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Plaintiff *in Propria Persona*
and Attorney for Plaintiffs
Amy Sherlock, Minors T.S.
and S.S.

SUPRIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, HALL OF JUSTICE

AMY SHERLOCK, an individual and on behalf of her minor children, T.S. and S.S., ANDREW FLORES, an individual,

Plaintiffs,

vs.

GINA M. AUSTIN, an individual; AUSTIN LEGAL GROUP, a professional corporation, LARRY GERACI, an individual, REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an individual; NINUS MALAN, an individual; FINCH, THORTON, AND BARID, a limited liability partnership; ABHAY SCHWEITZER, an individual and dba TECHNE; JAMES (AKA JIM) BARTELL, an individual; NATALIE TRANG-MY NGUYEN, an individual, AARON MAGAGNA, an individual; BRADFORD HARCOURT, an individual; SHAWN MILLER, an individual; LOGAN STELLMACHER, an individual; EULENTHIAS DUANE ALEXANDER, an individual; STEPHEN LAKE, an individual, ALLIED SPECTRUM, INC., a California corporation, PRODIGIOUS COLLECTIVES, LLC, a limited liability company, and DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2021-0050889-CU-AT-CTL

FIRST AMENDED COMPLAINT FOR:

1. CONSPIRACY TO MONOPOLIZE IN VIOLATION OF THE CARTWRIGHT ACT (Bus. & Prof. Code § §§ 16720 *et seq*.);
2. CONVERSION;
3. CIVIL CONSPIRACY;
4. DECLARATORY RELIEF
5. UNFAIR COMPETITION AND UNLAWFUL BUSINESS PRACTICES (Bus. & Prof. Code § 17200 *et seq*.); AND
6. DECLARATORY RELIEF,
7. CIVIL CONSPIRACY.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Amy Sherlock, Minors T.S. and S.S., Christopher Williams, and Andrew Flores, upon information and belief, allege as follows:

INTRODUCTION

1. This case arises from the concerted effort of a small group of wealthy individuals and their agents (the "Enterprise") that have conspired to create an unlawful monopoly in the cannabis market (the "Antitrust Conspiracy") in the City and County of San Diego.

2. The Enterprise includes attorneys from multiple law firms that are used to create the appearance of competition and legitimacy, while in reality the attorneys conspire against some of their own non-Enterprise clients to ensure the acquisition of the limited number of cannabis conditional use permits ("CUPs")[1] available in the City and County go to principals of the Enterprise.

3. At least some of the principals of the Enterprise have a history of being sanctioned for unlicensed commercial cannabis operations (i.e., illegal black-market dispensaries). Consequently, as a matter of law, they cannot own a cannabis CUP for a period of three years from the date of their last sanction. However, these individuals are wealthy and are able to the hire attorneys, political lobbyists, and other professionals to navigate the heavily regulated cannabis licensing process and acquire CUPs illegally.

4. The defining illegal act of the Enterprise is the acquisition of CUPs for its principals through the use of proxies - who do not disclose the principals as the true owners of the CUP applied for and acquired - in order to avoid disclosure laws that would mandate their applications be denied because of the principals' prior sanctions (the "Proxy Practice").

5. The unlawful acts taken by the Enterprise in furtherance of the Antitrust Conspiracy include "sham" litigation[2] and acts and threats of violence against potential competitors and witnesses.

6. Plaintiffs had or would have had interests in CUPs issued in the City and County of San Diego but-for the illegal acts of the Enterprise that were taken in furtherance of the Antitrust Conspiracy.

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[1] "[A] conditional use permit grants an owner permission to devote a parcel to a use that the applicable zoning ordinance allows not as a matter of right but only upon issuance of the permit." *Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997, 1006.

[2] "Sham" litigation is defined as an action that is objectively baseless and brought not to accomplish the purported object of the litigation but to harass or impede a competitor. *Prof'l Real Estate Inv'rs, Inc. v. Columbia Pictures Indus.* (1993) 508 U.S. 49, 61.

7. This action focuses on the Enterprise's unlawful acts in acquiring four CUPs: (i) the Ramona CUP,[3] (ii) the Balboa CUP,[4] (iii) the Federal CUP,[5] and (iv) the Lemon Grove CUP.[6]

JURISDICTION AND VENUE

8. Defendants are subject to the jurisdiction of this Court by virtue of their business dealings and transactions in California and by having caused injuries within the City and County of San Diego.

9. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to the California Constitution, Article VI, Section 10. Plaintiff's claims for violations of Business & Professions Code § 16720 *et seq*., arise exclusively under the laws of the State of California, do not arise under federal law, are not preempted by federal law, and do not challenge conduct within any federal agency's exclusive domain.

10. Venue is proper in this county because the acts taken by defendants were taken within the County of San Diego and the CUPs at issue in this action were issued at real property within the County of San Diego.

PARTIES

11. Plaintiff AMY SHERLOCK, an individual, at all material times herein was residing and working in the County of San Diego, California.

12. Plaintiffs MINORS T.S. and S.S., progeny of Amy and Michael "Biker" Sherlock, are individuals, were, and at all material times herein, living and attending school in the County of San Diego, California.

13. Plaintiff ANDREW FLORES, an individual, at all material times herein was residing and working in the County of San Diego, California.

14. Defendant GINA M. AUSTIN, an individual, at all material times herein was residing and working in the County of San Diego, State of California.

15. Defendant AUSTIN LEGAL GROUP, A Professional Corporation, was at all material

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[3] The "Ramona CUP" was issued at 1210 Olive Street, Ramona, CA 92065 (the "Ramona Property").
[4] The "Balboa CUP" was issued at 8863 Balboa Avenue, Unit E, San Diego, California 92123 (the "Balboa Property").
[5] The "Federal CUP" was issued at 6220 Federal Blvd., San Diego, CA 92114 (the "Federal Property").
[6] The "Lemon Grove CUP" was issued at 6859 Federal Blvd., Lemon Grove, CA 91945 (the "Lemon Grove Property").

times mentioned herein a Corporation under the laws of the State of California operating and conducting business in the County of San Diego, State of California.

16. Defendant LARRY GERACI an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

17. Defendant REBECCA BERRY an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

18. Defendant FINCH, THORTON, and BAIRD, a limited liability partnership, at all material times herein operated and conducted business in the County of San Diego, State of California.

19. Defendant ABHAY SCHWEITZER, an individual and dba TECHNE, an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

20. Defendant JIM BARTELL an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

21. Defendant NATALIE TRANG-MY NGUYEN an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

22. Defendant AARON MAGAGNA an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

23. Defendant JESSICA MCELFRESH an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

24. Defendant SALAM RAZUKI an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

25. Defendant NINUS MALAN an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

26. Defendant BRADFORD HARCOURT an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

27. Defendant LOGAN STELLMACHER an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

28. Defendant EULENTHIAS DUANE ALEXANDER, an individual, was at all material

times mentioned herein residing and working in the County of San Diego, State of California.

29. Defendant STEPHEN LAKE, an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

30. Defendant ALLIED SPECTRUM, INC., a corporation, under the laws of the State of California, was at all material times mentioned herein had its principal place of business and conducted business in the County of San Diego, State of California.

31. Defendant PRODIGIOUS COLLECTIVES, LLC, a limited liability company, under the laws of the State of California, was at all material times mentioned herein had its principal place of business and conducted business in the County of San Diego, State of California

32. The true names and capacities, whether individual, corporate, associate or otherwise of Defendants Does 1 through 50, inclusive, are unknown to Plaintiffs who therefore sue said defendants by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff further alleges that each of said fictitious Doe defendants is in some manner responsible for the acts and occurrences hereinafter set forth. Plaintiff will amend this Complaint to show their true names and capacities when the same are ascertained, as well as the manner in which each fictitious defendant is responsible for the damages sustained by Plaintiffs.

33. At all relevant times, each defendant was and is the agent of each of the remaining defendants and, in doing the acts alleged herein, was acting within the course and scope of such agency. Each defendant ratified and/or authorized the wrongful acts of each of the defendants.

34. Defendants, and each of them, are individually sued as participants and as aiders and abettors in the unlawful acts, plans, schemes, and transactions alleged in this Complaint. Defendants, and each of them, have participated as members of the conspiracy alleged herein, acted in furtherance of it, aided and assisted in carrying out its purposes, performed acts and made statements in furtherance of the conspiracy, and/or ratified the acts taken in furtherance of the conspiracy.

GENERAL ALLEGATIONS

I. MATERIAL STATE AND CITY LAWS REGARDING CANNABIS APPLICATION REQUIREMENTS.

35. At all material times related to this action, California's cannabis licensing statutes have required any party engaging in commercial cannabis activities to possess both a state license and a local

government permit, CUP or license.

36. At all material times related to this action, California Bus. & Prof. Code ("BPC") § 19323 *et seq*. or BPC § 26057 *et seq*. has mandated the denial of an application for a cannabis state license by an applicant who, *inter alia*, has been sanctioned for unlicensed commercial cannabis activities in the preceding three years; failed to provide required information in an application (including disclosure of all individuals with a direct ownership interest in the license being applied for); or failed to comply with local government requirements for the issuance of a permit, CUP or license for cannabis activities.

37. At all material times related to this action, in the City of San Diego, California, an application for a CUP has required the disclosure of all parties with an interest in the proposed property or CUP in the application.

II. THE PRINCIPALS AND AGENTS OF THE ENTERPRISE.

38. The known principals of the Enterprise are Geraci, Razuki, and Malan.

39. Lake and Harcourt, as further explained below, have numerous connections and relationships with principals and agents of the Enterprise. At this point, it is unclear if they are principals of the Enterprise or individual actors that have worked in concert with and/or ratified the Enterprise's acts in furtherance of their own goal of seeking to profit through unlawful actions in the cannabis industry.

40. Individuals that have acquired interests in CUPs and are members of the Enterprise, worked in concert with the Enterprise or ratified the Enterprise's unlawful actions include Harcourt, Razuki, Malan, Magagna, Alexander, and Schweitzer.

41. Individuals who are non-attorney agents of the Enterprise that have taken acts in furtherance of the Antitrust Conspiracy or who have ratified the acts of the Enterprise include Berry, Bartell, Alexander, Stellmacher, Miller and Schweitzer.

42. The law firms and attorneys that work for the Enterprise and that have taken acts in furtherance of the Antitrust Conspiracy include the Austin Legal Group; Ferris & Britton; Jessica McElfresh; Finch, Thornton & Baird; Matthew Shapiro; and Natalie Nguyen.

III. MATERIAL BACKGROUND

A. Geraci and Razuki have been sanctioned for unlicensed commercial cannabis activities.

43. Geraci has been sanctioned at least twice for unlicensed commercial cannabis activities.[7]

44. Geraci was last sanctioned on June 17, 2015 in the CCSquared Judgment.

45. As in effect on June 17, 2015, pursuant to BPC § 19323(a),(b)(7), Geraci could not lawfully own a cannabis license or CUP until at least June 18, 2018.

46. Razuki was sanctioned for unlicensed commercial cannabis activities on April 15, 2015.[8]

47. As in effect on Aril 15, 2015, pursuant to BPC § 19323(a),(b)(7), Razuki could not lawfully own a cannabis license or CUP until at least April 16, 2018.

B. Austin, Bartell and Schweitzer are experienced professionals in the cannabis industry who aid parties to prepare, apply and acquire CUPs.

48. Austin is an attorney who is "an expert in cannabis licensing and entitlement at the state and local levels and regularly speak[s] on the topic across the nation." [9]

49. Austin has testified that she has worked on approximately twenty-five (25) cannabis CUP applications with the City, of which approximately twenty-three (23) were approved or successfully maintained.

50. Bartell, through his political lobbying firm, B&A, has testified that he has lobbied the City for approximately twenty (20) cannabis CUP applications of which nineteen (19) were approved.

51. Schweitzer has testified that he has worked on approximately thirty to forty (30-40) cannabis CUP applications with the City.

52. Collectively, Austin, Bartell and Schweitzer have worked on the majority of the CUPs issued by the City.

53. Austin, Bartell and/or Schweitzer aided Geraci, Razuki and Magagna apply, acquire and/or maintain ownership interests in CUPs without disclosing all parties with an ownership interest in

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[7] In (i) *City of San Diego v. The Tree Club Cooperative, et al*., San Diego Superior Court Case No. 37-2014-0020897-CU-MC-CTL (the "Tree Club Judgment") and (ii) *City of San Diego v. CCSquared Wellness Cooperative, et. al.*, Case No. 37-2015-00004430-CU-MC-CTL (the "CCSquared Judgment" and, collectively with the Tree Club Judgement, the "Geraci Judgments").

[8] *City of San Diego v. Stonecrest Plaza*, *LLC*, Case No. 37-2014-00009664-CU-MC-CTL (the "Stonecrest Judgment").

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

the CUPs in violation of numerous State and City laws, including BPC §§ 19323, 26057, SDMC § 11.0401(b) and Penal Code § 115.

C. Jessica McElfresh is a cannabis attorney who has been arrested for conspiring with her clients to commit crimes and obstructing justice.

54. In May 2017, McElfresh was charged with, *inter alia*, Conspiracy to Commit a Crime, Manufacturing of a Controlled Substance, and Obstruction of Justice for her efforts to conceal her client's alleged illegal manufacturing operations from government inspectors. (*People v. McElfresh*, San Diego Superior Court, No. CD272111.)

55. In July 2018, McElfresh entered into a Deferred Prosecution Agreement (the "DPA") that would allow her to plead guilty in twelve months as follows: "On April 28, 2015 [McElfresh] knowingly facilitated the use of a premises without a required permit, in violation of San Diego Municipal Code § 121.0302(a), to wit: an unpermitted marijuana manufacturing and distribution operation by Med West Distribution, LLC."

56. Pursuant to the DPA, for a period of 12 months, McElfresh was prohibited from violating any other laws (except for minor infractions) until July 23, 2019, or face resumption of all charges filed against her.

57. On October 18, 2019, McElfresh was interviewed and quoted in a San Diego Union-Tribune article that stated: "McElfresh said she advised her clients to comply with city orders to shut down, partly because operating without local permission could affect their ability to obtain state marijuana licenses in the future."[10]

58. McElfresh has represented Geraci, Razuki and Malan in various legal matters.

D. Razuki's employee states Razuki openly discussed the plan to create a monopoly and use violence in furtherance of the Antitrust Conspiracy.

59. As further described below, when Flores became the equitable owner of the Federal Property, he began investigating Geraci and his agents and discovered the relationships between Geraci, Magagna, Razuki, Malan and Dave Gash via Austin who has represented all parties.

60. As further described below, Razuki was arrested by the FBI for attempting to have Malan

[10] *See* David Garrick, Roughly Two Dozen San Diego Marijuana Cultivators Forced to Shut Down, SAN DIEGO UNION-TRIBUNE (October 18, 2019).

kidnapped to Mexico and murdered as a result of ongoing litigation between them disputing ownership of approximately $40,000,000 in cannabis assets.

61. During the course of Flores' investigation, he spoke with an investigative reporter who had interviewed an employee of Razuki after Razuki had been arrested by the FBI (the "Employee"). The investigative reporter provided Flores a copy of the interview with the Employee.

62. The Employee stated that he was present when Austin provided confidential information from her non-Enterprise clients regarding real properties that qualified for CUPs so that Razuki and his associates could take action to prevent the acquisition of those CUPs by Austin's non-Enterprise clients in furtherance of creating a monopoly.

63. The Employee also stated that Razuki and his associates use Mexican gangs to commit violent acts on their behalf to further their goals when disputes arise in the operations of their dispensaries.

IV. THE SHERLOCK PROPERTY

64. Michael "Biker" Sherlock was a husband, father, professional athlete, and an entrepreneur with interests in the cannabis sector.

65. Lake is Mr. Sherlock's brother-in-law.

66. Mr. Sherlock partnered with Lake and Harcourt no later than in or around April 2013 for real estate and cannabis related investments (the "Sherlock Partnership").

67. On or about January 8, 2015, Lake purchased the Ramona Property.

68. On or about January 16, 2015, Mr. Sherlock was granted the Ramona CUP.

69. On or about April 24, 2015, as part of the Sherlock Partnership, Mr. Sherlock and Harcourt formed Leading Edge Real Estate, LLC ("LERE") to be their holding company for real properties. Mr. Sherlock was the CEO of LERE. Mr. Sherlock and Harcourt were both managing members.

70. On or about June 18, 2015, LERE acquired the Balboa Property.

71. On or about July 29, 2015, the City granted Mr. Sherlock's application for the Balboa CUP to his holding entity, United Patients Consumer Cooperative ("United Patients") (hereinafter, collectively, Mr. Sherlock's interests in the Partnership Agreement, LERE, and the Balboa and Ramona

CUPs, the "Sherlock Property").

72. The homeowner's association of the Balboa Property initiated litigation to prevent the opening of the dispensary at the Balboa Property alleging the homeowners association rules prohibited marijuana operations (the "HOA Litigation"). The HOA Litigation was still ongoing in December 2017.

73. On December 3, 2015, Mr. Sherlock passed away, purportedly he committed suicide.

A. Lake and Harcourt defraud Mrs. Sherlock of her interest in the Sherlock Property.

74. In or around December 2015, after Mr. Sherlock passed away, Harcourt submitted documentation to the City to have the Balboa CUP transferred from Mr. Sherlock and his holding entity, United Holdings, to his holding entity, San Diego Patients Cooperative Corporation, Inc. ("SDPCC"), and himself.

75. The day after Mr. Sherlock's death, Lake spoke with investigative officers and stated that he had spent time with Mr. Sherlock the day prior to his passing and that they had discussed problems that Lake felt were "small issues."

76. Shortly after Mr. Sherlock's death, Lake told Mrs. Sherlock that Mr. Sherlock had never actually acquired interests in the Balboa CUP because of the HOA Litigation. Lake told Mrs. Sherlock that Lake, Harcourt and Mr. Sherlock had to "walk away" because it was too expensive to continue financing the HOA Litigation and the parties had decided to walk away from their investments.

77. At various points in time after Biker's death, Lake told Mrs. Sherlock that the facility operating under the Ramona CUP was not making any profits and that there were no distributions for the owners.

78. On or about December 21, 2015, three weeks after Mr. Sherlock's death, LERE was dissolved via a submission to the Secretary of State purportedly executed by Mr. Sherlock (the "Dissolution Form").

79. Subsequent to Mr. Sherlock passing away, public records reveal that Harcourt, Lake, Alexander and Renny Bowden acquired interests in the Ramona CUP.

80. Bowden is Lake's longtime friend and business partner.

81. In or around April 2016, Harcourt on behalf of LERE, executed a grant deed for the Balboa Property in favor of High Sierra Equity, LLC ("High Sierra"), which is owned by Lake.

82. In or around September 2016, Lake on behalf of High Sierra executed a grant deed in favor of Razuki Investments, LLC ("Razuki Investments"), which is wholly owned by Razuki.

83. In or around March 2017, Razuki on behalf Razuki Investments executed a grant deed in favor of San Diego United Holdings Group, LLC ("SD United"), which is wholly owned by Malan.

84. In January 2020, Mrs. Sherlock was introduced to attorney Flores who told her that he was working on case which may have ties to the Balboa CUP. He informed her that a form dissolving an entity LERE was supposedly executed by Biker and processed by the State three weeks after his death (the "Dissolution Form").

85. Mrs. Sherlock reviewed the Dissolution Form, but she did not recognize Biker's signature.

86. Mrs. Sherlock discussed the issue with her sister, Lake's wife, and told her that she intended to sue Harcourt and her sister told her that she should speak with Lake about it. Lake then contacted Mrs. Sherlock and asked to meet.

87. In early February 2020, Mrs. Sherlock met with Lake at a coffee shop, and she told him that she intended to sue Harcourt. At this time, Mrs. Sherlock only knew that the CUP had been transferred into Harcourt's name. Lake initially told Mrs. Sherlock nothing other than "we did it," in which he was referring to the transfer of the Balboa CUP permit. He implied that Mrs. Sherlock's family would shun her for taking legal action against a family member and that she did not have the financial resources to be successful. Lake said something to the effect of, "oh well sorry, nothing you can do about it."

88. On or around February 15, 2020, Flores received an expert handwriting report concluding that Mr. Sherlock's signature was likely forged on the Dissolution Form.

89. Flores provided Mrs. Sherlock the forensic handwriting expert report. Flores also informed Mrs. Sherlock that the Ramona CUP had been transferred at some point to Harcourt and Bowden after review of Sherriff certificates and other publicly available documents. Up until this time, Mrs. Sherlock thought she still had an ownership interest in the Ramona CUP but that it was not operating profitably.

90. On or around February 21, 2020, Flores, on behalf of Mrs. Sherlock, contacted Harcourt's

attorney, Allan Claybon of Messner Reeves, LLP, to inquire how it was that Harcourt obtained ownership interests in the Balboa and Ramona CUPs and Mrs. Sherlock's belief that Mr. Sherlock's signature was forged.

91. On that initial call, Claybon expressly stated to Flores that he appreciated Flores contacting him, that he understood the timing of the submission of the Dissolution Form was suspicious, and that he would contact Harcourt to provide an explanation.

92. Shortly thereafter, in early March 2020, Lake appeared at Mrs. Sherlock's house unannounced.

93. Between the early February of 2020 meeting with Lake and him appearing at Mrs. Sherlock's home, Mrs. Sherlock had learned a lot more about the situation including dissolution of LERE. that the signature did not appear to me to be Biker's, and the handwriting expert had concluded that it was more than likely forged.

94. When Mrs. Sherlock confronted Lake about it, he then said that he had seen Mr. Sherlock execute the Dissolution Form the day before he passed away and that he was in an extremely emotional state, severely depressed because he had to "sign away" the Balboa CUP, because of the allegedly expensive HOA Litigation, and that is why his signature on the Dissolution Form does not look like his normal signature. Lake said that this was the reason why Biker had committed suicide. Lake said that Biker had cost him a lot money and repeatedly attempted to convince Mrs. Sherlock to not sue Harcourt.

95. Mrs. Sherlock was shocked and outraged but kept calm and asked if she would be getting any proceeds related to the Balboa and Ramona CUPs as a result of Biker's investment of time and capital to acquire them. Lake responded that Biker's contributions were "worthless," that Mrs. Sherlock and her children were not entitled to anything, and that she should be content with the proceeds from Mr. Sherlock's life insurance policy.

96. Mrs. Sherlock was angry and responded that, among other things, it was impossible for Mr. Sherlock to have signed away millions of dollars of assets depriving her and his children of their value. As they argued Mrs. Sherlock kept insisting that she would take legal action and Lake became clearly emotionally intense and he admitted that he and Harcourt were responsible for the transfer of the Balboa CUP. Lake said he was the property owner of the Balboa Property and that he had conveyed the

CUP to Harcourt. Lake said he did it to "save" Mrs. Sherlock from the "headaches" of having to deal with the CUP. Mrs. Sherlock told him that she never gave permission for anyone to act on her behalf and that it was her right, duty and honor to settle Mrs. Sherlock's affairs and that she was angry that she was deprived of her rights. Lake then alleged that the Balboa CUP was "stolen" from Harcourt.

97. The conversation became an intense argument and Lake again implied that Mrs. Sherlock could not financially afford to take any legal action and that there was nothing she could do about what had taken place. Lake concluded the conversation by implying that if Mrs. Sherlock took any legal action it would result in her and her children being shunned by their family.

98. During this time, despite Claybon's initial representation that he would speak with Harcourt, over the course of weeks, Flores and Claybon exchanged numerous phone calls and emails in which Claybon repeatedly refused to explain how Harcourt acquired Mr. Sherlock's interest in the Balboa CUP.

99. However, Claybon did communicate that Harcourt allegedly saw Mr. Sherlock execute the Dissolution Form the day before he passed away and also Harcourt's affirmative defenses in anticipation of litigation: (i) the statute of limitations bars any fraud-based causes of action that Mrs. Sherlock may have and (ii) the statute of limitations was not tolled because Mrs. Sherlock did not "exercise reasonable diligence" because she did not check the State's records after Mr. Sherlock passed away. Attached hereto as Exhibit 2 is the email chain between Flores and Claybon and fully incorporated herein by this reference.

B. *Razuki I*: Razuki/Malan defraud Harcourt of his interest in the Balboa CUP.

100. On or around June 6, 2017, SDPCC and Harcourt filed a lawsuit against*, inter alia*, Razuki and Malan alleging they had successfully conspired to defraud them of the Balboa CUP ("*Razuki I*").[11] (References to Razuki and Malan include the entities through which they operate.)

101. The *Razuki I* complaint contains causes of action against Razuki and Malan for, *inter alia*, breach of an alleged oral joint venture agreement reached in or around August 2016.

102. Materially summarized, the *Razuki I* complaint alleges that: (i) Razuki/Malan and

[11] *San Diego Patients Cooperative Corporation, Inc. v. Razuki Investments, LLC*, San Diego Superior Court Case No. 37-2017-00020661-CU-CO-CTL.

Harcourt reached an oral joint venture agreement for the operating of the dispensary that operates with the Balboa CUP; (ii) the Balboa CUP was valued at least 6 million dollars; (iii) Razuki/Malan provided a $50,000 "good faith" payment while the parties were negotiating the joint venture agreement; (iv) Razuki/Malan then purchased the real property at which the Balboa CUP was issued; (v) Razuki/Malan then fraudulently represented themselves as the owner of the Balboa CUP to the City; (vi) the City transferred the Balboa CUP to entities owned by Razuki/Malan; and (vii) thereafter Razuki/Malan fraudulently represented that $800,000 was the value of the real property at which the Balboa CUP was issued, inclusive of the Balboa CUP.

C. *Razuki II*: Malan defrauds Razuki of his undisclosed interests in approximately $40,000,000 in cannabis assets, including the Balboa CUP.

104. On or about July 10, 2018, Razuki initiated a lawsuit against, among others, Malan alleging he has ownership interests in approximately $40,000,000 in cannabis assets, including the Balboa CUP held in Malan's name, from which Malan was unlawfully diverting money owed to him ("*Razuki II*").[12]

105. In *Razuki II*, both Razuki and Malan have admitted that they reached an oral agreement pursuant to which Razuki and Malan would be partners in cannabis related businesses. Their agreement provided for Razuki to provide the initial cash investment to purchase certain assets while Malan would manage the assets. The parties agreed that after reimbursing the initial investment to Razuki, Razuki would be entitled to seventy-five percent (75%) of the profits & losses of the assets and Malan would be entitled to twenty-five percent (25%) of said profits & losses.

106. Razuki provided a sworn declaration stating his agreement with Malan provided for Malan to hold title to the cannabis assets without disclosing Razuki's ownership interest because he had been sanctioned in the Stonecrest Judgment for unlicensed commercial cannabis activities.[13]

107. But-for the legal disputes between Razuki and Malan over ownership of the $40,000,000

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[12] *Razuki v. Malan,* San Diego County Superior Court, Case No. 37-2018-0034229-CU-BC-CTL.

[13] *Razuki II*, ROA 79 (Razuki Declaration) at 6:1-8 ("Because of [the Stonecrest Judgment], I was concerned with having my name on any title associated with a marijuana operation. This is why Malan would put his name on title for the LLCs related to our marijuana operations. I always assumed he would honor the oral agreement and [a] [s]ettlement [a]greement that would entitle me to 75% ownership of all the [p]artnership [a]ssets.").

in cannabis assets, it would not be public knowledge that Razuki and Malan had an agreement for Razuki to hold title to said assets and not disclose Razuki's ownership interest therein because of the Stonecrest Judgment, in violation of applicable State and City laws.

D. *Razuki III* and *Razuki IV*: Razuki attempts to have Malan kidnapped to Mexico and murdered to acquire the $44,000,000 in cannabis assets, is arrested by the FBI, and Malan sues Razuki for trying to have him murdered.

108. On or around November 15-16, 2018, the FBI arrested Razuki, Sylvia Gonzalez and Elizabeth Juarez for conspiring to kidnap and murder Malan because of *Razuki II* ("*Razuki III*").[14]

109. Razuki did not know that one of the individuals that he attempted to hire to murder Malan was an informant for the FBI.

110. On or about August 7, 2019, Malan filed suit against, among others, Razuki, Gonzales, and Juarez for, *inter alia*, (i) interference with the exercise of his civil rights to engage in civil litigation (i.e., *Razuki III*) and (ii) intentional infliction of emotional distress related to their conspiracy to have him kidnapped and murdered ("*Razuki IV*").[15]

E. Summary of *Razuki I-IV* and the transfers of ownership of the Balboa Property and the Balboa CUP.

111. Lake and Harcourt unlawfully converted Mr. Sherlock's interest in the Sherlock Property via at least one forged document. Harcourt has refused to explain how he lawfully acquired Mr. Sherlock's interests in the Balboa or Ramona CUPs. Harcourt was in turn allegedly defrauded of the Balboa CUP by Razuki and Malan and filed suit (i.e., *Razuki I*). Malan was then allegedly defrauding Razuki by not providing him his share of profits of his undisclosed interests in various cannabis assets, including the Balboa CUP, and Razuki filed suit (i.e., *Razuki II*). Razuki then tried to have Malan murdered by hiring a hitman who was an informant for the FBI and was arrested by the FBI (i.e., *Razuki III*). Malan then sued Razuki for causes of action arising from Razuki's attempt to have him murdered to prevent him from continuing with their litigation over the $40,000,000 in cannabis assets (i.e., *Razuki IV*).

112. In Razuki *II*, the Court appointed a receiver to manage the assets, which came to include

[14] *United States v. Salam Razuki*, No. 18MJ5915 (S.D. Cal. Nov. 19, 2018).
[15] *Malan v. Razuki, et. al.*, San Diego Superior Court, Case No. 37-2019-00041260-CU-PO-CTL.

the Court ordered sale of the Balboa Property and the Balboa CUP (the "Balboa Assets").

113. On April 5, 2021, Mrs. Sherlock filed a motion to intervene in *Razuki II* seeking to prevent the sale of the Balboa CUP, which was denied.

114. On May 26, 2021, the Court ordered the Balboa Assets sold to Prodigious Collective ("Prodigious").

115. Based on the grant deed recorded at the Balboa Property, the Sherlock Family believes the Balboa Property was transferred to Allied pursuant to the sale to Prodigious.

V. THE FEDERAL CUP

A. Cotton and Geraci enter into an agreement to apply for a CUP at the Federal Property.

116. Cotton is the owner-of-record of the Federal Property at which he operates 151 Farms.

117. Geraci has approximately 40 years of experience providing tax services and has been the owner-manager of Tax & Financial Center "T&F Center" since 2001. T&F Center provides sophisticated tax, financial and accounting services.

118. In mid-2016, Geraci identified the Federal Property and began negotiating with Cotton for the purchase of the Federal Property because he believed it would qualify for a CUP.

119. Austin, Bartell, and Schweitzer were hired by Geraci and responsible for preparing, submitting, and lobbying a CUP application with the City at the Federal Property that was submitted in the name of Geraci's assistant, Berry (the "Berry CUP Application").

120. On October 31, 2016, Geraci presented Cotton with an Ownership Disclosure Form, a required component of the City's CUP application.

121. Geraci told Cotton that he needed Cotton to execute the form to show to his agents that he had access to the Federal Property as part of his due diligence in determining whether the property qualified for a CUP.

122. On October 31, 2016, Geraci had the Berry CUP Application filed with the City, which included the Ownership Disclosure Form and a Form DS-3032 General Application (the "General Application" and attached hereto as Exhibit 3.

123. The Ownership Disclosure Statement required a list that "***must*** include the names and

addresses of all persons who have an interest in the property, ***recorded or otherwise***, and state the type of interest."

124. The Berry CUP Application falsely states that Berry is the owner of the CUP being applied for; Geraci is not disclosed anywhere in the Berry CUP Application.

125. The Berry CUP Application was filed without Cotton's knowledge or consent.

126. On November 2, 2016, Cotton and Geraci met at Geraci's office and entered into an oral joint venture agreement whereby Cotton would sell the Federal Property to Geraci (the "JVA").

127. The material terms of the JVA were that Cotton would receive (i) $800,000, (ii) a 10% equity stake in the CUP, (iii) the greater of $10,000 a month or 10% of the net profits of the contemplated dispensary; and (iv) a $50,000 non-refundable deposit in the event the CUP application at the Federal Property was not approved. Geraci also promised that his attorney, Austin, would promptly reduce the JVA to writing.

128. The JVA was subject to a single condition precedent, the approval of a CUP application with the City at the Federal Property by Geraci.

129. At their meeting at which the JVA was reached, Geraci had Cotton execute a three-sentence document to memorialize Cotton's receipt of $10,000 towards the total $50,000 non-refundable deposit (the "November Document") and attached hereto as Exhibit 4.

130. On November 2, 2016, after the parties reached the JVA and executed the November Document, the following email communications took place:

(i) At 3:11, Geraci emailed Cotton a copy of the November Document.

(ii) At 6:55 PM, Cotton replied as follows:

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

(the "Request for Confirmation.") Attached hereto as Exhibit 5.

(iii) At 9:13 PM, Geraci replied: "No no problem at all" (the "Confirmation Email"). Attached hereto as Exhibit 6 are these three email exchanges between Cotton and Geraci.

131. On November 3, 2016, Geraci and Cotton spoke over the phone.

132. Subsequently, for months, Cotton and Geraci communicated via email and texts regarding the JVA and issues regarding the approval of a CUP at the Federal Property.

B. Cotton negotiates with Williams to sell the Federal Property.

133. In or around January 2017, after Geraci had failed to reduce the JVA to writing, Cotton began to seek new partners to apply for the Federal CUP at the Federal Property in the event Geraci failed to reduce the JVA to writing.

134. Cotton informed Williams about Geraci's failure to reduce the JVA to writing.

135. In or around February 2017, Williams and Cotton reached the material terms of an agreement for the sale of the Federal Property, subject to the JVA being terminated with Geraci.

136. The material terms of the agreement were for William's 50% purchase of the Federal Property and a 50% ownership interest in the Federal CUP if approved at the Federal Property for $2,500,000.

137. On or around March 6, 2017, Williams spoke to Austin, his attorney, about his intent to enter into an agreement with Cotton.

138. Austin told Williams that he could not enter into an agreement with Cotton because Geraci already had a final, written agreement for the purchase of the Federal Property.

139. Williams, relying on Austin's representation, believed that Cotton had executed a final written agreement with Geraci and was acting in bad-faith attempting to breach his agreement with Geraci to get better terms than those he had negotiated with Geraci and did not enter into an agreement with Cotton.

C. Cotton terminates the JVA with Geraci for his failure to reduce the JVA to writing.

140. On March 7, 2017, Geraci emailed Cotton a revised draft of a purchase agreement for the purchase of the Federal Property and in the cover email he states: "… the 10k a month might be difficult to hit until the sixth month… can we do 5k, and on the seventh month start 10k?".

141. Geraci's request to lower the monthly payment of $10,000 to $5,000 reflects the parties had an existing agreement that included a term of monthly $10,000 payments to Cotton from which

Geraci was requesting an amendment, in accordance with the JVA.

142. On or around March 7, 2017, Cotton discovered the Berry CUP Application was submitted on October 31, 2016, prior to his agreement with Geraci on November 2, 2016, and that the Berry CUP Application failed to disclose Geraci or Cotton and their respective ownership interests per the JVA.

143. Thereafter, Cotton continued to demand that Geraci reduce their JVA to writing as Geraci had promised, which Geraci never did.

144. Cotton did not know that Geraci had previously been sanctioned for unlicensed commercial cannabis activities and could therefore not lawfully own a CUP in his name.

145. On March 21, 2017, after several requests for assurance that the JVA would be honored were ignored by Geraci, Cotton emailed Geraci, terminating the JVA for anticipatory breach and informed him that he would be entering into an agreement with a third party for the sale of the Federal Property.

146. Thereafter, that same day, Cotton entered into a written joint venture agreement with Martin for the sale of the Federal Property.

D. Geraci files *Cotton I* to interfere with the sale of the Federal Property and the acquisition of the Federal CUP by a non-Enterprise party.

147. On March 22, 2017, Geraci's attorneys from the law firm of Ferris & Britton served Cotton with *Cotton I* alleging the November Document was executed with the intent of being a final written contract for Geraci's purchase of the Federal Property. Ferris & Britton also served Cotton with a copy of a recorded lis pendens on the Federal Property (the "F&B Lis Pendens").

148. As a matter of law, *Cotton I* was filed without factual or legal probable cause because the November Document cannot be a lawful contract for at least two reasons: it lacks mutual assent and a lawful object.

E. McElfresh and FTB represent Cotton against Geraci in *Cotton I*, neither of whom disclose they have shared clients with Geraci and Austin, and take actions to sabotage Cotton's case.

149. On or around May 12, 2017, Cotton filed *pro se* a cross-complaint in *Cotton I* against Geraci and Berry with causes of action for: (i) quiet title, (ii) slander of title, (iii) fraud/fraudulent

misrepresentation, (iv) fraud in the inducement, (v) breach of contract, (vi) breach of oral contract, (vii) breach of implied contract, (viii) breach of the implied covenant of good faith and fair dealing, (iv) trespass, (x) conspiracy, and (xi) declaratory and injunctive relief (the "*Cotton I XC*").

150. The basis of the *Cotton I XC* is that Cotton and Geraci reached the JVA and Geraci was seeking to prevent the sale to Martin by misrepresenting the November Document, a receipt, as a contract for the purchase of the Federal Property.

151. Cotton's cause of action for breach of oral contract materially stated as follows (emphasis added):

> ***The agreement reached on November 2nd, 2016 is a valid and binding oral agreement between Cotton and Geraci***.
>
> Geraci has breached the agreement by, among other actions described herein, alleging the written November [Document] is the final and entire agreement for the Property.

152. Cotton's cause of action against Geraci and Berry for conspiracy materially alleged as follows (emphasis added):

> Berry submitted the [Berry Application] in her name on behalf of Geraci because Geraci has been a named defendant in numerous lawsuits brought by the City of San Diego against him for the operation and management of unlicensed, unlawful and illegal marijuana dispensaries. **These lawsuits would ruin Geraci's ability to obtain a CUP himself**.

153. Subsequent to filing the *Cotton I XC*, Cotton acquired a litigation investor, Hurtado.

154. In or around April 2017, Hurtado consulted with attorney McElfresh to represent Cotton and she agreed to represent Cotton.

155. As Hurtado was acting as an agent of Cotton, an attorney-client relationship was established.[16]

156. On or around April 13, 2017, McElfresh emailed Hurtado that "upon further reflection"

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[16] *See Miller v. Metzinger* (1979) 91 Cal.App.3d 31, 39-40 ("As our Supreme Court said in *Perkins v. West Coast Lumber Co.* (1900) 129 Cal. 427, 429 [62 P. 57]: 'When a party seeking legal advice consults an attorney at law and secures that advice, the relation of attorney and client is established prima facie.' [….] In *Westinghouse Elec. Corp. v. Kerr-McGee Corp.* (7th Cir. 1978) 580 F.2d 1311, 1319, the court said: 'The fiduciary relationship existing between lawyer and client extends to preliminary consultation by a prospective client with a view to retention of the lawyer, although actual employment does not result.'").

that she did "not have the bandwidth" to represent Cotton and referred Hurtado to Demian of FTB.

157. Demian, a partner, and Adam Witt, an associate, of FTB were engaged and represented Cotton in *Cotton I*.

158. In engaging FTB, FTB was provided the communications between Geraci and Cotton.

159. FTB represented they knew that Martin, Hurtado and others had interests in the Federal Property and the Federal CUP and were third-party beneficiaries of FTB's services provided to Cotton.

160. On or around June 30, 2017, Demian and Witt substituted in as counsel for Cotton and filed an amended cross-complaint in *Cotton I* (the "*Cotton I FAXC*").

161. The *Cotton I FAXC* removed Cotton's allegations that it is unlawful for Geraci to own a CUP because he had been sanctioned for unlicensed commercial cannabis operations.

162. The *Cotton I FAXC* reduced and revised Cotton's causes of action from 11 to 7 as follows: (i) breach of contract; (ii) intentional misrepresentation; (iii) negligent misrepresentation; (iv) false promise; (v) intentional interference with prospective economic relations; (vi) negligent interference with prospective economic relations; and (vii) declaratory relief.

163. FTB's amendments from Cotton's *Cotton I CX* to their *Cotton I FAXC* were without factual or legal justification given the facts known to them.

164. The unjustified amendments include:

(i) Removing Cotton's cause of action for breach of an oral contract;

(ii) Removing Cotton's cause of action for fraud;

(iii) Removing Cotton's cause of action for conspiracy against Geraci and Berry; and

(iv) Removing Berry from all causes of action except the seventh for declaratory relief.

165. Demian represented to Cotton the amendments were just and proper and in Cotton's best interest.

166. Cotton relied on Demian's representations as Demian was his attorney who he believed was acting in his best interest.

167. Subsequent to FTB filing the *Cotton I XC*, FTB was informed that Martin is a high net worth individual who was prepared to hire independent counsel if he was named as a party in *Cotton I*.

168. On or about August 25, 2017, FTB filed a second amended cross-complaint for Cotton

(the "*Cotton I SAXC*"). This time, FTB removed the causes of action for intentional and negligent interference with prospective economic relations for the sale to Martin.

169. Martin was an indispensable party to the action as the purchaser of the Federal Property and was required to be named in *Cotton I*.

170. On or about November 3, 2017, Judge Wohlfeil held a hearing on Geraci's demurrer to Cotton's *Cotton I SAXC* at which Demian argued that Cotton had not reached a final agreement with Geraci, but rather that Geraci and Cotton had reached "an agreement to agree."

171. Demian's argument on behalf of Cotton contradicts Cotton's factual allegations in his *Cotton I XC* that the "agreement reached on November 2, 2016, is a valid and binding oral agreement," and fails to state a cause of action against Geraci because "an agreement to agree" in the future is not a lawful, enforceable agreement.[17]

172. In or around November 2017, at a meeting at FTB's office, Witt, while waiting for Demian, told Cotton that he had just overheard Demian talking with another partner at FTB and that FTB had shared clients with Geraci or Geraci's T&F Center.

173. Demian had never disclosed that Geraci or his company had shared clients with FTB.

174. In December 2017, during the course of his representation, Demian attempted to have Cotton execute a supporting declaration to argue in an *ex parte* application before the *Cotton I* court that Geraci was acting as Cotton's agent when Geraci had Berry submit the Berry Application to the City in her name without disclosing Geraci or Cotton's ownership interest.

175. Specifically, Demian wanted Cotton to admit that: "Cotton and Plaintiff/Cross-defendant Geraci reached an agreement regarding the sale of the Property in or around November 2016 ('November Agreement') which included, among other things, an agreement for **Geraci to pursue the [Federal] CUP *on* Cotton's behalf.**"

176. FTB has no factual or legal justification to have Cotton make this argument.

177. FTB's argument was contradicted by the pleadings submitted by Cotton and every

[17] "It is Hornbook law that an agreement to make an agreement is nugatory, and that this is true of material terms of any contract." *Roberts v. Adams* (1958) 164 Cal. App. 2d 312, 314. "[N]either law nor equity provides a remedy for a breach of an agreement to agree in the future." *Id*. at 316 (quotation omitted).

communication provided by Cotton to them.

178. Had Cotton executed the declaration and admitted that he, Cotton, and not Geraci, was the true applicant of the Berry CUP Application, Cotton's allegations of illegality against Geraci would fail to state a claim and Cotton would be the party strictly liable for violating State and City disclosure laws for using a proxy that failed to name him as the true and beneficial owner of the CUP applied for.[18]

179. On or around December 7, 2017, at a hearing before Judge Wohlfeil regarding the validity of the November Document being a contract, Demian failed to raise the Confirmation Email as evidence that the parties did not mutually assent to the November Document being a contract, or even raise the concept of mutual assent or illegality.

180. That same day, Cotton fired Demian or Demian quit because of Demian's failure to raise the issue of mutual assent before Judge Wohlfeil.

181. Later that day, when confronted by Cotton, Demian admitted he had failed to raise the issue of mutual assent or the Confirmation Email as evidence that Cotton and Geraci had not mutually assented to the November Document being a contract and stated it was because he had a "bad day."

182. At that point in time, Cotton did not know that McElfresh, who referred Hurtado to Demian, had shared clients with Austin and that she also worked for Razuki. Nor did Cotton understand the gravity of an attorney who fails to disclose conflicts of interests between clients.

F. Geraci and F&B collude to create and present fabricated evidence – the Disavowment Allegation - to the *Cotton I* court to overcome filing a lawsuit without probable cause because F&B relied on outdated case law.

183. From the filing of the *Cotton I* complaint in March 2017 until April 2018, Geraci's pleadings, motion practice and judicial and evidentiary admissions argued that the statute of frauds and the parol evidence rule barred admission of the Request for Confirmation, the Confirmation Email and other parol evidence as evidence that the parties did not mutually assent to the November Document being a purchase contract for the Federal Property.

184. For example, in Geraci's reply to his demurrer of the *Cotton I SACX*:

> Cotton alleges, based on extrinsic evidence, that the actual agreement between the parties contains material terms and conditions in addition to those in the [November Document]

[18] SDMC § 121.0311 (violations of the SDMC are strict liability offenses).

> as well as a term (a $50,000 deposit rather than the $10,000 deposit stated in the [November Document] that expressly conflicts with a term of the [November Document]. However, such a claim cannot stand as extrinsic evidence cannot be employed to prove an agreement at odds with the terms of the written memorandum.

185. On April 4, 2018, Cotton, via a specially appearing attorney, filed a motion to expunge the F&B Lis Pendens (the "Lis Pendens Motion"). The Lis Pendens Motion argued for the first time in *Cotton I* that, pursuant to *Riverisland*,[19] Geraci could not use the parol evidence rule as a shield to bar parol evidence as proof that the parties executed the November Document as a receipt and that Geraci was fraudulently representing it as a contract.

186. The Lis Pendens Motion was a *de facto* motion for summary judgment as a finding that the November Document is not a contract as a matter of law for lacking mutual assent would have meant that the *Cotton I* complaint, premised on the allegation that the November Document is a contract, was filed without probable cause.

187. On April 9, 2018, Geraci executed a declaration in support of his opposition to the Lis Pendens Motion. Attached hereto as Exhibit 7 and fully incorporated herein by this reference.

188. In his declaration, Geraci alleged for the first time that (i) Geraci did not read the entire Request for Confirmation before sending the Confirmation Email; (ii) Geraci called Cotton on November 3, 2016 and told him that he did not intend to send the Confirmation Email; (iii) Cotton orally agreed that the Request for Confirmation was sent as an attempt to acquire a 10% equity position in the CUP that the parties had not bargained-for and Cotton stated "well, you don't get what you don't ask for"; and (iv) Cotton orally agreed he was not entitled to a 10% equity interest in the CUP that is established by his Request for Confirmation and Geraci's Confirmation Email (the "Disavowment Allegation").

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[19] On January 14, 2013, the California Supreme Court overruled a longstanding precedent regarding the fraud exception to the parol evidence rule. In the 1935 case, *Bank of America Etc. Assn. v. Pendergrass* ("*Pendergrass*") 4 Cal.2d 258, the California Supreme Court declared inadmissible evidence of promissory fraud—a promise made without the intent to perform—made prior to and inconsistent with the subsequent written agreement. The court's unanimous decision in *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Association* ("*Riverisland*") (2013) 55 Cal.4th 1169, overruled *Pendergrass* and declared that the parol evidence rule does not bar evidence of promissory fraud that contradicts the terms of a writing. *Id.* at 1182 ("***[I]t was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud***.") (quotation omitted, emphasis added); *see IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 641 ***("[U]nder Pendergrass, external evidence of promises inconsistent with the express terms of a written contract were not admissible, even to establish fraud***.") (emphasis added).

189. The sole evidence that Geraci provided of the Disavowment Allegation were his phone records reflecting that Geraci and Cotton spoke on November 3, 2016.

190. The *Cotton I* court denied the Lis Pendens Motion finding the November Document appeared to be a contract without addressing the parol evidence and the issue of mutual assent.

191. Subsequent to the hearing, Cotton emailed Weinstein accusing him of fabricating the Disavowment Allegation, to which Weinstein responded as follows:

> First, our view is that the statute of frauds bars the [Confirmation Email] because it is parol evidence that is being offered to explicitly contradict the terms of the [November Document]. Mr. Geraci does not contend that his call to Mr. Cotton on November 3, 2016, resulted in an oral agreement between them that Mr. Cotton was not entitled to a 10% equity position. Rather, Mr. Geraci's position is that there was never an oral agreement between them that Mr. Cotton would receive a 10% equity position. Even assuming for the sake of argument that the [Confirmation Email] is not barred by the parol evidence rule and admissible, the telephone call the next day is parol evidence that Mr. Geraci never agreed to a 10% equity position and, therefore, it is consistent with the [November Document] and not barred by the statute of frauds.

192. First, the statute of frauds does not apply to the JVA.[20]

193. Second, pursuant to *Riverisland*, parol evidence is not barred to prove fraud.

194. Third, under California law as explained in *Stewart v. Preston Pipeline Inc.*, even assuming that Geraci's allegation of mistakenly sending the Confirmation Email were true, Geraci may not avoid the legal impact of sending the Confirmation Email on the ground that he failed to read the Request for Confirmation before signing it.[21]

195. Thus, even setting aside the illegality of Geraci's sanctions, there is no factual or legal

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

[21] "It is well established, in the absence of fraud, overreaching or excusable neglect, that one who signs an instrument may not avoid the impact of its terms on the ground that he failed to read the instrument before signing it. [¶] Plaintiff has cited no California cases (and we are aware of none) that stand for the extreme proposition that a party who fails to read a contract but nonetheless objectively manifests his assent by signing it—absent fraud or knowledge by the other contracting party of the alleged mistake—may later rescind the agreement on the basis that he did not agree to its terms. To the contrary, California authorities demonstrate that a contracting party is not entitled to relief from his or her alleged unilateral mistake under such circumstances." *Stewart v. Preston Pipeline Inc.*, 134 Cal. App. 4th 1565, 1588-89 (citations and quotations omitted).

probable cause for the filing of *Cotton I*.

G. Austin attempts to avoid service of process to allege she is not aware of the Geraci Judgments.

196. On August 8, 2018, Cotton appealed from the order denying the Lis Pendens Motion seeking to expunge the F&B Lis Pendens, which referenced the Geraci Judgments and the illegality of Geraci's ownership of a CUP.

197. On August 27, 2018, Cotton's then counsel and paralegal served Austin personally and as counsel for Magagna. Attached hereto as Exhibit 8 are the proofs of service describing Austin's actions attempting to avoid service and fully incorporated by this reference.

198. During discovery, Geraci asserted the attorney-client privilege as to communications between him and Austin.

H. The *Cotton I* trial and the Motion for New Trial.

199. In the years leading up to the trial of *Cotton I*, Cotton took numerous actions to seek to prevent Geraci from being able to process the Berry CUP Application at the Federal Property.

200. Cotton's actions included preventing Geraci from accessing the Federal Property for actions required to process the Berry CUP Application.

201. Cotton took such actions because in order for Geraci to limit his liability for filing *Cotton I*, Geraci needed to make it impossible for Cotton or any other party to acquire a CUP at the Federal Property. Thus, Geraci's consequential damages once his illegal actions are exposed, would not include the value of a CUP issued at the Federal property and such would limit his liability by millions of dollars and also serve to prevent third parties from seeking to help Cotton finance his litigation against Geraci.

202. Austin, Berry, Bartell, and Schweizer testified on Geraci's behalf at the trial of *Cotton I*.

203. At the trial of *Cotton I*, Judge Wohlfeil found that the CUP application would have been approved at the Federal Property but-for what he believed to be Cotton's unlawful interference with the processing of the application with the City: "I think, that it's more probable than not that a CUP had been issued and the dispensary opened…"

204. At the *Cotton I* trial, Austin testified: (i) she was not aware of the Geraci Judgments; (ii) she does not know why, or cannot remember why, Geraci used Berry as an agent for the Berry CUP

Application; and (iii) when presented with the Ownership Disclosure Statement, Austin was asked: "after reading that, why [did] it seem unnecessary to list Mr. Geraci?" Austin responded: "I don't know that it - - it was unnecessary or necessary. We just didn't do it."

205. At the trial of *Cotton I*, Berry's testimony alleged that while Geraci was not disclosed because he was an Enrolled Agent for the IRS, she was not aware that the City's CUP application forms required Geraci to be disclosed because she did not read them. Specifically, Berry testified: "I simply signed this. It was filled out by our team and I signed it. Trusting Mr. Geraci and the team."

206. During trial, Cotton moved for a directed verdict arguing BPC § 20657 *et seq.* bars Geraci's ownership of a CUP, which was summarily denied.

207. The *Cotton I* judgment found, *inter alia*, that Geraci "is not barred by law pursuant to California Business and Professions Code, Division 10 (Cannabis), Chapter 5 (Licensing), § 26057 (Denial of Application) from owning a Marijuana Outlet conditional use permit issued by the City of San Diego."

208. The $260,109.28 in damages awarded Geraci included legal fees for McElfresh's representation of Geraci in advancing the interests of the Berry CUP Application before the City.

209. After trial, Cotton filed a motion for new trial again arguing, *inter alia*, the illegality of the Proxy Practice, which Judge Wohlfeil denied finding the defense of illegality had been waived.

VI. THE MAGAGNA CUP APPLICATION WAS FILED TO PREVENT THE APPROVAL OF THE BERRY CUP APPLICATION AND LIMIT GERACI AND HIS COCONSPIRATORS LIABILITY ONCE THEIR UNLAWFUL ACTIONS WERE EXPOSED.

210. On or about March 14, 2018, Magagna submitted an application for a CUP at 6220 Federal Blvd. that is located within 1,000 feet of the Federal Property (the "Magagna CUP Application").

211. Prior to then, Williams had engaged Schweitzer on several CUP applications and was actively working with him on CUP applications at other real properties.

212. In or around November 2018, Schweitzer told Williams that the Magagna CUP Application would be approved and that he would have an ownership interest in the Federal CUP.

213. On or about October 18, 2018, the Magagna CUP Application was approved by the City.

214. Schweitzer is not listed as a party with an ownership interest in the Magagna CUP Application.

VII. DURING THE COURSE OF THE *COTTON I* LITIGATION, GERACI AND HIS AGENTS UNDERTOOK ACTS AND THREATS OF VIOLENCE AGAINST COTTON AND THIRD PARTIES SEEKING TO COERCE COTTON TO CEASE THE *COTTON I* LITIGATION.

A. Eulenthius Duane Alexander and Logan Stellmacher threaten Cotton on behalf of Geraci.

215. On or about February 3, 2018, Alexander and Stellmacher and a third-party went to the Federal Property purportedly to discuss business opportunities with Cotton.

216. However, when they arrived at the Federal Property, they only wanted to discuss the *Cotton I* litigation.

217. They made an offer to purchase the Federal Property stating they had reached an agreement with Geraci to take over the Berry CUP Application, offering to beat Martin's purchase price of $2,500,000, and promising Cotton a long-term job at the contemplated dispensary if Cotton could settle his litigation with Geraci.

218. Cotton declined, noting he was contractually unable to settle the litigation with Geraci in a manner that left Geraci the Federal Property because of his agreement with Martin.

219. Thereafter, Alexander and Stellmacher engaged in direct and indirect threats seeking to coerce Cotton to settle with Geraci.

220. Alexander made it a point to highlight that Geraci was a politically influential individual with the City and that the Berry CUP Application being approved was already a "done deal" for Geraci.

221. Stellmacher then directly threatened Cotton, stating that (i) Geraci's influence with the City extended to having the ability to have the San Diego Police Department raid the Federal Property and have Cotton arrested on fabricated charges and planted drugs and (ii) Geraci could have dangerous individuals visit the Federal Property implying they would cause bodily harm to Cotton.

222. Cotton refused the offer.

223. Thereafter, on numerous occasions, Stellmacher harassed Cotton.

224. On or about February 8, 2019, Stellmacher became aware that Cotton intended to file a federal lawsuit and describe Stellmacher's threats, and he went to the Federal Property and pleaded with Cotton to not name him as he had been arrested in Texas and was out on bail for illegally transporting cannabis.

B. Magagna attempts to bribe and threatens Young to prevent her from providing testimony against Geraci and his agents.

225. On or around October 2, 2017, Young visited the Federal Property and took a tour of 151 Farms. Young went to the Federal Property because she had heard about the property qualifying for a CUP and was looking for an investment opportunity.

226. Young was informed about the *Cotton I* litigation and was given a proposal to invest in the litigation as a means of acquiring an ownership interest in the Federal CUP.

227. Young had or did engage Bartell who worked on another CUP application at a different property.

228. Young spoke to her cannabis attorney, Shapiro, about the potential investment who told her that she should speak to Bartell.

229. Bartell told her not to invest in the *Cotton I* litigation because he "owned" the Berry CUP Application and he was getting it denied with the City because "everyone hates Darryl" (the "Bartell Statement").

230. Young did not invest in the *Cotton I* litigation.

231. Young was not aware that at the same time the Bartell Statement was made, Geraci was arguing before Judge Wohlfeil in *Cotton I* that Geraci was using his best efforts to have the Berry CUP Application approved, including through the political lobbying efforts of Bartell.

232. On or around May 27, 2018, Young met with Cotton and others to discuss a secured loan instead of litigation financing.

233. At the meeting, Young was informed by Cotton that he believed that Magagna was a co-conspirator of Geraci who was seeking to help Geraci mitigate his damages by having the Magagna CUP Application approved.

234. Young recognized Magagna and told Cotton that Shapiro was also Magagna's attorney and about the Bartell Statement.

235. However, Young stated her belief that Magagna was not a bad-faith actor and called him to speak about what was happening.

236. Young met with Magagna and explained Cotton's belief that he was a coconspirator of Geraci. To her surprise, Magagna did not deny the allegations, instead, he asked her to change her

statements and offered her a bribe for doing so. Young refused.

237. Despite her refusal, Magagna repeatedly requested that Young communicate with Cotton and tell him that she had "dreamed" the Bartell Statement.

238. Young continued to refuse and Magagna became increasingly physically and vocally aggressive with his demands until they parted, demanding Young not say anything about their conversation and to "keep him out of it."

C. Nguyen, Young's attorney, promises and fails to provide Young's testimony.

239. Nguyen and Austin both attended law school together at Thomas Jefferson School of Law in San Diego, California, and were both admitted to the California Bar in December 2006.

240. On January 1, 2019, Cotton subpoenaed Young to be deposed on January 18, 2019.

241. On January 16, 2019, Nguyen, representing Young, unilaterally cancelled the deposition of Young.

242. On January 21, 2019, Nguyen promised to provide Young's sworn testimony confirming, *inter alia*, the Bartell Statement and Magagna's attempts at bribing and threatening her.

243. On June 12, 2019, after having been put off for months by Nguyen, counsel for Cotton emailed Nguyen demanding she provide Young's promised testimony, to which Nguyen never responded.

244. On June 30, 2019, the day before the start of trial in *Cotton I*, Flores spoke with Young who said she had moved out of the City, could not be served, would not testify, and did not want anything to do with Cotton or *Cotton I*.

245. In January 2020, Flores spoke with Young and informed her that by failing to provide her promised testimony that he believed she was a coconspirator of Geraci and he intended to file suit against her.

246. Young broke down and said she had done nothing illegal and that it was Nguyen who had unilaterally decided not to provide her testimony after Young had already agreed to provide it.

247. Young stated that (i) Nguyen was referred to her by Shapiro, (ii) Shapiro paid Young's legal fees to Nguyen, (iii) Nguyen – in an email – told her that it was OK to "ignore" their obligation to provide Young's testimony because "it was too late for Cotton to do anything about it."

248. Thereafter, Young, having learned that Cotton intended to sue her for her failure to provide her promised testimony, emailed Cotton the email from Nguyen stating it was "too late" for Cotton to do anything about subpoenaing her for trial at *Cotton I*. Attached hereto at Exhibit 9 is a true and correct copy of that email.

D. Gash offers Young a job in Palm Springs, CA that prevents Cotton from subpoenaing Young for trial.

249. The job that Young received that was the catalyst for her moving out of the City, and being unable to be located to be served again for trial, was as a manager at a dispensary called Southern California Organic Treatment (SCOT) in Palm Springs, CA.

250. Public records reveal that Austin has or is counsel for SCOT.

251. Dave Gash and James Yamashita are, respectively, the CEO and CFO of SCOT.

252. Public records reveal that Gash (i) was sanctioned for unlicensed cannabis activities along with Ramistella and Yamashita; and (ii) was the property manager at the Balboa Property at which the Balboa CUP was issued.

253. Ramistella was a co-defendant and sanctioned with Geraci in the TreeClub Judgement for unlicensed commercial cannabis activities.

254. Based on the relationships between the parties, Plaintiffs believe and allege that the job offer to Young by Gash was made and intended to prevent Cotton from being able to locate and subpoena Young to testify at the trial of *Cotton I.*

E. Shawn Miller threatens Hurtado to coerce him to have Cotton settle the *Cotton I* litigation.

255. "Following a jury trial, defendant Shawn Joseph Miller was found guilty on two counts of committing wire fraud, in violation of 18 U.S.C.§ 1343, two counts of money laundering, in violation of 18 U.S.C.§ 1957, and one count of witness tampering, in violation of 18 U.S.C.§ 1512(b)(3)." *U.S. v. Miller*, 531 F.3d 340, 342 (6th Cir. 2008).

256. At a pretrial hearing, Miller's own attorney, fearing for his safety, requested that he be

relieved as counsel for Miller due to his violent nature.[22]

257. Subsequent to being released, Miller began working as a contract paralegal in the City.

258. In or around January 2018, Hurtado attempted to hire Miller as a contract paralegal for Cotton and his then counsel.

259. When Hurtado met Miller, he explained the *Cotton I* litigation and that Geraci was a "mafia like figure." Further that he was not a party to and did not want to be involved in the litigation because of the evidence of violence by Geraci and that he was concerned for the safety of his family, and he needed to do what was in their "best interest."

260. Thereafter, Miller stated that he knew Geraci.

261. Hurtado told him it would be a conflict of interest to hire Miller and requested Miller not inform Geraci about him. Miller agreed.

262. That same night, at approximately 10:00 p.m., Miller called Hurtado requesting that Hurtado use his influence with Cotton to persuade him to settle with Geraci because Geraci is really "not a bad guy" and that it would be in Hurtado's "best interest," which was a direct reference to their earlier conversation and Hurtado's concerns for the safety of his family.

263. The parties argued during which Hurtado accused Miller of threatening him on behalf of Geraci and hung up on Miller.

264. Thereafter, Miller repeatedly called, texted and harassed Hurtado under the guise of seeking to collect payment for work that he alleges he performed at Hurtado's request.

265. In *Cotton I,* Geraci responded to a special interrogatory as follows:

> **SPECIAL INTERROGATORY NO. 35:**
> Have YOU or YOUR AGENTS requested that Shawn Miller contact Joe Hurtado regarding any matter related to this litigation?
>
> **RESPONSE TO SPECIAL INTERROGATORY NO. 35**
> Not that I am aware. Moreover, I have never requested or authorized any person to do so.

266. Geraci's response allows for the possibility that if phone records and other evidence prove

[22] *Miller*, 531 F.3d 343 (Miller's attorney: "The Defendant and I just had a meeting, which deteriorated to a very violent nature…. I was hoping while he sat in jail he would come to his senses but obviously has not. He is hostile to me. I cannot under the ethical situation even sit at the same trial table with him. So I have all the evidence here that he needs. I can give it to him and let him represent himself.").

that Miller threatened and harassed Hurtado under the pretext of seeking to collect a debt, that Miller did so on behalf of Geraci but without Geraci's knowledge or consent.

VIII. AUSTIN INTERFERES WITH WILLIAMS ACQUISITION OF THE LEMON GROVE CUP AND WILLIAMS WITHDRAWS FROM THIS LAWSUIT AFTER BEING UNLAWFULLY CONTACTED BY AUSTIN.

267. Williams first retained Austin to be his attorney for cannabis related matters in or around February 2017.

268. In or around March 2017, Williams discussed with Austin his intent to purchase the Lemon Grove Property.

269. Austin represented to Williams that the Lemon Grove Property did not qualify for a CUP and that he should not purchase the Lemon Grove Property.

270. Subsequently, the Lemon Grove CUP was issued at the Lemon Grove Property.

271. The parties who acquired the Lemon Grove CUP at the Lemon Grove Property were represented by McElfresh.

272. Austin's representation to Williams that the Lemon Grove Property did not qualify for a CUP was false.

273. The original complaint in this action was filed on December 3, 2021.

274. On or around December 8, 2021, Austin contacted Williams despite knowing he was represented by counsel in violation of the Rules of Professional Responsibility.

275. Subsequently, Williams decided to withdraw from this suit.

IX. THE RELATED FEDERAL ACTIONS

276. There are two related actions in federal court by plaintiffs, one by Flores, Mrs. Sherlock, T.S., S.S. and, the second, by Cotton. Those actions are based on the Enterprise's unlawful actions violating plaintiffs Civil Rights related to the *Cotton I* action. Those actions sought to have, *inter alia*, the *Cotton I* judgment declared void due to, *inter alia*, the actions by Geraci and his agents that constitute a fraud on the Court. *See Kougasian v. TMSL, Inc.* (9th Cir. 2004) 359 F.3d 1136, 1141 ("It has long been the law that a plaintiff in federal court can seek to set aside a state court judgment obtained through extrinsic fraud.").

277. The actions do not seek to have the federal courts adjudicate the rights of plaintiffs to

personal or real property at issue in the state actions, the relief requested is limited to the violations of plaintiffs Civil Rights and seeking to have the *Cotton I* judgment declared void.

278. Motions to dismiss against Plaintiffs federal suit are pending. However, on October 22, 2021, the Federal Court issued its latest ruling in the Cotton matter finding that the *Rooker-Feldman* doctrine bars its review of the *Cotton I* judgment for illegality. (*See Cotton v. Bashant, et al.*, 18-CV-325 TWR (DEB), ECF No. 96 at 7:18-20 ("[Cotton's] claim is barred by the *Rooker-Feldman* doctrine.").

279. The necessity of having the *Cotton I* judgment declared void because of ALG's Proxy Practice must be addressed in State court.

ADDITIONAL FACTUAL ALLEGATIONS AND CAUSES OF ACTION

FIRST CAUSE OF ACTION – CONSPIRACY TO MONOPOLIZE IN VIOLATION OF THE CARTWRIGHT ACT (BUS. & PROF. CODE § 16700 *et seq.*)

(Plaintiffs v. Defendants)

280. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

281. "The purpose of the Cartwright Act is to protect and foster competition by preventing combinations and conspiracies which unreasonably restrain trade." *Morrison v. Viacom, Inc.*, 52 Cal. App. 4th 1514, 1524 (1997). The Cartwright Act prohibits trusts, which it defines as "combination[s] of capital, skill, or acts by two or more persons" for certain enumerated purposes, including "[t]o create or carry out restrictions in trade or commerce." BPC § 16720(a). A conspiracy to monopolize is within the Cartwright Act's definition of a trust as "a combination of capital, skill, or acts by two or more persons" to restrain trade. BPC § 16720. The California Supreme Court has emphasized that "agreements to establish or maintain a monopoly are restraints of trade made unlawful by the Cartwright Act." *In re Cipro Cases I & II*, 61 Cal. 4th 116, 148 (2015).

282. Defendants designed, implemented and/or ratified a combination and conspiracy with the specific intent to prevent competition and/or create a monopoly in the cannabis market in the City and County of San Diego in violation of the Cartwright Act.

283. Defendants committed overt acts and engaged in concerted action in furtherance of their

combination and conspiracy to restrain trade and monopolize, as described above, including but not limited to unlawfully applying for or acquiring CUPs through the use of proxies and/or forged documents, sham litigation,[23] and acts and threats of violence against competitors and/or parties who could threaten or expose their illegal actions in furtherance of the conspiracy.

284. As a direct and legal result of the unlawful actions of defendants, and each of them, Plaintiffs were injured in their business and/or property, all of which injuries have caused and continue to cause Plaintiffs' damage. Pursuant to BPC §16750(a), Plaintiffs are entitled to recover three (3) times the damages sustained by them, according to proof.

SECOND CAUSE OF ACTION– CONVERSION

(Mrs. Sherlock, T.S., and S.S. v. Lake, Harcourt, Prodigious and Allied)

285. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

286. The Sherlock Family had ownership interests in the Sherlock Property upon the death of Mr. Sherlock as his heirs.

287. After the death of Mr. Sherlock, Lake and Harcourt converted the Sherlock Property through documents that contained Mr. Sherlock's forged signature, including the Dissolution Form.

288. Conversion is a strict liability crime and holders of converted property, including bona fide purchasers, are liable for conversion and must return the property.

289. Prodigious and Allied, in which Malan holds an ownership interest, hold, respectively, the Balboa CUP and the Balboa Property, for which they are strictly liable.

290. The Sherlock Family is entitled to have their property returned to them.

THIRD CAUSE OF ACTION – CIVIL CONSPIRACY

(Mrs. Sherlock, T.S., and S.S. v. Lake and Harcourt)

291. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

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[23] The *Noerr-Pennington* doctrine and sham exception apply to the Cartwright Act. *See Blank v. Kirwan* (1985) 39 Cal. 3d 311, 320–322 (defendants' actions aimed at influencing city were protected from Cartwright Act claim by *Noerr-Pennington* doctrine); *Hi-Top Steel Corp. v. Lehrer*, 24 Cal. App. 4th 570, 579 (1994) ("we hold the sham exception to the *Noerr-Pennington* doctrine is applicable in California.").

292. Lake and Harcourt conspired to convert the Sherlock Family's interest in the Sherlock Property after the death of Mr. Sherlock through forged documents, including the Dissolution Form, as well as to conceal from them their causes of action to seek judicial redress for same.[24]

293. Shortly after Mr. Sherlock passed away, Lake knowingly and falsely represented to Mrs. Sherlock that Mr. Sherlock never acquired interests in the Balboa CUP.

294. Mrs. Sherlock trusted and relied on Lake's representations as he is her brother-in-law and was Mr. Sherlock's business partner.

295. Lake also falsely stated that he was the purchaser of the Balboa Property.

296. Mr. Sherlock's interest in the Balboa Property via his interest in LERE was converted by Harcourt when he transferred Balboa Property from LERE to Lake.

297. In or around March 2020, when Mrs. Sherlock confronted Lake with a handwriting expert report concluding that Mr. Sherlock's signature was forged on the Dissolution Form, Lake admitted to Mrs. Sherlock that he had converted the Mr. Sherlock's interest in the Balboa and Ramona CUPs after Mr. Sherlock's death.

298. As detailed above, Lake's reasoning for depriving the Sherlock Family of their interests in the CUPs included that Mr. Sherlock's contributions were "worthless," the Sherlock Family was not entitled to any compensation, and there was nothing Mrs. Sherlock could do about it because she lacked the financial resources to vindicate her rights.

299. Lake's statements to Mrs. Sherlock in or around February 2020, alleging Mr. Sherlock was in an extremely emotional state and executed the Dissolution Form, contradict his statements to investigative officers after the death of Mr. Sherlock in December 2015, were fabricated, and intended to cover-up his unlawful role in the sale of the Sherlock Property.

300. Harcourt's repeated refusal to explain how he purchased Mr. Sherlock's interests in the CUPs, but his communication of affirmative defenses in anticipation of litigation, evidence his knowing unlawful role in purchasing Mr. Sherlock's interests in the Balboa and Ramona CUPs.

301. In doing the things herein alleged, Lake and Harcourt acted purposefully with malice and oppression to deprive the Sherlock Family their rights to the Sherlock Property and prevent them from

[24] *See Ramey v. General Petroleum Corp.* (1959) 173 Cal. App. 2d 386, 403 (conspiracy to conceal and defeat plaintiff's common law action for damages).

seeking judicial redress for same. Lake and Harcourt's actions thereby warrant an assessment of punitive damages in an amount appropriate to punish them and deter others from engaging in similar misconduct pursuant to Civ. Code § 3294(c).

FOURTH CAUSE OF ACTION – DECLARATORY RELIEF

(Mrs. Sherlock, T.S., and S.S. v. Lake, Harcourt, Razuki, Malan, Prodigious and Allied)

302. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

303. The Sherlock Family dispute the claims of past and current ownership by Lake, Harcourt, Razuki, Malan, Prodigious and Allied to the Balboa Property and the Balboa CUP.

304. The Sherlock Family were unlawfully deprived of their interests in LERE (and thereby the Balboa Property) and the Balboa CUP.

305. The Balboa Property and the Balboa CUP were sold pursuant to a Court order based on the assumption that Lake/Harcourt had original lawful ownership of the assets and that they were lawfully acquired by Razuki/Malan.

306. As set forth above, Lake and Harcourt did not lawfully acquire Mr. Sherlock's ownership interests in LERE and the Balboa CUP. Further, Razuki and Malan's acquisition of the Balboa Property and the Balboa CUP pursuant to their illegal agreements also do not provide a lawful basis for their claims to the Balboa Property and the Balboa CUP.

307. Consequently, the Court ordered sale of the Balboa Property and the Balboa CUP is void as it is premised on the lawful ownership of the assets by Lake/Harcourt and Razuki/Malan.

308. The Sherlock Family desires a declaration that the transfers of Mr. Sherlock's interests in LERE and the Balboa CUP are void.

309. The Sherlock Family desires a declaration that the Oral and Partnership Agreements are illegal contracts are void and judicially unenforceable and, consequently, the Court ordered sale of the assets is void for unknowingly enforcing illegal contracts and converted property.

FIFTH CAUSE OF ACTION – UNFAIR COMPETITION LAW

(Cal. Bus. & Prof. Code § 17200 *ET SEQ.*)

(Plaintiffs v. Defendants)

310. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

311. The above-described acts and practices of Defendants and Does 1-100 in furtherance of the constitute unfair competition in that they are unlawful,[25] unfair,[26] and/or fraudulent business practices in violation of California's Unfair Competition Law ("UCL") codified at BPC § 17200 et seq.

312. As detailed above, the wrongful conduct of Defendants and Does 1 through 50, and each of them, as herein above alleged, seeking to prevent competition and ratification of acts seeking to prevent competition, in the cannabis market in the City and County of San Diego violate the Cartwright Act.

313. The filing of all documents with public offices effectuating the transfer of the Sherlock Property after the death of Mr. Sherlock are based on forged documents and violate Penal Code § 115.

314. ALG's Proxy Practice is illegal and violates numerous State and City laws, most notably, BPC §§ 19323 et seq. and 26057 et. seq.

315. The preparation, filing, and lobbying of CUP applications with the City by Malan, Berry, and Magagna, failing to disclose the ownership interests of, respectively, Razuki, Geraci, and Schweizer, violate BPC § 19323 et seq. and/or § 26057 et seq. and Penal Code § 115.

316. The filing and maintaining of the sham Cotton I action by Geraci, and F&B constitutes predatory and anticompetitive conduct that is unlawful and fraudulent.

317. Geraci and F&B's collusion to fabricate, present and testify as to the Disavowment Allegation, in response to Riverisland being raised in the Lis Pendens Motion, constitutes perjury (Pen. Code § 118) and subordination of perjury (Pen. Code § 127).

318. McElfresh's representation of Geraci in furtherance of the Berry CUP Application before

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[25] "The 'unlawful' practices prohibited by … section 17200 are any practices forbidden by law, be it civil or criminal, federal, state, or municipal, statutory, regulatory, or court-made. … As [the] Supreme Court put it, section 17200 'borrows' violations of other laws and treats them as unlawful practices independently actionable under section 17200 *et seq*." *South Bay Chevrolet v. General Motors Acceptance Corp.* (1999) 72 Cal.App.4th 861, 880–881 (cleaned up).

[26] The definition of "unfair" includes "[k]nowingly filing or pursuing unmeritorious legal actions that are not factually or legally tenable, for the purpose of earning income, qualifies as an unfair business practice." *Golden State Seafood, Inc. v. Schloss*, 53 Cal. App. 5th 21, 40 (2020).

the City violated her fiduciary duties to Cotton as her former client,[27] the terms of her DPA as she knew Geraci could not lawfully own a CUP via the Berry CUP Application pursuant to BPC § 19323 et seq., and Penal Code § 115.

319. Nguyen's failure to provide Young's testimony violates her professional responsibilities as an officer of the court as well as Cal. Pen. Code § 136 (preventing a witness from testifying).

320. The threats of violence by Alexander and Stellmacher against Cotton as agents of Geraci seeking to prevent him from continuing with litigation against Geraci constitute obstruction of justice pursuant to Pen. Code § 182(a)(5).

321. The threats of violence and harassment by Miller against Hurtado as an agent of Geraci seeking to have him cease his support of Cotton's litigation against Geraci constitutes obstruction of justice pursuant to Pen. Code § 182(a)(5).

322. The attempted bribery and threats by Magagna against Young violate Cal. Pen. Code § 136.1(d) and § 182(a)(5).

323. Plaintiffs are entitled to relief, including full restitution and/or disgorgement of all revenues, earnings, profits, compensation and benefits, such other monetary relief as the court deems just in light of the ill-gotten gains obtained by Defendants as a result of such business acts or practices, and an injunction prohibiting Defendants from engaging in the practices described herein.

SIXTH CAUSE OF ACTION – DECLARATORY RELIEF

(Flores v. Geraci)

324. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

325. Flores seeks to have the *Cotton I* judgment declared void for, *inter alia*, enforcing an illegal contract and being the product of a fraud on the court.

326. The Courts have "define[d] a judgment that is void for excess of jurisdiction to include a

[27] "Few precepts are more firmly entrenched than that the fiduciary relationship between attorney and client is of the very highest character and, even though terminated, forbids (1) any act which will injure the former client in matters involving such former representation or (2) use against the former client of any information acquired during such relationship." *Yorn v. Superior Court*, 90 Cal. App. 3d 669, 675 (1979) (citations omitted).

judgment that grants relief which the law declares shall not be granted."[28]

327. Geraci was sanctioned by the City in the CCSquared Judgment on June 17, 2015.

328. As in effect in October and November 2016 when the Berry CUP Application was submitted and the November Document executed, BPC § 19323(a),(b)(7) provided that a "licensing authority shall deny an application if the applicant has been sanctioned by a city for unlicensed commercial cannabis activities in the three years immediately preceding the date the application is filed with the licensing authority." BPC § 19323(a),(b)(7) (cleaned up; emphasis added).

329. The *Cotton I* judgment is therefore void because it grants relief to Geraci that the law declares shall not be granted.

330. Flores' causes of action asserted herein relating to their interests in the Federal Property and the Federal CUP are based on their contention that the November Document is not a lawful contract because it lacks mutual assent and a lawful object.

331. An actual controversy has arisen and now exists between Flores and Geraci in that Geraci contends the *Cotton I* judgment is not a void judgment.

332. A declaration finding the *Cotton I* judgment is void is necessary and appropriate at this time so that the rights, duties and obligations of these parties may be ascertained without reliance upon a void judgment that has no legal effect and cannot give rise to any rights in this action.

SEVENTH CAUSE OF ACTION – CIVIL CONSPIRACY

(Plaintiffs v. Defendants)

333. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

334. Defendants Lake and Harcourt unlawfully transferred the Sherlock Property from Mr. Sherlock thereby depriving the Sherlock Family of their interest in the Sherlock Property.

335. As set forth above, the remaining defendants took or ratified acts in furtherance of the Antitrust Conspiracy.

336. Irrespective of whether Lake and Harcourt are principals or agents of the Enterprise, all defendants are joint tortfeasors whose actions have damaged Plaintiffs.

[28] *311 S. Spring St. Co. v. Dep't of Gen. Servs.*, 178 Cal. App. 4th 1009, 1018 (2009).

337. In doing the things herein alleged, defendants have acted with malice, oppression, and fraud in conscious disregard of Plaintiffs' rights, thereby warranting an assessment of punitive damages in an amount appropriate to punish Defendants and deter others from engaging in similar misconduct.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that the Court grant the following relief:

1. Pursuant to Government Code § 12261, that the Court order the reinstatement of LERE.

2. For compensatory, general, consequential, and incidental damages and prejudgment interest in an amount to be proven at trial, as permitted by law.

3. An award of statutory damages, as permitted by law.

4. An award of punitive and exemplary damages, as permitted by law.

5. Reasonable attorneys' fees and costs, as permitted by law.

6. A declaration that ALG's Proxy Practice is an unlawful business practice.

7. For a temporary restraining order, preliminary injunction, and permanent injunction enjoining ALG from continuing with the Proxy Practice.

8. For a temporary restraining order, preliminary injunction, and permanent injunction enjoining the transfer of the Sherlock Property.

9. For a temporary restraining order, preliminary injunction, and permanent injunction enjoining Magagna from selling and/or transferring interests in the Federal CUP pending resolution of this action.

10. Any other injunctive relief as required to effectuate the relief requested herein.

11. Any such other and further relief as the Court deems fair, equitable, and just.

Dated: December 22, 2021

Law Offices of Andrew Flores

By /s/ Andrew Flores

Plaintiff *In Propria Persona*, and
Attorney for Plaintiffs
AMY SHERLOCK, and Minors T.S. and
S.S.

EXHIBIT 1

LLC-4/7	**Certificate of Cancellation of a Limited Liability Company (LLC)**

To cancel the Articles of Organization of a California LLC, or the Certificate of Registration of a registered foreign LLC, you can fill out this form, and submit for filing.

- There is no filing fee, however, a non-refundable **$15** service fee must be included, if you **drop off** the completed form.
- To file this form, the status of your LLC must be active on the records of the California Secretary of State. To check the status of the LLC, go to kepler.sos.ca.gov.

Important! California LLCs only: This form must be filed after or together with a Certificate of Dissolution (Form LLC-3). However, if the vote to dissolve was made by all of the members and that fact is noted in Item 4 below, Form LLC-3 is not required.

Note: *Before submitting the completed form*, you should consult with a private attorney for advice about your specific business needs. It is recommended for proof of submittal that if this form is mailed, it be sent by Certified Mail with Return Receipt Requested.

FILED ICW
Secretary of State
State of California
DEC 21 2015 0PO

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This Space For Office Use Only

For questions about this form, go to *www.sos.ca.gov/business-programs/business-entities/filing-tips.*

① **LLC's Exact Name in CA** (on file with CA Secretary of State)
Leading Edge Real Estate, LLC

② **LLC File No.** (issued by CA Secretary of State)
201511910148

Tax Liability (The following statement should not be altered. For information about final tax returns, go to https://www.ftb.ca.gov or call the California Franchise Tax Board at (800) 852-5711 (from within the U.S.) or (916) 845-6500 (from outside the U.S.).)

③ All final returns required under the California Revenue and Taxation Code have been or will be filed with the California Franchise Tax Board.

Dissolution (California LLCs ONLY: Check the box if the vote to dissolve was made by the vote of all the members.)

④ ☑ The dissolution was made by the vote of all of the members.

Additional Information (If any, list any other information the persons filing this form determine to include.)

⑤ _____

_____

Cancellation (The following statement should not be altered.)

⑥ Upon the effective date of this Certificate of Cancellation, this LLC's Articles of Organization (CA LLCs) or Certificate of Registration (registered foreign LLCs) will be cancelled and its powers, rights and privileges will cease in California.

Read and sign below: For California LLCs: This form must be signed by a majority of the managers, unless the LLC has had no members for 90 consecutive days, in which case the form must be signed by the person(s) authorized to wind up the LLC's affairs. For registered foreign LLCs: This form must be signed by a person authorized to so do under the laws of the foreign jurisdiction. If the signing person is a trust or another entity, go to www.sos.ca.gov/business-programs/business-entities/filing-tips for more information. If you need more space, attach extra pages that are 1-sided and on standard letter-sized paper (8 1/2" x 11"). All attachments are part of this document.

Sign here	Michael Sherlock *Print your name here*	Manager *Your business title*
Sign here	Bradford Harcourt *Print your name here*	Manager *Your business title*

Make check/money order payable to: **Secretary of State**

To get a copy of the filed document, include a separate request and payment for copy fees when the document is submitted. Copy fees are $1 for the first page and $.50 for each additional page. For certified copies, there is an additional $5 certification fee, per copy.

By Mail
Secretary of State
Business Entities, P.O. Box 944228
Sacramento, CA 94244-2280

Drop-Off
Secretary of State
1500 11th Street., 3rd Floor
Sacramento, CA 95814

EXHIBIT 2

From: Andrew flores
To: Evan P. Schube
Subject: FW: Sherlock -Harcourt Leading Edge Real Estate
Date: Tuesday, March 23, 2021 2:32:00 PM
Attachments: image001.png
image003.png

Hello Evan,

Please see the email chain between myself and Mr. Claybon, Harcourts attorney. I will be forwarding you some other materials shortly.

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego, CA 92101
P. (619) 356-1556
F. (619) 274-8053
andrew@floreslegal. com

From: Allan Claybon <aclaybon@messner.com>
Sent: Monday, March 9, 2020 1:41 PM
To: Andrew flores <andrew@floreslegal.pro>
Cc: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

SETTLEMENT COMMUNICATION PURSUANT TO FRE 408; CAL. EVID. CODE § 1152:

Mr. Flores,

I have had further discussion with my client. Without admitting any to any of the concerns that you have raised, he is hopeful an exchange of information would lead to a greater understanding of the related occurrences and will attempt to provide some further information. Please be specific as to what information you are seeking so that we can try to minimize any further back and forth.

To that end, it would not be productive for either side of this dispute to continue to issue threats or to be dismissive of each other's position. Escalation over email or on the phone will not advance either sides' causes.

With respect to your citation to Stevens, the case does not support any means for Ms. Sherlock to assert a claim against me, my firm or Mr. Harcourt for a violation of the Civil Rights Act ("CRA"). As stated previously, my firm did not represent Mr. Harcourt during the time period in which the alleged acts which allegedly deprived Ms. Sherlock of any property interest occurred. Regardless, the plaintiffs in Stevens were able to assert violations of the CRA as they were recognized as a protected political class. A violation of the CRA requires proof of "class-based, invidiously discriminatory animus." Ms. Sherlock has not faced discrimination based upon membership in a protected class. Therefore, she cannot assert claim for a violation under the CRA or any conspiracy to commit a violation of the CRA.

My client is willing to discuss the information requested after taking time to gather evidence. We can discuss soon when and how this can take place. Please let me know if you have questions.

Allan B. Claybon
Attorney

Messner Reeves LLP
10866 Wilshire Boulevard | Suite 800
Los Angeles CA 90024
424 276 6214 *direct* | 310 909 7440 *main*
310 889 0896 *fax*
aclaybon@messner.com
messner.com

From: Andrew flores <andrew@floreslegal.pro>
Sent: Wednesday, March 4, 2020 7:14 PM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Claybon,

Mrs. Sherlock demanded to know Mr. Harcourt's explanation for how he ended up owning 100% of the Balboa CUP after evidence was discovered that Mrs. Sherlock was unlawfully deprived of her interest in the Balboa CUP as Mr. Sherlock's heir (as fully described below). That demand is not unreasonable. It takes no effort for Mr. Harcourt to respond with a simple statement as to whether he purchased Mr. Sherlock's interest or Mr. Harcourt disavowed his interest in the Balboa CUP for some reason. Your feigned ignorance of the simplicity of this issue is apparent and your refusal to provide an explanation is unreasonable.

I am writing to make two points. First, as I noted, I went to the City and the documents that Mr. Harcourt references in his complaint pursuant to which the City transferred him sole ownership of the Balboa CUP are not in the City's file. Thus, your allegation that you "believe" the documents are "publicly accessible" has no factual basis. I have exercised due diligence and have not come across any such documents, if you know where they are publicly available, please let me know.

Second, as noted, your description of Mrs. Sherlock's demand based on the facts and arguments set forth below as "unreasonable" lacks probable cause. Even if Mr. Harcourt is not responsible for forging Mr. Harcourt's signature or engaged in unlawful conduct, that does not explain why he is refusing to provide a simple explanation given the facts. In my professional opinion, you have crossed the line from zealous advocacy of your client to being a co-conspirator of Mr. Harcourt seeking to defraud Mrs. Sherlock. *See Stevens v. Rifkin*, 608 F. Supp. 710, 730 (N.D. Cal. 1984) ("Though there appears to be no clear rule of immunity with respect to the liability under the civil rights laws of attorneys who violate the civil rights of others while representing their clients, cases under the Civil Rights Act indicate that the attorney may be held liable for damages if, on behalf of the client, the attorney takes actions that he or she knows, or reasonably should have known, would violate the clearly established constitutional or statutory rights of another.") (citing *Buller v. Buechler*,706 F.2d 844, 852-853 (8th Cir. 1983).

Based on the language in *Stevens*, I will be forced to protect Mrs. Sherlock's rights by filing suit against your personally and your firm as co-conspirators of Mr. Harcourt. And we will let a Court determine which one of us is unreasonable in light of our positions described below. Please consider this notice of my intent to file suit and a TRO against, *inter alia*, Mr. Harcourt, you, and your firm for conspiring to defraud Mrs. Sherlock of her interest in the Balboa CUP.

If you have any case law that contradicts *Stevens* and which allows you to unilaterally ignore Mrs. Sherlock's demand, particularly as the core basis of this suit is the belief that Mr. Harcourt fabricated documents and your refusal is potentially allowing him time to fabricate additional evidence to legitimize the transfer, please provide it and I will reconsider my position in light of any such authority.

Sincerely,

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego CA 92101
P. (619) 356-1556
F.(619) 274-8053

THE LAW OFFICE OF
ANDREW FLORES

From: Allan Claybon <aclaybon@messner.com>
Sent: Tuesday, March 3, 2020 4:42 PM
To: Andrew flores <andrew@floreslegal.pro>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Flores,

While I am disappointed in such a statement, I will be brief since you do not want to "engage in more phone calls or emails back and forth." I have been forthright and cordial in our communications hoping to find a resolution between the sides. A resolution should still be possible, but your emails are not pointing us in a productive direction.

On behalf of Mr. Harcourt, we are declining to produce documents based upon your demands. These requests are unreasonable for a number of reasons, not the least of which is a 24-hour deadline to produce evidence *to your satisfaction* regarding events occurring in or around 2015. Furthermore, many of the documents that we believe you are seeking are publicly accessible. There is no compulsion by law for Mr. Harcourt to produce documents to you on demand.

As you do not want to "more phone calls or emails back and forth" we also decline to go point-by-point regarding the significant misstatements of law and facts that appear throughout your latest emails. We are in disagreement with most of what you have said and each allegation contained therein. Without seeing any formalized complaint or other pleading, we are still unsure of your exact claims.

This email is sent based upon your 3/3/20 deadline. I am open to further discussion if you choose to reach out. Thank you.

Allan B. Claybon
Attorney

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10866 Wilshire Boulevard | Suite 800
Los Angeles CA 90024
424 276 6214 *direct* | 310 909 7440 *main*
310 889 0896 *fax*
aclaybon@messner.com
messner.com

From: Andrew flores <andrew@floreslegal.pro>
Sent: Monday, March 2, 2020 4:26 PM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Hello Mr. Claybon,

I spoke with Mrs. Sherlock today who reviewed Mr. Harcourt's complaint. Also, relatedly, I personally went to DSD and requested to view the file for the Balboa CUP before I even initially contacted you.

Mr. Harcourt's complaint alleges: "After Sherlock passed away in or around December 2015 HARCOURT submitted documentation to the City of San Diego in order to remove, Sherlock as the MMCC's responsible person, and HARCOURT then finalized the recording of the CUP with the City of San Diego und SDPCC." Nowhere in the City file for the Balboa CUP are there any documents that are described or that could be those referenced in Mr. Harcourt's complaint.

Please consider this a demand that you produce (i) the documents referenced in the Complaint and (ii) Mr. Harcourt's plain statement as to whether he is alleging he purchased Mr. Sherlock's interest or he is purporting that Mr. Sherlock disavowed any interest in the CUP for whatever reason (in anticipation of expensive litigation or otherwise).

Please note that Mrs. Sherlock never gave any authority to any party to negotiate on her behalf and any such alleged agency would have needed to be memorialized in writing to satisfy the statute of frauds. Please note that if you fail to produce those documents and/or Mr. Harcourt's explanation by 5:00 p.m. tomorrow, please consider this notice of our intent to file suit and an ex parte TRO seeking the court to order Mr. Harcourt to immediately set forth his purported reasons for how he ended up owning 100% of the Balboa CUP (before he is given more time to potentially fabricate additional evidence).

Lastly, so that there is no ambiguity between us, I have been cordial and civil in seeking to attempt to understand Mr. Harcourt's position. But, I find your description of my view of the facts as "speculation" and your description of me as being "jaded," for not taking Mr. Harcourt at his word, as unreasonable and personally offensive – we will let a judge determine whether the facts and positions taken by Mr. Harcourt below constitute probable cause. If you are correct, then feel free to bring a motion to dismiss and for Rule 11 sanctions for filing what you are de facto accusing me of – filing a frivolous lawsuit. As noted below, these communications are not privileged and will be used as an Exhibit in the complaint against Mr. Harcourt.

I stress the preceding because I do not have the time, or the desire, to engage in more phone calls or emails back and forth with you arguing over whether the facts below are speculation or probable cause. Please provide the requested facts by 5:00 tomorrow.

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego CA 92101
P. (619) 356-1556
F.(619) 274-8053

From: Allan Claybon <aclaybon@messner.com>
Sent: Friday, February 28, 2020 4:45 PM
To: Andrew flores <andrew@floreslegal.pro>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Flores,

I am acknowledging receipt of your email. As it almost exclusively consists of your current allegations regarding this matter, I will just say that I disagree with your points but will await for your follow-up after consulting with Ms. Sherlock. Thank you and have a good weekend.

Allan B. Claybon
Attorney

Messner Reeves LLP
10866 Wilshire Boulevard | Suite 800
Los Angeles CA 90024
424 276 6214 *direct* | 310 909 7440 *main*
310 889 0896 *fax*
aclaybon@messner.com
messner.com

From: Andrew flores <andrew@floreslegal.pro>
Sent: Thursday, February 27, 2020 7:36 PM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Claybon,

Thank you for your note. So that there is no confusion regarding our respective positions in our conversation today, please let me know if the following accurately summarizes our top three points of contention. Please respond if I have misunderstood or not accurately described our positions and I apologize ahead of time if I have. It was not purposeful.

First, setting other arguments aside, you believe that statute of limitations has tolled for a fraud cause of action. I rely on the following case language to argue that it has not: “It has long been established that the defendant's fraud in concealing a cause of action against him tolls the applicable statute of limitations, but only for that period during which the claim is

undiscovered by plaintiff or until such time as plaintiff, by the exercise of reasonable diligence, should have discovered it. Like the discovery rule, the rule of fraudulent concealment is an equitable principle designed to effect substantial justice between the parties; its rationale is that the culpable defendant should be estopped from profiting by his own wrong to the extent that it hindered an `otherwise diligent' plaintiff in discovering his cause of action." *Bernson v. Browning-Ferris Industries*, 7 Cal.4th 926, 931 (Cal. 1994) (quotations omitted). Mrs. Sherlock was not made aware of the forged signature until this month.

Which segues into your next, second, position, that the testimony of Mr. Harcourt and Mrs. Sherlock's brother-in-law establishes as a "fact" that Mr. Sherlock's signature was not forged. Thus there is no fraud. However, my position is that their testimony - that they allegedly saw Mr. Sherlock execute the form dissolving the LLC (and other documents) the day before his death - does not conclusively establish as a matter of law that Mr. Sherlock did in fact execute those documents and there is no fraud. As noted, I believe this is a non sequitur because it presupposes that Mr. Harcourt and Mrs. Sherlock's brother-in-law did not engage in fraud when that is the allegation to be determined. I believe it is self-evident that, *if there was fraud*, both Mr. Harcourt and Mrs. Sherlock's brother-in-law are currently benefiting from the fraud, which makes their testimony at the very least suspect and does not establish their alleged testimony as "facts" as you argue. (I realize you believe my position to be, as you described it, "jaded," but I hope you can appreciate that fraudulent self-serving testimony is a staple of my primary criminal defense practice and have seen such ignored by juries on many occasions, even to my clients' detriment.)

Given the evidence in opposition, I believe whether there was fraudulent action is a triable issue of fact. Specifically, because in opposition there is, *inter alia*, (i) the testimony of Mrs. Sherlock that Mr. Sherlock would "never" have signed away his interests in any CUPs without consideration as he had used their family savings to finance the acquisition of same; (ii) Mrs. Sherlock's testimony that she does not believe that it is Mr. Sherlock's signature; (iii) at least as of our conversation today, which took place after you spoke with Mr. Harcourt, there is no allegation or evidence of any documentation regarding any transfer of Mr. Sherlock's interests in the CUPs for any consideration; (iv) the handwriting expert who with a high degree of certitude provided his report that in his professional opinion the signature was forged; and (v) that though Mr. Sherlock allegedly signed various forms the day before he committed suicide, they were submitted to the state at different points in time and show different time stamps.

Third, and last, setting aside other arguments, you raised the position that Mrs. Sherlock failed to exercise reasonable diligence by not checking the state's public records. My position on this is that while Mrs. Sherlock knew that Mr. Sherlock had used their family's savings to pay for the application and processing of the CUPs, she did not know that it had been issued to Mr. Sherlock and Mr. Harcourt or that Mr. Sherlock allegedly agreed to disavow or transfer his interest in the CUP to Mr. Harcourt. Further, being practical, Mrs. Sherlock was a stay-at-home mother of two children who was faced with a horrible situation and was, and is, deeply financially challenged in the aftermath of her husband's passing away. This is not litigation hyperbole. Frankly, I am attempting to see things from your perspective, but I can't think of any line of reasoning or legal principle that would lead to the conclusion that Mrs. Sherlock's failure to review the state's public records means she failed to exercise "reasonable diligence" and therefore she has waived a fraud claim that, if true, has subjected her to severe emotional and financial distress.

Materially, Mrs. Sherlock's brother-in-law noted there was a lawsuit seeking to null the CUP, and Mr. Sherlock had no funds to finance an opposition to that lawsuit, thus he "signed away" the CUP. However, with my understanding of the cannabis CUP market, this by itself is not reasonable. As Mr. Harcourt himself alleges in his complaint against Mr. Razuki, the CUP by itself is worth $1,500,000. Thus, Mr. Sherlock could have sold his interest in the CUP for some amount to recoup some of his investment up to that point.

Lastly, though admittedly circumstantial, Mrs. Sherlock said that her brother-in-law

was literally crying yesterday while he was apologizing for not ever, in the preceding four plus years, informing her that he had allegedly seen Mr. Sherlock execute the form the day before his death. He also emphatically requested that she not pursue any litigation. I personally find this militates against taking Mrs. Sherlock's brother-in-law at his word and provides probable cause to believe that he ***may*** have engaged in some fraudulent conduct. Obviously, Mrs. Sherlock does not desire to have a family feud and does not want her brother-in-law involved in litigation and he will not be named in ***her*** suit.

Again, as discussed, I sincerely hope that we can reach resolution with Mr. Harcourt and Mrs. Sherlock, because, even assuming the evidence could lead a jury to find that Mr. Harcourt more-likely-than-not engaged in unlawful behavior, I am not after Mr. Harcourt. I met Mrs. Sherlock via a third-party that was also defrauded by James Bartell and the group of individuals he works with to defraud other parties of their cannabis CUPs (this is in addition to me as the successor-in-interest to an individual who was defrauded by Mr. Bartell and his group).

Lastly, I want to be completely forthright, I respect Mrs. Sherlock and will fulfill my fiduciary duties regarding ***her*** representation. However, I had already focused on Mr. Harcourt as a ***possible*** bad-faith actor that ***potentially*** worked in concert with Mr. Bartell's criminal organization to defraud his own partner, Mr. Sherlock. This is how they operate and Mr. Harcourt's situation is not the second or even third instance in which Mr. Bartell's group have facilitated an intra-partner dispute and then subsequently ended up owning the disputed CUP. In regards to Mr. Harcourt, if such can be proven to be probably true, such is evidence of my allegation that Mr. Bartell works for a group of individuals who have conspired and taken steps to create a monopoly in the cannabis market in the City of San Diego in violation of antitrust laws.

I am being straightforward about this because even if, for example, Mrs. Sherlock's brother-in-law and sister convince her to forgo any litigation, that does not automatically mean that I will not file suit against Mr. Harcourt. I could do so on the theory that the alleged fraudulent actions he took against Mr. Sherlock were in furtherance of the antitrust conspiracy; and that is even if he only took one unlawful action and thereafter had a falling out with his co-conspirators. *Mox, Inc. v. Woods*, 202 Cal. 675, 678 (1927) ("The advantage gained in charging a conspiracy is that the act of one during the conspiracy is the act of all if done in furtherance thereof, and thus defendants may be held liable who in fact committed no overt act whatsoever and gained no benefit therefrom."); *De Vries v. Brumback*, 53 Cal. 2d 643, 650 (1960) ("In tort 'the major significance of the conspiracy lies in the fact that it renders each participant in the wrongful act responsible as a joint tortfeasor for all damages ensuing from the wrong, irrespective of whether or not he was a direct actor and regardless of the degree of his activity.'") (quoting *Mox Inc.,* 202 Cal. at 677); *Roth v. Rhodes*, 25 Cal. App. 4th 530, 544 (1994) (joint and several liability rule of conspiracy applies to antitrust claims brought under Cartwright Act).

Please let me know if our conversation as described above is not accurate and, also, what Mr. Harcourt's explanation is for the alleged disavowment/transfer of the CUP from Mr. Sherlock.

With all this said, I have placed a call to Mrs. Sherlock so we can discuss what terms would be acceptable if she would like to put to rest any dispute with Mr. Harcourt. As soon as I speak with Mrs. Sherlock I will follow up with you.

Sincerely,

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego CA 92101
P. (619) 356-1556

F.(619) 274-8053

From: Allan Claybon <aclaybon@messner.com>
Sent: Thursday, February 27, 2020 3:04 PM
To: Andrew flores <andrew@floreslegal.pro>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Flores,

Thank you for speaking with me by phone today. Per our conversation, please let me know the information your client seeks from my client at this time. We can continue our conversation after we discuss more specific items.

Allan B. Claybon
Attorney

Messner Reeves LLP
10866 Wilshire Boulevard | Suite 800
Los Angeles CA 90024
424 276 6214 *direct* | 310 909 7440 *main*
310 889 0896 *fax*
aclaybon@messner.com
messner.com

From: Andrew flores <andrew@floreslegal.pro>
Sent: Wednesday, February 26, 2020 11:09 AM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Claybon,

I reached out to you in good faith with facts that provided probable cause to believe that your client may have been involved in illegal action. Materially, that Mr. Sherlock and Mr. Harcourt were granted a cannabis CUP via an LLC in mid-2015; Mr. Sherlock allegedly committed suicide on December 3, 2015; and then approximately three weeks later a form is submitted with the state dissolving the LLC that ultimately led to Mr. Harcourt being the sole owner of the CUP. However, Mrs. Sherlock is positive that Mr. Sherlock's signature was forged, a position supported by a

handwriting expert's analysis that I provided you. Those are facts. The inference that Mr. Harcourt may have taken unlawful action to deprive Mrs. Sherlock of her interest in the CUP is a reasonable one. During our phone call, you agreed that the circumstances are "certainly suspicious."

Had you touched base with your client and found out that there was a purchase agreement and proof of payment for a transfer of Mr. Sherlock's interest to Mr. Harcourt, that would have made sense and been credible. Instead, in your reply, your position changed and you describe the reasonable inferences as "speculation" and you allege that you do not see how they can support a claim. Your response evidences how you intend to manage this dispute; there is no need for a telephone call and we can let a court determine whether these facts constitute probable cause.

Please note that your reference to a phone call for "settlement" purposes does not make these emails privileged or confidential. I can and will use these emails to show that Mr. Harcourt was not able to provide any facts for how he ended up being the sole beneficiary of the cannabis CUP as a result of what appears to be a forged signature of Mr. Sherlock, as supported by the facts and evidence I have provided to you.

Please note that even if I do not file on behalf of Mrs. Sherlock., I may still file on my own behalf against Mr. Harcourt as a member of a conspiracy that has unlawfully deprived numerous individuals of cannabis CUPs, including through the use of unethical attorneys who file frivolous litigation. That Mr. Harcourt is now in litigation with Mr. Razuki/Mr. Malan is no different than the dispute between those two as well. Criminals fighting over ill-gotten gains.

Again, if you have any evidence other than self-serving oral testimony by individuals who benefit from the current status quo, please let me know by 5:00 p.m. tomorrow, Thursday, February 27, 2020.

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego CA 92101
P. (619) 356-1556
F.(619) 274-8053

From: Allan Claybon <aclaybon@messner.com>
Sent: Tuesday, February 25, 2020 5:33 PM

To: Andrew flores <andrew@floreslegal.pro>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Flores,

Please let me know if we can schedule a telephone call tomorrow to discuss. Mr. Harcourt unequivocally denies each of the allegations against him. With all due respect, these theories and allegations are based upon speculation. I cannot see how any of them support an actionable claim against Mr. Harcourt. But I am willing to have a conversation to guide some understanding on these issues. Let me know of a time that you are available. Our conversation will be for settlement purposes only. Thank you.

Allan B. Claybon
Attorney

Messner Reeves LLP
10866 Wilshire Boulevard | Suite 800
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424 276 6214 *direct* | 310 909 7440 *main*
310 889 0896 *fax*
aclaybon@messner.com
messner.com

From: Andrew flores <andrew@floreslegal.pro>
Sent: Tuesday, February 25, 2020 1:38 PM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Apologies, pressed sent by accident, please see below for complete email.

Andrew Flores
Attorney at Law
7880 Broadway
Lemon Grove, CA 91945
P. (619) 356-1556
F.(619) 274-8053

From: Andrew flores

Sent: Tuesday, February 25, 2020 1:27 PM
To: aclaybon@messner.com
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Claybon,

I am following up on my message I just left seeking to touch base on your client's reasons, if any, regarding the below. I have discovered additional evidence of bad faith – Mr. Jim Bartell (an influential political lobbyist in San Diego) who is involved in other fraudulent acts related to cannabis CUPs was also part of the Sherlock/Harcourt CUP process. As it stands now, there is evidence to support the argument that your client was working with, among others, Mr. Bartell and Mr. Razuki to defraud Mr. Sherlock of the CUP.

To be blunt, as matters stand, it appears that Mr. Harcourt, as the beneficiary, forged Mr. Sherlock's signature to acquire the CUP. Then, he in turn was defrauded by Mr. Razuki/Mr. Malan. Thereafter, there was a falling out between Mr. Harcourt and Mr. Razuki/Mr. Malan, exactly as there was a subsequent falling out between Mr. Malan and Mr. Razuki, with everyone fighting over the CUP but not addressing the fact that the CUPs were acquired unlawfully. First by Mr. Harcourt and then by Mr. Malan who admits that he had Mr. Razuki acquire the CUP but not disclose him as the true owner of the CUP – in direct violation of City and State laws. See San Diego Municipal Code section 11.0402 and Cal. Bus. and Pro. Code section 26057 *et seq.*

Alternatively, if your client got in over his head, it is doubtful he is aware of the criminal acts taken by the organization Mr. Bartell is part of, then our side would be willing to reach an agreement with Mr. Harcourt. Please let us know if such is the case and an option and we can discuss.

I realize that a few days is not a lot of time, on the other hand, if there is a reasonable, credible and legal reason that can explain how Mr. Harcourt ended up with the CUP as a result of a forged signature, your client should be able to readily explain such. With that said, if I do not hear from you by 5:00 p.m. on Thursday, February 27, 2020, I will assume your client has no evidence to explain the situation. I will proceed accordingly in seeking to protect Mrs. Sherlock's rights.

Andrew Flores
Attorney at Law
945 4th Ave, Suite 412
San Diego CA 92101
P. (619) 356-1556
F.(619) 274-8053

From: Andrew flores
Sent: Friday, February 21, 2020 12:10 PM
To: aclaybon@messner.com
Subject: Sherlock -Harcourt Leading Edge Real Estate

Hello Mr. Claybon,

Per our conversation this morning please find attached the Certificate of LLC Cancellation in question. I have also included the preliminary report by a forensic document examiner.

Lastly, as a professional courtesy, I want to highlight that I intend to file a lawsuit against no less than ten attorneys for conspiring with their clients to take unlawful actions in marijuana related transactions. I refuse to believe that every attorney in the San Diego area focused on the marijuana industry is willing to take unlawful actions, but as matters stand, it appears to be endemic to the practice. At least in the San Diego market. I am taking the time to explain this because I hope you will convince your client to provide the original certificate with Mr. Sherlock's signature. While the expert has highlighted that the signature is more likely than not someone other than Mr. Sherlock, the actual document could help him reach the opposite conclusion. Alternatively, if your client decides to not produce the original document, and cannot explain why Mr. Sherlock would leave your client the CUP and leave his wife and kids destitute after using their college funds to finance the acquisition of the CUP at the Balboa location, such would be probable cause to file suit on behalf of Mrs. Sherlock against your client.

That is the worst case scenario and something I want to avoid. I already have a big fight ahead of me against Razuki, Malan and numerous other bad faith actors, including attorneys. Alternatively, I hope that your client has evidence and a credible explanation for what appears to be a forged signature that left him with a valuable CUP. If such is the case, I can assure you that I have evidence and witnesses that will help your cause against Razuki and Malan that are part of my case.

Sincerely,

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego CA, 92101
P. (619) 356-1556
F.(619) 274-8053

EXHIBIT 3

Court's Ex. [redacted]
Case # [redacted]
Rec'd
Dept. [redacted] Clk.

City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000

THE CITY OF SAN DIEGO

General Application

FORM DS-3032
AUGUST 2013

Part I (Must be completed for all permits/approvals)

1. **Approval Type:** *Separate electrical, plumbing and/or mechanical permits are required for projects other than single-family residences or duplexes* ☐ Electrical/Plumbing/Mechanical ☐ Sign ☐ Structure ☐ Grading ☐ Public Right-of-Way; ☐ Subdivision ☐ Demolition/Removal ☐ Development Approval ☐ Vesting Tentative Map ☐ Tentative Map ☐ Map Waiver ☑ Other: CUP

2. **Project Address/Location:** *Include Building or Suite No.*	**Project Title:**	**Project No.:** *For City Use Only*
6176 Federal Blvd.	Federal Blvd. MMCC	520606
Legal Description: *(Lot, Block, Subdivision Name & Map Number)* TR#:2 001100 BLK 25*LOT 20 PER MAP 2121 IN* City/Muni/Twp: SAN DIEGO		**Assessor's Parcel Number:** 543-020-02

Existing Use: ☐ House/Duplex ☐ Condominium/Apartment/Townhouse ☑ Commercial/Non-Residential ☐ Vacant Land

Proposed Use: ☐ House/Duplex ☐ Condominium/Apartment/Townhouse ☑ Commercial/Non-Residential ☐ Vacant Land

Project Description:
The project consists of the construction of a new MMCC facility

3. **Property Owner/Lessee Tenant Name:** *Check one* ☐ Owner ☑ Lessee or Tenant — Telephone: — Fax:
Rebecca Berry

Address:	City:	State:	Zip Code:	E-mail Address:
5982 Gullstrand Street	San Diego	CA	92122	becky@tfcsd.net

4. **Permit Holder Name** - This is the property owner, person, or entity that is granted authority by the property owner to be responsible for scheduling inspections, receiving notices of failed inspections, permit expirations or revocation hearings, and who has the right to cancel the approval (in addition to the property owner). SDMC Section 113.0103.

Name: Rebecca Berry — Telephone: — Fax:

Address:	City:	State:	Zip Code:	E-mail Address:
5982 Gullstrand Street	San Diego	CA	92122	becky@tfcsd.net

5. **Licensed Design Professional** (if required): (check one) ☑ Architect ☐ Engineer — License No.: C-19371
Name: Michael R Morton AIA — Telephone: — Fax:

Address:	City:	State:	Zip Code:	E-mail Address:
3956 30th Street	San Diego	CA	92104	

6. **Historical Resources/Lead Hazard Prevention and Control (not required for roof mounted electric-photovoltaic permits, deferred fire approvals, or completion of expired permit approvals) -**
   a. Year constructed for all structures on project site: 1951
   b. HRB Site # and/or historic district if property is designated or in a historic district (if none write N/A): N/A
   c. Does the project include any permanent or temporary alterations or impacts to the exterior (cutting-patching-access-repair, roof repair or replacement, windows added-removed-repaired-replaced, etc)? ☑ Yes ☐ No
   d. Does the project include any foundation repair, digging, trenching or other site work? ☑ Yes ☐ No

I certify that the information above is correct and accurate to the best of my knowledge. I understand that the project will be distributed/reviewed based on the information provided.

Print Name: Abhay Schweitzer — Signature: [signature] (agent) — Date: 10/28/2016

7. **Notice of Violation** - If you have received a Notice of Violation, Civil Penalty Notice and Order, or Stipulated Judgment, a copy must be provided at the time of project submittal. Is there an active code enforcement violation case on this site? ☐ No ☐ Yes, copy attached

8. **Applicant Name:** *Check one* ☐ Property Owner ☐ Authorized Agent of Property Owner ☑ Other Person per M.C. Section 112.0102 — Telephone: — Fax:
Rebecca Berry

Address:	City:	State:	Zip Code:	E-mail Address:
5982 Gullstrand Street	San Diego	CA	92122	becky@tfcsd.net

Applicant's Signature: I certify that I have read this application and state that the above information is correct, and that I am the property owner, authorized agent of the property owner, or other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application (Municipal Code Section 112.0102). I understand that the applicant is responsible for knowing and complying with the governing policies and regulations applicable to the proposed development or permit. The City is not liable for any damages or loss resulting from the actual or alleged failure to inform the applicant of any applicable laws or regulations, including before or during final inspections. City approval of a permit application, including all related plans and documents, is not a grant of approval to violate any applicable policy or regulation, nor does it constitute a waiver by the City to pursue any remedy, which may be available to enforce and correct violations of the applicable policies and regulations. I authorize representatives of the city to enter the above-identified property for inspection purposes. I have the authority and grant City staff and advisory bodies the right to make copies of any plans or reports submitted for review and permit processing for the duration of this project.

Signature: Rebecca Berry — Date: Oct. 31 2016

EXHIBIT 4

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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

Larry Geraci

Darryl Cotton

ACKNOWLEDGMENT

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

State of California
County of San Diego)

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

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

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

WITNESS my hand and official seal.

JESSICA NEWELL
Commission # 2002598
Notary Public - California
San Diego County
My Comm. Expires Jan 27, 2017

Signature _____ (Seal)

EXHIBIT 5

Gmail **Darryl Cotton <indagrodarryl@gmail.com>**

Agreement

Larry Geraci <Larry@tfcsd.net> Wed, Nov 2, 2016 at 3:11 PM
To: Darryl Cotton <darryl@inda-gro.com>

Court's Ex. [redacted]
Case # [redacted]
Rec'd
Dept. [redacted] Clk.

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

Circular 230 Disclaimer:

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

recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

Cotton & Geraci Contract.pdf
71K

Exhibit B

(November 2nd Agreement)

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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

Larry Geraci

Darryl Cotton

ACKNOWLEDGMENT

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

State of California
County of San Diego)

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

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

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

WITNESS my hand and official seal.

JESSICA NEWELL
Commission # 2002598
Notary Public - California
San Diego County
My Comm. Expires Jan 27, 2017

Signature _____ (Seal)

EXHIBIT 6

Gmail Darryl Cotton <indagrodarryl@gmail.com>

Agreement

Larry Geraci <Larry@tfcsd.net> Wed, Nov 2, 2016 at 9:13 PM
To: Darryl Cotton <darryl@inda-gro.com>

Court's Ex. [redacted]
Case [redacted]
Rec'd
Dept. [redacted] Clk.

No no problem at all

Sent from my iPhone

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

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

Darryl Cotton, President

INDA-GRO "Sunlight in a Box" INDUCTION GROW LIGHTS

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

6176 Federal Blvd.
San Diego, CA. 92114
USA

[Quoted text hidden]

EXHIBIT 7

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

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

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

DECLARATION OF LARRY GERACI IN OPPOSITION TO DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS

[IMAGED FILE]

Hearing Date: April 13, 2018
Hearing Time: 9:00 a.m.

Filed: March 21, 2017
Trial Date: May 11, 2018

I, Larry Geraci, declare:

1. I am an adult individual residing in the County of San Diego, State of California, and I am one of the real parties in interest in this action. I have personal knowledge of the foregoing facts and if called as a witness could and would so testify.

2. In approximately September of 2015, I began lining up a team to assist in my efforts to develop and operate a Medical Marijuana Consumer Cooperative (MMCC) business (aka a medical

marijuana dispensary) in San Diego County. At the time, I had not yet identified a property for the MMCC business. I hired a consultant, Neal Dutta of Apollo Realty, to help locate and identify potential property sites for the business. I hired a design professional, Abhay Schweitzer of TECHNE. I hired a public affairs and public relations consultant with experience in the industry, Jim Bartell of Bartell & Associates. In addition, I hired a land use attorney, Gina Austin of Austin Legal Group.

3. The search to identify potential locations for the business took some time, as there are a number of requirements that had to be met. For example: a) only four (4) MMCCs are allowed in a City Council District; b) MMCCs are not allowed within 1,000 feet of public parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities, other MMCCs, residential facilities, or schools; c) MMCCs are not allowed within 100 feet of a residential zone; and d) the zoning had to be proper as MMCC's are allowed only in certain zones. In approximately June 2016, Neal Dutta identified to me real property owned by Darryl Cotton located at 6176 Federal Blvd., City of San Diego, San Diego County, California, Assessor's Parcel No. 543-020-02-00 (the "Property") as a potential site for acquisition and development for use and operation as a MMCC. And in approximately mid-July 2016 Mr. Dutta put me in contact with Mr. Cotton and I expressed my interest to Mr. Cotton in acquiring his Property if our further investigation satisfied us that the Property might meet the requirements for an MMCC site.

4. For several months after the initial contact, my consultant, Jim Bartell, investigated issues related to whether the location might meet the requirements for an MMCC site, including zoning issues and issues related to meeting the required distances from certain types of facilities and residential areas. For example, the City had plans for street widening in the area that potentially impacted the ability of the Property to meet the required distances. Although none of these issues were resolved to a certainty, I determined that I was still interested in acquiring the Property.

5. Thereafter I approached Mr. Cotton to discuss the possibility of my purchase of the Property. Specifically, I was interested in purchasing the Property from Mr. Cotton contingent upon my obtaining approval of a Conditional Use Permit ("CUP") for use as a MMCC. As the purchaser, I was willing to bear the substantial expense of applying for and obtaining CUP approval and understood that if I did not obtain CUP approval then I would not close the purchase and I would lose my

investment. I was willing to pay a price for the Property based on what I anticipated it might be worth if I obtained CUP approval. Mr. Cotton told me that he was willing to make the purchase and sale conditional upon CUP approval because if the condition was satisfied he would be receiving a much higher price than the Property would be worth in the absence of its approval for use as a medical marijuana dispensary. We agreed on a down payment of $10,000.00 and a purchase price of $800,000.00. On November 2, 2016, Mr. Cotton and I executed a written purchase and sale agreement for my purchase of the Property from him on the terms and conditions stated in the agreement (hereafter the "Nov 2nd Written Agreement"). A true and correct copy of the Nov 2nd Written Agreement, which was executed before a notary, is attached as Exhibit 2 to Defendant and Cross-Defendant, Larry Geraci's Notice of Lodgment in Support of Opposition to Motion to Expunge Lis Pendens (hereafter the "Geraci NOL"). I tendered the $10,000 deposit to Mr. Cotton as acknowledged in the Nov 2nd Written Agreement.

6. In paragraph 5 of his supporting declaration, Darryl Cotton states:

> "On November 2, 2016, Geraci and I met at Geraci's office to negotiate the final terms of the sale of the Property. At the meeting, we reached an oral agreement on the material terms for the sale of the Property (the "November Agreement"). The November Agreement consisted of the following: If the CUP was approved, then Geraci would, inter alia, provide me: (i) a total purchase price of $800,000; (ii) a 10% equity stake in the MO; and (iii) a minimum monthly equity distribution of $10,000. If the CUP was denied, I would keep an agreed upon $50,000 non-refundable deposit ("NRD") and the transaction would not close. In other words, the issuance of a CUP at the Property was a condition precedent for closing on the sale of the Property and, if the CUP was denied, I would keep my Property and the $50,000 NRD."

Darryl Cotton and I did meet at my office on November 2, 2016, to negotiate the final terms of the sale of the Property and we reached an agreement on the final terms of the sale of the Property. That agreement was not oral. We put our agreement in writing in a simple and straightforward written

agreement that we both signed before a notary. (See paragraph 5, *supra*, Nov 2nd Written Agreement, Exhibit 2 to Geraci NOL.) The written agreement states in its entirety:

> **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 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 the license is approved. Darryl Cotton has agreed to not enter into any other contacts [sic] on this property.**
>
> **__/s/_____ __/s/_____**
> **Larry Geraci Darryl Cotton**

I never agreed to pay Mr. Cotton a $50,000.00 non-refundable deposit. At the meeting, Mr. Cotton stated he would like a $50,000 non-refundable deposit. I said "no." Mr. Cotton then asked for a $10,000 non-refundable deposit and I said "ok" and that amount was put into the written agreement. After he signed the written agreement, I paid him the $10,000 cash as we had agreed. If I had agreed to pay Mr. Cotton a $50,000 deposit, it would have been a very simple thing to change "$10,000" to $50,000" in the agreement before we signed it.

I never agreed to pay Mr. Cotton a 10% equity stake in the marijuana dispensary. I never agreed to pay Mr. Cotton a minimum monthly equity distribution of $10,000. If I had agreed to pay Mr. Cotton a 10% equity stake in the marijuana dispensary and a minimum monthly equity distribution of $10,000, then it would have also been a simple thing to add a sentence or two to the agreement to say so.

What I did agree to was to pay Mr. Cotton a total purchase price of $800,000, with the balance of $790,000 due upon approval of a CUP. If the CUP was not approved, then he would keep the Property and the $10,000. So that is how the agreement was written.

7. In paragraph 6 of his supporting declaration, Darryl Cotton states:

> "At the November 2, 2016, meeting we reached the November Agreement, Geraci: (i) provided me with $10,000 in cash towards the NRD of $50,000, for which I executed a document to record my receipt thereof (the "Receipt"); (ii)

promised to have his attorney, Gina Austin ("Austin"), ***promptly*** reduce the oral November Agreement to written agreements for execution; and (iii) promised to not submit the CUP to the City until he paid me the balance of the NRD."

I did pay Mr. Cotton the $10,000 cash after we signed the Nov 2nd Written Agreement. As stated above, I never agreed to a $50,000 deposit and, if I had, it would have been a simple thing to state that in our written agreement.

Mr. Cotton refers to the written agreement (i.e., the Nov 2nd Written Agreement) as a "Receipt." Calling the Agreement a "Receipt" was never discussed. There would have been no need for a written agreement before a notary simply to document my payment to him of $10,000. In addition, had the intention been merely to document a written "Receipt" for the $10,000 payment, then we could have identified on the document that it was a "Receipt" and there would have been no need to put in all the material terms and conditions of the deal. Instead, the document is expressly called an "Agreement" because that is what we intended.

I did not promise to have attorney Gina Austin reduce the oral agreement to written agreements for execution. What we did discuss was that Mr. Cotton wanted to categorize or allocate the $800,000. At his request, I agreed to pay him for the property into two parts: $400,000 as payment for the property and $400,000 as payment for the relocation of his business. As this would benefit him for tax purposes but would not affect the total purchase price or any other terms and conditions of the purchase, I stated a willingness to later amend the agreement in that way.

I did not promise to delay submitting the CUP to the City until I paid the alleged $40,000 balance of the deposit. I agreed to pay a $10,000 deposit only. Also, we had previously discussed the long lead-time to obtain CUP approval and that we had already begun the application submittal process as discussed in paragraph 8 below.

8. Prior entering into the Nov 2nd Written Agreement, Darryl Cotton and I discussed the CUP application and approval process and that his consent as property owner would be needed to submit with the CUP application. I discussed with him that my assistant Rebecca Berry would act as my authorized agent to apply for the CUP on my behalf. Mr. Cotton agreed to Ms. Berry serving as

the Applicant on my behalf to attempt to obtain approval of a CUP for the operation of a MMCC or marijuana dispensary on the Property. On October 31, 2016, as owner of the Property, Mr. Cotton signed Form DS-318, the Ownership Disclosure Statement for a Conditional Use Permit, by which he acknowledged that an application for a permit (CUP) would be filed with the City of San Diego on the subject Property with the intent to record an encumbrance against the property. The Ownership Disclosure Statement was also signed by my authorized agent and employee, Rebecca Berry, who was serving as the CUP applicant on my behalf. A true and correct copy of the Ownership Disclosure Statement signed on October 31, 2016, by Darryl Cotton and Rebecca Berry is attached as Exhibit 1 to the Geraci NOL. Mr. Cotton provided that consent and authorization as we had discussed that approval of a CUP would be a condition of the purchase and sale of the Property.

9. As noted above, I had already put together my team for the MMCC project. My design professional, Abhay Schweitzer, and his firm, TECHNE, is and has been responsible for the design of the Project and the CUP application and approval process. Mr. Schweitzer was responsible for coordinating the efforts of the team to put together the CUP Application for the MMCC at the Property and Mr. Schweitzer has been and still is the principal person involved in dealings with the City of San Diego in connection with the CUP Application approval process. Mr. Schweitzer's declaration (Declaration of Abhay Schweitzer in Support of Opposition to Motion to Expunge Lis Pendens) has been submitted concurrently herewith and describes in greater detail the CUP Application submitted to the City of San Diego, which submission included the Ownership Disclosure Statement signed by Darryl Cotton and Rebecca Berry.

10. After we signed the Nov 2nd Written Agreement for my purchase of the Property, Mr. Cotton immediately began attempts to renegotiate our deal for the purchase of the Property. This literally occurred the evening of the day he signed the Nov 2nd Written Agreement.

On November 2, 2016, at approximately 6:55 p.m., Mr. Cotton sent me an email, which stated:

> Hi Larry,
>
> Thank you for meeting today. Since we examined the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored

> element in my decision to sell the property. I'll be fine if you simply acknowledge that here in a reply.

I receive my emails on my phone. It was after 9:00 p.m. in the evening that I glanced at my phone and read the first sentence, "Thank you for meeting with me today." And I responded from my phone "No no problem at all." I was responding to his thanking me for the meeting.

The next day I read the entire email and I telephoned Mr. Cotton because the total purchase price I agreed to pay for the subject property was $800,000 and I had never agreed to provide him a 10% equity position in the dispensary as part of my purchase of the property. I spoke with Mr. Cotton by telephone at approximately 12:40 p.m. for approximately 3-minutes. A true and correct copy of the Call Detail from my firm's telephone provider showing those two telephone calls is attached as Exhibit 3 to the Geraci NOL. During that telephone call I told Mr. Cotton that a 10% equity position in the dispensary was not part of our agreement as I had never agreed to pay him any other amounts above the $800,000 purchase price for the property. Mr. Cotton's response was to say something to the effect of "well, you don't get what you don't ask for." He was not upset and he commented further to the effect that things are "looking pretty good—we all should make some money here." And that was the end of the discussion.

11. To be clear, prior to signing the Nov 2nd Written Agreement, Mr. Cotton expressed a desire to participate in different ways in the *operation* of the future MMCC business at the Property. Mr. Cotton is a hydroponic grower and purported to have useful experience he could provide regarding the operation of such a business. Prior to signing the Nov 2nd Written Agreement we had preliminary discussions related to his desire to be involved in the *operation* of the business (not related to the purchase of the Property) and we discussed the *possibility* of compensation to him (e.g., a percentage of the net profits) in exchange for his providing various services to the business—but we never reached an agreement as to those matters related to the operation of my future MMCC business. Those discussions were not related to the purchase and sale of the Property, which we never agreed to amend or modify.

12. Beginning in or about mid-February 2017, and after the zoning issues had been resolved, Mr. Cotton began making increasing demands for compensation in connection with the sale. We were several months into the CUP application process which could potentially take many more months to

successfully complete (if it could be successfully completed and approval obtained) and I had already committed substantial resources to the project. I was very concerned that Mr. Cotton was going to interfere with the completion of that process to my detriment now that the zoning issues were resolved. I tried my best to discuss and work out with him some further compensation arrangement that was reasonable and avoid the risk he might try to "torpedo" the project and find another buyer. For example, on several successive occasions I had my attorney draft written agreements that contained terms that I that I believed I could live with and hoped would be sufficient to satisfy his demands for additional compensation, but Mr. Cotton would reject them as not satisfactory. Mr. Cotton continued to insist on, among other things, a 10% equity position, to which I was not willing to agree, as well as on minimum monthly distributions in amounts that I thought were unreasonable and to which I was unwilling to agree. Despite our back and forth communications during the period of approximately mid-February 2017 through approximately mid-March 2017, we were not able to re-negotiate terms for the purchase of the property to which we were both willing to agree. The Nov. 2nd Written Agreement was never amended or modified. Mr. Cotton emailed me that I was not living up to my agreement and I responded to him that he kept trying to change the deal. As a result, no re-negotiated written agreement regarding the purchase and sale of the property was ever signed by Mr. Cotton or me after we signed and agreed to the terms and conditions in the Nov 2d Written Agreement.

13. Ultimately, Mr. Cotton was extremely unhappy with my refusal to accede to his demands and the failure to reach agreement regarding his possible involvement with the *operation* of the business to be operated at the Property and my refusal to modify or amend the terms and conditions we agreed to in the Nov 2nd Written Agreement regarding my purchase from him of the Property. Mr. Cotton made clear that he had no intention of living up to and performing his obligations under the Agreement and affirmatively threatened to take action to halt the CUP application process.

14. Mr. Cotton thereafter made good on his threats. On the morning of March 21, 2017, Mr. Cotton had a conversation with Firouzeh Tirandazi at the City of San Diego, who was in charge of processing the CUP Application, regarding Mr. Cotton's interest in withdrawing the CUP Application. That discussion is confirmed in an 8:54 a.m. e-mail from Ms. Tirandazi to Mr. Cotton with a cc to

Rebecca Berry. A true and correct copy of that March 21, 2017, at 8:54 a.m. e-mail is attached as Exhibit 4 to the Geraci NOL.

15. That same day, March 21, 2017, at 3:18 p.m. Mr. Cotton emailed me, reinforcing that he would not honor the Nov 2nd Written Agreement. In his email he stated that I had no interest in his property and that "I will be entering into an agreement with a third party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you. A true and correct copy of that March 21, 2017, at 3:18 p.m. e-mail is attached as Exhibit 5 to the Geraci NOL.

16. Four minutes later that same day, at 3:25 p.m., Mr. Cotton e-mailed Ms. Tirandazi at the City, with a cc to both me and Rebecca Berry, stating falsely to Ms. Tirandazi: "… the potential buyer, Larry Gerasi [sic] (cc'ed herein), and I have failed to finalize the purchase of my property. As of today, there are no third-parties that have any direct, indirect or contingent interests in my property. The application currently pending on my property should be denied because the applicants have no legal access to my property. A true and correct copy of that March 21, 2017, at 3:25 p.m. e-mail is attached as Exhibit 6 to the Geraci NOL. Mr. Cotton's email was false as we had a signed agreement for the purchase and sale of the Property – the Nov 2nd Written Agreement.

17. Fortunately, the City determined Mr. Cotton did not have the authority to withdraw the CUP application without the consent of the Applicant (Rebecca Berry, my authorized agent).

18. Due to Mr. Cotton's clearly stated intention to not perform his obligations under the written Agreement and in light of his affirmative steps taken to attempt to withdraw the CUP application, I went forward on March 21, 2017, with the filing of my lawsuit against Mr. Cotton to enforce the Nov 2nd Written Agreement.

19. Since the March 21, 2017 filing of my lawsuit, we have continued to diligently pursue our CUP Application and approval of the CUP. Despite Mr. Cotton's attempts to withdraw the CUP application, we have completed the initial phase of the CUP process whereby the City deemed the CUP application complete (although not yet approved) and determined it was located in an area with proper zoning. We have not yet reached the stage of a formal City hearing and there has been no final determination to approve the CUP. The current status of the CUP Application is set forth in the

Declaration of Abhay Schweitzer.

20. Mr. Cotton also has made good on the statement in his March 21, 2017, at 3:18 p.m. email (referenced in paragraph 15 above - see Exhibit 5 to the Geraci NOL) stating that he would be "entering into an agreement with a third party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you. We have learned through documents produced in my lawsuit that well prior to March 21, 2017, Mr. Cotton had been negotiating with other potential buyers of the Property to see if he could get a better deal than he had agreed to with me. As of March 21, 2017, Cotton had already entered into a real estate purchase and sale agreement to sell the Property to another person, Richard John Martin II.

21. Although he entered into this alternate purchase agreement with Mr. Martin as early as March 21, 2017, to our knowledge in the nine (9) months since, neither Mr. Cotton nor Mr. Martin or other agent has submitted a separate CUP Application to the City for processing. During that time, we continued to process our CUP Application at great effort and expense.

22. During approximately the last 17 months, I have incurred substantial expenses in excess of $150,000 in pursuing the MMCC project and the related CUP application.

23. Finally, Mr. Cotton has asserted from the outset of his lawsuit and, again, in paragraph 16 of his supporting declaration, that he did not discover until March 16, 2017, that I had submitted the CUP Application back on October 31, 2016. That is a blatant lie. I kept Mr. Cotton apprised of the status of the CUP application and the problems we were encountering (e.g., an initial zoning issue) from the outset. Attached as Exhibit 7 is a true and correct copy of a text message Mr. Cotton sent me on November 16, 2016, in which he asks me, "Did they accept the CUP application?" Mr. Cotton was well aware at that time that we had already submitted the CUP application and were awaiting the City's completion of its initial review of the completeness of the application. Until the City deems the CUP application complete it does not proceed to the next step—the review of the CUP application.

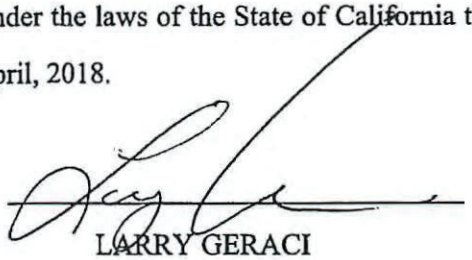
/ / /

/ / /

/ / /

/ / /

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 9th day of April, 2018.



LARRY GERACI

EXHIBIT 8

PROOF OF SERVICE (Court of Appeal) ☐ Mail ☒ Personal Service	
Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) before completing this form. Do not use this form for proof of electronic service. See form APP-009E.	
Case Name: Larry Geraci v. Darryl Cotton, et al. Court of Appeal Case Number: TBD Superior Court Case Number: 37-2017-00010073-CU-BC-CTL	

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**

2. My ☐ residence ☒ business address is *(specify)*:
   1455 Frazee Road, Suite 500, San Diego, CA 92108

3. I mailed or personally delivered a copy of the following document as indicated below *(fill in the name of the document you mailed or delivered and complete either a or b):*
   Petition for Writ of Mandate/Supersedeas and/or Other Appropriate Relief; Exhibits Volumes 1, 2 and 3, and Request for Judicial Notice in Support of Petition for Writ of Mandate/Supersedeas and/or Other Appropriate Relief

   a. ☐ **Mail.** I mailed a copy of the document identified above as follows:

      (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**

         (a) ☐ **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.

         (b) ☐ **placed** the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.

      (2) Date mailed:

      (3) The envelope was or envelopes were addressed as follows:

         (a) Person served:
            (i) Name:
            (ii) Address:

         (b) Person served:
            (i) Name:
            (ii) Address:

         (c) Person served:
            (i) Name:
            (ii) Address:

         ☐ Additional persons served are listed on the attached page *(write "APP-009, Item 3a" at the top of the page).*

      (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (city and state): San Diego, California

Case Name: Larry Geraci v. Darryl Cotton, et al.	Court of Appeal Case Number: TBD
	Superior Court Case Number: 37-2017-00010073-CU-BC-CTL

3. b. [x] **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:

(a) Name: Gina M. Austin, an individual

(b) Address where delivered:
Austin Legal Group
3990 Old Town Avenue, Suite A-112
San Diego, CA 92110

By serving: Gina Austin

TELEPHONE: (619) 924-9600

(c) Date delivered: August 27, 2018

(d) Time delivered: 4:37 p.m.

(2) Person served:

(a) Name: Austin Legal Group, APC, a California corporation

(b) Address where delivered:
Austin Legal Group
3990 Old Town Avenue, Suite A-112
San Diego, CA 92110

By serving: Gina Austin

TELEPHONE: (619) 924-9600

(c) Date delivered: August 27, 2018

(d) Time delivered: 4:37 p.m.

(3) Person served:

(a) Name: Gina M. Austin/Austin Legal Group, APC Attorneys for Aaron Magagna, an individual

(b) Address where delivered:
Austin Legal Group
3990 Old Town Avenue, Suite A-112
San Diego, CA 92110

By serving: Gina Austin

TELEPHONE: (619) 924-9600

(c) Date delivered: August 27, 2018

(d) Time delivered: 4:37 p.m.

[ ] Names and addresses of additional persons served and delivery dates and times are listed on the attached page *(write "APP-009, Item 3b" at the top of the page).*

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

Date: August 27, 2018

Jacob P. Austin
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

ATTACHMENT TO APP-009, ITEM 3b(3)

On Monday, August 27, 2018 at 4:37 p.m., I visited the office of attorney Gina Austin [SBN 246833] ("Mrs. Austin")/Austin Legal Group, APC to serve copies of the documents listed as ITEM 3 on page 1 on the individuals and entities listed in ITEM 3b(1)-(3).

When I arrived, the receptionist was not at the reception desk in the front office. Shortly thereafter, Mrs. Austin came from the back office to the reception desk to greet me. I told Mrs. Austin that I was there to serve documents – all of which were the correct copies of the Petition that had been personally served on her office the previous week.

Mrs. Austin responded that she wanted to look at copies of the Proofs of Service, and I told her that I was leaving copies for her and the Proofs of Service stated that I was serving her with three sets of the documents: one set on her as an individual, one set on her on behalf of her law firm Austin Legal Group, APC, and one set on her on behalf of her client Aaron Magagna.

Mrs. Austin then took two sets of the documents, told me she did not "want" the third set of documents, and then shoveled me out the door. After standing outside and thinking about the situation, I walked back into the office at 4:39 p.m. and told Mrs. Austin that, since I was there, I was going to leave the third set of documents with her anyway. She responded very emphatically, "I don't want this!" I shrugged and said that I was leaving the documents with her.

Mrs. Austin became very angry and approached me quickly as though she was going to physically shove me out the door and said, "You're not welcome here!" Barely restraining herself from physically shoving me, as she got within inches of me she forcefully opened the door into the hallway, she then snatched the third set of documents and threw them into the hallway repeating in a loud, angry tone, "I told you, I DO NOT WANT THIS!!!"

I did not argue or resist leaving, I left at that point. I was wildly surprised by the unexpected reaction, the anger exhibited towards me, and how my personal space was violated. As an attorney I was disappointed in her decorum and unprofessional demeanor.

EXHIBIT 9

Gmail **Darryl Cotton <indagrodarryl@gmail.com>**

Testimony

Corina Young <corina.young@live.com> Wed, Oct 28, 2020 at 12:22 PM
To: Darryl Cotton <indagrodarryl@gmail.com>

Darryl,

I am not involved. Please do not include me in your lawsuit. Please do not post this email online.

A ached are emails from my a orney at the me.

Corina

2 attachments

Email #1.pdf
299K

Email 2.pdf
133K

Attachment Email 1

FW: Geraci v. Cotton [Deposition Subpoena - Corina Young]

natalie@nguyenlawcorp.com <natalie@nguyenlawcorp.com>
Tue 7/2/2019 12:01 PM
To: 'Corina Young' <corina.young@live.com>

1 attachments (10 KB)
190627.Tentative Rulings on Motions in Limine.pdf;

Good morning Corina,

I hope this email finds you well. I haven't heard back from you so I assume you are occupied with other importance.

As an update, below is the last email from Cotton's attorney. In light of the trial dates, I presumed he was bluffing so I just ignored him.

The court issued its ruling on the parties' Motions in Limine in the Geraci v. Cotton trial last week. If you are bored or curious, it is attached for your review. The Trial was supposed to start July 1 but it looks as if someone (likely Cotton's attorney) filed an appeal and so trial was taken off calendar. I'll keep you apprised of this but for the moment, there's nothing you really need to do.

Yours,

Natalie

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com

From: Jake Austin <jpa@jacobaustinesq.com>
Sent: Wednesday, June 12, 2019 6:45 PM
To: Natalie T. Nguyen <natalie@nguyenlawcorp.com>
Subject: Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Ms. Nguyen,

Trial on the Geraci v. Cotton case in which your client, Corina Young, is a material witness is immediately impending and you have yet to deliver on any of the items we had previously agreed upon.

At this point in time it is too late to rely on you to uphold your promises without a proper demand. I need you to provide a declaration by end of week or I will have to file a motion for sanctions against you personally, and re-issue a subpoena.

Let me know by the end of the day Friday if you will provide the declaration requested or not so I can proceed accordingly.

Jacob

Law Office of Jacob Austin
P.O. Box 231189
San Diego, CA 92193 USA
Phone: (619) 357-6850
Facsimile: (888) 357-8501

On Tue, May 28, 2019 at 10:20 AM Jake Austin <jpa@jacobaustinesq.com> wrote:

> Ms. Young's original deposition was scheduled for Jan. 18th and we agreed to your request that she provide a declaration instead. It has been over 4 months and we have yet to receive anything. Please provide an update.
>
> Jacob
> **Law Office of Jacob Austin**
> P.O. Box 231189
> San Diego, CA 92193 USA
> Phone: (619) 357-6850
> Facsimile: (888) 357-8501
>
>
>
> On Fri, May 3, 2019 at 12:04 PM <natalie@nguyenlawcorp.com> wrote:
>
> > Good morning Jake,
> >
> > Thanks for following up. Let me check and get back to you soon.
> >
> > Natalie
> >
> > Natalie T. Nguyen, Esq.
> > **NGUYEN LAW CORPORATION**
> > M: 2260 Avenida de la Playa | La Jolla, CA 92037
> > T: 858-225-9208
> > E: natalie@nguyenlawcorp.com
> >
> > **From:** Jake Austin <jpa@jacobaustinesq.com>
> > **Sent:** Thursday, May 2, 2019 11:56 AM
> > **To:** Natalie T. Nguyen <natalie@nguyenlawcorp.com>
> > **Subject:** Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]
> >
> > Please give me an update, this is important to my client's case.
> >
> > Jacob
> > **Law Office of Jacob Austin**
> > P.O. Box 231189
> > San Diego, CA 92193 USA
> > Phone: (619) 357-6850
> > Facsimile: (888) 357-8501
> >
> >

On Tue, Apr 16, 2019 at 6:15 PM Jake Austin <jpa@jacobaustinesq.com> wrote:

> Hello Natalie,
>
> As you recall we have been trying to work out an affidavit or a deposition for three months now, can you kindly give me an update on Ms. Young?
>
> Jacob
> **Law Office of Jacob Austin**
> P.O. Box 231189
> San Diego, CA 92193 USA
> Phone: (619) 357-6850
> Facsimile: (888) 357-8501
>
>
>
> On Thu, Mar 7, 2019 at 1:45 PM <natalie@nguyenlawcorp.com> wrote:
>
> > Hi Jacob,
> >
> > Ms. Young is out of town on March 11 so she will not be able to attend the deposition as noticed. Our Objection to the Deposition Notice is attached.
> >
> > Despite her limited availability, we maintain the intention to provide you with a written statement as previously agreed. I hope to have it ready sometime next week.
> >
> > Best regards,
> >
> > Natalie
> >
> > Natalie T. Nguyen, Esq.
> > **NGUYEN LAW CORPORATION**
> > M: 2260 Avenida de la Playa | La Jolla, CA 92037
> > T: 858-225-9208
> > E: natalie@nguyenlawcorp.com
> >
> > **From:** Jake Austin <jpa@jacobaustinesq.com>
> > **Sent:** Thursday, February 28, 2019 2:05 PM
> > **To:** natalie@nguyenlawcorp.com
> > **Subject:** Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]
> >
> > Hello,
> >
> > I haven't heard from you for awhile so just so you know my office is generating a subpoena for a deposition. We hope we do not need a deposition so if you can provide an affidavit that would be greatly appreciated. Also can we agree to accept electronic service from one another moving forward?
> >
> > Jacob
> >
> > On Mon, Jan 21, 2019 at 3:09 PM <natalie@nguyenlawcorp.com> wrote:
> >
> > > Hi Jacob,

I closely reviewed the Declaration of Joe Hurtado and the text message exchange attached thereto. I also discussed your proposal:

"Thus, to simplify the matter, if Ms. Young can provide her sworn written testimony stating that all of the statements in the text messages were true or she believed them to be true when she said them, along with a description of the length and nature of her relationships with the parties identified in the text messages, we can forgo her deposition.

with Ms. Young and she's accepted the same. We will provide a sworn written testimony by Ms. Young as described above.

Best regards,

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com

From: Natalie T. Nguyen <natalie@nguyenlawcorp.com>
Sent: Thursday, January 17, 2019 5:23 PM
To: 'Jake Austin' <jpa@jacobaustinesq.com>
Subject: RE: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Hi Jacob,

Thank you for taking the time to lay it all out for me. My grasp of this case is limited to the online register of action, the minute order to continue trial, and the deposition subpoena. However, I'm only representing a third-party witness so I see no reason to be embroiled in the case. Perhaps it's best this way.

I quickly scanned the attachment you sent, mostly the text message exchange. I gather there's some complicated history between the parties. In any event, I don't see an issue with a providing a sworn statement.

I intend to review your email and attachment more closely tomorrow and discuss your proposal with Mr. Young. I will reach back out to you after that.

Best regards,

Natalie

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 11440 West Bernardo Court, Suite 210 | San Diego, CA 92127
T: 858-225-9208
E: natalie@nguyenlawcorp.com

From: Jake Austin <jpa@jacobaustinesq.com>
Sent: Thursday, January 17, 2019 4:55 PM
To: natalie@nguyenlawcorp.com
Subject: Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Hello Natalie,

This is an awkward situation, so I will be direct. Your client has repeatedly communicated that she is hostile to my client and will not provide her deposition to material matters that are crucial to my client. Thus, your unilateral decision to cancel the deposition because I did not respond with an alternative to her deposition is procedural improper and, in light of her long history of seeking to avoid being deposed, is suspect.

I can inform you that one of the parties on our side went through Stage III cancer and so we are aware of the challenges that dealing with cancer treatments takes on a patient and their loved ones. However, because of that, we also know that there will never be a "good" time in that context to be deposed.
I am not sure how deeply you are aware of the facts in this matter, so I will not assume you are purposefully being antagonistic and will not file a motion to compel your client's attendance and seek sanctions.

With that said, we understand your client is in a tough situation, which is what makes her testimony highly relevant and credible to our case. In your prior email you state that we can discuss "alternatives to her sitting for the deposition" and since it wasn't a request to reschedule, I have been racking my brain for an alternative to having her go through a deposition which I know could be tedious and stressful on its own. I also know that she may be hesitant to discuss certain subjects and may rely on the right against self-incrimination in some of her responses. I am not sure how familiar you are with the underlying case, but it is my belief that Ms. Young has not been involved in the acts that underline the causes of action and it is not my intention to name her in any lawsuit or anything to that effect.
To be specific, the facts which we hope to elicit from Ms.
Young have already been provided ***by*** her in her text messages with Mr. Hurtado. Attached hereto is a declaration from Mr. Hurtado that in turn has exhibits of text messages between him and Ms. Young regarding the subjects that we desire to depose Ms. Young on. The only additional facts we would want established, beyond those in her text messages, is a description of how long and how many interactions she has had with the parties at issue in this litigation and in the text messages.

What should be clear is that Ms. Young has known the parties associated with Mr. Geraci significantly longer and has established professional relationships with them, as opposed to the limited number of times she has met Mr. Cotton and Mr. Hurtado with whom she only had a couple of interactions with (setting aside her communications related to not wanting to be involved in this litigation to Mr. Hurtado).

Thus, to simplify the matter, if Ms. Young can provide her sworn written testimony stating that all of the statements in the text messages were true or she believed them to be true when she said them, along with a description of the length and nature of her relationships with the parties identified in the text messages, we can forgo her deposition.

Please confirm if your client is willing to provide such sworn testimony. If not, please let me know if your client is available to be deposed any day next week between Wednesday through Friday.
Please note that the trial calendar requires us to file a motion for summary judgement on or before February 8, 2019. As you know, getting transcripts back and drafting an MSJ is time

consuming, so, unfortunately, we are not in a position to push back her deposition for any prolong period of time.
Thus, if you cannot agree to providing her sworn testimony as described above, or having her deposition taken sometime next week, in the interests of my client's case, I will be forced to file an ex-parte application seeking to compel her deposition.

Lastly, again, my apologies for this direct and confrontational email. However, given Ms. Young's repeated statements, the nearing MSJ deadline, and the actions by the attorneys for Mr. Geraci, which I have already gone on record of stating and believing to be tantamount to fraud, I hope you can appreciate that I am attempting to manage this situation for Ms. Young as best as possible. The bottom line is that Ms. Young's testimony provides damaging evidence against her own attorney and agents and I realize the uncomfortable position she is in.

I am open to alternatives and discussions, but Ms. Young's testimony is material and crucial. If you would like to discuss this issue further, I will make myself available to you.

Jacob

On Tue, Jan 15, 2019 at 1:05 PM <natalie@nguyenlawcorp.com> wrote:

> Hi Jacob,
>
> I left you a voicemail earlier and I do hope we can connect today. Our firm represents Corina Young, whose deposition you set for this Friday, January 18, 2019. Ms. Young is caring for a parent with brain cancer so she has very little time and a lot on her mind. Can we discuss alternatives to her sitting for the deposition on Friday?
>
> Best regards,
>
> Natalie
>
> Natalie T. Nguyen, Esq.
> **NGUYEN LAW CORPORATION**
> M: 2260 Avenida de la Playa | La Jolla, CA 92037
> T: 858-225-9208
> E: natalie@nguyenlawcorp.com

Law Office of Jacob Austin
1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA
Phone: (619) 357-6850
Facsimile: (888) 357-8501

On Wed, Jan 16, 2019 at 3:39 PM <natalie@nguyenlawcorp.com> wrote:

> Hi Jacob,

I did not receive a response from you. Please note that for the reasons set forth in my email below, Ms. Young is unable and will not attend the deposition you set for this Friday, January 18, 2019, at 10:00 am. Please kindly contact my office before setting another deposition date.

Best regards,

Natalie

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com

From: natalie@nguyenlawcorp.com <natalie@nguyenlawcorp.com>
Sent: Tuesday, January 15, 2019 1:05 PM
To: JPA@jacobaustinesq.com
Subject: Geraci v. Cotton [Deposition Subpoena - Corina Young]
Importance: High

Hi Jacob,

I left you a voicemail earlier and I do hope we can connect today. Our firm represents Corina Young, whose deposition you set for this Friday, January 18, 2019. Ms. Young is caring for a parent with brain cancer so she has very little time and a lot on her mind. Can we discuss alternatives to her sitting for the deposition on Friday?

Best regards,

Natalie

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com

--

Law Office of Jacob Austin
1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA
Phone: (619) 357-6850
Facsimile: (888) 357-8501

Attachment Email 2

Geraci v Cotton

natalie@nguyenlawcorp.com <natalie@nguyenlawcorp.com>
Mon 7/22/2019 11:24 AM
To: 'Corina Young' <corina.young@live.com>

1 attachments (80 KB)
Invoice_656_491294_g8e.pdf;

Hi Corina,

I hope this email finds you very well.

I just wanted to let you know that the trial in Geraci v Cotton went forward and was completed. Therefore, you don't have to worry about providing any declaration or testimony on this case. Attached is your final invoice; no payment is due from you and we will close our file.

It was a pleasure working with you. Good luck on all your future endeavors!

PS. The jury found in favor of Geraci.

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com