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

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

vs.

GINA M. AUSTIN, an individual, AUSTIN LEGAL GROUP APC, a California Corporation; LAWRENCE (AKA LARRY) GERACI, an individual; TAX & FINANCIAL CENTER, INC., a California Corporation; REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an individual; NINUS MALAN, an individual; MICHAEL ROBERT WEINSTEIN, an individual; SCOTT TOOTHACRE, an individual; ELYSSA KULAS, an individual; FERRIS & BRITTON APC, a California Corporation; DAVID DEMIAN, an individual, ADAM C. WITT, an individual, RISHI S. BHATT, an individual, FINCH, THORTON, and BAIRD, a Limited Liability Partnership, JAMES D. CROSBY, an individual; ABHAY SCHWEITZER, an individual and dba

Case No.: 20-CV-000656-JO-DEB

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFFS' EX PARTE APPLICATION FOR ORDER SHORTENING TIME ON (1) MOTION TO VACATE ORDER OR, (2) ALTERNATIVELY, A STAY OF ACTION

VOLUME 2 OF 3

Complaint Filed: April 3, 2020

Judge: Hon. Jinsook Ohta

TECHNE; JAMES (AKA JIM) BARTELL, an individual; BARTELL & ASSOCIATES, a California Corporation; NATALIE TRANG-MY NGUYEN, an individual, AARON MAGAGNA, an individual; A-M INDUSTRIES, INC., a California Corporation; BRADFORD HARCOURT, an individual; ALAN CLAYBON, and individual; DOUGLAS A. PETTIT, an individual, JULIA DALZELL, an individual, MICHAEL TRAVIS PHELPS, an individual; THE CITY OF SAN DIEGO, a municipality; 2018FMO, LLC, a California Limited Liability Company; FIROUZEH TIRANDAZI, an individual; and DOES 1 through 50, inclusive,

Defendants.

Pursuant to Federal Rule of Civil Procedure 201(c)(2), Plaintiff's request that this Court take judicial notice of the following documents listed below and submitted herewith in support of their EX PARTE APPLICATION FOR ORDER SHORTENING TIME ON (1) MOTION TO VACATE ORDER OR, (2) ALTERNATIVELY, A STAY OF ACTION.

RJN-11

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

DARRYL COTTON, an individual,

Petitioner/Plaintiff,

v.

CITY OF SAN DIEGO, a public entity; and DOES 1 through 25,

Respondents/Defendants.

REBECCA BERRY, an individual; LARRY GERACE, an individual, and ROES 1 through 25,

Real Parties in Interest.

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

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

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

[IMAGED FILE]

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

Petition Filed: October 6, 2017

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

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

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

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

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

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

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

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

Dated: 3-7, 2018

JUDGE OF THE SUPERIOR COURT
Hon. Joel R. Wohlfeil

RJN-12

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual, Plaintiff, v. DARRYL COTTON, an individual; and DOES 1 through 10, inclusive, Defendants.	Case No. 37-2017-00010073-CU-BC-CTL Judge: Hon. Joel R. Wohlfeil Dept.: C-73 **JUDGMENT ON JURY VERDICT [PROPOSED BY PLAINTIFF/CROSS-DEFENDANTS]**
DARRYL COTTON, an individual, Cross-Complainant, v. LARRY GERACI, an individual, REBECCA BERRY, an individual, and DOES 1 THROUGH 10, INCLUSIVE, Cross-Defendants.	**[IMAGED FILE]** Action Filed: March 21, 2017 Trial Date: June 28, 2019

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

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

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

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

SPECIAL VERDICT FORM NO. 1

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

Breach of Contract

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

Answer: YES

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

Answer: NO

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

Answer: YES

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

Answer: NO

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

Answer: YES

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

Answer: YES

or

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

Answer: YES

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

Answer: YES

Breach of the Implied Covenant of Good Faith and Fair Dealing

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

Answer: YES

9. Was Plaintiff harmed by Defendant's interference?

Answer: YES

10. What are Plaintiffs damages?

Answer: $ 260,109.28

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

/ / /

SPECIAL VERDICT FORM NO. 2

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

Breach of Contract

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

Answer: NO

Fraud - Intentional Misrepresentation

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

Answer: NO

Fraud - False Promise

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

Answer: NO

Fraud - Negligent Misrepresentation

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

Answer: NO

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

///

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

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

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

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

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

IT IS SO ORDERED.

Dated: 8-19, 2019

Hon. Joel R. Wohlfeil
JUDGE OF THE SUPERIOR COURT

Judge Joel R. Wohlfeil

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

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

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

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

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EVENT TYPE: Civil Jury Trial

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Plaintiff/Cross-Complainant:

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

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

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

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

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

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

EXHIBIT B

ORIGINAL

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI,

Plaintiff,

v.

DARRYL COTTON,

Defendant.

DARRYL COTTON,

Cross-Complainant,

v.

LARRY GERACI,

Cross-Defendant.

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

SPECIAL VERDICT FORM NO. 1

Judge: Hon. Joel R. Wohlfeil

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

Breach of Contract

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

✓ Yes ___ No

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

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

___ Yes ✓ No

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

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

✓ Yes ___ No

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

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

___ Yes ✓ No

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

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

✓ Yes ____ No

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

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

✓ Yes ____ No

or

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

✓ Yes ____ No

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

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

✓ Yes ____ No

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

Breach of the Implied Covenant of Good Faith and Fair Dealing

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

✓ Yes ___ No

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

9. Was Plaintiff harmed by Defendant's interference?

✓ Yes ___ No

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

10. What are Plaintiff's damages?

$ 260,109.28

Dated: 7/16/19

Signed: _____
Presiding Juror

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

EXHIBIT C

ORIGINAL

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI,

Plaintiff,

v.

DARRYL COTTON,

Defendant.

DARRYL COTTON,

Cross-Complainant,

v.

LARRY GERACI,

Cross-Defendant.

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

Judge: Hon. Joel R. Wohlfeil

SPECIAL VERDICT FORM NO. 2

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

Breach of Contract

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

____Yes ✓ No

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

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

____Yes ____No

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

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

____Yes ____No

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

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

____Yes ____No

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

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

____Yes ____No

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

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

____Yes ____No

or

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

____Yes ____No

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

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

____Yes ____No

Please answer question 8.

Fraud - Intentional Misrepresentation

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

___Yes ___✓No

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

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

___Yes ___No

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

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

___Yes ___No

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

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

___Yes ___No

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

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

____Yes ____No

Please answer question 13.

Fraud - False Promise

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

____Yes ✓ No

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

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

____Yes ____No

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

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

____Yes ____No

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

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

____Yes ____No

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

17. Did Cross-Defendant perform the promised act?

____Yes ____No

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

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

____Yes ____No

Please answer question 19.

Fraud - Negligent Misrepresentation

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

___Yes ✓ No

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

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

____Yes ____No

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

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

____Yes ____No

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

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

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

____Yes ____No

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

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

____Yes ____No

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

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

____Yes ____No

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

25. What are Cross-Complainant's damages?

$_____

Dated: 7/16/19

Signed: _____
Presiding Juror

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

RJN-13

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal corporation, Plaintiff, v. STONECREST PLAZA, LLC, a Limited Liability Company; SALAM RAZUKI, an individual; and DOES 1 through 50, inclusive, Defendants.	Case No. 37-2014-00009664 -CU-MC-CTL JUDGE: RONALD S. PRAGER STIPULATION FOR ENTRY OF FINAL JUDGMENT IN ITS ENTIRETY AND PERMANENT INJUNCTION; JUDGMENT THEREON [CCP § 664.6] IMAGED FILE

Plaintiff City of San Diego, a municipal corporation, appearing by and through its attorneys, Jan I. Goldsmith, City Attorney, and by Gabriela Brannan, Deputy City Attorney, and Defendants STONECREST PLAZA, LLC, a Limited Liability Company; and SALAM RAZUKI, an individual; appearing by and through their attorney, Richard Ostrow, enter into the following Stipulation for Entry of Final Judgment in full and final settlement of the above-captioned case without trial or adjudication of any issue of fact or law, and agree that a final judgment may be so entered:

1. This Stipulation for Entry of Final Judgment (Stipulation) is executed only between and among Plaintiff City of San Diego, a municipal corporation, and Defendants STONECREST

. . . . .

2. PLAZA, LLC, a Limited Liability Company, and SALAM RAZUKI, an individual, (DEFENDANTS) who are named parties in the above-entitled action.

3. The parties to this Stipulation are parties to a civil suit pending in the Superior Court of the State of California for the County of San Diego, entitled *City of San Diego, a municipal corporation v. STONECREST PLAZA, LLC, a Limited Liability Company; and SALAM RAZUKI, an individual; and DOES 1 through 50, inclusive*, Civil Case Number Case Number 37-2014-00009664-CU-MC-CTL.

4. The parties wish to avoid the burden and expense of further litigation and accordingly have determined to compromise and settle their differences in accordance with the provisions of this Final Judgment. Neither this Final Judgment nor any of the statements or provisions contained herein shall be deemed to constitute an admission or an adjudication of any of the allegations of the Complaint. The parties to this Final Judgment agree to resolve this action in its entirety as to them and only them by mutually consenting to the entry of Final Judgment in its Entirety and Permanent Injunction by the Superior Court.

5. The address where the DEFENDANTS are maintaining a marijuana dispensary business is 4284 Market Street, San Diego, California, 92102 (PROPERTY).

6. The PROPERTY is owned by "Stonecrest Plaza, LLC, a California Limited Liability Company," according to San Diego County Recorder's Trustee's Deed Upon Sale, Document No. 2014-0071939, recorded February 21, 2014. The PROPERTY is also identified as Assessor's Parcel Numbers 547-013-17-00 and 547-013-19-00.

7. The legal description of the PROPERTY is:

> LOTS 22-24 INCLUSIVE, BLOCK 12 OF MORRISON'S MARSCENE PARK, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1844, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 10, 1925.

8. DEFENDANT SALAM RAZUKI as managing member of STONECREST PLAZA, LLC, represents that STONECREST PLAZA, LLC, is the legal property owner of the PROPERTY and represents that he has legal authority to bind STONECREST PLAZA, LLC, to this Stipulation.

9. This action is brought under California law and this Court has jurisdiction over the subject matter, the PROPERTY, and each of the parties in this action.

INJUNCTION

10. The injunctive terms of this Final Judgment are applicable to DEFENDANTS, their successors and assigns, any of their agents, officers, employees, representatives, and tenants, and all persons, corporations or other entities acting by, through, under or on behalf of DEFENDANTS, and all persons acting in concert with or participating with DEFENDANTS with actual or constructive knowledge of this Stipulation. **Effective immediately,** DEFENDANTS and all persons mentioned above are hereby enjoined and restrained pursuant to San Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, California Code of Civil Procedure section 526, and under the Court's inherent equity powers, from engaging in or performing, directly or indirectly, any of the following acts:

a. Keeping, maintaining, operating, or allowing the operation of any unpermitted use at the PROPERTY or at any other property or premises in the City of San Diego, including but not limited to, a marijuana dispensary, collective, or cooperative in violation of the San Diego Municipal Code; and,

b. Keeping or maintaining any violations of the San Diego Municipal Code at the PROPERTY or at any other property in the City of San Diego;

COMPLIANCE MEASURES

DEFENDANTS agree to do the following:

11. **Immediately** cease maintaining, operating, or allowing at the PROPERTY any commercial, retail, collective, cooperative, or group establishment for the growth, storage, sale, or distribution of marijuana, including but not limited to any marijuana dispensary, collective, or cooperative organized pursuant to the California Health and Safety Code.

12. **If the marijuana dispensary that is operating at the PROPERTY, including but not limited to, United Wellness Center, does not agree to immediately voluntarily vacate the premises, then within 24 hours from the date of signing this Stipulation,** DEFENDANTS shall in good faith use all legal remedies available to evict the marijuana dispensary business, also

known United Wellness Center and Ryan Shamoun or the appropriate party responsible for the leasehold and operation of the marijuana dispensary, including but not limited to, prosecuting an unlawful detainer action.

13. **Within 24-hours from the date of signing this Stipulation,** remove all signage from the exterior of the premises advertising a marijuana dispensary, including but not limited to, signage advertising United Wellness Center.

14. **Within seven calendar days after the marijuana dispensary business vacates the PROPERTY,** ensure that all fixtures, items, and property associated with United Wellness Center and Ryan Shamoun are removed from the premises.

15. **Within seven calendar days after the marijuana dispensary business vacates the PROPERTY,** contact Senior Land Development Investigator Leslie Sennett with the Code Enforcement Division (CED) of the City's Development Services Department to schedule an inspection of the entire PROPERTY.

a. If during the inspection, CES determines the existence of other code violations at the PROPERTY, DEFENDANTS agree to correct these additional code violations and obtain all required inspections and approvals as required by CES.

16. Allow personnel from the City of San Diego access to the PROPERTY to inspect for compliance upon 24-hour verbal or written notice. Inspections shall occur between the hours of 8:00 a.m. and 5:00 p.m.

MONETARY RELIEF

17. **Within 15 calendar days from the date of signing this Stipulation,** DEFENDANTS shall pay Plaintiff City of San Diego, for Development Services Department, Code Enforcement Section's **investigative costs, the amount of $890.03.** Payment shall be in the form of a certified check, payable to the "City of San Diego," and shall be in full satisfaction of all costs associated with the City's investigation of this action to date. The check shall be mailed or personally delivered to the Office of the City Attorney, 1200 Third Avenue, Suite 500, San Diego, CA 92101, Attention: Gabriela Brannan.

. . . . .

18. DEFENDANTS shall pay Plaintiff City of San Diego, civil penalties in the amount of $25,000, pursuant to SDMC section 12.0202(b) in full satisfaction of all claims against DEFENDANTS arising from any of the past violations alleged by Plaintiff in this action. **$17,500 of these penalties is immediately suspended.** These suspended penalties shall only be imposed if DEFENDANTS fail to comply with the terms of this Stipulation. Plaintiff City of San Diego, agrees to notify DEFENDANTS in writing if imposition of the penalties will be sought by Plaintiff and on what basis. Civil penalties shall be paid in the form of certified check, payable to the "City of San Diego," and delivered to the Office of the City Attorney, Code Enforcement Unit, 1200 Third Avenue, Suite 700, San Diego, California 92101, Attention: Gabriela Brannan.

a. Payment of the $7,500 in civil penalties that are due and payable will be made in monthly installment payments of $1,500 each. The first payment of $1,500 will be paid by January 15, 2015, and then monthly payments of $1,500 will be made on or before the 15th of each month until paid in full.

ENFORCEMENT OF JUDGMENT

19. In the event of default by DEFENDANTS as to any amount due under this Final Judgment, the entire amount due shall be deemed immediately due and payable as penalties to the City of San Diego, and Plaintiff shall be entitled to pursue any and all remedies provided by law for the enforcement of this Final Judgment. Further, any amount in default shall bear interest at the prevailing legal rate from the date of default until paid in full.

20. Nothing in this Final Judgment shall prevent any party from pursuing any remedies as provided by law to subsequently enforce this Final Judgment or the provisions of the SDMC, including criminal prosecution and civil penalties that may be authorized by the court according to the SDMC at a cumulative rate of up to $2,500 per day per violation.

21. DEFENDANTS agree that any act, intentional or negligent, or any omission or failure by their contractors, successors, assigns, partners, members, agents, employees or representatives to comply with the requirements set forth in Paragraphs 10-18 above will be deemed to be the act, omission, or failure of DEFENDANTS and shall not constitute a defense to a failure to comply with any part of this Final Judgment. Further, should any dispute arise between any contractor,

successor, assign, partner, member, agent, employee or representative of DEFENDANTS for any reason, DEFENDANTS agree that such dispute shall not constitute a defense to any failure to comply with any part of this Final Judgment, nor justify a delay in executing its requirements.

RETENTION OF JURISDICTION

22. The Court will retain jurisdiction for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such order or directions that may be necessary or appropriate for the construction, operation or modification of the Final Judgment, or for the enforcement or compliance therewith.

KNOWLEDGE AND ENTRY OF JUDGMENT

23. By signing this Final Judgment, DEFENDANTS admit personal knowledge of the terms set forth herein. Service by mail shall constitute sufficient notice for all purposes.

24. The clerk is ordered to immediately enter this Final Judgment.

RECORDATION OF JUDGMENT

25. A certified copy of this Judgment shall be filed in the Office of the San Diego County Recorder pursuant to the legal description of the PROPERTY.

IT IS SO STIPULATED.

Dated: 12/29, 2014

JAN I. GOLDSMITH, City Attorney

By _____
Gabriela Brannan
Deputy City Attorney
Attorneys for Plaintiff

Dated: 12/23, 2014

_____
SALAM RAZUKI, an individual

Dated: 12/23, 2014

_____
STONECREST PLAZA, LLC, by SALAM RAZUKI, Managing Member of Stonecrest Plaza, LLC, a Limited Liability Company

Dated: 12/23, 2014

Richard Ostrow, Attorney for Defendants STONECREST PLAZA, LLC, and SALAM RAZUKI

Upon the stipulation of the parties hereto and upon their agreement to entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and good cause appearing therefore, IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: JAN - 6 2015

JUDGE OF THE SUPERIOR COURT
RONALD S. PRAGER

City of San Diego v. Stonecrest Plaza, LLC, et al., Case No. 37-2014-00009664 -CU-MC-CTL

RJN-14

Salam Razuki v. Ninus Malan

Court of Appeal of California, Fourth Appellate District, Division One

February 24, 2021, Opinion Filed

D075028

Reporter
2021 Cal. App. Unpub. LEXIS 1168 *; 2021 WL 715002

SALAM RAZUKI, Plaintiff and Respondent, v. NINUS MALAN et al., Defendants and Appellants.

Notice: NOT TO BE PUBLISHED IN OFFICIAL REPORTS. *CALIFORNIA RULES OF COURT, RULE 8.1115(a)*, PROHIBITS COURTS AND PARTIES FROM CITING OR RELYING ON OPINIONS NOT CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED, EXCEPT AS SPECIFIED BY *RULE 8.1115(b)*. THIS OPINION HAS NOT BEEN CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED FOR THE PURPOSES OF *RULE 8.1115*.

Prior History: **[*1]** APPEAL from an order of the Superior Court of San Diego County, No. 37-2018-000034229-CU-BC-CTL, Eddie C. Sturgeon, Judge.

Disposition: Affirmed.

Counsel: G10 Galuppo Law, Daniel T. Watts and Louis A. Galuppo; Noonan Lance Boyer & Banach, James R. Lance and Genevieve M. Ruch for Defendants and Appellants Ninus Malan, San Diego United Holdings Group, LLC, Flip Management, LLC, Balboa Ave Cooperative, California Cannabis Group, and Devilish Delights, Inc.

Goria, Weber & Jarvis and Charles F. Goria for Defendants and Appellants Chris Hakim, Mira Este Properties, LLC, and Roselle Properties, LLC.

Law Offices of Steven A. Elia, Steven A. Elia, Maura Griffin and James Joseph; Williams Iagmin and Jon R. Williams for Plaintiff and Respondent.

Judges: HALLER, J.; HUFFMAN, Acting P. J., GUERRERO, J. concurred.

Opinion by: HALLER, J.

Opinion

Defendants Ninus Malan and Chris Hakim (and related entities) appeal from an order imposing a receivership over two cannabis businesses: a retail dispensary and a production facility. The trial court imposed the receivership after Salam Razuki sued the defendants, alleging he had interests in the businesses and defendants were diverting money owed to him. The manager of the cannabis businesses, SoCal Building Ventures, **[*2]** LLC (SoCal), intervened in the lawsuit and also requested the receivership. The court imposed the receivership pending the resolution of the many disputes among the parties in the litigation.

Defendants assert numerous challenges to the court's receivership order. We determine the court acted within its broad discretion and its legal rulings were supported by applicable law. We thus affirm.

OVERVIEW

The proceedings leading to the receivership followed a chaotic and procedurally confusing path before three different trial court judges, and involved thousands of pages of conflicting documentation about the parties' activities and their investments in the real property where these all-cash businesses operated. The allegations included accusations that money and equipment had been stolen from the businesses and claims that Malan's counsel and the receiver had committed malfeasance.

Razuki and Malan's business relationship began with commercial real estate investments in 2009, and eventually expanded into several cannabis businesses. By 2017, however, the relationship was strained, and they entered into a settlement agreement to clarify their ownership of and rights to the expected profits **[*3]** from three cannabis businesses: (1) A retail dispensary located on Balboa Avenue (Dispensary); (2) a production facility located on Mira Este Court (Production Facility); and (3) a planned cannabis cultivation facility to be located on Roselle Street (Planned Facility). Malan owned the entity that held title to the Dispensary property, and Malan and Hakim both

owned shares in the entities that held title to the Production and Planned Facilities properties. Razuki claimed interests in these businesses through his relationship with Malan.

After the settlement agreement, Malan and Hakim contracted with SoCal to manage the Dispensary and the Production Facility. This contract provided SoCal with options to purchase interests in the businesses. In May 2018, Razuki learned from SoCal that Malan had allegedly failed to disclose profits to him, and SoCal learned that Razuki claimed an interest in the Dispensary and Production Facility properties and/or businesses. After SoCal questioned Malan and Hakim's rights to option the properties, they unilaterally terminated SoCal's management agreements and locked SoCal out of both facilities.

Two months later, Razuki filed the complaint against Malan, **[*4]** Hakim, and numerous entities formed to operate the three cannabis businesses (detailed below). Within days, Razuki brought an ex parte application requesting the appointment of a receiver over the three businesses and SoCal filed an ex parte request to file a complaint in intervention against the same defendants. SoCal also joined Razuki's request for a receiver. These filings opened two months of intense litigation concerning the appointment of a receiver, generated thousands of pages of briefing, declarations, and exhibits, and resulted in five hearings before three different judges: Judge Kenneth Medel (who initially appointed the receiver and was peremptorily challenged); Judge Richard Strauss (who vacated the receiver and was peremptorily challenged); and Judge Eddie Sturgeon (who appointed the receiver in the challenged order).

After the matter was assigned to Judge Sturgeon, the parties filed voluminous documentation describing wildly different versions of events and competing theories of ownership of the businesses. Judge Sturgeon reinstated the receiver temporarily over the Dispensary and Production Facility, but not the Planned Facility, and set another hearing to confirm **[*5]** the appointment. By the time of that hearing, the court had before it evidence showing Razuki's significant investment into the businesses at issue; multiple competing claims on the ownership of the assets; at least one separate pending lawsuit to quiet title over the Dispensary; and allegations that Malan and his counsel had directed Dispensary employees to abscond with thousands of dollars in cash after Judge Medel's initial order appointing the receiver. After an extensive hearing, on September 26, 2018, Judge Sturgeon ordered the receiver to remain in place for an additional 60 days. Malan and Hakim (and related entities) now appeal from this order.[1]

Malan contends (1) technical errors in the procedure for the appointment of the receiver require reversal; and (2) his 2017 settlement agreement with Razuki is unenforceable as against public policy because its subject matter, the sale of cannabis, was unlawful when the agreement was made. Malan and Hakim both assert (1) the unclean hands doctrine precludes the equitable receivership remedy; (2) Razuki lacked standing under the receivership statute to pursue his claims; and (3) appointment of the receiver must be reversed because Razuki **[*6]** failed to show a probable right of possession of the assets, that the balance of harms supported the appointment of a receiver, or that a less drastic remedy was not available. Hakim's arguments concern only the appointment of the receiver over the Production Facility because he claims no ownership interest in the Dispensary.

As we shall explain, the trial court's discretion to appoint a receiver at this preliminary stage of litigation is broad, and to "justify our interference, it must clearly appear that the appointment was an arbitrary exercise of power." (*Maggiora v. Palo Alto Inn, Inc. (1967) 249 Cal.App.2d 706, 711, 57 Cal. Rptr. 787* (*Maggiora*).) Applying this standard, we reject appellants' arguments that the trial court abused its discretion. We also determine appellants' other contentions lack merit and affirm the receiver appointment.

FACTUAL AND PROCEDURAL BACKGROUND

The contours of the relationship between Malan and Razuki are not clearly spelled out in the record before this court. Their declarations show the business relationship began around 2009 and that Razuki initially hired Malan to manage his struggling Chula Vista commercial shopping center, followed shortly after by

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[1] On November 16, 2018, after the notices of appeal were filed and before any briefing, federal officers arrested Razuki for plotting to hire a hitman to kidnap and murder Malan in Mexico to put an end to this litigation. At the time of the briefing, Razuki awaited trial on federal charges of conspiracy to murder and kidnap Malan. As explained below, these facts occurred after the challenged September 26 receivership order and thus are not before us in deciding the propriety of this order. But these facts would be relevant to any further court orders in this case.

another commercial property. Malan excelled in this role, and Razuki brought **[*7]** him into his real estate investment business, partnering with Malan on the purchase, sale, and rental of commercial properties.

Eventually, the two became partners in the cannabis businesses which ultimately led to this litigation among Razuki, Malan, Hakim, and the various entities. The proceedings leading to the receiver appointment were lengthy and factually disputed. To properly evaluate the appellate contentions, we describe in some detail the facts and procedure leading to the appointment.

A. Allegations in Razuki's First Amended Complaint

On July 13, 2018, three days after filing his initial complaint, Razuki filed an amended complaint against Malan and Hakim and the various entities owned or controlled by them. These entities fall into three categories: (1) the entities holding title to the property where each of the three marijuana businesses was located[2]; (2) entities created to hold title to the required state licenses for each business[3]; and (3) the entities created to serve as the operating entity for all the cannabis operations (Flip Management, LLC (Flip) and Monarch Management Consulting (Monarch). These three category of entities will be collectively referred to as the **[*8]** Related Entities. The first category entities will be referred as the Property Owner entities.

In the amended complaint, Razuki alleged that when he and Malan decided to enter the cannabis industry as partners, they had an oral agreement that "Razuki would provide the initial cash investment to purchase a certain asset while Malan would manage the assets. The parties agreed that after reimbursing the initial investment to Razuki, he would be entitled to seventy-five percent (75%) of the profits & losses of that particular asset and Malan would be entitled to twenty-five percent (25%) of said profits & losses."

According to the complaint, the oral agreement between Razuki and Malan faltered in early 2017, when the entity that held property ownership of the Production Facility (Mira Este) required additional capital for renovations. Malan was able to secure a $1.08 million loan based in part on Razuki's personal guarantee and real property collateral. According to Razuki, however, the proceeds of the loan were not used on improvements to this property, but were instead taken by Malan and Hakim for their personal use.

On November 9, 2017, Razuki and Malan entered into a written agreement **[*9]** to settle their interests titled "Agreement of Compromise, Settlement, and Mutual Release" (Settlement Agreement). The Settlement Agreement required the transfer of the partnership assets to a new entity, RM Property Holdings, LLC (RM Property). The agreement describes the partnership assets as consisting of various portions of the three Property Owner entities and Flip, and Razuki's minority interests in two additional assets (Sunrise Property Investments, LLC (Sunrise) and Super 5 Consulting Group, LLC (Super 5)). The Agreement states Razuki and Malan "hereby reaffirm and acknowledge the terms of the Operating Agreement [for RM Property] provide for the repayment of the Partner's Cash Investment prior to any distribution of profits and losses. The Parties further reaffirm that once the partner's cash contribution has been repaid by the Company, then Razuki shall receive [75%] of the profits and losses of the Company and Malan shall receive [25%], all as set forth under the terms of the Operating Agreement."

Under the Settlement Agreement, Razuki and Malan had 30 days to make their best efforts to transfer these assets to RM Property and to perform an accounting of their cash investments **[*10]** in those assets. Razuki alleges that Malan asked for additional time to perform the accounting and also contracted with SoCal to serve as the operator for the cannabis operations at the Dispensary, the Production Facility, and the Planned Facility.

The SoCal management agreements gave SoCal the right to retain all revenue from the businesses in exchange for a guaranteed monthly payment to Monarch (formed to serve as an operating entity for all

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[2] These entities are (1) San Diego United Holding Group, LLC (SD United), property owner of the Dispensary location; (2) Mira Este Properties, LLC (Mira Este), property owner of the Production Facility location; and (3) Roselle Property, property owner of the Planned Facility location. Malan was the sole owner of SD United, and Malan and Hakim held equal interests in the other two property-owning entities.

[3] These entities are Balboa Ave Cooperative (Balboa Co-Op) for the Dispensary; California Cannabis Group (CCG) for the Production Facility; and Devilish Delights, Inc. (Devilish) for the Planned Facility. The licenses were required under state laws that closely regulate cannabis businesses. (See ***Bus. & Prof. Code, § 26000 et seq.***) Cities and counties also regulate these businesses through their land use and police powers, including through conditional use permits (CUP). (See *id.*, ***§ 26200, subd. (a)(1).***)

cannabis operations). Razuki alleged that although the agreements required payment to Monarch, Malan did not disclose the existence of Monarch to Razuki. Instead Malan told Razuki that SoCal's monthly payments would be deposited into accounts of Flip (the other operating entity) or the Property Owner entities. Also allegedly unknown to Razuki, the management agreements gave SoCal an option to purchase a 50 percent interest in each of the Property Owner entities.

In January 2018, Malan notified Razuki that he was close to completing the sale of the three Property Owner entities to SoCal and that transferring the assets to RM Property, as required by the Settlement Agreement, would unnecessarily complicate the sale. From January to May 2018, Malan **[*11]** represented he was continuing to negotiate the sale of the Property Owner entities to SoCal and that Razuki would receive 75 percent of Malan's share of the sale proceeds. During this time, Razuki asked for an accounting of the businesses and Malan told him none of the operations were profitable.

Then, in the second week of May 2018, Razuki met with SoCal's principal, Dean Bornstein. Bornstein told Razuki that SoCal had been making monthly payments to Monarch and that the Dispensary and the Production Facility were both profitable. As a result of this conversation, Razuki believed Malan was hiding profits and trying to eliminate Razuki from the businesses. After the meeting, SoCal also became suspicious of Malan and Hakim because SoCal was previously unaware of Razuki's claimed interest in the properties. As a result, SoCal sent a letter to Malan requesting confirmation of his ownership of the three Property Owner entities, and also indicating that SoCal wished to exercise its purchase options.

On July 9, Malan allegedly withdrew $24,028.93 from RM Property's bank account that had been deposited by Razuki, changed the locks at the Dispensary, and changed passwords for the Dispensary's **[*12]** security systems. During the next two days, Malan and Hakim terminated SoCal's management agreements, renamed the Dispensary, and told employees there was new management.

Based on these factual allegations, Razuki asserted numerous causes of action against Malan, Hakim and the Related Entities. These claims included: breach of the Settlement Agreement, the oral agreement, and the good faith implied covenant against Malan; breach of fiduciary duty against Malan, Hakim, and Monarch; fraud against Malan; money had and received against Flip and the Property Owner entities; conversion against Malan, Hakim, and Monarch; an accounting claim against Malan and Hakim; appointment of a receiver against all defendants; injunctive relief to prevent all defendants from selling, transferring, or conveying any asset or property; declaratory relief against Malan; constructive trust against Malan and Monarch; dissolution of RM Property; intentional interference with prospective economic advantage against Malan, Hakim, and the entities holding licenses; and intentional interference with a contractual relationship against Hakim and Monarch.

B. Razuki's Application for Receiver Appointment and SoCal's Application [*13] to File Complaint In Intervention

Three days after the amended complaint was filed, on July 16, Razuki filed his ex parte application for the appointment of receiver and preliminary injunction. The application sought the appointment of Michael Essary as receiver to take possession of the assets of RM Property, and each of the Related Entities.

The same day, SoCal filed an ex parte application to file a complaint in intervention. The proposed complaint named the same defendants, repeated many of the same allegations, and also sought the appointment of a receiver over the Related Entities. SoCal alleged defendants had concealed the existence of Razuki's ownership interest in the three facilities, and defendants had violated the management agreements.

According to SoCal's complaint, after SoCal learned of Razuki's interest and questioned Malan and Hakim, Malan informed SoCal that defendants' ownership of the Dispensary was also disputed in a separate pending case in San Diego Superior Court. SoCal responded with a request that defendants sign a tolling agreement to suspend the option deadlines, but also expressed hope the relationship could be salvaged.

On July 10 (the day Razuki filed his **[*14]** initial complaint), defendants' counsel sent a letter to SoCal terminating the three management agreements, and asserting SoCal was in breach of the agreements for failing to make contractually required payments and failing to appropriately manage the facilities. By the next day, Malan and Hakim had locked SoCal out of both the Dispensary and the Production Facility, and had repainted the dispensary and changed its name and signage. SoCal's complaint alleged that defendants

"destroyed the facilities' financial records, receipts, printers, barcode scanners, and point of sale tracking information . . . ."

C. Hearing on Receiver Appointment and Intervention Complaint

The hearing on Razuki's ex parte application for receivership and on SoCal's ex parte application to file its intervention complaint occurred on July 17. During the brief hearing, Razuki's counsel outlined the basis for the requested relief, explaining that Razuki believed Malan and Hakim had hidden over $1 million in management fees received from SoCal. He also argued a receivership was needed because defendants had violated their management agreements with SoCal, locking SoCal out of both the dispensary and production facility **[*15]** and preventing SoCal from accessing its valuable manufacturing equipment. SoCal also joined in the application for a receiver.

Gina Austin specially appeared on behalf of all of the defendants and said she had not yet been retained in the matter, and that none of the defendants had yet been served with the application for receiver or the complaint in intervention. Austin indicated she had briefly reviewed the receiver application before the hearing, and argued there was no urgency identified that required immediate relief.

The court granted SoCal's application to intervene and then without explanation stated it was "going to grant the relief requested. The injunction is granted. Receivership is appointed." The same day, the court issued a minute order confirming its rulings and signed a proposed order submitted by Razuki, which appointed a receiver over RM Property and the Related Entities (encompassing all three businesses). The orders directed both Razuki and the receiver to post a $10,000 bond within five days. The orders also set an August 10 order to show cause (OSC) to confirm the receiver appointment. Razuki and the receiver, Essary, submitted proof of the requisite undertakings **[*16]** to the court that day.

D. Malan's Peremptory Challenge and Motion to Vacate Receivership; Razuki's Ex Parte Application to Reset OSC Hearing

The day of the hearing, Malan filed a peremptory challenge. The OSC hearing was then vacated and, on July 25 the case was reassigned to Judge Strauss. Three days later, on July 28, Razuki filed an ex parte application for an order to reset the OSC hearing. Before the court took action on this application, Malan filed a competing ex parte application to vacate the receivership order. The application also sought a temporary restraining order (TRO) to prevent Razuki from "transferring money or disposing of property obtained from one of the Defendants since the receivership order was issued" or from entering any real property controlled by defendants.

Malan's moving papers presented a version of events completely at odds with those presented by Razuki and SoCal. Malan asserted that Razuki had no ownership interest in the businesses, pointing to grant deeds transferring the Dispensary and Planned Facility properties to the two Property Owner entities (SD United and Roselle). Malan's declaration stated that he and Razuki mutually agreed to rescind the **[*17]** Settlement Agreement in March 2018 after Razuki was unable to transfer his interests in Sunrise and Super 5 to RM Property. Malan alleged that Razuki filed the lawsuit because "of a large judgment a litigant obtained against him in another lawsuit, which is causing Razuki some cash flow problems."[4]

With respect to SoCal, Malan asserted that in January 2018, the three entities holding the medical marijuana licenses (Balboa Co-op, CCG, and Devilish) hired SoCal to operate the three properties, but SoCal had mismanaged the properties. Malan claimed SoCal had poorly controlled inventory, failed to have sufficient security present and hired a security guard not authorized to carry a firearm, failed "to pay employees correctly," and failed to pay required insurance. Malan also asserted SoCal gave confidential information to Razuki and withheld payments related to the Production Facility property, causing the owner (Mira Este) to default on a loan. Malan said SoCal was conspiring with Razuki "to hijack the three businesses" by filing this lawsuit.[5]

Finally, Malan's declaration detailed dramatic events

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[4] Malan also said the homeowners association rules governing the Dispensary property prohibit marijuana operations; the association had sued on this issue; and that the lawsuit had resulted in a February 2018 settlement granting a variance to the Property Owner entity (SD United) to operate the Dispensary if certain conditions were met.

[5] Malan also noted the entity holding title to the Dispensary property (SD United) had filed a cross-complaint to quiet title to this property in a separate pending case against Razuki.

that unfolded on July 17, the day Essary was appointed. Malan stated that after the hearing, **[*18]** several SoCal employees, including one carrying a visible gun, accompanied Essary to the Dispensary parking lot. Malan said he called the police when he saw the "gunman" and when the police arrived at the premises, Essary and the SoCal employees "fled." According to Malan, the employees and Essary returned later in the day, "broke down the door and invaded the building," and stole computers and other equipment. Malan stated that Essary's decision to rehire SoCal after his appointment was evidence of negligence and Essary's inability to manage the businesses.

A supporting declaration from Malan's counsel (Austin) corroborated Malan's statements about the receiver's takeover of the Dispensary. Austin also claimed Essary could not lawfully run the businesses because Essary was not properly licensed. Austin also said the Dispensary was under audit by the City of San Diego and both the Dispensary and Production Facility had upcoming hearings related to their conditional use permits that would be jeopardized by Essary's involvement.

SoCal filed an opposition, refuting Malan's allegations and asserting Malan had made material misrepresentations to the court. SoCal stated Malan falsely claimed **[*19]** Essary had threatened Dispensary employees, when in fact those employees had barricaded themselves into the store "so they could steal the dispensary's money in violation of the [receivership] order, and flee with bags of 'loot' into their attorney's 'getaway car.'" In support, SoCal submitted Essary's declaration stating that after the July 17 hearing, Austin told him she was advising her clients not to follow the court's order and to resist any attempt by Essary to take control of the assets. Essary also described the scene when he went to the Dispensary, explaining the employees locked themselves in a backroom with the safe and security cameras, loaded bags with money, and fled out the back door into Austin's waiting car.

E. July 31, 2018 Hearing Before Judge Strauss

On July 31, Judge Strauss heard Razuki's ex parte application to re-set the OSC to confirm the appointment of the receiver and Malan's ex parte application to vacate the receivership. Counsel for Malan and the entities argued the receivership order was void because Razuki had failed to provide proper notice, the receiver had a prior relationship with Razuki and SoCal that disqualified him, Razuki had failed to show a **[*20]** sufficient ownership interest in the entities, and there was no urgency that supported the drastic remedy of a receiver.

Razuki's counsel responded that Razuki's submitted evidence showed that Malan was attempting to steal assets from Razuki and SoCal, which had invested $2.6 million in equipment and other improvements to the properties. SoCal's counsel asserted there was urgency because Malan had begun to sell SoCal's equipment, and Malan and Hakim had diverted millions of dollars to Monarch that was owed to Razuki. SoCal also asserted a receiver was necessary because the operators hired by the defendants after SoCal's termination threatened the viability of the businesses and the value of its purchase options.

Near the conclusion of the contentious hearing, Hakim's counsel proposed a compromise, suggesting the court issue an injunction returning the parties to the status quo that existed before the receivership order, and that prevented any transfer of funds outside the ordinary course of business. Counsel suggested Razuki could then bring his request for a receiver again, on a noticed motion on shortened time with full briefing and the opportunity to submit evidence. The court adopted **[*21]** the proposal and directed Hakim's counsel to prepare a final order. The court declined to set a date to hear a new motion, instead instructing the parties "when you're ready to file whatever it is you're going to file, we'll see what kind of date we can give you. And we'll make it as soon as possible, but I don't know what that is exactly."

The court issued a minute order on July 31 stating the request to vacate the receivership was granted and directing "counsel to prepare a proposed order for the [c]ourt's review and approval." The order also granted Essary's request to employ counsel and "as to all other matters; the [c]ourt instructs counsel to proceed via noticed motion for remedies being sought."

F. Peremptory Challenge and Case Reassignment to Judge Sturgeon

After the July 31 hearing, SoCal filed its peremptory challenge to Judge Strauss and the case was again reassigned, this time to Judge Sturgeon. On his own motion, Judge Sturgeon scheduled an August 14

hearing to revisit the appointment of the receiver.[6]

On August 10, Razuki filed a "supplemental memorandum of points and authorities in support of appointment of receiver and opposition to [Malan's] ex parte application to vacate **[*22]** receivership order." Razuki argued Judge Strauss's minute order was ineffectual because the court had not signed any final order after the hearing, and he again argued the merits of appointing the receiver. Razuki's counsel outlined in more detail the payments made by SoCal to Monarch that he asserted were misappropriated by Malan and Hakim, and described the potential profitability of the businesses.

In support of his supplemental brief, Razuki filed voluminous records attached to his and other declarations, showing his specific investments into the Dispensary, Production Facility, and Planned Facility properties. For instance, Razuki attached evidence that he invested $254,780 for the down payment for the Production Facility property and paid $200,000 for the operation's business tax certificate, while Hakim invested $420,000 toward the down payment. Razuki also explained that he transferred the Dispensary property from Razuki Investments, LLC, his wholly owned entity, to the Property Owner entity (SD United) because he did not want to violate a settlement agreement he had previously reached with the City after another property he owned was charged with operating a dispensary unlawfully. **[*23]** That other settlement prohibited Razuki from owning a nonpermitted cannabis facility and Razuki feared the Dispensary's violation of the homeowners association rules precluding marijuana operations might constitute a violation.

Malan also filed supplemental briefing, a supporting declaration, and his counsel's declaration. Malan argued the Settlement Agreement was unenforceable because it was in violation of public policy and Razuki had not shown the medical marijuana businesses covered by the agreement were conducted in conformance with the law. Malan also argued that Essary had acted illegally by reinstating SoCal as the operations manager and failing to secure appropriate approval from the state licensing authorities before assuming the receivership.

In his declaration, Malan said that on July 31 (the date of the prior order), he witnessed SoCal employees use a moving truck at the Production Facility to attempt to steal equipment and an office computer. Malan also claimed Essary had stolen $80,000 from the Dispensary. Hakim's declaration stated he paid more than one-half the down payment for the Production Facility property and that Razuki "was insistent on not wanting to appear of **[*24]** record on title in connection with [this] acquisition. . . ."

Neither Malan's nor Hakim's declarations disputed Razuki's assertions concerning his specific ownership interests in the various properties, including that he was the source of a large portion of the down payment for the Production Facility property and had paid for the $200,000 business tax certificate.

G. August 14, 2018 Hearing

On August 14, the parties appeared before Judge Sturgeon for the first time. At the start of the hearing the court rejected the idea that it was conducting a rehearing of the prior orders and stated it would hear the matter anew on August 20. The parties' counsel then disputed whether the receivership had been vacated at the July 31 hearing because no final order had been signed.

After asking questions about the parties' documentation, the court stated it was not reinstating the receiver, and instead would institute a new, temporary order. This order froze all related bank accounts until the next hearing (although it allowed certain product purchases) and enjoined the sale of the three properties at issue.

H. Briefing for August 20, 2018 Hearing

On August 17, 2018, the parties filed additional briefs **[*25]** and voluminous documentation in support of their positions.

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[6] The status of Judge Strauss's order vacating the receivership was left in limbo. On August 7, 2018, Hakim's counsel submitted a proposed order to the court, as directed by Judge Strauss, with a letter to Judge Sturgeon explaining the circumstances. Razuki's counsel represented in a declaration filed on August 10, 2018, that Judge Sturgeon's clerk contacted her on August 8, 2018, by telephone and stated that because Judge Strauss had directed counsel to prepare an order after the hearing, and no order was ever signed, the July 31, 2018 minute order vacating the receivership "did not constitute a valid and final order and the receivership was never vacated." Essary submitted a report to the court on August 10, 2018, which stated it was his understanding that the order vacating his appointment was never made final, and that Judge Sturgeon had scheduled an ex parte hearing on August 14, 2018, "to 're-hear' Defendants' ex parte application to vacate the receivership."

Malan filed a supplemental brief and a 20-page supplemental declaration describing additional facts about his relationship with Razuki and the financing and prior ownership of the properties owned by SD United (the Dispensary property owner). Malan also again alleged malfeasance by Essary, asserting payments of over $100,000 to "SoCal insiders" and thousands of dollars to himself while in control of the businesses' bank accounts.

Malan continued to refute Razuki's ownership claims, asserting for the first time that SD United purchased the Dispensary property from Razuki in March 2017, subject to a $475,000 loan held by Razuki that Malan paid off three months later. Malan stated that Razuki abandoned his interest in the Dispensary property because his ownership in another dispensary (Sunrise) was far more lucrative. Malan stated that SD United purchased five other units adjacent to the Dispensary for $1.6 million with financing that did not involve Razuki. Malan repeated his prior allegations that he was coerced into signing the Settlement Agreement, and that he and Razuki mutually agreed to cancel it around January or February **[*26]** 2018.

Hakim's supplemental papers pertained mainly to its claims about SoCal's alleged mismanagement and sought to rebut SoCal's assertions it had option rights and rights to its equipment at the facilities. Hakim also noted that the Planned Facility was currently occupied by a tenant whose rent payments could easily be accounted for.

Razuki also submitted a supplemental brief in which he claimed Malan had immediately violated the court's order by contacting the bank for one of the entities, and another declaration with additional documentation showing his involvement in the financing of the three properties.

SoCal filed additional declarations in support of its position that a receiver was needed and that Essary was qualified to serve as the receiver.

I. August 20, 2018 Hearing

At the August 20 hearing, the court stated it would not address whether the July 31 order vacating the receiver was valid, rather the court was "starting fresh." Razuki's counsel then outlined Razuki's interest in the three businesses, expressing concern that Malan intended to immediately sell the real properties, and asserting Razuki had no confidence a truthful accounting could be done, particularly since the **[*27]** businesses were operated almost entirely in cash.[7] SoCal's counsel argued a damage award would be insufficient to remedy the breaches of its options for the real properties.

Malan's counsel repeated his argument that the Settlement Agreement was unenforceable as against public policy and also noted RM Property was never capitalized. He continued to assert there was no urgency requiring a receiver because all the asserted damages could be determined by an accounting. He also said that SoCal's poor management of the Dispensary had resulted in a default by the entity Property Owner (SD United) under the homeowners association settlement, irreparably harming the business. Hakim's counsel refuted the validity of SoCal's options and confirmed the Planned Facility was not currently a marijuana operation.

Essary's counsel explained Essary's activity during his appointment from July 17 to July 31, and refuted defendants' assertions that Essary had not satisfied the regulatory requirements to manage the Dispensary and Production Facility operations.

After the conclusion of arguments, the court imposed a temporary receivership and set a further hearing for Friday, September 7 to consider the continued **[*28]** need for the receiver. The court stated Razuki had shown a likelihood of prevailing on the merits and that there was a risk of irreparable harm "based on the amount of money that allegedly ha[d] been put into this case." The court again appointed Essary as the receiver and directed him to keep the two existing managers (Synergy and Far West) in place as managers of the Production Facility and the Dispensary, respectively.

The court also entered orders specifying who Essary should hire as the accountant for the entities in the receivership. The court ordered Essary to file a report on September 5 and ordered the parties to file any additional supplemental briefing three days before the hearing. The court excluded the Planned Facility from the receivership, but imposed a TRO preventing the

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[7] Razuki's counsel also asserted there was some indication that Malan and Hakim had given purchase options to Far West Operating, LLC (Far West) (which was the operator hired after Malan terminated SoCal in early July and was reinstated as the operator after July 31, 2018) and Synergy Management Partners, LLC (Synergy) (the company hired after July 31, 2018 to run the Mira Este production facility) that overlapped with SoCal's options, creating the risk of further litigation and additional need for the receiver.

sale of this property.

On August 28, the court entered the order appointing Essary as the receiver over the Dispensary and Production Facilities, the entity owners of these properties, and their license holders.

J. Briefing for September 7, 2018 Hearing

One week later, Hakim filed another supplemental brief, arguing the receivership had already caused irreparable harm to the Production Facility because **[*29]** producers and manufacturers were unwilling to work with the business while it was under the control of the receiver. Hakim also asserted the new manager (Synergy) could soundly manage the facility and keep meticulous records for any required accounting, preventing any harm to Razuki. Finally, Hakim argued a $10 million dollar bond was appropriate.

In his supplemental brief, Malan continued to refute Razuki's interest in the three businesses.[8] Malan asserted the receivership was detrimental to the businesses and that the receiver had already proven too expensive. Malan also continued to allege malfeasance by Essary.

Malan's declaration outlined additional details about his relationship with Razuki, explaining that in 2014 he and Razuki began investing in properties together with a 75/25 split in Razuki's favor, and that they purchased 50 properties including a gas station and two marijuana dispensaries. Malan stated Razuki then refused to honor their arrangement and did not share rent proceeds as they agreed, resulting in the 2017 Settlement Agreement. Malan repeated his assertion he was tricked into signing that agreement and that he and Razuki agreed to rescind it in February 2018. Malan **[*30]** also stated for the first time that he and Razuki had then agreed to keep the properties they controlled, with Malan taking ownership of all of the assets under the control of the receiver.

Malan's attorney (Austin) submitted a declaration expressing concern over Essary's decision to hire a partner in the law firm representing SoCal, as the receiver's cannabis expert, rather than her recommended independent expert. Austin also said the City's consultant who conducted an audit of the Dispensary had recently discovered an approximate $100,000 discrepancy while SoCal was the operator.

On September 5, Essary submitted his first receiver's report outlining his activity related to the Dispensary and the Production Facility.

K. September 7 Order Confirming Receiver Appointment for 60 Days

At the September 7 hearing, the parties' counsel reiterated their positions at length.

Razuki's counsel emphasized the entirely cash nature of the businesses, noting the cash could be easily hidden. Malan's counsel countered that discovery was the proper mechanism for Razuki to obtain financial information about the businesses, and that most of the relevant information was in SoCal's possession. Malan's counsel **[*31]** continued to challenge Razuki's assertion he had invested millions into the businesses, and argued a remedy less drastic than a receiver would be more appropriate, such as requiring a forensic accountant to assess all of the business accounts and operations.

Hakim's counsel focused on the harm resulting if the receiver remained in place, emphasizing the inability to attract any producers, and citing the uncertainty the property could be sold and the risk that trade secrets would be disclosed. Hakim's counsel also suggested that Razuki's interest in the Production Facility property could be protected by requiring his portion of profits to be deposited into a separate account that the other parties could not access.

In response to the court's inquiry, Essary's attorney stated he did not think the receivership would prevent new producers from contracting at the Production Facility and any concern about the disclosure of trade secrets could be rectified with a nondisclosure agreement.

After considering the voluminous written record and the parties' oral arguments at the several hearings, the court confirmed its receivership decision. The court concluded Razuki had shown a sufficient probability **[*32]** of prevailing on his claims, and that based on the documentation submitted to the court there was a risk of

[8] Malan lodged close to 100 exhibits consisting primarily of documents he asserted showed his control of the three businesses and related properties, e.g., cancelled checks, wire transfer receipts, and receipts for various business expenses, as well as documents from other lawsuits that allegedly showed Razuki's manipulation of the justice system to gain an advantage in real estate dealings.

irreparable harm requiring protection. The court appointed Essary as the receiver for an additional 60 days, after which it would reconsider the appointment, and ordered Essary to hire an outside accountancy firm to conduct a forensic accounting of the Production Facility, the Dispensary, and all of the interested parties' contributions to those businesses. The court ordered the receivership to remain over the same entities and ordered Razuki to post a bond of $350,000 within two weeks, with the existing order remaining in place until the bond was posted, and ordered that if the bond was not posted the receivership would be dissolved. The court directed the receiver's counsel to submit a final proposed order.

On September 13, the receiver's attorney submitted a proposed order. Seven days later, on September 20, Razuki filed notice he had posted the receivership bond of $350,000 on September 18.

On September 26, 2018, the court entered the order challenged in this appeal, entitled "Order Confirming Receiver and Granting Preliminary Injunction" (the September 26 order). The order **[*33]** confirmed Essary's appointment as receiver over two of the Property Owner entities (SD United and Mira Este); three license holder entities (Balboa Co-op, CCG, Devilish), and the business manager entity (Flip). The order required Essary to retain an independent accountant to conduct "a comprehensive forensic audit of the Marijuana Operations, as well as of all named parties in this matter as it relates to financial transactions between and among such parties related to the issues in dispute." The order excluded the Planned Facility, lifting the prior restraining order preventing its sale.

L. Notices of Appeal From the September 26 Order

Malan, SD United, Flip, and the three license holders (Balboa Co-op, CCG, and Devilish) filed their joint notice of appeal from the September 26 order on October 30, 2018. Hakim and the entities related to the Production Facility (Roselle and Mira Este) filed their joint notice of appeal from the order on November 2, 2018.[9]

DISCUSSION

[9] Our references to appellate arguments made by Malan and/or Hakim includes the entities related to each of these parties in their notices of appeal.

Malan and Hakim challenge the court's imposition of the receiver over the Dispensary and Production Facility related entities (SD United, Mira Este, Balboa Co-op, CCG, Devilish, and Flip).[10] Malan raises several errors in the **[*34]** process used to appoint the receiver and asserts that Essary is biased against him. Both appellants argue the court abused its discretion by appointing Essary, contending that Razuki did not show a sufficient probable interest in the assets placed under receivership and that the balance of harms did not favor him. Finally, Malan and Hakim assert the doctrine of unclean hands prevents the appointment of a receiver in this case.

I. Legal and Procedural Standards

A. Receivership Standards and Procedure

The appointment of a receiver is a provisional equitable remedy. The receiver's role is to preserve the status quo between the parties while litigation is pending. (*Southern California Sunbelt Developers, Inc. v. Banyan Limited Partnership (2017) 8 Cal.App.5th 910, 925, 214 Cal. Rptr. 3d 719*.) Further, it is "'an ancillary remedy which does not affect the ultimate outcome of the action.'" (*Ibid.*)

The court's role in supervising a receiver cannot be overstated. "'The receiver is but the hand of the court, to aid it in preserving and managing the property involved in the suit for the benefit of those to whom it may ultimately be determined to belong.' [Citations.]" (*Marsch v. Williams (1994) 23 Cal.App.4th 238, 248, 28 Cal. Rptr. 2d 402* (*Marsch*).) The receiver is the agent of the court and not of any party and, as such, is neutral, acts for the benefit of all who may have an interest in **[*35]** receivership property, and holds assets for the court rather than the parties. (*O'Flaherty v. Belgum (2004) 115 Cal.App.4th 1044, 1092, 9 Cal. Rptr. 3d 286* (*O'Flaherty*); see *People v. Stark (2005) 131 Cal.App.4th 184, 204, 31 Cal. Rptr. 3d 669*; *Cal. Rules*

[10] Although the court's order appointing Essary is styled "Order Confirming Receiver and Granting Preliminary Injunction," neither Malan's nor Hakim's briefing challenges a preliminary injunction. Rather, appellants briefing exclusively seeks reversal of the trial court's order appointing the receiver and return to them of the properties, assets, and companies placed under the receiver's control in accordance with that order.

of Court, rule 3.1179(a).)[11] Put another way, appointment of a receiver is a tool for the court to gain control over a chaotic ownership dispute like the turbulent situation Judge Sturgeon found when he was assigned to this case.

"'In California, a receiver may not be appointed except in the classes of cases expressly set forth in the statutes or as authorized under established usage of the court's equitable powers.' [Citations.]" (O'Flaherty, supra, 115 Cal.App.4th at p. 1092.) Code of Civil Procedure section 564 generally sets forth the statutory circumstances under which a receiver can be appointed.[12] (Marsch, supra, 23 Cal.App.4th at p. 248.) Section 564, subdivision (b) states: "A receiver may be appointed by the court in which an action or proceeding is pending, or by a judge of that court, in the following cases," and then lists 12 particular circumstances that can support the appointment of a receiver.

Two of these circumstances are relevant here. First, section 564, subdivision (b)(1) states: "(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the creditor's claim, *or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose* **[*36]** *right to or interest in the property or fund, or the proceeds of the property or fund, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.*" (Italics added.) Second, section 564, subdivision (b)(9) is a catchall, providing for the appointment of a receiver "[i]n all other cases where necessary to preserve the property or rights of any party."

"The requirements of [section 564] are jurisdictional, and without a showing bringing the receiver within one of the subdivisions of that section the court's order appointing a receiver is void." (Turner v. Superior Court (1977) 72 Cal.App.3d 804, 811, 140 Cal. Rptr. 475.) To invoke the authority of the court to appoint a receiver under section 564, subdivision (b)(1), the plaintiff must establish by a preponderance of the evidence a "joint interest with [the] defendant in the property; that the same was in danger of being lost, removed or materially injured, and that plaintiff's right to possession was probable." (Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp. (1953) 116 Cal.App.2d 869, 873, 254 P.2d 599 (*Alhambra*).) Lack of standing (here alleged to be lack of probable possession of the property) to seek a receivership is a jurisdictional defect that subjects the action to dismissal. (O'Flaherty, supra, 115 Cal.App.4th at p. 1095.)

Importantly, "[t]he trial court on the motion for receivership is not required to determine the ultimate issues involving the **[*37]** precise relationship of the parties. At this stage of the proceedings, nothing more than a probable joint or common interest in the property concerned need be shown." (Maggiora, supra, 249 Cal.App.2d at p. 711.) "'Evidence to justify the appointment of a receiver may be presented "in the form of allegations in a complaint or other pleading, by affidavit or by testimony."'" (Republic of China v. Chang (1955) 134 Cal.App.2d 124, 132, 285 P.2d 351, italics removed.)

Procedurally, the Code of Civil Procedure and the Rules of Court set two paths for obtaining a receiver. A party seeking the appointment of a receiver can do so either on an ex parte basis, or by noticed motion. Under either path, the substantive requirements for appointment of the receiver under section 564 are the same. Additional procedural protections, however, are required under the Rules of Court when an applicant proceeds on an ex parte basis.

Under rule 3.1175(a)(1), a plaintiff seeking a receiver on an ex parte basis, must show by declaration "[t]he nature of the emergency and the reasons irreparable injury would be suffered by the applicant during the time necessary for a hearing on notice." In addition, the applicant must show, by declarations or a verified pleading, (1) the names and contact information for "the persons in actual possession of the property"; **[*38]** (2) "[t]he use being made of the property by the persons in possession"; and (3) "[i]f the property is a part of the plant, equipment, or stock in trade of any business, the nature and approximate size or extent of the business and facts sufficient to show whether the taking of the property by a receiver would stop or seriously interfere with the operation of the business." (Rule 3.1175(a)(2)-(4).) If any of this information is "unknown to the applicant and cannot be ascertained by the exercise of due diligence, the applicant's declaration or verified complaint must fully state the matters unknown and the efforts made to acquire the information." (*Ibid.*)

In addition to the requirements of rule 3.1175, when an applicant proceeds on an ex parte basis, section 566,

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[11] All rule references are to the California Rules of Court.

[12] Subsequent undesignated statutory references are to the Code of Civil Procedure.

subdivision (b) requires an undertaking in an amount fixed by the court before imposing the receivership order. At the ex parte hearing, the applicant must propose specific amounts, and the reasons for the amounts proposed, of the undertakings required from the applicant by section 566, subdivision (b) and from the receiver by section 567, subdivision (b). (Rule 3.1178.)

If a receiver is appointed on an ex parte basis, the matter "must be made returnable upon an order to show cause why appointment should not be confirmed." (Rule 3.1176, subd. (a).) The OSC must be set within **[*39]** 15 days, "or if good cause appears to the court," within 22 days of appointment of the receiver. (*Ibid.*) On an OSC, or a noticed motion, the applicant's moving papers must allege sufficient facts establishing one of the statutory grounds for the appointment, as well as irreparable injury and the inadequacy of other remedies. (*Alhambra, supra, 116 Cal.App.2d at p. 873.*) The court has discretion to require the applicant to post a bond if the receivership is confirmed, but unlike at the ex parte stage, the bond is not statutorily required. Under section 567, subdivision (b) the receiver must maintain a bond under either procedure.

B. Standard of Review

"Where there is evidence that the plaintiff has at least a probable right or interest in the property sought to be placed in receivership and that the property is in danger of destruction, removal or misappropriation, the appointment of a receiver will not be disturbed on appeal." (*Sachs v. Killeen (1958) 165 Cal.App.2d 205, 213, 331 P.2d 735* (*Sachs*).) "The discretion of the trial court is so broad that an order based upon facts concerning which reasonable minds might differ with respect to the necessity for the receiver will not be reversed. [Citation.] To justify our interference, it must clearly appear that the appointment was an arbitrary exercise of power [citation]." **[*40]** (*Maggiora, supra, 249 Cal.App.2d at pp. 710-711*; see also *Breedlove v. J.W. & E.M. Breedlove Excavating Co. (1942) 56 Cal.App.2d 141, 143, 132 P.2d 239* ["[W]here a finding, based upon conflicting evidence, is to the effect that danger is threatened to property or funds, and the appointment of a receiver is made, it is seldom that the reviewing court will hold that the lower tribunal has been guilty of an abuse of the discretion confided to it."].)

II. Procedural Challenges to the Order Appointing

Essary

Because of the peremptory challenges and their attendant judicial reassignments, the procedure followed in this case did not precisely align with the conventional paths laid out by the rules. After Razuki obtained the initial appointment of the receiver on July 17 on an ex parte basis, the confirmation process required by rule 3.1176, subdivision (a) was short-circuited. Before the receivership could be confirmed through the issuance of an OSC, the receivership was vacated by Judge Strauss on July 31. That order was then interrupted by SoCal's peremptory challenge and Judge Sturgeon began the ex parte proceedings anew.

Although no order clarified whether the parties were to proceed by way of noticed motion or on an ex parte basis, the timeline of events generally followed the ex parte and confirmation by OSC procedure set forth in rules 3.1175 and 3.1176. Of note, at **[*41]** the August 20 hearing, the court stated that the next hearing should occur "within 15 to 20 days" and set the hearing for September 7 to consider the continuation of the receivership and the bond amount that should be required from Razuki. Further, no party filed a noticed motion with respect to the appointment of (or request to vacate) the receiver.

A. Failure to Require Undertaking

Malan first asserts that the initial order imposing the receiver issued by Judge Medel on July 17 was void because it "did not require an undertaking from the applicant *before* the order would take effect," and that every order thereafter was void as a result. (Italics added.) Malan also argues that Razuki failed to post a bond before Judge Sturgeon imposed the receivership a second time on August 20, again violating section 566 and voiding the September 26 order confirming the receivership at issue in this appeal.

Malan's arguments are not well taken. Section 566, subdivision (b) states, "if a receiver is appointed upon an ex parte application, the court, before making the order, must require from the applicant an undertaking in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages the defendant **[*42]** may sustain by reason of the appointment of the receiver and the entry by the receiver upon the duties, in case the applicant shall have procured the appointment wrongfully, maliciously, or without sufficient cause." As has been described, Razuki proceeded by ex parte application. The initial

order issued by Judge Medel provided Razuki a five-day grace period. Razuki, however, posted the bond *the day the order was issued*, satisfying the statute's requirement.

Even if we were to conclude the initial receivership was invalid because it gave Razuki five days to post an undertaking, we do not agree with Malan's contention that the September 26 order is therefore void.

To advance this argument, Malan relies on *Bibby v. Dieter (1910) 15 Cal.App. 45, 113 P. 874*, which held an order appointing a receiver upon an ex parte application without the required undertaking is void *and all subsequent orders arising from that appointment order are void*. This case is not governed by this rule because the challenged receivership order did not arise from the initial appointment order claimed to be void. Instead, after the two successful peremptory challenges, Judge Sturgeon made clear he was considering the receivership petition anew. The court had the **[*43]** full authority to vacate the earlier orders and rule on the petition as a matter of first impression. (See, e.g., *Wiencke v. Bibby (1910) 15 Cal.App. 50, 53, 113 P. 876* ["'The power of a court to vacate a judgment or order void upon its face is not extinguished by lapse of time, but may be exercised whenever the matter is brought to the attention of the court. . . . The court has full power to vacate such action on its own motion and without application on the part of anyone.'"]; *State of California v. Superior Court (Flynn) (2016) 4 Cal.App.5th 94, 100, 208 Cal. Rptr. 3d 501* ["Even without a change of law, a trial court has the inherent power to reconsider its prior rulings on its own motion at any time before entry of judgment."].)

Malan alternatively asserts that Judge Sturgeon's August 20 order appointing Essary for the second time was void because it did not require another undertaking by Razuki before it took effect. However, Malan does not explain why the initial $10,000 bond filed by Razuki was insufficient to satisfy section 566. While a dispute existed when the case was reassigned to Judge Sturgeon about whether that receivership was vacated by Judge Strauss on July 31 because no final order was signed, the record shows that Razuki's undertaking remained in place through September 19, 2018, when Razuki filed notice he had posted the **[*44]** $350,000 undertaking.[13] We presume the court was aware of the bond, which satisfied section 566. (See *Howard v. Thrifty Drug & Discount Stores (1995) 10 Cal.4th 424, 443, 41 Cal. Rptr. 2d 362, 895 P.2d 469* ["'We uphold judgments if they are correct for any reason, "regardless of the correctness of the grounds upon which the court reached its conclusion."'"]; *In re Marriage of Arceneaux (1990) 51 Cal.3d 1130, 1133, 275 Cal. Rptr. 797, 800 P.2d 1227*, ["A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness."])[14]

B. Failure to Timely Serve First Amended Complaint

In a similar vein, Malan argues that Razuki's failure to serve defendants with the first amended complaint within five days of the July 17 order, as required by rule 3.1176(b)-(c), requires reversal of the September 26, 2018 order.

Rule 3.1176(b) states that when a receiver is appointed on an ex parte basis, service of the complaint, notice of the OSC, and any supporting memorandum and declarations "must be made as soon as reasonably practical, but no later than 5 days after the date on which the order to show cause is issued, unless the court orders another time for service." Under rule 3.1176(c), if the applicant fails to "exercise diligence to effect service upon the adverse parties as provided in (b), the court may discharge the receiver."

Razuki provided the trial court with a reasonable **[*45]** explanation for the delay in serving the first amended complaint. He explained he was unable to obtain a conformed copy from the court's business office because of its backlog and that after the case was reassigned to Judge Strauss, his ex parte hearing to

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[13] Despite the lack of a final order after the July 31 hearing, the record also shows Essary and the defendants treated the receivership as being vacated that day. For example, the Dispensary and Production Facility resumed operations that day without any oversight by Essary. On appeal, no party suggests the July 31 order was not effective because it was not final.

[14] Malan also argues the September 26 order violated section 566 because it gave Razuki 14 days to post the $350,000 bond ordered on September 7, 2018. However, there is no bond requirement on the applicant for an order confirming the receivership. (§ 566, subd. (b); see § 41:7. Undertakings, bonds, receiver's oath, and related claims, 12 Cal. Real Est. § 41:7 (4th ed.) [No similar statutory requirement to file an undertaking where the application for appointment of receiver is made on a noticed motion or for the confirmation of an order appointing a receiver on an ex parte basis.].) Rather a bond may be imposed at the court's discretion.

obtain an order from the court to require the court's business office to expedite return of the conformed pleading was taken off calendar. Razuki explained to the trial court that after the case was reassigned, he obtained a new ex parte hearing before Judge Strauss to expedite processing of the complaint. This evidence established Razuki's diligence in attempting to serve defendants. Further, any error was mooted by Judge Strauss's July 31 order vacating the receiver and Judge Sturgeon's August 14, 2018 order declining to reinstate Essary. Malan's argument does not support reversal of the September 26 order.

C. Failure to Schedule OSC Hearing Within 22 Days of July 17 Order

Malan also argues the court's failure to make the OSC returnable within 15 days of the July 17 order appointing Essary, as required by rule 3.1176, voids the receivership. This argument lacks merit.

Rule 3.1176(a) requires the OSC to "be made returnable on the earliest date that the business **[*46]** of the court will admit, but not later than 15 days or, if good cause appears to the court, 22 days from the date the order is issued." (Rule 3.1176 (a).) At the time it instituted the first receivership on July 17, the court did set the hearing on the OSC outside the rule time. The OSC, however, was vacated after Malan filed his peremptory challenge to Judge Medel, mooting the purported violation of rule 3.1176(a). Further, Malan has provided no legal authority or argument to support his assertion that this technical error requires reversal of the later receivership order that is before this court on appeal.[15] (See *Mansell v. Board of Administration (1994) 30 Cal.App.4th 539, 545-546, 35 Cal. Rptr. 2d 574* (*Mansell*) [appellate court need not furnish argument or search the record to ascertain whether there is support for appellant's contentions].)

III. Receiver's Alleged Bias and *Rule 3.1179(b)*

Malan next contends that Essary was improperly biased against him and that Razuki and Essary violated *rule 3.1179(b)*, which prohibits a receiver from making an agreement with the party seeking the receiver to hire particular service providers. Razuki responds that the trial court considered these allegations, and properly rejected them in view of all of the evidence.

Rule 3.1179(b) states: "The party seeking the appointment of the receiver may not, directly **[*47]** or indirectly, require any contract, agreement, arrangement, or understanding with any receiver whom it intends to nominate or recommend to the court, and the receiver may not enter into any such contract, arrangement, agreement, or understanding concerning: [¶] (1) The role of the receiver with respect to the property following a trustee's sale or termination of a receivership, without specific court permission; [¶] (2) How the receiver will administer the receivership or how much the receiver will charge for services or pay for services to appropriate or approved third parties hired to provide services; [¶] (3) *Who the receiver will hire, or seek approval to hire, to perform necessary services*; or [¶] (4) What capital expenditures will be made on the property." (Italics added.) The rule contains no remedy for a violation, and does not require the court to void the receivership if it is violated.

The record shows the order issued by the court ensured the receiver was exercising independent authority in determining who to hire and how to manage the assets. Further, Malan points to no evidence of the existence of any agreement or understanding between Razuki and Essary concerning who **[*48]** Essary would hire if appointed. The court's rejection of Malan's argument that there was an agreement between Razuki and Essary that violated *rule 3.1179(b)(3)* was not an abuse of discretion.

With respect to Malan's assertion that Essary was biased against him, Malan points out that the initial July 17 order signed by Judge Medel authorized the receiver "to bind the Marijuana Operations to the terms of the Management Agreement . . . with SoCal . . . ." This order, however, was replaced and is not before this court on appeal.

The record shows that Judge Sturgeon was careful with respect to SoCal's continued role in the businesses. At the August 20 hearing, and as reflected in the court's written orders, Judge Sturgeon specifically prohibited Essary from hiring SoCal, instead directing the receiver to keep the new managers (Far West and Synergy), who were favored by Malan and Hakim, in place as the operators of the Dispensary and the Production Facility.

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[15] Malan's assertion that the court violated rule 3.1176(a) at the August 20 hearing by setting the next hearing to confirm its appointment of Essary 18 days later is also without merit. The hearing was within the rule limit of 22 days and Malan does not challenge the existence of good cause to set the hearing beyond 15 days.

As the court directed, Essary maintained those entities in place after his August 20 appointment. There is no support in the record for Malan's position that the court abused its discretion by appointing Essary, that Essary's actions showed bias in favor **[*49]** of Razuki, or that Essary violated *rule 3.1179(b)* after his August 20 appointment.[16]

IV. No Abuse of Discretion on *Section 564, subdivision (b)(1)* Issues

Malan and Hakim both argue in different ways that the court was required to determine whether Razuki showed a probability of success on the merits of his claims. Hakim asserts that "the trial court abused its discretion in appointing a receiver because the probability of success at trial between Razuki on the one hand and [the Production Facility entities (Mira Este and CCG)] on the other hand indisputably favors" these entities. Malan argues the Settlement Agreement "is void for violating public policy at the time it was created, so [Razuki] has not shown the requisite likelihood of success on the merits."

To appoint a receiver, however, the trial court was not required to determine the probability of success on any particular claim. Rather, as set forth above, to invoke the court's authority to appoint a receiver under *section 564, subdivision (b)(1)*, a plaintiff seeking a receiver must establish by a preponderance of the evidence a "joint interest with [the] defendant in the property; that the same was in danger of being lost, removed or materially injured, and that plaintiff's right to possession was probable." **[*50]** [17] (*Alhambra, supra, 116 Cal.App.2d at p. 873*; see *Maggiora, supra, 249 Cal.App.2d at p. 711*.)

Contrary to appellants' arguments, the trial court was "not required to determine the ultimate issues involving the precise relationship of the parties. At this stage of the proceedings, nothing more than a probable joint or common interest in the property concerned need be shown [citations]." (*Maggiora, supra, 249 Cal.App.2d at p. 711*.) Notably, an interest in the profits of a concern is "a significant factor in determining the necessity of a receiver [citation]. . . ." (*Id. at p. 711, fn. 3*.)

A. Razuki's Interest in Dispensary and Production Facility Entities

Malan and Hakim argue the receivership order must be vacated because Razuki failed to show a sufficient interest in the entities over which the receiver was appointed to satisfy *section 564, subdivision (b)(1)*. Further, they contend that the catchall provision of *section 564, subdivision (b)(9)* is unavailable because Razuki chose to proceed under subdivision (b)(1).

Razuki responds that the Settlement Agreement, enforceable or not, is evidence of an oral partnership agreement with Hakim and his significant interest in the Dispensary and the Production Facility. Further, his declarations and the attached documentation showed his significant financial contributions to these businesses. We agree with Razuki that these facts supported **[*51]** the trial court's determination that he had standing to pursue a receiver under *section 564, subdivision (b)(1)* over the Dispensary and Production Facility, and the various entities that served the two businesses.[18]

The evidence presented to the trial court satisfied the requirement that Razuki show a probable interest in the assets. Razuki's declaration attached the executed Settlement Agreement memorializing his interest in the operations of both the Dispensary and the Production Facility, specifically his right to receive profits from those entities through the mechanism of RM Property. In addition, Razuki's declaration outlined the background of the Settlement Agreement and the underlying partnership with Malan, which showed their agreement

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[16] The record does show the cannabis industry in San Diego is relatively small and many of the players in this litigation had existing relationships. For example, as SoCal argued below, Austin introduced Malan and Hakim to her client Jerry Baca, who formed Synergy in late August 2018 with Austin's counsel for the purpose of managing the Production Facility.

[17] Hakim cites one case addressed to the probability of prevailing, *Teachers Ins. & Annuity Assn. v. Furlotti (1999) 70 Cal.App.4th 1487, 1493, 83 Cal. Rptr. 2d 455* (*Teachers*). *Teachers*, however, was an appeal of a preliminary injunction requiring the defendant to remove a fence in a shared easement. (*Id. at pp. 1490-1492*.)

[18] Malan makes passing reference in his brief to the inclusion of Devilish in the receivership as improper because the title owner (Roselle) was excluded and Devilish was formed to hold Roselle's licenses. However, despite the exclusion of Roselle, Devilish was explicitly named as a party to the management agreement with SoCal for the Production Facility, bringing Devilish within the purview of the receivership.

to share the profits from their joint ventures. Indeed, Malan's own declaration recounted his longstanding arrangement with Razuki whereby profits in their real estate investments were split 75/25 in favor of Razuki.

Razuki also submitted documentation showing the collateral he pledged to secure the purchase and refinancing of the Production Facility property; his cash investments of over $450,000 in this property and the facility's licensure; and documentation showing the transfer **[*52]** of the Dispensary property from an entity wholly owned by him to SD United. Although Malan and Hakim submitted documentation showing their own investments in the properties and businesses, the documents did not refute Razuki's evidence of his own interest.

These facts distinguish the case from *Rondos v. Superior Court of Solano County (1957) 151 Cal.App.2d 190, 311 P.2d 113*, relied upon by appellants. In *Rondos*, one of two owners of a business licensed by the Department of Alcoholic Beverage Control (ABC), Marvin Caesar, contracted to sell his stake to Edward Essy with the consent of the other owner, George Rondos. When the required application to transfer the business was not approved by ABC within a year, Rondos served Essy with notice of rescission of the contract for sale and notified ABC that he was withdrawing the application for transfer. Essy brought suit and obtained the appointment of a receiver over the business. (*Id. at p. 193.*) The Court of Appeal reversed the receivership order, holding that Essy had failed to establish a probable interest under *section 564, subdivision (1)* (the identical predecessor to (b)(1)). (*Rondos, at pp. 194-195.*) Critically, the parties' contract explicitly stated the transfer of Caesar's interest to Essy would not occur until ABC approved the transfer. (*Id. at p. 194.*) No similar uncontroverted evidence **[*53]** exists in this case that would have precluded the trial court's finding that Razuki had shown a probable interest in the assets at issue.

Malan and Hakim point to no evidence showing Razuki's contributions to the businesses did not occur, or that Razuki made them without expectation of sharing in the profits. The trial court was tasked with making a preliminary determination as to whether Razuki was a partner or investor in these assets with a *probable* interest in them. There was sufficient evidence before the court supporting its determination that Razuki had satisfied this standard. (See *Maggiora, supra, 249 Cal.App.2d at p. 711* ["At this stage of the proceedings, nothing more than a probable joint or common interest in the property concerned need be shown . . . ."]; see also *Eng v. Brown (2018) 21 Cal.App.5th 675, 694, 230 Cal. Rptr. 3d 771* ["In general, 'the association of two or more persons to carry on as coowners a business for profit forms a partnership, whether or not the persons intend to form a partnership.' (*Corp. Code, § 16202, subd. (a)*.) With certain exceptions, '[a] person who receives a share of the profits of a business is presumed to be a partner in the business . . . .' . . . "].) It is not this court's role to second guess that determination.

Appellants' claim that Razuki lacks a sufficient interest **[*54]** to obtain a receiver bears a resemblance to the issue decided in *Sachs*, an appeal from the confirmation of a receiver after an ex parte appointment. (*Sachs, supra, 165 Cal.App.2d at p. 207.*) There, the defendants "urge[d] that the written agreement" giving plaintiff, the inventor of a device "to regulate the speed of electric motors," a percentage of net profits in the manufacturing and sale of the device "created neither a partnership nor a joint venture." (*Id. at p. 213.*) The defendants asserted that the plaintiff was "in the position of an unsecured creditor suing at law to recover a debt." (*Ibid.*) The trial court rejected this argument, concluding even if it was an accurate analogy, it did not preclude the receivership because "[t]he action is not one of law, but is essentially an equitable action to obtain an accounting and establish a constructive trust." (*Ibid.*)

In affirming, the *Sachs* court recognized the defendants had submitted conflicting evidence, denying that the plaintiff invented the device and contending he stole it from his employer, and asserting the profit sharing agreement was unenforceable because the plaintiff had failed to uphold his obligation to do certain "experimental and design work." (*Sachs, supra, 165 Cal.App.2d at p. 210.*) However, the court **[*55]** concluded the plaintiff's assertion that he entered into the agreement with the defendants was sufficient under the receivership statute to support the trial court's finding that the plaintiff had shown a probable interest in the business. (*Id. at p. 213.*)

As in *Sachs*, defendants here submitted evidence contradicting Razuki's claim to the property and profits of the Dispensary and Production Facility. This conflicting evidence, however, does not establish the court abused its discretion by crediting Razuki over defendants and finding Razuki had shown a probable right to possession at this stage of the litigation.

For these same reasons, we reject Malan's assertion

that Razuki's failure to transfer his pledged interests in Super 5 and Sunrise to RM Property, as contemplated by the Settlement Agreement, precludes appointment of the receiver.[19] This fact does not conclusively establish that Razuki lacked a probable interest in the assets placed in receivership. Rather, it was one fact among many conflicting facts about Razuki's ownership.[20]

B. Enforceability of Settlement Agreement As Against Public Policy

Malan argues the Settlement Agreement is void because it was against public policy when it was entered **[*56]** and therefore Razuki "has not shown the requisite likelihood of success on the merits." Malan also argues the explicit protection for contracts involving cannabis businesses afforded by *Civil Code section 1550.5* are not applicable because the law became effective after the Settlement Agreement was executed.

As discussed, the law applicable to the appointment of a receiver does not require the plaintiff to show a likelihood of prevailing on the merits of his claims. Rather, Razuki was required to show a probable right to the assets placed in receivership and that "the same was in danger of being lost, removed or materially injured . . . ." (*Alhambra, supra, 116 Cal.App.2d at p. 873*.) Further, the trial court "is not required to determine the ultimate issues involving the precise relationship of the parties." (*Maggiora, supra, 249 Cal.App.2d at p. 711*.)

Malan's assertion that the Settlement Agreement is unenforceable because it was against the public policy of this state at the time it was entered, does not convince us the trial court abused its discretion by appointing the receiver. "Anything that has a tendency to injure the public welfare is, in principle, against public policy. But to determine what contracts fall into this vague class is exceedingly difficult. It has been frequently observed **[*57]** that the question is primarily for the Legislature, and that, in the absence of a legislative declaration, a court will be very reluctant to hold the contract void." ([§ 453] General Principle., 1 Witkin, Summary 11th Contracts § 453 (2020); see also *Moran v. Harris (1982) 131 Cal.App.3d 913, 919-920, 182 Cal. Rptr. 519*, quoting *Stephens v. Southern Pacific Co. (1895) 109 Cal. 86, 89-90, 41 P. 783* [""The power of the courts to declare a contract void for being in contravention of sound public policy is a very delicate and undefined power, and, like the power to declare a statute unconstitutional, should be exercised only in cases free from doubt." [Citation.] . . . "No court ought to refuse its aid to enforce a contract on doubtful and uncertain grounds. The burden is on the defendant to show that its enforcement would be in violation of the settled public policy of this state, or injurious to the morals of its people." [Citation.]"].)

As an initial matter, Razuki's claims are not entirely reliant on the enforceability of the Settlement Agreement. Razuki sought the receiver appointment to protect his rights to the real properties and to the past and potential profits derived from the Dispensary and the Production Facility. He seeks to enforce those rights not only by way of the Settlement Agreement, but also by enforcement of his **[*58]** oral partnership agreement with Malan.

Additionally, the Settlement Agreement on its face does not concern the operations of a recreational marijuana business, which could arguably have been classified as illegal at the time the agreement was executed. The agreement's first recital states: "RAZUKI and MALAN have engaged in several business transactions, dealings, agreements (oral and written), promises, loans, payments, related to the acquisition of real property and interests in various *medical marijuana* businesses. Specifically, RAZUKI and MALAN have each invested certain sums of capital for the acquisition of the following assets . . . ." (Italics added.) At the time the contract was entered, business related to the provision of *medical marijuana* was lawful and not against this state's public policy.

In addition, the fact that marijuana use remains a violation of federal law does not necessarily establish the contract is unenforceable. Even if a dispute involves an "illegal contract" it can "be enforced in order to 'avoid unjust enrichment to a defendant and a disproportionately harsh penalty upon the plaintiff.'" (*Asdourian v. Araj (1985) 38 Cal.3d 276, 292, 211 Cal. Rptr. 703, 696 P.2d 95*.) ""[T]he extent of enforceability

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[19] We also reject Malan's contention that Razuki's failure to join Super 5 and Sunrise as indispensable parties precludes his claims. Malan fails to provide any legal argument in support of this position. (*Mansell, supra, 30 Cal.App.4th at pp. 545-546*.)

[20] We do agree with Hakim and Malan that proceeding under one of the more specific provisions of *section 564* precludes reliance on the catchall provision of subdivision (b)(9). (See *Marsch, supra, 23 Cal.App.4th at p. 246, fn. 8*.) However, because we affirm the trial court's finding under subdivision (b)(1), we need not address the issue.

and the kind of remedy granted **[*59]** depend upon a variety of factors, including the policy of the transgressed law, the kind of illegality and the particular facts."'" (*Ibid.*)

The trial court was tasked with making an early determination concerning the necessity of a receiver to protect the real property and other assets at issue. The court was not charged with determining the ultimate issue of enforceability of the Settlement Agreement and its failure to reach this issue to preclude Razuki's claims at this stage was not an abuse of discretion.[21]

C. Necessity of Derivative Action

Malan also argues that Razuki lacks standing to enforce the Settlement Agreement and that his claims should have been brought as a derivative action on behalf of RM Property. This argument misconstrues the claims asserted by Razuki. Razuki seeks to enforce the Settlement Agreement and his oral partnership agreement. Razuki's claims are not that Malan and Hakim defrauded RM Property. Rather he alleges that Malan breached the Settlement Agreement and that Malan and Hakim otherwise engaged in illegal and fraudulent conduct to prevent Razuki from obtaining the benefits of his partnership with Malan. Contrary to Malan's assertion, these claims are not **[*60]** necessarily derivative and were properly brought by Razuki on his own behalf. (See *Schuster v. Gardner (2005) 127 Cal.App.4th 305, 312, 25 Cal. Rptr. 3d 468* [A "'*derivative* action [is] filed on *behalf of the corporation* for injury to the corporation for which it has failed or refused to sue.'"].)

V. Imminent Injury and Availability of Less Dramatic Relief

Malan and Hakim contend the court erred by determining the balance of harms favored Razuki and SoCal's request for a receiver. They primarily argue that events occurring after the appointment—the Production Facility's failure to obtain new clients—demonstrate why the trial court was incorrect in finding there was a risk to Razuki's interest during the pendency of this litigation. Malan also asserts there was no evidence of any risk of destruction to the businesses' operations or the property. Further, Malan and Hakim both contend that lesser remedies were available to protect Razuki's interests.

Razuki responds that the risk of harm to his interest was significant because ownership of the cannabis operations, in particular the property that was permitted for such operations, "is a unique asset that cannot easily be replicated or otherwise replaced with money damages. Specifically, an ownership or equitable **[*61]** interest in those businesses and related facilities also grants an interest in the licenses and [CUPs] which allow those marijuana businesses to operate legally in San Diego. As the number of such licenses is rigorously restricted, the ownership of those business is a unique and irreplaceable asset." Further, Razuki points to the cash nature of the businesses, which makes accounting for and after-the-fact tracing of profits particularly difficult. Because of these facts, Razuki contends the trial court did not abuse its discretion by finding that a receivership was necessary to protect his stake in the enterprise while his claims proceed through the court. We agree.

To appoint a receiver under *section 564, subdivision (b)(1)*, the trial court must determine whether the "property or fund is in danger of being lost, removed, or materially injured." "[T]he availability of other remedies does not, in and of itself, preclude the use of a receivership. (*Sibert v. Shaver [(1952)] 113 Cal.App.2d 19, 21, 247 P.2d 609*.) Rather, a trial court must consider the availability and efficacy of other remedies in determining whether to employ the extraordinary remedy of a receivership." (*City and County of San Francisco v. Daley (1993) 16 Cal.App.4th 734, 745, 20 Cal. Rptr. 2d 256*.)

Contrary to Malan and Hakim's assertions on appeal, at the time the trial court confirmed the receivership, **[*62]** there was substantial evidence presented by Razuki suggesting that his investment in the dispensary and production facility was in jeopardy as a result of defendants' actions. The court had before it competing claims of ownership by Razuki and SoCal, and at least one separate pending lawsuit to quiet title over the Dispensary property. In addition, the initial receiver appointment in July had resulted in allegations that

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[21] Malan also relies on *Civil Code section 1550.5* (recognizing the lawfulness of certain medicinal and/or adult-use cannabis commercial activity) and the fact that the law did not take effect until January 1, 2018, almost two months after the Settlement Agreement was executed. Although the statute's existence may be a factor in determining the enforceability of the Settlement Agreement and/or the alleged oral agreement, it did not preclude the receiver appointment at this early stage of the litigation.

Malan and his counsel had directed Dispensary employees to take significant amounts of cash from the businesses.

Other facts before the court also suggested the property itself was in jeopardy of destruction. For instance, SoCal submitted the affidavit of a witness who saw the illegal transportation of cannabis products to the Production Facility, potentially jeopardizing the facility's permit. Malan and Hakim argued that SoCal's employees were also jeopardizing the viability of the dispensary through their mismanagement. There were also competing claims on the valuable equipment in the production facility, and threats it would be sold or destroyed.

When the unique character of this real property is considered in conjunction with the erratic behavior of the various parties **[*63]** leading to the September 7 hearing, the trial court's determination that there was a significant risk of irreparable harm to these assets requiring a neutral third party to step in was not an abuse of its wide discretion. In addition, the all-cash nature of the Dispensary and Production Facility, combined with a specific claim that cash had already been misappropriated from the Dispensary without proper accounting, supported the trial court's conclusion there was a risk of irreparable harm to the assets during this litigation. (See *Moore v. Oberg (1943) 61 Cal.App.2d 216, 221-222, 142 P.2d 443* (*Moore*) ["So broad is the discretion of the trial judge that his order based upon facts concerning which reasonable minds might differ with respect to the necessity for the receivership will not be reversed. We cannot substitute our conclusion for that of the trial court made upon sufficient evidence even if we should be of the opinion that there was no danger of the loss or removal of, or other irreparable injury to, the assets of the joint venture. To justify our interference with the order confirming the appointment herein, it must be made clearly to appear that the order was an arbitrary exercise of power."].)

With respect to Malan and Hakim's argument **[*64]** that the receivership has harmed the assets since September 26, 2018, it is not this court's role to review the activity that took place after the appealed order. (*Bach v. County of Butte (1989) 215 Cal.App.3d 294, 306, 263 Cal. Rptr. 565* (*Bach*).) This information was not before the trial court when it confirmed Essary's appointment and thus is not a proper basis for reversal of the order.[22] Hakim also argues that the appointment was unnecessary because after July 10, the Production Facility had generated no profits, and thus there was nothing for the receiver to manage. This argument does not assist Hakim. Rather it highlights the contradictions that were facing the trial court, including Hakim's and Malan's assertions that Synergy had secured profitable contracts before Essary's appointment. The argument also casts doubt on appellants' assertions that the receiver is the reason for the facility's lack of profit.

In sum, the receivership was an appropriate remedy for the court to track the cash the parties stated was flowing, and that had flowed, through the two operations; control the parties' chaotic ownership disputes; and protect the real property jeopardized by the parties' conduct. While the other remedies appellants suggest might also have protected **[*65]** Razuki's interest, Malan and Hakim have not shown the court's decision to confirm the receiver was "an arbitrary exercise of power." (*Moore, supra, 61 Cal.App.2d at p. 222*.)

VI. Unclean Hands

A. Background

Finally, Malan and Hakim ask this court to overturn the September 26 order based on the federal criminal charges that Razuki now faces. In support of their argument, Malan and Hakim included in the Appellants' Appendix briefing and declarations for Hakim's May 8, 2019 "Ex Parte Application to Remove Receiver from [Production] Facility . . . ." These documents include Malan's declaration attaching the criminal complaint filed against Razuki in the Southern District of California, *United States of America v. Razuki*, case No. 3:18-mj-05915-MDD (S.D.Cal. 2018) and the related grand jury indictment. The probable cause statement accompanying the complaint describes an FBI sting

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[22] For the same reason, Hakim's motion to augment the record to include subsequent reports of the receiver and related documentation is denied. (See *In re Marriage of Folb (1975) 53 Cal.App.3d 862, 877, 126 Cal. Rptr. 306*, disapproved on other grounds by *In re Marriage of Fonstein (1976) 17 Cal.3d 738, 131 Cal. Rptr. 873, 552 P.2d 1169*, ["But we must reiterate that matters occurring after judgment are generally not reviewable on appeal . . . . The trial court remains the more appropriate forum in which to litigate these subsequent developments."].)

operation in which two women who Malan describes as Razuki's employees, hired the FBI's confidential informant to kidnap and murder Malan.

The statement explains that one of the women, Sylvia Gonzalez, first met with the FBI informant on October 17, 2018, and at a subsequent meeting on November 5, 2018, told the informant that she wanted to get rid of **[*66]** Malan because it looked like "they [we]re going to appeal" and Razuki "has a lot of money tied up right now, and he's paying attorney fees." The statement describes several additional meetings between the women and the informant where they discussed a plan to kidnap Malan and take him to Mexico where they would murder him. Razuki was alleged to be present at one meeting, but not directly involved in conversations concerning the murder plot.

According to the statement, Gonzalez contacted the informant on November 13, 2018, to tell him that Malan would be at the San Diego Superior Court that day and on November 15, 2018, the informant met with Razuki and told him that he "took care of it." During the November 15, 2018 meeting, the informant requested payment from Razuki, who told the informant to ask Gonzalez. Gonzalez, the other woman, and Razuki were all arrested over the course of the next day. The criminal complaint contains two charges against Razuki, conspiracy to kidnap and conspiracy to murder in a jurisdiction outside the United States.

Hakim also asserts that in June 2017 Razuki threatened "to burn down the Mira Este facility," when Hakim refused to lend Razuki the $518,000 in **[*67]** proceeds Hakim received from the cash-out refinance on that property.

B. Analysis

"The defense of unclean hands arises from the maxim, '"He who comes into Equity must come with clean hands."' [Citation.] The doctrine demands that a plaintiff act fairly in the matter for which he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim. [Citations.] The defense is available in legal as well as equitable actions. [Citations.] Whether the doctrine of unclean hands applies is a question of fact." (*Kendall-Jackson Winery, Ltd. v. Superior Court (1999) 76 Cal.App.4th 970, 978, 90 Cal. Rptr. 2d 743* (*Kendall-Jackson*).)

"Any conduct that violates conscience, or good faith, or other equitable standards of conduct is sufficient cause to invoke the doctrine. [Citations.] [¶] The misconduct that brings the unclean hands doctrine into play must relate directly to the cause at issue. Past improper conduct or prior misconduct that only indirectly affects the problem before the court does not suffice. . . . The misconduct 'must relate directly to the transaction concerning which the complaint is made, i.e., it must pertain to the very subject matter involved and affect the equitable relations between the litigants.'" **[*68]** (*Kendall-Jackson, supra, 76 Cal.App.4th at p. 979*.)

Without any question, the conduct alleged in the federal complaint as well as the allegation that Razuki threatened to burn down the Mira Este facility is powerful evidence that could form the basis for the unclean hands doctrine defense. Critically, however, none of this information was before the trial court at the time it entered the receivership order challenged in this appeal. Malan and Hakim do not dispute that the kidnap and murder conspiracy allegations first came to light in November 2018, almost two months after the issuance of the appealed order. Additionally, Hakim's only citation in the record to the threat he alleges Razuki made in 2017 to burn down the Production Facility is contained in his declaration in support of his May 8, 2019 ex parte application to remove the receiver, more than six months after the issuance of the appealed order.

This court's role is to evaluate the ruling that was appealed by Malan and Hakim, not events that came later and that were not considered by the trial court. Malan and Hakim present no basis for this court to consider this new information.[23] (See *Bach, supra, 215 Cal.App.3d at p. 306* ["It is elementary that an appellate court is confined in its review to the proceedings **[*69]** which took place in the trial court. [Citation.] Accordingly, when a matter was not tendered in the trial court, 'It is improper to set [it] forth in briefs or oral argument, and [it] is outside the scope of review.'"].) While the alleged criminal conduct is concerning, to say the least, it is not a proper basis for reversal by this court of the challenged receivership order.

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[23] In his reply brief, Malan argues the timing of the conduct does not matter and quotes *Kendall-Jackson*, which states the general maxim that a plaintiff in equity "must come into court with clean hands, *and keep them clean*, or he will be denied relief, regardless of the merits of his claim." (*Kendall-Jackson, supra, 76 Cal.App.4th at p. 978*, italics added.) *Kendall-Jackson*, however, does not address the situation here, where conduct that was not before the trial court is used as the basis for a request that this court reverse the trial court's order.

DISPOSITION

The order is affirmed. Appellants to bear respondent's costs on appeal.

HALLER, J.

WE CONCUR:

HUFFMAN, Acting P. J.

GUERRERO, J.

End of Document

RJN-15

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 12/07/2017 TIME: 08:30:00 AM DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil
CLERK: Juanita Cerda
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT: R. Camberos

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

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EVENT TYPE: Ex Parte

APPEARANCES
Michael R Weinstein, counsel, present for Cross - Defendant,Cross - Complainant,Plaintiff(s).
DAVID S DEMIAN, counsel, present for Defendant,Cross - Complainant(s).
Gina Austin, counsel, present for plaintiff Larry Geraci

Darryl Cotton's Ex Parte Application For Temporary Restraining Order and Order to Show Cause Regarding Preliminary Injunction

(Case heard together with 17-37675, Cotton vs. City of San Diego)

The Court, after hearing oral argument and taking into consideration papers filed, **denies** the request for Temporary Restraining Order and provides counsel with a hearing for the Preliminary Injunction.

The Preliminary Injunction Hearing (Civil) is scheduled for 01/25/2018 at 09:00AM before Judge Joel R. Wohlfeil.

All moving, opposition and reply papers to be filed and served per code of civil procedure.

The Court directs the moving party to serve an amended notice and notice of the Court's ruling denying application as to the TRO.

Joel R. Wohlfeil

Judge Joel R. Wohlfeil

RJN-16

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 12/07/2017 TIME: 08:30:00 AM DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil
CLERK: Juanita Cerda
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: **37-2017-00037675-CU-WM-CTL** CASE INIT.DATE: 10/06/2017
CASE TITLE: **Cotton vs City of San Diego [IMAGED]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT TYPE: Ex Parte

APPEARANCES
David Demian, specially appearing for counsel Adam C Witt, present for Petitioner,Plaintiff(s).
Michael Weinstein, counsel, present for Real Parties in Interest Larry Geraci/Rebecca Berry
Jana Will, counsel, present for defendant City of San Diego
Gina Austin, counsel, present for Real Parties in Interest Larry Geraci/Rebecca Berry

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Darry Cotton's Ex Parte Application For an Order Shortening Time to Hear Motion For Issuance of Peremptory Writ In the First Instance

(Case heard together with 2017-10073, Larry Geraci vs. Darryl Cotton)

The Court, after hearing oral argument and taking into consideration papers filed, **declines** application for an Order Shortening Time. Counsel can call the calendar clerk to schedule. Attorney Demian informs the Court hearing has already been scheduled.

The Court provides parties with hearing date for the Peremptory Writ.

Hearing on Petition is continued pursuant to Court's motion to 01/25/2018 at 09:00AM before Judge Joel R. Wohlfeil.

All moving, opposition and reply papers to be filed and served per Code of Civil Procedures.

The moving party is directed to serve an amended notice and notice of the Court's ruling.

Joel R. Wohlfeil

Judge Joel R. Wohlfeil

RJN-17

Darryl Cotton
6176 Federal Avenue
San Diego, CA 92114
619-266-4004 (phone)
619-229-9387 (fax)

PRO PER

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual, and DOES 1-10, inclusive,

Defendants.

AND RELATED CROSS-ACTION

DARRYL COTTON, an individual,

Petitioner/Plaintiff,

v.

CITY OF SAN DIEGO, a public entity; and DOES 1 through 25,

Respondents/Defendants.

REBECCA BERRY, and individual; LARRY GERACI, an individual, and ROES 1 through 25,

Real Parties In Interest.

Case Nos.: '18 JAN 22 PM1:40
37-2017-00010073-CU-BC-CTL
37-2017-00037675-CU-WM-CTL

VERIFIED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DARRYL COTTON'S RESPONSE TO (1) MOTION BY PLAINTIFF/CROSS-DEFENDANT LARRY GERACI AND CROSS-DEFENDANT REBECCA BERRY TO COMPEL THE DEPOSITION OF DARRYL COTTON AND (2) MOTION BY REAL PARTIES IN INTEREST, LARRY GERACI AND REBECCA BERRY, TO COMPEL THE DEPOSITION OF DARRYL COTTON

Date: January 25, 2018
Time: 8:30 a.m.
Judge: Hon. Joel R. Wohlfeil
Dept.: C-73

I. LEGAL INTRODUCTION

I, Darryl Cotton (Cotton or Petitioner), Defendant and Cross-Complainant in the matter against Larry Geraci (Geraci or Respondent) and Rebecca Berry (Berry) and Petitioner/Plaintiff

in the matter against the City of San Diego (City), submit these points and authorities in opposition to the two motions before this Court seeking to compel my deposition (Motions to Compel). As fully argued below, the technical basis of my opposition is that, as a result of the professional negligence of my then-counsel and the facts of this case, when this Court made a factual finding that I am unlikely to prevail on my cause of action for breach of contract and denied my Application for a Temporary Restraining Order (TRO Motion) on December 7, 2017, it "abused its discretion."

Consequently, pursuant to CCP §§ 904.1(a)(6), 923 and the *Emeryville* line of cases, a Writ of Supersedeas and Writ of Mandate is warranted and the Motions to Compel should be denied while my appeals are reviewed by the Court of Appeals (COA).[1] I respectfully submit that the only issue that this Court needs to fully understand to decide these Motions to Compel is whether this Court would have made a different factual finding regarding my likelihood of success on the merits of my cause of action for breach of contract had my then-counsel not been negligent at the oral hearing and raised with this Court a single 1-page email.

II. PLAIN LANGUAGE INTRODUCTION AND RESPECTFUL REQUEST

The real reason I will be before this Court on January 25, 2018, once summarized in this introduction, will make me sound like I am paranoid, suffer from delusions of being the target of numerous conspiracies and will almost assuredly make me lose all credibility with this Court at the very onset. "From Oswald to Elvis, from Ollie to O.J., allegations of conspiracy have become the stuff of tabloid journalism and have the ring of a slug coin. The history of conspiracy, it has been observed, evidences the 'tendency of a principle to expand itself to the limit of its logic.' [Krulewitch v. United States, 336 U.S. 440, 445 (1949) (quoting Benjamin N. Cardozo, The

[1] *See* E. Stay by Writ of Supersedeas, Cal. Prac. Guide Civ. App. & Writs Ch. 7-E (**"Stay" to preserve status quo following denial of TRO or injunction**: Where a temporary restraining order or injunction has been denied and the defendant threatens to perform the act in question, a stay of the trial court order obviously will not "preserve the status quo." Here, the appellate court has authority to issue a "stay" (as distinguished from supersedeas) enjoining defendant from doing the action in question pending the appeal. [CCP § 923—court of appeal may "make any order appropriate to preserve the status quo" during pendency of an appeal; *People ex rel. San Francisco Bay Conservation & Develop. Comm'n v. Town of Emeryville*, supra, 69 C2d at 536-539, 72 CR at 792-794].).

Nature of the Judicial Process 51 (1925)).]"[2]

Your Honor, for the first time in my life I understand the concept of cognitive dissonance. I believe myself to be a man of reason and logic. Although I am not an attorney, I can understand the application of laws and principal to facts to analyze a situation and determine whether a cause of action is met. I firmly and completely believe that based on the facts of my case, the law and my reasoning below, that it is very simple and clear that this case brought by Geraci was done in bad-faith in an attempt to acquire my property, the main subject matter of this litigation, through a vexatious lawsuit. Further, that once this Court confirms my allegations of actions taken by counsel during the course of this litigation, that this Court will be absolutely appalled that our judicial system has been used so blatantly and disrespectfully as an instrument of misjustice.

However, despite believing in what I stated in the preceding paragraph 100%, I have been before Judge Sturgeon and this Court on [seven] occasions and not only has there been no outrage, with the exception of one motion, all of my motions have been denied and this Court even made a factual finding that I am unlikely to prevail on the merits of my case. Clearly, I am missing something. I am left to conclude that the reason for this paradox is probably one of two causes.

First, what I <u>believe</u> and <u>hope</u> to be the case, the negligent and/or potentially fraudulent actions by counsel in this action have prevented Judge Sturgeon and this Court from properly focusing on the substantive facts of this case and providing me appropriate lawful relief. Further, due to intense stress and my own lack of ability to properly articulate myself before this Court, I have not been able to communicate clearly and reasonably to this Court when I personally have been before it. I realize that this imposes a burden and makes it more difficult for this Court "to get quickly to the crux of a matter and to craft creative problem-solving orders for [pro se] litigants."[3]

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[2] Governmental Conspiracies to Violate Civil Rights: A Theory Reconsidered. Michael Finch. Montana Law Review Volume 57. Issue 1 Winter 1996. Page 1.

[3] *See* Handling Cases Involving Self-Represented Litigants. Administrative Office of the Courts. January 2007. Page xi. ("[S]elf-represented litigants often have difficulty preparing complete pleadings, meeting procedural

It is for this reason that, although I believe Mr. Weinstein filed the instant Motions to Compel as a vexatious litigation tactic, I am grateful that he did. It gives me a lawful and procedurally appropriate forum to fully explain the substantive issues to this Court and not have Mr. Weinstein be able to have this response stricken or denied on some procedural grounds that elevate form over justice.

As noted above, I am applying for a Writ of Supersedeas: "The issuance of a writ of supersedeas is not based on any statute, code section, or rule of court, but is within the inherent power of the court. Whether or not a writ should issue depends '***upon the special circumstances of each case***' (*West Coast etc. Co. v. Contractors' etc. Board, 68 Cal.App.2d* 1, 6 [155 P.2d 863])." (*internal citations omitted.*)[4] Additionally, pursuant to my appeal for a Writ of Mandate, relevantly and as summarized in the Rutter Guide:

> "Mandate will issue only if the following requirements are met:
>
> [1] No adequate remedy and irreparable injury…
>
> > However, notwithstanding an adequate remedy by appeal, a petition for writ of mandate may be granted in ***exceptional circumstances***—e.g., where the issue presented is of great public importance requiring prompt resolution and/or constitutional rights are implicated. [See, e.g., Anderson v. Super.Ct. (1989) 213 CA3d 1321, 1328, 262 CR 405, 410; Silva v. Super.Ct. (Heerhartz) (1993) 14 CA4th 562, 573, 17 CR2d 577, 583; and ¶ 15:6.1 ff.]
>
> [2] … Additionally, the petitioner must demonstrate an abuse of discretion or respondent's failure to perform a nondiscretionary duty to act."[5]

It is the "special/exceptional circumstances" arising from the acts of counsel in this matter, affecting the judiciary, deceiving this Court and the perception of access to justice by the public in our judicial system that makes what was originally a very simple contractual dispute a case "of great public importance requiring prompt resolution…"[6]

Thus, assuming I am not crazy, I believe that if the irreparable harm that I am facing is

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requirements, and articulating their cases clearly to the judicial officer. These difficulties produce obvious challenges.")

[4] *Sun-Maid Raisin Growers of Cal. v. Paul* (1964) 229 Cal.App.2d 368, 374–375 [40 Cal.Rptr. 352]

[5] B.Common Law Writs, Cal. Prac. Guide Civ. App. & Writs Ch. 15-B (emphasis added.)

[6] Id.

allowed to pass, then as stated by the Supreme Court of California, public confidence in the judiciary will be eroded and this case "will reinforce an already too common perception that the quality of justice a litigant can expect is proportional to the financial means at the litigant's disposal." *Neary v. Regents of Univ. of California*, 3 Cal. 4th 273, 287, 834 P.2d 119, 127–28 (1992).

However, there is the second possibility, which is that I am simply not reasoning well and have had some form of mental or psychological impairment. And I am actually before this Court wasting this Court's precious judicial time and resources. This is, I am forced to conclude, a possibility, because December 12, 2017, when this Court denied my Motion for Reconsideration, was the worst day of my life. As explained below, I was 100% positive that when I appeared before this Court on that day, I would be able to explain my then-counsel's negligence at the December 7, 2017 TRO Motion hearing, this Court would change its position and issue the TRO. Instead, my Motion for Reconsideration was denied and, given my expectations of having "my day in court," I was in so much shock that I suffered a mini-stroke, a TIA, and had to go to the Emergency Room (see **Exhibit 1**; medical records from admission to Mercy Scripps Hospital). The next day, when my financial investor told me, as a result of the denial of my Reconsideration Motion, that he was going to cease funding my business and this litigation because he needed to "cut his losses," I went to his location uninvited and physically assaulted him. (See **Exhibit 2 -** Supporting declaration of Joe Hurtado.) He was going to call the police and have me arrested. I will forever be grateful that he did not and instead called a medical doctor who found me to be a danger to myself and others (See **Exhibit 3**; Declaration of Dr. Carolyn Candido stating that I was a danger to myself and others and was suffering from Acute Stress Disorder).

In light of the above, I am open to the fact that I am not thinking clearly and would like to respectfully request that this Court, when determining whether to grant or deny the Motions to Compel, that it please provide a written opinion regarding my allegations of facts, law and reasoning below that make up the "special/exceptional circumstances" of my case and which are

the basis of my appeal. To be completely clear, I fully recognize that, especially if I am simply delusional, this Court has no obligation to me whatsoever to provide any reasoning.[7] But I ask the Court to please believe me when I say that I am incapable of expressing in written words here the everyday anguish I face thinking that I am losing everything of value in my life, that I am letting down my family, friends and business partners of over 20 years, and that I will soon be destitute due to Geraci's vexatious lawsuit and the negligent actions of counsel who failed to live up to their ethical obligations. I fear if I am not thinking clearly and there are legal, valid, and substantive reasons for the things that have happened, I may not be able to fully understand the legal concepts that justify such actions (however personally I disagree with them). A written opinion that I can slowly review and research the legal language and concepts of, analyzing my arguments below, would truly and sincerely be appreciated. It would, as perverse as it sounds, be a source of great solace to me. Understanding that Geraci's lawsuit against me has some modicum of merit would be a great relief to me and would take away what is the unfounded every day, relentless and intense rage I have against Geraci and counsel in this case and the despair that I feel at being unable to access justice because I cannot, with my limited time and resources, navigate the complexities of what is supposed to also be my judicial system.

III. MATERIAL FACTUAL BACKGROUND

A. Summary of Sole Underlying and Case Dispositive Issue in this Matter (the "Real Issue")

In November of 2016, Petitioner and Respondent met and came to an oral agreement for the sale of Petitioner's Property to Respondent (the "November Agreement"). Materially, at the

[7] See Nakamura v. Parker (2007) 156 Cal.App.4th 327, 335–336 [67 Cal.Rptr.3d 286, 290] ("Where, as here, a trial court is not explicitly required by law to state reasons for the decision rendered, the integrity of adjudication does not *necessarily* require an explanation; but that certainly does not mean a court *should* decline to provide any reasons for a ruling. "By and large it seems clear that the fairness and effectiveness of adjudication are *336 promoted by reasoned opinions. Without such opinions the parties have to take it on faith that their participation in the decision has been real, that the arbiter has in fact understood and taken into account their proofs and arguments. A less obvious point is that, where a decision enters into some continuing relationship, if no reasons are given the parties almost inevitably guess at reasons and act accordingly. Here the effectiveness of adjudication is impaired, not only because the results achieved may not be those intended by the arbiter, but also because his freedom of decision in future cases may be curtailed by the growth of practices based on a misinterpretation of decisions previously rendered." (Fuller, The Forms and Limits of Adjudication (1978) 92 Harv. L.Rev. 353, 388.)".)

meeting at which the parties reached the November Agreement, Respondent (i) provided Petitioner with $10,000 in cash to be applied towards a total non-refundable deposit of $50,000 and had Petitioner execute a document to record his receipt of the $10,000 (the "Receipt") and (ii) promised to have his attorney speedily draft and provide final, written purchase agreements for the Property that memorialized all of the terms that made up the November Agreement (the "Final Purchase Agreement").

On the same day the November Agreement was reached, Respondent emailed Petitioner a scanned copy of the Receipt. Petitioner, recognizing the Receipt could be construed as the final purchase agreement for the Property, emailed back asking Respondent to specifically confirm the Receipt was not the final purchase agreement as it failed to incorporate material terms. Respondent replied, acknowledging Petitioner's request for his confirmation and specifically providing said confirmation that the Receipt was not the Final Purchase Agreement (the "Confirmation Email"). (See **Exhibit 4** (contains all 14 emails between Geraci and myself. There are no other written documents or communications between myself and Geraci other than text messages.)

Thereafter, Respondent breached the November Agreement by, *inter alia*, failing to provide (i) the balance of the non-refundable deposit and (ii) the Final Purchase Agreement. Consequently, almost five months later in March of 2017, Petitioner terminated the November Agreement with Respondent for breach. After terminating the November Agreement with Respondent, Petitioner entered into a written real estate purchase agreement with a third-party for the sale of the Property (the "Real Estate Purchase Agreement"). (**Exhibit 5**; the Third-Party Purchase Agreement.)

After Petitioner terminated the November Agreement, Respondent filed the underlying lawsuit seeking to stymie the Real Estate Purchase Agreement and to acquire the Property through a vexatious lawsuit ("Respondent's Lawsuit"). Respondent's Lawsuit is premised solely and exclusively on the allegation that the Receipt is the Final Purchase Agreement. Thus, putting aside an overwhelming amount of additional and undisputed evidence, Respondent's own written

admission in the Confirmation Email stating the Receipt is not the Final Purchase Agreement is completely damning and dispositive. (See **Exhibit 4.**)

Respondent has never, (i) in the almost five months between his sending of the Confirmation Email and the termination of the November Agreement or (ii) in any pleading or oral argument in the two underlying civil matters to date, challenged, disputed, denied or even acknowledged his own written admission in the Confirmation Email that the Receipt is not the Final Purchase Agreement - in complete contradiction of his own complaint. Furthermore, Respondent has neither produced nor even alleged the existence of a single piece of evidence to support his contention that the Receipt is the Final Purchase Agreement.

Respondent's entire and sole superficial litigation strategy has been to rely on the Statute of Frauds ("SOF") and the Parol Evidence Rule ("PER") to prevent the admission of his Confirmation Email. However, the trial court denied Respondent's Demurrer based on the SOF and the PER. Moreover, even if the trial court had held that the SOF and the PER did apply in the first instance, the legal concept of promissory estoppel in California undeniably makes clear that Respondent's reliance is misplaced. The seminal case of *Monarco* makes clear that Respondent's actions in this case would be an unconscionable act and result in his unjust enrichment. Thus, with no just basis for filing Respondent's Lawsuit, the only reasonable conclusion that can be reached is that Respondent did so to unjustly acquire Petitioner's Property through a vexatious lawsuit.

B. Additional Material Background

Petitioner initially, given the simple nature of the Real Issue, believed that he would be able to represent himself pro se against Respondent's Lawsuit. Petitioner prepared and filed an Answer to Respondent's Lawsuit and a Cross-Complaint. Petitioner's Answer and Cross-Complaint were denied by the Court for failing to comply with procedural requirements. Petitioner realized, notwithstanding the simplicity of the Real Issue, that he would be unable to efficiently represent himself in a legal proceeding and entered into an agreement with a third-party to finance the litigation (the "Investor") against Respondent's Lawsuit in exchange for a

portion of the proceeds that he would receive from the Real Estate Purchase Agreement.

Investor did research, interviewed and hired a local law firm that had successfully handled a similar matter for a landlord (the "Similar Lawsuit"). The Investor negotiated with Mr. Demian for Mr. Demian to fully represent Petitioner and to provide his services on a financed agreement of $10,000 a month. The understanding was that the law firm would fully represent Petitioner to have Respondent's Lawsuit adjudicated as quickly and efficiently as possible. Thus, if in any given month the law firm billed more than $10,000, the balance would be carried over and made up for in future months in which there was less than $10,000 a month billed or upon conclusion of Petitioner's legal actions. (See **Exhibit 6**; email with Mr. Demian regarding $10,000 payment and retainer agreement with Mr. Demian.)

The reality was, the law firm did not want to actually do more than $10,000 of work a month. It heavily resisted doing the work necessary and preparing the Shortening Time and TRO Motions. The end result was that Petitioner's counsel was ill-prepared for the hearings and, most egregiously, completely failed to represent Petitioner's interest at the TRO Motion hearing. Specifically, as fully detailed below, Petitioner's TRO motion argued that Petitioner would more likely than not prevail on his Causes of Action for Breach of Contract and Declaratory Relief. Petitioner's moving papers put forth three arguments in support of his likelihood to prevail on his Breach of Contract claim and, essentially, one argument in support of his Declaratory Relief claim.

Summarily, the three arguments in support of his Breach of Contract claim are that (i) the undisputed communications between the parties, including the Confirmation Email, make clear that the Receipt is not the Final Purchase Agreement as Respondent alleges, (ii) that the trial court had already denied Respondent's attempt to utilize the SOF and the PER to prevent the admission of the Confirmation Email when it denied Respondent's Demurrer and (iii) even if the trial court were to have ruled otherwise or change its view, the concept of promissory estoppel would clearly prevent the use of the SOF and the PER to effectuate an unconscionable fraud or unjust enrichment, which would take place here if the Confirmation Email were prevented from

being legally taken notice of here as Respondent argues. The argument in support of the Declaratory Relief claim is based on a property owner's constitutional right to determine who may use his property as he sees fit – the exact same legal reasoning used by Petitioner's then-counsel to prevail in the previous Similar Lawsuit.

C. The TRO Motion Hearing

At the TRO Motion hearing, counsel for Respondent referenced the Receipt and said, essentially, "your Honor, we have a valid contract for the property, end of story." At this point, Petitioner's then-counsel should have, at the very least, raised the Confirmation Email and explained to this Court that there was undisputed evidence that completely contradicted Respondent's own argument and that the Receipt was the final purchase agreement for Petitioner's property. He did not. Instead, he argued solely the constitutional grounds for prevailing on the Declaratory Relief cause of action, which, unsurprisingly, did not persuade this Court. Consequently, this Court made factual findings that I was unlikely to prevail on the merits of my cause of action for breach of contract and that I was facing no irreparable harm.

The only relief sought by Petitioner via the TRO was that Respondent be enjoined from withdrawing and/or sabotaging the CUP application pending on the property and that a Receiver be appointed to oversee the CUP application pending resolution of Respondent's Lawsuit. Petitioner, for valid reasons below, simply wanted to have Respondent enjoined from sabotaging the CUP application pending resolution of Respondent's Lawsuit and the court addressing the Real Issue. During the TRO Motion hearing, the trial court judge reviewed the proposed order submitted by Petitioner and asked opposing counsel what was wrong with an agreement by Respondent or an order enjoining such action, to which Respondent's counsel replied that there was nothing specific, just the conceptual notion that his client should not be prevented from being able to do as he wished. The court did not pursue this line of reasoning further.

In other words, the very action that Petitioner sought to prevent was *de facto* approved of by the trial court. As explained below, withdrawing and/or sabotaging the CUP application is, from Respondent's perspective, the best and only reasonable course of action to take in order to

mitigate his damages to Petitioner – assuming Petitioner is able to get to a point in the judicial system in which the Real Issue will be reviewed and adjudicated by the court. Thus, having the trial court specifically allow the very course of action that will irreparably harm Petitioner is maddening and a source of every day extreme psychological and emotional distress.

Immediately after the TRO hearing, Investor called and informed Petitioner about his then-counsel's failure to raise the Confirmation Email or any of the other arguments in support of his Breach of Contract claim. After speaking with Investor and his then-counsel, Petitioner fired his then-counsel. Thereafter, Petitioner filed his Reconsideration Motion and the aftermath of what happened after its denial is described above in the introduction.

D. Ethical Violations by Counsel

After the denial of my Motion for Reconsideration, I made numerous calls to the State Bar of California and calls to its Ethics Hotline regarding the actions of Mr. Demian. Based on my descriptions of what took place at the TRO Motion hearing, I was directed to various ethics opinions and judicial cases (set forth below), that support the position that Mr. Demian was, at the very least, professionally negligent. Of note, it appears, *all* counsel present violated their ethical duties that day when they failed to raise with your Honor the fact that my counsel had been negligent in raising with this Court the single most material and dispositive piece of evidence that was in the moving papers. As noted in one of the ethics opinions, referencing the following Court of Appeals case:

> "[A]n attorney has a duty not only to tell the truth in the first place, but a duty to '*aid the court in avoiding error and in determining the cause in accordance with justice and the established rules of practice*.' (51 Cal.App. at p. 271, italics added.) Observance of this duty, we might add, prevents the waste of judicial resources, and the opposing party's time and money.[8]"

I will, after submission of this pleading to this Court, begin compiling my email records with Mr. Demian, Mr. Weinstein and Ms. Austin and intend to file complaints against each of them with the State Bar of California regarding their actions in this case. As to Mr. Weinstein

[8] *Datig v. Dove Books, Inc.* (1999) 73 Cal.App.4th 964, 980–981 [87 Cal.Rptr.2d 719], as modified on denial of reh'g (Aug. 13, 1999)

and Ms. Austin, for bringing and maintaining a lawsuit with no probable cause. And, as to Mr. Demian, for his professional negligence and, as argued below, potentially fraudulent behavior.

D. Emotional and Financial Pressure

Submitted herewith to this Court is the Secured Litigation Financing Agreement, which, because of confidentiality provisions and with this Court's approval, shall not be made public. However, as detailed therein, because of this litigation, I have been continually forced to sell and negotiate for financing for my businesses, personal, professional and litigation needs. To summarize, on March 21, 2017, when I sold my Property to the Third-Party Buyer, provided the CUP was issued, I was going to receive $2,000,000; a 20% equity stake in the business; and a guaranteed $10,000 a month payment for 10 years (minus agent and transaction fees). Assuming the CUP was not issued, I would have received $100,000 and kept my Property, from which I have run my business and non-profit 151 Farms for over 20 years. As of the day I submit this pleading with this Court, if I fail to prevail in this litigation, given all of the liens against my Property required to finance this litigation, I will be left completely destitute and with no home.[9]

ARGUMENT

A. Due to Counsel's Negligence, the Court Incorrectly Denied my TRO Motion

"[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821 (2011))

a. Geraci Breached The Agreement Reached on November 2, 2016

Neither party disputes an agreement was reached on November 2, 2016. However, as described above, Geraci's contention that the November Receipt is the full and final agreement between the parties for the purchase of the Property is completely contradicted by his own admission on the same day the November Receipt was executed. *See* **Exhibit 4**.

As noted, Geraci has never contested the Confirmation Email and, thus, Geraci's

[9] See supporting declarations of Darryl Cotton,

subsequent silence show that he admits the existence of those terms – specifically, that "any final" agreement, would contain my 10% equity stake. (*See, e.g., Keller v. Key System Transit Lines* (1954) 129 Cal.App.2d 593, 596 ["The basis of the rule on admissions made in response to accusations is the fact that human experience has shown that generally it is natural to deny an accusation if a party considers himself innocent of negligence or wrongdoing."].

b. Geraci and Berry's Reliance on the Statute of Frauds and the Parol Evidence Rule Is Misplaced

It appears that Geraci's complaint and his entire defense to my cross-complaint is premised on the Statute of Frauds. As discussed above, Geraci's admission that the November Receipt is not the final agreement is damning and dispositive. His attempt to cling to a 3-sentence one page document as the be-all end-all for our deal is not credible under any reasonable interpretation of the evidence. The fact is, the 3-sentence one page document is, on its face, ambiguous and the terms we actually agreed upon are reflected in our emails and texts, which are reliable, credible, and controlling. Indeed, the Court previously ruled as such on November 6, 2017, when it ruled against Geraci's statute-of-frauds-and-parol-evidence-rule-based demurrer. Thus, with the Court's ruling, there is no legal basis at all on which Geraci can prevail in this action.

Moreover, the statute of frauds does not apply and is not permitted to be used for an unconscionable fraud or to unjustly enrich a third party, which would be the result if the Court were now to cancel its previous determination that the Statute of Frauds is no bar to Cotton. The California Supreme Court is clear on this point – the doctrine of promissory estoppel has been "consistently applied by the courts of this state to prevent fraud that would result from refusal to enforce oral contracts in certain circumstances." (*Monarco v. Lo Greco* (1950) 35 Cal.2d 621, 623.) Per the agreement reached by the parties in November, Geraci was to pay $800,000 and ensure I received at least $10,000 a month from operations of the MMCC which would last for an estimated 10-year period at minimum. This is an obligation of approximately $2,000,000. Thus, Geraci is estopped from asserting the statute in this case as it is both an unconscionable act

and it would result in an unjust enrichment to Geraci of $1,200,000 – minimum.

c. Cotton Will Be Irreparably Harmed if the Court Does Not Grant the Injunction

It is clear based on the above that Geraci brought this action with no probable cause attempting to acquire the property through a vexatious lawsuit. However, at some point, any party who brings a lawsuit with no probable cause will realize, as the case progresses, that the trial court will be able to determine what is really going on. At that point, any such party must take what actions they can to mitigate their actions. I realized that, which was the basis of my TRO request. I believed I would ultimately prevail on the merits of my case, but wanted to ensure that Geraci could not withdraw and/or sabotage the CUP application to mitigate his damages to me.

Ahbay Schweitzer is an architect, a building designer and the owner of Techne, a local design firm that was engaged by Larry Geraci to acquire the CUP at the Property. Schweitzer is Geraci's exclusive agent. Per Schweitzer's declaration regarding the issuance of the CUP at the Property, he has:

> "Been engaged in the application process for this CUP application for approximately twelve (12) months so far…[and] [t]here is one major issue left to resolve regarding a street dedication. I expect this issue to be resolved within the next six (6) weeks." (See **Exhibit 7** - Declaration of Abhay Schweitzer.)

Schweitzer executed his declaration on October 20, 2017. Thus, it is possible that Geraci, now realizing that at this point the truth would come out, may already have taken steps to covertly sabotage the CUP application to prevent it from being issued. This is my biggest fear. Though I am distressed every day because of this entire situation, the denial of the TRO is what is driving me literally insane – the fact that every day that has passed since the TRO motion was denied has made it clear to Geraci that he is going to lose and he has had so much time to take covert actions to sabotage the CUP application in a way that will not be possible to discern and will prevent him from being legally liable. By doing so, if I ultimately prevail in this lawsuit, his damages will have been mitigated by ***millions***.

I note, per Mr. Schweitzer's declaration, the second most important and final item that

will be required to issue the CUP is a public hearing which he estimates to take place in March. In other words, Geraci still has the ability to sabotage the CUP application before this matter is even scheduled for trial.

The harm I face is all-encompassing, affecting my professional, personal, and every aspect of my life. Those who are close to me have seen me slowly be worn down, but the mental and psychological stress is real. The negative effect to me and everything of import in my life is read. Please see my supporting declaration submitted herewith, as well as those of (i) Don Casey, (ii) Michael Kevin McShane, (iii) Shawna Salazar, (iv) Sean Major, (v) Cindy Jackson, (vi) James Whitfield, (vii) Michael Scott McKim and (viii) Cheryl Morrow (all attached hereto as **Exhibit 15**)

B. Writ of Supersedeas

"A writ of supersedeas may be granted only upon a showing that (a) appellant would suffer irreparable harm absent the stay, and (b) the appeal has merit. [See *Smith v. Selma Community Hosp.* (2010) 188 CA4th 1, 18, 115 CR3d 416, 432].[10]

As argued above, (i) I will suffer irreparable harm if Geraci is allowed to withdraw and/or covertly sabotage the CUP application and (ii) my appeal has merit because, but for Mr. Demian's incompetence, this Court would have approved my TRO application.[11]

> "CCP § 923 grants the appellate court virtually unlimited discretion to make orders to preserve the status quo in protection of its own jurisdiction, including issuance of a stay order other than supersedeas. [CCP § 923; *People ex rel. San Francisco Bay Conservation & Develop. Comm'n v. Town of Emeryville* (1968) 69 C2d 533, 538-539, 72 CR 790, 793]
>
> (a) [7:274] **"Stay" to preserve status quo following denial of TRO or injunction**: Where a temporary restraining order or injunction has been denied and the defendant threatens to perform the act in question, a stay of the trial court order obviously will not "preserve the status quo." Here, the appellate court has authority to issue a "stay" (as

[10] E.Stay by Writ of Supersedeas, Cal. Prac. Guide Civ. App. & Writs Ch. 7-E

[11] See Declarations of Darryl Cotton

> distinguished from supersedeas) enjoining defendant from doing the action in question pending the appeal. [CCP § 923—court of appeal may "make any order appropriate to preserve the status quo" during pendency of an appeal; *People ex rel. San Francisco Bay Conservation & Develop. Comm'n v. Town of Emeryville*, supra, 69 C2d at 536-539, 72 CR at 792-794]"[12]

At the TRO hearing, your Honor reviewed the proposed TRO order and asked Mr. Weinstein what would be wrong with preventing his client from withdrawing the CUP application on the Property. Mr. Weinstein replied something to the effect that his client should not be prevented from doing as he wishes. (See **Exhibit 8** Declarations of Elizabeth Emerson (stating "At the hearing, the judge asked Mr. Weinstein what would be wrong with preventing the withdrawal of the CUP application. Mr. Weinstein replied something about his client having freedom to do what he wanted.") and Mr. Mass (stating "Mr. Demian, counsel for Mr. Cotton, did not raise any email arguments with the Court.")

In other words, given that Geraci brought forth this action to prevail with vexatious tactics and not anticipating I would be able to secure financial backers to hire counsel, he would at some point realize he will lose this case on the merits. In that case, knowing he would be liable for damages, but that those damages are exponentially higher if the CUP is issued, he would be incentivized to withdraw and/or through subterfuge have the CUP sabotaged so as to limit his liability. Thus, this Court unknowingly *de facto* allowed Geraci to take an action that is in his best interest but is unjust towards me – the destruction of the "fruits" that I would ultimately seek in the Court of Appeals if I lost this action or if he simply delays this action long enough to covertly sabotage the CUP application while he still has exclusive control.

Thus, even assuming I am incorrect about <u>some</u> facts and law above, allowing Geraci to withdraw the CUP as this Court allowed would deprive the COA of its jurisdiction and CCP § 923 is perfectly on point here because it "grants the appellate court virtually unlimited discretion to make orders to preserve the status quo in protection of its own jurisdiction, including issuance of a stay order other than supersedeas."

C. <u>Writ of Mandate</u>

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[12] E.Stay by Writ of Supersedeas, Cal. Prac. Guide Civ. App. & Writs Ch. 7-E

A writ of mandate is appropriate where a beneficially interested petitioner has no plain, speedy and adequate remedy at law, and Respondent has a clear, present and ministerial duty, or has abused its discretion. (Code of Civ. Proc., § 1085; *see, e.g. Robbins v. Superior Court* (1985) 38 C3d 199, 205 ("*Robbins.*")) For the reasons argued above, this Court should reverse its position on the TRO Motion and direct the City to transfer control of the CUP application to me. Or, at least, as requested below, appoint a receiver to manage the CUP application until the merits of this action are finally adjudicated and prevent Geraci from sabotaging the CUP application.

D. Ethical Considerations

As noted above, the case law language below cited to in the ethical opinions of the State Bar of California, appears to be completely applicable here to the actions of counsel:

1. Per the Supreme Court of California, "Business and Professions Code section 6128 provides in relevant part: 'Every attorney is guilty of a misdemeanor who ... is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive ... any party.'" "That section [6128] and subdivision impose a duty on attorneys to 'employ ... such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by any artifice or false statement of fact or law.'"[13]

2. The State Bar of California Standing Committee on Professional Responsibility and Conduct Formal Opinion No. 2013-189 discusses "Deceitful Conduct" and cites to *Datig v. Dove Books, Inc.*, a Court of Appeals case that states the following (all emphasis in original text):

> ***Defense Counsel Failed to Do His Duty as an Officer of the Court and Acted in Direct Violation of the Trial Court's Local Rules***
>
> Business and Professions Code section 6068 provides, in relevant part: "It is the duty of an attorney to do *all* of the following: [¶] ... [¶] (b) *To maintain the respect due to the courts of justice and judicial officers.* [¶] (c) To *counsel or maintain such actions*, proceedings, or *defenses* only as appear to him or her legal or just, except the defense of a

[13] Silberg v. Anderson (1990) 50 Cal.3d 205, 219 [266 Cal.Rptr. 638, 786 P.2d 365], as modified (Mar. 12, 1990)

> person charged with a public offense. [¶] (d) To *employ*, for the purpose of maintaining the causes confided to him or her *such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.*" (Italics added.)
>
> Further, the Rules of Professional Conduct require that a member of the State Bar "[s]hall not seek to mislead the judge, judicial officer, or jury by an artifice or false statement of fact or law." (Rules Prof. Conduct, rule 5-200(B).) (4) " '*Honesty* in dealing with the courts is of paramount importance, and *misleading a judge is, regardless of motives, a serious offense.*' " (*Paine v. State Bar* (1939) 14 Cal.2d 150, 154 [93 P.2d 103], italics added; see also *Di Sabatino v. State Bar* (1980) 27 Cal.3d 159, 162-163 [162 Cal.Rptr. 458, 606 P.2d 765]; *Garlow v. State Bar* (1982) 30 Cal.3d 912, 917 [180 Cal.Rptr. 831, 640 P.2d 1106].) "Counsel should not forget that they are officers of the court, and while it is their duty to protect and defend the interests of their clients, *the obligation is equally imperative to aid the court in avoiding error and in determining the cause in accordance with justice and the established rules of practice.*" (*Furlong v. White* (1921) 51 Cal.App. 265, 271 [196 P. 903], italics added.)
>
> [...] We therefore find it is necessary to state, explicitly, that although a misrepresentation to the court may have been made negligently, not intentionally, it is still a misrepresentation, and once the attorney realizes that he or she has misled the court, even innocently, he or she has an ***affirmative duty*** to immediately inform the court and to request that it set aside any orders based upon such misrepresentation; also, counsel should not attempt to benefit from such improvidently entered orders. As the court stated in *Furlong v. White,* an attorney has a duty not only to tell the truth in the first place, but a duty to "*aid the court in avoiding error and in determining the cause in accordance with justice and the established rules of practice.*" (51 Cal.App. at p. 271, italics added.) Observance of this duty, we might add, prevents the waste of judicial resources, and the opposing party's time and money.[14]

3. The State Bar of California Standing Committee on Professional Responsibility and Conduct Formal Opinion No. 2013-189 also states:

> Even when no duty of disclosure would otherwise exist, "where one does speak he must speak the whole truth to the end that he does not conceal any facts which materially qualify those stated. [Citation.] One who is asked for or volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud." *Cicone v. URS Corp.* (1986) 183 Cal.App.3d 194, 201. See *Goodman*, supra, 18 Cal.3d at pp. 346-347 and *Shafer v. Berger, Kahn, Shafton, Moss, Figler, Simon & Gladstone* (2003) 107 Cal.App.4th 54, 72 [131 Cal.Rptr.2d 777].
>
> See also *Vega*, supra, 121 Cal.App.4th at p. 294 ("it is established by statute 'that intentional concealment of a material fact is an alternative form of fraud and deceit equivalent to direct

[14] Datig v. Dove Books, Inc. (1999) 73 Cal.App.4th 964, 980–981 [87 Cal.Rptr.2d 719], as modified on denial of reh'g (Aug. 13, 1999)

> affirmative misrepresentation' [citations omitted] . . . . In some but not all circumstances, an independent duty to disclose is required; active concealment may exist where a party '[w]hile under no duty to speak, nevertheless does so, but does not speak honestly or makes misleading statements or suppresses facts which materially qualify those stated.'" [Fn. omitted.]); *Lovejoy v. AT&T Corp.* (2001) 92 Cal.App.4th 85, 97 [111 Cal.Rptr.2d 711]; *Stevens v. Superior Court* (1986) 180 Cal.App.3d 605, 608 [225 Cal.Rptr. 624].
>
> Footnote 14 states:
>
> > Cal. State Bar Formal Opn. No. 1996-146 ("A lawyer acts unethically where she assists in the commission of a fraud by implying facts and circumstances that are not true in a context likely to be misleading."); cf. *Datig*, supra, 73 Cal.App.4th at pp. 980-81 (once attorney realized he had negligently misled the court, the attorney had an affirmative duty to immediately notify the court).

E. Application of Ethical Considerations

Your Honor, this section is the part that makes me sound like a conspiracy nut. Below I describe facts and provide documentation that can be independently verified. I respectfully request that, notwithstanding how outlandish my claims are, you please consider that maybe, just maybe, they are true and that numerous officers of the court have engaged in unethical behavior.

Attorney Gina Austin. First, Austin undisputedly knows that the Receipt is not the final agreement for my Property as she is the attorney that, after November 2, 2016, was drafting various versions of the purchase agreement for my property. She is named numerous times in emails and texts between myself and Geraci. (See **Exhibit 4**.)

On March 6, 2017, Geraci texted me "Gina Austin is there she has a red jacket on it you want to have a conversation with her." (See **Exhibit 9**; all of the text messages between Geraci and myself including the quoted one above, all of which also make clear that Geraci was stringing me along and make numerous drafts to contracts for the purchase of my property ***after*** November 2016.) Austin was the headnote speaker at a local cannabis event on that day. I was unable to make the event, but my Investor Mr. Hurtado was and he spoke with Austin briefly, letting her know that I would not be attending. (See **Exhibit 2**; Declaration of Joe Hurtado, Paragraph 4.)

Second, at the TRO Motion hearing, per the Supreme Court and COA language above, Austin had affirmative duty to inform Your Honor that Mr. Demian had been negligent in failing

to bring to your attention the Confirmation Email.

Based on the ethics language above, it appears to me that Gina Austin has violated numerous ethical duties by bringing and maintaining this action against me when she knows it is completely founded on a lie.

Attorney Michael Weinstein. First, I have an email from myself to Mr. Weinstein that I will not attach here because I do not want this pleading stricken from the record because of Litigation Privilege discussed in the ethics opinions cited above. But, I will bring copies with me to Court on January 25th. These emails to Mr. Weinstein recount the entire history of the dealings between Geraci and me and provide emails, texts and provide him the evidence he needed to know that his client Geraci had no probable cause to bring this lawsuit.

Second, I will not assume that Geraci told Weinstein about the draft purchase agreements that Austin was working on. Assuming it can be argued that Weinstein was not aware of the concept of promissory estoppel at the onset of this litigation and that he believed the SOF and the PER would prevent the Confirmation email, thus providing probable cause for this suit, no later than when this Court denied Geraci's demurrer, Weinstein knew this case had no probable cause and that maintaining it was simply a vexatious tactic to fraudulently acquire my Property.

Third, at the TRO Motion hearing, for the same reasoning put forth above, Weinstein was obligated to inform this Court about Mr. Demian's negligence and provide the Confirmation Email.

Fourth, after the oral hearing in front of your honor on January 18, 2018, Mr. Weinstein approached me to discuss access to the Property for soil samples to continue the CUP application and to discuss a possible settlement of this action regarding the Property and the CUP application. I am not clear what he means, Mr. Weinstein has had the Third-Party Purchase Agreement for since early in this litigation and it has been discussed. He knows I was forced to unconditionally sell my interest in the Property on April 15, 2017, to pay off debts and continue financing this litigation. See **Exhibit 5** ("Seller hereby transfers and sells to Buyer, with all the associated rights and liabilities, his ownership, rights and interests in the property and the

associated CUP application pending before the City of San Diego for $500,000.") As that agreement makes clear, the condition precedent for closing is the successful resolution of this lawsuit. I am assuming that Mr. Weinstein wants me to engage in some kind of legal machinations by which I can void my agreement with the Third-Party Buyer so I can transfer the Property to Geraci. Even if there were some legal mechanism that would allow that (and it does not appear to me that is should be allowed in any circumstance as it would violate the implied covenant of good faith and fair dealing in every contract), I would not do so. Even if lawful, it is not ethical and it would make me just as bad as Geraci – the very idea of which is nauseating.

Attorney David Demian. First, Mr. Demian started off his representation on fraudulent grounds. My Investor, Mr. Hurtado negotiated a monthly $10,000 a month payment with him for his services. It was expressly discussed and negotiated that we would speedily and quickly resolve my legal matters as quickly as possible and that the $10,000 would not be a limitation. However, when he sent me the retainer agreement, it did not contain the $10,000 monthly financing concept. Mr. Hurtado spoke with Mr. Adam Witt, Mr. Demian's junior associate, who informed him that Mr. Demian did not want to put such a provision in the agreement because his partners would not like it. However, that he should not worry because so long as $10,000 was being paid, that my representation would not be impeded. Mr. Hurtado pushed back hard, being a former attorney, he knew that ultimately what mattered was the language. Mr. Witt spoke with Mr. Demian and called Mr. Hurtado and myself back, they proposed, and I am sure that they never would have anticipated that they would find themselves in this position, that execute the retainer agreement and that I note in the cover email our $10,000. I am assuming that they filed the retainer agreement with their firm Mr. Demian did not record the email reflecting our $10,000 a month agreement. At that point, the reasoning that they provided made sense, that so long as $10,000 was paid, that they would continue their services. I understand that businesses carry balances with vendors and clients. However, what is now apparent, is that Mr. Demian did not intend to fully represent me as he promised. He was intending to only do up to $10,000 a month of work. Either that, or he intended to fraud his partners. I do not know the words, but one

way or another, he was defrauding me or his partners. (See **Exhibit 6**: email to Adam Witt confirming that notwithstanding language in the retainer agreement, only $10,000 would be paid to FTB.)

Second, in his opposition to Geraci's demurrer, Mr. Demian did not raise the affirmative defense of promissory estoppel as articulated by the Supreme Court case of *Monarco*. Rather, it was Mr. Hurtado, who attended the oral arguments for the hearing, that felt that something had to be wrong. Mr. Hurtado did some "Googling" emailed Mr. Demian and approximately 2 weeks after the demurrer hearing emailed Mr. Demian about the concept of promissory estoppel and the *Monarco* case discussing the application to Mr. Cotton's case (*See* **Exhibit 10**). Mr. Demian included the *Monarco* case/promissory estoppel concept in the TRO motion that he submitted to this Court. In other words, I respectfully submit to this Court that this reflects that Mr. Demian clearly failed to meet his ethical obligations to me by even doing the most basic legal research required to properly represent me before this Court.

Third, Mr. Demian's actions at the TRO Motion hearing. As discussed *ad nauseum* above, he failed to raise the Confirmation Email. After the hearing, when Mr. Demian and the attorney for the City left the courtroom, the attorney for the City told Mr. Demian something to the effect of "you should have won based on the moving papers, but oral argument got you." Mr. Hurtado was standing no more 3 feet away from them when this was stated as he was enraged that Mr. Demian performed so poorly. Per the declarations of Mr. Mass and Ms. Elizabeth, Mr. Hurtado loudly berated Mr. Demian about his poor performance. Per Mr. Hurtado, he berated Mr. Demian for being unprepared and failing so miserably. Mr. Demian actually had the gall to retort to Mr. Hurtado that investing in litigation was always "risky" and, presumably, Mr. Hurtado should be less upset. Notably, and I believe the most actionable item against Mr. Demian, when I replied to Mr. Demian noting that even the City attorney stated that he should have won, he replied by email stating: "Also, as to the City Attorney, she told me my papers and oral argument were excellent. She did not say we should have won." (See **Exhibit 11**.) Mr. Demian is blatantly lying here, obviously and, at least it appears to me, foolishly attempting to

cloud title. Specifically, the statute allows for a judgement on the merits similar to summary adjudication. Given the facts of my case, this motion should have been pursued by any competent attorney who was aware of these facts. Mr. Austin is a criminal defense attorney who has only agreed to help upon the favorable resolution of my appeal. How is it that a criminal defense attorney within two days of hearing the facts of my case can discover a motion that can quickly and speedily allow this Court to get to the merits of the case, avoiding all of the vexatious tactics employed by Geraci, such as these Motions to Compel that are before the Court and which are completely frivolous (there is absolutely no more information that can be provided through discovery that will contradict the Confirmation Email.) In other words, this provides additional support that Mr. Demian was negligent and/or purposefully fraudulent in his actions towards me as he was seeking not seeking to end this litigation quickly, rather, he was hoping to prolong it to increase his legal fees. As of today, Mr. Demian has been paid approximately $60,000. I note, at $10,000 a month as per our email agreement. And, on January 10, 2018, Mr. Demian emailed me a bill for his services up to the TRO Motion hearing – he is requesting $91,943.45 in addition to the approximate $60,000 he has already received. (See **Exhibit 12**; invoices from FTB for $91,943.45.)

Your honor, this is not just. His negligence and active deceit are worthy of nothing but contempt. I implore you to exercise your powers to the fullest extent to grant me what relief you can against Mr. Demian for his actions described herein.

The City Attorneys

> "The notion that government might be "conspiring" to violate the rights of citizens is more apt to invite derision than concern… [y]et, when conspiracy is understood simply as an agreement to do wrong, the possibility of that government might conspire against citizens is not only plausible but likely. Contemporary government often operates through bureaucratic consensus, which necessarily involves the joint actions of multiple parties. By its nature then governmental decision-making that goes awry is often amenable to characterization as a "conspiracy." Most practitioners recognize that federal law authorizes civil actions against persons who, acting under color of law, directly violate the civil rights of others. These suits are typically brought under the now familiar section 1983 of title 41.

It is well known from a jurisprudence perspective that the City is anti-cannabis.[15] The

[15] *See* County of San Diego v. San Diego NORML, 165 Cal. App. 4th 798, 81 in which two California counties (San Diego and San Bernardino challenged the California Compassionate Use Act (Proposition 215) and subsequent

create a false record of what took place in order to limit his liability. However, I respectfully submit to this Court, now that you have reviewed the Confirmation Email and the *Monarco* case, it is simply not credible to believe the City attorney told him his oral argument was "excellent." Alternatively, I respectfully request that this Court ask the City attorney on January 25th what she told him after the oral hearing. I believe this to be incredibly important as Mr. Demian without a doubt failed his professional obligations by failing to raise the Confirmation Email. He then failed his ethical obligations by failing to inform the court of his negligence. Lastly, his email stating that Mr. Hurtado is lying and that his oral argument was "excellent" actually crosses the line and goes from negligence to, as noted above, deceit. I implore this Court to get to the bottom of this issue. My retainer agreement with Mr. Demian has an arbitration provision that prevents me from suing him for legal malpractice. "'*Honesty* in dealing with the courts is of paramount importance, and *misleading a judge is, regardless of motives, a serious offense.*' " (*Paine v. State Bar* (1939) 14 Cal.2d 150, 154 [93 P.2d 103], italics added; see also *Di Sabatino v. State Bar* (1980) 27 Cal.3d 159, 162-163 [162 Cal.Rptr. 458, 606 P.2d 765]; *Garlow v. State Bar* (1982) 30 Cal.3d 912, 917 [180 Cal.Rptr. 831, 640 P.2d 1106].) Mr. Demian here is not just seeking to mislead, he is attempting active deceit. This goes beyond serious. Please your honor, as an officer of the court he was beholden to you to do what was right. Instead of making things right, he sent me an email stating he was withdrawing from my case before even speaking with me! He set in motion a set of events that compounded the irreparable harm to me.

Fourth, on December 11, 2017, a day before oral hearing on my Motion for Reconsideration, that I was positive would be approved, I spoke with another local attorney named Jacob Austin as I was looking for new counsel. I had previously been introduced to Mr. Austin, who was tentatively planning to help me with my various legal matters before, unfortunately I ultimately chose to go with Mr. Demian given what appeared to be his superior expertise. Here is what is important to note: Mr. Austin brought to my attention the ability to bring a motion to expunge a *lis pendens* pursuant to a section in the CCP. The purpose of this motion is to speedily address meritless lawsuits that seek to attach real property and unlawfully

City Attorney's Prosecutorial office, though while not germane to these Motions to Compel, but described in my supporting declaration, took advantage of a plea agreement I entered into and extorted $25,000 from me (the consequences of which are described and detailed in the Secured Litigation Investment Agreement). It also appears to me the City's Development Services violated my Constitutional due process rights by failing to provide notice to me and continuing to process the CUP application after explicitly telling me that they would not until they received a grant deed from me, which I never provided, and working with Geraci on the CUP application. Furthermore, that the City, when it filed its Answer to my application for a Writ of Mandate, after the TRO Motion hearing knowing Demian had been negligent, seeking legal fees and accusing me, among other things, of being guilty of "unclean hands," that is also is violating my rights because the City knew there was no probable cause against me.

Thus, it appears to me, that I *could* file a case against the City tomorrow in federal court pursuant to Section 1983 alleging a conspiracy against me by the City because of my pro-cannabis political activism. I have no desire to do so. I want to end this endless, soul-crushing litigation. As described below, I respectfully request this Court's help.

CONCLUSION

The Supreme Court of California case of *Neary v. Regents of University of California* has become my last hope and I have read and re-read this case as it is my only source of strength right now. Ironically, it is for this reason that I have requested from this Court a written opinion regarding what I know are my amateurship attempts at legal formatting, writing and reasoning. If I truly am culpable somehow and Geraci is entitled to my Property, I will similarly carry this Court's decision with me to prevent me from acting out on my anger against Geraci and opposing counsel. (Even if I am crazy, Mr. Demian is worthy of contempt under any scenario.)

The opinion and the dissent in *Neary* discuss the best way to effectuate justice in our society taking into account the practical realities of the world we all live in. I empathize with George Neary, the plaintiff is the case, as did the Supreme Court of California, it stated:

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legislation requiring counties to issue identification cards to qualified patients and primary caregivers, on the ground that these measures were preempted by provisions of the federal Controlled Substances Act.

> *His plea is sympathetic: "Neary has spent more than twelve years in an expensive, time-consuming, emotionally wrenching, and destructively distracting struggle which has included enough twists, turns, setbacks and victories for a novel. He has finally resolved that struggle through negotiation and voluntary agreement." Thwarting the settlement would frustrate the parties' mutual desire for an immediate end to their now 13- year-old dispute. The parties have pummeled each other long enough and have staggered to their respective corners.* ***We choose to give them help, not the prospect of further battering.***

This statement holds great power for me. The Supreme Court recognized Mr. Neary's extraordinary circumstances and the unique situation his case represented to substantive justice. They recognized his plea as being "sympathetic" and I hope this Court can recognize the extraordinary circumstances I am in and do the same for me. *Neary* also states:

> In ordinary civil actions such as the one before us, the parties come to court seeking resolution of a dispute between them. The litigation process they encounter is fraught with complexities, uncertainties, delays, and risks of many kinds. Different judges and juries may respond in different ways to the same evidence and argument. Public judicial proceedings may result in adverse publicity and unwanted disclosure of previously confidential information. Damage awards (or failure to recover) may cause financial hardship or ruin. These observations are not original. "More than a century ago, Abraham Lincoln gave the following advice: 'Discourage litigation. Persuade your neighbors to compromise wherever you can. Point out to them how the nominal winner is often a real loser-in fees, expenses, and waste of time.' This was sage advice then and remains so now." (Lynch, California Negotiation and Settlement Handbook, *supra,* p. vii (foreword by California Supreme Court Chief Justice Malcolm M. Lucas).)[16]
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> [...] The primary purpose of the public judiciary is "to afford a forum for the settlement of litigable matters between disputing parties." (*282 *Vecki v. Sorensen* (1959) 171 Cal.App.2d 390, 393 [340 P.2d 1020].) We do not resolve abstract legal issues, even when requested to do so. We resolve real disputes between real people. (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170 [188 Cal.Rptr. 104, 655 P.2d 306].) This function does not undermine our integrity or demean our function. By providing a forum for the peaceful resolution of citizens' disputes, we provide a cornerstone for ordered liberty in a democratic society.
>
> The Court of Appeal's concern for the integrity of trial court judgments is flawed in other respects. First, the notion that such a judgment is a statement of "legal truth" places too much emphasis on the *result* of litigation rather than its *purpose.* "In all civil litigation, the judicial decree is not the end but the means. At the end of the rainbow lies not a judgment, but some action (or cessation of action) by the defendant that the judgment produces-the payment of damages, or some specific performance, or the termination of some conduct. Redress is sought *through* the court, but *from* the defendant. ... The real value of the judicial pronouncement-what makes it a proper judicial resolution of a 'case

[16] Neary v. Regents of University of California (1992) 3 Cal.4th 273, 280 [10 Cal.Rptr.2d 859, 834 P.2d 119]

> or controversy' rather than an advisory opinion-is in the settling of some dispute *which affects the behavior of the defendant towards the plaintiff.*" (*Hewitt v. Helms* (1987) 482 U.S. 755, 761 [96 L.Ed.2d 654, 661, 107 S.Ct. 2672], original italics.)[17]

Your Honor, I respectfully submit to you the language above and note that Geraci's actions make a mockery of the Supreme Court of California and this Court. Above, the Supreme Court of California discusses the challenges to individuals "[i]n ordinary civil actions" and that the Courts "resolve[s] real disputes between real people," this is not an "ordinary" action in which there is a "real" dispute here. It is a fabricated one. "Redress is sought *through* the court, but ***from*** the defendant." This vexatious lawsuit makes a mockery of the very basis of our judicial system – it is a blatant unlawful attempt by Geraci to acquire my Property ***from*** the Court and our judicial system. Geraci knew this case had no merit, but he brought it anyway knowing my financial predicament, of his partial making by failing to provide funds he promised and that he knew I was relying on, and filing a *lis pendens* to prevent me from entering into other agreements. Had I not entered into an agreement with Mr. Martin the same day I had terminated the agreement with Geraci, given that Weinstein served me the next day with the Complaint and *lis pendens*, I would not have been able to legally enter into that agreement and I would have lost everything by now. But for my desperate need for capital at the time, Geraci stringing me along (as our email communications make clear) and Weinstein's legal practice tactics would have been successful and I would not be before this Court attempting, however inarticulate, to see justice done.

Your Honor it is already after 11:00 am and will already late and running to get this printed to submit this pleading to your Court downtown. Please forgive the failings herein. I would request a continuance, but I cannot, because it although shames me to say this in a permanent public record, I am compelled to do so - there are people depending on me: I have

[17] Neary v. Regents of University of California (1992) 3 Cal.4th 273, 281–282 [10 Cal.Rptr.2d 859, 834 P.2d 119]

become estranged from my partner, I am behind on payroll, debts, and I am living at the Property. This case left me destitute. I do the best I can to keep up appearances, but I cannot run a commercial business with no capital and a *lis pendens* on the Property. I have absolutely no funds. I long ago maxed out any and all financial sources of help. Attached hereto as **Exhibit 13** are the water and electrical bills that are due, which are scheduled to be turned off tomorrow. I have already asked for repeated extensions. I do not know whether I will have electricity when I see you on Thursday. If my father were not the first note holder, I would already not even have a place to stay (see **Exhibit 14**; Declaration of Dale L. Cotton, stating "were this a normal business relationship, I would have foreclosed on this property…")

Please, in the interest of real, substantive justice, investigate my allegations here. I clearly understand how outrageous they seem. Please do not do not elevate form over substance and deny this pleading or the relief you can grant me on procedural, non-substantive grounds. I implore you to use your power to its fullest extent to grant me whatever relief that you can, which I do not even know what it is, so I cannot ask for it. I understand that you must vet my allegations herein as to Gina Austin and Micahel Weinstein. But, as to Mr. Demian, he is clearly culpable for failing to raise the Confirmation Email at the oral hearing, for failing to let you know that he did so in the aftermath, and, blatantly attempting to create a false record to deceive this Court. I ask that you please set in place whatever motion is necessary to sanction him.

> "Violation of statewide rules of court and/or local rules is sanctionable by payment of the opposing party's reasonable expenses and counsel fees. (Cal. Rules of Court, rule 227.) Furthermore, use of sanctions against both attorneys and clients has been commended by our Supreme Court as an appropriate method for dealing with unjustified litigation. (*Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863, 873-874 [254 Cal.Rptr. 336, 765 P.2d 498].) (3c) Based on our review of this record, it appears that defense counsel violated several statewide rules of court and local rules, and that these violations resulted in unnecessary litigation and cost to plaintiff and her attorney in time and money. We therefore remand this matter to the trial court to consider, and, if appropriate, award

sanctions against defendants and/or their attorneys and in favor of plaintiff."[18]

"[I]t is well established that California's Constitution provides the courts, including the Courts of Appeal, with inherent powers to control judicial proceedings. (Cal. Const., art. VI, § 1; *Walker v. Superior Court* (1991) 53 Cal.3d 257, 266-267 [279 Cal.Rptr. 576, 807 P.2d 418]; *Keeler v. Superior Court* (1956) 46 Cal.2d 596, 600 [297 P.2d 967].) To the same effect, Code of Civil Procedure section 128, subdivision (a)(8) authorizes every court '[t]o amend and control its process and orders so as to make them conform to law and justice.' This provision is consistent with and codifies the courts' traditional and inherent judicial power to do whatever is necessary and appropriate, in the absence of controlling legislation, to ensure the prompt, fair, and orderly administration of justice."[19] (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273, 276–277.)

Your Honor, I conclude with a plea, I realize that you are an arbitrator and must remain impartial. However, this Court is meant to give justice and vindicate the rights of the wronged. At the Court hearing this Thursday, unless Austin desires to perjure herself, you can ask her if she drafted the purchase agreements in early 2017, thereby reflecting her knowledge that the November 2016 agreement was not a final purchase agreement as Geraci and Weinstein allege. At the hearing, you can ask Weinstein why, given this Court's ruling denying his demurrer, he has continued to prosecute this case that has no factual or legal basis. I realize that my requests may be excessive, but, I respectfully note the following in the hopes that it supports my requests here. In *Ross v. Figueroa* (2006) 139 Cal.App.4th 856; 43 Cal. Rptr. 3d 289, the Court of Appeal [explicitly recognized the necessity and approved active judicial behavior in providing affirmative assistance to *pro se* clients] such as myself: "the judge cannot rely on the pro per

[18] Datig v. Dove Books, Inc. (1999) 73 Cal.App.4th 964, 982–983 [87 Cal.Rptr.2d 719], as modified on denial of reh'g (Aug. 13, 1999)

[19]

litigants to know each of the procedural steps, to raise objections, to ask all the relevant questions of witnesses, and to otherwise protect their due process rights."

Lastly, I sincerely believe that this case also represents something larger than myself and that if the damage and harm caused to me by Geraci and perpetuated and augmented by the acts of counsel as described above, including their manipulations of this Court, are allowed to pass, then it will prove that the concern articulated by Justice Kennard in *Neary* in 1992 has ceased to be "an already too common perception," but has in fact become reality and "the quality of justice a litigant can expect **is** proportional to the financial means at the litigant's disposal." *Neary v. Regents of University of California* (1992) 3 Cal.4th 273, 287 (emphasis added).

Dated: January 22, 2017

By: _____
DARRYL COTTON

Verification: I, Darryl Cotton, verify that all statements herein made that declare actions or beliefs as to myself are true and correct and I declare under penalty of perjury under the State of California that the foregoing is true and correct. I also verify and confirm that all exhibits attached hereto are true and correct copies as stated.	By: _____ DARRYL COTTON

EXHIBIT 1

Scripps Emergency Physicians - Scripps Mercy Hospital
4077 5th Ave • San Diego, CA 92103 • Tel: (619) 686-3800

- ☐ Michael Amadeo, NP • DEA #: MA3334048
- ☐ Cara Bergamo, MD • DEA #: FB6283242
- ☐ Chad M Bernhardt, DO • DEA #: FB0377348
- ☐ David Bremer, MD • DEA #: FB3655686
- ☐ Paul Chiller, MD • DEA #: FC0390639
- ☐ Elizabeth Christiansen, NP • DEA #: MK3775891
- ☐ Rebekah Cook, NP • DEA #: MC2972710
- ☐ Tracie Gadler, NP • DEA #: MG1889495
- ☐ Mark Keedy, NP • DEA #: MK0917681
- ☐ Haleigh Kotter, MD • DEA #: FK0087537
- ☑ Nicole Martinez, NP • DEA #: MR2117687
- ☐ Gary R. Polefrone, MD • DEA #: BP6090586
- ☐ Alejandra Prieto, NP • DEA #: MP3998039
- ☐ Gemma Ripperton, NP • DEA #: MR1784645
- ☐ Julie Sullivan, MD • DEA #: FS2037681
- ☐ Kyle Venstrom, MD • DEA #: FV6419368
- ☐ Thomas Violanta, PA • DEA #: MV0823080
- ☐ Katie Zielinski, NP • DEA #: MZ3336232

Patient Information

COTTON, DARRYL
MRN: 700464349 DOB: 05/29/1960 M/57
12/12/17 ACCT: 102942964

SCRIPPS MERCY HOSPITAL, SAN DIEGO

Circle No. of Drugs Prescribed: 1 2 3

Prescription is void if number of drugs prescribed is not noted

No Refills allowed for Schedule II

℞ 1 Keppra 250mg PO
BID #14

- ☐ 1 - 24 ☐ 25 - 49
- ☐ 50 - 74 ☐ 75 - 100
- ☐ 101 - 150 ☐ 151 & OVER
- ☐ ___ Units ☐ Do not substitute
- Refill 0 - 1 - 2 - 3 - 4 - PRN

℞ 2

- ☐ 1 - 24 ☐ 25 - 49
- ☐ 50 - 74 ☐ 75 - 100
- ☐ 101 - 150 ☐ 151 & OVER
- ☐ ___ Units ☐ Do not substitute
- Refill 0 - 1 - 2 - 3 - 4 - PRN

℞ 3

- ☐ 1 - 24 ☐ 25 - 49
- ☐ 50 - 74 ☐ 75 - 100
- ☐ 101 - 150 ☑ 151 & OVER
- ☐ ___ Units ☐ Do not substitute
- Refill 0 - 1 - 2 - 3 - 4 - PRN

Date 12/12/17

SCRIPT 58316 Order # 2322767-1

VERIFICATION BOX: HOLD BETWEEN THUMB AND FOREFINGER OR BREATHE ON IT. COLOR WILL DISAPPEAR, THEN REAPPEAR

SP100 RX_2_CA_multi_V FileRx.com 800-307-7717 RxPrints.com

COTTON, DARRYL
MRN: 700464349 DOB: 05/29/1960 M/57
12/12/17 102942964
ENGLISH

SCRIPPS MERCY HOSPITAL, SAN DIEGO

EXHIBIT 2

I, Joe Hurtado, declare:

1. I am an individual residing in the County of San Diego and I have personal knowledge of the facts stated below and, if called as a witness, I could and would testify.

2. Between late 2016 and early 2017, the following sequence of events took place: (i) Mr. Darryl Cotton informed me that he sold his property to Mr. Larry Geraci; (ii) Mr. Cotton told me that he expected Mr. Geraci would breach his agreement; (iii) Mr. Cotton asked that I help him locate a new buyer for his property; (iv) I brokered a deal between Mr. Cotton and Mr. Richard Martin for the sale of Mr. Cotton's property to Mr. Martin.

3. The day after the deal with Mr. Cotton and Mr. Martin was reached on March 21, 2017, Mr. Geraci via his counsel, Mr. Michael Weinstein, initiated a lawsuit against Mr. Cotton seeking to enforce a previous agreement between Mr. Cotton and himself (the "Geraci Litigation").

4. Materially, on March 6, 2017, I attended a local cannabis event at which Gina Austin was a speaker. At that event, I introduced myself and, at Mr. Cotton's request, let her know that he would not be attending and speaking with her.

5. Throughout the course of the Geraci Litigation, the following sequence of events took place: (i) Mr. Cotton attempted to represent himself *pro se* in the Geraci Litigation; (ii) Mr. Cotton chose to no longer represent himself in the Geraci Litigation and asked that I help him finance and facilitate his legal representation; (iii) I identified Mr. David Demian and facilitated the full legal representation of Mr. Cotton by Mr. Demian ; (iv) Mr. Demian , I believe, failed to live up to his professional obligations by, *inter alia*, (a) failing to discover and/or argue to the Court in the Geraci Litigation the concept of promissory estoppel in response to Mr. Geraci's demurrer to Mr. Cotton's Cross-Complaint; (b) failing to raise with the Court, at the oral hearing for a temporary restraining order ("TRO") applied for by Mr. Cotton, evidence that is material and necessary for the Court's proper adjudication of the issues before it; (c) when confronted by me, outside the courtroom

immediately after the TRO hearing, he acknowledged his failure to raise material arguments and evidence in the moving papers, but denied that the fact that his failure to do so was reflective of any wrongdoing; (d) not informing the Court of his failure to raise said arguments after the TRO hearing; and (e) terminating his representation of Mr. Cotton by email before even speaking with Mr. Cotton immediately after the oral hearing on the TRO.

6. I note that after the TRO hearing, I was approximately 5 feet away from Mr. Demian and the attorney representing the City of San Diego. I expressly heard the attorney for the City of San Diego say something along the lines of: "the moving papers were great" and that Mr. Demian "should have won."

7. Summarily, I originally supported Mr. Cotton to protect my own financial interest and as an investment. However, for various reasons which are being put forth by Mr. Cotton, this litigation has become incredibly more expensive, time consuming and mentally and emotionally challenging than originally envisioned. And which is hard to describe in words.

8. Notably, the day after the Court declined Mr. Cotton's motion for reconsideration of his application for a TRO, thereby confirming that Mr. Cotton was unlikely to prevail in the Geraci Litigation, I informed him that I would be "cutting my losses" and would cease funding him personally and the Geraci Litigation. This took place on December 13, 2017. Thereafter, on the same day, Mr. Cotton came to where I was located uninvited and pleaded with me to continue my support. I refused. Mr. Cotton physically assaulted me. I threatened to call the authorities and Mr. Cotton just sat down and became, for lack of a better expression, neurotic (e.g., speaking to himself, talking to others, being emotional, etc.)

9. Mr. Cotton was speaking and it appeared that he thought he was in the courtroom or at his property on Federal Boulevard. His speech was nonsensical. Understanding his situation, I did not

call the police and instead called a medical doctor I had recently been introduced to, Dr. Candido, and explained the situation to her.

10. Dr. Candido came to the location where Mr. Cotton was located and examined Mr. Cotton.

11. After diagnosing him, Dr. Candido recommended that we take Mr. Cotton to the Emergency Room or call the authorities as she believed him to be a danger to himself and others.

12. I spoke with Dr. Candido and she agreed that so long as Mr. Cotton was not allowed to drive and he could stay at the residence with me under my supervision, it would not be necessary to call the authorities.

13. It is against my recommendation that Mr. Cotton is submitting his response to the Court on the date hereof. I skimmed the very large document that appears to be over 1,000 pages that he intends to file with the Court today and strongly recommended that he request additional time from the Court, suggesting that to file such a document may actually be detrimental to him. However, Mr. Cotton has stated his situation is even more dire than before and that he requires this action to be speedily adjudicated, not just because of his dire financial situation, but for the well-being of his mental and emotional state.

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

Joe Hurtado

1/22/2018

EXHIBIT 3

I, Dr. Carolyn Candido, declare:

1. I am a licensed physician in the State of California.
2. On December 13, 2017, I was contacted by Mr. Joe Hurtado who requested I examine a friend of his, Mr. Darryl Cotton, who was speaking incoherently. Mr. Hurtado stated he was concerned that Mr. Cotton may require medical attention but that Mr. Cotton did not want to go to the Emergency Room.
3. I traveled to Mr. Hurtado's residence and met with Mr. Hurtado and Mr. Cotton.
4. Mr. Cotton was in a room by himself and initially did not allow me to examine him. After approximately thirty minutes, Mr. Hurtado spoke with Mr. Cotton who then allowed me to perform a physical examination.
5. Mr. Cotton had an elevated pulse, was speaking incoherently and exhibited signs of anxiety, panic and was expressing suicidal thoughts. His language vacillated from being clear to incoherent. I am unclear as to what he was attempting to express, but from what I could make out, he was in an emotional state due to matters related to some legal matter regarding his property.
6. It is my diagnosis that he was suffering from Acute Stress Disorder and that at that moment in time represented a danger to himself and others. Because of his express statements regarding suicide and other expressions of violence as to unidentified third-parties, I repeatedly requested that Mr. Cotton go to the Emergency Room, which he refused.
7. I communicated with Mr. Hurtado my diagnosis and expressed my concern for Mr. Cotton regarding his statements, to the extent that they were clear, as they reflected an intent to harm himself and others. It was my recommendation that Mr. Cotton not be by himself.
8. After speaking with Mr. Hurtado regarding Mr. Cotton, Mr. Hurtado promised to allow Mr. Cotton to remain at that residence until such time as Mr. Cotton was calm.

9. Since that evening I have not met or spoken with Mr. Cotton.

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

January 22, 2018

Dr. Carolyn Candido

EXHIBIT 4

Exhibit A

Compilation of all email correspondence between Darryl Cotton and Larry Geraci

Table of Contents

Format: Sender; Receiver; Date; Time

Subject: Automatic reply: test mail
From: Larry Geraci <Larry@tfcsd.net>
To: darryl@dalbercia.us
Date: Thursday, October 20, 2016 10:42:49 AM GMT-08:00

Thank you for your email...

I will be out of the office until Wednesday, October 26th, 2016. If you should need immediate assistance, please contact Becky at: becky@tfcsd.net. You may also contact the office as well.

Thank you.

Subject: Drawing
From: Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <darryl@inda-gro.com>
Date: Monday, October 24, 2016 11:38:28 AM GMT-08:00

Best Regards,

Larry E. Geraci, EA

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

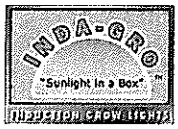
Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

Circular 230 Disclaimer:

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

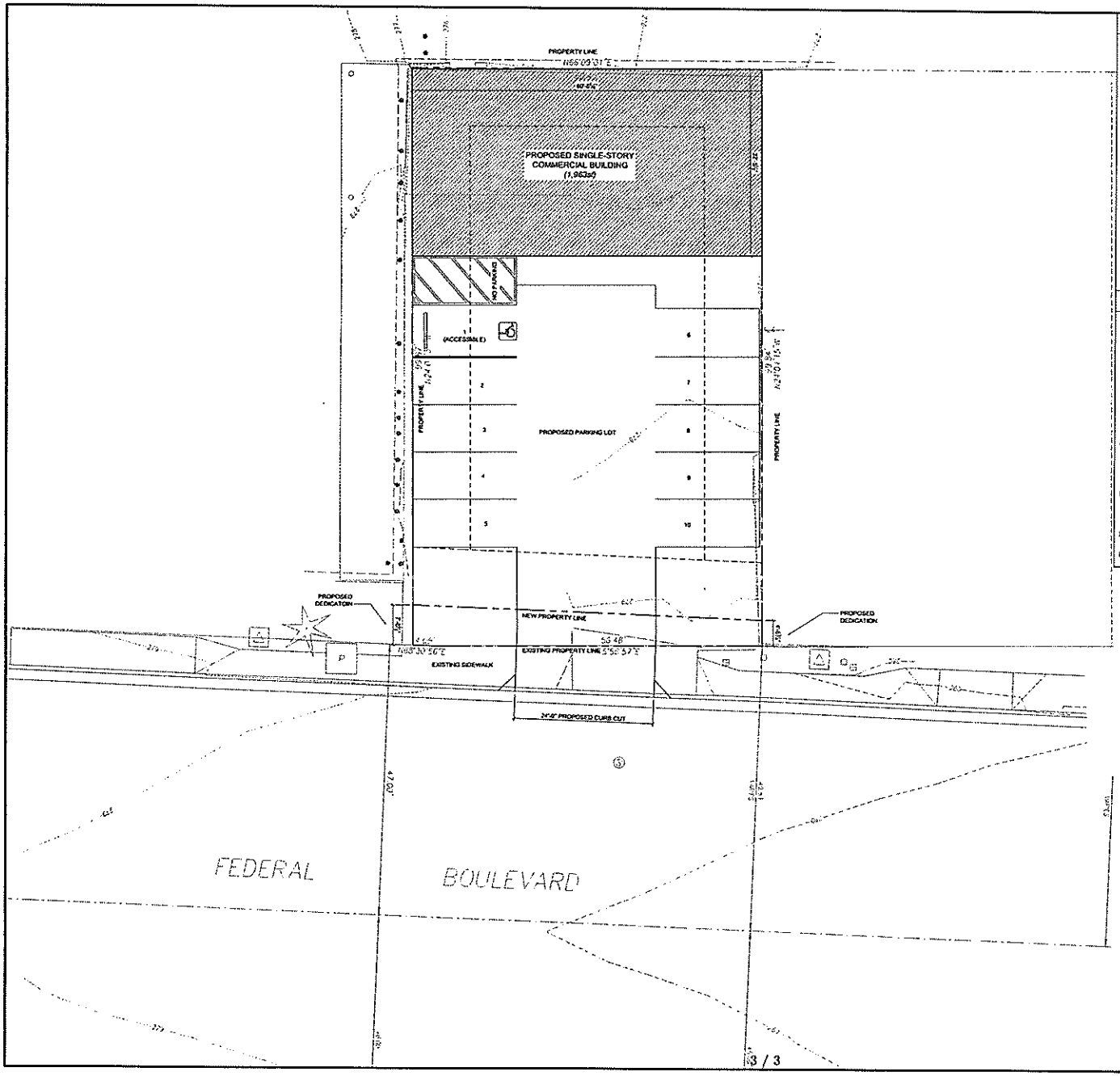
From: darryl@dalbercia.us [mailto:darryl@dalbercia.us] **On Behalf Of** Darryl Cotton
Sent: Monday, October 24, 2016 12:37 PM
To: Larry Geraci <Larry@tfcsd.net>
Subject: Test Send

Darryl Cotton, President



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

6176 Federal Blvd.
San Diego, CA. 92114
USA



SITE PLAN LEGEND

- PROPERTY LINE
- OUTLINE OF PROPOSED STRUCTURES
- AREA OF EXISTING LANDSCAPE
- AREA OF EASEMENT
- AREA OF EXISTING HARDSCAPE
- SITE DRAINAGE PATTERN

SITE PLAN NOTES

A. The site plan is for informational and general site reference only. Refer to other construction documents for complete scope of work.
B. Before commencing any site foundation or slab cutting or excavation, the contractor shall verify and mark locations of all site utilities, dimensions and conditions. These include but are not limited to property lines, setback location to all new or existing walls, easements (if any), existing site utilities, including water, sewer, gas and electrical lines and any other new or existing site items which could affect in any way the construction of the building. Flag or otherwise mark all locations of site property lines, easements (if any), underground utilities, and indicate utility type.
C. The Contractor or subcontractor shall notify TECHNE if any conflicts or discrepancy occurs between the information on this plan and actual field conditions. Do not proceed with work in conflict with these drawing until written or verbal instructions are issued by the Architect's office.
D. Protect and mark all existing building structure including walls, beams, columns, area separation walls, and other items that are part of the existing structure and not part of the scope of the tenant improvement, and mark perimeter of construction zone.
E. Coordinate with other tenants the temporary shutoff of any site utilities.
F. Refer to Topographic Survey for additional information.

1 SITE PLAN - PROPOSED
SCALE: 1/8" = 1'-0"

TECHNE
DESIGN | DEVELOPMENT
3954 30th Street, San Diego, CA 92104
techne-us.com
o 619-940-5814 m 323-595-5814

CONSULTANTS

LICENSED ARCHITECT MICHAEL RENE WINTON C-19371 REN. 08/30/2013 STATE OF CALIFORNIA

Federal Blvd. MMCC
6176 Federal Blvd.
San Diego,CA 92114

OWNER

Owner
Address
City, CA Zip Code

#	MARK	DATE	DESCRIPTION

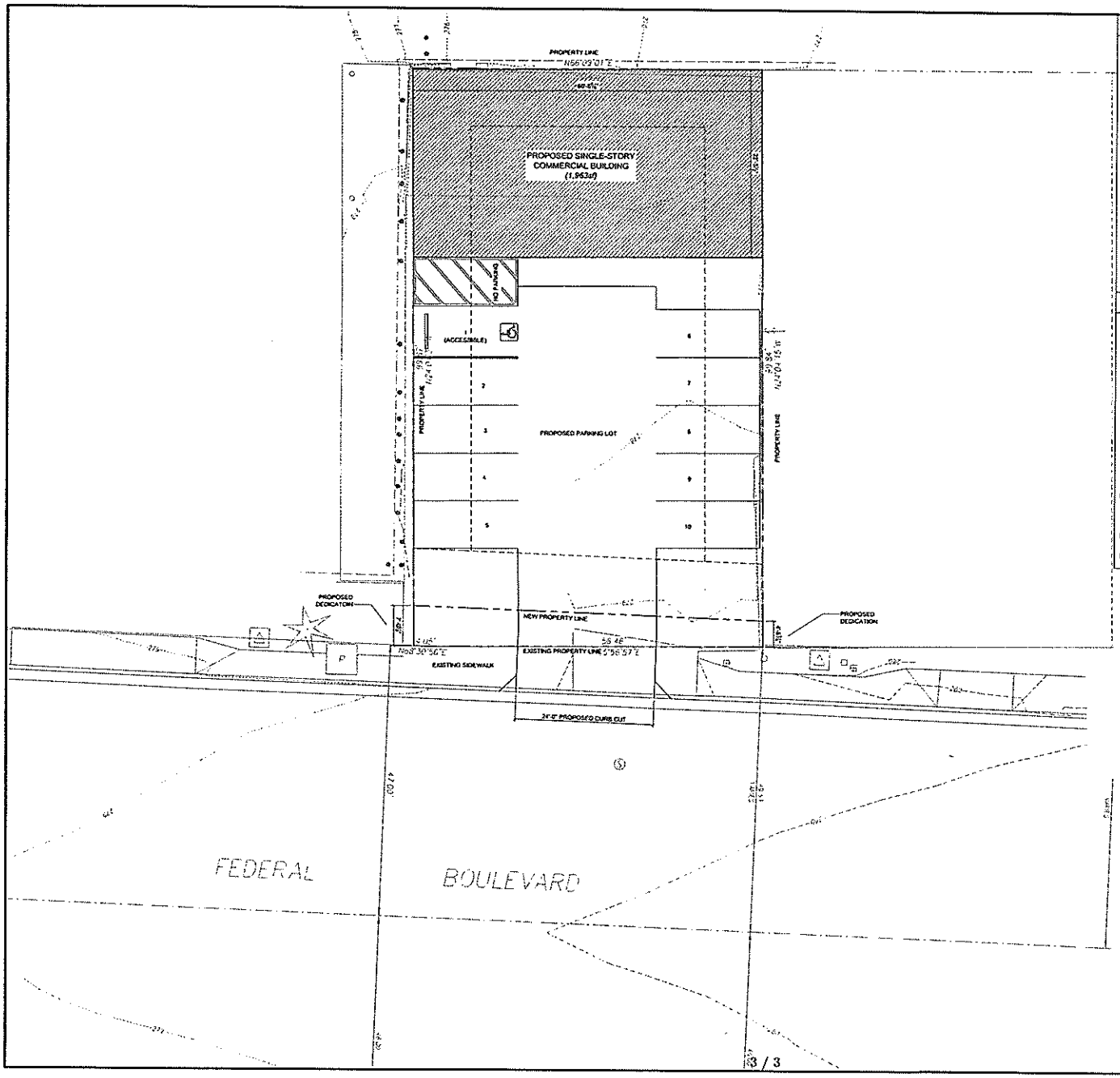
PROJECT NO: 1626
CAD DWG FILE:
DRAWN BY: AS, MM, JC
CHK'D BY: AS, MM

SHEET TITLE
SITE PLAN - PROPOSED - Scheme B

A102

SHEET 23 OF 46

3 / 3



SITE PLAN LEGEND

- PROPERTY LINE
- OUTLINE OF PROPOSED STRUCTURES
- AREA OF EXISTING LANDSCAPE
- AREA OF EASEMENT
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1 SITE PLAN - PROPOSED
SCALE: 1/8" = 1'-0"

TECHNE
DESIGN | DEVELOPMENT
3956 30th Street, San Diego, CA 92104
techne-us.com sustainableintheheart.org
o 619-940-5814 m 323-595-5814

CONSULTANTS

LICENSED ARCHITECT MICHAEL RENE JOHNSON C-19378 REN. 08/31/2023 STATE OF CALIFORNIA

Federal Blvd. MMCC
6176 Federal Blvd.
San Diego,CA 92114

OWNER

Owner
Address
City, CA Zip Code

NO.	DATE	BY
MARK	DATE	DESCRIPTION

PROJECT NO: 1626
CAD DWG FILE, [illegible]
DRAWN BY: AS, MJM, EC
CHK'D BY: AS, MJM
COPYRIGHT: [boilerplate]

SHEET TITLE
SITE PLAN - PROPOSED - Scheme B

A102

SHEET 23 OF 48

Subject: Agreement
From: Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <darryl@inda-gro.com>
Date: Wednesday, November 2, 2016 2:11:51 PM GMT-08:00

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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

Larry Geraci

Darryl Cotton

ACKNOWLEDGMENT

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

State of California
County of San Diego)

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

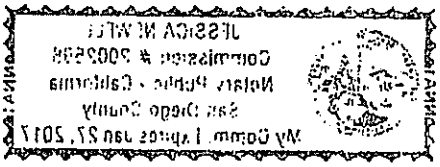
personally appeared Darryl Cotton and Larry Geraci,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their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

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

WITNESS my hand and official seal.

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

Signature _____ (Seal)



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Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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

Larry Geraci

Darryl Cotton

ACKNOWLEDGMENT

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

State of California
County of San Diego)

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

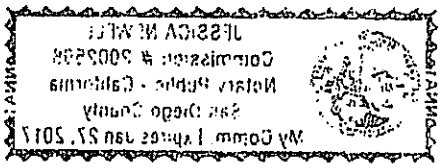
personally appeared Darryl Cotton and Larry Geraci,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their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

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

WITNESS my hand and official seal.

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

Signature _____ (Seal)



Subject: Re: Agreement
From: Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <darryl@inda-gro.com>
Date: Wednesday, November 2, 2016 8:13:54 PM GMT-08:00

No no problem at all

Sent from my iPhone

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

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

Darryl Cotton, President

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

6176 Federal Blvd.
San Diego, CA. 92114
USA

On Wed, Nov 2, 2016 at 3:11 PM, Larry Geraci <Larry@tfcsd.net> wrote:

> *Best Regards,*

Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Subject: Federal Blvd need sig ASAP
From: Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <darryl@inda-gro.com>
Date: Monday, November 14, 2016 10:26:09 AM GMT-08:00

Hi Darryl,

Can you sign and email back to me asap?

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

Authorization to view and copy Building Records from the County of San Diego Tax Assessor

I, Darryl Cotton, owner of the property located at 6176 Federal Blvd, San Diego, CA (APN 543-020-02-00) authorize Abhay Schweitzer, Benjamin Peterson, and/or Carlos Gonzalez of TECHNE to view and make copies of the County of San Diego Tax Assessor Building Records.

_____

Signature

_____/_____/_____

Date

Authorization to view and copy Building Records from the County of San Diego Tax Assessor

I, Darryl Cotton, owner of the property located at 6176 Federal Blvd, San Diego, CA (APN 543-020-02-00) authorize Abhay Schweitzer, Benjamin Peterson, and/or Carlos Gonzalez of TECHNE to view and make copies of the County of San Diego Tax Assessor Building Records.

_____

Signature

_____/_____/_____

Date

Subject: Federal Blvd Property
From: Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <darryl@inda-gro.com>
Date: Monday, February 27, 2017 8:49:16 AM GMT-08:00

Hi Daryl,

Attached is the draft purchase of the property for 400k. The additional contract for the 400k should be in today and I will forward it to you as well.

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY ("**Agreement**") is made and entered into this _____ day of _____, 2017, by and between DARRYL COTTON, an individual resident of San Diego, CA ("**Seller**"), and 6176 FEDERAL BLVD TRUST dated _____, 2017, or its assignee ("**Buyer**").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually covenanted and agreed by Seller and Buyer as follows:

1. DEFINITIONS. For the purposes of this Agreement the following terms will be defined as follows:

a. **"Real Property"**: That certain real property commonly known as 6176 Federal Blvd., San Diego, California, as legally described in Exhibit "A" attached hereto and made a part hereof.

b. **"Date of Agreement"**: The latest date of execution of the Seller or the Buyer, as indicated on the signature page.

c. **"Purchase Price"**: The Purchase Price for the Property (defined below) is Four Hundred Thousand Dollars ($400,000.00).

d. **"Due Diligence Period"**: The period that expires at 5:00 p.m., California time, on the date the CUP (defined below) is issued to Buyer or its designated assign.

e. **"Escrow Agent"**: The Escrow Agent is: [NAME]

f. **"Title Company"**: The Title Company is: [NAME]

g. **"Title Approval Date"**: The Title Approval Date shall be twenty (20) days following Buyer's receipt of a Preliminary Title Report and all underlying documents.

h. **"Closing"**, **"Closing Date"** and **"Close of Escrow"**: These terms are used interchangeably in this Agreement. The closing shall occur on or at 5:00 p.m., California time, on the date fifteen (15) days from the date Buyer or its designated assign is approved by the city of San Diego for a conditional use permit to distribute medical marijuana from the Real Property ("CUP"). Notwithstanding the foregoing, in no event shall Closing occur later than March 1, 2018, unless mutually agreed by the parties.

i. **"Notices"** will be sent as follows to:

Buyer: 6176 Federal Blvd. Trust
6176 Federal Blvd.

San Diego, California 92114
Attn:
Fax No.:
Phone No.:

with a copy to: Austin Legal Group, APC
3990 Old Town Ave, A-112
San Diego, CA 92110,

Seller: Darryl Cotton
Address:
City, State, Zip
Attn:
Fax No.:
Phone No.:

Escrow Agent: [NAME]
[ADDRESS]

2. PURCHASE AND SALE. Subject to all of the terms and conditions of this Agreement and for the consideration set forth, upon Closing Seller shall convey to Buyer, and Buyer shall purchase from Seller, all of the following:

a. The Real Property and all of Seller's interest in all buildings, improvements, facilities, fixtures and paving thereon or associated therewith (collectively, the "**Improvements**"), together with all easements, hereditaments and appurtenances thereto, subject only to the Permitted Exceptions in accordance with Section 5.b;

b. All other right, title and interest of Seller constituting part and parcel of the Property (hereinafter defined), including, but not limited to, all lease rights, agreements, easements, licenses, permits, tract maps, subdivision/condominium filings and approvals, air rights, sewer agreements, water line agreements, utility agreements, water rights, oil, gas and mineral rights, all licenses and permits related to the Property, and all plans, drawings, engineering studies located within, used in connection with, or related to the Property, if any in Seller's possession (collectively, the "**Intangibles**"). (Reference herein to the "**Property**" shall include the Real Property, Improvements, and Intangibles).

3. PURCHASE PRICE AND PAYMENT; DEPOSIT. The Purchase Price will be paid as follows:

a. Deposit. There shall be no Deposit required. It is acknowledged and agreed that Buyer has provided Seller alternative consideration in lieu of the Deposit.

b. Cash Balance. Buyer shall deposit into Escrow the cash balance of the Purchase Price, plus or minus prorations and costs pursuant to Section 15, in the form of cash, bank

cashier's check or confirmed wire transfer of funds not less than one (1) business day prior to the Close of Escrow.

4. ESCROW.

a. Execution of Form Escrow Instructions. Seller shall deposit this Agreement with Escrow Agent upon full execution of same by Buyer and Seller, at which time escrow (the "**Escrow**") shall be deemed to be opened. Escrow Agent shall thereafter promptly execute the original of this Agreement, provide copies thereof to Buyer and Seller. Immediately upon receipt of such duly executed copy of this Agreement, Escrow Agent shall also notify Seller and Buyer of the opening of Escrow. This Agreement shall act as escrow instructions to Escrow Agent, and Escrow Agent shall hereby be authorized and instructed to deliver the documents and monies to be deposited into the Escrow pursuant to the terms of this Agreement. Escrow Agent shall prepare the Escrow Agent's standard-form escrow agreement (if such a form is required by Escrow Agent), which shall, to the extent that the same is consistent with the terms hereof and approved by Seller and Buyer and not exculpate Escrow Agent from acts of negligence and/or willful misconduct, inure to the benefit of Escrow Agent. Said standard form escrow instructions shall be executed by Buyer and Seller and returned to Escrow Agent within three (3) business days from the date same are received from Escrow Agent. To the extent that Escrow Agent's standard-form escrow agreement is inconsistent with the terms hereof, the terms of this Agreement shall control. Should either party fail to return the standard form escrow instructions to Escrow Agent in a timely manner, such failure shall not constitute a material breach of this Agreement.

b. Close of Escrow. Except as provided below, Escrow shall close no later than the date provided for in Section 1, above.

c. Failure to Receive CUP. Should Buyer be denied its application for the CUP or otherwise abandon its CUP application, it shall have the option to terminate this Agreement by written notice to Seller, and the parties shall have no further liability to one another, except for the "**Buyer's Indemnity**" (as detailed in Section 8 below).

5. TITLE MATTERS.

a. Preliminary Title Report/Review of Title. As soon as practicable, but in no event later than five (5) business days after the Date of Agreement, Escrow Agent shall have delivered or shall cause to be delivered to Buyer a Preliminary Title Report issued by Title Company covering the Property (the "**Preliminary Title Report**"), together with true copies of all documents evidencing matters of record shown as exceptions to title thereon. Buyer shall have the right to object to any exceptions contained in the Preliminary Title Report and thereby disapprove the condition of title by giving written notice to Seller on or before the Title Approval Date as defined in Section 1. Any such disapproval shall specify with particularity the defects Buyer disapproves. Buyer's failure to timely disapprove in writing shall be deemed an approval of all exceptions. If Buyer disapproves of any matter affecting title, Seller shall have the option to elect to (i) cure or remove any one or more of such exceptions by notifying Buyer within five (5) business days from Seller's receipt of Buyer's disapproval, or (ii) terminate this Agreement, in which event Buyer shall receive a refund of its Deposit and all accrued interest, and the parties shall have no

further liability to one another, except for the Buyer's Indemnity. Seller's failure to timely notify Buyer of its election, as provided above, shall conclusively be deemed to be Seller's election to terminate this Agreement. For three (3) business days following Seller's actual or deemed election to terminate this Agreement, Buyer shall have the right to waive, in writing, any one or more of such title defects that Seller has not elected to cure or remove and thereby rescind Seller's election to terminate and close Escrow, taking title to the Property subject to such title exceptions.

b. Permitted Exceptions. The following exceptions shown on the Preliminary Title Report (the "**Permitted Exceptions**") are approved by Buyer:

(1) Real property taxes not yet due and payable as of the Closing Date, which shall be apportioned as hereinafter provided in Section 15;

(2) Unpaid installments of assessments not due and payable on or before the Closing Date;

(3) Any matters affecting the Property that are created by, or with the written consent of, Buyer;

(4) The pre-printed exclusions and exceptions that appear in the Owner's Title Policy issued by the Title Company; and

(5) Any matter to which Buyer has not delivered a notice of a Title Objection in accordance with the terms of Section 5.a hereof.

Notwithstanding the foregoing or anything else to the contrary, Seller shall be obligated, regardless of whether Buyer objects to any such item or exception, to remove or cause to be removed on or before Closing, any and all mortgages, deeds of trust or similar liens securing the repayment of money affecting title to the Property, mechanic's liens, materialmen's liens, judgment liens, liens for delinquent taxes and/or any other liens or security interests ("**Mandatory Cure Items**").

c. Title Policy. The Title Policy shall be an ALTA Standard Owners Policy with liability in the amount of the Purchase Price, showing fee title to the Property as vested in Buyer, subject only to the Permitted Exceptions. At Buyer's election, the Title Policy to be delivered to Buyer shall be an ALTA Extended Owners Policy, provided that the issuance of said ALTA Policy does not delay the Close of Escrow. The issuance by Title Company of the standard Title Policy in favor of Buyer, insuring fee title to the Property to Buyer in the amount of the Purchase Price, subject only to the Permitted Exceptions, shall be conclusive evidence that Seller has complied with any obligation, express or implied, to convey good and marketable title to the Property to Buyer.

d. Title and Survey Costs. The cost of the standard portion of the premium for the Title Policy shall be paid by the Seller. Buyer shall pay for the survey, if necessary, and the premium for the ALTA portion of the Title Policy and all endorsements requested by Buyer.

6. SELLER'S DELIVERY OF SPECIFIED DOCUMENTS. Seller has provided to Buyer those necessary documents and materials respecting the Property identified on Exhibit "B", attached hereto and made a part hereof (**"Property Information"**). The Property Information shall include, inter alia, all disclosures from Seller regarding the Property required by California and federal law.

7. DUE DILIGENCE. Buyer shall have through the last day of the Due Diligence Period, as defined in Section 1, in which to examine, inspect, and investigate the Property Information, the Property and any other relating to the Property or its use and or Compliance with any applicable zoning ordinances, regulations, licensing or permitting affecting its use or Buyer's intention use and, in Buyers sole discretion) and, in Buyer's sole and absolute judgment and discretion, to determine whether the Property is acceptable to Buyer in its present condition and to obtain all necessary internal approvals. Notwithstanding anything to the contrary in this Agreement, Buyer may terminate this Agreement by giving notice of termination (a **"Due Diligence Termination Notice"**) to Seller on or before the last day of the Due Diligence Period, in which event Buyer shall receive the immediate return of the Deposit and this Agreement shall terminate, except that Buyer's Indemnities set forth on Section 8, shall survive such termination.

8. PHYSICAL INSPECTION; BUYERS INDEMNITIES.

a. Buyer shall have the right, upon reasonable notice and during regular business hours, to physically inspect on a non-intrusive basis, and to the extent Buyer desires, to cause one or more representatives of Buyer to physically inspect on a non-intrusive basis, the Property without interfering with the occupants or operation of the Property Buyer shall make all inspections in good faith and with due diligence. All inspection fees, appraisal fees, engineering fees and other expenses of any kind incurred by Buyer relating to the inspection of the Property will be solely Buyer's expense. Seller shall cooperate with Buyer in all reasonable respects in making such inspections. To the extent that a Phase I environmental assessment acceptable to Seller justifies it, Buyer shall have the right to have an independent environmental consultant conduct an environmental inspection in excess of a Phase I assessment of the Property. Buyer shall notify Seller not less than one (1) business day in advance of making any inspections or interviews. In making any inspection or interviews hereunder, Buyer will treat, and will cause any representative of Buyer to treat, all information obtained by Buyer pursuant to the terms of this Agreement as strictly confidential except for such information which Buyer is required to disclose to its consultants, attorneys, lenders and transferees.

b. Buyer agrees to keep the Property free and clear of all mechanics' and materialmen's liens or other liens arising out of any of its activities or those of its representatives, agents or contractors. Buyer shall indemnify, defend (through legal counsel reasonably acceptable to Seller), and hold Seller, and the Property, harmless from all damage, loss or liability, including without limitation attorneys' fees and costs of court, mechanics' liens or claims, or claims or assertions thereof arising out of or in connection with the entry onto, or occupation of the Property by Buyer, its agents, employees and contractors and subcontractors. This indemnity shall survive the sale of the Property pursuant to the terms of this Agreement or, if such sale is not consummated, the termination of this Agreement. After each such inspection or investigation of the Property,

Buyer agrees to immediately restore the Property or cause the Property to be restored to its condition before each such inspection or investigation look place, at Buyer's sole expense.

9. COVENANTS OF SELLER. During the period from the Date of Agreement until the earlier of termination of the Agreement or the Close of Escrow, Seller agrees to the following:

a. Seller shall not permit or suffer to exist any new encumbrance, charge or lien or allow any easements affecting all or any portion of the Property to be placed or claimed upon the Property unless such encumbrance, charge, lien or easement has been approved in writing by Buyer or unless such monetary encumbrance, charge or lien will be removed by Seller prior to the Close of Escrow.

b. Seller shall not execute or amend, modify, renew, extend or terminate any contract without the prior written consent of Buyer, which consent shall not be unreasonably withheld. If Buyer fails to provide Seller with notice of its consent or refusal to consent, Buyer shall be deemed to have approved such contract or modification, except that no contract entered into by Seller shall be for a period longer than thirty (30) days and shall be terminable by the giving of a thirty (30) day notice.

c. Seller shall notify Buyer of any new matter that it obtains actual knowledge of affecting title in any manner, which was not previously disclosed to Buyer by the Title Report. Buyer shall notify Seller within five (5) business days of receipt of notice of its acceptance or rejection of such new matter. If Buyer rejects such matter, Seller shall notify Buyer within five (5) business days whether it will cure such matter. If Seller does not elect to cure such matter within such period, Buyer may terminate this Agreement or waive its prior disapproval within three (3) business days.

10. REPRESENTATIONS OF SELLER.

a. Seller represents and warrants to Buyer that:

(1) The execution and delivery by Seller of, and Seller's performance under, this Agreement are within Seller's powers and have been duly authorized by all requisite action.

(2) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the right of contracting parties generally.

(3) Performance of this Agreement by Seller will not result in a breach of, or constitute any default under any agreement or instrument to which Seller is a party, which breach or default will adversely affect Seller's ability to perform its obligations under this Agreement.

(4) To Seller's knowledge, without duty of inquiry, the Property is not presently the subject of any condemnation or similar proceeding, and to Seller's knowledge, no such condemnation or similar proceeding is currently threatened or pending.

(5) To Seller's knowledge, there are no management, service, supply or maintenance contracts affecting the Property which shall affect the Property on or following the Close of Escrow except as set forth in Exhibit "C" attached hereto and made a part hereof.

(6) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986 (*i.e.*, Seller is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated).

(7) Seller (a) is not in receivership; (b) has not made any assignment related to the Property for the benefit of creditors; (c) has not admitted in writing its inability to pay its debts as they mature; (d) has not been adjudicated a bankrupt; (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the Federal Bankruptcy Law or any other similar law or statute of the United States or any state, and (f) does not have any such petition described in Clause (e) hereof filed against Seller.

(8) Seller has not received written notice, nor to the best of its knowledge is it aware, of any actions, suits or proceedings pending or threatened against Seller which affect title to the Property, or which would question the validity or enforceability of this Agreement or of any action taken by Seller under this Agreement, in any court or before any governmental authority, domestic or foreign.

(9) Unless otherwise disclosed herein in Exhibit D, to Seller's knowledge without duty of inquiry, there does not exists any conditions or pending or threatening lawsuits which would materially affect the Property, including but not limited to, underground storage, tanks, soil and ground water.

(10) That Seller has delivered to Buyer all written information, records, and studies in Seller's possession concerning hazardous, toxic, or governmentally regulated materials that are or have been stored, handled, disposed of, or released on the Property.

b. If after the expiration of the Due Diligence Period but prior to the Closing, Buyer or any of Buyer's partners, members, trustees and any officers, directors, employees, agents, representatives and attorneys of Buyer, its partners, members or trustees (the "**Buyer's Representatives**") obtains knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Buyer shall give Seller written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). If at or prior to the Closing, Seller obtains actual knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Seller shall give Buyer written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). In such cases, Buyer, may elect either (a) to consummate the transaction, or (b) to terminate this Agreement by written notice given

to Seller on the Closing Date, in which event this Agreement shall be terminated, the Property Information returned to the Seller and, thereafter, neither party shall have any further rights or obligations hereunder except as provided in any section hereof that by its terms expressly provides that it survives the termination of this Agreement.

c. The representations of Seller set forth herein shall survive the Close of Escrow for a period of twelve (12) months.

11. REPRESENTATIONS AND WARRANTIES BY BUYER.

a. Buyer represents and warrants to Seller that:

(9) Buyer is duly organized and legally existing, the execution and delivery by Buyer of, and Buyer's performance under, this Agreement are within Buyer's organizational powers, and Buyer has the authority to execute and deliver this Agreement.

(10) This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the rights of contracting parties generally.

(11) Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which Buyer is a party, which breach or default will adversely affect Buyer's ability to perform its obligations under this Agreement.

(12) Buyer (a) is not in receivership or dissolution, (b) has not made any assignment for the benefit of creditors, (c) has not admitted in writing its inability to pay its debts as they mature, (d) has not been adjudicated a bankrupt, (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law, or any other similar law or statute of the United States or any state, or (f) does not have any such petition described in (e) filed against Buyer.

(5) Buyer hereby warrants and agrees that, prior to Closing, Buyer shall (i) conduct all examinations, inspections and investigations of each and every aspect of the Property, (ii) review all relevant documents and materials concerning the Property, and (iii) ask all questions related to the Property, which are or might be necessary, appropriate or desirable to enable Buyer to acquire full and complete knowledge concerning the condition and fitness of the Property, its suitability for any use and otherwise with respect to the Property.

12. DAMAGE. Risk of loss up to and including the Closing Date shall be borne by Seller. Seller shall immediately notify Buyer in writing of the extent of any damage to the Property. In the event of any material damage to or destruction of the Property or any portion thereof, Buyer

may, at its option, by notice to Seller given within ten (10) days after Buyer is notified of such damage or destruction (and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election): (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer or (ii) proceed under this Agreement, receive any insurance proceeds (including any rent loss insurance applicable to any period on and after the Closing Date) due Seller as a result of such damage or destruction and assume responsibility for such repair, and Buyer shall receive a credit at Closing for any deductible, uninsured or coinsured amount under said insurance policies. If Buyer elects (ii) above, Seller will cooperate with Buyer after the Closing to assist Buyer in obtaining the insurance proceeds from Seller's insurers. If the Property is not materially damaged, then Buyer shall not have the right to terminate this Agreement, but Seller shall at its cost repair the damage before the Closing in a manner reasonably satisfactory to Buyer or if repairs cannot be completed before the Closing, credit Buyer at Closing for the reasonable cost to complete the repair. "Material damage" and "Materially damaged" means damage reasonably exceeding ten percent (10%) of the Purchase Price to repair or that entitles a tenant to terminate its Lease.

13. CONDEMNATION. Seller shall immediately notify Buyer of any proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain over Property. Within ten (10) days after Buyer receives written notice from Seller of proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain, and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election, Buyer may: (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer; or (ii) proceed under this Agreement, in which event Seller shall, at the Closing, assign to Buyer its entire right, title and interest in and to any condemnation award related to the Real Property, and Buyer shall have the sole right during the pendency of this Agreement to negotiate and otherwise deal with the condemning authority in respect of such matter. Buyer shall not have any right or claim to monies relating to Sellers loss of income prior to closing.

14. CLOSING

a. Closing Date. The consummation of the transaction contemplated herein ("**Closing**") shall occur on or before the Closing Date set forth in Section 1. Closing shall occur through Escrow with the Escrow Agent. Unless otherwise stated herein, all funds shall be deposited into and held by Escrow Agent. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct the Escrow Agent to immediately record and deliver the closing documents to the appropriate parties and make disbursements according to the closing statement executed by Seller and Buyer. The Escrow Agent shall agree in writing with Buyer that (1) recordation of the Deed constitutes its representation that it is holding the closing documents, closing funds and closing statements and is prepared and irrevocably committed to disburse the closing funds in accordance with the closing statements and (2) release of funds to the Seller shall irrevocably commit it to issue the Title Policy in accordance with this Agreement.

b. Seller's Deliveries in Escrow. On or prior to the Closing Date, Seller shall deliver in escrow to the Escrow Agent the following:

(13) Deed. A Special Warranty Deed mutually satisfactory to the parties, executed and acknowledged by Seller, conveying to Buyer good, indefeasible and marketable fee simple title to the Property, subject only to the Permitted Exceptions (the "**Deed**").

(14) Assignment of Intangible Property. Such assignments and other documents and certificates as Buyer may reasonably require in order to fully and completely transfer and assign to Buyer all of Seller's right, title, and interest, in and to the Intangibles, all documents and contracts related thereto, Leases, and any other permits, rights applicable to the Property, and any other documents and/or materials applicable to the Property, if any. Such assignment or similar document shall include an indemnity by Buyer to Seller for all matters relating to the assigned rights, and benefits following the Closing Date.

(3) Assignment and Assumption of Contracts. An assignment and assumption of Leases from Seller to Buyer of landlord's interest in the Leases.

(4) FIRPTA. A non-foreign person affidavit that meets the requirements of Section 1445(b)(2) of the Internal Revenue Code, as amended.

(5) Additional Documents. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

c. Buyer's Deliveries in Escrow. On or prior to the Closing Date, Buyer shall deliver in escrow to the Escrow Agent the following:

(1) Purchase Price. The Purchase Price, less the Deposits, plus or minus applicable prorations, deposited by Buyer with the Escrow Agent in immediate funds wired or deposited for credit into the Escrow Agent's escrow account.

(2) Assumption of Intangible Property. A duly executed assumption of the Assignment referred to in Section 14.b(2).

(3) Authority. Evidence of existence, organization, and authority of Buyer and the authority of the person executing documents on behalf of Buyer reasonably required by the Title Company.

(4) Additional Documents. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

d. Closing Statements. Seller and Buyer shall each execute and deposit the closing statement, such transfer tax declarations and such other instruments as are reasonably required by the Title Company or otherwise required to close the Escrow and consummate the acquisition of the Property in accordance with the terms hereof. Seller and Buyer hereby designate Escrow Agent as the "**Reporting Person**" for the transaction pursuant to Section 6045(e) of the Code and the regulations promulgated thereunder and agree to execute such documentation as is reasonably necessary to effectuate such designation.

e. Title Policy. The Escrow Agent shall deliver to Buyer the Title Policy required hereby.

f. Possession. Seller shall deliver possession of the Property to Buyer at the Closing subject to the Permitted Exceptions, and shall deliver to Buyer all keys, security codes and other information necessary for Buyer to assume possession.

g. Transfer of Title. The acceptance of transfer of title to the Property by Buyer shall be deemed to be full performance and discharge of any and all obligations on the part of Seller to be performed pursuant to the provisions of this Agreement, except where such agreements and obligations are specifically stated to survive the transfer of title.

15. COSTS, EXPENSES AND PRORATIONS.

a. Seller Will Pay. At the Closing, Seller shall be charged the following:

(1) All premiums for an ALTA Standard Coverage Title Policy;

(2) One-half of all escrow fees and costs;

(3) Seller's share of prorations; and

(4) One-half of all transfer taxes.

b. Buyer Will Pay. At the Closing, Buyer shall pay:

(1) All document recording charges;

(2) One-half of all escrow fees and costs;

(3) Additional charge for an ALTA Extended Coverage Title Policy, and the endorsements required by Buyer;

(4) One-half of all transfer taxes; and

(5) Buyer's share of prorations.

c. Prorations.

(1) Taxes. All non-delinquent real estate taxes and assessments on the Property will be prorated as of the Closing Date based on the actual current tax bill. If the Closing Date takes place before the real estate taxes are fixed for the tax year in which the Closing Date occurs, the apportionment of real estate taxes will be made on the basis of the real estate taxes for the immediately preceding tax year applied to the latest assessed valuation. All delinquent taxes and all delinquent assessments, if any, on the Property will be paid at the Closing Date from funds accruing to Seller. All supplemental taxes billed after the Closing Date for periods prior to the

Closing Date will be paid promptly by Seller. Any tax refunds received by Buyer which are allocable to the period prior to Closing will be paid by Buyer to Seller.

(2) Utilities. Gas, water, electricity, heat, fuel, sewer and other utilities and the operating expenses relating to the Property shall be prorated as of the Close of Escrow. If the parties hereto are unable to obtain final meter readings as of the Close of Escrow, then such expenses shall be estimated as of the Close of Escrow based on the prior operating history of the Property.

16. CLOSING DELIVERIES.

a. Disbursements And Other Actions by Escrow Agent. At the Closing, Escrow Agent will promptly undertake all of the following:

(1) Funds. Disburse all funds deposited with Escrow Agent by Buyer in payment of the Purchase Price for the Property as follows:

(a) Deliver to Seller the Purchase Price, less the amount of all items, costs and prorations chargeable to the account of Seller; and

(b) Disburse the remaining balance, if any, of the funds deposited by Buyer to Buyer, less amounts chargeable to Buyer.

(2) Recording. Cause the Special Warranty Deed (with documentary transfer tax information to be affixed after recording) to be recorded with the San Diego County Recorder and obtain conformed copies thereof for distribution to Buyer and Seller.

(3) Title Policy. Direct the Title Company to issue the Title Policy to Buyer.

(4) Delivery of Documents to Buyer or Seller. Deliver to Buyer the any documents (or copies thereof) deposited into escrow by Seller. Deliver to Seller any other documents (or copies thereof) deposited into Escrow by Buyer.

17. DEFAULT AND REMEDIES

a. Seller's Default. If Seller fails to comply in any material respect with any of the provisions of this Agreement, subject to a right to cure, or breaches any of its representations or warranties set forth in this Agreement prior to the Closing, then Buyer may:

(1) Terminate this Agreement and neither party shall have any further rights or obligations hereunder, except for the obligations of the parties which are expressly intended to survive such termination; or

(2) Bring an action against Seller to seek specific performance of Seller's obligations hereunder.

b. Buyer's Default - Liquidated Damages. IF BUYER FAILS TO TIMELY COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, SELLER SHALL BE RELEASED FROM ITS OBLIGATION TO SELL THE PROPERTY TO BUYER. BUYER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT IT WOULD BE IMPRACTICAL AND/OR EXTREMELY DIFFICULT TO FIX OR ESTABLISH THE ACTUAL DAMAGE SUSTAINED BY SELLER AS A RESULT OF SUCH DEFAULT BY BUYER, AND AGREE THAT THE DEPOSITS ARE A REASONABLE APPROXIMATION THEREOF. ACCORDINGLY, IN THE EVENT THAT BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, THE DEPOSIT SHALL CONSTITUTE AND BE DEEMED TO BE THE AGREED AND LIQUIDATED DAMAGES OF SELLER, AND SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY. SELLER AGREES TO WAIVE ALL OTHER REMEDIES AGAINST BUYER WHICH SELLER MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY BY REASON OF SUCH DEFAULT BY BUYER. THE LIQUIDATED DAMAGES ARE NOT INTENDED TO BE A FORFEITURE OR PENALTY, BUT ARE INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER.

_____ _____

Seller's Initials Buyer's Initials

c. Escrow Cancellation Following a Termination Notice. If either party terminates this Agreement as permitted under any provision of this Agreement by delivering a termination notice to Escrow Agent and the other party, Escrow shall be promptly cancelled and, Escrow Agent shall return all documents and funds to the parties who deposited them, less applicable Escrow cancellation charges and expenses. Promptly upon presentation by Escrow Agent, the parties shall sign such instruction and other instruments as may be necessary to effect the foregoing Escrow cancellation.

d. Other Expenses. If this Agreement is terminated due to the default of a party, then the defaulting party shall pay any fees due to the Escrow Agent for holding the Deposits and any fees due to the Title Company in connection with issuance of the Preliminary Title report and other title matters (together, "**Escrow Cancellation Charges**"). If Escrow fails to close for any reason, other than a default under this Agreement, Buyer and Seller shall each pay one-half (½) of any Escrow Cancellation Charges.

18. MISCELLANEOUS.

a. Entire Agreement. This Agreement, together with the Exhibits and schedules hereto, contains all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the Exhibits and schedules hereto.

b. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

c. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

d. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

e. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

f. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer will not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attorneys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Agreement. In the event the transaction contemplated by this Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

g. Interpretation of Agreement. The article, section and other headings of this Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

h. Amendments. This Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

i. Drafts Not an Offer to Enter Into a Legally Binding Contract. The parties hereto agree that the submission of a draft of this Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Agreement (or a copy by facsimile transmission).

j. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

k. No Third Party Beneficiary. The provisions of this Agreement are not intended to benefit any third parties.

l. Survival. Except as expressly set forth to the contrary herein, no representations, warranties, covenants or agreements of Seller contained herein shall survive the Closing.

m. Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

n. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Section 1. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

o. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included,

unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

p. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

q. Procedure for Indemnity. The following provisions govern actions for indemnity under this Agreement. Promptly after receipt by an indemnitee of notice of any claim, such indemnitee will, if a claim in respect thereof is to be made against the indemnitor, deliver to the indemnitor written notice thereof and the indemnitor shall have the right to participate in, and, if the indemnitor agrees in writing that it will be responsible for any costs, expenses, judgments, damages and losses incurred by the indemnitee with respect to such claim, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnitor, if the indemnitee reasonably believes that representation of such indemnitee by the counsel retained by the indemnitor would be inappropriate due to actual or potential differing interests between such indemnitee and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnitor within a reasonable time of notice of any such claim shall relieve such indemnitor of any liability to the indemnitee under this indemnity only if and to the extent that such failure is prejudicial to its ability to defend such action, and the omission so to deliver written notice to the indemnitor will not relieve it of any liability that it may have to any indemnitee other than under this indemnity. If an indemnitee settles a claim without the prior written consent of the indemnitor, then the indemnitor shall be released from liability with respect to such claim unless the indemnitor has unreasonably withheld or delayed such consent.

r. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

s. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

t. Section 1031 Exchange. Either party may consummate the purchase or sale (as applicable) of the Property as part of a so-called like kind exchange (an "**Exchange**") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the "**Code**"), provided that: (a) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of an Exchange be a condition precedent or condition subsequent to the exchanging party's obligations under this Agreement; (b) the exchanging party shall effect its Exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary (c) neither party shall be required to take an assignment of the purchase

agreement for relinquished or replacement property or be required to acquire or hold title to any real property for purposes of consummating an Exchange desired by the other party; and (d) the exchanging party shall pay any additional costs that would not otherwise have been incurred by the non-exchanging party had the exchanging party not consummated the transaction through an Exchange. Neither party shall by this Agreement or, acquiescence to an Exchange desired by the other party, have its rights under this Agreement affected or diminished in any manner or be responsible for compliance with or be deemed to have warranted to the exchanging party that its Exchange in fact complies with Section 1031 of the Code.

u. Incorporation of Recitals/Exhibits. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Agreement as though fully set forth herein.

v. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

w. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

x. Legal Advice. Each party has received independently legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

y. Memorandum of Agreement. Buyer and Seller shall execute and notarize the Memorandum of Agreement included herewith as Exhibit E, which Buyer may record with the county of San Diego, in its sole discretion.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first set forth above.

BUYER:

6176 FEDERAL BLVD TRUST

By: _____

Printed: _____

Its: Trustee

SELLER:

DARRYL COTTON.

_____

Escrow Agent has executed this Agreement in order to confirm that the Escrow Agent has received and shall hold the Deposit and the interest earned thereon, in escrow, and shall disburse the Deposit, and the interest earned thereon, pursuant to the provisions of this Agreement.

Date: _____, 2017

By: _____

Escrow Officer

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL PROPERTY
(to be provided by the Title Company)

EXHIBIT "B"

PROPERTY INFORMATION

EXHIBIT "C"

SERVICE CONTRACTS

EXHIBIT "D"

THREATENED OR PENDING LAWSUITS

EXHIBIT "E"

MEMORANDUM OF AGREEMENT

AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY ("**Agreement**") is made and entered into this _____ day of _____, 2017, by and between DARRYL COTTON, an individual resident of San Diego, CA ("**Seller**"), and 6176 FEDERAL BLVD TRUST dated _____, 2017, or its assignee ("**Buyer**").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually covenanted and agreed by Seller and Buyer as follows:

1. DEFINITIONS. For the purposes of this Agreement the following terms will be defined as follows:

a. **"Real Property"**: That certain real property commonly known as 6176 Federal Blvd., San Diego, California, as legally described in Exhibit "A" attached hereto and made a part hereof.

b. **"Date of Agreement"**: The latest date of execution of the Seller or the Buyer, as indicated on the signature page.

c. **"Purchase Price"**: The Purchase Price for the Property (defined below) is Four Hundred Thousand Dollars ($400,000.00).

d. **"Due Diligence Period"**: The period that expires at 5:00 p.m., California time, on the date the CUP (defined below) is issued to Buyer or its designated assign.

e. **"Escrow Agent"**: The Escrow Agent is: [NAME]

f. **"Title Company"**: The Title Company is: [NAME]

g. **"Title Approval Date"**: The Title Approval Date shall be twenty (20) days following Buyer's receipt of a Preliminary Title Report and all underlying documents.

h. **"Closing"**, **"Closing Date"** and **"Close of Escrow"**: These terms are used interchangeably in this Agreement. The closing shall occur on or at 5:00 p.m., California time, on the date fifteen (15) days from the date Buyer or its designated assign is approved by the city of San Diego for a conditional use permit to distribute medical marijuana from the Real Property ("CUP"). Notwithstanding the foregoing, in no event shall Closing occur later than March 1, 2018, unless mutually agreed by the parties.

i. **"Notices"** will be sent as follows to:

Buyer: 6176 Federal Blvd. Trust
6176 Federal Blvd.

	San Diego, California 92114 Attn: Fax No.: Phone No.:
with a copy to:	Austin Legal Group, APC 3990 Old Town Ave, A-112 San Diego, CA 92110,
Seller:	Darryl Cotton Address: City, State, Zip Attn: Fax No.: Phone No.:
Escrow Agent:	[NAME] [ADDRESS]

2. PURCHASE AND SALE. Subject to all of the terms and conditions of this Agreement and for the consideration set forth, upon Closing Seller shall convey to Buyer, and Buyer shall purchase from Seller, all of the following:

a. The Real Property and all of Seller's interest in all buildings, improvements, facilities, fixtures and paving thereon or associated therewith (collectively, the "**Improvements**"), together with all easements, hereditaments and appurtenances thereto, subject only to the Permitted Exceptions in accordance with Section 5.b;

b. All other right, title and interest of Seller constituting part and parcel of the Property (hereinafter defined), including, but not limited to, all lease rights, agreements, easements, licenses, permits, tract maps, subdivision/condominium filings and approvals, air rights, sewer agreements, water line agreements, utility agreements, water rights, oil, gas and mineral rights, all licenses and permits related to the Property, and all plans, drawings, engineering studies located within, used in connection with, or related to the Property, if any in Seller's possession (collectively, the "**Intangibles**"). (Reference herein to the "**Property**" shall include the Real Property, Improvements, and Intangibles).

3. PURCHASE PRICE AND PAYMENT; DEPOSIT. The Purchase Price will be paid as follows:

a. Deposit. There shall be no Deposit required. It is acknowledged and agreed that Buyer has provided Seller alternative consideration in lieu of the Deposit.

b. Cash Balance. Buyer shall deposit into Escrow the cash balance of the Purchase Price, plus or minus prorations and costs pursuant to Section 15, in the form of cash, bank

cashier's check or confirmed wire transfer of funds not less than one (1) business day prior to the Close of Escrow.

4. ESCROW.

a. Execution of Form Escrow Instructions. Seller shall deposit this Agreement with Escrow Agent upon full execution of same by Buyer and Seller, at which time escrow (the "**Escrow**") shall be deemed to be opened. Escrow Agent shall thereafter promptly execute the original of this Agreement, provide copies thereof to Buyer and Seller. Immediately upon receipt of such duly executed copy of this Agreement, Escrow Agent shall also notify Seller and Buyer of the opening of Escrow. This Agreement shall act as escrow instructions to Escrow Agent, and Escrow Agent shall hereby be authorized and instructed to deliver the documents and monies to be deposited into the Escrow pursuant to the terms of this Agreement. Escrow Agent shall prepare the Escrow Agent's standard-form escrow agreement (if such a form is required by Escrow Agent), which shall, to the extent that the same is consistent with the terms hereof and approved by Seller and Buyer and not exculpate Escrow Agent from acts of negligence and/or willful misconduct, inure to the benefit of Escrow Agent. Said standard form escrow instructions shall be executed by Buyer and Seller and returned to Escrow Agent within three (3) business days from the date same are received from Escrow Agent. To the extent that Escrow Agent's standard-form escrow agreement is inconsistent with the terms hereof, the terms of this Agreement shall control. Should either party fail to return the standard form escrow instructions to Escrow Agent in a timely manner, such failure shall not constitute a material breach of this Agreement.

b. Close of Escrow. Except as provided below, Escrow shall close no later than the date provided for in Section 1, above.

c. Failure to Receive CUP. Should Buyer be denied its application for the CUP or otherwise abandon its CUP application, it shall have the option to terminate this Agreement by written notice to Seller, and the parties shall have no further liability to one another, except for the "**Buyer's Indemnity**" (as detailed in Section 8 below).

5. TITLE MATTERS.

a. Preliminary Title Report/Review of Title. As soon as practicable, but in no event later than five (5) business days after the Date of Agreement, Escrow Agent shall have delivered or shall cause to be delivered to Buyer a Preliminary Title Report issued by Title Company covering the Property (the "**Preliminary Title Report**"), together with true copies of all documents evidencing matters of record shown as exceptions to title thereon. Buyer shall have the right to object to any exceptions contained in the Preliminary Title Report and thereby disapprove the condition of title by giving written notice to Seller on or before the Title Approval Date as defined in Section 1. Any such disapproval shall specify with particularity the defects Buyer disapproves. Buyer's failure to timely disapprove in writing shall be deemed an approval of all exceptions. If Buyer disapproves of any matter affecting title, Seller shall have the option to elect to (i) cure or remove any one or more of such exceptions by notifying Buyer within five (5) business days from Seller's receipt of Buyer's disapproval, or (ii) terminate this Agreement, in which event Buyer shall receive a refund of its Deposit and all accrued interest, and the parties shall have no

further liability to one another, except for the Buyer's Indemnity. Seller's failure to timely notify Buyer of its election, as provided above, shall conclusively be deemed to be Seller's election to terminate this Agreement. For three (3) business days following Seller's actual or deemed election to terminate this Agreement, Buyer shall have the right to waive, in writing, any one or more of such title defects that Seller has not elected to cure or remove and thereby rescind Seller's election to terminate and close Escrow, taking title to the Property subject to such title exceptions.

b. Permitted Exceptions. The following exceptions shown on the Preliminary Title Report (the "**Permitted Exceptions**") are approved by Buyer:

(1) Real property taxes not yet due and payable as of the Closing Date, which shall be apportioned as hereinafter provided in Section 15;

(2) Unpaid installments of assessments not due and payable on or before the Closing Date;

(3) Any matters affecting the Property that are created by, or with the written consent of, Buyer;

(4) The pre-printed exclusions and exceptions that appear in the Owner's Title Policy issued by the Title Company; and

(5) Any matter to which Buyer has not delivered a notice of a Title Objection in accordance with the terms of Section 5.a hereof.

Notwithstanding the foregoing or anything else to the contrary, Seller shall be obligated, regardless of whether Buyer objects to any such item or exception, to remove or cause to be removed on or before Closing, any and all mortgages, deeds of trust or similar liens securing the repayment of money affecting title to the Property, mechanic's liens, materialmen's liens, judgment liens, liens for delinquent taxes and/or any other liens or security interests ("**Mandatory Cure Items**").

c. Title Policy. The Title Policy shall be an ALTA Standard Owners Policy with liability in the amount of the Purchase Price, showing fee title to the Property as vested in Buyer, subject only to the Permitted Exceptions. At Buyer's election, the Title Policy to be delivered to Buyer shall be an ALTA Extended Owners Policy, provided that the issuance of said ALTA Policy does not delay the Close of Escrow. The issuance by Title Company of the standard Title Policy in favor of Buyer, insuring fee title to the Property to Buyer in the amount of the Purchase Price, subject only to the Permitted Exceptions, shall be conclusive evidence that Seller has complied with any obligation, express or implied, to convey good and marketable title to the Property to Buyer.

d. Title and Survey Costs. The cost of the standard portion of the premium for the Title Policy shall be paid by the Seller. Buyer shall pay for the survey, if necessary, and the premium for the ALTA portion of the Title Policy and all endorsements requested by Buyer.

6. SELLER'S DELIVERY OF SPECIFIED DOCUMENTS. Seller has provided to Buyer those necessary documents and materials respecting the Property identified on Exhibit "B", attached hereto and made a part hereof ("**Property Information**"). The Property Information shall include, inter alia, all disclosures from Seller regarding the Property required by California and federal law.

7. DUE DILIGENCE. Buyer shall have through the last day of the Due Diligence Period, as defined in Section 1, in which to examine, inspect, and investigate the Property Information, the Property and any other relating to the Property or its use and or Compliance with any applicable zoning ordinances, regulations, licensing or permitting affecting its use or Buyer's intention use and, in Buyers sole discretion) and, in Buyer's sole and absolute judgment and discretion, to determine whether the Property is acceptable to Buyer in its present condition and to obtain all necessary internal approvals. Notwithstanding anything to the contrary in this Agreement, Buyer may terminate this Agreement by giving notice of termination (a "**Due Diligence Termination Notice**") to Seller on or before the last day of the Due Diligence Period, in which event Buyer shall receive the immediate return of the Deposit and this Agreement shall terminate, except that Buyer's Indemnities set forth on Section 8, shall survive such termination.

8. PHYSICAL INSPECTION; BUYERS INDEMNITIES.

a. Buyer shall have the right, upon reasonable notice and during regular business hours, to physically inspect on a non-intrusive basis, and to the extent Buyer desires, to cause one or more representatives of Buyer to physically inspect on a non-intrusive basis, the Property without interfering with the occupants or operation of the Property Buyer shall make all inspections in good faith and with due diligence. All inspection fees, appraisal fees, engineering fees and other expenses of any kind incurred by Buyer relating to the inspection of the Property will be solely Buyer's expense. Seller shall cooperate with Buyer in all reasonable respects in making such inspections. To the extent that a Phase I environmental assessment acceptable to Seller justifies it, Buyer shall have the right to have an independent environmental consultant conduct an environmental inspection in excess of a Phase I assessment of the Property. Buyer shall notify Seller not less than one (1) business day in advance of making any inspections or interviews. In making any inspection or interviews hereunder, Buyer will treat, and will cause any representative of Buyer to treat, all information obtained by Buyer pursuant to the terms of this Agreement as strictly confidential except for such information which Buyer is required to disclose to its consultants, attorneys, lenders and transferees.

b. Buyer agrees to keep the Property free and clear of all mechanics' and materialmen's liens or other liens arising out of any of its activities or those of its representatives, agents or contractors. Buyer shall indemnify, defend (through legal counsel reasonably acceptable to Seller), and hold Seller, and the Property, harmless from all damage, loss or liability, including without limitation attorneys' fees and costs of court, mechanics' liens or claims, or claims or assertions thereof arising out of or in connection with the entry onto, or occupation of the Property by Buyer, its agents, employees and contractors and subcontractors. This indemnity shall survive the sale of the Property pursuant to the terms of this Agreement or, if such sale is not consummated, the termination of this Agreement. After each such inspection or investigation of the Property,

Buyer agrees to immediately restore the Property or cause the Property to be restored to its condition before each such inspection or investigation look place, at Buyer's sole expense.

9. COVENANTS OF SELLER. During the period from the Date of Agreement until the earlier of termination of the Agreement or the Close of Escrow, Seller agrees to the following:

a. Seller shall not permit or suffer to exist any new encumbrance, charge or lien or allow any easements affecting all or any portion of the Property to be placed or claimed upon the Property unless such encumbrance, charge, lien or easement has been approved in writing by Buyer or unless such monetary encumbrance, charge or lien will be removed by Seller prior to the Close of Escrow.

b. Seller shall not execute or amend, modify, renew, extend or terminate any contract without the prior written consent of Buyer, which consent shall not be unreasonably withheld. If Buyer fails to provide Seller with notice of its consent or refusal to consent, Buyer shall be deemed to have approved such contract or modification, except that no contract entered into by Seller shall be for a period longer than thirty (30) days and shall be terminable by the giving of a thirty (30) day notice.

c. Seller shall notify Buyer of any new matter that it obtains actual knowledge of affecting title in any manner, which was not previously disclosed to Buyer by the Title Report. Buyer shall notify Seller within five (5) business days of receipt of notice of its acceptance or rejection of such new matter. If Buyer rejects such matter, Seller shall notify Buyer within five (5) business days whether it will cure such matter. If Seller does not elect to cure such matter within such period, Buyer may terminate this Agreement or waive its prior disapproval within three (3) business days.

10. REPRESENTATIONS OF SELLER.

a. Seller represents and warrants to Buyer that:

(1) The execution and delivery by Seller of, and Seller's performance under, this Agreement are within Seller's powers and have been duly authorized by all requisite action.

(2) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the right of contracting parties generally.

(3) Performance of this Agreement by Seller will not result in a breach of, or constitute any default under any agreement or instrument to which Seller is a party, which breach or default will adversely affect Seller's ability to perform its obligations under this Agreement.

(4) To Seller's knowledge, without duty of inquiry, the Property is not presently the subject of any condemnation or similar proceeding, and to Seller's knowledge, no such condemnation or similar proceeding is currently threatened or pending.

(5) To Seller's knowledge, there are no management, service, supply or maintenance contracts affecting the Property which shall affect the Property on or following the Close of Escrow except as set forth in Exhibit "C" attached hereto and made a part hereof.

(6) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986 (*i.e.*, Seller is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated).

(7) Seller (a) is not in receivership; (b) has not made any assignment related to the Property for the benefit of creditors; (c) has not admitted in writing its inability to pay its debts as they mature; (d) has not been adjudicated a bankrupt; (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the Federal Bankruptcy Law or any other similar law or statute of the United States or any state, and (f) does not have any such petition described in Clause (e) hereof filed against Seller.

(8) Seller has not received written notice, nor to the best of its knowledge is it aware, of any actions, suits or proceedings pending or threatened against Seller which affect title to the Property, or which would question the validity or enforceability of this Agreement or of any action taken by Seller under this Agreement, in any court or before any governmental authority, domestic or foreign.

(9) Unless otherwise disclosed herein in Exhibit D, to Seller's knowledge without duty of inquiry, there does not exists any conditions or pending or threatening lawsuits which would materially affect the Property, including but not limited to, underground storage, tanks, soil and ground water.

(10) That Seller has delivered to Buyer all written information, records, and studies in Seller's possession concerning hazardous, toxic, or governmentally regulated materials that are or have been stored, handled, disposed of, or released on the Property.

b. If after the expiration of the Due Diligence Period but prior to the Closing, Buyer or any of Buyer's partners, members, trustees and any officers, directors, employees, agents, representatives and attorneys of Buyer, its partners, members or trustees (the "**Buyer's Representatives**") obtains knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Buyer shall give Seller written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). If at or prior to the Closing, Seller obtains actual knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Seller shall give Buyer written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). In such cases, Buyer, may elect either (a) to consummate the transaction, or (b) to terminate this Agreement by written notice given

to Seller on the Closing Date, in which event this Agreement shall be terminated, the Property Information returned to the Seller and, thereafter, neither party shall have any further rights or obligations hereunder except as provided in any section hereof that by its terms expressly provides that it survives the termination of this Agreement.

c. The representations of Seller set forth herein shall survive the Close of Escrow for a period of twelve (12) months.

11. REPRESENTATIONS AND WARRANTIES BY BUYER.

a. Buyer represents and warrants to Seller that:

(9) Buyer is duly organized and legally existing, the execution and delivery by Buyer of, and Buyer's performance under, this Agreement are within Buyer's organizational powers, and Buyer has the authority to execute and deliver this Agreement.

(10) This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the rights of contracting parties generally.

(11) Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which Buyer is a party, which breach or default will adversely affect Buyer's ability to perform its obligations under this Agreement.

(12) Buyer (a) is not in receivership or dissolution, (b) has not made any assignment for the benefit of creditors, (c) has not admitted in writing its inability to pay its debts as they mature, (d) has not been adjudicated a bankrupt, (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law, or any other similar law or statute of the United States or any state, or (f) does not have any such petition described in (e) filed against Buyer.

(5) Buyer hereby warrants and agrees that, prior to Closing, Buyer shall (i) conduct all examinations, inspections and investigations of each and every aspect of the Property, (ii) review all relevant documents and materials concerning the Property, and (iii) ask all questions related to the Property, which are or might be necessary, appropriate or desirable to enable Buyer to acquire full and complete knowledge concerning the condition and fitness of the Property, its suitability for any use and otherwise with respect to the Property.

12. DAMAGE. Risk of loss up to and including the Closing Date shall be borne by Seller. Seller shall immediately notify Buyer in writing of the extent of any damage to the Property. In the event of any material damage to or destruction of the Property or any portion thereof, Buyer

may, at its option, by notice to Seller given within ten (10) days after Buyer is notified of such damage or destruction (and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election): (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer or (ii) proceed under this Agreement, receive any insurance proceeds (including any rent loss insurance applicable to any period on and after the Closing Date) due Seller as a result of such damage or destruction and assume responsibility for such repair, and Buyer shall receive a credit at Closing for any deductible, uninsured or coinsured amount under said insurance policies. If Buyer elects (ii) above, Seller will cooperate with Buyer after the Closing to assist Buyer in obtaining the insurance proceeds from Seller's insurers. If the Property is not materially damaged, then Buyer shall not have the right to terminate this Agreement, but Seller shall at its cost repair the damage before the Closing in a manner reasonably satisfactory to Buyer or if repairs cannot be completed before the Closing, credit Buyer at Closing for the reasonable cost to complete the repair. "Material damage" and "Materially damaged" means damage reasonably exceeding ten percent (10%) of the Purchase Price to repair or that entitles a tenant to terminate its Lease.

13. CONDEMNATION. Seller shall immediately notify Buyer of any proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain over Property. Within ten (10) days after Buyer receives written notice from Seller of proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain, and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election, Buyer may: (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer; or (ii) proceed under this Agreement, in which event Seller shall, at the Closing, assign to Buyer its entire right, title and interest in and to any condemnation award related to the Real Property, and Buyer shall have the sole right during the pendency of this Agreement to negotiate and otherwise deal with the condemning authority in respect of such matter. Buyer shall not have any right or claim to monies relating to Sellers loss of income prior to closing.

14. CLOSING

a. Closing Date. The consummation of the transaction contemplated herein ("**Closing**") shall occur on or before the Closing Date set forth in Section 1. Closing shall occur through Escrow with the Escrow Agent. Unless otherwise stated herein, all funds shall be deposited into and held by Escrow Agent. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct the Escrow Agent to immediately record and deliver the closing documents to the appropriate parties and make disbursements according to the closing statement executed by Seller and Buyer. The Escrow Agent shall agree in writing with Buyer that (1) recordation of the Deed constitutes its representation that it is holding the closing documents, closing funds and closing statements and is prepared and irrevocably committed to disburse the closing funds in accordance with the closing statements and (2) release of funds to the Seller shall irrevocably commit it to issue the Title Policy in accordance with this Agreement.

b. Seller's Deliveries in Escrow. On or prior to the Closing Date, Seller shall deliver in escrow to the Escrow Agent the following:

(13) Deed. A Special Warranty Deed mutually satisfactory to the parties, executed and acknowledged by Seller, conveying to Buyer good, indefeasible and marketable fee simple title to the Property, subject only to the Permitted Exceptions (the "**Deed**").

(14) Assignment of Intangible Property. Such assignments and other documents and certificates as Buyer may reasonably require in order to fully and completely transfer and assign to Buyer all of Seller's right, title, and interest, in and to the Intangibles, all documents and contracts related thereto, Leases, and any other permits, rights applicable to the Property, and any other documents and/or materials applicable to the Property, if any. Such assignment or similar document shall include an indemnity by Buyer to Seller for all matters relating to the assigned rights, and benefits following the Closing Date.

(3) Assignment and Assumption of Contracts. An assignment and assumption of Leases from Seller to Buyer of landlord's interest in the Leases.

(4) FIRPTA. A non-foreign person affidavit that meets the requirements of Section 1445(b)(2) of the Internal Revenue Code, as amended.

(5) Additional Documents. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

c. Buyer's Deliveries in Escrow. On or prior to the Closing Date, Buyer shall deliver in escrow to the Escrow Agent the following:

(1) Purchase Price. The Purchase Price, less the Deposits, plus or minus applicable prorations, deposited by Buyer with the Escrow Agent in immediate funds wired or deposited for credit into the Escrow Agent's escrow account.

(2) Assumption of Intangible Property. A duly executed assumption of the Assignment referred to in Section 14.b(2).

(3) Authority. Evidence of existence, organization, and authority of Buyer and the authority of the person executing documents on behalf of Buyer reasonably required by the Title Company.

(4) Additional Documents. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

d. Closing Statements. Seller and Buyer shall each execute and deposit the closing statement, such transfer tax declarations and such other instruments as are reasonably required by the Title Company or otherwise required to close the Escrow and consummate the acquisition of the Property in accordance with the terms hereof. Seller and Buyer hereby designate Escrow Agent as the "**Reporting Person**" for the transaction pursuant to Section 6045(e) of the Code and the regulations promulgated thereunder and agree to execute such documentation as is reasonably necessary to effectuate such designation.

e. Title Policy. The Escrow Agent shall deliver to Buyer the Title Policy required hereby.

f. Possession. Seller shall deliver possession of the Property to Buyer at the Closing subject to the Permitted Exceptions, and shall deliver to Buyer all keys, security codes and other information necessary for Buyer to assume possession.

g. Transfer of Title. The acceptance of transfer of title to the Property by Buyer shall be deemed to be full performance and discharge of any and all obligations on the part of Seller to be performed pursuant to the provisions of this Agreement, except where such agreements and obligations are specifically stated to survive the transfer of title.

15. COSTS, EXPENSES AND PRORATIONS.

a. Seller Will Pay. At the Closing, Seller shall be charged the following:

(1) All premiums for an ALTA Standard Coverage Title Policy;

(2) One-half of all escrow fees and costs;

(3) Seller's share of prorations; and

(4) One-half of all transfer taxes.

b. Buyer Will Pay. At the Closing, Buyer shall pay:

(1) All document recording charges;

(2) One-half of all escrow fees and costs;

(3) Additional charge for an ALTA Extended Coverage Title Policy, and the endorsements required by Buyer;

(4) One-half of all transfer taxes; and

(5) Buyer's share of prorations.

c. Prorations.

(1) Taxes. All non-delinquent real estate taxes and assessments on the Property will be prorated as of the Closing Date based on the actual current tax bill. If the Closing Date takes place before the real estate taxes are fixed for the tax year in which the Closing Date occurs, the apportionment of real estate taxes will be made on the basis of the real estate taxes for the immediately preceding tax year applied to the latest assessed valuation. All delinquent taxes and all delinquent assessments, if any, on the Property will be paid at the Closing Date from funds accruing to Seller. All supplemental taxes billed after the Closing Date for periods prior to the

Closing Date will be paid promptly by Seller. Any tax refunds received by Buyer which are allocable to the period prior to Closing will be paid by Buyer to Seller.

(2) Utilities. Gas, water, electricity, heat, fuel, sewer and other utilities and the operating expenses relating to the Property shall be prorated as of the Close of Escrow. If the parties hereto are unable to obtain final meter readings as of the Close of Escrow, then such expenses shall be estimated as of the Close of Escrow based on the prior operating history of the Property.

16. CLOSING DELIVERIES.

a. Disbursements And Other Actions by Escrow Agent. At the Closing, Escrow Agent will promptly undertake all of the following:

(1) Funds. Disburse all funds deposited with Escrow Agent by Buyer in payment of the Purchase Price for the Property as follows:

(a) Deliver to Seller the Purchase Price, less the amount of all items, costs and prorations chargeable to the account of Seller; and

(b) Disburse the remaining balance, if any, of the funds deposited by Buyer to Buyer, less amounts chargeable to Buyer.

(2) Recording. Cause the Special Warranty Deed (with documentary transfer tax information to be affixed after recording) to be recorded with the San Diego County Recorder and obtain conformed copies thereof for distribution to Buyer and Seller.

(3) Title Policy. Direct the Title Company to issue the Title Policy to Buyer.

(4) Delivery of Documents to Buyer or Seller. Deliver to Buyer the any documents (or copies thereof) deposited into escrow by Seller. Deliver to Seller any other documents (or copies thereof) deposited into Escrow by Buyer.

17. DEFAULT AND REMEDIES

a. Seller's Default. If Seller fails to comply in any material respect with any of the provisions of this Agreement, subject to a right to cure, or breaches any of its representations or warranties set forth in this Agreement prior to the Closing, then Buyer may:

(1) Terminate this Agreement and neither party shall have any further rights or obligations hereunder, except for the obligations of the parties which are expressly intended to survive such termination; or

(2) Bring an action against Seller to seek specific performance of Seller's obligations hereunder.

b. Buyer's Default - Liquidated Damages. IF BUYER FAILS TO TIMELY COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, SELLER SHALL BE RELEASED FROM ITS OBLIGATION TO SELL THE PROPERTY TO BUYER. BUYER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT IT WOULD BE IMPRACTICAL AND/OR EXTREMELY DIFFICULT TO FIX OR ESTABLISH THE ACTUAL DAMAGE SUSTAINED BY SELLER AS A RESULT OF SUCH DEFAULT BY BUYER, AND AGREE THAT THE DEPOSITS ARE A REASONABLE APPROXIMATION THEREOF. ACCORDINGLY, IN THE EVENT THAT BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, THE DEPOSIT SHALL CONSTITUTE AND BE DEEMED TO BE THE AGREED AND LIQUIDATED DAMAGES OF SELLER, AND SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY. SELLER AGREES TO WAIVE ALL OTHER REMEDIES AGAINST BUYER WHICH SELLER MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY BY REASON OF SUCH DEFAULT BY BUYER. THE LIQUIDATED DAMAGES ARE NOT INTENDED TO BE A FORFEITURE OR PENALTY, BUT ARE INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER.

_____ _____

Seller's Initials Buyer's Initials

c. Escrow Cancellation Following a Termination Notice. If either party terminates this Agreement as permitted under any provision of this Agreement by delivering a termination notice to Escrow Agent and the other party, Escrow shall be promptly cancelled and, Escrow Agent shall return all documents and funds to the parties who deposited them, less applicable Escrow cancellation charges and expenses. Promptly upon presentation by Escrow Agent, the parties shall sign such instruction and other instruments as may be necessary to effect the foregoing Escrow cancellation.

d. Other Expenses. If this Agreement is terminated due to the default of a party, then the defaulting party shall pay any fees due to the Escrow Agent for holding the Deposits and any fees due to the Title Company in connection with issuance of the Preliminary Title report and other title matters (together, "**Escrow Cancellation Charges**"). If Escrow fails to close for any reason, other than a default under this Agreement, Buyer and Seller shall each pay one-half (½) of any Escrow Cancellation Charges.

18. MISCELLANEOUS.

a. Entire Agreement. This Agreement, together with the Exhibits and schedules hereto, contains all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the Exhibits and schedules hereto.

b. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

c. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

d. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

e. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

f. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer will not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attorneys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Agreement. In the event the transaction contemplated by this Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

g. Interpretation of Agreement. The article, section and other headings of this Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

h. Amendments. This Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

i. Drafts Not an Offer to Enter Into a Legally Binding Contract. The parties hereto agree that the submission of a draft of this Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Agreement (or a copy by facsimile transmission).

j. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

k. No Third Party Beneficiary. The provisions of this Agreement are not intended to benefit any third parties.

l. Survival. Except as expressly set forth to the contrary herein, no representations, warranties, covenants or agreements of Seller contained herein shall survive the Closing.

m. Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

n. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Section 1. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

o. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included,

unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

p. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

q. Procedure for Indemnity. The following provisions govern actions for indemnity under this Agreement. Promptly after receipt by an indemnitee of notice of any claim, such indemnitee will, if a claim in respect thereof is to be made against the indemnitor, deliver to the indemnitor written notice thereof and the indemnitor shall have the right to participate in, and, if the indemnitor agrees in writing that it will be responsible for any costs, expenses, judgments, damages and losses incurred by the indemnitee with respect to such claim, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnitor, if the indemnitee reasonably believes that representation of such indemnitee by the counsel retained by the indemnitor would be inappropriate due to actual or potential differing interests between such indemnitee and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnitor within a reasonable time of notice of any such claim shall relieve such indemnitor of any liability to the indemnitee under this indemnity only if and to the extent that such failure is prejudicial to its ability to defend such action, and the omission so to deliver written notice to the indemnitor will not relieve it of any liability that it may have to any indemnitee other than under this indemnity. If an indemnitee settles a claim without the prior written consent of the indemnitor, then the indemnitor shall be released from liability with respect to such claim unless the indemnitor has unreasonably withheld or delayed such consent.

r. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

s. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

t. Section 1031 Exchange. Either party may consummate the purchase or sale (as applicable) of the Property as part of a so-called like kind exchange (an "**Exchange**") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the "**Code**"), provided that: (a) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of an Exchange be a condition precedent or condition subsequent to the exchanging party's obligations under this Agreement; (b) the exchanging party shall effect its Exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary (c) neither party shall be required to take an assignment of the purchase

agreement for relinquished or replacement property or be required to acquire or hold title to any real property for purposes of consummating an Exchange desired by the other party; and (d) the exchanging party shall pay any additional costs that would not otherwise have been incurred by the non-exchanging party had the exchanging party not consummated the transaction through an Exchange. Neither party shall by this Agreement or, acquiescence to an Exchange desired by the other party, have its rights under this Agreement affected or diminished in any manner or be responsible for compliance with or be deemed to have warranted to the exchanging party that its Exchange in fact complies with Section 1031 of the Code.

u. Incorporation of Recitals/Exhibits. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Agreement as though fully set forth herein.

v. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

w. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

x. Legal Advice. Each party has received independently legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

y. Memorandum of Agreement. Buyer and Seller shall execute and notarize the Memorandum of Agreement included herewith as Exhibit E, which Buyer may record with the county of San Diego, in its sole discretion.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first set forth above.

BUYER:

6176 FEDERAL BLVD TRUST

By: _____

Printed: _____

Its: Trustee

SELLER:

DARRYL COTTON.

_____

Escrow Agent has executed this Agreement in order to confirm that the Escrow Agent has received and shall hold the Deposit and the interest earned thereon, in escrow, and shall disburse the Deposit, and the interest earned thereon, pursuant to the provisions of this Agreement.

Date: _____, 2017

By: _____

Escrow Officer

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL PROPERTY
(to be provided by the Title Company)

EXHIBIT "C"

SERVICE CONTRACTS

EXHIBIT "D"

THREATENED OR PENDING LAWSUITS

EXHIBIT "E"

MEMORANDUM OF AGREEMENT

Subject: Statement
From: Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <darryl@inda-gro.com>
Date: Thursday, March 2, 2017 8:51:11 AM GMT-08:00

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

SIDE AGREEMENT

Dated as of March ___, 2017

By and Among

DARRYL COTTON

and

6176 FEDERAL BLVD TRUST

This Side Agreement ("Side Agreement") is made as of the ___ day of _____ 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust ("Buyer"), a California trust. Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Seller and Buyer desire to enter into a Purchase Agreement (the "Purchase Agreement"), dated of even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property"); and

WHEREAS, the purchase price for the Property is Four Hundred Thousand Dollars ($400,000); and

WHEREAS, a condition to the Purchase Agreement is that Buyer and Seller enter into this Side Agreement that addresses the terms under which Seller shall move his existing business located on the Property.

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

ARTICLE I

1. **Terms of the Side Agreement**

1.1. Buyer shall pay Four Hundred Thousand Dollars ($400,000) to cover Seller's expenses related to moving and re-establishing his business ("Payment Price").

1.2. The Payment Price is contingent on close of escrow pursuant to the Purchase Agreement.

ARTICLE II

2. Closing Conditions

2.1. Within ten (10) business days from the close of escrow on the Property, Buyer shall pay the Payment Price by wire transfer to an account provided by the Seller (see section 2.3); and

2.2. A condition precedent to the payment of the Payment Price is receipt by the Buyer of Seller's written representation that Seller has relocated his business and vacated the Property; and

2.3. If escrow does not close on the Property, the Side Agreement shall terminate in accordance with the terms of the Purchase Agreement and no payment is due or owing from Buyer to Seller.

ARTICLE III

3. General Provisions

3.1.This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

3.2. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

3.3. Wire Instructions. Buyer shall transmit Payment Price via wire transfer to the following account: _____, with the routing number or swift code of: _____, located at the following bank and address: _____.

3.4. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

3.5. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

3.6. Governing Law. This Side Agreement shall be governed by and construed in accordance with the laws of the State of California.

3.7. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Side Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer shall not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attorneys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Side Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Side Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Side Agreement. In the event the transaction contemplated by this Side Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

3.8. Interpretation of Side Agreement. The article, section and other headings of this Side Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

3.9. Amendments. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

3.10. Drafts Not an Offer to Enter Into a Legally Binding Contract. The parties hereto agree that the submission of a draft of this Side Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Side Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Side Agreement (or a copy by facsimile transmission).

3.11. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

3.12. No Third Party Beneficiary. The provisions of this Side Agreement are not intended to benefit any third parties.

3.13. Invalidity and Waiver. If any portion of this Side Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Side Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Side Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

3.14. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

IF TO BUYER:

6176 Federal Blvd. Trust
6176 Federal Blvd.
San Diego, California 92114
Attn:
Fax No.:
Phone No.:

with a copy to:

Austin Legal Group, APC
3990 Old Town Ave, A-112
San Diego, CA 92110

IF TO SELLER:

Darryl Cotton
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided,

however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

3.15. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

3.16. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

3.17. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

3.18. Execution in Counterparts. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

3.19. Incorporation of Recitals/Exhibits. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Side Agreement as though fully set forth herein.

3.20. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Side Agreement shall not invalidate this Side Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Side Agreement. The exercise of any remedy provided in this Side Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Side Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

3.21. Legal Advice. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

BUYER:

6176 FEDERAL BLVD. TRUST

By: _____

Printed: _____

Its: Trustee

SELLER:

DARRYL COTTON:

_____

SIDE AGREEMENT

Dated as of March ___, 2017

By and Among

DARRYL COTTON

and

6176 FEDERAL BLVD TRUST

This Side Agreement ("Side Agreement") is made as of the ___ day of _____ 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust ("Buyer"), a California trust. Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Seller and Buyer desire to enter into a Purchase Agreement (the "Purchase Agreement"), dated of even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property"); and

WHEREAS, the purchase price for the Property is Four Hundred Thousand Dollars ($400,000); and

WHEREAS, a condition to the Purchase Agreement is that Buyer and Seller enter into this Side Agreement that addresses the terms under which Seller shall move his existing business located on the Property.

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

ARTICLE I

1. Terms of the Side Agreement

1.1. Buyer shall pay Four Hundred Thousand Dollars ($400,000) to cover Seller's expenses related to moving and re-establishing his business ("Payment Price").

1.2. The Payment Price is contingent on close of escrow pursuant to the Purchase Agreement.

ARTICLE II

2. Closing Conditions

2.1. Within ten (10) business days from the close of escrow on the Property, Buyer shall pay the Payment Price by wire transfer to an account provided by the Seller (see section 2.3); and

2.2. A condition precedent to the payment of the Payment Price is receipt by the Buyer of Seller's written representation that Seller has relocated his business and vacated the Property; and

2.3. If escrow does not close on the Property, the Side Agreement shall terminate in accordance with the terms of the Purchase Agreement and no payment is due or owing from Buyer to Seller.

ARTICLE III

3. General Provisions

3.1.This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

3.2. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

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3.4. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

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IF TO BUYER:

6176 Federal Blvd. Trust
6176 Federal Blvd.
San Diego, California 92114
Attn:
Fax No.:
Phone No.:

with a copy to:

Austin Legal Group, APC
3990 Old Town Ave, A-112
San Diego, CA 92110

IF TO SELLER:

Darryl Cotton
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided,

however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

3.15. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

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3.17. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

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3.20. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Side Agreement shall not invalidate this Side Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Side Agreement. The exercise of any remedy provided in this Side Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Side Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

3.21. Legal Advice. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

BUYER:

6176 FEDERAL BLVD. TRUST

By: _____

Printed: _____

Its: Trustee

SELLER:

DARRYL COTTON:

_____

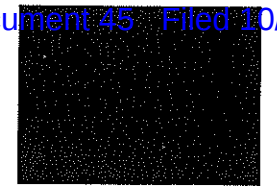
Subject: Re: Statement
From: Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcsd.net>
Date: Friday, March 3, 2017 8:22:09 AM GMT-08:00

Larry,

I read the Side Agreement in your attachment and I see that no reference is made to the 10% equity position as per my Inda-Gro GERL Service Agreement (see attached) in the new store. In fact para 3.11 looks to avoid our agreement completely. It looks like counsel did not get a copy of that document. Can you explain?

On Thu, Mar 2, 2017 at 8:51 AM, Larry Geraci <Larry@tfcsd.net> wrote:

> *Best Regards,*
>
> *Larry E. Geraci, EA*
>
> *Tax & Financial Center, Inc*
> *5402 Ruffin Rd, Ste 200*
> *San Diego, Ca 92123*
>
> *Web: Larrygeraci.com*
> ***Bus: 858.576.1040***
> *Fax: 858.630.3900*



SERVICES AGREEMENT CONTRACT

Date: 09/24/16

Customer: GERL Investments
5402 Ruffin Road, Ste. 200
San Diego, CA 92103

Attn: Mr. Larry Geraci
Ph: 858.956.4040
E-mail: Larry@TFCSD.net

Mr. Geraci;

Pursuant to our conversations I have developed this document to act as the Contract between us that will serve to define our relationship, services, and fee's for the development of 6176 Federal Boulevard San Diego, CA. 92114 (hereinafter referred to as the property) as a new dispensary to be owned and managed by your company, GERL Investments.

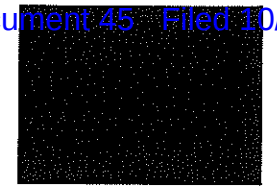
1) The property is currently owned by me, Darryl Cotton (Cotton-Seller) and occupied by my company, Inda-Gro Induction Lighting Company (Inda-Gro-Tenant). Under separate Contract Cotton has agreed to sell the property to GERL Investments (GERL-Buyer) for $400,000.00 and a 10% equity position in the new licensed cannabis dispensary business being developed at the property by GERL.

2) Upon completion and transfer of property ownership Cotton will immediately cease being the landlord to Inda-Gro and Inda-Gro will become the tenant of GERL.

3) GERL plans to tear down the existing structure(s) and build a new structure for a commercial dispensary. Under this Agreement GERL will allow Inda-Gro to remain in the property at no charge until such time that the plan check with the City of San Diego has been approved and permits have been issued. This process is expected to take 6-9 months. At the time GERL notices Inda-Gro that the permits have been issued Inda-Gro will have 30 days to vacate the property. Inda-Gro agrees to cooperate with GERL architects to access the property during the design phase of this work.

4) Inda-Gro is agreeing to vacate the property in consideration for a relocation fee of $400,000.00 of which payment would be made in two parts. Upon execution of this Contract GERL agrees to pay Inda-Gro $200,000. Upon issuance of the permits and the 30 day notice to vacate the balance, $200,000.00 would become payable and due.

5) Inda-Gro currently operates what we refer to as a 151 Farm. This is a teaching and touring farm that demonstrates urban farming technologies which utilize our lighting systems, controls and water savings strategies utilizing Aquaponics systems. Since it is in the interest of all parties; Inda-Gro, Cotton and



GERL to identify ongoing investment opportunities with both cannabis and non-cannabis related ventures Inda-Gro and Cotton agree to use the current property to highlight the benefits of what having a licensed dispensary is to the community and once relocated Inda-Gro/Cotton would agree to continue to promote the new dispensary as an example of seed to sale retail distribution as well as identify other investment opportunities that develop from interested parties having toured our facilities and wishing to establish similar operations.

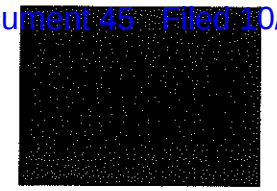
6) GERL may wish to have interested parties tour the current and new property for Inda-Gro 151 Farms. This too is acceptable and under this Agreement would be a mutual collaboration and strategic alliance in terms of the farming and cultivation aspects provided by Inda-Gro and the Site Acquisition, Design/Build Construction and Retail Cannabis Services provided by GERL for those future contracts.

TOTAL PRICE: **Four Hundred Thousand and 00/100 ($ 400,000.00)**

I/we accept the Service Agreement Contract as detailed and do hereby agree to the Terms as set forth herein:

Sign: _____ Print Name: _____ Date: _____
Darryl Cotton, President

Sign: _____ Print Name: _____ Date: _____
Larry Geraci



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San Diego, CA 92103

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Ph: 858.956.4040
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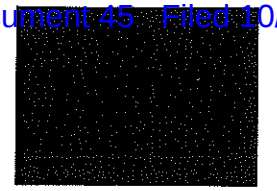

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I/we accept the Service Agreement Contract as detailed and do hereby agree to the Terms as set forth herein:

Sign: _____ Print Name: _____ Date: _____
Darryl Cotton, President

Sign: _____ Print Name: _____ Date: _____
Larry Geraci

Subject: Contract Review
From: Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <darryl@inda-gro.com>
Date: Tuesday, March 7, 2017 12:05:43 PM GMT-08:00

Hi Daryl,

I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month....can we do 5k, and on the seventh month start 10k?

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

SIDE AGREEMENT

This Side Agreement ("Side Agreement") is made as of the ___ day of _____ 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust, dated _____, 2017 ("Buyer"). Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Seller and Buyer have entered into a Purchase Agreement (the "Purchase Agreement"), dated as of approximate even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property");

WHEREAS, The Buyer intends to operate a licensed medical cannabis at the property ("Business"); and

WHEREAS, in conjunction with Buyer's purchase of the Property, Buyer has agreed to pay Seller $400,000.00 to reimburse and otherwise compensate Seller for Seller relocating his business located at the Property, and to share in certain profits of Buyer's future Business.

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

ARTICLE I
SIDE AGREEMENT

1.1. Within 10 days from the closing of the purchase of the Property pursuant to the Purchase Agreement, and conditioned upon Seller being fully vacated from the Property prior to such closing, Buyer shall pay to Seller in cash or cash equivalent, the sum of Four Hundred Thousand Dollars ($400,000.00) to an account to be designated by Seller in writing.

1.2. In addition to the above, conditioned upon the timely closing of the purchase of the Property pursuant to the Purchase Agreement, Buyer hereby agrees to pay to Seller 10% of the net revenues of Buyer's Business after all expenses and liabilities have been paid. Profits will be paid on the 10th day of each month following the month in which they accrued. Further, Buyer hereby guarantees a profits payment of not less than $5,000.00 per month for the first three months the Business is open (i.e. profits would be paid in months 2-4 for profits accrued in months 1-3) and $10,000.00 a month for each month thereafter the Business is operating on the Property.

ARTICLE II
GENERAL TERMS

2. Entire Agreement. This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto or thereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

2.1. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

2.2. Termination. If escrow does not close on the Property according to the terms of the Purchase Agreement, the Side Agreement shall terminate and Buyer and Seller shall have no obligations to each other under this Agreement.

2.3. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

2.4. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

2.5. Governing Law. This Side Agreement shall be governed by and construed in accordance with the laws of the State of California.

2.6. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential this Side Agreement and the transactions contemplated hereby, and shall not disclose such information to any third party, except their respective attorneys.

2.7. Interpretation of Side Agreement. The article, section and other headings of this Side Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

2.8. Amendments. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

2.9. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

2.10. No Third Party Beneficiary. The provisions of this Side Agreement are not intended to benefit any third parties.

2.11. Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Side Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

2.12. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

IF TO BUYER:

6176 Federal Blvd. Trust
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

with a copy to:

Austin Legal Group, APC
3990 Old Town Ave, A-112
San Diego, CA 92110

IF TO SELLER:

Darryl Cotton
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

2.13. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday,

Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

2.14. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

2.15. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

2.16. Execution in Counterparts. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

2.17. Incorporation of Recitals/Exhibits. All recitals set forth herein above are incorporated in this Agreement as though fully set forth herein.

2.18. Legal Advice. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

BUYER: SELLER:

6176 FEDERAL BLVD. TRUST **DARRYL COTTON:**

By: _____ _____

Printed: _____

Its: Trustee

SIDE AGREEMENT

This Side Agreement ("Side Agreement") is made as of the ___ day of _____ 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust, dated _____, 2017 ("Buyer"). Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Seller and Buyer have entered into a Purchase Agreement (the "Purchase Agreement"), dated as of approximate even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property");

WHEREAS, The Buyer intends to operate a licensed medical cannabis at the property ("Business"); and

WHEREAS, in conjunction with Buyer's purchase of the Property, Buyer has agreed to pay Seller $400,000.00 to reimburse and otherwise compensate Seller for Seller relocating his business located at the Property, and to share in certain profits of Buyer's future Business.

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

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1.2. In addition to the above, conditioned upon the timely closing of the purchase of the Property pursuant to the Purchase Agreement, Buyer hereby agrees to pay to Seller 10% of the net revenues of Buyer's Business after all expenses and liabilities have been paid. Profits will be paid on the 10th day of each month following the month in which they accrued. Further, Buyer hereby guarantees a profits payment of not less than $5,000.00 per month for the first three months the Business is open (i.e. profits would be paid in months 2-4 for profits accrued in months 1-3) and $10,000.00 a month for each month thereafter the Business is operating on the Property.

ARTICLE II
GENERAL TERMS

2. Entire Agreement. This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto or thereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

2.1. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

2.2. Termination. If escrow does not close on the Property according to the terms of the Purchase Agreement, the Side Agreement shall terminate and Buyer and Seller shall have no obligations to each other under this Agreement.

2.3. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

2.4. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

2.5. Governing Law. This Side Agreement shall be governed by and construed in accordance with the laws of the State of California.

2.6. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential this Side Agreement and the transactions contemplated hereby, and shall not disclose such information to any third party, except their respective attorneys.

2.7. Interpretation of Side Agreement. The article, section and other headings of this Side Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

2.8. Amendments. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

2.9. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

2.10. No Third Party Beneficiary. The provisions of this Side Agreement are not intended to benefit any third parties.

2.11. Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Side Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

2.12. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

IF TO BUYER:

6176 Federal Blvd. Trust
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

with a copy to:

Austin Legal Group, APC
3990 Old Town Ave, A-112
San Diego, CA 92110

IF TO SELLER:

Darryl Cotton
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

2.13. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday,

Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

2.14. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

2.15. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

2.16. Execution in Counterparts. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

2.17. Incorporation of Recitals/Exhibits. All recitals set forth herein above are incorporated in this Agreement as though fully set forth herein.

2.18. Legal Advice. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

BUYER: SELLER:

6176 FEDERAL BLVD. TRUST **DARRYL COTTON:**

By: _____ _____

Printed: _____

Its: Trustee

Subject: Re: Contract Review
From: Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcsd.net>
Date: Thursday, March 16, 2017 8:23:52 PM GMT-07:00

Larry,

My apologies ahead of time as I am going to provide frank comments on the agreement so that we can finalize it and get this closed. And, so that you understand where I am coming from, just want to lay out a few of our milestones.

Throughout October we had discussions regarding the sale of my property. We met on 11/2 and agreed upon an $800,000 purchase price, a $50,000 non-refundable deposit, a 10% equity stake with a monthly guaranteed minimum $10,000 payment and to definitive agreements that contained a few other conditions (e.g., I stay at the property if the CUP is issued until construction starts). We executed a good faith agreement that day stating the sale of the property was for the $800,000 and that as a sign of good faith, you were providing a $10,000 deposit towards the required $50,000 non-refundable deposit. That same day you scanned and emailed to me the agreement and I replied and noted that the agreement did not contain the 10% equity stake in the dispensary. I asked you to please respond and confirm via email that a condition of the sale was my 10% equity stake. You did not respond and confirm the 10% as I requested.

Almost 4 months later, on 2/27, you forwarded a draft purchase agreement for the property that again did not contain the agreed upon 10% equity stake, it also does not mention the remaining $40,000 towards the non-refundable deposit. I called you about this and we spoke.

On 3/2, you forwarded a draft Side Agreement that again did not contain the 10% equity stake. I replied the next day on 3/3 raising the 10% equity issue and attaching the draft services agreement that I drafted that contains some of the terms we had agreed upon.

On 3/7, email below, you forwarded a revised Side Agreement that did contain the 10% equity stake, but in the body of the email you requested that the $10,000 minimum monthly payment be held off until month 7 and that months 1-6 be reduced to $5,000 a month. I know from our conversations that you have spent over $300,000 on lobbying and zoning efforts for this property, which has caused you to be strapped for cash. However, I am not in a position to take a $5,000 reduction for 6 months.

The long and short of it, we started these negotiations 4 months ago and the drafts and our communications have not reflected what we agreed upon and are still far from reflecting our original agreement. Here is my proposal, please have your attorney Gina revise the Purchase Agreement and Side Agreement to incorporate all the terms we have agreed upon so that we can execute final versions and get this closed.

Please have these terms incorporated into revised drafts:

- The remaining $40,000 deposit, which is nonrefundable in the event you choose to not close on the property if the CUP is denied. And which is to be provided upon execution of the final agreements.
- If the CUP is granted, my business can remain at the property until the city has finalized the plans and construction begins at the property.
- A 10% equity stake with a minimum guaranteed monthly distribution of $10,000, whichever is greater.
- A clause that my 10% equity stake carries with it consent rights for any material decisions. Those items that are to require my consent can be standard minority consent rights, but

basically that my consent is required for large decisions like the issuance of employee bonus and for agreements with suppliers and vendors that are not done on an arm-lengths basis. A friend of mine said that these are standard "Minority Shareholder Protection Rights."
- A provision requiring that upon the creation of the formation and governance documents of the CUP entity, that there is a requirement that the accounting is to be done by a third-party accounting firm that will also be responsible for calculating my 10% monthly equity distributions.
- The incorporation of all the terms in the MOU that I created that Gina references in the draft purchase agreement.
- Please have Gina delete the clause in the purchase agreement that says both you and I had our own counsel review the agreement. You told me I could just communicate with Gina and though I tried to engage an attorney, I did not ultimately do so for cost reasons.

The intent of all this is to ensure that the agreement we have agreed upon can be executed and verified. Having said all this, I really want to finalize this as soon as possible - 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.

Ultimately, the main point is that we were supposed to execute our agreements as soon as possible so that I could receive the total $50,000 non-refundable deposit and you would take the risk of the non-approval of the CUP. If this keeps dragging on and we do not finalize and execute our agreements, then you may get a denial from the city on the CUP and then simply walk away. At that point, the property having been denied, no other party would be willing to take on that risk. If you are not willing to take on that risk as originally agreed upon, please let me know as there are other parties who would match your terms and be willing to take on that risk.

Please confirm by Monday 12:00 PM whether we are on the same page and you plan to continue with our agreement. Or, if not, so I can return your $10,000 of the $50,000 required deposit. If, hopefully, we can work through this, please confirm that revised final drafts that incorporate the terms above will be provided by Wednesday at 12:00 PM. I promise to review and provide comments that same day so we can execute the same or next day.

In anticipation of your reply, I remain,

Darryl Cotton

On Tue, Mar 7, 2017 at 12:05 PM, Larry Geraci <Larry@tfcsd.net> wrote:

> Hi Daryl,
>
> I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month....can we do 5k, and on the seventh month start 10k?
>
> *Best Regards,*

Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Subject: Re: Contract Review
From: Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcsd.net>
Date: Friday, March 17, 2017 2:15:50 PM GMT-07:00

Larry, I received your text asking to meet in person tomorrow. I would prefer that until we have final agreements, that we converse exclusively via email. My greatest concern is that you will 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. There is no situation where an oral agreement will convince me that you are dealing with me in good faith and will honor our agreement. We need a final written, legal, binding agreement.

Please confirm, as requested, 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.

It is unfortunate that matters have turned out like this, but hearing from the city that the application had been submitted before our deal was signed and that it is already under review, meaning you have been lying to me for months, forces me to take this course of action.

Again, please respond to this email so that there is a clear record of our conversations from this point forward or at least until we have final executed documents.

-Darryl

On Thu, Mar 16, 2017 at 8:23 PM, Darryl Cotton <indagrodarryl@gmail.com> wrote:

> Larry,
>
> My apologies ahead of time as I am going to provide frank comments on the agreement so that we can finalize it and get this closed. And, so that you understand where I am coming from, just want to lay out a few of our milestones.
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> Throughout October we had discussions regarding the sale of my property. We met on 11/2 and agreed upon an $800,000 purchase price, a $50,000 non-refundable deposit, a 10% equity stake with a monthly guaranteed minimum $10,000 payment and to definitive agreements that contained a few other conditions (e.g., I stay at the property if the CUP is issued until construction starts). We executed a good faith agreement that day stating the sale of the property was for the $800,000 and that as a sign of good faith, you were providing a $10,000 deposit towards the required $50,000 non-refundable deposit. That same day you scanned and emailed to me the agreement and I replied and noted that the agreement did not contain the 10% equity stake in the dispensary. I asked you to please respond and confirm via email that a condition of the sale was my 10% equity stake. You did not respond and confirm the 10% as I requested.
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- Please have Gina delete the clause in the purchase agreement that says both you and I had our own counsel review the agreement. You told me I could just communicate with Gina and though I tried to engage an attorney, I did not ultimately do so for cost reasons.

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continue with our agreement. Or, if not, so I can return your $10,000 of the $50,000 required deposit. If, hopefully, we can work through this, please confirm that revised final drafts that incorporate the terms above will be provided by Wednesday at 12:00 PM. I promise to review and provide comments that same day so we can execute the same or next day.

In anticipation of your reply, I remain,

Darryl Cotton

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> I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month....can we do 5k, and on the seventh month start 10k?
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> *Best Regards,*
>
> *Larry E. Geraci, EA*
>
> *Tax & Financial Center, Inc*
>
> *5402 Ruffin Rd, Ste 200*
>
> *San Diego, Ca 92123*
>
> *Web: Larrygeraci.com*
>
> ***Bus: 858.576.1040***
>
> *Fax: 858.630.3900*

Circular 230 Disclaimer:

Subject: RE: Contract Review
From: Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <indagrodarryl@gmail.com>
Date: Saturday, March 18, 2017 1:43:23 PM GMT-07:00

Darryl,

I have an attorney working on the situation now. I will follow up by Wednesday with the response as their timing will play a factor.

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Friday, March 17, 2017 2:16 PM
To: Larry Geraci <Larry@tfcsd.net>
Subject: Re: Contract Review

Larry, I received your text asking to meet in person tomorrow. I would prefer that until we have final agreements, that we converse exclusively via email. My greatest concern is that you will 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. There is no situation where an oral agreement will convince me that you are dealing with me in good faith and will honor our agreement. We need a final written, legal, binding agreement.

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Again, please respond to this email so that there is a clear record of our conversations from this point forward or at least until we have final executed documents.

-Darryl

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> *San Diego, Ca 92123*
>
> *Web: Larrygeraci.com*
> ***Bus: 858.576.1040***
> *Fax: 858.630.3900*

Subject: Re: Contract Review
From: Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcsd.net>
Date: Sunday, March 19, 2017 9:02:18 AM GMT-07:00

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Circular 230 Disclaimer:

Subject: RE: Contract Review
From: Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <indagrodarryl@gmail.com>
Date: Sunday, March 19, 2017 3:11:22 PM GMT-07:00

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As to lying about the status, read the comment below from the city on Wednesday 3/15/2017. We are addressing this currently with the city. I have been forthright with you this entire process.

To: 'Abhay Schweitzer' <abhay@techne-us.com>
Subject: PTS 520606 - Federal Boulevard MMCC
Importance: High

Good Afternoon,
I am the Development Project Manager assigned to the above referenced project. The project is located in the CO-2-1 (Commercial Office) Zone. Please note that per the San Diego Municipal Code, a Medical Marijuana Consumer Cooperative is not a permitted use in this Zone and staff will be recommending denial of this application.
Pease advise if you wish to continue the processing of the subject application through the full review process, or staff could schedule a hearing immediately with a recommendation of denial. Please note that all costs associated with the processing of the application would be charged to the deposit account and not refunded.
Please notify me at your earliest convenience of your preference.
Regards,

Best Regards,

Larry E. Geraci, EA

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Web: Larrygeraci.com
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Circular 230 Disclaimer:

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

From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Sunday, March 19, 2017 9:02 AM

To: Larry Geraci <Larry@tfcsd.net>
Subject: Re: Contract Review

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To: Larry Geraci <Larry@tfcsd.net>
Date: Sunday, March 19, 2017 6:47:43 PM GMT-07:00

Larry,

I have not been changing my mind. The only additional requests have been in regards to putting in place third party accounting and other mechanisms to ensure that my interests are protected. I have only done so because you kept providing draft agreements that continuously failed the terms we agreed to.

It is blatantly clear to me now that you have been stringing me along, even now all your responses are to buy more time. So there is no confusion, you have until tomorrow 12:00 PM to provide confirmation as requested below. If you don't, I am emailing the City of San Diego regarding the fact that no third-party has any interest in my property and the application currently pending needs to be denied.

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Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Friday, March 17, 2017 2:16 PM
To: Larry Geraci <Larry@tfcsd.net>
Subject: Re: Contract Review

Larry, I received your text asking to meet in person tomorrow. I would prefer that until we have final agreements, that we converse exclusively via email. My greatest concern is that you will 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. There is no situation where an oral agreement will convince me that you are dealing with me in good faith and will honor our agreement. We need a final written, legal, binding agreement.

Please confirm, as requested, 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.

It is unfortunate that matters have turned out like this, but hearing from the city that the application had been submitted before our deal was signed and that it is already under review, meaning you have been lying to me for months, forces me to take this course of action.

Again, please respond to this email so that there is a clear record of our conversations from this point forward or at least until we have final executed documents.

-Darryl

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and agreed upon an $800,000 purchase price, a $50,000 non-refundable deposit, a 10% equity stake with a monthly guaranteed minimum $10,000 payment and to definitive agreements that contained a few other conditions (e.g., I stay at the property if the CUP is issued until construction starts). We executed a good faith agreement that day stating the sale of the property was for the $800,000 and that as a sign of good faith, you were providing a $10,000 deposit towards the required $50,000 non-refundable deposit. That same day you scanned and emailed to me the agreement and I replied and noted that the agreement did not contain the 10% equity stake in the dispensary. I asked you to please respond and confirm via email that a condition of the sale was my 10% equity stake. You did not respond and confirm the 10% as I requested.

Almost 4 months later, on 2/27, you forwarded a draft purchase agreement for the property that again did not contain the agreed upon 10% equity stake, it also does not mention the remaining $40,000 towards the non-refundable deposit. I called you about this and we spoke.

On 3/2, you forwarded a draft Side Agreement that again did not contain the 10% equity stake. I replied the next day on 3/3 raising the 10% equity issue and attaching the draft services agreement that I drafted that contains some of the terms we had agreed upon.

On 3/7, email below, you forwarded a revised Side Agreement that did contain the 10% equity stake, but in the body of the email you requested that the $10,000 minimum monthly payment be held off until month 7 and that months 1-6 be reduced to $5,000 a month. I know from our conversations that you have spent over $300,000 on lobbying and zoning efforts for this property, which has caused you to be strapped for cash. However, I am not in a position to take a $5,000 reduction for 6 months.

The long and short of it, we started these negotiations 4 months ago and the drafts and our communications have not reflected what we agreed upon and are still far from reflecting our original agreement. Here is my proposal, please have your attorney Gina revise the Purchase Agreement and Side Agreement to incorporate all the terms we have agreed upon so that we can execute final versions and get this closed.

Please have these terms incorporated into revised drafts:

- The remaining $40,000 deposit, which is nonrefundable in the event you choose to not close on the property if the CUP is denied. And which is to be provided upon execution of the final agreements.
- If the CUP is granted, my business can remain at the property until the city has finalized the plans and construction begins at the property.
- A 10% equity stake with a minimum guaranteed monthly distribution of $10,000, whichever is greater.
- A clause that my 10% equity stake carries with it consent rights for any material decisions. Those items that are to require my consent can be standard minority consent rights, but basically that my consent is required for large decisions like the issuance of employee bonus and for agreements with suppliers and vendors that are not done on an arm-lengths basis. A friend of mine said that these are standard "Minority Shareholder Protection Rights."
- A provision requiring that upon the creation of the formation and governance documents of the CUP entity, that there is a requirement that the accounting is to be done by a third-party accounting firm that will also be responsible for calculating my 10% monthly equity distributions.
- The incorporation of all the terms in the MOU that I created that Gina references in the draft purchase agreement.
- Please have Gina delete the clause in the purchase agreement that says both you and I had our own counsel review the agreement. You told me I could just communicate with Gina and though I tried to engage an attorney, I did not ultimately do so for cost

reasons.

The intent of all this is to ensure that the agreement we have agreed upon can be executed and verified. Having said all this, I really want to finalize this as soon as possible - 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.

Ultimately, the main point is that we were supposed to execute our agreements as soon as possible so that I could receive the total $50,000 non-refundable deposit and you would take the risk of the non-approval of the CUP. If this keeps dragging on and we do not finalize and execute our agreements, then you may get a denial from the city on the CUP and then simply walk away. At that point, the property having been denied, no other party would be willing to take on that risk. If you are not willing to take on that risk as originally agreed upon, please let me know as there are other parties who would match your terms and be willing to take on that risk.

Please confirm by Monday 12:00 PM whether we are on the same page and you plan to continue with our agreement. Or, if not, so I can return your $10,000 of the $50,000 required deposit. If, hopefully, we can work through this, please confirm that revised final drafts that incorporate the terms above will be provided by Wednesday at 12:00 PM. I promise to review and provide comments that same day so we can execute the same or next day.

In anticipation of your reply, I remain,

Darryl Cotton

On Tue, Mar 7, 2017 at 12:05 PM, Larry Geraci <Larry@tfcsd.net> wrote:

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>
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Circular 230 Disclaimer:

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

Subject: Re: Contract Review
From: Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcsd.net>
Date: Tuesday, March 21, 2017 3:18:36 PM GMT-07:00

Larry, I have been in communications over the last 2 days with Firouzeh, the Development Project Manager for the City of San Diego who is handling CUP applications. She made it 100% clear that there are no restrictions on my property and that there is no recommendation that a CUP application on my property be denied. In fact she told me the application had just passed the "Deemed Complete' phase and was entering the review process. She also confirmed that the application was paid for in October, before we even signed our agreement.

This is our last communication, you have failed to live up to your agreement and have continuously lied to me and kept pushing off creating final legal agreements because you wanted to push it off to get a response from the City without taking the risk of losing the non-refundable deposit in the event the CUP application is denied.

To be clear, as of now, you have no interest in my property, contingent or otherwise. I will be entering into an agreement with a third-party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you.

Darryl Cotton

On Sun, Mar 19, 2017 at 6:47 PM, Darryl Cotton <indagrodarryl@gmail.com> wrote:

> Larry,
>
> I have not been changing my mind. The only additional requests have been in regards to putting in place third party accounting and other mechanisms to ensure that my interests are protected. I have only done so because you kept providing draft agreements that continuously failed the terms we agreed to.
>
> It is blatantly clear to me now that you have been stringing me along, even now all your responses are to buy more time. So there is no confusion, you have until tomorrow 12:00 PM to provide confirmation as requested below. If you don't, I am emailing the City of San Diego regarding the fact that no third-party has any interest in my property and the application currently pending needs to be denied.
>
> On Sun, Mar 19, 2017 at 3:11 PM, Larry Geraci <Larry@tfcsd.net> wrote:
>
> > Darryl,
> >
> > At this point, you keep changing your mind every time we talk. My attorneys will move forward on the agreement as planned. Any signed written agreement will be followed by the letter of the law. It's not about any deposit, it's about you changing what is not in writing. So there is no confusion, the attorneys will move forward with an agreement.
> >
> > **As to lying about the status, read the comment below from the city on Wednesday 3/15/2017**. We are addressing this currently with the city. I have been forthright with you this entire

process.

To: 'Abhay Schweitzer' <abhay@techne-us.com>
Subject: PTS 520606 - Federal Boulevard MMCC
Importance: High

Good Afternoon,

I am the Development Project Manager assigned to the above referenced project. The project is located in the CO-2-1 (Commercial Office) Zone. Please note that per the San Diego Municipal Code, a Medical Marijuana Consumer Cooperative is not a permitted use in this Zone and staff will be recommending denial of this application.

Pease advise if you wish to continue the processing of the subject application through the full review process, or staff could schedule a hearing immediately with a recommendation of denial. Please note that all costs associated with the processing of the application would be charged to the deposit account and not refunded.

Please notify me at your earliest convenience of your preference.

Regards,

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc

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San Diego, Ca 92123

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From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Sunday, March 19, 2017 9:02 AM

To: Larry Geraci <Larry@tfcsd.net>
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EXHIBIT 5

CALIFORNIA ASSOCIATION OF REALTORS®

COMMERCIAL PROPERTY PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

(NON-RESIDENTIAL)
(C.A.R. Form CPA, Revised 12/15)

Date Prepared: 03/21/2017

1. OFFER:
   A. THIS IS AN OFFER FROM Richard John Martin II ("Buyer").
   B. THE REAL PROPERTY to be acquired is 6176 Federal Blvd, situated in San Diego (City), San Diego (County), California, 92114-1401 (Zip Code), Assessor's Parcel No. 543-020-07-0 ("Property").
   C. THE PURCHASE PRICE offered is Two Million Dollars $ 2,000,000.00
   D. CLOSE OF ESCROW shall occur on (X) see Addendum 1 (date) (or ____ Days After Acceptance).
   E. Buyer and Seller are referred to herein as the "Parties." Brokers are not Parties to this Agreement.
2. AGENCY:
   A. DISCLOSURE: The Parties each acknowledge receipt of a (X) "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD).
   B. CONFIRMATION: The following agency relationships are hereby confirmed for this transaction:
   Listing Agent: N/A (Print Firm Name) is the agent of (check one):
   ( ) the Seller exclusively; or ( ) both the Buyer and Seller.
   Selling Agent N/A (Print Firm Name) (if not the same as the Listing Agent) is the agent of (check one): ( ) the Buyer exclusively; or ( ) the Seller exclusively; or ( ) both the Buyer and Seller.
   C. POTENTIALLY COMPETING BUYERS AND SELLERS: The Parties each acknowledge receipt of a (X) "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).
3. FINANCE TERMS: Buyer represents that funds will be good when deposited with Escrow Holder.
   A. INITIAL DEPOSIT: Deposit shall be in the amount of ..... $ ____
   (1) Buyer Direct Deposit: Buyer shall deliver deposit directly to Escrow Holder by electronic funds transfer, ( ) cashier's check, ( ) personal check, ( ) other ____ within 3 business days after Acceptance (or ____).
   OR (2) ( ) Buyer Deposit with Agent: Buyer has given the deposit by personal check (or ____) to the agent submitting the offer (or to ____), made payable to ____. The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder within 3 business days after Acceptance (or ____).
   Deposit checks given to agent shall be an original signed check and not a copy.
   (Note: Initial and increased deposit checks received by agent shall be recorded in Broker's trust fund log.)
   B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of ..... $ ____ within ____ Days After Acceptance (or ____).
   If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount in a separate liquidated damages clause (C.A.R. Form RID) at the time the increased deposit is delivered to Escrow Holder.
   C. ( ) ALL CASH OFFER: No loan is needed to purchase the Property. This offer is NOT contingent on Buyer obtaining a loan. Written verification of sufficient funds to close this transaction IS ATTACHED to this offer or ( ) Buyer shall, within 3 (or ____) Days After Acceptance, Deliver to Seller such verification.
   D. LOAN(S):
   (1) FIRST LOAN: in the amount of ..... $ 1,800,000.00
   This loan will be conventional financing or ( ) Seller financing (C.A.R. Form SFA); ( ) assumed financing (C.A.R. Form AFA); ( ) subject to financing; ( ) Other ____. This loan shall be at a fixed rate not to exceed ____% or, ( ) an adjustable rate loan with initial rate not to exceed ____%. Regardless of the type of loan, Buyer shall pay points not to exceed ____% of the loan amount.
   (2) ( ) SECOND LOAN in the amount of ..... $ ____
   This loan will be conventional financing or ( ) Seller financing (C.A.R. Form SFA); ( ) assumed financing (C.A.R. Form AFA); ( ) subject to financing; ( ) Other ____. This loan shall be at a fixed rate not to exceed ____% or ( ) an adjustable rate loan with initial rate not to exceed ____%. Regardless of the type of loan, Buyer shall pay points not to exceed ____% of the loan amount.
   E. ADDITIONAL FINANCING TERMS: see attached Addendum 1
   F. BALANCE OF DOWN PAYMENT OR PURCHASE PRICE in the amount of ..... $ 200,000.00 to be deposited with Escrow Holder pursuant to Escrow Holder instructions.
   G. PURCHASE PRICE (TOTAL): ..... $ 2,000,000.00
   H. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS: Buyer (or Buyer's lender or loan broker pursuant to paragraph 3J(1)) shall, within 3 (or ____) Days After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. ( ) Verification attached.)

Buyer's Initials (X) ( )
Seller's Initials (X) ( )

Property Address: 6176 Federal Blvd, San Diego, CA 92114-1401 Date: March 21, 2017

I. **APPRAISAL CONTINGENCY AND REMOVAL.** This Agreement is (or [X] is NOT) contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the purchase price. Buyer shall, as specified in paragraph 14B(3), in writing, remove the appraisal contingency or cancel this Agreement within 17 (or ___) **Days** After Acceptance.

J. **LOAN TERMS:**

(1) LOAN APPLICATIONS: Within 3 (or ___) **Days** After Acceptance, Buyer shall Deliver to Seller a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in paragraph 3D. If any loan specified in paragraph 3D is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate. ([X] Letter attached.)

(2) LOAN CONTINGENCY: Buyer shall act diligently and in good faith to obtain the designated loan(s). Buyer's qualification for the loan(s) specified above is a **contingency** of this Agreement unless otherwise agreed in writing. If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan. Buyer's contractual obligations regarding deposit, balance of down payment and closing costs are **not contingencies** of this Agreement.

(3) LOAN CONTINGENCY REMOVAL:

Within **21** (or ___) **Days** After Acceptance, Buyer shall, as specified in paragraph 14, in writing, remove the loan contingency or cancel this Agreement. If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.

(4) [X] NO LOAN CONTINGENCY: Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result Buyer does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

(5) LENDER LIMITS ON BUYER CREDITS: Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.

K. **BUYER STATED FINANCING:** Seller is relying on Buyer's representation of the type of financing specified (including but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price and to sell to Buyer in reliance on Buyer's covenant concerning financing. Buyer shall pursue the financing specified in this Agreement. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in the Agreement and the availability of any such alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

4. **SALE OF BUYER'S PROPERTY:**

A. This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer.

OR B. [ ] This Agreement and Buyer's ability to obtain financing are contingent upon the sale of property owned by Buyer as specified in the attached addendum (C.A.R. Form COP).

5. **ADDENDA AND ADVISORIES:**

A. ADDENDA:

[X] Addendum # 1 (C.A.R. Form ADM)	
[ ] Back Up Offer Addendum (C.A.R. Form BUO)	[ ] Court Confirmation Addendum (C.A.R. Form CCA)
[ ] Septic, Well and Property Monument Addendum (C.A.R. Form SWPI)	
[ ] Short Sale Addendum (C.A.R. Form SSA)	[ ] Other

B. BUYER AND SELLER ADVISORIES:

[X] Buyer's Inspection Advisory (C.A.R. Form BIA)	
[ ] Probate Advisory (C.A.R. Form PA)	[ ] Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)
[ ] Trust Advisory (C.A.R. Form TA)	[ ] REO Advisory (C.A.R. Form REO)
[ ] Short Sale Information and Advisory (C.A.R. Form SSIA)	[ ] Other

6. **OTHER TERMS:** *see attached Addendum 1, is incorporated as part of contract*

7. **ALLOCATION OF COSTS**

A. **INSPECTIONS, REPORTS AND CERTIFICATES:** Unless otherwise agreed, in writing, this paragraph only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; it **does not determine who is to pay for any work recommended or identified in the Report.**

(1) [ ] Buyer [ ] Seller shall pay for a natural hazard zone disclosure report, including tax [ ] environmental [ ] Other ___ prepared by ___

(2) [ ] Buyer [ ] Seller shall pay for the following Report ___ prepared by ___

(3) [ ] Buyer [ ] Seller shall pay for the following Report ___ prepared by ___

B. **GOVERNMENT REQUIREMENTS AND RETROFIT:**

(1) [ ] Buyer [ ] Seller shall pay for smoke alarm and carbon monoxide device installation and water heater bracing, if required by Law. Prior to Close Of Escrow ("COE"), Seller shall provide Buyer written statement(s) of compliance in accordance with state and local Law, unless Seller is exempt.

(2) (i) ☐ Buyer ☐ Seller shall pay the cost of compliance with any other minimum mandatory government inspections and reports if required as a condition of closing escrow under any Law.
(ii) ☐ Buyer ☐ Seller shall pay the cost of compliance with any other minimum mandatory government retrofit standards required as a condition of closing escrow under any Law, whether the work is required to be completed before or after COE.
(iii) Buyer shall be provided, within the time specified in paragraph 18A, a copy of any required government conducted or point-of-sale inspection report prepared pursuant to this Agreement or in anticipation of the sale of the Property.

C. **ESCROW AND TITLE:**
(1) (a) ☐ Buyer ☐ Seller shall pay escrow fee _____
(b) Escrow Holder shall be _____
(c) The Parties shall, within 5 (or ___) Days After receipt, sign and return Escrow Holder's general provisions.
(2) (a) ☐ Buyer ☐ Seller shall pay for owner's title insurance policy specified in paragraph 17E
(b) Owner's title policy to be issued by _____
(Buyer shall pay for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing.)

D. **OTHER COSTS:**
(1) ☐ Buyer ☐ Seller shall pay County transfer tax or fee _____
(2) ☐ Buyer ☐ Seller shall pay City transfer tax or fee _____
(3) ☐ Buyer ☐ Seller shall pay Owners' Association ('OA') transfer fee _____
(4) Seller shall pay OA fees for preparing all documents required to be delivered by Civil Code §4525.
(5) ☐ Buyer ☐ Seller shall pay OA fees for preparing all documents other than those required by Civil Code §4525.
(6) Buyer to pay for any HOA certification fee.
(7) ☐ Buyer ☐ Seller shall pay for any private transfer fee _____
(8) ☐ Buyer ☐ Seller shall pay for _____
(9) ☐ Buyer ☐ Seller shall pay for _____

8. **ITEMS INCLUDED IN AND EXCLUDED FROM SALE:**
A. **NOTE TO BUYER AND SELLER:** Items listed as included or excluded in the MLS, flyers or marketing materials are not included in the purchase price or excluded from the sale unless specified in paragraph 8 B, C or D.
B. **ITEMS INCLUDED IN SALE:**
(1) All EXISTING fixtures and fittings that are attached to the Property;
(2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar power systems, built-in appliances, window and door screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes, air coolers/conditioners, pool/spa equipment, garage door openers/remote controls, mailbox, in-ground landscaping, trees/shrubs, water features and fountains, water softeners, water purifiers, security systems/alarms.
(3) A complete inventory of all personal property of Seller currently used in the operation of the Property and included in the purchase price shall be delivered to Buyer within the time specified in paragraph 18A.
(4) Seller represents that all items included in the purchase price are, unless otherwise specified or identified pursuant to 8B(7), owned by Seller. Within the time specified in paragraph 18A, Seller shall give Buyer a list of fixtures not owned by Seller.
(5) Seller shall deliver title to the personal property by Bill of Sale, free and clear of all liens and encumbrances, and without Seller warranty of condition regardless of value.
(6) As additional security for any note in favor of Seller for any part of the purchase price, Buyer shall execute a UCC 1 Financing Statement to be filed with the Secretary of State, covering the personal property included in the purchase, replacement thereof, and insurance proceeds.
(7) **LEASED OR LIENED ITEMS AND SYSTEMS:** Seller shall, within the time specified in paragraph 18A, (i) disclose to Buyer if any item or system specified in paragraph 8B or otherwise included in the sale is leased or not owned by Seller, or specifically subject to a lien or other encumbrance, and (ii) Deliver to Buyer all written materials (such as lease, warranty, etc.) concerning any such item. Buyer's ability to assume any such lease, or willingness to accept the Property subject to any such lien or encumbrance, is a contingency in favor of Buyer and Seller as specified in paragraph 18B and C.
C. **ITEMS EXCLUDED FROM SALE:** Unless otherwise specified, the following items are excluded from sale: _____
_____
D. **OTHER ITEMS:**
(1) Existing integrated phone and automation systems, including necessary components such as intranet and Internet-connected hardware or devices, control units (other than non-dedicated mobile devices, electronics and computers), and applicable software, permissions, passwords, codes and access information, are (☐ are NOT) included in the sale.

9. **CLOSING AND POSSESSION:**
A. **Seller-occupied or vacant property:** Possession shall be delivered to Buyer (i) ☐ at 6 PM or (___ AM/ ___ PM, on the date of Close Of Escrow, (ii) ☐ no later than ___ calendar days After Close Of Escrow, or (iii) ☐ at ____ ☐AM/ ☐PM on _____.
B. **Seller Remaining in Possession After Close Of Escrow:** If Seller has the right to remain in possession after Close Of Escrow, (i) the Parties are advised to sign a separate occupancy agreement such as ___ C.A.R. Form CL; and (ii) the Parties are advised to consult with their insurance and legal advisors for information about liability and damage or injury to persons and personal and real property; and (iii) Buyer is advised to consult with Buyer's lender about the impact of Seller's occupancy on Buyer's loan.
C. **Tenant Occupied Units:** Possession and occupancy, subject to the rights of tenants under existing leases, shall be delivered to Buyer on Close Of Escrow.
D. **At Close Of Escrow:** (i) Seller assigns to Buyer any assignable warranty rights for items included in the sale, and (ii) Seller shall Deliver to Buyer available Copies of any such warranties. Brokers cannot and will not determine the assignability of any warranties.

E. At Close Of Escrow, unless otherwise agreed in writing, Seller shall provide keys, passwords, codes and/or means to operate all locks, mailboxes, security systems, alarms, home automation systems and intranet and Internet-connected devices included in the purchase price, and garage door openers. If the Property is a condominium or located in a common interest subdivision, Buyer may be required to pay a deposit to the Owners' Association ("OA") to obtain keys to accessible OA facilities.

10. **SECURITY DEPOSITS:** Security deposits, if any, to the extent they have not been applied by Seller in accordance with any rental agreement and current Law, shall be transferred to Buyer on Close Of Escrow. Seller shall notify each tenant, in compliance with the Civil Code.

11. **SELLER DISCLOSURES:**

A. **NATURAL AND ENVIRONMENTAL DISCLOSURES:** Seller shall, within the time specified in paragraph 18, if required by Law: (i) Deliver to Buyer earthquake guides (and questionnaire) and environmental hazards booklet; (ii) even if exempt from the obligation to provide an NHD, disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.

B. **ADDITIONAL DISCLOSURES:** Within the time specified in paragraph 18, Seller shall Deliver to Buyer, in writing, the following disclosures, documentation and information:

(1) **RENTAL SERVICE AGREEMENTS:** (i) All current leases, rental agreements, service contracts, and other agreements pertaining to the operation of the Property; and (ii) a rental statement including names of tenants, rental rates, period of rental, date of last rent increase, security deposits, rental concessions, rebates, or other benefits, if any, and a list of delinquent rents and their duration. Seller represents that no tenant is entitled to any concession, rebate, or other benefit, except as set forth in these documents.

(2) **INCOME AND EXPENSE STATEMENTS:** The books and records, including a statement of income and expense for the 12 months preceding Acceptance. Seller represents that the books and records are those maintained in the ordinary and normal course of business, and used by Seller in the computation of federal and state income tax returns.

(3) ☐ **TENANT ESTOPPEL CERTIFICATES:** (if checked) Tenant estoppel certificates (C.A.R. Form TEC) completed by Seller or Seller's agent, and signed by tenants, acknowledging: (i) that tenants' rental or lease agreements are unmodified and in full force and effect (or if modified, stating all such modifications); (ii) that no lessor defaults exist; and (iii) stating the amount of any prepaid rent or security deposit.

(4) **SURVEYS, PLANS AND ENGINEERING DOCUMENTS:** Copies of surveys, plans, specifications and engineering documents, if any, in Seller's possession or control.

(5) **PERMITS:** If in Seller's possession, Copies of all permits and approvals concerning the Property, obtained from any governmental entity, including, but not limited to, certificates of occupancy, conditional use permits, development plans, and licenses and permits pertaining to the operation of the Property.

(6) **STRUCTURAL MODIFICATIONS:** Any known structural additions or alterations to, or the installation, alteration, repair or replacement of, significant components of the structure(s) upon the Property.

(7) **GOVERNMENTAL COMPLIANCE:** Any improvements, additions, alterations or repairs made by Seller, or known to Seller to have been made, without required governmental permits, final inspections, and approvals.

(8) **VIOLATION NOTICES:** Any notice of violations of any Law filed or issued against the Property and actually known to Seller.

(9) **MISCELLANEOUS ITEMS:** Any of the following, if actually known to Seller: (i) any current pending lawsuit(s), investigation(s), inquiry(ies), action(s), or other proceeding(s) affecting the Property or the right to use and occupy it, (ii) any unsatisfied mechanic's or materialman's lien(s) affecting the Property; and (iii) that any tenant of the Property is the subject of a bankruptcy.

C. **WITHHOLDING TAXES.** Within the time specified in paragraph 18A, to avoid required withholding, Seller shall Deliver to Buyer or qualified substitute, an affidavit sufficient to comply with federal (FIRPTA) and California withholding Law. (C.A.R. Form AS or QS).

D. **NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES.** This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at **http://www.npms.phmsa.dot.gov/**. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Web site.

E. **CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:**

(1) **SELLER HAS: 7 (or ___) Days** After Acceptance to disclose to Buyer whether the Property is a condominium, or is located in a planned development or other common interest subdivision.

(2) If the Property is a condominium or is located in a planned development or other common interest subdivision, Seller has **3 (or ___) Days** After Acceptance to request from the OA (C.A.R. Form HOA1): (i) Copies of any documents required by Law; (ii) disclosure of any pending or anticipated claim or litigation by or against the OA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of OA minutes for regular and special meetings; and (v) the names and contact information of all OAs governing the Property (collectively, "CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the OA and any CI Disclosures in Seller's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement as specified in paragraph 18B(3). The Party specified in paragraph 7, as directed by escrow, shall deposit funds into escrow or direct to OA or management company to pay for any of the above.

12. ☐ **ENVIRONMENTAL SURVEY** (If checked): Within ___ **Days** After Acceptance, Buyer shall be provided a phase one environmental survey report paid for and obtained by ( ) Buyer ( ) Seller. Buyer shall then as specified in paragraph 18 remove this contingency or cancel this Agreement.

13. **SUBSEQUENT DISCLOSURES:** In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer of which Buyer is otherwise unaware, Seller shall promptly Deliver a subsequent or amended disclosure or notice in writing, covering those items. **However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies disclosed in reports ordered and paid for by Buyer.**

14. **CHANGES DURING ESCROW:**
   A. Prior to Close Of Escrow, Seller may only engage in the following acts ("Proposed Changes") subject to Buyer's rights in paragraph 14B: (i) rent or lease any vacant unit or other part of the premises; (ii) alter, modify, or extend any existing rental or lease agreement; (iii) enter into, alter, modify or extend any service contract(s); or (iv) change the status of the condition of the Property.
   B. (1) 7 (or ____) Days prior to any Proposed Changes, Seller shall Deliver written notice to Buyer of any Proposed Changes.
   (2) Within 5 (or ___) Days After receipt of such notice, Buyer, in writing, may give Seller notice of Buyer's objection to the Proposed Changes in which case Seller shall not make the Proposed Changes.

15. **CONDITION OF PROPERTY:** Unless otherwise agreed in writing: (i) the Property is sold (a) "AS-IS" in its PRESENT physical condition as of the date of Acceptance and (b) subject to Buyer's investigation rights; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow.
   A. Seller shall, within the time specified in paragraph 18A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law.
   B. Buyer has the right to conduct Buyer Investigations of the Property and, as specified in paragraph 18B, based upon information discovered in those investigations: (i) cancel this Agreement; or (ii) request that Seller make Repairs or take other action.
   C. **Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.**

16. **BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:**
   A. Buyer's acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as specified in this paragraph and paragraph 18B. Within the time specified in paragraph 18D(1), Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies (Buyer Investigations"), including, but not limited to, the right to: (i) inspect for lead-based paint and other lead-based paint hazards; (ii) inspect for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures; may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent; shall NOT include roof coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas; and shall include a report ("Pest Control Report") showing the findings of the company, which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2); (iii) review the registered sex offender database; (iv) confirm the insurability of Buyer and the Property including the availability and cost of flood and fire insurance; (v) review and seek approval of leases that may need to be assumed by Buyer; and (vi) satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form BIA). Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations except for minimally invasive testing required to prepare a Pest Control Report or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
   B. Seller shall make the Property available for all Buyer Investigations. Buyer shall: (i) as specified in paragraph 18B, complete Buyer Investigations and either remove this contingency or cancel this Agreement; and (ii) give Seller, at no cost, complete Copies of all such investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.
   C. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's investigations and through the date possession is made available to Buyer.
   D. **Buyer indemnity and seller protection for entry upon property:** Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.

17. **TITLE AND VESTING:**
   A. Within the time specified in paragraph 18, Buyer shall be provided a current preliminary title report ("Preliminary Report"). The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the Preliminary Report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 18B. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities. Seller shall, within 7 Days After Acceptance, give Escrow Holder a completed Statement of Information.
   B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record (which Seller is obligated to pay off) unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing.
   C. Within the time specified in paragraph 18A, Seller has a duty to disclose to Buyer all matters known to Seller affecting title, whether of record or not.

Property Address: *6176 Federal Blvd, San Diego, CA 92114-1401* Date *March 21, 2017*

19. **REPAIRS:** Repairs shall be completed prior to final verification of condition unless otherwise agreed in writing. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skilful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain invoices and paid receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.
20. **FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final verification of the Property within 5 (or ___) Days Prior to Close Of Escrow, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to paragraph 15; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).
21. **PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless otherwise agreed in writing, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, rents, HOA regular, special, and emergency dues and assessments imposed prior to Close Of Escrow; premiums on insurance assumed by Buyer; payments on bonds and assessments assumed by Buyer; and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special assessments that are now a lien but not yet due. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.
22. **BROKERS:**
    A. **COMPENSATION:** Seller or Buyer, or both, as applicable, agrees to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
    B. **BROKERAGE:** Neither Buyer nor Seller has utilized the services of, or for any other reason owes compensation to, a licensed real estate broker (individual or corporate), agent, finder, or other entity, other than as specified in this Agreement, in connection with any act relating to the Property, including, but not limited to, inquiries, introductions, consultations and negotiations leading to this Agreement. Buyer and Seller each agree to indemnify, defend, and hold the other, the Brokers specified herein and their agents harmless from and against any costs, expenses or liability for compensation claimed inconsistent with the warranty and representations in this paragraph.
    C. **SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Broker: (i) Does not decide what price Buyer or Seller should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Broker; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (xi) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.
23. **REPRESENTATIVE CAPACITY:** If one or more Parties is signing the Agreement in a representative capacity and not for himself/herself as an individual then that Party shall so indicate in paragraph 40 or 41 and attach a Representative Capacity Signature Disclosure (C.A.R. Form RCSD). Wherever the signature or initials of the representative identified in the RCSD appear on the Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Party acting in a representative capacity (i) represents that the entity for which that party is acting already exists and (ii) shall Deliver to the other Party and Escrow Holder, within 3 Days After Acceptance, evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code 18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).
24. **JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:**
    A. **The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder,** which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: paragraphs 1-3, 4B, 5A, 6, 7, 10, 11D, 17, 18G, 21, 22A, 23, 24, 30, 38, 39, 41, 42 and paragraph D of the section titled Real Estate Brokers on page 11. If a Copy of the separate compensation agreement(s) provided for in paragraph 22A, or paragraph D of the section titled Real Estate Brokers on page 11 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder and will execute such provisions within the time specified in paragraph 7C(1)(c). To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder within 3 (or ___) Days, shall pay to Escrow Holder or HOA or HOA management company or others any fee required by paragraphs 7, 11 or elsewhere in this Agreement.

Buyer's Initials (X _____) (_____) Seller's Initials (X _____) (_____)

D. At Close Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.

E. Buyer shall receive a standard coverage owner's CLTA policy of title insurance. An ALTA policy or the addition of endorsements may provide greater coverage for Buyer. A title company, at Buyer's request, can provide information about the availability, desirability, coverage, and cost of various title insurance coverages and endorsements. If Buyer desires title coverage other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and shall pay any increase in cost.

18. **TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).**

A. **SELLER HAS: 7 (or ___) Days** After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 5A, 6, 7, 8B(7); 11A, B, C, D and E, 12, 15A and 17A. Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement if Seller has not Delivered the items within the time specified.

B. **(1) BUYER HAS: 17 (or ___) Days** After Acceptance, unless otherwise agreed in writing, to:
(i) complete all Buyer investigations; review all disclosures, reports, lease documents to be assumed by Buyer pursuant to paragraph 6B(7); and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property;
(2) Within the time specified in paragraph 18B(1), Buyer may request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to (C.A.R. Form RRRR) Buyer's requests.
(3) By the end of the time specified in paragraph 18B(1) (or as otherwise specified in this Agreement), Buyer shall Deliver to Seller a removal of the applicable contingency or cancellation (C.A.R. Form CR or CC) of this Agreement. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in paragraph 18A, then Buyer has **5 (or ___) Days** After Delivery of any such items, or the time specified in paragraph 18B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.
(4) **Continuation of Contingency**: Even after the end of the time specified in paragraph 18B(1) and before Seller cancels, if at all, pursuant to paragraph 18C, Buyer retains the right, in writing, to either (i) remove remaining contingencies or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 18C(1).

C. **SELLER RIGHT TO CANCEL:**
(1) **Seller right to Cancel; Buyer Contingencies:** If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
(2) **Seller right to Cancel; Buyer Contract Obligations:** Seller, after first delivering to Buyer a NBP, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by paragraph 3A or 3B or if the funds deposited pursuant to paragraph 3A or 3B are not good when deposited; (ii) Deliver a letter as required by paragraph 3J(1); (iii) Deliver verification as required by paragraph 3C or 3H or if Seller reasonably disapproves of the verification provided by paragraph 3C or 3H; or (iv) In writing assume or accept leases or liens specified in 6B(7); (v) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 3B and 29E; or (vi) Provide evidence of authority to sign in a representative capacity as specified in paragraph 23. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.

D. **NOTICE TO BUYER OR SELLER TO PERFORM:** The NBP or NSP shall: (i) be in writing; (ii) be signed by the applicable Buyer or Seller; and (iii) give the other Party at least **2 (or ___) Days** After Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A NBP or NSP may not be Delivered any earlier than **2 Days** Prior to the expiration of the applicable time for the other Party to remove a contingency or cancel this Agreement or meet an obligation specified in paragraph 18A.

E. **EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES:** If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in writing, Buyer shall conclusively be deemed to have: (i) completed all Buyer investigations and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.

F. **CLOSE OF ESCROW:** Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a demand to close escrow (C.A.R. Form DCE). The DCE shall: (i) be signed by the applicable Buyer or Seller; and (ii) give the other Party at least **3 (or _____) Days** After Delivery to close escrow. A DCE may not be Delivered any earlier than **3 Days** Prior to the scheduled close of escrow.

G. **EFFECT OF CANCELLATION ON DEPOSITS:** If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign mutual instructions to cancel the sale and escrow and release deposits, if any, to the party entitled to the funds, less fees and costs incurred by that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. Except as specified below, **release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award.** If either Party fails to execute mutual instructions to cancel escrow, one Party may make a written demand to Escrow Holder for the deposit (C.A.R. Form BDRD or SDRD). Escrow Holder, upon receipt, shall promptly deliver notice of the demand to the other Party. If, within **10 Days** After Escrow Holder's notice, the other Party does not object to the demand, Escrow Holder shall disburse the deposit to the Party making the demand. If Escrow Holder complies with the preceding process, each Party shall be deemed to have released Escrow Holder from any and all claims or liability related to the disbursal of the deposit. Escrow Holder, at its discretion, may nonetheless require mutual cancellation instructions. **A Party may be subject to a civil penalty of up to $1,000 for refusal to sign cancellation instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).**

B. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within 3 Days After Acceptance (or _____). Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title company when received from Seller. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under paragraph 10D, Escrow Holder shall deliver to Buyer a Qualified Substitute statement that complies with federal Law.

C. Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraph 22A and paragraph D of the section titled Real Estate Brokers on page 11. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 22A, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.

D. Upon receipt, Escrow Holder shall provide Seller and Seller's Broker verification of Buyer's deposit of funds pursuant to paragraph 3A and 3B. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify all Brokers: (i) if Buyer's initial or any additional deposit is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.

E. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within 3 Days after mutual execution of the amendment.

25. REMEDIES FOR BUYER'S BREACH OF CONTRACT:

A. Any clause added by the Parties specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase in violation of this Agreement shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.

B. LIQUIDATED DAMAGES: If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. Buyer and Seller agree that this amount is a reasonable sum given that it is impractical or extremely difficult to establish the amount of damages that would actually be suffered by Seller in the event Buyer were to breach this Agreement. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. AT TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM RID).

Buyer's Initials _____ / _____ Seller's Initials _____ / _____

26. DISPUTE RESOLUTION:

A. MEDIATION: The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action through the C.A.R. Consumer Mediation Center (www.consumermediation.org) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Broker(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. Mediation fees, if any, shall be divided equally among the Parties involved. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED. Exclusions from this mediation agreement are specified in paragraph 26C.

B. ARBITRATION OF DISPUTES: The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of transactional real estate Law experience, unless the parties mutually agree to a different arbitrator. The Parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 26C.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Buyer's Initials _____ / _____ Seller's Initials _____ / _____

C. **ADDITIONAL MEDIATION AND ARBITRATION TERMS:**

(1) **EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; and (iii) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.

(2) **PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.

(3) **BROKERS:** Brokers shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to the Agreement.

27. **SELECTION OF SERVICE PROVIDERS:** Brokers do not guarantee the performance of any vendors, services or product providers ("Providers"), whether referred by Broker or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.

28. **MULTIPLE LISTING SERVICE/PROPERTY DATA SYSTEM:** If Broker is a participant of a Multiple Listing Service ("MLS") or Property Data System ("PDS"), Broker is authorized to report to the MLS or PDS a pending sale and, upon Close Of Escrow, the terms of this transaction to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS or PDS.

29. **ATTORNEY FEES:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorneys' fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 28A.

30. **ASSIGNMENT:** Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the written consent of Seller. Such consent shall not be unreasonably withheld unless otherwise agreed in writing. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless otherwise agreed in writing by Seller (C.A.R. Form AOAA).

31. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon, and inure to the benefit of, Buyer and Seller and their respective successors and assigns, except as otherwise provided herein.

32. **ENVIRONMENTAL HAZARD CONSULTATION:** Buyer and Seller acknowledge: (i) Federal, state, and local legislation impose liability upon existing and former owners and users of real property, in applicable situations, for certain legislatively defined, environmentally hazardous substances; (ii) Broker(s) has/have made no representation concerning the applicability of any such Law to this transaction or to Buyer or to Seller, except as otherwise indicated in this Agreement; (iii) Broker(s) has/have made no representation concerning the existence, testing, discovery, location and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property; and (iv) Buyer and Seller are each advised to consult with technical and legal experts concerning the existence, testing, discovery, location and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property.

33. **AMERICANS WITH DISABILITIES ACT:** The Americans With Disabilities Act ("ADA") prohibits discrimination against individuals with disabilities. The ADA affects almost all commercial facilities and public accommodations. The ADA can require, among other things, that buildings be made readily accessible to the disabled. Different requirements apply to new construction, alterations to existing buildings, and removal of barriers in existing buildings. Compliance with the ADA may require significant costs. Monetary and injunctive remedies may be incurred if the Property is not in compliance. A real estate broker does not have the technical expertise to determine whether a building is in compliance with ADA requirements, or to advise a principal on those requirements. Buyer and Seller are advised to contact an attorney, contractor, architect, engineer or other qualified professional of Buyer's or Seller's own choosing to determine to what degree, if any, the ADA impacts that principal or this transaction.

34. **COPIES:** Seller and Buyer each represent that Copies of all reports, documents, certificates, approvals and other documents that are furnished to the other are true, correct and unaltered Copies of the original documents, if the originals are in the possession of the furnishing party.

35. **EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.

36. **GOVERNING LAW:** This Agreement shall be governed by the Laws of the state of California.

37. **TERMS AND CONDITIONS OF OFFER:** This is an offer to purchase the Property on the above terms and conditions. The liquidated damages paragraph or the arbitration of disputes paragraph is incorporated in this Agreement if initialed by all Parties or if incorporated by mutual agreement in a counter offer or addendum. If at least one but not all Parties initial, a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. Buyer has read and acknowledges receipt of a Copy of the offer and agrees to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.

38. **TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as otherwise specified, this Agreement shall be interpreted and disputes shall be resolved in accordance with the Laws of the State of California. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**

39. **DEFINITIONS:** As used in this Agreement:

A. **"Acceptance"** means the time the offer or final counter offer is accepted in writing by a Party and is delivered to and personally received by the other Party or that Party's authorized agent in accordance with the terms of this offer or a final counter offer.

B. **"Agreement"** means this document and any counter offers and any incorporated addenda, collectively forming the binding agreement between the Parties. Addenda are incorporated only when Signed by all Parties.

C. "C.A.R. Form" means the most current version of the specific form referenced or another comparable form agreed to by the parties.
D. "Close Of Escrow" or "COE" means the date the grant deed, or other evidence of transfer of title, is recorded.
E. "Copy" means copy by any means including photocopy, NCR, facsimile and electronic.
F. "Days" means calendar days. However, after Acceptance, the last Day for performance of any act required by this Agreement (including Close Of Escrow) shall not include any Saturday, Sunday, or legal holiday and shall instead be the next Day.
G. "Days After" means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59 PM on the final day.
H. "Days Prior" means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.
I. "Deliver", "Delivered" or "Delivery", unless otherwise specified in writing, means and shall be effective upon: personal receipt by Buyer or Seller or the individual Real Estate Licensee for that principal as specified in the section titled Real Estate Brokers on page 11, regardless of the method used (i.e., messenger, mail, email, fax, other).
J. "Electronic Copy" or "Electronic Signature" means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
K. "Law" means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
L. "Repairs" means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
M. "Signed" means either a handwritten or electronic signature on an original document, Copy or any counterpart.

40. **AUTHORITY:** Any person or persons signing this Agreement represent(s) that such person has full power and authority to bind that person's principal, and that the designated Buyer and Seller has full authority to enter into and perform this Agreement. Entering into this Agreement and the completion of the obligations pursuant to this contract, does not violate any Articles of Incorporation, Articles of Organization, By Laws, Operating Agreement, Partnership Agreement or other document governing the activity of either Buyer or Seller.

41. **EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless the offer is Signed by Seller and a Copy of the Signed offer is personally received by Buyer, or by _____ *see Addendum 1* _____ who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer (or by _____ AM/ PM), on _____ (date)).

One or more Buyers is signing the Agreement in a representative capacity and not for himself/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-B) for additional terms.

Date 3-21-17 BUYER _____

(Print name) *Richard John Martin II*

Date _____ BUYER _____

(Print name) _____

Additional Signature Addendum attached (C.A.R. Form ASA)

42. **ACCEPTANCE OF OFFER:** Seller warrants that Seller is the owner of the Property, or has the authority to execute this Agreement. Seller accepts the above offer and agrees to sell the Property on the above terms and conditions, and agrees to the above confirmation of agency relationships. Seller has read and acknowledges receipt of a Copy of this Agreement, and authorizes Broker to Deliver a Signed Copy to Buyer.

(if checked) SELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COUNTER OFFER (C.A.R. Form SCO or SMCO) DATED: _____

One or more Sellers is signing the Agreement in a representative capacity and not for himself/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-S) for additional terms.

Date 3-21-17 SELLER _____

(Print name) *Darryl Cotton*

Date _____ SELLER _____

(Print name) _____

Additional Signature Addendum attached (C.A.R. Form ASA)

(_____/_____) (Initials) **(Do not initial if making a counter offer.) CONFIRMATION OF ACCEPTANCE:** A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent on (date) _____ at _____ AM/ PM. **A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.**

Property Address: *6176 Federal Blvd, San Diego, CA 92114-1401* Date: *March 21, 2017*

REAL ESTATE BROKERS:

A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.

B. Agency relationships are confirmed as stated in paragraph 2.

C. If specified in paragraph 3A(2), Agent who submitted the offer for Buyer acknowledges receipt of deposit.

D. COOPERATING BROKER COMPENSATION: Listing Broker agrees to pay Cooperating Broker (Selling Firm) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrow, the amount specified in the MLS, provided Cooperating Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Listing Broker and Cooperating Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC). Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.

Real Estate Broker (Selling Firm) *N/A* CalBRE Lic #

By CalBRE Lic # Date

By CalBRE Lic # Date

Address City State Zip

Telephone Fax E-mail

Real Estate Broker (Listing Firm) *N/A* CalBRE Lic #

By CalBRE Lic # Date

By CalBRE Lic # Date

Address City State Zip

Telephone Fax E-mail

ESCROW HOLDER ACKNOWLEDGMENT:

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked ☐) a deposit in the amount of $

counter offer number , Seller's Statement of Information and

and agrees to act as Escrow Holder subject to paragraph 24 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised that the date of Confirmation of Acceptance of the Agreement as between Buyer and Seller is

Escrow Holder Escrow #

By Date

Address

Phone/Fax/E-mail

Escrow Holder has the following license number #

☐ Department of Business Oversight, ☐ Department of Insurance, ☐ Bureau of Real Estate.

PRESENTATION OF OFFER: ( ) Listing Broker presented this offer to Seller on (date).
Broker or Designee Initials

REJECTION OF OFFER: (X) No counter offer is being made. This offer was rejected by Seller on (date).
Seller's Initials

Buyer's Initials (X) ( )

Seller's Initials (X) ( )

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525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by
Broker or Designee

CALIFORNIA ASSOCIATION OF REALTORS®

ADDENDUM

(C.A.R. Form ADM, Revised 12/15) No. 1

The following terms and conditions are hereby incorporated in and made a part of the ☐ Purchase Agreement, ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind), ☐ Other _____
dated March 21, 2017 on property known as 6176 Federal Blvd San Diego, CA 92114-1401
in which Richard John Martin II is referred to as ("Buyer/Tenant")
and Darryl Cotton is referred to as ("Seller/Landlord")

Memorandum of Understanding

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

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

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

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

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

Date March 21, 2017
Buyer/Tenant X Richard John Martin II
Buyer/Tenant _____

Date March 21, 2017
Seller/Landlord X Darryl Cotton
Seller/Landlord _____

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Reviewed by _____ Date _____

CALIFORNIA ASSOCIATION OF REALTORS®

ADDENDUM

(C.A.R. Form ADM, Revised 12/15) No. 2

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

dated March 21, 2017 on property known as 6176 Federal Blvd San Diego, CA 92114-1401

in which Richard John Martin II is referred to as ("Buyer/Tenant")

and Darryl Cotton is referred to as ("Seller/Landlord").

Memorandum of Understanding and Agreement

1) This Memorandum of Understanding and Agreement ("MOUA") amends the agreement reached by Buyer and Seller on March 21, 2017.

2) Notwithstanding any language in this purchase agreement to the contrary, the provisions within this MOUA shall be given effect and supersede any conflicting or ambiguous language within this purchase agreement.

3) Seller hereby transfers and sells to Buyer, with all the associated rights and liabilities, his ownership, rights and interests in the property and the associated CUP application pending before the City of San Diego for $500,000.

4) Buyer shall immediately provide seller with a $50,000 non-refundable deposit.

5) The closing of this sale, including the payment of the balance of the purchase price and all the requirements stated herein, shall be completed upon the favorable resolution of the Larry Geraci lawsuit against Seller for the property.

6) In addition, should a CUP application be approved at the property, Buyer shall pay Seller a one-time payment of $1,500,000. Seller's previous agreement for an equity stake in the business is voided and Seller has no interest in the property or the CUP.

7) CONFIDENTIALITY CLAUSE. SELLER WILL NOT DISCLOSE BUYER'S IDENTITY OR THIS AGREEMENT IN ANY FORM, DIRECTLY OR INDIRECTLY, UNTIL HE HAS RESOLVED THE LEGAL ACTION WITH GERACI. FOR THE AVOIDANCE OF DOUBT, THIS MEANS THAT SELLER WILL NOT INVOLVE OR MENTION BUYER IN ANY FORM TO ANY THIRD-PARTIES, IN ANY LITIGATION PROCEEDINGS OR IN ANY MATTERS REGARDING ALLEGATIONS OF CRIMINAL OR UNLAWFUL ACTIONS. SHOULD SELLER BREACH THIS PROVISION, SELLER HEREBY EXPRESSLY AGREES TO PAY TO BUYER $200,000 FOR BREACH OF THIS PROVISION.

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

Date April 15, 2017

Buyer/Tenant X Richard John Martin II

Buyer/Tenant

Date April 15, 2017

Seller/Landlord X Darryl Cotton

Seller/Landlord

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525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by _____ Date _____

CALIFORNIA ASSOCIATION OF REALTORS

ADDENDUM

(C.A.R. Form ADM, Revised 12/15) No. 3

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

dated March 21, 2017, on property known as 6176 Federal Blvd San Diego, CA 92114-1401

in which Richard John Martin II is referred to as ("Buyer/Tenant"),

and Darryl Cotton is referred to as ("Seller/Landlord").

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

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

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

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

Date May 12, 2017

Buyer/Tenant X Richard John Martin II

Buyer/Tenant

Date May 12, 2017

Seller/Landlord X Darryl Cotton

Seller/Landlord

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525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by Date

AMERIFIRST FINANCIAL, INC.

Pre-Approval Letter

Friday, April 14, 2017

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

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

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

The following conditions must be satisfied for final loan approval:

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

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

Please keep in mind the following:

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

Sincerely,

Alexis Roper

Alexis Roper
Sr. Mortgage Loan Officer
619-436-8873
aroper@amerifirst.us
NMLS #583371

EXHIBIT 6

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Executed Services Agreement for Representation of Darryl Cotton

Darryl Cotton <indagrodarryl@gmail.com>
To: "Adam C. Witt" <awitt@ftblaw.com>
Cc: Joe Hurtado <j.hurtado1@gmail.com>
Thu, Jun 15, 2017 at 12:16 PM

Adam,

Please find attached the executed engagement letter. Per our agreement, notwithstanding the language in the engagement letter, I will be financing this lawsuit with a total monthly payment of $10,000 a month with the retainer to be paid within 24 hours.

As per our phone discussion earlier today please do not respond to my sisters request for information on your representation of me or the status of my 6176 Federal Blvd property. My father holds the title on the property and she is trying to make sure I am not representing myself in the Geraci matter. I told her that you have been retained and I will provide her with a copy of our Services Agreement which is really all she needs as assurance I'm not representing myself in this matter.

Lastly please include Joe Hurtado in all future email correspondence between us.

I really look forward to working with you and your firm as we work to bring these matters to their ultimate resolutions.

Sincerely,

Darryl Cotton

Service Contract 6-13-17.pdf
289?K

FINCH • THORNTON • BAIRD LLP
ATTORNEYS AT LAW

David S. Demian
ddemian@ftblaw.com

File 999.002

June 13, 2017

VIA U.S. AND ELECTRONIC MAIL

Mr. Darryl Cotton
6176 Federal Boulevard
San Diego, California 92114
indagrodarryl@gmail.com

Re: *Services Agreement For Representation Of Darryl Cotton*

Dear Mr. Cotton:

We appreciate your decision to retain Finch, Thornton & Baird, LLP. Please forgive the formality of this letter but the California Business and Professions Code requires that we have a written agreement. This letter sets forth the terms of our representation.

1. Description Of Representation And Services. You retain Finch, Thornton & Baird, LLP to represent you in connection with obtaining a conditional use permit ("CUP") for 6176 Federal Boulevard and also to represent you in related civil and forfeiture actions related to the property. We will provide other services as requested and provided we agree to perform such services. All services shall be subject to this agreement.

2. Fees To Be Charged. Our fees will be billed on the basis of time expended at the hourly billing rates of the attorneys, law clerks and legal assistants involved. At the present time, our hourly rates vary from $210.00 to $420.00 for attorneys, $195.00 to $210.00 for law clerks and $75.00 to $125.00 for paralegal and legal assistants. My current hourly rate is $400.00. Adam Witt's current hourly rate is $300.00. These hourly rates are subject to change in the future and typically increase in September of each year. The rate(s) charged will be reflected on the invoices for services rendered. We bill in one-tenth of an hour increments. In order to deliver cost-effective services, when practical, work will be assigned to other qualified attorneys, law clerks or legal assistants with either billing rates lower than mine or some specialized knowledge beneficial to you.

3. Costs And Expenses. We also charge for expenses and costs necessarily incurred to perform our services. Examples of these are Secretary of State fees, California Department of Corporations fees, court filing fees, service of process fees, deposition court reporter and transcript costs, etc. It is our policy to not charge for minor everyday expenses such as photocopies, postage, facsimiles, mileage, phone expenses, etc., unless these expenses become beyond the ordinary. For example, extra large reproductions or photocopying large quantities of documents for discovery, depositions or trial exhibits, etc., are usually costly and we will bill for reimbursement of such expenses or have you pay the vendor directly.

4. Services Of Experts/Consultants. It may become necessary to employ experts or consultants to assist in resolving a matter. We will obtain your approval for the retention of any such consultants or experts, and you may instruct us in writing at any time to terminate their services. The fees of experts and consultants will be in addition to the fees and costs charged for our services. In most circumstances, we will have the experts or consultants bill you directly.

5. Payment Of Legal Fees. For your convenience, we understand that we will be receiving payment for costs, expenses and fees relating to our legal services pursuant to this agreement from Joe Hurtado. Rather than billing you separately, one invoice will be forwarded to Joe.

Rule 3-310(F) of the Rules of Professional Conduct of the State Bar of California requires that we not accept compensation for representing a client from a person other than the client unless: (1) there is no interference with our independent professional judgment or with the attorney-client relationship; (2) information relating to representation of you is protected as required by Business and Professions Code section 6068, subdivision (e); and (3) we obtain your informed written consent to such an arrangement. With regard to Rule 3-310(F), we do not believe there will be any interference with our independence of professional judgment or with the attorney-client relationship between our firm and you as a result of the payment of invoices by Joe because your interests are aligned. Note, you remain liable for all fees and costs if Joe fails to pay. We inform you of these matters and request your written consent to this arrangement. Execution of this agreement constitutes such written consent.

6. Client Responsibilities. We have two primary requests of our clients: (1) that we are kept informed of all information you obtain or discover regarding a matter for which we are retained; and (2) that we receive timely payment for our services and advances. In this regard, we invoice monthly and expect payment within 30 days. Any objection to an invoice must be made in writing within 30 days of the date of your receipt of the invoice or the objection is waived. At our option, late payments will accrue interest at the annual rate of seven percent. As security for the payment of our invoices, you grant us a lien upon any sums recovered (or which you are entitled to recover) as a result of our efforts, including any funds in our client trust account. This lien is in addition to our equitable lien rights.

With regard to our lien rights, Rule 3-300 of the Rules of Professional Conduct of the State Bar of California states:

> "[We] shall not enter into a business relationship with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:
>
> (A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and
>
> (B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and

(C) The client thereafter consents in writing to the terms of the transaction or the terms of acquisition."

You granting us a lien is an adverse and/or business relationship and pursuant to the above Rule we recommend you seek advice from an independent lawyer of your choice before granting us the lien and entering into this agreement.

7. Potential Conflicts Of Interest. Representation by us in a particular matter is contingent upon clearance of all conflicts of interest checks. With regard to this matter, Rules 3-310(C) through 3-310(E) of the Rules of Professional Conduct of the State Bar of California state:

Rule 3-310(C):

"[We] shall not, without the informed written consent of each client:

(1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or

(2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or

(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter."

Rule 3-310(E):

"[We] shall not accept employment adverse to a client or former client where, by reason of the representation of the client or former client, [we have] obtained confidential information material to the employment except with the informed written consent of the client or former client."

With regard to Rule 3-310(C), it is our duty not to represent clients whose interests potentially or actually conflict, unless each client provides us with informed written consent to such representation. Our current understanding of the available facts and applicable law leads us to believe the prospect for an actual or potential conflict is low. Accordingly, we believe we can represent you in a manner consistent with the professional standards by which we must abide. If this understanding changes in any material way, we will make appropriate disclosures to each of you so a proper course of action may then be pursued.

Although we believe there is only a limited potential for any conflict of interest, we inform you of potential conflicts that could theoretically arise. We do not foresee such a conflict will arise, but advise of the potential. As discussed, we represent the Green Road, LLC, and its principals and agents (collectively "Green Road") in connection with all aspects of the potential operation of a marijuana dispensary within District 6 of the City of San Diego. Our ability to continue to represent Green Road in all matters that

may arise in the future is critical to our firm, including in connection with potential disputes in which you are adverse to Green Road. Our understanding is that you have an interest in operating a marijuana dispensary in District 6 either directly or indirectly, and that our representation here is focused on obtaining a District 4 dispensary. Accordingly, we do not perceive a conflict here. However, in order to preserve our ability to represent Green Road should a conflict arise in the future, by signing this agreement you agree we may terminate our representation of you at any time of a potential or actual conflict arises between you and Green Road.

In addition, in the even of such a conflict, we may ask your consent to represent you and Green Road concurrently. You each acknowledge that if any party refuses to sign such a waiver our firm reserves the right to terminate our representation of you. Similarly, if we do undertake representation adverse to you, you agree not to seek the disqualification of our firm unless you present court-admissible evidence that our firm (a) has material confidential information from you in the matter in which a conflict is claimed, (b) obtained such material confidential information by virtue of our representation of you, and (c) such information could be used against you in the case in which a conflict is claimed. Note that our withdrawal from representation of you could be expensive (bringing new counsel up to speed), disadvantageous (sending the wrong message to an adversary), or come at an inopportune time.

By execution of this agreement, you acknowledge our warnings of potential conflicts of interest with respect to this matter, and waive any and all conflicts of interest which presently exist, or may hereafter arise, by virtue of our representation. Before consenting to our representation on these terms, we recommend you carefully consider the ramifications of our representation on these terms and consult with counsel of your choice.

8. Disclaimer Of Guarantees. It is impossible for us to make any guarantees regarding the successful termination of a matter and all expressions relative to the merits of your positions are only matters of our opinion and do not constitute a guarantee of a particular result.

9. Client Contact. It is our practice to furnish our clients with copies of all important pleadings and/or correspondence and to give verbal or written status reports from time to time concerning the progress of our representation. We encourage you to contact us if you have any questions concerning the status of our representation.

10. Termination Or Withdrawal. You have the right to terminate our services at any time. We may withdraw from representation upon reasonable written notice to enable you to secure other counsel due to: (1) the dissolution of our firm; (2) the discovery of evidence that your claim, suit or position lacks merit; (3) your non-cooperation or material breach of this agreement; and/or (4) the discovery of an irreconcilable conflict of interest. In the event of termination or withdrawal, we may make and retain a duplicate file, and you agree to pay for all costs of duplicating and transferring the files. Similarly, if at any time, during or after our representation, you request your client files, you agree we may make and retain a duplicate file, and you agree to pay for all costs of duplicating and transferring said files.

11. Retainer. We request a retainer of $10,000.00 as an initial payment for our invoices. The retainer will be placed in the Finch, Thornton & Baird, LLP Client Trust Account, and we are authorized to make disbursements into our firm account to cover amounts we invoice you. Our monthly invoices will show the amount charged against the retainer and the retainer balance. We may request this retainer be replenished monthly or from time to time. The retainer amount is not a representation of the estimated total fees, costs and expenses likely to be incurred in the course of our representation. If we allow the retainer to be depleted, you agree to comply with the billing and payment provisions set forth above. You may pay this retainer by check, payable to Finch, Thornton & Baird, LLP Client Trust Account or by going on our website http://www.ftblaw.com/bill-pay/. Click on the RETAINER PAYMENT button and pay via credit card. Once the retainer is depleted and you receive invoices for a balance due, you may use this same site to make credit card payments, by clicking the INVOICE PAYMENT button.

12. Arbitration. Any dispute relating to fees and costs due pursuant to this agreement shall, at your discretion and upon timely demand, be submitted to binding arbitration before the San Diego County Bar Association pursuant to California Business and Professions Code section 6200, et seq., or should that organization decline to arbitrate the dispute, before the State Bar of California pursuant to California Business and Professions Code section 6200, et seq.

Subject to the foregoing requirements of California Business and Professions Code section 6200, et seq., any controversy or claim arising out of or relating to this agreement shall be resolved by binding arbitration before the American Arbitration Association by a single arbitrator in San Diego, California, in accordance with the Commercial Rules of the American Arbitration Association prevailing at the time of the arbitration and judgment on the award may be entered in any court having jurisdiction. The right to appeal from the arbitrator's award, any judgment entered, or any order made is expressly waived.

13. Conclusion. To confirm this letter accurately reflects our complete and mutual understanding as to the terms of our agreement, please date, sign and return an original agreement along with a check for $10,000.00 in the enclosed addressed and stamped envelope. A duplicate original is enclosed for you. Thank you for the opportunity to be of service.

Very truly yours,

David S. Demian,
Partner

Enclosures

DSD:hkr/3BD2583

cc: Mr. Joe Hurtado (via email only) (w/o encls.)

AUTHORIZATION, CONSENT, AND ACKNOWLEDGMENT:

I have read and understand this services agreement. I acknowledge receiving full disclosure of the terms of the conflicts of entering the transaction described above. I understand I may seek independent counsel before signing this agreement. I consent on behalf of the entity listed below to the representation by Finch, Thornton & Baird, LLP, as described above.

Signature: _____
Darryl Cotton
Dated: 6-15-2017

Finch, Thornton & Baird, LLP is authorized to accept direction as to the representation of you from the following individuals:

Darryl Cotton _____ 6-15-17

Client No. _____

BILLING INFORMATION

(1) Please provide the name of the person to whom our invoices should be addressed.

_____
(Name)

_____
(Title)

_____
(Address)

_____

_____ _____
(Work Phone) (Direct Phone)

_____ _____
(Fax) (Mobile Phone)

_____
(E-mail)

(2) Please provide the name of your accounts payable contact.

_____
(Name)

_____
(Title)

_____
(Address)

_____

_____ _____
(Work Phone) (Direct Phone)

_____ _____
(Fax) (Mobile Phone)

_____
(E-mail)

(3) How would you like to receive your invoices? (Select One) E-mail: ☐ Mail: ☐

(4) Would you like to receive wiring instructions? (Select One) Yes: ☐ No: ☐

EXHIBIT 7

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

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave., Ste. A112
San Diego, CA 92110
Telephone: (619) 924-9600
Fax: (619) 881-0045
gaustin@austinlegalgroup.com

Attorneys for Real Parties in Interest
LARRY GERACI and REBECCA BERRY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

DARRYL COTTON, an individual,

Petitioner/Plaintiff,

v.

CITY OF SAN DIEGO, a public entity; and DOES 1 through 25,

Respondents/Defendants.

REBECCA BERRY, an individual; LARRY GERACE, an individual, and ROES 1 through 25,

Real Parties In Interest.

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

Judge: Hon. Eddie Sturgeon

DECLARATION OF ABHAY SCHWEITZER IN SUPPORT OF OPPOSITION TO EX PARTE APPLICATION FOR ISSUANCE OF AN ALTERNATIVE WRIT OF MANDATE OR FOR AN ORDER SETTING AN EXPEDITED HEARING AND BRIEFING SCHEDULE

[IMAGED FILE]

DATE: **October 31, 2017**
TIME: **8:30 a.m.**
DEPT: **C-67**

Petition Filed: October 6, 2017
Trial Date: None

I, Abhay Schweitzer, declare:

1. I am over the age of 18 and am not a party to this action. I have personal knowledge of the facts stated in this declaration. If called as a witness, I would testify competently thereto. I provide this declaration in support of Real Parties in Interest Rebecca Berry and Larry Geraci's ("Real-Parties") opposition to Petitioner/Plaintiff's request for the ex parte issuance of a writ of mandate or for an order setting an expedited hearing and briefing schedule.

2. I am a building designer in the state of California and a Principal with Techne, a design firm I founded in approximately December 2010. Techne provides design services to clients throughout California. Our offices are located at 3956 30th Street, San Diego, CA 92104. Our firm has worked on approximately 30 medical marijuana projects over the past 5 years, including a number of Conditional Use Permits for Medical Marijuana Consumer Cooperatives (MMCC) in the City of San Diego ("City"). One of these projects was and is an application for a MMCC to be located at 6176 Federal Ave., San Diego, CA 92105 (the "Property").

3. On or about October 4, 2016, Rebecca Berry hired my firm to provide design services in connection with the application for a MMCC to be developed and built at the Property (the "Project"). Those services included, but are not limited to, services in connection with the design of the Project and application for a Conditional Use Permit (the "CUP").]

4. The first step in obtaining a CUP is to submit an application to the City of San Diego. My firm along with other consultants (a Surveyor, a Landscape Architect, and a consultant responsible for preparing the noticing package and radius maps) prepared the CUP application for the client as well as prepared the supporting plans and documentation. My firm coordinated their work and incorporated it into the submittal.

5. On or after October 31, 2016, I submitted the application to the City for a CUP for a medical marijuana consumer cooperative to be located on the Property. The CUP application for the Project was submitted under the name of applicant, Rebecca Berry, whom I was informed and believe was and is an employee and agent of Larry Geraci. The submittal of the CUP application required the submission of several forms to the City, including Form DS-318, that I am informed and believe was

signed by the property owner, Darryl Cotton, authorizing/consenting to the application. A true and correct copy of Form DS-318 that I submitted to the City is attached as Exhibit 3 to Real Parties in Interest Notice of Lodgment in Support of Opposition to Ex Parte Application for Issuance of Alternative Writ of Mandate or for an Order Setting an Expedited Hearing and Briefing Schedule (hereafter "RPI NOL"). Mr. Cotton's signed consent can be found on Form DS-318.

6. On the Ownership Disclosure Statement, I am informed and believe Cotton signed the form as "Owner" and Berry signed the form as "Tenant/Lessee." The form only has three boxes from which to choose when checking – "Owner", "Tenant/Lessee" and "Redevelopment Agency". The purpose of that signed section, Part 1, is to identify all persons with an interest in the property *and must be signed by all persons with an interest in the property.*

7. The CUP application process generally involves several rounds of comments from the City in which the applicant is required to respond in order to "clear" the comment. This processing involved substantial communication back and forth with the City, with the City asking for additional information, or asking for changes, and our responding to those requests for additional information and making any necessary changes to the plans. I have been the principal person involved in dealings with the City of San Diego in connection with the application for a CUP. My primary contact at the City during the process is and has been Firouzdeh Tirandazi, Development Project Manager, City of San Diego Development Services Department, tele (619) 446-5325, the person whom the City assigned to be the project manager for our CUP application.

8. We have been engaged in the application process for this CUP application for approximately twelve (12) months so far.

9. At the outset of the review process a difficulty was encountered that delayed the processing of the application. The Project was located in an area zoned "CO" which supposedly included medical marijuana dispensary as a permitted use, but the City's zoning ordinance did not specifically state that was a permitted use. I am informed and believe that on February 22, 2017, the City passed a new regulation that amended the zoning ordinance to clarify that operating a medical marijuana dispensary was a permitted use in areas zoned "CO." I am informed and believe this

regulation took effect on April 12, 2017, so by that date the zoning ordinance issue was cleared up and the City resumed its processing of the CUP application.

10. The CUP application for this Project has completed the initial phase of the process. This initial phase was completed when the City deemed the CUP application complete (although not yet approved) and determined the Project was located in an area with proper zoning. When this occurred, as required, notice of the proposed project was given to the public as follows: First, on March 27, 2017, the City posted a Notice of Application (or "NOA") for the Project on its website for 30 days and provided the NOA to me, on behalf of the applicant, for posting at the property; Second, the City mailed the Notice of Application to all properties within 300 feet of the subject property. Third, as applicant we posted the Notice of Application at the property line as was required.

11. Since the completion of the initial phase of the process we have been engaged in successive submissions and reviews and are presently engaged still in that submission and review process. The most recent comments from the City were received on October 20, 2017. There is one major issue left to resolve regarding a street dedication. I expect this issue to be resolved within the next six (6) weeks.

12. Once the City has cleared all the outstanding issues it will issue an environmental determination and the City Clerk will issue a Notice of Right to Appeal Environmental Determination ("NORA"). I expect the NORA to be issued sometime in late December 2017 or January 2018.

13. The NORA must be published for 10 business days. If no interested party appeals the NORA, City staff will present the CUP for a determination on the merits by a Hearing Officer. The hearing is usually set on at least 30 days' notice so the City's Staff has time to prepare a report with its recommendations regarding the issues on which the hearing officer must make findings. If there is no appeal of the NORA, I expect the hearing before the hearing officer to be held in late January or February 2018.

14. If the NORA is appealed it will be set for hearing before the City Council. It is my opinion that the earliest an appeal of the NORA could be heard before the City Council would be mid-January 2018. In all but one instance, the City Council has denied a NORA appeal related to a medical

marijuana CUP application. The one NORA appeal that was upheld is a project located in a flood zone.

15. If there is a NORA appeal and such appeal is denied by the City Council, then the earliest I would expect the CUP application to be heard by a hearing officer would be March 2018.

16. If there is a NORA appeal and it is upheld by the City Council, the City Council would retain jurisdiction and the CUP application would be heard by the City Council for a final determination at some point after the NORA appeal. In that case the earliest I would expect this to occur would also be March 2018.

17. To date we have not yet reached the stage of a City Council hearing and there has been no final determination to approve the CUP.

18. I have been notified by the City of San Diego that as of October 30, 2017, there has been no other CUP Application submitted concerning on the property.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct. Executed this 30th day of October, 2017.

Dated: 10/30/2017

ABHAY SCHWEITZER

EXHIBIT 8

I, Elizabeth Emerson, hereby declare:

1. **I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.**
2. I am 41 years old and an Air Force veteran. I served my country honorably in military intelligence and held a Top Secret clearance for all seven years of my service.
3. I later served as a police dispatcher in Texas for two years and left on good terms to move to San Diego, where I am now a resident.
4. I worked in Accounts Payable for the law firm of McCarthy & Holthus which I left after two and a half years to start my own bookkeeping, accounting and administrative assistant enterprise. Because of this I now handle the accounting for GreenerLiving, a landscape and lawn maintenance company, which is co-owned by Mr. Tom Maas and Mr. Joe Hurtado.
5. I accompanied Mr. Maas and Mr. Hurtado to the hearing for Mr. Cotton on December 7, 2017 as it was strongly anticipated that this hearing would produce positive results for Mr. Cotton and, thus, for Mr. Hurtado.
6. At the hearing, I was expecting Mr. Demian to mention what Mr. Hurtado repeatedly called the "smoking gun" email in which Mr. Larry Geraci contradicts himself regarding some contract. Mr. Demian did not raise any emails in his oral arguments to the Court.
7. During the hearing, the judge asked Mr. Weinstein what would be wrong with preventing the withdrawal of the CUP application. Mr. Weinstein replied with something about his client having the freedom to do what he wanted.
8. After the hearing concluded, Mr. Hurtado started yelling at Mr. Demian right outside the Courtroom about how it was possible that Mr. Demian could not raise with the Court "the fucking email!" Mr. Hurtado was incredibly agitated and loud and everyone in the hallway was staring at Mr. Hurtado and Mr. Demian.

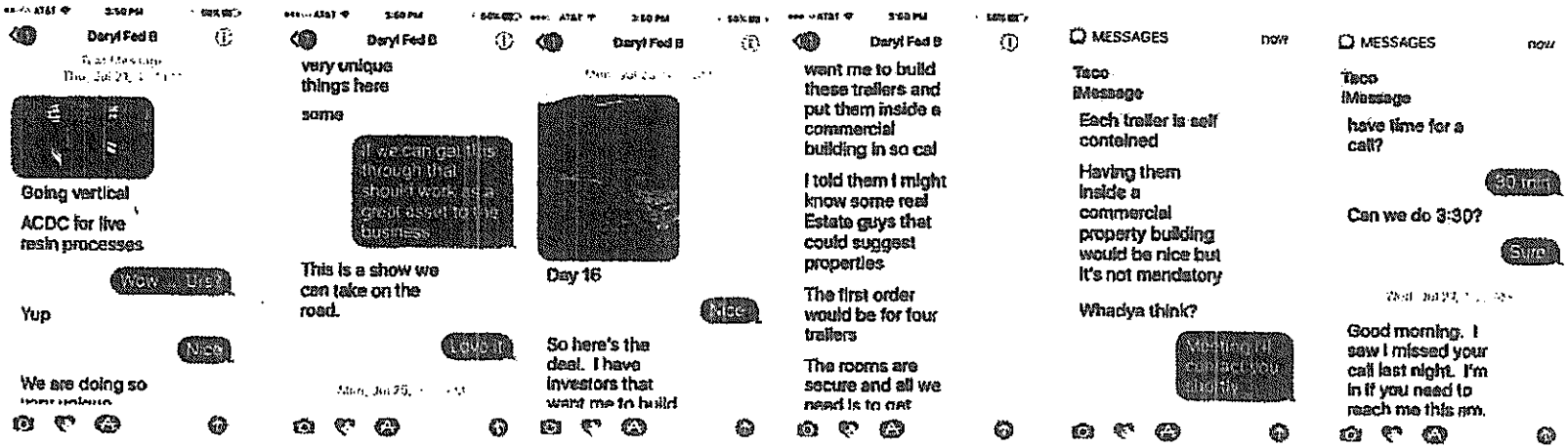
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

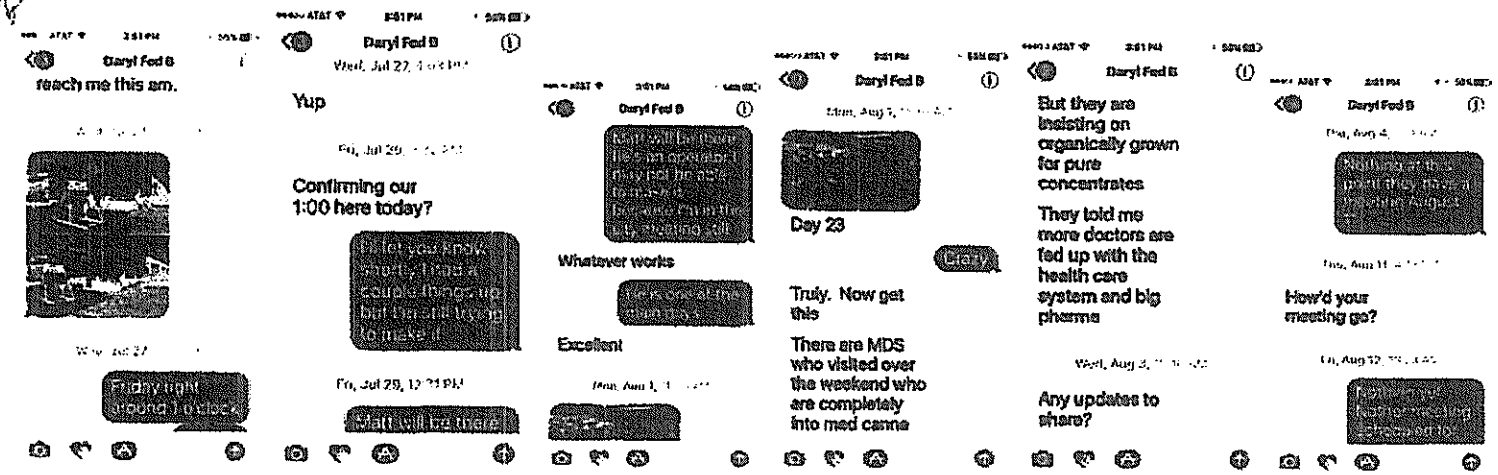
DATED: 01/22/2019

Elizabeth Emerson

EXHIBIT 9

READ THIS WAY →





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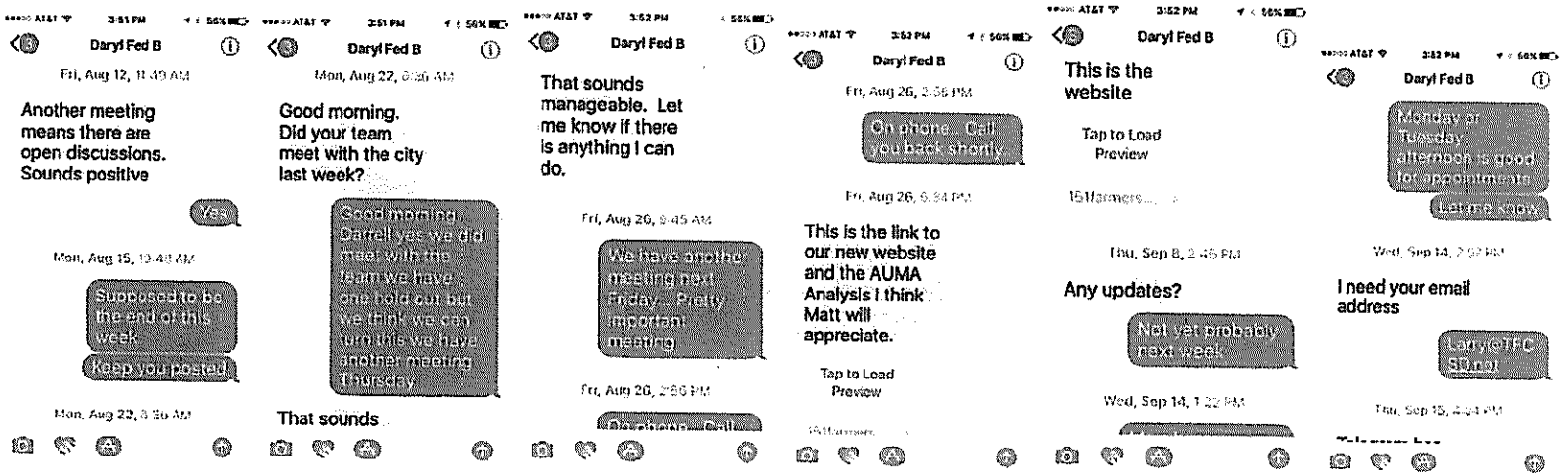

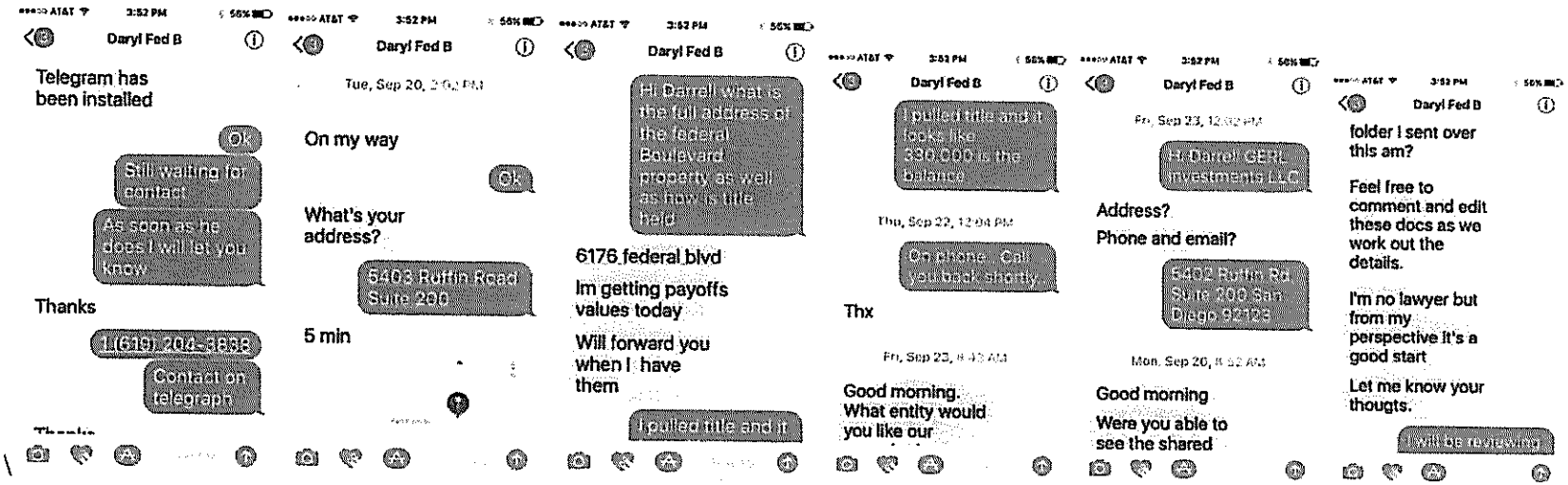

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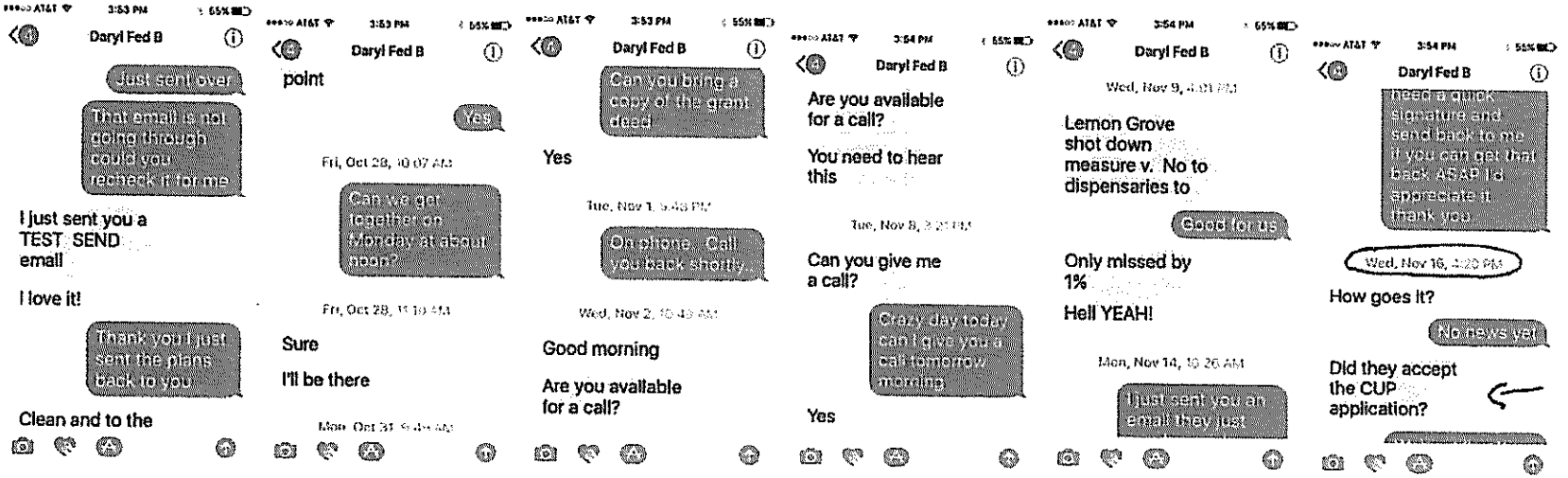

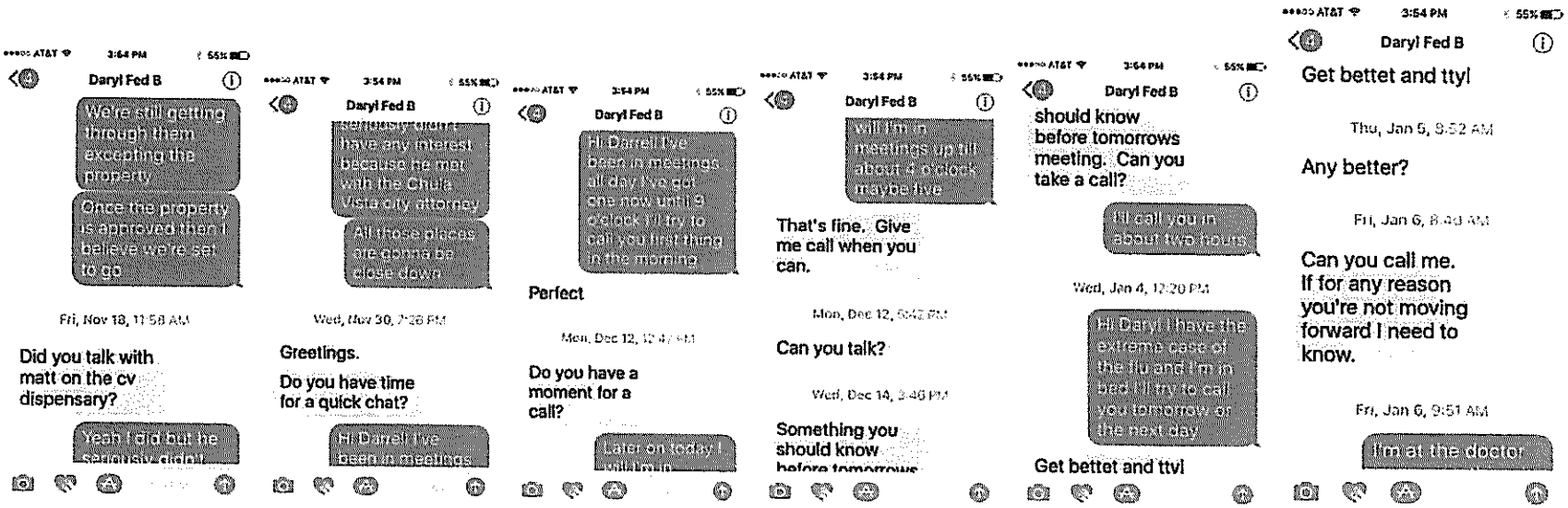

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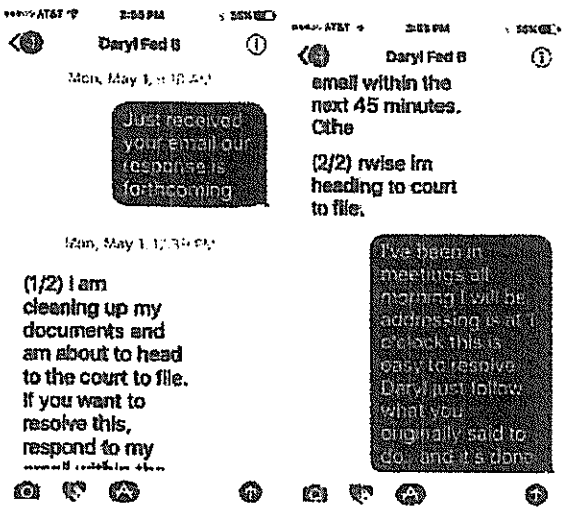

EXHIBIT 10

Gmail

Joe Hurtado <j.hurtado1@gmail.com>

Federal - Expedited Schedule / Statute of Frauds

Joe Hurtado <j.hurtado1@gmail.com>
To: "David S. Demian" <ddemian@ftblaw.com>, "Adam C. Witt" <awitt@ftblaw.com>
Cc: Darryl Cotton <indagrodarryl@gmail.com>
Thu, Nov 16, 2017 at 10:45 AM

Hi David / Adam,

Expedited Hearing and Briefing Schedule. I'm putting together my notes / thoughts for the request for the motion to expedite. I will forward later today or tomorrow at the latest and hopefully it is helpful. (I have listed every argument and point they make in all of the pleadings to date, we have a logical and persuasive response for every point.)

Statute of Frauds. I came across a case last night that I think would be incredibly supportive if not actually dispositive on the statute of frauds issue we faced in the demurrer. (I was so incredibly frustrated last night thinking I found "the one case" and all I needed to do was Shepardize the case to confirm and find, ideally, more recent supporting case law. Best I got were treatises and Google Scholar hits - I'm calling and signing up with Westlaw or Lexis today.)

The case is *Monarco v. Lo Greco* (35 Cal. 2d 621, 220 P.2d 737, 1950 Cal. 370). The below includes language copied from the case and online case brief websites and treatises:

Issue. "The controlling question is whether plaintiff is estopped from relying upon the statute of frauds to defeat the enforcement of the oral agreement."

Rule of Law. "The California Supreme Court decided in *Monarco v. Lo Greco* that a party is estopped to assert the Statute of Frauds if he would be *unjustly enriched* or when *unconscionable injury* would result to the other party who, in reliance on the oral agreement, was induced to materially change his position."

- "Since the test in *Monarco* is so general, the trial courts have the considerable flexibility to determine whether to enforce the Statute in a given case. While this makes predictability uncertain, it affords the trial court the opportunity to consider the whole spectrum of factors which might be relevant to balancing the adequacy of the fact determination process against the purposes of the Statute. Such freedom for the trial court is justifiable if trial procedure has advanced to such an extent that it is adequate to protect against the evils which the Statute sought to prevent."

Analysis.

Unjust Enrichment. The evidence is clear that Geraci is attempting to falsely claim the receipt for the $10,000 is actually the final agreement, thereby unjustly enriching himself at the expense of the benefits that Cotton bargained for, *inter alia*, Cotton's 10% equity stake.

Unconscionable Injury. Because of Geraci, Cotton has:

(a) been unable to make a living. He is unable to operate his businesses, Fleet Systems (electrical contracting) and Dalbercia (manufacturing), that operate from the property. This action has created the possibility that he will lose the property and not have any funds to relocate to another property to operate from (*i.e.*, he can't enter into contracts and make a living because if he does and then loses this case, then he has no property to work from, won't be able to uphold his end of the contracts and he would be setting himself up for severe damages);

(b) been forced to repeatedly renegotiate the terms of the sale of the property with his agent and the buyer of the property, most notably requiring him to give up the 20% equity stake that he originally bargained for with RJ. This represents a perpetual long-term revenue cash flow to Cotton that, while impossible to quantify what it could be in a best case scenario if the business were to be a commercial success, is at the very least a perpetual monthly payment of $10,000.

It appears this case is helpful for us - hopefully this case has not been overturned and/or the websites I got this information from are not inaccurate. Please let me know your thoughts.

Geraci Declaration. When you have a moment, I would appreciate if you would forward Geraci's supporting declaration to his opposition to our *ex parte* motion for an expedited hearing/schedule. The PDF forwarded is missing the first three pages of his declaration (attached, missing pages start at page 68).

Thank you, Joe

3C28056-OPPOSITION TO EX PARTE APPLICA (1).PDF
4640K

EXHIBIT 11

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

RE: Withdrawal

David S. Demian <ddemian@ftblaw.com>
To: Darryl Cotton <indagrodarryl@gmail.com>
Cc: Joe Hurtado <j.hurtado1@gmail.com>
Thu, Dec 7, 2017 at 1:56 PM

Per your request, attached are substitution of attorney forms which must be filed with the Court in all three pending matters. Please sign and email back to us for filing as soon as possible.

With your consent, we will contact Weinstein to move next week's depositions to be re-noticed after you have retained new counsel. To avoid any harm to you this must be addressed this week so please advise if you agree promptly.

As to the reasons for our termination, I respectfully disagree with the characterization of the hearing. Also, as to the City Attorney, she told me my papers and oral argument were excellent. She did not say we should have won.

We are preparing final invoices and your files will be made available for you or your new counsel as quickly as possible.

Best,

David

David S. Demian *Partner*

Finch, Thornton & Baird, LLP Attorneys At Law

4747 Executive Drive, Suite 700 San Diego, CA 92121

T 858.737.3100 D 858.737.3118 M 858.245.2451 F 858.737.3101

ftblaw.com Bio LinkedIn

From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Thursday, December 07, 2017 12:33 PM
To: David S. Demian <ddemian@ftblaw.com>
Cc: Joe Hurtado <j.hurtado1@gmail.com>
Subject: Re: Withdrawal

David,

I spoke with Joe and he informed me that you were not familiar with the points in the P&A for the TRO motion and that you did not raise them before the Court when they were directly on point and necessary to be raised as a response to Weinstein's arguments. Further, that the attorney for the City explicitly told you right after you walked out of the hearing that we should have won based on the moving papers!

Our relationship is terminated, but I need it to be clear that it is based on your performance today at the hearing. Joe is already looking for new counsel to represent me and we will be submitting a motion for reconsideration with the Court.

- Darryl

On Thu, Dec 7, 2017 at 11:33 AM, David S. Demian <ddemian@ftblaw.com> wrote:

Gentlemen: Per my discussion with Joe post-hearing and my voice mail to Darryl it is apparent our withdrawal from the case is the next step. I will be sending the consent form and filing and preparing the file for your delivery. You should immediately seek advice of new counsel.

Please call at any time with questions.

David

David S. Demian *Partner*

Finch, Thornton & Baird, LLP Attorneys At Law

4747 Executive Drive, Suite 700 San Diego, CA 92121

T 858.737.3100 D 858.737.3118 M 858.245.2451 F 858.737.3101

ftblaw.com Bio LinkedIn

3 attachments

Sub of Att - Forfeiture Matter.pdf
66K

Sub of Att - Writ Matter.pdf
65K

Sub of Att - Geraci Matter.pdf
63K

EXHIBIT 12

FINCH·THORNTON·BAIRD LLP
ATTORNEYS AT LAW

4747 Executive Drive, Suite 700 San Diego, CA 92121
T 858.737.3100 F 858.737.3101 ftblaw.com

Mr. Darryl Cotton
6176 Federal Boulevard
San Diego, CA 92114

January 10, 2018
Account No: 2403-003
Statement No: 150904

For Legal Services Rendered through December 31, 2017

Total Balance Due **$9,913.95**

Re: Forfeiture Action

			Rate	Hours	
12/04/17	ACW	Correspondence with Joe and Darryl regarding upcoming deadline to make payment to City.	330.00	0.20	66.00

Recapitulation

		Rate	Hours	
ACW	Adam C. Witt - Associate	330.00	0.20	66.00
For Current Services Rendered			**0.20**	**$66.00**

Expenses/Advances

Date	Description	Amount
12/11/17	One Legal's fee for e-filing substitution of attorney. Inv. No. 11145398 - One Legal LLC	9.95
Total Expenses/Advances		**$9.95**

Total Current Work	**$75.95**
Previous Balance	9,838.00
Payments/Adjustments Since Last Bill	-0.00
Balance Due	**$9,913.95**

Payments received after January 10, 2018 are not included in this statement.

Please make checks payable to: FINCH, THORNTON & BAIRD, LLP

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Please contact us within 10 days of the invoice date with any questions. Thank you.

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4747 Executive Drive, Suite 700 San Diego, CA 92121
T 858.737.3100 F 858.737.3101 ftblaw.com

Mr. Darryl Cotton
6176 Federal Boulevard
San Diego, CA 92114

January 10, 2018
Account No: 2403-002
Statement No: 150903

For Legal Services Rendered through December 31, 2017

Total Balance Due **$42,020.48**

Re: 6176 Federal Boulevard Conditional Use Permit

			Rate	Hours	
12/01/17	SLH	Analyze status and developments of CUP application (1.0); analyze opposition to ex parte application with respect to same (0.5); prepare public records act request for documents and correspondence with respect to City, Geraci, and related parties (0.5).	300.00	2.00	600.00
12/01/17	RSB	Prepare electronic stipulation to accept pleadings and other documents through email.	225.00	0.20	45.00
12/01/17	ACW	Work on developing strategy for writ and ex parte relief regarding CUP application.	330.00	1.10	363.00
12/01/17	DSD	Further work on ex parte motions and strategy.	415.00	2.40	996.00
12/03/17	DSD	Discussion with Joe on options for saving permit by concurrent actions.	415.00	1.00	415.00
12/04/17	DSD	Analyze case of Monarco in connection with effort acquire CUP; work on application for peremptory writ.	415.00	1.40	581.00
12/04/17	RSB	Revise ex parte application to incorporate Joe Hurtado's analysis.	225.00	1.70	382.50
12/04/17	SLH	Conference to analyze San Diego Municipal Code provisions for application resubmittal.	300.00	0.20	60.00
12/04/17	DSD	Final correspondence to Weinstein regarding stipulation.	415.00	0.40	166.00
12/04/17	DSD	Correspondence to Weinstein as to e-service.	415.00	0.20	83.00
12/04/17	DSD	Analyze mandatory injunction options; work on proposed order.	415.00	0.50	207.50
12/04/17	DSD	Begin work on proposed order.	415.00	0.60	249.00
12/04/17	RSB	Revise ex parte application (0.5) and Cotton's and Demian's declarations to reflect Hurtado's latest insights (0.3).	225.00	0.80	180.00
12/04/17	DSD	Further work on writ application.	415.00	1.20	498.00
12/04/17	ACW	Work on proposal to attorney Weinstein regarding stipulation on CUP application.	330.00	0.80	264.00
12/05/17	DSD	Further work on writ request.	415.00	0.60	249.00
12/05/17	CRS	Review and work on edits to memorandum in support of ex parte for an order shortening time for writ hearing.	355.00	1.70	603.50

Account Number: 2403 - 002
Statement No: 150903

January 10, 2018
Page 2

			Rate	Hours	
12/05/17	RSB	Finalize writ/ex parte application and all supporting documentation.	225.00	0.60	135.00
12/05/17	DSD	Discussion with Joe on arguments as to damages and injury.	415.00	0.50	207.50
12/05/17	DSD	Analyze and work on arguments as to injury.	415.00	1.80	747.00
12/05/17	DSD	Final motion for peremptory writ.	415.00	1.50	622.50
12/05/17	DSD	Final declaration of Cotton; discussion with Darryl.	415.00	0.20	83.00
12/05/17	DSD	Correspondence to counsels with notice of ex parte.	415.00	0.20	83.00
12/06/17	DSD	Discussion with Joe finalizing motion on writ.	415.00	0.40	166.00
12/06/17	DSD	Finalize motion on writ.	415.00	0.40	166.00
12/06/17	DSD	Revise declaration of Darryl per his comments.	415.00	0.50	207.50
12/06/17	DSD	Further work on P&A to focus on arguments and reduce length.	415.00	0.70	290.50
12/07/17	DSD	Appear at ex parte hearing on writ.	415.00	0.80	332.00

Recapitulation

		Rate	Hours	
DSD	David Demian - Partner	415.00	15.30	6,349.50
RSB	Rishi S. Bhatt - Associate	225.00	3.30	742.50
SLH	Steven L. Hwang - Associate	300.00	2.20	660.00
CRS	Christopher Sillari - Partner	355.00	1.70	603.50
ACW	Adam C. Witt - Associate	330.00	1.90	627.00
For Current Services Rendered			**24.40**	**$8,982.50**

Expenses/Advances

Date	Description	Amount
12/07/17	Vendor fee of ex parte application, memorandum and declaration of David Demian. Inv. No. 4235732 - Knox Attorney Service	203.95
12/11/17	One Legal's fee for e-filing of substitution of attorney. Inv. No. 11145392 - One Legal LLC	9.95
Total Expenses/Advances		**$213.90**

Total Current Work	**$9,196.40**
Previous Balance	32,824.08
Payments/Adjustments Since Last Bill	-0.00
Balance Due	**$42,020.48**

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ATTORNEYS AT LAW

4747 Executive Drive, Suite 700 San Diego, CA 92121
T 858.737.3100 F 858.737.3101 ftblaw.com

Mr. Darryl Cotton
6176 Federal Boulevard
San Diego, CA 92114

January 10, 2018
Account No: 2403-004
Statement No: 150905

For Legal Services Rendered through December 31, 2017

Total Balance Due **$40,009.02**

Re: adv. Larry Geraci

			Rate	Hours	
12/01/17	RSB	Conference about lodging objections to Geraci's notice of deposition and accompanying production request.	225.00	0.20	45.00
12/01/17	RSB	Perform final analysis on the probability that Cotton will be able to obtain a TRO or a Preliminary Injunction as a way to force Geraci to quickly settle the case.	225.00	0.30	67.50
12/01/17	RSB	Analyze timing of when Cotton's objections to Notice of Deposition are due.	225.00	0.40	90.00
12/01/17	RSB	Further revise discovery responses.	225.00	0.20	45.00
12/01/17	CRS	Review draft discovery responses and work on edits to same.	355.00	1.80	639.00
12/01/17	CRS	Conference regarding objections to deposition notice and requests for documents, and work on strategy for same.	355.00	0.40	142.00
12/01/17	CRS	Conference regarding materials and outline to prepare for depositions.	355.00	0.20	71.00
12/01/17	RSB	Analyze California law regarding the one-year statute of limitations.	225.00	1.20	270.00
12/01/17	CRS	Conference regarding primary contract theory of case and strategy for defense of their alleged contract.	355.00	0.50	177.50
12/01/17	RSB	Conference about dedication of property to the City of San Diego.	225.00	0.20	45.00
12/01/17	CRS	Work on framework for stipulation on CUP and in the alternative, a narrow order for ex parte relief.	355.00	0.80	284.00
12/01/17	RSB	Continue analyzing how to frame the theory of the case for purposes of Cotton's upcoming discovery responses and deposition.	225.00	1.20	270.00
12/01/17	ACW	Work on document production requests in connection with deposition notices to Geraci and Berry.	330.00	1.40	462.00
12/01/17	DSD	Work on case arguments for ex parte and detailed correspondence to Joe and Darryl with strategy for motions.	415.00	3.20	1,328.00
12/01/17	DSD	Conference as to attorney-client privilege issues in case and analyze same.	415.00	0.50	207.50

			Rate	Hours	
12/02/17	RSB	Continue analyzing how attorney-client privilege may apply to Joe Hurtado.	225.00	0.90	202.50
12/03/17	RSB	Draft points and authorities for Cotton's TRO against the City of San Diego.	225.00	3.50	787.50
12/03/17	CRS	Conference regarding application of attorney-client privilege for communications between Darryl and Hurtado.	355.00	0.30	106.50
12/04/17	RSB	Review proposed email to Geraci's attorney, Michael Weinstein, regarding a proposed stipulation pertaining to the CUP application (0.1); provide feedback (0.2)	225.00	0.30	67.50
12/04/17	CRS	Work on strategy for seeking TRO in addition to ex parte relief on the Writ.	355.00	0.80	284.00
12/04/17	RSB	Begin drafting the injunctive order for the Court to sign.	225.00	1.00	225.00
12/04/17	RSB	Review Hurtado's memo regarding the issuance of a TRO.	225.00	0.20	45.00
12/04/17	RSB	Continue drafting injunction.	225.00	1.10	247.50
12/04/17	CRS	Work on revisions to proposed order for ex parte hearing on TRO.	355.00	0.30	106.50
12/04/17	CRS	Work on framework and strategies for memorandum in support of ex parte for TRO.	355.00	1.50	532.50
12/04/17	ACW	Conference to work on strategy for ex parte application for injunctive relief.	330.00	0.30	99.00
12/05/17	RSB	Revise ex parte application.	225.00	1.40	315.00
12/05/17	RSB	Review Hurtado's email regarding lis pendens and attorney fees (0.2); analyze cases cited therein (0.4).	225.00	0.60	135.00
12/05/17	RSB	Revise Cotton declaration to contain the terms of the parties' contract and to contain the Geraci-Cotton email exchange reflecting the same.	225.00	2.50	562.50
12/05/17	RSB	Continue to revise TRO for tomorrow's ex parte hearing.	225.00	3.00	675.00
12/05/17	RSB	Further revise ex parte application materials for tomorrow.	225.00	2.50	562.50
12/05/17	CRS	Work on memorandum in support of TRO and strategize for order in support of same.	355.00	2.00	710.00
12/05/17	RSB	Further work on ex parte application and TRO for tomorrow.	225.00	1.50	337.50
12/05/17	DSD	Work on motion for TRO, arguments on breach of contract.	415.00	2.10	871.50
12/05/17	DSD	Work on motion for TRO, revise declaration of Cotton.	415.00	1.50	622.50
12/05/17	DSD	Work on Declaration of Demian in support of TRO.	415.00	0.50	207.50
12/05/17	DSD	Correspondence to counsels with notice of ex parte.	415.00	0.20	83.00
12/06/17	RSB	Perform last minute revisions to the TRO and ex parte that is going out today.	225.00	1.10	247.50
12/06/17	DSD	Discussion with Joe no ex parte for TRO/PI.	415.00	0.30	124.50
12/06/17	DSD	Further work on motion arguments for writ as to Schweitzer section on CUP timing; work on declaration as to same.	415.00	0.30	124.50
12/06/17	DSD	Review declaration exhibits of Darryl and revise numbering.	415.00	0.50	207.50
12/06/17	CRS	Conference regarding last changes to memorandum in support of TRO.	355.00	0.30	106.50
12/06/17	CRS	Conference regarding objections to deposition notices.	355.00	0.30	106.50
12/06/17	DSD	Prepare responses to document demands by Geraci as part of Darryl deposition; review prior responses and document production; discussion with Darryl as to same.	415.00	0.70	290.50
12/06/17	DSD	Final motion for TRO for filing.	415.00	1.50	622.50
12/06/17	DSD	Appear at ex parte on TR/preliminary injunction (1.0).	415.00	1.00	415.00

			Rate	Hours	
12/06/17	DSD	Appear at ex parte on verified writ.	415.00	1.00	415.00
12/07/17	DSD	Appear at ex parte hearing on TRO.	415.00	0.80	332.00

Recapitulation

		Rate	Hours	
DSD	David Demian - Partner	415.00	14.10	5,851.50
RSB	Rishi S. Bhatt - Associate	225.00	23.30	5,242.50
CRS	Christopher Sillari - Partner	355.00	9.20	3,266.00
ACW	Adam C. Witt - Associate	330.00	1.70	561.00
For Current Services Rendered			**48.30**	**$14,921.00**

Expenses/Advances

Date	Description	Amount
11/30/17	Delivery of notice of deposition to Michael Weinstein at Ferris & Britton on November 30, 2017. Inv. No. 3497179 - Golden State Overnight	16.59
12/07/17	Vendor fee for filing ex parte application, memorandum and declaration of David Demian. Inv. No. 4235733 - Knox Attorney Service	148.55
12/11/17	One Legal's fee for e-filing of substitution of attorney. Inv. No. 11145359 - One Legal LLC	9.95
Total Expenses/Advances		**$175.09**

Total Current Work	**$15,096.09**
Previous Balance	24,912.93
Payments/Adjustments Since Last Bill	-0.00
Balance Due	**$40,009.02**

Payments received after January 10, 2018 are not included in this statement.

Please make checks payable to: FINCH, THORNTON & BAIRD, LLP

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Please contact us within 10 days of the invoice date with any questions. Thank you.

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EXHIBIT 13

SDGE
A Sempra Energy utility®

H

Account: 1310536032 08 Service Address: 6176 FEDERAL BLVD
Date Mailed: 01/12/18

URGENT NOTICE!
PAYMENT REQUEST

RE-INSTATED SECURITY DEPOSIT

We are requesting a $4,267.00 Security Deposit. Your Security Deposit request, which was previously waived, is now being re-instated as your bills have not been paid on time.

A payment is requested in the amount of $4,267.00 and must be received before the expiration date of 02/01/18 to avoid the disconnection of service.

There will be a charge if collection action is required. Please refer to the back of this notice for additional information.

The bottom portion of this notice must accompany your payment. If you intend to mail your payment, you should do so at least three business days prior to the expiration date of this notice.

You can also make your payment online at no charge. Go to sdge.com/myaccount. We also offer electronic payment services, such as SDG&E Pay-By-Phone and Automatic Pay. For your convenience, you can also pay by using most ATM cards, debit cards, MasterCard® and Visa® credit cards and electronic checks by calling BillMatrix at 1-800-386-0067.

Si necesita ayuda para intepretar este aviso llamenos a 1-800-311-7343.

0008

PLEASE KEEP THIS PORTION FOR YOUR RECORDS. (FAVOR DE GUARDAR ESTA PARTE PARA SUS REGISTROS.)
PLEASE RETURN THIS PORTION WITH YOUR PAYMENT. (FAVOR DE DEVOLVER ESTA PARTE CON SU PAGO.)

SDGE A Sempra Energy utility®

ACCOUNT NUMBER
1310 536 032 3

DATE DUE	Feb 1, 2018
AMOUNT DUE	$4,267.00

SERVICE ADDRESS: 6176 FEDERAL BLVD SAN DIEGO 92114

Please enter amount enclosed.
$

Write account number on check and make payable to San Diego Gas & Electric.

4726.1.2.108 1 oz.
DARRYL COTTON
6184 FEDERAL BLVD
SAN DIEGO CA 92114-1401

SAN DIEGO GAS & ELECTRIC
PO BOX 25111
SANTA ANA CA 92799-5111

3 7 00000131053603200004267000000426700

SDGE
A Sempra Energy utility®

PLEASE NOTE: This deposit less the amount of any unpaid bills will be refunded together with any interest due at the rate determined in accordance with the utility's Rule 7, Deposits, upon discontinuance of service or after the deposit has been held for 12 consecutive months during which time continuous gas and/or electric service has been received, and all bills for such service have been paid within the allowed number of days from the date mailed, in accordance with the Rules as approved by the Public Utilities Commission of the State of California.

No interest will be paid if service was temporarily or permanently disconnected for non-payment of bills within the past 12 months, or the account was past due more than once during the past six months or more than twice during the past 12 months.

Refund will be made by application to the account or by check, in which case endorsement of the check will constitute acknowledgement of receipt of refund and release the utility from any further claims against the deposit covered by this notice.

THE CITY OF SAN DIEGO
WATER & WASTEWATER SERVICES

City of San Diego PUBLIC UTILITIES Water & Wastewater

ISSUE DATE: Jan 2, 2018

a reminder...

610000247582
ACCOUNT NUMBER

6184 FEDERAL BLVD
SERVICE ADDRESS

Dec 21 2017
PAYMENT DUE DATE

1426 1 AV 0.373
DARRYL G COTTON
6176 FEDERAL BLVD
SAN DIEGO CA 92114-1401

5-1
01426

RETURN THIS PORTION

MAKE CHECK PAYABLE TO CITY TREASURER

0002 1 610000247582 2 0000025041 5 0

$250.41
TOTAL DUE NOW

THE CITY OF SAN DIEGO
WATER & WASTEWATER SERVICES
PUBLIC UTILITIES Water & Wastewater
a reminder...

JUST A FRIENDLY REMINDER...TO LET YOU KNOW WE HAVE NOT RECEIVED YOUR PAYMENT. IF PAYMENT HAS BEEN MADE, PLEASE ACCEPT OUR THANKS. IF NOT, YOUR REMITTANCE TODAY WILL BE APPRECIATED.

FOR RECORDED LISTING OF AUTHORIZED PAYMENT AGENCIES OR TO REPORT A PAYMENT, PLEASE CALL 515-3500.

ACCOUNT NO. 610000247582 DARRYL G COTTON SERVICE ADDRESS 6184 FEDERAL BLVD	Dec 21 2017 PAYMENT WAS DUE	$250.41 TOTAL NOW DUE

THE CITY OF SAN DIEGO
WATER & WASTEWATER SERVICES

City of San Diego PUBLIC UTILITIES Water & Wastewater

ISSUE DATE: Jan 2, 2018

a reminder...

610000012730
ACCOUNT NUMBER

6176 FEDERAL BLVD
SERVICE ADDRESS

Dec 21 2017
PAYMENT DUE DATE

1425 1 AV 0.373
FLEET ELECTRICAL CO
C/O DARRYL G COTTON
6176 FEDERAL BLVD
SAN DIEGO CA 92114-1401

5-1
01425

RETURN THIS PORTION

MAKE CHECK PAYABLE TO CITY TREASURER

0002 1 610000012730 0 0000017998 6 0

$179.98
TOTAL DUE NOW

THE CITY OF SAN DIEGO
WATER & WASTEWATER SERVICES
PUBLIC UTILITIES
a reminder...

JUST A FRIENDLY REMINDER...TO LET YOU KNOW WE HAVE NOT RECEIVED YOUR PAYMENT. IF PAYMENT HAS BEEN MADE, PLEASE ACCEPT OUR THANKS. IF NOT, YOUR REMITTANCE TODAY WILL BE APPRECIATED.

FOR RECORDED LISTING OF AUTHORIZED PAYMENT AGENCIES OR TO REPORT A PAYMENT, PLEASE CALL 515-3500.

ACCOUNT NO. **610000012730** FLEET ELECTRICAL CO SERVICE ADDRESS **6176 FEDERAL BLVD**	**Dec 21 2017** PAYMENT WAS DUE	**$179.98** TOTAL NOW DUE

SDGE
A Sempra Energy utility®

ACCOUNT NUMBER 1310 536 032 4
SERVICE FOR
DARRYL COTTON
6176 FEDERAL BLVD
SAN DIEGO, CA 92114

DATE MAILED Jan 12, 2018
www.sdge.com
1-800-336-SDGE (7343) *English*
1-800-311-SDGE (7343) *Español*
1-877-889-SDGE (7343) *TTY*
M-F, 7am-8pm, Sat, 7am-6pm
24 Hour Emergency Service

Account Summary

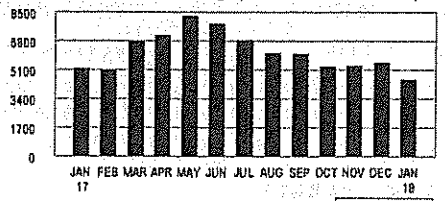
Previous Balance	$2,120.28
Payment Received	- .00
Past Due Balance	$2,120.28
Current Charges	+ 1,098.80
Total Amount Due	**$3,219.08**

Please disregard past due balance if already paid. Please pay current charges by Jan 27, 2018.

.7% Delayed Payment Charge Due If Paid After Feb 6, 2018.

DATE DUE ON RECEIPT
AMOUNT DUE $3,219.08

Electric Usage History *(Total kWh used)*



	Jan 17	Dec 17	Jan 18
Total kWh used	5,209	5,531	4,561
Daily average kWh	168.0	172.8	147.1
Days in billing cycle	31	32	31
Change in daily average from last month			- 14.9%
Change in daily average from last year			- 12.4%
Max monthly demand	16.3	17.1	16.0
Max annual demand			22.4

Summary of Current Charges

(See page 2 for details)

	Billing Period	Usage	Amount($)
Electric	Dec 10, 2017 - Jan 10, 2018	4,561 kWh	1,083.96
Delayed Payment Charge (.7% on balance of $2,120.28)			14.84
Total Charges this Month			**$1,098.80**

Regulatory Notices

- All customers are required to pay a Competition Transition Charge as part of the charges above, including those who choose an electric service provider other than SDG&E.

See Time of Use - Electricity information on page 3.

PLEASE KEEP THIS PORTION FOR YOUR RECORDS. (FAVOR DE GUARDAR ESTA PARTE PARA SUS REGISTROS.)
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ACCOUNT NUMBER
1310 536 032 4

DATE DUE ON RECEIPT
AMOUNT DUE $3,219.08

SERVICE ADDRESS: 6176 FEDERAL BLVD SD 92114

Please enter amount enclosed.
$

Write account number on check and make payable to San Diego Gas & Electric.

4723.163.3717.1933536 1 AV 0.373 oz 0.922
DARRYL COTTON
6184 FEDERAL BLVD
SAN DIEGO CA 92114-1401

SAN DIEGO GAS & ELECTRIC
PO BOX 25111
SANTA ANA CA 92799-5111

CA 8

4 2 900001310536032000010948000000321908

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SERVICE FOR
DARRYL COTTON
6184 FEDERAL BLVD
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24 Hour Emergency Service

Savings Alert: California is fighting climate change and so can you! Your bill includes a Climate Credit from a state program to cut carbon pollution while also reducing your energy costs. Find out how at EnergyUpgradeCA.org/credit.

Account Summary

Previous Balance	$837.04
Payment Received	- .00
Past Due Balance	$837.04
Current Charges	+ 728.63
Total Amount Due	**$1,565.67**

Please disregard past due balance if already paid. Please pay current charges by Jan 27, 2018.

.7% Delayed Payment Charge Due If Paid After Feb 6, 2018.

Summary of Current Charges

(See page 2 for details)

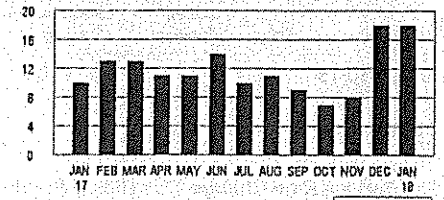
	Billing Period	Usage	Amount($)
Gas	Dec 10, 2017 - Jan 10, 2018	18 Therms	24.59
Electric	Dec 10, 2017 - Jan 10, 2018	1,485 kWh	357.58
Other Charges and Credits			346.46
Total Charges this Month			**$728.63**

Regulatory Notices

- All customers are required to pay a Competition Transition Charge as part of the charges above, including those who choose an electric service provider other than SDG&E.

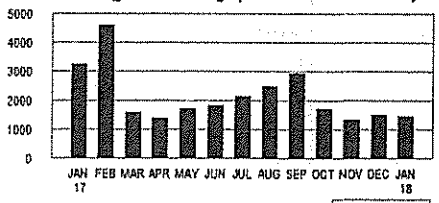
DATE DUE	ON RECEIPT
AMOUNT DUE	$1,565.67

Gas Usage History *(Total Therms used)*



	Jan 17	Dec 17	Jan 18
Total Therms used	10	18	18
Daily average Therms	.3	.6	.6
Days in billing cycle	30	32	31
Change in daily average from last month			+ 0.0%
Change in daily average from last year			+ 100.0%

Electric Usage History *(Total kWh used)*



	Jan 17	Dec 17	Jan 18
Total kWh used	3,266	1,517	1,485
Daily average kWh	105.4	47.4	47.9
Days in billing cycle	31	32	31
Change in daily average from last month			+ 1.1%
Change in daily average from last year			- 54.6%
Max monthly demand	11.0	6.6	3.9
Max annual demand			15.5

See Time of Use - Electricity information on page 3.

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ACCOUNT NUMBER
9185 520 600 4

DATE DUE	ON RECEIPT
AMOUNT DUE	$1,565.67

SERVICE ADDRESS: 6184 FEDERAL BLVD SD 92114

Please enter amount enclosed.
$

Write account number on check and make payable to San Diego Gas & Electric.

4723.163.3717.1933404 2 AV 0.373 oz 1.092

DARRYL COTTON
6176 FEDERAL BLVD
SAN DIEGO CA 92114-1401

SAN DIEGO GAS & ELECTRIC
PO BOX 25111
SANTA ANA CA 92799-5111

CY 8

4 2 200009185520600000007286300000156567

EXHIBIT 14

DECLARATION OF DALE L. COTTON

I, Dale Lloyd Cotton, have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.

1. I am a self-employed businessman and the First Trust Deed Holder of 6176 Federal Boulevard San Diego, CA 92114; to which the title to that property is held by my son, Darryl Gerard Cotton.

2. Darryl has been under extreme financial pressure from the litigation he is involved in and he has not been making the mortgage payments to me. He has been responsible in keeping me updated through regular communication as to the status of that litigation.

3. That communication has made me very aware of the enormous stresses Darryl is undergoing both emotionally and financially.

4. To be clear: were this a normal business relationship, I would have foreclosed on this property a year ago.

5. But this is not a normal business relationship and I do want to help him and any of my children out to the fullest extent that I can. However, I am not a wealthy man, and this cannot continue.

6. I respectfully request this court to consider what the effects of this needless, protracted litigation has caused to not only Darryl, but to me as well, and please use whatever discretionary authority you have to see that justice will eventually be served in this matter.

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

DATED: 1/21/2018

Dale L Cotton

DALE LLOYD COTTON

my cell
708-380-7010
811 67th St
Mendota, IL USA
61342

EXHIBIT 15

I, Darryl Gerard Cotton, hereby declare:

1. **I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.**
2. This declaration is being prepared for this lawsuit, litigation matter and should lay out in detail all the pertinent facts and history of me, my business and the chronological events leading to and through the legal proceedings to date.
3. It is the intent of this declaration to prove 6 things: 1) I have had a lifelong passion and interest in electricity and electrical designs; 2) I am a businessman, I have had numerous companies related to electricity; 3) I also have a lifelong interest in plants and crops; 4) I am involved in and proud of my political activism; 5) Larry Geraci is attempting to defraud me of my property and; 6) My former counsel FTB is also likely guilty of fraud.
4. It is important to me that this reflect these issues, therefore I go to great lengths to describe them.
5. I was born in 1960 in Peoria, Ill. My father, Dale Lloyd Cotton, was a Mechanical Engineer who worked for the Electromotive Company (EMD) as a Process Engineer, just outside of Chicago, Ill. My mother, Therese Marie Cotton, was a chemist who worked at various universities. I had one brother, Gregory, and a sister, Christine, from their marriage.
6. Some of my earliest and fondest memories growing up were of having my parents take us to their respective workplaces. At Christmas, EMD would open their entire facility up for tours where everyone could see the factory and all the locomotives in various stages of construction. My father would walk us around and point out where he worked and explain his job of engineering the manufacturing processes that would produce those enormous locomotives that were sold all over the world. Touring that factory, I saw what seemed like

an important part of what society needed in its everyday life of moving goods from one point to another. I was very proud of my dad and the work he did for EMD.

7. Since my father grew up in the farming area of Southern Illinois, at 13 years old I was given a chance to work one summer detasseling corn. It was very hard work, but I stuck with it and learned to appreciate what it takes to get these crops to harvest. Visiting my grandparents, and that summer working in the farms in Mendota, Illinois, sparked my early interest in plants and crop science.

8. When my mother took me to her job, I got a chance to see the work she was doing toward her thesis in Raman Spectroscopy. This is the science that involves determining the molecular identity of an object using light. As light bombards the object, the return or reflection of that light creates a signature in frequency and wavelength that can be characterized in a nondestructive fashion by the object's unique molecular identity. I would often accompany my mother to her labs at Argonne National Labs and Northwestern University to see her equipment and experiments underway. I got to sit in with her and her colleagues when they would discuss advanced physics and particle science. Of course, these topics were well over my head, but I always made sure they at least attempted to explain what they were talking about, in terms I might be able to grasp. In deference to my mother, and because they probably enjoyed the challenge, her colleagues would usually take the time to do so and show me what the equipment was doing in their experiments. I was thrilled to understand, at least in a broad sense, what it was their work entailed.

9. There is no doubt that my interest in electricity and light, came from exposure to the work my mother had been doing, and the efforts she and her colleagues made to explain to their work to me. Later in life, I would, on occasion, accompany her as she gave lectures around the world to other academics on her work, and it became increasingly evident to me, that she was respected as an innovator in her field. I could only hope that I would have an

opportunity to contribute to the world in as meaningful a way as she had. Sadly, my mother died in 1999 but her memory and work will live on forever. It is a goal of mine to emulate her personality, and the way she affected those around her, in the same positive ways she did.

10. At a very young age, I found that I was really interested in politics and what was going on in the world. I even have a vague recollection of being 3 years old and sensing something was horribly wrong when the world seemed to stop with the assassination of John F. Kennedy. We all just stood there, staring at the TV, and the busy street that normally had cars flying down it, was quiet. There was no traffic. Time stood still. After that, having lived through the Vietnam war, Watergate, Nixon, Martin Luther King, and other such events, I can't recall ever not having an interest in politics and the law and their effects on the world we lived in. I found it exciting and fascinating.

11. My parents went through a horrible divorce when I was 13 years old. There was bitter fighting over who would get what and it led to a serious and permanent fracturing of our family. I'll never forget the tug of war and the lawyers coaching us as to what to say so we would be able to support whatever was expected to be said when we stood in front of the judge. Having to pick sides between your parents is not something that you would ever want a child to do but that is essentially what we had to do. What happened is that the boys went to my father and my sister went to my mother. Life as we knew it would never be the same.

12. From the time I was 13 to 15 years old, my brother and I were basically on our own. My dad worked full time, and during his off time, he sought out new relations that would rebuild our household. My brother and I resisted these new women coming into our lives, trying to assume the position that had been our mother's, so we rebelled. We did not make it easy on these women and they would leave. This, coupled with the fact we were acting like normal

teenagers, caused a lot of friction with my dad. Eventually my father farmed out my brother Gregory, who was just 12 years old at the time, to a family down the street from us who agreed to take him in. I lived with my dad until I was 15 years old, when he agreed to my moving out.

13. In 1972 I became aware of a considerable buzz being created by then President Nixon having appointed a commission, known as the Shafer Commission, to study, compile information on, and report back to him what effects cannabis was having on our youth. It was clear to us from Nixon's statements that he did not want to see cannabis become acceptable at any level. He needed federal drug policy to make cannabis use a criminal act. Nixon saw cannabis being used by a bunch of war protesters who would sit around smoking weed and creating havoc, over him and his policies, so he needed it stamped out. He needed a way to give the federal government the tools to do that. To that end, he created the Shafer Commission, whose sole purpose he believed was to come back with findings that supported his beliefs. Nixon needed findings that would claim cannabis was evil, dangerous, and a threat to society. Unfortunately for Nixon, after an exhaustive, comprehensive, and nonpartisan analysis of the effects of cannabis, they came back with just the opposite opinion.

14. When the Shafer Commission came back with their report, they relied on research that had been done by UC San Francisco chemistry students who were interested in finding out why the same strain of cannabis could make one person laugh and another contemplative. They appreciated that there was the potential to use cannabis as medicine and they recommended that further research be done to see what biochemistry was at work. What they discovered was the beginning of why the science of this plant needs to be better understood. Relying on that research, and other studies from around the world, created a situation where Nixon could not accept the findings and would not release the report in the form that he had

received it. Nixon ignored the Commission's recommendations and went on to create the Controlled Substances Act. He eventually resigned and was then pardoned by his replacement, Jerry Ford. One of the first things Ford did was give the Shafer Commission report to Big Pharma so that they could "continue" the research that had been done by others, while it was kept from the public for over 40 years.

15. In 1975 I moved into my own room at a boarding house known as The Stone House. The Stone House was run by a little old lady who went by Marty. Marty was an exceptionally sweet person who had an incredible affection for birds. She had hundreds of finches in the basement and would spend hours with them. What Marty was not always very good at was noticing what her tenants were up to, and by that, I mean, more than a few of her tenants were heroin addicts, who lived there because it was cheap, and Marty loved them unconditionally, as if they were her own.

16. When Marty first met me, she was not ready to rent a room to a 15-year-old boy but since I was personable, had a job working part time for Horton Electric, a local electrical and lighting company, and was going to high school 1 block away from the Stone House, Marty decided to take a chance and let me move into my own room. This was important, not only because I got to understand self-responsibility at a very young age, but also because it gave me the opportunity to see how those other boarders made their living and survived as adults.

17. The Stone House was a large 3 story house and the attic floor was the most desirable of all the floors. This is where, in the evenings, the rooms would open up and there would be free flowing music, conversation, drinking, drugs (only cannabis and psilocybin for me), and discussions on everything imaginable including politics, the Vietnam war, President Nixon, relationships, and girls. People came from all over to attend these evening soirees. They were lively and fun, but they had purpose too. We were in the midst of revolt and

revolution. There was Kent State. There was Watergate. There was George McGovern. There was talk of impeachment. There was the Shafer Commission. There were body bags of soldiers fighting in a war that had no meaning. There were refugees. There was Jimmy Carter. There was Lieutenant Calley. There were lines of people waiting to buy gasoline. There was upheaval. I was taking it all in. Living at the Stone House taught me to think for myself, to question those who would manipulate the system on behalf of their own special interests, to help educate others, as I had been, and finally to cherish the Constitution as it is a living, breathing document that must be the center of our universe and not be taken for granted or the freedom we cherish will be lost forever. The tree of liberty will not be taken down with a single swing of the axe, but in a slow and steady process whereby one day you look up and the tree is gone. As citizens of this great country, we have a responsibility to protect ourselves and those around us from letting that happen. That is the message I took from the Stone House.

18. While Stone House helped form some of my early political ideologies, it also got me to question drugs, both legal and illegal, and the influence they had on people's lives. When the parties died down, it was always just me and the other boarders who had all taken me under their wings and mentored me. I got to see them as they really were. Even though some of them got into things that I would never try, such as heroin, I respected that they were clear to me why they did these drugs and why they would never want to see me doing them. I watched them go through the process of attaining the drugs and the rituals that went with getting the drugs into their systems. While they were certainly consumed by their addictions, they also seemed to care about the young man living in their Stone House and did not want to see me make the same mistakes they had. I respected them and their intellects. However, I saw firsthand how heroin would ravish them and ultimately, they would overdose, and some would even die. It was tough knowing that these drugs took

control of young people who could have been assets to our world. I knew then and there that I would never subject myself to a drug, legal or not, that took over my life. Instead I would always maintain an interest in how drugs could be used to provide relief, repair or prevention of disease without the addictive elements that consumed those who took them.

19. After a couple of years of living in the Stone House, I had saved and was making enough money at Horton Electric to move into my own house. In 1977, at the age of 17, I kissed Marty goodbye, thanked her for everything she had done for me, and moved into my own house.

20. At the time I rented my own house, I had been working part time for Horton Electric for almost 3 years. I initially started out working in the warehouse stocking inventory but, since I was always interested in what those electrical parts did, I'd ask a lot of questions of those who worked there. That got me to understand the business to the point that, at just 16 years old, I got to move up to the electrical sales desk. In that capacity, I got to meet with customers, helped fill orders and realized that building and wiring things was incredibly rewarding.

21. While I appreciated the opportunity to work in electrical sales, I lobbied hard to get transferred to the electrical construction side of the company. I had already been dreaming of someday becoming an electrical contractor. The contracting side of Horton Electric was run by a surly old Irishman by the name of Chris who wanted nothing to do with having a young kid working around him and his electricians, but I didn't give up and I eventually got on his good side. Once I did, it was the best thing that could have happened to me. I got direction. I got focus. This shop was well established and serviced all the surrounding area. Chris was very well respected, and by me representing him, by way of delivering materials and getting to know the union electricians, I had an opportunity to see how the electrical construction side of the business operated. I'm a quick study but there was no way

that, without formal training, I was going to learn the electrical contracting trade unless I got a break. That break came when one of the union electricians I was working with decided that I was worthy of baptism by fire. As much as Chris got to know and rely on me, he knew that my heart was in becoming an electrician and one day running my own business, so he got me onto a union job that needed more electricians than the hall had available at the time. I was given an opportunity to become a walk-on electrician for a huge condominium project being built outside Chicago. While I had some experience in bending conduit and running wire, I was not up to the skill levels that were required to maintain that job. I was not going to lose that job, so I would actually stay after hours to practice bending conduit to improve my production levels. When the project foreman found out I was doing that, he was not happy about it, and told me in no uncertain terms that, if I ever did anything off the clock, I would be terminated. However, he liked that I wanted to succeed and paired me with another walk-on electrician who was so good he was out-producing the union electricians by nearly twice the production per day. John was good. Very good. He had methods and techniques that allowed him alone to finish a one-bedroom condominium, completely piped in conduit and ready for drywall, in one day. I worked with John and learned every technique he had. Within a month, I was knocking out the same production levels he was. John went on to become a union electrician and stayed in Chicago. I could have gone that route too, but I wanted to eventually have my own business as I had seen Chris do at Horton Electric and, since the winters were brutal in Chicago and I had nothing keeping me in the Midwest, I decided to take my skill sets and move to a warmer year round climate. It was in 1980 that I made the decision to pack all my belongings up in a van and move to San Diego.

22. When I arrived in San Diego, I immediately got a job for the U.S. Navy working as an electrician in the Public Works Center (PWC). While this was considered a temporary

position, my electrical skills and acumen put me in demand among the career, civil service electricians and allowed me to travel to many of the Southern CA naval bases while working on, and often being given a supervisory role in, some of the most sensitive and high-profile projects going at the time.

23. I had been working for PWC for 2 years when, in 1982, I was given an opportunity to make better money as the Electrical Superintendent for Dave Baker of Westland Electric. In this capacity, I would be responsible for running multiple large commercial projects. Dave hired me for this position because he knew, from people he knew at PWC, that I was knowledgeable, organized, liaisoned well with our customers, and delegated authority, which resulted in my projects being completed on time and on budget.

24. In 1983, I met Debra Holly and we started dating. We never married but stayed together for 14 years, during which time we had 2 beautiful daughters, Kimberly and Kristina. It was during those early years that Debra encouraged me to follow my dreams of owning and operating my own electrical contracting firm.

25. In late 1985, I started suffering from occasional nocturnal epileptic seizures. While it is unknown as to what exactly is responsible for these seizures, it is believed that lack of sleep and stress are significant contributing factors. I was originally prescribed Dilantin which worked but was known to cause problems within the liver and, since I also have the Hepatitis C virus, I was very concerned about the effects a prescription drug would have on my liver.

26. In 1987 I made the decision to start my own electrical contracting business and Fleet Electric, CA License Number 514234, began business out of my home in North Park. I managed to run and grow that business so that I needed to move into a larger space. In 1992 I moved our business out of my home and into a commercial rental property at 6184 Federal Blvd, which I currently maintain for my business.

27. In 1996 I first became aware of Dennis Peron as he was getting attention as one of the original co-authors of Prop 215, which, with its passage, had made cannabis legal in CA for treating certain medical conditions. While at the time I was uncertain as to how effective cannabis might be in the treatment of my seizures, I did appreciate that it was now being recognized as a possible alternative option to the prescription drugs I was taking. I resolved to follow the research that developed relative to the genetics and dosing levels that could be relied on to help combat these seizures.

28. In 1997, the owner of the property at 6176 Federal Blvd contacted me and asked if I would be interested in acquiring his property, which is adjacent to mine, at 6184 Federal Blvd, if the terms were favorable. This was a deal that worked for both of us and I purchased the 6176 Federal Blvd property in my name.

29. In 2000 I expanded my license to include a General Contracting classification and was issued CA Contractors license number 757758. Since the new license allowed us to do work beyond just electrical, I renamed the company Fleet Services and proceeded to operate under that license until 11/30/2012 when I decided I would cease contracting and devote my full attention to my efforts in energy efficient horticultural lighting and controls.

30. In 2002 I started Fleet Systems as a compliment to my Fleet Services contracting business. Fleet Systems provided emergency and backup power generation for both permanent and rental power applications. Fleet Systems became dealers and authorized service centers for many major brands including Kohler, Baldor, and Cummins. Within 4 years of our startup; our Fleet Systems Maintenance Contracts Division had acquired a majority of the major key accounts such as hospitals, casinos, office buildings, and hotels in San Diego whereby the annual generator service contracts were an integral part of our portfolio. Recognizing this, the local Kohler Distributor, Bay City Electric Works, made an offer to purchase Fleet Systems and I accepted their offer. It was agreed that we would

retain the Fleet Systems name so that we could continue to provide mobile power systems service on news vans, semi-trucks and RV systems, services that we still provide.

31. In 2005 I expanded our generator equipment business into Mexico with the opening of Fleet Systems de Mexico. This was good timing for us because at the time we opened our facility in Ensenada, MX there were sizeable rentals and sales contracts available. In addition, many of our US manufacturers whose power systems we were already servicing had maquiladora operations in this region which made it relatively easy to support them with equipment and personnel from our San Diego facility. With the sale of Fleet Systems in 2007 we ceased operations in Mexico.

32. In 2010 I started Inda-Gro as an induction plant lighting manufacturer. Inda-Gro was one of the very first companies to identify induction lighting as a viable, energy-efficient plant lighting technology that could compete with the existing HID lighting technology that dominated the plant lighting market.

33. It is through the ongoing research I have done at Inda-Gro that we have seen significant developments in plant photobiology with self-published and other researchers' papers.

34. From 2010 onward I worked primarily on the manufacturing and distribution side of Inda-Gro lights. Since our products relied on a well-established Tesla Coil technology which was being applied in a new way to provide lighting for plants, it required that growers be convinced that our products could deliver the crop quality and yields to which they had become accustomed under HID lighting systems. The only way that was going to happen with a new technology was if we had "partner growers" who would provide meaningful data as to their comparative results or if we had our own farm running continuously that would allow for people to see the plants and lighting systems in operation. Couple those visits with time/date stamped images posted on Facebook of previous grows and crop results and the

consumer now has the ability to make an informed decision as to what Inda-Gro brings to the market.

35. My experiences with having "partner growers" providing me with any reliable, meaningful data was a challenge. More often than not. they would take one of my lights with the promise that they would tell me how it performed. The majority of the time I would get little to nothing back in return. Clearly this did not work for me and my plans to improve our products by tracking real time plant performance values.

36. In 2011 I decided to no longer rely on "partner growers" as the design developments required more reliable feedback in a timely fashion and I began to focus entirely on our inhouse T&D garden operations for indoor and greenhouse lighting applications. It was at this time I started both Youtube and Facebook channels to publish our work with time/date stamped images and videos.

37. In 2012, in addition to the lighting and controls research and development underway, I was given the opportunity to procure several different genetics of cannabis that I wanted to grow for the treatment of my seizures. It was during this time that I became very interested in combining the engineering work we were doing with our Inda-Gro products with the plant sciences to generate organically grown cannabis products that would not only be healthier but, by combining certain genetics, prove to be better at combating my seizure disorder.

38. Aquaponics is not widely used in cannabis cultivation. However, I was attracted to this method of cultivation because of the organic nature under which the plants had to be grown. Nothing could be placed on the plants that could harm the fish. This appealed to me since, if I were to continue to use cannabis in combination with prescription drugs to treat my seizures, I wanted to be sure that the cannabis I consumed was free of any potentially toxic elements. A balanced aquaponic system relies on healthy fish and their waste being

the primary nutrients for the plants. This is a presentation I developed that goes into detail as to how this method of cultivation may be employed for cannabis crop cultivation.

39. I experimented with several methods that would allow aquaponics to be used in cannabis cultivation and found a reliable technique that gave the cannabis plants their main nutrient requirements from the flood and drain fish water but which also allowed us to top feed the trace minerals that cannabis and other flowering plants need in a top water feed that does not water to the point that water combines with the fish water. This practice is referred to as decoupled or dual root zone feeding for the plants.

40. As a result of my posting this work on Facebook media I eventually came to the attention of Pentair Aquaponic Eco-Systems. PentairAES is the largest manufacturer of aquaculture products in the world. It was Dr. Huy Tran, PhD, the Director of Research for Pentair at the time, who reached out to me to learn more about us and our products and to explore if induction grow lights would be a good fit for the industry and their product line. After discussing the science involved in our products and learning more about us, Dr. Tran decided to recommend our induction lights be used in the Pentair product line under their own label. His recommendations were accepted by management and I began filling induction grow light orders for PentairAES.

41. After entering into that agreement with PentairAES, I expanded sales of our induction grow lights but I also benefited from the incredible insight and knowledge that Dr. Tran and other advanced academics within Pentair, such as Dr. Jason Danaher, have been able to provide me with in regard to how aquaponics can grow a wide range of crops in a wide range of environments while using 5-10% of the water that a traditional soil crop would consume. I also was pleased to discover from the research we were doing into plant lighting and aquaculture that the benefits we found in organically grown food crops quality extended to cannabis crop quality.

42. Cannabis that I had been acquiring through local retail cannabis dispensaries would not always be guaranteed to be free of contaminant pesticides, fungicides, aerocides or even nutrients. When I would procure concentrates of the same genetics for my condition, the percentage of residual solvent elements would be increased by 10-20X what it would have been in flower form. While I want the benefits of medical grade cannabis to combat my seizure disorder, I refuse to take in chemicals that I know to be unhealthy and even life threatening.

43. In March 2015 I found a commercial property available for rent in the Barrio Logan section of San Diego. The landlord understood that I was to rent this property for the purposes of developing what I began referring to as a 151 Farm. The concept, which originally began with our R&D work on Federal Blvd, was that urban farms would grow 1 pound of cannabis to 5 pounds of food for 1 community. I went forward with the Barrio Logan project because it afforded us a larger footprint than I had available at the Federal Blvd property. The size of this property allowed us to have indoor, greenhouse and outdoor plants that were grown in a soilless aquaponic system of recirculating water. In our trials of systems and procedures I grew lettuce, hops, peppers and medical cannabis. I maintained our progress on social media with time/date stamped photos and welcomed those who had an interest in our work to visit us for tours.

44. While I initially sought out others in the hydroponics industry to co-develop the 151 Barrio Logan project, it became apparent that, even though they may have endorsed the efforts, they were never willing to contribute any time or money to see that the project was maintained. While I consider Barrio Logan a success, ultimately the work and money involved to maintain it became too much to bear and I had to shut it down and return those operations to the 6176 Federal Blvd location where it continues to operate to this day.

45. Over the years I became increasingly aware of all the research being done in other countries on the medical benefits of cannabis. I watched with great interest as medical doctors and scientists from every realm of the sciences collaborated in finding out more about this plant and how it interacts with our endocannabinoid systems. What this ongoing research has shown is that at the botanical level there are mysteries about this plant and its broad phenotype expressions that exist amongst the wide-ranging genetics that will combine to promote homeostasis or a balancing of the mind/body relationship.

46. Other elements of the plant have been clinically proven to reduce blood flow to cancer cells. Today there exists greater empirical evidence than ever before as to how this plant can benefit us and why its cultivation and access need to be sensibly managed. Based on my personal experiences, that of those I've seen benefit from this plant and the research that supports its medical use, I will remain committed to lending my voice to see that laws and policies are in place at the federal level which would include the re/declassification of cannabis and that at the local and state levels those who need access to this plant for their medical conditions are able to do so.

47. In late 2015 I was contacted by researchers at the National Algae Association who had seen my work whereby I had taken one of our induction grow lamps and designed a waterproof housing that allowed the lamp to be put underwater without any type of housing over it. This put the lamp's energy, intensity and spectrums at depths in the tank where it is difficult for light to travel at distance to meet with the macroalgae being grown.

48. The particular algae we were interested in cultivating with our lamps was the Haematococcus Pluvialis algae or "HP" for short. HP is known to be very high in the super antioxidant astaxanthin. Research indicated that by installing the lamps in the tank we would be able to increase the concentration levels of astaxanthin and decrease times to

harvest. From my perspective, anything I could do to help improve any crop production value which, when extracted, would benefit the patient, was worthy of pursuit.

49. Because of my work on the AquaPAR submersible induction lamps to decrease times to harvest and increase HP concentration levels, I was invited to give a presentation at The National Algae Convention.

50. One of my greatest personal motivations in starting my own 151 Farms Urban Aquaponics Gardens was that I could gain personal knowledge by creating these gardens and learn what would and would not work when growing a wide variety of food and plant-based medicines in this fashion as well as develop our lighting and control products.

51. The reason this work at this particular time was especially appealing to me is that botanical plant substances can help alleviate certain medical conditions in patients when combined with the ability to optimize crop production values in a given area using controlled environmental conditions whereby the plants can develop in the lowest times to harvest across all plant species.

52. When optimizing plant production values, what matters most is that the research supports whatever the benefits to the patients may be based on control factors such as the plant genetics, the type of cultivation systems and procedures being used that allows for organically grown plant-based products to be grown in a repeatable fashion. It is for this reason I began to introduce a wider variety of crops, known for treating medical conditions, into our 151 Farms so they could be available to those who would seek them out in their fresh unadulterated form from their local garden. Other factors that contributed to my support for and development of 151 Farms included; The ability to co-cultivate fish and plants in a **soilless** urban garden setting.

53. There is an opiate epidemic in the United States which has now reached epic proportions. The need for fresh, organically grown, unprocessed foods and plant-based medicine has never been greater.

54. A whole host of medical conditions, such as high blood pressure, diabetes, Alzheimer's, obesity, and cancer, can be directly attributed to the consumption of processed foods.

55. The availability of fresh unprocessed foods is severely restricted in urban settings. This leads more people to purchase food products that have longer shelf lives from the stores in their neighborhoods. Consequently, the percentage of diet-related diseases is disproportionately higher in regions where access to unprocessed food is limited.

56. Why is having locally-sourced, organically grown medical cannabis plant genetics so important to patients? Research has shown improved efficacy from the EXTRACTION of essential oils from cannabis plants when that extraction is done from a just harvested plant. This extraction process is referred to as a live resin extraction. A cultivation process whereby the just harvested plant can be converted into that essential oil is critical to the finished product quality. What is equally important is that the plants are grown in a controlled environment whereby the full phenotype expression can occur. This is a function of broad spectrum lighting. It's also important that the plant genetics are known and stable to realize these benefits in a repeatable process. Finally, it is important that the plants have not been subject to pesticides, aerocides, fungicides or residual nutrients that may contain heavy metals or plant growth regulators which in an extracted process could be 10-20X what those levels would be in a flower form. Cannabis grown and processed in this way allows the patient to take lower doses that, when coupled with diet and some form of exercise incorporated into a daily regimen, help to, at a minimum, improve their quality of life and reduce or even eliminate the medical conditions that existed prior to their introduction to naturopathic treatments. The benefits of a 151 Farm are that the source plant material for

medical grade cannabis can be made available to those within the community nearest to where it has been grown.

57. If you're familiar with the term Community Supported Agriculture (CSA), a 151 Farm utilizes Cannabis Supported Community Agriculture (CSCA) as a way to pay it forward within our communities by providing housing and jobs for all skill levels and donating a portion of the food being grown to local food banks.

58. The negative impact that our drug laws and policies have had in non-white communities has been disproportionately larger than for those who live in predominantly white communities. These drug policies have led to higher percentages of incarceration, lost jobs, crime and other negative effects for those individuals and their communities.

59. With the increased opportunities coming from the mainstream and legalization of cannabis within these communities, it is morally imperative that under these new laws, cannabis related business opportunities be given to those who have been most affected by those previous drug policies and laws. 151 Farms provides a distinct and transparent pathway for those opportunities.

60. It is necessary to meet with government officials and interact with them on a regular basis to see that organic urban farming and medical cannabis patient's needs are being considered. Letting your voice be heard, not being passive, leading by example, and being part of the dialogue to be part of the solution are all parts of what being a 151 Farmer means when it comes to exacting change in an ever-changing industry.

61. For me personally, knowing that I am able to grow my own medical grade cannabis with particular genetics that help to prevent my seizures is comforting, but I would also like to know that I can purchase medical grade cannabis which is free of toxic elements, should I become unable to grow in the future. This got me looking into how the State of CA regulates pesticides and toxicity limits on medical cannabis products that are cultivated and

produced under the authority of Prop 215. What I found is that as far as the State of CA is concerned, since 1996, when Prop 215 was passed, there have never been any limits on pesticides and toxicity because the California Department of Pesticide Regulations (CDPR) got their limits from those established by the FDA and EPA. The problem CDPR had with setting state levels was that it relied on a federal agency to provide data and NO federal agencies will perform the pesticide and toxicity studies on a product that is listed as a Schedule One drug. Under the Controlled Substance Act cannabis is seen as having NO medicinal value whatsoever, it is subject to severe safety measures and it is listed as having a higher potential for abuse than heroin, which is listed as a less dangerous, schedule two drug.

62. With one side blaming the other and me as the medical cannabis patient caught in the middle, I began researching why the federal government still considered cannabis as having NO medicinal value. What I found that seriously contradicted that position was that in 2003 the Department of Health and Human Services was granted patent number US 6,630,507 B1 which cites the antioxidant and neuroprotective benefits of cannabinoids which are to be derived from cannabis.

63. If, after reviewing this patent, there is still any doubt in your mind as to what research supports it and the benefits of cannabis, I would encourage you to look at the 'other publications' as listed in the upper right-hand portion of the patent. Here you will see the studies from accredited scientists and institutions that from 1965 to 1981 have done their own research to support this singular patent issued in 2003 and the benefits that this plant represents to the medical patient. Yet today, 15 years later, cannabis remains a Schedule One drug. The federal government's scheduling hypocrisy regarding cannabis as having NO medicinal value is astounding!

64. As a medical cannabis patient myself and having lived for 2 years in the Stone House where I saw firsthand the ravages of heroin, I simply cannot understand the hypocrisy between these two positions. It is one of the reasons I have been so vocal about trying to enact common sense laws and regulations as to how cannabis is grown and how it can be accessed by those who require it medically.

65. Another area of great concern to me is why any state government would not have established pesticide and toxicity levels of substances that may come in contact with cannabis before they allow the sale of cannabis products within that state. For food and drugs other than cannabis, these levels are typically established by the federal government but since cannabis is listed as a federal schedule one substance, the California Department of Pesticide Regulation, which would normally set these limits, has had a hands-off policy for setting these limits, citing lack of federal direction.

66. With the passing of Prop 215 in 1996, California has had 20 years to set pesticide and toxicity limits on cannabis grown in state and never provided those limits to the cultivators or to the medical cannabis patients. It was left up to the consumer to decide if they were comfortable with the amount of heavy metals and other potentially toxic substances that could be found in the plant materials and if they were willing to consume that product. Even though it is necessary that there be established limits that require that the testing of that product and the information regarding what was in that product be made available to the consumer, more often than not those test results were not available, and the medical cannabis patient was left to chance what was in the plant material they were ingesting. With recent tests showing that over 84% of the cannabis being tested has tested positive for what are considered harmful levels of pesticides, the fact that the State of CA has left this responsibility to the medical cannabis patient consumer for the last 20 years is unconscionable.

67. With the passing of Proposition 64, "The Control, Regulate and Tax the Adult Use of Marijuana Act" (AUMA) the state has now accepted their responsibility to set these limits. However, the limits have not yet been set and are expected to be released at some point in the near future.

68. With the passing of AUMA nothing has changed in the federal scheduling of cannabis. It's still Schedule One. Why has the state agreed to establish these guidelines now when they were unwilling or unable to set them in protection of the medical cannabis patient before the passage of AUMA? It's simple. The state never took their responsibilities to the medical cannabis patient seriously under Prop 215 since it did not increase revenue for them.

69. I felt strongly then and still feel today that, while Prop 215 was certainly not perfect, it could have been improved upon if the legislature had seen fit to do so. The legislature failed the medical cannabis patient and now they are in charge of a regulatory system that is supposed to be responsible and equitable to the medical and so called "recreational" cannabis communities. To say I have my doubts as to how they will manage this on behalf of the medical cannabis patient would be, to put it mildly, a massive understatement.

70. I have always had a hard time accepting, and have staunchly opposed, any laws or regulations that purport that cannabis can be structured for "recreational" use. It is my belief that has been proven to be the case in Washington, Oregon and Colorado that when "recreational" laws are introduced the medical cannabis patient's rights are infringed upon as the non-profit medical cannabis industry virtually disappears while everyone chases the for-profit "recreational" market.

71. When these so called "recreational" laws are passed they attempt to equate cannabis to other "recreational" drugs such as alcohol or tobacco. Because of that, I stand opposed to a recreational classification for cannabis since both alcohol and tobacco have proven to be cancer causing, lead to addiction and cause death. Cannabis, in any of its forms, has none of

these deleterious effects. As cited in the DEA 2017 Drugs of Abuse (page 75) there has never been a reported case where someone has died or suffered permanent harm from the effects of cannabis. The same cannot be said of alcohol or tobacco.

72. In or around March of 2016 I became aware that an initiative, Proposition 64, The Control, Regulate and Tax the Adult Use of Marijuana Act (AUMA) had made the California 2016 ballot. With the passage of AUMA, cannabis would be made available in CA in a "recreational" form to anyone over the age of 21 who wishes to purchase it without the need of a physician's recommendation.

73. Over the course of the next couple of months I read this initiative and considered what it's passing would mean for the cannabis market in general and the medical cannabis patient in particular. I regularly watched and participated in online debates on the merits of AUMA and found my position to oppose the passing of AUMA only being reinforced as I learned more about how the general public saw AUMA in a positive light without having an in depth understanding of what its passage would mean to those who would be most impacted by it: medical cannabis patients.

74. Since AUMA was a long and complex initiative, one that the average reader found to be confusing and difficult to read through in its entirety, I took the initiative to create a condensed version that included a Table of Contents, a link to the Proposition in its original form and comments that invited discussion as to the purposes that were specifically included in the Proposition. I then posted that AUMA analysis on the 151 Farmers website, which was created to explain our ideologies and act as an archive for the papers and research that help propel forward the need for urban gardens and how cannabis and those laws that affect cannabis are an important element in those farms' success.

75. From that AUMA analysis I began a campaign that included interviews and numerous social media posts on behalf of myself and others and conducted seminars as to what the passing of

AUMA would mean to the medical cannabis patient. Within these presentations and posts I would always reference the AUMA analysis and a certain section of the initiative that was to be voted on.

76. I used social media and the AUMA analysis to create not only discussions about the specific elements within AUMA but also what organizations endorsed it and why they chose to do so. One organization that supported the passing of AUMA was the California Medical Association (CMA). With its 41,000 physician members, the CMA has never supported cannabis for any medical purposes, but they were endorsing AUMA for "recreational" purposes. I found that position to be hypocritical by pointing out the following: 1) The CMA never endorsed cannabis for its possible benefits as a drug to be used for certain medical conditions; 2) The CMA has never been on record supporting research on how cannabis could be used to treat certain medical conditions; 3) Has the CMA endorsed laws that make other recreational drugs legally available to those over 21 years of age? Of course not. I believe that the CMA and other likeminded organizations will endorse any cannabis law that minimizes the benefits of cannabis for medical use and which allows the states to construct laws that tax and regulate cannabis in a recreational form so that it does not compete with pharmaceutical drugs.

77. Once I had a better understanding of AUMA I felt compelled to reach as wide an audience as possible to express my concerns. While I was already reaching a fairly large audience with my posts, seminars and press conferences, it was somewhat limited to a core group who already followed me. If I wanted to reach a much larger audience I needed to get the support of those who had a much larger following. I did that with a campaign that included radio, tv, press conferences, seminars and an outreach to cannabis activists who had their own followings.

78. In September 2016 I reached out to Dennis Peron to introduce myself. Over the course of various phone and text messages we shared our concerns over what the passage of AUMA may mean to the medical cannabis patients' rights which were granted to them under Prop 215.

79. Dennis and I both agreed that should AUMA pass, those medical cannabis patients' rights that had previously been made available to them under Prop 215 were likely to be eroded and infringed upon as we have seen happen in other states where recreational cannabis was added to what had previously been strictly medical cannabis. Dennis and I agreed to collaborate to the extent we would try to educate the voters as to what the details within AUMA would mean to the medical cannabis patient should it pass.

80. In October 2016, Dennis Peron, with the help of friends, was able to travel from his home in San Francisco and visit our 151 Farm here in San Diego. While Dennis was here we invited other activists to visit our farm and meet him to discuss how we all might help in his efforts to protect the patients' rights that had been granted under Prop 215.

81. During that visit, Dennis gave me access to his personal Facebook page where I began presenting elements of AUMA on his behalf, daily or every other day, that came directly from the Prop 64 language. Those posts ended up creating a lot of debate and discussion among those who followed Dennis's page. At the time we could only hope they would seriously consider what they would be getting if AUMA passed.

82. Also during that visit, Dennis and I were invited to be interviewed for a radio show on our mutually declared positions as to the threats that the passing of AUMA would represent to the medical cannabis patients' rights granted under Prop 215. We agreed and those interviews were done in Irvine, CA and sponsored by WeedMaps for SpeakEasy radio.

83. In addition to my work on social media, I also kept up the 151 Farms website which is where I created a paper, in collaboration with Dennis Peron and other likeminded activists,

that addressed how, with the passing of AUMA, the medical cannabis patients' rights which had been granted under Prop 215, would most likely be lost. With the posting of this paper just prior to the November 8, 2016 elections, we stated why cannabis could never be considered "recreational" and it was subsequently released to a wide audience through numerous social media platforms.

84. In November 2016 California voters approved Proposition 64, the Adult Use of Marijuana Act, as a way to make cannabis available to anyone over the age of 21 for recreational purposes. Under AUMA, the state will incorporate the medical cannabis patients' rights and access to medical grade cannabis within a regulatory structure that will "streamline" (their words) recreational and medical cannabis licensing beginning January 1, 2018.

85. Under AUMA the state has been given the right to modify the original voter approved proposition with a ⅔ majority vote of the house. This is the first time that a voter approved initiative has given the state the right to change it without another initiative to replace it. I find this to be a slippery-slope whereby, for example, the ⅔ majority might someday just vote that a simple majority can carry a change in the law. I seriously doubt the constitutionality of any initiative that undermines this most basic tenet of voter approved Initiatives.

86. With the passing of AUMA we shall see what its effect will be on the medical cannabis patient. I stand prepared to exercise any and all of my constitutional rights in seeking protection for those medical cannabis patients, cultivators and processors who have been harmed should AUMA not take into account their unique needs and circumstances. From a medical cannabis patient's perspective these are the questions I feel need to be asked: 1) Will the passing of AUMA have a negative impact on patients' rights to cannabis?; 2) Will it affect the availability of medical grade cannabis?; 3) Will the price of cannabis go up to where it is now unaffordable for the medical cannabis patient?; 4)Will the opportunities to

continue research and development of cannabis genetics for specific medical conditions be limited to only those who would qualify under a for-profit regulatory framework controlled by a state government that has historically taken a laissez-faire attitude toward cannabis and its use for medical purposes?

87. Under AUMA, has the state given voice to a medical cannabis association that can speak on behalf of those who are representative of that group of cannabis buyers that is distinctly different from those that would purchase for recreational reasons? If so, who are they?

88. Since 2015, the 151 Farms at 6176 Federal Blvd has had many people from very diverse backgrounds come tour our operations. I have always treated these visitors as Friends of the Farm and hope to inspire them once they have seen what we represent.

89. If a Friend of the Farm is interested in visiting us on more than one occasion, they become a 151 Ambassador. That is, they can lead their own tour groups and help spread the word about what we do here. These relationships have spawned some remarkable personal connections that have continued to bring attention to our cause.

90. The list of 151 Ambassadors has grown. Over the years we have welcomed a large and diverse range of people to our farm who have come from all over the world. Our motto is: We Need More Gardens Not Less. Come Visit Us! Leave your Bias at the Gate and I Promise You Will Learn Something!

91. With that message we have seen politicians, members of the media, medical doctors, researchers, judges, lawyers, entrepreneurs, veterans, law enforcement, activists, teachers, students, policy makers, community leaders and more. It seems that people identify with community and appreciate a place where they can come together and feel like they can contribute and make a difference. If they have something tangible to wrap their heads around that includes a roadmap that allows them to recreate what they've seen, the possibilities are endless. At 151 Farms that has been my goal and it all starts with a plant.

92. We have had such a huge diversity of talented and motivated people come visit our farm and go on to become 151 Ambassadors that there are simply too many to list. Here are 3 noteworthy 151 Ambassadors that, due to their dedication and commitment, I would like to present as representatives of our cause:

a. Coach Don Casey, former NBA Coach and currently serving as the National Trustee Board Member for the ALS Foundation. Coach Casey has been instrumental in seeing that ALS patients who seek medical cannabis understand that many doctors support the use of cannabis as a way to improve their quality of life. I developed The Casey Cut in honor of Coach Casey as a tribute to his many years of work on behalf of ALS patients.

b. Ms. Linda Davis, Americans for Safe Access, in her tireless efforts to bring medical cannabis patients the 151 Farms message of how important it is to have organically grown, pesticide free cannabis to treat their medical conditions.

c. Sgt. Sean Major, former Marine Corps servicemember, who came to 151 Farms as the only active duty military member in the entire Department of Defense who has ever been given the authorization to treat combat related brain injuries by cultivating cannabis. Having grown cannabis prior to enlisting in the Marine Corps, Sean believed that the psychological issues he was having as a result of his tours in Afghanistan could be managed if he were allowed to cultivate cannabis while gaining accreditation from a school that taught cannabis cultivation as a post military career opportunity. Sean has continued to work tirelessly on behalf of veterans who suffer from combat related injuries so that they might have access to medical grade cannabis to treat their conditions.

93. In July 2015, Mr. Ramiz Audish came to our offices at Inda-Gro and asked if he could take a tour of our farm. Ramiz, who preferred to be called Ray, was a well-spoken, clean cut young man who had heard about what we were doing and wanted to see the operations for himself. Ray was quite complimentary of everything we were doing with both Inda-Gro and 151 Farms and suggested some ideas to improve our operations. I was interested in hearing what he had to say.

94. Ray first asked under what authority I was growing the cannabis on our site. I pointed him to the Physician's Recommendations I had posted for those personal medical cannabis needs as established under Proposition 215 and SB 420 guidelines.

95. I told Ray that in addition to the posted Physician's Recommendations, we had recently completed a cannabis cultivation application with the Outliers Collective, a duly licensed collective located in El Cajon, CA. In that process the owners of Outliers and two Sheriff's Deputies who specialize in cannabis compliance came out to our farm. I gave them a tour of our operations and, while they complimented the quality and organic nature of our cannabis, they told us they could not certify us as an approved vendor for Outliers since the City of San Diego would not grant a license for cannabis plant counts that would allow us to grow commercially at our location. With that, we were denied approved vendor status with Outliers Collective. Both Outliers and I were very disappointed, but I did feel better when, after having toured our facility, the Sheriff's Deputies told me that I was operating within Prop 215 and SB 420 guidelines.

96. Confident that I was meeting the letter of the law as a cannabis cultivator, Ray said that he felt the only other thing I lacked was a medical marijuana consumer collective (MMCC) or retail dispensary at this location. Ray told me that he had experience in owning and running these MMCC businesses. I did not have an understanding of the retail MMCC laws in San Diego, but Ray told me he was well versed in these laws. Ray explained to me that our

location was appealing to him because it was unique in that City of San Diego zoning allowed for an MMCC type of business at this location. I told him that my interests in the property were not in running an MMCC business but were in lighting and the development and expansion of our 151 Farms.

97. Ray was undeterred by my resistance and insisted that he would be entirely responsible for the MMCC business and would acquire the licensing and permits necessary to maintain compliance for it. His pitch was that the dispensary would bring more attention to what I was doing at 151 Farms and that by working together we would present to the community a sustainable, organically grown "Seed to Sale" model of what our 151 Farm represented. That concept appealed to me and with that I considered his offer under the following conditions:

a. I would first visit one of his other MMCC businesses to see for myself how it was being run. The business he took me to was in Mira Mesa and I was impressed with how well it was built out and how well it appeared to be run.

b. Ray's and my businesses would be clearly divided with separate entrances and addresses.

c. I would have nothing to do with his business because, unlike Ray, who had operated retail cannabis dispensaries, I knew nothing of what it took to be licensed and compliant for this type of business.

d. Ray assured me that his intentions were to become a long-term tenant and that he would prove his value by not interfering with my current business operations and by signing a short term, 6-month lease while he went about acquiring the necessary licensing and permits to operate his business.

e. Ray agreed to these terms and the Lease Agreement was executed on July 20, 2015 and was set to expire on December 20, 2015.

98. With our Agreement in place, Ray began operating his MMCC business, which he called Pure Meds. The following statements reference my observations and opinions of Ray and the business from July 2015 until February 2016:

a. Ray was a good tenant who paid his rent on time and never presented any problems for me as a landlord.

b. Ray was at the property daily and ran what appeared to me to be a transparent, successful and well managed business.

c. Ray had licensed and armed security with controlled access and paid attention to the details that I initially feared would detract from my Inda-Gro and 151 Farms business. The concerns I had were that the retail business would attract people who would hang around outside the business or attract criminal elements. That never happened. In fact, just the opposite occurred. Pure Meds attracted repeatable local customers who appreciated that they could acquire their medical grade cannabis products without traveling great distances or having to deal with an underground resource.

d. The operation of Pure Meds did in fact increase the interest in 151 Farms and our Inda-Gro lighting products.

e. Prior to witnessing how Pure Meds operated, I had no firsthand knowledge of how a retail MMCC would or should operate. During the course of his 6 month lease I had a chance to form some opinions that were, for the most part, positive. While the retail side of the business still did not inspire me to get involved, I was satisfied that those who had the experience and resources necessary to manage the day to day operations of the business would be an asset to me and my goals with 151 Farms.

f. When the end of the lease came up, I asked Ray if he planned on staying and what the status was on his licensing with the City. He told me that it was in process and

that he would have the license within the next 90 days. I had no reason not to believe Ray as he had been a man of his word in everything he had promised me before. In addition, I, as a landlord, did not see myself as some sort of traffic cop who was expected to make sure Ray paid all his taxes and operated in accordance with all the laws and regulations that his type of business required. If Ray did not secure the necessary operating permits I knew that the City would not allow him to operate and would shut down his business. With that, I agreed to let him stay on the property on a month to month basis for 90 days, at which time, if he had the license to operate, I would give him a 1-year lease. That was satisfactory to Ray and we continued with our relationship.

99. In February 2016 I was served with a lawsuit by the City of San Diego that charged me with running an illegal cannabis dispensary. I was very surprised to receive this lawsuit because it listed me as the owner/manager of Pure Meds and that was never the case. Had the City noticed me by letter that my tenant, Pure Meds, was not in compliance with the MMCC licensing requirements and that my property was not in an area that could ever be zoned for an MMCC Conditional Use Permit, I would have taken action and would have served Ray with an Unlawful Detainer. At the time I was served this lawsuit, Ray was no longer renting under a lease and he was certainly not in compliance with our Agreement that he operate in accordance with city rules and regulations for his business.

100. Ray was not named in that lawsuit because the City was unable to identify who the actual tenant/operator of Pure Meds was. When I showed the lawsuit to Ray, he offered to pay for my legal defense until the case was adjudicated as long as he was able to continue operations. He told me that this was not the first time he had seen this happen and that he was certain that his lawyer could get the case dismissed or obtain a negotiated settlement. He told me he would start a petition that his patients would sign asking the City

to allow Pure Meds to remain open. I accepted that offer and was prepared to see where this would go once the lawyers for both sides got together and worked out the details. In less than 30 days Ray provided me with 19 pages and some 200 signatures of patients that wanted Pure Meds to remain open. At the time I thought there might be a pretty good chance of negotiating something with the City that allowed him to stay open but of course I didn't know what would come of it since a rezoning had taken place.

101. The only way I discovered that my property had been rezoned was by my having been named in that lawsuit. Within the lawsuit it states that my property had been in an MMCC compliant zone prior to January 13, 2016 at which time the City of San Diego rezoned the property, for unknown reasons, so that it would no longer be eligible to operate as an MMCC. Prior to the rezoning neither I nor any of my neighbors that I spoke with had been noticed that this rezoning was to occur. When I requested the public information as to what notification had been given to the property owners that this rezoning was to be considered, the information I received from the city proved that there had been virtually no notice given to any of the property owners and the notices that were given talked obliquely of a general development plan that included a shopping center approximately 2 miles from our properties.

102. The City next sought a Temporary Restraining Order on me to keep me off the property. These TRO motions are usually summarily granted to the City but in my case, when I showed up to court to argue that I was NOT the owner of Pure Meds and was instead the owner of the PROPERTY and that I had just found out from the details given in that lawsuit about the rezoning issue on my PROPERTY, the Judge asked the City Attorney if that was in fact the case and the City Attorney admitted that it was. With that, the Judge asked me directly if I would be willing to cooperate with the City Attorney in identifying who the owner of Pure Meds was, to which I responded that I had no problem doing so. The

Judge then denied the TRO. I would have thought my agreeing to cooperate with the City Attorney in this matter would have satisfied the City Attorney but she and her boss were quite upset with the denial of the TRO and argued after the decision had been made that I was a threat and that the Judge should reconsider. The Judge would not alter his decision and I was able to continue operating my business while I decided what to do next with Ray and Pure Meds.

103. With the TRO having been denied, the City asked for and received a warrant to come onto the property and seize anything related to what they determined was illegal drug activity.

104. On April 6, 2016, approximately 30 armed police officers rushed onto my property and placed me and my 3 employees who were on site in handcuffs.

105. I never resisted and offered to open every door or cabinet that I had access to as they requested. I told them that had they requested a tour of the property, I would have given them one. I regularly conduct these tours and believed that I was operating in compliance with the laws as defined by Prop 215 and SB 64. Everything that the officers wanted to see within my areas of operational control was made available to them. I never denied that there was cannabis being grown and processed on my property but I had the Physician's Recommendations posted for the plants and materials on hand and believed I was operating legally within the limits set forth under these laws. With that, the officers counted and inventoried all of the items, which included company computers, that they felt they might be able to use to prosecute me should they choose to.

106. When it came to the officers gaining access into Pure Meds, I told them that I did not have a key to that area as it was sublet. When they asked me who the owner of Pure Meds was, I told them his name was Ray and I did not know his real name as I had forgotten it. The officers asked me if I could get them his real name and I told them that I could but it

would require me finding the lease I had with him which was on the computer they had just confiscated as evidence. The officer noted that the information was available on my computer and a locksmith was called to gain access into Pure Meds.

107. During the approximately 3 hours the officers were on site conducting their investigation, I pleaded with them not to kill the mother plants that had been hybridized and genetically adapted to grow in an aquaponic system. These were high CBD (to be differentiated from the more hallucinogenic THC) strains that we were developing that were showing promise in a high nitrogen system without the need for trace mineral supplements. It had taken us nearly 3 years to accomplish that task.

108. Some of the officers appeared sympathetic to what I was telling them. They admitted they had never seen an aquaponics cultivation system like ours in the past. I took the time to explain to them what our purpose was and, although they still had a job to do, I could tell they were interested in what we were doing. For example, I was asked by one of the officers how these products might work for dogs that might have seizures. Another officer told me his mother had fibromyalgia and asked if an organically grown CBD product would offer her some relief. I don't fault the officers for what happened that day. I saw them on the phone trying to see if they could get permission to avoid killing the mother plants. Whoever they were talking to, though, denied that permission and the plants were all, every single one, killed and taken in for evidence. I was heartbroken. We lost some very solid genetics that day.

109. The officers eventually removed the handcuffs and left without arresting me or anyone from my company. I was told that a Pure Meds guard was briefly detained on a weapons and cocaine charge but when they found that the gun was properly registered and it was not cocaine after all, the guard was released from custody.

110. After the officers left we were all pretty shaken up but I got everyone together and told them that we had done nothing wrong and we were going to return to our normal activities as soon as possible. With that, I invited local TV stations onto the property who were congregating outside our yard watching the police action occur. I got them to set their cameras up outside of our fish tanks and I conducted interviews so I could tell listeners our side of the story. I wanted people to know what we stood for as a 151 Farm and not see us as just another one of the illegal pot shops that were springing up everywhere and getting all the media attention.

111. The next day I got a phone call from Ray who told me he was sorry this had happened and that he wanted to resume operations as quickly as possible. He told me these raids were common practice and the normal way things were conducted until the case went to trial. He told me that these types of businesses would typically continue to run for up to another 6 months before they were permanently shut down or a settlement was reached that allowed them to continue to operate.

112. I asked him if he had, in fact, ever made an attempt to apply for an MMCC CUP and he told me that, while he had originally intended to, he never did. I told Ray that had he done what he had originally promised by applying for the CUP, he would have had a very good chance at being awarded the CUP since the zoning allowed for it at the time he began renting from me. It was the lawsuit that was filed which first informed me that my property had been eligible for a CUP and then, for whatever reason, the property was rezoned to make it ineligible for a CUP shortly before the case against me was filed. Naturally I was very upset with what Ray had put me through and was even MORE upset that his actions had reduced the value of my property if the city having rezoned my property right after Pure Meds began business made it permanently ineligible for any future MMCC business to operate.

113. Since Ray had never attempted to apply for the CUP after he told me that he would, I told him that he could no longer continue to operate his business on my property. Ray was given one week to remove his remaining possessions from the property before I disposed of them. He was not happy that I wasn't going to let him reopen. He offered me considerably more money to which I said "no" and that my decision was final. He begrudgingly accepted that and the next day he had people come and remove his remaining items. Ray never set foot on my property again.

114. After the raid, I never heard from anyone with the City who wanted any additional information from me regarding Ray. I believed that whatever information they needed they had found on my computer and they didn't need my assistance.

115. **After a couple of months the City decided to charge me** personally with exceeding the allowable plant counts by adding in the clones that I had not included in our counts because they were not rooted. I was arrested and booked into jail at which point I bailed out and got prepared for my arraignment.

116. A few days prior to my arraignment, I called the City Attorney assigned to my case and told him that I was going to plead Not Guilty based on the fact that the clones they had added into the plant counts were not viable since they had not yet rooted. He considered this and **decided to drop the charges at least for the time being** but he did reserve the right to recharge me in the future if additional information was presented.

117. I got a letter from the District Attorney stating that after a review of the evidence they had decided not to prosecute me but that the City of San Diego still held the option of doing so.

118. On March 15, 2017 I received notice that the City of San Diego would be charging me with 4 misdemeanor counts relative to my operations, **1 day before the statute of limitations would have ran**. I retained the legal services of Mr. Robert Bryson and went to

the arraignment on April 5, 2016 where *the plan was for me to plead Not Guilty* and take it to trial if necessary.

119. Prior to the day of arraignment and entering my plea, I had not seen the report or any evidence that had been used to bring these 4 misdemeanor charges against me. The City Attorney met with Mr. Bryson and me in the hallway and presented us with the case file for our review. This was the first time that I became aware that Ray had been arrested and was awaiting trial on charges of his own. From the evidence I could see that Ray's other locations had been shut down and that he had made agreements with the City that, to avoid charges, he would agree to not operate an unlicensed MMCC business within the City of San Diego in the future. Clearly with his Pure Meds operations on my property he had violated those agreements.

120. After Mr. Bryson and I had spent about 30 minutes reviewing the documents, we asked to speak to Deputy City Attorney Mark Skeels, who was handling the matter. What Mr. Skeels told us was, that since Pure Meds did not reopen after the raid, which was what usually happened, the City was willing to offer me a deal in order to settle the matter without it going to trial.

121. Mr. Skeels told me that if I would agree to forfeit the $30,000 in cash that had been seized from Pure Meds during the raid.and plead guilty to one misdemeanor charge of a Health and Safety Code section HS 11366.5 (a) violation, the other 3 charges would be dropped. As Mr. Skeels explained to me, pleading guilty to this single charge was my accepting that there had been a code violation on the property and I would be on probation for 3 years to assure that I would not violate this Code again. Mr. Skeels agreed that Mr. Bryson could take some time to consider this offer.

122. After discussing with Mr. Bryson that this offer seemed reasonable providing there was language added into the plea agreement that for the 3 years I would be on probation and

because I agreed to waive my 4th amendment rights, I would maintain my Prop 215 medical cannabis cultivation rights and not be subject to what was still unknown medical cannabis cultivation limits as would be defined in Prop 64.

123. Mr. Skeels asked why I wanted that language in the Plea Agreement and I told him that I had no problem proving over the 3 year course of my probation that as a medical cannabis patient, who cultivated cannabis at my property and planned on continuing to do so, I was in compliance with Prop 215 but that, based on what I knew of the Pro p 64 law which was due to take effect on January 1, 2018, I wanted whoever was inspecting me and my property to hold me to a recreational standard that may, as the guidelines under Prop 64 were not yet finalized, conflict with a medical standard. The language in the Plea Agreement would be as much for my benefit as for that of any inspecting authority who would visit me over the course of the 3 years' probation.

124. Mr. Skeels considered this and agreed that as far as he and the City were concerned, adding language to the Plea Agreement to that effect was not a problem and that it would indeed provide for clarification of enforcement standards for those authorities who would be tasked with inspecting me and the property for Prop 215 compliance during the course of my 3 years' probation.

125. Having agreed to that, I suggested that Mr. Skeels also add language to the Plea Agreement that would include a limit of up to 4 Physician's Recommendations for those patients for whom I was growing cannabis. Mr. Skeels told us that adding language to that effect was not necessary because the Prop 215 statute didn't set a limit on Physician's Recommendations. He also told us that we simply needed to have those Physician's Recommendations available for inspection and that they had to be current. Mr. Skeels told us that all the Plea Agreement needed to state was that I would be retaining my rights under

Prop 215. With that, we agreed to the terms of the Plea Agreement and Mr. Skeels left us to await his return with the finalized Plea Agreement.

126. When he returned a short time later, Mr. Bryson and I reviewed the Plea Agreement and saw that the language we had discussed about my retaining my rights under Prop 215 had been added. With that, Mr. Skeels then reviewed every element of the Plea Agreement with us and had me initial each box that was required. Once this was completed, we went before the Honorable Judge Rachel Cano.

127. While reviewing the Plea Agreement from the bench, Hon. Judge Cano spoke to me directly and asked why the Prop 215 language had been added into the Plea Agreement. I explained that with the obvious conflicts for me between Prop 215 and Prop 64, that I, as a medical cannabis patient who cultivated cannabis at this property, needed the standard I would operate under to be defined in this agreement or it would be subject to interpretation by any inspecting authority who would visit me during the course of my 3 years' probation. Judge Cano considered this and agreed that it was a simple and straightforward solution to what she and even the City saw as a way of bringing clarity to these evolving standards. With that, she accepted the Plea Agreement and I believed we were done.

128. In a wild turn of events that I can only describe as the most duplicitous bait and switch imaginable… Within days of Mr. Skeels convincing my attorney and I through his *assurances of the terms* of our plea agreement, the City filed a *Lis Pendens* on my property (April 18, 2017 – Over 1 year after the incident took place.) and began the process of selling it as a seized property asset, which I now became aware was what I had unknowingly agreed to in the Misdemeanor Health and Safety 11336 (a) code charge to which I had pled guilty in the Plea Agreement I had entered into with the City on April 5, 2017.

129. I immediately contacted Mr. Bryson and asked if he had known that, when I agreed to enter into this Plea Agreement, that it meant I was forfeiting my building and land to the

City. That had NEVER been discussed prior to my accepting the Plea Agreement. In fact, prior to accepting the Plea Agreement, Mr. Skeels had gone out of his way to go over the Plea Agreement in detail with us and had even added the language of how I would retain my Prop 215 rights over the course of my 3 years' probation. If Mr. Skeels knew then that I was giving up my building and land under this Plea Agreement, why wasn't it brought up at that time? Both Mr. Bryson and Mr. Skeels are officers of the court. Both had an obligation to tell me that's what my agreeing to a misdemeanor guilty plea of HS 11336 (a) meant and neither one did that. In fact, the last area of refuge I would have had prior to this Plea Agreement being accepted by the court would have been if Judge Cano had mentioned to me that the language we had added into the Plea Agreement where I retained my Prop 215 rights was meaningless in light of the fact that pleading guilty to this one charge meant I was not going to own the property anyway.

130. Mr. Bryson was as shocked as I was when he realized what we had agreed to. He told me that he had no idea that losing the building and land would be the consequence of entering into that deal with Mr. Skeels. With that, he wrote me a Declaration that stated that he was not aware and had he known that my losing the building and land was the consequence of entering into that Plea Agreement with the City, he would have advised against signing it. I received that Declaration from Mr. Bryson and dismissed him from any future representation.

131. I then reached out to Mr. Skeels and asked if he was aware that my agreeing to this single misdemeanor charge meant I would be giving up my property. He told me that he was not aware that that was the consequence either, but he would look into it and get back to me. I never heard back from him.

132. I then sought out and retained new counsel with attorney David Demian of the law firm Finch, Thorton &and Baird (FTB) representing me in this matter.

133. In a phone call between Mr. Demian and Mr. Skeels that was made on speaker phone from a conference room at the FTB offices, thus allowing me to hear what was being discussed, I learned what Mr. Skeels's real position on the Asset Forfeiture matter that my Plea Agreement had represented was. Mr. Skeels informed Mr. Demian that he too was on speaker phone as there were other attorneys from his office listening in on the conversation.

134. Mr. Skeels's stated position during that call was that we had a deal in that Plea Agreement and it would stand. According to him, my only options were to elect to withdraw the Plea Agreement, after which the City would take me to trial on the 4 misdemeanor charges that I was originally charged with, or to agree to pay the City $100,000 and all charges would be dropped. What I was hearing was extortion, plain and simple.

135. Mr. Demian told Mr. Skeels that the $100,000 payment he was seeking was unacceptable and that the only thing that might work on my behalf would be to find a lesser amount in the interest of offsetting the legal fees I would have to incur in order to defend the 4 misdemeanor charges. Mr. Skeels asked what that amount might be and Mr. Demian responded with a counteroffer of $5,000, referring to that amount as a nuisance payoff that he had been authorized to submit on my behalf. Mr. Skeels rejected the counteroffer and told Mr. Demian to get back to him if and when we were serious.

136. What was clear to me during that conversation was that the City wanted a payout and what they had seized during the raid was not enough. The HS code section violation to which I had pled guilty was not widely understood. This was a new tool for the City to use to shut down illegal dispensaries and Mr. Skeels knew it. He was not willing to negotiate because he felt he didn't have to. Mr. Skeels had Mr. Demian on speaker phone in his office so he could make a point to those listening in on his side that the City did in fact have the upper hand in these negotiations and that Real Property Asset Forfeiture was a tactic they

could employ in other cases where a landlord rented to a tenant who was not licensed to run a MMCC business. At one point in the conversation when Mr. Demian questioned Mr. Skeels's authority and skills in negotiating a settlement on behalf of the City, Mr. Skeels got upset that Mr. Demian would even question his professional qualifications. Mr. Demian, sensing that he had offended Mr. Skeels, immediately began apologizing and told Mr. Skeels that he would confer with me and respond with another offer. Mr. Skeels told Mr. Demian that the new offer would need to be near the $100,000 mark or it would be rejected, and we would be wasting precious time and the property would be sold out from underneath me as the law allowed.

137. After that conversation, Mr. Demian admitted he was not the best person to represent me in further negotiations in this matter with Mr. Skeels. I needed to retain co-counsel who had experience in successfully negotiating with Mr. Skeels. They had to be able to defend me in this matter should we go to trial and that would start with them withdrawing my Plea Agreement based on my having been enticed to do enter it under fraudulent representation and incompetent counsel. With Mr. Bryson's declaration in which he admitted not knowing what the consequences of HS 11336 (a) were, I was hopeful that if the threat of withdrawing the Plea Agreement came from the right lawyer, that Mr. Skeels would want to settle the matter without going to trial. With that in mind, I engaged the legal services of attorney Stephen G. Cline in anticipation of the Plea Agreement being withdrawn and my taking this matter to trial should Mr. Skeels and I not come to terms.

138. Mr. Cline reached out to Mr. Skeels by phone and told him that unless the City was willing to settle this matter for a much lower amount than the $100,000 they were seeking, he had every intention of going before Judge Cano to request a withdrawal of the Plea Agreement. Mr. Cline was prepared to defend his request based on the fact that the Real Property (building and land) Asset Forfeiture was not listed in the records of items seized in

the raid, nor was there ever any posting by either the officers or the City Attorney that the building and land were considered part of the seized items. In addition, the TRO that the City had requested had been denied which meant that I was not party to my tenant's business operations, I had incompetent legal representation when I entered into the Plea Agreement and finally, neither Mr. Skeels nor Judge Cano had made me aware that the consequence of signing the Plea Agreement was the forfeiture of my Real Property, which was valued at approximately $500,000 based on fair market value comparisons and up to 10 times that should it ever qualify for a licensed MMCC business.

139. I did not feel that Judge Cano would react well to what Mr. Cline was prepared to present to her if we did not reach a settlement and, if Mr. Skeels could be persuaded to relax his demands, it may not be necessary to do so.

140. After consideration, Mr. Skeels suggested that the amount be reduced to $50,000. Mr. Cline told him he would convey that message to me and get back to him. I felt that $50,000 was still outrageous in light of the reasons that Mr. Cline had presented to Mr. Skeels earlier, but when I considered the potential legal fees should this matter go to trial, I told Mr. Cline to return to Mr. Skeels with an offer of $10,000 but with an authorization limit of $25,000 should an increase be necessary.

141. Mr. Skeels rejected the offer of $10,000 and said we would have to agree to an amount closer to the $50,000 they were seeking, or this would go to trial. With that, Mr. Cline provided Mr. Skeels with our best and final offer of $25,000 and advised Mr. Skeels that, should that amount be unacceptable, we were prepared to go to trial and win based on the merits of our case.

142. Mr. Skeels accepted the $25,000 offer and the matter was turned back over to David Demian at FTB for finalization of the terms and document exchange. On October 4, 2017 a Stipulation for Judgement was executed showing the listed seized items from the raid and a

$25,000 payment for full satisfaction on my Real Property, which they had listed as 6176-6184 Federal Blvd. I only own the 6176 Federal Blvd property but the Stipulated Judgement also covered the rental property I had next door.

143. On January 2, 2018 I made the $25,000 payment to the City per the terms of the Stipulated Judgement using borrowed money.

144. What I take from this is that Mr. Skeels has now set a precedent in that a City can include the Real Property of the land owner in their seized assets regardless of whether or not that landowner had anything to do with the business their tenant was operating. While he wanted as much as he could get from me, it was more important to show those other prosecuting attorneys that this was a way of forcing landlords to assure their tenants were properly licensed when it comes to an MMCC dispensary. Landlords are now going to have to be those traffic cops which means that if the tenant has a license and then loses it during the course of the tenancy, that landlord may face the same asset seizure and forfeiture actions that I did, whether or not they were aware of their tenant's actions.

LARRY GERACI

145. In late September 2016 I received a phone call from Mr. Larry Geraci. I had never met or heard of Mr. Geraci prior to that call. The purpose of Mr. Geraci's call was to inform me that he had become aware of my property from what he had seen from the Pure Meds situation and he wanted to know if I would be interested in selling him the property for the purposes of opening a licensed MMCC.

146. I told Mr. Geraci that the City had rezoned the property and that it was my understanding that it would no longer qualify for an MMCC business. Mr. Geraci told me that that was not necessarily the case and he would like me to consider what he had to say in a meeting that would be held at his office. I agreed to the meeting and met him in his office within a few days of his initial call.

147. I found that Mr. Geraci was a professional Financial Planner who operated out of nice offices in the Kearny Mesa area of San Diego. He told me that his core business was Financial and Tax Planning and that he represented clients in his professional capacity as an Enrolled Agent. Mr. Geraci was also a real estate investor/developer and one of his investments was buying specific properties in locations that can be converted into MMCC retail cannabis businesses.

148. I asked Mr. Geraci how many MMCC businesses he had in operation and he told me that he had multiple MMCC businesses whereby he would finance the purchase of the property and pay for the licensing to get the business MMCC compliant. Once completed, he would have others own and operate the MMCC business and he would get an ongoing equity position in that business. Mr. Geraci told me he preferred to remain in the background on these transactions since the perception of him being directly involved in cannabis business may harm his other business enterprises. That did not come as a surprise to me and I accepted that statement on face value.

149. Regarding the rezoning of my property, which from my understanding would now make my property ineligible for an MMCC business, Mr. Geraci told me that he had special knowledge and influence that would allow him to get my property through that process by having it rezoned back into an MMCC compliant zone and then submitting the CUP application so the MMCC could be run on that specific property. If anyone else had been telling me this, I would have not believed them but Mr. Geraci appeared to have the relationships, experience and financial wherewithal to make something like this happen. As he was a licensed financial professional who is held to the highest fiduciary standards, I was interested in pursuing these negotiations with him to see where they might lead.

150. At the time we were discussing his special relationships that would assist in getting my property rezoned to an MMCC compliant zone, I was completely unaware that the City

of San Diego, which had rezoned my property to an ineligible MMCC compliant zone in January of 2016 while they were building a case against me and Pure Meds, had, once Pure Meds was shut down, once again rezoned the area and my property in April of 2016 without notifying me or any of the other property owners in the area.

151. *Mr. Geraci had to have already known this prior to our first meeting in early October 2016 that included discussing his special relationships that could have my property rezoned. He didn't need any special relations as the rezone had already occurred. That's why he knew from the moment he met me that he could get the CUP Application accepted. He just wasn't positive he could get it approved. For that reason, he lied to me about needing to get the rezoning done before he could even submit the CUP Application. Mr. Geraci was a fraud from the moment I met him. I just didn't know that at the time.*

152. During that first meeting, Mr. Geraci told me that, due to the issue I had had with having rented to an illegal dispensary, I would need to sell the property to him and he would submit the CUP application in one of his employee's names, Rebecca Berry, because she had a clean record and would not be denied once the process began.

153. Mr. Geraci asked me how much I would want for the property and I told him I would agree to $800,000 as long as I got an equity position in the monthly MMCC sales that amounted to $10,000 or 10% of the net profits, whichever was greater and he agreed to that.

154. During October 2016 I met with Mr. Geraci at his office on several more occasions. We discussed in detail how, in addition to whatever he was willing to do to purchase and develop my 6176 property, I was interested in having him assist me in identifying other properties where I could expand my work with 151 Farms. Like Ray before him, I wanted him to understand that the only reason I wanted to sell the property was so that I could afford to move into a larger property. I had no interest in owning or

managing an MMCC business so if that side of the equation worked for him, within the terms and conditions we agreed to, I could stay focused on my goals with 151 Farms. It was to be a win/win situation for the both of us. Mr. Geraci agreed to that and I told him I would draft a Memorandum of Understanding (MOU) that would act as a working document to memorialize this conversation and serve as the basis of our agreement once his lawyer had prepared it.

155. We had orally agreed to, among other things, a sales price of $800,000 for the property contingent upon him obtaining the MMCC CUP approval from the City of San Diego and that was memorialized in the MOU I created and sent to Mr. Geraci. Upon approval of the MMCC CUP, the payments would be split into $400,000 for me and another $400,000 for Inda-Gro for relocation of the business. The terms for the relocation of the business were spelled out in a second working document I called the Service Contract. That Service Contract was sent along with the MOU and required that Mr. Geraci, if he were to actually acquire the property upon Approval of the CUP Application, would grant Inda-Gro the right to remain on the property at no rent until the plans were completed and accepted by the City of San Diego Development Services and he was ready to begin construction on the new MMCC. While Mr. Geraci never acknowledged either of my working documents in writing, he told me over the phone that he was fine with them and that they would be incorporated into a contract that his lawyer would prepare and I could make changes to the contract before we consummated our deal.

156. While I was waiting for his lawyer to send me the contract, Mr. Geraci asked me to come into his office on October 31, 2016. It was at this meeting that Mr. Geraci asked me to sign a City of San Diego CUP application form which listed Rebecca Berry as the qualifying applicant. Rebecca Barry was not present when I signed this **and to my knowledge I have never even met her.** Mr. Geraci told me he wanted this signed in preparation for when the

rezoning had been completed and the CUP Application could be submitted. According to him, it would not and could not be submitted until the rezoning had taken place.

157. During our phone calls Mr. Geraci told me that the terms I had outlined in the MOU and Service Agreement were acceptable and that he would have his lawyer prepare a contract that would include these terms and that a $50,000 non-refundable deposit which would not be contingent on the City of San Diego MMCC CUP approval would be paid at the time we signed that contract.

158. Mr. Geraci told me that, in anticipation of the contract, he would like to immediately begin the process of getting the property rezoned so that the CUP application could be submitted, and he could pay me the entire $50,000 as we had agreed.

159. Mr. Geraci told me that he would like me to stop by his office and sign a receipt for $10,000 which would be applied toward the $50,000 earnest money. He also told me that this signed receipt would allow him and/or his agents to begin the process of getting the City to rezone the property. The plan that Mr. Geraci had was that the rezoning might take 4-6 weeks and he did not want to pay the entire $50,000 until the rezoning had occurred and the CUP application could be submitted. This seemed reasonable to me and we set a meeting for November 2, 2016 in his office.

160. On November 2, 2016 when I arrived at the scheduled meeting with Mr. Geraci, he told me that he had already begun the initial process of getting the property rezoned and that the CUP application may be ready in as little as 2 weeks. With that, he had me sign a 3 sentence document that I considered a receipt which stated the $800,000 sales price and that I was accepting the $10,000 in a cash payment from him. He had a Notary Public certify that it was my signature on the document. What I was signing was not any sort of contract that held the terms we had discussed in my MOU and Service Agreement. It was most certainly not a Real Estate Contract as required by California law and Mr. Geraci, who held

CA Real Estate License number 01141323, knew that. During our meeting Mr. Geraci did not try to represent this as a final contract but as a receipt to get the rezoning process underway. I did not sense that he was trying to pull one over on me and felt that, in a professional capacity, he would not attempt something like that. I believed him and looked forward to seeing him make the things happen he said he and he alone had the skill sets to do. Nonetheless, when I got back to my office, I felt as though I should send him an email that would memorialize what was said to me when I signed that receipt.

161. Within hours of having signed the receipt I sent Mr. Geraci that email in which I asked him to acknowledge, in an email response, that what I just signed was not meant to be a final contract between us. Shortly thereafter I received his response stating that he had "no problem, no problem at all" acknowledging that this was not the final contract. Mr. Geraci's response to my email reassured me that he was operating in good faith and that the process, in the order he had described to me, had begun.

162. On November 15, 2016 Mr. Geraci asked me to sign another document that would allow me, as the property owner, to authorize his architect, Mr. Abhay Schweitzer, to view and copy records at the County of San Diego Tax Assessor's Office of Building Records. Signing that document requested by Mr. Geraci further led me to believe that I was the property owner until such time that the CUP Application was granted and I would sell the property to Mr. Geraci.

163. Over the course of the next several weeks I would, through phone conversations and various texts and emails, of which I have copies, inquire as to how the rezoning process was coming along. Mr. Geraci always responded that, while they were making progress, the rezoning had not yet been completed. He told me to be patient and that it would happen. He also said that he had a team working on this and that he had spent large sums of money, in all the right places, to see that the property would get rezoned. Again, I had no reason to

doubt him since he had professional credentials and fiduciary duties that I believed would have prevented him from lying. One thing, however, was certain. The original 2 weeks had expired, and I had not yet been paid the remaining $40,000 that he had promised.

164. In February 2017 I had several other parties contact me and inquire if my property was available for purchase. Those parties told me that my property was unique in that it fit the necessary requirements for an MMCC business. Each of these parties also told me that they too had special skills and connections that would ensure that this property was approved for an MMCC business. This made me wonder how many more people in the cannabis business had found out about my property. Had Mr. Geraci managed to get the rezoning done and just not told me so he wouldn't have to pay the $40,000 balance on the non-refundable deposit? Since I didn't know for sure what I had in Mr. Geraci, I told those interested in the property to submit written offers of which I received two that were worth considerably more than the offer that Mr. Geraci had made me. If I found that Mr. Geraci was not acting in good faith, I would have other offers to fall back on if the situation required it.

165. In February 2017, after still not receiving the contract that Mr. Geraci had promised me in November 2016, I demanded that he send it to me. It was becoming obvious that he was engaging in delay tactics and I wasn't sure why.

166. This got him moving and in late February 2017 I got a contract that his lawyer, Gina Austin of the Austin Law Group, had prepared on his behalf which I guess he expected me to sign without reading. This contract missed most of the elements that were in the MOU and Service Agreement, not the least of which was that in consideration for the sales price I had set, I would receive 10% of the store's monthly net profits or $10,000 per month, whichever was greater. My radar was on full alert.

167. I texted Mr. Geraci to ask if his lawyer had even read my MOU and the Service Agreement, the terms of which Mr. Geraci had agreed to include in the final contract, and he told me that she must have made a mistake and missed them in that draft. Mr. Geraci apologized and told me that he had not read the contract that Ms. Austin had prepared and that she had the working documents necessary to prepare our contract. With that, Mr. Geraci assured me that the revised version would include those terms and to expect it within a few days.

168. On March 3, 2016, I received the Side Agreement to his Contract and, while it did include more of the MOU and Service Agreement terms that Mr. Geraci and I had agreed to in our conversations, it still fell woefully short of what had been agreed to in my working documents which, per Mr. Geraci, his counsel had to work from. Ms. Austin had incorporated the 10% or $10,000 language but there was still highly prejudicial language in the Side Agreement that I found unacceptable and was in no way was in the spirit of our early negotiations. For example, Ms. Austin called the $10,000 payment "the total agreed to amount" and stated that even that would have to be returned to Mr. Geraci in the event the CUP Application was not approved. This was not going well.

169. In addition to the obvious problems I was seeing from the contracts that Ms. Austin had prepared, **Mr. Geraci was now requesting that we reduce the agreed upon $10,000 a month to $5,000 a month for 6 months until after the store had opened and they started to get some market share.** It was now apparent to me that I needed to get to the bottom of this and verify whatever it was that Mr. Geraci had been telling me. What more evidence could there possibly be showing that the monthly equity stake was an integral term of the agreement we actually made months prior!?!

170. At this point it didn't matter what Mr. Geraci told me. What the contract prepared by Ms. Austin now proffered was that the $10,000 paid by Mr. Geraci was the total deposit

amount that was going to be paid. It was apparent that no matter what, Mr. Geraci was not to be trusted and he was running the clock and using his lawyer, Ms. Austin, as tools to defraud me of my property as the terms we had originally agreed upon were no longer acceptable to him. Nonetheless I had to know the current status of my property zoning to see where I stood.

171. Around March 15, 2017 I decided to call the City of San Diego Development Services to find out for myself if my property had been rezoned back to an MMCC compliant zone or if, as Mr. Geraci kept telling me, it was still in process and the CUP had not yet been submitted. What I found out was astounding!

172. Ms. Firouzeh Tirandazi, Development Project Manager for the City of San Diego Development Services told me that my property had been rezoned to an MMCC compliant zone in April 2016.

173. Mr. Geraci had been lying to me since the beginning. When he had me sign the CUP application listing Rebecca Berry as the qualifying applicant in October 2016 he knew then that the rezoning had occurred and that he could submit the CUP Application immediately. And that's exactly what he did.

174. Per Ms. Tirandazi, the CUP Application with Ms. Berry's name on it that Mr. Geraci had me sign *was submitted on October 31, 2016, just days before I signed his receipt of the $10,000 which I was paid on November 2, 2016*. Mr. Geraci had needed me to sign that document so he could, at some point in the future, argue that the document I signed on November 2, 2016 was the one and only contract. Mr. Geraci had never intended to honor the terms to which we had agreed in my MOU and Service Agreement.

175. After my call to Ms. Tirandazi, I contacted Ms. Berry and Mr. Geraci to tell them that I had contacted her and now knew that Mr. Geraci had been lying to me all along and

that I had just discovered his fraud. Mr. Geraci contacted me by text to ask for a face-to-face meeting.

176. On March 17, 2017 in an email I sent to Mr. Geraci, I declined his request for another face-to-face meeting and stipulated that all future communications between us be in writing. I demanded that he honor the terms of our MOU and Service Agreement, that the $40,000 balance of the non-refundable $50,000 be paid immediately and that, regarding the $10,000 or 10% of the net profits, whichever was greater, we agree to use a 3rd party accountant to assure proper distribution. I required that Mr. Geraci accept these terms in writing no later than March 20, 2017 at 12:00 or I would cease any further business with him.

177. On March 21, 2017, having received no response from Mr. Geraci, I sold my property to Richard J. Martin for $2,000,000 and a guaranteed 20% equity in a new MMCC business should it be established. The non-refundable earnest money was $100,000, which I have long since expended to use to pay legal fees I had incurred in the matter with Mr. Geraci. Unlike Mr. Geraci's so called contract, the sales contract with Mr. Martin was done on a notarized Commercial Property Purchase Agreement with an Addendum that acknowledged my MOU and the terms I set forth within it.

178. Also on March 21, 2017, after selling the property to Mr. Martin, I went to Development Services to meet with Ms. Tirandazi in person to see if the CUP application that they were processing with Ms. Berry's name on it could be transferred to me or an assignee of mine. Ms. Tirandazi told me that the current CUP Application they had in process for Ms. Berry had been signed by me and that the only way it could be reassigned was if Ms. Berry relinquished her rights to it or a court ordered them to reassign it. I knew that getting Mr. Geraci and Ms. Berry to relinquish their rights to the current CUP application in process was not an option so I asked Ms. Tirandazi if I could submit another

CUP application to run concurrent with the application in Ms. Berry's name. This way my application would already be in process once the City figured out that neither Mr. Geraci nor Ms. Berry had a Grant Deed in their name. Ms. Tirandazi told me that the City of San Diego's policy was that only one CUP application per address would be accepted and that, as Ms. Berry's was already being processed, I could not submit one at that time. Since I now knew that Mr. Geraci and Ms. Berry were not going to get final approval on the CUP without a Grant Deed in their name, I had to consider my legal options.

179. On March 22, 2017 I received a letter from Mr. Geraci's new attorney, Michael Weinstein, informing me that as a result of my having contacted Ms. Tirandazi to see about having Ms. Berry's CUP application reassigned, Mr. Geraci had instructed Mr. Weinstein to file a *Lis Pendens* on my property and a lawsuit against me seeking to have me honor what Mr. Geraci now considered to be the "end all be all contract" I had signed with him on November 2, 2016. While Mr. Weinstein threatened me with the great harm that would befall me should this matter go to trial, he also encouraged me to negotiate with them as he stated there was still time to do so. Because I had not received a response from Mr. Geraci by the deadline I had given him of March 20, 2017 and having subsequently sold the property to Mr. Martin, I had no intention of negotiating anything further with either Mr. Geraci or Mr. Weinstein.

180. Until I could resolve the CUP issue with the City of San Diego for what would now be the new property owner, Mr. Martin, I needed to see if there was a way to maintain the status of Ms. Berry's CUP application, so I wouldn't waste time submitting another application after Ms. Berry's application was deemed incomplete because the Grant Deed would never be in her or Mr. Geraci's name. As far as my hope to negotiate settlement involving Mr. Geraci relinquishing his rights to Ms. Berry's CUP, telling Mr. Weinstein that I had sold the property to Mr. Martin was not a good strategy.

181. On May 9, 2017 in an email Mr. Weinstein suggested a settlement whereby Mr. Geraci would, among other things, increase his offer to purchase the property to $925,000 and pay the $50,000 non-refundable earnest money but I would have no equity position in the new dispensary and, while Ms. Berry's CUP application was being processed, I would agree to cease all cannabis related cultivation activity on the property within 2 days of signing this agreement.

182. I found the May 9, 2017 settlement offer confusing. Why did Mr. Geraci care if I was cultivating cannabis on site? That had never come up before and now it was a condition of the "improved" settlement offer. Beyond that, Mr. Geraci proved that no matter who he had representing him, he was not to be trusted. There was no mention of the 10% equity position with a $10,000 a month guaranteed minimum that was preeminent in our original negotiations. What Mr. Weinstein's settlement offer suggested to me was that, while his client was at his core a snake, something else was motivating him to be concerned about what my current activities entailed. I had seen and heard enough.

183. On May 12, 2017 I filed a *Pro Se* cross complaint thinking that that might convince Mr. Geraci to back down from what, in my mind, was an unwinnable situation for him regarding the purchase of my property. It did not, however, have that effect so I requested that David Demian represent me and take the case over.

184. On June 29, 2017 I filed a Notice of Substitution naming David Demian as new counsel on my behalf.

185. On September 28, 2017 Mr. Weinstein filed a Notice of Demurrer/Motion to Strike which was his attempt to limit the underlying agreements of my case to the single 3 sentence document I had signed on November 2, 2016 as the only document that should be

considered. He did not want anything else that transpired between me and Mr. Geraci to be considered.

186. On October 24, 2017 Judge Wohlfield issued a Tentative Ruling denying the Demurrer which was good news for me since my supporting documents against Mr. Geraci were primarily supported by the written communications that occurred after the November 2, 2017 document was signed.

187. With the Demurrer having been denied, my next concern was that the likelihood of Mr. Geraci getting the property after all the evidence was heard had to be of grave concern to him. If he were not to acquire the property, then all the work he was doing on the CUP application would be for naught and he would suffer financially. It is not unreasonable to think that Mr. Geraci might try to cut his losses by having Ms. Berry's CUP, which he completely controlled, purposely denied by instructing his agent(s) to create a scenario wherein that would be the result. In other words, if Mr. Geraci can't have this MMCC dispensary, no one else will either.

188. Should Mr. Geraci decide to sabotage Ms. Berry's CUP application, it would create a huge financial loss for both me and for Mr. Martin. I had to do something to protect my interests in the property by seeking protection from the court. By having the court appoint a Receiver who would give them oversight into what was happening on Ms. Berry's CUP, it would assure that the CUP process is followed and maintained. If Mr. Geraci felt he was going to prevail on the Breach of Contract claim he had against me, he would have not been opposed to my seeking a Temporary Restraining Order against him that would afford me this protection. That was not the case.

189. On December 7, 2017 Mr. Demian had a Writ of Mandate seeking to shorten the time to trial and a Temporary Restraining Order hearing whereby I would be protected if Mr. Geraci decided it was in his best financial interests to sabotage Ms. Berry's CUP as

opposed to losing the Breach of Contract case he had against me now that his Demurrer had been denied and all of the evidence subsequent to the November 2, 2017 document would come into consideration. We believed that while our request for a Writ of Mandate may not be granted, the TRO would be granted.

190. Mr. Demian had 4 or 5 relevant arguments contained within his Points and Authorities in his TRO motion that were cogent and compelling to the court in granting the TRO (none of the *relevant arguments towards granting the requested relief* were apparently raised by him). Furthermore, Mr. Weinstein should have had no opposition to our request for a TRO if Mr. Geraci actually believed he would prevail in the Breach of Contract suit against me and he would be awarded the property under the terms of the November 2, 2017 document I signed. If, on the other hand, Mr. Geraci actually believed that he would lose the Breach of Contract suit now that all the evidence would be heard then Mr. Geraci knew he had to vigorously oppose our request for a TRO or he would not have an opportunity to sabotage Ms. Berry's CUP which was in process with the City of San Diego Development Services and in his complete control.

191. In making his decision on the TRO motion, Judge Wohlfield listened to the oral arguments raised by Mr. Weinstein and Mr. Demian. Mr. Demian only raised the least relevant point in his oral arguments before Judge Wohlfield, stating that we should be granted the TRO based entirely on the constitutional protections that are fundamental to property owners maintaining control of their property. The only reason Mr. Demian raised that singular point and not the others is because this was the point he was most familiar with from having successfully argued it in a similar case for another client. Mr. Demian was not prepared to argue the other, more pertinent issues relevant to my case in front of the court. Had Mr. Demian's oral arguments included a reference to Judge Wohlfied's previous ruling on the Demurrer and shown the real harm in not having the TRO for his client's court

supervised protection, it would have been simply a matter of Judge Wohlfield supporting his previous position in denying the Demurrer and looking at ANY of the supporting evidence that Mr. Demian would have asked him to reference prior to making his decision. Mr. Demian did none of that while Mr. Weinstein successfully argued that the TRO was not necessary as it could potentially harm Ms. Berry's CUP process and that Mr. Geraci was going to win the Breach of Contract case based solely on the November 2, 2017 document that I had signed.

192. Judge Wohlfield denied the TRO on the grounds that Mr. Demian had not provided him with sufficient evidence to warrant the court's protection of me prior to this matter being settled in trial.

193. Immediately after the hearing, Mr. Joe Hurtado who, as my litigation investor, was present to ensure that both my and Mr. Martin's legal interests were being protected, met Mr. Demian in the hallway outside the courtroom. Mr. Hurtado was livid. Having the TRO denied due to the incompetence Mr. Demian had shown in the courtroom was egregious. For Mr. Demian not to bring the essential elements of the motion to Judge Wohlfield's attention while Mr. Weinstein successfully argued their Breach of Contract case was, according to Mr. Hurtado, "the worst performance he had ever seen by a lawyer!" Mr. Demian looked down at his shoes and mumbled something about how he had tried and had to leave to go to another meeting.

194. After Mr. Demian left, Mr. Hurtado called to tell me what had happened. I was livid too. There was no excusing Mr. Demian's performance. I immediately called Mr. Demian to hear for myself what he felt went wrong and he told me that "it did not go as he had hoped." With that Mr. Demian told me he thought this would be a good time for me to seek alternative counsel and informed me he would be withdrawing from the case.

195. On December 12, 2017, representing myself, I had a hearing in front of Judge Wohlfield for a Motion to Reconsider his ruling on the TRO. While I am not an attorney, I was fully prepared to argue the supporting elements of the motion that Mr. Demian had not raised and felt it would give the court the opportunity to see why I had an immediate interest in seeking court supervised protection through the TRO.

196. I arrived at the hearing and was immediately told by Judge Wohlfield, before I could even speak, that he was denying my Motion for Reconsideration on procedural grounds. I was not allowed to say anything. Mr. Weinstein applauded the denial stating that the Writ of Mandate was due to be heard on January 26, 2017 and having a TRO granted prior to that hearing was unnecessary. What I was not given the opportunity to say was that the reason I was there and representing myself was that if the court didn't intervene on my behalf immediately, the harm that Mr. Geraci could cause me would be done before that hearing.

197. When I walked out of the courtroom I felt like the world was closing in around me. I started feeling dizzy and had a hard time standing or even speaking. I thought it was temporary but since I was prone to seizures, I decided to go the hospital and have myself checked out. I did and was told was that I had suffered a Transient Ischemic Attack (TIA). A TIA is a mini-stroke which is caused when stress creates loss of blood to the brain. I am hoping I don't ever have another one of these as I felt helpless in its grasp.

198. I did not agree with Judge Wohlfield's decision. I did not feel that he had considered the elements which supported my urgency to be granted the TRO.. In the interest of protecting myself from the harm Mr. Geraci was capable of inflicting on me, I had no choice but to seek an Appellate Court ruling on my TRO motion wherein they would consider all the facts and supporting evidence that Judge Wohlfield had not considered when denying me that protection.

199. On December 18, 2017 I filed a Notice with the Court that I will be appealing Judge Wohlfield's decision and will be requesting that the matter be expedited due to its urgency.

200. With everything I have been going through legally, the stresses that I find myself under have affected my health and those opportunities that I might have pursued for myself, my loved ones and my employees. I no longer sleep through the night and have anxiety attacks that are difficult to manage. I have had heart palpitations. I find that my focus and attention to the details necessary to run my business have suffered. My personal and professional relationships are in jeopardy.

201. In addition to the legal issues I'm dealing with, I have tried to maintain my Inda-Gro lighting business by introducing a new LED Grow light to our lineup for which I have applied for a provisional patent. Developing this new light and the software and controls that will run it have been somewhat cathartic in that it takes my mind off of the legal issues I'm confronting but by no means am I able to give Inda-Gro the attention it deserves when I'm consumed with the stresses I face daily as a result of Mr. Geraci and the pressure he has put on me.

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

DATED: 1-20-18

DARRYL COTTON

I, DON CASEY, hereby declare as follows:

I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.

1. In my career, I have been a collegiate basketball coach at Temple University, an NBA coach for the Los Angeles Clippers and the New Jersey Nets. I have also worked as an assistant coach with the Chicago Bulls (1982–1983) and Boston Celtics (1990–1996).

2. From 1993-2000 I was the vice-chairman of the President's Council on Physical Fitness and Sports and was personally **appointed by President Clinton**.

3. Currently I am a board member and National Trustee for the ALS Foundation[1].

4. After meeting and befriending Mr. Cotton, he has been working extensively on developing a very specifically genetically engineered strain of cannabis designed for those suffering from ALS.

5. He is calling this strain the "Casey Cut" as a tribute to my mother who died of ALS in 1969; it was a joint endeavor to help those suffering from this neurodegenerative disease.

6. Because of Darryl's efforts to aid those with ALS, I strongly support him and 151 Farms. I have brought ALS patients to whom Darryl has provided cannabis products at no charge in an attempt to alleviate their pain and suffering.

7. The goal of developing a highly concentrated cannabidiol strain of cannabis has the purpose of helping alleviate the pain and adverse effects ALS patients contend with while working to help repair the underlying neurodegenerative conditions that these patients suffer from.

[1] Based in Washington, D.C., the ALS Association coordinates the federal and state advocacy programs, works directly with Congress, the White House, other federal agencies and other national organizations, and provides training and support for ALS Association advocates.

8. About a year ago Darryl told me he was selling his property for 2 million dollars. Now, I am finding out that not only is that not happening, there is litigation holding up his business prospects.

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

DATED: February 22, 17

Don Casey

I, MICHAEL KEVIN MCSHANE, declare:

1. **I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.**
2. I have been HIV positive for over 30 years.
3. In 2009 I developed debilitating skin cancer. That is when I became familiar with the medical cannabis community.
4. I have elected to treat my HIV and cancer exclusively through using cannabis oil extracts and other cannabis-based derivatives.
5. Mr. Cotton has wonderful ethics and his moral compass is unparalleled. Having become familiar with people of all walks of life in the marijuana industry, I find Mr. Cotton to be in stark contrast to many of the characters I have come across. I have found most establishments are not actually patient-oriented and some seem borderline criminal. Greed, profit and self-serving platitudes are the rule despite the reality of patients' needs and the purpose behind Prop. 215 and the spirit behind people's support for Prop 64.
6. Let me be clear, *Mr. Cotton is fully committed to helping people* with a laser-focus on the *medicinal purposes* and benefits of cannabis specifically tailored to increasing the therapeutic benefits to those of us with chronic and terminal diseases.
7. Just this week I have had a severe flare up with my cancer and I don't know if I will be alive long enough to hear the results of Mr. Cotton's case. But what I do know is that Mr. Cotton and his dedication to helping people that are suffering is genuine and the relief that he helps provide is a comfort and a service that at this time hospitals simply do not provide.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

1/4/2018
(Date)

/s/*Michael McShane*
(*MICHAEL KEVIN MCSHANE*)

I, Shawna Salazar, hereby declare:

1. **I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.**
2. I met Darryl in 1999 when he was the proprietor of Fleet Electrical and I was hired to work as a dispatcher for his company.
3. Over time I got to know Darryl on a personal level and we became close to the point where we began dating and our relationship evolved into a personal one.
4. I am proud to say that we have now been in an exclusive personal relationship for over 17 years and I continue to work with him in his business ventures as my assistance is required.
5. As I know Darryl on both a personal and professional level, I am in a unique position to speak to how passionate he is in any venture he decides to pursue.
6. In 2010 he began focusing much of his attention and resources towards plant lighting and opened Inda-Gro, which manufactured induction grow lights. I saw that company grow in size and stature until he recognized that induction technology was being phased out and decided to expand the product line into LED plant lighting.
7. It has always been personally rewarding to see Darryl create these products and see his pride in knowing that the plant quality is improved based on his designs. This is especially true when it comes to medical cannabis since Darryl uses it personally to help combat his own condition of nocturnal seizures.
8. Many people have toured 151 Farms. This farm was created to not only prove our new products but to show the community how energy and water savings can be employed in an urban garden environment. Darryl's dream has always been to take this model to a larger audience and expand to a larger facility.
9. When Darryl told me in September 2016 about the property being sold to a businessman named Larry Geraci, I was at first hesitant as to what the impact would be on our business

and the employees that worked here. Darryl relieved me of those concerns when he told me that with the Geraci purchase we not only would we have a good deal on the property but that because Geraci was involved in other real estate ventures he would help to make us aware of a larger property that would serve to meet our future needs. Sadly, that has not been the case.

10. The stresses that the failed Geraci negotiations and subsequent litigation have put Darryl under have been indescribably hard to watch.

11. I have seen Darryl go from a happy, outgoing person to one who at times will stare into space and mumble to himself. He is short tempered and not available to those who used to be closest to him.

12. He spends most of his days and even nights at the office trying to fix what he sees as beyond his control.

13. He is fearful of losing everything he has worked for and nothing anyone says or does can bring him any consolation. Frankly, it is a horrible thing to watch and it has led to us not having much of a relationship any more.

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

DATED: 1/20/18

Shawna Salazar

I, SEAN MAJOR, declare as follows:

1. I was a sergeant in the United States Marine Corps. I served from 2009 to 2016 including a tour in Afghanistan.
2. I suffered 4 major traumatic brain injuries while in the service and currently suffer from PTSD.
3. Currently, I am prescribed more than 20 different variations of pills. Of all the medications, I find the holistic approach to reap the most benefits. I find far more relief in medical grade cannabis geared towards increasing the yield of cannabinoids proven to have a multitude of medical benefits rather than just high THC to get people "high." This type of medicine is what I see as the most promising future area for further medical and therapeutic research.
4. I believe high-CBD medical cannabis is safer and more effective for veterans' recuperation than pharmaceutical options, and both I, and Darryl Cotton want to raise awareness and foster change.
5. In October 2015 I became the first, *and to-date only,* active duty Marine to be approved to use cannabis to treat my medical conditions. Since being granted an approval to use cannabis cultivation as a way to help combat the stresses that I have dealt with after having returned from active service I have been devoted to spreading awareness.
6. Currently, I am in production of a documentary television program that is to be distributed through Netflix.
7. I have had multiple news outlets write articles about me and I speak nationally about organically grown cannabis, the Veteran community, and the positive benefits of cannabis on medical/psychological conditions that affect our wounded warriors.
8. I became acquitted to Darryl Cotton and 151 Farms after hearing the positive things Mr. Cotton is doing in developing sustainable gardens that combine healthy foods to be donated to the community with hops for San Diego's vibrant beer community and medical grade

cannabis for people like myself with legitimate medical needs that are not being adequately addressed by big pharmaceutical companies.

9. I reached out to Darryl and 151 Farms as a way to get involved with their work in growing medical cannabis for those who require it.

10. I have seen first-hand the care Mr. Cotton puts into his passion, which is helping people understand and receive, natural, non-pharmacological healing.

11. Mr. Cotton uses a sustainable method of using a "closed system" irrigation involving fish, to plants (cannabis and vegetables) and he donates the grown food back to poor communities in San Diego.

12. For all the above reasons I see what Mr. Cotton is doing as a service to his community and he is setting an example to the rest of the state on how card-carryings medical recommendation patients should be prioritized while also being socially engaged and aware.

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

DATED: January 22, 2018

/s/Sean Major
Sean Major

I, Cindy Jackson, hereby declare as follows:

I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.

1. I have worked as a bookkeeper for Darryl Cotton since 1997. In that time, I have seen him grow from a small, sole proprietor, electrical contractor employing around 6 employees to becoming an incorporated, Union-shop employing more than 90 electricians and a successful equipment rental company.
2. When the economy slowed down in the mid-2000s the need for both companies' products and services dwindled. As a result, Darryl sold off the rental equipment and began to focus on his other passion: plant lighting.
3. In 2010, Darryl created Inda-Gro, and became a manufacturer of induction grow lights. His focus was on creating lights and controls to improve plant response in both quality and yield.
4. This company was especially important to him as it relates to cannabis cultivation since he has needed it to combat some of his own personal medical conditions.
5. In addition to being a businessman of the highest ethical standards, Darryl has always been interested in patients' rights and their access to medical cannabis. It is for this reason he has invested countless hours and money into seeing that all those who require fresh food and medical grade cannabis have the tools and the legal resources to do so.
6. Having known Darryl for as long as I have, I can honestly say that the Darryl I used to know is not the same person that I see today.
7. Ever since Darryl met Larry Geraci, he was led to believe that the purchase of the property at 6176 Fed. Blvd. would help Darryl expand operations and pursue greater opportunities.
8. The current legal entanglements with Mr. Geraci have caused Darryl and those of us who have been loyal to him and his causes stresses that are impossible to fully describe.

9. These extreme stresses, brought on by this litigation, are causing Darryl great physical, emotional, and financial harm that affects his ability to conduct business or plan on future endeavors. If there is any remedy that the court might provide to protect Mr. Cotton and his rights within the law, I would pray that the court do so.

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

DATED: 1/22/18

Cindy Jackson

I, James Whitfield, hereby declare:

1. **I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.**
2. I am 67 years old, a Navy veteran and I served my country for 20 years, 3 months and 14 days. As a result of my military service, I suffer from severe back, neck and leg pain.
3. Pharmaceutical drugs have not been at all useful in the repair or recovery of my painful conditions.
4. The one thing that does provide me with a great deal of relief is the regular use of organically grown medical cannabis which I began using rather than the opiates that had been prescribed to me. All the painkillers I was given were addictive and kept me from being able to maintain a solid and consistent coherency.
5. I have known Darryl Cotton and 151 Farms for nearly 20 years now. I support their ongoing efforts to educate others on the importance of having fresh food and cannabis available to those who seek it.
6. It has been extremely important for me to have access to fresh food and genetically specific cannabis to help alleviate my pain and suffering. As such, cannabis remains an important lifeline for me on a daily basis.
7. I fully support Darryl Cotton and his efforts to promote laws, policies and regulations that serve to protect patients' rights and access to medical-grade cannabis as a treatment for medical, physical and psychological conditions.

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

DATED: 1/18/18

James Whitfield

I, Michael Scott McKim, hereby declare:

1. **I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.**
2. I am a San Diego native.
3. I am a heavy equipment operator and have been a cannabis farmer for 20 years.
4. I have been the senior farm manager at many licensed mid-to-large cannabis farms in Northern California. As such, I have gained tremendous insight into the evolving business of cannabis as well as how the plant is grown and processed.
5. I left Northern California to look for likeminded farmers that value organically grown plants that would not potentially harm the medical cannabis patient as I became aware that the industry is becoming increasingly about making a profit and that plant quality and patients' needs are no longer priorities.
6. I was introduced to Darryl Cotton and 151 Farms in August 2017. I was so impressed with his passion, education and vision that I immediately offered to help him in any way I could.
7. Darryl has worked tirelessly in promoting these urban farms as a way to educate the community about the benefits of organically grown food, hops and medicine.
8. Darryl is a man of his word and he is driven by a sense of purpose that you rarely see in people. It is his vision to expand 151 Farms to larger markets that has given me a good sense of my own future opportunities.
9. I can see that Darryl is in a stressful legal battle with someone who apparently seeks to take advantage of Darryl by acquiring his property and benefitting from the notoriety that Darryl has created with 151 Farms in the urban farming community.
10. Recently Darryl has become extremely stressed out and not as available as he used to be. Clearly something must be done and I hope that there are legal mechanisms that can protect Darryl and those of us who share his passion and dreams.

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

DATED: 1-20-18

Michael Scott McKim

I, Cheryl Morrow, hereby declare:

I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.

1. I am Editor-in-Chief of the San Diego Monitor News and have proudly been a consistent community supporter for 27 years. I have witnessed numerous valued activities with 151 Farms personally and have become a strong advocate.
2. Since Darryl Cotton and 151 Farms have come to my awareness, I have frequented the farm and have recommended the farm's usage to many San Diego residents with health issues. It only makes sense to support a system that gives alternatives of fresh food and environmental solutions as well as promoting health benefits to a community that has been ravaged by poor health options and poor food options. The public has grown dependent on our sound wellness options in pursuit of a healthier lifestyle and I have knowledge of these options as an urban garden advocate along with my many years in the cosmetics industry.
3. I have grown to trust Darryl Cotton with his superior knowledge on medical cannabis law and I respect his abiding by state and local government requirements. Ethically speaking, I feel that 151 Farms is the best model in the country and should be considered a model for all cannabis endeavors. Individuals who seek interest in this industry should seek out what Darryl Cotton has done with his undying courage and extremely time-consuming devotion.
4. I have seen many changes in growing techniques over the last few years and 151 Farms is the product of many farms that are adding value to their communities all over the world. I have seen people from abroad take tours of the farm who have been astounded by 151 Farms' sophistication while delivering compassion for its patients.
5. It is obvious that the legal actions have taken a toll on Darryl's passion regarding the day to day operations of the farm. However, Darryl is a model citizen in my opinion. My entire family has great respect for those who roll up their sleeves to be a part of the solutions and

not just problems. 151 Farms is a community asset. I have gained a wealth of knowledge about my own health preservation, so in saying all of this… God helps those who help themselves.

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

DATED: 1-22-2018

/s/ Cheryl Morrow
Cheryl Morrow

RJN-18

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

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

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

NOTICE OF RULING AFTER HEARING RE:

(1) MOTION BY PLAINTIFF/CROSS-DEFENDANT LARRY GERACI AND CROSS-DEFENDANT REBECCA BERRY TO COMPEL THE DEPOSITION OF DARRYL COTTON AND TO CONTINUE HEARING ON MOTION FOR PRELIMINARY INJUNCTION

(2) MOTION BY DEFENDANT/CROSS-COMPLAINANT DARRYL COTTON FOR PRELIMINARY INJUNCTION

[IMAGED FILE]

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

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

PLEASE TAKE NOTICE THAT on January 25, 2018, the Court heard the following noticed motions:

(1) Motion by Plaintiff and Cross-Defendant, Larry Geraci, and Cross-Defendant, Rebecca

Berry, to (a) compel the deposition of Darryl Cotton, and (b) continue the January 25, 2018, hearing on the motion by Defendant and Cross-Complainant, Darryl Cotton, for a preliminary injunction; and

(2) Motion by Defendant and Cross-Complainant, Darryl Cotton, for a preliminary injunction.

Plaintiff and Cross-Defendant, Larry Geraci, and Cross-Defendant, Rebecca Berry, were represented by attorney Michael R. Weinstein of the law firm Ferris & Britton, APC. Defendant and Cross-Complainant, Darryl Cotton, was represented by Darryl Cotton, pro se.

PLEASE TAKE FURTHER NOTICE THAT, having reviewed the written pleadings submitted in support and opposition to the motions and hearing oral argument, the Court ruled as follows:

(1) The Court confirmed its tentative ruling as the final ruling of the court, set forth in and attached hereto as Exhibit A, GRANTING Plaintiff's motion to compel Plaintiff to a deposition and ordering Plaintiff to submit to a deposition within twenty (20) days of the hearing, and DENYING Plaintiff's motion to continue the January 25, 2018, hearing on Defendant's motion for a preliminary injunction, subject to the following modification: Plaintiff must submit to a deposition within twenty (20) days of the hearing absent further leave of the court or agreement of the parties. By close of business on Friday, January 26, 2018, Plaintiff shall provide to attorney Weinstein two dates within the next 20 days on which Plaintiff is available for a full-day deposition (9 a.m. to 5 p.m., with a 1-hour lunch break) to be taken at Aptus Court Reporting Service, which is located at 600 West Broadway, Suite 300, San Diego, CA 92101. Attorney Weinstein shall then select one of those two dates for the deposition and shall serve an amended deposition notice with the selected date.

(2) The Court confirmed its tentative ruling as the final ruling of the court, set forth in and attached hereto as Exhibit A, DENYING Defendant's motion for a preliminary injunction.

Dated: January 25, 2018

FERRIS & BRITTON, APC

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

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - January 22, 2018

EVENT DATE: 01/25/2018 EVENT TIME: 09:00:00 AM DEPT.: C-73

JUDICIAL OFFICER: Joel R. Wohlfeil

CASE NO.: 37-2017-00037675-CU-WM-CTL

CASE TITLE: COTTON VS CITY OF SAN DIEGO [IMAGED]

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT TYPE: Hearing on Petition
CAUSAL DOCUMENT/DATE FILED:

The Motion (ROA # 60, 61) of Real Parties in Interest LARRY GERACI and REBECCA BERRY, to (1) compel the deposition of Petitioner / Plaintiff DARRYL COTTON ("Plaintiff"), and (2) continue the January 25, 2018, hearing on Plaintiff's Motion for issuance of a peremptory writ of mandate, is GRANTED IN PART AND DENIED IN PART.

The Motion to compel Plaintiff to submit to a deposition is GRANTED. Plaintiff shall submit to a deposition within twenty (20) days of the hearing of this Motion.

The Motion to continue the hearing of Plaintiff's Motion for issuance of a peremptory writ of mandate, is DENIED.

The Petition (ROA # 38, 42) of Plaintiff / Petitioner DARRYL COTTON ("Plaintiff") for writ of mandate, is DENIED.

The Court initially notes that its December 7, 2017 order denying the ex parte application for an order shortening time to hear this Motion (ROA # 42) invited the filing of moving and opposition papers per Code. However, no additional papers were filed. As a result, this ruling is premised the original Petition for writ of mandate, and briefing and evidence presented to the Court prior to both ex parte hearings.

A traditional writ of mandate under Code of Civil Procedure section 10858 is a method for compelling a public entity to perform a legal and usually ministerial duty. Klajic v. Castaic Lake Water Agency (2001) 90 Cal. App. 4th 987, 995. The Court reviews an administrative action, pursuant to Code of Civil Procedure section 1085, to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires. Id.

A record owner, or "[a]ny person who can demonstrate a legal right, interest, or entitlement to the use of the real property subject to the application" may submit an application for a permit. SDMC 112.0102. Plaintiff argues that the City has a ministerial duty to process the CUP Application with Petitioner as the sole applicant; however, Petitioner cannot demonstrate that he was the only person who possessed the right to use the subject property. Whether someone other than the "record owner" possesses a valid

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - January 22, 2018

EVENT DATE: 01/25/2018 EVENT TIME: 09:00:00 AM DEPT.: C-73

JUDICIAL OFFICER: Joel R. Wohlfeil

CASE NO.: 37-2017-00037675-CU-WM-CTL

CASE TITLE: COTTON VS CITY OF SAN DIEGO [IMAGED]

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT TYPE: Hearing on Petition
CAUSAL DOCUMENT/DATE FILED:

The Motion (ROA # 60, 61) of Real Parties in Interest LARRY GERACI and REBECCA BERRY, to (1) compel the deposition of Petitioner / Plaintiff DARRYL COTTON ("Plaintiff"), and (2) continue the January 25, 2018, hearing on Plaintiff's Motion for issuance of a peremptory writ of mandate, is GRANTED IN PART AND DENIED IN PART.

The Motion to compel Plaintiff to submit to a deposition is GRANTED. Plaintiff shall submit to a deposition within twenty (20) days of the hearing of this Motion.

The Motion to continue the hearing of Plaintiff's Motion for issuance of a peremptory writ of mandate, is DENIED.

The Petition (ROA # 38, 42) of Plaintiff / Petitioner DARRYL COTTON ("Plaintiff") for writ of mandate, is DENIED.

The Court initially notes that its December 7, 2017 order denying the ex parte application for an order shortening time to hear this Motion (ROA # 42) invited the filing of moving and opposition papers per Code. However, no additional papers were filed. As a result, this ruling is premised the original Petition for writ of mandate, and briefing and evidence presented to the Court prior to both ex parte hearings.

A traditional writ of mandate under Code of Civil Procedure section 10858 is a method for compelling a public entity to perform a legal and usually ministerial duty. Klajic v. Castaic Lake Water Agency (2001) 90 Cal. App. 4th 987, 995. The Court reviews an administrative action, pursuant to Code of Civil Procedure section 1085, to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires. Id.

A record owner, or "[a]ny person who can demonstrate a legal right, interest, or entitlement to the use of the real property subject to the application" may submit an application for a permit. SDMC 112.0102. Plaintiff argues that the City has a ministerial duty to process the CUP Application with Petitioner as the sole applicant; however, Petitioner cannot demonstrate that he was the only person who possessed the right to use the subject property. Whether someone other than the "record owner" possesses a valid

right to apply for and obtain the CUP is disputed. Evidence exists demonstrating an agreement for the purchase and sale of the subject property, which could confer a legal right and entitlement to the use of the property.

In addition, Plaintiff has not exhausted his administrative remedy by submitting his own separate CUP application. He cannot be recognized as the "sole applicant" (see Petition at page 10, line 5) when he has not, in fact, submitted a separate application. The City may very well have a ministerial duty to accept and process Petitioner's CUP application in lieu of any competing application, but this duty does not arise in the absence of the filing of such an application.

The Motion (ROA # 94, 95) of Plaintiff and Cross-Defendant LARRY GERACI and Cross-Defendant REBECCA BERRY ("Cross-Defendants") to (1) compel the deposition of Defendant and Cross-Complainant DARRYL COTTON ("Defendant"), and (2) continue the January 25, 2018, hearing on Defendant's Motion for a preliminary injunction, is GRANTED IN PART AND DENIED IN PART.

The Motion to compel Defendant to submit to a deposition is GRANTED. Defendant shall submit to a deposition within twenty (20) days of the hearing of this Motion.

The Motion to continue the hearing of Defendant's Motion for a preliminary injunction, is DENIED.

Defendant and Cross-Complainant DARRYL COTTON'S Motion for a preliminary injunction is DENIED.

The Court initially notes that its December 7, 2017 order denying the ex parte application for a TRO and setting this hearing (ROA # 72) invited the filing of moving and opposition papers. However, no additional papers were filed. As a result, this ruling is premised on the briefing and evidence presented to the Court prior to the ex parte hearing.

The Court considers two interrelated questions in deciding whether to issue a preliminary injunction: (1) is Plaintiff likely to suffer greater injury from a denial of the injunction than Defendant is likely to suffer from its grant; and (2) is there a reasonable probability that Plaintiff will prevail on the merits. Robbins v. Superior Court (1985) 38 Cal.3d 199, 206; Code Civ. Proc. 526(a). The Court's determination must be guided by a "mix" of the potential-merit and interim-harm factors. Butt v. State of California (1992) 4 Cal. 4th 668, 678. A preliminary injunction is appropriate when pecuniary compensation would not afford adequate relief; or where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief. Code Civ. Proc. 526(a). The burden is on the moving party to show all elements necessary to support issuance of a preliminary injunction. O'Connell v. Superior Court (2006) 141 Cal. App. 4th 1452, 1481. A preliminary injunction amounts to a mere interlocutory order to maintain the status quo pending a determination of the action on its merits. Varian Medical Systems, Inc. v. Delfino (2005) 35 Cal. 4th 180, 191.

Regarding the probability of prevailing, a record owner, or "[a]ny person who can demonstrate a legal right, interest, or entitlement to the use of the real property subject to the application" may submit an application for a permit. SDMC §112.0102. Defendant and Cross-Complainant Cotton argues that the City must process the CUP Application with him as the sole applicant. However, disputed evidence exists suggesting that Cotton was not the only person who possesses the right to use the subject property. Whether someone other than the "record owner" possesses a valid right to apply for and obtain the CUP is disputed. Evidence exists demonstrating an agreement for the purchase and sale of

the subject property, which could confer a legal right and entitlement to the use of the property.

In addition, Defendant and Cross-Complainant Cotton is not likely to prevail because the evidence demonstrates that he has not submitted his own separate and competing CUP application. He cannot be recognized as the sole applicant when he has not, in fact, submitted an application. A determination regarding the City's obligation to accept and process Cotton's CUP application in lieu of any competing application cannot be made in the absence of the filing of such an application.

Finally, Defendant and Cross-Complainant Cotton is unlikely to sustain irreparable harm because pecuniary compensation would afford adequate relief. Plaintiff can prosecute a claim premised on the lost revenue from operation of a medical marijuana dispensary. Although calculating such revenue may be somewhat complicated and require an expert opinlon, this is far from an impossible task.

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

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

Judge: Hon. Joel R. Wohlfeil

PROOF OF SERVICE

[IMAGED FILE]

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

I, Anna K. Lizano, declare that: I am over the age of 18 years and not a party to the case; I am employed in the County of San Diego, California; and my business address is: 501 West Broadway, Suite 1450, San Diego, California 92101.

On, January 25, 2018, I served the following documents:

1. **NOTICE OF RULING AFTER HEARING RE: (1) MOTION BY PLAINTIFF/CROSS-DEFENDANT LARRY GERACI AND CROSS-DEFENDANT REBECCA BERRY TO COMPEL THE DEPOSITION OF DARRYL COTTON AND TO CONTINUE HEARING ON MOTION FOR PRELIMINARY INJUNCTION (2) MOTION BY DEFENDANT/CROSS-COMPLAINANT DARRYL COTTON FOR PRELIMINARY INJUNCTION.**

[X] EMAIL. Based on an agreement of the parties to accept service by email, I caused the document[s] to be sent to the person at approximately 4:00 p.m. on the date above, to the following email addresses:

Darryl Cotton
indagrodarryl@gmail.com

I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

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

Dated: January 25, 2018

Anna K. Lizano

RJN-19

Jacob P. Austin [SBN 290303]
The Law Office of Jacob Austin
1455 Frazee Road, Suite 500
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E-mail: JacobAustinEsq@gmail.com

Attorney for Defendant/Cross-Complainant DARRYL COTTON

FILED
San Diego Superior Court
SEP 12 2018
By: _____, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, HALL OF JUSTICE

LARRY GERACI, an individual,

Plaintiff,

vs.

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

Defendants.

AND RELATED CROSS-ACTION.

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

VERIFIED STATEMENT OF DISQUALFICATION PURSUANT TO CCP §170.1(a)(6)(A)(iii) AND CCP §170.1(a)(6)(B)

TO THE HONORABLE JOEL R. WOHLFEIL, JUDGE OF THE SUPERIOR COURT:

PLEASE TAKE NOTICE that this Verified Statement of Disqualification is a request by Attorney Jacob P. Austin ("Counsel") that Judge Wohlfeil recuse himself as the judicial officer presiding over the above-captioned proceeding based upon the facts and evidence set forth below (the "Statement").

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///

///

I. INTRODUCTION

1. Counsel brings forth this Statement pursuant to (i) California Code of Civil Procedure ("CCP") § 170.1(a)(6)(A)(iii) on the grounds that a "person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial," and (ii) CCP §170.1(a)(6)(B) on the grounds that the facts demonstrate "[b]ias or prejudice toward a lawyer in the proceeding."

2. As a threshold issue, Counsel notes that this Statement arises in part from the denial of two motions brought before Judge Wohlfeil. On August 30, 2018 Counsel filed a Petition for Writ of Mandate, Supersedeas and/or Other Appropriate Relief ("Writ Petition") for appellate review from the denial of the two motions. The Writ Petition is material to this Statement, a copy thereof is attached as Exhibit A. The supporting Exhibits to the Writ Petition are attached hereto as Exhibit B.

3. Summarily, this action arises from a real estate contract dispute between Plaintiff Larry Geraci ("Plaintiff") and defendant Darryl Cotton ("Defendant"). Both Plaintiff and Defendant admit that on November 2, 2016: (i) they reached an agreement for the sale of Defendant's real property ("Property") to Plaintiff; (ii) the sale was contingent upon Plaintiff obtaining approval from the City of San Diego ("City") of a Conditional Use Permit ("CUP") that would allow the operation of a for-profit medical marijuana outlet at the Property (the "Business"); (iii) they executed a three-sentence document that reflects Defendant received $10,000 in cash from Plaintiff (the "November Document"); and (iv) Plaintiff, within hours of the execution of the November Document and in response to a specific request by Defendant for written assurance, specifically confirmed via email that the three-sentence November Document is not the final agreement for the sale of the Property (the "Confirmation Email").

4. Plaintiff alleges the November Document is the final and completely integrated agreement for the sale of the Property.

5. Defendant alleges the November Document is a document memorializing his receipt of $10,000 in cash and that the parties reached an oral agreement for a joint venture to develop the Business at the Property (the "Joint Venture Agreement" hereinafter "JVA"). The JVA was to be reduced to writing by Plaintiff's attorney and to include, *inter alia*, a 10% equity position for him in the contemplated business.

6. In March of 2017, Plaintiff brought forth suit alleging that the November Document *is* the completely integrated agreement and seeking specific performance to force the sale from Defendant to himself.

7. Plaintiff has maintained throughout the course of this litigation that the Confirmation Email, that negates the entire basis of his Complaint, is barred by the parol evidence rule ("PER").

8. In April of 2018, when confronted with case law allowing the admission of the Confirmation Email and other parol evidence as proof of a fraud, Plaintiff submitted a declaration alleging *for the first time* that he sent the Confirmation Email by *mistake* and that on November 3, 2016, Defendant (i) orally disavowed the interest in the CUP that Plaintiff had promised to him in the Confirmation Email and (ii) agreed the November Document is a completely integrated agreement for the sale of the Property to Plaintiff. Plaintiff provided no explanation why he waited over a year after filing suit to allege such a material and critical factual statement.

9. It is Counsel's absolute belief, based on facts admitted to *by* Plaintiff, that this action is frivolous and a stereotypical malicious prosecution action. Plaintiff is seeking to fraudulently misrepresent the November Document as completely integrated agreement for his purchase of the Property in order to deprive Defendant the benefit of the parties' bargain reached on November 2, 2016 that included an equity position in the Business anticipated to be highly lucrative.

10. "Whether a contract is integrated is a question of law when the evidence of integration is not in dispute." *Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 954. ***"The crucial threshold inquiry, therefore, and one for the court to decide, is whether the parties intended their written agreement to be fully integrated.*** [Citations.]" *Brandwein v. Butler* (2013) 218 Cal.App.4th 1485, 1510 (emphasis added).

11. Judge Wohlfeil, despite repeated oral and written requests for over a year, has never addressed the ***crucial threshold inquiry*** of contract integration.

12. In response to evidence and arguments presented by Defendant (while representing himself pro se) that prove the November Document is not completely integrated, Judge Wohlfeil defended Plaintiff's attorneys Michael Weinstein ("Weinstein") and Gina Austin ("Mrs. Austin") (no relation to Counsel Jacob P. Austin). Specifically, Judge Wohlfeil stated from the bench that he is

personally acquainted with Weinstein and Mrs. Austin and that he does not believe they would act unethically by filing a meritless suit.[1] Furthermore, Judge Wohlfeil stated on a separate occasion that he has known Weinstein for decades since early in their careers and that he "may have made" the statement regarding his belief about Weinstein and Mrs. Austin's inability to be unethical.

13. Pursuant to *Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, had Judge Wohlfeil addressed the ***crucial threshold inquiry*** of contract integration and found that the November Document was not a completely integrated agreement because of the PER, then Weinstein and Mrs. Austin would be open to a cause of action for malicious prosecution. *Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 349 ("we hold that terminations based on the parol evidence rule are favorable for malicious prosecution purposes.").

14. Counsel understands that "the mere fact a judicial officer rules against a party does not show bias. [Citation.] It is a well-settled truism, however, that the ***'trial of a case should not only be fair in fact, but it should also appear to be fair.'*** [Citations.]" *In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1328 (emphasis added). In this case, fairness and the *appearance of fairness* will be achieved only if the entire case is reassigned to another judicial officer because on these facts, as proven below, this case should not even have to reach a jury trial. Given the facts of the case and Judge Wohlfeil's comments and rulings, it can reasonably ***appear*** that Judge Wohlfeil has ruled against Defendant because he (i) is seeking to unjustly use his position as a judicial officer to protect Weinstein and Mrs. Austin from a malicious prosecution action and/or (ii) has a fixed opinion that Weinstein and Mrs. Austin are incapable of being unethical to a degree that it impairs his ability to impartially weigh any facts and evidence involving their acts.

15. The undisputed facts set forth below in Section II. (Material Factual and Procedural Background) are laid out chronologically and are meant to support the following six factual findings:

a. Plaintiff is before Judge Wohlfeil as part of a demonstrably unlawful scheme to acquire the CUP at issue here. Plaintiff is prohibited from owning a CUP by numerous applicable City of San Diego and State of California laws and regulations that disqualify individuals who (i) have been sanctioned for being involved in illegal marijuana commercial businesses (ii) and for failing to comply

[1] Exhibit B, ln.6-10; p.1051, ln.25-28; p.1055

with the applicable disclosure obligations as part of the CUP application process (meant to prevent disqualified individuals from acquiring an interest in a CUP for marijuana-related operations);

b. Mrs. Austin and Rebecca Berry ("Berry"), Plaintiff's employee/agent, knowingly omitted Plaintiff's ownership in the Property and the CUP application in contravention of applicable laws and regulations;

c. The November Document is not a completely integrated agreement pursuant to the PER and the record makes it appear that Judge Wohlfeil has consistently and systemically avoided addressing the ***crucial threshold inquiry*** of contract integration which would be the case-dispositive issue;

d. Judge Wohlfeil has stated, and the record makes numerous references to, his belief that Weinstein and/or Mrs. Austin would not act unethically;

e. Some of Judge Wohlfeil's rulings are unsupported by facts or law and, in some instances, contradicted by facts and evidence both Plaintiff and Defendant admit are true; and

f. If Judge Wohlfeil were to appropriately address the issue of contract integration, pursuant to the PER, Weinstein and Mrs. Austin would be exposed to legal and financial liability for filing and/or maintaining a malicious prosecution action.

II. MATERIAL FACTUAL AND PROCEDURAL BACKGROUND

A. *Plaintiff has a history of owning/managing illegal marijuana dispensaries that disqualify him from owning a for-profit Marijuana Outlet; Judge Wohlfeil has never addressed why he allows this case to continue when on its face Plaintiff is using this action to effectuate a fraud.*

16. Plaintiff has been a named defendant and sanctioned in at least three actions by the City for owning/managing illegal marijuana dispensaries. *See City of San Diego v. The Tree Club Cooperative* Case No. 37-2014-00020897-CU-MC-CTL, *City of San Diego v. CCSquared Wellness Cooperative* Case No. 37-2015-00004430-CU-MC-CTL and, *City of San Diego v. LMJ 35th Street Property LP, et al.*, Case No. 37-2015-000000972.[2]

[2] Exhibit C, Stipulation of Judgment, Preliminary Injunction Order

17. Forms DS-190 (Affidavit for Medical Marijuana Consumer Cooperatives for Conditional Use Permit (CUP))[3] and DS-318 (Ownership Disclosure Statement)[4] are two of the forms required by the City Development Services Department as part of the application process for a CUP (the "CUP Application Forms").

18. In relevant part, Form DS-318 states: "Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (*e.g.*, tenants who will benefit from the permit, all individuals who own the property)."[5]

19. Berry is the employee and agent of Plaintiff.[6]

20. Berry executed and submitted the CUP Application Forms for the Property to the City.[7]

21. Berry ***DID NOT*** list Plaintiff as a person owning or having an interest in the CUP and/or the Property as required.[8] Instead, she listed herself as the "Tenant/Lessee" of the Property on Form DS-318,[9] and "Owner" of the Property on Form DS-190.[10]

22. As described in Plaintiff's *own* submission, he admits that Berry, his agent, submitted the CUP Application Forms on his behalf:

> Berry was the Applicant. Cotton and Berry did not have a principal-agent relationship and Berry did not submit the CUP Application on his behalf. Rather, Berry had a principal-agent relationship *with Geraci*. Berry submitted the CUP Application on behalf of Geraci who had entered into a written agreement with Cotton for the purchase of the Property.

Exhibit D at p.6, fn.1. (emphasis in original).

23. California Bus. & Prof. Code §26057(a) states that, "The licensing authority ***shall*** deny an application if either *the applicant*, or the premises for which a state license is applied, do not qualify for licensure under this division." (emphasis added).

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[3] Exhibit B, p.559.
[4] Exhibit B, p.558.
[5] Exhibit B, p.558 (emphasis added).
[6] Exhibit B, p.46, ln.2-4.
[7] *Id.*
[8] Exhibit B, p.558.
[9] Exhibit B, p.559.
[10] Exhibit B, p.558.

24. Bus. & Prof. Code §26057(b) sets forth the criteria that ***mandates denial*** under Bus. & Prof. Code §26057(a).

25. "Conduct that constitutes grounds for denial of licensure under Chapter 2 (commencing with Section 480) of Division 1.5, except as otherwise specified in this section and Section 26059." Bus. & Prof. Code §26057(b)(2). Criteria under Bus. & Prof. Code §480 that disqualify Plaintiff from owning an interest include:

a. "A board may deny a license regulated by this code on the grounds that the applicant has one of the following.... ***Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.***" Bus. & Prof. Code §480(a)(2) (emphasis added).

b. "A board may deny a license regulated by this code on the ground that ***the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.***" Bus. & Prof. Code §480(d) (emphasis added).

c. "***Failure to provide information required by the licensing authority.***" Bus. & Prof. Code §26057(b)(3) (emphasis added).

d. "The applicant, or any of its officers, directors, or owners, has been ***sanctioned*** by a licensing authority or a city, county, or city and county for ***unauthorized commercial cannabis activities***, has had a license suspended or revoked under this division in the three years immediately preceding the date the application is filed with the licensing authority." Bus. & Prof. Code §26057(b)(7) (emphasis added).

26. San Diego Municipal Code ("SDMC") §42.1501 materially states: "It is the intent of this Division to promote and protect the public health, safety, and welfare of the citizens of San Diego by allowing but strictly regulating the retail sale of marijuana at ***marijuana outlets.... It is further the intent of this Division to ensure that marijuana is not diverted for illegal purposes, and to limit its use to those persons authorized under state law.***" (Emphasis added.)

27. Plaintiff is disqualified from having an ownership interest in the CUP for the Property because (i) his agents knowingly did not disclose his ownership interest in the CUP Application Forms;

(ii) he has been sanctioned for owning/managing illegal dispensaries; and (iii) this legal action is part of a fraudulent scheme to deprive Defendant of his Property by way of a frivolous lawsuit.

28. Plaintiff's attorney, Mrs. Austin, is handling the CUP application for the Property. Mrs. Austin is considered the premier attorney in San Diego for marijuana related CUP applications with the City of San Diego. Attached hereto as Exhibit E is an article published by the *San Diego Union Tribune* on August 10, 2018 entitled "San Diego's cannabis supply chain is falling into place, with one production business approved and 39 more on tap" stating that, of 24 manufacturing licenses available for marijuana businesses in the City of San Diego, Mrs. Austin represents six of the applicants who are at the "head of the pack."[11]

29. Attached hereto as Exhibit F is an email chain from Mrs. Austin specifically advising Plaintiff's architect that she wanted to review the CUP application for the Property before it was submitted to the City.

30. In short, the plain and clear language on the CUP Application Form required Berry to disclose Plaintiff's ownership interest in the CUP and the Property. She did not. And, Mrs. Austin, specializing in marijuana law, *knew* that Berry should have listed Plaintiff as an individual with an interest in the CUP and the Property.

31. Had Plaintiff submitted the CUP Application under his own name, it would have been denied by the City pursuant to the applicable state and local laws and regulations referenced above.

32. To date, Judge Wohlfeil has *never* addressed why he allows this action to continue when even Plaintiff has admitted to the facts above that prove he and his agents have violated numerous applicable disclosure laws and regulations. If Judge Wohlfeil addressed this issue, Mrs. Austin would be legally liable for purposefully omitting Plaintiff from the applicable disclosure requirements

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[11] Exhibit E, San Diego Union Tribune, *San Diego's cannabis supply chain is falling into place, with one production business approved and 39 more on tap*, http://www.sandiegouniontribune.com/news/politics/sd-me-weed-production-20180810-story.html, August 10, 2018 last accessed September 10, 2018

B. Judge Wohlfeil has consistently refused to address the threshold and case-dispositive issue of contract integration; which, if he did, would result in this matter being adjudicated in Defendant's favor and expose Weinstein and Mrs. Austin (and others) to liability for malicious prosecution.

33. Neither Plaintiff nor Defendant dispute that on November 2, 2016 they met, reached an agreement for the sale of the Property to Plaintiff, and executed the November Document. The parties, however, dispute the terms reached and the nature of the November Document.[12]

34. On November 2, 2016 at 3:11 p.m., after the parties reached their agreement and Defendant executed the November Document, Plaintiff emailed Defendant a copy of the November Document.[13]

35. At 6:55 p.m., Defendant replied:

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

Exhibit B, p.497 (emphasis added).

36. At 9:13 p.m., Plaintiff replied: "***No no problem at all***" (the "Confirmation Email"). (*Id.*)

37. For approximately five months after execution of the November Document, the parties exchanged numerous emails, texts and calls regarding various issues related to, *inter alia*, the CUP Application, drafts of the JVA for the sale of the Property and Defendant's equity position in the Business.

38. Copies of 15 email chains representing *all* email communications exchanged by Plaintiff and Defendant during the period October 24, 2016 to March 21, 2017 (the "Email Communications") were submitted to the Fourth District Court of Appeal as Exhibit 9 to the Petition. *See* Exhibit B, p.487-555.

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[12] Exhibit B, 635-652. [ROA 47].
[13] Exhibit B, p.492-493; p.494-495.

39. Copies of *all* text communications exchanged by Plaintiff and Defendant during the period July 21, 2016 to May 8, 2017 (the "Text Communications") were submitted to the Fourth District Court of Appeal as Exhibit 9 to the Petition. *See* Exhibit Bp.392-421.

40. All the Email and Text Communications prove incontrovertibly that the parties met sometime in July of 2016, negotiated for several months thereafter and their negotiations culminated in an oral agreement on November 2, 2016 (JVA). Thereafter, as evidenced by their communications and the draft agreements Plaintiff forwarded to Defendant, the parties were working to reduce the JVA to writing until their relationship deteriorated because Plaintiff intentionally attempted to deprive Defendant of his 10% agreed-upon equity position.

41. The most notable Text and Email Communications clearly evidencing that the parties entered into the JVA and were working to reduce the JVA to writing when the relationship became hostile include the following:

42. On **February 27, 2017**, Plaintiff sent an email to Defendant stating: "Attached is the draft purchase of the property for 400k. The additional contract for the 400k should be in today and I will forward it to you as well."[14] The document attached to his email was entitled: "AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY" (the "Draft Purchase Agreement").[15] The introduction to the Draft Purchase Agreement states:

> THIS AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY ("Agreement") is made and entered into this __ day of _____, 2017, by and between DARRYL COTTON, an individual resident of San Diego, CA ("Seller"), and 6176 FEDERAL BLVD TRUST dated ___ 2017, or its assignee ("Buyer").

Exhibit B, p.503 (emphasis added).

43. The Draft Purchase Agreement neither provides for nor mentions (i) the employment of Defendant by Plaintiff in any capacity as part of the transaction, or (ii) that the Draft Purchase Agreement is an amendment and/or renegotiation of an existing agreement.

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[14] Exhibit B, p.501-502. [ROA 237].
[15] Exhibit B, p.503-528. [ROA 237].

44. On March 2, 2017, Plaintiff emailed Defendant a document entitled "SIDE AGREEMENT" (the "First Draft Side Agreement").[16] The Recitals to the Side Agreement state:

> WHEREAS, the Seller and Buyer desire to enter into a Purchase Agreement (the "Purchase Agreement"), dated of even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property"); and
>
> WHEREAS, the purchase price for the Property is Four Hundred Thousand Dollars ($400,000); and
>
> WHEREAS, a condition to the Purchase Agreement is that Buyer and Seller enter into this Side Agreement that addresses the terms under which Seller shall move his existing business located on the Property.

Exhibit B, p.531.

45. The First Draft Side Agreement neither provides for nor mentions (i) the employment of Defendant by Plaintiff in any capacity as part of the transaction, or (ii) that the draft purchase agreement is an amendment and/or renegotiation of an existing agreement.

46. On March 6, 2017, Defendant told Plaintiff that he would be attending a local cannabis event at which Mrs. Austin would be the keynote speaker. Plaintiff texted Defendant saying he could speak directly with Mrs. Austin at the event regarding revisions to the agreements: "***Gina Austin is there she has a red jacket on if you want to have a conversation with her.***"[17]

47. Defendant was not able to make the event, but Joe Hurtado ("Hurtado") – a transaction adviser whom Defendant had engaged on a contingent basis to help him sell the Property to a new buyer if Plaintiff breached the agreement – did attend.[18]

48. Hurtado spoke with Mrs. Austin, letting her know that Defendant would not be attending, and that Defendant was concerned because the First Draft Purchase Agreement he had received did not contain a provision regarding Defendant's 10% equity interest in the Business.[19]

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[16] Exhibit B, p.529-536. [ROA 237].
[17] Exhibit B, p.421. [ROA 237].
[18] Exhibit B, p.385, ln.6-13 [ROA 237].
[19] Exhibit B, p.591, ln.8-18 [ROA 237].

49. Mrs. Austin confirmed that she was working to reduce the JVA to writing and would forward it shortly. ("My conversation with Mrs. Austin was short, clear, direct, unambiguous and with no possibility for misinterpretation. Mrs. Austin acknowledged that she was working on the drafts for Plaintiff's purchase of Mr. Cotton's Property and that no final agreement had yet been executed.").[20]

50. The next day on **March 7, 2017**, Plaintiff emailed Defendant a second draft Side Agreement (the "Second Draft Side Agreement").[21]

51. The metadata to the Second Draft Side Agreement reflects Mrs. Austin as the "creator" and "author" of the Second Draft Side agreement, and that the document was created on March 6, 2017 (the "Metadata Evidence").[22]

52. The cover email to the March 7, 2017 email Plaintiff sent to Defendant stated:

> Hi Darryl, I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month . . . can we do 5k, and on the seventh month start 10k?

Exhibit B, p.541-542 (the "March Request Email").

53. The Recitals to the Second Draft Side Agreement state:

> WHEREAS, the Seller and Buyer have entered into a Purchase Agreement (the "Purchase Agreement"), dated as of approximate even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property");
>
> WHEREAS, The Buyer intends to operate a licensed medical cannabis at the property ("Business"); and
>
> WHEREAS, in conjunction with Buyer's purchase of the Property, Buyer has agreed to pay Seller $400,000.00 to reimburse and otherwise compensate Seller for Seller relocating his business located at the Property, ***and to share in certain profits of Buyer's future Business***.[23]

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[20] Exhibit B, p.591, ln.19-21 [ROA 237].
[21] Exhibit B, p.543-546. [ROA 237].
[22] Exhibit B, p.329.
[23] Exhibit B, p.543-546 [ROA 237] (emphasis added).

54. The Second Draft Side Agreement provides that Defendant would receive 10% of the net profits of the Business, instead of the "10% equity position" agreed upon by the parties in the JVA and specifically confirmed by Plaintiff in the Confirmation Email.[24]

55. The Second Draft Side Agreement neither provides for nor mentions (i) the employment of Defendant by Plaintiff in any capacity as part of the transaction, or (ii) that the draft purchase agreement is an amendment and/or renegotiation of an existing agreement.

56. On March 21, 2017, after Plaintiff failed to respond to numerous written requests for assurance of performance – *i.e.*, that he would honor the JVA and provide Defendant a "10% equity position" in the Business – Defendant terminated the JVA as a result of Plaintiff's breach.[25]

57. After terminating the JVA on March 21, 2017, Defendant entered into a written agreement for the sale of the Property with a third party (the "Third-Party Sale").[26]

58. On March 22, 2017, Plaintiffs' attorney, Weinstein, emailed Defendant a copy of the Complaint filed in this action the preceding day asserting causes of action for breach of contract and specific performance and alleging the November Document is the final agreement for the sale of Defendant's Property.[27]

59. Defendant filed a cross-complaint against Plaintiff and his agent/employee Rebecca Berry ("Berry"). His operative Second Amended Cross-Complaint filed on August 25, 2017 asserts causes of action for breach of contract, intentional misrepresentation, negligent misrepresentation, false promise and declaratory relief.[28]

60. On October 6, 2017, Defendant filed a verified Petition for Writ of Mandate pursuant to Code of Civil Procedure §1085 seeking an alternative writ of mandate and a peremptory writ of mandate directing the City to recognize Defendant as the sole applicant with respect to Conditional Use Permit Application-Project No. 52066 the CUP on the Property (the "City Action").[29]

[24] Exhibit B, p.543-546 [ROA 237].
[25] Exhibit B, p.885 [ROA 160].
[26] Exhibit B, p.895-906 [ROA 160].
[27] Exhibit B, p.625, ln.15-17; p.626, ln.6-11. [ROA 1].
[28] Exhibit B, p.634-659 [ROA 47].
[29] Exhibit B, p.681-691.

61. The dispositive issue in the instant action and the City Action is whether the November Document is a completely integrated agreement.

62. As repeatedly noted, Judge Wohlfeil has never undertaken what should be the "***crucial threshold inquiry*** [to determine] whether the parties intended their written agreement to be fully integrated. [Citations.]" *Brandwein v. Butler* (2013) 218 Cal.App.4th 1485, 1510 (emphasis added).

63. Defendant has, on no less than ***six occasions***, three of which were in open court by counsel and co-counsel, requested that Judge Wohlfeil please provide his reasoning for repeatedly finding that the November Document is a completely integrated agreement throughout the course of this litigation.[30] On more than ***two occasions*** Defendant has literally begged Judge Wohlfeil in writing and orally at hearings to explain why the Confirmation Email, which Plaintiff admits he sent in a sworn declaration, does not prove the November Document is not a completely integrated agreement. Specifically, he stated "***I BEG the Court at the hearing to please articulate to me (i) which facts in the record and (ii) on what legal authority it was persuaded that I am not going to prevail on the merits on my cause of action for breach of contract.***"[31]

64. On July 13, 2018, Judge Wohlfeil denied Defendant's Motion for Judgement on the Pleadings ("MJOP"). During oral argument, Counsel repeatedly asked Judge Wohlfeil to address dispositive issue of contract integration.[32]

> **THE COURT:** Good morning to each of you two. Interesting motion particularly combined with your request for judicial notice. Is there anything else that you'd like to add?
>
> **MR. AUSTIN:** Well, I would like an explanation. So Mr. Geraci, the plaintiff in this case, he submitted the declaration admitting essentially that –

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[30] Exhibit B, p. 22, ln. 21- p. 23, ln. 1;
Exhibit G p.4, ln.13-15 [ROA 128] MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DARRYL COTTON'S *EX PARTE* APPLICATION FOR A STAY, OR, ALTERNATIVELY JUDGEMENT ON THE PLEADINGS; Exhibit H p. 5 lines 5-7 [ROA 166] OPPOSITION TO PLAINTIFF/CROSS-DEFENDANT LARRY GERACI'S *EX PARTE* APPLICATION FOR AN ORDER SHORTENING TIME TO HEAR MOTION FOR MONETARY AND ESCALATING/TERMINATING SANCTIONS AGAINST DEFENDANT AND CROSS-COMPLAINANT, DARRYL COTTON; Exhibit B, p. 11-15.

[31] Exhibit B, p. 22, ln. 21- p. 23, ln. 1; Exhibit H p. 5 lines 5-7 [ROA 166] OPPOSITION TO PLAINTIFF/CROSS-DEFENDANT LARRY GERACI'S *EX PARTE* APPLICATION FOR AN ORDER SHORTENING TIME TO HEAR MOTION FOR MONETARY AND ESCALATING SANCTIONS

[32] Exhibit B, p. 1226-1227 [ROA 253].

THE COURT: It's the "essentially" part that I don't agree with. You make those same comments in your paper. There's four separate causes of action....

THE COURT: The court wasn't persuaded that even if I were grant the request to take judicial notice of a declaration granted of a party opponent, it's still not dispositive of the entire complaint. And that's what your motion is directed to, isn't it.

MR. AUSTIN: Well –

THE COURT: – in it's entirety?

MR. AUSTIN: Because all four causes of action are premised on a breach of contract, so if there's not an integrated contract, according to plaintiff himself, I feel that all four causes of actions fail.

THE COURT: Not so sure if I agree with that entire analysis. Anything else, counsel?
MR. AUSTIN: Well, I was just wondering if you could explain to me, if you believe as a matter of law, the three-sentence contracts that plaintiff claims is an integrated contract. If you believe that to actually be a fully integrated contract.

THE COURT: You know, we've been down this road so many times, counsel. I've explained and reexplained the court's interpretation of your position. I don't know what more to say.

CO COUNSEL: Your Honor, if I may, I'm co-counsel on behalf of Mr. Cotton. ***Your Honor, the only thing we really want clarification in the matter whether or not the court deems the contract an integrated contract or not.***

THE COURT: Again, we've addressed that in multiple motions. I'm not going to go back over it again at this point in time.
Anything else, counsel?

CO COUNSEL: That's it.[33]

[33] Exhibit B, p. 11-15 (emphasis added).

65. This is also at least the ***eighth time***[34] Judge Wohlfeil found, without explanation, that the contract was in fact completely integrated.[35]

66. The transcript demonstrates Judge Wohlfeil's exasperation with Defendant and Counsel. Ostensibly, Judge Wohlfeil's frustration arises from what he thinks is Counsel's repeated attempt to challenge an adverse ruling that he has already addressed. However, Judge Wohlfeil is mistaken, he has never addressed the threshold and case-dispositive issue of contract integration.

67. The frustration on Judge Wohlfeil's behalf is unjustified. Rather, it is Defendant who has reason to be frustrated with the adjudication of his case. Counsel does not mean to be disrespectful, but, as more fully described below, there are numerous rulings that demonstrate Judge Wohlfeil does not have a clear understanding of the simplicity of this case and that he has taken procedurally improper actions to the unjustified benefit of Plaintiff.

III. DISCUSSION

A. PLAINTIFF FILED THIS ACTION AS PART OF A FRAUDULENT SCHEME TO ACQUIRE AN INTEREST IN A MARIJUANA RELATED BUSINESS THAT HE IS PROHIBITED FROM OWNING PURSUANT TO CITY AND STATE LAW.

68. It is a matter of public record that Plaintiff has been sanctioned for owning/managing illegal dispensaries.

69. Per Plaintiff's own admissions, his agent, Berry, submitted the CUP application on the Property and omitted naming him as a party with an interest in the Property or the CUP.

70. Plaintiff is before Judge Wohlfeil alleging he is the rightful owner of the Property and the sole owner of the CUP.

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[34] Exhibit I [ROA 72], Minute Order December 7, 2017.
Exhibit J [ROA 78], Minute Order entered December 12, 2017.
Exhibit K [ROA 129] Minute Order March 06, 2018.
Exhibit L [ROA 106] Minute Order entered January 25, 2018.
Exhibit B, p.1148-1149 [ROA 192]
Exhibit M, p. 2 ¶3 [ROA 222] Minute Order Dated April 27, 2018.
Exhibit B, p.01-02 [ROA 240].
Exhibit B, p.1227[ROA 253].

[35] It is of note that, though I have cited to only eight instances, there are other motions and hearing not referenced herein. In those other hearings and motions the same determinations are made. This would constitute *at least* eight instances.

71. By Plaintiff's own admission, setting aside the dispute of contract integration, he has knowingly undertaken a course of action to unlawfully acquire an undisclosed interest in a marijuana related CUP that he is prohibited from owning because of his history with illegal marijuana dispensaries. This is blatant and self-admitted fraud.

72. Judge Wohlfeil has never addressed why he is ratifying Plaintiff's scheme by allowing this case to continue when on undisputed facts, Plaintiff is perpetrating a fraud in violation numerous City of San Diego and State of California regulatory agencies.

73. Mrs. Austin is Plaintiff's attorney who is responsible for overseeing the CUP application for Plaintiff.

74. Thus, as more fully described below, a third-party could reasonably entertain the notion that Judge Wohlfeil is avoiding this issue to "protect" Mrs. Austin from the legal repercussions of violating numerous applicable disclosure laws and regulations and aiding and abetting her client in a scheme whose unlawful goal is to help her client acquire a prohibited interest in a marijuana related CUP. Alternatively, that Judge Wohlfeil believes Mrs. Austin to be ethical to a degree that he cannot impartially review the evidence he is presented with that proves otherwise.

B. PURSUANT TO THE PAROL EVIDENCE RULE THE NOVEMBER DOCUMENT IS NOT A COMPLETELY INTEGRATED AGREEMENT.

75. The issue of contract integration is dispositive in this matter. Plaintiff filed suit alleging that the November Document is the final agreement for his purchase of the Property.

76. A full detailed analysis on the issue of contract integration is described and argued in the Petition filed herewith as Exhibit A at pages 45 – 55. A summarized analysis of the issue of contract integration and the PER is set forth here:

77. "Whether a contract is integrated is a question of law when the evidence of integration is not in dispute." *Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 954. "***The crucial threshold inquiry, therefore, and one for the court to decide, is whether the parties intended their written agreement to be fully integrated.*** [Citations.]" *Brandwein v. Butler* (2013) 218 Cal.App.4th 1485, 1510 (emphasis added).

78. Generally, the application of the PER to determine whether a contract is a complete integration involves a two-step analysis:[36] In the first step, the factors to be considered include: (i) the language and completeness of the written agreement; (ii) whether it contains an integration clause; (iii) the terms of the alleged oral agreement and whether it might contradict those in the writing; (iv) whether the oral agreement might naturally be made as a separate agreement or, in other words, if the oral agreement were true, would it certainly have been included in the written instrument; (v) would evidence of the oral agreement mislead the trier of fact; and (vi) the circumstances at the time of the writing. *Kanno v. Marwit Capital Partners II, L.P.*, (*Kanno*), 18 Cal.App.5th 987, 1007. Additionally, (vii) the terms of a writing "may be explained or supplemented by course of dealing or usage of trade or by course of performance." CCP §1856(c).

79. Application of these seven factors here leads to only one reasonable and incontrovertible conclusion: the November Document was not *intended* to be a completely integrated agreement:

(i) The November Document does not appear to be a final agreement. "We start by asking whether the [November Document] appears on its face to be a final expression of the parties' agreement with respect to the terms included in that agreement. [Citation.]" *Id.* at 1007. In reviewing the November Document, it is readily apparent that it is not – it is three sentences long and is missing many essential terms when compared to even a standard real estate purchase agreement, much less one that has a complicated condition precedent requiring approval of a CUP by the City for a business in the emerging and highly regulated marijuana industry. It also has basic grammar and spelling mistakes (*e.g.*, "contacts" instead of "contracts"). Unlike the writings in *Kanno*, the November Document is not "lengthy, formal; [or] detailed[.]" *Id.* Given its short length, its lack of formality, its simplicity given the complicated subject matter it was intended to cover and its grammar and spelling mistakes, these factors weigh in favor of a finding that the November Document does not meet the criteria to be a completely integrated agreement.

(ii) The November Document does not contain an integration clause. The presence of an integration clause is given great weight on the issue of integration and it is "very persuasive, if not

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[36] *See Gerdlund v. Elec. Dispensers Int'l* (1987) 190 Cal.App.3d 263, 270; *Banco Do Brasil, S.A. v. Latian, Inc.* (1991) 234 Cal.App.3d 973, 1001; *Kanno, supra*, at 1007.

controlling, on the issue." *Masterson v. Sine* (1968) 68 Cal.2d 222, 225. Conversely, the lack of an integration clause, as here, is evidence the writing is not completely integrated. *Esbensen v. Userware Internat., Inc.* (1992) 11 Cal.App.4th 631, 638. Thus, this factor weighs in favor of a finding the November Document is not completely integrated.

(*iii*) ***The terms of the oral JVA do not contradict the November Document.*** In determining whether a writing was intended as a final expression of the parties' agreement, "collateral oral agreements" that contradict the writing cannot be considered. *Banco Do Brasil, supra*, at 1002-1003. The fact that the November Document does not state it will provide for Defendant's equity position does not mean its *silence* on the subject is a contradiction as Plaintiff argues. As the seminal case of *Masterson* makes clear, silence on a term allows the introduction of extrinsic evidence to show the parties intent on that matter. *Masterson, supra*, at 228-231.

(*iv*) ***The oral agreement – the JVA – would not have been included in the November Document that was meant to be a receipt.*** Where a "collateral" oral agreement is alleged, the court must determine whether the subject matter is such that it would "certainly" have been included in the written agreement had it actually been agreed upon; or would "naturally" have been made as a separate agreement. *Id.* at 227. Here, the terms of the JVA as alleged by Defendant are consistent with the November Document and the Confirmation Email, both of which provide direct, undisputed evidence that the November Document was meant to be a receipt by Defendant of $10,000 to be applied toward the total agreed-upon $50,000 NRD. As the November Document was meant to be a *receipt*, it is *natural* that it would not have all the material terms reached in the JVA. Furthermore, it is *natural* that the November Document was created and notarized as part of the JVA as Plaintiff provided Defendant the $10,000 in CASH. No reasonable party would provide such a material amount in cash without ensuring adequate proof of its receipt.

(v) ***A fact finder would not be misled by the admission of the Confirmation Email and other parol evidence.*** Evidence of a collateral oral agreement should be excluded if it is likely to mislead the fact finder. *Id.* The court properly exercises its discretion by weighing the probative value of the extrinsic evidence against the possibility it may mislead the jury. *See* Evid. Code §352; *Brawthen v. H & R Block, Inc.* (1972) 28 Cal.App.3d 131, 137-138 ("[*Masterson*] points out that evidence of the

'oral collateral agreements should be excluded only when the fact finder is likely to be misled....' ***This permits a limited weighing of the evidence by the trial court for the purpose of keeping 'incredible' evidence from the jury.***") (emphasis added). The undisputed Text and Email Communications are clear and not "incredible." Simply stated, the evidence would not mislead the fact finder and actually clearly establish what took place – the parties were still reducing the JVA to writing when the relationship soured because Defendant confronted Plaintiff about having submitted the CUP application on the Property without finalizing the agreement or providing the remainder of the NRD.

(vi) ***The circumstances at the time of writing clearly prove the parties did not intend the November Document to be a completely integrated agreement.*** A critical point noted by the *Kanno* court in reaching its decision was the following oral exchange: "[plaintiff] insisted that [defendant] 'promise this to me.' [Defendant] paused and then said, '*[o]kay, [plaintiff], I promise.*'" *Kanno, supra,* at 1009 (emphasis added). Relying heavily on that exchange, the *Kanno* court found that "[t]he evidence supports a finding that the parties intended the terms of the [oral agreement] to be part of their [written] agreement." *Id.* Here, exactly as in *Kanno*, Defendant emailed Plaintiff asking him to specifically confirm in writing (*i.e.*, promise) that a "final agreement" would contain his "10% equity position" and Plaintiff clearly and unambiguously did so: "*No no problem at all.*" Exhibit B, p.497.

(vii) ***Plaintiff's course of performance and conduct explains the meaning of the November Document – it was meant to be a receipt.*** "The law imputes to a person the intention corresponding to the reasonable meaning of his language, acts, and conduct." *H. S. Crocker Co. v. McFaddin* (1957) 148 Cal.App.2d 639, 643. With the exception of the days leading up to the filing of the underlying suit by Plaintiff, Plaintiff's language, actions, and conduct all reflected that *he* believed that he and Defendant and were joint-venturers: (i) in response to Defendant's March Request Email, Plaintiff sent the Partnership Confirmation Text; (ii) in response to Defendant's comments stating the drafts Plaintiff forwarded did not contain his equity position, Plaintiff forwarded revised drafts that did provide for Defendant to receive a portion of the net profits (albeit, not an equity position); (iii) at the same time, Plaintiff continued to have the CUP application for the Property processed, which, per his own Complaint, would require months – if not years – and significant capital investment. Exhibit B, p.625, ln.22 – p.626, ln.1.

80. In addition, Plaintiff's March Request Email is as damning as the Confirmation Email – Plaintiff is asking ***of*** Defendant a concession from his ***established obligation*** to pay $10,000 a month. Exhibit B, p.541-542. Plaintiff's own language offers clear additional evidence that there was an agreed-upon collateral oral agreement not included in the November Document: payments of $10,000 a month.

81. In sum, all seven factors lead to one irrefutable conclusion: the November Document was not intended to be a completely integrated agreement for the Property.

82. Pursuant to the second step: the parol evidence is admissible as it helps explain and interpret the November Document for what it was intended to be: a memorialization of Defendant's receipt of $10,000 and not the "final agreement." Additionally, the parol evidence is evidence of a *collateral oral agreement* – the JVA.

83. Judge Wohlfeil has never undertaken the above analysis.

84. Plaintiff's argument in opposition to the above contract integration analysis is his oral allegation, raised for the first time in his April 2018 Declaration, that Defendant disavowed the equity interest promised to him by Defendant in his Confirmation Email. Plaintiff's oral allegation is barred by the PER and the Statute of Frauds. Furthermore, because Plaintiff was a licensed real estate agent for over 25 years, he cannot claim any form of detrimental reliance regarding his allegation that Defendant orally disavowed the equity position promised to him by Plaintiff in the Confirmation Email as the law imputes to him knowledge of the Statute of Frauds.

C. THE COURT HAS MADE FACTUALLY UNSUPPORTED FINDINGS AND VIOLATED WELL-ESTABLISHED RULES OF LAW.

85. Judge Wohlfeil has made various unsupported rulings and procedurally improper orders in this matter. The three most egregious rulings that demonstrate clear error, resulting in this case being prolonged to Plaintiff's benefit and Defendant's detriment, are:

86. On January 25, 2018 Judge Wohlfeil denied defendants Writ Petition in the City Action. The City Action is premised on the same facts as in this action. The denial was based on Judge Wohlfeil's reasoning that Defendant is not likely to prevail because the evidence demonstrates that he has not submitted his own separate and competing CUP application and that he would not sustain irreparable harm. *See* Exhibit L, page 3. As to the first point regarding a new application, Judge

Wohlfeil ignores the facts that 1) Defendant was initially not allowed to submit an application by the City; and 2) once the City did allow him to submit a competing application, his CUP would have been severely disadvantaged because the "first come, first serve" nature of application processing by the City. Judge Wohlfeil gave no further facts to support his ruling.

87. On April 13, 2018, Defendant's noticed motion to expunge the *Lis Pendens* on the property ("LP Motion") was denied, the trial court's minute order denying the motion makes two factually false statements that were the premises of its ruling. In other words, the "facts" that the trial court thinks are "facts" and which justify its rulings are plainly false:

i. First, "documents Defendant offers in support of the motion were created *after* November 2, 2016;" and

ii. Second, that the contract drafts back and forth "appear to be unsuccessful attempts to negotiate changes to the original agreement."[37]

88. The crucial document, the Confirmation Email was created on the same day as the November Document, only hours later.

89. As previously noted the agreements back and forth never mention a renegotiation, employment, or any other statement which would conclude that these are attempts to do anything other than memorialize an already established agreement, especially when coupled with the email and text communications.

90. In addition to summary denial of the MJOP on July 13, 2018, the Court also denied Defendant's Request for Judicial Notice of Plaintiff's declaration. There are three critical issues that are raised by the trial court's improper denial of Defendant's Request for Judicial Notice of Plaintiff's declaration. They are particularly important because this single ruling can, separate from the other evidence and arguments presented herein, provide the basis that could reasonably lead a third-party to believe the trial court was not acting impartially:

First, the trial court stated "even if I were to grant the request to take judicial notice of a declaration..."[38] Respectfully, the trial court does not have the discretion to deny taking judicial notice

[37] Exhibit B, p.1148-1149 [ROA 192]
[38] Exhibit B, p. 11-15

of the declaration. As clearly stated by the appellate court in *Four Star Electric, Inc. v. F & H Construction* (1992) 7 Cal.App.4th 1375, 1379: "[Defendant] requested the trial court to take judicial notice of pertinent portions of court files in the prior actions. ***The trial court was required to do so upon request*** (Evid. Code, § 452, subd. (d), 453)[.]" *Id.* at 1379 (emphasis added). Counsel cited *Four Star* in his Reply and proved that he met the requirements pursuant to CCP §§ 452 and 453. Thus, though the trial court was not required to take as true the matters asserted within the declaration, it was required to take notice of the declaration itself and, in accordance with the law, analyze the statements therein. It did not.

Second, the trial court's refusal to take judicial notice appears to be based on a hearsay objection (given the trial court's reference to "party opponents" and prior rulings).[39] This position is error because the declaration in question is a judicial admission and does not constitute hearsay. However, assuming the concept of hearsay did apply, the trial court's ruling would still be incorrect because:

(i) the statement does not need to be taken for its truth; and

(ii) there are several clear exceptions to the hearsay rule that would apply if the concept of hearsay were applicable.[40] The exceptions include:

a. The crucial "statement" in this case is the Confirmation Email that states: "no, no problem at all." The trial court did not need to take the statement for the truth asserted therein, that in fact his confirmation would be "no problem," but rather it should have taken judicial notice that the statement was made, making it a judicial admission and putting the onus on Plaintiff to provide an explanation that is not "inherently incredible." In fact, the trial court has broad discretion to simply disregard testimony that is "inherently incredible" even if there is no adverse testimony to combat the statement;

b. in the hearsay construct, the statement can be used solely as impeachment evidence, again not offered for its truth, but rather to show that Plaintiff's Complaint is contradicted by his declaration; and

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[39] Counsel notes that in a prior ruling, specifically in the trial courts tentative ruling [ROA 191], it sustained Plaintiffs objections to request for judicial notice which was made primarily on hearsay grounds.

[40] See California Evidence Code § 1200 *et seq.*

c. the statement is clearly an admission by a party opponent and/or an inconsistent statement as it contradicts the very basis of Plaintiff's Complaint alleging the November Document is a completely integrated agreement.[41]

Third, the trial court stated it "wasn't persuaded that even if I were grant the request to take judicial notice of a declaration granted of a party opponent, it's still not dispositive of the entire complaint."[42] This is clearly incorrect and Counsel cannot understand what line of reasoning the trial court undertook to reach such a conclusion. Plaintiff brought forth four causes of action,[43] three of them are derivative and only exist if the primary cause of action for breach of contract is valid. As argued above, and further elaborated upon in the Writ Petition, without the breach of contract cause of action, Plaintiff's remaining three causes of action necessarily fail:

(i) "The essence of the implied covenant of good faith ... is that ' "neither party will do anything which injures the right of the other to receive the benefits of the agreement" ' [citations]." *Commercial Union Assurance Companies v. Safeway Stores, Inc.*, 26 Cal.3d 912, 918. Here, the agreement that Plaintiff premises his cause of action for breach of the implied covenant of good faith and fair dealing is shown to be a receipt. The reality is that Plaintiff is the one who violated the implied covenant of good faith and fair dealing by filing and maintaining this lawsuit fraudulently mispresenting a receipt as a final agreement. Simply stated, there first needs to be a valid agreement and Plaintiff's alleged agreement – the November Document - is not. Ergo, there cannot be a breach of the implied covenant of good faith and fair dealing.

(ii) "To qualify for declaratory relief, [a party] would have to demonstrate its action presented two essential elements: (1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to [the party's] rights or obligations." *Jolley v. Chase Home Fin., LLC* (2013) 213 Cal. App. 4th 872, 909. Here, the "proper subject" of declaratory relief Plaintiff seeks is "a judicial determination of the terms and conditions of the written agreement as well as of the rights, duties, and obligations of plaintiff GERACI and defendants thereunder in

[41] *See* California Evidence Code § 1200 *et. seq.*
[42] Exhibit B, p. 12 ln 21-24 (emphasis added).
[43] Exhibit B, p.624-690 [ROA 1] (Cause of Action in Plaintiff's complaint are: Breach of Contract, Implied Covenant of Good Faith, Specific Performance, and Declaratory relief.)

connection with the purchase and sale of the PROPERTY by COTTON to GERACI or his assignee."[44] In other words Plaintiff's request for declaratory relief is predicated on the allegation that the November Document is a purchase agreement for the sale of the Property. As proven above, it is not. It is a receipt. Therefore, Counsel fails to understand how this cause of action would survive.

(iii) "To obtain specific performance, a plaintiff must make several showings, in addition to proving the elements of a standard breach of contract." *Darbun Enterprises, Inc. v. San Fernando Cmty. Hosp.* (2015) 239 Cal. App. 4th 399, 409. Again, as with the two causes of action above, this cause of action is predicated upon Plaintiff "proving the elements of a standard breach of contract" which he cannot do as the November Document is not a contract. *Id.* Thus, Counsel is unclear how this cause of action can survive if the trial were to adjudicate, pursuant to the PER, that the November Document is not a completely integrated agreement; such a finding, on these facts, would prove that Plaintiff committed fraud by misrepresenting the November Document as a final agreement. In short, the trial court's rulings referenced above are predicated on what the trial court believes to be facts that are incorrect and laws that are not applicable and/or are misapplied.

91. To summarize, and to be absolutely clear on this point, when the trial court denied Defendant's MJOP, the trial court implicitly found the following factual allegations by Plaintiff to NOT be "inherently incredible." Or, in other words, ***this is Plaintiff's explanation of the Confirmation Email and the trial court finds the following to be credible***:

(i) *Within hours* of the parties finalizing their agreement on November 2, 2016, Defendant sent an email to Plaintiff pretending that the JVA had been reached and in which Defendant was already promised a very specific "10% equity position;"

(ii) Plaintiff to have mistakenly confirmed in writing, at Defendant's specific request for written confirmation, Defendant's pretend equity position within hours of the November Document being executed;

(iii) Plaintiff, a licensed Real Estate Agent (at the time) for over 25 years, to have never sought in any manner to document the fact that he mistakenly sent the Confirmation Email despite knowing its legal import under the Statute of Frauds;

[44] Exhibit B, p.629, ln. 1-5

(iv) for Plaintiff to have realized, over a year after filing suit, that he should raise the Oral Disavowment; and

(v) that Plaintiff did so, coincidentally, in response to Defendant's motion citing, for the first time, *Riverisland* and *Tenzer* preventing Plaintiff from using the PER as a shield to bar parol evidence that is proof of his own fraud. (*Tenzer v. Superscope, Inc.* (1985) 39 Cal.3d 18; *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Ass'n* (2013) 55 Cal.4th 1169).

D. DISQUALIFICATION FOR CAUSE

92. There are two often-cited cases that set forth the standard and analysis that mandate Judge Wohlfeil's recusal per this Statement:

(a) First, in *Hall v. Harker* (*Hall*) (1999) 69 Cal.App.4th 836, a malicious prosecution case was subject to reversal when the trial judge revealed clear bias regarding defendant's profession, *i.e.*, that attorneys tend to initiate and churn litigation for financial gain, regardless of merits of the case or damage to defendant, and then made credibility determinations against defendant on a probable cause issue that was central to the case. *Id.* at 843 ("Whether [attorney] initiated [party's] cross-complaint without probable cause and for an improper purpose was the central issue in the malicious prosecution case against him. [Attorney], of course, maintained he believed his client's version of the facts and presented evidence to support the reasonableness of that belief. The trial judge however, made credibility findings that rejected [Attorney's] story and that of his supporting witnesses. ***It is difficult to imagine a more direct connection between the judge's expressed bias and the gravamen of the case before him.***") (emphasis added).

Here, even more egregious than *Hall*, Judge Wohlfeil has consistently, and without ever providing his reasoning for doing so, (i) turned a case-dispositive issue that is a purely a question of law into a factual dispute; and then (ii) made credibility determinations of the evidence on the case-dispositive issue against Defendant without any evidentiary support (in some instances, in direct and unexplained contradiction of undisputed evidence and controlling case law).

(b) Second, in *Rohr v. Johnson* (1944) 65 Cal.App.2d 208 the court stated: "The mere fact that a judge entertains a ***general*** belief in the honesty of someone he knows is neither unusual nor

indicates that he has such a ***fixed opinion*** as to impair his ability to weigh any evidence involving the acts of that person." *Id.* at 211 (emphasis added). In *Rohr*, the court did not find that the trial judge was biased, noting "[i]t does not here appear that there was any conflict between the testimony produced by the respective parties or that the judge was in any way called upon to decide which of two sets of witnesses was telling the truth. At best, any showing of bias is not strong, and it is very questionable whether the showing thus made could be held sufficient to show the existence of bias." *Id.*

Here, application of the principles articulated in *Rohr* mandate recusal of Judge Wohlfeil because:

i. Judge Wohlfeil's belief in the honesty of Weinstein and Mrs. Austin is not "general" as in *Rohr* because whether this action was ***specifically*** filed and/or maintained by them as a malicious prosecution action goes straight to the issue of the honesty, integrity and credibility of Weinstein and Mrs. Austin. Judge Wohlfeil's "***fixed opinion***" – that Weinstein and Mrs. Austin are incapable of acting unethically by filing/maintaining a lawsuit lacking probable cause – prejudices Defendant because it does not *even allow for the possibility* that this case was filed for the purpose of coercing Defendant into settling with Plaintiff without regard to the merits of Plaintiff's Complaint. Judge Wohlfeil's fixed opinion is causing irreparable harm to Defendant by forcing him to endure the hardships of a meritless litigation action. This, whether inadvertent or unintentional, has further aided Plaintiff and his counsel in their unlawful scheme to prevail via a malicious prosecution action.

ii. The representations and factual assertions of Mrs. Austin to the trial court, in her advocacy of Plaintiff's right to control over the Property, have been that the November Document - executed on November 2, 2016 - is a completely integrated agreement for the sale of the Property. The declaration of Hurtado, a former practicing attorney in the State of New York and California federal judicial law clerk, declares that on March 6, 2017, Mrs. Austin directly and unambiguously stated that the November Document is ***not*** a completely integrated agreement for the sale of the Property. Hurtado's testimony directly contradicts Mrs. Austin's factual representations to this court: one of these two parties, both of whom completely understand the seriousness of violating ethical rules and laws by fabricating material evidence and engaging in a course of conduct meant to ***intentionally*** deceive a trial court, has *knowingly* and *willfully* made a false material factual statement to this Court. Thus, unlike in

Rohr, "here [it does] appear that there [is a] conflict between the testimony produced by the respective parties [and] that the judge [has been] called upon to decide which of two sets of witnesses was telling the truth." *Id.* However, Judge Wohlfeil's *fixed opinion* that Mrs. Austin is incapable of acting unethically (*i.e.*, lying), on the *threshold* and *case-dispositive* issue, directly and self-evidently prejudices Defendant as it is serving to *force* him to continue in a litigation matter that is grinding him down financially, physically and mentally; thereby serving to coerce him into settling a meritless action.

93. Summarized, Counsel's position is that it can *appear* that Judge Wohlfeil's fixed opinion and/or bias has led him to improperly turn a pure question of law into a factual dispute, so he can then make unmerited credibility determinations regarding evidence against Defendant because of his personal relationship with Weinstein and Mrs. Austin. If the pure question of law – whether the November Document is a completely integrated contract – were appropriately analyzed via the PER and well-settled case law, then Weinstein and Mrs. Austin would be open to a cause of action for malicious prosecution pursuant to *Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 349 ("we hold that terminations based on the PER are favorable for malicious prosecution purposes.").

94. In other words, if Judge Wohlfeil has (i) incorrectly turned a legal dispute into a factual dispute and (ii) made rulings that are neither supported by facts nor law, then a "person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial" (CCP § 170.1(a)(6)(A)(iii)) because it can reasonably appear that Judge Wohlfeil is using his position as an Officer of the Court to "protect" his "friends" - Weinstein and/or Mrs. Austin - from a malicious prosecution action because he has a favorable "[b]ias ... toward a lawyer in the proceeding" (CCP § 170.1(a)(6)(B)).

95. An alternative theory, that a third-party could reasonably entertain, is that Judge Wohlfeil is simply over-burdened and assumed that this matter could not be as simple as described by Defendant (*i.e.*, one email dispositively proves that Plaintiff is committing fraud and Weinstein/Mrs. Austin brought forth a malicious prosecution action). Thus, Judge Wohlfeil simply ignores the submissions by Defendant and *trusts* that Weinstein/Mrs. Austin are ethical and would be bounded in their arguments based on facts. If such is the case, Judge Wohlfeil has made a serious mistake; based on *undisputed* evidence and the PER, it is clear that Weinstein and Mrs. Austin have made factual representations and

arguments they know to be false. While it is impossible for Counsel to truly understand the motives for Judge Wohlfeil's rulings, being intimately familiar with every piece of evidence in this action, it is clear Judge Wohlfeil has been remiss in his duties.

96. Thus, whatever the reason, in the interest of justice, Judge Wohlfeil should immediately recuse himself from any further actions in this matter. At this point, even if Judge Wohlfeil were to now understand the sheer simplicity of the evidence and facts at issue here, the objective standard has been met. Furthermore, Defendant should not be put in a position in which he "hopes" that throughout the remainder of the litigation Judge Wohlfeil would be capable of being impartial. On that note, assuming there are future adverse rulings to Defendant, they would be overshadowed by the specter that Judge Wohlfeil was ruling in retaliation for Counsel having brought forth this Statement seeking his disqualification in defense of his client's rights.

D. THIS PETITION (STATEMENT OF DISQUALIFICATION) IS TIMELY

97. CCP §170.3(c)(1) provides that a "[Statement of Disqualification] shall be presented at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification." In light of the facts and circumstances set forth below, the timeliness of Counsel's presentation of this Statement is statutorily complaint and consistent with relevant controlling case law.

98. As discussed above, Counsel first appeared in this case to represent Defendant on a limited scope for the sole purpose of drafting, filing and arguing the LP Motion and the related *ex parte* application filed in April 2018. Thereafter, Counsel became attorney of record.

99. The trial court's order denying Defendant's LP Motion made numerous factually inaccurate and unsupported statements. The trial court allowed that motion to be heard on shortened time but denied Defendant the opportunity to file a reply and point out the flaws in Plaintiff's opposition papers. Counsel hoped it was simply a single instance of mistake by the trial court and that he could address the issue again in a subsequent motion.

100. On April 27, 2018, Counsel became attorney of record and represented Defendant on his Receiver Application on June 14, 2018. The trial court again summarily denied the relief requested, impliedly finding the November Document is a completely integrated agreement. But, again, because

it was an *ex parte* application, the issue of contract integration was not fully briefed (and never had been prior to then).

101. On June 20, 2018, Counsel filed the MJOP which fully briefed the issue of contract integration ***for the first time.*** Judge Wohlfeil issued a tentative ruling denying the MJOP on July 12, 2018. At the hearing on July 13, 2018 before this court, Counsel and co-counsel attempted to focus on the sole, dispositive issue of contract integration: specifically, that the November Document is not a completely integrated agreement. "Your Honor, ***the only thing we really want clarification*** in the matter whether or not the court deems the contract an integrated contract or not."[45] Judge Wohlfeil, in an exasperated demeanor that comes across in the transcript from the hearing, stated: (i) "You know, we've been down this road so many times, counsel. I've explained and reexplained the court's interpretation of your position. I don't know what more to say," and (ii) "we've addressed that in multiple motions. I'm not going to go back over it again at this point in time."[46]

102. Judge Wohlfeil, again, has NEVER addressed the threshold and case-dispositive issue of contract integration. And it did not become apparent to Counsel, until the July 13, 2018 hearing that Judge Wohlfeil could reasonably appear to be avoiding the issue of contract integration.

103. As a practical matter, it is noteworthy that, immediately following Counsel's discovery of Judge Wohlfeil's fixed opinion evidenced in his ruling on the MJOP, Counsel was preparing for trial, drafting other filings in this matter while simultaneously preparing this statement which now includes information from the August 2, 2018 hearing where a continuance of the August 17, 2018 trial was granted. Counsel dedicated substantial amount of time to drafting a lengthy Petition for Writ in this matter with the Court of Appeals which was filed on August 30, 2018.

104. Additionally, Counsel had to research and file a Petition for Review with California Supreme Court for the City Action which was filed on August 27, 2018 in order to preserve Defendant's appeal or his appeal would be lost forever. This petition is currently under review with the California Supreme Court. Counsel is primarily a criminal defense attorney and therefore spends much of the regular business day in court and his only opportunity to research and draft what are novel civil law

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[45] Exhibit B, p. 13, ln. 19-21 (emphasis added).
[46] *Id.* at ln.12-15, ln. 22-24

issues, to him, take place in the evening and on weekends. As an example, this Statement also required substantial time to research, draft and prepare for filing as Counsel has never had to address the process for seeking the disqualification of a judge. Thus, this Statement is being provided at the earliest time practical given Counsel's other time sensitive obligations.

105. In *Christie v. City of El Centro* the trial court set aside a nonsuit and dismissal in favor of the city and its police department. The trial court granted a new trial after finding that the previous judge who granted the nonsuit was disqualified. It held that as a matter of law the judge was disqualified at the moment he had a conversation with a previously disqualified judge in the same matter. Having found the judge who granted nonsuit disqualified to rule on the matter, the trial court set aside the resulting dismissal. The Court of Appeal affirmed that determination, emphasizing in its opinion that "***disqualification occurs when the facts creating disqualification arise, not when disqualification is established.***" *Christie v. City of El Centro* (2006) 135 Cal.App.4th 767, 776 (emphasis added) (citing *Tatum v. Southern Pacific Co.* (1967) 250 Cal. App. 2d 40, 43; *Urias v. Harris Farms, Inc.* (1991) 234 Cal. App. 3d 415, 422–427.

106. Here, it was not until *after* Counsel had fully briefed the motion in the MJOP ***and*** Judge Wohlfeil incorrectly and in a frustrated manner stated he had already addressed the threshold and case-dispositive issue of contract integration, that Counsel became aware of the "facts" (*i.e.*, Judge Wohlfeil's fixed opinion/bias) giving rise to this Statement. Counsel, now, respectfully submits this Statement at the earliest possible opportunity. *See* CCP §170.3(c)(1) "at [his] earliest practicable opportunity after discovering the facts constituting the ground for disqualification."; *North Beverly Park Homeowners Ass'n v. Bisno* (2007) 147 Cal.App.4th 762, re'hrg denied, rvw. denied ("The issue of disqualification must be raised at the ***earliest reasonable opportunity*** after the party becomes aware of the disqualifying facts.").

V. CONCLUSION

A court is not required to determine whether there is actual bias. As noted, the objective test is whether a reasonable member of the public at large, aware of all the facts, would fairly entertain doubts as to the judge's impartiality. *See Christie v. City of El Centro* (2006) 135 Cal. App. 4th 767, 776; *Housing Authority of the County of Monterey v. Jones* (2005) 130 Cal. App. 4th 1029, 1041–1042;

Briggs v. Superior Court (2001) 87 Cal. App. 4th 312, 318–319; *Ng v. Superior Court* (1997) 52 Cal. App. 4th 1010, 1024.

Cumulatively, the facts and cases referenced above clearly meet this objective standard:

First, Plaintiff and his agents knowingly violated numerous City and State disclosure laws and regulations when they omitted Plaintiff's name as a party who has an interest in the Property and the CUP;

Second, the case-dispositive issue is whether the November Document is a completely integrated agreement.

Third, the Confirmation Email and other parol evidence is undisputed evidence that the November Document is not a completely integrated agreement.

Fourth, Judge Wohlfeil has, on no less than ***eight occasions***, impliedly and/or directly found that the November Document is a completely integrated agreement.

Fifth, Judge Wohlfeil has never provided his legal reasoning for why the Confirmation Email, pursuant to contract interpretation laws and well-settled case law, does not disprove Plaintiff's contention that the November Document is a completely integrated agreement.

Sixth, Defendant has, on no less than ***six occasions***, requested that Judge Wohlfeil please provide his reasoning for finding that the November Document is a completely integrated agreement. On more than ***two occasions*** Defendant has literally begged Judge Wohlfeil in writing and orally at hearings to explain why the Confirmation Email does not prove that the November Document is not a completely integrated agreement. *See, e.g.*, (***"I BEG the Court..."***)[47]

Seventh, some of the purported "facts" referenced by Judge Wohlfeil in support of his rulings represent clear abuses of discretion as the "facts" he references are not facts at all. The ***undisputed evidence*** provided by Plaintiff and Defendant directly contradict the factual findings upon which Judge Wohlfeil premised his rulings.

Eight, Judge Wohlfeil has stated, and the record in this action makes numerous references to, that he does not personally believe Weinstein and Mrs. Austin are capable of acting unethically by filing and/or maintaining a malicious prosecution action.

[47]Exhibit B, p. 22, ln. 21 - p. 23, ln. 1

Ninth, it is possible that this case was filed and/or maintained without probable cause (*i.e.*, could be a malicious prosecution action).

Tenth, if this case was filed and/or maintained without probable cause, then that means that Weinstein and Mrs. Austin potentially acted unethically.

Eleventh, the declaration of Hurtado declares that Mrs. Austin knows her representations to this court are false, which is to say that she is acting unethically (*i.e.*, arguing the November Document, executed in November of 2016, is a completely integrated agreement when she was working on the actual final agreements to effectuate the sale in March of 2017). Judge Wohlfeil's expressed opinion that counsel for Plaintiff would not act unethically is clearly "fixed" in light of the facts presented here and highly prejudicial to Defendant.

Twelfth, by allowing this matter to continue, Judge Wohlfeil has ratified Plaintiff's attempt to pursue an interest in the Property and by extension the CUP even though Plaintiff cannot legally own an interest in a Marijuana Outlet under state law.

Thirteen, if Judge Wohlfeil had addressed the threshold issue of contract integration and applied PER properly, the only logical conclusion is that the Confirmation Email (admitted to in Plaintiff's sworn declaration) prove the November Document is not a completely integrated agreement. The consequence of such a ruling would be that Weinstein and Mrs. Austin would be open to a cause of action for malicious prosecution. *See Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 349 ("[W]e hold that terminations based on the parol evidence rule are favorable for malicious prosecution purposes.").

"When the allegations of bias relate to factual issues, they are particularly troubling because the appellate court usually defers to the trial court's factual and credibility findings. [Citation.] Implicit in this time-honored standard of review is the assumption that such findings were made fairly and impartially." *Hall v. Harker* (1999) 69 Cal.App.4th 836, 841. Here, if nothing else, whether there exists prejudice or not, Judge Wohlfeil has repeatedly and inexplicably (i) avoided addressing the obvious fraudulent scheme that Plaintiff is engaged in via his agents in seeking to acquire a marijuana related CUP that he is prohibited from owning by law; (ii) falsely stated that he has addressed the threshold issue of contract integration when in fact he has not and has systemically refused to do so for over a

year; and (iii) gotten procedural and material case-dispositive facts wrong that, coupled with his comments as to the ethics of Weinstein and Mrs. Austin, make it impossible for a third-party to believe that Judge Wohlfeil can be impartial. Recusal is mandated.

Counsel respectfully notes that he is at a loss to understand Judge Wohlfeil's actions. He does not believe Judge Wohlfeil has intended to specifically harm Defendant, but, his actions are unjustified and are resulting in severe prejudice to Defendant. Plaintiff and bis attorneys are intelligent individuals who, as a result of Judge Wohlfeil's actions, had and continue to have the luxury of covering up their tracks and taking actions to unjustly mitigate their liability to Defendant. That Judge Wohlfeil's bias/fixed-opinion leads him to believe the preceding sentence is unfounded or some form of litigation-hyperbole is why Counsel is compelled to bring forth this Statement in defense of his client's rights.

VI. VERIFICATION

I, Jacob P. Austin, hereby declare under penalty of perjury that I drafted and have read the foregoing Verified Statement, and the facts stated herein are true and correct based upon my direct first-hand personal knowledge and information which I obtained through my review of the pleadings and documents filed in this matter on September 12, 2018.

DATED: September 12, 2018

JACOB P. AUSTIN

EXHIBIT A

IN THE COURT OF APPEAL OF THE S

CASE #: D074587

FOURTH APPELLATE DISTRICT – DIVISION ONE

DARRYL COTTON,

Defendant/Petitioner/Appellant,

v.

THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO,

Respondent.

LARRY GERACI, an individual; REBECCA BERRY, an individual; MICHAEL R. WEINSTEIN, an individual; SCOTT TOOTHACRE, an individual; FERRIS & BRITTON APC, a California corporation; GINA M. AUSTIN an individual; AUSTIN LEGAL GROUP APC, a California corporation; JIM BARTELL, an individual; BARTELL & ASSOCIATES, INC., a California corporation; ABHAY SCHWEITZER, an individual and dba TECHNE; AARON MAGAGNA, an individual; THE CITY OF SAN DIEGO, a public entity; M. TRAVIS PHELPS, MICHELLE SOKOLOWSKI, FIROUZEH TIRANDAZI, CHERLYN CAC, as individuals and as employees of THE CITY OF SAN DIEGO,

Real Parties in Interest.

Court of Appeal Case No. _____
(San Diego Superior Court Case No. 37-2017-00010073-CU-BC-CTL)

PETITION FOR WRIT OF MANDATE, SUPERSEDEAS AND/OR OTHER APPROPRIATE RELIEF

IMMEDIATE STAY REQUESTED ON AUGUST 28, 2018

JACOB P. AUSTIN [SBN 290303]
Law Office of Jacob Austin
1455 Frazee Road, #500, San Diego, CA 92108
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Attorney for Defendant/Petitioner/Appellant DARRYL COTTON

TO BE FILED IN THE COURT OF APPEAL — APP-008

COURT OF APPEAL FOURTH APPELLATE DISTRICT, DIVISION ONE	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 290303 NAME: JACOB P. AUSTIN FIRM NAME: The Law Office of Jacob Austin STREET ADDRESS: 1455 Frazee Road, #500 CITY: San Diego STATE: CA ZIP CODE: 92108 TELEPHONE NO.: (619) 357-6850 FAX NO.: (888) 357-8501 E-MAIL ADDRESS: JPA@JacobAustinEsq.com ATTORNEY FOR (name): Defendant/Petitioner/Appellant DARRYL COTTON	SUPERIOR COURT CASE NUMBER: 37-2017-00010073-CU-BC-CTL
APPELLANT/ PETITIONER: DARRYL COTTON RESPONDENT/ REAL PARTY IN INTEREST: LARRY GERACI, an individual; REBECCA BERRY, an individual	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): Appellant/Petitioner DARRYL COTTON

2. a. [ ] There are no interested entities or persons that must be listed in this certificate under rule 8.208.
   b. [X] Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1) Michael R. Weinstein	Attorney representing Real Parties in Interest Geraci and Berry
(2) Scott Toothacre	Attorney representing Real Parties in Interest Geraci and Berry
(3) Ferris & Britton APC, a California corp.	Law firm at which Michael R. Weinstein & Scott Toothacre practice
(4) Gina M. Austin	Former attorney for Geraci & current attorney for Aaron Magagne
(5) Austin Legal Group APC, California corp.	Law firm owned/operated by Gina M. Austin

[X] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: August 20, 2018

JACOB P. AUSTIN
(TYPE OR PRINT NAME)

Jacob P. Austin
(SIGNATURE OF APPELLANT OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-008 [Rev. January 1, 2017]

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Cal. Rules of Court, rules 8.208, 8.488
www.courts.ca.gov

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS - continued

ATTACHMENT 2

Name of Interested Entity or Person	Nature of Interest (*Explain*)
(6) Gina M. Austin, an individual	Attorney who formerly represented Geraci, and currently represents Aaron Magagna
(7) Austin Legal Group APC, a California corporation	Law Firm of Attorney Gina Austin which formerly represented Geraci, and currently represents Aaron Magagna
(8) Jim Bartell, an individual	Lobbyist providing services to Larry Geraci re CUP application for Petitioner's real property
(9) Bartell & Associates, Inc.	Lobbying firm providing services to Larry Geraci re pending CUP application for Petitioner's real property
(10) Abhay Schweitzer, an individual	Architect providing design and other services for Larry Geraci re pending CUP application for Petitioner's real property
(11) Abhay Schweitzer dba TECHNE	Fictitious Business Name under which Abhay Schweitzer does business providing design and other services for Larry Geraci re CUP application for Petitioner's real property
(12) Aaron Magagna, an individual	Owner of a recently-submitted CUP application for real property located at 6220 Federal Boulevard, City and County of San Diego, California
(13) M. Travis Phelps, an individual and employee of the City of San Diego	Deputy Attorney for the City of San Diego who represented the City of San Diego in a related case in the San Diego County Superior Court entitled *Cotton v. City of San Diego, et al.*, Case No. 37-2017-00037675-CU-WM-CTL
(14) The City of San Diego	The public entity which is processing the CUP applications for Petitioner's real property and the competing CUP application submitted by Aaron Magagna

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS - continued

(15) Michelle Sokolowski, an individual and employee of the City of San Diego	Deputy Director, City of San Diego Development Services Department, Project Submittal and Management Division who was involved in processing the CUP application for Petitioner's real property
(16) Firouzeh Tirandazi, an individual and employee of the City of San Diego	Former Development Project Manager, City of San Diego Development Services Department who was involved in processing the CUP application for Petitioner's real property
(17) Cherlyn Cac, an individual and employee of the City of San Diego	Development Project Manager, City of San Diego Development Services Department who was involved in processing the CUP application for Petitioner's real property

DECLARATION OF JACOB P. AUSTIN REGARDING REPORTERS' TRANSCRIPTS OF HEARINGS PURSUANT TO CRC 8.486(b)(3)

I, Jacob P. Austin, declare:

1. I am the attorney for Petitioner DARRYL COTTON in both this Appellate Petition and the San Diego Superior Court Case from which this Petition is taken entitled *Larry Geraci v. Darryl Cotton, et al.*, Case No. 37-2017-00010073-CU-BC-CTL ("Lower Court Case").

2. The facts contained herein are true and correct as of my personal knowledge, except those facts which are stated upon information and belief; and, as to those facts, I believe them to be true.

3. This declaration is submitted pursuant to California Rules of Court Rule 8.46(b)(3) to summarize the proceedings in the Lower Court Case relevant to this Petition.

4. For the reasons more fully discussed in this Petition, the litigation in the Lower Court Case has rendered Petitioner virtually indigent, such that he has been forced to sell off more and more of his interest in his real property to finance the litigation and to pay the cost of his basic daily needs.

5. Due to Petitioner's financial condition, he was unable to afford the cost of a court reporter for hearings on law and motion matters.

6. Given the gravity of Petitioner's Motion for Appointment of Receiver ("Receiver Motion") and Motion for Judgment on the Pleadings, I paid the cost for the court reporter, and certified copies of the transcripts of those hearings are included in Petitioner's exhibits at V1 E4 and V3 E21.

7. The hearing on the third law and motion matter directly relevant to the issues raised in this Petition is the April 13, 2018 hearing on Petitioner's Motion to Expunge Notice of Pendency of Action (*Lis Pendens*) ("LP Motion") (V1 E4 and V3 E18) is summarized below.

Petitioner's LP Motion

8. Petitioner's LP Motion was brought on the grounds, *inter alia*, that (a) an email sent to Petitioner by Plaintiff/Real Party in Interest Larry Geraci ("Geraci") (the "Confirmation Email") and other evidence presented in the case was undisputed, uncontroverted and case dispositive in nature because it proved that Petitioner and Geraci had never executed a final, legally-binding agreement for the purchase of Petitioner's real property ("Property"), (b) Geraci had not met, nor could he ever meet, his burden of proof to establish by a preponderance of evidence the probable validity of any claim of an ownership interest in the Property, (c) Geraci's own writings constituted willful and knowing misrepresentations made for the specific purpose of defrauding Petitioner, (d) Geraci's case is meritless, and (e) the lawsuit and *lis pendens* were filed for the specific purpose of coercing Petitioner to settle despite the fact that Geraci's case was meritless.

9. Geraci opposed the motion arguing that the evidence was barred by the statute of frauds and parol evidence rule, and supported his argument with a declaration executed April 9, 2018 alleging, *inter alia*, that he had sent the Confirmation Email *by mistake* – the very first time he raised this "mistake" after having had numerous opportunities during the preceding eleven months since he filed the lawsuit. (*See* V2 E10.)

10. At the April 13, 2018 hearing, I argued that the *lis pendens* should be expunged because Geraci's case, premised on a breach of contract, lacked merit and, therefore, Geraci had no viable claim to the Property. I further argued that neither party had considered the document Geraci disingenuously claimed to be the parties' completely integrated agreement to be a final contract. Months of communications between the parties reflect only that the final contract had not been reduced to writing. And until filing his Complaint, Geraci never treated the document as the parties' contract, nor

did he even reference it while his attorney, Gina Austin, was writing and sending drafts of a Purchase and Sale Agreement for the Property.

11. I discussed the document referred to in my moving papers as "The Confirmation Email," and neither Judge Wohlfeil nor Geraci's counsel, Michael R. Weinstein, would even engage in that line of discussion.

12. I also made an oral motion at the Court take testimony of a witness at the hearing, my motion was denied on ground that the Court was not permitted to do so, notwithstanding the fact that a motion to expunge a *lis pendens* is one of the few motions when the Court may take testimony at hearing.

13. Following oral argument, the Court denied the LP Motion on the grounds set forth in its April 13, 2018 Minute Order. *See* V1 E3.

I declare under penalty of perjury according to the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 20, 2018 at San Diego, California.

JACOB P. AUSTIN

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Defendant/Petitioner Darryl Cotton ("Petitioner") respectfully petitions this Court for review of Respondent's orders denying (i) Petitioner's *Ex Parte* Application for Appointment of a Receiver ("Receiver Motion")[1] and (ii) Motion for Judgment on the Pleadings ("MJOP")[2] in San Diego Superior Court Case No. 37-2017-00010073-CU-BC-CTL.[3]

A single question of law – whether or not a three-sentence document is a completely integrated agreement – determines whether this Petition is meritorious and warrants the issuance of a writ. That single question of law is not only ***dispositive*** of both orders of which Petitioner is seeking review, it is also the ***case-dispositive*** issue in the underlying suit.

Prior to the rulings giving rise to this Petition, Petitioner was representing himself *pro se* and, given that he has no legal background, he was not able to adequately defend himself in this action. The two motions giving rise to the orders at issue here were prepared and submitted by counsel for Petitioner ("Counsel"), originally retained to represent Petitioner on a

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[1] V1 E1 p.2.*

***Exhibit Citation Key: Volume No. "V#," Exhibit No. "E#," Page No(s). "p.#," Line No(s). "ln.#."**

[2] V1 E2 p.4.

[3] Petitioner notes that resolution of this Petition will also effectively adjudicate a related appeal that is premised on the same facts at issue here: Petitioner's Appeal of Judgment After Order Denying Motion for Issuance of Peremptory Writ of Mandate in a related case – Court of Appeal Case No. D073766; San Diego Superior Court Case No. 37-2017-00037675-CU-WM-CTL. *See* V1 E3 p.6-9.

limited scope basis starting April 5, 2018, following which he substituted in to fully represent Petitioner in this action beginning May 4, 2018.

As proven herein, the action filed against Petitioner not only lacks merit but, given plaintiff/real-party-in-interest Larry Geraci's ("Geraci") judicial admissions in his declaration dated April 9, 2018, it is clear this suit should have been dismissed in the early stages of this litigation pursuant to the Parol Evidence Rule ("PER") and that it represents a malicious prosecution action. *See Casa Herrera, Inc. v. Beydoun* (*Casa Herrera*) (2004) 32 Cal.4th 336, 349 ("we hold that terminations based on the parol evidence rule are favorable for malicious prosecution purposes.").

I. INTRODUCTION

A. OVERVIEW

The gravamen of this Petition is incredibly simple: Is a three-sentence document executed on November 2, 2016 (the "November Document") by Geraci and Petitioner a completely integrated agreement for the sale of Petitioner's real property (the "Property") to Geraci?

Geraci filed the underlying suit against Petitioner in **March of 2017** premised exclusively on the allegation that the November Document is a completely integrated agreement. However, Geraci's sworn declaration executed in **April of 2018** admits that on the same day the November Document was executed, *at Petitioner's specific request for written assurance of performance*, Geraci confirmed via email that the November Document is not a "final agreement" for sale of the Property (the "Confirmation Email"). Furthermore, also in his **April 2018** declaration, for the first time since filing suit in **March of 2017**, Geraci alleged that he sent his Confirmation Email by *mistake*.

Of critical import is the fact that Geraci did not raise this "mistake" allegation until Petitioner, represented by Counsel, cited for the first time

controlling case law indisputably establishing that Geraci could not bar the admission of his Confirmation Email pursuant to the PER. *See Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Assn.* (*Riverisland*) (2013) 55 Cal.4th 1169, 1182 (quoting *Ferguson v. Koch* (1928) 204 Cal. 342, 347) ("'***[I]t was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud.***'") (emphasis added).

An immediate stay, coupled with appropriate writ relief, are necessary to stop what has already caused and continues to cause irreparable harm to Petitioner by forcing him to defend himself against a frivolous suit. *See Boy Scouts of America National Foundation v. Superior Court* (2012) 206 Cal.App.4th 428, 438 (writ review of order overruling demurrer was appropriate where resolution of issue in petitioner's favor "would have resulted in a final disposition" as to petitioner).

As proven below, Petitioner's case is as simple as described above. The fact that Petitioner, on these simple and undisputed facts, has been and continues to be coerced into selling his remaining interest in his Property to finance a clearly meritless suit represents a reality of our judicial system: it takes wealth to access justice. In this regard, this case represents a public policy concern as it "reinforce[s] an already too common perception that the quality of justice a litigant can expect is proportional to the financial means at the litigant's disposal." *Neary v. Regents of University of California* (*Neary*) (1992) 3 Cal.4th 273, 287.

B. AN IMMEDIATE STAY SHOULD ISSUE.

"Whether a contract is integrated is a question of law when the evidence of integration is not in dispute." *Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (*Founding Members*) (2003) 109 Cal.App.4th 944, 954; *see also* CCP § 1856(d). ***"The crucial threshold inquiry, therefore, and one for the court to decide, is***

whether the parties intended their written agreement to be fully integrated. [Citations.]" *See Brandwein v. Butler* (2013) 218 Cal.App.4th 1485, 1510 (emphasis added).

None of the evidence at issue in this action is disputed by either party. This Petition and the underlying suit could even be adjudicated solely on Geraci's Complaint and April 2018 declaration containing judicial admissions that negate the ***dispositive*** material allegation in his Complaint; that the November Document is a final agreement for his purchase of the Property.

Petitioner does not have, nor has he had, the financial resources to meet his basic personal financial obligations, much less to undertake discovery and other measures in preparation for a trial. Additionally, Counsel is almost exclusively a criminal defense attorney and has never undertaken a civil trial or an appeal/petition such as this; he is representing Petitioner outside the scope of their original agreement solely because he believes this action against Petitioner is frivolous and its current procedural posture reflects an egregious miscarriage of justice. Petitioner respectfully requests that this Court please issue an immediate stay while it reviews this Petition. *See Alan S. v. Superior Court* (2009) 172 Cal.App.4th 238, 241 (granting of extraordinary writ because party's petition presents an important issue regarding access to justice for *pro per* litigants with limited financial resources).

Additionally, pursuant to CCP § 923, this Court has virtually unlimited discretion to make orders to preserve the *status quo* in protection of its own jurisdiction, including issuance of a stay order other than supersedeas. CCP § 923; *People ex rel. San Francisco Bay Conservation & Development Com. v. Emeryville* (1968) 69 Cal.2d 533, 538-539. Once this Court understands the simplicity of this case, it becomes self-evident that Geraci is motivated to limit his liability to Petitioner. As argued in the

Receiver Motion (and below), the steps being taken by Geraci, if allowed to continue, will deprive this Court of its jurisdiction and its ability to vindicate Petitioner's rights at a later point in time. Geraci is taking steps to sabotage the main subject matter of the dispute in this action: an application for a Conditional Use Permit (the "CUP") for a Marijuana Outlet at the Property currently being processed by the City of San Diego (the "City"). In protection of its jurisdiction, this Court should immediately issue a stay and appoint a receiver to manage the CUP application process pending final resolution of this action. CCP § 923 ("The provisions of this chapter shall not limit the power of a reviewing court... ***to make any order*** appropriate to preserve the *status quo*, the effectiveness of the judgment subsequently to be entered, or otherwise in aid of its jurisdiction.") (emphasis added).

C. WHY WRIT RELIEF SHOULD BE GRANTED.

The Court should grant this Petition for the following reasons:

First, the underlying public policy issue here is of widespread interest. *Brandt v. Superior Court* (1985) 37 Cal.3d 813, 816. This action represents an abuse of the judiciary as Respondent is being used as an instrument to effectuate a miscarriage of justice.

Second, each of Respondent's orders is clearly erroneous as a matter of law and substantially prejudices Petitioner's case. *Babb v. Superior Court* (*Babb*) (1971) 3 Cal.3d 841, 851. As proven below, the facts are undisputed, incontrovertible, and inextricably lead to the conclusion that Respondent has erred in finding the November Document to be a completely integrated agreement.

Third, Petitioner lacks adequate means, such as a direct appeal, by which to attain relief. *See Fair Employment & Housing Com. v. Superior Court* (*Fair Employment & Housing*) (2004) 115 Cal.App.4th 629, 633 ("Where there is no direct appeal from a trial court's adverse ruling, and the

aggrieved party would be compelled to go through a trial and appeal from a final judgment, a petition for writ of mandate is allowed. Such a situation arises where the trial court has improperly overruled a demurrer."). Respondent's order denying Petitioner's MJOP is non-appealable. And, although the denial of the Receiver Motion is appealable (for which Petitioner filed an Amended Notice of Appeal on July 26, 2018),[4] Petitioner's extraordinary circumstances warrant extraordinary relief. *Hogya v. Superior Court* (1977) 75 Cal.App.3d 122, 128.

Notwithstanding Petitioner's blue-collar background and his lack of legal education, on such undisputed facts, Respondent should have adjudicated this matter on its own when presented with Petitioner's arguments (even if such arguments were presented in a legally unsophisticated manner by a *pro se* litigant). This case's continued existence is a miscarriage of justice and resolution via the standard appeal process – given Respondent's rulings and the fact that the sole issue of contract integration has been fully briefed – is inadequate and highly prejudicial as the ***threshold*** issue of contract integration is ***case-dispositive*** and negates the need for discovery and a trial. Pursuant to *Mon Chong Loong Trading Corp. v. Superior Court* (2013) 218 Cal.App.4th 87, 92, "where doing so would serve the interests of justice and judicial economy, an appellate court may use its discretion to construe an appeal as a petition for writ of mandate."

Fourth, Petitioner will suffer harm and prejudice in a manner that cannot be corrected on appeal. *Valley Bank of Nev. v. Superior Court* (1975) 15 Cal.3d 652. The basis of Petitioner's Receiver Motion was evidence that Geraci is taking steps to unlawfully sabotage the City's approval of the CUP application for the Property. As more fully described below, by sabotaging

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[4] V1 E5 p.17.

approval of the CUP application, Geraci will be able to greatly diminish his special and consequential damages due to Petitioner. ***At this point in time, the real driver behind the litigation is not Geraci's good faith belief in the merits of his case; rather, it is to prejudice Petitioner by unnecessarily prolonging this litigation while unlawfully taking extra-judicial actions to limit his liability to Petitioner arising from his breach of the contract.*** Specifically, Geraci is using the political influence of his hired lobbyist, Jim Bartell ("Bartell"), to attain approval of a CUP application for an adjacent property (the "Competing CUP") (V2 E9 p.593, ln.11-19; p.391 (Notice of Application for Conditional Use Permit for Marijuana Outlet dated April 5, 2018)) in order to preclude issuance of a CUP for Petitioner's Property, thereby enabling him to limit his liability to Petitioner. If approved, the Competing CUP application would bar issuance of the CUP for the Property because the two properties are located within 1,000 feet of one another. RJN 9 p.116 at §(a)(1) (§141.0504(a)(6), City of San Diego Ordinance No. O-20793, passed February 22, 2017).

New evidence recently discovered by Petitioner reveals that the Competing CUP application was submitted by an individual named Aaron Magagna ("Magagna") who is believed to be an agent of Geraci. This evidence includes but is not limited to the fact that Magagna is represented by both Gina Austin (Geraci's attorney) and Matthew Shapiro ("Shapiro"), who works extensively with Gina Austin and Bartell. V2 E9 p.593, ln.20-27.[5]

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[5] Petitioner notes that, on or about March 12, 2018, Counsel entered Respondent's predominantly vacant courtroom during a recess and observed Shapiro in plain clothes sitting one seat away from Petitioner and his

Materially, the evidence supporting the allegations against Bartell, purportedly a reputable individual with a history of extensive civil service (he is a former chief of staff for a U.S. Congressman), is third-party testimony from a mutual client ***of both*** Bartell and Shapiro. Their client, Ms. Corina Young, had a meeting with Bartell and Shapiro to discuss investment opportunities in Marijuana Outlets. At that meeting, Bartell stated he was getting the CUP application on Petitioner's Property denied because "everyone hates Darryl." V2 E9 p.593, ln.11-16. This comment by Bartell was made in or around December of 2017. Bartell is a political lobbyist hired ***by Geraci*** to get the CUP on Petitioner's Property approved. If Geraci's case was meritorious, Bartell would be using his influence to get the CUP on the Property approved, not to have it denied.

Finally, Geraci has ceased processing the CUP for the Property, whereas the Competing CUP is moving forward through the review process at unprecedented breakneck speed such that it is likely to be approved prior to the CUP application for the Property (despite the CUP application for the

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litigation investor while they were discussing Petitioner's case. When Counsel asked Shapiro why he was there, he replied that he was observing Respondent in preparation for an upcoming hearing before Respondent in another case. After discovering that Magagna had submitted the Competing CUP and was a client of Shapiro, Counsel emailed Shapiro on May 27, 2018 expressing his concern about a number of issues, including Shapiro's possible eavesdropping on the private conversations of Petitioner and his litigation investor in court in March 2018. In response, Shapiro admitted that he had lied to Counsel; the true reason he went to court that day was to "[scope] out" the hearing on Petitioner's case, but seating himself near Petitioner was "truly a coincidence." V2 E9 p.361, ln. 11-12; V2 E9 p.363-370.

Property having been submitted approximately 17 months before the Competing CUP), thereby substantially limiting Geraci's liability to Petitioner, the scope of which will be greater if the CUP application for the Property is approved.

As further described below, this is the Catch-22 in which Geraci and his agents find themselves: they must pretend they believe the November Document is a completely integrated agreement, necessarily requiring them to pursue approval of the CUP for the Property. In reality, however, they do not want the CUP for the Property to be approved because, by doing so, their financial liability to Petitioner will exponentially increase if this case is adjudicated on the merits.

D. ISSUE PRESENTED.

There is one single question that addresses whether Respondent has abused its discretion in denying Petitioner's Receiver Motion, his MJOP and whether this Petition qualifies for extraordinary writ relief: Is the November Document a completely integrated agreement for the sale of Petitioner's Property to Geraci?

E. COUNSEL'S REQUEST.

Should this Court deny this Petition, Counsel respectfully requests, on behalf of his client and himself, that it please provide its reasoning. The urgent basis of this request is that, since the inception of this action on March 21, 2017, Respondent has ***never once*** provided its reasoning for repeatedly finding the November Document to be a completely integrated agreement. It has failed to provide such reasoning despite repeated written

and oral requests by Petitioner[6] and Counsel.[7] Petitioner's belief, supported by Counsel's professional opinion (and whose ethical obligations require him to be truthful with his client), is that there is complete lack of any factual or legal support for Geraci's Complaint and Respondent's rulings. This belief by Petitioner – coupled with the fact that Respondent has stated from the bench that it is personally acquainted with opposing counsel and "does not believe they would act unethically"[8] by bringing forth a meritless case – has led Petitioner to believe that Respondent is actively conspiring against him with Geraci and opposing counsel.

On March 8, 2018, Petitioner underwent an Independent Psychiatric Assessment ("IPA") by Dr. Marcus Ploesser who works as a psychiatrist for the Department of Corrections for the State of California (in addition to his own private practice). Relevantly, his declaration summarizing his findings from the IPA states the following:

> Furthermore, [Petitioner]'s description of his nightmares include vivid scenes of violence towards the attorneys for plaintiff that he believes are not acting in a professional manner. [Petitioner] believes that the attorneys representing plaintiff are "in it together" with the plaintiff to use the lawsuit to "defraud" him of

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[6] *See, e.g.*, V1 E6 p.22, ln.21 – .23, ln.1 ("***I BEG the Court at the hearing to please articulate to me (i) which facts in the record and (ii) on what legal authority it was persuaded that I am not going to prevail on the merits on my cause of action for breach of contract.***") (emphasis in original).

[7] *See, e.g.*, V3 E21 p.1229-1234.

[8] V1 E8 p.254, ln.6-10.

> his property. This point is one of the main foci of his expressed mental distress.
>
> [Petitioner]'s distress due to his perception of a conspiracy against him by attorneys is amplified by what he believes is the Court's disregard for the evidence and arguments he has presented. He states he has never been provided the reasoning for the denial of any relief he sought. ***[Petitioner] expressed that at certain points during the course of the litigation he believed the trial court judge was part of the perceived conspiracy against him.***

V1 E8 p.336, ln.6-21 (emphasis added).

Thus, in the interest of justice and for the mental well-being of Petitioner, Counsel and Petitioner respectfully request that this Court please not issue a summary denial should it find that, notwithstanding the Confirmation Email (and other parol evidence), the November Document ***is*** a completely integrated agreement.

F. AUTHENTICITY OF EXHIBITS.

All exhibits accompanying this Petition are true and correct copies of the original documents on file with the trial court. Such exhibits are incorporated by this reference as though fully set forth herein. The exhibits are paginated consecutively, and page references in this Petition are to the consecutive pagination.

II.
MATERIAL FACTUAL AND PROCEDURAL BACKGROUND.

A. NEGOTIATIONS FOR THE PROPERTY.

In the Summer of 2016, Geraci was one of several parties who contacted Petitioner seeking to purchase the Property to apply for a CUP and operate a Marijuana Outlet at the Property (the "Business").[9] During these negotiations, Geraci represented that (i) he was a California licensed Real Estate Agent;[10] (ii) he was an Enrolled Agent with the IRS;[11] (iii) he was the Owner and Manager of Tax and Financial Center, Inc. (a sophisticated accounting and financial advisory services firm);[12] (iv) preliminary due diligence on the Property by his experts had revealed a zoning issue which, unless *first* resolved, would prevent the City from even *accepting* a CUP application on the Property (the "Zoning Issue"); (v) through his "professional relationships" and hired lobbyists, he was in a unique position to have the Zoning Issue resolved; (vi) he was highly qualified to operate the Business because he owned and operated multiple cannabis dispensaries in the City;[13] (vii) stated that he could not put the CUP in his name because of the fact that he was an Enrolled Agent with the IRS and the federal

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[9] *See, e.g.,* V2 E9 p.381, ln.11-14.

[10] *Id.* at ln.15-16 (Petitioner's Declaration); p.582 (Accurint Professional Background Report).

[11] *Id.*

[12] V2 E9 p.381, ln.16-17 (Petitioner's Declaration); p.573 at ¶2 (Accurint Professional Background Report).

[13] V2 E9 ln.21-22.

government takes a negative stance against marijuana;[14] and (viii) therefore, Geraci suggested his office manager, Rebecca Berry ("Berry"), was an individual who could be trusted to be the applicant on the CUP application because, *inter alia*, she helped manage his other marijuana dispensaries.[15]

On or around October 31, 2016, Geraci asked Petitioner to execute Form DS-318 (Ownership Disclosure Statement) – a required component of all CUP applications. Geraci told Petitioner that he needed the executed Ownership Disclosure Statement to show third-party experts that he had access to the Property in connection with his planning and lobbying efforts toward resolution of the Zoning Issue. The Ownership Disclosure Statement

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[14] V2 E9 p.582, ¶3.

[15] Petitioner notes that Geraci has been sanctioned in at least three other matters for owning/managing illegal marijuana dispensaries in San Diego, California: *City of San Diego v. The Tree Club Cooperative* Case No. 37-2014-00020897-CU-MC-CTL, *City of San Diego v. CCSquared Wellness Cooperative* Case No. 37-2015-00004430-CU-MC-CTL and, *City of San Diego v. LMJ 35th Street Property LP, et al.*, Case No. 37-2015-000000972. *See* RJNs 1-6, p.1-40. Furthermore, Bus. & Prof. Code § 26057(b)(7) provides that "[t]he licensing authority may deny the application for licensure or renewal of a state license if... [t]he applicant, or any of its officers, directors, or owners, has been sanctioned by a licensing authority or a city, county, or city and county for unauthorized commercial cannabis activities, has had a license suspended or revoked under this division in the three years immediately preceding the date the application is filed with the licensing authority." Petitioner believes that the true reason Geraci suggested Berry as his agent was to circumvent applicable disclosure laws.

identifies Berry as the "Tenant/Lessee" of the Property.[16] Petitioner has never met Berry and has never entered into any form of contract with Berry. Additionally, on October 31, 2016, and unbeknownst to Petitioner, Berry (i) executed Form DS-190 (Affidavit for Medical Marijuana Consumer Cooperatives for Conditional Use Permit (CUP)), stating she is the "Owner" of the Property, [17] and (ii) submitted the current CUP application for the Property to the City without Petitioner's knowledge or consent[18].

Notably, the CUP application required Berry to disclose all parties with an interest in the CUP. In relevant part, the CUP application form states: "Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list **must** include the names and addresses of **all** persons who have an interest in the property, recorded or otherwise, and state the type of property interest (*e.g.*, tenants who will benefit from the permit, all individuals who own the property)."[19]

Thus, Berry, acting as Geraci's agent, knowingly omitted his name as an individual who had an interest in the Property and CUP application, and stated that *she* was the owner of the Property in violation of applicable disclosure laws and requirements. These facts, when coupled with the evidence that Geraci was previously sanctioned on several occasions for operating illegal marijuana dispensaries, makes it clear that he has used his employee/agent as his proxy to acquire a prohibited interest in a Marijuana Outlet. *See* RJNs 1-6, p.1-40.

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[16] V2 E9, p.382, ln.14-18; p.558.

[17] V2 E9 p.559.

[18] V2 E9 p.386, ln.25 – p.397, ln.5.

[19] V2 E9 558 (emphasis added).

B. THE JOINT-VENTURE AGREEMENT IS FORMED.

On the morning of November 2, 2016, Petitioner was still in negotiations with various parties for the Property.[20] Later that day, Petitioner and Geraci entered into an oral joint-venture agreement (the "JVA") pursuant to which, *inter alia,* (i) Petitioner would sell his Property to Geraci; and (ii) Geraci would finance the acquisition of the CUP with the City and development of the Business at the Property. The JVA had a condition precedent: if the CUP was ***approved***, then Geraci would, *inter alia,* provide Petitioner (i) a total purchase price of $800,000 for the Property; (ii) a 10% equity position in the Business; and (iii) the greater of $10,000 or 10% of the net profits of the Business on a monthly basis. If the CUP was ***denied***, Petitioner would keep both his Property *and* the agreed-upon $50,000 non-refundable deposit ("NRD") and the transaction would not close.[21] In other words, the approval and issuance of the CUP at the Property was a condition precedent for closing on the sale of the Property.

At that meeting, Geraci provided $10,000 in cash toward the agreed-upon $50,000 NRD. Geraci then had Petitioner execute a three-sentence document to memorialize his receipt thereof – the November Document. Geraci then promised, *inter alia,* (i) to have his attorney, Gina Austin, *promptly* reduce the JVA to writing and (ii) to not submit the CUP application to the City until he paid the balance of the NRD to Petitioner.[22] Later that same day, November 2, 2016, the following communications took place between Geraci and Petitioner:

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[20] V2 E9 p.382, ln.10-13; p.428-486.

[21] *Id.* at p.382, ln.19 – p.383, ln.2.

[22] *Id.* at p.383, ln.8-14.

At 3:11 p.m., Geraci emailed Petitioner a copy of the November Document which states:

> [Petitioner] has agreed to sell the property located at 6176 Federal Blvd. CA for a sum of $800,000 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary) [¶] Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of $800,000 and to remain in effect until license is approved. [Petitioner] has agreed to not enter into any other contacts *[sic]* on this property.

V2 E9 p.492-495.

At 6:55 p.m., Petitioner replied:

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

Id. at p.497 (emphasis added).

At 9:13 p.m., Geraci replied: "***No no problem at all***" (*i.e.*, the Confirmation Email). *Id.* (emphasis added).

Thus, because Petitioner recognized the November Document read like both a receipt and a contract, yet contained only some of the terms of the

final agreement, he requested and received from Geraci written assurance of performance (*i.e.*, that the "final agreement" would contain his "10% equity position"). Having received Geraci's Confirmation Email, Petitioner proceeded in good faith believing Geraci's representations that Gina Austin would reduce the JVA to writing and Geraci would honor their agreement.

C. GERACI BREACHES THE JVA AND ATTEMPTS TO DEPRIVE PETITIONER OF HIS BARGAINED-FOR EQUITY POSITION IN THE BUSINESS.

For approximately five months after the November Document was executed, the parties exchanged numerous emails, texts and calls regarding various issues related to the Zoning Issue, CUP application, drafts of the JVA for the sale of the Property and Petitioner's equity position in the Business. During that time however, Geraci continuously failed to accurately reduce the JVA to writing, pay the balance of the NRD, and provide substantive updates regarding his progress in resolving the alleged Zoning Issue – all leading to Petitioner's belief that Geraci was attempting to deprive him of his 10% equity position in the Business.

Attached as "Exhibit 5" to Petitioner's Declaration in support of his Receiver Motion are copies of ***all*** 15 of the email communications that ever took place between Petitioner and Geraci until the filing of the underlying suit spanning the period from October 24, 2016 to March 21, 2017 (the "Email Communications"). V2 E9 p.488-555.

Attached as "Exhibit 2" to Petitioner's Declaration in support of his Receiver Motion is a copy of ***all*** text messages (totaling approximately 550) that ever took place between Petitioner and Geraci and which span the period of July 21, 2016 to May 8, 2017 (the "Text Communications"). *Id.* at p.393-421.

These Text and Email Communications have been provided to Respondent in numerous filings and Geraci has never disputed their authenticity. *See, e.g.,* V2 E9 p.343-421 and V1 E8 p.256-328.

All of the Email and the Text Communications directly prove or unilaterally support the conclusion that (i) the November Document is not a completely integrated agreement; and (ii) the parties were working to reduce the JVA into two agreements before the relationship became hostile – one agreement to provide for the sale of the Property and a second "Side Agreement" to provide for Respondent's 10% equity position in the Business.

Notable communications include the following:

On February 27, 2017, Geraci emailed Petitioner: "Attached is the draft purchase of the property for 400k. The additional contract for the 400k should be in today and I will forward it to you as well."[23] The attached document is titled: "AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY" (the "Draft Purchase Agreement").[24]

On March 2, 2017, Geraci emailed Petitioner a draft agreement entitled "SIDE AGREEMENT" that was supposed to provide for, *inter alia*, Petitioner's 10% equity position (the "First Draft Side Agreement").[25] The next day, March 3, 2017, Petitioner replied:

> Larry, [¶] I read the Side Agreement in your attachment and I see that no reference is made to the ***10% equity position*** as per my Inda-Gro

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[23] V2 E9 p.501-502.

[24] *Id.* at p.503-528.

[25] *Id.* at p.529-536.

> GERL Services Agreement (see attached) in the new store. In fact para 3.11 [*stating we are not partners*] looks to avoid our agreement completely. It looks like counsel did not get a copy of that document. Can you explain?[26]

Petitioner followed up with Geraci later that day, seeking specific confirmation that Geraci had received the email and understood his concern: the draft did not reflect they *were partners* in the Business.

Petitioner texted: "***Did you get my email?***"[27]

Geraci replied one minute later, "***Yes I did I'm having her rewrite it now[.] As soon as I get it I will forward it to you***" (the "Partnership Confirmation Text").[28] Thus, in his response to Petitioner's concern that they were not partners, Geraci did not deny the accusation, but confirmed that his attorney would address that concern.

On March 6, 2017, Petitioner let Geraci know he would be attending a local cannabis event at which Gina Austin would be the keynote speaker. Geraci texted Petitioner he could speak with Gina Austin directly at the event regarding revisions to the agreements: "***Gina Austin is there she has a red jacket on if you want to have a conversation with her.***"[29] Petitioner was not able to make the event, but Joe Hurtado ("Hurtado") – a transaction adviser whom Petitioner had engaged on a contingent basis to help him sell the

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[26] V2 E9 p.537 (emphasis added).

[27] V2 E2 p.421 (emphasis added).

[28] *Id.* (emphasis added).

[29] *Id.* (emphasis added).

Property to a new buyer if Geraci breached the agreement – did attend.[30] Hurtado spoke with Gina Austin, letting her know that Petitioner would not be attending and that he was concerned because the First Draft Purchase Agreement Petitioner had received did not contain a provision regarding Petitioner's 10% equity interest in the Business.[31] Gina Austin confirmed she was working on reducing the JVA to writing.[32]

The next day, on March 7, 2017, Geraci emailed Petitioner a revised Side Agreement ("Second Draft Side Agreement") drafted by Gina Austin:[33] In that email Geraci wrote:

> Hi Darryl, I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month . . . can we do 5k, and on the seventh month start 10k?

Id. at p.541-542 (the "March Request Email").

The March Request Email clearly and plainly reflects that Geraci had an *established obligation* of $10,000 and he is seeking a concession *from* Petitioner – specifically, a reduction of $5,000 per month for six months while the Business ramped-up.

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[30] V2 E9 p.385, ln.6-13.

[31] *Id.* at p.591 ln.8-18.

[32] *Id.* at ln.19-21.

[33] V1 E8 p.329 (screen shot of metadata of the Second Draft Side Agreement showing that Gina Austin is the author of the document and that it was created on March 6, 2017).

The Second Draft Side Agreement provided for Petitioner to receive 10% of the net revenues of the Business, but did not provide for the 10% equity position as agreed to in the JVA. V2 E9 p.543-546.

On March 14, 2017, having grown deeply suspicious of Geraci's continuous failure to accurately reduce the JVA to writing, Petitioner contacted the City and discovered that Geraci had already submitted a CUP application for the Property. V2 E9 p.386, ln.25 – p.387, ln.11; p.557-561.

On March 16, 2017, Petitioner emailed Geraci:

> [W]e started these negotiations 4 months ago and the drafts and our communications have not reflected what we agreed upon and are still far from reflecting our original agreement. Here is my proposal, please have your attorney Gina revise the Purchase Agreement and Side Agreement to incorporate all the terms we have agreed upon so that we can execute final versions and get this closed. [¶] I really want to finalize this as soon as possible – ***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. [¶] Please confirm by Monday 12:00 PM whether we are on the same page and you plan to continue with our agreement. Or, if not, so I can return your $10,000 of the $50,000 required

> deposit. If, hopefully, we can work through this, please confirm that revised final drafts that incorporate the terms above will be provided by Wednesday at 12:00 PM....

V2 E9 p.547-548 (emphasis added).

The next day, Geraci texted Petitioner: "***Can we meet tomorrow [?]***" *Id.* at p.416 (emphasis added).

Petitioner replied in relevant part via email:

> Larry, I received your text asking to meet in person tomorrow. I would prefer that until we have final agreements, that we converse exclusively via email.... ***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. There is no situation where an oral agreement will convince me that you are dealing with me in good faith and will honor our agreement. <u>We need a final written, legal, binding agreement. Please confirm, as requested... that you are honoring our agreement and will have final drafts</u> ... by Wednesday at 12:00 PM.

V2 E9 p.549 (emphasis added).

Thereafter, Geraci repeatedly refused to provide Petitioner assurance of performance (*i.e.*, that he would reduce the JVA to writing). V3 E13

p.887-890. Thus, Petitioner terminated the JVA with Geraci[34] and sold the Property to a third-party on March 21, 2017 (the "Third-Party Sale"). *Id.* at p.895-907.

D. GERACI FILES A COMPLAINT ALLEGING THE NOVEMBER DOCUMENT IS THE "FINAL AGREEMENT."

On March 22, 2017, the day after Petitioner terminated the JVA with Geraci, counsel for Geraci, Michael R. Weinstein ("Weinstein"), emailed Petitioner the Complaint, premised solely on the allegation that the November Document is a completely integrated agreement for the Property. V2 E12 p.644, ln.12-17. Geraci's Complaint alleges:

> (i) On November 2, 2016, [Geraci] and [Petitioner] entered into a written agreement for the purchase and sale of the [Property] on the terms and conditions stated therein.... [and]
> (ii) [Petitioner] has anticipatorily breached the contract by stating that he will not perform the written agreement according to its terms. Among other things, [Petitioner] has stated that, contrary to the written terms, the parties agreed to a down payment... of $50,000... [and] he is entitled to a 10% ownership interest in the [Property.]

V2 E11 p.625, ln.15-17; p.626, ln.6-11.

Geraci's allegation in his Complaint that the November Document is the final agreement for the Property is directly and completely contradicted by his Confirmation Email sent within hours of the execution of the

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[34] V3 E13 p.885.

November Document, as well as by his Email and Text Communications which followed.[35]

E. PETITIONER'S *EX PARTE* APPLICATION AND COUNSEL'S ETHICAL DILEMMA.

On April 4, 2018, Counsel filed an *Ex Parte* Application for Order (1) Shortening Time on [Petitioner]'s Motion to Expunge Notice of Pendency of Action (*Lis Pendens*); and (2) to Compel the Attendance and Testimony of Larry Geraci (the "LP Motion"). V3 E13. As set forth in his supporting declaration and in the moving papers, Counsel declared under penalty of perjury the following:

> In preparation for representing [Petitioner] on his Motion to Expunge the Notice of Action I have, *inter alia*, reviewed (i) every filing in both of [Petitioner]'s actions with Mr. Geraci (Case No. 37-2017-00010073-CU-BC-CTL) and the City of San Diego (37-2017-00037675-CU-WM-CTL); (ii) every document produced to and from [Petitioner] via discovery; (iii) every single email to and from [Petitioner]'s professional and personal email accounts between October 1, 2016 and March 31, 2017; and (iv) interviewed over 17 individuals who were in constant written communications and/or working with [Petitioner] on a daily basis during the same time

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[35] Petitioner filed a Second Amended Cross-Complaint alleging, *inter alia,* that the November Document is not the final agreement between the parties. V2 E12 p.635-p.659.

> period noted and which gave rise to the events leading and related to this action.

V3 E13 p.676, ln.10-17.

This statement was presented to Respondent in a section called "Counsel's Ethical Dilemma." V3 E13 p.667, ln.1 – p.671, ln.5. Simply stated, Counsel was representing Petitioner at that point in time on a limited basis, solely for Petitioner's LP Motion, and his review of the record revealed that there was no factual or legal basis to justify any of Respondent's rulings finding – either directly and/or impliedly – that the November Document is a completely integrated agreement for the sale of the Property. Additionally, Counsel's review of the case record revealed that, at a hearing on a motion by Geraci to compel discovery on January 25, 2018, Respondent began the hearing by stating that he was personally acquainted with opposing counsel and that he did not believe they would act unethically by bringing forth a meritless suit.[36]

As stated in the moving papers for the LP Motion, "...Counsel respectfully notes that if [Respondent] is correct in his conclusion regarding the lack of probable cause in this case, and based on his [review of the evidence noted above], then it can ***appear*** that this Court is biased against [Petitioner]. Thus, restated, Counsel's Ethical Dilemma is that he *believes* [Respondent's] maintenance of this action is not reasonable in light of the evidence which has been presented; but he neither believes [Respondent] to be biased against [Petitioner] nor that it would allow its alleged relationship with counsel for Geraci, even if true, to affect its impartiality." V3 E13 p.669, ln.14-19 (emphasis in original).

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[36] V1 E8 p.254, ln.6-10.

F. THE MOTION TO EXPUNGE THE *LIS PENDENS* ON PETITIONER'S PROPERTY.

For over a year prior to the LP Motion, Geraci argued that the PER bars his written promise to provide Petitioner a "10% equity position" in the Business (*i.e.*, the Confirmation Email) and other parol evidence. *See, e.g.*, V3 E15 p.1084-1103. In Petitioner's April 4, 2018 LP Motion, he cited – for the first time in the action – the seminal cases of *Tenzer v. Superscope, Inc.* (*Tenzer*) (1985) 39 Ca1.3d 18 and *Riverisland, supra,* 55 Cal.4th 1169 that indisputably preclude Geraci from using the PER and/or the SOF "as a shield to prevent proof of [his own] fraud." V1 E8 p.247 ln.9-21

In his opposition to the LP Motion citing *Tenzer* and *Riverisland*, Geraci provided a declaration executed on April 9, 2018 admitting that he sent the Confirmation Email promising to provide Petitioner a "10% equity position" in the Business, but alleging that (i) he sent the Confirmation Email by *mistake* because he meant to respond *only* to the first sentence of Petitioner's email thanking him for meeting earlier that day and *not* to the second, third or fourth sentences requesting written confirmation of Petitioner's equity position; and (ii) on November 3, 2016, he called Petitioner who ***orally agreed*** that the November Document is a completely integrated agreement and that he was not entitled to an equity position in the Business (the "Oral Disavowment"). V2 E10 p.617, ln.21–p.618, ln.16.

This purported Oral Disavowment by Petitioner was raised by Geraci for the first time in his April 2018 declaration. In support of this allegation, Geraci provided his redacted cell phone record showing his call to Petitioner on November 3, 2016 at **12:40 p.m.** (V3 E16 p.1113), ostensibly to support his contention that he realized his mistake early the next day and called Petitioner to fix his mistake. However, the redacted portion of Geraci's phone record includes what was either a less than one minute call or a missed incoming call from Petitioner at **12:38 p.m.** reflecting that Geraci was simply

returning Petitioner's call two minutes later at 12:40 p.m. *See* RJN 7 at p.60. Additionally, the phone records reflect that Petitioner and Geraci spoke several times the preceding day, that day, and numerous times thereafter. *Id.* at p.60-82.

Geraci's position is that the record of his three-minute call to Petitioner on November 3, 2017 is "substantial evidence" that Petitioner did, in fact, orally disavow his equity position in the Business. However, when that individual cell phone call is viewed against the entire record, the fact that Petitioner called Geraci *first* that day and the parties were in constant communications during that period of time, it becomes clear that Geraci's *selective* presentation of the evidence of a single cell phone call on that particular day is a clear misrepresentation. Geraci presented Respondent with a highly redacted copy of his phone records in order to give that exact misrepresentation.

Further, in his opposition to the LP Motion, Geraci argued that the draft agreements – the Draft Purchase Agreement, the First Draft Side Agreement, and the Second Draft Side Agreement – forwarded to Petitioner after November 2, 2016 were attempts to renegotiate the deal to include employment for Petitioner. V2 E10 p.617, ln.21–p.618, ln.25. Respondent subsequently denied the LP Motion without addressing the Confirmation Email and premised its ruling on two factually incorrect statements.

First, Respondent's order incorrectly states that the draft agreements provided by Petitioner "appear to be unsuccessful attempts to negotiate changes to the original agreement." V3 E18 p.1149, ¶3. Respondent does not state what language in any of the draft agreements offers support for such a conclusion. The recitals to the draft agreements plainly and clearly reflect that the parties had not yet executed a purchase agreement for the sale of the Property. Furthermore, none of the drafts contain a provision for, or even mention, potential employment of Petitioner of any kind by Geraci. V2 E9

p.503-528, 531-536. The failed "negotiation" statement by Respondent, on which it premised its ruling, is completely devoid of any factual support and clearly contradicted by the plain language in the drafts.

Second, Respondent's order states "the documents [Petitioner] offers in support of his Motion were created ***after*** November 2, 2016...." V3 E18 p.1149, ¶3 (emphasis added). This statement is factually and obviously incorrect. The timestamp on the Confirmation Email proves it was created on the very same day as the November Document, within hours of its execution, and in reply to the same email in which Geraci first sent Petitioner a scanned copy of the November Document. V2 E9 p.492-497.

To be incredibly clear on this point: Respondent's order, on its face, makes it clear that after a year presiding in this action, on the ***threshold*** and ***case-dispositive*** issue, Respondent is not aware that the single most critical piece of evidence – proving Geraci's lawsuit is frivolous – was created within hours of and on the SAME DAY as the November Document.

G. THE MOTION FOR JUDGMENT ON THE PLEADINGS ("MJOP").

Notwithstanding Respondent's order denying the LP Motion on clearly factually incorrect grounds, Counsel, believing Respondent did not find Petitioner credible, hoped to get through to Respondent with simple and undisputed facts. Thus, Counsel prepared and submitted Petitioner's MJOP[37] that focused solely on the question of contract integration. V3 E19 p.1160,

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[37] Counsel notes that he became attorney of record on May 4, 2018 and the deadline to submit a motion for summary judgment was on April 29, 2018. Thus, he had no time to prepare the motion for summary judgment and the only vehicle left to him to summarily end the meritless litigation was via an MJOP.

ln.21-22 ("The sole and dispositive issue in this MJOP is whether the November Document is a completely integrated agreement.").

Respondent issued its tentative ruling denying the MJOP without addressing or providing its substantive reasoning for doing so. V3 E19 p.1227. Counsel also believed he may have lost credibility with Respondent for having referenced Petitioner's allegations of extra-judicial actions by Geraci attempting to force Petitioner to settle. Thus, Counsel asked a colleague to second chair the oral hearing on the MJOP. As the transcript clearly reflects, the ONLY issue on which Counsel and co-chair requested Respondent to focus was the issue of contract integration. Respondent repeatedly refused three separate requests to address the issue:

> **THE COURT**: Good morning to each of you two. Interesting motion, particularly combined with your request for judicial notice. Is there anything else that you'd like to add?
>
> **MR. AUSTIN:** Well, I would like an explanation. So Mr. Geraci, the plaintiff in this case, he submitted the declaration admitting essentially that –
>
> **THE COURT**: It's the "essentially" part that I don't agree with. You make those same comments in your paper. There's four separate causes of action…
>
> **THE COURT**: The court wasn't persuaded that even if I were grant the request to take judicial notice of a declaration granted of a party opponent, it's still not dispositive of the entire complaint. And that's what your motion is directed to, isn't it.

MR. AUSTIN: Well --

THE COURT: -- in it's entirety? *[sic]*

MR. AUSTIN: Because all four causes of action are premised on a breach of contract, so if there's not an integrated contract, according to plaintiff himself, I feel that all four causes of actions fail.

THE COURT: Not so sure if I agree with that entire analysis.

Anything else, counsel?

MR. AUSTIN: Well, I was just wondering if you could explain to me, if you believe as a matter of law, the three-sentence contracts that plaintiff claims is an integrated contract. If you believe that to actually be a fully integrated contract.

THE COURT: You know, we've been down this road so many times, counsel. I've explained and reexplained the court's interpretation of your position. I don't know what more to say.

CO COUNSEL: Your Honor, if I may, I'm co counsel on behalf of [Petitioner].

Your Honor, the <u>only</u> thing we really want clarification in the matter whether or not the court deems the contract an integrated contract or not.

> **THE COURT:** Again, we've addressed that in multiple motions. I'm not going to go back over it again at this point in time.
>
> Anything else, counsel?
>
> **CO COUNSEL:** That's it.

V1 E4 p.12, ln.5–p.13, ln.26 (emphasis added).

The record in this matter is clear: Respondent has ***never*** provided its reasoning for repeatedly finding that the November Document is a completely integrated agreement. Respondent's statement that it already has addressed the issue is factually false. Respondent, via the summary granting or denying of motions based on the merits of the underlying case, has implicitly found that the November Document is a completely integrated agreement; but, again, it has ***never*** provided its reasoning for deciding so. And, given Respondent's order denying the LP Motion based upon factual findings clearly contradicted by undisputed evidence, it is clear Respondent does not even understand the import of the Confirmation Email or the prejudice Respondent's lack of understanding is causing Petitioner.

H. STATEMENT OF DISQUALIFICATION AND COMPLAINTS TO THE CALIFORNIA STATE BAR ETHICS COMMITTEE.

Given Respondent's admission that it is personally familiar with opposing counsel and it does not believe they are capable of acting unethically, coupled with unsupported factual findings, false statements contained in Respondent's orders and at oral hearings, and its repeated refusal to address the ***threshold*** and ***case-dispositive*** question of contract integration, Counsel will be filing a Verified Statement of Disqualification pursuant to CCP § 170.1(a)(6)(iii) and CCP § 170.1(a)(6)(B) requesting the Respondent judge to recuse himself. The request is premised primarily on

the grounds that a "person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial."

Additionally, Petitioner (not through Counsel) will be filing a complaint with the State Bar of California against all other attorneys in this matter regarding their filing, maintaining, and/or ratifying a frivolous lawsuit. Petitioner's complaint will contain Counsel's Verified Statement of Disqualification and this Petition.

III. STANDARD OF REVIEW.

"The Code of Civil Procedure provides that mandate 'may be issued ... to compel the performance of an act which the law specially enjoins' (§ 1085) where 'there is not a plain, speedy, and adequate remedy, in the ordinary course of law.' (§ 1086.) Although it is well established that mandamus cannot be issued to control a court's discretion, in unusual circumstances the writ will lie where, under the facts, that discretion can be exercised in only one way. [Citation]." *Babb, supra,* 3 Cal.3d at 850-851.

"'Whether a contract is integrated is a question of law when the evidence of integration is not in dispute.' [Citations.]" *Kanno v. Marwit Capital Partners II, L.P.* (*Kanno*) (2017) 18 Cal.App.5th 987, 1001.

IV. ARGUMENT

A. RESPONDENT HAS ABUSED ITS DISCRETION IN REPEATEDLY FINDING THAT THE NOVEMBER DOCUMENT IS A COMPLETELY INTEGRATED AGREEMENT.

"An agreement is not ambiguous merely because the parties (**or judges**) disagree about its meaning. Taken in context, words still matter. As Justice Baxter pointed out, written agreements whose language appears clear in the context of the parties' dispute are not open to claims of latent

ambiguity. *Abers v. Rounsavell* (2010) 189 Cal.App.4th 348, 356 (internal citations omitted) (emphasis added).

The PER operates to exclude evidence of a prior agreement or a contemporaneous oral agreement that contradicts terms in a writing that is intended by the parties to be a final expression of their agreement with respect to those terms. CCP § 1856(a). Parties may intend for the writing to finally and completely express only certain terms of their agreement, rather than the entire agreement. If only part of the agreement is integrated, the PER applies only to that part. *Founding Members, supra,* 109 Cal. App. 4th at 953. Unless a written agreement is intended to be "a complete and exclusive statement of the terms of the agreement," the terms of that agreement "may be explained or supplemented by evidence of consistent additional terms." CCP § 1856(b). Generally, the application of the PER to determine whether a contract is a complete integration involves a two-step analysis:[38]

1. Step One: Did the Parties ***intend*** the writing to be a complete or partial integration?

The Fourth District Appellate Court's ("4th DCA") December 22, 2017 opinion in *Kanno* is conceptually identical to Petitioner's case and the analysis described therein to determine whether the parties ***intended*** the writings at issue to be complete or partial integrations is directly and fully controlling here. In *Kanno*, plaintiff sued defendants for breach of oral contract, specific performance, and promise without intent to perform in connection with a transaction that was documented by three writings, each

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[38] *See Gerdlund v. Elec. Dispensers Int'l* (1987) 190 Cal.App.3d 263, 270; *Banco Do Brasil, S.A. v. Latian, Inc.* (1991) 234 Cal.App.3d 973, 1001; *Kanno, supra,* at 1007.

of which had an extensive integration clause. A jury found in favor of plaintiff and the trial court held that the PER did not bar plaintiff's oral agreement and the evidence supported a finding that the parties intended the oral agreement to be part of their agreement. On appeal, as described in appellant's opening paragraph:

> The question presented by this appeal is whether a complex written $23.5 million transaction to purchase all of the assets of plaintiff's company-negotiated by Sheppard Mullin for plaintiff and Paul Hastings for defendants and including multiple separate integrated agreements comprising two binders of materials - can be anything other than a fully integrated agreement.[39]

The 4th DCA affirmed the judgment, finding the oral agreement was not made unenforceable by the PER. In analyzing the PER and whether the documents were completely integrated, the factors considered by the *Kanno* court included: (i) the language and completeness of the written agreement; (ii) whether it contains an integration clause; (iii) the terms of the alleged oral agreement and whether it might contradict those in the writing; (iv) whether the oral agreement might naturally be made as a separate agreement or, in other words, if the oral agreement were true, would it certainly have been included in the written instrument; (v) would evidence of the oral agreement mislead the trier of fact; and (vi) the circumstances at the time of the writing. *Kanno, supra,* 18 Cal.App.5th at 1007. Additionally, (vii) the terms of a

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[39] *Kanno v. Marwit Capital*, 2016 CA App. Ct. Briefs LEXIS 857.

writing "may be explained or supplemented by course of dealing or usage of trade or by course of performance." CCP § 1856(c).

Application of these seven factors here leads to only one reasonable and incontrovertible conclusion: the November Document was not ***intended*** to be a completely integrated agreement:

a. The November Document does not appear to be a final agreement.

"We start by asking whether the [November Document] appears on its face to be a final expression of the parties' agreement with respect to the terms included in that agreement. [Citation.]" *Id.* at 1007. In reviewing the November Document, it is readily apparent that it is not – it is three sentences long and is missing many essential terms when compared to even a standard real estate purchase agreement, much less one that has a complicated condition precedent requiring approval of a CUP by the City for a business in the emerging and highly regulated marijuana industry. It also has basic grammar and spelling mistakes (*e.g.*, "contacts" instead of "contracts"). Unlike the writings in *Kanno,* the November Document is <u>not</u> "lengthy, formal, [or] detailed[.]" *Id.*

Given its short length, its lack of formality, its simplicity given the complicated subject matter it was intended to cover and its grammar and spelling mistakes, these factors weigh in favor of a finding that the November Document does not meet the criteria to be a completely integrated agreement.

b. The November Document does not contain an integration clause.

The presence of an integration clause is given great weight on the issue of integration and it is "very persuasive, if not controlling, on the issue." *Masterson v. Sine* (1968) 68 Cal.2d 222, 225. Conversely, the lack of an integration clause, as here, is evidence the writing is not completely

integrated. *Esbensen v. Userware Internat., Inc.* (1992) 11 Cal.App.4th 631, 638. Thus, this factor weighs in favor of a finding the November Document is not completely integrated.

c. The terms of the oral JVA do not contradict the November Document.

In determining whether a writing was intended as a final expression of the parties' agreement, "collateral oral agreements" that contradict the writing cannot be considered. *Banco Do Brasil, supra*, at 1002-1003. The fact that the November Document does not state it will provide for Petitioner's equity position does not mean its *silence* on the subject is a contradiction as Geraci argues. As the seminal case of *Masterson* makes clear, silence on a term allows the introduction of extrinsic evidence to show the parties intent on that matter. *Masterson, supra,* at 228-231.

d. The oral agreement – the JVA – would not have been included in the November Document that was meant to be a receipt.

Where a "collateral" oral agreement is alleged, the court must determine whether the subject matter is such that it would "certainly" have been included in the written agreement had it actually been agreed upon; or would "naturally" have been made as a separate agreement. *Id.* at 227. Here, the terms of the JVA as alleged by Petitioner are consistent with the November Document and the Confirmation Email, both of which provide direct, undisputed evidence that the November Document was meant to be a receipt by Petitioner of $10,000 to be applied toward the total agreed-upon $50,000 NRD. As the November Document was meant to be a *receipt*, it is *natural* that it would not have all the material terms reached in the JVA.

Furthermore, it is *natural* that the November Document was created and notarized as part of the JVA as Geraci provided Petitioner the $10,000

in CASH. No reasonable party would provide such a material amount in cash without ensuring adequate proof of its receipt.

Thus, this factor also weighs against a finding that the November Document is a completely integrated agreement.

e. A fact finder would not be misled by the admission of the Confirmation Email and other parol evidence.

Evidence of a collateral oral agreement should be excluded if it is likely to mislead the fact finder. *Id.* The court properly exercises its discretion by weighing the probative value of the extrinsic evidence against the possibility it may mislead the jury. *See* Evid. Code § 352; *Brawthen v. H & R Block, Inc.* (1972) 28 Cal.App.3d 131, 137-138 ("[*Masterson*] points out that evidence of the 'oral collateral agreements should be excluded only when the fact finder is likely to be misled....' ***This permits a limited weighing of the evidence by the trial court for the purpose of keeping 'incredible' evidence from the jury.***") (emphasis added). The undisputed Text and Email Communications are clear and not "incredible." Simply stated, the evidence would not mislead the fact finder and actually clearly establish what took place – the parties were still reducing the JVA to writing when the relationship soured because Petitioner confronted Geraci about having submitted the CUP application on the Property without finalizing the agreement or providing the remainder of the NRD.

f. Geraci's course of performance and conduct explains the meaning of the November Document – it was meant to be a receipt.

"The law imputes to a person the intention corresponding to the reasonable meaning of his language, acts, and conduct." *H. S. Crocker Co. v. McFaddin* (1957) 148 Cal.App.2d 639, 643. With the exception of the days leading up to the filing of the underlying suit by Geraci, Geraci's language, actions, and conduct all reflected that ***he*** believed that he and Petitioner and

were joint-venturers: (i) in response to Petitioner's March Request Email, Geraci sent the Partnership Confirmation Text; (ii) in response to Petitioner's comments stating the drafts Geraci forwarded did not contain his equity position, Geraci forwarded revised drafts that did provide for Petitioner to receive a portion of the net profits (albeit, not an equity position); (iii) at the same time, Geraci continued to have the CUP application for the Property processed, which, per his own Complaint, would require months – if not years – and significant capital investment. V2 E11 p.625, ln.22 – p.626, ln.1.

In addition, Geraci's March Request Email is as damning as the Confirmation Email – Geraci is asking ***of*** Petitioner a concession from his ***established obligation*** to pay $10,000 a month. V2 E9 p.541-542. Geraci's own language offers clear additional evidence that there was an agreed-upon collateral oral agreement not included in the November Document: payments of $10,000 a month.

"A party's conduct occurring between the execution of the contract and a dispute about the meaning of the contract's terms may reveal what the parties understood and intended those terms to mean." *Banning Ranch Conservancy v. Superior Court* (2011) 193 Cal.App.4th 903, 915 (citations and quotations omitted). It was not until Petitioner repeatedly requested that Geraci provide final drafts of the JVA reflecting his equity position that there is any evidence of discord between Petitioner and Geraci. And it was not until Petitioner was served with Geraci's Complaint that Petitioner became aware that Geraci intended to misrepresent the November Document as a completely integrated agreement for the sale of the Property. Most notably, all of the undisputed Email and Text Communications exchanged between the parties throughout this period clearly reflect that the parties considered themselves joint-venturers.

"When a person makes a statement ... under circumstances that would normally call for a response if the statement were untrue, the statement

is admissible for the limited purpose of showing the party's reaction to it. His silence, evasion, or equivocation may be considered as a tacit admission of the statements made in his presence." *In re Neilson* (1962) 57 Cal.2d 733, 746. If Geraci intended the November Document to be the "final agreement" as he now alleges, then he should have challenged or repudiated the Text and Email Communications reflecting that he was a joint-venturer with Petitioner. As the law understands, a failure to repudiate material allegations is a tacit admission of them. *See* Evid. Code § 1221. This is not merely a legal concept codified by law, it is also a self-evident truth that is understood by any reasonable individual. *See Keller v. Key System Transit Lines* (1954) 129 Cal.App.2d 593, 596 ("The basis of the rule on admissions made in response to accusations is the fact that human experience has shown that generally it is natural to deny an accusation if a party considers himself innocent of negligence or wrongdoing.").

For the reasons set forth above, this factor supports the conclusion that the November Document is not the "final agreement" for the Property.

g. The circumstances at the time of writing clearly prove the parties did not intend the November Document to be a completely integrated agreement.

A critical point noted by the *Kanno* court in reaching its decision was the following oral exchange: "[plaintiff] insisted that [defendant] 'promise this to me.' [Defendant] paused and then said, '***[o]kay, [plaintiff], I promise.***'" *Kanno, supra*, at 1009 (emphasis added). Relying heavily on that exchange, the *Kanno* court found that "[t]he evidence supports a finding that the parties intended the terms of the [oral agreement] to be part of their [written] agreement." *Id.* Here, exactly as in *Kanno*, Petitioner emailed Geraci asking him to specifically confirm in writing (*i.e.*, promise) that a "final agreement" would contain his "10% equity position" and Plaintiff clearly and unambiguously did so: "***No no problem at all.***" V2 E9 p.497.

Step One Conclusion

In sum, all seven factors lead to one irrefutable conclusion: the November Document was ***not intended*** to be a completely integrated agreement for the Property.

2. Step Two: If there is an integration, is the parol evidence being offered consistent with the writing, either: (i) to explain or interpret the agreement by proving a meaning to which the language of the writing is reasonably susceptible; or (ii) to show a collateral oral agreement that was "naturally" made as a separate agreement?

We have established that the November Document is *not* a completely integrated agreement; however, the November Document and the Confirmation Email are both evidence of the JVA – the "final agreement," of which one of the final integrated terms is Petitioner's "10% equity position" in the Business. "An integration may be partial rather than complete: The parties may intend that a writing finally and completely express only certain terms of their agreement rather than the agreement in its entirety. If the agreement is partially integrated, the parol evidence rule applies to the integrated part." *Founding Members, supra,* 109 Cal.App.4th at 953 (citations omitted). Thus, the Confirmation Email and other parol evidence described above are *consistent* with the integrated terms under both Step Two factors:

First, the parol evidence – the Confirmation Email which by itself is ***dispositive*** – helps explain and interpret the November Document for what it was intended to be: a memorialization of Petitioner's receipt of $10,000 *in cash* and not the "final agreement."

Second, the parol evidence is evidence of a *collateral oral agreement* – the JVA. Again, the parol evidence clearly establishes the parties reached an agreement which was a joint-venture. At Petitioner's specific request for assurance of performance, Geraci confirmed the same day via email that a

"final agreement" would contain a "10% equity position." Months later, at Petitioner's objection to the draft agreement written by Attorney Gina Austin and forwarded by Geraci stating they were *not* partners, Geraci replied stating that he was having his attorney revise the documents and the next day Petitioner received the Second Draft Side Agreement; an updated draft that provided for him to receive 10% of the *net profits*. "A joint venture or partnership may be formed orally [citations], or 'assumed to have been organized from a reasonable deduction from the acts and declarations of the parties.' [Citation.]" *Weiner v. Fleischman* (1991) 54 Cal.3d 476, 482-483. The only reasonable deduction to be reached here, based on the undisputed communications and actions by and between the parties, is that they both considered themselves joint-venturers.

Step Two Conclusion

Thus, for the reasons set forth above, pursuant to the PER, the parol evidence is proof that the November Document is not a completely integrated agreement and is actually a receipt executed on the day the parties reached the oral agreement – the JVA.

3. The Oral Disavowment is barred by the PER.

"A short and vernacular explanation of the parol evidence rule would be that a party to a written contract cannot be permitted to urge that a contract means something which its terms simply cannot mean." *Ri-Joyce, Inc. v. New Motor Vehicle Bd.* (1992) 2 Cal.App.4th 445, 452. Geraci's Oral Disavowment – that Petitioner orally agreed over the phone to forego the equity position Geraci had promised him in the JVA and confirmed in writing in the Confirmation Email – is barred by the PER. Geraci "cannot be permitted to urge that a contract means something which its terms simply cannot mean." *Id.*

4. The Oral Disavowment is also barred by the SOF.

Geraci was a licensed real estate agent for over 25 years at the time of the execution of the November Document. *See* fn. 10. He cannot, as a matter of law, justify any detrimental reliance for failing to reduce to writing the alleged oral statements made by Petitioner on November 3, 2016. *See Phillippe v. Shapell Indus.* (1987) 43 Cal.3d 1247, 1264.

B. RESPONDENT ABUSED ITS DISCRETION IN DENYING PETITIONER'S REQUEST FOR JUDICIAL NOTICE OF GERACI'S DECLARATION RESULTING IN SEVERE PREJUDICE TO PETITIONER.

On July 13, 2018 Respondent refused to take judicial notice of Geraci's declaration on Petitioner's MJOP. V1 E2 p.004, ¶2. Pursuant to Evid. Code § 453, a trial court must take judicial notice of the matters specified in Evid. Code § 452 if a party requests it to do so and does each of the following: (i) gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable him or her to prepare to meet the request (Evid. Code § 453(a)); and (ii) furnishes the court with sufficient information to enable it to take judicial notice of the matter (Evid. Code § 453(b)). *See Four Star Electric, Inc. v. F & H Construction* (1992) 7 Cal.App.4th 1375, 1379.

Petitioner met the requirements set forth in Evid. Code § 453; thus, Respondent was required to take judicial notice of Plaintiff's statements in his declaration *even if they nullify material allegations in Geraci's Complaint. See Rauber v. Herman* (1991) 229 Cal.App.3d 942, 946 ("Where an allegation [in a party's Complaint] is contrary to law or to a fact of which the court may take judicial notice, ***it is*** to be treated as a ***nullity***.") (emphasis added).

Respondent did not provide its reasoning for failing to deny the request for judicial notice of Geraci's declaration, pursuant to Evid. Code

§ 453, thereby defeating the basis of the MJOP and severely prejudicing Petitioner. Respondent is ***forcing*** Petitioner to undertake the costly burden of discovery and to prepare for trial in a demonstrably meritless suit.

C. RESPONDENT ABUSED ITS DISCRETION IN DENYING PETITIONER'S *EX PARTE* APPLICATION FOR APPOINTMENT OF A RECEIVER.

"If jointly-owned property is in danger of being lost or destroyed or misappropriated, Respondent may appoint a receiver to protect a party's interest in the property, and such an appointment will be upheld on appeal. [CCP] § 564." *Rosenthal v. Rosenthal* (1966) 240 Cal.App.2d 927, 933. On appeal, as articulated in *Moore v. Oberg* (1943) 61 Cal.App.2d 216, 220, "[t]he ultimate fact to be found [is] whether the protection of the interest of plaintiff require[s] the appointment of a receiver." The moving party must make a showing by a "preponderance of the evidence." *Id.* at 220-221.

Petitioner has more than met his burden. As proven above, the November Document is not a completely integrated agreement. Thus, the sole basis of Geraci's Complaint fails. Geraci's own actions and the communications between himself and Petitioner for more than five months prior to the filing of his lawsuit reveal this case for what it is: frivolous. That Geraci – and, notably, his counsel – continue to prosecute this action is simply because Geraci desires to mitigate his financial liability to Petitioner.

Geraci is liable for, *inter alia*, the $10,000 monthly payments he promised Petitioner, which was an identical term bargained for by Petitioner in the Third-Party Sale. V1 E8 p.246 ln.6-10. However, Petitioner was forced to sell those monthly payments to finance this litigation. *Id.* at ln.12-14. Since the life of the CUP is ten years, Geraci's total liability on this issue is $1,200,000 at a minimum.. RJN 9 at p.143 §(i) and p.144 §(n)(1). However, Geraci will ***only*** become liable ***if*** the CUP is approved – pursuant to the condition precedent in the JVA and the terms of the Third-Party Sale.

And, again, Geraci has sole and exclusive control of the CUP application through his employee/agent, Rebecca Berry. In other words, Geraci controls the CUP application.

Given the above analysis, if Geraci loses this action because it is adjudicated on the merits, he will be liable for Petitioner's damages; the amount of which will be determined by the City's approval or denial of the CUP – again, an outcome which is solely within Geraci's control. This is absurd. And countenanced by Respondent.

In light of the foregoing, the fact that Geraci ***and*** his attorneys continue to maintain a suit lacking probable cause begs a simple question: Why would they continue to devote time, capital and resources to obtain approval of the CUP for the benefit of the Third-Party Sale? They would not; they are merely ***pretending*** to do so because they filed suit alleging their cause of action for breach of contract was meritorious. However, they actually intended to prevail by leveraging and increasing the pressure exerted on Petitioner by the litigation process knowing that he lacked the financial resources to hire an attorney. If they ***appear*** to have ceased prosecuting the CUP on the Property, that is an indirect admission that they know they brought forth a meritless suit. They are caught in a Catch-22; having to spend money to ***appear*** as though they want to have the CUP approved, but knowing that if they actually get the CUP approved and this case is adjudicated on the merits, they are just increasing the amounts of special and consequential damages they will owe Petitioner.

Further, as to the attorneys involved, it is self-evident that they would rather appear to be incompetent – and argue to the bitter end that the PER bars the Confirmation Email – than admit they were complicit in a criminal conspiracy to deprive Petitioner of his Property via a malicious prosecution action.

In support of his Receiver Motion, Petitioner provided, *inter alia*, an email dated June 1, 2018 from the City stating that Geraci had done nothing to advance the CUP application for nearly ***six months***. *See* V2 E9 p.587 ("On April 20, 2018, I had sent a letter to the project's point of contact for project inactivity and would be closing the project, due to inactivity for 90 days."). Geraci is failing to prosecute the CUP on the Property so the Competing CUP application can be approved which would result in the denial of the CUP for the Property. The evidence from the City is sufficient to have justified the appointment of a receiver. *See Brush v. Apartment & Hotel Financing Corp.* (1927) 82 Cal.App. 723, 725 (An allegation that real property is deteriorating and will continue to do so and will by the time of trial, be practically worthless because of pleaded conditions is sufficient to justify the appointment of a receiver).

Additionally, Petitioner provided the declaration of Hurtado that includes evidence that Geraci's political lobbyist – Bartell – is using his political influence with the City to have the CUP on Petitioner's Property denied and the Competing CUP submitted by Magagna approved. V2 E9 p.352, ln.6-9; *see* V2 E9 p.593, ln.11-27 (Hurtado Declaration). While these statements cannot be recognized as undisputed facts on an *ex parte* application for a receiver, in light of the fact that the case against Petitioner is meritless, Hurtado's declaration was sufficient to have required the appointment of a receiver. *See Armbrust v. Armbrust* (1946) 75 Cal.App.2d 272, 274.

At the June 14, 2018 hearing on Petitioner's Receiver Motion, counsel Andrew Flores, for Petitioner, directed Respondent to ***both*** the Competing CUP and the City's email stating that there had been no activity on the CUP application for the Property for nearly six months. V3 E21 p.1232, ln.6-20. Counsel explained to Respondent that, because the City Ordinance governing CUPs for Marijuana Outlets prohibits issuance of multiple CUPs within

1,000 feet of each other, if the Competing CUP was granted, by law it would bar issuance of the CUP for Petitioner's Property because the real property which is the subject of the Competing CUP is located less than 1,000 feet from the Property. *Id.* Counsel clearly described a race to get the Competing CUP approved and Geraci's inaction in processing the CUP application for the Property as proven ***by the City***. Respondent, without providing its reasoning, stated that it was "not persuaded [Petitioner] carried [his] burden that would warrant good cause...." V3 E21 p.1232. ln.27 – 1233, ln.2.

D. RESPONDENT ABUSED ITS DISCRETION IN DENYING PETITIONER'S MJOP.

"[An MJOP] is the equivalent of a general demurrer. This motion tests whether the allegations of the pleading under attack support the pleader's cause if they are true.... In order for judicial notice to support a motion for judgment on the pleadings by negating an express allegation of the pleading, the notice must be of something that cannot reasonably be controverted. The same is true of evidentiary admissions or concessions.... Judicial notice may conclusively defeat the pleading as where it establishes res judicata or collateral estoppel. ***The pleader's own concession may have this same conclusive effect***.... In these limited situations, the court, in ruling on a [MJOP], properly looks beyond the pleadings. But it does so only because the party whose pleading is attached will as a matter of law, or law's equivalent of judicial notice of a fact not reasonably subject to contradiction, fail in the litigation." *Columbia Casualty Co. v. Northwestern Nat. Ins. Co.* (*Columbia*) (1991) 231 Cal.App.3d at 468-469 (citations and quotations omitted) (emphasis added).

"A judicial admission is a party's unequivocal concession of the truth of a matter and removes the matter as an issue in the case. [Citations.]" *Gelfo v. Lockheed Martin Corp.* (*Gelfo*) (2006) 140 Cal.App.4th 34, 48. "[A]

court may take judicial notice of a party's admissions or concessions, but only in cases where the admission 'can not reasonably be controverted,' such as in answers to interrogatories or requests for admission, or in affidavits and **declarations** filed on the party's behalf. [Citation.]" *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 485 (emphasis added).

Geraci's declaration is a judicial admission that he sent the Confirmation Email confirming the November Document is "not" a "final agreement" on ***November 2, 2016***. Realizing he can neither dispute the authenticity of the email nor bar its admission, Geraci then opposes the legal effect of the Confirmation Email on his case with his Oral Disavowment allegation – that he sent the Confirmation Email by *mistake* and that Petitioner orally agreed the November Document is the final agreement for the sale of his Property. Geraci raises this self-serving Oral Disavowment allegation for the first time in his declaration executed ***April 9, 2018***, which is the only direct evidence Geraci puts forth to support this allegation. And, again, he did so in opposition to Petitioner's LP Motion citing *Riverisland* and *Tenzer* that established that Geraci would not be able to bar the admission of his Confirmation Email – the proof of his fraud; which, prior to then, had been the vanguard of his legal arguments in all motions before Respondent.

In *King v. Andersen* (1966) 242 Cal.App.2d 606, the plaintiff in an assault case admitted at deposition that defendant used "no force." *Id.* at 609. When defendant moved for summary judgment based on plaintiff's deposition concession, plaintiff submitted an affidavit in support of his opposition saying, in fact, defendant had applied unnecessary force. *Id.* at 610. Plaintiff disputed the meaning attributed to his deposition testimony by defendant and argued that the dispute must be submitted to the jury. *Id.* at 609-610. Respondent disagreed and dismissed the case. The Court of Appeal affirmed. *Id.* at 610. Plaintiff could not manufacture a dispute of fact by

submitting additional affidavits. "Where, as here, however, there is a clear and unequivocal admission by the plaintiff, himself, in his deposition . . . we are forced to conclude there is no *substantial evidence* of the existence of a triable issue of fact." *Id.* (emphasis in original).

Here, Geraci is attempting to do the very same thing as the plaintiff in *King*. He sent a clear and unequivocal admission that the November Document is not a final agreement on **November 2, 2016**. The procedural history of this action shows that Geraci was relying on the PER/SOF to bar the admission of the Confirmation Email. When confronted with *Riverisland* and *Tenzer* in **April of 2018**, he submits a declaration saying he sent the Confirmation Email by mistake. In support of this contention, Geraci alleges that Petitioner orally agreed the November Document is a final agreement and, therefore, such dispute should be submitted to the jury. Identical to *King*, ***Geraci's self-serving declaration should not be considered substantial evidence and he should not be allowed to blatantly fabricate a material factual dispute to continue to prosecute a frivolous action***. As noted above, he ceased prosecuting the CUP on the Property and the evidence reveals that Bartell, Geraci's agent, is using his influence with the City to have the CUP on the Property denied. In light of the fact that Geraci should lose this action on the merits, it is reasonable that Geraci is taking actions to limit his liability – that is, using his agents to sabotage the CUP for the Property and obtain approval of the Competing CUP.

In *Joslin*, the 4th DCA held that courts may take judicial notice of a fact and use it to dismiss a case "where there is not or cannot be a factual dispute concerning that which is sought to be judicially noticed." *Joslin v. H.A.S Ins. Brokerage* (1986) 184 Cal.App.3d 369, 375. Consistent with summary judgment jurisprudence, *Joslin* held that a party cannot escape dismissal simply by offering an "explanation" of its admission and that explanations that are "inherently incredible" may simply be disregarded. *Id.*

at 376. Geraci's Oral Disavowment allegation falls squarely into this category. Thus, it is forestalled by *Joslin* as it is an "explanation" that is "inherently incredible" and should be disregarded.

To be absolutely clear on this point, when Respondent denied Petitioner's MJOP, it implicitly found the following factual allegations by Geraci to NOT be "inherently incredible." To put it more succinctly, ***this is Geraci's position and Respondent finds the following to be credible:***

(i) *Within hours* of the parties finalizing their agreement on November 2, 2016, Petitioner sent an email to Geraci *pretending* that the terms of the JVA had been reached and in which Petitioner was *already* promised a very specific "10% equity position;" (ii) Geraci *mistakenly* confirmed in writing, at Petitioner's specific request for written confirmation, Petitioner's *pretend* equity position *within hours* of the November Document being executed; (iii) Geraci, a licensed Real Estate Agent (at the time) for over 25 years, *never* sought in *any* manner to document the fact that he mistakenly sent the Confirmation Email despite knowing its legal import under the Statute of Frauds; (iv) Geraci realized, *over a year after filing suit*, that he should raise the Oral Disavowment; and (v) that Geraci did so, *coincidentally*, in response to Petitioner's motion citing, for the first time, the holdings of *Riverisland* and *Tenzer* which prevent Geraci from using the PER as a shield to bar parol evidence that is proof of his own fraud.

In *Rivera v. S. Pac. Transp. Co. (Rivera)* (1990) 217 Cal.App.3d 294, 297-299, the court granted summary judgment based on plaintiff's deposition testimony that a train was moving when he tried to enter. The court rejected plaintiff's attempt to explain his testimony that the train was moving before and after he entered, but was still at the precise moment he got on. *Id.* "When the defendant can establish an absolute defense from the plaintiff's admissions, the credibility of the admissions are valued so highly that the controverting affidavits may be disregarded as irrelevant, inadmissible or

evasive." *Id.* at 299-300 (internal quotations and citations omitted). Similarly, here, Geraci's judicial admission that he sent the Confirmation Email – which he was forced to provide in light of *Riverisland* and *Tenzer* – proves the November Document is not a completely integrated agreement for the sale of the Property. Therefore, the Confirmation Email is an "absolute defense" to Geraci's Complaint. *Id.* Pursuant to *Rivera*, Geraci's Oral Disavowment seeking to explain away Petitioner's "absolute defense" as a "mistake" should "be disregarded as…inadmissible[.]" *Id.*

The court in *Columbia* discussed the appropriateness of judicial notice "to support a motion for judgment on the pleadings by negating an express allegation of the pleading [when] the notice [is] something that cannot ***reasonably be controverted.***" *Id.* at 468 (emphasis added). At issue in *Columbia* was the trial court's granting of an MJOP based on "reliance on the terminology of an incorporated complex contract" that contradicted the pleading at issue. The court reversed, noting that "parol evidence may lead to an interpretation of the contract consistent with the pleading's express allegation." *Id.* at 470. The critical point here from the *Columbia* opinion is whether the "fact" sought to be judicially noticed "cannot reasonably be controverted." *Id.* at 468.

Here, Geraci's judicial admission, that on **November 2, 2016** he confirmed in writing that the November Document is not a completely integrated agreement, "cannot reasonably be controverted" by his own self-serving declaration raising the Oral Disavowment allegation for the first time on **April 9, 2018**. *Id.*

In summary, pursuant to well-established case law – *Joslin*, *Gelfo*, *King*, *Rivera*, *Columbia* - disposing of a case prior to trial by means of a MJOP is appropriate "where the pleader's own concession" means that *on the merits* its "cause is inevitably destined to fail." *Id.* at 469. Such is the case here. The only reason Geraci continues prosecuting this action is to further

his goal to exponentially limit his damages (and those of his agents) to Petitioner by sabotaging the approval of the CUP for the Property.

V. MAIN CONCLUSION

Geraci's litigation strategy can be summarized as follows: the November Document is a completely integrated agreement and the PER bars his Confirmation Email as evidence to contradict the terms set forth therein. However, should Respondent allow the admission of his Confirmation Email, then his Oral Disavowment allegation – that Petitioner agreed the November Document is a completely integrated agreement – will exculpate him from liability because he sent the Confirmation Email by *mistake* and he corrected that mistake *orally* over the phone the next day. In other words, if he can't prevent admission of evidence created on November 2, 2016 ***proving*** his fraud, then he will use his NEW evidence – his self-serving declaration created on April 9, 2018 - to ***disprove*** his fraud. This is absurd.

In *American Internat. Group, Inc. v. Superior Court* (1991) 234 Cal.App.3d 749, 755, the appellate court issued a writ on a petition from a denial of judgment on pleadings where the issue, as here, was purely legal on undisputed facts and of significant legal import. Discussed thoroughly above, and simply self-evident, Petitioner is the victim of a malicious prosecution action that has evolved into a civil a conspiracy orchestrated by numerous individuals seeking to mitigate their damages. If Petitioner had been represented by competent counsel and/or Petitioner had not discredited himself with Respondent (with allegations of threats by Geraci against him seeking to intimidate him into settling), this matter should have been adjudicated in Petitioner's favor in the preliminary stages of this action.

Petitioner's inability to access justice on these facts represents a severe public policy issue; it will already stand as precedent and encourage wealthy individuals to seek to use the judiciary as an instrument to effectuate a

miscarriage of justice against parties who cannot afford legal counsel to defend themselves against meritless cases. *See Neary, supra,* 3 Cal.4th at 287 (***"the quality of justice a litigant can expect is proportional to the financial means at the litigant's disposal."***) (emphasis added).

In light of the foregoing facts, and the underlying public policy concerns at issue here, Petitioner respectfully requests that this Court immediately issue a writ providing Petitioner the critically needed relief set forth below.

VI. PRAYER FOR RELIEF

Petitioner prays that this Court:

1. Grant an immediate stay of the underlying proceeding pending resolution of this Petition;
2. Issue a peremptory Writ of Mandate and/or Writ of Prohibition directing Respondent to:
   a. Vacate its Minute Order dated June 14, 2018 denying Receiver Motion;
   b. Appoint a receiver with the requisite authority and ability to supervise and pursue the City's approval of the CUP application;
   c. Vacate its Minute Order dated July 13, 2018 denying Petitioner's MJOP;
   d. Grant Petitioner's MJOP; and
   e. Order Geraci to pay the remaining costs required to immediately have the CUP application for the Property completed;

3. Award Petitioner his costs, pursuant to Rule 8.493 of the California Rules of Court and any other applicable statutes and/or rules; and

4. Grant such other relief as may be just and proper.

DATED: August 27, 2018 LAW OFFICE OF JACOB AUSTIN

By: Jacob P. Austin
Jacob P. Austin
Attorney for Petitioner DARRYL COTTON

WORD COUNT CERTIFICATION

This brief contains 13-point font in Times New Roman typeface, and contains 13614 (permissibly) words as counted by Microsoft Word 2016, the word processing software used to generate this brief.

DATED: August 27, 2018 LAW OFFICE OF JACOB AUSTIN

By _____
Jacob P. Austin
Attorney for Petitioner DARRYL COTTON

EXHIBIT B

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT – DIVISION ONE

DARRYL COTTON, Defendant/Petitioner/Appellant, v. THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO, Respondent.	Court of Appeal Case No. _____ (San Diego Superior Court Case No. 37-2017-00010073-CU-BC-CTL) and Court of Appeal Case No. D073766 (San Diego Superior Court Case No. 37-2017-00037675-CU-WM-CTL)
LARRY GERACI, an individual; REBECCA BERRY, an individual; MICHAEL R. WEINSTEIN, an individual; SCOTT TOOTHACRE, an individual; FERRIS & BRITTON APC, a California corporation; GINA M. AUSTIN an individual; AUSTIN LEGAL GROUP APC, a California corporation; JIM BARTELL, an individual; BARTELL & ASSOCIATES, INC., a California corporation; ABHAY SCHWEITZER, an individual and dba TECHNE; AARON MAGAGNA, an individual; THE CITY OF SAN DIEGO, a public entity; M. TRAVIS PHELPS, MICHELLE SOKOLOWSKI, FIROUZEH TIRANDAZI, CHERLYN CAC, as individuals and as employees of THE CITY OF SAN DIEGO, Real Parties in Interest.	

EXHIBITS – VOLUME 1 of 3
[EXHIBITS 1-8, Pages 001 – 339]
TO PETITION FOR WRIT OF MANDATE, SUPERSEDEAS AND/OR OTHER APPROPRIATE RELIEF

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VOLUME 1 [EXHIBITS 1 – 8, PAGES 001–339]

RJN-20

ROA 297
6 pages

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Clerk of the Superior Court
SEP 17 2018
By: C. Beutler, Deputy

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

AND RELATED CROSS-ACTION

Case No: 2017-00010073-CU-BC-CTL

ORDER STRIKING DEFENDANT'S STATEMENT OF DISQUALIFICATION OF JUDGE JOEL R. WOHLFEIL

The Court has reviewed the paperwork that was filed by Defendant Darryl Cotton on September 12, 2018, entitled "Verified Statement of Disqualification" (hereafter "Statement of Disqualification"), which seeks to disqualify Judge Joel R. Wohlfeil from further presiding over the proceedings in the above-entitled case. However, the Statement of Disqualification was not properly served, is untimely, and overall fails to state any legal basis for disqualification on its face. Therefore, the Statement of Disqualification is ordered stricken for the reasons cited below.

I. Authority to Strike the Challenge.

Challenges filed pursuant to Civil Code of Procedure[1] section 170.1 are adjudicated under the procedures set forth in section 170.3. Pursuant to section 170.3, if a judge who should

[1] All further references are to the Code of Civil Procedure unless otherwise stated.

disqualify himself or herself fails to do so, any party may file with the clerk a verified written statement setting forth facts constituting grounds for disqualification. The statement seeking to disqualify the judge "shall be presented at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification. Copies of the statement shall be served on each party or his or her attorney who has appeared and shall be personally served on the judge alleged to be disqualified, or on his or her clerk, provided that the judge is present in the courthouse or in chambers." (§ 170.3 (c)(1).)

Once objection has been made, the judge may, within 10 days after service of the objection, "file a consent to disqualification" (§ 170.3(c)(3)); or file "a written verified answer admitting or denying any or all of the allegations...." (*Id.*) Failure to take any action is tantamount to consenting to disqualification. (§ 170.3(c)(4); *Hollingsworth v. Superior Court* (1987) 191 Cal.App.3d 22, 26.) However, if the statement is untimely filed, has not been served, or on its face discloses no legal grounds for disqualification, the judge against whom it is filed may strike it. (§ 170.4(b).) In striking a challenge the court is not passing on its own disqualification, but instead is passing only on the legal grounds set forth in the Verified Statement.

Should the 10-day period after service pass with the judge taking no action, the judge is deemed disqualified and has no power to act in the case. (§ 170.4(b); *Lewis v. Superior Court* (1988) 198 Cal.App.3d 1101, 1104.)

Here, the Statement of Disqualification was not properly served, is untimely, and overall fails to state any legal basis for disqualification on its face.

II. Service.

Section 170.3(c)(1) requires that a copy of the challenge for cause be personally served on the judge being challenged, or on his or her clerk provided that the judge is present in the courthouse or in chambers. Further, the 10-day period in which to respond does not begin to run until service is effected. Here, Judge Wohlfeil was not personally served, nor was his clerk served while he was present in the courthouse or in chambers. Therefore, the Statement of Disqualification is stricken for lack of service.

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III. Timeliness.

Section 170.3(c)(1) provides in part that the statement seeking to disqualify the judge "shall be presented at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification." The failure to timely file a statement of disqualification promptly upon discovery of the ground for disqualification constitutes a forfeiture or waiver of the right to seek disqualification. (*Tri Counties Bank v. Sup.Ct.* (*Amaya–Guenon*) (2008) 167 Cal.App.4th 1332, 1337-38.) In addition, an untimely disqualification statement may be stricken by the judge against whom it is filed. (§ 170.4(b). "Consequently, if a party is aware of grounds for disqualification of a judge but waits until after a pending motion is decided to present the statement of objection, the statement may be stricken as untimely." (*Tri Counties Bank v. Sup.Ct.* (*Amaya–Guenon*), *supra*, 167 Cal.App.4th at 1338.)

According to the Statement of Disqualification, Defendant asserts that Judge Wohlfeil is biased based on rulings made by the court at several hearings, the latest of which occurred on July 13, 2018. Yet, the present Statement of Disqualification was not filed until September 12, 2018, almost two months after Defendant first became aware of the facts supporting the alleged bias. While Defendant attributes the delay to defense counsel's schedule and other time sensitive obligations, it is clear that the Statement of Disqualification was not "presented at the earliest practicable opportunity." Therefore, the Statement of Disqualification is stricken as untimely pursuant to section 170.4(b), in addition to the reasons set forth below.

IV. The Factual Allegations.

Defendant asserts that Judge Wohlfeil is biased and should be disqualified from the present action because he made "various unsupported rulings and procedurally improper orders in this matter." Specifically, he alleges that Judge Wohlfeil improperly denied Defendant's Motion for Judgment on the Pleadings and Request for Judicial Notice, made statements indicating that the Court had a "fixed opinion" regarding the credibility of Plaintiff and Plaintiff's counsel,[2] failed to rule on the crucial threshold inquiry concerning whether there was an integrated contract, failed to

[2] Although Defendant asserts that Judge Wohlfeil made a statement that he was personally acquainted with Plaintiff's counsel and "does not believe that they would act unethically by filing a meritless suit," citing to Exhibit B, ln. 6-10; p. 1051, 25-28; p. 1055, the documents cited do not contain any such statements by Judge Wohlfeil.

explain the bases for his decisions, took procedurally improper actions which favored Plaintiff, and acted frustrated with Defendant's counsel. (See Statement of Disqualification pp. 14-16; 21; 26-29.)

Defendant is seeking to disqualify Judge Wohlfeil pursuant to section 170.1(a)(6)(A)(iii), which provides a judge is disqualified if, "a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial." Defendant also cites to section 170.1(a)(6)(B), which provides that, "[B]ias or prejudice toward a lawyer in the proceeding may be grounds for disqualification." (§170.1.) The standard is articulated in *United Farm Workers of America v. Superior Court* (1985) 170 Cal.App.3d 97. However, there are well-established limitations on what evidence may be used to establish bias or prejudice under section 170.1(a)(6)(A)(iii). Section 170.2 expressly provides that it shall not be grounds for disqualification where the judge has "in any capacity expressed a view on a legal or factual issue presented in the proceeding, except as provided in paragraph (2) of subdivision (a) of, or subdivision (b) or (c) of, Section 170.1." In addition, a legal ruling is insufficient to establish bias or prejudice, even if the legal ruling is later determined to be erroneous. (*Dietrich v. Litton Industries, Inc.* (1970) 12 Cal.App.3d 704, 719.) Further, it is not evidence of prejudice or bias when a judge expresses an opinion based upon actual observances and in what he or she considers the discharge of his or her judicial duty. (*Jack Farenbaugh & Son v. Belmont Construction, Inc.* (1987) 194 Cal. App. 3d 1023, 1031; *Shakin v. Board of Medical Examiners* (1967) 254 Cal. App. 2d 102, 116.) Moreover, the grounds for disqualification must be established by offering admissible evidence, rather than information and belief, hearsay or other inadmissible evidence. (See, *United Farm Workers, supra*, 170 Cal.App.3d at 106, fn.6.) Lastly, in *People v. Sweeney* (1960) 55 Cal.2d 27, 35, the California Supreme Court held that a statement of disqualification based upon the conclusions or speculation of a party "may be ignored or stricken from the files by the trial judge."

As summarized above, Defendant's claims of bias are based solely on his disagreement with the statements and legal rulings made by this Court, and therefore fall squarely within the parameters of the authorities set forth above. Such allegations, without more, cannot establish a

legal basis for disqualification. Every ruling requires the court to resolve a conflict in favor of one party and against another. The opinion formed does not amount to bias and prejudice. (*Moulton Niguel Water Dist. v. Colombo* (2003) 111 Cal. App. 4th 1210, 1219-1220.) Thus, it is clearly not legal evidence of bias that the Court made decisions regarding the evidence or issues presented, or ruled in a particular way in this case even if those decisions were, as Defendant contends, in error.

Likewise, statements made in the performance of judicial duties cannot establish a legal basis for disqualification. Judicial remarks that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. "[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings ... do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." (*Liteky v. United States* (1994) 510 U.S. 540, 555.) Further, the facts and circumstances prompting a challenge for cause must be evaluated in the context of the entire proceeding and not based solely upon isolated conduct or remarks. (*Flier v. Superior Court* (1994) 23 Cal.App.4th 165, 171-172.)

In the present case, all of the Court's decisions and comments were made during court proceedings, in the context of the factual and evidentiary issues presented, the court's knowledge of the case, and its overall handling of the matters pending before it. As the authorities above clearly indicate, a judge must be able to issue rulings and make statements in connection with the performance of his or her judicial duties, including those concerning the sufficiency of the evidence, the credibility of parties, or any other issues before the court. Thus, any rulings or statements made by Judge Wohlfeil that Defendant believes were intemperate, unfair, or somehow favored the other party fall into the categories set forth in the legal authorities above; namely the Court expressing its views about the legal and factual issues before it, and the expression of opinion in the performance of the court's judicial duties which cannot establish a legal basis for disqualification.

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Further, the Statement of Disqualification is based solely on Defendant's conclusions and interpretation of the Court's rulings and statements. Thus, it lacks sufficient factual or evidentiary support and amounts to no more than mere speculation and conjecture, which likewise cannot form a legal basis for disqualification.

In short, the allegations made by Defendant do not show any bias on the part of the judge, nor do they support any reasonable and objective conclusion that Judge Wohlfeil is, or could reasonably be believed to be, biased. Therefore, the Statement of Disqualification is properly stricken, and this Court may hear any further matters that may come before it in this case.

V. Conclusion.

IT IS HEREBY ORDERED that the Statement of Disqualification of Judge Joel R. Wohlfeil is stricken for the reasons stated above pursuant to section 170.4(b).

This order constitutes a determination of the question of disqualification of the trial judge pursuant to section 170.3(d).

IT IS SO ORDERED.

Dated this 17 day of September 2018.

By: _____

Hon. Joel R. Wohlfeil
Judge of the Superior Court