

1 Padraic I. McCoy  
2 Tilden McCoy + Dilweg LLP  
3 13310 Maxella Ave., Unit D  
4 Marina Del Rey, CA 90292  
5 p. (303)396-2842  
6 f. (303)416-8707  
7 pmccoy@tildenmccoy.com  
8 Attorneys for Defendant, Jammin Java Corporation

9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

11 FIFTY-SIX HOPE ROAD MUSIC  
12 LIMITED, a Bahamian corporation, and  
13 HOPE ROAD MERCHANDISING, LLC,  
14 a Florida limited liability company,

15 Plaintiffs,

16 vs.

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

19 Defendants

} Case No.: **2:16-cv-05810**

} **EX PARTE APPLICATION FOR**  
} **TEMPORARY RESTRAINING**  
} **ORDER AND/OR PRELIMINARY**  
} **INJUNCTION; MEMORANDUM**  
} **OF POINTS AND AUTHORITIES**  
} **IN SUPPORT THEREOF**

20 **EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER**  
21 **AND/OR PRELIMINARY INJUNCTION AND ORDER TO SHOW CAUSE**  
22 **WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
13310 Maxella Ave., Unit D  
Marina Del Rey, CA 90292  
p. (303)396-2842

1 TO PLAINTIFFS FIFTY-SIX HOPE ROAD MUSICAL LTD. and HOPE ROAD  
2 MERCHANDISING LLC, AND THEIR ATTORNEYS OF RECORD:  
3

4 **PLEASE TAKE NOTICE** that on August 4<sup>th</sup>, 2016, or as soon thereafter as  
5 counsel may be heard in the United States District Court, Central District – Western  
6 Division, located at 312 N. Spring St., Los Angeles, CA, 90012, Defendant Jammin  
7 Java, Corp. (“**JJC**”), will move the Court *ex parte* pursuant to Local Rule 7-19 and  
8 Rule 65 of the Federal Rules of Civil Procedure and Rule 65-1 of the Civil Local  
9 Rules for a temporary restraining order and/or preliminary injunction enjoining  
10 Plaintiff Fifty-Six Hope Road Music from terminating its licensing agreement with  
11 JJC and/or ordering Plaintiff Fifty-Six Hope Road Music to immediately reinstate  
12 the licensing agreement. Lastly, JJC requests that the Court direct the Plaintiff Fifty-  
13 Six Hope Road Music to show cause why a Preliminary Injunction should not issue  
14 pending a final decision in this matter.  
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18 The Motion will be made on the ground that JJC will suffer irreparable injury  
19 unless the licensing agreement is reinstated.  
20

21 **NOTICE OF APPLICATION TO COUNSEL (L.R. 7-19.1)**

22 On July 29, 2016, counsel for JJC gave notice to counsel for Plaintiffs, Bonnie  
23 E. Eskenazi, of JJC’s intent to file for injunctive relief. *See* Declaration of Giovanni  
24 Ruscitti. On Aug 4, 2016, counsel for JJC gave further notice of the substance and  
25 timing of the relief requested. Ms. Eskenazi did not respond before this application  
26 was filed. Ms. Eskenazi’s address is 1900 Avenue of the Stars, 21st Floor, Los  
27  
28

1 Angeles, CA 90067. Her phone number is 310-785-6857 and her e-mail address is  
2 BEskenazi@greenbergglusker.com.  
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Padraic I. McCoy  
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13310 Maxella Ave., Unit D  
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p. (303)396-2842

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Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
13310 Maxella Ave., Unit D  
Marina Del Rey, CA 90292  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX**  
2 **PARTE MOTION FOR TEMPORARY RESTRAINING ORDER,**  
3 **MANDATORY INJUNCTION, AND/OR PRELIMINARY INJUNCTION**

4  
5 **I. INTRODUCTION**

6 This is a classic case about greed and unabashed self-interest and dealing. The  
7 Plaintiffs are owned by the widow and children of Bob Marley. As Rohan Marley,  
8 who is one of Bob Marley’s children, is one of the founders of JJC’s predecessor, is  
9 an owner in each of the Plaintiffs, and, until just recently, was the Chairman of the  
10 Board of the JJC, has repeatedly told JJC’s management, “*the needs of family [the*  
11 *Marley family, who are the owners of the Plaintiffs] come first.*” And the conduct  
12 of the Plaintiffs and Rohan Marley reveal that they hatched a transparent plan to  
13 accomplish just that - to take over the business of JJC at all costs in an effort to  
14 make higher royalties off of Bob Marley’s name, likeness and image. And in doing  
15 so, they have ignored binding contracts, asserted claims that were waived and barred  
16 by Plaintiffs’ prior breaches, usurped corporate opportunities, bullied and  
17 fraudulently induced JJC and its current management to enter into contracts that  
18 benefited them and not JJC, and ultimately sought to destroy a public company,  
19 which will force it to terminate all of its employees, breach contracts with third-  
20 parties, lose all shareholder value, and literally disappear overnight and go out of  
21 business. And in the process, they are disparaging JJC’s management, which has  
22 diligently increased revenues from \$400,000 to \$12.3 Million in 4 years and build a  
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Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
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p. (303)396-2842

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1 successful coffee brand that the Marley family now wants to improperly reap the  
2 benefits from. In other words, they are re-trading the deal. Fortunately, the law does  
3 not condone or protect such conduct.  
4

5 Plaintiff, Jammin Java Corp. (“**JJC**”), a coffee company based in Denver,  
6 Colorado. Since 2010, JJC has had the exclusive right to utilize the brand name  
7 “Marley Coffee” and other licensed products through a long term licensing  
8 agreement (the “**Long Term License Agreement**”) with Defendant Fifty-Six Hope  
9 Road Music Limited (“**56HR**”), an entity controlled by Rohan Marley and the other  
10 children of the late reggae artist Bob Marley. Important here, JJC was founded by  
11 Rohan Marley and he served as JJC’s Chairman and was actively involved in all  
12 company operations since 2008. Rohan Marley, however, is also a Director and  
13 owner of 56HR, and is heavily involved in its operations as well. This is important  
14 because 56HR’s bad faith termination of the Long Term License Agreement and  
15 other tortuous and wrongful conduct described below came immediately after Rohan  
16 Marley’s recent (and unceremonious) resignation from JJC on June 27, 2016, and on  
17 the heels of Rohan Marley dumping 877,087 shares of JJC in the months time right  
18 before he resigned, of which has yet to be reported.  
19  
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23 With that backdrop, the key facts and issues are as follows:  
24

25 Since 2011, JJC has built its business rapidly and has established key  
26 relationships and long term commercial agreements with industry leading coffee  
27 roasters, suppliers, and distributors both domestically and internationally. Because  
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Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
13310 Maxella Ave., Unit D  
Marina Del Rey, CA 90292  
P. (303) 396-2842

1 JJC’s revenue comes exclusively from the sale of coffee products using the “Marley  
2 Coffee” brand name, JJC has focused its growth efforts on promoting the goodwill  
3 and reputation of the brand, and has spent millions of dollars on marketing and  
4 branding initiatives.  
5

6 And these efforts have been successful, which is highlighted by the fact that  
7 under current management, JJC has increased sales revenue from \$403,000 (for FYE  
8 1/31/12) to over \$12.3 Million (for FYE 1/31/16), and Marley Coffee is now sold in  
9 12,500 stores, including major chains such as Kroger, Safeway, Albertson’s, Whole  
10 Foods, Target, and many more. Shelf space for coffee products in these chains is  
11 highly competitive and takes a long time to establish. Over the past 5 years, JJC has  
12 spent close to \$1.5 Million on hard shelf fee costs, plus another \$1.2 Million on  
13 marketing trial entry discounts to launch Marley Coffee products on shelf. However,  
14 as a result of JJC’s growth and branding efforts, the viability of JJC’s entire business  
15 is wholly dependent on its right to utilize the “Marley Coffee” brand name and other  
16 intellectual property owned by 56HR and licensed to JJC.  
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21 As detailed below, JJC’s current management was able to grow the company,  
22 despite having to overcome major hurdles that were caused by the actions of JJC’s  
23 former CEO Shane Whittle, and JJC’s former Chairman Rohan Marley. Rohan  
24 Marley and 56HR were the parties responsible for bringing Mr. Whittle into JJC to  
25 oversee its early operations, without any input or approval from current JJC  
26 management. But, it was current JJC management that was forced to address and  
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Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
13310 Maxella Ave., Unit D  
Marina Del Rey, CA 90292  
p. (303)396-2842

1 overcome the issues left in Mr. Whittle’s wake, including an SEC investigation into  
2 an alleged wrongful “pump and dump” trading scheme engaged by Mr. Whittle,  
3 which led to a formal civil Complaint in 2015. In addition, JJC had to defend several  
4 lawsuits filed by Mr. Whittle that were directed at the actions of Rohan Marley, and  
5 representatives of 56HR.  
6

7  
8 Beginning in 2016, JJC began negotiating potential equity investments with  
9 investors in order to provide short term working capital and long term financing to  
10 continue JJC’s growth. In May 2016, JJC entered into a letter of intent with an  
11 attractive equity partner (the “**Potential Investor**”) that contemplated a \$8,000,000 to  
12 \$10,000,000 investment (the “**Potential Investment**”). The key deal point of the  
13 Potential Investment was that prior to closing, JJC would enter into an extension of  
14 the Long Term License Agreement.  
15  
16

17 Shockingly, when JJC advised 56HR of the details of the Potential Investment  
18 and requested an extension of the Long Term License Agreement, 56HR terminated  
19 the Long Term License Agreement, and attempted to hijack the negotiations with the  
20 Potential Investor. Then, 56HR fraudulently induced JJC to immediately enter a  
21 short term license agreement (based on promises and assurances from 56HR that a  
22 long term deal would be negotiated and that it would cooperate with JJC in closing  
23 the Potential Investment), only to turn around and terminate that short term  
24 agreement without prior notice or opportunity to cure only fifteen (15) days later.  
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27 But that is not all. In the days following the termination of the short term  
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Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
13310 Maxella Ave., Unit D  
Marina Del Rey, CA 90292  
p. (303)396-2842

1 license agreement, 56HR represented that it was still willing to discuss a long term  
2 agreement if JJC hired a Chief Restructuring Officer (“CRO”) and provided certain  
3 information to 56HR. JJC promptly provided all requested information and retained  
4 Thomas A. Kim to serve as CRO. However, after Mr. Kim issued his preliminary  
5 assessment of JJC, which was favorable and recommended that 56HR establish a  
6 framework for a long term license agreement with JJC and reinstate negotiations with  
7 the Potential Investor, counsel for 56HR responded on August 2, 2016, that Mr.  
8 Kim’s assessment was nothing more than a “transparent piece of propaganda.” The  
9 same day, and even though JJC had done everything requested of it in reliance on  
10 56HR’s representations that it would continue negotiations, 56HR filed a lawsuit  
11 against JJC. This was the final chapter in series of bad faith on the part of 56HR.  
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16 During the past 30 days, it has become clear that 56HR’s primary objective is  
17 to profit from JJC’s efforts and usurp JJC’s corporate opportunities in order to obtain  
18 higher licensing fees and more favorable licensing terms to the detriment of JJC.  
19 These objectives were reinforced by two events that took place on August 2, 2016:  
20 first, after terminating the license and directing some of JJC’s suppliers to cease all  
21 shipments, 56HR reversed course in an email from its counsel on August 2 and  
22 advised that JJC could continue shipping product to its customers but its suppliers  
23 would have to pay all of the royalties to 56HR (*see* email from Bonnie Eskanazi  
24 dated 8/2/2016); second, a representative of 56HR informed JJC that 56HR had  
25 engaged in discussions with JJC’s primary supplier to ship Marley Coffee to  
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Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
13310 Maxella Ave., Unit D  
Marina Del Rey, CA 90292  
p. (303)396-2842

1 customers through a direct purchase order with 56HR (to the detriment and exclusion  
2 of JJC). These are clear examples of usurping corporate opportunities and interfering  
3 with existing contracts and prospective economic advantages belonging to JJC.  
4

5 In addition, JJC believes the purported termination of the Short Term and Long  
6 Term License Agreements were wrongful and administered in bad faith. The  
7 purported basis of the terminations was that JJC breached the agreements by failing  
8 to pay licensing fees; however, 56HR (including Rohan Marley) has had knowledge  
9 of the alleged payment issues for years and has never objected. Indeed, JJC has had  
10 several recent conversations with 56HR about the payment issues, during which the  
11 parties agreed that JJC would continue making meaningful payments with the hope  
12 and goal of making everyone whole with an injection of capital. Consistent with the  
13 agreements reached during these discussions, JJC has made consistent bi-weekly  
14 licensing payments to 56HR since November 2015 through March 2016, at which  
15 time JJC and 56HR began negotiating the terms of the Potential Investment, which  
16 would have made 56HR whole.  
17  
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21 Moreover, 56HR committed several material, and prior, breaches of the license  
22 agreements (explained below) that excuse any subsequent payment breach by JJC.  
23 Relevant to the instant motion, an immediate TRO enjoining 56HR from enforcing  
24 the termination in order to allow JJC to operate while these claims are litigated is  
25 necessary to prevent irreparable harm.  
26

27 To that end, and as detailed below, the purported termination of the license has  
28

Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
13310 Maxella Ave., Unit D  
Marina Del Rey, CA 90292  
p. (303) 396-2842

1 completely chilled JJC’s operations, as it is unable generate any revenue or cash flow  
2 through the sale of its coffee products (all of which utilize the licensed “Marley  
3 Coffee” name and branding). Currently, JJC has almost \$750,000 worth of  
4 outstanding unfilled orders, and several key customers have threatened to cancel  
5 and/or delist JJC if the orders are not filled immediately. In addition, JJC has entered  
6 into negotiations with several potential investors, who have all expressed an interest  
7 in the company; however, none of these parties will continue negotiations without a  
8 long term license agreement. Likewise, JJC’s main coffee roaster has agreed to  
9 provide JJC with credit so that it can fill orders, but 56HR not only directed the  
10 roaster not to ship, but attempted to take over the business directly. Ultimately, if the  
11 license is not immediately reinstated so that outstanding orders can be fulfilled, JJC  
12 will be unable to continue as a going concern and will suffer complete financial  
13 collapse and irreparable harm to its goodwill and business reputation within days.  
14  
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## 18 II. BACKGROUND

### 19 A. Overview of JJC.

20 JJC is a publicly held coffee company with a principal office located in  
21 Denver, Colorado. JJC has 16,000 shareholders and current has 10 employees. The  
22 current officers and directors of JJC are Brent Toevs and Anh Tran (“**Current JJC**  
23 **Management**”). Mr. Toevs has served as CEO and Director of JJC since May  
24 2011. Mr. Tran has served as President, Chief Operating Officer, Secretary,  
25 Treasurer, and Director of JJC since August 2011. Tran Decl. at ¶ 3.  
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Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
13310 Maxella Ave., Unit D  
Marina Del Rey, CA 90292  
p. (303) 396-2842

1 Rohan Marley founded the “Marley Coffee” brand in 2007, and served as a  
2 Director and Chairman of the board of JJC from March 2008 until his recent  
3 resignation June 27, 2016 (discussed below). Rohan Marley is shareholder of JJC.  
4 Rohan Marley is also is a part owner and Director of 56HR, and is heavily involved  
5 in all of the Marley family businesses including 56HR. Tran Decl. at ¶ 5. Upon  
6 information and belief, Rohan Marley is also responsible for appointing Shane  
7 Whittle (“**Whittle**”) as the company’s initial CEO. Whittle was heavily involved in  
8 the management and operations of JJC from 2007 to 2011. Current JJC Management  
9 was not responsible and had no role in bringing Whittle into the company. Tran  
10 Decl. at ¶ 6.

11 JJC sells coffee products under the trade name “Marley Coffee” and related  
12 marks and logos depicting the likeness of Bob Marley through a license agreement  
13 with 56HR. All JJC products utilize the “Marley Coffee” brand name. As a result,  
14 JJC’s ability to generate revenue is wholly dependent on its right to utilize the Marley  
15 Coffee name. *Id.* at ¶ 18.

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21 **B. The Initial and The Long Term License Agreement.**

22 JJC first acquired the right to utilize the Marley Coffee name in March 2010,  
23 pursuant to a trademark license agreement (the “**Initial License Agreement**”) with  
24 Marley Coffee LLC (“**MCL**”). *See* Tran Decl. at ¶ 7.

25 In August 2012, JJC and MCL mutually terminated the Initial License  
26 Agreement and, effective August 7, 2012, JJC entered into a new exclusive long  
27  
28

1 term licensing agreement with 56HR that included an initial fifteen (15) year term,  
2 with the option to renew for two fifteen (15) year renewal terms (the “**Long Term**  
3 **License Agreement**”). *Id.* at ¶¶ 4, 8.

4  
5 The licensed property covered by the Long Term License Agreement includes  
6 the trade name “Marley Coffee” and “Marley Coffee Stir It Up” as well as certain  
7 logos and trademarks depicting the likeness of Bob Marley (the “**Licensed**  
8 **Property**”). The licensed products covered by the Long Term License Agreement  
9 includes “coffee in all its forms and derivations, regardless of portions, sizes, or  
10 packaging” (the “**Licensed Products**”). The licensed services covered by the Long  
11 Term License Agreement included “coffee roasting services, coffee production  
12 services, and coffee sales, supply, distribution and support services, excluding coffee  
13 houses” (the “**Licensed Services**”). *See* Tran Decl., Ex. A at pp. 1-2.

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16  
17 **C. 56HR’s Breaches of the Long Term License Agreement.**

18 In Section 10(a)(iii) of the Long Term License Agreements, 56HR expressly  
19 warranted and represented to JJC that “(iii) it has not sold, assigned, leased, licensed,  
20 or in any manner disposed of or encumbered the rights herein granted to  
21 Licensee....” Similarly, pursuant to Section 8(e) of the License Agreements, 56HR  
22 agreed to cooperate with JJC “to ensure that third parties do not unlawfully infringe  
23 Licensed Property or engage in any acts of unfair competition involving Licensed  
24 Property.” *See* Ex. A to Tran Decl. at p. 12.

25  
26  
27 After the Long Term License was executed, JJC discovered that 56HR had  
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Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
13310 Maxella Ave., Unit D  
Marina Del Rey, CA 90292  
p. (303)396-2842

1 granted licenses to, or otherwise authorized, third parties to utilize the Licensed  
2 Products within the Territory, including but not limited to Marley Coffee Jamaica  
3 and Marley Beverages. Tran Decl. at ¶ 9. Upon information and belief, both  
4 Marley Coffee Jamaica and Marley Beverages are owned and controlled by Rohan  
5 Marley and were using the Licensed Products with Rohan’s Marley’s express  
6 authorization in violation of the Long Term License Agreements. *Id.*  
7  
8

9 In addition, Rohan Marley and 56HR authorized a Korean entity (C&V Korea) to  
10 open a coffee house named “Marley Coffee” and allowed C&V to serve an inferior  
11 coffee product at the coffee house (that was not procured from JJC) under the guise  
12 of the “Marley Coffee” brand, which has caused confusion in the market and harm to  
13 JJC’s brand. *Id.* at ¶ 11. JJC has insisted for the past 12 months that the issue of not  
14 using Marley Coffee beans inside the Marley Coffee shops be immediately rectified  
15 not only to uphold the Marley Coffee brand name for quality and excellence, but to  
16 honor 56HR’s obligations under the Long Term License Agreement. 56HR’s direct  
17 response do these demands was that “we will not terminate the license with C&V  
18 over this issue.” *See* Tran Decl. at ¶ 11.  
19  
20  
21

22 Upon information and belief, Rohan Marley received a direct financial benefit  
23 from Marley Coffee Jamaica, Marley Coffee Beverages, and C&V’s use of the  
24 Licensed Products during the term of the Long Term License Agreement, to the  
25 detriment and exclusion of JJC.  
26

27 In Section 12(a) of the Long Term License Agreement, 56HR agreed to  
28

Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
13310 Maxella Ave., Unit D  
Marina Del Rey, CA 90292  
P. (303) 396-2842

1 indemnify, defend and hold harmless [JJC]...from and against any and all claims,  
2 liabilities, demands, causes of action, judgments, settlements, costs and expenses  
3 (including, without limitation, reasonable attorneys fees and court costs) arising  
4 solely out of or in connection with: (i) the breach by [56HR] of a representation,  
5 warranty or covenant in [the Long Term License Agreement]; (ii) the failure of  
6 [56HR] to perform any of its obligations...; [and] (iii) the gross negligence, bad  
7 faith, or unlawful conduct of [56HR]. *See* Tran Decl., Ex. A at p. 16.  
8  
9

10 56HR did not indemnify and defend JJC from and against the claims alleged in  
11 the Whittle Lawsuits and SEC Complaints (described below). Tran Decl. at ¶ 23. In  
12 addition, 56HR has not reimbursed JJC for the attorneys fees, settlements, and other  
13 costs and expenses JJC incurred as a result of such claims. *Id.*  
14

15  
16 **D. Current JJC Management Promotes Marley Coffee Brand Worldwide.**

17 After securing the Long Term License Agreement, JJC focused its efforts on  
18 promoting and growing the “Marley Coffee” brand. Since 2011, JJC has spent  
19 millions of dollars on trade shows, on shelf marketing, sponsorships, social media  
20 campaigns, and general branding and marketing initiatives aimed at growing and  
21 advancing the Marley Coffee brand name throughout the world. *See* Tran Decl., at ¶  
22 12.  
23

24  
25 During the past five years, Current JJC Management have rapidly grown the  
26 business by expanding JJC’s distribution and supply networks across the world,  
27 introducing new products, securing long term supply and distribution agreements,  
28

1 identifying new investors, and investing in marketing initiatives to expand brand  
2 recognition, all of which positioned JJC for long-term success. *See* Tran Decl. at ¶  
3 13.  
4

5 For example, under Current JJC Management, JJC entered into an Amended  
6 and Restated License Agreement with Mother Parkers Tea & Coffee Inc. (“**Mother**  
7 **Parkers**” and the “**MP Agreement**”) on May 20, 2014. A significant portion of  
8 JJC’s current revenue comes from sales to and through Mother Parkers. *See* Tran  
9 Decl. at ¶ 14. JJC also entered into an exclusive long term Supply and Distribution  
10 Agreement with C&V International Co., Ltd., for distribution of Marley Coffee in  
11 South Korea (the “**C&V Agreement**”); an Exclusive Sales and Marketing  
12 Agreement (the “**NCSV Agreement**”) with National Coffee Service & Vending  
13 (“**NCSV**”); and a Supply and Toll Agreement with National Coffee Roasters, a  
14 division of European Roasterie (the “**NCR Agreement**”). *See* Tran Decl. at ¶ 14.  
15  
16  
17

18 In the past five years, Current JJC Management has also: (a) launched Marley  
19 Coffee RealCups into the retail grocery channel; (b) launched an innovative Coffee  
20 of the Month subscription service as well an online retail platform at  
21 <https://shop.marleycoffee.com/>, which the company anticipates to be a key revenue  
22 driver in 2016; and (c) positioned JJC in the global marketplace, with distribution  
23 channels set up in several countries, which include Canada, the United Kingdom,  
24 South Korea, Mexico and Chile. Tran Decl. at 15.  
25  
26

27 As a result of these efforts, JJC expanded Marley Coffee brand recognition  
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Tilden McCoy + Dilweg LLP  
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P. (303) 396-2842

1 and significantly increased sales revenue from \$403,000 (for FYE 1/31/12) to over  
2 \$12.3 Million (for FYE 1/31/16), and Marley Coffee is now sold in 12,500 stores,  
3 including major chains such as Kroger, Safeway, Albertson's, Whole Foods, Target,  
4 and many more. *Id.* at ¶ 16. Shelf space for coffee products in these chains is highly  
5 competitive and takes a long time to establish. *Id.* Over the past 5 years, JJC has  
6 spent close to \$1.5 Million on hard shelf fee costs, plus another \$1.2 Million on  
7 marketing trial entry discounts to launch Marley Coffee products on shelf. *Id.* at ¶  
8 17. According to IRI syndicated data, Marley Coffee was the 6<sup>th</sup> fastest growing  
9 company in the single serve coffee category (the fastest growing sector of the coffee  
10 industry and the fastest growing part of JJC's business) in 2015 with 73% year over  
11 year growth. *Id.*

12  
13  
14  
15  
16 As a result of JJC's growth and branding efforts, the viability of JJC's entire  
17 business is wholly dependent on its right to utilize the "Marley Coffee" brand name  
18 and other intellectual property owned by 56HR and licensed to JJC.

#### 19 **E. The Whittle Lawsuits and SEC Complaint**

20  
21 Current JJC Management took over in August 2011, they inherited a very  
22 difficult situation. Specifically, beginning in 2011 and continuing through mid-2016,  
23 Current JJC Management was forced to address and overcome two major hurdles,  
24 both of which were outside the control of Current JJC Management and were caused  
25 by the actions of JJC's former CEO, Shane Whittle ("Whittle") and JJC's former  
26 Chairman Rohan Marley. Tran Decl. at ¶ 20. Rohan Marley and 56HR were  
27  
28

Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
13310 Maxella Ave., Unit D  
Marina Del Rey, CA 90292  
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1 responsible for bringing Whittle into JJC to oversee operations, without any input or  
2 approval from Current JJC Management. *Id.*

3  
4 First, JJC was forced to defend two lawsuits filed against JJC by Whittle (the  
5 “**Whittle Lawsuits**”). In sum, the claims in the Whittle Lawsuits were primarily  
6 directed at Rohan Marley, 56HR, and other affiliates and Marley family members,  
7 and included allegations of breach of fiduciary duty, conspiracy, and civil theft, and  
8 racketeering. *Id.* at ¶ 21. However, JJC was named party and was forced to defend  
9 the Whittle Lawsuits and incur significant attorneys’ fees and dedicate countless  
10 resources doing so. *Id.*

11  
12  
13 The second major hurdle that Current JJC Management encountered at the  
14 onset of their tenure related to investigations Securities and Exchange Commission  
15 (“**SEC**”) into an alleged “pump and dump” trading scheme that Whittle engaged in  
16 during his tenure as CEO of JJC. The SEC investigations commenced in 2011, and,  
17 on November 17, 2015, JJC was named as a defendant in a civil complaint (the “**SEC**  
18 **Complaint**”). *Id.* at ¶ 22. On or around May 31, 2016, JJC entered into a consent to  
19 the entry of a final judgment with the SEC which, among other things, ordered JJC to  
20 pay an aggregate of \$700,000 (the “**Final SEC Judgment**”). *Id.* 56HR was well  
21 aware of the SEC Complaint and was fully advised of JJC’s response to the  
22 allegations. *Id.* 56HR and Rohan Marley encouraged JJC to enter into the Final  
23 SEC Judgment. *Id.*

Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
13310 Maxella Ave., Unit D  
Marina Del Rey, CA 90292  
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1 **F. Current JJC Management Brings Attractive Equity Partners to the Table.**

2 Beginning in 2016, Current JJC Management began to focus its efforts on  
3 deals with long term equity partners. *Id.* at ¶ 25. In May 2016, entered into a letter  
4 of intent with a potential investor (the “**Potential Investor**”) that contemplated a  
5 investment into JJC between \$8,000,000 and \$10,000,000 (the “**Potential**  
6 **Investment**”). *Id.*

7  
8  
9 The key deal point and condition of the Potential Investment was that prior to  
10 or connection with closing, JJC would enter into an extension to the Long Term  
11 License Agreement with terms satisfactory to the Potential Investor. *Id.* In  
12 response, JJC and representatives of 56HR (including specifically Rohan Marley and  
13 his business manager) began discussing the framework for an extension of the Long  
14 Term Agreement. *Id.* 56HR also requested a meeting with the Potential Investors  
15 and requested information about the Potential Investment as well as a business plan,  
16 a copy of the Letter of Intent and the use of proceeds. During these discussions,  
17 56HR repeatedly assured JJC that they were willing to extend the Long Term  
18 License Agreement if they were comfortable with the terms of the Potential  
19 Investment. *Id.* at ¶ 27.

20  
21  
22 At no point during these negotiations, did 56HR indicate that if it were to  
23 extend the license agreement, it would require higher licensing fees. *Id.* at ¶ 27.  
24 However, in July 2016, after multiple attempts to talk to the principles of 56HR,  
25 Brent Toevs contacted Cedella Marley, one of the key decision makers. For the very  
26  
27  
28

1 first time, Cedella Marley she makes the following statements: (a) “we like Marley  
2 Coffee, but we don’t like Jammin Java.”; and (b) “we want higher licensing fees.”

3  
4 *Id.* at ¶ 37.

### 5 **G. The Wrongful Termination of the Long Term License Agreement.**

6 Notwithstanding the parties prior discussions over the previous several months,  
7 and 56HR’s knowledge that a long term extension was crucial, on June 2, 2016, just  
8 when a definitive agreement with Potential Investors was in reach, 56HR decided to  
9 issue a Notice of Material Breach of the Long Term License Agreement (the “**June**  
10 **2016 Notice of Breach**”). *Id.* at ¶ 29. In the June 2016 Notice of Breach, 56HR, for  
11 the first time formally took the position that JJC was in breach of the Long Term  
12 License Agreement by failing to quarterly licensing fees to 56HR. *Id.* To the  
13 contrary, JJC had several conversations with 56HR about the payment issues in the  
14 months leading up to the termination. During these discussions, the parties agreed  
15 that JJC would continue exploring a capital investments that would make 56HR  
16 whole, but in the meantime, JJC would make meaningful licensing payments. Tran  
17 Decl. at ¶ 30. Consistent with the agreements reached during these discussions, JJC  
18 made bi-weekly licensing payments to 56HR from November 2015 through March  
19 2016, at which time JJC and 56HR began negotiating the terms of the Potential  
20 Investment. *Id.*

21  
22 On June 27, 2016, 56HR provided notice of the termination of the Long Term  
23 License Agreement (the “**June 2016 Notice of Termination**”). The same day 56HR  
24  
25  
26  
27  
28

1 issued the June 2016 Notice of Termination, Rohan Marley resigned as Chairman of  
2 JJC. Tran Decl. at ¶¶ 33, 5. In addition, in the months leading up to Rohan Marley’s  
3 resignation, he sold 877,087 shares of JJC stock. *Id.* at ¶ 33.

4  
5 **H. The Fraudulent Inducement to Sign the Short Term License Agreement.**

6 Right after 56HR issued the June 2016 Notice of Termination, it sent a  
7 proposed six-month short term license agreement (the “**Short Term License**  
8 **Agreement**”) to JJC. The Short Term License Agreement had the same terms as the  
9 Long Term License Agreement, except it included a short six-month term. *See* Tran  
10 Decl. at ¶ 34.

11  
12 56HR presented the Short Term License Agreement as a “take it or leave it”  
13 deal and represented that it was the only agreement 56HR was willing to extend that  
14 would allow JJC to continue utilizing the Licensed Products. *Id.* at ¶ 35.  
15 Representatives of 56HR, however, expressly represented that: (a) they would  
16 continue to negotiate a long term agreement in good faith; (b) that the intent of the  
17 Short Term License Agreement was to provide the parties sufficient time to  
18 negotiate a long term agreement; (c) that they would cooperate with JJC in  
19 connection with JJC’s efforts to bring in a long-term investor to; and (d) that the  
20 terms and conditions of a long term agreement would be substantially similar to the  
21 terms and conditions of the Long Term and Short Term License Agreements. *Id.*

22 Because JJC’s ability to continue as a going concern is dependent on the use  
23 of the Marley Coffee trade name and use of the other Licensed Products, and  
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Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
13310 Maxella Ave., Unit D  
Marina Del Rey, CA 90292  
p. (303)396-2842

1 because the Short Term License Agreement was the only available arrangement that  
2 would allow JJC to continue shipping product and generating revenue, JJC had no  
3 choice but to execute the Short Term License Agreement. *Id.* at ¶ 36. In doing so,  
4 however, JJC relied on 56HR’s representations that it would continue to negotiate a  
5 long term agreement in good faith and cooperate with JJC’s efforts to secure an  
6 equity partner. *Id.*

9 On July 21, 2016, fifteen days after JJC executed the Short Term Agreement,  
10 56HR sent JJC a notice purporting to terminate the Short Term License Agreement  
11 “effective immediately” and demanding that JJC immediately cease use of the  
12 Marley Coffee trademark. *Id.* at ¶ 38.

14 **I. 56HR Continue to Discuss the Framework for a Long Term Deal.**

15 In the days following the termination of the Short Tem License Agreement,  
16 56HR represented that it was still willing to discuss a long term agreement if JJC  
17 hired a Chief Restructuring Officer (“CRO”) and provided certain information to  
18 56HR. Tran Decl. at ¶ 39. In response, JJC promptly provided all requested  
19 information and retained Thomas A. Kim to serve as CRO. *Id.*

22 Mr. Kim conducted an independent assessment of JJC’s business viability. He  
23 has not prior relationship with Current JJC Management. *Id.* In performing his  
24 assessment, Mr. Kim and his team met with Current JJC Management, and, upon  
25 information and belief, had discussions with representatives of 56HR and JJC’s key  
26 business partners. *Id.* Mr. Kim has been an independent consultant in the term  
27  
28

Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
13310 Maxella Ave., Unit D  
Marina Del Rey, CA 90292  
p. (303)396-2842

1 around business since 1988. After an intensive four day review, Mr. Kim issued a  
2 Preliminary Assessment on August 1, 2016 (the “CRO Assessment”), which  
3 included the following findings and recommendations:  
4

- 5 • If 56 HR wants to continue in the coffee business, the safest way is to  
6 continue business operations with Jammin Java, while continuing to look  
7 at viable alternatives to ensure the brand’s future sucess”;
- 8 • “Current business and brand relationships are established upon many  
9 years of development by [Current JJC Management]”;
- 10 • “Current management has established credibility within the industry”;
- 11 • “License appears to be within industry norms”
- 12 • “If license agreement is terminated in a less than idea manner, the fall out  
13 would adversely affect the brand and future licensing opportunities”
- 14 • “The business shows promise both now and in the future”
- 15 • “The company has established itself as a premium brand in highly  
16 competitive market place”

17 (Tran Decl. at ¶ 40).

18 The CRO Assessment was sent to counsel for 56HR on August 1. Counsel for  
19 56HR responded on August 2, 2016, questioning the legitimacy of the CRO  
20 Assessment and characterizing it as nothing more than a “transparent piece of  
21 propaganda.” Tran Decl. at ¶ 41. The same day, 56HR filed a lawsuit against JJC.

22 *Id.*

Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
13310 Maxella Ave., Unit D  
Marina Del Rey, CA 90292  
p. (303)396-2842

1           **JJC Will Suffer Irreparable Harm Without Immediate Injunctive Relief.**

2           For the reasons set forth below and in greater detail in the Verified Complaint  
3  
4 filed contemporaneous with this application, JJC contends that 56HR’s purported  
5 terminations of the License Agreements were wrongful and administered in bad  
6 faith. However, in light of the fact that JJC’s ability to continue as a going concern  
7 is wholly dependent on its right to utilize the Licensed Products, the purported  
8 termination of the Short Term and Long Term License Agreement would produce a  
9 great and irreparable injury to JJC and would effectively put an end to the company  
10 unless a temporary restraining order and/or immediate injunctive relief is granted.  
11  
12 *See* Tran Decl. generally at ¶¶ 42-47.

13  
14           In short, unless 56HR is enjoined from enforcing the termination of the  
15 subject license agreement, JJC will be unable to generate any revenue and fund its  
16 operations pending a final decision on its legal claims against 56HR. *Id.* at ¶ 45.  
17 Specifically, without the ability to utilize the Licensed Products, JJC has been unable  
18 to fill existing purchase orders (currently totaling approximately \$745,000) or issue  
19 new purchase orders. *Id.* at ¶ 42. Moreover, several large customers have cancelled  
20 orders with JJC (including Target) and several others, including Kroger and Kehe,  
21 have threatened to cancel unless their orders are filled immediately. *Id.*

22  
23  
24  
25           In addition, JJC is desperately in need of cash flow to meet short term payroll,  
26 working capital, and debt service obligations. *Id.* at ¶ 43. But, JJC does not have  
27 cash on hand to satisfy these obligations and has no current ability to generate sales  
28



1 revenue since it is prohibited from using the Licensed Products. JJC needs to fill the  
2 current outstanding purchase orders immediately in order to generate cash flow to  
3 satisfy these obligations. *Id.* As a result, at this time, JJC is within days of complete  
4 financial collapse. *Id.*

5  
6 In addition to the inability to generate revenue and continue as a going  
7 concern, without a temporary restraining order enjoining 56HR from enforcing the  
8 termination of the license agreements, JJC's goodwill and business reputation will  
9 suffer irreparable harm. More specifically, without the ability to ship its products,  
10 JJC: (a) will default on its obligations under various supply and distribution  
11 agreements, (b) will default on various credit agreements and debt service  
12 requirements; (c) will be unable to service existing accounts, (c) will be unable to  
13 obtain new accounts, (d) will be unable to continue marketing initiatives; (d) will be  
14 unable to continue negotiations with potential equity partners; (e) will lose all  
15 investor and shareholder value; (f) will inevitably lose all of its current customers;  
16 and (g) will be forced to terminate all of its employees. Combined, these things all  
17 result in great and irreparable harm to JJC. *See* Tran Decl. at ¶¶ 45 to 47.

### 22 III. LEGAL STANDARD

23 Federal Rule of Civil Procedure 65 provides authority for the Court to issue  
24 either a preliminary injunction or a TRO. *See* Fed. R. Civ. P. 65(a), (b). "A plaintiff  
25 seeking a preliminary injunction must establish that he is [1] likely to succeed on the  
26 merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary  
27  
28

1 relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in  
2 the public interest.” *Am. Trucking Ass’ns v. City of Los Angeles*, 559 F.3d 1046, 1052  
3 (9th Cir. 2009) (quoting *Winter v. Natural Res. Def. Council Inc.*, 129 U.S. 365, 374  
4 (2008)). The requirements for a TRO are the same. See *Stuhlbarg Int’l Sales Co. v.*  
5 *John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

6  
7  
8 Before the Supreme Court decision in *Winter v. NRDC, Inc.*, 555 U.S. 7  
9 (2008), the Ninth Circuit held that to prevail on a motion for a preliminary injunction,  
10 a party had to show either (1) a likelihood of success on the merits and the possibility  
11 of irreparable injury, or (2) that serious questions going to the merits were raised and  
12 the balance of hardships tips in favor of the moving party. *Alliance for the Wild*  
13 *Rockies v. Cottrell*, 632 F.3d 1127, 1131-1132 (9th Cir. 2011). In *Winter*, however,  
14 the Supreme Court clarified that a plaintiff must establish all four prongs of the test.  
15 See *id.* at 1135. After *Winter*, the Ninth Circuit has stated that a plaintiff may prevail  
16 on a motion for a preliminary injunction by showing that serious questions exist as to  
17 the merits and a balance of hardships tips sharply towards the plaintiff, provide that  
18 the plaintiff also shows a likelihood of irreparable injury and that the injunction is in  
19 the public interest. *Id.*

20  
21  
22  
23  
24 A party seeking an *ex parte* TRO must “certif[y] in writing any efforts made to  
25 give notice [to the opposing party or its attorney] and the reasons why it should not  
26 be required.” Fed. R. Civ. P. 65(b)(1)(B). *Ex parte* TROs are appropriate when  
27 necessary to prevent irreparable harm and should be imposed only for the time  
28

1 needed to hold a hearing. *Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto*  
2 *Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974).

#### 3 4 IV. ARGUMENT

##### 5 A. JJC will suffer irreparable harm with a TRO.

6 As set forth below, if the TRO is not granted, JJC will die.

7  
8 A party seeking a TRO must provide evidence of likely immediate irreparable  
9 harm if the TRO is not entered. *See Herb Reed Enterprises, LLC v. Florida*  
10 *Entertainment Mgmt., Inc.*, 736 F.3d 1239, 1250 (9th Cir. 2013). "To establish  
11 irreparable harm a party must demonstrate that, but for the grant of equitable relief,  
12 there is a substantial likelihood that the party will suffer an injury 'for which a  
13 monetary award cannot be adequate compensation.'" *Mahroom*, 2009 U.S. Dist  
14 LEXIS 11041, \*8 (quoting *Tom Doherty Assocs., Inc. v. Saban Entm't, Inc.*, 60 F.3d  
15 27, 37 (2d Cir. 1995) (internal quotations omitted).

16  
17  
18 "[T]he threatened destruction of a business may, under some circumstances,  
19 be sufficient to satisfy the requirement that a movant show a 'likelihood of  
20 irreparable injury.'" *Retail Imaging Mgmt. Group, LLC v. Fujifilm N. Am. Corp.*, 841  
21 F. Supp. 2d 1189, 1195 (D. Ore. 2012) (relying on *Dollar Rent A Car of Wash., Inc.*  
22 *v. Travelers Indem. Co.*, 774 F.2d 1371 (9th Cir. 1985)). Moreover, "a 'substantial  
23 loss of business or bankruptcy' absent an injunction is one way a plaintiff can show  
24 'irreparable injury.'" *QBAS Co. v. C Walters Intercoastal Corp.*, 2010 U.S. Dist.  
25 LEXIS 143945, \*32, 2010 WL 7785955 (C.D. Cal. 2010) (quoting *Doran v. Salem*  
26  
27  
28

Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
13310 Maxella Ave., Unit D  
Marina Del Rey, CA 90292  
p. (303)396-2842

1 *Inn, Inc.*, 422 U.S. 922, 932 (1975). This is because impairments and disruptions in a  
2 business “could prove fatal.” *Mahroom v. Best W. Int'l, Inc.*, 2009 U.S. Dist. LEXIS  
3 11041, \*8, 2009 WL 248262 (N.D. Cal. 2009) (finding that disruption of a lodging  
4 business that did not require business to cease operations nonetheless satisfied  
5 irreparable harm standard); *Tom Doherty Assocs. v. Saban Entm't, Inc.*, 60 F.3d 27,  
6 37 (2d Cir. 1995) (listing relevant irreparable harm cases, including “a finding of  
7 irreparable injury on the grounds that termination of the franchise would ‘obliterate’  
8 the dealership and that the right to continue a business ‘is not measurable entirely in  
9 monetary terms’; ... finding irreparable harm from loss of ‘ongoing business  
10 representing many years of effort and the livelihood of its husband and wife owners’  
11 ... and ... [finding] irreparable harm in the loss of a relatively unique product.”).

12  
13  
14  
15  
16 *Laguardia Assocs. v. Holiday Hospitality Franchising, Inc.*, 92 F. Supp. 2d  
17 119, 122-123 (E.D.N.Y. 2000) is particularly instructive and is squarely on point with  
18 the facts of this case. In *Laguardia*, a franchisor attempted to terminate a  
19 franchisee’s franchise agreement for failure of the franchisee to make fee payments  
20 despite prior waiver by franchisor of strict compliance with those fee payment  
21 provisions. *Id.* at 123 (the change was brought about by new management, who  
22 informed franchisee “there is a new sheriff in town”).  
23  
24

25 The *Laguardia* court found irreparable harm to be satisfied and explained:  
26 Irreparable harm can generally be assumed where a franchisor is  
27 attempting to terminate an exclusive franchise arrangement on short  
28

Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
13310 Maxella Ave., Unit D  
Marina Del Rey, CA 90292  
p. (303)396-2842

1 notice. By the nature of the exclusive arrangement, the franchisee's  
2 business operation depends upon the economic relationship established  
3 by the franchise agreement. The franchise relationship is the lifeline of  
4 the franchisee's business; the franchisee's investment of capital, time,  
5 and effort in promoting the franchisor's goods or services--to the general  
6 exclusion of competing goods and services--would be irreparably lost  
7 upon termination. Money damages cannot make the franchisee in such  
8 situations whole. *See Roso-Lino Beverage Distribs., Inc. v. Coca-Cola*  
9 *Bottling Co.*, 749 F.2d 124, 125-26 (2d Cir. 1984) (per curiam) ("The  
10 loss of Roso-Lino's distributorship, an ongoing business representing  
11 many years of effort and the livelihood of its husband and wife owners,  
12 constitutes irreparable harm. What plaintiff stands to lose cannot be fully  
13 compensated by subsequent money damages.").

14  
15  
16  
17  
18 *Id.* at 131. The irreparable harm analysis from *Laguardia* is persuasive  
19 authority, is directly on point, and has been cited by the Federal District Court  
20 for the Northern District of California. *See Mahroom, supra* at \*9-10.

21  
22 In this case, like the franchisee in *Laguardia*, JJC's business operation depends  
23 entirely on the license agreement. *See* Tran Decl. at ¶ 18. This license arrangement  
24 combined with the commercial relationships, is the "bloodline" of JJC. *Id.* at ¶ 46.  
25 And, much like the franchisee in *Laguardia*, current JJC management has dedicated 5  
26 years and millions of dollars promoting the "Marley Coffee" brand, which goodwill  
27  
28

1 and business reputation would be irreparably destroyed without a TRO.

2 And while evidence of monetary loss alone is not sufficient to show irreparable  
3 harm, evidence of loss of control over business reputation and damage to goodwill  
4 supports a finding of irreparable harm. *See Herb Reed Enterprises, LLC*, 736 F.3d at  
5 1250 (citing *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush and Co., Inc.*, 240 F.3d  
6 832, 841 (9th Cir. 2001).

7  
8  
9 For example, in *Mahroom v. Best W. Int'l, Inc.*, 2009 U.S. Dist. LEXIS 11041,  
10 \*8, 2009 WL 248262 (N.D. Cal. 2009), the court found in favor of motel owners  
11 under the irreparable harm analysis where Best Western International, Inc. (“BWI”),  
12 a membership organization consisting of individually owned and operated motels and  
13 hotels, sought to terminate the motel owners’ membership. The court concluded that  
14 the loss of the promotional benefit of using BWI’s online reservation system and the  
15 potential loss of the intangible benefits that arise from being a member of the  
16 organization weighed in favor of injunction. *Id.* at 10-11. *See also Inter-Collegiate*  
17 *Press, Inc. v. Myers*, 519 F. Supp. 765, 770, 1981 U.S. Dist. LEXIS 13791, \*11 (D.  
18 Kan. 1981) (“Plaintiff introduced evidence that defendant was soliciting and selling  
19 to plaintiff’s customers the products of a competing company, causing plaintiff to lose  
20 sales, business, customers and customer goodwill. We find that such activity is  
21 causing immediate and irreparable injury and loss to plaintiff because of the extreme  
22 difficulty and uncertainty in restoring goodwill among the customers and regaining  
23 the business of customers who are being, and will be, induced away or lost by the  
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Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
13310 Maxella Ave., Unit D  
Marina Del Rey, CA 90292  
p. (303)396-2842

1 plaintiff.”).

2 In this case, as explained above, without the TRO enjoining 56HR from  
3 terminating JJC’s ability to utilize the Licensed Products, it will be forced to cease  
4 operations and will financially collapse within days. *See* Tran Decl. at ¶ 43. In  
5 addition to the inability to generate revenue and continue as a going concern, without  
6 a temporary restraining order enjoining 56HR from enforcing the termination of the  
7 license agreements, JJC’s goodwill and business reputation will suffer irreparable  
8 harm because JJC will default on its obligations under various supply, distribution,  
9 and shelving agreements, including major accounts agreements with NCR, NCSV,  
10 Mother Parkers, and C&V, Kroger, Safeway, Albertsons, Target, UNFI, Kehe, DPI,  
11 and C&S. Again, the license agreement and related accounts are the “bloodline” of  
12 JJC. *See id.* at ¶¶ 45-46.

13 Finally, without a revenue stream, Furthermore, without a TRO, JJC will: (a)  
14 will default on its obligations under various supply and distribution agreements, (b)  
15 will default on various credit agreements and debt service requirements; (c) will be  
16 unable to service existing accounts, (c) will be unable to obtain new accounts, (d) will  
17 be unable to continue marketing initiatives; (d) will be unable to continue  
18 negotiations with potential equity partners; (e) will lose all investor and shareholder  
19 value; (f) will inevitably lose all of its current customers; and (g) will be forced to  
20 terminate all of its employees Combined, these things all result in great and  
21 irreparable harm to JJC. *Id.* at ¶ 47.

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Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
13310 Maxella Ave., Unit D  
Marina Del Rey, CA 90292  
p. (303)396-2842

1                   Because the TRO is necessary to prevent irreparable harm, the Court  
2 should grant JJC’s Motion.

3  
4 **B. JJC is likely to succeed on the merits on its Breach of Contract , Wrongful**  
5 **Termination, and/or Breach of Implied Duty of Good Faith and Fair Dealing**  
6 **claims.**

7  
8                   A party seeking a preliminary injunction need not show a likelihood of success  
9 on the merits so long as the party can show “serious questions going to the merits’  
10 and a hardship balance that tips sharply toward the plaintiff,” assuming the other two  
11 elements are met. *Alliance for the Wild Rockies*, 632 F.3d at 1131-32.

12  
13 Here, JJC’s Verified Counterclaim raises serious questions going to the merits.

14                   There are compelling facts that support JJC’s claim that 56HR breached the  
15 Long Term and Short Term License Agreements, and that its termination of the Long  
16 Term and Short Term License Agreements were wrongful, administered in bad faith,  
17 and represented material breaches on the part of 56HR.

18  
19                   To prevail on its breach of contract claim, a party must prove the following:  
20 (1) the existence of a contract, (2) plaintiff’s performance or excuse for non-  
21 performance, (3) defendant’s breach, and (4) damages to plaintiff therefrom.

22  
23 *Acoustics, Inc. v. Trepte Construction Co.* (1971) 14 Cal.App.3d 887, 913.

24  
25                   In this case, 56HR breached Sections 10(a)(iii) and/or 8(e) of the Long Term  
26 and Short Term License Agreements by granting licenses to, or otherwise  
27 authorizing, third parties to utilize the Licensed Products within the Territory,  
28

Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
13310 Maxella Ave., Unit D  
Marina Del Rey, CA 90292  
p. (303)396-2842



1 including but not limited to Marley Coffee Jamaica and Marley Beverages. *See* Tran  
2 Decl. at ¶¶ 9-11.

3  
4 In addition, 56HR breached Section 12(a) of the Long Term License  
5 Agreement, by failing to indemnify and defend JJC from and against the claims  
6 alleged in the Whittle Lawsuits, and/or failing to reimburse JJC for the attorneys fees,  
7 settlements, and other costs and expenses JJC incurred as a result of such claims.  
8

9 56HR also breached the Long Term License Agreement and Short Term  
10 License Agreement by wrongfully terminating those agreements in bad faith. The  
11 purported basis of the termination was that JJC had defaulted on its payment  
12 obligations; however, 56HR intentionally and/or through its representations, course  
13 of conduct, and course of dealings with JJC for years during the term of the Long  
14 Term License Agreement, effectively waived such claims. *See Laguardia Assocs. v.*  
15 *Holiday Hospitality Franchising, Inc.*, 92 F. Supp. 2d 119, 129-130 (E.D.N.Y. 2000)  
16 (“Waiver is the voluntary abandonment of a known right which, but for the waiver,  
17 would have been enforceable. [ ] Holiday, by not terminating on the April 1999  
18 default for nearly ten months, but instead essentially abandoning that right until  
19 February 2000, waived its right to rely on that default--as it seeks to do--as a basis for  
20 termination of the Agreements.”); *see also Springs Industries, Inc. v. Kris Knit, Inc.*,  
21 880 F.2d 1129, 1133 (9th Cir. 1989) (J. Trott, dissenting) (“Both of these doctrines  
22 [waiver and estoppels] have been utilized by the New York courts in order to relieve  
23 an aggrieved party to a contract involving ‘distinctly unfair’ circumstances.”).  
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Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
13310 Maxella Ave., Unit D  
Marina Del Rey, CA 90292  
P. (303) 396-2842

Padraic I. McCoy  
Tilden McCoy + Dilweg LLP  
13310 Maxella Ave., Unit D  
Marina Del Rey, CA 90292  
p. (303)396-2842

1           The foregoing material breaches of contract were prior to the alleged payment  
2 breach on the part of JJC, and therefore excused such alleged breach. *See* Brown v.  
3 Grimes (2011) 192 Cal.App.4th 265, 277–278 (When a party’s failure to perform a  
4 contractual obligation constitutes a material breach of the contract, the other party  
5 may be discharged from its duty to perform under the contract.)  
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8           For the reasons set forth above and in the Verified Complaint, there are serious  
9 questions going to the merits of JJC’s wrongful termination and related breach of  
10 contract and business tort claims against 56HR. Moreover, there is evidence that  
11 56HR engaged in a pattern of bad faith in its negotiations and business dealings with  
12 JJC that involved numerous negligent misrepresentations, fraudulent inducements,  
13 interferences with JJC’s prospective economic advantages and prospective  
14 contractual relations with third parties, and other prior material breaches of the  
15 License Agreements.  
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18       **C.    The balance of equities tips in JJC’s favor.**

19           The balance of the equities and hardships tips sharply in JJC’s favor. As  
20 discussed above, if the TRO is not entered, JJC will be forced to cease operations,  
21 costing it its good will and business reputation and harming its employees,  
22 shareholders and suppliers. In contrast, the entry of a TRO enjoining 56HR from  
23 terminating the license or requiring 56HR to reinstate the license during the pendency  
24 of this action will simply preserve the status quo that has existed since 2010.  
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1 **D. Consideration of the public interest.**

2 The plaintiff bears the initial burden of proving that the issuance of a TRO is in  
3 the public interest. *See Rubin ex rel. NLRB v. Vista Del Sol Health Servs.*, 80 F. Supp.  
4 3d 1058, 1073 ( 2015). The Court should weigh the public interest in light of the  
5 likely consequences of the TRO, and such consequences must be supported by  
6 evidence. *See id.* at 1075. When the impact of a TRO is limited to the parties, then  
7 the public interest factor is neutral. When the impact of a TRO reaches beyond the  
8 parties, though, the public interest will be relevant to determining whether to enter  
9 the TRO. *Id.*

10 The public interest factor weighs in favor of entering a TRO and the impact of  
11 a TRO reaches beyond the parties. The entry of a TRO will result in JJC to continue  
12 to operate as a going concern, thereby allowing JJC’s workers to remain employed,  
13 enabling JJC to honor its contractual obligations with third parties and customers, and  
14 preventing JJC’s 16,000 shareholders from losing their entire investment in the  
15 company. *See Tran Decl.* at ¶ 47. As the likely consequences of the TRO will  
16 protect employees against losing their income, protect shareholders from losses, and  
17 protect JJC’s suppliers, distributors, and customers, the public interest factor warrants  
18 entering the TRO.

19 **V. CONCLUSION**

20 For all of the foregoing reasons, JJC requests that this Court issue an  
21 immediate temporary restraining order requiring that 56HR cease from terminating  
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1 the Long Term and Short Term License Agreements or immediately reinstate the  
2 license agreement and allow JJC to utilize the Licensed Products pending a final  
3 decision of this matter. JJC further requests the Court issue an order requiring  
4 defendants to show cause why a preliminary injunction should not enter.  
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6  
7  
8 DATED: August 4, 2016

Respectfully Submitted,

9 TILDEN MCCOY + DILWEG LLP

10  
11 /s/ Padraic I. McCoy  
12 Padraic I. McCoy (SBN 223341)  
13 pmccoy@tildenmccoy.com  
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