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FIFTY-SIX HOPE ROAD MUSIC
LIMITED, a Bahamian corporation and
HOPE ROAD MERCHANDISING, LLC, a
Florida limited liability company.

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

FIFTY-SIX HOPE ROAD MUSIC LIMITED, a Bahamian corporation, and HOPE ROAD MERCHANDISING, LLC, a Florida limited liability company Plaintiffs, v. JAMMIN JAVA CORPORATION, a Nevada corporation, and DOES 1-10 Defendants.	Case No. 2:16-cv-05810 SVW (MRWx) *Assigned to Hon. Stephen V. Wilson* **DECLARATION OF BONNIE E. ESKENAZI IN OPPOSITION TO DEFENDANT JAMMIN JAVA'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION** [Memorandum of Points & Authorities and Certification and Notice of Interested Parties filed concurrently herewith] Action filed on August 4, 2016.

28219-00007/2665034.1

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DECLARATION OF BONNIE E. ESKENAZI

Bonnie E. Eskenazi declares:

1. I am an attorney at law duly licensed to practice in the State of California and am a partner of Greenberg Glusker Fields Claman & Machtinger LLP, counsel of record for Plaintiffs Fifty-Six Hope Road Music Limited ("56HR") and Hope Road Merchandising LLC ("HRM") (collectively, 56HR and HRM are sometimes referred to herein as "Plaintiffs"). I submit this declaration in opposition to defendant Jammin Java's ("JJ" or "Defendant") *ex parte* application for a temporary restraining order and/or preliminary injunction. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto under oath.

2. At all times relevant to this action, 56HR is and has been the worldwide owner of all intellectual property and publicity rights derived from Bob Marley and his musical legacy, including the rights to Bob Marley's name, image and likeness and hundreds of trademarks all around the world, including but not limited to: "Marley Coffee," "Marley Coffee Stir It Up," "Bob Marley Coffee," and the Marley Coffee logo ("Marley Trademarks").

3. 56HR has registered the trademark "Bob Marley" with the United States Patent and Trademark Office under Registration Number 4,422,220 as a trademark for coffee, coffee beans, coffee-based beverages and other products. 56HR also has registrations with the United States Patent and Trademark Office for "Marley Coffee" for numerous goods and services under Registration Numbers 3,778,736, 3,871,574, 4,150,381, 4,158,045, 4,187,013, 4,254,177, and 4,328,523. 56HR on July 30, 2015 also filed a trademark registration for "Marley Coffee" for café and coffee house services under Serial Number 8670974 that was published for opposition on November 17, 2015. 56HR granted HRM a non-exclusive right to license the Marley Trademarks for merchandise. True and correct copies of reports

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from the United States Patent and Trademark office reflecting these registrations are attached hereto as Exhibit A.

4. On or about August 7, 2012, 56HR entered into a long term license agreement ("Long Term License") with JJ in which 56HR granted JJ the right to use the Marley Trademarks exclusively on coffee (i.e., coffee beans) and non-exclusively on coffee mugs, coffee glasses and other related products, as well as on coffee roasting, production and sales serves, excluding coffee houses (Long Term License Summary of Commercial Terms ("Summary") ¶¶ A-E; Long Term License ¶ 1). The exclusive licensed products and non-exclusive licensed products are defined collectively as "Licensed Products." (Summary ¶ D.) The Long Term License also specified that JJ could provide "Licensed Services" in the form of "[c]offee roasting services, coffee production services, and coffees sales, supply, distribution and support services, <u>excluding coffee houses</u>." (Id. ¶ E; emphasis added.) A true and correct copy of the Long Term License is attached hereto as Exhibit B.

5. The Long Term License further provided that the license was "non-transferable, non-assignable, non-sublicenseable, [and] non-divisible." (Long Term License ¶ 1(a)). The Long Term License required that JJ pay to 56HR "Earned Royalties" of three percent (3%) of Net Sales within thirty (30) days following the completion of each calendar quarter of each calendar year. (Summary ¶ K; Long Term License ¶ 3.)

6. Under the Long Term License JJ was required to "compute Earned Royalties [as specified in the Summary] . . . and [to] furnish to [56HR] within thirty (30) days following the end of each calendar quarter during the Term a complete and accurate statement . . . (each, a 'Quarterly Statement'), setting forth the number of Licensed Products sales made, the total gross revenue of Licensee relating thereto and the calculation of the amount of Earned Royalties due to Licensor for each such calendar quarter." (Long Term License ¶ 4(a).) Moreover, JJ was

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obligated under the Long Term License to provide certified annual statements, quarterly "full and complete financial statements," and "annual audited financial statements" setting forth information required by 56HR, which includes sales information and calculation of royalties. (Id. ¶¶ 4(b); 4(h).)

7. Pursuant to Paragraph 15, the Long Term License provided 56HR the right to terminate the agreement on multiple grounds, including without limitation:

a. "The failure of Licensee [JJ] to make any payment required to be made under this Agreement, which failure is not cured within ten (10) business days of Licensee's receipt of written notice from Licensor specifying the nature of such failure with particularity." (Long Term License ¶ 15(i).)

b. "The breach by Licensee of any of its representations or warranties herein or the failure of Licensee to comply with any of the other terms of this Agreement or otherwise discharge its duties hereunder, and such breach or failure is not cured within fifteen (15) business days of Licensee's receipt of written notice from Licensor specifying the nature of such breach or failure with particularity." (Long Term License ¶ 15(ii).)

c. "Any negative or unlawful finding of Licensee's or Jammin' Java's activities by the Securities & Exchange Commission or any similar government agency in any country, territory or possession." (Long Term License ¶ 15(v).)

8. The Long Term License expressly reserved to 56HR "[o]wnership of all intellectual property rights" in any of the Marley Trademarks and "any and all additions to, and new renderings, modifications or embellishments of" the Marley Trademarks. (Long Term License ¶ 8(b).) The Long Term License further provided that "[i]n no event shall any expiration or termination of this Agreement excuse any party from any breach or violation of this Agreement and full legal and

equitable remedies shall remain available therefor, nor shall it excuse the making of any payment due under this Agreement with respect to any period prior to the date of expiration or termination." (Id. ¶ 16(c).)

9. Despite the contractual requirement that JJ provide royalty statements no later than thirty (30) days after the end of each quarter (Long Term License ¶4(a)), JJ only sent royalty statements to 56HR intermittently. 56HR requested the statements due under the agreement on multiple occasions, however the intermittent nature of the statements continued. Beginning in or around July 2015, JJ ceased sending royalty statements to 56HR entirely. 56HR continued to press JJ to provide the required royalty statements, and as a result, on or about May 31, 2016 when JJ finally provided a summary Excel spreadsheet which showed that JJ owed 56HR $297,324.05 in accrued royalties that had been unpaid and accumulating for approximately the prior two (2) years. A true and correct copy of the excel spreadsheet provided by JJ on or about May 31, 2016 is attached hereto as Exhibit C.

10. On or about June 2, 2016, I sent a letter to Anh Tran, an officer and director of JJ, providing formal written notice to JJ of multiple material breaches of the Long Term License ("June 2 Breach Notice"). A true and correct copy of the June 2 Breach Notice is attached hereto as Exhibit D. The June 2 Breach Notice listed both curable and non-curable breaches of the Long Term Agreement and provided JJ with fifteen (15) days opportunity to cure as required pursuant to Paragraph 15(a)(ii) of the Long Term License. The breaches set forth in the June 2 Breach Notice are as follows:

a. Failure to make required royalty payments in a timely manner per the Long Term License, resulting in a total amount currently due to 56HR of $297,324.05 as of April 30, 2016.

b. Failure to provide in a timely, complete and regular manner certified Annual Statements, quarterly financial statements and annual audited

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financial statements.

c. In or about November 2015, the SEC filed a complaint against JJ in federal court for violation of the securities laws which resulted in a Consent Decree and final judgment against JJ based on the accusations of unlawful activities contained in the SEC's complaint which JJ cannot deny. The complaint and resulting Consent Decree constitute a "negative or unlawful finding of … [JJ's] activities by the Securities & Exchange Commission . . ." under the Long Term License.

11. Shortly after I sent the June 2, 2016 Breach Letter, Brent Toevs, Chief Executive Officer and a director of JJ, sent an email to two of the directors of 56HR, on which I was copied, essentially admitting that JJ did not have the money to pay 56HR the royalties owed to it. Instead Toevs stated that JJ "could try and make a substantial payment of the royalty in the next couple of weeks if needed." A true and correct copy of the Toevs email is attached hereto as Exhibit E.

12. As of June 24, 2016, none of the breaches identified in the June 2 Breach Notice had been cured. Indeed, to this day, all of the breaches identified in the June 2 Breach Notice remain uncured. Accordingly, on or about June 27, 2016, I sent a further letter to JJ informing it that the Long Term License terminated on June 24 ("June 27 Termination Letter"). A true and correct copy of the June 27 Termination Letter is attached hereto as Exhibit F.

13. On or about July 7, 2016, JJ admitted in an 8-K filing that 56HR had terminated the Long Term License due to JJ's breach of various terms of the Long Term License, stating "56 Hope Road terminated the Long-Term License due to our breach of certain of the terms of the Long-Term License Agreement, including but not limited to, our failure to deliver quarterly statements in timely manner, our failure to timely make licensing payments, our failure to deliver audited financial statements in a timely manner, and the Securities and Exchange Commission's complaint against us. Some of these breaches were due to cash flow issues and

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corporate governance matters." A true and correct copy of the JJ's July 7, 2016 8-K filing is attached hereto as Exhibit G.

14. In an effort to give JJ another chance, 56HR offered to explore whether there was some alternative basis on which to continue a long term relationship on better footing, particularly if JJ could demonstrate its financial viability on both a short term and long term basis. In order to minimize any disruption in JJ's business while the parties explored the possibility of entering into a new long term license, on June 27, 2016, at the same time as it terminated the Long Term License, 56HR offered JJ a short-term license agreement through its affiliate HRM. 56HR also required that JJ execute a promissory note and security agreement securing the over $297,000 owed by JJ to 56HR for Earned Royalties as of April 30, 2016.

15. On or about July 6, 2016, JJ and HRM entered into a short term license agreement, with an effective date of June 27, 2016 ("Short Term License"). A true and correct copy of the Short Term License is attached hereto as Exhibit H. For all intents and purposes, the Short Term License included the same material terms as the Long Term License in regards to the scope of the licensed rights, the incurring and payment of Earned Royalties, quarterly, annual and financial statements, grounds for termination, effect of termination. However, among other differences, the parties to the Short Term License expressly acknowledged and agreed that the Short Term License replaced and superseded the Long Term License, which the parties agreed had been terminated.

16. The Short Term License also differed from the Long Term License in that it had a six-month term, renewable for an additional six-month term at the discretion of HRM, and only on the condition that JJ was not in breach of the agreement. (Short Term License Summary of Commercial Terms ¶¶ A, E.) In addition to the same termination provisions that existed in the Long Term License, paragraph 15(a)(vi) of the Short Term License additionally provided that HRM

could terminate the agreement if JJ was in breach "of any of its other agreements with Licensor or any of its affiliated companies. . . ."

17. In late June and through much of July, 2016, Plaintiffs worked in good faith with JJ and (at JJ's request) with certain of its distributors and creditors to try to ascertain whether there was a viable basis on which a new long term license with JJ might be granted. These efforts were unsuccessful. Among other things, JJ had failed to provide to Plaintiffs a concrete, realistic and viable short or long term plan for its financial survival.

18. During that period of time, JJ failed to cure any of the still outstanding breaches of the Long Term License and Plaintiffs also discovered that JJ had engaged in additional breaches of both the Long Term and Short Term Licenses, as follows among other things:

a. JJ still had not provided certified statements as required by the Long Term License and Short Term License, and also continued to fail to pay any portion of the Earned Royalties under the agreements.

b. Subsequent to the June 27 Termination Letter, Plaintiffs discovered UCC filings that purported to secure loans to JJ using the Long Term and Short Term Licenses as security. This type of breach had been brought to JJ's attention in or about December 2015, when 56HR objected to JJ in writing and reminded JJ about the non-assignability of the Long Term License. JJ responded that it understood 56HR's objection and would immediately rectify the situation. Plaintiffs discovered in or about mid-July 2016 that the same lender they had complained about in December 2015 which JJ had promised to correct, had in fact re-filed its UCC in January 2016 with the same exact language which once again purported to include the Long Term License.

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c. During that same investigation in July 2016, Plaintiffs learned that several other lenders similarly had completed UCC filings on the same basis, securing all of JJ's "general intangibles," which would include the Long Term and Short Term Licenses and which would constitute a breach of both the Long Term and Short Term Licenses. A true and correct copy of the UCC Report I discovered in mid-July 2016 is attached hereto as Exhibit I.

d. Plaintiffs discovered in or about July 2016 that JJ had entered into unpermitted sublicenses.

e. Plaintiffs learned that JJ was unable to pay its current debts as they came due and/or to continue its current business activities, even in the short term. For example, Plaintiffs learned that JJ was no longer filling all of the purchase orders from customers, putting the Marley Coffee brand in danger.

f. Plaintiffs also learned that JJ had ceased advertising, promoting and selling Marley Coffee in a manner commensurate with the promotion and sale of high quality merchandise.

g. In addition to the SEC violations, which were themselves troubling, Plaintiffs further learned of multiple instances in which management had acted in an misleading and unethical manner.

19. Accordingly, on July 21, 2016, I sent a letter on behalf of HRM to Mr. Tran stating that HRM was terminating the June 27, 2016 Short Term License effective that date ("July 21 Termination Letter") based on the breaches outlined above. A true and correct copy of the July 21 Termination Letter is attached hereto as Exhibit J.

20. Between July 21, 2016 and today, Plaintiffs have done nothing to stop JJ or its licensees from roasting, selling and distributing coffee under the Marley Trademarks. In fact, in response to a request from Mother Parkers, one of JJ's

largest creditors and distributors of Marley Coffee, I sent a letter to Mother Parkers' in house counsel, Heather Saranpaa, confirming that Plaintiffs had no objection to, and would not interfere with, Mother Parkers continued sale and distribution of Marley Coffee precisely as it had been doing for the past several years. A true and correct copy of my email to Ms. Saranpaa is attached hereto as Exhibit K.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed in Los Angeles, California on August 5, 2016.

/s/ Bonnie E. Eskenazi
Bonnie E. Eskenazi

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