

**Geraci vs. Cotton, et al.**

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



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JULY 3, 2019

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Certified Shorthand Reporter  
Job No. 10057773

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| 15 | 10                    | Draft Services Agreement          | 81 | 81 |
| 16 |                       | Contract between Inda-Gro and     |    |    |
|    |                       | GERL Investments, dated 9/24/16   |    |    |
| 17 | 14                    | Email to Larry Geraci and Neil    | 84 | 84 |
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| 19 | 15                    | Email to Rebecca Berry from       | 85 | 85 |
| 20 |                       | Abhay Schweitzer re Federal       |    |    |
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| 22 | 17                    | Email to Larry Geraci and         | 88 | 88 |
| 23 |                       | Neil Dutta from Abhay Schweitzer  |    |    |
| 24 |                       | re Federal Blvd. - Width of       |    |    |
|    |                       | ROW, dated 10/18/16 with attached |    |    |
|    |                       | Lundstrom Topographic Survey,     |    |    |
|    |                       | Project No. L222-01               |    |    |
| 25 | 18                    | Email thread between Neil Dutta   | 88 | 88 |
| 26 |                       | from Abhay Schweitzer Re:         |    |    |
| 27 |                       | FW: Federal Blvd. - Zoning,       |    |    |
| 28 |                       | dated 10/19/16                    |    |    |

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| 3  | 21 Email from Larry Geraci to      | 90                    | 90  |
| 4  | Darryl Cotton dated 10/24/16,      |                       |     |
| 5  | attaching A102 Site Plan -         |                       |     |
| 6  | Proposed - Scheme                  |                       |     |
| 7  | 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         |                       |     |
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| 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        |                       |     |
|    | Blvd - Authorization to view       |                       |     |
|    | County Tax Assessor Records,       |                       |     |
|    | dated 11/07/16 with attachment     |                       |     |
|    | 44 Email to Darryl Cotton from     | 121                   | 121 |
|    | Larry Geraci re Federal Blvd       |                       |     |
|    | need sig ASAP, dated 11/14/16      |                       |     |
|    | 46 Authorization to view records - | 122                   | 122 |
|    | signed by Cotton 11/15/16          |                       |     |
|    | 59 Email to Darryl Cotton from     | 130                   | 130 |
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| 1  | I N D E X (continued) |                                 |                       |     |
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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 |
| 8  |                       | Darryl Cotton re Statement,     |                       |     |
| 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)             |                       |     |
| 22 |                       |                                 |                       |     |
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1 July 3, 2019; San Diego, California; 8:55 a.m.

2 Hon. Joel R. Wohlfeil

3 -- o0o --

4 THE COURT: All right. Good morning,  
5 everybody.

6 THE REPORTER: Morning, your Honor.

7 MR. WEINSTEIN: Good morning, your Honor.

8 MR. AUSTIN: Good morning, your Honor.

9 THE COURT: All right. So we'll be bringing  
10 the jury in as soon as they have assembled.

11 Let me go to Plaintiff's counsel. Any issues  
12 that we need to discuss?

13 MR. WEINSTEIN: Just one concerning the exhibit  
14 books again for the defense. And I'll have Ms. Kulas  
15 address that.

16 MS. KULAS: Yesterday, we received a digital  
17 version from Mr. Austin's paralegal. But they didn't  
18 have stamps on them. They weren't correctly Bates  
19 numbered. I emailed this morning. And we don't have a  
20 way of even correcting the exhibit list that's within  
21 the witness's exhibit binder and your Honor's exhibit  
22 binder.

23 So I don't really know how to move forward  
24 because we don't have even a hard set of the exhibits  
25 that are correct to -- to use.

26 MR. WEINSTEIN: I would note for the Court that  
27 just because I know time is an issue, I don't anticipate  
28 using any exhibits from the defense exhibit book in my



1 opening or in my direct. So if that --

2 THE COURT: Okay.

3 MR. WEINSTEIN: But at some point --

4 THE COURT: Okay. Counsel?

5 MR. AUSTIN: I've been trying to get everything  
6 fixed. And I got a list of all the errors. And I had  
7 somebody working on it all yesterday while we were in  
8 trial. And all evening. And we're getting everything  
9 electronically sent out.

10 The Bates number, I don't know why that ended  
11 up being significantly --

12 THE COURT: Do you have a hard copy that you  
13 provided?

14 MR. AUSTIN: I thought that I did provide a  
15 hard copy.

16 MS. KULAS: That issue that I gave you  
17 yesterday --

18 THE COURT: Counsel, speak to the Court.

19 MS. KULAS: Sorry, your Honor.

20 THE COURT: So your comments?

21 MS. KULAS: Yes. Yesterday, I provided  
22 Mr. Austin with a list of the issues that were  
23 reflective from the hard copy that you provided us the  
24 day prior.

25 So we reviewed them, and as we discussed  
26 yesterday, there were some discrepancies with what was  
27 contained in those exhibits.

28 THE COURT: All right. So -- I don't know how

1 challenging some of these issues may be. So what we're  
2 going to do is we're going to do the best we can, but at  
3 some point in time, if either the plaintiff is being  
4 prejudiced -- and I don't know if you are yet -- or the  
5 Court is unable to follow whatever documents that you  
6 have had marked, the price to be paid will be that I'll  
7 sustain an objection and that document will not be  
8 admitted.

9 So, ultimately, it's the risk you assume by not  
10 reasonably complying with what the rules require.

11 Now, Counsel, there are other judges that would  
12 respond to this issue very differently. Perhaps you  
13 could even say much more draconian than I do. These  
14 things happen. So I'm going to keep an eye on it, and  
15 we'll do the best we can. But you should consider  
16 yourself admonished. These are awful important things  
17 that we need to have done.

18 So I've done my best right now.

19 MR. WEINSTEIN: Fair enough, your Honor.  
20 Nothing else.

21 THE COURT: All right. Let me go to the  
22 defense side.

23 Any -- any issues that you wanted to bring up?

24 MR. AUSTIN: Just yesterday when you were  
25 asking if I wanted to reserve, were you only talking  
26 about calling back witnesses or, like, after he does his  
27 opening, do I get to do mine?

28 I was just wondering about --

1           THE COURT: Well, you are entitled to make an  
2 opening statement immediately after Plaintiff's counsel  
3 does during Plaintiff's case in chief, or you can  
4 reserve the right to do an opening and do that at the  
5 beginning of your case in chief.

6           I was actually referring to the examination of  
7 witnesses. And as witnesses are called in Plaintiff's  
8 case in chief, you have the right to not examine them at  
9 that time but instead recall them in your case in chief.

10          Now, you have to first make sure you have the  
11 power to have them recalled. If it's a party in the  
12 courtroom, that's fine. If a party is under subpoena,  
13 that's fine. But if it's a -- somebody else coming into  
14 Court voluntarily, unless there's been a paper served  
15 upon them, it's not my ability. The Court doesn't have  
16 the power to tell somebody to come back.

17          So I'm going to ask you if you want to  
18 cross-examine these witnesses at that time or reserve  
19 your right to do so during your case in chief. And you  
20 respond as you think. And then the risk you assume is  
21 that these people are available for you to do that in  
22 your case in chief.

23          But the context was in talking about time  
24 estimates. That's all I was speaking about. I wasn't  
25 trying to put any pressure on you.

26          So is there anything else you want to discuss  
27 about that right now?

28          MR. AUSTIN: No. I just wanted to make sure I

1 wasn't locking myself down to something right now.

2 THE COURT: Well, at some point in time, you'll  
3 have to make that decision, but that was not the Court's  
4 intention yesterday.

5 All right. Anything else, Counsel?

6 MR. AUSTIN: No, your Honor.

7 THE COURT: As soon as we get the jury in,  
8 we're going to start with opening statements. Are you  
9 ready to go?

10 MR. WEINSTEIN: Yes, your Honor.

11 THE COURT: Are you going to give an opening  
12 right after Plaintiff's counsel?

13 MR. AUSTIN: Yes, your Honor. And I do have  
14 those lodgements from yesterday.

15 THE COURT: Okay. When you have a chance, just  
16 give them to my deputy.

17 By the way, do we have our jurors here?

18 THE BAILIFF: Yes, your Honor.

19 MR. WEINSTEIN: There is one thing.

20 Apparently, we have to still focus this  
21 projector.

22 MS. KULAS: I just want to make sure it's  
23 focused, because we haven't touched it in a few days.

24 THE COURT: I'll give you the jury -- I'll take  
25 you -- either as they are coming into the courtroom or  
26 after I have begun -- after I've indicated it's time for  
27 the opening statement, you can do that. Okay? Feel  
28 free to turn it on now if you'd like to, but I don't

1 want to hold the jury up any longer.

2 So bring them in, Madam Deputy.

3 THE BAILIFF: Yes, your Honor.

4 THE COURT: All right. Good morning,  
5 everybody. Thanks for being so good about assembling on  
6 time. We were delayed a couple of minutes. I had  
7 several hearings at 8:30, and I had to talk with counsel  
8 for just a moment.

9 In just a few moments -- hmm. I'm looking. We  
10 have an empty seat. One, two, three. Juror No. 4.

11 Oaxaca. We're usually very good about making  
12 sure we have everybody assembled before bringing people  
13 in.

14 Has anybody seen our Juror No. 4? Was he here  
15 this morning?

16 All right. One moment. I'm going to talk to  
17 my deputy.

18 Madam Deputy, may I see you for a moment.

19 THE BAILIFF: Yes, your Honor.

20 (Sidebar held and not reported.)

21 THE COURT: All right. We've got almost  
22 everybody here.

23 All right. We would probably not have brought  
24 you in to sit where you are if we were still waiting for  
25 our remaining jurors. But we wouldn't have been able to  
26 start before now.

27 So we're still on track.

28 So what we're going to do, we still have one of

1 our alternates, Mr. Dunbar. Counsel, I'm inclined to  
2 excuse him so we can move forward.

3 Any objection?

4 MR. WEINSTEIN: No objection.

5 MR. AUSTIN: No objection.

6 THE COURT: All right. So Mr. Dunbar will be  
7 excused. If he does appear, Madam Deputy, can you let  
8 him know he's excused?

9 JUROR: Sir, I'm right here.

10 THE COURT: I'm sorry, Mr. Dunbar. I thought  
11 we were -- I was informed that we were still waiting for  
12 one more juror. So we do have everybody. I apologize.  
13 That must have been an odd experience hearing me talk  
14 about you and you're sitting right here.

15 We're getting off to a rough start this  
16 morning. We try to be perfect, but it doesn't always  
17 happen, folks.

18 All right. So we do have everybody.

19 All right. So very briefly, in just a few  
20 moments, Counsel will give their opening statements.  
21 When they're done, we'll take our morning break. Even  
22 if we're not quite at 10:30, we'll take our 15-minute  
23 break. And when we return, we'll start with witnesses  
24 and go until noon and continue along that line until the  
25 end of the day.

26 Please recall that we're dark tomorrow because  
27 of the holiday and will not be returning until next  
28 Monday, the 11th. And then you'll have a line-up of

1 witnesses. And the lawyers are working hard to have as  
2 many witnesses lined up. Some of them will take a  
3 little longer, like the parties. But you'll be seeing a  
4 steady stream of witnesses through and including  
5 Plaintiff and the defendant's case in chief.

6 So I'll keep you up to date on where we are in  
7 the estimate, but as mentioned before, we will get you  
8 the case at or before the close of business Thursday,  
9 July 18th.

10 So it's now time for counsel to give an opening  
11 statement. I mentioned to you yesterday that nothing  
12 the lawyers say during the trial is evidence. The only  
13 thing you're going to base your decision on ultimately  
14 is the evidence and, of course, the law that I give to  
15 you. But what they say in their opening statement will  
16 give you an idea of what they expect the evidence to  
17 consist of, at least from their perspective.

18 So with that in mind, Counsel, whenever you're  
19 ready, please give your opening statement.

20 MR. WEINSTEIN: Thank you, your Honor.

21 (Opening statement on behalf of  
22 Plaintiff/Cross-Defendant Larry Geraci)

23 MR. WEINSTEIN: Good morning, Mr. Dunbar, and  
24 the rest of the jurors. Thank you for your patience  
25 through jury selection yesterday. As your Honor has  
26 just reminded you, nothing I say is evidence. It's what  
27 I believe the evidence will show. So if I make a  
28 statement and I don't preface it by saying the testimony

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

28 I already mentioned Abhay Schweitzer. He owns

1 his own business called TECHNE, T-E-C-H-N-E, a design  
2 and development firm. He's a project designer who has  
3 experience working on marijuana dispensary projects and  
4 had also been successful in guiding clients through and  
5 obtaining approvals of condition use permits for  
6 dispensaries for other of his clients.

7 Mr. Geraci, you'll learn, hired Mr. Schweitzer  
8 to be on his team along with Mr. Bartell.

9 You will learn that -- in this case that  
10 Mr. Schweitzer and his staff at TECHNE spent over 680  
11 hours on this project, 150 or more of which was just for  
12 preparation of drawings to be submitted to the City in  
13 connection with this regulatory process that one has to  
14 go through to obtain a conditional use permit.

15 Mr. Schweitzer is expected to describe to you  
16 in detail the CUP application process and the  
17 applications taken to process the CUP application for  
18 the dispensary on this property.

19 He's going to also testify to you about  
20 unsuccessful attempts to appeal the approval of a  
21 competing CUP application on a nearby property. You've  
22 heard a little bit earlier about a competing CUP  
23 application. We'll get into more detail about that  
24 later.

25 Gina Austin, you will hear about. Gina is an  
26 attorney. She has her own law firm, the Austin Legal  
27 Group. Her practice includes, in addition to corporate  
28 and securities, land use entitlements. She's

1 represented medical cannabis, collectives and  
2 cooperatives with regard to regulatory compliance  
3 issues. She's also been successful in obtaining permits  
4 from local municipalities and representing them in front  
5 of local municipalities.

6 Mr. Geraci, you will learned, hired Ms. Austin  
7 to be on the team he put together to attempt to obtain  
8 approval of the conditional use permit for the  
9 dispensary on the property he was buying from  
10 Mr. Cotton.

11 There are two more people on the long list I  
12 need to introduce you to. The first one is Firouzeh.  
13 And I'm hoping I'm pronouncing that right because it's  
14 not -- it doesn't sound how it's spelled. But it's  
15 Fairsday Tirandazi. Ms. Tirandazi was an employee of  
16 the City of San Diego. She was an initial project  
17 manager for the City responsible for the CUP application  
18 that was submitted on this property. At that time, she  
19 was the initial project manager, and she worked in the  
20 San Diego -- City of San Diego's development services  
21 department.

22 The last person is another City employee. Her  
23 name is Sherlynn Tac, T-a-c. She's also employed by the  
24 City of San Diego. And at a time, she was the second  
25 project manager after Ms. Firouzeh (sic) was transferred  
26 from the department. Ms. Tac was the second manager at  
27 the City for the CUP application that was being  
28 processed that had been applied for by Ms. Berry on

1     behalf of Mr. Geraci.

2             I know that's a long list, and you'll become  
3     familiar with those people as you hear the testimony.

4             And here's what I expect the evidence to show.  
5     On November 2nd, 2016, Mr. Geraci and Mr. Cotton signed  
6     before a notary a written agreement which set out the  
7     material terms and conditions that was agreed to for the  
8     purchase and sale of Mr. Cotton's property.

9             Would you bring up 38, please.

10            Of course, you'll be shown this agreement  
11     again, I'm sure, many times during the trial. This is  
12     an agreement that Mr. Geraci will tell you was drafted  
13     by he and Mr. Cotton together in his office on  
14     November 2nd. He sat at his computer, did the typing.  
15     His office has a 65-inch computer monitor on the wall.  
16     Mr. Geraci viewed the computer monitor, and they  
17     essentially went through and drafted the agreement  
18     together and spoke about it as it was written. It  
19     started out as a Word document with the date at the top.  
20     And as it was written, they went through it, put the  
21     words down, made suggestions, and then agreed that those  
22     words were accurately reflecting what they had agreed  
23     to. That's what Mr. Geraci will testify to.

24            When it was all agreed to and the words were  
25     agreed to, they both signed it in front of the notary.

26            Would you show us 39, please.

27            And 39, it's not that big of a deal. But it's  
28     just a notary acknowledgment that shows it was signed by

1 Mr. Geraci at 3:05 p.m. on November 2nd by Mr. Cotton  
2 two minutes before that.

3 Now, Mr. Geraci will testify that this  
4 agreement was the culmination of a series of phone calls  
5 and a couple of face-to-face meetings, including the  
6 meeting on November 2nd, when they discussed and  
7 negotiated the terms of the agreement.

8 Mr. Geraci will testify that this was intended  
9 to be their final agreement. It was a simple one, as  
10 reflected in the written document.

11 Now, both Mr. Cotton and Mr. Geraci signed the  
12 agreement, and Mr. Geraci on that day provided  
13 Mr. Cotton with \$10,000 in cash as a deposit called for  
14 in the agreement. It was to be applied against the  
15 purchase price of \$800,000 with a balance due upon  
16 approval, if there was approval of a conditional use  
17 permit for the medical marijuana dispensary.

18 Now, Mr. Cotton will not deny that he signed  
19 the written agreement. However, he's expected to  
20 testify that the document was not intended as an  
21 agreement but rather as a receipt for the \$10,000 of  
22 cash that he received. He's expected to testify that as  
23 of November 2nd, 2016 when they each signed the  
24 document -- if you could put it back up -- they had  
25 orally agreed to additional terms and conditions for the  
26 purchase.

27 Among other terms and conditions, he's expected  
28 to testify or claim that they agreed to a nonrefundable

1 deposit of \$50,000, not \$10,000. He's expected to claim  
2 that in addition to the total purchase price of  
3 \$800,000, he and Mr. Geraci had orally agreed that the  
4 dispensary was built, that Mr. Cotton would receive  
5 a 10-percent equity stake or ownership interest in the  
6 medical -- in the dispensary with a right to receive  
7 guaranteed minimum cash distributions of \$10,000 a  
8 month.

9 Mr. Cotton will testify that all these terms  
10 and conditions were orally agreed to as of November 2nd,  
11 2016.

12 What he won't -- what he will agree to, though,  
13 and is not expected to dispute is that the sale was  
14 intended to be conditional upon the obtaining of a  
15 conditional use permit for the operation of a  
16 dispensary.

17 The testimony will show that neither party  
18 disputes that was part of the agreement. It's not going  
19 to be disputed that they discussed and it was agreed  
20 that approval was to be obtained by Mr. Geraci at his  
21 expense. They discussed that if the Geraci -- if the  
22 CUP wasn't approved, Mr. Cotton would get his -- would  
23 keep his 10,000-dollar nonrefundable deposit, and  
24 Mr. Geraci would have to have borne all the expenses  
25 that he invested in trying to obtain approval of the  
26 dispensary that never came to fruition.

27 Now, you're going to hear testimony -- I  
28 started with the agreement on November 2nd. You're

1 going to hear testimony about the events that led up to  
2 the signing of the agreement on November 2nd. You will  
3 learn that in late 2015 or in 2015, Mr. Geraci became  
4 interested in the possibility of acquiring a property to  
5 develop and operate a dispensary.

6 You will learn that in the City of San Diego,  
7 there are nine council districts, and four principals  
8 are permitted maximum in each council district. So this  
9 was in a council district, and there was the possibility  
10 of that district having four principals.

11 You'll also learn that the City's zoning  
12 ordinance limits the locations where operations of a  
13 dispensary are allowed in use. So if a property is  
14 located within district but it's not zoned for operation  
15 of a dispensary, you can't operate one there, unless and  
16 until the City approves a conditional use permit that  
17 allows you to do so. But they won't do that if their  
18 zoning isn't approved.

19 Now, you will hear a lot in this case about the  
20 regulatory permit process as applying for and obtaining  
21 that conditional use permit was a condition of the  
22 purchase. Mr. Geraci is not an expert in the medical  
23 marijuana industry. So he decided to assemble a team  
24 that I described to provide him with guidance through  
25 that process.

26 He hired Mr. Bartell in October of 2015, the  
27 lobbyist I mentioned, who was familiar with the process.  
28 And they started looking for properties, trying to



1 identify properties that might be feasible to acquire  
2 and to then obtain and operate -- a conditional use  
3 permit to operate a dispensary.

4 And in approximately -- you'll learn that in  
5 approximately mid-2016, Mr. Cotton's property at 6176  
6 Federal Boulevard was identified as a possible feasible  
7 location. Now, it was located in zoning -- a zone  
8 called CO-2-1.

9 Would you put up 27, please.

10 You're going to hear a lot about a zoning issue  
11 in this case and correcting a zoning problem. You'll  
12 hear testimony from multiple witnesses on that issue.  
13 But for purposes of the road map, the crux of it is that  
14 the City -- would you blow that up, please. Especially  
15 2D2 on the left side.

16 Keep going. Perfect.

17 So this is an information bulletin put out by  
18 the City of San Diego for medical marijuana consumer  
19 cooperatives. And you'll notice in Section 2D, it says  
20 MMCCs are allowed only in the following zones.

21 If you can blow up that paragraph.

22 And you'll see that CO-2-1 is an allowable use  
23 in that zone according to this information bulletin.

24 However, it turns out, the City's Municipal  
25 Code didn't have that particular zone, CO-2-1, didn't  
26 have a dispensary as an allowable use in the CO-2-1 zone  
27 under the zoning ordinances in the Municipal Code. So  
28 there was a conflict. You'll hear about the crux of

1     that conflict and the problems and what efforts were  
2     made to amend the zoning ordinance to resolve that  
3     problem before the City would continue with the process  
4     of CUP application. I'll get to that a little bit  
5     later.

6             Now, for purposes of where we are in the  
7     opening, it's important to know that the evidence will  
8     show that both Mr. Geraci and Mr. Cotton were aware of  
9     this potential zoning problem at the time Mr. Cotton  
10    first made -- Mr. Geraci first made contact with  
11    Mr. Cotton about his property. So when did that happen?

12            You'll learn that Mr. Geraci's first contact  
13    with Mr. Cotton about the property was in mid July of  
14    2016. Mr. Geraci called Mr. Cotton to see if he was  
15    interested in selling his property. He didn't -- he  
16    knew nothing about Mr. Cotton's background.

17            Mr. Geraci will testify to the details of that  
18    conversation, which lasted about 20 minutes. But among  
19    other things, he will tell you that he introduced  
20    himself and explained to Mr. Cotton that he was looking  
21    to purchase a property that could be used to develop a  
22    medical marijuana consumer cooperative. And he asked  
23    Mr. Cotton -- and to develop a dispensary. And he asked  
24    Mr. Cotton if he would be interested in selling.  
25    Mr. Geraci told him he did not want to waste his time if  
26    the asking price was outside his budget. And he asked  
27    what price he would want to sell the property.  
28    Mr. Cotton told him \$800,000. Mr. Geraci told him that

1 was in his budget and asked if they could meet to  
2 discuss specifics.

3 Now, this was the first contact, this telephone  
4 call in mid July 2016 where they discussed the terms of  
5 a potential purchase. Not all the terms but that  
6 particular term, the price.

7 The next time that -- the first time they had a  
8 face-to-face meeting was in September of 2016.  
9 Mr. Geraci is going to testify about the details of that  
10 conversation as well, as I expect Mr. Cotton will.  
11 Among other things, Mr. Geraci is going to tell you that  
12 he told Mr. Cotton he was still interested in exploring  
13 the purchase of his property, but his team still had  
14 some work to do to determine if it was even feasible  
15 enough to go forward. They knew for sure they had the  
16 zoning issue, but they wanted to determine if there were  
17 other issues.

18 Mr. Geraci said he would be back in contact  
19 with him when it was determined whether the property was  
20 feasible and he was ready to move forward. And they  
21 discussed other things, which I will leave to the  
22 testimony.

23 Mr. Cotton said he wanted to send him and was  
24 going to send him a proposed agreement.

25 Would you go to No. 9, please.

26 So you will see an email on November -- I'm  
27 sorry -- on September 26th, 2016, after that initial  
28 face-to-face meeting where Mr. Cotton did what he said

1 he was going to do, sent Mr. Geraci a proposed contract.  
2 And this is the email.

3 And then would you go to Exhibit 10, please.  
4 Blow that up.

5 So you'll see this. This is a draft agreement.  
6 You'll get to see it in more detail with Mr. Cotton and  
7 Mr. Geraci.

8 Now, Mr. Cotton -- paragraph 1, highlight one,  
9 please.

10 Mr. Geraci reviewed the agreement. He noticed  
11 in paragraph 1 that one of the things Mr. Cotton wanted  
12 was a 10 percent equity position or one of the things he  
13 was proposing was a 10 percent equity position in the  
14 new licensed entity, which refers to the dispensary,  
15 we'll hear.

16 Mr. Geraci had some prior communications before  
17 this with Mr. Cotton in which Mr. Cotton was trying to  
18 persuade him to invest in Mr. Cotton's -- we'll call it  
19 grow business. Mr. Cotton produces cannabis. He is a  
20 hydroponic grower, as I understand it. He'll talk about  
21 it, though. He was trying to persuade Mr. Geraci to  
22 invest in his growing business in exchange for which he  
23 would get a 10 percent interest -- interest in the  
24 dispensary. They had discussed that. Mr. -- they  
25 discussed that when Mr. Geraci called Mr. Cotton back  
26 after receiving this draft agreement he told him he was  
27 not interested in doing that. He told Mr. Cotton that  
28 he was getting ahead of himself. He told him he was

1 focused on getting the CUP. And he never signed the  
2 agreement.

3           Nevertheless, the parties proceeded forward,  
4 and in October of 2016, you'll see communications  
5 between the parties. You'll see texts, some  
6 photographs, of which they communicated during that  
7 period of time on issues that dealt with investigating  
8 the feasibility of the property.

9           For example, Mr. Cotton provided access to his  
10 property for a topographic survey, which was going to be  
11 necessary -- which is done by an engineering firm, paid  
12 for by Mr. Geraci, which was going to be necessary if  
13 they were going to move forward with the CUP  
14 application.

15           Would you show us Exhibit 21, please. And on  
16 October 24th, 2016, Mr. Geraci sent Mr. Cotton an  
17 email -- just highlight the date at the top.

18           I'll represent to you while we're struggling  
19 with that it's October 24th. And the second page.

20           I guess we lost the zoom for now. We'll wait  
21 for that until we present the evidence.

22           Effectively what happened on October 24th is  
23 you'll learn that Mr. Geraci had hired an engineer, had  
24 a topographic study done and he also had site drawings  
25 prepared by his project designer, Mr. Abhay Schweitzer's  
26 firm. He shared those with Mr. Cotton to show him what  
27 was being proposed to be done on the property.

28           So after that proposal for the agreement, which

1 was not signed, they went forward with these kind of  
2 communications, working towards potentially still doing  
3 a deal.

4 Mr. Geraci going to testify in about the third  
5 week of October he had a phone conversation with  
6 Mr. Cotton in which he told Mr. Cotton they were close  
7 to being ready to submit a CUP application, that they  
8 should get an agreement signed in writing.

9 They subsequently arranged for Mr. Cotton to  
10 come to Mr. Geraci's office on November 2nd to put  
11 together a written agreement.

12 Would you show Exhibit --

13 But before that happened, in connection with  
14 submitting the CUP application, there was a form that  
15 needed to be signed by Mr. Cotton. So Mr. Geraci will  
16 testify he contacted Mr. Cotton on October 31st of 2016  
17 and told him there was a form that needed to be signed  
18 to submit the CUP application. Mr. Cotton came to the  
19 office and signed the application. And when we're able  
20 to blow it up, you'll be able to see that better. And  
21 Mr. Geraci told him this was going to be used in  
22 connection with submitting the CUP application.

23 Then the meeting on November 2nd happens.  
24 We've discussed that. On October 31st, though, after  
25 this form was signed, the CUP application was submitted  
26 to the City for what is called the completeness review.  
27 It's the initial phase when you submit your application.  
28 Mr. Schweitzer will describe what that is.

1           The November 2nd meeting happened, and they  
2           signed the agreement, which I've discussed.

3           Mr. Geraci will also testify that in advance of  
4           that meeting, he had had discussions with Mr. Cotton  
5           about the amount of a nonrefundable deposit. He had had  
6           prior discussions before that meeting. Mr. Cotton  
7           wanted a 50,000-dollar nonrefundable deposit.  
8           Mr. Cotton -- Mr. Geraci said he was not willing to take  
9           that because he was going to be putting all this money  
10          into getting the CUP application and had substantial  
11          risk. He would only agree to pay a 10,000-dollar  
12          nonrefundable deposit. And Mr. Cotton told him that's  
13          okay.

14          So Mr. Geraci, on November 2nd, when he knew he  
15          was going to meet with Mr. Geraci, went and got \$10,000  
16          in cash and brought it to his office so that when the  
17          agreement was signed, if and when it was signed, he  
18          would put the 5- to 10,000-dollar nonrefundable deposit  
19          that they had agreed to would be appropriate in the  
20          prior meeting.

21          Now, after signing the agreement, the testimony  
22          will show that Mr. Geraci really tried to renegotiate  
23          the deal.

24          Would you show Exhibit 40. We'll go quickly  
25          through those.

26          Before Mr. Cotton left the office on  
27          November 2nd, he asked if Mr. Geraci would email him the  
28          agreement. And Mr. Geraci did. You're going to see an

1 email where Mr. Geraci sent him the agreement on -- at  
2 3:11 p.m. on November 2nd, a few minutes after  
3 Mr. Geraci -- Mr. Cotton had left.

4 Show Exhibit 41, please. You're going to see  
5 an email -- you're going to see an email from later that  
6 evening from Mr. Cotton to Mr. Geraci at six -- it was  
7 sent at 6:56 p.m., in which he wrote an email that said  
8 thank you for meeting with me today. And then the  
9 balance of the email -- I'm going to go over there and  
10 read it because I know you can't see it -- the second  
11 sentence says since we executed the purchase agreement  
12 in your office for the sale price of the property, I  
13 just noticed the 10 percent equity position in the  
14 dispensary was not language added in the contract -- or  
15 into that document. I just want to make sure that we're  
16 not missing that language in any final agreement, as it  
17 is a factored element in my decision to sell the  
18 property. I'd be fine if you would simply acknowledge  
19 this in a reply.

20 Mr. Geraci will testify he got that email after  
21 9 o'clock that evening because he gets his emails on his  
22 phone.

23 Show us Exhibit 42, please. When he looked at  
24 that email, he read the first sentence thank you for  
25 meeting with me and immediately replied, no, not a  
26 problem, and didn't read the body of the email. He's  
27 going to then testify that he had a phone call with  
28 Mr. Geraci the next day -- or Mr. Cotton the next day in



1     which they discussed where Mr. Geraci asked him about  
2     what is it -- what is this 10 percent equity interest  
3     and told him he did not agree to that.

4             Mr. Geraci will testify Mr. Cotton replied,  
5     well, you can't -- you know, something to the effect of  
6     well, you can't blame a guy for trying. And Mr. Geraci  
7     said I'm not going to agree to 10 percent equity  
8     interest, and Mr. Cotton said, okay, and added, well,  
9     we're still going to all make a lot of money on this or  
10    something to that effect.

11            Now, I'm going to come to this later -- I  
12    expect Mr. Geraci -- Mr. Cotton -- I'm sorry -- to  
13    testify that he viewed this as a written confirmation of  
14    the 10 percent equity interest. The evidence is going  
15    to show otherwise.

16            Would you turn to No. 69. I apologize we're  
17    not able to blow this up. But you will see this  
18    March 16th, 2017 email from Mr. Cotton where he goes  
19    through in the second paragraph of this email at the  
20    bottom, his view of what the discussions and  
21    negotiations have been. And at the end, he writes, "You  
22    did not respond and confirm the 10 percent as I  
23    requested." Mr. Cotton was acknowledging in this email  
24    what -- that Mr. Geraci had not in fact confirmed he was  
25    agreeable to a 10 percent equity position, because  
26    that's how -- what the evidence will show Mr. Cotton  
27    understood at the time of the dispute.

28            Mr. Geraci will testify I didn't even see that

1 second sentence when I sent the first reply, and I never  
2 confirmed expressly that I was going to be agreeing to  
3 a 10 percent equity position. It was not part of their  
4 deal that they discussed, Mr. Geraci will testify at  
5 their November 2nd meeting. It was not part of any  
6 agreement they had reached prior to that meeting when  
7 they signed the written agreement, which doesn't include  
8 that provision.

9 Now, I mentioned earlier that expect  
10 Mr. Geraci -- Mr. Cotton -- I apologize -- Mr. Cotton to  
11 also claim that they agreed to a 10 percent -- I'm  
12 sorry -- a guaranteed 10,000-dollar minimum monthly  
13 distribution from the dispensary at the time they signed  
14 the November 2nd, 2016 agreement. The evidence will  
15 show that there's no mention of any guaranteed monthly  
16 payments in any communications between Mr. Geraci and  
17 Mr. Cotton prior to Mr. Geraci or Mr. Cotton having a  
18 telephone call on February 7th, 2017.

19 Now, what had happened between the  
20 November 3rd, 2016 telephone call that I described, the  
21 agreement was signed on November 2nd, the telephone call  
22 on November 3rd, and on February 7th, Mr. Geraci then  
23 talked about a telephone call he had with Mr. Cotton in  
24 which he started in earnest to try to renegotiate the  
25 agreement.

26 What happened was the zoning -- you'll learn  
27 the zoning got approved. It was approved by an  
28 amendment to the Municipal Code. The zoning ordinance

1 was changed. It was submitted to the legislative  
2 process on January 31st of 2017. And Mr. Geraci, who  
3 had been having continual communications with Mr. Cotton  
4 about the progress of the resolution of the zoning  
5 issue, because the CUP application was essentially stuck  
6 in the mud and couldn't be processed until the zoning  
7 issue was resolved, Mr. Geraci -- Mr. Cotton was asking  
8 for updates. And you'll see text message -- messages  
9 from Mr. Geraci to Mr. Cotton and vice versa about that  
10 in the period between November 3rd and February 7th.  
11 And you'll find that Mr. Geraci communicated to him,  
12 because he had been told by his lobbyist, Mr. Bartell,  
13 that the zoning issue had been resolved. And he  
14 communicated that to Mr. Geraci -- or Mr. Cotton.

15 At that point, this February 7th, 2017 phone  
16 call occurred that Mr. Geraci will describe.

17 And in that phone call, Mr. Geraci is going to  
18 testify about all the details because he remembers it  
19 vividly. It was disturbing him to have the phone calls,  
20 he will tell you. But the crux of the call is, you will  
21 learn, that Mr. Cotton had been talking to some people  
22 that told him they would give him 10,000 a month  
23 guaranteed once the dispensary was in operation.  
24 Mr. Geraci told him that he could not do that, that it  
25 was a high number for a brand-new business, and  
26 explained why it was not possible. Mr. Geraci reminded  
27 Mr. Cotton of that phone conversation that they had the  
28 signed agreement, but Mr. Cotton insisted that

1 Mr. Geraci work with him, because other people would pay  
2 him that.

3 Mr. Geraci will tell you that this position --  
4 at this time, he felt trapped because he had invested  
5 money towards getting a CUP application. He will tell  
6 you he knew and needed Mr. Cotton's cooperation to be  
7 able to process -- continue to process the CUP  
8 application, clearly getting access to the property.  
9 And he felt that he was in a corner. And he didn't know  
10 what to do. He contacted a number of people, but one  
11 person he contacted was Ms. Austin.

12 Ms. Austin is going to testify, and she's going  
13 to tell you about the phone call that she had with  
14 Mr. Geraci. Mr. Geraci is going to tell you that he  
15 felt he was being extorted by Mr. Cotton who was trying  
16 to renegotiate their deal. And he told that to  
17 Ms. Austin. Ms. Austin is going to come in and testify  
18 that Mr. -- I believe that Mr. Geraci told her he was  
19 being extorted and he felt like he needed to try and  
20 renegotiate to save the deal. He felt he was between a  
21 rock and a hard place.

22 So at that point in time and only at that point  
23 in time, he will testify he directed Gina Austin to try  
24 and draft up a more formal agreement that would provide  
25 Mr. Cotton with some things, but he wasn't going to  
26 agree to provide him with an ownership interest or with  
27 guaranteed distributions, because that just wasn't going  
28 to be possible, given that it was a new business and

1 wouldn't make money.

2           He tried to renegotiate because he was trying  
3 to determine, you know, he either was going to lose his  
4 investment or he was going to try to go forward with the  
5 investment and try to renegotiate. He even offered to  
6 renegotiate a new agreement and provide some cash  
7 distributions, lesser for the first six months, and  
8 then 10,000 after the seventh month. But during all of  
9 these renegotiations, you will learn from emails,  
10 Mr. Cotton's demands kept escalating. He wanted a 10  
11 percent equity stake. He wanted the minimum guaranteed  
12 distribution of 10,000 a month, and it had to start  
13 right when the dispensary opened. He wanted consent  
14 rights as a minority shareholder to approve things. He  
15 wanted to be able to put a -- I may misstate this. But  
16 he asked for other things with respect to the accounting  
17 of the business, things that had never been discussed.

18           Mr. Geraci will testify he realized that there  
19 was no way he was going to be able to renegotiate the  
20 agreement to something acceptable. Told Mr. Cotton, you  
21 know, that they had an agreement, and went forward with  
22 the lawsuit.

23           Now, you're going to hear about the conduct of  
24 Mr. Cotton after the lawsuit was filed, and you're going  
25 to hear about the conduct of Mr. Geraci after the  
26 lawsuit was filed. We're going to present evidence of  
27 attempts by Mr. Cotton to interfere with the CUP  
28 application process. There's going to be evidence that

1 he signed another offer to sell the property. The  
2 written agreement he signed said he couldn't enter into  
3 other contracts, but he did.

4 He's going to -- we're going to -- we're going  
5 to have testimony that he blocked access and refused to  
6 allow access to the property to do geotechnical studies,  
7 essentially soils testing, that was required by the City  
8 as part of the permit process.

9 And you will learn that Mr. Geraci had to go to  
10 court twice to get court orders that would get him onto  
11 the property so the soil testing could be done so we  
12 could move forward with the CUP application process.

13 Mr. Geraci, on the other hand, you will learn,  
14 despite even after the lawsuit was filed, continued to  
15 diligently prosecute the CUP application through his  
16 team. He's going to testify that they were -- and they  
17 did -- were instructed to move forward as fast as they  
18 could to resolve the problems. But you will learn as a  
19 result of the delays in the soils testing, they lost a  
20 number of months off the CUP application process because  
21 until they submitted the soils testing report, they  
22 could not resubmit a CUP application to the City.

23 So the way it works is once you get through the  
24 completeness review -- you'll learn once you get through  
25 the completeness review of the application, then they go  
26 forward with the review process where they have all  
27 these different disciplines within the City, review  
28 drawings, review the parking, review all the

1 requirements that they have to look at for a new  
2 development on a property. They then provide you with  
3 comments of things they want corrected or changed. You  
4 then have to attempt to correct those, and then you  
5 resubmit at one time.

6 Well, they could not resubmit until the soils  
7 testing was done, and that's why there was a delay,  
8 you'll learn. As a result, you'll hear about a  
9 competing CUP application that started later, but it was  
10 a competing CUP application on a nearby property. That  
11 competing CUP application was able in the end, the  
12 evidence will show, as a result of these delays, get  
13 ahead of the CUP application for this property and get  
14 approved first.

15 Mr. Geraci and Mr. Schweitzer will testify  
16 about how they attempted to appeal the approval of the  
17 competing CUP application because they felt there were  
18 deficiencies in it. Mr. Schweitzer and Mr. Bartell  
19 appeared at a planning commission appeal of that, which  
20 is where you go to appeal the approval of the CUP  
21 application. But they were unsuccessful.

22 The rules are you can't have a CUP -- I'm  
23 sorry -- you can't have a dispensary within a thousand  
24 feet of one another, and this nearby property was too  
25 close. So once that planning commission appeal of the  
26 competing CUP application was denied -- and that was in  
27 December of 2018 -- there was nothing else to be done.  
28 And Mr. Geraci had to give up on getting the CUP

1 application.

2 Now, finally -- and I appreciate your  
3 patience -- you'll be presented with evidence of the  
4 money that was extended by Mr. Geraci after he entered  
5 into the written agreement with Mr. Cotton in an attempt  
6 to get the CUP application submitted and approved.  
7 He's -- we're going to be asking you to return a verdict  
8 for Mr. Geraci for damages in the amount of the money he  
9 spent in reliance on the promise in this written  
10 agreement of November 2nd to -- to sell the property  
11 conditioned upon getting the CUP approval. And we're  
12 going to -- we're going to show in the evidence that it  
13 was Mr. Cotton's interference with that process that  
14 resulted in Mr. Geraci having invested that money and  
15 then having lost it.

16 Thank you very much.

17 THE COURT: Thank you, Counsel.

18 All right. Counsel, would you like to give an  
19 opening statement.

20 MR. AUSTIN: Yes, your Honor.

21 THE COURT: All right. Whenever you're ready.

22 (Opening statement on behalf of  
23 Defendant/Cross-Complainant Darryl Cotton)

24 MR. AUSTIN: Good morning, everyone. Thank you  
25 for being here. The jury is integral in our system for  
26 resolving disputes. And that's all we're asking you to  
27 do here.

28 And I think --



1           THE REPORTER: I'm sorry, Counsel. Could I  
2 please get you to speak up or move closer, whichever is  
3 easier for you. Thank you.

4           MR. AUSTIN: As you all know now, this case is  
5 primarily about a contract for real property, and  
6 presumably, this property could qualify as a marijuana  
7 dispensary. However, what this case is really about and  
8 what you may have already guessed already is this is a  
9 case about greed. You're going to hear testimony during  
10 this trial about Mr. Cotton's property that's qualified  
11 for a conditional use permit or a CUP to operate the  
12 marijuana dispensary.

13           You've already heard that the parties met mid  
14 July, 2016, and they had a face-to-face meeting on  
15 September 26th. And also Mr. Geraci's counsel has shown  
16 you an agreement following that face-to-face meeting  
17 where Mr. Cotton was sent a proposed contract. So this  
18 is in September. This is a full two-page contract with  
19 a multitude of terms. Counsel only showed you the one  
20 section requesting 10 percent, but it is a two-page  
21 contract. It's just a proposal. It's just a working  
22 document. He calls it a memorandum of understanding  
23 based on their conversation.

24           At no point does Mr. Geraci send any revisions,  
25 suggestions, or have any complaints to that document.  
26 And they continue to communicate for another five weeks.

27           So you will also hear testimony from Mr. Cotton  
28 other parties had been in contact with him over this

1 property, because in San Diego, only a very limited set  
2 of properties can qualify for a CUP permit for the  
3 marijuana dispensary, and his location just so happened  
4 to be in the sweet spot, so to speak.

5 Mr. Cotton is going to tell you why he picked  
6 Mr. Geraci over potential buyers. And what he's going  
7 to tell you is that he chose Mr. Geraci primarily for  
8 two main reasons: These reasons are specified in his  
9 memorandum of understanding that he sent on  
10 September 26th.

11 Mr. Geraci claimed to also have other marijuana  
12 dispensaries, and he knew about their operation and that  
13 he would be the most qualified buyer and most likely  
14 person to have a CUP approved.

15 Mr. Geraci also offered to give him a 10  
16 percent equity stake in the property with also a  
17 minimum 10,000-dollar distribution per month. And  
18 Mr. Cotton knows that the CUPs presumably in San Diego  
19 are supposed to be good for a period of 10 years. So  
20 he's looking at a significant income with just a 10  
21 percent equity stake.

22 An equity is different than just profit  
23 sharing. It also means ownership. So, essentially,  
24 they were entering into a joint venture.

25 You will hear about Mr. Geraci asking  
26 Mr. Cotton to sign an ownership document prior to  
27 finalizing their agreement to clear the so-called zoning  
28 issue. In fact, he was shown that exhibit, and in that

1 exhibit, Rebecca Berry signs off as on the -- the  
2 ownership disclosure statement as an owner of the  
3 property. Mr. Cotton signed this because he was told  
4 that it was a necessary step in order to get the CUP  
5 approved.

6 That document was dated October 31st.

7 And as you have heard, on November 2nd, 2016,  
8 as you were shown on the board, there's a three-sentence  
9 document when Mr. Geraci gave Cotton \$10,000. This date  
10 is very important to the trial. This is the date that  
11 Mr. Geraci and Mr. Cotton agreed to certain terms, and  
12 Mr. Geraci paid a 10,000-dollar deposit.

13 Mr. Cotton will tell you that this was only a  
14 partial deposit. Mr. Cotton will tell you that Geraci  
15 had promised him a 50,000-dollar deposit down and had  
16 Mr. Cotton come in but then at the last minute, he said  
17 he only had \$10,000. And he asked if that would be  
18 okay. And it was -- it was told to you guys that this  
19 contract was drafted jointly, but Mr. Cotton will  
20 testify that when he came in, this document was already  
21 drafted. To him, it looked like a receipt, he  
22 got \$10,000, and notarized it. It was \$10,000 in cash,  
23 mind you. So signing a receipt was completely  
24 reasonable. It was notarized. He left. It was an  
25 in-and-out interaction. And Mr. Geraci did not provide  
26 a copy to Mr. Cotton of that receipt as he left. In  
27 fact, he got an email a few hours later, and then when  
28 Mr. Cotton noticed it, he saw that on the email, it was

1 written as a contract. So, obviously, he had  
2 reservations about that language. So he just wanted to  
3 be clear that not all terms were specified within that  
4 email.

5 So in that email, which you were also shown,  
6 Mr. Cotton says, "I just want to" -- "I want you to  
7 acknowledge that the 10 percent equity stake will be  
8 included in any final agreement." That language, "in  
9 any final agreement," shows his knowledge and intent  
10 that this not be construed as a final agreement. This  
11 was a three-sentence document. He had already sent a  
12 multi-page document a month and a half prior.

13 What counsel left out when describing  
14 Mr. Geraci and Ms. Berry is that Mr. Geraci, in addition  
15 to his tax and financial planning, he is also a  
16 real estate agent. And Ms. Berry is a real estate  
17 broker. This is important because this property is  
18 potentially worth tens of millions of dollars over the  
19 next several years. Do any of you think a real estate  
20 agent would --

21 MR. WEINSTEIN: Objection. Argumentative.

22 THE COURT: Sustained.

23 MR. AUSTIN: Withdrawn.

24 Anyway, this is a property worth millions of  
25 dollars. It contains typographical errors. The last  
26 sentence -- the last line of that three-sentence  
27 paragraph says Mr. Cotton is not going to enter into any  
28 contacts with anyone on the property. Presumably, he

1     meant contracts. This was something that was whipped  
2     together. It looks like nothing more than a receipt.  
3     And only because some of the terms are contained within  
4     that document are they able to look back at it and try  
5     to tell you that this is a fully binding, integrated  
6     contract, which is an incredulous assertion.

7             As this trial goes on, the judge is going to  
8     tell you to look at the intent of the parties -- did  
9     they intend to enter into a contract? Did they intend  
10    on certain terms to be entered into that contract. We  
11    have document evidence and emails sent that very day  
12    that this document was signed in which Mr. Cotton states  
13    equivocally that he wants all terms included in a final  
14    contract to which shortly thereafter Mr. Cotton -- or  
15    Mr. Geraci -- I apologize -- responds, no, no problem at  
16    all. You were shown that email.

17            In that email, I would say there was, like, a  
18    rather large paragraph, and Mr. Geraci expects you to  
19    believe that --

20            MR. WEINSTEIN: Objection. Argumentative.

21            MR. AUSTIN: With --

22            THE COURT: Overruled.

23            MR. AUSTIN: Okay. Mr. -- Mr. Geraci is going  
24    to ask you to believe that he was only responding to the  
25    first eight or nine words of this entire paragraph when  
26    he says, no, no problem at all. You're supposed to  
27    believe that he is referring to, like, oh, it was good  
28    to see you today.

1 MR. WEINSTEIN: Objection. Argumentative.

2 THE COURT: As phrased, sustained.

3 MR. AUSTIN: Mr. Cotton's email to Mr. Geraci  
4 was over a paragraph long, and it talked in great detail  
5 about some of his other expectations and how, at  
6 minimum, in a final agreement, he would like for a 10  
7 percent equity stake to be included in their final  
8 contract to which Mr. Geraci, whether it be on his phone  
9 or late at night, regardless, he responded, no, no  
10 problem at all.

11 You're -- you will be told by Mr. Geraci  
12 he's -- I anticipate he will testify that the next day  
13 on November 3rd, he made a phone call to Mr. Cotton.  
14 And he's going to say that Mr. Cotton orally agreed that  
15 he didn't need any of those terms, but a problem will  
16 arise when I introduce an exhibit also on November 3rd,  
17 which is another email where they basically reiterate  
18 that phone conversation, and that term is never  
19 discussed. In fact, what is discussed is potentially  
20 branding products when they're going to be working  
21 together if this dispensary goes through.

22 What you will also see and what has been  
23 discussed by opposing counsel is there's an attorney  
24 named Mrs. Austin, who created multiple drafts of  
25 contracts that were delivered to Mr. Cotton. And the  
26 dates of those drafts are months after the November 2nd  
27 agreement. You will see a chain of text messages.  
28 You'll see a chain of emails. Never once does

1 Mr. Geraci refer back to this November 2nd document  
2 which we assert is a little more than a receipt. He  
3 never says, Mr. Cotton, why are you asking for more?  
4 They're trying to say that he was pressuring Mr. Geraci  
5 into including more terms and that he was extorting him  
6 when in fact he never has any qualms or issues with  
7 Mr. Cotton's requests for what they had originally been  
8 agreeing upon. Keep in mind, they had known each other  
9 from July to November before any money is exchanged.  
10 All these terms Mr. Cotton had been consistent with the  
11 entire time, and after that date, all the way to March  
12 when this lawsuit was filed, he was also just requesting  
13 the same things that were written in his memorandum of  
14 understanding. And he will testify to all the things  
15 that -- that were scuds and expected.

16 It's also important to note that the CUP  
17 application was initially submitted on October 31st  
18 without Mr. Cotton's knowledge.

19 Mr. Geraci had represented to Mr. Cotton that  
20 he would get the full 50,000-dollar deposit before --  
21 before the application could go through, and he was also  
22 told that unless the zoning issue was resolved, an  
23 application could not even be submitted.

24 Ultimately, you will note that Mr. Geraci's  
25 case is incredulous because of the emails and text  
26 messages between Mr. Cotton and Mr. Geraci, the multiple  
27 draft revisions between February and March of 2017.  
28 When Ms. Austin was emailing drafts to Mr. Geraci and

1 Geraci was sending those to Mr. Cotton for his final  
2 agreement, Mr. Cotton was responding back and putting in  
3 his suggestions and edits. And then he would get a  
4 revision back with some of those suggestions and edits.  
5 And it was clearly a back-and-forth situation where a  
6 final agreement had not yet been reached.

7 Further, you will also hear testimony from a  
8 man named Joe Hurtado. He is a transactional advisor  
9 who met with Mr. Cotton and started working with them.  
10 He spoke to Geraci's attorney, Gina Austin, who  
11 confirmed that the final agreement had not yet been  
12 reached and that she was working on reducing that  
13 agreement to writing. Keep in mind the final agreement  
14 had not yet been reached.

15 Ultimately, it wasn't until Mr. Cotton told  
16 Mr. Geraci that he would be terminating the agreement  
17 and selling the property to someone else after four  
18 months of negotiation, asking for updates, asking for  
19 the remainder of the deposit, asking that Mr. Geraci  
20 confirm again that he would have an equity interest. It  
21 wasn't until then that Mr. Geraci filed this lawsuit to  
22 stop Mr. Cotton from being able to sell his property to  
23 someone else who would give him what he was asking for  
24 since they met.

25 Ultimately, ladies and gentlemen, the evidence  
26 in this case is clear. The parties agreed to a joint  
27 venture. Then Mr. Geraci attempted to reduce the  
28 contract to writing over the course of four months, but



1 more importantly, over two separate occasions, there's  
2 an attempt to change the deal that they had made in  
3 November, which luckily for Mr. Cotton, he caught on to  
4 and pointed out. Do not be distracted by its lawyers.  
5 The judge will tell you what the lawyers say is not  
6 evidence, not the questions we ask, not the opening  
7 statements, not the closing arguments that we give. Do  
8 not allow them to paint the picture using rhetoric and  
9 distractions --

10 MR. WEINSTEIN: Objection. Argumentative.

11 THE COURT: Overruled.

12 MR. AUSTIN: A lot of their arguments will be  
13 unsupported by the evidence, I suspect. I am confident  
14 that once you review the communications between  
15 Mr. Cotton and Mr. Geraci on that alone, the only  
16 verdict you will be able to return is one in favor of  
17 Mr. Cotton on all causes of action. Thank you.

18 THE COURT: All right. Thank you, Counsel.

19 All right. Ladies and gentlemen, we're going  
20 to take our morning break at this time. It's  
21 about 10:15. When we do get back, we'll begin with the  
22 plaintiff's case in chief and begin with the first  
23 witness.

24 Do not form or express an opinion or discuss  
25 the case, if you do, so with your fellow jurors. We'll  
26 be in recess now for 15 minutes.

27 (Discussion off the record.)

28 THE COURT: All right. The jury is out of the

1 courtroom. Counsel, we'll be in recess now.

2 (Recess from 10:12 a.m. to 10:24 a.m.)

3 THE COURT: All right. Counsel, do you need to  
4 see the Court for any reason?

5 MR. WEINSTEIN: Yes, your Honor.

6 So Plaintiffs would ask that nonsuit be granted  
7 on behalf of Ms. Berry. There's been no mention of her,  
8 no proffer or statement in the opening statement that  
9 she made any representations of any kind to anybody. In  
10 fact, there was barely a recitation of that evidence as  
11 it relates to Mr. Geraci, something about relying on the  
12 fact that he owed -- said he owed a number of  
13 dispensaries. That was the only thing that was said as  
14 to Mr. Geraci.

15 As to Ms. Berry, nothing. And there has to be  
16 evidence of a direct false misrepresentation to  
17 Mr. Cotton. And there's been no indication in the  
18 opening statement that there's going to be any proof of  
19 that.

20 And, your Honor, I'm sorry. We actually  
21 prepared a very short brief on the issue. May we  
22 present that.

23 THE COURT: You bet. Well, yes. But my deputy  
24 is not here.

25 So, Counsel, I agree with Plaintiff's counsel.  
26 I don't recall hearing any references to Ms. Berry in  
27 your opening statement.

28 MR. AUSTIN: I did make two references. I

1 talked about how she was on the ownership disclosure  
2 statement, which is like the initial application for the  
3 CUP. Granted, that was brief. But I also did mention  
4 how she's a real estate agent and that she works in  
5 Mr. Geraci's --

6 MR. COTTON: Broker.

7 MR. AUSTIN: I did say broker. And that she  
8 worked in Mr. Geraci's office.

9 Essentially, she was being used as a proxy for  
10 Mr. Geraci. This whole thing because he had represented  
11 to Mr. Cotton that he could not have his name on the CUP  
12 application because he was an enrolled agent with the  
13 IRS. But I did mention her, and I think evidence is  
14 going to show that, you know, she is integral in his  
15 ability to purchase this property to go for the  
16 condition precedent, which is the CUP.

17 THE COURT: All right. Well, it's one thing  
18 for her to be connected to Mr. Geraci or his business,  
19 but it's something else for her to have allegedly  
20 engaged in conduct that would subject her to individual  
21 or direct liability.

22 MR. AUSTIN: But she ratifies it by having her  
23 name on the entire CUP application, which is the whole  
24 purpose of Mr. Geraci purchasing the property or  
25 attempting to acquire the property.

26 THE COURT: All right. If that's the full  
27 extent of the evidence that you base your claims against  
28 Ms. Berry individually --

1           MR. AUSTIN: And by her signing this  
2 disclosures agreement -- I can pull it out -- it says  
3 that she has to have an ownership interest. Like she  
4 put -- by signing two or three of these documents, she's  
5 essentially also committing fraud because the City of  
6 San Diego --

7           MR. WEINSTEIN: Your Honor, do you wish --  
8 well, may I respond briefly?

9           THE COURT: Well, there were a couple of  
10 references to Ms. Berry. But I'm --

11           MR. WEINSTEIN: The fact that she -- may I add  
12 the fact that she's on the ownership disclosure  
13 statement is not a representation to Mr. Cotton. The  
14 fact that he wants to argue she's a proxy, he's going to  
15 argue that because we've stipulated she's an agent.

16           THE COURT: All right.

17           MR. WEINSTEIN: There's no basis for a  
18 direct -- or basically no liability on either of the  
19 tort claims.

20           THE COURT: So you accused Ms. Berry of fraud.  
21 What representation did she make to Mr. Cotton that you  
22 allege to have been fraudulent? That's what I -- and,  
23 Counsel, help me out, if I missed something. Did you  
24 tell the jury that she made a statement that you  
25 consider to be fraudulent to Mr. Cotton?

26           MR. AUSTIN: I did not tell the jury that, your  
27 Honor.

28           THE COURT: All right. See, it's your theory.

1 So merely because she's either connected to Mr. Geraci  
2 or she signs a document, that's not going to be enough  
3 for you to sustain or make a prima facie showing that  
4 would give that part of your case to the jury.

5 So do you have anything -- if I were to grant  
6 your request to reopen opening, is there anything that  
7 you could tell the jury that would get you beyond a  
8 nonsuit motion for Ms. Berry in fraud?

9 MR. AUSTIN: Only to reiterate what I told you.

10 THE COURT: All right. I'm not persuaded that  
11 that would be enough. Now, granting a nonsuit motion  
12 after an opening statement is a very strong ruling. So  
13 I'm not leaping into this, I can assure you. But if  
14 you're not telling me that if I were to give you leave  
15 to reopen you could say something that would get you  
16 beyond a nonsuit motion, it seems to the Court that it  
17 would be a futile exercise to engage in.

18 So one more time, is there anything else that  
19 you could tell the jury about Ms. Berry about fraudulent  
20 statements? That's the core of your fraud case against  
21 Ms. Berry. She may have made intentionally or  
22 negligently fraudulent statements to Mr. Cotton?

23 MR. AUSTIN: Just by having her name on all of  
24 the CUP paperwork.

25 THE COURT: You can file this.

26 The Court grants the motion for nonsuit in  
27 favor of Ms. Berry as a cross-defendant only and against  
28 Mr. Cotton as a cross-complainant only.

1 MR. WEINSTEIN: Right. And that's as to the  
2 two tort claims that she's named in?

3 THE COURT: The only tort claims -- well,  
4 remind me.

5 MR. WEINSTEIN: She's not on the false claim.

6 THE COURT: How about the declaratory relief?

7 MR. WEINSTEIN: That's the third claim. I'm  
8 not sure what they're seeking declaratory relief of at  
9 this stage.

10 I was only seeking it on the --

11 THE COURT: Fraud claims?

12 MR. WEINSTEIN: -- for the fraud claims. As to  
13 the declaratory relief, my argument is completely  
14 separate as to that, as I don't know what relief is  
15 required in terms of declaratory relief.

16 THE COURT: If that's encompassed, that motion  
17 is denied without prejudice of you renewing a motion at  
18 a later time on the subject of the declaratory relief  
19 action.

20 So just give me one moment.

21 All right. So Ms. Berry's name will not appear  
22 on the verdict form as a result of the Court's ruling.

23 All right. Madam Deputy, are the jurors ready?

24 THE BAILIFF: Yes.

25 THE COURT: All right. You can bring them in.

26 All right. Welcome back, everyone. All of our  
27 jurors are present.

28 Counsel, your first witness will be?

1 MR. WEINSTEIN: The plaintiffs call Larry  
2 Geraci.

3 THE COURT: All right. Good morning,  
4 Mr. Geraci.

5 Larry Geraci,  
6 being called on behalf of the plaintiff, having been  
7 first duly sworn, testified as follows:

8  
9 THE CLERK: Please state your full name and  
10 spell your first and last name for the record.

11 THE WITNESS: Larry Geraci. L-a-r-r-y  
12 G-e-r-a-c-i.

13 THE COURT: All right. Thank you very much.  
14 Counsel, whenever you're ready, please begin  
15 your examination.

16 MR. WEINSTEIN: Thank you.

17 (Direct examination of Larry Geraci)

18 BY MR. WEINSTEIN:

19 Q Good morning, Mr. Geraci.

20 A Good morning.

21 Q How old are you?

22 A Fifty-eight.

23 Q And are you married?

24 A Widowed.

25 Q Do you have any children?

26 A Five.

27 Q What are their ages?

28 A 33, 28. I have 25, 19 and 12.

1           Q     And are you currently employed?

2           A     Yes.

3           Q     Before I get there, did you -- did you graduate

4     from high school?

5           A     Yes.

6           Q     Where?

7           A     University High School.

8           Q     When?

9           A     1979.

10          Q     Okay. And did you attend college at all?

11          A     Yes.

12          Q     What college did you attend?

13          A     Grossmont and San Diego City.

14          Q     Did you receive a degree from either of those

15     institutions?

16          A     No, I didn't.

17          Q     Okay. Now, are you currently employed?

18          A     Yes.

19          Q     And by whom? By whom?

20          A     Tax and Financial Center.

21          Q     And what type of business is Tax and Financial

22     Center?

23          A     We prepare tax returns and bookkeeping services

24     and payroll services.

25          Q     And who owns that business?

26          A     I do.

27          Q     And how long have you owned that business?

28          A     I've owned that business since 2001.



1 Q And currently how many employees do you have?

2 A Eight employees.

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

5 A Forty years.

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

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

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

14 A Bookkeeping.

15 Q For whom?

16 A Businesses.

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

19 A Yes.

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

21 A My clients.

22 Q And who -- what types of clients?

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

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

27 A Enrolled agent.

28 Q Is the answer yes?

1           A     Yes.

2           Q     And what license do you hold?

3           A     Enrolled agent.

4           Q     What is an enrolled agent?

5           A     We are licensed by the Internal Revenue Service

6     to represent clients when they get audited by the IRS.

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

8           A     That's a federal license.

9           Q     And how long have you been licensed by -- as an

10   enrolled agent?

11          A     Since 1999.

12          Q     Now, have -- do you have a real estate license

13   currently?

14          A     Yes. No. No.

15          Q     Have you had a real estate license?

16          A     Yes.

17          Q     What kind of a real estate license?

18          A     Salesperson.

19          Q     And when did you hold that license?

20          A     From 1993 to 2017.

21          Q     Okay. And during that period of time, what

22   types of -- or how many transactions have you engaged in

23   where you were acting as a real estate agent?

24          A     Probably under 10 since 1993.

25          Q     And of those 10, are those residential, or

26   commercial transactions, or both?

27          A     Both.

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

1     bought and sold real property?

2           A     Yes, I have.

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

5           A     No.

6           Q     Okay. Do you know Rebecca Berry?

7           A     Yes.

8           Q     And you see her in this courtroom?

9           A     Yes.

10          Q     And who is Rebecca Berry?

11          A     She's my administrator.

12          Q     And how long has she worked for you?

13          A     Fourteen years.

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

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

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

22          A     No, I haven't.

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

25          A     No, I haven't.

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

28          A     No.

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

6           A     No, I didn't.

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

9           A     No, I didn't.

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

12          A     About mid July.

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

15          A     2016.

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

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

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

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

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

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

27          Q     When did you first hire Mr. Bartell?

28          A     In October of 2015.

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

3           A     No, I didn't.

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

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

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

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

12           MR. AUSTIN: No.

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

14           THE COURT: Exhibit 1?

15           MR. WEINSTEIN: Yes.

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

18           MR. AUSTIN: No, your Honor.

19           THE COURT: Exhibit 1 will be admitted.

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

23     BY MR. WEINSTEIN:

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

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

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

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

3 THE WITNESS: Can we make that bigger?

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

6 BY MR. WEINSTEIN:

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

8 A Yes, I do.

9 Q What is it?

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

11 Q And on the second page, there's a signature  
12 over a typed name of Larry Geraci, with a date of  
13 10-29-15. Is that your signature?

14 A Yes, it is.

15 Q Is that your handwriting with the date?

16 A Yes, it is.

17 Q And did you date it on or about October 29th,  
18 2015?

19 A Yes, I did.

20 Q All right. Now, what services did you -- were  
21 you hiring Mr. Bartell to perform pursuant to your  
22 agreement with him?

23 A He had -- he was known in the community for --  
24 for getting CUPs for other clients that I had heard of,  
25 and also he does a lot of Code violations, things like  
26 that, within the City to help residents in the City to  
27 work them through Code.

28 Q How did you come to that information?

1           A     Talking to Mr. Bartell.

2           Q     Okay. How did you make contact with him the  
3 first time? What brought you two together?

4           A     I have a staff member -- I was at a business  
5 meeting, and one of his staff members was there.

6           Q     Who was that?

7           A     Bianca Martinez.

8           Q     Okay. And did you have a conversation with  
9 her -- what conversation did you have with her that  
10 related to Mr. Bartell?

11          A     She explained to me what they do and their  
12 successes of what they have done within the City.

13          Q     With respect to what?

14          A     Obtaining CUPs.

15          Q     All right. Now, at that point in time, were  
16 you interested in finding a property to obtain a CUP?

17          A     Yes.

18          Q     And when did you -- how did you become  
19 interested in finding a property to obtain a CUP for  
20 operation of a dispensary?

21          A     Just talking to Bianca Martinez, listening to  
22 their successes. And that's when I decided that I'd  
23 like to employ them.

24          Q     Okay. And what did they do after October of  
25 2015 in connection with the services they were providing  
26 you?

27          A     We had met, and they started searching  
28 properties in -- around the City to see if we could find

1 a property that would be a possible location.

2 Q And what -- at any point in time was a property  
3 identified?

4 A Yes.

5 Q What was the first property that was  
6 identified?

7 A Mr. Cotton's.

8 Q Okay. And when did that become identified to  
9 you?

10 A That would be the following year, about July  
11 approximately.

12 Q Okay. Now, after that property was identified,  
13 what step did you take to move forward and explore  
14 whether you were interested in purchasing it?

15 A We had Bianca Martinez look at the property and  
16 was looking at a little bit of law. I also had -- I had  
17 a builder take a look at also the zoning and take a look  
18 that the property would be feasible, which would be if  
19 it was close to churches, to schools, residential, just  
20 how difficult the property would be.

21 Q Okay. Did you learn there were any issues with  
22 the property after it was identified?

23 A We were made aware of that the zoning was a  
24 problem and it could be a possible distance requirement  
25 that had to be overcome from a residential.

26 Q Okay. So with respect to the zoning problem,  
27 what was your understanding at that time of the zoning  
28 issue, the zoning problem?



1           A       That the area was not zoned correctly. It once  
2 was, and then it wasn't. And I was informed that it was  
3 City paperwork that was the problem.

4           Q       And you mentioned an issue with respect to it  
5 being too close to a property. Can you tell us what you  
6 meant by that.

7           A       It has to be 100 feet away from residential,  
8 and it was only 90 feet away from residential.

9           Q       Okay. Now, what activities, if any, did you  
10 have your team do to investigate the feasibility of the  
11 property?

12          A       Well, putting the team together, they did their  
13 own work, trying to see if these problems could be  
14 overcome.

15          Q       Okay. And at some point in time, did you have  
16 a first contact with Mr. Cotton?

17          A       Yes, I did.

18          Q       When was that?

19          A       About July 19th or 20th.

20          Q       Okay. And how did that -- was that contact  
21 face to face, or by phone, or text? How did you --

22          A       That was by phone.

23          Q       Okay. And who called whom?

24          A       I called Mr. Cotton.

25          Q       Why did you call Mr. Cotton?

26          A       I wanted to discuss with him about purchasing  
27 this property.

28          Q       And can you tell me what was discussed by the

1 two of you in that first telephone conversation.

2 A I introduced myself, and I asked Mr. Cotton --  
3 I told Mr. Cotton that I was looking to purchase  
4 property, purchase his property for a possible  
5 dispensary in that location.

6 Q Okay. Anything else? Did he respond to that?

7 A And I -- and I asked him if he was interested  
8 in selling his property.

9 Q And what did he say?

10 A He said yes.

11 Q What else did either one of you say during that  
12 conversation? Just take us through it.

13 A I was -- I wanted to get down to very quickly,  
14 you know, what he was asking for his property. And he  
15 said \$800,000. And I had asked him if there was any --  
16 was he in any other contracts at the time or any  
17 interest. And he said, yes, people have been  
18 interested.

19 And he said you're going to have a zoning  
20 issue. And I said I was aware of that.

21 Q He told you you were going to have a zoning  
22 issue?

23 A Yes.

24 Q Okay. What exactly what was discussed between  
25 the two of you about the zoning issue?

26 A Since we had both known that the zoning issue  
27 was going to be a problem, we didn't spend a lot of time  
28 on that. But he did -- we both agreed that, yes, we

1 heard of -- he knew of the zoning issue, and I knew it  
2 as well.

3 Q Did he tell you how he knew there was a zoning  
4 issue?

5 A No, he did not.

6 Q Did you have any discussion in that  
7 conversation about why -- what purpose you wanted to  
8 purchase the property for?

9 A Yes. I told him I wanted to put a dispensary  
10 there, and he seemed very knowledgeable about the whole  
11 situation to begin with. And I, frankly, just asked him  
12 why he didn't do it himself.

13 Q And what did he say to you that made you  
14 believe that he was knowledgeable about the subject?

15 A He knew -- he knew a lot of the zoning codes  
16 that I was not familiar with, because the team was  
17 taking care of that. So he was talk -- talking very --  
18 extremely knowledgeable on the subject and the zoning.

19 Q Did you have any discussion with him about  
20 medical marijuana dispensaries in particular?

21 A Well, what it was is when I asked him why he  
22 did not do it himself, he said because he was in  
23 litigation with the City. He told me that he had rented  
24 to a dispensary on his property, an unlicensed  
25 dispensary, and that he was currently in a lawsuit with  
26 the City.

27 And I had responded back to him I got the same  
28 kind of lawsuit on two of our properties that we have.

1           Q     So you had lawsuits brought by the City against  
2     you on two properties?

3           A     Yes.

4           Q     Okay. And what was the situation in those  
5     cases? How -- did you own the properties?

6           A     Yes. I had two properties.

7           Q     Were you the owner of the dispensaries?

8           A     No.

9           Q     Okay. Who owned the dispensaries?

10          A     The -- there was a tenant. I don't remember  
11     their names.

12          Q     Okay. Do you remember any other discussion  
13     with Mr. Cotton at that time about the issues the two of  
14     you had had with the City suing you with respect to  
15     having tenants at the property to operate --

16          A     It was kind of a very friendly phone call  
17     because we both were in the same boat, if you will, that  
18     the City didn't send out any kind of notices. They  
19     didn't send out a warning. They just hit you with a  
20     very, very aggressive lawsuit that, to me, was just  
21     unbelievable. But we both had discussed that. And  
22     we -- I asked him if he had settled his yet, and he said  
23     it wasn't settled yet. And I said I believe we have  
24     settled ours, and I think you just need to do it quickly  
25     because the City is not giving up on this.

26          Q     Okay. Now, did you discuss at all with him  
27     during that conversation your plans regarding a medical  
28     marijuana dispensary?

1           A     Just that we had to -- before I could enter  
2     into any contracts -- or that I wasn't interested in any  
3     contracts until we were to do more research on the  
4     property to see if it still would be viable. There were  
5     still a number of issues with the property. Let alone  
6     tearing the whole building down. But, of course, the  
7     residential problem and the zoning was the biggest  
8     problem that we had.

9           Q     Did you discuss with him the team that you had  
10    at that time?

11          A     Yes. He --

12          Q     What was discussed about that?

13          A     He asked me, you know, what my plan was because  
14    they had not had any success with him or other  
15    investors. And I said I had had a team in place. And  
16    he said who? And I said I had Jim Bartell. And he  
17    immediately knew who Jim Bartell was.

18          Q     Did he tell you how he knew who Jim Bartell  
19    was?

20          A     He didn't -- he said he had heard of him.

21          Q     Okay.

22          A     Because Jim is very -- in the -- in the  
23    cannabis industry, he's known very well. And he was one  
24    of the main people in the City who has been successful  
25    at getting CUPs for his clients.

26          Q     Okay. Go on. You were talking about what you  
27    were discussing about a marijuana dispensary during that  
28    conversation, and I cut you off.

1                   **Anything else that was discussed?**

2           A       I believe that was it.

3           **Q       Do you recall whether you had talked to him**  
4 **about anybody else on your team at that time?**

5           A       I don't recall exactly, but I believe I would  
6 have told him about the whole team. Jim Bartell, we  
7 just got stuck on him because it was a moment of, oh,  
8 yes, we know Jim. And then it was -- I believe I said  
9 Abhay Schweitzer and Gina Austin. But --

10          **Q       You don't recall?**

11          A       I don't recall.

12          **Q       Okay. Anything else that was said in that**  
13 **conversation that you haven't already told us?**

14          A       Oh. I did ask him if he had any long-term  
15 tenants on the property because that would be a problem  
16 if we went to build something or we had to buy tenants  
17 out. He said he had no long-term tenants. He said he  
18 was the only one on the property, and he said he was a  
19 grower.

20          **Q       Okay. And did he explain to you what he meant**  
21 **when he said he was a grower?**

22          A       I said to him are you growing marijuana on the  
23 site? And he said, yes.

24          **Q       And anything else that was discussed between**  
25 **the two of you about him being a grower?**

26          A       I said if we get further along -- well, not --  
27 no.

28          **Q       Did you discuss in that conversation what**

1 further steps might be taken between the two of you?

2 A I said that we're going to need to keep in  
3 contact because the team has got to start getting on the  
4 property, taking measurements, you know, surveyors.  
5 There was just a whole host of things that they had to  
6 start doing to see if this property -- if it was viable  
7 to move forward on the property.

8 Q And what was his response to that?

9 A He said, "Okay."

10 Q Had you discussed with him whether you would  
11 contact him again, what the next step would be?

12 A I gave him my phone number, and I said that  
13 we'll be contacting him or maybe somebody on the team  
14 will be contacting him to get access to the property.

15 Q Okay. After -- anything else you recall about  
16 that initial conversation?

17 A I did say if we get far enough along in this  
18 process, he's going to have to move his grows.

19 Q Okay. And did -- and I don't recall if I asked  
20 you this. I apologize. Did he respond as to what price  
21 he would entertain selling the property?

22 A Yes. That was \$800,000.

23 Q Okay. Was there any other possible term of the  
24 purchase that was -- of the possible purchase that was  
25 discussed at that time?

26 A Nothing else. I just told him that it was  
27 reasonable, it's within my budget.

28 Q Okay. After that first conversation, did you

1 continue to have communications with Mr. Cotton?

2 A Yes. I was giving him updates as we -- through  
3 the weeks and giving him updates. And, actually, the  
4 next day, he was sending me pictures of all his grows.

5 MR. WEINSTEIN: Would you bring up Exhibit 5.  
6 Your Honor, I offer 5. It's been stipulated  
7 to.

8 THE COURT: Any objection, Counsel?

9 All right. Exhibit 5 will be admitted into  
10 evidence.

11 (Premarked Joint Exhibit 5, Text messages  
12 between Larry Geraci and Darryl Cotton from  
13 7/21/16 to 5/08/17, was admitted into evidence.)

14 BY MR. WEINSTEIN:

15 Q Okay. Now, I do think you have the book in  
16 front of you.

17 MR. WEINSTEIN: May I approach, your Honor?

18 THE COURT: Yes. Absolutely.

19 BY MR. WEINSTEIN:

20 Q Mr. Geraci, this is a multiple-page document.  
21 So would you look at it in your book and then tell me  
22 what -- if you recognize it. It will be under Tab 5.

23 A Yes, I do.

24 Q Okay. What is -- how many pages are there?  
25 Just go to the end of the page. There are Bates numbers  
26 at the bottom. If you tell me how many pages there are.

27 A Oh. This is 5-025. And the first one is -- 25  
28 pages.



1 Q Okay. Now, what is Exhibit 5?

2 A It's text messages between Mr. Cotton and  
3 myself.

4 Q Okay. And where did those text messages come  
5 from?

6 A Our cell phones.

7 Q When you say "our cell phones," whose cell  
8 phone?

9 A My cell phone.

10 Q Okay. And how was this document prepared, if  
11 you know?

12 A These are screenshots that have been printed.

13 Q Okay. Now, if you look at -- you said you  
14 communicated with him the next day after you spoke with  
15 him on the phone. Would you look at page 1, please.

16 And would you highlight the first. All right.  
17 The very first -- first of all, can you tell what the  
18 date range is of these text messages?

19 A On this page, it would be July 21st to -- all  
20 the way -- this first page is July 21st.

21 Q Okay. And then are those the text messages in  
22 chronological order?

23 A Yes, they are.

24 Q So what's the last one that's shown on page 25?

25 A May 8th, 2017.

26 Q All right. Does Exhibit 5 represent all your  
27 cell phone text messages between you and Mr. Cotton  
28 during the period of July 21st, 2016 through May 8,

1 2017?

2 A Yes, they do.

3 Q Okay. Now, focusing on the one on the top of  
4 page 1, is that the first text message you received from  
5 Mr. Cotton?

6 A Yes, it is.

7 Q Okay. And what did you understand was being  
8 depicted here?

9 A This was the beginnings of a grow for  
10 Mr. Cotton.

11 Q Okay. And do you know how he sent you pictures  
12 of his grow?

13 A He was just sending me what he was doing on his  
14 property?

15 Q I'm now having you look at page 2. Do you see  
16 the text, the photographs at the top of the page?

17 A Yes.

18 Q Okay. And what are the dates of those?

19 A These are July 25th.

20 Q Of what year?

21 A 2016.

22 Q Okay. And do you remember receiving these  
23 photos?

24 A I'm sorry?

25 Q Do you remember receiving these photos from  
26 Mr. Cotton?

27 A Yes.

28 Q And, again, what did you understand the reason

1 was he was sending these to you?

2 A He was just showing me his success at his  
3 grows.

4 Q All right. Now, I'm not going to have you go  
5 through every page, I promise. But we talked about the  
6 July -- mid July telephone conversation where you  
7 discussed 800,000.

8 When is the next time you had any conversation  
9 or discussion with Mr. Cotton about terms of a potential  
10 purchase?

11 A The next time was September 20th, I believe.

12 Q Okay. And what kind of -- how was that -- how  
13 did you speak with him at that time? Was it -- was it  
14 by phone? Face to face?

15 A That was a face-to-face meeting.

16 Q Had you met with Mr. Cotton face to face before  
17 September 20th, 2016?

18 A No.

19 Q All right. Now, at that meeting, did you  
20 discuss the terms of the potential purchase of the  
21 property?

22 A Yes.

23 Q Okay. Now I'm going to move away from that.  
24 Between the July 21st, I think you said, or July 20th  
25 phone call where you discussed 800,000, and this  
26 face-to-face meeting, did you have communications with  
27 Mr. Cotton that were about things other than the terms  
28 of the potential purchase?

1           A       Yes.

2           Q       So what kind of things did you communicate with  
3 him about during that period of time?

4           A       Mr. Cotton expressed that he would like to have  
5 me invest -- or he had investors and he'd like me to  
6 invest in his grow business.

7           Q       And were those communications by phone? By  
8 text? By email? How did you communicate with him?

9           A       Those were -- along with the pictures, we would  
10 have conversations about his grows and him wanting to  
11 bring me into the grow business and how he would supply  
12 his product to the dispensary.

13          Q       Okay. And did you ever -- during those  
14 conversations, did you have a response to those ideas?

15          A       I just said that, you know, we're getting so  
16 far ahead of ourselves here. We've got years to go, and  
17 this is -- this is not even -- I can't consider that.

18          Q       When you said you've got years to go, what did  
19 you mean by that?

20          A       The process is going to take some time.

21          Q       What process?

22          A       Going through the whole CUP process. We have  
23 not even submitted the application yet. We're still  
24 doing our -- our work on just trying to see if we can  
25 get this thing to a stage where we could submit the CUP.

26          Q       Okay. And did you have an understanding at the  
27 time of what the likely time frame would be to submit a  
28 CUP application and get it processed?

1           A       I left that up to the team.

2           Q       Okay. Now, at the time in terms of your  
3       planning, if a CUP had been able to be approved on a  
4       property, would there have to be other steps taken  
5       before a dispensary could be opened?

6           A       Yes. On this location, there was quite a bit  
7       of work to do.

8           Q       What would you have to do?

9           A       Currently, we'd have to tear the entire  
10      building down. There was grading to do. There was  
11      some -- I believe there was some water issues of  
12      drainage. It would -- to build the building, I think  
13      our time frame was going to be almost two years just to  
14      get the building up.

15          Q       All right. But at this point in time, you  
16      haven't even submitted the CUP application. Correct?

17          A       No, I haven't.

18          Q       Now, other than talking about his grows or him  
19      asking you to invest in his grows, what other  
20      communications did you have during that time period  
21      between the first call and this face-to-face meeting on  
22      September 20th about other subjects?

23          A       We -- we talked about mainly Mr. Cotton was  
24      talking about his grows pretty much straight through.  
25      He talked about possibly getting a percentage --  
26      switching percentages from his grow to the dispensary.  
27      And I just told him I wasn't prepared to do that. And  
28      that was just thrown in every now and then.

1           Q     Did you have any communications with him during  
2     that time about feasibility issues like zoning or the  
3     setback you talked about?

4           A     Yes. That's what the team was. That's the  
5     updates I was giving him through the process.

6           Q     Okay. Let's move forward to the  
7     September 20th, I think you said 2016, face-to-face  
8     meeting. Where did that occur?

9           A     In my office.

10          Q     And who was present?

11          A     Mr. Cotton and myself.

12          Q     And where was it within your office?

13          A     In my actual office.

14          Q     All right. Now, what was the purpose of that  
15     meeting?

16          A     We had not met before. So we just wanted to  
17     sit down and talk and just maybe hash out a few things  
18     on what our terms were, but the meeting quickly went to  
19     Mr. Cotton and his grows and what he was, you know,  
20     wanting to do with his grows. It was --

21          Q     How long -- how long did that meeting last?

22          A     About 30 minutes.

23          Q     Okay. You need to wait for me to --

24          A     Well --

25          Q     -- finish my question, because the court  
26     reporter has to type everything --

27          A     Okay.

28          Q     -- and I don't want any bad looks.

1 All right. So just tell -- tell me what you  
2 recall being discussed between you and Mr. Cotton at  
3 that September 20th, 2016 face-to-face meeting.

4 A He was trying to get me to invest in his grow  
5 or he was going to take 10 percent of the dispensary  
6 and 10 percent in the -- I was going to take 10 percent  
7 in the grow. And I just said I still can't do that.  
8 And he said, well, let me put a proposal together for  
9 you.

10 Q Was anything else discussed in that 30-minute  
11 meeting that you recall?

12 A We kind of went over the process. He was  
13 very -- you know, we were going through the process of  
14 what the team had been doing and updates on what they  
15 were finding out and what they could do.

16 Q Okay. You said he -- you mentioned that he  
17 said he wanted to put something together. I don't want  
18 to put words in your mouth. What were you telling me?

19 A He wanted to put together a proposal.

20 Q Okay. And your response to that?

21 A I said just go ahead and email me a proposal.

22 Q And did he do that?

23 A Yes, he did.

24 Q Okay. Before I leave this, do you recall  
25 anything else being discussed in the September 20th,  
26 2016 meeting that you haven't already told me?

27 A I can't recall at this point.

28 Q Okay. But he did then send you a proposal?

1           A     Yes, he did.

2           Q     Do you recall when that was?

3           A     I think that was on the 24th.

4           Q     Okay. Well, we'll get there.

5                     MR. WEINSTEIN: So would you show him  
6     Exhibit 8, please.

7                     Your Honor, I'd like to offer Exhibit 8. It's  
8     been stipulated.

9                     THE COURT: Any objection?

10                    MR. AUSTIN: No, your Honor.

11                    THE COURT: Exhibit 8 will be admitted.

12                    (Premarked Joint Exhibit 8, email to Larry  
13     Geraci from Darryl Cotton re 6176 Federal Blvd  
14     property, dated 9/21/16 with attached letter to  
15     Dale and Darryl Cotton from Kirk Ross regarding  
16     payoff, dated 9/21/16, was admitted into  
17     evidence.)

18     BY MR. WEINSTEIN:

19           Q     Mr. Geraci, I want you to look at Exhibit 8.  
20     And tell me if you recognize it.

21           A     Yes, I do.

22           Q     Okay. And what is Exhibit 8?

23           A     It's an attachment -- it's -- it's an email  
24     with the attachment of the proposal -- with the  
25     proposal.

26           Q     Okay. And do you recall why Mr. Cotton was  
27     sending you this email?

28           A     He said he was going to send over a proposal.



1           Q     Okay. Well, we haven't gotten to that. Can  
2     you look at the attachments and let me know if that  
3     refreshes your recollection. The attachments would be  
4     at the back of the email.

5           A     Oh. Yes. These are -- these are the -- it  
6     looks like the liens on the property.

7           Q     Had you had discussions about him sending you  
8     information regarding the liens on the property?

9           A     Yes, I did.

10          Q     When did that discussion take place?

11          A     It, I'm sure, happened during one of my phone  
12     calls when we were talking.

13          Q     And why did you want to know what liens were on  
14     the property?

15          A     I was looking to see if there was a judgment on  
16     the property as well.

17          Q     Okay. And what did you determine?

18          A     I didn't see a judgment on the property for the  
19     current lawsuit.

20               MR. WEINSTEIN: Okay. Would you go to -- show  
21     Exhibit 9.

22               Your Honor, I'd like to offer Exhibit 9.  
23     Again, it's been stipulated to.

24               THE COURT: Any objection?

25               MR. AUSTIN: No, your Honor.

26               THE COURT: Exhibit 9 will be admitted.

27     \ \ \

28     \ \ \

1 (Premarked Joint Exhibit 9, email to Larry  
2 Geraci from Darryl Cotton re GERL MAIN -  
3 Invitation to collaborate, dated 9/26/16, was  
4 admitted into evidence.)

5 BY MR. WEINSTEIN:

6 Q So, Mr. Geraci, would you look at Exhibit 9 and  
7 tell me if you've seen it before.

8 A Yes, I have.

9 Q What is it?

10 A This is a Dropbox or where you can pick up  
11 documents.

12 Q Who sent this to whom?

13 A Darryl Cotton sent it to me.

14 Q And on what date?

15 A On 9/26.

16 Q Okay. And was there anything attached or in  
17 the Dropbox that you found?

18 A Yes. I found a proposal.

19 MR. WEINSTEIN: Your Honor, I'd like to offer  
20 Exhibit 10, please.

21 THE COURT: Any objection?

22 MR. AUSTIN: No objection.

23 THE COURT: Exhibit 10 will be admitted.

24 (Premarked Joint Exhibit 10, Draft Services  
25 Agreement Contract between Inda-Gro and GERL  
26 Investments, dated 9/24/16, was admitted into  
27 evidence.)

28

1 BY MR. WEINSTEIN:

2 Q Mr. Geraci, if you look -- have you seen  
3 Exhibit 10 before?

4 A Yes, I have.

5 Q And what is it?

6 A This is a proposal from Mr. Cotton.

7 Q And did you receive it in the Dropbox with the  
8 email from September 20th?

9 A Yes, I did.

10 Q Okay. And at the time, what did you understand  
11 this to be?

12 A His proposal that he had talked -- said that he  
13 would send over.

14 Q Okay. And did you review that proposal?

15 A Yes, I did.

16 Q And then did you have a discussion at any point  
17 in time subsequent to reviewing it with Mr. Cotton?

18 A Yes, I did.

19 Q And how did that discussion take place?

20 A By phone.

21 Q And when did that discussion take place in  
22 relation to you getting this email on September 26th?

23 A I believe it was either the next day or --  
24 within 48 hours, I think.

25 Q Okay. And tell us what your discussion was  
26 with Mr. Cotton about this proposal that's marked as  
27 Exhibit 10.

28 A Well, the first thing I ran down and looked at

1 is I saw the 10 percent equity position that I just was  
2 not prepared to do.

3 Q How --

4 A And then the --

5 Q Go ahead.

6 A And then reading further down, he wanted to, it  
7 looked to me, intertwine his business, Inda-Gro 151,  
8 with the new dispensary.

9 Q Anything else you noticed when you reviewed it?

10 A He wanted a 400,000-dollar relocation. He  
11 wanted it split up. \$400,000 for the property and  
12 \$400,000 as a relocation expense.

13 Q Now, did you discuss any of these things you  
14 noticed in the proposal with Mr. Cotton during that  
15 telephone call?

16 A I'm sorry. Can you repeat that.

17 Q You told us what you noticed when you looked at  
18 it. I want to know what you talked with Mr. Cotton  
19 about with respect to the proposal.

20 A Yeah. I told him this just wouldn't work. I  
21 can't agree to the 10 percent, and I'm not looking for a  
22 partnership. We've got a lot -- we've got a long way to  
23 go, and it's not what I've agreed to.

24 Q And what was his response?

25 A He said okay. He said -- I think he actually  
26 just said, hey, this could work out well.

27 Q Anything else you recall being discussed by you  
28 and Mr. Cotton about this proposal?

1           A     I don't believe so.

2           Q     Okay. Now, did you ever sign this proposal?

3           A     No, I didn't.

4                 MR. WEINSTEIN: Okay. Would you -- I'd like to  
5 offer, your Honor, Exhibit 14.

6                 THE COURT: Any objection?

7                 MR. AUSTIN: No, your Honor.

8                 THE COURT: Exhibit 14 will be admitted.

9                 (Premarked Joint Exhibit 14, email to Larry  
10 Geraci and Neil Dutta from Abhay Schweitzer re  
11 6176 Federal Blvd. - Site Visit, dated 10/04/16,  
12 was admitted into evidence.)

13 BY MR. WEINSTEIN:

14           Q     Okay. Mr. Geraci, are you looking at  
15 Exhibit 14?

16           A     Yes, I am.

17           Q     Have you seen that before?

18           A     Yes, I have.

19           Q     And what is it?

20           A     This is an email from Abhay Schweitzer.

21           Q     Concerning what?

22           A     He visited the property.

23           Q     After you had your face-to-face meeting with  
24 Mr. Cotton and again after you had reviewed this  
25 proposal with him, did you continue to explore the  
26 feasibility of the property?

27           A     Yes, we did.

28           Q     And did Mr. Cotton continue to allow you to

1 explore the property?

2 A Yes, he did.

3 Q So at this point in time, what did you  
4 understand about the concerns of the feasibility of the  
5 property?

6 A It looked like he had some un- -- unpermitted  
7 construction on the property towards the rear. There  
8 was a number of -- there was parking issues, ceiling  
9 height.

10 Q Okay. And is this -- was this as part of your  
11 effort to figure out whether the property would be  
12 feasible?

13 A Yes, it was.

14 MR. WEINSTEIN: And would you -- I'd like to  
15 offer 15, your Honor.

16 THE COURT: Any objection?

17 MR. AUSTIN: No, your Honor.

18 THE COURT: Exhibit 15 will be admitted.

19 (Premarked Joint Exhibit 15, Email to Rebecca  
20 Berry from Abhay Schweitzer re Federal Blvd. -  
21 Proposal for Survey, dated 10/06/16, was  
22 admitted into evidence.)

23 BY MR. WEINSTEIN:

24 Q Mr. Geraci, would you take a look at  
25 Exhibit 15.

26 Mr. Geraci, have you seen Exhibit 15 before?

27 A Yes, I have.

28 Q What is it?

1           A       This is a proposal from Lundstrom Engineering  
2       and Surveying.

3           Q       And who sent -- who sent this email?

4           A       Abhay Schweitzer.

5           Q       Okay. And why was -- do you understand why you  
6       were receiving that email from Mr. Schweitzer?

7           A       Yes.

8           Q       Why?

9           A       We needed to do a survey on the property, and  
10       this was a proposal.

11          Q       Okay. And was Mr. Schweitzer responsible for  
12       dealing with vendors to do studies on the property?

13          A       Yes, he was.

14          Q       Okay. And what was his role in the team?

15          A       His main role was he was part of actually  
16       getting the application entered. He was the designer.  
17       He would coordinate all the contractors and vendors  
18       together to start looking at the feasibility of this  
19       property.

20          Q       And when you -- do you remember when you  
21       brought on Mr. Schweitzer to the team?

22          A       I believe it was midyear. But I -- I don't  
23       remember exactly.

24          Q       Did you have an understanding at the time of  
25       his experience in obtaining CUP approvals for  
26       dispensaries?

27          A       I had -- Abhay was a recommendation from Jim  
28       Bartell.

1           Q     Okay. And what did you understand  
2     Mr. Schweitzer's experience was from Mr. Bartell?

3           A     That he was a very good designer and was very  
4     good at putting projects together and he had worked with  
5     him before. And it was a good recommendation.

6           Q     Okay. And did you talk with Mr. Schweitzer  
7     about his experience? Did you talk to Mr. Schweitzer  
8     about his experience processing CUP applications?

9           A     Yes. Very -- very detailed, an impressive  
10    individual when I met him.

11          Q     What did he tell you about his experience?

12          A     He said he had designed and put in place some  
13    CUPs at the time, and he had some extensive experience  
14    on that.

15          Q     Okay. So when you got this proposal -- or this  
16    email on October 6th -- would you go to the next page,  
17    please -- what did you understand -- did you have an  
18    understanding as to why a topographic survey was  
19    required?

20          A     I have limited knowledge on that, but I believe  
21    it's to determine property lines and topography of the  
22    property.

23               MR. WEINSTEIN: Okay. Your Honor, I'd offer  
24    Exhibit 17, please.

25               THE COURT: Any objection?

26               MR. AUSTIN: No objection.

27               THE COURT: Exhibit 17 will be admitted.

28               \ \ \



1 (Premarked Joint Exhibit 17, Email to Larry  
2 Geraci and Neil Dutta from Abhay Schweitzer re  
3 Federal Blvd. - Width of ROW, dated 10/18/16  
4 with attached Lundstrom Topographic Survey,  
5 Project No. L222-01, was admitted into  
6 evidence.)

7 BY MR. WEINSTEIN:

8 Q Would you look at Exhibit 17 in your book,  
9 Mr. Geraci.

10 Have you seen that before?

11 A Yes, I have.

12 Q What is it?

13 A This is an email from Abhay Schweitzer.

14 Q And was anything attached to it?

15 A Yes. There was a plan attached to it.

16 Q Would you go to the second page, please. And  
17 did you understand this to be the topographic survey  
18 performed by the engineering firm that had been hired?

19 A That was my understanding.

20 MR. WEINSTEIN: Okay. Your Honor, I offer  
21 Exhibit 18, please.

22 THE COURT: Any objection?

23 MR. AUSTIN: No objection.

24 THE COURT: Exhibit 18 will be admitted.

25 (Premarked Joint Exhibit 18, Email thread  
26 between Neil Dutta from Abhay Schweitzer Re: FW:  
27 Federal Blvd. - Zoning, dated 10/19/16, was  
28 admitted into evidence.)

1 BY MR. WEINSTEIN:

2 Q Okay. Mr. Geraci, have you seen Exhibit 20  
3 before (sic)?

4 A Yes, I have.

5 Q What is it? Exhibit 18. I apologize.  
6 Have you seen Exhibit 18 before?

7 A I have seen Exhibit 18.

8 Q What is it?

9 A It looks like it was a -- they were trying to  
10 explain the -- there was a conflict in here between the  
11 zoning. There was a bulletin that said one thing, and  
12 the Code said something else, I believe.

13 Q Okay. And was that your understanding at the  
14 time of the zoning problem that existed at the property?

15 A Yes.

16 Q Okay. Now, did you have discussions during  
17 this time period after you talked to Mr. Cotton about  
18 his proposal and submitting this CUP application about  
19 the zoning issues?

20 A Yes, I did. I said we've narrowed this down to  
21 the zoning problem. And I said I believe we may be able  
22 to work forward on this.

23 Q What was your understanding of -- what -- had  
24 your team advised you there was a way that you might be  
25 able to get around the zoning problem?

26 A Yes. They had said that they may be able to  
27 work with the City to get around the zoning problem or  
28 get it corrected. I don't know what language they

1 exactly used.

2 Q Did you communicate that to Mr. Cotton?

3 A Yes, I did.

4 MR. WEINSTEIN: Okay. Now, would you -- I'd  
5 like to offer Exhibit 21, your Honor.

6 THE COURT: Any objection?

7 MR. AUSTIN: No, your Honor.

8 THE COURT: Exhibit 21 will be admitted.

9 (Premarked Joint Exhibit 21, Email from Larry  
10 Geraci to Darryl Cotton, dated 10/24/16,  
11 attaching A102 Site Plan - Proposed - Scheme B,  
12 was admitted into evidence.)

13 BY MR. WEINSTEIN:

14 Q So Mr. Cotton -- I'm sorry -- Mr. Geraci, have  
15 you seen Exhibit 21 before?

16 A Yes.

17 Q Okay. And what is Exhibit 21?

18 A It's an email from Darryl Cotton.

19 Q Okay. On what date?

20 A October 24, 2016.

21 Q And what was attached to that email?

22 A The -- it looks like the drawings for the  
23 property.

24 Q Would you blow that up. Okay. You'll  
25 notice -- keep going.

26 So you'll notice in the bottom right-hand  
27 corner -- I don't know if the jury can see it. If you  
28 can't, let me know. It says site plan, proposed, scheme

1 B.

2 Do you see that? Mr. Cotton (sic), do you see  
3 that?

4 I'm sorry. Mr. Geraci.

5 A I do you see that.

6 Q I'm sorry. I will get this right. I  
7 apologize. I'm glad you didn't respond.

8 You had a site plan prepared by your team as  
9 part of this CUP process?

10 A Yes, I did.

11 Q And did you share -- were you sharing that with  
12 Mr. Cotton by this email?

13 A Yes, I was.

14 Q Why were you sharing it with Mr. Cotton?

15 A To let him know the progress that we had been  
16 making.

17 Q Okay. Now, after the phone call in which you  
18 discussed the draft services agreement -- I think you  
19 said it was within 48 hours of September 26th, 2016  
20 email -- did you have any subsequent communications with  
21 Mr. Cotton about the terms of a potential purchase?

22 A About --

23 Q Is that a yes or a no?

24 A Yes.

25 Q When did that happen?

26 A About October 18th, 19th.

27 Q And was that face to face, or by phone?

28 A That was by phone.

1           Q     And what discussion did you have in that phone  
2     call with Mr. Geraci about any potential terms for  
3     purchase of the property, Mr. -- let me rephrase that.

4                     What discussions did you have with Mr. Cotton  
5     at the time about any potential terms of the purchase of  
6     the property?

7           A     We had discussed that we're moving along here  
8     and that I would like to sit down and get something in  
9     writing because we're getting ready to submit the CUP  
10    application.

11          Q     And did he respond to that?

12          A     He said, "Very good."

13          Q     Okay. And did you have any discussions about  
14    the terms at that time?

15          A     He had -- he had asked for a 50,000-dollar  
16    nonrefundable deposit at that time.

17          Q     And what was your response to that ask?

18          A     I just said that's -- that's too big of an ask  
19    for the money that I am having to put out at this point,  
20    and I think we should be able to drop that down to  
21    maybe \$10,000.

22          Q     Did you explain to him why you thought it was  
23    too big of an amount?

24          A     The amount of risk I was taking, first of all,  
25    and the money that was going out, I said it was just too  
26    much money.

27          Q     What risk was that?

28          A     All the money I was paying all the

1 professionals, the team, to move forward with the  
2 progress on this CUP.

3 Q And what was his response to saying you will --  
4 you suggesting it be 10,000?

5 A He said that was fine.

6 Q Okay. And do you recall anything else that you  
7 discussed with Mr. Cotton during that phone conversation  
8 around October 18th or so, 2016?

9 A I said we'll be -- we may be calling him for a  
10 couple of signatures and because we're getting close  
11 here to submitting the CUP.

12 Q And after that phone call, did you have an  
13 occasion to need his signature on a document?

14 A Yes, we did.

15 MR. WEINSTEIN: Your Honor, I'd offer  
16 Exhibit 30.

17 THE COURT: Any objection?

18 MR. AUSTIN: No, your Honor.

19 THE COURT: Exhibit 30 will be admitted, then.  
20 (Premarked Joint Exhibit 30, City of San Diego  
21 Ownership Disclosure Statement (Form DS-318)  
22 signed, dated 10/31/16, was admitted into  
23 evidence.)

24 BY MR. WEINSTEIN:

25 Q Okay. Mr. Cotton, have you seen Exhibit 30  
26 before?

27 A Mr. Geraci. I have seen Exhibit 30.

28 Q I apologize. And what is Exhibit 30?

1           A     Hold on. This is the ownership disclosure  
2 statement.

3           Q     Okay. And did you need Mr. Cotton's signature  
4 on the ownership disclosure statement?

5           A     Yes, we did.

6           Q     How did you advise him of that, if you did?

7           A     We told him that he -- if he could come by and  
8 sign the ownership disclosure statement.

9           Q     Okay. And what was the response to that?

10          A     He said he could do it.

11          Q     Okay. And when did you make that request of  
12 him?

13          A     It may have been within a day or two of this  
14 signature. I -- I don't recall exactly when we had  
15 talked with him to get him over here.

16          Q     Okay. And to your understanding, did he come  
17 in and sign that document?

18          A     Yes, he did.

19          Q     Did you meet with him at that time?

20          A     No, I didn't.

21          Q     When did you next meet with him?

22          A     I met with him on November 2nd.

23          Q     Okay. And this is, again, of 2016?

24          A     Yes, it is.

25          Q     Okay. And where?

26          A     At my office.

27          Q     Who was present?

28          A     Yes. Mr. Cotton was present.

1 Q And anybody besides you and Mr. Cotton?

2 A No.

3 Q Okay. And where in your office did you meet?

4 A In my office specifically.

5 Q Okay. And what was the purpose of the meeting?

6 A To sit down and draft a agreement between  
7 Mr. Cotton and myself.

8 Q Okay. And how did Mr. -- did you communicate  
9 to Mr. Cotton that would be the purpose of the  
10 agreement?

11 A Yes.

12 Q When did you do that?

13 A I had made a variety of phone calls. There was  
14 a lot that day, and there was some made from the office  
15 that week. So I can't tell you exactly when I requested  
16 that he come over.

17 Q What did you -- when you requested him to come  
18 over, what did you say to him?

19 A I said we -- we want to submit this, get  
20 this -- the CUP is going to be submitted, and I'd like  
21 to get something in writing.

22 Q Okay. And his response to that was?

23 A He said, okay. I'm free.

24 Q Okay. And so that was the purpose of this  
25 meeting on November 2nd?

26 A Yes.

27 Q Okay. So when he arrived, do you remember what  
28 time of day it was?



1           A     It was approximately 230.

2           Q     **Okay. And did you discuss -- what -- what**  
3           **happened in that meeting?**

4           A     We sat down, and I -- I have a big 65-inch  
5     monitor on my wall. And we started talking out the  
6     document. I said we're -- we want to get this -- the  
7     CUP process started, and we're going to get going on  
8     this. Oh, actually, you know what, when he walked in,  
9     he was kidding. He said do you have my \$50,000? And I  
10    said, no. I have 10,000. And he just kind of chuckled.  
11    And we sat down. I put a Word document up on the  
12    screen, and I said, look, let's -- let's work together  
13    on this and get this typed out.

14          Q     **And who was actually doing the typing?**

15          A     I was doing the typing.

16          Q     **And so when you say we were drafting, what did**  
17          **you mean by that?**

18          A     We were putting together an agreement that --  
19    for the property at the time.

20          Q     **Okay. And did you go through each of the**  
21          **provisions in that agreement with Mr. Cotton?**

22          A     Well, we were type -- as we both were kind of  
23    talking back and forth, we were typing out the  
24    agreement.

25               MR. WEINSTEIN: Okay. I'd like to offer  
26    Exhibit 38, your Honor.

27               THE COURT: Any objection?

28               MR. AUSTIN: No, your Honor.

1 THE COURT: Exhibit 38 will be admitted.

2 (Premarked Joint Exhibit 38, Agreement between  
3 Larry Geraci or assignee and Darryl Cotton,  
4 dated 11/02/16, was admitted into evidence.)

5 BY MR. WEINSTEIN:

6 Q Mr. Geraci have you seen Exhibit 38 before?

7 A Yes, I have.

8 Q And what is it?

9 A This is an agreement between Larry Geraci and  
10 Darryl Cotton.

11 Q Okay. Is this the agreement you just described  
12 drafting with Mr. Cotton when he was in your office on  
13 November 2nd?

14 A Yes.

15 Q Okay. Now, did you and Mr. Cotton review each  
16 line and word of that agreement?

17 A Yes, we did.

18 Q And did you have a discussion that this was an  
19 agreement?

20 A Yes.

21 Q Did you have any discussion that it was a  
22 receipt?

23 A No.

24 Q And then the first line of the agreement says  
25 it's an agreement between Larry Geraci or assignee and  
26 Darryl Cotton.

27 Did you have any discussion about the language  
28 "or assignee"?

1           A       Yes.

2           Q       What was that discussion?

3           A       On the assignee I was -- at the time, we had  
4 not picked out a corporate name or who the -- you know,  
5 who -- what entity I would put it into at the time or I  
6 needed an agent to work with me, which was Rebecca Berry  
7 as well. So the assignee was sort of a general term out  
8 there.

9           Q       Okay. And so what was the purpose of that  
10 provision, then?

11          A       So I could have somebody step in in my place.

12          Q       All right. And Mr. Cotton agreed to that?

13          A       Yes, he did.

14          Q       Okay. Now, it says Darryl Cotton has agreed to  
15 sell the property located at 6176 Federal Boulevard,  
16 California, for a sum of \$800,000 to Larry Geraci or  
17 assignee on the approval of a marijuana dispensary,  
18 period. And then parentheses, CUP for a dispensary,  
19 close parens.

20                   Do you see that?

21          A       Yes, I do.

22          Q       Okay. Did you discuss when that was drafted by  
23 the two of you for the sum of \$800,000 as the purchase  
24 price?

25          A       Yes, we did.

26          Q       And had that purchase price ever changed since  
27 you started initially discussing a possible purchase  
28 price for the property?

1           A       That had never changed.

2           Q       Okay. Now, it's -- the sentence says also on  
3 the approval of a marijuana dispensary, period.

4           A       Yes.

5           Q       Parentheses, CUP for a dispensary, close  
6 parens.

7                   Did you have a discussion with Mr. Cotton about  
8 that language at the time you drafted the -- the two of  
9 you drafted the agreement?

10          A       Yes. It was understood that on the approval of  
11 the marijuana dispensary that, you know, I'd be bearing  
12 the cost, and we needed to get approval to complete the  
13 actual purchase for the property.

14          Q       Okay. When you said it was understood, what  
15 was said? I mean, how did you have that understanding?

16          A       As I was typing, I said, and I will, of course,  
17 be paying for the -- the process to get CUP.

18          Q       Did Mr. Cotton respond to that?

19          A       He said yes. He agreed.

20          Q       Had you had prior discussions before you put  
21 this in the -- the signed document that you would bear  
22 the expense of applying and obtaining the approval of  
23 the condition use permit?

24          A       Yes. It was -- it was just understood. And he  
25 and I discussed that I'm paying for all the expenses to  
26 move forward with this CUP.

27          Q       The next sentence says "\$10,000 cash" -- cash  
28 is in parentheses -- "has been given in good faith

1     earnest money to be applied to the sales price of  
2     \$800,000 and to remain in effect until license is  
3     approved."

4             Do you see that?

5             A     Yes, I do.

6             Q     Did you discuss that language with Mr. Cotton?

7             A     Yes, we did.

8             Q     Okay.

9             A     Just like --

10            Q     And what was -- what were his comments about  
11     that language?

12            A     He said everything is fine, as we typed it out.

13            Q     Okay. Did you have a discussion about what  
14     good faith earnest money was?

15            A     Yes, we did.

16            Q     What was that discussion?

17            A     It was money that I was to give Mr. Cotton to  
18     show my seriousness for closing this transaction.

19            Q     Okay. And what was the amount of that good  
20     faith earnest money?

21            A     \$10,000.

22            Q     On the date of this meeting, November 2nd, did  
23     you have discussions with him about whether that deposit  
24     was refundable or nonrefundable?

25            A     As I was typing it out, he said that's  
26     nonrefundable. And I said, yes, that's fine.

27            Q     Okay. Now, it also says "to be applied to the  
28     sales price and to remain in effect until the license is

1 approved."

2 Did you have a discussion with him about what a  
3 license was?

4 A Yes. The CUP license.

5 Q Okay. And did you have a discussion about  
6 what -- when the balance of the money would be due after  
7 payment of the nonrefundable deposit?

8 A When -- on approval of the CUP, the balance of  
9 the money would be due.

10 Q Now, there's no specific time in this document  
11 for you to accomplish that. Is that correct?

12 A That is correct.

13 Q Did you have a discussion with Mr. Cotton at  
14 the time about whether or not to put in a time frame in  
15 the agreement?

16 A Yes, we did.

17 Q What was that discussion?

18 A We discussed -- we talked approximates, but I  
19 couldn't give any solids. The team couldn't give me the  
20 solid numbers because it's all left up to the City, the  
21 cycle reviews. You don't know the problems you're going  
22 to run into. So we just couldn't pin down the date when  
23 you could do this.

24 Q Okay. So is that why no date is specified?

25 A That is correct.

26 Q Okay. Did you have an understanding when you  
27 signed this that you would have to pursue that CUP  
28 application in good faith?

1           A     Yes.

2           Q     Now, the last sentence says "Darryl Cotton has  
3     agreed to not enter into any other contacts on this  
4     property."

5                     Do you see that?

6           A     Yes, I do.

7           Q     Do you see the word "contacts"?

8           A     Yes.

9           Q     And did you mean contacts, or was that a  
10    typographical error?

11          A     That was a typographical error.

12          Q     And what was it intended to say?

13          A     Contracts on this property.

14          Q     And why was that sentence added to the  
15    agreement?

16          A     I had told Darryl that, as I was -- I'm  
17    pursuing this, I don't want any other -- I would like  
18    him not to enter into any more contracts on this  
19    property.

20          Q     Did he respond to that?

21          A     He said that's fine.

22          Q     Okay. And then after you -- after you typed  
23    that sentence, did you guys read through the document  
24    together?

25          A     Yes. We were staring at it up on the big  
26    screen.

27          Q     Okay. And then I see your signature on the  
28    bottom left-hand side above the words "Larry Geraci."

1                   Is that your signature?

2           A       That is my signature.

3           Q       And did Mr. Cotton sign the agreement at that  
4       time as well?

5           A       Yes, did he.

6           Q       And was that document signed in the presence of  
7       anybody?

8           A       We had a notary.

9                   MR. WEINSTEIN:   Okay.   Would you -- Your Honor,  
10       I'd offer Exhibit 39.

11                   THE COURT:   Any objection?

12                   MR. AUSTIN:   No, your Honor.

13                   THE COURT:   Exhibit 39 will be admitted.

14                   (Premarked Joint Exhibit 39, Excerpt from  
15       Jessica Newell Notary Book dated 11/02/2016, was  
16       admitted into evidence.)

17       BY MR. WEINSTEIN:

18           Q       Okay.   It's a little dark, Mr. Geraci.

19                   Do you recognize Exhibit 39?

20           A       Yes, I do.

21           Q       What is it?

22           A       This is the notary's ledger that records who  
23       she's notarizing.

24           Q       Okay.   And you were there when that occurred?

25           A       Yes.

26           Q       Okay.   And can you read -- it may be hard for  
27       the jury to see.

28                   Can you read a time on there at which -- the



1 time that Mr. Darryl Cotton signed, according to this  
2 notary?

3 A 3:03 p.m.

4 Q And what time does it indicate you signed?

5 A 3:05 p.m.

6 Q Is that accurate, to the best of your  
7 knowledge?

8 A I believe so.

9 Q Now, at the time of this November 2nd meeting  
10 when this document was drafted up and signed -- go back  
11 to 38.

12 At the time you were meeting on November 2nd,  
13 2016 and you signed what's been marked as Exhibit 38,  
14 did you have any discussions with Mr. Cotton about there  
15 being any other terms and conditions for the purchase?

16 A There was no other terms and conditions.

17 Q That wasn't my question.

18 My question was whether there was any  
19 discussion between you at the time as to whether there  
20 were any other terms and conditions.

21 A No.

22 Q And had you agreed as of November 2nd, 2016 to  
23 pay Mr. Cotton a 10 percent equity stake in -- or  
24 ownership interest in the dispensary as past the  
25 purchase of this property?

26 A No.

27 Q Did you ever agree or tell Mr. Cotton before  
28 November 2nd, 2016 that you would agree to pay him a 10

1 percent equity or ownership interest in the dispensary  
2 in addition to the 800,000-dollar purchase price?

3 A No.

4 Q Now, at some point in time, did Mr. Cotton ask  
5 you to pay him a guaranteed 10 percent cash  
6 distribution -- monthly cash distribution when the  
7 dispensary opened?

8 A No, he didn't.

9 Q Ever?

10 A Ever.

11 Q Okay. Well, did you have a phone call with him  
12 on February 7th, 2017? I'm not talking about this time.  
13 I'm talking about at any time in history.

14 A Yes. February 7th, he did.

15 Q Okay. At the time that you signed this  
16 agreement, Mr. Geraci, with Mr. Cotton, had there been  
17 any discussions between you about a -- his request for  
18 a 10,000-dollar-a-month guaranteed minimum cash  
19 distribution?

20 A There was no discussion.

21 Q When was the first time that came up?

22 A February 7th.

23 Q Okay. And at the -- as of this date,  
24 November 2nd, 2016, had you had any discussions with him  
25 about that proposed agreement that he had drafted on  
26 September -- on September 26th that you had already met  
27 and talked about?

28 A No, there was nothing more on that.

1           Q     To your understanding, was there any term and  
2     condition of the purchase agreement discussed between  
3     you and Mr. -- or agreed between you and Mr. Cotton as  
4     of the date that you signed this November 2nd, 2016  
5     agreement, other than the terms that are stated in the  
6     agreement?

7           A     There was nothing else.

8           Q     Now, did you provide a copy of the  
9     November 2nd, 2016 signed agreement to Mr. Cotton?

10          A     I emailed it to him.

11          Q     And when did you email it to him?

12          A     Within 5, 10 minutes maybe.

13               MR. WEINSTEIN: Your Honor, I'd offer  
14     Exhibit 40.

15               THE COURT: Any objection?

16               MR. AUSTIN: No, your Honor.

17               THE COURT: Exhibit 40 will be admitted.

18               (Premarked Joint Exhibit 40, Email to Darryl  
19     Cotton from Larry Geraci attaching Nov 2  
20     Agreement, dated 11/2/2016, was admitted into  
21     evidence.)

22     BY MR. WEINSTEIN:

23          Q     Okay. Have you seen Exhibit 40 before?

24          A     Yes, I have.

25          Q     What is Exhibit 40?

26          A     This is the email I sent to Mr. Cotton.

27          Q     To do what?

28          A     It's the copy of the agreement.

1 Q And what time did you send that to him?

2 A 3:11 p.m.

3 Q And how long after you had signed the agreement  
4 was that emailed to him?

5 A I believe six minutes.

6 Q Did you wait two hours before sending it to  
7 him?

8 A No.

9 Q Now, did you ever receive a response to this  
10 email?

11 A I'm sorry. Say that again.

12 Q Did you ever receive a response to this email?  
13 Just a yes or a no.

14 A Yes.

15 MR. WEINSTEIN: Okay. Your Honor, I'd offer  
16 Exhibit 41.

17 THE COURT: Any objection?

18 MR. AUSTIN: No, your Honor.

19 THE COURT: Exhibit 41 will be admitted.

20 (Premarked Joint Exhibit 41, Email from Darryl  
21 Cotton to Larry Geraci re Agreement, dated  
22 11/2/16, was admitted into evidence.)

23 BY MR. WEINSTEIN:

24 Q Mr. Cotton -- Mr. Geraci, have you seen  
25 Exhibit 41 before?

26 A Yes, I have.

27 Q And what is it?

28 A This is an email sent from Darryl Cotton.

1 Q Okay. At what time?

2 A 6:56 p.m.

3 Q When did you take a look at this email?

4 A That -- later that night.

5 Q Okay. Now, did you -- did you look at that  
6 email -- do you get emails at both work and on your  
7 phone?

8 A On my phone, yes. Work and phone, yes.

9 Q When you looked at this email, were you at  
10 work, or did you look at it on your phone?

11 A On my phone.

12 Q Okay. And did you read the entire email?

13 A No, I did not.

14 Q What did you do?

15 A My email shows me, like, the first part of the  
16 sentence, and so I expanded it. And it said thank you  
17 for your meeting today.

18 Q And did you read the rest of the email?

19 A Not at that time.

20 Q And did you respond after you received this  
21 email back to Mr. Cotton?

22 A Yes, I did.

23 MR. WEINSTEIN: I offer Exhibit 42, your Honor.

24 THE COURT: Any objection?

25 MR. AUSTIN: No objection.

26 THE COURT: Exhibit 42 will be admitted.

27 \ \ \

28 \ \ \

1 (Premarked Joint Exhibit 42, Email to Darryl  
2 Cotton from Larry Geraci re Agreement, dated  
3 11/2/16, was admitted into evidence.)

4 BY MR. WEINSTEIN:

5 Q Okay. Mr. Geraci, do you recognize Exhibit 42?

6 A Yes, I do.

7 Q What is it?

8 A This is my response to the email he had sent  
9 me.

10 Q And what did you respond?

11 A No, no problem at all.

12 Q What were you referring to?

13 A I read thank you for the meeting today. And it  
14 should have said no problem at all.

15 Q All right. And what time did you send that to  
16 Mr. Cotton?

17 A 950 -- 9:13 at night.

18 Q And did you subsequently read the entire email?

19 A Yes. The following day.

20 MR. WEINSTEIN: Okay. Your Honor, this is a  
21 good breaking point.

22 THE COURT: Good what?

23 MR. WEINSTEIN: This is a good breaking point.  
24 And I know you like to break 10 minutes before to talk  
25 to counsel.

26 THE COURT: All right. We'll stop a little bit  
27 earlier at this time.

28 Folks, we're going to be in recess until 1:30.

1 If you want to assemble just a little bit earlier. I  
2 need to talk to the lawyers for just a few moments.  
3 We'll get started talking at 1:30. So we'll be in  
4 recess at this time. Do not form or express any  
5 opinions or discuss the case until you deliberate.  
6 We'll be in recess until then.

7 THE WITNESS: Can I step down?

8 THE COURT: Yes. All right. The jurors left  
9 the courtroom. Feel free to step down, Mr. Geraci.

10 I wasn't necessarily expecting to stop that  
11 many minutes before.

12 MR. WEINSTEIN: I thought you said 10. And it  
13 was sort of a subject matter break. So --

14 THE COURT: Oh, okay. I like to get a little  
15 bit closer to noon before we stop.

16 MR. WEINSTEIN: I apologize, your Honor.

17 THE COURT: All right. So issues, if any, that  
18 either one of you need to bring up at this time?

19 MR. WEINSTEIN: Give me a moment, your Honor,  
20 please.

21 No. I'll think about it over lunch.

22 THE COURT: Okay.

23 Counsel, anything?

24 MR. AUSTIN: No.

25 THE COURT: All right. So why don't you try to  
26 be back by --

27 MR. WEINSTEIN: I do. I prepared to raise it,  
28 your Honor. I did -- I will bring an oral motion for

1 nonsuit, unless it's too late, on breach of contract  
2 claim asserted by Mr. Cotton. And if I could explain  
3 the basis, I would appreciate it.

4 THE COURT: As a result of what he said within  
5 his --

6 MR. WEINSTEIN: As a result of the opening  
7 statement.

8 THE COURT: All right. I'm going to deny that  
9 without prejudice.

10 MR. WEINSTEIN: Okay.

11 THE COURT: You can renew whatever motion you  
12 think appropriate at the close of the next stage of  
13 evidence.

14 MR. WEINSTEIN: Thank you.

15 THE COURT: So we'll be in recess now. And try  
16 to get back here by 1:20. And then we will try to  
17 resume as promptly as possible at 1:30. Thank you.

18 MR. WEINSTEIN: Thank you.

19 (Lunch recess from 11:47 a.m. to 1:20 p.m.)

20 THE COURT: All right. We've got a couple  
21 minutes before we bring our jury in.

22 Counsel, how are we doing?

23 MR. WEINSTEIN: Doing good, thanks.

24 THE COURT: All right.

25 MR. WEINSTEIN: Although, I'm not as good  
26 standing all that time as I used to be.

27 THE COURT: Well --

28 MR. WEINSTEIN: That's my own fault.



1 THE COURT: -- you have not drawn a judge who  
2 manages his courtroom with a heavy hand. All right? I  
3 need all of you just to reflect upon that.

4 You did put the Court in a little bit of a  
5 difficult position. I don't usually stop quite that  
6 early. But, quite frankly, it looked to me like it was  
7 time -- it was a good time for a break. All right?

8 MR. WEINSTEIN: And I think I misunderstood.  
9 You want about five minutes more then normally?

10 THE COURT: Well, usually. I'll give counsel a  
11 queue or heads-up, something like "when it's convenient"  
12 when we get a little bit closer to noon.

13 All right. So we might want to think about  
14 that as we go down the road.

15 Now, I really would like to see us make as much  
16 progress as is possible this afternoon.

17 Do you expect you'll finish your direct  
18 examination of Mr. Geraci?

19 MR. WEINSTEIN: I do.

20 THE COURT: This afternoon?

21 MR. WEINSTEIN: Yes.

22 THE COURT: All right. And then will you be  
23 conducting your cross-examination this afternoon of  
24 Mr. Geraci?

25 MR. AUSTIN: If necessary, your Honor.

26 I find the time Mr. Weinstein's opt to be very  
27 convenient for this case because I almost didn't catch  
28 it. I would like to make an oral motion for a nonsuit.

1           Essentially what just transpired right before  
2 Mr. Geraci corrected himself is it comes down to what  
3 we've been arguing this whole time. It's what we call  
4 the confirmation email where he says, no, no problem at  
5 all.

6           Mr. Geraci says, yes, I made a mistake. I  
7 meant "No problem." What's happening here is they're  
8 asserting the affirmative defense of mistake.

9           This confirmation email goes to the whole heart  
10 of the email, which is Mr. Cotton alleging that that  
11 document you have is not the full contract and  
12 Mr. Geraci is agreeing that's not the contract.

13           I don't know if we need to pull back the  
14 transcript. But I don't think this could be more clear.  
15 Like, if this isn't a nonsuit, I don't know if this is  
16 potentially grounds for mistrial. This is, I feel, case  
17 dispositive. It goes right to the heart of the matter  
18 of whether that contract was disputed or not. If they  
19 don't have that affirmative defense, they don't have the  
20 affirmative defense to any of the cross-complaints to  
21 Mr. Cotton.

22           THE COURT: Well, your oral motion for nonsuit  
23 is denied without prejudice and even premature. We're  
24 now into evidence. And the time for you to bring your  
25 motion, if at all, will be at the close of Plaintiff's  
26 case in chief.

27           And if Plaintiff has failed to make the prima  
28 facie showing of each of the elements in which they bear

1 the burden of proof, the motion in whole or part will be  
2 well-taken. I'm not predicting that that will be the  
3 case. But I understand your argument. But at this  
4 point, that's what it is.

5 So we've got that taken care of. No need to  
6 rewind any testimony.

7 But going back to just a moment ago, do you  
8 expect to do your cross-examination of Mr. Geraci at the  
9 close of direct, or do you intend to reserve?

10 MR. AUSTIN: Close of direct.

11 THE COURT: All right. So any estimate of how  
12 much more time you'll be with your client on direct?

13 MR. WEINSTEIN: I'm thinking an hour, but I'm  
14 not -- it's hard to predict.

15 THE COURT: No, that's fine. The parties are  
16 obviously important witnesses. So it sounds like this  
17 afternoon, if not well before the close of business  
18 today, you'll be in your cross-examination of  
19 Mr. Geraci.

20 Again, I'm not putting any pressure on you at  
21 all. But do you have any estimate of how long you might  
22 go on cross?

23 MR. AUSTIN: Maybe 40 minutes to an hour.

24 THE COURT: All right. So it's possible you  
25 might be done with Mr. Geraci today? All right. And  
26 then with redirect.

27 All right. So your next witness, if we get to  
28 that point, will be?

1 MR. WEINSTEIN: Well, assuming -- if we  
2 finish -- I mean, if we don't get past Mr. Geraci today,  
3 I'll be calling Gina Austin first thing Monday morning  
4 because she's available then.

5 THE COURT: All right. That's fine. But I do  
6 not want to shut down too much earlier.

7 MR. WEINSTEIN: No. If -- if --

8 THE COURT: So if we have extra time, and that  
9 meaning if we get too much beyond 4 o'clock, maybe we'll  
10 call it a day. But let's assume we're going to need --  
11 you're going to need to have somebody else lined up.

12 MR. WEINSTEIN: It would be Rebecca Berry.

13 THE COURT: All right. Ms. Berry. I gotcha.  
14 So you've got the witnesses lined up. So then assuming  
15 for the moment that neither you nor you complete your  
16 examination of Ms. Berry if she's called today, then we  
17 would interrupt her to call Ms. Austin?

18 MR. WEINSTEIN: I would probably, depending on  
19 how far we got with Ms. Berry, probably just have  
20 Ms. Austin go on after Ms. Berry.

21 THE COURT: All right. And recall we'll have a  
22 full day of testimony Monday, Tuesday, and Wednesday.

23 How many witnesses altogether will you be  
24 calling?

25 MR. WEINSTEIN: At least six.

26 THE COURT: All right. But I'm wondering --

27 MR. WEINSTEIN: So some are short.

28 THE COURT: Yeah.

1           MR. WEINSTEIN: And some are longer. So I can  
2 give the Court an estimate. I mean, Schweitzer will  
3 probably be longer.

4           THE COURT: Any longer than Mr. Geraci?

5           MR. WEINSTEIN: No.

6           THE COURT: Right. I'm wondering -- again, I'm  
7 not putting pressure on anybody. We're just getting  
8 started. But it sounds to me -- it looks to me like  
9 you'll wrap before the close of business Thursday if not  
10 the close of business Wednesday.

11          MR. WEINSTEIN: It's possible. But we have a  
12 half day Thursday. That's what I represented to the  
13 Court too.

14          THE COURT: You did. But I'm just doing the  
15 math here. These days can get to be pretty long once we  
16 get used to getting started on time at 9:00 and we don't  
17 end too prematurely and then we go to 4:30. All right.  
18 So we're making progress.

19          Just in case, though, you need to make sure you  
20 have witnesses lined up before we anticipate ending for  
21 the week at noon on Thursday. It's possible that you  
22 might have to have witnesses lined up to begin your case  
23 in chief. And then once we get started, do you think  
24 you can do it in a couple days?

25          MR. AUSTIN: Absolutely, your Honor.

26          MR. WEINSTEIN: Actually, your Honor, I  
27 neglected to include in my count Mr. Cotton. So I think  
28 I have seven total.

1           THE COURT: That's fine. Again, this is a  
2 sheer number of witnesses. It's nothing unreasonable.

3           All right. Do either one of you -- now, we  
4 haven't gone sidebar yet, but we did spend some time  
5 picking our jury yesterday afternoon, which was outside  
6 the presence of the reporter. Although, the reporter  
7 wasn't in Court yesterday, I guess.

8           But if at any time we go sidebar, I usually  
9 don't invite the court reporter to go sidebar at that  
10 time. But at the first available moment, I make sure  
11 that if you'd like to make a record of what we  
12 discussed, you can do so. It's your responsibility to  
13 make a note of what we discussed. I usually have a  
14 pretty good idea of what we discussed. And I do my best  
15 to recite it. And then I always ask counsel to make  
16 comments or objections.

17           But don't be shy about insisting or reminding,  
18 I should say, of your right to make a record.

19           All right. Anything else before we bring the  
20 jury in?

21           MR. WEINSTEIN: No, your Honor.

22           THE COURT: Counsel, anything else?

23           MR. AUSTIN: No, your Honor.

24           THE COURT: All right. So stand down, and as  
25 soon as the jury is available, we'll bring them in.

26           (Discussion off the record.)

27           THE COURT: Thank you, ladies and gentlemen.  
28 So we're all ready to go to resume the direct

1 examination of Mr. Geraci.

2 Mr. Geraci, welcome back. You understand  
3 you're still under oath?

4 THE WITNESS: Yes, I do.

5 THE COURT: Thank you very much. All of our  
6 jurors are present and accounted for.

7 Counsel, whenever you're ready, please resume  
8 your direct examination.

9 MR. WEINSTEIN: Sure.

10 BY MR. WEINSTEIN:

11 Q Mr. Geraci, after you received Exhibit 42 --  
12 that was the 9:13 p.m. email on November 2nd -- did you  
13 respond to Mr. Cotton?

14 A Yes, I did.

15 Q And when did you respond to him?

16 A Right after I read it at 9:13.

17 Q You said you -- when did you read -- did you  
18 read the email on -- when did you have the phone call  
19 with him, I guess, is the better question?

20 A Back up. Where are we now?

21 Q So let's do this.

22 Would you put Exhibit 42 back on.

23 A Okay.

24 Q Did you subsequently have a phone call with  
25 Mr. Cotton about this email to be sent to you?

26 A Yes. The following day.

27 Q All right. And what day was that?

28 A That was the 3rd.

1           Q     All right. How long was the phone call, if you  
2 recall?

3           A     Probably several minutes.

4           Q     And what was said between you and him in that  
5 phone call?

6           A     After I opened the email and took a look at the  
7 rest of it, I said -- I called Darryl. And I said what  
8 is up with this email and the 10 percent? And he  
9 replied lightheartedly, you don't get what you don't ask  
10 for. We're going to make some money. And I said,  
11 Darryl, you asked me for this 10 percent, and I -- and  
12 I've said no. And I said so let's just stick with no  
13 right now.

14          Q     And did he have a response to that?

15          A     Yeah. He said okay. And I said I'll call you  
16 later during the week.

17          Q     And did you have subsequent communications with  
18 him during the week, as you proceeded on with the CUP  
19 application?

20          A     Yes, I did.

21               MR. WEINSTEIN: Your Honor, I'd like to admit  
22 Exhibit 43.

23               THE COURT: Any objection?

24               MR. AUSTIN: No, your Honor.

25               THE COURT: Exhibit 43 will be admitted.

26               \ \ \

27               \ \ \

28               \ \ \



1 (Premarked Joint Exhibit 43, Email to Becky  
2 Berry from Abhay Schweitzer re Federal Blvd -  
3 Authorization to view County Tax Assessor  
4 Records, dated 11/07/16 with attachment, was  
5 admitted into evidence.)

6 BY MR. WEINSTEIN:

7 Q Mr. Geraci, would you please read Exhibit 43 to  
8 yourself and let me know if you've seen it before.

9 A Yes, I have seen this.

10 Q What is it?

11 A It is an email to Becky Berry from Abhay  
12 Schweitzer.

13 Q Were you copied on that email?

14 A Yes, I was.

15 Q And what was your understanding after you saw  
16 this email?

17 A It was giving -- Darryl was giving three people  
18 authorization to view and copy the County of San Diego  
19 tax assessor's records.

20 Q And Mr. Cotton is not on this email, is he?

21 A To -- no. It was not sent to him.

22 Q Okay. Did you subsequently communicate to  
23 Mr. Cotton that you requested that he sign authorization  
24 forms so people could look at the county assessor's  
25 record related to the property?

26 A Yes, I did.

27 MR. WEINSTEIN: Your Honor, I'd like to offer  
28 Exhibit 44.

1 THE COURT: Any objection?

2 MR. AUSTIN: No, your Honor.

3 THE COURT: Exhibit 44 will be admitted.

4 (Premarked Joint Exhibit 44, Email to Darryl

5 Cotton from Larry Geraci re Federal Blvd

6 need sig ASAP, dated 11/14/16, was admitted into

7 evidence.)

8 BY MR. WEINSTEIN:

9 Q Mr. Geraci, have you seen Exhibit 44 before?

10 A Yes, I have.

11 Q Okay. And what is Exhibit 44?

12 A It's an email to Darryl Cotton.

13 Q Okay. It says "Can you sign and email back to  
14 me ASAP?"

15 Do you see that?

16 A Yes, I do.

17 Q Is there an attachment to that email?

18 A Yes, there is.

19 Q And for clarity, why were you sending this  
20 attachment to Mr. Cotton?

21 A So he could sign it and get it back to us.

22 Q And did he do that?

23 A Yes, he did.

24 MR. WEINSTEIN: I'd offer Exhibit 46, please.

25 THE COURT: Any objection?

26 MR. AUSTIN: No, your Honor.

27 THE COURT: Exhibit 46 will be admitted.

28 \ \ \

1 (Premarked Joint Exhibit 46, Authorization to  
2 view records - signed by Cotton 11/15/16, was  
3 admitted into evidence.)

4 BY MR. WEINSTEIN:

5 Q Mr. Geraci, have you seen Exhibit 46 before?

6 A Yes.

7 Q And what is Exhibit 46?

8 A It's Darryl's authorization giving  
9 authorization to Abhay, Benjamin, and Carlos of TECHNE  
10 to view and make copies of the County of San Diego tax  
11 assessor records.

12 Q These last emails were an issue related to  
13 getting authorization to seek county assessor records  
14 that took place after a telephone conversation on  
15 November 3rd?

16 A Yes.

17 Q Did you continue to have your team process the  
18 CUP application?

19 A Yes, I did.

20 Q Okay. Now, at some point in time after  
21 November 3rd telephone call with Mr. Cotton, did you  
22 have a subsequent communication with him in which he  
23 claimed your agreement contained terms that weren't  
24 spelled out in the written agreement you had signed on  
25 November 2nd?

26 A That would be --

27 Q Just a "yes" or "no" is fine.

28 A Yes.

1           Q     Okay. And do you recall when that conversation  
2 was -- or communication was?

3           A     Yes.

4           Q     When was it?

5           A     February 7th.

6           Q     And was that communication in person? By  
7 phone? By text? How did it happen?

8           A     That was by phone.

9           Q     And how is it that you're able to remember the  
10 exact date of that phone call?

11          A     Because the phone call was very disturbing.

12          Q     How was it disturbing?

13          A     Mr. Cotton had started the conversation off in  
14 a tone that I hadn't heard before from Mr. Cotton.  
15 We -- I -- we had a very good relationship up until this  
16 point. And he said he had been talking to other people.  
17 And he had said that they were willing to give  
18 him \$10,000 a month guaranteed. And I said, Darryl, who  
19 are the other people? And he said I've got investors  
20 that will give me \$10,000 a month.

21               And I said, Darryl, that is very difficult to  
22 do. I said we've got a signed contract. And \$10,000 a  
23 month, you know, is very difficult on a new business,  
24 especially a new business -- the first 12 months of a  
25 business with all the capital expenditures I am spending  
26 on this to get the doors open. I'm starting in the hole  
27 the day we open the doors at \$10,000 a month. And I  
28 said that was not the agreement.

1           And he said I gave you a good deal, and I think  
2           you should help me.

3           And I said look at, even with Section 28E --  
4           the first problem is just the -- the 10,000 a month in  
5           the hole, new business. We have no branding. We have  
6           no customers. We have no proven product at this point.  
7           And the competition, by the time this thing is open,  
8           which is four years from date of contract, I said the  
9           competition is going to be all over the place. I cannot  
10          guarantee 10,000 a month at any cost. I don't know.  
11          And not even that, it's the Section -- Code Section 280E  
12          of the Internal Revenue Service code that we've got to  
13          contend with as well.

14          **Q     Had you had discussion with Mr. Cotton before**  
15          **about IRS Code Section 280E?**

16          A     Yes, I did.

17          **Q     When?**

18          A     This is back early on. I would say sometime in  
19          September.

20          **Q     And could you explain what IRS Code**  
21          **Section 280E, what the impact would be on a dispensary**  
22          **business.**

23          A     The federal law does not allow -- okay. The  
24          federal law still sees the marijuana business as an  
25          illegal activity. So it doesn't allow you to write off  
26          all your expenses, we'll call it, below the line. So  
27          you've got gross income minus the cost of the product,  
28          which in this case would be marijuana, and then you have

1 gross income. The IRS right there stops you and applies  
2 39-percent tax code to it. Now, it's 37. Back then, it  
3 was 39. And says you're done. Cut me a check for that  
4 amount.

5 Under normal business, you could get down to  
6 that gross sales number and go ahead and write off your  
7 rent, your labor costs, and mind you, the dispensary is  
8 a heavy retail business. So you've got lots of labor.  
9 You've got labor. You've got rental costs. You've got  
10 advertising, supplies, contractors. Your networking  
11 systems, point of sale systems. You have got an  
12 enormous amount of expenses. So if we just start with  
13 \$1 million and we get it down 500,000 in marijuana  
14 costs. Now, you're at 500,000. The marijuana business  
15 will pay 37 percent now of that number. You cut a  
16 check, and no more write-offs.

17 Over here, on the normal business, that 500,000  
18 with the additional amount of expenses may bring you  
19 down to about \$150,000 of taxable income. I'm just  
20 going to simplify that and not go any further than that.  
21 So we start with 150-.

22 Well, you're talking a huge disparity. You're  
23 talking an enormous tax bill over here as opposed to  
24 maybe paying 25,000 over here.

25 180-, 25,000. There's a huge difference there.  
26 We're waiting for -- the industry is waiting for that to  
27 be corrected. So you've got the states that have  
28 approved -- the 36 states have approved it right now,

1 approved the use of marijuana. And the federal  
2 government still sees it as illegal activity. So until  
3 they fix it, there's a big problem even today out in the  
4 industry right now.

5 So it almost makes it I'm going to say close to  
6 impossible to make a profit right now in this industry  
7 because of that Code section.

8 **Q Now, did -- in the conversation on the phone**  
9 **with Mr. Cotton, what specifically did you discuss about**  
10 **Section 280E?**

11 A Well, I had told him, because we both were  
12 familiar with it, I said because of 280E, let's just  
13 start with just the fact that we're a new business is  
14 going to be very difficult to show a profit in the first  
15 12 months, very difficult. 280E is even going to make  
16 it more difficult. As I've explained, you can't even  
17 show a profit -- you may even show a loss at some point  
18 in time. So I tried to explain this to Darryl.

19 And I said if I show losses, I've still got to  
20 write you a check for \$10,000. I said I -- I can't put  
21 that -- I can't get risk for that amount of money  
22 because that's just -- it's sure bankruptcy. You're  
23 going right into bankruptcy guaranteeing somebody 10,000  
24 a month. It's just going to be very difficult to match.

25 **Q What was Mr. Cotton's response to that**  
26 **discussion?**

27 A He said see what you can do. And I was so  
28 angry and extremely upset.

1           Q     Now, had he indicated in that phone  
2 conversation that he had talked to anybody else that was  
3 willing to pay him guaranteed distributions?

4           A     He just said he had other investors that were  
5 willing to pay.

6           Q     Did he tell you who they were?

7           A     No, he didn't.

8           Q     Okay. When you left that conversation, was he  
9 still insisting on 10,000 a month guaranteed  
10 distributions?

11          A     Yes, he was.

12          Q     Okay. And how did -- how did you feel?  
13 What -- how did you decide to react to that after you  
14 got done with the phone call?

15          A     I just needed to get off the phone, and I said  
16 I will -- I'll get back with you. And got off the  
17 phone. And immediately started calling some of the  
18 people that I know in the industry. And they were  
19 saying that that is -- that is going to be difficult,  
20 very, very difficult to get to that number.

21                 And I -- I just couldn't figure out why  
22 the \$10,000 a month and where that came from.

23          Q     And --

24          A     So my thought process --

25          Q     Go ahead. Sorry.

26          A     My thought process, we had just cleared the  
27 zoning on the record property on January 31st -- it  
28 was -- we knew it was January 18th and then there was



1 some paperwork to go. But we had cleared the zoning on  
2 the property, which was the biggest hurdle in this whole  
3 situation, was the zoning. It cleared it for that  
4 property. But it also cleared it for everybody else.

5 So that was -- that was huge. That was  
6 enormous.

7 And a week later, Mr. Cotton is now  
8 demanding \$10,000 a month. And I -- my thought pattern  
9 was, you know, wait a minute. You know, I trusted him.  
10 I thought he was acting in, you know, good faith at this  
11 point.

12 Q Mr. Geraci, if you're able to proceed. Do you  
13 recall any discussions in that February 7th telephone  
14 call about the agreement that had been signed on  
15 November 2nd?

16 A I'm sorry. Could you repeat that.

17 Q Sure.

18 In the February 7th, 2017 telephone call you've  
19 been telling us about, were there any discussions  
20 between the two of you about the November subcontracted,  
21 2016 agreement that had been signed?

22 A I had told him that we had an agreement, that  
23 that was our agreement, and it was signed.

24 Q Now, anything else that took place in that  
25 conversation or that was said in that conversation that  
26 you haven't already mentioned?

27 A I can't recall at this time.

28 Q Okay. What course of action, if any, did you

1     **decide to embark upon once you got that demand on**  
2     **February 7th?**

3           A     After -- after the conversation I had with --

4           **Q     Yes. How did you decide to proceed?**

5           A     I started calling people around to find out  
6     about, first of all, how this is going to work out  
7     because I couldn't see how it could -- it was very  
8     difficult to get past that 10,000. I -- I called an  
9     operator that I knew, and they were saying that is very,  
10    very tough. We tried to figure out how we could get  
11    that to work. And then I -- I called my attorney, Gina  
12    Austin.

13          **Q     And what discussion did you have with -- when**  
14    **did you call her in relation to your phone call with**  
15    **Mr. Cotton?**

16          A     I think it was within a few days. This is in  
17    the middle of tax season. So it's -- I have  
18    appointments every hour. So I'm working 18 hours a day.  
19    So I think I waited a couple days. Or maybe -- I can't  
20    recall exactly. But it was within a few days, I called  
21    Gina Austin.

22          **Q     And what did you discuss with Ms. Austin in**  
23    **that phone call?**

24          A     I said that -- on the project we're working on,  
25    I said Mr. Cotton is now demanding \$10,000 a month, and  
26    I am not sure we can even do that. And I said it feels  
27    like Mr. Cotton is extorting me at this point because we  
28    just got this zoning approved.

1           **Q     And did she respond to that?**

2           A     She said well, you may have to renegotiate.  
3     You may get him back to the table. And I said -- and I  
4     was just very upset at that point.

5                 And she said -- I told her well, why don't we  
6     just put together a contract and maybe get Mr. Cotton to  
7     sit down with us and go through the contract.

8           **Q     Okay. Did you then proceed to try to**  
9     **renegotiate the agreement you had?**

10          A     I wanted to start off with the one we had  
11     except split it up, as Mr. Cotton requested. He wanted  
12     400,000 in relocation costs and then \$400,000 for the  
13     property instead of the \$800,000 that we had written up  
14     with the contract. And I said that's fine. Just draw  
15     that up just so it adds up to \$800 still. So it was  
16     still the same.

17                 And so Ms. Austin did draw that up.

18                 MR. WEINSTEIN: Okay. Your Honor, I'd like to  
19     offer Exhibit 59.

20                 THE COURT: Any objection?

21                 MR. AUSTIN: No, your Honor.

22                 THE COURT: Exhibit 59 will be admitted.

23                 (Premarked Joint Exhibit 59, Email to Darryl  
24     Cotton from Larry Geraci re Federal Blvd  
25     Property, dated 2/27/17, was admitted into  
26     evidence.)

27     BY MR. WEINSTEIN:

28           **Q     Mr. Geraci, would you take a look at**

1 Exhibit 59, please. You might want to look at it in  
2 your book because it has an attachment.

3 A Yes, I recognize it.

4 Q Okay. Have you seen Exhibit 59 before?

5 A Yes, I have.

6 Q What is it?

7 A It's an email I sent Darryl Cotton.

8 Q And it says it's a draft purchase of the  
9 property for 400K. The additional contract for the 400K  
10 should be in today and I will forward it to you as well.

11 You wrote that?

12 A Yes, I did.

13 Q Okay. And draft purchase, was that attached to  
14 the email?

15 A Yes. The 400 -- yes. The first 400 was.

16 Q Would you go to the attachment.

17 And is this the agreement that you had asked  
18 Ms. Austin to draft to try and start renegotiating the  
19 deal?

20 A Yes, it is.

21 Q And had you instructed Ms. Austin to draft an  
22 agreement like this?

23 A Yes, I did.

24 Q And you provided it to Mr. Cotton. Is that  
25 correct?

26 A That is correct.

27 Q Was there any -- was there a second part to  
28 this agreement you had asked Ms. Austin to draft?

1           A       That was \$400,000.

2                   MR. WEINSTEIN: Offer Exhibit 62, please.

3                   THE COURT: Any objection?

4                   Any objection, Counsel?

5                   MR. AUSTIN: No, your Honor.

6                   THE COURT: All right. Exhibit 62 will be  
7 admitted.

8                   (Premarked Joint Exhibit 62, Email to Darryl  
9 Cotton from Larry Geraci re Statement  
10 attaching draft Side Agreement, dated 3/2/17,  
11 was admitted into evidence.)

12 BY MR. WEINSTEIN:

13           Q       Would you take a look at Exhibit 62 and let me  
14 know if you have seen that email before.

15           A       Yes, I have.

16           Q       And what is it? What -- did you send that  
17 email?

18           A       Yes, I did.

19           Q       To whom?

20           A       Darryl Cotton.

21           Q       On what date?

22           A       March 2nd.

23           Q       What did you send to him?

24           A       I'm understanding. What did you say?

25           Q       What did you send to him?

26           A       The second part of the agreement.

27           Q       Okay. Would you bring up the attachment,  
28 please. If you would look at the attachment,

1 Mr. Geraci, and let me know if this is the second part  
2 of the agreement that you had asked Ms. Austin to draft  
3 up at that time.

4 A Yes.

5 Q Now, did either of these two draft agreements  
6 that had been drawn up for -- by Gina Austin contain  
7 a 10 percent equity at this ownership or stake for  
8 Mr. Cotton?

9 A No, they didn't.

10 Q Did any of these agreements contain a provision  
11 for \$10,000 a month guaranteed minimum cash  
12 distributions?

13 A No, they didn't.

14 Q Why not?

15 A That was not what we agreed to -- as of the  
16 11-two agreement, that's not what we agreed to.

17 Q Okay. Were you willing to agree to it at the  
18 time that these were drafted?

19 A I was willing to agree with this contract.

20 Q My question was were you willing to agree  
21 with 10,000-dollar equity ownership stake --

22 A No.

23 Q -- at the time this was drafted?

24 Were you willing to agree to a 10  
25 percent -- 10,000-dollar-a-month guaranteed distribution  
26 at the time these agreements were drafted?

27 A Absolutely not.

28 Q Okay. Now, you sent these emails to Mr. Cotton

1 with the draft agreements. Did you get a response from  
2 him?

3 A Yes, I did.

4 MR. WEINSTEIN: Your Honor, I'd offer 63.

5 THE COURT: Any objection?

6 MR. AUSTIN: No objection.

7 THE COURT: Exhibit 63 will be admitted.

8 (Premarked Joint Exhibit 63, Email to Larry  
9 Geraci from Darryl Cotton re Statement,  
10 dated 3/03/17, was admitted into evidence.)

11 BY MR. WEINSTEIN:

12 Q Mr. Geraci, have you seen Exhibit 63 before?

13 A Yes, I have.

14 Q And what is Exhibit 63?

15 A This is an email sent to me from Darryl Cotton.

16 Q And he's responding -- if I understand  
17 correctly, he's responding to the issues with a side  
18 agreement and the other agreement that had been sent to  
19 you -- to him by you. Correct?

20 A That is correct.

21 Q Okay. And he attached to this email what he --  
22 what he refers to as my Inda-Gro GERL service agreement.

23 Do you see that?

24 A Yes, I do see it.

25 Q Would you look at the attachment, please.

26 Do you recognize the document attached to this  
27 email on March 3rd, 2017?

28 A Yes.

1           Q     Had you seen this document before you received  
2     it on March 3rd?

3           A     Yes, I did.

4           Q     When had you received it before?

5           A     That was presented to me after the  
6     September 20th meeting.

7           Q     Okay. So this is what you testified earlier  
8     you saw received by the September 26th email. Correct?

9           A     Yes.

10          Q     And were you willing to -- to enter into an  
11     agreement that was -- contained the terms -- terms and  
12     conditions that are in what he had previously proposed  
13     on September 24th, 2016?

14          A     No.

15          Q     Did you ever sign this agreement after he sent  
16     it to you the second time?

17          A     No, I didn't.

18          Q     Did you direct Gina Austin to prepare a draft  
19     agreement that contains all the terms and conditions in  
20     this proposed agreement back in September 24, 2016?

21          A     No, I didn't.

22          Q     So how did you respond to Mr. Cotton's email?  
23     Did you have further discussions with him?

24          A     No. At this point, Mr. Cotton had cut off the  
25     communications.

26          Q     Okay. Well, let's -- let me have you look  
27     at --

28                   MR. WEINSTEIN: I'd offer, your Honor,



1 Exhibit 64.

2 THE COURT: Any objection?

3 MR. AUSTIN: No, your Honor.

4 THE COURT: Exhibit 64 will be admitted.

5 (Premarked Joint Exhibit 64, Email to Darryl  
6 Cotton from Larry Geraci re Contract  
7 Review, dated 3/7/17, was admitted into  
8 evidence.)

9 BY MR. WEINSTEIN:

10 Q Now, does this refresh your recollection that  
11 you had further communications with him after you  
12 responded to those draft agreements?

13 A Yes. I meant verbally. But email, yes.

14 Q Okay. And have you seen Exhibit 64 before?

15 A Yes, I have.

16 Q Okay. And what -- did you send it to  
17 Mr. Cotton?

18 A Yes, I did.

19 Q On March 7th, 2017?

20 A Yes.

21 Q And this email says, "I have not reviewed this  
22 yet but wanted you to look at it and give me your  
23 thoughts. Talking to Matt, the 10K a month might be  
24 difficult to hit until the six month. Can we do 5K, and  
25 on the seventh month start 10K?"

26 Do you see that?

27 A Yes, I do.

28 Q Why did you send Mr. Cotton this email?

1           A       I wanted to preserve my investment. So some of  
2       the operators were telling me I might have to get some  
3       investors come in and cover me for about two years. So  
4       I did not want to lose the deal. I had spent hundreds  
5       of thousands trying to get this thing through. And I  
6       thought I would at least try to negotiate and get  
7       something through at this point. But -- and taking on  
8       just a couple of investors, then.

9           Q       So did Mr. Cotton respond to this proposal by  
10      you to renegotiate the agreement?

11      A       He did respond to me.

12      Q       Okay. And did he accept that proposal?

13      A       No, he didn't.

14      Q       Okay.

15               MR. WEINSTEIN: Your Honor, I'd offer  
16      Exhibit 69.

17               THE COURT: Any objection?

18               MR. AUSTIN: No, your Honor.

19               THE COURT: Exhibit 69 will be admitted.  
20               (Premarked Joint Exhibit 69, Email to Larry  
21               Geraci from Darryl Cotton Re Contract  
22               Review, dated 3/17/17, was admitted into  
23               evidence.)

24               THE WITNESS: Can I get that book over there?

25               MR. WEINSTEIN: I think he has to go to the  
26      next volume.

27               THE COURT: Counsel can approach. You can  
28      help.

1 MR. WEINSTEIN: Thank you.

2 BY MR. WEINSTEIN:

3 Q Mr. Geraci, would you turn to Exhibit 69. It's  
4 a series of email threads. I'd like you to read all the  
5 emails to yourself carefully. They're in reverse  
6 chronological order.

7 Let me know when you have done that. It's a  
8 long email thread, I realize.

9 A I've read it.

10 Q Okay. I'd like you to look in reverse  
11 chronological order. Go to the last email. It starts  
12 at the bottom of the second-to-last page.

13 Okay. So the very bottom of the second to the  
14 last page, there's one line that refers to an email you  
15 wrote on March 7th at 12:05 p.m.

16 Do you see that?

17 A Yes, I do.

18 Q It continues on to the next page.

19 So this was the email that we just looked at  
20 that you had sent on March 7th that was marked as  
21 Exhibit 64. Correct?

22 A Correct.

23 Q All right. I just want to get that for  
24 orientation. So let's go to the next email up in the  
25 thread.

26 So do you recognize this email from Mr. Cotton?

27 A Yes, I do.

28 Q Okay. And did you receive it on or about

1 March 16th at 8:23 p.m.?

2 A Yes.

3 Q All right. So was this Mr. Cotton's response  
4 to your email of March 7th, as far as you recall?

5 A Yes, it was.

6 Q I'd like to focus on the second paragraph where  
7 he recaps his understanding of the agreement.

8 Do you see that?

9 A Yes, I do.

10 Q Okay. The first line -- do one line at a time.

11 Okay. Did you have discussions -- he says  
12 "Throughout October, we had discussions regarding the  
13 sale of my property."

14 Is that true, or false?

15 A That is true.

16 Q He next says "We met on 11/2 and agreed upon an  
17 800,000-dollar purchase price, a 50,000-dollar  
18 nonrefundable deposit, a 10,000 equity stake with a  
19 monthly guaranteed minimum \$10,000."

20 Do you see that?

21 A Yes, I do.

22 Q Is any of that true?

23 A The purchase price is the only thing that's  
24 correct.

25 Q Okay. Now, it continues on and says -- and it  
26 refers to definitive agreements that contained a few  
27 conditions. And he writes "Investigate the property if  
28 the CUP is issued until construction starts."

1                   Is that true? Had you discussed that?

2           A       I'm going to need you to back that up a little  
3 bit.

4           Q       Sure. I cut off part of the sentence. So this  
5 is the rest of the sentence. He said we had discussions  
6 regarding definitive agreements that contained a few  
7 other conditions, and he gives an example.

8                   Is that true?

9           A       That is not true.

10          Q       Okay. The next line says "We executed a good  
11 faith agreement that day stating the sale of the  
12 property was for 800,000, and as a sign of good faith,  
13 you were providing a 10,000-dollar deposit towards the  
14 required 50,000-dollar nonrefundable deposit."

15                   Is any portion of that statement true?

16          A       The 800,000-dollar price tag is the only number  
17 I see is correct.

18          Q       Had you agreed to a 50,000-dollar nonrefundable  
19 deposit --

20          A       No, I did not.

21          Q       -- on November 2nd?

22          A       No, I did not.

23          Q       It goes on to say that same day you scanned and  
24 emailed the agreement. Is that true?

25          A       Yes.

26          Q       And Mr. Cotton says "I replied and noted that  
27 the agreement did not contain the 10 percent equity  
28 stake in the dispensary."

1                   Did you receive an email from Mr. Cotton on  
2                   November 2nd that said that in the text of the email?

3           A       Yes.

4           Q       Okay. That email, which we've seen before,  
5                   asks -- says "Mr. Cotton, I asked you to please respond  
6                   and confirm via email that a condition of the sale was  
7                   my 10 percent equity stake."

8                   Did he ask you to do that in that email?

9           A       Yes, he did.

10          Q       And this is an email we talked about in which  
11                   you then subsequently had a conversation with him on  
12                   November 3rd?

13          A       Correct.

14          Q       All right. In the last sentence, he says "You  
15                   did not respond and confirm the 10 percent as I  
16                   requested."

17                   Was that true?

18          A       That is true.

19          Q       Now, did you make -- or did you respond -- and  
20                   he goes on to talk about some of the emails you see.

21                   Did you respond to Mr. Cotton's email on  
22                   March 16th, 2007, if you recall?

23          A       I don't recall at this point.

24                   MR. WEINSTEIN: Okay. I'd like to offer 70 --  
25                   strike that. Could you pull up the top email, please?

26                   THE COURT: Seven-zero?

27                   MR. WEINSTEIN: I withdraw that, your Honor. I  
28                   need to make sure -- I can't see the top of the email

1 until I have it blown up. So I need to have a quick  
2 look.

3 BY MR. WEINSTEIN:

4 Q Do you remember -- the very first email at the  
5 top of the first page of Exhibit 69, do you recall  
6 receiving that?

7 A Yes.

8 Q Okay. And in that, he says "You told me  
9 repeatedly that you could not submit a CUP application  
10 until certain zoning issues had been resolved."

11 Is that true?

12 A That is not true.

13 Q What discussions -- well, strike that.

14 Did you tell Mr. Cotton you were submitting a  
15 CUP application back in October of 2016?

16 A Yes, I did.

17 MR. WEINSTEIN: One minute, your Honor. Would  
18 you go back to Exhibit 5, please.

19 BY MR. WEINSTEIN:

20 Q Mr. Geraci, I'm going to have you go back to  
21 Exhibit 5 and go to a text on November 14th, 2016. Find  
22 the page that it's located on and tell me what page  
23 number it is at the bottom.

24 So look at page 19 of Exhibit 5.

25 A Yes, I have it.

26 Q Okay. Now, on November -- you said you had  
27 discussions with Mr. Cotton that you were filing the CUP  
28 application. Is that correct?

1           A     That is correct.

2           Q     He acknowledged you in those conversations that  
3 he knew you were filing that application?

4           A     Yes, he did.

5           Q     Okay. On November 14th, do you see the text  
6 at -- it says 1626, which I assume is 4:26 p.m.

7                     Do you see that? Go down further.

8                     It says "Did they accept the CUP application?"

9                     Do you see that?

10          A     Yes, I do.

11          Q     Okay. And is that a text that you received  
12 from Mr. Cotton on November 16th, 2016?

13          A     Yes, it is.

14          Q     Okay. And was that consistent with your  
15 understanding that he knew a CUP application had been  
16 previously admitted to the City?

17          A     Yes, it is.

18          Q     Now, was it your understanding at the time that  
19 the CUP application had been submitted but it was stuck  
20 in the completeness review phase until the zoning issue  
21 was resolved?

22          A     That was my understanding.

23          Q     Okay. So would it have been -- the application  
24 had been submitted, but it wasn't going anywhere at that  
25 time?

26          A     Correct.

27          Q     Okay. And at some point in time, did the CUP  
28 application again start to move forward?



1           A     Yes, it did.

2           Q     And when did that occur?

3           A     Once the zoning issue was corrected.

4           Q     All right.

5           MR. WEINSTEIN:   Okay.   Would you -- your Honor,  
6   I'd like to offer Exhibit 72.

7           THE COURT:   Any objection?

8           MR. AUSTIN:   No, your Honor.

9           THE COURT:   Exhibit 72 will be admitted.

10          (Premarked Joint Exhibit 72, Email to Larry  
11          Geraci from Darryl Cotton re Contract  
12          Review, dated 3/19/17, was admitted into  
13          evidence.)

14       BY MR. WEINSTEIN:

15          Q     Mr. Cotton, would you -- Mr. Geraci, would you  
16          review Exhibit 72 and let me know whether you've seen  
17          those emails in that email thread before.

18          A     Yes, I've seen this.

19          Q     Okay.   And was this an email that you sent to  
20          Mr. Geraci on March 19th, 2017 at 3:11 p.m.?

21          A     This is an email I sent Mr. Cotton, yes.

22          Q     I'm sorry.   Mr. Cotton.   I'll probably get this  
23          right a week from Thursday.

24                It's an email you sent to Mr. Cotton on or  
25          about that date and time.

26          A     Yes, it is.

27          Q     Okay.   And in it you say, "Darryl, at this  
28          point, you keep changing your mind every time we talk."

1 Do you see that?

2 A Yes.

3 Q What did you mean by that?

4 A Mr. Cotton, as he was making demands, was  
5 adding additional items to each email he would send  
6 over.

7 Q And were you willing to continue to consider  
8 those escalating demands?

9 A At that point, no.

10 Q Would you go back to Exhibit 69, please. Take  
11 69 back up. I apologize. Go to the next page.  
12 All right.

13 So, Mr. Geraci, I want to have you look at the  
14 email that starts on the page 4 at the bottom. It's  
15 part of this email we've looked at before.

16 Go to the previous page, please.

17 And it's that entire email. So we did look  
18 at -- we looked at part of the email but not the whole  
19 thing. So this was the March 16th email that he sent  
20 you that we previously discussed. Correct?

21 A Yes, it is.

22 Q I've gone -- I went through that in the  
23 subcontracted paragraph. Now, I want to look to the  
24 next page, which is a continuation of that email. And  
25 if you could highlight where it says "Please have" in  
26 the second paragraph.

27 Do you recall receiving and seeing this portion  
28 of the email when you got it on March 16th, 2017?

1 A Yes, I do.

2 Q Okay. And had you agreed on a 50,000-dollar  
3 nonrefundable deposit?

4 A No, I didn't.

5 Q But he still wanted that to be in the  
6 agreement. Correct?

7 A Yes, he did.

8 Q He mentions a 10 percent equity stake with a  
9 minimum guaranteed monthly distribution. He was still  
10 continuing to insist on that demand. Correct?

11 A Correct.

12 Q And were you willing to do that?

13 A No.

14 Q You had indicated you were -- you had made an  
15 offer to do some partial distributions as part of the  
16 negotiations, though. Correct?

17 A Correct.

18 Q And he didn't accept that. Correct?

19 A He did not.

20 Q And then the next bullet point, would you  
21 highlight the whole bullet point.

22 In this, he insists on a, quote, clause that  
23 my 10 percent equity stake carries with it consent  
24 rights for any material decisions. Those items that are  
25 to require my consent can be standard minority consent  
26 rights, but basically that my consent is required for  
27 large decisions like the issuance of employee bonus and  
28 for agreements with suppliers and vendors that are not

1 done on an arm-length's basis. A friend of mine said  
2 that these are standard minority shareholder protection  
3 rights.

4 Do you see that?

5 A I do.

6 Q Had you ever received that demand from  
7 Mr. Cotton before this email?

8 A Never.

9 Q Had it ever been discussed?

10 A Never been discussed.

11 Q Were you willing to do that?

12 A No.

13 Q The next provision says -- bullet point says "A  
14 provision requiring that upon the creation of the  
15 formation and governance documents -- upon the creation  
16 of the formation and governance documents of this CUP  
17 entity, that there's a requirement that the accounting  
18 is to be done by a third-party accounting firm that will  
19 also be responsible for calculating my 10 percent  
20 monthly equity distributions."

21 Do you see that?

22 A Yes, I do.

23 Q Had that been something that had been demanded  
24 before by Mr. Cotton?

25 A No.

26 Q Were you willing to do that at this time?

27 A No.

28 Q Okay. The next bullet point item is the

1 incorporation of all the items -- all the terms in the  
2 MOU that I created that Gina references in the draft  
3 purchase agreement.

4 Do you see that?

5 A Yes, I do.

6 Q Were you willing to do that at this time?

7 A No.

8 Q Okay. And then he asks for a provision to be  
9 deleted.

10 When you subsequently emailed him on March 19th  
11 and talked about him changing his mind and you testified  
12 that he was escalating his demands, were these the  
13 things that you were referring to?

14 A Yes, they are.

15 Q Were there any other demands he made that you  
16 had not discussed before that came up at this point in  
17 time, if any?

18 A I think this covers it.

19 Q All right. So I want to take you back to  
20 Exhibit 72. Middle email.

21 And after you sent Mr. Cotton this email, what  
22 action did you take?

23 A At this point, I felt that Mr. Cotton didn't  
24 want to negotiate anymore. So I had to look at  
25 protecting the -- my investment that I had. And I  
26 sought out legal advice at this point.

27 Q Okay. Did you subsequently file a lawsuit?

28 A Yes, I did.

1           Q     Okay. Now, after you filed the lawsuit, did  
2     you consider -- continue to pursue the CUP application  
3     through your team?

4           A     Yes, we did.

5           Q     Why?

6           A     I was going to satisfy our agreement.

7           Q     And what instructions, if any, did you give to  
8     the team at that time in terms of pursuing the CUP  
9     application?

10          A     I told them just continue to move forward.

11          Q     Okay. Now, was it important to you that the  
12     CUP application be approved?

13          A     Yes.

14          Q     Why?

15          A     Number one, I -- I have to complete the  
16     contract. And, number two, I had learned that a  
17     competing -- a competing CUP was coming up behind us.

18          Q     Do you recall when you learned that  
19     approximately?

20          A     It was -- I'm thinking it was somewhere at the  
21     end of March, somewhere around there. I can't tell you  
22     the exact date.

23          Q     Do you have a clear recollection of that? Do  
24     you have a clear recollection of when you were told  
25     about the competing CUP application?

26          A     Oh, yes.

27          Q     And who were you told by?

28          A     I believe it was Abhay.

1 Q And that's Mr. Schweitzer?

2 A Yes.

3 Q And when he told you that there was a competing  
4 CUP application on a property, where did you understand  
5 that property was?

6 A He told me -- I said where was it? And he said  
7 it's within 1,000 feet of Mr. Cotton's property.

8 Q And did you understand that that had  
9 significance for the CUP application that you were  
10 pursuing?

11 A Yes.

12 Q Why?

13 A Because you can't have two dispensaries within  
14 a thousand feet of each other.

15 Q At this point, you're in a race?

16 A In a race.

17 Q Okay. Now, after March of 2017, did you become  
18 aware of any conduct by Mr. Geraci that interfered with  
19 the ability to move forward with this CUP application?

20 A The conduct of Mr. Cotton?

21 Q I'm sorry. Mr. Cotton.

22 A Yes.

23 Q All right. And what did you -- what conduct  
24 did you learn of?

25 A Well, he was calling the City and trying to  
26 insert his name on the application. He told the gal at  
27 the City that he had no idea that somebody submitted an  
28 application, a CUP application.

1 Q And this person at the City, who was that?

2 A Tirandazi.

3 Q Is that Mr. Tirandazi?

4 A Tirandazi, yes.

5 Q Anything else that he did that you're aware of  
6 that interfered with your team's ability to obtain a  
7 CUP?

8 A That's just the beginning.

9 Q What do you remember happening next?

10 A We needed to get a survey -- a soil sample done  
11 on the property. While before that, we had to post.  
12 Post a permit. And it disappeared off the fence. So --

13 Q So this was a requirement of the CUP process  
14 that once your application is deemed complete, you have  
15 to go forward and post notice of it on the property?

16 A Right.

17 Q Okay. Did -- who handled that on the team?

18 A Abhay Schweitzer.

19 Q He'll be able to tell us that from firsthand  
20 knowledge?

21 A Yes.

22 Q All right. What else happened that you recall  
23 that interfered with the ability to process a CUP  
24 application?

25 A We needed to get the soils sample -- soil  
26 samples out from the property, and Mr. Cotton prevented  
27 us from getting onto the property.

28 Q And do you recall whether you were eventually



1     able to get access?

2           A     Eventually, we did.

3           Q     What did you have to do in order to get access  
4     to the property?

5           A     We had to take court action.

6           Q     And on how many occasions?

7           A     Two.

8           Q     And did that result, to your knowledge, in any  
9     kind of delay in the process of the CUP application?

10          A     Well, we had three --

11               MR. AUSTIN:  Objection.  Speculation.

12               THE COURT:  Sustained.

13     BY MR. WEINSTEIN:

14          Q     Would that be a better question for  
15     Mr. Schweitzer?

16          A     Yes, it would.

17          Q     Now, did the competing CUP application receive  
18     approval before your application?

19          A     Yes.  Yes, it did.

20          Q     And did you take any action to try and  
21     challenge the approval of that competing CUP  
22     application?

23          A     We --

24          Q     That's a "yes" or "no."

25          A     Yes.

26          Q     What did -- what did you do?

27          A     I hired an attorney.

28          Q     And did you have somebody appear to -- did

1     somebody within your team handle the actual appeal at  
2     the planning commission?

3           A     Yes.

4           Q     And who was that?

5           A     Abhay Schweitzer and Jim Bartell.

6           Q     And they would be able to tell us about what  
7     deficiencies they claimed in the competing CUP  
8     application?

9           A     Yes, they would.

10          Q     All right. We'll leave that for them. Was  
11     that appeal successful?

12          A     No, it wasn't.

13          Q     And that appeal of the competing CUP  
14     application was unsuccessful, did you do anything else  
15     to try to pursue the CUP application?

16          A     Well, I hired another attorney to get some  
17     advice on what we could do with -- with -- if they  
18     didn't accept the appeal, which they didn't. So I just  
19     got a third-party attorney to take a look at it and see  
20     if there was anything else we could do.

21          Q     And did you then pursue any other action?

22          A     No, not at that point.

23          Q     And was that based on the advice of that  
24     counsel?

25          A     Yes, counsel.

26          Q     Who was that attorney?

27          A     I can't pronounce her name.

28          Q     Okay. Would you look at Exhibit 134. It might

1 refresh your recollection. It might be in the other  
2 volume.

3 A 130 --

4 THE COURT: If it's in another volume --

5 MR. WEINSTEIN: 137.

6 THE WITNESS: Yeah. It's in the other volume.

7 MR. WEINSTEIN: May I approach?

8 THE COURT: You bet.

9 MR. WEINSTEIN: Thank you.

10 BY MR. WEINSTEIN:

11 Q Are you taking a look at 137?

12 A Yes, I am.

13 THE COURT: I'm sorry?

14 MR. WEINSTEIN: 137. I'm just going to use it  
15 to refresh his recollection.

16 THE COURT: I understand. Was there an  
17 objection?

18 MR. AUSTIN: Your Honor, in my exhibit folder,  
19 it's not in there.

20 THE COURT: All right. Why don't you talk  
21 among yourselves. Just take a moment, please.

22 MR. AUSTIN: I have it, your Honor.

23 THE COURT: Got it? All right. Thank you very  
24 much. Let's continue with 137.

25 BY MR. WEINSTEIN:

26 Q So take a look at Exhibit 137. Does that  
27 refresh your recollection as to the name of the  
28 attorney?

1           A       Yes, it does.

2           Q       What was this attorney's name?

3           A       McElfresh.

4           Q       So now I'm going to switch subjects completely.  
5 I'm going to talk about the money that was expended in  
6 connection with the CUP application. Continue to look  
7 at Exhibit 137.

8                   MR. WEINSTEIN: Your Honor, we're offering 137  
9 pursuant to the advanced trial review orders requirement  
10 of Evidence Code 1561. I think it is summary of  
11 damages.

12                  THE COURT: All right.

13                  MR. AUSTIN: No objection.

14                  THE COURT: All right. Exhibit 137 will be  
15 admitted.

16                   (Premarked Joint Exhibit 137, Federal Blvd. -  
17 Summary of All Expense Payments (Excel  
18 Spreadsheet), was admitted into evidence.)

19 BY MR. WEINSTEIN:

20           Q       All right. Mr. Geraci, did you have a summary  
21 prepared of the amounts of money you expended in  
22 connection with seeking this CUP application after you  
23 entered into the November 2nd written agreement with  
24 Mr. Cotton?

25           A       Yes, I did.

26           Q       And did you review and approve that summary?

27           A       Yes, I did.

28           Q       Okay. And did you -- were there supporting

1 documentation -- documents that you reviewed in  
2 connection with this summary?

3 A Yes, I did.

4 Q Okay.

5 MR. WEINSTEIN: Your Honor, may I have a quick  
6 sidebar?

7 THE COURT: Ladies and gentlemen, if you want  
8 to stretch your legs for just a moment, I need to talk  
9 to counsel for just a quick moment. We'll be right  
10 back.

11 (Sidebar held and not reported.)

12 THE COURT: All right. We're going to be going  
13 a little bit longer. Then we'll be taking our afternoon  
14 break in just a few minutes.

15 All right. So Exhibit 137 has been admitted.

16 Counsel, why don't you continue.

17 MR. WEINSTEIN: Put it back up.

18 BY MR. WEINSTEIN:

19 Q Is this a summary that you had prepared and  
20 reviewed with respect to the expenses you paid from the  
21 CUP application?

22 A Yes, they are.

23 Q Did you review all the supporting documentation  
24 for that summary?

25 A Yes, I did.

26 Q And it lists amounts paid for both -- are these  
27 different persons with whom you contracted in connection  
28 with obtaining the CUP application?

1 A Yes.

2 Q The first line says "Payments for Federal  
3 Avenue."

4 Who -- what payments are those to?

5 A That's to Austin Legal Group.

6 Q All right. And then the next line,  
7 Bartell & Associates.

8 Is that to Mr. Bartell's company?

9 A Yes, it is.

10 Q Payments listed to the City treasurer. What  
11 are those for?

12 A Those would be for the CUP application fees.

13 Q Now, there's an entry for Lundstrom  
14 Engineering. Do you remember what they did?

15 A I believe that was the topographical  
16 engineering report.

17 Q The next entry is for McElfresh Law. What was  
18 that vendor?

19 A That was the attorney I hired for the appeal.

20 Q This is the appeal of the competing CUP  
21 application?

22 A Yes, it is.

23 Q The next entry is for Mituza Traffic  
24 Consulting.

25 Do you see that?

26 A Yes, I do.

27 Q What was that company hired to do?

28 A They were to analyze traffic along Federal

1 Boulevard.

2 Q By the way, did -- strike that.

3 Sam Wade Landscape Architect, what vendor was  
4 that?

5 A The City requires you to get runoff, how water  
6 runs off on your property and how much landscape they  
7 want on your property as well. So we had to hire a  
8 landscape architect.

9 Q SCST, what is that vendor?

10 A That is Southern California Soils Testing.

11 Q And what were they hired to do?

12 A They were hired to get core samples of -- of  
13 dirt from the property.

14 Q Okay. Did they prepare any kind of a report,  
15 if you know?

16 A I believe they did.

17 Q I'll ask Mr. Schweitzer about that.

18 Snipes-Dye Associates, what was that group  
19 hired to do?

20 A Okay. That was the grading of the property.

21 Q The what of the property?

22 A That was the people who were doing the grading  
23 of the property. So they had to make plans to -- on how  
24 the property was going to be grading. It was conceptual  
25 grading plans.

26 Q I see.

27 And then TECHNE, that's Mr. Schweitzer's  
28 business?

1           A       Yes.

2           Q       Those were the fees paid to his business for  
3 all the work he did on the CUP application?

4           A       Yes.

5           Q       And then Title Pro, a small amount, what was  
6 that for?

7           A       That was to run title on the property.

8           Q       Okay. And that totaled 213,503.28.

9                   Is that the total that you're claiming for the  
10 payments you made in connection with the CUP application  
11 after you signed the agreement -- or -- in reliance on  
12 the agreement you signed with Mr. Cotton?

13          A       Yes.

14          Q       And you still have bills owing to Mr. Bartell  
15 of \$46,606?

16          A       That is correct.

17          Q       The competing CUP application on the nearby  
18 property, did you ever learn who the owner of that  
19 property was?

20          A       Yes, I did.

21          Q       What was that -- what was that person's name?

22          A       Aaron Magagna.

23          Q       And when did you learn that he had a competing  
24 CUP application -- or when did you learn his name that  
25 he was a property owner?

26          A       Through the team.

27          Q       Through what? I'm sorry?

28          A       Through the team.



1           Q     Okay. Have you ever met Mr. Magagna?

2           A     No.

3           Q     Have you ever spoken to him?

4           A     No.

5           Q     Do you know whether you've ever seen him?

6           A     I have never seen him.

7                 MR. WEINSTEIN: I think that's it, your Honor.

8     I appreciate the time.

9                 Thank you.

10                THE COURT: Cross-examination.

11                MR. AUSTIN: Yes, your Honor.

12                (Cross-examination of Larry Geraci)

13     BY MR. AUSTIN:

14           Q     Good afternoon, Mr. Geraci.

15           A     Good afternoon.

16           Q     Earlier, you testified that Rebecca Berry works

17     with the Tax and Financial Group that you run?

18           A     Yes.

19           Q     Yes. You called her your gatekeeper?

20           A     Yes.

21           Q     So she's like the first point of contact when

22     anyone enters your office?

23           A     For the most part, yes.

24           Q     For the most part.

25                 Is she a licensed real estate broker?

26           A     Yes, she is.

27           Q     Have you ever utilized her in that capacity?

28           A     No, I haven't.

1 Q You've never engaged her services as a broker?

2 A No, I haven't.

3 Q Okay. And you were a licensed real estate  
4 agent from 1993 to 2017?

5 A That is correct.

6 Q So is that license lapsed right before this  
7 lawsuit -- or you let it go?

8 A I just let it go. I haven't been practicing  
9 for years.

10 Q Okay. So you have had experience with tenants  
11 that have had marijuana dispensaries on the properties  
12 before?

13 A Yes. Tenants on the -- my property, yes.

14 Q Okay. So there's two -- two cases where you  
15 were -- you were named in a lawsuit against (sic) the  
16 City?

17 A That is correct.

18 Q Okay. Are you aware of how much money the --  
19 your tenants were pulling in with their dispensaries?

20 A I had no idea.

21 Q But you got the sense that this could be a  
22 profitable industry if done legally?

23 A I did not get into their business. We -- they  
24 paid us rent.

25 Q Yes. But that -- is this how you learned of  
26 the industry?

27 A No.

28 Q Oh, okay.

1                   Anyway, you assembled a team starting in 2015?

2           A       That is correct.

3           Q       All right. So Jim Bartell, I see Exhibit 1, we  
4       had a contract with Mr. Bartell. Right?

5           A       That is correct.

6           Q       And about how long was that contract, the  
7       length?

8           A       I don't recall how long it was supposed to be.  
9       I think it was just an ongoing monthly thing until --

10          Q       Oh, what I'm referring to is the length of the  
11       actual written contract. You can refer to Exhibit 1 if  
12       that would help refresh your recollection.

13          A       Okay. It looks like a page and a half.

14          Q       And I see there's a lot of terms and specific  
15       items in there. Did you pay him cash in this  
16       transaction? It looks like on page 3 of Exhibit 1, you  
17       gave him a check for \$7,500. Is that correct?

18          A       Yes.

19          Q       Okay. So, typically, when you're dealing with  
20       professionals or you're doing anything with a sum of  
21       money that's more than nominal, you typically use  
22       contracts, do you not?

23          A       It depends on the situation.

24          Q       Okay. We just looked at Exhibit 137 -- I'm  
25       sorry. It's a different volume. You probably don't  
26       have to refer to it. But there were 11 vendors on  
27       there. Correct?

28          A       That is correct.

1           Q     Yes. So these were all professional groups,  
2 institutions, attorneys, other professionals. Correct?

3           A     That is correct.

4           Q     All right. Did -- did you enter into any oral  
5 contracts with any of those vendors for those services  
6 specified in Exhibit 137?

7           A     No oral contracts.

8           Q     No oral contracts?

9           A     No.

10          Q     Were all of your contracts very specific with  
11 all the fine terms?

12          A     It depends on who was writing the contract.  
13 So --

14          Q     Okay. So you met Mr. Cotton July 2016?

15          A     I didn't meet him. I talked to him on the  
16 phone.

17          Q     Oh. You spoke with him over the phone. Right.  
18 And you guys started immediately going through phone  
19 calls and text messages and developing some sort of  
20 professional relationship or prospective professional  
21 relationship?

22          A     It was more or less a friendship.

23          Q     Okay. Remind me what date it was that  
24 Mr. Cotton and you came to some sort of agreement that  
25 you would be willing to buy his property?  
26 Approximately?

27          A     When we discussed terms or --

28          Q     Or when you figured out that you wanted to make

1     **an offer.**

2           A     The first time I talked with him was 800-. We  
3     had a meeting I believe it was September 20th.

4           **Q     Around September 20th.**

5           A     That didn't change. And then we signed a  
6     contract November 2nd.

7           **Q     Right.**

8                     **What would you estimate the fair market value**  
9     **of Mr. Cotton's property to be?**

10           MR. WEINSTEIN: Objection. Lacks foundation.

11           MR. AUSTIN: At -- at the time --

12           THE COURT: One moment.

13           Do you want the Court to rule on the objection?

14           MR. AUSTIN: Yes, your Honor.

15           THE COURT: The objection is overruled.

16           THE WITNESS: Could you repeat the question?

17     BY MR. AUSTIN:

18           **Q     Approximately what do you think the fair market**  
19     **value of Mr. Cotton's property was?**

20           MR. WEINSTEIN: I'm going to object for just as  
21     to time.

22           THE COURT: That's --

23           MR. AUSTIN: In --

24           THE COURT: One moment. The objection is  
25     sustained. Please narrow the scope of the time.

26     BY MR. AUSTIN:

27           **Q     Yes. September 2016.**

28           A     Considering its current condition, it was

1     probably worth -- I'm just going to guess. My estimate,  
2     225- to \$250,000.

3           Q     Are you aware of -- well, you described  
4     Mr. Cotton's business as a grow operation. But are you  
5     aware of what his company's name was?

6           A     I believe it was Inda-Gro.

7           Q     Yes. And do you know what they actually did?

8           A     It looked like he was growing marijuana.

9           Q     It looks like he was growing several different  
10    things.

11                   But would it be fair to say that he had a  
12    lighting company that -- that focused in on growing  
13    medical cannabis and other plants?

14           A     I don't ever recall hearing a lighting company  
15    in our conversations. He did say -- he did say he had I  
16    think it was watering and the way he lights it. I'm not  
17    in the industry. So I couldn't tell you. He tried to  
18    explain it to me one time, and it went right over my  
19    head.

20           Q     So you say you came to an agreement for a sale  
21    price of \$800,000?

22           A     That is correct.

23           Q     Okay. And on September 24th, Mr. Cotton sent  
24    you a link to a Dropbox with documents in it. Correct?

25           A     I believe so.

26           Q     Did you look at those documents?

27           A     It was the one proposal.

28           Q     Was there also a memorandum of understanding

1       within that Dropbox?

2           A       No, there wasn't.

3           Q       Is it fair to say that maybe you just don't  
4       recall seeing it?

5           A       I don't recall seeing it.

6           Q       Okay. And if I can bring your attention to  
7       Exhibit 5, the text messages. If we go to page 11.  
8       September 26th. Five text messages down. If I may,  
9       I'll just read.

10                   From Darryl Cotton. "Good morning" --

11          A       Excuse me. I'm not there yet. Where are you  
12       again?

13          Q       Are you still -- page 11 on Exhibit 5.

14          A       Yes, I'm there.

15          Q       All right. So Darryl writes "Good morning.  
16       Were you able to see the share folder I sent over this  
17       a.m.? Feel free to comment and edit these docs as we  
18       work out the details. I'm no lawyer, but from my  
19       perspective, it's a good thought. Let me know your  
20       thoughts."

21                   To which you respond, "I will be reviewing  
22       today."

23                   Do you recall that?

24          A       Yes, I do.

25          Q       Did you in fact review the documents that he  
26       sent?

27          A       The proposal, yes, I did.

28          Q       Okay. Did you return any comments or edits

1 to --

2 A I don't believe so.

3 Q Oh. If I can direct your attention to that  
4 services contract, as it's entitled by Mr. Cotton.  
5 That's Exhibit 63. I apologize. It's actually  
6 Exhibit 10.

7 THE COURT: What exhibit number?

8 MR. AUSTIN: Exhibit 10.

9 THE COURT: Ten.

10 THE WITNESS: Okay. I'm there.

11 BY MR. AUSTIN:

12 Q Could you read -- could you read that first  
13 paragraph for me.

14 A "Pursuant to our conversation, I have developed  
15 this document to act as a contract between us that will  
16 serve to define our relationship, services, fees, for  
17 the development of 6176 Federal Boulevard, San Diego,  
18 92114, hereafter referred to as the property, as a new  
19 dispensary to be owned and managed by your company, GERL  
20 Investments."

21 Q All right. And you see where he continues to  
22 lay out six terms in six different paragraphs. Correct?

23 A I do see that.

24 Q It looks like he's trying to be pretty specific  
25 on how he wants this sale to go down under his  
26 understanding of where you guys were at in the  
27 negotiation phase.

28 Is that a fair representation?



1           MR. WEINSTEIN: I'm going to object that it  
2           calls for speculation as to what --

3           THE COURT: Sustained.

4           BY MR. AUSTIN:

5           Q       Would you agree that this is a relatively  
6           detailed attempt at a first draft of a contract?

7           A       I would say it's fairly detailed.

8           Q       So upon receiving this, you didn't feel it was  
9           necessary to make any comments, edits, or ask him to  
10          change anything?

11          A       We had a conversation about this.

12          Q       Okay. So every conversation that you had in  
13          regards to modifying this contract was all oral?

14          MR. WEINSTEIN: Objection. Ambiguous as  
15          phrased as to "this contract."

16          THE COURT: Overruled.

17          THE WITNESS: Could you repeat the question.

18          BY MR. AUSTIN:

19          Q       So any comments you had regarding modifications  
20          to this contract were oral conversations?

21          A       It wasn't a big conversation with him. I just  
22          saw pretty much the 10 percent and how he wanted to  
23          integrate Inda-Gro into the new dispensary. This just  
24          wasn't -- I wasn't going to entertain anything on this.

25          Q       Okay. Going back to Exhibit 5 -- actually, on  
26          the first page, halfway down --

27          A       What page number, please?

28          Q       Page 1.

1           A       Okay.

2           THE COURT: Counsel, it's nearly 3 o'clock. Is  
3 it a convenient time for a break?

4           MR. AUSTIN: Yes, your Honor.

5           THE COURT: All right. So we're going to take  
6 our afternoon break now. We're going to be in recess  
7 for approximately 15 minutes. Do not form or express an  
8 opinion or discuss the case until you deliberations.

9           We'll be in recess for 15 minutes.

10          All right. The jury has left the courtroom.  
11 We'll be in recess.

12          (Recess from 2:54 p.m. to 3:08 p.m.)

13          THE COURT: Let me talk to counsel for just a  
14 quick moment.

15          The pace was beginning to slow down just a  
16 little bit this afternoon. Remember, you have an  
17 audience, those folks. And it's hard for you to keep  
18 their attention if they're -- if they're struggling to  
19 stay awake.

20          So you might want to inject a little bit more  
21 pace into your presentation. I'm not being critical.  
22 It's just something to think about.

23          All right. Let's see. Mr. Geraci, may I ask  
24 that you take the witness stand. And as soon as the  
25 deputy has the jury assembled.

26          All right. Mr. Austin, please continue your  
27 cross-examination of Mr. Geraci.

28

1 BY MR. AUSTIN:

2 Q So just to backtrack just ever so slightly, you  
3 said in July is when you developed a friendship with  
4 Mr. Cotton?

5 A It wasn't in July. My first contact with  
6 Mr. Cotton.

7 Q Well, over the proceeding couple months that  
8 you were speaking with him, you were developing some  
9 sort of friendship is what you said.

10 A Yeah. Some sort of friendship, correct.

11 Q Okay. So what I was trying to draw your  
12 attention to earlier was texts and emails where it  
13 indicates that you're working together. You did use  
14 language multiple times with the words "we" and "we're  
15 going to make money together."

16 A Are you pointing to a page, please?

17 Q Yes. Page 1 on Exhibit 5, you say that -- so  
18 Mr. Cotton sends pictures of some basil growing. And  
19 then he kind of discusses what's going on. Was it you  
20 that responded with "If we can get this through, that  
21 should work great as an asset to the business"?

22 A Do you want me to define that?

23 Q No. Is that -- is that your response to the  
24 text message? Are you the one who sent that text "If we  
25 get this through, that should work as a great asset to  
26 the business"?

27 A If we could get this deal through, this could  
28 work as an asset to the business because Mr. Cotton

1 was -- do you want me to explain it or --

2 Q I don't -- I don't need an explanation.

3 A Okay.

4 Q Did you send that text message?

5 A Yes, I did.

6 Q Okay. Thank you.

7 And when on September 24th you were given a  
8 draft of what Mr. Cotton indicated he would like the  
9 contract to be, you did not send him any edits in  
10 writing or any suggestions, nothing in writing?

11 A No, I did not.

12 Q Okay. So he comes in on November 2nd. You  
13 give him \$10,000. And he gives you -- or -- and he  
14 signs this quote-unquote receipt.

15 Why -- why in this three-sentence document that  
16 you allege as the contract did you not have more  
17 specific terms?

18 MR. WEINSTEIN: Objection. Vague.

19 THE COURT: Overruled.

20 THE WITNESS: We had an understanding as we  
21 were talking through the contract.

22 BY MR. AUSTIN:

23 Q So, basically, at this point, you guys have a  
24 friendly relationship. So whatever oral understandings  
25 you have together, that's good enough to go forward with  
26 this contract, in your mind? Let -- do I need to  
27 rephrase that?

28 A Yeah.

1           Q     So at this time, because of the relationship  
2     you had with Darryl, you thought the three-sentence --

3           THE COURT: Counsel, no first names. All last  
4     names, please.

5           MR. AUSTIN: I apologize, your Honor.

6     BY MR. AUSTIN:

7           Q     Because of your relationship with Mr. Cotton,  
8     you felt this three-sentence contract was good enough?

9           A     Yes. I trusted Mr. Cotton. Absolutely.

10          Q     And you were a real estate agent at this time?

11          A     At that time, I was.

12          Q     Would you recommend that -- if you were still  
13     practicing real estate, would you recommend that any of  
14     your clients sign this very contract?

15          A     Absolutely.

16          Q     Are you familiar with CAR forms?

17          A     Yes, I am.

18          Q     Could you tell the jury what those are.

19          A     Those are forms you can use in real estate  
20     transactions if you choose to use them.

21          Q     Yes. While not mandatory, they are -- they are  
22     a good source, and a lot of people use them for  
23     real estate transactions, wouldn't you say?

24          A     You can, yes.

25          Q     Yes.

26                 Do you know approximately how long those  
27     contracts typically are, those forms?

28          A     Approximately six pages, I believe.

1           Q     Yes, somewhere in that range.

2           A     Mm-hmm.

3           Q     Fine print and a lot of terms, I recall.

4           MR. WEINSTEIN:  Objection.  Your Honor, that's  
5 not a question.

6           THE COURT:  I'm sorry?

7           MR. WEINSTEIN:  My objection is he's testifying  
8 about a CAR form and not asking the question.

9           THE COURT:  Your objection is overruled.

10          BY MR. AUSTIN:

11          Q     So despite trusting Mr. Cotton, some of this  
12 your attorney went over with you, but why wouldn't you  
13 include language within that contract on who would bear  
14 the expense of pursuing the CUP?

15          A     When Mr. Cotton and I got together, it was an  
16 understanding as we were drawing those -- that contract  
17 up and we were talking it out to girth, we drew the  
18 contract -- contract up.  And we understood who was  
19 paying for the CUP as we drew the contract up.

20          Q     Okay.  And you also had an understanding that  
21 the \$10,000 was nonrefundable?

22          A     That is correct.

23          Q     So that's why you didn't include that term in  
24 that document?

25          A     We -- we talked as we were across from each  
26 other, yes.

27          Q     Okay.  So furthermore, you orally discussed  
28 that the -- or did you discuss when the balance of the

1     **\$800,000 would be due?**

2           A     When the CUP was issued, the balance that was  
3     \$790,000.

4           Q     **So when it's issued or not necessarily when the**  
5     **business starts?**

6           A     But when the CUP is issued, we were going to  
7     close the deal.

8           Q     **Okay. Do you have a notary on staff at tax and**  
9     **financial industries -- or did -- at your business, do**  
10    **you have a notary on staff?**

11          A     Yes, I do.

12          Q     **Okay. So if that was the contract, why didn't**  
13    **you have a separate receipt for a 10,000-dollar deposit?**

14          A     That was the receipt.

15          Q     **That was --**

16          A     That was him -- me giving him \$10,000. That  
17    was part of the contract. And I'm not sure what else  
18    you're trying to ask me here.

19          Q     **Why did you pay him \$10,000 in cash and not by**  
20    **check?**

21          A     Because he required it. He asked me to do it.

22          Q     **And when he came in and he mentioned five --**  
23    **\$50,000, he -- he did so in a joking manner?**

24          A     Yes, he did.

25          Q     **So you had no actual expectation that he wanted**  
26    **or he actually expected, himself, a 50,000-dollar**  
27    **retainer on that day -- or not retainer, but deposit?**

28          A     He knew he wasn't getting \$50,000 that day.

1           Q     So after leaving your office that day, you  
2 almost immediately scanned and sent a copy of the  
3 contract, as you call it, to Mr. Cotton?

4           A     I didn't leave my office. I scanned it to him  
5 within six minutes.

6           Q     Okay.

7           A     And then sent it to him.

8           Q     Why didn't you give him a copy on the spot?

9           A     He asked me to email it to him.

10          Q     Oh, okay.

11                So the couple hours later when he opens his  
12 email, he sends you a rather lengthy response. It's a  
13 pretty big paragraph.

14          A     Could you tell me where that is, please.

15          Q     That would be Exhibit 41, page 1. So in this  
16 email, you write -- or Mr. Cotton writes, "Hi, Larry.  
17 Thank you for meeting today. Since we executed the  
18 purchase agreement in your office for the sale price of  
19 the property, I just noticed the 10 percent equity  
20 position of the dispensary was not language added into  
21 that document. I just want to make sure that we're not  
22 missing that language in the new final agreement as it  
23 is a factored element in my decision to seel my  
24 property. I'll be fine if you simply acknowledge that  
25 here in a reply. Regards."

26                Do you recall reading that?

27          A     The next day, yes.

28          Q     So what you testified to earlier was that you



1     responded to this email but only to the first five  
2     words --

3           A     That is correct.

4           Q     -- "Thank you for meeting today."

5           A     Yes.

6           Q     And your response was what?   What was your  
7     response?

8           A     No, no problem.

9           Q     No, no problem.   Earlier, you were a little bit  
10    unclear.   You said you made a mistake in saying no, no  
11    problem before -- before we took our lunch.

12          A     I doubled the no because I was texting on my  
13    phone, probably.

14          Q     Okay.   So are we to believe that you routinely  
15    just answer emails that you don't read, you respond  
16    without reading?

17          A     My phone shows the first two lines in my email.

18          Q     So --

19          A     And so the first two -- do you want an answer?

20          Q     Yes.   Go on.

21          A     Okay.   So the short part, he put "Thank you for  
22    meeting today."   That line showed up in my email viewing  
23    section.

24          Q     So the beginning of the next sentence, "Since  
25    we executed the purchase agreement," that wasn't in the  
26    second line?

27          A     No.   Because the first line is "Hi, Larry."

28                 The second line is "Thank you for meeting

1     today."

2           Q     Well, it's all one paragraph. I mean, I don't  
3     know --

4           A     Are you understanding how the cell phone works  
5     on the -- when you read a cell -- a message?

6           Q     Yeah. I'm familiar. Maybe it did cut off at  
7     that period.

8           A     I -- I have it right now if you want to look at  
9     it.

10          Q     No, that's quite all right. All right. So you  
11     never -- you never send Mr. Cotton a denial in  
12     writing -- you never refute this. You say you had an  
13     oral conversation the next day.

14          A     That is correct.

15          Q     Okay. So I have a lengthy gap between exhibits  
16     here.

17                     But when it comes to contracts on  
18     February 27th, which is Exhibit 59, the first page --

19          A     What page are you on?

20          Q     It's the first page, Exhibit 59. So, here, we  
21     have on the third page starts an agreement. And this  
22     was drafted by Gina Austin.

23          A     That is correct.

24          Q     Okay. And here we have a one, two, three,  
25     four, five, six, seven, eight, nine, 10, 11, 12, 13, 14,  
26     15, 16 -- we have a 17-page draft agreement. And this  
27     was only one of two contracts that Gina was drafting.  
28     Is that correct?

1           A     Yes, that's correct.

2           Q     Okay. So I see in this agreement there are a  
3 lot of terms. There are defined terms, addresses,  
4 purchase price, how deposits are supposed to go.

5                     It does seem to indicate that a 10,000-dollar  
6 deposit was made already. Is that correct?

7           A     That is correct.

8           Q     It discusses escrow, title matters --

9                     THE REPORTER: I'm sorry, Counsel. Can the  
10 reporter hear again after title matters.

11                    MR. AUSTIN: Title policy, title survey costs,  
12 physical inspections, covenants.

13 BY MR. AUSTIN:

14           Q     These are all typical terms in real estate  
15 contracts, aren't they?

16           A     I -- yes, they are.

17           Q     And these are designed to protect both sides in  
18 a contract, are they not?

19           A     Yes, they are.

20           Q     On page 16 at the top, I see they even have  
21 attorney fees, governing law under the State of  
22 California, interpretation of this agreement.

23                    So going back to page 1, actually, you refer to  
24 the additional contract for \$400,000. How come in --  
25 to -- to your knowledge, how come in Mr. Cotton's  
26 September services agreement he mentions breaking it up  
27 in \$400,000 and then in November, you don't mention  
28 breaking it up in \$400,000. But then when it comes to

1     you sending drafts, the \$400,000 in two separate  
2     contracts comes back into play?

3           A     Could you repeat that again.

4           Q     Why is it that initially the idea was to have  
5     two different payments of \$400,000 for different  
6     purposes and then this resurfaces several months later  
7     but it does not appear in the November 2nd document?

8           A     Mr. Cotton and I sat down at my desk and  
9     developed that agreement. Okay. That agreement can be  
10    submitted to escrow to create all these same pages.  
11    Okay. So --

12          Q     Okay.

13          A     -- the 400,000 Mr. Cotton decided he wanted to  
14    have relocation costs of \$400,000. So in one of the  
15    emails, he said he wanted it split up in February, I  
16    believe. I was trying to appease him and just give  
17    him -- split up the \$400,000 like he wanted on one of  
18    the emails. But it still added up to \$800,000.

19          Q     But November, when he comes in, give  
20    him \$10,000 cash and he's on his way, he -- he doesn't  
21    care about the \$400,000 at that point? He doesn't care  
22    about how it's broken up? It just --

23          A     I couldn't read his mind.

24                THE COURT: Hold on. Was there an objection?

25                MR. WEINSTEIN: No.

26                THE COURT: I'm sorry. Excuse me for  
27    interrupting, Mr. Geraci. Please continue.

28

1 BY MR. AUSTIN:

2 Q So in Exhibit 62, there's the second half of  
3 the contract, which is also relatively lengthy. But  
4 perhaps more like five or six pages.

5 A What page are you on, please?

6 Q Exhibit 62. Bates numbered 1 through 8.

7 So in response to these two contracts that you  
8 send, if you could refer to Exhibit 63, Mr. Cotton --  
9 wait. Let's see. Yes.

10 Mr. Cotton responds to you, "Larry, I read the  
11 side agreement and your attachment, and I still see that  
12 no reference is made to the 10 percent equity position  
13 as per my Inda-Gro service agreement in the new store.  
14 In fact, paragraph 3.11, which looks to avoid our  
15 agreement completely, looks like counsel did not get a  
16 copy of that document. Can you explain."

17 A At that time --

18 Q What's that? That's page 1, Exhibit 63.

19 A I have it. Did you want a response?

20 Q No. You didn't actually respond in email. So  
21 when he's asking why that's not in there, I don't -- I  
22 don't have a response. So did you -- did you call  
23 him --

24 A This was a very contentious time, and I was  
25 talking to my attorney explicitly because Mr. Cotton  
26 wouldn't take my phone calls after this point.

27 Q So he was trying to communicate via writing?

28 A Okay.

1 Q Through email, did you ever email him back?

2 A Because -- no, I did not.

3 Q Okay. So is that why you also did not respond  
4 on March 16th in Exhibit 69?

5 A No. 69, you said?

6 Q Yes. Exhibit 69.

7 A I need the other book.

8 Q Oh.

9 A Thank you.

10 And what page are you on, please?

11 Q Page 1 on 69.

12 A Okay.

13 Q So towards the bottom of the page on  
14 March 16th, he refers to the draft side agreements that  
15 were emailed to him from Gina Austin.

16 A How far down on the page, please?

17 Q The last two paragraphs --

18 A Okay.

19 Q -- mentions March 2nd and March 7th.

20 So upon receiving the first draft of the main  
21 and side agreement from Gina Austin, Mr. Cotton said he  
22 didn't like some of the terms. And you testified that  
23 you did have some modifications made. And then he was  
24 given a second set of draft agreements. Correct?

25 A Okay. So from the first set to the second set,  
26 you're saying there was --

27 Q So he was --

28 A -- negotiating?

1 Q Was there negotiation there?

2 A Yes, there was.

3 Q Yes. How come at no point did you either in  
4 text message that we saw or email, how come you never  
5 refuted what Mr. Cotton was asking? Essentially, what  
6 you're telling us is you only orally disagreed with what  
7 cotton was requesting --

8 A I was talking to my attorney at this -- do you  
9 want me to answer?

10 Q Yes.

11 A I was talking -- right here, this email is  
12 dated 3/17. It's extremely contentious at this time, at  
13 this point right now. And I felt litigation coming on.  
14 Mr. Cotton knew we had a contract. We had a signed  
15 contract. And what he was doing here was trying to  
16 renegotiate his way up is what he was doing here. I  
17 wasn't going to entertain that.

18 Q Are you familiar with the statute of frauds?

19 A I couldn't read it to you. I don't --

20 Q Well, are you aware of if it has a legal  
21 construct that contracts regarding land should be in  
22 writing?

23 A Don't know that.

24 Q As a real estate agent, you're not aware of  
25 that?

26 A No. I submitted a lot of contracts into escrow  
27 that are not on CAR forms as you suggest, or air forms  
28 or any of the rest of them. And escrow takes care of

1     it, and they produce all of the escrow statements, which  
2     gives you the document at which you're -- what you're  
3     referring to.

4           Q     Well, I also see these -- these contracts  
5     written by Gina Austin. They're not -- they're not  
6     standardized forms at all. But they are rather lengthy  
7     contracts containing various and numerous provisions  
8     and --

9           A     She's the attorney.

10          Q     Yes. So not -- they don't all have to be on  
11     forms. But I was just curious why you have contracts  
12     with everyone except -- standardized contracts with just  
13     about everyone but Mr. Cotton.

14                 MR. WEINSTEIN: Objection. Vague and ambiguous  
15     and --

16                 THE COURT: Sustained.

17     BY MR. AUSTIN:

18          Q     All right. So you have a written contract with  
19     Mr. Bartell, who is a lobbyist. Correct?

20          A     That is correct.

21          Q     Did you have a retainer with Abhay Schweitzer,  
22     some sort of written contract?

23          A     I believe I did.

24          Q     And I would say Bartell is someone you paid the  
25     most money to. So it makes sense that to be in writing.

26                 In your assessment, would it be fair to say  
27     that Mr. Cotton's property, if a CUP were to be approved  
28     upon it, would be worth millions of dollars?



1           A       I wouldn't know that. I was giving him  
2       \$800,000, which is four times the amount that it was.  
3       That was a very high premium for a big risk not knowing  
4       you were going to get it. And, of course, I took a  
5       beating for it.

6           Q       So long story short, you're willing to put a  
7       quarter million dollars into this property on top of the  
8       \$800,000 you're willing to pay, and you expect all of us  
9       to believe it's all hinged on this one three-sentence  
10      document?

11          A       That document --

12               MR. WEINSTEIN: Objection. Vague as phrased.

13               THE COURT: The objection is -- I'm sorry?

14               MR. WEINSTEIN: It's -- it's an incomplete  
15      hypothetical. It's vague and ambiguous. I'm not sure  
16      what he's referring to, it all hinges on.

17               THE COURT: That objection is overruled.

18               THE WITNESS: Could you state your question  
19      again, please.

20               THE COURT: Madam Reporter, could you read it  
21      for us?

22               (The following was read by the reporter:

23               Q. So long story short, you're willing to put a  
24      quarter million dollars into this property on  
25      top of the \$800,000 you're willing to pay, and  
26      you expect all of us to believe it's all hinged  
27      on this one three-sentence document?)

28               MR. WEINSTEIN: I'll also object it's

1 argumentative.

2 THE COURT: The objection is sustained.

3 Next question, Counsel.

4 BY MR. AUSTIN:

5 Q So from November 2016 to March 2017, I count  
6 Mr. Cotton made at least seven requests to include  
7 the 10 percent equity stake or a minimum of \$10,000 and  
8 a remainder of a 50,000-dollar deposit. Not once in  
9 text message or email do you deny that those were terms  
10 that were discussed?

11 A I did deny it.

12 Q In writing?

13 A I did not sign his contract.

14 Q You did not sign his contract.

15 Did you ever send him an email to the effect  
16 of, Darryl, why are you trying to change these terms?  
17 Why are you trying to add terms?

18 A I don't think so.

19 Q Okay. Actually, I think there is one -- one  
20 time you say something like that. It's late March. Let  
21 me find that language. It's in one of the emails.

22 A What page is it, please?

23 Q Quick aside, Exhibit 69, page 3. This email,  
24 you say, "Hi, Darryl. I've not reviewed this yet, but I  
25 want you to look at it and give me your thoughts.  
26 Talking to Matt, the \$10,000 a month might be difficult  
27 to hit until the sixth month. Can we do 5K and on the  
28 seventh start 10K?"

1                   Who is Matt?

2           A       Matt is a consultant/operator.

3           Q       Is he an attorney?

4           A       No, he's not.

5           Q       Okay. Does he work in your office?

6           A       No, he doesn't.

7           Q       Just an independent consultant of some sort?

8           A       Yes, he is.

9           Q       Okay. I recall you testifying towards the end  
10 of the negotiation phase. You said you were having your  
11 attorneys look at it. I believe that was in reference  
12 to one of the changes Mr. Cotton wanted.

13          A       Could you refer me to that document, please.

14          Q       I'm trying to find that. I believe it was  
15 March 16th or 17th.

16                   At that -- let's see.

17          A       March 16th.

18                   I do have in front of me a No. 68.

19          Q       Yeah. Sixty-eight.

20                   At that time, was Gina Austin still on your  
21 team?

22          A       I believe so.

23          Q       As of March 16th or 17th, have you hired  
24 Mr. Weinstein yet?

25          A       I can't re -- I can't recall when I hired  
26 Mr. Weinstein.

27          Q       Do you recall the day you initiated your  
28 lawsuit against Mr. -- or Mr. Cotton?

1           A       I -- I don't recall that day.

2           Q       Was it approximately March 21st?

3           A       I was working 18 hours a day. So I could not  
4 tell you what day I picked.

5           Q       So at no point after things started to get  
6 messy on February 7th did any attorney advise you to put  
7 your objections to Mr. Cotton's demands in writing?

8                   MR. WEINSTEIN: Object. It's unlimited as to  
9 time. Therefore, calls for -- potentially calls for  
10 privileged information.

11                  THE COURT: The objection is sustained.

12 BY MR. AUSTIN:

13           Q       Why did you feel it was unnecessary of all --  
14 I'll start over.

15                   So you expect us all to believe you feel it was  
16 unnecessary at any point to have in writing any  
17 objection to Darryl's alleged escalating demands?

18                   MR. WEINSTEIN: Objection. Argumentative, as  
19 phrased.

20                  THE COURT: Argumentative? Is that what you  
21 said?

22                   MR. WEINSTEIN: Yes. Argumentative as phrased.

23                  THE COURT: The objection is sustained.

24                   No first names, Counsel.

25                   MR. AUSTIN: I apologize, your Honor.

26 BY MR. AUSTIN:

27           Q       At any point when you saw Mr. Cotton's very  
28 specific written requests for assurances that those

1 terms be included in a final agreement, at no point did  
2 you feel it was necessary to tell him no in writing?

3 A I think the fact that he signed a contract  
4 between November 2nd and I did not sign his proposal, I  
5 believe, is very clear.

6 Q So in all the emails that we went through and  
7 the text messages and all your testimony, I never saw  
8 anyone reference back to November 2nd until the lawsuit  
9 was filed.

10 MR. WEINSTEIN: The best --

11 BY MR. AUSTIN:

12 Q So the question is, did you actually believe  
13 the November 2nd document was a contract on November 2nd  
14 for the entire property?

15 A It was a contract.

16 Q For the sale of a property --

17 A Yes.

18 Q -- that could potentially be a marijuana  
19 dispensary?

20 A It wasn't a dispensary at the time.

21 Q But could -- could have been.

22 A Yes. It could have been. As we know, it's not  
23 now. So it's just a property. It's a sale -- it's a  
24 straight sale of a piece of property that was paid four  
25 times its value.

26 Q That's speculation as to value.

27 MR. WEINSTEIN: Is that a question? If it's a  
28 question, I object as argumentative.

1 THE COURT: As framed, sustained.

2 MR. AUSTIN: Withdrawn. I have no further  
3 questions.

4 THE COURT: All right. Redirect.

5 MR. WEINSTEIN: No, your Honor.

6 THE COURT: All right. May Mr. Geraci be  
7 excused?

8 MR. WEINSTEIN: Yes, your Honor.

9 THE COURT: Counsel?

10 MR. AUSTIN: Yes, your Honor.

11 THE COURT: Thank you very much, Mr. Geraci.

12 All right. Counsel, your next witness?

13 MR. WEINSTEIN: Rebecca Berry.

14

15 Rebecca Berry,  
16 being called on behalf of the Plaintiff/Cross-Defendant,  
17 having been first duly sworn, testified as follows:

18

19 THE CLERK: Please state your full name and  
20 spell your first and last name for the record.

21 THE WITNESS: Rebecca Ann Berry.

22 THE REPORTER: May the reporter have the  
23 spelling of Ann?

24 THE COURT: Could you spell your middle name,  
25 please.

26 THE WITNESS: Ann, A-n-n.

27 THE COURT: Thank you.

28 Counsel, please continue.

1 MR. WEINSTEIN: Thank you.

2 (Direct examination of Rebecca Berry)

3 BY MR. WEINSTEIN:

4 Q Ms. Berry, are you -- first of all, let's talk  
5 about your education. Have you graduated from high  
6 school?

7 A Yes.

8 Q And when?

9 A 1967.

10 Q From where?

11 A Granite Hills High School.

12 Q And did you take college after that?

13 A Some college.

14 Q Where at?

15 A Grossmont College.

16 Q And when was that?

17 A 1968 and then 10 years later, I took classes  
18 probably in -- no. Fifteen years later. So --

19 Q Okay. And did you get a degree from Grossmont?

20 A No.

21 Q Okay. Other than attending Grossmont, have you  
22 attended any -- any schooling since you graduated from  
23 high school?

24 A Real estate and as the real estate broker  
25 ministerial training.

26 Q Okay. And let's take the latter first. Would  
27 you -- did you say ministerial training?

28 A Yes.

1           Q     Okay. What training did you have that was  
2 ministerial?

3           A     Through my church and as a licensed  
4 practitioner and counselor.

5           Q     Okay. And when -- did you get some type of  
6 license with respect to that?

7           A     Yes.

8           Q     What license is that?

9           A     Licensed counselor in 1991 and a minister,  
10 1999.

11          Q     Okay. And are you still counselor or a  
12 minister?

13          A     Counselor but not a minister.

14          Q     Okay. Now, you had -- you obtained a  
15 real estate license?

16          A     Yes.

17          Q     Is that a -- well, when did you obtain a  
18 real estate license?

19          A     It's been 10, 12 years.

20          Q     From today?

21          A     From today.

22          Q     Okay. And was it a salesperson's license? A  
23 broker's license? What kind of license?

24          A     Salesperson's license.

25          Q     And have you used that salesperson's license in  
26 connection with real estate transactions?

27          A     Yes.

28          Q     Okay. Now, did you act as a real estate agent



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

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?

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.

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?

1 A No.

2 Q Who prepared those forms?

3 A The team.

4 Q Okay. And, generally, who on the team prepared  
5 those forms?

6 A I really don't know because I -- just whoever  
7 would give it to me. And -- or through Mr. Geraci, I  
8 would sign it and take care of it.

9 MR. WEINSTEIN: Okay. And -- could you bring  
10 up Exhibit 34, please.

11 I offer Exhibit 34.

12 THE COURT: Any objection?

13 MR. AUSTIN: No, your Honor.

14 THE COURT: Exhibit 34 will be admitted.

15 (Premarked Joint Exhibit 34, Forms submitted to  
16 City of San Diego in relation to 6176 Federal  
17 Blvd CUP Application, dated 10/31/16, Form  
18 DS-3032 General Application dated 10/31/2016,  
19 was admitted into evidence.)

20 BY MR. WEINSTEIN:

21 Q So, Ms. Berry, this is called the general  
22 application form. It's the first page of Exhibit 34.

23 Is that your signature at the bottom of the  
24 page?

25 A Yes.

26 Q Okay. And did you prepare that form?

27 A No.

28 Q Was it prepared for you?

1 A Yes.

2 Q And did you sign it on or about October 31st,  
3 2016?

4 A Yes.

5 Q Okay. When you signed that form, was it your  
6 understanding that the form had been prepared under the  
7 direction of either Mr. Schweitzer or Ms. Austin?

8 A Simply by the team. I did not know who  
9 prepared it.

10 Q Okay. Would you go to the next form, please.  
11 The next form is a D.S. 190 form, an affidavit for  
12 medical marijuana consumer cooperatives for conditional  
13 use permit.

14 Was that one of the forms that you were  
15 provided to sign for the CUP application?

16 A Yes.

17 Q Did you prepare that form?

18 A Yes.

19 Q Did you --

20 A I'm sorry. I did not prepare it. I'm so  
21 sorry.

22 Q Is that your signature and date at the bottom  
23 of the page?

24 A Yes.

25 Q When you signed this form, did you understand  
26 that it had been prepared by somebody on the team?

27 A Yes.

28 Q And were you involved in making any decisions

1 as to how this form would be filled out?

2 A No.

3 Q Next document. Okay. This next form is  
4 deposit account/financially responsible party. Is that  
5 another form that you signed in connection with the CUP  
6 application?

7 A Yes.

8 Q Okay. And did you date it, sign it on  
9 October 31st, 2016?

10 A Yes.

11 Q And did you prepare that form?

12 A No.

13 Q Did you understand it was prepared by somebody  
14 on the team?

15 A Probably, yes.

16 Q And did you understand -- have an understanding  
17 as to -- well, do you have any responsible --  
18 responsibility for deciding how to fill out the form?

19 A No.

20 Q Okay. The last form, please. Okay. This form  
21 is called ownership disclosure statement. Would you go  
22 to the signature section.

23 And was this a form that you signed in  
24 connection with the CUP application?

25 A Yes.

26 Q Okay. And did you prepare this form?

27 A No.

28 Q Did you understand it was prepared by somebody

1 on your team?

2 A Probably.

3 Q Okay. And did you -- were you responsible for  
4 making any determinations as to how to fill out this  
5 form?

6 A No.

7 Q So in signing these forms, you were relying on  
8 the team to properly prepare the forms?

9 A Yes.

10 Q Did you get involved in any discussions that  
11 you recall with them about how to fill these forms out?

12 A No.

13 Q So is it fair to say that your role in  
14 connection with the application was simply to be the  
15 liaison between the team and the City and Mr. Geraci?

16 A Yes.

17 Q Did you ever become aware of any issues related  
18 to problems in getting the CUP application processed,  
19 that you recall?

20 A I really didn't get that involved. I knew  
21 there were things going on, but I didn't really pay that  
22 much attention to it. I wasn't really that involved  
23 with it.

24 Q Did you get emails concerning issues regarding  
25 the CUP application that you simply forwarded on to  
26 Mr. Geraci?

27 A Yes.

28 Q And was he the one making decisions with



1     **respect to those issues?**

2           A     Yes.

3           MR. WEINSTEIN:   Your Honor, may I have a  
4     moment.

5           THE COURT:   You may.

6     BY MR. WEINSTEIN:

7           Q     **Just in case I missed it, I know it's been**  
8     **quick. But am I correct you've never spoken to**  
9     **Mr. Cotton?**

10          A     No.

11          Q     **Have you ever communicated with him by email if**  
12     **you're aware?**

13          A     He sent one email, but I've never sent him  
14     anything.

15          Q     **Okay.**

16          A     I got one email from him.

17          Q     **And what did you do with that email?**

18          A     I read the first line or two and forwarded it  
19     to Larry.

20          MR. WEINSTEIN:   Okay. I think that's all I  
21     have, your Honor.

22          THE COURT:   All right. Cross-examination.

23                (Cross-examination of Rebecca Berry)

24     BY MR. AUSTIN:

25          Q     **Good afternoon, Ms. Berry.**

26          A     Good afternoon.

27          Q     **So on Exhibit 30, you signed a document saying**  
28     **that --**

1           A     Do I need to look it up?

2           Q     Yeah, if you could. Exhibit 34. On the first  
3 page at the very bottom, is that your signature? I  
4 think we've already established that it is.

5           A     Yes.

6           Q     It's dated October -- October 31st. So at that  
7 time, do you -- do you know whether Mr. Cotton and  
8 Mr. Geraci had entered into a real estate contract?

9           A     No.

10          Q     And why were you told to be the applicant on  
11 this?

12          A     Like I said, it was because Larry -- or  
13 Mr. Geraci had a federal license.

14          Q     So because of this license, you did not -- let  
15 me put this differently.

16                   So if you go to page 4 on that same exhibit.

17          A     Page 4.

18          Q     It's fine print, but in Part 1.

19          A     Okay.

20          Q     Starting at the third sentence, it says the  
21 list must include the names and addresses of all persons  
22 who have an interest in the property recorded or  
23 otherwise and state the type of property interest,  
24 whether --

25          A     Okay. So you're saying page 4, part 1 to be  
26 completed when property is held. Is that what you're  
27 talking about?

28          Q     That is the section, yes.

1           A     Okay. And then what are you saying?

2           Q     The third sentence, starting halfway through  
3 the third line down.

4           A     Okay.

5           Q     The list must include the names and addresses  
6 of all persons who have an interest in the property.

7                     So why upon signing this did you not include  
8 Mr. Geraci's name? Did -- was he not to have any  
9 interest in the CUP?

10          A     I simply signed this. It was filled out by our  
11 team and I signed it. Trusting Mr. Geraci and the team.

12          Q     Did it concern you at all that this could  
13 potentially either lead to the denial of the application  
14 for being incomplete or possibly even legal penalties  
15 against you?

16          A     No. I didn't -- I was not involved in it.

17          Q     So you had no concern?

18          A     It didn't even -- no. It didn't even enter my  
19 mind.

20          Q     So on that same page, it's checked off that  
21 you're the tenant/lessee.

22                     Do you see that a couple lines above your  
23 signature there in the --

24          A     Yes.

25          Q     Okay. And going back a page to page 3, also  
26 October 31st, you say you're the president. What are  
27 you the president of?

28          A     I believe that I put president because I'm the

1 real estate -- I -- I don't even remember. There -- it  
2 was -- it seemed like a good reason to do it.

3 Q Okay. So going back another page, page 1, on  
4 this page, you check off the part -- there's two  
5 options: There's owner and there's agent. You check  
6 off owner. Is that correct?

7 A I did not check that box.

8 Q Someone else checked it?

9 A Yes.

10 Q Okay. Then on page 1, that's where it says  
11 you're the applicant. So there's just a lot of  
12 contradiction. But it didn't matter to you what was  
13 being signed?

14 A I simply signed it and under direction from our  
15 team.

16 Q Okay.

17 A And Mr. Geraci.

18 Q Have you ever been the applicant on any other  
19 CUPs?

20 A No.

21 Q So you have no involvement with any other CUPs  
22 at all?

23 A No.

24 Q Okay. Did Mr. Geraci offer to pay you more to  
25 sign these documents?

26 A No mention of any money was ever -- never  
27 talked about, any money.

28 Q Even in the event of the CUP application being

1 approved?

2 A No.

3 Q Okay. So are you still a real estate broker?

4 A Yes.

5 Q Have -- so as of now, you've definitely seen  
6 the November 2nd document that your boss, Mr. Geraci,  
7 alleges was the official contract?

8 A Yes.

9 Q You've seen and read it?

10 A Yes.

11 Q Do you feel in your experience and expertise  
12 that that contract contains all the essential elements  
13 that a California real estate contract should contain?

14 A Quite often buyers and sellers will get into --  
15 make up -- get an arrangement together and make up their  
16 own contract. It happens a lot.

17 Q Right.

18 A So I was not involved in this.

19 Q Okay. I mean, if someone asks you to write a  
20 real estate contract, would yours be at all similar to  
21 that particular contract?

22 MR. WEINSTEIN: Object. It's an incomplete  
23 hypothetical. Vague and ambiguous.

24 THE COURT: Sustained.

25 BY MR. AUSTIN:

26 Q If someone asked you to complete a real estate  
27 contract for them, do you think you would submit a  
28 three-sentence document similar to the November 2nd

1 document?

2 MR. WEINSTEIN: Same objection. Still that  
3 it's an incomplete hypothetical.

4 THE COURT: Your objection is sustained.  
5 BY MR. AUSTIN:

6 Q Looking at that document and knowing California  
7 real estate law, what essential terms do you think you  
8 would like to see added?

9 A As a real estate agent and licensed broker, I  
10 have my own ideas and training about something that I'm  
11 an agent for. So if I'm an agent, it's going to be  
12 completely different.

13 But, like I said, buyers and sellers will get  
14 together and make arrangements all the time. Whatever  
15 works for them is -- is perfectly acceptable. Okay.

16 Q Ordinarily, would you prefer to see more  
17 specificity and more terms included?

18 MR. WEINSTEIN: Objection. Vague and  
19 ambiguous.

20 THE COURT: Sustained.

21 BY MR. AUSTIN:

22 Q Looking at that document, in your estimation,  
23 would an escrow company be willing to accept that  
24 document?

25 A Yes.

26 Q In your experience, how many three-sentence  
27 real estate contracts have you conducted a sale with?

28 A The real estate agent representing a buyer or

1 seller, I would use the CAR -- CAR. But this is between  
2 a seller and a buyer. So it's a different arrangement.  
3 I have never -- so I -- I believe that Mr. Geraci has --  
4 I have seen contracts in this same format.

5 Q Aren't all real estate purchases sales between  
6 sellers and buyers?

7 A Yes. Yes. But if an agent gets involved, it's  
8 going to be -- have a whole new set of rules because I'm  
9 liable too. Okay.

10 Q Right.

11 A Okay.

12 Q Are you an independent contractor?

13 A No.

14 Q Are you a W-2 employee?

15 A Yes.

16 Q So even though you didn't read the forms and  
17 you were just signing what you were told was prepared by  
18 the team, do you think it's a problem that Mr. Geraci's  
19 interest was not disclosed anywhere on that form?

20 MR. WEINSTEIN: Objection. Lacks foundation.

21 BY MR. AUSTIN:

22 Q Well --

23 THE COURT: The objection is sustained.

24 BY MR. AUSTIN:

25 Q So in that first subsection I referred you to,  
26 it did say -- you read this -- that the list must  
27 include the names and addresses of all persons that have  
28 an interest in this property.

1                   So you didn't see that at all?

2           A       I simply signed it.

3           MR. AUSTIN:   Okay.   No further questions.

4           THE COURT:   Redirect?

5           MR. WEINSTEIN:   No, your Honor.

6           THE COURT:   May Ms. Berry be excused?

7           MR. WEINSTEIN:   Yes, your Honor.

8           THE COURT:   Counsel?

9           MR. AUSTIN:   No objection.

10          THE COURT:   Thank you very much, Ms. Berry.

11          All right.   Folks, we've finished the last of  
12   our witnesses that we're going to hear from this week.  
13   You're off tomorrow.   We'll see you bright and early  
14   Monday morning on the 11th -- the 8th.   July 8th at  
15   9 o'clock.   Do not form or stress an opinion or discuss  
16   the case until deliberations.

17          We'll see you Monday, July 11th.   Thank you.  
18   All right.   The jury has left the courtroom.

19          Let me spend just a moment catching up, making  
20   sure we know where we stand.

21          So you ended up finishing two witnesses.   I  
22   don't know if that's how you expected or are ahead of  
23   pace.   Who do you have lined up for Monday?

24          MR. WEINSTEIN:   So the plan -- I have to get  
25   ahold of her, but I believe Gina Austin will start off.  
26   She -- and then it will be followed by Mr. Cotton.   And  
27   then --

28          THE COURT:   Mr. Cotton?



1           MR. WEINSTEIN: Yes. Then -- he'll be a rather  
2     lengthy witness. And then likely by Schweitzer. But I  
3     have to -- I have some schedule issues with various  
4     witnesses. So I have to make sure it works. He's the  
5     lengthiest of the witnesses after Mr. Cotton.

6           THE COURT: Well, and do you expect to complete  
7     your examination of Mr. Cotton and Mr. Schweitzer within  
8     the same period of time as you did with Mr. Geraci?

9           MR. TOOTHACRE: I would suspect a little bit  
10    longer than Mr. Schweitzer.

11          THE COURT: All right.

12          MR. TOOTHACRE: He's going to go through what  
13    he did for the CUP process, and it's pretty lengthy.

14          THE COURT: Okay. Well, even if you do that  
15    with both Mr. Cotton and Mr. Schweitzer, you got through  
16    Mr. Geraci in about half a day.

17          MR. WEINSTEIN: I -- what the Court is driving  
18    at is I believe I will be done certainly by the 11th and  
19    maybe a little sooner. It depends. I've got --

20          THE COURT: After Austin -- by the way, before  
21    I forget, I did hear and made note of Mr. Geraci talking  
22    about conversations he had with Ms. Austin.

23          MR. WEINSTEIN: Those were waived, have been  
24    waived. Documents have been produced.

25          THE COURT: Once the waiver -- or once the  
26    privilege is waived in part, it becomes a slippery  
27    slope. And I'm going to have to evaluate the content --  
28    context, I should say, of what's left, if any of the

1 communications that could be protected.

2 But I just wanted to make note of that.

3 So after Ms. Austin, Mr. Cotton,  
4 Mr. Schweitzer, who do you have left?

5 MR. TOOTHACRE: Bartell.

6 MR. WEINSTEIN: Mr. Bartell, who is not  
7 available until the 10th, I believe. But between Cotton  
8 and Schweitzer and -- and I've got two City of San Diego  
9 witnesses that I would hope to, if I needed to, schedule  
10 before Mr. Bartell.

11 THE COURT: I don't think there's much doubt --  
12 again, based on your pace, which I'm not criticizing,  
13 we're going to have to fill -- I can see the 8th being  
14 filled up. But I'm wondering about --

15 THE WITNESS: Well, the 8th --

16 THE COURT: -- 9th. We're not going to wait  
17 until the 10th if you only have half a day of witnesses  
18 lined up on the 9th. That's all I'm trying to  
19 emphasize. We have to use our jury time.

20 MR. WEINSTEIN: Yeah. I think I have that  
21 managed.

22 THE COURT: All right.

23 MR. WEINSTEIN: But --

24 THE COURT: So is Bartell going to be your last  
25 witness?

26 MR. WEINSTEIN: If I take the City witnesses  
27 before him, because they need to go on the stand.

28 THE COURT: Right.

1           MR. WEINSTEIN: And they would fill up then the  
2 9th if that becomes necessary. Then I put the City  
3 witnesses up.

4           THE COURT: Who are those witnesses?

5           MR. WEINSTEIN: Firouzeh and Tirandazi. And  
6 Sherlyn Tac, T-a-c.

7           THE COURT: And how long are you expecting with  
8 Mr. Bartell?

9           MR. WEINSTEIN: I think he's going to be an  
10 hour at the most.

11          THE COURT: Boy. Again, at this rate or pace,  
12 I should say, I question just how deep into the 10th.  
13 Certainly, if Bartell is the last witness.

14          MR. WEINSTEIN: Then we'd be ready to move on.

15          THE COURT: Right. So you need to have  
16 witnesses -- I think you're going to need to have  
17 witnesses lined up as early as the 10th, which suggests  
18 to me that if you get your case in chief as early as the  
19 10th, recognizing we're going to finish at noon on the  
20 11th, I would expect that you'll probably be done with  
21 your case in chief sometime on Monday, the 15th. At  
22 this point, can you imagine any rebuttal? Not --

23          MR. WEINSTEIN: I can imagine it, but right  
24 now, I don't anticipate it.

25          THE COURT: All right. So I -- we're not going  
26 to tell them -- tell them this yet, but it's real easy  
27 for me to see us instructing you arguing on Tuesday, the  
28 16th right now. Sometime early to mid next week, I will

1 be able to turn around to you a set of jury  
2 instructions, a draft set of jury instructions, plus  
3 verdict forms, recognizing that the ones that you had  
4 submitted previously, meaning the verdict forms, will  
5 now be modified to exclude Ms. Berry.

6 All right. Before we wrap up -- oh, one more  
7 thing. The courtroom belongs to you. You can leave as  
8 much or as little stuff behind as you'd like. But we  
9 are going to have a lot of people coming through the  
10 courtroom on Friday.

11 And so if you -- to the extent you leave  
12 anything behind, talk to my deputy. We want to make  
13 sure it's secure. I don't think anybody will pick up --  
14 pick up or take it with them. But they could rearrange  
15 things. So be careful about that.

16 Anything else from Plaintiff's side before we  
17 wrap up for the day?

18 MR. WEINSTEIN: No, your Honor. Thank you.

19 THE COURT: Defense side, anything?

20 MR. AUSTIN: Just this lodgement.

21 THE COURT: Madam Deputy, can I see that  
22 lodgement?

23 MR. AUSTIN: Should I have a cover page on it?

24 THE COURT: Well -- now, you've seen it.  
25 Right?

26 MR. WEINSTEIN: I have not.

27 THE COURT: Just to be sure, let's make sure  
28 Mr. Weinstein has looked at it. I think it's the two

1 settlement agreements that Mr. Geraci entered into with  
2 the City. I might be mischaracterizing. I'm not trying  
3 to do so.

4 MR. AUSTIN: There's only one, which is just  
5 printed right off the registry of actions. And it's  
6 just the one dated 9/26/2014.

7 THE COURT: All right. Do you object if I look  
8 at this?

9 MR. WEINSTEIN: Let me look.

10 MR. AUSTIN: And the other -- just the other  
11 two parts are Business and Professions Code 480.2,  
12 Business and Professions Code 26057. And then the  
13 actual forms themselves, the OSHA disclosure form --

14 THE COURT: Now, what -- okay. I --

15 MR. AUSTIN: -- which is the City of San Diego  
16 development services form. They have already been  
17 admitted as exhibits. But the language within them --

18 THE COURT: Well, it's becoming a little late  
19 in the day. But I'm recalling that it seemed to make  
20 sense that I look at these in the context of an argument  
21 or two that somebody had been making. So --

22 MR. WEINSTEIN: My reaction is I haven't -- I  
23 don't know that I've ever seen this one. So I would  
24 like to review it.

25 THE COURT: Does it appear to be something your  
26 client signed?

27 MR. WEINSTEIN: It -- certainly, he's named in  
28 the caption. I would agree with that. And he did sign

1 it.

2 THE COURT: All right. I know you've been  
3 trying to get to me for the last day or so. And I  
4 appreciate you being diligent.

5 MR. WEINSTEIN: And, actually, I finished  
6 reviewing it. I don't have a problem, because I just  
7 read the order.

8 THE COURT: Now, I'm not clear on the other  
9 items. They were a couple of B&P code sections and  
10 what?

11 MR. AUSTIN: And then, like, actual development  
12 services forms.

13 THE COURT: Now, why are you asking me to look  
14 at those?

15 MR. AUSTIN: Well, it just shows that -- it  
16 actually applies to both sides, really. But Mr. Geraci  
17 would not qualify to have his name on a CUP application,  
18 which is also relevant because Rebecca Berry, as his  
19 agent, was submitting this all on his behalf.

20 THE COURT: Okay. Now, here's the way I'm  
21 looking at it. If counsel were to restyle this as a  
22 brief and were to file it, I would give him leave. And,  
23 obviously, you need to make sure opposing counsel gets a  
24 copy. But I would look at it just as I would look at  
25 anything that you were to file. And you wouldn't need  
26 leave to file a brief with the Court.

27 So I'll accept it. But, Counsel, just assure  
28 me you've given a copy of everything you want me to look

1 at to the other side. Right?

2 MR. AUSTIN: I'll confirm that it's been  
3 emailed. But I know I have all the PDFs saved and  
4 queued up.

5 THE COURT: Can you exchange filings with the  
6 Court by way of email?

7 MR. WEINSTEIN: Filings with the Court?

8 THE COURT: Well, he's giving me something to  
9 look at. And he's telling me he emailed it to your  
10 side. Is that an agreement you all have?

11 MR. WEINSTEIN: I agree he can email me things.  
12 But I had not received such an email by the time I came  
13 to court this morning. So if it's been emailed by his  
14 office since then, I have no knowledge.

15 THE COURT: I'm going to refrain from looking  
16 at anything until noon tomorrow. Between now and then,  
17 Counsel, make sure you email a duplicate copy of  
18 everything you're providing to my deputy to the other  
19 side.

20 And then between noon tomorrow and when I see  
21 you Monday at 9:00 a.m., I will have looked at it. And  
22 if there's anything you want to file in response to  
23 that, feel free to do so.

24 MR. WEINSTEIN: Fair enough. Thank you, your  
25 Honor.

26 THE COURT: All right. So anything else from  
27 the defense side? I mean, anything else tonight?

28 MR. AUSTIN: No, your Honor.

1                   THE COURT: All right. So then we'll be in  
2 recess. Thank you all very much.

3                   MR. WEINSTEIN: Thank you.

4                   (The proceedings concluded at 4:22 p.m.)  
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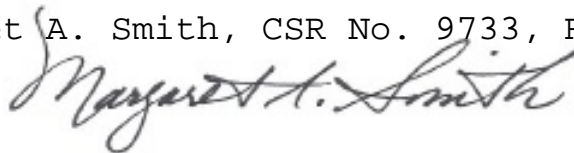


1 I, Margaret A. Smith, a Certified Shorthand  
2 Reporter, No. 9733, State of California, RPR, CRR, do  
3 hereby certify:

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

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