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2020 JUN 29 PM 3: 29

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

5 **Plaintiff Pro Se**

BY _____ DEPUTY

6 **UNITED STATES DISTRICT COURT**
7 **SOUTHERN DISTRICT OF CALIFORNIA**

8
9 **DARRYL COTTON, an individual**

Case No. 3:18-cv-00325-BAS-DEB

10 **Plaintiff,**

11 **vs.**

**PLAINTIFF DARRYL COTTON'S
MEMORANDUM OF POINTS AND
AUTHORITIES (1) IN OPPOSITION
TO DEFENDANT GINA M. AUSTIN'S
MOTION TO DISMISS PLAINTIFF'S
FIRST AMENDED COMPLAINT
AND (2) REQUEST FOR SANCTIONS**

12 **CYNTHIA BASHANT, an individual;**
13 **JOEL WOHLFEIL, an individual;**
14 **LARRY GERACI, an individual;**
15 **REBECCA BERRY, an individual;**
16 **GINA AUSTIN, an individual;**
17 **MICHAEL R. WEINSTEIN, an**
18 **individual; JESSICA MCELFRISH, an**
19 **individual; and DAVID DEMIAN, an**
20 **individual**

21 **Defendants,**

Hearing Date: July 13, 2020
Time: NA
Judge: Hon. Cynthia Ann Bashant
Courtroom:

Related Case: 20CV0656-BAS-MDD

DEMAND FOR JURY TRIAL

1 Plaintiff pro se Darryl Cotton hereby files this opposition to defendant Gina M. Austin's
2 Motion to Dismiss (the "MTD") Plaintiff's First Amended Complaint (the "FAC") filed by her
3 attorneys Douglas A. Pettit and Julia Dalzell of Pettit Kohn Ingrassia Lutz & Dolin ("Pettit's Law
4 Firm").

5 Introduction

6 "One species of fraud upon the court occurs when an 'officer of the court' perpetrates fraud
7 affecting the ability of the court or jury to impartially judge a case." *Pumphrey v. K.W. Thompson*
8 *Tool Co.*, 62 F.3d 1128, 1130 (9th Cir. 1995). Austin lied to the jury and the court in *Cotton I* on a
9 **case-dispositive issue** and, thus, committed a fraud on the court that mandates the vacating of the
10 *Cotton I* judgment for enforcing an illegal contract and being the product of a fraud on the court.

11 In this action, Cotton seeks to vacate the judgment issued in *Cotton I* for being procured
12 through, *inter alia*, multiple acts that constitute a fraud on the court. Those acts include Austin's
13 perjured testimony in *Cotton I* that her client, Lawrence Geraci, who had been repeatedly sanctioned
14 for his owning of illegal marijuana dispensaries, could lawfully own a cannabis conditional use permit
15 ("CUP") via a fraudulent application submitted in the name of his receptionist, Rebeca Berry, to the
16 City of San Diego (the "City"). (ECF Dock. No. 18 (FAC) at ¶11 ("**Austin, as Geraci's cannabis**
17 **attorney and responsible for the Berry Application, testified in Cotton I that it is not unlawful for**
18 **Berry to have submitted the Berry Application with false statements.**") (emphasis added).)

19 The MTD, in clear violation of FRCP 11 and ¶ 11 of the FAC, states that "**[n]o specific**
20 **allegations against [Austin] exist in [Cotton's] First Amended Complaint...**" (MTD at 2:23
21 (emphasis added).) Pettit and Dalzell are not stupid, no attorney is that stupid – what are they going
22 to say in the Reply, they "failed to understand" ¶ 11 in Cotton's FAC describing Austin's perjured
23 testimony? Whatever their pretext, the truth is they chose with malicious intent to file the MTD as a
24 "**sham defense**"² to deplete my time and resources and with no fear of any serious legal or judicial

25 ¹ "*Cotton I*" means *Geraci v. Cotton*, San Diego Superior Court, Case No. 37-2017-00010073-CU-
BC-22 CTL.

26 ² As material to this motion, a "sham" action or pleading includes, first, the filing of a single suit that
27 is "(1) objectively baseless, and (2) a concealed attempt to interfere with the plaintiff's business
28 relationships." *Freeman v. Lasky, Haas & Cohler*, 410 F.3d 1180, 1184 (9th Cir. 2005) (citation and
quotation omitted). Second, "in the context of a judicial proceeding, if the alleged anticompetitive

1 consequence for helping Austin destroy my life and literally stealing from me the value of a cannabis
 2 CUP at my property. Out of sheer greed and jealousy they stole from me and for defending my rights
 3 in a court of law they make me out to be a stupid pro se for calling them out for being the unethical
 4 scumbag attorneys that they are.

5 The MTD must be denied because it seeks to deceive this Court into ratifying a void judgment
 6 that enforces an illegal contract. The Pettit's Law Firm's denial of ¶ 11 of the FAC in the MTD is
 7 unjustifiable, frivolous, seeks to perpetuate a fraud on this court and warrants sanctions.

8 Material Summary of the Case

9 Geraci has been sued and sanctioned at least three times by the City for his
 10 owning/management of illegal marijuana dispensaries at his real properties. Consequently, pursuant
 11 to State of California (the "State") and City laws, regulations and public policies, Geraci cannot own
 12 a conditional use permit ("CUP") or license to operate a legal cannabis dispensary as a matter of law
 13 (the "Sanctions Issue").

14 Cotton is the owner-of-record of real property (the "Property") in the City that qualifies for a
 15 cannabis CUP. Geraci, in order to prevent Cotton from selling the Property to a third-party, Chris
 16 Williams (a black man), fraudulently induced Cotton into entering an oral joint venture agreement
 17 and promised to provide Cotton, *inter alia*, a 10% equity position in the CUP as consideration for the
 18 Property (the "JVA"). However, Geraci could not actually honor the JVA because he could not own
 a cannabis CUP because of the Sanctions Issue.

19 To unlawfully circumvent the Sanctions Issue, Geraci hired cannabis expert Austin. Austin
 20 prepared Geraci's CUP application at the Property using his secretary, Berry, as a proxy (the "Berry
 21 Application"). In the Berry Application, in violation of applicable disclosure laws, regulations and
 22 the plain language of the City's CUP application forms that she certified she understood, Berry
 23 knowingly and falsely certified that she is the true and sole owner of the CUP being applied for (the
 24 "Berry Fraud" and, collectively with the Sanctions Issue, the "Illegality Issues").

25
 26 behavior consists of making intentional misrepresentations to the court, litigation can be
 27 deemed a sham if 'a party's knowing fraud upon, or its intentional misrepresentations to, the court
 28 deprive the litigation of its legitimacy.'" *Id.* (citation omitted). And, third, a defensive pleading may
 also be a sham "because asking a court to deny one's opponent's petition is also a form of petition;
 thus, we may speak of a '*sham defense*' as well as a 'sham lawsuit.'" *Id.* (emphasis added).

1 Cotton discovered the Berry Fraud and demanded that Geraci reduce the JVA to writing.
 2 Geraci refused, Cotton then terminated the JVA with Geraci and entered into a written joint venture
 3 agreement with Richard Martin (the "Martin Sale"). The next day, to prevent the Martin Sale, Geraci's
 4 attorneys from the law firm of Ferris & Britton ("F&B") served Cotton with a sham action, *Cotton I*,
 5 and a recorded lis pendens on the Property (the "F&B Lis Pendens"). The *Cotton I* complaint denies
 6 the existence of the JVA and is predicated on the false allegation that a three-sentence document,
 7 executed as a *receipt* by Geraci and Cotton, is a *contract* for Geraci's purchase of the Property (the
 8 "November Document").

9 At trial in *Cotton I*, Austin testified that neither of the Illegality Issues barred Geraci's
 10 ownership of a cannabis CUP via the Berry Application. That was a blatant lie – a drug dealer can't
 11 acquire a regulated license via a fraudulent application submitted in the name of his receptionist.

12 Judge Joel R. Wohlfeil who presided over *Cotton I* trusted Austin's factually and legally
 13 contradicted testimony because he is a biased imbecile of epic proportions that decided to believe her
 14 based on his personal belief that she is incapable of acting unethically. Wohlfeil's bias will be the
 15 subject of numerous publications and a law school article describing the White Privilege that white
 16 litigants with white attorneys have before white judges. It is because of idiots like Wohlfeil on the
 17 bench that smarter, corrupt attorneys like Pettit and Dalzell can file the instant MTD without any
 18 factual or legal probable cause and not be worried about any serious legal repercussion.

18 Statement of Facts

19 **I. THE SANCTIONS ISSUE³**

20 1. On June 17, 2015, Geraci executed a Stipulated Judgment as a defendant in which he
 21 judicially admitted that:

- 22 a. "The address where the Defendants were *maintaining* a marijuana dispensary business at
 23 all times relevant to this action is 3505 Fifth Ave, San Diego [the 'Geraci Property'].
 24 (Request for Judicial Notice ("RJN") No. 1 (the "CCSquared Judgment") at ¶ 4.)

25
 26
 27 ³ There are other legal actions in which Geraci was sanctioned, for simplicity, Cotton only sets forth
 28 one.

1 b. “The [Geraci Property] is owned by JL 6th Avenue Property, LLC (JL)... Defendants
 2 GERACI and KACHA are members of JL and hereby certify they have authority to sign
 3 for and bind herein.” (*Id.* at ¶¶ 4-5.)

4 c. Geraci and his co-defendants agree to be jointly sanctioned as “civil penalties” the amount
 5 of \$25,000. (*Id.* ¶ 17.)

6 **II. GINA AUSTIN IS AN EXPERT IN LOCAL CANNABIS COMPLIANCE**

7 2. On September 4, 2018, Austin executed a declaration stating: “*I am an expert in*
 8 *cannabis licensing and entitlement at the state and local levels and regularly speak on the topic*
 9 *across the nation.*” (RJN No. 2 (Austin Decl.), ¶ 2 (emphasis added).)

10 **III. NEGOTIATIONS FOR THE PROPERTY AND THE NOVEMBER DOCUMENT**

11 Per Geraci’s sworn declaration:⁴

12 3. “In approximately September of 2015, I began lining up a team to assist in my efforts
 13 to develop and operate a [dispensary] in the [City].” (RJN No. 3 (Geraci Decl.) at ¶ 2.)

14 4. “I hired... design professional, Abhay Schweitzer of TECHNE[,], a public affairs and
 15 public relations consultant with experience in the industry, Jim Bartell of Bartell & Associates. In
 16 addition, I hired a land use attorney, Gina Austin of Austin Legal Group.” (*Id.*)

17 5. “In approximately June 2016, [I was introduced to the Property] as a potential site for
 18 acquisition and development for use and operation as a [dispensary].” (*Id.* at ¶ 3.)

19 6. “[I]n approximately mid-July 2016... I expressed my interest to Mr. Cotton in
 20 acquiring his Property if our further investigation satisfied us that the Property might meet the
 21 requirements for [a dispensary] site.” (*Id.*)

22 7. “On November 2, 2016, Mr. Cotton and I executed [the November Document.]” (*Id.*
 23 at ¶ 5.)

24 8. “After we signed the [November Document], Mr. Cotton immediately began attempts
 25 to renegotiate our deal for the purchase of the Property. This literally occurred the evening of the day
 26 he signed the [November Document].” (*Id.* at ¶ 10.)

27 ⁴ Cotton does not agree with the facts alleged in Geraci’s declaration, Cotton’s point in using Geraci’s
 28 declaration is that even if everything he says is assumed to be true, he fails to state a cause of action.

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

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

8 (The "Request for Confirmation") (*Id.* at ¶ 10 (emphasis added).)⁵

9 10. "I responded from my phone '*No no problem at all.*'" (The "Confirmation Email")
10 (*Id.* (emphasis added).)

11 11. "The next day I read the entire email and I telephoned Mr. Cotton because the total
12 purchase price I agreed to pay for the subject property was \$800,000 and I had never agreed to provide
13 him a 10% equity position in the dispensary as part of my purchase of the property." (*Id.*)

14 12. "Mr. Cotton's response was to say something to the effect of 'well, you don't get what
15 you don't ask for.' He was not upset and he commented further to the effect that things are 'looking
16 pretty good-we all should make some money here.' And that was the end of the discussion." (The
17 "Disavowment Allegation") (*Id.*).

18 13. Geraci has no evidence that Cotton mutually assented to the Request for Confirmation
19 being - in contradiction of its plain, clear and unambitious language - a renegotiating (or
20 "extortionate") tactic to acquire a 10% equity position in the CUP that the parties had not agreed to.
21 (*See, gen., id.*)

22 14. Geraci has no evidence that Cotton mutually assented to the Confirmation Email being
23 sent by mistake and it having no legal effect other than his own self-serving testimony that the
24 Disavowment Allegation took place. (*See, gen., id.*)

25 **IV. THE BERRY FRAUD**

26 15. On October 31, 2016, Berry submitted the Berry Application to the City.

27 ⁵ The Geraci declaration incorrectly quotes the Request for Confirmation Email as stating "examined,"
28 when in fact it said "executed." It is outside the scope of this Opposition to address, but it was a
purposeful misstatement to confuse Judge Wohlfeil, which it did.

1 16. Austin personally reviewed and commented on the Berry Application before it was
2 submitted to the City. (RJN No. 4 at Trial Ex 35-004.)

3 17. The Berry Application included Form DS-318 (Ownership Disclosure Statement (RJN
4 No. 6)) and Form DS-3032 (General Application (RJN No.5)).

5 18. In the General Application, Berry certified the following to be true:

6 I certify that I have read this application and state the above information is correct, and
7 that I am the property owner, authorized agent of the property owner, or other person
8 having a legal right, interest, or entitlement to the use of the property that is the subject
9 of this application (Municipal Code Section 112.0102). I understand that the applicant
is responsible for knowing and complying with the governing policies and regulations
applicable to the proposed development or permit.

10 (RJN No. 5.)

11 19. The Ownership Disclosure Statement required Berry to provide a list that:

12 ... *must* include the names and addresses of *all* persons who have an interest in the
13 property, *recorded or otherwise*, and state the type of interest (e.g., tenants who will
benefit from the permit, *all* individuals who own the property).

14 (RJN No. 6) (emphasis added).

15 20. Berry did not disclose Geraci in any capacity in the Berry Application as required by
16 the plain language of the Ownership Disclosure Statement. (*See id.*)

17 21. Berry testified at trial in *Cotton I* that the failure to disclose Geraci was purposeful and
18 purportedly because Geraci was an Enrolled Agent with the IRS. (RJN No. 7 at 193:15-194:5
19 (transcript of Berry's testimony at *Cotton I* trial.)

20 **V. AUSTIN'S TESTIMONY AT THE *COTTON I* TRIAL**

21 22. Austin testified at the *Cotton I* trial.

22 23. Regarding the City's disclosure requirements, Austin testified at trial in *Cotton I* that
23 she was not aware of the judgments against Geraci (i.e. the CCSquared Judgment). (RJN Ex. 8
24 at 50:1-7.)

25 24. Austin also testified that the City does not bar any individuals from acquiring a
26 cannabis CUP. (Id. at 47:10-14 ("[Question:] You are aware that certain people are not eligible for
27 or are barred from obtaining certain CUPs. Correct? [Answer:] Not at the city level, but at the state
28 level, yes."))

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

6 26. In regard to state disclosure requirements, Austin testified that the CCSquared
7 Judgment, if true, would not bar Geraci from lawfully owning a cannabis license pursuant to the Berry
8 Application (the “Sanctions Issue”). (RJN Ex. 8 at 56:16-57:3.)

9 **VI. THE FAC AND THE MTD**

10 27. On May 13, 2020 Cotton filed the FAC that included the following allegations against
11 Austin:

12 a. “Austin, as Geraci’s cannabis attorney and responsible for the Berry Application,
13 testified in *Cotton I* that it is not unlawful for Berry to have submitted the Berry Application with false
14 statements.” (Docket No. 18 (FAC), ¶ 11.)

15 b. “Austin’s success is not because she is a legal genius, but because she engages in and
16 ratifies unlawful actions against the competition, such as filing sham lawsuits like *Cotton I*.” (Id., ¶
17 59.)

18 28. On May 27, 2020, the MTD was filed without addressing Austin’s testimony or
19 whether *Cotton I* is a sham.

20 29. The MTD is itself a sham and focuses on the procedural history of the case and begs
21 this Court to get angry at Cotton being angry at it for not realizing that Geraci and his attorneys are
22 imbeciles who deceived Judge Wohlfeil. Why does Pettit’s Law Firm not argue the merits and instead
23 seek to make this Court emotional and rely on its bias against litigants making allegations of judicial
24 bias? Because Pettit’s Law Firm is an unethical firm like their clients who service drug dealers and
25 all they care about winning – not facts, the law and certainly not justice. To that end, the Pettit’s Law
26 Firm makes the following statements in the MTD:

27 a. “Plaintiff, upset with his mounting losses, continually amends his pleadings to include
28 every individual remotely involved in any one stage of his countless litigation efforts.” (ECF No. 24
(MTD) at 2:15-17.)

1 b. "No specific allegations against Defendant exist in this [FAC], and Plaintiff cannot
2 incorporate by reference any prior complaints or allegations." (*Id.* at 22-24.)

3 c. "Plaintiff's FAC fails to state a claim against Defendant and is entirely devoid of any
4 facts. Therefore, Defendant moves to dismiss Plaintiff's FAC. Plaintiff has been relentless in filing
5 baseless suits, bar complaints, and judicial complaints. Plaintiff's ongoing harassment should
6 end. No claims have merit and every prior complaint has been dismissed. Plaintiff therefore should
7 not be given leave to amend."

8 30. These are conclusory statements that do not address the merits of Cotton's causes of
9 action against Austin for perjury or *Cotton I* failing to state a cause of action for breach of contract
10 because it lacks mutual assent.

11 31. The MTD does not address the Illegality Issues.

12 Legal Standard

13 A complaint must plead sufficient factual allegations to "state a claim to relief that is plausible
14 on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and citations
15 omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court
16 to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

17 "A Rule 12(b)(6) dismissal may be based on either a 'lack of a cognizable legal theory' or 'the
18 absence of sufficient facts alleged under a cognizable legal theory.'" *Johnson v. Riverside Healthcare*,
19 534 F.3d 1116, 1121 (9th Cir. 2008) (quoting *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699
20 (9th Cir. 1990)). Here, Cotton does not just allege, he provides the law and Austin's testimony proving
21 she lied and committed a fraud on the court.

22 ARGUMENT

23 **I. MATERIAL STATE AND CITY LAWS AND REGULATIONS**

24 **A. GENERAL CITY CUP APPLICATION REQUIREMENTS**

25 Since August 1993, SDMC § 11.0401 has prohibited the furnishing of false or incomplete
26 information in any application for any type of permit or CUP from the City. (*See* SDMC § 11.0401(b)
27 ("No person willfully shall make a false statement or fail to report any material fact in any application
28

1 for City license, permit, certificate, employment or other City action under the provisions of the
2 [SDMC].”).)

3 SDMC § 11.0402 provides that “[w]henver in [the SDMC] any act or omission is made
4 unlawful, it shall include causing, permitting, aiding or abetting such act or omission.”

5 SDMC § 121.0302(a) provides that: “It is unlawful for any person to maintain or use any
6 premises in violation of any of the provisions of the Land Development Code, without a required
7 permit, contrary to permit conditions, or without a required variance.”

8 The Land Development Code consists of Chapters 11 through 14 of the SDMC (encompassing
9 §§ 111.0101-1412.0113). (SDMC § 111.0101(a).)

10 The City’s General Application for CUP applications requires - and cites SDMC § 112.0102
11 - that an applicant certify they are the owner, an agent of the owner, or a person having a legal right
12 to the property on which the CUP application is filed on.

13 SDMC § 121.0311 states as follows: “Violations of the Land Development Code shall be
14 treated as *strict liability* offenses regardless of intent.” (Emphasis added.)

15 B. CANNABIS CUP APPLICATION REQUIREMENTS⁶

16 SDMC § 42.1502 defines a “cannabis outlet” (i.e., a dispensary) as a “retail establishment
17 operating with a Conditional Use Permit in accordance with... retailer licensing requirements
18 contained in the California Business and Professions Code [(“BPC”)] sections governing cannabis
19 and medical cannabis.” (Emphasis in original.)

20 BPC § 26057 (Denial of Application) provides as follows:

21 (a) The licensing authority *shall deny* an application if... the applicant... do[es] not
22 qualify for licensure under this division.

23 (b) The licensing authority may deny the application for licensure or renewal of a state
24 license if any of the following conditions apply.

25 (1) Failure or inability to comply with the provisions of this division, any rule or
26 regulation adopted pursuant to this division...

26 ⁶ The Berry Application was originally a medical cannabis CUP application that was converted to a
27 for-profit cannabis retail CUP application during the course of *Cotton I*. Throughout the Course of
28 *Cotton I*, various cannabis laws and regulations at the State and City level were applicable to
medical and non-medical applications that changed over time. For simplicity, Petitioners focus on
the primary State statute that applied when the *Cotton I* judgement was issued, BPC § 26057.

1 (3) Failure to provide information required by the licensing authority.

2

3 (7) The applicant, or any of its officers, directors, or owners, has been sanctioned
4 by a licensing authority or a city, county, or city and county for unauthorized
5 commercial cannabis activities... in the three years immediately preceding the date
6 the application is filed with the licensing authority.

7 BPC § 26057(a),(b)(1)(3)(7) (emphasis added).

8 **I. THE FAC STATES A CLAIM AGAINST AUSTIN FOR COMMITTING PERJURY IN *COTTON I* THAT
9 CONSTITUTES A FRAUD ON THE COURT AND UPON FLORES.**

10 “One species of fraud upon the court occurs when an ‘officer of the court’ perpetrates fraud
11 affecting the ability of the court or jury to impartially judge a case.” *Pumphrey*, 62 F.3d at 1130.

12 Austin committed perjury before Judge Wohlfeil and the jury at the trial of *Cotton I* about the
13 *case-dispositive* issue of the legality of Geraci’s ownership of a cannabis CUP via the Berry
14 Application.

15 **A. THE SANCTIONS ISSUE**

16 Geraci was sanctioned on June 17, 2015 in the CCSquared Judgment for “maintaining” an
17 illegal dispensary at the Geraci Property. At trial in *Cotton I*, Geraci lied and said he has never
18 operated a dispensary. Even assuming his judicial admissions in the Stipulated Judgment did not
19 directly contradict his testimony, as a co-owner of JL he is still liable. “[A]s the owner of the [Geraci
20 Property] where an illegal marijuana facility was operating, [Geraci is] strictly liable for the offense,
21 regardless of his knowledge, intent, or active participation in the operation. [Citations.]” *City of San
22 Diego v. Medrano*, D071111, at *7 (Cal. Ct. App. Aug. 2, 2017) (unpublished); *see People v. Superior
23 Court of L.A. Cnty.*, 234 Cal.App.4th 1360, 1385 (Cal. Ct. App. 2015) (“[Party’s] claim that he lacked
24 knowledge that there was a marijuana facility on his property lacks merit as violation of [the Los
25 Angeles Municipal Code] section 12.21A.1(a) is a strict liability offense.”).

26 Pursuant to BPC § 26057(a),(b)(7), applicable to all cannabis CUP applications with the City
27 (*see* SDMC § 42.1502), Geraci was barred from owning a cannabis CUP until June 18, 2018.

28 The Berry Application was submitted on October 31, 2016. Therefore, setting aside other
arguments, because the November Document’s object is Geraci’s ownership of a cannabis CUP,
which is illegal, it is void and unenforceable. *Consul Ltd. v. Solide Enterprises, Inc.*, 802 F.2d 1143,

1 1148 (9th Cir. 1986) (“A contract to perform acts barred by California’s licensing statutes is illegal,
2 void and unenforceable.”).

3 Austin is a cannabis expert in local compliance laws, Austin knows the strict liability nature
4 of willfully lying in cannabis CUP applications. Austin’s testimony that she was not aware of the
5 CCSquared Judgment and inability to articulate an explanation for failing to disclose Geraci in the
6 Berry Application (i.e., “We just didn’t do it.”) not only insults the intelligence of the judiciary, it
7 removes any presumption of integrity that she is afforded as an attorney with a license to practice law.

8 A. THE BERRY FRAUD

9 Austin/Berry’s failure to disclose Geraci in the Berry Application:

10 (i) violates the plain and clear requirement set forth in the Ownership Disclosure Form
11 requiring a list of all parties with an interest in the CUP or the Property (required pursuant to SDMC
12 § 112.0102 as cited to in the Ownership Disclosure Form);

13 (ii) violates SDMC § 11.0401 (prohibiting willful false statements in CUP applications);

14 (iii) makes Austin, Geraci, Berry, Bartell and Schweitzer jointly liable pursuant to SDMC §
15 11.0402 (joint liability for aiding & abetting) for which there can be no excuse as the violations are
16 treated as strict liability offenses regardless of intent pursuant to SDMC § 121.0311; and

17 (iv) violates BPC § 26057(b)(3) (“The applicant has failed to provide information required by
18 the licensing authority.”). *See* Cal. Code Regs. tit. 16 § 5003(b)(1) (defining “Owner” for purposes
19 of cannabis applications as, *inter alia*, a “person with an aggregate ownership interest of 20 percent
20 or more in the person applying for a license or a licensee”).

21 In *Homami*, the court declined to enforce an oral contract that provided that a buyer of real
22 property would pay interest secretly to the seller in order to allow the seller to avoid declaring interest
23 income and thus to evade required taxes. *Homami v. Iranzadi*, 211 Cal.App.3d 1104.

24 In reaching its decision, the court identified a “group of cases... involv[ing] plaintiffs who
25 have attempted to circumvent federal law. Generally, these cases arise where nonveterans seek to
26 obtain government benefits and entitlements available to veterans only, either by setting up a
27 strawman veteran or otherwise by falsifying documents.” *Homami* at 1110.

28 Here, similarly, Geraci used his secretary Berry as a strawman, or rather a strawwoman, to
unlawfully acquire a cannabis CUP that he could not own in his own name. And he did so via a

1 fraudulent application that violated clearly applicable State and City laws and regulations requiring
2 the disclosure of Geraci. This was done at Austin's legal advice.

3 Therefore, even setting aside the Sanctions Issue, the *Cotton I* judgment is void because in
4 direct contravention of Austin's testimony, Geraci cannot own a cannabis permit via the Berry
5 Application because of the Berry Fraud. "To permit a recovery here on any theory would permit
6 [Geraci, Austin and their conspirators] to benefit from [their] willful and deliberate flouting of [the]
7 law[s] designed to promote the general public welfare. ***This cannot be contended by the courts.***"
8 *Id.* at 1110 (quoting *May v. Herron*, 127 Cal.App.2d 707, 712 (Cal. Ct. App. 1954) (emphasis added)).

9 B. AUSTIN COMMITTED PERJURY ABOUT THE ILLEGALITY ISSUES AND THUS COMMITTED A
10 FRAUD ON THE COURT

11 "Perjury constitutes fraud on the court only in special situations, such as when an officer of
12 the court commits the perjury or the perjury prevents a critical issue or piece of evidence from coming
13 before the court. [Citations.]" *Myser v. Tangen*, No. C14-0608JLR, at *12 (W.D. Wash. Feb. 5, 2015).

14 Austin's testimony regarding the Illegality Issues was case-dispositive. Because of her
15 testimony, Judge Wohlfeil sent the breach of contract cause of action to the jury implicitly finding
16 that Geraci can lawfully own a cannabis CUP via the Berry Application even in light of the Illegality
17 Issues. Austin is a liar and Wohlfeil is a biased imbecile who is responsible for subjecting me to hell
18 for over three years because he is too stupid and lazy to check applicable laws and regulations.

19 **II. COTTON AGREES THAT THE DECLARATORY RELIEF CAUSE OF ACTION IS INADEQUATELY
20 PLED AND REQUESTS LEAVE OF THE COURT TO FILE AN AMENDED COMPLAINT.**

21 As set forth above, Austin is a despicable liar that contributed to the set of events that have led
22 Judge Wohlfeil to entering a judgment enforcing an illegal contract. But that does not change the facts,
23 she lied, she committed perjury, and as an officer of the court testifying on case-dispositive issues,
24 such constitutes a fraud on the court.

25 Pettit's Law Firm's attorneys, again, are not stupid. They filed the MTD with no factual or
26 legal justification to lie and state that Cotton made no factual allegations against Austin. Cotton
27 requests that he be granted leave to amend his complaint to amend his declaratory relief cause of
28 action and to add Pettit's Law Firm as named defendants for abuse of process and conspiring with
Austin to deceive this Court to continue to ratify an illegal contract that they know was procured

1 through their client's fraud on the court. And for ratifying Geraci/Austin's conspiracy to deprive me
 2 of my constitutional right to an impartial trial before an impartial adjudicator.

3 III. PETTIT'S LAW FIRM' MTD COMMENTS

4 In the MTD, Pettit's Law Firm argues that I "had every opportunity to use the correct forum
 5 and continue through the appeal process." That is false. An appeal would have cost me \$200,000 per
 6 attorney Kelly Woodruff of the California Appellate Law Group. **I DON'T HAVE \$200,000!**

7 I DON'T HAVE \$200,000 BECAUSE OF SCUMBAG ATTORNEYS LIKE AUSTIN,
 8 PETTIT AND DALZELL WHO HAVE DEPLETED MY CAPITAL AND ACCESS TO CAPITAL
 9 OVER THE COURSE OF YEARS WITH FRIVOLOUS LAWSUIT AND FILINGS LIKE THIS
 10 MTD.

11 Pettit and Dalzell go on to argue that "Leave to amend should not be granted when there is any
 12 indication of bad faith, undue delay, prejudice, or futility. *Stone v. Baum*, 409 F. Supp. 2d 1164 (2005).
 13 All factors are present here." (ECF No. at 9:5-7.)

14 Pettit and Dalzell are unethical attorneys - they filed a frivolous MTD and then they accuse
 15 me of "bad faith" and "prejudice"? They are human scum! I hope one day that one of their victims
 16 destroys their lives and everything that they love and care about so they live in daily agony and they
 17 understand what it is like to unjustifiably lose everything. And then when they seek legal redress the
 18 very people who violated them make them out to be emotional litigants whose arguments are driven
 19 by emotion and not facts. They are worse than Geraci and Austin. They are nothing more than
 20 ambulance chasing attorneys that will do anything for money without any regard for the facts or law
 21 - like this case, completely ignoring my allegations in the FAC to force me to undertake the cost and
 22 expense of preparing this opposition. DAMN YOU PETTIT AND DALZELL. One day you will be
 23 exposed and all your victims will hold you to account for your unlawful and unethical actions and the
 24 pain you willfully and evilly cause. It is amazing that all you attorneys think you can break the law
 25 and that because judges are too stupid, corrupt, incompetent or due to public policy reasons are unable
 26 to do anything about it that you think people will just allow you to screw them over and steal from
 27 them. People are not dogs to be kicked and spit on with impunity. There are times where there are
 28 things worth fighting and dying for in life. To me this represents one of those times.

CONCLUSION

In 1944 in *Hazel Atlas* the United States Supreme Court held that courts have not only the power but the “duty” to take corrective action when fraud upon the court occurs. *Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238, 249-50 (1944) (“We hold, therefore, that the Circuit Court on the record here presented had both the *duty* and the power to vacate its own judgment and to give the District Court appropriate directions”) (fn. omitted; Emphasis added).

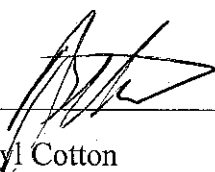
Attorneys from day one of law school are governed by the honor code. That is later codified into the rules of procedure, evidence and ethical rules of professional responsibility under which all attorneys practice law. Judges generally accept as true the written and oral representations of attorneys because the attorneys are officers of the court and it is their duty to be truthful with the court.

Once fraud upon the court occurs, the court is not required to examine the effect that such conduct might have had on the ultimate judgment, but rather the court in fact has a “duty” to take corrective action when fraud upon the court occurs. *Id.* From the attorneys viewpoint the rule should always be “If you lie, you lose”.

Geraci is a drug dealer because he has been sanctioned for illegal commercial marijuana sales. Austin sought to help him acquire a cannabis CUP via a fraudulent application in violation of the law. When the fraud was exposed and litigation ensued, she lied about the law to Judge Wohlfeil as a “cannabis expert” at trial. Judge Wohlfeil is an imbecile who did not check the law and entered a judgment in violation of the law that enforces an illegal contract. Now, Pettit’s Law Firm defends Austin and seeks to perpetuate the criminal conspiracy effectuated in *Cotton I* upon this Court.

Cotton requests that the Court deny the MTD, grant Cotton leave to amend his complaint, and award Cotton sanctions for Pettit’s Law Firm frivolous filing of the MTD.

Dated: April 29, 2020


Darryl Cotton

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

Plaintiff Pro Se

2020 JUN 29 PM 3:30

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY _____ DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON,

Plaintiff,

VS.

CYNTHIA BASHANT, an individual;
JOEL WOHLFEIL, an individual; LARRY
GERACI, an individual; REBECCA
BERRY, an individual; GINA AUSTIN, an
individual; MICHAEL R. WEINSTEIN, an
individual; JESSICA MCELRESH, an
individual; and DAVID DEMIAN, an
individual

Case No. 3:18-cv-00325-BAS-DEB

REQUEST FOR JUDICIAL NOTICE

Hearing Date: July 13, 2020

Time: NA

Judge: Hon. Cynthia Ann Bashant
Courtroom:

Memorandum of Points and Authorities ISO Plaintiffs' Ex Parte Application for Injunctive Relief

Plaintiff hereby requests that this Court take judicial notice of the documents described below and the copies thereof attached hereto in support of his Opposition to Motion Defendant Gina Austin's Motion to Dismiss

The documents listed below and attached hereto as RJN Exhibits Nos. 1-7 conformed copies of pleadings and other papers filed in *Geraci v. Cotton, et al.*, San Diego Superior Court Case No. 37-2017-10073-CU-BC-CTL ("*Cotton I*") and other cases named herein which are currently pending in and/or were previously adjudicated by the San Diego County Superior Court. This Court may properly take judicial notice of these exhibits pursuant to Federal Rules of Evidence, Rule 201.

RJN NO.	DOCUMENT TITLE/DESCRIPTION
1	Stipulation for Entry of Final Judgment and Permanent Injunction; Judgment Thereon [CCP § 664.6] filed and entered on June 17, 2014 in case entitled <i>City of San Diego v. CCSquared Wellness Cooperative, et al.</i> , San Diego Superior Court Case No. 37-2015-00004430-CU-MC-CTLReporter's
2	Supplemental Declaration of Gina M. Austin for September 7, 2018 Hearing filed on September 4, 2018 in the case entitled <i>Razuki v. Malan, et. al.</i> , San Diego County Superior Court Case No. 37-2018-00034229-CU-BC-CTL
3	Declaration of Larry Geraci in Opposition to Defendant Darryl Cotton's Motion to Expunge Lis Pendens filed in Cotton I on April 10, 2018
4	<i>Cotton I</i> Trial Exhibit 35 – Email from Gina Austin to Abhay Schweitzer on October 27, 2016 at 4:57 p.m.
5	<i>Cotton I</i> Trial Exhibit 35-004 – City of San Diego Department of Development Services Form DS-3032 –General Application for Conditional Use Permit (CUP) of 6176 Federal Boulevard, San Diego, CA, Project No. 520606 executed on October 31, 2016 by Rebecca Berry as President

RJN NO.	DOCUMENT TITLE/DESCRIPTION
6	<i>Cotton I</i> Trial Exhibit 30-001 – City of San Diego Department of Development Services Form DS-318 – Ownership Disclosure Statement for CUP Application of 6176 Federal Boulevard, San Diego, CA, Project No. 520606 executed on October 31, 2016 by Rebecca Berry as President
7	Reporter's Transcript of Proceedings [at Trial] July 8, 2019 in <i>Cotton I</i> , Excerpt of Testimony of Rebecca Berry.
8	Reporter's Transcript of Proceedings [at Trial] July 8, 2019 in <i>Cotton I</i> , Excerpt of Testimony of Gina Austin.

Dated: June 29, 2020

DARRYL COTTON

By 

Plaintiff *In Propria Persona*,

EXHIBIT 1

No Fee GC §6103

FILED
Clerk of the Superior Court

JUN 17 2015

FILED
Clerk of the Superior Court

JUN 17 2015

By: H. CHAVARIN, Deputy
15 JUN 11 PM 137

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal
corporation,

Plaintiff,

v.

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

Defendants.

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

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

IMAGED FILE

1. Plaintiff, City of San Diego, a municipal corporation, appearing by and through its attorneys, Jan I. Goldsmith, City Attorney, and Marsha Kerr, Deputy City Attorney; and Defendants, JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC; JEFFREY KACHA; and LAWRENCE E. GERACI, aka LARRY GERACI (Doe 1) (collectively, "Defendants"), appearing by and through their attorney, Joseph Carmellino, Esq., enter into the following Stipulation for Entry of Final Judgment (Stipulation) in full and final settlement of the above-captioned case without trial or adjudication of any issue of fact or law, and agree that a final judgment may be so entered.

///

1 2. The parties to this Stipulation are parties in two civil actions pending in the Superior
2 Court of the State of California for the County of San Diego. It is the intention of the parties that
3 the terms of this Stipulation constitute a global settlement of the following cases:

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

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

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

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

19 5. The legal description of the PROPERTY is:

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

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

24 INJUNCTION

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

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

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

11 COMPLIANCE MEASURES

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

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

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

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

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

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

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

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

8 MONETARY RELIEF

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

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

28 ///

1 **RECORDATION OF JUDGMENT**

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

5 **KNOWLEDGE AND ENTRY OF JUDGMENT**

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

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

9 **IT IS SO STIPULATED.**

10 Dated: June 11, 2015

JAN I. GOLDSMITH, City Attorney

11 By Marsha B. Kerr
12

Marsha B. Kerr
Deputy City Attorney
Attorneys for Plaintiff

13 Dated: 6-10, 2015

JL INDIA STREET, LP, formerly known as JL
INDIA STREET, LLC

14 By Jeffrey Kacha
15

General Partner

16 Dated: 6-10, 2015

17 Jeffrey Kacha, an individual

18 Dated: 6-8, 2015

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

20 ///

1 Dated: 6/11/15, 2015

2 By 

3 Joseph S. Carmellino
4 Attorney for Defendants Jeffrey Kacha and
5 JL India Street LP, formerly known as JL
6 India Street, LLC

7 **JUDGMENT**

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

11 Dated: 6-12-16

 JOHN S. MEYER

12 JUDGE OF THE SUPERIOR COURT
13
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EXHIBIT 2

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

6 Attorneys for Defendants
Ninus Malan

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

09/04/2018 at 05:40:00 PM

Clerk of the Superior Court
By E- Filing, Deputy Clerk

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

11 **SALAM RAZUKI, an individual,**

12 **Plaintiff,**

13 **vs.**

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

Defendants.

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

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

[Imaged File]

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

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

1 I, Gina M. Austin, declare:

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

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

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

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

15 5. I spoke with Mr. Essary immediately after the hearing in this matter on August 20,
 16 2018 and suggested that an independent cannabis expert not affiliated with either the plaintiff or
 17 defendant would be a better solution in order to avoid an actual or apparent conflict of interest by
 18 Mr. Lachant. I informed Mr. Essary that while I could provide any cannabis licensing
 19 information he required, both sides would probably appreciate an independent third party. I
 20 recommended Pamela Epstein of Greenwise Consulting.

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

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

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3990 Old Town Ave, Ste A-112
San Diego, CA 92116

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

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

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

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

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

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3990 Old Town Ave, Ste A-112
San Diego, CA 92116

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

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

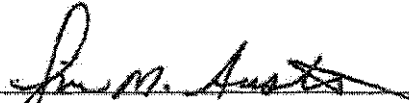
9 13. I informed Mr. Essary of the discrepancy. On August 27, 2018 Mr. Essary sent an
10 email stating that he would have to contact Mr. Yaeger to determine why there is a discrepancy.
11 As of the drafting of this declaration MGO has not received a response from Mr. Yaeger or Mr.
12 Essary as to the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

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

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

1 contingent on our office attending the hearing.

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

4
5 
6 Gina M. Austin

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13 AUSTIN LEGAL GROUP, APC
14 3990 Old Town Ave, Ste A-112
15 San Diego, CA 92116
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EXHIBIT 3

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

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

ELECTRONICALLY FILED
 Superior Court of California,
 County of San Diego

04/10/2018 at 11:10:00 AM
 Clerk of the Superior Court
 By Katelin O'Keefe, Deputy Clerk

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

10 LARRY GERACI, an individual,

11 Plaintiff,

12 v.

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

15 Defendants.

16 DARRYL COTTON, an individual,

17 Cross-Complainant,

18 v.

19 LARRY GERACI, an individual, REBECCA
 20 BERRY, an individual, and DOES 1
 THROUGH 10, INCLUSIVE,

21 Cross-Defendants.

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

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

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

[IMAGED FILE]

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

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

22
 23 I, Larry Geraci, declare:

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

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

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

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

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

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

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

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

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

25 Darryl Cotton and I did meet at my office on November 2, 2016, to negotiate the final terms of
26 the sale of the Property and we reached an agreement on the final terms of the sale of the Property.
27 That agreement was not oral. We put our agreement in writing in a simple and straightforward written
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1 agreement that we both signed before a notary. (See paragraph 5, *supra*, Nov 2nd Written Agreement,
2 Exhibit 2 to Geraci NOL.) The written agreement states in its entirety:

3 **11/02/2016**

4 **Agreement between Larry Geraci or assignee and Darryl Cotton:**

5 **Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd.,**
6 **CA for a sum of \$800,000 to Larry Geraci or assignee on the approval of a**
7 **Marijuana Dispensary. (CUP for a dispensary.)**

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

12 /s/
13 **Larry Geraci**

14 /s/
15 **Darryl Cotton**

16 I never agreed to pay Mr. Cotton a \$50,000.00 non-refundable deposit. At the meeting, Mr.
17 Cotton stated he would like a \$50,000 non-refundable deposit. I said "no." Mr. Cotton then asked for a
18 \$10,000 non-refundable deposit and I said "ok" and that amount was put into the written agreement.
19 After he signed the written agreement, I paid him the \$10,000 cash as we had agreed. If I had agreed to
20 pay Mr. Cotton a \$50,000 deposit, it would have been a very simple thing to change "\$10,000" to
21 \$50,000" in the agreement before we signed it.

22 I never agreed to pay Mr. Cotton a 10% equity stake in the marijuana dispensary. I never
23 agreed to pay Mr. Cotton a minimum monthly equity distribution of \$10,000. If I had agreed to pay
24 Mr. Cotton a 10% equity stake in the marijuana dispensary and a minimum monthly equity distribution
25 of \$10,000, then it would have also been a simple thing to add a sentence or two to the agreement to
26 say so.

27 What I did agree to was to pay Mr. Cotton a total purchase price of \$800,000, with the balance
28 of \$790,000 due upon approval of a CUP. If the CUP was not approved, then he would keep the
Property and the \$10,000. So that is how the agreement was written.

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

"At the November 2, 2016, meeting we reached the November Agreement,
Geraci: (i) provided me with \$10,000 in cash towards the NRD of \$50,000, for
which I executed a document to record my receipt thereof (the "Receipt"); (ii)

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

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

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

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

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

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

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

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

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

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

25 Hi Larry,

26 Thank you for meeting today. Since we examined the Purchase Agreement in
27 your office for the sale price of the property I just noticed the 10% equity position
28 in the dispensary was not language added into that document. I just want to make
sure that we're not missing that language in any final agreement as it is a factored

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

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

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

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

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

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

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

24 14. Mr. Cotton thereafter made good on his threats. On the morning of March 21, 2017, Mr.
25 Cotton had a conversation with Firouzeh Tirandazi at the City of San Diego, who was in charge of
26 processing the CUP Application, regarding Mr. Cotton's interest in withdrawing the CUP Application.
27 That discussion is confirmed in an 8:54 a.m. e-mail from Ms. Tirandazi to Mr. Cotton with a cc to
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1 Rebecca Berry. A true and correct copy of that March 21, 2017, at 8:54 a.m. e-mail is attached as
2 Exhibit 4 to the Geraci NOL.

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

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

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

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

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

1 Declaration of Abhay Schweitzer.

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

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

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

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

25 ///

26 ///

27 ///

28 ///

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

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6 LARRY GERACI
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EXHIBIT 4

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

Court's Ex.	035
Case #	07-2017-01010073-CU-BC-CYL
Rec'd	
Dept.	C-73
Clk.	

Larry,

Here is what I need:

Rebecca to finish filling out and sign the following:

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

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

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

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

Please let me know if you have any questions.

Thank you

ABHAY SCHWEITZER
Assoc. AIA- Principal

3958 30th Street. San Diego, CA 92104
techne-us.com sustainablearchitect.org
o 619-940-5814 m 313-595-5814

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

Hi Abhay,

Can you tell me what you exactly need from me?

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Circular 230 Disclaimer:

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

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

Hi Gina,

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

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

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

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

Thank you

ABHAY SCHWEITZER
Assoc. AIA- Principal

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

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

One more thing...

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

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

Gina

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

Good afternoon Gina,

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

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

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

Please let me know if you need anything else meanwhile.

Thank you

ABHAY SCHWEITZER
Assoc. AIA- Principal

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

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

Hi Gina,

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

Thank you

ABHAY SCHWEITZER
Assoc. AIA- Principal

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

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

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

Gina

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

Good afternoon,

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

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

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

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

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

Thank you

ABHAY SCHWEITZER
Assoc. AIA- Principal

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

EXHIBIT 5

 City of San Diego Development Services 1222 First Ave., MS-302 San Diego, CA 92101 (619) 448-5000	<h1 style="margin: 0;">General Application</h1>	FORM
		DS-3032

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

2. Project Address/Location: *Include Building or Suite No.*
6176 Federal Blvd. **Project Title:** Federal Blvd. MMCC **Project No. For City Use Only:** 520606

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


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

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

3. Property Owner/Lessee Tenant Name: *Check one* ☐ Owner ☒ Lessee or Tenant **Telephone:** **Fax:**
 Rebecca Berry
Address: 5982 Gullstrand Street **City:** San Diego **State:** CA **Zip Code:** 92122 **E-mail Address:** becky@fcsd.net

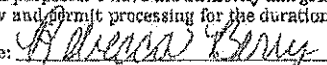
4. Permit Holder Name: *This is the property owner, person, or entity that is granted authority by the property owner to be responsible for scheduling inspections, receiving notices of failed inspections, permit expirations or revocation hearings, and who has the right to cancel the approval (in addition to the property owner). SDMC Section 113.0103.*
Name: Rebecca Berry **Telephone:** **Fax:**
Address: 5982 Gullstrand Street **City:** San Diego **State:** CA **Zip Code:** 92122 **E-mail Address:** becky@fcsd.net

5. Licensed Design Professional (if required): *(check one)* ☒ Architect ☐ Engineer **License No.:** C-19371
Name: Michael R. Morton AIA **Telephone:** **Fax:**
Address: 3956 30th Street **City:** San Diego **State:** CA **Zip Code:** 92104 **E-mail Address:**

6. Historical Resources/Lead Hazard Prevention and Control *(not required for roof mounted electric-photovoltaic permits, deferred fire approvals, or completion of expired permit approvals).*
 a. Year constructed for all structures on project site: 1981
 b. HRP Site # and/or historic district if property is designated or in a historic district (if none write N/A): N/A
 c. Does the project include any permanent or temporary alterations or impacts to the exterior (cutting-patching-access-repair, roof repair or replacement, windows added-removed-repaired-replaced, etc)? ☒ Yes ☐ No
 d. Does the project include any foundation repair, digging, trenching or other site work? ☒ Yes ☐ No
 I certify that the information above is correct and accurate to the best of my knowledge. I understand that the project will be distributed/reviewed based on the information provided.
Print Name: Abhay Schweitzer **Signature:**  **Date:** 10/28/2016

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

8. Applicant Name: *Check one* ☐ Property Owner ☐ Authorized Agent of Property Owner ☒ Other Person per M.C. Section 112.0102
Rebecca Berry **Telephone:** **Fax:**
Address: 5982 Gullstrand Street **City:** San Diego **State:** CA **Zip Code:** 92122 **E-mail Address:** becky@fcsd.net

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

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

DS-3032 (08-13)

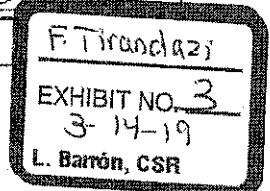


EXHIBIT 6



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

Ownership Disclosure Statement

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

Project Title

Project No. For City Use Only

Federal Blvd. MMCC

Project Address:

6176 Federal Blvd., San Diego, CA 92114

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

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

Additional pages attached ☐ Yes ☒ No

Name of Individual (type or print):

Darryl Cotton

☒ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

6176 Federal Blvd

City/State/Zip:

San Diego Ca 92114

Phone No:

(619) 954-4447

Fax No:

Signature:

Date:

10-31-2016

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature:

Date:

Name of Individual (type or print):

Rebecca Berry

☐ Owner ☒ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

5982 Gullstrand St

City/State/Zip:

San Diego / Ca / 92122

Phone No:

8589996882

Fax No:

Signature:

Date:

10-31-2016

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature:

Date:

EXHIBIT 7

Geraci vs. Cotton, et al.

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



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Transcript of Proceedings

Geraci vs. Cotton, et al.

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

Department 73

Hon. Joel R. Wohlfeil

LARRY GERACI, an individual,)

Plaintiff,)

vs.) 37-2017-00010073-CU-BC-CTL

DARRYL COTTON, an individual;)

and DOES 1 through 10,)

inclusive,)

Defendants.)

AND RELATED CROSS-ACTION.)

_____)

Reporter's Transcript of Proceedings

JULY 3, 2019

Reported By:

Margaret A. Smith, CSR 9733, RPR, CRR

Certified Shorthand Reporter

Job No. 10057773

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 APPEARANCES

2

3 FOR PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI AND
4 CROSS-DEFENDANT REBECCA BERRY:

5 FERRIS & BRITTON

6 BY: MICHAEL R. WEINSTEIN, ESQUIRE

7 BY: SCOTT H. TOOTHACRE, ESQUIRE

8 BY: ELYSSA K. KULAS, ESQUIRE

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10 San Diego, California 92101

11 mweinstein@ferrisbritton.com

12 stoothacre@ferrisbritton.com

13 ekulas@ferrisbritton.com

14

15 FOR DEFENDANT AND CROSS-COMPLAINANT DARRYL COTTON:

16 ATTORNEY AT LAW

17 BY: JACOB P. AUSTIN, ESQUIRE

18 1455 Frazee Road, Suite 500

19 San Diego, California 92108

20 619.357.6850

21 jpa@jacobaustinesq.com

22

23

24

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Transcript of Proceedings

Geraci vs. Cotton, et al.

1	I N D E X	
2		PAGE
3	OPENING STATEMENTS:	
4	On behalf of Plaintiff/Cross-Defendant	14
5	On behalf of Defendant/Cross-Complainant	39
6	WITNESSES:	
7	LARRY GERACI	
8	Direct by Mr. Weinstein	54
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10	REBECCA BERRY	
11	Direct by Mr. Weinstein	190
12	Cross by Mr. Austin	200
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Transcript of Proceedings

Geraci vs. Cotton, et al.

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

Transcript of Proceedings

Geraci vs. Cotton, et al.

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4	Darryl Cotton dated 10/24/16,		
5	attaching A102 Site Plan -		
6	Proposed - Scheme		
7	30 City of San Diego Ownership	93	93
8	Disclosure Statement		
9	(Form DS-318) signed,		
10	dated 10/31/16		
11	34 Forms submitted to City of	196	196
12	San Diego in relation to		
13	6176 Federal Blvd CUP		
14	Application, dated 10/31/16,		
15	Form DS-3032 General Application		
16	dated 10/31/2016		
17	38 Agreement between Larry Geraci	97	97
18	or assignee and Darryl Cotton,		
19	dated 11/02/16		
20	39 Excerpt from Jessica Newell	103	103
21	Notary Book dated 11/02/2016		
22	40 Email to Darryl Cotton from	106	106
23	Larry Geraci attaching Nov 2		
24	Agreement, dated 11/2/2016		
25	41 Email from Darryl Cotton to	107	107
26	Larry Geraci re Agreement,		
27	dated 11/2/16		
28	42 Email to Darryl Cotton from	109	109
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	dated 11/2/16		
	43 Email to Becky Berry from	120	120
	Abhay Schweitzer re Federal		
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	County Tax Assessor Records,		
	dated 11/07/16 with attachment		
	44 Email to Darryl Cotton from	121	121
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	need sig ASAP, dated 11/14/16		
	46 Authorization to view records -	122	122
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	59 Email to Darryl Cotton from	130	130
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Transcript of Proceedings

Geraci vs. Cotton, et al.

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3	62 Email to Darryl Cotton from	132	132
4	Larry Geraci re Statement		
5	attaching draft Side Agreement,		
6	dated 3/2/17		
7	63 Email to Larry Geraci from	134	134
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9	dated 3/03/17		
10	64 Email to Darryl Cotton from	136	136
11	Larry Geraci re Contract		
12	Review, dated 3/7/17		
13	69 Email to Larry Geraci from	137	137
14	Darryl Cotton Re Contract		
15	Review, dated 3/17/17		
16	72 Email to Larry Geraci from	144	144
17	Darryl Cotton re Contract		
18	Review, dated 3/19/17		
19	137 Federal Blvd. - Summary of All	155	155
20	Expense Payments		
21	(Excel Spreadsheet)		
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Transcript of Proceedings

Geraci vs. Cotton, et al.

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

3 A No.

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

6 A No.

7 Q Do you know Darryl Cotton?

8 A No.

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

11 A Yesterday in the courtroom.

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

14 A No.

15 Q Have you ever seen him in the office?

16 A No.

17 Q Okay. Now, are you currently employed?

18 A Yes.

19 Q And by whom?

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

22 Q Okay. Let's focus on Tax and Financial.

23 How long have you worked at Tax and Financial
24 Center?

25 A Almost 15 years.

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

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

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 the office.

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

3 A Almost 15 years.

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

5 A Yes.

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

11 A Yes.

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

14 A Yes.

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

18 A Yes.

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

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

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

24 A He's an enrolled agent.

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

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 A Yes.

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

5 A No.

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

8 A Yes.

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

12 A Yes.

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

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

18 Q Okay.

19 A And then I made no decisions.

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

23 A I had some interaction.

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

26 A Abhay.

27 Q That's Mr. Schweitzer?

28 A Mr. Schweitzer.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Q What did you understand his role as?

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

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

10 A Yes.

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

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

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

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

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

20 A Yes.

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

23 A No decisions.

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

27 A Yes.

28 Q Okay. Did you prepare those forms?

Transcript of Proceedings

Geraci vs. Cotton, et al.

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

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

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

13
14
15 Margaret A. Smith, CSR No. 9733, RPR, CRR

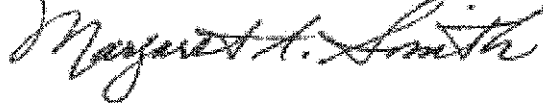
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EXHIBIT 8

Geraci vs. Cotton, et al.

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

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Transcript of Proceedings

Geraci vs. Cotton, et al.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION
Department 73 Hon. Joel R. Wohlfeil
LARRY GERACI, an individual,)
Plaintiff,)
vs.) 37-2017-00010073-CU-BC-CTL
DARRYL COTTON, an individual;)
and DOES 1 through 10,)
inclusive,)
Defendants.)
_____)
AND RELATED CROSS-ACTION.)
_____)

Reporter's Transcript of Proceedings
JULY 8, 2019

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

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 APPEARANCES

2

3 FOR PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI AND
4 CROSS-DEFENDANT REBECCA BERRY:

5 FERRIS & BRITTON

6 BY: MICHAEL R. WEINSTEIN, ESQUIRE

7 BY: SCOTT H. TOOTHACRE, ESQUIRE

8 BY: ELYSSA K. KULAS, ESQUIRE

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12 stoothacre@ferrisbritton.com

13 ekulas@ferrisbritton.com

14

15 FOR DEFENDANT AND CROSS-COMPLAINANT DARRYL COTTON:

16 ATTORNEY AT LAW

17 BY: JACOB P. AUSTIN, ESQUIRE

18 1455 Frazee Road, Suite 500

19 San Diego, California 92108

20 619.357.6850

21 jpa@jacobaustinesq.com

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Transcript of Proceedings

Geraci vs. Cotton, et al.

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Redirect by Mr. Weinstein 65

DARRYL COTTON (UNDER 776)
Cross by Mr. Weinstein 69

ABHAY SCHWEITZER
Direct by Mr. Toothacre 165

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Geraci vs. Cotton, et al.

1	I N D E X			
2				
3	EXHIBITS	IDENTIFIED / ADMITTED		
4	12	Agreement between Techne and Larry Geraci, dated 10/04/16	174	174
5	16	Executed Letter Agreement between Rebecca Berry and Lundstrom Engineering and Surveying, Inc. re Topographic Survey Proposal, dated 10/6/16	185	185
6				
7	19	Email to Larry Geraci and Neil Dutta from Abhay Schweitzer re Federal Blvd. - Site layout, dated 10/20/16 with two attachments A101 - Site Plan - Existing & A102 - Site Plan - Proposed	194	194
8				
9	20	Email to Larry Geraci from Abhay Schweitzer Re: Federal Blvd. - Site layout, dated 10/24/16 with attached A102 - Site Plan - Proposed - Scheme B	197	197
10				
11	22	Email to Becky Berry from Abhay Schweitzer Fwd Federal Blvd., dated 10/26/16 with attachment Blank City of San Diego Ownership Disclosure Statement, Form DS-318	199	199
12				
13	23	Email to Rebecca Berry from Abhay Schweitzer re Invoice #339 from TECHNE City fees (Federal Blvd), dated 10/26/16 with attached Techne Invoice No. 339, dated 10/26/16	200	200
14				
15	24	Email to Rebecca Berry from Abhay Schweitzer re Federal Blvd. - City Fees breakdown, dated 10/26/16 with attached City of San Diego Information Bulletin 170, How to Apply for a Conditional Use Permit Medical Marijuana Consumer Cooperative	17	17
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Transcript of Proceedings

Geraci vs. Cotton, et al.

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

Transcript of Proceedings

Geraci vs. Cotton, et al.

1	I N D E X (continued)		
2			
3	EXHIBITS	IDENTIFIED / ADMITTED	
4	48 Email to Jim Bartell from	229	229
5	Abhay Schweitzer Re: Update,		
	dated 11/29/16		
6	49 Email to Abhay Schweitzer from	39	39
7	Jim Bartell RE: Federal Blvd -		
8	Completeness Review corrections,		
	dated 11/30/16		
9	70 Email to Larry Geraci from Darryl	140	140
10	Cotton re Contract Review,		
	dated 3/19/17		
11	71 Email to Darryl Cotton from	143	143
12	Larry Geraci re Contract Review,		
	dated 3/19/17		
13	73 Email to Darryl Cotton from	141	141
14	Firouzeh Tirandazi re Federal		
	Boulevard MMCC, dated 3/21/17		
15	74 Email to Larry Geraci from	145	145
16	Darryl Cotton re Contract Review,		
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17	75 Email to Firozeh Tirandazi	148	148
18	from Darryl Cotton re PTS		
19	520606 - Federal Blvd MMCC,		
	dated 3/21/17, with attached		
	Addendum Nos. 102		
20	76 CAR Commercial Property Purchase	149	149
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3	EXHIBITS	IDENTIFIED / ADMITTED		
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1 A Yes.

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

4 A Yes.

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

9 A As a good attorney? Sure.

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

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

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

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

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

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

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

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

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

17 MR. WEINSTEIN: Objection. Vague as phrased.

18 THE COURT: Overruled.

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

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

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

5 BY MR. AUSTIN:

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

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

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

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

17 A That's correct.

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

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

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

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

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

5 A No.

6 Q You're not aware of that?

7 A No.

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

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

15 MR. WEINSTEIN: Waived, your Honor.

16 THE COURT: I'm sorry?

17 MR. WEINSTEIN: We will waive the privilege.

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

21 BY MR. AUSTIN:

22 Q Were those marijuana related?

23 A They were not.

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

28 A That's correct.

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

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

7 Q Yes.

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

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

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

16 BY MR. AUSTIN:

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

24 A Yes.

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

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

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1 Q But at some point, his involvement would have
2 to be disclosed. Correct?

3 A Like I said, this -- the purpose of this form
4 is for conflict of interests. And so at some point --
5 and it happens all the time -- the applicant isn't the
6 name of the person who's -- who's on the form. And we
7 go to planning commission. And the planning
8 commissioners have reviewed all the documents. And they
9 wouldn't have seen Mr. Geraci's name. And had he known
10 one of them or had done work with one of them and they
11 would need to recuse, they would then be upset that it
12 didn't get listed on the form.

13 Q Right. That makes sense.

14 So if Mr. Geraci has been sanctioned for
15 illegal cannabis activity --

16 MR. WEINSTEIN: Objection, your Honor. May we
17 have a sidebar?

18 THE COURT: The objection is sustained.

19 Next question. And the request for sidebar is
20 deferred at this time.

21 BY MR. AUSTIN:

22 Q On the state level, would Mr. Geraci's interest
23 have to be disclosed in his -- his involvement with the
24 CUP?

25 A Yes. At the -- when -- once the CUP -- if the
26 CUP had been issued and a state permit had been applied
27 for, then they're -- the state's rules are much more
28 explicit as to what -- who needs to be disclosed as an

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1 owner and a financially interested party. But we didn't
2 get to that point.

3 Q Okay. So as the main attorney on the CUP
4 application, you were involved in pretty much all
5 important conversations?

6 MR. WEINSTEIN: Object. Vague and ambiguous as
7 phrased.

8 THE COURT: Do you -- do you understand the
9 question, Ms. Austin?

10 THE WITNESS: I think he's asking me if I was
11 involved in every conversation.

12 THE COURT: All right. The objection is
13 overruled.

14 Please answer.

15 THE WITNESS: I wasn't involved in every
16 conversation.

17 BY MR. AUSTIN:

18 Q Just the most important ones that would have an
19 effect on the outcome?

20 A I would hope so.

21 Q All right. And you're familiar with Abhay
22 Schweitzer?

23 A Abhay Schweitzer, yes.

24 Q Did you ever have an email conversation with
25 Mr. Schweitzer asking that Mr. Geraci's name not be
26 included in any of the applications?

27 A Maybe. I worked with Abhay on dozens of
28 projects. And this is several years ago. But maybe.

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1 Q And Exhibit 36, which I believe has already
2 been admitted into evidence --

3 THE COURT: Thirty-six has not yet been
4 admitted.

5 MR. AUSTIN: Oh.

6 THE COURT: Are you offering it?

7 MR. AUSTIN: Yes, if we could, your Honor.

8 THE COURT: Any objection to the admission of
9 Exhibit 36?

10 MR. WEINSTEIN: No, your Honor.

11 THE COURT: Exhibit 36 will be admitted.

12 (Premarked Joint Exhibit 36, Email to Rebecca
13 Berry from Abhay Schweitzer Re: Federal Blvd -
14 Site Plan and Floor Plan, dated 10/31/16, was
15 admitted into evidence.)

16 THE WITNESS: Okay.

17 BY MR. AUSTIN:

18 Q Okay. On the first page, towards the bottom,
19 the email dated October 28th, do you recognize this?

20 A Yeah.

21 Q So it purports to be an email you sent to
22 Mr. Schweitzer.

23 A Yes.

24 Q So Item 1, as you have them numbered, can you
25 read that.

26 A "I would like to" -- I think I meant file or
27 fill. I don't know. It's misspelled -- "in the tenant
28 and not the owner on Item No. 3. Cotton has legal

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

3 Q And what legal issues were those?

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

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

7 A I was told multiple.

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

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

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

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

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

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

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

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

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

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

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

4 THE COURT: All right.

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

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

10 MR. AUSTIN: 26057.

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

13 MR. AUSTIN: Yes.

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

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

19 Q Are you familiar with this Code?

20 A Yes.

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

26 A Correct.

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

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

3 A No.

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

6 THE WITNESS: Sorry.

7 MR. WEINSTEIN: Same as before.

8 THE COURT: The objection is overruled.

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

13 BY MR. AUSTIN:

14 Q Right.

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

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

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

28 THE COURT: Sustained.

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1 MR. AUSTIN: Okay. Moving on.

2 BY MR. AUSTIN:

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

5 A Yeah. Our office did, correct.

6 Q And that was roughly March 2017?

7 A That's correct.

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

10 A Yes.

11 Q What was contained in that contract?

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

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

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

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

24 A What do you mean "working documents"?

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

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

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

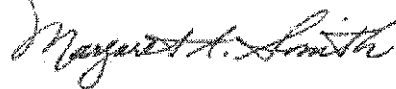
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Geraci vs. Cotton, et al.

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

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

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

13 
14

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