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Attorney For  
**Court-Appointed Receiver Michael Essary**

SUPERIOR COURT OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO

SALAM RAZUKI, an individual,  
Plaintiff,

v.

NINUS MALAN, an individual; CHRIS  
HAKIM, 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; 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

**RECEIVER MICHAEL ESSARY'S  
DECLARATION IN RESPONSE TO  
DEFENDANT MALAN'S EX PARTE  
APPLICATION**

Judge: Hon. Eddie C. Sturgeon  
Dept: C-67  
Date: February 21, 2019  
Time: 8:30 a.m.

**DECLARATION OF RECEIVER MICHAEL ESSARY**

1. I, Michael Essary, was appointed as the Receiver in the above-entitled matter by this  
Court on August 20, 2018. This declaration is submitted in response to Defendant Malan's *ex parte*

1 application, which I received and reviewed on February 20, 2019 at approximately 10:00 a.m.

2 2. Defendant Malan and his counsel falsely and improperly attempt to place blame on  
3 this Court's Receiver for the partnership collapse and business failures of Defendant Malan and the  
4 myriad of other parties and partners involved in the above-entitled debacle.

5 3. My counsel and I successfully corralled all parties and counsel for a 10-hour mediation  
6 session on February 19, 2019. Notwithstanding our positive outlook for a partial resolution in this  
7 matter, it will not surprise the Court to learn that the mediation was unfruitful.

8 4. The receivership estate has no funds. I have not been paid for any of my services in  
9 this matter from October 1, 2018 to the present. My counsel has not been paid for any of his services  
10 in this matter from October 1, 2018 to the present. Forensic accountant Brian Brinig has not been  
11 paid for any of his services in this matter from October 1, 2018 to the present.

12 5. The delinquencies and debts belonging to the parties in this matter, their businesses  
13 and their properties are not new emergencies. Per my request, my counsel sent an email to all counsel  
14 on December 19, 2018 confirming that the receivership estate had no funds, the delinquencies are  
15 mounting and the parties had effectively tied the hands of the receivership by filing appeals and taking  
16 the position that the Court and Receiver were unable to modify the Receivership Order to, for  
17 example, install a new third party operator at the Balboa Dispensary after Defendant Malan's chosen  
18 operator (Far West) abandoned the dispensary and locked the doors without notice given to the  
19 Receiver in November 2018. Attached hereto as **Exhibit A** is a true and correct copy of my attorney  
20 Richardson Griswold's email to all counsel on December 19, 2018.

21 6. I remain in contact with the mortgage lender for the Balboa properties regarding the  
22 delinquencies. We remain hopeful we can postpone a foreclosure sale, negotiate a payment plan  
23 and/or secure a new financing agreement that would entail the mortgage lender providing additional  
24 funding to the receivership on new terms.

25 7. I am in contact with multiple interested third party operators for the Balboa Ave  
26 Dispensary. Now that the mediation proved unproductive, we plan to proceed with seeking the  
27 stipulation of the parties to install a new third party operator.  
28

1           8.       I am in contact with a receivership lender who has committed to funding \$500,000 via  
2 a Court-authorized receivership certificate. However, this outside funding would need to be granted  
3 lien priority status above the existing Balboa mortgages. This would require a noticed motion with  
4 proper notice and opportunity for opposition by the existing mortgage lender. Again, now that the  
5 mediation proved unproductive, we will proceed with exploring this route.

6           9.       Defendant Malan states the commercial owner's association is not being paid and is  
7 proceeding with the revocation of the use variance at the Balboa Ave site. This is false. Plaintiff  
8 Razuki agreed to a payment plan with the commercial owner's association, and in exchange, the  
9 commercial owner's association withdrew their efforts to revoke the use variance. Defendant Malan  
10 and his counsel are well aware of this fact.

11          10.      To my knowledge, Defendant Malan is represented in this matter by both the Austin  
12 Legal Group and G10 Gallupo Law. Attorney Gina Austin of Austin Legal Group recently emailed  
13 invoices addressed to "Ninus Malan General" that total \$180,225.00. Ms. Austin explained in her  
14 email that "[m]ost of the expenses relate to the various litigation matters." It is unclear whether  
15 Defendant Malan's *ex parte* application, filed by G10 Galuppo Law, is seeking payment of co-  
16 counsel Austin Legal Group's unpaid attorney's fees for their joint client Mr. Malan. In any event,  
17 as stated above and confirmed with all parties, the receivership estate has no funds—even if it did  
18 consider the \$180,225.00 to be a valid receivership expense.

19          11.      Defendant Malan incorrectly asserts that "the receiver has not kept the business open."  
20 To the contrary, the Balboa Ave Dispensary is closed because Defendant Malan's chosen operator  
21 (Far West) abandoned the business with no notice in November 2018. Far West and its part-owner  
22 Justus Henkes were confirmed as the operator and accountant at the Balboa Ave Dispensary over the  
23 objection of the receiver. This was confirmed in the September 26, 2018 Preliminary  
24 Injunction/Receivership Confirmation Order. Of note, I have confirmed accountant Justus Henkes  
25 has ceased to provide any services to the Balboa Ave Dispensary or the Mira Este facility.


26          12.      I am consulting with experts regarding cannabis regulatory issues, specifically related  
27 to the current closed-status of the Balboa Ave Dispensary. This Court ordered me to utilize the Austin  
28

1 Legal Group as my cannabis industry consultant. As the Court will recall, I had desired to use a  
2 different industry consultant. Austin Legal Group argued in Court that it should remain as the  
3 receivership consultant. Earlier this month, attorney Gina Austin of the Austin Legal Group notified  
4 me by email that it would not assist with any cannabis consulting to the receivership given its unpaid  
5 legal bills. As this Court is aware, the receivership estate has no funds. Therefore, I will do my best  
6 to secure consulting services from industry experts without any promise of payment to such  
7 consultants.

8 13. I will reserve opinion as to whether this Court should increase the Plaintiff's  
9 preliminary injunction bond. The purpose of this response declaration was solely to correct false  
10 statements and mischaracterizations made by Defendant Malan and his counsel.

11  
12 I declare, under penalty of perjury under the laws of the State of California, that the foregoing  
13 is true and correct.

14 Executed this 20th day of February 2019 at San Diego, California.

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16   
17 Michael Essary  
18 Court Appointed Receiver  
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## Exhibit A

Richardson Griswold <[rgriswold@griswoldlawca.com](mailto:rgriswold@griswoldlawca.com)>

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**Razuki/Malan: status of receivership**

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Richardson Griswold <[rgriswold@griswoldlawca.com](mailto:rgriswold@griswoldlawca.com)>

Wed, Dec 19, 2018 at 2:09 PM

To: James Joseph <[james@elialaw.com](mailto:james@elialaw.com)>, Maura Griffin <[MG@mauragriffinlaw.com](mailto:MG@mauragriffinlaw.com)>, Steven Elia <[steve@elialaw.com](mailto:steve@elialaw.com)>, "Salvatore J. Zimmitti" <[szimmitti@nelsonhardiman.com](mailto:szimmitti@nelsonhardiman.com)>, Robert Fuller <[rfuller@nelsonhardiman.com](mailto:rfuller@nelsonhardiman.com)>, Lou Galuppo <[lgaluppo@galuppolaw.com](mailto:lgaluppo@galuppolaw.com)>, "Daniel T. Watts (dwatts@galuppolaw.com)" <[dwatts@galuppolaw.com](mailto:dwatts@galuppolaw.com)>, Charles Goria <[chasgoria@gmail.com](mailto:chasgoria@gmail.com)>, "Leetham, Tamara" <[tamara@austinlegalgroup.com](mailto:tamara@austinlegalgroup.com)>, "Austin, Gina" <[gaustin@austinlegalgroup.com](mailto:gaustin@austinlegalgroup.com)>, Matthew Dart <[matt@dartlawfirm.com](mailto:matt@dartlawfirm.com)>, Matt Mahoney <[mahoney@wmalawfirm.com](mailto:mahoney@wmalawfirm.com)>  
Cc: Mike <[Calsur@aol.com](mailto:Calsur@aol.com)>, Brian Brinig <[BPB@btzforensics.com](mailto:BPB@btzforensics.com)>, Jamie Eberhardt <[jeberhardt@griswoldlawca.com](mailto:jeberhardt@griswoldlawca.com)>

Counsel,

The receivership estate has no money. We are all aware that the debts, outstanding invoices, delinquent taxes, breached settlement agreements, etc. continue to mount. Further, some parties take the position that regardless of appeal bonds being posted, the Court is prohibited from "modifying" the existing receivership order (i.e. Court is prohibited from authorizing the receiver to change the operator at Balboa based on existing language of the receivership order) pending the appeal. Even further, we are now in limbo as to whether all appealing parties intend to post the Court-set appeal bond amounts, and if so, when.

I respect and understand the fact that you and your clients are deeply engaged in your respective litigation strategies in this matter. At the same time, I am also encouraged by the fact that some of you and your clients are also engaged in creative-solution/settlement discussions. We support that.

But to be blunt, our hands are currently tied from an operational standpoint, and further, the receiver, receiver's counsel and receiver's appointed forensic accountant have not been paid in months.

We would like to see Balboa up and running again. We continue to be open to discussing with any party or counsel a productive approach to re-opening Balboa's doors and potentially working with an operations team willing to infuse capital at the outset.

We look forward to hearing from you all.

Thanks,  
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1 **PROOF OF SERVICE**

2 *Salam Razuki v. Ninus Malan, et al.*

3 *San Diego County Superior Court Case No. 37-2018-00034229-CU-BC-CTL*

4 I am employed in the County of San Diego, State of California. I am over the age of 18 and  
5 am not a party to the within action. I am employed by Griswold Law, APC and my business address  
is 444 S. Cedros Avenue, Suite 250, Solana Beach, California 92075.

6 On *February 20, 2019*, I served the documents described as **RECEIVER MICHAEL**  
7 **ESSARY'S DECLARATION IN RESPONSE TO DEFENDANT MALAN'S EX PARTE**  
8 **APPLICATION** on each interested party, as follows:

9 **SEE ATTACHED SERVICE LIST**

10      **(VIA MAIL)** I placed a true and correct copy(ies) of the foregoing document in a sealed  
11 envelope(s) addressed to each interested party as set forth above. I caused each such envelope, with  
12 postage thereon fully prepaid, to be deposited with the United States Postal Service. I am readily  
13 familiar with the firm's practice for collection and processing of correspondence for mailing with the  
14 United States Postal Service. Under that practice, the correspondence would be deposited with the  
United States Postal Service on that same day with postage thereon fully prepaid in the ordinary  
course of business.

15      **(VIA OVERNIGHT DELIVERY)** I enclosed the documents in an envelope or package provided  
16 by an overnight delivery carrier and addressed to each interested party. I placed the envelope or  
17 package for collection and overnight delivery in the overnight delivery carrier depository at Solana  
Beach, California to ensure next day delivery.

18   **X**   **(VIA ELECTRONIC MAIL)** I caused true and correct copy(ies) of the foregoing document(s)  
19 to be transmitted via **One Legal e-service** to each interested party at the electronic service addresses  
listed on the attached service list.

20      **(BY FACSIMILE)** I transmitted a true and correct copy(ies) of the foregoing documents via  
21 facsimile.

22 I declare under penalty of perjury under the laws of the State of California that the foregoing  
23 is true and correct. Executed on *February 20, 2019*, in Solana Beach, California.

24 

25 Katie Westendorf

**SERVICE LIST**

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Maura Griffin, Esq.

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