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Attorney for Defendant Larry Geraci

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

DARRYL COTTON, Plaintiff, v. LAWRENCE (A/K/A LARRY) GERACI, an individual, Defendant.	Case No. 37-2022-00000023-CU-MC-CTL **DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IN OPPOSITION TO PLAINTIFF'S MOTION TO VACATE VOID JUDGMENT** Date: February 25, 2022 Time: 9:00 a.m. Dept.: C-75 Judge: Hon. James A. Mangione Complaint Filed: January 3, 2022 Trial Date: Unassigned

Pursuant to Evidence Code Sections 452 and 453, Defendant Larry Geraci requests that the Court take judicial notice of the following:

Exhibit No.	True and Correct Copy of:
1	Complaint in U.S. District Court for the Southern District of California Case No. 3:18-cv-00325-JO-DEB
2	First Amended Complaint in U.S. District Court for the Southern District of California Case No. 3:18-cv-00325-JO-DEB
3	Order Granting Motions to Dismiss and Denying Others as Moot in U.S. District Court for the Southern District of California Case No. 3:18-cv-00325-JO-DEB
4	Complaint in U.S. District Court for the Southern District of California Case No.

	3:18-cv-02751-GPC-MDD
5	Order Dismissing the Complaint in U.S. District Court for the Southern District of California Case No. 3:18-cv-02751-GPC-MDD With Prejudice and Denying Defendants' Motions to Dismiss as Moot

Dated: February 10, 2022

Respectfully submitted,

/s/ James D. Crosby
James D. Crosby
Attorney for Larry Geraci

Exhibit
1

FILED
Feb 09 2018
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY s/ Lillianac DEPUTY

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

Plaintiff *Pro Se*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual,

Plaintiff,

vs.

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

Defendants.

DEMAND FOR JURY TRIAL

CASE NO.: '18CV0325 GPC MDD

Judge:
Dept.:

PLAINTIFF'S COMPLAINT FOR:

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

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19. DECLARATORY RELIEF; AND
20. INJUNCTIVE RELIEF.

Plaintiff *Pro Se* Darryl Cotton ("Plaintiff," "Cotton" or "I") alleges upon information and belief as follows:

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14. Alternatively, the state court judges have been grossly negligent towards me either because (i) they are unjustly dismissive of me because of my *pro se* and *blue-collar* status and simply did not review my pleadings and disregarded my arguments at the oral hearings (ii) or they are not impartial because, as one judge stated at the last hearing 2 weeks ago, he doubts my allegations of

ethical violations against counsel (including City attorneys) are true because he "knows them all well."

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

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

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

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

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

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

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

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

JURISDICTIONAL FACTS

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

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

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

PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

38. Cotton does not know the true names and capacities of the defendants named DOES 1 through 10 and, therefore, sues them by fictitious names. Cotton is informed and believes that DOES

1 through 10 are in some way responsible for the events described in this Complaint and are liable to Cotton based on the causes of action below. Cotton will seek leave to amend this Complaint when the true names and capacities of these parties have been ascertained.

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

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

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

FACTUAL ALLEGATIONS

THE ORIGIN OF THIS MATTER - MY PROPERTY

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

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

contemplation of finalizing their negotiations (including the execution of documents required for the CUP application). 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 first lobbied with the City to have the zoning issue resolved (the "Critical Zoning Issue");

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

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

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

44. On November 2, 2016, Cotton and Geraci met and came to an oral agreement for the sale of Cotton's Property to Geraci (the "November Agreement").

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

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

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

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

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

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

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

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

> "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."

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

> ***"No no problem at all"***

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

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

52. On March 7, 2017, Geraci emailed a draft Side Agreement. The cover email states:

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

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

> a. "WHEREAS, the Seller and Buyer have entered into a 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[.]"
> b. Section 1.2: "Buyer hereby agrees to pay to Seller 10% of the net revenues of Buyer's Business [...] Buyer hereby guarantees a profits payment of not less than $5,000 per month for the first three months [...] and $10,000 a month for each month thereafter[.]"
> c. Section 2.12, which provides for notices, requires a copy of all notices sent to Buyer to be sent to: "Austin Legal Group, APC, 3990 Old Town Ave, A-112, San Diego, CA 92110."

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

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

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

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

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

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

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

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

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

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

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

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

65. The Receipt was executed in November of 2016.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

does it address the professional negligence of my counsel at the TRO hearing on December 7, 2017? It does not.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUMMARY OF ADDITIONAL MATERIAL FACTS REGARDING THE CITY

The City Prosecutor – Mark Skeels

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The City's Development Services Department

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

City Civil Attorneys

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

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

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

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

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

The State Court Judges

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

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

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

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

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

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

THE FILING OF THIS FEDERAL COMPLAINT – THREATHS

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

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

> "Senator Osborn: 'If the State courts had proven themselves competent to suppress the local disorders, or to maintain law and order, we should not have been called upon to legislate[.]
>
> Representative Perry concluded: 'Sheriffs, having eyes to see, see not; judges, having ears to hear, hear not; witnesses conceal the truth or falsify it; grand and petit juries act as if they might be accomplices.... (A)ll the apparatus and machinery of civil government, all the processes of justice, skulk away as if government and justice were crimes and feared detection. Among the most dangerous things an injured party can do is to appeal to justice.'"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

166. Under the parties' oral 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 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.

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

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

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

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

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

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

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

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

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

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

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

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

177. Cotton reasonably relied on Geraci's promises.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Enrolled Agent – Fiduciary Duty

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

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

Real Estate Broker – Fiduciary Duty

194. Geraci is a licensed real estate Broker.

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

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

197. Breach of Fiduciary Duties

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

216. That the preparation of the CUP application would be very time consuming and take hundreds of thousands of dollars in lobbying efforts.

217. Geraci knew that these representations were false because, among other things, Geraci had already filed a CUP application with the City of San Diego prior to that day. At that point in time, all of his declarations regarding the issues that needed to be addressed, his trustworthiness and his intent to follow through with accurate final legal agreements were false. His subsequent communications via email, text messages and Final Agreement draft revisions make clear that he continued to represent to Cotton that the preliminary work of preparing the CUP application was underway, when, in fact, he was just stalling for time. Presumably, to get an acceptance or denial from the City and, assuming he got a denial, to be able to deprive Cotton of the $40,000 balance due on the non-refundable deposit.

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

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

220. Cotton relied on Geraci's representations.

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

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

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

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

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

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

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

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

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

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

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

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

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

233. Cotton has no adequate remedy at law for the injuries currently being suffered in that it will be impossible for Cotton to determine the precise amount Cotton has suffered and continues to suffer damages because of Geraci's actions.

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

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

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

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

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

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

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

240. As a further and proximate result of Defendants' conduct, Cotton has incurred expenses in order to clear title to the Property. Moreover, these expenses are continuing, and Cotton will incur additional expenses for such purpose until the cloud on Cotton's title to the Property has

been removed. The amounts of future expenses are not ascertainable at this time but will be proven at trial.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

257. Cotton has an ongoing prospective business relationship with Mr. Martin and the City via by the then-filed CUP application that was resulting, and would have resulted, in an economic benefit to Cotton based on and in connection with the approval of the CUP application.

258. Further, specifically, Cotton has an ongoing prospective business relationship with Mr. Martin for the sale of the Property that was resulting, and would have resulted, in an economic benefit to Cotton based on and in connection with the sale of the Property.

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

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

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

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

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

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

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

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

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

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

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

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

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

269. Defendants, and each of them, engaged in outrageous conduct towards Plaintiff, with the intention to cause or with reckless disregard for the probability of causing Plaintiff to suffer severe emotional distress. Geraci has event sent convicts to intimidate, coerce and threaten my investors by telling him that it would be in his "best interest" to use his influence me to settle with Geraci.

270. All of the above-named defendants know that this is an unfounded lawsuit against me and the continued malicious attempts at depriving me of my rights, money and sanity can only be described as outrageous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

294. Then I was told to submit a new application which necessarily creates an inequitable race – all these facts can only be reconciled if one is to accept that 1) the city is prejudiced against me or; 2) Geraci has them in his pocket.

295. Not only that, this all follows the tyrannical practices of Deputy City Attorney Mark Skeels who tricked me and my young defense counsel into setting myself up for an Asset Forfeiture Action that ultimately resulted in a $25,000 extortion. Under the Fourth Amendment, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause." U.S. Const. amend. IV. "The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable." *Florida v. Jimeno,* 500 U.S. 248, 250, 111 S.Ct. 1801, 114 L.Ed.2d 297 (1991). In light of the situation I was in, the unforeseen and extreme result must surely constitute an "unreasonable" seizure.

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

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

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

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

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

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

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

301. The elements of civil RICO are as fol-lows: (1) conduct, (2) of an enterprise, (3) through a pattern (4) of racketeering ac-tivity, (5) resulting in injury.

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

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

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

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

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

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

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

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

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

NINTEENTH CLAIM OF DECLARATORY RELIEF (As Against All Defendants)

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

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

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

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

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

INJUNCTIVE RELIEF (As Against All Defendants)

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

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

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

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

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

//

//

PRAYER FOR RELIEF

WHEREFORE, Cotton prays for relief against defendants as follows:

1. That the Court order the Lis Pendens on the Property be released;

2. That the Court order, by way of declaratory relief, that there is no purchase agreement between the Geraci and that Cotton is the sole owner of the Property;

3. That the CUP application be transferred to me;

4. General, exemplary, special and/or consequential damages in the amount to be proven at trial, but which are no less than $5,000,000;

5. Punitive damages against all defendants;

6. Sanctions against counsel as this Court may find warranted based on the allegations above that will be proven to be true during the course of this litigation;

7. That this Court appoint Mr. Cotton counsel until such time as he has the financial wherewithal to pay for counsel himself; and

8. That other relief is awarded as the Court determines is in the interest of justice.

Dated: February 9, 2018.

Darryl Cotton,
Cotton and Cotton Pro Se

EXHIBIT 1

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

PRO PER

FILED
Clerk of the Superior Court
JAN 22 2018
By: A. SEAMONS, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

LARRY GERACI, an individual, Plaintiff, v. DARRYL COTTON, an individual, and DOES 1-10, inclusive, Defendants. AND RELATED CROSS-ACTION DARRYL COTTON, an individual, Petitioner/Plaintiff, v. CITY OF SAN DIEGO, a public entity; and DOES 1 through 25, Respondents/Defendants. REBECCA BERRY, and individual; LARRY GERACI, an individual, and ROES 1 through 25, Real Parties In Interest.	Case Nos.: 37-2017-00010073-CU-BC-CTL 37-2017-00037675-CU-WM-CTL **VERIFIED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DARRYL COTTON'S RESPONSE TO (1) MOTION BY PLAINTIFF/CROSS-DEFENDANT LARRY GERACI AND CROSS-DEFENDANT REBECCA BERRY TO COMPEL THE DEPOSITION OF DARRYL COTTON AND (2) MOTION BY REAL PARTIES IN INTEREST, LARRY GERACI AND REBECCA BERRY, TO COMPEL THE DEPOSITION OF DARRYL COTTON** Date: January 25, 2018 Time: 8:30 a,m. Judge: Hon. Joel R. Wohlfeil Dept.: C-73

I. LEGAL INTRODUCTION

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

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

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

II. PLAIN LANGUAGE INTRODUCTION AND RESPECTFUL REQUEST

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[6] Id.

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

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

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

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

III. MATERIAL FACTUAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

B. Additional Material Background

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

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

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

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

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

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

C. The TRO Motion Hearing

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

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

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

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

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

D. Ethical Violations by Counsel

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

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

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

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

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

D. Emotional and Financial Pressure

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

ARGUMENT

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

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

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

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

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

[9] See supporting declarations of Darryl Cotton,

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Writ of Supersedeas

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

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

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

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

[11] See Declarations of Darryl Cotton

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

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

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

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

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

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

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

D. Ethical Considerations

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

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

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

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

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

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

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

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

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

affirmative misrepresentation' [citations omitted] . . . . In some but not all circumstances, an independent duty to disclose is required; active concealment may exist where a party '[w]hile under no duty to speak, nevertheless does so, but does not speak honestly or makes misleading statements or suppresses facts which materially qualify those stated.'" [Fn. omitted.]); *Lovejoy v. AT&T Corp.* (2001) 92 Cal.App.4th 85, 97 [111 Cal.Rptr.2d 711]; *Stevens v. Superior Court* (1986) 180 Cal.App.3d 605, 608 [225 Cal.Rptr. 624].

Footnote 14 states:

> Cal. State Bar Formal Opn. No. 1996-146 ("A lawyer acts unethically where she assists in the commission of a fraud by implying facts and circumstances that are not true in a context likely to be misleading."); cf. *Datig*, supra, 73 Cal.App.4th at pp. 980-81 (once attorney realized he had negligently misled the court, the attorney had an affirmative duty to immediately notify the court).

E. Application of Ethical Considerations

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

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

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

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

to bring to your attention the Confirmation Email.

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

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

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

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

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

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

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

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

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

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

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

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

The City Attorneys

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

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

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

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

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

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

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

CONCLUSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[18] Datig v. Dove Books, Inc. (1999) 73 Cal.App.4th 964, 982–983 [87 Cal.Rptr.2d 719], as modified on denial of reh'g (Aug. 13, 1999)
[19]

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

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

Dated: January 22, 2017

By: _____
DARRYL COTTON

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

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

Michael Amadio, NP • DEA #: MA3334048
Cara Bergsma, MD • DEA #: FB6283242
Chad M Bienhaver, DO • DEA #: FB0377348
Daryl Birmingham, MD • DEA #: FB6855669
Paul Chiller, MD • DEA #: FC0380639
Elizabeth Christiansen, NP • DEA #: MC0776691
Rebekah Cook, NP • DEA #: MC2872710
Tracie Gadfor, NP • DEA #: MX1669406
Mark Keedy, NP • DEA #: MK0817601
Heinrich Kotter, MD • DEA #: FK0067537
Nicole Merriman, NP • DEA #: MR2117087
Gary R. Palmbaum, MD • DEA #: BP6890586
Alejandra Prijatel, NP • DEA #: MP3660069
Caroline Rapaport, NP • DEA #: MR1794646
Julie Sullivan, MD • DEA #: FS2037091
Kyle Vanatowa, MD • DEA #: FV5419693
Thomas Vielanda, PA • DEA #: MV0623080
Katie Zielinski, NP • DEA #: MZ3368232

Patient Information

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

SCRIPPS MERCY HOSPITAL, SAN DIEGO

Circle No. of Drugs Prescribed: 1 2 3

Prescription is void if number of drugs prescribed is not noted

No Refills allowed for Schedule II

Rx1 Keppra 250mg PO BID #14
☐ 1-24 ☐ 25-49 ☐ 50-74 ☐ 75-100 ☐ 101-150 ☐ 151 & OVER ☐ ___ Units ☐ Do not substitute
Refill 0 1 2 3 4 PRN

Rx2
☐ 1-24 ☐ 25-49 ☐ 50-74 ☐ 75-100 ☐ 101-150 ☐ 151 & OVER ☐ ___ Units ☐ Do not substitute
Refill 0 1 2 3 4 PRN

Rx3
☐ 1-24 ☐ 25-49 ☐ 50-74 ☐ 75-100 ☐ 101-150 ☐ 151 & OVER ☐ ___ Units ☐ Do not substitute
Refill 0 1 2 3 4 PRN

Date 12/12/17

SCRIPT 58316 Order # 2322787-1

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

SAFETY FEATURES: COLORED VOID BACKGROUND • MICROPRINT LINES • INVERT TO REVEAL PROTECTION

RX_2_CA_initial_V FileRx.com 800-377-7717 RxFields.com

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

SCRIPPS MERCY HOSPITAL, SAN DIEGO

EXHIBIT 2

I, Joe Hurtado, declare:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Joe Hurtado

1/22/2018

EXHIBIT 3

3

I, Dr. Carolyn Candido, declare:

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

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

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

January 22, 2018

Dr. Carolyn Candido

4

EXHIBIT 4

Exhibit A

Compilation of all email correspondence between Darryl Cotton and Larry Geraci

Table of Contents

Format: Sender; Receiver; Date; Time

1. Geraci. Cotton. 10-20-16. 11:42 AM.	A-1
2. Geraci. Cotton. 10-24-16. 12:38 PM.	A-2
2.1 Attachment	A-2.1
3. Geraci. Cotton. 11-2-16. 3:11 PM.	A-3
3.1 Attachment	A-3.1
4. Geraci. Cotton. 11-2-16. 9:13 PM.	A-4
5. Geraci. Cotton. 11-14-16. 10:26 AM.	A-5
5.1 Attachment	A-5.1
6. Geraci. Cotton. 2-27-17. 8:49 AM.	A-6
6.1 Attachment	A-6.1
7. Geraci. Cotton. 2-2-17. 8:51 AM.	A-7
7.1 Attachment	A-7.1
8. Cotton. Geraci. 3-3-17. 8:22 AM.	A-8
8.1 Attachment	A-8.1
9. Geraci. Cotton. 3-7-17. 12:05 PM.	A-6
9.1 Attachment	A-9.1
10. Cotton. Geraci. 3-16-17. 8:23 PM.	A-10
11. Cotton. Geraci. 3-17-17. 2:15 PM.	A-11
12. Geraci. Cotton. 3-18-17. 1:43 PM.	A-12
13. Cotton. Geraci. 3-19-17. 9:02 AM.	A-13
14. Geraci. Cotton. 3-19-17. 3:11 PM.	A-14

15. Cotton. Geraci. 3-19-17. 6:47 PM. A-15
16. Cotton. Geraci. 3-21-17. 3:18 PM. A-16

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

Thank you for your email...

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

Thank you.

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

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

Circular 230 Disclaimer:

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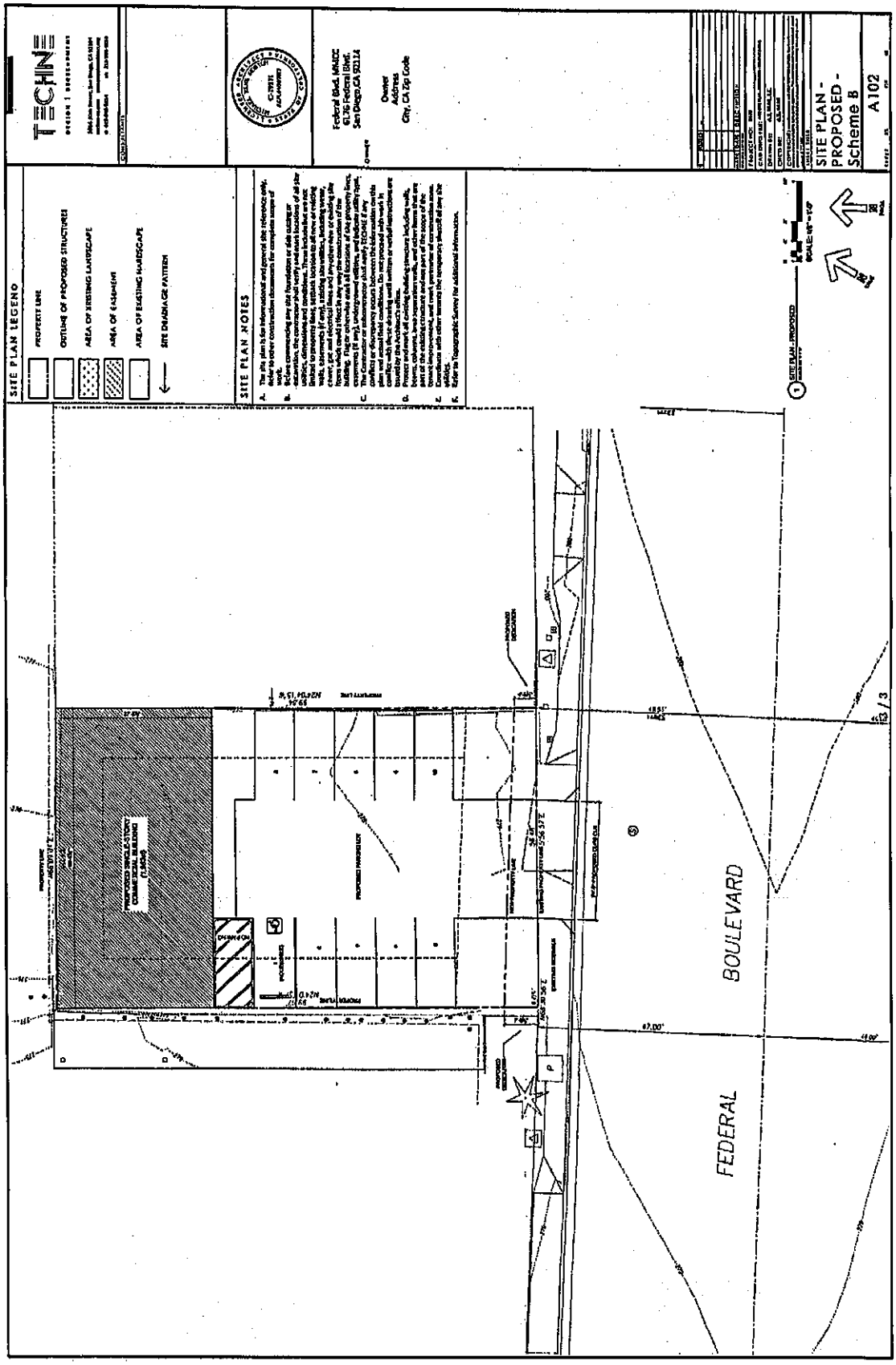
From: darryl@dalbercia.us [mailto:darryl@dalbercia.us] **On Behalf Of** Darryl Cotton
Sent: Monday, October 24, 2016 12:37 PM
To: Larry Geraci <Larry@tfcsd.net>
Subject: Test Send

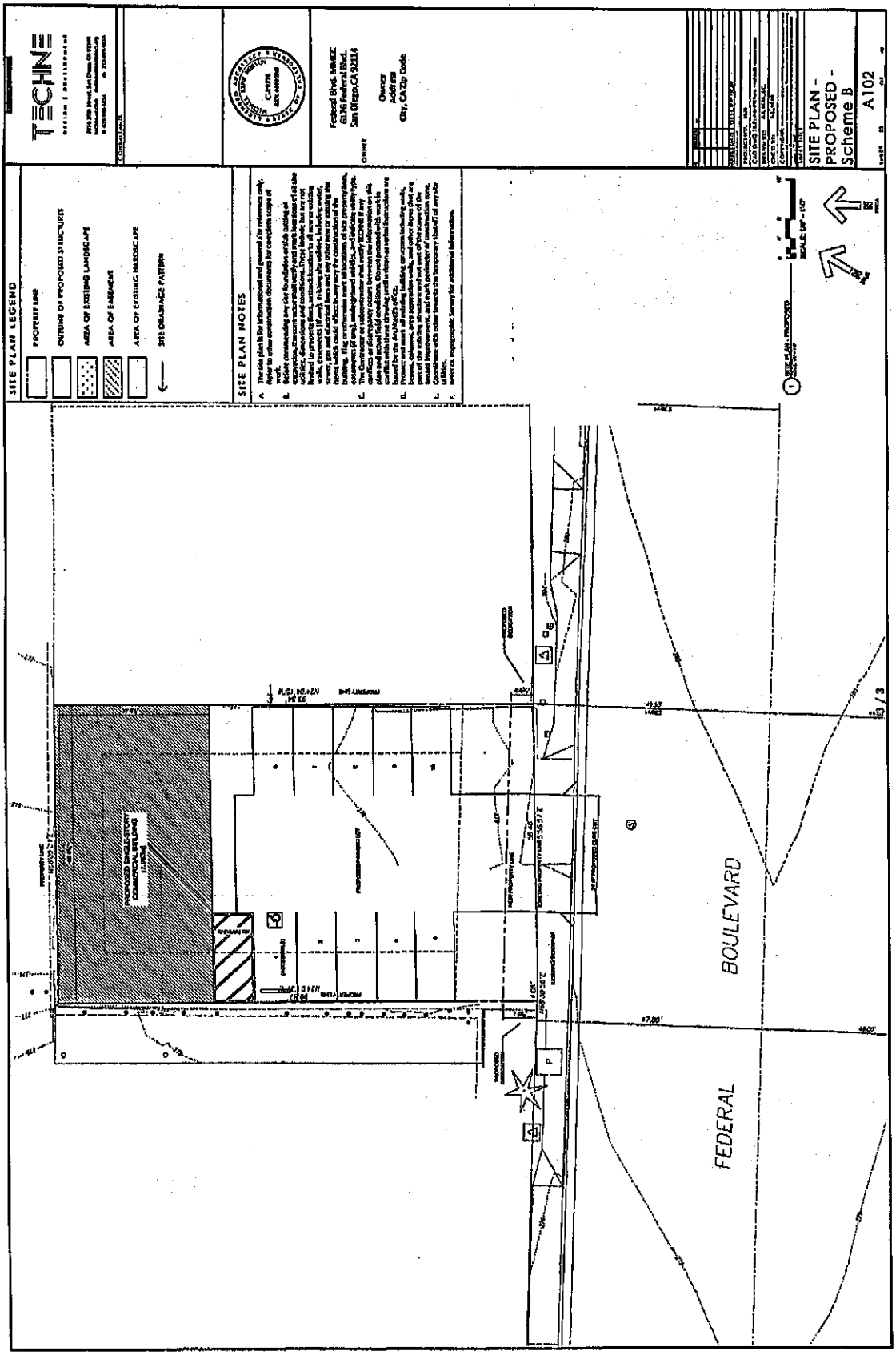
Darryl Cotton, President

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

6176 Federal Blvd.
San Diego, CA. 92114 —
USA

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.


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
Federal Blvd. MUCC
6136 Federal Blvd.
San Diego, CA 92114
Owner
Address
City, CA Zip Code
SITE PLAN - PROPOSED - Scheme B
A102
SITE PLAN - PROPOSED
PROPOSED SINGLE STORY COMMERCIAL BUILDING
PROPOSED PARKING LOT
BOULEVARD
FEDERAL


SITE PLAN LEGEND
PROPERTY LINE
OUTLINE OF PROPOSED STRUCTURE
AREA OF EXISTING LANDSCAPE
AREA OF EASEMENT
AREA OF EXISTING HARDSCAPE
SITE DRAINAGE PATTERN
SITE PLAN NOTES
Federal Blvd. MIXED
6176 Federal Blvd.
San Diego, CA 92114
Owner
Address
City, CA Zip Code
SITE PLAN - PROPOSED - Scheme B
A102
FEDERAL
BOULEVARD

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

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

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.

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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

Larry Geraci

Darryl Cotton

ACKNOWLEDGMENT

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

State of California
County of San Diego)

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

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

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

WITNESS my hand and official seal.

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

Signature [signature] (Seal)

11/02/2016

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Darryl Cotton

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

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

WITNESS my hand and official seal.

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

Signature [signature] (Seal)

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

No no problem at all

Sent from my iPhone

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

Hi Larry,

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

Regards.

Darryl Cotton, President

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

6176 Federal Blvd.
San Diego, CA. 92114
USA

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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

Fax: 858.630.3900

Circular 230 Disclaimer:

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

Hi Darryl,

Can you sign and email back to me asap?

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

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

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

_____

Signature

_____/_____/_____

Date

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

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

_____

Signature

_____/_____/_____

Date

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

Hi Daryl,

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

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

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AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY

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

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

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

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

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

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

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

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

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

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

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

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

Buyer: 6176 Federal Blvd. Trust
6176 Federal Blvd.

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

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

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

Escrow Agent: [NAME]
[ADDRESS]

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

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

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

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

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

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

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

4. ESCROW.

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

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

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

5. TITLE MATTERS.

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

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

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

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

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

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

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

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

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

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

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

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

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

8. PHYSICAL INSPECTION; BUYERS INDEMNITIES.

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

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

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

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

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

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

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

10. REPRESENTATIONS OF SELLER.

a. Seller represents and warrants to Buyer that:

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

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

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

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

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

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

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

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

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

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

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

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

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

11. REPRESENTATIONS AND WARRANTIES BY BUYER.

a. Buyer represents and warrants to Seller that:

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

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

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

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

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

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

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

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

14. CLOSING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. COSTS, EXPENSES AND PRORATIONS.

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

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

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

(3) Seller's share of prorations; and

(4) One-half of all transfer taxes.

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

(1) All document recording charges;

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

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

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

(5) Buyer's share of prorations.

c. Prorations.

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

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

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

16. CLOSING DELIVERIES.

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

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

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

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

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

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

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

17. DEFAULT AND REMEDIES

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

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

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

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

_____ _____
Seller's Initials Buyer's Initials

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

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

18. MISCELLANEOUS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SIGNATURE PAGE FOLLOWS

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

BUYER:

6176 FEDERAL BLVD TRUST

By: _____

Printed: _____

Its: Trustee

SELLER:

DARRYL COTTON.

_____

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

Date: _____, 2017

By: _____

Escrow Officer

EXHIBIT "A"

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

EXHIBIT "B"

PROPERTY INFORMATION

EXHIBIT "C"

SERVICE CONTRACTS

EXHIBIT "D"

THREATENED OR PENDING LAWSUITS

EXHIBIT "E"

MEMORANDUM OF AGREEMENT

AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY

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

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

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

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

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

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

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

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

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

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

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

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

Buyer: 6176 Federal Blvd. Trust
6176 Federal Blvd.

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

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

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

Escrow Agent: [NAME]
[ADDRESS]

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

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

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

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

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

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

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

4. ESCROW.

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

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

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

5. TITLE MATTERS.

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

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

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

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

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

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

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

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

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

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

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

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

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

8. PHYSICAL INSPECTION; BUYERS INDEMNITIES.

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

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

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

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

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

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

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

10. REPRESENTATIONS OF SELLER.

a. Seller represents and warrants to Buyer that:

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

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

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

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

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

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

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

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

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

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

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

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

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

11. REPRESENTATIONS AND WARRANTIES BY BUYER.

a. Buyer represents and warrants to Seller that:

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

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

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

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

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

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

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

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

14. CLOSING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. COSTS, EXPENSES AND PRORATIONS.

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

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

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

(3) Seller's share of prorations; and

(4) One-half of all transfer taxes.

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

(1) All document recording charges;

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

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

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

(5) Buyer's share of prorations.

c. Prorations.

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

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

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

16. CLOSING DELIVERIES.

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

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

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

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

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

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

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

17. DEFAULT AND REMEDIES

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

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

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

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

_____ _____
Seller's Initials Buyer's Initials

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

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

18. MISCELLANEOUS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

r. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

s. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

t. Section 1031 Exchange. Either party may consummate the purchase or sale (as applicable) of the Property as part of a so-called like kind exchange (an "**Exchange**") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the "**Code**"), provided that: (a) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of an Exchange be a condition precedent or condition subsequent to the exchanging party's obligations under this Agreement; (b) the exchanging party shall effect its Exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary (c) neither party shall be required to take an assignment of the purchase

EXHIBIT "B"

PROPERTY INFORMATION

EXHIBIT "C"

SERVICE CONTRACTS

EXHIBIT "D"

THREATENED OR PENDING LAWSUITS

EXHIBIT "E"

MEMORANDUM OF AGREEMENT

Subject: Statement
From: Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <darryl@inda-gro.com>
Date: Thursday, March 2, 2017 8:51:11 AM GMT-08:00

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc
5402 Ruffin Rd, Ste 200
San Diego, Ca 92123

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

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.

SIDE AGREEMENT

Dated as of March ___, 2017

By and Among

DARRYL COTTON

and

6176 FEDERAL BLVD TRUST

This Side Agreement ("Side Agreement") is made as of the ___ day of _____ 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust ("Buyer"), a California trust. Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Seller and Buyer desire to enter into a Purchase Agreement (the "Purchase Agreement"), dated of even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property"); and

WHEREAS, the purchase price for the Property is Four Hundred Thousand Dollars ($400,000); and

WHEREAS, a condition to the Purchase Agreement is that Buyer and Seller enter into this Side Agreement that addresses the terms under which Seller shall move his existing business located on the Property.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

ARTICLE I

1. **Terms of the Side Agreement**

1.1. Buyer shall pay Four Hundred Thousand Dollars ($400,000) to cover Seller's expenses related to moving and re-establishing his business ("Payment Price").

1.2. The Payment Price is contingent on close of escrow pursuant to the Purchase Agreement.

ARTICLE II

2. Closing Conditions

2.1. Within ten (10) business days from the close of escrow on the Property, Buyer shall pay the Payment Price by wire transfer to an account provided by the Seller (see section 2.3); and

2.2. A condition precedent to the payment of the Payment Price is receipt by the Buyer of Seller's written representation that Seller has relocated his business and vacated the Property; and

2.3. If escrow does not close on the Property, the Side Agreement shall terminate in accordance with the terms of the Purchase Agreement and no payment is due or owing from Buyer to Seller.

ARTICLE III

3. General Provisions

3.1.This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

3.2. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

3.3. Wire Instructions. Buyer shall transmit Payment Price via wire transfer to the following account: _____, with the routing number or swift code of: _____, located at the following bank and address: _____.

3.4. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

3.5. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

3.6. Governing Law. This Side Agreement shall be governed by and construed in accordance with the laws of the State of California.

3.7. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Side Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer shall not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attorneys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Side Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Side Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Side Agreement. In the event the transaction contemplated by this Side Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

3.8. Interpretation of Side Agreement. The article, section and other headings of this Side Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

3.9. Amendments. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

3.10. Drafts Not an Offer to Enter Into a Legally Binding Contract. The parties hereto agree that the submission of a draft of this Side Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Side Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Side Agreement (or a copy by facsimile transmission).

3.11. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

3.12. No Third Party Beneficiary. The provisions of this Side Agreement are not intended to benefit any third parties.

3.13. Invalidity and Waiver. If any portion of this Side Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Side Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Side Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

3.14. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

IF TO BUYER:

6176 Federal Blvd. Trust
6176 Federal Blvd.
San Diego, California 92114
Attn:
Fax No.:
Phone No.:

with a copy to:

Austin Legal Group, APC
3990 Old Town Ave, A-112
San Diego, CA 92110

IF TO SELLER:

Darryl Cotton
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided,

however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

3.15. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

3.16. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

3.17. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

3.18. Execution in Counterparts. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

3.19. Incorporation of Recitals/Exhibits. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Side Agreement as though fully set forth herein.

3.20. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Side Agreement shall not invalidate this Side Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Side Agreement. The exercise of any remedy provided in this Side Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Side Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

3.21. Legal Advice. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

BUYER:

6176 FEDERAL BLVD. TRUST

By: _____

Printed: _____

Its: Trustee

SELLER:

DARRYL COTTON:

_____

SIDE AGREEMENT

Dated as of March ___, 2017

By and Among

DARRYL COTTON

and

6176 FEDERAL BLVD TRUST

This Side Agreement ("Side Agreement") is made as of the ___ day of _____ 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust ("Buyer"), a California trust. Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Seller and Buyer desire to enter into a Purchase Agreement (the "Purchase Agreement"), dated of even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property"); and

WHEREAS, the purchase price for the Property is Four Hundred Thousand Dollars ($400,000); and

WHEREAS, a condition to the Purchase Agreement is that Buyer and Seller enter into this Side Agreement that addresses the terms under which Seller shall move his existing business located on the Property.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

ARTICLE I

1. **Terms of the Side Agreement**

1.1. Buyer shall pay Four Hundred Thousand Dollars ($400,000) to cover Seller's expenses related to moving and re-establishing his business ("Payment Price").

1.2. The Payment Price is contingent on close of escrow pursuant to the Purchase Agreement.

ARTICLE II

2. Closing Conditions

2.1. Within ten (10) business days from the close of escrow on the Property, Buyer shall pay the Payment Price by wire transfer to an account provided by the Seller (see section 2.3); and

2.2. A condition precedent to the payment of the Payment Price is receipt by the Buyer of Seller's written representation that Seller has relocated his business and vacated the Property; and

2.3. If escrow does not close on the Property, the Side Agreement shall terminate in accordance with the terms of the Purchase Agreement and no payment is due or owing from Buyer to Seller.

ARTICLE III

3. General Provisions

3.1.This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

3.2. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

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).

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3.12. No Third Party Beneficiary. The provisions of this Side Agreement are not intended to benefit any third parties.

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IF TO BUYER:

6176 Federal Blvd. Trust
6176 Federal Blvd.
San Diego, California 92114
Attn:
Fax No.:
Phone No.:

with a copy to:

Austin Legal Group, APC
3990 Old Town Ave, A-112
San Diego, CA 92110

IF TO SELLER:

Darryl Cotton
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided,

however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

3.15. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

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.

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3.20. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Side Agreement shall not invalidate this Side Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Side Agreement. The exercise of any remedy provided in this Side Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Side Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

3.21. Legal Advice. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

BUYER:

6176 FEDERAL BLVD. TRUST

By: _____

Printed: _____

Its: Trustee

SELLER:

DARRYL COTTON:

_____

Subject: Re: Statement
From: Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcsd.net>
Date: Friday, March 3, 2017 8:22:09 AM GMT-08:00

Larry,

I read the Side Agreement in your attachment and I see that no reference is made to the 10% equity position as per my Inda-Gro GERL Service Agreement (see attached) in the new store. In fact para 3.11 looks to avoid our agreement completely. It looks like counsel did not get a copy of that document. Can you explain?

On Thu, Mar 2, 2017 at 8:51 AM, Larry Geraci <Larry@tfcsd.net> wrote:

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

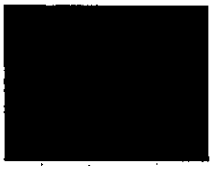
Bus: 858.576.1040

Fax: 858.630.3900

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.



SERVICES AGREEMENT CONTRACT

Date: 09/24/16

Customer: GERL Investments
5402 Ruffin Road, Ste. 200
San Diego, CA 92103

Attn: Mr. Larry Geraci
Ph: 858.956.4040
E-mail: Larry@TFCSD.net

Mr. Geraci;

Pursuant to our conversations I have developed this document to act as the Contract between us that will serve to define our relationship, services, and fee's for the development of 6176 Federal Boulevard San Diego, CA. 92114 (hereinafter referred to as the property) as a new dispensary to be owned and managed by your company, GERL Investments.

1) The property is currently owned by me, Darryl Cotton (Cotton-Seller) and occupied by my company, Inda-Gro Induction Lighting Company (Inda-Gro-Tenant). Under separate Contract Cotton has agreed to sell the property to GERL Investments (GERL-Buyer) for $400,000.00 and a 10% equity position in the new licensed cannabis dispensary business being developed at the property by GERL.

2) Upon completion and transfer of property ownership Cotton will immediately cease being the landlord to Inda-Gro and Inda-Gro will become the tenant of GERL.

3) GERL plans to tear down the existing structure(s) and build a new structure for a commercial dispensary. Under this Agreement GERL will allow Inda-Gro to remain in the property at no charge until such time that the plan check with the City of San Diego has been approved and permits have been issued. This process is expected to take 6-9 months. At the time GERL notices Inda-Gro that the permits have been issued Inda-Gro will have 30 days to vacate the property. Inda-Gro agrees to cooperate with GERL architects to access the property during the design phase of this work.

4) Inda-Gro is agreeing to vacate the property in consideration for a relocation fee of $400,000.00 of which payment would be made in two parts. Upon execution of this Contract GERL agrees to pay Inda-Gro $200,000. Upon issuance of the permits and the 30 day notice to vacate the balance, $200,000.00 would become payable and due.

5) Inda-Gro currently operates what we refer to as a 151 Farm. This is a teaching and touring farm that demonstrates urban farming technologies which utilize our lighting systems, controls and water savings strategies utilizing Aquaponics systems. Since it is in the interest of all parties; Inda-Gro, Cotton and

GERL to identify ongoing investment opportunities with both cannabis and non-cannabis related ventures Inda-Gro and Cotton agree to use the current property to highlight the benefits of what having a licensed dispensary is to the community and once relocated Inda-Gro/Cotton would agree to continue to promote the new dispensary as an example of seed to sale retail distribution as well as identify other investment opportunities that develop from interested parties having toured our facilities and wishing to establish similar operations.

6) . GERL may wish to have interested parties tour the current and new property for Inda-Gro 151 Farms. This too is acceptable and under this Agreement would be a mutual collaboration and strategic alliance in terms of the farming and cultivation aspects provided by Inda-Gro and the Site Acquisition, Design/Build Construction and Retail Cannabis Services provided by GERL for those future contracts.

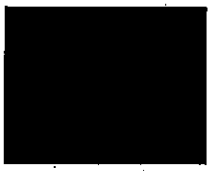
TOTAL PRICE: Four Hundred Thousand and 00/100 ($ 400,000.00)

I/we accept the Service Agreement Contract as detailed and do hereby agree to the Terms as set forth herein:

Sign: _____ Print Name: _____ Date: _____
Darryl Cotton, President

Sign: _____ Print Name: _____ Date: _____
Larry Geraci

Inda-Gro
6176 Federal Blvd., San Diego, CA 92114-1401
Toll Free: 877.452.2244 Local: 619.266.4004
www.inda-gro.com



SERVICES AGREEMENT CONTRACT

Date: 09/24/16

Customer: GERL Investments
5402 Ruffin Road, Ste. 200
San Diego, CA 92103

Attn: Mr. Larry Geraci
Ph: 858.956.4040
E-mail: Larry@TFCSD.net

Mr. Geraci;

Pursuant to our conversations I have developed this document to act as the Contract between us that will serve to define our relationship, services, and fee's for the development of 6176 Federal Boulevard San Diego, CA. 92114 (hereinafter referred to as the property) as a new dispensary to be owned and managed by your company, GERL Investments.

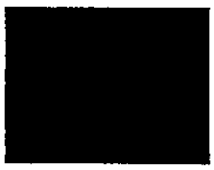
1) The property is currently owned by me, Darryl Cotton (Cotton-Seller) and occupied by my company, Inda-Gro Induction Lighting Company (Inda-Gro-Tenant). Under separate Contract Cotton has agreed to sell the property to GERL Investments (GERL-Buyer) for $400,000.00 and a 10% equity position in the new licensed cannabis dispensary business being developed at the property by GERL.

2) Upon completion and transfer of property ownership Cotton will immediately cease being the landlord to Inda-Gro and Inda-Gro will become the tenant of GERL.

3) GERL plans to tear down the existing structure(s) and build a new structure for a commercial dispensary. Under this Agreement GERL will allow Inda-Gro to remain in the property at no charge until such time that the plan check with the City of San Diego has been approved and permits have been issued. This process is expected to take 6-9 months. At the time GERL notices Inda-Gro that the permits have been issued Inda-Gro will have 30 days to vacate the property. Inda-Gro agrees to cooperate with GERL architects to access the property during the design phase of this work.

4) Inda-Gro is agreeing to vacate the property in consideration for a relocation fee of $400,000.00 of which payment would be made in two parts. Upon execution of this Contract GERL agrees to pay Inda-Gro $200,000. Upon issuance of the permits and the 30 day notice to vacate the balance, $200,000.00 would become payable and due.

5) Inda-Gro currently operates what we refer to as a 151 Farm. This is a teaching and touring farm that demonstrates urban farming technologies which utilize our lighting systems, controls and water savings strategies utilizing Aquaponics systems. Since it is in the interest of all parties; Inda-Gro, Cotton and



GERL to identify ongoing investment opportunities with both cannabis and non-cannabis related ventures Inda-Gro and Cotton agree to use the current property to highlight the benefits of what having a licensed dispensary is to the community and once relocated Inda-Gro/Cotton would agree to continue to promote the new dispensary as an example of seed to sale retail distribution as well as identify other investment opportunities that develop from interested parties having toured our facilities and wishing to establish similar operations.

6) GERL may wish to have interested parties tour the current and new property for Inda-Gro 151 Farms. This too is acceptable and under this Agreement would be a mutual collaboration and strategic alliance in terms of the farming and cultivation aspects provided by Inda-Gro and the Site Acquisition, Design/Build Construction and Retail Cannabis Services provided by GERL for those future contracts.

TOTAL PRICE: **Four Hundred Thousand and 00/100 ($ 400,000.00)**

I/we accept the Service Agreement Contract as detailed and do hereby agree to the Terms as set forth herein:

Sign: _____ Print Name: _____ Date: _____
Darryl Cotton, President

Sign: _____ Print Name: _____ Date: _____
Larry Geraci

Subject: Contract Review
From: Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <darryl@inda-gro.com>
Date: Tuesday, March 7, 2017 12:05:43 PM GMT-08:00

Hi Daryl,

I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month....can we do 5k, and on the seventh month start 10k?

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc
5402 Ruffin Rd, Ste 200
San Diego, Ca 92123

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

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.

SIDE AGREEMENT

This Side Agreement ("Side Agreement") is made as of the ___ day of _____ 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust, dated _____, 2017 ("Buyer"). Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Seller and Buyer have entered into a Purchase Agreement (the "Purchase Agreement"), dated as of approximate even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property");

WHEREAS, The Buyer intends to operate a licensed medical cannabis at the property ("Business"); and

WHEREAS, in conjunction with Buyer's purchase of the Property, Buyer has agreed to pay Seller $400,000.00 to reimburse and otherwise compensate Seller for Seller relocating his business located at the Property, and to share in certain profits of Buyer's future Business.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

ARTICLE I
SIDE AGREEMENT

1.1. Within 10 days from the closing of the purchase of the Property pursuant to the Purchase Agreement, and conditioned upon Seller being fully vacated from the Property prior to such closing, Buyer shall pay to Seller in cash or cash equivalent, the sum of Four Hundred Thousand Dollars ($400,000.00) to an account to be designated by Seller in writing.

1.2. In addition to the above, conditioned upon the timely closing of the purchase of the Property pursuant to the Purchase Agreement, Buyer hereby agrees to pay to Seller 10% of the net revenues of Buyer's Business after all expenses and liabilities have been paid. Profits will be paid on the 10th day of each month following the month in which they accrued. Further, Buyer hereby guarantees a profits payment of not less than $5,000.00 per month for the first three months the Business is open (i.e. profits would be paid in months 2-4 for profits accrued in months 1-3) and $10,000.00 a month for each month thereafter the Business is operating on the Property.

ARTICLE II
GENERAL TERMS

2. Entire Agreement. This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto or thereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

2.1. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

2.2. Termination. If escrow does not close on the Property according to the terms of the Purchase Agreement, the Side Agreement shall terminate and Buyer and Seller shall have no obligations to each other under this Agreement.

2.3. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

2.4. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

2.5. Governing Law. This Side Agreement shall be governed by and construed in accordance with the laws of the State of California.

2.6. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential this Side Agreement and the transactions contemplated hereby, and shall not disclose such information to any third party, except their respective attorneys.

2.7. Interpretation of Side Agreement. The article, section and other headings of this Side Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

2.8. Amendments. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

2.9. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

2.10. No Third Party Beneficiary. The provisions of this Side Agreement are not intended to benefit any third parties.

2.11. Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Side Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

2.12. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

IF TO BUYER:

6176 Federal Blvd. Trust
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

with a copy to:

Austin Legal Group, APC
3990 Old Town Ave, A-112
San Diego, CA 92110

IF TO SELLER:

Darryl Cotton
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

2.13. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday,

Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

2.14. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

2.15. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

2.16. Execution in Counterparts. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

2.17. Incorporation of Recitals/Exhibits. All recitals set forth herein above are incorporated in this Agreement as though fully set forth herein.

2.18. Legal Advice. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

BUYER: SELLER:

6176 FEDERAL BLVD. TRUST **DARRYL COTTON:**

By: _____ _____

Printed: _____

Its: Trustee

SIDE AGREEMENT

This Side Agreement ("Side Agreement") is made as of the ___ day of _____ 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust, dated _____, 2017 ("Buyer"). Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Seller and Buyer have entered into a Purchase Agreement (the "Purchase Agreement"), dated as of approximate even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property");

WHEREAS, The Buyer intends to operate a licensed medical cannabis at the property ("Business"); and

WHEREAS, in conjunction with Buyer's purchase of the Property, Buyer has agreed to pay Seller $400,000.00 to reimburse and otherwise compensate Seller for Seller relocating his business located at the Property, and to share in certain profits of Buyer's future Business.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

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

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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.

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2.12. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

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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.

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Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

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2.16. Execution in Counterparts. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

2.17. Incorporation of Recitals/Exhibits. All recitals set forth herein above are incorporated in this Agreement as though fully set forth herein.

2.18. Legal Advice. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

BUYER: SELLER:

6176 FEDERAL BLVD. TRUST **DARRYL COTTON:**

By: _____ _____

Printed: _____

Its: Trustee

Subject: Re: Contract Review
From: Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcsd.net>
Date: Thursday, March 16, 2017 8:23:52 PM GMT-07:00

Larry,

My apologies ahead of time as I am going to provide frank comments on the agreement so that we can finalize it and get this closed. And, so that you understand where I am coming from, just want to lay out a few of our milestones.

Throughout October we had discussions regarding the sale of my property. We met on 11/2 and agreed upon an $800,000 purchase price, a $50,000 non-refundable deposit, a 10% equity stake with a monthly guaranteed minimum $10,000 payment and to definitive agreements that contained a few other conditions (e.g., I stay at the property if the CUP is issued until construction starts). We executed a good faith agreement that day stating the sale of the property was for the $800,000 and that as a sign of good faith, you were providing a $10,000 deposit towards the required $50,000 non-refundable deposit. That same day you scanned and emailed to me the agreement and I replied and noted that the agreement did not contain the 10% equity stake in the dispensary. I asked you to please respond and confirm via email that a condition of the sale was my 10% equity stake. You did not respond and confirm the 10% as I requested.

Almost 4 months later, on 2/27, you forwarded a draft purchase agreement for the property that again did not contain the agreed upon 10% equity stake, it also does not mention the remaining $40,000 towards the non-refundable deposit. I called you about this and we spoke.

On 3/2, you forwarded a draft Side Agreement that again did not contain the 10% equity stake. I replied the next day on 3/3 raising the 10% equity issue and attaching the draft services agreement that I drafted that contains some of the terms we had agreed upon.

On 3/7, email below, you forwarded a revised Side Agreement that did contain the 10% equity stake, but in the body of the email you requested that the $10,000 minimum monthly payment be held off until month 7 and that months 1-6 be reduced to $5,000 a month. I know from our conversations that you have spent over $300,000 on lobbying and zoning efforts for this property, which has caused you to be strapped for cash. However, I am not in a position to take a $5,000 reduction for 6 months.

The long and short of it, we started these negotiations 4 months ago and the drafts and our communications have not reflected what we agreed upon and are still far from reflecting our original agreement. Here is my proposal, please have your attorney Gina revise the Purchase Agreement and Side Agreement to incorporate all the terms we have agreed upon so that we can execute final versions and get this closed.

Please have these terms incorporated into revised drafts:

- The remaining $40,000 deposit, which is nonrefundable in the event you choose to not close on the property if the CUP is denied. And which is to be provided upon execution of the final agreements.
- If the CUP is granted, my business can remain at the property until the city has finalized the plans and construction begins at the property.
- A 10% equity stake with a minimum guaranteed monthly distribution of $10,000, whichever is greater.
- A clause that my 10% equity stake carries with it consent rights for any material decisions. Those items that are to require my consent can be standard minority consent rights, but

basically that my consent is required for large decisions like the issuance of employee bonus and for agreements with suppliers and vendors that are not done on an arm-lengths basis. A friend of mine said that these are standard "Minority Shareholder Protection Rights."

- A provision requiring that upon the creation of the formation and governance documents of the CUP entity, that there is a requirement that the accounting is to be done by a third-party accounting firm that will also be responsible for calculating my 10% monthly equity distributions.
- The incorporation of all the terms in the MOU that I created that Gina references in the draft purchase agreement.
- Please have Gina delete the clause in the purchase agreement that says both you and I had our own counsel review the agreement. You told me I could just communicate with Gina and though I tried to engage an attorney, I did not ultimately do so for cost reasons.

The intent of all this is to ensure that the agreement we have agreed upon can be executed and verified. Having said all this, I really want to finalize this as soon as possible - I found out today that a CUP application for my property was submitted in October, which I am assuming is from someone connected to you. Although, I note that you told me that the $40,000 deposit balance would be paid once the CUP was submitted and that you were waiting on certain zoning issues to be resolved. Which is not the case.

Ultimately, the main point is that we were supposed to execute our agreements as soon as possible so that I could receive the total $50,000 non-refundable deposit and you would take the risk of the non-approval of the CUP. If this keeps dragging on and we do not finalize and execute our agreements, then you may get a denial from the city on the CUP and then simply walk away. At that point, the property having been denied, no other party would be willing to take on that risk. If you are not willing to take on that risk as originally agreed upon, please let me know as there are other parties who would match your terms and be willing to take on that risk.

Please confirm by Monday 12:00 PM whether we are on the same page and you plan to continue with our agreement. Or, if not, so I can return your $10,000 of the $50,000 required deposit. If, hopefully, we can work through this, please confirm that revised final drafts that incorporate the terms above will be provided by Wednesday at 12:00 PM. I promise to review and provide comments that same day so we can execute the same or next day.

In anticipation of your reply, I remain,

Darryl Cotton

On Tue, Mar 7, 2017 at 12:05 PM, Larry Geraci <Larry@tfcsd.net> wrote:

> Hi Daryl,
>
> I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month....can we do 5k, and on the seventh month start 10k?
>
> *Best Regards,*

Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

Subject: Re: Contract Review
From: Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcsd.net>
Date: Friday, March 17, 2017 2:15:50 PM GMT-07:00

Larry, I received your text asking to meet in person tomorrow. I would prefer that until we have final agreements, that we converse exclusively via email. My greatest concern is that you will get a denial on the CUP application and not provide the remaining $40,000 non-refundable deposit. To be frank, I feel that you are not dealing with me in good faith, you told me repeatedly that you could not submit a CUP application until certain zoning issues had been resolved and that you had spent hundreds of thousands of dollars on getting them resolved. You lied to me, I found out yesterday from the City of San Diego that you submitted a CUP application on October 31, 2016 BEFORE we even signed our agreement on the 2nd of November. There is no situation where an oral agreement will convince me that you are dealing with me in good faith and will honor our agreement. We need a final written, legal, binding agreement.

Please confirm, as requested, by 12:00 PM Monday that you are honoring our agreement and will have final drafts (reflecting completely the below) by Wednesday at 12:00 PM.

It is unfortunate that matters have turned out like this, but hearing from the city that the application had been submitted before our deal was signed and that it is already under review, meaning you have been lying to me for months, forces me to take this course of action.

Again, please respond to this email so that there is a clear record of our conversations from this point forward or at least until we have final executed documents.

-Darryl

On Thu, Mar 16, 2017 at 8:23 PM, Darryl Cotton <indagrodarryl@gmail.com> wrote:

> Larry,
>
> My apologies ahead of time as I am going to provide frank comments on the agreement so that we can finalize it and get this closed. And, so that you understand where I am coming from, just want to lay out a few of our milestones.
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Please have these terms incorporated into revised drafts:

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- The incorporation of all the terms in the MOU that I created that Gina references in the draft purchase agreement.
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In anticipation of your reply, I remain,

Darryl Cotton

On Tue, Mar 7, 2017 at 12:05 PM, Larry Geraci <Larry@tfcsd.net> wrote:

Hi Daryl,

I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month....can we do 5k, and on the seventh month start 10k?

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

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Subject: RE: Contract Review
From: Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <indagrodarryl@gmail.com>
Date: Saturday, March 18, 2017 1:43:23 PM GMT-07:00

Darryl,

I have an attorney working on the situation now. I will follow up by Wednesday with the response as their timing will play a factor.

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc
5402 Ruffin Rd, Ste 200
San Diego, Ca 92123

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

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From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Friday, March 17, 2017 2:16 PM
To: Larry Geraci <Larry@tfcsd.net>
Subject: Re: Contract Review

Larry, I received your text asking to meet in person tomorrow. I would prefer that until we have final agreements, that we converse exclusively via email. My greatest concern is that you will get a denial on the CUP application and not provide the remaining $40,000 non-refundable deposit. To be frank, I feel that you are not dealing with me in good faith, you told me repeatedly that you could not submit a CUP application until certain zoning issues had been resolved and that you had spent hundreds of thousands of dollars on getting them resolved. You lied to me, I found out yesterday from the City of San Diego that you submitted a CUP application on October 31, 2016 BEFORE we even signed our agreement on the 2nd of November. There is no situation where an oral agreement will convince me that you are dealing with me in good faith and will honor our agreement. We need a final written, legal, binding agreement.

Please confirm, as requested, by 12:00 PM Monday that you are honoring our agreement and will have final drafts (reflecting completely the below) by Wednesday at 12:00 PM.

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Web: Larrygeraci.com
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To: Larry Geraci <Larry@tfcsd.net>
Date: Sunday, March 19, 2017 9:02:18 AM GMT-07:00

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At this point, you keep changing your mind every time we talk. My attorneys will move forward on the agreement as planned. Any signed written agreement will be followed by the letter of the law. It's not about any deposit, it's about you changing what is not in writing. So there is no confusion, the attorneys will move forward with an agreement.

As to lying about the status, read the comment below from the city on Wednesday 3/15/2017. We are addressing this currently with the city. I have been forthright with you this entire process.

To: 'Abhay Schweitzer' <abhay@techne-us.com>
Subject: PTS 520606 - Federal Boulevard MMCC
Importance: High

Good Afternoon,
I am the Development Project Manager assigned to the above referenced project. The project is located in the CO-2-1 (Commercial Office) Zone. Please note that per the San Diego Municipal Code, a Medical Marijuana Consumer Cooperative is not a permitted use in this Zone and staff will be recommending denial of this application.
Pease advise if you wish to continue the processing of the subject application through the full review process, or staff could schedule a hearing immediately with a recommendation of denial. Please note that all costs associated with the processing of the application would be charged to the deposit account and not refunded.
Please notify me at your earliest convenience of your preference.
Regards,

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Larry,

I have not been changing my mind. The only additional requests have been in regards to putting in place third party accounting and other mechanisms to ensure that my interests are protected. I have only done so because you kept providing draft agreements that continuously failed the terms we agreed to.

It is blatantly clear to me now that you have been stringing me along, even now all your responses are to buy more time. So there is no confusion, you have until tomorrow 12:00 PM to provide confirmation as requested below. If you don't, I am emailing the City of San Diego regarding the fact that no third-party has any interest in my property and the application currently pending needs to be denied.

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> **Importance:** High
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> Good Afternoon,
>
> I am the Development Project Manager assigned to the above referenced project. The project is located in the CO-2-1 (Commercial Office) Zone. Please note that per the San Diego Municipal Code, a Medical Marijuana Consumer Cooperative is not a permitted use in this Zone and staff will be recommending denial of this application.
>
> Pease advise if you wish to continue the processing of the subject application through the full review process, or staff could schedule a hearing immediately with a recommendation of denial. Please note that all costs associated with the processing of the application would be charged to the deposit account and not refunded.
>
> Please notify me at your earliest convenience of your preference.
>
> Regards,

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

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Sent: Sunday, March 19, 2017 9:02 AM

To: Larry Geraci <Larry@tfcsd.net>
Subject: Re: Contract Review

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Again, please respond to this email so that there is a clear record of our conversations from this point forward or at least until we have final executed documents.

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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.

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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

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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?

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Subject: Re: Contract Review
From: Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcsd.net>
Date: Tuesday, March 21, 2017 3:18:36 PM GMT-07:00

Larry, I have been in communications over the last 2 days with Firouzeh, the Development Project Manager for the City of San Diego who is handling CUP applications. She made it 100% clear that there are no restrictions on my property and that there is no recommendation that a CUP application on my property be denied. In fact she told me the application had just passed the "Deemed Complete' phase and was entering the review process. She also confirmed that the application was paid for in October, before we even signed our agreement.

This is our last communication, you have failed to live up to your agreement and have continuously lied to me and kept pushing off creating final legal agreements because you wanted to push it off to get a response from the City without taking the risk of losing the non-refundable deposit in the event the CUP application is denied.

To be clear, as of now, you have no interest in my property, contingent or otherwise. I will be entering into an agreement with a third-party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you.

Darryl Cotton

On Sun, Mar 19, 2017 at 6:47 PM, Darryl Cotton <indagrodarryl@gmail.com> wrote:

> Larry,
>
> I have not been changing my mind. The only additional requests have been in regards to putting in place third party accounting and other mechanisms to ensure that my interests are protected. I have only done so because you kept providing draft agreements that continuously failed the terms we agreed to.
>
> It is blatantly clear to me now that you have been stringing me along, even now all your responses are to buy more time. So there is no confusion, you have until tomorrow 12:00 PM to provide confirmation as requested below. If you don't, I am emailing the City of San Diego regarding the fact that no third-party has any interest in my property and the application currently pending needs to be denied.
>
> On Sun, Mar 19, 2017 at 3:11 PM, Larry Geraci <Larry@tfcsd.net> wrote:
>
>> Darryl,
>>
>> At this point, you keep changing your mind every time we talk. My attorneys will move forward on the agreement as planned. Any signed written agreement will be followed by the letter of the law. It's not about any deposit, it's about you changing what is not in writing. So there is no confusion, the attorneys will move forward with an agreement.
>>
>> **As to lying about the status, read the comment below from the city on Wednesday 3/15/2017.** We are addressing this currently with the city. I have been forthright with you this entire

process.

To: 'Abhay Schweitzer' <abhay@techne-us.com>
Subject: PTS 520606 - Federal Boulevard MMCC
Importance: High

Good Afternoon,

I am the Development Project Manager assigned to the above referenced project. The project is located in the CO-2-1 (Commercial Office) Zone. Please note that per the San Diego Municipal Code, a Medical Marijuana Consumer Cooperative is not a permitted use in this Zone and staff will be recommending denial of this application.

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5

EXHIBIT 5

CALIFORNIA ASSOCIATION OF REALTORS®

COMMERCIAL PROPERTY PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

(NON-RESIDENTIAL)
(C.A.R. Form CPA, Revised 12/15)

Date Prepared: 03/21/2017

1. OFFER:
   A. THIS IS AN OFFER FROM Richard John Martin II ("Buyer"), [X] Individual(s), [ ] A Corporation, [ ] A Partnership, [ ] An LLC, [ ] An LLP, or [ ] Other _____.
   B. THE REAL PROPERTY to be acquired is 6176 Federal Blvd, situated in San Diego (City), San Diego (County), California, 92114-1401 (Zip Code), Assessor's Parcel No. 543-320-02-0 ("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:
      Listing Agent N/A (Print Firm Name) is the agent of (check one): [ ] the Seller exclusively; or [ ] both the Buyer and Seller.
      Selling Agent N/A (Print Firm Name) (if not the same as the Listing Agent) is the agent of (check one): [ ] the Buyer exclusively; or [ ] the Seller exclusively; or [ ] both the Buyer and Seller.
   C. POTENTIALLY COMPETING BUYERS AND SELLERS: The Parties each acknowledge receipt of a [X] "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).
3. FINANCE TERMS: Buyer represents that funds will be good when deposited with Escrow Holder.
   A. INITIAL DEPOSIT: Deposit shall be in the amount of ..... $ _____
      (1) Buyer Direct Deposit: Buyer shall deliver deposit directly to Escrow Holder by electronic funds transfer, [ ] cashier's check, [ ] personal check, [ ] other _____ within 3 business days after Acceptance (or _____);
      OR (2) [ ] Buyer Deposit with Agent: Buyer has given the deposit by personal check (or _____) to the agent submitting the offer (or to _____), made payable to _____. The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder within 3 business days after Acceptance (or _____).
      Deposit checks given to agent shall be an original signed check and not a copy.
      (Note: Initial and increased deposit checks received by agent shall be recorded in Broker's trust fund log.)
   B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of ... $ _____ within ___ Days After Acceptance (or _____).
      If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount in a separate liquidated damages clause (C.A.R. Form RID) at the time the increased deposit is delivered to Escrow Holder.
   C. [ ] ALL CASH OFFER: No loan is needed to purchase the Property. This offer is NOT contingent on Buyer obtaining a loan. Written verification of sufficient funds to close this transaction IS ATTACHED to this offer or [ ] Buyer shall, within 3 (or _____) Days After Acceptance, Deliver to Seller such verification.
   D. LOAN(S):
      (1) FIRST LOAN: In the amount of ..... $ 1,800,000.00
      This loan will be conventional financing or [ ] Seller financing (C.A.R. Form SFA), [ ] assumed financing (C.A.R. Form AFA), [ ] subject to financing, [ ] Other _____. This loan shall be at a fixed rate not to exceed ____ % or, [ ] an adjustable rate loan with initial rate not to exceed ____ %. Regardless of the type of loan, Buyer shall pay points not to exceed ____ % of the loan amount.
      (2) [ ] SECOND LOAN in the amount of ..... $ _____
      This loan will be conventional financing or [ ] Seller financing (C.A.R. Form SFA), [ ] assumed financing (C.A.R. Form AFA), [ ] subject to financing, [ ] Other _____. This loan shall be at a fixed rate not to exceed ____ % or, [ ] an adjustable rate loan with initial rate not to exceed ____ %. Regardless of the type of loan, Buyer shall pay points not to exceed ____ % of the loan amount.
   E. ADDITIONAL FINANCING TERMS: see attached Addendum 1
   F. BALANCE OF DOWN PAYMENT OR PURCHASE PRICE in the amount of ..... $ 200,000.00 to be deposited with Escrow Holder pursuant to Escrow Holder instructions.
   G. PURCHASE PRICE (TOTAL): ..... $ 2,000,000.00
   H. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS: Buyer (or Buyer's lender or loan broker pursuant to paragraph 3J(1)) shall, within 3 (or ___) Days After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. ([ ] Verification attached.)

Buyer's Initials (X) ( ) Seller's Initials (X) ( )

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I. **APPRAISAL CONTINGENCY AND REMOVAL:** This Agreement is (or [X] is NOT) contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the purchase price. Buyer shall, as specified in paragraph 14B(3), in writing, remove the appraisal contingency or cancel this Agreement within 17 (or ___) Days After Acceptance.

J. **LOAN TERMS:**

(1) **LOAN APPLICATIONS:** Within 3 (or ___) Days After Acceptance, Buyer shall Deliver to Seller a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in paragraph 3D. If any loan specified in paragraph 3D is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate. ([X] Letter attached)

(2) **LOAN CONTINGENCY:** Buyer shall act diligently and in good faith to obtain the designated loan(s). Buyer's qualification for the loan(s) specified above is a contingency of this Agreement unless otherwise agreed in writing. If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan. Buyer's contractual obligations regarding deposit, balance of down payment and closing costs are not contingencies of this Agreement.

(3) **LOAN CONTINGENCY REMOVAL:**
Within 21 (or ___) Days After Acceptance, Buyer shall, as specified in paragraph 18, in writing, remove the loan contingency or cancel this Agreement. If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.

(4) [X] **NO LOAN CONTINGENCY:** Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result Buyer does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

(5) **LENDER LIMITS ON BUYER CREDITS:** Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.

K. **BUYER STATED FINANCING:** Seller is relying on Buyer's representation of the type of financing specified (including but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price and to sell to Buyer in reliance on Buyer's covenant concerning financing. Buyer shall pursue the financing specified in this Agreement. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in the Agreement and the availability of any such alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

4. **SALE OF BUYER'S PROPERTY:**

A. This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer.

OR B. [ ] This Agreement and Buyer's ability to obtain financing are contingent upon the sale of property owned by Buyer as specified in the attached addendum (C.A.R. Form COP).

5. **ADDENDA AND ADVISORIES:**

A. ADDENDA:

[X] Addendum # 1 (C.A.R. Form ADM)	
[ ] Back Up Offer Addendum (C.A.R. Form BUO)	[ ] Court Confirmation Addendum (C.A.R. Form CCA)
[ ] Septic, Well and Property Monument Addendum (C.A.R. Form SWPI)	
[ ] Short Sale Addendum (C.A.R. Form SSA)	[ ] Other

B. BUYER AND SELLER ADVISORIES:

[X] Buyer's Inspection Advisory (C.A.R. Form BIA)	
[ ] Probate Advisory (C.A.R. Form PA)	[ ] Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)
[ ] Trust Advisory (C.A.R. Form TA)	[ ] REO Advisory (C.A.R. Form REO)
[ ] Short Sale Information and Advisory (C.A.R. Form SSIA)	[ ] Other

6. **OTHER TERMS:** see attached Addendum 1, is incorporated as part of contract.

7. **ALLOCATION OF COSTS**

A. **INSPECTIONS, REPORTS AND CERTIFICATES:** Unless otherwise agreed, in writing, this paragraph only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; it does not determine who is to pay for any work recommended or identified in the Report.

(1) [ ] Buyer [ ] Seller shall pay for a natural hazard zone disclosure report, including tax [ ] environmental [ ] Other: _____ prepared by _____

(2) [ ] Buyer [ ] Seller shall pay for the following Report _____ prepared by _____

(3) [ ] Buyer [ ] Seller shall pay for the following Report _____ prepared by _____

B. **GOVERNMENT REQUIREMENTS AND RETROFIT:**

(1) [ ] Buyer [ ] Seller shall pay for smoke alarm and carbon monoxide device installation and water heater bracing, if required by Law. Prior to Close Of Escrow ("COE"), Seller shall provide Buyer written statement(s) of compliance in accordance with state and local Law, unless Seller is exempt.

Buyer's Initials (X _____) (_____) Seller's Initials (X _____) (_____)

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(2) (i) ☐ Buyer ☐ Seller shall pay the cost of compliance with any other minimum mandatory government inspections and reports if required as a condition of closing escrow under any Law.
(ii) ☐ Buyer ☐ Seller shall pay the cost of compliance with any other minimum mandatory government retrofit standards required as a condition of closing escrow under any Law, whether the work is required to be completed before or after COE.
(iii) Buyer shall be provided, within the time specified in paragraph 18A, a copy of any required government conducted or point-of-sale inspection report prepared pursuant to this Agreement or in anticipation of this sale of the Property.

C. ESCROW AND TITLE:
(1) (a) ☐ Buyer ☐ Seller shall pay escrow fee _____
(b) Escrow Holder shall be _____
(c) The Parties shall, within 5 (or ___) Days After receipt, sign and return Escrow Holder's general provisions.
(2) (a) ☐ Buyer ☐ Seller shall pay for owner's title insurance policy specified in paragraph 17E _____
(b) Owner's title policy to be issued by _____
(Buyer shall pay for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing.)

D. OTHER COSTS:
(1) ☐ Buyer ☐ Seller shall pay County transfer tax or fee _____
(2) ☐ Buyer ☐ Seller shall pay City transfer tax or fee _____
(3) ☐ Buyer ☐ Seller shall pay Owners' Association ("OA") transfer fee _____
(4) Seller shall pay OA fees for preparing all documents required to be delivered by Civil Code §4525.
(5) ☐ Buyer ☐ Seller shall pay OA fees for preparing all documents other than those required by Civil Code §4525.
(6) Buyer to pay for any HOA certification fee.
(7) ☐ Buyer ☐ Seller shall pay for any private transfer fee _____
(8) ☐ Buyer ☐ Seller shall pay for _____
(9) ☐ Buyer ☐ Seller shall pay for _____

8. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:

A. NOTE TO BUYER AND SELLER: Items listed as included or excluded in the MLS, flyers or marketing materials are not included in the purchase price or excluded from the sale unless specified in paragraph 8B, C or D.

B. ITEMS INCLUDED IN SALE:
(1) All EXISTING fixtures and fittings that are attached to the Property;
(2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar power systems, built-in appliances, window and door screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes, air coolers/conditioners, pool/spa equipment, garage door openers/remote controls, mailbox, in-ground landscaping, trees/shrubs, water features and fountains, water softeners, water purifiers, security systems/alarms.
(3) A complete inventory of all personal property of Seller currently used in the operation of the Property and included in the purchase price shall be delivered to Buyer within the time specified in paragraph 18A.
(4) Seller represents that all items included in the purchase price are, unless otherwise specified or identified pursuant to 8B(7), owned by Seller. Within the time specified in paragraph 18A, Seller shall give Buyer a list of fixtures not owned by Seller.
(5) Seller shall deliver title to the personal property by Bill of Sale, free and clear of all liens and encumbrances, and without seller warranty of condition regardless of value.
(6) As additional security for any note in favor of Seller for any part of the purchase price, Buyer shall execute a UCC-1 Financing Statement to be filed with the Secretary of State, covering the personal property included in the purchase replacement thereof, and insurance proceeds.
(7) LEASED OR LIENED ITEMS AND SYSTEMS: Seller shall, within the time specified in paragraph 18A, (i) disclose to Buyer if any item or system specified in paragraph 8B or otherwise included in the sale is leased, or not owned by Seller, or specifically subject to a lien or other encumbrance, and (ii) Deliver to Buyer all written materials (such as lease, warranty, etc.) concerning any such item. Buyer's ability to assume any such lease, or willingness to accept the Property subject to any such lien or encumbrance, is a contingency in favor of Buyer and Seller as specified in paragraph 18B and C.

C. ITEMS EXCLUDED FROM SALE: Unless otherwise specified, the following items are excluded from sale: _____

D. OTHER ITEMS:
(1) Existing integrated phone and automation systems, including necessary components such as wiring and Internet-connected hardware or devices, control units (other than non-dedicated mobile devices, electronics and computers) and applicable software, permissions, passwords, codes and access information, are (☐ are NOT) included in the sale.

9. CLOSING AND POSSESSION:

A. Seller-occupied or Vacant property: Possession shall be delivered to Buyer: (i) ☐ at 6 PM or (___ ☐ AM/☐ PM) on the date of Close Of Escrow; (ii) ☐ no later than ___ calendar days After Close Of Escrow; or (iii) ☐ at ___ ☐ AM/☐ PM on _____.

B. Seller Remaining In Possession After Close Of Escrow: If Seller has the right to remain in possession after Close Of Escrow, (i) the Parties are advised to sign a separate occupancy agreement such as ☐ C.A.R. Form CL; and (ii) the Parties are advised to consult with their insurance and legal advisors for information about liability and damage or injury to persons and personal and real property; and (iii) Buyer is advised to consult with Buyer's lender about the impact of Seller's occupancy on Buyer's loan.

C. Tenant Occupied Units: Possession and occupancy, subject to the rights of tenants under existing leases, shall be delivered to Buyer on Close Of Escrow.

D. At Close Of Escrow: (i) Seller assigns to Buyer any assignable warranty rights for items included in the sale, and (ii) Seller shall Deliver to Buyer available Copies of any such warranties. Brokers cannot and will not determine the assignability of any warranties.

Buyer's Initials (X _____) (_____) Seller's Initials (X _____) (_____)

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E. At Close Of Escrow, unless otherwise agreed in writing, Seller shall provide keys, passwords, codes and/or means to operate all locks, mailboxes, security systems, alarms, home automation systems and Internet and Internet-connected devices included in the purchase price and garage door openers. If the Property is a condominium or located in a common interest subdivision, Buyer may be required to pay a deposit to the Owners' Association ("OA") to obtain keys to accessible OA facilities.

10. **SECURITY DEPOSITS:** Security deposits, if any, to the extent they have not been applied by Seller in accordance with any rental agreement and current Law, shall be transferred to Buyer on Close Of Escrow. Seller shall notify each tenant, in compliance with the Civil Code.

11. **SELLER DISCLOSURES:**

A. **NATURAL AND ENVIRONMENTAL DISCLOSURES:** Seller shall, within the time specified in paragraph 18, if required by Law: (i) Deliver to Buyer earthquake guides (and questionnaire) and environmental hazards booklet; (ii) even if exempt from the obligation to provide an NHD, disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.

B. **ADDITIONAL DISCLOSURES:** Within the time specified in paragraph 18, Seller shall Deliver to Buyer, in writing, the following disclosures, documentation and information:

(1) **RENTAL SERVICE AGREEMENTS:** (i) All current leases, rental agreements, service contracts, and other agreements pertaining to the operation of the Property; and (ii) a rental statement including names of tenants, rental rates, period of rental, date of last rent increase, security deposits, rental concessions, rebates, or other benefits, if any, and a list of delinquent rents and their duration. Seller represents that no tenant is entitled to any concession, rebate, or other benefit, except as set forth in these documents.

(2) **INCOME AND EXPENSE STATEMENTS:** The books and records, including a statement of income and expense for the 12 months preceding Acceptance. Seller represents that the books and records are those maintained in the ordinary and normal course of business, and used by Seller in the computation of federal and state income tax returns.

(3) ☐ **TENANT ESTOPPEL CERTIFICATES:** (If checked) Tenant estoppel certificates (C.A.R. Form TEC) completed by Seller or Seller's agent, and signed by tenants, acknowledging: (i) that tenants' rental or lease agreements are unmodified and in full force and effect (or if modified, stating all such modifications); (ii) that no lessor defaults exist, and (iii) stating the amount of any prepaid rent or security deposit.

(4) **SURVEYS, PLANS AND ENGINEERING DOCUMENTS:** Copies of surveys, plans, specifications and engineering documents, if any, in Seller's possession or control.

(5) **PERMITS:** If in Seller's possession, Copies of all permits and approvals concerning the Property, obtained from any governmental entity, including, but not limited to, certificates of occupancy, conditional use permits, development plans, and licenses and permits pertaining to the operation of the Property.

(6) **STRUCTURAL MODIFICATIONS:** Any known structural additions or alterations to, or the installation, alteration, repair or replacement of, significant components of the structure(s) upon the Property.

(7) **GOVERNMENTAL COMPLIANCE:** Any improvements, additions, alterations or repairs made by Seller, or known to Seller to have been made, without required governmental permits, final inspections, and approvals.

(8) **VIOLATION NOTICES:** Any notice of violations of any Law filed or issued against the Property and actually known to Seller.

(9) **MISCELLANEOUS ITEMS:** Any of the following, if actually known to Seller: (i) any current pending lawsuit(s), investigation(s), inquiry(ies), action(s), or other proceeding(s) affecting the Property, or the right to use and occupy it; (ii) any unsatisfied mechanic's or materialman's lien(s) affecting the Property; and (iii) that any tenant of the Property is the subject of a bankruptcy.

C. **WITHHOLDING TAXES:** Within the time specified in paragraph 18A, to avoid required withholding Seller shall Deliver to Buyer or qualified substitute, an affidavit sufficient to comply with federal (FIRPTA) and California withholding Law, (C.A.R. Form AS or QS).

D. **NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES:** This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at http://www.npms.phmsa.dot.gov/. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Web site.

E. **CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:**

(1) **SELLER HAS: 7 (or ___) Days** After Acceptance to disclose to Buyer whether the Property is a condominium, or is located in a planned development or other common interest subdivision.

(2) If the Property is a condominium or is located in a planned development or other common interest subdivision, Seller has 3 (or ___) Days After Acceptance to request from the OA (C.A.R. Form HOA1): (i) Copies of any documents required by Law; (ii) disclosure of any pending or anticipated claim or litigation by or against the OA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of OA minutes for regular and special meetings; and (v) the names and contact information of all OAs governing the Property (collectively, "CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the OA and any CI Disclosures in Seller's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement as specified in paragraph 18B(3). The Party specified in paragraph 7, as directed by escrow, shall deposit funds into escrow or direct to OA or management company to pay for any of the above

Buyer's Initials (X ___)(___) Seller's Initials (X ___)(___)

12. ☐ ENVIRONMENTAL SURVEY (If checked): Within ____ Days After Acceptance, Buyer shall be provided a phase one environmental survey report paid for and obtained by ☐ Buyer ☐ Seller. Buyer shall then, as specified in paragraph 18 remove this contingency or cancel this Agreement.
13. SUBSEQUENT DISCLOSURES: In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer of which Buyer is otherwise unaware, Seller shall promptly Deliver a subsequent or amended disclosure or notice in writing, covering those items. However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies disclosed in reports ordered and paid for by Buyer.
14. CHANGES DURING ESCROW:
    A. Prior to Close Of Escrow, Seller may only engage in the following acts, ("Proposed Changes"), subject to Buyer's rights in paragraph 14B: (i) rent or lease any vacant unit or other part of the premises; (ii) alter, modify, or extend any existing rental or lease agreement; (iii) enter into, alter, modify or extend any service contract(s); or (iv) change the status of the condition of the Property.
    B. (1) 7 (or ☐ ___) Days prior to any Proposed Changes, Seller shall Deliver written notice to Buyer of any Proposed Changes. (2) Within 5 (or ___) Days After receipt of such notice Buyer, in writing, may give Seller notice of Buyer's objection to the Proposed Changes in which case Seller shall not make the Proposed Changes.
15. CONDITION OF PROPERTY: Unless otherwise agreed in writing: (i) the Property is sold (a) "AS-IS" in its PRESENT physical condition as of the date of Acceptance and (b) subject to Buyer's Investigation rights; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow.
    A. Seller shall, within the time specified in paragraph 18A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law.
    B. Buyer has the right to conduct Buyer Investigations of the property and, as specified in paragraph 18B, based upon information discovered in those Investigations: (i) cancel this Agreement; or (ii) request that Seller make Repairs or take other action.
    C. Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.
16. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:
    A. Buyer's acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as specified in this paragraph and paragraph 18B. Within the time specified in paragraph 18B(1), Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations"), including, but not limited to, the right to: (i) inspect for lead-based paint and other lead-based paint hazards; (ii) inspect for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures, may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent, shall NOT include roof coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas; and shall include a report ("Pest Control Report") showing the findings of the company which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2), (iii) review the registered sex offender database; (iv) confirm the insurability of Buyer and the Property including the availability and cost of flood and fire insurance, (v) review and seek approval of leases that may need to be assumed by Buyer; and (vi) satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form BIA). Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations except for minimally invasive testing required to prepare a Pest Control Report; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
    B. Seller shall make the Property available for all Buyer Investigations. Buyer shall (i) as specified in paragraph 18B, complete Buyer Investigations and either remove the contingency or cancel this Agreement, and (ii) give Seller at no cost, complete Copies of all such investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.
    C. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's investigations and through the date possession is made available to Buyer.
    D. Buyer indemnity and seller protection for entry upon property: Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations, and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.
17. TITLE AND VESTING:
    A. Within the time specified in paragraph 18, Buyer shall be provided a current preliminary title report ("Preliminary Report"). The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the Preliminary Report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 18B. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities. Seller shall within 7 Days After Acceptance, give Escrow Holder a completed Statement of Information.
    B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record (which Seller is obligated to pay off) unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing.
    C. Within the time specified in paragraph 18A, Seller has a duty to disclose to Buyer all matters known to Seller affecting title, whether of record or not.

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19. **REPAIRS:** Repairs shall be completed prior to final verification of condition unless otherwise agreed in writing. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall, (i) obtain invoices and paid receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.
20. **FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final verification of the Property within 5 (or __) Days Prior to Close Of Escrow, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to paragraph 15; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).
21. **PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless otherwise agreed in writing, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, rents, OA regular, special, and emergency dues and assessments imposed prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment Distact bonds and assessments that are now a lien. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special assessments that are now a lien but not yet due. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.
22. **BROKERS:**
    A. **COMPENSATION:** Seller or Buyer, or both, as applicable, agrees to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
    B. **BROKERAGE:** Neither Buyer nor Seller has utilized the services of, or for any other reason owes compensation to, a licensed real estate broker (individual or corporate), agent, finder, or other entity, other than as specified in this Agreement, in connection with any act relating to the Property, including, but not limited to, inquiries, introductions, consultations and negotiations leading to this Agreement. Buyer and Seller each agree to indemnify, defend, and hold the other, the Brokers specified herein and their agents, harmless from and against any costs, expenses or liability for compensation claimed inconsistent with the warranty and representations in this paragraph.
    C. **SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Broker: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Broker; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (xi) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.
23. **REPRESENTATIVE CAPACITY:** If one or more Parties is signing the Agreement in a representative capacity and not for himself/herself as an individual then that Party shall so indicate in paragraph 40 or 41 and attach a Representative Capacity Signature Disclosure (C.A.R. Form RCSD). Wherever the signature or initials of the representative identified in the RCSD appear on the Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Party acting in a representative capacity (i) represents that the entity for which that party is acting already exists and (ii) shall Deliver to the other Party and Escrow Holder, within 3 Days After Acceptance, evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code 18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).
24. **JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:**
    A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: paragraphs 1, 3, 4B, 5A, 6, 7, 10, 11D, 17, 18G, 21, 22A, 23, 24, 30, 38, 39, 41, 42 and paragraph D of the section titled Real Estate Brokers on page 11. If a Copy of the separate compensation agreement(s) provided for in paragraph 22A, or paragraph D of the section titled Real Estate Brokers on page 11 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder and will execute such provisions within the time specified in paragraph 7C(1)(c). To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within 3 (or __) Days, shall pay to Escrow Holder or HOA or HOA management company or others any fee required by paragraphs 7, 11 or elsewhere in this Agreement.

Buyer's Initials (x' ____)(____) Seller's Initials (x' ____)(____)

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D. At Close Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.

E. Buyer shall receive a standard coverage owner's CLTA policy of title insurance. An ALTA policy or the addition of endorsements may provide greater coverage for Buyer. A title company, at Buyer's request, can provide information about the availability, desirability, coverage, and cost of various title insurance coverages and endorsements. If Buyer desires title coverage other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and shall pay any increase in cost.

18. **TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).**

A. **SELLER HAS: 7 (or ___) Days After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 5A, 6, 7, 8B(7), 11A, B, C, D and E, 12, 15A and 17A. Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement if Seller has not Delivered the items within the time specified.**

B. (1) **BUYER HAS: 17 (or ___) Days After Acceptance, unless otherwise agreed in writing, to**
(i) complete all Buyer investigations; review all disclosures, reports, lease documents to be assumed by Buyer pursuant to paragraph 8B(7) and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property.
(2) Within the time specified in paragraph 18B(1), Buyer may request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to (C.A.R. Form RRRR) Buyer's requests.
(3) By the end of the time specified in paragraph 18B(1) (or as otherwise specified in this Agreement), Buyer shall Deliver to Seller a removal of the applicable contingency or cancellation (C.A.R. Form CR or CC) of this Agreement. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in paragraph 18A, then Buyer has 5 (or ___) Days After Delivery of any such items, or the time specified in paragraph 18B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.
(4) **Continuation of Contingency:** Even after the end of the time specified in paragraph 18B(1) and before Seller cancels, if at all, pursuant to paragraph 18C, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 18C(1).

C. **SELLER RIGHT TO CANCEL:**
(1) **Seller right to Cancel; Buyer Contingencies:** If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
(2) **Seller right to Cancel; Buyer Contract Obligations:** Seller, after first delivering to Buyer a NBP, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by paragraph 3A or 3B or if the funds deposited pursuant to paragraph 3A or 3B are not good when deposited; (ii) Deliver a letter as required by paragraph 3J(1); (iii) Deliver verification as required by paragraph 3C or 3H or if Seller reasonably disapproves of the verification provided by paragraph 3C or 3H; or (iv) In writing assume or accept leases or form specified in 8B(7); (v) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 3B and 29B; or (vi) Provide evidence of authority to sign in a representative capacity as specified in paragraph 23. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.

D. **NOTICE TO BUYER OR SELLER TO PERFORM:** The NBP or NSP shall: (i) be in writing; (ii) be signed by the applicable Buyer or Seller; and (iii) give the other Party at least 2 (or ___) Days After Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A NBP or NSP may not be Delivered any earlier than 2 Days Prior to the expiration of the applicable time for the other Party to remove a contingency or cancel this Agreement or meet an obligation specified in paragraph 18.

E. **EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES:** If Buyer removes, in writing, any contingency or cancellation rights unless otherwise specified in writing, Buyer shall conclusively be deemed to have: (i) completed all Buyer investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.

F. **CLOSE OF ESCROW:** Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a demand to close escrow (C.A.R. Form DCE). The DCE shall: (i) be signed by the applicable Buyer or Seller; and (ii) give the other Party at least 3 (or _____) Days After Delivery to close escrow. A DCE may not be Delivered any earlier than 3 Days Prior to the scheduled close of escrow.

G. **EFFECT OF CANCELLATION ON DEPOSITS:** If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign mutual instructions to cancel the sale and escrow and release deposits if any, to the party entitled to the funds, less fees and costs incurred by that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. Except as specified below, release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award. If either Party fails to execute mutual instructions to cancel escrow, one Party may make a written demand to Escrow Holder for the deposit (C.A.R. Form BDRD or SDRD). Escrow Holder, upon receipt, shall promptly deliver notice of the demand to the other Party. If, within 10 Days After Escrow Holder's notice, the other Party does not object to the demand, Escrow Holder shall disburse the deposit to the Party making the demand. If Escrow Holder complies with the preceding process, each Party shall be deemed to have released Escrow Holder from any and all claims or liability related to the disbursal of the deposit. Escrow Holder, at its discretion, may nonetheless require mutual cancellation instructions. **A Party may be subject to a civil penalty of up to $1,000 for refusal to sign cancellation instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).**

Buyer's Initials (X) ( ) Seller's Initials (X) ( )

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B. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within 3 Days After Acceptance (or _____) Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title company when received from Seller. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under paragraph 10C, Escrow Holder shall deliver to Buyer a Qualified Substitute statement that complies with federal Law.

C. Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraph 22A and paragraph D of the section titled Real Estate Brokers on page 11. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 22A, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.

D. Upon receipt, Escrow Holder shall provide Seller and Seller's Broker verification of Buyer's deposit of funds pursuant to paragraph 3A and 3B. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify all Brokers: (i) if Buyer's initial or any additional deposit is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.

E. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within 3 Days after mutual execution of the amendment.

25. REMEDIES FOR BUYER'S BREACH OF CONTRACT:

A. Any clause added by the Parties specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase in violation of this Agreement shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.

B. LIQUIDATED DAMAGES: If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. Buyer and Seller agree that this amount is a reasonable sum given that it is impractical or extremely difficult to establish the amount of damages that would actually be suffered by Seller in the event Buyer were to breach this Agreement. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. AT TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM RID).

Buyer's Initials _____ / _____ Seller's Initials _____ / _____

26. DISPUTE RESOLUTION:

A. MEDIATION: The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action through the C.A.R. Consumer Mediation Center (www.consumermediation.org) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Broker(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. Mediation fees, if any, shall be divided equally among the Parties involved. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED. Exclusions from this mediation agreement are specified in paragraph 26C.

B. ARBITRATION OF DISPUTES: The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of transactional real estate Law experience, unless the parties mutually agree to a different arbitrator. The Parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 26C.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Buyer's Initials _____ / _____ Seller's Initials _____ / _____

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C. ADDITIONAL MEDIATION AND ARBITRATION TERMS:

(1) EXCLUSIONS: The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; and (iii) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.

(2) PRESERVATION OF ACTIONS: The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.

(3) BROKERS: Brokers shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to the Agreement.

27. SELECTION OF SERVICE PROVIDERS: Brokers do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Broker or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.

28. MULTIPLE LISTING SERVICE/PROPERTY DATA SYSTEM: If Broker is a participant of a Multiple Listing Service ("MLS") or Property Data System ("PDS"), Broker is authorized to report to the MLS or PDS a pending sale and, upon Close Of Escrow, the terms of this transaction to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS or PDS.

29. ATTORNEY FEES: In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorneys fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 28A.

30. ASSIGNMENT: Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the written consent of Seller. Such consent shall not be unreasonably withheld unless otherwise agreed in writing. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless otherwise agreed in writing by Seller (C.A.R. Form AOAA).

31. SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon, and inure to the benefit of, Buyer and Seller and their respective successors and assigns, except as otherwise provided herein.

32. ENVIRONMENTAL HAZARD CONSULTATION: Buyer and Seller acknowledge: (i) Federal, state, and local legislation impose liability upon existing and former owners and users of real property, in applicable situations, for certain legislatively defined, environmentally hazardous substances; (ii) Broker(s) has/have made no representation concerning the applicability of any such Law to this transaction or to Buyer or to Seller, except as otherwise indicated in this Agreement; (iii) Broker(s) has/have made no representation concerning the existence, testing, discovery, location and evaluation after, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property; and (iv) Buyer and Seller are each advised to consult with technical and legal experts concerning the existence, testing, discovery, location and evaluation after, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property.

33. AMERICANS WITH DISABILITIES ACT: The Americans With Disabilities Act ("ADA") prohibits discrimination against individuals with disabilities. The ADA affects almost all commercial facilities and public accommodations. The ADA can require, among other things, that buildings be made readily accessible to the disabled. Different requirements apply to new construction, alterations to existing buildings, and removal of barriers in existing buildings. Compliance with the ADA may require significant costs. Monetary and injunctive remedies may be incurred if the Property is not in compliance. A real estate broker does not have the technical expertise to determine whether a building is in compliance with ADA requirements, or to advise a principal on those requirements. Buyer and Seller are advised to contact an attorney, contractor, architect, engineer or other qualified professional of Buyer's or Seller's own choosing to determine to what degree, if any, the ADA impacts that principal or this transaction.

34. COPIES: Seller and Buyer each represent that Copies of all reports, documents, certificates, approvals and other documents that are furnished to the other are true, correct and unaltered Copies of the original documents, if the originals are in the possession of the furnishing party.

35. EQUAL HOUSING OPPORTUNITY: The Property is sold in compliance with federal, state and local anti-discrimination Laws.

36. GOVERNING LAW: This Agreement shall be governed by the Laws of the state of California

37. TERMS AND CONDITIONS OF OFFER: This is an offer to purchase the Property on the above terms and conditions. The liquidated damages paragraph or the arbitration of disputes paragraph is incorporated in this Agreement if initialed by all Parties or if incorporated by mutual agreement in a counter offer or addendum. If at least one but not all Parties initial, a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. Buyer has read and acknowledges receipt of a Copy of the offer and agrees to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.

38. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES: Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as otherwise specified, this Agreement shall be interpreted and disputes shall be resolved in accordance with the Laws of the State of California. Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.

39. DEFINITIONS: As used in this Agreement:

A. "Acceptance" means the time the offer or final counter offer is accepted in writing by a Party and is delivered to and personally received by the other Party or that Party's authorized agent in accordance with the terms of this offer or a final counter offer.

B. "Agreement" means this document and any counter offers and any incorporated addenda, collectively forming the binding agreement between the Parties. Addenda are incorporated only when Signed by all Parties.

Buyer's Initials (X) ( ) Seller's Initials (X) ( )

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C. "C.A.R. Form" means the most current version of the specific form referenced or another comparable form agreed to by the parties.
D. "Close Of Escrow" or "COE" means the date the grant deed, or other evidence of transfer of title, is recorded.
E. "Copy" means copy by any means including photocopy, NCR, facsimile and electronic.
F. "Days" means calendar days. However, after Acceptance, the last Day for performance of any act required by this Agreement (including Close Of Escrow) shall not include any Saturday, Sunday, or legal holiday and shall instead be the next Day.
G. "Days After" means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59 PM on the final day.
H. "Days Prior" means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.
I. "Deliver", "Delivered" or "Delivery", unless otherwise specified in writing, means and shall be effective upon personal receipt by Buyer or Seller or the Individual Real Estate Licensee for that principal as specified in the section titled Real Estate Brokers on page 11, regardless of the method used (i.e., messenger, mail, email, fax, other).
J. "Electronic Copy" or "Electronic Signature" means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
K. "Law" means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
L. "Repairs" means any repairs (including pest control), alterations, replacements, modifications or restoration of the Property provided for under this Agreement.
M. "Signed" means either a handwritten or electronic signature on an original document, Copy or any counterpart.

40. **AUTHORITY:** Any person or persons signing this Agreement represent(s) that such person has full power and authority to bind that person's principal, and that the designated Buyer and Seller has full authority to enter into and perform this Agreement. Entering into this Agreement, and the completion of the obligations pursuant to this contract, does not violate any Articles of Incorporation, Articles of Organization, By Laws, Operating Agreement, Partnership Agreement or other document governing the activity of either Buyer or Seller.

41. **EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless the offer is Signed by Seller and a Copy of the Signed offer is personally received by Buyer, or by _____ see Addendum 1 _____, who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer (or by ☐ _____ ☐ AM/ ☐ PM, on _____ (date)).

☐ One or more Buyers is signing the Agreement in a representative capacity and not for himself/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-B) for additional terms.

Date 3-21-17 BUYER _____

(Print name) Richard John Martin II

Date _____ BUYER _____

(Print name) _____

☐ Additional Signature Addendum attached (C.A.R. Form ASA).

42. **ACCEPTANCE OF OFFER:** Seller warrants that Seller is the owner of the Property, or has the authority to execute this Agreement. Seller accepts the above offer and agrees to sell the Property on the above terms and conditions, and agrees to the above confirmation of agency relationships. Seller has read and acknowledges receipt of a Copy of this Agreement, and authorizes Broker to Deliver a Signed Copy to Buyer.

☐ (If checked) SELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COUNTER OFFER (C.A.R. Form SCO or SMCO) DATED: _____.

☐ One or more Sellers is signing the Agreement in a representative capacity and not for himself/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-S) for additional terms.

Date 3-21-17 SELLER _____

(Print name) Darryl Cotton

Date _____ SELLER _____

(Print name) _____

☐ Additional Signature Addendum attached (C.A.R. Form ASA).

(____ / ____) (Do not initial if making a counter offer.) **CONFIRMATION OF ACCEPTANCE:** A Copy of Signed Acceptance was
(Initials) personally received by Buyer or Buyer's authorized agent on (date) _____ at _____
☐ AM/ ☐ PM. A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.

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REAL ESTATE BROKERS:

A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.
B. Agency relationships are confirmed as stated in paragraph 2.
C. If specified in paragraph 3A(2): Agent who submitted the offer for Buyer acknowledges receipt of deposit.
D. COOPERATING BROKER COMPENSATION: Listing Broker agrees to pay Cooperating Broker (Selling Firm) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrow, the amount specified in the MLS, provided Cooperating Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Listing Broker and Cooperating Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC). Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.

Real Estate Broker (Selling Firm) N/A CalBRE Lic. # ____
By ____ CalBRE Lic. # ____ Date ____
By ____ CalBRE Lic. # ____ Date ____
Address ____ City ____ State ____ Zip ____
Telephone ____ Fax ____ E-mail ____
Real Estate Broker (Listing Firm) N/A CalBRE Lic. # ____
By ____ CalBRE Lic. # ____ Date ____
By ____ CalBRE Lic. # ____ Date ____
Address ____ City ____ State ____ Zip ____
Telephone ____ Fax ____ E-mail ____

ESCROW HOLDER ACKNOWLEDGMENT:

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, ☐ a deposit in the amount of $ ____), counter offer numbers ____ ☐ Seller's Statement of Information and ____, and agrees to act as Escrow Holder subject to paragraph 24 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised that the date of Confirmation of Acceptance of the Agreement is between Buyer and Seller is ____

Escrow Holder ____ Escrow # ____
By ____ Date ____
Address ____
Phone/Fax/E-mail ____
Escrow Holder has the following license number # ____
☐ Department of Business Oversight, ☐ Department of Insurance, ☐ Bureau of Real Estate

PRESENTATION OF OFFER: (____) Listing Broker presented this offer to Seller on ____ (date).
(Broker or Designee Initials)

REJECTION OF OFFER: (____ X ____) No counter offer is being made. This offer was rejected by Seller on ____ (date).
(Seller's Initials)

Buyer's Initials (X) (____) Seller's Initials (X) (____)

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Reviewed by
Broker or Designee ____

CALIFORNIA ASSOCIATION OF REALTORS®

ADDENDUM

(C.A.R. Form ADM, Revised 12/15)

No. 1

The following terms and conditions are hereby incorporated in and made a part of the: [ ] Purchase Agreement, [ ] Residential Lease or Month-to-Month Rental Agreement, [ ] Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind), [x] Other

dated March 21, 2017, on property known as 6176 Federal Blvd San Diego, CA 92114-1401

in which Richard John Martin II is referred to as ("Buyer/Tenant")

and Darryl Cotton is referred to as ("Seller/Landlord").

Memorandum of Understanding

This Memorandum of Understanding ("MOU") is fully incorporated into this purchase agreement.

Seller shall receive a 20% equity stake in the business / MMCC upon approval and completion.

Seller shall receive on a monthly basis, 20% of the profits of the business / MMCC or $10,000, whichever is greater.

The $100,000 earnest money deposit is non-refundable and shall be Seller's to keep even if the CUP application is denied.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date March 21, 2017 | Date March 21, 2017

Buyer/Tenant X Richard John Martin II | Seller/Landlord X Darryl Cotton

Buyer/Tenant | Seller/Landlord

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Reviewed by _____ Date _____

CALIFORNIA ASSOCIATION OF REALTORS®

ADDENDUM

(C.A.R. Form ADM, Revised 12/15)

No. 2

The following terms and conditions are hereby incorporated in and made a part of the: [X] Purchase Agreement, [ ] Residential Lease or Month-to-Month Rental Agreement, [ ] Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind), [ ] Other _____

dated March 21, 2017, on property known as 6176 Federal Blvd San Diego, CA 92114-1401

in which Richard John Martin II is referred to as ("Buyer/Tenant")

and Darryl Cotton is referred to as ("Seller/Landlord").

Memorandum of Understanding and Agreement

1) This Memorandum of Understanding and Agreement ("MOUA") amends the agreement reached by Buyer and Seller on March 21, 2017.

2) Notwithstanding any language in this purchase agreement to the contrary, the provisions within this MOUA shall be given effect and supersede any conflicting or ambiguous language within this purchase agreement.

3) Seller hereby transfers and sells to Buyer, with all the associated rights and liabilities, his ownership, rights and interests in the property and the associated CUP application pending before the City of San Diego for $500,000.

4) Buyer shall immediately provide seller with a $50,000 non-refundable deposit.

5) The closing of this sale, including the payment of the balance of the purchase price and all the requirements stated herein, shall be completed upon the favorable resolution of the Larry Geraci lawsuit against Seller for the property.

6) In addition, should a CUP application be approved at the property, Buyer shall pay Seller a one-time payment of $1,500,000. Seller's previous agreement for an equity stake in the business is voided and Seller has no interest in the property or the CUP.

7) CONFIDENTIALITY CLAUSE: SELLER WILL NOT DISCLOSE BUYER'S IDENTITY OR THIS AGREEMENT IN ANY FORM, DIRECTLY OR INDIRECTLY, UNTIL HE HAS RESOLVED THE LEGAL ACTION WITH GERACI. FOR THE AVOIDANCE OF DOUBT, THIS MEANS THAT SELLER WILL NOT INVOLVE OR MENTION BUYER IN ANY FORM TO ANY THIRD-PARTIES, IN ANY LITIGATION PROCEEDINGS OR IN ANY MATTERS REGARDING ALLEGATIONS OF CRIMINAL OR UNLAWFUL ACTIONS. SHOULD SELLER BREACH THIS PROVISION, SELLER HEREBY EXPRESSLY AGREES TO PAY TO BUYER $200,000 FOR BREACH OF THIS PROVISION.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date April 15, 2017 — Date April 15, 2017

Buyer/Tenant X Richard John Martin II — Seller/Landlord X Darryl Cotton

Buyer/Tenant _____ — Seller/Landlord _____

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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 Gerael'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 Richard John Martin II — Seller/Landlord X Darryl Cotton

Buyer/Tenant — Seller/Landlord

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Reviewed by ____ Date ____

AMERIFIRST FINANCIAL, INC.

Pre-Approval Letter

Friday, April 14, 2017

TO: Whom it may concern
RE: Richard John (R.J.) Martin II

We are pleased to inform you that the above referenced loan application has been ***pre-approved*** with the following terms and conditions:

Purchase Price: $2,500,000
Loan Program: Jumbo 30 YEAR FIX
Loan amount: $2,000,000

The following conditions must be satisfied for final loan approval:

1) *Appraiser's certification of value along with a final inspection.*
2) *Acceptable Preliminary Title.*
3) *Following standard investor requirements: Evidence of Hazard Insurance, Flood Certification*
4) *Copy of Fully Executed Purchase Contract and Escrow Instructions*

This approval is based on review of the borrower's credit report in conjunction with documentation provided by the borrower regarding employment, income, assets as applicable to the above loan. These items are sufficient to obtain final loan approval provided there are no changes in the borrower's financial situation as required by the loan program.

Please keep in mind the following:

- Upgrades and modifications that increase the purchase price beyond what is indicated above may invalidate this approval and result in disqualification or re-qualification on an alternative loan program offering.
- This approval does not include any contingencies unless specifically noted above. If the loan approval is contingent on sale of another property but that sale does not occur prior to closing on this property, re-qualification on an alternative loan program may be required to complete the purchase.
- At times market conditions require that loan program guidelines and parameters change, which may affect this approval unless your loan has been locked and will close within that lock period. If this occurs, we will review the borrower's file and notify you of any changes that apply.

Sincerely,

Alexis Roper

Alexis Roper
Sr. Mortgage Loan Officer
619-436-8873
aroper@amerifirst.us
NMLS #583371

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 6

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Executed Services Agreement for Representation of Darryl Cotton

Darryl Cotton <indagrodarryl@gmail.com>
To: "Adam C. Witt" <awitt@fbbw.com>
Cc: Joe Hurtado <jhurtado1@gmail.com>

Thu, Jun 15, 2017 at 12:16 PM

Adam,

Please find attached the executed engagement letter. Per our agreement, nonwithstanding the language in the engagement letter, I will be financing this lawsuit with a total monthly payment of $10,000 a month with the retainer to be paid within 24 hours.

As per our phone discussion earlier today please do not respond to my sisters request for information on your representation of me or the status of my 5178 Federal Blvd property. My father holds the title on the property and she is trying to make sure I am not representing myself in the Gerazi matter. I told her that you have been retained and I will provide her with a copy of our Services Agreement which is really all she needs as assurance I'm not representing myself in this matter.

Lastly please include Joe Hurtado in all future email correspondence between us.

I really look forward to working with you and your firm as we work to bring these matters to their ultimate resolutions.

Sincerely,

Darryl Cotton

Service Contract 6-13-17.pdf
2397K

FINCH • THORNTON • BAIRD LLP
ATTORNEYS AT LAW

David S. Demian
ddemian@fbblaw.com

File 999.002

June 13, 2017

VIA U.S. AND ELECTRONIC MAIL

Mr. Darryl Cotton
6176 Federal Boulevard
San Diego, California 92114
indagrodarryl@gmail.com

Re: *Services Agreement For Representation Of Darryl Cotton*

Dear Mr. Cotton:

We appreciate your decision to retain Finch, Thornton & Baird, LLP. Please forgive the formality of this letter but the California Business and Professions Code requires that we have a written agreement. This letter sets forth the terms of our representation.

1. Description Of Representation And Services. You retain Finch, Thornton & Baird, LLP to represent you in connection with obtaining a conditional use permit ("CUP") for 6176 Federal Boulevard and also to represent you in related civil and forfeiture actions related to the property. We will provide other services as requested and provided we agree to perform such services. All services shall be subject to this agreement.

2. Fees To Be Charged. Our fees will be billed on the basis of time expended at the hourly billing rates of the attorneys, law clerks and legal assistants involved. At the present time, our hourly rates vary from $210.00 to $420.00 for attorneys, $195.00 to $210.00 for law clerks and $75.00 to $125.00 for paralegal and legal assistants. My current hourly rate is $400.00. Adam Witt's current hourly rate is $300.00. These hourly rates are subject to change in the future and typically increase in September of each year. The rate(s) charged will be reflected on the invoices for services rendered. We bill in one-tenth of an hour increments. In order to deliver cost-effective services, when practical, work will be assigned to other qualified attorneys, law clerks or legal assistants with either billing rates lower than mine or some specialized knowledge beneficial to you.

3. Costs And Expenses. We also charge for expenses and costs necessarily incurred to perform our services. Examples of these are Secretary of State fees, California Department of Corporations fees, court filing fees, service of process fees, deposition court reporter and transcript costs, etc. It is our policy to not charge for minor everyday expenses such as photocopies, postage, facsimiles, mileage, phone expenses, etc., unless these expenses become beyond the ordinary. For example, extra large reproductions or photocopying large quantities of documents for discovery, depositions or trial exhibits, etc., are usually costly and we will bill for reimbursement of such expenses or have you pay the vendor directly.

4. Services Of Experts/Consultants. It may become necessary to employ experts or consultants to assist in resolving a matter. We will obtain your approval for the retention of any such consultants or experts, and you may instruct us in writing at any time to terminate their services. The fees of experts and consultants will be in addition to the fees and costs charged for our services. In most circumstances, we will have the experts or consultants bill you directly.

5. Payment Of Legal Fees. For your convenience, we understand that we will be receiving payment for costs, expenses and fees relating to our legal services pursuant to this agreement from Joe Hurtado. Rather than billing you separately, one invoice will be forwarded to Joe.

Rule 3-310(F) of the Rules of Professional Conduct of the State Bar of California requires that we not accept compensation for representing a client from a person other than the client unless: (1) there is no interference with our independent professional judgment or with the attorney-client relationship; (2) information relating to representation of you is protected as required by Business and Professions Code section 6068, subdivision (e); and (3) we obtain your informed written consent to such an arrangement. With regard to Rule 3-310(F), we do not believe there will be any interference with our independence of professional judgment or with the attorney-client relationship between our firm and you as a result of the payment of invoices by Joe because your interests are aligned. Note, you remain liable for all fees and costs if Joe fails to pay. We inform you of these matters and request your written consent to this arrangement. Execution of this agreement constitutes such written consent.

6. Client Responsibilities. We have two primary requests of our clients: (1) that we are kept informed of all information you obtain or discover regarding a matter for which we are retained; and (2) that we receive timely payment for our services and advances. In this regard, we invoice monthly and expect payment within 30 days. Any objection to an invoice must be made in writing within 30 days of the date of your receipt of the invoice or the objection is waived. At our option, late payments will accrue interest at the annual rate of seven percent. As security for the payment of our invoices, you grant us a lien upon any sums recovered (or which you are entitled to recover) as a result of our efforts, including any funds in our client trust account. This lien is in addition to our equitable lien rights.

With regard to our lien rights, Rule 3-300 of the Rules of Professional Conduct of the State Bar of California states:

> "[We] shall not enter into a business relationship with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:
>
> (A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and
>
> (B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and

(C) The client thereafter consents in writing to the terms of the transaction or the terms of acquisition."

You granting us a lien is an adverse and/or business relationship and pursuant to the above Rule we recommend you seek advice from an independent lawyer of your choice before granting us the lien and entering into this agreement.

7. Potential Conflicts Of Interest. Representation by us in a particular matter is contingent upon clearance of all conflicts of interest checks. With regard to this matter, Rules 3-310(C) through 3-310(E) of the Rules of Professional Conduct of the State Bar of California state:

Rule 3-310(C):

"[We] shall not, without the informed written consent of each client:

(1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or

(2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or

(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter."

Rule 3-310(E):

"[We] shall not accept employment adverse to a client or former client where, by reason of the representation of the client or former client, [we have] obtained confidential information material to the employment except with the informed written consent of the client or former client."

With regard to Rule 3-310(C), it is our duty not to represent clients whose interests potentially or actually conflict, unless each client provides us with informed written consent to such representation. Our current understanding of the available facts and applicable law leads us to believe the prospect for an actual or potential conflict is low. Accordingly, we believe we can represent you in a manner consistent with the professional standards by which we must abide. If this understanding changes in any material way, we will make appropriate disclosures to each of you so a proper course of action may then be pursued.

Although we believe there is only a limited potential for any conflict of interest, we inform you of potential conflicts that could theoretically arise. We do not foresee such a conflict will arise, but advise of the potential. As discussed, we represent the Green Road, LLC, and its principals and agents (collectively "Green Road") in connection with all aspects of the potential operation of a marijuana dispensary within District 6 of the City of San Diego. Our ability to continue to represent Green Road in all matters that

may arise in the future is critical to our firm, including in connection with potential disputes in which you are adverse to Green Road. Our understanding is that you have an interest in operating a marijuana dispensary in District 6 either directly or indirectly, and that our representation here is focused on obtaining a District 4 dispensary. Accordingly, we do not perceive a conflict here. However, in order to preserve our ability to represent Green Road should a conflict arise in the future, by signing this agreement you agree we may terminate our representation of you at any time of a potential or actual conflict arises between you and Green Road.

In addition, in the even of such a conflict, we may ask your consent to represent you and Green Road concurrently. You each acknowledge that if any party refuses to sign such a waiver our firm reserves the right to terminate our representation of you. Similarly, if we do undertake representation adverse to you, you agree not to seek the disqualification of our firm unless you present court-admissible evidence that our firm (a) has material confidential information from you in the matter in which a conflict is claimed, (b) obtained such material confidential information by virtue of our representation of you, and (c) such information could be used against you in the case in which a conflict is claimed. Note that our withdrawal from representation of you could be expensive (bringing new counsel up to speed), disadvantageous (sending the wrong message to an adversary), or come at an inopportune time.

By execution of this agreement, you acknowledge our warnings of potential conflicts of interest with respect to this matter, and waive any and all conflicts of interest which presently exist, or may hereafter arise, by virtue of our representation. Before consenting to our representation on these terms, we recommend you carefully consider the ramifications of our representation on these terms and consult with counsel of your choice.

8. Disclaimer Of Guarantees. It is impossible for us to make any guarantees regarding the successful termination of a matter and all expressions relative to the merits of your positions are only matters of our opinion and do not constitute a guarantee of a particular result.

9. Client Contact. It is our practice to furnish our clients with copies of all important pleadings and/or correspondence and to give verbal or written status reports from time to time concerning the progress of our representation. We encourage you to contact us if you have any questions concerning the status of our representation.

10. Termination Or Withdrawal. You have the right to terminate our services at any time. We may withdraw from representation upon reasonable written notice to enable you to secure other counsel due to: (1) the dissolution of our firm; (2) the discovery of evidence that your claim, suit or position lacks merit; (3) your non-cooperation or material breach of this agreement; and/or (4) the discovery of an irreconcilable conflict of interest. In the event of termination or withdrawal, we may make and retain a duplicate file, and you agree to pay for all costs of duplicating and transferring the files. Similarly, if at any time, during or after our representation, you request your client files, you agree we may make and retain a duplicate file, and you agree to pay for all costs of duplicating and transferring said files.

11. Retainer. We request a retainer of $10,000.00 as an initial payment for our invoices. The retainer will be placed in the Finch, Thornton & Baird, LLP Client Trust Account, and we are authorized to make disbursements into our firm account to cover amounts we invoice you. Our monthly invoices will show the amount charged against the retainer and the retainer balance. We may request this retainer be replenished monthly or from time to time. The retainer amount is not a representation of the estimated total fees, costs and expenses likely to be incurred in the course of our representation. If we allow the retainer to be depleted, you agree to comply with the billing and payment provisions set forth above. You may pay this retainer by check, payable to Finch, Thornton & Baird, LLP Client Trust Account or by going on our website http://www.ftblaw.com/bill-pay/. Click on the RETAINER PAYMENT button and pay via credit card. Once the retainer is depleted and you receive invoices for a balance due, you may use this same site to make credit card payments, by clicking the INVOICE PAYMENT button.

12. Arbitration. Any dispute relating to fees and costs due pursuant to this agreement shall, at your discretion and upon timely demand, be submitted to binding arbitration before the San Diego County Bar Association pursuant to California Business and Professions Code section 6200, et seq., or should that organization decline to arbitrate the dispute, before the State Bar of California pursuant to California Business and Professions Code section 6200, et seq.

Subject to the foregoing requirements of California Business and Professions Code section 6200, et seq., any controversy or claim arising out of or relating to this agreement shall be resolved by binding arbitration before the American Arbitration Association by a single arbitrator in San Diego, California, in accordance with the Commercial Rules of the American Arbitration Association prevailing at the time of the arbitration and judgment on the award may be entered in any court having jurisdiction. The right to appeal from the arbitrator's award, any judgment entered, or any order made is expressly waived.

13. Conclusion. To confirm this letter accurately reflects our complete and mutual understanding as to the terms of our agreement, please date, sign and return an original agreement along with a check for $10,000.00 in the enclosed addressed and stamped envelope. A duplicate original is enclosed for you. Thank you for the opportunity to be of service.

Very truly yours,

David S. Demian,
Partner

Enclosures

DSD:hkr/3BD2583

cc: Mr. Joe Hurtado (via email only) (w/o encls.)

AUTHORIZATION, CONSENT, AND ACKNOWLEDGMENT:

I have read and understand this services agreement. I acknowledge receiving full disclosure of the terms of the conflicts of entering the transaction described above. I understand I may seek independent counsel before signing this agreement. I consent on behalf of the entity listed below to the representation by Finch, Thornton & Baird, LLP, as described above.

Signature: _____
Darryl Cotton
Dated: 6-15-2017

Finch, Thornton & Baird, LLP is authorized to accept direction as to the representation of you from the following individuals:

Darryl Cotton
_____ 6-15-17
_____
_____

Client No. _____

BILLING INFORMATION

(1) Please provide the name of the person to whom our invoices should be addressed.

_____
(Name)

_____
(Title)

_____
(Address)

_____

_____ _____
(Work Phone) (Direct Phone)

_____ _____
(Fax) (Mobile Phone)

_____
(E-mail)

(2) Please provide the name of your accounts payable contact.

_____
(Name)

_____
(Title)

_____
(Address)

_____

_____ _____
(Work Phone) (Direct Phone)

_____ _____
(Fax) (Mobile Phone)

_____
(E-mail)

(3) How would you like to receive your invoices? (Select One) E-mail: ☐ Mail: ☐

(4) Would you like to receive wiring instructions? (Select One) Yes: ☐ No: ☐

FINCH•THORNTON•BAIRD™
ATTORNEYS AT LAW

4747 Executive Drive ❖ Suite 700 ❖ San Diego, California 92121-3107
Telephone: (858) 737-3100 ❖ Facsimile: (858) 737-3101 ❖ www.ftblaw.com

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EXHIBIT 7

FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave., Ste. A112
San Diego, CA 92110
Telephone: (619) 924-9600
Fax: (619) 881-0045
gaustin@austinlegalgroup.com

Attorneys for Real Parties in Interest
LARRY GERACI and REBECCA BERRY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

DARRYL COTTON, an individual, Petitioner/Plaintiff, v. CITY OF SAN DIEGO, a public entity; and DOES 1 through 25, Respondents/Defendants.	Case No. 37-2017-00037675-CU-WM-CTL Judge: Hon. Eddie Sturgeon **DECLARATION OF ABHAY SCHWEITZER IN SUPPORT OF OPPOSITION TO EX PARTE APPLICATION FOR ISSUANCE OF AN ALTERNATIVE WRIT OF MANDATE OR FOR AN ORDER SETTING AN EXPEDITED HEARING AND BRIEFING SCHEDULE**
REBECCA BERRY, an individual; LARRY GERACE, an individual, and ROES 1 through 25, Real Parties In Interest.	**[IMAGED FILE]** **DATE: October 31, 2017** **TIME: 8:30 a.m.** **DEPT: C-67** Petition Filed: October 6, 2017 Trial Date: None

I, Abhay Schweitzer, declare:

1. I am over the age of 18 and am not a party to this action. I have personal knowledge of the facts stated in this declaration. If called as a witness, I would testify competently thereto. I provide this declaration in support of Real Parties in Interest Rebecca Berry and Larry Geraci's ("Real-Parties") opposition to Petitioner/Plaintiff's request for the ex parte issuance of a writ of mandate or for an order setting an expedited hearing and briefing schedule.

2. I am a building designer in the state of California and a Principal with Techne, a design firm I founded in approximately December 2010. Techne provides design services to clients throughout California. Our offices are located at 3956 30th Street, San Diego, CA 92104. Our firm has worked on approximately 30 medical marijuana projects over the past 5 years, including a number of Conditional Use Permits for Medical Marijuana Consumer Cooperatives (MMCC) in the City of San Diego ("City"). One of these projects was and is an application for a MMCC to be located at 6176 Federal Ave., San Diego, CA 92105 (the "Property").

3. On or about October 4, 2016, Rebecca Berry hired my firm to provide design services in connection with the application for a MMCC to be developed and built at the Property (the "Project"). Those services included, but are not limited to, services in connection with the design of the Project and application for a Conditional Use Permit (the "CUP").]

4. The first step in obtaining a CUP is to submit an application to the City of San Diego. My firm along with other consultants (a Surveyor, a Landscape Architect, and a consultant responsible for preparing the noticing package and radius maps) prepared the CUP application for the client as well as prepared the supporting plans and documentation. My firm coordinated their work and incorporated it into the submittal.

5. On or after October 31, 2016, I submitted the application to the City for a CUP for a medical marijuana consumer cooperative to be located on the Property. The CUP application for the Project was submitted under the name of applicant, Rebecca Berry, whom I was informed and believe was and is an employee and agent of Larry Geraci. The submittal of the CUP application required the submission of several forms to the City, including Form DS-318, that I am informed and believe was

signed by the property owner, Darryl Cotton, authorizing/consenting to the application. A true and correct copy of Form DS-318 that I submitted to the City is attached as Exhibit 3 to Real Parties in Interest Notice of Lodgment in Support of Opposition to Ex Parte Application for Issuance of Alternative Writ of Mandate or for an Order Setting an Expedited Hearing and Briefing Schedule (hereafter "RPI NOL"). Mr. Cotton's signed consent can be found on Form DS-318.

6. On the Ownership Disclosure Statement, I am informed and believe Cotton signed the form as "Owner" and Berry signed the form as "Tenant/Lessee." The form only has three boxes from which to choose when checking – "Owner", "Tenant/Lessee" and "Redevelopment Agency". The purpose of that signed section, Part 1, is to identify all persons with an interest in the property *and must be signed by all persons with an interest in the property.*

7. The CUP application process generally involves several rounds of comments from the City in which the applicant is required to respond in order to "clear" the comment. This processing involved substantial communication back and forth with the City, with the City asking for additional information, or asking for changes, and our responding to those requests for additional information and making any necessary changes to the plans. I have been the principal person involved in dealings with the City of San Diego in connection with the application for a CUP. My primary contact at the City during the process is and has been Firouzdeh Tirandazi, Development Project Manager, City of San Diego Development Services Department, tele (619) 446-5325, the person whom the City assigned to be the project manager for our CUP application.

8. We have been engaged in the application process for this CUP application for approximately twelve (12) months so far.

9. At the outset of the review process a difficulty was encountered that delayed the processing of the application. The Project was located in an area zoned "CO" which supposedly included medical marijuana dispensary as a permitted use, but the City's zoning ordinance did not specifically state that was a permitted use. I am informed and believe that on February 22, 2017, the City passed a new regulation that amended the zoning ordinance to clarify that operating a medical marijuana dispensary was a permitted use in areas zoned "CO." I am informed and believe this

regulation took effect on April 12, 2017, so by that date the zoning ordinance issue was cleared up and the City resumed its processing of the CUP application.

10. The CUP application for this Project has completed the initial phase of the process. This initial phase was completed when the City deemed the CUP application complete (although not yet approved) and determined the Project was located in an area with proper zoning. When this occurred, as required, notice of the proposed project was given to the public as follows: First, on March 27, 2017, the City posted a Notice of Application (or "NOA") for the Project on its website for 30 days and provided the NOA to me, on behalf of the applicant, for posting at the property; Second, the City mailed the Notice of Application to all properties within 300 feet of the subject property. Third, as applicant we posted the Notice of Application at the property line as was required.

11. Since the completion of the initial phase of the process we have been engaged in successive submissions and reviews and are presently engaged still in that submission and review process. The most recent comments from the City were received on October 20, 2017. There is one major issue left to resolve regarding a street dedication. I expect this issue to be resolved within the next six (6) weeks.

12. Once the City has cleared all the outstanding issues it will issue an environmental determination and the City Clerk will issue a Notice of Right to Appeal Environmental Determination ("NORA"). I expect the NORA to be issued sometime in late December 2017 or January 2018.

13. The NORA must be published for 10 business days. If no interested party appeals the NORA, City staff will present the CUP for a determination on the merits by a Hearing Officer. The hearing is usually set on at least 30 days' notice so the City's Staff has time to prepare a report with its recommendations regarding the issues on which the hearing officer must make findings. If there is no appeal of the NORA, I expect the hearing before the hearing officer to be held in late January or February 2018.

14. If the NORA is appealed it will be set for hearing before the City Council. It is my opinion that the earliest an appeal of the NORA could be heard before the City Council would be mid-January 2018. In all but one instance, the City Council has denied a NORA appeal related to a medical

marijuana CUP application. The one NORA appeal that was upheld is a project located in a flood zone.

15. If there is a NORA appeal and such appeal is denied by the City Council, then the earliest I would expect the CUP application to be heard by a hearing officer would be March 2018.

16. If there is a NORA appeal and it is upheld by the City Council, the City Council would retain jurisdiction and the CUP application would be heard by the City Council for a final determination at some point after the NORA appeal. In that case the earliest I would expect this to occur would also be March 2018.

17. To date we have not yet reached the stage of a City Council hearing and there has been no final determination to approve the CUP.

18. I have been notified by the City of San Diego that as of October 30, 2017, there has been no other CUP Application submitted concerning on the property.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct. Executed this 30th day of October, 2017.

Dated: 10/30/2017

ABHAY SCHWEITZER

8

EXHIBIT 8

I, Elizabeth Emerson, hereby declare:

1. **I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.**
2. I am 41 years old and an Air Force veteran. I served my country honorably in military intelligence and held a Top Secret clearance for all seven years of my service.
3. I later served as a police dispatcher in Texas for two years and left on good terms to move to San Diego, where I am now a resident.
4. I worked in Accounts Payable for the law firm of McCarthy & Holthus which I left after two and a half years to start my own bookkeeping, accounting and administrative assistant enterprise. Because of this I now handle the accounting for GreenerLiving, a landscape and lawn maintenance company, which is co-owned by Mr. Tom Maas and Mr. Joe Hurtado.
5. I accompanied Mr. Maas and Mr. Hurtado to the hearing for Mr. Cotton on December 7, 2017 as it was strongly anticipated that this hearing would produce positive results for Mr. Cotton and, thus, for Mr. Hurtado.
6. At the hearing, I was expecting Mr. Demian to mention what Mr. Hurtado repeatedly called the "smoking gun" email in which Mr. Larry Geraci contradicts himself regarding some contract. Mr. Demian did not raise any emails in his oral arguments to the Court.
7. During the hearing, the judge asked Mr. Weinstein what would be wrong with preventing the withdrawal of the CUP application. Mr. Weinstein replied with something about his client having the freedom to do what he wanted.
8. After the hearing concluded, Mr. Hurtado started yelling at Mr. Demian right outside the Courtroom about how it was possible that Mr. Demian could not raise with the Court "the fucking email!" Mr. Hurtado was incredibly agitated and loud and everyone in the hallway was staring at Mr. Hurtado and Mr. Demian.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 01/22/2019

Elizabeth Emerson

DECLARATION OF TOM MAAS

I, Tom Maas, hereby declare:

1. **I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.**

2. I have been the proprietor of several businesses in Minneapolis, MN.

3. I am a co-owner of GreenerLiving, a landscaping company with Mr. Joe Hurtado. We originally started GreenerLiving in Minneapolis, but we relocated to San Diego, where I am now a resident.

5. I accompanied Mr. Hurtado to the hearing for Mr. Cotton on December 7, 2017 to provide support for both Mr. Cotton and Mr. Hurtado. I anticipated, based on the descriptions provided by Mr. Cotton and Mr. Hurtado, that the attorney for Mr. Cotton would prevail that day based primarily on an email sent by Larry Geraci that was called the "smoking gun" by Mr. Hurtado.

6. Mr. Demian, counsel for Mr. Cotton, did not raise any email arguments with the Court.

6. After the hearing, Mr. Hurtado yelled at Mr. Demian for failing to raise the email with the Court in the hallway outside the Courtroom.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 1/22/2018

/s/Tom Maas
Tom Maas

9

EXHIBIT 10

Gmail

Joe Hurtado <j.hurtado1@gmail.com>

Federal - Expedited Schedule / Statute of Frauds

Joe Hurtado <j.hurtado1@gmail.com>
To: "David S. Damian" <ddamian@fhblaw.com>, "Adam C. Witt" <awitt@fhblaw.com>
Cc: Darryl Cotton <indagrodaryl@gmail.com>

Thu, Nov 16, 2017 at 10:45 AM

Hi David / Adam,

Expedited Hearing and Briefing Schedule. I'm putting together my notes / thoughts for the request for the motion to expedite. I will forward later today or tomorrow at the latest and hopefully it is helpful. (I have listed every argument and point they make in all of the pleadings to date, we have a logical and persuasive response for every point.)

Statute of Frauds. I came across a case last night that I think would be incredibly supportive if not actually dispositive on the statute of frauds issue we faced in the demurrer. (I was so incredibly frustrated last night thinking I found "the one case" and all I needed to do was Shepardize the case to confirm and find, ideally, more recent supporting case law. Best I got were treatise and Google Scholar hits - I'm calling and signing up with Westlaw or Lexis today.)

The case is *Monarco v. Lo Greco* (35 Cal. 2d 621, 220 P.2d 737, 1950 Cal. 370). The below includes language copied from the case and online case brief websites and treatise:

Issue. "The controlling question is whether plaintiff is estopped from relying upon the statute of frauds to defeat the enforcement of the oral agreement."

Rule of Law. "The California Supreme Court decided in *Monarco v. Lo Greco* that a party is estopped to assert the Statute of Frauds if he would be *unjustly enriched* or when *unconscionable injury* would result to the other party who, in reliance on the oral agreement, was induced to materially change his position."

- "Since the test in *Monarco* is so general, the trial courts have the considerable flexibility to determine whether to enforce the Statute in a given case. While this makes predictability uncertain, it affords the trial court the opportunity to consider the whole spectrum of factors which might be relevant to balancing the adequacy of the fact determination process against the purposes of the Statute. Such freedom for the trial court is justifiable if trial procedure has advanced to such an extent that it is adequate to protect against the evils which the Statute sought to prevent."

Analysis.

Unjust Enrichment. The evidence is clear that Gerard is attempting to falsely claim the receipt for the $10,000 is actually the final agreement, thereby unjustly enriching himself at the expense of the benefits that Cotton bargained for, *inter alia*, Cotton's 10% equity stake.

Unconscionable Injury. Because of Gerard, Cotton has:

(a) been unable to make a living. He is unable to operate his businesses, Fleet Systems (electrical contracting) and Dalbercia (manufacturing), that operate from the property. This action has created the possibility that he will lose the property and not have any funds to relocate to another property to operate from (*i.e.*, he can't enter into contracts and make a living because if he does and then loses this case, then he has no property to work from, won't be able to uphold his end of the contracts and he would be setting himself up for severe damages);

(b) been forced to repeatedly renegotiate the terms of the sale of the property with his agent and the buyer of the property, most notably requiring him to give up the 20% equity stake that he originally bargained for with RJ. This represents a perpetual long-term revenue cash flow to Cotton that, while impossible to quantify what it could be in a best case scenario if the business were to be a commercial success, is at the very least a perpetual monthly payment of $10,000.

It appears this case is helpful for us - hopefully this case has not been overturned and/or the websites I got this information from are not inaccurate. Please let me know your thoughts.

Gerard Declaration. When you have a moment, I would appreciate if you would forward Gerard's supporting declaration to his opposition to our *ex parte* motion for an expedited hearing/schedule. The PDF forwarded is missing the first three pages of his declaration (attached, missing pages start at page 68).

Thank you, Joe

3C28858-OPPOSITION TO EX PARTE APPLICA [1].PDF
4640K

EXHIBIT 11

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

RE: Withdrawal

David S. Damian <ddamian@ftblaw.com>
To: Darryl Cotton <indagrodarryl@gmail.com>
Cc: Joe Hurtado <j.hurtado1@gmail.com>

Thu, Dec 7, 2017 at 1:58 PM

Per your request, attached are substitution of attorney forms which must be filed with the Court in all three pending matters. Please sign and email back to us for filing as soon as possible.

With your consent, we will contact Weinstein to move next week's depositions to be re-noticed after you have retained new counsel. To avoid any harm to you this must be addressed this week so please advise if you agree promptly.

As to the reasons for our termination, I respectfully disagree with the characterization of the hearing. Also, as to the City Attorney, she told me my papers and oral argument were excellent. She did not say we should have won.

We are preparing final invoices and your files will be made available for you or your new counsel as quickly as possible.

Best,

David

David S. Damian *Partner*

Finch, Thornton & Baird, LLP Attorneys At Law

4747 Executive Drive, Suite 700 San Diego, CA 92121

T 858.737.3100 D 858.737.3116 M 858.245.2461 F 858.737.3101

ftblaw.com Bio LinkedIn

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From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Thursday, December 07, 2017 12:33 PM
To: David S. Damian <ddamian@ftblaw.com>
Cc: Joe Hurtado <j.hurtado1@gmail.com>
Subject: Re: Withdrawal

David,

I spoke with Joe and he informed me that you were not familiar with the points in the PSA for the TRO motion and that you did not raise them before the Court when they were directly on point and necessary to be raised as a response to Weinstein's arguments. Further, that the attorney for the City explicitly told you right after you walked out of the hearing that we should have won based on the moving papers!

Our relationship is terminated, but I need it to be clear that it is based on your performance today at the hearing. Joe is already looking for new counsel to represent me and we will be submitting a motion for reconsideration with the Court.

- Darryl

On Thu, Dec 7, 2017 at 11:33 AM, David S. Damian <ddamian@ftblaw.com> wrote:

> Gentlemen: Per my discussion with Joe post-hearing and my voice mail to Darryl it is apparent our withdrawal from the case is the next step. I will be sending the consent form and filing and preparing the file for your delivery. You should immediately seek advice of new counsel.
>
> Please call at any time with questions.
>
> David
>
> David S. Damian *Partner*
>
> Finch, Thornton & Baird, LLP Attorneys At Law
>
> 4747 Executive Drive, Suite 700 San Diego, CA 92121
>
> T 858.737.3100 D 858.737.3116 M 858.245.2461 F 858.737.3101
>
> ftblaw.com Bio LinkedIn
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3 attachments

Sub of Att - Forfeiture Matter.pdf
66K

Sub of Att - Writ Matter.pdf
65K

Sub of Att - Gerace Matter.pdf
63K

12

EXHIBIT 12

FINCH•THORNTON•BAIRD LLP
ATTORNEYS AT LAW

4747 Executive Drive, Suite 700 San Diego, CA 92121
T 858.737.3100 F 858.737.3101 ftblaw.com

Mr. Darryl Cotton
6176 Federal Boulevard
San Diego, CA 92114

January 10, 2018
Account No: 2403-003
Statement No: 150904

For Legal Services Rendered through December 31, 2017

Total Balance Due **$9,913.95**

Re: Forfeiture Action

			Rate	Hours	
12/04/17	ACW	Correspondence with Joe and Darryl regarding upcoming deadline to make payment to City.	330.00	0.20	66.00

Recapitulation

		Rate	Hours	
ACW	Adam C. Witt - Associate	330.00	0.20	66.00
For Current Services Rendered			**0.20**	**$66.00**

Expenses/Advances

Date	Description	Amount
12/11/17	One Legal's fee for e-filing substitution of attorney. Inv. No. 11145398 - One Legal LLC	9.95
Total Expenses/Advances		$9.95

Total Current Work	**$75.95**
Previous Balance	9,838.00
Payments/Adjustments Since Last Bill	-0.00
Balance Due	**$9,913.95**

Account Number: 2403 - 003
Statement No: 150904

January 10, 2018
Page 2

Payments received after January 10, 2018 are not included in this statement.

Please make checks payable to: FINCH, THORNTON & BAIRD, LLP

Payment is due within 30 days of the invoice date.

Please contact us within 10 days of the invoice date with any questions. Thank you.

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Mr. Darryl Cotton
6176 Federal Boulevard
San Diego, CA 92114

January 10, 2018
Account No: 2403-002
Statement No: 150903

For Legal Services Rendered through December 31, 2017

Total Balance Due **$42,020.48**

Re: 6176 Federal Boulevard Conditional Use Permit

			Rate	Hours	
12/01/17	SLH	Analyze status and developments of CUP application (1.0); analyze opposition to ex parte application with respect to same (0.5); prepare public records act request for documents and correspondence with respect to City, Geraci, and related parties (0.5).	300.00	2.00	600.00
12/01/17	RSB	Prepare electronic stipulation to accept pleadings and other documents through email.	225.00	0.20	45.00
12/01/17	ACW	Work on developing strategy for writ and ex parte relief regarding CUP application.	330.00	1.10	363.00
12/01/17	DSD	Further work on ex parte motions and strategy.	415.00	2.40	996.00
12/03/17	DSD	Discussion with Joe on options for saving permit by concurrent actions.	415.00	1.00	415.00
12/04/17	DSD	Analyze case of Monarco in connection with effort acquire CUP; work on application for peremptory writ.	415.00	1.40	581.00
12/04/17	RSB	Revise ex parte application to incorporate Joe Hurtado's analysis.	225.00	1.70	382.50
12/04/17	SLH	Conference to analyze San Diego Municipal Code provisions for application resubmittal.	300.00	0.20	60.00
12/04/17	DSD	Final correspondence to Weinstein regarding stipulation.	415.00	0.40	166.00
12/04/17	DSD	Correspondence to Weinstein as to e-service.	415.00	0.20	83.00
12/04/17	DSD	Analyze mandatory injunction options; work on proposed order.	415.00	0.50	207.50
12/04/17	DSD	Begin work on proposed order.	415.00	0.60	249.00
12/04/17	RSB	Revise ex parte application (0.5) and Cotton's and Demian's declarations to reflect Hurtado's latest insights (0.3).	225.00	0.80	180.00
12/04/17	DSD	Further work on writ application.	415.00	1.20	498.00
12/04/17	ACW	Work on proposal to attorney Weinstein regarding stipulation on CUP application.	330.00	0.80	264.00
12/05/17	DSD	Further work on writ request.	415.00	0.60	249.00
12/05/17	CRS	Review and work on edits to memorandum in support of ex parte for an order shortening time for writ hearing.	355.00	1.70	603.50

Account Number: 2403 - 002
Statement No: 150903

January 10, 2018
Page 2

			Rate	Hours	
12/05/17	RSB	Finalize writ/ex parte application and all supporting documentation.	225.00	0.60	135.00
12/05/17	DSD	Discussion with Joe on arguments as to damages and injury.	415.00	0.50	207.50
12/05/17	DSD	Analyze and work on arguments as to injury.	415.00	1.80	747.00
12/05/17	DSD	Final motion for peremptory writ.	415.00	1.50	622.50
12/05/17	DSD	Final declaration of Cotton; discussion with Darryl.	415.00	0.20	83.00
12/05/17	DSD	Correspondence to counsels with notice of ex parte.	415.00	0.20	83.00
12/06/17	DSD	Discussion with Joe finalizing motion on writ.	415.00	0.40	166.00
12/06/17	DSD	Finalize motion on writ.	415.00	0.40	166.00
12/06/17	DSD	Revise declaration of Darryl per his comments.	415.00	0.50	207.50
12/06/17	DSD	Further work on P&A to focus on arguments and reduce length.	415.00	0.70	290.50
12/07/17	DSD	Appear at ex parte hearing on writ.	415.00	0.80	332.00

Recapitulation

		Rate	Hours	
DSD	David Demian - Partner	415.00	15.30	6,349.50
RSB	Rishi S. Bhatt - Associate	225.00	3.30	742.50
SLH	Steven L. Hwang - Associate	300.00	2.20	660.00
CRS	Christopher Sillari - Partner	355.00	1.70	603.50
ACW	Adam C. Witt - Associate	330.00	1.90	627.00
For Current Services Rendered			**24.40**	**$8,982.50**

Expenses/Advances

Date	Description	Amount
12/07/17	Vendor fee of ex parte application, memorandum and declaration of David Demian. Inv. No. 4235732 - Knox Attorney Service	203.95
12/11/17	One Legal's fee for e-filing of substitution of attorney. Inv. No. 11145392 - One Legal LLC	9.95
Total Expenses/Advances		**$213.90**

Total Current Work	**$9,196.40**
Previous Balance	32,824.08
Payments/Adjustments Since Last Bill	-0.00
Balance Due	**$42,020.48**

Payments received after January 10, 2018 are not included in this statement.

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Mr. Darryl Cotton
6176 Federal Boulevard
San Diego, CA 92114

January 10, 2018
Account No: 2403-004
Statement No: 150905

For Legal Services Rendered through December 31, 2017

Total Balance Due **$40,009.02**

Re: adv. Larry Geraci

			Rate	Hours	
12/01/17	RSB	Conference about lodging objections to Geraci's notice of deposition and accompanying production request.	225.00	0.20	45.00
12/01/17	RSB	Perform final analysis on the probability that Cotton will be able to obtain a TRO or a Preliminary Injunction as a way to force Geraci to quickly settle the case.	225.00	0.30	67.50
12/01/17	RSB	Analyze timing of when Cotton's objections to Notice of Deposition are due.	225.00	0.40	90.00
12/01/17	RSB	Further revise discovery responses.	225.00	0.20	45.00
12/01/17	CRS	Review draft discovery responses and work on edits to same.	355.00	1.80	639.00
12/01/17	CRS	Conference regarding objections to deposition notice and requests for documents, and work on strategy for same.	355.00	0.40	142.00
12/01/17	CRS	Conference regarding materials and outline to prepare for depositions.	355.00	0.20	71.00
12/01/17	RSB	Analyze California law regarding the one-year statute of limitations.	225.00	1.20	270.00
12/01/17	CRS	Conference regarding primary contract theory of case and strategy for defense of their alleged contract.	355.00	0.50	177.50
12/01/17	RSB	Conference about dedication of property to the City of San Diego.	225.00	0.20	45.00
12/01/17	CRS	Work on framework for stipulation on CUP and in the alternative, a narrow order for ex parte relief.	355.00	0.80	284.00
12/01/17	RSB	Continue analyzing how to frame the theory of the case for purposes of Cotton's upcoming discovery responses and deposition.	225.00	1.20	270.00
12/01/17	ACW	Work on document production requests in connection with deposition notices to Geraci and Berry.	330.00	1.40	462.00
12/01/17	DSD	Work on case arguments for ex parte and detailed correspondence to Joe and Darryl with strategy for motions.	415.00	3.20	1,328.00
12/01/17	DSD	Conference as to attorney-client privilege issues in case and analyze same.	415.00	0.50	207.50

Account Number: 2403 - 004
Statement No: 150905

January 10, 2018
Page 2

			Rate	Hours	
12/02/17	RSB	Continue analyzing how attorney-client privilege may apply to Joe Hurtado.	225.00	0.90	202.50
12/03/17	RSB	Draft points and authorities for Cotton's TRO against the City of San Diego.	225.00	3.50	787.50
12/03/17	CRS	Conference regarding application of attorney-client privilege for communications between Darryl and Hurtado.	355.00	0.30	106.50
12/04/17	RSB	Review proposed email to Geraci's attorney, Michael Weinstein, regarding a proposed stipulation pertaining to the CUP application (0.1); provide feedback (0.2)	225.00	0.30	67.50
12/04/17	CRS	Work on strategy for seeking TRO in addition to ex parte relief on the Writ.	355.00	0.80	284.00
12/04/17	RSB	Begin drafting the injunctive order for the Court to sign.	225.00	1.00	225.00
12/04/17	RSB	Review Hurtado's memo regarding the issuance of a TRO.	225.00	0.20	45.00
12/04/17	RSB	Continue drafting injunction.	225.00	1.10	247.50
12/04/17	CRS	Work on revisions to proposed order for ex parte hearing on TRO.	355.00	0.30	106.50
12/04/17	CRS	Work on framework and strategies for memorandum in support of ex parte for TRO.	355.00	1.50	532.50
12/04/17	ACW	Conference to work on strategy for ex parte application for injunctive relief.	330.00	0.30	99.00
12/05/17	RSB	Revise ex parte application.	225.00	1.40	315.00
12/05/17	RSB	Review Hurtado's email regarding lis pendens and attorney fees (0.2); analyze cases cited therein (0.4).	225.00	0.60	135.00
12/05/17	RSB	Revise Cotton declaration to contain the terms of the parties' contract and to contain the Geraci-Cotton email exchange reflecting the same.	225.00	2.50	562.50
12/05/17	RSB	Continue to revise TRO for tomorrow's ex parte hearing.	225.00	3.00	675.00
12/05/17	RSB	Further revise ex parte application materials for tomorrow.	225.00	2.50	562.50
12/05/17	CRS	Work on memorandum in support of TRO and strategize for order in support of same.	355.00	2.00	710.00
12/05/17	RSB	Further work on ex parte application and TRO for tomorrow.	225.00	1.50	337.50
12/05/17	DSD	Work on motion for TRO, arguments on breach of contract.	415.00	2.10	871.50
12/05/17	DSD	Work on motion for TRO, revise declaration of Cotton.	415.00	1.50	622.50
12/05/17	DSD	Work on Declaration of Demian in support of TRO.	415.00	0.50	207.50
12/05/17	DSD	Correspondence to counsels with notice of ex parte.	415.00	0.20	83.00
12/06/17	RSB	Perform last minute revisions to the TRO and ex parte that is going out today.	225.00	1.10	247.50
12/06/17	DSD	Discussion with Joe no ex parte for TRO/PI.	415.00	0.30	124.50
12/06/17	DSD	Further work on motion arguments for writ as to Schweitzer section on CUP timing; work on declaration as to same.	415.00	0.30	124.50
12/06/17	DSD	Review declaration exhibits of Darryl and revise numbering.	415.00	0.50	207.50
12/06/17	CRS	Conference regarding last changes to memorandum in support of TRO.	355.00	0.30	106.50
12/06/17	CRS	Conference regarding objections to deposition notices.	355.00	0.30	106.50
12/06/17	DSD	Prepare responses to document demands by Geraci as part of Darryl deposition; review prior responses and document production; discussion with Darryl as to same.	415.00	0.70	290.50
12/06/17	DSD	Final motion for TRO for filing.	415.00	1.50	622.50
12/06/17	DSD	Appear at ex parte on TR/preliminary injunction (1.0).	415.00	1.00	415.00

Account Number: 2403 - 004
Statement No: 150905

January 10, 2018
Page 3

			Rate	Hours	
12/06/17	DSD	Appear at ex parte on verified writ.	415.00	1.00	415.00
12/07/17	DSD	Appear at ex parte hearing on TRO.	415.00	0.80	332.00

Recapitulation

		Rate	Hours	
DSD	David Demian - Partner	415.00	14.10	5,851.50
RSB	Rishi S. Bhatt - Associate	225.00	23.30	5,242.50
CRS	Christopher Sillari - Partner	355.00	9.20	3,266.00
ACW	Adam C. Witt - Associate	330.00	1.70	561.00
For Current Services Rendered			48.30	**$14,921.00**

Expenses/Advances

Date	Description	Amount
11/30/17	Delivery of notice of deposition to Michael Weinstein at Ferris & Britton on November 30, 2017. Inv. No. 3497179 - Golden State Overnight	16.59
12/07/17	Vendor fee for filing ex parte application, memorandum and declaration of David Demian. Inv. No. 4235733 - Knox Attorney Service	148.55
12/11/17	One Legal's fee for e-filing of substitution of attorney. Inv. No. 11145359 - One Legal LLC	9.95
Total Expenses/Advances		**$175.09**

Total Current Work	**$15,096.09**
Previous Balance	24,912.93
Payments/Adjustments Since Last Bill	-0.00
Balance Due	**$40,009.02**

Payments received after January 10, 2018 are not included in this statement.

Please make checks payable to: FINCH, THORNTON & BAIRD, LLP

Payment is due within 30 days of the invoice date.

Please contact us within 10 days of the invoice date with any questions. Thank you.

To pay online visit: http://www.ftblaw.com/bill-pay/

13

EXHIBIT 13

SDGE
A Sempra Energy utility

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Account: 1310536032 08 Service Address: 6176 FEDERAL BLVD
Date Mailed: 01/12/18

URGENT NOTICE!
PAYMENT REQUEST

RE-INSTATED SECURITY DEPOSIT

We are requesting a $4,267.00 Security Deposit. Your Security Deposit request, which was previously waived, is now being re-instated as your bills have not been paid on time.

A payment is requested in the amount of $4,267.00 and must be received before the expiration date of 02/01/18 to avoid the disconnection of service.

There will be a charge if collection action is required. Please refer to the back of this notice for additional information.

The bottom portion of this notice must accompany your payment. If you intend to mail your payment, you should do so at least three business days prior to the expiration date of this notice.

You can also make your payment online at no charge. Go to sdge.com/myaccount. We also offer electronic payment services, such as SDG&E Pay-By-Phone and Automatic Pay. For your convenience, you can also pay by using most ATM cards, debit cards, MasterCard® and Visa® credit cards and electronic checks by calling BillMatrix at 1-800-386-0067.

Si necesita ayuda para intepretar este aviso llamenos a 1-800-311-7343.

0008

PLEASE KEEP THIS PORTION FOR YOUR RECORDS. (FAVOR DE GUARDAR ESTA PARTE PARA SUS REGISTROS.)
PLEASE RETURN THIS PORTION WITH YOUR PAYMENT. (FAVOR DE DEVOLVER ESTA PARTE CON SU PAGO.)

SDGE A Sempra Energy utility

ACCOUNT NUMBER
1310 536 032 3

DATE DUE	Feb 1, 2018
AMOUNT DUE	$4,267.00

SERVICE ADDRESS: 6176 FEDERAL BLVD SAN DIEGO 92114

Please enter amount enclosed.
$

Write account number on check and make payable to San Diego Gas & Electric.

4726.1.2.108 1 oz.
DARRYL COTTON
6184 FEDERAL BLVD
SAN DIEGO CA 92114-1401

SAN DIEGO GAS & ELECTRIC
PO BOX 25111
SANTA ANA CA 92799-5111

3 7 00000131053603200004267000000426700

SDGE

A Sempra Energy utility®

H

NOTICE OF PAST DUE ACCOUNT AND IMPENDING DISCONNECTION
IF YOU HAVE ANY QUESTIONS, PLEASE CALL
1-800-411-SDGE (7343) M-F 7AM - 8PM, SAT 7AM - 6PM

Pay Before Date/Disconnection Policy
Your SDG&E bill is due and payable upon presentation and is past due if not paid within 19 days of the date mailed for residential customers or 15 days for non-residential customers. If your payment has not been received by the "Due Date" shown on your bill, your SDG&E service is subject to disconnection, after proper notice has been provided. If your service is disconnected for non-payment, there may be additional service charges and you will be required to pay all past due SDG&E amounts before service is restored. Your SDG&E service could also be disconnected if the information provided on your application for service is false, incomplete or inaccurate. SDG&E will disconnect your services only for non-payment of those charges owed SDG&E.

Residential customers who are unable to pay their SDG&E bill in full due to a temporary financial hardship or due to a serious illness in the household, need to call SDG&E before the expiration of this notice. Employees, including multilingual staff, are available to assist with payment arrangements.

If SDG&E fails to offer you payment arrangements, you may write to the Consumer Affairs Branch of the California Public Utilities Commission (CPUC), State Office Building, 505 Van Ness Avenue, Room 2003, San Francisco, CA 94102, email: consumer-affairs@cpuc.ca.gov, prior to disconnection of your SDG&E service. The Consumer Affairs Branch will review the complaint and issue its proposed resolution to you and SDG&E. If you are not satisfied, you may appeal the proposed resolution by filing a formal complaint. A more detailed explanation of disconnection policies, including your rights as an SDG&E customer, may be obtained by calling 1-800-411-SDGE (7343) Monday-Friday 7am-8pm, Saturday 7am-6pm; or e-mail: info@sdge.com.

Re-Establishment of Credit/Deposit
If you pay your SDG&E bill after the expiration date of a past due notice, or for non-residential customers, if your SDG&E bill becomes past due and a written notice for disconnection is mailed, you may be required to re-establish your credit by paying a deposit.

Rates And Rules
SDG&E's rate schedules and rules, on file and approved by the CPUC, are available on the Internet at www.sdge.com. Copies of applicable tariffs may also be obtained by calling 1-800-411-SDGE (7343) or visiting any company bill payment office.

Disputed Bills
If you dispute the SDG&E charges on your bill, which may include electric energy charges that reflect electricity provided by the State of California Department of Water Resources (DWR), please request an explanation from SDG&E within five days. If you still believe you have been billed incorrectly, the full amount of the SDG&E charges and DWR charges on the bill should be deposited with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 2003, San Francisco, CA 94102, email: consumer-affairs@cpuc.ca.gov, within 15 days of the mailing date of this past due notice to avoid disconnection of your SDG&E service. Make the remittance payable to the CPUC, not SDG&E.

Residential customers may, in lieu of depositing the full amount of disputed bills with the CPUC, agree to an installment plan with SDG&E. A complaint may still be filed with the CPUC by stating your claim in writing and by providing supporting documentation.

The CPUC will not accept deposits when the dispute appears to be over matters that do not directly relate to the accuracy of the bill. Such matters include the quality of the utility's service, general level of rates, pending rate applications, and sources of fuel power that are used to generate power.

Failure to make the deposit to the CPUC or payment arrangements with SDG&E by the expiration date of a past due notice, may result in the disconnection of your SDG&E service.

SDGE
A Sempra Energy utility

PLEASE NOTE: This deposit less the amount of any unpaid bills will be refunded together with any interest due at the rate determined in accordance with the utility's Rule 7, Deposits, upon discontinuance of service or after the deposit has been held for 12 consecutive months during which time continuous gas and/or electric service has been received, and all bills for such service have been paid within the allowed number of days from the date mailed, in accordance with the Rules as approved by the Public Utilities Commission of the State of California.

No interest will be paid if service was temporarily or permanently disconnected for non-payment of bills within the past 12 months, or the account was past due more than once during the past six months or more than twice during the past 12 months.

Refund will be made by application to the account or by check, in which case endorsement of the check will constitute acknowledgement of receipt of refund and release the utility from any further claims against the deposit covered by this notice.

THE CITY OF SAN DIEGO
WATER & WASTEWATER SERVICES
PUBLIC UTILITIES

ISSUE DATE: Jan 2, 2018

a reminder...

610000247582
ACCOUNT NUMBER

6184 FEDERAL BLVD
SERVICE ADDRESS

Dec 21 2017
PAYMENT DUE DATE

1426 1 AV 0.373
DARRYL G COTTON
6176 FEDERAL BLVD
SAN DIEGO CA 92114-1401

5-1
01426

RETURN THIS PORTION

MAKE CHECK PAYABLE TO CITY TREASURER

0002 1 610000247582 2 0000025041 5 0

$250.41
TOTAL DUE NOW

THE CITY OF SAN DIEGO
WATER & WASTEWATER SERVICES
PUBLIC UTILITIES

a reminder...

JUST A FRIENDLY REMINDER...TO LET YOU KNOW WE HAVE NOT RECEIVED YOUR PAYMENT. IF PAYMENT HAS BEEN MADE, PLEASE ACCEPT OUR THANKS. IF NOT, YOUR REMITTANCE TODAY WILL BE APPRECIATED.

FOR RECORDED LISTING OF AUTHORIZED PAYMENT AGENCIES OR TO REPORT A PAYMENT, PLEASE CALL 515-3500.

ACCOUNT NO. **610000247582** **DARRYL G COTTON** SERVICE ADDRESS **6184 FEDERAL BLVD**	**Dec 21 2017** PAYMENT WAS DUE	**$250.41** TOTAL NOW DUE

THE CITY OF SAN DIEGO • PUBLIC UTILITIES DEPARTMENT • (619) 515-3500 • **KEEP** THIS PORTION UW-1457 (9-13)

The City of San Diego • Public Utilities Department

Federal Tax ID# 95-6000776

Payments Information

Make Checks Payable to City Treasurer

Online
www.sandiego.gov/customercare

By Mail
Public Utilities Department
Customer Care Center
PO Box 129020
San Diego, CA 92112-9020

In Person (please bring both portions of bill)

City Treasurer – Cashier
Cash, Check, Debit Card, MasterCard/Visa/Discover Card
Civic Center Plaza
1200 3rd Ave – Lobby

Public Utilities Department
Cash, Check, Debit Card, MasterCard/Visa/Discover Card
525 B Street - Ground Floor

Authorized Payment Agencies
www.sandiego.gov/publicutilities/customerservices

Payment is due on or before the Payment Due Date. If not paid within this time, service may be discontinued.

Disputed Payment Amounts should be paid to avoid interruption of service. Investigations are made upon request. Adjustments, when warranted, are made only after completion of an investigation.

In The Event Service is Discontinued for service to be restored payment must be made and reported to Customer Care (619) 515-3500. Service will be restored before the end of the following business day.

A Payment Return Fee will be assessed for any payment returned by the bank.

Contact Information

www.sandiego.gov/publicutilities/customerservices

Customer Care
(619) 515-3500
(858) 755-7211
(760) 489-8673

Emergency Service & Repairs (24 Hours)
(619) 515-3525
(858) 755-0365
(760) 489-0140

Public Utilities Department
Customer Support Division

Customer Care Walk-In Payment Center
525 B Street - Ground Floor
San Diego, CA 92101
Hours: Monday - Friday 8 a.m. - 5 p.m.

Assistance for speech and hearing impaired customers is available via California relay services at 1-800-735-2929 (TT/TDD). Alternate formats available upon request of qualified individuals with disabilities.

THE CITY OF SAN DIEGO
WATER & WASTEWATER SERVICES PUBLIC UTILITIES

ISSUE DATE: Jan 2, 2018

a reminder...

610000012730
ACCOUNT NUMBER

6176 FEDERAL BLVD
SERVICE ADDRESS

Dec 21 2017
PAYMENT DUE DATE

1425 1 AV 0.373
FLEET ELECTRICAL CO
C/O DARRYL G COTTON
6176 FEDERAL BLVD
SAN DIEGO CA 92114-1401

5-1
01425

RETURN THIS PORTION

MAKE CHECK PAYABLE TO CITY TREASURER

0002 1 610000012730 0 0000017998 6 0

$179.98
TOTAL DUE NOW

THE CITY OF SAN DIEGO
WATER & WASTEWATER SERVICES PUBLIC UTILITIES

a reminder...

JUST A FRIENDLY REMINDER...TO LET YOU KNOW WE HAVE NOT RECEIVED YOUR PAYMENT. IF PAYMENT HAS BEEN MADE, PLEASE ACCEPT OUR THANKS. IF NOT, YOUR REMITTANCE TODAY WILL BE APPRECIATED.

FOR RECORDED LISTING OF AUTHORIZED PAYMENT AGENCIES OR TO REPORT A PAYMENT, PLEASE CALL 515-3500.

ACCOUNT NO. **610000012730** **FLEET ELECTRICAL CO** SERVICE ADDRESS **6176 FEDERAL BLVD**	**Dec 21 2017** PAYMENT WAS DUE	**$179.98** TOTAL NOW DUE

THE CITY OF SAN DIEGO • PUBLIC UTILITIES DEPARTMENT • (619) 515-3500 • **KEEP** THIS PORTION UW-1457 (9-13)

The City of San Diego • Public Utilities Department

Federal Tax ID# 95-6000776

Payments Information

Make Checks Payable to City Treasurer

Online
www.sandiego.gov/customercare

By Mail
Public Utilities Department
Customer Care Center
PO Box 129020
San Diego, CA 92112-9020

In Person (please bring both portions of bill)

City Treasurer – Cashier
Cash, Check, Debit Card, MasterCard/Visa/Discover Card
Civic Center Plaza
1200 3rd Ave – Lobby

Public Utilities Department
Cash, Check, Debit Card, MasterCard/Visa/Discover Card
525 B Street - Ground Floor

Authorized Payment Agencies
www.sandiego.gov/publicutilities/customerservices

Payment is due on or before the Payment Due Date. If not paid within this time, service may be discontinued.

Disputed Payment Amounts should be paid to avoid interruption of service. Investigations are made upon request. Adjustments, when warranted, are made only after completion of an investigation.

In The Event Service is Discontinued for service to be restored payment must be made and reported to Customer Care (619) 515-3500. Service will be restored before the end of the following business day.

A Payment Return Fee will be assessed for any payment returned by the bank.

Contact Information

www.sandiego.gov/publicutilities/customerservices

Customer Care
(619) 515-3500
(858) 755-7211
(760) 489-8673

Emergency Service & Repairs (24 Hours)
(619) 515-3525
(858) 755-0365
(760) 489-0140

Public Utilities Department
Customer Support Division

Customer Care Walk-In Payment Center
525 B Street - Ground Floor
San Diego, CA 92101
Hours: Monday - Friday 8 a.m. - 5 p.m.

Assistance for speech and hearing impaired customers is available via California relay services at 1-800-735-2929 (TT/TDD). Alternate formats available upon request of qualified individuals with disabilities.

SDGE A Sempra Energy utility

ACCOUNT NUMBER 1310 536 032 4
SERVICE FOR
DARRYL COTTON
6176 FEDERAL BLVD
SAN DIEGO, CA 92114

DATE MAILED Jan 12, 2018
www.sdge.com
1-800-336-SDGE (7343) *English*
1-800-311-SDGE (7343) *Español*
1-877-889-SDGE (7343) *TTY*
M-F, 7am-8pm, Sat, 7am-6pm
24 Hour Emergency Service

Account Summary

Previous Balance	$2,120.28
Payment Received	- .00
Past Due Balance	$2,120.28
Current Charges	+ 1,098.80
Total Amount Due	**$3,219.08**

DATE DUE	ON RECEIPT
AMOUNT DUE	$3,219.08

Please disregard past due balance if already paid. Please pay current charges by Jan 27, 2018.

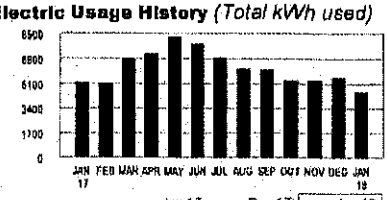
.7% Delayed Payment Charge Due If Paid After Feb 6, 2018.

Summary of Current Charges

(See page 2 for details)

	Billing Period	Usage	Amount($)
Electric	Dec 10, 2017 - Jan 10, 2018	4,561 kWh	1,083.96
Delayed Payment Charge (.7% on balance of $2,120.28)			14.84
Total Charges this Month			**$1,098.80**

Electric Usage History *(Total kWh used)*



	Jan 17	Dec 17	Jan 18
Total kWh used	5,209	5,531	4,561
Daily average kWh	168.0	172.8	147.1
Days in billing cycle	31	32	31
Change in daily average from last month			- 14.9%
Change in daily average from last year			- 12.4%
Max monthly demand	18.3	17.1	18.0
Max annual demand			22.4

Regulatory Notices

- All customers are required to pay a Competition Transition Charge as part of the charges above, including those who choose an electric service provider other than SDG&E.

See Time of Use - Electricity information on page 3.

PLEASE KEEP THIS PORTION FOR YOUR RECORDS. (FAVOR DE GUARDAR ESTA PARTE PARA SUS REGISTROS.)
PLEASE RETURN THIS PORTION WITH YOUR PAYMENT. (FAVOR DE DEVOLVER ESTA PARTE CON SU PAGO.)

SDGE A Sempra Energy utility

Save Paper & Postage
PAY ONLINE
www.sdge.com

ACCOUNT NUMBER
1310 536 032 4

DATE DUE	ON RECEIPT
AMOUNT DUE	$3,219.08

SERVICE ADDRESS: 6176 FEDERAL BLVD SD 92114

Please enter amount enclosed.
$
Write account number on check and make payable to San Diego Gas & Electric

4723.163.3717.1933536 1 AV 0.373 oz 0.922
DARRYL COTTON
6184 FEDERAL BLVD
SAN DIEGO CA 92114-1401

SAN DIEGO GAS & ELECTRIC
PO BOX 25111
SANTA ANA CA 92799-5111

CY 8

4 2 90000131053603200001098800000321908

SDGE
A Sempra Energy utility

ACCOUNT NUMBER 1310 536 032 4
DATE DUE
ON RECEIPT

DATE MAILED Jan 12, 2018 Page 2 of 6
1-800-336-SDGE (7343) *English*
1-800-311-SDGE (7343) *Español*
1-877-889-SDGE (7343) *TTY*
www.sdge.com

H

Detail of Current Charges

Electric Service

Rate: Time of Use - TOU-A-Commercial Climate Zone: Inland

Billing Period: 12/10/17 - 1/10/18 Total Days: 31

Meter Number: 06509045 *(Next scheduled read date Feb 9, 2018)* Cycle: 8

Meter Constant: 1.000 Billing Voltage Level: Secondary

Circuit: 0165 *Your circuit is currently not subject to rotating outage. However, this is subject to change without notice.*

Total Usage: 4,561 *(Usage based on interval data)*

ELECTRIC CHARGES Amount($)

Customer Charge 30.00

Electricity Delivery *(Details below)* 3,172 kWh

WINTER USAGE	On-Peak		Off-Peak		
kWh used	427		2,745		
Rate/kWh	$.13007		$.13007		
21 Day Charge	$55.54	+	$357.04	=	412.58

Electricity Delivery *(Details below)* 1,389 kWh

WINTER USAGE	On-Peak		Off-Peak		
kWh used	201		1,188		
Rate/kWh	$.13736		$.13736		
10 Day Charge	$27.61	+	$163.18	=	190.79

Rate Change This Billing Period:
There was a rate change on day 22 of your Billing Period. Therefore, your charges for the first 21 days were at Rate 1, and the remaining 10 days were at Rate 2.

DWR Bond Charge 4,561 kWh x $.00549 25.04

(Continued on next page)

Other Important Phone Numbers

For emergencies and to report outages, please call 24 hours a day, 7 days a week 1-800-611-7343

To locate underground cables & gas pipes, please call DigAlert, Monday-Friday, 8am-7pm 8-1-1

Payment Options $

Online: It's fast, easy and free. Just register or sign into My Account at https://myaccount.sdge.com

Home banking: If you pay bills online through your bank, check with them to see if you can receive your bill online.

Automatic Pay: Have your payment automatically deducted from your account. For more information, call 1-800-411-SDGE (7343) or visit www.sdge.com

Pay by Phone: Visit www.sdge.com to enroll. Once enrolled for pay by phone option, you may authorize a payment from your checking account any day up to and including the bill due date.

By Mail: Mail your check or money order, along with the payment stub at the bottom of your bill, in the enclosed envelope to SDG&E, PO Box 25111, Santa Ana, CA 92799-5111

ATM/Debit/Credit Card or Electronic Check: You can use most major ATM/Debit cards, MasterCard and Visa credit cards, or the Electronic Check thru BillMatrix. A convenience fee is charged. Contact BillMatrix at 1-800-386-0067 or visit www.sdge.com/epay.

In Person: To find the nearest location and hours of operation, call 1-800-411-SDGE (7343) or visit www.sdge.com.

Need help paying your bill? Call us for programs and services at 1-800-411-SDGE (7343) or visit www.sdge.com.

SDGE A Sempra Energy utility

ACCOUNT NUMBER 9185 520 600 4
SERVICE FOR
DARRYL COTTON
6184 FEDERAL BLVD
SAN DIEGO, CA 92114

DATE MAILED Jan 12, 2018 Page 1 of 7
www.sdge.com
1-800-336-SDGE (7343) *English*
1-800-311-SDGE (7343) *Español*
1-877-889-SDGE (7343) *TTY*
M-F, 7am-8pm, Sat, 7am-6pm
24 Hour Emergency Service

Savings Alert: California is fighting climate change and so can you! Your bill includes a Climate Credit from a state program to cut carbon pollution while also reducing your energy costs. Find out how at EnergyUpgradeCA.org/credit.

DATE DUE	ON RECEIPT
AMOUNT DUE	$1,565.67

Account Summary

Previous Balance	$837.04
Payment Received	- .00
Past Due Balance	$837.04
Current Charges	+ 728.63
Total Amount Due	**$1,565.67**

Please disregard past due balance if already paid. Please pay current charges by Jan 27, 2018.

.7% Delayed Payment Charge Due If Paid After Feb 6, 2018.

Summary of Current Charges

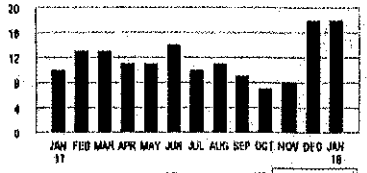
(See page 2 for details)

	Billing Period	Usage	Amount($)
Gas	Dec 10, 2017 - Jan 10, 2018	18 Therms	24.59
Electric	Dec 10, 2017 - Jan 10, 2018	1,485 kWh	357.58
Other Charges and Credits			346.46
Total Charges this Month			**$728.63**

Regulatory Notices

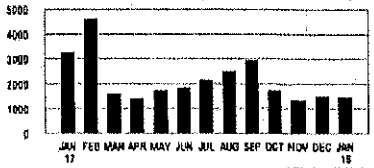
- All customers are required to pay a Competition Transition Charge as part of the charges above, including those who choose an electric service provider other than SDG&E.

Gas Usage History *(Total Therms used)*



	Jan 17	Dec 17	Jan 18
Total Therms used	10	18	18
Daily average Therms	.3	.6	.6
Days in billing cycle	30	32	31
Change in daily average from last month			+ 0.0%
Change in daily average from last year			+ 100.0%

Electric Usage History *(Total kWh used)*



	Jan 17	Dec 17	Jan 18
Total kWh used	3,266	1,517	1,485
Daily average kWh	105.4	47.4	47.9
Days in billing cycle	31	32	31
Change in daily average from last month			+ 1.1%
Change in daily average from last year			- 54.6%
Max monthly demand	11.0	6.8	3.9
Max annual demand			16.5

See Time of Use - Electricity information on page 3.

PLEASE KEEP THIS PORTION FOR YOUR RECORDS. (FAVOR DE GUARDAR ESTA PARTE PARA SUS REGISTROS.)
PLEASE RETURN THIS PORTION WITH YOUR PAYMENT (FAVOR DE DEVOLVER ESTA PARTE CON SU PAGO.)

SDGE A Sempra Energy utility

Save Paper & Postage
PAY ONLINE
www.sdge.com

ACCOUNT NUMBER
9185 520 600 4

DATE DUE	ON RECEIPT
AMOUNT DUE	$1,565.67

SERVICE ADDRESS: 6184 FEDERAL BLVD SD 92114

Please enter amount enclosed.
$

Write account number on check and make payable to San Diego Gas & Electric

4723.163.3717.1933404 2 AV 0.373 oz 1.092

DARRYL COTTON
6176 FEDERAL BLVD
SAN DIEGO CA 92114-1401

SAN DIEGO GAS & ELECTRIC
PO BOX 25111
SANTA ANA CA 92799-5111

4 2 20000918552060000000728630000156567

SDGE
A Sempra Energy utility

ACCOUNT NUMBER 9185 520 600 4
DATE DUE
ON RECEIPT

DATE MAILED Jan 12, 2018 Page 2 of 7
1-800-336-SDGE (7343) *English*
1-800-311-SDGE (7343) *Español*
1-877-889-SDGE (7343) *TTY*
www.sdge.com

H

Detail of Current Charges

Gas Service

Rate: GN3-Commercial

Meter Number: 01187950 *(Next scheduled read date Feb 9, 2018)* Cycle: B

Billing Period	Days	Current Reading	-	Previous Reading	=	Difference	x	Meter Constant	x	Therm Multiplier	Total Therms
12/10/17 - 01/10/18	31	435		418		17		1.000		1.047	18

GAS CHARGES Amount($)

Gas Service Rate Change This Billing Period:
There was a rate change on day 22 of your Billing Period. Therefore, your charges for the first 21 days were at Rate 1, and the remaining 10 days were at Rate 2.

Customer Charge 10.00

Gas Service *(Details below)* 18 Therms

	1000 Therms	1001 - 21,000 Therms	Over 21,000 Therms	
Therms used	18			
Rate/Therm	$.41975			
21 of 31 Days	$5.12			= 5.12
Therms used	18			
Rate/Therm	$.32890			
10 of 31 Days	$1.91			= 1.91

Gas Energy Rate Change This Billing Period:
There was a rate change on day 22 of your Billing Period. Therefore, your charges for the first 21 days were at Rate 1, and the remaining 10 days were at Rate 2.

(Continued on next page)

Other Important Phone Numbers

For emergencies and to report outages, please call 24 hours a day, 7 days a week 1-800-811-7343

To locate underground cables & gas pipes, please call DigAlert, Monday-Friday, 8am-7pm 8-1-1

Payment Options $

Online: It's fast, easy and free. Just register or sign into My Account at https://myaccount.sdge.com

Home banking: If you pay bills online through your bank, check with them to see if you can receive your bill online.

Automatic Pay: Have your payment automatically deducted from your account. For more information, call 1-800-411-SDGE (7343) or visit www.sdge.com

Pay by Phone: Visit www.sdge.com to enroll. Once enrolled for pay by phone option, you may authorize a payment from your checking account any day up to and including the bill due date.

By Mail: Mail your check or money order, along with the payment stub at the bottom of your bill, in the enclosed envelope to SDG&E, PO Box 25111, Santa Ana, CA 92799-5111

ATM/Debit/Credit Card or Electronic Check: You can use most major ATM/Debit cards, MasterCard and Visa credit cards, or the Electronic Check thru BillMatrix. A convenience fee is charged. Contact BillMatrix at 1-800-386-0067 or visit www.sdge.com/epay.

In Person: To find the nearest location and hours of operation, call 1-800-411-SDGE (7343) or visit www.sdge.com.

Need help paying your bill? Call us for programs and services at 1-800-411-SDGE (7343) or visit www.sdge.com.

14

EXHIBIT 14

DECLARATION OF DALE L. COTTON

I, Dale Lloyd Cotton, have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.

1. I am a self-employed businessman and the First Trust Deed Holder of 6176 Federal Boulevard San Diego, CA 92114; to which the title to that property is held by my son, Darryl Gerard Cotton.

2. Darryl has been under extreme financial pressure from the litigation he is involved in and he has not been making the mortgage payments to me. He has been responsible in keeping me updated through regular communication as to the status of that litigation.

3. That communication has made me very aware of the enormous stresses Darryl is undergoing both emotionally and financially.

4. To be clear: were this a normal business relationship, I would have foreclosed on this property a year ago.

5. But this is not a normal business relationship and I do want to help him and any of my children out to the fullest extent that I can. However, I am not a wealthy man, and this cannot continue.

6. I respectfully request this court to consider what the effects of this needless, protracted litigation has caused to not only Darryl, but to me as well, and please use whatever discretionary authority you have to see that justice will eventually be served in this matter.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

DATED: 1/21/2018

DALE LLOYD COTTON

my Cell
702-380-7010
811 6TH ST
MENDOTA, IL USA
61342

SUPPORTING DECLARATION

EXHIBIT 15

I, Darryl Gerard Cotton, hereby declare:

1. **I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.**
2. This declaration is being prepared for this lawsuit, litigation matter and should lay out in detail all the pertinent facts and history of me, my business and the chronological events leading to and through the legal proceedings to date.
3. It is the intent of this declaration to prove 6 things: 1) I have had a lifelong passion and interest in electricity and electrical designs; 2) I am a businessman, I have had numerous companies related to electricity; 3) I also have a lifelong interest in plants and crops; 4) I am involved in and proud of my political activism; 5) Larry Geraci is attempting to defraud me of my property and; 6) My former counsel FTB is also likely guilty of fraud.
4. It is important to me that this reflect these issues, therefore I go to great lengths to describe them.
5. I was born in 1960 in Peoria, Ill. My father, Dale Lloyd Cotton, was a Mechanical Engineer who worked for the Electromotive Company (EMD) as a Process Engineer, just outside of Chicago, Ill. My mother, Therese Marie Cotton, was a chemist who worked at various universities. I had one brother, Gregory, and a sister, Christine, from their marriage.
6. Some of my earliest and fondest memories growing up were of having my parents take us to their respective workplaces. At Christmas, EMD would open their entire facility up for tours where everyone could see the factory and all the locomotives in various stages of construction. My father would walk us around and point out where he worked and explain his job of engineering the manufacturing processes that would produce those enormous locomotives that were sold all over the world. Touring that factory, I saw what seemed like

an important part of what society needed in its everyday life of moving goods from one point to another. I was very proud of my dad and the work he did for EMD.

7. Since my father grew up in the farming area of Southern Illinois, at 13 years old I was given a chance to work one summer detasseling corn. It was very hard work, but I stuck with it and learned to appreciate what it takes to get these crops to harvest. Visiting my grandparents, and that summer working in the farms in Mendota, Illinois, sparked my early interest in plants and crop science.

8. When my mother took me to her job, I got a chance to see the work she was doing toward her thesis in Raman Spectroscopy. This is the science that involves determining the molecular identity of an object using light. As light bombards the object, the return or reflection of that light creates a signature in frequency and wavelength that can be characterized in a nondestructive fashion by the object's unique molecular identity. I would often accompany my mother to her labs at Argonne National Labs and Northwestern University to see her equipment and experiments underway. I got to sit in with her and her colleagues when they would discuss advanced physics and particle science. Of course, these topics were well over my head, but I always made sure they at least attempted to explain what they were talking about, in terms I might be able to grasp. In deference to my mother, and because they probably enjoyed the challenge, her colleagues would usually take the time to do so and show me what the equipment was doing in their experiments. I was thrilled to understand, at least in a broad sense, what it was their work entailed.

9. There is no doubt that my interest in electricity and light, came from exposure to the work my mother had been doing, and the efforts she and her colleagues made to explain to their work to me. Later in life, I would, on occasion, accompany her as she gave lectures around the world to other academics on her work, and it became increasingly evident to me, that she was respected as an innovator in her field. I could only hope that I would have an

opportunity to contribute to the world in as meaningful a way as she had. Sadly, my mother died in 1999 but her memory and work will live on forever. It is a goal of mine to emulate her personality, and the way she affected those around her, in the same positive ways she did.

10. At a very young age, I found that I was really interested in politics and what was going on in the world. I even have a vague recollection of being 3 years old and sensing something was horribly wrong when the world seemed to stop with the assassination of John F. Kennedy. We all just stood there, staring at the TV, and the busy street that normally had cars flying down it, was quiet. There was no traffic. Time stood still. After that, having lived through the Vietnam war, Watergate, Nixon, Martin Luther King, and other such events, I can't recall ever not having an interest in politics and the law and their effects on the world we lived in. I found it exciting and fascinating.

11. My parents went through a horrible divorce when I was 13 years old. There was bitter fighting over who would get what and it led to a serious and permanent fracturing of our family. I'll never forget the tug of war and the lawyers coaching us as to what to say so we would be able to support whatever was expected to be said when we stood in front of the judge. Having to pick sides between your parents is not something that you would ever want a child to do but that is essentially what we had to do. What happened is that the boys went to my father and my sister went to my mother. Life as we knew it would never be the same.

12. From the time I was 13 to 15 years old, my brother and I were basically on our own. My dad worked full time, and during his off time, he sought out new relations that would rebuild our household. My brother and I resisted these new women coming into our lives, trying to assume the position that had been our mother's, so we rebelled. We did not make it easy on these women and they would leave. This, coupled with the fact we were acting like normal

teenagers, caused a lot of friction with my dad. Eventually my father farmed out my brother Gregory, who was just 12 years old at the time, to a family down the street from us who agreed to take him in. I lived with my dad until I was 15 years old, when he agreed to my moving out.

13. In 1972 I became aware of a considerable buzz being created by then President Nixon having appointed a commission, known as the Shafer Commission, to study, compile information on, and report back to him what effects cannabis was having on our youth. It was clear to us from Nixon's statements that he did not want to see cannabis become acceptable at any level. He needed federal drug policy to make cannabis use a criminal act. Nixon saw cannabis being used by a bunch of war protesters who would sit around smoking weed and creating havoc, over him and his policies, so he needed it stamped out. He needed a way to give the federal government the tools to do that. To that end, he created the Shafer Commission, whose sole purpose he believed was to come back with findings that supported his beliefs. Nixon needed findings that would claim cannabis was evil, dangerous, and a threat to society. Unfortunately for Nixon, after an exhaustive, comprehensive, and nonpartisan analysis of the effects of cannabis, they came back with just the opposite opinion.

14. When the Shafer Commission came back with their report, they relied on research that had been done by UC San Francisco chemistry students who were interested in finding out why the same strain of cannabis could make one person laugh and another contemplative. They appreciated that there was the potential to use cannabis as medicine and they recommended that further research be done to see what biochemistry was at work. What they discovered was the beginning of why the science of this plant needs to be better understood. Relying on that research, and other studies from around the world, created a situation where Nixon could not accept the findings and would not release the report in the form that he had

received it. Nixon ignored the Commission's recommendations and went on to create the Controlled Substances Act. He eventually resigned and was then pardoned by his replacement, Jerry Ford. One of the first things Ford did was give the Shafer Commission report to Big Pharma so that they could "continue" the research that had been done by others, while it was kept from the public for over 40 years.

15. In 1975 I moved into my own room at a boarding house known as The Stone House. The Stone House was run by a little old lady who went by Marty. Marty was an exceptionally sweet person who had an incredible affection for birds. She had hundreds of finches in the basement and would spend hours with them. What Marty was not always very good at was noticing what her tenants were up to, and by that, I mean, more than a few of her tenants were heroin addicts, who lived there because it was cheap, and Marty loved them unconditionally, as if they were her own.

16. When Marty first met me, she was not ready to rent a room to a 15-year-old boy but since I was personable, had a job working part time for Horton Electric, a local electrical and lighting company, and was going to high school 1 block away from the Stone House, Marty decided to take a chance and let me move into my own room. This was important, not only because I got to understand self-responsibility at a very young age, but also because it gave me the opportunity to see how those other boarders made their living and survived as adults.

17. The Stone House was a large 3 story house and the attic floor was the most desirable of all the floors. This is where, in the evenings, the rooms would open up and there would be free flowing music, conversation, drinking, drugs (only cannabis and psilocybin for me), and discussions on everything imaginable including politics, the Vietnam war, President Nixon, relationships, and girls. People came from all over to attend these evening soirees. They were lively and fun, but they had purpose too. We were in the midst of revolt and

revolution. There was Kent State. There was Watergate. There was George McGovern. There was talk of impeachment. There was the Shafer Commission. There were body bags of soldiers fighting in a war that had no meaning. There were refugees. There was Jimmy Carter. There was Lieutenant Calley. There were lines of people waiting to buy gasoline. There was upheaval. I was taking it all in. Living at the Stone House taught me to think for myself, to question those who would manipulate the system on behalf of their own special interests, to help educate others, as I had been, and finally to cherish the Constitution as it is a living, breathing document that must be the center of our universe and not be taken for granted or the freedom we cherish will be lost forever. The tree of liberty will not be taken down with a single swing of the axe, but in a slow and steady process whereby one day you look up and the tree is gone. As citizens of this great country, we have a responsibility to protect ourselves and those around us from letting that happen. That is the message I took from the Stone House.

18. While Stone House helped form some of my early political ideologies, it also got me to question drugs, both legal and illegal, and the influence they had on people's lives. When the parties died down, it was always just me and the other boarders who had all taken me under their wings and mentored me. I got to see them as they really were. Even though some of them got into things that I would never try, such as heroin, I respected that they were clear to me why they did these drugs and why they would never want to see me doing them. I watched them go through the process of attaining the drugs and the rituals that went with getting the drugs into their systems. While they were certainly consumed by their addictions, they also seemed to care about the young man living in their Stone House and did not want to see me make the same mistakes they had. I respected them and their intellects. However, I saw firsthand how heroin would ravish them and ultimately, they would overdose, and some would even die. It was tough knowing that these drugs took

control of young people who could have been assets to our world. I knew then and there that I would never subject myself to a drug, legal or not, that took over my life. Instead I would always maintain an interest in how drugs could be used to provide relief, repair or prevention of disease without the addictive elements that consumed those who took them.

19. After a couple of years of living in the Stone House, I had saved and was making enough money at Horton Electric to move into my own house. In 1977, at the age of 17, I kissed Marty goodbye, thanked her for everything she had done for me, and moved into my own house.

20. At the time I rented my own house, I had been working part time for Horton Electric for almost 3 years. I initially started out working in the warehouse stocking inventory but, since I was always interested in what those electrical parts did, I'd ask a lot of questions of those who worked there. That got me to understand the business to the point that, at just 16 years old, I got to move up to the electrical sales desk. In that capacity, I got to meet with customers, helped fill orders and realized that building and wiring things was incredibly rewarding.

21. While I appreciated the opportunity to work in electrical sales, I lobbied hard to get transferred to the electrical construction side of the company. I had already been dreaming of someday becoming an electrical contractor. The contracting side of Horton Electric was run by a surly old Irishman by the name of Chris who wanted nothing to do with having a young kid working around him and his electricians, but I didn't give up and I eventually got on his good side. Once I did, it was the best thing that could have happened to me. I got direction. I got focus. This shop was well established and serviced all the surrounding area. Chris was very well respected, and by me representing him, by way of delivering materials and getting to know the union electricians, I had an opportunity to see how the electrical construction side of the business operated. I'm a quick study but there was no way

that, without formal training, I was going to learn the electrical contracting trade unless I got a break. That break came when one of the union electricians I was working with decided that I was worthy of baptism by fire. As much as Chris got to know and rely on me, he knew that my heart was in becoming an electrician and one day running my own business, so he got me onto a union job that needed more electricians than the hall had available at the time. I was given an opportunity to become a walk-on electrician for a huge condominium project being built outside Chicago. While I had some experience in bending conduit and running wire, I was not up to the skill levels that were required to maintain that job. I was not going to lose that job, so I would actually stay after hours to practice bending conduit to improve my production levels. When the project foreman found out I was doing that, he was not happy about it, and told me in no uncertain terms that, if I ever did anything off the clock, I would be terminated. However, he liked that I wanted to succeed and paired me with another walk-on electrician who was so good he was out-producing the union electricians by nearly twice the production per day. John was good. Very good. He had methods and techniques that allowed him alone to finish a one-bedroom condominium, completely piped in conduit and ready for drywall, in one day. I worked with John and learned every technique he had. Within a month, I was knocking out the same production levels he was. John went on to become a union electrician and stayed in Chicago. I could have gone that route too, but I wanted to eventually have my own business as I had seen Chris do at Horton Electric and, since the winters were brutal in Chicago and I had nothing keeping me in the Midwest, I decided to take my skill sets and move to a warmer year round climate. It was in 1980 that I made the decision to pack all my belongings up in a van and move to San Diego.

22. When I arrived in San Diego, I immediately got a job for the U.S. Navy working as an electrician in the Public Works Center (PWC). While this was considered a temporary

position, my electrical skills and acumen put me in demand among the career, civil service electricians and allowed me to travel to many of the Southern CA naval bases while working on, and often being given a supervisory role in, some of the most sensitive and high-profile projects going at the time.

23. I had been working for PWC for 2 years when, in 1982, I was given an opportunity to make better money as the Electrical Superintendent for Dave Baker of Westland Electric. In this capacity, I would be responsible for running multiple large commercial projects. Dave hired me for this position because he knew, from people he knew at PWC, that I was knowledgeable, organized, liaisoned well with our customers, and delegated authority, which resulted in my projects being completed on time and on budget.

24. In 1983, I met Debra Holly and we started dating. We never married but stayed together for 14 years, during which time we had 2 beautiful daughters, Kimberly and Kristina. It was during those early years that Debra encouraged me to follow my dreams of owning and operating my own electrical contracting firm.

25. In late 1985, I started suffering from occasional nocturnal epileptic seizures. While it is unknown as to what exactly is responsible for these seizures, it is believed that lack of sleep and stress are significant contributing factors. I was originally prescribed Dilantin which worked but was known to cause problems within the liver and, since I also have the Hepatitis C virus, I was very concerned about the effects a prescription drug would have on my liver.

26. In 1987 I made the decision to start my own electrical contracting business and Fleet Electric, CA License Number 514234, began business out of my home in North Park. I managed to run and grow that business so that I needed to move into a larger space. In 1992 I moved our business out of my home and into a commercial rental property at 6184 Federal Blvd, which I currently maintain for my business.

27. In 1996 I first became aware of Dennis Peron as he was getting attention as one of the original co-authors of Prop 215, which, with its passage, had made cannabis legal in CA for treating certain medical conditions. While at the time I was uncertain as to how effective cannabis might be in the treatment of my seizures, I did appreciate that it was now being recognized as a possible alternative option to the prescription drugs I was taking. I resolved to follow the research that developed relative to the genetics and dosing levels that could be relied on to help combat these seizures.

28. In 1997, the owner of the property at 6176 Federal Blvd contacted me and asked if I would be interested in acquiring his property, which is adjacent to mine, at 6184 Federal Blvd, if the terms were favorable. This was a deal that worked for both of us and I purchased the 6176 Federal Blvd property in my name.

29. In 2000 I expanded my license to include a General Contracting classification and was issued CA Contractors license number 757758. Since the new license allowed us to do work beyond just electrical, I renamed the company Fleet Services and proceeded to operate under that license until 11/30/2012 when I decided I would cease contracting and devote my full attention to my efforts in energy efficient horticultural lighting and controls.

30. In 2002 I started Fleet Systems as a compliment to my Fleet Services contracting business. Fleet Systems provided emergency and backup power generation for both permanent and rental power applications. Fleet Systems became dealers and authorized service centers for many major brands including Kohler, Baldor, and Cummins. Within 4 years of our startup; our Fleet Systems Maintenance Contracts Division had acquired a majority of the major key accounts such as hospitals, casinos, office buildings, and hotels in San Diego whereby the annual generator service contracts were an integral part of our portfolio. Recognizing this, the local Kohler Distributor, Bay City Electric Works, made an offer to purchase Fleet Systems and I accepted their offer. It was agreed that we would

retain the Fleet Systems name so that we could continue to provide mobile power systems service on news vans, semi-trucks and RV systems, services that we still provide.

31. In 2005 I expanded our generator equipment business into Mexico with the opening of Fleet Systems de Mexico. This was good timing for us because at the time we opened our facility in Ensenada, MX there were sizeable rentals and sales contracts available. In addition, many of our US manufacturers whose power systems we were already servicing had maquiladora operations in this region which made it relatively easy to support them with equipment and personnel from our San Diego facility. With the sale of Fleet Systems in 2007 we ceased operations in Mexico.

32. In 2010 I started Inda-Gro as an induction plant lighting manufacturer. Inda-Gro was one of the very first companies to identify induction lighting as a viable, energy-efficient plant lighting technology that could compete with the existing HID lighting technology that dominated the plant lighting market.

33. It is through the ongoing research I have done at Inda-Gro that we have seen significant developments in plant photobiology with self-published and other researchers' papers.

34. From 2010 onward I worked primarily on the manufacturing and distribution side of Inda-Gro lights. Since our products relied on a well-established Tesla Coil technology which was being applied in a new way to provide lighting for plants, it required that growers be convinced that our products could deliver the crop quality and yields to which they had become accustomed under HID lighting systems. The only way that was going to happen with a new technology was if we had "partner growers" who would provide meaningful data as to their comparative results or if we had our own farm running continuously that would allow for people to see the plants and lighting systems in operation. Couple those visits with time/date stamped images posted on Facebook of previous grows and crop results and the

consumer now has the ability to make an informed decision as to what Inda-Gro brings to the market.

35. My experiences with having "partner growers" providing me with any reliable, meaningful data was a challenge. More often than not. they would take one of my lights with the promise that they would tell me how it performed. The majority of the time I would get little to nothing back in return. Clearly this did not work for me and my plans to improve our products by tracking real time plant performance values.

36. In 2011 I decided to no longer rely on "partner growers" as the design developments required more reliable feedback in a timely fashion and I began to focus entirely on our inhouse T&D garden operations for indoor and greenhouse lighting applications. It was at this time I started both Youtube and Facebook channels to publish our work with time/date stamped images and videos.

37. In 2012, in addition to the lighting and controls research and development underway, I was given the opportunity to procure several different genetics of cannabis that I wanted to grow for the treatment of my seizures. It was during this time that I became very interested in combining the engineering work we were doing with our Inda-Gro products with the plant sciences to generate organically grown cannabis products that would not only be healthier but, by combining certain genetics, prove to be better at combating my seizure disorder.

38. Aquaponics is not widely used in cannabis cultivation. However, I was attracted to this method of cultivation because of the organic nature under which the plants had to be grown. Nothing could be placed on the plants that could harm the fish. This appealed to me since, if I were to continue to use cannabis in combination with prescription drugs to treat my seizures, I wanted to be sure that the cannabis I consumed was free of any potentially toxic elements. A balanced aquaponic system relies on healthy fish and their waste being

the primary nutrients for the plants. This is a presentation I developed that goes into detail as to how this method of cultivation may be employed for cannabis crop cultivation.

39. I experimented with several methods that would allow aquaponics to be used in cannabis cultivation and found a reliable technique that gave the cannabis plants their main nutrient requirements from the flood and drain fish water but which also allowed us to top feed the trace minerals that cannabis and other flowering plants need in a top water feed that does not water to the point that water combines with the fish water. This practice is referred to as decoupled or dual root zone feeding for the plants.

40. As a result of my posting this work on Facebook media I eventually came to the attention of Pentair Aquaponic Eco-Systems. PentairAES is the largest manufacturer of aquaculture products in the world. It was Dr. Huy Tran, PhD, the Director of Research for Pentair at the time, who reached out to me to learn more about us and our products and to explore if induction grow lights would be a good fit for the industry and their product line. After discussing the science involved in our products and learning more about us, Dr. Tran decided to recommend our induction lights be used in the Pentair product line under their own label. His recommendations were accepted by management and I began filling induction grow light orders for PentairAES.

41. After entering into that agreement with PentairAES, I expanded sales of our induction grow lights but I also benefited from the incredible insight and knowledge that Dr. Tran and other advanced academics within Pentair, such as Dr. Jason Danaher, have been able to provide me with in regard to how aquaponics can grow a wide range of crops in a wide range of environments while using 5-10% of the water that a traditional soil crop would consume. I also was pleased to discover from the research we were doing into plant lighting and aquaculture that the benefits we found in organically grown food crops quality extended to cannabis crop quality.

42. Cannabis that I had been acquiring through local retail cannabis dispensaries would not always be guaranteed to be free of contaminant pesticides, fungicides, aerocides or even nutrients. When I would procure concentrates of the same genetics for my condition, the percentage of residual solvent elements would be increased by 10-20X what it would have been in flower form. While I want the benefits of medical grade cannabis to combat my seizure disorder, I refuse to take in chemicals that I know to be unhealthy and even life threatening.

43. In March 2015 I found a commercial property available for rent in the Barrio Logan section of San Diego. The landlord understood that I was to rent this property for the purposes of developing what I began referring to as a 151 Farm. The concept, which originally began with our R&D work on Federal Blvd, was that urban farms would grow 1 pound of cannabis to 5 pounds of food for 1 community. I went forward with the Barrio Logan project because it afforded us a larger footprint than I had available at the Federal Blvd property. The size of this property allowed us to have indoor, greenhouse and outdoor plants that were grown in a soilless aquaponic system of recirculating water. In our trials of systems and procedures I grew lettuce, hops, peppers and medical cannabis. I maintained our progress on social media with time/date stamped photos and welcomed those who had an interest in our work to visit us for tours.

44. While I initially sought out others in the hydroponics industry to co-develop the 151 Barrio Logan project, it became apparent that, even though they may have endorsed the efforts, they were never willing to contribute any time or money to see that the project was maintained. While I consider Barrio Logan a success, ultimately the work and money involved to maintain it became too much to bear and I had to shut it down and return those operations to the 6176 Federal Blvd location where it continues to operate to this day.

45. Over the years I became increasingly aware of all the research being done in other countries on the medical benefits of cannabis. I watched with great interest as medical doctors and scientists from every realm of the sciences collaborated in finding out more about this plant and how it interacts with our endocannabinoid systems. What this ongoing research has shown is that at the botanical level there are mysteries about this plant and its broad phenotype expressions that exist amongst the wide-ranging genetics that will combine to promote homeostasis or a balancing of the mind/body relationship.

46. Other elements of the plant have been clinically proven to reduce blood flow to cancer cells. Today there exists greater empirical evidence than ever before as to how this plant can benefit us and why its cultivation and access need to be sensibly managed. Based on my personal experiences, that of those I've seen benefit from this plant and the research that supports its medical use, I will remain committed to lending my voice to see that laws and policies are in place at the federal level which would include the re/declassification of cannabis and that at the local and state levels those who need access to this plant for their medical conditions are able to do so.

47. In late 2015 I was contacted by researchers at the National Algae Association who had seen my work whereby I had taken one of our induction grow lamps and designed a waterproof housing that allowed the lamp to be put underwater without any type of housing over it. This put the lamp's energy, intensity and spectrums at depths in the tank where it is difficult for light to travel at distance to meet with the macroalgae being grown.

48. The particular algae we were interested in cultivating with our lamps was the Haematococcus Pluvialis algae or "HP" for short. HP is known to be very high in the super antioxidant astaxanthin. Research indicated that by installing the lamps in the tank we would be able to increase the concentration levels of astaxanthin and decrease times to

harvest. From my perspective, anything I could do to help improve any crop production value which, when extracted, would benefit the patient, was worthy of pursuit.

49. Because of my work on the AquaPAR submersible induction lamps to decrease times to harvest and increase HP concentration levels, I was invited to give a presentation at The National Algae Convention.

50. One of my greatest personal motivations in starting my own 151 Farms Urban Aquaponics Gardens was that I could gain personal knowledge by creating these gardens and learn what would and would not work when growing a wide variety of food and plant-based medicines in this fashion as well as develop our lighting and control products.

51. The reason this work at this particular time was especially appealing to me is that botanical plant substances can help alleviate certain medical conditions in patients when combined with the ability to optimize crop production values in a given area using controlled environmental conditions whereby the plants can develop in the lowest times to harvest across all plant species.

52. When optimizing plant production values, what matters most is that the research supports whatever the benefits to the patients may be based on control factors such as the plant genetics, the type of cultivation systems and procedures being used that allows for organically grown plant-based products to be grown in a repeatable fashion. It is for this reason I began to introduce a wider variety of crops, known for treating medical conditions, into our 151 Farms so they could be available to those who would seek them out in their fresh unadulterated form from their local garden. Other factors that contributed to my support for and development of 151 Farms included; The ability to co-cultivate fish and plants in a **soilless** urban garden setting.

53. There is an opiate epidemic in the United States which has now reached epic proportions. The need for fresh, organically grown, unprocessed foods and plant-based medicine has never been greater.

54. A whole host of medical conditions, such as high blood pressure, diabetes, Alzheimer's, obesity, and cancer, can be directly attributed to the consumption of processed foods.

55. The availability of fresh unprocessed foods is severely restricted in urban settings. This leads more people to purchase food products that have longer shelf lives from the stores in their neighborhoods. Consequently, the percentage of diet-related diseases is disproportionately higher in regions where access to unprocessed food is limited.

56. Why is having locally-sourced, organically grown medical cannabis plant genetics so important to patients? Research has shown improved efficacy from the EXTRACTION of essential oils from cannabis plants when that extraction is done from a just harvested plant. This extraction process is referred to as a live resin extraction. A cultivation process whereby the just harvested plant can be converted into that essential oil is critical to the finished product quality. What is equally important is that the plants are grown in a controlled environment whereby the full phenotype expression can occur. This is a function of broad spectrum lighting. It's also important that the plant genetics are known and stable to realize these benefits in a repeatable process. Finally, it is important that the plants have not been subject to pesticides, aerocides, fungicides or residual nutrients that may contain heavy metals or plant growth regulators which in an extracted process could be 10-20X what those levels would be in a flower form. Cannabis grown and processed in this way allows the patient to take lower doses that, when coupled with diet and some form of exercise incorporated into a daily regimen, help to, at a minimum, improve their quality of life and reduce or even eliminate the medical conditions that existed prior to their introduction to naturopathic treatments. The benefits of a 151 Farm are that the source plant material for

medical grade cannabis can be made available to those within the community nearest to where it has been grown.

57. If you're familiar with the term Community Supported Agriculture (CSA), a 151 Farm utilizes Cannabis Supported Community Agriculture (CSCA) as a way to pay it forward within our communities by providing housing and jobs for all skill levels and donating a portion of the food being grown to local food banks.

58. The negative impact that our drug laws and policies have had in non-white communities has been disproportionately larger than for those who live in predominantly white communities. These drug policies have led to higher percentages of incarceration, lost jobs, crime and other negative effects for those individuals and their communities.

59. With the increased opportunities coming from the mainstream and legalization of cannabis within these communities, it is morally imperative that under these new laws, cannabis related business opportunities be given to those who have been most affected by those previous drug policies and laws. 151 Farms provides a distinct and transparent pathway for those opportunities.

60. It is necessary to meet with government officials and interact with them on a regular basis to see that organic urban farming and medical cannabis patient's needs are being considered. Letting your voice be heard, not being passive, leading by example, and being part of the dialogue to be part of the solution are all parts of what being a 151 Farmer means when it comes to exacting change in an ever-changing industry.

61. For me personally, knowing that I am able to grow my own medical grade cannabis with particular genetics that help to prevent my seizures is comforting, but I would also like to know that I can purchase medical grade cannabis which is free of toxic elements, should I become unable to grow in the future. This got me looking into how the State of CA regulates pesticides and toxicity limits on medical cannabis products that are cultivated and

produced under the authority of Prop 215. What I found is that as far as the State of CA is concerned, since 1996, when Prop 215 was passed, there have never been any limits on pesticides and toxicity because the California Department of Pesticide Regulations (CDPR) got their limits from those established by the FDA and EPA. The problem CDPR had with setting state levels was that it relied on a federal agency to provide data and NO federal agencies will perform the pesticide and toxicity studies on a product that is listed as a Schedule One drug. Under the Controlled Substance Act cannabis is seen as having NO medicinal value whatsoever, it is subject to severe safety measures and it is listed as having a higher potential for abuse than heroin, which is listed as a less dangerous, schedule two drug.

62. With one side blaming the other and me as the medical cannabis patient caught in the middle, I began researching why the federal government still considered cannabis as having NO medicinal value. What I found that seriously contradicted that position was that in 2003 the Department of Health and Human Services was granted patent number US 6,630,507 B1 which cites the antioxidant and neuroprotective benefits of cannabinoids which are to be derived from cannabis.

63. If, after reviewing this patent, there is still any doubt in your mind as to what research supports it and the benefits of cannabis, I would encourage you to look at the 'other publications' as listed in the upper right-hand portion of the patent. Here you will see the studies from accredited scientists and institutions that from 1965 to 1981 have done their own research to support this singular patent issued in 2003 and the benefits that this plant represents to the medical patient. Yet today, 15 years later, cannabis remains a Schedule One drug. The federal government's scheduling hypocrisy regarding cannabis as having NO medicinal value is astounding!

64. As a medical cannabis patient myself and having lived for 2 years in the Stone House where I saw firsthand the ravages of heroin, I simply cannot understand the hypocrisy between these two positions. It is one of the reasons I have been so vocal about trying to enact common sense laws and regulations as to how cannabis is grown and how it can be accessed by those who require it medically.

65. Another area of great concern to me is why any state government would not have established pesticide and toxicity levels of substances that may come in contact with cannabis before they allow the sale of cannabis products within that state. For food and drugs other than cannabis, these levels are typically established by the federal government but since cannabis is listed as a federal schedule one substance, the California Department of Pesticide Regulation, which would normally set these limits, has had a hands-off policy for setting these limits, citing lack of federal direction.

66. With the passing of Prop 215 in 1996, California has had 20 years to set pesticide and toxicity limits on cannabis grown in state and never provided those limits to the cultivators or to the medical cannabis patients. It was left up to the consumer to decide if they were comfortable with the amount of heavy metals and other potentially toxic substances that could be found in the plant materials and if they were willing to consume that product. Even though it is necessary that there be established limits that require that the testing of that product and the information regarding what was in that product be made available to the consumer, more often than not those test results were not available, and the medical cannabis patient was left to chance what was in the plant material they were ingesting. With recent tests showing that over 84% of the cannabis being tested has tested positive for what are considered harmful levels of pesticides, the fact that the State of CA has left this responsibility to the medical cannabis patient consumer for the last 20 years is unconscionable.

67. With the passing of Proposition 64, "The Control, Regulate and Tax the Adult Use of Marijuana Act" (AUMA) the state has now accepted their responsibility to set these limits. However, the limits have not yet been set and are expected to be released at some point in the near future.

68. With the passing of AUMA nothing has changed in the federal scheduling of cannabis. It's still Schedule One. Why has the state agreed to establish these guidelines now when they were unwilling or unable to set them in protection of the medical cannabis patient before the passage of AUMA? It's simple. The state never took their responsibilities to the medical cannabis patient seriously under Prop 215 since it did not increase revenue for them.

69. I felt strongly then and still feel today that, while Prop 215 was certainly not perfect, it could have been improved upon if the legislature had seen fit to do so. The legislature failed the medical cannabis patient and now they are in charge of a regulatory system that is supposed to be responsible and equitable to the medical and so called "recreational" cannabis communities. To say I have my doubts as to how they will manage this on behalf of the medical cannabis patient would be, to put it mildly, a massive understatement.

70. I have always had a hard time accepting, and have staunchly opposed, any laws or regulations that purport that cannabis can be structured for "recreational" use. It is my belief that has been proven to be the case in Washington, Oregon and Colorado that when "recreational" laws are introduced the medical cannabis patient's rights are infringed upon as the non-profit medical cannabis industry virtually disappears while everyone chases the for-profit "recreational" market.

71. When these so called "recreational" laws are passed they attempt to equate cannabis to other "recreational" drugs such as alcohol or tobacco. Because of that, I stand opposed to a recreational classification for cannabis since both alcohol and tobacco have proven to be cancer causing, lead to addiction and cause death. Cannabis, in any of its forms, has none of

these deleterious effects. As cited in the DEA 2017 Drugs of Abuse (page 75) there has never been a reported case where someone has died or suffered permanent harm from the effects of cannabis. The same cannot be said of alcohol or tobacco.

72. In or around March of 2016 I became aware that an initiative, Proposition 64, The Control, Regulate and Tax the Adult Use of Marijuana Act (AUMA) had made the California 2016 ballot. With the passage of AUMA, cannabis would be made available in CA in a "recreational" form to anyone over the age of 21 who wishes to purchase it without the need of a physician's recommendation.

73. Over the course of the next couple of months I read this initiative and considered what it's passing would mean for the cannabis market in general and the medical cannabis patient in particular. I regularly watched and participated in online debates on the merits of AUMA and found my position to oppose the passing of AUMA only being reinforced as I learned more about how the general public saw AUMA in a positive light without having an in depth understanding of what its passage would mean to those who would be most impacted by it: medical cannabis patients.

74. Since AUMA was a long and complex initiative, one that the average reader found to be confusing and difficult to read through in its entirety, I took the initiative to create a condensed version that included a Table of Contents, a link to the Proposition in its original form and comments that invited discussion as to the purposes that were specifically included in the Proposition. I then posted that AUMA analysis on the 151 Farmers website, which was created to explain our ideologies and act as an archive for the papers and research that help propel forward the need for urban gardens and how cannabis and those laws that affect cannabis are an important element in those farms' success.

75. From that AUMA analysis I began a campaign that included interviews and numerous social media posts on behalf of myself and others and conducted seminars as to what the passing of

AUMA would mean to the medical cannabis patient. Within these presentations and posts I would always reference the AUMA analysis and a certain section of the initiative that was to be voted on.

76. I used social media and the AUMA analysis to create not only discussions about the specific elements within AUMA but also what organizations endorsed it and why they chose to do so. One organization that supported the passing of AUMA was the California Medical Association (CMA). With its 41,000 physician members, the CMA has never supported cannabis for any medical purposes, but they were endorsing AUMA for "recreational" purposes. I found that position to be hypocritical by pointing out the following: 1) The CMA never endorsed cannabis for its possible benefits as a drug to be used for certain medical conditions; 2) The CMA has never been on record supporting research on how cannabis could be used to treat certain medical conditions; 3) Has the CMA endorsed laws that make other recreational drugs legally available to those over 21 years of age? Of course not. I believe that the CMA and other likeminded organizations will endorse any cannabis law that minimizes the benefits of cannabis for medical use and which allows the states to construct laws that tax and regulate cannabis in a recreational form so that it does not compete with pharmaceutical drugs.

77. Once I had a better understanding of AUMA I felt compelled to reach as wide an audience as possible to express my concerns. While I was already reaching a fairly large audience with my posts, seminars and press conferences, it was somewhat limited to a core group who already followed me. If I wanted to reach a much larger audience I needed to get the support of those who had a much larger following. I did that with a campaign that included radio, tv, press conferences, seminars and an outreach to cannabis activists who had their own followings.

78. In September 2016 I reached out to Dennis Peron to introduce myself. Over the course of various phone and text messages we shared our concerns over what the passage of AUMA may mean to the medical cannabis patients' rights which were granted to them under Prop 215.

79. Dennis and I both agreed that should AUMA pass, those medical cannabis patients' rights that had previously been made available to them under Prop 215 were likely to be eroded and infringed upon as we have seen happen in other states where recreational cannabis was added to what had previously been strictly medical cannabis. Dennis and I agreed to collaborate to the extent we would try to educate the voters as to what the details within AUMA would mean to the medical cannabis patient should it pass.

80. In October 2016, Dennis Peron, with the help of friends, was able to travel from his home in San Francisco and visit our 151 Farm here in San Diego. While Dennis was here we invited other activists to visit our farm and meet him to discuss how we all might help in his efforts to protect the patients' rights that had been granted under Prop 215.

81. During that visit, Dennis gave me access to his personal Facebook page where I began presenting elements of AUMA on his behalf, daily or every other day, that came directly from the Prop 64 language. Those posts ended up creating a lot of debate and discussion among those who followed Dennis's page. At the time we could only hope they would seriously consider what they would be getting if AUMA passed.

82. Also during that visit, Dennis and I were invited to be interviewed for a radio show on our mutually declared positions as to the threats that the passing of AUMA would represent to the medical cannabis patients' rights granted under Prop 215. We agreed and those interviews were done in Irvine, CA and sponsored by WeedMaps for SpeakEasy radio.

83. In addition to my work on social media, I also kept up the 151 Farms website which is where I created a paper, in collaboration with Dennis Peron and other likeminded activists,

that addressed how, with the passing of AUMA, the medical cannabis patients' rights which had been granted under Prop 215, would most likely be lost. With the posting of this paper just prior to the November 8, 2016 elections, we stated why cannabis could never be considered "recreational" and it was subsequently released to a wide audience through numerous social media platforms.

84. In November 2016 California voters approved Proposition 64, the Adult Use of Marijuana Act, as a way to make cannabis available to anyone over the age of 21 for recreational purposes. Under AUMA, the state will incorporate the medical cannabis patients' rights and access to medical grade cannabis within a regulatory structure that will "streamline" (their words) recreational and medical cannabis licensing beginning January 1, 2018.

85. Under AUMA the state has been given the right to modify the original voter approved proposition with a ⅔ majority vote of the house. This is the first time that a voter approved initiative has given the state the right to change it without another initiative to replace it. I find this to be a slippery-slope whereby, for example, the ⅔ majority might someday just vote that a simple majority can carry a change in the law. I seriously doubt the constitutionality of any initiative that undermines this most basic tenet of voter approved Initiatives.

86. With the passing of AUMA we shall see what its effect will be on the medical cannabis patient. I stand prepared to exercise any and all of my constitutional rights in seeking protection for those medical cannabis patients, cultivators and processors who have been harmed should AUMA not take into account their unique needs and circumstances. From a medical cannabis patient's perspective these are the questions I feel need to be asked: 1) Will the passing of AUMA have a negative impact on patients' rights to cannabis?; 2) Will it affect the availability of medical grade cannabis?; 3) Will the price of cannabis go up to where it is now unaffordable for the medical cannabis patient?; 4)Will the opportunities to

continue research and development of cannabis genetics for specific medical conditions be limited to only those who would qualify under a for-profit regulatory framework controlled by a state government that has historically taken a laissez-faire attitude toward cannabis and its use for medical purposes?

87. Under AUMA, has the state given voice to a medical cannabis association that can speak on behalf of those who are representative of that group of cannabis buyers that is distinctly different from those that would purchase for recreational reasons? If so, who are they?

88. Since 2015, the 151 Farms at 6176 Federal Blvd has had many people from very diverse backgrounds come tour our operations. I have always treated these visitors as Friends of the Farm and hope to inspire them once they have seen what we represent.

89. If a Friend of the Farm is interested in visiting us on more than one occasion, they become a 151 Ambassador. That is, they can lead their own tour groups and help spread the word about what we do here. These relationships have spawned some remarkable personal connections that have continued to bring attention to our cause.

90. The list of 151 Ambassadors has grown. Over the years we have welcomed a large and diverse range of people to our farm who have come from all over the world. Our motto is: We Need More Gardens Not Less. Come Visit Us! Leave your Bias at the Gate and I Promise You Will Learn Something!

91. With that message we have seen politicians, members of the media, medical doctors, researchers, judges, lawyers, entrepreneurs, veterans, law enforcement, activists, teachers, students, policy makers, community leaders and more. It seems that people identify with community and appreciate a place where they can come together and feel like they can contribute and make a difference. If they have something tangible to wrap their heads around that includes a roadmap that allows them to recreate what they've seen, the possibilities are endless. At 151 Farms that has been my goal and it all starts with a plant.

92. We have had such a huge diversity of talented and motivated people come visit our farm and go on to become 151 Ambassadors that there are simply too many to list. Here are 3 noteworthy 151 Ambassadors that, due to their dedication and commitment, I would like to present as representatives of our cause:

a. Coach Don Casey, former NBA Coach and currently serving as the National Trustee Board Member for the ALS Foundation. Coach Casey has been instrumental in seeing that ALS patients who seek medical cannabis understand that many doctors support the use of cannabis as a way to improve their quality of life. I developed The Casey Cut in honor of Coach Casey as a tribute to his many years of work on behalf of ALS patients.

b. Ms. Linda Davis, Americans for Safe Access, in her tireless efforts to bring medical cannabis patients the 151 Farms message of how important it is to have organically grown, pesticide free cannabis to treat their medical conditions.

c. Sgt. Sean Major, former Marine Corps servicemember, who came to 151 Farms as the only active duty military member in the entire Department of Defense who has ever been given the authorization to treat combat related brain injuries by cultivating cannabis. Having grown cannabis prior to enlisting in the Marine Corps, Sean believed that the psychological issues he was having as a result of his tours in Afghanistan could be managed if he were allowed to cultivate cannabis while gaining accreditation from a school that taught cannabis cultivation as a post military career opportunity. Sean has continued to work tirelessly on behalf of veterans who suffer from combat related injuries so that they might have access to medical grade cannabis to treat their conditions.

93. In July 2015, Mr. Ramiz Audish came to our offices at Inda-Gro and asked if he could take a tour of our farm. Ramiz, who preferred to be called Ray, was a well-spoken, clean cut young man who had heard about what we were doing and wanted to see the operations for himself. Ray was quite complimentary of everything we were doing with both Inda-Gro and 151 Farms and suggested some ideas to improve our operations. I was interested in hearing what he had to say.

94. Ray first asked under what authority I was growing the cannabis on our site. I pointed him to the Physician's Recommendations I had posted for those personal medical cannabis needs as established under Proposition 215 and SB 420 guidelines.

95. I told Ray that in addition to the posted Physician's Recommendations, we had recently completed a cannabis cultivation application with the Outliers Collective, a duly licensed collective located in El Cajon, CA. In that process the owners of Outliers and two Sheriff's Deputies who specialize in cannabis compliance came out to our farm. I gave them a tour of our operations and, while they complimented the quality and organic nature of our cannabis, they told us they could not certify us as an approved vendor for Outliers since the City of San Diego would not grant a license for cannabis plant counts that would allow us to grow commercially at our location. With that, we were denied approved vendor status with Outliers Collective. Both Outliers and I were very disappointed, but I did feel better when, after having toured our facility, the Sheriff's Deputies told me that I was operating within Prop 215 and SB 420 guidelines.

96. Confident that I was meeting the letter of the law as a cannabis cultivator, Ray said that he felt the only other thing I lacked was a medical marijuana consumer collective (MMCC) or retail dispensary at this location. Ray told me that he had experience in owning and running these MMCC businesses. I did not have an understanding of the retail MMCC laws in San Diego, but Ray told me he was well versed in these laws. Ray explained to me that our

location was appealing to him because it was unique in that City of San Diego zoning allowed for an MMCC type of business at this location. I told him that my interests in the property were not in running an MMCC business but were in lighting and the development and expansion of our 151 Farms.

97. Ray was undeterred by my resistance and insisted that he would be entirely responsible for the MMCC business and would acquire the licensing and permits necessary to maintain compliance for it. His pitch was that the dispensary would bring more attention to what I was doing at 151 Farms and that by working together we would present to the community a sustainable, organically grown "Seed to Sale" model of what our 151 Farm represented. That concept appealed to me and with that I considered his offer under the following conditions:

a. I would first visit one of his other MMCC businesses to see for myself how it was being run. The business he took me to was in Mira Mesa and I was impressed with how well it was built out and how well it appeared to be run.

b. Ray's and my businesses would be clearly divided with separate entrances and addresses.

c. I would have nothing to do with his business because, unlike Ray, who had operated retail cannabis dispensaries, I knew nothing of what it took to be licensed and compliant for this type of business.

d. Ray assured me that his intentions were to become a long-term tenant and that he would prove his value by not interfering with my current business operations and by signing a short term, 6-month lease while he went about acquiring the necessary licensing and permits to operate his business.

e. Ray agreed to these terms and the Lease Agreement was executed on July 20, 2015 and was set to expire on December 20, 2015.

98. With our Agreement in place, Ray began operating his MMCC business, which he called Pure Meds. The following statements reference my observations and opinions of Ray and the business from July 2015 until February 2016:

a. Ray was a good tenant who paid his rent on time and never presented any problems for me as a landlord.

b. Ray was at the property daily and ran what appeared to me to be a transparent, successful and well managed business.

c. Ray had licensed and armed security with controlled access and paid attention to the details that I initially feared would detract from my Inda-Gro and 151 Farms business. The concerns I had were that the retail business would attract people who would hang around outside the business or attract criminal elements. That never happened. In fact, just the opposite occurred. Pure Meds attracted repeatable local customers who appreciated that they could acquire their medical grade cannabis products without traveling great distances or having to deal with an underground resource.

d. The operation of Pure Meds did in fact increase the interest in 151 Farms and our Inda-Gro lighting products.

e. Prior to witnessing how Pure Meds operated, I had no firsthand knowledge of how a retail MMCC would or should operate. During the course of his 6 month lease I had a chance to form some opinions that were, for the most part, positive. While the retail side of the business still did not inspire me to get involved, I was satisfied that those who had the experience and resources necessary to manage the day to day operations of the business would be an asset to me and my goals with 151 Farms.

f. When the end of the lease came up, I asked Ray if he planned on staying and what the status was on his licensing with the City. He told me that it was in process and

that he would have the license within the next 90 days. I had no reason not to believe Ray as he had been a man of his word in everything he had promised me before. In addition, I, as a landlord, did not see myself as some sort of traffic cop who was expected to make sure Ray paid all his taxes and operated in accordance with all the laws and regulations that his type of business required. If Ray did not secure the necessary operating permits I knew that the City would not allow him to operate and would shut down his business. With that, I agreed to let him stay on the property on a month to month basis for 90 days, at which time, if he had the license to operate, I would give him a 1-year lease. That was satisfactory to Ray and we continued with our relationship.

99. In February 2016 I was served with a lawsuit by the City of San Diego that charged me with running an illegal cannabis dispensary. I was very surprised to receive this lawsuit because it listed me as the owner/manager of Pure Meds and that was never the case. Had the City noticed me by letter that my tenant, Pure Meds, was not in compliance with the MMCC licensing requirements and that my property was not in an area that could ever be zoned for an MMCC Conditional Use Permit, I would have taken action and would have served Ray with an Unlawful Detainer. At the time I was served this lawsuit, Ray was no longer renting under a lease and he was certainly not in compliance with our Agreement that he operate in accordance with city rules and regulations for his business.

100. Ray was not named in that lawsuit because the City was unable to identify who the actual tenant/operator of Pure Meds was. When I showed the lawsuit to Ray, he offered to pay for my legal defense until the case was adjudicated as long as he was able to continue operations. He told me that this was not the first time he had seen this happen and that he was certain that his lawyer could get the case dismissed or obtain a negotiated settlement. He told me he would start a petition that his patients would sign asking the City

to allow Pure Meds to remain open. I accepted that offer and was prepared to see where this would go once the lawyers for both sides got together and worked out the details. In less than 30 days Ray provided me with 19 pages and some 200 signatures of patients that wanted Pure Meds to remain open. At the time I thought there might be a pretty good chance of negotiating something with the City that allowed him to stay open but of course I didn't know what would come of it since a rezoning had taken place.

101. The only way I discovered that my property had been rezoned was by my having been named in that lawsuit. Within the lawsuit it states that my property had been in an MMCC compliant zone prior to January 13, 2016 at which time the City of San Diego rezoned the property, for unknown reasons, so that it would no longer be eligible to operate as an MMCC. Prior to the rezoning neither I nor any of my neighbors that I spoke with had been noticed that this rezoning was to occur. When I requested the public information as to what notification had been given to the property owners that this rezoning was to be considered, the information I received from the city proved that there had been virtually no notice given to any of the property owners and the notices that were given talked obliquely of a general development plan that included a shopping center approximately 2 miles from our properties.

102. The City next sought a Temporary Restraining Order on me to keep me off the property. These TRO motions are usually summarily granted to the City but in my case, when I showed up to court to argue that I was NOT the owner of Pure Meds and was instead the owner of the PROPERTY and that I had just found out from the details given in that lawsuit about the rezoning issue on my PROPERTY, the Judge asked the City Attorney if that was in fact the case and the City Attorney admitted that it was. With that, the Judge asked me directly if I would be willing to cooperate with the City Attorney in identifying who the owner of Pure Meds was, to which I responded that I had no problem doing so. The

Judge then denied the TRO. I would have thought my agreeing to cooperate with the City Attorney in this matter would have satisfied the City Attorney but she and her boss were quite upset with the denial of the TRO and argued after the decision had been made that I was a threat and that the Judge should reconsider. The Judge would not alter his decision and I was able to continue operating my business while I decided what to do next with Ray and Pure Meds.

103. With the TRO having been denied, the City asked for and received a warrant to come onto the property and seize anything related to what they determined was illegal drug activity.

104. On April 6, 2016, approximately 30 armed police officers rushed onto my property and placed me and my 3 employees who were on site in handcuffs.

105. I never resisted and offered to open every door or cabinet that I had access to as they requested. I told them that had they requested a tour of the property, I would have given them one. I regularly conduct these tours and believed that I was operating in compliance with the laws as defined by Prop 215 and SB 64. Everything that the officers wanted to see within my areas of operational control was made available to them. I never denied that there was cannabis being grown and processed on my property but I had the Physician's Recommendations posted for the plants and materials on hand and believed I was operating legally within the limits set forth under these laws. With that, the officers counted and inventoried all of the items, which included company computers, that they felt they might be able to use to prosecute me should they choose to.

106. When it came to the officers gaining access into Pure Meds, I told them that I did not have a key to that area as it was sublet. When they asked me who the owner of Pure Meds was, I told them his name was Ray and I did not know his real name as I had forgotten it. The officers asked me if I could get them his real name and I told them that I could but it

would require me finding the lease I had with him which was on the computer they had just confiscated as evidence. The officer noted that the information was available on my computer and a locksmith was called to gain access into Pure Meds.

107. During the approximately 3 hours the officers were on site conducting their investigation, I pleaded with them not to kill the mother plants that had been hybridized and genetically adapted to grow in an aquaponic system. These were high CBD (to be differentiated from the more hallucinogenic THC) strains that we were developing that were showing promise in a high nitrogen system without the need for trace mineral supplements. It had taken us nearly 3 years to accomplish that task.

108. Some of the officers appeared sympathetic to what I was telling them. They admitted they had never seen an aquaponics cultivation system like ours in the past. I took the time to explain to them what our purpose was and, although they still had a job to do, I could tell they were interested in what we were doing. For example, I was asked by one of the officers how these products might work for dogs that might have seizures. Another officer told me his mother had fibromyalgia and asked if an organically grown CBD product would offer her some relief. I don't fault the officers for what happened that day. I saw them on the phone trying to see if they could get permission to avoid killing the mother plants. Whoever they were talking to, though, denied that permission and the plants were all, every single one, killed and taken in for evidence. I was heartbroken. We lost some very solid genetics that day.

109. The officers eventually removed the handcuffs and left without arresting me or anyone from my company. I was told that a Pure Meds guard was briefly detained on a weapons and cocaine charge but when they found that the gun was properly registered and it was not cocaine after all, the guard was released from custody.

110. After the officers left we were all pretty shaken up but I got everyone together and told them that we had done nothing wrong and we were going to return to our normal activities as soon as possible. With that, I invited local TV stations onto the property who were congregating outside our yard watching the police action occur. I got them to set their cameras up outside of our fish tanks and I conducted interviews so I could tell listeners our side of the story. I wanted people to know what we stood for as a 151 Farm and not see us as just another one of the illegal pot shops that were springing up everywhere and getting all the media attention.

111. The next day I got a phone call from Ray who told me he was sorry this had happened and that he wanted to resume operations as quickly as possible. He told me these raids were common practice and the normal way things were conducted until the case went to trial. He told me that these types of businesses would typically continue to run for up to another 6 months before they were permanently shut down or a settlement was reached that allowed them to continue to operate.

112. I asked him if he had, in fact, ever made an attempt to apply for an MMCC CUP and he told me that, while he had originally intended to, he never did. I told Ray that had he done what he had originally promised by applying for the CUP, he would have had a very good chance at being awarded the CUP since the zoning allowed for it at the time he began renting from me. It was the lawsuit that was filed which first informed me that my property had been eligible for a CUP and then, for whatever reason, the property was rezoned to make it ineligible for a CUP shortly before the case against me was filed. Naturally I was very upset with what Ray had put me through and was even MORE upset that his actions had reduced the value of my property if the city having rezoned my property right after Pure Meds began business made it permanently ineligible for any future MMCC business to operate.

113. Since Ray had never attempted to apply for the CUP after he told me that he would, I told him that he could no longer continue to operate his business on my property. Ray was given one week to remove his remaining possessions from the property before I disposed of them. He was not happy that I wasn't going to let him reopen. He offered me considerably more money to which I said "no" and that my decision was final. He begrudgingly accepted that and the next day he had people come and remove his remaining items. Ray never set foot on my property again.

114. After the raid, I never heard from anyone with the City who wanted any additional information from me regarding Ray. I believed that whatever information they needed they had found on my computer and they didn't need my assistance.

115. **After a couple of months the City decided to charge me** personally with exceeding the allowable plant counts by adding in the clones that I had not included in our counts because they were not rooted. I was arrested and booked into jail at which point I bailed out and got prepared for my arraignment.

116. A few days prior to my arraignment, I called the City Attorney assigned to my case and told him that I was going to plead Not Guilty based on the fact that the clones they had added into the plant counts were not viable since they had not yet rooted. He considered this and **decided to drop the charges at least for the time being** but he did reserve the right to recharge me in the future if additional information was presented.

117. I got a letter from the District Attorney stating that after a review of the evidence they had decided not to prosecute me but that the City of San Diego still held the option of doing so.

118. On March 15, 2017 I received notice that the City of San Diego would be charging me with 4 misdemeanor counts relative to my operations, **1 day before the statute of limitations would have ran.** I retained the legal services of Mr. Robert Bryson and went to

the arraignment on April 5, 2016 where *the plan was for me to plead Not Guilty* and take it to trial if necessary.

119. Prior to the day of arraignment and entering my plea, I had not seen the report or any evidence that had been used to bring these 4 misdemeanor charges against me. The City Attorney met with Mr. Bryson and me in the hallway and presented us with the case file for our review. This was the first time that I became aware that Ray had been arrested and was awaiting trial on charges of his own. From the evidence I could see that Ray's other locations had been shut down and that he had made agreements with the City that, to avoid charges, he would agree to not operate an unlicensed MMCC business within the City of San Diego in the future. Clearly with his Pure Meds operations on my property he had violated those agreements.

120. After Mr. Bryson and I had spent about 30 minutes reviewing the documents, we asked to speak to Deputy City Attorney Mark Skeels, who was handling the matter. What Mr. Skeels told us was, that since Pure Meds did not reopen after the raid, which was what usually happened, the City was willing to offer me a deal in order to settle the matter without it going to trial.

121. Mr. Skeels told me that if I would agree to forfeit the $30,000 in cash that had been seized from Pure Meds during the raid and plead guilty to one misdemeanor charge of a Health and Safety Code section HS 11366.5 (a) violation, the other 3 charges would be dropped. As Mr. Skeels explained to me, pleading guilty to this single charge was my accepting that there had been a code violation on the property and I would be on probation for 3 years to assure that I would not violate this Code again. Mr. Skeels agreed that Mr. Bryson could take some time to consider this offer.

122. After discussing with Mr. Bryson that this offer seemed reasonable providing there was language added into the plea agreement that for the 3 years I would be on probation and

because I agreed to waive my 4th amendment rights, I would maintain my Prop 215 medical cannabis cultivation rights and not be subject to what was still unknown medical cannabis cultivation limits as would be defined in Prop 64.

123. Mr. Skeels asked why I wanted that language in the Plea Agreement and I told him that I had no problem proving over the 3 year course of my probation that as a medical cannabis patient, who cultivated cannabis at my property and planned on continuing to do so, I was in compliance with Prop 215 but that, based on what I knew of the Pro p 64 law which was due to take effect on January 1, 2018, I wanted whoever was inspecting me and my property to hold me to a recreational standard that may, as the guidelines under Prop 64 were not yet finalized, conflict with a medical standard. The language in the Plea Agreement would be as much for my benefit as for that of any inspecting authority who would visit me over the course of the 3 years' probation.

124. Mr. Skeels considered this and agreed that as far as he and the City were concerned, adding language to the Plea Agreement to that effect was not a problem and that it would indeed provide for clarification of enforcement standards for those authorities who would be tasked with inspecting me and the property for Prop 215 compliance during the course of my 3 years' probation.

125. Having agreed to that, I suggested that Mr. Skeels also add language to the Plea Agreement that would include a limit of up to 4 Physician's Recommendations for those patients for whom I was growing cannabis. Mr. Skeels told us that adding language to that effect was not necessary because the Prop 215 statute didn't set a limit on Physician's Recommendations. He also told us that we simply needed to have those Physician's Recommendations available for inspection and that they had to be current. Mr. Skeels told us that all the Plea Agreement needed to state was that I would be retaining my rights under

Prop 215. With that, we agreed to the terms of the Plea Agreement and Mr. Skeels left us to await his return with the finalized Plea Agreement.

126. When he returned a short time later, Mr. Bryson and I reviewed the Plea Agreement and saw that the language we had discussed about my retaining my rights under Prop 215 had been added. With that, Mr. Skeels then reviewed every element of the Plea Agreement with us and had me initial each box that was required. Once this was completed, we went before the Honorable Judge Rachel Cano.

127. While reviewing the Plea Agreement from the bench, Hon. Judge Cano spoke to me directly and asked why the Prop 215 language had been added into the Plea Agreement. I explained that with the obvious conflicts for me between Prop 215 and Prop 64, that I, as a medical cannabis patient who cultivated cannabis at this property, needed the standard I would operate under to be defined in this agreement or it would be subject to interpretation by any inspecting authority who would visit me during the course of my 3 years' probation. Judge Cano considered this and agreed that it was a simple and straightforward solution to what she and even the City saw as a way of bringing clarity to these evolving standards. With that, she accepted the Plea Agreement and I believed we were done.

128. In a wild turn of events that I can only describe as the most duplicitous bait and switch imaginable... Within days of Mr. Skeels convincing my attorney and I through his *assurances of the terms* of our plea agreement, the City filed a *Lis Pendens* on my property (April 18, 2017 – Over 1 year after the incident took place.) and began the process of selling it as a seized property asset, which I now became aware was what I had unknowingly agreed to in the Misdemeanor Health and Safety 11336 (a) code charge to which I had pled guilty in the Plea Agreement I had entered into with the City on April 5, 2017.

129. I immediately contacted Mr. Bryson and asked if he had known that, when I agreed to enter into this Plea Agreement, that it meant I was forfeiting my building and land to the

City. That had NEVER been discussed prior to my accepting the Plea Agreement. In fact, prior to accepting the Plea Agreement, Mr. Skeels had gone out of his way to go over the Plea Agreement in detail with us and had even added the language of how I would retain my Prop 215 rights over the course of my 3 years' probation. If Mr. Skeels knew then that I was giving up my building and land under this Plea Agreement, why wasn't it brought up at that time? Both Mr. Bryson and Mr. Skeels are officers of the court. Both had an obligation to tell me that's what my agreeing to a misdemeanor guilty plea of HS 11336 (a) meant and neither one did that. In fact, the last area of refuge I would have had prior to this Plea Agreement being accepted by the court would have been if Judge Cano had mentioned to me that the language we had added into the Plea Agreement where I retained my Prop 215 rights was meaningless in light of the fact that pleading guilty to this one charge meant I was not going to own the property anyway.

130. Mr. Bryson was as shocked as I was when he realized what we had agreed to. He told me that he had no idea that losing the building and land would be the consequence of entering into that deal with Mr. Skeels. With that, he wrote me a Declaration that stated that he was not aware and had he known that my losing the building and land was the consequence of entering into that Plea Agreement with the City, he would have advised against signing it. I received that Declaration from Mr. Bryson and dismissed him from any future representation.

131. I then reached out to Mr. Skeels and asked if he was aware that my agreeing to this single misdemeanor charge meant I would be giving up my property. He told me that he was not aware that that was the consequence either, but he would look into it and get back to me. I never heard back from him.

132. I then sought out and retained new counsel with attorney David Demian of the law firm Finch, Thorton &and Baird (FTB) representing me in this matter.

133. In a phone call between Mr. Demian and Mr. Skeels that was made on speaker phone from a conference room at the FTB offices, thus allowing me to hear what was being discussed, I learned what Mr. Skeels's real position on the Asset Forfeiture matter that my Plea Agreement had represented was. Mr. Skeels informed Mr. Demian that he too was on speaker phone as there were other attorneys from his office listening in on the conversation.

134. Mr. Skeels's stated position during that call was that we had a deal in that Plea Agreement and it would stand. According to him, my only options were to elect to withdraw the Plea Agreement, after which the City would take me to trial on the 4 misdemeanor charges that I was originally charged with, or to agree to pay the City $100,000 and all charges would be dropped. What I was hearing was extortion, plain and simple.

135. Mr. Demian told Mr. Skeels that the $100,000 payment he was seeking was unacceptable and that the only thing that might work on my behalf would be to find a lesser amount in the interest of offsetting the legal fees I would have to incur in order to defend the 4 misdemeanor charges. Mr. Skeels asked what that amount might be and Mr. Demian responded with a counteroffer of $5,000, referring to that amount as a nuisance payoff that he had been authorized to submit on my behalf. Mr. Skeels rejected the counteroffer and told Mr. Demian to get back to him if and when we were serious.

136. What was clear to me during that conversation was that the City wanted a payout and what they had seized during the raid was not enough. The HS code section violation to which I had pled guilty was not widely understood. This was a new tool for the City to use to shut down illegal dispensaries and Mr. Skeels knew it. He was not willing to negotiate because he felt he didn't have to. Mr. Skeels had Mr. Demian on speaker phone in his office so he could make a point to those listening in on his side that the City did in fact have the upper hand in these negotiations and that Real Property Asset Forfeiture was a tactic they

could employ in other cases where a landlord rented to a tenant who was not licensed to run a MMCC business. At one point in the conversation when Mr. Demian questioned Mr. Skeels's authority and skills in negotiating a settlement on behalf of the City, Mr. Skeels got upset that Mr. Demian would even question his professional qualifications. Mr. Demian, sensing that he had offended Mr. Skeels, immediately began apologizing and told Mr. Skeels that he would confer with me and respond with another offer. Mr. Skeels told Mr. Demian that the new offer would need to be near the $100,000 mark or it would be rejected, and we would be wasting precious time and the property would be sold out from underneath me as the law allowed.

137. After that conversation, Mr. Demian admitted he was not the best person to represent me in further negotiations in this matter with Mr. Skeels. I needed to retain co-counsel who had experience in successfully negotiating with Mr. Skeels. They had to be able to defend me in this matter should we go to trial and that would start with them withdrawing my Plea Agreement based on my having been enticed to do enter it under fraudulent representation and incompetent counsel. With Mr. Bryson's declaration in which he admitted not knowing what the consequences of HS 11336 (a) were, I was hopeful that if the threat of withdrawing the Plea Agreement came from the right lawyer, that Mr. Skeels would want to settle the matter without going to trial. With that in mind, I engaged the legal services of attorney Stephen G. Cline in anticipation of the Plea Agreement being withdrawn and my taking this matter to trial should Mr. Skeels and I not come to terms.

138. Mr. Cline reached out to Mr. Skeels by phone and told him that unless the City was willing to settle this matter for a much lower amount than the $100,000 they were seeking, he had every intention of going before Judge Cano to request a withdrawal of the Plea Agreement. Mr. Cline was prepared to defend his request based on the fact that the Real Property (building and land) Asset Forfeiture was not listed in the records of items seized in

the raid, nor was there ever any posting by either the officers or the City Attorney that the building and land were considered part of the seized items. In addition, the TRO that the City had requested had been denied which meant that I was not party to my tenant's business operations, I had incompetent legal representation when I entered into the Plea Agreement and finally, neither Mr. Skeels nor Judge Cano had made me aware that the consequence of signing the Plea Agreement was the forfeiture of my Real Property, which was valued at approximately $500,000 based on fair market value comparisons and up to 10 times that should it ever qualify for a licensed MMCC business.

139. I did not feel that Judge Cano would react well to what Mr. Cline was prepared to present to her if we did not reach a settlement and, if Mr. Skeels could be persuaded to relax his demands, it may not be necessary to do so.

140. After consideration, Mr. Skeels suggested that the amount be reduced to $50,000. Mr. Cline told him he would convey that message to me and get back to him. I felt that $50,000 was still outrageous in light of the reasons that Mr. Cline had presented to Mr. Skeels earlier, but when I considered the potential legal fees should this matter go to trial, I told Mr. Cline to return to Mr. Skeels with an offer of $10,000 but with an authorization limit of $25,000 should an increase be necessary.

141. Mr. Skeels rejected the offer of $10,000 and said we would have to agree to an amount closer to the $50,000 they were seeking, or this would go to trial. With that, Mr. Cline provided Mr. Skeels with our best and final offer of $25,000 and advised Mr. Skeels that, should that amount be unacceptable, we were prepared to go to trial and win based on the merits of our case.

142. Mr. Skeels accepted the $25,000 offer and the matter was turned back over to David Demian at FTB for finalization of the terms and document exchange. On October 4, 2017 a Stipulation for Judgement was executed showing the listed seized items from the raid and a

$25,000 payment for full satisfaction on my Real Property, which they had listed as 6176-6184 Federal Blvd. I only own the 6176 Federal Blvd property but the Stipulated Judgement also covered the rental property I had next door.

143. On January 2, 2018 I made the $25,000 payment to the City per the terms of the Stipulated Judgement using borrowed money.

144. What I take from this is that Mr. Skeels has now set a precedent in that a City can include the Real Property of the land owner in their seized assets regardless of whether or not that landowner had anything to do with the business their tenant was operating. While he wanted as much as he could get from me, it was more important to show those other prosecuting attorneys that this was a way of forcing landlords to assure their tenants were properly licensed when it comes to an MMCC dispensary. Landlords are now going to have to be those traffic cops which means that if the tenant has a license and then loses it during the course of the tenancy, that landlord may face the same asset seizure and forfeiture actions that I did, whether or not they were aware of their tenant's actions.

LARRY GERACI

145. In late September 2016 I received a phone call from Mr. Larry Geraci. I had never met or heard of Mr. Geraci prior to that call. The purpose of Mr. Geraci's call was to inform me that he had become aware of my property from what he had seen from the Pure Meds situation and he wanted to know if I would be interested in selling him the property for the purposes of opening a licensed MMCC.

146. I told Mr. Geraci that the City had rezoned the property and that it was my understanding that it would no longer qualify for an MMCC business. Mr. Geraci told me that that was not necessarily the case and he would like me to consider what he had to say in a meeting that would be held at his office. I agreed to the meeting and met him in his office within a few days of his initial call.

147. I found that Mr. Geraci was a professional Financial Planner who operated out of nice offices in the Kearny Mesa area of San Diego. He told me that his core business was Financial and Tax Planning and that he represented clients in his professional capacity as an Enrolled Agent. Mr. Geraci was also a real estate investor/developer and one of his investments was buying specific properties in locations that can be converted into MMCC retail cannabis businesses.

148. I asked Mr. Geraci how many MMCC businesses he had in operation and he told me that he had multiple MMCC businesses whereby he would finance the purchase of the property and pay for the licensing to get the business MMCC compliant. Once completed, he would have others own and operate the MMCC business and he would get an ongoing equity position in that business. Mr. Geraci told me he preferred to remain in the background on these transactions since the perception of him being directly involved in cannabis business may harm his other business enterprises. That did not come as a surprise to me and I accepted that statement on face value.

149. Regarding the rezoning of my property, which from my understanding would now make my property ineligible for an MMCC business, Mr. Geraci told me that he had special knowledge and influence that would allow him to get my property through that process by having it rezoned back into an MMCC compliant zone and then submitting the CUP application so the MMCC could be run on that specific property. If anyone else had been telling me this, I would have not believed them but Mr. Geraci appeared to have the relationships, experience and financial wherewithal to make something like this happen. As he was a licensed financial professional who is held to the highest fiduciary standards, I was interested in pursuing these negotiations with him to see where they might lead.

150. At the time we were discussing his special relationships that would assist in getting my property rezoned to an MMCC compliant zone, I was completely unaware that the City

of San Diego, which had rezoned my property to an ineligible MMCC compliant zone in January of 2016 while they were building a case against me and Pure Meds, had, once Pure Meds was shut down, once again rezoned the area and my property in April of 2016 without notifying me or any of the other property owners in the area.

151. Mr. Geraci had to have already known this prior to our first meeting in early October 2016 that included discussing his special relationships that could have my property rezoned. He didn't need any special relations as the rezone had already occurred. That's why he knew from the moment he met me that he could get the CUP Application accepted. He just wasn't positive he could get it approved. For that reason, he lied to me about needing to get the rezoning done before he could even submit the CUP Application. Mr. Geraci was a fraud from the moment I met him. I just didn't know that at the time.

152. During that first meeting, Mr. Geraci told me that, due to the issue I had had with having rented to an illegal dispensary, I would need to sell the property to him and he would submit the CUP application in one of his employee's names, Rebecca Berry, because she had a clean record and would not be denied once the process began.

153. Mr. Geraci asked me how much I would want for the property and I told him I would agree to $800,000 as long as I got an equity position in the monthly MMCC sales that amounted to $10,000 or 10% of the net profits, whichever was greater and he agreed to that.

154. During October 2016 I met with Mr. Geraci at his office on several more occasions. We discussed in detail how, in addition to whatever he was willing to do to purchase and develop my 6176 property, I was interested in having him assist me in identifying other properties where I could expand my work with 151 Farms. Like Ray before him, I wanted him to understand that the only reason I wanted to sell the property was so that I could afford to move into a larger property. I had no interest in owning or

managing an MMCC business so if that side of the equation worked for him, within the terms and conditions we agreed to, I could stay focused on my goals with 151 Farms. It was to be a win/win situation for the both of us. Mr. Geraci agreed to that and I told him I would draft a Memorandum of Understanding (MOU) that would act as a working document to memorialize this conversation and serve as the basis of our agreement once his lawyer had prepared it.

155. We had orally agreed to, among other things, a sales price of $800,000 for the property contingent upon him obtaining the MMCC CUP approval from the City of San Diego and that was memorialized in the MOU I created and sent to Mr. Geraci. Upon approval of the MMCC CUP, the payments would be split into $400,000 for me and another $400,000 for Inda-Gro for relocation of the business. The terms for the relocation of the business were spelled out in a second working document I called the Service Contract. That Service Contract was sent along with the MOU and required that Mr. Geraci, if he were to actually acquire the property upon Approval of the CUP Application, would grant Inda-Gro the right to remain on the property at no rent until the plans were completed and accepted by the City of San Diego Development Services and he was ready to begin construction on the new MMCC. While Mr. Geraci never acknowledged either of my working documents in writing, he told me over the phone that he was fine with them and that they would be incorporated into a contract that his lawyer would prepare and I could make changes to the contract before we consummated our deal.

156. While I was waiting for his lawyer to send me the contract, Mr. Geraci asked me to come into his office on October 31, 2016. It was at this meeting that Mr. Geraci asked me to sign a City of San Diego CUP application form which listed Rebecca Berry as the qualifying applicant. Rebecca Barry was not present when I signed this **and to my knowledge I have never even met her.** Mr. Geraci told me he wanted this signed in preparation for when the

rezoning had been completed and the CUP Application could be submitted. According to him, it would not and could not be submitted until the rezoning had taken place.

157. During our phone calls Mr. Geraci told me that the terms I had outlined in the MOU and Service Agreement were acceptable and that he would have his lawyer prepare a contract that would include these terms and that a $50,000 non-refundable deposit which would not be contingent on the City of San Diego MMCC CUP approval would be paid at the time we signed that contract.

158. Mr. Geraci told me that, in anticipation of the contract, he would like to immediately begin the process of getting the property rezoned so that the CUP application could be submitted, and he could pay me the entire $50,000 as we had agreed.

159. Mr. Geraci told me that he would like me to stop by his office and sign a receipt for $10,000 which would be applied toward the $50,000 earnest money. He also told me that this signed receipt would allow him and/or his agents to begin the process of getting the City to rezone the property. The plan that Mr. Geraci had was that the rezoning might take 4-6 weeks and he did not want to pay the entire $50,000 until the rezoning had occurred and the CUP application could be submitted. This seemed reasonable to me and we set a meeting for November 2, 2016 in his office.

160. On November 2, 2016 when I arrived at the scheduled meeting with Mr. Geraci, he told me that he had already begun the initial process of getting the property rezoned and that the CUP application may be ready in as little as 2 weeks. With that, he had me sign a 3 sentence document that I considered a receipt which stated the $800,000 sales price and that I was accepting the $10,000 in a cash payment from him. He had a Notary Public certify that it was my signature on the document. What I was signing was not any sort of contract that held the terms we had discussed in my MOU and Service Agreement. It was most certainly not a Real Estate Contract as required by California law and Mr. Geraci, who held

CA Real Estate License number 01141323, knew that. During our meeting Mr. Geraci did not try to represent this as a final contract but as a receipt to get the rezoning process underway. I did not sense that he was trying to pull one over on me and felt that, in a professional capacity, he would not attempt something like that. I believed him and looked forward to seeing him make the things happen he said he and he alone had the skill sets to do. Nonetheless, when I got back to my office, I felt as though I should send him an email that would memorialize what was said to me when I signed that receipt.

161. Within hours of having signed the receipt I sent Mr. Geraci that email in which I asked him to acknowledge, in an email response, that what I just signed was not meant to be a final contract between us. Shortly thereafter I received his response stating that he had "no problem, no problem at all" acknowledging that this was not the final contract. Mr. Geraci's response to my email reassured me that he was operating in good faith and that the process, in the order he had described to me, had begun.

162. On November 15, 2016 Mr. Geraci asked me to sign another document that would allow me, as the property owner, to authorize his architect, Mr. Abhay Schweitzer, to view and copy records at the County of San Diego Tax Assessor's Office of Building Records. Signing that document requested by Mr. Geraci further led me to believe that I was the property owner until such time that the CUP Application was granted and I would sell the property to Mr. Geraci.

163. Over the course of the next several weeks I would, through phone conversations and various texts and emails, of which I have copies, inquire as to how the rezoning process was coming along. Mr. Geraci always responded that, while they were making progress, the rezoning had not yet been completed. He told me to be patient and that it would happen. He also said that he had a team working on this and that he had spent large sums of money, in all the right places, to see that the property would get rezoned. Again, I had no reason to

doubt him since he had professional credentials and fiduciary duties that I believed would have prevented him from lying. One thing, however, was certain. The original 2 weeks had expired, and I had not yet been paid the remaining $40,000 that he had promised.

164. In February 2017 I had several other parties contact me and inquire if my property was available for purchase. Those parties told me that my property was unique in that it fit the necessary requirements for an MMCC business. Each of these parties also told me that they too had special skills and connections that would ensure that this property was approved for an MMCC business. This made me wonder how many more people in the cannabis business had found out about my property. Had Mr. Geraci managed to get the rezoning done and just not told me so he wouldn't have to pay the $40,000 balance on the non-refundable deposit? Since I didn't know for sure what I had in Mr. Geraci, I told those interested in the property to submit written offers of which I received two that were worth considerably more than the offer that Mr. Geraci had made me. If I found that Mr. Geraci was not acting in good faith, I would have other offers to fall back on if the situation required it.

165. In February 2017, after still not receiving the contract that Mr. Geraci had promised me in November 2016, I demanded that he send it to me. It was becoming obvious that he was engaging in delay tactics and I wasn't sure why.

166. This got him moving and in late February 2017 I got a contract that his lawyer, Gina Austin of the Austin Law Group, had prepared on his behalf which I guess he expected me to sign without reading. This contract missed most of the elements that were in the MOU and Service Agreement, not the least of which was that in consideration for the sales price I had set, I would receive 10% of the store's monthly net profits or $10,000 per month, whichever was greater. My radar was on full alert.

167. I texted Mr. Geraci to ask if his lawyer had even read my MOU and the Service Agreement, the terms of which Mr. Geraci had agreed to include in the final contract, and he told me that she must have made a mistake and missed them in that draft. Mr. Geraci apologized and told me that he had not read the contract that Ms. Austin had prepared and that she had the working documents necessary to prepare our contract. With that, Mr. Geraci assured me that the revised version would include those terms and to expect it within a few days.

168. On March 3, 2016, I received the Side Agreement to his Contract and, while it did include more of the MOU and Service Agreement terms that Mr. Geraci and I had agreed to in our conversations, it still fell woefully short of what had been agreed to in my working documents which, per Mr. Geraci, his counsel had to work from. Ms. Austin had incorporated the 10% or $10,000 language but there was still highly prejudicial language in the Side Agreement that I found unacceptable and was in no way was in the spirit of our early negotiations. For example, Ms. Austin called the $10,000 payment "the total agreed to amount" and stated that even that would have to be returned to Mr. Geraci in the event the CUP Application was not approved. This was not going well.

169. In addition to the obvious problems I was seeing from the contracts that Ms. Austin had prepared, **Mr. Geraci was now requesting that we reduce the agreed upon $10,000 a month to $5,000 a month for 6 months until after the store had opened and they started to get some market share.** It was now apparent to me that I needed to get to the bottom of this and verify whatever it was that Mr. Geraci had been telling me. What more evidence could there possibly be showing that the monthly equity stake was an integral term of the agreement we actually made months prior!?!

170. At this point it didn't matter what Mr. Geraci told me. What the contract prepared by Ms. Austin now proffered was that the $10,000 paid by Mr. Geraci was the total deposit

amount that was going to be paid. It was apparent that no matter what, Mr. Geraci was not to be trusted and he was running the clock and using his lawyer, Ms. Austin, as tools to defraud me of my property as the terms we had originally agreed upon were no longer acceptable to him. Nonetheless I had to know the current status of my property zoning to see where I stood.

171. Around March 15, 2017 I decided to call the City of San Diego Development Services to find out for myself if my property had been rezoned back to an MMCC compliant zone or if, as Mr. Geraci kept telling me, it was still in process and the CUP had not yet been submitted. What I found out was astounding!

172. Ms. Firouzeh Tirandazi, Development Project Manager for the City of San Diego Development Services told me that my property had been rezoned to an MMCC compliant zone in April 2016.

173. Mr. Geraci had been lying to me since the beginning. When he had me sign the CUP application listing Rebecca Berry as the qualifying applicant in October 2016 he knew then that the rezoning had occurred and that he could submit the CUP Application immediately. And that's exactly what he did.

174. Per Ms. Tirandazi, the CUP Application with Ms. Berry's name on it that Mr. Geraci had me sign *was submitted on October 31, 2016, just days before I signed his receipt of the $10,000 which I was paid on November 2, 2016.* Mr. Geraci had needed me to sign that document so he could, at some point in the future, argue that the document I signed on November 2, 2016 was the one and only contract. Mr. Geraci had never intended to honor the terms to which we had agreed in my MOU and Service Agreement.

175. After my call to Ms. Tirandazi, I contacted Ms. Berry and Mr. Geraci to tell them that I had contacted her and now knew that Mr. Geraci had been lying to me all along and

that I had just discovered his fraud. Mr. Geraci contacted me by text to ask for a face-to-face meeting.

176. On March 17, 2017 in an email I sent to Mr. Geraci, I declined his request for another face-to-face meeting and stipulated that all future communications between us be in writing. I demanded that he honor the terms of our MOU and Service Agreement, that the $40,000 balance of the non-refundable $50,000 be paid immediately and that, regarding the $10,000 or 10% of the net profits, whichever was greater, we agree to use a 3rd party accountant to assure proper distribution. I required that Mr. Geraci accept these terms in writing no later than March 20, 2017 at 12:00 or I would cease any further business with him.

177. On March 21, 2017, having received no response from Mr. Geraci, I sold my property to Richard J. Martin for $2,000,000 and a guaranteed 20% equity in a new MMCC business should it be established. The non-refundable earnest money was $100,000, which I have long since expended to use to pay legal fees I had incurred in the matter with Mr. Geraci. Unlike Mr. Geraci's so called contract, the sales contract with Mr. Martin was done on a notarized Commercial Property Purchase Agreement with an Addendum that acknowledged my MOU and the terms I set forth within it.

178. Also on March 21, 2017, after selling the property to Mr. Martin, I went to Development Services to meet with Ms. Tirandazi in person to see if the CUP application that they were processing with Ms. Berry's name on it could be transferred to me or an assignee of mine. Ms. Tirandazi told me that the current CUP Application they had in process for Ms. Berry had been signed by me and that the only way it could be reassigned was if Ms. Berry relinquished her rights to it or a court ordered them to reassign it. I knew that getting Mr. Geraci and Ms. Berry to relinquish their rights to the current CUP application in process was not an option so I asked Ms. Tirandazi if I could submit another

CUP application to run concurrent with the application in Ms. Berry's name. This way my application would already be in process once the City figured out that neither Mr. Geraci nor Ms. Berry had a Grant Deed in their name. Ms. Tirandazi told me that the City of San Diego's policy was that only one CUP application per address would be accepted and that, as Ms. Berry's was already being processed, I could not submit one at that time. Since I now knew that Mr. Geraci and Ms. Berry were not going to get final approval on the CUP without a Grant Deed in their name, I had to consider my legal options.

179. On March 22, 2017 I received a letter from Mr. Geraci's new attorney, Michael Weinstein, informing me that as a result of my having contacted Ms. Tirandazi to see about having Ms. Berry's CUP application reassigned, Mr. Geraci had instructed Mr. Weinstein to file a *Lis Pendens* on my property and a lawsuit against me seeking to have me honor what Mr. Geraci now considered to be the "end all be all contract" I had signed with him on November 2, 2016. While Mr. Weinstein threatened me with the great harm that would befall me should this matter go to trial, he also encouraged me to negotiate with them as he stated there was still time to do so. Because I had not received a response from Mr. Geraci by the deadline I had given him of March 20, 2017 and having subsequently sold the property to Mr. Martin, I had no intention of negotiating anything further with either Mr. Geraci or Mr. Weinstein.

180. Until I could resolve the CUP issue with the City of San Diego for what would now be the new property owner, Mr. Martin, I needed to see if there was a way to maintain the status of Ms. Berry's CUP application, so I wouldn't waste time submitting another application after Ms. Berry's application was deemed incomplete because the Grant Deed would never be in her or Mr. Geraci's name. As far as my hope to negotiate settlement involving Mr. Geraci relinquishing his rights to Ms. Berry's CUP, telling Mr. Weinstein that I had sold the property to Mr. Martin was not a good strategy.

181. On May 9, 2017 in an email Mr. Weinstein suggested a settlement whereby Mr. Geraci would, among other things, increase his offer to purchase the property to $925,000 and pay the $50,000 non-refundable earnest money but I would have no equity position in the new dispensary and, while Ms. Berry's CUP application was being processed, I would agree to cease all cannabis related cultivation activity on the property within 2 days of signing this agreement.

182. I found the May 9, 2017 settlement offer confusing. Why did Mr. Geraci care if I was cultivating cannabis on site? That had never come up before and now it was a condition of the "improved" settlement offer. Beyond that, Mr. Geraci proved that no matter who he had representing him, he was not to be trusted. There was no mention of the 10% equity position with a $10,000 a month guaranteed minimum that was preeminent in our original negotiations. What Mr. Weinstein's settlement offer suggested to me was that, while his client was at his core a snake, something else was motivating him to be concerned about what my current activities entailed. I had seen and heard enough.

183. On May 12, 2017 I filed a *Pro Se* cross complaint thinking that that might convince Mr. Geraci to back down from what, in my mind, was an unwinnable situation for him regarding the purchase of my property. It did not, however, have that effect so I requested that David Demian represent me and take the case over.

184. On June 29, 2017 I filed a Notice of Substitution naming David Demian as new counsel on my behalf.

185. On September 28, 2017 Mr. Weinstein filed a Notice of Demurrer/Motion to Strike which was his attempt to limit the underlying agreements of my case to the single 3 sentence document I had signed on November 2, 2016 as the only document that should be

considered. He did not want anything else that transpired between me and Mr. Geraci to be considered.

186. On October 24, 2017 Judge Wohlfield issued a Tentative Ruling denying the Demurrer which was good news for me since my supporting documents against Mr. Geraci were primarily supported by the written communications that occurred after the November 2, 2017 document was signed.

187. With the Demurrer having been denied, my next concern was that the likelihood of Mr. Geraci getting the property after all the evidence was heard had to be of grave concern to him. If he were not to acquire the property, then all the work he was doing on the CUP application would be for naught and he would suffer financially. It is not unreasonable to think that Mr. Geraci might try to cut his losses by having Ms. Berry's CUP, which he completely controlled, purposely denied by instructing his agent(s) to create a scenario wherein that would be the result. In other words, if Mr. Geraci can't have this MMCC dispensary, no one else will either.

188. Should Mr. Geraci decide to sabotage Ms. Berry's CUP application, it would create a huge financial loss for both me and for Mr. Martin. I had to do something to protect my interests in the property by seeking protection from the court. By having the court appoint a Receiver who would give them oversight into what was happening on Ms. Berry's CUP, it would assure that the CUP process is followed and maintained. If Mr. Geraci felt he was going to prevail on the Breach of Contract claim he had against me, he would have not been opposed to my seeking a Temporary Restraining Order against him that would afford me this protection. That was not the case.

189. On December 7, 2017 Mr. Demian had a Writ of Mandate seeking to shorten the time to trial and a Temporary Restraining Order hearing whereby I would be protected if Mr. Geraci decided it was in his best financial interests to sabotage Ms. Berry's CUP as

opposed to losing the Breach of Contract case he had against me now that his Demurrer had been denied and all of the evidence subsequent to the November 2, 2017 document would come into consideration. We believed that while our request for a Writ of Mandate may not be granted, the TRO would be granted.

190. Mr. Demian had 4 or 5 relevant arguments contained within his Points and Authorities in his TRO motion that were cogent and compelling to the court in granting the TRO (none of the *relevant arguments towards granting the requested relief* were apparently raised by him). Furthermore, Mr. Weinstein should have had no opposition to our request for a TRO if Mr. Geraci actually believed he would prevail in the Breach of Contract suit against me and he would be awarded the property under the terms of the November 2, 2017 document I signed. If, on the other hand, Mr. Geraci actually believed that he would lose the Breach of Contract suit now that all the evidence would be heard then Mr. Geraci knew he had to vigorously oppose our request for a TRO or he would not have an opportunity to sabotage Ms. Berry's CUP which was in process with the City of San Diego Development Services and in his complete control.

191. In making his decision on the TRO motion, Judge Wohlfield listened to the oral arguments raised by Mr. Weinstein and Mr. Demian. Mr. Demian only raised the least relevant point in his oral arguments before Judge Wohlfield, stating that we should be granted the TRO based entirely on the constitutional protections that are fundamental to property owners maintaining control of their property. The only reason Mr. Demian raised that singular point and not the others is because this was the point he was most familiar with from having successfully argued it in a similar case for another client. Mr. Demian was not prepared to argue the other, more pertinent issues relevant to my case in front of the court. Had Mr. Demian's oral arguments included a reference to Judge Wohlfied's previous ruling on the Demurrer and shown the real harm in not having the TRO for his client's court

supervised protection, it would have been simply a matter of Judge Wohlfield supporting his previous position in denying the Demurrer and looking at ANY of the supporting evidence that Mr. Demian would have asked him to reference prior to making his decision. Mr. Demian did none of that while Mr. Weinstein successfully argued that the TRO was not necessary as it could potentially harm Ms. Berry's CUP process and that Mr. Geraci was going to win the Breach of Contract case based solely on the November 2, 2017 document that I had signed.

192. Judge Wohlfield denied the TRO on the grounds that Mr. Demian had not provided him with sufficient evidence to warrant the court's protection of me prior to this matter being settled in trial.

193. Immediately after the hearing, Mr. Joe Hurtado who, as my litigation investor, was present to ensure that both my and Mr. Martin's legal interests were being protected, met Mr. Demian in the hallway outside the courtroom. Mr. Hurtado was livid. Having the TRO denied due to the incompetence Mr. Demian had shown in the courtroom was egregious. For Mr. Demian not to bring the essential elements of the motion to Judge Wohlfield's attention while Mr. Weinstein successfully argued their Breach of Contract case was, according to Mr. Hurtado, "the worst performance he had ever seen by a lawyer!" Mr. Demian looked down at his shoes and mumbled something about how he had tried and had to leave to go to another meeting.

194. After Mr. Demian left, Mr. Hurtado called to tell me what had happened. I was livid too. There was no excusing Mr. Demian's performance. I immediately called Mr. Demian to hear for myself what he felt went wrong and he told me that "it did not go as he had hoped." With that Mr. Demian told me he thought this would be a good time for me to seek alternative counsel and informed me he would be withdrawing from the case.

195. On December 12, 2017, representing myself, I had a hearing in front of Judge Wohlfield for a Motion to Reconsider his ruling on the TRO. While I am not an attorney, I was fully prepared to argue the supporting elements of the motion that Mr. Demian had not raised and felt it would give the court the opportunity to see why I had an immediate interest in seeking court supervised protection through the TRO.

196. I arrived at the hearing and was immediately told by Judge Wohlfield, before I could even speak, that he was denying my Motion for Reconsideration on procedural grounds. I was not allowed to say anything. Mr. Weinstein applauded the denial stating that the Writ of Mandate was due to be heard on January 26, 2017 and having a TRO granted prior to that hearing was unnecessary. What I was not given the opportunity to say was that the reason I was there and representing myself was that if the court didn't intervene on my behalf immediately, the harm that Mr. Geraci could cause me would be done before that hearing.

197. When I walked out of the courtroom I felt like the world was closing in around me. I started feeling dizzy and had a hard time standing or even speaking. I thought it was temporary but since I was prone to seizures, I decided to go the hospital and have myself checked out. I did and was told was that I had suffered a Transient Ischemic Attack (TIA). A TIA is a mini-stroke which is caused when stress creates loss of blood to the brain. I am hoping I don't ever have another one of these as I felt helpless in its grasp.

198. I did not agree with Judge Wohlfield's decision. I did not feel that he had considered the elements which supported my urgency to be granted the TRO. In the interest of protecting myself from the harm Mr. Geraci was capable of inflicting on me, I had no choice but to seek an Appellate Court ruling on my TRO motion wherein they would consider all the facts and supporting evidence that Judge Wohlfield had not considered when denying me that protection.

199. On December 18, 2017 I filed a Notice with the Court that I will be appealing Judge Wohlfield's decision and will be requesting that the matter be expedited due to its urgency.

200. With everything I have been going through legally, the stresses that I find myself under have affected my health and those opportunities that I might have pursued for myself, my loved ones and my employees. I no longer sleep through the night and have anxiety attacks that are difficult to manage. I have had heart palpitations. I find that my focus and attention to the details necessary to run my business have suffered. My personal and professional relationships are in jeopardy.

201. In addition to the legal issues I'm dealing with, I have tried to maintain my Inda-Gro lighting business by introducing a new LED Grow light to our lineup for which I have applied for a provisional patent. Developing this new light and the software and controls that will run it have been somewhat cathartic in that it takes my mind off of the legal issues I'm confronting but by no means am I able to give Inda-Gro the attention it deserves when I'm consumed with the stresses I face daily as a result of Mr. Geraci and the pressure he has put on me.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 1-20-18

DARRYL COTTON

I, DON CASEY, hereby declare as follows:

I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.

1. In my career, I have been a collegiate basketball coach at Temple University, an NBA coach for the Los Angeles Clippers and the New Jersey Nets. I have also worked as an assistant coach with the Chicago Bulls (1982–1983) and Boston Celtics (1990–1996).
2. From 1993-2000 I was the vice-chairman of the President's Council on Physical Fitness and Sports and was personally **appointed by President Clinton.**
3. Currently I am a board member and National Trustee for the ALS Foundation[1].
4. After meeting and befriending Mr. Cotton, he has been working extensively on developing a very specifically genetically engineered strain of cannabis designed for those suffering from ALS.
5. He is calling this strain the "Casey Cut" as a tribute to my mother who died of ALS in 1969; it was a joint endeavor to help those suffering from this neurodegenerative disease.
6. Because of Darryl's efforts to aid those with ALS, I strongly support him and 151 Farms. I have brought ALS patients to whom Darryl has provided cannabis products at no charge in an attempt to alleviate their pain and suffering.
7. The goal of developing a highly concentrated cannabidiol strain of cannabis has the purpose of helping alleviate the pain and adverse effects ALS patients contend with while working to help repair the underlying neurodegenerative conditions that these patients suffer from.

[1] **Based in Washington, D.C., the ALS Association coordinates the federal and state advocacy programs, works directly with Congress, the White House, other federal agencies and other national organizations, and provides training and support for ALS Association advocates.**

and the employees that worked here. Darryl relieved me of those concerns when he told me that with the Geraci purchase we not only would we have a good deal on the property but that because Geraci was involved in other real estate ventures he would help to make us aware of a larger property that would serve to meet our future needs. Sadly, that has not been the case.

10. The stresses that the failed Geraci negotiations and subsequent litigation have put Darryl under have been indescribably hard to watch.

11. I have seen Darryl go from a happy, outgoing person to one who at times will stare into space and mumble to himself. He is short tempered and not available to those who used to be closest to him.

12. He spends most of his days and even nights at the office trying to fix what he sees as beyond his control.

13. He is fearful of losing everything he has worked for and nothing anyone says or does can bring him any consolation. Frankly, it is a horrible thing to watch and it has led to us not having much of a relationship any more.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 1/20/18

Shawna Salazar

I, SEAN MAJOR, declare as follows:

1. I was a sergeant in the United States Marine Corps. I served from 2009 to 2016 including a tour in Afghanistan.
2. I suffered 4 major traumatic brain injuries while in the service and currently suffer from PTSD.
3. Currently, I am prescribed more than 20 different variations of pills. Of all the medications, I find the holistic approach to reap the most benefits. I find far more relief in medical grade cannabis geared towards increasing the yield of cannabinoids proven to have a multitude of medical benefits rather than just high THC to get people "high." This type of medicine is what I see as the most promising future area for further medical and therapeutic research.
4. I believe high-CBD medical cannabis is safer and more effective for veterans' recuperation than pharmaceutical options, and both I, and Darryl Cotton want to raise awareness and foster change.
5. In October 2015 I became the first, *and to-date only*, active duty Marine to be approved to use cannabis to treat my medical conditions. Since being granted an approval to use cannabis cultivation as a way to help combat the stresses that I have dealt with after having returned from active service I have been devoted to spreading awareness.
6. Currently, I am in production of a documentary television program that is to be distributed through Netflix.
7. I have had multiple news outlets write articles about me and I speak nationally about organically grown cannabis, the Veteran community, and the positive benefits of cannabis on medical/psychological conditions that affect our wounded warriors.
8. I became acquitted to Darryl Cotton and 151 Farms after hearing the positive things Mr. Cotton is doing in developing sustainable gardens that combine healthy foods to be donated to the community with hops for San Diego's vibrant beer community and medical grade

cannabis for people like myself with legitimate medical needs that are not being adequately addressed by big pharmaceutical companies.

9. I reached out to Darryl and 151 Farms as a way to get involved with their work in growing medical cannabis for those who require it.

10. I have seen first-hand the care Mr. Cotton puts into his passion, which is helping people understand and receive, natural, non-pharmacological healing.

11. Mr. Cotton uses a sustainable method of using a "closed system" irrigation involving fish, to plants (cannabis and vegetables) and he donates the grown food back to poor communities in San Diego.

12. For all the above reasons I see what Mr. Cotton is doing as a service to his community and he is setting an example to the rest of the state on how card-carryings medical recommendation patients should be prioritized while also being socially engaged and aware.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: January 22, 2018

/s/Sean Major
Sean Major

I, Cindy Jackson, hereby declare as follows:

I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.

1. I have worked as a bookkeeper for Darryl Cotton since 1997. In that time, I have seen him grow from a small, sole proprietor, electrical contractor employing around 6 employees to becoming an incorporated, Union-shop employing more than 90 electricians and a successful equipment rental company.
2. When the economy slowed down in the mid-2000s the need for both companies' products and services dwindled. As a result, Darryl sold off the rental equipment and began to focus on his other passion: plant lighting.
3. In 2010, Darryl created Inda-Gro, and became a manufacturer of induction grow lights. His focus was on creating lights and controls to improve plant response in both quality and yield.
4. This company was especially important to him as it relates to cannabis cultivation since he has needed it to combat some of his own personal medical conditions.
5. In addition to being a businessman of the highest ethical standards, Darryl has always been interested in patients' rights and their access to medical cannabis. It is for this reason he has invested countless hours and money into seeing that all those who require fresh food and medical grade cannabis have the tools and the legal resources to do so.
6. Having known Darryl for as long as I have, I can honestly say that the Darryl I used to know is not the same person that I see today.
7. Ever since Darryl met Larry Geraci, he was led to believe that the purchase of the property at 6176 Fed. Blvd. would help Darryl expand operations and pursue greater opportunities.
8. The current legal entanglements with Mr. Geraci have caused Darryl and those of us who have been loyal to him and his causes stresses that are impossible to fully describe.

9. These extreme stresses, brought on by this litigation, are causing Darryl great physical, emotional, and financial harm that affects his ability to conduct business or plan on future endeavors. If there is any remedy that the court might provide to protect Mr. Cotton and his rights within the law, I would pray that the court do so.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 1/22/18

Cindy L Jackson

Cindy Jackson

I, James Whitfield, hereby declare:

1. **I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.**
2. I am 67 years old, a Navy veteran and I served my country for 20 years, 3 months and 14 days. As a result of my military service, I suffer from severe back, neck and leg pain.
3. Pharmaceutical drugs have not been at all useful in the repair or recovery of my painful conditions.
4. The one thing that does provide me with a great deal of relief is the regular use of organically grown medical cannabis which I began using rather than the opiates that had been prescribed to me. All the painkillers I was given were addictive and kept me from being able to maintain a solid and consistent coherency.
5. I have known Darryl Cotton and 151 Farms for nearly 20 years now. I support their ongoing efforts to educate others on the importance of having fresh food and cannabis available to those who seek it.
6. It has been extremely important for me to have access to fresh food and genetically specific cannabis to help alleviate my pain and suffering. As such, cannabis remains an important lifeline for me on a daily basis.
7. I fully support Darryl Cotton and his efforts to promote laws, policies and regulations that serve to protect patients' rights and access to medical-grade cannabis as a treatment for medical, physical and psychological conditions.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 1/18/18

James Whitfield

I, Michael Scott McKim, hereby declare:

1. **I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.**
2. I am a San Diego native.
3. I am a heavy equipment operator and have been a cannabis farmer for 20 years.
4. I have been the senior farm manager at many licensed mid-to-large cannabis farms in Northern California. As such, I have gained tremendous insight into the evolving business of cannabis as well as how the plant is grown and processed.
5. I left Northern California to look for likeminded farmers that value organically grown plants that would not potentially harm the medical cannabis patient as I became aware that the industry is becoming increasingly about making a profit and that plant quality and patients' needs are no longer priorities.
6. I was introduced to Darryl Cotton and 151 Farms in August 2017. I was so impressed with his passion, education and vision that I immediately offered to help him in any way I could.
7. Darryl has worked tirelessly in promoting these urban farms as a way to educate the community about the benefits of organically grown food, hops and medicine.
8. Darryl is a man of his word and he is driven by a sense of purpose that you rarely see in people. It is his vision to expand 151 Farms to larger markets that has given me a good sense of my own future opportunities.
9. I can see that Darryl is in a stressful legal battle with someone who apparently seeks to take advantage of Darryl by acquiring his property and benefitting from the notoriety that Darryl has created with 151 Farms in the urban farming community.
10. Recently Darryl has become extremely stressed out and not as available as he used to be. Clearly something must be done and I hope that there are legal mechanisms that can protect Darryl and those of us who share his passion and dreams.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 1-20-18

Michael Scott McKim

I, Cheryl Morrow, hereby declare:

I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.

1. I am Editor-in-Chief of the San Diego Monitor News and have proudly been a consistent community supporter for 27 years. I have witnessed numerous valued activities with 151 Farms personally and have become a strong advocate.
2. Since Darryl Cotton and 151 Farms have come to my awareness, I have frequented the farm and have recommended the farm's usage to many San Diego residents with health issues. It only makes sense to support a system that gives alternatives of fresh food and environmental solutions as well as promoting health benefits to a community that has been ravaged by poor health options and poor food options. The public has grown dependent on our sound wellness options in pursuit of a healthier lifestyle and I have knowledge of these options as an urban garden advocate along with my many years in the cosmetics industry.
3. I have grown to trust Darryl Cotton with his superior knowledge on medical cannabis law and I respect his abiding by state and local government requirements. Ethically speaking, I feel that 151 Farms is the best model in the country and should be considered a model for all cannabis endeavors. Individuals who seek interest in this industry should seek out what Darryl Cotton has done with his undying courage and extremely time-consuming devotion.
4. I have seen many changes in growing techniques over the last few years and 151 Farms is the product of many farms that are adding value to their communities all over the world. I have seen people from abroad take tours of the farm who have been astounded by 151 Farms' sophistication while delivering compassion for its patients.
5. It is obvious that the legal actions have taken a toll on Darryl's passion regarding the day to day operations of the farm. However, Darryl is a model citizen in my opinion. My entire family has great respect for those who roll up their sleeves to be a part of the solutions and

not just problems. 151 Farms is a community asset. I have gained a wealth of knowledge about my own health preservation, so in saying all of this… God helps those who help themselves.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 1-22-2018

/s/ Cheryl Morrow
Cheryl Morrow

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	

Remove Properties and Personal Information

OK | Cancel | Apply

Exhibit
2

Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Fax: (619) 229-9387

Plaintiff *Pro Se*

2020 MAY 13 PM 2:18
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual,

Plaintiff,

vs.

CYNTHIA BASHANT, an individual; JOEL WOHLFEIL, an individual; LARRY GERACI, an individual; REBECCA BERRY, an individual; GINA AUSTIN, an individual; MICHAEL WEINSTEIN, an individual; JESSICA MCELFRESH, an individual; and DAVID DEMIAN, an individual

Defendants.

CASE NO.:3:18-cv-00325-BAS-MDD

PLAINTIFF'S FIRST AMENDED COMPLAINT FOR:

1. DEPRIVATION OF CIVIL RIGHTS (42 U.S.C. § 1983)
2. DEPRIVATION OF CIVIL RIGHTS (42 U.S.C. § 1983)
3. DECLARATORY RELIEF
4. PUNITIVE DAMAGES

Related Case: 20CV0656-BAS-MDD

DEMAND FOR JURY TRIAL

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Plaintiff *Pro Se* Darryl Cotton ("Plaintiff," "Cotton" or "I") alleges upon information and belief as follows:

INTRODUCTION

1. This action is a collateral attack on a state court judgment issued by Judge Joel R. Wohlfeil in *Cotton I*.[1]

2. "Under California law, the 'well-settled rule [is] that the courts will not aid a party whose claim for relief rests on an illegal transaction.'" *Singh v. Baidwan*, 651 F. App'x 616, 2-3 (9th Cir. 2016) (quoting *Wong v. Tenneco, Inc.*, 702 P.2d 570, 576 (Cal. 1985) (in bank)).

3. "A contract to perform acts barred by California's licensing statutes is illegal, void and unenforceable." *Consul Ltd. v. Solide Enterprises, Inc.*, 802 F.2d 1143, 1148 (9th Cir. 1986).

4. *Cotton I* was a breach of contract action filed by Lawrence Geraci against Cotton.

5. Geraci and Cotton reached an oral joint venture agreement (the "JVA") to develop a cannabis dispensary at Cotton's real property (the "Property").

6. However, Geraci had no intention of honoring his agreement with Cotton. In fact, Geraci could not honor his agreement with Cotton because he had been repeatedly sanctioned for his owning/management of illegal marijuana dispensaries and, consequently, is barred as a matter of law from owning a cannabis dispensary (the "Illegality Issue").

7. To get around the Illegality Issue and still own the cannabis permit at the Property, Geraci applied for a cannabis permit at the Property with the City in the name of his receptionist, Rebecca Berry (the "Berry Application").

8. In the Berry Application, Berry certified under penalty of perjury she is the sole owner of the cannabis permit being sought (the "Berry Fraud").

9. At trial in *Cotton I*, Geraci testified he instructed Berry to submit the Berry Application.

10. At trial in *Cotton I*, Berry testified she made the certifications knowing they were false.

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[1] "*Cotton I*" means *Larry Geraci vs Darryl Cotton*, San Diego County Superior Court, Case No. 37-2017-00010073-CU-BC-CTL.

11. Austin, as Geraci's cannabis attorney and responsible for the Berry Application, testified in *Cotton I* that it is not unlawful for Berry to have submitted the Berry Application with false statements.

12. The JVA had a condition precedent, the approval of a marijuana dispensary at the Property

13. *Cotton I* was filed by attorney Michael Weinstein of Ferris & Britton without probable cause.

14. When Cotton accused Weinstein of being an unethical attorney, Wohlfeil admonished Cotton stating from the bench that he does not believe that Weinstein is even capable of acting unethically.

15. Wohlfeil stated that the basis of his belief is based on the fact that both he and Weinstein had started their legal careers at the same time and from the years of Weinstein having practiced before him when he became a judge.

16. Unfortunately for Wohlfeil, Weinstein ***is*** an unethical attorney that cares more about avoiding liability for filing a malicious prosecution action than betraying Wohlfeil's blind trust in him.

17. The *Cotton I* judgment is void for being procured via a fraud on the court, the product of judicial bias, and because the alleged contract has an unlawful object and is therefore illegal and cannot be enforced.

18. This action will force the judge overseeing this matter to choose between exposing the unethical actions of at least two judges and numerous attorneys or to enforce an illegal contract that rewards a drug dealer for seeking to acquire a cannabis permit under fraudulent pretenses and filing a malicious prosecution action.

19. Cotton hopes that the presiding judge in this matter will not retaliate against Cotton for seeking to protect his rights.

20. Cotton has painfully come to learn that judges instinctively protect other judges because they operate from the assumption that a pro se litigant making allegations of bias and prejudice after a jury trial are just sore losers. And 99.99% of the time they are probably right.

21. However, that probability does not give a judge the right to violate their judicial oath and not vet the facts and arguments they are presented with.

22. In complete candid honesty, Cotton has been fighting for over three years to vindicate his rights and he is simply disgusted and exhausted of hearing that he needs to be subservient and denigrate

himself before judges even when they violate Cotton's basic rights because they assume he is a pro se "conspiracy nut" litigant.

23. Cotton continues pushing forward, trusting not in the ridiculous notions of Justice or the Rule of Law (this case proves those things do not exist), but because he knows that if he keeps filing lawsuits against the unethical attorneys and the judges who have objectively shown bias against Cotton as a pro se litigant that he will eventually get the attention of the media.

24. Then, fear of liability will force a judge to finally expose Wohlfeil for the biased judge that he is. A judge who ruined Cotton's life because he chose to trust Weinstein rather than do the job he is paid to do and apply the law to the facts which he had been presented with.

JURISDICTION AND VENUE

25. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§§ 1331, 1343(3), 2283, and 18 U.S.C. § 1964 which confer original jurisdiction to the District Courts of the United States for all civil actions arising under the United States Constitution or the laws of the United States, as well as civil actions to redress deprivation under color of state law, of any right immunity or privilege secured by the United States Constitution.

26. This action is brought pursuant to 42 U.S.C. §§ 1983 to redress the deprivation under color of state and/or local law of rights, privileges, immunities, liberty and property, secured to all citizens by the First, Fourth and Fourteenth Amendments to the United States Constitution, without due process of law.

27. Venue is proper in this Court because the events described below took place in this judicial district and the real property at issue is located in this judicial district.

PARTIES

28. Cotton is, and at all times mentioned was, an individual residing within the County of San Diego, California.

29. Cotton is, and at all times material to this action was, the sole record owner of the commercial real property located at 6176 Federal Boulevard, San Diego, California 92114 ("Property").

30. Upon information and belief Defendant Geraci is, and at all times mentioned was, an individual residing within the County of San Diego, California.

31. Upon information and belief, Defendant Berry is, and at all times mentioned was, an individual residing within the County of San Diego, California.

32. Upon information and belief, Defendant Gina Austin ("Austin") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

33. Upon information and belief, Defendant Michael Weinstein ("Weinstein") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

34. Upon information and belief, Defendant Jessica McElfresh ("McElfresh") is, and at all time mentioned was, an individual residing within the County of San Diego, California.

35. Upon information and belief, Defendant David Demian ("Demian") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

36. Upon information and belief, Defendant Joel Wohlfeil ("Wohlfeil") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

37. Upon information and belief, Defendant Cynthia Bashant ("Bashant") is, and at all time mentioned was, an individual residing within the County of San Diego, California.

38. Cotton does not know the true names and capacities of the defendants named DOES 1 through 10 and, therefore, sues them by fictitious names. Cotton is informed and believes that DOES 1 through 10 are in some way responsible for the events described in this Complaint and are liable to Cotton based on the causes of action below. Cotton will seek leave to amend this Complaint when the true names and capacities of these parties have been ascertained.

FACTUAL ALLEGATIONS

I. Background

A. Geraci is an intelligent and highly sophisticated businessman who has been sanctioned at least three times for his ownership/management of illegal marijuana dispensaries.

39. Geraci has approximately 40 years of experience providing tax services and has been the owner-manager of Tax & Financial Center, Inc. ("Tax Center") since 2001.

40. Tax Center provides sophisticated tax, financial and accounting services.

41. Geraci has been an Enrolled Agent with the IRS since 1999.

42. Geraci was a California licensed real estate salesperson for approximately 25 years from 1993-2017.

43. Geraci has been sued by the City for his ownership/management of at least three illegal marijuana dispensaries (the "Illegal Marijuana Dispensaries").

44. Geraci settled all three cases, collectively paying fines in the amount of $100,000.

45. Geraci did not "coincidentally" lease three real properties to the Illegal Marijuana Dispensaries; he was an operator and beneficial owner. *See, e.g., City of San Diego v. CCSquared Wellness Cooperative*, Case No. Case No. 37-2015-00004430-CU-MC-CTL, ROA No. 44 (Stipulated Judgment) at 2:15-16 ("The address where the Defendants were maintaining a marijuana dispensary business at all times relevant to this action is 3505 Fifth Ave, San Diego, CA 92103").

B. State and City Cannabis Laws and Regulations

46. It is against State and City laws and regulations to apply for a cannabis license or permit in the name of a third party who knowingly and falsely states in the application that they are the applicant for the cannabis license and/or permit being sought.

47. It is against the public policy of the State and City to issue cannabis licenses or permits to individuals with a history of engaging in illegal commercial marijuana activity.

48. It is against the public policy of the State and City to issue cannabis licenses or permits to an applicant who seeks to acquire a license or permit via unlawful means.

49. As an example of applicable State law when the JVA was formed, California Business and Professions Code ("BPC") § 19323, amended by 2016 Cal SB 837 and effective June 27, 2016, mandated the denial of an application for an cannabis license if the applicant had, *inter alia*, purposefully omitted required information, made false representations, been sanctioned for unauthorized commercial marijuana activity in the three years preceding the application, or failed to comply with local ordinances.

50. As an example of applicable City laws/regulations, the San Diego Municipal Code ("SDMC") prohibits the furnishing of false or incomplete information in any application for any type of license or permit from the City. SDMC § 11.0401(b) ("No person willfully shall make a false statement or fail to

report any material fact in any application for City license, permit, certificate, employment or other City action under the provisions of the [SDMC].").

51. Further, SDMC § 11.0402 provides that "[w]henever in [the SDMC] any act or omission is made unlawful, it shall include causing, permitting, aiding or abetting such act or omission."

52. SDMC § 121.0311 states as follows: "Violations of the Land Development Code shall be treated as ***strict liability offenses*** regardless of intent."[2]

53. Thus, applying for a cannabis permit or license, or aiding a party to apply for same, and willfully making a false statement in the application is illegal regardless of intent.[3]

C. Gina Austin

54. Attorney Gina Austin attended the Thomas Jefferson School of Law and was admitted to the California Bar on December 1, 2006.

55. Austin, with approximately two to three years of experience as an attorney, founded her law firm ALG in 2009.

56. Austin, in her own words, is "an expert in cannabis licensing and entitlement at the state and local levels and regularly speak[s] on the topic across the nation."[4]

57. Austin has worked on at least 50 conditional use permit applications with the City.

58. Austin has been the single most successful attorney in the City in aiding her clients acquire cannabis permits.

59. Austin's success is not because she is a legal genius, but because she engages in and ratifies unlawful actions against the competition, such as filing sham lawsuits like *Cotton I.*

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[2] The Land Development Code consists of Chapters 11 through 14 of the SDMC (encompassing §§ 111.0101-1412.0113). (SDMC § 111.0101(a).)

[3] *See City of San Diego v. 1735 Garnet*, LLC, D071332, at *16 (Cal. Ct. App. Oct. 30, 2017) ("[I]n a recent case in which a land owner who leased property to a marijuana dispensary was sued for violations of a Los Angeles Municipal Code (LAMC) section similar to SDMC section 121.0302(a), the appellate court concluded the land owner's argument that he lacked knowledge of the marijuana dispensary and thus should not be held liable was meritless, when the violation of LAMC section 12.21A.1(a), was a ***strict liability offense***. [Citation.] The same is true here. The terms of the SDMC specifically provide that violations of the Land Development Act are to be treated as '***strict liability offenses***.' (SDMC, § 121.0311.)").

[4] *Razuki v. Malan,* San Diego County Superior Court, Case No. 37-2018-0034229-CU-BC-CTL, ROA 127 (Declaration of Gina Austin) at ¶ 2.

II. The November Document and the November 3, 2016 Phone Call

60. In early 2016 Geraci contacted Cotton to purchase the Property because it potentially qualified to operate a cannabis dispensary.

61. In good faith, Cotton engaged with Geraci in preliminary due diligence.

62. On October 31, 2016, Geraci, without Cotton's knowledge or consent, had Berry submit the Berry Application.

63. On November 2, 2016, Geraci and Cotton reached the JVA pursuant to which Cotton would sell the Property to Geraci.

64. Cotton's consideration for entering into the JVA included (i) a 10% equity position in the dispensary, (ii) on a monthly basis, the greater of $10,000 or 10% of the net profits of the dispensary, (iii) a $50,000 non-refundable deposit for Cotton to keep if the permit for a dispensary was not approved at the Property, and (iv) Geraci promised to have his attorney, Gina Austin, promptly reduce the JVA to writing for execution.

65. At the meeting Geraci and Cotton executed a three-sentence document drafted by Geraci (the "November Document").

66. The November Document was executed with the intent it be a receipt for Cotton's acceptance of $10,000 in cash towards the $50,000 non-refundable deposit.

67. That same day:

(i) Geraci emailed Cotton a copy of the November Document, which in the email attachment Geraci had titled the November Document the 'Geraci – Cotton Contract".

(ii) Upon review and within hours of having received the Geraci email Cotton replied and requested that Geraci confirm in writing the November Document is not a purchase contract reflecting 'any final agreement'. (the "Request for Confirmation"); and

(iii) Geraci replied and confirmed the November Document is not a purchase contract (the "Confirmation Email"). A true and correct copy of these emails are attacked hereto as Exhibit 1.

68. The Request for Confirmation and the Confirmation Email prove that Cotton and Geraci did not mutually assent to the November Document being a purchase contract for the Property (the "Mutual Assent Issue").

69. On November 3, 2016, Cotton called Geraci to talk about Geraci branding the contemplated dispensary at the Property with his nonprofit 151 Farms organization.

70. At 1:41 p.m. on November 3, 2016, Cotton emailed Geraci after they had spoken as follows:

> 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.

71. On March 21, 2017, after Geraci repeatedly refused to reduce the JVA to writing as promised, Cotton emailed Geraci and terminated the JVA with Geraci for anticipatory breach.

72. In his email terminating the JVA, Cotton specifically informed Geraci that he was selling the Property to a third-party: "To be clear, as of now, you have no interest in my [P]roperty, contingent or otherwise. I will be entering into an agreement with a third-party[.]"

73. On March 21, 2017, after terminating the JVA with Geraci, Cotton entered into a written joint venture agreement with Richard Martin.

III. The *Cotton I* Litigation

74. The next day, March 22, 2017, Weinstein emailed Cotton copies of the *Cotton I* complaint and a lis pendens recorded by F&B on the Property (the "F&B Lis Pendens").

75. The *Cotton I* complaint alleges causes of action for (i) breach of contract, (ii) breach of the covenant of good faith and fair dealing, (iii) specific performance, and (iv) declaratory relief.

76. All four causes of action are premised on the allegation that the November Document is a fully integrated purchase contract.

77. The *Cotton I* complaint alleges that Cotton anticipatorily breached his agreement with Geraci by demanding additional consideration not originally agreed to, including the 10% equity position in the dispensary.

78. Weinstein filed the *Cotton I* complaint relying on the *Pendergrass*[5] line of reasoning seeking to use the parol evidence rule as a shield to bar the admission of the Confirmation Email and other incriminating parol evidence.[6]

79. On May 12, 2017, Cotton filed pro se a cross-complaint in *Cotton I* against Geraci and Berry with causes of action for: (i) quiet title, (ii) slander of title, (iii) fraud/fraudulent misrepresentation, (iv) fraud in the inducement, (v) breach of contract, (vi) breach of oral contract, (vii) breach of implied contract, (viii) breach of the implied covenant of good faith and fair dealing, (iv) trespass, (x) conspiracy, and (xi) declaratory and injunctive relief.

80. After dealing with the procedural difficulties of representing himself pro se, Cotton reached an agreement with a litigation investor to hire counsel to represent him in *Cotton I* and related legal matters required to acquire a cannabis permit at the Property.

81. Cotton's litigation investor reached an agreement with then-prominent and yet to be publicly disgraced cannabis attorney Jessica McElfresh for her representation of Cotton in *Cotton I*.

82. McElfresh did not disclose that Geraci and numerous of Geraci's associates are her clients.

83. McElfresh did not disclose that she shares numerous clients with Austin.

84. In May 2017, the San Diego County District Attorney's office filed charges against McElfresh for her efforts in seeking to conceal the illegal cannabis operations of one of her clients from government inspectors.

85. Specifically, McElfresh was charged with, *inter alia*, Conspiracy to Commit a Crime, Manufacturing of a Controlled Substance, and Obstruction of Justice.

86. McElfresh charged Cotton for her legal services for Cotton in *Cotton I*.

87. McElfresh referred Cotton's litigation investor to David Demian of Finch, Thornton & Baird to represent Cotton in *Cotton I*.

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[5] *Bank of America etc. Assn. v. Pendergrass* (1935) 4 Cal.2d 258.

[6] *See IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 641 (emphasis added) ("under *Pendergrass*, external evidence of promises inconsistent with the express terms of a written contract were not admissible, even to establish fraud.").

88. Neither McElfresh nor Demian disclosed that FTB had shared clients with Geraci and his business.

89. FTB twice amended Cotton's pro se complaint with the intent to sabotage Cotton's case.

90. Most notably, FTB removed from Cotton's complaint the allegations that Geraci and Berry conspired to acquire a cannabis permit at the Property in Berry's name because Geraci could not own a cannabis permit because of the Illegality Issue.

91. Further, FTB removed Cotton's allegation that Geraci and Cotton had reached and valid and binding oral agreement and replaced it with an allegation that Geraci and Cotton had reached an agreement to agree in the future, which is not a valid and enforceable agreement.

92. Demian, like Weinstein, Austin and McElfresh, is a criminal with a license to practice law and represents the most vile type of all attorneys – those who would connive to defeat their own client's case.

IV. **The Disavowment Allegation**

93. From the filing of *Cotton I* in March 2017 until April 2018 Weinstein argued that the statute of frauds and the parol evidence rule barred the Confirmation Email and other parol evidence as proof of the JVA.

94. For example, Weinstein argued:

> Cotton alleges, based on extrinsic evidence [(e.g., the Confirmation Email)], that the actual agreement between the parties contains material terms and conditions in addition to those in the [November Document] as well as a term (a $50,000 deposit rather than the $10,000 deposit stated in the [November Document]) that expressly conflicts with a term of the [November Document]. However, such a claim cannot stand as extrinsic evidence cannot be employed to prove an agreement at odds with the terms of the written memorandum.

95. However, in April 2018, attorney Jacob Austin specially appearing for Cotton filed a motion to expunge the F&B Lis Pendens and cited and argued for the first time in *Cotton I* that Geraci/Weinstein

could not use the parol evidence rule to bar the Confirmation Email pursuant to the *Pendergrass* line of reasoning because it had been overruled by *Riverisland* in 2013 (the "Lis Pendens Motion").[7]

96. In opposition to the Lis Pendens Motion, Geraci submitted a supporting declaration alleging for the first time that (i) he sent the Confirmation Email by mistake because he only read the first sentence of Cotton's Request for Confirmation email; (ii) that on November 3, 2016 he called Cotton to tell him that he sent the Confirmation Email by mistake; (iii) Cotton agreed with Geraci that the Confirmation Email was sent by mistake and he was not entitled to a 10% equity position in the dispensary; and (iv) Cotton sent the Request for Confirmation **pretending** that Geraci and him had reached an agreement that included a 10% equity position for Cotton (the "Disavowment Allegation").

97. Pursuant to FRCP 201 Cotton requests the Court take judicial notice of Geraci's April 9, 2018 declaration attached hereto as Exhibit 2.

98. Geraci's April 9, 2018 declaration contradicts dozens of his evidentiary and judicial admissions he set forth in his declarations, discovery responses and arguments in briefs prior to then.

99. Even assuming that Geraci's April 9, 2018 declaration did not contradict his previous judicial and evidentiary admissions, his claim is barred by the statute of frauds and the parole evidence rule.

100. The statute of frauds applies to an agreement for the sale of real property as Geraci alleges, but it does not apply to a joint venture agreement as Cotton alleges.[8]

101. Geraci cannot just pretend the Confirmation Email has no legal effect.

V. <u>The Federal Lawsuits</u>

102. In February 2018, Cotton filed suit and a TRO in federal court against, *inter alia*, Geraci, Weinstein and Austin alleging, *inter alia*, RICO and § 1983 claims ("*Cotton III*").[9]

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[7] *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Association* ("*Riverisland*") (2013) 55 Cal.4th 1169, 1182 ("[W]e overrule *Pendergrass* and its progeny, and reaffirm the venerable maxim stated in *Ferguson v. Koch* [(1928) 204 Cal. 342, 347]: '***[I]t was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud.***'") (emphasis added).

[8] *Bank of California v. Connolly* (1973) 36 Cal.App.3d 350, 374 ("[A]n oral joint venture agreement concerning real property is not subject to the statute of frauds even though the real property was owned by one of the joint venturers.").

[9] *Cotton v. Geraci*, Case No.: 18cv325-GPC(MDD).

103. On February 28, 2019, because of *Cotton I*, Judge Curiel stayed *Cotton III* pursuant to the *Colorado River* doctrine.

104. In July 2019, Wohlfeil entered judgment against Cotton in *Cotton I* after a jury trial implicitly finding that the November Document is a fully integrated purchase contract that has a lawful object as a matter of law.

105. Cotton filed a motion for new trial ("MNT") arguing, *inter alia*, assuming the November Document is a contract, it is an illegal contract that cannot be enforced. (*Cotton I*, ROA No 672.)

106. Wohlfeil denied the MNT believing Weinstein's frivolous opposition argument that Cotton had waived the defense of illegality to the enforcement of a contract because Cotton had not allegedly raised the Illegality Issue before in *Cotton I*.

107. Factually and legally the arguments are contradicted by the facts and law. Cotton did raise the Illegality Issue before the MNT and even if he had not he cannot waive the defense of illegality. *See City Lincoln-Mercury Co. v. Lindsey*, 52 Cal.2d 267, 274 (Cal. 1959) ("A party to an illegal contract cannot ratify it, cannot be estopped from relying on the illegality, and ***cannot waive*** his right to urge that defense.").

108. On January 10, 2020, Judge Curiel recused himself from *Cotton III* after Cotton had filed a motion to lift the *Colorado River* stay and a TRO seeking to have Judge Curiel found to be a biased judge that was enforcing an illegal contract and a request for counsel.

109. Cotton believes that Judge Curiel realized that with the information contained within his motion to lift the stay, Cotton was not a conspiracy nut and that Wohlfeil was a biased judge and *Cotton I* represents a three-year long egregious miscarriage of justice.

110. *Cotton III* was transferred to Judge Bashant and on January 15, 2020 Bashant lifted the *Colorado River* stay, but denied Cotton's in Forma Pauperis request for court appointed counsel.

111. On April 9, 2020, Cotton filed an ex parte application seeking reconsideration of Bashant's order denying his request for counsel premised on, *inter alia*, the argument that Cotton needed to prove Judge Wohlfeil is biased.

112. Getting any kind of relief from judges against judges is virtually impossible. Judges protect judges.

113. On April 16, 2020, Judge Bashant denied Cotton's ex parte application in a typical pro se fashion with a conclusory finding that Cotton had failed to prove "exceptional circumstances," but without describing why.

114. Judge Wohlfeil is enforcing an illegal contract and he made statements that manifestly prove he is biased because he stated Weinstein is not capable of acting unethically when the entire *Cotton I* case is undisputable evidence that Weinstein is acting unethically.

115. Any reasonable person would find that a judge enforcing an illegal contract and requiring a jury to determine a matter of law does represent exceptional circumstances.

116. Cotton now believes that with her recent rulings, Judge Bashant is covering up for Wohlfeil.

117. Both Wohlfeil and Bashant served on the San Diego Superior Court for at least seven years together before Bashant was elevated to the federal court.

118. Because of the violence and Wohlfeil's action led Martin to believe that he was actively seeking to sabotage Cotton's case Martin sold his interest in the property to Cotton's former attorney, Andrew Flores.

119. On April 3, 2020, Andrew Flores filed suit in federal court and an ex parte TRO after Cotton told him that some of his supporters, who had lent him significant money, were considering taking violent action against Geraci's attorneys to bring in law enforcement agencies to investigate this case because Wohlfeil and the City Attorney's are corrupt. (*Flores, et al. v. Austin, et al.*, Case No.20-cv-656-BAS-MDD.)

120. On April 20, 2020, Bashant denied Flores' TRO. The opening paragraph states: "Plaintiffs… allege civil rights violations under 42 U.S.C. § 1983, make a 'neglect to perform wrongful act' cause of action, and seek various forms of declaratory relief. The complaint is almost impossible to summarize due to its length and confusing nature."

121. Bashant's order also alleges that Flores did not comply with FRCP 65(b) for the issuance of a TRO based, in part, on Bashant's allegation that Corina Young is a "defendant."

122. First, according to Bashant, Flores lacks any professional competence as an attorney because he sued for "neglect[ing] to perform wrongful act."

123. Flores did not.

124. Flores filed a § 1986 cause of action for "neglect to **prevent** a wrongful act" which is clearly stated in the title page of his complaint.

125. Second, Corina Young is a ***witness*** who has been threatened from providing her testimony. She is not a "defendant."

126. Bashant simply made that up.

127. Third, Flores did provide notice, case law and argument for why notice is not required pursuant to FRCP 65.

128. Fourth, given the preceding three points, Bashant's allegation that the Flores' complaint is "confusing" is meritless as she clearly does not understand even the most basic facts she was presented with.

129. The bottom line is that Bashant either knew that statements she attributed to Flores were true or she did not know because she did not take the time to vet Flores' complaint and TRO.

130. If Bashant knew they were false, she did so to purposefully denigrate anyone that seeks to prove that Wohlfeil is a biased judge to Cotton's great prejudice.

131. If Bashant did not know her statements were false, then without justification she is making rulings warranted by law and facts, but in reality, she never even bothered understand the facts and apply the law.

132. In either scenario, a reasonable person would conclude that Bashant is a biased judge who is not impartial.

VI. This Complaint

133. The Flores complaint is 177 pages and explains in detail how the *Cotton I* complaint is but one sham action among many filed in furtherance by Geraci and his associates seeking to acquire as many cannabis permits as they can in the City to establish a monopoly.

134. Cotton does not have the ability to explain the conspiracy in a clear and succinct manner so he files this amended complaint focused on the fact that the November Document cannot be a contract because it lacks mutual assent, has an unlawful object and Judge Wohlfeil's statements and actions prove that he is biased.

135. Cotton did not have a fair and impartial tribunal.

136. Cotton does not have the ability to explain the entire conspiracy which gives rise to RICO, antitrust, obstruction of justice, and fraud causes of action that includes multiple government and private attorneys.

137. However, Cotton intends to prepare and file a motion seeking court counsel to amend this Complaint to include all defendants against whom Cotton has valid causes of action.

First Cause of Action -§ 1983

(Plaintiff against Bashant)

138. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs.

139. The presence of bad faith can render an exercise of legal judgment judicial misconduct; "Bad faith" in this context means "acts within the lawful power of a judge which nevertheless are committed for a corrupt purpose, i.e., for any purpose other than the faithful discharge of judicial duties." *Cannon v. Commission on Judicial Qualifications*, 14 Cal.3d 678, 695 (Cal. 1975).

140. Cotton has filed judicial complaints against both Wohlfeil and Bashant for their failure to exercise their judicial discretion in bad faith.

141. Bashant's order finding that Cotton did not prove exceptional circumstances when Wohlfeil entered a judgment in *Cotton I* that enforces an illegal contract as a matter of law, coupled with her fabricated statements that she attributed to Flores' that undermines the case against Wohlfeil, would lead any reasonable person to believe that she is covering up for Wohlfeil. Or, at the very least, that she is not impartial.

142. "Bias exists where a court has prejudged, or reasonably appears to have prejudged, an issue." *Kenneally v. Lungren*, 967 F.2d 329, 333 (9th Cir. 1992) (quotation and citation omitted).

143. Cotton should not have to "hope" that Bashant will not take other unethical and prejudiced actions against him either to continue to cover up for Wohlfeil or to retaliate against him for exposing that she fabricated and attributed multiple statements to Flores that were not true.

144. This relief against Bashant is prospective.

Second Cause of Action -§ 1983

(Plaintiff against Wohlfeil)

145. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs.

146. Plaintiff seeks to have the *Cotton I* judgment vacated and a new trial in state court where he originally filed his cross-complaint and Wohlfeil should not continue to preside over *Cotton I.*

147. As with Bashant, Cotton should not have to hope that Wohlfeil will not retaliate against him for exposing him for being a biased judge that exposed him for being a judge that thinks the defense of illegality is capable of being waived because Cotton had allegedly not raised the Illegality Issue before the MNT.

148. This relief against Wohlfeil is prospective.

Third Cause of Action – Declaratory Relief

(Plaintiff against the Geraci, Berry, Weinstein, Austin, McElfresh and Demian)

149. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs.

150. Plaintiff seeks to have the *Cotton I* judgment declared void and vacated for being procured by a fraud on the court, the product of judicial bias, and because it enforces an illegal contract.

Fourth Cause of Action – Punitive Damages

(Plaintiff against all defendants)

151. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs.

152. "At some point, justice delayed is justice denied." *Southern Pacific Transp. Co. v. I.C.C*, 871 F.2d 838, 848 (9th Cir. 1989).

153. Since March 2017, Plaintiff has incurred over **$3,000,000** from 7 different law firms and at least three contract paralegals in legal fees. The law firms are: (i) Finch, Thornton, & Baird; (ii) Law Office of Jacob Austin; (iii) Kerr & Wagstaffe LLP; (iv) Law Office of JoEllen Plaskett; (v) Law Office of Andrew Flores; (vi) California Appellate Law Group; and (vii) Tiffany & Bosco. The three contract paralegals are: (i) Leanne Thomas; (ii) Zoe Villaroman, and (iii) Lori Hatmaker.

154. "Generally, [punitive damages] cases fall into three categories: (1) really stupid defendants; (2) really mean defendants; and, (3) really stupid defendants who could have caused a great deal of harm by their actions but who actually caused minimal harm." *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 453 n. 15 (1993) (citation and quotation omitted).

155. Judges are protected by their judicial immunity.

156. But *Cotton I* at every point, has failed to state a cause of action as filed when Weinstein incorrectly assumed the parol evidence rule would bar the Confirmation Email and as de facto amended, when confronted by *Riverisland,* to alleging that the Confirmation Email was sent by mistake.

157. Cotton believes it would be an egregious miscarriage of justice to find that defendants can file and maintain a malicious prosecution action that at no point stated a cause of action and rely on the judgments or orders by judges, that were biased against Cotton, to avoid being held liable for Cotton's legal fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Cotton prays for relief against defendants as follows:

1. That this Court disqualify Bashant from continuing to preside over this matter;
2. That the *Cotton I* judgment be declared void;
3. That the *Cotton I* action be stayed pending resolution of this action;
4. That Wohlfeil be declared bias and prohibited from continuing to preside over Cotton I upon its resumption pending resolution of this Complaint;
5. General, exemplary, special and/or consequential damages in the amount to be proven at trial, but which are no less than $7,000,000;
6. Punitive damages against all defendants saved Wohlfeil and Bashant who are protected by their judicial immunity;
7. That this Court appoint Cotton counsel;
8. That this Court grant Cotton's appointed counsel leave to amend this Complaint to include all defendants and set forth all material allegations; and
9. That other relief is awarded as the Court determines is in the interest of justice.

Dated: May 13, 2020.

Darryl Cotton,

Cotton and Cotton Pro Se

Exhibit
3

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual, Plaintiff, v. CYNTHIA BASHANT, an individual; JOEL WOHLFEIL, an individual; LARRY GERACI, an individual; REBECCA BERRY, an individual; GINA AUSTIN, an individual; MICHAEL WEINSTEIN, an individual; JESSICA MCELFRESH, an individual; and DAVID DEMIAN, an individual, Defendants.	Case No.: 18-CV-325 TWR (DEB) **ORDER GRANTING MOTIONS TO DISMISS AND DENYING OTHERS AS MOOT** (ECF Nos. 44, 46, 50, 53, 64, 65, 66, 67, 93)

Defendants Judge Joel Wohlfeil, Judge Cynthia Bashant, Jessica McElfresh, Larry Geraci, Rebecca Berry, and David Demian have respectively moved to dismiss Plaintiff's First Amended Complaint. (ECF Nos. 50, 64, 65, 66, 67.) In light of the Notice of Dismissal (ECF No. 95), Judges Wohlfeil and Bashant have been dismissed with prejudice. The Court finds the matters suitable for disposition without oral argument. *See* Civ. L.R. 7.1(d)(1). For the reasons set forth below, the Court **GRANTS** the motions and **DENIES AS MOOT** Plaintiff's remaining pending motions. (ECF Nos. 44, 46, 53.)

BACKGROUND

The facts of this case have been recited in this Court's previous order. (*See* ECF No. 71). The following relates to the remaining Defendants.

By way of background, Defendant Larry Geraci and Plaintiff Daryl Cotton allegedly reached an "oral joint venture agreement" where Geraci planned on buying Plaintiff's real property to develop a cannabis dispensary. (FAC ¶ 5, 63.) Geraci was not new to the cannabis business, as he had allegedly owned and managed at least three illegal marijuana dispensaries previously. (*Id.* ¶ 43.) Due to these illicit activities, Geraci had been sanctioned and barred from owning a cannabis dispensary, and he therefore applied for a cannabis permit with the City of San Diego under his receptionist's name, Rebecca Berry. (*Id.* ¶¶ 6–7.) Months later, the deal broke down when Geraci allegedly refused to put their joint venture agreement into writing as promised. (*Id.* ¶ 71.) Geraci sued Plaintiff in state court for breach of contract concerning the purchase and sale of Plaintiff's real property. (*Id.* ¶¶ 5, 63, 75.) Judge Wohlfeil was assigned the case. (*Id.* ¶ 1.) Plaintiff, initially proceeding pro se, filed a cross-complaint against Geraci and his receptionist, Rebecca Berry. (*Id.* ¶ 79.)

After "dealing with the procedural difficulties of representing himself pro se," Plaintiff turned to a litigation investor to hire a lawyer. (*Id.* ¶ 81.) The litigation investor found Defendant Jessica McElfresh. (*Id.* ¶ 81.) The representation, however, did not last. Plaintiff describes McElfresh as a "publicly disgraced cannabis attorney" against whom the San Diego County District Attorney's office has filed charges for "seeking to conceal the illegal cannabis operations of one of her clients from government inspectors." (*Id.* ¶ 81.) McElfresh referred Plaintiff's litigation investor to Defendant David Demian of Finch, Thornton & Baird, LLP. (*Id.* ¶ 87.) Plaintiff alleges that both McElfresh and Demian had failed to disclose that Geraci and some of his associates were also their clients. (*Id.* ¶ 88.) Plaintiff accuses McElfresh and Demian of being "criminal[s] with a license to practice law" and the types of attorneys who "connive to defeat their own client's case." (*Id.* ¶ 92.)

In his First Amended Complaint ("FAC"), Plaintiff characterizes this case as a "collateral attack on a state court judgment" (*id.* ¶ 1), and relevant here, asserts a cause of action for declaratory relief against McElfresh, Geraci, Berry, and Demian. (*Id.* ¶¶ 149–50.) Additionally, Plaintiff asserts a fourth cause of action for punitive damages against all Defendants. (*Id.* ¶¶ 151–57.) In his claim for declaratory relief, Plaintiff asks this Court to declare the state court judgment "void and vacated for being procured by a fraud on the court, the product of judicial bias, and because it enforces an illegal contract." (*Id.* ¶ 150.) In his claim for punitive damages, Plaintiff states that he was denied justice because Judge Wohlfeil and Judge Bashant were biased against him, and due to the litigation, has incurred hefty legal fees. (*Id.* ¶¶ 153, 156–57.)

LEGAL STANDARD

A. Federal Rule of Civil Procedure 12(b)(1)

Congress granted district courts with "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Rule 12(b)(1) allows the dismissal of a case for lack of subject-matter jurisdiction. Fed. R. Civ. P. 12(b)(1). "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3).

B. Federal Rule of Civil Procedure 12(b)(6)

Rule 12(b)(6) allows a court to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, the complaint must contain a "short and plain statement showing that the pleader is entitled to relief," backed by sufficient facts that make the claim "plausible on its face." Fed. R. Civ. P. 8(a)(2); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007)). Plausibility requires "more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 566 U.S. at 678. Rather, it demands enough factual content for the court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). The court must accept as true "all factual allegations in the complaint" and "construe the

pleadings in the light most favorable to the nonmoving party." *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). This presumption does not extend to conclusory allegations, "unwarranted deductions of fact, or unreasonable inferences." *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008).

C. Leave to Amend

Under Rule 15(a), a district court should "freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a). "This policy is to be applied with extreme liberality." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (internal quotation marks and citations omitted). With respect to pro se litigants, the Ninth Circuit has stated that this "extreme liberality" is "particularly important," *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000), and that courts should dismiss a pro se complaint without leave to amend "only if it is absolutely clear that the deficiencies of the complaint could not be cured by amendment." *Schucker v. Rockwood*, 846 F.2d 1202, 1203–04 (9th Cir. 1988).

ANALYSIS

A. Defendant Jessica McElfresh

Plaintiff brings two causes of action against Defendant Jessica McElfresh: (1) declaratory relief and (2) punitive damages. (FAC ¶¶ 148, 150.) In response, McElfresh asserts that none of the allegations in Plaintiff's claims for declaratory relief and punitive damages are directed towards her, and that Plaintiff's claims "are not sufficient to state a claim upon which relief may be granted" under Rule 12(b)(6). (ECF No. 65-1 at 5–6.) Additionally, McElfresh requests that this Court strike Plaintiff's causes of action for declaratory relief and punitive damages under Fed. R. Civ. P. 12(b)(f). (*Id.* at 2, 5–7.) The Court agrees and dismisses Plaintiff's claims under Fed. R. Civ. P. 12(b)(6).

1. Declaratory Relief

"To obtain declaratory relief in federal court, there must be an independent basis for jurisdiction." *Stock W., Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). "Federal courts are courts of limited jurisdiction" and

"possess only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Thus, "[w]hen presented with a claim for a declaratory judgment," the Court must make sure that an "actual case or controversy" under Article III exists. *Rhoades v. Avon Prod., Inc.*, 504 F.3d 1151, 1157 (9th Cir. 2007). "Declaratory relief is not an independent cause of action, but instead a form of equitable relief." *Kimball v. Flagstar Bank F.S.B.*, 811 F. Supp. 2d 1209, 1219 (S.D. Cal. 2012).

Here, Plaintiff has not alleged substantive legal claims against McElfresh. For example, Plaintiff states McElfresh failed to disclose that Geraci and some of his associates were also her clients. (*Id.* ¶ 82.) Additionally, McElfresh failed to mention that she and Austin share the same clients. (*Id.* ¶ 83.) Further, after her representation of Plaintiff had ended, McElfresh referred Plaintiff's litigation investor to Demian, whose firm previously shared clients with Geraci and his business. (*Id.* ¶ 87–88.) And lastly, Plaintiff characterizes McElfresh as a criminal with a license to practice law and connives to defeat her own client's case. (FAC ¶ 92.)

None of these allegations are substantive legal claims. Although Plaintiff seeks declaratory relief to "vacate and declare void" the judgment from state court because (1) it was "procured by a fraud on the court," (2) it is the "product of judicial bias," and (3) "it enforces an illegal contract," (FAC ¶ 150), the basis of his claims occurred in past litigation, and past acts cannot be the basis for declaratory judgement. *See John M. Floyd & Assocs., Inc. v. First Imperial Credit Union*, No. 16-CV-1851 DMS (WVG), 2017 WL 4810223, at *5 (S.D. Cal. Oct. 25, 2017) ("[A] declaratory judgment is not a corrective action" and "should not be used to remedy past wrongs."). Absent an "actual case or controversy" against McElfresh, Plaintiff has no standing to obtain declaratory relief. *See Westburg v. Good Life Advisors, LLC*, No. 18CV248-LAB (MDD), 2019 WL 1546949, at *1 (S.D. Cal. Apr. 8, 2019) (stating that a "federal court has jurisdiction to award declaratory relief only where a true case or controversy exists."). The Court **DISMISSES** this claim, accordingly.

2. Punitive Damages

Plaintiff also seeks punitive damages against McElfresh. But punitive damages "constitute a remedy, not a claim." *Oppenheimer v. Southwest Airlines Co.*, No. 13-CV-260-IEG BGS, 2013 WL 3149483, at *3 (S.D. Cal. June 17, 2013). Here, Plaintiff has not alleged any substantive legal claims against McElfresh and therefore lacks basis to obtain punitive damages.[1] The Court **DISMISSES** this claim, accordingly.

B. Larry Geraci & Rebecca Berry

Plaintiff alleges two causes of action against Defendants Larry Geraci and Rebecca Berry: (1) declaratory relief and (2) punitive damages. (FAC ¶¶ 149–57.) In response, Geraci and Berry argue that the Court lacks subject-matter jurisdiction under the *Rooker-Feldman* doctrine. (ECF No. 66 at 1–2.) Moreover, Geraci and Berry allege that Plaintiff's FAC should be dismissed because Plaintiff fails to state any legally cognizable cause of action. (*Id.*) The Court agrees.

1. *Rooker-Feldman* Doctrine

"The *Rooker-Feldman* doctrine takes its names from *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed. 2d. 206 (1983)." *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003). Put simply, the doctrine provides that federal courts lack subject matter jurisdiction to "hear a direct appeal" from state court judgment. *Id.* If a party is disappointed by a state court judgment, the proper course is to appeal to a higher state court. *See id.* at 1155. "Plaintiffs thus cannot come to federal court to seek

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[1] In her Reply, McElfresh requests this Court to dismiss the Plaintiff's FAC under Civil Local Rule 7.1(f)(3)(c) for Plaintiff's failure to file an opposition to Defendant's motion to dismiss. (ECF No. 72 at 2–4.) However, this Court has exercised its discretion and accepted Plaintiff's untimely filing of his opposition, partially due to his status as a *pro se* litigant. In Plaintiff's Opposition to McElfresh's Motion to Dismiss (ECF No. 76), Plaintiff adds new allegations and facts against McElfresh. Those arguments will not be considered because "a court may not look beyond the complaint to a plaintiff's moving papers, such as a memorandum in opposition to a defendant's motion to dismiss," when considering a Rule 12(b)(6) motion to dismiss. *Schneider v. Cal. Dep't of Corr.*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998) (citation omitted).

'what in substance would be appellate review of the state judgment.'" *Benavidez v. County of San Diego*, 993 F.3d 1134, 1142 (9th Cir. 2021) (citing *Johnson v. De Grandy*, 512 U.S. 997, 1005–06 (1994)). "The doctrine does not depend on the availability of a forum; instead, it exists to protect state courts from collateral attack by a federal judgment." *Id.* at 1143. As the Ninth Circuit has stated, "the *Rooker-Feldman* doctrine, precludes federal adjudication of a claim that 'amounts to nothing more than an impermissible collateral attack on prior state court decisions.'" *Ignacio v. Judges of the United States Court of Appeals for the Ninth Circuit*, 453 F.3d 1160, 1165 (9th Cir. 2006) (citations omitted).

Here, Plaintiff's claim is barred by the *Rooker-Feldman* doctrine. By asking to have a state court judgment "declared void and vacated" (FAC ¶ 150), Plaintiff is essentially seeking appellate review of the state court's decision. All the claims against Geraci and Berry are inextricably tied to the state court proceeding. At bottom, Plaintiff believes that the contract between him and Geraci and Berry is illegal, but that issue has been dealt with in state court. While plaintiffs are not precluded from bringing similar, independent actions in federal court,[2] Plaintiff explicitly states that this action is a "collateral attack on a state court judgment issued by Judge Joel R. Wohlfeil." (FAC ¶ 1.) If this Court were to find that the Judicial Defendants were enforcing an illegal contract, then this Court would be stepping beyond the bounds of its jurisdiction because the *Rooker-Feldman* bars collateral attacks on state court judgments. *Benavidez*, 993 F.3d at 1142. The relief that Plaintiff is seeking falls squarely within the *Rooker-Feldman* prohibition.

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[2] "If… a federal plaintiff asserts as a legal wrong an allegedly illegal act or omission by an adverse party, *Rooker-Feldman* does not bar jurisdiction." *Noel*, 341 F.3d at 1164. Thus "[t]he doctrine does not preclude a plaintiff from bringing an 'independent claim' that, though similar or even identical to issues aired in state court, was not subject of a previous judgment by the state court." *Cooper v. Ramos*, 704 F.3d 772, 778 (9th Cir. 2012) (citing *Skinner v. Switzer*, 562 U.S. 521, 531 (2011)).

2. Declaratory Relief and Punitive Damages

Even if the *Rooker-Feldman* doctrine did not apply, Plaintiff's FAC still fails. Here, Plaintiff has no claim for declaratory relief since he has no underlying cause of action against Geraci and Berry. As noted above, claims for declaratory relief are "not themselves causes of action, but rather remedies available." *Inciyan v. City of Carlsbad*, No. 19-CV-2370-JLS (MBS), 2020 WL 94087, at *3 (S.D. Cal. Jan. 8, 2020). Declaratory relief claims "must be based on other, viable causes of action." *Id.* at 2. But here, Plaintiff has not alleged any substantive legal claim against Geraci or Berry. At best, Plaintiff alleges that Geraci and Berry violated the San Diego Municipal Code Section 11.0401(b) ("No person willfully shall make a false statement or fail to report any material fact in any application for City license, permit, certificate, employment or other City action under the provisions of the San Diego Municipal Code."). Moreover, Plaintiff alleges that Geraci and Berry "conspired to acquire a cannabis permit." (FAC ¶ 90.) But Plaintiff does not assert his allegations under a legally cognizable cause of action.

For the same reason, Plaintiff's claim for punitive damages fails. Punitive damages "constitute a remedy, not a claim." *Oppenheimer v. Southwest Airlines Co.*, No. 13-CV-260-IEG BGS, 2013 WL 3149483, at *3 (S.D. Cal. June 17, 2013). The Court therefore **DISMISSES** Plaintiff's claims against Geraci and Berry, accordingly.

C. David Demian – Declaratory Relief and Punitive Damages

Plaintiff asserts two causes of action against David Demian: (1) declaratory relief and (2) punitive damages. (FAC ¶¶ 149–50, 151–57.) In response, David Demian argues that those claims should be dismissed. (*See* ECF No. 67 at 5.) The Court agrees.

Plaintiff's claims for declaratory relief and punitive damages fail for the same reasons discussed above. According to Plaintiff, Demian "is a criminal with a license to practice law and represents the most vile type of all attorneys—those who would connive to defeat their own client's case." (FAC ¶ 92.) However, Plaintiff's opinion about Demian is not justiciable because there is no underlying case or controversy. *See*

Westburg v. Good Life Advisors, LLC, No. 18CV248-LAB (MDD), 2019 WL 1546949, at *1 (S.D. Cal. Apr. 8, 2019) (stating that "a request for declaratory judgment cannot be used to bypass Article III's requirements" and that a "federal court has jurisdiction to award declaratory relief only where a true case or controversy exists"). In addition, Plaintiff asserts a cause of action for "punitive damages," (FAC ¶ 151–57), but punitive damages "constitute a remedy, not a claim." *Oppenheimer v. Southwest Airlines Co.*, No. 13-CV-260-IEG BGS, 2013 WL 3149483, at *3 (S.D. Cal. June 17, 2013). The Court therefore **DISMISSES** Plaintiff's claim for declaratory relief and punitive damages against Demian.[3]

D. Motion to Appoint Counsel

Finally, Plaintiff has moved ex parte for an appointment of counsel. (ECF No. 93.) That motion is denied. Under 28 U.S.C. § 1915(e)(1), a court may "appoint counsel for indigent civil litigants" based on a showing of "exceptional circumstances." *Id.* (citing *Agyeman v. Corrs. Corp. of Am.,* 390 F.3d 1101, 1103 (9th Cir.2004), *cert. denied sub nom. Gerber v. Agyeman,* 545 U.S. 1128, 125 S.Ct. 2941, 162 L.Ed.2d 867 (2005)). In determining whether exceptional circumstances exist, the court considers (1) the "likelihood of success on the merits" and (2) "the ability of the petitioner to articulate his

[3] Demian also moves to dismiss for improper service, but the Court declines to dismiss on this ground. According to the Ninth Circuit, "Rule 4 is a flexible rule that should be liberally construed so long as a party receives sufficient notice of the complaint." *Crowley v. Bannister*, 734 F.3d 967, 975 (9th Cir. 2013) (quoting *Benny v. Pipes*, 799 F.2d 489, 492 (9th Cir. 1986)). Courts may excuse Rule 4 requirements if "(a) the party that had to be served personally received actual notice, (b) the defendant would suffer no prejudice from the defect in service, (c) there is a justifiable excuse for the failure to serve properly, and (d) the plaintiff would be severely prejudiced if his complaint were dismissed." *Cristo v. U.S. Sec. & Exch. Comm'n*, No. 19CV1910-GPC(MDD), 2020 WL 2735175, at *6 (S.D. Cal. May 26, 2020) (quoting *Borzeka v. Heckler*, 739 F.2d 444, 447 (9th Cir. 1984)). Considering these factors, the Court excuses Plaintiff's improper service. First, Demian has received actual notice. Second, Demian would not be prejudiced from the defective service. Lastly, Plaintiff had justifiable excuse due to his pro se status, and he would be "severely prejudiced if his complaint were dismissed on a failure to comply with technical rule." *Cristo*, 2020 WL 2735175, at *6. As a result, the Court finds that service on Demian has been effectuated. *See id.* As for the untimeliness of Plaintiff's service, the Court exercises its discretion and retroactively grants an extension of time to serve from January 28, 2021. *See In re Sheehan*, 253 F.3d 507, 513 (9th Cir. 2001) ("Courts have discretion under Rule 4(m), absent a showing of good cause, to extend the time for service or to dismiss the action without prejudice.").

claims *pro se* in light of the complexity of the legal issues involved." *Id.* (quoting *Weygandt v. Look,* 718 F.2d 952, 954 (9th Cir.1983)). "Neither of these considerations is dispositive and instead must be viewed together." *Id.* (citing *Wilborn v. Escalderon,* 789 F.2d 1328, 1331 (9th Cir.1986)).

Here, neither of those circumstances are present. First, given that his claims are being dismissed, Plaintiff has not shown a likelihood of success on the merits. Second, although the Court sympathizes with Plaintiff's medical conditions as described in his motion, the legal issues presented here are not particularly complex such that an appointment of counsel is warranted.

CONCLUSION

For the reasons stated above, the Court **GRANTS** the Defendants' motions to dismiss. (ECF Nos. 65, 66, 67.). First, the Court **DENIES** leave to amend as to Geraci and Berry, since those claims are barred by the *Rooker-Feldman* doctrine. But as for David Demian and Jessica McElfresh, leave to amend is **GRANTED**. Plaintiff has only amended his complaint once, and pro se litigants are treated with "extreme liberality." *Lopez*, 203 F.3d at 1131. Finally, in light of the Notice of Dismissal, Judges Wohlfeil and Bashant are **DISMISSED WITH PREJUDICE** and their motions to dismiss are **MOOT**. (ECF Nos. 50, 64.)

In its previous order, the Court granted Plaintiff leave to amend his First Amended Complaint against Defendant Gina Austin. (ECF No. 71.) Plaintiff will have <u>thirty (30) days from the date of this Order</u> to file an amended complaint against Defendants Gina Austin, Jessica McElfresh, and David Demian.

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The Court **DENIES** Plaintiff's remaining motions as **MOOT** [4] (ECF Nos. 44, 46, 53) and **DENIES** the ex parte motion for appointment of counsel. (ECF No. 93.)

IT IS SO ORDERED.

Dated: October 22, 2021

Honorable Todd W. Robinson
United States District Court

[4] Plaintiff's Ex Parte Application for Leave to File Attached Omnibus Sur-Reply is now moot because the motions he characterizes as "pending" have now been ruled on. (ECF No. 46 at 1–2.) But even considering the merits, Plaintiff's motion fails. The Federal Rules of Civil Procedure and this District's Local Rules do not provide a right to file a sur-reply. Rather, "permitting the filing of a sur-reply is within the discretion of the district court." *Whitewater W. Indus., Ltd. v. Pac. Surf Designs, Inc.*, No. 317CV01118BENBLM, 2018 WL 3198800, at *1 (S.D. Cal. June 26, 2018). Sur-replies should be allowed "only where a valid reason for such additional briefing exists, such as where the movant raises new arguments in its reply brief." *Hill v. England*, No. CVF05869RECTAG, 2005 WL 3031136, at *1 (E.D. Cal. Nov. 8, 2005) (internal quotations omitted). Here, Plaintiff alleges that he has "new information relevant to the motions pending." (ECF No. 46 at 3.) But the "new information" that Plaintiff provides concerns the underlying state court proceeding, *Geraci v. Cotton*, 37-2017-00010073-CU-BC-CTL. Plaintiff alleges that he "never received a fair trial," (ECF No. 46 at 5), but as previously discussed, this Court's review of the underlying state court proceeding is barred by the *Rooker-Feldman* doctrine. Finally, it is within this Court's discretion to grant leave to file a sur-reply if Defendants have raised new arguments in their reply briefs. *See Hill*, 2005 WL 3031136, at *1. Since Defendants have not raised new arguments, a sur-reply is not warranted.

Exhibit
4

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual; JOE HURTADO, an individual; Plaintiffs, vs. LARRY GERACI, an individual; REBECCA BERRY a/k/a REBECCA ANN BERRY RUNYAN, an individual; MICHAEL R. WEINSTEIN, an individual; SCOTT TOOTHACRE, an individual; FERRIS & BRITTON APC, a California corporation; GINA M. AUSTIN, an individual; AUSTIN LEGAL GROUP APC, a California corporation, SEAN MILLER, an individual FINCH THORTON & BAIRD, a limited liability partnership, DAVID DEMIAN, an individual, ADAM WITT, an individual; and DOES 1 through 50, inclusive, Defendants.	Case No. '18CV2751 W AGS COMPLAINT FOR: **1. FRAUD;** **2. ABUSE OF PROCESS;** **3. RICO;** **4. CIVIL CONSPIRACY; and** **5. LEGAL MALPRACTICE**

Plaintiffs Darryl Cotton (Cotton) and Joe Hurtado (Hurtado) (hereinafter collectively "Plaintiffs"), by and through their counsel, Jacob P. Austin, of the Law Offices of Jacob Austin, for Plaintiffs' causes of action against Defendants, complain and allege as follows on information and belief:

INTRODUCTION

1. The origin of this matter is a very simple real estate breach-of-contract dispute between Darryl Cotton ("Cotton") and Lawrence Geraci ("Geraci"). Cotton is the owner-of-record of the subject real property, 6176 Federal Blvd., San Diego, CA 92114 (the "Property"), which qualifies for a conditional use permit ("CUP")[1] that would allow the operation of a highly lucrative Marijuana Outlet – a for-profit cannabis retail store (the "Business"). On November 2, 2016, Cotton and Geraci entered into an oral joint-venture agreement (the "JVA") pursuant to which, *inter alia*, (i) Cotton would sell his Property to Geraci and (ii) Geraci would finance the acquisition of (a) the CUP for the Property (the "6176 CUP Application") with the City of San Diego (the "City") and (b) the development of the Business at the Property. However, Geraci, driven by greed, breached the JVA by attempting to deprive Cotton of a bargained-for 10% equity position in the Business. Consequently, Cotton terminated the JVA and sold the property to a third-party, Richard Martin ("Martin").

2. The day after Cotton terminated the JVA with Geraci, Cotton was served with a frivolous lawsuit by Geraci and a copy of a *Lis Pendens* filed and recorded on the Property seeking to prevent the sale to Martin (the "Geraci Litigation").[2] Cotton hired David Demian ("Demian") and Adam Witt ("Witt") of Finch, Thornton & Baird (collectively with Demian and Witt, "FTB") to represent him in various legal disputes related to the Property, including the Geraci Litigation. Pursuant to Cotton's agreement with FTB, they were to be paid a maximum of $10,000 a month with any amount above $10,000 being carried over as a balance. FTB, however, engaged in a series of fraudulent and negligent actions designed to prolong the litigation and thereby increase their legal fees.

3. In short, what should have been a simple legal matter that could have originally been adjudicated as a matter of law pursuant to the parol evidence rule, became more convoluted as Cotton's *pro se* representation served to incentivize Geraci and his agents to double-down on their initial

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[1] A conditional use permit is administrative permission for use not allowed as a matter of right in a zone, but subject to approval (Cal. Zoning Practice, *Types of Zoning Relief § 7.64, p.299* (Cont. Ed. Bar 1996). The issuance of a condition use permit may be subject to conditions. (*J-Marion Company, Inc, v. County of Sacramento* (1977) 76 Cal.App.3d 517, 522.)

[2] Counsel for Plaintiffs notes that the majority of the language in this Complaint has been copied from Cotton's judicial submissions because, notwithstanding the *procedural* history of that matter, the undisputed facts and the legal arguments already made require, at the very least, that Cotton prevail in the Geraci Litigation on his breach of contract cause of action. The origin of this dispute before it became increasingly convoluted as the actions of Geraci, his agents and the City gave rise to additional causes of action.

fraudulent scheme to unlawfully acquire Cotton's Property; both by engaging in unlawful conduct in the Geraci Litigation and extra-judicial attempts aimed at coercing a settlement from Cotton. While these allegations appear outlandish at first glance, in reality they are neither novel nor incredible: over the last year the FBI and various law enforcement agencies have increasingly highlighted the criminal actions and corruption of numerous cities, government agencies, lobbyists, attorneys and private individuals in "pay to play" schemes across the State of California to engage in highly profitable commercial marijuana activities.[3]

JURISDICTION AND VENUE

4. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1343(a), and 18 U.S.C. § 1964, which, *inter alia*, confer original jurisdiction to the District Courts of the United States for all civil actions arising under the United States Constitution or the laws of the United States, as well as civil actions to redress deprivation under color of state law, of any right immunity or privilege secured by the United States Constitution. Further, this Court has subject matter jurisdiction pursuant to the Federal Racketeering Act, 18 U.S.C. §1651, *et seq*. and supplemental jurisdiction for Plaintiffs' claims arising under the laws of the State of California pursuant to 28 U.S.C. § 1367(a).

5. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of state and local law of rights, privileges, immunities, liberty and property, secured to all citizens by the First, Fourth and Fourteenth Amendments to the United States Constitution.

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(2) for all Defendants because the acts and omissions giving rise to the claims alleged herein occurred in this judicial district and the Property is located in this judicial district.

PARTIES

7. At all times herein mentioned, Cotton (a) was and is an individual residing in the City and County of San Diego; and (b) was and is the owner of the Property.

8. At all times herein mentioned Hurtado (a) was and is an individual residing in the City of El Cajon, County of San Diego; (b) was and is a transactional advisor for Cotton; and (c) did operate as a litigation investor of the underlying lawsuit between Cotton and Geraci.

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[3] *E.g. MKay, Inc., et al. v. City of Huntington Park, et al.*, United States District Court for the Central District of California, Case No. 2:17-CV-01467-SJO-AFM, (Plaintiff sued City of Huntington Park for pay-to-play scheme).

9. At all times herein mentioned, Defendant Geraci (a) was and is an individual residing and doing business as an accounting and financial advisor in the City and County of San Diego; and (b) was an is the Plaintiff in the underlying lawsuit against Cotton.

10. At all times herein mentioned, Defendant REBECCA BERRY a/k/a REBECCA ANN BERRY-RUNYAN ("Berry") (a) was and is an individual residing and doing business in the City and County of San Diego; and (b) was and is the agent of Geraci.

11. At all times herein mentioned, Defendant WEINSTEIN ("Weinstein") (a) was and is an individual residing and doing business in the City and County of San Diego; (b) is an attorney licensed by the State of California to practice law; (c) is a managing partner and shareholder of the law firm of Defendant FERRIS & BRITTON APC ("F&B"); and (d) is the attorney of record for Geraci and Berry in the Geraci Litigation.

12. At all times herein mentioned, Defendant F&B (a) was and is a California corporation doing business as a professional law firm in the City and County of San Diego; and (b) is the law firm representing Geraci and Berry in the Geraci Litigation.

13. At all times herein mentioned, Defendant GINA M. AUSTIN ("Austin") (a) was and is an individual residing and doing business in the City and County of San Diego as an attorney at law specializing in cannabis regulation and permitting; (b) is an attorney licensed by the State of California to practice law; (c) is the sole officer and director of Defendant AUSTIN LEGAL GROUP, APC, a California corporation; (d) is Geraci's attorney in connection with the 6176 CUP Application; and (e) represented Geraci in the Geraci Litigation and in other matters.

14. At all times herein mentioned, Defendant Damian (a) was and is an individual residing and doing business in the City and County of San Diego; (b) is an attorney licensed by the State of California to practice law; (c) is a partner and shareholder of the law firm of Defendant FTB.

15. At all times herein mentioned, Defendant Witt (a) was and is an individual residing and doing business in the City and County of San Diego; (b) is an attorney licensed by the State of California to practice law; (c) is a junior associate of the law firm of Defendant FTB.

16. At all times herein mentioned, FTB, was a limited liability partnership with its principle place of business in the County of San Diego.

GENERAL ALLEGATIONS

A. Material Factual Background

17. The regulatory schemes being effectuated by the State of California and the City of San Diego governing the licensing of marijuana businesses prohibit individuals who have previously been sanctioned with illegal marijuana activities from having an ownership interest in a legal Marijuana Outlet. San Diego Municipal Code ("SDMC") §42.1501 materially states: "the intent of this Division [is] to ensure that marijuana is not diverted for illegal purposes, and to limit its use to those persons authorized under state law." California Bus. & Prof. Code § 26057 applies to the licensing of marijuana operations and provides the criteria pursuant to which a license may be denied, including the "[f]ailure to provide information required by the licensing authority" and "[t]he applicant… has been sanctioned by a licensing authority or a city… for unauthorized commercial cannabis activities…" Bus. & Prof. Code § 26057(b)(3),(7). Additionally, various other provisions void marijuana licenses acquired through fraud and other unlawful actions. *See*, *e.g.*, Bus. & Prof. Code § 480(d) ("A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.")

18. Geraci has been a named defendant and sanctioned in at least three actions by the City for owning/managing illegal marijuana dispensaries. Geraci is not named as a person with an interest in the Property or the 6176 CUP Application in contravention of numerous City and State laws. Geraci judicially admits that he has previously been sanctioned and that his name is not on the 6176 CUP Application.

19. Berry is Geraci's agent, a California licensed Real Estate Broker, disclaims knowledge of the statute of frauds, submitted the 6176 CUP Application claiming to be the Owner of the Property, and alleges she thought it was proper to not disclose Geraci as an individual with an interest in the Property or the CUP in the 6176 CUP Application.

20. Austin, per her own sworn declaration, is a "an expert in cannabis licensing and entitlement at the state and local levels and regularly speak[s] on the topic across the nation... [and] performs... legal services [that] include corporate transactions and structuring, land use entitlements and

regulations related to cannabis, and state compliance related to cannabis."[4] Austin is Geraci's attorney/agent who is responsible for the 6176 CUP Application and who has also represented him in the Geraci Litigation. She reviewed and approved the 6176 CUP Application before its submission to the City knowing that Berry had falsely stated she was the "Owner" of the Property in the application for the 6176 CUP Application.

21. Sean Miller ("Miller") is an agent of Geraci and a violent convict out on parole who "was found guilty on two counts of committing wire fraud, in violation of 18 U.S.C. § 1343, two counts of money laundering, in violation of 18 U.S.C. § 1957, and one count of witness tampering, in violation of 18 U.S.C. § 1512(b)(3)." *United States v. Miller*, 531 F.3d 340, 342 (6th Cir. 2008). Miller threatened Hurtado and his family with the goal of having Hurtado use his influence with Cotton to have him forcibly settle with Geraci.

22. Cotton hired FTB because they represented plaintiff in *Engebretsen v. City of San Diego* (Nov. 30, 2016, No. D068438) ___Cal.App.5th___ [2016 Cal. App. Unpub. LEXIS 8548, at *1]. In *Engebretsen* "[plaintiff] sought a writ of mandate to compel the [City] to recognize him as the sole applicant for a [CUP] to operate a [Marijuana Outlet] on his [real property] and process the application accordingly. Engebretsen alleged he was the sole record owner and interest holder of [his real property] throughout the application process. Although real party in interest Radoslav Kalla was listed as the applicant for the CUP, Engebretsen alleged that Kalla was acting on Engebretsen's behalf as an agent, Kalla never had an independent legal right to use the [Engebretsen's real property], and Engebretsen had since revoked Kalla's agency. The City did not oppose Engebretsen's writ petition. [¶] The trial court granted the writ, and in a statement of decision, discussed its basis for finding that (1) Kalla was acting as Engebretsen's agent in pursuing the CUP; (2) Kalla did not have any independent authority to pursue it or legal interest in the [Engebretsen's real property]; (3) Engebretsen, as the principal, terminated Kalla's agency and became the only proper applicant; and (4) the City had a ministerial duty to process the application in Engebretsen's name." *Id*. at *1-2. In other words, a nearly identical situation in which Cotton found himself with Geraci. Cotton entered into a joint-venture with Geraci and, although it was

[4] CASE NO. 37-2018-00034229-CU-BC-CTL, SUPPLEMENTAL DECLARATION OF GINA M. AUSTIN FOR SEPTEMBER 7, 2018 HEARING, filed September 4, 2018.

done without his knowledge, Berry submitted the 6176 CUP Application to the City as an agent of joint-venture between Cotton and Geraci. When Geraci breached the JVA, Cotton terminated the agreement and, thus, the agency relationship with Berry, who by her own judicial admissions has no interest in the Property other than as Geraci's agent.

B. Geraci's Conspiracy to Unlawfully Acquire Cotton's Property

23. The day after Cotton terminated the JVA with Geraci, Cotton was served with a frivolous lawsuit by Geraci and a copy of a Lis Pendens filed on the Property seeking to prevent the sale to Martin. Additionally, Geraci began a course of unlawful conduct to coerce Cotton to settle the Geraci Litigation for less than what Cotton had bargained-for in the JVA. Geraci's efforts included physical threats and intimidation tactics that were not only aimed at Cotton, but also Cotton's friends, employees and his litigation investor, Hurtado. When Cotton communicated that he could not legally agree to a settlement that would result in Geraci owning the Property and CUP, due to an amendment to the agreement with Martin resulting from the filing of the Geraci Litigation, Geraci changed course and conspired with his agents, who include Jim Bartell (a powerful political lobbyist with a great degree of influence with the City), to sabotage the 6176 CUP Application with the City. The ultimate goal being to limit Geraci and his agents' legal and financial liability to Cotton and Martin. Their efforts to sabotage the 6176 CUP Application at the Property primarily consisted of two routes, both of which were effectuated via Bartell's political influence. First, to have the City deny the 6176 CUP Application and, second, to stall the 6176 CUP Application while a competing CUP application (the "6120 CUP Application") was filed via a proxy within 1,000 feet of the Property.[5]

C. FTB's Legal Malpractice

24. On or about May 12, 2107 Cotton, self-represented, filed a cross-complaint against Geraci and Berry which contained 11 causes of action.

[5] **San Diego Municipal Code § 141.0504** (a) Marijuana outlets shall maintain the following minimum separation between uses, as measured between property lines, in accordance with Section 113.0225: (1) 1,000 feet from resource and population-based city parks, other marijuana outlets, churches, child care centers, playgrounds, libraries owned and operated by the City of San Diego, minor-oriented facilities, residential care facilities, and schools. For purposes of this section, school means any public or private institution of learning providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

25. On or about June 13, 2017, at San Diego, California, Plaintiffs retained and employed FTB to represent Cotton in, inter alia, the Geraci Litigation.

26. FTB agreed to represent Cotton on a financed agreement of $10,000 a month. The agreement was that the law firm would fully represent Cotton even if the cost was greater than $10,000. If there was a month that was in excess of $10,000, then that balance would be carried over.

27. However, Witt communicated that Damian was concerned his partners would not like it if they knew that he took on Cotton's representation with an understanding that Cotton would only pay $10,000 a month. Witt, however, expressly stated that it would not be an issue as they could just pretend that any delay in payments was due to Cotton's delay in payment. At Witt's suggestion, Cotton emailed the executed agreement with FTB for their services that does not contain the $10,000 a month agreement but noted in the cover email that their real agreement was the agreed-to $10,000 a month payment plan.

28. On or about June 30, 2017, FTB filed Cotton's "First Amended Cross-Complaint." The "First Amended Cross-Complaint" contained seven causes of action.

29. On or about August 25, 2017 FTB filed Cotton's "Second Amended Cross-Complaint." The "Second Amended Cross-Complaint" contained four causes of actions.

30. FTB had no justification to dismiss the other causes of action and Cotton did not understand, at that point in time, that he would lose his meritorious causes of action as a result of FTB's dismissal of causes of action and release of Berry from other causes of action.

31. No court order was issued with relation to the merits of any of Cotton's original causes of action that would require FTB to drop any cause of action.

32. Plaintiffs submit that no reasonable attorney would dismiss or otherwise fail to plea those causes of action as they were meritorious.

33. In fact, Cotton's First Amended Cross-Complaint, drafted and filed by FTB, contained two causes of action for interference with a prospective economic relation which Cotton had not including in his pro per filing. These meritorious causes were not carried over to the Second Amended Cross-Complaint. FTB has never provided any reasoning for this action, and justified their dismissal

34. On December 7, 2016, at a hearing on Cotton's request for a temporary restraining order, FTB failed to raise in oral argument the most critical and case-dispositive piece of evidence in the lawsuit, the Confirmation Email (as defined below).

35. Demian notified Cotton he was withdrawing as counsel via email without notice after failing to prepare for that hearing, failing to raise material evidence at the hearing (that would have resulted in a favorable decision as a matter of law), and admitting to Hurtado, immediately after the hearing outside the courtroom, that he was not prepared because the "$10,000 was not enough."

36. Cotton thereafter represented himself before the court pro se and, having no legal education or prior legal experience, was unable to convey the facts free of emotion resulting in his inability to persuade the trial court of the frivolous nature of the action against him; despite the undisputed facts and judicial admissions that mandate resolution in his favor as a matter of law in the Geraci Litigation. Summarily stated, Cotton's submissions to the Court and oral arguments at hearings, alleging a conspiracy by Geraci, Geraci's attorneys and agents, various City officials and even his own attorneys, FTB, make him appear to be a "conspiracy nut." Thus, causing him to lose all credibility with the presiding judge in the Geraci Litigation.

37. Plaintiffs' justifiable reliance on the misrepresentations of FTB directly caused damages in the form of economic losses to Plaintiffs in an amount to be determined at trial.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

FRAUD

(Against Defendants Geraci, Berry, Weinstein, Toothacre, F&B, Austin, ALG and DOES 1-50) Inclusive)

38. Plaintiff realleged and incorporates herein by this reference all the allegations contained above.

39. In the summer of 2016, Geraci was one of several parties who contacted Cotton seeking to purchase the Property in order to apply for a CUP to establish and operate a Marijuana Outlet at the Property (i.e., the Business). Over the course of the ensuing five to six months, Geraci and Cotton met, spoke by telephone, and emailed and texted one another actively working to negotiate the terms of the potential sale of the Property to Geraci. During this time, Cotton was also actively meeting, negotiating and communicating with other parties who were interested in purchasing the Property.

40. During their negotiations, Geraci represented to Cotton that (a) he was a California licensed Real Estate Agent; (b) he was an Enrolled Agent with the IRS; (c) he was the owner and manager of Tax and Financial Center, Inc. (a sophisticated accounting and financial advisory services company); (d) preliminary due diligence on the Property by his experts had discovered that there was a zoning issue that unless first resolved would prevent the City from even accepting the 6176 CUP Application (the "Zoning Issue"); (e) through his professional relationships and powerful hired lobbyists, he was in a unique position to have the Zoning Issue resolved; (f) he was highly qualified to operate the Business because he owned and operated multiple cannabis dispensaries in the City; and (g) Berry was a trustworthy individual to be the applicant for the 6176 CUP Application because, inter alia, she assisted Geraci in managing his marijuana dispensaries and could pass the background checks.

41. On or around October 31, 2016, Geraci asked Cotton to execute Form DS-318 (the "Ownership Disclosure Statement") – a required component of all CUP applications for Marijuana Outlets with the City. Geraci asked Cotton to execute the Ownership Disclosure Statement in good faith so that he could show it to his experts to prove that he had access to the Property and they could begin their planning and lobbying efforts to resolve the Zoning Issue. The Ownership Disclosure Statement stated that Berry was the "lessee" of the Property, however, Cotton has never met Berry or entered into any type of agreement with Berry.

42. On November 2, 2016, Cotton was actively negotiating with various parties regarding the purchase and sale of the Property. However, in the afternoon of November 2, 2016, Cotton and Geraci met at Geraci's office, finalized their negotiations and entered into the JVA. The agreed-upon terms included but were not limited to the following:

a. Geraci would resolve the Zoning Issue and pay for all costs associated with the submission and approval of the 6176 CUP Application;

b. If the CUP was approved, then Geraci would pay for the development of the Business at the Property and provide Cotton (i) a total purchase price of $800,000 for the Property; (ii) a 10% equity position in the Business; and (iii) the greater of $10,000 or 10% of the net profits on a monthly basis; and

c. If the CUP was denied, Cotton would keep an agreed upon $50,000 non-refundable deposit ("NRD") and the transaction would not close. In other words, the issuance of the

CUP at the Property was a condition precedent for closing on the sale of the Property (the "Condition Precedent") and, if the CUP was denied, Defendant would keep his Property and the $50,000 NRD.

43. At the November 2, 2016 meeting, Geraci provided $10,000 in cash towards the agreed upon $50,000 NRD and had Cotton execute a three-sentence document he drafted to memorialize Cotton's receipt of the $10,000 (the "November Document").[6] Also, Geraci promised to (i) have his attorney, Austin, *promptly* reduce the JVA to writing and (ii) to not submit the 6176 CUP Application to the City until he paid the balance of the NRD to Cotton.

44. Later that ***same*** day, the following communications took place between Geraci and Cotton:

a. At 3:11 p.m., Geraci emailed Cotton a scanned copy of the November Document, which states:

> Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for the 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 contacts [sic] on this property.

(emphasis added).

b. At 6:55 p.m., Cotton replied:

> Thank you for meeting today. Since we executed the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored element in my decision to sell the property. I'll be fine if you would simply acknowledge that here in a reply.

(emphasis added).

c. At 9:13 p.m., Geraci replied: "***No no problem at all***" (the "Confirmation Email").

45. Geraci filed the Complaint in the Geraci Litigation stating that the November Document was the final agreement for the purchase of the Property. Geraci knows that such a statement is false, as

[6] The November Document, at Geraci's request, was notarized by an employee of Geraci who works at his office and was there during their meeting.

he himself has confirmed in the Confirmation Email, but he did so to seek to unlawfully deprive Cotton of, *inter alia,* his bargained-for 10% equity position. It is justified for Cotton to have relied on Geraci and his representations as he was a California licensed real estate agent, an Enrolled Agent with the IRS, and held himself out as a sophisticated businessman. Geraci's representations have resulted in damages as Cotton has been forced to continuously sell off his interest in the Property and the CUP to finance his legal defense.

SECOND CAUSE OF ACTION

ABUSE OF PROCESS

(Against Defendants Geraci, Berry, Weinstein, Toothacre, F&B, Austin, ALG and DOES 1-50, Inclusive)

46. Plaintiff realleged and incorporates herein by this reference all the allegations contained above.

47. Geraci, with the help of others, including named defendants herein, filed a frivolous lawsuit, filed a Lis Pendens on the property, filed motions, declarations, responsive pleadings, taken depositions, and generally maintained the lawsuit knowing it lacked probable cause at its filing and, as result of Geraci's judicial admissions, was barred by the parol evidence rule and the statute of frauds.

48. That Geraci and his cohorts used this legal procedure to interfere in a contractual relationship and force the sale of the Property to Geraci instead of and rather than Geraci.

49. That Plaintiffs were and continue to be harmed; and

50. That Defendants conduct was a substantial factor in causing Plaintiffs' harm.

THIRD CAUSE OF ACTION

RICO

(Against Defendants Geraci, Berry, Weinstein, Toothacre, F&B, Austin, ALG, Miller and DOES 1-50, Inclusive)

51. Plaintiff realleged and incorporates herein by this reference all the allegations contained above.

52. Geraci is the head of a criminal enterprise dealing in illegal marijuana operations who is attempting acquire a prohibited interest in a Marijuana Outlet via a proxy.

53. The goal of Geraci and his agents is to circumvent the applicable regulatory scheme and thereby continue to run their criminal enterprise under the facade of a lawful and legitimate business.

54. Commencing on or about August of 2016, Geraci and his agents named as defendants herein, conspired together wrongfully to acquire a CUP for a Marijuana Outlet on the Property. To this end Geraci and his agents have engaged in fraud, misrepresentations, intimidation, cohesion, abuse of process, causing all of the value that Plaintiffs' would have benefited from and instead have had to expend all of their resources to defend a frivolous lawsuit.

55. Geraci and his agents were aware that Geraci and others planned to interfere in and prevent Cotton from 1) transferring his property to a bona fide purchaser for value; and/or 2) obtaining a CUP on the Property.

56. Defendants agreed with Geraci and others and intended that the interference with the sale of the property and issuance of a CUP on the Property be committed.

57. Additionally, a conspiracy can be inferred from the circumstances, the nature of the acts done by each Defendant, the relationships between the Defendants, and the interest of each Defendant individually and collectively.

58. Geraci, per his own and Berry's judicial admissions, is prohibited from being licensed with the State of California for a Marijuana Outlet because, inter alia, (i) his prior involvement with unauthorized commercial cannabis activities for which he was sanctioned; (ii) his failure to have his agent, Berry, disclose his ownership interest in the Property and the CUP in the 6176 CUP Application; and (iii) his filing of the Geraci Litigation which, as fully described herein, is a fraudulent action in furtherance of his conspiracy seeking to use the judiciary to unlawfully deprive Cotton and Martin of their interest in the Property and the CUP.

FOURTH CAUSE OF ACTION

CIVIL CONSPIRACY

(Against Defendants Geraci, Berry, Weinstein, Toothacre, Austin, Miller, ALG
And DOES 1-50, Inclusive)

59. Plaintiff realleged and incorporates herein by this reference all the allegations contained above.

60. Defendants named in this cause of action conspired to fraudulently deprive Plaintiffs of their interest in the Property and to unlawfully coerce and intimidate them into having Cotton settle the Geraci Litigation. All the named defendants knew that Geraci did not have a lawful claim to the Property, yet he and they agreed, and took action, to effectuate the fraudulent scheme premised on the false allegation that the November Document was the final integrated agreement for the Property. And, in furtherance of the conspiracy, to unlawfully intimidate Plaintiffs.

FIFTH CAUSE OF ACTION
LEGAL MALPRACTICE

(Against FTB, Demain, Witt and DOES 1-50 Inclusive)

61. Plaintiffs repeat and reallege all previous allegation as if restated herein.

62. On or about June 13, 2017, at San Diego, California, Plaintiffs retained and employed FTB to represent Cotton in connection with his legal issues related to the Property. At such a time and place Defendants and each of them accepted such employment and agreed to perform legal services for Plaintiffs.

63. At all times herein mentioned, FTB and each of them, failed to exercise reasonable care and skill in undertaking to perform such legal services for Plaintiffs.

64. Had FTB, and each of them, exercised proper care and skill in the foregoing matter, Plaintiffs would have seen the resolution of the underlying matter in their favor and Geraci and his attorneys would not have been emboldened to continue to maintain a frivolous lawsuit and take extra judicial actions to attempt to limit their own liability.

65. As a proximate result of negligence of the FTB, and each of them, Plaintiffs have been damaged in an amount which is unknown or unknowable, but which is excess of the jurisdictional limits of this Court. Plaintiffs will request leave of Court to amend this Complaint when such an amount is ascertained.

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PRAYER FOR RELIEF:

WHEREFORE, Cotton prays for relief against defendants as follows.

1. General, exemplary, special and or consequential damages in the amount to be proven at trial, but which are no less than 5,000,000;
2. All applicable relief entitled to Plaintiffs by law and equity.
3. All other relief is awarded as the Court determine is in the interest of justice.

Dated: December 6, 2018 THE LAW OFFICE OF JACOB AUSTIN

/s Jacob P. Austin
JACOB P. AUSTIN
Attorney for Plaintiffs

Exhibit
5

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual; JOSE HURTADO, an individual,

Plaintiff,

v.

LARRY GERACI, an individual; REBECCA BERRY a/k/a REBECCA ANN BERRY RUNYAN, an individual; MICHAEL R. WEINSTEIN, an individual; SCOTT TOOTHACRE, an individual; FERRIS & BRITTON APC, a California corporation; GINA M. AUSTIN, an individual; AUSTIN LEGAL GROUP APC, a California corporation; SEAN MILLER, an individual; FINCH THORTON & BAIRD, a limited liability partnership; DAVID DEMIAN, an individual; ADAM WITT, an individual; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 18cv2751-GPC(MDD)

ORDER DISMISSING THE COMPLAINT WITH PREJUDICE AND DENYING DEFENDANTS' MOTIONS TO DISMISS AS MOOT

[Dkt. Nos. 18, 20, 21.]

Before the Court are Defendants Finch Thornton & Baird LLP, David Demian and Adam Witt's motion to dismiss pursuant to Federal Rule of Civil Procedure 4, (Dkt. No.

18); Defendants Michael R Weinstein, Scott Toothacre, and Ferris & Britton, APC's motion to dismiss, or in the alternative, motion to stay the case, (Dkt. No. 20); and Defendants Gina M. Austin and Austin Legal Group APC's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), 9(b) and California's anti-SLAPP statute. (Dkt. No. 21.) Oppositions were filed by Plaintiff Darryl Cotton.[1] (Dkt. Nos. 27, 28.) Replies were subsequently filed by all Defendants. (Dkt. Nos. 29-31.)

Based on the reasoning below, the Court DISMISSES the Complaint pursuant to the Court's Order filed on February 28, 2018 in Case No. 18cv325-GPC(MDD) and DENIES Defendants' motions to dismiss as moot.

Discussion

On December 6, 2018, Plaintiffs Darryl Cotton ("Cotton") and Joe Hurtado ("Hurtado"), with counsel, filed the instant Complaint alleging causes of action for fraud, abuse of process, RICO, civil conspiracy, and legal malpractice against Defendant Larry Geraci and a number of other defendants involved in a pending state court case in the Superior Court of San Diego in Case No. 37-2017-00010073-CU-BC-CTL. (Dkt. No. 1.) Pursuant to Local Civil Rule 40.1, the instant Complaint was low-numbered to a prior case in this Court filed by Darryl Cotton against Larry Geraci and numerous defendants in Case No. 18cv325-GPC(MDD) because they are related. (Dkt. No. 3.) On April 19, 2019, Hurtado substituted himself in to proceed in pro per in place of his counsel. (Dkt. No. 26.)

The instant case is based on an alleged real estate purchase and sale contract between Cotton and Geraci that is the subject of the controversy in the state court action and also includes Cotton's claims against individuals involved in the underlying state court case. On March 21, 2017, Geraci filed a state court complaint against Cotton alleging breach of contract, breach of the covenant of good faith and fair dealing, specific

[1] Plaintiff Hurtado, now proceeding pro se, did not file an opposition.

performance and declaratory relief concerning a real estate purchase and sale agreement. (Dkt. No. 20-2, Ds' RJN[2], Ex. B, State Court Compl.) According to the state court complaint, the parties entered into a written agreement for the purchase and sale of Cotton's real property located at 6176 Federal Boulevard, San Diego, CA on November 2, 2016. (Id., Compl. ¶ 7.) On that day, Geraci paid Cotton $10,000 good faith earnest money to be applied to the sales price of $800,000 and the sale was subject to approval of a conditional use permit ("CUP") by the City of San Diego. (Id. ¶ 8.) Geraci engaged in efforts and spent money to obtain a CUP including hiring a consultant, Rebecca Berry, to coordinate the CUP efforts and an architect. (Id. ¶ 9.) The state court complaint claims that Cotton anticipatorily breached the contract stating he will not perform according to the terms of the written contract. (Id. ¶ 11.) Specifically, Geraci alleges that Cotton "has stated that, contrary to the written terms, the parties agreed to a down payment or earnest money in the amount of $50,000.00 and that he will not perform unless Geraci makes a further down payment. Cotton has also stated that, contrary to the written terms, he is entitled to a 10% ownership interest in the Property and that he will not perform unless Geraci transfers to him a 10% ownership interest. Cotton also threatened to contact the City of San Diego to sabotage the CUP process by withdrawing his acknowledgment that Geraci has a right to possession or control of the Property if Geraci will not accede to his additional terms and conditions and, on March 21, 2017, Cotton made good on his threat when he contacted the City of San Diego and attempted to withdraw the CUP application." (Id.) On May 12, 2017, Cotton subsequently filed a cross-complaint in state court against Geraci and Berry for numerous causes of action relating the contract for the sale of his Property. (Id., Ex. C.)

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[2] The Court grants Defendants Weinstein, Toothacre and Ferris & Britton, APC's request for judicial notice of court filings in state court and this Court. (Dkt. No. 20-2.) The Court may take judicial notice of court filings and other matters of public record. See Reyn's Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746 n.6 (9th Cir. 2006).

During the pendency of the state court complaint, on February 9, 2018, Cotton, proceeding *pro se*, filed a Complaint in this Court alleging eighteen causes of action under federal and state law along with a motion to proceed in forma pauperis. (Case No. 18cv325-GPC(MDD), Dkt. Nos. 1, 2.) Similar to the state court complaint and cross-complaint, the Complaint concerned the alleged breach of an agreement for the purchase and sale of Cotton's real property located at 6176 Federal Boulevard, San Diego, CA on November 2, 2016. (Case No. 18cv325-GPC(MDD), Dkt. No. 1, Compl.[3]) The Complaint alleged that Cotton's property at 6176 Federal Boulevard, San Diego, CA, qualifies for a Conditional Use Permit ("CUP") for the establishment of a Medical Marijuana Consumer Collective ("MMCC"). (Id. ¶ 2.) If the CUP is approved, the value of the property will potentially be greater than $100 million. (Id. ¶¶ 2, 3.) On November 2, 2016, Cotton and Geraci orally agreed to terms for the sale of Cotton's property. (Id. ¶ 44.) The oral agreement contained condition precedents prior to closing. (Id. ¶ 45.) The Agreement required that Geraci provide a $50,000 non-refundable deposit for Cotton to keep if the CUP was not issued; a total purchase price of $800,000 if the CUP was issued; and a 10% equity stake in the MMCC with a guaranteed monthly equity distribution of $10,000. (Id. ¶ 46.) According to Cotton, Geraci provided Cotton with $10,000 cash to be applied toward the non-refundable deposit of $50,000 and had Cotton execute a document to record his receipt of the money and promised to have his attorney, Gina Austin, speedily draft a final, written purchase agreement for the Property that would memorialize their oral terms. (Id. ¶ 47.) They effectively agreed to two written agreements: the "purchase agreement" for the sale of the property and a "side agreement" concerning Cotton's equity stake and other provisions. (Id. ¶ 48.)

Cotton claims he has definitive proof of the terms of their agreement based on a confirmation email Geraci sent to Cotton stating, "No No problem at all" when Cotton

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[3] The allegations in the Complaint, in 18cv325, are similar to those in Cotton's cross-complaint in state court. (See Dkt. No. 20-2, Ds' RJN, Exs. C and D.)

emailed Geraci noting that the 10% equity interest in the dispensary was not added into their purchase agreement of November 2, 2016 and asked that Geraci simply acknowledge that interest in a reply email. (Id. ¶ 49.) According to Cotton, Geraci's response to the email demonstrates that the November 2, 2016 agreement is not the final agreement. (Id. ¶ 50.) He also claims that Geraci attached a draft "side agreement" providing for the 10% interest in an email on March 7, 2017. (Id. ¶¶ 52-54.) Cotton argues that Geraci breached the agreement by filing the CUP application without first paying the balance of $40,000, and failed to provide the final agreement as promised. (Id. ¶ 56.) Geraci made it clear he would not honor the agreement, and then Cotton responded informing Geraci that he no longer has any interest in his property. (Id. ¶ 59.) In desperate need of funds, Cotton entered into a written real estate purchase agreement with a third party. (Id.)

On February 28, 2018, the Court granted Plaintiff's motion to proceed IFP and *sua sponte* stayed the case until resolution of the parallel state court action pursuant to the Colorado River[4] doctrine. (Dkt. No. 7.) In its order, the Court conducted a detailed analysis going through the eight factors to determine if the Colorado River abstention doctrine applied. (Id. at 6-10.) Of significance, the Court noted that "Plaintiff seeks to litigate the exact same issues that are currently pending in state court in this Court. Not only will both courts consider the same issues but could possibly reach different results." (Id. at 8.) The Court also noted that the state court action was filed first and was in the middle of discovery. (Id. at 8.) The Court concluded that Cotton was "clearly forum shopping" and was "dissatisfied with the acts taken by the defendants in the underlying state court case, and dissatisfied with the rulings of the state court." (Id. at 9-10.) Finally, the court concluded that the state court and federal court complaint were substantially similar as the causes of action all arise out of the same November 2, 2016

[4] Colorado River Water Dist. v. United States, 424 U.S. 800 (1976).

agreement and subsequent disputes. The Court stayed the case on February 28, 2018 "until resolution of the parallel state court action." (Id. at 11.)

By filing the instant Complaint on December 6, 2018 alleging causes of action relating to the November 2, 2016 purchase and sale agreement between Cotton and Geraci, Cotton is again improperly attempting to forum shop, and this time, attempting to circumvent the Court's order staying the issues concerning the real estate purchase and sale agreement of November 2, 2016 pending resolution of the state court action. According to Defendants, the state court action is still pending with a trial date set for June 28, 2019. (Dkt. No. 20-1 at 10.) Instead of filing a new complaint, Plaintiff should have filed a motion to lift the stay in Case No. 18cv325 explaining why the stay should be lifted due to changed circumstances. See Taylor v. Hawley Troxel Ennis & Hawley, LLP, 628 Fed. App'x 490, 491 (9th Cir. 2015) (district court erred in denying motion to lift stay due to changed circumstances).

In responding to the motion to dismiss by Weinstein, Toothacre, and Ferris & Britton, Plaintiff appears to justify the filing of the new Complaint or demonstrate changed circumstances by arguing that the stay based on the Colorado River abstention is inapplicable because the state court does not have jurisdiction over the real property at issue because indispensable parties have not been named; therefore, the state action must be dismissed. (Dkt. No. 27 at 6.) He argues that his counsel has an *ex parte* hearing on April 25, 2019 in the state action seeking dismissal for failure to join an "indispensable party" however, he has not updated the Court on the state court's ruling and based on a review of the Register of Actions on the state court's website, the case is still pending in state court. Moreover, Defendants explained that the April 25, 2019 *ex parte* hearing never proceeded because Cotton never filed an application. (Dkt. No. 31 at 4.) Cotton then argues that the state court action should be dismissed for failure to join an indispensable party, Richard Martin, the third party who purchased the property on March 22, 2017. However, this issue is not properly before this Court.

Cotton further argues, without legal authority, that the Colorado River abstention doctrine is no longer applicable because there are additional parties and an additional cause of action for legal malpractice.[5]

The Colorado River abstention doctrine applies to actions that are "substantially similar," and "exact parallelism" is not required. Nakash v. Marciano, 882 F.2d 1411, 1412-13, 1416 (9th Cir. 1989) (The federal action, filed five years after the state action included slightly different parties and similar, although not identical, causes of action). In Nakash, the court found that the state and federal actions were substantially similar because it was merely a "'spin-off' of the more comprehensive state litigation." Id. at 1417; Am. Int'l Underwriters, Inc. v. Continental Ins. Co., 843 F.2d 1253, 1259-60 (9th Cir. 1988) (after filing in state court, plaintiff brought suit in federal court to avoid the state court's unfavorable evidentiary rules); Silvaco Data Sys., Inc. v. Tech. Modeling Assocs., Inc., 896 F. Supp. 973, 976 (N.D. Cal. 1995) (pointing out that "[t]he mere fact that the claims in state and federal court are not based on exactly the same laws does not preclude a finding of substantial similarity" and holding that "[a]lthough the state and federal actions are not identical, they include extremely similar claims that all arise out of the long-standing competitive feud between [the parties]").

Here, the instant Complaint adds an additional plaintiff, Joe Hurtado, adds as defendants his former attorneys representing him in the state court action, Finch Thorton & Baird, David Demian and Adam Witt as well as adding Sean Miller as a defendant. According to the Complaint, Joe Hurtado is Cotton's "transactional advisor" and "litigation investor" as it relates to the "underlying lawsuit between Cotton and Geraci." (Dkt. No. 1, Compl. ¶ 8.) It also adds Sean Miller as a defendant because he threatened

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[5] Cotton also argues that the Colorado River abstention does not apply where monetary damages are sought under a claim pursuant to 42 U.S.C. § 1983 while state court proceedings are pending. He claims that Hurtado has stated that he intends to file a separate complaint to include a 42 U.S.C. § 1983 claim against the City of San Diego. (Dkt. No. 28 at 16.) Even if Plaintiff's argument is correct, the argument is without merit as the pending complaint does not assert a claim under 42 U.S.C. § 1983.

Hurtado and his family with the purpose of using Hurtado's influence with Cotton to have him forcibly settle with Geraci. (Id. ¶ 21.) Finally, the Complaint adds a legal malpractice claim against Cotton's former counsel in the state court action, Finch Thornton & Baird, Demian and Witt. (Id. ¶¶ 24-37.) However, the naming of additional parties and the addition of the legal malpractice claim that arise out of the state court litigation concerning the November 2, 2016 real estate contract between Cotton and Geraci do not demonstrate changed circumstances sufficient to lift the stay. Plaintiff continues to be dissatisfied with the state court proceedings and the conduct of the named defendants in the state court proceedings. See Nakash, 882 F.2d at 1417 ("We have no interest in encouraging this practice [of forum shopping due to dissatisfaction with the state court]."). Accordingly, because there is a pending case that is currently stayed, the Court DISMISSES the Complaint with prejudice pursuant to the Court's Order staying the action under the Colorado River abstention doctrine, filed on February 29, 2018, in Case No. 18cv325-GPC(MDD).

Plaintiff expressed concern of prejudice if the complaint is dismissed because his legal malpractice claim would be barred because the statute of limitations for legal malpractice not related to fraud is one year.[6] See Cal. Civ. Proc. Code § 340.6. Plaintiff notes that his attorneys in state court were grossly negligently or purposefully by failing to address factual and legal issues at oral argument on December 7, 2017. (Dkt. No. 27 at 3.) Therefore, the instant Complaint was filed within the one-year limitations period on December 6, 2018. However, Plaintiff indicated that he intends to allege a legal malpractice claim based on fraud where the statue of limitations is four years. (Dkt. No. 27 at 7.) Therefore, Plaintiff will not be prejudiced by the Court's dismissal of this action.

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[6] Plaintiff raised the prejudice issue with regards to Defendants Finch Thornton & Baird, Demian and Witt's motion to dismiss for improper service. (Dkt. No. 27 at 6.)

Conclusion

Based on the above, the Court DISMISSES the Complaint with prejudice. Any future filings shall be made in Case No. 18cv325-GPC(MDD). The Court DENIES all Defendants' motions to dismiss as moot. The hearing set for May 24, 2019 shall be **vacated.**

IT IS SO ORDERED.

Dated: May 14, 2019

Hon. Gonzalo P. Curiel
United States District Judge