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SoCal Building Ventures, LLC; and
7 San Diego Building Ventures, LLC

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO - CENTRAL COURTHOUSE

11 SALAM RAZUKI, an individual,
12 Plaintiff,
13 v.
14 NINUS MALAN, et al.
15 Defendants.

CASE NO.: 37-2018-00034229-CU-BC-CTL
(Assigned to: Hon. Eddie E. Sturgeon, Dept.
C-67)

**PLAINTIFFS-IN-INTERVENTION'
MEMORANDUM IN SUPPORT OF
PLAINTIFF'S RAZUKI'S *EX PARTE*
APPLICATION AND OPPOSITION TO
DEFENDANT HAKIM'S *EX PARTE*
APPLICATION TO REMOVE THE
RECEIVER; DECLARATION OF DEAN
BORNSTEIN**

18 AND RELATED CLAIMS-IN-
19 INTERVENTION AND CROSS CLAIMS.

Action Filed: July 10, 2018
Trial Date: None

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Plaintiffs-in-Intervention SoCal Building Ventures, LLC and San Diego Building
4 Ventures, LLC ("SoCal") support Plaintiff Razuki's *ex parte* application for, among other
5 reasons, because: (1) Defendants have proven that they cannot transparently operate either the
6 Balboa or Mira Este Facility and keep them viable; and (2) Defendants and their affiliated
7 management companies and counsel continue to openly defy this Court's orders by keeping the
8 receiver and forensic accountant in the dark, while simultaneously blaming the receiver for their
9 own failure to competently operate the facilities.

10 Defendants are far from apologetic about their mismanagement and blatant obstruction of
11 the receiver and forensic accounting this Court ordered. On the contrary, they have only become
12 more emboldened with each act of defiance, which started when Far West Management (aka
13 Golden State Greens) and its managers, along with their attorney Gina Austin, looted over
14 \$60,000 from the Balboa Dispensary while they physically barricaded receiver Mike Essary from
15 entering the facility. This outrageous act of contempt act is sadly one of several that Defendants
16 have engaged in. Now, although they are no longer *physically* barricading the receiver from the
17 facilities, they continue to nonetheless obstruct the receiver and forensic accountant from
18 carrying out their duties by continuing to withhold basic information, refusing to obtain approval
19 for payments made, and by refusing to pay the fees of the receiver and forensic accountant,
20 again, despite this Court's clear orders. Enough is enough. Continuing to allow Defendants
21 and/or their financially-interested management companies and agents to have any hand in these
22 facilities' operations is allowing the fox to guard the henhouse.

23 The perilous financial state of both facilities is no surprise to SoCal or Plaintiff. It is a
24 natural consequence of allowing Defendants to *operate both facilities in the dark for their own*
25 *personal gain*. Unlike Defendants, SoCal had been operating both facilities transparently and
26 professionally, and was making generous payments under its management contracts amounting
27 to over \$2.7 million before Defendants' fraud was exposed and they scurried to contrive baseless
28 breach of contract claims. In Defendants' haste to cover up their fraud, they obviously had no

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1 plan how to run these facilities ethically and sustainably after SoCal's departure, and now have
2 no one to blame for their present financial state but themselves.

3 It is particularly absurd for Defendant Hakim to argue that the receiver should be
4 removed from the Mira Este Facility because a receiver is "bad for business." Despite
5 contending that several would-be manufacturers were turned away by the receiver's presence,
6 SoCal successfully operated both facilities under the supervision of the receiver *and would do it*
7 *again*, perhaps because SoCal has nothing to hide and no reason to fear oversight.

8 Regardless, it is clear that **Defendant Hakim cannot be trusted to operate the Mira**
9 **Este Facility without the oversight of a receiver.** As SoCal has already demonstrated to this
10 Court based on an uncontroverted declaration by Chris Grippi, **Hakim forged an invoice by Mr.**
11 **Grippi purporting to reflect nearly \$300,000 in work Grippi never performed**, just so
12 Hakim could steal money from SoCal. SoCal is informed and believe that this is just the tip of
13 the iceberg of Hakim's fraud. Given Hakim's obvious comfort level with at least one undisputed
14 act of felony forgery, it is therefore unsurprising that, as far as Hakim is concerned, "no receiver
15 is a good receiver."

16 Unlike Defendants, SoCal has never been given any chance by this Court to operate these
17 facilities, even though SoCal never engaged in fraud, forgery or any other unethical or criminal
18 business practice and has already proven itself capable of running both the Mira Este and Balboa
19 Facilities in cooperation with the receiver. SoCal should not be sidelined any longer.

20 SoCal respectfully urges this Court to grant Plaintiff's *ex parte* and finally put an end to
21 Defendants' pattern of willful disobedience and the irreparable harm that it is causing to both
22 facilities. The Court should finally remove Defendants, their conflicted management companies,
23 their conflicted accountant, Justus Henkes, and conflicted "compliance" counsel, Gina Austin,
24 from controlling, operating, or consulting on the operations of these facilities in any way.

25 This Court should also authorize the receiver to enter into new management contracts
26 with SoCal or, alternatively, some other truly independent and professional management
27 company that this Court can be sure will operate the facilities openly and professionally. This
28 may be the Court's last chance to do so before these businesses permanently fail.

1 **II. THE RECEIVER SHOULD REMAIN IN PLACE AND HIS POWERS SHOULD**
2 **BE EXPANDED TO ENTER INTO NEW CONTRACTS WITH SOCAL OR,**
3 **ALTERNATIVELY, TRULY INDEPENDENT MANAGEMENT COMPANIES**
4 **CAPABLE OF COOPERATING WITH THE RECEIVER.**

5 It has long been established that a receiver may enter into contracts on behalf of the
6 Court, so long as this is authorized by the Court. *See Painter v. Painter*, 138 Cal. 231, 237–38
7 (1902) (holding that trial court did not exceed its jurisdiction in authorizing
8 the receiver to enter into contract); *Nulaid Farmers Ass'n v. LaTorre*, 252 Cal. App. 2d 788, 793
9 (1967) (receiver may make contract binding property or fund in his custody if approved by the
10 court).

11 Such an order is necessary here. It is painfully obvious that Defendants and their
12 “affiliated” management companies are incapable of operating the Balboa and Mira Este
13 facilities, at least in a transparent manner so that the receiver can account for the large amounts
14 of cash they are supposedly generating. As they have done throughout this litigation, Defendants
15 will undoubtedly come to Court blaming the receiver and/or SoCal - or anyone else for that
16 matter but themselves - for their current financial state. It is also equally clear that Defendants
17 will try and deceive this Court by hiding evidence of their self-dealing from the receiver and
18 forensic accountant, and will offer frivolous “excuses” for violating this Court’s last order by
19 using the operations’ funds to only pay themselves and their management company insiders;
20 instead of the receiver, receiver’s counsel, and the forensic accountant as the Court’s last order
21 required.

22 Neither SoCal nor Razuki is surprised that the Balboa Facility is allegedly on the verge of
23 closing or losing its CUP due to supposed debts that Defendants cannot pay. This is the natural
24 consequence of permitting Defendants to upset the status quo by ousting SoCal from performing
25 under its arms-length agreements that were highly favorable to both facilities. Defendant Malan
26 cannot pay these debts, such as making HOA payments, because SoCal had been paying them
27 for him. As usual, Malan will now use his own failures to seek more money – money that Malan
28 will hide from the receiver and forensic accountant.

Defendant Hakim’s *ex parte* application to remove the receiver is also nothing new, and

1 is based on the same primary argument he made last time - that nobody will supposedly do
2 business with Mira Este because they are all afraid of receivers. This is nonsense.

3 SoCal and other reputable operators with nothing to hide have nothing to fear from a
4 receiver. **SoCal successfully ran both facilities in cooperation with the receiver and would**
5 **happily do it again under new contracts with the receiver as authorized by this Court.** *See*
6 Declaration of Dean Bornstein. SoCal is confident that it is not the only operator that would do
7 business with Mira Este under the supervision of a receiver. To the extent this Court is in doubt,
8 it should allow the *receiver* to approach these businesses himself, rather than Hakim or Synergy,
9 who both have a financial incentive to rid themselves of the receiver.

10 Moreover, this Court should not remove the receiver from the Mira Este Facility because
11 Hakim cannot be trusted. SoCal has already provided uncontroverted evidence of at least one
12 instance of felony forgery by Hakim, in which **Hakim forged nearly \$300,000 in bogus**
13 **contractor expenses that were never incurred.** This forgery was confirmed in a declaration by
14 Chris Grippi, the contractor who Hakim represented had performed these “tenant
15 improvements.” If Hakim is comfortable fabricating false and fraudulent invoices to steal money
16 from SoCal, it is obvious that he cannot be trusted to run the Mira Este Facility, without the
17 oversight of the receiver and forensic accountant.

18 **III. SOCIAL OR, ALTERNATIVELY, ANOTHER REPUTABLE AND INDEPENDENT**
19 **OPERATOR SHOULD BE GIVEN THE CHANCE TO RESUME MANAGEMENT**
20 **OF THE FACILITIES UNDER NEW MANAGEMENT CONTRACTS.**

21 SoCal, an innocent victim of Defendants’ fraud, is owed an opportunity to demonstrate to
22 this Court that it can run these facilities profitably and in plain view of the receiver, as it had
23 been doing before Judge Strauss purported to vacate the prior receivership order entered by
24 Judge Medel. Now that SoCal’s contracts and options have been placed into legal “limbo,”
25 SoCal has no reason to continue making the generous payments and investments into these
26 facilities it had been, particularly since Defendants have demonstrated that they are only
27 interested in paying themselves rather than the facilities’ debts. Accordingly, SoCal requests that
28 the receiver be given the authority to enter into new management/option contracts on behalf of
the facilities with SoCal, similar to those contracts Defendants breached. *See* Bornstein Decl.

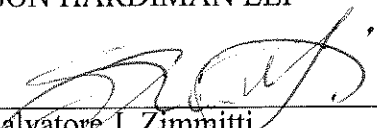
1 In the alternative, if this Court is *still* not inclined to give SoCal a chance to run these
2 operations for whatever reason, this Court should finally order the removal of Defendants'
3 affiliated management companies and other insiders from the operations, including the
4 financially-conflicted accountant Justus Henkes and Balboa's "compliance" counsel Gina
5 Austin, and give the receiver the power to search for another operator. As the receiver will attest
6 to at the hearing, Defendants' management companies and accountant have continued to keep the
7 receiver in the dark notwithstanding their obligation to disclose and/or seek approval of all
8 financial transactions. If this level of obstruction and defiance of this Court's authority is
9 insufficient to remove them from any further control of the operations, then it is difficult to
10 image any misconduct that would, and there will have been no point in appointing the receiver in
11 the first place.

12 **IV. CONCLUSION**

13 For the foregoing reasons, SoCal respectfully urges this Court to: (1) grant Plaintiff's
14 Razuki's *ex parte* application and remove the current management of the Balboa and Mira Este
15 Facilities; (2) deny Defendant Hakim's *ex parte* application in its entirety; and (3) authorize the
16 receiver to enter into new management contracts with SoCal to operate the Balboa and Mira Este
17 Facilities or, alternatively, to select another, truly independent and professional management
18 company to run them.

19 Dated: October 24, 2018

NELSON HARDIMAN LLP

20 By: 
21 Salvatore J. Zimmitti
22 Attorneys for Plaintiffs-in-Intervention / Cross-Defendants
23 SoCal Building Ventures, LLC and
24 San Diego Buidling Ventures, LLC.

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PROOF OF SERVICE

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of 18 and not a party to the within action. My business address is 1100 Glendon Avenue, Suite 1400, Los Angeles, California 90024.

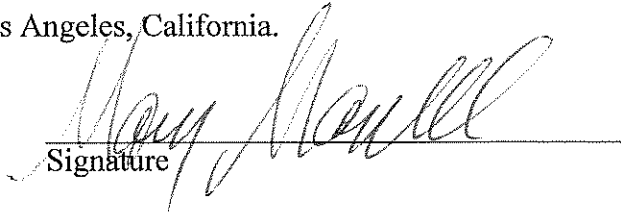
On **October 24, 2018**, I served on the interested parties the document(s) described as **PLAINTIFFS-IN-INTERVENTION' MEMORANDUM IN SUPPORT OF PLAINTIFF'S RAZUKI'S *EX PARTE* APPLICATION AND OPPOSITION TO DEFENDANT HAKIM'S *EX PARTE* APPLICATION TO REMOVE THE RECEIVER; DECLARATION OF DEAN BORNSTEIN** by electronically transmitting through ONE LEGAL ATTORNEY SERVICE a true copy thereof as follows:

SEE ATTACHED SERVICE LIST

- (BY E-SERVICE – ONE LEGAL ATTORNEY SERVICE)** I caused a copy of the above-referenced document to be transmitted to the interested parties set forth above via One Legal Attorney Service
- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed **October 24, 2018** at Los Angeles, California.

Mary Markwell
Please Print Name


Signature

SERVICE LIST

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