

Robert E. Fuller (SBN 171770)
rfuller@nelsonhardiman.com
Zachary E. Rothenberg (SBN 215404)
zrothenberg@nelsonhardiman.com
Salvatore J. Zimmitti (SBN 245678)
szimmitti@nelsonhardiman.com
NELSON HARDIMAN LLP
1100 Glendon Avenue, Suite 1400
Los Angeles, CA 90024
Telephone: (310) 203-2800
Facsimile: (310) 203-2727

Attorneys for Plaintiffs-in-Intervention
SoCal Building Ventures, LLC and San Diego
Building Ventures, LLC

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

SALAM RAZUKI, an individual, ,
Plaintiff,
v.
NINUS MALAN, et al.,
Defendants.

AND RELATED COMPLAINT-IN-
INTERVENTION

CASE NO.: 37-2018-00034229-CU-BC-CTL
Assigned to: Hon. Eddie E. Sturgeon

**PLAINTIFFS-IN-INTERVENTION'S
MEMORANDUM IN SUPPORT OF OSC
RE: CONFIRMATION OF RECEIVER AND
REQUEST FOR FORENSIC ACCOUNTING**

*[Filed concurrently with Declaration of Chris
Berman and Declaration of Salvatore Zimmitti]*

DATE: September 7, 2018
TIME: 1:30 p.m.
DEPT: C-67

Action Filed: July 10, 2018

TABLE OF CONTENTS

MEMORANDUM OF POINTS AND AUTHORITIES	1
I. INTRODUCTION	1
II. FACTUAL BACKGROUND	3
III. LEGAL STANDARDS	5
IV. THE RECEIVERSHIP SHOULD BE CONFIRMED AND EPANDED TO INCLUDE A FORENSIC ACCOUNTING GIVEN IRREFUTABLE EVDIENCE OF DEFENDANTS' THEFT AND NOW FORGERY	6
V. THE TRUE STATUS QUO CAN ONLY BE PRESERVED BY PLACING SOCAL BACK IN ITS MANAGEMENT ROLE AT BALBOA AND MIRA ESTE.	8
VI. GOLDEN STATE GREENS AND SYNERGY ARE NOT INNOCENT THIRD PARTIES AND NO HARM WOULD COME FROM PLACING SOCAL BACK TO ITS MANAGEMENT ROLE AND RETURNING TO THE STATUS QUO.	9
VII. IF SOCAL IS NOT RETURNED TO ITS MANAGEMENT ROLE, THIS COURT SHOULD ORDER THE RETURN OF ITS EQUIPMENT CURRENTLY HELD AT THE MIRA ESTE AND BALBOA FACILITIES.	11
VIII. NO OTHER REMEDY, OTHER THAN A RECEIVERSHIP AND A FORENSIC ACCOUNTING, IS SUFFICIENT TO PRESERVE THE STATUS QUO AND SOCAL'S OWNERSHIP RIGHTS IN THE FACILITIES.	12
IX. CONCLUSION	13

TABLE OF AUTHORITIES

Page(s)

California Cases

Sachs v. Killeen,
165 Cal. App. 2d 205 (1958)5, 6

California Statutes

Cal. Jur. 3d Criminal Law, *Crimes Against Property* § 4061
Cal. Penal Code
§ 470.....1

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In addition to theft caught on video, clear contempt of two court orders, and the fraudulent concealment of third-party claims and pending litigation that induced SoCal to invest over \$2.7 million into the Mira Este and Balboa Facilities in the first place, Defendants have added yet another reason for this Court to confirm Mr. Essary's appointment – **Defendants' use of a forged invoice to demand reimbursement from SoCal for expenses never incurred.**

"Any material alteration of a writing with intent to defraud anyone so as to make the writing appear to be different from what it was originally intended to be is a forgery." 18 Cal. Jur. 3d Criminal Law: *Crimes Against Property* § 406; Cal. Penal Code § 470. Yet this is precisely what Defendants did to justify their demand that SoCal pay \$125,000 in tenant improvements to the Mira Este facility – improvements that never occurred.

Since June 1, 2018, when Defendants first began scurrying to concoct some ground to terminate the Agreements, they have boldly claimed a right to \$125,000 in tenant improvements that were allegedly made pursuant to the Mira Este Agreement. They have stated in their filings, in declarations, and in open court that SoCal's delay in paying for these improvements constituted a default and justified their termination of the Agreements.

After recently analyzing one particularly large invoice Defendants submitted to SoCal as "proof" of these tenant improvements made to Mira Este *in July 2017*, SoCal discovered that this invoice appeared to have been back-dated and "DocuSigned" by Defendant Hakim nearly a year later on *March 6, 2017*, the same day it was forwarded to SoCal to justify payment.

To follow up on this suspicious document, Plaintiff Razuki contacted the owner of the company who was named on the invoice, Chris Grippi. As Mr. Grippi's declaration confirms, **this invoice is a complete fabrication and his company never performed any work at the Mira Este Facility.** Accordingly, Defendants' claim that SoCal breached the Mira Este Agreement by failing to pay these expenses, like the invoice itself, is a total fraud.

Defendants' obvious comfort level with forging documents puts into question all of their representations and purported costs and expenses, including for example the \$125,000 in

1 “Furniture, Fixtures, & Equipment” that SoCal did in fact pay despite Defendants’ failure to
2 provide proof. SoCal therefore respectfully demands that this Court not only confirm Mr.
3 Essary’s appointment, but also give Mr. Essary the further power to arrange for a forensic
4 accounting of all of Defendants’ asserted costs, expenses, and rights to payment from or
5 reimbursement by SoCal. Without such an accounting, Defendants will continue to rely on false
6 claims of entitlement to money to deceive this Court.

7 SoCal also respectfully urges that it be immediately reinstated as manager of the Mira
8 Este and Balboa Facilities. As Defendants’ forgery makes additionally clear, **their termination**
9 **of SoCal’s Agreements on July 10, 2018 in part based on these fraudulent expenses was the**
10 **moment when the status quo was derailed.** SoCal had been up to that time managing both
11 facilities professionally and was sinking millions of dollars into them, until Defendants’ fraud
12 was discovered and SoCal started asking too many questions.

13 Allowing Defendants to continue using Golden State Greens and Synergy as their
14 preferred managers does not help and further harms the status quo. Golden State Greens is
15 certainly not independent or innocent. Its managers were caught on video literally robbing the
16 Balboa Facility’s safes while barricading themselves from the receiver. Golden State will
17 obviously do whatever Defendants’ instruct them to do, and Defendants are obviously willing to
18 instruct them to commit theft, attempt to evade service, and disobey a valid court order.

19 Defendants’ new manager for Mira Este, “Synergy,” is also not entitled to any sympathy
20 nor any superior claim to manage Mira Este over SoCal. Synergy did not invest \$1.2 million
21 dollars building out the Mira Este Facility like SoCal did, and Synergy is presumably enjoying
22 (free of charge) the use of SoCal’s expensive manufacturing equipment that SoCal paid over
23 \$400,000 for and Defendants shamelessly refused to return. **Synergy also contracted with**
24 **Defendants with full knowledge that it may be ordered to cease management because of**
25 **this litigation – Synergy in fact expressly agreed in its contract to waive any breach of that**
26 **contract resulting from this litigation.** Accordingly, this Court may order Synergy to step aside
27 knowing that it would result in no claim for damages or other repercussion to Defendants.

28 Since the last hearing, SoCal has been patiently waiting on the sidelines, but this cannot

1 continue. The longer this Court permits Defendants and their affiliated management companies
2 to “operate” the facilities, the more opportunity exists for Defendants to commit waste and
3 potentially manipulate and destroy evidence; and the further the parties depart from the true
4 status quo – i.e., the one that existed before Defendants decided to help themselves by fabricating
5 a breach of contract and physically barring SoCal from continuing its management and pursuing
6 its options. This violation of the status quo will soon to be irreparable and must be immediately
7 restored. In the event that this Court disagrees and allows Defendants and their affiliated entities
8 to continue to run these operations, SoCal respectfully requests, at minimum, that the Court
9 allow SoCal to enter the Mira Este and Balboa facilities under the supervision of the receiver and
10 reclaim all of its property and equipment.

11 **II. FACTUAL BACKGROUND¹**

12 SoCal first started paying Defendants under the parties’ Letter of Intent in October 2017
13 and, subsequently, pursuant to the parties’ definitive agreements (“Agreements”) executed for
14 the Balboa, Mira Este and Roselle Facilities. *See* Ex. B to Decl. of Jim Townsend filed 8/13/18.

15 In total, SoCal has paid over **\$2.7 million** toward the Balboa and Mira Este Facilities. *See*
16 *id.* **Virtually all of this money came from SoCal’s own “pocket”** as the Mira Este Facility was
17 not ready for operations and generated no revenue and the Balboa Facility only began generating
18 profits sufficient to start making payment from “sales” in late March 2018. *See id.*

19 The parties appeared to perform without significant incident until late May 2018, when
20 SoCal in discussion with Plaintiff Razuki discovered that Razuki held an interest in the Facilities
21 and that a pending lawsuit was filed by a third party a year earlier, claiming an interest in the
22 Balboa Facility. *See* Decl. of Dean Bornstein filed 8/13/18, ¶ 11.

23 Shocked by this revelation and Defendants’ apparent breach of the Agreements’
24 representations and warranties (including the warranty that no litigation implicating the facilities
25 existed), in a letter dated May 24, 2018, SoCal sought additional information to confirm
26

27
28 ¹ For additional background, please see Plaintiffs-in-Intervention’s Supplemental Opposition to
Ex Parte Application to Vacate Receivership Order.

1 Defendants' title to the property. *See* Bornstein Decl., filed 8/13/18, ¶13 & Exh. B.

2 On June 1, 2018, counsel for Defendants promised to (but never did) gather the requested
3 information and for the first time started making vague written demands for allegedly overdue
4 payments, including claims SoCal suspected may have been fabricated. *Id.*, ¶ 14.

5 On June 19, 2018, Defendant Malan finally admitted to the existence of the pending
6 litigation that threatened the Balboa Facility. Malan provided no explanation why this pending
7 litigation and Razuki's interests were not disclosed previously; however, he agreed to and did
8 waive the option deadline for the Balboa Facility pending resolution of the resolution of the
9 Balboa litigation. *See id.*, ¶ 17 & Exh. C.

10 On July 10, 2018, Defendants purported to unilaterally terminate *all* three Agreements
11 via a one-page letter that was based on vague and nonspecific claims of poor performance and
12 payment defaults. *Id.*, ¶ 19 & Exh. E. SoCal objected to this termination and subsequently
13 demanded a mediation pursuant to the Agreements' dispute resolution procedures but this was
14 ignored. *Id.*, ¶¶ 20-21, & Exh. F.

15 On (or before) July 10, 2018, Defendants implemented a hostile takeover of the Balboa
16 and Mira Este Facilities and physically barred SoCal from managing the facilities. Far West
17 Management LLC d/b/a Golden State Greens was immediately installed at the Balboa Facility.
18 *See* Decl. of James Holler filed 8/13/18, ¶¶ 10-11.

19 Given Defendants' erratic behavior and sudden ousting of SoCal, Plaintiff Razuki filed
20 this action and moved *ex parte* to appoint a receiver on July 17, 2018. SoCal Building Ventures
21 LLC and San Diego Building Ventures LLC (collectively "SoCal") also moved *ex parte* to
22 intervene in this action. Both motions were granted and Michael Essary was appointed.

23 Mr. Essary's attempt to effectuate the receivership order and to assume control of the
24 Balboa Facility was actively resisted and interfered with by the management of Golden State
25 Greens, who were captured on video collecting cash from the Balboa Facility's safes and fleeing
26 the back of the building into Defendants' counsel, Gina Austin's, car. Decl. of Michael Essary
27 dated 7/30/18, ¶¶ 4-5; *see* Decl. of Michael Essary dated 8/12/18; Holler Decl. filed 8/13/18, ¶¶
28 12-18 & Exh. A. Based on accounting records, there was approximately \$65,000 in Balboa's

1 safes as of July 10, 2018. Decl. of John Yaeger filed 8/13/18, ¶¶ 7-8. When Mr. Essary finally
2 entered the Balboa Facility on July 17, 2018, the safes were empty.

3 Defendants exercised their peremptory challenge of Judge Medel and on July 31, 2018
4 moved *ex parte* to vacate Judge Medel's order before Judge Strauss, to whom the case was
5 reassigned.²

6 SoCal respectfully ceded managerial control to Defendants on July 31, 2018 and
7 demanded the return of what is currently estimated to be approximately \$410,000 in equipment
8 SoCal had installed for its personal use at the Mira Este facility. Decl. of Salvatore Zimmitti filed
9 8/13/18 ¶¶ 6-8 & Ex. C. Counsel for SoCal tried to resolve this matter informally by submitting
10 an inventory list of items with detailed proof of ownership; however, despite initially indicating
11 that they would review and respond to this demand, Defendants never did, and continue to
12 maintain unlawful possession of this equipment to this day.

13 On August 14, 2018, this Court ordered "all accounts are frozen until further order of the
14 Court." *See* Minute order filed August 15, 2018.

15 On August 14, 2014, the same day this Court ordered all bank accounts frozen (but
16 before the minute order had been distributed), Defendant Malan attempted to unfreeze the
17 receivership hold on the Flip Management account by emailing BBVA bank and attaching Judge
18 Strauss' prior minute order. Mr. Malan represented in the email to BBV: "Please see attached
19 Minute Order Vacating the Receivership for Flip Management Acc XXXXX7151. Can you
20 please remove the Hold on the Account." *See* Ex. B to Suppl. Zimmitti Decl. filed 8/17/18.

21 **III. LEGAL STANDARDS**

22 All that is required for this Court to confirm the receivership "is evidence that the
23 plaintiff has at least a probable right or interest in the property sought to be placed in
24 receivership and that the property is in danger of destruction, removal or misappropriation."
25 *Sachs v. Killeen*, 165 Cal. App. 2d 205, 213 (1958). This evidence can include, for example,

26
27 ² At that hearing, Judge Straus purported to grant this relief and sought to return to the "status
28 quo" before Mr. Essary was appointed; however, no order was ultimately signed and SoCal
exercised its own peremptory challenge.

falsifying documents, misappropriating and diverting of profits, and concealment of the actual profits of the business. *See Sachs*, 165 Cal.App.2d at 213-214. This has been established.

IV. THE RECEIVERSHIP SHOULD BE CONFIRMED AND EPANDED TO INCLUDE A FORENSIC ACCOUNTING GIVEN IRREFUTABLE EVDIENCE OF DEFENDANTS' THEFT AND NOW FORGERY.

Defendants argued to this Court and in declarations that they were justified in summarily terminating all of the Facility Agreements and kicking SoCal out of the facilities in part because of SoCal's alleged failure to pay \$125,000 in tenant improvements pursuant to section 5.4 of the Mira Este Agreement. These tenant improvements were identified as allegedly owing in Defendants' June 1, 2018 letter to SoCal and again, more recently, in Hakim's supplemental declaration, in which he specifically declares under penalty of perjury:

"SoCal was in default of [the Mira Este Agreement] as of July 10, 2018, as follows:...**Failure to pay SoCal's reimbursement of the tenant improvements due March 2, 2018 of \$125,000 (section 5.4 of [Mira Este Agreement]).**"

Supp. Hakim Decl., ¶ 5 filed 8/17/18.

As described below, this \$125,000 in tenant improvements that Defendants claim was owed by SoCal and upon which their termination is predicated is a fraud and a forgery, the brazenness of which not only confirms the need for the receiver but also demonstrates that the receiver's powers should be expanded to arrange for a full forensic accounting to uncover the extent of Defendants' fraud and misappropriation of money and property.

In February 2018, SoCal's Chief Operating Officer, Chris Berman, was asked by Defendant Hakim to pay \$125,000 pursuant to section 5.4 the Mira Este Agreement for tenant improvements. Decl. of Chris Berman, ¶ 4. This section provides in full:

To the extent that Old Operators provide receipts for tenant improvements made to the 1,200 sf manufacturing room, the certificate of occupancy is received, and this Agreement is executed, then Manager shall reimburse the Old Operators for \$125,000 representing 50% of the tenant improvements incurred for the 1,200 sf manufacturing room. Such payment for tenant improvements shall be due thirty (3) days after receipt of the certificate of occupancy.

On March 1, 2018, Mr. Berman emailed Defendant Hakim and asked him to send "copies of [his] receipts / expense for T.I. improvements made to the 1,200 sf manufacturing space that you

1 are seeking reimbursement on.” Berman Decl., ¶ 4. In response, on March 6, 2018, Hakim
2 emailed Mr. Berman eight (8) attached invoices and stated: “Attached are the expenses for Mira
3 TI. There are more invoices relating to design and construction changes, but this should be
4 enough for your file.” Berman Decl., ¶ 5 & Exh. A.

5 Because these invoices did not constitute “receipts,” SoCal was not obligated to
6 reimburse the “expenses.” However, as Defendants had represented before, they allegedly paid
7 for this work “in cash” and did not have receipts. *Id.*, ¶ 6. Assuming they were in fact real, Mr.
8 Berman responded to Mr. Hakim with the additional concern that the invoices appeared to
9 covered areas on the property well beyond the “1,200 sf manufacturing room” that SoCal was
10 responsible for under section 5.4, such as items related to the Roselle Facility, parking lot work,
11 HVAC, drywall, and electrical charges. *Id.*, ¶ 7 & Exh. C. Hakim did not respond to this email,
12 so Mr. Berman Balboa’s CPA, John Yeager, to follow up with Defendants and their counsel,
13 Gina Austin, to obtain this information. Mr. Yeager did so on repeated occasions; however, this
14 information was never provided. *Id.*, ¶ 8 & Exh. D.

15 SoCal’s suspicions about the legitimacy of these invoices and Defendants’ inability to
16 furnish receipts caused it to reevaluate the largest of the invoices Hakim emailed on March 6,
17 2018 - the “Mira Este Bid – 7.1.17” attachment, which reflected a proposal by Element Builders
18 for \$266,725.00 that had been submitted by “Chris Grippi” and “accepted” on July 1, 2017 and
19 “DocuSigned” by Hakim (the “July 1 Bid”). Ex. B to Berman Decl., ¶ 5. SoCal became
20 concerned that this work had never been performed and forwarded this document to its counsel,
21 who reviewed the DocuSign “signature properties.” Berman Decl., ¶ 10; Zimmitti Decl., ¶¶ 2-9.
22 Consistent with SoCal’s suspicion of fraud, according to the electronic signature properties
23 associated with this invoice, **Hakim signed this proposal on March 6, 2016**, the same day
24 Hakim forwarded the document to SoCal as proof of expenses “incurred” on the Mira Este
25 Facility **in 2017**. Zimmitti Decl., ¶¶ 6-7.

26 Given the evidence that these tenant improvements may have been a recent fabrication,
27 the July 1 Bid was forwarded to Plaintiff Razuki, whose counsel obtained a declaration from
28 Chris Grippi, the owner of Element Builders. Zimmitti Decl., ¶ 8. As confirmed by Mr. Grippi in

1 his declaration, **the July 1 Bid is a complete forgery and Element Builders never prepared a**
2 **bid in this amount and never performed any work at the Mira Este Facility.** *See* Ex. C to
3 Zimmitti Decl. Ironically, while Mr. Grippi did submit two proposals for Mira Este work to
4 Defendants in June 2017, these were for lesser amounts and neither of them was accepted. *Id.*

5 Although SoCal fortunately did not pay for these fraudulently represented tenant
6 improvement expenses, other expenses Defendants likewise failed to provide proof for were
7 paid. For example, Defendants sought and were paid by SoCal for \$125,000 in alleged Fixtures,
8 Furniture & Equipment (“FF&E”) despite SoCal’s request and Defendants’ failure to supply
9 proof of these expenses. Berman Decl., ¶ 12. SoCal was pressured into paying for this \$125,000
10 in FF&E because Defendants were continually strapped for “cash.” Berman Decl., ¶ 13. SoCal is
11 informed and believes that this FF&E was also a fraud; one Defendants were successful in
12 completing.

13 In light of Defendants’ aforementioned forgery and the high likelihood that other
14 fraudulent representations were made to SoCal in connection with claims of reimbursement,
15 **SoCal hereby requests that the receiver’s powers be enlarged to arrange for a forensic**
16 **accounting to validate all claims for reimbursement and all of Defendants’ transactions**
17 **related to the facilities.**

18 **V. THE TRUE STATUS QUO CAN ONLY BE PRESERVED BY PLACING SOCIAL**
19 **BACK IN ITS MANAGEMENT ROLE AT BALBOA AND MIRA ESTE.**

20 SoCal respects this Court’s challenge in fairly mediating this dispute; however,
21 permitting Defendants to use their own management companies during the receivership is
22 threatening further irreparable harm to SoCal’s options and providing Defendants additional time
23 and opportunity to commit further waste and potentially destroy evidence of their fraud.

24 As a threshold matter, allowing Defendants to use their “new” management companies is
25 equivalent to adopting Defendants’ fabricated claim for breach of the Agreements. As discussed
26 above, Defendants claim of contractual default by SoCal is based in large part on the unpaid
27 Mira Este “tenant improvements” – these are the same expenses SoCal has since discovered were
28 completely fabricated and supported by a forged invoice. How could SoCal have breached an

1 agreement by refusing to pay for expenses that were never incurred?

2 Permitting Defendants to utilize their management companies and their own, financially-
3 interested accountant also allows Defendants to potentially cover up and benefit from their fraud.
4 SoCal has been completely forthcoming with all information sought by the receiver; whereas
5 Defendants have resisted these requests and have been unwilling to be transparent about their
6 operations, just like they resisted Mr. Essary's execution of Judge Medel's receivership order.

7 Forcing SoCal to sit on the sidelines and watch while these other management companies
8 take advantage of SoCal's labor and property is also horribly unfair. It is classic "insult to injury"
9 to oust SoCal from its management role based on a clearly fabricated claim for breach of contract
10 and then make SoCal wait while Defendants' new management not only retains this equipment,
11 but presumably uses it for themselves and Defendants' benefit.

12 Finally, there is nothing to lose and everything to be gained by having SoCal return to its
13 management role at the Mira Este and Balboa Facilities. Just like their clearly forged invoice for
14 \$266,000 in work never performed, all of Defendants' accusations against SoCal are a calculated
15 fiction, albeit hastily concocted in response to Defendants' fraud being exposed. Unlike
16 Defendants, SoCal has nothing to hide and has demonstrated that it can manage the facilities
17 with complete transparency. Accordingly, to the extent the receiver takes issue or has any
18 concern with SoCal's conduct, Mr. Essary will have the opportunity to address those issues as
19 they arise.

20 In short, this Court should immediately return the parties back to the true "status quo" in
21 this case, which was upset immediately upon Defendants' wrongful termination and forcible
22 "self-help" ousting of SoCal from the facilities on July 10, 2018.

23 **VI. GOLDEN STATE GREENS AND SYNERGY ARE NOT INNOCENT THIRD**
24 **PARTIES AND NO HARM WOULD COME FROM PLACING SOCAL BACK IN**
ITS MANAGEMENT ROLE AND RETURNING TO THE STATUS QUO.

25 Every day that Golden State Greens and Synergy Management Partners, LLC
26 ("Synergy") continue to operate the facilities further threatens permanent and irreparable harm to
27 SoCal's and Plaintiff Razuki's interests in the facilities. This Court should not be concerned
28 with ordering Defendants' managers to transition control back to SoCal, for obvious reasons.

1 Golden State Greens, a management company under Defendants' control, certainly does
2 not have superior rights to SoCal. Golden State Greens did not invest \$756,000 into the Balboa
3 Facility like SoCal did, based on Defendants' false representations and warranties. Nor should
4 Golden State Greens be viewed as some innocent third party. On the contrary, its managers were
5 captured on video along with their counsel refusing to comply with Judge Medel's order and
6 committing theft by looting the \$65,000 that was in Balboa's safes while they barricaded Mr.
7 Essary from the facility. This Court should not reward Golden State Greens for this
8 contemptuous conduct.

9 Synergy is also entitled to no sympathy, and this Court should summarily order them to
10 cease managing Mira Este. Synergy is unjustly benefiting from Defendants' shameless theft and
11 retention of over \$400,000 of SoCal's manufacturing equipment. Synergy should not be allowed
12 to handle or use any of this equipment. If Synergy were a reputable organization, it should have
13 already offered to use its own manufacturing equipment, rather than helping itself to SoCal's.

14 Furthermore, **there would be no legal repercussion to Defendants if this Court**
15 **ordered Synergy to hand management control back to SoCal immediately**, because the
16 Synergy contract waives any discontinuation of its contract resulting from this litigation:

17 Section 1.8. Prior Agreements: The Parties acknowledge that the Company has
18 recently terminated the services of SoCal...and that such termination has led to
19 litigation regarding the management and ownership rights in the
20 Facility....[Synergy] acknowledges and understands that the Litigation could
21 affect [Synergy's] ability to perform under this Agreement or ability to receive
22 timely payment for services, should the court or other parties to the Litigation take
certain actions. Excepting the right to indemnification as herein detailed,
**Manager hereby agrees to waive any breach of this Agreement resulting
from the Litigation.**

23 Ex. 1 to Suppl. Hakim Decl. filed 8/17/18, § 1.8. As the plain language above makes clear,
24 Synergy entered its agreement with "eyes wide open," knowing that this Court may order
25 Synergy to transition management control of Mira Este back to SoCal. That is exactly what this
26 Court should do to return the parties to the rightful "status quo."

VII. IF SOCAL IS NOT RETURNED TO ITS MANAGEMENT ROLE, THIS COURT SHOULD ORDER THE RETURN OF ITS EQUIPMENT CURRENTLY HELD AT THE MIRA ESTE AND BALBOA FACILITIES.

Out of respect for this Court's order SoCal has thus far patiently waited while Defendants help themselves to over \$400,000 of SoCal's manufacturing equipment at the Mira Este Facility, and still more equipment that SoCal has yet to inventory at the Balboa Facility. Allowing Defendants to continue to use and exert control over this equipment is further harming SoCal.

Defendants have no valid claim to this property. Tellingly, the best counsel for Hakim could do at the last hearing is to theoretically posit that one "could argue" that such ownership was based on section 4.3.6. of the Mira Este Agreement, which provides:

Company is the sole owner of the real property on which the Facility is located and is the sole owner of the improvements comprising the Facility and all real and personal property located therein. The Company has full power, authority and legal right to own such real and personal property.

But no such argument can be actually be made. Section 4.3.6 does not relate to SoCal's equipment installed *after* the Agreement was executed. Section 4.3.6 is one Defendants' various representations and warranties and concerns only their title to equipment *existing on the property at the time the parties were negotiating the Agreements*. Section 4.3.6 is in fact one of several such warranties by Defendants, and immediately precedes another, at section 4.3.7, which is one (ironically) that Defendants' breached by falsely warranting that "[t]here is no litigation or proceeding pending or threatened against Company."

SoCal does not want Defendants' old toilets, coffee machines, or other miscellaneous appliances that were onsite before SoCal started managing the facility. SoCal wants the return of its extraordinarily expensive and delicate equipment that was bought and installed after the Agreement went into effect solely for SoCal's use in manufacturing. Defendants' frivolous attempt to use their own warranty relating to an "existing condition" at the Mira Este Facility to refuse returning SoCal's property is sadly consistent with Defendants' overall fraudulent business practice. To the extent this Court is not inclined to allow SoCal to manage the Mira Este and Balboa Facilities during the pendency of this litigation, SoCal respectfully demands that it be allowed to reclaim its property under the supervision and control of the receiver.

VIII. NO OTHER REMEDY, OTHER THAN A RECEIVERSHIP AND A FORENSIC ACCOUNTING, IS SUFFICIENT TO PRESERVE THE STATUS QUO AND SOCAL'S OWNERSHIP RIGHTS IN THE FACILITIES.

Defendants' forged invoice for \$266,000 is likely just the "tip of the iceberg" of Defendants' fraud, particularly since Defendant Malan previously approached SoCal employee Daniel Spillane and asked Mr. Spillane to fabricate a shipping manifest so that Malan could sell illegal cannabis biomass "on the streets." *See* Decl. of Daniel Spillane IV, filed 8/13/18. At minimum, the discovery of Defendants' forged invoice – which they have used aggressively in this case to condemn SoCal – exemplifies just how low they will go, and demands that Mr. Essary be confirmed and his powers be enlarged to also "look backwards" at all of Defendants' claims for costs, expenses and reimbursement.

A forensic accounting is not only necessary to determine where SoCal's money went, it is critical to further debunk Defendants' lies and false claims that SoCal failed to pay money due thereby justifying their termination of the Agreements. Defendants should not be able to argue to this Court that SoCal breached the Mira Este agreement by failing to pay \$125,000 in tenant improvements without offering some measure of proof that those improvements were actually made. Requiring SoCal *and* Defendants to turn over all of their checks, receipts, bank statements, invoices, and all other "proof" to a truly independent forensic accountant would have the benefit of uncovering additional fraud and determining whether or not SoCal complied with its financial obligations under the Agreements in good faith, to the extent they were not prevented or interfered with due to Defendants' misconduct.

The need for a forensic accounting while the facilities are subject to the control of the receiver is particularly urgent, since SoCal does not have the time to conduct discovery or use conventional means to discover these facts, and is apparent that Defendants, who are comfortable without outright falsifying documents, are likely willing to conceal, destroy, or manipulate evidence to further their fraud. Accordingly, Mr. Essary's appointment should be confirmed and his powers should be enlarged to arrange for a forensic accounting.

//

//

1 **IX. CONCLUSION**

2 For the foregoing reasons, Plaintiffs-in-Intervention respectfully request that (1) the
3 Court confirm Mr. Essary's appointment as receiver, (2) return SoCal as manager of the Balboa
4 and Mira Este Facilities, and (3) grant Mr. Essary the power to arrange for a forensic accounting.
5

6 Dated: September 4, 2018

NELSON HARDIMAN LLP

7
8 By: 

Salvatore Zimmitti

Attorneys for Plaintiffs-in-Intervention

SoCal Building Ventures, LLC and San Diego

Building Ventures, LLC
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28