

SUSANNE C. KOSKI, State Bar No. 176555  
CARMELA E. DUKE, State Bar No. 270348  
Superior Court of California, County of San Diego  
1100 Union Street  
San Diego, California 92101  
Telephone: (619) 844-2382

Attorneys for Defendant, The Honorable Joel R. Wohlfeil,  
Judge of the Superior Court of California, County of  
San Diego

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

ANDREW FLORES, et al.,

Plaintiffs,

v.

GINA M. AUSTIN, et al.,

Defendants

Case No. 20-cv-0656-TWR-DEB

**DEFENDANT JUDGE JOEL R.  
WOHLFEIL’S NOTICE OF MOTION  
AND MOTION TO DISMISS FIRST  
AMENDED COMPLAINT WITH  
PREJUDICE**

Date: May 5, 2021

Time: 1:30 p.m.

Crtrm: 3A (Schwartz)

Judge: The Honorable Todd W. Robinson

**[NO ORAL ARGUMENT  
REQUESTED]**

TO ALL PARTIES AND/OR THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 5, 2021, at 1:30 p.m., in Courtroom 3A of the United States District Court for the Southern District of California, located at 221 West Broadway (Schwartz), San Diego, California 92101, before The Honorable Judge Todd W. Robinson, Defendant the Honorable Joel R. Wohlfeil, Judge of the Superior Court of California, County of San Diego (“Judge Wohlfeil”), will move to

1 dismiss Plaintiffs’ First Amended Complaint (“FAC”) and each claim for relief  
2 pursuant to Federal Rules of Civil Procedure ("FRCP") 12(b)(1) and 12(b)(6) on the  
3 following grounds:

4 1. Because Judge Wohlfeil enjoys absolute judicial immunity, this Court  
5 lacks jurisdiction over the subject matter of the FAC pursuant to FRCP 12(b)(1) and  
6 the FAC fails to state a claim upon which relief can be granted under FRCP 12(b)(6);

7 2. The action is barred by Eleventh Amendment Immunity. Accordingly,  
8 this Court lacks jurisdiction over the subject matter of the FAC pursuant to FRCP  
9 12(b)(1) and the FAC fails to state a claim upon which relief can be granted under  
10 FRCP 12(b)(6);

11 3. Plaintiffs fail to state a claim for declaratory relief and therefore should be  
12 dismissed pursuant to FRCP 12(b)(6) and FRCP 12(b)(1) because they lack standing  
13 under Article III of the U.S. Constitution; and

14 4. The FAC fails to state facts sufficient to state a viable § 1983 claim  
15 against Judge Wohlfeil and therefore should be dismissed pursuant to FRCP 12(b)(6).

16 The Motion to Dismiss will be based on this Notice of Motion and Motion, the  
17 Memorandum of Points and Authorities, the Request for Judicial Notice with Exhibits  
18 A-I, the Declaration of Carmela E. Duke, all of which are served and filed herewith, as  
19 well as the pleadings and other papers filed hereon.

20  
21 SUSANNE C. KOSKI  
22 Superior Court of California, County of San  
23 Diego

24 DATED:

25 January 13, 2021

26 By: s/ Carmela E. Duke  
27 CARMELA E. DUKE  
28 Attorneys for Defendant, The Honorable Joel  
R. Wohlfeil, Judge of the Superior Court of  
California, County of San Diego

SUSANNE C. KOSKI, State Bar No. 176555  
CARMELA E. DUKE, State Bar No. 270348  
Superior Court of California, County of San Diego  
1100 Union Street  
San Diego, California 92101  
Telephone: (619) 844-2382

Attorneys for Defendant, The Honorable Joel R. Wohlfeil,  
Judge of the Superior Court of California, County of  
San Diego

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

ANDREW FLORES, et al.,

Plaintiffs,

v.

GINA M. AUSTIN, et al.,

Defendants.

Case No. 20-cv-0656-TWR-DEB

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO DISMISS FIRST  
AMENDED COMPLAINT WITH  
PREJUDICE BY DEFENDANT JUDGE  
JOEL R. WOHLFEIL**

Date: May 5, 2021

Time: 1:30 p.m.

Crtrm: 3A (Schwartz)

Judge: The Honorable Todd W. Robinson

**[NO ORAL ARGUMENT REQUESTED]**

/ / /

/ / /

/ / /

/ / /

/ / /

TOPICAL INDEX

1		Page
2	TABLE OF AUTHORITIES.....	-ii-
3	I. INTRODUCTION.....	1
4	II. SUMMARY OF ALLEGATIONS OF THE FAC.....	2
5	A. The Parties and Overview of the Underlying Litigation.....	2
6	i. Cotton I.....	2
7	ii. Cotton II.....	3
8	iii. Plaintiffs’ involvement in Cotton I and Cotton II.....	3
9	B. Plaintiffs’ Allegations Against Judge Wohlfeil.....	3
10	C. Causes of Action Against Judge Wohlfeil.....	4
11	III. ARGUMENT.....	5
12	A. Legal Standard.....	5
13	B. Judge Wohlfeil Enjoys Absolute Judicial Immunity Against	
14	Plaintiffs’ Claims.....	6
15	C. Eleventh Amendment Immunity Bars Plaintiffs’ Action Against	
16	Judge Wohlfeil.....	8
17	D. Plaintiffs Fail to State a Claim for Declaratory Relief.....	10
18	i. Plaintiffs’ declaratory relief cause of action fails to state a valid	
19	claim because it is not a cognizable cause of action.....	10
20	ii. Plaintiffs’ declaratory relief action fails to state a claim because it	
21	impermissibly seeks redress for alleged wrongs that have already	
22	occurred.....	11
23	iii. Plaintiffs’ lack standing to assert a claim for declaratory relief.....	11
24	E. The FAC Fails to State a Viable § 1983 Claim Against Judge	
25	Wohlfeil.....	13
26	IV. CONCLUSION.....	15
27		
28		



**TABLE OF AUTHORITIES**

Page(s)

Cases

1

2

3 *Alabama v. Pugh*, 438 U.S. 781 (1978)..... 8

4 *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)..... 6

5 *Ashelman v. Pope*, 793 F.2d 1072 (9th Cir. 1986)..... 6, 7

6

7 *Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104 (1991) ..... 6

8 *Brandon v. Holt*, 469 U.S. 464 (1985)..... 9

9 *Caltex Plastics, Inc. v. Lockheed Martin Corporation*, 824 F.3d 1156 (9th Cir. 2016) ..... 5

10 *In re Castillo*, 297 F.3d 940 (9th Cir. 2002) ..... 6

11 *Clapper v. Amnesty Intern. USA*, 568 U.S. 398 (2013)..... 11

12 *Crooks v. Maynard*, 913 F.2d 699 (9th Cir. 1990) ..... 7

13 *Duvall v. County of Kitsap*, 260 F.3d 1124 (9th Cir. 2001) ..... 7

14 *Edejer v. DHI Mortg. Co.*, C 09-1302 PJH, 2009 WL 1684714 (N.D. Cal. Jun. 12,

15 2009) ..... 11

16 *Experimental Holdings, Inc. v. Farris*, 503 F.3d 514 (6th Cir. 2007)..... 14

17 *Farm Credit Servs. v. Am. State Bank*, 339 F.3d 764 (8th Cir. 2003)..... 6

18 *Forrester v. White*, 484 U.S. 219 (1988) ..... 6

19 *Franceschi v. Schwartz*, 57 F.3d 828 (9th Cir. 1995)..... 8

20 *Gonzales v. Gorsuch*, 688 F.2d 1263 (9th Cir. 1982)..... 12

21 *Greater Los Angeles Council of Deafness, Inc. v. Zolin*, 812 F.2d 1103 (9th Cir. 1987)... 9

22 *Hyland v. Wonder*, 117 F.3d 405 (9th Cir. 1997) ..... 9

23 *Jewel v. National Sec. Agency*, 673 F.3d 902 (2011) ..... 12

24 *Johnson v. Knowles*, 113 F.3d 1114 (9th Cir. 1997) ..... 13

25

26

27

28

**TABLE OF AUTHORITIES**

Page(s)

Cases (cont'd)

1

2

3 *Kim v. Shellpoint Partners, LLC*, No. 15cv611-LAB (BLM), 2016 WL 1241541

4 (S.D. Cal. Mar. 30, 2016) ..... 10, 11

5 *Krainski v. Regents of Nev. Sys. of Higher Educ.*, 616 F.3d 963 (9th Cir. 2010) ..... 13

6 *Los Angeles County Ass’n of Env’tl. Health Specialists v. Lewin*, 215 F. Supp. 2d 1071

7 (C.D. Cal. 2002)..... 9

8 *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) ..... 11, 12

9 *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279 (9th Cir. 1986)..... 6

10 *Mahaley v. Mapes*, No. EDCV 12-01896-PSG OP, 2013 WL 1914237 (C.D. Cal. Apr.

11 16, 2013) ..... 9

12 *Mireles v. Waco*, 502 U.S. 9 (1991)..... 7

13 *Muhammad v. Berreth*, No. C 12-02407 CRB, 2012 WL 4838427 (N.D. Cal. Oct. 10,

14 2012) ..... 10

15 *Oliver v. Placer Superior Court*, No. 2:12-CV-2665 GEB GGH, 2013 WL 2488557

16 (E.D. Cal. Jun. 10, 2013) ..... 9

17 *Pierson v. Ray*, 386 U.S. 547 (1967) ..... 8

18 *Riggle v. California*, 577 F.2d 579 (9th Cir. 1978) ..... 8

19 *Schucker v. Rockwood*, 846 F.2d 1202 (9th Cir. 1988) ..... 7

20 *Simmons v. Sacramento County Superior Court*, 318 F.3d 1156 (9th Cir. 2003)..... 9

21 *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005 (9th Cir. 2012)..... 6

22 *Stump v. Sparkman*, 435 U.S. 349 (1978)..... 6, 7, 8

23 *Warth v. Seldin*, 422 U.S. 490 (1975)..... 11

24 *Weisbuch v. County of Los Angeles*, 119 F.3d 778 (9th Cir. 1997)..... 6

25 *West v. Atkin*, 487 U.S. 42 (1988)..... 13

26

27

28

**TABLE OF AUTHORITIES**

Page(s)

Cases (cont'd)

*White v. Cox*, No. C 07-3815 PJH, 2008 WL 686760 (N.D. Cal. Mar. 10, 2008) ..... 9

*Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989)..... 9

*Wolfe v. Strankman*, 392 F.3d 358 (9th Cir. 2004)..... 5

Statutes

28 U.S.C. § 2201 ..... 10

42 U.S.C. § 1983 ..... 1, 2, 4, 13, 14, 15

Cal. Government Code §§ 810 et seq. .... 10

Cal. Government Code § 811.9(a) ..... 10

Cal. Government Code § 825(a) ..... 10

Rules

Federal Rule of Civil Procedure 12(b)(1) ..... 5

Federal Rules of Civil Procedure Rule 12(b)(6)..... 5, 6

I.

INTRODUCTION

In this action, Plaintiffs Andrew Flores, Amy Sherlock, T.S., and S.S., (collectively “Plaintiffs”) have sued Judge Joel R. Wohlfeil and a multitude of other defendants<sup>1</sup> because they are unhappy with the rulings he made in connection with two underlying civil actions adjudicated in the Superior Court of California, County of San Diego (“the Superior Court”). The state court actions both concerned a dispute regarding an alleged real estate purchase and sale agreement between Darryl Cotton (“Cotton”) and Larry Geraci (“Geraci”). Specifically, the dispute concerned whether Cotton agreed to sell Geraci his real property for the purposes of establishing a Medical Marijuana Consumer Collective (“MMCC”) on the property. Cotton lost in both state court actions. Although Plaintiffs were not parties in the state court actions, through this federal lawsuit, they seek to void the state court judgments and recover damages for their alleged losses resulting from the two underlying lawsuits.<sup>2</sup>

As against Judge Wohlfeil, Plaintiff Flores asserts a claim for violation of civil rights under 42 U.S.C. § 1983 (First Cause of Action) and all Plaintiffs assert a claim for declaratory relief wherein they seek to have this Court make various determinations concerning the underlying state court actions (Sixth Cause of Action). However, both of these claims are based solely on the decisions and rulings made by Judge Wohlfeil in the performance of his judicial duties and therefore are absolutely barred by the doctrine of judicial immunity. Nor can these causes of action triumph over the immunity provided by the Eleventh Amendment.

/ / /

<sup>1</sup> Plaintiffs have named over 20 individuals, many of whom are attorneys, seven corporate entities, and one municipality as defendants in this lawsuit.

<sup>2</sup> As indicated in the U.S. District Court, Southern District of California Civil Docket, this case is related to *Cotton v. Geraci, et al.*, case no. 3:18-cv-00325-TWR-DEB (“related case”). The related case is brought by Darryl Cotton and also alleges a civil rights claim under 42 U.S.C. § 1983 against Judge Wohlfeil, which is based on his rulings and decisions made as a judge in the same state actions which are the subject of this lawsuit.

1 Further, the First Amended Complaint (“FAC”) fails to allege viable claims for relief  
 2 against Judge Wohlfeil. Plaintiffs’ declaratory relief cause of action fails to state a  
 3 cognizable claim because it is not a separate and independent cause of action, Plaintiffs  
 4 improperly seek to redress past wrongs through this cause of action, and they lack standing  
 5 to bring this claim. Plaintiff Flores fails to state a viable § 1983 claim for relief because he  
 6 has not alleged a plausible constitutional violation. Thus, for all of these reasons, Judge  
 7 Wohlfeil respectfully requests that this Court dismiss the FAC, without leave to amend,  
 8 and enter a judgment of dismissal, with prejudice, in his favor.

## 9 II.

### 10 SUMMARY OF ALLEGATIONS OF THE FAC<sup>3</sup>

#### 11 A. The Parties and Overview of the Underlying Litigation.

##### 12 i. *Cotton I*

13 On March 21, 2017, Geraci filed a state court action against Cotton alleging breach  
 14 of contract, breach of covenant of good faith and fair dealing, specific performance, and  
 15 declaratory relief as it related to an alleged real estate purchase and sale agreement (37-  
 16 2017-00010073-CU-BC-CTL) (hereinafter “*Cotton I*”). (FAC at ¶¶ 129-131; *see also*  
 17 Complaint in *Cotton I*, RJN, Ex. A.) The dispute concerned the sale of the property for  
 18 purposes of founding a MMCC. Judge Wohlfeil was the judge assigned to *Cotton I*. (*See*  
 19 Notice of Case Assignment for *Cotton I*, RJN, Ex. B.)

20 A jury decided the fate of *Cotton I* and rendered a verdict in favor of Geraci and  
 21 against Cotton. (*See* Judgment on Jury Verdict, RJN, Ex. C.) Judge Wohlfeil denied  
 22 Cotton’s motion for new trial. (FAC at ¶ 198.) Cotton appealed, but the California Court  
 23 of Appeal, Fourth Appellate District, Division One, dismissed the appeal because Cotton  
 24 failed to timely designate the record and also failed to timely deposit costs for preparing  
 25 the record on appeal. (*See* Remittitur, RJN, Ex. D.)

---

27 <sup>3</sup> The facts set forth are taken from those alleged in the FAC, as supplemented by the  
 28 documents submitted in connection with Judge Wohlfeil’s Request for Judicial Notice  
 (“RJN”).

1            *ii. Cotton II*

2            On October 6, 2017, Cotton filed an action seeking an alternative writ of mandate  
3 against Geraci, which was also assigned to Judge Wohlfeil (37-2017-00037675-CU-WM-  
4 CTL) (hereinafter “*Cotton I*”). (FAC at ¶¶ 206, 214.) Judge Wohlfeil denied Cotton’s  
5 petition for writ of mandate. (FAC at ¶ 214.) Judgment was entered in Geraci’s favor. (*See*  
6 *Judgment After Order Denying Motion for Issuance of Peremptory Writ of Mandate*, RJN,  
7 Ex. E.) Cotton appealed and the Remittitur was issued on November 5, 2018, dismissing  
8 the appeal because he failed to timely designate the appellate record. (*See Remittitur*, RJN,  
9 Ex. F.)

10           *iii. Plaintiffs’ involvement in Cotton I and Cotton II*

11           Plaintiff Flores was not a party in *Cotton I* or *Cotton II*. (*See Case Summary of*  
12 *Parties*, RJN, Ex. G.) Instead, he is an attorney who made isolated special appearances on  
13 behalf of Cotton in *Cotton I* (FAC at ¶ 184) and, at one point, moved to intervene and  
14 become a party to the action, which was denied by Judge Wohlfeil. (FAC at ¶ 182.)  
15 Notwithstanding, Plaintiff Flores alleges in the FAC “he ha[s] become the equitable owner  
16 of the Property” at issue in *Cotton I*. (FAC at ¶¶ 182, 239.)

17           The Sherlock Plaintiffs were also not parties in *Cotton I* or *Cotton II*. (*See Case*  
18 *Summary of Parties*, RJN, Ex. G.) Plaintiffs also confirm they were not parties in the state  
19 action and further allege they were not in privity with any parties in *Cotton I* and *II*. (FAC  
20 at ¶ 18.) Notwithstanding, in the FAC, the Sherlock Plaintiffs allege they have an interest  
21 in two cannabis conditional use permits, the “Balboa CUP” and the “Ramona CUP,” which  
22 they claim were fraudulently acquired by certain defendants named in the FAC, but not by  
23 Judge Wohlfeil. (FAC at ¶¶ 82-109.)

24           **B. Plaintiffs’ Allegations Against Judge Wohlfeil.**

25           Although the FAC is lengthy and difficult to follow, Plaintiffs’ factual allegations  
26 against Judge Wohlfeil center on official rulings and decisions he made in the underlying  
27 actions. Such allegations include the following:  
28

- 1 • In *Cotton I*, Judge Wohlfeil “denied the DQ motion incorrectly.” (FAC ¶ 191.)  
2 According to Plaintiffs, the law “mandated [Judge Wohlfeil’s] recusal.” (FAC at ¶¶  
3 187-191; 249-252.)
- 4 • In *Cotton I*, Judge Wohlfeil “refused” to address and adjudicate “questions of law”  
5 in Cotton’s motion for summary judgment or, alternatively, summary adjudication.  
6 (FAC at ¶¶ 170-172; 255-258.) Thus, Judge Wohlfeil’s ruling on said motion is  
7 incorrect.
- 8 • During the trial in *Cotton I*, Judge Wohlfeil erroneously “prohibited Cotton and  
9 Hurtado from providing contradicting testimony. . . .” (FAC at ¶ 179.)
- 10 • During the trial in *Cotton I*, Judge Wohlfeil improperly “prohibited Cotton and  
11 Hurtado from testifying about Magagna’s attempts to bribe and threaten Corina  
12 Young, a material third-party witness to the conspiracy.” (FAC at ¶ 181.)
- 13 • In *Cotton I*, Judge Wohlfeil erroneously denied Cotton’s motion for new trial. (FAC  
14 at ¶¶ 195-205; 260-263.) According to Plaintiff Flores, Judge Wohlfeil’s finding that  
15 the defense of illegality had been waived was not only “factually contradicted by the  
16 record of [sic] *Cotton I*” but also wrong as a matter of law. (FAC at ¶¶ 260-263.)
- 17 • Judge Wohlfeil’s “denial of Flores’ motion to intervene in *Cotton I* action”  
18 improperly “deprive[d] Flores” of various constitutional rights. (FAC at ¶¶ 264-  
19 265.)
- 20 • In *Cotton II*, Judge Wohlfeil’s “denying Cotton’s petition is void for, *inter alia*,  
21 enforcing an illegal contract.” (FAC ¶ 214.)

22 In light of the alleged erroneous rulings referenced above, and in addition to various  
23 acts of the other defendants, Plaintiffs allege that *Cotton I* is a “sham,” and the “judgment  
24 ‘enforces an illegal contract procured through, *inter alia*, a fraud on the court.’” (FAC at p.  
25 14.)

### 26 **C. Causes of Action Against Judge Wohlfeil.**

27 Plaintiff Flores asserts a 42 U.S.C. § 1983 civil rights cause of action against Judge  
28 Wohlfeil (the First Cause of Action). (FAC at ¶¶ 247-265.) He alleges his civil rights have



1 been deprived because of Judge Wohlfeil’s erroneous rulings made throughout the course  
2 of *Cotton I*. (FAC at ¶¶ 247-265.) Plaintiff Flores and the Sherlock Plaintiffs also assert a  
3 declaratory relief cause of action against Judge Wohlfeil (the Sixth Cause of Action),  
4 alleging declaratory relief is required because the judgments in *Cotton I* and *II* are void, in  
5 part, “for being the product of judicial bias” and a controversy “exists between Plaintiffs  
6 and Defendants . . . concerning the validity of the judgements [sic] in question and (i) their  
7 acts or failure to act that contributed to the procurement of those judgments and (ii) their  
8 knowledge that those judgments are void.” (FAC at ¶¶ 311, 313.)

9 In addition to damages, Plaintiffs seek to have the “judgments in *Cotton I* and *II* . . .  
10 be declared void;” “[a] declaration that Plaintiffs be allowed to join *Cotton I* as  
11 indispensable parties;” “[a] declaration that Flores be allowed to join *Cotton II* as an  
12 indispensable party;” “[a]n order that *Cotton I* and *Cotton II* be stayed pending resolution  
13 of this federal action;” and “[a] declaration that no ruling, order or judgment issued by  
14 Judge Wohlfeil may be used by defendants to justify any action in this matter due to judicial  
15 bias.” (FAC at p. 45.)

16 **III.**  
17 **ARGUMENT**

18 **A. Legal Standard.**

19 Federal Rule of Civil Procedure 12(b)(1) allows for a motion to dismiss based on  
20 lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1). Such a motion may be  
21 facial, where the inquiry is confined to the allegations in the complaint, or factual, where  
22 the court looks beyond the complaint to extrinsic evidence. *Wolfe v. Strankman*, 392 F.3d  
23 358, 362 (9th Cir. 2004).

24 A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil  
25 Procedure is a challenge to the sufficiency of the pleadings set forth in the complaint. A  
26 dismissal is proper under Rule 12(b)(6) when the complaint “fails to state a cognizable  
27 legal theory or fails to allege sufficient factual support for its legal theories.” *Caltex*  
28 *Plastics, Inc. v. Lockheed Martin Corporation*, 824 F.3d 1156, 1159 (9th Cir. 2016). A



1 Rule 12(b)(6) motion for failure to state a claim may also challenge defenses disclosed on  
2 the face of the complaint or which are apparent from matters subject to judicial notice.  
3 *Weisbuch v. County of Los Angeles*, 119 F.3d 778, 783 n.1 (9th Cir. 1997); *Skilstaf, Inc. v.*  
4 *CVS Caremark Corp.*, 669 F.3d 1005, 1016 n. 9 (9th Cir. 2012); *Mack v. South Bay Beer*  
5 *Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986), *overruled on other grounds by*  
6 *Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104 (1991).

7 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,  
8 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*,  
9 556 U.S. 662, 678 (2009) (internal quotation marks omitted). “While legal conclusions can  
10 provide the framework of a complaint, they must be supported by factual allegations.” *Id.*  
11 at 679. A court is “free to ignore legal conclusions, unsupported conclusions, unwarranted  
12 inferences and sweeping legal conclusions cast in the form of factual allegations.” *Farm*  
13 *Credit Servs. v. Am. State Bank*, 339 F.3d 764, 767 (8th Cir. 2003) (citation omitted).

14 **B. Judge Wohlfeil Enjoys Absolute Judicial Immunity Against Plaintiffs’**  
15 **Claims.**

16 “Judges and those performing judge-like functions are absolutely immune from  
17 damage liability for acts performed in their official capacities.” *Ashelman v. Pope*, 793  
18 F.2d 1072, 1075 (9th Cir. 1986). “This absolute immunity insulates judges from charges  
19 of erroneous acts or irregular action, even when it is alleged that such action was driven by  
20 malicious or corrupt motives, [citation], or when the exercise of judicial authority is  
21 ‘flawed by the commission of grave procedural errors.’” *In re Castillo*, 297 F.3d 940, 947  
22 (9th Cir. 2002) (quoting *Stump v. Sparkman*, 435 U.S. 349, 359 (1978)). “Judicial  
23 immunity discourages collateral attacks on final judgments through civil suits, and thus  
24 promotes the use of ‘appellate procedures as the standard system for correcting judicial  
25 error.’” *Id.* (quoting *Forrester v. White*, 484 U.S. 219, 225 (1988)).

26 “Judicial immunity applies however erroneous the act may have been, and however  
27 injurious in its consequences it may have proved to the plaintiff.” *Ashelman*, 793 F.2d at  
28 1075 (internal quotation marks omitted). “Disagreement with the action taken by [a]

1 judge,” even one resulting in “tragic consequences,” “does not justify depriving that judge  
2 of his immunity.” *Stump*, 435 U.S. at 363 (applying judicial immunity to judge who  
3 approved petition for sterilization even if approval was in error).

4 Immunity is overcome in only two situations: where the judge “acts in the clear  
5 absence of all jurisdiction, [citation], or performs an act that is not ‘judicial’ in nature.”  
6 *Ashelman*, 793 F.2d at 1075; see also *Mireles v. Waco*, 502 U.S. 9, 11 (1991). When  
7 determining whether judicial immunity applies, jurisdiction is construed broadly. *Crooks*  
8 *v. Maynard*, 913 F.2d 699, 701 (9th Cir. 1990) (holding immunity applied where judicial  
9 officer had “colorable authority” to hold parties in contempt). A judge is not deprived of  
10 immunity for “[g]rave procedural errors or acts in excess of judicial authority” or if the  
11 judge “misinterpret[s] a statute and erroneously exercise[s] jurisdiction and thereby act[s]  
12 in excess of his jurisdiction.” *Schucker v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988).  
13 Thus, in *Schucker*, the Ninth Circuit held that even assuming the judge had acted in excess  
14 of his jurisdiction, judicial immunity applied because the alleged conduct by the judge “was  
15 not done ‘in the clear absence of jurisdiction.’” *Id.* (quoting *Stump*, 435 U.S. at 357 n.7).

16 “The factors relevant in determining whether an act is judicial ‘relate to the nature  
17 of the act itself, i.e., whether it is a function normally performed by a judge, and to the  
18 expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity.’”  
19 *Ashelman*, 793 F.2d at 1075 (quoting *Stump*, 435 U.S. at 362). The inquiry focuses on  
20 whether the “‘nature’ and function of the ‘act’” is normally performed by a judge, “not the  
21 ‘act itself.’” *Mireles v. Waco*, 502 U.S. 9, 13 (1991). Additional factors to be considered  
22 include whether the events occurred in the judge's chambers, and whether the controversy  
23 centered around a case then pending before the judge. *Duvall v. County of Kitsap*, 260 F.3d  
24 1124, 1133 (9th Cir. 2001).

25 Here, the FAC is devoid of any allegations suggesting that Judge Wohlfeil lacked  
26 jurisdiction over the underlying civil actions. Moreover, Plaintiffs’ allegations arise solely  
27 from the rulings and statements Judge Wohlfeil made in his official capacity as a state court  
28 judge. Specifically, the causes of action are expressly based on Judge Wohlfeil’s rulings

1 on: Cotton’s motion for disqualification in *Cotton I* (see FAC at ¶¶ 253-254; 309); Cotton’s  
2 motion for summary judgment or, alternatively summary adjudication in *Cotton I* (see FAC  
3 at ¶¶ 255-259; 309); Plaintiff Flores’ motion to intervene in *Cotton I* (see FAC at ¶¶ 264-  
4 265; 309); admissibility of witness testimony at trial (see FAC at ¶¶ 179, 181; 309); and  
5 Cotton’s motion for new trial (see FAC at ¶¶ 260-263; 309). Issuing rulings in a matter  
6 pending before the court is a normal judicial function. Thus, Judge Wohlfeil was simply  
7 acting in his judicial capacity and is immune from liability for rulings made in his official  
8 capacity. *Stump*, 435 U.S. at 362.

9 Finally, the proper mechanism to challenge a judge’s errors is on appeal, not by filing  
10 a subsequent civil litigation against the judge. *Pierson v. Ray*, 386 U.S. 547, 554 (1967).  
11 “It is a judge's duty to decide all cases within his jurisdiction that are brought before him,  
12 including controversial cases that arouse the most intense feelings in the litigants. His  
13 errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants  
14 may hound him with litigation charging malice or corruption.” *Ibid.* “Imposing such a  
15 burden on judges would contribute not to principled and fearless decisionmaking but to  
16 intimidation.” *Id.* Appeals were sought in *Cotton I* and *II* and both were ultimately  
17 dismissed. (See Remittitur, RJN, Ex. D; see also Remittitur, RJN, Ex. F.)

18 For these reasons, judicial immunity precludes this action. Because this fatal defect  
19 cannot be cured by an amendment to the pleadings, Judge Wohlfeil respectfully requests  
20 that this Court dismiss this action with prejudice.

21 **C. Eleventh Amendment Immunity Bars Plaintiffs’ Action Against Judge**  
22 **Wohlfeil.**

23 The Eleventh Amendment generally bars suits against a state or an arm of the state  
24 under principles of sovereign immunity. *Franceschi v. Schwartz*, 57 F.3d 828, 831 (9th  
25 Cir. 1995). The Eleventh Amendment has been construed as a grant of sovereign immunity  
26 to states against suits in federal court and is in the nature of a jurisdictional bar. See  
27 *Alabama v. Pugh*, 438 U.S. 781, 782 n.1 (1978); see also *Riggle v. California*, 577 F.2d  
28 579, 581-82 (9th Cir. 1978).

1 California superior courts are considered arms of the state and therefore enjoy  
2 Eleventh Amendment immunity. *Simmons v. Sacramento County Superior Court*, 318 F.3d  
3 1156, 1161 (9th Cir. 2003) (holding Eleventh Amendment barred § 1983 claim against  
4 superior court and its employees); *Greater Los Angeles Council of Deafness, Inc. v. Zolin*,  
5 812 F.2d 1103, 1110 (9th Cir. 1987) (“conclud[ing] that a suit against the superior court is  
6 a suit against the State, barred by the eleventh amendment”); *Los Angeles County Ass’n of*  
7 *Env’tl. Health Specialists v. Lewin*, 215 F. Supp. 2d 1071, 1078 (C.D. Cal. 2002).

8 Similarly, because judges and court employees are considered arms of the state, they  
9 are also entitled to immunity. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71  
10 (1989); *Simmons*, 318 F.3d at 1161; *White v. Cox*, No. C 07-3815 PJH, 2008 WL 686760,  
11 at \*2 (N.D. Cal. Mar. 10, 2008); *Oliver v. Placer Superior Court*, No. 2:12-CV-2665 GEB  
12 GGH, 2013 WL 2488557, at \*3 (E.D. Cal. Jun. 10, 2013); *Mahaley v. Mapes*, No. EDCV  
13 12-01896-PSG OP, 2013 WL 1914237, at \*6 (C.D. Cal. Apr. 16, 2013). The immunity  
14 applies to suits for damages, injunctive relief, and declaratory relief. *Zolin*, 812 F.2d at  
15 1110 n.10.

16 Although Plaintiffs appear to have named Judge Wohlfeil in his individual capacity  
17 (see FAC ¶ 30), nothing in the allegations of the FAC would lead one to the conclusion  
18 that Judge Wohlfeil is being sued other than in his official capacity. *See Brandon v. Holt*,  
19 469 U.S. 464, 471-472 (1985). As set forth above, all of the allegations against Judge  
20 Wohlfeil concern acts allegedly undertaken in his official capacity as a judicial officer.  
21 Critically, some of the remedies sought by Plaintiffs—equitable relief directed at his  
22 orders—are remedies that could only apply to Judge Wohlfeil in his official capacity.

23 Where the state itself or one of its agencies or departments is not named as defendant  
24 and where a state official is named instead, the official must demonstrate that the state is  
25 the real party in interest and will be liable for any judgment rendered against the judge.  
26 *Hyland v. Wonder*, 117 F.3d 405, 413 (9th Cir. 1997) (“If the state officials can show that  
27 ‘the action is in essence one for recover of money from the state, the state is the real,  
28 substantial party in interest and is entitled to invoke its sovereign immunity from suit even

1 though individual officials are nominal defendants.”).

2 Here, California Government Code section 811.9(a) requires the Judicial Council of  
3 California (“the Judicial Council”) to provide for the representation, defense, and  
4 indemnification of judges of the superior courts for purposes of the Government Claims  
5 Act, Cal. Gov’t Code §§ 810 et seq. See Cal. Gov’t Code § 825(a) (discussing a public  
6 entity’s obligation to defend an employee against an action arising out of an act or omission  
7 occurring within the scope of his or her employment). Thus, while Judge Wohlfeil, but not  
8 the Superior Court, is a named defendant, the State of California remains the “real,  
9 substantial party in interest” through the Judicial Council’s duty to provide for the  
10 representation, defense, and indemnification of Judge Wohlfeil in this action. Accordingly,  
11 Eleventh Amendment immunity applies to Plaintiffs’ claims against Judge Wohlfeil, and  
12 this action should be dismissed with prejudice.

13 **D. Plaintiffs Fail to State a Claim for Declaratory Relief.**

14 Plaintiffs fail to state a claim for declaratory relief because it is not a cognizable  
15 cause of action, they are impermissibly seeking redress for alleged wrongs which have  
16 already occurred, and because they lack standing. As a result of these shortcomings, which  
17 cannot be remedied through an amendment, the motion should be granted and the action  
18 against Judge Wohlfeil should be dismissed.

19 *i. Plaintiffs’ declaratory relief cause of action fails to state a valid claim*  
20 *because it is not a cognizable cause of action.*

21 Plaintiffs seek declaratory relief in the Sixth Cause of Action asserting that an actual  
22 controversy exists between the parties concerning the validity of the judgments in *Cotton*  
23 *I* and *II*. However, “declaratory relief is not a cognizable cause of action.” *Kim v. Shellpoint*  
24 *Partners, LLC*, No. 15cv611-LAB (BLM), 2016 WL 1241541, at \*8 (S.D. Cal. Mar. 30,  
25 2016). “Declaratory relief is not an independent cause of action or theory of recovery, only  
26 a remedy.” *Muhammad v. Berreth*, No. C 12-02407 CRB, 2012 WL 4838427, at \*5 (N.D.  
27 Cal. Oct. 10, 2012); *see also* 28 U.S.C. § 2201. Thus, Plaintiffs’ declaratory relief cause of  
28 action fails to state a valid claim because it is not a separate and independent cause of

1 action.

2 *ii. Plaintiffs’ declaratory relief action fails to state a claim because it*  
3 *impermissibly seeks redress for alleged wrongs that have already*  
4 *occurred.*

5 “The purpose of a declaratory judgment is to set controversies at rest before they  
6 cause harm to the plaintiff, not to remedy harms that have already occurred.” *Edejer v. DHI*  
7 *Mortg. Co.*, C 09-1302 PJH, 2009 WL 1684714, at \*11 (N.D. Cal. Jun. 12, 2009). Thus,  
8 “[d]eclaratory judgment is not a corrective remedy and should not be used to remedy past  
9 wrongs.’ (Citation omitted) Instead, ‘[t]he purpose of a declaratory judgment is to set forth  
10 a declaration of future rights.’ (Citation omitted).” *Kim*, 2016 WL 1241541, at \* 8.

11 Here, Plaintiffs’ declaratory relief claim fails because it seeks to redress past wrongs  
12 rather than a declaration as to future rights. It is clear from the FAC that Plaintiffs are  
13 seeking to undo past judgments entered in the state court actions. Their claims do not  
14 concern prospective, or future rights. As a result, Plaintiffs’ declaratory relief cause of  
15 action should be dismissed with prejudice.

16 *iii. Plaintiffs’ lack standing to assert a claim for declaratory relief.*

17 “Article III of the Constitution limits federal courts’ jurisdiction to certain ‘Cases’  
18 and ‘Controversies.’” *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 408 (2013). “‘One  
19 element of the case-or-controversy requirement’ is that plaintiffs ‘must establish that they  
20 have standing to sue.’ (Citations omitted)” *Ibid*. Article III standing consists of three  
21 elements: (1) the plaintiff must have suffered an “injury in fact;” (2) “there must be a causal  
22 connection between the injury and the conduct complained of;” and (3) “it must be ‘likely,’  
23 as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable  
24 decision.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). “It is the responsibility  
25 of the complainant clearly to allege facts demonstrating that he is a proper party to invoke  
26 judicial resolution of the dispute and exercise of the court’s remedial powers.” *Warth v.*  
27 *Seldin*, 422 U.S. 490, 518 (1975). In other words, “[t]he party invoking federal jurisdiction  
28 bears the burden of establishing these elements.” *Lujan*, 504 U.S. at 561.

///



1 In order to satisfy the “injury in fact” element, Plaintiffs “must assert a grievance  
2 that is both ‘concrete and particularized.’” *Jewel v. National Sec. Agency*, 673 F.3d 902,  
3 908 (2011). For the causal connection element to be satisfied “the injury has to be ‘fairly .  
4 . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the  
5 independent action of some third party not before the court.” *Lujan*, 504 U.S. at 560.  
6 Evaluating redressability, the third element, “requires an analysis of whether the court has  
7 the power to right or to prevent the claimed injury.” *Gonzales v. Gorsuch*, 688 F.2d 1263,  
8 1267 (9th Cir. 1982).

9 “[E]ach element must be supported in the same way as any other matter on which  
10 the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required  
11 at the successive stages of the litigation.” *Lujan*, 504 U.S. at 561.

12 Here, Plaintiffs were not parties in the state court actions and lack standing to sue  
13 Judge Wohlfeil. First, the Sherlock Plaintiffs fail to satisfy all three elements of Article III  
14 standing as it applies to Judge Wohlfeil. There are no allegations that the Sherlock Plaintiffs  
15 have any interest in the property which was the subject of the *Cotton I* and *II* actions.  
16 Instead, the Sherlock Plaintiffs allege they have an interest in two cannabis conditional use  
17 permits (“CUPs”), the “Balboa CUP” and the “Ramona CUP,” which they claim were  
18 fraudulently acquired by certain defendants named in the FAC, but not by Judge Wohlfeil.  
19 (FAC at ¶¶ 82-109.) Because these Plaintiffs claim their interests in the CUPs were  
20 fraudulently acquired by others, none of whom are Judge Wohlfeil, they have not suffered  
21 an injury in fact as applied to Judge Wohlfeil. Further, there is no causal connection  
22 between their alleged injury, which appears to be a loss of interest in the CUPs, and Judge  
23 Wohlfeil’s judicial duties in the underlying state actions. Absent from the FAC are  
24 allegations or any showing that *Cotton I* and/or *Cotton II* concerned the adjudication of  
25 rights regarding the “Balboa CUP” and/or the “Ramona CUP.”

26 Additionally, because there is no causal connection between Judge Wohlfeil’s  
27 judicial duties in *Cotton I* and/or *Cotton II* and the adjudication of rights concerning the  
28 “Balboa CUP” and/or “Ramona CUP,” the Sherlock Plaintiffs fail to show redressability,

1 the third element of Article III standing. In the declaratory relief, the Sherlock Plaintiffs  
2 seek a determination that the judgments reached in *Cotton I* and *II* are void. However, the  
3 Sherlock Plaintiffs were not a party in *Cotton I* and/or *Cotton II*. Also, if adjudication of  
4 *Cotton I* and/or *Cotton II* did not concern the “Balboa CUP” and/or the “Ramona CUP,”  
5 then there is no redressability. Thus, because the Sherlock Plaintiffs have no standing, the  
6 declaratory relief cause of action asserted against Judge Wohlfeil should be dismissed with  
7 prejudice.

8 Finally, Plaintiff Flores has not demonstrated satisfaction of all three Article III  
9 requirements, which is his burden. Plaintiff Flores fails to allege an injury in fact because  
10 he has not asserted a cognizable protected property interest which has been injured.  
11 Moreover, Plaintiff Flores is unable to allege redressability because he was not a party in  
12 *Cotton I* or *Cotton II* and, and as discussed *infra* in section III.D.i, this Court does not have  
13 the power to correct or to prevent his claimed injury. To the extent Plaintiff Flores  
14 disagreed with Judge Wohlfeil’s ruling on the intervention motion in *Cotton I*, Plaintiff  
15 Flores’ remedy was to seek review in the state appellate court. Thus, because Plaintiff  
16 Flores has no standing, the declaratory relief action should be dismissed with prejudice.

17 **E. The FAC Fails to State a Viable § 1983 Claim Against Judge Wohlfeil.**

18 To establish a claim for injunctive relief under § 1983, a plaintiff must establish two  
19 elements: 1) a violation of a right secured by the Constitution or laws of the United States;  
20 and 2) that the violation was committed by a person acting under color of state law. *See*  
21 42 U.S.C. § 1983; *West v. Atkin*, 487 U.S. 42, 48 (1988). Plaintiff Flores has not stated a §  
22 1983 claim because he has not alleged a plausible constitutional violation. *Johnson v.*  
23 *Knowles*, 113 F.3d 1114, 1117 (9th Cir. 1997).

24 “A procedural due process claim has two elements: deprivation of a constitutional  
25 protected liberty or property interest and denial of adequate procedural protection.”  
26 *Krainski v. Regents of Nev. Sys. of Higher Educ.*, 616 F.3d 963, 969-70 (9th Cir. 2010).  
27 Plaintiff Flores fails to allege both elements in the FAC. First, no cognizable protected  
28 property interest has been alleged by Plaintiff Flores. “Procedural due process claims



1 require that the plaintiff have a ‘legitimate claim of entitlement’ with an independent  
2 source, such as state law.” *Experimental Holdings, Inc. v. Farris*, 503 F.3d 514, 519 (6th  
3 Cir. 2007). However, Plaintiff Flores fails to assert a legitimate claim of entitlement or  
4 protected property interest in the FAC.

5 Further, Plaintiff Flores fails to allege that he was not provided adequate procedural  
6 protections. Rather, the allegations in the FAC show the contrary. Plaintiff Flores alleges  
7 he was deprived of “his property” and the ability to bring a claim as a result of Judge  
8 Wohlfeil’s ruling on the motion to intervene. (FAC at ¶¶ 264-265.) These allegations  
9 however, include facts that show the motion to intervene was heard and adjudicated in state  
10 court. (*See* FAC at ¶¶ 182, 264-265; *see also* 6/27/19 Minute Order, RJN, Ex. H.)  
11 Specifically, Plaintiff Flores’ allegations not only assert he was given access to the courts  
12 and the ability to bring a claim, but also that he was provided with an opportunity to be  
13 heard, and was heard by the court and was able to argue his position. (*See* FAC at ¶¶ 182,  
14 264-265; *see also* Flores’ Ex Parte Application, RJN, Ex. I; 6/27/19 Minute Order, RJN,  
15 Ex. H.) Thus, there are simply no allegations suggesting that the state court proceedings  
16 did not afford adequate procedural protections.

17 Despite being provided access to the courts and an opportunity to be heard, Plaintiff  
18 Flores is clearly unhappy with Judge Wohlfeil’s ruling on the motion to intervene, as well  
19 as the Judge’s rulings on other forms of relief in *Cotton I* and *II*. Plaintiff Flores’ discontent  
20 with Judge Wohlfeil’s rulings does not equate to a violation of his procedural due process  
21 rights. If a plaintiff could circumvent the independence of the state courts by simply  
22 applying a § 1983 label to every unfavorable decision by a state court, it would turn federal  
23 courts into courts of appeal for every state court matter. Therefore, given that Plaintiff  
24 Flores’ allegations on their face establish that he does not have a viable due process claim  
25 against Judge Wohlfeil, the § 1983 civil rights claim should be dismissed with prejudice.

26 / / /

27 / / /

28 / / /

**IV.**  
**CONCLUSION**

As set forth above, this action against Judge Wohlfeil is barred because he enjoys absolute judicial immunity. It is further precluded by the Eleventh Amendment. Additionally, Plaintiffs’ declaratory relief claim fails because it is not a cognizable cause of action, Plaintiffs are improperly seeking to redress past wrongs, and because they lack standing. Lastly, Plaintiff Flores fails to state a viable § 1983 claim. Because Plaintiffs cannot cure these defects by way of amendment, Judge Wohlfeil respectfully requests that the Court grant this Motion to Dismiss, without leave to amend, and enter a judgment of dismissal with prejudice in his favor.

Respectfully submitted,  
SUSANNE C. KOSKI  
Superior Court of California, County of San Diego

DATED:  
January 13, 2021

By: s/ Carmela E. Duke  
CARMELA E. DUKE  
Attorneys for Defendant, The Honorable Joel R. Wohlfeil, Judge of the Superior Court of California, County of San Diego

SUSANNE C. KOSKI, State Bar No. 176555  
CARMELA E. DUKE, State Bar No. 270348  
Superior Court of California, County of San Diego  
1100 Union Street  
San Diego, California 92101  
Telephone: (619) 844-2382

Attorneys for Defendant, The Honorable Joel R. Wohlfeil,  
Judge of the Superior Court of California, County of  
San Diego

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

ANDREW FLORES, et al.,

Plaintiffs,

v.

GINA M. AUSTIN, et al.,

Defendants.

Case No. 20-cv-0656-TWR-DEB

**DEFENDANT JOEL R. WOHLFEIL'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT WITH PREJUDICE**

Date: May 5, 2021

Time: 1:30 p.m.

Crtrm: 3A (Schwartz)

Judge: The Honorable Todd W. Robinson

**[NO ORAL ARGUMENT REQUESTED]**

Defendant the Honorable Joel R. Wohlfeil, Judge of the Superior Court of California, County of San Diego, respectfully request the Court to take judicial notice of the following documents pursuant to Federal Rule of Evidence 201:

Exhibit A: Complaint in *Geraci v. Cotton* ("Cotton P"), San Diego Superior Court ("SDSC") Case No. 37-2017-00010073-CU-BC-CTL;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Exhibit B: Notice of Case Assignment for *Cotton I*, SDSC Case No. 37-2017-00010073-CU-BC-CTL;

Exhibit C: Judgment on Jury Verdict in *Cotton I*, SDSC Case No. 37-2017-00010073-CU-BC-CTL;

Exhibit D: Remittitur in *Cotton I*, SDSC Case No. 37-2017-00010073-CU-BC-CTL;

Exhibit E: Judgment After Order Denying Motion for Issuance of Peremptory Writ of Mandate in *Cotton v. Geraci* (“*Cotton II*”), SDSC Case No. 37-2017-00037675-CU-WM-CTL;

Exhibit F: Remittitur in *Cotton II*, SDSC Case No. 37-2017-00037675-CU-WM-CTL;

Exhibit G: Case Summary of Parties in *Cotton I* and *Cotton II*, SDSC Case Nos. 37-2017-00010073-CU-BC-CTL and 37-2017-00037675-CU-WM-CTL;

Exhibit H: Minute Order dated June 27, 2019 in *Cotton I*, SDSC Case No. 37-2017-00010073-CU-BC-CTL; and

Exhibit I: Ex Parte Application in *Cotton I*, SDSC Case No. 37-2017-00010073-CU-BC-CTL.

SUSANNE C. KOSKI  
Superior Court of California, County of San Diego

DATED:

January 13, 2021

By: s/ Carmela E. Duke  
CARMELA E. DUKE  
Attorneys for Defendant, The Honorable Joel R. Wohlfeil, Judge of the Superior Court of California, County of San Diego

EXHIBIT TABLE OF CONTENTS

1			
2			Page
3			
4	EXHIBIT A:	Complaint in <i>Geraci v. Cotton</i> (“ <i>Cotton P</i> ”), San Diego Superior Court (“SDSC”) Case No.	
5		37-2017-00010073-CU-BC-CTL .....	1
6	EXHIBIT B:	Notice of Case Assignment for <i>Cotton I</i> , SDSC Case No.	
7		37-2017-00010073-CU-BC-CTL.....	11
8	EXHIBIT C:	Judgment on Jury Verdict in <i>Cotton I</i> , SDSC	
9		Case No. 37-2017-00010073-CU-BC-CTL.....	13
10	EXHIBIT D:	Remittitur in <i>Cotton I</i> , SDSC Case No.	
11		37-2017-00010073-CU-BC-CTL.....	38
12	EXHIBIT E:	Judgment After Order Denying Motion for Issuance of	
13		Peremptory Writ of Mandate in <i>Cotton v. Geraci</i>	
14		(“ <i>Cotton II</i> ”), SDSC Case No. 37-2017-00037675- CU-	
15		WM-CTL.....	40
16	EXHIBIT F:	Remittitur in <i>Cotton II</i> , SDSC Case No.	
17		37-2017-00037675-CU-WM-CTL.....	42
18	EXHIBIT G:	Case Summary of Parties in <i>Cotton I</i> and <i>Cotton II</i> ,	
19		SDSC Case Nos. 37-2017-00010073-CU-BC-CTL and	
20		37-2017-00037675-CU-WM-CTL.....	44
21	EXHIBIT H:	Minute Order dated June 27, 2019 in <i>Cotton I</i> , SDSC	
22		Case No. 37-2017-00010073-CU-BC-CTL.....	46
23	EXHIBIT I:	Ex Parte Application in <i>Cotton I</i> , SDSC Case No.	
24		37-2017-00010073-CU-BC-CTL.....	48
25			
26			
27			
28			

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**03/21/2017** at 10:11:00 AM  
Clerk of the Superior Court  
By Carla Brennan, 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  
12 LARRY GERACI

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

15 LARRY GERACI, an individual,  
16 Plaintiff,

17 v.

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

21 Plaintiff, LARRY GERACI, alleges as follows:

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

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

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

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

5. Plaintiff GERACI does not know the true names or capacities of the defendants sued  
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.

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

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

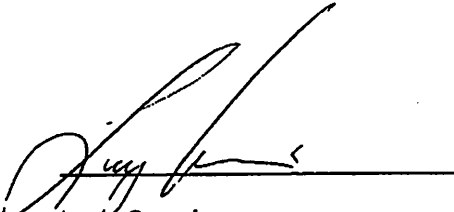
# EXHIBIT A

11/02/2016

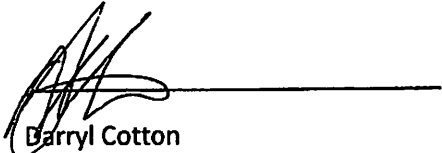
**Agreement between Larry Geraci or assignee and Darryl Cotton:**

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 Gerasi,  
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)

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7073	
PLAINTIFF(S) / PETITIONER(S): Larry Geraci	
DEFENDANT(S) / RESPONDENT(S): Darryl Cotton	
LARRY GERACI VS DARRYL COTTON [IMAGED]	
<b>NOTICE OF CASE ASSIGNMENT and CASE MANAGEMENT CONFERENCE</b>	CASE NUMBER: 37-2017-00010073-CU-BC-CTL

**CASE ASSIGNMENT**

Judge: Joel R. Wohlfeil

Department: C-73

**COMPLAINT/PETITION FILED: 03/21/2017**

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	08/25/2017	01:30 pm	C-73	Joel R. Wohlfeil

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR\* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov).

\*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).





## Superior Court of California County of San Diego

### NOTICE OF ELIGIBILITY TO eFILE AND ASSIGNMENT TO IMAGING DEPARTMENT

**This case is eligible for eFiling. Should you prefer to electronically file documents, refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases for rules and procedures or contact the Court's eFiling vendor at [www.onelegal.com](http://www.onelegal.com) for information.**

**This case has been assigned to an Imaging Department and original documents attached to pleadings filed with the court will be imaged and destroyed. Original documents should not be filed with pleadings. If necessary, they should be lodged with the court under California Rules of Court, rule 3.1302(b).**

On August 1, 2011 the San Diego Superior Court began the Electronic Filing and Imaging Pilot Program ("Program"). As of August 1, 2011 in all new cases assigned to an Imaging Department all filings will be imaged electronically and the electronic version of the document will be the official court file. The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and on the Internet through the court's website.

You should be aware that the electronic copy of the filed document(s) will be the official court record pursuant to Government Code section 68150. The paper filing will be imaged and held for 30 days. After that time it will be destroyed and recycled. **Thus, you should not attach any original documents to pleadings filed with the San Diego Superior Court. Original documents filed with the court will be imaged and destroyed except those documents specified in California Rules of Court, rule 3.1806.** Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant or petitioner to serve a copy of this notice with the complaint, cross-complaint or petition on all parties in the action.

On all pleadings filed after the initial case originating filing, all parties must, to the extent it is feasible to do so, place the words "**IMAGED FILE**" in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.

**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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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.

---

DARRYL COTTON, an individual,  
Cross-Complainant,  
v.  
LARRY GERACI, an individual, REBECCA  
BERRY, an individual, and DOES 1  
THROUGH 10, INCLUSIVE,  
Cross-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]**

**[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."

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 \$ 33,612.16; *added 10/1/19* *(af)*

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

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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**

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]  
Presiding Juror

25  
26 After all verdict forms have been signed, notify the bailiff that you are ready to present your  
27 verdict in the courtroom.  
28

# **EXHIBIT C**

ORIGINAL

FILED  
Clerk of the Superior Court

JUL 16 2019

By: A. TAYLOR

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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.

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

2

3  Yes  No

4

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

7

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

9

10  Yes  No

11

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

14

15 17. Did Cross-Defendant perform the promised act?

16

17  Yes  No

18

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

21

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

24

25  Yes  No

26

27 Please answer question 19.

28

1 **Fraud - Negligent Misrepresentation**

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

26

27

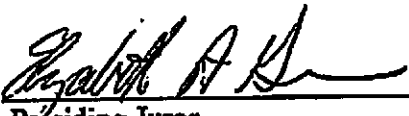
28

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.  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

**FILED**  
Clerk of the Superior Court

**MAY 14 2020**

By: S. Ochoa, Deputy

San Diego County Superior Court - Main  
P.O. Box 120128  
San Diego, CA 92112

RE: LARRY GERACI,  
Plaintiff, Cross-defendant and Respondent,  
v.  
DARRYL COTTON,  
Defendant, Cross-complainant and Appellant.  
**D077081**  
**San Diego County Super. Ct. No. 37-2017-00010073-CU-BC-CTL**

**\* \* \* REMITTITUR \* \* \***

I, Kevin J. Lane, Clerk of the Court of Appeal of the State of California, for the Fourth Appellate District, certify the attached is a true and correct copy of the original opinion or decision entered in the above-entitled case on February 11, 2020, and that this opinion or decision has now become final.

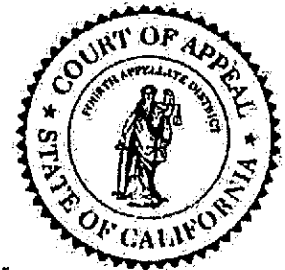
\_\_\_\_\_ Appellant   X   Respondent to recover costs.  
\_\_\_\_\_ Each party to bear own costs.  
\_\_\_\_\_ Other (See Below)

5/14/20

Witness my hand and the seal of the Court affixed this

KEVIN J. LANE, Clerk

By: Jonathan Newton, Deputy Clerk



cc: All Parties (Copy of remittitur only, Cal. Rules of Court, rule 8.272(d).)

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

Court of Appeal  
Fourth Appellate District  
**FILED ELECTRONICALLY**  
02/11/2020  
Kevin J. Lane, Clerk  
By: Jonathan Newton

LARRY GERACI,  
Plaintiff, Cross-defendant and Respondent,

v.

DARRYL COTTON,  
Defendant, Cross-complainant and Appellant.

**D077081**

**San Diego County Super. Ct. No. 37-2017-00010073-CU-BC-CTL**

THE COURT:

Pursuant to California Rules of Court, rule 8.140, the appeal filed November 21, 2019, is DISMISSED for appellant's failure to timely designate the record (Cal. Rules of Court, rule 8.121(a)) and because appellant did not timely deposit costs for preparing the record on appeal (Cal. Rules of Court, rules 8.122(c), 8.130(b), 8.140).

MCCONNELL

Presiding Justice

cc: Clerk of the San Diego County Superior Court  
All Parties


KEVIN J. LANE, Clerk of the Court of Appeal, Fourth Appellate District, State of California, does hereby Certify that the preceding is a true and correct copy of the Original of this document/order/opinion filed in this Court, as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.

02/11/2020

KEVIN J. LANE, CLERK

By: *Jonathan Newton*  
Deputy Clerk





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**F I L E D**  
Clerk of the Superior Court

MAR -7 2018

By: J. CERDA

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

DARRYL COTTON, an individual,  
Petitioner/Plaintiff,

v.

CITY OF SAN DIEGO, a public entity; and  
DOES 1 through 25,  
Respondents/Defendants.

REBECCA BERRY, an individual; LARRY  
GERACE, an individual, and ROES 1 through  
25,  
Real Parties in Interest.

Case No. 37-2017-00037675-CU-WM-CTL

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

**[PROPOSED] JUDGMENT AFTER  
ORDER DENYING MOTION FOR  
ISSUANCE OF PEREMPTORY WRIT OF  
MANDATE**

**[IMAGED FILE]**

**DATE: January 25, 2018  
TIME: 8:30 a.m.  
DEPT: C-73**

Petition Filed: October 6, 2017

On October 6, 2017, Plaintiff/Petitioner initiated this action by filing his Verified Petition for Alternative Writ of Mandate (Code Civ. Proc. § 1085).

On November 30, 2017, Real Party in Interest, Larry Geraci, answered the petition by the filing of Real Party in Interest Larry Geraci's Verified Answer to Petition for Writ of Mandate.

On November 30, 2017, Real Party in Interest, Rebecca Berry, answered the petition by the filing of Real Party in Interest Rebecca Berry's Verified Answer to Petition for Writ of Mandate.

On or about December 28, 2017, Respondent/Defendant, City of San Diego, answered the petition by the filing of Respondent/Defendant City of San Diego's Answer to Petitioner's Verified Petition for Alternative Writ of Mandate.

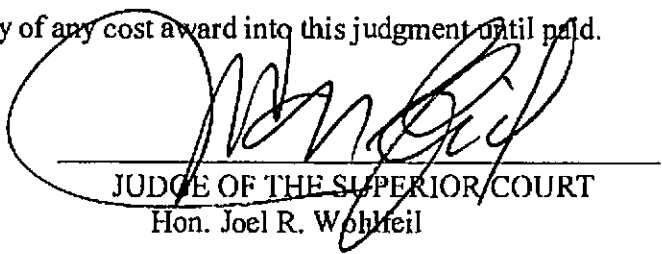
1 On January 25, 2018, the noticed motion by Petitioner/Plaintiff, Darryl Cotton, for issuance of a  
2 peremptory writ of mandate came on for hearing. Petitioner/Plaintiff, Darryl Cotton, was represented  
3 by Darryl Cotton, pro se. Respondent/Defendant, City of San Diego, was represented by M. Travis  
4 Phelps, Chief Deputy City Attorney with the Office of the City Attorney. Real Parties in Interest, Larry  
5 Geraci and Rebecca Berry, were represented by attorney Michael R. Weinstein of the law firm Ferris &  
6 Britton, APC. After review of the written pleadings submitted by the parties and hearing oral  
7 argument, the Court issued its order DENYING Petitioner/Plaintiff's motion for issuance of a  
8 peremptory writ of mandate.

9 Based on the order denying Petitioner/Plaintiff's motion for issuance of a peremptory writ of  
10 mandate, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

11 (1) Judgment be entered in favor of Respondent/Defendant, City of San Diego, and Real  
12 Parties in Interest, Larry Geraci and Rebecca Berry, and against Petitioner/Plaintiff, Darryl  
13 Cotton; and

14 (2) Respondent/Defendant, City of San Diego, and Real Parties in Interest, Larry Geraci and  
15 Rebecca Berry, have and recover from Petitioner/Plaintiff costs of suit in the sums of  
16 \$ TBD (City of San Diego), \$ TBD <sup>4 1,037.95 costs added 6/12/18 @P</sup> (Larry Geraci), and \$ TBD  
17 (Rebecca Berry), respectively, with interest thereon at the rate of ten percent (10%) per  
18 annum from the date of entry of any cost award into this judgment until paid.

19  
20 Dated: 3-7, 2018

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT  
Hon. Joel R. Wohlfeil

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

**F I L E D**  
Clerk of the Superior Court

NOV - 5 2018

By: A. SANTIAGO, Deputy

San Diego County Superior Court - Main  
P.O. Box 120128  
San Diego, CA 92112

RE: DARRYL COTTON,  
Plaintiff and Appellant,  
v.  
CITY OF SAN DIEGO,  
Defendant and Respondent;  
LARRY GERACI,  
Real Party in Interest and Respondent.  
**D073766**  
**San Diego County Super. Ct. No. 37-2017-00037675-CU-WM-CTL**

**\* \* \* REMITTITUR \* \* \***

I, Kevin J. Lane, Clerk of the Court of Appeal of the State of California, for the Fourth Appellate District, certify the attached is a true and correct copy of the original opinion or decision entered in the above-entitled case on July 18, 2018, and that this opinion or decision has now become final.

\_\_\_\_\_ Appellant  Respondent to recover costs.  
\_\_\_\_\_ Each party to bear own costs.  
\_\_\_\_\_ Other (See Below)

Witness my hand and the seal of the Court affixed this November 5, 2018

KEVIN J. LANE, Clerk

By: Rita Rodriguez, Deputy Clerk

cc: All Parties (Copy of remittitur only, Cal. Rules of Court, rule 8.272(d).)



COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

Court of Appeal  
Fourth Appellate District  
**FILED ELECTRONICALLY**  
07/18/2018  
Kevin J. Lane, Clerk  
By: J. Yost

DARRYL COTTON,  
Plaintiff and Appellant,  
v.  
CITY OF SAN DIEGO,  
Defendant and Respondent;  
LARRY GERACI,  
Real Party in Interest and Respondent.  
**D073766**  
**San Diego County No. 37-2017-00037675-CU-WM-CTL**

THE COURT:

Pursuant to California Rules of Court, rule 8.140, the appeal filed March 20, 2018, is DISMISSED for appellant's failure to timely designate the record (Cal. Rules of Court, rule 8.121(a)).

MCCONNELL

Presiding Justice

cc: Clerk of the San Diego County Superior Court  
All Parties

KEVIN J. LANE, Clerk of the Court of Appeal, Fourth Appellate District, State of California, does hereby Certify that the preceding is a true and correct copy of the Original of this document/order/opinion filed in this Court, as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.

07/18/2018



KEVIN J. LANE, CLERK

By: *J. Yost*  
Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA**  
**County of SAN DIEGO**

**Register of Actions Notice**

Case Number:	37-2017-00010073-CU-BC-CTL	Filing Date:	03/21/2017
Case Title:	Larry Geraci vs Darryl Cotton [Imaged]	Case Age:	1392 days
Case Status:	Pending	Location:	Central
Case Category:	Civil - Unlimited	Judicial Officer:	Joel R. Wohlfeil
Case Type:	Breach of Contract/Warranty	Department:	C-73

**Future Events**

Date	Time	Department	Event
No future events			

**Participants**

Name	Role	Representation
Berry, Rebecca	Cross - Defendant, Respondent on Appeal	Self-Represented; Weinstein, Michael R
Cotton, Darryl	Defendant, Appellant, Cross - Complainant	Austin, Jacob; Lees, Megan E.; Self-Represented
Geraci, Larry	Plaintiff, Respondent on Appeal, Cross - Defendant	Self-Represented; Toothacre, Scott H; Weinstein, Michael R

**Representation**

Name	Address	Phone Number
AUSTIN, JACOB	P O Box 231189 San Diego CA 92193	(619) 357-6850
COTTON, DARRYL	6176 Federal Boulevard San Diego CA 92114	(619) 634-1561
GERACI, LARRY	Not Available	
LEES, MEGAN E	Not Available	
TOOTHACRE, SCOTT H	Not Available	
WEINSTEIN, MICHAEL R	FERRIS & BRITTON APC 501 W Broadway 1450 San Diego CA 92101	(619) 233-3131, (619) 232-9316

ROA#	Entry Date	Short/Long Entry	Filed By
1	03/21/2017	Complaint filed by Geraci, Larry. Refers to: Cotton, Darryl	Geraci, Larry (Plaintiff)
2	03/21/2017	Civil Case Cover Sheet filed by Geraci, Larry. Refers to: Cotton, Darryl	Geraci, Larry (Plaintiff)
3	03/21/2017	Original Summons filed by Geraci, Larry. Refers to: Cotton, Darryl	Geraci, Larry (Plaintiff)
4	03/22/2017	Summons issued.	
5	03/21/2017	Case assigned to Judicial Officer Wohlfeil, Joel.	
6	03/22/2017	Civil Case Management Conference scheduled for 08/25/2017 at 01:30:00 PM at Central in C-73 Joel R. Wohlfeil.	
7	03/22/2017	Case initiation form printed.	
8	03/22/2017	Case initiation form printed.	
9	03/22/2017	Notice - Other filed by Geraci, Larry; Geraci, Larry.	Geraci, Larry (Plaintiff); Geraci, Larry (Plaintiff)
10	04/05/2017	Proof of Service of 30-day Summons & Complaint - Personal filed by Geraci, Larry. Refers to: Cotton, Darryl	Geraci, Larry (Plaintiff)
11	05/01/2017	Ex Parte scheduled for 05/04/2017 at 08:30:00 AM at Central in C-73 Joel R. Wohlfeil.	
12	05/03/2017	The Ex Parte was rescheduled to 05/09/2017 at 08:30:00 AM in C-73 before Joel R. Wohlfeil at Central.	

**Exhibit G**

**SUPERIOR COURT OF CALIFORNIA**  
**County of SAN DIEGO**

**Register of Actions Notice**

Case Number:	37-2017-00037675-CU-WM-CTL	Filing Date:	10/06/2017
Case Title:	Cotton vs City of San Diego [IMAGED]	Case Age:	1193 days
Case Status:	Pending	Location:	Central
Case Category:	Civil - Unlimited	Judicial Officer:	Joel R. Wohlfeil
Case Type:	Writ of Mandate	Department:	C-73

**Future Events**

Date	Time	Department	Event
No future events			

**Participants**

Name	Role	Representation
Berry, Rebecca	Respondent on Appeal	Weinstein, Michael R
COTTON, DARRYL	Petitioner, Appellant	Self-Represented
City of San Diego	Respondent, Respondent on Appeal	Phelps, M. Travis; Phelps, M. Travis; Will, Jana Mickova
Geraci, Larry	Respondent on Appeal	Weinstein, Michael R

**Representation**

Name	Address	Phone Number
COTTON, DARRYL	6176 Federal Boulevard San Diego CA 92114	(619) 634-1561
PHELPS, M. T	OFFICE OF THE CITY ATTORNEY 1200 Third Avenue 1620 San Diego CA 92101 4100	(619) 533-5800
WEINSTEIN, MICHAEL R	FERRIS & BRITTON APC 501 West Broadway 1450 San Diego CA 92101	(619) 233-3131, (619) 232-9316
WILL, JANA M	OFFICE OF THE CITY ATTORNEY 1200 Third Avenue 1100 San Diego CA 92101	(619) 533-5800

ROA#	Entry Date	Short/Long Entry	Filed By
1	10/06/2017	Petition for Writ of Mandate filed by COTTON, DARRYL. Refers to: City of San Diego; Berry, Rebecca; Geraci, Larry	COTTON, DARRYL (Petitioner)
2	10/06/2017	Civil Case Cover Sheet filed by COTTON, DARRYL. Refers to: City of San Diego; Berry, Rebecca; Geraci, Larry	COTTON, DARRYL (Petitioner)
3	10/06/2017	Civil Case Cover Sheet filed by COTTON, DARRYL.	COTTON, DARRYL (Plaintiff)
4	10/06/2017	Original Summons filed by COTTON, DARRYL.	COTTON, DARRYL (Plaintiff)
5	10/06/2017	Case assigned to Judicial Officer Sturgeon, Eddie.	
6	10/11/2017	Case initiation form printed.	
7	10/11/2017	Summons issued.	
8	10/12/2017	Ex Parte scheduled for 10/31/2017 at 08:30:00 AM at Central in C-67 Eddie C Sturgeon.	
9	10/30/2017	Ex Parte Application - Other and Supporting Documents (Ex Parte Application for Alternative Writ of Mandate) filed by COTTON, DARRYL.	COTTON, DARRYL (Petitioner)
10	10/30/2017	Memorandum of Points and Authorities filed by COTTON, DARRYL.	COTTON, DARRYL (Petitioner)
11	10/30/2017	Declaration - Other (Declaration of Darryl Cotton) filed by COTTON, DARRYL.	COTTON, DARRYL (Petitioner)
12	10/30/2017	Declaration - Other (Declaration of David Demian) filed by COTTON, DARRYL.	COTTON, DARRYL (Petitioner)
13	10/30/2017	Notice of Lodgment filed by COTTON, DARRYL.	COTTON, DARRYL (Petitioner)
14	10/30/2017	Request for Judicial Notice filed by COTTON, DARRYL.	COTTON, DARRYL (Petitioner)

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

**MINUTE ORDER**

DATE: 06/27/2019 TIME: 08:30:00 AM DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil  
CLERK: Andrea Taylor  
REPORTER/ERM: Not Requested  
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:** Ex Parte

**EVENT TYPE:** Civil Jury Trial

**APPEARANCES**

Michael R Weinstein, counsel, present for Respondent on Appeal, Cross - Defendant, Cross - Complainant, Plaintiff(s).  
Jacob Austin, counsel, present for Defendant, Cross - Complainant, Appellant(s).  
Andrew Flores, counsel appears on his own behalf.

Ex-parte application for request to intervene and stay case requested by Attorney Andrew Flores.

The Court finds Attorney Andrew Flores has not shown good cause to intervene and stay the case and the request is denied.

The Court advances the Trial call set for tomorrow at 8:30 a.m. with agreement of counsel.

Court and counsel discuss trial procedures.

Counsel agree to give a mini opening statement. The Court will pre-screen jurors for 4 weeks and will most likely order a panel of 50 prospective jurors.

Court directs counsel to email the Court clerk before close of business tomorrow a complete set of jury instructions in Word in the order to which they should be given along with a proposed verdict form.

The Court will hear motions in limine at 1:30 p.m. on July 1, 2019 and will have a Prospective jury panel ready to go for July 2, 2019.

Estimated length of trial: 8 days

Civil Jury Trial is continued pursuant to Court's motion to 07/01/2019 at 01:30PM before Judge Joel R. Wohlfeil.

Parties waive notice.



1 LAW OFFICES OF ANDREW FLORES  
2 Andrew Flores (SBN 272958)  
3 7880 Broadway  
4 Lemon Grove, CA 91978  
5 Telephone (619) 356-1556  
6 Fax Number: (619) 274-8053  
7 Email: Andrew@FloresLegal.pro

F I L  
Clerk of the Superior Court D  
JUN 26 2019  
By: A. SEAMONS, Deputy

8 *In Propria Persona*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF SAN DIEGO**

11 LARRY GERACI, an individual,  
12 Plaintiff(s),

13 vs.

14 DARRYL COTTON, an individual; and DOES 1  
15 through 10, inclusive,  
16 Defendant(s).

Case No.: 37-2017-00010073-CU-BC-CTL  
~~EX PARTE~~  
INTERVENOR'S NOTICE OF MOTION  
AND MOTION TO INTERVENE, WITH  
MEMORANDUM OF POINTS AND  
AUTHORITIES

DATE: June 27, 2019  
TIME: 8:30 a.m.  
DEPT: C-73  
JUDGE: The Hon. Joel R. Wohlfeil

Complaint filed: March 21, 2017  
Trial Date: June 28, 2019

21  
22 **TO THE PARTIES AND THEIR COUNSEL OF RECORD:**

23 **PLEASE TAKE NOTICE** that on June 27, 2019 at 8:30 a.m. in department C-73 of the above-  
24 entitled Court, located at the Hall of Justice, 330 W Broadway, San Diego, CA 92101, Andrew Flores  
25 will and hereby does move this Court to permit him to intervene in the above-captioned action.  
26  
27  
28

1           This Motion is based upon the Court’s file in this matter, the pleadings and records on file  
2 herein, this Notice of Motion, and upon the Memorandum of Points and Authorities and Declaration  
3 of Andrew Flores (hereinafter “Movant”), with attachments thereto, in support thereof, along with  
4 such other and further oral and documentary evidence as may be present at the hearing thereon.

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: June 26, 2019

Respectfully submitted,

---

Andrew Flores  
In Pro Per

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO INTERVENE**

**I. FACTUAL AND PROCEDURAL BACKGROUND**

The actions giving rise to this motion to intervene center around the real property located at 6176 Federal Blvd., San Diego, CA 92114 (the "Property"). Mr. Cotton alleges in this suit that on November 2, 2016, Mr. Cotton and Mr. Geraci met and (a) entered into an oral joint venture agreement to apply for the Permit and develop a Marijuana Outlet at the Property (the "JVA"); (b) executed a three-sentence document drafted by Mr. Geraci to memorialize Mr. Cotton's receipt of \$10,000 in cash towards a non-refundable deposit agreed to as part of the JVA (the "November Document"); and (c) Mr. Geraci promised to have his attorney, Mrs. Gina Austin, reduce the JVA to writing for execution.

Neither Mr. Geraci nor Mr. Cotton dispute that later that same day after the parties separated (a) Mr. Geraci emailed Mr. Cotton a copy of the November Document; (b) Mr. Cotton responded and requested that Mr. Geraci confirm the November Document is not a sales contract (the "Request for Confirmation"); and (c) Mr. Geraci replied and provided the requested written confirmation (the "Confirmation Email"). Mr. Geraci now alleges he sent the Confirmation by mistake.

On March 21, 2017, Mr. Cotton terminated his agreement with Mr. Geraci for breach and entered into a written joint venture agreement with Mr. Martin (the "Martin Purchase Agreement"). On March 22, 2017, Mr. Geraci served Mr. Cotton with the instant lawsuit alleging the November Document is a sales contract. Movant is confident the instant suit a sham lawsuit intended to justify the recording of a lis pendens on the Property seeking to prevent the sale of the Property to Mr. Martin.

1 Mr. Geraci and his counsel, Mr. Weinstein, have known that Mr. Martin purchased the  
2 Property on March 21, 2017 before they served Mr. Cotton with the complaint for this suit on March  
3 22, 2017 since mid-2017 when the Martin Purchase Agreement was disclosed via discovery.<sup>1</sup>

4 Once Mr. Geraci filed this suit, Mr. Martin was intimidated by Mr. Geraci's history of  
5 involvement with illegal commercial marijuana operations and made a demand that Mr. Cotton  
6 prosecute this action without including him as a party to the litigation. In March of 2019, Movant  
7 informed Mr. Martin that he was an "indispensable" party and that he had to become a party. Mr.  
8 Martin decided to extricate himself from the sale and, on March 25, 2019, Movant bought the Property  
9 from Mr. Martin. Flores Decl., Ex. 1. Subsequent to buying the Property, Movant discovered  
10 evidence that the instant suit is part of a conspiracy to monopolize the Marijuana Outlet permits in  
11 San Diego, which the City has limited to thirty-six. Movant is preparing a federal antitrust lawsuit,  
12 that he intends to file within the week. The law and the facts are complicated and Movant has not  
13 been dilatory in his preparation of bringing forth suit. And, for the reasons set forth below, his antitrust  
14 suit is the basis of Movant's request that this Court stay this action over which the federal court has  
15 exclusive jurisdiction.

16  
17  
18 **II. MOVANT IS ENTITLED TO INTERVENE PURSUANT TO CALIFORNIA**  
19 **CODE OF CIVIL PROCEDURE SECTION 387(b) BECAUSE THEY HAVE**  
20 **SIGNIFICANT RELEVANT INTERESTS NOT ADEQUATELY**  
21 **REPRESENTED BY THE EXISTING PARTIES, DISPOSITION OF THE**  
22 **ACTION WITHOUT THEM WILL IMPEDE AND IMPAIR THEIR ABILITY**  
23 **TO PROTECT THOSE INTERESTS, AND THIS APPLICATION TO**  
24 **INTERVENE IS TIMELY.**

25  
26 A person is entitled to intervene as of right, "if the person seeking intervention claims an  
27 interest relating to the property or transaction which is the subject of the action and that person is so  
28

---

26 <sup>1</sup> On December 7, 2017, Mr. Weinstein filed an opposition to Mr. Cotton's TRO specifically  
27 referencing the Martin Purchase Agreement. Docket No. 243, pg. 11:20-23 ("In other words, if Cotton  
28 is granted his IRO and/or PI but Geraci prevails at trial, Geraci's victory may be a pyrrhic one as  
Cotton would have a \$1.2 million reason to destroy the CUP approval process in order to free Cotton  
to close the more lucrative deal he has made with another buyer, Richard Martin II, for the purchase  
and sale of the Property.").

1 situated that the disposition of the action may as a practical matter impair or impede that person’s  
2 ability to protect that interest, unless that person’s interest is adequately represented by existing  
3 parties....” Code Civ. Proc. § 387 subd. (b). Intervention pursuant to section 387 subdivision (b) is  
4 mandatory if the petition to intervene is timely made.

5  
6 Movant has a direct interest in the subject property and subject of this action. Movant is the  
7 equitable owner of the Property directly subject to this action. Mr. Geraci cannot claim prejudice as  
8 he has known of Mr. Martin being the equitable owner and never sought leave of the court to amend  
9 the complaint to name him.

10 Furthermore, Mr. Cotton was represented by counsel, Finch, Thornton, & Baird, LLP  
11 (“FTB”), on August 25, 2017, when this Court entered a minute order that pursuant to a joint  
12 stipulation of counsel, no new parties could be named and all unserved, non-appearing and factiously  
13 named parties were dismissed. Mr. Cotton fired FTB for their professional negligence and/or alleged  
14 fraud in their representation of his rights. FTB was aware of Mr. Martin, but did not name him as a  
15 party. Neither Mr. Cotton nor Mr. Martin knew what an “indispensable” party was until Mr. Flores  
16 informed them.  
17

18 It is inexplicable why neither Mr. Geraci’s counsel nor Mr. Cotton’s counsel did not seek to  
19 add Mr. Martin, Plaintiff’s predecessor-in-interest. Whatever the reason, Movant, as the successor-  
20 in-interest to Mr. Martin has a contractual right to the Property that was established BEFORE Mr.  
21 Cotton was served with the instant suit. Thus, as an indispensable party, Movant is required to be a  
22 party to any adjudication of the rights the Property.  
23

24 As mentioned above, Movant only became the equitable owner on March 25, 2019 and has  
25 been engaged in his own investigation regarding the issues and parties presented in this case separate  
26 and apart from Mr. Cotton.  
27  
28

1           **III. AN ANTITRUST CONSPIRACY TO MONOPOLIZE IS EXCLUSIVELY A**  
 2           **FEDERAL CAUSE OF ACTION**

3           “[A] plaintiff can bring an antitrust claim circumventing *Noerr-Pennington* immunity by  
 4 relying on the sham exception even if the allegedly sham legal actions remain pending [in state court].  
 5 This conclusion is logical given that a determination of whether anticompetitive legal actions fall  
 6 within the sham exception turns not on their ultimate outcomes but on the existence of a reasonable  
 7 basis (or a proper motive) for instituting and pursuing them in the first place.” Hanover 3201 Realty,  
 8 LLC v. Village Supermarkets, Inc., 806 F.3d 162, 191 n.4 (3d Cir. 2015) (citing Professional Real  
 9 Estate Investors, Inc. v. Columbia Pictures Industries, Inc., 508 U.S. 49, 61 n.5 (1993)).

10           Thus, respectfully, Movant notes that if the Court denies this ex-parte application, that will  
 11 not bar federal court jurisdiction over the federal suit he will file. Section 2 of the Sherman Act  
 12 prohibits any attempt to monopolize. 15 U.S.C. § 2. Section 4 of the Clayton Act, in turn, defines the  
 13 class of persons who may bring a private antitrust suit as “any person” who is injured “by reason of  
 14 anything” prohibited by the antitrust laws. *Id.* § 15(a). This extraordinarily broad language reflects  
 15 the Clayton Act’s remedial purpose and Congress’s intent to “create a private enforcement mechanism  
 16 that would deter violators and deprive them of the fruits of their illegal actions, and would provide  
 17 ample compensation to the victims of antitrust violations.” Blue Shield of Va. v. McCready, 457 U.S.  
 18 465, 472, 102 S.Ct. 2540, 73 L.Ed.2d 149 (1982). Emphasizing § 4’s expansive reach, the Supreme  
 19 Court has explained that the “statute does not confine its protection to consumers, or to purchasers,  
 20 or to competitors, or to sellers.... The Act is comprehensive in its terms and coverage, protecting all  
 21 who are made victims of the forbidden practices by whomever they may be perpetrated.” *Id.* (quoting  
 22 Mandeville Island Farms, Inc. v. Am. Crystal Sugar Co., 334 U.S. 219, 236, 68 S.Ct. 996, 92 L.Ed.  
 23 1328 (1948)).

24           Moreover, the federal court will not be bound by this court’s judgment and *res judicata* will  
 25 not apply for two reasons. First, in an antitrust matter, factual determinations by a state court do not  
 26  
 27  
 28

1 apply. As the Ninth Circuit has stated: “It would seem to us to be unthinkable that a federal court  
2 having exclusive jurisdiction of a treble damage antitrust suit would tie its own hands by a stay of this  
3 kind in order to permit a judge of a state court, without a jury, to make a determination which would  
4 rob the federal court of full power to determine all of the fact issues before it.” Mach-Tronics, Inc. v.  
5 Zirpoli, 316 F.2d 820, 833 (9th Cir. 1963).

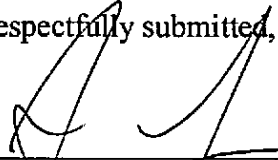
7 Second, although the “*Rooker-Feldman* [doctrine] prohibits a federal district court from  
8 exercising subject matter jurisdiction over a suit that is a de facto appeal from a state court judgment.”  
9 Kougasian v. TMSL, Inc., 359 F.3d 1136, 1139 (9th Cir. 2004). Even if it could be argued that  
10 Movant was somehow in privity with Mr. Cotton as Mr. Martin’s successor-in-interest, “*Rooker-*  
11 *Feldman* does not apply where the plaintiff in the federal case was in privity with, but not a party to,  
12 the underlying state court proceeding.” St. Jon v. Tatro, Case No.: 15-cv-2552-GPC-JLB, at \*17 n.2  
13 (S.D. Cal. Mar. 23, 2016) (citing Lance v. Dennis, 546 U.S. 459, 466 (2006)).

15 **CONCLUSION**

16 For all the reasons set forth in this memorandum, Movant respectfully requests this Court  
17 grant this motion and dismiss this action for failure to join an indispensable party and lack of subject  
18 matter jurisdiction over federal anti-trust causes of action.

20 DATED: June 26, 2019

21 Respectfully submitted,

22   
23 \_\_\_\_\_  
24 Andrew Flores  
25 In Pro Per

1 LAW OFFICES OF ANDREW FLORES  
Andrew Flores (SBN 272958)  
2 7880 Broadway  
Lemon Grove, CA 91978  
3 Telephone: (619) 356-1556  
4 Facsimile: (619) 274-8053  
E-mail: Andrew@FloresLegal.pro

5  
6 Plaintiff *In Propria Persona*  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO

10  
11 LARRY GERACI, an individual,  
12 Plaintiff,  
13 vs.

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

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

) **DECLARATION OF ANDREW FLORES IN  
SUPPORT OF MOTION TO INTERVENE AN  
DISMISS WITHOUT PREJUDICE**

) Date: June 27, 2019  
) Time: 8:30 a.m.  
) Dept: C-73  
) Judge: The Hon. Joel R. Wohlfeil

17  
18  
19  
20  
21  
22  
23 I, ANDREW FLORES, declare:

- 24 1. I am over the age of eighteen years, and the Defendant-Intervenor in this action.  
25 2. The facts set forth herein are true and correct as of my own personal knowledge.  
26 3. This declaration is submitted in support of my Motion to Intervene and Motion to  
27 Dismiss.  
28 4. I hereby incorporate by reference the facts stated in my Memorandum of Points and



1 Authorities in Support of Motion to Intervene and Motion to Dismiss.

2 5. On March 25, 2019 I purchased the contractual rights of one Richard Martin II relating  
3 to an agreement between he and Darryl Cotton executed on March 21, 2017.

4 6. This agreement was entered into *after* Mr. Cotton had terminated his agreement with Mr.  
5 Geraci who subsequently filed the instant action.

6 7. As the successor-in-interest to those contractual rights, I will be highly prejudiced if this  
7 matter is litigated in my absence.

8 8. I since March 25, 2019 I have discovered evidence which form the bases of an anti-trust  
9 lawsuit I am preparing to file *in pro per*.

10 9. However, I have been in discussions with a very reputable national law firm that  
11 specializes in RICO and Anti-Trust lawsuits who are currently vetting a draft version of my complaint,  
12 which apparently is vetted by multiple levels of partners in that firm.

13 10. The newly discovered evidence has not been provided to either Mr. Cotton, Mr. Geraci,  
14 or their respective counsel because it the evidence may impact a current federal investigation into  
15 corruption in the marijuana industry and a criminal proceeding in Federal Court involving a murder for  
16 hire plot involving co-owners of another marijuana dispensary.

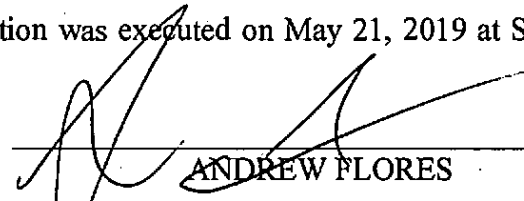
17 11. I have also contacted the Assistant United States Attorney who is currently prosecuting  
18 the case.

19 12. There is a great deal of other relevant factual and legal issues to my anti-trust case  
20 however because I believe that the anti-trust issues is dispositive of my request, and due to the limited  
21 time restraints am not providing them in detail.

22 13. I have reviewed all of the motions and filings in this matter and represent that the factual  
23 statements provided in my Motion to Intervene and Dismiss the Action Without Prejudice.

24 14. A redacted version, of the Martin Purchase Agreement is attached as **Exhibit 1**.

25 I declare under penalty of perjury according to the laws of the State of California that the  
26 foregoing is true and correct, and that this declaration was executed on May 21, 2019 at San Diego,  
27 California.

28   
\_\_\_\_\_  
ANDREW FLORES

# EXHIBIT 1

**AGREEMENT**

---

This Agreement is entered into by and among Darryl Cotton (“Cotton”), Jacob Austin (“Austin”), Andrew Flores (“Flores”), Joe Hurtado (“Hurtado”), and Richard Martin (“Martin”) on **March 25, 2019**.

**RECITALS**

WHEREAS, Austin, Cotton, Hurtado, Martin and another party entered into a Secured Litigation Financing Agreement on **December 26, 2017** (a redacted version is attached hereto as **Exhibit A**);

WHEREAS, the Secured Litigation Financing Agreement amended and incorporated various other agreements related to the real property located at 6176 Federal Blvd., San Diego CA 92114 (the “Property”), of which Cotton is the owner-of-record;

WHEREAS, the Secured Litigation Financing Agreement contemplated, *inter alia*, (i) a favorable and quick resolution of various legal disputes relating to the Property, (ii) provided for financing of the legal disputes regarding the Property; and (iii) the payment of interests in the Property and/or a conditional use permit for a Marijuana Outlet at the Property (the “CUP”) subject to successful resolution of the legal disputes regarding the Property;

WHEREAS, the legal disputes regarding the Property are still ongoing, the procedural history of the legal disputes is unfavorable, and, thus, there is doubt as to what right, if at all, Cotton had to sell and/or transfer his interest in the Property to various parties as reflected in the Secured Litigation Financing Agreement;

WHEREAS, the Secured Litigation Financing Agreement was amended and other parties have helped finance Cotton’s legal defense;

WHEREAS, the parties believe that in order to protect and vindicate Cotton’s rights to the Property, and the agreements he made regarding the Property, a lawsuit against multiple parties alleging they are part of a criminal enterprise is necessary;

WHEREAS, Martin and other parties to the Secured Litigation Financing Agreement do not desire to be part of such a lawsuit;

WHEREAS, all of the parties to the Secured Litigation Financing Agreement have agreed to settle their financial obligations thereunder once all the legal disputes regarding the ownership of the Property have been finally settled;

WHEREAS, Hurtado has provided or paid on Cotton’s behalf approximately \$254,500; and

WHEREAS, Hurtado is liable to Flores and Austin for legal services performed for Cotton.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants set forth below, the parties hereby agree as follows:

//  
//  
//

#### AGREEMENT

1. Martin hereby transfers and assigns to Flores any and all rights and interests in the Property, the CUP and any matters arising from or related thereto that he has, or may potentially have, and which may lawfully be transferred and/or assigned.
2. For the avoidance of doubt, given the doubt as to the legal validity of Cotton's ability to sell and/or transfer any interest in the Property, Cotton, Hurtado, and Austin hereby transfer and assign to Flores any ownership interest in the Property or the CUP that they may potentially have.
3. Flores hereby agrees to become a plaintiff, become counsel for Hurtado, and prosecute the contemplated legal action required to protect the validity of the interests acquired by this Agreement.
4. All of the parties represent they had or have attorney-client, principal-agent, fiduciary, and/or other confidential relationships by and among each other, the scope or existence of which for some have repeatedly changed throughout the course of the events leading up to this Agreement.
5. The parties, without waiving any attorney-client, work product, litigation, and/or any other applicable privilege or right arising from any of said relationships by and among them, hereby release each other from any future potential legal claims arising from any conflict of interest related to this Agreement. For the avoidance of doubt, this includes Cotton's release of any potential claims in connection with a contemplated claim by Hurtado against Cotton for fraud. The potential fraud claim is in the event there is a judicial determination that a document executed by Cotton and Geraci on November 2, 2016 was intended to be a sales agreement for the purchase of the Property by Geraci.
6. Cotton promises to execute a lien on the Property in favor of Hurtado for \$375,000 (the "Hurtado Lien").
7. Cotton promises to have the existing lien on the Property subordinated to the Hurtado Lien.
8. If the contemplated litigation is successful, but a CUP at the Property is not approved, Flores promises to pay \$500,000 for the Property.
9. If the contemplated litigation is successful, and a CUP is approved at the Property, Flores promises to pay \$5,000,000 for the Property.

#### ADDITIONAL PROVISIONS

10. Any invalid, illegal or unenforceable provision of this Agreement shall be severable, and after any such severance, all other provisions of this Agreement shall remain in full force and effect.
11. Insofar as there are any legal disputes between Martin and any other party arising from or related to this Agreement, the Agreement shall be governed by and construed in accordance

with the internal laws of the State of Hawaii without giving effect to the conflict of laws provisions thereof and the venue for any action filed by or against Martin shall be Honolulu, Hawaii. The prevailing party, in any legal dispute, shall have the right to collect from the other party its reasonable costs and attorneys' fees incurred in enforcing this Agreement.

12. The parties agree to negotiate in good faith regarding any issues that may arise by among some or all of the parties in regards to this Agreement. It is the intent of the parties, and they are relying on such, that they shall work in good faith and that any such issues be construed in light of, and effectuate the intent of, this Agreement.
13. This Agreement alone fully and completely expresses the agreement of the parties relating to the subject matter hereof. All previous courses of dealing, understandings, agreements, representations or warranties, written or oral, are replaced by this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first written above.

By:   
Andrew Flores

By:   
Jacob Austin

By:   
Joe Hurtado

By:   
Darryl Cotton

By:   
Richard Martin

# Exhibit A

(Redacted Secured Litigation Financing Agreement)

## SECURED LITIGATION FINANCING AGREEMENT

This amendment to the Secured Litigation Financing Agreement (the "Financing Agreement") is entered into by and among Jacob Austin ("Austin"), Darryl Cotton ("Cotton"), Joe Hurtado ("Hurtado"), and Richard Martin ("Martin") on December 26, ~~2016~~ 2017.

### RECITALS

WHEREAS, on December 15, 2017, the parties hereto came to a tentative and general agreement that was agreed to and more fully detailed in the Financing Agreement executed by Austin, Cotton, Hurtado and Maas on December 20, 2017 (the "December 20<sup>th</sup> Agreement"; attached hereto Exhibit 1 and fully incorporated herein by reference);

WHEREAS, Mr. Martin did not execute the December 20<sup>th</sup> Agreement as contemplated because, upon review of the various legal agreements and complicated history stated therein, he requested additional time for legal review before executing;

WHEREAS, Mr. Martin has agreed to execute the December 20<sup>th</sup> Agreement, subject to the amendments stated below; and

WHEREAS, all of the parties who executed the December 20<sup>th</sup> Agreement, taking into account the current status of the case, the need to secure capital and full-time legal representation, and the immediate risk of losing the Property in a matter of days without the \$25,000 payment to the City of San Diego, have agreed to amend the December 20<sup>th</sup> Agreement as described below.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereby agree as follows:

1. Notwithstanding any language in the December 20<sup>th</sup> Agreement, or any agreement incorporated therein, the provisions within this Financing Agreement shall be given effect and supersede any conflicting or ambiguous language.

2. Paragraph 9 in the December 20<sup>th</sup> Agreement is amended with the following language: If any term of this Financing Agreement is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term. If application of this Severability provision should materially and adversely affect the economic substance of the transactions contemplated hereby, the Party adversely impacted shall be entitled to compensation for such adverse impact, provided the reason for the invalidity or unenforceability of a term is not due to serious misconduct by the Party seeking such compensation.

3. This Financing Agreement shall be kept strictly confidential and may not be disclosed without the prior written consent of all the parties hereto. Further, should any party disclose this Financing Agreement other than Mr. Martin, such party shall owe Mr. Martin \$200,000 for breach of this provision.

4. Mr. Hurtado, in consideration for Mr. Martin's promises herein, credits back all the consideration due to him from Mr. Martin pursuant to the MOU for facilitating the sale of the Property. (For the avoidance of doubt, for calculating the credits and liabilities between the parties herein, all other debts, obligations and rights remain the same between Mr. Martin and Mr. Hurtado and Mr. Hurtado's

sole source of compensation for facilitating the sale of the Property is that due to him pursuant to the Professional Services Agreement.)

5.

6.

7. Insofar as there are any legal disputes between Mr. Martin and any other party arising from or related to this Financing Agreement, the Financing Agreement shall be governed by and construed in accordance with the internal laws of the State of Hawaii without giving effect to the conflict of laws provisions thereof and the venue for any action filed by or against Mr. Martin shall be Honolulu, Hawaii. The prevailing party, in any legal dispute, shall have the right to collect from the other party its reasonable costs and attorneys' fees incurred in enforcing this Financing Agreement.


8.

9. The parties agree to negotiate in good faith in regards to any other agreements or issues that may arise by among some or all of the parties hereto, in regards or related to the subject matter hereof, pending final resolution of the various matters, litigation or otherwise, described herein. It is the intent of the parties, and they are relying on such, that they shall work in good faith and that any such agreements or issues be construed in light of, and effectuate the intent of, this Financing Agreement.

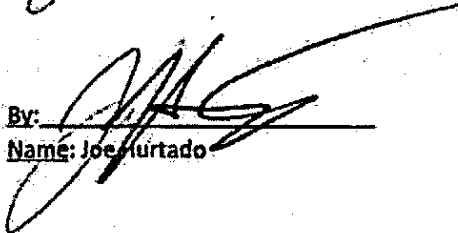
*[Remainder of this page left intentionally blank.]*

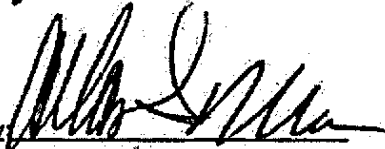


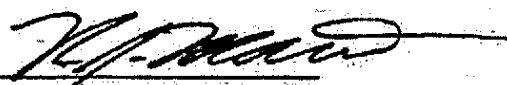
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first written above.

By:   
Name: Daryi Cotton

By:   
Name: Jacob Austin

By:   
Name: Joe Hurtado

By:   
Name: Tom Maas

By:   
Name: Richard Martin

# EXHIBIT 1

## Secured Litigation Financing Agreement

## SECURED LITIGATION FINANCING AGREEMENT

This Secured Litigation Financing Agreement (the "Financing Agreement") is entered into by and among Jacob Austin ("Austin"), Darryl Cotton ("Cotton"), Joe Hurtado ("Hurtado"), and Richard Martin ("Martin") on December 20, 2017.

### RECITALS

WHEREAS, on November 2, 2016, Cotton alleges he (i) entered into an oral agreement with a Mr. Geraci for the purchase of his real property at 6176 Federal Blvd., San Diego, CA 92114 (the "Property"; the "Geraci Agreement") and (ii) executed a document reflecting his receipt of \$10,000 towards a non-refundable deposit as called for in the Geraci Agreement (the "November Receipt");

WHEREAS, Cotton alleges the Geraci Agreement required that Geraci have his attorney draft and speedily provide written legal agreements completely reflecting the terms that comprised the Geraci Agreement (the "Final Legal Agreements");

WHEREAS, Cotton discussed with Hurtado from February through early-March of 2017 his (i) belief that Geraci had failed to provide for over three months the promised Final Legal Agreements, (ii) belief that Geraci breached the Geraci Agreement, (iii) belief that Geraci would not cure the breach and, consequently, (iv) desire that Hurtado help in potentially facilitating the sale of the Property to a third-party because he was facing dire financial hardship as a result of relying on Geraci's representations in the Geraci Agreement;

WHEREAS, on or around March 3, 2017, Cotton showed Hurtado documentation that could be interpreted as Geraci not acting in good faith and Cotton and Hurtado came to a tentative agreement as to the terms upon which Cotton would sell the Property to a third-party if the Geraci Agreement was terminated (an email dated March 3, 2017 from Cotton to Geraci stating that a draft of a legal agreement, sent by Geraci to Cotton, failed to include a material provision providing for Cotton's 10% equity stake in the dispensary);

WHEREAS, Hurtado spoke with various parties to facilitate the potential sale of the Property and, on March 15, 2017, entered into a Memorandum of Understanding (the "MOU") with Martin describing the terms and conditions upon which Hurtado would facilitate the sale of the Property from Cotton to Martin if the Geraci Agreement was terminated (attached hereto as Exhibit A);

WHEREAS, on March 21, 2017, Cotton (i) terminated the Geraci Agreement for Breach (there is an email from Cotton to Geraci terminating the agreement) and, thereafter, (ii) entered into a Commercial Property Purchase Agreement with Martin for the sale of the Property (the "Real Estate Purchase Agreement"; attached hereto as Exhibit B);

WHEREAS, on March 22, 2017, Cotton received an email from Geraci's attorney, Mr. Weinstein, stating that Geraci has filed a lawsuit against Cotton alleging the November Receipt was the final legal agreement between the parties as to the sale of the Property from Cotton to Geraci (the "Geraci Lawsuit");

WHEREAS, Martin, subsequent to being informed of (i) the Geraci Lawsuit, that would necessitate allegations of criminal and fraudulent behavior between Cotton and Geraci, and (ii) being made aware that Geraci has a public record of being named a defendant in numerous lawsuits by the City of San Diego for the operating of illegal dispensaries, communicated his desire to cancel the Real Estate Purchase Agreement;

WHEREAS, Hurtado, after discussing with Martin his desire to cancel the Real Estate Purchase Agreement, began discussions with Cotton and Martin to amend the MOU and the Real Estate Purchase Agreement to reflect the terms upon which Cotton and Martin would continue and close the Real Estate Purchase Agreement;

WHEREAS,

Secured Litigation Financing Agreement

WHEREAS, on April 14, 2017, Hurtado received a Pre-Approval Letter from Martin's lender as required per the MOU (attached hereto as Exhibit C);

WHEREAS, on April 15, 2017, Cotton and Martin executed Addendum No. 2 to the Real Estate Purchase Agreement that provides, *inter alia*, that the Real Estate Purchase Agreement and Martin's identity will be kept strictly confidential and will not be disclosed as part of the Geraci Lawsuit (the breach of which would result in a \$200,000 penalty);

WHEREAS, on May 3, 2017, Cotton and Hurtado entered into the Master Real Estate Purchase and Professional Services Agreement (the "Professional Services Agreement"; attached hereto as Exhibit D) providing that, *inter alia*, Hurtado will identify and finance local counsel to fully represent Cotton in the Geraci Lawsuit;

WHEREAS, subsequent to the execution of the Professional Services Agreement, it became apparent that the Real Estate Purchase Agreement would need to be disclosed in the Geraci Lawsuit and Cotton, aware that Martin would not disclose the Real Estate Purchase Agreement, requested that Hurtado negotiate with Martin for such disclosure;

WHEREAS, on or around May 10, 2017, Martin and Hurtado agreed to amend the MOU again, providing that in exchange for Hurtado providing an *additional* \$100,000 credit to Martin at the closing of the Real Estate Purchase Agreement (for a total of \$200,000), then Martin would amend the Real Estate Purchase Agreement to allow its disclosure in the Geraci Agreement;

WHEREAS, on May 12, 2017, (i) Cotton and Martin executed Addendum No. 3 to the Real Estate Purchase Agreement, providing that Cotton may disclose the Real Estate Purchase Agreement in the Geraci Lawsuit, and (ii) Cotton and Hurtado executed Amendment No. 2 to the Professional Services Agreement, providing that Cotton would pay Hurtado \$100,000 for acquiring the consent of Martin for the disclosure of the Real Estate Purchase Agreement (subject to the CUP being issued);

WHEREAS, on June 13, 2017, (i) Cotton entered into a Services Agreement for Representation with FTB so that they would fully represent Cotton in various legal actions related to the Property (the "Legal Actions") and would allow Cotton to pay his legal fees with a maximum payment of \$10,000 a month (previously negotiated with FTB by Hurtado) and any balance would be carried forward (Exhibit E) and (ii) Cotton and Hurtado executed Amendment No. 3 to the Professional Services Agreement in which, *inter alia*, Hurtado promises to pay \$10,000 a month to Cotton for Cotton, in turn, to pay FTB;

WHEREAS,

WHEREAS, the Court denied Cotton's request for an expedited trial schedule on December 7, 2017 in his action against the City of San Diego;

WHEREAS, the Court denied Cotton's request for a Temporary Restraining Order on December 7, 2017 in the Geraci Lawsuit, specifically making a factual finding that (i) Cotton is more-likely-than-not going to lose on his cause of action for breach of contract and (ii) that there is no risk of irreparable harm to Cotton (the "TRO Motion");

WHEREAS, Cotton decided to terminate his agreement with FTB for their failure to prevail on the TRO Motion (Exhibit F; email from Cotton terminating FTB representation);

WHEREAS, the Court denied Cotton's *pro se* request that the Court reconsider its denial of the TRO Motion on December 12, 2017 at a hearing at which Cotton was representing himself *pro se* and, after the hearing, Cotton was admitted to Scripps Mercy Hospital for chest pains and was diagnosed as having suffered a Transient Ischemic Attack ("TIA");

Secured Litigation Financing Agreement

WHEREAS, on December 15, 2017, the parties herein reached a tentative oral agreement as to the terms described herein;

WHEREAS, Cotton and Hurtado have exhausted their professional and personal financial resources in financing the litigation and keeping Cotton's operations ongoing;

WHEREAS, Cotton owes a \$25,000 judgment to the City of San Diego on or before January 2, 2018, pursuant to a Stipulation for an Entry of Forfeiture Judgment arising from an agreement facilitated by his former FTB counsel;

WHEREAS, if Cotton does not pay the \$25,000 judgment, he voids his agreement with the City of San Diego and shall forfeit the Property, which is the underlying collateral and security for a material portion of the agreements referenced herein; and

WHEREAS, Martin has agreed to loan the \$25,000 necessary to prevent the loss of the Property and incur certain other financial obligations on behalf of Hurtado (the "Martin Funding Agreement"), subject to the creation of a legal, binding agreement that specifically describes the relationships and legal agreements of all the parties that have a lien against the Property and which subordinates all those agreements to his lien on the Property (this Financing Agreement).

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereby agree as follows:

**AGREEMENT**

Secured Litigation Financing Agreement

#### ADDITIONAL PROVISIONS

6. All amounts due and/or that will come to be due pursuant to this Financing Agreement (and the agreements incorporated herein), shall be subject and subordinate to all amounts and/or rights of Mr. Martin as stated in this Financing Agreement. The parties promise to take any and all actions, including execution of additional legal documents, required to subordinate their rights and/or amounts due them under this Financing Agreement, or in any way related to the Property, to secure and prioritize Mr. Martin's lien on the Property.
7. The Recitals set forth above, including the Exhibits referenced therein, are, by this reference, fully incorporated into and deemed a part of this Financing Agreement.
8. Unless revised by terms specifically stated herein, all other terms of the respective agreements by the parties hereto, shall not be modified and/or amended in any manner by this Financing Agreement.
9. Any invalid, illegal or unenforceable provision of this Financing Agreement shall be severable, and after any such severance, all other provisions of this Agreement shall remain in full force and effect.
10. Notwithstanding any other provision or language herein, \_\_\_\_\_ and Mr. Martin shall have until December 26, 2017, to VOID their consent and agreement to this Financing Agreement. (For the avoidance of doubt, such time is being given for each of \_\_\_\_\_ and Mr. Martin to review and consult with independent legal counsel.)
11. The parties agree that learning of the terms of the various agreements by and among the other parties hereto, as a result of the disclosure of these agreements pursuant to this Financing Agreement, shall not be the basis of any renegotiations for any agreement previously reached. Each party hereby individually agrees and acknowledges that, insofar as it is a party to any previous agreement reached, oral or otherwise, any such agreement was negotiated at arms-length and the

Secured Litigation Financing Agreement

unusual circumstances giving rise to these circumstances and this Financing Agreement is not the result of any party to this Financing Agreement.

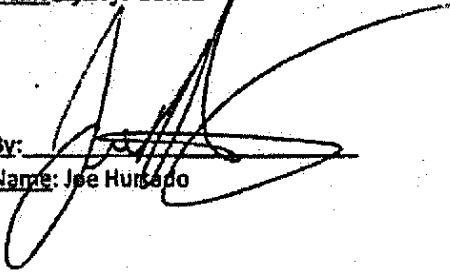
12. This Agreement may not be amended or modified, except by a written agreement signed by all parties hereto.
13. This Financing Agreement alone fully and completely expresses the agreement of the parties relating to the Property, the pending CUP application and all matters referenced herein. There are no other courses of dealing, understanding, agreements, representations or warranties, written or oral.

*{Remainder of this page left intentionally blank.}*

Secured Litigation Financing Agreement

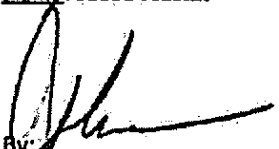
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first written above.

By:   
Name: Emyl Cotton

By:   
Name: Joe Hursado

By: \_\_\_\_\_  
Name: Richard Martin

By:   
Name: Jacob Austin

By:   
Name: Tom Maas



# EXHIBIT A

MEMORANDUM OF UNDERSTANDING

MARCH 15, 2017

This Memorandum of Understanding (MOU) is entered into by Richard Martin (Principal) and Joe Hurtado (Agent).

This MOU is entered into by the parties to memorialize their understanding of a contemplated project, specifically, the purchase of 6176 Federal Blvd., San Diego, CA 92114 (Subject Property) as an investment opportunity for Principal. This MOU confirms, subject to the below, the terms and conditions upon which Agent shall facilitate the sale of the Subject Property to Principal.

Principal and Agent hereby agree that:

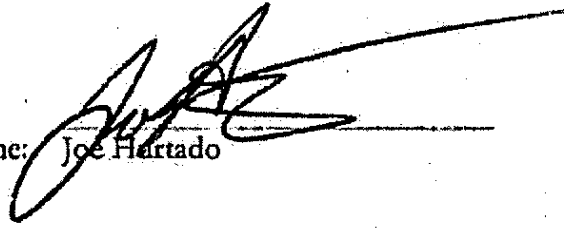
1. Subject Property. Agent has represented to Principal that he believes the Subject Property will become available for purchase and that he has a sense of the terms upon which the owner will sell the Subject Property, at which, it is believed, a permit from the City of San Diego can issue that will allow the establishment of a dispensary.
2. Subject Property Sale Terms. Agent shall negotiate terms with the owner of the Subject Property and Principal hereby agrees to pay the following consideration for the Subject Property: \$2,500,000; a 49% ownership stake in the contemplated dispensary; and, on a monthly basis, once the contemplated dispensary is permitted and open to the public (Opening), the greater of (i) 49% of the contemplated dispensary's net profits or (ii) \$20,000; provided that, Principal shall have, at his sole discretion, (i) a right-of-first-refusal and (ii) the right to buy-back the 49% ownership stake at any time after 2 years from the date of the Opening for a sum of - after taking into account all transaction costs, taxes and fees to the owner(s) of the 49% (for which Principal shall be liable for) - \$2,500,000 plus 5x the net profits of the average of the preceding 6 months.
3. Agent's Consideration. To the extent that Agent is able to negotiate the consideration for the Subject Property to be below \$2,500,000, a 49% ownership stake in the contemplated dispensary and/or the monthly \$20,000 minimum guaranteed payment, any such delta shall be Agent's consideration for facilitating the sale of the Subject Property (Delta). Principal promises to keep any such Delta strictly confidential and shall not disclose the Delta

to the owner of the Subject Property or any third-parties under any circumstances, unless first agreed to in writing by Agent.

4. Loan Approval. Principal shall provide within 30 days from the date hereof proof of funds and/or loan approval documentation reflecting his ability to tender the purchase price consideration of \$2,500,000 for the Subject Property. If Principal fails to provide said documentation, this MOU shall be terminated and Agent may immediately facilitate the sale of the Subject Property to a third-party.
5. Impossibility of Operating a Dispensary. It is the intent of the parties that the Subject Property be used as a dispensary. If, for whatever reason (including by operation of law, federal anti-cannabis enforcement efforts or otherwise), the Subject Property is not able to be operated as a dispensary, then all payments called for herein shall be deemed null and void. Principal shall have no further liability pursuant to this MOU or any agreements promulgated hereunder and may sell the Subject Property. This provision shall materially be copied into the governing and operating documents for the contemplated dispensary and shall be given the intent and effect that is reflected herein.
6. Severability. If any term of this MOU is to any extent invalid, illegal, or incapable of being enforced, such term shall be excluded to the extent of such invalidity, illegality, or unenforceability; all other terms hereof shall remain in full force and effect. Further, in such an event, the parties agree to have this MOU construed, to the greatest extent permissible, in such a manner that this MOU will be interpreted to reflect the original intent of the parties expressed herein as if no portion of this MOU had been held to be invalid, illegal or unenforceable.
7. Assuming the Subject Property is acquired, more detailed and comprehensive legal agreements shall be required. The parties agree to negotiate in good faith in regards to any and all such agreements, including those that that will be required to effectuate the intent of this MOU, the sale of the Subject Property and the operations of the contemplated dispensary. All such legal documents shall include and be done (i) in a standard format with reasonable and common provisions and (ii) at market rates.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be effective as of the day, month and year first written above.

By:   
Name: Richard Martin

By:   
Name: Joe Hartado

# EXHIBIT B



CALIFORNIA ASSOCIATION OF REALTORS

COMMERCIAL PROPERTY PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (NON-RESIDENTIAL) (C.A.R. Form CPA, Revised 12/15)

Date Prepared: 03/21/2017

1. OFFER:

- A. THIS IS AN OFFER FROM Richard John Martin II (Buyer)
B. THE REAL PROPERTY to be acquired is 676 Federal Blvd, San Diego (City), San Diego (County), California, 92114-1431 (Zip), Assessor's Parcel No. 340-260-024 (Property)
C. THE PURCHASE PRICE offered is Two Million Dollars \$ 2,000,000.00
D. CLOSE OF ESCROW shall occur on see Addendum 1 (date) (or Days After Acceptance)
E. Buyer and Seller are referred to herein as the "Parties." Brokers are not Parties to this Agreement.

2. AGENCY:

- A. DISCLOSURE: The Parties each acknowledge receipt of a Disclosure Regarding Real Estate Agency Relationships (C.A.R. Form AD)
B. CONFIRMATION: The following agency relationships are hereby confirmed for this transaction: Listing Agent N/A (Print Firm Name) is the agent of (check one) the Seller exclusively, or both the Buyer and Seller. Selling Agent N/A (Print Firm Name) (if not the same as the Listing Agent) is the agent of (check one) the Buyer exclusively, or the Seller exclusively, or both the Buyer and Seller.
C. POTENTIALLY COMPETING BUYERS AND SELLERS: The Parties each acknowledge receipt of a Possible Representation of More than One Buyer or Seller - Disclosure and Consent (C.A.R. Form PRDS)

3. FINANCE TERMS: Buyer represents that funds will be good when deposited with Escrow Holder.

- A. INITIAL DEPOSIT: Deposit shall be in the amount of \$
(1) Buyer Direct Deposit: Buyer shall deliver deposit directly to Escrow Holder by electronic funds transfer, cashier's check, personal check, other within 3 business days after Acceptance (or )
OR (2) Buyer Deposit with Agent: Buyer has given the deposit by personal check (or ) to the agent submitting the offer (or to ), made payable to . The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder within 3 business days after Acceptance (or )
Deposit checks given to agent shall be an original signed check and not a copy
(Note: in the past increased deposit checks received by agent shall be recorded in Broker's trust fund log.)

- B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of \$ within Days After Acceptance (or ). If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount in a separate liquidated damages clause (C.A.R. Form RID) at the time the increased deposit is delivered to Escrow holder.

- C. ALL CASH OFFER: No loan is needed to purchase the Property. This offer is NOT contingent on Buyer obtaining a loan. Written verification of sufficient funds to close this transaction IS ATTACHED to this offer or Buyer shall, within 3 (or ) Days After Acceptance, Deliver to Seller such verification.

- D. LOAN(S):
(1) FIRST LOAN: in the amount of \$ 1,800,000.00
This loan will be conventional financing or Seller financing (C.A.R. Form SFA), assumed financing (C.A.R. Form AFA), subject to financing, Other. This loan shall be at a fixed rate not to exceed % or an adjustable rate loan with initial rate not to exceed % of the loan amount.
(2) SECOND LOAN in the amount of \$
This loan will be conventional financing or Seller financing (C.A.R. Form SFA), assumed financing (C.A.R. Form AFA), subject to financing, Other. This loan shall be at a fixed rate not to exceed % or an adjustable rate loan with initial rate not to exceed % of the loan amount.
Regardless of the type of loan, Buyer shall pay points not to exceed % of the loan amount.

- E. ADDITIONAL FINANCING TERMS: see attached Addendum 1

- F. BALANCE OF DOWN PAYMENT OR PURCHASE PRICE in the amount of \$ 200,000.00 to be deposited with Escrow Holder pursuant to Escrow Holder instructions.

- G. PURCHASE PRICE (TOTAL): \$ 2,000,000.00

- H. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS: Buyer (or Buyer's lender or loan broker pursuant to paragraph 3.H.1) shall, within 3 (or ) Days After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. (Verification attached.)

Buyer's Initials (X) [Signature]
© 2015, California Association of REALTORS®, Inc. CPA REVISED 12/15 (PAGE 1 OF 11)

Seller's Initials (X) [Signature]





CALIFORNIA ASSOCIATION OF REALTORS®

ADDENDUM

(C.A.R. Form ADM, Revised 12/15)

No. 1

The following terms and conditions are hereby incorporated in and made a part of the [ ] Purchase Agreement, [ ] Residential Lease or Month-to-Month Rental Agreement, [ ] Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind), [ ] Other

dated March 21, 2017 on property known as 6176 Federal Blvd

in which San Diego, CA 92114-1401

and Richard John Martin II is referred to as ("Buyer/Tenant") and Darryl Cotton is referred to as ("Seller/Landlord")

Memorandum of Understanding

This Memorandum of Understanding ("MDU") is fully incorporated into this purchase agreement.

Seller shall receive a 20% equity stake in the business / MMCC upon approval and completion.

Seller shall receive on a monthly basis, 20% of the profits of the business / MAIC or \$10,000, whichever is greater.

The \$100,000 earnest money deposit is non-refundable and shall be Seller's to keep even if the GUP application is denied.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date March 21, 2017

Date March 21, 2017

Buyer/Tenant [Signature]  
Richard John Martin II

Seller/Landlord [Signature]  
Darryl Cotton

Buyer/Tenant \_\_\_\_\_

Seller/Landlord \_\_\_\_\_

© 1995-2015, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL. This form is made available to real estate professionals through an agreement with or purchase from the California Association of REALTORS®; it is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective trademark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

Published and Distributed by: REAL ESTATE BUSINESS SERVICES, P.C. a subsidiary of the California Association of REALTORS® 875 South Virgil Avenue, Los Angeles, CA 90005-0002

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



ADM REVISED 12/15 (PAGE 1 OF 1)

ADDENDUM (ADM PAGE 1 OF 1)





CALIFORNIA ASSOCIATION OF REALTORS®

ADDENDUM (C.A.R. Form ADM, Revised 12/15)

No. 2

The following terms and conditions are hereby incorporated in and made a part of the:  Purchase Agreement,  Residential Lease or Month-to-Month Rental Agreement,  Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind),  Other dated March 21, 2017, on property known as 6176 Federal Blvd

in which San Diego, CA 92114-1401 is referred to as ("Buyer/Tenant") and Richard John Martin II Darryl Cotton to referred to as ("Seller/Landlord").

Memorandum of Understanding and Agreement

- 1) This Memorandum of Understanding and Agreement ("MOUA") amends the agreement reached by Buyer and Seller on March 21, 2017.
2) Notwithstanding any language in this purchase agreement to the contrary, the provisions within this MOUA shall be given effect and supersede any conflicting or ambiguous language within this purchase agreement.
3) Seller hereby transfers and sells to Buyer, with all the associated rights and liabilities, his ownership, rights and interests in the property and the associated CUP application pending before the City of San Diego for \$500,000.
4) Buyer shall immediately provide seller with a \$50,000 non-refundable deposit.
5) The closing of this sale, including the payment of the balance of the purchase price and all the requirements stated herein, shall be completed upon the favorable resolution of the Larry Geraci lawsuit against Seller for the property.
6) In addition, should a CUP application be approved at the property, Buyer shall pay Seller a one-time payment of \$1,500,000. Seller's previous agreement for an equity stake in the business is voided and Seller has no interest in the property or the CUP.
7) CONFIDENTIALITY CLAUSE: SELLER WILL NOT DISCLOSE BUYER'S IDENTITY OR THIS AGREEMENT IN ANY FORM, DIRECTLY OR INDIRECTLY, UNTIL HE HAS RESOLVED THE LEGAL ACTION WITH GERACI. FOR THE AVOIDANCE OF DOUBT, THIS MEANS THAT SELLER WILL NOT INVOLVE OR MENTION BUYER IN ANY FORM TO ANY THIRD-PARTIES, IN ANY LITIGATION PROCEEDINGS OR IN ANY MATTERS REGARDING ALLEGATIONS OF CRIMINAL OR UNLAWFUL ACTIONS. SHOULD SELLER BREACH THIS PROVISION, SELLER HEREBY EXPRESSLY AGREES TO PAY TO BUYER \$700,000 FOR BREACH OF THIS PROVISION.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date April 15, 2017

Date April 15, 2017

Buyer/Tenant X [Signature] Richard John Martin II

Seller/Landlord X [Signature] Darryl Cotton

Buyer/Tenant

Seller/Landlord

© 1985-2015, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) grants the unauthorized distribution, display and reproduction of this form, in any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL. This form is made available to real estate professionals through an agreement with or purchase from the California Association of REALTORS®. It is not intended to identify the user as a REALTOR®, REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

Published and Distributed by: REAL ESTATE BUSINESS SERVICES, INC. a subsidiary of the California Association of REALTORS® 315 South Virg Avenue, Los Angeles, California 90070



ADM REVISED 12/15 (PAGE 1 OF 1)

ADDENDUM (ADM PAGE 1 OF 1)





CALIFORNIA ASSOCIATION OF REALTORS

ADDENDUM

(C.A.R. Form ADM, Revised 12/15)

No. 3

The following terms and conditions are hereby incorporated in and made a part of the [ ] Purchase Agreement, [ ] Residential Lease or Month-to-Month Rental Agreement, [ ] Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind), [ ] Other

dated March 21, 2017, on property known as 6176 Federal Blvd San Diego, CA 92114-1401 in which Richard John Martin II is referred to as Buyer/Tenant and Darryl Colton is referred to as Seller/Landlord.

This addendum is fully incorporated into this purchase agreement and amends the agreement reached between the parties on March 21, 2017, as amended by addendum 2 on April 15th, 2017.

Buyer hereby agrees to permit Seller to disclose this agreement in his response to Geraci's lawsuit.

For the avoidance of doubt, Seller will not have to pay the \$200,000 fine for breach of the Confidentiality provision previously agreed to.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date May 12, 2017

Date May 12, 2017

Buyer/Tenant X

Richard John Martin II

Seller/Landlord X

Darryl Colton

Buyer/Tenant

Seller/Landlord

© 1998-2015, California Association of REALTORS®, Inc., United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy, machine or any other means, including electronic or computerized formats. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL. This form is made available to real estate professionals through an agreement with or purchase from the California Association of REALTORS®. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

Published and Distributed by: REAL ESTATE BUSINESS SERVICES, INC. a subsidiary of the California Association of REALTORS® 520 South Vine Avenue, Los Angeles, California 90020

Revised by Date



ADM REVISED 12/15 (PAGE 1 OF 1)

ADDENDUM (ADM PAGE 1 OF 1)

# EXHIBIT C



**Pre-Approval Letter**

Friday, April 14, 2017

TO: Whom it may concern  
RE: Richard John (R.J.) Martin II

We are pleased to inform you that the above referenced loan application has been *pre-approved* with the following terms and conditions:

*Purchase Price: \$2,500,000*  
*Loan Program: Jumbo 30 YEAR FIX*  
*Loan amount: \$2,000,000*

The following conditions must be satisfied for final loan approval:

- 1) *Appraiser's certification of value along with a final inspection.*
- 2) *Acceptable Preliminary Title.*
- 3) *Following standard investor requirements: Evidence of Hazard Insurance, Flood Certification*
- 4) *Copy of Fully Executed Purchase Contract and Escrow Instructions*

This approval is based on review of the borrower's credit report in conjunction with documentation provided by the borrower regarding employment, income, assets as applicable to the above loan. These items are sufficient to obtain final loan approval provided there are no changes in the borrower's financial situation as required by the loan program.

Please keep in mind the following:

- Upgrades and modifications that increase the purchase price beyond what is indicated above may invalidate this approval and result in disqualification or re-qualification on an alternative loan program offering.
- This approval does not include any contingencies unless specifically noted above. If the loan approval is contingent on sale of another property but that sale does not occur prior to closing on this property, re-qualification on an alternative loan program may be required to complete the purchase.
- At times market conditions require that loan program guidelines and parameters change, which may affect this approval unless your loan has been locked and will close within that lock period. If this occurs, we will review the borrower's file and notify you of any changes that apply.

Sincerely,

**Alexis Roper**  
*Sr. Mortgage Loan Officer*  
619-436-8873  
[aroper@amerifirst.us](mailto:aroper@amerifirst.us)  
NMLS #583371



AmeriFirst Financial, Inc., 1550 E. McKellips Road, Suite 117, Mesa, AZ 85203 (NMLS # 145368). 1-877-276-1974. Copyright 2014. All Rights Reserved. This is not an offer to enter into an agreement. Not all customers will qualify. Information, rates, and programs are subject to change without prior notice. All products are subject to credit and property approval. Not all products are available in all states or for all loan amounts. Other restrictions and limitations apply. License Information: CA: Licensed by The Department of Business Oversight under the California Residential Mortgage Lending Act

0034 Exhibit I

# EXHIBIT D

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

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 May 03 2017 before me, Rebeca Gonzalez Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared Joe Hurtado & Darryl Goffin  
Name(s) of Signer(s)

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 [Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document  
Title or Type of Document: Master Real Estate and Professional Services Agreement Document Date: 5/3/17  
Number of Pages: 5 Signer(s) Other Than Named Above: no

Capacity(ies) Claimed by Signer(s)  
Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

**MASTER REAL ESTATE PURCHASE AND PROFESSIONAL SERVICES AGREEMENT**

---

This Master Real Estate Purchase and Professional Services Agreement (the "Agreement") is made and entered into as of May 3, 2017 by and between Darryl Cotton ("Principal") and Joe Hurtado ("Agent").

**RECITALS**

**WHEREAS**, Principal is the owner of Dalbercia Inc. and Fleet Systems (respectively, engaged in commercial electrical work and lighting manufacturing) and the founder and manager of 151 Farms (a nonprofit organization that promotes sustainable, ecological-friendly urban farms);

**[REMAINDER OF  
SECURED LITIGATION  
FINANCING AGREEMENT  
REDACTED]**

SUSANNE C. KOSKI, State Bar No. 176555  
CARMELA E. DUKE, State Bar No. 270348  
Superior Court of California, County of San Diego  
1100 Union Street  
San Diego, California 92101  
Telephone: (619) 844-2382

Attorneys for Defendant, The Honorable Joel R. Wohlfeil,  
Judge of the Superior Court of California, County of  
San Diego

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

ANDREW FLORES, et al.,

Plaintiffs,

v.

GINA M. AUSTIN, et al.,

Defendants.

Case No. 20-cv-0656-TWR-DEB

**DECLARATION OF CARMELA E.  
DUKE IN SUPPORT OF DEFENDANT  
JUDGE JOEL R. WOHLFEIL'S  
MOTION TO DISMISS FIRST  
AMENDED COMPLAINT WITH  
PREJUDICE**

Date: May 5, 2021

Time: 1:30 p.m.

Crtrm: 3A (Schwartz)

Judge: The Honorable Todd W. Robinson

**[NO ORAL ARGUMENT  
REQUESTED]**

I, CARMELA E. DUKE, declare as follows:

1. I am licensed to practice law in the State of California and employed as a litigation attorney by the Superior Court of California, County of San Diego.

2. I have personal knowledge of the matters stated here and if called as a witness, I would competently testify thereto.

1           3.     On November 20, 2020, pursuant to section III.A.1 of the Civil Standing  
2 Order of the Honorable Todd W. Robinson, United States District Judge of the  
3 Southern District of California, I initiated the meet and confer process by sending a  
4 letter to Plaintiff Andrew Flores, who is also attorney for Plaintiffs Amy Sherlock and  
5 Minors T.S. and S. S., notifying him of my intent to file a motion to dismiss to the  
6 First Amended Complaint on behalf of Defendant, the Honorable Joel R. Wohlfeil,  
7 Judge of the Superior Court of California, County of San Diego (“Judge Wohlfeil”).  
8 The letter outlined the legal bases for the motion to dismiss and requested that  
9 Plaintiff Flores contact me on or before December 4, 2020, to informally resolve the  
10 lawsuit. (A true and correct copy of the correspondence sent to Plaintiff Flores on  
11 November 20, 2020 is attached as Exhibit “1” to this Declaration.)

12           4.     To date, Plaintiff Flores has failed to respond to my request to meet and  
13 confer as detailed above.

14           5.     Attached to the Request for Judicial Notice in Support of the Motion to  
15 Dismiss Plaintiffs’ First Amended Complaint by Defendant Judge Wohlfeil, are true  
16 and correct copies of the following documents:

17           Exhibit A:   Complaint in *Geraci v. Cotton* (“*Cotton I*”), San Diego  
18                        Superior Court (“SDSC”) Case No. 37-2017-00010073-  
19                        CU-BC-CTL;

20           Exhibit B:   Notice of Case Assignment for *Cotton I*, SDSC Case No.  
21                        37-2017-00010073-CU-BC-CTL;

22           Exhibit C:   Judgment on Jury Verdict in *Cotton I*, SDSC Case No.  
23                        37-2017-00010073-CU-BC-CTL;

24           Exhibit D:   Remittitur in *Cotton I*, SDSC Case No. 37-2017-  
25                        00010073-CU-BC-CTL;

26           Exhibit E:   Judgment After Order Denying Motion for Issuance of  
27                        Peremptory Writ of Mandate in *Cotton v. Geraci*  
28                        (“*Cotton II*”), SDSC Case No. 37-2017-00037675-CU-



1 WM-CTL;

2 Exhibit F: Remittitur in *Cotton II*, SDSC Case No. 37-2017-  
3 00037675-CU-WM-CTL;

4 Exhibit G: Case Summary of Parties in *Cotton I* and *Cotton II*,  
5 SDSC Case Nos. 37-2017-00010073-CU-BC-CTL and  
6 37-2017-00037675-CU-WM-CTL;

7 Exhibit H: Minute Order dated June 27, 2019 in *Cotton I*, SDSC  
8 Case No. 37-2017-00010073-CU-BC-CTL; and

9 Exhibit I: Ex Parte Application in *Cotton I*, SDSC Case No. 37-  
10 2017-00010073-CU-BC-CTL.

11  
12 I declare under penalty of perjury that the foregoing is true and correct.  
13 Executed this 13th day of January 2021, in San Diego, California.

14  
15 s/ Carmela E. Duke  
16 CARMELA E. DUKE



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

SAN DIEGO COUNTY COURTHOUSE  
PO BOX 122724  
SAN DIEGO, CA 92112-2724

November 20, 2020

Andrew Flores, Esq.  
Law Office of Andrew Flores  
945 4th Avenue, Suite 412  
San Diego, CA 92101

RE: *Flores, et al. v. Austin, et al.*, Case No. 3:20-cv-00656-TWR-DEB

Dear Mr. Flores:

I represent the Honorable Joel R. Wohlfeil in the above-entitled action. I am writing you in a good faith attempt to resolve this matter informally and prior to Judge Wohlfeil making an appearance in this case and filing a Motion to Dismiss the First Amended Complaint (“FAC”). District Judge Todd W. Robinson’s Standing Order of Civil Cases requires any party contemplating filing a noticed motion in his court to meet and confer in an attempt to resolve the issue which is subject of the motion. This letter shall serve as Judge Wohlfeil’s good faith attempt to comply with Judge Robinson’s chamber rules and meet and confer to informally resolve the issues concerning your FAC.

We request that you please voluntarily dismiss the action you filed against Judge Wohlfeil because it is barred as a matter of law. If you are not willing to voluntarily dismiss the action against Judge Wohlfeil, then we intend to seek a formal dismissal of the FAC on the following grounds:

1. Judge Wohlfeil is absolutely immune from liability under the doctrine of judicial immunity because the actions upon which the FAC are based were taken in the judge’s official judicial capacity. Judges are granted absolute immunity from civil liability for their judicial actions. *Stump v. Sparkman*, 435 U.S. 349, 355-356 (1978). “Judicial immunity applies however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff.” *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (internal quotation marks omitted). “Disagreement with the action taken by [a] judge,” even one resulting in “tragic consequences,” also “does not justify depriving that judge of his immunity.” *Stump*, 435 U.S. at 363 (applying judicial immunity to judge who approved petition for sterilization even if approval was in error).

Judicial immunity is overcome only in two circumstances: where the judge “acts in the clear absence of all jurisdiction, [citation], or performs an act that is not ‘judicial’ in nature.” *Ashelman*, 793 F.2d at 1075; *see also Mireles v. Waco*, 502 U.S. 9, 11 (1991). Neither of these two circumstances apply to this case. Instead, the FAC is entirely based on actions and

statements made by Judge Wohlfeil while he was the presiding judge in *Cotton I* and *Cotton I*. Because the claims for relief against Judge Wohlfeil are based on acts done in his official capacity as a judge in *Cotton I* and *Cotton II*, Judge Wohlfeil is protected under the doctrine of absolute judicial immunity.

Moreover, judge's errors should be corrected on appeal, not by subsequent civil litigation, because civil liability "would contribute not to principled and fearless decisionmaking but to intimidation." *Pierson v. Ray*, 386 U.S. 547, 554 (1967). This lawsuit is an improper vehicle to challenge Judge Wohlfeil's rulings made in *Cotton I* and *II*.

2. Judge Wohlfeil is immune from liability under the Eleventh Amendment. The Eleventh Amendment generally bars suits against a state or an arm of the state under principles of sovereign immunity. *Franceschi v. Schwartz*, 57 F.3d 828, 831 (9th Cir. 1995). The Eleventh Amendment has been construed as a grant of sovereign immunity to states against suits in federal court and is in the nature of a jurisdictional bar. *See Alabama v. Pugh*, 438 U.S. 781, 782 n.1 (1978); *see also Riggle v. California*, 577 F.2d 579, 581-82 (9th Cir. 1978). California superior courts are considered arms of the state and therefore enjoy Eleventh Amendment immunity. *Simmons v. Sacramento County Superior Court*, 318 F.3d 1156, 1161 (9th Cir. 2003) (holding Eleventh Amendment barred § 1983 claim against superior court and its employees); *Los Angeles County Ass'n of Env'tl. Health Specialists v. Lewin*, 215 F. Supp. 2d 1071, 1078 (C.D. Cal. 2002). Similarly, because judges and court employees are considered arms of the state, they are also entitled to immunity. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989); *Simmons*, 318 F.3d at 1161. The immunity applies to suits for damages, injunctive relief, and declaratory relief. *Franceschi, supra*, 57 F.3d at 831.

All of the allegations against Judge Wohlfeil concern acts undertaken in his official capacity as a judicial officer of the Superior Court. Accordingly, the Eleventh Amendment also bars the claims for relief asserted in the FAC.

3. All three plaintiffs lack standing to sue Judge Wohlfeil. As plaintiffs you must establish that you have standing pursuant to Article III of the U.S. Constitution. Article III standing has three elements: (1) the plaintiff must have suffered an "injury in fact;" (2) "there must be a causal connection between the injury and the conduct complained of;" and (3) "it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). You and the Sherlock plaintiffs have not satisfied these three elements.

4. The declaratory relief claim fails as a matter of law because it cannot be used to remedy past wrongs. (*Edejer v. DHI Mortg. Co.*, C 09-1302 PJH, 2009 WL 1684714, at \*11 (N.D. Cal., 2009). The relief you and the Sherlock plaintiffs seek in the FAC is to redress alleged past wrongs. You are not seeking a declaration as to future rights. Thus, as a matter of law, plaintiffs are not entitled to declaratory relief and this cause of action has no merit.

5. Finally, the first cause of action, asserted by you against Judge Wohlfeil, fails to state a viable claim for relief. To establish a claim for injunctive relief under § 1983, a plaintiff must establish two elements: 1) a violation of a right secured by the Constitution or laws of the United States; and 2) that the violation was committed by a person acting under color of state

law. See 42 U.S.C. § 1983; *West v. Atkin*, 487 U.S. 42, 48 (1988). You have not stated a viable § 1983 claim because you have not alleged a plausible constitutional violation. *Johnson v. Knowles*, 113 F.3d 1114, 1117 (9th Cir. 1997).

You fail to allege a procedural due process claim against Judge Wohlfeil. A procedural due process claim has two elements: deprivation of a constitutional protected liberty or property interest and denial of adequate procedural protection.” *Krainski v. Regents of Nev. Sys. of Higher Educ.*, 616 F.3d 963, 969-70 (9th Cir. 2010). First, you have not alleged a cognizable property interest. Second, even if you did, which you have not, the allegations in the FAC show that you were provided access to the courts to bring your claim. Additionally, the allegations establish that you were provided an opportunity to be heard on your motion, and your issue was adjudicated. Thus, the allegations in the FAC demonstrate that your due process rights were not violated. As a result, your § 1983 claim cannot survive and should be dismissed.

Based on the foregoing, I request that you voluntarily dismiss this action against Judge Wohlfeil.

Also, to date you have not served Judge Wohlfeil with a summons and complaint in this matter. This letter does not, and in no way, constitute a waiver of service of the summons and the FAC.

Please respond to this meet and confer letter before December 4, 2020, advising whether you agree to dismiss this action. If not, please address each of the deficiencies listed above and provide any legal authority and analysis you have supporting your assertion that the FAC is legally sufficient.

Sincerely,



Carmela E. Duke  
Litigation Attorney  
Office of General Counsel  
Superior Court of California,  
County of San Diego

1 SUSANNE C. KOSKI, State Bar No. 176555  
2 CARMELA E. DUKE, State Bar No. 270348  
3 Superior Court of California, County of San Diego  
4 1100 Union Street  
5 San Diego, California 92101  
6 Telephone: (619) 844-2382

7 Attorneys for Defendant, The Honorable Joel R. Wohlfeil,  
8 Judge of the Superior Court of California, County of  
9 San Diego

10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 ANDREW FLORES, et al.,

13 Plaintiffs,

14 v.

15 GINA M. AUSTIN, et al.,

16 Defendants.  
17  
18  
19

} Case No. 20-cv-00656-TWR-DEB  
} **PROOF OF SERVICE**  
} [CivLR 5.4(c)]

20 I, PUI KATSIKARIS, declare that: I am over the age of eighteen years and  
21 not a party to the above-referenced case; I am employed in, or am a resident of, the  
22 County of San Diego, California where the mailing occurs; and my business  
23 address is: 1100 Union Street, San Diego, California.

24 I further declare that I am readily familiar with the business practice for  
25 collection and processing of correspondence for mailing with the United States  
26 Postal Service; and that the correspondence shall be deposited with the United  
27 States Postal Service this same day in the ordinary course of business.

28 On January 13, 2021, I served the following document(s): **DEFENDANT  
JUDGE JOEL R. WOHLFEIL’S NOTICE OF MOTION AND MOTION TO  
DISMISS FIRST AMENDED COMPLAINT WITH PREJUDICE;**



1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
2 **MOTION TO DISMISS FIRST AMENDED COMPLAINT WITH**  
3 **PREJUDICE BY DEFENDANT JUDGE JOEL R. WOHLFEIL;**  
4 **DEFENDANT JUDGE JOEL R. WOHLFEIL’S REQUEST FOR JUDICIAL**  
5 **NOTICE IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED**  
6 **COMPLAINT WITH PREJUDICE with EXHIBITS A-I; and**  
7 **DECLARATION OF CARMELA E. DUKE IN SUPPORT OF DEFENDANT**  
8 **JUDGE JOEL R. WOHLFEIL’S MOTION TO DISMISS FIRST AMENDED**  
9 **COMPLAINT WITH PREJUDICE** by placing a true copy of each document in  
10 a separate envelope addressed to each addressee, respectively, as follows:

11 N/A

12 I then sealed each envelope and deposited said envelope(s) in the U.S. Postal  
13 Pick up box, this same day, at my business address shown above, following  
14 ordinary business practices.

15 Additionally, pursuant to the Electronic Case Filing Administrative Policies  
16 and Procedures Manuel of this Court, Section 2.d.2, service has been effected on  
17 the parties below, whose counsel of record is a registered participant of CM/ECF,  
18 via electronic service through the **CM/ECF system:**

19 **Andrew Flores** Email: [afloreslaw@gmail.com](mailto:afloreslaw@gmail.com)  
20 (Plaintiff and Attorney for Plaintiffs Amy Sherlock and Minors T.S. and S.S.)

21 **Gregory Brian Emdee** Email: [gemdee@kmslegal.com](mailto:gemdee@kmslegal.com)  
22 (Attorney for Defendants Michael Weinstein, Scott Toothacre, Elyssa Kulas,  
23 Rachel M. Prendergast, and Ferris & Britton APC).

24 I declare under penalty of perjury under the laws of the State of California  
25 that the foregoing is true and correct.

26 Executed on January 13, 2021

27   
28 \_\_\_\_\_  
PUI KATSIKARIS