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2 California State Bar Number 272958
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9 Plaintiff *In Propria Persona*
10 and Attorney for Plaintiffs
11 Amy Sherlock and Minors T.S.
12 and S.S.

13
14 UNITED STATES DISTRICT COURT
15 SOUTHERN DISTRICT OF CALIFORNIA
16

17 ANDREW FLORES, an individual, AMY)
18 SHERLOCK, on her own behalf and on)
19 behalf of her minor children, T.S. and S.S.)
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;)
FERRIS & BRITTON APC, a California)
Corporation; DAVID DEMIAN, an)
individual, ADAM C. WITT, an individual,)

Case No.: 3:20-cv-00656-BAS-DEB

EX PARTE APPLICATION FOR
LEAVE TO FILE ATTACHED
SURREPLY TO DEFENDANTS'
REPLY TO PLAINTIFFS'
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS.

1 RISHI S. BHATT, an individual, FINCH,)
 2 THORTON, and BAIRD, a Limited Liability)
 3 Partnership, JAMES D. CROSBY, an)
 4 individual; ABHAY SCHWEITZER, an)
 5 individual and dba TECHNE; JAMES (AKA)
 6 JIM) BARTELL, an individual; BARTELL &)
 7 ASSOCIATES, a California Corporation;)
 8 NATALIE TRANG-MY NGUYEN, an)
 9 individual, AARON MAGAGNA, an)
 10 individual; A-M INDUSTRIES, INC., a)
 11 California Corporation; BRADFORD)
 12 HARCOURT, an individual; ALAN)
 13 CLAYBON, an individual, MICHAEL)
 14 TRAVIS PHELPS, an individual; THE CITY)
 15 OF SAN DIEGO, a municipality; 2018FMO,)
 16 LLC, a California Limited Liability)
 17 Company; FIROUZEH TIRANDAZI, an)
 18 individual; and DOES 1 through 50, inclusive,)

Defendants,

16 JOHN EK, an individual;)
 17 THE EK FAMILY TRUST, 1994 Trust,)

Real Parties In Interest.

19 The Plaintiffs in the above-captioned case, through counsel, respectfully move for
 20 leave to submit the attached surreply (attached as “Exhibit A”) in response to new
 21 arguments and factual claims made by Defendants Michael Weinstein, Scott Toothacre,
 22 Elyssa Kulas, and Ferris and Britton, APC (hereinafter “Defendants”) in Defendants’
 23 Reply to Plaintiffs’ Memorandum in Opposition of Defendants’ Motion to Dismiss the
 24 First Amended Complaint.

25 ///
 26 ///
 27 ///
 28 ///

A. INTRODUCTION

Defendants in their Reply argue, for the first time, that Plaintiffs are in privity with Darryl Cotton in the related state action referred to as *Cotton I*.¹ Thus, they are barred from bringing the instant action due to the doctrine of res judicata and collateral estoppel. The Court has not scheduled oral argument in this matter and Plaintiffs will be severely prejudiced if not given an opportunity to rebut this new raised argument made by Defendants.

B. LEGAL STANDARDS

Ex parte applications “are a form of emergency relief that will only be granted upon an adequate showing of good cause or irreparable injury to the party seeking relief.” *Salameh v. Tarsadia Hotel*, No. 09cv2739-GPC (BLM), 2015 U.S. Dist. LEXIS 50354, at *6 (S.D. Cal. Apr. 16, 2015) (quotation and citation omitted). The application must address why the regular noticed motion procedures are not adequate and must be supported by admissible evidence. *Id.* at *6-7. Second, the moving party must be “without fault” in creating the need for ex parte relief. *Id.* at *7.

“Moving parties are required to raise all of their arguments in their opening brief to prevent ‘sandbagging’ of the nonmoving party and to provide opposing counsel the opportunity to respond.” *Lewis v. Gotham Insurance Company*, Civil No. 09CV252 L (POR), at *2 (S.D. Cal. Nov. 5, 2009) (citing *Corson and Gruman Co. v. NLRB*, 899 F.2d 47, 50 n. 4 (D.C. Cir. 1990)); see *State of Nev. v. Watkins*, 914 F.2d 1545, 1560 (9th Cir. 1990) (Courts generally refuse to consider new arguments raised for the first time in a reply brief). It is generally “improper for the moving party to . . . introduce new facts or different legal arguments in the reply brief [beyond] . . . [those that were] presented in the moving papers.” *Ojo v. Farmers Grp., Inc.*, 565 F.3d 1175, 1186 (9th Cir. 2009) (citing William W. Schwarzer, A. Wallace Tashima, and James M. Wagstaffe, *Federal Civil Procedure Before Trial*, § 12:107 (The Rutter Group 2005)). This rule is designed to avoid unfairly depriving the opposing party of a response. See *Fox v. Citicorp Credit*

¹ “*Cotton I*” means *Geraci v. Cotton, et al.*, San Diego Superior Court Case No. 37-2017-10073-CU-BC-CTL.

1 *Servs., Inc.*, 15 F.3d 1507, 1514 n.6 (9th Cir. 1994); *see also Provenz v. Miller*, 102 F.3d
2 1478, 1483 (9th Cir. 1996) (“where new evidence is presented in a reply. . . the district
3 court should not consider the new evidence without giving the [non]movant an
4 opportunity to respond.”) (quotation and citation omitted).

5
6 **C. DEFENDANTS HAVE NEWLY ARGUED THAT PLAINTIFFS WERE IN**
7 **PRIVITY WITH COTTON IN PRIOR ACTION.**

8 Defendants have asserted for the first time, in their Reply, that Plaintiffs were in
9 privity with Darryl Cotton in *Cotton I* and are therefore barred from filing the instant
10 action because of that judgment. The issue is case dispositive. Thus, to avoid prejudice,
11 Plaintiffs should be afforded an opportunity to respond.

12 Plaintiffs thus respectfully request they be allowed to file the attached sur-reply.

13
14 Dated: August 18, 2020

Law Offices of Andrew Flores

15
16 By /s/ Andrew Flores

17 *Plaintiff In Propria Persona*, and
18 Attorney for Plaintiffs
19 AMY SHERLOCK, Minors T.S. and
20 S.S.
21
22
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26
27
28

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7 Plaintiff *In Propria Persona*
and Attorney for Plaintiffs
8 Amy Sherlock and Minors T.S.
and S.S.
9

10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**
12

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

16 Plaintiffs,

17 vs.

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

Case No.: 3:20-cv-00656-BAS-DEB

**PLAINTIFFS' SURREPLY TO
DEFENDANTS' REPLY TO
PLAINTIFFS' OPPOSITION TO
MOTION TO DISMISS THE FIRST
AMENED COMPLAIN BY
MICHAEL WEINSTEIN, SCOTT H.
TOOTHACRE, ELYSSA KULAS,
AND FERRIS & BRITTON APC**

Hearing Date: August 24, 2020
Time: 10:00 A.M.

District Judge: Cynthia Ann Bashant
Magistrate Judge: Daniel E. Butcher
Courtroom: 4B (4th Floor)
Complaint Filed: April 3, 2020
Trial Date: None

1 KULAS, an individual;
 2 FERRIS & BRITTON APC, a California
 3 Corporation; DAVID DEMIAN, an
 4 individual, ADAM C. WITT, an
 5 individual, RISHI S. BHATT, an
 6 individual, FINCH, THORTON, and
 7 BAIRD, a Limited Liability Partnership,
 8 JAMES D. CROSBY, an individual;
 9 ABHAY SCHWEITZER, an individual
 10 and dba TECHNE; JAMES (AKA JIM)
 11 BARTELL, an individual; BARTELL &
 12 ASSOCIATES, a California Corporation;
 13 NATALIE TRANG-MY NGUYEN, an
 14 individual, AARON MAGAGNA, an
 15 individual; A-M INDUSTRIES, INC., a
 16 California Corporation; BRADFORD
 17 HARCOURT, an individual; ALAN
 18 CLAYBON, an individual, MICHAEL
 19 TRAVIS PHELPS, an individual; THE
 20 CITY OF SAN DIEGO, a municipality;
 21 2018FMO, LLC, a California Limited
 22 Liability Company; FIROUZEH
 23 TIRANDAZI, an individual; and
 24 DOES 1 through 50, inclusive,

Defendants,

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

Real Parties In Interest

Related Case: 18CV00325-BAS-DEB

23 Plaintiffs hereby file this surreply in opposition to defendants Michael Weinstein,
 24 Scott Toothacre, Elyssa Kulas, and Ferris and Britton’s (the “Defendants”) Reply to
 25 Plaintiffs’ Opposition to Motion to Dismiss Plaintiffs’ First Amended Complaint (the
 26 “Reply”).

1 Defendants argue, for the first time, in their Reply that Plaintiffs are barred from
2 bringing this action on the grounds that Plaintiffs were in privity with Darryl Cotton in
3 *Cotton I*¹ and therefore the doctrine of res judicata and collateral estoppel applies.² In
4 support of this argument, Defendants note that Flores’ made special appearances in *Cotton*
5 *I*. However, those special appearances on behalf of Cotton, before Flores became the
6 equitable owner of the Property, does not put Flores in a position of privity with Cotton,
7 much less the Sherlock parties.

8 Defendants’ res judicata argument, predicated on Plaintiffs being in privity with
9 Cotton, fails for at least four reasons:

10 First:

11 “Under the requirement of privity, only parties to the former judgment or their
12 privies may take advantage of or be bound by it. [Citation.] A party in this
13 connection is one who is [1] ‘directly interested in the subject matter, [2] *and had*
14 *a right to make a defense, or to control the proceeding, and [3] to appeal from*
15 *the judgment.*’ [Citations.]”

16 *Patel v. Crown Diamonds, Inc.*, 247 Cal.App.4th 29, 37-38 (Cal. Ct. App. 2016) (emphasis
17 in original).

18 Defendants’ privity argument fails because Plaintiffs were neither parties to the
19 *Cotton I* action nor were they in privity with Cotton. Although Flores had a direct interest
20 in the Property (but not the Sherlock, T.S., or S.S.), none of Plaintiffs had a right to make a
21 defense, control the proceeding, or appeal from the judgment. Defendants do not allege,
22 much less prove, otherwise.

23 Second, Defendants are also barred by the doctrine of judicial estoppel from arguing
24 that Flores was able to litigate his claims in the *Cotton I* action. Flores filed a motion to
25 intervene in *Cotton I* arguing, *inter alia*, the existence of the Enterprise and the Antitrust
26 Conspiracy (as alleged and defined in Plaintiffs’ First Amended Complaint). (*See Request*

27 ¹ “*Cotton I*” means *Larry Geraci vs Darryl Cotton*, San Diego County Superior Court,
28 Case No. 37-2017-00010073-CU-BC-CTL.

² The word “privity” is not used even once in Defendants’ motion to dismiss.

1 for Judicial notice (“RJN”) No. 1.) Weinstein opposed Flores’ motion to intervene and the
2 Court denied Flores’ motion. (See RJN No. 2.)

3 Federal law on judicial estoppel governs cases in federal courts regardless of whether
4 they involve state law claims. *Johnson v. Oregon Dep’t of Human Res. Rehab. Div.*, 141
5 F.3d 1361, 1364 (9th Cir. 1998); *Rissetto v. Plumbers and Steamfitters Local 343*, 94 F.3d
6 597, 603 (9th Cir. 1996). Judicial estoppel is an equitable doctrine that prevents a party from
7 benefitting by taking one position but then later seeking to benefit by taking a clearly
8 inconsistent position. *Hamilton v. State Farm Fire & Cas. Ins. Co.*, 270 F.3d 778, 782 (9th
9 Cir. 2001). It “applies to positions taken in the same action or in different actions,” *Samson*
10 *v. NAMA Holdings, LLC*, 637 F.3d 915, 935 (9th Cir. 2010) (citing *Rissetto*, 94 F.3d at
11 605)), and is intended to protect the integrity of the judicial process by preventing a litigant
12 from “playing fast and loose with the courts,” *Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th
13 Cir. 1990). “It also ‘applies to a party’s stated position whether it is an expression of
14 intention, a statement of fact, or a legal assertion.’” *Samson*, 637 F.3d at 935 (quoting
15 *Wagner v. Prof’l Eng’rs in California Gov’t*, 354 F.3d 1036, 1044 (9th Cir. 2004)) (emphasis
16 added).

17 Defendants, having opposed Flores’ motion to intervene and assert causes of action
18 that were not litigated in *Cotton I*, is judicially estopped from arguing that Flores was in
19 privity with Cotton. Defendants’ argument seeks to unconstitutionally deprive Plaintiffs of
20 their “day in court” to litigate their claims. *Truax v. Corrigan*, 257 U.S. 312, 332 (1921)
21 (“***The due process clause requires that every man shall have the protection of his day in***
22 ***court***, and the benefit of the general law, a law which hears before it condemns, which
23 proceeds not arbitrarily or capriciously but upon inquiry, and renders judgment only after
24 trial, so that every citizen shall hold his life, liberty, property and immunities under the
25 protection of the general rules which govern society.”) (emphasis added).

26 Third, *arguendo*, assuming the *Cotton I* judgment is valid as Defendants state, Flores
27 cannot be in privity with Cotton because then that means Cotton committed a fraud on
28 Flores’ predecessor in interest, Richard Martin. Consequently, Flores has a cause of action

1 against Cotton for fraud. Such a position prevents a finding of privity because Cotton was
2 not therefore a “virtual representative” for Martin/Flores. *See DKN Holdings LLC v.*
3 *Faerber*, 61 Cal.4th 813, 826 (Cal. 2015) (“A nonparty alleged to be in privity must have
4 an interest so similar to the party’s interest that the party acted as the nonparty’s ‘virtual
5 representative’ in the first action.”) (citation and quotation omitted).

6 Fourth, for the reasons set forth above, a finding that Plaintiffs were in privity with
7 Cotton would violate due process of law. *Cal Sierra Dev., Inc. v. George Reed, Inc.*, 14
8 Cal.App.5th 663, 673 (Cal. Ct. App. 2017) (“This requirement of identity of parties or
9 privity is a requirement of due process of law.”) (quotation and citation omitted).

10 **Conclusion**

11 For the reasons set forth above, Plaintiffs respectfully submit they were not in privity
12 with Cotton.

13
14 Dated: August 18, 2020

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

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8 Plaintiff *In Propria Persona*
9 and Attorney for Plaintiffs
10 AMY SHERLOCK; Minors T.S.
11 and S.S.; and JANE DOE

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

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

17 Plaintiffs,)

18 vs.)

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

Case No.: 3:20-cv-00656-BAS-DEB

DECLARATION OF ANDREW
FLORES IN SUPPORT OF
PLAINTIFFS' *EX PARTE*
APPLICATION FOR LEAVE TO FILE
SURREPLY

1 individual, ADAM C. WITT, an individual,)
 2 RISHI S. BHATT, an individual, FINCH,)
 3 THORTON, and BAIRD, a Limited Liability)
 4 Partnership, JAMES D. CROSBY, an)
 5 individual; ABHAY SCHWEITZER, an)
 6 individual and dba TECHNE; JAMES (AKA)
 7 JIM) BARTELL, an individual; BARTELL &)
 8 ASSOCIATES, a California Corporation;)
 9 NATALIE TRANG-MY NGUYEN, an)
 10 individual, AARON MAGAGNA, an)
 11 individual; A-M INDUSTRIES, INC., a)
 12 California Corporation; BRADFORD)
 13 HARCOURT, an individual; ALAN)
 14 CLAYBON, an individual, MICHAEL)
 15 TRAVIS PHELPS, an individual; THE CITY)
 16 OF SAN DIEGO, a municipality; 2018FMO,)
 17 LLC, a California Limited Liability)
 18 Company; FIROUZEH TIRANDAZI, an)
 19 individual; and DOES 1 through 50, inclusive,)

Defendants,

20 JOHN EK, an individual;)
 21 THE EK FAMILY TRUST, 1994 Trust,)

Real Parties In Interest.

I, ANDREW FLORES, declare:

1. I am over the age of eighteen years, and a Plaintiff in the above entitled action as well as counsel for plaintiffs Amy Sherlock and her two minor children T.S. and S.S. (collectively, "Plaintiffs").

2. I am an attorney duly licensed in the State of California with my primary place of business in San Diego County.

3. The facts set forth herein are true and correct as of my own personal knowledge or belief.

4. This declaration is submitted in support of Plaintiffs' *Ex Parte* application

1 for leave to file a surreply to defendants motion to dismiss Plaintiffs’ First Amended
2 Complaint (the “Application”).

3 5. On August 18, 2020 at approximately 4:15 p.m. I called and spoke with
4 opposing counsel Gregory B. Emdee of the law firm KJAR, McKENNA &
5 STOCKALPER LLP. During that phone call I informed Mr. Emdee of the nature of the
6 Application and that I would be filing the Application by end of day on August 18, 2020.

7 6. Good cause exists to grant the Application because for the first time, in
8 defendants’ Reply to Plaintiffs’ Opposition to Defendants’ Motion to Dismiss,
9 defendants argue that Plaintiffs were in privity with Darryl Cotton in *Cotton I*.¹

10 7. The Court has not scheduled oral argument in this matter and Plaintiffs will
11 be severely prejudiced if not given an opportunity to rebut this argument made by
12 defendants.

13 I declare under penalty of perjury according to the laws of United States of
14 America that the foregoing is true and correct, and that this declaration was executed on
15 August 18, 2020 at San Diego, California.

16
17
18 By /s/ Andrew Flores
19 Plaintiff *In Propria Persona*, and
20 Attorney for Plaintiffs AMY SHERLOCK
21 and Minors T.S. and S.S.
22
23
24
25
26

27 _____
28 ¹ “*Cotton I*” means *Geraci v. Cotton, et al.*, San Diego Superior Court Case No. 37-
2017-10073-CU-BC-CTL.

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9 and Attorney for Plaintiffs
10 AMY SHERLOCK; Minors T.S.
11 and S.S.; and JANE DOE

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 ANDREW FLORES, an individual, AMY)
15 SHERLOCK, on her own behalf and on)
16 behalf of her minor children, T.S. and S.S.)
17 Plaintiffs,)
18 vs.)

Case No.: 3:20-cv-00656-BAS-DEB
REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF PLAINTIFFS
SURREPLY

19 GINA M. AUSTIN, an individual; AUSTIN)
20 LEGAL GROUP APC, a California)
21 Corporation; JOEL R. WOHLFEIL, an)
22 individual; LAWRENCE (AKA LARRY))
23 GERACI, an individual; TAX &)
24 FINANCIAL CENTER, INC., a California)
25 Corporation; REBECCA BERRY, an)
26 individual; JESSICA MCELFRISH, an)
27 individual; SALAM RAZUKI, an individual.)
28 NINUS MALAN, an individual;)
MICHAEL ROBERT WEINSTEIN, an)
individual; SCOTT TOOTHACRE, an)
individual; ELYSSA KULAS, an individual;)
FERRIS & BRITTON APC, a California)
Corporation; DAVID DEMIAN, an)
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1 RISHI S. BHATT, an individual, FINCH,)
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 6 JIM) BARTELL, an individual; BARTELL &)
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 8 NATALIE TRANG-MY NGUYEN, an)
 9 individual, AARON MAGAGNA, an)
 10 individual; A-M INDUSTRIES, INC., a)
 11 California Corporation; BRADFORD)
 12 HARCOURT, an individual; ALAN)
 13 CLAYBON, an individual, MICHAEL)
 14 TRAVIS PHELPS, an individual; THE CITY)
 15 OF SAN DIEGO, a municipality; 2018FMO,)
 16 LLC, a California Limited Liability)
 17 Company; FIROUZEH TIRANDAZI, an)
 18 individual; and DOES 1 through 50, inclusive,)

19 Defendants,

20 JOHN EK, an individual;)
 21 THE EK FAMILY TRUST, 1994 Trust,)

22 Real Parties In Interest.

23 Plaintiffs hereby request that this Court take judicial notice of the documents
 24 described below and the copies thereof attached hereto in support of their Surreply in
 25 support of their opposition to Defendants motion to dismiss.

26 The documents listed below and attached hereto as RJN Exhibits Nos. 1 and 2 and
 27 are conformed copies of pleadings and other papers filed in *Cotton I*. This Court may
 28 properly take judicial notice of these exhibits pursuant to Federal Rules of Evidence, Rule
 201.

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RJN NO.	DOCUMENT TITLE/DESCRIPTION
1	Intervener’s Ex Parte Notice of Motion and Motion to Intervene, With Memorandum of Points and Authorities, <i>Geraci v. Cotton, et al.</i> , San Diego Superior Court Case No. 37-2017-10073-CU-BC-CTL (“ <i>Cotton I</i> ”) ROA No. 572.
2	Minute Order Dated June 27, 2019 in the case entitled <i>Geraci v. Cotton, et al.</i> , San Diego Superior Court Case No. 37-2017-10073-CU-BC-CTL (“ <i>Cotton I</i> ”) ROA No. 590.

Dated: August 18, 2020

Law Offices of Andrew Flores

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

EXHIBIT 1

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 L Clerk of the Superior Court D

JUN 26 2019

By: A. SEAMONS, Deputy

8 *In Propria Persona*

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

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

13 vs.

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

16 Defendant(s).

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

EX PARTE
INTERVENOR'S NOTICE OF MOTION
AND MOTION TO INTERVENE, WITH
MEMORANDUM OF POINTS AND
AUTHORITIES

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

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

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

23 **PLEASE TAKE NOTICE** that on June 27, 2019 at 8:30 a.m. in department C-73 of the above-
24 entitled Court, located at the Hall of Justice, 330 W Broadway, San Diego, CA 92101, Andrew Flores
25 will and hereby does move this Court to permit him to intervene in the above-captioned action.
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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 Neither Mr. Geraci nor Mr. Cotton dispute that later that same day after the parties separated
13 (a) Mr. Geraci emailed Mr. Cotton a copy of the November Document; (b) Mr. Cotton responded and
14 requested that Mr. Geraci confirm the November Document is not a sales contract (the “Request for
15 Confirmation”); and (c) Mr. Geraci replied and provided the requested written confirmation (the
16 “Confirmation Email”). Mr. Geraci now alleges he sent the Confirmation by mistake.

17 On March 21, 2017, Mr. Cotton terminated his agreement with Mr. Geraci for breach and
18 entered into a written joint venture agreement with Mr. Martin (the “Martin Purchase Agreement”).
19 On March 22, 2017, Mr. Geraci served Mr. Cotton with the instant lawsuit alleging the November
20 Document is a sales contract. Movant is confident the instant suit a sham lawsuit intended to justify
21 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 IRO and/or PI but Geraci prevails at trial, Geraci's victory may be a pyrrhic one as
 Cotton would have a \$1.2 million reason to destroy the CUP approval process in order to free Cotton
 to close the more lucrative deal he has made with another buyer, Richard Martin II, for the purchase
 and sale of the Property.").

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

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

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

17
18 It is inexplicable why neither Mr. Geraci's counsel nor Mr. Cotton's counsel did not seek to
19 add Mr. Martin, Plaintiff's predecessor-in-interest. Whatever the reason, Movant, as the successor-
20 in-interest to Mr. Martin has a contractual right to the Property that was established BEFORE Mr.
21 Cotton was served with the instant suit. Thus, as an indispensable party, Movant is required to be a
22 party to any adjudication of the rights the Property.

23
24 As mentioned above, Movant only became the equitable owner on March 25, 2019 and has
25 been engaged in his own investigation regarding the issues and parties presented in this case separate
26 and apart from Mr. Cotton.

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

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

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

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

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

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 1 through 10, inclusive,
16 Defendants.

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

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

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

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

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

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

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

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

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

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

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

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

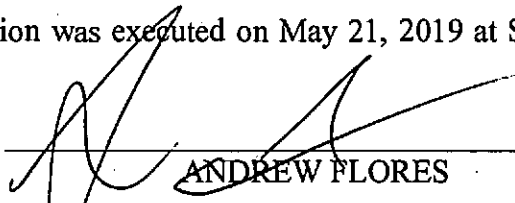
17 11. I have also contacted the Assistant United States Attorney who is currently prosecuting
18 the case.

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

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

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

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

28 

ANDREW FLORES

EXHIBIT 1

AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

//
//
//

AGREEMENT

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

ADDITIONAL PROVISIONS

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

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

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

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

By: 

Andrew Flores

By: 

Jacob Austin

By: 

Joe Hurtado

By: 

Darryl Cotton

By: 

Richard Martin

Exhibit A

(Redacted Secured Litigation Financing Agreement)

SECURED LITIGATION FINANCING AGREEMENT

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

RECITALS

WHEREAS, on December 15, 2017, the parties hereto came to a tentative and general agreement that was agreed to and more fully detailed in the Financing Agreement executed by Austin, Cotton, Hurtado and Maas on December 20, 2017 (the "December 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.

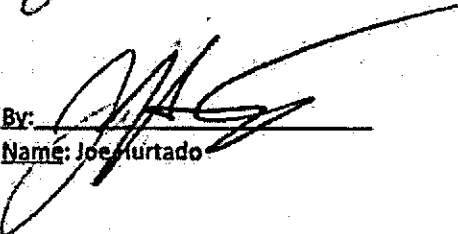
9. The parties agree to negotiate in good faith in regards to any other agreements or issues that may arise by among some or all of the parties hereto, in regards or related to the subject matter hereof, pending final resolution of the various matters, litigation or otherwise, described herein. It is 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: Mary 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,

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

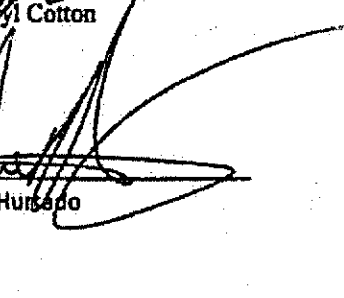
unusual circumstances giving rise to these circumstances and this Financing Agreement is not the result of any party to this Financing Agreement.

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: Barry Cotton

By: 
Name: Joe Hursado

By: _____
Name: Richard Martin

By: 
Name: Jacob Austin

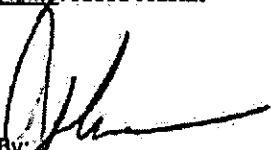
By: 
Name: Tom Maas

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

MARCH 15, 2017

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

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

Principal and Agent hereby agree that:

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

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

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

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

By: 
Name: Richard Martin

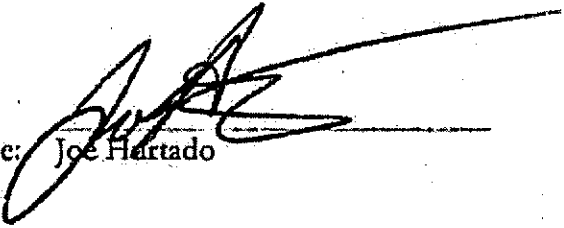
By: 
Name: Joe Hartado

EXHIBIT B



CALIFORNIA ASSOCIATION OF REALTORS®

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

Date Prepared: 03/21/2017

1. OFFER:

- A. THIS IS AN OFFER FROM Richard John Martin II (Buyer)
B. THE REAL PROPERTY to be acquired is 6776 Federal Blvd, San Diego (City), San Diego (County), California, 92116-1431 (720) (Zoning), Assessor's Parcel No. 343-22032-8 (Property)
C. THE PURCHASE PRICE offered is Two Million Dollars \$ 2,000,000.00
D. CLOSE OF ESCROW shall occur on see Addendum 1 (date) (or Days After Acceptance)
E. Buyer and Seller are referred to herein as the "Parties." Brokers are not Parties to this Agreement.

2. AGENCY:

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

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

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

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

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

- D. LOAN(S):
(1) FIRST LOAN: in the amount of \$ 1,800,000.00
This loan will be conventional financing or Seller financing (C.A.R. Form SFA), assumed financing (C.A.R. Form AFA), subject to financing, Other. This loan shall be at a fixed rate not to exceed % or an adjustable rate loan with initial rate not to exceed % 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.B(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 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 ("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 Buyer/Tenant X Richard John Martin II

Date March 21, 2017 Seller/Landlord X Darryl Cotton

Buyer/Tenant

Seller/Landlord

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Reviewed by _____ Date _____



ADM REVISED 12/15 (PAGE 1 OF 1)

ADDENDUM (ADM PAGE 1 OF 1)



CALIFORNIA ASSOCIATION OF REALTORS®

ADDENDUM

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

No. 2

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

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

in which San Diego, CA 92114-1401 is referred to as "Buyer/Tenant" and Richard John Martin II 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 \$700,000 FOR BREACH OF THIS PROVISION.

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

Date April 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 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 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 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)

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



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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

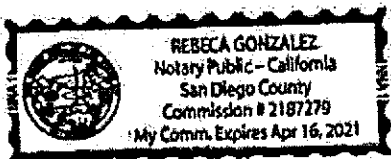
personally appeared Joe Hurtado & Darryl Cotton

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 [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 2

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

MINUTE ORDER

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

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil
CLERK: Andrea Taylor
REPORTER/ERM: Not Requested
BAILIFF/COURT ATTENDANT: R. Camberos

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

EVENT TYPE: Ex Parte

EVENT TYPE: Civil Jury Trial

APPEARANCES

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

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

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

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

Court and counsel discuss trial procedures.

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

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

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

Estimated length of trial: 8 days

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

Parties waive notice.