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 HOPE ROAD MERCHANDISING, LLC

10
 11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA
 13 WESTERN DIVISION

14
 15 FIFTY-SIX HOPE ROAD MUSIC
 LIMITED, a Bahamian corporation,
 16 and HOPE ROAD
 MERCHANDISING, LLC, a Florida
 17 limited liability company,

18 Plaintiffs,

19 v.

20 JAMMIN JAVA CORPORATION, a
 Nevada corporation, and DOES 1-10,

21 Defendants.
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 23
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 25
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Case No. 2:16-cv-05810 SVW (MRWx)

Assigned to Hon. Stephen V. Wilson

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN OPPOSITION
 TO DEFENDANT JAMMIN JAVA'S
 EX PARTE APPLICATION FOR
 TEMPORARY RESTRAINING
 ORDER AND/OR PRELIMINARY
 INJUNCTION**

[Declaration of Bonnie E. Eskenazi and
 Certificate of Interested Parties filed
 concurrently herewith]

Action filed on August 4, 2016.

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1 **I. INTRODUCTION**

2 Defendant and counterclaimant Jammin’ Java Corporation (“JJC”) seeks an
3 *ex parte* temporary restraining order against Plaintiffs and counterdefendants 56
4 Hope Road Music, Ltd. (“56HR”) and Hope Road Merchandising, LLC (“HRM”).¹
5 JJC allegedly seeks this temporary restraining order to prevent the irreparable harm
6 of destroying JJC’s business. However, what JJC actually seeks is an order of
7 specific performance requiring 56HR to continue to perform under a trademark
8 license agreement that was validly terminated by 56HR over a month ago. This,
9 JJC cannot do.

10 To begin with, JJC fails to demonstrate any urgency which would justify
11 trying to obtain a mandatory injunction on an *ex parte* basis. The facts underlying
12 JJC’s request have existed for over a month – 56HR terminated its long-term
13 license agreement with JJC more than a month ago and then HRM terminated the
14 short term replacement license two weeks ago. JJC does not even try to explain
15 what has supposedly happened in interim which could justify this emergency
16 request. For this reason alone, the application should be denied.

17 JJC’s application also fails on the merits. It is indisputable that 56HR
18 properly terminated its long term trademark license agreement with JJC. In fact,
19 JJC admitted as much in a public filing with the Securities and Exchange
20 Commission (“SEC”). Although HRM then entered into a short term license while
21 the parties attempted to resolve their differences, JJC also breached that short term
22 license. Accordingly, HRM properly terminated the short term license as well. JJC
23 has offered no credible evidence to contradict these facts and cannot demonstrate a
24 probability of prevailing on the merits.

25 JJC also cannot demonstrate that it will suffer any irreparable harm. JJC
26 claims that if an injunction is not issued requiring 56HR to perform a license that
27

28 ¹ 56HR and HRM will be collectively referred to herein as “Plaintiffs.”

1 has already been terminated, then JJC will not be able to fulfill its existing orders or
 2 conduct its business. But, 56HR has taken no actions to prevent JJC from fulfilling
 3 its existing orders. To the contrary, 56HR has informed JJC's creditors that they
 4 may continue doing business with JJC. Indeed, it is in 56HR's interest to allow JJC
 5 to fulfill orders and collect money so that JJC will have assets with which to satisfy
 6 the damages that it will owe plaintiffs for its breaches of contract.

7 Finally, JJC improperly seeks an injunction to remedy an act that occurred
 8 weeks ago (Plaintiffs' termination of the license agreements). It is well settled that
 9 an injunction can only be used to prevent harm caused by future acts, not past acts.
 10 In this way, injunctions are prospective, not retrospective. Yet, the injunction JJC
 11 seeks would require 56HR to "reinstate" an agreement previously terminated. This
 12 is not a proper use of injunctive relief.

13 Accordingly, JJC has not justified its request for an emergency TRO. Should
 14 JJC wish to pursue a preliminary injunction, it should file a noticed motion and
 15 proceed in an orderly fashion.

16
 17 **II. FACTS**

18 56HR owns the valuable trademark rights in name and likeness of Bob
 19 Marley. Declaration of Bonnie E. Eskenazi ("Eskenazi Decl.", ¶2-3). 56HR
 20 licenses HRM to make merchandise based on those trademarks on a non-exclusive
 21 basis. *Id.*

22 In August 2012, 56HR entered into a license agreement with JJC which
 23 granted JJC the right to use the Marley trademarks in connection with coffee
 24 products (the "Long Term License"). Eskenazi Decl., ¶ 4, Exh. B. Importantly, the
 25 Long Term License was limited only to coffee bean products and not brewed
 26 coffee, coffee houses or restaurants. Eskenazi Decl., ¶ 4, Exh. B, ¶¶ B, E.

27 From early on in the relationship, JJC struggled to comply with its
 28 obligations under the Long Term License. Merely by way of example, JJC

1 repeatedly failed to provide 56HR with the required quarterly accounting of all
 2 sales of coffee products containing the Marley Trademarks. Eskenazi Decl., ¶9.
 3 JJC also failed to provide 56HR with the required financial statements and
 4 disclosures regarding JJC’s financial viability. Eskenazi, Decl., ¶ 10(b). JJC also
 5 failed to make its required royalty payments, ultimately resulting in a total
 6 liquidated amount due to 56HR of \$297,324.05. Eskenazi, Decl., ¶ 10, Exh. C.
 7 Finally, in 2015, the SEC filed charges against JJC for violations of securities laws
 8 and JJC entered into a consent judgment with the SEC. Eskenazi Decl., ¶10.

9 As a result of all of these repeated material breaches of the license
 10 agreement, on June 2, 2016, 56HR gave notice of these breaches, thereby giving
 11 JJC fifteen (15) days to cure. Eskenazi Decl, ¶ 10, Exh. D. JJC failed to cure any
 12 of these breaches. Eskenazi Decl., ¶11-12. Accordingly, 56HR formally
 13 terminated the long term license agreement on June 27, 2016. Eskenazi Decl., ¶ 12,
 14 Exh. F.

15 Immediately after terminating the Long Term Agreement, 56HR offered JJC
 16 a short term license agreement to continue using Marley trademarks in connection
 17 with its coffee products. Eskenazi Decl., ¶14. The purpose of the Short Term
 18 License was to give JJC time to try and cure its breaches and fix the problems with
 19 its business operations. Eskenazi Decl., ¶14. On or about July 6, 2016, HRM and
 20 JJC entered into a six month license agreement on substantially the same terms as
 21 the Long Term License (the “Short Term License”). Eskenazi Decl., ¶15, Exh. H.
 22 The Short Term License acknowledged that the Long Term License had been
 23 terminated. Eskenazi Decl., ¶15, Exh. H.

24 After the parties entered into the Short Term License, they attempted to
 25 negotiate a new long term license with sufficient assurances of JJC’s ability to
 26 perform. Eskenazi Decl., ¶17. During the negotiations, it became abundantly clear
 27 that JJC had no intention of changing its business operations or taking any steps to
 28 assure HRM and 56HR that it could and would perform properly under a new long

1 term agreement. Eskenazi Decl., ¶18. For example, JJC refused or failed to
 2 provide certified statements, as required by the Long Term License and Short Term
 3 License, and failed to pay any portion of the Earned Royalties under the
 4 agreements. Eskenazi Decl., ¶18.

5 While the parties were negotiating a possible new long term license,
 6 plaintiffs discovered many new breaches of the Short Term License. Eskenazi
 7 Decl., ¶18. For example, in mid-July 2016, 56HR and HRM learned that JJC had
 8 purported to pledge the Short Term License as security for credit it sought – a clear
 9 violation of the license agreements. Eskenazi Decl., ¶18(b), (c), Exh. I. This was
 10 after 56HR and HRM had previously complained that pledging the long term
 11 license was a breach of contract of that agreement. *Id.*

12 Moreover, Plaintiffs discovered in or about July 2016 that JJC had entered
 13 into unauthorized sublicenses. Eskenazi Decl., ¶18(d). Plaintiffs also learned that
 14 JJC was unable to pay its current debts as they came due and/or to continue its
 15 current business activities, even in the short term. For example, plaintiffs learned
 16 that JJC was no longer filling all of the purchase orders from customers, putting the
 17 Marley Coffee brand in danger. Eskenazi Decl., ¶18(e).

18 Plaintiffs also learned that JJC had ceased advertising, promoting and selling
 19 Marley Coffee in a manner commensurate with the promotion and sale of high
 20 quality merchandise. Eskenazi Decl., ¶ 18(f). In addition to the SEC violations and
 21 formal charges, which were themselves troubling, plaintiffs discovered of multiple
 22 instances in which management had acted in an misleading and unethical manner.
 23 Eskenazi Decl., ¶18. Accordingly, on July 21, 2016, HRM formally terminated the
 24 Short Term License. Eskenazi Decl., ¶19, Exh. J.

25 Since the Short Term License was terminated, neither 56HR nor HRM have
 26 taken any action to prevent JJC from fulfilling existing orders for product or
 27 otherwise conducting its business. Eskenazi Decl., ¶20. To the contrary, 56HR and
 28 HRM have offered assurances to one of JJC's largest customers that it will not take

1 any action to interference with that customer’s ability to continue doing business
 2 with JJC. Eskenazi Decl., ¶20. Plaintiffs have not taken any actions to prevent JJC
 3 from fulfilling any existing customer orders. Eskenazi Decl., ¶20.

4
 5 **III. ARGUMENT**

6 **A. JJC Cannot Justify Emergency Ex Parte Relief.**

7 A temporary restraining order is appropriate only where the moving party
 8 demonstrates that, absent the order, it will suffer “*immediate* and irreparable injury,
 9 loss, or damage.” Fed. R. Civ. P. 65(b) (emphasis added). *See Caribbean Marine*
 10 *Services, Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (party seeking a
 11 preliminary injunction must demonstrate “immediate threatened harm.”). In order
 12 to justify emergency *ex parte* relief, the movant must demonstrate that this harm
 13 will occur *before the opposing party can have an opportunity to respond*. *See e.g.,*
 14 *In re Intermagnetics Am., Inc.*, 101 B.R. 191, 193 (C.D. Cal. 1989) (party filing ex
 15 parte application must show “some genuine urgency such that ‘immediate and
 16 irreparable injury, loss, or damage will result to the applicant before the adverse
 17 party or his attorney can be heard in opposition.’”). Moreover, ex parte temporary
 18 restraining orders “should be restricted to serving their underlying purpose of
 19 *preserving the status quo* and preventing irreparable harm just so long as is
 20 necessary to hold a hearing, and no longer.” *Granny Goose Foods, Inc. v. Bhd. of*
 21 *Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cty.*, 415 U.S. 423, 439,
 22 94 S. Ct. 1113, 1124, 39 L. Ed. 2d 435 (1974). Here, JJC cannot meet these
 23 stringent requirements for three reasons.

24 First, JJC does not seek to preserve the status quo. Presently, all licenses
 25 between JJC and plaintiffs regarding the use of Bob Marley trademarks have been
 26 terminated. Yet, JJC seeks a TRO to force 56HR to “reinstate” the Long Term
 27 License that has been terminated for nearly six weeks. *See*, JJC’s Proposed Order.
 28 In this way, JJC is seeking a mandatory injunction forcing 56HR to perform under a

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1 contract that it validly terminated pursuant to the express terms of the agreement.
2 Such an order would not maintain the status quo, it would change it drastically.
3 This alone demonstrates that JJC is not entitled to the relief it seeks.

4 Second, JJC has inexplicably waited over a month before seeking this relief.
5 56HR validly terminated the long term license agreement on June 27, 2016. JJC
6 acknowledged nearly a month ago in a public filing with the SEC that 56HR had
7 terminated the long term license with JJC on June 27, 2016 due to JJC’s own
8 breaches of the agreement. *See*, Eskenazi Decl., ¶13, Exh. G. JJC offers no
9 explanation of something that changed between June 27, 2016 and the filing of this
10 application that created an urgency requiring ex parte relief. The truth is, nothing
11 has changed – the license agreement remains terminated.

12 Given JJC’s admissions and the length of time that has elapsed since the
13 termination of the license agreement, this matter is hardly “urgent.” It was not
14 until plaintiffs filed a breach of contract action in state court on August 1 [Doc 1-1]
15 and sought a declaration that the agreements were in fact validly terminated that
16 suddenly this TRO became urgent. It is not. In short, defendant has an adequate
17 remedy at law and it is inappropriate for it to be seeking emergency relief for what
18 it essentially claims is a breach of contract, especially when defendant has waited
19 over a month to do so.

20 Third, plaintiffs have done nothing to prevent JJC from fulfilling orders or
21 conducting its business. In fact, plaintiffs informed JJC’s largest revenue
22 generating distributor that it may continue doing business with JJC. Eskenazi
23 Decl., ¶20. By doing so, plaintiffs have made clear that they have no present
24 intention of disrupting JJC’s operations. JJC can continue operating until its own
25 incompetence shuts it down. Accordingly, there is no basis to believe that JJC
26 needs the extraordinary relief it seeks simply to continue operating.

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B. JJC Cannot Satisfy the Requirements for Issuance of a Temporary Restraining Order or Preliminary Injunction.

In addition to making a showing that justifies emergency ex parte relief, in order to prevail on this application, JJC must also establish the traditional requirements for a TRO or preliminary injunction, namely: (1) likelihood of success on the merits; (2) likelihood of suffering irreparable harm in the absence of preliminary relief; (3) balance of equities tips in its favor; and (4) that injunctive relief is in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20, 129 S.Ct. 365, 374 (2008). JJC cannot satisfy these elements.

1. JJC Has Not Shown Irreparable Injury and Inadequacy of Legal Remedies

JJC has not shown it will likely suffer irreparable harm without the issuance of a TRO or preliminary injunction. JJC claims that it will suffer irreparable harm without a TRO because it “has been unable to fill existing purchase orders (totaling approximately \$745,000) or issue new purchase orders.” Tran Decl., at 11-12 [Doc 2-2]. JJC contends that without the ability to fill existing and future purchase orders, it cannot generate revenue and “will die.” Tran Decl., at 11-13. However, JJC offers no evidence that Plaintiffs have done anything to prevent JJC from filling these orders. In fact, as discussed above, Plaintiffs have not sought any preliminary injunctive relief in this action to preclude JJC from filling existing and future purchase orders. Plaintiffs have also not sought to interfere with JJC’s ability to fill orders and do business with its distributors and retail customers. Eskenazi Decl., ¶20. Not only have Plaintiffs done nothing to preclude JJC from continuing to generate revenue at the moment, Plaintiffs have told Mother Parkers – one of JJC’s largest revenue generating distributors – that it has no objection to, and will not interfere with, Mother Parkers’ continued sale and distribution of Marley

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1 Coffee.² Eskenazi Decl., ¶20.

2 To the extent JJC does fill the orders post-termination of the licenses,
3 Plaintiffs will simply be entitled to money damages for JJC’s breach of the license
4 agreements and/or trademark infringement. Frankly, given that JJC already owes
5 Plaintiffs hundreds of thousands of dollars for breach of the license agreements, it is
6 in Plaintiffs’ best interest that JJC sell off its remaining inventory and account to
7 Plaintiffs in damages.

8 JJC’s claim that it will suffer irreparable harm to its goodwill and business
9 reputation without the requested TRO is also meritless. Any such harm would be
10 self-inflicted. Plaintiffs are not seeking a TRO or preliminary injunction preventing
11 JJC from filling existing or future product orders pending the resolution of this
12 action. To the extent JJC voluntarily stops doing that, it is only harming itself.
13 Self-inflicted harm does not qualify as irreparable harm. *Caplan v. Felheimer*
14 *Eichen Braverman & Kaskey*, 68 F.3d 828, 839 (3d Cir. 1995).

15 Finally, JJC fundamentally misapprehends the nature of the injunctive relief
16 remedy. Injunctions are designed to prevent future acts that will cause irreparable
17 harm. *Nat’l Rural Telecommunications Cooperative v. Directv, Inc.*, 319 F. Supp.
18 2d 1040, 1051 (C.D. Cal. 2003) (“Under California law, injunctions operate only
19 with future effect...”). They are not used to remedy acts that have already
20 occurred. *Id.*; *Griffith v. Department of Public Works*, 52 Cal.2d 848, 853 (1959)
21 (“an injunction will not generally be issued to prohibit a completed act); *Sun*
22 *Microsystems, Inc. v. Microsoft Corp.*, 188 F.3d 1115, 1123 (9th Cir. 1999) (district
23 court abused its discretion in enjoining an act that had already occurred), impliedly

24 _____
25 ² Although JJC makes vague references in its brief to attempts by Plaintiffs to enter
26 into agreements directly with JJC’s customers, JJC offers no *evidence* of any such
27 actions by Plaintiffs. This is because this never happened. To the contrary,
28 Plaintiffs have scrupulously avoided such interference. Eskenazi Decl., ¶ 20. In
fact, the evidence provided by JJC in their Notice of Errata attaches an August 2,
2016 email which conclusively proves that Plaintiffs have no intention of
preventing any of JJC’s customers or distributors from ordering or shipping
product. JJC Notice of Errata, Exh. F.

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1 overruled on other grounds as stated in *Perfect 10, Inc. v. Google, Inc.*, 653 F.3d
2 976 (9th Cir. 2011). Here, JJC’s *ex parte* application is directed at reversing the
3 terminations that have already occurred. This alone is a basis to deny JJC’s
4 application.

5 **2. JJC Has not Shown a Likelihood of Success on the Merits**

6 It is indisputable that 56HR terminated the long term license agreement “due
7 to [JJC’s] breach of certain terms of the Long-Term License Agreement, including,
8 but not limited to, [its] failure to deliver quarterly statements in a timely manner,
9 [its] failure to timely make licensing payments, [its] failure to deliver audited
10 financial statements in a timely manner, and the Securities and Exchange
11 Commission’s complaint against [it]” relating to an alleged “pump and dump”
12 scheme regarding Jammin Java stock. *See* Jammin Java Corp Form 8-K, filed with
13 the SEC on July 7, 2016, Eskenazi Decl., Exh. G. JJC admitted in the same public
14 filing that “[s]ome of these breaches were due to cash flow issues and corporate
15 governance matters.” *Id.* Finally, JJC admitted in its public filing with the SEC
16 that it owes 56HR \$297,324, with accrued interest until paid in full, pursuant to the
17 terms of the long term license agreement. *Id.*

18 Paragraph 15 of the Long Term License provided 56HR the right to terminate
19 the agreement on multiple grounds, including without limitation:

20 a. “The failure of Licensee [JJ] to make any payment required to
21 be made under this Agreement, which failure is not cured within ten (10)
22 business days of Licensee’s receipt of written notice from Licensor
23 specifying the nature of such failure with particularity.” Eskenazi Decl.,
24 Exh. B, ¶ 15(i).

25 b. “The breach by Licensee of any of its representations or
26 warranties herein or the failure of Licensee to comply with any of the other
27 terms of this Agreement or otherwise discharge its duties hereunder, and such
28 breach or failure is not cured within fifteen (15) business days of Licensee’s

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1 receipt of written notice from Licensor specifying the nature of such breach
2 or failure with particularity.” Eskenazi Decl., Exh. B, ¶ 15(ii).

3 c. “Any negative or unlawful finding of Licensee’s or Jammin’
4 Java’s activities by the Securities & Exchange Commission or any similar
5 government agency in any country, territory or possession.” Eskenazi Decl.,
6 Exh. B, ¶ 15(v).

7 It is undisputed that JJC violated the above provisions of the contract, and
8 admitted as much in public filings with the SEC, thereby giving 56HR the lawful
9 right to terminate the very agreement that JJC seeks a mandatory TRO or
10 preliminary injunction to reinstate. Therefore, JJC has not, and cannot show a
11 likelihood of success on the merits.³

12 In stark contrast to Plaintiffs’ clear evidence of breach by JJC and the
13 resulting proper and valid termination of the license agreement, JJC’s claims of
14 breach by Plaintiffs have little connection to the actual terms of the license
15 agreement. For example, JJC claims that Plaintiffs breached the Long Term
16 License by entering into licenses to sell beverages and operate coffee houses. JJC
17 Memo of P’s & A’s, p. 32-33, Tran Decl., ¶9-11. Yet, the *evidence* supposedly
18 supporting this claim is utterly lacking – JJC submits no correspondence or
19 contracts, it simply offers vague and conclusory testimony of Ahn Tran. More to
20 the point, the license agreements make abundantly clear that JJC had no right to
21 operate coffee houses or sell brewed coffee beverages. *See*, Long Term License,
22 Eskenazi Decl., Exh. B, ¶¶ B, C and E; Short Term License, Eskenzai Decl., Exh.
23 H, ¶ B. Even if there were some basis to this claim (there is none), even JJC’s own
24 evidence demonstrates these matters were addressed years ago. Accordingly, JJC
25 cannot prove that Plaitniffs breached the license agreements by entering into other
26

27 ³ Although not germane to the relief sought by this application, it is also indisputable that
28 JJC breached the short term license agreement, thereby giving HRM the lawful right to
terminate that agreement as well. Eskenazi Decl., ¶18-19.

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1 licenses and certainly cannot demonstrate that any such breaches give JJC any right
2 to injunctive relief.

3 Similarly, JJC claims that 56HR failed to indemnify and defend JJC from
4 lawsuits brought by Shane Whittle. Yet, JJC offers no *evidence* that the Long Term
5 License requires 56HR to indemnify it from those lawsuits (it does not). Moreover,
6 JJC offers no *evidence* that it gave “prompt written notice” to 56HR of the
7 supposed indemnity claim (again, it did not). See, Eskenazi Decl., Exh. B, ¶ 12(c).
8 Accordingly, JJC cannot possibly prove that Plaintiffs breached any indemnity
9 obligation under the Long Term License.

10 The evidence clearly shows that JJC repeatedly breached both the Long Term
11 License and the Short Term License and Plaintiffs fully complied with the terms of
12 those licenses. Accordingly, JJC cannot demonstrate a likelihood of success on the
13 merits of its claims.

14 **3. JJC Has Not Shown A Balance of the Equities in Its Favor.**

15 As discussed above, JJC does not seek to preserve the status quo. Presently,
16 all licenses between JJC and plaintiffs regarding the use of Bob Marley trademarks
17 have been terminated. Yet, JJC seeks a TRO to force plaintiffs to continue to
18 perform under the Long Term License that has been terminated for nearly six
19 weeks. In this way, JJC is seeking a mandatory injunction forcing 56HR to
20 reinstate a contract that it validly terminated pursuant to the express terms of the
21 agreement. Such an order would not maintain the status quo, it would change it
22 drastically and would impose an extraordinary burden on Plaintiffs. In effect, the
23 TRO JJC seeks would require Plaintiffs to continue doing business with a company
24 that does not honor the contract, cannot and will not pay the required royalties, and
25 has been found repeatedly to violate federal law.

26 On the other hand, Plaintiffs have done nothing since the termination of the
27 Long Term License to preclude JJC from filling customer orders to generate
28 revenue. Plaintiffs are not preventing JJC from fulfilling orders, nor are Plaintiffs

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1 interfering with JJC’s relationships with its customers and suppliers. This evidence
2 demonstrates that JJC is presently suffering no direct harm, whereas issuance of
3 this injunction would immediately and irreparably harm Plaintiffs. Accordingly,
4 the balance of equities weighs heavily in favor of denying injunctive relief.

5 **4. JJC Has Also Not Shown that Injunctive Relief Is In the**
6 **Public Interest.**

7 JJC has plainly not established this element. No public interest would be
8 served by granting a mandatory injunction reinstating a license agreement that was
9 validly terminated for good cause six weeks ago. This is especially true given that
10 JJC has already informed all of its shareholders, as well as prospective investors,
11 that the Long Term License was terminated as a direct result of JJC’s own breaches
12 of contract. JJC 8-K, Eskenazi, Decl., Exh. G. Surely, there can be no public
13 interest in now allowing JJC to “reinstate” the very license that it admittedly
14 breached.

15 **C. If The Court Issues a TRO, It Should Impose a Substantial Bond**
16 **to Protect Plaintiffs From Further Damages.**

17 Pursuant to Federal Rule of Civil Procedure 65(c), the Court may issue a
18 TRO *only* if JJC gives sufficient security to protect Plaintiffs from the harm that
19 will occur as a result of being improperly restrained. Given the nature of the
20 injunction JJC seeks, these damages will be substantial. The evidence demonstrates
21 that JJC has already proven an inability to pay Plaintiffs for the use of their valuable
22 trademark rights. To the extent the Court were to order Plaintiffs to continue
23 allowing JJC to use those rights, Plaintiffs will continue to suffer substantial
24 damage in the form of lost royalty income. JJC already owes Plaintiffs nearly
25 \$300,000. That amount will continue to grow as JJC continues to operate and use
26 Plaintiffs’ intellectual property.

27 More importantly, however, is the potential for long-term harm to the Marley
28 brand of having to be associated with a disreputable and incompetent licensee. JJC

1 has already stopped advertising the Marley Coffee brand in a way that is beneficial
2 to the marks. Eskenazi Decl., ¶ 18(f). Given the disarray at JJC, one can only
3 imagine the problems with quality control that are likely to arise if Plaintiffs are
4 forced to continue doing business with JJC. The harm to the Marley brand could
5 become irreparable if Plaintiffs are forced to stay in business with JJC.
6 Accordingly, Plaintiffs ask that if the Court is willing to consider issuance of a
7 TRO, it set the amount of security at no less than \$5 million.

8
9 **IV. CONCLUSION**

10 Based on the foregoing, Plaintiffs respectfully request that the Court deny
11 JJC’s application in its entirety. JJC has offered no urgency which would justify
12 issuance of an *ex parte* TRO, nor has it offered any justification for setting a
13 preliminary injunction hearing on an expedited basis. JJC seeks an injunction to
14 remedy acts that occurred weeks ago and is unable to demonstrate any new present
15 threat to its business. There is no reason why this case cannot proceed in the
16 normal course without the need for temporary injunctive relief.

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19 DATED: August 5, 2016

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