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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO - CENTRAL

SAN DIEGO PATIENTS COOPERATIVE
CORP, et. al.,

Plaintiffs,

vs.

RAZUKI INVESTMENTS LLC, et. al.,

Defendants.

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

**OPPOSITION TO MOTION TO
INTERVENE**

DATE: May 14, 2021

TIME: 9:00 a.m.

DEPT: 67

ATTACHED: JAFFE DECLARATION

Defendants Razuki Investments, LLC, Salam Razuki and Keith Henderson submit their
Opposition To The Motion To Intervene By Amy Sherlock ("Sherlock") as follows:

1 **I. Statement Of The Case**

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.

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14 **II. The Application For Intervention Is Not Timely**

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

23 Sherlock has not made a timely application to intervene. In addition to this action
24 pending since 2017, Sherlock filed a lawsuit in the Southern District of California in August,
25 2020 known as *Andrew Flores, et. al. v. Gina M. Austin, et. al.*, Case No. 20-cv-0656-TWR-DEB
26 (the “Federal Case”). Sherlock and her attorney in this matter, Andrew Flores (as a party in
27 Federal Case), include allegations against Harcourt in the Federal Case of the alleged forgery
28

1 regarding the Balboa property referenced in the motion for intervention in this case. This action
2 is cited and referenced in the Federal Case Complaint at paragraphs 304-307 and footnote 27.
3 The alleged handwriting expert and his alleged report (referenced as an exhibit in the proposed
4 Complaint In Intervention but not included), are referenced in the Federal Case Complaint at
5 paragraphs 23 and 833. *See*, attached Jaffe Declaration at paragraph 2-4. Sherlock (and attorney
6 Flores) are already litigating their claims involving Harcourt in the Federal Case.

7
8 **III. Sherlock Has Failed To Meet Her Burden To Make The Showing Necessary**
9 **For Mandatory Or Permissive Intervention**

10 Sherlock has failed to meet her burden to make the showing necessary for mandatory or
11 permissive intervention.

12 A. No Supporting Declaration

13 There is no declaration, and therefore no facts, supporting the motion.

14 B. No Mandatory Intervention

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

21 Sherlock fails to recognize that this case does not involve any disposition regarding the
22 sale of the Balboa CUP. It involves an alleged oral joint venture agreement for Plaintiffs to
23 allegedly operate the Balboa marijuana dispensary. “The ‘interest’ mentioned in section 387
24 which entitles a person to intervene in a suit between other persons must be ‘in the matter in
25 litigation and of such a direct and immediate character that the intervener will either gain or lose
26 by the direct legal operation and effect of the judgment’ (Elliott v. Superior Court, 168 Cal. 727 [1905]
27 145 P. 101]); it must be ‘direct and not consequential’ (Isaacs v. Jones, 121 Cal. 257, 261 [53 P.
28 793, 1101]). *See*, also, *Bechtel v. Axelrod*, 20 Cal.2d 390, 392 [125 P.2d 836]; *La Mesa etc. Irr.*

1 Dist. v. Halley, 195 Cal. 739 [235 P. 990]; Lindsay-Strathmore Irrig. Dist. v. Wutchumna Water
2 Co., 111 Cal.App. 707 [296 P. 942]; 20 Cal.Jur. p. 520, § 25; 39 Am.Jur. p. 935, § 61; 30 Cal.
3 L.Rev. 478.” *Allen v. California Water Tel. Co.* (1947) 31 Cal. 2d 104, 109. Sherlock’s alleged
4 claim to the proceeds from the sale of the Balboa Property and its CUP (when this action does
5 not involve the sale of the Balboa Property and its CUP), is not a protectable interest in the
6 subject of this action.

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

11 C. No Permissive Intervention

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

17 Sherlock has not followed the proper procedures, she does not have a direct and
18 immediate interest in this action, the intervention will clearly enlarge the issues in this litigation
19 (Sherlock alleges forgery for the first time in this action against Plaintiff Harcourt although the
20 expert report to counsel for Sherlock which is referenced as an exhibit to the proposed Complaint
21 In Intervention is dated February 21, 2020⁰), and the reasons for intervention do not outweigh the
22 opposition by the parties presently in the action.

23 D. Statute Of Limitations

24 Sherlock has failed to address how her claims are not barred by the statute of limitations.
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1 **IV. Conclusion**

2 The motion for intervention should be denied, and Razuki Investments, LLC, Salam
3 Razuki and Keith Henderson request such other and further relief as the Court deems proper.
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5 Dated: May 3, 2021

LAW OFFICES OF DOUGLAS JAFFE

6 /s/ Douglas Jaffe, Esq.

7 Douglas Jaffe
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DECLARATION OF DOUGLAS JAFFE

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2 1. I am the attorney for Defendants Razuki Investments, LLC, Salam Razuki and
3 Keith Henderson. As such, I have personal knowledge of the facts set forth herein and if called
4 to testify, I could and would competently testify thereto.

5 2. Proposed Intervenor Amy Sherlock (“Sherlock”) filed a lawsuit in the Southern
6 District of California in August, 2020 known as *Andrew Flores, et. al. v. Gina M. Austin, et. al.*,
7 Case No. 20-cv-0656-TWR-DEB (the “Federal Case”). I have reviewed the Complaint in the
8 Federal Case. Sherlock and her attorney in this matter, Andrew Flores (as a party in the Federal
9 Case), include allegations against Harcourt in the Federal Case Complaint of the alleged forgery
10 regarding the Balboa property referenced in the motion for intervention in this case.

11 3. This action is cited and referenced in the Federal Case Complaint at paragraphs
12 304-307 and footnote 27.

13 4. The alleged handwriting expert and his alleged report (referenced as an exhibit in
14 the proposed Complaint In Intervention but not included), are referenced in the Federal Case
15 Complaint at paragraphs 23 and 833.

16 5. The Complaint in the Federal Case is 172 pages with 1117 numbered paragraphs.

17
18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct.

20 Executed on May 3, 2021 in San Diego, California.

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22 /s/ Douglas Jaffe

23 DOUGLAS JAFFE
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1 PROOF OF SERVICE

2 I am over the age of 18 years and not a party to or interested in the within entitled action.
3 My business address is 501 West Broadway, Suite 800, San Diego, California 92101.

4 On May 3, 2021, I served the foregoing:

5 **OPPOSITION TO MOTION TO INTERVENE**

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7 by electronic service through One Legal, by email addressed as follows:

8 Andrew Flores
9 andrew@floreslegal.pro

10 James Lance
11 jlance@noonanlance.com

12 Allan Claybon
13 aclaybon@messner.com

14 Genevieve M. Ruch
15 gruch@noonanlance.com

16 I am readily familiar with the firm's practice of collection and processing for service
17 through One Legal. It is submitted to One Legal and sent by email to the above email addresses
18 on the same day in the ordinary course of business.

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct. Executed on May 3, 2021 at San Diego, California.

21
22 /s/ Douglas Jaffe

23 DOUGLAS JAFFE