C., Rule 3.1175.)”

3 In the present case, the evidence that plaintiff has submitted is little more than the legal
4 conclusions and general allegations of his complaint. Omitted from his paperwork is any
5 information concerning the economics of the property, such as the gross income (or lack thereof
6 in the case of Mira Este and Roselle), the operating expenses, and what would be left over to pay
7 and support a receiver. In particular, no showing by plaintiff was made relative to: the type of
8 emergency and why plaintiff would suffer irreparable injury during the time needed for a noticed
9 hearing; the names, addresses, and telephone numbers of the individuals in actual possession of
10 the MEP Facility or Roselle; the property for which a receiver is requested; the manner in which
11 the persons in possession are using the property; and the nature and approximate size or extent of
12 the business, and facts sufficient to show whether the taking of the property by a receiver would
13 stop or seriously interfere with the operation of the business.
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16 In regards to Roselle, there would be insufficient net income to support the payment of a
17 receiver even if there was a need to do so.

18 Contrariwise, Mr. Hakim has submitted a detailed recitation of the facts, including the
19 fact that there is no controversy or factual issue regarding Mr. Hakim's 50% ownership interest
20 in MEP and Roselle. There is also no factual issue regarding SoCal's defaults, failure to cure,
21 and termination on July 10, 2018.

22 It can readily be seen from the paperwork submitted in opposition to the appointment of a
23 receiver that not only would defendants Mr. Malan, Mr. Hakim, and the respective entities
24 through which they operated be adversely affected by the appointment of a receiver; but plaintiff
25 himself would be disadvantaged by the appointment of a receiver because of the depletion of net
26

1 profits necessary to support the receiver and his coterie of "consultants".

2 **4. CONCLUSION**

3 For all of the foregoing reasons, it is requested that plaintiff's ex parte application for the
4 appointment of a receiver be denied. If any preliminary injunctive orders are deemed
5 appropriate, they should be limited such that they do not impact Mr. Hakim's interests in the
6 assets of the MEP Facility and Roselle.
7

8 Respectfully submitted,

9 **GORIA, WEBER & JARVIS**

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11 Dated: 8/17/2018

12 By: 

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14 Attorneys for Defendant
15 Chris Hakim
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