

1 ANDREW FLORES,
2 California State Bar Number 272958
3 Law Office of Andrew Flores
4 945 4th Avenue, Suite 412
5 San Diego, CA 92101
6 Telephone: (619) 356-1556
7 Facsimile: (619) 274-8053
8 E-mail: Andrew@FloresLegal.pro

9 Plaintiff *In Propria Persona*,
10 and Attorney for Plaintiffs
11 Amy Sherlock, Minors T.S.
12 and S.S., Jane Doe, and Jeff Hagler

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 ANDREW FLORES, an individual; AMY)
16 SHERLOCK, on her own behalf and on)
17 behalf of her minor children, T.S. and S.S.;)
18 JANE DOE, an individual; and JEFF)
19 HAGLER, an individual;)
20 Plaintiffs,)

21 vs.)

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

Case No **'20CV0656 JLS LL**
PLAINTIFFS' NOTICE OF EX
PARTE APPLICATION, AND EX
PARTE APPLICATION FOR:
(1) TEMPORARY RESTRAINING
ORDER;
(2) ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION;
(3) ORDER TO SHOW CAUSE RE:
SANCTIONS AS TO ATTORNEY
NATALIE NGUYEN;
(4) ORDER COMPELLING THE
ATTENDANCE OF ATTORNEY
NATALIE NGUYEN;
(5) ORDER TO SHOW CAUSE RE:
SANCTIONS AS TO CORINA
YOUNG; AND
(6) ORDER COMPELLING THE
ATTENDANCE OF CORINA YOUNG

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

Defendants,

JOHN EK, an individual; THE EK FAMILY
TRUST, 1994 Trust

Real Parties In Interest.

1 **TO THE CLERK OF THE COURT AND ALL PARTIES:**

2 **PLEASE TAKE NOTICE** that Plaintiffs Andrew Flores, Amy Sherlock on her
3 own behalf and as parental guardian of minors T.S. and S.S, Jane Doe, and Jeff Hagler
4 hereby make this ex parte application (“Application”) to this Court, pursuant to Rules 64
5 and 65 of the Federal Rules of Civil Procedure (“FRCP”) and Local Rules 7.1(f) and
6 83.3(g) for the Southern District of California, for:

7 (1) a temporary restraining order (“TRO”) enjoining defendant Aaron Magagna
8 (“Magagna”) from selling and/or transferring the conditional use permit (“CUP”) No.
9 598124 (the “District Four CUP”) issued by the City of San Diego for a Cannabis Outlet
10 at 6220 Federal Blvd., San Diego, CA 92114 (“6220 Federal”);

11 (2) an order to show cause (“OSC”) why a preliminary injunction should not issue
12 preventing Magagna from committing the above-described acts during the pendency of
13 this action;

14 (3) an OSC for why defendant Attorney Natalie Trang-My Nguyen
15 (“Nguyen”) should not be sanctioned for failing to provide the promised testimony of her
16 client, defendant Corina Young (“Young”), in a related state court action (“*Cotton I*”);¹

17 (4) an order for Nguyen to appear at the hearing before this Court on this
18 Application and testify as to the above-described acts;

19 (5) an OSC for why Young should not be sanctioned for failing to provide her
20 promised testimony in *Cotton I*; and

21 (6) an order for Young to appear at the hearing before this Court on this Application
22 and testify as to the above-described acts.

23 Good cause exists for issuance of a TRO restraining and enjoining Magagna from
24 selling and/or transferring the District Four CUP that was the object of *Cotton I*. The
25 requested relief is warranted because, *inter alia*, Magagna procured the District Four CUP
26 by attempting to bribe and then threatening Young from providing her testimony in
27

28 ¹ *Geraci v. Cotton*, San Diego Superior Court, Case No. 37-2017-00010073-CU-BC-22
CTL. A judgment was issued in favor of plaintiff Lawrence Geraci on October 16, 2019
(ROA 694).

1 *Cotton I* that would have evidenced Magagna’s unlawful actions to acquire the District
2 Four CUP. Immediate injunctive relief is necessary because Magagna is currently in the
3 process of attempting to sell the District Four CUP. If Magagna is allowed to sell the
4 District Four CUP to a bona fide third party, Plaintiffs will be irreparably damaged.
5 Plaintiffs may not be able to recover the District Four CUP from a bona fide third party
6 and do not have the finances, as a result of defendants’ unlawful acts, to engage in further
7 litigation to vindicate their rights to the District Four CUP if it is sold to a third party.

8 Further, defendants John Ek and The Ek Family Trust, 1994 Trust (collectively
9 “Ek”), the property owner of the real property at which the District Four CUP was granted
10 is evicting the adjoining tenant under the belief that the District Four CUP was lawfully
11 acquired by Magagna and will not be revoked. Apparently, Ek has reached a deal with
12 Magagna to enlarge the contemplated cannabis business. The to-be evicted tenant is a
13 sole proprietor who has operated a tire business at that location for at least 5 years. Ek is
14 making significant decisions, including evicting his tenant, and will be irreparably harmed
15 if the District Four CUP is later determined to be void for having been procured through,
16 *inter alia*, Magagna’s unlawful actions.

17 Good cause exists for issuance of an order requiring Nguyen to appear at the
18 hearing on this Application to explain why she did not provide Young’s promised
19 testimony. In January 2020, Plaintiff Andrew Flores (“Flores”) confronted Young for
20 failing to provide her testimony and informed her that he intended to file suit against her
21 as a co-conspirator of a conspiracy that committed a fraud on the court in *Cotton I*. Young
22 alleged that it was her attorney, Nguyen, who informed her that they would just “ignore”
23 their promise to provide Young’s testimony because “it was too late for Cotton to do
24 anything about it.” Further, that Nguyen was referred to Young *by* Magagna’s attorney,
25 Matthew Shapiro (“Shapiro”), and that Shapiro paid for almost all of Nguyen’s legal
26 services for Young.

27 Defendants are predominantly highly intelligent and experienced attorneys who
28 either filed/maintained *Cotton I* without probable cause or knew that it was
filed/maintained without probable cause. Therefore, they knew or should have known

1 that the allegations of violence against Young, which were raised in *Cotton I*, were almost
2 certainly true. Allowing Nguyen time to collude with her co-conspirators to fabricate
3 mitigating evidence (which they did in *Cotton I* as described below) or to counsel/coerce
4 Young into changing her testimony will severely prejudice Plaintiffs.

5 Good cause exists for issuance of an order requiring Young to appear at the hearing
6 on this Application to explain why she did not provide her promised testimony. Even
7 assuming that Nguyen did in fact tell Young that they can ignore their promise to provide
8 Young's testimony, Young clearly knew by Nguyen's alleged language, "it was too late
9 for Cotton to do anything about it," that the failure to provide her promised testimony was
10 unlawful. Further, Young has alleged that she has been threatened and even moved out
11 of the City of San Diego for fear of being the victim of violence by defendants, including
12 by Magagna and his attorney Shapiro, who both knew where she lived and had been to
13 her home. Allowing defendants additional time to bribe, coerce, threaten, and/or take any
14 other unlawful acts against Young to make her unavailable or cause her to change her
15 testimony will severely prejudice Plaintiffs.

16 Good cause also exists for the granting of the injunctive relief requested herein
17 because "a court has the power to conduct an independent investigation in order to
18 determine whether it has been the victim of fraud." *Chambers v. NASCO, Inc.*, 501 U.S.
19 32, 44 (1991). Substantively, the relief requested herein will also serve to inform this
20 Court as to whether it has been the victim of fraud by defendants.

21 Plaintiffs make this Application on the grounds that they are likely to succeed on
22 the merits of their claims and that, absent injunctive relief prior to trial, Plaintiffs will
23 suffer irreparable harm if Magagna sells the District Four CUP or Young is prevented
24 from providing her testimony. Moreover, preliminary injunctive relief is warranted
25 because the balance of hardships tip overwhelmingly in Plaintiffs favor and is in the
26 public interest.

27 Pursuant to FRCP 65(b) and Local Rules 7.1(f) and 83.3(g) for the Southern
28 District of California the granting of this Application without notice to defendants is
appropriate in order to not allow Magagna time to consummate the sale of the District

1 Four CUP or to allow defendants time to threaten, coerce or intimidate Young from
2 providing her testimony or into committing perjury. *Reno Air Racing Ass'n., Inc. v.*
3 *McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006) (“There are ‘a very narrow band of cases
4 in which *ex parte* orders are proper because notice to the defendant would render fruitless
5 the further prosecution of the action.’”) (quoting *American Can Co. v. Mansukhani*, 742
6 F.2d 314, 322 (7th Cir. 1984)).

7 Plaintiffs base this Application on this Ex Parte Application, the Memorandum of
8 Points and Authorities, Declaration of Andrew Flores and Request for Judicial Notice in
9 support hereof, and the [Proposed] Order, all filed concurrently herewith, the papers and
10 records on file in this action and the *Cotton I* action, and any evidence and argument that
11 may be presented at a hearing on this Application (should the Court decide to hear oral
12 argument).

13
14 Dated: April 3, 2020

Law Offices of Andrew Flores

15
16 By /s/ Andrew Flores

17
18 Plaintiff *In Propria Persona*, and
19 Attorney for Plaintiffs
20 AMY SHERLOCK, Minors T.S. and
21 S.S., and JANE DOE
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25
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28

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9 Plaintiff *In Propria Persona*,
10 and Attorney for Plaintiffs
11 Amy Sherlock, Minors T.S.
12 and S.S., Jane Doe, and Jeff Hagler

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 ANDREW FLORES, an individual, AMY)
16 SHERLOCK, on her own behalf and on)
17 behalf of her minor children, T.S. and)
18 S.S., JEFF HAGLER, an individual,)
19 JANE DOE, an individual,)

20 Plaintiffs,)

21 vs.)

22 GINA M. AUSTIN, an individual;)
23 AUSTIN LEGAL GROUP APC, a)
24 California Corporation; JOEL R.)
25 WOHLFEIL, an individual; LAWRENCE)
26 (AKA LARRY) GERACI, an individual;)
27 TAX & FINANCIAL CENTER, INC., a)
28 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; RACHEL M.)

Case No. '20CV0656 JLS LL
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' EX PARTE
APPLICATION FOR:
(1) TEMPORARY RESTRAINING
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SANCTIONS AS TO CORINA
YOUNG; AND
(6) ORDER COMPELLING THE
APPEARANCE OF CORINA YOUNG

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

Defendants,

JOHN EK, an individual; THE EK)
 25 FAMILY TRUST, 1994 Trust)
 26)

Real Parties In Interest.

28

Table of Contents

1

2 INTRODUCTION 1

3 STATEMENT OF FACTS 3

4 I. Relevant Background 3

5 A. Geraci is a sophisticated businessman who has been sanctioned at least three

6 times for his involvement/management of illegal marijuana dispensaries..... 3

7 B. State Law 3

8 C. City Law 5

9

10 II. The Berry Application for a dispensary at the Property 6

11 III. Geraci alleged a receipt was a purchase contract to record a lis pendens on the

12 Property and prevent the sale of the Property to Flores’ predecessor-in-interest. 8

13 IV. Geraci and Cotton’s conduct after executing the November Document 9

14 A. The Confirmation Email 9

15 B. The November 3, 2016 Email 10

16 C. The Partnership Confirmation Text 10

17 D. The \$5,000 Request Email 10

18

19 V. Pleadings; the Martin/Flores Purchase Agreement; and *Riverisland* 11

20 VI. Young and Magagna; Austin and Nguyen; 6220 Federal..... 14

21 LEGAL STANDARDS 17

22 ARGUMENT 17

23 I. Likelihood of success on the merits 17

24 A. Berry’s alleged agency of Geraci violates the Statute of Frauds and the Equal

25 Dignities Rule..... 18

26 B. The November Document is a receipt and cannot be a fully integrated purchase

27 contract because it lacks mutual assent..... 18

28 C. The November Document does not have a lawful object. 20

1 D. The Disavowment Allegation is fabricated evidence created in response to
2 *Riverisland*.21
3 E. Nguyen has committed a fraud on the court by failing to provide Young’s
4 promised testimony.23
5 II. Irreparable Harm23
6 III. Balance of Equities.....23
7 IV. Public Interest.....24
8 CONCLUSION.....25
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Table of Authorities

Cases

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 861 F.2d 21,22

Aoude v. Mobile Oil Corp.,
 892 F.2d 1115 (1st Cir. 1989) 18, 20, 22

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 (2000) 24 Cal. 4th 83 21

Associated Milk Dealers v. Milk Drivers U,
 422 F.2d 546 (7th Cir. 1970) 24

Bank of America Etc. Assn. v. Pendergrass
 (“Pendergrass”) 4 Cal.2d 258 11

Barsegian v. Kessler & Kessler
 (2013) 215 Cal.App.4th 446 21

Beazell v. Schrader
 (1963) 59 Cal.2d 577 13

Bowers v. Raymond J. Lucia Cos.
 (2012) 206 Cal.App.4th 724 19

Brown v. City of Fremont
 (1977) 75 Cal.App.3d 141 22

Chambers v. Baltimore Ohio Railroad,
 207 U.S. 142 (1907) 24

Chambers v. Nasco, Inc.,
 501 U.S. 32 (1991) 17, 23, 25

De Vries v. Brumback
 (1960) 53 Cal. 2d 643 23

Diamond Bar Dev. Corp. v. Superior Court
 (1976) 60 Cal. App. 3d 330 20

Dore v. Arnold Worldwide, Inc.
 (2006) 39 Cal.4th 384 20

1 *H. S. Crocker Co. v. McFaddin*
 2 (1957) 148 Cal.App.2d 639 19

3 *Hollywood Nat. Bank v. International Bus. Mach,*
 4 38 Cal.App.3d 607 (Cal. Ct. App. 1974) 18

5 *IIG Wireless, Inc. v. Yi*
 6 (2018) 22 Cal.App.5th 630 11

7 *In re Intermagnetics America, Inc.,*
 8 926 F.2d 912 (9th Cir. 1991) 18

9 *Masterson v. Sine,*
 10 68 Cal.2d 222 (Cal. 1968) 19

11 *Park Vill. Aprt. v. Mortimer Howard Trust,*
 12 636 F.3d 1150 (9th Cir. 2011) 23

13 *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Association*
 14 (2013) 55 Cal.4th 1169 11

15 *Roth v. Rhodes*
 16 (1994) 25 Cal. App. 4th 530 23

17 *Sierra Forest Legacy v. Rey,*
 18 577 F.3d 1015 (9th Cir. 2009) 17

19 *Spokane Law Enforcement Fed. Credit Union v. Barker*
 20 (*In re Barker*), 839 F.3d 1189 (9th Cir. 2016) 21-22

21 *Tanoh v. Dow Chemical Co.,*
 22 561 F.3d 945 (9th Cir. 2009) 24-25

23 *Ty Inc. v. Softbelly's, Inc.,*
 24 517 F.3d 494 (7th Cir. 2008) 23

25 *Vierra v. Workers' Comp. Appeals Bd.*
 26 (2007) 154 Cal. App. 4th 1142 20-21

27 *Whitman v. Hawaiian Tug & Barge Corp.,*
 28 27 F. Supp. 2d 1225 (D. Haw. 1998) 17

Statutes

Senate Bill 94 §102 5

Senate Bill 94 §1 5, 6

1
2 CCP at § 23 4
3 CCP at § 27 4
4 CCP § 664.6 3, 4
5 Civ. Code at § 1598 20
6 Civ. Code § 1550 20
7 Civ. Code § 1624 18
8 Civ. Code § 2309 18
9 Pen. Code § 518 20
10 Adult Use of Marijuana Act §6.1 5
11 San Diego Municipal Code §141.0504(a)(1) 2, 3
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1 **INTRODUCTION**

2 There is a small group of wealthy individuals, attorneys and professionals
3 providing services in the cannabis sector (the “Enterprise”) who have conspired to create
4 an unlawful monopoly in the cannabis market (the “Antitrust Conspiracy”) in the City of
5 San Diego (the “City”). Defendants Lawrence Geraci; Rebeca Berry (Geraci’s
6 receptionist and a real estate broker); Geraci’s attorneys (Michael Weinstein and Scott
7 Toothacre of Ferris & Britton, APC (“F&B”) and Gina Austin of the Austin Legal Group,
8 APC (“ALG”)); Aaron Magana (a wealthy individual with multiple legal cannabis
9 businesses); Attorney Matthew Shapiro (Magana’s attorney); and Attorney Natalie
10 Trang-My Nguyen (an associate of Shapiro and Austin) are among the principals and
11 agents of the Enterprise.

12 In furtherance of the Antitrust Conspiracy, Geraci/F&B filed a sham suit in state
13 court against Darryl Cotton seeking to prevent sale of the Property¹ to Richard Martin
14 (“Cotton I”).² Cotton I alleged a receipt was a fully integrated purchase contract for
15 Geraci’s purchase of the Property and sought to force the sale of the Property to Geraci.
16 When the suit was exposed as a sham, the Enterprise took unlawful actions in and out of
17 the courtroom, including threats and acts of violence, to coerce Cotton to settle the case.

18 The reason Geraci/F&B would file a sham suit, and engage in and/or ratify acts and
19 threats of violence to cover up their having filed a sham suit, is that the Property qualifies
20 for a conditional use permit (“CUP”) with the City to allow the operation of a Cannabis
21 Outlet (also generally known as a “dispensary”); a for-profit cannabis retail store. The
22 Property is worth no less than \$7,400,000 with a cannabis CUP being issued and without
23 it, approximately \$500,000.

24 Cotton was forced to sell the Property at below market value to finance his legal
25

26 ¹ The “Property” means the real property located at 6176 Federal Blvd., San Diego, CA
27 92114.

28 ² *Geraci v. Cotton*, San Diego Superior Court, Case No. 37-2017-00010073-CU-BC-22
CTL.

1 defense in *Cotton I*. In April 2017, Cotton unconditionally sold the Property to Martin for
2 a down payment of \$50,000 and a total consideration due of \$2,000,000 if the cannabis
3 CUP is issued at the Property and \$500,000 if the cannabis CUP is not.

4 Thus, *if* (i) *Cotton I* is found to be a sham suit and (ii) the cannabis CUP is issued
5 at the Property, *then* the consequential damages for which Geraci and his agents are liable
6 for include (i) \$7,400,000 - \$2,000,000 = \$5,400,000 *plus* (ii) attorneys' fees and costs
7 (in excess of a \$1,000,000 at this point) *plus* (iii) whatever exemplary and punitive
8 damages the Court (or a jury) believes are warranted. Therefore, no less than \$6,400,000.
9 Further, if Plaintiffs are successful in having this Court ensure their safe access to state
10 court and they prevail on their RICO and/or antitrust causes of action allowing for treble
11 damages, Geraci and his agents are liable for no less than \$19,200,000.³

12 As is self-evident, when *Cotton I* was exposed as a sham suit, Geraci and his agents
13 were highly motivated to take any action necessary to mitigate those consequential
14 damages. And the only way for them to permanently do that was to ensure that a cannabis
15 CUP is *never* issued at the Property. To effectuate this goal, Geraci and his agents had a
16 co-conspirator, Magagna, file a competing cannabis CUP application approximately 200
17 feet away from the Property at 6220 Federal⁴ (the "Magana Application"). By law, two
18 cannabis CUPs cannot be issued on properties located within 1,000 feet of each other.⁵

19 The Enterprise's conspiracy successfully culminated in (i) the Magagna
20 Application being approved and a cannabis CUP being issued at 6220 Federal (the
21 "District Four CUP") and (ii) a judgment in favor of Geraci in *Cotton I*.

22 Plaintiffs request Magagna be enjoined from selling/transferring the District Four
23 CUP pending resolution of this suit and that Nguyen and her client, Corina Young, be
24 ordered to appear before this Court and explain why they failed to provide the promised
25 testimony of Young in *Cotton I*; which includes Magagna's attempts at bribing and
26

27 ³ Not all of Plaintiffs' demonstratable compensatory damages are set forth herein.

28 ⁴ "6220 Federal" means 6220 Federal Blvd., San Diego, CA 92114.

⁵ San Diego Municipal Code ("SDMC") §141.0504(a)(1).

1 threatening Young to change her testimony that would incriminate Geraci and his agents.

2 **STATEMENT OF FACTS**

3 **I. RELEVANT BACKGROUND**

4 **A. Geraci is a sophisticated businessman who has been sanctioned at**
5 **least three times for his involvement/management of illegal**
6 **marijuana dispensaries.**

7 Geraci has approximately 40 years of experience providing tax services and has
8 been the owner-manager of Tax & Financial Center, Inc. (“T&F Center”) since 2001.
9 (Request for Judicial Notice (“RJN”) Ex. 1 (Reporter’s Transcript (“RT”) of *Cotton I*
10 Trial for July 3, 2019 (“RT 7/3/19”)) at 16:17-24; 55:17-28.) T&F Center provides
11 sophisticated tax, financial and accounting services. (See Flores Dec at ¶ 38 and Ex. 9 (list
12 of services provided by T&F Center).) Geraci has been an Enrolled Agent with the IRS
13 since 1999, which “means he has a federal license that allows him to represent clients
14 before the IRS.” (RJN Ex. 1 at 57:2-1; 16:22-24.) Geraci was also a California licensed
15 real estate salesperson for approximately 25 years from 1993-2017. (*Id.* at 57:15-20.)

16 Prior to his involvement with the Property, Geraci was sued by the City for his
17 involvement in three illegal marijuana dispensaries (the “Illegal Marijuana
18 Dispensaries”); Geraci settled all three cases, collectively paying fines in the amount of
19 \$100,000 (the “Geraci Judgements”).⁶ Geraci did not “coincidentally” lease three real
20 properties to the Illegal Marijuana Dispensaries; he was an operator and beneficial owner.
21 (See RJN Ex. 3 (CCSquared Stipulated Judgement) at 2:15-16 (“The address where the
22 Defendants were maintaining a marijuana dispensary business at all times relevant to this
23 action is 3505 Fifth Ave, San Diego[.]”) (emphasis added).)

24 **B. State Law**

25
26 ⁶ See RJN Ex. 2 (Stipulation for Entry of Final Judgment and Permanent Injunction;
27 Judgment Thereon [CCP § 664.6] (the “Tree Club Judgment”)); RJN Ex. 3 (Stipulation
28 for Entry of Final Judgment and Permanent Injunction; Judgment Thereon [CCP § 664.6]
(the “CCSquared Judgment”). The CCSquared Judgment was a global settlement of two
separate civil actions.

1 In 2003, the State of California (the “State”) enacted the Medical Marijuana
2 Program Act (the “MMPA”), which established certain requirements for nonprofit entities
3 that would come to be known as Medical Marijuana Consumer Cooperatives (“MMCC”).

4 In 2015, the Medical Marijuana Regulation and Safety Act (“MMRSA”)⁷ was
5 enacted to establish a statewide regulatory system for medical marijuana businesses
6 governing, among other things, cultivation, processing, transportation, testing and
7 distribution of medical marijuana, and allowing, *inter alia*, for MMCCs to operate for
8 profit. (*See* Cal. Bus. & Prof. Code (“BPC”) §§ 19300–19360.)

9 As part of the MMRSA, SB 643 added § 19323 to the BPC, effective January 1,
10 2016. (SB 643 at § 10.) BPC § 19323 set forth criteria mandating the denial of an
11 MMCC application. (*Id.*) BPC § 19323 was amended by 2016 Cal SB 837 (“SB 837”),
12 effective June 27, 2016, and is the original applicable regulatory language at issue in this
13 action. (SB 837 at § 27.) Specifically, BPC § 19323 mandated the denial of an application
14 for an MMCC if the applicant had, *inter alia*, purposefully omitted required information,
15 made false representations, been sanctioned for unauthorized commercial marijuana
16 activity in the three years preceding the application, or failed to comply with local
17 ordinances. (*See id.* at § 27 (BPC § 19323(a),(b)(1)-(3),(7)); *id.* at § 23 (BPC
18 § 19320(b)).)

19 On November 8, 2016, the voters of California approved Proposition 64, the
20 Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”), which legalized the
21 for-profit sale of recreational cannabis. AUMA required a party desiring to operate a for-
22 profit dispensary to acquire a license from the State and to comply with local ordinances.
23 (*See* AUMA at § 6.1 (adding BPC § 26200).) AUMA requires the disclosure of an
24 individual who would be the sole owner of the license being sought in the application and
25 also mandates the denial of a license on the same grounds as those set forth in BPC
26

27 ⁷ The Medical Marijuana Regulation and Safety Act was enacted through three bills,
28 Assembly Bill No. 266, Assembly Bill No. 243, and Senate Bill No. 643 (“SB 643”) in
the 2015–2016 legislative session.

1 § 19323. (*See* AUMA at §6.1 (adding §§ 26001(a) (providing definition of applicant),
2 26055(a) (requiring licensing authorities to only issue licenses to qualified applicants),
3 and 26057 (prohibiting certain applicants from obtaining a license).)

4 2017 Cal SB 94 (“SB 94”), effective June 27, 2017, consolidated the medical
5 regulatory scheme established under the MMPA with the recreational regulatory scheme
6 established by AUMA. Pursuant to SB 94, all cannabis entities require a license from the
7 State to operate and must comply with local ordinances. (*See* SB 94 §1(g); *id.* at §102
8 (amending BPC § 26200).)

9 C. City Law

10 General Cannabis Permit and CUP Requirements. Since August 1993, SDMC
11 § 11.0401 has prohibited the furnishing of false or incomplete information in any
12 application for any type of permit or CUP from the City. (*See* SDMC § 11.0401(b) (“No
13 person willfully shall make a false statement or fail to report any material fact in any
14 application for City license, permit, certificate, employment or other City action under
15 the provisions of the [SDMC].”).) Further, SDMC § 11.0402 provides that “[w]henever
16 in [the SDMC] any act or omission is made unlawful, it shall include causing, permitting,
17 aiding or abetting such act or omission.” Thus, since 1993, applying for any kind of
18 cannabis permit or CUP from the City, or aiding a party to apply for same, and willfully
19 making a false statement in the application is illegal.

20 Medical Cannabis CUP Requirements. On April 27, 2011, the City passed
21 Ordinance No. 20043 (“O-20043”), which added Division 15 (Medical Marijuana
22 Consumer Cooperatives) to Chapter 4, Article 2 of the SDMC. (*Id.* at 6.)

23 Pursuant to O-20043, an MMCC could operate a dispensary in the City if organized
24 as an MMCC with the State and provided that it acquired the appropriate permit and CUP
25 from the City. (*See id.* at 10 (adding § 42.1504(e).) As defined in O-20043, an MMCC
26 was an “MMCC” organized “under” and operating in “accordance” with State law. (*Id.*
27 at 8.) O-20043 required all persons defined as *responsible persons* to undergo
28 fingerprinting and background checks. (*Id.* at 11 (adding § 42.1507 (Cooperative-

1 Background Checks)).) O-20043 broadly defined a *responsible person*, which included
2 any person who is responsible for the “operation, management, direction, or policy of an
3 [MMCC].” (*Id.* at 9 (adding § 42.1502 (Definitions) and defining *responsible person*)).)

4 On March 25, 2014, the City passed Ordinance No. 20356 (“O-20356”), which
5 amended the SDMC to allow for the regulation and establishment of for-profit
6 dispensaries by MMCCs.

7 Recreational Cannabis CUP Requirements. On February 22, 2017, in response to
8 the passage of AUMA, the City adopted Ordinance No. 20793 (“O-20793”). O-20793 (i)
9 amended the SDMC by replacing medical dispensaries, MMCCs, with non-medical
10 dispensaries called Marijuana Outlets (and now called Cannabis Outlets); (ii) requires an
11 applicant to acquire a CUP to operate a non-medical dispensary; and (iii) incorporated by
12 reference and mandated compliance with the licensing requirements added to the BPC by
13 AUMA to qualify for a cannabis CUP from the City. (*See id.* at 3 (adding § 113.0103
14 (Definitions) and defining a *marijuana outlet* as a “retail establishment operating with a
15 [CUP]... where marijuana... [is] sold to the public in accordance with dispensary or
16 retailer licensing requirements pursuant to the [BPC].”)).)

17 II. THE BERRY APPLICATION FOR A DISPENSARY AT THE PROPERTY

18 In or around mid-2016, Geraci first contacted Cotton because the Property “may
19 qualify for a dispensary.” (RJN Ex. 1 (RT 7/3/19) at 59:10-19.) Berry testified that on
20 October 31, 2016, Geraci had Berry file for a MMCC CUP at the Property (the “Berry
21 Application”). (*Id.* at 193:15-194:8; *see* RJN Exs. 4-7 (material forms from the Berry
22 Application).) Geraci is not disclosed in the Berry Application. (*See* RJN Exs. 4-7.) Berry
23 testified that her failure to disclose Geraci in the Berry Application was purposeful; he
24 was not disclosed because he was an Enrolled Agent with the IRS (the “Berry Fraud”).
25 (RJN Ex. 1 at 193:15-194:8) The Berry Application included the following four forms
26 and material representations by Berry:

27 (1) In Form DS-3032 (General Application)), Berry certified that (a) she is the
28 “Lessee or Tenant” of the Property, (b) that she is the “Permit Holder,” and (c) that she

1 “understand[s] [she] is responsible for knowing and complying with the governing
2 policies and regulations applicable to [an MMCC].” (RJN Ex. 4.) Section 7 of DS-3032
3 requires the applicant to disclose any “Notice of Violation,” which includes a “Stipulated
4 Judgment.” (*Id.*) Had Geraci been the Applicant, the Geraci Judgments would have
5 needed to be disclosed and their omission would have been discovered.

6 (2) In Form DS-190 (Affidavit for Medical Marijuana Consumer Cooperatives for
7 Conditional Use Permit), Berry declared that she (a) is the “Owner” of the Property, (b)
8 the “Business Owner,” and (c) is aware an MMCC is subject to the SDMC’s MMCC
9 requirements. (RJN Ex. 5.)

10 (3) In Form DS-3242 (Deposit Account/Financially Responsible Party), Berry
11 stated she is the “financially responsible party” for the MMCC and the “President” of the
12 entity seeking the Cannabis CUP. (RJN Ex. 6.)

13 (4) In Form DS-318 (Ownership Disclosure Statement), Berry stated she was a
14 “tenant/lessee” of the Property. Form DS-318 required Berry to provide a list that “must
15 include the names and addresses of all persons who have an interest in the property,
16 recorded or otherwise, and state the type of interest (*e.g.*, tenants who will benefit from
17 the permit, all individuals who own the property).” (RJN Ex. 7 (emphasis added).)

18 At trial in *Cotton I*, Austin, Geraci’s cannabis attorney for the Berry Application,
19 testified on his behalf. Austin is “an expert in cannabis licensing and entitlement at the
20 state and local levels and regularly speak[s] on the topic across the nation.” (RJN Ex. 8 at
21 2:7-8 (emphasis added).) Austin has worked on at “least 50” CUP applications with the
22 City. (RJN Ex. 9 (RT of *Cotton I* trial for July 8, 2019 (“RT 7/8/19”) at 12:17-23.) Austin
23 personally reviewed and commented on the Berry Application before it was submitted to
24 the City. (RJN Ex. 10 (Trial Ex. 35) at 035-004–035-005 (highlighted).)

25 Regarding the City’s disclosure requirements, Austin testified at trial in *Cotton I*
26 that she was not aware of the Geraci Judgements. (RJN Ex. 9 at 50:1-7.) Austin also
27 testified that the City does not bar **any** individuals from acquiring a cannabis CUP. (*Id.* at
28 47:10-14 (“[Question:] You are aware that certain people are not eligible for or are barred

1 from obtaining certain CUPs. Correct? [Answer:] Not at the city level, but at the state
2 level, yes.”.) Then, after being confronted with form DS-318 from the Berry
3 Application, requiring Berry to provide a list of all persons who have an interest in the
4 Property, Austin was asked why “after reading that, why [did] it seem unnecessary to list
5 Mr. Geraci?” (*Id.* at 51:25-26.) Austin responded: “I don’t know that it - - it was
6 unnecessary or necessary. We just didn’t do it.” (*Id.* at 51:27-28 (emphasis added).)

7 The Berry Application was submitted pre-AUMA and sought a medical cannabis
8 CUP from the City (and was subject to BPC § 19323). After the passage of AUMA, the
9 Berry Application was switched to recreational cannabis CUP application (and was
10 subject to BPC § 26057). (*See* Flores Dec. ¶ 37, Ex. 8 (letter from the City referencing
11 the Berry Application for a recreational “Marijuana Outlet”).)

12 Regarding the State’s requirements, Austin testified that the Geraci Judgements, if
13 true, would not bar Geraci from lawfully owning a cannabis license pursuant to the Berry
14 Application (the “Sanctions Issue”). (RJN Ex. 9 at 56:16-57:3.)

15 Thus, according to Austin’s self-serving expert testimony, neither the Berry Fraud
16 nor the Sanctions Issue warrant denial of the Berry Application.

17 III. GERACI ALLEGED A RECEIPT WAS A PURCHASE CONTRACT TO RECORD A LIS
18 PENDENS ON THE PROPERTY AND PREVENT THE SALE OF THE PROPERTY TO
19 FLORES’ PREDECESSOR-IN-INTEREST.

20 On November 2, 2016, Cotton and Geraci both judicially admit they met at T&F
21 Center and reached an agreement for the sale of the Property to Geraci, the sole condition
22 precedent to closing was the approval of a cannabis CUP at the Property, Cotton received
23 \$10,000 in cash from Geraci, and they executed a document (the “November Document”).
(RJN Ex. 11 (Geraci Decl.) at 2:24-3:26; RJN. Ex. 12 (Cotton Decl.) at 2:5-3:8.)

24 Geraci filed suit alleging the November Document was executed with the intent it
25 be a fully integrated purchase contract. (RJN Ex. 13 (*Cotton I* complaint) at 2:15–21,
26 4:10–5:19, 5:22–27.)

27 In his cross-complaint, Cotton alleged the parties reached an oral joint venture
28 agreement at their meeting on November 2, 2016 (the “JVA”). (RJN Ex. 14 (Cotton’s

1 second amended cross-complaint (“SACC”)) at 4:21–5:23.) More specifically, Cotton
 2 alleged that pursuant to the JVA he would sell the Property to Geraci and his consideration
 3 was to be, *inter alia*, (i) \$800,000; (ii) a 10% equity position in the CUP; (iii) the greater
 4 of \$10,000 or 10% of the net profits of the dispensary on a monthly basis; and (iv) a
 5 \$50,000 non-refundable deposit for Cotton to keep in the event the CUP application at
 6 the Property was denied. Further, the November Document was drafted by Geraci and
 7 executed to memorialize Cotton’s receipt of \$10,000 in cash towards the \$50,000 non-
 8 refundable deposit. Also, Geraci promised to have his attorney, Austin, promptly reduce
 9 the JVA to writing. (*Id.*)

10 **IV. GERACI AND COTTON’S CONDUCT AFTER EXECUTING THE NOVEMBER DOCUMENT**

11 There are only 16 emails between Geraci and Cotton between the execution of the
 12 November Document in November 2016 and the filing of *Cotton I* in March 2017. (RJN
 13 Ex. 12 at Ex 1.)⁸ There are approximately 240 texts between Geraci and Cotton during
 14 the same time period. (RJN Ex. 15.) The texts and emails unilaterally provide a uniform
 15 single narrative, that Cotton and Geraci believed themselves to be joint venturers and the
 16 November Document was executed with the intent it be a receipt.

17 Notable communications include the following:

18 **A. The Confirmation Email**

19 On November 2, 2016, after the parties met and parted ways, Geraci emailed
 20 Cotton a copy of the November Document. (RJN Ex. 12 at Ex. 1 pp. 4-6.)

21 That same day, around 6:55 p.m., Cotton replied to Geraci’s email as follows:

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

27 ⁸ For the Court’s convenience, the first page of Ex. 1 to RJN Ex. 12 is a table of contents
 28 reflecting the dates the emails were exchanged, the identities of the sender/recipient, and
 the attachments, if any.

1 (The “Request for Confirmation”) (*Id.* at 9 (emphasis added).)

2 Later that evening, at around 9:13 p.m., Geraci replied: “No no problem at all.”
3 (The “Confirmation Email”) (*Id.* (emphasis added).)

4
5 **B. The November 3, 2016 Email**

6 The next day at around 12:36 p.m., Cotton called Geraci who did not pick up. At
7 around 12:40 p.m., Geraci called Cotton back and they spoke for approximately three
8 minutes. Later that same day, at around 1:41 p.m., Cotton emailed Geraci as follows:

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

13 (The “November 3, 2016 Email”) (Flores Dec ¶ 39, Ex. 10 (emphasis added).)

14 **C. The Partnership Confirmation Text**

15 On March 2, 2017, Geraci emailed Cotton a draft agreement entitled Side
16 Agreement that had a provision stating that Geraci and Cotton were not partners. (RJN
17 Ex. 12 at Ex. 1 pp. 41-48.) The next day, Cotton emailed Geraci:

18 Larry, [¶] I read the Side Agreement in your attachment and I see that no
19 reference is made to the 10% equity position... In fact para 3.11 [stating we
20 are not partners] looks to avoid our agreement completely. It looks like
21 counsel did not get a copy of that document. Can you explain?
(*Id.* at 49-50)

22 Cotton texted Geraci later that day: “Did you get my email?” (RJN Ex. 15 at Trial
23 Ex. 005-024.) Geraci replied one minute later: “Yes I did I’m having her rewrite it now[.]
24 As soon as I get it I will forward it to you” (the “Partnership Confirmation Text”). (*Id.*)

25 **D. The \$5,000 Request Email**

26 On March 7, 2017, Geraci emailed Cotton a revised Side Agreement. The revised
27 Side provided for Cotton to receive “10% of the net profits,” but did not provide for a
28 “10% equity position.” (RJN Ex. 12 at Ex. 1 pp. 53-58.) In the cover email, Geraci wrote:

1 Hi Darryl, I have not reviewed this yet but wanted you to look at it and give
2 me your thoughts. Talking to Matt, the 10k a month might be difficult to hit
3 until the sixth month... can we do 5k, and on the seventh month start 10k?

4 ((The “\$5,000 Request Email”) (*see* RJN Ex. 12 at Ex. 1 pp. 55-60); (hereinafter, the
5 \$5,000 Request Email, the Confirmation Email, the November 3, 2016 Email, and the
6 Partnership Confirmation Text, collectively, the “Parol Evidence”).) The language is
7 unambiguous, Geraci is asking for a concession – of an existing obligation – from Cotton
8 of a material term not included in the November Document.

9 V. PLEADINGS; THE MARTIN/FLORES PURCHASE AGREEMENT; AND RIVERISLAND⁹

10 On March 21, 2017, Cotton terminated the JVA with Geraci for failure to reduce
11 the JVA to writing. (RJN Ex. 12 at Ex. 1 at 67.) Later that same day, Cotton entered into
12 the Martin Purchase Agreement. (Flores Dec. at Ex. 1.) The next day, March 22, 2017,
13 Weinstein emailed Cotton a copy of the *Cotton I* complaint and a copy of a lis pendens
14 recorded on the Property (the “F&B Lis Pendens”). (RJN Ex. 12 at 4:25-5:5.)

15 On April 15, 2017, the Martin Purchase Agreement was amended pursuant to
16 which Cotton unconditionally sold the Property to Martin. (Flores Dec., Ex. 1 at 0022.)
17 (“Seller hereby transfers and sells to Buyer, with all the associated rights and liabilities,
18 his ownership, rights and interests in the [P]roperty and the associated CUP application
19 pending before the City of San Diego....”) (emphasis added.) Pursuant to the April 15,
20 2017 amendment, Cotton was to receive \$50,000. (*Id.*) Joe Hurtado and Jane Doe

21 _____
22 ⁹ On January 14, 2013, the California Supreme Court overruled a longstanding precedent
23 regarding promissory fraud. In the 1935 case, *Bank of America Etc. Assn. v. Pendergrass*
24 (“*Pendergrass*”) 4 Cal.2d 258, the California Supreme Court declared inadmissible
25 evidence of promissory fraud—a promise made without the intent to perform—made
26 prior to and inconsistent with the subsequent written agreement. The court’s unanimous
27 decision in *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit*
28 *Association* (“*Riverisland*”) (2013) 55 Cal.4th 1169, overruled *Pendergrass* and declared
that the parol evidence rule does not bar evidence of promissory fraud that contradicts the
terms of a writing. *Id.* at 1182; *see IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630,
641 (“[U]nder *Pendergrass*, external evidence of promises inconsistent with the express
terms of a written contract were not admissible, even to establish fraud.”).

1 (“Jane”) provided the \$50,000. (Flores Dec. ¶¶ 9,11.)

2 On November 20, 2017, Geraci filed his answer to Cotton’s SACC alleging the
3 JVA (the “*Cotton I Answer*”). (RJN Ex. 21.) Geraci did not plead fraud or mistake as
4 affirmative defenses. (*See id.*) In his fifth affirmative defense, a reservation of rights,
5 Geraci judicially admitted that he has “insufficient information upon which to form a
6 belief as to the existence of additional and as yet unstated affirmative defenses [and] he
7 reserves the right to assert additional affirmative defenses *in the event discovery discloses*
8 *the existence of said affirmative defenses.*” (*Id.* at 2:28-3:3 (emphasis added).)

9 On March 25, 2019, Martin and Flores entered into the Flores Purchase Agreement.
10 (Flores Dec. ¶ 6, Ex. 1 at 0001.) On February 9, 2018, Cotton, proceeding pro se, filed a
11 federal complaint against Geraci, Berry, Austin, ALG, Weinstein, F&B, and the City
12 alleging, *inter alia*, a RICO cause of action based in part on the allegation that Geraci and
13 Cotton reached the JVA as evidentiarily supported by the Request for Confirmation and
14 the Confirmation Email (“*Cotton III*”).¹⁰ On February 28, 2018, Judge Curiel stayed
15 *Cotton III* pursuant to the *Colorado River* doctrine.¹¹ On December 6, 2018, Cotton and
16 Hurtado, through counsel Jacob, filed a federal complaint alleging causes of action for,
17 *inter alia*, RICO and civil conspiracy against, *inter alia*, Geraci, Berry, F&B, and ALG
18 (“*Cotton IV*”).¹² On March 26, 2019, Attorney James D. Crosby as attorney-of-record for
19 Geraci and Berry filed their answer to Cotton’s *Cotton IV* complaint (the “*Cotton IV*
20 *Answer*”).¹³ The *Cotton IV Answer* admits that Geraci sent the Confirmation Email and
21 does not set forth affirmative defenses of fraud or mistake.¹⁴

22
23 ¹⁰ *Cotton v. Geraci* (S.D. Cal. Feb. 28, 2018), Case No. 18cv325-GPC(MDD). Plaintiffs
24 note that “*Cotton II*” refers to another complaint filed by Cotton in state court, described
25 in Plaintiffs’ complaint, and while material is not being included due to space constraints
in this Application.

26 ¹¹ *Cotton III*, ECF Dock. No. 7.

27 ¹² *Cotton v. Geraci* (S.D. Cal. May. 14, 2019), Case No.: 18cv2751-GPC(MDD) (“*Cotton*
VI”).

28 ¹³ *Cotton IV*, ECF Dock. No. 19.

¹⁴ *Id.*

1 From the filing of his *Cotton I* complaint in March 2017 until April 2018,
 2 Geraci/F&B simply ignored the Parol Evidence, arguing that the statute of frauds and the
 3 parol evidence rule barred its admission. For example:

4 Cotton alleges, based on extrinsic evidence [(i.e., the Parol Evidence)], that
 5 the actual agreement between the parties contains material terms and
 6 conditions in addition to those in the [November Document] as well as a term
 7 (a \$50,000 deposit rather than the \$10,000 deposit stated in the [November
 8 Document]) that expressly conflicts with a term of the [November Document].
 9 However, such a claim cannot stand as extrinsic evidence cannot be employed
 to prove an agreement at odds with the terms of the written memorandum.
 (*Beazell v. Schrader* (1963) 59 Cal.2d 577.)

10 (RJN Ex. 24 (Geraci reply to demurrer to SACC) at 2:8-13 (emphasis added).)

11 On April 4, 2018, Cotton, via attorney Jacob Austin (“Jacob”) who was engaged
 12 on a limited basis, filed a motion to expunge the F&B Lis Pendens (the “Lis Pendens
 13 Motion”). (RJN Ex. 24.) The Lis Pendens Motion argued for the first time in *Cotton I*
 14 that, pursuant to *Riverisland*, Geraci/F&B could not use the parol evidence rule as a shield
 15 to bar the Parol Evidence as proof of Geraci’s fraud. (*Id.* at 14:17-20 (the parol evidence
 16 rule “does not bar evidence of *fraudulent promises* at variance with terms of the writing:
 17 **‘[I]t was never intended that the parol evidence rule should be used as a shield to
 18 prevent the proof of fraud.’”)) (quoting *Riverisland* at 1182) (emphasis added).)**

19 On April 9, 2018, Geraci executed a declaration in support of his opposition to the
 20 Lis Pendens Motion. (RJN Ex. 11). Geraci alleged for the first time that (i) Geraci did
 21 not read the entire Request for Confirmation before sending the Confirmation Email; (ii)
 22 Geraci called Cotton on November 3, 2016 and told him that he did not intend to send the
 23 Confirmation Email; and (iii) Cotton orally agreed that he was not entitled to a 10% equity
 24 position in the CUP (the “Disavowment Allegation”). (*Id.* at 6:21-7:16.)

25 After the hearing on the Lis Pendens Motion, Jacob emailed Weinstein and accused
 26 him of going from using the parol evidence rule as a *shield* to bar the proof of the oral
 27 JVA between Geraci and Cotton to using it as a *sword* to introduce a new fraudulent oral
 28 agreement between Geraci and Cotton to cover-up Geraci’s original fraud. (Flores Dec.

1 ¶ 34, Ex. 5.) Weinstein disagreed and summarized his litigation position as follows:

2
3 First, our view is that the statute of frauds bars the [Confirmation Email]
4 because it is parol evidence that is being offered to *explicitly contradict* the
5 terms of the [November Document]. Second, Mr. Geraci does not contend
6 that his call to Mr. Cotton on November 3, 2016 resulted in an oral
7 agreement between them that Mr. Cotton was not entitled to a 10% equity
8 position. Even assuming for the sake of argument that the [Confirmation
9 Email] is not barred by parol evidence rule and is admissible, the telephone
10 call the next day is parol evidence that Mr. Geraci *never* agreed to a 10%
11 equity position and, therefore, it is *consistent* with the [November
12 Document] and not barred by the statute of frauds.

13 (*Id.*) (emphasis in original.) Weinstein conveniently ignores that the allege telephone
14 call explicitly contradicts the Confirmation Email that is not barred by the parol evidence
15 and therefore is the controlling writing. In other words, if F&B can't use the parol
16 evidence rule to bar the Parol Evidence as proof of the oral JVA and, thus, Geraci/F&B's
17 fraud (the *Pendergrass* line of reasoning), then F&B argues the existence of an oral
18 agreement between Geraci and Cotton that proves Geraci did not commit fraud.

19 On June 26, 2019, Flores met with Weinstein. (Flores Dec. ¶¶ 15-20.) At the
20 meeting, Weinstein alleged the draft agreements sent by Geraci to Cotton starting in
21 March 2017 were "appeasement" efforts by Geraci to placate Cotton. Flores then asked
22 Weinstein to explain the Request for Confirmation sent on November 2, 2016. Weinstein
23 visibly stumbled for a few moments before alleging - *for the first time since the filing*
24 *Cotton I and the week before trial* - that the Request for Confirmation was an "extortionate
25 scheme" by Cotton to acquire a 10% equity position in the dispensary. (*Id.*) At trial,
26 Geraci alleged for the *first* time that he "*felt* he was being extorted" by Cotton. (*See* RJN
27 Ex. 17 at 16:20-24, 17:3-6 (emphasis added).)

28 VI. YOUNG AND MAGAGNA; AUSTIN AND NGUYEN; 6220 FEDERAL

On October 2, 2017, Young visited the Property. Young is an entrepreneur with
interests in the cannabis industry and spoke with Cotton about acquiring an interest in the
contemplated cannabis dispensary. Cotton called Hurtado and the three of them spoke

1 about Young investing in the *Cotton I* litigation as a way for Young to acquire an interest
2 in the cannabis CUP. (*See* Flores Dec. ¶ 21, Ex. 2)(email between Hurtado and Young).)
3 Unbeknownst to Cotton or Hurtado, Young’s attorney was Shapiro; Shapiro is also
4 Magagna’s attorney for the Magagna Application. (*See* Flores Dec. ¶ 35, Ex. 6 (messages
5 between Magagna and Cotton in which Magagna confirms Shapiro is his attorney); *see*
6 RJN Ex. 18 (Certificate of Incorporation by Shapiro incorporating Magagna’s entity that
7 applied for the Magagna Application).) Shapiro took Young to consult with political
8 lobbyist James Bartell. (*See* RJN Ex. 19 at ¶ 21.) Bartell is Geraci’s political lobbyist for
9 the Berry Application. (*See* RJN Ex. 1 at 59:20-60:7.) Bartell told Young that he “owns”
10 the Berry Application and that he was getting it denied with the City “because everyone
11 hates Darryl” (the “Bartell Statement”). (*See* RJN Ex. 19 at ¶ 21 and Ex. A.) Young did
12 not communicate the Bartell Statement to Cotton or Hurtado but let them know she was
13 not interested in investing at that point in time. Young subsequently engaged Bartell for
14 a cannabis application at a different location. (*See id.* at Exhibit A (Young texts reflecting
15 Bartell is working for Young; “you know Bartell is on my La Mesa CUP”).)

16 On May 17, 2018, Hurtado sent Young an investment proposal to finance *Cotton I*
17 not as a litigation investment, but as a loan secured by a note on the Property. (Flores
18 Dec. ¶ 22, Ex. 3 (Hurtado email to Young with investment proposal).) On or around May
19 27, 2018, Young met with Hurtado to discuss the investment proposal. (RJN Ex. 19 at
20 ¶21.) Jacob and Cotton were at the same location, Jane’s residence, working on *Cotton I*
21 when Young arrived. At that meeting, Young communicated that Shapiro had taken her
22 to consult with Bartell and described the Bartell Statement. Young also told them that she
23 had been introduced to Magagna by Shapiro. (*Id.*) Cotton expressed his desire to sue
24 Magagna as a co-conspirator of Geraci, to which Young responded by stating that she did
25 not believe Magagna would engage in fraudulent conduct. (Flores Dec. ¶ 41.)

26 Young met with Magagna and explained Cotton believed him to be a co-conspirator
27 of Geraci. To her surprise, Magagna did not deny the allegations, instead, he asked her to
28 change her statements and offered her a bribe for doing so. Young refused. Despite her

1 refusal, Magagna repeatedly requested that Young change her statements by saying that
2 she “dreamed” the Bartell Statement. Young continued to refuse and Magagna became
3 increasingly aggressive with his demands until they parted, and he threatened Young
4 demanding that she not “testify” about him and to “keep him out of it.” (See RJN Ex. 19
5 ¶¶22-23, and Ex. A.)

6 Young then met with Hurtado and requested his help to keep her out of *Cotton I*.
7 Hurtado informed her that he could not, and she became upset; she had gone to see him
8 to invest, not to become a witness against her own political lobbyist, or Magagna who is
9 represented by Austin, the preeminent cannabis attorney in the City who represents most
10 of the individuals who have acquired cannabis CUPs in the City. The contemporaneous
11 text messages between Hurtado and Young confirm the Bartell Statement, that Magagna
12 attempted to bribe and then threatened her, and that she is scared for her safety because
13 Shapiro and Magagna know where she lives. (See RJN Ex. 19, Exhibit A).

14 On January 1, 2019, Jacob subpoenaed Young to be deposed on January 18, 2019.
15 (RJN Ex. 20.) On January 16, 2019, Nguyen, representing Young, unilaterally cancelled
16 the deposition of Young. (Flores Dec ¶ 36, Ex. 7.) On January 21, 2019, Nguyen
17 promised to provide Young’s testimony confirming, *inter alia*, the Bartell Statement and
18 Magagna’s attempts at bribing and threatening her. (*Id.*) On June 12, 2019, after having
19 been put off for months by Nguyen, Jacob emailed Nguyen demanding she provide
20 Young’s promised testimony, to which Nguyen never responded. (*Id.*) On June 30, 2019,
21 the day before the start of trial in *Cotton I*, Hurtado and Flores spoke with Young who
22 said she had moved out of the City, could not be served, would not testify, and did not
23 “want anything” to do with Cotton or *Cotton I*. (Flores Dec. ¶ 24-25.) Young also told
24 Flores that he needed to be fearful for the safety of himself and his family because, *inter*
25 *alia*, Austin and Magagna are “dangerous.” (*Id.*)

26 In January 2020, Flores believed he was done preparing the complaint for the
27 instant action and intended to name Young as a co-conspirator of Geraci. (*Id.* at ¶ 26.)
28 Flores spoke with Young and was direct, informing her that by failing to provide her

1 testimony she was a co-conspirator of Geraci and he would do everything in his power
2 to see her civilly liable, which may lead to her being criminally prosecuted after the civil
3 action was over and factual findings had been made. (*Id.* at ¶ 27.) Young broke down and
4 said she had done nothing illegal and that it was Nguyen who decided not to provide her
5 testimony. Young alleged that (i) Nguyen was referred to her by Shapiro, (ii) Shapiro paid
6 Nguyen’s legal fees, (iii) Nguyen – in an email – told her that it was OK to “ignore” their
7 obligation to provide Young’s testimony because “it was too late for Cotton to do
8 anything about it” (the “Young Allegations”). (Flores Dec. ¶ 28.)

9 Nguyen and Austin both attended law school together at Thomas Jefferson School
10 of Law in San Diego, California, and both were admitted to the California Bar on
11 December 1, 2006. (*Id.* at ¶ 40.)

12 On or about February 24, 2020, Flores went to a tire business adjoining 6220
13 Federal, and spoke with the owner-operator of the business. The owner confirmed that he
14 was being evicted by Ek, the property owner, because he wanted to expand the cannabis
15 dispensary approved at 6220 Federal. (*Id.* at ¶ 30, 33.)

16 LEGAL STANDARDS

17 “The standard for issuing a temporary restraining order is identical to the standard
18 for issuing a preliminary injunction.” *Whitman v. Hawaiian Tug & Barge Corp.*, 27 F.
19 Supp. 2d 1225, 1228 (D. Haw. 1998). Plaintiffs seeking a preliminary injunction “must
20 establish that (1) they are likely to succeed on the merits; (2) they are likely to suffer
21 irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in
22 their favor; and (4) a preliminary injunction is in the public interest.” *Sierra Forest*
23 *Legacy v. Rey*, 577 F.3d 1015, 1021 (9th Cir. 2009).

24 Sanctions are appropriate “if a court finds that fraud has been practiced upon it, or
25 that the very temple of justice has been defiled....” *Chambers v. Nasco, Inc.*, 501 U.S. 32,
26 46 (1991) (citation and quotation omitted).

27 ARGUMENT

28 I. LIKELIHOOD OF SUCCESS ON THE MERITS

1 Plaintiffs are likely to succeed on their declaratory cause of action seeking the
 2 *Cotton I* judgment be declared void pursuant to the equitable doctrine of a fraud on the
 3 court. “[A] ‘fraud on the court’ occurs where it can be demonstrated, clearly and
 4 convincingly, that a party has sentiently set in motion some unconscionable scheme
 5 calculated to interfere with the judicial system’s ability impartially to adjudicate a matter
 6 by improperly influencing the trier or unfairly hampering the presentation of the opposing
 7 party’s claim or defense.” *Montez v. Chase Home Fin. LLC*, Case No. 3:18-cv-02899-
 8 BEN-LL, at *4 (S.D. Cal. May 1, 2019) (quoting *Aoude v. Mobile Oil Corp.*, 892 F.2d
 9 1115, 118 (1st Cir. 1989)). “[F]raud upon the court includes both attempts to subvert the
 10 integrity of the court and fraud by an officer of the court.” *In re Intermagnetics America,*
 11 *Inc.* (“*Intermagnetics*”), 926 F.2d 912, 916 (9th Cir. 1991).

12 Here, there are at least five acts that constitute a fraud on the court:

13 **A. Berry’s alleged agency of Geraci violates the Statute of Frauds and**
 14 **the Equal Dignities Rule**

15 F&B, Geraci and Berry’s allegation that Berry was acting as Geraci’s agent when
 16 she submitted the Berry Application, i.e., the Berry Fraud, violates the statute of frauds
 17 and the equal dignities rule. Civ. Code § 1624(4); *id.* § 2309; *Hollywood Nat. Bank v.*
 18 *International Bus. Mach*, 38 Cal.App.3d 607, 617 (Cal. Ct. App. 1974) (“[W]here the
 19 writing is unambiguous on its face, extrinsic evidence is inadmissible to show that a
 20 person acted purely as an agent.”). Nothing that F&B/Geraci/Berry can argue in
 21 opposition can change this indisputable fact: the Berry Fraud is illegal.

22 **B. The November Document is a receipt and cannot be a fully integrated**
 23 **purchase contract because it lacks mutual assent.**

24 In *Aoude*, the Court held that a fraud on the court was committed when “[plaintiff]
 25 knew that counsel had annexed [a] false agreement to the complaint instead of the real
 26 one....” (*Aoude, supra*, 892 F.2d at 1118), which is exactly what happened in *Cotton I*.

27 One of the essential elements of an enforceable contract is mutual consent.
 28 [Citation.] For consent to be mutual, the parties must all agree on the same
 thing in the same sense. ([CCP] §§ 1580 & 1636.) “The existence of mutual
 consent is determined by objective rather than subjective criteria, the test

1 being what the outward manifestations of consent would lead a reasonable
2 person to believe.” [Citation.] “If there is no evidence establishing a
3 manifestation of assent to the ‘same thing’ by both parties, then there is no
4 mutual consent to contract and no contract formation.” [Citation.]

4 *Bowers v. Raymond J. Lucia Cos.* (2012) 206 Cal.App.4th 724, 732-33.

5 The November Document is ambiguous. Cotton, unlike Geraci, is not a
6 sophisticated party: Cotton refers to the November Document as a “Purchase Agreement”
7 in the Request for Confirmation, but also requests that Geraci “simply acknowledge... in
8 a reply” that the “10% equity position” term would be in a “final agreement” as it was “a
9 factored element in [his] decision to sell the [P]roperty.” (RJN Ex. 12 at Ex. 1 at 9.) The
10 language is clear and unambiguous on this point – Cotton is asking for written evidence
11 of an agreed upon term not reflected in the November Document.

12 Any ambiguity is removed by the Parol Evidence; and most notably Geraci’s
13 Confirmation Email, “no no problem at all,” that provides exactly the type of “outward
14 manifestation of consent [that] would lead a reasonable person to believe” that Geraci had
15 intended to provide the requested confirmation by Cotton. *Bowers, supra*, at 732-33;
16 *H. S. Crocker Co. v. McFaddin* (1957) 148 Cal.App.2d 639, 643 (“The law imputes to a
17 person the intention corresponding to the reasonable meaning of his language, acts, and
18 conduct.”) (emphasis added).

19 Furthermore, and by itself dispositively fatal to Geraci’s narrative: the *Cotton I*
20 complaint is exclusively predicated on the specific claim that the November Document is
21 an integrated purchase contract. “The crucial issue in determining whether there has been
22 an integration is whether the parties intended their writing to serve as the exclusive
23 embodiment of their agreement.” *Masterson v. Sine*, 68 Cal.2d 222, 225 (Cal. 1968)
24 (emphasis added). For the same reasons set forth above, and as the plain language of the
25 Parol Evidence unilaterally reflects, it is clear the parties’ intent when executing the
26 November Document was not to it being “the exclusive embodiment of their agreement.”
27 *Id.* The November Document does not include the 10% term or the \$10,000 minimum
28 monthly payment that Geraci is asking a concession from in his \$5,000 Request Email.

1 In regard to the Request for Confirmation, it was when Flores first confronted
 2 Weinstein in June 2019 and backed him into a corner that Weinstein stated the Request
 3 for Confirmation was sent by Cotton as an “extortionate scheme” to unlawfully acquire
 4 from Geraci a 10% equity position in the dispensary.

5 “Extortion” is defined as the “obtaining of property or other consideration from
 6 another, with his or her consent, or the obtaining of an official act of a public officer,
 7 induced by a *wrongful use of force or fear*, or under color of official right.” Pen. Code
 8 § 518 (emphasis added). Nothing in the Request for Confirmation, or in any of the
 9 evidence, even remotely suggests any “wrongful use of force or fear” by Cotton. The
 10 “extortion” interpretation of the Request for Confirmation by Weinstein is absurd.
 11 *Diamond Bar Dev. Corp. v. Superior Court* (1976) 60 Cal. App. 3d 330, 333-34 (“The
 12 language of any document will govern its interpretation if that language is clear, explicit,
 13 and not absurd.” (Civ. Code, § 1638.)). Bluntly stated, Weinstein’s extortion
 14 interpretation is a desperate attempt to reconcile the *Cotton I* complaint with the Parol
 15 Evidence he believed would be barred by the *Pendergrass* line of reasoning.¹⁵

16 Thus, here as in *Aoude*, Geraci/F&B committed a fraud on the court by filing
 17 *Cotton I* when “[Geraci] knew that [F&B] had annexed [a] false agreement to the
 18 complaint...” *Aoude, supra*, 892 F.2d at 1118.

19 **C. The November Document does not have a lawful object.**

20 Under California law, a contract must have a “lawful object.” Civ. Code § 1550(3).
 21 Contracts without a lawful object are void. *Id.* at § 1598. California courts have held that
 22 a lawful contract “must not be in conflict either with express statutes or public policy”—
 23 as a corollary, “[a] contract that conflicts with an express provision of the law is illegal
 24 and the rights thereto cannot be judicially enforced.” *Vierra v. Workers' Comp. Appeals*
 25

26 ¹⁵ “When a dispute arises over the meaning of contract language, the first question to be
 27 decided is whether the language is ‘reasonably susceptible’ to the interpretation urged by
 28 the party. If it is not, the case is over.” *Dore v. Arnold Worldwide, Inc.*(2006) 39 Cal.4th
 384, 393 (citation and quotation omitted) (emphasis added)).

1 *Bd.*(2007) 154 Cal. App. 4th 1142, 1148 (citations omitted); *see also Armendariz v.*
 2 *Found. Health Psychcare Servs., Inc.*(2000) 24 Cal. 4th 83, 124 (“If the central purpose
 3 of the contract is tainted with illegality, then the contract as a whole cannot be enforced.”).

4 It is undisputed that the object of the agreement between Cotton and Geraci is the
 5 approval of a cannabis CUP young. It is the sole condition precedent under both Geraci’s
 6 and Cotton’s allegations of the agreement reached. Thus, whether Geraci was to own
 7 90% or 100% of the cannabis CUP, the true object of the November Document is Geraci’s
 8 ownership of the cannabis CUP. Geraci is prohibited from owning a cannabis CUP
 9 pursuant to the Berry Application because of the Illegality Issue and the Berry Fraud. *See,*
 10 *e.g.,* SDMC §§ 11.0401, 11.0402; BPC § 29323 (as applicable to the Berry Application
 11 seeking a medical cannabis CUP); BPC § 26057 (as applicable to the Berry Application
 12 when seeking a recreational cannabis CUP). In other words, because “the central purpose
 13 of the contract is tainted with illegality, then the contract as a whole cannot be enforced.”
 14 *Armendariz, supra,* 24 Cal. 4th 83 at 124.

15 F&B and Austin colluding to misrepresent the law at trial in *Cotton I* on this case-
 16 dispositive issue is a “fraud upon the court [both because it is an] attempt[] to subvert the
 17 integrity of the court and fraud by [officers] of the court.” *Intermagnetics, supra,* at 926
 18 F.2d at 916.

19
 20 **D. The Disavowment Allegation is fabricated evidence created in
 response to *Riverisland*.**

21 Under California law, “Facts established by pleadings as judicial admissions are
 22 conclusive concessions of the truth of those matters, are effectively removed as issues
 23 from the litigation, and may not be contradicted, by the party whose pleadings are used
 24 against him or her.” *Barsegian v. Kessler & Kessler* (2013) 215 Cal.App.4th 446, 451
 25 (citations and quotations omitted).

26 Under Federal law, the “Ninth Circuit has acknowledged the doctrine of judicial
 27 admissions.” *Spokane Law Enforcement Fed. Credit Union v. Barker (In re Barker)*, 839
 28 F.3d 1189, 1195 (9th Cir. 2016) (citing *American Title Ins. Co. v. Lacelaw Corp.*

1 (*American*), 861 F.2d 224, 226 (9th Cir. 1988)). “Judicial admissions are formal
2 admissions in the pleadings which have the effect of withdrawing a fact from issue and
3 dispensing wholly with the need for proof of the fact.” *Id.* (quoting *American*, 861 F.2d
4 at 226). “Judicial admissions are ‘conclusively binding on the party who made them.’”
5 *Id.* “A statement in a complaint, answer or pretrial order is a judicial admission, as is a
6 failure in an answer to deny an allegation.” *American*, 861 F.2d at 226. “Not only are
7 such admissions... binding before the trial court, but they are binding on appeal as well.”
8 *Id.* (quotation and citation omitted).

9 The *Cotton I* Answer is a judicial admission by Geraci that he is not personally
10 aware of any other facts prior to that date, November 20, 2017, that would be an
11 affirmative defense. (RJN Ex. 21 at 2:28-3:3.) This is a fact that is positively stated by
12 Geraci. As F&B themselves have argued: “[A] pleader cannot blow hot and cold as to
13 the facts *positively stated*.” (RJN Ex. 22 at 5:26-28 (quoting *Brown v. City of Fremont*
14 (1977) 75 Cal.App.3d 141, 146 (emphasis added by F&B)).) Therefore, Geraci’s judicial
15 admission in his *Cotton I* Answer in November of 2017 negates the factual possibility of
16 the Disavowment Allegation taking place a year before on November 3, 2016. Also, the
17 *Cotton IV* Answer by Geraci/Berry fails to allege the Disavowment Allegation in response
18 to the JVA and, therefore, “is a failure in an answer to deny an allegation” that is
19 conclusively binding on Geraci and bars him from raising the Disavowment Allegation.
20 *American, supra*, 861 F.2d at 226.

21 Furthermore, the only direct, undisputed, and credible evidence regarding the
22 phone call on November 3, 2016 is the November 3, 2016 Email, which references the
23 phone call and militates against the Disavowment Allegation actually taking place.

24 F&B’s criminal complicity is as clear as day by their position they “coincidentally”
25 decided to allege the Disavowment Allegation when first confronted by *Riverisland* in
26 April 2018. Geraci and his counsel colluded to fabricate the Disavowment Allegation
27 and, thus, committed a fraud on the Court. *Aoude, supra*, 892 F.2d at 1118-19.
28

1 **E. Nguyen has committed a fraud on the court by failing to provide**
2 **Young’s promised testimony.**

3 “Trying improperly to influence a witness is fraud on the court and on the opposing
4 party[.]” *Ty Inc. v. Softbelly’s, Inc.*, 517 F.3d 494, 498 (7th Cir. 2008). Nguyen did more
5 than influence, she unilaterally decided Young’s testimony would not be provided
6 because “it was too late for Cotton to anything about it.” Further, *Cotton IV* setting forth
7 a RICO cause of action, based in part on the same set of facts as *Cotton I*, had been
8 pending in this Court since February 2018.

9 Consequently, Nguyen’s failure to provide Young’s testimony in *Cotton I* in 2019
10 is a fraud on this court and exposes her to sanctions by this court. *Chambers v. Nasco,*
11 *Inc.*, 501 U.S. 32, 34 (1991) (holding “the [trial] court did not err in imposing sanctions
12 for conduct before other tribunals”).

13 II. IRREPARABLE HARM

14 “It is well-established that the loss of an interest in real property constitutes an
15 irreparable injury.” *Park Vill. Apt. v. Mortimer Howard Trust*, 636 F.3d 1150, 1159 (9th
16 Cir. 2011). Even assuming Magagna did not know about the Antitrust Conspiracy when
17 he filed the Magagna Application, if he attempted to bribe or threatened Young from
18 testifying, he ratified the conspiracy and is jointly liable with Geraci and his co-
19 conspirators. *De Vries v. Brumback* (1960) 53 Cal. 2d 643, 648; *Roth v. Rhodes* (1994)
20 25 Cal. App. 4th 530, 544 (joint and several liability rule of conspiracy applies to antitrust
21 claims brought under Cartwright Act). If so, this “deceitful” act alone mandates the
22 District Four CUP be revoked. BPC § 26057(a),(b)(2); BPC § 480(a)(2).

23 Flores, in equity, should be the owner of the District Four CUP. Plaintiffs will be
24 irreparably harmed if Magagna and his co-conspirators are allowed to sell the District
25 Four CUP because it not only denies Flores’ right to the CUP, it ratifies the fraudulent
26 and violent acts Geraci and his agents undertook for Magagna to procure the CUP.

27 III. BALANCE OF EQUITIES

28 Magagna will suffer no irreparable harm if he is prevented from selling the District

1 Four CUP for a few days/weeks while the Court makes a preliminary determination
2 regarding the truth or falsity of the Young Allegations. Nguyen and Young will suffer *de*
3 *minimis* harm in making themselves available to testify as to the truth or falsity of the
4 allegations attributed to them.

5 Alternatively, if the Court finds Plaintiffs' allegations to be probably true, and
6 ultimately finds they are true, that means Plaintiffs are the victims of an ongoing criminal
7 conspiracy that is being effectuated by officers of the court through the state and federal
8 judiciaries. A conspiracy that has inflicted severe mental, financial and emotional harm
9 on numerous individuals and families without any justification other than sheer malicious
10 greed. The balance of equities weighs in Plaintiffs' favor.

11 IV. PUBLIC INTEREST

12 The gravamen of this action is Plaintiffs' desire to seek relief in state court for, *inter*
13 *alia*, ongoing antitrust violations that are a public interest matter. *See Associated Milk*
14 *Dealers v. Milk Drivers U*, 422 F.2d 546, 552 (7th Cir. 1970) ("Illegality under the
15 antitrust laws concerns broad public interests transcending the private objectives of the
16 parties."). Plaintiffs should not be denied or delayed safe access to the state courts
17 because of defendants' acts and threats of violence and unlawful litigation tactics.

18 In *Chambers v. Baltimore Ohio Railroad*, 207 U.S. 142, 148 (1907), the United
19 States Supreme Court characterized the right of access to the courts as follows:

20 The right to sue and defend in the courts is the alternative of force. In an
21 organized society it is the right conservative of all other rights, and lies at the
22 foundation of orderly government. It is one of the highest and most essential
23 privileges of citizenship, and must be allowed by each state to the citizens of
24 all other states to the precise extent that it is allowed to its own citizens.
Equality of treatment in this respect is not left to depend upon comity between
the states, but is granted and protected by the Federal Constitution.

25 *Id.* at 148 (emphasis added).

26 The relief Plaintiffs seek is their right under the "well-established rule that
27 plaintiffs, as masters of their complaint, may choose their forum by selecting state over
28 federal court..." *Tanoh v. Dow Chemical Co.*, 561 F.3d 945, 953 (9th Cir. 2009). To deny

1 Plaintiffs the relief they seek would be to substantively deprive them of their “right to sue
2 and defend in the courts” (*Chambers* at 148) and their right to “choose their forum by
3 selecting state over federal court” (*Tanoh* at 953).

4 Plaintiffs respectfully submit that the evil at issue here is allowing defendants to
5 capitalize in any way on Plaintiffs’ need of federal protection to access the state court in
6 the first place (as a result of defendants’ own unlawful actions). Irrespective of the
7 outcome of this action, this matter shall already stand as powerful precedent for unethical
8 litigants and attorneys for the proposition that with wealth, access to justice can be denied
9 to individuals who are not wealthy. But-for the Property being worth millions of dollars,
10 no reasonable attorney would have brought suit against a sitting judge in the area in which
11 he practices or sought to vindicate the rights of Plaintiffs.

12 CONCLUSION

13 Plaintiffs respectfully submit that they are likely to prevail on their declaratory
14 relief cause of action seeking to void the *Cotton I* judgment. Plaintiffs respectfully request
15 the Court issue an Order barring Magagna from selling/transferring the District Four
16 CUP, directing Nguyen and Young to attend the hearing on this Application, and granting
17 leave for Plaintiffs to file a motion for sanctions equal to attorneys’ fees and costs accrued
18 to date arising from Geraci’s and his agents’ unlawful actions in state and federal court.

19 As a concurrent or alternative ground for granting the relief requested herein,
20 Plaintiffs respectfully request this Court exercise its power to determine whether
21 defendants are part of a conspiracy that has defrauded Plaintiffs of their interests in
22 cannabis CUPs via unlawful litigation/tactics; a conspiracy that has committed multiple
23 acts of a fraud on the court on the state and federal judiciaries. *Chambers v. NASCO, Inc.*,
24 501 U.S. 32, 44 (1991) (“[A] court has the power to conduct an independent investigation
25 in order to determine whether it has been the victim of fraud.”); *id.* at 56-57 (“[T]he court
26 found [party’s] actions were ‘part of [a] sordid scheme of deliberate misuse of the judicial
27 process’ designed ‘to defeat [his adversary’s] claim by harassment, repeated and endless
28 delay, mountainous expense and waste of financial resources.’”).

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Dated: April 3, 2020

Law Offices of Andrew Flores

By /s/ Andrew Flores
Plaintiff *In Propria Persona*, and
Attorney for Plaintiffs
AMY SHERLOCK, Minors T.S. and
S.S., and JANE DOE

EXHIBIT 1

Geraci vs. Cotton, et al.

**Reporter's Transcript of Proceedings
July 03, 2019**

Transcript of Proceedings

Geraci vs. Cotton, et al.

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

Department 73 Hon. Joel R. Wohlfeil

LARRY GERACI, an individual,)
 Plaintiff,)
 vs.) 37-2017-00010073-CU-BC-CTL
 DARRYL COTTON, an individual;)
 and DOES 1 through 10,)
 inclusive,)
 Defendants.)
 _____)
 AND RELATED CROSS-ACTION.)
 _____)

Reporter's Transcript of Proceedings
 JULY 3, 2019

Reported By:
 Margaret A. Smith, CSR 9733, RPR, CRR
 Certified Shorthand Reporter
 Job No. 10057773

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 APPEARANCES
2
3 FOR PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI AND
4 CROSS-DEFENDANT REBECCA BERRY:
5 FERRIS & BRITTON
6 BY: MICHAEL R. WEINSTEIN, ESQUIRE
7 BY: SCOTT H. TOOTHACRE, ESQUIRE
8 BY: ELYSSA K. KULAS, ESQUIRE
9 501 West Broadway, Suite 1450
10 San Diego, California 92101
11 mweinstein@ferrisbritton.com
12 stoothacre@ferrisbritton.com
13 ekulas@ferrisbritton.com
14
15 FOR DEFENDANT AND CROSS-COMPLAINANT DARRYL COTTON:
16 ATTORNEY AT LAW
17 BY: JACOB P. AUSTIN, ESQUIRE
18 1455 Frazee Road, Suite 500
19 San Diego, California 92108
20 619.357.6850
21 jpa@jacobbaustinesq.com
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Transcript of Proceedings

Geraci vs. Cotton, et al.

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I N D E X

PAGE

OPENING STATEMENTS:

On behalf of Plaintiff/Cross-Defendant 14
On behalf of Defendant/Cross-Complainant 39

WITNESSES:

LARRY GERACI

Direct by Mr. Weinstein 54
Cross by Mr. Austin 160

REBECCA BERRY

Direct by Mr. Weinstein 190
Cross by Mr. Austin 200

Transcript of Proceedings

Geraci vs. Cotton, et al.

I N D E X (continued)			
	EXHIBITS	IDENTIFIED / ADMITTED	
1			
2			
3			
4	1 Letter of Agreement with	60	60
5	Bartell & Associates dated		
	10/29/15		
6	5 Text messages between Larry	71	71
7	Geraci and Darryl Cotton		
	from 7/21/16 to 5/08/17		
8	8 Email to Larry Geraci from	79	79
9	Darryl Cotton re 6176		
10	Federal Blvd property, dated		
11	9/21/16 with attached letter to		
	Dale and Darryl Cotton from Kirk		
	Ross regarding payoff, dated		
	9/21/16		
12	9 Email to Larry Geraci from	81	81
13	Darryl Cotton re GERL MAIN -		
14	Invitation to collaborate,		
	dated 9/26/16		
15	10 Draft Services Agreement	81	81
16	Contract between Inda-Gro and		
	GERL Investments, dated 9/24/16		
17	14 Email to Larry Geraci and Neil	84	84
18	Dutta from Abhay Schweitzer re		
	6176 Federal Blvd. - Site Visit,		
	dated 10/04/16		
19	15 Email to Rebecca Berry from	85	85
20	Abhay Schweitzer re Federal		
21	Blvd. - Proposal for Survey,		
	dated 10/06/16		
22	17 Email to Larry Geraci and	88	88
23	Neil Dutta from Abhay Schweitzer		
24	re Federal Blvd. - Width of		
	ROW, dated 10/18/16 with attached		
	Lundstrom Topographic Survey,		
	Project No. L222-01		
25	18 Email thread between Neil Dutta	88	88
26	from Abhay Schweitzer Re:		
27	FW: Federal Blvd. - Zoning,		
28	dated 10/19/16		

Transcript of Proceedings

Geraci vs. Cotton, et al.

I N D E X (continued)			
	EXHIBITS	IDENTIFIED / ADMITTED	
1			
2			
3	21 Email from Larry Geraci to	90	90
4	Darryl Cotton dated 10/24/16,		
5	attaching A102 Site Plan -		
6	Proposed - Scheme		
7			
8	30 City of San Diego Ownership	93	93
9	Disclosure Statement		
10	(Form DS-318) signed,		
11	dated 10/31/16		
12			
13	34 Forms submitted to City of	196	196
14	San Diego in relation to		
15	6176 Federal Blvd CUP		
16	Application, dated 10/31/16,		
17	Form DS-3032 General Application		
18	dated 10/31/2016		
19			
20	38 Agreement between Larry Geraci	97	97
21	or assignee and Darryl Cotton,		
22	dated 11/02/16		
23			
24	39 Excerpt from Jessica Newell	103	103
25	Notary Book dated 11/02/2016		
26			
27	40 Email to Darryl Cotton from	106	106
28	Larry Geraci attaching Nov 2		
29	Agreement, dated 11/2/2016		
30			
31	41 Email from Darryl Cotton to	107	107
32	Larry Geraci re Agreement,		
33	dated 11/2/16		
34			
35	42 Email to Darryl Cotton from	109	109
36	Larry Geraci re Agreement,		
37	dated 11/2/16		
38			
39	43 Email to Becky Berry from	120	120
40	Abhay Schweitzer re Federal		
41	Blvd - Authorization to view		
42	County Tax Assessor Records,		
43	dated 11/07/16 with attachment		
44			
45	44 Email to Darryl Cotton from	121	121
46	Larry Geraci re Federal Blvd		
47	need sig ASAP, dated 11/14/16		
48			
49	46 Authorization to view records -	122	122
50	signed by Cotton 11/15/16		
51			
52	59 Email to Darryl Cotton from	130	130
53	Larry Geraci re Federal Blvd		
54	Property, dated 2/27/17		

Transcript of Proceedings

Geraci vs. Cotton, et al.

I N D E X (continued)			
	EXHIBITS		IDENTIFIED / ADMITTED
1			
2			
3	62	Email to Darryl Cotton from Larry Geraci re Statement attaching draft Side Agreement, dated 3/2/17	132 / 132
4			
5	63	Email to Larry Geraci from Darryl Cotton re Statement, dated 3/03/17	134 / 134
6			
7	64	Email to Darryl Cotton from Larry Geraci re Contract Review, dated 3/7/17	136 / 136
8			
9	69	Email to Larry Geraci from Darryl Cotton Re Contract Review, dated 3/17/17	137 / 137
10			
11	72	Email to Larry Geraci from Darryl Cotton re Contract Review, dated 3/19/17	144 / 144
12			
13	137	Federal Blvd. - Summary of All Expense Payments (Excel Spreadsheet)	155 / 155
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Transcript of Proceedings

Geraci vs. Cotton, et al.

1 will show, it's really in front of every sentence
2 because I'm not a witness.

3 Now, it's my opportunity, as you were
4 pre-instructed yesterday, to present an opening
5 statement. It's really an outline, a road map of what I
6 expect the evidence will show, and it's going to allow
7 you to keep an overview of the case in mind during the
8 later presentation of evidence.

9 Evidence comes in out of order. These facts
10 are going -- the facts you'll hear are going to be new
11 to you for the first time. We've known them for a long
12 time. And as a result, it will take you a while to put
13 them all together. But when it's said and done,
14 hopefully, the overview I've presented to you will help
15 you understand the case as it's presented.

16 Now, as I mentioned in the mini opening
17 yesterday, this case involves a dispute between Larry
18 Geraci and Darryl Cotton concerning an agreement from
19 the purchase and sale of Mr. Cotton's property at 6176
20 Federal Boulevard.

21 Now, Mr. Geraci and Mr. Cotton dispute the
22 terms of the agreement. During my opening, I'll refer
23 to and show you some of the documents. These are some
24 of the exhibits that I anticipate you will see during
25 the evidence portion of the case. It will help me with
26 my overview and help you.

27 But before I jump into the story -- before I do
28 that, the setup is with the screen over here. And we

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 have jurors all the way extending to almost even with
2 me. If anybody at any time has trouble seeing the
3 screen, just give us a heads-up, and we'll make an
4 adjustment and move the attorneys back and forth to make
5 it clear.

6 So, anyway, before I jump into the story, I
7 need to introduce you briefly to some of the persons
8 whose names will come up in the testimony and who may
9 give testimony in the case. And there's eight people in
10 particular. I just want to identify it from the outset.

11 Of course, there's Darryl Cotton, who is the
12 defendant and cross-complainant. He was the seller of
13 the property. Mr. Cotton has developed hydroponic
14 systems for the growing of cannabis. He's very active
15 in the community regarding cannabis issues. You'll
16 learn more about that later.

17 Mr. Geraci, sitting in front of me next to the
18 bench, is the buyer. He owns a tax and financial
19 accounting business called The Tax and Financial Center.
20 He's been doing tax preparation work for about 40 years.
21 So that's basically been his profession his whole
22 career. He's licensed as an enrolled agent. This means
23 he has a federal license that allows him to represent
24 clients before the IRS.

25 And that will become an issue that you will
26 hear about later in the case.

27 Rebecca Berry, who sits to my left, because we
28 don't have room for everybody, who is sitting in the

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 first seat, is also my client, a cross-defendant in the
2 case. She's Mr. Geraci's administrative assistant.
3 She's worked in this business for 14 or 15 years.
4 Ms. Berry, acting as Mr. Geraci's agent, was the
5 applicant on the conditional use permit application that
6 you've heard about so far. And that was submitted to
7 the City of San Diego.

8 This was done with Mr. Cotton's knowledge.

9 She coordinated -- Ms. Berry did --
10 communications regarding the project with Mr. Geraci and
11 the project team that he hired. And along with the
12 project manager, a gentleman by the name of Abhay
13 Schweitzer, was the City's contract for this CUP
14 application.

15 The next person I want to mention is Jim
16 Bartell. Jim Bartell has a public government and media
17 relations business called Jim Bartell & Associates.
18 He's a registered lobbyist. He had been successful in
19 obtaining for his clients approval of CUPs for
20 dispensaries.

21 Mr. Geraci hired Mr. Bartell to be on his team
22 to help the efforts to develop and operate a medical
23 marijuana consumer cooperative, sometimes abbreviated
24 MMCC. And he was hired to do that.

25 Mr. Bartell is expected to testify about his
26 role in attempting to obtain a CUP for a dispensary on
27 the property.

28 I already mentioned Abhay Schweitzer. He owns

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Q And currently how many employees do you have?

2 A Eight employees.

3 Q Before I forget, how long have you been engaged
4 in preparing taxes for people?

5 A Forty years.

6 Q Now, you said you have eight employees. Are
7 they divided into any departments within your business?

8 A Yes. I've got two employees in accounting, one
9 employee in payroll. I've got two administrators and
10 two more people in bookkeeping.

11 Q So when you say you have two people in
12 accounting, what services do the people in accounting
13 provide?

14 A Bookkeeping.

15 Q For whom?

16 A Businesses.

17 Q Okay. And the other folks are in the tax
18 preparation side of the business?

19 A Yes.

20 Q Okay. And who do they prepare taxes for?

21 A My clients.

22 Q And who -- what types of clients?

23 A Individuals and businesses, small corporations,
24 and small partnerships.

25 Q Okay. Now, do you currently hold any licenses
26 associated with tax preparation?

27 A Enrolled agent.

28 Q Is the answer yes?

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 A Yes.

2 Q **And what license do you hold?**

3 A Enrolled agent.

4 Q **What is an enrolled agent?**

5 A We are licensed by the Internal Revenue Service
6 to represent clients when they get audited by the IRS.

7 Q **And is that a federal, or state license?**

8 A That's a federal license.

9 Q **And how long have you been licensed by -- as an**
10 **enrolled agent?**

11 A Since 1999.

12 Q **Now, have -- do you have a real estate license**
13 **currently?**

14 A Yes. No. No.

15 Q **Have you had a real estate license?**

16 A Yes.

17 Q **What kind of a real estate license?**

18 A Salesperson.

19 Q **And when did you hold that license?**

20 A From 1993 to 2017.

21 Q **Okay. And during that period of time, what**
22 **types of -- or how many transactions have you engaged in**
23 **where you were acting as a real estate agent?**

24 A Probably under 10 since 1993.

25 Q **And of those 10, are those residential, or**
26 **commercial transactions, or both?**

27 A Both.

28 Q **Now, have you, for your personal investment,**

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 **bought and sold real property?**

2 A Yes, I have.

3 **Q Have you served as your own real estate agent**
4 **in connection with any of those transactions?**

5 A No.

6 **Q Okay. Do you know Rebecca Berry?**

7 A Yes.

8 **Q And you see her in this courtroom?**

9 A Yes.

10 **Q And who is Rebecca Berry?**

11 A She's my administrator.

12 **Q And how long has she worked for you?**

13 A Fourteen years.

14 **Q And you said she was an administrator. What's**
15 **her role as an administrator?**

16 A She's the front desk booking -- booking
17 clients' appointments, administering the bills when they
18 come in to the payables department. She's like the
19 gatekeeper of everything that comes into the office.

20 **Q Have you ever owned a medical marijuana**
21 **dispensary?**

22 A No, I haven't.

23 **Q Have you ever operated or managed a medical**
24 **marijuana dispensary?**

25 A No, I haven't.

26 **Q Have you ever told Darryl Cotton that you owned**
27 **or managed a marijuana dispensary?**

28 A No.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Q In connection with -- we'll get to it. But in
2 connection with the transaction, the sale of -- the
3 purchase and sale of his property, in connection with
4 any communications with Mr. Cotton, did you indicate to
5 him that you operated or owned multiple dispensaries?

6 A No, I didn't.

7 Q Did you talk to him about anybody within your
8 team that managed or operated dispensaries?

9 A No, I didn't.

10 Q Okay. Now, when did you first have any
11 communication with Darryl Cotton?

12 A About mid July.

13 Q And why did you contact -- first of all, what
14 year?

15 A 2016.

16 Q Why did you contact Mr. Cotton or have
17 communication with him in July of 2016?

18 A The team had identified a property on Federal
19 Boulevard that may qualify for a dispensary.

20 Q Okay. And you mentioned the team. What was
21 the team?

22 A Jim Bartell, Abhay Schweitzer, and Gina Austin.

23 Q And when did you form -- for what purposes was
24 that team formed?

25 A They were going to facilitate to proceed to get
26 the CUP on Mr. Cotton's property.

27 Q When did you first hire Mr. Bartell?

28 A In October of 2015.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Q Now, at that time, had you had any contact with
2 Mr. Cotton?

3 A No, I didn't.

4 Q So why did you -- well, first of all, can you
5 tell the jury who Mr. Bartell is, to your understanding.

6 A Mr. Bartell is a liaison lobbyist between
7 myself and the City.

8 MR. WEINSTEIN: Okay. I'm going to show the
9 witness a stipulated exhibit, Exhibit 1.

10 THE COURT: Any objection if Exhibit 20 is
11 admitted, Counsel?

12 MR. AUSTIN: No.

13 MR. WEINSTEIN: Exhibit 1. It's Exhibit 1.

14 THE COURT: Exhibit 1?

15 MR. WEINSTEIN: Yes.

16 THE COURT: Oh, I'm sorry. Any objection to
17 the admission of Exhibit 1?

18 MR. AUSTIN: No, your Honor.

19 THE COURT: Exhibit 1 will be admitted.

20 (Premarked Joint Exhibit 1, Letter of Agreement
21 with Bartell & Associates dated 10/29/15, was
22 admitted into evidence.)

23 BY MR. WEINSTEIN:

24 Q Mr. Geraci, there are books up there. If it's
25 easier for you, there are books up there.

26 THE COURT: Counsel, they may have been moved.
27 Do you want to approach?

28 MR. WEINSTEIN: If you need to look at the

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 books, let us know. We'll approach. If you can see the
2 screen, that's fine too.

3 THE WITNESS: Can we make that bigger?

4 THE COURT: Can you see that, Mr. Geraci?

5 All right.

6 BY MR. WEINSTEIN:

7 Q First of all, do you recognize that document?

8 A Yes, I do.

9 Q What is it?

10 A It's a contract between myself and Mr. Bartell.

11 Q And on the second page, there's a signature

12 over a typed name of Larry Geraci, with a date of

13 10-29-15. Is that your signature?

14 A Yes, it is.

15 Q Is that your handwriting with the date?

16 A Yes, it is.

17 Q And did you date it on or about October 29th,

18 2015?

19 A Yes, I did.

20 Q All right. Now, what services did you -- were

21 you hiring Mr. Bartell to perform pursuant to your

22 agreement with him?

23 A He had -- he was known in the community for --

24 for getting CUPs for other clients that I had heard of,

25 and also he does a lot of Code violations, things like

26 that, within the City to help residents in the City to

27 work them through Code.

28 Q How did you come to that information?

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 or broker with respect to the sale of -- the agreement
2 to sell property that's the subject of this lawsuit?

3 A No.

4 Q Okay. Were you involved at all in the
5 negotiation of -- of that agreement?

6 A No.

7 Q Do you know Darryl Cotton?

8 A No.

9 Q Have you -- when is the first time you ever saw
10 him?

11 A Yesterday in the courtroom.

12 Q Okay. Have you ever spoken to him on the
13 phone?

14 A No.

15 Q Have you ever seen him in the office?

16 A No.

17 Q Okay. Now, are you currently employed?

18 A Yes.

19 Q And by whom?

20 A Tax and Financial as the real estate broker and
21 through my church as a teacher and counselor.

22 Q Okay. Let's focus on Tax and Financial.
23 How long have you worked at Tax and Financial
24 Center?

25 A Almost 15 years.

26 Q And what's your current job position at Tax and
27 Financial Center?

28 A I'm an assistant to Larry Geraci, and I manage

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 the office.

2 Q And how long have you been in that position?

3 A Almost 15 years.

4 Q So the entire time you've been there?

5 A Yes.

6 Q Now, in -- as you know, this case -- do you
7 know -- do you understand this case involves an attempt
8 to obtain a CUP conditional use permit to operate a
9 dispensary at a property that Mr. Geraci was attempting
10 to purchase?

11 A Yes.

12 Q Okay. Were you the applicant on that CUP
13 application?

14 A Yes.

15 Q Okay. And as -- as the applicant -- as the
16 applicant, did you understand that you were acting at
17 all times as the agent for and on behalf of Mr. Geraci?

18 A Yes.

19 Q Why -- what was your understanding as to why
20 you were the applicant on that CUP application?

21 A Mr. Geraci has a federal license, and we were
22 afraid that it might affect it at some point.

23 Q What lines -- what federal license is that?

24 A He's an enrolled agent.

25 Q And did you have a discussion with him about
26 the fact that there was a possibility or it was unknown
27 whether him being an applicant on the property would
28 affect his enrolled agent license?

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 A Yes.

2 Q All right. Were there any other reasons that
3 you recall that you were the applicant -- chose to be
4 the applicant on the project?

5 A No.

6 Q Were you willing and -- were you willing to be
7 the applicant on the project as Mr. Geraci's agent?

8 A Yes.

9 Q Now, in connection with the CUP application
10 project, were you involved at all in the communications
11 with the City?

12 A Yes.

13 Q Okay. And what was your involvement in
14 communications with the City?

15 A They -- I -- what I would do is if I got any
16 information, I would simply direct it to Mr. Geraci or
17 his team.

18 Q Okay.

19 A And then I made no decisions.

20 Q Okay. And so did you also have any
21 communications with the team that Mr. Geraci had put
22 together to pursue the CUP application?

23 A I had some interaction.

24 Q And -- and which members of the team do you
25 recall having interaction with?

26 A Abhay.

27 Q That's Mr. Schweitzer?

28 A Mr. Schweitzer.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Q What did you understand his role as?

2 A He had something -- he was -- he had an
3 architect company or something like that. And so I -- I
4 wasn't really sure. I didn't know who the people were.
5 And so I would just get this information and direct it
6 to Mr. Geraci and the team for their approval.

7 Q Okay. So you would receive information from
8 the team -- from the team in connection with the CUP
9 application?

10 A Yes.

11 Q And then what would you do with that
12 information?

13 A I would forward it to Mr. Geraci for his
14 direction.

15 Q Okay. And then what would happen after you
16 forward it to him for his direction?

17 A He would tell me what to do with it.

18 Q Okay. And then did you carry out his
19 instructions?

20 A Yes.

21 Q Did you make any discussions with respect to
22 the CUP application?

23 A No decisions.

24 Q Now, in connection with the CUP application,
25 did you have to sign forms to be submitted to the City
26 of San Diego?

27 A Yes.

28 Q Okay. Did you prepare those forms?

Transcript of Proceedings

Geraci vs. Cotton, et al.

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I, Margaret A. Smith, a Certified Shorthand Reporter, No. 9733, State of California, RPR, CRR, do hereby certify:

That I reported stenographically the proceedings held in the above-entitled cause; that my notes were thereafter transcribed with Computer-Aided Transcription; and the foregoing transcript, consisting of pages number from 1 to 215, inclusive, is a full, true and correct transcription of my shorthand notes taken during the proceeding had on July 3, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of July 2019.

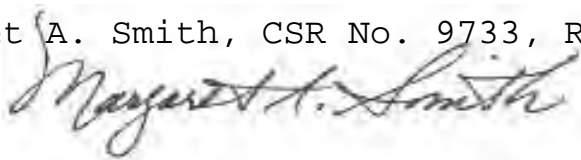
Margaret A. Smith, CSR No. 9733, RPR, CRR


EXHIBIT 2

FILED
Clerk of the No Fee GC §6103
OCT 27 2014
By: DJ JELISON, Deputy

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal corporation,

Plaintiff,

v.

THE TREE CLUB COOPERATIVE, INC., a California corporation;
JONAH McCLANAHAN, an individual;
JOHN C. RAMISTELLA, an individual;
JL 6th AVENUE PROPERTY, LLC, a California limited liability company;
LAWRENCE E. GERACI, also known as LARRY GERACI, an individual;
JEFFREY KACHA, an individual; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2014-00020897-CU-MC-CTL

JUDGE: RONALD S. PRAGER

STIPULATION FOR ENTRY OF FINAL JUDGMENT 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 Marsha B. Kerr, Deputy City Attorney, and Defendants JL 6th AVENUE PROPERTY, LLC, a California limited liability company; LAWRENCE E. GERACI, aka LARRY GERACI, an individual; and JEFFREY KACHA, an individual, appearing by and through their attorney, Joseph S. Carmellino, 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 1. This Stipulation for Entry of Final Judgment (Stipulation) is executed between and
2 among Plaintiff City of San Diego, a municipal corporation, and Defendants JL 6th AVENUE
3 PROPERTY, LLC; LAWRENCE E. GERACI, aka LARRY GERACI; and JEFFREY KACHA
4 only, who are named parties in the above-entitled action (collectively, "Defendants").

5 2. The parties to this Stipulation are parties to a civil suit pending in the Superior Court
6 of the State of California for the County of San Diego, entitled *City of San Diego, a municipal*
7 *corporation v., The Tree Club Cooperative, Inc., a California corporation; Jonah McClanahan,*
8 *an individual; John C. Ramistella, an individual; JL 6th Avenue Property, LLC, a California*
9 *limited liability company; Lawrence E. Geraci, also known as Larry Geraci, an individual;*
10 *Jeffrey Kacha, an individual; and DOES 1 through 50, inclusive, Case No. 37-2014-00020897-*
11 *CU-MC-CTL. This Stipulation does not affect City of San Diego v. Tycel Cooperative, Inc., et al.,*
12 *San Diego Superior Court case No. 37-2014-00025378-CU-MC-CTL, which is a separate case to*
13 *be considered separately.*

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

21 4. The address where the tenant Defendants were maintaining a marijuana dispensary
22 business is 1033 Sixth Avenue, San Diego, California, 92101, also identified as Assessor's Parcel
23 Number 534-186-04-00 (PROPERTY).

24 5. The PROPERTY is owned by JL 6th AVENUE PROPERTY, LLC (JL), according to
25 San Diego County Recorder's Grant Deed, Document No. 2012-0184893, recorded March 29,
26 2012. Defendants GERACI and KACHA are members of JL and hereby certify they have
27 authority to sign for and bind JL herein.

28 ///

1 6. The legal description of the PROPERTY is:

2 THE NORTH HALF OF LOT D IN BLOCK 34 OF HORTON'S ADDITION, IN THE
3 CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MADE
4 BY L.L. LOCKLING FILED JUNE 21, 1871 IN BOOK 13, PAGE 522 OF DEEDS, IN
5 THE OFFICE OF THE COUNTY OF SAN DIEGO COUNTY.

6 7. This action is brought under California law and this Court has jurisdiction over the
7 subject matter, the PROPERTY, and each of the parties to this Stipulation.

8 **INJUNCTION**

9 8. The provisions of this Stipulation are applicable to Defendants, their successors and
10 assigns, agents, officers, employees, representatives, and tenants, and all persons, corporations or
11 other entities acting by, through, under or on behalf of Defendants, and all persons acting in
12 concert with or participating with Defendants with actual or constructive knowledge of this
13 Stipulation and Injunction. **Effective immediately upon the date of entry of this Stipulation,**
14 Defendants and all persons mentioned above are hereby enjoined and restrained pursuant to San
15 Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, California Code of Civil
16 Procedure section 526, and under the Court's inherent equity powers, from engaging in or
17 performing, directly or indirectly, any of the following acts:

18 a. Keeping, maintaining, operating, or allowing the operation of an unpermitted
19 marijuana dispensary, collective or cooperative at the PROPERTY, including but not limited to, a
20 marijuana dispensary, collective, or cooperative in violation of the San Diego Municipal Code.

21 b. Defendants shall not be barred in the future from any legal and permitted use of
22 the PROPERTY.

23 **COMPLIANCE MEASURES**

24 **DEFENDANTS agree to do the following at the PROPERTY:**

25 9. **Within 24 hours from the date of signing this Stipulation,** cease maintaining,
26 operating, or allowing at the PROPERTY any commercial, retail, collective, cooperative, or
27 group establishment for the growth, storage, sale, or distribution of marijuana, including but not
28 limited to any marijuana dispensary, collective, or cooperative organized pursuant to the
California Health and Safety Code.

1 10. The Parties acknowledge that where local zoning ordinances allow the operation of a
2 marijuana dispensary, collective or cooperative as a permitted use in the City of San Diego, then
3 Defendants will be allowed to operate or maintain a marijuana dispensary, collective or
4 cooperative in the City of San Diego as authorized under the law after Defendants provide the
5 following to Plaintiff in writing:

- 6 a. Proof that the business location is in compliance with the ordinance; and
- 7 b. Proof that any required permits or licenses to operate a marijuana dispensary,
8 collective or cooperative have been obtained from the City of San Diego as required by the
9 SDMC.

10 11. If the marijuana dispensary that is operating at the PROPERTY, including but
11 not limited to, The Tree Club Cooperative, Inc., Jonah McClanahan and John C.
12 Ramistella, does not agree to immediately voluntarily vacate the premises, then within 24
13 hours from the date of signing this Stipulation, DEFENDANTS shall in good faith use all legal
14 remedies available to evict the marijuana dispensary business known as The Tree Club
15 Cooperative, Inc., Jonah McClanahan and John C. Ramistella or the appropriate party responsible
16 for the leasehold and operation of the marijuana dispensary, including but not limited to,
17 prosecuting an unlawful detainer action.

18 12. Within 24 hours from the date of signing this Stipulation, remove all signage from
19 the exterior of the premises advertising a marijuana dispensary, including but not limited to,
20 signage advertising The Tree Club Cooperative.

21 13. Within 24 hours from the date of signing this Stipulation, post a sign for a
22 minimum of 60 calendar days, conspicuously visible from the exterior of the PROPERTY stating
23 in large bold font and capital letters that can be seen from the public right way, that "The Tree
24 Club Cooperative" is permanently closed and that there is no dispensary operating at this address.

25 14. Allow personnel from the City of San Diego access to the PROPERTY to inspect for
26 compliance upon 24-hour verbal or written notice. Inspections shall occur between the hours of
27 8:00 a.m. and 5:00 p.m.

28

1 15. When this Stipulation has been filed with the Court, Jeffrey Kacha will personally
2 pick up a conformed copy of the Stipulation and Order from the Office of the City Attorney. He
3 or his attorney will contact the City’s investigator, Connie Johnson, at 619-533-5699 within 15
4 days of the filing of this Stipulation to set a time for Mr. Kacha to pick up the conformed copy.

5 **MONETARY RELIEF**

6 16. Within 15 calendar days from the date of signing this Stipulation, Defendants
7 shall pay Plaintiff City of San Diego, for Development Services Department, Code Enforcement
8 Section’s investigative costs, the amount of \$281.93. Payment shall be in the form of a certified
9 check, payable to the “City of San Diego,” and shall be in full satisfaction of all costs associated
10 with the City’s investigation of this action to date. The check shall be mailed or personally
11 delivered to the Office of the City Attorney, 1200 Third Avenue, Suite 700, San Diego, CA
12 92101, Attention: Marsha B. Kerr.

13 17. Commencing within 30 days of signing this Stipulation, Defendants shall pay to
14 Plaintiff City of San Diego civil penalties in the amount of \$25,000, pursuant to SDMC section
15 12.0202(b) in full satisfaction of all claims against Defendants arising from any of the past
16 violations alleged by Plaintiff in this action. **\$19,000 of these penalties is immediately**
17 **suspended.** These suspended penalties shall only be imposed if Defendants fail to comply with
18 the terms of this Stipulation. Plaintiff City of San Diego agrees to notify Defendants in writing if
19 imposition of the penalties will be sought by Plaintiff and on what basis. Civil penalties in the
20 amount of \$6,000 shall be paid in 15 monthly installments of \$400.00 each, at 30-day intervals
21 following the date of the first payment as specified above, in the form of a certified check,
22 payable to the “City of San Diego,” and delivered to the Office of the City Attorney, Code
23 Enforcement Unit, 1200 Third Avenue, Suite 700, San Diego, California 92101, Attention:
24 Marsha B. Kerr.

25 **ENFORCEMENT OF JUDGMENT**

26 18. In the event of default by Defendants as to any amount due under this Stipulation, the
27 entire amount due shall be deemed immediately due and payable as penalties to the City of San
28 Diego, and Plaintiff shall be entitled to pursue any and all remedies provided by law for the

1 enforcement of this Stipulation. Further, any amount in default shall bear interest at the prevailing
2 legal rate from the date of default until paid in full.

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

7 20. Defendants agree that any act, intentional or negligent, or any omission or failure by
8 their contractors, successors, assigns, partners, members, agents, employees or representatives to
9 comply with the requirements set forth in Paragraphs 8-17 above will be deemed to be the act,
10 omission, or failure of Defendants and shall not constitute a defense to a failure to comply with
11 any part of this Stipulation. Further, should any dispute arise between any contractor, successor,
12 assign, partner, member, agent, employee or representative of Defendants for any reason,
13 Defendants agree that such dispute shall not constitute a defense to any failure to comply with
14 any part of this Stipulation, nor justify a delay in executing its requirements.

15 **RETENTION OF JURISDICTION**

16 21. The Court will retain jurisdiction for the purpose of enabling any of the parties to this
17 Stipulation to apply to this Court at any time for such order or directions that may be necessary or
18 appropriate for the construction, operation or modification of the Stipulation, or for the
19 enforcement or compliance therewith, pursuant to Code of Civil Procedure 664.6.

20 **RECORDATION OF JUDGMENT**

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

23 **KNOWLEDGE AND ENTRY OF JUDGMENT**

24 23. By signing this Stipulation, Defendants admit personal knowledge of the terms set
25 forth herein. Service by mail shall constitute sufficient notice for all purposes.

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24. The clerk is ordered to immediately enter this Stipulation.

IT IS SO STIPULATED.

Dated: OCT. 21, 2014

JAN I. GOLDSMITH, City Attorney

By Marsha B. Kerr
Marsha B. Kerr
Deputy City Attorney
Attorneys for Plaintiff

Dated: 7/26, 2014

JL 6TH AVENUE PROPERTY, LLC

By [Signature]
Member

Dated: 10-21-14, 2014

[Signature]
Lawrence E. Geraci aka Larry Geraci, an individual

Dated: 9/26, 2014

[Signature]
Jeffrey Kacha

Dated: 9/26, 2014

[Signature]
Joseph S. Carmellino, Attorney for
Defendants JL 6th Avenue Property, LLC,
Lawrence E. Geraci aka Larry Geraci and
Jeffrey Kacha

///

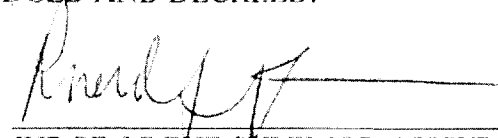
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ORDER

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

Dated: 10/27/14



JUDGE OF THE SUPERIOR COURT

RONALD S. PRAGER

37-2014-00020897-CU-MC-CTL

EXHIBIT 3

No Fee GC §6103

FILED
Clerk of the Superior Court

JUN 17 2015

FILED
Clerk of the Superior Court

JUN 17 2015

By: H. CHAVARIN, Deputy
15 JUN 11 PM 1:37

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal corporation,

Plaintiff,

v.

CCSQUARED WELLNESS COOPERATIVE, a California corporation;
BRENT MESNICK, an individual;
JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC;
JEFFREY KACHA, an individual; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2015-00004430-CU-MC-CTL

STIPULATION FOR ENTRY OF FINAL JUDGMENT AND PERMANENT INJUNCTION; JUDGMENT THEREON [CCP § 664.6]

IMAGED FILE

1. Plaintiff, City of San Diego, a municipal corporation, appearing by and through its attorneys, Jan I. Goldsmith, City Attorney, and Marsha Kerr, Deputy City Attorney; and Defendants, JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC; JEFFREY KACHA; and LAWRENCE E. GERACI, aka LARRY GERACI (Doe 1) (collectively, "Defendants"), appearing by and through their attorney, Joseph Carmellino, Esq., enter into the following Stipulation for Entry of Final Judgment (Stipulation) 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 2. The parties to this Stipulation are parties in two civil actions pending in the Superior
2 Court of the State of California for the County of San Diego. It is the intention of the parties that
3 the terms of this Stipulation constitute a global settlement of the following cases:

4 a. *City of San Diego v. CCSquared Wellness Cooperative, et al.*, Case No. 37-2015-
5 00004430-CU-MC-CTL.

6 b. *City of San Diego v. LMJ 35th Street Property LP, et al.*, Case No. 37-2015-
7 000000972.

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

15 4. The address where the Defendants were maintaining a marijuana dispensary business
16 at all times relevant to this action is 3505 Fifth Avenue, San Diego, also identified as Assessor's
17 Parcel Number 452-407-17-00 (PROPERTY). The PROPERTY is currently owned by JL INDIA
18 STREET, LP, formerly known as JL INDIA STREET, LLC.

19 5. The legal description of the PROPERTY is:

20 Lot 3 in block 45 of loma grande, in the city of San Diego, County of San
21 Diego, State of California, according to Map thereof No. 692, filed in the
 Office of the County Recorder of San Diego County, November 23, 1891.

22 6. This action is brought under California law and this Court has jurisdiction over the
23 subject matter, the PROPERTY, and each of the parties to this Stipulation.

24 **INJUNCTION**

25 7. The provisions of this Stipulation are applicable to Defendants, their successors and
26 assigns, agents, officers, employees, representatives, and tenants, and all persons, corporations or
27 other entities acting by, through, under or on behalf of Defendants, and all persons acting in
28 concert with or participating with Defendants with actual or constructive knowledge of this

1 Stipulation and Injunction. **Effective immediately upon the date of entry of this Stipulation,**
2 Defendants and all persons mentioned above are hereby enjoined and restrained pursuant to San
3 Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, California Code of Civil
4 Procedure section 526, and under the Court’s inherent equity powers, from engaging in or
5 performing, directly or indirectly, any of the following acts:

6 Keeping, maintaining, operating or allowing any commercial, retail, collective,
7 cooperative or group establishment for the growth, storage, sale or distribution of marijuana,
8 including, but not limited to, any marijuana dispensary, collective or cooperative organized
9 anywhere in the City of San Diego without first obtaining a Conditional Use Permit pursuant to
10 the San Diego Municipal Code.

11 **COMPLIANCE MEASURES**

12 **DEFENDANTS agree to do the following at the PROPERTY:**

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

17 9. The Parties acknowledge that where local zoning ordinances allow the operation of a
18 marijuana dispensary, collective or cooperative as a permitted use in the City of San Diego, then
19 Defendants will be allowed to operate or maintain a marijuana dispensary, collective or
20 cooperative in the City of San Diego as authorized under the law after Defendants provide the
21 following to Plaintiff in writing:

- 22 a. Proof that the business location is in compliance with the ordinance; and
- 23 b. Proof that any required permits or licenses to operate a marijuana dispensary,
24 collective or cooperative have been obtained from the City of San Diego as
25 required by the SDMC.

26 10. **Within 24 hours from the date of signing this Stipulation,** remove all signage from
27 the exterior of the premises advertising a marijuana dispensary, including but not limited to,
28 signage advertising CCSquared Wellness Cooperative or CCSquared Storefront.

1 11. **No later than 48 hours from signing this Stipulation** cease advertising on the
2 internet, magazines or through any other medium the existence of CCSquared Wellness
3 Cooperative or CCSquared Storefront at the PROPERTY.

4 12. **No later than 48 hours from signing this Stipulation** remove all fixtures, items and
5 property associated with a marijuana dispensary business from the PROPERTY.

6 13. **Within one week of signing this Stipulation**, Defendant will contact City zoning
7 investigator Leslie Sennett at 619-236-6880 to schedule an inspection of the PROPERTY.

8 **MONETARY RELIEF**

9 14. Defendants, jointly and severally, shall pay Plaintiff City of San Diego, for
10 Development Services Department, Code Enforcement Section’s investigative costs, the amount
11 of **\$2,438.03**. All other attorney fees and costs expended by the parties in the above-captioned
12 case are waived by the parties. The parties agree that payment in full of the monetary amount
13 referenced as investigative costs is applicable to and satisfies payment of investigative costs for
14 both cases referenced in paragraph 2 above.

15 15. Defendants shall jointly and severally pay to Plaintiff City of San Diego civil penalties
16 in the amount of \$75,000, pursuant to SDMC section 12.0202(b) in full satisfaction of all claims
17 against Defendants arising from any of the past violations alleged by Plaintiff in this action.
18 **\$37,500 of these penalties is immediately suspended.** Payment in the amount of \$37,500 in
19 civil penalties plus \$2438.03 in investigative costs referenced in paragraph 14, totaling
20 \$39,938.03, shall be made in 24 monthly installments of \$1,664.09 each beginning on or before
21 June 5, 2015, and continuing on the fifth of each successive month until paid in full. Receipt of
22 Defendants’ initial monthly payment of \$1,664.09 on June 4, 2015 is acknowledged. The parties
23 agree that payment in full of the monetary amounts referenced as civil penalties is applicable to
24 and satisfies payment of civil penalties for both of the cases referenced in paragraph 2 above. All
25 payments shall be made in the form of a certified check payable to the “City of San Diego,” and
26 shall be mailed or personally delivered to the Office of the City Attorney, 1200 Third Avenue,
27 Suite 700, San Diego, CA 92101, Attention: Marsha B. Kerr.

28 ///

1 16. The suspended penalties shall only be imposed if Defendants fail to comply with the
2 terms of this Stipulation. Plaintiff City of San Diego agrees to notify Defendants in writing if
3 imposition of the penalties will be sought by Plaintiff and on what basis.

4 **ENFORCEMENT OF JUDGMENT**

5 17. In the event of default by Defendants as to any amount due under this Stipulation, the
6 entire amount due shall be deemed immediately due and payable as penalties to the City of San
7 Diego, and Plaintiff shall be entitled to pursue any and all remedies provided by law for the
8 enforcement of this Stipulation. Further, any amount in default shall bear interest at the prevailing
9 legal rate from the date of default until paid in full. Service by mail shall constitute sufficient
10 notice for all purposes.

11 18. Nothing in this Stipulation shall prevent any party from pursuing any remedies as
12 provided by law to subsequently enforce this Stipulation or the provisions of the SDMC,
13 including criminal prosecution and civil penalties that may be authorized by the court according
14 to the SDMC at a cumulative rate of up to \$2,500 per day per violation occurring after the
15 execution of this Stipulation.

16 19. Defendants agree that any act, intentional act, omission or failure by their contractors,
17 successors, assigns, partners, members, agents, employees or representatives on behalf of
18 Defendants to comply with the requirements set forth in Paragraphs 7-15 above will be deemed to
19 be the act, omission, or failure of Defendants and shall not constitute a defense to a failure to
20 comply with any part of this Stipulation. Further, should any dispute arise between any
21 contractor, successor, assign, partner, member, agent, employee or representative of Defendants
22 for any reason, Defendants agree that such dispute shall not constitute a defense to any failure to
23 comply with any part of this Stipulation, nor justify a delay in executing its requirements.

24 **RETENTION OF JURISDICTION**

25 20. The Court will retain jurisdiction for the purpose of enabling any of the parties to
26 this Stipulation to apply to this Court at any time for such order or directions that may be
27 necessary or appropriate for the construction, operation or modification of the Stipulation, or for
28 the enforcement or compliance therewith, pursuant to Code of Civil Procedure 664.6.

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RECORDATION OF JUDGMENT

21. This Stipulation shall not be recorded unless there is an uncured breach of the terms herein, in which instance a certified copy of this Stipulation and Judgment may be recorded in the Office of the San Diego County Recorder pursuant to the legal description of the PROPERTY.

KNOWLEDGE AND ENTRY OF JUDGMENT

22. By signing this Stipulation, Defendants admit personal knowledge of the terms set forth herein. Service by regular mail shall constitute sufficient notice for all purposes.

23. The clerk is ordered to immediately enter this Stipulation.

IT IS SO STIPULATED.

Dated: June 11, 2015 JAN I. GOLDSMITH, City Attorney

By Marsha B. Kerr
Marsha B. Kerr
Deputy City Attorney
Attorneys for Plaintiff

Dated: 6-10, 2015 JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC

By Jeffrey Kacha
Jeffrey Kacha, General Partner

Dated: 6-10, 2015 Jeffrey Kacha, an individual

Jeffrey Kacha
Jeffrey Kacha, an individual


Dated: 6-8, 2015 Lawrence E. Geraci, aka Larry Geraci, an individual

Lawrence E. Geraci
Lawrence E. Geraci, aka Larry Geraci, an individual

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Dated: 6/17/15, 2015

By 
Joseph S. Carmellino
Attorney for Defendants Jeffrey Kacha and
JL India Street LP, formerly known as JL
India Street, LLC

JUDGMENT

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

Dated: 6-17-16

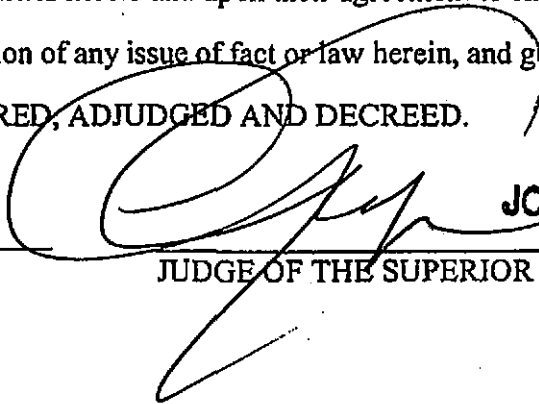

JOHN S. MEYER
JUDGE OF THE SUPERIOR COURT

EXHIBIT 4

Court's Ex. **034**
 Case # 37-2017-00010073-CU-BC-CTL



Rec'd _____
 Dept. **C-73** Clk. _____

General Application

FORM
DS-3032
 AUGUST 2013

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

2. Project Address/Location: *Include Building or Suite No.*
 6176 Federal Blvd. **Project Title:** Federal Blvd. MMCC **Project No.:** *For City Use Only* 520604

Legal Description: *(Lot, Block, Subdivision Name & Map Number)*
 TR#:2 001100 BLK 25*LOT 20 PER MAP 2121 IN* City/Muni/Twp: SAN DIEGO **Assessor's Parcel Number:** 543-020-02

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

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

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

Address: _____ **City:** San Diego **State:** CA **Zip Code:** 92122 **E-mail Address:** becky@tfcسد.net

4. Permit Holder Name - This is the property owner, person, or entity that is granted authority by the property owner to be responsible for scheduling inspections, receiving notices of failed inspections, permit expirations or revocation hearings, and who has the right to cancel the approval (in addition to the property owner). SDMG Section 113.0103.
Name: Rebecca Berry **Telephone:** _____ **Fax:** _____
Address: _____ **City:** San Diego **State:** CA **Zip Code:** 92122 **E-mail Address:** becky@tfcسد.net

5. Licensed Design Professional (if required): (check one) Architect Engineer License No.: C-19371
Name: Michael R Morton AIA **Telephone:** _____ **Fax:** _____
Address: _____ **City:** San Diego **State:** CA **Zip Code:** 92104 **E-mail Address:** _____

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

Must be completed for all permits/approvals

Part I

Print Name: Abhay Schweitzer **Signature:** *[Signature]* **Date:** 10/28/2016

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

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

Address: _____ **City:** San Diego **State:** CA **Zip Code:** 92122 **E-mail Address:** becky@tfcسد.net

Applicant's Signature: I certify that I have read this application and state that the above information is correct, and that I am the property owner, authorized agent of the property owner, or other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application (Municipal Code Section 112.0102). I understand that the applicant is responsible for knowing and complying with the governing policies and regulations applicable to the proposed development or permit. The City is not liable for any damages or loss resulting from the actual or alleged failure to inform the applicant of any applicable laws or regulations, including before or during final inspections. City approval of a permit application, including all related plans and documents, is not a grant of approval to violate any applicable policy or regulation, nor does it constitute a waiver by the City to pursue any remedy, which may be available to enforce and correct violations of the applicable policies and regulations. I authorize representatives of the city to enter the above-identified property for inspection purposes. I have the authority and grant City staff and advisory bodies the right to make copies of any plans or reports submitted for review and permit processing for the duration of this project.
Signature: *[Signature]* **Date:** Oct 31 2016

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 Upon request, this information is available in alternative formats for persons with disabilities.

DS-3032 (08-13)

EXHIBIT 5



City of San Diego
 Development Services
 1222 First Ave., MS-401
 San Diego, CA 92101
 (619) 446-5000

Affidavit for Medical Marijuana Consumer Cooperatives for Conditional Use Permit (CUP)

FORM DS-190
 MARCH 2014

The purpose of this affidavit is for the property owner, authorized agent, or business owner of the Medical Marijuana Consumer Cooperative (MMCC) to affirm that all uses within 1,000 feet from the subject property line have been identified, including residential zones within 100 feet, as defined in San Diego Municipal Code (SDMC), Sections 113.0103 and 141.0614.

The proposed MMCC location must be 100 feet from any residential zone and not within 1,000 feet of the property line of the following:

- | | |
|----------------------|--|
| 1. Public park | 6. Minor-oriented facility |
| 2. Church | 7. Other medical marijuana consumer cooperatives |
| 3. Child care center | 8. Residential care facility |
| 4. Playground | 9. Schools |
| 5. City library | |

GENERAL INFORMATION

Project Name: Federal Blvd. MMCC	Project No.: For City Use Only 5201000
Project Address: 6176 Federal Blvd., San Diego, CA 92114	
Date Information Verified by Owner or Authorized Agent: 10/28/2016	

DECLARATION: *The property owner, authorized agent, or business owner of the Medical Marijuana Consumer Cooperative must complete the following section and sign their name where indicated.*


We are aware that the business described above is subject to the Medical Marijuana Consumer Cooperatives (MMCC) regulated by SDMC, Section 141.0614 and Chapter 4, Article 2, Division 15. We hereby affirm under penalty of perjury that the proposed business location is not within 1,000 feet, measured in accordance with SDMC, Section 113.0225, of the property line of any public park, church, child care center, playground, library owned and operated by the City of San Diego, minor-oriented facility, other medical marijuana consumer cooperative, residential care facility, or schools; and is 100 feet from any residential zone as identified on the 1000-foot radius map and spread-sheet submitted with the Conditional Use Permit application.

Property Owner or Authorized Agent Name: Check one <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Agent		Telephone No.:	
Mailing Address:	City:	State:	Zip Code:
Signature:	Date:		
Business Owner Name: Rebecca Berry		Telephone No.: (858) 999-6882	
Mailing Address: 5982 Gullstrand Street	City: San Diego	State: CA	Zip Code: 92122
Signature: <i>Rebecca Berry</i>	Date: <i>Oct 31 2016</i>		

Printed on recycled paper. Visit our web site at www.sandiego.gov/development-services.
 Upon request, this information is available in alternative formats for persons with disabilities.

DS-190 (03-14)

EXHIBIT 6

 THE CITY OF SAN DIEGO	City of San Diego Development Services Attn: Deposit Accounts 1222 First Ave., MS-401 San Diego, CA 92101 (619) 446-5000	<h2 style="margin:0;">Deposit Account/Financially Responsible Party</h2>	FORM <h1 style="margin:0;">DS-3242</h1> AUGUST 2014
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Project Address/Location: 6176 Federal Blvd. San Diego, CA. 92114	Project No.: <i>For City Use Only</i> 520606	Internal Order No.: <i>For City Use Only</i>
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Approval Type: *Check appropriate box for type of approval requested:*

Grading
 Public Right-of-Way
 Subdivision
 Neighborhood Use
 Coastal
 Neighborhood Development
 Site Development
 Planned Development
 Conditional Use
 Variance
 Vesting Tentative Map
 Tentative Map
 Map Waiver
 Other: _____

Is the project subject to a Reimbursement Agreement? No Yes

If yes, provide Reimbursement Agreement Application Project Number or Resolution/Ordinance No.: _____

Deposit Trust Fund Account Information: A deposit into a Trust Fund account with an initial deposit to pay for the review, inspection and/or project management services is required. The initial deposit is drawn against to pay for these services. The Financially Responsible Party will receive a monthly statement reflecting the charges made against the account, and an invoice when additional deposits are necessary to maintain a minimum balance. The payment of the invoice will be required in order to continue processing your project. At the end of the project, any remaining funds will be returned to the Financially Responsible Party.

FINANCIALLY RESPONSIBLE PARTY

Name/Firm Name: Rebecca Berry	Address: 5982 Gullstrand Street	E-mail:
City: San Diego	State: CA	Zip Code: 92122
Telephone:	Fax No.:	

Financially Responsible Party Declaration: I understand that City expenses may exceed the estimated advance deposit and, when requested by the City of San Diego, will provide additional funds to maintain a positive balance. Further, the sale or other disposition of the property does not relieve the individual or Company/Corporation of their obligation to maintain a positive balance in the trust account, unless the City of San Diego approves a Change of Responsible Party and transfer of funds. Should the account go into deficit, all City work may stop until the requested advance deposit is received.

This is a continuation of existing Project No.: _____ Internal Order No.: _____

- NOTE:** Using an existing opened account may be allowed when:
1. Same location for both projects;
 2. Same Financially Responsible Party;
 3. Same decision process (Ministerial and discretionary projects may not be combined);
 4. Same project manager is managing both projects; and
 5. Preliminary Review results in a project application.

Please be advised: Billing statements cannot distinguish charges between two different projects.

Please Print Legibly.

Print Name: <u>REBECCA BERRY</u>	Title: <u>PRESIDENT</u>
Signature*: <u>Rebecca Berry</u>	Date: <u>10/31/16</u>

***The name of the individual and the person who signs this declaration must be the same. If a corporation is listed, a corporate officer must sign the declaration (President, Vice-President, Chairman, Secretary or Treasurer).**

FOR CITY USE ONLY

Project Title: <u>Federal Blvd mmcc</u>	Date Requested: <u>10/31/16</u>
<input type="checkbox"/> Keep existing Project No.: _____ as lead or <input type="checkbox"/> Use new Project No.: _____ as lead	

ACCOUNT CLOSURE AUTHORIZATION

Date Requested: _____ Completed Inactive Withdrawn Collections

Print Name: _____ Signature: _____

EXHIBIT 7



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

Ownership Disclosure Statement

Approval Type: Check appropriate box for type of approval (s) requested: Neighborhood Use Permit Coastal Development Permit
 Neighborhood Development Permit Site Development Permit Planned Development Permit Conditional Use Permit
 Variance Tentative Map Vesting Tentative Map Map Waiver Land Use Plan Amendment • Other _____

Project Title _____ **Project No. For City Use Only** _____

Federal Blvd. MMCC

Project Address:

6176 Federal Blvd., San Diego, CA 92114

Part I - To be completed when property is held by Individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. 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). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached Yes No

Name of Individual (type or print):
 Darryl Cotton

Owner Tenant/Lessee Redevelopment Agency

Street Address:
 6176 Federal Blvd

City/State/Zip:
 San Diego Ca 92114

Phone No: (619) 954-4447 **Fax No:**

Signature: _____ **Date:** 10-31-2016

Name of Individual (type or print):
 Rebecca Berry

Owner Tenant/Lessee Redevelopment Agency

Street Address:
 5982 Gullstrand St

City/State/Zip:
 San Diego / Ca / 92122

Phone No: 8589996882 **Fax No:**

Signature: _____ **Date:** 10-31-2016

Name of Individual (type or print):

Owner Tenant/Lessee Redevelopment Agency

Street Address:

City/State/Zip:

Phone No: _____ **Fax No:** _____

Signature : _____ **Date:** _____

Name of Individual (type or print):

Owner Tenant/Lessee Redevelopment Agency

Street Address:

City/State/Zip:

Phone No: _____ **Fax No:** _____

Signature : _____ **Date:** _____

EXHIBIT 8

1 Gina M. Austin (SBN 246833)
E-mail: *gaustin@austinlegalgroup.com*
2 Tamara M. Leetham (SBN 234419)
E-mail: *tamara@austinlegalgroup.com*
3 AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
4 San Diego, CA 92110
Phone: (619) 924-9600
5 Facsimile: (619) 881-0045

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

09/04/2018 at 05:46:00 PM
Clerk of the Superior Court
By E-Filing, Deputy Clerk

6 Attorneys for Defendants
Ninus Malan
7

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

10
11 SALAM RAZUKI, an individual,

12 Plaintiff,

13 vs.

14 NINUS MALAN, an individual; CHRIS
15 HAKIM, an individual; MONARCH
16 MANAGEMENT CONSULTING, INC., a
California corporation; SAN DIEGO
17 UNITED HOLDINGS GROUP, LLC, a
California limited liability company; FLIP
18 MANAGEMENT, LLC, a California
limited liability company; ROSELLE
19 PROPERTIES, LLC, a California limited
liability company; BALBOA AVE
20 COOPERATIVE, a California nonprofit
mutual benefit corporation; CALIFORNIA
21 CANNABIS GROUP, a California
nonprofit mutual benefit corporation;
22 DEVILISH DELIGHTS, INC. a California
nonprofit mutual benefit corporation; and
DOES 1-100, inclusive;

23 Defendants.
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CASE NO. 37-2018-00034229-CU-BC-CTL

**SUPPLEMENTAL DECLARATION OF
GINA M. AUSTIN FOR SEPTEMBER 7,
2018 HEARING**

[Imaged File]

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110

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I, Gina M. Austin, declare:

1. I am attorney admitted to practice before this Court and all California courts and, along with Tamara M. Leetham, represent defendant Ninus Malan (“Malan”) in this matter. I make this supplemental declaration in support of Malan’s application to vacate order appointing receiver. Unless otherwise stated, all facts testified to are within my personal knowledge and, if called as a witness, I would and could competently testify to them.

2. I am an expert in cannabis licensing and entitlement at the state and local levels and regularly speak on the topic across the nation.

3. My firm also performs additional legal services for these defendants to include corporate transactions and structuring, land use entitlements and regulations related to cannabis, and state compliance related to cannabis.

4. The purpose of this declaration is to provide additional information related to the events that have transpired since the last hearing on August 20, 2018. All of the facts previously testified to in my declaration of June 30, 2018 and August 20, 2018 remain true and accurate.

5. I spoke with Mr. Essary immediately after the hearing in this matter on August 20, 2018 and suggested that an independent cannabis expert not affiliated with either the plaintiff or defendant would be a better solution in order to avoid an actual or apparent conflict of interest by Mr. Lachant. I informed Mr. Essary that while I could provide any cannabis licensing information he required, both sides would probably appreciate an independent third party. I recommended Pamela Epstein of Greenwise Consulting.

6. Both Ninus Malan and Pamela Epstein informed me on August 27, 2018 that Mr. Essary was going to continue to use Mr. Lachant despite our objections. On August 27, 2018 I followed up with an email to Mr. Essary that we oppose the use of Mr. Lachant given the fact that Mr. Lachant is a partner with Nelson Hardiman and counsel for plaintiff-in-intervention. A true and correct copy of the email is attached hereto as Exhibit A.

7. There is no need for Mr. Essary to manage or control any part of state application process. The only fee associated with the Balboa Dispensary state license will not occur until the annual license is issued. Based upon expected revenues of \$2.5 to \$7.5 the fee to the Bureau of

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San Diego, CA 92110

1 Cannabis Control will be \$64,000. So long as Ninus Malan and Balboa Ave Cooperative are the
2 identified "owners" and applicants for the state licensing for the Balboa Dispensary there is no
3 need to change any information at the state level. However, if a consultant is needed I am willing
4 to provide the necessary assistance.

5 8. If Mr. Essary remains the receiver he would be deemed an "owner" of the Balboa
6 Dispensary and an additional application would need to be filed pursuant to Section 5024 (c) of
7 Title 16 Division 42 of the California Code of Regulations. This additional application would
8 unnecessarily increase expenses for the Balboa Dispensary as the application would need to be
9 submitted anew with the receiver as an "owner" and then again once the litigation is complete. It
10 will also cause a delay that could potentially prevent the Balboa Dispensary from operating in
11 2019 if the annual application is not approved. If SB 1459 is signed by the governor (allowing
12 for provisional licenses for those who hold temporary licenses) the change of ownership may also
13 affect the ability of Balboa Ave Cooperative to obtain a provision license.

14 9. There is no need for Mr. Essary to manage or control any part of state application
15 process for the distribution or manufacturing license at the Mira Este property. The only fee
16 associated with the Mira Este state licenses will not occur until the annual licenses are issued.
17 The fees will be \$7,500 to California Department of Public Health for manufacturing so long as
18 revenue is not over \$500,000 and \$1,200 for distribution so long as annual revenue is not over
19 \$3,000,000 for manufacturing. As long as Ninus Malan, Chis Hakim and California Cannabis
20 Group are the identified "owners" and applicants for the state licensing for the Mira Este property
21 there is no need to change any information at the state level. However, if a consultant is needed I
22 am willing to provide the necessary assistance.

23 10. If Mr. Essary remains the receiver he would be deemed an "owner" and additional
24 filing requirements must be met for both the distribution and manufacturing applications.

25 11. During the time that SoCal was operating the Balboa Dispensary they were using a
26 point of sale system called Treez. The City of San Diego through its contractor MGO is in the
27 middle of a tax and compliance audit of the Balboa dispensary. I have been working with MGO
28 to determine what information is required to be provided and have agreed on what is to be

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1 produced. On August 24, 2018 I received the sales report from Treez for the sales occurring
2 during January through March 2018 while SoCal was operating the dispensary. A true and
3 correct copy of the email is attached hereto as Exhibit B. I did not attach the excel spread sheets
4 as they are over 1000 pages.

5 12. I immediately forwarded this information to MGO for their review. Mr. Grigor
6 Gevorgyan of MGO informed me that there is a discrepancy between the tax form that was filed
7 by Mr. Essary and the sales data reported on the spreadsheets of approximately \$100,000. A true
8 and correct copy of the email from Mr. Gevorgyan is attached hereto as Exhibit C.

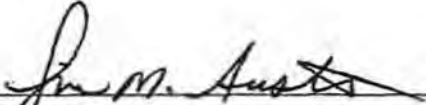
9 13. I informed Mr. Essary of the discrepancy. On August 27, 2018 Mr. Essary sent an
10 email stating that he would have to contact Mr. Yaeger to determine why there is a discrepancy.
11 As of the drafting of this declaration MGO has not received a response from Mr. Yaeger or Mr.
12 Essary as to the basis for the discrepancy. A true and correct copy of MGO's request for
13 clarification is attached hereto as Exhibit D.

14 14. On August 15, 2018, I was attending the hearing for the Conditional Use Permit
15 for a marijuana production facility located on 8859 Balboa Ave, Suites A-E. San Diego United
16 Holdings, LLC is the applicant. The application was approved and was not appealed. The permit
17 will be recorded by the City of San Diego within the next 10 business days. The temporary and
18 annual state application for this location must be prepared. The expense for the application
19 process is \$25,000. This expense will be covered by the operating group that San Diego United
20 Holdings contracts with to conduct operations at this facility. It is critical that the operating entity
21 be secured as quickly as possible to allow for the timely filing of a state application. All of the
22 potential operating entities that we have had conversations with will not enter into an agreement
23 so long as there is a receiver in control.

24 15. An application for a Conditional Use Permit by Mira Este Properties, LLC for a
25 marijuana production facility located at 9212 Mira Este Court is set to go before the Hearing
26 Officer on October 3, 2018. It is highly likely that the permit will be appealed to the Planning
27 Commission because the City will only be issuing 40 licenses and approximately half will have
28 been issued by this time. It is my opinion that successful approval of this application is

1 contingent on our office attending the hearing.

2 I declare under penalty of perjury under California state law that the foregoing is true and
3 correct. Executed in San Diego, California on September 4, 2018.

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6 Gina M. Austin

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EXHIBIT 9

Geraci vs. Cotton, et al.

**Reporter's Transcript of Proceedings
July 08, 2019**



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Transcript of Proceedings

Geraci vs. Cotton, et al.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION
Department 73 Hon. Joel R. Wohlfeil

LARRY GERACI, an individual,)
Plaintiff,)
vs.) 37-2017-00010073-CU-BC-CTL
DARRYL COTTON, an individual;)
and DOES 1 through 10,)
inclusive,)
Defendants.)
_____)
AND RELATED CROSS-ACTION.)
_____)

Reporter's Transcript of Proceedings
JULY 8, 2019

Reported By:
Margaret A. Smith,
CSR 9733, RPR, CRR
Certified Shorthand Reporter
Job No. 10057774

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 APPEARANCES
2
3 FOR PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI AND
4 CROSS-DEFENDANT REBECCA BERRY:
5 FERRIS & BRITTON
6 BY: MICHAEL R. WEINSTEIN, ESQUIRE
7 BY: SCOTT H. TOOTHACRE, ESQUIRE
8 BY: ELYSSA K. KULAS, ESQUIRE
9 501 West Broadway, Suite 1450
10 San Diego, California 92101
11 mweinstein@ferrisbritton.com
12 stoothacre@ferrisbritton.com
13 ekulas@ferrisbritton.com
14
15 FOR DEFENDANT AND CROSS-COMPLAINANT DARRYL COTTON:
16 ATTORNEY AT LAW
17 BY: JACOB P. AUSTIN, ESQUIRE
18 1455 Frazee Road, Suite 500
19 San Diego, California 92108
20 619.357.6850
21 jpa@jacobbaustinesq.com
22
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Transcript of Proceedings

Geraci vs. Cotton, et al.

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I N D E X

PAGE

WITNESSES:

GINA AUSTIN	
Direct by Mr. Weinstein	10
Cross by Mr. Austin	46
Redirect by Mr. Weinstein	65
DARRYL COTTON (UNDER 776)	
Cross by Mr. Weinstein	69
ABHAY SCHWEITZER	
Direct by Mr. Toothacre	165

Transcript of Proceedings

Geraci vs. Cotton, et al.

I N D E X			
EXHIBITS		IDENTIFIED	/ ADMITTED
12	Agreement between Techne and Larry Geraci, dated 10/04/16	174	174
16	Executed Letter Agreement between Rebecca Berry and Lundstrom Engineering and Surveying, Inc. re Topographic Survey Proposal, dated 10/6/16	185	185
19	Email to Larry Geraci and Neil Dutta from Abhay Schweitzer re Federal Blvd. - Site layout, dated 10/20/16 with two attachments A101 - Site Plan - Existing & A102 - Site Plan - Proposed	194	194
20	Email to Larry Geraci from Abhay Schweitzer Re: Federal Blvd. - Site layout, dated 10/24/16 with attached A102 - Site Plan - Proposed - Scheme B	197	197
22	Email to Becky Berry from Abhay Schweitzer Fwd Federal Blvd., dated 10/26/16 with attachment Blank City of San Diego Ownership Disclosure Statement, Form DS-318	199	199
23	Email to Rebecca Berry from Abhay Schweitzer re Invoice #339 from TECHNE City fees (Federal Blvd), dated 10/26/16 with attached Techne Invoice No. 339, dated 10/26/16	200	200
24	Email to Rebecca Berry from Abhay Schweitzer re Federal Blvd. - City Fees breakdown, dated 10/26/16 with attached City of San Diego Information Bulletin 170, How to Apply for a Conditional Use Permit Medical Marijuana Consumer Cooperative	17	17

Transcript of Proceedings

Geraci vs. Cotton, et al.

I N D E X (continued)				
	EXHIBITS		IDENTIFIED	ADMITTED
1				
2				
3				
4	25	Email to Larry Geraci and Rebecca Berry from Abhay Schweitzer re Federal Blvd - Site Plan and Floor Plan, dated 10/26/16 with attachments	26	26
5				
6				
7	26	CUP Submittal Plans - CUP Completeness Review dated 10/28/2016	210	210
8				
9	28	Land Development Manual Vol 1, Ch 1 Project Submittal Reqts, Sec 4 Development Permits/Approvals June 2015	211	211
10				
11				
12	29	Information Bulletin 515 Geotechnical Study Requirements October 2016	212	212
13				
14	31	Form DS-3242 Deposit Account/Financially Responsible Party dated 10/31/2016	215	215
15				
16	32	CUP Completeness Review - Photographic Survey submitted 10/31/2016	74	74
17				
18	33	CUP Completeness Review - City of SD Receipt for \$8,800 Payment dated 10/31/2016	218	218
19				
20	35	Email to Larry Geraci from Abhay Schweitzer Re: Federal Blvd - Site Plan and Floor Plan, dated 10/31/16	219	219
21				
22	36	Email to Rebecca Berry from Abhay Schweitzer Re: Federal Blvd - Site Plan and Floor Plan, dated 10/31/16	54	54
23				
24				
25	45	Email to Jim Bartell from Abhay Schweitzer re Federal Blvd. MMCC - Completeness Review, dated 11/14/16	35	35
26				
27	47	CUP Completeness Review - Remaining Cycle Issues dated 11/15/2016	227	227
28				

Transcript of Proceedings

Geraci vs. Cotton, et al.

I N D E X (continued)			
	EXHIBITS	IDENTIFIED	ADMITTED
1			
2			
3			
4	48 Email to Jim Bartell from	229	229
5	Abhay Schweitzer Re: Update,		
	dated 11/29/16		
6	49 Email to Abhay Schweitzer from	39	39
7	Jim Bartell RE: Federal Blvd -		
	Completeness Review corrections,		
8	dated 11/30/16		
9	70 Email to Larry Geraci from Darryl	140	140
	Cotton re Contract Review,		
10	dated 3/19/17		
11	71 Email to Darryl Cotton from	143	143
	Larry Geraci re Contract Review,		
12	dated 3/19/17		
13	73 Email to Darryl Cotton from	141	141
	Firouzeh Tirandazi re Federal		
14	Boulevard MMCC, dated 3/21/17		
15	74 Email to Larry Geraci from	145	145
	Darryl Cotton re Contract Review,		
16	dated 3/21/17		
17	75 Email to Firozeh Tirandazi	148	148
	from Darryl Cotton re PTS		
18	520606 - Federal Blvd MMCC,		
	dated 3/21/17, with attached		
19	Addendum Nos. 102		
20	76 CAR Commercial Property Purchase	149	149
	Agreement and Joint Escrow		
21	Instructions, dated 3/21/17		
22	77 Addendum No. 2 - MOU re Martin	151	151
	and Cotton dated 4/15/17		
23	78 Addendum No. 3 - Permit Disclosure	152	152
	of Agreement in Cotton's Response		
24	to Geraci lawsuit - Martin & Cotton		
	dated 5/12/17		
25	84 Email to Darryl Cotton from	154	154
26	Michael Weinstein re Geraci v.		
27	Cotton - Posting of Notice of		
	Application, dated 3/28/17		
28			

Transcript of Proceedings

Geraci vs. Cotton, et al.

I N D E X (continued)			
	EXHIBITS	IDENTIFIED / ADMITTED	
1			
2			
3			
4	87	Picture of Posted Notice of Application on property fence of 6176 Federal Blvd., dated 4/04/17	155 155
5			
6	94	Email to Darryl Cotton from Firouzeh Tirandazi re PTS 520606 - Federal Boulevard MMCC, dated 05/08/17	156 156
7			
8			
9	118	Notice of Ruling After Hearing Re Motion by Plaintiff for Preliminary Injunction or other Order to Compel Access to the Subject Property for Soils Testing, 3/26/18	162 162
10			
11			
12	119	Order Granting Ex Parte Application by Plaintiff for Appointment of Court Clerk or Court Clerk's Designees as Elisor, 4/3/2018	163 163
13			
14			
15	138	Austin Legal Group Expense Summary with Supporting Documentation	14 14
16			
17	164	City Ordinance No. 0-20793	22 24
18	281	B&P Code Section 26057	56
19			
20			
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28			

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 you look at them more closely where you're sitting.

2 What's your profession?

3 A I'm an attorney.

4 Q How long have you been a lawyer?

5 A Thirteen years.

6 Q And are you currently employed?

7 A Yes.

8 Q By whom?

9 A Austin Legal Group.

10 Q And who owns the Austin Legal Group?

11 A I do.

12 Q And are you the sole owner?

13 A Yes.

14 Q Now, currently how many lawyers do you have
15 working for you at the law firm?

16 A Five.

17 Q And how many were there back in 2016, let's
18 say, October of 2016?

19 A Three or four others.

20 Q Okay. So -- and when you said a moment ago
21 five, five including yourself?

22 A Yes.

23 Q All right. And what areas of law does your
24 firm generally practice?

25 A We work corporate mergers and acquisitions,
26 land use entitlements, cannabis entitlement, and
27 litigation.

28 Q And yourself personally, what areas do you

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 **focus your practice on?**

2 A Currently, almost exclusively in cannabis law.

3 **Q And would you explain generally what the area**
4 **of cannabis law covers.**

5 A It covers land use entitlements. So getting a
6 dispensary or a manufacturing facility permitted in a
7 jurisdiction of San Diego. Every city is different. It
8 includes compliance for those companies so that they're
9 compliant with the state law as well as the local
10 jurisdiction law. It has a lot of mergers and
11 acquisitions since there's been a lot of roll-up in the
12 industry in the last year.

13 **Q And you practice in jurisdictions outside**
14 **California?**

15 A Yeah. Twenty-five different local
16 jurisdictions in California and then four other states.

17 **Q Okay. Now, have you represented persons or**
18 **businesses in connection with regulatory compliance for**
19 **getting conditional use permits in the City of**
20 **San Diego?**

21 A Yes.

22 **Q On how many occasions?**

23 A At least 50.

24 **Q And that includes pending applications?**

25 A That includes pending ones, correct.

26 **Q And how many of your clients within the City of**
27 **San Diego have obtained a CUP license?**

28 A I have to count that.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Q Do you have an estimate?

2 A Somewhere between 20 and 25.

3 Q Okay. Now, do you consider yourself one of the
4 experts in the San Diego area as it relates to cannabis
5 law and regulation?

6 A Yes, I do.

7 Q And do you speak regularly at industry
8 conferences on subjects related to cannabis law and
9 regulation?

10 A Yes, I do.

11 Q Can you give me some examples of conferences
12 you've spoken at.

13 A The most recent -- well, most recently, I did a
14 law school panel, a panel for the Thomas Jefferson law
15 school. Before that, I think I was in Chicago speaking
16 at the Arcview conference. And before that, it would
17 have been at the NCIA, National Cannabis Industry
18 Association, conference in Los Angeles.

19 Q And what type of topics have you spoken at
20 those conferences?

21 A Regulatory compliance issues, corporate
22 structuring, funding mechanisms, local -- dealing with
23 local jurisdictions and municipalities.

24 Q And do you know Larry Geraci?

25 A Yes.

26 Q And was Mr. Geraci your client?

27 A Yes.

28 Q Had your firm provided services to him in

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 (Cross-examination of Gina Austin)

2 BY MR. AUSTIN:

3 Q Good morning.

4 A Good morning.

5 Q Mrs. Austin, you mentioned in direct that
6 you're an attorney in the field of cannabis regulation.
7 Correct?

8 A That's correct.

9 Q And you would consider yourself an expert in
10 that field?

11 A That's correct.

12 Q Have you ever testified as a cannabis expert?

13 A No. Let me take that back. Not -- I have
14 been -- I've had trials where I -- where our office is
15 representing a cannabis client and I am there as the
16 expert to provide background information to the Court
17 but not testifying.

18 Q Okay. So -- all right. You haven't been an
19 expert in trials for background --

20 A Not as a designated expert, no.

21 Q Oh. Not expert. All right.

22 How long have you worked in the area of
23 cannabis regulation?

24 A A little over six years.

25 Q As an expert cannabis attorney, do you have
26 clients that seek out your services to assist them in
27 obtaining permits to get licenses to operate medical
28 outlet -- or marijuana outlets?

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 A Yes.

2 Q Do you also do cultivation facilities or
3 manufacturing?

4 A Yes.

5 Q As a good attorney, one of the things you try
6 to do is figure out in particular if a client is
7 eligible for a marijuana license permit before beginning
8 the process. Correct?

9 A As a good attorney? Sure.

10 Q You are aware that certain people are not
11 eligible for or are barred from obtaining certain CUPS.
12 Correct?

13 A Not at the city level, but at the state level,
14 yes.

15 Q At the state level. Is there anything that
16 could bar someone from the city level?

17 A There might be. I haven't seen the -- they
18 have to run a LiveScan, which is a background check,
19 fingerprint similar to what attorneys now have to do.
20 And the City doesn't -- hasn't denied anybody, and they
21 haven't said what they would be looking for. Presuming
22 that it would be the same as what is at the state level,
23 but I -- we haven't seen anybody be denied. So I'm not
24 sure.

25 Q On the state level, do criminal convictions
26 prevent someone from obtaining licenses?

27 A Very rarely. It would be felony and a crime of
28 moral turpitude.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 **Q What if someone has had illegal operations that**
2 **have resulted in a lawsuits on the property, illegal**
3 **principals?**

4 A So in different jurisdictions, it's different.
5 It's different. But if we're talking about the City of
6 San Diego -- the state only makes you write a
7 rehabilitation plan. They don't preclude you from
8 operating. So you can have a misdemeanor -- and you
9 have to disclose them all. So you have to disclose
10 your -- if you've got a DUI, if you had some petty theft
11 as a teenager or, I guess, over 18, if you -- and we see
12 all of these things. And they simply -- you disclose
13 it, and then you write a rehabilitation to the state,
14 and the state says, okay, here you go.

15 **Q So does the City care if someone has been**
16 **sanctioned for illegal commercial cannabis activity?**

17 MR. WEINSTEIN: Objection. Vague as phrased.

18 THE COURT: Overruled.

19 THE WITNESS: Does the City care if somebody
20 has been sanctioned? Yes and no because it just depends
21 on what that was. If that -- if there was -- Urban
22 League had a perfect example. Wilson had been
23 sanctioned for prior activity, and at the time when they
24 first started those back in 2009, there was a --
25 phrasing in the -- in the settlement agreement that said
26 you cannot conduct any cannabis activity unless amended
27 by the Court. And he was still awarded a dispensary.
28 And he ultimately did get it amended, the -- the

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 judgment or the stipulation amended to say no illegal
2 cannabis activity.

3 So does the City care? I don't know how to
4 answer that.

5 BY MR. AUSTIN:

6 Q All right. So it would be fair to say that the
7 first goal of the regulating agencies in the city and
8 the state is to protect the community and keep these
9 types of individuals who had had illegal activity --
10 illegal cannabis activity going on, the goal would be to
11 keep the public safe?

12 A I don't understand that question. Can you
13 rephrase it?

14 Q No. Cancel that. Sorry. Strike that.

15 So on the 6176 property, Mr. Geraci's name was
16 not used on the CUP application. Correct?

17 A That's correct.

18 Q And was the reason because of his tax business?
19 Is that what you were told?

20 A I don't know if I was told.

21 Q Were you given a reason why Rebecca Berry would
22 be used as the agent?

23 A I -- I don't recall if I was or if I wasn't.
24 I'm trying to think back. I -- I -- I don't know if it
25 was his tax business or -- you know, every year things
26 loosen up a little bit, and there's been a -- always
27 been a fear of federal enforcement. And so I don't
28 remember the exact reason right now.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Q Are you aware that Mr. Geraci has been
2 sanctioned for illegal cannabis activity on three
3 occasions for owning property in which illegal marijuana
4 principals were housed?

5 A No.

6 Q You're not aware of that?

7 A No.

8 Q Did you do any type of -- actually, have you
9 worked with Mr. Geraci on any project other than the
10 6176 CUP?

11 A I'm not sure I can answer that for client
12 privilege. I know he waived with regard to this. If
13 someone could instruct me whether or not it's been
14 waived to everything, that would be helpful.

15 MR. WEINSTEIN: Waived, your Honor.

16 THE COURT: I'm sorry?

17 MR. WEINSTEIN: We will waive the privilege.

18 THE WITNESS: Okay. Yes. I did work with him
19 on -- working on some other land use entitlement
20 projects.

21 BY MR. AUSTIN:

22 Q Were those marijuana related?

23 A They were not.

24 Q So in the forms that we saw up on the board,
25 you said that Rebecca Berry's name was all that was
26 required because the -- any CUP runs with the land.
27 Correct?

28 A That's correct.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Q So if Ms. Berry was Mr. Geraci's agent,
2 wouldn't you say that in fact Mr. Geraci did have an
3 interest in the CUP?

4 A I'm sorry. The question is I would say that
5 Mr. Geraci has an interest in the CUP because Rebecca
6 Berry was his agent?

7 Q Yes.

8 A Yeah. I believe that they were working
9 together to obtain the CUP.

10 Q So in Exhibit 30, which has already been
11 admitted into evidence, the first page, Part 1, it's
12 fine print. But three lines down, does it not say to
13 list -- and by the list it's referring to -- anyone --

14 THE REPORTER: Can the reporter hear that last
15 part again, and louder Counsel.

16 BY MR. AUSTIN:

17 Q Okay. In Part 1, it refers to the ownership
18 disclosure statement. And three lines down, it says the
19 list must include the names and addresses of all persons
20 who have an interest in the property, recorded or
21 otherwise, and state the type of property interest,
22 including tenants who will benefit from the permit, all
23 individuals who own the property.

24 A Yes.

25 Q So after reading that, why does it seem
26 unnecessary to list Mr. Geraci?

27 A I don't know that it -- it was unnecessary or
28 necessary. We just didn't do it.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 issues with the City, and I don't want to see his name
2 on the application unless necessary."

3 **Q And what legal issues were those?**

4 A My understanding is that he had multiple
5 enforcement actions for illegal cultivation on site.

6 **Q Was it multiple, or just one? Do you recall?**

7 A I was told multiple.

8 **Q Okay. Is that a similar reason why**
9 **Mr. Geraci's name was kept off that form?**

10 A No. Like I said, I didn't know anything about
11 that.

12 **Q Okay. Are you familiar with the California**
13 **Business and Professions Code 26057?**

14 A Probably. It sounds like it's part of the
15 cannabis regulations.

16 **Q Yes. I don't -- I don't know if you would like**
17 **to read the first paragraph of this to refresh your**
18 **recollection or if I can read this section in.**

19 THE COURT: What's the exhibit number, Counsel?

20 MR. AUSTIN: What would be the exhibit number
21 on this?

22 THE COURT: Has that been marked previously as
23 an exhibit?

24 MR. AUSTIN: It has not. Could we get judicial
25 notice of the California business code and
26 professions -- or Business and Professions Code.

27 THE COURT: Well, have you shown opposing
28 counsel that document? Why don't you do so.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 MR. WEINSTEIN: We've seen it. It's part of
2 what we discussed on Friday in terms of lodgement. He
3 wants to show the witness the statute.

4 THE COURT: All right.

5 MR. WEINSTEIN: And I would ask that she be
6 given the statute in front of her to read.

7 THE COURT: All right. So let's -- the next
8 exhibit in order is 281. Counsel, what's the name of
9 the statute? B&P Code section what?

10 MR. AUSTIN: 26057.

11 THE COURT: All right. And did you want to
12 show that statute to Ms. Austin to refresh her memory?

13 MR. AUSTIN: Yes.

14 THE COURT: All right. So we'll have that
15 marked next in order Exhibit 281.

16 (Premarked Joint Exhibit 281, B&P Code
17 Section 26057, was marked for identification.)

18 BY MR. AUSTIN:

19 Q Are you familiar with this Code?

20 A Yes.

21 Q So in Subsection A, it states that "The
22 licensing authority shall deny an application if either
23 the applicant or the premises for which the state
24 license applied do not qualify for the license under
25 this division." Correct?

26 A Correct.

27 Q All right. So although you're not aware of any
28 sanctions against Mr. Geraci, if such a thing were in

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 existence, would he be barred from having a license
2 issued in his name?

3 A No.

4 MR. WEINSTEIN: Objection. Belated objection,
5 your Honor.

6 THE WITNESS: Sorry.

7 MR. WEINSTEIN: Same as before.

8 THE COURT: The objection is overruled.

9 THE WITNESS: No. Because this statute has to
10 be read in its totality. A says if this. And then
11 under B4, large A tells what you kind of crimes they're
12 talking about.

13 BY MR. AUSTIN:

14 Q Right.

15 A So if there was a violent felony conviction,
16 which most of these have to do with moral turpitude,
17 then an applicant may be denied for state licensing --
18 or shall be denied for state licensing. But we have --
19 I can tell you, because of the nature of the industry,
20 every person out there operating a legal dispensary in
21 the City of San Diego has a prior conviction.

22 Q So if the state had an issue with Mr. Geraci's
23 name, what would that process be to try and ensure that
24 he could acquire the license?

25 MR. WEINSTEIN: Objection, your Honor. Vague,
26 irrelevant, since we're not talking about a state
27 license. That's --

28 THE COURT: Sustained.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 MR. AUSTIN: Okay. Moving on.

2 BY MR. AUSTIN:

3 Q You said you drafted some proposed contracts
4 for Mr. Geraci and Darryl Cotton. Correct?

5 A Yeah. Our office did, correct.

6 Q And that was roughly March 2017?

7 A That's correct.

8 Q Were you aware of any prior contract between
9 Mr. Geraci and Mr. Cotton?

10 A Yes.

11 Q What was contained in that contract?

12 A I don't know if I had seen the contract. I
13 know that Mr. Geraci told me he had an agreement with
14 Darryl Cotton. And, as I mentioned, Darryl was trying
15 to change it. And so he wanted me to draft up something
16 new.

17 Q Okay. So he had an agreement with Mr. Cotton.
18 Was it in writing?

19 A I -- I understood it to be in writing. I don't
20 believe I had seen anything at the time we drafted this.

21 Q And when your office drafted this contract, did
22 you have any working documents to base the contract off
23 of?

24 A What do you mean "working documents"?

25 Q Were you given any outlines, like, of what the
26 terms of the agreement were?

27 A No. I believe that was a phone call.

28 Q It's just a phone call from Mr. Geraci?

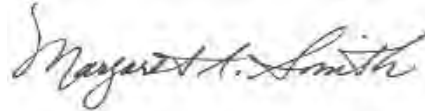
Transcript of Proceedings

Geraci vs. Cotton, et al.

1 I, Margaret A. Smith, a Certified Shorthand
2 Reporter, No. 9733, State of California, RPR, CRR, do
3 hereby certify:

4 That I reported stenographically the proceedings
5 held in the above-entitled cause; that my notes were
6 thereafter transcribed with Computer-Aided
7 Transcription; and the foregoing transcript, consisting
8 of pages number from 1 to 236, inclusive, is a full,
9 true and correct transcription of my shorthand notes
10 taken during the proceeding had on July 8, 2019.

11 IN WITNESS WHEREOF, I have hereunto set my hand
12 this 22nd day of July 2019.

13 

14 _____
15 Margaret A. Smith, CSR No. 9733, RPR, CRR

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EXHIBIT 10

To: Larry Geraci [Larry@tfcfsd.net]
Cc: Ben Peterson [ben@techne-us.com]
From: Abhay Schweitzer
Sent: Mon 10/31/2016 9:58:07 AM
Importance: Normal
Subject: Re: Federal Blvd - Site Plan and Floor Plan
Received: Mon 10/31/2016 9:58:13 AM

Court's Ex. **035**
Case # 37-2017-00010073-CU-BC-CTL
Rec'd _____
Dept. **C-73** Clk. _____

Larry,

Here is what I need:

Rebecca to finish filling out and sign the following:

- 1) please put phone number and date and sign the DS-190 and send back to all.
- 2) on the DS 318 we need Cotton as the owner and you as the tenant and you both have to sign and date and send back to all. If we can't get Cotton today then we can submit without it and simply submit it when we submit the multiple sets of plans and noticing package after the completeness review.
- 3) on DS 3032 check the box other person and also date and sign and send back to all.

In addition to items 1-3 above, I also need the following:

- \$8,800 cash for the deposit we need to give to the City. If they take cash, I'll give it to them, if not I'll deposit and give them a check from my company.
- Current Grant Deed of property

We are ready to go on our end. We would need the above from you by 2:00pm at the latest in order to submit today. They won't take any projects after 3:00pm.

Please let me know if you have any questions.

Thank you

ABHAY SCHWEITZER
Assoc. AIA- Principal

3956 30th Street. San Diego, CA 92104
techne-us.com sustainablearchitect.org
o 619-940-5814 m 313-595-5814

On Mon, Oct 31, 2016 at 9:52 AM, Larry Geraci <Larry@tfcfsd.net> wrote:

Hi Abhay,

Can you tell me what you exactly need from me?

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](tel:858.576.1040)

Fax: [858.630.3900](tel: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](tel: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: Abhay Schweitzer [mailto:abhay@techne-us.com]
Sent: Friday, October 28, 2016 1:13 PM
To: Austin, Gina <gaustin@austinlegalgroup.com>
Cc: Larry Geraci <Larry@tfcgsd.net>; Becky Berry <Becky@tfcgsd.net>; Jim Bartell <jim@bartellassociates.com>
Subject: Re: Federal Blvd - Site Plan and Floor Plan

Hi Gina,

A104 is the existing plan. Orientation is the same. Don't worry about the door since we are completely demolishing that building.

Here are the forms you requested that I hadn't yet sent and also the DS-3032 with the modifications. I haven't received the DS-318 back yet from the client, but I'm attaching it anyway with what we could fill out. For DS-190 I put the client as the person who will sign. See attached.

Just picked up the maps but they are not in digital format and I can't scan something that big. I'm gonna take some pictures and email to you shortly however. They used the new property line with the maps so everything looks good.

For DS-3032 Section 8, I imagine we are selecting "Other Person per M.C. Section 112.0102" as the person who is signing. Is this correct?

Thank you

ABHAY SCHWEITZER
Assoc. AIA- Principal

3956 30th Street. San Diego, CA 92104
techne-us.com sustainablearchitect.org
o [619-940-5814](tel:619-940-5814) m [313-595-5814](tel:313-595-5814)

On Fri, Oct 28, 2016 at 12:53 PM, Austin, Gina <gaustin@austinlegallgroup.com> wrote:

One more thing...

On sheet A104 it is orientated a different direction than the other sheets. This is a little confusing when we go to PC. It would be nice to have all sheets orientated the same way because this is what we use in the PPT.

Also, the door on the bottom of the sheet opens past the property line. It is probably better to show that not occurring.

Gina

From: Abhay Schweitzer [mailto:abhay@techne-us.com]
Sent: Thursday, October 27, 2016 5:31 PM
To: Austin, Gina
Cc: Larry Geraci; Becky Berry; Jim Bartell
Subject: Re: Federal Blvd - Site Plan and Floor Plan

Good afternoon Gina,

Attached you will find the drawings we have completed so far. We are still working on 4 sheets which we will complete tomorrow morning. They are related to accessibility, security and stormwater management. I expect we will have them complete by 10:00am tomorrow.

The package with the separation maps, adjacent uses and so forth is ready and I'll likely have it in my hands tomorrow morning some time.

I'm attaching the forms we have partially completed so far for you to review as well in case you need to see them.

Please let me know if you need anything else meanwhile.

Thank you

ABHAY SCHWEITZER
Assoc. AIA- Principal

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techne-us.com sustainablearchitect.org
o [619-940-5814](tel:619-940-5814) m [313-595-5814](tel:313-595-5814)

On Thu, Oct 27, 2016 at 12:41 PM, Abhay Schweitzer <abhay@techne-us.com> wrote:

Hi Gina,

Yes thats me. I'm working to complete everything today and I'll email today once its done.

Thank you

ABHAY SCHWEITZER
Assoc. AIA- Principal

3956 30th Street. San Diego, CA 92104
techne-us.com sustainablearchitect.org
o [619-940-5814](tel:619-940-5814) m [313-595-5814](tel:313-595-5814)

On Thu, Oct 27, 2016 at 11:29 AM, Austin, Gina <gaustin@austinlegalgroup.com> wrote:

Thanks Abhay. Are you the person completing the submission package? I am under the impression it is getting submitted on Friday. I would like to review all the docs prior to submittal. PDF is fine.

Gina

From: Abhay Schweitzer [mailto:abhay@techne-us.com]
Sent: Wednesday, October 26, 2016 4:57 PM
To: Larry Geraci; Becky Berry
Cc: Austin, Gina; Jim Bartell
Subject: Federal Blvd - Site Plan and Floor Plan

Good afternoon,

Attached you will find the proposed site plan and floor plan. I added the language that Gina mentioned for the irrevocable offer of dedication. I also made a separate sheet showing the separation after this dedication, which can in around 100'-1" just so that we can a bit of a buffer.

We are on track to submit on Friday for the first step which is the Submitted Completeness Review.

We don't have time to make any changes to the floor plan or site at this stage, but we can make changes after we submit to the City.

With the proposed plan, you would be able to easily accommodate 12-15 clients at one time.

You will notice a storage room at the top left corner of the floor plan. There is a corridor which leads to this room. The room is large enough so that we can add circulation elements for a future second floor addition.

Thank you

ABHAY SCHWEITZER
Assoc. AIA- Principal

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techne-us.com sustainablearchitect.org
o [619-940-5814](tel:619-940-5814) m [313-595-5814](tel:313-595-5814)

EXHIBIT 11

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
04/10/2018 at 11:10:00 AM
Clerk of the Superior Court
By Katelin O'Keefe, Deputy Clerk

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

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,
Plaintiff,

v.

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

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

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

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

[IMAGED FILE]

DARRYL COTTON, an individual,
Cross-Complainant,

v.

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

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

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

I, Larry Geraci, declare:

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

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

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

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

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

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

1 investment. I was willing to pay a price for the Property based on what I anticipated it might be worth
2 if I obtained CUP approval. Mr. Cotton told me that he was willing to make the purchase and sale
3 conditional upon CUP approval because if the condition was satisfied he would be receiving a much
4 higher price than the Property would be worth in the absence of its approval for use as a medical
5 marijuana dispensary. We agreed on a down payment of \$10,000.00 and a purchase price of
6 \$800,000.00. On November 2, 2016, Mr. Cotton and I executed a written purchase and sale agreement
7 for my purchase of the Property from him on the terms and conditions stated in the agreement
8 (hereafter the “Nov 2nd Written Agreement”). A true and correct copy of the Nov 2nd Written
9 Agreement, which was executed before a notary, is attached as Exhibit 2 to Defendant and Cross-
10 Defendant, Larry Geraci’s Notice of Lodgment in Support of Opposition to Motion to Expunge Lis
11 Pendens (hereafter the “Geraci NOL”). I tendered the \$10,000 deposit to Mr. Cotton as acknowledged
12 in the Nov 2nd Written Agreement.

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

14 “On November 2, 2016, Geraci and I met at Geraci’s office to negotiate the final
15 terms of the sale of the Property. At the meeting, we reached an oral agreement
16 on the material terms for the sale of the Property (the “November Agreement”).
17 The November Agreement consisted of the following: If the CUP was approved,
18 then Geraci would, inter alia, provide me: (i) a total purchase price of \$800,000;
19 (ii) a 10% equity stake in the MO; and (iii) a minimum monthly equity
20 distribution of \$10,000. If the CUP was denied, I would keep an agreed upon
21 \$50,000 non-refundable deposit (“NRD”) and the transaction would not close. In
22 other words, the issuance of a CUP at the Property was a condition precedent for
23 closing on the sale of the Property and, if the CUP was denied, I would keep my
24 Property and the \$50,000 NRD.”

25 Darryl Cotton and I did meet at my office on November 2, 2016, to negotiate the final terms of
26 the sale of the Property and we reached an agreement on the final terms of the sale of the Property.
27 That agreement was not oral. We put our agreement in writing in a simple and straightforward written
28

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

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

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

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

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

24 8. Prior entering into the Nov 2nd Written Agreement, Darryl Cotton and I discussed the
25 CUP application and approval process and that his consent as property owner would be needed to
26 submit with the CUP application. I discussed with him that my assistant Rebecca Berry would act as
27 my authorized agent to apply for the CUP on my behalf. Mr. Cotton agreed to Ms. Berry serving as
28

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

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

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

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

25 Hi Larry,

26 Thank you for meeting today. Since we examined the Purchase Agreement in
27 your office for the sale price of the property I just noticed the 10% equity position
28 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

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

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

6 The next day I read the entire email and I telephoned Mr. Cotton because the total purchase
7 price I agreed to pay for the subject property was \$800,000 and I had never agreed to provide him a
8 10% equity position in the dispensary as part of my purchase of the property. I spoke with Mr. Cotton
9 by telephone at approximately 12:40 p.m. for approximately 3-minutes. A true and correct copy of the
10 Call Detail from my firm's telephone provider showing those two telephone calls is attached as
11 Exhibit 3 to the Geraci NOL. During that telephone call I told Mr. Cotton that a 10% equity position in
12 the dispensary was not part of our agreement as I had never agreed to pay him any other amounts above
13 the \$800,000 purchase price for the property. Mr. Cotton's response was to say something to the effect
14 of "well, you don't get what you don't ask for." He was not upset and he commented further to the
15 effect that things are "looking pretty good—we all should make some money here." And that was the
16 end of the discussion.

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

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

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

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

24 14. Mr. Cotton thereafter made good on his threats. On the morning of March 21, 2017, Mr.
25 Cotton had a conversation with Firouzeh Tirandazi at the City of San Diego, who was in charge of
26 processing the CUP Application, regarding Mr. Cotton’s interest in withdrawing the CUP Application.
27 That discussion is confirmed in an 8:54 a.m. e-mail from Ms. Tirandazi to Mr. Cotton with a cc to
28

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

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

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

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

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

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

1 Declaration of Abhay Schweitzer.

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

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

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

16 23. Finally, Mr. Cotton has asserted from the outset of his lawsuit and, again, in paragraph
17 16 of his supporting declaration, that he did not discover until March 16, 2017, that I had submitted the
18 CUP Application back on October 31, 2016. That is a blatant lie. I kept Mr. Cotton apprised of the
19 status of the CUP application and the problems we were encountering (e.g., an initial zoning issue)
20 from the outset. Attached as Exhibit 7 is a true and correct copy of a text message Mr. Cotton sent me
21 on November 16, 2016, in which he asks me, “Did they accept the CUP application?” Mr. Cotton was
22 well aware at that time that we had already submitted the CUP application and were awaiting the City’s
23 completion of its initial review of the completeness of the application. Until the City deems the CUP
24 application complete it does not proceed to the next step—the review of the CUP application.

25 ///

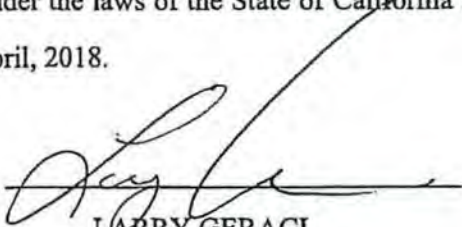
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 9th day of April, 2018.



LARRY GERACI

EXHIBIT 12

Jacob P. Austin [SBN 290303]
The Law Office of Jacob Austin
1455 Frazee Road, #500
San Diego, CA 92108
Telephone: 619.357.6850
Facsimile: 888.357.8501
JPA@JacobAustinEsq.com

F I L E D
Clerk of the Superior Court

APR 04 2018

By: A. SEAMONS, Deputy

2018 APR 04 11:48

Attorney for Defendant and Cross-Complainant Darryl Cotton
[Representation Limited to Motion to Expunge *Lis Pendens*]

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

LARRY GERACI, an individual,
Plaintiff,

vs.

DARRYL COTTON, an individual; REBECCA
BERRY, an individual; and DOES 1-10, Inclusive,
Defendants.

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

DARRYL COTTON'S DECLARATION IN
SUPPORT OF MOTION FOR EXPUNGEMENT
OF NOTICE OF PENDENCY OF ACTION
(*LIS PENDENS*)

DATE: April 13, 2018
TIME: 9:00 a.m.
DEPT: C-72
JUDGE: The Honorable Joel R. Wohlfeil

DARRYL COTTON, an individual,
Cross-Complainant,

vs.

LARRY GERACI, and individual, REBECCA
BERRY, an individual; and DOES 1 through 10,
Inclusive,
Cross-Defendants.

I, Darryl Cotton ("Cotton" or "Defendant"), declare:

- I am the owner of record of the real property located at 6176 Federal Blvd., San Diego (the "Property").
- In or around August 2016, Geraci first contacted Cotton seeking to purchase the

1 Property. Geraci desired to buy the Property from Cotton because it met certain requirements of the
 2 City of San Diego ("City") to apply for and obtain a conditional use permit ("CUP") that would allow
 3 the operation of a Marijuana Outlet ("MO") at the Property. Over the ensuing months, we extensively
 4 negotiated the terms of a potential sale of the Property.

5 3. During these negotiations, Geraci made the following representations to me: (i) he could
 6 be trusted as reflected by the fact that he operated in a fiduciary capacity as an IRS Enrolled Agent for
 7 many powerful and high-net-worth-individuals ("HNWI"); (ii) he is the owner and operator of Tax and
 8 Financial Center, Inc., an accounting and financial advisory services company, servicing HNWI and
 9 large businesses in a fiduciary capacity; (iii) he was a California Licensed Real Estate Broker, bound by
 10 professional and ethical obligations, to be truthful in real-estate deals; (iv) through his experts, who had
 11 conducted preliminary due diligence, he had uncovered a critical zoning issue that unless *first* resolved
 12 would prevent the City from even accepting a CUP application on the Property (the "Critical Zoning
 13 Issue"); (v) through his professional relationships, which included his HNWI clients that were
 14 politically influential, and through powerful hired lobbyists (some of whom used to work for the City in
 15 senior positions), he was in a unique position to have the Critical Zoning Issue resolved; (vi) he was
 16 highly qualified to operate a MO because he owned and operated multiple cannabis dispensaries in San
 17 Diego; and (vii) his employee, Rebecca Berry ("Berry"), was a trustworthy individual that could be
 18 trusted to be the applicant on the CUP application because she (a) managed his marijuana dispensaries,
 19 (b) held a senior position at a church and came across as a "nice old lady that had nothing to do with
 20 marijuana," and (c), consequently, would pass the stringent City and State of California background
 21 checks required to have the CUP approved (collectively, the "Qualification Representations").

22 4. On or around October 31, 2016, Geraci asked me to execute Form DS-318 (Ownership
 23 Disclosure Statement) ("Ownership Statement") – a required component of all CUP applications.
 24 Geraci told me that he needed the executed Ownership Statement to show that he had access to the
 25 Property in connection with his planning and lobbying efforts to resolve the Critical Zoning Issue.

26 5. On November 2, 2016, Geraci and I met at Geraci's office to negotiate the final terms of
 27 the sale of the Property. At the meeting, we reached an oral agreement on the material terms for the sale
 28 of the Property (the "November Agreement"). The November Agreement consisted of the following: If
 the CUP was approved, then Geraci would, *inter alia*, provide me: (i) a total purchase price of
 \$800,000; (ii) a 10% equity stake in the MO; and (iii) a minimum monthly equity distribution of
 \$10,000. If the CUP was denied, I would keep an agreed upon \$50,000 non-refundable deposit

1 (“NRD”) and the transaction would not close. In other words, the issuance of the CUP at the Property
2 was a condition precedent for closing on the sale of the Property and, if the CUP was denied, I would
3 keep my Property and the \$50,000 NRD.

4 6. At the November 2, 2016 meeting, we reached the November Agreement, Geraci: (i)
5 provided me with \$10,000 in cash towards the NRD of \$50,000, for which I executed a document to
6 record my receipt thereof (the “Receipt”); (ii) promised to have his attorney, Gina Austin (“Austin”),
7 *promptly* reduce the oral November Agreement to written agreements for execution; and (iii) promised
8 to not submit the CUP to the City until he paid me the balance on the NRD.

9 7. After Geraci and I met on November 2, 2016, reached the November Agreement,
10 executed the Receipt and separated we had a series of email communications that took place that same
11 day. Attached hereto as Exhibit 1 is a true and correct copy of all emails between Geraci and I.

12 8. The day I received a copy of the Receipt from Geraci, I realized it could be misconstrued
13 as a final agreement for the Property. Because I was concerned, and wanted there to be no uncertainty, I
14 requested Geraci confirm in writing the Receipt was not a final agreement. Geraci replied and I refer to
15 this email from him as the “Confirmation Email.”

16 9. Thereafter, over the course of almost five months, we exchanged numerous emails, texts
17 and calls regarding various issues related to the Critical Zoning Issue, the CUP application and drafts of
18 the final written agreements for the Property (included in Exhibit 1). However, Geraci continuously
19 failed to make actual, substantive progress. Most notably, he failed to provide me the final written
20 agreements, pay the balance of the NRD, and to provide facts regarding the progress being made on the
21 Critical Zoning Issue.

22 10. Regarding the Critical Zoning Issue, Geraci and I exchanged a series of texts. Attached
23 hereto as Exhibit 2 is a true and correct copy of text messages between Geraci and I from January 6,
24 2017 and February 7, 2017.

25 11. These text communications made me think, among other things, that Geraci was being
26 truthful about working on and making progress on the Critical Zoning Issue (the “Text
27 Communications”).

28 12. On March 3, 2017, I emailed Geraci regarding a draft agreement that was supposed to
contain, *inter alia*, my 10% equity stake in the MO. Geraci did not reply to my email. Geraci did not
pick up when I called later. I grew exasperated, and later followed-up with Geraci via text wanting to
confirm that Geraci had received my email and understood my concern - that the Side Agreement did

1 not provide for my “10% equity position” in the MO.

2 13. On March 6, 2017, Geraci and I spoke regarding revisions required to have the drafts
3 accurately reflect the November Agreement. I communicated my frustration with the delays and Geraci
4 again promised to have Austin *promptly* correct the mistakes in the drafts. During that conversation, I
5 let Geraci know that I would be attending a local cannabis event at which Austin was scheduled to be
6 the headnote speaker. Geraci later texted me that I could speak with her directly at the event.

7 14. I was unable to attend the event that night. However, I had grown suspicious of Geraci
8 because of his continuous failure to accurately have Austin reduce the November Agreement to writing.
9 So, I had already set in place a contingency plan. I requested the help of Mr. Joe Hurtado, a financial
10 transaction adviser, and asked him to help me locate a new buyer for the Property. I asked him to
11 attend the event so that he could tell Austin I would not attend to discuss the revisions to the agreement
12 and so he could confirm with her directly that Geraci and I had not executed a final written agreement
13 yet.

14 15. On March 7, 2017, Geraci sent me an email. Attached to Geraci’s email was a revised
15 draft of the Side Agreement in Word format. The embedded metadata to the Word file of the agreement
16 states the file was created “March 3, 2017” and the author of the document is “Gina Austin (the
17 “Metadata Evidence”). Attached hereto as Exhibit 3 is a true and correct copy of screen shot of that
18 Metadata Evidence.

19 16. On March 16, 2017, after having reviewed the revised agreement forwarded by Geraci
20 on March 7, 2017, and discovering that it again did not accurately reflect the November Agreement, I
21 decided to follow up with the City regarding the Critical Zoning Issue personally. It was at this point
22 that I discovered that Geraci had been lying from the very beginning – Geraci had submitted a CUP for
23 the Property on October 31 2016, before we even reached the November Agreement. Submitted
24 herewith with the accompanying Request for Judicial Notice is a copy of a Parcel Information Report
25 provided by the City of San Diego, Development Services Department (“City Parcel Report”) that
26 states the zoning of the Property was changed to “CO-2-1” (MO qualifying zone) on January 14, 2016.

27 17. On March 21, 2017, because Geraci neither responded to my requests for assurance of
28 performance, provide the November Agreement reduced to writing as required per the November
Agreement, and I had found out that he had lied to me about numerous matters, I terminated the
contract with Geraci via email.

18. Because I had already anticipated Geraci’s breach from his evasive language and failure

1 to confirm he would honor his end of the bargain, I had already lined up another buyer and I entered
2 into a written purchase agreement for the sale of the Property to Mr. Martin (the "Martin Sale
3 Agreement").

4 19. The next day, Geraci's counsel, Michael Weinstein ("Weinstein"), emailed me the
5 Complaint and the *lis pendens* filed on my Property.

6 20. On January 25, 2018, I attended a hearing before Judge Wohlfeil on a motion to compel
7 me to respond to certain discovery requests by Geraci. In my opposition to that motion, I described
8 what I believed were the unethical actions by, *inter alia*, Austin and Weinstein. At the beginning of the
9 hearing, Judge Wohlfeil told me that he knew them well and that he did not believe they would engage
10 in the unethical actions I described in my opposition.

11 21. I have no other assets other than my Property. I have borrowed against the sale of the
12 Property. If I lose this litigation, even assuming I do not have to pay Geraci's legal fees, the equity I
13 would receive does not cover the debt that I owe. I have long ago exhausted all personal and
14 professional sources of capital. I am facing daily financial hardship. If I lose this property, I will have
15 no means by which to subsist.

16 22. I underwent an Independent Psychiatric Assessment (the "IPA") with Dr. Markus
17 Ploesser. Attached hereto as Exhibit 4 is a true and correct copy of the IPA.

18 I declare under penalty of perjury under the laws of the State of California that the foregoing is
19 true and correct, and that this declaration was executed on April 4, 2018 at San Diego, California.

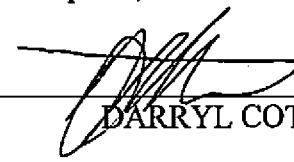
20 
21 _____
22 DARRYL COTTON
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EXHIBIT 1

E-MAILS BETWEEN COTTON AND GERACI 10/24/16 – 03/21/17

NO.	DATE	TIME	FROM	TO	SUBJECT	ATTACHMENT	PAGE #/ RANGE
1	10/24/16	12:38 pm	Geraci	Cotton	Drawing	Yes	1-2
						A102 Site Plan – Proposed Scheme B.pdf	3
2	11/02/16	03:11 pm	Geraci	Cotton	Agreement	Yes	4-5
						Cotton & Geraci Contract.pdf	6-8
3	11/02/16	06:55 pm 09:13 pm	Cotton Geraci	Geraci Cotton	Agreement Agreement	No	9
4	11/14/16	10:26 pm	Geraci	Cotton	Federal Blvd needs sig ASAP	Yes	10-11
						Authorization to view and copy Building Records from the County of San Diego Tax Assessor.pdf	12
5	02/27/17	08:49 pm	Geraci	Cotton	Federal Blvd Property	Yes	13-14
						17-0226 Fed Blvd Comm Purchase v3 (First Draft).pdf	15-40
6	03/02/17	08:51 am	Geraci	Cotton	Statement	Yes	41-42
						17-0227 Side Agreement unsigned.docx	43-48
7	03/03/17	08:22 am	Cotton	Geraci	Re: Statement	Yes	49-50
						IndaGro-GERL Service Contract.doc	51-52
8	03/07/17	12:05 pm	Geraci	Cotton	Contract Review	Yes	53-54
						17-0306 Side Agreement unsigned.docx	55-58
9	03/16/17	08:23 am	Cotton	Geraci	Re: Contract Review	No	59-60
10	03/17/17	02:15 pm	Cotton	Geraci	Re: Contract Review	No	61
11	03/18/17	01:43 pm	Geraci	Cotton	RE: Contract Review	No	62-63
12	03/19/17	09:02 am	Cotton	Geraci	Re: Contract Review	No	64
13	03/19/17	03:11 pm	Geraci	Cotton	RE: Contract Review	No	65
14	03/19/17	06:47 pm	Cotton	Geraci	Re: Contract Review	No	66
15	03/21/17	03:18 pm	Cotton	Geraci	Re: Contract Review	No	67



Darryl Cotton <indagrodarryl@gmail.com>

Drawing

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

Mon, Oct 24, 2016 at 12:38 PM

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

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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@tfcfsd.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

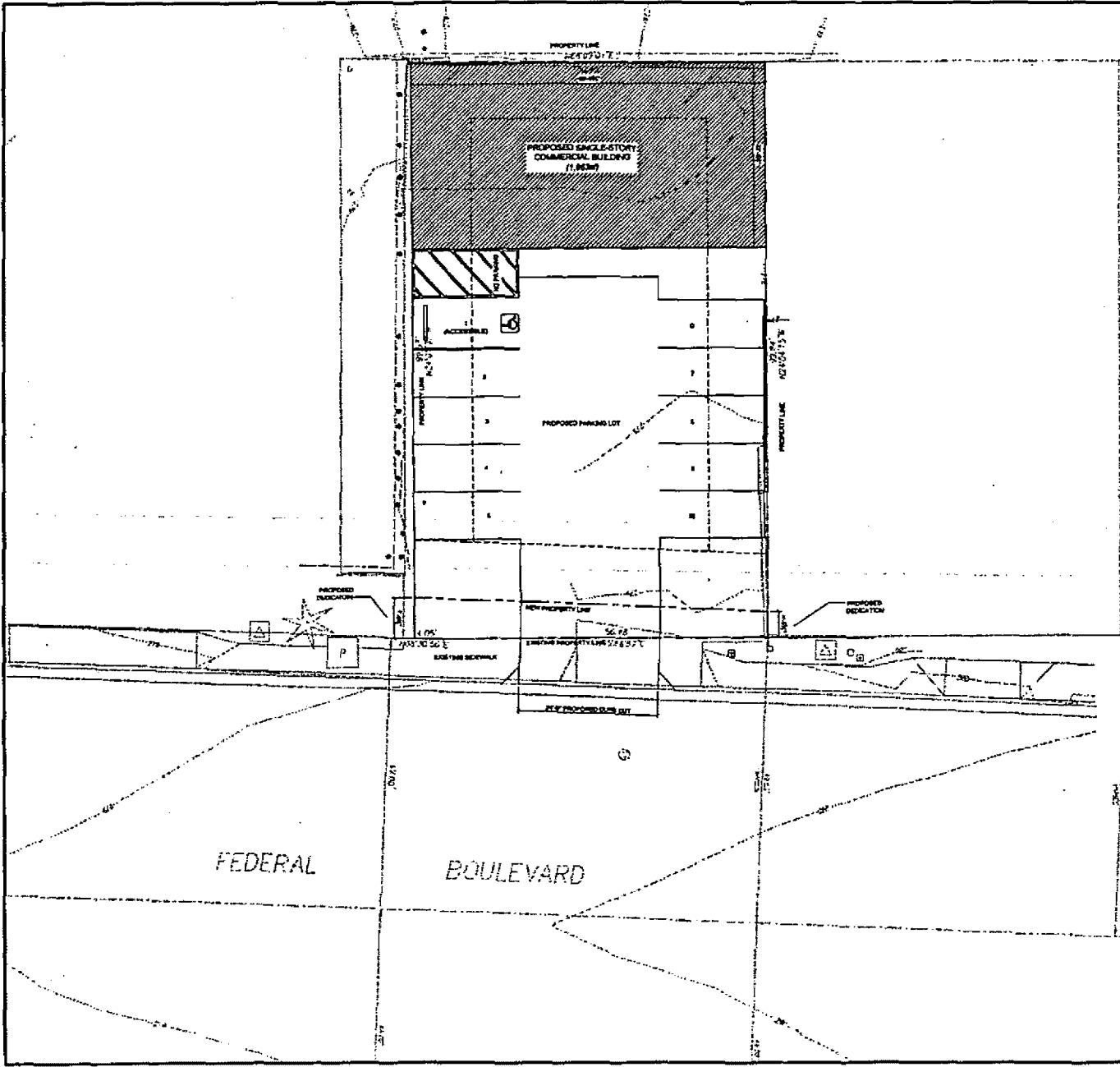
6176 Federal Blvd.

San Diego, CA. 92114

USA

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 **A102 Site Plan - Proposed - Scheme B.pdf**
399K



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**
- The site plan is for informational and general site reference only. Refer to other construction documents for complete scope of work.
 - Before commencing any site foundation or slab casting or excavation, the contractor shall verify and mark locations of all 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. The Contractor or subcontractor shall notify TECHNÉ 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 drawings until written or verbal instructions are issued by the Architect's office.
 - 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 proposed improvement, and mark perimeter of construction zone.
 - Coordinate with other tender the temporary support of any site utilities.
 - Refer to Topographic Survey for additional information.

TECHNÉ
DESIGN | DEVELOPMENT

1038 5th Street, San Diego, CA 92101
techn@technedesign.com | phone: 619.441.1111
4 619.441.1111 | fax: 619.441.1111

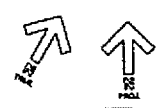
REGISTERED ARCHITECT
C-9371
FOR 606791

STATE OF CALIFORNIA

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

Owner
Address
City, CA Zip Code

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



PROJECT NO.	DATE
DATE DRAWN	BY
CHECKED BY	DATE
PROJECT NAME	LOCATION
SITE PLAN - PROPOSED - Scheme B	
A 102	

3



Darryl Cotton <indagrodarryl@gmail.com>

Agreement

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

Wed, Nov 2, 2016 at 3:11 PM

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

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Gmail - Agreement

return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

 **Cotton & Geraci Contract.pdf**
71K


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, 2010 before me, Jessica Newell Notary Public
(insert name and title of the officer)

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

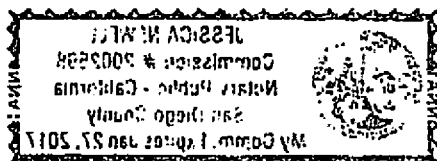
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jessica Newell

(Seal)







Darryl Cotton <indagrodarryl@gmail.com>

Re: Agreement

1 message

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

Wed, Nov 2, 2016 at 9:13 PM

No no problem at all

Sent from my iPhone

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

Hi Larry,

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

Regards.

Darryl Cotton, President



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

6176 Federal Blvd.
San Diego, CA. 92114
USA

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Darryl Cotton <indagrodarryl@gmail.com>

Federal Blvd need sig ASAP

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

Mon, Nov 14, 2016 at 10:26 AM

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

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Authorization to view and copy Building Records from the County of San D....pdf
35K

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



Darryl Cotton <indagrodarryl@gmail.com>

Federal Blvd Property

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

Mon, Feb 27, 2017 at 8:49 AM

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

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.

 **17-0226 Fed Blvd Comm Purchase v3 (First Draft).pdf**
347K

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.
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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 exist 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 Seller's 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 proration 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 (1/2) 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



Darryl Cotton <indagrodarryl@gmail.com>

Statement

1 message

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

Thu, Mar 2, 2017 at 8:51 AM

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

Gmail - Statement

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.

 17-0227 Side Agreement unsigned.docx
35K

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:



Darryl Cotton <Indagrodarryl@gmail.com>

Re: Statement

Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcfsd.net>

Fri, Mar 3, 2017 at 8:22 AM

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@tfcfsd.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

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.

 **IndaGro-GERL Service Contract.doc**
691K



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@TFCSO.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

Inda-Gro
6176 Federal Blvd., San Diego, CA 92114-1401
Toll Free: 877.452.2244 Local: 619.266.4004
www.inda-gro.com



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



Darryl Cotton <indagrodarryl@gmail.com>

Contract Review

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

Tue, Mar 7, 2017 at 12:05 PM

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

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.



17-0306 Side Agreement unsigned v2.docx
38K

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



Darryl Cotton <indagrodarryl@gmail.com>

Re: Contract Review

1 message

Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcfsd.net>

Thu, Mar 16, 2017 at 8:23 PM

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



Darryl Cotton <indagrodarryl@gmail.com>

Re: Contract Review

1 message

Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@fcsd.net>

Fri, Mar 17, 2017 at 2:15 PM

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



Darryl Cotton <indagrodarryl@gmail.com>

RE: Contract Review

1 message

Larry Geraci <Larry@tfcisd.net>
To: Darryl Cotton <indagrodarryl@gmail.com>

Sat, Mar 18, 2017 at 1:43 PM

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

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.



Darryl Cotton <indagrodarryl@gmail.com>

Re: Contract Review

1 message

Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcSD.net>

Sun, Mar 19, 2017 at 9:02 AM

Larry,

I understand that drafting the agreements will take time, but you don't need to consult with your attorneys to tell me whether or not you are going to honor our agreement.

I need written confirmation that you will honor our agreement so that I know that you are not just playing for time - hoping to get a response from the City before you put down in writing that you owe me the remainder of the \$50,000 nonrefundable deposit we agreed to.

If I do not have a written confirmation from you by 12:00 PM tomorrow, I will be contacting the City of San Diego and let them know that our agreement was not completed and that the application pending on my property needs to be denied because the applicant has no right to my property.



Darryl Cotton <indagrodarryl@gmail.com>

RE: Contract Review

1 message

Larry Geraci <Larry@fcsd.net>
To: Darryl Cotton <indagrodarryl@gmail.com>

Sun, Mar 19, 2017 at 3:11 PM

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.

Please 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,



Darryl Cotton <indagrodarryl@gmail.com>

Re: Contract Review

1 message

Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcSD.net>

Sun, Mar 19, 2017 at 6:47 PM

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.



Darryl Cotton <indagrodarryl@gmail.com>

Re: Contract Review

1 message

Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcgsd.net>

Tue, Mar 21, 2017 at 3:18 PM

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

EXHIBIT 2

Friday, March 3, 2017

12:16 PM Did you get my email?

L Yes I did I'm having her
rewrite it now

As soon as I get it I will
forward it to you

12:17 PM

Monday, March 6, 2017

L Gina Austin is there she has
a red jacket on if you want to
have a conversation with her

4:30 PM

Tuesday, March 7, 2017

L Just sent the contract over

12:05 PM

12:10 PM Ill look it over tonight

Thursday, March 16, 2017


L How's it going with the
contract?

4:47 PM

Friday, March 17, 2017

L Can we meet tomorrow

11:44 AM

 Enter message



That sounds good. Can we speak later?

10:15 AM

L

Not done intel 1030 tonight ...
am tomorrow

11:27 AM

12:16 PM K

Wednesday, February 15, 2017

L

Good morning Darrell... We are preparing the documents with the attor

ney and hopefully will have them by the end of this week

8:25 AM

1:00 PM Sounds good

Wednesday, February 22, 2017

L

Contract should be ready in a couple days

11:38 AM

Thursday, February 23, 2017

L

Can you call me when you get a chance thanks

2:38 PM

Monday, February 27, 2017

L

Good morning Darrell I emailed you the contract for the purchase of the property ...the relocation contract will come sometime today

8:50 AM

Hi Larry I'm traveling today I will have a chance to look at that tomorrow and I will forward it to my attorney thank you

10:04 AM

Wednesday, January 18, 2017

L The sign off date they said it's going to be the 30th 10:27 AM

10:34 AM This resolves the zoning issue?

L Yes 10:36 AM

11:03 AM Excellent

Monday, January 30, 2017

L On phone.. Call you back shortly. 3:50 PM

3:50 PM Ok

Tuesday, January 31, 2017

2:47 PM How goes it?

L We're waiting for confirmation today at about 4 o'clock 2:48 PM

Monday, February 6, 2017

12:15 PM Whats new?

Tuesday, February 7, 2017

8:19 AM Based on your last text I thought you'd have some information on the zoning by now. Your lack of response suggests no resolution as of yet.

L I'm just walking in with clients they resolved it it's fine we're just waiting for final paperwork 8:20 AM

67% 5:43 PM

< **Larry Geraci**
8589564040



SMS/MMS

Wednesday, January 4, 2017



Hi Daryl I have the extreme case of the flu and I'm in bed I'll try to call you tomorrow or the next day

12:20 PM

12:20 PM **Get better and try!**

Thursday, January 5, 2017

8:52 AM **Any better?**

Friday, January 6, 2017

8:40 AM **Can you call me. If for any reason you're not moving forward I need to know.**



I'm at the doctor now everything is going fine the meeting went great yesterday supposed to sign off on the zoning on the 24th of this month I'll try to

call you later today still very sick

9:51 AM

Friday, January 13, 2017

Are you available for a call?

10:46 AM



I'm in a meeting I'll call you when I'm done

10:47 AM

10:47 AM **Thx**

17-0306 Side Agreement unsigned v2 Properties 

General Security Details

Property Value ^

Description

Title

Subject

Tags

Categories

Comments

Origin

Authors Gina Austin

Last saved by AEA

Revision number 4

Version number

Program name Microsoft Office Word

Company HP

Manager

Content created 3/6/2017 3:48 PM

Date last saved 3/6/2017 5:05 PM

Last printed

Total editing time 01:22:00

Content v

[Remove Properties and Personal Information](#)

OK

Cancel

EXHIBIT 3

EXHIBIT 4

Case No.:

**IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE**

DARRYL COTTON
Defendant and Appellant,

v.

The Superior Court of California, County of San Diego, Respondent.
LARRY GERACI, an individual, REBECCA BERRY, an individual,
CITY OF SAN DIEGO, a public entity,
Real Parties in Interest.

Appeal from Orders of the Superior Court, County of San Diego

37-2017-00010073-CU-BC-CTL
37-2017-00037675-CU-WM-CTL

Honorable Joel R. Wohlfeil, Judge Presiding

**INDEPENDENT PSYCHIATRIC ASSESSMENT OF DARRYL COTTON;
DECLARATION OF DR. MARKUS PLOESSER
IN SUPPORT OF DARRYL COTTON'S EMERGENCY PETITION
FOR EXTRAORDINARY WRIT, WRIT OF MANDATE,
OR OTHER APPROPRIATE RELIEF**

Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Appellant, Self-Represented

1 I, Markus Ploesser, MD, LLM, DABPN, FRCP(C), declare:

2 1. On March 4, 2018, I interviewed Mr. Darryl Cotton for an Independent
3 Psychiatric Assessment. At the beginning of the assessment, I informed Mr. Cotton
4 that the assessment was being prepared to assist the Court and not to act as an advocate
5 on his behalf. Mr. Cotton expressed his understanding, agreement and proceeded with
6 the interview and assessment.
7

8
9 **DUTY TO COURT**

10 2. I certify that I am aware of my duty as an expert to assist the Court and
11 not to be an advocate for any party. I have prepared this report in conformity with that
12 duty. I will provide testimony in conformity with that duty if I am called upon to
13 provide oral or written testimony.
14

15 3. I am solely responsible for the opinions provided in this report. I reserve
16 the right to amend or alter my opinions should additional relevant information become
17 available after the report completion.
18

19 **QUALIFICATIONS**

20 4. I am a psychiatrist licensed in the State of California, Physician and
21 Surgeon License No. A101564 and the Province of British Columbia, License No.
22 31564.
23

24 5. I am Board certified by the American Board of Psychiatry and Neurology
25 in the area of Psychiatry (Certificate No. 60630) and the subspecialty of Forensic
26
27

1 Psychiatry (Certificate No. 1903).

2 6. I am a Fellow of the Royal College of Physicians and Surgeons of Canada,
3 with certifications in Psychiatry and Forensic Psychiatry.
4

5 7. I am on the clinical faculty at the University of British Columbia (UBC)
6 in the division of Forensic Psychiatry.

7 8. My prior work experience has included forensic psychiatric evaluation
8 work for the Forensic Psychiatric Hospital and the Forensic Psychiatric Services
9 Commission in Coquitlam, British Columbia. I have written numerous forensic
10 psychiatric assessment reports and testified as an expert witness before the British
11 Columbia Review Board and the Provincial Courts of British Columbia.
12

13 9. I currently work as a psychiatrist for the Department of Corrections for
14 the State of California.
15

16 10. In addition to my medical qualifications, I am also a graduate of Columbia
17 University School of Law in the LLM program.
18

19 11. In preparation for my assessment of Mr. Cotton, I consulted with Dr.
20 Carolyn Candido regarding her medical diagnosis of Mr. Cotton on December 13,
21 2017. Additionally, I reviewed the declaration previously provided by Dr. Candido
22 regarding her diagnosis of Mr. Cotton prepared on January 22, 2018. (Attached hereto
23 as Exhibit 1.)
24

25 12. Prior to my interview with Mr. Cotton, I also discussed the factual
26
27

1 background regarding Mr. Cotton's need for a psychiatric assessment with his legal
2 consultant, Mr. Jacob Austin. Mr. Austin, I was told, is representing Mr. Cotton on a
3 limited basis due to Mr. Cotton's inability to pay for his full legal representation by
4 Mr. Austin.
5

6 **CLIENT INTERVIEW**

7 13. Mr. Cotton related the following: He is 57 years old. He was born and
8 raised in the Chicago area and has lived in San Diego since 1980. He owns a lighting
9 manufacturing company but reports that over the past approximately 9-12 months he
10 has experienced financial hardship, stress and anxiety originating from a lawsuit
11 against him.
12
13

14 14. Mr. Cotton denies any history of mental health symptoms predating the
15 current lawsuit. He is taking Keppra 500mg twice daily for a seizure disorder, which
16 he started suffering from around the age of 26. He usually suffers from approximately
17 3 Grand Mal seizures per year. He used to take Dilantin, another anticonvulsant
18 medication. He reports having obtained significant medical benefit from the use of
19 medical cannabis, particularly a high CBD strain which he says has helped to reduce
20 the frequency of his seizures.
21
22

23 15. Mr. Cotton represents he owns a property meeting certain requirements
24 by the City of San Diego and the State of California that would allow the creation and
25 operation of a Medical Marijuana Consumer Collective.
26
27

1 16. Mr. Cotton reports that he has and is being subjected to a variety of threats
2 and harassing behaviors that he believes have been directed against him by the plaintiff
3 in the lawsuit.
4

5 17. Mr. Cotton believes that an armed robbery on June 10th, 2017 on his
6 property may have been directed by the plaintiff. He was present at his property at the
7 time of the armed robbery, slamming the door and thereby escaping the robbers inside
8 a building on his property while he called 911. The armed individuals who committed
9 the robbery threatened Mr. Cotton at gun-point before fleeing from the premises. (Mr.
10 Cotton stated the armed-robbery is still unresolved by the police and it was the subject
11 of local news coverage that is still available online.)
12
13

14 18. Mr. Cotton states he followed the armed individuals in his vehicle as they
15 fled from the scene while he was on the phone with 911. He was told by 911 to cease
16 his pursuit due to safety reasons as Mr. Cotton was chasing the armed robbers at high-
17 speed. Mr. Cotton believes he recognized the driver of the getaway vehicle as an
18 employee of the plaintiff.
19
20

21 19. Mr. Cotton appeared particularly intense during his narration regarding
22 one of his employees who was duct-taped and laying face down at gun-point on the
23 ground. Mr. Cotton states that this long-time employee, an electrical-engineer who Mr.
24 Cotton relied upon heavily, quit the next day because of this incident.
25

26 20. Mr. Cotton describes starting to experience increased symptoms of stress
27
28

1 and anxiety since the robbery, above that which was caused by the litigation. He had
2 been in his usual state of health prior. He reports that he is now unable to sleep at night,
3 experiences "mood swings" and episodes of explosive rage without apparent triggers.
4
5 He experiences nightmares around themes of feeling powerless. The nightmares occur
6 in slight variations, and at times he "sees the robbers in his dreams."

7
8 21. Furthermore, his description of his nightmares include vivid scenes of
9 violence towards the attorneys for plaintiff that he believes are not acting in a
10 professional manner. Mr. Cotton believes that the attorneys representing plaintiff are
11 "in it together" with the plaintiff to use the lawsuit to "defraud" him of his property.
12
13 This point is one of the main foci of his expressed mental distress.

14
15 22. Mr. Cotton's distress due to his perception of a conspiracy against him by
16 attorneys is amplified by what he believes is the Court's disregard for the evidence and
17 arguments he has presented. He states he has never been provided the reasoning for the
18 denial of any relief he sought. Mr. Cotton expressed that at certain points during the
19 course of the litigation he believed the trial court judge was part of the perceived
20 conspiracy against him.
21

22
23 23. Mr. Cotton is also under the belief that his former law firm could have
24 resolved this matter at an early stage in the proceedings but chose not to in order to
25 continue billing legal fees.

26
27 24. Mr. Cotton reports no improvement in his mental health symptoms since
28

1 the robbery. He describes that since the robbery there have been additional threats made
2 against him by "agents" of the plaintiff. Specifically, he describes that two associates
3 of plaintiff went to his property on February 3, 2017 under the pretense of discussing
4 potential business opportunities, but when they arrived they were there to indirectly
5 threaten him by informing him that it would be "good" for him to "settle with Geraci."
6

7
8 25. Mr. Cotton now feels hopeless, helpless, unable to sleep, with decreased
9 appetite, but either no or only minimal changes in weight.

10 26. Mr. Cotton states that on December 12, 2017, immediately after a court
11 hearing, he was evaluated in the emergency department of a hospital for a TIA
12 (transitory ischemic attack, a frequent precursor of a stroke).
13

14 27. The day after his emergency department discharge, Mr. Cotton states he
15 assaulted a third-party and that is also the day he was diagnosed with Acute Stress
16 Disorder by Dr. Candido.
17

18 28. Mr. Cotton expressed having experienced suicidal ideation, most recently
19 on December 13th, 2017. He denied symptoms of psychosis, specifically
20 hallucinations.
21

22 OPINIONS AND RECOMMENDATIONS

23
24 29. It is my professional opinion that Mr. Cotton currently meets criteria of
25 Post-Traumatic Stress Disorder (F43.10), Intermittent Explosive Disorder (F63.81) and
26 Major Depression (F32.2). He does not present with any objective, observable signs
27

1 and symptoms of psychosis.

2 30. Given the absence of a prior mental health history of psychotic disorder
3 (and the physical symptoms that led to a diagnosis of a TIA and Acute Stress Disorder
4 by separate medical doctors), I have no reason to believe that Mr. Cotton's reports of
5 harassment by the plaintiff would be of delusional quality. It is my professional opinion
6 that Mr. Cotton sincerely believes that the plaintiff and his counsel are in a conspiracy
7 against him and that they represent a threat to his life.
8
9

10 31. It is my medical opinion that Mr. Cotton's symptoms are unlikely to
11 improve as long as current stressors (pending litigation, and what Mr. Cotton believes
12 to be threatening behaviors by plaintiff or his "agents") persist. His symptoms are also
13 likely to be significantly reduced if he believes the Court was not ignoring and
14 disregarding him.
15
16

17 32. It is my medical opinion that Mr. Cotton's mental health condition would
18 likely benefit from a rapid resolution of current legal proceedings. In my professional
19 opinion, the level of emotional and physical distress faced by Mr. Cotton at this time
20 is above and beyond the usual stress on any defendant being exposed to litigation. If
21 causative triggers and threats against Mr. Cotton persist, there is a substantial
22 likelihood that Mr. Cotton may suffer irreparable harm with regards to his mental
23 health.
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33. Besides a removal of current stressors, his mental health condition would likely benefit from Cognitive Behavioral Therapy for PTSD and depression, as well as a trial of antidepressant medication.

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

DATED:

3/4/2018



Markus Ploesser, MD, LLM, DABPN, FRCP(C)

M. PLOESSER, M.D.
PSYCHIATRIST

EXHIBIT 13

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

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

11 Attorneys for Plaintiff
12 LARRY GERACI

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

15 LARRY GERACI, an individual,
16 Plaintiff,
17 v.
18 DARRYL COTTON, an individual; and
19 DOES 1 through 10, inclusive,
20 Defendants.

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

PLAINTIFF'S COMPLAINT FOR:

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

21 Plaintiff, LARRY GERACI, alleges as follows:

- 22 1. Plaintiff, LARRY GERACI ("GERACI"), is, and at all times mentioned was, an
23 individual residing within the County of San Diego, State of California.
- 24 2. Defendant, DARRYL COTTON ("COTTON"), is, and at all times mentioned was, an
25 individual residing within the County of San Diego, State of California.
- 26 3. The real estate purchase and sale agreement entered into between Plaintiff GERACI and
27 Defendant COTTON that is the subject of this action was entered into in San Diego County, California,
28 and concerns real property located at 6176 Federal Blvd., City of San Diego, San Diego County,
California (the "PROPERTY").
- 4. Currently, and at all times since approximately 1998, Defendant COTTON owned the
PROPERTY.
- 5. Plaintiff GERACI does not know the true names or capacities of the defendants sued
herein as DOES 1 through 20 and therefore sue such defendants by their fictitious names. Plaintiff is

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

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

14 **GENERAL ALLEGATIONS**

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

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

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

1 the PROPERTY to him by Defendant COTTON.

2 **FIRST CAUSE OF ACTION**

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

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

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

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

21 **SECOND CAUSE OF ACTION**

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

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

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

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

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

8 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

19 **On all Causes of Action:**

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

25 6. For costs of suit incurred herein; and

26 ///

27 ///

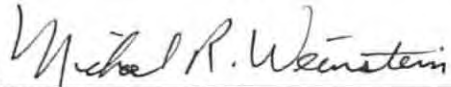
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7. For such other and further relief as the Court may deem just and proper.

Dated: March 21, 2017

FERRIS & BRITTON,
A Professional Corporation

By: 
Michael R. Weinstein
Scott H. Toothacre

Attorneys for Plaintiff
LARRY GERACI

EXHIBIT A

11/02/2016

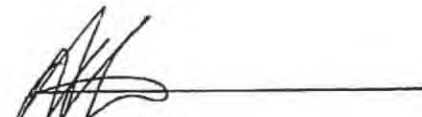
Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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



Larry Geraci



Darryl Cotton

ACKNOWLEDGMENT

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

State of California
County of San Diego

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

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

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

WITNESS my hand and official seal.



Signature Jessica Newell (Seal)

EXHIBIT 14

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

FINCH, THORNTON & BAIRD, LLP

ATTORNEYS AT LAW
4747 EXECUTIVE DRIVE - SUITE 700
SAN DIEGO, CALIFORNIA 92121-3107
TELEPHONE: (868) 737-3100
FACSIMILE: (858) 737-3101

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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

Clerk of the Superior Court
By Richard Day, Deputy Clerk

Attorneys for Defendant and Cross-Complainant Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

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

SECOND AMENDED CROSS-COMPLAINT
FOR:

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

[IMAGED FILE]

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

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

DARRYL COTTON, an individual,

Cross-Complainant

v.

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

Cross-Defendants.

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

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

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

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

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

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

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

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

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GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

28 / / / / /

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

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

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

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

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

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

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

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

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 not to enter into any other contacts on this
property.

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

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.

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

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

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

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

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

20 Cotton: "This resolves the zoning issue?"

21 Geraci: "Yes"

22 Cotton: "Excellent"...

23 Cotton: "How goes it?"

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

25 Cotton: "Whats new?"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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FIRST CAUSE OF ACTION

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

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

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

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

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

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

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SECOND CAUSE OF ACTION

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

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

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

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

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

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

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

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

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

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

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

20 THIRD CAUSE OF ACTION

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

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

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

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

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

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

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

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

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

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

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

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

4 FOURTH CAUSE OF ACTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 FIFTH CAUSE OF ACTION

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

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

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

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

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

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PRAYER FOR RELIEF

WHEREFORE, Cotton prays for relief as follows:

ON THE FIRST CAUSE OF ACTION:

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

2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial.

ON THE SECOND CAUSE OF ACTION

1. For general, special, and consequential damages in an amount not yet fully ascertained but at least \$40,000;

2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial; and

3. For punitive and exemplary damages in an amount just and reasonable to punish and deter defendants.

ON THE THIRD CAUSE OF ACTION

1. For general, special, and consequential damages in an amount not yet fully ascertained but at least \$40,000; and

2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial.

ON THE FOURTH CAUSE OF ACTION

1. For general, special, and consequential damages in an amount not yet fully ascertained but at least \$40,000;

2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial; and

3. For punitive and exemplary damages in an amount just and reasonable to punish and deter defendants.

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ON THE FIFTH CAUSE OF ACTION

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

ON ALL CAUSES OF ACTION

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

DATED: August 25, 2017

Respectfully submitted,

FINCH, THORNTON & BAIRD, LLP

By: _____

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

2403.004/3BQ6279.hkr

EXHIBIT 1

11/02/2016


Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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



Larry Geraci



Darryl Cotton

ACKNOWLEDGMENT

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

State of California
County of San Diego

On November 2, 2010 before me, Jessica Newell Notary Public
(insert name and title of the officer)

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


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

WITNESS my hand and official seal.



Signature Jessica Newell (Seal)

My Comm. Expires Jan 31, 2017
 Notary Public - California
 Commission # 2003288
 JESSICA M. WELLS



My Comm. Expires Jan 31, 2017
 Notary Public - California
 Commission # 2003288
 JESSICA M. WELLS

EXHIBIT 2

6/7/2017

Gmail - Agreement



Darryl Cotton <indagrodarryl@gmail.com>

Agreement

2 messages

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

Wed, Nov 2, 2016 at 3:11 PM

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com

Bus: 858.576.1040


Fax: 858.630.3900

Circular 230 Disclaimer:

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

6/7/2017

Gmail - Agreement

 Cotton & Geraci Contract.pdf
71K

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

Wed, Nov 2, 2016 at 9:13 PM

No no problem at all

Sent from my iPhone

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

Hi Larry,

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

Regards.

Darryl Cotton, President



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

6176 Federal Blvd.
San Diego, CA. 92114
USA

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

[Quoted text hidden]

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

FINCH, THORNTON & BAIRD, LLP

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

Attorneys for Defendant and Cross-Complainant Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

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

PROOF OF SERVICE BY MAIL

[IMAGED FILE]

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

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

DARRYL COTTON, an individual,

Cross-Complainant

v.

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

Cross-Defendants.

I, Heidi Runge, declare that:

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

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will be deposited with the United States Postal Service this same day in the ordinary course of business. I caused to be served the following document(s): SECOND AMENDED CROSS-COMPLAINT, by placing a copy thereof in a separate envelope for each addressee listed as follows:

Michael R. Weinstein, Esq.
Scott H. Toothacre, Esq.
Ferris & Britton
A Professional Corporation
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Facsimile: (619) 232-9316
Email: mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

ATTORNEYS FOR PLAINTIFF AND
CROSS-DEFENDANT LARRY GERACI

Michael R. Weinstein, Esq.
Scott H. Toothacre, Esq.
Ferris & Britton
A Professional Corporation
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Facsimile: (619) 232-9316
Email: mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

ATTORNEYS FOR CROSS-DEFENDANT
REBECCA BERRY

I then sealed the envelope(s) and, with the postage thereon fully prepaid, either deposited it/each in the United States Postal Service or placed it/each for collection and mailing on August 25, 2017, at San Diego, California, following ordinary business practices.

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

Executed on August 25, 2017.


Heidi Runge

2403.004/Proof.hr

EXHIBIT 15

Court's Ex. **005**

Case # 37-2017-00010073-CU-BC-CTL

Rec'd _____

Dept. **C-73** Clk. _____

Jul 21, 2016 16:31



From: Daryl Fed B(16199544447)

Jul 21, 2016 16:31:36

From: Daryl Fed B(16199544447)

Going vertical

Jul 21, 2016 16:31:36

From: Daryl Fed B(16199544447)

ACDC for live resin processes

Jul 21, 2016 16:32:06

Sent To: Daryl Fed B(16199544447)

Wow Urs?

Jul 21, 2016 16:34:14

From: Daryl Fed B(16199544447)

Yup

Jul 21, 2016 16:35:11

Sent To: Daryl Fed B(16199544447)

Nice

Jul 21, 2016 16:35:16

From: Daryl Fed B(16199544447)

We are doing so very unique things here

Jul 21, 2016 16:35:31

From: Daryl Fed B(16199544447)

some

Jul 21, 2016 16:35:45

Sent To: Daryl Fed B(16199544447)

If we can get this through that should work as a great asset to the business

Jul 21, 2016 16:35:56

From: Daryl Fed B(16199544447)

This is a show we can take on the road.

Jul 21, 2016 16:36:54

Sent To: Daryl Fed B(16199544447)

Love it

Jul 21, 2016 16:37:11

Jul 25, 2016 09:27

From:
Daryl Fed B(16199544447)



Jul 25, 2016 09:27:27

From:
Daryl Fed B(16199544447)



Jul 25, 2016 09:27:27

From:
Daryl Fed B(16199544447)

📅 Day 16

Jul 25, 2016 09:27:27

Sent To:
Daryl Fed B(16199544447)

Nice

Jul 25, 2016 09:28:05

From:
Daryl Fed B(16199544447)

So here's the deal. I have investors that want me to build these trailers and put them inside a commercial building in so cal

Jul 25, 2016 09:28:18

From:
Daryl Fed B(16199544447)

I told them I might know some real Estate guys that could suggest properties

Jul 25, 2016 09:28:53

From: Daryl Fed B(16199544447) The first order would be for four trailers Jul 25, 2016 09:29:22

From: Daryl Fed B(16199544447) The rooms are secure and all we need is to get power and water to them. Jul 25, 2016 09:29:59

From: Daryl Fed B(16199544447) Each trailer is self contained Jul 25, 2016 09:30:14

From: Daryl Fed B(16199544447) Having them inside a commercial property building would be nice but it's not mandatory Jul 25, 2016 09:31:14

From: Daryl Fed B(16199544447) Whadya think? Jul 25, 2016 09:33:36

Sent To: Daryl Fed B(16199544447) Meeting I'll contact you shortly Jul 25, 2016 09:46:44

Jul 25, 2016 14:44

From: Daryl Fed B(16199544447) Hey Larry do you have time for a call? Jul 25, 2016 14:44:15

Sent To: Daryl Fed B(16199544447) 30 min Jul 25, 2016 14:44:37

From: Daryl Fed B(16199544447) Can we do 3:30? Jul 25, 2016 14:45:47

Sent To: Daryl Fed B(16199544447) Sure Jul 25, 2016 14:49:17

Jul 27, 2016 07:30

From: Daryl Fed B(16199544447) Good morning. I saw I missed your call last night. I'm in if you need to reach me this am. Jul 27, 2016 07:30:52

Jul 27, 2016 09:54

From:
Daryl Fed B(16199544447)



Jul 27, 2016 09:54:26

From:
Daryl Fed B(16199544447)



Jul 27, 2016 09:54:26

From:
Daryl Fed B(16199544447)



Jul 27, 2016 09:54:26

Jul 27, 2016 13:39

Sent To:
Daryl Fed B(16199544447)

Friday right around 1 o'clock

Jul 27, 2016 13:39:35

Sent To:
Daryl Fed B(16199544447)

Is good

Jul 27, 2016 13:39:39

Jul 27, 2016 16:03

From:
Daryl Fed B(16199544447)

Yup

Jul 27, 2016 16:03:56

Jul 29, 2016 09:32

From:
Daryl Fed B(16199544447)

Confirming our 1:00 here today?

Jul 29, 2016 09:32:58

Sent To:
Daryl Fed B(16199544447)

I'll let you know shortly I had a couple things up but I'm still trying to make it

Jul 29, 2016 09:42:13

Jul 29, 2016 12:31

Sent To:
Daryl Fed B(16199544447)

Matt will be there he's an operator I may not be able to make it because I'm in the city meeting still

Jul 29, 2016 12:31:01

From:
Daryl Fed B(16199544447)

Whatever works

Jul 29, 2016 12:32:12

Sent To:
Daryl Fed B(16199544447)

He is one of the main guys

Jul 29, 2016 12:32:37

Jul 29, 2016 12:55

From:
Daryl Fed B(16199544447)

Excellent

Jul 29, 2016 12:55:28

Aug 1, 2016 11:30

From:
Daryl Fed B(16199544447)



Aug 1, 2016 11:30:50

From:
Daryl Fed B(16199544447)

📅 Day 23

Aug 1, 2016 11:30:50

Sent To:
Daryl Fed B(16199544447)

Crazy

Aug 1, 2016 11:33:06

Aug 1, 2016 12:18

From:
Daryl Fed B(16199544447)

Truly. Now get this

Aug 1, 2016 12:18:07

From:
Daryl Fed B(16199544447)

There are MDS who visited over the weekend who are completely into med canna

Aug 1, 2016 12:18:56

From:
Daryl Fed B(16199544447)

But they are insisting on organically grown for pure concentrates

Aug 1, 2016 12:19:43

From:
Daryl Fed B(16199544447)

They told me more doctors are fed up with the health care system and big pharma

Aug 1, 2016 12:20:34

Aug 3, 2016 10:16

From:
Daryl Fed B(16199544447)

Any updates to share?

Aug 3, 2016 10:16:45

Aug 4, 2016 19:51

Sent To:
Daryl Fed B(16199544447)

Nothing at this point they have a meeting August 11

Aug 4, 2016 19:51:43

Aug 11, 2016 16:13

From:
Daryl Fed B(16199544447)

How'd your meeting go?

Aug 11, 2016 16:13:00

Aug 12, 2016 10:23

Sent To:
Daryl Fed B(16199544447)

Nothing yet Nother meeting scheduled for next week

Aug 12, 2016 10:23:04

Sent To:
Daryl Fed B(16199544447)

Another

Aug 12, 2016 10:23:10

Aug 12, 2016 11:49

From:
Daryl Fed B(16199544447)

Another meeting means there are open discussions.
Sounds positive

Aug 12, 2016 11:49:09

Sent To:
Daryl Fed B(16199544447)

Yes

Aug 12, 2016 11:51:36

Aug 15, 2016 10:48

Sent To:
Daryl Fed B(16199544447)

Supposed to be the end of this week

Aug 15, 2016 10:48:17

Sent To:
Daryl Fed B(16199544447)

Keep you posted

Aug 15, 2016 10:48:20

Aug 22, 2016 08:36

From:
Daryl Fed B(16199544447)

Good morning. Did your team meet with the city last week?

Aug 22, 2016 08:36:34

Aug 22, 2016 09:08

Sent To:
Daryl Fed B(16199544447)

Good morning Darrell yes we did meet with the team we have one hold out but we think we can turn this we have another meeting Thursday

Aug 22, 2016 09:08:45

From:
Daryl Fed B(16199544447)

That sounds manageable. Let me know if there is anything I can do.

Aug 22, 2016 09:12:46

Aug 26, 2016 09:45

Sent To:
Daryl Fed B(16199544447)

We have another meeting next Friday... Pretty important meeting

Aug 26, 2016 09:45:29

Aug 26, 2016 14:56

GER0504

Sent To:
Daryl Fed B(16199544447)

On phone.. Call you back shortly..

Aug 26, 2016 14:56:57

Aug 26, 2016 18:34

From:
Daryl Fed B(16199544447)

This is the link to our new website and the AUMA Analysis I think Matt will appreciate.

Aug 26, 2016 18:34:23

<http://151farmers.org/2016/08/19/prop-64-aumaanalysis/>

From:
Daryl Fed B(16199544447)

This is the website
<http://151farmers.org>

Aug 26, 2016 18:36:30

Sep 8, 2016 14:46

From:
Daryl Fed B(16199544447)

Any updates?

Sep 8, 2016 14:46:18

Sep 8, 2016 15:16

Sent To:
Daryl Fed B(16199544447)

Not yet probably next week

Sep 8, 2016 15:16:10

Sep 14, 2016 13:22

Sent To:
Daryl Fed B(16199544447)

Monday or Tuesday afternoon is good for appointments

Sep 14, 2016 13:22:44

Sent To:
Daryl Fed B(16199544447)

Let me know

Sep 14, 2016 13:22:52

Sep 14, 2016 14:57

From:
Daryl Fed B(16199544447)

I need your email address

Sep 14, 2016 14:57:17

Sent To:
Daryl Fed B(16199544447)

Larry@TFC SD.net

Sep 14, 2016 14:57:52

Sep 15, 2016 16:04

From: Daryl Fed B(16199544447) **Telegram has been installed** Sep 15, 2016 16:04:42

Sent To: Daryl Fed B(16199544447) **Ok** Sep 15, 2016 16:06:38

Sent To: Daryl Fed B(16199544447) **Still waiting for contact** Sep 15, 2016 16:07:16

Sent To: Daryl Fed B(16199544447) **As soon as he does I will let you know** Sep 15, 2016 16:07:29

From: Daryl Fed B(16199544447) **Thanks** Sep 15, 2016 16:07:45

Sent To: Daryl Fed B(16199544447) **1 (619) 204-3838** Sep 15, 2016 16:23:38

Sent To: Daryl Fed B(16199544447) **Contact on telegraph** Sep 15, 2016 16:23:56

From: Daryl Fed B(16199544447) **Thanks** Sep 15, 2016 16:31:08

Sep 20, 2016 14:02

From: Daryl Fed B(16199544447) **On my way** Sep 20, 2016 14:02:58

Sent To: Daryl Fed B(16199544447) **Ok** Sep 20, 2016 14:03:11

From: Daryl Fed B(16199544447) **What's your address?** Sep 20, 2016 14:03:16

Sent To: Daryl Fed B(16199544447) **5403 Ruffin Road Suite 200** Sep 20, 2016 14:03:30

From: Daryl Fed B(16199544447) **5 min** Sep 20, 2016 14:03:38

Sent To:
Daryl Fed B(16199544447)

text/x-vlocation

Sep 20, 2016 14:03:43

Sent To:
Daryl Fed B(16199544447)

[img alt="Small green speech bubble icon with a white question mark inside." data-bbox="688 252 710 263"/>

Sep 20, 2016 14:03:43

Sent To:
Daryl Fed B(16199544447)

5402

Sep 20, 2016 14:04:02

Sep 21, 2016 09:27

Sent To:
Daryl Fed B(16199544447)

Hi Darrell what is the full address of the federal Boulevard property as well as how is title held

Sep 21, 2016 09:27:30

From:
Daryl Fed B(16199544447)

6176 federal blvd

Sep 21, 2016 09:28:37

From:
Daryl Fed B(16199544447)

Im getting payoffs values today

Sep 21, 2016 09:28:57

From:
Daryl Fed B(16199544447)

Will forward you when I have them

Sep 21, 2016 09:29:26

Sent To:
Daryl Fed B(16199544447)

I pulled title and it looks like 330,000 is the balance

Sep 21, 2016 09:46:26

Sep 22, 2016 12:04

Sent To:
Daryl Fed B(16199544447)

On phone.. Call you back shortly..

Sep 22, 2016 12:04:58

From:
Daryl Fed B(16199544447)

Thx

Sep 22, 2016 12:05:25

Sep 23, 2016 08:43

From:
Daryl Fed B(16199544447)

Good morning. What entity would you like our consultation contract to be directed to?

Sep 23, 2016 08:43:23

Sep 23, 2016 12:02

Sent To:
Daryl Fed B(16199544447)

Hi Darrell GERL investments LLC

Sep 23, 2016 12:02:20

From:
Daryl Fed B(16199544447)

Address?

Sep 23, 2016 12:08:45

From:
Daryl Fed B(16199544447)

Phone and email?

Sep 23, 2016 12:09:01

Sent To:
Daryl Fed B(16199544447)

5402 Ruffin Rd. Sulte 200 San Diego 92123

Sep 23, 2016 12:09:08

Sep 26, 2016 08:52

From:
Daryl Fed B(16199544447)

Good morning

Sep 26, 2016 08:52:31

From:
Daryl Fed B(16199544447)

Were you able to see the shared folder I sent over this am?

Sep 26, 2016 08:53:13

From:
Daryl Fed B(16199544447)

Feel free to comment and edit these docs as we work out the details.

Sep 26, 2016 08:54:57

From:
Daryl Fed B(16199544447)

I'm no lawyer but from my perspective it's a good start

Sep 26, 2016 08:56:46

From:
Daryl Fed B(16199544447)

Let me know your thoughts.

Sep 26, 2016 08:57:17

Sent To:
Daryl Fed B(16199544447)

I will be reviewing today

Sep 26, 2016 09:11:04

Sep 27, 2016 11:12

Sent To:
Daryl Fed B(16199544447)

On phone.. Call you back shortly..

Sep 27, 2016 11:12:47

Sep 27, 2016 12:18

From:
Daryl Fed B(16199544447)



Sep 27, 2016 12:18:42

Sep 28, 2016 14:28

Sent To:
Daryl Fed B(16199544447)

What is your last name

Sep 28, 2016 14:28:09

Sent To:
Daryl Fed B(16199544447)

In current meeting

Sep 28, 2016 14:28:19

Sent To:
Daryl Fed B(16199544447)

Got it

Sep 28, 2016 14:28:28

Sent To:
Daryl Fed B(16199544447)

They had it

Sep 28, 2016 14:28:33

Sent To:
Daryl Fed B(16199544447)

Do they have final judgement on your property

Sep 28, 2016 14:30:49

From:
Daryl Fed B(16199544447)

Not sure what you mean? Payoff?

Sep 28, 2016 14:42:20

Sep 30, 2016 09:38

From:
Daryl Fed B(16199544447)

Does 10:15 work?

Sep 30, 2016 09:38:57

Sent To:
Daryl Fed B(16199544447)

Sure

Sep 30, 2016 09:39:19

Sep 30, 2016 10:23

From:
Daryl Fed B(16199544447)

5 min

Sep 30, 2016 10:23:28

Sent To:
Daryl Fed B(16199544447)

Ok

Sep 30, 2016 10:23:33

Sep 30, 2016 12:24

Sent To:
Daryl Fed B(16199544447)

1661 N. 2nd Ave., El Cajon

Sep 30, 2016 12:24:42

Sep 30, 2016 13:45

From:
Daryl Fed B(16199544447)

I'll ck it out

Sep 30, 2016 13:45:39

Oct 3, 2016 21:01

Sent To:
Daryl Fed B(16199544447)

The architect and the builder want to come out to the place tomorrow morning at 9 o'clock is that OK

Oct 3, 2016 21:01:16

Oct 4, 2016 09:02

From:
Daryl Fed B(16199544447)

Yes

Oct 4, 2016 09:02:25

Sent To:
Daryl Fed B(16199544447)

They should be there now

Oct 4, 2016 09:09:53

Oct 5, 2016 10:54

Sent To:
Daryl Fed B(16199544447)

Is there a septic tank on the property for that front building

Oct 5, 2016 10:54:57

Oct 6, 2016 09:49

From:
Daryl Fed B(16199544447)

Fyi Dennis Peron is staying at the farm thru Friday night

Oct 6, 2016 09:49:37

From:
Daryl Fed B(16199544447)

Dennis is the co-author of prop 215

Oct 6, 2016 09:49:58

From:
Daryl Fed B(16199544447)

He is getting up in years and may not be with us much longer

Oct 6, 2016 09:50:30

From:
Daryl Fed B(16199544447)

He's here fighting auma prop 64

Oct 6, 2016 09:50:52

From:
Daryl Fed B(16199544447)

We did a radio show on LA last night.

Oct 6, 2016 09:51:18

GER0510

From: Daryl Fed B(16199544447) If you or matt or anyone wants a photo op with a real legendary activist now is your chance Oct 6, 2016 09:52:44

Sent To: Daryl Fed B(16199544447) All sounds good but I'm trying to keep it low-key Oct 6, 2016 09:53:46

From: Daryl Fed B(16199544447) I understand Oct 6, 2016 09:54:23

From: Daryl Fed B(16199544447) Just wanted you to know. Cali got med cannabis 20 yrs ago because of this guy. Oct 6, 2016 09:55:24

Oct 8, 2016 10:42

Sent To: Daryl Fed B(16199544447) Surveyors will be out there on Tuesday just a heads up Oct 8, 2016 10:42:59

Oct 8, 2016 16:29

From: Daryl Fed B(16199544447) Got it Oct 8, 2016 16:29:25

Oct 9, 2016 16:59

From: Daryl Fed B(16199544447) What time? Oct 9, 2016 16:59:12

Sent To: Daryl Fed B(16199544447) I will check they were going to get me a time Oct 9, 2016 17:03:10

Oct 10, 2016 11:54

Sent To: Daryl Fed B(16199544447) There getting me a time and just a few minutes I'll let you know Oct 10, 2016 11:54:54

Oct 10, 2016 17:28

Sent To: Daryl Fed B(16199544447) Sorry for the late notice he said he be there at 8 AM Oct 10, 2016 17:28:30

From:
Daryl Fed B(16199544447)

Thats fine. Jeff will be here

Oct 10, 2016 17:29:10

Sent To:
Daryl Fed B(16199544447)

Thx

Oct 10, 2016 17:29:19

Oct 11, 2016 14:07

From:
Daryl Fed B(16199544447)

Your guy never showed

Oct 11, 2016 14:07:45

Sent To:
Daryl Fed B(16199544447)

Really

Oct 11, 2016 14:07:57

From:
Daryl Fed B(16199544447)

Nope

Oct 11, 2016 14:08:35

Sent To:
Daryl Fed B(16199544447)

I just looked in my email they moved it until tomorrow at 8 AM sorry about that

Oct 11, 2016 14:11:48

From:
Daryl Fed B(16199544447)

Got it

Oct 11, 2016 14:12:13

Oct 17, 2016 10:14

Sent To:
Daryl Fed B(16199544447)

My architect needs access to the buildings at 1 o'clock can you make that happen

Oct 17, 2016 10:14:31

Oct 18, 2016 13:22

Sent To:
Daryl Fed B(16199544447)

On phone.. Call you back shortly..

Oct 18, 2016 13:22:18

From:
Daryl Fed B(16199544447)

Ok

Oct 18, 2016 13:22:31

Sent To:
Daryl Fed B(16199544447)

Just called

Oct 18, 2016 13:34:06

Oct 18, 2016 14:02

From:
Daryl Fed B(16199544447)

Tag your it

Oct 18, 2016 14:02:38

Oct 18, 2016 15:49

From:
Daryl Fed B(16199544447)

Do you have time for call? Like in 20 min?

Oct 18, 2016 15:49:41

Oct 20, 2016 10:35

Sent To:
Daryl Fed B(16199544447)

Can you send me your email

Oct 20, 2016 10:35:14

Oct 20, 2016 11:43

From:
Daryl Fed B(16199544447)

I sent you an email

Oct 20, 2016 11:43:49

From:
Daryl Fed B(16199544447)

Darryl@inda-gro.com

Oct 20, 2016 11:44:16

Oct 20, 2016 13:22

Sent To:
Daryl Fed B(16199544447)

He is going to redraw them with the building on the back and I'll send you both

Oct 20, 2016 13:22:24

Oct 20, 2016 14:47

From:
Daryl Fed B(16199544447)

Sounds good.

Oct 20, 2016 14:47:31

Oct 24, 2016 11:37

Sent To:
Daryl Fed B(16199544447)

Just sent over

Oct 24, 2016 11:37:12

Sent To:
Daryl Fed B(16199544447)

That email is not going through could you recheck it for me

Oct 24, 2016 11:42:50

Oct 24, 2016 12:37

From: Daryl Fed B(16199544447) I just sent you a TEST SEND email Oct 24, 2016 12:37:34

From: Daryl Fed B(16199544447) I love it! Oct 24, 2016 12:41:45

Sent To: Daryl Fed B(16199544447) Thank you I just sent the plans back to you Oct 24, 2016 12:41:47

From: Daryl Fed B(16199544447) Clean and to the point Oct 24, 2016 12:42:14

Sent To: Daryl Fed B(16199544447) Yes Oct 24, 2016 12:43:48

Oct 28, 2016 10:07

Sent To: Daryl Fed B(16199544447) Can we get together on Monday at about noon? Oct 28, 2016 10:07:23

Oct 28, 2016 11:10

From: Daryl Fed B(16199544447) Sure Oct 28, 2016 11:10:58

From: Daryl Fed B(16199544447) I'll be there Oct 28, 2016 11:14:10

Oct 31, 2016 09:49

Sent To: Daryl Fed B(16199544447) Can you bring a copy of the grant deed Oct 31, 2016 09:49:51

From: Daryl Fed B(16199544447) Yes Oct 31, 2016 09:50:07

Nov 1, 2016 17:48

Sent To: Daryl Fed B(16199544447) On phone.. Call you back shortly.. Nov 1, 2016 17:48:43

Nov 2, 2016 10:49

From:
Daryl Fed B(16199544447)

Good morning

Nov 2, 2016 10:49:12

From:
Daryl Fed B(16199544447)

Are you available for a call?

Nov 2, 2016 10:53:34

Nov 2, 2016 11:23

From:
Daryl Fed B(16199544447)

You need to hear this

Nov 2, 2016 11:23:52

Nov 8, 2016 15:21

From:
Daryl Fed B(16199544447)

Can you give me a call?

Nov 8, 2016 15:21:19

Sent To:
Daryl Fed B(16199544447)

Crazy day today can I give you a call tomorrow morning

Nov 8, 2016 15:32:10

From:
Daryl Fed B(16199544447)

Yes

Nov 8, 2016 15:36:25

Nov 9, 2016 16:01

From:
Daryl Fed B(16199544447)

Lemon Grove shot down measure v. No to dispensaries to

Nov 9, 2016 16:01:01

Sent To:
Daryl Fed B(16199544447)

Good for us

Nov 9, 2016 16:01:26

From:
Daryl Fed B(16199544447)

Only missed by 1%

Nov 9, 2016 16:01:32

From:
Daryl Fed B(16199544447)

Hell YEAH!

Nov 9, 2016 16:01:43

Nov 14, 2016 10:26

GER0515

Sent To:
Daryl Fed B(16199544447)

I just sent you an email they just need a quick signature and send back to me if you can get that back ASAP I'd appreciate it thank you

Nov 14, 2016 10:26:47

Nov 16, 2016 16:20

From:
Daryl Fed B(16199544447)

How goes it?

Nov 16, 2016 16:20:21

Sent To:
Daryl Fed B(16199544447)

No news yet

Nov 16, 2016 16:25:47

From:
Daryl Fed B(16199544447)

Did they accept the CUP application?

Nov 16, 2016 16:26:37

Sent To:
Daryl Fed B(16199544447)

We're still getting through them excepting the property

Nov 16, 2016 16:30:19

Sent To:
Daryl Fed B(16199544447)

Once the property is approved then I believe we're set to go

Nov 16, 2016 16:30:33

Nov 18, 2016 11:58

From:
Daryl Fed B(16199544447)

Did you talk with matt on the cv dispensary?

Nov 18, 2016 11:58:05

Nov 18, 2016 12:26

Sent To:
Daryl Fed B(16199544447)

Yeah I did but he seriously didn't have any interest because he met with the Chula Vista city attorney

Nov 18, 2016 12:26:07

Sent To:
Daryl Fed B(16199544447)

All those places are gonna be close down

Nov 18, 2016 12:26:13

Nov 30, 2016 19:26

From:
Daryl Fed B(16199544447)

Greetings.

Nov 30, 2016 19:26:18

From:
Daryl Fed B(16199544447)

Do you have time for a quick chat?

Nov 30, 2016 19:26:34

Sent To:
Daryl Fed B(16199544447)

Hi Darrell I've been in meetings all day I've got one now until 9 o'clock I'll try to call you first thing in the morning

Nov 30, 2016 19:29:03

From:
Daryl Fed B(16199544447)

Perfect

Nov 30, 2016 19:29:36

Dec 12, 2016 12:47

From:
Daryl Fed B(16199544447)

Do you have a moment for a call?

Dec 12, 2016 12:47:42

Sent To:
Daryl Fed B(16199544447)

Later on today I will I'm in meetings up till about 4 o'clock maybe five

Dec 12, 2016 12:54:23

From:
Daryl Fed B(16199544447)

That's fine. Give me call when you can.

Dec 12, 2016 12:57:28

Dec 12, 2016 17:42

From:
Daryl Fed B(16199544447)

Can you talk?

Dec 12, 2016 17:42:17

Dec 14, 2016 15:46

From:
Daryl Fed B(16199544447)

Something you should know before tomorrows meeting. Can you take a call?

Dec 14, 2016 15:46:52

Sent To:
Daryl Fed B(16199544447)

I'll call you in about two hours

Dec 14, 2016 15:50:24

Jan 4, 2017 12:20

Sent To:
Daryl Fed B(16199544447)

Hi Daryl I have the extreme case of the flu and I'm in bed I'll try to call you tomorrow or the next day

Jan 4, 2017 12:20:01

From:
Daryl Fed B(16199544447)

Get better and ttyl

Jan 4, 2017 12:20:21

Jan 5, 2017 08:52

From:
Daryl Fed B(16199544447)

Any better?

Jan 5, 2017 08:52:26

Jan 6, 2017 08:40

From:
Daryl Fed B(16199544447)

Can you call me. If for any reason you're not moving forward I need to know.

Jan 6, 2017 08:40:54

Jan 6, 2017 09:51

Sent To:
Daryl Fed B(16199544447)

I'm at the doctor now everything is going fine the meeting went great yesterday supposed to sign off on the zoning on the 24th of this month I'll try to call you later today still very sick

Jan 6, 2017 09:51:20

Jan 13, 2017 10:46

From:
Daryl Fed B(16199544447)

Are you available for a call?

Jan 13, 2017 10:46:44

Sent To:
Daryl Fed B(16199544447)

I'm in a meeting I'll call you when I'm done

Jan 13, 2017 10:46:59

From:
Daryl Fed B(16199544447)

Thx

Jan 13, 2017 10:47:18

Jan 18, 2017 10:27

Sent To:
Daryl Fed B(16199544447)

The sign off date they said it's going to be the 30th

Jan 18, 2017 10:27:46

From:
Daryl Fed B(16199544447)

This resolves the zoning issue?

Jan 18, 2017 10:34:56

Sent To:
Daryl Fed B(16199544447)

Yes

Jan 18, 2017 10:36:05

Jan 18, 2017 11:03

From:
Daryl Fed B(16199544447)

Excellent

Jan 18, 2017 11:03:42

Jan 30, 2017 15:50

Sent To:
Daryl Fed B(16199544447)

On phone.. Call you back shortly..

Jan 30, 2017 15:50:11

From:
Daryl Fed B(16199544447)

Ok

Jan 30, 2017 15:50:22

Jan 31, 2017 14:47

From:
Daryl Fed B(16199544447)

How goes it?

Jan 31, 2017 14:47:53

Sent To:
Daryl Fed B(16199544447)

We're waiting for confirmation today at about 4 o'clock

Jan 31, 2017 14:48:17

Feb 6, 2017 12:15

From:
Daryl Fed B(16199544447)

Whats new?

Feb 6, 2017 12:15:28

Feb 7, 2017 08:19

From:
Daryl Fed B(16199544447)

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

Feb 7, 2017 08:19:34

Sent To:
Daryl Fed B(16199544447)

I'm just walking in with clients they resolved it it's fine we're just waiting for final paperwork

Feb 7, 2017 08:20:16

Feb 7, 2017 10:15

From:
Daryl Fed B(16199544447)

That sounds good. Can we speak later?

Feb 7, 2017 10:15:53

Feb 7, 2017 11:27

Sent To:
Daryl Fed B(16199544447)

Not done intel 1030 tonight ... am tomorrow

Feb 7, 2017 11:27:31

Feb 7, 2017 12:16

From:
Daryl Fed B(16199544447)

K

Feb 7, 2017 12:16:35

Feb 15, 2017 08:25

Sent To:
Daryl Fed B(16199544447)

Good morning Darrell... We are preparing the documents with the attorney and hopefully will have them by the end of this week

Feb 15, 2017 08:25:27

Feb 15, 2017 13:00

From:
Daryl Fed B(16199544447)

Sounds good

Feb 15, 2017 13:00:27

Feb 22, 2017 11:38

Sent To:
Daryl Fed B(16199544447)

Contract should be ready in a couple days

Feb 22, 2017 11:38:26

Feb 23, 2017 14:38

Sent To:
Daryl Fed B(16199544447)

Can you call me when you get a chance thanks

Feb 23, 2017 14:38:23

Feb 27, 2017 08:50

Sent To:
Daryl Fed B(16199544447)

Good morning Darrell I emailed you the contract for the purchase of the property ...the relocation contract will come sometime today

Feb 27, 2017 08:50:23

Feb 27, 2017 10:04

From:
Daryl Fed B(16199544447)

Hi Larry I'm traveling today I will have a chance to look at that tomorrow and I will forward it to my attorney thank you

Feb 27, 2017 10:04:43

Mar 3, 2017 12:16

From:
Daryl Fed B(16199544447)

Did you get my email?

Mar 3, 2017 12:16:44

Sent To:
Daryl Fed B(16199544447)

Yes I did I'm having her rewrite it now

Mar 3, 2017 12:17:07

Sent To:
Daryl Fed B(16199544447)

As soon as I get it I will forward it to you

Mar 3, 2017 12:17:13

Mar 6, 2017 16:30

Sent To:
Daryl Fed B(16199544447)

Gina Austin is there she has a red jacket on if you want to have a conversation with her

Mar 6, 2017 16:30:14

Mar 7, 2017 12:05

Sent To:
Daryl Fed B(16199544447)

Just sent the contract over

Mar 7, 2017 12:05:53

From:
Daryl Fed B(16199544447)

I'll look it over tonight

Mar 7, 2017 12:10:03

Mar 16, 2017 16:47

Sent To:
Daryl Fed B(16199544447)

How's it going with the contract?

Mar 16, 2017 16:47:23

Mar 17, 2017 11:44

Sent To:
Daryl Fed B(16199544447)

Can we meet tomorrow

Mar 17, 2017 11:44:27

Apr 29, 2017 20:52

From:
Daryl Fed B(16199544447)

Check your email

Apr 29, 2017 20:52:06

May 1, 2017 09:18

Sent To:
Daryl Fed B(16199544447)

Just received your email our response is forthcoming

May 1, 2017 09:18:52

May 1, 2017 12:39

From:
Daryl Fed B(16199544447)

(1/2) I am cleaning up my documents and am about to head to the court to file. If you want to resolve this, respond to my email within the next 45 minutes. Othe

May 1, 2017 12:39:18

From:
Daryl Fed B(16199544447)

(2/2) rwise im heading to court to file.

May 1, 2017 12:39:19

Sent To:
Daryl Fed B(16199544447)

I've been in meetings all morning I will be addressing is at 1 o'clock this is easy to resolve Daryl just follow what you originally said to do.. and it's done

May 1, 2017 12:41:30

From:
Daryl Fed B(16199544447)

I tried to be reasonable despite your actions. We will let a judge and jury decide. Do not text me or contact me in any form from this point on.

May 1, 2017 12:43:40

May 8, 2017 08:03

Sent To:
Daryl Fed B(16199544447)

We will respond shortly

May 8, 2017 08:03:17

EXHIBIT 16

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

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

8 *In Propria Persona*

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

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

13 vs.

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

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

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

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

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

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

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

5

6 DATED: June 26, 2019

Respectfully submitted,

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Andrew Flores
In Pro Per

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

3 **I. FACTUAL AND PROCEDURAL BACKGROUND**

4 The actions giving rise to this motion to intervene center around the real property located at
5 6176 Federal Blvd., San Diego, CA 92114 (the "Property"). Mr. Cotton alleges in this suit that on
6 November 2, 2016, Mr. Cotton and Mr. Geraci met and (a) entered into an oral joint venture
7 agreement to apply for the Permit and develop a Marijuana Outlet at the Property (the "JVA"); (b)
8 executed a three-sentence document drafted by Mr. Geraci to memorialize Mr. Cotton's receipt of
9 \$10,000 in cash towards a non-refundable deposit agreed to as part of the JVA (the "November
10 Document"); and (c) Mr. Geraci promised to have his attorney, Mrs. Gina Austin, reduce the JVA to
11 writing for execution.

12
13 Neither Mr. Geraci nor Mr. Cotton dispute that later that same day after the parties separated
14 (a) Mr. Geraci emailed Mr. Cotton a copy of the November Document; (b) Mr. Cotton responded and
15 requested that Mr. Geraci confirm the November Document is not a sales contract (the "Request for
16 Confirmation"); and (c) Mr. Geraci replied and provided the requested written confirmation (the
17 "Confirmation Email"). Mr. Geraci now alleges he sent the Confirmation by mistake.

18
19 On March 21, 2017, Mr. Cotton terminated his agreement with Mr. Geraci for breach and
20 entered into a written joint venture agreement with Mr. Martin (the "Martin Purchase Agreement").
21 On March 22, 2017, Mr. Geraci served Mr. Cotton with the instant lawsuit alleging the November
22 Document is a sales contract. Movant is confident the instant suit a sham lawsuit intended to justify
23 the recording of a lis pendens on the Property seeking to prevent the sale of the Property to Mr. Martin.

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

4 Once Mr. Geraci filed this suit, Mr. Martin was intimidated by Mr. Geraci's history of
 5 involvement with illegal commercial marijuana operations and made a demand that Mr. Cotton
 6 prosecute this action without including him as a party to the litigation. In March of 2019, Movant
 7 informed Mr. Martin that he was an "indispensable" party and that he had to become a party. Mr.
 8 Martin decided to extricate himself from the sale and, on March 25, 2019, Movant bought the Property
 9 from Mr. Martin. Flores Decl., Ex. 1. Subsequent to buying the Property, Movant discovered
 10 evidence that the instant suit is part of a conspiracy to monopolize the Marijuana Outlet permits in
 11 San Diego, which the City has limited to thirty-six. Movant is preparing a federal antitrust lawsuit,
 12 that he intends to file within the week. The law and the facts are complicated and Movant has not
 13 been dilatory in his preparation of bringing forth suit. And, for the reasons set forth below, his antitrust
 14 suit is the basis of Movant's request that this Court stay this action over which the federal court has
 15 exclusive jurisdiction.
 16
 17

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

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

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

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

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

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

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

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

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

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

10
11 Thus, respectfully, Movant notes that if the Court denies this ex-parte application, that will
12 not bar federal court jurisdiction over the federal suit he will file. Section 2 of the Sherman Act
13 prohibits any attempt to monopolize. 15 U.S.C. § 2. Section 4 of the Clayton Act, in turn, defines the
14 class of persons who may bring a private antitrust suit as “any person” who is injured “by reason of
15 anything” prohibited by the antitrust laws. *Id.* § 15(a). This extraordinarily broad language reflects
16 the Clayton Act’s remedial purpose and Congress’s intent to “create a private enforcement mechanism
17 that would deter violators and deprive them of the fruits of their illegal actions, and would provide
18 ample compensation to the victims of antitrust violations.” Blue Shield of Va. v. McCready, 457 U.S.
19 465, 472, 102 S.Ct. 2540, 73 L.Ed.2d 149 (1982). Emphasizing § 4’s expansive reach, the Supreme
20 Court has explained that the “statute does not confine its protection to consumers, or to purchasers,
21 or to competitors, or to sellers.... The Act is comprehensive in its terms and coverage, protecting all
22 who are made victims of the forbidden practices by whomever they may be perpetrated.” *Id.* (quoting
23 Mandeville Island Farms, Inc. v. Am. Crystal Sugar Co., 334 U.S. 219, 236, 68 S.Ct. 996, 92 L.Ed.
24 1328 (1948)).

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

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

6
7 Second, although the "*Rooker-Feldman* [doctrine] prohibits a federal district court from
8 exercising subject matter jurisdiction over a suit that is a de facto appeal from a state court judgment."
9 Kougasian v. TMSL, Inc., 359 F.3d 1136, 1139 (9th Cir. 2004). Even if it could be argued that
10 Movant was somehow in privity with Mr. Cotton as Mr. Martin's successor-in-interest, "*Rooker-*
11 *Feldman* does not apply where the plaintiff in the federal case was in privity with, but not a party to,
12 the underlying state court proceeding." St. Jon v. Tatro, Case No.: 15-cv-2552-GPC-JLB, at *17 n.2
13 (S.D. Cal. Mar. 23, 2016) (citing Lance v. Dennis, 546 U.S. 459, 466 (2006)).
14

15 **CONCLUSION**

16 For all the reasons set forth in this memorandum, Movant respectfully requests this Court
17 grant this motion and dismiss this action for failure to join an indispensable party and lack of subject
18 matter jurisdiction over federal anti-trust causes of action.
19

20 DATED: June 26, 2019

21 Respectfully submitted,

22 
23 _____
24 Andrew Flores
25 In Pro Per
26
27
28

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

5
6 *Plaintiff In Propria Persona*

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

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

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

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

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

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

17
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22
23 I, ANDREW FLORES, declare:

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

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

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

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

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

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

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

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

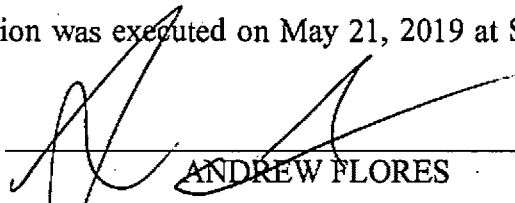
17 11. I have also contacted the Assistant United States Attorney who is currently prosecuting
18 the case.

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

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

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

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

28 

ANDREW FLORES

EXHIBIT 1

AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

//
//
//

AGREEMENT

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

ADDITIONAL PROVISIONS


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

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


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

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

By: 
Andrew Flores

By: 
Jacob Austin

By: 
Joe Hurtado

By: 
Darryl Cotton

By: 
Richard Martin

Exhibit A

(Redacted Secured Litigation Financing Agreement)

SECURED LITIGATION FINANCING AGREEMENT

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

RECITALS

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

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

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

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

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

1. Notwithstanding any language in the December 20th Agreement, or any agreement incorporated therein, the provisions within this Financing Agreement shall be given effect and supersede any conflicting or ambiguous language.
2. Paragraph 9 in the December 20th Agreement is amended with the following language: If any term of this Financing Agreement is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term. If application of this Severability provision should materially and adversely affect the economic substance of the transactions contemplated hereby, the Party adversely impacted shall be entitled to compensation for such adverse impact, provided the reason for the invalidity or unenforceability of a term is not due to serious misconduct by the Party seeking such compensation.
3. This Financing Agreement shall be kept strictly confidential and may not be disclosed without the prior written consent of all the parties hereto. Further, should any party disclose this Financing Agreement other than Mr. Martin, such party shall owe Mr. Martin \$200,000 for breach of this provision.
4. Mr. Hurtado, in consideration for Mr. Martin's promises herein, credits back all the consideration due to him from Mr. Martin pursuant to the MOU for facilitating the sale of the Property. (For the avoidance of doubt, for calculating the credits and liabilities between the parties herein, all other debts, obligations and rights remain the same between Mr. Martin and Mr. Hurtado and Mr. Hurtado's

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

5.

6.


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

8.

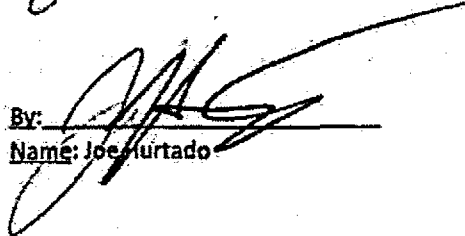
9. The parties agree to negotiate in good faith in regards to any other agreements or issues that may arise by among some or all of the parties hereto, in regards or related to the subject matter hereof, pending final resolution of the various matters, litigation or otherwise, described herein. It is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

[Remainder of this page left intentionally blank.]

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

By: 
Name: Maryl Cotton

By: 
Name: Jacob Austin

By: 
Name: Joe Hurtado

By: 
Name: Tom Maas

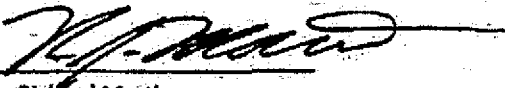
By: 
Name: Richard Martin

EXHIBIT 1

Secured Litigation Financing Agreement

SECURED LITIGATION FINANCING AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

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

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

WHEREAS,

Secured Litigation Financing Agreement

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

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

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

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

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

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

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

WHEREAS,

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

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

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

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

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

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

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

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

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

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

AGREEMENT

ADDITIONAL PROVISIONS

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

Secured Litigation Financing Agreement

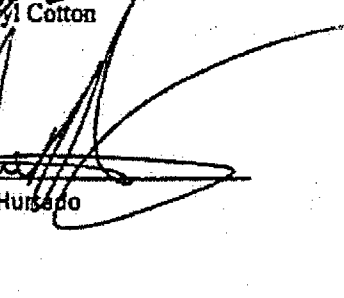
unusual circumstances giving rise to these circumstances and this Financing Agreement is not the result of any party to this Financing Agreement.

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

[Remainder of this page left intentionally blank.]

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

By: 
Name: Earyl Cotton

By: 
Name: Joe Hursapo

By: _____
Name: Richard Martin

By: 
Name: Jacob Austin


By: 
Name: Tom Maas

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

MARCH 15, 2017

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

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

Principal and Agent hereby agree that:

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

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

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

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

By: 
Name: Richard Martin

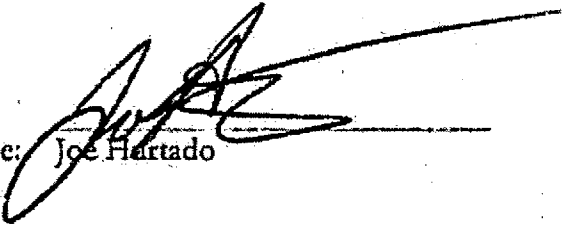
By: 
Name: Joe Hartado

EXHIBIT B



CALIFORNIA ASSOCIATION OF REALTORS®

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

Date Prepared: 03/27/2017

1. OFFER:

- A. THIS IS AN OFFER FROM Richard John Martin II (Buyer)
B. THE REAL PROPERTY to be acquired is 6776 Federal Blvd, San Diego (City), San Diego (County), California, 92114-1437 (72) (Cable Address/Parcel No. 343-22032-8 (Property))
C. THE PURCHASE PRICE offered is Two Million
D. CLOSE OF ESCROW shall occur on see Addendum 1 (date) (or Days After Acceptance)
E. Buyer and Seller are referred to herein as the "Parties." Brokers are not Parties to this Agreement.

2. AGENCY:

- A. DISCLOSURE: The Parties each acknowledge receipt of a Disclosure Regarding Real Estate Agency Relationships (C.A.R. Form AD)
B. CONFIRMATION: The following agency relationships are hereby confirmed for this transaction: Listing Agent N/A (Print Firm Name) is the agent of (check one) the Seller exclusively, or both the Buyer and Seller. Selling Agent N/A (Print Firm Name) (if not the same as the Listing Agent) is the agent of (check one) the Buyer exclusively, or the Seller exclusively, or both the Buyer and Seller.
C. POTENTIALLY COMPETING BUYERS AND SELLERS: The Parties each acknowledge receipt of a Possible Representation of More than One Buyer or Seller - Disclosure and Consent (C.A.R. Form 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: In this 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 % of the loan amount.
(2) SECOND LOAN in the amount of \$
This loan will be conventional financing or Seller financing (C.A.R. Form SFA), assumed financing (C.A.R. Form AFA), subject to financing, Other. This loan shall be at a fixed rate not to exceed % or an adjustable rate loan with initial rate not to exceed % of the loan amount.
Regardless of the type of loan, Buyer shall pay points not to exceed % of the loan amount.

- E. ADDITIONAL FINANCING TERMS: see attached Addendum 1

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

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

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

Buyer's Initials (X) [Signature]
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Seller's Initials (X) [Signature]





CALIFORNIA ASSOCIATION OF REALTORS®

ADDENDUM

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

No. 1

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

dated March 21, 2017 on property known as 6176 Federal Blvd San Diego, CA 92116-1401

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 ("MDU") is fully incorporated into this purchase agreement.

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

Seller shall receive on a monthly basis, 20% of the profits of the business / 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 GUP application is denied.

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

Date March 21, 2017

Date March 21, 2017

Buyer/Tenant X [Signature] Richard John Martin II

Seller/Landlord X [Signature] Darryl Cotton

Buyer/Tenant

Seller/Landlord

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Revised by _____ Date _____



ADM REVISED 12/15 (PAGE 1 OF 1)

ADDENDUM (ADM PAGE 1 OF 1)



CALIFORNIA ASSOCIATION OF REALTORS®

ADDENDUM

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

No. 2

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

dated March 21, 2017, on property known as 6176 Federal Blvd San Diego, CA 92114-1407

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 13, 2017

Date April 15, 2017

Buyer/Tenant X Richard John Martin II

Seller/Landlord X Darryl Cotton

Buyer/Tenant _____

Seller/Landlord _____

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Revised by _____ Date _____



ADM REVISED 12/15 (PAGE 1 OF 1)

ADDENDUM (ADM PAGE 1 OF 1)



CALIFORNIA ASSOCIATION OF REALTORS

ADDENDUM

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

No. 3

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

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

San Diego, CA 92114-1401

in which Richard John Martin II is referred to as "Buyer/Tenant"

and Darryl Colton is referred to as "Seller/Landlord"

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

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

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

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

Date May 12, 2017

Date May 12, 2017

Buyer/Tenant X [Signature] Richard John Martin II

Seller/Landlord X [Signature] Darryl Colton

Buyer/Tenant

Seller/Landlord

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Revised by Date



EXHIBIT C



Pre-Approval Letter

Friday, April 14, 2017

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

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

Purchase Price: \$2,500,000
Loan Program: Jumbo 30 YEAR FLX
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,

A handwritten signature in cursive script that reads "Alexis Roper".

Alexis Roper
Sr. Mortgage Loan Officer
619-436-8873
aroper@amerifirst.us
NMLS #583371



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

0034

EXHIBIT D

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California)

County of San Diego)

On May 03 2017 before me, Rebeca Gonzalez Notary Public

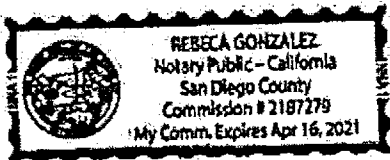
Date Here Insert Name and Title of the Officer

personally appeared Joe Hurtado & Darryl Cotton
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Master Real Estate and Professional Services Agreement Document Date: 5/3/17

Number of Pages: 5 Signer(s) Other Than Named Above: no

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Corporate Officer -- Title(s): _____
- Partner -- Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer Is Representing: _____

Signer's Name: _____

- Corporate Officer -- Title(s): _____
- Partner -- Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer Is Representing: _____

MASTER REAL ESTATE PURCHASE AND PROFESSIONAL SERVICES AGREEMENT

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

RECITALS

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

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

EXHIBIT 17

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

09/23/2019 at 03:18:00 PM

Clerk of the Superior Court
By Adriana Ive Anzalone, Deputy Clerk

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

7 Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and
Cross-Defendant REBECCA BERRY
8

9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO, HALL OF JUSTICE**

11 LARRY GERACI, an individual,

12 Plaintiff,

13 v.

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

16 Defendants.
17

18 _____
19 AND RELATED CROSS-ACTION
20

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

Judge: Hon. Joel R. Wohlfeil

**PLAINTIFF/CROSS-DEFENDANTS'
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
DEFENDANT/CROSS-COMPLAINANT'S
MOTION FOR NEW TRIAL**

[IMAGED FILE]

DATE: October 25, 2019

TIME: 9:00 a.m.

DEPT: C-73

Filed: March 21, 2017

Trial Date: June 28, 2019

Notice of Entry
of Judgment: August 20, 2019

TABLE OF CONTENTS

1		<u>PAGE</u>
2		
3	I. INTRODUCTION/SUMMARY OF ARGUMENT.....	6
4		
5	II. STANDARDS FOR NEW TRIAL MOTION BASED	
6	ON C.C.P § 657(6).....	9
7		
8	A. Cotton’s New Trial Motion is Limited to the Statutory	
9	Ground that the Verdict was “Against the	
10	Law” under C.C.P. § 657(6)	9
11		
12	B. The Correct Standard for a New Trial Motion Based on the	
13	Statutory Ground that the Verdict was “Against the Law”	9
14		
15	III. ARGUMENT.....	10
16		
17	A. MR. COTTON’S ILLEGALITY ARGUMENTS FAIL.....	10
18		
19	1. Mr. Cotton Has Waived and Abandoned	
20	the “Illegality” Argument.....	10
21		
22	2. The Contract at Issue in This Case is Not Illegal.....	13
23		
24	3. B&P Code Does Not Bar Mr. Geraci From Applying	
25	for a CUP.....	13
26		
27	4. It Is Common Practice For CUP Applicants To	
28	Use Agents During The Application Process	14
	B. MR. COTTON’S ARGUMENT THAT THE VERDICT	
	IS AGAINST THE LAW BECAUSE THE JURY	
	DISREGARDED THE JURY INSTRUCTIONS FAILS.....	15
	C. MR. COTTON’S ARGUMENT THAT HE WAS DENIED	
	A FAIR TRIAL AS THE RESULT OF ERRORS RELATING	
	TO THE USE OF THE ATTORNEY-CLIENT PRIVILEGE	
	DURING DISCOVERY AND AT TRIAL ALSO FAILS.....	17
	IV. CONCLUSION.....	20

TABLE OF AUTHORITIES

PAGE(S)

CASES

1

2

3

4 *A&M Records, Inc. v. Heilman*

5 (1977) 75 Cal.App.3d 554..... 19, 20

6

7 *Apra v. Aureguy*

8 (1961) 55 Cal.2d 827..... 10

9

10 *Bristow v. Ferguson*

11 (1981) 121 Cal.App.3d 823..... 11

12

13 *Cassim v. Allstate Ins. Co.*

14 (2004)33 Cal.4th 780..... 16

15

16 *Chodosh v. Palm Beach Park Association*

17 2018 WL 6599824..... 11

18

19 *Coombs v. Hibberd*

20 (1872) 43 Cal. 452..... 20

21

22 *De Felice v. Tabor*

23 (1957) 149 Cal.App.2d 273..... 9

24

25 *Fergus v. Songer*

26 (2007) 150 Cal.App.4th 552..... 10

27

28 *Fomco, Inc. v. Joe Maggio, Inc.*

(1961) 55 Cal.2d 162..... 10

Hernandez v. County of Los Angeles

(2014) 226 Cal.App.4th 1599..... 17

Hoffman-Haag v. Transamerica Ins. Co.

(1991) 1 Cal.App.4th 10..... 15

Horn v. Atchison, T. & S.F.Ry. Co.

(1964) 61 Cal.2d 602..... 6, 12

Kralyevich v. Magrini

(1959) 172 Cal.App.2d 784..... 10

Lewis Queen v. N.M. Ball Sons

(1957) 48 Cal.2d 141..... 10

TABLE OF AUTHORITIES-Continued

	<u>PAGE(S)</u>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
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17	
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21	
22	
23	
24	
25	
26	
27	
28	

<i>Lewith v. Rehmke</i> (1935) 10 Cal.App.2d 97.....	7
<i>McCown v. Spencer</i> (1970) 8 Cal.App.3d 216.....	10
<i>Malkasian v. Irwin</i> (1964) 61 Cal.2d 738.....	6, 9
<i>Manufacturers' Finance Corp. v. Pacific Wholesale Radio</i> (1933) 130 Cal.App.239.....	15
<i>Marriage of Beilock</i> (1978) 81 Cal.App.3d 713.....	10
<i>Miller v. National American Life Ins. Co.</i> (1976) 54 Cal.App.3d 331.....	12
<i>Morris v. Purity Sausage Co.</i> (1934) 1 Cal.App.2d 120.....	7
<i>Mosesian v. Pennwalt Corp.</i> (1987) 191 Cal.App.3d 851.....	9
<i>O'Malley v. Carrick</i> (1922) 60 Cal.App. 48.....	10
<i>People v. Ault</i> (2004) 33 Cal.4 th 1250.....	9
<i>People v. McKeinnon</i> (2011) 52 Cal.4 th 610.....	16
<i>Peterson v. Peterson</i> (1953) 121 Cal.App.2d 1.....	7
<i>Quantification Settlement Agreement Cases</i> (2011) 201 Cal.App.4 th 758.....	10
<i>Ryan v. Crown Castle NG Networks Inc.</i> (2016) 6 Cal.App.5th 775.....	9

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TABLE OF AUTHORITIES-Continued

PAGE(S)

Sepulveda v. Ishimaru
(1957) 149 Cal.App.2d 543..... 12

Treber v. Sup. Ct
(1968) 68 Ca.2d 128..... 17

Tagney v. Hoy
(1968) 260 Cal.App.2d 372..... 10

STATUTES

Business & Professions Code

Section 26000..... 14

Section 26001(y)..... 14

Section 26501..... 12

Section 26057..... 11, 13

Section 26057(b)..... 13, 14

Section 26057(b)(7)..... 18

Code of Civil Procedure

Section 569..... 9, 17

Section 657(1)..... 9, 17

Section 657(5)..... 9

Section 657(6)..... 9, 10, 17

Section 657(7)..... 9, 10, 17

Evidence Code

Section 352..... 12

California Constitution

Art. VI, §13.....

OTHER

Civil Trials and Evidence, Post Trial Motions, The Rutter Group ¶ 18:134.1..... 17

Civil Trials and Evidence, Post Trial Motions, The Rutter Group ¶ 18:201..... 17

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff/Cross-Defendants submit this Memorandum of Points and Authorities in Opposition
3 to Defendant/Cross-Complainant's Motion for New Trial.

4 **I. INTRODUCTION/SUMMARY OF ARGUMENT**

5 This case came to jury trial on July 1, 2019 and took place over the ensuing three-week period,
6 consisting of 9 trial days. Mr. Cotton received a fair trial. The jury unanimously found in favor of Mr.
7 Geraci and against Mr. Cotton on his causes of action for Breach of Contract and Breach of the
8 Covenant of Good Faith and Fair Dealing and awarded damages to Mr. Geraci. (See Special Verdict
9 Form, ROA #635.)¹ Cotton now requests this Court to set aside the verdict.²

10 As a threshold matter, Mr. Cotton's supporting documents were not timely filed and served.
11 CCP § 569(a) provides that "Within 10 days of filing the notice, the moving party *shall serve upon all*
12 *other parties* and file any brief *and accompanying documents*, including affidavits in support of the
13 motion. ...". Here, Mr. Cotton's Notice of Intent to Move for New Trial was served and filed on
14 September 3, 2019. The ten-day period to file his brief and accompanying documents expired on
15 September 13th. While Mr. Cotton timely filed his *unsigned* Memorandum of Points and Authorities
16 just before midnight on September 13th, that filing did not include any accompanying documents.
17 Instead, on Monday, September 16th, (3-days late) Mr. Cotton filed two documents entitled "Errata"
18
19

20 _____
21 ¹ The jury also unanimously found in favor of Mr. Geraci and against Mr. Cotton on all of Mr. Cotton's claims set forth in
22 his cross-complaint. (See Special Verdict Form, ROA# 636.) Mr. Cotton does not challenge the jury verdict nor seek a
23 new trial in connection with his cross-claims; his memorandum of points and authorities in support of his new trial motion
24 does not argue any grounds for a new trial on his cross-claims. Even if for the sake of argument Mr. Cotton intended to
25 move for a new trial on those claims, that motion would fail for the same reason as his new trial motion fails as to the
26 verdict against him on Mr. Geraci's claims.

27 ² Mr. Cotton's counsel, Jacob Austin, did not raise an objection to the admission of any exhibits or the examination with
28 regard to any exhibits. Attorney Austin only made two objections throughout the trial, neither of which have any impact on
the pending motion. "In an appeal ... from a judgment after denial of a motion for new trial, the failure of ... counsel to
object or except may be treated as a waiver of the error." (5 Witkin, Cal. Procedure (1983 pocket sup.) Attack on Judgment
in Trial Court, § 119, p. 307; *Malkasian v. Irwin* (1964) 61 Cal. 2d at p. 747; see *Horn v. Atchison, T. & S.F.Ry. Co.* (1964)
61 Cal.2d 602, 610, cert. den. Sub nom. *Atchison, Topeka & Santa Fe Railway Co. v. Horn*, 380 U.S. 909 [13 L. Ed. 2d
796, 85 S. Ct. 892] ["In the absence of a timely objection the offended party is deemed to have waived the claim of error
through his participation in the atmosphere which produced the claim of prejudice." (*Sabella v. Sothern Pac. Co.* (1969)
70 Cal.2d at p. 319.)

1 which contained the accompanying documents in support of his motion.³ Affidavits or declarations
2 filed too late may be disregarded. (See *Morris v. Purity Sausage Co.* (1934) 1 Cal.App.2d 120; *Lewith*
3 *v. Rehmk*e (1935) 10 Cal.App.2d 97, 105; *Peterson v. Peterson* (1953) 121 Cal.App.2d 1, 9.)

4 As to the merits of his motion for new trial, Mr. Cotton's asserts three grounds:

5 First Mr. Cotton contends the November 2, 2016 agreement was illegal and void because Mr.
6 Geraci failed to disclose his interest in both the Property and the Conditional Use Permit ("CUP").
7 Mr. Cotton erroneously contends the agreement violates local law and policies, as well as state law.
8 The statutes upon which Mr. Cotton relies were not even in effect at the time the November 2, 2016
9 contract was entered.⁴ Even if that is disregarded, the contract was otherwise legal as discussed *infra*.

10 Additionally, Mr. Cotton has waived the "illegality" argument for two reasons: (1) he never
11 raised illegality as an affirmative defense; and (2) with regard to the "illegality" argument, Attorney
12 Austin represented to the Court at the conclusion of evidence and in response to the Court's inquiries
13 if there were any other exhibits Mr. Austin wished to admit into evidence: "I'm willing to not argue
14 the matter if your Honor is inclined not to include it. We can just – forget about it." (Reporter's
15 Transcript herein after referred to as "RT") (Plaintiff/Cross-Defendants Notice of Lodgment in
16 Opposition to Motion for New Trial ("Plaintiff NOL") (RT, July 10, 2019, p. 69:15-72:26, Ex. 6 to
17 Plaintiff NOL)

18 Even assuming the illegality argument has not been waived, the argument that the November 2,
19 2016 contract is illegal fails. Mr. Geraci's stipulated judgments with the City of San Diego, and the
20

21 ³ Mr. Cotton's Errata claims that "[d]ue to a clerical error, an incomplete draft of the Memorandum of Points and
22 Authorities in Support of the Motion for New Trial was uploaded for electronic filing and service instead of the true final
23 copy and, as such, the table of Authorities in the draft was incomplete, the document was not executed and the exhibits
24 referenced therein were not attached." The signature page for the Memorandum of Points & Authorities attached to the
25 Errata is dated, *September 15, 2019*, (2 days *after* the papers were filed and served) which belies Mr. Cotton's claim that
26 the motion was complete, filed and served in a timely manner and that the failure to transmit the signature page and
27 accompanying documents was a "clerical error. Indeed, it suggests Mr. Cotton's filing was untimely.

28 ⁴ In making his illegality argument, Mr. Cotton cites to B&P Code §§ 26000 (Effective June 27, 2017); 26055 (Effective
July 2019); and 26057(a) (Effective January 1, 2019). The contract in question was entered November 2, 2016. The
general rule that judicial decisions are given retroactive effect is basic in our legal tradition. In *Evangelatos v. Superior*
Court (1988) 44 Cal.3d 1188, 1207, the California Supreme Court observed: "[t]he principle that statutes operate only
prospectively, while judicial decisions operate retrospectively, is familiar to every law student." (*United States v. Security*
Industrial Bank (1982) 459 U.S. 70, 79, 103 S.Ct. 407, 413, 74 L.Ed.2d 235.) The statutes cited by Mr. Cotton in support
of his "illegality" argument were not in effect until *after*, sometimes years after, entering the contract in question.

1 use of an agent in application process for the CUP, do not render the contract illegal. Indeed, as set
 2 forth herein, several witnesses testified that it is common practice for an applicant on a CUP
 3 application for a medical marijuana dispensary to utilize an agent in that process.

4 Second, Mr. Cotton argues the verdict is against law because the jury disregarded the jury
 5 instructions and applied an objective standard to Mr. Cotton's conduct and a subjective standard to Mr.
 6 Geraci's conduct as related to the November 2, 2016 Agreement, the "confirmation email" and the
 7 "disavowment" allegation. To the contrary, there is no legal basis to conclude that the jury disregarded
 8 the jury instructions and applied an objective standard to Mr. Cotton and a subjective standard to Mr.
 9 Geraci's conduct. That is simply Mr. Cotton's interpretation of the facts and evidence which he would
 10 like to substitute for the jury's unanimous verdict.

11 Third, Mr. Cotton contends that Mr. Geraci used the attorney-client privilege as a shield during
 12 discovery and as a sword during trial, which prohibited Mr. Cotton from receiving a fair and impartial
 13 trial.⁵ Mr. Cotton has misrepresented the facts, circumstances and the Minute Order issued by the
 14 Court in connection with the attorney-client privilege issues during discovery and the waiver of those
 15 issues at trial. In spite of asserting the attorney-client privilege with regard to the documents drafted
 16 by Gina Austin's office, and contrary to Cotton's arguments herein, those documents were produced to
 17 Mr. Cotton during discovery. (Cross-Defendant Rebecca Berry's Responses to Request, For
 18 Production of Documents, Set One, Ex. 1 to Plaintiff NOL; and Plaintiff/Cross-Defendant Larry
 19 Geraci's Amended Responses to Special Interrogatories, Set Two, Ex. 2 to Plaintiff NOL) The
 20 documents were also listed on the Joint TRC Exhibit List and admitted into evidence at trial without
 21 objection. (Trial Exhibits 59, 62, Ex. 7 to Plaintiff NOL; RT July 3, 2019, 129:22-133:27, Ex. 3 to
 22 NOL; Joint Exhibit List, Ex. 10 to Plaintiff NOL) Mr. Cotton's counsel did not raise any evidentiary
 23 objections to the waiver of attorney-client privilege either with regard to the documentary evidence or
 24 the testimonial evidence. As such, Mr. Cotton's claim that he was unable to cross-examine either Mr.
 25 Geraci or Ms. Austin with the relevant documents (Cotton's P's & A's, p. 5:1-3) is without merit.
 26

27
 28 ⁵ This is a C.C.P. § 657(7) issue regarding evidentiary rulings, a ground *not* set forth in the Notice of Intent to Move for
 New Trial. (See *Treber v. Sup. Ct* (1968) 68 Ca.2d 128, 131; *Hernandez v. County of Los Angeles* (2014) 226 Cal.App.4th
 1599, 1601-1605.) (Practice Guide: Civil Trials and Evidence, Post Trial Motions, (The Rutter Group 2010) ¶ 18:201.)]

1 Indeed, armed with those documents during discovery, Mr. Cotton never took the depositions of Mr.
2 Geraci nor Attorney Gina Austin. And he in fact questioned the witnesses about those documents
3 during trial. (RT July 8, 2019, p. 58:3-60:10, Ex. 4 to Plaintiff NOL)

4 Finally, as a matter of law, a new trial may only be granted when the verdict constitutes a
5 miscarriage of justice. (Calif. Const., Art. VI, §13.) “If it clearly appears that the error could not have
6 affected the result of the trial, the court is bound to deny the motion.” [*Bristow v. Ferguson* (1981) 121
7 Cal.App.3d 823, 826; *Mosesian v. Pennwalt Corp.* (1987) 191 Cal.App.3d 851, 866-867, (disapproved
8 on other grounds in *People v. Ault* (2004) 33 Cal.4th 1250, 1272.)] Mr. Cotton has not demonstrated
9 the claimed errors likely affected the result of the trial.

10 **II. STANDARDS FOR NEW TRIAL MOTION BASED ON C.C.P. § 657(6)**

11 **A. Cotton’s New Trial Motion is Limited to the Statutory Ground that the Verdict** 12 **was “Against Law” under C.C.P. § 657(6)**

13 In his Notice of Intent to Move for New Trial dated September 13, 2019, Mr. Cotton gave
14 notice that he was bring the motion pursuant to C.C.P. § 657(6) on the ground that “the verdict is
15 against the law.” (ROA#656.) Yet in his brief, he asserts that his motion for new trial is made on the
16 grounds of “irregularity of proceedings” under C.C.P. § 657(1) and “against the law” under (C.C.P. §
17 657(7), *neither of which grounds were set forth in his Notice of Intention to Move for New Trial.*
18 (Cotton P’s&A’s, p. 5:10-21) A notice of intention to move for a new trial is deemed to be a motion
19 for new trial *on the grounds stated in the notice.* (C.C.P. §659.) It is well-established that a new trial
20 order “can be granted only on a ground specified in the motion.” (*Malkasian v. Irwin* (1964) 61 Cal.2d
21 738, 745; *De Felice v. Tabor* (1957) 149 Cal.App.2d 273, 274.)

22 Mr. Cotton also asserts that “the Court sits as the 13th juror and is “vested with the plenary
23 power – and burdened with a correlative duty – to independently evaluate the evidence,” (incorrectly
24 citing to *Ryan v. Crown Castle NG Networks Inc.* (2016) 6 Cal.App.5th 775, 784, which concerned
25 C.C.P. § 657(5), not § 657(6). Rather, the “against law” ground differs from the “insufficiency of the
26 evidence” ground in that there is no weighing of evidence or determining credibility. The “against
27 law” ground applies only when the evidence is without conflict in any material point and insufficient
28 as a matter of law to support the verdict. (*McCown v. Spencer* (1970) 8 Cal.App.3d 216, 229.)

1 **B. The Correct Standard for a New Trial Motion Based on the Statutory Ground**
 2 **that the Verdict is “Against Law”**

3 The statutory ground under C.C.P. §657(6) that the verdict is “against law” is of very limited
 4 application. (*Tagney v. Hoy* (1968) 260 Cal.App.2d 372, citing *Kralyevich v. Magrini* (1959) 172
 5 Cal.App.2d 784 [“A decision can be said to be ‘against law’ only: (1) where there is a failure to find
 6 on a material issue; (2) where the findings are irreconcilable; and (3) where the evidence is insufficient
 7 in law and without conflict in any material point.” C.C.P. § 657(6) is not a ground to have the court
 8 reconsider its rulings. The “against law” ground applies only when the evidence is without conflict in
 9 any material point and insufficient *as a matter of law* to support the verdict. (*McCown v. Spencer*
 10 (1970) 8 Cal.App.3d 216, 229; see *Fergus v. Songer* (2007) 150 Cal.App.4th 552, 567-569 [finding
 11 verdict was not “against law” because it was supported by substantial evidence]; *Marriage of Beilock*
 12 (1978) 81 Cal.App.3d 713, 728.) C.C.P. § 657(6) does not cover errors that fall within the other
 13 sections of C.C.P. § 657, such as § 657(7). (*O'Malley v. Carrick* (1922) 60 Cal.App. 48, 51)

14 **III. ARGUMENT**

15 **A. MR. COTTON’S ILLEGALITY ARGUMENTS FAIL**

16 **1. Mr. Cotton Has Waived and Abandoned the “Illegality” Argument**

17 Mr. Cotton failed to raise “illegality” as an affirmative defense in his Answer to Plaintiff’s
 18 Complaint (ROA#17). Normally, affirmative defenses not raised in the answer to complaint or cross-
 19 complaint are waived. (E.g., *Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758,
 20 813.) As stated above, Mr. Cotton did not plead “illegality” as an affirmative defense; therefore, Mr.
 21 Cotton cites *Lewis Queen v. N.M. Ball Sons* (1957) 48 Cal.2d 141, 146-148), for the proposition that
 22 illegality can be raised “at any time.” That is a correct statement of the law, however, that rule is not
 23 unqualified. Two California Supreme Court cases decided after *Lewis & Queen – Fomco, Inc. v. Joe*
 24 *Maggio, Inc.* (1961) 55 Cal.2d 162, and *Apra v. Aureguy* (1961) 55 Cal.2d 827 – both rejected post-

25
 26 ⁶ Mr. Cotton did not set forth any failure by the court as to a finding on some material issue. Mr. Cotton also did not
 27 establish findings that are irreconcilable. Mr. Cotton further did not establish that the evidence is insufficient in law and
 28 without conflict on any material point. Other challenges as to the application of law in this case would be governed
 by C.C.P. § 657(7) not cited in Mr. Cotton’s Notice of Intention to Move for New Trial and, therefore, are not reviewable
 herein. For these reasons alone, Mr. Cotton’s arguments for a new trial should be rejected by this Court.

1 trial defenses of illegal contract because the illegality defense had not been raised in the trial court.
2 (See *Fomco*, *supra*, 55 Cal.2d at p. 166; 55 Cal.2d at p. 831.) In fact, language in *Fomco* suggests that
3 the high court actually rejected *Lewis & Queen's* dicta that the issue of illegal contract could be raised
4 for the first time on appeal. (See *Chodosh v. Palm Beach Park Association* 2018 WL 6599824)

5 At trial the “illegality” issue appears to have first come up in response to questions being posed
6 by Attorney Austin in his examination of witnesses. Attorney Weinstein argued Attorney Austin was
7 asking questions of witnesses which implied it was illegal for Mr. Geraci to operate a legally permitted
8 dispensary. Attorney Weinstein pointed out, and the Court agreed, that the two civil judgments on
9 their face did not bar Mr. Geraci from operating a legally permitted dispensary. (RT, July 9, 2019, p.
10 120:20-121:24, Ex. 5 to Plaintiff NOL) Attorney Weinstein went on to argue that Business &
11 Professions Code Section 26057 was *permissive* and not mandatory and that it dealt with state
12 licenses, not a City CUP. The Court was troubled by the fact that Attorney Austin had not filed a trial
13 brief addressing this issue, nor had Attorney Austin filed any memorandum of points and authorities
14 on the issue. The Court concluded: “So for the time being, I’m tending to agree with the plaintiff’s
15 side without the defense having given me something I can look at and absorb.” (RT, July 9, 2019, p.
16 120:20-123:6, Ex. 5 to Plaintiff NOL)

17 Later that day, Attorney Austin called Joe Hurtado to the stand. Joe Hurtado had a vested
18 interest in the case as he was financing Mr. Cotton’s litigation expenses and attorneys’ fees. (RT July
19 9, 2019, p. 150:13-18, Ex. 5 to Plaintiff NOL) Attorney Austin improperly attempted to elicit expert
20 testimony from Joe Hurtado, that it was his opinion that Mr. Geraci did not qualify for a CUP under
21 the Business & Professions Code. (RT, July 9, 2019, 151:22-28, Ex. 5 to Plaintiff NOL) During
22 Attorney Austin’s examination of Mr. Hurtado, the Court initiated a side-bar at which Mr. Hurtado’s
23 proposed testimony was discussed. The Court permitted Mr. Hurtado to testify to hearsay
24 conversations with Gina Austin and hearsay conversations with anyone else on Mr. Geraci’s team. At
25 the conclusion of Mr. Hurtado’s testimony, and after excusing the jury, the Court permitted the parties
26 to make a record of that side bar. (RT, July 9, 2019, p. 155:8-158:18, Ex. 5 to Plaintiff NOL) The
27 Court expressed to Attorney Austin that to the extent Mr. Hurtado wanted to express legal opinions, he
28 was not going to permit such testimony. In response, Attorney Austin admitted that “perhaps Mr.

1 Hurtado should have been designated as an expert...”. (RT, July 9, 2019, p. 157:13-15, Ex. 5 to
2 Plaintiff NOL) Mr. Hurtado was not designated as an expert witness and his opinion testimony was
3 properly excluded.

4 The “illegality” issue was again raised on July 10, 2019, when Attorney Austin offered Trial
5 Exhibit 281 into evidence, which was a copy of Business & Professions Code § 26051; and requested
6 the Court take judicial notice of the two lawsuits in which Mr. Geraci was a named party. The Court
7 sustained Attorney Weinstein’s objections to Business & Professions Code § 26051 being admitted
8 into evidence. As to the request for judicial notice of the two prior cases against Mr. Geraci, Attorney
9 Weinstein raised an Evidence Code § 352 objection.

10 The Court stated:

11 Putting aside whether the probative value is substantially outweighed by undue prejudice
12 or any other of the 352 factors including but not limited to cumulateness, as I read these
13 judgments, Mr. Geraci is not barred from trying to obtain whatever permission he would
14 need or anybody would need from operating a marijuana dispensary. And I thought that
15 was your theory at one point.

16 And if that were your theory, I’m not seeing anything, well, inside the four corners of
17 these judgments that prohibit Mr. Geraci from, for example, doing the deal that he had
18 proposed to do with Mr. Cotton.

19 Attorney Austin replied to the Court: “I think there was a change in the law, which would –
20 would change that. *But I’m willing to not argue the matter if your Honor is inclined not to include*
21 *it. We can just – forget about it.”* The Court then sustained the objections and declined to take
22 judicial notice of Mr. Geraci’s two prior judgments. (RT, July 10, 2019, p. 69:15-72:26, Ex. 6 to
23 Plaintiff NOL) [trial court could properly deny a motion for new trial based on a waiver of the issue
24 during trial. (*Miller v. National American Life Ins. Co.* (1976) 54 Cal.App.3d 331, 346; *Horn v. Atchison,*
25 *T. & S.F.Ry. Co.*, (1964) 61 Cal.2d 602; *Sepulveda v. Ishimaru*, (1957) 149 Cal.App.2d 543, 547]

26 It is clear in the instant case, that Attorney Austin abandoned his “illegality” argument; i.e.,
27 Mr. Austin’s statement to the Court: “I think there was a change in the law, which would – would
28 change that. *But I’m willing to not argue the matter if your Honor is inclined not to include it. We*
can just – forget about it.” (RT, July 10, 2019, p. 72:10-13, Ex. 6 to Plaintiff NOL) Having waived
this issue during the trial, Mr. Cotton is precluded from urging it as a ground for granting a new trial.

1 **2. The Contract at Issue in This Case is Not Illegal.**

2 Even if the statutes Mr. Cotton relies upon were in effect on November 2, 2016 when the
3 contract was entered (which they were not) and there were no waiver of the “illegality” issue (which
4 there was), the November 2, 2016 agreement remains a legal contract.

5 The stipulated judgments on their face permit Mr. Geraci to apply for a CUP. In Case Number
6 37-2014-00020897-CU-MC-CTL, paragraph 8a enjoins Mr. Geraci from “Keeping, maintaining,
7 operating, or allowing the operation of an *unpermitted marijuana dispensary ...*”. (Italics, Bold
8 Added.) Paragraph 8(b) specifically sates “*Defendants shall not be barred in the future from any*
9 *legal and permitted use of the PROPERTY.*” (Italics, Bold Added.)

10 In Case Number 37-2015-00004430-CU-MC-CTL, Paragraph 7 prevents Defendant from
11 “Keeping, maintaining, operating or allowing any commercial, retail, collective, cooperative or group
12 establishment for the growth, storage, sale or distribution of marijuana, including, but not limited to,
13 any marijuana dispensary, collective or cooperative organized anywhere in the City of San Diego
14 *without first obtaining a Conditional Use Permit pursuant to the San Diego Municipal Code.*”
15 (Italics, bold added)

16 It was this language in the two stipulated judgments that led this Court to state: “I’m not
17 seeing anything, well, inside the four corners of these judgments that prohibit Mr. Geraci from, for
18 example, doing the deal that he had proposed to do with Mr. Cotton.” To which, Attorney Austin
19 stated “*We can just – forget about it.*” (RT, July 10, 2019, p. 69:8-15, Ex. 6 to Plaintiff NOL)

20 **3. The B&P Code Does Not Bar Mr. Geraci From Applying for a CUP**

21 Setting aside waiver and the fact that the two stipulated judgments, on their face, permit Mr.
22 Geraci to obtain a CUP, there is no mandatory provision in the Business & Professions Code which
23 would bar Mr. Geraci from lawfully obtaining a CUP.

24 Section 26057(b)(7) of the California Business & Professions Code provides that “[t]he
25 licensing authority *may* deny the application for licensure or renewal of a **state license** if ... [t]he
26 applicant, or any of its officers, directors or owners, has been sanctioned by a licensing authority or a
27 city, county, or city and county for unauthorized commercial cannabis activities, has had a license
28 suspended or revoked under this division in the three years immediately preceding the date the

1 application is filed with the licensing authority.” (Cal. Bus. & Prof. Code § 26057(b)(7) [*emphasis*
 2 *added*].) Section 26057 is part of a larger division known as the Medicinal and Adult-Use Cannabis
 3 Regulation and Safety Act, which has the purpose and intent to “control and regulate the cultivation,
 4 distribution, transport, storage, manufacturing, processing, and sale” of commercial medicinal and
 5 adult-use cannabis. (Cal. Bus. & Prof. Code § 26000.) Under this division, a “license” refers to a
 6 “state license issued under this division, and includes both an A-license and an M-license, as well as a
 7 laboratory testing license.” (Cal. Bus. & Prof. Code § 26001(y).)

8 In this case, the CUP is not a state license. Even if this statute were to apply to a CUP, the
 9 permissive nature of the authority would not *require* the denial of a CUP license because it is up to the
 10 discretion of the licensing authority to make such a decision based on the conditions provided in
 11 section 26057(b). (Cal. Bus. & Prof. Code § 26057(b).) In addition, attorney Gina Austin testified at
 12 trial the statute would not prevent Mr. Geraci from obtaining a CUP. (RT, July 8, 2019, p. 55:12-
 13 57:21, Ex. 4 to Plaintiff NOL)

14 **4. It Is Common Practice For CUP Applicants To Use Agents During The**
 15 **Application Process.**

16 Mr. Cotton argues that Mr. Geraci did not disclose his interest on the Ownership Disclosure
 17 Statement and that therefore Mr. Geraci is asking this Court to assist him in violating local laws, which
 18 the Court is prohibited from doing. (Cotton P’s & A’s, p. 12:16-23)

19 Rebecca Berry, the CUP applicant, signed the CUP forms as Mr. Geraci’s agent. This was
 20 disclosed to Mr. Cotton from the outset. Prior to Mr. Cotton signing the Ownership Disclosure
 21 Statement he knew that Ms. Berry was going to be acting as Mr. Geraci’s agent for purposes of the
 22 CUP. (RT, July 8, 2019, p. 99:15-19, Ex. 4 to Plaintiff NOL; and Trial Exhibit 30, Ex. 8 to Plaintiff
 23 NOL) In fact it was Mr. Cotton’s belief that Ms. Berry had to sign the Ownership Disclosure
 24 Statement as a Tenant Lessee. (RT, July 8, 2019, pp. 101:26-102:7, Ex. 4 to Plaintiff NOL; and Trial
 25 Exhibit 30, Ex. 8 to Plaintiff NOL)

26 Abhay Schweitzer testified that there is no problem with that (Ms. Berry signing as an agent
 27 for Mr. Geraci) because, from the City’s perspective, the City is only interested in having someone
 28 make the representation that they are the responsible party for paying for the permitting process. (RT,

1 July 8, 2019, p. 31:22-33:13, Ex. 4 to Plaintiff NOL) And as to the Ownership Disclosure statement,
2 the City's Form is limited, only permitting three choices, none of which fit the circumstances in this
3 case; thus attorney Gina Austin testified that there was no problem from her perspective with Ms.
4 Berry checking tenant/lessee. (RT, July 8, 2019, p. 33:14-35:11, Ex. 4 to Plaintiff NOL)
5 Mr. Schweitzer testified that it is not unusual for an agent to be listed as the owner on the form. (RT,
6 July 9, 2019, p. 60:20-27, Ex. 5 to Plaintiff NOL)

7 During Mr. Austin's cross-examination of Firouzeh Tirandazi, a City Project Manager III (the
8 highest classification of Project Managers at the City of San Diego), he tried to get her to testify that
9 "anyone with an ownership or financial interest in a marijuana outlet is supposed to be disclosed to the
10 City." Ms. Tirandazi testified that they (the City) are only looking for the property owner and the
11 tenant/lessee. (RT, July 9, 2019, p. 112:23-28; Ex. 5 to Plaintiff NOL) Ms. Tirandazi was unfamiliar
12 with the California Business & Professions Code vis-à-vis the CUP application process. (RT, July 9,
13 2019, p. 113:1-5, Ex. 5 to Plaintiff NOL)

14 **B. MR. COTTON'S ARGUMENT THAT THE VERDICT IS AGAINST THE LAW**
15 **BECAUSE THE JURY DISREGARDED THE JURY INSTRUCTIONS FAILS.**

16 Mr. Cotton contends the verdict is contrary to law because, he argues, the jury disregarded the
17 jury instructions and applied an objective standard to Mr. Cotton's conduct and a subjective standard
18 to Mr. Geraci's conduct as related to the November 2, 2016 Agreement, the "confirmation email" and
19 the "disavowment" allegation. To the contrary, there is no legal basis to conclude that the jury
20 disregarded the jury instructions and applied an objective standard to Mr. Cotton and a subjective
21 standard to Mr. Geraci's conduct. That is simply Mr. Cotton's interpretation of the facts and evidence
22 which he would like to substitute for the jury's unanimous verdict.

23 If the jury has been instructed correctly and returns a verdict contrary to those instructions, the
24 verdict is "against law." (See *Manufacturers' Finance Corp. v. Pacific Wholesale Radio* (1933) 130
25 Cal.App.239, 243.) A new trial motion based on the "against law" ground permits the moving party to
26 raise new legal theories for the first time; i.e., the trial judge gets a second chance to reexamine the
27 judgment for errors of law. (*Hoffman-Haag v. Transamerica Ins. Co.* (1991) 1 Cal.App.4th 10, 15.)

28 Mr. Cotton asks this Court to accept *his* interpretation of the evidence; disregard the jury's

1 evaluation and interpretation of the evidence; and grant him a new trial based upon *his* theory of what
2 the evidence shows. Specifically, Mr. Cotton urges that there was no disputed evidence relating to the
3 parties' objective manifestations regarding the contract formation. (Cotton P's&A's, p. 13:16-17.)
4 This is yet another iteration of Mr. Cotton's mantra in numerous motions throughout the litigation that
5 the "disavowment allegation" was case dispositive.

6 The unanimous verdict of a sophisticated jury militates strict adherence to the principle that
7 courts "credit jurors with intelligence and common sense and presume they generally understand and
8 follow instructions." (*People v. McKeinnon* (2011) 52 Cal.4th 610, 670 ["defendant manifestly fails to
9 show a reasonable likelihood the jury misinterpreted and misapplied the limiting instruction"].) The
10 Court's instructions to the jury, which, "absent some contrary indications in the record," must be
11 presumed heeded by the jury. (*Cassim v. Allstate Ins. Co.* (2004)33 Cal.4th 780 at 803.)

12 The Court gave CACI Nos. 302 – Contract Formation Essential Factual Elements; 303 –
13 Breach of Contract – Essential Factual Elements; and a host of other instructions regarding contract
14 formation, interpretation and breach. Those instructions were correct statements of the applicable law.
15 Mr. Cotton's counsel did not object to any of those instructions. Mr. Cotton has not overcome the
16 presumption that the jury heeded the Court's instructions. He fails to show a reasonable likelihood the
17 jury misinterpreted and misapplied the jury instructions related to contract formation.

18 In support of his argument, Mr. Cotton argues that Mr. Geraci had draft "final" agreements
19 prepared and circulated by Attorney Gina Austin, and therefore, the argument goes, the November 2,
20 2016 Agreement could not have been the final agreement between the parties. This argument simply
21 ignores the testimony of Larry Geraci that he felt he was being extorted by Mr. Cotton and did not
22 want to lose all of the money he had invested in the project and therefore he instructed his attorney,
23 Gina Austin to draft some agreements, attempting to negotiate some terms that Mr. Cotton might be
24 happy with. Those draft agreements were prepared by Gina Austin's office and forwarded to Mr.
25 Cotton. (Trial Exhibit 59, 62, Ex. 7 to Plaintiff NOL; RT July 3, 2019, 129:22-133:27, Ex. 4 to NOL)
26 Mr. Cotton refused to accept those terms and no new agreement was reached. Mr. Geraci became fed-
27 up and filed the instant lawsuit to protect his investment based on the November 2, 2016 written
28 agreement the parties had entered into.

1 Mr. Cotton sets forth a number of factors which he claims support his interpretation of the
2 evidence that the November 2, 2016 agreement was not the final agreement of the parties. (Cotton Ps
3 &As, p. 13:16-25.) However, Mr. Cotton fails to acknowledge that each of the alleged factors he
4 claims support his argument, are equally supportive of Mr. Geraci's and Attorney Gina Austin's
5 testimony that Mr. Geraci felt he was being extorted by Mr. Cotton and requested Gina Austin to
6 please draft new contracts so he would not lose his investment. (RT July 8, 2019, p. 41:10-26, Ex. 4 to
7 Plaintiff NOL.) Consistent with their testimony, the November 2, 2016, written agreement was neither
8 amended nor superseded by a new agreement.

9 **C. MR. COTTON'S ARGUMENT THAT HE WAS DENIED A FAIR TRIAL AS**
10 **THE RESULT OF ERRORS RELATING TO THE USE OF THE ATTORNEY-**
11 **CLIENT PRIVILEGE DURING DISCOVERY AND AT TRIAL ALSO FAILS.**

12 Mr. Cotton contends that Mr. Geraci used the attorney-client privilege as a shield during
13 discovery and as a sword during trial, which prevented Mr. Cotton from receiving a fair and impartial
14 trial. This is a C.C.P. § 657(7) issue regarding evidentiary rulings, a ground *not* set forth in Mr.
15 Cotton's Notice of Intent to Move for New Trial. (See *Treber v. Sup. Ct* (1968) 68 Ca.2d 128, 131;
16 *Hernandez v. County of Los Angeles* (2014) 226 Cal.App.4th 1599, 1601-1605.) (Practice Guide: Civil
17 Trials and Evidence, Post Trial Motions, (The Rutter Group 2010) ¶ 18:201.)

18 Preliminarily, under C.C.P. § 657(1), evidentiary rulings by which relevant evidence was
19 erroneously excluded (or conversely, irrelevant evidence erroneously admitted) may be grounds for a
20 new trial if prejudicial to the moving party's right to a fair trial. [Civil Trials and Evidence, Post Trial
21 Motions, The Rutter Group 18:134.1] A motion for new trial on this ground *must* be made on
22 affidavits. Mr. Cotton has failed to file any affidavits in support of his motion for new trial

23 Alternatively, erroneous evidentiary rulings (admitting or excluding evidence may be
24 challenged under C.C.P. §657(7) as an "Error in law, occurring at the trial and excepted to by the party
25 making the application." Mr. Cotton has *not* moved for a new trial based on either C.C.P. § 657(1) or
26 C.C.P. §657(7). Instead, in his Notice of Intent to Move for New Trial (p. 2:8-11), Mr. Cotton has
27 sought a new trial on the sole ground that the verdict is "against law" pursuant to C.C.P. § 657(6). A
28 notice of intention to move for a new trial is deemed to be a motion for new trial *on the grounds stated*

1 *in the notice.* (C.C.P. §659.) Mr. Cotton cannot assert grounds for new trial not stated in the Notice.

2 As to the merits of the argument, Mr. Cotton has misrepresented the facts, circumstances and
3 the Minute Order issued by the Court in connection with the attorney-client privilege issues during
4 discovery and the waiver of those issues at trial.

5 Mr. Cotton claims there was a Court order prohibiting testimony on matters that Plaintiff
6 asserted attorney-client privilege. (Mr. Cotton's P's & A's, p. 14:26-28) In support of this contention,
7 Mr. Cotton Cites to the Court's Minute Order dated February 8, 2019 (ROA#455 at p. 3.) This
8 misrepresents what that Court Order states. It actually states:

9 Plaintiff's objections on the basis of privilege to REQUEST FOR PRODUCTION NO.
10 29 are SUSTAINED; however, the scope of the request appears to seek relevant
11 documents. Given Plaintiff's election to assert the privilege and/or doctrine in discovery,
12 the Court will *HEAR* on the scope of the testimony Plaintiff will be not be permitted to
13 provide at trial on the subject of the DISAVOWMANET ALLEGATION."

14 Clearly, the Court said it would hear and determine the scope of the testimony allowed; it did
15 not prohibit testimony as alleged by Mr. Cotton. Thereafter, Mr. Cotton's attorney drafted the Notice
16 of Ruling which only prevents Rebecca Berry from testifying on the matter of the disavowment
17 allegation. It does not bar any other witness from so testifying. (ROA# 455, p. 2.)

18 In addition, Mr. Cotton asserts that Mr. Geraci used the attorney-client privilege as a shield and
19 a sword, thereby violating Mr. Cotton's right to a fair and impartial trial. This argument fails on many
20 levels, and has otherwise been waived by Mr. Cotton's failure to object to either the documentary
21 evidence or the testimonial evidence.⁷ In fact, Mr. Cotton's attorney conducted substantial
22 examination of witnesses on these very topics.

23 Mr. Cotton has waived this argument for the following reasons:

24 1. He never took the depositions of Mr. Geraci or Gina Austin for ascertain this
25 information from them;

26 2. In response to Mr. Cotton's requests for the production of all documents relating to the
27 purchase of the property drafted or revised by Gina Austin [RFPs Nos. 18, 19], Mr. Geraci objected on
28 the grounds of attorney-client privilege; however, in response to RFP 19, he added that "*Responding*

⁷ "Failure to object to the reception of a matter into evidence constitutes an admission that it is competent evidence." (People v. Close (1957) 154 Cal.App.2d 545, 552; People v. Wheeler (1992) Cal.4th 284, 300.)

1 *Party has produced previously all responsive documents drafted by Ms. Austin or persons employed*
2 *in her law firm.”*

3 3. Indeed, all such responsive documents had been produced and were marked as Trial
4 Exhibits 59 and 62 which were admitted at trial with Mr. Cotton’s Attorney’s representations that he
5 had no objections to the admission of the documents. (RT July, 3, 2019, pp. 130:18-26; 132:2-7, Ex. 3
6 to Plaintiff NOL.) Mr. Cotton testified that he received Exhibit 59 on February 27, 2017, and Exhibit
7 62 on March 2, 2017. (RT July 8, 2019, pp. 137:1-138:6, Ex. 4 to Plaintiff NOL.) In fact Mr. Cotton
8 responded to Mr. Geraci regarding those documents. (RT July 8, 2019, pp. 138:2-141:4, Ex. 4 to
9 Plaintiff NOL; and Trial Exhibits 63 and 70, Ex. 9 to Plaintiff NOL)

10 4. Larry Geraci testified regarding these exhibits and the surrounding circumstances. Mr.
11 Cotton’s attorney noted he had no objection to the admission of those exhibits (RT July 3, 2019, pp.
12 130:18-26; 132:2-7, Ex. 3 to Plaintiff NOL) and he did not object to the testimony.

13 5. Attorney Gina Austin testified regarding these exhibits and the surrounding
14 circumstances and Mr. Cotton’s attorney made no objections. (RT July 8, 2019, p. 41:10-26, Ex. 4 to
15 Plaintiff NOL)

16 6. Mr. Cotton’s attorney cross-examined Gina Austin regarding the draft agreements
17 drafted by Ms. Austin’s office. (RT July 8, 2019, p. 58:3-60:10, Ex. 4 to Plaintiff NOL)

18 Having failed to make any objections whatsoever to any of the documentary and testimonial
19 evidence of which he now complains, Mr. Cotton has waived any argument that the material should
20 not have been admitted.

21 Mr. Cotton cites *A&M Records, Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 556 for the
22 proposition that a litigant cannot claim privilege during discovery and then testify at trial. The *A&M*
23 *Records* case is clearly distinguishable from the case at bar. In that case, a defendant accused of
24 distributing pirated records failed to produce at his deposition documents requested by the plaintiff
25 “and also refused to answer any questions of substance on the constitutional ground (5th Amendment)
26 that his answers might tend to incriminate him.” (*A&M Records, supra*, 75 Cal.App.3d at p. 654.) The
27 trial court ordered the defendant to turn over the requested documents by a specified date before trial,
28 or the defendant would be barred from introducing them at trial, and the court also precluded the

1 defendant “from testifying at trial respecting matters [and] questions ... he refused to answer at his
2 deposition[.]” (*Id.* at p. 655.) The order limit[ed] the scope of [the defendant]’s testimony only, and
3 not that of any other witness” at his company. (*Ibid.*)

4 First and foremost, this case does not involve a situation where a party claims the 5th
5 Amendment privilege against self-incrimination and then waives it at trial, so the *A & M Records* case
6 has no application to the case at bar. The Court held that a litigant cannot assert his constitutional
7 privilege against self-incrimination in discovery and then waive the privilege and testify at trial. (*Ibid.*)
8 By analogy, and without citation, Mr. Cotton seeks to extend this reasoning to the attorney-client
9 privilege being asserted during discovery and then waived at trial. This argument is inapplicable to
10 this case where the attorney-client documents were produced to Mr. Cotton; were responded to by Mr.
11 Cotton; were offered and admitted at trial with no objection by Mr. Cotton; the witnesses (Larry
12 Geraci and Gina Austin) testified without any objection being made; and where Mr. Cotton’s own
13 attorney conducted extensive examination of that witness with regard to the relevant communications
14 between Ms. Austin and her client, Mr. Geraci. And Mr. Cotton himself was examined regarding
15 these exhibits.

16 **IV. CONCLUSION**

17 This Court ensured that Mr. Cotton received a fair trial from a fair and impartial jury. The jury
18 paid careful attention, sifted through the evidence, and carefully came to an appropriate verdict. For
19 the above-stated reasons, the Court should deny Mr. Cotton’s motion for a new trial. “There must be
20 some point where litigation in the lower courts terminates” because otherwise “the proceedings after
21 judgment would be interminable”. (*Coombs v. Hibberd* (1872) 43 Cal. 452, 453.) It is time to end this
22 litigation in the trial court and respect the jury’s judgment.

23 FERRIS & BRITTON
24 A Professional Corporation

25 Dated: September 23, 2019

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

EXHIBIT 18

3724942

FILED *qu*
Secretary of State
State of California *JM*

1cc NOV 04 2014

**Articles of Incorporation
of
A-M Industries, Inc.**

The undersigned, being over the age of eighteen years, in order to form a corporation pursuant to the provision of the California Corporation Code, hereby certifies as follows:

I

The name of the corporation, hereinafter referred to as the "Corporation," is A-M Industries, Inc.

II

This corporation is a nonprofit **Mutual Benefit Corporation** organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law. The specific purpose of this corporation is limited to providing a means for facilitating and coordinating transactions amongst members. The corporation cannot purchase from or sell to non-members.

III

The name and address of the initial agent for service of process:

Aaron Magagna
3639 Midway Dr., Ste. B-132
San Diego, CA 92110

IV

The initial street address and mailing address of the corporation is 3639 Midway Dr. Ste. B-132 San Diego, CA 92110.

V

Notwithstanding any of the above statements of purposes and power, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purposes of this corporation.



Matthew Shapiro, Incorporator



**State of California
Secretary of State**

N

Statement of Information

(Domestic Nonprofit, Credit Union and Consumer Cooperative Corporations)

Filing Fee: \$20.00. If this is an amendment, see instructions.
IMPORTANT – READ INSTRUCTIONS BEFORE COMPLETING THIS FORM

F274180

FILED

In the office of the Secretary of State
of the State of California

DEC-02 2014

1. CORPORATE NAME

A-M INDUSTRIES, INC.

2. CALIFORNIA CORPORATE NUMBER

C3724942

This Space for Filing Use Only

Complete Principal Office Address (Do not abbreviate the name of the city. Item 3 cannot be a P.O. Box.)

3. STREET ADDRESS OF PRINCIPAL OFFICE IN CALIFORNIA, IF ANY	CITY	STATE	ZIP CODE
3639 MIDWAY DR STE B-132, SAN DIEGO, CA 92110			

4. MAILING ADDRESS OF THE CORPORATION	CITY	STATE	ZIP CODE
AARON MAGAGNA 3639 MIDWAY DR STE B-132, SAN DIEGO, CA 92110			

Names and Complete Addresses of the Following Officers (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)

5. CHIEF EXECUTIVE OFFICER/	ADDRESS	CITY	STATE	ZIP CODE
AARON MAGAGNA	3639 MIDWAY DR STE B-132, SAN DIEGO, CA 92110			

6. SECRETARY	ADDRESS	CITY	STATE	ZIP CODE
AARON MAGAGNA	3639 MIDWAY DR STE B-132, SAN DIEGO, CA 92110			

7. CHIEF FINANCIAL OFFICER/	ADDRESS	CITY	STATE	ZIP CODE
AARON MAGAGNA	3639 MIDWAY DR STE B-132, SAN DIEGO, CA 92110			

Agent for Service of Process If the agent is an individual, the agent must reside in California and Item 9 must be completed with a California street address, a P.O. Box address is not acceptable. If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 9 must be left blank.

8. NAME OF AGENT FOR SERVICE OF PROCESS (Note: The person designated as the corporation's agent MUST have agreed to act in that capacity prior to the designation.)
AARON MAGAGNA

9. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL	CITY	STATE	ZIP CODE
3639 MIDWAY DR STE B-132, SAN DIEGO, CA 92110			

Common Interest Developments

10. Check here if the corporation is an association formed to manage a common interest development under the Davis-Stirling Common Interest Development Act, (California Civil Code section 4000, et seq.) or under the Commercial and Industrial Common Interest Development Act, (California Civil Code section 6500, et seq.). The corporation must file a Statement by Common Interest Development Association (Form SI-CID) as required by California Civil Code sections 5405(a) and 6760(a). Please see instructions on the reverse side of this form.

11. THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT.

12/02/2014	MATTHEW WILLIAM SHAPIRO	ATTORNEY	
DATE	TYPE/PRINT NAME OF PERSON COMPLETING FORM	TITLE	SIGNATURE

EXHIBIT 19

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Jacob P. Austin [SBN 290303]
The Law Office of Jacob Austin
1455 Frazee Road, #500
San Diego, CA 92118
Telephone: (619) 357-6850
Facsimile: (888) 357-8501
E-mail: JPA@JacobAustinEsq.com

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
06/13/2018 at 03:49:00 PM
Clerk of the Superior Court
By Lee McAlister, Deputy Clerk

Attorney for Defendant/Cross-Complainant DARRYL COTTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

LARRY GERACI, an individual,
Plaintiff,
vs.
DARRYL COTTON, an individual; and
DOES 1 through 10, inclusive,
Defendants.

Case No. 37-2017-00010073-CU-BC-CTL
**DECLARATION OF JOE HURTADO IN
SUPPORT OF *EX PARTE* APPLICATION FOR
ORDERS APPOINTING A RECEIVER TO
MANAGE THE CONDITIONAL USE PERMIT
FOR DEFENDANT'S REAL PROPERTY; AND
OTHER RELIEF**

Date: June 14, 2018
Time: 8:30 a.m.
Dept: C-73
Judge: The Hon. Joel R. Wohlfeil

AND RELATED CROSS-ACTION.

I, Joe Hurtado, declare as follows:

1. I am an individual over the age of 18 years, residing in the County of San Diego, and not a party to this action.
2. The facts contained in this declaration are true and correct of my own personal knowledge, except those facts which are stated upon information and belief; and, as to those facts, I believe them to be true. If called upon to do so, I could and would competently testify as to the truth of the facts stated herein.

1 3. I graduated from New York University School of Law in 2009.

2 4. Upon graduation, I clerked in the United States District Court in the Northern District of
3 California for a year.

4 5. Upon completion of my clerkship, I joined the Mergers & Acquisitions group at Latham
5 & Watkins in New York City as an Associate.

6 6. In 2013, I left the practice of law and joined the Corporate Strategy & Development
7 department at UnitedHealth Group in Minneapolis as a Manager.

8 7. I left UnitedHealth Group in August of 2015, relocated to San Diego and enrolled in the
9 Master of Science in Real Estate (MSRE) degree program at the University of San Diego. In my studies
10 in the MSRE program, we discussed the effect that the legalization of medical cannabis was having on
11 real property values in California.

12 8. Between late-2016 and early-2017, the following sequence of events took place:
13 (i) Mr. Darryl Cotton informed me that he had entered into a conditional agreement for the sale of his
14 real property located at 6176 Federal Boulevard, San Diego, California (the "Property") to
15 Mr. Lawrence Geraci; (ii) Mr. Cotton told me that he expected Mr. Geraci would breach their
16 agreement; (iii) Mr. Cotton asked that I help him to locate a new buyer for his Property; (iv) I confirmed
17 with Mr. Geraci's attorney, Mrs. Gina Austin, that she was in the process of reducing to writing the
18 agreement between Mr. Geraci and Mr. Cotton for the sale of the Property; (v) I entered into a contingent
19 agreement with Mr. Richard Martin to facilitate his purchase of Mr. Cotton's Property in the event the
20 transaction between Mr. Cotton and Mr. Geraci did not close as contemplated; and (vi) I brokered a deal
21 between Mr. Cotton and Mr. Martin for the sale of Mr. Cotton's Property to Mr. Martin.

22 9. The day after the deal between Mr. Cotton and Mr. Martin had been reached on
23 March 21, 2017, I was informed by Mr. Cotton that Mr. Geraci had served him with a lawsuit alleging
24 a document executed in November of 2016 was the final written agreement for Mr. Cotton's Property
25 (the "Geraci Litigation").

26 10. Throughout the course of the Geraci Litigation, the following sequence of events took
27 place: (i) Mr. Cotton attempted to represent himself *pro se* in the Geraci Litigation; (ii) Mr. Cotton chose
28 to no longer represent himself in the Geraci Litigation and asked that I help him finance and facilitate

1 his legal representation; (iii) I identified Attorney David S. Demian of Finch, Thornton & Baird for
2 Mr. Cotton to interview to represent him in his legal matters; (iv) Attorney Demian undertook the
3 representation of Mr. Cotton in various legal matters related to Mr. Cotton's Property; (v) Attorney
4 Demian's representation of Mr. Cotton was terminated after I informed Mr. Cotton that Attorney
5 Demian had failed to raise material evidence at a Court hearing at which I was present on December 7,
6 2017; and (vi) I facilitated Mr. Cotton's legal representation by Attorney Jacob Austin after Mr. Cotton's
7 relationship with Attorney Demian was terminated.

8 11. On March 6, 2017, I attended a local event in San Diego for the kick-off of a new business
9 center at which Mrs. Austin was the keynote speaker. Mr. Cotton had planned to attend the event to
10 speak with Mrs. Austin regarding comments to the written agreements for the purchase of his Property
11 by Mr. Geraci. However, Mr. Cotton could not make it and asked that I communicate so to Mrs. Austin.

12 12. At that point in time, after speaking with Mr. Cotton, I decided to attend the event
13 because I was doubtful that Mr. Geraci would fail to live up to his end of the bargain. The deal Mr.
14 Geraci had reached with Mr. Cotton was very favorable to him given the competition in San Diego for
15 properties that qualified for CUPs with the City for cannabis related businesses.

16 13. My primary goal in attending the event was to speak with Ms. Austin to convey
17 Mr. Cotton's message that he would not be attending and to personally confirm with Ms. Austin that a
18 final agreement for the sale of Mr. Cotton's Property to Mr. Geraci had not been executed.

19 14. My conversation with Mrs. Austin was short, clear, direct, unambiguous and with no
20 possibility for misinterpretation. Mrs. Austin acknowledged that she was working on the drafts for
21 Mr. Geraci's purchase of Mr. Cotton's Property and that no final agreement had yet been executed.

22 15. I have reviewed some of Mrs. Austin's submissions to the Court on behalf of Mr. Geraci
23 arguing that Mr. Cotton and Mr. Geraci entered into a final agreement for the Property in November of
24 2016. It is my belief that Mr. Geraci is falsely representing that document as the final agreement for the
25 Property and that Mrs. Austin knows this is a false representation.

26 16. In January of 2018 I provided a supporting declaration for Mr. Cotton in which I noted I
27 spoke with Ms. Austin at the event in March of 2017. This statement by itself is inconsequential to the
28 Geraci Litigation. I had hoped, since prior to then I had not provided a declaration or been involved in

1 the litigation, that my declaration would let her know I was aware of her contradictory statements to the
2 Court. And, consequently, she would inform Mr. Geraci about our conversation in March of 2017 which
3 would lead to a material positive effect on the Geraci Litigation for Mr. Cotton (without me personally
4 having to become involved).

5 17. I do not understand how Mrs. Austin can ethically reconcile her representations in March
6 of 2017 and her arguments to the Court alleging facts that contradict her statements to me. Mr. Austin,
7 counsel for Mr. Cotton, and I have spoken about the conversation I had with Ms. Austin in March of
8 2017 and information, such as the Metadata Evidence (as defined in Mr. Cotton’s submissions to the
9 Court), that reflect that Mrs. Austin is making false representations to the Court. Mr. Austin forwarded
10 me an email from Mr. Weinstein in which Mr. Weinstein defends Ms. Austin by stating the following:

11 Ms. Austin has made no misrepresentations to the court. No declaration signed under penalty
12 of perjury by Gina Austin has been submitted as evidence to the Court in any proceeding in
13 any of the two cases. She has appeared as counsel in the Writ of Mandate case and argued
with me in opposition to Mr. Cotton’s first ex parte application for issuance of a writ of
mandate heard by Judge Sturgeon. That is it – legal argument.

14 Therefore, based on this email from Mr. Weinstein, it appears to me that Mr. Weinstein and Mrs. Austin
15 believe they can make *legal arguments* to the Court that contain factual statements that they know to be
16 false and not be in violation of any rules or codes of ethical conduct for attorneys. I believe this to be
17 incorrect.

18 18. I have not previously provided my detailed testimony for the following reasons: (i) my
19 professional and personal networks are conservative in nature and I did not want there to be a public
20 record of my involvement in a cannabis related real estate transaction; (ii) I believed that the evidence
21 presented by Mr. Cotton, especially the Confirmation Email and communications sent by Mr. Geraci to
22 Mr. Cotton, is more than sufficient to prove his case and that my testimony would be unnecessary;
23 (iii) Mr. Cotton is an intelligent, strong-willed and politically passionate individual; however, I did not
24 want to be publicly associated with him because of his history related to his political activism for medical
25 cannabis; (iv) the Court’s orders in this action have repeatedly stated that Mr. Cotton is unlikely to
26 prevail in this litigation and I have finite capital to allocate toward financing his legal defense
27 (irrespective of the merits of his case); (v) on January 17, 2018, I was threatened by an individual,
28 Mr. Shawn Miller, who told me that it would be in my “best interest” to use my influence with

1 Mr. Cotton to convince him to “settle with Geraci”; (v) Mr. Cotton has been the victim of an armed-
2 robbery at his Property, reported to the police, that he believes occurred at the direction of Mr. Geraci;
3 and (vi) Mr. Cotton, on a separate incident, showed me video of being accosted by an individual known
4 as Logan who told Mr. Cotton that he should settle with Mr. Geraci for his own good.

5 19. The language used by Logan sounds similar me to that used by Mr. Miller, leading me
6 to believe there is a reasonable possibility that these individuals were both sent by, or someone
7 connected to, Mr. Geraci.

8 20. I am now providing my testimony at the request of Mr. Austin because I believe his legal
9 arguments regarding the parol evidence rule are meritorious and that Mr. Cotton will prevail in this
10 action as a matter of law.

11 21. Additionally, I am providing my testimony because on May 27, 2018 I was present at a
12 meeting at which Ms. Corina Young described a meeting to Mr. Cotton and his attorney, Mr. Austin,
13 that she had with Mr. Jim Bartell on or around October of 2017. She met with Mr. Bartell upon her
14 attorney’s recommendation, Mr. Matthew Shapiro, when she informed him that she was contemplating
15 investing in Mr. Cotton’s litigation against Mr. Geraci. Mr. Bartell informed her that he “owns” the CUP
16 on Mr. Cotton’s Property and he would be getting it denied “because everyone hates Darryl.”

17 22. Ms. Young was attempting to defuse the situation between Mr. Cotton and a Mr. Aaron
18 Magagna who had submitted a competing CUP within 1,000 feet of Mr. Cotton’s Property and who
19 appears to have numerous connections to Mr. Geraci.

20 23. Subsequent to the May 27, 2018, Ms. Young and I had several conversations in which
21 she first attempted to argue on behalf of Mr. Magagna, until such time that Mr. Magagna attempted to
22 coerce Ms. Young into changing her testimony regarding the meeting with Mr. Bartell and he offered
23 her financial compensation for doing so. Attached hereto as **Exhibit A** are true and correct copies of my
24 text messages with Ms. Young on June 1, 2018. I am breaching her confidence by providing them, but
25 am doing so because I believe her testimony is required to prove Mr. Bartell’s statements and that Mr.
26 Shapiro and Mr. Magagna are closely connected to Mr. Bartell and Mrs. Austin, both of whom are agents
27 of Mr. Geraci.
28

1 24. Upon information and belief, according to a statement from a third-party, Mr. Magagna
2 is also currently represented by Mrs. Austin.

3 25. On June 4, 2018, Ms. Young hired independent counsel and stated she would not be
4 providing any statements until her attorney reviewed the Geraci Litigation. Subsequent to June 4, 2018,
5 Ms. Young communicated that she would neither confirm nor deny the statements in our text messages
6 and, if subpoenaed, upon the advice of counsel, she would be invoke her right under the 5th Amendment
7 to not self-incriminate herself.

8 26. Lastly, I wish to clearly state that I do *not* share, support or condone in any manner
9 Mr. Cotton's beliefs regarding the various conspiracies he has alleged in his public filings regarding the
10 Court, the City of San Diego or any of their respective employees.




11 I declare under penalty of perjury under the laws of the State of California that the foregoing is
12 true and correct, and that this declaration was executed on June 13, 2018.

13
14 /s/

15 JOE HURTADO
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EXHIBIT A

Corina Young
16196330228



Fri, 06/01/2018

Look, I don't know what to say because at the end of the day as discussed yiurr being put in a shitty situation and it benefits me. Anything i say is suspect. I'm sorry about Darryl and the situation. Talk to your attorney first about this before saying anything more to me or anyone. I just want you to know I can't NOT tell the truth. Jake has already sent emails and I have to provide my testimony to confirm what you said in front of him and darryl. And I'm sorry because although you told me about Aaron in confidence, under oath, I won't be able to lie about it. The whole situation has spiraled out of control.

10:17 AM



I have no words.

10:23 AM





I will be getting an attorney. You are all opportunistic assholes.



Enter message



← Corina Young 16196330228  



I will be getting an attorney. You are all opportunistic assholes.
10:31 AM



Matt, Cotton, Gina, Jacob... now you... it's so disgusting to disrupt and destroy people's lives. I'm fucking hiding from Cotton!!!
10:35 AM



Now things I told you in confidence... seriously? You know Jim is on my CUP.
10:37 AM



You know is jeopardizes my future and everything I have worked so hard for.
10:38 AM



I hate you
10:46 AM



And I never asked you to "not" tell the truth
10:49 AM



Enter message



← Corina Young 16196330228  



And I never asked you to "not" tell the truth
10:48 AM



I have not shared anything you have told me in confidence with Darryl. I don't trust him, he's literally been driven near insane because of this. But if this comes down to getting deposed and being on trial and I get asked about Aaron, which I will, I'm going to have to tell them what I know. Aaron pays Matt points for cannabis sold to unlicensed shops, he repeatedly told you that you were dreaming the Bartell meeting, he offered you money to somehow keep him out of this. Shapiro told



Enter message



1 **III. CONCLUSION**

2 For all the foregoing reasons, the Court should deny judicial notice, should deny reconsideration
3 of prior motions, and should deny partial adjudication of issues.

4
5 Dated: April 29, 2019

FERRIS & BRITTON,
A Professional Corporation

6
7 By: Michael R. Weinstein
8 Michael R. Weinstein
9 Scott H. Toothacre
10 Attorneys for Plaintiff/Cross-Defendant
11 LARRY GERACI and Cross-Defendant
12 REBECCA BERRY
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EXHIBIT 23

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

09/28/2017 at 11:02:00 AM

Clerk of the Superior Court
By Katelin O'Keefe, Deputy Clerk

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

7 Attorneys for Plaintiff and Cross-Defendant
LARRY GERACI

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

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

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

Judge: Hon. Joel Wohlfeil

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF CROSS-
DEFENDANT LARRY GERACI'S
DEMURRER TO SECOND AMENDED
CROSS-COMPLAINT BY DARRYL
COTTON**

[IMAGED FILE]

16 DARRYL COTTON, an individual,
17 Cross-Complainant,
18 v.
19 LARRY GERACI, an individual, REBECCA
20 BERRY, an individual, and DOES 1
THROUGH 10, INCLUSIVE,
21 Cross-Defendants.

DATE: November 3, 2017
TIME: 9:00 a.m.
DEPT: C-73

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

TABLE OF CONTENTS

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

	Page
I. RELIEF REQUESTED AND SUMMARY OF THE ARGUMENTS.....	6
II. FACTUAL ALLEGATIONS	6
III. LEGAL STANDARD ON DEMURRER.....	9
IV. LEGAL ARGUMENT.....	10
A. THE FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT FAILS TO STATE A CAUSE OF ACTION.....	10
1. Cotton’s Allegations of a Partly Oral and Partly Written Contract Violate the Applicable Statute of Frauds – Civ. Code § 1624(a)(3)	10
2. The First Cause of Action for Breach of Contract Fails as a Matter of Law as It Does Not Allege Actionable Breach.....	11
B. THE SECOND, THIRD AND FOURTH CAUSES OF ACTION FAIL TO STATE A CAUSE OF ACTION.....	13
1. Each of the misrepresentation claims, the 2nd, 3rd and 4th causes of action for intentional misrepresentation, negligent misrepresentation, and false promise, do not state a cause of action. Cotton has not alleged facts which, if true, are sufficient to establish the element of justifiable reliance.....	13
2. The Third Cause of Action for Negligent Misrepresentation Fails to State a Claim Upon Which Relief May Be Granted Because Intentional Fraud and Negligent Misrepresentation Base On the Same Facts Cannot Co- Exist	15
V. LEAVE TO AMEND	16
VI. CONCLUSION.....	17

TABLE OF AUTHORITIES

Page

Cases

1

2

3

4 *Adelman v. Associated Ins. Co.*

5 (2001) 90 Cal.App.4th 3529

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11 (2011) 196 Cal.App.4th 144313

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13 (1985) 39 Cal.3d 3119, 16

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17 (2014) 224 Cal.App.4th 146213

18 *Carney v. Simmonds*

19 (1957) 49 Cal.2d 849, 16

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25 (1995) 31 Cal.App.4th 11379, 16

26 *Groves v. Peterson*

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(1947) 81 Cal.App.2d 1749, 16

Jacobs v. Locatelli

(2017) 8 Cal.App.5th 31711

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	(1976) 17 Cal.3d 699	14
2	<i>Ocm Principal Opportunities Fund v. CIBC World Markets Corp.</i>	
3	(2007) 157 Cal.App.4th 835	14
4	<i>Pacific State Bank v. Greene</i>	
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6	<i>Richman v. Hartley,</i>	
7	(2014) 224 Cal.App.4th 1182	11
8	<i>Roberts v. Adams</i>	
	(1958) 164 Cal.App.2d 312	11
9	<i>Rosenthal v. Great Western Fin. Securities Corp.</i>	
10	(1996) 14 Cal.4th 394	14
11	<i>Ross v. Creel Printing & Publishing Co.</i>	
12	(2002) 100 Cal.App.4th 736	16
13	<i>Secrest v. Security National Mortgage Loan Trust,</i>	
14	(2008) 167 Cal.App.4th 544	10
15	<i>Serrano v. Priest</i>	
	(1971) 5 Cal.3d 584	9
16	<i>Smiley v. Citibank</i>	
17	(1995) 11 Cal.4th 138	9, 16
18	<i>Spangenberg v. Spangenberg</i>	
19	(1912) 19 Cal.App. 439	12
20	<i>Sterling v. Taylor</i>	
	(2007) 40 Cal.4th 757	10, 11
21	<i>Tarmann v. State Farm</i>	
22	(1991) 2 Cal.App.4th 153	15
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24	(2015) 235 Cal.App.4th 156	11
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26	(1980) 101 Cal.App.3d 27	13
27		
28		

1 **Statutes**

2 Civ. Code, § 1624 10

3 Civ. Code, § 1624(a)(3) 6, 10

4 Code Civ. Proc., § 430.30 9, 16

5 Code Civ. Proc., § 430.30(a) 9

6 Code Civ. Proc., § 430.30(j) 9

7

8 **Other Authorities**

9 5 Witkin, Summary of Cal. Law, Torts, § 808 14

10 CACI No. 1900 13

11 CACI No. 1902 13

12 CACI No. 1903 13

13 Rest.2d Contracts, § 164 14

14 Rest.2d Contracts, § 166 14

15 **Rules**

16 Cal. Rules of Court, rule 3.1320(g) 16

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1 Plaintiff and Cross-Defendant LARRY GERACI (hereafter "Geraci") respectfully submits these
2 points and authorities in support of his Demurrer to Cross-Complainant DARRYL COTTON's
3 (hereafter "Cotton" or "Cross-Complainant) Second Amended Cross-Complaint filed on August 25,
4 2017 (hereafter "SAXC").

5 **I. RELIEF REQUESTED AND SUMMARY OF THE ARGUMENTS**

6 The SAXC alleges five causes of action by Cotton against Geraci: the first cause of action for
7 breach of contract; the second cause of action for intentional misrepresentation; the third cause of
8 action for negligent misrepresentation; the fourth cause of action for false promise; and the fifth cause
9 of action for declaratory relief. Each of the five causes of action against Geraci arises out of, or relates
10 to, a dispute concerning a contract for the purchase and sale of real property between Geraci and
11 Cotton. Geraci demurs to the first, second, third, and fourth causes of action asserted against him upon
12 the following grounds:

13 1. The first cause of action for breach of contract fails to state a cause of action because
14 Cotton alleges an oral agreement (or partly oral, partly written agreement) for the purchase and sale of
15 the subject real property that is barred by the applicable Statute of Frauds. (Civ. Code, § 1624(a)(3).)

16 2. The first cause of action for breach of contract fails to state a cause of action because it
17 fails to allege a necessary element of that cause of action – actionable breach.

18 3. Each of the misrepresentation claims, the second, third, and fourth causes of action for
19 the torts of intentional misrepresentation, negligent misrepresentation, and false promise, respectively –
20 do not state a cause of action as Cotton has not alleged facts which, if true, are sufficient to establish the
21 element of justifiable reliance.

22 4. Under California law there cannot be a promissory fraud cause of action and a negligent
23 misrepresentation cause of action based upon the same set of identical facts.

24 **II. FACTUAL ALLEGATIONS**

25 The relevant factual allegations supporting Cotton's first cause of action for breach of contract
26 are found in the paragraphs of the SAXC, as follows:

27 8. In or around August 2016, Geraci first contacted Cotton seeking to
28 purchase the Property. Geraci desired to buy the Property from Cotton because it meets
certain requirements of the City of San Diego ("City") for obtaining a Conditional Use

1 Permit ("CUP") to operate a Medical Marijuana Consumer Cooperative ("MMCC") at
2 the Property. The Property is one of a very limited number of properties located in San
3 Diego City Council District 4 that potentially satisfy the CUP requirements for a MMCC.

3 9. Over the ensuing weeks and months, Geraci and Cotton negotiated
4 extensively regarding the terms of a potential sale of the Property . . .

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

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

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

17 (b) The parties agreed that the City's approval of a CUP application to
18 operate a MMCC at the Property would be a condition precedent to closing the sale (in
19 other words, the sale of the Property would be completed and title transferred to Geraci
20 only upon the City's approval of the CUP application and Geraci's payment of the
21 \$750,000 balance of the purchase price to Cotton; if the City denied the CUP application,
22 the parties agreed the sale of the Property would be automatically terminated and Cotton
23 would be entitled to retain the entire \$50,000 non-refundable deposit;

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

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

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

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

17. Cotton was hesitant to grant Geraci more time to pay the non-refundable
deposit but Geraci offered to pay \$10,000 towards the \$50,000 total deposit immediately
as a show of "good-faith," even though the parties had not reduced their final agreement

1 to writing. Cotton was understandably concerned that Geraci would file the CUP
2 application before paying the balance of the non-refundable deposit and Cotton would
3 never receive the remainder of the non-refundable deposit if the City denied the CUP
4 application before Geraci paid the remaining \$40,000 (thereby avoiding the parties'
5 agreement that the \$50,000 non-refundable deposit was intended to shift to Geraci some
6 of the risk of the CUP application being denied). Despite his reservations, Cotton agreed
7 to Geraci's request and accepted the lesser \$10,000 initial deposit amount based upon
8 Geraci's express promise to pay the \$40,000 balance of the non-refundable deposit prior
9 to submission of the CUP application, at the latest.

10
11 18. At the November 2, 2016 meeting, the parties executed a three-sentence
12 document related to their agreement on the purchase price for the Property at Geraci's
13 request, which read as follows:

14 Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd,
15 CA for a sum of \$800,00.00 to Larry Geraci or assignee on the approval of
16 a Marijuana Dispensary. (CUP for a dispensary)

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

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

28 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.

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

Paragraphs 19-28 set forth a litany of factual allegations that can be summarized as follows:

The written agreement signed November 2, 2016, did not contain all of the material terms and
conditions of the agreement that Cotton alleges were really agreed to on November 2, 2016. After
signing that incomplete written agreement¹, the parties had numerous oral and written communications

¹ Plaintiff and Cross-Defendant Geraci alleges in his Complaint that the written agreement signed November 2, 2016, contains all the material terms and conditions of the agreement for the purchase and sale of the subject real property and is the entire agreement enforceable between the parties. Defendant and Cross-Complainant Cotton contends that written agreement signed November 2, 2016, sets forth only some of the material terms and conditions agreed to by the parties on November 2nd and some different and additional material terms and conditions not reflected in a signed writing were agreed to by the parties.

1 about documenting in a signed writing all the material terms and conditions Cotton alleges had been
2 agreed to orally on November 2nd, but never did so. In other words, there is no written agreement
3 signed by Cotton and Geraci containing all of the material terms and conditions Cotton alleges were
4 agreed to on November 2nd. In addition, one of those material terms and conditions Cotton claims was
5 orally agreed to (\$50k earnest money) directly contradicts the November 2, 2016, written agreement
6 which clearly states that \$10k would be paid as earnest money and acknowledges that such payment
7 has been received.

8 **III. LEGAL STANDARD ON DEMURRER**

9 When a complaint, or any cause of action in a complaint, fails to state facts sufficient to
10 constitute a cause of action, the court may grant a demurrer. (Code Civ. Proc., § 430.30.) The court
11 considers the allegations on the face of the complaint and any matter of which it must or may take
12 judicial notice under the Code of Civil Procedure section 430.30(a). (*Groves v. Peterson* (2002)
13 100 Cal.App.4th 659; Code Civ. Proc., § 430.30(a).) In reviewing the sufficiency of a complaint
14 against a demurrer, the court treats the demurrer as admitting all material facts properly pleaded.
15 (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 (citing to *Serrano v. Priest* (1971) 5 Cal.3d 584, 591);
16 *Adelman v. Associated Ins. Co.* (2001) 90 Cal.App.4th 352, 359.) However, contentions, deductions, or
17 conclusions of fact or law are insufficient to constitute a cause of action. (*Id.*)

18 The court may grant a demurrer with or without leave to amend when it is obvious from the
19 facts alleged that the plaintiff could not state a cause of action. (See *Hillman v. Hillman Land Co.*
20 (1947) 81 Cal.App.2d 174, 181; see generally *Carney v. Simmonds* (1957) 49 Cal.2d 84, 97; see
21 *Smiley v. Citibank* (1995) 11 Cal.4th 138, 164; Code Civ. Proc., § 430.30(j).) The party seeking leave
22 to amend their pleading bears the burden of establishing that there is a reasonable possibility that the
23 defect can be cured by amendment. (See *Blank v. Kirwan, supra*, 39 Cal.3d at p. 318; *Gould v.*
24 *Maryland Sound Industries* (1995) 31 Cal.App.4th 1137, 1153.)

25 ///
26 ///
27 ///
28 ///

1 **IV. LEGAL ARGUMENT**

2 **A. THE FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT FAILS TO**
 3 **STATE A CAUSE OF ACTION**

4 **1. Cotton's Allegations of an Oral, or of a Partly Oral or Partly Written**
 5 **Agreement, Violate the Applicable Statute of Frauds – Civ. Code §**
 6 **1624(a)(3)**

7 A contract coming within the statute of frauds is invalid unless it is memorialized by a writing
 8 subscribed by the party to be charged or by the party's agent. (Civ. Code, § 1624; *Secrest v. Security*
 9 *National Mortgage Loan Trust*, (2008) 167 Cal.App.4th 544) An agreement for the sale of real
 10 property or an interest in real property comes within the statute of frauds. (Civ. Code, § 1624(a)(3).)
 11 Here, both parties allege, and therefore it is undisputed, that they signed a November 2, 2016, written
 12 agreement. This written agreement between the parties is the controlling evidence under the statute of
 13 frauds. Cotton alleges, based on extrinsic evidence, that the actual agreement between the parties
 14 contains material terms and conditions in addition to those in the written agreement as well as a term (a
 15 \$50,000 deposit rather than the \$10,000 deposit stated in the written agreement) that expressly conflicts
 16 with a term of the November 2, 2016 agreement. However, such a claim cannot stand as extrinsic
 17 evidence cannot be employed to prove an agreement at odds with the terms of the written
 18 memorandum. (*Bezell v. Schrader* (1963) 59 Cal.2d 577.)

19 The controlling law is set forth in *Sterling v. Taylor* (2007) 40 Cal.4th 757, as follows:

20 We emphasize that a memorandum of the parties' agreement is controlling evidence
 21 under the statute of frauds. Thus, extrinsic evidence cannot be employed to prove an
 22 agreement at odds with the terms of the memorandum. This point was made in *Bezell v.*
 23 *Schrader* (1963) 59 Cal.2d 577, 30 Cal.Rptr. 534, 381 P.2d 390. There, the plaintiff
 24 sought to recover a 5 percent real estate broker's commission under an oral agreement.
 25 (*Id.* at p. 579, 30 Cal.Rptr. 534, 381 P.2d 390.) The escrow instructions, which specified
 26 a 1.25 percent commission, were the "memorandum" on which the plaintiff relied to
 27 comply with the statute. However, he contended the instructions incorrectly reflected the
 28 parties' actual agreement, as shown by extrinsic evidence. (*Id.* at p. 580, 30 Cal.Rptr.
 534, 381 P.2d 390.) The *Bezell* court reject this argument, **holding that under the**
statute of frauds, "the parol agreement of which the writing is a memorandum must
be one whose terms are consistent with the terms of the memorandum." (*Id.* at
 p. 582, 30 Cal.Rptr. 534, 381 P.2d 390.) Thus, in determining whether extrinsic evidence
 provides the certainty required by the statute, courts must bear in mind that **the evidence**
cannot contradict the terms of the writing. (Bold added.)

Sterling v. Taylor, supra, 40 Cal.4th at p. 771-772.

1 See also *Ukkestad v. RBS Asset Finance, Inc.* (2015) 235 Cal.App.4th 156 (“In the context of a
 2 case arising from a dispute over the certainty of the terms of sale of real property, our Supreme court
 3 recently endorsed a “flexible, pragmatic view,” under which uncertain written contractual terms comply
 4 with the statute of frauds as long as the can be made certain by reference to extrinsic evidence, **and as**
 5 **long as the evidence is not used to contradict the written terms.** (*Sterling, supra*, 40 Cal.4th at
 6 p. 771, fn. 13.)) See also, *Jacobs v. Locatelli* (2017) 8 Cal.App.5th 317, 325 (“As a result of *Sterling*,
 7 it is indisputably the law that “when ambiguous terms in a memorandum are disputed, extrinsic
 8 evidence is admissible to resolve the uncertainty.” (*Sterling, supra*, 40 Cal.4th at p. 767.) The
 9 agreement must still provide the essential terms, and it is “clear that extrinsic evidence cannot supply
 10 those required terms.” (*Ibid.*))

11 In the instant case, the only writing signed by both parties is the November 2, 2016 written
 12 agreement, which explicitly provides for a \$10,000 down payment (“earnest money to be applied to the
 13 sales price”); in fact, the agreement acknowledges receipt of that down payment. Cotton is alleging
 14 that the oral agreement provided for a down payment of \$50,000, which is in direct contradiction of the
 15 written term of a \$10,000 down payment.

16 **2. The First Cause of Action for Breach of Contract Fails as a Matter of Law**
 17 **as It Does Not Allege Actionable Breach**

18 “To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract,
 19 (2) plaintiff’s performance of the contract or excuse for nonperformance, (3) defendant’s breach, and
 20 (4) resulting damage to the plaintiff.” (*Richman v. Hartley*, (2014) 224 Cal.App.4th 1182, 1186.) “It is
 21 Hornbook law that an agreement to make an agreement is nugatory, and that this is true of material
 22 terms of any contract.” (*Roberts v. Adams* (1958) 164 Cal.App.2d 312, 314.) “[N]either law nor equity
 23 provides a remedy for a breach of an agreement to agree in the future.” (*Id.* at p. 316)

24 The pertinent allegations regarding Cotton’s breach of contract cause of action are found in the
 25 SAXC as follows:

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

1 and hinder the process of negotiations, and failing to timely or constructively response to
2 Cotton's requests and communications.

3 It is basic contract law that a breach of contract occurs when a party to a contract deliberately
4 refuses to do that which he or she has agreed and is required to under the contract. (*Spangenberg v.*
5 *Spangenberg* (1912) 19 Cal.App. 439.) A contract may be breached by "nonperformance," meaning an
6 unjustified failure to perform a material contractual obligation when performance is due, it may be
7 breached by repudiation, or it may be breached by a combination of the two. (*Central Valley General*
8 *Hosp. v. Smith* (2009) 162 Cal.App.4th 501.)

9
10 The written contract entered on November 2, 2012 reads as follows:

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

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

15 Cotton has not alleged that Geraci breached any obligations set forth in the November 2, 2016
16 written agreement. Cotton has not alleged Geraci failed to pay the \$10k earnest money (in fact, the
17 written agreement acknowledges it has been paid). And Cotton has not alleged the CUP Application
18 has been approved and Geraci has failed to tender the remaining balance of the purchase price.

19 Instead, Cotton alleges that on November 2, 2016, the parties orally agreed to other and
20 different material terms and conditions not set forth in the November 2, 2016, written agreement,
21 including an obligation to negotiate in good faith to reduce these other and different material terms and
22 conditions to a signed writing, and that Geraci breached the alleged agreement by failing to negotiate in
23 good faith to do so. (SAXC, ¶ 36.)

24 This alleged failure to negotiate in good faith to reduce these other and different material terms
25 and conditions to a signed writing cannot as a matter of law constitute an actionable breach. It is
26 simply an admission by Cotton that these alleged other and different material terms and conditions
27 were never reduced to a writing sign by both Cotton and Geraci, and, therefore, the alleged oral (or
28

1 partly oral, partly written) agreement alleged by Cotton is barred by the Statute of Frauds. Cotton
 2 cannot bootstrap around the Statute of Frauds by alleging that Geraci's failure to negotiate in good faith
 3 to reduce these other and different material terms and conditions to a signed writing was itself an
 4 actionable breach of an otherwise unenforceable contract.

5 **B. THE SECOND, THIRD AND FOURTH CAUSES OF ACTION FAIL TO STATE**
 6 **A CAUSE OF ACTION**

7 **1. Each of the misrepresentation claims, the 2nd, 3rd and 4th causes of action**
 8 **for intentional misrepresentation, negligent misrepresentation, and false**
 9 **promise, do not state a cause of action. Cotton has not alleged facts which, if**
 10 **true, are sufficient to establish the element of justifiable reliance.**

11 In order to state a cause of action for intentional misrepresentation, negligent misrepresentation,
 12 or false promise, the plaintiff must allege reasonable reliance on defendant representations. (CACI Nos.
 13 1900, 1902, and 1903.) An essential element for a claim of promissory fraud is a specific allegation of
 14 reliance that is reasonable. (*Behnke v. State Farm* (2011) 196 Cal.App.4th 1443, 1452 (noting
 15 "justifiable reliance" and "reasonable reliance" by the promisee are an essential element).) Stated
 16 differently, to recover for fraud, Plaintiff must show it reasonably relied on the defendant's
 17 misrepresentations. A Plaintiff cannot recover if reliance was not justified or reasonable. (*Wagner v.*
 18 *Benson* (1980) 101 Cal.App.3d 27, 36 ("plaintiffs' reasonable reliance on the alleged misrepresentation
 19 is an essential element of fraud").) "The law is well established that actionable misrepresentations must
 20 pertain to past or existing material facts. Statements or predictions regarding future events are deemed
 21 to be mere opinions which are not actionable." (*Cansino v. Bank of America* (2014) 224 Cal.App.4th
 22 1462, 1469.)

23 "[T]here are two causation elements in a fraud cause of action. First, the plaintiff's actual and
 24 justifiable reliance on the defendant's misrepresentation must have caused him to take a detrimental
 25 course of action. Second, the detrimental action taken by the plaintiff must have caused his alleged
 26 damage." (*Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1062.)

27 "Actual reliance occurs when a misrepresentation is "an immediate cause of [a plaintiff's]
 28 conduct, which alters his legal relations," and when, absent such representation, "he would not, in all
 reasonable probability, have entered into the contract or other transaction." (*Engala v. Permanente*
Medical Group, Inc. (1997) 15 Cal.4th 951, 976-977.)

1 “Besides actual reliance, [a] plaintiff must also show “justifiable” reliance, i.e., circumstances
2 were such to make it *reasonable* for [the] plaintiff to rely on defendant’s statements without an
3 independent inquiry or investigation.’ [Citation.] The reasonableness of the plaintiff’s reliance is judged
4 by reference to the plaintiff’s knowledge and experience. (5 Witkin, Summary of Cal. Law, Torts,
5 § 808, p. 1164.) “Except in the rare case where the undisputed facts leave no room for a reasonable
6 difference of opinion, the question of whether a plaintiff’s reliance is reasonable is a question of fact.”
7 [Citations.]’ [Citation.”] (*Ocm Principal Opportunities Fund v. Cibe World Markets Corp.* (2007)
8 157 Cal.App.4th 835, 864-865.)

9 When a promise contradicts the express terms of the contract, proving justifiable reliance is an
10 uphill battle. (*Pacific State Bank v. Greene* (2003) 110 Cal.App.4th 375, 393.) This is because of the
11 general principle that a party who signs a contract “cannot complain of unfamiliarity with the language
12 of the instrument” (*Madden v. Kaiser Foundation Hospitals* (1976) 17 Cal .3d 699, 710), the defrauded
13 party must show a reasonable reliance on the misrepresentation that excuses the failure to familiarize
14 himself with the contents of the document. (Rest.2d Contracts, §§ 164, 166; *California Trust Co. v.*
15 *Cohn* (1932) 214 Cal. 619.) For instance, a “party’s *unreasonable* reliance on the other’s
16 misrepresentations, resulting in a failure to read a written agreement before signing it, is an insufficient
17 basis, under the doctrine of fraud in the execution ... “ for permitting that party to void the agreement.
18 (*Rosenthal v. Great Western Fin. Securities Corp.* (1996)14 Cal.4th 394, 423.) Thus, the particular
19 circumstances of the contract’s execution, including the prominent and discernible provisions of the
20 contents of the writing in issue, must make it reasonable for the party claiming fraud to have
21 nonetheless relied on the mischaracterization. This is not an easily met burden of proof.

22 More importantly for purposes of this demurrer, Cotton has not alleged facts which, if true, are
23 sufficient to support a finding of reasonable reliance. This is self-evident considering that the
24 misrepresentations Cotton is claiming reliance upon are in direct conflict with the clear, unambiguous
25 written agreement signed by Cotton. It does not appear Cotton can amend to allege a factual scenario
26 by which Cotton would be able to establish reasonable reliance on alleged misrepresentations made by
27 Geraci.

1 Furthermore, Cotton has admitted that he was *hesitant, understandably concerned and despite*
 2 *his hesitation, concerns and reservations* he agreed to Geraci's terms. (SAXC ¶17) It is difficult to
 3 reconcile Cotton's hesitation, concerns and reservations in dealing with Geraci with his claim to have
 4 reasonably relied on Geraci's representations. Rather it appears that Cotton did not trust Geraci's
 5 alleged representations and entered the agreement regardless of his misgivings regarding Geraci. Such
 6 reliance cannot be said to have been reasonable in light of Cotton's admissions in his pleadings.

7 **2. The Third Cause of Action for Negligent Misrepresentation Fails to State a**
 8 **Claim Upon Which Relief May Be Granted Because Intentional Fraud and**
 9 **Negligent Misrepresentation Base On the Same Facts Cannot Co-Exist**

10 Cross-Complainant's Fourth Cause of Action labeled "False Promise", is for a type of fraud
 11 often referred to as "promissory fraud;" i.e., a promise made without the intent to perform. (SAXC,
 12 ¶¶ 47-54) Cross-Complainant's Third Cause of Action for Negligent Misrepresentation and Fourth
 13 Cause of Action for promissory fraud, rely upon the same exact facts (SAXC ¶¶ 43, 47), incorporating
 14 by reference all previous allegations of the complaint], and attempt to plead the "false promise" cause
 15 of action alternatively with the "negligent misrepresentation" cause of action. While pleading
 16 alternative legal theories based on the same facts is usually acceptable, in this instance Cross-
 17 Complainant's Third Cause of Action fails because California law clearly holds that a promise made
 18 without the intent to perform cannot form the basis for a claim of negligent misrepresentation.

19 Cross-Complainant's Third Cause of Action (Negligent Misrepresentation) is on all fours with,
 20 and is governed by, the decision in *Tarmann v. State Farm* (1991) 2 Cal.App.4th 153. There, plaintiff
 21 alleged claims for fraud and negligent misrepresentation based on her contention that the defendant
 22 insurer had falsely promised that it would pay for repairs to her automobile upon their completion.
 23 When the insurance company in fact declined to pay, plaintiff brought an action alleging that the
 24 insurer's representations about payment were either intentionally or negligently false.

25 The trial court sustained Defendant's demurrer to the negligent misrepresentation claim without
 26 leave to amend, and the Court of Appeal affirmed. In so doing, it began its analysis by noting that "to
 27 be actionable, a negligent misrepresentation must ordinarily be as to past or existing material facts.
 28 [P]redictions as to future events, or statements as to future action by some third party, are deemed
 opinions, and not actionable fraud. [Citations omitted]." (*Tarmann, supra*, 2 Cal.App.4th at p. 158.)

1 There is no question that Cotton alleged that the basis of his allegations regarding fraud were that
 2 Geraci promised to take certain actions in the future. (See SAXC ¶¶ 45(c), 45(b), 48(a), 48(b), 48(c),
 3 48(d).)

4 The Court went on to compare the elements of fraud and negligent misrepresentation, as
 5 follows:

6 To maintain an action for deceit based on a false promise, one must specifically allege
 7 and prove, among other things, that the promisor did not intend to perform at the time he
 8 or she made the promise and that it was intended to deceive or induce the promise to do
 9 or not to do a particular thing. [Citations omitted]. Given this requirement, an action
 10 based on a false promise is simply a type of intentional misrepresentation, i.e., actual
 11 fraud. *The specific intent requirement also precludes pleading a false promise claim as a*
 12 *negligent misrepresentation, i.e., 'the assertion, as a fact, of that which is not true, by one*
 13 *who has no reasonable ground for believing it to be true.'* (Civil Code Section 1710,
 14 subd. (2).) Simply put, making a promise with an honest but unreasonable intent to
 15 perform is wholly different from making one with no intent to perform and, therefore,
 16 does not constitute a false promise. Moreover, we decline to establish a new type of
 17 actionable deceit: the negligent false promise. In light of our discussion, the trial court
 18 properly sustained the demurrer to [Plaintiff's] cause of action for negligent
 19 misrepresentation." *Tarmann, supra*, 2 Cal.App.4th at 159 (emphasis added.)

20 Cross-Complainant cannot have it both ways. His allegations that Plaintiff made promises
 21 about future actions without the intent to perform simply cannot support a claim for negligent
 22 misrepresentation. The Demurrer to the Third Cause of Action, as in *Tarmann*, should be sustained
 23 without leave to amend.

24 **V. LEAVE TO AMEND**

25 The Court may grant a demurrer with or without leave to amend, and the burden is on the party
 26 seeking leave to amend their pleading to establish that the pleading is capable of amendment. (See
 27 *Hillman v. Hillman Land Co., supra*, 81 Cal.App.2d at p. 181; see generally *Carney v. Simmonds,*
 28 *supra*, 49 Cal.2d at p. 97; see *Smiley v. Citibank, supra*, 11 Cal.4th at p. 164; see *Blank v. Kirwan,*
supra, 39 Cal.3d at p. 318; *Gould v. Maryland Sound Industries, supra*, 31 Cal.App.4th at p. 1153;
 Code Civ. Proc., § 430.30; Cal. Rules of Court, rule 3.1320(g).) A plaintiff does not meet its burden
 unless it advises the trial court of new information that would contribute to a meaningful amendment.
 (See e.g. *Ross v. Creel Printing & Publishing Co. (2002) 100 Cal.App.4th 736, 749.*)

This Court should grant the motion *without leave to amend unless* Cross-Complainant makes an
 offer of proof that he can in good faith allege facts establishing the elements of each of the remaining

1 claims.

2 **VI. CONCLUSION**

3 For the foregoing reasons and subject to a sufficient offer of proof, Geraci's demurrers to each
4 of the causes of action should each be sustained without leave to amend.

5

6 Dated: September 28, 2017

FERRIS & BRITTON,
A Professional Corporation

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

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EXHIBIT 24

Jacob P. Austin, SBN 290303
The Law Office of Jacob Austin
1455 Frazee Road, #500
San Diego, CA 92108
Telephone: 619.357.6850
Facsimile: 888.357.8501
JPA@JacobAustinEsq.com

F I L E D
Clerk of the Superior Court

APR 04 2018

By: A. SEAMONS, Deputy

Attorney for Defendant and Cross-Complainant Darryl Cotton
(Representation limited to Motion to Expunge *Lis Pendens*)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL DIVISION

LARRY GERACI, an individual,
Plaintiff,

vs.

DARRYL COTTON, an individual; REBECCA
BERRY, an individual; and DOES 1-10,
INCLUSIVE,
Defendants.

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

DARRYL COTTON'S MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
OF MOTION TO EXPUNGE NOTICE OF
PENDENCY OF ACTION (*LIS PENDENS*)

DATE: April 13, 2018
TIME: 9:00 a.m.
DEPT: C-73
JUDGE: Honorable Joel R. Wohfeil

DARRYL COTTON, an individual,
Cross-Complainant,

vs.

LARRY GERACI, and individual, REBECCA
BERRY, an individual; and DOES 1 THROUGH
10, INCLUSIVE,
Cross-Defendants.

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23
24
25
26
27
28

TABLE OF CONTENTS

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

I. FACTUAL BACKGROUND 2

II. DISCUSSION..... 8

 A. GERACI HAS THE BURDEN OF PROOF IN OPPOSING
 COTTON’S MOTION TO EXPUNGE A *LIS PENDENS*
 PURSUANT TO CCP §405.32 8

 B. GERACI CANNOT ESTABLISH PROBABLE VALIDITY
 THAT THE RECEIPT IS THE FINAL AGREEMENT FOR
 COTTON’S PROPERTY..... 9

 C. ALL OF GERACI’S ARGUMENTS ARE MEANT TO DISTRACT
 THIS COURT FROM THE *UNDISPUTED* AND CASE DISPOSITIVE
 NATURE OF THE CONFIRMATION MAIL AND OTHER EVIDENCE
 PROVING THE RECEIPT IS JUST A RECEIPT..... 13

III. CONCLUSION 15

TABLE OF AUTHORITIES

CASE LAW

1

2

3 *Amalgamated Bank v. Superior Court* (2007) 149 Cal.App.4th 1003 1

4 *BGJ Associates, LLC v. Superior Court* (1999) 75 Cal.App.4th 952 1

5 *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370..... 11

6

7 *Castro v. Superior Court* (2004) 116 Cal.App.4th 101015

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10 *J–Marion Company, Inc. v. County of Sacramento* (1977) 76 Cal.App.3d 517 1

11 *Lazar v. Superior Court* (1996) 12 Cal.4th 631..... 11

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13 *Pacesetter Homes, Inc. v. Brodtkin* (1970) 5 Cal.App.3d 206..... 11

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16 *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Ass'n*

17 (2013) 55 Cal.4th 1169 14-15

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STATUTES

California Civil Code

Section 1440. 13

Section 1572. 11

 1572(1). 11

 1572(3). 11

 1572(4). 11

 1572(5). 11

Section 1573. 11

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Section 3300. 14

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Section 405.31. 9

Section 405.32. 1,9-10

Section 405.38. 15

Section 2019.030. 11

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Cal. Zoning Practice, *Types of Zoning Relief* §7.64, p.299 (Cont. Ed. Bar 1996). 2

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 ¶9:422. 1

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 ¶5:3. 11

1 Witkin, Summary of California Law, *Contracts* (11th ed. 2017)

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MEMORANDUM OF POINTS AND AUTHORITES

Defendant and Cross-Complainant Darryl Cotton ("Cotton") hereby moves this Court to expunge the *Lis Pendens* (the "LP") recorded by Plaintiff Larry Geraci ("Geraci") on his real property located at 6176 Federal Blvd., San Diego (the "Property") pursuant to CCP §405.32 for the following reasons.

As stated by the California Supreme Court, "[T]he lis pendens procedure [is] susceptible to serious abuse, providing unscrupulous plaintiffs with a powerful lever to force the settlement of groundless or malicious suits." *Malcolm v. Superior Court* (1981) 29 Cal.3d 518, 524. "Once a lis pendens is filed, it clouds the title and effectively prevents the property's transfer until the litigation is resolved or the lis pendens is expunged." *BGJ Associates, LLC v. Superior Court* (1999) 75 Cal.App.4th 952, 967. "Because of the potential for abuse and injustice to the property owner, the Legislature has provided statutory procedures (CCP §405.30 *et seq.*) by which a lis pendens may be removed ('expunged')." Weil & Brown, Cal. Practice Guide, *Civ. Pro. Before Trial* (The Rutter Group 2017) ("Rutter Guide") ¶9:422 (citing *Shah v. McMahon* (2007) 148 Cal.App.4th 526, 529). "[T]he lis pendens procedure provides a means by which a court may dispose of meritless real estate claims at the *preliminary stage of a case.*" *Shah, supra*, at 529 (emphasis added).

CCP §405.30 *et seq.* was enacted to require proactive action by the trial court in the form of a "minitrial" on the merits in the *preliminary stage of a case*. As explained by the Court in *Amalgamated Bank v. Superior Court* (2007) 149 Cal.App.4th 1003, in analyzing the Legislature's intent in revising the *LP* laws in 1992 and enacting CCP §405.32:

The financial pressure created by a recorded lis pendens provided the opportunity for abuse, permitting parties with meritless cases to use it as a bullying tactic to extract unfair settlements. [¶] The Code Comment thus states that section 405.32 "is intended to disapprove *Malcolm*. . . and other cases which have held that the court on a motion to expunge may not conduct a 'minitrial' on the merits of the case. *This section is intended to change California law and to require judicial evaluation of the merits.*" (Code Com., 14A West's Ann. Code Civ. Proc., foll. §405.32, par. 3, p. 346, italics added.)

Amalgamated, supra, at 1012 (emphasis in original).

In *Hilberg v. Superior Court* (1989) 215 Cal.App.3d 539, 542, the Court stated: "We cannot ignore as judges what we know as lawyers - that the recording of a lis pendens is sometimes made not to prevent conveyance of property that is the subject of the lawsuit, but to coerce an opponent to settle regardless of the merits." (Citing *Malcolm, supra*, at 678.) Here, this action represents the very evil which CCP §405.30 *et seq.* was enacted to prevent. This action was filed with no probable cause to

1 maliciously (i) prevent Cotton's sale of the Property to a third-party *bona fide* purchaser and (ii) exert
2 undue financial, emotional and psychological pressure on Cotton to coerce him into settling with Geraci.

3 I. FACTUAL BACKGROUND

4 Cotton is the sole owner of record of the Property.¹ In or around August 2016, Geraci first
5 contacted Cotton seeking to purchase the Property. Geraci desired to buy the Property from Cotton
6 because it met certain requirements of the City of San Diego ("City") to apply for and obtain a conditional
7 use permit ("CUP")² that would allow the operation of a Marijuana Outlet ("MO")³ at the Property. Over
8 the ensuing months, the parties extensively negotiated the terms of a potential sale of the Property. (DC
9 Decl. ¶2; VP ¶13, ¶14.)

10 During these negotiations, Geraci made the following representations to Cotton: (i) he could be
11 trusted as reflected by the fact that he operated in a fiduciary capacity as an IRS Enrolled Agent for many
12 powerful and high-net-worth-individuals ("HNWI"); (ii) he is the owner and operator of Tax and
13 Financial Center, Inc., an accounting and financial advisory services company, servicing HNWI and large
14 businesses in a fiduciary capacity; (iii) he was a California Licensed Real Estate Broker, bound by
15 professional and ethical obligations, to be truthful in real-estate deals; (iv) through his experts, who had
16 conducted preliminary due diligence, he had uncovered a critical zoning issue that unless *first* resolved
17 would prevent the City from even accepting a CUP application on the Property (the "Critical Zoning
18 Issue"); (v) through his professional relationships, which included his HNWI clients that were politically
19 influential, and through powerful hired lobbyists (some of whom used to work for the City in senior
20 positions), he was in a unique position to have the Critical Zoning Issue resolved; (vi) he was highly
21 qualified to operate a MO because he owned and operated multiple cannabis dispensaries in San Diego;
22 and (vii) his employee, Rebecca Berry ("Berry"), was a trustworthy individual who could be trusted to
23 be the applicant on the CUP application because she (a) managed his marijuana dispensaries, (b) held a
24 senior position at a church and came across as a "nice old lady that had nothing to do with marijuana,"

25
26 ¹ Declaration of Darryl Cotton ("DC Decl.") ¶1; Request for Judicial Notice ("RJN") Exhibit ("Ex.") 1; (Verified Petition for
Alternative Writ of Mandate) ("VP") ¶1; RJN Ex. 2 (Complaint ("Comp.") ¶4.

27 ² A conditional use permit is administrative permission for uses not allowed as a matter of right in a zone, but subject to
28 approval. (Cal. Zoning Practice, *Types of Zoning Relief* §7.64, p.299 (Cont. Ed. Bar 1996.) The issuance of a conditional use
permit may be subject to conditions. (*J-Marion Company, Inc. v. County of Sacramento* (1977) 76 Cal.App.3d 517, 522.)

³ RJN 3 (City of San Diego, Development Services Department Information Bulletin 170 (October 2017) (City Information
Bulletin describing "the application process for a Marijuana Outlet").

1 and (c), consequently, would pass the stringent City and State of California background checks required
2 to have the CUP approved (collectively, the "Qualification Representations"). (DC Decl. ¶3.)

3 On or around October 31, 2016, Geraci asked Cotton to execute Form DS-318 (Ownership
4 Disclosure Statement) ("Ownership Statement") – a required component of all CUP applications.
5 (RJN 4.) Geraci told Cotton that he needed the executed Ownership Statement to show that he had access
6 to the Property in connection with his planning and lobbying efforts to resolve the Critical Zoning Issue.
7 (DC Decl. ¶4.)

8 On November 2, 2016, Geraci and Cotton met at Geraci's office to negotiate the final terms of the
9 sale of the Property. At the meeting, the parties reached an oral agreement on the material terms for the
10 sale of the Property (the "November Agreement"). The November Agreement consisted of the following:
11 If the CUP was approved, then Geraci would, *inter alia*, provide: (i) a total purchase price of \$800,000;
12 (ii) a 10% equity stake in the MO; and (iii) a minimum monthly equity distribution of \$10,000. If the
13 CUP was denied, Cotton would keep an agreed upon \$50,000 non-refundable deposit ("NRD") and the
14 transaction would not close. In other words, the issuance of the CUP at the Property was a condition
15 precedent for closing on the sale of the Property and, if the CUP was denied, Cotton would keep his
16 Property and the \$50,000 NRD. (DC Decl. ¶5.)

17 At the November 2, 2016 meeting, after the parties reached the November Agreement, Geraci: (i)
18 provided Cotton with \$10,000 in cash towards the NRD of \$50,000, for which Cotton executed a
19 document to record his receipt thereof (the "Receipt"); (ii) promised to have his attorney, Gina Austin
20 ("Austin"), *promptly* reduce the oral November Agreement to written agreements for execution; and (iii)
21 promised to not submit the CUP to the City until he paid the balance on the NRD. (DC Decl. ¶6.)

22 After Geraci and Cotton met on November 2, 2016, reached the November Agreement, executed
23 the Receipt and separated – the following email communications took place that same day:

24 At 3:11 p.m., Geraci emailed Cotton a scanned copy of the Receipt which states:

25 Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd. CA for a
26 sum of \$800,000 to Larry Geraci or assignee on the approval of a Marijuana Dispensary.
27 (CUP for a dispensary) [¶] Ten Thousand dollars (cash) has been given in good faith
28 earnest money to be applied to the sales price of \$800,000 and to remain in effect until
license is approved. Darryl Cotton has agreed to not enter into any other contacts [*sic*]
on this property. [DC Decl. Ex. 1, pp. 4-8.]

At 6:55 p.m., Cotton replied:

1 Thank you for meeting today. Since we executed the Purchase Agreement in your office
2 for the sale price of the property I just noticed the 10% equity position in the dispensary
3 was not language added into that document. I just want to make sure that we're not
4 missing that language in any final agreement as it is a factored element in my decision
5 to sell the property. I'll be fine if you would simply acknowledge that here in a reply.
6 [DC Decl. Ex. 1, p.9 (emphasis added).]

7 At 9:13 p.m., Geraci replied: "No no [sic] problem at all" [*Id.* (emphasis added).]

8 In other words, the very same day on which the Receipt was executed, Cotton received a copy of the
9 Receipt from Geraci and realized it could be misconstrued as a final agreement for the Property. Because
10 Cotton was concerned, and wanted there to be no uncertainty, he requested Geraci confirm in writing the
11 Receipt was not a final agreement. Geraci replied to Cotton's request for written confirmation; thereby
12 clearly, unambiguously and indisputably confirming the Receipt is not a final agreement for Cotton's
13 Property. Thus, Cotton refers to this email from Geraci as the "Confirmation Email." (DC Decl. ¶8.)

14 Thereafter, over the course of almost five months, the parties exchanged numerous emails, texts
15 and calls regarding various issues related to the Critical Zoning Issue, the CUP application and drafts of
16 the final written agreements for the Property.⁴ However, Geraci continuously failed to make actual,
17 substantive progress. Most notably, he failed to provide the final written agreements, pay the balance of
18 the NRD, and to provide facts regarding the progress being made on the Critical Zoning Issue. (DC Decl.
19 ¶9.) Regarding the Critical Zoning Issue, and also reflecting Geraci's general non-substantive replies and
20 avoidance, the following text exchanges took place between Geraci and Cotton from January 6, 2017 and
21 February 7, 2017:

22 Cotton: Can you call me. If for any reason you're not moving forward I need to know.

23 Geraci: I'm at the doctor now everything is going fine the meeting went great yesterday
24 supposed to sign off on the zoning on the 24th of this month I'll try to call you later
25 today still very sick

26 Cotton: Are you available for a call?

27 Geraci: I'm in a meeting I'll call you when I'm done

28 Cotton: Thx

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

Cotton: This resolves the zoning issue?

Geraci: Yes

Cotton: Excellent

Geraci: On phone.. Call you back shortly..

Cotton: Ok

⁴ See DC Decl. Ex. 1. (Fifteen (15) emails with attachments sent between Cotton and Geraci prior to the commencement of the instant suit between 10/24/16–03/21/17 containing all email communications between them.)

1 Cotton: How goes it?

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

2 Cotton: Whats [*sic*] new?

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

4 Geraci: I'm just walking in with clients they resolved it its fine we're just waiting for final paperwork [Cotton Decl. Ex. 2, pp.1-4.]

5
6 These text communications were meant to and did induce Cotton into believing, relying and acting on
7 Geraci's representations he was making progress on the Critical Zoning Issue (the "Text
8 Communications"). (DC Decl. ¶¶9-11.)

9 On February 27, 2017, Geraci emailed Cotton: "*Attached is the draft purchase of the property*
10 *for 400k. The additional contract for the 400k should be in today and I will forward it to you as well.*"

11 (DC Decl. Ex. 1, p.13.) The cover email clearly states Geraci's intent of effectuating the oral November
12 Agreement via two separate written documents (each for \$400,000). Notably, Section 18(i) states:

13 The parties shall be legally bound with respect to the purchase and sale of the Property
14 pursuant to the terms of this Agreement only if and when both Seller and Buyer have fully
15 executed and delivered to each other a counterpart of this Agreement (or a copy by facsimile
transmission). [DC Decl. Ex. 1, p.29.]

16 Thus, the language clearly reflects the parties were yet to be "legally bound" to "the purchase and sale of
17 the Property" in February of 2017 and had yet to execute a final, legally binding agreement. *Id.*

18 On March 2, 2017, Geraci emailed Cotton a draft of the additional contract, the Side Agreement,
19 that was supposed to provide for, *inter alia*, Cotton's 10% equity stake. (DC Decl. Ex. 1, pp.41-48.) The
20 next day, Cotton replied:

21 Larry, I read the Side Agreement in your attachment and I see that no reference is made to
22 the *10% equity position* as per my Inda-Gro GERL Services Agreement (see attached) in
the new store. In fact para 3.11 [stating we are not partners] looks to avoid our agreement
23 completely. It looks like counsel did not get a copy of that document. Can you explain? [5]

24 Geraci did not reply to Cotton's email. Geraci did not pick up when Cotton called later. Exasperated,
25 Cotton followed up with Geraci via text wanting to confirm that Geraci had received the email and
26 understood his concern – that the Side Agreement did not provide for his "*10% equity position*" in the
27 MO. Cotton texted: "*Did you get my email?*" (DC Decl. Ex. 2, p.4.) Geraci replied one minute later: "*Yes*
28 *I did I'm having her rewrite it now[.] As soon as I get it I will forward it to you[.]*" (DC Decl. Ex. 2, p.4

⁵ DC Decl. Ex. 1, pp.49-50 (email) (emphasis added); pp.51-52 (Inda-Gro GERL Services Agreement (attachment)).

1 (the "Confirmation Text").) The Confirmation Text proves that on March 3, 2017 Geraci (i) was going
2 to have Austin revise the Side Agreement to contain Cotton's "10% equity position" in the MO and (ii)
3 had previously *received, acknowledged and consented* to the terms contained in the "Inda-Gro GERL
4 Services Agreement." Notably, Geraci does not refuse, refute, argue or so much as question Cotton's
5 requests or statements as would be logical if the Receipt were the full agreement as **now** alleged.

6 On March 6, 2017, Geraci and Cotton spoke regarding revisions required to have the drafts
7 accurately reflect the November Agreement. Cotton communicated his frustration with the delays and
8 Geraci again promised to have Austin *promptly* correct the mistakes in the drafts. During that
9 conversation, Cotton let Geraci know he would be attending a local cannabis event at which Austin was
10 scheduled to be the headnote speaker. (DC Decl. ¶13.) Geraci later texted Cotton he could speak with
11 Austin directly at the event: "*Gina Austin is there she has a red jacket on if you want to have a*
12 *conversation with her.*" (DC Decl. Ex. 2, p.4.)

13 The next day, March 7, 2017, Geraci sent the following email to Cotton:

14 Hi Darryl, I have not reviewed this yet but wanted you to look at it and give me your
15 thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth
16 month. . . . can we do 5k, and on the seventh month start 10k? [DC Decl. Ex. 1, pp.53-54
(email), pp.55-58 (draft Side Agreement).]

17 The *facts* that are demonstrated by the March Request Email are clear: Geraci had an established
18 obligation *to* Cotton, requiring him to pay a minimum of \$10,000 a month, and is requesting *of* Cotton a
19 concession from that obligation - specifically, that for the first six months of the operations of the MO,
20 he be allowed to pay Cotton \$5,000 instead of the \$10,000 per month base as required per the November
21 Agreement (the "March Request Email").

22 Attached to Geraci's email was a revised draft of the Side Agreement in Word format. This draft
23 provides for, *inter alia*, Cotton receiving (i) 10% of the net profits of the MO and (ii) a minimum monthly
24 payment of \$10,000. (DC Decl. at Ex. 1, p.55.) Furthermore, Attorney Gina Austin (who for several
25 months represented Geraci – a Real Party in Interest to the related Writ Action against the City), was
26 responsible for, and did draft versions of the contracts months after the November agreement indicating
27 her awareness that no final agreement had been executed. The attachment of the last draft provided was
28 dated "**March 3, 2017**" (the "Metadata Evidence"). (DC Decl. ¶15, Ex. 3 (screen-shot of the Metadata
Evidence).)

1 On March 16, 2017, after having reviewed the revised agreement forwarded by Geraci on
 2 March 7, 2017, and discovering that it again did not accurately reflect the November Agreement, Cotton
 3 decided to follow up with the City regarding the Critical Zoning Issue personally. It was at this point that
 4 Cotton discovered that Geraci had been lying from the very beginning – Geraci had submitted a CUP for
 5 the Property on October 31 2016, before the parties even reached the November Agreement. (DC Decl.
 6 ¶16.) Geraci’s submission was a direct contradiction of his (i) representation that a CUP could not be
 7 submitted until the Critical Zoning Issue was resolved and (ii) promise to not submit the CUP until he
 8 had paid Cotton the balance of the NRD. A Parcel Information Report provided by the City of San Diego,
 9 Development Services Department (“City Parcel Report”) states the zoning of the Property was changed
 10 to “CO-2-1” (MO qualifying zone) on January 14, 2016. (RJN 5, p.2.) In other words, the City Parcel
 11 Report makes clear the entire Critical Zoning Issue was a fraudulent scheme to (i) induce Cotton into
 12 executing the Ownership Statement – no zoning change was required to submit the CUP for an MO to
 13 the City on the Property – and (ii) to deceive Cotton into thinking that he required Geraci’s unique and
 14 powerful political influence to resolve the alleged Critical Zoning Issue.

15 Later that same day, March 16, 2017, Cotton emailed Geraci, in relevant part, the following:

16 [W]e started these negotiations 4 months ago and the drafts and our communications have
 17 not reflected what we agreed upon and are still far from reflecting our original agreement.
 18 Here is my proposal, please have your attorney Gina revise the Purchase Agreement and
 19 Side Agreement to incorporate all the terms we have agreed upon so that we can execute
 20 final versions and get this closed. [¶] I really want to finalize this as soon as possible - ***I***
 21 ***found out today that a CUP application for my property was submitted in October, which***
 22 ***I am assuming is from someone connected to you.*** Although, I note that you told me that
 23 the \$40,000 deposit balance would be paid once the CUP was submitted and that you were
 24 waiting on certain zoning issues to be resolved. Which is not the case. [¶] Please confirm
 25 by Monday 12:00 PM whether we are on the same page and you plan to continue with our
 26 agreement. Or, if not, so I can return your \$10,000 of the \$50,000 required deposit. If,
 27 hopefully, we can work through this, please confirm that revised final drafts that
 28 incorporate the terms above will be provided by Wednesday at 12:00 PM. [DC Decl. Ex.
 1, pp.59-60]

25 The next day, Geraci texted Cotton: "***Can we meet tomorrow*** [?]" (DC Decl. Ex. 2, p.4.) Of note,
 26 Geraci, did not refute or dispute Cotton’s factual assertions that Geraci had lied and submitted the CUP
 27 without, *inter alia*, paying Cotton the balance of the NRD and reducing the November Agreement to
 28 writing. Cotton replied via email:

Larry, I received your text asking to meet in person tomorrow. I would prefer that until we

1 have final agreements, that we converse exclusively via email.... To be frank, I feel that
2 you are not dealing with me in good faith, you told me repeatedly that you could not submit
3 a CUP application until certain zoning issues had been resolved and that you had spent
4 hundreds of thousands of dollars on getting them resolved. *You lied to me*, I found out
5 yesterday from the City of San Diego that you submitted a CUP application on October 31,
6 2016 BEFORE we even signed our agreement on the 2nd of November. There is no
7 situation where an oral agreement will convince me that you are dealing with me in good
8 faith and will honor our agreement. *We need a final written, legal, binding agreement.*

9 Please *confirm, as requested*, by 12:00 PM Monday *that you are honoring our agreement*
10 *and will have final drafts* (reflecting completely the below) by Wednesday at 12:00 PM.
11 [DC Decl. Ex. 1, p.61 (emphasis added).]

12 On March 18, 2017, Geraci replied to Cotton as follows: "*Darryl, I have an attorney working on*
13 *the situation now. I will follow up by Wednesday with the response as their timing will play a factor.*"

14 (DC Decl. Ex. 1, pp.62-63.) Cotton, now understanding Geraci's deceitful nature, replied:

15 Larry, I understand that drafting the agreements will take time, but you don't need to consult
16 with your attorneys to tell me whether or not you are going to honor our agreement. *I need*
17 *written confirmation that you will honor our agreement* so that I know that you are not
18 just playing for time – hoping to get a response from the City before you put down in
19 writing that you owe me the remainder of the \$50,000 nonrefundable deposit we agreed to.
20 [DC Decl. Ex. 1, p.64.) (emphasis added).]

21 Geraci's response to Cotton's **three (3) written requests for assurance of performance** was nebulous,
22 and there was no finalization of the written agreements or confirmation of his intent to do so by Cotton's
23 deadline.

24 Thus, Cotton, having been true to his word and waiting until March 20 had passed (without receipt
25 of adequate assurance nor performance by Geraci, *i.e.*, Geraci's breach of the November agreement)
26 terminated the deal with Geraci on March 21, 2017 for breach: "To be clear, as of now, you have no
27 interest in my property, contingent or otherwise." (DC Decl. Ex. 1, p.67.) Having anticipated Geraci's
28 breach, Cotton had already lined up another buyer and then executed a written purchase agreement for
the sale of the Property to Mr. Martin (the "Martin Sale Agreement"). (RJN 6, pp.182-196.) The next
day, Geraci's counsel, Michael Weinstein ("Weinstein"), emailed Cotton the Complaint and the LP filed
on the Property. (DC Decl. ¶¶ 18,19.) The Complaint is premised solely on the allegation the Receipt is
the final written agreement for the Property (Comp. ¶7).

29 **II. DISCUSSION**

30 **A. GERACI HAS THE BURDEN OF PROOF IN OPPOSING COTTON'S MOTION TO**
EXPUNGE A LIS PENDENS PURSUANT TO CCP §405.32.

1 CCP §405.30 provides, in relevant part, as follows:

2 At any time after notice of pendency of action has been recorded, any party . . . may apply
3 to the court in which the action is pending to expunge the notice . . . Evidence or
4 declarations may be filed with the motion to expunge the notice. The court may permit
5 evidence to be received in the form of oral testimony, and may make any orders it deems
6 just to provide for discovery by any party affected by a motion to expunge the notice. The
7 claimant shall have the burden of proof under Sections 405.31 and 405.32.

8 Thus, to avoid a motion to expunge under CCP §405.32, the burden is on the *LP* claimant – here,
9 Geraci – to establish the “probable validity” of the real property claim “by a preponderance of the
10 evidence.” *Id.* “If conflicting evidence is presented, the judge must weigh the evidence in deciding
11 whether plaintiff has sustained its burden.” Rutter Guide §9:436.2. As summarized and explained by
12 Miller & Starr, *California Real Estate*, Chapter 10, Section D.8 (December 2017 Update):

13 When expungement is sought on the basis that the real property claim lacks probable
14 validity, the claimant who filed the *lis pendens* has the burden of proof by a preponderance
15 of the evidence that the claim has probable validity. The resolution of this issue, unlike the
16 “failure to plead” grounds for expungement, requires the court to examine the factual
17 merits of the claim. Written evidence or declarations may be filed, and the court may permit
18 oral testimony; the court also may authorize discovery by the party moving to expunge. It
19 is not sufficient for the claimant merely to make a *prima facie* showing of probable validity;
20 the demonstration of “probable validity” requires a determination that it is more likely than
21 not that the claimant will obtain a judgment against the Cotton on the claim. The court is
22 required to weigh the evidence and make a preliminary determination based on the
23 evidence submitted, of whether it is more probable than not, that the claimant will prevail
24 on its real property claim. This determination must be made based on a preponderance of
25 evidence, with the claimant bearing the burden of proof. *Thus, the current statute
26 deliberately rejects former law that the trial court is not required to conduct a “mini-
27 trial” of the action on the merits and cannot resolve conflicts in the evidence, and
28 requires a hearing on the merits of the same nature as an attachment proceeding or a
claim and delivery proceeding.* [Emphasis added; internal citations omitted.]

Expungement of an improper *LP* is mandatory, not discretionary - “the court *shall* order that the
notice be expunged if the court finds that the claimant has not established by a preponderance of the
evidence the probable validity of the real property claim.” CCP §405.32 (emphasis added). Geraci cannot
meet his burden of proof, thus, the *LP* must be expunged.

**B. GERACI CANNOT ESTABLISH PROBABLE VALIDITY THAT THE RECEIPT IS THE
FINAL AGREEMENT FOR COTTON’S PROPERTY.**

In his Complaint, pursuant to which the *LP* was filed, Geraci alleges the following four causes of
action: (1) Breach of Contract (“BOC”); (2) Breach of the Covenant of Good Faith and Fair Dealing; (3)
Specific Performance; and (4) Declaratory Relief. (RJN 2.) The primary cause of action is the BOC (with

1 the other causes arising therefrom), which is predicated solely on the allegation the Receipt is the final
2 written agreement for the purchase of the Property by Geraci. As alleged by Geraci in his Complaint:

3 (i) "On November 2, 2016, [Geraci] and [Cotton] entered into a written agreement for the
4 purchase and sale of the [Property] on the terms and conditions stated therein." (Comp. ¶7.);

5 (ii) "On or about November 2, 2016, [Geraci] paid to [Cotton] \$10,000 good faith earnest
6 money to be applied to the sales price of \$800,000.00 and to remain in effect until the license,
7 known as a Conditional Use Permit or CUP is approved, all in accordance with the terms and
8 conditions of the written agreement." (Comp. ¶8.); and

9 (iii) "[Cotton] has anticipatorily breached the contract by stating that he will not perform the
10 written agreement according to its terms. Among other things, [Cotton] has stated that,
11 contrary to the written terms, the parties agreed to a down payment... of \$50,000... [and] he
12 is entitled to a 10% ownership interest in the [Property.]" (Comp. ¶11.)

13 Materially summarized, Geraci and Cotton are in accord that on November 2, 2016: (i) an
14 agreement was reached for the sale of the Property; (ii) Cotton received \$10,000 from Geraci; and (iii) a
15 document was executed by both parties on that day. However, the parties dispute what that executed
16 document is. Cotton alleges the document, the Receipt, is just a "receipt" meant to memorialize his receipt
17 of the \$10,000. Geraci, on the other hand, alleges the Receipt is the "final written agreement" for his
18 purchase of the Property and that Cotton is lying about being entitled to a total \$50,000 NRD and a 10%
19 equity stake in the Property – terms not contained in the Receipt.

20 Thus, the sole and case-dispositive issue in this action is a determination of whether the Receipt
21 is a "receipt" as Cotton alleges or a "final written agreement" for the Property as Geraci alleges. The
22 evidence is simple and clear. Geraci fraudulently induced Cotton into executing the Receipt; promising
23 to have Austin promptly reduce the November Agreement to writing for execution. Geraci schemed to
24 acquire the Property by misrepresenting the Receipt as the final agreement for the Property if the CUP is
25 *approved*.⁶ Alternatively, if the CUP is *denied*, Geraci can simply breach his promise to pay the \$40,000

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28
⁶ Cotton notes that for what Geraci alleges is a simple 3-sentence breach of contract suit, he has what appears to be, based on pleadings filed, at least three full-time attorneys from two separate and sizeable law firms – Ferris & Britton and Austin Legal Group – representing him and engaging in litigation and discovery tactics that are demonstratively oppressive. "Oppression means the ultimate effect of the burden of responding to the discovery is incommensurate with the result sought. In considering whether the discovery is unduly burdensome or expensive, the court takes into account 'the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation.'" (Code Civ. Proc., §2019.030, subd. (a)(2).) *People v. Sarpas* (2014) 225 Cal.App.4th 1539, 1552 (case citations omitted). As proven herein, this case lacks probable cause. Thus, given Cotton is financially destitute and with no legal background, traveling to and from a deposition and responding to even basic interrogatories and requests for admissions (while doing so *pro se*) is oppressive because (i) the "discovery sought is unreasonably cumulative or duplicative" (CCP §2019.030) as all material evidence is already in the record and (ii) "unduly burdensome [and] expensive, taking into account the needs of the case" (CCP §2019.030).

1 balance due on the NRD. But-for Cotton calling the City (discovering a CUP had been submitted in
2 October of 2016), confronting Geraci about his lies and demanding him to perform or provide assurance
3 of performance, Geraci's fraudulent scheme would have been successful.

4 "Fraud is a *defense* to breach of contract ... and the elements of contractual fraud are very similar
5 to those of deceit. Courts analyzing tort cases often rely on contract cases (and vice versa), and may
6 interchangeably cite the tortious deceit statutes (Civ.C. §§1709-1710) and contractual fraud statutes
7 (Civ.C. §§1572-1573)." Rutter Guide, *Civil Procedure Before Trial, Claims & Defenses* ¶5:3 (citing
8 *Pacesetter Homes, Inc. v. Brodtkin* (1970) 5 Cal.App.3d 206, 210-211; *Bily v. Arthur Young & Co.* (1992)
9 3 Cal.4th 370, 415; and 5 Witkin, *Summary of California Law, Torts* §767 (11th ed. 2017)).

10 Cotton, to prevail on this motion, must provide sufficient evidence to prove that Geraci will "more
11 likely than not" fail to "obtain a judgment against [Cotton] on the [BOC] claim." CCP §405.30. He can
12 do so by proving any one of the *contractual fraud* statutes for (i) Misrepresentation, (ii) Concealment,
13 (iii) False Promise or (iv) Other Deceptive Acts.⁷ However, to not just prevail on this motion, but to
14 demonstrate the complete lack of probable cause underlying this suit and the intentional malicious filing
15 of the *LP*, Cotton establishes and proves the more difficult elements for the fraudulent *tort of deceit* and
16 *promissory fraud* as defined by the California Supreme Court. In *Lazar v. Superior Court* (1996) 12
17 Cal.4th 631, 638 (internal citations and quotations omitted) the Court stated:

18 The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation
19 (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or
20 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e)
21 resulting damage.

22 "Promissory fraud" is a subspecies of the action for fraud and deceit. A promise to do
23 something necessarily implies the intention to perform; hence, where a promise is made
24 without such intention, there is an implied misrepresentation of fact that may be actionable
25 fraud. [¶] An action for promissory fraud may lie where a [plaintiff] fraudulently induces
26 the [defendant] to enter into a contract.

27 Misrepresentations. Geraci made, *inter alia*, the following misrepresentations: (1) Cotton's
28 execution of the Ownership Statement was required to resolve the Critical Zoning Issue; (2) the alleged

7 Civ.C. §1572(1) (Misrepresentation: "The suggestion, as a fact, of that which is not true, by one who does not believe it to be true."); Civ.C. §1572(3) (Concealment: "The suppression of that which is true, by one having knowledge or belief of the fact"); Civ.C. § 1572(4) (False Promise: "A promise made without any intention of performing it"); Civ.C. §1572(5) (Other Deceptive Act: "Any other act fitted to deceive."; *see Wells v. Zenz* (1927) 83 Cal.App. 137, 140 (Describing this catchall provision as covering "all the multifarious means which human ingenuity can devise" and including deception by "surprise, trick, cunning, dissembling and unfairness.")).

1 Critical Zoning Issue, unless first resolved with Geraci's unique and powerful political connections,
 2 prevented the submission of a CUP to the City; (3) he would pay Cotton the balance of the \$50,000 NRD
 3 before submitting the CUP to the City; (4) the Receipt would not be represented as the "final agreement"
 4 for the Property; (5) he would have his attorney, Austin, *promptly* reduce the November Agreement to
 5 writing; (6) he would provide Cotton a 10% equity stake in the MO; and (7) he would provide Cotton a
 6 minimum \$10,000 a month payment throughout the life of the MO (the "Seven Primary
 7 Misrepresentations").

8 Knowledge of Falsity. The (i) *undisputed* written admissions and communications *by* Geraci
 9 (most notably the Confirmation Email, the Confirmation Text, the Text Communications, and the March
 10 Request Email); (ii) the City Parcel Report; (iii) the fact the CUP was submitted by Geraci's agent, Berry,
 11 and accepted by the City in October 2016; and (iv) the language in the multiple drafts of the Purchase
 12 and Side Agreements prepared by Geraci's attorney, Austin, *after* November 2, 2016 clearly prove
 13 beyond any reasonable doubt that Geraci knew each of the Seven Primary Misrepresentations were false.

14 Intent to Defraud. Prior to the execution of any documents, Geraci provided his Qualification
 15 Representations and thereby characterized himself as a trustworthy, ethical, knowledgeable and
 16 politically influential individual that was uniquely positioned to help Cotton with resolving the Critical
 17 Zoning Issue and, consequently, getting a CUP approved on the Property. Thus, Geraci's Qualification
 18 Representations were material and had the intent and effect of deceiving Cotton into believing, relying
 19 and acting on Geraci's Seven Primary Misrepresentations.⁸

20 Justifiable Reliance. Based on Geraci's representations, it was reasonable and justifiable for
 21 Cotton to act as if Geraci was being truthful. "No rational party would enter into a contract anticipating
 22 that they are or will be lied to." *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 993.
 23 Prior to discovering in March of 2017 that Geraci had submitted a CUP in October of 2016, Cotton,
 24 although upset at the lack of progress, had no reason to believe that Geraci was an unscrupulous
 25 individual. Thus, it was reasonable for Cotton to be induced by Geraci's representations into (i) executing
 26 the Ownership Statement, (ii) executing the Receipt, (iii) believing Geraci was diligently working on the
 27

28 ⁸ See *Whiteley v. Philip Morris, Inc.* (2004) 117 Cal.App.4th 635, 678; 5 Witkin, Summary of California Law, Torts §808 (11th ed. 2017) (actual reliance is shown if the misrepresentation substantially influences a party's decision to act).

1 Critical Zoning Issue; (iv) believing Austin was working on reducing the November Agreement to writing
2 for execution; and (v) forbearing from entering into a contract for the Property with a third-party⁹. It was
3 not until Geraci refused to perform or even respond to Cotton's repeated requests for assurance of
4 performance that Cotton justifiably terminated the November Agreement.¹⁰

5 Damage. It is impossible to convey in this action and motion the full scope of the irreparable and
6 unconscionable physical and psychological damage Geraci has caused Cotton.¹¹ However, at a
7 minimum, Cotton is entitled to compensation for all harm caused by Geraci's breach of contract that was
8 foreseeable. Civ.C. §3300. Some of Cotton's lost profits are recoverable as they were certain, under both
9 the November Agreement and the original Martin Sale Agreement, he was guaranteed a monthly
10 minimum of \$10,000. Civ.C. §3301. Furthermore, "once a person willfully deceives another with intent
11 to induce him to alter his position to his injury, he 'is liable for any damage which he thereby suffers.'
12 (Civ.C. §1709.)" *Fowler v. Fowler* (1964) 227 Cal.App.2d 741, 748. Here, to finance this meritless
13 litigation, Cotton was forced to unconditionally sell his Property for a flat \$500,000 and he no longer has
14 any equity or monthly payments even if the CUP is approved. (RJN 6, p.194.)

15 **C. ALL OF GERACI'S ARGUMENTS ARE MEANT TO DISTRACT THIS COURT FROM**
16 **THE UNDISPUTED AND CASE-DISPOSITIVE NATURE OF THE CONFIRMATION**
17 **EMAIL AND OTHER EVIDENCE PROVING THE RECEIPT IS JUST A RECEIPT.**

18 A review of the record of this action, and the related Petition for Writ of Mandate action Cotton filed
19 against the City of San Diego¹² reveals that Weinstein devotes the vast and overwhelming majority of his
20 arguments to describing in painstaking detail, and proving with voluminous supporting evidence, the

21 ⁹ "Forbearance – the decision not to exercise a right or power – is sufficient consideration to support a contract and to
22 overcome the statute of frauds. [Citation.] It is also sufficient to fulfill the element of reliance necessary to sustain a cause of
23 action for fraud or negligent misrepresentation." *Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 174.

24 ¹⁰ Civ.C. § 1440; "[I]f a party to a contract expressly or by implication repudiates the contract before the time for his or her
25 performance has arrived, an anticipatory breach is said to have occurred." *Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th
26 479, 489; see I Witkin, Summary of California Law, Contracts §§861-868; *Restatement (Second) Contracts* §§250-257
27 (Anticipatory breach—also called "anticipatory repudiation" and "prospective nonperformance"—occurs when a party whose
28 performance is not yet due makes clear that it does not intend to perform.).

¹¹ Cotton has filed a complaint in the United States District Court, Southern District of California which currently is pending
before The Honorable Gonzalo Curiel (Case No. 3:18-cv-00325). The federal action is stayed pending resolution of this state
action. Cotton has alleged causes of action against Mr. Geraci, Ms. Berry, Ms. Austin, Messrs. Weinstein and Toothacre, and
their respective law firms, Ferris & Britton and Austin Legal Group, for, *inter alia*, Civil Conspiracy and RICO. One of the
primary issues in that suit will focus on whether Geraci had probable cause, in light of the Confirmation Email and the other
evidence presented herein, to bring forth this suit; *see, generally*, RJN 6 (Cotton's attempt, in a submission that was
procedurally an opposition to compel certain discovery requests, describe the challenges he has faced in this litigation and his
relationship with counsel. His submission was supported by numerous declarations of individuals who interacted with him
during the negotiations phase with Geraci and this litigation.).

¹² *Darryl Cotton v. City of San Diego* (Case No. 37-2017-00037675-CU-WM-CTL).

1 significant amount of time, energy, resources and capital that Geraci has invested in seeking to have the CUP
 2 approved. *This is meant to distract the Court from the undisputed and case-dispositive nature of the*
 3 *Confirmation Email, the Confirmation Text, the March Request Email, the Metadata Evidence and testimony*
 4 *presented herein that completely remove all probable cause to support Geraci's allegation that the Receipt*
 5 *is the final agreement for the Property.* Geraci's lengthy descriptions of his self-serving performance cannot
 6 be the basis of granting him a right of ownership to Cotton's Property. But, it *does* serve to distract the Court
 7 by creating the illusion – because he has invested “more than \$300,000.00 on the CUP process” – that he
 8 would only do so if he had a legal right of ownership to the Property. (Comp. ¶9.)

9 Previously, Geraci filed a Demurrer to Cotton's Cross-Complaint arguing, *inter alia*, the Statute
 10 of Frauds (“SOF”) and the Parol Evidence Rule (“PER”) should prevent admission of some of the written
 11 communications, especially the Confirmation Email, between the parties referenced above. This Court
 12 properly denied Geraci's Demurrer. However, even assuming, *arguendo*, the Court had ruled otherwise
 13 in the first instance, Geraci's reliance on the SOF and the PER is misplaced. First, “The doctrine of
 14 estoppel to plead the statute of frauds may be applied where necessary to prevent either unconscionable
 15 injury or unjust enrichment.” *Tenzer v. Superscope, Inc.* (1985) 39 Cal.3d 18, 27. Here, as described
 16 above, both unconscionable injury and unjust enrichment will occur if Geraci can misrepresent the
 17 Receipt as the final agreement for the Property. Second, the PER does not bar evidence of *fraudulent*
 18 *promises* at variance with terms of the writing: “[I]t was never intended that the parol evidence rule
 19 should be used as a shield to prevent the proof of fraud.” *Riverisland Cold Storage, Inc. v. Fresno-Madera*
 20 *Production Credit Ass'n* (2013) 55 Cal.4th 1169, 1182 (quoting *Ferguson v. Koch* (1928) 204 Cal. 342,
 21 347).

22 Notably, the California Supreme Court in *Riverisland* referenced *Tenzer, supra*, in reaching its
 23 holding: “*Tenzer* disapproved a 44-year-old line of cases to bring California law into accord with the
 24 Restatement Second of Torts, holding that a fraud action is not barred when the allegedly fraudulent
 25 promise is unenforceable under the statute of frauds. Considerations that were persuasive in *Tenzer* also
 26 support our conclusion here. The *Tenzer* court decided the Restatement view was better as a matter of
 27 policy. [Citation.] *It noted the principle that a rule intended to prevent fraud, in that case the statute*
 28 *of frauds, should not be applied so as to facilitate fraud.* [Citation.]” *Riverisland, supra*, at 1183

1 (emphasis added).

2 Litigation-hyperbole aside, it would be truly outrageous and violate all notions of justice, fairness
3 and simple decency if Geraci could invoke the SOF or the PER to prevent his own written admissions
4 proving his own fraud. Cotton has continuously sold and collateralized his remaining interest in the
5 Property to finance this meritless litigation. If he loses – it is not an exaggeration, but a fact – Cotton will
6 be destitute and homeless.¹³


7 **IV. CONCLUSION**

8 The Receipt is the *only* piece of evidence Geraci has *ever* produced which APPEARS to grant
9 him a right of ownership to the Property. Setting aside the other evidence referenced above (Geraci’s
10 anticipatory breach of the November Agreement and the fraud), the Confirmation Email alone is
11 indisputably dispositive on this issue – *the Receipt is just a “receipt” and not a “final written*
12 *agreement” for the Property.* Geraci had no probable cause to file this action and “recorded [the]
13 lis pendens... to coerce [Cotton] to settle regardless of the merits.” *Hilberg, supra*, at 542 (“We cannot
14 ignore as judges what we know as lawyers - that the recording of a lis pendens is sometimes made ... to
15 coerce an opponent to settle regardless of the merits.”).

16 For the reasons forth above, Geraci cannot meet his burden and establish the probable validity
17 that the Receipt is the final written agreement for the Property. Thus, respectfully, Cotton requests the
18 Court order the *LP* be expunged, award Cotton his attorneys’ fees and costs¹⁴ (to be submitted by way of
19 noticed motion upon this Court’s ruling on this motion), and such other relief as this Court may find just
20 and proper based on its factual findings at the hearing on this motion.

21
22 DATED: April 4, 2018

THE LAW OFFICE OF JACOB AUSTIN

23 By 
24 JACOB P. AUSTIN
25 Attorney for Defendant and Cross-Complainant
26 DARRYL COTTON

27 ¹³ DC Decl. ¶21; RJN 6, p.194 (Amendment to Martin Sale Agreement).

28 ¹⁴ *Castro v. Superior Court* (2004) 116 Cal.App.4th 1010, 1018 (“Under section 405.38, a prevailing party on a motion to expunge a lis pendens is *entitled* to recover attorney fees. The statute provides: ‘The court *shall* direct that the *party prevailing on any motion* under this chapter be awarded the reasonable attorney’s fees and costs of making or opposing the motion unless the court finds that the other party acted with substantial justification or that other circumstances make the imposition of attorney’s fees and costs unjust.’ (§405.38, italics added.)”). [Emphasis in original.]

1 ANDREW FLORES
2 California State Bar Number 272958
3 Law Office of Andrew Flores
4 945 4th Avenue, Suite 412
5 San Diego, CA 92101
6 Telephone: (619) 356-1556
7 Facsimile: (619) 274-8053
8 Andrew@FloresLegal.pro

9 Plaintiff *In Propria Persona*,
10 and Attorney for Plaintiffs
11 Amy Sherlock, Minors T.S.
12 and S.S., Jane Doe, and Jeff Hagler

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 ANDREW FLORES, an individual; AMY)
16 SHERLOCK, on her own behalf and on half)
17 of her minor children, T.S. and S.S.; JANE)
18 DOE, an individual; and JEFF HAGLER, an)
19 individual;)

20 Plaintiffs.)

21 vs.)

22 GINA M. AUSTIN, an individual; AUSTIN LEGAL)
23 GROUP APC, a California Corporation; JOEL R.)
24 WOHLFEIL, an individual; LAWRENCE (AKA)
25 LARRY) GERACI, an individual; TAX &)
26 FINANCIAL CENTER, INC., a California)
27 Corporation; REBECCA BERRY, an individual;))
28 JESSICA MCELFFRESH, an individual; SALAM)
RAZUKI, an individual; NINUS MALAN, an)
individual; MICHAEL ROBERT WEINSTEIN, an)
individual; SCOTT TOOTHACRE, an individual;))
ELYSSA KULAS, an individual; RACHEL M.)
PRENDERGAST, an individual; FERRIS &)
BRITTON APC, a California Professional)
Corporation; DAVID DEMIAN, an individual;))
ADAM WITT, an individual; RISHI BHATT, an)

Case No.: '20CV0656 JLS LL
DECLARATION OF ANDREW FLORES IN SUPPORT OF PLAINTIFF'S EX PARTE APPLICATION FOR:
(1) TEMPORARY RESTRAINING ORDER;
(2) ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION;
(3) ORDER TO SHOW CAUSE RE: SANCTIONS AS TO ATTORNEY NATALIE NGUYEN;
(4) ORDER COMPELLING THE ATTENDANCE OF ATTORNEY NATALIE NGUYEN;
(5) ORDER TO SHOW CAUSE RE: SANCTIONS AS TO CORINA YOUNG;
(6) ORDER COMPELLING THE ATTENDANCE OF CORINA YOUNG

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

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 Defendants,

JOHN EK, an individual; THE EK FAMILY TRUST,
 1994 Trust

Real Parties In Interest.

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I, ANDREW FLORES, declare:

1. I am over the age of eighteen years and am both a Plaintiff *Pro Per* and Attorney for Amy Sherlock, her minor children T.S. and S.S., Jane Doe and Jeff Hagler in this action.

2. I am admitted to practice law in this jurisdiction, California Bar No. 272958, and before this court.

3. Plaintiffs, for the purposes of this lawsuit, waived any potential conflict and have agreed that there is no actual conflict at this time. This waiver by and between Plaintiffs at this point in time is not a direct or indirect waiver of any applicable privilege as to any third parties.

4. The facts set forth herein are true and correct as of my own personal knowledge.

5. This declaration is submitted in support of Plaintiff’s EX PARTE APPLICATION referenced and captioned above.

6. On March 25, 2019, I purchased the contractual rights of Richard Martin (“Flores Purchase Agreement”) in the agreement between him and Darryl Cotton executed on March 21, 2017 (and generally referred to as the Martin Purchase Agreement). The Flores Purchase Agreement is attached hereto as Exhibit 1.

7. My initial involvement in *Cotton I*¹ was assisting Attorney Jacob Austin (“Jacob”) with one special appearance.

8. Shortly thereafter I began assisting Jacob in the matter. Through my assisting of Jacob, I was introduced to one of Darryl Cotton’s litigation investors, Joe Hurtado.

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

1 9. Hurtado informed me that though Martin had purchased the Property² from
2 Cotton, he and Jane Doe provided the \$50,000 required under the Martin Purchase
3 agreement, which they knew would have to be disclosed, because they believed Geraci
4 to a “violent and mafia-like figure.”

5 10. When I initially began working on the case, Jacob maintained an office in
6 Mission Valley, Cotton lived near the City of Lemon Grove and Hurtado lived about 30
7 miles outside of San Diego; because of this Jane Doe allowed them to take over a floor
8 of her residence to work on *Cotton I*.

9 11. It was during a meeting at her home that I met Jane Doe and she confirmed
10 she paid to Cotton \$25,000 pursuant to the Martin Purchase Agreement.

11 12. Through my review of *Cotton I*, I came to the realization that Martin was an
12 indispensable party to that action because resolution of that matter would affect his rights
13 as the equitable owner of the Property.

14 13. In or around February 2019, I informed Martin of my belief that he was an
15 indispensable party. At this time he relayed to me that he was not interested in being
16 involved in protracted litigation with allegations of fraudulent behavior, organized crime
17 and violence. Also, that he had been to a hearing in *Cotton I* in which Judge Wohlfeil had
18 been openly “dismissive” and “disrespectful” to Cotton so he believed Judge Wohlfeil to
19 be biased against Cotton.

20 14. I offered to purchase Martin’s rights to the Martin Purchase Agreement,
21 which he agreed to on March 25, 2019.

22 15. On or about June 26, 2019, I personally met with attorneys Michael
23 Weinstein and Scott Toothacre of Ferris & Britton who represent Lawrence Geraci and
24 Rebecca Berry in *Cotton I* and informed them that I was the equitable owner of the
25 Property since I had purchased Martin’s contractual interests at the end of March 2019.

26 16. At that meeting Weinstein alleged that the draft agreements between Cotton
27

28 ² “Property” means the real property located at 6176 Federal Blvd, San Diego, California 92114.

1 and Geraci were “appeasement” efforts by Geraci to placate Cotton. I then asked
2 Weinstein to explain how the Request for Confirmation email (as defined in the
3 Application) did not establish the parties did not mutually assent to the November
4 Document (as defined in the Application) being a purchase contract.

5 17. Weinstein visibly stumbled for a few moments while he attempted to
6 articulate a response, and then alleged that the Request for Confirmation was an
7 “extortionate scheme” by Cotton to acquire a 10% equity position in the dispensary.

8 18. I had, previous to that meeting, reviewed all of the motions, declarations,
9 pleadings, and discovery responses in *Cotton I*, this was the first time that F&B had
10 accused Cotton of a crime – an “extortionate scheme” to acquire an interest in the
11 cannabis business.

12 19. I noted to Weinstein that this was never part of the record of this case and
13 Weinstein responded that Cotton should have deposed Geraci if he wanted that
14 information.

15 20. Weinstein did not explain why Geraci would disclose the “extortionate
16 scheme” defense in a deposition, but not in any pleading or in response to multiple rounds
17 of discovery that required he set forth all his defenses to Cotton’s allegations.

18 21. I was told by Hurtado that Corina Young, an entrepreneur with various
19 business interests, visited the Property on October 2, 2017 and spoke with Cotton about
20 acquiring an interest in the contemplated dispensary. Hurtado further stated that Cotton
21 called him and the three of them discussed Young potentially investing in the *Cotton I*
22 litigation in exchange for an interest in the contemplated cannabis business at the
23 Property. Attached hereto as Exhibit 2 is the first email between Hurtado and Young sent
24 the day after they met provided by Hurtado.

25 22. Though an agreement was never made as to the investment in *Cotton I*, in
26 May of 2018 Hurtado thought Young may be interested in financing *Cotton I* not as an
27 investment but as a loan secured by the Property. As evidence of this Hurtado provided
28 me with an email dated May 17, 2018 that he sent to Young that includes the investment

1 proposal, which is attached hereto as Exhibit 3.

2 23. On June 26, 2019 I filed a motion to intervene in *Cotton I*, which was
3 subsequently denied by Judge Wohlfeil. (*Cotton I*, ROA 572.)

4 24. On June 30, 2019, the day before *Cotton I* trial started, Young called Hurtado
5 while I was present. Hurtado put the call on speakerphone and I informed Young that
6 Jacob was trying to serve her with a subpoena to testify at *Cotton I* as her testimony was
7 crucial to his case and that he never received the statement she promised to provide.

8 25. Young stated that she had moved out of the City, could not be served and
9 did not “want anything to do with Cotton or the litigation.” I informed Young that her
10 absconding was not going to end the case because regardless of the outcome of *Cotton I*,
11 I would be filing my own lawsuit against the defendants named herein once I had finished
12 conducting my due diligence and investigations. It was at that point that Young stated,
13 *inter alia*, that my family and I should be fearful because Austin and Magagna were
14 “dangerous.”

15 26. In January 2020, after several more months of investigations and researching
16 the relationships between the defendants and other nexus lines between their marijuana
17 related projects, I believed I was done and intended to name Young as a co-conspirator
18 of Geraci.

19 27. Around this time, I was preparing to name Young to be a defendant and
20 Hurtado was able to arrange a call with Young. I explained to Young that her failure to
21 provide her testimony, moving out of the City to prevent service of process, and her
22 connections with the defendants that form the Enterprise, it was my opinion that I had
23 probable cause to name her as a co-conspirator and that I would bring forth suit against
24 her and see her civilly liable. I also explained that the civil action could lead to her being
25 criminally prosecuted once all of the facts came to light and that I was already in touch
26 with the FBI who were investigating public corruption related to marijuana pay-to-play
27 conspiracies.

28 28. It was at that point that Young broke down and began to explain that she had

1 done nothing illegal and that it was her attorney Natalie Nguyen who told her not to
2 provide her testimony and ignore the subpoena; that she was referred to Nguyen by
3 attorney Matt Shapiro; and that Shapiro paid almost all of her fees due to Nguyen for her
4 legal services.

5 29. I asked her if she had any evidence of this and she told me that Nguyen had
6 told her, in an email, that it was ok to “ignore” their obligation to provide her testimony
7 because it was “too late” for Cotton to do anything about it.

8 30. On or about February 24, 2020, I attempted to speak to the owner of a
9 business located at 6230 Federal Blvd, San Diego, CA, 92114 (the “Tire Shop”). This
10 property is owned by John Ek, who is also the owner of 6220 Federal Blvd, San Diego,
11 CA, 92114 (“6220 Federal”). 6220 Federal is the location at which the City issued a
12 cannabis conditional use permit to Aaron Magagna (the “District Four CUP”).

13 31. The owner of the Tire Shop would not provide me his name but did confirm
14 that he was being “evicted.” He requested he not be involved in any litigation.

15 32. I then walked to 6176 Federal Blvd to talk to Cotton. I informed him of my
16 encounter, and he told me that he was actually planning on purchasing some tires for one
17 of his vehicles and may have an opportunity to converse with this individual.

18 33. On March 2, 2020, Cotton informed me that he had just purchased tires from
19 the Tire Shop, and in fact did speak to the owner who stated that he leases the property
20 from Ek. The owner told Cotton that Ek had given him notice to vacate the property
21 because he was seeking to enlarge the dispensary approved at 6220 Federal Blvd. Cotton
22 provided Flores with the purchase receipt at the Tire Shop as evidence of his conversation
23 with the owner, which is attached hereto as Exhibit 4.

24 34. On or about June 4, 2018, Jacob Austin provided me an email chain between
25 him and Michael Weinstein, the subject being “Geraci v. Cotton matter,” which is
26 attached hereto as Exhibit 5.

27 35. In or around June 2018 Cotton provided me with copies of a conversation
28 he had with defendant Aaron Magagna via “Facebook Chat” that began on or about May

1 28, 2018 in which he, Magagna, confirms that his attorney is Matthew Shapiro. Those
2 Facebook chats provided by Cotton are attached hereto as Exhibit 6.

3 36. In or around July 2019, Jacob provided me with an email chain beginning
4 on January 16, 2019 between him and Natalie Nguyen, attorney for Young, which
5 discusses Young being subpoenaed for her deposition and her testimony regarding her
6 email exchange with Hurtado. That email chain provided by Jacob is attached hereto as
7 Exhibit 7.

8 37. During my review of discovery provided by Geraci in *Cotton I*, I came
9 across a letter from sent to Abhay Schweitzer from the Cherlyn Cac of DSD with the
10 City, which reference the application for a cannabis CUP at the Property as an application
11 for a Marijuana Outlet CUP. Attached hereto as Exhibit 8 is a true and correct copy of
12 that letter (excluding a 14 page attachment).

13 38. During my investigation of Geraci I visited the website for his company Tax
14 and Financial Center (www.larrygeraci.com). On his website, under the tab labeled
15 “Services,” Geraci offers, *inter alia*, a number of services relating to Tax Management,
16 Accounting, Estate Planning, Cash Flow and Budgeting Analysis, and IRS
17 Representation. I took a screenshot of that webpage on March 19, 2020. A true and correct
18 copy of that screenshot is attached hereto as Exhibit 9.

19 39. Attached hereto as Exhibit 10 is an email sent by Cotton to Geraci on
20 November 3, 2016 that was provided by Geraci during discovery labeled bates no.
21 GER0448-GER0449.

22 40. In or around March 2020, while investigating other possible connections
23 between certain defendants, I located the California State Bar Profiles for attorneys Gina
24 Austin and Natalie Nguyen that reflect they both attended Thomas Jefferson School of
25 Law and were both admitted to practice law in California on December 1, 2006.

26 41. In or around June 2018, I had a conversation with Cotton in which he
27 expressed to me that he believed that Magagna was a co-conspirator of Geraci because
28 of information he had learned from Young, but that Young did not believe Magagna

1 would engage in fraudulent conduct.
2

3 I declare under penalty of perjury according to the laws of the State of California
4 that the foregoing is true and correct, and that this declaration was executed on April 3,
5 2020 at San Diego, California.

6 

7 _____
8 ANDREW FLORES
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EXHIBIT 1

AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

//
//
//

AGREEMENT

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

ADDITIONAL PROVISIONS

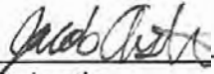
10. Any invalid, illegal or unenforceable provision of this Agreement shall be severable, and after any such severance, all other provisions of this Agreement shall remain in full force and effect.
11. Insofar as there are any legal disputes between Martin and any other party arising from or related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

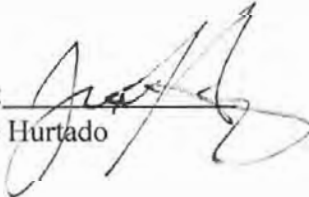
with the internal laws of the State of Hawaii without giving effect to the conflict of laws provisions thereof and the venue for any action filed by or against Martin shall be Honolulu, Hawaii. The prevailing party, in any legal dispute, shall have the right to collect from the other party its reasonable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

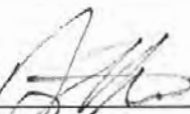
12. The parties agree to negotiate in good faith regarding any issues that may arise by among some or all of the parties in regards to this Agreement. It is the intent of the parties, and they are relying on such, that they shall work in good faith and that any such issues be construed in light of, and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

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

By: 
Andrew Flores

By: 
Jacob Austin

By: 
Joe Hurtado

By: 
Darrin Cotton

By: 
Richard Martin

Exhibit A

(Redacted Secured Litigation Financing Agreement)

SECURED LITIGATION FINANCING AGREEMENT

This amendment to the Secured Litigation Financing Agreement (the "Financing Agreement") is entered into by and among Jacob Austin ("Austin"), Darryl Cotton ("Cotton"), Joe Hurtado ("Hurtado"), and Richard Martin ("Martin") on ~~December 26, 2016~~ December 20, 2017.

RECITALS

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

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

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

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

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

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

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

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

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

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

5.

6.

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

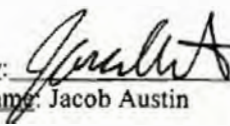
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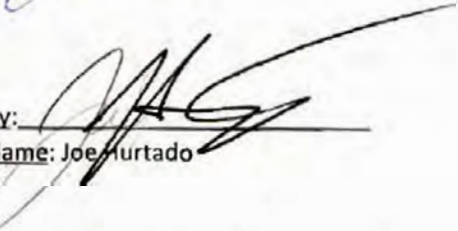
9. The parties agree to negotiate in good faith in regards to any other agreements or issues that may arise by among some or all of the parties hereto, in regards or related to the subject matter hereof, pending final resolution of the various matters, litigation or otherwise, described herein. It is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

[Remainder of this page left intentionally blank.]

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

By: 
Name: Darryl Cotton

By: 
Name: Jacob Austin

By: 
Name: Joe Murtado


By: 
Name: Richard Martin

EXHIBIT 1

Secured Litigation Financing Agreement

SECURED LITIGATION FINANCING AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

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

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

WHEREAS,

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

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

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

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

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

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

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

WHEREAS,

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

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

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

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

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

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

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

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

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

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

AGREEMENT

ADDITIONAL PROVISIONS

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

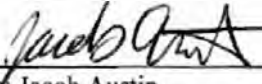
unusual circumstances giving rise to these circumstances and this Financing Agreement is not the result of any party to this Financing Agreement.

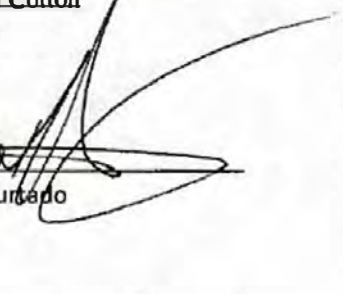
12. This Agreement may not be amended or modified, except by a written agreement signed by all parties hereto.
13. **This Financing Agreement alone fully and completely expresses the agreement of the parties relating to the Property, the pending CUP application and all matters referenced herein. There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

[Remainder of this page left intentionally blank.]

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

By: 
Name: Emani Cotton

By: 
Name: Jacob Austin

By: 
Name: Joe Hurtado

By: _____
Name: Richard Martin

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

MARCH 15, 2017

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

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

Principal and Agent hereby agree that:

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

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

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

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

By: 
Name: Richard Martin

By: 
Name: Joe Hartado

EXHIBIT B



CALIFORNIA ASSOCIATION OF REALTORS

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

Date Prepared: 03/21/2017

1. OFFER:

- A. THIS IS AN OFFER FROM Richard John Martin II (Buyer)
B. THE REAL PROPERTY to be acquired is 6176 Federal Blvd, San Diego (City), San Diego (County), California, 92114-1401 (P.O. Code), Assessor's Parcel No. 383-370-02-0 (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
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 unencashed 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 % of the loan amount.
(2) SECOND LOAN in the amount of \$
This loan will be conventional financing or Seller financing (C.A.R. Form SFA), assumed financing (C.A.R. Form AFA), subject to financing, Other. This loan shall be at a fixed rate not to exceed % or an adjustable rate loan with initial rate not to exceed % of the loan amount.
Regardless of the type of loan, Buyer shall pay points not to exceed % of the loan amount.

- E. ADDITIONAL FINANCING TERMS: see attached Addendum 1
F. BALANCE OF DOWN PAYMENT OR PURCHASE PRICE in the amount of \$ 200,000.00 to be deposited with Escrow Holder pursuant to Escrow Holder instructions.

- G. PURCHASE PRICE (TOTAL): \$ 2,000,000.00
H. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS: Buyer (or Buyer's lender or loan broker pursuant to paragraph 3.1(1)) shall, within 3 (or) Days After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. (Verification attached.)

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

Seller's Initials (X) [Signature]





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 / MIMCC upon approval and completion.

Seller shall receive on a monthly basis, 20% of the profits of the business / MIMCC 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

Date March 21, 2017

Buyer/Tenant X [Signature] Richard John Martin II

Seller/Landlord X [Signature] Darryl Cotton

Buyer/Tenant

Seller/Landlord

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Reviewed by _____ Date _____





ADDENDUM

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

No. 2

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

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

Date April 15, 2017

Buyer/Tenant X [Signature]
Richard John Martin II

Seller/Landlord X [Signature]
Darryl Cotton

Buyer/Tenant

Seller/Landlord

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Revised 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 Garaci'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 [Signature]
Richard John Martin II

Date May 12, 2017
Seller/Landlord X [Signature]
Darryl Cotton

Buyer/Tenant: _____

Seller/Landlord: _____

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520 South Virgil Avenue, Los Angeles, California 90028

_____ Date _____



EXHIBIT C



Pre-Approval Letter

Friday, April 14, 2017

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

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

Purchase Price: \$2,500,000
Loan Program: Jumbo 30 YEAR FLX
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



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

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EXHIBIT D

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California)
County of San Diego)
On May 03 2017 before me, Rebeca Gonzalez Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Joe Hurtado & Nancy Cotton
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document
Title or Type of Document: Master Real State and Professional Services Agreement Document Date: 5/3/17
Number of Pages: 5 Signer(s) Other Than Named Above: MS

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

MASTER REAL ESTATE PURCHASE AND PROFESSIONAL SERVICES AGREEMENT

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

RECITALS

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

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

EXHIBIT 2

[REDACTED]

From: Joe Hurtado [REDACTED]
Sent: Tuesday, October 3, 2017 7:31 PM
To: corina.young@live.com
Subject: Federal Blvd. - Potential Partnership

Hello Corina,

This is Joe, we met last night at the Federal Blvd. property. Again, as I stated last night, it was great meeting you - particularly when compared to two of the groups I met today who have nowhere near your level of professionalism. This industry is certainly interesting in regards to the gamut of personalities one meets.

Per our discussion, I am going to send you a copy of the CUP application and a memo from our attorneys analyzing the outstanding issue that needs to be worked through. However, the memo is 4 months old and several issues have been addressed. They are updating the memo and will forward in 2-3 days. As soon as I receive it, I will forward.

Best, Joe

EXHIBIT 3

[REDACTED]

From: Joe Hurtado [REDACTED] >
Sent: Thursday, May 17, 2018 1:03 PM
To: Corina Young
Subject: Investment Proposal
Attachments: Investment Proposal - Copy (1).pdf

Corina,

Please find attached the investment proposal for the Note on the Property on which the CUP is being processed.

Best, Joe

Project Federal Blvd.

Investment Proposal

May-2018

Project Federal Blvd.

Executive Summary

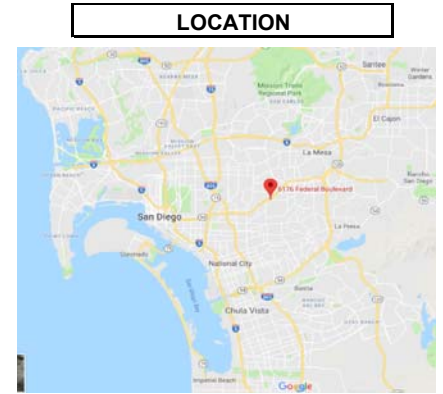
May 3, 2018

Highlights

Location:	San Diego, California	Year Founded:	N/A	Loan Amount:	\$ 325,000
Investment Type:	Secured Loan	Website:	N/A	Estimated Return:	\$ 410,000
Ownership:	Private	FTE:	N/A	Estimated ROI:	26.15%

Investment Overview

- ❑ **Description.** Purchase of Note secured by Deed of Trust on real property in the amount of \$410,000 for \$325,000 with payback estimated to be in 6 to 18 months.
- ❑ **Summary.** The property located at 6176 Federal Boulevard, San Diego, California 92114 (the "Property") is secured by a Deed of Trust recorded in September of 2013 on a Note on which the outstanding balance is approximately \$410,000. The owner of the Property is Darryl Cotton ("Seller"). The owner of the Note is Dale Cotton, Seller's father. In November of 2016 Seller reached an oral agreement with Investor A for the sale of the Property subject to a condition precedent; that the City of San Diego approve an application for a Conditional Use Permit ("CUP") for the operation of a Marijuana Outlet at the Property (the "November Oral Agreement"). Investor A promised to have his attorney quickly provide a final written agreement that fully reflected the November Oral Agreement. Investor A failed to provide the final written agreement and Seller terminated the November Oral Agreement with Investor A in March of 2017. Seller then entered into a written purchase agreement with Investor B that provides for Seller selling his Property to Investor B unconditionally for \$500,000 with an additional consideration payment of \$1,500,000 if the CUP application is approved. Thereafter, Investor A filed a lawsuit against Seller alleging breach of contract and seeking specific performance (i.e., that Seller be forced to sell the Property to him for \$800,000 with a balance due of \$790,000 after having provided a down payment of \$10,000).
- ❑ **The Condition Precedent: The CUP.** The City of San Diego has been processing the application for a CUP at the Property since October of 2016. The only technical issue that potentially would have prevented the issuance of the CUP has been resolved. There are essentially only two steps left for approval of the CUP application, soils testing and public hearings.
- ❑ **Use of Funds.** Because all parties expect the City of San Diego to approve the CUP application, the litigation over the rightful ownership of the Property has been heavily litigated and has cost more and taken longer than originally anticipated. Seller's father, the Note holder, is aware of the facts of the case and believes that Seller will prevail at trial. Thus, he is willing to sell or subordinate his Note of \$410,000 for \$325,000 in order to finance the litigation through trial.



Strategic Considerations

- ❑ **Guaranteed Return.** The Note is not a subject of the litigation and is undisputed. It was recorded in September of 2013. Attached hereto as: Exhibit A is the recorded Deed of Trust; Exhibit B is the Note; and Exhibit C is a Property Report.
 - The Note contemplates that Seller would pay his father monthly payments, but no payments were made. Thus, the full balance of approximately \$410,000 is outstanding.
- ❑ **Results of Litigation Inconsequential to Investment.** There are only four possible scenarios and under all of them the Note is fully secured as it is first-in-line and the only lien against the Property.
 - **CUP Application Approved.** If the CUP is approved as expected and Investor A prevails against Seller, Investor A is seeking specific performance admitting that he is required to pay \$790,000 to Seller. If Seller prevails in the litigation, then Seller will receive \$2,000,000 from Investor B.
 - **CUP Application Denied.** If the CUP Application is denied, Investor B is still obligated to purchase the Property for \$500,000.
- ❑ **Timing on Return on Investment.** As noted, this matter has been litigated since March of 2017 and trial is scheduled for mid-August of 2018. It is not possible to predict at this point in time whether the losing party to the litigation would appeal the decision or how long the Court of Appeals would take to decide on, if any, such appeal. However, it can reasonably be expected that this matter would be fully concluded within 12 months. Seller provides a range of up to 18 months on timing for the return on investment in an overabundance of caution because he does not want to be in a position where the Note is due but the litigation is not concluded.
 - **Example.** Although incredibly unlikely, it is not inconceivable that the losing party appeals the final judgment from the jury trial in mid-August and on appeal the Court of Appeals decides there was a procedural or substantive issue that was not properly handled and which requires a new jury trial. This, in turn, could lead to another appeal. Again, this is incredibly unlikely, but Seller would prefer to plan for the worst-case-scenario then be obligated to perform on the Note while the litigation is not finalized.

Proposal

- ❑ **Structure.** The Note can be purchased or a new Note can be issued that can be subordinated to the existing Note. The Note to be purchased for \$325,000 and due upon final resolution of the litigation for a return of \$410,000 if the litigation is concluded within 18 months. If the litigation for some reason continues past 18 months, interest to accrue on \$410,000 at 6% annum and due upon final resolution of the litigation.

ROI Summary on \$325,000

Months	6	12	18
Investment Gain	\$ 85,000	\$ 85,000	\$ 85,000
ROI	26.15%	26.15%	26.15%
Annualized ROI	59.15%	26.15%	16.75%

Exhibit A

DOC # 2013-0563101



**RECORDING REQUESTED BY
CHICAGO TITLE COMPANY**

When Recorded Mail To:

Dale L. Cotton
6176 Federal Blvd.
San Diego, CA 92114

Handwritten initials: FC, HP, DW

SEP 12, 2013 8:00 AM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
Ernest J. Dronenburg, Jr., COUNTY RECORDER
FEES: 42.00 WAYS: 2
DA: 1

2561

PAGES: 4



(space above for recorder's use only)

DEED OF TRUST WITH ASSIGNMENT OF RENTS

RECORDING REQUESTED BY

2562

AND WHEN RECORDED MAIL TO

Dale L. Cotton
6176 Federal Blvd.
San Diego, Ca. 92114

Assessors Parcel Number:543-020-02

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST WITH ASSIGNMENT OF RENTS

This DEED OF TRUST, made June 13, 2013

between

DARRYL COTTON, a single man, herein called TRUSTOR,

whose address is 6176 Federal Blvd., San Diego, Ca. 92114

CHICAGO TITLE COMPANY, a California Corporation, herein called TRUSTEE, and

DALE L. COTTON, a single man, herein called BENEFICIARY,

Trustor irrevocably grants, transfers and assigns to Trustee in Trust, with Power of Sale that property in the city of San Diego, County of San Diego, State of California, described as:

THAT PORTION OF BLOCK 25, TRACT NO. 2 OF ENCANTO HEIGHTS, ACCORDING TO MAP THEREOF NO. 1100, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 5, 1907, AS SHOWN ON MAP NO. 2121 OF JOFAINA VISTA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 20, 1928, NOW ABANDONED AND DESCRIBED AS LOT 20.

Together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

For the Purpose of Securing (1) payment of the sum of \$330,000.00 with interest thereon according to the terms of a promissory note or notes of even date herewith made by Trustor, payable to order of the Beneficiary, and extensions or renewals thereof; (2) the performance of each agreement of Trustor incorporated by reference or contained herein or reciting it is so secured; (3) Payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his or her successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

A. To protect the security of this Deed of Trust, and with respect to the property above described, Trustor agrees:

- (1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.
- (2) To provide maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
- (3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.
- (4) To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his or her reasonable fees.

The instrument filed for record by Chicago Title Company as an accommodation only. It has not been examined as to its execution or as to its effect upon the title.

00013365-004-RM1

(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby, any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

(1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him or her in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance,

(2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his or her right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(3) That at any time or from time to time, without liability therefore and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(4) That upon written request of beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder, the recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto".

(5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his or her own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(6) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

(8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term Beneficiary shall mean the owner and holder, including pledges, of the note secured hereby, whether or not named as Beneficiary herein, in this Deed, whenever the context so requires, the masculine gender includes the feminine and/or the neuter, and the singular number includes the plural.

(9) The Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

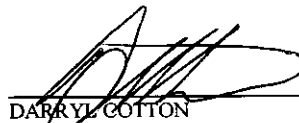
Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge thereof does not exceed the maximum allowed by laws.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him or her at his or her address hereinbefore set forth.

Dated: June 13, 2013

Signature of Trustor

STATE OF CALIFORNIA
COUNTY OF San Diego
On August 21, 2013 before me,
Bill Little
A Notary Public, personally appeared Darryl Cotton


DARRYL COTTON

who proved to me on (he 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/henrtheir authorized capacity(ies), and that by his/henrtheir signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal

Signature 

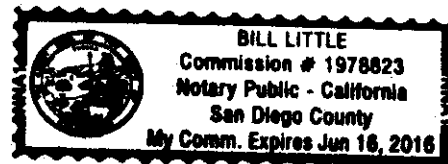


Exhibit B

Date: 6-13-2013

PROMISSORY NOTE

For value received, DARRYL COTTON ("Promissor"), promises to pay to the order of DALE L. COTTON ("Promisee"), the sum of THREE HUNDRED THIRTY THOUSAND AND NO/100 (\$330,000.00) DOLLARS, which sum, together with interest from the date of this Note on the unpaid principal balance at the initial rate of 4.5% per year (the "Initial Interest Rate"), shall be payable in initial monthly installments of \$2,535.80 each, beginning April 25, 2013, and continuing on the 25th day of every month until March 25, 2028, at which time all remaining principal and accrued interest, if not sooner paid, shall be paid in full.

Each payment may be applied as Promisee may elect in any or all of the following manners:

1. To the payment of late charges as provided in this Note.
2. To the payment of interest at the rate that is in effect at the time the payment is made in respect to the above-mentioned sum.
3. To the payment of the principal of this Note.

The undersigned agrees that the Initial Interest Rate shall be fixed until March 25, 2018 and shall change every 60 months thereafter based on a future rate of 3.75% above the weekly average yield on United States Treasury securities adjusted to a constant maturity of 5 years. The rate may change every 60 months beginning March 25, 2018. The amount of each scheduled payment will change together with the final payment amount.

During the term of this loan, the applicable annual interest rate will not be less than 4.5%. The post maturity date will be 12%. There will be a late charge of 5% of the payment due for any payment made more than 15 days after it payment is due.

The undersigned reserves the right to prepay this Note in whole or in part at any time, provided that all interest accrued to the date of the prepayment shall first have been paid.

Should the Promissor fail to make any of the payments described above, then Promisee may, at its option, declare the whole of this obligation to be due and payable and may proceed for the collection of this obligation in the manner provided by law or equity. This Note shall bear interest after maturity at an effective rate of interest adjusted in accordance with the provisions of this Variable Rate Promissory Note whether this Note becomes due by reason of the exercise of the options as provided above or by lapse of time according to its terms; provided, however, the interest due under this Note shall not exceed the maximum lawful contract rate either before or after default.

Any legal holder of this Note may, without notice and without releasing the liability of any maker or guarantor of this Note, grant extensions or renewals of this Note from time to time and for any term or terms. Any legal holder of this Note shall not be liable for or prejudiced by failure to collect or for lack of diligence in bringing suit on this Note or any renewal or extension of this Note.

Promissor waives presentment for payment, notice of nonpayment, protest and notice of protest.

Should this Note be placed in the hands of an attorney for collection, or if action be instituted on it, all parties now or in the future liable for the indebtedness evidenced by this Note, jointly and severally agree to pay all costs and expenses of the collection or enforcement action with reasonable attorney's fees in addition to the amount found due.

This Note may be assigned by Promissor with the consent of Promisee, which consent shall not be unreasonably withheld. Any assignment shall not release the Promissor from any of his obligations under this Note.

This Note is secured by a mortgage or trust deed on real estate at 6176 Federal Boulevard, San Diego, CA 92114 to protect the Note holder in the event of default on this Note.

This Note shall be governed by the laws of the state of Illinois.

Promissor

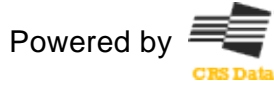
By:



6-13-2013

DARRYL COTTON

Exhibit C



Tuesday, April 17, 2018



LOCATION

Property Address	6176 Federal Blvd San Diego, CA 92114-1401	
Subdivision	Encanto Heights	
Carrier Route	C001	
County	San Diego County, CA	
Map Code	1290D1	

GENERAL PARCEL INFORMATION

APN/Tax ID	543-020-02-00
Alt. APN	
City	San Diego
Tax Area	08001
2010 Census Trct/Blk	30.03/1
Assessor Roll Year	2017

PROPERTY SUMMARY

Property Type	Commercial
Land Use	Retail Stores
Improvement Type	Retail Stores
Square Feet	918
# of Buildings	1

CURRENT OWNER

Name	Cotton Darryl
Mailing Address	6184 Federal Blvd San Diego, CA 92114-1401
Owner Occupied	No
Owner Right Vesting	

SALES HISTORY THROUGH 04/09/2018

Settlement Date	Date Recorded	Amount	Buyer/Owners	Seller	Instrument	No. Parcels Book/Page Or Document#
2/3/1998	2/27/1998	\$141,000	Cotton Darryl	Josephson Family Trust 09-19-94 & Josephson Marvi	Grant Deed	1998-0102763
9/19/1994	10/10/1994		Josephson Marvin H & Josephson Marilyn J	Josephson Marvin H & Josephson Marilyn J	Intrafamily Transfer & Dissolution	1994-0595092

TAX ASSESSMENT

Tax Assessment	2017	Change (%)	2016	Change (%)	2015
Assessed Land	\$133,274.00	\$2,613.00 (2.0%)	\$130,661.00	\$1,962.00 (1.5%)	\$128,699.00
Assessed Improvements	\$60,698.00	\$1,190.00 (2.0%)	\$59,508.00	\$893.00 (1.5%)	\$58,615.00

Total Assessment	\$193,972.00	\$3,803.00 (2.0%)	\$190,169.00	\$2,855.00 (1.5%)	\$187,314.00
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Exempt Reason

% Improved	31%
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TAXES

Tax Year	City Taxes	County Taxes	Total Taxes
2017			\$2,296.86
2016			\$2,260.18
2015			\$2,227.16
2014			\$2,192.60
2013			\$2,189.70

MORTGAGE HISTORY

Date Recorded	Loan Amount	Borrower	Lender	Book/Page or Document#
09/12/2013	\$330,000	Cotton Darryl	Dale L Cotton	2013-0563101
11/28/2007	\$100,000	Cotton Darryl Dalbercia Inc	San Diego National Bank	2007-0742898
11/08/2007	\$250,000	Cotton Darryl	San Diego National Bank	2007-0709933
10/24/2005	\$144,684	Cotton Darryl	Pacific Bell Directory	2005-0919320
01/06/2004	\$85,000	Cotton Darryl	San Diego Electrical Pension T	2004-0009120

FORECLOSURE HISTORY

No foreclosures were found for this parcel.

PROPERTY CHARACTERISTICS: BUILDING

Building # 1

Type	Retail Stores	Condition		Units	
Effective Year Built	1951	Stories		Rooms	
BRs		Baths	F H	Rooms	
Total Sq. Ft.	918				
Building Square Feet (Living Space)		Building Square Feet (Other)			

- CONSTRUCTION

Quality	Roof Framing
Shape	Roof Cover Deck
Partitions	Cabinet Millwork
Common Wall	Floor Finish
Foundation	Interior Finish
Floor System	Air Conditioning
Exterior Wall	Heat Type
Structural Framing	Bathroom Tile
Fireplace	Plumbing Fixtures

- OTHER

Occupancy	Building Data Source
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PROPERTY CHARACTERISTICS: EXTRA FEATURES

No extra features were found for this parcel.

PROPERTY CHARACTERISTICS: LOT

Land Use	Retail Stores	Lot Dimensions	
----------	---------------	----------------	--

Block/Lot	25/20	Lot Square Feet	6,049
Latitude/Longitude	32.728960°/-117.064387°	Acreage	0.14

PROPERTY CHARACTERISTICS: UTILITIES/AREA

Gas Source		Road Type	
Electric Source		Topography	
Water Source		District Trend	
Sewer Source		School District	
Zoning Code	Commercial	School District 2	Del Mar Union
Owner Type			

LEGAL DESCRIPTION

Subdivision	Encanto Heights	Plat Book/Page	
Block/Lot	25/20	Tax Area	08001
Tract Number	001100		
Description	001100 Blk 25 Lot 20 Per Map 2121 In		

FLOOD ZONE INFORMATION

Zone Code	Flood Risk	BFE	Description	FIRM Panel ID	FIRM Panel Eff. Date
0.2 PCT	Moderate		An area inundated by 500-year flooding; an area inundated by 100-year flooding with average depths of less than 1 foot or with drainage areas less than 1 square mile; or an area protected by levees from 100- year flooding.	060295-06073C1902G	05/16/2012

LISTING ARCHIVE

MLS #	Status	Status Change Date	List Date	List Price	Closing Date	Closing Price	Listing Agent	Listing Broker	Selling Agent	Selling Broker
130001729	Expired	12/31/2013	12/19/2012	\$425,000			Erik Wiese	Wiese & Associates		
72034987	Expired	12/31/2007	04/26/2007	\$699,000			Erik Wiese	Wiese & Associates		
9800050	Sold	02/27/1998	01/14/1998	\$175,000	02/27/1998	\$141,000	Donavan Truesdale	Century 21 Award - Sd	Donavan Truesdale	Century 21 Award - Sd
9700642	Expired	01/04/1998	06/03/1997	\$200,000			Donavan Truesdale	Century 21 Klowden Forness		

EXHIBIT 4



6230 FEDERAL BLVD. SAN DIEGO, CA 92114
 ortiztires@hotmail.com
 (619) 263-7703
 CELL. (619) 415-2185

OPEN 7 DAYS

SOLD BY: [Signature] SERVICED BY: _____ DATE: 3-2-20

NAME: _____ PHONE: _____

ADDRESS: _____

CITY: _____

Vehicle Make: _____ Vehicle Mileage: _____
 S.P. L.R. R.R. L.F. R.F.

Mile Warranty: _____ Road Hazard Yes No

Lifetime Warranty on Workmanship & Materials: _____
 Yes No

Alignment Recommended: _____

		Tire Disposal Fee	
		Tire Service	
		Mount & Balance	
1	New		
2	New		
3	New		
4	New		
		Free Balance	
		Rotation every 3000 miles	
		Free flat repair for life of the tire	
		SALES TAX	
		TOTAL	\$ 160

Thank You!

RECEIVED BY: _____

Used Tires SOLD-AS-IS NO WARRANTY
 No refunds. Credits or Exchanges Only
 To Ensure Safety, Retorque Lugnuts After 25 Miles



EXHIBIT 5



Jake Austin <jacobaustinesq@gmail.com>

Geraci v. Cotton matter

Michael Weinstein <MWeinstein@ferrisbritton.com>
To: Jake Austin <jpa@jacobaustinesq.com>
Cc: Scott Toothacre <SToothacre@ferrisbritton.com>

Mon, Jun 4, 2018 at 8:34 AM

Dear Mr. Ausn,

Please accept my confirmaon tha t you have fulfilled your meet and confer obligaon with r espect to your client’s stated intenon t o file a second moon f or judgment on the pleadings.

You have also stated your client’s intenon t o file a moon seeking lea ve of court to amend Mr. Co on's Cross-Complaint to add, *inter alia*, a cause of acon f or conspiracy and addional de fendants.

My client will oppose both moons. My posion is tha t your enr e analysis is flawed. I will address whatever arguments you make in detail in my opposition brie fs a er you file the respectv e moons. F or now, I will address just a few points.

You connue t o insist that Mr. Geraci brought forth a meritless lawsuit and that Mr. Geraci’s declaraon filed in opposition to Mr. Co on's moon t o expunge the *lis pendens* strengthens that posion. We disagree. Mr. Geraci’s declaraon supports the claim regarding the wri en agreement that was reached on November 2, 2016. Those issues will be decided at trial.

You state that the parol evidence rule (PER) allows the admission of his wri en confirmaon and lik ewise bars as a ma er of law his allegaon tha t he called Mr. Co on the next day and they **orally agreed** that Mr. Co on was not entled t o a 10% equity posion. Ag ain, we disagree and contend that you are misapplying the parol evidence rule. First, our view is that the statute of frauds bars the la er email because it is parol evidence that is being offered to **explicitly contradict** the terms of the wri en agreement entered into on November 2. Second, Mr. Geraci does not contend that his call to Mr. Co on on November 3, 2016, resulted in an oral agreement between them that Mr. Co on was not entled t o a 10% equity posion. Rather, Mr. Geraci’s posion is tha t there was **never** an oral agreement between them that Mr. Co on would receive a 10% equity posion. E ven assuming for the sake of argument that the November 2 email is not barred by the parol evidence rule and admissible, the telephone call the next day is parol evidence that Mr. Geraci never agreed to a 10% equity posion and, therefore, it is **consistent** with the November 2 wri en agreement and not barred by the statute of frauds.

A moon f or judgment on the pleadings is like a demurrer in that the Court looks to the four corners of the pleading in the Complaint. California is a noce pleading jurisdicon. Mr . Geraci’s Complaint sufficiently alleges all elements of the various causes of acon alleg ed therein. Mr. Geraci’s declaraon filed in opposition t o Mr. Co on’s moon t o expunge the *lis pendens* does nothing to alter that analysis. In addion, e ven if Mr. Co on brought a moon f or summary judgment/summary adjudicaon, which he has not done, the declar aon w ould be evidence creang a ma terial factual dispute that would defeat such a moon. Y our client’s intended moon f or judgment on the pleadings is frivolous and will be denied for the same reasons that it was denied the first me it w as filed.

As for the moon f or leave of court to amend the Second Amended Cross-Complaint to add a cause of acon f or conspiracy and addional de fendants is simply a further transparent a empt to delay the trial in this acon. B y bringing in new defendants the trial will have to be connued t o give them the opportunity to defend. That would substancially pr ejudice Mr. Geraci. Quite frankly, I do not see how such delay would be in Mr. Co on’s best interest either. The court should not allow that to happen.

I look forward to receiving service of your client’s moving papers for each moon.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
Ferris & Britton, A Professional Corporation
501 West Broadway, Suite 1450

San Diego, CA 92101-7901
www.ferrisbritton.com
Tel (619) 233-3131
Fax (619) 232-9316

Vcard



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From: jacobaustinesq@gmail.com <jacobaustinesq@gmail.com> **On Behalf Of** Jake Ausn
Sent: Friday, June 01, 2018 4:42 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

- (ii) Ms. Young's statements regarding Mr. Bartell that I personally witnessed and will attest to;
- (iii) Mr. Shapiro's (a) lie to me regarding his reasoning for sitting down next to Mr. Cotton and his litigation investor, (b) his indirect admission that he was present and heard Mr. Bartell state he was getting Mr. Cotton's CUP application denied, (c) the fact that the competing CUP application is a client of Mr. Shapiro, and (d) the fact that he has a deep relationship with Mrs. Austin (an adverse party to Mr. Cotton); and
- (iv) the engineering company's apparent intent to go back on an explicit representation to recommend an approval (that appears to have been coerced);

Mr. Cotton will be seeking to amend his Cross-Complaint.

Please let me know if you would agree to stipulate to an amendment. Mr. Cotton will be seeking to amend his Cross-Complaint to, *inter alia*, respond to the new factual allegations raised by Mr. Geraci and to add as co-defendants the engineering company, Mr. Shapiro, Mr. Magana, and Mr. Bartell. He will also, at a minimum, be bringing forth a cause of action for conspiracy for the reasons stated above.

Also, please consider this notice for an ex-parte TRO scheduled for June 6, 2018 seeking to have the Court appoint a receiver to manage the CUP application. I realize that Mr. Cotton has made this request before, but I believe that with the newly discovered facts and Mr. Geraci's latest factual allegations in his declaration, Mr. Cotton will be able to meet his burden and prove to the court that more likely than not he will prevail on the merits of his cause of action for breach of contract. I will forward the moving papers as soon as they are ready, but no later than 12:00 PM on June 5, 2018.

Lastly, I will have an updated disclosure response to you this week.

-Jacob

[Quoted text hidden]

EXHIBIT 6



Aaron Magagna

1 mutual friend: Greg Magdoff

Self-Employed

Lives in San Diego, California

MON 8:07PM

Hi Aaron. Corina says you're a good guy. She wants to help you. If that's the case fuck the lawyers, the advisors and everyone else in your ear.

Shapiro has one chance to make this right for you and tell you what you really need to know.

If he doesn't do it than he has picked the wrong horse and thrown you into an untenable situation. One that if you had the facts would have steered very clear of this CUP application.

Shapiro has a responsibility to tell you whats going on with Bartel

He heard what he heard

and I heard what I heard

I suggest sharing this pm with Shapiro. If he says ignore me then you have a decision to make.

Corina will tell you I have no ill will to you. I believe 'they' have manipulated you.

ultimately the decision is yours to make on how to respond or not respond to me.

and it's going to be an important decision for you to make.

Just know this

From my perspective 'they' do not have your best interests in mind. 'They' are covering the asses by making it worse Aaron. This is a moment in time that you have to consider fully.

Frankly had Corina not tried to open this dialogue up I would not have reached out to you at all.

Aaron Magagna



Aaron Magagna accepted your request.

Hello Darryl, I am grateful for Corina reaching out to you and for you giving me a chance to show you our view. It's been a long weekend and a very long day today. I would much rather have this conversation in person so you can see I'm genuine and also show you the most recent review cycle from the city and all their comments so that you can hopefully understand my reasoning for applying for a CUP. I am sorry if you have been wronged by other people, that sucks, but I want a chance to show you I had no part or affiliation with those circumstances.

I look forward to meeting you tomorrow.

Thanks Aaron.

TUE 1:09PM

Hi Darryl,

Are you available to meet me with your attorney Jacob? I have the most recent cycle reviews from the city and wanted to discuss them with you if possible.

TUE 3:56PM

Aaron if you want to hear what you're being exposed to why don't you and Shapiro conference call my attorney Jake @ 619.357.6850 to discuss these issues with you in an unfiltered conversation. With that then you can decide what's in your best interests.

TUE 7:05PM

Hi Darryl, I would love to sit down in person with all 4 of us as soon as possible. I would love to hear what you and Jake have to say in addition get a chance to clear our names from any wrongdoing you might have thought we were a part of. I have the most recent review comments from the project at your address, along with every other cannabis project in the city. (Some 70 projects, all public record) I would love a chance for you to take a look at them and answer any questions regarding them. Are you and Jake available tomorrow?

FRI 3:02PM

Hi Darryl, it appears that you have lost interest in discussing any of the above issues. If you ever decide that you do, its an open offer, I am more than willing to sit down with you and your attorney Jake.

Take care, Aaron

EXHIBIT 7

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

From: Jake Austin (jpa@jacobaustinesq.com)

To: lorianne.hatmaker@yahoo.com

Date: Sunday, June 16, 2019, 12:43 PM PDT

Law Office of Jacob Austin

P.O. Box 231189

San Diego, CA 92193 USA

Phone: (619) 357-6850

Facsimile: (888) 357-8501

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----- Forwarded message -----

From: **Jake Austin**<jpa@jacobaustinesq.com>

Date: Wed, Jun 12, 2019 at 6:45 PM

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

To: Natalie T. Nguyen <natalie@nguyenlawcorp.com>

Ms. Nguyen,

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

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

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

Jacob

Law Office of Jacob Austin

P.O. Box 231189

San Diego, CA 92193 USA

Phone: (619) 357-6850

Facsimile: (888) 357-8501

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

Ms. Young's original deposition was scheduled for Jan. 18th and we agreed to your request that she provide a declaration instead. It has been over 4 months and we have yet to receive anything. Please provide an update.

Jacob

Law Office of Jacob Austin

P.O. Box 231189

San Diego, CA 92193 USA

Phone: (619) 357-6850

Facsimile: (888) 357-8501

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On Fri, May 3, 2019 at 12:04 PM <natalie@nguyenlawcorp.com> wrote:

Good morning Jake,

Thanks for following up. Let me check and get back to you soon.

Natalie

Natalie T. Nguyen, Esq.

NGUYEN LAW CORPORATION

M: 2260 Avenida de la Playa | La Jolla, CA 92037

T: 858-225-9208

E: natalie@nguyenlawcorp.com

From: Jake Austin <jpa@jacobaustinesq.com>

Sent: Thursday, May 2, 2019 11:56 AM

To: Natalie T. Nguyen <natalie@nguyenlawcorp.com>

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

Please give me an update, this is important to my client's case.

Jacob

Law Office of Jacob Austin

P.O. Box 231189

San Diego, CA 92193 USA

Phone: (619) 357-6850

Facsimile: (888) 357-8501

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

Hello Natalie,

As you recall we have been trying to work out an affidavit or a deposition for three months now, can you kindly give me an update on Ms. Young?

Jacob

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San Diego, CA 92193 USA

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On Thu, Mar 7, 2019 at 1:45 PM <natalie@nguyenlawcorp.com> wrote:

Hi Jacob,

Ms. Young is out of town on March 11 so she will not be able to attend the deposition as noticed. Our Objection to the Deposition Notice is attached.

Despite her limited availability, we maintain the intention to provide you with a written statement as previously agreed. I hope to have it ready sometime next week.

Best regards,

Natalie

Natalie T. Nguyen, Esq.

NGUYEN LAW CORPORATION

M: 2260 Avenida de la Playa | La Jolla, CA 92037

T: 858-225-9208

E: natalie@nguyenlawcorp.com

From: Jake Austin <jpa@jacobaustinesq.com>

Sent: Thursday, February 28, 2019 2:05 PM

To: natalie@nguyenlawcorp.com

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

Hello,

I haven't heard from you for awhile so just so you know my office is generating a subpoena for a deposition. We hope we do not need a deposition so if you can provide an affidavit that would be greatly appreciated. Also can we agree to accept electronic service from one another moving forward?

Jacob

On Mon, Jan 21, 2019 at 3:09 PM <natalie@nguyenlawcorp.com> wrote:

Hi Jacob,

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

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

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

Best regards,

Natalie T. Nguyen, Esq.

NGUYEN LAW CORPORATION

M: [2260 Avenida de la Playa | La Jolla, CA 92037](https://www.google.com/maps/place/2260+Avenida+de+la+Playa+|+La+Jolla,+CA+92037)

T: 858-225-9208

E: natalie@nguyenlawcorp.com

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

Hi Jacob,

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

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

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

Best regards,

Natalie

Natalie T. Nguyen, Esq.

NGUYEN LAW CORPORATION

M: [11440 West Bernardo Court, Suite 210 | San Diego, CA 92127](https://www.google.com/maps/place/11440+West+Bernardo+Court,+Suite+210+|+San+Diego,+CA+92127)

T: 858-225-9208

E: natalie@nguyenlawcorp.com

From: Jake Austin <jpa@jacobaustinesq.com>

Sent: Thursday, January 17, 2019 4:55 PM

To: natalie@nguyenlawcorp.com

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

Hello Natalie,

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

I can inform you that one of the parties on our side went through Stage III cancer and so we are aware of the challenges that dealing with cancer treatments takes on a patient and their loved ones. However, because of that, we also know that there will never be a “good” time in that context to be deposed.

I am not sure how deeply you are aware of the facts in this matter, so I will not assume you are purposefully being antagonistic and will not file a motion to compel your client's attendance and seek sanctions.

With that said, we understand your client is in a tough situation, which is what makes her testimony highly relevant and credible to our case. In your prior email you state that we can discuss "alternatives to her sitting for the deposition" and since it wasn't a request to reschedule, I have been racking my brain for an alternative to having her go through a deposition which I know could be tedious and stressful on its own. I also know that she may be hesitant to discuss certain subjects and may rely on the right against self-incrimination in some of her responses. I am not sure how familiar you are with the underlying case, but it is my belief that Ms. Young has not been involved in the acts that underline the causes of action and it is not my intention to name her in any lawsuit or anything to that effect.

To be specific, the facts which we hope to elicit from Ms.

Young have already been provided *by* her in her text messages with Mr. Hurtado. Attached hereto is a declaration from Mr. Hurtado that in turn has exhibits of text messages between him and Ms. Young regarding the subjects that we desire to depose Ms. Young on. The only additional facts we would want established, beyond those in her text messages, is a description of how long and how many interactions she has had with the parties at issue in this litigation and in the text messages.

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

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

Please confirm if your client is willing to provide such sworn testimony. If not, please let me know if your client is available to be deposed any day next week between Wednesday through Friday.

Please note that the trial calendar requires us to file a motion for summary judgement on or before February 8, 2019. As you know, getting transcripts back and drafting an MSJ is time consuming, so, unfortunately, we are not in a position to push back her deposition for any prolong period of time.

Thus, if you cannot agree to providing her sworn testimony as described above, or having her deposition taken sometime next week, in the interests of my client's case, I will be forced to file an ex-parte application seeking to compel her deposition.

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

testimony provides damaging evidence against her own attorney and agents and I realize the uncomfortable position she is in.

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

Jacob

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

Hi Jacob,

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

Best regards,

Natalie

Natalie T. Nguyen, Esq.

NGUYEN LAW CORPORATION

M: [2260 Avenida de la Playa | La Jolla, CA 92037](https://www.google.com/maps/place/2260+Avenida+de+la+Playa+|+La+Jolla,+CA+92037)

T: 858-225-9208

E: natalie@nguyenlawcorp.com

Law Office of Jacob Austin

[1455 Frazee Rd. Suite 500](https://www.google.com/maps/place/1455+Frazee+Rd,+Suite+500,+San+Diego,+CA+92108)
[San Diego, CA 92108 USA](https://www.google.com/maps/place/1455+Frazee+Rd,+Suite+500,+San+Diego,+CA+92108)

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

Hi Jacob,

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

Best regards,

Natalie

Natalie T. Nguyen, Esq.

NGUYEN LAW CORPORATION

M: [2260 Avenida de la Playa | La Jolla, CA 92037](https://www.google.com/maps/place/2260+Avenida+de+la+Playa+|+La+Jolla,+CA+92037)

T: 858-225-9208

E: natalie@nguyenlawcorp.com

From: natalie@nguyenlawcorp.com <natalie@nguyenlawcorp.com>

Sent: Tuesday, January 15, 2019 1:05 PM

To: JPA@jacobaustinesq.com

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

Importance: High

Hi Jacob,

I left you a voicemail earlier and I do hope we can connect today. Our firm represents Corina Young, whose deposition you set for this Friday, January 18, 2019. Ms. Young is caring for a

parent with brain cancer so she has very little time and a lot on her mind. Can we discuss alternatives to her sitting for the deposition on Friday?

Best regards,

Natalie

Natalie T. Nguyen, Esq.

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M: [2260 Avenida de la Playa | La Jolla, CA 92037](https://www.google.com/maps/place/2260+Avenida+de+la+Playa+|+La+Jolla,+CA+92037)

T: 858-225-9208

E: natalie@nguyenlawcorp.com

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

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EXHIBIT 8



September 26, 2018

Via Email: abhay@techne-us.com

Abhay Schweitzer
Techne
3956 30th Street
San Diego, CA 92104

Subject: Federal Blvd MMCC Fourth Assessment Letter; Project No. 520606; Internal Order No. 24007070; Encanto Neighborhoods.

Dear Mr. Schweitzer:

The Development Services Department has completed the third review of the project referenced above, and described as a Process Three, Conditional Use Permit to demolish an existing structure and the construction of a two-story, approximately 2,800-square-foot building, for the operation of a Marijuana Outlet on a site located at 6176 Federal Boulevard in the CO-2-1 Zone within the Encanto Neighborhoods Community Plan area.

Enclosed is a Cycle Issues Report (Enclosure 1) which contains review comments from staff representing various disciplines. The purpose of this assessment letter is to summarize the significant project issues and identify a course of action for the processing of your project.

If any additional requirements should arise during the subsequent review of your project, we will identify the issue and the reason for the additional requirement. To resolve any outstanding issues, please provide the information that is requested in the Cycle Issues Report. If you choose not to provide the requested additional information or make the requested revisions, processing may continue. However, the project may be recommended for denial if the remaining issues cannot be satisfactorily resolved and the appropriate findings for approval cannot be made.

The Development Services Department will generally formulate a formal recommendation for your project subsequent to completion of the following milestones: 1) After the City Council recognized Community Planning Group has provided a formal project recommendation; 2) After all City staff project-review comments have been adequately addressed; and 3) During the final stages of the environmental review process.

Page 2

Abhay Schweitzer
September 26, 2018

As your Development Project Manager, I will coordinate all correspondence, emails, phone calls, and meetings directly with the applicants assigned "Point of Contact." You have been designated as the Point of Contact for this project. Please notify me should the Point of Contact change while I am managing this project.

I. **REQUIRED APPROVAL:** Your project as currently proposed requires a Process Three, Conditional Use Permit (CUP) for the proposed Marijuana Outlet pursuant to San Diego Municipal Code (SDMC) Section 126.0303(a). The decision to approve, conditionally approve, or deny the project will be made by the Hearing Officer with appeal rights to the Planning Commission.

11. **SIGNIFICANT PROJECT ISSUES:** The significant project issues are listed below. Resolution of these issues could affect your project. Additional explanation is provided in the Cycle Issues Report. Please carefully review the City staff comments and respond accordingly. Please note the following key issues:

- Planning Review staff again notes the project site is within 100 feet of residential zoned properties, the RS-1-7 Zone. Per SDMC Section 141.0504(a) (2), Marijuana Outlets shall maintain a separation of 100 feet from a residential zone. Please clarify and respond to the appropriate measurement and indicate on the development plans as required. City staff would recommend denial of the permit if the project does not meet the separation requirement for Residential Zones within 100 feet.

III. **STUDIES/REQUIRED REPORTS:** A number of documents have been identified as necessary to the project's review. Reference the attached Submittal Requirements Report (Enclosure 2).

IV. **PROJECT ACCOUNT STATUS:** Our current accounting system does not provide for real-time information regarding account status and majority of the recent City staff charges **have not** been posted on the account; however, our latest data indicates you have deposit account deficit of approximately \$1,400.00. **Please pay the invoice immediately (Enclosure 3).**

During the processing of your project, your application's Financially Responsible Party will continue to receive monthly statements with the break-down of staff charges to your account. The minimum balance required for your application is \$5,000.00, <https://www.sandiego.gov/sites/default/files/dsdb503.pdf>. To avoid project delays due to insufficient account funds, please ensure that your deposit account maintains the minimum account balance at all times.

For your convenience, deposits can be made anytime on line through Open DSD, <http://www.sandiego.gov/development-services/opensds/>, and by entering your project number in the "Project ID" field, <http://opensds.sandiego.gov/web/approvals/>. Also, any invoices can be paid online by searching for the invoice number,

Page 3
Abhay Schweitzer
September 26, 2018

<http://opensd.sandiego.gov/web/invoices/> or in person at the Cashier, located on the 3rd Floor of the Development Services Center.

- V. **TIMELINE:** Upon your review of the attached Cycle Issues Report, you may wish to schedule a meeting with staff and your consultants prior to resubmitting the project. Please contact me if you wish to schedule a meeting with staff. During the meeting, we will also focus on key milestones that must be met in order to facilitate the review of your proposal and to project a potential timeline for a hearing date. Your next review cycle should take approximately 18 business days to process.

The SDMC Section 126.0114 requires that a development permit application be closed if the applicant fails to submit or resubmit requested materials, information, fees, or deposits within 90 calendar days. Once closed, the application, plans and other data submitted for review may be returned to the applicant or destroyed. To reapply, the applicant shall be required to submit a new development permit application with required submittal materials, and shall be subject to all applicable fees and regulations in effect on the date the new application is deemed complete.

If you wish to continue processing this project, please note that delays in resubmitting projects and/or responding to City staff's inquiries negatively impact this Department's ability to effectively manage workload, which can lead to both higher processing costs and longer timelines for your project.

- VI. **RESUBMITTALS/NEXT STEPS:** Project re-submittals are done on a walk-in basis. Please check-in on the third floor of the Development Service Center (1222 First Avenue) to be placed on the list for the submittal counter. ***Project re-submitta/s directly to the Development Project Manager will not be accepted.*** Please be prepared to provide the following:
- A. **Plans and Reports:** Provide the number of sets of plans and reports as shown on the attached Submittal Requirements Report. The plans should be folded to an approximate 8 ½ x 11 inch size.
- B. **Response to Cycle Issues Report:** Prepare a cover letter that specifically describes how you have addressed each of the issues identified in the Cycle Issues Report and any issues identified in this cover letter, if applicable. Or, you may choose to simply submit the Cycle Issues Report, identifying within the margins how you have addressed the issue. If the issue is addressed on one or more sheets of the plans or the reports, please reference the plan, sheet number, report or page number as appropriate. If it is not feasible to address a particular issue, please indicate the reason. **Include a copy of this Assessment Letter, Cycle Issues Report and your response letter if applicable. with each set of plans.**

Page 4
Abhay Schweitzer
September 26, 2018

C Pay Invoice: Please pay enclosed invoice prior to your project re-submittal. The re-submittal cannot be distributed to City staff when an invoice is outstanding.

- VII. COMMUNITY PLANNING GROUP:** Staff provides the decision maker with the recommendation from your locally recognized community planning group. If you have not already done so, please contact Kenneth Malbrough, Chairperson of the Encanto Neighborhoods Community Planning Group, at (619) 843-6721 to schedule your project for a recommendation from the group. If you have already obtained a recommendation from the community planning group, in your resubmittal, if applicable, please indicate how your project incorporates any input suggested to you by the community planning group.

Information Bulletin 620, "Coordination of Project Management with Community Planning Committees" (available at <http://www.sandiego.gov/development-services>), provides some valuable information about the advisory role the Community Planning Group. Council Policy 600-24 provides standard operating procedures and responsibilities of recognized Community Planning Committees and is available at <http://www.sandiego.gov/cit;y-clerk/officialdocs/index.shtml>.

- VIII. STAFF REVIEW TEAM:** Should you require clarification about specific comments from the staff reviewing team, please contact me, or feel free to contact the reviewer directly. The names and telephone numbers of each reviewer can be found on the enclosed Cycle Issues Report.

- IX. PROJECT ISSUE RESOLUTION CONFERENCE:** Project Issue Resolution (PIR) conferences provide customers an opportunity to have issues heard and considered by executive department management. A PIR will be considered if, after the issuance of the third Assessment Letter for discretionary projects, customers and staff have been unable to resolve project issues. The PIR would address issues such as disagreements between the applicant and staff on interpretations of codes or ordinances, requests for additional information or studies, or project-related processing requirements. Any determinations from a PIR are not binding on any City decision-making body, such as City Council, Planning Commission, or Hearing Officer. Qualifying PIR requests should be coordinated with your Development Project Manager.

In conclusion, please note that information forms and bulletins, project submittal requirements, and the Land Development Code may be accessed on line at <http://www.sandiego.gov/development-services>. Many land use plans for the various communities throughout the City of San Diego are now available on line at <http://www.sandiego.gov/planning/community/profiles/index.shtml>.

To view project details online, visit: <http://www.sandiego.gov/development-services/opensd/>.

Page 5
Abhay Schweitzer
September 26, 2018

For modifications to the project scope, submittal requirements or questions regarding any of the above, please contact me prior to resubmittal. I may be reached by telephone at (619) 236-6327 or via e-mail at CCac@sandiego.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cherlyn Cac". The signature is stylized and overlaps with some text that is partially obscured.

for

Cherlyn Cac
Development Project Manager

Enclosures:

1. Cycle Issues Report
2. Submittal Requirements Report
3. Invoice

cc: File
Kenneth Malbrough, Chairperson, Encanto Neighborhoods Community Planning Group
Elizabeth Dickson, Planning Department
Reviewing Staff

EXHIBIT 9

Tax & Financial Center, Inc.

[Home](#) [About Us](#) [Services](#) [Contact](#) [Tax Tools](#) [News](#) [Financial Guides](#) [Glossary](#) [Links](#)

Services

Tax & Financial Center, Inc. provides a wide range of services to individuals and businesses in a variety of industries. At Tax & Financial Center, Inc., we strive to meet each client's specific needs in planning for the future and achieving their goals in an ever-changing financial and regulatory environment.

Our professional services include:

- [Tax Management Services](#)
 - [Estate and Trust Planning and Tax Preparation](#)
 - [Bookkeeping/Write-up](#)
 - [IRS Representation](#)
 - [Cash Flow and Budgeting Analysis](#)
 - [Accounting Services](#)
 - [QuickBooks Accounting Help and Assistance](#)
 - [Entity Selection and Restructuring](#)
 - [Payroll Services](#)
-

Tax Management Services

At Tax & Financial Center, Inc., we guide our clients through a full range of tax planning and preparation decisions with strategies that minimize your tax liabilities, maximize your cash flow and keep you on track to your financial goals. Our expertise, experience, analysis and thorough research allow us to optimize financial opportunities to be found in existing as well as recently altered tax laws. We are knowledgeable and up to date on the tax laws and can make sense of your receipts, bills and notices.

[Request information about Tax Management Services below](#)

Accounting Services

From start-ups to established enterprises, businesses rely on accurate and insightful financial information in order to maintain profitability and capitalize on new opportunities. Tax & Financial Center, Inc.'s accounting services steer you closer to these goals with accurate record-keeping and reporting as well as support on financial issues such as initial accounting system setup, cost-containment, tax planning, investments, and employee benefit and profit-sharing plans.

These services include but are not limited to:

- General ledger and financial statement preparation
- Bookkeeping (Monthly, quarterly, or annual)
- Accounting system setup and support
- Payroll processing
- Cash flow budgeting and forecasting
- Personal financial statements
- Corporate tax planning and return preparation

[Request information about Accounting Services below](#)

Estate and Trust Planning and Tax Preparation

Effective estate and trust planning can ensure financial security for loved ones. For businesses, it can maintain a smooth succession of ownership. Tax & Financial Center, Inc.'s role is to help you navigate the complex and shifting tax laws to facilitate the transfer of assets and minimize the tax liability of your beneficiaries. Everyone should have a well-thought-out plan as to how to distribute the assets left in one's estate so as to avoid complications and to be sure that the individual's wishes are followed. Having your taxes and estate thoroughly and carefully planned will ensure that your loved ones don't have any complications to deal with during a time of loss.

[Request information about Estate and Trust Planning and Tax Preparation below](#)

QuickBooks Accounting Help and Assistance

QuickBooks can provide useful and timely information in the form of financial statements, reports and graphs. However, it can only provide this information if you purchase the right product and then install, setup and use it properly. We don't just help you use the software, we help you use it more efficiently and more effectively.

Tax & Financial Center, Inc. offers the following solutions to help meet your QuickBooks needs:

Setup

We assist new QuickBooks users with initial setup including: EasyStep Interview, Preferences, Lists, Customers, Vendors, Employees, Banking and Reports. We also help experienced users manage their businesses more effectively by improving their current setup. Many users experience problems and lack the ability to generate and track important information as a result of inadequate setup.

Review

Our QuickBooks review service helps companies that have the human resources to perform daily accounting and payroll tasks, but need an accounting and payroll expert to review your transactions, accounts and reports. This review ensures that you receive timely, relevant and reliable financial information. We also inform you of any corrections, adjustments or reclassifications necessary to ensure that the financial information you receive reflects the correct financial condition of your business. Reviews may be conducted at any time, but monthly reviews provide you with up-to-date information and feedback about your business.

[Request information about QuickBooks Accounting Help and Assistance below](#)

Bookkeeping/Write-up

Accurate record-keeping is essential to a successful business yet can also be complicated and time consuming. Tax & Financial Center, Inc. can help you with the organization and day-to-day tasks of bookkeeping so that you can focus on your core business.

[Request information about Bookkeeping/Write-up below](#)

Entity Selection and Restructuring

Your business entity has a large impact on your taxes and other liabilities. From your company's inception through its growth and development, Tax & Financial Center, Inc. can advise you on choosing an entity type and later restructuring if advantageous. With our knowledge and expertise, you will always be receiving the most advantageous entity type for the functions your business performs.

[Request information about Entity Selection and Restructuring below](#)

IRS Representation

Professional representation can be vital during an audit, and our experience with tax authorities enables us to guide clients in their dealings with federal and state agencies. If you have been chosen for an audit, the professional representation you can find with our firm can put many of your worries at bay. We are ready and willing to answer any and all questions the IRS may be asking of you.

[Request information about IRS Representation below](#)

Payroll Services

Tax & Financial Center, Inc.'s payroll services can help you reduce the time spent on administration through developing and implementing a computerized payroll system that will facilitate processing, timely payment and preparation of tax returns.

[Request information about Payroll Services below](#)

Cash Flow and Budgeting Analysis


Good cash management can improve a company's liquidity, reduce costs, and increase profitability. Tax & Financial Center, Inc. can help you maintain optimal cash flow levels by tracking sources and uses, forecasting, and budgeting accordingly. To a business entity, cash flow is something that can make or break the business' ability to survive. We can help you analyze your spending, re-balance your budget and/or debts for an optimal cash flow to support your business' success. This balance plan would be revisited if and when there were any major changes in your business structure to ensure that you are operating at an optimal level. With our help and guidance, you will always be on top of your finances and ready for the future.

[Request information about Cash Flow and Budgeting Analysis below](#)

Information Request for Services Listed Above

Name	<input type="text"/>
Phone Number	<input type="text"/>
Email	<input type="text" value="your-address@email.com"/>
Which service would you like more information about?	<input type="text" value="Choose a service..."/>

Message

Security Question: What is 5+2? 

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[Web Builder CS: Websites for Accountants](#)

EXHIBIT 10

Larry Geraci

From: darryl@dalbercia.us on behalf of Darryl Cotton <darryl@inda-gro.com>
Sent: Thursday, November 3, 2016 1:41 PM
To: Larry Geraci
Subject: Re: Agreement

Larry,

Per our phone call the name 151 AmeriMeds has not been taken nor has there been any business entity formed from it. If you see this as an opportunity to piggyback some of the work I've done and will continue to do as 151 Farmers with further opportunities as a potential franchise for your dispensary I'd like for you to consider that as the process evolves.

We'll firm it up as you see fit.

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

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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](tel:858.576.1040)

Fax: [858.630.3900](tel:858.630.3900)

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