

1 Douglas A. Pettit, Esq., SBN 160371
Kayla R. Sealey, Esq., SBN 341956
2 **PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**
11622 El Camino Real, Suite 300
3 San Diego, CA 92130
Telephone: (858) 755-8500
4 Facsimile: (858) 755-8504
E-mail: dpettit@pettitkohn.com
5 ksealey@pettitkohn.com

6 Attorneys for Defendants
GINA M. AUSTIN and
7 **AUSTIN LEGAL GROUP**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

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

13 Plaintiffs,

14 v.

15 GINA M. AUSTIN, an individual; AUSTIN
16 LEGAL GROUP, a professional corporation,
LARRY GERACI, an individual, REBECCA
17 BERRY, an individual; JESSICA
MCELFRESH, an individual; SALAM
18 RAZUKI, an individual; NINUS MALAN,
an individual; FINCH, THORTON, AND
19 BARID, a limited liability partnership;
ABHAY SCHWEITZER, an individual and
20 dba TECHNE; JAMES (AKA JIM)
BARTELL, an individual; NATALIE
21 TRANG-MY NGUYEN, an individual,
AARON MAGAGNA, an individual;
22 BRADFORD HARCOURT, an individual;
SHAWN MILLER, an individual; LOGAN
23 STELLMACHER, an individual;
EULENTIAS DUANE ALEXANDER, an
24 individual; STEPHEN LAKE, an individual,
ALLIED SPECTRUM, INC. a California
25 corporation, PRODIGIOUS COLLECTIVES,
LLC, a limited liability company, and DOES
26 1 through 50, inclusive,

27 Defendants.

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County of San Diego
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CASE NO.: 37-2021-00050889-CU-AT-CTL

**DEFENDANTS GINA M. AUSTIN AND
AUSTIN LEGAL GROUP'S NOTICE OF
MOTION AND SPECIAL MOTION TO
STRIKE PLAINTIFFS' FIRST AMENDED
COMPLAINT PURSUANT TO CODE OF
CIVIL PROCEDURE SECTION 425.16
(ANTI-SLAPP STATUTE)**

[IMAGED FILE]

Date: August 5, 2022
Time: 9:00 a.m.
Dept.: C-75
Judge: Hon. James A. Mangione
Filed: December 3, 2021
Trial: Not Set

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on **August 5, 2022, at 9 00 a.m.**, or as soon thereafter as the matter may be heard before the Honorable James A. Mangione in Department C-75 of the above-entitled court, Defendants GINA M. AUSTIN and AUSTIN LEGAL GROUP (collectively, “Defendants”) will and hereby do move this Court for an order striking the First Amended Complaint (“FAC”) filed by Plaintiffs AMY SHERLOCK and ANDREW FLORES (collectively, “Plaintiffs”).

This Motion is made pursuant to Code of Civil Procedure section 425.16 and on the grounds that the causes of action asserted against Defendants in the FAC arise from constitutionally protected activity and Plaintiffs cannot establish a probability of prevailing on their claims. Plaintiffs’ claims are barred by Civil Code sections 47(b) and 1714.10. Further, Plaintiffs cannot establish the essential elements of their claims.


Pursuant to section 425.16(c)(1), Defendants also seek the attorneys’ fees and costs incurred in connection with this Motion.

Defendants’ Special Motion to Strike is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Gina M. Austin, the Declaration of Douglas A. Pettit, the Notice of Lodgment with supporting exhibits, the entire court file in this matter, and on such further evidence as will be presented at the hearing for this Motion.

PETTIT KOHN INGRASSIA LUTZ & DOLIN PC

Dated: June 16, 2022

By:



Douglas A. Pettit, Esq.
Kayla R. Sealey, Esq.
Attorneys for Defendants
**GINA M. AUSTIN and
AUSTIN LEGAL GROUP**

1 Douglas A. Pettit, Esq., SBN 160371
Kayla R. Sealey, Esq., SBN 341956
2 **PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**
11622 El Camino Real, Suite 300
3 San Diego, CA 92130
Telephone: (858) 755-8500
4 Facsimile: (858) 755-8504
E-mail: dpettit@pettitkohn.com
5 ksealey@pettitkohn.com

6 Attorneys for Defendants
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7 **AUSTIN LEGAL GROUP**

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14 v.

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

28 Defendants.

CASE NO.: 37-2021-00050889-CU-AT-CTL

**DEFENDANTS GINA M. AUSTIN AND
AUSTIN LEGAL GROUP'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF THEIR
MOTION TO STRIKE PLAINTIFFS'
FIRST AMENDED COMPLAINT
PURSUANT TO CODE OF CIVIL
PROCEDURE SECTION 425.16 (ANTI-
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1 Defendants GINA M. AUSTIN and AUSTIN LEGAL GROUP (collectively, “Austin” or
2 “Defendants”), hereby submit the following Memorandum of Points and Authorities in support of
3 their Special Motion to Strike Plaintiffs AMY SHERLOCK, an individual and on behalf of her
4 minor children, T.S. and S.S., and ANDREW FLORES’ (collectively, “Plaintiffs”) First
5 Amended Complaint pursuant to Code of Civil Procedure section 425.16 (the “anti-SLAPP
6 statute”).

7 **I.**

8 **INTRODUCTION**

9 The claims in Plaintiffs’ First Amended Complaint (“FAC”) should be stricken pursuant
10 to California’s anti-SLAPP statute. The entire lawsuit, as it relates to Austin, is based on her
11 acting within the scope as an attorney, providing legal services to her clients and petitioning for
12 conditional use permits (“CUPs”)—all of which is absolutely privileged pursuant to Civil Code
13 section 47(b). Although the FAC attempts to characterize Austin’s actions as conspiratorial to
14 monopolize the cannabis market, the facts provided only show that Plaintiffs are suing Austin for
15 doing her job and representing her clients. This is a classic case for the application of the anti-
16 SLAPP statute.

17 Austin is an attorney who specializes in cannabis licensing and entitlement at the state and
18 local levels. Despite the fact that neither Plaintiff has a direct grievance against Austin, she has
19 been named as a defendant in this action. Plaintiff Amy Sherlock’s alleged damages stem from
20 allegations that other named defendants (not Austin) defrauded her and her children out of
21 property that was owned by her deceased husband. Likewise, Plaintiff Andrew Flores’ alleged
22 damages stem from the acts of other named defendants, not Austin. These contrived conspiracy
23 claims are without merit and are simply rehashed allegations that have already been made in three
24 separate complaints.¹

25 Notwithstanding its frivolous nature, Plaintiffs’ FAC is subject to the anti-SLAPP statute.
26 The claims asserted against Austin are explicitly grounded in petitioning activities undertaken by

27 _____
28 ¹ **Exhibit A:** *Geraci v. Cotton* Complaint; **Exhibit B:** *Geraci v. Cotton* Cross-Complaint; **Exhibit C:** *Cotton v. Geraci et al.* Complaint.

1 Austin on behalf of her clients. The causes of action for Conspiracy to Monopolize in Violation of
2 the Cartwright Act, Unfair Competition and Unlawful Business Practices, and Civil Conspiracy
3 fall within the anti-SLAPP statute as they arise directly from the protected activity of petitioning
4 an administrative agency. Further, Plaintiffs cannot meet their burden to establish a probability of
5 success on their claims because (1) the claims are barred by Civil Code section 1714.10, (2)
6 Austin’s petitioning activities are clearly and unambiguously protected by the litigation privilege,
7 and (3) Plaintiffs failed to establish and cannot establish the essential elements of their claims.

8 II.

9 STATEMENT OF RELEVANT FACTS

10 A. The Cotton Actions

11 Plaintiffs’ FAC conspicuously resembles the allegations made in the various Cotton
12 actions by asserting the same conspiracy theory based upon the same facts. The Cotton actions
13 arise out of an unsuccessful agreement for the purchase and sale of real property between Cotton
14 and defendant Larry Geraci (“Geraci”). Austin represented Geraci at the time and was involved to
15 the extent of drafting the parties’ purchase and sale agreement. (Austin Dec., ¶ 6.) Neither Plaintiff
16 was involved or had anything remotely to do with this deal.

17 On March 21, 2017, a complaint was filed in *Geraci v. Cotton*, Case No.: 37-2017-
18 00010073-CU-BC-CTL, for breach of contract claims. (Declaration of Douglas A. Pettit (“Pettit
19 Dec.”), Ex. A.) Austin did not represent Geraci in this action, she only testified at trial pursuant to
20 a subpoena. (Austin Dec., ¶ 7.)

21 On August 25, 2017, Cotton filed a cross-complaint in *Geraci v. Cotton* (Pettit Dec., Ex.
22 B) which named Austin as a defendant for representation of Geraci in drafting the purchase and
23 sale agreement. Following a jury trial, judgment was entered in favor of Geraci against Cotton on
24 both the complaint and the cross-complaint.

25 On February 9, 2018, Cotton filed a complaint in *Cotton v. Geraci, et al.*, Case No. 18-cv-
26 0325-GPC-MDD, asserting twenty (20) causes of action alleging the city was prejudice against
27 him, the state court judges were biased, and all defendants were united in a grand conspiracy.
28 (Pettit Dec., Ex. C.)

1 **B. Austin’s Involvement with the Ramona CUP**

2 The Ramona CUP was issued at 1210 Olive Street, Ramona, California 92065, to Michael
3 “Biker” Sherlock (“Mr. Sherlock”). (FAC, ¶¶ 2,68.) All of the allegations related to the Ramona
4 CUP are asserted by Plaintiff Sherlock against other defendants. (See FAC, ¶¶ 64-115.) Austin
5 was not involved with the acquisition of the Ramona CUP. (Declaration of Gina M. Austin
6 (“Austin Dec.”), ¶ 2.)

7 **C. Austin’s Involvement with the Balboa CUP**

8 The Balboa CUP was issued at 8863 Balboa Avenue, Unit E, San Diego, California
9 92123, to Mr. Sherlock’s holding entity, United Patients Consumer Cooperative. (FAC, ¶¶ 2, 71.)
10 All of the allegations related to the Balboa CUP are asserted by Plaintiff Sherlock against other
11 defendants. (See FAC, ¶¶ 64-115.) Austin was involved with the acquisition of the Balboa CUP to
12 the extent that she helped Evelyn Heidelberg, Mr. Sherlock’s attorney, with the initial application.
13 (Austin Dec., ¶ 3.)

14 **D. Austin’s Involvement with the Federal CUP**

15 The Federal CUP was issued at 6220 Federal Blvd., San Diego, California 92114, to
16 defendant Aaron Magagna. (FAC, ¶¶ 2, 213.) Austin was not involved with the acquisition of the
17 Federal CUP. (Austin Dec., ¶ 5.)

18 Prior to the Federal CUP being issued, Austin and others were hired by Geraci to apply for
19 a CUP at 6176 Federal Blvd., San Diego, California 92114 (the “Cotton Property”). (FAC, ¶ 119;
20 Austin Dec., ¶ 4.) Austin was involved in assisting with the preparation of the application, which
21 was abandoned after another CUP was issued within 1000 feet, i.e., the Federal CUP. (*Ibid.*)

22 **E. Austin’s Involvement with the Lemon Grove CUP**

23 The Lemon Grove CUP was issued at 6859 Federal Blvd., Lemon Grove, California
24 91945. (FAC, ¶ 2.) Austin was not involved with the acquisition of the Lemon Grove CUP and has
25 no recollection of conversations with anyone regarding whether the Lemon Grove Property
26 qualified for a CUP. (Austin Dec., ¶ 8.) Further, Plaintiffs have not alleged any interest in the
27 Lemon Grove CUP and are not asserting any related damages—the FAC is improperly asserting
28 rights of a third-party who is not a plaintiff. (See FAC, ¶¶ 267-275.)

1 III.

2 **LEGAL STANDARD**

3 Code of Civil Procedure section 425.16 (the “anti-SLAPP statute”) is a procedural remedy
4 designed “to dispose of lawsuits brought to chill the valid exercise of a party’s constitutional right
5 of petition or free speech.” (*Digerati Holdings, LLC v. Young Money Ent’t, LLC* (2011) 194
6 Cal.App.4th 873, 882-83.) The Legislature enacted the anti-SLAPP statute to control “a
7 disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional
8 rights of freedom of speech and petition for redress of grievances.” (Code Civ. Proc., § 425.16,
9 subd. (a).) The statute therefore “provides a procedure for weeding out, at an early stage,
10 *meritless* claims arising from protected activity.” (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384; See
11 also *Bel Air Internet v. Morales* (2018) 20 Cal.App.5th 924, 939.) In order to maximize protection
12 for petitioning activity, the statute is construed broadly. (Code Civ. Proc., § 425.16, subd. (a);
13 *Briggs v. Eden Council* (1999) 19 Cal.4th 1106, 1119-22.)

14 The anti-SLAPP analysis involves a two-pronged test. First, the Court must determine if
15 the moving party has made a threshold showing that the challenged claim arises out of activity
16 which is protected under the statute. (Code Civ. Proc., § 425.16, subd. (b)(1); See also *Jarrow*
17 *Formulas, Inc. v. Lamarche* (2003) 31 Cal.4th 728, 733.) The inquiry on the first prong focuses
18 only on whether the actions underlying the challenged claims fall under one of the categories of
19 protected activity described in section 425.16, subdivision (e). (*Malin v. Singer* (2013) 217
20 Cal.App.4th 1283, 1292.)

21 Second, if the movant establishes the challenged claims arise out of protected activity, the
22 burden then shifts to the respondent to demonstrate by “competent, admissible evidence” a
23 probability of success on the merits. (Code Civ. Proc., § 425.16, subd. (b)(1); See *Hailstone v.*
24 *Martinez* (2008) 169 Cal.App.4th 728, 736 [holding plaintiff cannot rely solely on his complaint
25 to meet his burden under the second prong].) If the respondent fails to meet this burden, the
26 claims must be stricken. (Code Civ. Proc., § 425.16, subd. (b) (1).)

27 In making its determination, the trial court is instructed to analyze the factual sufficiency
28 of a claim, “not make credibility determinations or compare the weight of the evidence.” (*Malin*

1 v. *Singer*, *supra*, 217 Cal.App.4th at 1293, citing *Soukup v. Law Offices of Herbert Hafif* (2006)
2 39 Cal.4th 260, 269, fn.3; See also *Flatley v. Mauro* (2006) 39 Cal.4th 299, 326.)

3 IV.

4 **ARGUMENT**

5 **A. The First Prong of the Anti-SLAPP Statute is Satisfied Because Plaintiffs' Claims**
6 **Arise from Protected Activity**

7 **1. Petitioning an Administrative Agency for Conditional Use Permits is a**
8 **Protected Activity**

9 One form of protected activity under the anti-SLAPP statute is “any written or oral
10 statement or writing made before a legislative, executive, or judicial proceeding, or any other
11 official proceeding authorized by law.” (Code Civ. Proc., § 425.16, subd. (e)(1).) All of the
12 claims against Austin in Plaintiffs’ FAC are based on or related to proceedings she instituted
13 before the local zoning authority. Specifically, Plaintiffs’ claims are based on Austin’s acquisition
14 of CUPs on behalf of her clients.

15 “It is well established that the protection of the anti-SLAPP statute extends to lawyers and
16 law firms engaged in litigation-related activity.” (*Optional Capital, Inc. v. Akin Gump Strauss,*
17 *Hauer & Feld LLP* (2017) 18 Cal.App.5th 95, 113.) “In fact, courts have adopted a fairly
18 expansive view of what constitutes litigation-related activities within the scope of section
19 425.16.” (*Ibid*, internal quotations omitted.) Under the statute’s “plain language,” the filing of
20 such legal petitions and “*all* communicative acts performed by attorneys as part of their
21 representation of a client in a judicial proceeding or other petitioning context are per se protected
22 as petitioning activity by the anti-SLAPP statute.” (*Ibid*, italics in original; internal quotations
23 omitted.)

24 Austin’s filing of applications for conditional use permits on behalf of her clients and any
25 statements made in a proceeding before the local zoning authority fall under the anti-SLAPP
26 statute as petitioning activity because a local zoning authority proceeding is the proceeding of a
27 governmental administrative body. (*Briggs v. Eden Council for Hope & Opportunity*,

28 ///

1 *supra*, 19 Cal.4th at 1115 “[t]he constitutional right to petition . . . includes . . . seeking
2 administrative action”].)

3 **2. Plaintiffs’ Claims “Arise From” the Petitioning for Conditional Use Permits**

4 In determining whether a claim “arises from” protected conduct, the Court looks at the
5 “allegedly wrongful and injury-producing conduct that provides the foundation for the claims.”
6 (*Castleman v. Sagaser* (2013) 216 Cal.App.4th 481, 490-91.) “The anti-SLAPP statute’s
7 definitional focus is not the form of the plaintiff’s cause of action but, rather, the defendant’s
8 activity that gives rise to his or her asserted liability—and whether that activity constitutes
9 protected speech or petitioning.” (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 92.) Plaintiffs cannot
10 avoid the anti-SLAPP application by disguising the pleading as a “garden variety” tort claim if
11 the basis of the alleged liability is predicated on protected speech or conduct.” (*Id.* At 90.)

12 Here, Plaintiffs’ inclusion of Defendants in the FAC arises out of protected activity.
13 Plaintiffs’ FAC explicitly states: “This action focuses on the Enterprise’s unlawful acts in
14 acquiring four CUPs . . .” (FAC, ¶ 7.) Specifically, Austin’s conduct of aiding her clients in the
15 acquisition of CUPs is the basis for the claims against Defendants. Plaintiffs’ causes of action for
16 conspiracy to monopolize in violation of the Cartwright Act, unfair competition and unlawful
17 business practices, and civil conspiracy are compromised solely of Austin’s petitioning activities
18 for CUPs on behalf of her clients. (FAC, ¶¶ 53, 119.)

19 Although the FAC alleges someone nonprotected activity in addition to the protected
20 activity, the anti-SLAPP statute still applies. For example, the FAC alleges that Austin “provided
21 confidential information from her non-Enterprise clients regarding real properties that qualified
22 for CUPs so that Razuki and his associates could take action to prevent the acquisition of those
23 CUPs by Austin’s non-Enterprise clients in furtherance of creating a monopoly.” (FAC, ¶ 62.)
24 Plaintiffs likewise allege that “Austin contacted Williams despite knowing he was represented by
25 counsel in violation of the Rules of Professional Responsibility.” (FAC, ¶ 274.) Even if these
26 allegations were true, the law is clear that mixed allegations of protected and nonprotected
27 activity do not remove the claims from the scope of the anti-SLAPP statute. “Where causes of
28 action allege both protected and unprotected activity, all the causes of action must be stricken.”

1 (*Trapp v. Naiman* (2013) 218 Cal.App.4th 113, 121; See also *Fox Searchlight Pictures, Inc. v.*
2 *Paladino* (2001) 89 Cal.App.4th 294, 308 [“a plaintiff cannot frustrate the purposes of the SLAPP
3 statute through a pleading tactic of combining allegations of protected and nonprotected
4 activity...”].) Simply put, if the harm primarily stems from protected activity, the entire claim is
5 subject to being stricken. (*Peregrine Funding, Inc.* (2005) 133 Cal.App.4th 658.)

6 Plaintiffs’ claims and alleged injuries resulted entirely from actions Austin took in
7 petitioning the local zoning authority, on behalf of her clients, for CUPs. While the FAC alleges
8 violations of the Rules of Professional Conduct, the only harm demonstrably connected to these
9 allegations are the petitions for and acquisitions of CUPs. Accordingly, Austin’s alleged conduct
10 of aiding her clients in the acquisition of CUPs, is central to the claims. Since the claims arise out
11 of protected activity (and Austin was named in retaliation for protected activity), Austin has met
12 its burden under the first prong of the anti-SLAPP analysis.

13 **B. The Second Prong of the Anti-SLAPP Statute is Also Satisfied Because Plaintiffs’**
14 **Cannot Establish a Probability of Prevailing on Their Claims**

15 Once the defendant establishes that the anti-SLAPP statute applies, the plaintiff must
16 demonstrate that his claims have merit based not on speculation or the mere allegations of the
17 pleadings, but with “competent and admissible evidence.” (*Tuchscher Dev. Enterprises, Inc. v.*
18 *San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219, 1236.) Evidence that would not be
19 admissible at trial, such as an “averment on information and belief[,] ... cannot show a
20 probability of prevailing on the claim.” (*Ibid.*)

21 While the burden on the second prong belongs the plaintiff, in determining whether a
22 party has established a probability of prevailing on the merits of his or her claims, a court
23 considers not only the substantive merits of those claims, but also all defenses available to them.
24 (See *Traditional Cat Assn., Inc. v. Gilbreath* (2004) 118 Cal.App.4th 392, 398.) A plaintiff must
25 present evidence to overcome any privilege or defense to the claim that has been raised in order to
26 demonstrate a “probability of success on the merits.” (See *Flatley v. Mauro, supra*, 39 Cal.4th at
27 323.)

28 ///

1 **1. Civil Code Section 1714.10 Bars Plaintiffs’ Claims**

2 Under Civil Code section 1714.10 (a),

3 No cause of action against an attorney for a civil conspiracy with his or her
4 client arising from any attempt to contest or compromise a claim or dispute,
5 and which is based upon the attorney’s representation of the client, shall be
6 included in a complaint or other pleading unless the court enters an order
7 allowing the pleading that includes the claim for civil conspiracy to be filed
 after the court determines that the party seeking to file the pleading has
 established that there is a reasonable probability that the party will prevail in
 the action.

8 (Civ. Code, § 1714.10, subd. (a).) The plaintiff must file a verified petition accompanied by
9 supporting affidavits stating the facts upon which the liability is based, after which the defendant
10 is entitled to submit opposing affidavits prior to the court making its determination. (*Ibid.*) Failure
11 to obtain a court order under section 1714.10 (a) is a defense to the action. (Civ. Code, § 1714.10,
12 subd. (b).)

13 Section 1714.10 applies to any claims against an attorney where the factual basis for the
14 conspiracy-based claim is so intertwined with the other causes of action that it is not severable.
15 (*Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc.* (2005) 131 Cal.App.4th 802, 820-21.)
16 Here, Plaintiffs’ causes of action against Austin include i) Conspiracy to Monopolize in Violation
17 of the Cartwright Act (Bus. & Prof. Code, §§ 16720 *et seq.*); ii) Unfair Competition and Unlawful
18 Business Practices (Bus. & Prof. Code, §§ 17200 *et seq.*); and iii) Civil Conspiracy. Each cause of
19 action against Austin is based on allegations of a conspiracy with “the Enterprise” in which
20 Plaintiffs allege Austin unlawfully applied for or acquired CUPS for her clients (FAC, ¶¶ 4, 7.) All
21 of Plaintiffs’ claims are based entirely on Austin’s purported conspiracy with and representation
22 of her clients. (See, e.g., FAC at ¶¶ 42, 53, 59, and 119.) Yet, Plaintiffs did not obtain leave from
23 this Court to include Austin as a defendant before filing the FAC against her. Plaintiffs never filed
24 a “verified petition” or “supporting affidavits stating the facts upon which the liability is based”
25 as required. (Civ. Code, § 1714.10, subd. (a).) Thus, Plaintiffs failed to comply with section
26 1714.10, and their claims against Austin are barred. (Civ. Code, § 1714.10, subd. (b).)

27 ///

28 ///

1 **2. Plaintiffs’ Claims are Barred by the Litigation Privilege**

2 In addition to being barred by Civil Code section 1714.10, Plaintiffs’ claims are barred by
3 the litigation privilege. A plaintiff cannot establish a probability of prevailing if the litigation
4 privilege precludes liability on the claims. (*Optional Capital, Inc. v. Akin Gump Strauss, Hauer &*
5 *Feld LLP, supra*, 18 Cal.App.5th at 115; See also, *Kashian v. Harriman* (2002) 98 Cal.App.4th
6 892, 926-27 [plaintiff cannot demonstrate a probability of prevailing where plaintiff’s defamation
7 action was barred by Civil Code section 47, subd. (b)].) It is well established under California
8 law, that the litigation privilege “is absolute in nature, applying ‘to all publications, irrespective of
9 their maliciousness.’” (*Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th
10 1232, 1241, quoting *Silberg v. Anderson* (1990) 50 Cal.3d 205, 216.) ‘The usual formulation is
11 that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings;
12 (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation;
13 and (4) that [has] some connection or logical relation to the action.’ (*Id.* at p. 212.) The privilege
14 “is not limited to statements made during a trial or other proceedings, but may extend to steps
15 taken prior thereto, or afterwards.” (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1057.) The
16 privilege has been interpreted broadly and “any doubt as to whether the privilege applies is
17 resolved in favor of applying it.” (*Adams v. Superior Court* (1992) 2 Cal.App.4th 521, 529; *Home*
18 *Ins. Co. v. Zurich Ins. Co.* (2002) 96 Cal.App.4th 17,13.)

19 Here, Plaintiffs’ claims are based entirely on communications protected by the litigation
20 privilege, i.e., petitioning the local zoning authority. Local zoning authority proceedings are the
21 type of proceedings to which the litigation privilege applies. The statements made during such
22 proceeding are covered by the litigation privilege as statements made as part of an “official
23 proceeding authorized by law” within the meaning of Civil Code section 47, subdivision (b)
24 because they were made in a quasi-judicial proceeding. (See *Lebbos v. State Bar* (1985) 165
25 Cal.App.3d 656, 667 [statements made in initiating and pursuing a State Bar administrative
26 proceeding were protected by the litigation privilege]; *Hagberg v. California Federal Bank*
27 (2004) 32 Cal.4th 350, 362 [“statements that are made in quasi-judicial proceedings . . . are
28 privileged to the same extent as statements made in the course of a judicial proceeding”].)

1 The litigation privilege is absolute. As such, Plaintiffs' claims against Austin are barred by
2 the litigation privilege.

3 **3. Plaintiffs' Conspiracy to Monopolize in Violation of the Cartwright Act**
4 **Claim Fails**

5 In *Quelimane v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 47, the Supreme Court
6 described the required Cartwright Act allegations to maintain an action for combination in
7 restraint of trade as three-fold: "(1) the formation and operation of the conspiracy, (2) the
8 wrongful act or acts done pursuant thereto, and (3) the damage resulting from such act or acts"
9 (*ibid*), but subsequently indicated that an allegation or inference of purpose to restrain trade
10 should also be present. (See *Kunert v. Mission Financial Services Corp.* (2003) 110 Cal.App.4th
11 242, 262, n.15; See also *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th
12 700, 722 [agreement violates Cartwright Act only if "restraint of trade in the commodity is the
13 purpose of the agreement"].)

14 As a general proposition the California Supreme Court requires a "high degree of
15 particularity in the pleading of Cartwright Act violations." (*G.H.I.I. v. MTS, Inc.* (1983) 147
16 Cal.App.3d 256, 265.) Unlawful combinations must be alleged with specificity, and thus,
17 "general allegations of a conspiracy unaccompanied by a statement of the facts constituting the
18 conspiracy and explaining its objectives and impact in restraint of trade will not suffice." (*Ibid*;
19 See *Truta v. Avis Rent A Car System, Inc.* (1987) 193 Cal.App.3d 802 [conclusory allegations
20 insufficient].)

21 "[A] plaintiff cannot merely restate the elements of a Cartwright Act violation . . . the
22 plaintiff must allege in its complaint *certain facts* in addition to the elements of the alleged
23 unlawful act so that the defendant can understand the nature of the alleged wrong and discovery is
24 not merely a blind 'fishing expedition' for some unknown wrongful acts." (*Smith v. State Farm*
25 *Mutual Automobile Ins. Co., supra*, 93 Cal.App.4th at 722 (emphasis in original), quoting
26 *Cellular Plus, Inc. v. Superior Court* (1993) 14 Cal.App.4th 1224, 1236.)

27 A Cartwright Act violation requires "a combination of capital, skill or acts by two or more
28 persons" that seeks to achieve an anticompetitive end. (Bus. & Prof. Code, § 16720.)

1 Consequently, “[o]nly separate entities pursuing separate economic interests can conspire within
2 the proscription of the antitrust laws against price fixing combinations.” (*Freeman v. San Diego*
3 *Assn. of Realtors* (1999) 77 Cal.App.4th 171, 189, citing *Copperweld Corp. v. Independence*
4 *Tube Corp.* (1984) 467 U.S. 752, 769–771 [legally distinct entities do not conspire if they
5 “pursue[] the common interests of the whole rather than interests separate from those of the
6 [group] itself...”].) A Cartwright Act complaint that does not adequately allege concerted action
7 by separate entities with separate and independent interests is subject to dismissal. (*Id.* at 52;
8 *Asahi Kasei Pharma Corp. v. CoTherix, Inc.* (2012) 204 Cal.App.4th 1.)

9 Plaintiffs’ FAC has failed to even come close to supporting a claim for violation of the
10 Cartwright Act. Plaintiffs’ only make general allegations of a conspiracy and have not offered a
11 single fact showing that the purpose of the agreement, between all 19 defendants, was a restraint
12 of trade in CUPs. This alone, is enough for Plaintiffs’ Cartwright Act claim to be stricken.

13 The FAC also fails to allege concerted action by separate entities with separate and
14 independent interests. Plaintiffs’ have alleged concerted action “of a small group of wealthy
15 individuals and their agents (the “Enterprise”) that have conspired to create an unlawful
16 monopoly in the cannabis market.” (FAC, ¶ 1.) Their whole argument is that everyone was
17 working together and pursuing the common interest of the enterprise. (See *Copperworld Corp. v.*
18 *Independence Tube Corp.*, *supra*, 467 U.S. at 769-771.) This too, by itself, is enough for the
19 Court to dismiss this claim.

20 By way of supporting facts, the FAC alleges: “Defendants committed overt acts and
21 engaged in concerted action in furtherance of their combination and conspiracy to restrain and
22 monopolize, as described above, including but not limited to unlawfully applying for or acquiring
23 CUPs through the use of proxies and/or forged documents, sham litigation, and acts and threats of
24 violence against competitors and/or parties who could threaten or expose their illegal actions in
25 furtherance of the conspiracy. (FAC, ¶ 283.) Although this allegation includes all the correct
26 buzzwords, it does nothing to help the already mentioned deficiencies. More importantly, it fails
27 to show any liability as to Austin and further supports the fact that she has been wrongly included
28 in this action:

- 1 • Unlawfully applying for or acquiring CUPs through the use of proxies: Paragraph 119 of
2 the FAC alleges that Austin, Bartell and Schweitzer were hired by Geraci to prepare and
3 submit a CUP application in the name of Geraci’s assistant, Berry (the “Berry CUP
4 Application”). Other than this conclusory allegation, Plaintiffs have provided no evidence
5 supporting it, as to Austin. (See FAC, Exh. 3, the Berry CUP Application [showing it was
6 signed and submitted by Schweitzer].)
- 7 • Unlawfully applying for or acquiring CUPs through forged documents: This allegation has
8 nothing to do with Austin as it relates to Plaintiff Sherlocks claims against defendants
9 Lake and Harcourt. (See FAC, ¶¶ 64-99 and 285-301.)
- 10 • Sham litigation: This allegation is in regards to the action filed by Geraci against Cotton
11 (Cotton I). (See FAC, ¶ 316.) Austin’s only role in it was testifying. (See FAC, ¶¶ 202,
12 204.)
- 13 • Acts and threats of violence: There are no allegations in the FAC of threats or violence
14 against Austin. (See FAC, ¶¶ 215-224 [alleging defendants Alexander and Stellmacher
15 threatened Cotton]; FAC, ¶¶ 225-238 [alleging defendant Magagna threatens Young].)
16 Thus, Plaintiffs’ conspiracy to monopolize in violation of the Cartwright Act claim should
17 be stricken.

18 **4. The Unfair Competition and Unlawful Business Practices Claims Fails**

19 The Unfair Business Practices Act shall include “any unlawful, unfair, or fraudulent
20 business act or practice.” (Bus. & Prof. Code, § 17200.) A plaintiff alleging unfair business
21 practices under these statutes must state with reasonable particularity the facts supporting the
22 statutory elements of the violation. (*Khoury v. Maly’s of California, Inc.* (1993) 14 Cal.App.4th
23 612, 619.)

24 Plaintiffs allege that Austin’s “Proxy Practice is illegal and violates numerous State and
25 City laws, most notably, BPC §§ 19323 et seq. and 26057 et seq.” (FAC, ¶ 314.) Business and
26 Professions Code section 26057, formerly section 19323, states the licensing authority “shall
27 deny an application if either the applicant, or the premises for which a state license is applied, do
28 not qualify for licensure under this division.” (Bus. & Prof. Code, § 26057.) The statute goes on

1 to list specific conditions that *may* constitute grounds for denial of licensure or renewal. (*Ibid*,
2 emphasis added.)

3 Plaintiffs’ entire argument backing their “Proxy Practice” allegation rests on their asserted
4 fact that Geraci and Razuki were ineligible to own a cannabis license or CUP due to previously
5 being sanctioned for unlicensed commercial cannabis activities. What Plaintiffs’ do not mention
6 is that although this type of sanction could be grounds for denial, section 26057 allows the
7 licensing authority to decide based on all the circumstances. A plain reading of the statute shows
8 there is no one condition that constitutes an automatic, outright denial. The statute gives the
9 licensing authority complete discretion to weigh factors and decide what *may* constitute grounds
10 for denial.

11 Further, it is unclear as to how Austin could be implicated for violation of this statute as it
12 does not apply to her. Section 26057 appears to be guidelines for a licensing authority to follow
13 when reviewing applications for cannabis licenses and CUPs. Austin takes no part in reviewing,
14 approving or denying such applications.

15 Consequently, Plaintiffs have not properly alleged a claim for unfair business practices,
16 which requires Plaintiffs to state with reasonable particularity the facts supporting the statutory
17 elements of the violation. (See *Khoury v. Maly’s of California, Inc.*, *supra*, 14 Cal.App.4th at
18 619.) As it stands, Plaintiffs have not pled a statute, its elements, and any facts to support Austin’s
19 violation of said statute. Thus, Plaintiffs unfair competition and unlawful business practices claim
20 should be stricken.

21 **5. Plaintiffs’ Civil Conspiracy Claim is Legally Defective**

22 A complaint for civil conspiracy states a cause of action only when it alleges the
23 commission of a civil wrong that causes damage; although conspiracy may render additional
24 parties liable for the wrong or increase the damages for which any one conspirator is liable, the
25 conspiracy itself, no matter how atrocious, is not actionable without the wrong. (*Okun v. Superior*
26 *Court* (1981) 29 Cal.3d 442, 454.) The civil wrong must consist of acts that would give rise to a
27 cause of action independent of the conspiracy. (*Zumbrun v. Univ. of S. Cal.* (1972) 25 Cal.App.3d
28 1, 12; See also *Harrell v. 20th Century Ins. Co.* (9th Cir. 1991) 934 F.2d 203, 208 [civil

1 conspiracy claim failed because underlying cause of action for fraud was barred by the statute of
2 limitations].)

3 If a party is legally incapable of committing the underlying tort, that party cannot be liable
4 for conspiracy to commit the tort. (*1-800-Contacts, Inc. v. Steinberg* (2003) 107 Cal.App.4th 568,
5 590 [party who owed no fiduciary duties to plaintiff found not liable for conspiracy to induce
6 breach of fiduciary duties owed by another]; See also *Chavers v. Gatke Corp.* (2003) Cal.App.4th
7 606, 614 [defendant not liable for conspiracy unless he owes plaintiff a duty that is independent
8 of conspiracy].) In addition, if the underlying tortious act was privileged, an allegation that the act
9 was committed as a part of a conspiracy will not revive an action that would otherwise be barred.
10 (*Nicholson v. McClatchy Newspaper* (1986) 177 Cal.App.3d 509, 521.)

11 First and foremost, Plaintiffs have not alleged facts sufficient to prove a conspiracy. There
12 are no facts proving that Austin created or was a participant in any common plan, scheme or
13 design. There are no facts proving that Austin agreed to be a part of a conspiracy or that her acts
14 were in furtherance of a conspiracy.

15 Additionally, even if Plaintiffs did properly plead a conspiracy (they did not), this claim
16 still fails. Plaintiffs cannot prevail on any of the underlying tort claims upon which the conspiracy
17 claim is based. Because a bare conspiracy is not actionable, Plaintiffs could only prevail on this
18 claim if they showed that they had a probability of prevailing on one or more of the torts upon
19 which the conspiracy claim is predicated. Their failure to show a probability of success on any of
20 the underlying tort claims therefore bars Plaintiffs' conspiracy claims as a matter of law.

21 Furthermore, as explained above, the litigation privilege applies. In other words, the acts
22 complained of by Plaintiffs were privileged. Therefore, Plaintiffs cannot try to revive an action
23 against Austin by alleging her acts were committed as part of a conspiracy. Thus, Plaintiffs civil
24 conspiracy claim fails.

25 V.

26 **CONCLUSION**

27 Plaintiffs' claims against Austin arise from her petitioning the local zoning authority, on
28 behalf of her clients. Because the claims all arise from protected petitioning activity, Defendants

1 establish the first prong of the anti-SLAPP analysis. On the second prong of the analysis,
2 Plaintiffs cannot meet their burden to show a likelihood of success on the merits. In addition,
3 Plaintiffs' claims are barred by Civil Code 1714.10 and the litigation privilege. Accordingly,
4 Austin respectfully requests the Court grant her special motion to strike Plaintiffs' FAC as to
5 Defendants Gina M. Austin and Austin Legal Group pursuant to Code of Civil Procedure section
6 425.16.

7 **PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**

8
9 Dated: June 16, 2022

By: 

Douglas A. Pettit, Esq.
Kayla R. Sealey, Esq.
Attorneys for Defendants
**GINA M. AUSTIN and
AUSTIN LEGAL GROUP**

1 Douglas A. Pettit, Esq., SBN 160371
2 Kayla R. Sealey, Esq., SBN 341956
3 **PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**
4 11622 El Camino Real, Suite 300
5 San Diego, CA 92130
6 Telephone: (858) 755-8500
7 Facsimile: (858) 755-8504
8 E-mail: dpettit@pettitkohn.com
9 ksealey@pettitkohn.com

10 Attorneys for Defendants
11 **GINA M. AUSTIN and**
12 **AUSTIN LEGAL GROUP**

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

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

18 Plaintiffs,

19 v.

20 GINA M. AUSTIN, an individual; AUSTIN
21 LEGAL GROUP, a professional
22 corporation, LARRY GERACI, an
23 individual, REBECCA BERRY, an
24 individual; JESSICA MCELFRISH, an
25 individual; SALAM RAZUKI, an
26 individual; NINUS MALAN, an individual;
27 FINCH, THORTON, AND BARID, a
28 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;
EULENTIAS 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.: 37-2021-00050889-CU-AT-CTL

**DECLARATION OF GINA M. AUSTIN,
ESQ. IN SUPPORT OF MOTION TO
STRIKE PLAINTIFFS' FIRST AMENDED
COMPLAINT PURSUANT TO CODE OF
CIVIL PROCEDURE SECTION 425.16
(ANTI-SLAPP STATUTE)**

[IMAGED FILE]

Date: August 5, 2022
Time: 9:00 a.m.
Dept.: C-75
Judge: Hon. James A. Mangione
Filed: December 3, 2021
Trial: Not Set

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I, Gina Austin, declare as follows:

1. I am a named defendant in the above-captioned case and am a partner and owner of the law firm Austin Legal Group (“ALG”), also a named defendant in this action. I am licensed to practice before the Courts of the State of California, and if called as a witness, I would and could competently testify to the following facts of my own personal knowledge.

2. ALG was not involved with the acquisition of the Ramona CUP.

3. ALG was involved with the acquisition of the Balboa CUP, to the extent of helping Evelyn Heidelberg, Michael Sherlock’s attorney, with the initial application.

4. ALG was hired by Larry Geraci (“Geraci”) to help acquire a CUP at 6176 Federal Blvd., San Diego, California 92114 (the “Cotton Property”). I assisted with the application, but it was abandoned after another CUP was issued within 1000 feet, i.e., the Federal CUP.

5. ALG was not involved with the acquisition of the Federal CUP.

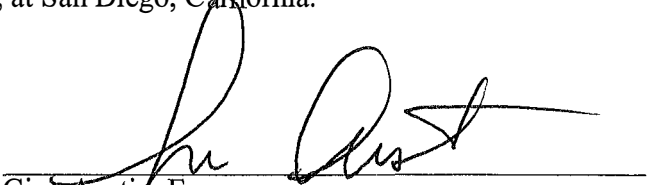
6. ALG represented Geraci in drafting a finalized draft of Darryl Cotton (“Cotton”) and Geraci’s agreement for the purchase and sale of the Cotton Property.

7. ALG did not represent Geraci in *Cotton I*. I only testified at trial pursuant to a subpoena.

8. ALG was not involved with the acquisition of the Lemon Grove CUP, and I have no recollection of conversations with anyone regarding whether the property qualified for a CUP.

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

Executed this 16th day of June, 2022, at San Diego, California.


Gina Austin, Esq.

1 Douglas A. Pettit, Esq., SBN 160371
Kayla R. Sealey, Esq., SBN 341956
2 **PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**
11622 El Camino Real, Suite 300
3 San Diego, CA 92130
Telephone: (858) 755-8500
4 Facsimile: (858) 755-8504
E-mail: dpettit@pettitkohn.com
5 ksealey@pettitkohn.com

6 Attorneys for Defendants
7 **GINA M. AUSTIN and**
AUSTIN LEGAL GROUP

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

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

13 Plaintiffs,

14 v.

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

28 Defendants.

CASE NO.: 37-2021-00050889-CU-AT-CTL

**DECLARATION OF DOUGLAS A.
PETTIT, ESQ. IN SUPPORT OF
DEFENDANTS' MOTION TO STRIKE
PLAINTIFFS' FIRST AMENDED
COMPLAINT PURSUANT TO CODE OF
CIVIL PROCEDURE SECTION 425.16
(ANTI-SLAPP STATUTE)**

[IMAGED FILE]

Date: August 5, 2022
Time: 9:00 a.m.
Dept.: C-75
Judge: Hon. James A. Mangione
Filed: December 3, 2021
Trial: Not Set

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I, Douglas A. Pettit, declare as follows:

1. I am an attorney duly licensed to practice law before all of the courts of the State of California and am a shareholder with the law firm of Pettit Kohn Ingrassia Lutz & Dolin PC, attorneys of record for Defendants GINA M. AUSTIN and AUSTIN LEGAL GROUP (“Defendants”), in the above-captioned case. I am familiar with the facts and proceedings of this case and if called as a witness, I could and would competently testify to the following facts of my own personal knowledge.


2. A true and correct copy of the Complaint filed in *Geraci v. Cotton*, Case No.: 37-2017-00010073-CU-BC-CTL, filed March 21, 2017, in San Diego Superior Court is attached hereto as **Exhibit A**.

3. A true and correct copy of the Cross-Complaint filed in *Geraci v. Cotton*, Case No.: 37-2017-00010073-CU-BC-CTL, filed August 25, 2017, in San Diego Superior Court is attached hereto as **Exhibit B**.

4. A true and correct copy of the Complaint filed in *Cotton v. Geraci, et al.*, Case No. 18-cv-0325-GPC-MDD, filed February 9, 2018, in the United States District Court, Southern District of California is attached hereto as **Exhibit C**.

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

Executed this 16th day of June, 2022, at San Diego, California.



Douglas A. Pettit, Esq.

Exhibit A

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

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

7 Attorneys for Plaintiff
LARRY GERACI

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

10 LARRY GERACI, an individual,
11 Plaintiff,
12 v.
13 DARRYL COTTON, an individual; and
14 DOES 1 through 10, inclusive,
15 Defendants.

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

PLAINTIFF'S COMPLAINT FOR:

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

16 Plaintiff, LARRY GERACI, alleges as follows:

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

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

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

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

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

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

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

14 **GENERAL ALLEGATIONS**

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

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

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

1 the PROPERTY to him by Defendant COTTON.

2 **FIRST CAUSE OF ACTION**

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

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

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

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

21 **SECOND CAUSE OF ACTION**

22 **(For Breach of the Implied Covenant of Good Faith and Fair Dealing**

23 **against Defendant COTTON and DOES 1-5)**

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

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

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

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

8 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

19 **On all Causes of Action:**

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

25 6. For costs of suit incurred herein; and

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

Dated: March 21, 2017

FERRIS & BRITTON,
A Professional Corporation

By: 
Michael R. Weinstein
Scott H. Toothacre

Attorneys for Plaintiff
LARRY GERACI

Exhibit B

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

FINCH, THORNTON & BAIRD, LLP

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

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Superior Court of California,
County of San Diego

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

Clerk of the Superior Court
By Richard Day, Deputy Clerk

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Attorneys for Defendant and Cross-Complainant Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

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

SECOND AMENDED CROSS-COMPLAINT
FOR:

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

[IMAGED FILE]

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

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

DARRYL COTTON, an individual,

Cross-Complainant

v.

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

Cross-Defendants.

/////

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

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

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

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

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

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

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

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

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GENERAL ALLEGATIONS

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

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

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

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

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

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

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

FINCH, THORNTON &
BAIRD, LLP
4747 Executive
Drive - Suite 700
San Diego, CA 92121
(858) 737-3100

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

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

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

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

28 / / / /

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 Geraci: "The sign off date they said it's going to be the 30th."

20 Cotton: "This resolves the zoning issue?"

21 Geraci: "Yes"

22 Cotton: "Excellent"...

23 Cotton: "How goes it?"

24 Geraci: "We're waiting for confirmation today at about 4 o'clock"

25 Cotton: "Whats new?"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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FIRST CAUSE OF ACTION

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

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

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

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

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

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

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SECOND CAUSE OF ACTION

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

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

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

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

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

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

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

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

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

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

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

20 THIRD CAUSE OF ACTION

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

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

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

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

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

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

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

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

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

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

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

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

4 FOURTH CAUSE OF ACTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 FIFTH CAUSE OF ACTION

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

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

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

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

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

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PRAYER FOR RELIEF

WHEREFORE, Cotton prays for relief as follows:

ON THE FIRST CAUSE OF ACTION:

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

ON THE SECOND CAUSE OF ACTION

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

ON THE THIRD CAUSE OF ACTION

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

ON THE FOURTH CAUSE OF ACTION

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

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ON THE FIFTH CAUSE OF ACTION

1. For a judicial declaration that defendants have no right or interest whatsoever in the Property;

2. For a judicial declaration that Cotton is the sole interest-holder in the CUP application for the Property submitted on or around October 31, 2016, defendants have no right or interest in said CUP application, and that defendants are enjoined from further pursuing such CUP application for the Property; and

3. For a judicial order that the Lis Pendens filed by Geraci on the Property be released.

ON ALL CAUSES OF ACTION

1. For interest on all sums at the maximum legal rates from dates according to proof;

2. For costs of suit; and

3. For such other relief as the Court deems just.

DATED: August 25, 2017

Respectfully submitted,

FINCH, THORNTON & BAIRD, LLP

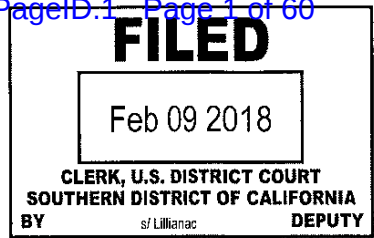
By: _____

DAVID S. DEMIAN
ADAM C. WITT

Attorneys for Defendant and Cross-Complainant
Darryl Cotton

2403.004/3BQ6279.hkr

Exhibit C



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Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Fax: (619) 229-9387

Plaintiff Pro Se

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual,

Plaintiff,

CASE NO.: '18CV0325 GPC MDD

Judge:
Dept.:

vs.

PLAINTIFF'S COMPLAINT FOR:

LARRY GERACI, an individual;
REBECCA BERRY, an individual; GINA
AUSTIN, an individual; AUSTIN LEGAL
GROUP, a professional corporation;
MICHAEL WEINSTEIN, an individual;
SCOTT H. TOOTHACRE; an individual;
FERRIS & BRITTON, a professional
corporation; CITY OF SAN DIEGO, a
public entity; and DOES 1 through 10,
inclusive,

Defendants.

- 1. 42 U.S.C. SEC. 1983: 4TH AMEND. UNLAWFUL SEIZURE**
- 2. 42 U.S.C. SEC. 1983: 14TH AMEND. DUE PROCESS VIOLATIONS**
- 3. BREACH OF CONTRACT;**
- 4. FALSE PROMISE;**
- 5. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;**
- 6. BREACH OF FIDUCIARY DUTY;**
- 7. FRAUD IN THE INDUCEMENT;**
- 8. FRAUD / FRAUDULENT MISREPRESENTATION;**
- 9. TRESPASS;**
- 10. SLANDER OF TITLE;**
- 11. FALSE DOCUMENTS LIABILITY;**
- 12. UNJUST ENRICHMENT;**
- 13. INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;**
- 14. NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;**
- 15. INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS;**
- 16. NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS;**
- 17. CONSPIRACY;**
- 18. RICO;**
- 19. DECLARATORY RELIEF; AND**
- 20. INJUNCTIVE RELIEF.**

DEMAND FOR JURY TRIAL

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6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Fax: (619) 229-9387

Plaintiff Pro Se

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual,

Plaintiff,

CASE NO.:

Judge:
Dept.:

vs.

PLAINTIFF'S COMPLAINT FOR:

LARRY GERACI, an individual;
REBECCA BERRY, an individual; GINA
AUSTIN, an individual; AUSTIN LEGAL
GROUP, a professional corporation;
MICHAEL WEINSTEIN, an individual;
SCOTT H. TOOTHACRE; an individual;
FERRIS & BRITTON, a professional
corporation; CITY OF SAN DIEGO, a
public entity; and DOES 1 through 10,
inclusive,

Defendants.

1. 42 U.S.C. SEC. 1983: 4TH AMEND. UNLAWFUL SEIZURE
2. 42 U.S.C. SEC. 1983: 14TH AMEND. DUE PROCESS VIOLATIONS
3. BREACH OF CONTRACT;
4. FALSE PROMISE;
5. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
6. BREACH OF FIDUCIARY DUTY;
7. FRAUD IN THE INDUCEMENT;
8. FRAUD / FRAUDULENT MISREPRESENTATION;
9. TRESPASS;
10. SLANDER OF TITLE;
11. FALSE DOCUMENTS LIABILITY;
12. UNJUST ENRICHMENT;
13. INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;
14. NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;
15. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
16. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS;
17. CONSPIRACY;
18. RICO;
19. DECLARATORY RELIEF; AND
20. INJUNCTIVE RELIEF.

DEMAND FOR JURY TRIAL

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

4 **INTRODUCTION**

5 1. The *origin* of this matter is a simpler-than-most real estate contract dispute regarding
6 the sale of my property to defendant Larry Geraci (“Geraci”).

7 2. My property qualifies to apply with the City of San Diego (“City”) for a Conditional
8 Use Permit (“CUP”). If the City issues the CUP, the value of the Property will immediately be worth
9 at least **\$16,000,000** because the CUP will allow the establishment of a Medical Marijuana Consumer
10 Collective (“MMCC”). Under the regulatory scheme being effectuated by the State of California, an
11 MMCC is a retail-for-profit marijuana store. Because the City is creating an incredibly small
12 oligarchy by only issuing 36 MMCC retail licenses across the entire City, and will not issue any more
13 for at least 10 years, the net present value of the Property, to an individual that has the capital and
14 resources to build, develop and operate the MMCC, is at least **\$100,000,000**.

15 3. However, the value of the Property is exponentially *greater* than \$100,000,000 to
16 organized, sophisticated and powerful criminals that are looking for legitimate businesses in the
17 marijuana industry that they can use as fronts for their illegal operations.

18 4. Defendant Larry Geraci (“Geraci”) is exactly such a criminal – he runs a criminal
19 enterprise that has for years operated in the illegal marijuana industry. He operates publicly through a
20 business providing tax and financial consulting services that he uses to invests his illegal gains and to
21 provide money laundering services to other criminals who own illegal marijuana stores.

22 5. It is a matter of public record that Geraci is an Enrolled Agent with the I.R.S. and that
23 he has been a named defendant in numerous lawsuits filed by the City against him for his
24 owning/operating of numerous illegal marijuana dispensaries. As described below, he now operates

1 through employees and attorneys to hide his illicit operations. There is no way to ascertain exactly the
2 breadth of his criminal enterprise given his use of private and legal proxies for his criminal activities.

3 6. In November of 2016, Geraci and I came to terms for the sale of my property to him,
4 the terms of which included my having an ownership interest in the contemplated MMCC. However,
5 I found out Geraci had induced me to enter into that agreement on fraudulent grounds and he
6 breached the agreement in numerous ways.

7
8 7. Consequently, I terminated the agreement. After I terminated the agreement, Geraci, in
9 concert with his office manager/employee Rebecca Berry ("Berry") and his counsel, Gina Austin
10 ("Austin"), Michael Weinstein ("Weinstein") and Scott H. Toothacre ("Toothacre"), and their
11 respective law firms, brought forth a meritless lawsuit in state court attempting to fraudulently
12 deprive me of my property (the "Geraci Action").

13
14 8. After the Geraci Action was filed, I requested the City transfer the CUP application
15 filed by Geraci on my property to me. The City refused. I then filed an action against the City seeking
16 to have the City transfer the CUP application to me as Geraci had no legal basis to my property after
17 our agreement was terminated (the "City Action," and collectively with the Geraci Action, the "State
18 Action." Defendant attorneys named herein, and their respective law firms, are Geraci's counsel in
19 the State Action (the "Attorney Defendants").

20
21 9. Throughout the course of the State Action, I have dealt with officials from the City of
22 San Diego ("City") that have violated my constitutional rights in various ways. These actions, by
23 themselves unlawful, have also had the effect of allowing, condoning, perpetuating and augmenting
24 the irreparable harm done to me that was originally set in motion by Geraci, Berry and the Attorney
25 Defendants.

26
27 10. I believe the City as an entity is prejudiced against me and has, and is, seeking to
28 deprive me of my rights and property because of (i) my political activism for the legalization of

1 medical cannabis ("Political Activism") and/or (ii) as the result of political influence wielded by
2 Geraci.

3 11. Irrespective of motivation and whether the City is in some manner connected to
4 Geraci, which I believe to be true for the reasons explained below, but even I myself find hard to
5 believe (I understand how crazy it sounds), it does not change the facts – the City has taken unlawful
6 actions towards me.
7

8 12. For all intents and purposes, even assuming the City has not been unduly influenced
9 by Geraci and his political lobbyists, the effect to me by the City's actions would be no different as if
10 the City had actually purposefully conspired against me with Geraci to effectuate his unlawful
11 scheme against me to fraudulently deprive me of my Property.
12

13 13. These officials and their unconstitutional actions include, but are not limited to:

14 a. A criminal prosecutor who induced me into entering into a misdemeanor plea
15 agreement and did not tell me or my attorney representing me that as a consequence of entering that
16 misdemeanor plea agreement I would be forfeiting my real property at issue here (which at that point
17 in time was worth at least \$3,000,000). That City attorney then used that misdemeanor plea
18 agreement as the unreasonable basis of filing a lis pendens on my property, thereby unconstitutionally
19 seizing my property, and filing a Forfeiture Action seeking to acquire my property. The City attorney
20 initially requested \$100,000 to cease its unfounded Forfeiture Action, but when my then-counsel
21 produced evidence of my destitute financial status, the City agreed to only extort \$25,000 from me
22 (the short and long-term consequence of having to renegotiate the terms of my agreement with my
23 financial backers to meet the January 2, 2018 deadline to pay this unconstitutional \$25,000 obligation
24 or lose the Property that is worth millions of dollars is the single most financially catastrophic event
25 to happen in this litigation, other than Geraci's breach of our agreement and the actions he set in
26 motion leading to this Federal Complaint.)
27
28

1 b. Officials at Development Services that were processing the CUP application
2 submitted by Geraci violated my constitutional rights by denying me substantive and procedural due
3 process by failing to provide notice about a material change in how they were processing my
4 application; blatantly lying to me by telling me they could not accept a second CUP application on a
5 property (which they later said I could after my then-counsel sent them a demand letter and noted
6 there was no legal basis for their position and that he had personally filed a second CUP application
7 on another property for another landlord in a similar situation to mine);

9 c. Civil attorneys for the City in the State Action that (a) violated their ethical
10 duties by failing to inform the judges in the State Action about the Judge's mistakes/erroneous
11 assumptions and/or working in concert with the State Court Judges and other City officials against
12 me because of my Political Activism and (b) continuing to prosecute the State Action when they
13 knew it was meritless, thereby maliciously putting more undue financial and emotional pressure on
14 me by seeking money/fees and accusing me of having "unclean hands;" and

16 d. The State Court Judges presiding over the State Action whom I am forced to
17 conclude, given that their Orders simply cannot be reconciled with the evidence and arguments made
18 before them, are at the very least guilty of gross negligence by systemically denying me my
19 constitutional rights by assuming that because I am a crazy pro se and that no pleading, evidence and
20 oral argument I put forth over the course of months could actually contain enough legal and factual
21 basis so as to warrant the relief I requested.

23 14. Alternatively, the state court judges have been grossly negligent towards me either
24 because (i) they are unjustly dismissive of me because of my *pro se* and *blue-collar* status and simply
25 did not review my pleadings and disregarded my arguments at the oral hearings (ii) or they are not
26 impartial because, as one judge stated at the last hearing 2 weeks ago, he doubts my allegations of
27
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1 ethical violations against counsel (including City attorneys) are true because he “knows them all
2 well.”

3 15. In the absence of additional information, I am forced to conclude that the state court
4 judges, actually City officials, are acting in concert with other City Officials as part of an off-the-
5 books illegal stratagem to deprive property owners of their properties via Forfeiture Actions if they
6 are sympathetic to and/or share my Political Activism.
7

8 16. I am not the only individual who has had their property unconstitutionally seized as
9 part of a Forfeiture Action that has been used by the City to extort significant financial gains from
10 property owners that share my Political Activism. Should I prevail in the TRO, I may seek out other
11 victims and bring forth a class action lawsuit against the City for their unconstitutional practice of
12 seizing properties.
13

14 17. I pray *this Federal Court* will not be dismissive of me because of my *pro se* and blue-
15 collar status and my Political Activism. I am painfully cognizant that from a statistical standpoint,
16 given my *pro se* status and the allegations above, that I will be perceived immediately as an
17 uneducated, legally-ignorant and conspiracy nut. I understand that. It is a reasonable assumption to
18 make. I just pray that this Federal Court, before it finalizes its conclusion, that it genuinely reviews
19 the evidence submitted with my TRO application because although from statistical standpoint I am
20 probably a *pro se* conspiracy nut, there is the possibility that my case is that 1 in a 1,000,000 chance
21 that there really is a conspiracy against me driven by the fact that the Property can be worth at least
22 **\$100,000,000** to sophisticated individuals, such as the defendants herein (excluding the City).
23

24 18. The truth is, I am a step away from literally losing my sanity, and I am aware of that.
25 But I view this Federal Court as my last recourse to protect and vindicate my rights as a citizen of this
26 great country and, if nothing else, that it may please explain to me its logic and evidence in issuing its
27 orders – something the State Courts have never done.
28

1 19. I know how crazy all this sounds even as I write this now. But I would ask the Court
2 to consider that I have owned this property since 1997 and have worked the better part of my life in
3 building my business's and my future at this location. For me to lose this property and what it
4 represents of my life's work is incredibly difficult to bear.

5 20. I have done everything in my power in the State Action, including selling off my
6 future to finance the professional services of attorneys and representing myself pro se, but it has not
7 availed me in the slightest. I have been before the State Judges over eight times and never once have
8 they sought to explain, despite my repeated, specific and emotional pleas that they do so, why my
9 case should not be immediately, summarily adjudicated my favor given undisputed evidence and
10 facts in the record. (See Exhibit 1 (My opposition to a motion to compel my deposition filed in the
11 State Action in which I described the totality of the circumstances to the state judge presiding, which
12 was ignored.)
13

14 21. Thus, I am forced to conclude "that state courts [a]re being used to harass and injure
15 individuals [such as myself], either because the state courts [a]re powerless to stop deprivations or
16 [a]re in league with those who [a]re bent upon abrogation of federally protected rights." Mitchum v.
17 Foster, 407 U.S. 225, 240, 92 S. Ct. 2151, 2161, 32 L. Ed. 2d 705 (1972).
18

19 22. I file this Complaint today before this Federal Court, pursuant to s 1983, because
20 "[t]he very purpose of s 1983 was to interpose the federal courts between the States and the people, as
21 guardians of the people's federal rights – to protect the people from unconstitutional action under
22 color of state law, 'whether that action be executive, legislative, or judicial' Ex parte Virginia, 100
23 U.S., at 346, 25 L.Ed. 676." (*Id.*)
24
25

26 **JURISDICTIONAL FACTS**

1 23. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1343(3), 2283,
2 and 18 U.S.C. § 1964 which confer original jurisdiction to the District Courts of the United States for
3 all civil actions arising under the United States Constitution or the laws of the United States, as well
4 as civil actions to redress deprivation under color of state law, of any right immunity or privilege
5 secured by the United States Constitution. Further this court has subject matter jurisdiction pursuant
6 to the Federal Racketeering Act, 18 U.S.C. section 1651, et seq. I also request this Court exercise its
7 supplemental jurisdiction and adjudicate claims arising under the laws of the State of California
8 pursuant to 28 U.S.C. § 1367(a).
9

10 24. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under
11 color of state and/or local law of rights, privileges, immunities, liberty and property, secured to all
12 citizens by the First, Fourth and Fourteenth Amendments to the United States Constitution, without
13 due process of law. This action seeks injunctive and other extraordinary relief, monetary damages,
14 and such other relief as this Court may find proper.
15

16 25. Venue is proper in this Court because the events described below took place in this
17 judicial district and the real property at issue is located in this judicial district.
18

19 **PARTIES**

20 26. Cotton is, and at all times mentioned was, an individual residing within the County of
21 San Diego, California.
22

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

1 28. Cotton is the President of Inda-Gro that he founded in 2010 which is a manufacturer
2 of environmentally sustainable products, primarily horticulture lighting systems, that help enhance
3 crop production while conserving energy and water resources and which operates from the Property.

4 29. Cotton is the President of 151 Farms, a not-for-profit organization he founded in 2015
5 that is focused on providing ecologically sustainable horticultural practices for the food and medical
6 needs of urban communities which also operates from the Property.

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

9 31. Upon information and belief, Defendant Rebecca Berry ("Berry") is, and at all times
10 mentioned was, an individual residing within the County of San Diego, California.

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

13 33. Upon information and belief, Austin Legal Group ("ALG") is, and at all times
14 mentioned was, a company located within the County of San Diego, California.

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

17 35. Upon information and belief, Defendant Scott H. Toothacre ("Toothacre") is, and at
18 all times mentioned was, an individual residing within the County of San Diego, California.

19 36. Upon information and belief, Ferris & Britton ("F&B") is, and at all times mentioned
20 was, a company located within the County of San Diego, California.

21 37. Defendant City of San Diego ("City") is, and at all times mentioned was, a public
22 entity organized and existing under the laws of California.

23 38. Cotton does not know the true names and capacities of the defendants named DOES 1
24 through 10 and, therefore, sues them by fictitious names. Cotton is informed and believes that DOES
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26
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1 through 10 are in some way responsible for the events described in this Complaint and are liable to Cotton based on the causes of action below. Cotton will seek leave to amend this Complaint when the true names and capacities of these parties have been ascertained.

39. At all times mentioned, defendants Geraci, Berry, Austin, ALG (the "Original Defendants") were each an agent, principal, representative, alter ego and/or employee of the others and each was at all times acting within the course and scope of said agency, representation and/or employment and with the permission of the others.

40. As detailed below, Weinstein, Toothacre & F&B are attorneys representing Geraci and Berry and joined the Original Defendants in their malfeasance when they became aware that the Geraci Lawsuit was vexatious, continued prosecuting the Geraci Lawsuit and took unlawful actions beyond the scope of their legal representation (F&B, from here on out, collectively, with the Original Defendants, the "Private Defendants").

41. As detailed below, the City, through various representatives, each acting either with purposeful intent, in concert with and/or with negligence, condoned, allowed, perpetuated and augmented the irreparable and unlawful actions taken by the Private Defendants with their own unconstitutional actions.

FACTUAL ALLEGATIONS

THE ORIGIN OF THIS MATTER - MY PROPERTY

42. In or around August 2016, Geraci first contacted Cotton to purchase the property and set up an MMCC. The Property is one of a very limited number of properties located in San Diego City Council District 4 that potentially satisfy the CUP requirements for a MMCC.

43. Over the ensuing weeks and months, Geraci and Cotton negotiated extensively regarding the terms of a potential sale of the Property and, in good faith, took various steps in

1 contemplation of finalizing their negotiations (including the execution of documents required for the
2 CUP application). During these negotiations, Geraci represented to Cotton, among other things, that:

3 a. Geraci was a trustworthy individual because Geraci operated in a fiduciary
4 capacity for many high net worth individuals and businesses as an Enrolled Agent for the IRS
5 and the owner-manager of Tax and Financial Center, Inc., an accounting and financial
6 advisory business;

7
8 b. Geraci, through his due diligence, had uncovered a critical zoning issue that
9 would prevent the Property from being issued a CUP to operate a MMCC unless Geraci first
10 lobbied with the City to have the zoning issue resolved (the “Critical Zoning Issue”);

11 c. Geraci, through his personal, political and professional relationships, was in a
12 unique position to lobby and influence key City political figures to have the Critical Zoning
13 Issue favorably resolved and obtain approval of the CUP application once submitted;

14 d. Geraci was qualified to successfully operate a MMCC because he owned and
15 operated several other marijuana dispensaries in the San Diego County area through his
16 employee Berry and other agents; and

17
18 e. That through his Tax and Financial Center, Inc. company he knew how to “get
19 around” the IRS regulations and minimize tax liability which is something he did for himself
20 and other owners of cannabis dispensaries.

21
22 44. On November 2, 2016, Cotton and Geraci met and came to an oral agreement for the
23 sale of Cotton’s Property to Geraci (the “November Agreement”).

24 45. The November Agreement had a condition precedent for closing, which was the
25 successful issuance of a CUP by the City.

26
27 46. The November Agreement consisted of, among other things, Geraci promising to
28 provide the following consideration: (i) a \$50,000 non-refundable deposit for Cotton to keep if the

1 CUP was not issued, (ii) a total purchase price of \$800,000 if the CUP was issued; and a 10% equity
2 stake in the MMCC with a guarantee minimum monthly equity distribution of \$10,000.

3 47. At the November 2, 2016 meeting, after the parties reached the November
4 Agreement, Geraci (i) provided Cotton with \$10,000 in cash to be applied towards the total non-
5 refundable deposit of \$50,000 and had Cotton execute a document to record his receipt of the
6 \$10,000 (the "Receipt") and (ii) promised to have his attorney, Gina Austin, speedily draft and
7 provide final, written purchase agreements for the Property that memorialized all of the terms that
8 made up the November Agreement.
9

10 48. The parties agreed to effectuate the November Agreement via two written
11 agreements, one a "Purchase Agreement" for the sale of the Property and a second "Side Agreement"
12 that contained, among other things, Cotton's equity percentage, terms for his continued operations of
13 his Inda-Gro business and 151 Farms operations at the Property until the beginning of construction at
14 the Property of the MMCC, and the guaranteed minimum monthly payments of \$10,000 (collectively,
15 the ("Final Agreement").
16

17 49. On that same day, November 2, 2016, after the parties met, reached the November
18 Agreement and separated, the following email chain took place:

19 a. At 3:11 PM, Geraci emailed a scanned copy of the Receipt to Cotton.

20 b. At 6:55 PM, Cotton replied to Geraci stating the following:

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

25 c. At 9:13 PM, Geraci replied with the following:

26 "*No no problem at all*"
27
28

1 50. In other words, on the same day the Receipt was executed and I received it from
2 Geraci, I realized it could be misconstrued and that it was missing material terms (e.g., my 10%
3 equity stake). Because I was concerned, I emailed him specifically, so that he would confirm that the
4 Receipt was not a final agreement and he confirmed it. That is why I refer to this email as the
5 “*Confirmation Email.*”
6

7 51. Thereafter, over the course of almost five months, the parties exchanged numerous
8 emails, texts and calls regarding the Critical Zoning Issue, the Final Agreements and comments to
9 various drafts of the Final Agreement that were drafted by Gina Austin.

10 52. On March 7, 2017, Geraci emailed a draft Side Agreement. The cover email states:
11 “Hi Darryl, I have not reviewed this yet but wanted you to look at it and give me your
12 thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth
13 month....can we do 5k, and on the seventh month start 10k?”

14 53. The attached draft of the Side Agreement to the March 7, 2017 email from Geraci
15 provides, among other things, the following:

16 a. “WHEREAS, the Seller and Buyer have entered into a Purchase Agreement[,]
17 dated as of approximate even date herewith, pursuant to which the Seller shall sell to
18 Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal
19 Blvd., San Diego, California 92114[.]”

20 b. Section 1.2: “Buyer hereby agrees to pay to Seller 10% of the net revenues of
21 Buyer’s Business [...] Buyer hereby guarantees a profits payment of not less than
22 \$5,000 per month for the first three months [...] and \$10,000 a month for each month
23 thereafter[.]”

24 c. Section 2.12, which provides for notices, requires a copy of all notices sent to
25 Buyer to be sent to: “Austin Legal Group, APC, 3990 Old Town Ave, A-112, San
26 Diego, CA 92110.”

27 54. The draft was provided in a Word version and attached to the email from Geraci, the
28 “Details” information of that Word document states that the “Authors” is “Gina Austin” and that the
“Content created” was done on “3/6/2017 3:48 PM.” (the “**Meta-Data Evidence**”; a true and correct
copy of a screenshot of the Meta-Data Evidence is attached hereto as **Exhibit 2**).

1 55. I then found out that Geraci had been lying to me about the Critical Zoning Issue and
2 had submitted a CUP application with the City BEFORE we even finalized the November
3 Agreement.

4 56. Thus, Geraci breached the November Agreement by, *inter alia*, (i) filing the CUP
5 application with the City without first paying Cotton the \$40,000 balance of the non-refundable
6 deposit; not paying Cotton the \$40,000 balance; and (ii) failing to provide the Final Agreement as
7 promised.

8
9 57. I gave Respondent Geraci numerous opportunities to live up to his end of the bargain.
10 I was forced to, I had put off other investors and was relying on the \$40,000 to make payroll and
11 purchase materials for a new line of lights I was developing for my company Inda-Gro. I also, if I had
12 to, would have sold part of my 10% equity stake in the MMCC once it was approved.

13
14 58. However, Geraci made it clear via his email communications that he was going to
15 attempt to deprive me of the benefits of the bargain I bargained for when he refused to confirm via
16 writing that he was going to honor the November Agreement and made a statement that he had his
17 “attorneys working on it.”

18
19 59. On March 21, 2017, after Geraci refused to confirm in writing that he was going to
20 honor the November Agreement, I emailed him: “To be clear, as of now, you have no interest in my
21 property, contingent or otherwise.” Having anticipated his breach and being in desperate need of
22 money, That same day, I entered into the Written Real Estate Purchase Agreement with a third-party.
23 That deal was brokered by my Investor.

24 60. The next day, Weinstein emailed me a copy of the Geraci Lawsuit and filed a *Lis*
25 *Pendens* on my Property. The Geraci Lawsuit is premised solely and exclusively on the allegation
26 that the Receipt is the Final Agreement. As stated in Geraci’s own words in a declaration submitted
27 in State Action under penalty of perjury: “*On November 2, 2016, Mr. Cotton and I executed a*
28

1 *written purchase and sale agreement for my purchase of the Property from him on the terms and*
2 *conditions stated in the agreement[.]’*

3 61. Thus, putting aside an overwhelming amount of additional and undisputed evidence,
4 Geraci’s own written admission in the Confirmation Email explicitly confirming the Receipt is not
5 the Final Purchase Agreements is completely damning and dispositive. It contradicts the only basis of
6 his complaint in the State Action and merits summary adjudication in my favor on the Breach of
7 Contract cause of action and related claims (hereinafter, the Breach of Contract cause of action
8 premised on the preceding facts is referred to as the “Original Issue”).

10 62. The only argument that has been put forth in the State Action that at first glance
11 appears to have merit is Geraci’s argument that the Confirmation Email should be prevented from
12 having legal effect pursuant to the Statute of Frauds (SOF) and the Parol Evidence Rule (PER). That
13 argument was the basis of Geraci’s demurrer to my cross-complaint in the State Action, which the
14 State Court denied.

16 63. Thus, the FACTS prove Geraci is lying and that his Complaint is meritless. And the
17 LAW is on my side as it will not prevent the admission of the Confirmation Email. With neither the
18 facts nor the law supporting Geraci’s lawsuits, why have the state court judges allowed both legal
19 actions to continue to my great and irreparable physical, emotional, psychological and financial
20 detriment?
21

22 64. The Receipt is the SOLE and ONLY basis of Geraci’s claim to the Property in the
23 Civil Action and the CUP application in the City Action. Gina Austin is defending Geraci and Berry
24 in the City Action which is premised on the alleged fact that the Receipt is the Final Agreement for
25 my Property.
26

27 65. The Receipt was executed in November of 2016.
28

1 66. Geraci's motivation for his unlawful behavior here is deplorable, but it is
2 understandable – Greed. What I cannot understand, nor can the attorneys I have spoken with about
3 these matters, is how or what Austin was thinking when she decided to represent Geraci and Berry in
4 the City Action and, on numerous occasions, work with Weinstein and Toothacre in the Geraci
5 Action? The record was already clear by then, and unless she wants to perjure herself or allege that I
6 somehow can get Google to falsify its records, there is evidence that is beyond dispute that she is
7 LYING to the State Court perpetuating a meritless case based solely on one single argument she
8 knows is false.

10 67. She is representing to the State Court that the Receipt is the final agreement for my
11 property, but she drafted several versions of the purchase and the side agreement for my property as
12 late as March of 2017? This appears to me to be criminal. And really, really dumb.

14 68. She is supposedly incredibly smart, she was just named as one of the Top Cannabis
15 Attorneys in San Diego. This is actually the basis of the fear of my Investor, a former attorney
16 himself, what kind of influence does Geraci have that he can force and coerce Austin to commit a
17 crime, to be able to get F&B to bring forth a vexatious lawsuit and to continue to maliciously
18 prosecute a case with no proable cause? Why have the judges not addressed the evidence?

20 69. For me it is impossible to ascertain the full extent of Geraci's influence, but it is
21 significant and scary. It is even enough to force a convict out on parole to risk going back to jail - on
22 January 17, 2018 while attempting to find a paralegal to assist me with filing and proof reading my
23 pleadings in the State Action, my investor, a former federal judicial law clerk, called several
24 paralegals to see if they could help me on short notice because my pleadings were not professional.
25 He invited a paralegal named Shawn Miller of SJBM Consulting over to his home to interview him
26 and give him the background. After he gave a description of the case and the Complaint and my
27 Cross-Complaint, Shawn stated that he knew Geraci and his business associates.
28

1 70. Because Shawn knew Geraci, my investor told him that matters would not work out
2 and asked him not to mention him to Geraci and/or his associates. My investor specifically told
3 Shawn that as a paralegal, he was ethically and professionally bound to NOT disclose the
4 conversation and its contents.

5 71. Not even two hours later, at around 10:00 PM at night, Shawn called my investor and
6 told him that it would be in his "best interest" for him to use his influence on me to get me to settle
7 with Geraci. This was the last straw for my investor because he does not understand the actions taken
8 by the City, the attorneys and the judges in this action. Being threatened at his home late at night by a
9 convict out on parole who was clearly aware that by violating his ethical and professional duties he
10 would risk going back to jail, reflected to him, that Geraci, putting aside my own belief that he is a
11 thuggish drug-lord at the head of a criminal enterprise, was someone that had a great deal of
12 influence over criminals and was someone he did not want anything to do with.

13 72. My investor has been a nervous wreck knowing that Geraci and his associates,
14 including a former special forces green beret (discussed below) know where he lives.

15 73. With all these seemingly unrelated people and events all coming together to protect,
16 intimidate for, push unfounded legal claims for, and do Geraci's bidding has been disturbing and
17 created nothing but turmoil in my life. Even my family, friends, businessmen and investors are
18 concerned that matters have escalated to a degree that Geraci, in seeking to cover-up everything that
19 has transpired here, may take drastic actions against them.

20 **SUMMARY OF MATERIAL FACTS REGARDING WEINSTEIN, TOOTHACRE AND F&B**

21 74. Initially, given the simple nature of the Original Issue, believing that I would be able
22 to represent myself *pro se* in the Geraci Lawsuit. This was a foolish assumption as it turned out.
23 Without wealth, justice is difficult to access. I prepared and filed an Answer to the Geraci Lawsuit
24 and filed a Cross-Complaint. My Answer and Cross-Complaint were submitted in one document and,
25
26
27
28

1 therefore, denied by the State Court for failing to comply with procedural requirements. Thus, I was
2 forced to realize, notwithstanding the simplicity of the Original Issue, that I would be unable to
3 efficiently represent myself in a legal proceeding and entered into an agreement with a third-party
4 (the "Investor") to finance my representation in the Geraci Lawsuit. (The Investor is also the
5 individual who brokered the Real Estate Written Purchase Agreement between Mr. Martin and
6 myself.)

7
8 75. In exchange for my Investor financing the Geraci Litigation, I exchanged a portion of
9 the proceeds that I would receive from the Real Estate Purchase Agreement.

10 76. Investor did research, interviewed and coordinated my retaining the services of Mr.
11 David Damien of Finch, Thornton and Baird ("FTB"). Investor recommended FTB for me to
12 interview and choose as counsel because Mr. Damien had previously worked on a very similar
13 matter, representing a property owner against an investor with whom he had an agreement to develop
14 an MMCC, but with which he had a falling out before the CUP was issued. Mr. Damien was able to
15 prevail in that lawsuit, a Writ of Mandate action against the City, and have the City transfer the CUP
16 application filed by and paid for by the investor in that matter to the property owner (see
17 *Engerbretsen v. City of San Diego*, 37-2015-00017734-CU-WM-CTL.) Thus, he appeared to be a
18 perfect fit to help represent me against Geraci.

19
20
21 77. Investor negotiated with Mr. Damien for FTB to fully represent me in various legal
22 matters without limitation and to do so via a financing arrangement of \$10,000 a month. However,
23 Mr. Damien did not actually want to do work in excess of \$10,000 a month. Consequently, he was
24 not prepared for several hearings and proved grossly incompetent.[6]

25
26 78. Mr. Damien was professionally negligent on December 7, 2017 when he represented
27 me before the state court judge on an application for a TRO. Summarily, he failed in oral argument to
28 raise with the state court judge the Confirmation Email – the single most powerful and dispositive

1 piece of evidence in this case. After he was berated by my Investor right outside the courtroom for his
2 negligence, he withdrew as my counsel before even speaking with me via email.

3 79. The State Court Judge's order denying my TRO states "The Court, after hearing oral
4 argument and taking into consideration papers filed, denies the request for Temporary Restraining
5 Order and provides counsel with a hearing for the Preliminary Injunction." Based on the facts above,
6 and as can be confirmed with the opposition to the TRO motion filed herewith, there is no factual or
7 legal basis for the Court's decision.
8

9 80. I then filed *pro se* a motion for reconsideration regarding the TRO motion in which I
10 explicitly stated that Damien had been negligent by failing to raise the Confirmation Email with the
11 state court judge. That motion was heard on December 12, 2017.
12

13 81. On December 12, 2017, five days after the denial of my TRO application. I showed
14 up with family, friends, and supporters, confident that I would have "my day in court" and that the
15 State Court judge would realize Damien's negligence and issue the TRO.

16 82. Instead, I was not even given the opportunity to speak a single word. Before I could
17 say anything, the State Court judge told me he was denying my motion for reconsideration and left
18 the bench.
19

20 83. The minute order states: "The Court denies without prejudice the ex parte application.
21 Defendant is directed to go by way of noticed motion." If I am correct in assuming that, even putting
22 aside additional evidence, the Confirmation Email by itself dispositively resolves the case in my
23 favor, then what is the basis of the State Court decision to deny my motion for reconsideration if he
24 had reviewed my motion and understood that Damien had been negligent by failing to raise the
25 Confirmation Email? And why was I not allowed to speak a single word? And how does allowing me
26 to file by way of "noticed motion" address the exigency that was the basis of my TRO? And how
27
28

1 does it address the professional negligence of my counsel at the TRO hearing on December 7, 2017?

2 It does not.

3 84. *December 12, 2017 is, and always will be, the worst day of my life.* I was in so much
4 shock from the denial of my motion for reconsideration and the way in which it happened, that I
5 suffered a Transient Ischemic Attack, a form of stroke. I had to go to the Emergency Room that day
6 after the state court judge denied my motion without even letting me speak a single word.
7

8 85. The next day my financial investor told me he was going to cease funding my personal
9 needs and the Geraci Litigation because he needed to “cut his losses.” I went to his home uninvited. I
10 again pleaded with him to continue his support and he refused. I could not control myself and I ended
11 up physically assaulting him.

12 86. He was going to call the police and have me arrested. I will forever be grateful that he
13 did not and instead called a medical doctor who found me to be a danger to myself and others. (See
14 **exhibit 1.**)

15 87. After the denial of my TRO application, I made numerous calls to the California State
16 Bar and their Ethic Hotline regarding Damien’s negligence at the TRO Motion hearing. I was
17 directed to various Ethics opinions regarding not just his actions, but those of the other attorneys who
18 were present who, because of the situation violated their ethical duties by failing to let the State Court
19 know that it was ruling on a motion when it had not taken into account the single most powerful piece
20 of evidence – the Confirmation Email.
21

22 88. The most relevant items that I was pointed to are the following:
23

24 a. “[A]n attorney has a duty not only to tell the truth in the first place, but a duty
25 to ‘*aid the court in avoiding error and in determining the cause in accordance with justice*
26 *and the established rules of practice.*’ (51 Cal.App. at p. 271, italics added.)”

27 b. “A lawyer acts unethically where she assists in the commission of a fraud by
28 implying facts and circumstances that are not true in a context likely to be misleading.”^[10]

1
2 89. When Weinstein first emailed me the complaint on March 22, 2017 from the state
3 court action, I replied and noted the facts above, including the Confirmation Email. Thus, Weinstein
4 knew from the very beginning that he was filing and prosecuting a vexatious lawsuit. Unless he wants
5 to argue that he assumed the SOF and the PER would prevent the admission of the Confirmation
6 Email AND he was not aware of the concept of promissory estoppel which would apply if the SOF
7 and PER did apply in the first instance to prevent the admission of the Confirmation Email. (Or likely
8 any of the other common law exceptions to the PER per the Rutter Guide such as fraud, formation
9 defect, condition precedent, collateral agreement, ambiguity or subsequent agreements most of which
10 would swallow up the rule thereby leaving him without a defense. Assuming of course that anyone
11 was actually paying attention or being unduly influenced by Geraci via his political lobbyist. In fact,
12 if I had the money I would hire a private investigator to see what ties Geraci has to my former
13 attorneys at FTB that helped them forget basic first year law school contract law concepts such as
14 promissory estoppel). In fact, an associate at FTB, when partner David Damien was not in the room,
15 even let slip that some of Geraci's clients were also clients of their law firm, FTB. Should FTB not
16 have to disclose that relationship as part of my representation because it could represent a conflict of
17 interest? They never did, aside from the associate, Mr. Witt, who did so in small conversation when
18 the partner Damien was not in the room.)
19
20
21

22 90. Even assuming the above is the case, that Weinstein was not aware of the concept of
23 promissory estoppel, no later than when the State Court denied Geraci's demurrer based on the SOF
24 and the PER, Weinstein knew that the case was at that point vexatious and yet he kept prosecuting it.
25

26 91. At the December 7, 2017 TRO hearing, Weinstein obviously knew that Damien was
27 negligent in not raising, among the other arguments, the Confirmation Email in front of the State
28 Court judge. I believe that given the language provided by the California State Bar, that he violated

1 his ethical obligations to the Court and, vicariously to me, by allowing the State Court judge to rule
2 on the TRO motion without raising with him the fact that he was doing so without having taken into
3 account material and dispositive evidence.

4 92. The obligations of an attorney must stop short of taking advantage of situations that
5 lead to a miscarriage of justice, especially when he knows that I am facing severe financial and
6 emotional distress. This appears to me to be an Abuse of Process, and this is in the best case scenario
7 in which it is can be assumed that he is not vexatiously continuing to prosecute this case when he
8 knows that there is no factual or legal basis for it.

9
10 93. I filed Notices of Appeal from the denial of my TRO application and Motion for
11 Reconsideration. I hired counsel, Mr. Jacob Austin, a criminal defense attorney, who graciously
12 agreed to help me on my appeals on a contingent basis (and with a guarantee of ultimately being paid
13 by my investor if I did not prevail on my Appeal).

14
15 94. I was working on the draft of my Appeal, when Weinstein, on January 8, 2018, filed
16 two motions to compel my deposition in the State Action and a large amount of discovery requests.

17 95. Against the advice of my counsel and my investor, I decided to take advantage of the
18 opportunity to oppose the Motion to Compel and highlight to the judge the Confirmation Email and
19 the actions by counsel as described above. I filed my Opposition and it is attached here as Exhibit 1.
20

21 96. The Motions to Compel were granted and the various requests I set forth in my
22 opposition were denied.

23 97. The order issued by the judge granting the motion to compel and denying the relief I
24 requested, is predicated on the erroneous belief that there is "disputed" evidence in the record. Up
25 until that point in time I believed that the state court judge decision was due to Damien's negligence,
26 I now believe that there are other nefarious factors at play and justice simply cannot be had in San
27 Diego state court.
28

1 98. That same day, January 25, 2018, I emailed Weinstein specifically accusing him of
2 violating his ethical obligations as he has an “affirmative duty” to inform the State Court judge about
3 his erroneous assumption regarding the fact that the Confirmation Email was not disputed. He replied
4 with a perfectly crafted legal response, by stating that he “had not made any misrepresentations to the
5 courts about facts or the law,” which is completely accurate. My accusation was that he was violating
6 an affirmative duty to act, not that he had taken an act that was a misrepresentation.
7

8 ***SUMMARY OF ADDITIONAL MATERIAL FACTS REGARDING THE CITY***

9 **The City Prosecutor – Mark Skeels**

10 99. In July of 2015, I leased a portion of my building to a tenant who managed a non-
11 profit corporation, “Pure Meds,” to run a cannabis dispensary based on his representations that he
12 was fully compliant with the laws. I did not know then what I know now, that leasing my property to
13 Pure Meds without the proper City permit would be unlawful.
14

15 100. Although Pure Meds operated from my building, it was completely segregated with
16 separate entrances and addresses.
17

18 101. On April 6, 2016, the City shut down Pure Meds and brought charges against Pure
19 Meds and myself almost exactly one year later. On April 5, 2017, realizing and acknowledging my
20 error, I pled guilty to one misdemeanor charge of a Health and Safety Code section HS 11366.5 (a)
21 violation.
22

23 102. My plea agreement states that “*Mr. Cotton retains all legal rights pursuant to prop*
24 *215.*” The judge asked me during the hearing why that language was added. I explained that I run 151
25 Farms at my Property and that I cultivate medical cannabis there in compliance with prop 215.
26 Because I was giving up my 4th amendment rights in the plea agreement, I wanted to be sure that I
27
28

1 was protected for my cultivation at the Property pursuant to Proposition 215. In other words, my Plea
2 Agreement and my discussion was predicated on my keeping my Property.

3 103. Immediately upon entering into the Plea Agreement, the City filed a Petition for
4 Forfeiture of Property based on the Plea Agreement I entered into and filed a Lis Pendens putting yet
5 another cloud on my title.

6 104. Deputy City Attorney Skeels did not explain to me, nor my counsel, that he intended
7 to seek the forfeiture of my property or that it was even a possibility. In fact, he did the opposite, he
8 made it seem as if he was giving me a sweetheart deal with a small fine and informal probation.

9 105. My criminal defense attorney who defended me in that action submitted a sworn
10 declaration stating that he was not aware and was not made aware by Skeels that the forfeiture of my
11 property was a possibility. Skeels did not care.

12 106. In other words, Skeels fraudulently induced me to enter into a plea agreement without
13 telling me the consequences that he was actually planning to pursue. This appears to me to be a
14 violation of my constitutional right to be made aware of the consequences to pleading guilty to a
15 criminal charge. Based on representations of Skeels, I didn't fully understand the charges or the
16 effects of admitting guilt. I would not have entered into a misdemeanor plea agreement if the
17 consequence of that action was to forfeit my property for which at that point in time I was still going
18 to receive in excess of \$3,000,000. It is ludicrous to believe otherwise.

19 107. In fact, this unlawful seizure is, I believe, part of an unconditional strategy by Skeels
20 and the City to deprive individuals of their property. This belief is bolstered by the fact that I have
21 been told on numerous occasions by numerous criminal attorneys as I have explained these facts that
22 it is incredibly rare for prosecutors to talk to defense counsel in the presence of the accused, much
23 less directly communicate with a defendant.

1 108. Skeels told me he was giving me a “sweetheart” deal. I feel that if it wasn’t a pressure
2 tactic than it was essentially a “confidence game” and a complete sham designed to gain undeserved
3 trust and pretend to be helpful while concealing his true intent of pursuing Asset Forfeiture. Under
4 information and belief, I feel that this is just one example of what appears to be endemic, systemic
5 maneuvering to confiscate the properties of as many defendants as possible.

6 109. This seemingly mild misdemeanor, my leasing out my property to third-parties over
7 who I had no control, with its \$239 fine, ended up in an unimaginable \$25,000 extortion that also
8 forced me to renegotiate with numerous parties to get it at a time when I was completely destitute
9 because of this legal action brought forth by Geraci and his crew of criminals.

10 110. Once I hired FTB, Damien reached out to Skeels and according to Damien, even
11 Skeels was not aware of the fact that there would be a forfeiture action. While that would be
12 believable under some circumstances, the Petition for Forfeiture of Property & Lis Pendens were
13 filed the next day so it is impossible to believe him.

14 111. Ultimately, facing numerous lawsuits and needing to prioritize my time and limited
15 financing, I settled and agreed to pay the City \$25,000. For the record, I am not here in this legal
16 action seeking to have that Plea Agreement nullified. Per the Forfeiture Settlement Agreement that
17 Skeels and Damien convinced me into entering, if I fight the Stipulation for Entry of Judgement, then
18 I lose the Property. I am stating these series of events so that it can be taken into account with the
19 other actions by the City via Development Services and the Officers of the Court that together make
20 it clear that there is a pattern of discriminatory and unconstitutional behavior towards me by the City.
21 Whether these actions are because of my Political Activism, Geraci’s influence or a combination of
22 both, will be proven through discovery and trial. (As a side note in regards to Skeels: I would hope
23 that Judge Cano may take it upon herself to sanction Skeels for his manipulation of the Plea
24 Agreement that she approved and which clearly did not contemplate the Forfeiture Action that he
25
26
27
28

1 brought under it as she and I had explicitly discussed the continuation of my cultivation practices on
2 the Property, the basis of the Prop 215 language added into the Plea Agreement. Who knows how
3 many more victims Skeels has extorted and how many orders by judges he has manipulated?)
4

5 The City's Development Services Department

6 112. On March 21, 2017, when I terminated my agreement with Geraci and sold the
7 property to a third-party, I also emailed the Development Project Manager responsible for the CUP
8 application on my Property. I stated:
9

10 "the potential buyer, Larry Geraci (cc'ed herein), and I have failed to finalize the purchase of
11 my property. As of today, there are no third-parties that have any direct, indirect or contingent
12 interests in my property. The application currently pending on my property should be denied
because the applicants have no legal access to my property."

13 113. The City refused to cease processing the CUP application as the application was
14 submitted by Geraci's employee, Berry.

15 114. However, on May 19, 2017, after numerous emails and calls with various individuals
16 at Development Services, the Project Manager provided a letter addressed to Abhay Schweitzer,
17 Geraci's architect who is in control of processing the CUP application with City, stating, in relevant
18 part:
19

20 "City staff has been informed that the project site has been sold. In order to continue the
21 processing of your application, with your project resubmittal, please provide a new Grant
22 Deed, updated Ownership Disclosure Statement, and a change of Financial Responsible Party
Form if the Financial Responsible Party has also changed."

23 115. Thus, as of May 19, 2017, I proceeded under the assumption that I was not at risk of
24 losing the CUP process because the CUP process was on hold until, *inter alia*, I executed a Grant
25 Deed. **If a CUP application is submitted and it is denied, then another CUP application cannot**
26 **be resubmitted for a year on the same Property.**
27
28

1 116. Sometime after May 19, 2017, I contacted Development Services and requested that I
2 be allowed to submit a second CUP application. Development Services denied my request and stated
3 that they could not accept a second CUP application on the same property. This is a blatant lie.
4 Damien had, in the Engerbretsen matter, submitted a second CUP application on behalf of his client
5 with the City.

6
7 117. On September 22, 2017, my then-counsel Damien wrote to Development Services
8 noting their refusal to accept a second CUP application and that such “refusal is not supported by any
9 provision of the Municipal Code.”

10 118. The City replied on September 29, 2017, by stating, inter alia, that I could submit a
11 second CUP application, but then also stated the following:

12
13 “As you’ve acknowledged in your letter, DSD is currently processing an application,
14 submitted by Ms. Rebecca Berry [...] Please be advised that the City is only able to make a
15 decision on one of these applications; the first project deemed ready for a decision by the
16 Hearing Officer will be scheduled for a public hearing. Following any final decision on one of
the CUP applications submitted [...], the CUP application still in process would be obsolete
and would need to be withdrawn.”

17 119. On October 30, 2017, through my then-counsel Damien, I filed a Motion for Writ of
18 Mandate directing the City to transfer the CUP application to me. It was not until I reviewed the
19 Declaration of Abhay Schweitzer in Support of Geraci’s opposition to my Motion for a Writ of
20 Mandate that I came to find out that the City had, in complete contradiction of the letter provided on
21 May 19, 2017, continued to process the Geraci CUP application on MY Property without the
22 executed Grant Deed.

23
24 120. The City never informed me of this or provided notice of any kind. Had I known, I
25 would have taken alternative steps to secure my rights to the CUP process. Per Schweitzer’s
26 declaration, everything was going great and he anticipates the CUP being approved in March of 2018.
27
28

1 121. To summarize, first, DSD communicated that it would not process a CUP application
2 on my Property without an executed grant deed by me. However, without any notice or knowledge
3 and in complete contradiction of its own letter stating it required an executed Grant Deed, it
4 continued to prosecute the Geraci CUP application.

5 122. Second, when I first reached out to DSD to submit a second CUP application, it
6 blatantly lied by stating that they could not accept a second CUP application on the property when it
7 had on other occasions for similarly situated individuals.

8 123. Third, not until my then-counsel sent a demand letter noting there was no legal basis
9 for the City's refusal, did DSD allow me to submit a CUP application. But, the City created an unjust
10 "horse-race" between myself and Geraci.

11 124. DSD has been processing the Geraci CUP application for over a year at that point,
12 allowing me to submit a second CUP application on those terms is a futile task that would only have
13 resulted in needless additional expense and actions and which, per the declaration of Schweitzer, was
14 a fool's task as it is expected that the CUP will issue in March. This is simply a malicious ploy to get
15 me to expend more money and resources when all these parties knew that I was fighting a meritless
16 lawsuit and incredibly financially challenged.

17
18
19
20 City Civil Attorneys

21 125. For the same reasons explained above, the City attorney at the TRO Motion hearing
22 should have informed the State Court judge about Damien's negligence and the Confirmation Email.

23 126. Further, the City through its attorney, filed its Answer to my application for a Writ of
24 Mandate AFTER the TRO Motion hearing. At that point, the City knew that Damien had been
25 negligent and the attorney for the City even communicated to Damien that he "should have won"
26 based on the pleading papers.
27
28

1 127. Pursuant to the Answer filed, even though the City KNOWS that the case is meritless,
2 it is seeking legal fees against me and it is accusing me, among other things, of being guilty of
3 “unclean hands.”

4 128. The City is accusing me of wrongdoing when it knows that I am not in the wrong.
5 The only wrongs that the City could hold against me are the leasing of my Property to a non-profit
6 that operated an unlicensed dispensary. I recognize I was wrong in not seeking out confirmation of
7 the dispensary’s legality and I pled guilty, for which I was extorted \$25,000.
8

9 129. The only other potential reason is that the City, when taking into account all of the
10 other unfounded and unconstitutional actions described herein, is that the City is systemically
11 discriminating against me whenever it can because of my Political Activism and/or in connection
12 Geraci as a result of his influence.
13

14 The State Court Judges

15 130. At the oral hearing held on January 25, 2018 on Geraci’s motions to compel, the State
16 Court judge started the hearing by stating that he does not believe that counsel against whom I made
17 my allegations would engage in the actions I described. He specifically stated that he has known them
18 all for a long period of time.
19

20 131. As I view it, he was telling me he has some form of relationship with attorneys and
21 that he does not believe they would engage in unethical actions. OK, I understand that. I could just be
22 a crazy pro per, but why did he not review the evidence submitted and make a judgment that takes
23 that evidence into account? I literally begged him in my opposition, and for that matter, in my Motion
24 for Reconsideration, that he please provide the reasoning for why the Confirmation Email does not
25 dispositively address my breach of contract cause of action.
26

27 132. The Order he issued granting Weinstein’s Motions to Compel and denying my
28 requests in my Opposition states the following: “*Disputed* evidence exists suggesting that Cotton was

1 not the only person who possess the right to use the subject property.” THERE IS **NO** DISRUPTED
2 EVIDENCE. The only evidence in the record ever put forth by Geraci for his claim to my Property is
3 his allegation that the Receipt is the final purchase agreement for my property, a lie which is blatantly
4 exposed by his admission in the Confirmation Email. That, again, is NOT DISPUTED.

5 133. To clearly highlight this issue: The Confirmation Email was the subject of a demurrer
6 that the State Court judge ruled on, it was objected to on SOF and PER grounds, not its authenticity
7 that has never been challenged, disputed or denied since November 2, 2016!

8 134. I was preparing yet another Motion for Reconsideration regarding his order granting
9 the Motions to Compel, exhausting my limited resources attempting to make all kinds of arguments
10 when I came to a realization: even if he did turn around and issue some kind of order favorable to me,
11 all the evidence proves that he is at best, grossly negligent, and, at worst, conspiring against me
12 because of my Political Activism.
13

14
15 **THE FILING OF THIS FEDERAL COMPLAINT – THREATS**
16

17 135. On **February 3, 2018**, two individuals visited me. (I am not naming them because one
18 of the individuals is a former special forces operative for the US military and, for the reasons
19 described below, an agent of Geraci.) These two individuals came to my Property and during the
20 course of that conversation contradicted themselves by stating first that they had nothing to do with
21 Geraci and that they would buy the Property/CUP and assured me a long term job.
22

23 136. When I told them that Mr. Martin was paying a total purchase price of \$2,500,000,
24 they told me they would pay significantly *more* than \$2,500,000 and that it would also be beneficial
25 for me as I would be able to “end” the litigation with Geraci.
26
27
28

1 137. I then explained to them that I was already contractually and legally obligated to
2 pursue the litigation action against Geraci, prevail, and then transfer the Property and the CUP
3 application to Mr. Martin.

4 138. They looked at each other and then contradicted themselves. They told me that Geraci
5 was “powerful” and had “deep ties and influence” with the “City” and that it would not go well for
6 me if I did not agree to settle the action with Geraci. These individuals are NOT simple, street level
7 individuals. One of them is a high-net worth individual that recently sponsored a large art gala at San
8 Diego State (the “Sponsor”).
9

10 139. The other is a former special forces operative for the US Military (the “Operative”).
11 The Operative told me that because of my Plea Agreement, Geraci could use his influence with the
12 City to have the San Diego Police Department raid my Property at any time and have me arrested. I
13 told him that all the cannabis on my Property was compliant with Proposition 215 and my rights to
14 cultivate as I had specifically discussed with the judge who accepted the plea agreement. I showed it
15 to them, I have a large photocopy of it on my wall at the Property, and it was clear they were
16 expecting me to be more intimidated.
17

18 140. Yesterday, **February 8, 2018**, when I was wrapping up this Federal Complaint and all
19 the required documents for the filing of my TRO submitted concurrently with herewith, I sent an
20 email notice **ONLY** to counsel in the State Action (the “Federal Notice Email”).
21

22 141. NO ONE ELSE KNEW THAT WAS PLANNING ON FILING IN FEDERAL
23 COURT WITH THESE CAUSES OF ACTION YESTERDAY. NOT EVEN MY OWN FAMILY,
24 FRIENDS, INVESTORS, SUPPORTERS, PARALEGALS AND COUNSEL.
25

26 142. I sent the Federal Notice Email at **3:01 PM**.

27 143. At **3:36 PM**, not even an hour later, the Operative called me and told me *emphatically*
28 that he no longer has anything to do with the Sponsor, Geraci or anything related to me. He was

1 aware that I was immediately filing in Federal Court. He asked that I note name him or involve him
2 in this Federal lawsuit. Because he is ex-special forces, I have no desire to do so. Should the Sponsor,
3 Geraci, and whichever attorney informed him deny this allegation, then they can name him and be
4 responsible for the consequences of doing so. I note I have the phone records to prove this and am
5 creating copies that will be kept separately by third-parties.

6
7 144. How could Sponsor and Operative claim to not know Geraci? Why is Operative
8 calling me to tell me that he has nothing to do with Geraci or the actions that have transpired here? I
9 ONLY told counsel in the State Action. Clearly, Sponsor and Operative are working with Austin,
10 Weinstein, Toothacre and Geraci and they were sent to coerce and/or intimidate me at the behest of
11 Geraci in an attempt to force me to settle this lawsuit when they came to visit me on February 8,
12 2018.

13 14 CONCLUSION

15 145. I was researching the last Order by the state judge that denied my requested relief
16 because, he decrees, that I have not Exhausted my Administrative Remedies. In the Rutter guide it
17 states that: "The failure to pursue administrative remedies does not bar judicial relief where the
18 administrative remedy is *inadequate*, or where it would be *futile to pursue* the remedy" and
19 "administrative remedies also inadequate when irreparable harm would result by requiring exhaustion
20 before seek judicial relief" [Rutter Guide 1:906.26.]

21
22 146. Additionally, it stated in that subsection that: "Generally, a plaintiff is not required to
23 exhaust state administrative or judicial remedies before suing under federal civil rights statutes."
24 [Rutter Guide 1:906.29]

25
26 147. This reference led to me researching Section 1983 claims that I already knew allowed
27 federal action, but I was not aware could stop State Court actions while it adjudicated the Federal
28 Questions. That Rutter Guide section has a link to Mitchum v. Foster.

1 148. The United States Supreme Court held in Mitchum v. Foster that Section 1983 claims
2 in Federal Court are an exception to the Anti-Injunction Act that would allow a Federal Court to stay
3 a state court action. In reaching this decision, the United States Supreme Court noted the following
4 from the legislative debates leading to the passing of Section 1983:

5
6 “Senator Osborn: ‘If the State courts had proven themselves competent to suppress the local
7 disorders, or to maintain law and order, we should not have been called upon to legislate[.]”

8 Representative Perry concluded: ‘Sheriffs, having eyes to see, see not; judges, having ears to
9 hear, hear not; witnesses conceal the truth or falsify it; grand and petit juries act as if they
10 might be accomplices.... (A)ll the apparatus and machinery of civil government, all the
11 processes of justice, skulk away as if government and justice were crimes and feared
12 detection. Among the most dangerous things an injured party can do is to appeal to justice.’”

13 In my case, among other things, the City attorney unreasonably seized my property, they
14 “saw” and “heard” me speak with the judge regarding my right to retain my Prop 215 rights and my
15 property, but they pretend that they do not; I have repeatedly and emphatically demeaned myself and
16 begged the State Court judges in writing and at oral hearings to hear me regarding the Confirmation
17 Email, but they do not “hear me;” all attorneys present at the TRO hearing on December 7, 2017
18 where obligated to aid the Court in avoiding error, but they “conceal the truth or falsify it.” The City
19 attorneys “skulk away” and pretend to not be involved by stating that this case is a “private dispute”
20 between private actors.

21 149. It is futile to seek to protect and vindicate my rights in State Court. I have been
22 repeatedly told by numerous attorneys that if I were to appeal the State Court orders that there would
23 be severe backlash because judges take severe and personal offense when their judgment is
24 challenged. And that it is especially true when it turns out that they were actually wrong as there is
25 then a record of their “abuse of discretion” – “Among the most dangerous things an injured party
26 can do is to appeal to justice.” (*Id.*)
27
28

1 150. Thus, I find myself here and now today. I do not ask this Federal Court to believe me,
2 I only ask that this Court please genuinely review the evidence submitted with my application
3 submitted herewith for a TRO and the causes of action I bring forth in this Federal Complaint. If
4 Geraci and/or the City is allowed to passively and/or actively sabotage the CUP application, I will
5 have lost everything of value in my life completely unlawfully and unconstitutionally.
6

7 151. Please, I realize that this is a Federal Court and my Political Activism will not endear
8 me to the Federal Judiciary as an entity, but I do not come before this Federal Court to enforce or
9 argue rights related to my Political Activism, but rather for the protection and vindication of those
10 rights that are granted to me by the Constitution of the United States of America.
11

12 **FIRST CLAIM 42 U.S.C. SEC. 1983: 4TH AMEND. UNLAWFUL SEIZURE (As**
13 **against the City of San Diego)**

14 152. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1
15 through 135 as though fully set forth herein.

16 153. Defendant(s), acting under the color of state law, county ordinances, and penal codes,
17 individually and in their official capacity, and in violation of 42 U.S.C. § 1983, have violated
18 Plaintiff's right to be free from unreasonable search and seizure under the Fourth Amendment.
19

20 154. Well after my property was raided because the wrong-doings of my adjoining tenant
21 (Pure Meds), it occurred upon the City that (although they declined to press charges shortly after the
22 raid and waited the full statute of limitations under California Penal Code 364/365 days) I could
23 easily be charged and set up for an Asset Forfeiture action, so they filed. Upon entering a plea
24 following City Attorney Skeels' repeated assurances that the plea was a "sweetheart deal", and for
25 the sake of expediency, I went ahead and pled guilty.
26

27 155. I thought the action was over at that time. I was wrong, the City used this transaction
28 to further their suspicious utilization of Asset Forfeiture and almost immediately filed a Lis Pendens.

1 THAT is where the truly unreasonable seizure comes into play. This was essentially a retroactive
2 punishment tacked on to the punishment that the City had already meted out.

3 156. Defendants (City Attorney's Office) violated Plaintiffs' right to procedural due
4 process by issuing a Lis Pendens as a result of the plea without any prior notice and under false
5 pretenses. Defendant City has violated Plaintiffs' right to be free from unreasonable search and
6 seizure under the Fourth Amendment by conducting in such underhanded behavior.
7

8 157. As a direct and proximate result of the foregoing, Plaintiffs have been damaged in an
9 amount according to proof at trial.

10
11 **SECOND CLAIM FOR 42 U.S.C. SEC. 1983: 14TH AMEND. DUE PROCESS**
12 **VIOLATIONS (As against City)**

13 158. Cotton hereby incorporates by reference all of his allegations contained above as if
14 fully set forth herein.

15 159. Defendants, acting under the color of state law, county ordinances, regulations,
16 customs and usage of regulations and authority, individually and in their official capacity, and in
17 violation of 42 U.S.C. § 1983, have deprived Plaintiff of the rights, privileges or immunities secured
18 by the Due Process Clause of the Fourteenth Amendment.

19 160. Defendant City, specifically Development Services, has violated Plaintiff's rights to
20 substantive and procedural due process by the actions alleged above in regards to my Property and
21 the associated CUP application pending on my Property.
22

23 161. As a direct and proximate result of the foregoing, Plaintiffs have been damaged in an
24 amount according to proof at trial.
25

26 **THIRD CLAIM FOR BREACH OF CONTRACT (Against Geraci, Berry, Austin, ALG and**
27 **DOES 1 through 10)**
28

1 162. Cotton hereby incorporates by reference all of his allegations contained above as if
2 fully set forth herein.

3 163. Geraci and Cotton entered into an oral agreement regarding the sale of the Property
4 and agreed to negotiate and collaborate in good faith on mutually acceptable purchase and sale
5 documents reflecting their agreement.

6 164. The November 2nd Agreement was meant to be the written instrument that solely
7 memorialized the partial receipt of the non-refundable deposit.

8 165. Cotton upheld his end of the bargain, including by deciding to not sell his Property to
9 another party while Geraci, among other matters, ostensibly prepared a CUP application for
10 submission.
11

12 166. Under the parties' oral contract, Geraci was bound to negotiate the terms of an
13 agreement for the Property in good faith. Geraci breached his obligation to negotiate in good faith
14 by, among other things, intentionally delaying the process of negotiations, failing to deliver
15 acceptable purchase documents, failing to pay the agreed-upon non-refundable deposit, demanding
16 new and unreasonable terms in order to further delay and hinder the process of negotiations, and
17 failing to timely or constructively respond to Cotton's requests and communications.
18

19 167. Geraci breached the contract by, among other reasons, alleging the November 2nd
20 Agreement is the final agreement between the parties for the purchase of the Property. Berry, as
21 Geraci's agent is also liable. And Gina Austin and ALG were fully aware and apparently supportive
22 of these actions based on the multiple drafts and revisions of what was to be the final purchase
23 agreement.
24

25 168. As a direct and proximate result of Geraci's breaches of the contract, Cotton has been
26 damaged in an amount not yet fully ascertainable, has suffered and continues to suffer damages
27 because of Geraci's actions that constitute a breach of contract. This intentional, willful, malicious,
28

1 outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special,
2 exemplary and/or punitive damages.

3 **FOURTH CAUSE OF ACTION FALSE PROMISE – (As Against Geraci, Berry and DOES 1**
4 **through 10)**

5 169. Cotton hereby incorporates by reference all of his allegations contained above as if
6 fully set forth herein.

7
8 170. On November 2, 2016, among other things, Geraci falsely promised the following to
9 Cotton without any intent of fulfilling the promises.

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

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

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

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

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

20 176. Geraci intended to deceive Cotton in order to, among other things, cause Cotton to
21 rely on the false promises and execute the document signed by the parties at their November 2, 2016
22 meeting so that Geraci could later deceitfully allege that the document contained the parties' entire
23 agreement.
24
25

26 177. Cotton reasonably relied on Geraci's promises.

27 178. Geraci failed to perform the promises he made on November 2, 2016.
28

1 179. As a result of the actions taken in reliance on Geraci's false promises, Geraci created a
2 cloud on Cotton's title to the Property. As a further result of Geraci's false promises, Geraci has
3 diminished the value of the Property, reduced the price Cotton will be able to receive for the
4 Property, and caused Cotton to incur significant unnecessary costs and attorneys' fees to protect his
5 interest in his Property. As a further result of Geraci's false promises, Cotton has been deprived of
6 the remaining \$40,000 of the non-refundable deposit that Geraci promised to pay prior to filing a
7 CUP application for the Property.
8

9 180. Geraci's representations were intentional, willful, malicious, outrageous, unjustified,
10 done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive Cotton
11 of his interest in the Property. This intentional, willful, malicious, outrageous and unjustified conduct
12 entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages
13 under Civil Code section 3294.
14

15 **FIFTH CLAIM OF BREACH OF THE IMPLIED COVENANT OF GOOD FAITH**
16 **AND FAIR DEALING (As against Geraci, Berry, Austin, ALG, the City of San Diego, and**
17 **DOES 1 through 10)**

18 181. Cotton hereby incorporates by reference all of his allegations contained above as if
19 fully set forth herein.
20

21 182. Geraci breached the implied covenant of good faith and fair dealing when, among
22 other actions described herein, he alleged that the November 2nd Agreement is the final purchase
23 agreement between the parties for the Property.
24

25 183. As discussed above, Geraci, Berry, by and through counsel (Austin and ALG) and
26 personally continued to negotiate terms of the initial agreement for months following the November 2
27 Agreement.
28

1 184. Additionally, the City of San Diego, specifically Development Services have not dealt
2 with the CUP application fairly as discussed above. They have been paid application fees to process
3 the CUP on my property. I am the sole deed holder and have at all times held exclusive possession of
4 the Federal Blvd. property.

5 185. In dealing with San Diego, they have breached the implied covenant of good faith and
6 fair dealing when among other actions, they have not kept me informed or allowed me to gain
7 ownership of the CUP and have even went so far as to deny my rights to Due Process in failing to do
8 so.
9

10 186. I have suffered and continue to suffer damages because of Geraci's actions, his
11 attorneys actions and the City's Actions that constitute a breach of the implied covenant of good faith
12 and fair dealing.
13

14 187. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton
15 to an award of general, compensatory, special, exemplary and/or punitive damages.
16

17 **SIXTH CLAIM OF BREACH OF FIDUCIARY DUTY (As against Geraci and DOES 1**
18 **through 10)**

19 188. Cotton hereby incorporates by reference all of his allegations contained above as if
20 fully set forth herein.

21 189. Geraci stated he would honor the agreement reached on November 2nd, 2016, which
22 included a 10% equity stake in the Business and a guaranteed monthly equity distribution of \$10,000
23 a month.
24

25 190. Geraci stated he would pay the balance of the non-refundable deposit as soon as
26 possible, but at the latest when the alleged critical zoning issue was resolved, which, in turn, he
27 alleged was a necessary prerequisite for submission of the CUP application.
28

1 191. Geraci acknowledged that the November 2nd Agreement was not the final agreement
2 for the purchase of the Property via email on November 2nd, 2016.00

3 *Enrolled Agent – Fiduciary Duty*

4 192. Geraci represented to Cotton that as an Enrolled Agent for the IRS he was an
5 individual that could be trusted as he operated in a fiduciary capacity on a daily basis for many high-
6 net worth individuals and businesses. Further, that as an Enrolled Agent he would be able to structure
7 the tax filings of the medical marijuana dispensary and the owners, including Cotton, in such a way
8 that the tax liability would be very limited and, consequently, would maximize Cotton's share of the
9 profits.
10

11 193. Geraci, by representing himself to be an Enrolled Agent of the IRS that would, among
12 other things, submit on behalf of Cotton tax filings with the IRS, created a fiduciary relationship
13 between Cotton and himself.
14

15 *Real Estate Broker – Fiduciary Duty*

16 194. Geraci is a licensed real estate Broker.

17 195. Geraci took responsibility for the drafting of the Purchase Agreement for the Property
18 stating he would have his attorney provide a draft and, further, that Cotton did not require his own
19 counsel to revise the drafts of the real estate purchase contract.
20

21 196. Geraci induced Cotton into letting him effectuate the real estate transaction by
22 claiming that Cotton could trust Geraci.

23 197. Breach of Fiduciary Duties

24 198. Cotton has violated his fiduciary duties by, among the other actions described herein,
25 fraudulently inducing Cotton into executing the November 2nd Agreement and alleging it is the final
26 agreement for the purchase of the Property.
27
28

1 199. Cotton has suffered and continues to suffer damages because of Geraci's actions that
2 constitute a breach of his fiduciary duties.

3 200. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton
4 to an award of general, compensatory, special, exemplary and/or punitive damages.
5

6 **SEVENTH CLAIM FOR FRAUD IN THE INDUCEMENT (As against Geraci, Berry, ALG,
7 Austin and DOES 1 through 10)**

8 201. Plaintiff incorporates by reference each and every allegation contained above as
9 though fully set forth herein.

10 202. Geraci made promises to Cotton on November 2nd, 2016, promising to effectuate the
11 agreement reached on that day, but he did so without any intention of performing or honoring his
12 promises.
13

14 203. Geraci had no intent to perform the promises he made to Cotton on November 2nd,
15 2016 when he made them, as is clear from his actions described herein, that he represented he would
16 be preparing a CUP application.

17 204. In fact, he had already deceived Cotton and submitted a CUP application PRIOR to
18 November 2, 2016.
19

20 205. Geraci intended to deceive Cotton in order to, among things, execute the November
21 2nd Agreement.

22 206. Cotton reasonably relied on Geraci's promises and had no idea Geraci had already
23 started the CUP application process.

24 207. Geraci failed to perform the promises he made on November 2nd, 2016, notably, his
25 delivery of the balance of the non-refundable deposit and his promise to treat the November 2nd
26 Agreement as a memorialization of the \$10,000 received towards the non-refundable deposit and not
27 the final legal agreement for the purchase of the Property.
28

1 208. Cotton has suffered and continues to suffer damages because he relied on Geraci's
2 representations and promises.

3 209. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton
4 to an award of general, compensatory, special, exemplary and/or punitive damages.

5
6 **EIGHTH CLAIM FOR FRAUD/FRAUDULENT MISREPRESENTATION (As against**
7 **Geraci, Berry, Austin, ALG and DOES 1 through 10)**

8 210. Cotton hereby incorporates by reference all of his allegations contained above as if
9 fully set forth herein.

10 211. Each of the Defendants and their agents intentionally and/or negligently made
11 representations of material fact(s) in discussions with Cotton. On November 2, 2016, Geraci
12 represented to Cotton, among other things, that:

13 212. He would honor the agreement reached on November 2nd, 2016, which included a
14 10% equity stake in the Business and a guaranteed monthly equity distribution of \$10,000 a month.

15 213. He would pay the balance of the non-refundable deposit as soon as possible, but at the
16 latest when the alleged critical zoning issue was resolved, which, in turn, he alleged was a necessary
17 prerequisite for submission of the CUP application.

18 214. He understood and confirmed the November 2nd Agreement was not the final
19 agreement for the purchase of the Property.

20 215. That he, Geraci, as an Enrolled Agent by the IRS was someone who was held to a high
21 degree of ethical standards and that he could be trusted to prepare and forward the final legal
22 agreements, honestly effectuate the agreement that they had reached, including the corporate
23 structure of the contemplated businesses so as to ultimately minimize Cotton's tax liability.

24 216. That the preparation of the CUP application would be very time consuming and take
25 hundreds of thousands of dollars in lobbying efforts.
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1 217. Geraci knew that these representations were false because, among other things, Geraci
2 had already filed a CUP application with the City of San Diego prior to that day. At that point in
3 time, all of his declarations regarding the issues that needed to be addressed, his trustworthiness and
4 his intent to follow through with accurate final legal agreements were false. His subsequent
5 communications via email, text messages and Final Agreement draft revisions make clear that he
6 continued to represent to Cotton that the preliminary work of preparing the CUP application was
7 underway, when, in fact, he was just stalling for time. Presumably, to get an acceptance or denial
8 from the City and, assuming he got a denial, to be able to deprive Cotton of the \$40,000 balance due
9 on the non-refundable deposit.
10

11 218. Geraci intended for Cotton to rely on his representations and, consequently, not
12 engage in efforts to sell his Property.
13

14 219. Cotton did not know that Geraci's representations were false.

15 220. Cotton relied on Geraci's representations.

16 221. Cotton's reliance on Geraci's representations were reasonable and justified.

17 222. As a result of Geraci's representations to Cotton, Cotton was induced into executing
18 the November 2nd Agreement, giving Geraci the only basis of his Complaint and, consequently,
19 among other unfavorable results, allowing Geraci to unlawfully create a cloud on title to his Property.
20 Thus, Cotton has been forced to sell his Property at far from favorable terms.
21

22 223. Cotton has been damaged in an amount of no less than \$2,000,000 from this Claim
23 alone. Additional damages from potential future profit distributions and other damages will be proven
24 at trial.
25

26 224. Geraci's representations were intentional, willful, malicious, outrageous, unjustified,
27 done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive Cotton
28 of his interest in the Property.

1 225. This intentional, willful, malicious, outrageous and unjustified conduct entitles Cotton
2 to an award of general, compensatory, special, exemplary and/or punitive damages.

3 **NINTH CLAIM FOR TRESPASS (As against Geraci, Berry, Toothacre, Weinstein,**
4 **F&B and DOES 1 through 10)**

5 226. Cotton hereby incorporates by reference all of his allegations contained above as if
6 fully set forth herein.

7 227. The Property was owned by Cotton and is in his exclusive possession.

8 228. Geraci, or an agent acting on his behalf, illegally entered the subject property on or
9 about March 27, 2017, and posted two NOTICES OF APPLICATION on the Property.
10

11 229. Geraci's attorney, Michael Weinstein, emailed Cotton on March 22, 2017 stating that
12 Geraci or his agents would be placing the aforementioned Notices upon Cotton's property.
13

14 230. Geraci knew that he had fraudulently induced Cotton into executing the November
15 2nd Agreement and, consequently, he had no valid legal basis to trespass unto Cotton's Property.

16 231. Alternatively, setting aside the fraudulent inducement, on March 21, 2017, Cotton,
17 having discovered Geraci's criminal scheme to deprive him of his Property, emailed Geraci stating
18 that he no longer had any interests in the Property and should not trespass on his Property, yet he
19 continued to do despite being warned not to.
20

21 232. Geraci's Notices of Application posted on his Property has caused and continues to
22 damage Cotton because the discouragement of future businesses, partnerships and potential buyers it
23 immediately caused to which Weinstein was a knowing party.

24 233. Cotton has no adequate remedy at law for the injuries currently being suffered in that
25 it will be impossible for Cotton to determine the precise amount Cotton has suffered and continues to
26 suffer damages because of Geraci's actions.
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1 234. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton
2 to an award of general, compensatory, special, exemplary and/or punitive damages.

3 **TENTH CLAIM FOR SLANDER OF TITLE (As against Geraci, Berry, Austin, ALG,
4 F&B and the City of San Diego)**

5 235. Cotton hereby incorporates by reference all of his allegations contained above as if
6 fully set forth herein.

7 236. Geraci disparaged Cotton's exclusive valid title by and through the preparing, posting,
8 publishing, and recording of the documents previously described herein, including, but not limited to,
9 a Complaint in state court and Lis Pendens filed on the Property.

10 237. The City of San Diego separately also used/abused the Lis Pendens process to strong
11 arm me and violate my 4th Amendment Rights against unreasonable seizure.

12 238. Defendants knew that such documents were improper in that at the time of the
13 execution and delivery of the documents, Defendants had no right, title, or interest in the Property.
14 These documents were naturally and commonly to be interpreted as denying, disparaging, and casting
15 doubt upon Cotton's legal title to the Property. By posting, publishing and recording documents,
16 Defendants' disparagement of Cotton's legal title was made to the world at large.

17 239. As a direct and proximate result of all Defendants' conduct in publishing these
18 documents, Cotton's title to the Property has been disparaged and slandered, and there is a cloud on
19 Cotton's title, and Cotton has suffered and continues to suffer damages, including, but not limited to,
20 lost future profits, in an amount to be proved at trial, but in an amount of no less than \$2,000,000.

21 240. As a further and proximate result of Defendants' conduct, Cotton has incurred
22 expenses in order to clear title to the Property. Moreover, these expenses are continuing, and Cotton
23 will incur additional expenses for such purpose until the cloud on Cotton's title to the Property has
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1 been removed. The amounts of future expenses are not ascertainable at this time but will be proven at
2 trial.

3 241. The amount of such damages shall be proven at trial (expert witness testimony will
4 likely be of critical importance).

5
6 **ELEVENTH CLAIM FOR FALSE DOCUMENTS LIABILITY (As against Geraci,
7 Berry, Austin, ALG, F&B and DOES 1 through 10)**

8 242. Cotton hereby incorporates by reference all of his allegations contained above as if
9 fully set forth herein.

10 243. Geraci filed a Complaint against Cotton and a Lis Pendens on the Property with a
11 public office, respectively, this Court and the San Diego County Recorder's Office.

12 244. Geraci knew the Complaint and Lis Pendens, both solely and completely predicated
13 upon his allegation that the November 2nd Agreement was the final agreement for the purchase of the
14 Property, was false and unfounded when he filed them.

15 245. Geraci, his agents and counsel, all knew at the time of the filing he was committing a
16 crime (in violation of California Penal Code Section 115 PC) and did so knowingly anyway.

17 246. Cotton has suffered and continues to suffer damages because of Geraci's actions.

18 247. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton
19 to an award of general, compensatory, special, exemplary and/or punitive damages.
20

21
22 **TWELFTH CLAIM OF UNJUST ENRICHMENT (As against Geraci, Berry, and the
23 City of San Diego)**

24 248. Cotton hereby incorporates by reference all of his allegations contained above as if
25 fully set forth herein.

26 249. Geraci represented to Cotton that executing the November 2nd Agreement was only to
27 memorialize the \$10,000 good-faith deposit towards the total \$50,000 non-refundable deposit, but
28

1 Geraci now alleges that the November 2nd Agreement is the final agreement for the purchase of the
2 Property.

3 250. Geraci himself confirmed via email that the November 2nd Agreement is not the final
4 agreement.

5 251. Had Geraci described the effect of executing the November 2nd Agreement in the way
6 that Geraci presently interprets it, then Cotton would never have signed the November 2nd
7 Agreement.
8

9 252. Geraci will be unjustly enriched at the expense of Cotton if he is permitted to retain
10 the interest in the Property that he now asserts under the November 2nd Agreement.

11 253. The City of San Diego was able trick me into entering deals that caused me to lose
12 \$25,000 to remove the Lis Pendens from the property.
13

14 254. Cotton has suffered and continues to suffer damages because of Geraci's actions.

15 255. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton
16 to an award of general, compensatory, special, exemplary and/or punitive damages.
17

18 **THIRTEENTH CLAIM OF INTENTIONAL INTERFERENCE WITH**
19 **PROSPECTIVE ECONOMIC RELATIONS – (As Against Geraci, Berry, Austin, F&B and**
20 **DOES 1 through 10)**

21 256. Cotton hereby incorporates by reference all of his allegations contained above as if
22 fully set forth herein.

23 257. Cotton has an ongoing prospective business relationship with Mr. Martin and the City
24 via by the then-filed CUP application that was resulting, and would have resulted, in an economic
25 benefit to Cotton based on and in connection with the approval of the CUP application.
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1 258. Further, specifically, Cotton has an ongoing prospective business relationship with Mr.
2 Martin for the sale of the Property that was resulting, and would have resulted, in an economic
3 benefit to Cotton based on and in connection with the sale of the Property.

4 259. Defendants knew of Cotton's ongoing and prospective business relationship with Mr.
5 Martin and the City arising from and related to the CUP Application and defendants knew of
6 Cotton's ongoing and prospective business relationship with the new buyer for the Property.
7

8 260. Defendants intentionally engaged in acts designed to interfere, and which have
9 interfered and are likely to continue to interfere, with Cotton's relationship with the City, the CUP
10 application, and the new buyer, including without limitation, their refusal to acknowledge they have
11 no interest in the Property and/or the CUP application.
12

13 261. As a direct and proximate result of the defendants' conduct, Cotton has suffered and
14 will continue to suffer damages in an amount not yet fully ascertainable and to be determined
15 according to proof at trial.

16 262. The aforementioned conduct by defendants was despicable, willful, malicious,
17 fraudulent, and oppressive conduct which subjected Cotton to cruel and unjust hardship in conscious
18 disregard of Cotton's rights, so as to justify an award of exemplary and punitive damages in an
19 amount to be determined according to proof at trial, including pursuant to Civil Code section 3294.
20

21 **FOURTEENTH CLAIM OF NEGLIGENT INTERFERENCE WITH PROSPECTIVE**
22 **ECONOMIC RELATIONS – (As Against Geraci, Berry, and DOES 1 through 10)**

23 263. Cotton hereby incorporates by reference all of his allegations contained above as if
24 fully set forth herein.

25 264. Cotton has an ongoing prospective business relationship with the City that was
26 resulting, and would have resulted, in an economic benefit to Cotton based on and in connection with
27 the approval of the CUP application. In addition, Cotton has an ongoing prospective business
28

1 relationship with the new buyer of the Property that was resulting, and would have resulted, in an
2 economic benefit to Cotton based on and in connection with the sale of the Property.

3 265. Defendants knew or should have known of Cotton's ongoing and prospective business
4 relationship with the City arising from and related to the CUP Application, and defendants knew or
5 should have known of Cotton's ongoing and prospective business relationship with the new buyer for
6 the Property.
7

8 266. Defendants failed to act with reasonable care when they engaged in acts designed to
9 interfere, and which have interfered and are likely to continue to interfere, with Cotton's relationship
10 with the City, the CUP application, and the new buyer, including without limitation, their refusal to
11 acknowledge they have no interest in the Property and/or the CUP application.
12

13 267. As a direct and proximate result of the defendants' conduct, Cotton has suffered and
14 will continue to suffer damages in an amount not yet fully ascertainable and to be determined
15 according to proof at trial.
16

17 **FIFTH CLAIM OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (As against**
18 **All Defendants)**

19 268. Cotton hereby incorporates by reference all of his allegations contained above as if
20 fully set forth herein.

21 269. Defendants, and each of them, engaged in outrageous conduct towards Plaintiff, with
22 the intention to cause or with reckless disregard for the probability of causing Plaintiff to suffer
23 severe emotional distress. Geraci has event sent convicts to intimidate, coerce and threaten my
24 investors by telling him that it would be in his "best interest" to use his influence me to settle with
25 Geraci.
26
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1 270. All of the above-named defendants know that this is an unfounded lawsuit against me
2 and the continued malicious attempts at depriving me of my rights, money and sanity can only be
3 described as outrageous.

4 271. The defendants have acted for the purpose of causing me emotional distress so severe
5 that it could be expected to adversely affect mental health and well-being.
6

7 272. The defendants' conduct is causing such distress, which includes, but is not limited to,
8 chronic loss of sleep, paranoia, and other injuries to health and well-being. All of these injuries
9 continue on a daily basis.

10 273. To the extent that said outrageous conduct was perpetrated by certain Defendants, the
11 remaining Defendants adopted and ratified said conduct with a wanton and reckless disregard of the
12 deleterious consequences. As a proximate result of said conduct, I have suffered and continue to
13 suffer extreme mental distress, humiliation, anguish, and emotional and physical injuries, as well as
14 economic losses.
15

16 274. Defendants committed the acts alleged herein maliciously, fraudulently and
17 oppressively with the wrongful intention of injuring Plaintiff, from an improper and evil motive
18 amounting to malice and in conscious disregard of Plaintiff's rights, entitling Plaintiff to recover
19 punitive damages in amounts to be proven at trial.
20

21 **SIXTHTEENTH CLAIM FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**
22 **(As against All Defendants)**

23 275. Plaintiff realleges and incorporates by reference the allegations contained above as
24 though fully set forth.
25

26 276. All Defendants, and each of them, knew or reasonably should have known that the
27 conduct described herein would, and did, proximately result in physical and emotional distress to
28 Plaintiff. Being as all of the above-named defendants know that this is an unfounded lawsuit against

1 me and the continued malicious attempts at depriving me of my rights, money and sanity can only be
2 described as outrageous.

3 277. At all relevant times, all Defendants, and each of them, had the power, ability,
4 authority, and duty to stop engaging in the conduct described herein and/or to intervene to prevent or
5 prohibit said conduct.

6 278. Despite said knowledge, power, and duty, Defendants negligently failed to act so as to
7 stop engaging in the conduct described herein and/or to prevent or prohibit such conduct or otherwise
8 protect Plaintiff. Therefore, whether or not the defendants have acted for the express purpose of
9 causing me this extreme emotional distress, they have caused it. And they should have known this
10 would happen.

11 279. Further, they have been made aware and have been on notice. Weinstein of F&B,
12 specifically. To the extent that said negligent conduct was perpetrated by certain Defendants, the
13 remaining Defendants confirmed and ratified said conduct with the knowledge that Plaintiff's
14 emotional and physical distress would thereby increase, and with a wanton and reckless disregard for
15 the deleterious consequences to Plaintiff.

16 280. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
17 suffered and continues to suffer serious emotional distress, humiliation, anguish, emotional and
18 physical injuries, as well as economic losses, all to his damage in amounts to be proven at trial.

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22 **SEVENTEENTH CLAIM FOR CONSPIRACY (As against Geraci, Berry, Austin, ALG,
23 Weinstein, the City of San Diego and DOES 1 through 10)**

24 281. Cotton hereby incorporates by reference all of his allegations contained above as if
25 fully set forth herein.

26 282. Geraci fraudulently induced Cotton to execute the Ownership Disclosure Statement on
27 October 31st, 2016, alleging that the Ownership Disclosure Statement was necessary because the
28

1 parties did not have a final agreement in place at that time, thus, he needed it to show other
2 professionals involved in the preparation of the CUP application and the lobbying efforts to prove
3 that he, Geraci, had access to the Property.

4 283. As a sign of good-faith by Cotton as they had not reached a final agreement for the
5 sale of the Property, Geraci wanted something in writing proving Cotton's support of the CUP
6 application at his Property because he needed to immediately spend large amounts of cash to continue
7 with the preparation of the CUP application and the lobbying efforts. However, Geraci promised that
8 the Ownership Disclosure Statement would not under any circumstances actually be submitted to the
9 City of San Diego. Further, that it was impossible to submit the CUP application as the critical zoning
10 issue had been resolved with the city of San Diego.
11

12 284. The Ownership Disclosure Statement is also executed by Rebecca Berry and denotes
13 Rebecca Berry is the "Tenant/Lessee" of the Property.
14

15 285. Geraci represented to Cotton that Rebecca Berry could be trusted and was one of his
16 best employees who was familiar with the medical marijuana industry.

17 286. Cotton has never met or entered into any agreement with Rebecca Berry.

18 287. Rebecca Berry knew that she had not entered into a lease of any form with Cotton for
19 the Property.
20

21 288. Upon information and belief, Rebecca Berry allowed the CUP application to be
22 submitted in her name on behalf of Geraci because Geraci has been a named Cotton in numerous
23 other lawsuits brought by the City of San Diego against him for the operation and management of
24 unlicensed and unlawful marijuana dispensaries.^[14]
25

26 289. Rebecca Berry knew that she was filing a document with the City of San Diego that
27 contained a false statement, specifically that she was a lessee of the Property.
28

1 290. Rebecca Berry, at Geraci's instruction or her own desire, submitted the CUP
2 application as Geraci's agent, thereby Geraci's scheme to deprive Cotton of his Property.

3 291. Gina Austin and ALG represented Berry and Geraci in the initial Writ motion
4 involving the City of San Diego, additionally, Austin and ALG drafted the proposed Final Purchase
5 Agreements and subsequent revisions well into March of 2017. Therefore these acts were in full
6 knowledge that the November 2 Agreement (which this whole case is premised on) was NOT
7 intended to be the full and final agreement. The egregiousness of not informing the court of these
8 material facts and allowing this case to proceed so far is a slight to the Superior Court to which an
9 officer of the court has a duty of honesty, integrity and candor. No other possible explanation comes
10 to mind other than Austin and ALG have been knowingly working in concert together to defraud the
11 court, and myself.
12

13 292. Inexplicably, no one working in The City Attorney's Office of the City of San Diego
14 have raised their voices to assist me when they have received all the above information. They have
15 seen my evidence, they have expressed surprise that I was not granted a TRO after reading my
16 Motion for Reconsideration for the TRO. Yet, knowing this is an unfounded case San Diego is still
17 permitting this injustice continue.
18

19 293. The San Diego Department of Services seemingly worked exclusively for Geraci and
20 Berry and essentially blocked me from having any say as to the CUP for my property. They have
21 continued to process the CUP application for Geraci and Berry when they know that Geraci and
22 Berry have no legal right to my Property.
23

24 294. Then I was told to submit a new application which necessarily creates an inequitable
25 race – all these facts can only be reconciled if one is to accept that 1) the city is prejudiced against me
26 or; 2) Geraci has them in his pocket.
27
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1 295. Not only that, this all follows the tyrannical practices of Deputy City Attorney Mark
2 Skeels who tricked me and my young defense counsel into setting myself up for an Asset Forfeiture
3 Action that ultimately resulted in a \$25,000 extortion. Under the Fourth Amendment, "[t]he right of
4 the people to be secure in their persons, houses, papers, and effects, against unreasonable searches
5 and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause." U.S. Const.
6 amend. IV. "The Fourth Amendment does not proscribe all state-initiated searches and seizures; it
7 merely proscribes those which are unreasonable." *Florida v. Jimeno*, 500 U.S. 248, 250, 111 S.Ct.
8 1801, 114 L.Ed.2d 297 (1991). In light of the situation I was in, the unforeseen and extreme result
9 must surely constitute an "unreasonable" seizure.
10

11 296. Further adding to my confusion, frustration and inability to gain any traction in
12 protecting my own interests, the Honorable Judge Wohlfeil presiding over my case has not seemed
13 interested in reading any of my prior submissions. He "knows [the attorneys opposing me] well" and
14 I believe based on that he is biased against me now that I am pro se and a likely mark for everyone to
15 be able to walk over and take advantage of with no repercussions. At best, Judge Wohlfiel probably
16 hopes my case can be settled out of court relieving him of further responsibility (or culpability?) in
17 regard to my case. At worst, Wohlfeil's seemingly purposeful negligence at this point is an
18 intentional cover-up of the fact that he does not care about my case or he is actively helping Geraci.
19
20

21 297. Ultimately, whether it was done purposefully, working in concert with, and/or because
22 of gross negligence, all the parties here, even if operating in their own "mini-conspiracies," have de
23 facto operated in a one, large conspiracy by perpetuating and augmenting the unlawful actions and
24 harm caused to Darryl.
25

26 298. Cotton has suffered and continues to suffer damages because of actions of all
27 defendants such that it would be "a challenge to imagine a scenario in which that harassment would
28

1 not have been the product of a conspiracy.” [*Geinosky v. City of Chicago* (7th Cir. 2012) 675 F3d
2 743, 749].

3 299. As a direct and proximate result of Defendants’, their agents’ and conspirators’
4 concerted, intentional (and even negligent), willful, malicious, outrageous, and unjustified conduct
5 entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages.
6 unlawful conduct. Plaintiff has suffered and continues to suffer serious emotional distress,
7 humiliation, anguish, emotional and physical injuries, as well as economic losses, all to his damage in
8 amounts to be proven at trial.
9

10
11 **EIGHTEENTH CLAIM FOR RACKETEER INFLUENCED AND CORRUPT
ORGANIZATION ACT (As against All Defendants)**

12 300. Cotton hereby incorporates by reference all of his allegations contained above as if
13 fully set forth herein.
14

15 301. The elements of civil RICO are as follows: (1) conduct, (2) of an enterprise, (3)
16 through a pattern (4) of racketeering activity, (5) resulting in injury.

17 302. Geraci, as proven by public records of lawsuits filed by the City against him for the
18 operating of illegal dispensaries, has run an enterprise of illegal marijuana dispensaries over the
19 course of years. His enterprise is focused on marijuana dispensaries and related financial support
20 services meant to unlawfully circumvent IRS tax liabilities. As discussed above, he uses employees,
21 third-parties, attorneys and criminals to operate his criminal enterprise.
22

23 303. Geraci specifically told Cotton, when fraudulently inducing him to enter into the
24 November Agreement, that as an Enrolled Agent for the IRS, he was uniquely positioned to “get
25 around” paying IRS Code Section 280(e). At the time, it appeared to Cotton that Geraci was stating
26 he had some form of unknown method to do so lawfully. In retrospect, it is apparent that he is
27
28

1 providing money laundering services for himself and others, using his Tax and Financial company as
2 legitimate front for his behind the scenes unlawful activities.

3 304. Geraci runs his enterprise through his employees, such as Berry, who use their names
4 on applications, such as the CUP application at issue here, to provide anonymity and for Geraci to
5 stay off the radar of law enforcement agencies. For example, Geraci, and Berry, were required by law
6 to state the names of all individuals who had an interest in the CUP when the CUP application was
7 filed. Geraci's name is NOT on the CUP application. His office manager, Berry, is. Had this instant
8 lawsuit not required him to fraudulently attempt to enforce the Receipt as the final agreement for the
9 Property, there would be no record of his ownership in the CUP application.
10

11 305. Geraci is the lead perpetrator in the enterprise. It is Geraci that had his office manager,
12 Berry submit the CUP application with material omissions (his name); having Gina Austin, his
13 attorney, represent him in the State Actions although she knows she is violating her ethical (and
14 potentially legal) obligations to the Court by representing Geraci under the false premise that the
15 Receipt is the final agreement for the Property; Geraci is directing Weinstein, also his attorney, to
16 continue to represent him when Weinstein knows that there is no factual or legal basis to continue
17 prosecuting the State Action against me to my great detriment.
18

19
20 306. Mr. Geraci has told me that he has run many illegal marijuana dispensaries through his
21 employee, Berry. I believe that he has invested the proceeds of the pattern of racketeering activity
22 into the enterprise endeavors to continuously open more illegal dispensaries. Further, because he has
23 evaded criminal prosecution and additionally managed to pull off this farce of a civil suit against me,
24 I believe he has also used said monies to compensate Austin and Weinstein, and, de facto, their
25 respective law firms, for the unethical and unlawful actions against me. How else can one explain
26 why two, ostensibly intelligent attorneys who statistically speaking should be smarter than most
27 would take the actions they have which are clearly unethical and unlawful.
28

1 307. The way in which the City has dealt with me in every avenue also points to the distinct
2 possibility that Geraci's "influence" has in fact tainted the state legal process against me. I have been
3 specifically told by Mr. Dwayne and his associate Mr. L that Geraci has deep connections to the
4 City's politicians.

5 308. To my knowledge all defendants and Does above in some way shape or form have
6 worked in conjunction with one another willfully, occasionally negligently, but at all times in
7 association against me. Most certainly, Austin, ALG, Weinstein, Toothacre, Berry and F&B do
8 Geraci's bidding and are complicit in all of his dishonest schemes.

9 309. As a direct and proximate result of the Defendants', their agents' and coconspirators'
10 plot to participate in the conduct of the affairs of their conspiracy and wrongs, alleged herein,
11 Plaintiff has been and is continuing to be injured in his property, person and business as set forth
12 herein.
13

14
15 **NINETEENTH CLAIM OF DECLARATORY RELIEF (As Against All Defendants)**

16 310. Cotton hereby incorporates by reference all of his allegations contained above as if
17 fully set forth herein.

18 311. An actual controversy has arisen and now exists between Cotton and all defendants
19 concerning their respective rights, liabilities, obligations and duties based on the actions described
20 herein.
21

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

25 313. Accordingly, Cotton respectfully requests a judicial declaration of rights, liabilities,
26 and obligations of the parties. Specifically, Cotton requests a judicial declaration that (a) Cotton is
27 the sole owner of the Property, (b) Cotton is the owner and sole interest-holder in the CUP
28

1 application for the Property submitted on or around October 31, 2016, (c) defendants have no right or
2 interest in the Property or the CUP application for the Property submitted on or around October 31,
3 2016, and (d) the Lis Pendens filed by Geraci be released.

4
5 **INJUNCTIVE RELIEF (As Against All Defendants)**

6 314. Cotton hereby incorporates by reference all of his allegations contained above as if
7 fully set forth herein.

8 315. For the reasons argued above, Cotton respectfully requests that all defendants be
9 immediately be notified and enjoined that their actions, even if under the color of effectuating
10 professional legal services, the law or the authority of any governmental agency, cease violating Mr.
11 Cotton's rights.
12

13 316. That the Geraci be ordered to continue to pay for the costs associated with getting
14 approval of the CUP application and the development of the MMCC per his agreement with Cotton,
15 and as he stated in his declaration in the state action.
16

17 317. That the City not be allowed to passively and/or affirmatively sabotage the CUP so as
18 to limit its liability for its actions stated herein.

19 318. Such as other injunctive relief as is required based on the facts alleged above to protect
20 and vindicate my rights.
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PRAYER FOR RELIEF

WHEREFORE, Cotton prays for relief against defendants as follows:

1. That the Court order the Lis Pendens on the Property be released;
2. That the Court order, by way of declaratory relief, that there is no purchase agreement between the Geraci and that Cotton is the sole owner of the Property;
3. That the CUP application be transferred to me;
4. General, exemplary, special and/or consequential damages in the amount to be proven at trial, but which are no less than \$5,000,000;
5. Punitive damages against all defendants;
6. Sanctions against counsel as this Court may find warranted based on the allegations above that will be proven to be true during the course of this litigation;
7. That this Court appoint Mr. Cotton counsel until such time as he has the financial wherewithal to pay for counsel himself; and
8. That other relief is awarded as the Court determines is in the interest of justice.

Dated: February 9, 2018.



Darryl Cotton,
Cotton and Cotton Pro Se

1 Douglas A. Pettit, Esq., SBN 160371
2 Kayla R. Sealey, Esq., SBN 341956
3 **PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**
4 11622 El Camino Real, Suite 300
5 San Diego, CA 92130
6 Telephone: (858) 755-8500
7 Facsimile: (858) 755-8504
8 E-mail: dpettit@pettitkohn.com
9 ksealey@pettitkohn.com

10 Attorneys for Defendants
11 **GINA M. AUSTIN and**
12 **AUSTIN LEGAL GROUP**

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

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

18 Plaintiffs,

19 v.

20 GINA M. AUSTIN, an individual; AUSTIN
21 LEGAL GROUP, a professional corporation,
22 LARRY GERACI, an individual, REBECCA
23 BERRY, an individual; JESSICA
24 MCELDFRESH, an individual; SALAM
25 RAZUKI, an individual; NINUS MALAN,
26 an individual; FINCH, THORTON, AND
27 BARID, a limited liability partnership;
28 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;
EULENTIAS 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.: 37-2021-00050889-CU-AT-CTL

PROOF OF SERVICE

[IMAGED FILE]

Date: August 5, 2022

Time: 9:00 a.m.

Dept.: C-75

Judge: Hon. James A. Mangione

Filed: December 3, 2021

Trial: Not Set

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I, the undersigned, declare that:

I am and was at the time of service of the papers herein, over the age of eighteen (18) years and am not a party to the action. I am employed in the County of San Diego, California, and my business address is 11622 El Camino Real, Suite 300, San Diego, California 92130.

On **June 16, 2022**, I caused to be served the following documents:

- 1. DEFENDANTS GINA M. AUSTIN AND AUSTIN LEGAL GROUP’S NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE PLAINTIFFS’ FIRST AMENDED COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 425.16 (ANTI-SLAPP STATUTE)**
- 2. DEFENDANTS GINA M. AUSTIN AND AUSTIN LEGAL GROUP’S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEIR MOTION TO STRIKE PLAINTIFFS’ FIRST AMENDED COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 425.16 (ANTI-SLAPP STATUTE)**
- 3. DECLARATION OF GINA M. AUSTIN, ESQ. IN SUPPORT OF MOTION TO STRIKE PLAINTIFFS’ FIRST AMENDED COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 425.16 (ANTI-SLAPP STATUTE)**
- 4. DECLARATION OF DOUGLAS A. PETTIT, ESQ. IN SUPPORT OF DEFENDANTS’ MOTION TO STRIKE PLAINTIFFS’ FIRST AMENDED COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 425.16 (ANTI-SLAPP STATUTE)**

BY FACSIMILE TRANSMISSION (Code Civ. Proc. §§ 1013(e)-(f)): From fax number (858) 755-8504 to the fax numbers listed below. The facsimile machine I used complied with Cal. Rules of Court, rule 2.306 and no error was reported by the machine. I caused the machine to print a transmission record, a copy of which will be maintained with the document(s) in our office.

BY MAIL: By placing a copy thereof for delivery in a separate envelope addressed to each addressee, respectively, as follows:

- BY FIRST-CLASS MAIL (Code Civ. Proc. §§ 1013(a)-(b))**
- BY OVERNIGHT DELIVERY (Code Civ. Proc. §§ 1013(c)-(d))**
- BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED (Code Civ. Proc. §§ 1013(a)-(b))**

BY ELECTRONIC DELIVERY (Code Civ. Proc. § 1010.6 and Cal. Rules of Court, rule 2.251): Based on an agreement between the parties to accept service by e-mail or electronic transmission, I caused such document(s) to be electronically served to those parties listed below from e-mail address izamora@pettitkohn.com. The file transmission was reported as complete and a copy of the Service Receipt will be maintained with the original document(s) in our office.

BY ELECTRONIC SERVICE (California Rule of Court 2.251): By submitting an electronic version of the document(s) via file transfer protocol (FTP) to OneLegal Online Court Services through the upload feature at www.onelegal.com.

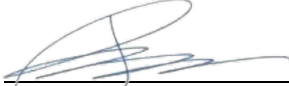
///

1 [] **BY PERSONAL SERVICE:** I caused the above-described document to be personally
2 served on the parties listed on the service list below at their designated business addresses
3 pursuant to Code Civ. Proc. §1011.

3 Andrew Flores, Esq.
4 Law Office of Andrew Flores
5 954 4th Avenue, Suite 412
6 San Diego, CA 92101
7 Tel: (619) 256-1556
8 Fax: (619) 274-8253
9 Email: Andrew@FloresLegal.Pro
10 **Plaintiff in *Propria Persona***
11 **and Attorney for Plaintiffs**
12 **Amy Sherlock, Minors T.S.**
13 **and S.S.**

9 I am readily familiar with the firm's practice of collection and processing correspondence
10 for mailing. Under that practice, it would be deposited with the United States Postal Service on
11 that same day with postage thereon fully prepaid at San Diego, California, in the ordinary course
12 of business. I am aware that service is presumed invalid if postal cancellation date or postage
13 meter date is more than one day after the date of deposit for mailing in affidavit.

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct. Executed on **June 16, 2022**, at San Diego, California.

14 
15 _____
16 Luis Zamora