

1 KJAR, McKENNA & STOCKALPER LLP
2 James J. Kjar, Esq. (SBN: 94027)
kjar@kmslegal.com
3 Jon R. Schwalbach, Esq. (SBN: 281805)
4 jschwalbach@kmslegal.com
5 Gregory B. Emdee, Esq. (SBN: 315374)
gemdee@kmslegal.com
6 841 Apollo Street, Suite 100
7 El Segundo, California 90245
8 Telephone: (424) 217-3026
Facsimile: (424) 367-0400

9 Attorneys for Defendants,
10 MICHAEL WEINSTEIN, SCOTT H. TOOTHACRE, ELYSSA KULAS,
11 RACHEL M. PRENDERGAST and FERRIS & BRITTON

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 ANDREW FLORES, an individual,
15 AMY SHERLOCK, on her own behalf
16 and on behalf of her minor children, T.S.
and S.S., JANE DOE, an individual,
Plaintiffs,

17 vs.

18 GINA M. AUSTIN, an individual;
19 AUSTIN LEGAL GROUP APC, a
California Corporation; JOEL R.
20 WOHLFEIL, an individual;
LAWRENCE (AKA LARRY) GERACI,
21 an individual; TAX & FINANCIAL
22 CENTER, INC., a California
Corporation; REBECCA BERRY, an
23 individual; JESSICA MCELFFRESH, an
24 individual; SALAM RAZUKI, an
individual; NINUS MALAN, an
25 individual; MICHAEL ROBERT
26 WEINSTEIN, an individual; SCOTT
TOOTHACRE, an individual; ELYSSA
27 KULAS, an individual; RACHEL M.

Case No.: 3:20-cv-00656-BAS-MDD

**NOTICE OF MOTION AND
MOTION TO DISMISS
COMPLAINT BY DEFENDANTS
MICHAEL WEINSTEIN, SCOTT H.
TOOTHACRE, ELYSSA KULAS,
RACHEL M. PRENDERGAST AND
FERRIS & BRITTON;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: August 3, 2020
Time: 10:00 a.m.

**NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT**

District Judge: Cynthia A. Bashant
Magistrate Judge: Mitchell D. Dembin
Courtroom: 4B (4th Floor)

1 PRENDERGAST, an individual;
 2 FERRIS & BRITTON APC, a California
 Corporation; DAVID S. DEMIAN, an
 3 individual, ADAM C. WITT, an
 4 individual, RISHI S. BHATT, an
 individual, FINCH, THORTON, and
 5 BAIRD, a Limited Liability Partnership,
 6 JAMES D. CROSBY, an individual;
 ABHAY SCHWEITZER, an individual
 7 and dba TECHNE; JAMES (AKA JIM)
 8 BARTELL, an individual; BARTELL &
 ASSOCIATES, a California Corporation;
 9 MATTHEW WILLIAM SHAPIRO, an
 10 individual; MATTHEW W. SHAPIRO,
 APC, a California corporation;
 11 NATALIE TRANGMY NGUYEN, an
 12 individual, AARON MAGAGNA, an
 individual; A-M INDUSTRIES, INC., a
 13 California Corporation; BRADFORD
 14 HARCOURT, an individual; ALAN
 CLAYBON, an individual; SHAWN
 15 MILLER, an individual; LOGAN
 16 STELLMACHER, an individual;
 17 EULENTIAS DUANE ALEXANDER,
 an individual; BIANCA MARTINEZ; an
 18 individual; THE CITY OF SAN DIEGO,
 a municipality; 2018FMO, LLC, a
 19 California Limited Liability Company;
 20 FIROUZEH TIRANDAZI, an individual;
 STEPHEN G. CLINE, an individual;
 21 JOHN DOE, an individual; and DOES 2
 22 through 50, inclusive,

Defendants,

23 _____
 JOHN EK, an individual;
 24 THE EK FAMILY TRUST, 1994 Trust,
 25 _____
 Real Parties In Interest.

26 ///
 27 ///
 ///
 28 ///

Complaint Filed: April 3, 2020
 Trial Date: None

TO PLAINTIFFS ANDREW FLORES, AMY SHERLOCK, T.S. and S.S, JANE DOE AND THE COURT:

NOTICE

PLEASE TAKE NOTICE that on August 3, 2020 at 10:00 a.m. or as soon thereafter as this motion may be heard in courtroom 4B of the United States Court for the Southern District of California, Edward J. Schwartz U.S. Courthouse, 221 W. Broadway, San Diego, California 92101. Defendants Michael Weinstein, Scott H. Toothacre, Elyssa Kulas, Rachel M. Prendergast, and Ferris & Britton (Collectively “F&B Defendants”) will and hereby do move this Court for an Order dismissing them from this litigation with Prejudice. Further, Plaintiffs Andrew Flores, Amy Sherlock, T.S. and S.S, Jane Doe (Collectively “Plaintiffs”) causes of action for Violations of Civil Rights §§1985,1986, and Declaratory Relief should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6). Oral argument will not be heard unless requested by the Court.

F&B Defendants bring this Motion on the grounds that the complaint does not—and could never—state a claim upon which relief may be granted. This Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, Request for Judicial Notice with attached Exhibits, and all pleadings, records and files herein, such matters of which the Court may take judicial notice, and any such further documents and argument that may be offered to this court before or at the hearing of this motion.

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1 F&B Defendants also join in any motions by the other Defendants
2 challenging Plaintiffs' Complaint, to the extent those motions support the dismissal
3 of the Complaint as to F&B Defendants.

4
5 Dated: June 30, 2020 KJAR, McKENNA & STOCKALPER LLP

6
7 By: /s/ Gregory B. Emdee
8 JAMES J. KJAR
9 JON R. SCHWALBACH
10 GREGORY B. EMDEE
11 Attorneys for Defendants Michael
12 Weinstein, Scott H Toothacre,
13 Elyssa Kulas, Rachel M. Prendergast,
14 and Ferris & Britton
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MEMORANDUM OF POINTS AND AUTHORITIES

1.0 INTRODUCTION

In this action, Plaintiffs, Andrew Flores, Amy Sherlock, T.S. and S.S, Jane Doe (Collectively “Plaintiffs”) attempt to jump into the fray of this ongoing litigation saga after Darryl Cotton (hereinafter “Cotton”) lost his jury trial in San Diego Superior Court and Cotton abandoned his appeal in the California Court of Appeal. Rather than accept the outcome, Plaintiffs have named everyone remotely connected to Cotton’s state court litigation, claiming a grand conspiracy.

The moving Defendants, Michael Weinstein, Scott Toothacre, Elyssa Kulas, Rachel M. Prendergast (a former paralegal), and Ferris & Britton, APC (hereinafter collectively “F&B Defendants”) were involved in the representation of Cotton in *Geraci v. Cotton*, Case No.: 37-2017-00010073-CU-BC-CTL in San Diego Superior Court (hereinafter “state court action”). Plaintiff Andrew Flores specially appeared and represented Cotton in various proceedings in the underlying state court action and over time became personally invested in the outcome of that state court action. Compl. ¶¶ 8, 16, 18, 19, 1047, 1082. In retaliation for the loss of the underlying state court action, Plaintiffs bring this suit against the F&B Defendants for their litigation acts in the state court action. Compl. ¶ 18. Despite Plaintiffs’ Complaint being 171+ pages, it is inadequately pled. The Complaint is vague, unintelligible, and barred. Thus, Plaintiffs’ Complaint should be dismissed.

2.0 PROCEDURAL HISTORY

This action arises out of an unsuccessful underlying agreement for the purchase and sale of real property between Plaintiff Cotton and Co-Defendant Larry Geraci (hereinafter “Geraci”), which resulted in a state court lawsuit. Specifically, on March 21, 2017, Geraci, through the legal representation of the F&B Defendants, filed a complaint against Plaintiff in San Diego Superior Court (hereinafter “state court action”) *Geraci v. Cotton*, Case No.: 37-2017-00010073-CU-BC-CTL, alleging, among other things, that Cotton breached their contract;

1 Cotton cross-complained for, among other things, breach of contract and fraud.
2 Compl., ¶¶ 530, 788 (Defendant’s Request for Judicial Notice, **Exhibit “1”**,
3 **Exhibit “5”**, and **Exhibit “6”**.) Plaintiff Andrew Flores filed a motion to intervene
4 in the state court action, but it was denied. Compl. ¶¶ 1003, 1005.

5 Following a jury trial in the state court action, judgment was entered in favor
6 of Geraci and against Cotton on both the complaint and the cross-complaint.
7 (Defendant’s Request for Judicial Notice, **Exhibit “3”** & **Exhibit “4”**). Cotton
8 attempted to appeal the state court decision, but his appeal was dismissed for
9 procedural failures. Compl. ¶¶ 644, 654.

10 Unhappy with the adverse ruling in the state court action, Cotton and
11 Plaintiff Andrew Flores, filed their respective lawsuits in federal court. Compl., ¶
12 769 (Defendant’s Request for Judicial Notice, **Exhibit “7”**). On May 13, 2020,
13 Cotton filed a First Amended Complaint in his federal suit, which refers to the
14 Complaint and events in this matter. Cotton Federal Suit First Am. Compl., ¶¶ 119,
15 122-124, 127-129, 133 (Defendant’s Request for Judicial Notice, **Exhibit “2”**.)

16 Presently, against F&B Defendants, Plaintiffs assert claims for Violation of
17 Federal Civil Rights pursuant to 42 U.S.C. §§ 1985 & 1986 and declaratory relief.
18 Compl., ¶¶ 1042-162; 1074-1117. However, Plaintiffs’ allegations only claim that
19 F&B Defendants represented Geraci in the underlying state court action. Compl.,
20 ¶¶ 105, 455, 524, 565, 571, 585, 598, 603, 621, 622, 635, 670-671, 684, 698, 716-
21 718, 720, 723, 727, 738, 749, 762, 820-821, 1084. As such, all F&B Defendants’
22 alleged conduct arises from their lawful litigation activities.

23 Plaintiffs admit that they filed this Complaint to re-litigate the existence of
24 the same November 2, 2016 contract that was subject of the state court action and
25 re-litigate the state court action. Compl. ¶¶ 5-6. Plaintiffs also seek to have the
26 federal courts improperly intervene and act as an appellate court for the state
27 court’s judgments and ruling. Compl., ¶¶ 2-3. The Complaint is mostly
28 unintelligible and devoid of any facts sufficient to adequately support any of

1 Plaintiffs’ causes of action against F&B Defendants. As such, F&B Defendants are
2 entirely unable to determine what facts support the allegations against them.

3 Plaintiffs’ improper use of the federal system as an appellate court should be
4 halted. Therefore, F&B Defendants respectfully request this Court dismiss
5 Plaintiffs’ entire Complaint against F&B Defendants, with prejudice. Further, this
6 Court should not grant Plaintiffs leave to amend.

7 **3.0 LEGAL STANDARD FOR MOTION TO DISMISS**

8 Fed. R. Civ. P. 12(b)(6) provides this Court’s authority to dismiss Plaintiffs’
9 Complaint for “failure to state a claim upon which relief can be granted.”

10 Dismissal of a complaint can be based on either a lack of a cognizable legal theory
11 or the absence of sufficient facts alleged under a cognizable legal theory.

12 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). As a result
13 of the Supreme Court’s decision in *Bell Atlantic Corp. v. Twombly*, a complaint
14 must indicate more than mere speculation of a right to relief. *Bell Atlantic Corp. v.*
15 *Twombly*, 550 U.S. 544, 556 (2007). A complaint is subject to dismissal unless it
16 alleges “enough facts to state a claim to relief that is plausible on its face.”
17 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

18 In ruling on a Rule 12(b)(6) motion, a court should not accept legal
19 conclusions cast in the form of factual allegations if those conclusions cannot
20 reasonably be drawn from the facts alleged.¹ Moreover, “conclusory allegations of
21 law and unwarranted inferences are not sufficient to defeat a [Rule 12(b)(6)]
22 motion to dismiss.” *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998). Courts will
23 not assume plaintiffs “can prove facts which [they have] not alleged, or that the
24 defendants have violated ... laws in ways that have not been alleged.” *Associated*
25 *General Contractors v. California State Council of Carpenters*, 459 U.S. 519, 526

27 ¹ *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994) (citing
28 *Papasan v. Allain*, 478 U.S. 265, 286 (1986); *United States ex rel. Chunie v.*
Ringrose, 788 F.2d 638, 643 n. 2 (9th Cir.), cert. denied, 454 U.S. 1031 (1981)).

1 (1983). However, this Court may take “judicial notice of ‘matters of public
2 record,’” i.e. documents filed in Darryl Cotton’s lawsuits, which are attached to the
3 concurrently filed request for judicial notice.²

4 **4.0 ARGUMENT**

5 Plaintiffs are attempting to circumvent the proper appeals process. Further,
6 Plaintiffs’ Complaint must be dismissed as it does not meet the stringent pleading
7 requirements. Plaintiffs will not be able to cure these defects:

8 **First**, Plaintiffs’ claims must fail because F&B Defendants are immune from
9 liability under the *Noerr-Pennington* Doctrine for any litigation-related activity as
10 it relates to the state court action.

11 **Second**, even accepting Plaintiffs allegations as true, Plaintiffs have failed to
12 state facts sufficient to constitute any cause of action against F&B Defendants.

13 Plaintiffs’ 177-page Complaint is unintelligible, vague, and ambiguous, lacks any
14 facts with the requisite specificity to support any of their causes of action.

15 **Third**, Plaintiffs cannot allege that F&B Defendants were a state actor.

16 **Fourth**, Plaintiffs’ allegations against F&B Defendants arise entirely out of
17 protected activity and all pendant state law claims must be stricken as a violation
18 of the applicable California anti-SLAPP statute.

19 **Fifth**, Plaintiffs lack standing to sue.

20 **4.1 PLAINTIFFS’ COMPLAINT MUST BE DISMISSED BECAUSE** 21 **F&B DEFENDANTS ARE IMMUNE FROM LIABILITY** 22 **UNDER THE NOERR-PENNINGTON DOCTRINE.**

23 “The Noerr-Pennington doctrine shields individuals from, inter alia, liability
24 for engaging in litigation.” *Microsoft Corp. v. Motorola, Inc.*, 795 F.3d 1024, 1047

25 ² Fed.R.Evid. 201; *Longacre v. Kitsap County*, 744 Fed.Appx. 450, 451 (9th Cir.
26 2018) (“The district court did not abuse its discretion by taking judicial notice of
27 documents from the state court action”); *Reyn’s Pasta Bella, LLC v. Visa USA,*
28 *Inc.*, 442 F.3d 741, 746 (9th Cir. 2006) (“We may take judicial notice of court
filings”); *Gomez v. Bidz.com, Inc.*, No. CV 09-3216 CBM (EX) 2011 WL
13190130, at *1 (C.D. Cal., Feb. 2, 2011) (“The Court takes judicial notice of
Exhibits B, C, and D, because they are public court filings”).

1 (9th Cir. 2015) (emphasis in original, internal citations omitted); *accord Kaiser*
2 *Found. Health Plan, Inc. v. Abbott Labs., Inc.*, 552 F.3d 1033, 1044 (9th Cir.
3 2009). Noerr-Pennington immunity applies to claims under civil rights statutes
4 (see, e.g., 42 U.S.C. § 1983) that are based on the petitioning of public authorities,
5 such as the courts.³

6 Moreover, “the Noerr-Pennington doctrine sweeps broadly” and applies to
7 any claims that are based upon “advocacy before any branch of either federal or
8 state government.” *Kottle v. Nw Kidney Ctrs.*, *supra*, 146 F.3d at 1059.

9 “[B]ecause Noerr-Pennington protects federal constitutional rights, it applies in all
10 contexts, even where a state law doctrine advances a similar goal. [Citation.] There
11 is no reason that Noerr-Pennington and California privilege law cannot both apply
12 to [plaintiff’s] intentional interference claims, and we hold that the district court
13 properly considered both doctrines.” *Theme Promotions, Inc. v. News Am. Mktg.*
14 *FSI*, 546 F.3d 991, 1007 (9th Cir. 2008).

15 A three-part test determines whether the defendant’s conduct is immunized
16 under Noerr-Pennington: (1) identify whether the lawsuit imposes a burden on
17 petitioning rights, (2) decide whether the alleged activities constitute protected
18 petitioning activity, and (3) analyze whether the statutes at issue may be construed
19 to preclude that burden on the protected petitioning activity. *Kearney v. Foley &*
20 *Lardner*, 566 F.3d 826, 832 (9th Cir. 2009). Application of this test renders F&B
21 Defendants immune from any liability in this case under Noerr-Pennington.

22 Plaintiffs’ claims against F&B Defendants in this action arise entirely out of
23 F&B Defendants’ alleged participation in the state court action in 2017. Compl.,
24 ¶¶ 105, 455, 524, 565, 571, 585, 598, 603, 621, 622, 635, 670-671, 684, 698, 716-

25 _____
26 ³ *Boulware v. Nevada Dep’t of Human Resources*, 960 F.2d 793, 800 (9th Cir.
27 1992); *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 930 (9th Cir. 2006) (holding that the
28 Supreme Court has held that the Noerr-Pennington principles “apply with full force
in other statutory contexts” outside antitrust); see *Evers v. County of Custer*, 745
F.2d 1196, 1204 (9th Cir. 1984).

1 718, 720, 723, 727, 738, 749, 762, 820-821, 1084. Plaintiffs vaguely allege that
 2 F&B Defendants effectuated their crimes through the judiciary. *Id.* at ¶ 105.
 3 Plaintiffs also allege that Bartell spoke with Defendant Weinstein prior to his
 4 deposition. *Id.* at ¶ 455. Plaintiffs further allege that Defendant Weinstein emailed
 5 a copy of the state court action complaint, *lis pendens*, and various
 6 communications. *Id.* at ¶ 524, 635. Plaintiffs also allege that Defendant Weinstein
 7 argued various case law and theories before the court. *Id.* at ¶¶ 565, 571, 585, 603,
 8 621, 718, 1084. Plaintiffs also allege that Defendant Weinstein and Defendant
 9 Toothacre represented Geraci and Rebecca Berry during court proceedings *Id.* at ¶¶
 10 598, 749, 762, 820-821. Plaintiffs also allege that Defendant Weinstein stated he
 11 wished to settle. *Id.* at ¶622. Plaintiffs also allege that Defendant Weinstein and
 12 Defendant Toothacre deposed various individuals including Cotton and Hurtado.
 13 *Id.* at ¶¶ 684, 698, 738. Plaintiffs also allege that F&B Defendants participated in
 14 the discovery process. *Id.* at ¶¶ 717-720, 723, 727. Plaintiffs further allege that
 15 Defendant Toothacre represented Tirandazi and that Plaintiffs eavesdropped on
 16 communications regarding Tirandazi’s deposition. *Id.* at ¶ 670-671.

17 In total, Plaintiffs simply allege that F&B Defendants represented Geraci in
 18 the state court action, such representation and litigation conduct falls squarely
 19 within the protection of the Noerr-Pennington Doctrine. Furthermore, to the extent
 20 that F&B Defendants were involved in the state court action at all—whether in a
 21 pre-litigation context or otherwise—such conduct remains protected by the Noerr-
 22 Pennington Doctrine as “incidental to the prosecution of the suit.”⁴

23

24 _____
 25 ⁴ See *Western Sugar Cooperative v. Archer-Daniels-Midland Co.*, No. CV
 26 1134739-CBM (MANx) 2013 WL 12123307, at *1 (C.D. Cal., Sept. 16, 2013)
 27 (“The Ninth Circuit has explained that ‘in the litigation context, not only petitions
 28 [such as a complaint, answer, or other documents and pleadings] sent directly to
 the court in the course of litigation, but also “conduct incidental to the prosecution
 of the suit [like discovery communications and settlement demands]” is protected
 by the Noerr-Pennington doctrine.”).

1 “The Noerr-Pennington doctrine can be applied in tandem with the
 2 California litigation privilege.” *UMG Recordings, Inc. v. Global Eagle*
 3 *Entertainment, Inc.*, 117 F.Supp.3d 1092, 1113 (C.D. Cal. 2015). “The [litigation]
 4 privilege in section 47, subdivision 2 of the Civil Code, however, is based on the
 5 desire of the law to protect attorneys in their primary function – the representation
 6 of a client.” *Friedman v. Knecht*, 248 Cal.App.2d 455, 462 (1967). “Without the
 7 litigation privilege, attorneys would simply be unable to do their jobs properly.”
 8 *Finton Construction, Inc. v. Bidna & Keys, APLC*, 238 Cal.App.4th 200, 212
 9 (2015); *see also Rupert v. Bond*, 68 F.Supp.3d 1142 (2014).

10 Ultimately, it is well-established that Noerr-Pennington provides F&B
 11 Defendants with a complete defense to Plaintiffs’ claims. Plaintiffs cannot satisfy
 12 any of the exceptions to the applicability of the Noerr-Pennington Doctrine.

13 Consequently, Plaintiffs’ Complaint should be dismissed.

14 **4.2 PLAINTIFFS’ COMPLAINT FAILS TO STATE ANY CLAIMS**
 15 **AGAINST F&B DEFENDANTS UPON WHICH RELIEF CAN**
 16 **BE GRANTED.**

17 To survive a motion to dismiss, the Complaint “must contain sufficient
 18 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its
 19 face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009) (quoting *Bell Atlantic Corp. v.*
 20 *Twombly*, 550 U.S. 544, 570 (2007)). A formulaic recitation of the elements of a
 21 cause of action will not suffice. *Bell Atlantic Corp. v. Twombly*, *supra*, 550 U.S. at
 22 555. Labels and conclusions are insufficient to meet the plaintiff’s obligation to
 23 provide the grounds of his entitlement to relief. *Id.* “Factual allegations must be
 24 enough to raise a right to relief above the speculative level.” *Id.*

25 Plaintiffs’ Complaint, on its face, fails to allege any facts sufficient to state a
 26 claim for relief. Evidenced by Plaintiffs’ repetitive and unintelligible pleadings,
 27 motion work, and other requests, no amount of amendment will cure the significant
 28 deficiencies in the Complaint. The Complaint contains no factual allegations to
 support its alleged causes of action against F&B Defendants, neglects to state the

1 necessary elements of each cause of action, and is based entirely on vague,
 2 ambiguous, and conclusory statements. The few facts included in the Complaint
 3 specific to F&B Defendants are implausible conjectures insufficient to support any
 4 claim for relief. F&B Defendants are vaguely mentioned in their capacity as
 5 attorneys, paralegal, and firm, however due to the lack of substantive and
 6 identifying allegations, F&B Defendants' involvement and wrongdoing is left to
 7 pure speculation.

8 **4.21 Plaintiffs Have Failed to Provide “Fair Notice” of the Claims Being**
 9 **Asserted and the Grounds Upon Which They Rest**

10 Plaintiffs cannot allege some vague and speculative wrong has been
 11 committed and demand relief. Instead, the pleading must give “fair notice” of the
 12 claims asserted and the “grounds upon which it rests.” *Bell Atlantic Corp., supra*,
 13 550 U.S. at 555. Without any substantive allegations pled, F&B Defendants cannot
 14 properly prepare a defense. *Bell Atlantic Corp., supra*, 550 U.S. at 565, n. 10. F&B
 15 Defendants should not be dragged into court, forced to prepare an answer by
 16 guesswork, on meritless and baseless allegations alone. This requirement of “fair
 17 notice” also serves to “prevent costly discovery on claims with no underlying
 18 factual or legal basis.” *Migdal v. Rowe Price-Fleming Int’l, Inc.*, 248 F3d 321, 328
 19 (4th Cir. 2001).

20 Here, Plaintiffs' Complaint fails to allege, with any amount of specificity,
 21 facts that give “fair notice” of the claims asserted against F&B Defendants.
 22 Plaintiffs vaguely allege that F&B Defendants effectuated their crimes through the
 23 judiciary. Compl., at ¶ 105. Plaintiffs also allege that Bartell spoke with Defendant
 24 Weinstein prior to his deposition. *Id.* at ¶ 455. Plaintiffs also allege that Defendant
 25 Weinstein stated he wished to settle. *Id.* at ¶ 622. Plaintiffs further allege that
 26 Defendant Toothacre represented Tirandazi and that Plaintiffs eavesdropped on
 27 communications regarding Tirandazi's deposition. *Id.* at ¶¶ 670-671. The only
 28 other reference to F&B Defendants is that they represented Geraci in the

1 underlying state court action. Compl., ¶¶ 524, 565, 571, 585, 598, 603, 621, 635,
2 684, 698, 716-718, 720, 723, 727, 738, 749, 762, 820-821, 1084.

3 There are no facts to support how these vague assertions relate or support
4 any of the causes of action against F&B Defendants. Notwithstanding that
5 litigation activities are protected, F&B Defendants are unsure of what harm, if any,
6 their alleged conduct might have caused because it is not pled.

7 Plaintiffs' Complaint is nothing more than a recitation of Plaintiffs' version
8 of the history regarding the underlying contract between Geraci and Cotton—the
9 exact matters already decided in the state court action. The Complaint is devoid of
10 any factual allegations that would provide F&B Defendants fair notice of the
11 claims asserted against them because Plaintiffs possess no actual facts to support
12 their allegations.

13 **4.22 Plaintiffs Have Failed to Allege Enough Facts to State a Claim for**
14 **Relief Plausible on Its Face**

15 The rule set forth in *Bell Atlantic Corp.* requires that a party demonstrate the
16 plausibility, as opposed to the conceivability, of its causes of action in the
17 complaint. *Bell Atlantic Corp., supra*, 550 U.S. at 936. While “fair notice” and
18 “plausibility” are related concepts, they are analyzed as separate issues: “When
19 evaluating a complaint, we ask whether the pleading gives the defendant fair notice
20 of the claim and includes sufficient ‘factual matter’ to state a plausible ground for
21 relief.” *Kirkpatrick v. County of Washoe*, 792 F.3d 1184, 1191 (9th Cir. 2015).
22 Plausibility asks for more than a “sheer probability” that a defendant has acted
23 unlawfully. *Ashcroft, supra*, 556 U.S. at 678.

24 Here, Plaintiffs have not alleged a “sheer probability” of wrongdoing, let
25 alone a coherent set of facts to support a plausible claim. The Complaint’s claims
26 against F&B Defendants are vague, conclusory, speculative, and implausible. The
27 bare allegations, which hardly ever refer to F&B Defendants, simply do not give
28 rise to a “plausibl[e] suggest[ion of] an entitlement to relief.” *Ashcroft, supra*, 556
U.S. at 681. In other words, the Complaint’s factual allegations do not support a

1 plausible inference that F&B Defendants engaged in any cognizable wrongdoing
2 against Plaintiffs.

3 Plaintiffs blithely note a “frivolous” lawsuit and opposition argument was
4 made, Plaintiffs were unhappy with the outcome, and thus, F&B Defendants must
5 have schemed with Geraci to deprive Cotton of the subject property. Compl.
6 ¶¶637, 652, 734. Plaintiffs allege absolutely no facts that remotely demonstrate the
7 plausibility of these allegations of civil rights violations. The Complaint lays out
8 one hundred and fifty-one (151) pages of “facts,” and then lists each cause of
9 action with incomplete legal elements. No cause of action asserted against F&B
10 Defendants relates any facts to support the claims. Plaintiffs solely blame F&B
11 Defendants for filing the state court action and making arguments Plaintiffs deem
12 “frivolous” in F&B Defendants’ role as Geraci’s attorneys. Compl., ¶¶ 12, 637,
13 734. Therefore, Plaintiffs have not “nudged” their claims “across the line from
14 conceivable to plausible.” *Bell Atlantic Corp, supra*, 550 U.S. at 570. As the
15 Complaint fails to allege any facts to state a claim for relief that is plausible on its
16 face, dismissal is proper. *See Bell Atlantic Corp., supra*, 550 U.S. at 555–56.

17 **4.3 THIS COURT SHOULD NOT ENTERTAIN PLAINTIFFS’** 18 **BASELESS CLAIMS**

19 Plaintiffs’ fourth and fifth causes of action are for violations of civil rights.
20 Plaintiffs’ eighth and ninth causes of action are for “declaratory relief”. As
21 explained below, each are invalid as to the F&B Defendants.

22 **4.31 Plaintiffs’ Causes of Action for Declaratory Relief are an** 23 **Improper Attempt to Circumvent the California Court of Appeals**

24 A lawsuit seeking federal declaratory relief must first present an actual case
25 or controversy within the meaning of Article III, section 2 of the United States
26 Constitution. *Aetna Life Ins. Co. of Hartford v. Haworth*, 300 U.S. 227, 239–40, 57
27 S.Ct. 461, 463–64, 81 L.Ed. 617 (1937); A ‘controversy’ in this sense must be one
28 that is appropriate for judicial determination. *Osborn v. Bank of United States*, 9
Wheat. 738, 819, 6 L.Ed. 204. It must also fulfill statutory jurisdictional

1 prerequisites. *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 672, 70 S.Ct.
 2 876, 879, 94 L.Ed. 1194 (1950). If the suit passes constitutional and statutory
 3 muster, the district court must also be satisfied that entertaining the action is
 4 appropriate. This determination is discretionary, for the Declaratory Judgment Act
 5 is “deliberately cast in terms of permissive, rather than mandatory, authority.”
 6 *Public Serv. Comm'n of Utah v. Wycoff Co.*, 344 U.S. 237, 250, 73 S.Ct. 236, 243–
 7 44, 97 L.Ed. 291 (1952) (J. Reed, concurring). The Act “gave the federal courts
 8 competence to make a declaration of rights; it did not impose a duty to do so.”
 9 *Public Affairs Associates v. Rickover*, 369 U.S. 111, 112, 82 S.Ct. 580, 581–82, 7
 10 L.Ed.2d 604 (1962).

11 Here, in the declaratory relief cause of action, Plaintiffs improperly seek to
 12 have the state court action’s judgement declared void and vacated because it
 13 allegedly enforces an illegal contract. Compl. ¶ 1076. Plaintiffs also seek to have
 14 F&B Defendants declared “unethical” and that Plaintiff Andrew Flores is not liable
 15 for harm that may be suffered in the future as a result of his tortious conduct.
 16 Compl. ¶¶ 1113, 1116. These are not Article III “controversies” appropriate for
 17 this Court’s determination. Such matters should be decided via the California court
 18 of appeal and by criminal courts. This matter has already been adjudicated and
 19 seeks a pseudo appeal of the state court action and for this Court to act as a
 20 criminal court. Thus, Plaintiffs’ declaratory relief causes of action are
 21 inappropriate for this Court’s determination.

22 **4.32 Plaintiffs’ Causes of Action for Violations of Sections 1985 & 1986**
 23 **Must Be Dismissed Because They Cannot Allege That F&B**
 24 **Defendants Acted Under Color of State Law.**

25 F&B Defendants are private attorneys, a private paralegal, and a private law
 26 firm. *See* Compl., ¶¶2, 29, 708. Plaintiffs’ failure to plead state action, i.e a
 27 cognizable claim under §1983, mandates dismissal of their claims under §1985⁵

28 ⁵ *Turner v. Larsen*, 536 Fed.Appx. 748, 748 (9th Cir. 2013) (“The district court properly dismissed Turner’s §1983 claim because Turner failed to allege facts

1 and §1986.⁶ State action is a prerequisite of federal civil rights claims.⁷ Plaintiffs
 2 are unable to plead any facts that attribute any action of F&B Defendants as state
 3 actions. Therefore, Plaintiffs’ claim for Violation of Civil Rights pursuant to 42
 4 U.S.C. §§1985 & 1986 must be dismissed.

5 “‘To state a claim under §1983, a plaintiff must: (1) allege the violation of a
 6 right secured by the Constitution and laws of the United States; and (2) *show that*
 7 *the alleged deprivation was committed by a person acting under color of state*
 8 *law.*”⁸ Courts must “start with the presumption that conduct by private actors is
 9 not state action.”⁹ It is Plaintiffs’ burden to allege facts sufficient to show that F&B
 10 Defendants were state actors. *Florer*, at 922; *Flagg Bros., Inc. v. Brooks*, 436 U.S.
 11 149, 156 (1978). “Dismissal of a section 1983 claim following a Rule 12(b)(6)
 12 motion is proper if the complaint is devoid of factual allegations that give rise to a
 13 plausible inference of either element.” *Naffe* at 1036; citing, *inter alia*, *Ashcroft v.*
 14 *Iqbal*, 556 U.S. 662, 677-678 (2009). The *Price* court explained the limitations
 15 upon the liberal federal pleading standards, stating “private parties are not
 16 generally acting under color of state law, and we have stated that conclusionary

17 _____
 18 showing that defendants acted under color of state law”); *Olsen v. Idaho State Bd.*
 19 *Of Med.*, 363 F.3d 916, 930 (9th Cir. 2004) (“to state a claim for conspiracy under
 20 §1985, a plaintiff must first have a cognizable claim under §1983”)

21 ⁶ *McCalden v. California Library Ass'n*, 955 F.2d 1214, 1219 (9th Cir.), cert.
 22 denied, 504 U.S. 957, 112 S.Ct. 2306 (1992) superseded by rule on other grounds
 23 as stated in *Harmston v. City and County of San Francisco*, 627 F.3d 1273, 1279–
 24 80 (9th Cir. 2010) (Claim can be stated under §1986 only if complaint states valid
 25 claim under §1985).

26 ⁷ See, e.g., *Naffe v. Frey*, 789 F.3d 1030 (9th Cir. 2015); *West v. Atkins*, 487 U.S.
 27 42, 48, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988); *Tsao v. Desert Palace, Inc.*, 698
 28 F.3d 1128, 1139 (9th Cir. 2012).

⁸ *Naffe v. Frey*, 789 F.3d 1030, 1035-1036 (9th Cir. 2015)(emphasis added);
 quoting *West v. Atkins*, 487 U.S. 42, 48, (1988); *Tsao v. Desert Palace, Inc.*, 698
 F.3d 1128, 1139 (9th Cir. 2012).

⁹ *Florer v. Congregation Pidyon Shevuyim*, 639 F.3d 916, 922 (9th Cir. 2011);
Sutton v. Providence Saint Joseph Medical Center, 192 F.3d 826, 836 (9th Cir.
 1999).

1 allegations, unsupported by facts [will be] rejected as insufficient to state a claim
 2 under the Civil Rights Act.” *Price v. Hawaii*, 939 F.2d 702, 707-708 (9th Cir.
 3 1991), citations omitted.

4 Regarding the need to scrutinize the sufficiency of allegations that private
 5 parties are subject to §1983 liability, *Price* recounted: “Careful adherence to the
 6 ‘state action’ requirement preserves an area of individual freedom by limiting the
 7 reach of federal law and federal judicial power. It also avoids imposing on the
 8 State, its agencies or officials, responsibility for conduct for which they cannot be
 9 fairly blamed. A major consequence is to require the courts to respect the limits of
 10 their own power as directed against state governments and private interests.” *Price*
 11 *v. Hawaii*, *supra*, 939 F.2d at 708, citing *Lugar v. Edmondson Oil Co.*, 457 U.S.
 12 922, 936-937 (1982).

13 The law is settled that private attorneys, like F&B Defendants, whether
 14 counseling or representing a private citizen, are not acting under color of state law
 15 for purposes of §§1983, 1985, & 1986.¹⁰ Ultimately, Plaintiffs have not and cannot
 16 allege that F&B Defendants are a state actor. Certainly, the allegations that F&B
 17 Defendants represented and/or counseled Geraci during the underlying state court
 18 action is plainly insufficient to plead that F&B Defendants were acting under color
 19 of state law.¹¹ State action is an essential element of Plaintiffs’ federal civil rights
 20 claim under 42 U.S.C. §§1983 and 1985. As such, Plaintiffs’ §1985 & §1986

21 _____
 22 ¹⁰ *Simmons v. Sacramento County Superior Court*, 318 F.3d 1156, 1161 (9th Cir.
 23 2003) (“Plaintiff cannot sue Mirante’s counsel under §1983, because he is a lawyer
 24 in private practice who was not acting under color of state law”); *Price v. State of*
 25 *Hawaii*, 939 F.2d 702, 707-708 (9th Cir. 1991) (“private parties are not generally
 26 acting under color of state law”); *see also Polk County v. Dodson*, 454 U.S. 312,
 325 (1981) (private attorney, even if appointed and paid for by the state, is not
 acting under color of state law when representing a defendant).

27 ¹¹ *See, e.g., Simmons v. Sacramento County Superior Court, supra*, 318 F.3d at
 28 1161 (“conclusory allegations that the lawyer was conspiring with state officers”
 are insufficient to show a private party is a state actor for purposes of 42 U.S.C.
 §1983).

1 claims against F&B Defendants must be dismissed.

2 **4.33 Plaintiffs’ §1985 Claims Fails Due to a Failure to Allege Racial or**
3 **Class-Based Discrimination**

4 “A claim [for intimidation] under section 1985(2), part 1, is composed of
5 three essential elements: (1) a conspiracy between two or more persons, (2) to
6 deter a witness by force, intimidation, or threat from attending federal court or
7 testifying freely in a matter there pending, which (3) causes injury to the claimant.”
8 *Rutledge v. Arizona Bd. Of Regents*, 859 F. 2d 732, 735 (9th Cir. 1988); *Chahal v.*
9 *Paine Webber Inc.*, 725 F. 2d 20, 23 (2d Cir. 1984).

10 A plaintiff *must show the conspiracy prevented the plaintiff from bringing*
11 *an effective case in federal court. Rutledge v. Arizona Bd. Of Regents, supra*, 859
12 F. 2d at 735. Regardless of whether the conspiracy could have affected Plaintiffs’
13 ability to present a case in state court, Plaintiffs must show its effect on the federal
14 court case. *Id* at 736.

15 Presumably, Plaintiffs’ reference to “his agents” refers to Geraci’s attorneys,
16 including F&B Defendants. Compl., ¶¶ 1046-1049, 1051-1054. It appears
17 Plaintiffs are alleging interference in the pending present federal judicial
18 proceeding and in Cotton’s federal suit (Cotton III), which has never been served
19 on any defendants, and in the concluded state court action (Cotton I). Compl.
20 ¶¶1046-1049, 1051-1054. Cotton III was stayed until after the conclusion of the
21 state court action. There has been no testimony in any contested proceedings in
22 Cotton III as it has not even been served. “[T]his action” is the current federal
23 court action filed by Plaintiffs, but there has been no testimony in any contested
24 proceedings as it has also not been served either.

25 A §1985(2) part 2 cause of action is different if it pertains to state judicial
26 proceedings, i.e the state court action, and requires Plaintiffs show a class-based
27 animus motivated the conspiracy.¹² Nowhere in Plaintiffs’ cause of action for

28 ¹² *Bretz v. Kelman* 773 F.2d 1026, 1029-1030 (9th Cir. 1985) (The Ninth Circuit,

1 violations of §1985 do Plaintiffs purport to be a member of any class. Further,
2 Plaintiffs do not allege any racial or class-based discrimination. Having failed to
3 sufficiently plead a §1985(2), part 2, claim, Plaintiffs has also failed to sufficiently
4 plead a §1986 claim because, as noted above, the former is a requirement.

5 **4.4 PLAINTIFFS’ ENTIRE COMPLAINT, AS IT RELATES TO**
6 **F&B DEFENDANTS, MUST BE STRIKEN UNDER THE**
7 **CALIFORNIA ANTI-SLAPP STATUTE.**

8 When a plaintiff alleges state law claims subject to the California anti-
9 SLAPP statue, the Court can dismiss these claims for legal deficiencies using a
10 Rule 12(b)(6) analysis.¹³ Furthermore, California’s anti-SLAPP statute applies to
11 state claims brought in federal courts.¹⁴ Cal. Code Civ. Proc. §425.16(b)(1)
12 establishes “a two-step process for determining” whether an action should be
13 stricken as a SLAPP. *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.

14 First, the court must determine “whether the defendant has made a threshold
15 showing that the challenged cause of action” arises from an act in furtherance of
16 the right of petition or free speech in connection with a public issue. *Id.* A
17 defendant meets the burden of showing that a plaintiff’s action arises from a

18 _____
19 rehearing the case en banc, held that because Bretz failed to allege racial or class-
20 based discrimination, he did not state a cause of action under § 1985(2) part 2 or §
21 1985(3) part 1.)

22 ¹³ See *Planned Parenthood Fed’n of Am. v. Ctr. for Med. Progress* 890 F.3d 828,
23 834, 2018 U.S. App. LEXIS 12649; *Bulletin Displays, LLC v. Regency Outdoor*
24 *Adver., Inc.*, (2006) 448 F. Supp. 2d. 1172, 1179; *Globetrotter Software, Inc. v.*
25 *Elan Computer Group, Inc.*, (1999) 63 F.Supp.2d 1127, 1130.

26 ¹⁴ *Resolute Forest Prods. v. Greenpeace Int’l*, 302 F. Supp. 3d 1005, 1024 (2017);
27 *Gottesman v. Santana*, 263 F. Supp. 3d 1034 (2017); *DC Comics v. Pac. Pictures*
28 *Corp.*, 706 F.3d 1009, 1013 (9th Cir. 2013) (“We have held that [an anti-SLAPP]
motion is available against state law claims brought in federal court.”); See
Planned Parenthood Fed’n of Am. v. Ctr. for Med. Progress, 890 F.3d 828, 2018
U.S. App. LEXIS 12649; *Bulletin Displays, LLC v. Regency Outdoor Adver., Inc.*,
(2006) 448 F. Supp. 2d. 1172, 1179; *Globetrotter Software, Inc. v. Elan Computer*
Group, Inc., (N.D. Cal. 1999) 63 F.Supp.2d 1127, 1130.

1 protected activity by showing that the acts underlying the plaintiff's cause of action
2 fall within one of the four categories of conduct described in C.C.P. §425.16(e).

3 Second, the court must “determine whether the plaintiff has demonstrated a
4 probability of prevailing on the claim.” *Navellier v. Sletten, supra*, 29 Cal.4th at
5 88. If the defendant makes a threshold showing that the cause of action arises from
6 an act in furtherance of the right of petition or free speech in connection with a
7 public issue and the plaintiff fails to demonstrate a probability of prevailing, then
8 the court must strike the cause of action. C.C.P. §425.16, subd. (b)(1).

9 **4.41 F&B Defendants’ Litigation Acts Are Protected Under §425.16**

10 A cause of action arising from F&B Defendants’ litigation activity may
11 appropriately be subject to a special motion to strike under C.C.P. §425.16.¹⁵
12 Litigation acts covered under §425.16 include communicative conduct such as
13 filing, funding, and the prosecution of civil action. *Ludwig v. Superior Court*
14 (1995) 37 Cal.App.4th 8, 17–19. Applying California state substantive law,
15 numerous cases hold the SLAPP statute protects lawyers sued for litigation-related
16 speech and activity.¹⁶

17 Here, it is indisputable that Plaintiffs’ claims “arise from an act in
18 furtherance of the right of petition or free speech.” Claims based in abuse of
19 process are subject to the anti-SLAPP statute because, by definition, they target
20 protected activity, the filing and maintenance of a lawsuit. *Jarrow Formulas, Inc.*
21 *v. LaMarche* (2003) 31 Cal.4th 728, 733–741. Plaintiffs have alleged F&B
22 Defendants filed the state court action “without probable cause”, represented

23 _____
24 ¹⁵ *Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056 (holding an abuse of process
25 claim with no reasonable probability of success subject to strike pursuant to anti-
SLAPP).

26 ¹⁶ *Thayer v. Kabateck Brown Kellner LLP* (2012) 207 Cal.App.4th 141 (citing
27 *Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056; *Jarrow Formulas, Inc. v.*
LaMarche (2003) 31 Cal.4th 728, 742–743; *Cabral v. Martins* (2009) 177
28 Cal.App.4th 471, 479–480; *Mindys Cosmetics, Inc. v. Dakar* 611 F.3d 590, 596
(9th Cir. 2010).).

1 Geraci, and made “frivolous opposition argument.” Compl., ¶¶ 15, 637, 734,
2 1001(vi). Plaintiffs’ unsubstantiated allegations of extra-judicial conspiracy are
3 precisely the types of meritless claims the California anti-SLAPP statute is
4 designed to eliminate at an early pleading stage.

5 **4.42 F&B Defendants’ Litigation Speech is Protected Activity**

6 All communicative actions or speech performed by attorneys as part of their
7 representation of a client in a judicial proceeding or other petitioning context is
8 protected by the anti-SLAPP statute and litigation privilege. *Contreras v. Dowling*
9 (2016) 5 Cal. App. 5th 394, 409; See Civ. Code § 47(b). There is no exception
10 simply because a plaintiff speculates, asserts, or alleges illegality or a statutory or
11 civil violation. *Bergstein v. Stroock & Stroock & Lavan LLP* (2015) 236 Cal. App.
12 4th 793, 805-810.

13 Plaintiffs’ allegations are entirely based on F&B Defendants’ litigation
14 speech and communicative conduct. Therefore, F&B Defendants’ alleged conduct,
15 speech, and activity is protected from retaliation in suit by the litigation privilege
16 and anti-SLAPP statute. Plaintiffs allege that F&B Defendants are “unethical
17 attorneys”, Compl., ¶1083. However, Plaintiffs’ speculative assertion that F&B
18 Defendants are “unethical” is not enough to meet the stringent illegality exception.
19 *Bergstein v. Stroock & Stroock & Lavan LLP* (2015) 236 Cal. App. 4th 793, 805-
20 810. There is no exception to the litigation privilege or anti-SLAPP statute for
21 mere violations of statutes, civil noncompliance, or bare assertions of
22 wrongdoing—only actual criminal conduct or intentionally tortious acts create an
23 exception to this privilege. *Id.* at 805-810.

24 Plaintiffs’ entire 177-page Complaint against F&B Defendants is based on
25 F&B Defendants’ actions as attorneys representing their client and their litigation-
26 related speech and activity. The Complaint seeks to punish F&B Defendants solely
27 for their representation of Plaintiffs’ adversary in the underlying state court action.
28 Since the allegations against F&B Defendants are pled under state law claims, they

1 are subject to C.C.P. §425.16, recognized by this Court through the Federal Rules.
2 All state law causes of action asserted against F&B Defendants are subject to
3 dismissal pursuant to California anti-SLAPP.

4 **4.43 Plaintiffs Cannot Show their Pleading is Adequate or Amendable**

5 Once a defendant establishes the anti-SLAPP law applies, the burden shifts
6 to the plaintiff to prove his pleadings are sufficient and not subject to any privilege
7 under the anti-SLAPP statute. *Planned Parenthood Fed'n of Am., Inc. v. Ctr. for*
8 *Med. Progress*, 890 F.3d 828, 834 (9th Cir. 2018). A plaintiff cannot
9 establish any probability of prevailing if the litigation privilege precludes the
10 defendant's liability on the claim. *Bergstein v. Stroock & Stroock & Lavan LLP*
11 (2015) 236 Cal. App. 4th 793, 814. When a defendant brings issues of a "special
12 motion to strike based on deficiencies in a plaintiff's complaint, the motion must
13 be treated in the same manner as a motion under Rule 12(b)(6) except that the
14 attorney's fee provision of §425.16(c) applies." *Planned Parenthood Fed'n of Am.*
15 *v. Ctr. for Med. Progress, supra*, 890 F.3d at 834.

16 All F&B Defendants' conduct alleged in the Complaint is litigation related
17 actions, and each subject to the special motion to strike under C.C.P. §425.16. By
18 failing to state a claim upon which relief can be granted, all Plaintiffs' claims are
19 inadequately pled under Rule 12(b)(6) standards. Accordingly, Plaintiffs' state law
20 claims in the Complaint should be stricken pursuant to C.C.P. §425.16.

21 Consequently, F&B Defendants should be awarded reasonable attorneys' fees
22 attributable to the bringing of this motion.

23 **4.5 PLAINTIFFS' LACK STANDING TO SUE**

24 When a defendant challenges the Article III standing of a plaintiff, Rule
25 12(b)(1) provides the appropriate standard because it is the court's subject-matter
26 jurisdiction which is challenged. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir.
27 2000). Once a party has moved to dismiss for lack of subject matter jurisdiction,
28 the opposing party bears the burden of establishing the Court's jurisdiction. See

1 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128
 2 L.Ed.2d 391 (1994). The Plaintiffs carry their burden by putting forth “the manner
 3 and degree of evidence required” by the stage of the litigation. *Lujan v. Defenders*
 4 *of Wildlife*, 504 U.S. 555, 561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).

5 To satisfy the constitutional requirement of standing that arises from Article
 6 III, a plaintiff must allege the “irreducible minimum” of: (1) an injury in fact via
 7 “an invasion of a legally protected interest which is (a) concrete and particularized,
 8 and (b) actual or imminent, not conjectural or hypothetical”; (2) causation, i.e., the
 9 injury is “fairly traceable to the challenged action of the defendant”; and (3)
 10 redressability, i.e. it is “likely, as opposed to merely speculative, that the injury
 11 will be redressed by a favorable decision.” *Lujan*, 504 U.S. at 560, 112 S.Ct.
 12 2130–61 (internal citations and quotations omitted).

13 Legal actions cannot be brought simply on the ground that an individual or
 14 group is displeased with the outcome of a lawsuit. Plaintiffs’ allegations neither
 15 plead an injury in fact, indicate that F&B Defendants conduct caused Plaintiffs’
 16 harm, nor will Plaintiffs’ injury be redressed by a favorable decision as Plaintiffs
 17 are angry at government regulations prohibiting CUPs for marijuana within 1,000
 18 feet of each other and the state court action’s result. Even assuming, Plaintiff
 19 Andrew Flores has standing, the other Plaintiffs clearly have no standing in the
 20 matter as they are just individuals Cotton and/or Plaintiff Andrew Flores met.

21 Compl. ¶ 19.

22 **4.6 MOTION TO STRIKE REDUNDANT, IMMATERIAL,**
 23 **IMPERTINENT, AND SCANDALOUS MATTERS**

24 A motion to strike under Rule 12(f) may be joined with a motion to dismiss
 25 under Rule 12(b)(6). Fed. R. Civ. P. 12(g)(1). Rule 12(f) allows a court, or a party
 26 by motion, to strike from a pleading “any redundant, immaterial, impertinent, or
 27 scandalous matter.” Fed. R. Civ. P. 12(f). An “[i]mmaterial’ matter is that which
 28

1 has no essential or important relationship to the claim for relief... being pleaded.”¹⁷

2 Plaintiff’s prayer for punitive damages is immaterial as to any allegations
3 against F&B Defendants. Therefore, Plaintiff’s prayer for punitive damages should
4 be dismissed and Plaintiff’s various inflammatory statements in their Complaint
5 should be stricken as immaterial, redundant, impertinent and scandalous.

6 **4.7 PLAINTIFFS CANNOT FIX THE MANY DEFECTS TO THEIR**
7 **CLAIMS, NOR DO THEY WANT TO, SO THEY SHOULD**
8 **NOT BE GIVEN LEAVE TO AMEND.**

9 Decisional law holds that leave to amend should not be given if “amendment
10 would be futile.”¹⁸ Since F&B Defendants cannot be construed as state actors and
11 Noerr-Pennington is an absolute defense to claims based on F&B Defendants
12 representation of Mr. Geraci in the state court action, Plaintiffs will be unable to
13 plead *any* claim against F&B Defendants. No matter how Plaintiffs label their
14 claims, Noerr-Pennington bars it.¹⁹ Furthermore, Plaintiffs admit that they filed a
15 “rushed Complaint” due to Plaintiffs’ own threats. Compl. ¶1108. Because
16 Plaintiffs lack standing and could never plead a plausible legal theory against F&B

17 ¹⁷ *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), rev'd on other
18 grounds, 510 U.S. 517 (1994) (quoting 5 Charles A. Wright & Arthur R. Miller,
Federal Practice and Procedure § 1382, at 706-07 (1990)).

19 ¹⁸ *Palm v. Los Angeles Department of Water and Power*, 889 F.3d 1081, 1084 (9th
20 Cir. 2018); *Deveraturda v. Globe Aviation Security Services*, 454 F.3d 1043, 1049-
21 50 (9th Cir. 2006) (holding leave to amend properly denied where amendment
22 would be futile); *McQuillion v. Schwarzenegger*, 369 F.3d 1091, 1099 (9th Cir.
2004).

23 ¹⁹ *Dean v. Friends of Pine Meadow*, 21 Cal.App.5th 91, 108–109 (2018) (“While
24 the Noerr-Pennington Doctrine was formulated in the context of antitrust cases, it
25 has been applied or discussed in cases involving other types of civil liability,
26 including liability for interference with contractual relations or prospective
27 economic advantage [citations] or unfair competition [citation]. Additionally, the
28 “principle of constitutional law that bars litigation arising from injuries received as
a consequence of First Amendment petitioning activity [should be applied],
regardless of the underlying cause of action asserted by the plaintiffs.” [Citation.]
“[T]o hold otherwise would effectively chill the defendants’ First Amendment
rights.”), internal citation omitted.

1 Defendants, their claims should be dismissed.²⁰

2 **5.0 CONCLUSION**

3 In addition to lacking standing to bring the instant suit, Plaintiffs have failed
4 to sufficiently state a claim for relief against F&B Defendants. Furthermore, Noerr-
5 Pennington and Anti-SLAAP laws insulate the F&B Defendants from any liability
6 for providing legal counsel to Co-Defendant Geraci or representing him in the
7 underlying state court action. Plaintiffs will be unable to demonstrate the F&B
8 Defendants alleged conduct is not privileged and protected nor that they were a
9 state actor. Accordingly, F&B Defendants respectfully request this Court dismiss
10 Plaintiffs’ Complaint against F&B Defendants with prejudice. As Plaintiff cannot
11 plead a claim against F&B Defendants, nor do they want to, this motion should be
12 granted without leave to amend.

13

14 Dated: June 12, 2020

KJAR, McKENNA & STOCKALPER LLP

15

By: /s/ Gregory B. Emdee

16

JAMES J. KJAR

17

JON R. SCHWALBACH

18

GREGORY B. EMDEE

19

Attorneys for Defendants Michael

20

Weinstein, Scott H Toothacre,

21

Elyssa Kulas, Rachel M. Prendergast

22

and Ferris & Britton

23

24

25 ²⁰ *Yagman v. Garcetti*, 852 F.3d 859, 863 (9th Cir. 2017) (“dismissal is appropriate
26 where the plaintiff failed to allege ‘enough facts to state a claim to relief that is
27 plausible on its face’”); *Golo, LLC, v. Higher Health Network, LLC, and Troy
28 Shanks*, No. 3:18-CV-2434-GPC-MSB) 2019 WL 446251, at *4 (S.D. Cal., Feb. 5,
2019) (“Dismissal is warranted under Rule 12 (b)(6) where the complaint lacks a
cognizable legal theory”).

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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2020, I electronically filed the foregoing **NOTICE OF MOTION AND MOTION BY DEFENDANT MICHAEL WEINSTEIN TO DISMISS FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES** with the Clerk of the Court for the United States District Court, Southern District of California by using the Southern District CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the USDC-Southern District of California CM/ECF system.

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 841 Apollo Street, Suite 100, El Segundo, California 90245. The envelope or package was placed in the mail at El Segundo, California. I am readily familiar with this business’s practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully paid.

I further certify that participants in the case not registered as CM/ECF users have been mailed the above described documents by First Class Mail, postage pre-paid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days, to the following non-CM/ECF participants:

NONE
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 30, 2020 at El Segundo, California.

/s/ Berta R. Howard

BERTA R. HOWARD, Declarant

1 KJAR, McKENNA & STOCKALPER LLP
James J. Kjar, Esq. (SBN: 94027)
2 kjar@kmslegal.com
Jon R. Schwalbach, Esq. (SBN: 281805)
3 jschwalbach@kmslegal.com
Gregory B. Emdee, Esq. (SBN: 315374)
4 gemdee@kmslegal.com

5 Attorneys for Defendants,
MICHAEL WEINSTEIN, SCOTT H. TOOTHACRE and
6 FERRIS & BRITTON

7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 ANDREW FLORES, an individual,)
10 AMY SHERLOCK, on her own)
behalf and on behalf of her minor)
11 children, T.S. and S.S., JANE DOE,)
12 an individual,)

13 Plaintiffs,)

14 vs.)

14 GINA M. AUSTIN, an individual;)
15 AUSTIN LEGAL GROUP APC, a)
California Corporation; JOEL R.)
16 WOHLFEIL, an individual;)
17 LAWRENCE (AKA LARRY))
GERACI, an individual; TAX &)
18 FINANCIAL CENTER, INC., a)
19 California Corporation; REBECCA)
BERRY, an individual; JESSICA)
20 MCELFRISH, an individual;)
21 SALAM RAZUKI, an individual;)
22 NINUS MALAN, an individual;)
MICHAEL ROBERT WEINSTEIN,)
23 an individual; SCOTT TOOTHACRE,)
24 an individual; ELYSSA KULAS, an)
individual; RACHEL M.)
25 PRENDERGAST, an individual;)
26 FERRIS & BRITTON APC, a)
27 California Corporation; DAVID S.)

Case No.: 3:20-cv-00656-BAS-MDD

**REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF DEFENDANTS
MICHAEL WEINSTEIN, SCOTT H.
TOOTHACRE AND FERRIS &
BRITTON’S MOTION TO DISMISS**

Date: August 3, 2020
Time: 10:00 a.m.

**NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT**

District Judge: Cynthia A. Bashant
Magistrate Judge: Mitchell D. Dembin
Courtroom: 4B (4th Floor)

Complaint Filed: April 3, 2020
Trial Date: None

1 DEMIAN, an individual, ADAM C.)
2 WITT, an individual, RISHI S.)
3 BHATT, an individual, FINCH,)
4 THORTON, and BAIRD, a Limited)
5 Liability Partnership, JAMES D.)
6 CROSBY, an individual; ABHAY)
7 SCHWEITZER, an individual and dba)
8 TECHNE; JAMES (AKA JIM))
9 BARTELL, an individual; BARTELL)
10 & ASSOCIATES, a California)
11 Corporation; MATTHEW WILLIAM)
12 SHAPIRO, an individual;)
13 MATTHEW W. SHAPIRO, APC, a)
14 California corporation; NATALIE)
15 TRANGMY NGUYEN, an individual,)
16 AARON MAGAGNA, an individual;)
17 A-M INDUSTRIES, INC., a)
18 California Corporation; BRADFORD)
19 HARCOURT, an individual; ALAN)
20 CLAYBON, an individual; SHAWN)
21 MILLER, an individual; LOGAN)
22 STELLMACHER, an individual;)
23 EULENTIAS DUANE)
24 ALEXANDER, an individual;)
25 BIANCA MARTINEZ; an individual;)
26 THE CITY OF SAN DIEGO, a)
27 municipality; 2018FMO, LLC, a)
28 California Limited Liability)
Company; FIROUZEH TIRANDAZI,)
an individual; STEPHEN G. CLINE,)
an individual; JOHN DOE, an)
individual; and DOES 2 through 50,)
inclusive,)
Defendants,)

JOHN EK, an individual;)
THE EK FAMILY TRUST, 1994)
Trust,)
Real Parties In Interest.)

1 **PLEASE TAKE NOTICE** that on August 3, 2020, or as soon thereafter,
2 Defendants MICHAEL WEINSTEIN, SCOTT H. TOOTHACRE and FERRIS &
3 BRITTON (collectively “Defendants”) hereby request the Court to take judicial notice
4 pursuant to Federal Rules of Evidence 201 of the following documents:
5

- 6 1. Special Verdict Form No. 1; *Geraci v. Cotton*, Case No.: 37-2017-00010073-
7 CU-BC-CTL; Filed July 16, 2019 (attached hereto as **Exhibit 1**).
- 8 2. First Amended Complaint; *Cotton v. Geraci et al.*, Case No. 3:18-cv-00325-
9 BAS-MDD; Filed May 13, 2020 (attached hereto as **Exhibit 2**).
- 10 3. Special Verdict Form No. 2; *Geraci v. Cotton*, Case No.: 37-2017-00010073-
11 CU-BC-CTL; Filed July 16, 2019 (attached hereto as **Exhibit 3**).
- 12 4. Notice of Entry of Judgment; *Geraci v. Cotton*, Case No.: 37-2017-00010073-
13 CU-BC-CTL; Filed August 20, 2019 (attached hereto as **Exhibit 4**).
- 14 5. Complaint; *Geraci v. Cotton*, Case No.:37-2017-00010073-CU-BC-CTL; filed
15 March 21, 2017 (attached hereto as **Exhibit 5**).
- 16 6. Second Amended Cross-Complaint; *Geraci v. Cotton*, Case No.: 37-2017-
17 00010073-CUBC- CTL; filed August 25, 2017 (attached hereto as **Exhibit 6**).
- 18 7. Original Federal Court Complaint Filed by Darryl Cotton; *Cotton v. Geraci*, Case
19 No.: 3:18-cv-00325-GPC-MDD; filed February 9, 2018 (attached hereto as
20 **Exhibit 7**).
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Dated: June 30, 2020

KJAR, McKENNA & STOCKALPER LLP

By: /s/ Gregory B. Emdee
JAMES J. KJAR
JON R. SCHWALBACH
GREGORY B. EMDEE
Attorneys for Defendants Michael Weinstein,
Scott H Toothacre, and Ferris & Britton

CERTIFICATE OF SERVICE

1
2
3 I hereby certify that on June 30, 2020, I electronically filed the foregoing
4 **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS**
5 **MICHAEL WEINSTEIN, SCOTT H. TOOTHACRE AND FERRIS &**
6 **BRITTON’S MOTION TO DISMISS** with the Clerk of the Court for the United
7 States District Court, Southern District of California by using the Southern District
8 CM/ECF system.

9 Participants in the case who are registered CM/ECF users will be served by the
10 USDC-Southern District of California CM/ECF system.

11 I am employed in the County of Los Angeles, State of California; I am over the
12 age of eighteen years and not a party to the within action; my business address is 841
13 Apollo Street, Suite 100, El Segundo, California 90245. The envelope or package was
14 placed in the mail at El Segundo, California. I am readily familiar with this business’s
15 practice for collecting and processing correspondence for mailing. On the same day that
16 correspondence is placed for collection and mailing, it is deposited in the ordinary
17 course of business with the United States Postal Service, in a sealed envelope with
18 postage fully paid.

19 I further certify that participants in the case not registered as CM/ECF users have
20 been mailed the above described documents by First Class Mail, postage pre-paid, or
21 have dispatched it to a third party commercial carrier for delivery within three (3)
22 calendar days, to the following non-CM/ECF participants:

23 *NONE*

24 *///*

1 I declare under penalty of perjury under the laws of the State of California the
2 foregoing is true and correct and that this declaration was executed on June 30, 2020 at
3 El Segundo, California.
4

5 /s/ Berta R. Howard

6 BERTA R. HOWARD, Declarant
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ORIGINAL

FILED
Clerk of the Superior Court

JUL 16 2019

By: A. TAYLOR

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI,
Plaintiff,
v.
DARRYL COTTON,
Defendant.

Case No. 37-2017-00010073-CU-BC-CTL

SPECIAL VERDICT FORM NO. 1

Judge: Hon. Joel R. Wohlfeil

DARRYL COTTON,
Cross-Complainant,
v.
LARRY GERACI,
Cross-Defendant.

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1. Did Plaintiff Larry Geraci and Defendant Darryl Cotton enter into the November 2, 2016 written contract?

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Yes No

If your answer to question 1 is yes, answer question 2. If your answer to question 1 is no, answer no further questions, and have the presiding juror sign and date this form.

2. Did Plaintiff do all, or substantially all, of the significant things that the contract required him to do?

Yes No

If your answer to question 2 is yes, do not answer question 3 and answer question 4. If your answer to question 2 is no, answer question 3.

3. Was Plaintiff excused from having to do all, or substantially all, of the significant things that the contract required him to do?

Yes No

If your answer to question 3 is yes, answer question 4. If your answer to question 3 is no, answer no further questions, and have the presiding juror sign and date this form.

4. Did all the condition(s) that were required for Defendant's performance occur?

Yes No

If your answer to question 4 is yes, do not answer question 5 and answer question 6. If your answer to question 4 is no, answer question 5.

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5. Was the required condition(s) that did not occur excused?

Yes No

If your answer to question 5 is yes, then answer question 6. If your answer to question 5 is no, answer no further questions, and have the presiding juror sign and date this form.

6. Did Defendant fail to do something that the contract required him to do?

Yes No

or

Did Defendant do something that the contract prohibited him from doing?

Yes No

If your answer to either option for question 6 is yes, answer question 7. If your answer to both options is no, do not answer question 7 and answer question 8.

7. Was Plaintiff harmed by Defendant's breach of contract?

Yes No

If your answer to questions 4 or 5 is yes, please answer question 8.

Breach of the Implied Covenant of Good Faith and Fair Dealing

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8. Did Defendant unfairly interfere with Plaintiff's right to receive the benefits of the contract?

Yes No

If your answer to question 8 is yes, answer question 9. If your answer to question 8 is no, but your answer to question 7 is yes, do not answer question 9 and answer question 10. If your answers to questions 7 and 8 were not yes, answer no further questions, and have the presiding juror sign and date this form.

9. Was Plaintiff harmed by Defendant's interference?

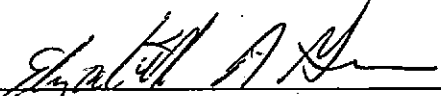
Yes No

If your answer to question 9 is yes, answer question 10. If your answer to question 9 is no, but your answer to question 7 is yes, answer question 10. If your answers to questions 7 and 9 were not yes, answer no further questions, and have the presiding juror sign and date this form.

10. What are Plaintiff's damages?

\$ 260,109.28

Dated: 7/16/19

Signed: 
Presiding Juror

After all verdict forms have been signed, notify the bailiff that you are ready to present your verdict in the courtroom.

1 **Darryl Cotton**
2 **6176 Federal Blvd.**
3 **San Diego, CA 92114**
4 **Telephone: (619) 954-4447**
5 **Fax: (619) 229-9387**

2020 MAY 13 PM 2: 18

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

6 **Plaintiff Pro Se**

BY _____ DEPUTY

7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 DARRYL COTTON, an individual,)
10 Plaintiff,)
11 vs.)
12 CYNTHIA BASHANT, an individual; JOEL)
13 WOHLFEIL, an individual; LARRY GERACI, an)
14 individual; REBECCA BERRY, an individual;)
15 GINA AUSTIN, an individual; MICHAEL)
16 WEINSTEIN, an individual; JESSICA)
17 MCELFRESH, an individual; and DAVID)
18 DEMIAN, an individual)
19 Defendants.)

CASE NO.:3:18-cv-00325-BAS-MDD

PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR:

- 1. DEPRIVATION OF CIVIL RIGHTS (42 U.S.C. § 1983)
- 2. DEPRIVATION OF CIVIL RIGHTS (42 U.S.C. § 1983)
- 3. DECLARATORY RELIEF
- 4. PUNITIVE DAMAGES

Related Case: 20CV0656-BAS-MDD

DEMAND FOR JURY TRIAL

20 ///
21 ///
22 ///

1
2 Plaintiff *Pro Se* Darryl Cotton (“Plaintiff,” “Cotton” or “I”) alleges upon information and belief
3 as follows:

4 **INTRODUCTION**

5 1. This action is a collateral attack on a state court judgment issued by Judge Joel R. Wohlfeil in
6 *Cotton I*.¹

7 2. “Under California law, the ‘well-settled rule [is] that the courts will not aid a party whose claim
8 for relief rests on an illegal transaction.’” *Singh v. Baidwan*, 651 F. App'x 616, 2-3 (9th Cir. 2016)
9 (quoting *Wong v. Tenneco, Inc.*, 702 P.2d 570, 576 (Cal. 1985) (in bank)).

10 3. “A contract to perform acts barred by California's licensing statutes is illegal, void and
11 unenforceable.” *Consul Ltd. v. Solide Enterprises, Inc.*, 802 F.2d 1143, 1148 (9th Cir. 1986).

12 4. *Cotton I* was a breach of contract action filed by Lawrence Geraci against Cotton.

13 5. Geraci and Cotton reached an oral joint venture agreement (the “JVA”) to develop a cannabis
14 dispensary at Cotton’s real property (the “Property”).

15 6. However, Geraci had no intention of honoring his agreement with Cotton. In fact, Geraci could
16 not honor his agreement with Cotton because he had been repeatedly sanctioned for his
17 owning/management of illegal marijuana dispensaries and, consequently, is barred as a matter of law
18 from owning a cannabis dispensary (the “Illegality Issue”).

19 7. To get around the Illegality Issue and still own the cannabis permit at the Property, Geraci
20 applied for a cannabis permit at the Property with the City in the name of his receptionist, Rebecca
21 Berry (the “Berry Application”).

22 8. In the Berry Application, Berry certified under penalty of perjury she is the sole owner of the
23 cannabis permit being sought (the “Berry Fraud”).

24 9. At trial in *Cotton I*, Geraci testified he instructed Berry to submit the Berry Application.

25 10. At trial in *Cotton I*, Berry testified she made the certifications knowing they were false.

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28 ¹ “*Cotton I*” means *Larry Geraci vs Darryl Cotton*, San Diego County Superior Court, Case
No. 37-2017-00010073-CU-BC-CTL.

1 11. Austin, as Geraci's cannabis attorney and responsible for the Berry Application, testified in
2 *Cotton I* that it is not unlawful for Berry to have submitted the Berry Application with false statements.

3 12. The JVA had a condition precedent, the approval of a marijuana dispensary at the Property

4 13. *Cotton I* was filed by attorney Michael Weinstein of Ferris & Britton without probable cause.

5 14. When Cotton accused Weinstein of being an unethical attorney, Wohlfeil admonished Cotton
6 stating from the bench that he does not believe that Weinstein is even capable of acting unethically.

7 15. Wohlfeil stated that the basis of his belief is based on the fact that both he and Weinstein had
8 started their legal careers at the same time and from the years of Weinstein having practiced before him
9 when he became a judge.

10 16. Unfortunately for Wohlfeil, Weinstein *is* an unethical attorney that cares more about avoiding
11 liability for filing a malicious prosecution action than betraying Wohlfeil's blind trust in him.

12 17. The *Cotton I* judgment is void for being procured via a fraud on the court, the product of judicial
13 bias, and because the alleged contract has an unlawful object and is therefore illegal and cannot be
14 enforced.

15 18. This action will force the judge overseeing this matter to choose between exposing the unethical
16 actions of at least two judges and numerous attorneys or to enforce an illegal contract that rewards a
17 drug dealer for seeking to acquire a cannabis permit under fraudulent pretenses and filing a malicious
18 prosecution action.

19 19. Cotton hopes that the presiding judge in this matter will not retaliate against Cotton for seeking
20 to protect his rights.

21 20. Cotton has painfully come to learn that judges instinctively protect other judges because they
22 operate from the assumption that a pro se litigant making allegations of bias and prejudice after a jury
23 trial are just sore losers. And 99.99% of the time they are probably right.

24 21. However, that probability does not give a judge the right to violate their judicial oath and not
25 vet the facts and arguments they are presented with.

26 22. In complete candid honesty, Cotton has been fighting for over three years to vindicate his rights
27 and he is simply disgusted and exhausted of hearing that he needs to be subservient and denigrate
28

1 himself before judges even when they violate Cotton's basic rights because they assume he is a pro se
2 "conspiracy nut" litigant.

3 23. Cotton continues pushing forward, trusting not in the ridiculous notions of Justice or the Rule
4 of Law (this case proves those things do not exist), but because he knows that if he keeps filing lawsuits
5 against the unethical attorneys and the judges who have objectively shown bias against Cotton as a pro
6 se litigant that he will eventually get the attention of the media.

7 24. Then, fear of liability will force a judge to finally expose Wohlfeil for the biased judge that he
8 is. A judge who ruined Cotton's life because he chose to trust Weinstein rather than do the job he is
9 paid to do and apply the law to the facts which he had been presented with.

10 **JURISDICTION AND VENUE**

11 25. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1343(3), 2283, and 18
12 U.S.C. § 1964 which confer original jurisdiction to the District Courts of the United States for all civil
13 actions arising under the United States Constitution or the laws of the United States, as well as civil
14 actions to redress deprivation under color of state law, of any right immunity or privilege secured by
15 the United States Constitution.

16 26. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of
17 state and/or local law of rights, privileges, immunities, liberty and property, secured to all citizens by
18 the First, Fourth and Fourteenth Amendments to the United States Constitution, without due process
19 of law.

20 27. Venue is proper in this Court because the events described below took place in this judicial
21 district and the real property at issue is located in this judicial district.

22 **PARTIES**

23 28. Cotton is, and at all times mentioned was, an individual residing within the County of San
24 Diego, California.

25 29. Cotton is, and at all times material to this action was, the sole record owner of the commercial
26 real property located at 6176 Federal Boulevard, San Diego, California 92114 ("Property").
27
28

1 30. Upon information and belief Defendant Geraci is, and at all times mentioned was, an individual
2 residing within the County of San Diego, California.

3 31. Upon information and belief, Defendant Berry is, and at all times mentioned was, an individual
4 residing within the County of San Diego, California.

5 32. Upon information and belief, Defendant Gina Austin ("Austin") is, and at all times mentioned
6 was, an individual residing within the County of San Diego, California.

7 33. Upon information and belief, Defendant Michael Weinstein ("Weinstein") is, and at all times
8 mentioned was, an individual residing within the County of San Diego, California.

9 34. Upon information and belief, Defendant Jessica McElfresh ("McElfresh") is, and at all time
10 mentioned was, an individual residing within the County of San Diego, California.

11 35. Upon information and belief, Defendant David Demian ("Demian") is, and at all times
12 mentioned was, an individual residing within the County of San Diego, California.

13 36. Upon information and belief, Defendant Joel Wohlfeil ("Wohlfeil") is, and at all times
14 mentioned was, an individual residing within the County of San Diego, California.

15 37. Upon information and belief, Defendant Cynthia Bashant ("Bashant") is, and at all time
16 mentioned was, an individual residing within the County of San Diego, California.

17 38. Cotton does not know the true names and capacities of the defendants named DOES 1 through
18 10 and, therefore, sues them by fictitious names. Cotton is informed and believes that DOES 1 through
19 10 are in some way responsible for the events described in this Complaint and are liable to Cotton
20 based on the causes of action below. Cotton will seek leave to amend this Complaint when the true
21 names and capacities of these parties have been ascertained.

22 **FACTUAL ALLEGATIONS**

23 **I. Background**

24 A. Geraci is an intelligent and highly sophisticated businessman who has been sanctioned
25 at least three times for his ownership/management of illegal marijuana
dispensaries.

26 39. Geraci has approximately 40 years of experience providing tax services and has been the
27 owner-manager of Tax & Financial Center, Inc. ("Tax Center") since 2001.

28 40. Tax Center provides sophisticated tax, financial and accounting services.

1 41. Geraci has been an Enrolled Agent with the IRS since 1999.

2 42. Geraci was a California licensed real estate salesperson for approximately 25 years from 1993-
3 2017.

4 43. Geraci has been sued by the City for his ownership/management of at least three illegal
5 marijuana dispensaries (the “Illegal Marijuana Dispensaries”).

6 44. Geraci settled all three cases, collectively paying fines in the amount of \$100,000.

7 45. Geraci did not “coincidentally” lease three real properties to the Illegal Marijuana
8 Dispensaries; he was an operator and beneficial owner. *See, e.g., City of San Diego v. CCSquared*
9 *Wellness Cooperative*, Case No. Case No. 37-2015-00004430-CU-MC-CTL, ROA No. 44 (Stipulated
10 Judgment) at 2:15-16 (“The address where the Defendants were maintaining a marijuana dispensary
11 business at all times relevant to this action is 3505 Fifth Ave, San Diego, CA 92103”).

12 B. State and City Cannabis Laws and Regulations

13 46. It is against State and City laws and regulations to apply for a cannabis license or permit in the
14 name of a third party who knowingly and falsely states in the application that they are the applicant for
15 the cannabis license and/or permit being sought.

16 47. It is against the public policy of the State and City to issue cannabis licenses or permits to
17 individuals with a history of engaging in illegal commercial marijuana activity.

18 48. It is against the public policy of the State and City to issue cannabis licenses or permits to an
19 applicant who seeks to acquire a license or permit via unlawful means.

20 49. As an example of applicable State law when the JVA was formed, California Business and
21 Professions Code (“BPC”) § 19323, amended by 2016 Cal SB 837 and effective June 27, 2016,
22 mandated the denial of an application for an cannabis license if the applicant had, *inter alia*,
23 purposefully omitted required information, made false representations, been sanctioned for
24 unauthorized commercial marijuana activity in the three years preceding the application, or
25 failed to comply with local ordinances.

26 50. As an example of applicable City laws/regulations, the San Diego Municipal Code (“SDMC”)
27 prohibits the furnishing of false or incomplete information in any application for any type of license or
28 permit from the City. SDMC § 11.0401(b) (“No person willfully shall make a false statement or fail to

1 report any material fact in any application for City license, permit, certificate, employment or other
2 City action under the provisions of the [SDMC].”).

3 51. Further, SDMC § 11.0402 provides that “[w]henver in [the SDMC] any act or omission is
4 made unlawful, it shall include causing, permitting, aiding or abetting such act or omission.”

5 52. SDMC § 121.0311 states as follows: “Violations of the Land Development Code shall be
6 treated as *strict liability offenses* regardless of intent.”²

7 53. Thus, applying for a cannabis permit or license, or aiding a party to apply for same, and willfully
8 making a false statement in the application is illegal regardless of intent.³

9 C. Gina Austin

10 54. Attorney Gina Austin attended the Thomas Jefferson School of Law and was admitted to the
11 California Bar on December 1, 2006.

12 55. Austin, with approximately two to three years of experience as an attorney, founded her law
13 firm ALG in 2009.

14 56. Austin, in her own words, is “an expert in cannabis licensing and entitlement at the state and
15 local levels and regularly speak[s] on the topic across the nation.”⁴

16 57. Austin has worked on at least 50 conditional use permit applications with the City.

17 58. Austin has been the single most successful attorney in the City in aiding her clients acquire
18 cannabis permits.

19 59. Austin’s success is not because she is a legal genius, but because she engages in and ratifies
20 unlawful actions against the competition, such as filing sham lawsuits like *Cotton I*.

21
22 ² The Land Development Code consists of Chapters 11 through 14 of the SDMC (encompassing §§
111.0101-1412.0113). (SDMC § 111.0101(a).)

23 ³ See *City of San Diego v. 1735 Garnet, LLC*, D071332, at *16 (Cal. Ct. App. Oct. 30, 2017) (“[I]n a
24 recent case in which a land owner who leased property to a marijuana dispensary was sued for
25 violations of a Los Angeles Municipal Code (LAMC) section similar to SDMC section 121.0302(a),
26 the appellate court concluded the land owner’s argument that he lacked knowledge of the marijuana
27 dispensary and thus should not be held liable was meritless, when the violation of LAMC section
12.21A.1(a), was a *strict liability offense*. [Citation.] The same is true here. The terms of the SDMC
specifically provide that violations of the Land Development Act are to be treated as ‘*strict liability*
offenses.’ (SDMC, § 121.0311.)”).

28 ⁴ *Razuki v. Malan*, San Diego County Superior Court, Case No. 37-2018-0034229-CU-BC-
CTL, ROA 127 (Declaration of Gina Austin) at ¶ 2.

1 **II. The November Document and the November 3, 2016 Phone Call**

2 60. In early 2016 Geraci contacted Cotton to purchase the Property because it potentially qualified
3 to operate a cannabis dispensary.

4 61. In good faith, Cotton engaged with Geraci in preliminary due diligence.

5 62. On October 31, 2016, Geraci, without Cotton’s knowledge or consent, had Berry submit the
6 Berry Application.

7 63. On November 2, 2016, Geraci and Cotton reached the JVA pursuant to which Cotton would
8 sell the Property to Geraci.

9 64. Cotton’s consideration for entering into the JVA included (i) a 10% equity position in the
10 dispensary, (ii) on a monthly basis, the greater of \$10,000 or 10% of the net profits of the dispensary,
11 (iii) a \$50,000 non-refundable deposit for Cotton to keep if the permit for a dispensary was not
12 approved at the Property, and (iv) Geraci promised to have his attorney, Gina Austin, promptly reduce
13 the JVA to writing for execution.

14 65. At the meeting Geraci and Cotton executed a three-sentence document drafted by Geraci (the
15 “November Document”).

16 66. The November Document was executed with the intent it be a receipt for Cotton’s acceptance
17 of \$10,000 in cash towards the \$50,000 non-refundable deposit.

18 67. That same day:

19 (i) Geraci emailed Cotton a copy of the November Document, which in the email
20 attachment Geraci had titled the November Document the ‘Geraci – Cotton Contract’.

21 (ii) Upon review and within hours of having received the Geraci email Cotton replied and
22 requested that Geraci confirm in writing the November Document is not a purchase contract reflecting
23 ‘any final agreement’. (the “Request for Confirmation”); and

24 (iii) Geraci replied and confirmed the November Document is not a purchase contract (the
25 “Confirmation Email”). A true and correct copy of these emails are attached hereto as Exhibit 1.

26 68. The Request for Confirmation and the Confirmation Email prove that Cotton and Geraci did
27 not mutually assent to the November Document being a purchase contract for the Property (the “Mutual
28 Assent Issue”).

1 69. On November 3, 2016, Cotton called Geraci to talk about Geraci branding the contemplated
2 dispensary at the Property with his nonprofit 151 Farms organization.

3 70. At 1:41 p.m. on November 3, 2016, Cotton emailed Geraci after they had spoken as follows:

4 Larry, [¶] Per our phone call the name 151 AmeriMeds has not been taken nor has there
5 been any business entity formed from it. If you see this as an opportunity to
6 piggyback some of the work I've done and will continue to do as 151 Farmers with
7 further opportunities as a potential franchise for your dispensary I'd like for you to
8 consider that as the process evolves. [¶] We'll firm it up as you see fit.

9 71. On March 21, 2017, after Geraci repeatedly refused to reduce the JVA to writing as promised,
10 Cotton emailed Geraci and terminated the JVA with Geraci for anticipatory breach.

11 72. In his email terminating the JVA, Cotton specifically informed Geraci that he was selling the
12 Property to a third-party: "To be clear, as of now, you have no interest in my [P]roperty, contingent or
13 otherwise. I will be entering into an agreement with a third-party[.]"

14 73. On March 21, 2017, after terminating the JVA with Geraci, Cotton entered into a written joint
15 venture agreement with Richard Martin.

16 **III. The Cotton I Litigation**

17 74. The next day, March 22, 2017, Weinstein emailed Cotton copies of the *Cotton I* complaint and
18 a lis pendens recorded by F&B on the Property (the "F&B Lis Pendens").

19 75. The *Cotton I* complaint alleges causes of action for (i) breach of contract, (ii) breach of the
20 covenant of good faith and fair dealing, (iii) specific performance, and (iv) declaratory relief.

21 76. All four causes of action are premised on the allegation that the November Document is a fully
22 integrated purchase contract.

23 77. The *Cotton I* complaint alleges that Cotton anticipatorily breached his agreement with Geraci
24 by demanding additional consideration not originally agreed to, including the 10% equity position in
25 the dispensary.
26
27
28

1 78. Weinstein filed the *Cotton I* complaint relying on the *Pendergrass*⁵ line of reasoning seeking to
2 use the parole evidence rule as a shield to bar the admission of the Confirmation Email and other
3 incriminating parole evidence.⁶

4 79. On May 12, 2017, Cotton filed pro se a cross-complaint in *Cotton I* against Geraci and Berry
5 with causes of action for: (i) quiet title, (ii) slander of title, (iii) fraud/fraudulent misrepresentation,
6 (iv) fraud in the inducement, (v) breach of contract, (vi) breach of oral contract, (vii) breach of implied
7 contract, (viii) breach of the implied covenant of good faith and fair dealing, (iv) trespass, (x)
8 conspiracy, and (xi) declaratory and injunctive relief.

9 80. After dealing with the procedural difficulties of representing himself pro se, Cotton reached an
10 agreement with a litigation investor to hire counsel to represent him in *Cotton I* and related legal matters
11 required to acquire a cannabis permit at the Property.

12 81. Cotton's litigation investor reached an agreement with then-prominent and yet to be publicly
13 disgraced cannabis attorney Jessica McElfresh for her representation of Cotton in *Cotton I*.

14 82. McElfresh did not disclose that Geraci and numerous of Geraci's associates are her clients.

15 83. McElfresh did not disclose that she shares numerous clients with Austin.

16 84. In May 2017, the San Diego County District Attorney's office filed charges against McElfresh
17 for her efforts in seeking to conceal the illegal cannabis operations of one of her clients from
18 government inspectors.

19 85. Specifically, McElfresh was charged with, *inter alia*, Conspiracy to Commit a Crime,
20 Manufacturing of a Controlled Substance, and Obstruction of Justice.

21 86. McElfresh charged Cotton for her legal services for Cotton in *Cotton I*.

22 87. McElfresh referred Cotton's litigation investor to David Demian of Finch, Thornton & Baird to
23 represent Cotton in *Cotton I*.

24
25
26 ⁵ *Bank of America etc. Assn. v. Pendergrass* (1935) 4 Cal.2d 258.

27 ⁶ *See IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 641 (emphasis added) (“under *Pendergrass*,
28 external evidence of promises inconsistent with the express terms of a written contract were not
admissible, even to establish fraud.”).

1 88. Neither McElfresh nor Demian disclosed that FTB had shared clients with Geraci and his
2 business.

3 89. FTB twice amended Cotton's pro se complaint with the intent to sabotage Cotton's case.

4 90. Most notably, FTB removed from Cotton's complaint the allegations that Geraci and Berry
5 conspired to acquire a cannabis permit at the Property in Berry's name because Geraci could not own
6 a cannabis permit because of the Illegality Issue.

7 91. Further, FTB removed Cotton's allegation that Geraci and Cotton had reached a valid and
8 binding oral agreement and replaced it with an allegation that Geraci and Cotton had reached an
9 agreement to agree in the future, which is not a valid and enforceable agreement.

10 92. Demian, like Weinstein, Austin and McElfresh, is a criminal with a license to practice law and
11 represents the most vile type of all attorneys – those who would connive to defeat their own client's
12 case.

13 **IV. The Disavowment Allegation**

14 93. From the filing of *Cotton I* in March 2017 until April 2018 Weinstein argued that the statute of
15 frauds and the parol evidence rule barred the Confirmation Email and other parol evidence as proof of
16 the JVA.

17 94. For example, Weinstein argued:

18 Cotton alleges, based on extrinsic evidence [(e.g., the Confirmation Email)], that the
19 actual agreement between the parties contains material terms and conditions in
20 addition to those in the [November Document] as well as a term (a \$50,000 deposit rather
21 than the \$10,000 deposit stated in the [November Document]) that expressly conflicts
22 with a term of the [November Document]. However, such a claim cannot stand as extrinsic
evidence cannot be employed to prove an agreement at odds with the terms of the
written memorandum.

23 95. However, in April 2018, attorney Jacob Austin specially appearing for Cotton filed a motion to
24 expunge the F&B Lis Pendens and cited and argued for the first time in *Cotton I* that Geraci/Weinstein

1 could not use the parol evidence rule to bar the Confirmation Email pursuant to the *Pendergrass* line
2 of reasoning because it had been overruled by *Riverisland* in 2013 (the “Lis Pendens Motion”).⁷

3 96. In opposition to the Lis Pendens Motion, Geraci submitted a supporting declaration alleging for
4 the first time that (i) he sent the Confirmation Email by mistake because he only read the first sentence
5 of Cotton’s Request for Confirmation email; (ii) that on November 3, 2016 he called Cotton to tell him
6 that he sent the Confirmation Email by mistake; (iii) Cotton agreed with Geraci that the Confirmation
7 Email was sent by mistake and he was not entitled to a 10% equity position in the dispensary; and (iv)
8 Cotton sent the Request for Confirmation **pretending** that Geraci and him had reached an agreement
9 that included a 10% equity position for Cotton (the “Disavowment Allegation”).

10 97. Pursuant to FRCP 201 Cotton requests the Court take judicial notice of Geraci’s April 9, 2018
11 declaration attached hereto as Exhibit 2.

12 98. Geraci’s April 9, 2018 declaration contradicts dozens of his evidentiary and judicial admissions
13 he set forth in his declarations, discovery responses and arguments in briefs prior to then.

14 99. Even assuming that Geraci’s April 9, 2018 declaration did not contradict his previous judicial
15 and evidentiary admissions, his claim is barred by the statute of frauds and the parole evidence rule.

16 100. The statute of frauds applies to an agreement for the sale of real property as Geraci
17 alleges, but it does not apply to a joint venture agreement as Cotton alleges.⁸

18 101. Geraci cannot just pretend the Confirmation Email has no legal effect.

19 **V. The Federal Lawsuits**

20 102. In February 2018, Cotton filed suit and a TRO in federal court against, *inter alia*, Geraci,
21 Weinstein and Austin alleging, *inter alia*, RICO and § 1983 claims (“*Cotton IIF*”).⁹

22
23
24 ⁷*Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Association* (“*Riverisland*”) (2013) 55 Cal.4th 1169, 1182 (“[W]e overrule *Pendergrass* and its progeny, and reaffirm the venerable maxim stated in *Ferguson v. Koch* [(1928) 204 Cal. 342, 347]: ‘**[I]t was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud.**’”) (emphasis added).

25
26 ⁸*Bank of California v. Connolly* (1973) 36 Cal.App.3d 350, 374 (“[A]n oral joint venture agreement concerning real property is not subject to the statute of frauds even though the real property was owned by one of the joint venturers.”).

27
28 ⁹*Cotton v. Geraci*, Case No.: 18cv325-GPC(MDD).

1 103. On February 28, 2019, because of *Cotton I*, Judge Curiel stayed *Cotton III* pursuant to
2 the *Colorado River* doctrine.

3 104. In July 2019, Wohifeil entered judgment against Cotton in *Cotton I* after a jury trial
4 implicitly finding that the November Document is a fully integrated purchase contract that has a lawful
5 object as a matter of law.

6 105. Cotton filed a motion for new trial (“MNT”) arguing, *inter alia*, assuming the November
7 Document is a contract, it is an illegal contract that cannot be enforced. (*Cotton I*, ROA No 672.)

8 106. Wohlfeil denied the MNT believing Weinstein’s frivolous opposition argument that
9 Cotton had waived the defense of illegality to the enforcement of a contract because Cotton had not
10 allegedly raised the Illegality Issue before in *Cotton I*.

11 107. Factually and legally the arguments are contradicted by the facts and law. Cotton did
12 raise the Illegality Issue before the MNT and even if he had not he cannot waive the defense of
13 illegality. *See City Lincoln-Mercury Co. v. Lindsey*, 52 Cal.2d 267, 274 (Cal. 1959) (“A party to an
14 illegal contract cannot ratify it, cannot be estopped from relying on the illegality, and **cannot waive** his
15 right to urge that defense.”).

16 108. On January 10, 2020, Judge Curiel recused himself from *Cotton III* after Cotton had
17 filed a motion to lift the *Colorado River* stay and a TRO seeking to have Judge Curiel found to be a
18 biased judge that was enforcing an illegal contract and a request for counsel.

19 109. Cotton believes that Judge Curiel realized that with the information contained within
20 his motion to lift the stay, Cotton was not a conspiracy nut and that Wohlfeil was a biased judge and
21 *Cotton I* represents a three-year long egregious miscarriage of justice.

22 110. *Cotton III* was transferred to Judge Bashant and on January 15, 2020 Bashant lifted the
23 *Colorado River* stay, but denied Cotton’s in Forma Pauperis request for court appointed counsel.

24 111. On April 9, 2020, Cotton filed an ex parte application seeking reconsideration of
25 Bashant’s order denying his request for counsel premised on, *inter alia*, the argument that Cotton
26 needed to prove Judge Wohlfeil is biased.

27 112. Getting any kind of relief from judges against judges is virtually impossible. Judges
28 protect judges.

1 113. On April 16, 2020, Judge Bashant denied Cotton's ex parte application in a typical pro
2 se fashion with a conclusory finding that Cotton had failed to prove "exceptional circumstances," but
3 without describing why.

4 114. Judge Wohlfeil is enforcing an illegal contract and he made statements that manifestly
5 prove he is biased because he stated Weinstein is not capable of acting unethically when the entire
6 *Cotton I* case is undisputable evidence that Weinstein is acting unethically.

7 115. Any reasonable person would find that a judge enforcing an illegal contract and
8 requiring a jury to determine a matter of law does represent exceptional circumstances.

9 116. Cotton now believes that with her recent rulings, Judge Bashant is covering up for
10 Wohlfeil.

11 117. Both Wohlfeil and Bashant served on the San Diego Superior Court for at least seven
12 years together before Bashant was elevated to the federal court.

13 118. Because of the violence and Wohlfeil's action led Martin to believe that he was actively
14 seeking to sabotage Cotton's case Martin sold his interest in the property to Cotton's former attorney,
15 Andrew Flores.

16 119. On April 3, 2020, Andrew Flores filed suit in federal court and an ex parte TRO after
17 Cotton told him that some of his supporters, who had lent him significant money, were considering
18 taking violent action against Geraci's attorneys to bring in law enforcement agencies to investigate this
19 case because Wohlfeil and the City Attorney's are corrupt. (*Flores, et al. v. Austin, et al.*, Case No.20-
20 cv-656-BAS-MDD.)

21 120. On April 20, 2020, Bashant denied Flores' TRO. The opening paragraph states:
22 "Plaintiffs... allege civil rights violations under 42 U.S.C. § 1983, make a 'neglect to perform wrongful
23 act' cause of action, and seek various forms of declaratory relief. The complaint is almost impossible
24 to summarize due to its length and confusing nature."

25 121. Bashant's order also alleges that Flores did not comply with FRCP 65(b) for the issuance
26 of a TRO based, in part, on Bashant's allegation that Corina Young is a "defendant."

27 122. First, according to Bashant, Flores lacks any professional competence as an attorney
28 because he sued for "neglect[ing] to perform wrongful act."

1 123. Flores did not.

2 124. Flores filed a § 1986 cause of action for “neglect to **prevent** a wrongful act” which is
3 clearly stated in the title page of his complaint.

4 125. Second, Corina Young is a *witness* who has been threatened from providing her
5 testimony. She is not a “defendant.”

6 126. Bashant simply made that up.

7 127. Third, Flores did provide notice, case law and argument for why notice is not required
8 pursuant to FRCP 65.

9 128. Fourth, given the preceding three points, Bashant’s allegation that the Flores’ complaint
10 is “confusing” is meritless as she clearly does not understand even the most basic facts she was
11 presented with.

12 129. The bottom line is that Bashant either knew that statements she attributed to Flores were
13 true or she did not know because she did not take the time to vet Flores’ complaint and TRO.

14 130. If Bashant knew they were false, she did so to purposefully denigrate anyone that seeks
15 to prove that Wohlfeil is a biased judge to Cotton’s great prejudice.

16 131. If Bashant did not know her statements were false, then without justification she is
17 making rulings warranted by law and facts, but in reality, she never even bothered understand the facts
18 and apply the law.

19 132. In either scenario, a reasonable person would conclude that Bashant is a biased judge
20 who is not impartial.

21 **VI. This Complaint**

22 133. The Flores complaint is 177 pages and explains in detail how the *Cotton I* complaint is
23 but one sham action among many filed in furtherance by Geraci and his associates seeking to acquire
24 as many cannabis permits as they can in the City to establish a monopoly.

25 134. Cotton does not have the ability to explain the conspiracy in a clear and succinct manner
26 so he files this amended complaint focused on the fact that the November Document cannot be a
27 contract because it lacks mutual assent, has an unlawful object and Judge Wohlfeil’s statements and
28 actions prove that he is biased.

1 135. Cotton did not have a fair and impartial tribunal.

2 136. Cotton does not have the ability to explain the entire conspiracy which gives rise to
3 RICO, antitrust, obstruction of justice, and fraud causes of action that includes multiple government
4 and private attorneys.

5 137. However, Cotton intends to prepare and file a motion seeking court counsel to amend
6 this Complaint to include all defendants against whom Cotton has valid causes of action.

7 **First Cause of Action -§ 1983**

8 (Plaintiff against Bashant)

9 138. Plaintiff realleges and incorporates herein by reference the allegations in the preceding
10 paragraphs.

11 139. The presence of bad faith can render an exercise of legal judgment judicial misconduct;
12 “Bad faith” in this context means “acts within the lawful power of a judge which nevertheless are
13 committed for a corrupt purpose, i.e., for any purpose other than the faithful discharge of judicial
14 duties.” *Cannon v. Commission on Judicial Qualifications*, 14 Cal.3d 678, 695 (Cal. 1975).

15 140. Cotton has filed judicial complaints against both Wohlfeil and Bashant for their failure
16 to exercise their judicial discretion in bad faith.

17 141. Bashant’s order finding that Cotton did not prove exceptional circumstances when
18 Wohlfeil entered a judgment in *Cotton I* that enforces an illegal contract as a matter of law, coupled
19 with her fabricated statements that she attributed to Flores’ that undermines the case against Wohlfeil,
20 would lead any reasonable person to believe that she is covering up for Wohlfeil. Or, at the very least,
21 that she is not impartial.

22 142. “Bias exists where a court has prejudged, or reasonably appears to have prejudged, an
23 issue.” *Kenneally v. Lungren*, 967 F.2d 329, 333 (9th Cir. 1992) (quotation and citation omitted).

24 143. Cotton should not have to “hope” that Bashant will not take other unethical and
25 prejudged actions against him either to continue to cover up for Wohlfeil or to retaliate against him
26 for exposing that she fabricated and attributed multiple statements to Flores that were not true.

27 144. This relief against Bashant is prospective.

28 **Second Cause of Action -§ 1983**

(Plaintiff against Wohlfeil)

145. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs.

146. Plaintiff seeks to have the *Cotton I* judgment vacated and a new trial in state court where he originally filed his cross-complaint and Wohlfeil should not continue to preside over *Cotton I*.

147. As with Bashant, Cotton should not have to hope that Wohlfeil will not retaliate against him for exposing him for being a biased judge that exposed him for being a judge that thinks the defense of illegality is capable of being waived because Cotton had allegedly not raised the Illegality Issue before the MNT.

148. This relief against Wohlfeil is prospective.

Third Cause of Action – Declaratory Relief

(Plaintiff against the Geraci, Berry, Weinstein, Austin, McElfresh and Demian)

149. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs.

150. Plaintiff seeks to have the *Cotton I* judgment declared void and vacated for being procured by a fraud on the court, the product of judicial bias, and because it enforces an illegal contract.

Fourth Cause of Action – Punitive Damages

(Plaintiff against all defendants)

151. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs.

152. “At some point, justice delayed is justice denied.” *Southern Pacific Transp. Co. v. I.C.C.*, 871 F.2d 838, 848 (9th Cir. 1989).

153. Since March 2017, Plaintiff has incurred over **\$3,000,000** from 7 different law firms and at least three contract paralegals in legal fees. The law firms are: (i) Finch, Thornton, & Baird; (ii) Law Office of Jacob Austin; (iii) Kerr & Wagstaffe LLP; (iv) Law Office of JoEllen Plaskett; (v) Law Office of Andrew Flores; (vi) California Appellate Law Group; and (vii) Tiffany & Bosco. The three contract paralegals are: (i) Leanne Thomas; (ii) Zoe Villaroman, and (iii) Lori Hatmaker.

1 154. “Generally, [punitive damages] cases fall into three categories: (1) really stupid
2 defendants; (2) really mean defendants; and, (3) really stupid defendants who could have caused a great
3 deal of harm by their actions but who actually caused minimal harm.” *TXO Production Corp. v.*
4 *Alliance Resources Corp.*, 509 U.S. 443, 453 n. 15 (1993) (citation and quotation omitted).

5 155. Judges are protected by their judicial immunity.

6 156. But *Cotton I* at every point, has failed to state a cause of action as filed when Weinstein
7 incorrectly assumed the parol evidence rule would bar the Confirmation Email and as de facto
8 amended, when confronted by *Riverisland*, to alleging that the Confirmation Email was sent by
9 mistake.

10 157. Cotton believes it would be an egregious miscarriage of justice to find that defendants
11 can file and maintain a malicious prosecution action that at no point stated a cause of action and rely
12 on the judgments or orders by judges, that were biased against Cotton, to avoid being held liable for
13 Cotton’s legal fees and costs.


14 **PRAYER FOR RELIEF**

15 WHEREFORE, Cotton prays for relief against defendants as follows:

- 16 1. That this Court disqualify Bashant from continuing to preside over this matter;
- 17 2. That the *Cotton I* judgment be declared void;
- 18 3. That the *Cotton I* action be stayed pending resolution of this action;
- 19 4. That Wohlfeil be declared bias and prohibited from continuing to preside over Cotton I upon
20 its resumption pending resolution of this Complaint;
- 21 5. General, exemplary, special and/or consequential damages in the amount to be proven at trial,
22 but which are no less than \$7,000,000;
- 23 6. Punitive damages against all defendants saved Wohlfeil and Bashant who are protected by
24 their judicial immunity;
- 25 7. That this Court appoint Cotton counsel;
- 26 8. That this Court grant Cotton’s appointed counsel leave to amend this Complaint to include all
27 defendants and set forth all material allegations; and
- 28 9. That other relief is awarded as the Court determines is in the interest of justice.

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Dated: May 13, 2020.



Darryl Cotton,
Cotton and Cotton Pro Se

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Cotton, Darryl.

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
In Pro Per

DEFENDANTS
Bashant, Cynthia A., Wohlfeil, Joel, Garaci, Lawrence, Berry, Rebecca, Austin, Gina M., Weinstein, Michael, R., McElfresh, Jessica, Demien, David.

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions

CONTRACT	TORTS	FOREFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. 1983
 Brief description of cause:
Deprivation of Civil Rights

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Bashant DOCKET NUMBER 20CV0656-BAS-MDD

DATE 05/13/2020 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ORIGINAL

FILED
Clerk of the Superior Court

JUL 16 2019

By: A. TAYLOR

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI,
Plaintiff,

v.

DARRYL COTTON,
Defendant.

Case No. 37-2017-00010073-CU-BC-CTL

Judge: Hon. Joel R. Wohlfeil

SPECIAL VERDICT FORM NO. 2

DARRYL COTTON,
Cross-Complainant,

v.

LARRY GERACI,
Cross-Defendant.

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1 1. Did Cross-Complainant Darryl Cotton and Cross-Defendant Larry Geraci enter into an oral
2 contract to form a joint venture?

3
4 Yes No

5
6 If your answer to question 1 is yes, answer question 2. If your answer to question 1 is no, do not
7 answer questions 2 – 7 and answer question 8.

8
9 2. Did Cross-Complainant do all, or substantially all, of the significant things that the contract
10 required him to do?

11
12 Yes No

13
14 If your answer to question 2 is yes, do not answer question 3 and answer question 4. If your
15 answer to question 2 is no, answer question 3.

16
17 3. Was Cross-Complainant excused from having to do all, or substantially all, of the significant
18 things that the contract required him to do?

19
20 Yes No

21
22 If your answer to question 3 is yes, answer question 4. If your answer to question 3 is no, do not
23 answer questions 4 – 7 and answer question 8.

24
25 4. Did all the condition(s) that were required for Cross-Defendant's performance occur?

26
27 Yes No

28

1 If your answer to question 4 is yes, do not answer question 5 and answer question 6. If your
2 answer to question 4 is no, answer question 5.

3
4 5. Was the required condition(s) that did not occur excused?

5
6 Yes No

7
8 If your answer to question 5 is yes, answer question 6. If your answer to question 5 is no, do not
9 answer questions 6 – 7 and answer question 8.

10
11 6. Did Cross-Defendant fail to do something that the contract required him to do?

12
13 Yes No

14
15 or

16
17 Did Cross-Defendant do something that the contract prohibited him from doing?

18
19 Yes No

20
21 If your answer to either option for question 6 is yes, answer question 7. If your answer to both
22 options is no, do not answer question 7 and answer question 8.

23
24 7. Was Cross-Complainant harmed by Cross-Defendant's breach of contract?

25
26 Yes No

27
28 Please answer question 8.

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Fraud - Intentional Misrepresentation

8. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

Yes No

If your answer to question 8 is yes, answer question 9. If your answer to question 8 is no, do not answer questions 9 – 12 and answer question 13.

9. Did Cross-Defendant know that the representation was false, or did Cross-Defendant make the representation recklessly and without regard for its truth?

Yes No

If your answer to question 9 is yes, answer question 10. If your answer to question 9 is no, do not answer questions 10 – 12 and answer question 13.

10. Did Cross-Defendant intend that Cross-Complainant rely on the representation?

Yes No

If your answer to question 10 is yes, answer question 11. If your answer to question 10 is no, do not answer questions 11 – 12 and answer question 13.

11. Did Cross-Complainant reasonably rely on the representation?

Yes No

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If your answer to question 11 is yes, answer question 12. If your answer to question 11 is no, do not answer question 12 and answer question 13.

12. Was Cross-Complainant's reliance on Cross-Defendant's representation a substantial factor in causing harm to Cross-Complainant?

Yes No

Please answer question 13.

Fraud - False Promise

13. Did Cross-Defendant make a promise to Cross-Complainant that was important to the transaction?

Yes No

If your answer to question 13 is yes, answer question 14. If your answer to question 13 is no, do not answer questions 14 – 18 and answer question 19.

14. Did Cross-Defendant intend to perform this promise when Cross-Defendant made it?

Yes No

If your answer to question 14 is no, answer question 15. If your answer to question 14 is yes, do not answer questions 15 – 18 and answer question 19.

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15. Did Cross-Defendant intend that Cross-Complainant rely on this promise?

Yes No

If your answer to question 15 is yes, answer question 16. If your answer to question 15 is no, do not answer questions 16 – 18 and answer question 19.

16. Did Cross-Complainant reasonably rely on this promise?

Yes No

If your answer to question 16 is yes, answer question 17. If your answer to question 16 is no, do not answer questions 17 – 18 and answer question 19.

17. Did Cross-Defendant perform the promised act?

Yes No

If your answer to question 17 is no, answer question 18. If your answer to question 17 is yes, do not answer question 18 and answer question 19.

18. Was Cross-Complainant's reliance on Cross-Defendant's promise a substantial factor in causing harm to Cross-Complainant?

Yes No

Please answer question 19.

1 **Fraud - Negligent Misrepresentation**

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19. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

Yes No

If your answer to question 19 is yes, answer question 20. If your answer to question 19 is no, do not answer questions 20 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

20. Did Cross-Defendant honestly believe that the representation was true when Cross-Defendant made it?

Yes No

If your answer to question 20 is yes, answer question 21. If your answer to question 20 is no, do not answer questions 21 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

21. Did Cross-Defendant have reasonable grounds for believing the representation was true when Cross-Defendant made it?

Yes No

If your answer to question 21 is yes, answer question 22. If your answer to question 21 is no, do not answer questions 22 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If

1 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding
2 juror sign and date this form.

3

4 22. Did Cross-Defendant intend that Cross-Complainant rely on the representation?

5

6 Yes No

7

8 If your answer to question 22 is yes, answer question 23. If your answer to question 22 is no, do
9 not answer questions 23 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If
10 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding
11 juror sign and date this form.

12

13 23. Did Cross-Complainant reasonably rely on the representation?

14

15 Yes No

16

17 If your answer to question 23 is yes, answer question 24. If your answer to question 23 is no, do
18 not answer question 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your
19 answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror
20 sign and date this form.

21

22 24. Was Cross-Complainant's reliance on Cross-Defendant's representation a substantial factor
23 in causing harm to Cross-Complainant?

24

25 Yes No

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1 If your answer to question 24 is yes, answer question 25. If your answer to question 24 is no, but
2 if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and
3 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

4
5 25. What are Cross-Complainant's damages?

6
7 \$ _____

8
9
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11 Dated: 7/16/19

Signed: 
Presiding Juror

12
13 After all verdict forms have been signed, notify the bailiff that you are ready to present your verdict in
14 the courtroom.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/20/2019 at 03:27:00 PM

Clerk of the Superior Court
By E-Filing, Deputy Clerk

1 FERRIS & BRITTON
2 A Professional Corporation
3 Michael R. Weinstein (SBN 106464)
4 Scott H. Toothacre (SBN 146530)
5 501 West Broadway, Suite 1450
6 San Diego, California 92101
7 Telephone: (619) 233-3131
8 Fax: (619) 232-9316
9 mweinstein@ferrisbritton.com
10 stoothacre@ferrisbritton.com

11 Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and
12 Cross-Defendant REBECCA BERRY

13 **SUPERIOR COURT OF CALIFORNIA**
14 **COUNTY OF SAN DIEGO, HALL OF JUSTICE**

15 LARRY GERACI, an individual,
16 Plaintiff,

17 v.

18 DARRYL COTTON, an individual; and DOES 1
19 through 10, inclusive,
20 Defendants.

Case No. 37-2017-00010073-CU-BC-CTL
Judge: Hon. Joel R. Wohlfeil
Dept.: C-73

NOTICE OF ENTRY OF JUDGMENT
[IMAGED FILE]

21 DARRYL COTTON, an individual,
22 Cross-Complainant,

23 v.

24 LARRY GERACI, an individual, REBECCA
25 BERRY, an individual, and DOES 1 THROUGH
26 10, INCLUSIVE,
27 Cross-Defendants.

Action Filed: March 21, 2017
Trial Date: June 28, 2019

28 ///

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///

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, August 19, 2019, judgment was entered in the above-captioned cause. A conformed copy of said judgment is attached hereto and incorporated herein by reference as though fully set forth.

FERRIS & BRITTON
A Professional Corporation

Dated: August 20, 2019

By: Michael R. Weinstein
Michael R. Weinstein
Scott H. Toothacre
Attorneys for Plaintiff/Cross-Defendant LARRY GERACI
and Cross-Defendant REBECCA BERRY

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
08/19/2019 at 11:53:00 AM
Clerk of the Superior Court
By Jessica Pascual, Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual; and DOES 1
through 10, inclusive,

Defendants.

Case No. 37-2017-00010073-CU-BC-CTL

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73

JUDGMENT ON JURY VERDICT
[PROPOSED BY PLAINTIFF/CROSS-
DEFENDANTS]

DARRYL COTTON, an individual,

Cross-Complainant,

v.

LARRY GERACI, an individual, REBECCA
BERRY, an individual, and DOES 1
THROUGH 10, INCLUSIVE,

Cross-Defendants.

[IMAGED FILE]

Action Filed: March 21, 2017
Trial Date: June 28, 2019

This action came on regularly for jury trial on June 28, 2019, continuing through July 16, 2019, in Department C-73 of the Superior Court, the Honorable Judge Joel R. Wohlfeil presiding. Michael R. Weinstein, Scott H. Toothacre, and Elyssa K. Kulas of FERRIS & BRITTON, APC, appeared for Plaintiff and Cross-Defendant, LARRY GERACI and Cross-Defendant, REBECCA BERRY, and Jacob P. Austin of THE LAW OFFICE OF JACOB AUSTIN, appeared for Defendant and Cross-Complainant, DARRYL COTTON.

1 A jury of 12 persons was regularly impaneled and sworn. Witnesses were sworn and testified and
2 certain trial exhibits admitted into evidence.

3 During trial and following the opening statement of Plaintiff/Cross-Complainant’s counsel, the
4 Court granted the Cross-Defendants’ nonsuit motion as to the fraud cause of action against Cross-
5 Defendant Rebecca Berry only in Cross-Complainant’s operative Second Amended Cross-Complaint. A
6 copy of the Court’s July 3, 2019 Minute Order dismissing Cross-Defendant Rebecca Berry from this
7 action is attached as Exhibit “A.”

8 After hearing the evidence and arguments of counsel, the jury was duly instructed by the Court
9 and the cause was submitted to the jury with directions to return a verdict on special issues on two special
10 verdict forms. The jury deliberated and thereafter returned into court with its two special verdicts as
11 follows:

12 **SPECIAL VERDICT FORM NO. 1**

13 We, the Jury, in the above entitled action, find the following special verdict on the questions
14 submitted to us:

15

16 **Breach of Contract**

17

18 1. Did Plaintiff Larry Geraci and Defendant Darryl Cotton enter into the November 2, 2016
19 written contract?

20 Answer: YES

21

22 2. Did Plaintiff do all, or substantially all, of the significant things that the contract required him
23 to do?

24 Answer: NO

25

26 3. Was Plaintiff excused from having to do all, or substantially all, of the significant things that
27 the contract required him to do?

28 Answer: YES

1 4. Did all the condition(s) that were required for Defendant's performance occur?

2 Answer: NO

3
4 5. Was the required condition(s) that did not occur excused?

5 Answer: YES

6
7 6. Did Defendant fail to do something that the contract required him to do?

8 Answer: YES

9 or

10 Did Defendant do something that the contract prohibited him from doing?

11 Answer: YES

12
13 7. Was Plaintiff harmed by Defendant's breach of contract?

14 Answer: YES

15
16 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

17
18 8. Did Defendant unfairly interfere with Plaintiffs right to receive the benefits of the contract?

19 Answer: YES

20
21 9. Was Plaintiff harmed by Defendant's interference?

22 Answer: YES

23
24 10. What are Plaintiffs damages?

25 Answer: \$ 260,109.28

26
27 A true and correct copy of Special Verdict Form No. 1 is attached hereto as Exhibit "B."

28 ///

SPECIAL VERDICT FORM NO. 2

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1. Did Cross-Complainant Darryl Cotton and Cross-Defendant Larry Geraci enter into an oral contract to form a joint venture?

Answer: NO

Fraud - Intentional Misrepresentation

8. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

Answer: NO

Fraud - False Promise

13. Did Cross-Defendant make a promise to Cross-Complainant that was important to the transaction?

Answer: NO

Fraud - Negligent Misrepresentation

19. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

Answer: NO

Given the jury's responses, Question 25 regarding Cross-Complainant's damages became inapplicable as a result of the jury's responses.

///

1 A true and correct copy of Special Verdict Form No. 2 is attached hereto as Exhibit "C."

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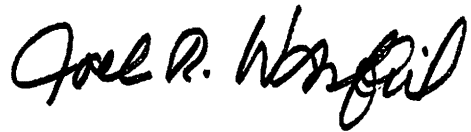
NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That Plaintiff LARRY GERACI have and recover from Defendant DARRYL COTTON the sum of \$260,109.28, with interest thereon at ten percent (10%) per annum from the date of entry of this judgment until paid, together with costs of suit in the amount of \$_____;

2. That Cross-Complainant DARRYL COTTON take nothing from Cross-Defendant REBECCA BERRY; and

3. That Cross-Complainant DARRYL COTTON take nothing from Cross-Defendant LARRY GERACI.

IT IS SO ORDERED.



Dated: 8-19, 2019

Hon. Joel R. Wohlfeil
JUDGE OF THE SUPERIOR COURT

Judge Joel R. Wohlfeil

EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 07/03/2019 TIME: 09:00:00 AM DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil
CLERK: Andrea Taylor
REPORTER/ERM: Margaret Smith CSR# 9733
BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: 37-2017-00010073-CU-BC-CTL CASE INIT.DATE: 03/21/2017
CASE TITLE: **Larry Geraci vs Darryl Cotton [Imaged]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Civil Jury Trial

APPEARANCES

Michael R Weinstein, counsel, present for Respondent on Appeal, Cross - Defendant, Cross - Complainant, Plaintiff(s).
Scott H Toothacre, counsel, present for Respondent on Appeal, Cross - Defendant, Cross - Complainant, Plaintiff(s).
Jacob Austin, counsel, present for Defendant, Cross - Complainant, Appellant(s).
Darryl Cotton, Defendant is present.
Larry Geraci, Plaintiff is present.
Rebecca Berry, Cross - Defendant is present.

8:55 a.m. This being the time previously set for further Jury trial in the above entitled cause, having been continued from July 2, 2019, all parties and counsel appear as noted above and court convenes. The jurors are not present.

Outside the presence of the jury, Court and counsel discuss exhibits.

9:01 a.m. Court is in recess.

9:03 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. The jurors are present except for juror no. 4.

An unreported sidebar conference is held. (6 minutes) Juror no. 4 arrives.

9:09 a.m. Attorney Weinstein presents opening statement on behalf of Plaintiff/Cross-Defendant Larry Geraci, et al.

9:55 a.m. Attorney Austin presents opening statement on behalf of Defendant/Cross-Complainant Darryl Cotton.

CASE TITLE: Larry Geraci vs Darryl Cotton [Imaged]

CASE NO: 37-2017-00010073-CU-BC-CTL

10:15 a.m. All jurors are admonished and excused for break and Court is in recess.

10:24 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. The jury is not present.

Outside the presence of the jury, Plaintiff makes a Motion for Non-suit on the Cross-Complaint against Rebecca Berry. The Court hears oral argument. Motion for Non-Suit is denied as to Declaratory Relief claim. Motion for Non-Suit is granted as to Fraud claim.

10:30 a.m. Court is in recess.

10:31 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. All jurors are present.

10:32 a.m. **LARRY GERACI** is sworn and examined by Attorney Weinstein on behalf of Plaintiff/Cross-Defendants, Larry Geraci, et al.

The following Court's exhibit(s) are marked for identification and admitted on behalf of Plaintiff/Cross-Defendant:

- 1) Letter of Agreement with Bartell & Associates dated 10/29/15
- 5) Text Messages between Larry Geraci and Darryl Cotton from 7/21/16-5/8/17
- 8) Email to Larry Geraci from Darryl Cotton dated 9/21/16 with attached letter to Dale and Darryl Cotton from Kirk Ross, dated 9/21/16
- 9) Email to Larry Geraci from Darryl Cotton, dated 9/26/16
- 10) Draft Services Agreement Contract between Inda-Gro and GERL Investments, dated 9/24/16
- 14) Email to Larry Geraci and Neil Dutta from Abhay Schweitzer, dated 10/4/16
- 15) Email to Rebecca Berry from Abhay Schweitzer, dated 10/6/16
- 17) Email to Larry Geraci and Neil Dutta from Abhay Schweitzer, dated 10/18/16
- 18) Email thread between Neil Dutta from Abhay Schweitzer, dated 10/19/16
- 21) Email from Larry Geraci to Darryl Cotton, dated 10/24/16
- 30) City of San Diego Ownership Disclosure Statement signed, dated 10/31/16
- 38) Agreement between Larry Geraci or assignee and Darryl Cotton, dated 11/2/16
- 39) Excerpt from Jessica Newell Notary Book, dated 11/2/16
- 40) Email to Darryl Cotton from Larry Geraci attaching Nov. 2 Agreement, dated 11/2/16
- 41) Email from Darryl Cotton to Larry Geraci, dated 11/2/16
- 42) Email to Darryl Cotton from Larry Geraci, dated 11/2/16

11:44 a.m. All jurors are admonished and excused for lunch and Court remains in session.

Outside the presence of the jury, Attorney Austin makes a Motion for Non-Suit on Breach of Contract claim against Darryl Cotton. The Court hears oral argument. Motion for Non-Suit is denied without prejudice.

11:50 a.m. Court is in recess.

1:19 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. The jurors are not present.

CASE TITLE: Larry Geraci vs Darryl Cotton [Imaged]

CASE NO: 37-2017-00010073-CU-BC-CTL

Outside the presence of the jury, Attorney Austin makes a Motion for Non-Suit. The Court hears argument. The Motion for Non-Suit is denied without prejudice as pre-mature. Court and counsel discuss scheduling.

1:25 p.m. Court is in recess.

1:33 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. All jurors are present.

1:34 p.m. Larry Geraci, previously sworn, resumes the stand for further direct examination by Attorney Weinstein on behalf of Plaintiff/Cross-Defendants, Larry Geraci, et al.

The following Court's exhibit(s) are marked for identification and admitted on behalf of Plaintiff/Cross-Defendants:

- 43) Email to Becky Berry from Abhay Schweitzer, dated 11/7/16 with attachment
- 44) Email to Darryl Cotton from Larry Geraci, dated 11/14/16
- 46) Authorization to view records, signed by Cotton, 11/15/16
- 59) Email to Darryl Cotton from Larry Geraci, dated 2/27/17
- 62) Email to Darryl Cotton from Larry Geraci, dated 3/2/17
- 63) Email to Larry Geraci from Darryl Cotton, dated 3/3/17
- 64) Email to Darryl Cotton from Larry Geraci, dated 3/7/17
- 69) Email to Larry Geraci from Darryl Cotton, dated 3/17/17 at 2:15 p.m.
- 72) Email to Larry Geraci from Darryl Cotton, dated 3/19/17 at 6:47 p.m.
- 137) Federal Blvd.- Summary of All Expense Payments, excel spreadsheet

2:29 p.m. An unreported sidebar conference is held. (3 minutes)

2:36 p.m. Cross examination of Larry Geraci commences by Attorney Austin on behalf of Defendant/Cross-Complainant, Darryl Cotton.

2:53 p.m. All jurors are admonished and excused for break and Court is in recess.

3:08 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. All jurors are present.

3:09 p.m. Larry Geraci is sworn and examined by Attorney Austin on behalf of Defendant/Cross-Complainant, Defendant.

3:47 p.m. Redirect examination of Larry Geraci commences by Attorney Weinstein on behalf of Plaintiff/Cross-Defendant, Larry Geraci, et al.

3:48 p.m. The witness is excused.

3:49 p.m. **REBECCA BERRY** is sworn and examined by Attorney Weinstein on behalf of Plaintiff/Cross-Defendant, Larry Geraci, et al.

The following Court's exhibit(s) is marked for identification and admitted on behalf of

CASE TITLE: Larry Geraci vs Darryl Cotton [Imaged]

CASE NO: 37-2017-00010073-CU-BC-CTL

Plaintiff/Cross-Complainant:

34) Forms submitted to City of San Diego dated 10/31/16; Form DS-3032 General Application dated 10/31/16

4:00 p.m. Cross examination of Rebecca Berry commences by Attorney Austin on behalf of Defendant/Cross-complainant, Darryl Cotton.

4:15 p.m. The witness is excused.

4:16 p.m. All jurors are admonished and excused for the evening and Court remains in session.

Outside the presence of the jury, Court and counsel discuss scheduling.

4:22 p.m. Court is adjourned until 07/08/2019 at 09:00AM in Department 73.

EXHIBIT B

ORIGINAL

FILED
Clerk of the Superior Court

JUL 16 2019

By: A. TAYLOR

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION**

LARRY GERACI,
Plaintiff,

v.

DARRYL COTTON,
Defendant.

Case No. 37-2017-00010073-CU-BC-CTL

SPECIAL VERDICT FORM NO. 1

Judge: Hon. Joel R. Wohlfeil

DARRYL COTTON,
Cross-Complainant,

v.

LARRY GERACI,
Cross-Defendant.

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1. Did Plaintiff Larry Geraci and Defendant Darryl Cotton enter into the November 2, 2016 written contract?

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Yes No

If your answer to question 1 is yes, answer question 2. If your answer to question 1 is no, answer no further questions, and have the presiding juror sign and date this form.

2. Did Plaintiff do all, or substantially all, of the significant things that the contract required him to do?

Yes No

If your answer to question 2 is yes, do not answer question 3 and answer question 4. If your answer to question 2 is no, answer question 3.

3. Was Plaintiff excused from having to do all, or substantially all, of the significant things that the contract required him to do?

Yes No

If your answer to question 3 is yes, answer question 4. If your answer to question 3 is no, answer no further questions, and have the presiding juror sign and date this form.

4. Did all the condition(s) that were required for Defendant's performance occur?

Yes No

If your answer to question 4 is yes, do not answer question 5 and answer question 6. If your answer to question 4 is no, answer question 5.

1
2 5. Was the required condition(s) that did not occur excused?

3
4 Yes No

5
6 If your answer to question 5 is yes, then answer question 6. If your answer to question 5 is no,
7 answer no further questions, and have the presiding juror sign and date this form.

8
9 6: Did Defendant fail to do something that the contract required him to do?

10
11 Yes No

12
13 or

14
15 Did Defendant do something that the contract prohibited him from doing?

16
17 Yes No

18
19 If your answer to either option for question 6 is yes, answer question 7. If your answer to both
20 options is no, do not answer question 7 and answer question 8.

21
22 7. Was Plaintiff harmed by Defendant's breach of contract?

23
24 Yes No

25
26 If your answer to questions 4 or 5 is yes, please answer question 8.

27
28 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

1
2 8. Did Defendant unfairly interfere with Plaintiff's right to receive the benefits of the contract?

3
4 Yes No

5
6 If your answer to question 8 is yes, answer question 9. If your answer to question 8 is no, but
7 your answer to question 7 is yes, do not answer question 9 and answer question 10. If your answers to
8 questions 7 and 8 were not yes, answer no further questions, and have the presiding juror sign and date
9 this form.

10
11 9. Was Plaintiff harmed by Defendant's interference?

12
13 Yes No

14
15 If your answer to question 9 is yes, answer question 10. If your answer to question 9 is no, but
16 your answer to question 7 is yes, answer question 10. If your answers to questions 7 and 9 were not yes,
17 answer no further questions, and have the presiding juror sign and date this form.

18
19 10. What are Plaintiff's damages?

20
21 \$ 260,109.28

22
23 Dated: 7/16/19

24 Signed: [Signature]
25 Presiding Juror

26 After all verdict forms have been signed, notify the bailiff that you are ready to present your
27 verdict in the courtroom.

EXHIBIT C

ORIGINAL

FILED
Clerk of the Superior Court

JUL 16 2019

By: A. TAYLOR

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI,
Plaintiff,

v.

DARRYL COTTON,
Defendant.

Case No. 37-2017-00010073-CU-BC-CTL

Judge: Hon. Joel R. Wohlfeil

SPECIAL VERDICT FORM NO. 2

DARRYL COTTON,
Cross-Complainant,

v.

LARRY GERACI,
Cross-Defendant.

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1 1. Did Cross-Complainant Darryl Cotton and Cross-Defendant Larry Geraci enter into an oral
2 contract to form a joint venture?

3
4 ___ Yes No

5
6 If your answer to question 1 is yes, answer question 2. If your answer to question 1 is no, do not
7 answer questions 2 – 7 and answer question 8.

8
9 2. Did Cross-Complainant do all, or substantially all, of the significant things that the contract
10 required him to do?

11
12 ___ Yes ___ No

13
14 If your answer to question 2 is yes, do not answer question 3 and answer question 4. If your
15 answer to question 2 is no, answer question 3.

16
17 3. Was Cross-Complainant excused from having to do all, or substantially all, of the significant
18 things that the contract required him to do?

19
20 ___ Yes ___ No

21
22 If your answer to question 3 is yes, answer question 4. If your answer to question 3 is no, do not
23 answer questions 4 – 7 and answer question 8.

24
25 4. Did all the condition(s) that were required for Cross-Defendant's performance occur?

26
27 ___ Yes ___ No

1 If your answer to question 4 is yes, do not answer question 5 and answer question 6. If your
2 answer to question 4 is no, answer question 5.

3
4 5. Was the required condition(s) that did not occur excused?

5
6 Yes No

7
8 If your answer to question 5 is yes, answer question 6. If your answer to question 5 is no, do not
9 answer questions 6 – 7 and answer question 8.

10
11 6. Did Cross-Defendant fail to do something that the contract required him to do?

12
13 Yes No

14
15 or

16
17 Did Cross-Defendant do something that the contract prohibited him from doing?

18
19 Yes No

20
21 If your answer to either option for question 6 is yes, answer question 7. If your answer to both
22 options is no, do not answer question 7 and answer question 8.

23
24 7. Was Cross-Complainant harmed by Cross-Defendant's breach of contract?

25
26 Yes No

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28 Please answer question 8.

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Fraud - Intentional Misrepresentation

8. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

Yes No

If your answer to question 8 is yes, answer question 9. If your answer to question 8 is no, do not answer questions 9 – 12 and answer question 13.

9. Did Cross-Defendant know that the representation was false, or did Cross-Defendant make the representation recklessly and without regard for its truth?

Yes No

If your answer to question 9 is yes, answer question 10. If your answer to question 9 is no, do not answer questions 10 – 12 and answer question 13.

10. Did Cross-Defendant intend that Cross-Complainant rely on the representation?

Yes No

If your answer to question 10 is yes, answer question 11. If your answer to question 10 is no, do not answer questions 11 – 12 and answer question 13.

11. Did Cross-Complainant reasonably rely on the representation?

Yes No

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If your answer to question 11 is yes, answer question 12. If your answer to question 11 is no, do not answer question 12 and answer question 13.

12. Was Cross-Complainant's reliance on Cross-Defendant's representation a substantial factor in causing harm to Cross-Complainant?

Yes No

Please answer question 13.

Fraud - False Promise

13. Did Cross-Defendant make a promise to Cross-Complainant that was important to the transaction?

Yes No

If your answer to question 13 is yes, answer question 14. If your answer to question 13 is no, do not answer questions 14 – 18 and answer question 19.

14. Did Cross-Defendant intend to perform this promise when Cross-Defendant made it?

Yes No

If your answer to question 14 is no, answer question 15. If your answer to question 14 is yes, do not answer questions 15 – 18 and answer question 19.

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15. Did Cross-Defendant intend that Cross-Complainant rely on this promise?

Yes No

If your answer to question 15 is yes, answer question 16. If your answer to question 15 is no, do not answer questions 16 – 18 and answer question 19.

16. Did Cross-Complainant reasonably rely on this promise?

Yes No

If your answer to question 16 is yes, answer question 17. If your answer to question 16 is no, do not answer questions 17 – 18 and answer question 19.

17. Did Cross-Defendant perform the promised act?

Yes No

If your answer to question 17 is no, answer question 18. If your answer to question 17 is yes, do not answer question 18 and answer question 19.

18. Was Cross-Complainant's reliance on Cross-Defendant's promise a substantial factor in causing harm to Cross-Complainant?

Yes No

Please answer question 19.

1 **Fraud - Negligent Misrepresentation**

2
3 19. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

4
5 Yes No

6
7 If your answer to question 19 is yes, answer question 20. If your answer to question 19 is no, do
8 not answer questions 20 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If
9 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding
10 juror sign and date this form.

11
12 20. Did Cross-Defendant honestly believe that the representation was true when Cross-Defendant
13 made it?

14
15 Yes No

16
17 If your answer to question 20 is yes, answer question 21. If your answer to question 20 is no, do
18 not answer questions 21 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If
19 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding
20 juror sign and date this form.

21
22 21. Did Cross-Defendant have reasonable grounds for believing the representation was true when
23 Cross-Defendant made it?

24
25 Yes No

26
27 If your answer to question 21 is yes, answer question 22. If your answer to question 21 is no, do
28 not answer questions 22 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If

1 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding
2 juror sign and date this form.

3

4 22. Did Cross-Defendant intend that Cross-Complainant rely on the representation?

5

6 Yes No

7

8 If your answer to question 22 is yes, answer question 23. If your answer to question 22 is no, do
9 not answer questions 23 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If
10 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding
11 juror sign and date this form.

12

13 23. Did Cross-Complainant reasonably rely on the representation?

14

15 Yes No

16

17 If your answer to question 23 is yes, answer question 24. If your answer to question 23 is no, do
18 not answer question 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your
19 answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror
20 sign and date this form.

21

22 24. Was Cross-Complainant's reliance on Cross-Defendant's representation a substantial factor
23 in causing harm to Cross-Complainant?

24

25 Yes No

26

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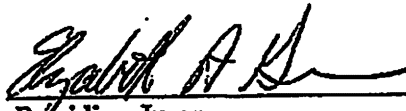
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1 If your answer to question 24 is yes, answer question 25. If your answer to question 24 is no, but
2 if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and
3 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

4
5 25. What are Cross-Complainant's damages?

6
7 \$ _____
8
9

10
11 Dated: 7/16/19
12

Signed: 
Presiding Juror

13 After all verdict forms have been signed, notify the bailiff that you are ready to present your verdict in
14 the courtroom.
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1 FERRIS & BRITTON
A Professional Corporation
2 Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
3 501 West Broadway, Suite 1450
San Diego, California 92101
4 Telephone: (619) 233-3131
Fax: (619) 232-9316
5 mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com
6

7 Attorneys for Plaintiff
LARRY GERACI

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

10 LARRY GERACI, an individual,
11 Plaintiff,

12 v.

13 DARRYL COTTON, an individual; and
14 DOES 1 through 10, inclusive,
15 Defendants.

Case No. 37-2017-00010073-CU-BC-CTL

PLAINTIFF'S COMPLAINT FOR:

- 1. **BREACH OF CONTRACT;**
- 2. **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING;**
- 3. **SPECIFIC PERFORMANCE; and**
- 4. **DECLARATORY RELIEF.**

16 Plaintiff, LARRY GERACI, alleges as follows:

17 1. Plaintiff, LARRY GERACI ("GERACI"), is, and at all times mentioned was, an
18 individual residing within the County of San Diego, State of California.

19 2. Defendant, DARRYL COTTON ("COTTON"), is, and at all times mentioned was, an
20 individual residing within the County of San Diego, State of California.

21 3. The real estate purchase and sale agreement entered into between Plaintiff GERACI and
22 Defendant COTTON that is the subject of this action was entered into in San Diego County, California,
23 and concerns real property located at 6176 Federal Blvd., City of San Diego, San Diego County,
24 California (the "PROPERTY").

25 4. Currently, and at all times since approximately 1998, Defendant COTTON owned the
26 PROPERTY.

27 5. Plaintiff GERACI does not know the true names or capacities of the defendants sued
28 herein as DOES 1 through 20 and therefore sue such defendants by their fictitious names. Plaintiff is

1 informed and believe and based thereon allege that each of the fictitiously-named defendants is in some
2 way and manner responsible for the wrongful acts and occurrences herein alleged, and that damages as
3 herein alleged were proximately caused by their conduct. Plaintiff will seek leave of Court to amend
4 this complaint to state the true names and/or capacities of such fictitiously-named defendants when the
5 same are ascertained.

6 6. Plaintiff alleges on information and belief that at all times mentioned herein, each and
7 every defendant was the agent, employee, joint venture, partner, principal, predecessor, or successor in
8 interest and/or the alter ego of each of the remaining defendants, and in doing the acts herein alleged,
9 were acting, whether individually or through their duly authorized agents and/or representatives, within
10 the scope and course of said agencies, service, employment, joint ventures, partnerships, corporate
11 structures and/or associations, whether actual or ostensible, with the express and/or implied knowledge,
12 permission, and consent of the remaining defendants, and each of them, and that said defendants
13 ratified and approved the acts of all of the other defendants.

14 **GENERAL ALLEGATIONS**

15 7. On November 2, 2016, Plaintiff GERACI and Defendant COTTON entered into a
16 written agreement for the purchase and sale of the PROPERTY on the terms and conditions stated
17 therein. A true and correct copy of said written agreement is attached hereto as Exhibit A.

18 8. On or about November 2, 2016, GERACI paid to COTTON \$10,000.00 good faith
19 earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until the license,
20 known as a Conditional Use Permit or CUP is approved, all in accordance with the terms and
21 conditions of the written agreement.

22 9. Based upon and in reliance on the written agreement, Plaintiff GERACI has engaged
23 and continues to engage in efforts to obtain a CUP for a medical marijuana dispensary at the
24 PROPERTY, as contemplated by the parties and their written agreement. The CUP process is a long,
25 time-consuming process, which can take many months if not years to navigate. Plaintiff GERACI's
26 efforts include, but have not been limited to, hiring a consultant to coordinate the CUP efforts as well as
27 hiring an architect. Plaintiff GERACI estimates he has incurred expenses to date of more than
28 \$300,000.00 on the CUP process, all in reliance on the written agreement for the purchase and sale of

1 the PROPERTY to him by Defendant COTTON.

2 **FIRST CAUSE OF ACTION**

3 **(For Breach of Contract against Defendant COTTON and DOES 1-5)**

4 10. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
5 paragraphs 1 through 9 above.

6 11. Defendant COTTON has anticipatorily breached the contract by stating that he will not
7 perform the written agreement according to its terms. Among other things, COTTON has stated that,
8 contrary to the written terms, the parties agreed to a down payment or earnest money in the amount of
9 \$50,000.00 and that he will not perform unless GERACI makes a further down payment. COTTON
10 has also stated that, contrary to the written terms, he is entitled to a 10% ownership interest in the
11 PROPERTY and that he will not perform unless GERACI transfers to him a 10% ownership interest.
12 COTTON has also threatened to contact the City of San Diego to sabotage the CUP process by
13 withdrawing his acknowledgment that GERACI has a right to possession or control of the PROPERTY
14 if GERACI will not accede to his additional terms and conditions and, on March 21, 2017, COTTON
15 made good on his threat when he contacted the City of San Diego and attempted to withdraw the CUP
16 application.

17 12. As result of Defendant COTTON’s anticipatory breach, Plaintiff GERACI will suffer
18 damages in an amount according to proof or, alternatively, for return of all sums expended by GERACI
19 in reliance on the agreement, including but not limited to the estimated \$300,000.00 or more expended
20 to date on the CUP process for the PROPERTY.

21 **SECOND CAUSE OF ACTION**

22 **(For Breach of the Implied Covenant of Good Faith and Fair Dealing**
23 **against Defendant COTTON and DOES 1-5)**

24 13. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
25 paragraphs 1 through 12 above.

26 14. Each contract has implied in it a covenant of good faith and fair dealing that neither
27 party will undertake actions that, even if not a material breach, will deprive the other of the benefits of
28 the agreement. By having threatened to contact the City of San Diego to sabotage the CUP process by

1 withdrawing his acknowledgment that Plaintiff GERACI has a right to possession or control of the
2 PROPERTY if GERACI will not accede to his additional terms and conditions, Defendant COTTON
3 has breached the implied covenant of good faith and fair dealing.

4 15. As result of Defendant COTTON's breach of the implied covenant of good faith and fair
5 dealing, Plaintiff GERACI will suffer damages in an amount according to proof or, alternatively, for
6 return of all sums expended by GERACI in reliance on the agreement, including but not limited to the
7 estimated \$300,000.00 or more expended to date on the CUP process for the PROPERTY.

8 **THIRD CAUSE OF ACTION**

9 **(For Specific Performance against Defendants COTTON and DOES 1-5)**

10 16. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
11 paragraphs 1 through 15 above.

12 17. The aforementioned written agreement for the sale of the PROPERTY is a valid and
13 binding contract between Plaintiff GERACI and Defendant COTTON.

14 18. The aforementioned written agreement for the sale of the PROPERTY states the terms
15 and conditions of the agreement with sufficient fullness and clarity so that the agreement is susceptible
16 to specific performance.

17 19. The aforementioned written agreement for the purchase and sale of the PROPERTY is a
18 writing that satisfies the statute of frauds.

19 20. The aforementioned written agreement for the purchase and sale of the PROPERTY is
20 fair and equitable and is supported by adequate consideration.

21 21. Plaintiff GERACI has duly performed all of his obligations for which performance has
22 been required to date under the agreement. GERACI is ready and willing to perform his remaining
23 obligations under the agreement, namely: a) to continue with his good faith efforts to obtain a CUP for
24 a medical marijuana dispensary; and b) if he obtains CUP approval for a medical marijuana dispensary
25 thus satisfying that condition precedent, then to pay the remaining \$790,000.00 balance of the purchase
26 price.

27 22. Defendant COTTON is able to specifically perform his obligations under the contract,
28 namely: a) to not enter into any other contracts to sell or otherwise encumber the PROPERTY; and b) if

1 Plaintiff GERACI obtains CUP approval for a medical marijuana dispensary thus satisfying that
2 condition precedent, then to deliver title to the PROPERTY to GERACI or his assignee in exchange for
3 receipt of payment from GERACI or assignee of the remaining \$790,000.00 balance of the purchase
4 price.

5 23. Plaintiff GERACI has demanded that Defendant COTTON refrain from taking actions
6 that interfere with GERACI’s attempt to obtain approval of a CUP for a medical marijuana dispensary
7 and to specifically perform the contract upon satisfaction of the condition that such approval is in fact
8 obtained.

9 24. Defendant COTTON has indicated that he has or will interfere with Plaintiff GERACI’s
10 attempt to obtain approval of a CUP for a medical marijuana dispensary and that COTTON does not
11 intend to satisfy his obligations under the written agreement to deliver title to the PROPERTY upon
12 satisfaction of the condition that GERACI obtain approval of a CUP for a medical marijuana
13 dispensary and tender the remaining balance of the purchase price.

14 25. The aforementioned written agreement for the purchase and sale of the PROPERTY
15 constitutes a contract for the sale of real property and, thus, Plaintiff GERACI’s lack of a plain, speedy,
16 and adequate legal remedy is presumed.

17 26. Based on the foregoing, Plaintiff GERACI is entitled to an order and judgment thereon
18 specifically enforcing the written agreement for the purchase and sale of the PROPERTY from
19 Defendant COTTON to GERACI or his assignee in accordance with its terms and conditions.

20 **FOURTH CAUSE OF ACTION**

21 **(For Declaratory Relief against Defendants COTTON and DOES 1-5)**

22 27. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
23 paragraphs 1 through 14 above.

24 28. An actual controversy has arisen and now exists between Defendant COTTON, on the
25 one hand, and Plaintiff GERACI, on the other hand, in that COTTON contends that the written
26 agreement contains terms and condition that conflict with or are in addition to the terms stated in the
27 written agreement. GERACI disputes those conflicting or additional contract terms.

28

1 29. Plaintiff GERACI desires a judicial determination of the terms and conditions of the
2 written agreement as well as of the rights, duties, and obligations of Plaintiff GERACI and defendants
3 thereunder in connection with the purchase and sale of the PROPERTY by COTTON to GERACI or
4 his assignee. Such a declaration is necessary and appropriate at this time so that each party may
5 ascertain their rights, duties, and obligations thereunder.

6 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

7 **On the First and Second Causes of Action:**

8 1. For compensatory damages in an amount in excess of \$300,000.00 according to proof at
9 trial.

10 **On the Third Cause of Action:**

11 2. For specific performance of the written agreement for the purchase and sale of the
12 PROPERTY according to its terms and conditions; and

13 3. If specific performance cannot be granted, then damages in an amount in excess of
14 \$300,000.00 according to proof at trial.

15 **On the Fourth Cause of Action:**

16 4. For declaratory relief in the form of a judicial determination of the terms and conditions
17 of the written agreement and the duties, rights and obligations of each party under the written
18 agreement.

19 **On all Causes of Action:**

20 5. For temporary and permanent injunctive relief as follows: that Defendants, and each of
21 them, and each of their respective directors, officers, representatives, agents, employees, attorneys, and
22 all persons acting in concert with or participating with them, directly or indirectly, be enjoined and
23 restrained from taking any action that interferes with Plaintiff GERACI' efforts to obtain approval of a
24 Conditional Use Permit (CUP) for a medical marijuana dispensary at the PROPERTY;

25 6. For costs of suit incurred herein; and

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7. For such other and further relief as the Court may deem just and proper.

Dated: March 21, 2017

FERRIS & BRITTON,
A Professional Corporation

By: 

Michael R. Weinstein
Scott H. Toothacre

Attorneys for Plaintiff
LARRY GERACI

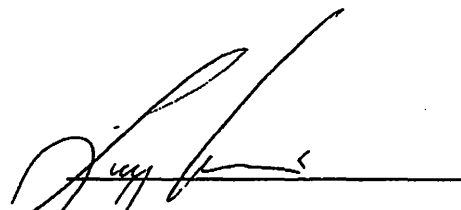
EXHIBIT A

11/02/2016

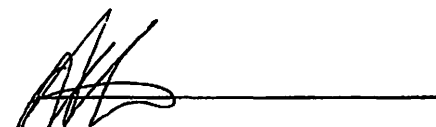
Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed to not enter into any other contacts on this property.



Larry Geraci



Darryl Cotton

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego

On November 2, 2016 before me, Jessica Newell Notary Public
(insert name and title of the officer)

personally appeared Darryl Cotton and Larry Geraci,
who proved to me on the basis of satisfactory evidence to be the person(s), whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.



Signature Jessica Newell (Seal)

DAVID S. DEMIAN, SBN 220626
E-MAIL: ddemian@ftblaw.com
ADAM C. WITT, SBN 271502
E-MAIL: awitt@ftblaw.com

FINCH, THORNTON & BAIRD, LLP

ATTORNEYS AT LAW
4747 EXECUTIVE DRIVE - SUITE 700
SAN DIEGO, CALIFORNIA 92121-3107
TELEPHONE: (858) 737-3100
FACSIMILE: (858) 737-3101

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/25/2017 at 11:44:00 AM

Clerk of the Superior Court
By Richard Day, Deputy Clerk

Attorneys for Defendant and Cross-Complainant Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual; and
DOES 1 through 10, inclusive,

Defendants.

CASE NO: 37-2017-00010073-CU-BC-CTL

SECOND AMENDED CROSS-COMPLAINT
FOR:

- (1) BREACH OF CONTRACT;
- (2) INTENTIONAL MISREPRESENTATION;
- (3) NEGLIGENT MISREPRESENTATION;
- (4) FALSE PROMISE; AND
- (5) DECLARATORY RELIEF.

[IMAGED FILE]

Assigned to:
Hon. Joel R. Wohlfeil, Dept. C-73

Complaint Filed: March 21, 2017
Trial Date: Not Set

DARRYL COTTON, an individual,

Cross-Complainant

v.

LARRY GERACI, an individual;
REBECCA BERRY, an individual; and
ROES 1 through 50,

Cross-Defendants.

./././././.

1 Defendant and cross-complainant Darryl Cotton (“Cotton”) alleges as follows:

2 1. Venue is proper in this Court because the events described below took place in
3 this judicial district and the real property at issue is located in this judicial district.

4 2. Cotton is, and at all times mentioned was, an individual residing within the
5 County of San Diego, California.

6 3. Cotton was at all times material to this action the sole record owner of the
7 commercial real property located at 6176 Federal Boulevard, San Diego, California 92114
8 (“Property”) which is the subject of this dispute.

9 4. Cotton is informed and believes plaintiff and cross-defendant Larry Geraci
10 (“Geraci”) is, and at all times mentioned was, an individual residing within the County of San
11 Diego, California.

12 5. Cotton is informed and believes cross-defendant Rebecca Berry (“Berry”) is,
13 and at all times mentioned was, an individual residing within the County of San Diego,
14 California.

15 6. Cotton does not know the true names and capacities of the cross-defendants
16 named as ROES 1 through 50 and therefore sues them by fictitious names. Cotton is informed
17 and believes that ROES 1 through 50 are in some way responsible for the events described in
18 this Second Amended Cross-Complaint. Cotton will seek leave to amend this Second
19 Amended Cross-Complaint when the true names and capacities of these cross-defendants have
20 been ascertained.

21 7. At all times mentioned, each cross-defendant was an agent, principal,
22 representative, employee, or partner of the other cross-defendants, and acted within the course
23 and scope of such agency, representation, employment, and/or partnership, and with
24 permission of the other cross-defendants.

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GENERAL ALLEGATIONS

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2 8. In or around August 2016, Geraci first contacted Cotton seeking to purchase the
3 Property. Geraci desired to buy the Property from Cotton because it meets certain
4 requirements of the City of San Diego (“City”) for obtaining a Conditional Use Permit
5 (“CUP”) to operate a Medical Marijuana Consumer Cooperative (“MMCC”) at the Property.
6 The Property is one of a very limited number of properties located in San Diego City Council
7 District 4 that potentially satisfy the CUP requirements for a MMCC.

8 9. Over the ensuing weeks and months, Geraci and Cotton negotiated extensively
9 regarding the terms of a potential sale of the Property. During these negotiations, Geraci
10 represented to Cotton, among other things, that:

11 (a) Geraci was a trustworthy individual because Geraci operated in a
12 fiduciary capacity for many high net worth individuals and businesses as an enrolled agent for
13 the IRS and the owner-manager of Tax and Financial Center, Inc., an accounting and financial
14 advisory business;

15 (b) Geraci, through his due diligence, had uncovered a critical zoning issue
16 that would prevent the Property from being issued a CUP to operate a MMCC unless Geraci
17 lobbied with the City to have the zoning issue resolved first;

18 (c) Geraci, through his personal and professional relationships, was in a
19 unique position to lobby and influence key City political figures to have the zoning issue
20 favorably resolved and obtain approval of the CUP application once submitted; and

21 (d) Geraci was qualified to successfully operate a MMCC because he owned
22 and operated several other marijuana dispensaries in the San Diego County area.

23 10. Cotton, acting in good faith based upon Geraci’s representations during the sale
24 negotiations, assisted Geraci with preliminary due diligence in investigating the feasibility of a
25 CUP application at the Property while the parties negotiated the terms of a possible deal.
26 However, despite the parties’ work on a CUP application, Geraci represented to Cotton that a
27 CUP application for the Property could not actually be submitted until after the critical zoning
28 issue was resolved or the application would be summarily rejected by the City.

1 11. On or around October 31, 2016, Geraci asked Cotton to execute an Ownership
2 Disclosure Statement, which is a required component of all CUP applications. Geraci told
3 Cotton that he needed the signed document to show that Geraci had access to the Property in
4 connection with his lobbying efforts to resolve the zoning issue and his eventual preparation of
5 a CUP application. Geraci also requested that Cotton sign the Ownership Disclosure Statement
6 as an indication of good-faith while the parties negotiated on the sale terms. At no time did
7 Geraci indicate to Cotton that a CUP application would be filed prior to the parties entering
8 into a final written agreement for the sale of the Property. In fact, Geraci repeatedly
9 maintained to Cotton that the critical zoning issue needed to be resolved before a CUP
10 application could even be submitted.

11 12. The Ownership Disclosure Statement that Geraci provided to Cotton to sign in
12 October 2016 incorrectly indicated that Cotton had leased the Property to Berry. However,
13 Cotton has never met Berry personally and never entered into a lease or any other type of
14 agreement with her. At the time, Geraci told Cotton that Berry was a trusted employee who
15 was very familiar with MMCC operations and who was involved with his other MMCC
16 dispensaries. Cotton’s understanding was that Geraci was unable to list himself on the
17 application because of Geraci’s other legal issues but that Berry was Geraci’s agent and was
18 working in concert with him and at his direction. Based upon Geraci’s assurances that listing
19 Berry as a tenant on the Ownership Disclosure Statement was necessary and proper, Cotton
20 executed the Ownership Disclosure Statement that Geraci provided to him.

21 13. On November 2, 2016, Geraci and Cotton met at Geraci’s office in an effort to
22 negotiate the final terms of their deal for the sale of the Property. The parties reached an
23 agreement on the material terms for the sale of the Property. The parties further agreed to
24 cooperate in good faith to promptly reduce the complete agreement, including all of the
25 agreed-upon terms, to writing.

26 14. The material terms of the agreement reached by the parties at the November 2,
27 2016 meeting included, without limitation, the following key deal points:

28 / / / / /

1 (a) Geraci agreed to pay the total sum of \$800,000 in consideration for the
2 purchase of the Property, with a \$50,000 non-refundable deposit payable to Cotton
3 immediately upon the parties' execution of final integrated written agreements and the
4 remaining \$750,000 payable to Cotton upon the City's approval of a CUP application for the
5 Property;

6 (b) The parties agreed that the City's approval of a CUP application to
7 operate a MMCC at the Property would be a condition precedent to closing of the sale (in other
8 words, the sale of the Property would be completed and title transferred to Geraci only upon
9 the City's approval of the CUP application and Geraci's payment of the \$750,000 balance of
10 the purchase price to Cotton; if the City denied the CUP application, the parties agreed the sale
11 of the Property would be automatically terminated and Cotton would be entitled to retain the
12 entire \$50,000 non-refundable deposit);

13 (c) Geraci agreed to grant Cotton a ten percent (10%) equity stake in the
14 MMCC that would operate at the Property following the City's approval of the CUP
15 application; and

16 (d) Geraci agreed that, after the MMCC commenced operations at the
17 Property, Geraci would pay Cotton ten percent (10%) of the MMCC's monthly profits and
18 Geraci would guarantee that such payments would amount to at least \$10,000 per month.

19 15. At Geraci's request, the sale was to be documented in two final written
20 agreements, a real estate purchase agreement and a separate side agreement, which together
21 would contain all the agreed-upon terms from the November 2, 2016 meeting. At that meeting,
22 Geraci also offered to have his attorney "quickly" draft the final integrated agreements and
23 Cotton agreed.

24 16. Although the parties came to a final agreement on the purchase price and
25 deposit amounts at their November 2, 2016 meeting, Geraci requested additional time to come
26 up with the \$50,000 non-refundable deposit. Geraci claimed he needed extra time because he
27 had limited cashflow and would require the cash he did have to fund the lobbying efforts
28 needed to resolve the zoning issue at the Property and to prepare the CUP application.

1 17. Cotton was hesitant to grant Geraci more time to pay the non-refundable deposit
 2 but Geraci offered to pay \$10,000 towards the \$50,000 total deposit immediately as a show of
 3 “good-faith,” even though the parties had not reduced their final agreement to writing. Cotton
 4 was understandably concerned that Geraci would file the CUP application before paying the
 5 balance of the non-refundable deposit and Cotton would never receive the remainder of the
 6 non-refundable deposit if the City denied the CUP application before Geraci paid the
 7 remaining \$40,000 (thereby avoiding the parties’ agreement that the \$50,000 non-refundable
 8 deposit was intended to shift to Geraci some of the risk of the CUP application being denied).
 9 Despite his reservations, Cotton agreed to Geraci’s request and accepted the lesser \$10,000
 10 initial deposit amount based upon Geraci’s express promise to pay the \$40,000 balance of the
 11 non-refundable deposit prior to submission of the CUP application, at the latest.

12 18. At the November 2, 2016 meeting, the parties executed a three-sentence
 13 document related to their agreement on the purchase price for the Property at Geraci’s request,
 14 which read as follows:

15 Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA
 16 for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a
 Marijuana Dispensary. (CUP for a dispensary)

17 Ten Thousand dollars (cash) has been given in good faith earnest money to be
 18 applied to the sales price of \$800,000.00 and to remain in effect until license is
 19 approved. Darryl Cotton has agreed not to enter into any other contacts on this
 property.

20 Geraci assured Cotton that the document was intended to merely create a record of Cotton’s
 21 receipt of the \$10,000 “good-faith” deposit and provide evidence of the parties’ agreement on
 22 the purchase price and good-faith agreement to enter into final integrated agreement documents
 23 related to the sale of the Property. Geraci emailed Cotton a scanned copy of the executed
 24 document the same day. Following closer review of the executed document, Cotton wrote in
 25 an email to Geraci several hours later (still on the same day):

26 I just noticed the 10% equity position in the dispensary was not language added
 27 into that document. I just want to make sure that we’re not missing that
 28 language in any final agreement as it is a factored element in my decision to sell
 the property. I’ll be fine if you would simply acknowledge that here in a reply.

1 Approximately two hours later, Geraci replied via email, “No no problem at all.”

2 19. Thereafter, Cotton continued to operate in good faith under the assumption that
3 Geraci’s attorney would promptly draft the fully integrated agreement documents as the parties
4 had agreed and the parties would shortly execute the written agreements to document their
5 agreed-upon deal. However, over the following months, Geraci proved generally unresponsive
6 and continuously failed to make substantive progress on his promises, including his promises
7 to promptly deliver the draft final agreement documents, pay the balance of the non-refundable
8 deposit, and keep Cotton apprised of the status of the zoning issue.

9 20. Over the weeks and months that followed, Cotton repeatedly reached out to
10 Geraci regarding the status of the zoning issue, the payment of the remaining balance of the
11 non-refundable deposit, and the status of the draft documents. For example, on January 6,
12 2017, after Cotton became exasperated with Geraci’s failure to provide any substantive
13 updates, he texted Geraci, “Can you call me. If for any reason you’re not moving forward I
14 need to know.” Geraci replied via text, stating: “I’m at the doctor now everything is going fine
15 the meeting went great yesterday supposed to sign off on the zoning on the 24th of this month
16 I’ll try to call you later today still very sick.”

17 21. Between January 18, 2017 and February 7, 2017, the following exchange took
18 place between Geraci and Cotton via text message:

19 Geraci: “The sign off date they said it’s going to be the 30th.”

20 Cotton: “This resolves the zoning issue?”

21 Geraci: “Yes”

22 Cotton: “Excellent”...

23 Cotton: “How goes it?”

24 Geraci: “We’re waiting for confirmation today at about 4 o’clock”

25 Cotton: “Whats new?”

26 Cotton: “Based on your last text I thought you’d have some information on the
27 zoning by now. Your lack of response suggests no resolution as of yet.”

28 Geraci: “I’m just walking in with clients they resolved it its fine we’re just
waiting for final paperwork.”

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1 The above communications between Geraci and Cotton regarding the zoning issue conveyed to
2 Cotton that the issue had still not yet been fully resolved at that time. As noted, Geraci had
3 previously represented to Cotton that the CUP application could not be submitted until the
4 zoning issue was resolved, which was key because Geraci's submission of the CUP application
5 was the outside date the parties had agreed upon for payment of the \$40,000 balance of the
6 non-refundable deposit to Cotton. As it turns out, Geraci's representations were untrue and he
7 knew they were untrue as he had already submitted the CUP application months prior.

8 22. With respect to the promised final agreement documents, Geraci continuously
9 failed to timely deliver the documents as agreed. On February 15, 2017, more than two
10 months after the parties reached their agreement, Geraci texted Cotton, "We are preparing the
11 documents with the attorney and hopefully will have them by the end of this week." On
12 February 22, 2017, Geraci again texted Cotton, "Contract should be ready in a couple days."

13 23. On February 27, 2017, nearly three months after the parties reached an
14 agreement on the terms of the sale, Geraci finally emailed Cotton a draft real estate purchase
15 agreement and stated: "Attached is the draft purchase of the property for 400k. The additional
16 contract for the 400k should be in today and I will forward it to you as well." However, upon
17 review, the draft purchase agreement was missing many of the key deal points agreed upon by
18 the parties at their November 2, 2016 meeting. After Cotton called Geraci for an explanation,
19 Geraci claimed it was simply due to miscommunication with his attorney and promised to have
20 her revise the agreement to accurately reflect their deal points.

21 24. On March 2, 2017, Geraci first emailed Cotton a draft of the separate side
22 agreement that was to incorporate other terms of the parties' deal. Cotton immediately
23 reviewed the draft side agreement and emailed Geraci the next day stating: "I see that no
24 reference is made to the 10% equity position... [and] para 3.11 looks to avoid our agreement
25 completely." Paragraph 3.11 of the draft side agreement stated that the parties had no joint
26 venture or partnership agreement of any kind, which contradicted the parties' express
27 agreement that Cotton would receive a ten percent equity stake in the MMCC business as a
28 condition of the sale of the Property.

1 25. On or about March 3, 2017, Cotton told Geraci he was considering retaining an
2 attorney to revise the incomplete and incorrect draft documents provided by Geraci. Geraci
3 dissuaded Cotton from doing so by assuring Cotton the errors were simply due to a
4 misunderstanding with his attorney and that Cotton could speak with her directly regarding any
5 comments on the drafts.

6 26. On March 7, 2017, Geraci emailed Cotton a revised draft of the side agreement
7 along with a cover email that stated: "... the 10k a month might be difficult to hit until the
8 sixth month... can we do 5k, and on the seventh month start 10k?". Cotton, increasingly
9 frustrated with Geraci's failure to abide by the parties' agreement, responded to Geraci on
10 March 16, 2017 in an email which included the following:

11 We started these negotiations 4 months ago and the drafts and our
12 communications have not reflected what agreed upon and are still far from
13 reflecting our original agreement. Here is my proposal, please have your
14 attorney Gina revise the Purchase Agreement and the Side Agreement to
15 incorporate all the terms we have agreed upon so that we can execute final
16 versions and get this closed... Please confirm by Monday 12:00 PM whether we
17 are on the same page and you plan to continue with our agreement ... If,
18 hopefully, we can work through this, please confirm that revised final drafts that
19 incorporate the terms will be provided by Wednesday at 12:00 PM. I promise to
20 review and provide comments that same day so we can execute the same or next
21 day.

22 27. On the same day, Cotton contacted the City's Development Project Manager
23 responsible for CUP applications. **At that time, Cotton discovered for the first time that**
24 **Geraci had submitted a CUP application for the Property way back on October 31, 2016,**
25 **before the parties even agreed upon the final terms of their deal and contrary to Geraci's**
26 **express representations over the previous five months.** Cotton expressed his
27 disappointment and frustration in the same March 16, 2017 email to Geraci:

28 I found out today that a CUP application for my property was submitted in
October, which I am assuming is from someone connected to you. Although, I
note that you told me that the \$40,000 deposit balance would be paid once the
CUP was submitted and that you were waiting on certain zoning issues to be
resolved. Which is not the case.

29 28. On March 17, 2017, after Geraci requested an in-person meeting via text
message, Cotton replied in an email to Geraci which including the following:

1 I would prefer that until we have final agreements that we converse exclusively
2 via email. My greatest concern is that you get a denial on the CUP application
3 and not provide the remaining \$40,000 non-refundable deposit. To be frank, I
4 feel that you are not dealing with me in good faith, you told me repeatedly that
5 you could not submit a CUP application until certain zoning issues had been
6 resolved and that you had spent hundreds of thousands of dollars on getting
7 them resolved. You lied to me, I found out yesterday from the City of San
8 Diego that you submitted a CUP application on October 31 2016 BEFORE we
9 even signed our agreement on the 2nd of November... Please confirm by 12:00
10 PM Monday that you are honoring our agreement and will have final drafts
11 (reflecting completely the below) by Wednesday at 12:00 PM.

12 Geraci did not provide the requested confirmation that he would honor their agreement or
13 proffer the requested agreements prior to Cotton's deadlines.

14 29. On March 21, 2017, Cotton emailed Geraci to confirm their agreement was
15 terminated and that Geraci no longer had any interest in the Property. Cotton also notified
16 Geraci that he intended to move forward with a new buyer for the Property.

17 30. On March 22, 2017, Geraci's attorney, Michael Weinstein ("Weinstein"),
18 emailed Cotton a copy of a complaint filed by Geraci in which Geraci claims for the very first
19 time that the three-sentence document signed by the parties on November 2, 2016 constituted
20 the parties' complete agreement regarding the Property, contrary to the parties' further
21 agreement the same day, the entire course of dealings between the parties, and Geraci's own
22 statements and actions.

23 31. On March 28, 2017, Weinstein emailed Cotton and indicated that Geraci
24 intended to continue to pursue the CUP application and would be posting notices on Cotton's
25 property. Cotton responded via email the same day and objected to Geraci or his agents
26 entering the Property and reiterated the fact that Geraci has no rights to the Property.

27 32. The defendants' refusal to acknowledge they have no interest in the Property
28 and to step aside from the CUP application has diminished the value of the Property, reduced
the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and
attorneys' fees to protect his interest in his Property.

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FIRST CAUSE OF ACTION

(Breach of Contract – Against Geraci and ROES 1 through 50)

33. Cotton realleges and incorporates by reference paragraphs 1 through 32, above, as though set forth in full at this point.

34. Geraci and Cotton entered into an agreement to negotiate and collaborate in good faith on mutually acceptable purchase and sale documents reflecting the terms for a purchase and sale of the Property and a side agreement for Cotton to obtain an equity position in the MMCC to operate at the Property. This agreement is comprised of (a) the November 2, 2016 document signed by Geraci and Cotton, and (b) the November 2, 2016 email exchange between Geraci and Cotton including other agreed-upon terms and the parties’ agreement to negotiate and collaborate in good faith on final deal documents. True and correct copies of the agreement are attached hereto as Exhibits 1 and 2, respectively.

35. Cotton performed all conditions, covenants, and promises required on his part to be performed in accordance with the terms and conditions of the contract between the parties or has been excused from performance.

36. Under the parties’ contract, Geraci was bound to negotiate the terms of an agreement for the Property in good faith. Geraci breached his obligation to negotiate in good faith by, among other things, intentionally delaying the process of negotiations, failing to deliver acceptable final purchase documents, failing to pay the agreed-upon non-refundable deposit, demanding new and unreasonable terms in order to further delay and hinder the process of negotiations, and failing to timely or constructively respond to Cotton’s requests and communications.

37. As a direct and proximate result of Geraci’s breaches of the contract, Cotton has been damaged in an amount not yet fully ascertainable and to be determined according to proof at trial.

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SECOND CAUSE OF ACTION

(Intentional Misrepresentation – Against Geraci and ROES 1 through 50)

38. Cotton realleges and incorporates by reference paragraphs 1 through 37, above, as though set forth in full at this point.

39. Defendants made statements to Cotton that: (a) were false representations of material facts; (b) defendants knew to be false or were made recklessly and without regard for their truth; (c) defendants intended Cotton to rely upon; (d) Cotton reasonably and justifiably relied upon; (e) Cotton’s reasonable reliance upon was a substantial factor in causing harm and damage to Cotton; and (f) caused damages to Cotton as a direct and proximate result of such fraudulent statements as described in paragraphs 1 through 32 above.

40. The intentional misrepresentations by defendants include at least the following:

(a) On or about October 31, 2016, Geraci fraudulently induced Cotton to execute the Ownership Disclosure Statement by (i) falsely representing that Geraci needed to show he had access to the Property in connection with his lobbying efforts to resolve the zoning issue and in connection with the preparation of a CUP application; and (ii) by indicating the document would only be used as a show of good-faith while the parties negotiated on the sale terms;

(b) On or about November 2, 2016, Geraci fraudulently induced Cotton to execute the document Geraci now alleges is the fully integrated agreement between the parties by representing that (i) the CUP application would not be filed until the zoning issue was resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at their November 2, 2016 meeting; (iii) Geraci would pay the \$40,000 remainder of the \$50,000 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci understood and agreed the document was not intended to be the final agreement between the parties for the purchase of the Property and did not contain all material terms of the parties’ agreement;

/////

/////

1 (c) On multiple occasions, Geraci represented to Cotton that a CUP
2 application for the Property could not be submitted until after the zoning issue was resolved;

3 (d) On multiple occasions, Geraci represented to Cotton that Geraci had not
4 yet filed a CUP application with respect to the Property when the CUP application had already
5 been filed; and

6 (e) On multiple occasions, Geraci represented to Cotton that the preliminary
7 work of preparing a CUP application was merely underway, when, in fact, the CUP application
8 had already been filed.

9 41. Defendants, through their intentional misrepresentations and the actions taken in
10 reliance upon such misrepresentations, have diminished the value of the Property, reduced the
11 price Cotton will be able to receive for the Property, and caused Cotton to incur costs and
12 attorneys' fees to protect his interest in his Property. As a further result of the intentional
13 misrepresentations, Cotton has been deprived of the remaining \$40,000 of the non-refundable
14 deposit that Geraci promised to pay prior to filing a CUP application for the Property.

15 42. The misrepresentations were intentional, willful, malicious, outrageous,
16 unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with the intent
17 to deprive Cotton of his interest in the Property. This intentional, willful, malicious,
18 outrageous and unjustified conduct entitles Cotton to an award of general, compensatory,
19 special, exemplary and/or punitive damages under Civil Code section 3294.

20 THIRD CAUSE OF ACTION

21 (Negligent Misrepresentation – Against Geraci and ROES 1 through 50)

22 43. Cotton realleges and incorporates by reference paragraphs 1 through 42, above,
23 as though set forth in full at this point.

24 44. Defendants made statements to Cotton that: (a) were false representations of
25 material facts; (b) defendants had no reasonable grounds for believing were true when the
26 statements were made; (c) defendants intended Cotton to rely upon; (d) Cotton reasonably and
27 justifiably relied upon; (e) Cotton's reasonable reliance upon was a substantial factor in
28 causing harm and damage to Cotton; and (f) caused damages to Cotton as a direct and

1 proximate result of such fraudulent statements as described in paragraphs 1 through 32 above.

2 45. The negligent misrepresentations by defendants include at least the following:

3 (a) On or about October 31, 2016, Geraci fraudulently induced Cotton to
4 execute the Ownership Disclosure Statement by (i) falsely representing that Geraci needed to
5 show he had access to the Property in connection with his lobbying efforts to resolve the
6 zoning issue and in connection with the preparation of a CUP application; and (ii) by
7 indicating the document would only be used as a show of good-faith while the parties
8 negotiated on the sale terms;

9 (b) On or about November 2, 2016, Geraci fraudulently induced Cotton to
10 execute the document Geraci now alleges is the fully integrated agreement between the parties
11 by representing that (i) the CUP application would not be filed until the zoning issue was
12 resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at
13 their November 2, 2016 meeting; (iii) Geraci would pay the \$40,000 remainder of the \$50,000
14 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci
15 understood and agreed the document was not intended to be the final agreement between the
16 parties for the purchase of the Property and did not contain all material terms of the parties'
17 agreement;

18 (c) On multiple occasions, Geraci represented to Cotton that a CUP
19 application for the Property could not be submitted until after the zoning issue was resolved;

20 (d) On multiple occasions, Geraci represented to Cotton that Geraci had not
21 yet filed a CUP application with respect to the Property when the CUP application had already
22 been filed; and

23 (e) On multiple occasions, Geraci represented to Cotton that the preliminary
24 work of preparing a CUP application was merely underway, when, in fact, the CUP application
25 had already been filed.

26 46. Defendants, through their negligent misrepresentations and the actions taken in
27 reliance upon such misrepresentations, have diminished the value of the Property, reduced the
28 price Cotton will be able to receive for the Property, and caused Cotton to incur costs and

1 attorneys' fees to protect his interest in his Property. As a further result of the negligent
2 misrepresentations, Cotton has been deprived of the remaining \$40,000 of the non-refundable
3 deposit that Geraci promised to pay prior to filing a CUP application for the Property.

4 FOURTH CAUSE OF ACTION

5 (False Promise – Against Geraci and ROES 1 through 50)

6 47. Cotton realleges and incorporates by reference paragraphs 1 through 46, above,
7 as though set forth in full at this point.

8 48. On November 2, 2016, among other things, Geraci falsely promised the
9 following to Cotton without any intent of fulfilling the promises:

10 (a) Geraci would pay Cotton the remaining \$40,000 of the non-refundable
11 deposit prior to filing a CUP application;

12 (b) Geraci would cause his attorney to promptly draft the final integrated
13 agreements to document the agreed-upon deal between the parties;

14 (c) Geraci would pay Cotton the greater of \$10,000 per month or 10% of the
15 monthly profits for the MMCC at the Property if the CUP was granted; and

16 (d) Cotton would be a 10% owner of the MMCC business operating at
17 Property if the CUP was granted.

18 49. Geraci had no intent to perform the promises he made to Cotton on November
19 2, 2016 when he made them.

20 50. Geraci intended to deceive Cotton in order to, among other things, cause Cotton
21 to rely on the false promises and execute the document signed by the parties at their November
22 2, 2016 meeting so that Geraci could later deceitfully allege that the document contained the
23 parties' entire agreement.

24 51. Cotton reasonably relied on Geraci's promises.

25 52. Geraci failed to perform the promises he made on November 2, 2016.

26 53. Defendants, through their false promises and the actions taken in reliance upon
27 such false promises, have diminished the value of the Property, reduced the price Cotton will
28 be able to receive for the Property, and caused Cotton to incur costs and attorneys' fees to

1 protect his interest in his Property. As a further result of the false promises, Cotton has been
2 deprived of the remaining \$40,000 of the non-refundable deposit that Geraci promised to pay
3 prior to filing a CUP application for the Property.

4 54. The false promises were intentional, willful, malicious, outrageous, unjustified,
5 done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive
6 Cotton of his interest in the Property. This intentional, willful, malicious, outrageous and
7 unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary
8 and/or punitive damages under Civil Code section 3294.

9 FIFTH CAUSE OF ACTION

10 (Declaratory Relief – Against Geraci, Berry, and ROES 1 through 50)

11 55. Cotton realleges and incorporates by reference paragraphs 1 through 54, above,
12 as though set forth in full at this point.

13 56. An actual controversy has arisen and now exists between Cotton and all
14 defendants concerning their respective rights, liabilities, obligations and duties with respect to
15 the Property and the CUP application for the Property filed on or around October 31, 2016.

16 57. A declaration of rights is necessary and appropriate at this time in order for the
17 parties to ascertain their respective rights, liabilities, and obligations because no adequate
18 remedy other than as prayed for exists by which the rights of the parties may be ascertained.

19 58. Accordingly, Cotton respectfully requests a judicial declaration of rights,
20 liabilities, and obligations of the parties. Specifically, Cotton requests a judicial declaration
21 that (a) defendants have no right or interest whatsoever in the Property, (b) Cotton is the sole
22 interest-holder in the CUP application for the Property submitted on or around October 31,
23 2016, (c) defendants have no interest in the CUP application for the Property submitted on or
24 around October 31, 2016, and (d) the Lis Pendens filed by Geraci be released.

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PRAYER FOR RELIEF

WHEREFORE, Cotton prays for relief as follows:

ON THE FIRST CAUSE OF ACTION:

- 1. For general, special, and consequential damages in an amount not yet fully ascertained and according to proof at trial, but at least \$40,000; and
- 2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial.

ON THE SECOND CAUSE OF ACTION

- 1. For general, special, and consequential damages in an amount not yet fully ascertained but at least \$40,000;
- 2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial; and
- 3. For punitive and exemplary damages in an amount just and reasonable to punish and deter defendants.

ON THE THIRD CAUSE OF ACTION

- 1. For general, special, and consequential damages in an amount not yet fully ascertained but at least \$40,000; and
- 2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial.

ON THE FOURTH CAUSE OF ACTION

- 1. For general, special, and consequential damages in an amount not yet fully ascertained but at least \$40,000;
- 2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial; and
- 3. For punitive and exemplary damages in an amount just and reasonable to punish and deter defendants.

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ON THE FIFTH CAUSE OF ACTION

- 1. For a judicial declaration that defendants have no right or interest whatsoever in the Property;
- 2. For a judicial declaration that Cotton is the sole interest-holder in the CUP application for the Property submitted on or around October 31, 2016, defendants have no right or interest in said CUP application, and that defendants are enjoined from further pursuing such CUP application for the Property; and
- 3. For a judicial order that the Lis Pendens filed by Geraci on the Property be released.

ON ALL CAUSES OF ACTION

- 1. For interest on all sums at the maximum legal rates from dates according to proof;
- 2. For costs of suit; and
- 3. For such other relief as the Court deems just.

DATED: August 25, 2017

Respectfully submitted,

FINCH, THORNTON & BAIRD, LLP



By: _____
 DAVID S. DEMIAN
 ADAM C. WITT
 Attorneys for Defendant and Cross-Complainant
 Darryl Cotton

2403.004/3BQ6279.hkr

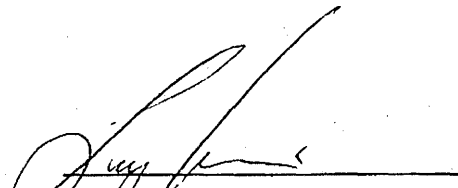
EXHIBIT 1

11/02/2016

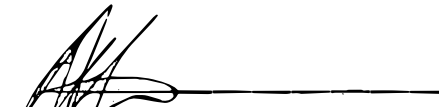
Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed to not enter into any other contacts on this property.



Larry Geraci



Darryl Cotton

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego

On November 2, 2016 before me, Jessica Newell Notary Public
(insert name and title of the officer)

personally appeared Darryl Cotton and Larry Geraci
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Jessica Newell (Seal)

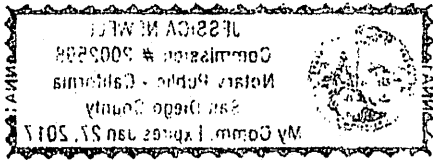


EXHIBIT 2



Darryl Cotton <indagrodarryl@gmail.com>

Agreement

2 messages

Larry Geraci <Larry@tfcSD.net>
To: Darryl Cotton <darryl@inda-gro.com>

Wed, Nov 2, 2016 at 3:11 PM

Best Regards,

Larry E. Geraci, EA

*Tax & Financial Center, Inc
5402 Ruffin Rd, Ste 200
San Diego, Ca 92123*

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

6/7/2017

Gmail - Agreement

 Cotton & Geraci Contract.pdf
71K

Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <darryl@inda-gro.com>

Wed, Nov 2, 2016 at 9:13 PM

No no problem at all

Sent from my iPhone

On Nov 2, 2016, at 6:55 PM, Darryl Cotton <darryl@inda-gro.com> wrote:

Hi Larry,

Thank you for meeting today. Since we executed the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored element in my decision to sell the property. I'll be fine if you would simply acknowledge that here in a reply.

Regards.

Darryl Cotton, President



darryl@inda-gro.com
www.inda-gro.com
Ph: 877.452.2244
Cell: 619.954.4447
Skype: dc.dalbercia

6176 Federal Blvd.
San Diego, CA. 92114
USA

NOTICE: The information contained in the above message is confidential information solely for the use of the intended recipient. If the reader of this message is not the intended recipient, the reader is notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify Inda-Gro immediately by telephone at 619.266.4004.

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DAVID S. DEMIAN, SBN 220626
E-MAIL: ddemian@ftblaw.com
ADAM C. WITT, SBN 271502
E-MAIL: awitt@ftblaw.com

FINCH, THORNTON & BAIRD, LLP

ATTORNEYS AT LAW
4747 EXECUTIVE DRIVE - SUITE 700
SAN DIEGO, CALIFORNIA 92121-3107
TELEPHONE: (858) 737-3100
FACSIMILE: (858) 737-3101

Attorneys for Defendant and Cross-Complainant Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual; and
DOES 1 through 10, inclusive,

Defendants.

CASE NO: 37-2017-00010073-CU-BC-CTL

PROOF OF SERVICE BY MAIL

[IMAGED FILE]

Assigned to:
Hon. Joel R. Wohlfeil, Dept. C-73

Complaint Filed: March 21, 2017
Trial Date: Not Set

DARRYL COTTON, an individual,

Cross-Complainant

v.

LARRY GERACI, an individual;
REBECCA BERRY, an individual; and
ROES 1 through 50,

Cross-Defendants.

I, Heidi Runge, declare that:

I am over the age of eighteen years and not a party to the action; I am employed in the County of San Diego, California, where the mailing occurred; and my business address is 4747 Executive Drive, Suite 700, San Diego, California 92121-3107. I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service pursuant to which practice the correspondence

1 will be deposited with the United States Postal Service this same day in the ordinary course of
2 business. I caused to be served the following document(s): SECOND AMENDED CROSS-
3 COMPLAINT, by placing a copy thereof in a separate envelope for each addressee listed as
4 follows:

5 Michael R. Weinstein, Esq.
6 Scott H. Toothacre, Esq.
7 Ferris & Britton
8 A Professional Corporation
9 501 West Broadway, Suite 1450
10 San Diego, California 92101
11 Telephone: (619) 233-3131
12 Facsimile: (619) 232-9316
13 Email: mweinstein@ferrisbritton.com
14 stoothacre@ferrisbritton.com

ATTORNEYS FOR PLAINTIFF AND
CROSS-DEFENDANT LARRY GERACI

11 Michael R. Weinstein, Esq.
12 Scott H. Toothacre, Esq.
13 Ferris & Britton
14 A Professional Corporation
15 501 West Broadway, Suite 1450
16 San Diego, California 92101
17 Telephone: (619) 233-3131
18 Facsimile: (619) 232-9316
19 Email: mweinstein@ferrisbritton.com
20 stoothacre@ferrisbritton.com

ATTORNEYS FOR CROSS-DEFENDANT
REBECCA BERRY

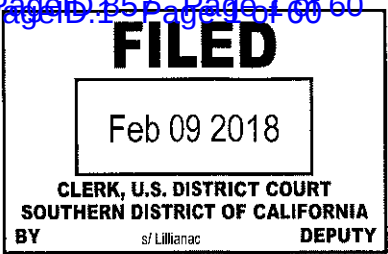
21 I then sealed the envelope(s) and, with the postage thereon fully prepaid, either
22 deposited it/each in the United States Postal Service or placed it/each for collection and
23 mailing on August 25, 2017, at San Diego, California, following ordinary business practices.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Executed on August 25, 2017.

27 
28 Heidi Runge

2403.004/Proof.hr



1 **Darryl Cotton**
2 **6176 Federal Blvd.**
3 **San Diego, CA 92114**
4 **Telephone: (619) 954-4447**
5 **Fax: (619) 229-9387**

6 **Plaintiff Pro Se**

7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 **DARRYL COTTON, an individual,**

10 **Plaintiff,**

11 **vs.**

12 **LARRY GERACI, an individual;**
13 **REBECCA BERRY, an individual; GINA**
14 **AUSTIN, an individual; AUSTIN LEGAL**
15 **GROUP, a professional corporation;**
16 **MICHAEL WEINSTEIN, an individual;**
17 **SCOTT H. TOOTHACRE; an individual;**
18 **FERRIS & BRITTON, a professional**
19 **corporation; CITY OF SAN DIEGO, a**
20 **public entity; and DOES 1 through 10,**
21 **inclusive,**

22 **Defendants.**

CASE NO.: '18CV0325 GPC MDD

Judge:
Dept.:

PLAINTIFF'S COMPLAINT FOR:

- 1. 42 U.S.C. SEC. 1983: 4TH AMEND. UNLAWFUL SEIZURE
- 2. 42 U.S.C. SEC. 1983: 14TH AMEND. DUE PROCESS VIOLATIONS
- 3. BREACH OF CONTRACT;
- 4. FALSE PROMISE;
- 5. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
- 6. BREACH OF FIDUCIARY DUTY;
- 7. FRAUD IN THE INDUCEMENT;
- 8. FRAUD / FRAUDULENT MISREPRESENTATION;
- 9. TRESPASS;
- 10. SLANDER OF TITLE;
- 11. FALSE DOCUMENTS LIABILITY;
- 12. UNJUST ENRICHMENT;
- 13. INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;
- 14. NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;
- 15. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
- 16. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS;
- 17. CONSPIRACY;
- 18. RICO;
- 19. DECLARATORY RELIEF; AND
- 20. INJUNCTIVE RELIEF.

23 **DEMAND FOR JURY TRIAL**

1 **Darryl Cotton**
2 **6176 Federal Blvd.**
3 **San Diego, CA 92114**
4 **Telephone: (619) 954-4447**
5 **Fax: (619) 229-9387**

6 **Plaintiff Pro Se**

7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 **DARRYL COTTON, an individual,**
10 **Plaintiff,**

CASE NO.:

Judge:
Dept.:

11 **vs.**

PLAINTIFF'S COMPLAINT FOR:

12 **LARRY GERACI, an individual;**
13 **REBECCA BERRY, an individual; GINA**
14 **AUSTIN, an individual; AUSTIN LEGAL**
15 **GROUP, a professional corporation;**
16 **MICHAEL WEINSTEIN, an individual;**
17 **SCOTT H. TOOTHACRE; an individual;**
18 **FERRIS & BRITTON, a professional**
19 **corporation; CITY OF SAN DIEGO, a**
20 **public entity; and DOES 1 through 10,**
21 **inclusive,**

22 **Defendants.**

- 23 **1. 42 U.S.C. SEC. 1983: 4TH AMEND.**
- 24 **UNLAWFUL SEIZURE**
- 25 **2. 42 U.S.C. SEC. 1983: 14TH AMEND. DUE**
- 26 **PROCESS VIOLATIONS**
- 27 **3. BREACH OF CONTRACT;**
- 28 **4. FALSE PROMISE;**
- 5. BREACH OF IMPLIED COVENANT OF**
- GOOD FAITH AND FAIR DEALING;**
- 6. BREACH OF FIDUCIARY DUTY;**
- 7. FRAUD IN THE INDUCEMENT;**
- 8. FRAUD / FRAUDULENT**
- MISREPRESENTATION;**
- 9. TRESPASS;**
- 10. SLANDER OF TITLE;**
- 11. FALSE DOCUMENTS LIABILITY;**
- 12. UNJUST ENRICHMENT;**
- 13. INTENTIONAL INTERFERENCE WITH**
- PROSPECTIVE ECONOMIC RELATIONS;**
- 14. NEGLIGENT INTERFERENCE WITH**
- PROSPECTIVE ECONOMIC RELATIONS;**
- 15. INTENTIONAL INFLICTION OF**
- EMOTIONAL DISTRESS;**
- 16. NEGLIGENT INFLICTION OF**
- EMOTIONAL DISTRESS;**
- 17. CONSPIRACY;**
- 18. RICO;**
- 19. DECLARATORY RELIEF; AND**
- 20. INJUNCTIVE RELIEF.**

23 **DEMAND FOR JURY TRIAL**

1
2 Plaintiff *Pro Se* Darryl Cotton (“Plaintiff,” “Cotton” or “I”) alleges upon information and
3 belief as follows:

4 **INTRODUCTION**

5 1. The origin of this matter is a simpler-than-most real estate contract dispute regarding
6 the sale of my property to defendant Larry Geraci (“Geraci”).

7 2. My property qualifies to apply with the City of San Diego (“City”) for a Conditional
8 Use Permit (“CUP”). If the City issues the CUP, the value of the Property will immediately be worth
9 at least **\$16,000,000** because the CUP will allow the establishment of a Medical Marijuana Consumer
10 Collective (“MMCC”). Under the regulatory scheme being effectuated by the State of California, an
11 MMCC is a retail-for-profit marijuana store. Because the City is creating an incredibly small
12 oligarchy by only issuing 36 MMCC retail licenses across the entire City, and will not issue any more
13 for at least 10 years, the net present value of the Property, to an individual that has the capital and
14 resources to build, develop and operate the MMCC, is at least **\$100,000,000**.

15 3. However, the value of the Property is exponentially **greater** than \$100,000,000 to
16 organized, sophisticated and powerful criminals that are looking for legitimate businesses in the
17 marijuana industry that they can use as fronts for their illegal operations.

18 4. Defendant Larry Geraci (“Geraci”) is exactly such a criminal -- he runs a criminal
19 enterprise that has for years operated in the illegal marijuana industry. He operates publicly through a
20 business providing tax and financial consulting services that he uses to invests his illegal gains and to
21 provide money laundering services to other criminals who own illegal marijuana stores.

22 5. It is a matter of public record that Geraci is an Enrolled Agent with the I.R.S. and that
23 he has been a named defendant in numerous lawsuits filed by the City against him for his
24 owning/operating of numerous illegal marijuana dispensaries. As described below, he now operates
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1 through employees and attorneys to hide his illicit operations. There is no way to ascertain exactly the
2 breadth of his criminal enterprise given his use of private and legal proxies for his criminal activities.

3 6. In November of 2016, Geraci and I came to terms for the sale of my property to him,
4 the terms of which included my having an ownership interest in the contemplated MMCC. However,
5 I found out Geraci had induced me to enter into that agreement on fraudulent grounds and he
6 breached the agreement in numerous ways.
7

8 7. Consequently, I terminated the agreement. After I terminated the agreement, Geraci, in
9 concert with his office manager/employee Rebecca Berry ("Berry") and his counsel, Gina Austin
10 ("Austin"), Michael Weinstein ("Weinstein") and Scott H. Toothacre ("Toothacre"), and their
11 respective law firms, brought forth a meritless lawsuit in state court attempting to fraudulently
12 deprive me of my property (the "Geraci Action").
13

14 8. After the Geraci Action was filed, I requested the City transfer the CUP application
15 filed by Geraci on my property to me. The City refused. I then filed an action against the City seeking
16 to have the City transfer the CUP application to me as Geraci had no legal basis to my property after
17 our agreement was terminated (the "City Action;" and collectively with the Geraci Action, the "State
18 Action." Defendant attorneys named herein, and their respective law firms, are Geraci's counsel in
19 the State Action (the "Attorney Defendants").
20

21 9. Throughout the course of the State Action, I have dealt with officials from the City of
22 San Diego ("City") that have violated my constitutional rights in various ways. These actions, by
23 themselves unlawful, have also had the effect of allowing, condoning, perpetuating and augmenting
24 the irreparable harm done to me that was originally set in motion by Geraci, Berry and the Attorney
25 Defendants.
26

27 10. I believe the City as an entity is prejudiced against me and has, and is, seeking to
28 deprive me of my rights and property because of (i) my political activism for the legalization of

1 medical cannabis (“Political Activism”) and/or (ii) as the result of political influence wielded by
2 Geraci.

3 11. Irrespective of motivation and whether the City is in some manner connected to
4 Geraci, which I believe to be true for the reasons explained below, but even I myself find hard to
5 believe (I understand how crazy it sounds), it does not change the facts – the City has taken unlawful
6 actions towards me.
7

8 12. For all intents and purposes, even assuming the City has not been unduly influenced
9 by Geraci and his political lobbyists, the effect to me by the City’s actions would be no different as if
10 the City had actually purposefully conspired against me with Geraci to effectuate his unlawful
11 scheme against me to fraudulently deprive me of my Property.
12

13 13. These officials and their unconstitutional actions include, but are not limited to:

14 a. A criminal prosecutor who induced me into entering into a misdemeanor plea
15 agreement and did not tell me or my attorney representing me that as a consequence of entering that
16 misdemeanor plea agreement I would be forfeiting my real property at issue here (which at that point
17 in time was worth at least \$3,000,000). That City attorney then used that misdemeanor plea
18 agreement as the unreasonable basis of filing a lis pendens on my property, thereby unconstitutionally
19 seizing my property, and filing a Forfeiture Action seeking to acquire my property. The City attorney
20 initially requested \$100,000 to cease its unfounded Forfeiture Action, but when my then-counsel
21 produced evidence of my destitute financial status, the City agreed to only extort \$25,000 from me
22 (the short and long-term consequence of having to renegotiate the terms of my agreement with my
23 financial backers to meet the January 2, 2018 deadline to pay this unconstitutional \$25,000 obligation
24 or lose the Property that is worth millions of dollars is the single most financially catastrophic event
25 to happen in this litigation, other than Geraci’s breach of our agreement and the actions he set in
26 motion leading to this Federal Complaint.)
27
28

1 b. Officials at Development Services that were processing the CUP application
2 submitted by Geraci violated my constitutional rights by denying me substantive and procedural due
3 process by failing to provide notice about a material change in how they were processing my
4 application; blatantly lying to me by telling me they could not accept a second CUP application on a
5 property (which they later said I could after my then-counsel sent them a demand letter and noted
6 there was no legal basis for their position and that he had personally filed a second CUP application
7 on another property for another landlord in a similar situation to mine);

9 c. Civil attorneys for the City in the State Action that (a) violated their ethical
10 duties by failing to inform the judges in the State Action about the Judge's mistakes/erroneous
11 assumptions and/or working in concert with the State Court Judges and other City officials against
12 me because of my Political Activism and (b) continuing to prosecute the State Action when they
13 knew it was meritless, thereby maliciously putting more undue financial and emotional pressure on
14 me by seeking money/fees and accusing me of having "unclean hands;" and

16 d. The State Court Judges presiding over the State Action whom I am forced to
17 conclude, given that their Orders simply cannot be reconciled with the evidence and arguments made
18 before them, are at the very least guilty of gross negligence by systemically denying me my
19 constitutional rights by assuming that because I am a crazy pro se and that no pleading, evidence and
20 oral argument I put forth over the course of months could actually contain enough legal and factual
21 basis so as to warrant the relief I requested.

23 14. Alternatively, the state court judges have been grossly negligent towards me either
24 because (i) they are unjustly dismissive of me because of my *pro se* and *blue-collar* status and simply
25 did not review my pleadings and disregarded my arguments at the oral hearings (ii) or they are not
26 impartial because, as one judge stated at the last hearing 2 weeks ago, he doubts my allegations of
27

1 ethical violations against counsel (including City attorneys) are true because he “knows them all
2 well.”

3 15. In the absence of additional information, I am forced to conclude that the state court
4 judges, actually City officials, are acting in concert with other City Officials as part of an off-the-
5 books illegal stratagem to deprive property owners of their properties via Forfeiture Actions if they
6 are sympathetic to and/or share my Political Activism.
7

8 16. I am not the only individual who has had their property unconstitutionally seized as
9 part of a Forfeiture Action that has been used by the City to extort significant financial gains from
10 property owners that share my Political Activism. Should I prevail in the TRO, I may seek out other
11 victims and bring forth a class action lawsuit against the City for their unconstitutional practice of
12 seizing properties.
13

14 17. I pray *this Federal Court* will not be dismissive of me because of my *pro se* and blue-
15 collar status and my Political Activism. I am painfully cognizant that from a statistical standpoint,
16 given my *pro se* status and the allegations above, that I will be perceived immediately as an
17 uneducated, legally-ignorant and conspiracy nut. I understand that. It is a reasonable assumption to
18 make. I just pray that this Federal Court, before it finalizes its conclusion, that it genuinely reviews
19 the evidence submitted with my TRO application because although from statistical standpoint I am
20 probably a *pro se* conspiracy nut, there is the possibility that my case is that 1 in a 1,000,000 chance
21 that there really is a conspiracy against me driven by the fact that the Property can be worth at least
22 **\$100,000,000** to sophisticated individuals, such as the defendants herein (excluding the City).
23

24 18. The truth is, I am a step away from literally losing my sanity, and I am aware of that.
25 But I view this Federal Court as my last recourse to protect and vindicate my rights as a citizen of this
26 great country and, if nothing else, that it may please explain to me its logic and evidence in issuing its
27 orders – something the State Courts have never done.
28

1 28. Cotton is the President of Inda-Gro that he founded in 2010 which is a manufacturer
2 of environmentally sustainable products, primarily horticulture lighting systems, that help enhance
3 crop production while conserving energy and water resources and which operates from the Property.

4 29. Cotton is the President of 151 Farms, a not-for-profit organization he founded in 2015
5 that is focused on providing ecologically sustainable horticultural practices for the food and medical
6 needs of urban communities which also operates from the Property.

7
8 30. Upon information and belief Defendant Larry Geraci ("Geraci") is, and at all times
9 mentioned was, an individual residing within the County of San Diego, California.

10 31. Upon information and belief, Defendant Rebecca Berry ("Berry") is, and at all times
11 mentioned was, an individual residing within the County of San Diego, California.

12 32. Upon information and belief, Defendant Gina Austin ("Austin") is, and at all times
13 mentioned was, an individual residing within the County of San Diego, California.

14 33. Upon information and belief, Austin Legal Group ("ALG") is, and at all times
15 mentioned was, a company located within the County of San Diego, California.

16 34. Upon information and belief, Defendant Michael Weinstein ("Weinstein") is, and at
17 all times mentioned was, an individual residing within the County of San Diego, California.

18 35. Upon information and belief, Defendant Scott H. Toothacre ("Toothacre") is, and at
19 all times mentioned was, an individual residing within the County of San Diego, California.

20 36. Upon information and belief, Ferris & Britton ("F&B") is, and at all times mentioned
21 was, a company located within the County of San Diego, California.

22 37. Defendant City of San Diego ("City") is, and at all times mentioned was, a public
23 entity organized and existing under the laws of California.

24 38. Cotton does not know the true names and capacities of the defendants named DOES 1
25 through 10 and, therefore, sues them by fictitious names. Cotton is informed and believes that DOES
26
27
28

1 1 through 10 are in some way responsible for the events described in this Complaint and are liable to
2 Cotton based on the causes of action below. Cotton will seek leave to amend this Complaint when the
3 true names and capacities of these parties have been ascertained.

4 39. At all times mentioned, defendants Geraci, Berry, Austin, ALG (the "Original
5 Defendants") were each an agent, principal, representative, alter ego and/or employee of the others
6 and each was at all times acting within the course and scope of said agency, representation and/or
7 employment and with the permission of the others.

8 40. As detailed below, Weinstein, Toothacre & F&B are attorneys representing Geraci
9 and Berry and joined the Original Defendants in their malfeasance when they became aware that the
10 Geraci Lawsuit was vexatious, continued prosecuting the Geraci Lawsuit and took unlawful actions
11 beyond the scope of their legal representation (F&B, from here on out, collectively, with the Original
12 Defendants, the "Private Defendants").

13 41. As detailed below, the City, through various representatives, each acting either with
14 purposeful intent, in concert with and/or with negligence, condoned, allowed, perpetuated and
15 augmented the irreparable and unlawful actions taken by the Private Defendants with their own
16 unconstitutional actions.
17
18
19

20 FACTUAL ALLEGATIONS

21 *THE ORIGIN OF THIS MATTER - MY PROPERTY*

22 42. In or around August 2016, Geraci first contacted Cotton to purchase the property and
23 set up an MMCC. The Property is one of a very limited number of properties located in San Diego
24 City Council District 4 that potentially satisfy the CUP requirements for a MMCC.

25 43. Over the ensuing weeks and months, Geraci and Cotton negotiated extensively
26 regarding the terms of a potential sale of the Property and, in good faith, took various steps in
27
28

1 contemplation of finalizing their negotiations (including the execution of documents required for the
2 CUP application). During these negotiations, Geraci represented to Cotton, among other things, that:

3 a. Geraci was a trustworthy individual because Geraci operated in a fiduciary
4 capacity for many high net worth individuals and businesses as an Enrolled Agent for the IRS
5 and the owner-manager of Tax and Financial Center, Inc., an accounting and financial
6 advisory business;

7
8 b. Geraci, through his due diligence, had uncovered a critical zoning issue that
9 would prevent the Property from being issued a CUP to operate a MMCC unless Geraci first
10 lobbied with the City to have the zoning issue resolved (the “Critical Zoning Issue”);

11 c. Geraci, through his personal, political and professional relationships, was in a
12 unique position to lobby and influence key City political figures to have the Critical Zoning
13 Issue favorably resolved and obtain approval of the CUP application once submitted;

14 d. Geraci was qualified to successfully operate a MMCC because he owned and
15 operated several other marijuana dispensaries in the San Diego County area through his
16 employee Berry and other agents; and

17
18 e. That through his Tax and Financial Center, Inc. company he knew how to “get
19 around” the IRS regulations and minimize tax liability which is something he did for himself
20 and other owners of cannabis dispensaries.

21
22 44. On November 2, 2016, Cotton and Geraci met and came to an oral agreement for the
23 sale of Cotton’s Property to Geraci (the “November Agreement”).

24 45. The November Agreement had a condition precedent for closing, which was the
25 successful issuance of a CUP by the City.

26
27 46. The November Agreement consisted of, among other things, Geraci promising to
28 provide the following consideration: (i) a \$50,000 non-refundable deposit for Cotton to keep if the

1 CUP was not issued, (ii) a total purchase price of \$800,000 if the CUP was issued; and a 10% equity
2 stake in the MMCC with a guarantee minimum monthly equity distribution of \$10,000.

3 47. At the November 2, 2016 meeting, after the parties reached the November
4 Agreement, Geraci (i) provided Cotton with \$10,000 in cash to be applied towards the total non-
5 refundable deposit of \$50,000 and had Cotton execute a document to record his receipt of the
6 \$10,000 (the "Receipt") and (ii) promised to have his attorney, Gina Austin, speedily draft and
7 provide final, written purchase agreements for the Property that memorialized all of the terms that
8 made up the November Agreement.
9

10 48. The parties agreed to effectuate the November Agreement via two written
11 agreements, one a "Purchase Agreement" for the sale of the Property and a second "Side Agreement"
12 that contained, among other things, Cotton's equity percentage, terms for his continued operations of
13 his Inda-Gro business and 151 Farms operations at the Property until the beginning of construction at
14 the Property of the MMCC, and the guaranteed minimum monthly payments of \$10,000 (collectively,
15 the ("Final Agreement").
16

17 49. On that same day, November 2, 2016, after the parties met, reached the November
18 Agreement and separated, the following email chain took place:

- 19 a. At 3:11 PM, Geraci emailed a scanned copy of the Receipt to Cotton.
20 b. At 6:55 PM, Cotton replied to Geraci stating the following:

21 "Thank you for meeting today. Since we executed the Purchase Agreement in
22 your office for the sale price of the property I just noticed the 10% equity
23 position in the dispensary was not language added into that document. I just
24 want to make sure that we're not missing that language in any final agreement
as it is a factored element in my decision to sell the property. I'll be fine if you
would simply acknowledge that here in a reply."

- 25 c. At 9:13 PM, Geraci replied with the following:

26 "*No no problem at all*"
27
28

1 50. In other words, on the same day the Receipt was executed and I received it from
2 Geraci, I realized it could be misconstrued and that it was missing material terms (e.g., my 10%
3 equity stake). Because I was concerned, I emailed him specifically, so that he would confirm that the
4 Receipt was not a final agreement and he confirmed it. That is why I refer to this email as the
5 “*Confirmation Email.*”

6
7 51. Thereafter, over the course of almost five months, the parties exchanged numerous
8 emails, texts and calls regarding the Critical Zoning Issue, the Final Agreements and comments to
9 various drafts of the Final Agreement that were drafted by Gina Austin.

10 52. On March 7, 2017, Geraci emailed a draft Side Agreement. The cover email states:
11 “Hi Darryl, I have not reviewed this yet but wanted you to look at it and give me your
12 thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth
13 month....can we do 5k, and on the seventh month start 10k?”

14 53. The attached draft of the Side Agreement to the March 7, 2017 email from Geraci
15 provides, among other things, the following:

- 16 a. “WHEREAS, the Seller and Buyer have entered into a Purchase Agreement[,] dated as of approximate even date herewith, pursuant to which the Seller shall sell to
17 Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal
18 Blvd., San Diego, California 92114[.]”
19 b. Section 1.2: “Buyer hereby agrees to pay to Seller 10% of the net revenues of
20 Buyer’s Business [...] Buyer hereby guarantees a profits payment of not less than
21 \$5,000 per month for the first three months [...] and \$10,000 a month for each month
22 thereafter[.]”
23 c. Section 2.12, which provides for notices, requires a copy of all notices sent to
24 Buyer to be sent to: “Austin Legal Group, APC, 3990 Old Town Ave, A-112, San
25 Diego, CA 92110.”

26 54. The draft was provided in a Word version and attached to the email from Geraci, the
27 “Details” information of that Word document states that the “Authors” is “Gina Austin” and that the
28 “Content created” was done on “3/6/2017 3:48 PM.” (the “**Meta-Data Evidence**”; a true and correct
copy of a screenshot of the Meta-Data Evidence is attached hereto as **Exhibit 2**).

1 55. I then found out that Geraci had been lying to me about the Critical Zoning Issue and
2 had submitted a CUP application with the City BEFORE we even finalized the November
3 Agreement.

4 56. Thus, Geraci breached the November Agreement by, *inter alia*, (i) filing the CUP
5 application with the City without first paying Cotton the \$40,000 balance of the non-refundable
6 deposit; not paying Cotton the \$40,000 balance; and (ii) failing to provide the Final Agreement as
7 promised.
8

9 57. I gave Respondent Geraci numerous opportunities to live up to his end of the bargain.
10 I was forced to, I had put off other investors and was relying on the \$40,000 to make payroll and
11 purchase materials for a new line of lights I was developing for my company Inda-Gro. I also, if I had
12 to, would have sold part of my 10% equity stake in the MMCC once it was approved.
13

14 58. However, Geraci made it clear via his email communications that he was going to
15 attempt to deprive me of the benefits of the bargain I bargained for when he refused to confirm via
16 writing that he was going to honor the November Agreement and made a statement that he had his
17 "attorneys working on it."
18

19 59. On March 21, 2017, after Geraci refused to confirm in writing that he was going to
20 honor the November Agreement, I emailed him: "To be clear, as of now, you have no interest in my
21 property, contingent or otherwise." Having anticipated his breach and being in desperate need of
22 money, That same day, I entered into the Written Real Estate Purchase Agreement with a third-party.
23 That deal was brokered by my Investor.

24 60. The next day, Weinstein emailed me a copy of the Geraci Lawsuit and filed a *Lis*
25 *Pendens* on my Property. The Geraci Lawsuit is premised solely and exclusively on the allegation
26 that the Receipt is the Final Agreement. As stated in Geraci's own words in a declaration submitted
27 in State Action under penalty of perjury: "*On November 2, 2016, Mr. Cotton and I executed a*
28

1 *written purchase and sale agreement for my purchase of the Property from him on the terms and*
2 *conditions stated in the agreement[.]’*

3 61. Thus, putting aside an overwhelming amount of additional and undisputed evidence,
4 Geraci’s own written admission in the Confirmation Email explicitly confirming the Receipt is not
5 the Final Purchase Agreements is completely damning and dispositive. It contradicts the only basis of
6 his complaint in the State Action and merits summary adjudication in my favor on the Breach of
7 Contract cause of action and related claims (hereinafter, the Breach of Contract cause of action
8 premised on the preceding facts is referred to as the “Original Issue”).

10 62. The only argument that has been put forth in the State Action that at first glance
11 appears to have merit is Geraci’s argument that the Confirmation Email should be prevented from
12 having legal effect pursuant to the Statute of Frauds (SOF) and the Parol Evidence Rule (PER). That
13 argument was the basis of Geraci’s demurrer to my cross-complaint in the State Action, which the
14 State Court denied.

16 63. Thus, the FACTS prove Geraci is lying and that his Complaint is meritless. And the
17 LAW is on my side as it will not prevent the admission of the Confirmation Email. With neither the
18 facts nor the law supporting Geraci’s lawsuits, why have the state court judges allowed both legal
19 actions to continue to my great and irreparable physical, emotional, psychological and financial
20 detriment?
21

22 64. The Receipt is the SOLE and ONLY basis of Geraci’s claim to the Property in the
23 Civil Action and the CUP application in the City Action. Gina Austin is defending Geraci and Berry
24 in the City Action which is premised on the alleged fact that the Receipt is the Final Agreement for
25 my Property.
26

27 65. The Receipt was executed in November of 2016.
28

1 66. Geraci's motivation for his unlawful behavior here is deplorable, but it is
2 understandable – Greed. What I cannot understand, nor can the attorneys I have spoken with about
3 these matters, is how or what Austin was thinking when she decided to represent Geraci and Berry in
4 the City Action and, on numerous occasions, work with Weinstein and Toothacre in the Geraci
5 Action? The record was already clear by then, and unless she wants to perjure herself or allege that I
6 somehow can get Google to falsify its records, there is evidence that is beyond dispute that she is
7 LYING to the State Court perpetuating a meritless case based solely on one single argument she
8 knows is false.

9
10 67. She is representing to the State Court that the Receipt is the final agreement for my
11 property, but she drafted several versions of the purchase and the side agreement for my property as
12 late as March of 2017? This appears to me to be criminal. And really, really dumb.

13
14 68. She is supposedly incredibly smart, she was just named as one of the Top Cannabis
15 Attorneys in San Diego. This is actually the basis of the fear of my Investor, a former attorney
16 himself, what kind of influence does Geraci have that he can force and coerce Austin to commit a
17 crime, to be able to get F&B to bring forth a vexatious lawsuit and to continue to maliciously
18 prosecute a case with no probable cause? Why have the judges not addressed the evidence?
19

20 69. For me it is impossible to ascertain the full extent of Geraci's influence, but it is
21 significant and scary. It is even enough to force a convict out on parole to risk going back to jail - on
22 January 17, 2018 while attempting to find a paralegal to assist me with filing and proof reading my
23 pleadings in the State Action, my investor, a former federal judicial law clerk, called several
24 paralegals to see if they could help me on short notice because my pleadings were not professional.
25 He invited a paralegal named Shawn Miller of SJBM Consulting over to his home to interview him
26 and give him the background. After he gave a description of the case and the Complaint and my
27 Cross-Complaint, Shawn stated that he knew Geraci and his business associates.
28

1 70. Because Shawn knew Geraci, my investor told him that matters would not work out
2 and asked him not to mention him to Geraci and/or his associates. My investor specifically told
3 Shawn that as a paralegal, he was ethically and professionally bound to NOT disclose the
4 conversation and its contents.

5 71. Not even two hours later, at around 10:00 PM at night, Shawn called my investor and
6 told him that it would be in his "best interest" for him to use his influence on me to get me to settle
7 with Geraci. This was the last straw for my investor because he does not understand the actions taken
8 by the City, the attorneys and the judges in this action. Being threatened at his home late at night by a
9 convict out on parole who was clearly aware that by violating his ethical and professional duties he
10 would risk going back to jail, reflected to him, that Geraci, putting aside my own belief that he is a
11 thuggish drug-lord at the head of a criminal enterprise, was someone that had a great deal of
12 influence over criminals and was someone he did not want anything to do with.

13 72. My investor has been a nervous wreck knowing that Geraci and his associates,
14 including a former special forces green beret (discussed below) know where he lives.

15 73. With all these seemingly unrelated people and events all coming together to protect,
16 intimidate for, push unfounded legal claims for, and do Geraci's bidding has been disturbing and
17 created nothing but turmoil in my life. Even my family, friends, businessmen and investors are
18 concerned that matters have escalated to a degree that Geraci, in seeking to cover-up everything that
19 has transpired here, may take drastic actions against them.

20 **SUMMARY OF MATERIAL FACTS REGARDING WEINSTEIN, TOOTHACRE AND F&B**

21 74. Initially, given the simple nature of the Original Issue, believing that I would be able
22 to represent myself *pro se* in the Geraci Lawsuit. This was a foolish assumption as it turned out.
23 Without wealth, justice is difficult to access. I prepared and filed an Answer to the Geraci Lawsuit
24 and filed a Cross-Complaint. My Answer and Cross-Complaint were submitted in one document and,
25
26
27
28

1 therefore, denied by the State Court for failing to comply with procedural requirements. Thus, I was
2 forced to realize, notwithstanding the simplicity of the Original Issue, that I would be unable to
3 efficiently represent myself in a legal proceeding and entered into an agreement with a third-party
4 (the “Investor”) to finance my representation in the Geraci Lawsuit. (The Investor is also the
5 individual who brokered the Real Estate Written Purchase Agreement between Mr. Martin and
6 myself.)

7
8 75. In exchange for my Investor financing the Geraci Litigation, I exchanged a portion of
9 the proceeds that I would receive from the Real Estate Purchase Agreement.

10 76. Investor did research, interviewed and coordinated my retaining the services of Mr.
11 David Damien of Finch, Thornton and Baird (“FTB”). Investor recommended FTB for me to
12 interview and choose as counsel because Mr. Damien had previously worked on a very similar
13 matter, representing a property owner against an investor with whom he had an agreement to develop
14 an MMCC, but with which he had a falling out before the CUP was issued. Mr. Damien was able to
15 prevail in that lawsuit, a Writ of Mandate action against the City, and have the City transfer the CUP
16 application filed by and paid for by the investor in that matter to the property owner (see
17 *Engerbretsen v. City of San Diego*, 37-2015-00017734-CU-WM-CTL.) Thus, he appeared to be a
18 perfect fit to help represent me against Geraci.

19
20
21 77. Investor negotiated with Mr. Damien for FTB to fully represent me in various legal
22 matters without limitation and to do so via a financing arrangement of \$10,000 a month. However,
23 Mr. Damien did not actually want to do work in excess of \$10,000 a month. Consequently, he was
24 not prepared for several hearings and proved grossly incompetent.[6]

25
26 78. Mr. Damien was professionally negligent on December 7, 2017 when he represented
27 me before the state court judge on an application for a TRO. Summarily, he failed in oral argument to
28 raise with the state court judge the Confirmation Email – the single most powerful and dispositive

1 piece of evidence in this case. After he was berated by my Investor right outside the courtroom for his
2 negligence, he withdrew as my counsel before even speaking with me via email.

3 79. The State Court Judge's order denying my TRO states "The Court, after hearing oral
4 argument and taking into consideration papers filed, denies the request for Temporary Restraining
5 Order and provides counsel with a hearing for the Preliminary Injunction." Based on the facts above,
6 and as can be confirmed with the opposition to the TRO motion filed herewith, there is no factual or
7 legal basis for the Court's decision.
8

9 80. I then filed *pro se* a motion for reconsideration regarding the TRO motion in which I
10 explicitly stated that Damien had been negligent by failing to raise the Confirmation Email with the
11 state court judge. That motion was heard on December 12, 2017.

12 81. On December 12, 2017, five days after the denial of my TRO application. I showed
13 up with family, friends, and supporters, confident that I would have "my day in court" and that the
14 State Court judge would realize Damien's negligence and issue the TRO.
15

16 82. Instead, I was not even given the opportunity to speak a single word. Before I could
17 say anything, the State Court judge told me he was denying my motion for reconsideration and left
18 the bench.
19

20 83. The minute order states: "The Court denies without prejudice the ex parte application.
21 Defendant is directed to go by way of noticed motion." If I am correct in assuming that, even putting
22 aside additional evidence, the Confirmation Email by itself dispositively resolves the case in my
23 favor, then what is the basis of the State Court decision to deny my motion for reconsideration if he
24 had reviewed my motion and understood that Damien had been negligent by failing to raise the
25 Confirmation Email? And why was I not allowed to speak a single word? And how does allowing me
26 to file by way of "noticed motion" address the exigency that was the basis of my TRO? And how
27
28

1 does it address the professional negligence of my counsel at the TRO hearing on December 7, 2017?

2 It does not.

3 84. December 12, 2017 is, and always will be, the worst day of my life. I was in so much
4 shock from the denial of my motion for reconsideration and the way in which it happened, that I
5 suffered a Transient Ischemic Attack, a form of stroke. I had to go to the Emergency Room that day
6 after the state court judge denied my motion without even letting me speak a single word.
7

8 85. The next day my financial investor told me he was going to cease funding my personal
9 needs and the Geraci Litigation because he needed to “cut his losses.” I went to his home uninvited. I
10 again pleaded with him to continue his support and he refused. I could not control myself and I ended
11 up physically assaulting him.

12 86. He was going to call the police and have me arrested. I will forever be grateful that he
13 did not and instead called a medical doctor who found me to be a danger to myself and others. (See
14 **exhibit 1.**)

15 87. After the denial of my TRO application, I made numerous calls to the California State
16 Bar and their Ethic Hotline regarding Damien’s negligence at the TRO Motion hearing. I was
17 directed to various Ethics opinions regarding not just his actions, but those of the other attorneys who
18 were present who, because of the situation violated their ethical duties by failing to let the State Court
19 know that it was ruling on a motion when it had not taken into account the single most powerful piece
20 of evidence – the Confirmation Email.
21
22

23 88. The most relevant items that I was pointed to are the following:

24 a. “[A]n attorney has a duty not only to tell the truth in the first place, but a duty
25 to ‘*aid the court in avoiding error and in determining the cause in accordance with justice*
26 *and the established rules of practice.*’ (51 Cal.App. at p. 271, italics added.)”

27 b. “A lawyer acts unethically where she assists in the commission of a fraud by
28 implying facts and circumstances that are not true in a context likely to be misleading.”[10]

1
2 89. When Weinstein first emailed me the complaint on March 22, 2017 from the state
3 court action, I replied and noted the facts above, including the Confirmation Email. Thus, Weinstein
4 knew from the very beginning that he was filing and prosecuting a vexatious lawsuit. Unless he wants
5 to argue that he assumed the SOF and the PER would prevent the admission of the Confirmation
6 Email AND he was not aware of the concept of promissory estoppel which would apply if the SOF
7 and PER did apply in the first instance to prevent the admission of the Confirmation Email. (Or likely
8 any of the other common law exceptions to the PER per the Rutter Guide such as fraud, formation
9 defect, condition precedent, collateral agreement, ambiguity or subsequent agreements most of which
10 would swallow up the rule thereby leaving him without a defense. Assuming of course that anyone
11 was actually paying attention or being unduly influenced by Geraci via his political lobbyist. In fact,
12 if I had the money I would hire a private investigator to see what ties Geraci has to my former
13 attorneys at FTB that helped them forget basic fist year law school contract law concepts such as
14 promissory estoppel). In fact, an associate at FTB, when partner David Damien was not in the room,
15 even let slip that some of Geraci's clients were also clients of their law firm, FTB. Should FTB not
16 have to disclose that relationship as part of my representation because it could represent a conflict of
17 interest? They never did, aside from the associate, Mr. Witt, who did so in small conversation when
18 the partner Damien was not in the room.)
19
20
21

22 90. Even assuming the above is the case, that Weinstein was not aware of the concept of
23 promissory estoppel, no later than when the State Court denied Geraci's demurrer based on the SOF
24 and the PER, Weinstein knew that the case was at that point vexatious and yet he kept prosecuting it.
25

26 91. At the December 7, 2017 TRO hearing, Weinstein obviously knew that Damien was
27 negligent in not raising, among the other arguments, the Confirmation Email in front of the State
28 Court judge. I believe that given the language provided by the California State Bar, that he violated

1 his ethical obligations to the Court and, vicariously to me, by allowing the State Court judge to rule
2 on the TRO motion without raising with him the fact that he was doing so without having taken into
3 account material and dispositive evidence.

4 92. The obligations of an attorney must stop short of taking advantage of situations that
5 lead to a miscarriage of justice, especially when he knows that I am facing severe financial and
6 emotional distress. This appears to me to be an Abuse of Process, and this is in the best case scenario
7 in which it is can be assumed that he is not vexatiously continuing to prosecute this case when he
8 knows that there is no factual or legal basis for it.

10 93. I filed Notices of Appeal from the denial of my TRO application and Motion for
11 Reconsideration. I hired counsel, Mr. Jacob Austin, a criminal defense attorney, who graciously
12 agreed to help me on my appeals on a contingent basis (and with a guarantee of ultimately being paid
13 by my investor if I did not prevail on my Appeal).

15 94. I was working on the draft of my Appeal, when Weinstein, on January 8, 2018, filed
16 two motions to compel my deposition in the State Action and a large amount of discovery requests.

17 95. Against the advice of my counsel and my investor, I decided to take advantage of the
18 opportunity to oppose the Motion to Compel and highlight to the judge the Confirmation Email and
19 the actions by counsel as described above. I filed my Opposition and it is attached here as Exhibit 1.
20

21 96. The Motions to Compel were granted and the various requests I set forth in my
22 opposition were denied.

23 97. The order issued by the judge granting the motion to compel and denying the relief I
24 requested, is predicated on the erroneous belief that there is “disputed” evidence in the record. Up
25 until that point in time I believed that the state court judge decision was due to Damien’s negligence,
26 I now believe that there are other nefarious factors at play and justice simply cannot be had in San
27 Diego state court.
28

1 was protected for my cultivation at the Property pursuant to Proposition 215. In other words, my Plea
2 Agreement and my discussion was predicated on my keeping my Property.

3 103. Immediately upon entering into the Plea Agreement, the City filed a Petition for
4 Forfeiture of Property based on the Plea Agreement I entered into and filed a Lis Pendens putting yet
5 another cloud on my title.

6 104. Deputy City Attorney Skeels did not explain to me, nor my counsel, that he intended
7 to seek the forfeiture of my property or that it was even a possibility. In fact, he did the opposite, he
8 made it seem as if he was giving me a sweetheart deal with a small fine and informal probation.

9 105. My criminal defense attorney who defended me in that action submitted a sworn
10 declaration stating that he was not aware and was not made aware by Skeels that the forfeiture of my
11 property was a possibility. Skeels did not care.

12 106. In other words, Skeels fraudulently induced me to enter into a plea agreement without
13 telling me the consequences that he was actually planning to pursue. This appears to me to be a
14 violation of my constitutional right to be made aware of the consequences to pleading guilty to a
15 criminal charge. Based on representations of Skeels, I didn't fully understand the charges or the
16 effects of admitting guilt. I would not have entered into a misdemeanor plea agreement if the
17 consequence of that action was to forfeit my property for which at that point in time I was still going
18 to receive in excess of \$3,000,000. It is ludicrous to believe otherwise.

19 107. In fact, this unlawful seizure is, I believe, part of an unconditional strategy by Skeels
20 and the City to deprive individuals of their property. This belief is bolstered by the fact that I have
21 been told on numerous occasions by numerous criminal attorneys as I have explained these facts that
22 it is incredibly rare for prosecutors to talk to defense counsel in the presence of the accused, much
23 less directly communicate with a defendant.

1 108. Skeels told me he was giving me a “sweetheart” deal. I feel that if it wasn’t a pressure
2 tactic than it was essentially a “confidence game” and a complete sham designed to gain undeserved
3 trust and pretend to be helpful while concealing his true intent of pursuing Asset Forfeiture. Under
4 information and belief, I feel that this is just one example of what appears to be endemic, systemic
5 maneuvering to confiscate the properties of as many defendants as possible.

6
7 109. This seemingly mild misdemeanor, my leasing out my property to third-parties over
8 who I had no control, with its \$239 fine, ended up in an unimaginable \$25,000 extortion that also
9 forced me to renegotiate with numerous parties to get it at a time when I was completely destitute
10 because of this legal action brought forth by Geraci and his crew of criminals.

11 110. Once I hired FTB, Damien reached out to Skeels and according to Damien, even
12 Skeels was not aware of the fact that there would be a forfeiture action. While that would be
13 believable under some circumstances, the Petition for Forfeiture of Property & Lis Pendens were
14 filed the next day so it is impossible to believe him.

15
16 111. Ultimately, facing numerous lawsuits and needing to prioritize my time and limited
17 financing, I settled and agreed to pay the City \$25,000. For the record, I am not here in this legal
18 action seeking to have that Plea Agreement nullified. Per the Forfeiture Settlement Agreement that
19 Skeels and Damien convinced me into entering, if I fight the Stipulation for Entry of Judgement, then
20 I lose the Property. I am stating these series of events so that it can be taken into account with the
21 other actions by the City via Development Services and the Officers of the Court that together make
22 it clear that there is a pattern of discriminatory and unconstitutional behavior towards me by the City.
23 Whether these actions are because of my Political Activism, Geraci’s influence or a combination of
24 both, will be proven through discovery and trial. (As a side note in regards to Skeels: I would hope
25 that Judge Cano may take it upon herself to sanction Skeels for his manipulation of the Plea
26 Agreement that she approved and which clearly did not contemplate the Forfeiture Action that he
27
28

1 brought under it as she and I had explicitly discussed the continuation of my cultivation practices on
2 the Property, the basis of the Prop 215 language added into the Plea Agreement. Who knows how
3 many more victims Skeels has extorted and how many orders by judges he has manipulated?)
4

5 The City's Development Services Department

6 112. On March 21, 2017, when I terminated my agreement with Geraci and sold the
7 property to a third-party, I also emailed the Development Project Manager responsible for the CUP
8 application on my Property. I stated:

9
10 "the potential buyer, Larry Geraci (cc'ed herein), and I have failed to finalize the purchase of
11 my property. As of today, there are no third-parties that have any direct, indirect or contingent
12 interests in my property. The application currently pending on my property should be denied
13 because the applicants have no legal access to my property."

14 113. The City refused to cease processing the CUP application as the application was
15 submitted by Geraci's employee, Berry.

16 114. However, on May 19, 2017, after numerous emails and calls with various individuals
17 at Development Services, the Project Manager provided a letter addressed to Abhay Schweitzer,
18 Geraci's architect who is in control of processing the CUP application with City, stating, in relevant
19 part:

20 "City staff has been informed that the project site has been sold. In order to continue the
21 processing of your application, with your project resubmittal, please provide a new Grant
22 Deed, updated Ownership Disclosure Statement, and a change of Financial Responsible Party
23 Form if the Financial Responsible Party has also changed."

24 115. Thus, as of May 19, 2017, I proceeded under the assumption that I was not at risk of
25 losing the CUP process because the CUP process was on hold until, *inter alia*, I executed a Grant
26 Deed. **If a CUP application is submitted and it is denied, then another CUP application cannot**
27 **be resubmitted for a year on the same Property.**
28

1 116. Sometime after May 19, 2017, I contacted Development Services and requested that I
2 be allowed to submit a second CUP application. Development Services denied my request and stated
3 that they could not accept a second CUP application on the same property. This is a blatant lie.
4 Damien had, in the Engerbretsen matter, submitted a second CUP application on behalf of his client
5 with the City.

6
7 117. On September 22, 2017, my then-counsel Damien wrote to Development Services
8 noting their refusal to accept a second CUP application and that such “refusal is not supported by any
9 provision of the Municipal Code.”

10 118. The City replied on September 29, 2017, by stating, inter alia, that I could submit a
11 second CUP application, but then also stated the following:

12
13 “As you’ve acknowledged in your letter, DSD is currently processing an application,
14 submitted by Ms. Rebecca Berry [...] Please be advised that the City is only able to make a
15 decision on one of these applications; the first project deemed ready for a decision by the
16 Hearing Officer will be scheduled for a public hearing. Following any final decision on one of
the CUP applications submitted [...], the CUP application still in process would be obsolete
and would need to be withdrawn.”

17 119. On October 30, 2017, through my then-counsel Damien, I filed a Motion for Writ of
18 Mandate directing the City to transfer the CUP application to me. It was not until I reviewed the
19 Declaration of Abhay Schweitzer in Support of Geraci’s opposition to my Motion for a Writ of
20 Mandate that I came to find out that the City had, in complete contradiction of the letter provided on
21 May 19, 2017, continued to process the Geraci CUP application on MY Property without the
22 executed Grant Deed.
23

24 120. The City never informed me of this or provided notice of any kind. Had I known, I
25 would have taken alternative steps to secure my rights to the CUP process. Per Schweitzer’s
26 declaration, everything was going great and he anticipates the CUP being approved in March of 2018.
27
28

1 not the only person who possess the right to use the subject property.” THERE IS **NO** DISPUTED
2 EVIDENCE. The only evidence in the record ever put forth by Geraci for his claim to my Property is
3 his allegation that the Receipt is the final purchase agreement for my property, a lie which is blatantly
4 exposed by his admission in the Confirmation Email. That, again, is NOT DISPUTED.

5 133. To clearly highlight this issue: The Confirmation Email was the subject of a demurrer
6 that the State Court judge ruled on, it was objected to on SOF and PER grounds, not its authenticity
7 that has never been challenged, disputed or denied since November 2, 2016!

8 134. I was preparing yet another Motion for Reconsideration regarding his order granting
9 the Motions to Compel, exhausting my limited resources attempting to make all kinds of arguments
10 when I came to a realization: even if he did turn around and issue some kind of order favorable to me,
11 all the evidence proves that he is at best, grossly negligent, and, at worst, conspiring against me
12 because of my Political Activism.
13
14

15 **THE FILING OF THIS FEDERAL COMPLAINT – THREATS**

16 135. On **February 3, 2018**, two individuals visited me. (I am not naming them because one
17 of the individuals is a former special forces operative for the US military and, for the reasons
18 described below, an agent of Geraci.) These two individuals came to my Property and during the
19 course of that conversation contradicted themselves by stating first that they had nothing to do with
20 Geraci and that they would buy the Property/CUP and assured me a long term job.
21
22

23 136. When I told them that Mr. Martin was paying a total purchase price of \$2,500,000,
24 they told me they would pay significantly *more* than \$2,500,000 and that it would also be beneficial
25 for me as I would be able to “end” the litigation with Geraci.
26
27
28

1 137. I then explained to them that I was already contractually and legally obligated to
2 pursue the litigation action against Geraci, prevail, and then transfer the Property and the CUP
3 application to Mr. Martin.

4 138. They looked at each other and then contradicted themselves. They told me that Geraci
5 was “powerful” and had “deep ties and influence” with the “City” and that it would not go well for
6 me if I did not agree to settle the action with Geraci. These individuals are NOT simple, street level
7 individuals. One of them is a high-net worth individual that recently sponsored a large art gala at San
8 Diego State (the “Sponsor”).

9 139. The other is a former special forces operative for the US Military (the “Operative”).
10 The Operative told me that because of my Plea Agreement, Geraci could use his influence with the
11 City to have the San Diego Police Department raid my Property at any time and have me arrested. I
12 told him that all the cannabis on my Property was compliant with Proposition 215 and my rights to
13 cultivate as I had specifically discussed with the judge who accepted the plea agreement. I showed it
14 to them, I have a large photocopy of it on my wall at the Property, and it was clear they were
15 expecting me to be more intimidated.

16 140. Yesterday, **February 8, 2018**, when I was wrapping up this Federal Complaint and all
17 the required documents for the filing of my TRO submitted concurrently with herewith, I sent an
18 email notice **ONLY** to counsel in the State Action (the “Federal Notice Email”).

19 141. NO ONE ELSE KNEW THAT WAS PLANNING ON FILING IN FEDERAL
20 COURT WITH THESE CAUSES OF ACTION YESTERDAY. NOT EVEN MY OWN FAMILY,
21 FRIENDS, INVESTORS, SUPPORTERS, PARALEGALS AND COUNSEL.

22 142. I sent the Federal Notice Email at **3:01 PM**.

23 143. At **3:36 PM**, not even an hour later, the Operative called me and told me *emphatically*
24 that he no longer has anything to do with the Sponsor, Geraci or anything related to me. He was
25
26
27
28

1 aware that I was immediately filing in Federal Court. He asked that I note name him or involve him
2 in this Federal lawsuit. Because he is ex-special forces, I have no desire to do so. Should the Sponsor,
3 Geraci, and whichever attorney informed him deny this allegation, then they can name him and be
4 responsible for the consequences of doing so. I note I have the phone records to prove this and am
5 creating copies that will be kept separately by third-parties.

6
7 144. How could Sponsor and Operative claim to not know Geraci? Why is Operative
8 calling me to tell me that he has nothing to do with Geraci or the actions that have transpired here? I
9 ONLY told counsel in the State Action. Clearly, Sponsor and Operative are working with Austin,
10 Weinstein, Toothacre and Geraci and they were sent to coerce and/or intimidate me at the behest of
11 Geraci in an attempt to force me to settle this lawsuit when they came to visit me on February 8,
12 2018.

13 14 CONCLUSION

15 145. I was researching the last Order by the state judge that denied my requested relief
16 because, he decrees, that I have not Exhausted my Administrative Remedies. In the Rutter guide it
17 states that: "The failure to pursue administrative remedies does not bar judicial relief where the
18 administrative remedy is *inadequate*, or where it would be *futile to pursue* the remedy" and
19 "administrative remedies also inadequate when irreparable harm would result by requiring exhaustion
20 before seek judicial relief" [Rutter Guide 1:906.26.]

21
22 146. Additionally, it stated in that subsection that: "Generally, a plaintiff is not required to
23 exhaust state administrative or judicial remedies before suing under federal civil rights statutes."
24 [Rutter Guide 1:906.29]

25
26 147. This reference led to me researching Section 1983 claims that I already knew allowed
27 federal action, but I was not aware could stop State Court actions while it adjudicated the Federal
28 Questions. That Rutter Guide section has a link to Mitchum v. Foster.

1 148. The United States Supreme Court held in Mitchum v. Foster that Section 1983 claims
2 in Federal Court are an exception to the Anti-Injunction Act that would allow a Federal Court to stay
3 a state court action. In reaching this decision, the United States Supreme Court noted the following
4 from the legislative debates leading to the passing of Section 1983:

5
6 “Senator Osborn: ‘If the State courts had proven themselves competent to suppress the local
7 disorders, or to maintain law and order, we should not have been called upon to legislate[.]’

8 Representative Perry concluded: ‘Sheriffs, having eyes to see, see not; judges, having ears to
9 hear, hear not; witnesses conceal the truth or falsify it; grand and petit juries act as if they
10 might be accomplices.... (A)ll the apparatus and machinery of civil government, all the
11 processes of justice, skulk away as if government and justice were crimes and feared
12 detection. Among the most dangerous things an injured party can do is to appeal to justice.’”

13 In my case, among other things, the City attorney unreasonably seized my property, they
14 “saw” and “heard” me speak with the judge regarding my right to retain my Prop 215 rights and my
15 property, but they pretend that they do not; I have repeatedly and emphatically demeaned myself and
16 begged the State Court judges in writing and at oral hearings to hear me regarding the Confirmation
17 Email, but they do not “hear me;” all attorneys present at the TRO hearing on December 7, 2017
18 where obligated to aid the Court in avoiding error, but they “conceal the truth or falsify it.” The City
19 attorneys “skulk away” and pretend to not be involved by stating that this case is a “private dispute”
20 between private actors.

21 149. It is futile to seek to protect and vindicate my rights in State Court. I have been
22 repeatedly told by numerous attorneys that if I were to appeal the State Court orders that there would
23 be severe backlash because judges take severe and personal offense when their judgment is
24 challenged. And that it is especially true when it turns out that they were actually wrong as there is
25 then a record of their “abuse of discretion” – “Among the most dangerous things an injured party
26 can do is to appeal to justice.” (*Id.*)
27
28

1 150. Thus, I find myself here and now today. I do not ask this Federal Court to believe me,
2 I only ask that this Court please genuinely review the evidence submitted with my application
3 submitted herewith for a TRO and the causes of action I bring forth in this Federal Complaint. If
4 Geraci and/or the City is allowed to passively and/or actively sabotage the CUP application, I will
5 have lost everything of value in my life completely unlawfully and unconstitutionally.

6
7 151. Please, I realize that this is a Federal Court and my Political Activism will not endear
8 me to the Federal Judiciary as an entity, but I do not come before this Federal Court to enforce or
9 argue rights related to my Political Activism, but rather for the protection and vindication of those
10 rights that are granted to me by the Constitution of the United States of America.

11
12 **FIRST CLAIM 42 U.S.C. SEC. 1983: 4TH AMEND. UNLAWFUL SEIZURE (As**
13 **against the City of San Diego)**

14 152. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1
15 through 135 as though fully set forth herein.

16 153. Defendant(s), acting under the color of state law, county ordinances, and penal codes,
17 individually and in their official capacity, and in violation of 42 U.S.C. § 1983, have violated
18 Plaintiff's right to be free from unreasonable search and seizure under the Fourth Amendment.

19 154. Well after my property was raided because the wrong-doings of my adjoining tenant
20 (Pure Meds), it occurred upon the City that (although they declined to press charges shortly after the
21 raid and waited the full statute of limitations under California Penal Code 364/365 days) I could
22 easily be charged and set up for an Asset Forfeiture action, so they filed. Upon entering a plea
23 following City Attorney Skeels' repeated assurances that the plea was a "sweetheart deal", and for
24 the sake of expediency, I went ahead and pled guilty.

25
26 155. I thought the action was over at that time. I was wrong, the City used this transaction
27 to further their suspicious utilization of Asset Forfeiture and almost immediately filed a Lis Pendens.
28

1 THAT is where the truly unreasonable seizure comes into play. This was essentially a retroactive
2 punishment tacked on to the punishment that the City had already meted out.

3 156. Defendants (City Attorney's Office) violated Plaintiffs' right to procedural due
4 process by issuing a Lis Pendens as a result of the plea without any prior notice and under false
5 pretenses. Defendant City has violated Plaintiffs' right to be free from unreasonable search and
6 seizure under the Fourth Amendment by conducting in such underhanded behavior.
7

8 157. As a direct and proximate result of the foregoing, Plaintiffs have been damaged in an
9 amount according to proof at trial.

10
11 **SECOND CLAIM FOR 42 U.S.C. SEC. 1983: 14TH AMEND. DUE PROCESS**
12 **VIOLATIONS (As against City)**

13 158. Cotton hereby incorporates by reference all of his allegations contained above as if
14 fully set forth herein.

15 159. Defendants, acting under the color of state law, county ordinances, regulations,
16 customs and usage of regulations and authority, individually and in their official capacity, and in
17 violation of 42 U.S.C. § 1983, have deprived Plaintiff of the rights, privileges or immunities secured
18 by the Due Process Clause of the Fourteenth Amendment.

19 160. Defendant City, specifically Development Services, has violated Plaintiff's rights to
20 substantive and procedural due process by the actions alleged above in regards to my Property and
21 the associated CUP application pending on my Property.
22

23 161. As a direct and proximate result of the foregoing, Plaintiffs have been damaged in an
24 amount according to proof at trial.
25

26 **THIRD CLAIM FOR BREACH OF CONTRACT (Against Geraci, Berry, Austin, ALG and**
27 **DOES 1 through 10)**
28

1 162. Cotton hereby incorporates by reference all of his allegations contained above as if
2 fully set forth herein.

3 163. Geraci and Cotton entered into an oral agreement regarding the sale of the Property
4 and agreed to negotiate and collaborate in good faith on mutually acceptable purchase and sale
5 documents reflecting their agreement.

6 164. The November 2nd Agreement was meant to be the written instrument that solely
7 memorialized the partial receipt of the non-refundable deposit.

8 165. Cotton upheld his end of the bargain, including by deciding to not sell his Property to
9 another party while Geraci, among other matters, ostensibly prepared a CUP application for
10 submission.
11

12 166. Under the parties' oral contract, Geraci was bound to negotiate the terms of an
13 agreement for the Property in good faith. Geraci breached his obligation to negotiate in good faith
14 by, among other things, intentionally delaying the process of negotiations, failing to deliver
15 acceptable purchase documents, failing to pay the agreed-upon non-refundable deposit, demanding
16 new and unreasonable terms in order to further delay and hinder the process of negotiations, and
17 failing to timely or constructively respond to Cotton's requests and communications.
18

19 167. Geraci breached the contract by, among other reasons, alleging the November 2nd
20 Agreement is the final agreement between the parties for the purchase of the Property. Berry, as
21 Geraci's agent is also liable. And Gina Austin and ALG were fully aware and apparently supportive
22 of these actions based on the multiple drafts and revisions of what was to be the final purchase
23 agreement.
24

25 168. As a direct and proximate result of Geraci's breaches of the contract, Cotton has been
26 damaged in an amount not yet fully ascertainable, has suffered and continues to suffer damages
27 because of Geraci's actions that constitute a breach of contract. This intentional, willful, malicious,
28

1 outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special,
2 exemplary and/or punitive damages.

3 **FOURTH CAUSE OF ACTION FALSE PROMISE – (As Against Geraci, Berry and DOES 1**
4 **through 10)**

5 169. Cotton hereby incorporates by reference all of his allegations contained above as if
6 fully set forth herein.

7
8 170. On November 2, 2016, among other things, Geraci falsely promised the following to
9 Cotton without any intent of fulfilling the promises.

10 171. Geraci would pay Cotton the remaining \$40,000 of the non-refundable deposit prior to
11 filing a CUP application;

12 172. Geraci would cause his attorney to promptly draft the final integrated agreements to
13 document the agreed-upon deal between the parties;

14
15 173. Geraci would pay Cotton the greater of \$10,000 per month or 10% of the monthly
16 profits for the MMCC at the Property if the CUP was granted; and

17 174. Cotton would be a 10% owner of the MMCC business operating at Property if the
18 CUP was granted.

19
20 175. Geraci had no intent to perform the promises he made to Cotton on November 2, 2016
21 when he made them.

22 176. Geraci intended to deceive Cotton in order to, among other things, cause Cotton to
23 rely on the false promises and execute the document signed by the parties at their November 2, 2016
24 meeting so that Geraci could later deceitfully allege that the document contained the parties' entire
25 agreement.

26
27 177. Cotton reasonably relied on Geraci's promises.

28 178. Geraci failed to perform the promises he made on November 2, 2016.

1 179. As a result of the actions taken in reliance on Geraci's false promises, Geraci created a
2 cloud on Cotton's title to the Property. As a further result of Geraci's false promises, Geraci has
3 diminished the value of the Property, reduced the price Cotton will be able to receive for the
4 Property, and caused Cotton to incur significant unnecessary costs and attorneys' fees to protect his
5 interest in his Property. As a further result of Geraci's false promises, Cotton has been deprived of
6 the remaining \$40,000 of the non-refundable deposit that Geraci promised to pay prior to filing a
7 CUP application for the Property.
8

9 180. Geraci's representations were intentional, willful, malicious, outrageous, unjustified,
10 done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive Cotton
11 of his interest in the Property. This intentional, willful, malicious, outrageous and unjustified conduct
12 entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages
13 under Civil Code section 3294.
14

15 **FIFTH CLAIM OF BREACH OF THE IMPLIED COVENANT OF GOOD FAITH**
16 **AND FAIR DEALING (As against Geraci, Berry, Austin, ALG, the City of San Diego, and**
17 **DOES 1 through 10)**

18 181. Cotton hereby incorporates by reference all of his allegations contained above as if
19 fully set forth herein.
20

21 182. Geraci breached the implied covenant of good faith and fair dealing when, among
22 other actions described herein, he alleged that the November 2nd Agreement is the final purchase
23 agreement between the parties for the Property.
24

25 183. As discussed above, Geraci, Berry, by and through counsel (Austin and ALG) and
26 personally continued to negotiate terms of the initial agreement for months following the November 2
27 Agreement.
28

1 184. Additionally, the City of San Diego, specifically Development Services have not dealt
2 with the CUP application fairly as discussed above. They have been paid application fees to process
3 the CUP on my property. I am the sole deed holder and have at all times held exclusive possession of
4 the Federal Blvd. property.

5 185. In dealing with San Diego, they have breached the implied covenant of good faith and
6 fair dealing when among other actions, they have not kept me informed or allowed me to gain
7 ownership of the CUP and have even went so far as to deny my rights to Due Process in failing to do
8 so.
9

10 186. I have suffered and continue to suffer damages because of Geraci's actions, his
11 attorneys actions and the City's Actions that constitute a breach of the implied covenant of good faith
12 and fair dealing.
13

14 187. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton
15 to an award of general, compensatory, special, exemplary and/or punitive damages.
16

17 **SIXTH CLAIM OF BREACH OF FIDUCIARY DUTY (As against Geraci and DOES 1**
18 **through 10)**

19 188. Cotton hereby incorporates by reference all of his allegations contained above as if
20 fully set forth herein.

21 189. Geraci stated he would honor the agreement reached on November 2nd, 2016, which
22 included a 10% equity stake in the Business and a guaranteed monthly equity distribution of \$10,000
23 a month.
24

25 190. Geraci stated he would pay the balance of the non-refundable deposit as soon as
26 possible, but at the latest when the alleged critical zoning issue was resolved, which, in turn, he
27 alleged was a necessary prerequisite for submission of the CUP application.
28

1 191. Geraci acknowledged that the November 2nd Agreement was not the final agreement
2 for the purchase of the Property via email on November 2nd, 2016.00

3 *Enrolled Agent – Fiduciary Duty*

4 192. Geraci represented to Cotton that as an Enrolled Agent for the IRS he was an
5 individual that could be trusted as he operated in a fiduciary capacity on a daily basis for many high-
6 net worth individuals and businesses. Further, that as an Enrolled Agent he would be able to structure
7 the tax filings of the medical marijuana dispensary and the owners, including Cotton, in such a way
8 that the tax liability would be very limited and, consequently, would maximize Cotton's share of the
9 profits.
10

11 193. Geraci, by representing himself to be an Enrolled Agent of the IRS that would, among
12 other things, submit on behalf of Cotton tax filings with the IRS, created a fiduciary relationship
13 between Cotton and himself.
14

15 *Real Estate Broker – Fiduciary Duty*

16 194. Geraci is a licensed real estate Broker.

17 195. Geraci took responsibility for the drafting of the Purchase Agreement for the Property
18 stating he would have his attorney provide a draft and, further, that Cotton did not require his own
19 counsel to revise the drafts of the real estate purchase contract.
20

21 196. Geraci induced Cotton into letting him effectuate the real estate transaction by
22 claiming that Cotton could trust Geraci.

23 197. Breach of Fiduciary Duties

24 198. Cotton has violated his fiduciary duties by, among the other actions described herein,
25 fraudulently inducing Cotton into executing the November 2nd Agreement and alleging it is the final
26 agreement for the purchase of the Property.
27
28

1 208. Cotton has suffered and continues to suffer damages because he relied on Geraci's
2 representations and promises.

3 209. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton
4 to an award of general, compensatory, special, exemplary and/or punitive damages.

5
6 **EIGHTH CLAIM FOR FRAUD/FRAUDULENT MISREPRESENTATION (As against**
7 **Geraci, Berry, Austin, ALG and DOES 1 through 10)**

8 210. Cotton hereby incorporates by reference all of his allegations contained above as if
9 fully set forth herein.

10 211. Each of the Defendants and their agents intentionally and/or negligently made
11 representations of material fact(s) in discussions with Cotton. On November 2, 2016, Geraci
12 represented to Cotton, among other things, that:

13 212. He would honor the agreement reached on November 2nd, 2016, which included a
14 10% equity stake in the Business and a guaranteed monthly equity distribution of \$10,000 a month.

15 213. He would pay the balance of the non-refundable deposit as soon as possible, but at the
16 latest when the alleged critical zoning issue was resolved, which, in turn, he alleged was a necessary
17 prerequisite for submission of the CUP application.

18 214. He understood and confirmed the November 2nd Agreement was not the final
19 agreement for the purchase of the Property.

20 215. That he, Geraci, as an Enrolled Agent by the IRS was someone who was held to a high
21 degree of ethical standards and that he could be trusted to prepare and forward the final legal
22 agreements, honestly effectuate the agreement that they had reached, including the corporate
23 structure of the contemplated businesses so as to ultimately minimize Cotton's tax liability.

24 216. That the preparation of the CUP application would be very time consuming and take
25 hundreds of thousands of dollars in lobbying efforts.
26
27
28

1 217. Geraci knew that these representations were false because, among other things, Geraci
2 had already filed a CUP application with the City of San Diego prior to that day. At that point in
3 time, all of his declarations regarding the issues that needed to be addressed, his trustworthiness and
4 his intent to follow through with accurate final legal agreements were false. His subsequent
5 communications via email, text messages and Final Agreement draft revisions make clear that he
6 continued to represent to Cotton that the preliminary work of preparing the CUP application was
7 underway, when, in fact, he was just stalling for time. Presumably, to get an acceptance or denial
8 from the City and, assuming he got a denial, to be able to deprive Cotton of the \$40,000 balance due
9 on the non-refundable deposit.
10

11 218. Geraci intended for Cotton to rely on his representations and, consequently, not
12 engage in efforts to sell his Property.
13

14 219. Cotton did not know that Geraci's representations were false.

15 220. Cotton relied on Geraci's representations.

16 221. Cotton's reliance on Geraci's representations were reasonable and justified.

17 222. As a result of Geraci's representations to Cotton, Cotton was induced into executing
18 the November 2nd Agreement, giving Geraci the only basis of his Complaint and, consequently,
19 among other unfavorable results, allowing Geraci to unlawfully create a cloud on title to his Property.
20 Thus, Cotton has been forced to sell his Property at far from favorable terms.
21

22 223. Cotton has been damaged in an amount of no less than \$2,000,000 from this Claim
23 alone. Additional damages from potential future profit distributions and other damages will be proven
24 at trial.
25

26 224. Geraci's representations were intentional, willful, malicious, outrageous, unjustified,
27 done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive Cotton
28 of his interest in the Property.

1 225. This intentional, willful, malicious, outrageous and unjustified conduct entitles Cotton
2 to an award of general, compensatory, special, exemplary and/or punitive damages.

3 **NINTH CLAIM FOR TRESPASS (As against Geraci, Berry, Toothacre, Weinstein,**
4 **F&B and DOES 1 through 10)**

5 226. Cotton hereby incorporates by reference all of his allegations contained above as if
6 fully set forth herein.

7 227. The Property was owned by Cotton and is in his exclusive possession.

8 228. Geraci, or an agent acting on his behalf, illegally entered the subject property on or
9 about March 27, 2017, and posted two NOTICES OF APPLICATION on the Property.

10 229. Geraci's attorney, Michael Weinstein, emailed Cotton on March 22, 2017 stating that
11 Geraci or his agents would be placing the aforementioned Notices upon Cotton's property.

12 230. Geraci knew that he had fraudulently induced Cotton into executing the November
13 2nd Agreement and, consequently, he had no valid legal basis to trespass unto Cotton's Property.

14 231. Alternatively, setting aside the fraudulent inducement, on March 21, 2017, Cotton,
15 having discovered Geraci's criminal scheme to deprive him of his Property, emailed Geraci stating
16 that he no longer had any interests in the Property and should not trespass on his Property, yet he
17 continued to do despite being warned not to.

18 232. Geraci's Notices of Application posted on his Property has caused and continues to
19 damage Cotton because the discouragement of future businesses, partnerships and potential buyers it
20 immediately caused to which Weinstein was a knowing party.

21 233. Cotton has no adequate remedy at law for the injuries currently being suffered in that
22 it will be impossible for Cotton to determine the precise amount Cotton has suffered and continues to
23 suffer damages because of Geraci's actions.

1 234. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton
2 to an award of general, compensatory, special, exemplary and/or punitive damages.

3 **TENTH CLAIM FOR SLANDER OF TITLE (As against Geraci, Berry, Austin, ALG,
4 F&B and the City of San Diego)**

5 235. Cotton hereby incorporates by reference all of his allegations contained above as if
6 fully set forth herein.

7 236. Geraci disparaged Cotton's exclusive valid title by and through the preparing, posting,
8 publishing, and recording of the documents previously described herein, including, but not limited to,
9 a Complaint in state court and Lis Pendens filed on the Property.

10 237. The City of San Diego separately also used/abused the Lis Pendens process to strong
11 arm me and violate my 4th Amendment Rights against unreasonable seizure.

12 238. Defendants knew that such documents were improper in that at the time of the
13 execution and delivery of the documents, Defendants had no right, title, or interest in the Property.
14 These documents were naturally and commonly to be interpreted as denying, disparaging, and casting
15 doubt upon Cotton's legal title to the Property. By posting, publishing and recording documents,
16 Defendants' disparagement of Cotton's legal title was made to the world at large.

17 239. As a direct and proximate result of all Defendants' conduct in publishing these
18 documents, Cotton's title to the Property has been disparaged and slandered, and there is a cloud on
19 Cotton's title, and Cotton has suffered and continues to suffer damages, including, but not limited to,
20 lost future profits, in an amount to be proved at trial, but in an amount of no less than \$2,000,000.

21 240. As a further and proximate result of Defendants' conduct, Cotton has incurred
22 expenses in order to clear title to the Property. Moreover, these expenses are continuing, and Cotton
23 will incur additional expenses for such purpose until the cloud on Cotton's title to the Property has
24

1 been removed. The amounts of future expenses are not ascertainable at this time but will be proven at
2 trial.

3 241. The amount of such damages shall be proven at trial (expert witness testimony will
4 likely be of critical importance).

5
6 **ELEVENTH CLAIM FOR FALSE DOCUMENTS LIABILITY (As against Geraci,
7 Berry, Austin, ALG, F&B and DOES 1 through 10)**

8 242. Cotton hereby incorporates by reference all of his allegations contained above as if
9 fully set forth herein.

10 243. Geraci filed a Complaint against Cotton and a Lis Pendens on the Property with a
11 public office, respectively, this Court and the San Diego County Recorder's Office.

12 244. Geraci knew the Complaint and Lis Pendens, both solely and completely predicated
13 upon his allegation that the November 2nd Agreement was the final agreement for the purchase of the
14 Property, was false and unfounded when he filed them.

15 245. Geraci, his agents and counsel, all knew at the time of the filing he was committing a
16 crime (in violation of California Penal Code Section 115 PC) and did so knowingly anyway.

17 246. Cotton has suffered and continues to suffer damages because of Geraci's actions.

18 247. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton
19 to an award of general, compensatory, special, exemplary and/or punitive damages.
20
21

22 **TWELFTH CLAIM OF UNJUST ENRICHMENT (As against Geraci, Berry, and the
23 City of San Diego)**

24 248. Cotton hereby incorporates by reference all of his allegations contained above as if
25 fully set forth herein.

26 249. Geraci represented to Cotton that executing the November 2nd Agreement was only to
27 memorialize the \$10,000 good-faith deposit towards the total \$50,000 non-refundable deposit, but
28

1 Geraci now alleges that the November 2nd Agreement is the final agreement for the purchase of the
2 Property.

3 250. Geraci himself confirmed via email that the November 2nd Agreement is not the final
4 agreement.

5 251. Had Geraci described the effect of executing the November 2nd Agreement in the way
6 that Geraci presently interprets it, then Cotton would never have signed the November 2nd
7 Agreement.
8

9 252. Geraci will be unjustly enriched at the expense of Cotton if he is permitted to retain
10 the interest in the Property that he now asserts under the November 2nd Agreement.

11 253. The City of San Diego was able trick me into entering deals that caused me to lose
12 \$25,000 to remove the Lis Pendens from the property.
13

14 254. Cotton has suffered and continues to suffer damages because of Geraci's actions.

15 255. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton
16 to an award of general, compensatory, special, exemplary and/or punitive damages.
17

18 **THIRTEENTH CLAIM OF INTENTIONAL INTERFERENCE WITH**
19 **PROSPECTIVE ECONOMIC RELATIONS – (As Against Geraci, Berry, Austin, F&B and**
20 **DOES 1 through 10)**

21 256. Cotton hereby incorporates by reference all of his allegations contained above as if
22 fully set forth herein.

23 257. Cotton has an ongoing prospective business relationship with Mr. Martin and the City
24 via by the then-filed CUP application that was resulting, and would have resulted, in an economic
25 benefit to Cotton based on and in connection with the approval of the CUP application.
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1 258. Further, specifically, Cotton has an ongoing prospective business relationship with Mr.
2 Martin for the sale of the Property that was resulting, and would have resulted, in an economic
3 benefit to Cotton based on and in connection with the sale of the Property.

4 259. Defendants knew of Cotton's ongoing and prospective business relationship with Mr.
5 Martin and the City arising from and related to the CUP Application and defendants knew of
6 Cotton's ongoing and prospective business relationship with the new buyer for the Property.
7

8 260. Defendants intentionally engaged in acts designed to interfere, and which have
9 interfered and are likely to continue to interfere, with Cotton's relationship with the City, the CUP
10 application, and the new buyer, including without limitation, their refusal to acknowledge they have
11 no interest in the Property and/or the CUP application.
12

13 261. As a direct and proximate result of the defendants' conduct, Cotton has suffered and
14 will continue to suffer damages in an amount not yet fully ascertainable and to be determined
15 according to proof at trial.

16 262. The aforementioned conduct by defendants was despicable, willful, malicious,
17 fraudulent, and oppressive conduct which subjected Cotton to cruel and unjust hardship in conscious
18 disregard of Cotton's rights, so as to justify an award of exemplary and punitive damages in an
19 amount to be determined according to proof at trial, including pursuant to Civil Code section 3294.
20

21 **FOURTEENTH CLAIM OF NEGLIGENT INTERFERENCE WITH PROSPECTIVE**
22 **ECONOMIC RELATIONS – (As Against Geraci, Berry, and DOES 1 through 10)**

23 263. Cotton hereby incorporates by reference all of his allegations contained above as if
24 fully set forth herein.

25 264. Cotton has an ongoing prospective business relationship with the City that was
26 resulting, and would have resulted, in an economic benefit to Cotton based on and in connection with
27 the approval of the CUP application. In addition, Cotton has an ongoing prospective business
28

1 relationship with the new buyer of the Property that was resulting, and would have resulted, in an
2 economic benefit to Cotton based on and in connection with the sale of the Property.

3 265. Defendants knew or should have known of Cotton's ongoing and prospective business
4 relationship with the City arising from and related to the CUP Application, and defendants knew or
5 should have known of Cotton's ongoing and prospective business relationship with the new buyer for
6 the Property.
7

8 266. Defendants failed to act with reasonable care when they engaged in acts designed to
9 interfere, and which have interfered and are likely to continue to interfere, with Cotton's relationship
10 with the City, the CUP application, and the new buyer, including without limitation, their refusal to
11 acknowledge they have no interest in the Property and/or the CUP application.
12

13 267. As a direct and proximate result of the defendants' conduct, Cotton has suffered and
14 will continue to suffer damages in an amount not yet fully ascertainable and to be determined
15 according to proof at trial.
16

17 **FIFTH CLAIM OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (As against**
18 **All Defendants)**

19 268. Cotton hereby incorporates by reference all of his allegations contained above as if
20 fully set forth herein.

21 269. Defendants, and each of them, engaged in outrageous conduct towards Plaintiff, with
22 the intention to cause or with reckless disregard for the probability of causing Plaintiff to suffer
23 severe emotional distress. Geraci has event sent convicts to intimidate, coerce and threaten my
24 investors by telling him that it would be in his "best interest" to use his influence me to settle with
25 Geraci.
26
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1 270. All of the above-named defendants know that this is an unfounded lawsuit against me
2 and the continued malicious attempts at depriving me of my rights, money and sanity can only be
3 described as outrageous.

4 271. The defendants have acted for the purpose of causing me emotional distress so severe
5 that it could be expected to adversely affect mental health and well-being.

6 272. The defendants' conduct is causing such distress, which includes, but is not limited to,
7 chronic loss of sleep, paranoia, and other injuries to health and well-being. All of these injuries
8 continue on a daily basis.

9 273. To the extent that said outrageous conduct was perpetrated by certain Defendants, the
10 remaining Defendants adopted and ratified said conduct with a wanton and reckless disregard of the
11 deleterious consequences. As a proximate result of said conduct, I have suffered and continue to
12 suffer extreme mental distress, humiliation, anguish, and emotional and physical injuries, as well as
13 economic losses.

14 274. Defendants committed the acts alleged herein maliciously, fraudulently and
15 oppressively with the wrongful intention of injuring Plaintiff, from an improper and evil motive
16 amounting to malice and in conscious disregard of Plaintiff's rights, entitling Plaintiff to recover
17 punitive damages in amounts to be proven at trial.

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21 **SIXTHTEENTH CLAIM FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**
22 **(As against All Defendants)**

23 275. Plaintiff realleges and incorporates by reference the allegations contained above as
24 though fully set forth.

25 276. All Defendants, and each of them, knew or reasonably should have known that the
26 conduct described herein would, and did, proximately result in physical and emotional distress to
27 Plaintiff. Being as all of the above-named defendants know that this is an unfounded lawsuit against
28

1 me and the continued malicious attempts at depriving me of my rights, money and sanity can only be
2 described as outrageous.

3 277. At all relevant times, all Defendants, and each of them, had the power, ability,
4 authority, and duty to stop engaging in the conduct described herein and/or to intervene to prevent or
5 prohibit said conduct.

6 278. Despite said knowledge, power, and duty, Defendants negligently failed to act so as to
7 stop engaging in the conduct described herein and/or to prevent or prohibit such conduct or otherwise
8 protect Plaintiff. Therefore, whether or not the defendants have acted for the express purpose of
9 causing me this extreme emotional distress, they have caused it. And they should have known this
10 would happen.

11 279. Further, they have been made aware and have been on notice. Weinstein of F&B,
12 specifically. To the extent that said negligent conduct was perpetrated by certain Defendants, the
13 remaining Defendants confirmed and ratified said conduct with the knowledge that Plaintiff's
14 emotional and physical distress would thereby increase, and with a wanton and reckless disregard for
15 the deleterious consequences to Plaintiff.

16 280. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
17 suffered and continues to suffer serious emotional distress, humiliation, anguish, emotional and
18 physical injuries, as well as economic losses, all to his damage in amounts to be proven at trial.

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22 **SEVENTEENTH CLAIM FOR CONSPIRACY (As against Geraci, Berry, Austin, ALG,
23 Weinstein, the City of San Diego and DOES 1 through 10)**

24 281. Cotton hereby incorporates by reference all of his allegations contained above as if
25 fully set forth herein.

26 282. Geraci fraudulently induced Cotton to execute the Ownership Disclosure Statement on
27 October 31st, 2016, alleging that the Ownership Disclosure Statement was necessary because the
28

1 parties did not have a final agreement in place at that time, thus, he needed it to show other
2 professionals involved in the preparation of the CUP application and the lobbying efforts to prove
3 that he, Geraci, had access to the Property.

4 283. As a sign of good-faith by Cotton as they had not reached a final agreement for the
5 sale of the Property. Geraci wanted something in writing proving Cotton's support of the CUP
6 application at his Property because he needed to immediately spend large amounts of cash to continue
7 with the preparation of the CUP application and the lobbying efforts. However, Geraci promised that
8 the Ownership Disclosure Statement would not under any circumstances actually be submitted to the
9 City of San Diego. Further, that it was impossible to submit the CUP application as the critical zoning
10 issue had been resolved with the city of San Diego.
11

12 284. The Ownership Disclosure Statement is also executed by Rebecca Berry and denotes
13 Rebecca Berry is the "Tenant/Lessee" of the Property.
14

15 285. Geraci represented to Cotton that Rebecca Berry could be trusted and was one of his
16 best employees who was familiar with the medical marijuana industry.
17

18 286. Cotton has never met or entered into any agreement with Rebecca Berry.

19 287. Rebecca Berry knew that she had not entered into a lease of any form with Cotton for
20 the Property.

21 288. Upon information and belief, Rebecca Berry allowed the CUP application to be
22 submitted in her name on behalf of Geraci because Geraci has been a named Cotton in numerous
23 other lawsuits brought by the City of San Diego against him for the operation and management of
24 unlicensed and unlawful marijuana dispensaries.[14]
25

26 289. Rebecca Berry knew that she was filing a document with the City of San Diego that
27 contained a false statement, specifically that she was a lessee of the Property.
28

1 290. Rebecca Berry, at Geraci's instruction or her own desire, submitted the CUP
2 application as Geraci's agent, thereby Geraci's scheme to deprive Cotton of his Property.

3 291. Gina Austin and ALG represented Berry and Geraci in the initial Writ motion
4 involving the City of San Diego, additionally, Austin and ALG drafted the proposed Final Purchase
5 Agreements and subsequent revisions well into March of 2017. Therefore these acts were in full
6 knowledge that the November 2 Agreement (which this whole case is premised on) was NOT
7 intended to be the full and final agreement. The egregiousness of not informing the court of these
8 material facts and allowing this case to proceed so far is a slight to the Superior Court to which an
9 officer of the court has a duty of honesty, integrity and candor. No other possible explanation comes
10 to mind other than Austin and ALG have been knowingly working in concert together to defraud the
11 court, and myself.
12

13 292. Inexplicably, no one working in The City Attorney's Office of the City of San Diego
14 have raised their voices to assist me when they have received all the above information. They have
15 seen my evidence, they have expressed surprise that I was not granted a TRO after reading my
16 Motion for Reconsideration for the TRO. Yet, knowing this is an unfounded case San Diego is still
17 permitting this injustice continue.
18

19 293. The San Diego Department of Services seemingly worked exclusively for Geraci and
20 Berry and essentially blocked me from having any say as to the CUP for my property. They have
21 continued to process the CUP application for Geraci and Berry when they know that Geraci and
22 Berry have no legal right to my Property.
23

24 294. Then I was told to submit a new application which necessarily creates an inequitable
25 race – all these facts can only be reconciled if one is to accept that 1) the city is prejudiced against me
26 or; 2) Geraci has them in his pocket.
27
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1 295. Not only that, this all follows the tyrannical practices of Deputy City Attorney Mark
2 Skeels who tricked me and my young defense counsel into setting myself up for an Asset Forfeiture
3 Action that ultimately resulted in a \$25,000 extortion. Under the Fourth Amendment, "[t]he right of
4 the people to be secure in their persons, houses, papers, and effects, against unreasonable searches
5 and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause." U.S. Const.
6 amend. IV. "The Fourth Amendment does not proscribe all state-initiated searches and seizures; it
7 merely proscribes those which are unreasonable." *Florida v. Jimeno*, 500 U.S. 248, 250, 111 S.Ct.
8 1801, 114 L.Ed.2d 297 (1991). In light of the situation I was in, the unforeseen and extreme result
9 must surely constitute an "unreasonable" seizure.
10

11 296. Further adding to my confusion, frustration and inability to gain any traction in
12 protecting my own interests, the Honorable Judge Wohlfeil presiding over my case has not seemed
13 interested in reading any of my prior submissions. He "knows [the attorneys opposing me] well" and
14 I believe based on that he is biased against me now that I am pro se and a likely mark for everyone to
15 be able to walk over and take advantage of with no repercussions. At best, Judge Wohlfiel probably
16 hopes my case can be settled out of court relieving him of further responsibility (or culpability?) in
17 regard to my case. At worst, Wohlfeil's seemingly purposeful negligence at this point is an
18 intentional cover-up of the fact that he does not care about my case or he is actively helping Geraci.
19
20

21 297. Ultimately, whether it was done purposefully, working in concert with, and/or because
22 of gross negligence, all the parties here, even if operating in their own "mini-conspiracies," have de
23 facto operated in a one, large conspiracy by perpetuating and augmenting the unlawful actions and
24 harm caused to Darryl.
25

26 298. Cotton has suffered and continues to suffer damages because of actions of all
27 defendants such that it would be "a challenge to imagine a scenario in which that harassment would
28

1 not have been the product of a conspiracy.” [*Geinosky v. City of Chicago* (7th Cir. 2012) 675 F3d
2 743, 749].

3 299. As a direct and proximate result of Defendants’, their agents’ and conspirators’
4 concerted, intentional (and even negligent), willful, malicious, outrageous, and unjustified conduct
5 entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages.
6 unlawful conduct. Plaintiff has suffered and continues to suffer serious emotional distress,
7 humiliation, anguish, emotional and physical injuries, as well as economic losses, all to his damage in
8 amounts to be proven at trial.
9

10 **EIGHTEENTH CLAIM FOR RACKETEER INFLUENCED AND CORRUPT**
11 **ORGANIZATION ACT (As against All Defendants)**

12 300. Cotton hereby incorporates by reference all of his allegations contained above as if
13 fully set forth herein.
14

15 301. The elements of civil RICO are as follows: (1) conduct, (2) of an enterprise, (3)
16 through a pattern (4) of racketeering activity, (5) resulting in injury.

17 302. Geraci, as proven by public records of lawsuits filed by the City against him for the
18 operating of illegal dispensaries, has run an enterprise of illegal marijuana dispensaries over the
19 course of years. His enterprise is focused on marijuana dispensaries and related financial support
20 services meant to unlawfully circumvent IRS tax liabilities. As discussed above, he uses employees,
21 third-parties, attorneys and criminals to operate his criminal enterprise.
22

23 303. Geraci specifically told Cotton, when fraudulently inducing him to enter into the
24 November Agreement, that as an Enrolled Agent for the IRS, he was uniquely positioned to “get
25 around” paying IRS Code Section 280(e). At the time, it appeared to Cotton that Geraci was stating
26 he had some form of unknown method to do so lawfully. In retrospect, it is apparent that he is
27
28

1 providing money laundering services for himself and others, using his Tax and Financial company as
2 legitimate front for his behind the scenes unlawful activities.

3 304. Geraci runs his enterprise through his employees, such as Berry, who use their names
4 on applications, such as the CUP application at issue here, to provide anonymity and for Geraci to
5 stay off the radar of law enforcement agencies. For example, Geraci, and Berry, were required by law
6 to state the names of all individuals who had an interest in the CUP when the CUP application was
7 filed. Geraci's name is NOT on the CUP application. His office manager, Berry, is. Had this instant
8 lawsuit not required him to fraudulently attempt to enforce the Receipt as the final agreement for the
9 Property, there would be no record of his ownership in the CUP application.
10

11 305. Geraci is the lead perpetrator in the enterprise. It is Geraci that had his office manager,
12 Berry submit the CUP application with material omissions (his name); having Gina Austin, his
13 attorney, represent him in the State Actions although she knows she is violating her ethical (and
14 potentially legal) obligations to the Court by representing Geraci under the false premise that the
15 Receipt is the final agreement for the Property; Geraci is directing Weinstein, also his attorney, to
16 continue to represent him when Weinstein knows that there is no factual or legal basis to continue
17 prosecuting the State Action against me to my great detriment.
18

19
20 306. Mr. Geraci has told me that he has run many illegal marijuana dispensaries through his
21 employee, Berry. I believe that he has invested the proceeds of the pattern of racketeering activity
22 into the enterprise endeavors to continuously open more illegal dispensaries. Further, because he has
23 evaded criminal prosecution and additionally managed to pull off this farce of a civil suit against me,
24 I believe he has also used said monies to compensate Austin and Weinstein, and, de facto, their
25 respective law firms, for the unethical and unlawful actions against me. How else can one explain
26 why two, ostensibly intelligent attorneys who statistically speaking should be smarter than most
27 would take the actions they have which are clearly unethical and unlawful.
28

1 307. The way in which the City has dealt with me in every avenue also points to the distinct
2 possibility that Geraci's "influence" has in fact tainted the state legal process against me. I have been
3 specifically told by Mr. Dwayne and his associate Mr. L that Geraci has deep connections to the
4 City's politicians.

5 308. To my knowledge all defendants and Does above in some way shape or form have
6 worked in conjunction with one another willfully, occasionally negligently, but at all times in
7 association against me. Most certainly, Austin, ALG, Weinstein, Toothacre, Berry and F&B do
8 Geraci's bidding and are complicit in all of his dishonest schemes.

9 309. As a direct and proximate result of the Defendants', their agents' and coconspirators'
10 plot to participate in the conduct of the affairs of their conspiracy and wrongs, alleged herein,
11 Plaintiff has been and is continuing to be injured in his property, person and business as set forth
12 herein.
13
14

15 **NINETEENTH CLAIM OF DECLARATORY RELIEF (As Against All Defendants)**

16 310. Cotton hereby incorporates by reference all of his allegations contained above as if
17 fully set forth herein.

18 311. An actual controversy has arisen and now exists between Cotton and all defendants
19 concerning their respective rights, liabilities, obligations and duties based on the actions described
20 herein.
21

22 312. A declaration of rights is necessary and appropriate at this time in order for the parties
23 to ascertain their respective rights, liabilities, and obligations because no adequate remedy other than
24 as prayed for exists by which the rights of the parties may be ascertained.

25 313. Accordingly, Cotton respectfully requests a judicial declaration of rights, liabilities,
26 and obligations of the parties. Specifically, Cotton requests a judicial declaration that (a) Cotton is
27 the sole owner of the Property, (b) Cotton is the owner and sole interest-holder in the CUP
28

1 application for the Property submitted on or around October 31, 2016, (c) defendants have no right or
2 interest in the Property or the CUP application for the Property submitted on or around October 31,
3 2016, and (d) the Lis Pendens filed by Geraci be released.

4
5 **INJUNCTIVE RELIEF (As Against All Defendants)**

6 314. Cotton hereby incorporates by reference all of his allegations contained above as if
7 fully set forth herein.

8 315. For the reasons argued above, Cotton respectfully requests that all defendants be
9 immediately be notified and enjoined that their actions, even if under the color of effectuating
10 professional legal services, the law or the authority of any governmental agency, cease violating Mr.
11 Cotton's rights.
12

13 316. That the Geraci be ordered to continue to pay for the costs associated with getting
14 approval of the CUP application and the development of the MMCC per his agreement with Cotton,
15 and as he stated in his declaration in the state action.
16

17 317. That the City not be allowed to passively and/or affirmatively sabotage the CUP so as
18 to limit its liability for its actions stated herein.

19 318. Such as other injunctive relief as is required based on the facts alleged above to protect
20 and vindicate my rights.
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26 //

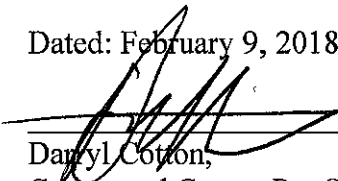
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PRAYER FOR RELIEF

WHEREFORE, Cotton prays for relief against defendants as follows:

1. That the Court order the Lis Pendens on the Property be released;
2. That the Court order, by way of declaratory relief, that there is no purchase agreement between the Geraci and that Cotton is the sole owner of the Property;
3. That the CUP application be transferred to me;
4. General, exemplary, special and/or consequential damages in the amount to be proven at trial, but which are no less than \$5,000,000;
5. Punitive damages against all defendants;
6. Sanctions against counsel as this Court may find warranted based on the allegations above that will be proven to be true during the course of this litigation;
7. That this Court appoint Mr. Cotton counsel until such time as he has the financial wherewithal to pay for counsel himself; and
8. That other relief is awarded as the Court determines is in the interest of justice.

Dated: February 9, 2018.



Darryl Cotton,
Cotton and Cotton Pro Se