

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

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



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

Reporter's Transcript of Proceedings  
JULY 8, 2019

Reported By:  
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Job No. 10057774

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1 July 8, 2019; San Diego, California; 9:01 a.m.

2 Hon. Joel R. Wohlfeil

3 -- o0o --

4 THE COURT: Good morning, everybody.

5 MR. WEINSTEIN: Good morning, your Honor.

6 MR. AUSTIN: Good morning, your Honor.

7 THE COURT: Okay. While the defense side is  
8 setting up, let me go to plaintiff's counsel. Who is  
9 your next witness going to be called?

10 MR. WEINSTEIN: Gina Austin.

11 THE COURT: Is Ms. Austin out in the corridor?

12 MR. WEINSTEIN: I believe she is.

13 THE COURT: What is your best estimate of how  
14 long that would take?

15 MR. WEINSTEIN: I would imagine an hour.

16 THE COURT: And then after Ms. Austin, who do  
17 you expect?

18 MR. WEINSTEIN: Mr. Cotton.

19 THE COURT: That may take a while.

20 All right. And do we have all of our jurors?

21 THE BAILIFF: Yes, your Honor.

22 THE COURT: So why don't we -- the Court had  
23 planned on bringing up some issues. We'll defer those  
24 until probably when you get back hopefully in time  
25 before we resume at 1:30. I'm going to ask everyone to  
26 be back at 1:20.

27 So Madam Deputy, you can bring in the jury.

28 All right. Good morning, everyone.

1 MR. WEINSTEIN: Morning, your Honor.

2 THE COURT: It seems like forever since we last  
3 saw you Thursday afternoon. I can assure you that this  
4 courtroom was packed on Friday. We were open for  
5 business, that's for sure.

6 Thank you for reassembling as promptly as you  
7 did.

8 You may wonder why we do what we call the  
9 formal flag opening every morning, and it's a very  
10 simple explanation.

11 You all give us all kinds of time and effort,  
12 but come another week or so when we're done with this  
13 trial, there's a bunch of other people that are going to  
14 be sitting in your chairs. There's going to be other  
15 lawyers, other parties in, and, yes, someday, there will  
16 be a different judge sitting where I'm sitting right  
17 here.

18 All of us will come and go, but the institution  
19 of the Court, as symbolized by the Court, remains  
20 intact. That's where we all come for justice every day.  
21 So that's what we do. We honor the stability of the  
22 judicial institution.

23 So with that in mind, you may recall that we  
24 were at the front end of the plaintiff's case in chief.  
25 We're going to continue with the plaintiff's case in  
26 chief.

27 And perhaps -- and I'll give you a more current  
28 update on this well before the close of business this

1 week, which is Thursday at noon -- we may be approaching  
2 the beginning of the defendant's case in chief.

3 In any event, plaintiff's case in chief,  
4 Counsel, your next witness will be?

5 MR. WEINSTEIN: Gina Austin.

6 THE COURT: She's out in the hallway?

7 MR. WEINSTEIN: I believe so.

8 THE COURT: Madam Deputy, could you retrieve  
9 Ms. Austin, please.

10 Good morning, Ms. Austin. If you could follow  
11 the directions of my deputy and my clerk, please.

12  
13 Gina Austin,  
14 being called on behalf of the Plaintiff/Cross-Defendant,  
15 having been first duly sworn, testified as follows:

16  
17 THE CLERK: Please state your full name and  
18 spell your first and last name for the record.

19 THE WITNESS: Gina Austin, G-i-n-a A-u-s-t-i-n.

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

22 MR. WEINSTEIN: Thank you, your Honor.

23 (Direct examination of Gina Austin)

24 BY MR. WEINSTEIN:

25 Q Good morning, Ms. Austin.

26 A Good morning.

27 Q We will be showing you some documents on the  
28 screen, but there are books in front of you with tabs if

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

2             What's your profession?

3             A     I'm an attorney.

4             Q     How long have you been a lawyer?

5             A     Thirteen years.

6             Q     And are you currently employed?

7             A     Yes.

8             Q     By whom?

9             A     Austin Legal Group.

10            Q     And who owns the Austin Legal Group?

11            A     I do.

12            Q     And are you the sole owner?

13            A     Yes.

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

16            A     Five.

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

19            A     Three or four others.

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

22            A     Yes.

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

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

28            Q     And yourself personally, what areas do you

1     **focus your practice on?**

2           A     Currently, almost exclusively in cannabis law.

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

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

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

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

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

21          A     Yes.

22          Q     **On how many occasions?**

23          A     At least 50.

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

25          A     That includes pending ones, correct.

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

28          A     I have to count that.

1 Q Do you have an estimate?

2 A Somewhere between 20 and 25.

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

6 A Yes, I do.

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

10 A Yes, I do.

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

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

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

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

24 Q And do you know Larry Geraci?

25 A Yes.

26 Q And was Mr. Geraci your client?

27 A Yes.

28 Q Had your firm provided services to him in

1 attempting to obtain a conditional use permit in the  
2 City of San Diego at 6176 Federal Boulevard?

3 A Yes, we did.

4 Q Do you remember when you were first hired with  
5 Mr. Geraci in connection with that matter?

6 A You're going to have to help me.

7 Q Sure. Why don't you look at -- if we could --  
8 actually, I don't need to put it up. If you could look  
9 at Exhibit 138. Actually, I'd offer 138 as well.

10 THE COURT: Just give me one moment, please.

11 THE WITNESS: Somewhere around September or  
12 October of 2016.

13 THE COURT: Any objection -- did you say you're  
14 offering 138?

15 MR. WEINSTEIN: I am.

16 THE COURT: Any objection, Counsel?

17 MR. AUSTIN: No objection.

18 THE COURT: All right. Exhibit 138 will be  
19 admitted.

20 (Premarked Joint Exhibit 138, Austin Legal Group  
21 Expense Summary with Supporting Documentation,  
22 was admitted into evidence.)

23 BY MR. WEINSTEIN:

24 Q So in a moment I'll have my associate put up  
25 138. But what did you look at to remind yourself of  
26 when you generally began providing services to  
27 Mr. Geraci?

28 A A billing statement.

1           Q     Okay. And there's also on the second page of  
2     138, there's a -- it looks like a letter to you from  
3     Rebecca Berry and Larry Geraci. Do you see that?

4           A     Yes. Berry.

5           Q     What is that?

6           A     That would be our engagement letter.

7           Q     When was that form signed, if you know?

8           A     I'd have to look at it.

9           Q     What's the date?

10          A     It's dated October 4th, 2016. It would be  
11     signed somewhere around that time.

12          Q     Okay.

13          A     We don't provide services until we have an  
14     executed agreement.

15          Q     Okay. Now, are there zoning requirements to  
16     comply with in order for a dispensary to operate within  
17     the City of San Diego?

18          A     Yes, there are.

19          Q     Would you explain to the jury what zoning  
20     requirements are.

21          A     The zoning requirements today, or the zoning  
22     requirements at the time?

23          Q     Zoning requirements generally, what they are.

24          A     Generally, a dispensary, which is now called an  
25     outlet, is allowed in different certain zones -- only  
26     certain zones. The industrial zone would be one of  
27     them. The commercial zones would be one of them. And  
28     the City of San Diego is broken up into about 20-some



1 different zones.

2 Q Okay. So is it fair to say that in order for a  
3 dispensary to legally operate, it has to be in an area  
4 where zoning permits designate use?

5 A That's correct.

6 Q Okay. Now, if zoning is appropriate, what  
7 other legal requirements are there for a dispensary to  
8 be operated legally?

9 A So it's a long process in the city. We call  
10 this jurisdiction a race jurisdiction, meaning it's the  
11 first person to get there. So in the City of San Diego,  
12 you would have to get a conditional use permit, which is  
13 special land use entitlement, and that would require a  
14 submission of documents, a whole slew of documents,  
15 including building plans, to the city, which would then  
16 review them, send them back to you with comments. You  
17 would go through this process until the city decided  
18 they had exhausted all of their questions. And then you  
19 would be allowed to go on to a hearing.

20 Q Okay. Now, in connection with your  
21 representation of Mr. Geraci, you understand that the  
22 property upon which a conditional use permit was  
23 attempted to be obtained was at 6160 Federal Boulevard?

24 A That's correct.

25 Q Do you recall when you first got involved in  
26 the matter whether or not there was a zoning compliance  
27 issue with respect to that property?

28 A There was. So --

1           **Q     Would you explain what that was.**

2           A     So the zoning must be, like I said, generally  
3     commercial or industry. And there was a discrepancy  
4     between what the city had decided in their -- in a  
5     pamphlet, in the information bulletin could be the  
6     allowed zoning, which was CO, and what the actual  
7     Municipal Code and the rules that governed it said it  
8     could be, which was CC.

9                     So at the time that the application was  
10    initially filed, there was no mechanism because the  
11    zoning was CO and it was not allowed. And there needed  
12    to be some revisions to the Municipal Code before a  
13    dispensary would be allowed in the CO zone.

14                    MR. WEINSTEIN: Okay. Your Honor, I'd like at  
15    this time to offer Exhibit 24.

16                    THE COURT: One moment.

17                    Any objection?

18                    MR. AUSTIN: No objection.

19                    THE COURT: Exhibit 24 will be admitted.

20                    (Premarked Joint Exhibit 24, Email to Rebecca  
21    Berry from Abhay Schweitzer re Federal Blvd. -  
22    City Fees breakdown, dated 10/26/16 with  
23    attached City of San Diego Information Bulletin  
24    170, How to Apply for a Conditional Use Permit  
25    Medical Marijuana Consumer Cooperative, was  
26    admitted into evidence.)

27                    BY MR. WEINSTEIN:

28           **Q     And I'm showing you what's marked Exhibit 24.**

1 It's an email. But I just want to look at the  
2 attachment to it.

3 On the second page, there's an attachment. Are  
4 you looking at it?

5 A Yes.

6 Q Okay. And it's entitled at the top  
7 "Information Bulletin 170." Is that correct?

8 A Correct.

9 Q Is that the information bulletin that you were  
10 referring to?

11 A Correct. In this information bulletin, you can  
12 see under 2D, it says CO2-1 and CO2-2. That is allowed.  
13 And this was in conflict with the Municipal Code, which  
14 did not allow for that zone.

15 Q And what is the general purpose of this  
16 bulletin, as you understand it?

17 A It's to inform the public as to how to go about  
18 applying for a conditional use permit.

19 Q Okay. And so it's a publication by the City of  
20 San Diego?

21 A Correct.

22 Q All right. And so you said that it was in  
23 conflict with the zoning under the Municipal Code.  
24 Would you describe what the Municipal Code is.

25 A The Municipal Code would be the rules and  
26 regulations that govern the City of San Diego so that  
27 it -- if you want to build a house, you can't build a  
28 house on a commercial lot generally or an industrial lot

1 unless it's in certain zoning. And so all of those  
2 rules, including a lot of other rules -- but those are  
3 the rules that this is focusing on.

4 Q And do you recall this case how -- was the  
5 zoning conflict ever ultimately resolved?

6 A It was.

7 Q And how was it resolved?

8 A Mr. Geraci, along with other consultants on the  
9 team, myself included, worked with the city to amend the  
10 Municipal Code and the 11th code update so that the  
11 Municipal Code accurately reflected what the city  
12 intended to do with this information bulletin.

13 Q Now, do you have a recollection of what the  
14 zoning -- what the name of the zoning ordinance was that  
15 changed the Municipal Code?

16 A It would have been the 11th code update, I  
17 believe.

18 MR. WEINSTEIN: Your Honor, may I have a  
19 moment.

20 THE COURT: You may.

21 BY MR. WEINSTEIN:

22 Q Do you recall the date that the zoning -- well,  
23 first of all, explain the process by which a zoning  
24 ordinance is amended.

25 A I will explain the one -- this process, for  
26 this one. There's a lot of different processes. But in  
27 this particular instance, in 2000, I believe it was, the  
28 city revamped its entire Municipal Code. And so it

1 started basically from scratch. Everything they had,  
2 they kind of threw out the door, and they started over  
3 in 2,000 and renumbered and everything.

4 And then ever since then, they have been doing  
5 clean-ups. And that clean-up can happen once a year, it  
6 can happen every couple years. And it fixes both the  
7 typos, errors, like this bulletin 170, and it adopts new  
8 rules and regulations like when they adopted the  
9 regulations to allow dispensaries in the first place or  
10 when they adopted regulations to allow production  
11 facilities. So those each come in these code updates.  
12 So the first code update, second code update. The  
13 last -- around this time, it was the 11th code update.  
14 Next month, it will have the 12th code update.

15 And so the city staff puts together all those  
16 changes. The changes, they would go through multiple  
17 committees. And then it goes to the planning commission  
18 which hears them. And then it goes to the City Council  
19 to approve it.

20 **Q And at some point is a bill introduced to amend**  
21 **the zoning ordinance?**

22 A So what happens is ultimately it goes to the  
23 planning commission, which will then rule on it. And  
24 the way that the -- the mechanism for amendments to go  
25 in, as people make submissions to these code amendment  
26 team. And so I could say I want a change to the code,  
27 and they may say, no, we're not interested. A council  
28 member will say they want a change to the code. That

1 will get in there. It will be vetted. Committees will  
2 talk about it. They'll massage the language, and  
3 eventually, it will go to hearing. It's a little bit  
4 different than what happens in the -- the legislature,  
5 the state legislature. At the municipal level, it's a  
6 little bit different.

7 Q So when we say that a zoning ordinance has  
8 been --

9 THE REPORTER: I'm sorry, may the reporter hear  
10 again from the beginning.

11 BY MR. WEINSTEIN:

12 Q When we talk about a zoning ordinance being  
13 introduced to the City Council, what does that mean?

14 A That means that that entire process that I have  
15 just described has occurred and they have now got a  
16 document that's somewhere between 50 and 100 pages of  
17 redline strikeout showing what the changes are, that  
18 they are going to hear at a public hearing that's  
19 properly noticed where they get to review the -- the  
20 document and all the changes. And then they vote on it  
21 at the City Council hearing.

22 Q Okay. So before it's even introduced, it's  
23 gone through the whole planning commission process?

24 A It's gone through planning commission, and it's  
25 gone through multiple committees and iterations of  
26 committees at the city level.

27 Q Okay. And do you recall when this particular  
28 zoning ordinance was introduced to the City Council?

1           A       I do not.

2                   MR. WEINSTEIN: Your Honor, I'd like to show

3 the witness a document to refresh her recollection.

4                   THE COURT: What exhibit number is that?

5                   MR. WEINSTEIN: It's not an exhibit number.

6                   THE COURT: Do you want to have it marked next

7 in order?

8                   MR. WEINSTEIN: That would be great.

9                   THE COURT: Just give me one moment.

10 All right. Why don't we have this marked next in order

11 as 164.

12                   The general description?

13                   MR. WEINSTEIN: Ordinance No. 0-20793.

14                   THE COURT: San Diego Municipal Code?

15                   MR. WEINSTEIN: It is.

16                   THE COURT: All right. Thank you very much.

17                   Counsel, any objection if this document is

18 marked for identification as 164?

19                   MR. AUSTIN: No, your Honor.

20                   THE COURT: All right. Thank you.

21                   (Premarked Joint Exhibit 164, City

22 Ordinance No. 0-20793, was marked for

23 identification.)

24                   MR. WEINSTEIN: May I approach?

25                   THE COURT: You bet.

26 BY MR. WEINSTEIN:

27           Q       Do you recognize what I've handed you?

28           A       Yes. This is the zoning ordinance that was

1 approved by the City for CO-2-1.

2 Q And this was the ordinance that was approved  
3 and made effective that changed the zoning so that zone  
4 CO-2-1 would be a permissible use -- would allow a  
5 marijuana dispensary to be a permissible use?

6 A That's correct.

7 Q Can you tell from that document in particular,  
8 if you can look at the last page to refresh your  
9 recollection, as to when it was actually introduced to  
10 the City Council?

11 A It looks like the first reading was on  
12 January 31st.

13 Q What year?

14 A And then it finally passed on February 22nd.

15 Q So when you say January 31st, what year?

16 A 2017.

17 Q And it was passed on February 22nd, 2017?

18 A Oh, I'm sorry. So it was introduced on the  
19 31st. The first reading on the 14th, and second reading  
20 on February 22nd, so February 14th and February 22nd of  
21 2017, because the public has to have two opportunities  
22 to hear it.

23 Q And then is there a passage date on the front?

24 A February 22nd, 2017.

25 Q And then when did that ordinance become  
26 effective, if you know?

27 A Generally, they become effective 30 days after  
28 passage.



1           Q     And do you know if that was true of this  
2 ordinance?

3           A     I believe it was.

4           Q     Okay. Now, just so we're clear, so as of  
5 January 31st, did -- this had already gone through the  
6 planning commission and code amendment process before  
7 being introduced to the City Council?

8           A     That's correct.

9           Q     All right. Thank you.

10           MR. WEINSTEIN: Your Honor, I would offer 164.

11           THE COURT: Any objection?

12           MR. AUSTIN: No objection.

13           THE COURT: Exhibit 164 is admitted.

14           (Premarked Joint Exhibit 164, City  
15 Ordinance No. 0-20793, was admitted into  
16 evidence.)

17 BY MR. WEINSTEIN:

18           Q     Now, Ms. Austin, do you know whether Mr. Geraci  
19 assembled a team to guide him through the CUP  
20 application process for that appropriate property?

21           A     Yes, he did.

22           Q     Do you recall who was on that team?

23           A     Abide Switzer as the architect or designer, Jim  
24 Bartell as the policy consultant and political  
25 consultant, myself as the attorney. I believe there  
26 were a couple others, but I didn't have much interaction  
27 with them.

28           Q     What was your role? How would you describe

1     **your role?**

2           A     To get the CUP.

3           MR. WEINSTEIN:   Okay.   I'd like to show the  
4     witness what's been -- I'd like to first of all offer --  
5     it's already been offered and admitted, Exhibit 14.   I'd  
6     like to have it published again for the witness.

7           THE COURT:   Exhibit 14 has been admitted.   You  
8     can publish it.

9           MR. WEINSTEIN:   Great.

10          BY MR. WEINSTEIN:

11          **Q     Ms. Austin, let me know when you have had a**  
12     **chance to review Exhibit 14.**

13          A     Yes.

14          **Q     And what is it?**

15          A     Exhibit 14, it's an email from Abhay  
16     Schweitzer, the architect, to Larry Geraci, Neil Dutta.  
17     That was another person on the team.   Myself, and Jim  
18     Bartell.

19          **Q     Okay.   And what does this email generally**  
20     **relate to?**

21          A     Initial site inspection, going out and checking  
22     on the feasibility of the property.

23          **Q     And why were you copied on this email?   Do you**  
24     **know?**

25          A     I would generally be copied on all  
26     correspondence that related to whether or not the permit  
27     could be issued.   Because a lot of times what will  
28     happen is the architect may not see there to be

1 sufficient parking, and there's an exception in the Code  
2 that I could show them that would then allow for  
3 sufficient parking or other issues. Parking is a big  
4 one.

5 Q So who was the person on the team mainly  
6 responsible for marshaling the application, preparing  
7 the application and marshaling it through the process?

8 A Abhay Schweitzer.

9 Q And he could keep other members in the team in  
10 the loop as things progressed?

11 A That's correct.

12 Q At this point in time, there were issues  
13 related to whether or not the property would be feasible  
14 for potential MMCC?

15 A Correct.

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

18 THE COURT: Any objection?

19 MR. AUSTIN: No objection.

20 THE COURT: Exhibit 25 will be admitted.

21 (Premarked Joint Exhibit 25, Email to Larry  
22 Geraci and Rebecca Berry from Abhay Schweitzer  
23 re Federal Blvd - Site Plan and Floor Plan,  
24 dated 10/26/16 with attachments, was admitted  
25 into evidence.)

26 BY MR. WEINSTEIN:

27 Q Let me know when you have had a chance to look  
28 at Exhibit 25.

1           A       I've reviewed it.

2           Q       Is that another email you were copied on from  
3 the team?

4           A       Yes.

5           Q       And what's the date of the email?

6           A       I'm sorry. What was the question?

7           Q       What was the date of the email?

8           A       October 26th, 2016.

9           Q       And is there an attachment to that?

10          A       Yes. There -- it looks like there were three  
11 attachments.

12          Q       Okay. Would you go to the first attachment,  
13 please.

14          A       Okay.

15          Q       So just generally describe, since it is a  
16 little difficult for the jury to see, what are -- what  
17 types of drawings are attached to this email?

18          A       There is a site plan, a separation exhibit, and  
19 a floor plan. So the site plan -- the site plan would  
20 be the entire location, the property boundaries.  
21 There's a requirement for a distance of 100 feet from  
22 residential. So that's the second one. And the third  
23 one is the proposed floor plan of what it would look  
24 like inside the dispensary.

25          Q       Now, are these all plans that would be required  
26 to be submitted to the city in connection with the CUP  
27 application?

28          A       That's correct.

1           Q     All right. Now, if you go back to the first  
2 page email --

3           A     Yes.

4           Q     -- Mr. Schweitzer makes the statement "I added  
5 the language that Gina mentioned for the irrevocable  
6 offer of dedication."

7           A     Yes, I see that.

8           Q     Okay. And can you tell the jury what that was  
9 referring to.

10          A     Oh, getting technical now. The City of  
11 San Diego requires a 1,000-foot separation from  
12 residential property zones, meaning that you don't  
13 actually have to have a house there -- not 1,000.  
14 100 feet. Excuse me. It's 100 feet from a residential  
15 property zone.

16               And in this particular area, the zone of the  
17 residential property went from not only where the  
18 property across the street but all the way into the  
19 center of Federal Boulevard so that the zone was right  
20 there on the center line of Federal Boulevard, which  
21 meant we couldn't possibly meet that distance for the  
22 application. And so the idea was that we would offer  
23 the city an irrevocable offer of dedication, meaning  
24 we're going to give this area to you, city, when you  
25 decide to do your street widening which you're going to  
26 on Federal Boulevard, then you would have this area.  
27 And that would help us meet the distance for a  
28 thousand -- or for 100 feet.

1           Q     Okay. So the way it was currently -- zoned  
2     currently was you didn't have 100 feet from that  
3     residential zone?

4           A     That's correct.

5           Q     All right. So was the plan -- if I understand,  
6     the plan, then, was to essentially offer to give that  
7     however many feet you needed to give off the property to  
8     the city so that you could essentially achieve a  
9     100-foot distance?

10          A     That's correct.

11          Q     All right. And is that strip that's offered to  
12     be dedicated reflected on the site plan?

13          A     Let -- yes, it is. It is that lower portion  
14     that's hashed out.

15          Q     Let's see if we can pull it up for the jury.  
16     Is it on that one, or the next one?

17          A     That's it.

18          Q     Okay. So, sadly, my eyesight is not that good.  
19                 So there's a -- so there's the existing  
20     property line that I'm pointing to here. Correct?

21          A     That's correct.

22          Q     And there was an offer to dedicate back to a  
23     new property line so that the city ends up with this  
24     area. Correct?

25          A     That's correct.

26          Q     And that was the game plan to achieve the  
27     100-foot separation?

28          A     That's correct.

1           Q     All right. Now, as part of your role on the  
2     team, did you get involved in the review of  
3     application -- of forms that were submitted with the CUP  
4     application?

5           A     Some of them.

6           Q     Okay. Would you put up 34 that's previously  
7     been admitted.

8                     So under Exhibit 34, if you'll note there are  
9     four forms.

10          A     Yes.

11          Q     Okay. Are each of those forms forms that are  
12     required by the city to be submitted in connection with  
13     the CUP application?

14          A     Yes, they are.

15          Q     Were you involved in reviewing any of those  
16     forms before they were submitted?

17          A     I'm sure I was.

18          Q     Okay. All right. Let's -- let's look at them  
19     generally. The first form was called General  
20     Application DS-3032. That's on the first page.

21                     Do you see that?

22          A     Yes.

23          Q     What's the purpose of that form?

24          A     Basically, the application cover sheet that  
25     would go to the City to tell the City what is going --  
26     who's applying for it, what they're applying for. It's  
27     a conditional use permit. You see at the top, there's  
28     all kind of boxes you can check. They use the same form

1 for everything.

2 Q And who was the applicant on this form?

3 A I believe it's Rebecca Berry. Let me check.

4 Q And was she acting as Mr. Geraci's agent, to  
5 your knowledge, in connection with the CUP application?

6 A That's my understanding.

7 Q Was there any -- is there any problem from your  
8 perspective and given your experience with having an  
9 agent be the applicant on a CUP?

10 A No. Because a conditional on it, obviously  
11 makes a difference, I think, of why I said that. The  
12 conditional use permit runs with the land.

13 Q Explain to the jury what that means.

14 A What that means is it doesn't matter who the  
15 applicant is. Ultimately, it's tied to the dirt. So if  
16 the dirt has an entitlement to build a marijuana  
17 dispensary, then it stays there, regardless of whether  
18 or not I decide to do it, you decide to do it, someone  
19 else decides to run it. It's kind of like owning a  
20 home, and if I lease it out to somebody else, it's  
21 still -- I still own it.

22 Q Okay. Would you look at the next form, which  
23 is an Affidavit for Medical Marijuana Consumer  
24 Cooperative Form DS-190.

25 Do you see that?

26 A Yes.

27 Q And what's the purpose of that form?

28 A Let me just make sure. This one is the City



1 wants the applicant to make the representation that they  
2 know that there is no sensitive use or residential use  
3 within 1,000 feet or 100 feet, depending on which, from  
4 the property.

5 Q And in this case, there was one within 100 feet  
6 or less, and there was an offer of dedication. Is that  
7 your --

8 A That's correct.

9 Q And you see that Rebecca -- it looks like  
10 Rebecca signed it at the bottom --

11 A That's correct.

12 Q -- as the business owner?

13 Any problem, from your perspective, in your  
14 experience, with her signing as a CUP applicant, this  
15 form?

16 A No. The City is only interested in that  
17 somebody made that representation. So there are only  
18 two boxes, owner and agent. And so we just pick one  
19 kind of intermittently -- or indiscriminately, owner of  
20 the business, agent of the business, because the City is  
21 not using this for anything other than the verification  
22 of the 1,000 feet and 100 feet.

23 Q And they're going to get plans as well that  
24 will verify that?

25 A That's correct.

26 Q All right. Let's look at the third form.

27 A Yes.

28 Q Okay. That's called a Deposit Account

1     **Financially Responsible Party Form, DS-3242. And we see**  
2     **Rebecca Berry has signed that form?**

3           A     That's correct.

4           Q     **What's the purpose of that form?**

5           A     This form is who's going to be paying, because  
6     you don't have to own the property to make a  
7     application. You just have to have authorization to do  
8     that. But somebody has to be responsible for paying,  
9     and the City wants to know who that is.

10          Q     **From your perspective, any problem with**  
11     **Mr. Geraci being the financially responsible party**  
12     **signing these forms?**

13          A     No.

14          Q     **Go to the next form, please.**

15                **This is the ownership disclosure statement.**

16          A     Yes.

17          Q     **Do you see that?**

18          A     Yes.

19          Q     **Have you seen -- first of all, tell the jury**  
20     **what is the purpose of this form?**

21          A     The purpose of this form, from the City's  
22     perspective, is to determine -- so that council members  
23     and planning commission members can have -- determine  
24     whether or not they have a conflict when they're voting  
25     on a matter. So because these are forms -- or these are  
26     projects that will go before a hearing body, the  
27     ownership is relevant because a council member can't  
28     vote on a project if they are involved in it. And the

1 same with planning commissioners.

2 Q Do you see in the middle -- can you pull it up  
3 for me, please.

4 Above Rebecca Berry's signature, there are  
5 three boxes. One says owner. One says tenant/lessee.  
6 And one says redevelopment agent.

7 Do you see that on the form?

8 A Yes.

9 Q And I apologize, your Honor, for not blowing it  
10 up on the screen.

11 Are there any other boxes on the form above  
12 Rebecca Berry's name?

13 A No.

14 Q It's a preprinted form?

15 A It is a preprinted form.

16 Q And the box checked says tenant/lessee.

17 Do you see that?

18 A Yes.

19 Q And you're aware that Rebecca Berry was not a  
20 tenant on the property?

21 A That's correct.

22 Q Is there a problem from your perspective with  
23 that box being checked on this form?

24 A No.

25 Q Why not?

26 A Again, the City's forms are limited. They have  
27 two boxes, sometimes only three boxes. Also, the  
28 redevelopment agency also doesn't make a whole lot of

1 sense for any applicant that would be applying or using  
2 this form. And so the City's main concern -- this has  
3 come out in the planning commission over the last  
4 several months and council as well -- their main concern  
5 is to know whether or not the person who is involved in  
6 the project that's before them is somebody that they  
7 have a business relationship with and have taken more  
8 than \$500 from in the last year.

9 Q Okay. And this form represents -- or  
10 identifies Rebecca Berry as that person?

11 A That's correct.

12 Q And also identifies Cherlyn Cac, as you see on  
13 the left-hand side of the form?

14 A That's correct.

15 MR. WEINSTEIN: Your Honor, I'd offer  
16 Exhibit 45.

17 MR. AUSTIN: No objection.

18 THE COURT: Any objection?

19 MR. AUSTIN: No objection.

20 THE COURT: Exhibit 45 will be admitted.

21 (Premarked Joint Exhibit 45, Email to Jim  
22 Bartell from Abhay Schweitzer re Federal Blvd.  
23 MMCC - Completeness Review, dated 11/14/16, was  
24 admitted into evidence.)

25 MR. TOOTHACRE: I think it already was.

26 MR. WEINSTEIN: She's going to reboot.

27 THE WITNESS: Okay.

28

1 BY MR. WEINSTEIN:

2 Q Could you identify for the jury what Exhibit 45  
3 is.

4 A It's an email from Jim Bartell and is CC'd to  
5 Larry Geraci, myself, and Rebecca Berry from Abhay  
6 Schweitzer on November 14th, 2016, regarding the Federal  
7 Boulevard MMCC completeness review.

8 Q Okay. And so you're being notified about that  
9 subject by Mr. Schweitzer?

10 A That's correct.

11 Q All right. And that's to keep you in the loop?

12 A That's correct.

13 Q Okay. Explain to the jury what a completeness  
14 review phase is.

15 A So because of the competitive nature of  
16 marijuana outlets with only four being allowed per  
17 district, the City took their step one process, which is  
18 normally just giving them everything, and they  
19 bifurcated it and made it 1A and 1B.

20 And the completeness review is 1A. And they go  
21 in, and that's where the city looks to make sure that  
22 it's in the proper zone, that it isn't in a district  
23 that has already four permitted, that there's a set of  
24 plans, a floor plan, a site plan, distance maps that the  
25 packages put together before they ever do anything.

26 Q So they make sure the application is complete  
27 and that zoning is appropriate?

28 A That's correct.

1           Q     All right. Normally, how long does that  
2     completeness phase take?

3           A     Twenty-four hours to 10 days.

4           Q     Okay. In this case, how long did it take?

5           A     I do not know that answer.

6           Q     Do you know when the application was  
7     essentially hung up in the completeness review phase  
8     until the zoning issue was resolved?

9           A     Oh. I -- the completeness review, the initial  
10    steps -- so they started it. And then they just let it  
11    sit because we didn't want it to be denied because  
12    there's -- if there's competitors, then you have this  
13    race over who got completed first, who paid first, who  
14    did all of these processes first.

15                So in this particular instance, rather than  
16    deny it at the completeness check, I believe what they  
17    did is they just let it sit until the zoning amendment  
18    was finalized.

19          Q     Okay. And that occurred at some time after it  
20    was passed on February -- on February 22nd, 2017?

21          A     That's correct.

22          Q     When you get out of the completeness review  
23    phase, what happens next when you review an application?

24          A     You give them money, and then they go and they  
25    take it and they parse the application out to all of the  
26    different disciplines. So some will go to planning.  
27    Then they'll go to traffic, go to engineering. And the  
28    full review of the application starts.

1           Q     Okay. Is there any really review of the merits  
2 of the application prior to an application being deemed  
3 complete through the completeness phase?

4           A     No.

5           Q     All right. Explain what -- you mentioned some  
6 of the disciplines. Explain what the various  
7 disciplines are, to the extent you can recall.

8           A     So each -- they call them departments in the  
9 city, but they really are just desks sitting next to  
10 each other. So think of them more as a person than a  
11 department. But you have a planner that looks at issues  
12 like zoning and height restrictions and setbacks and  
13 street widths and things like that.

14                   You've got traffic engineers. That's another  
15 discipline in traffic. And traffic will determine  
16 whether or not there is sufficient egress and ingress to  
17 the property, make sure that the sidewalk is there if  
18 there isn't one and that you build it out.

19                   Then there's engineering, environmental  
20 assessment, which would be the environmental  
21 determination whether it needs to comply with the  
22 California Environmental Quality Act or whether it's  
23 exempt.

24                   There might be a couple others, but those are  
25 the --

26           Q     Once -- once you are in the review process,  
27 what do these disciplines do?

28           A     They will basically redline or markup the plans

1 and -- what's submitted. And then each discipline will  
2 provide a set of comments as to what they want changed.  
3 And then that will get back to -- in the summary form,  
4 back to the applicant, which will then jump through all  
5 the hoops that the city is requesting, and then  
6 resubmit.

7 MR. WEINSTEIN: Okay. I'd like to offer  
8 Exhibit 49, your Honor.

9 THE COURT: Any objection?

10 MR. AUSTIN: No objection.

11 THE COURT: Exhibit 49 will be admitted.

12 (Premarked Joint Exhibit 49, Email to Abhay  
13 Schweitzer from Jim Bartell RE: Federal Blvd -  
14 Completeness Review corrections, dated 11/30/16,  
15 was admitted into evidence.)

16 BY MR. WEINSTEIN:

17 Q Ms. Austin, let me know when you have had a  
18 chance to review Exhibit 49.

19 A Okay.

20 Q Okay. And have you seen this email before?

21 A Yes.

22 Q Okay. And you were copied on it to keep you in  
23 the loop?

24 A That's correct.

25 Q Okay. I'm highlighting the second paragraph  
26 where Mr. Schweitzer states that the staff would not  
27 support it since it's in a zone that does not allow  
28 MMCCs.



1 Do you see that?

2 A Yes.

3 Q Is that just confirmation of what you told us  
4 earlier, that the application was sitting there and  
5 wouldn't be processed through the completeness phase  
6 because of the zoning issues?

7 A Can you rephrase the question.

8 Q Sure.

9 When did you receive this email?

10 A It looks like I received it on November 30th.

11 Q All right. And was that consistent with your  
12 recollection that this -- the application was being  
13 processed through the completeness phase because of the  
14 zoning issue that existed?

15 A Right. The City was -- was conflicted as to  
16 what to do.

17 We met with the City trying to get them to --  
18 knowing that it was going to be corrected in the 11th  
19 code update or hoping that it would be, to not deny this  
20 outright and continue to process it. And it just sat  
21 there as they were trying to figure out what to do with  
22 it.

23 Q Until the zoning issue was resolved in late  
24 February?

25 A That's correct.

26 Q All right. Now, this case involves a signed  
27 document between Mr. Geraci and Mr. Cotton related to  
28 the purchase and sale of Mr. Cotton's property.

1                   Do you understand that?

2           A       Yes.

3           Q       Were you involved in the negotiation of an  
4       agreement that was signed on November 2nd, 2016? In  
5       fact, why don't I have you look at Exhibit 38. That's  
6       already been admitted. That will refresh your memory.

7           A       What number did you say?

8           Q       Thirty-eight.

9           A       No, I was not involved in that.

10          Q       Okay. And at some point in time after the --  
11       the zoning ordinance was introduced to the City Council,  
12       were you contacted by Mr. Geraci in connection with  
13       doing any drafting of the new agreement?

14          A       Yes, I was.

15          Q       What happened?

16          A       So I'm not confident on the date. I want to  
17       say it was around probably March, but I could be off by  
18       a couple months here or there of 2017.

19                   Mr. Geraci called and said something to the  
20       effect of -- I don't want to give exact words. But it  
21       was something to the effect of I am tired of being  
22       extorted by Darryl Cotton. He wants more money and  
23       more -- more interest than what we agreed to. So I'm  
24       going to -- I want to draft a new agreement. And can  
25       you do that for me? And I said sure. We'll put  
26       something together for you.

27          Q       And did you get involved, then, in the attempt  
28       to draft a new agreement to replace the original

1 agreement?

2 A Our office did.

3 Q And it was an attorney in your office?

4 A That's correct.

5 Q Okay. And were you the person that  
6 communicated with that attorney and that was the liaison  
7 with the client?

8 A That's correct.

9 Q All right. Did Mr. Cotton -- Geraci tell you  
10 what terms he wanted in that new agreement?

11 A He did. But I do not recall what they were.

12 Q Okay. What did you do when you heard those  
13 terms from him?

14 A I gave them to an attorney in the office,  
15 Arden Anderson, and said this is what we need done. We  
16 need a new agreement. Please draft.

17 Q Okay. Would you put up Exhibit 59, previously  
18 been admitted.

19 So let me know when you have gotten to  
20 Exhibit 59.

21 A I'm here.

22 Q Okay. So Exhibit 59, that's a cover email.  
23 But I would like to look at the attachment behind the  
24 email.

25 A Yes.

26 Q Okay. On the third page, there's the beginning  
27 of an attachment.

28 A Yeah.

1 Q And how long is that document -- how long is  
2 the attachment?

3 A Seventeen pages.

4 Q Okay. What is it?

5 A It's a purchase and sale agreement.

6 Q Okay. And do you know who drafted that?

7 A It looks like our office drafted it.

8 Q Okay. And was that the document that was  
9 drafted in response to Mr. Geraci's attempt to draft a  
10 new agreement that he can present to Mr. Cotton?

11 A Yes.

12 Q Okay. And the date on that email was  
13 February 27th. Does that refresh your recollection as  
14 to when Mr. Cotton -- or Mr. Geraci would have contacted  
15 you?

16 A It would have been in February.

17 Q Okay.

18 A Early February.

19 Q Okay. Would you look at Exhibit 62, which has  
20 previously been admitted.

21 A Yes.

22 Q Okay. And, again, that's another email with an  
23 attachment --

24 A Yes.

25 Q -- let's go back to the attachment.

26 A Correct.

27 Q And it starts on page 3 with side agreement.  
28 How many pages is that?

1           A     Six. It looks like six.

2           Q     And do you recognize that document?

3           A     Yes.

4           Q     What is it?

5           A     It is the second half of the purchase and sale  
6 agreement.

7           Q     Okay. And, again, do you know who drafted this  
8 document?

9           A     Our office drafted it.

10          Q     And was this, again, in response to  
11 Mr. Geraci's request to try to put together a new  
12 agreement that he could negotiate with Mr. Cotton about?

13          A     That's correct.

14          Q     Okay. Do you know if these agreements were  
15 ever signed?

16          A     I do not believe they were ever signed.

17          Q     Okay. Did any conversation with you and  
18 Mr. Geraci ever say that he wanted to provide Mr. Cotton  
19 with a 10-percent equity interest in the dispensary?

20          A     No.

21          Q     Did he ever tell you he wanted to provide  
22 Mr. Cotton with guaranteed monthly distributions  
23 of \$10,000 a month?

24          A     No.

25          Q     Did he tell you what the purchase price was?

26          A     There was -- that -- that's these two  
27 agreements. We're going back several years here. But I  
28 remember it was -- it was going to be 800,000. But then

1 for some reason, they needed to split it into two 400s.

2 Q Okay. We'll change subjects briefly.

3 Do you know of a gentleman named Joe Hurtado?

4 A I've heard of him recently.

5 Q There's a gentleman by the name of Joe Hurtado  
6 that claims to have talked to you at a cannabis  
7 conference you were speaking about.

8 Do you have any recollection of that meeting?

9 A I do not.

10 Q It would have been in March of 2017. Do you  
11 recall speaking at a cannabis conference then?

12 A I don't. I'm sure I was, but I don't doubt  
13 that. I just don't recall.

14 Q Okay. So you don't doubt that you may have,  
15 because you speak at a lot of conferences?

16 A That's correct.

17 Q All right. Would you have discussed with a  
18 person not your client any details with respect to any  
19 negotiations you were assisting your client with?

20 A No.

21 Q Okay. Did Mr. Geraci ever mention to you  
22 anything about a joint venture?

23 A No.

24 MR. WEINSTEIN: Your Honor, I believe that's  
25 all I have. Thank you.

26 THE COURT: All right. Cross-examination?

27 MR. AUSTIN: Yes, your Honor.

28 \ \ \

1 (Cross-examination of Gina Austin)

2 BY MR. AUSTIN:

3 Q Good morning.

4 A Good morning.

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

8 A That's correct.

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

11 A That's correct.

12 Q Have you ever testified as a cannabis expert?

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

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

20 A Not as a designated expert, no.

21 Q Oh. Not expert. All right.

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

24 A A little over six years.

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

1           A       Yes.

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

4           A       Yes.

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

9           A       As a good attorney? Sure.

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

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

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

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

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

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



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

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

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

17               MR. WEINSTEIN: Objection. Vague as phrased.

18               THE COURT: Overruled.

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

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

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

5 BY MR. AUSTIN:

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

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

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

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

17 A That's correct.

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

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

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

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

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

5           A     No.

6           Q     You're not aware of that?

7           A     No.

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

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

15               MR. WEINSTEIN: Waived, your Honor.

16               THE COURT: I'm sorry?

17               MR. WEINSTEIN: We will waive the privilege.

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

21    BY MR. AUSTIN:

22          Q     Were those marijuana related?

23          A     They were not.

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

28          A     That's correct.

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

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

7           Q     Yes.

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

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

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

16                BY MR. AUSTIN:

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

24          A     Yes.

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

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

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

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

13          Q     Right. That makes sense.

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

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

18                THE COURT: The objection is sustained.

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

21    BY MR. AUSTIN:

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

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

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

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

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

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

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

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

14 Please answer.

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

17 BY MR. AUSTIN:

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

20 A I would hope so.

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

23 A Abhay Schweitzer, yes.

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

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

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

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

5           MR. AUSTIN:   Oh.

6           THE COURT:   Are you offering it?

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

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

10          MR. WEINSTEIN:  No, your Honor.

11          THE COURT:   Exhibit 36 will be admitted.

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

16          THE WITNESS:  Okay.

17     BY MR. AUSTIN:

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

20          A     Yeah.

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

23          A     Yes.

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

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

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

3 Q And what legal issues were those?

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

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

7 A I was told multiple.

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

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

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

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

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

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

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

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

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

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



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

4 THE COURT: All right.

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

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

10 MR. AUSTIN: 26057.

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

13 MR. AUSTIN: Yes.

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

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

18 BY MR. AUSTIN:

19 Q Are you familiar with this Code?

20 A Yes.

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

26 A Correct.

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

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

3             A     No.

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

6             THE WITNESS:  Sorry.

7             MR. WEINSTEIN:  Same as before.

8             THE COURT:  The objection is overruled.

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

13    BY MR. AUSTIN:

14            Q     Right.

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

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

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

28            THE COURT:  Sustained.

1 MR. AUSTIN: Okay. Moving on.

2 BY MR. AUSTIN:

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

5 A Yeah. Our office did, correct.

6 Q And that was roughly March 2017?

7 A That's correct.

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

10 A Yes.

11 Q What was contained in that contract?

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

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

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

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

24 A What do you mean "working documents"?

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

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

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

1           A     That's correct.

2           Q     So you developed this 17-page contract based  
3 off a phone call?

4           A     Yes.

5           Q     Okay. You said there was two contracts.  
6 Correct?

7           A     There was the side agreement. So it was a  
8 purchase and sale for the property and a side agreement.

9           Q     What was contained in the side agreement?

10          A     I'd have to go back and look at it. Could you  
11 tell me what exhibit number that was. As I said, my  
12 office drafted them. I didn't personally -- I  
13 supervised.

14          Q     Okay. Well, upon completion of the purchase  
15 and sale agreement and the side contract, did you email  
16 those drafts to Mr. Geraci?

17          A     Yes.

18          Q     Did you anticipate getting some edits -- or  
19 requests for edits or revisions?

20          A     I don't know if I anticipated or -- or didn't.  
21 I mean, the normal process with a client is you send  
22 them over a draft and you walk -- or you explain to them  
23 the key pertinent parts. And they say I don't want this  
24 or I do want that. I --

25          Q     Okay. Did you in fact end up making a second  
26 draft, or your office, rather?

27          A     I don't recall because Arden was the primary  
28 person working on that. And so I don't recall if there

1 was some minor -- I'd be guessing.

2 Q Okay. Do you know if Mr. Cotton -- I believe  
3 you testified -- and I didn't quite catch the answer --  
4 do you know if Mr. Cotton or Mr. Geraci ever executed  
5 those contract drafts?

6 A I don't believe so.

7 Q Okay.

8 A And I say that because I don't have an executed  
9 copy at my office. So I'm assuming that it didn't  
10 happen. But they might have and not given me a copy.

11 Q Okay. Do you know why the 6176 CUP has not  
12 been approved?

13 A Because it's within 1,000 feet of another one  
14 that was approved.

15 Q Do you know who owns the one that was approved?

16 A Yes.

17 Q What is the name of that individual?

18 A Aaron Magagna.

19 Q Have you ever represented Mr. Magagna before?

20 A Yes. But I will note that that's the end of  
21 what I'm allowed to say because he has not waived the  
22 privilege.

23 Q Fair.

24 You weren't representing him on the competing  
25 CUP, were you?

26 A No.

27 Q As a part of professional responsibilities in  
28 California, you did do a conflict to check on

1     **Mr. Magagna before representing him. Correct?**

2           A     I think I can fairly answer that yes.

3           Q     **So you wouldn't make it a habit of representing**  
4     **clients that have conflicting interests, would you?**

5           A     I do not make it a habit of representing  
6     clients who have conflicting interests, no.

7           Q     **And if you did have clients with conflicting**  
8     **interests, what -- what would you do?**

9           A     That's too hypothetical for me to answer.  
10    Every situation is very unique.

11          Q     **But it is fair to say it would be unethical to**  
12     **represent two clients with competing interests.**  
13     **Correct?**

14          A     Yes.

15          Q     **For example, partially for the jury's**  
16     **edification, it would be unethical if you had, say, a**  
17     **workers' compensation case and you were representing the**  
18     **worker and the employer wanted to hire you. Correct?**

19          A     Sure.

20          Q     **Are you aware of how long Mr. Geraci's CUP**  
21     **application process took?**

22          A     Well, it started in 2016. So it took quite a  
23     bit of time.

24          Q     **Are you familiar with the length of time**  
25     **Mr. Magagna's CUP was being processed?**

26          A     I know it started after Mr. Geraci's.

27          Q     **Do you have a -- do you know approximately when**  
28     **it would have started?**

1           A     No. But I'm sure -- I -- I believe that it --  
2     that it went in -- we saw the notice of application  
3     after the zone change.

4           Q     So the notice of application, does that go out  
5     to neighboring properties?

6           A     It's posted on the City's website. We  
7     monitor -- monitor them daily.

8           Q     Okay. Would it be fair to say it began in  
9     2018?

10          A     I don't know. I don't know. I'd have to see a  
11     document to remind me.

12          Q     Initially, you said that you've done multiple  
13     speaking events.

14          A     Yes.

15          Q     The first one you mentioned was the -- at the  
16     Thomas Jefferson School of Law?

17          A     That's correct.

18          Q     And towards the end of your testimony, you --  
19     you said you did not recall having a conversation with a  
20     man named Joe Hurtado?

21          A     That's correct. I've been told about it. But  
22     I don't know anything about it.

23          Q     Is it possible that this alleged conversation  
24     could have happened at the Jefferson School of Law  
25     speech?

26          A     This year, like a month ago? No, I don't think  
27     it happened a month ago.

28          Q     Oh. Oh. In 2017?

1           A       I think I did a presentation there in 2017 as  
2 well. I've done two or three there.

3           Q       Okay. I was going to ask you how many. Okay.  
4 Perfect.

5                   And what was the nature of the speaking event  
6 in 2017, if you recall, at Thomas Jefferson?

7           A       I don't. It was cannabis related. I don't  
8 know what it was about.

9           Q       Okay. When Mr. Magagna's CUP was approved,  
10 that effectively terminated Mr. Cotton -- or  
11 Mr. Geraci's CUP application. Correct?

12          A       Correct.

13          Q       But is there an appeal process for that?

14          A       So when -- so it's a two-step process. It goes  
15 to the hearing officer first, and then it goes to  
16 planning commission.

17                   And so the hearing officer granted, I guess, I  
18 think -- I think the hearing officer must have granted.  
19 And then Mr. Geraci must have appealed to the planning  
20 commission. And then the planning commission would have  
21 affirmed. And then that would be the end of it, unless  
22 they wanted to litigate.

23          Q       Are you aware of any, at least, preliminary  
24 attempts, with the hearing officer or -- or anything  
25 else that Mr. Geraci's team would have participated in?

26          A       I was not involved. So I do not know.

27          Q       You were never approached regarding trying to  
28 assist with that appeal, then, I -- I assume?



1           A       I was not involved, no.

2           Q       **Okay. You've been involved with approximately**  
3 **25 CUPs?**

4           A       In San Diego?

5           Q       **In San Diego.**

6           A       Yes.

7           Q       **Yes. How many of those were successful?**

8           A       The majority of them. I think -- so many of  
9 these came in after the fact while we were doing  
10 compliance. But we're working with about 25 clients  
11 here in San Diego. There have been three in the City --  
12 or two in the city proper of San Diego that have not  
13 been approved that I worked on from the beginning.

14          Q       **So you have roughly a 23 out of 25 success**  
15 **rate?**

16          A       Yes. Not all of those I started in the  
17 beginning, though. So, I mean, I may be working with  
18 them at the tail end of it. It may be coming in  
19 currently to make -- keep their CUPs. There's a lot of  
20 different -- a lot of different things.

21          Q       **It's fair to say you were involved on the**  
22 **Geraci CUP from the very beginning. Correct?**

23          A       Yes. Until your client sued me, in which case  
24 I stopped representing him.

25          Q       **All right.**

26               MR. AUSTIN: I have no further questions.

27               THE COURT: Redirect?

28               MR. WEINSTEIN: Just one question, your Honor.

1 (Redirect examination of Gina Austin)

2 BY MR. WEINSTEIN:

3 Q Business and Professions Code 260 --

4 A Yes.

5 Q -- 57, is that applicable to municipal  
6 licenses?

7 A No.

8 Q Is it applicable to state licenses?

9 A Yes.

10 MR. WEINSTEIN: Thank you. That's all, your  
11 Honor.

12 THE COURT: Anything else, Counsel?

13 MR. AUSTIN: No, your Honor.

14 THE COURT: May Ms. Austin be excused?

15 MR. WEINSTEIN: Yes, your Honor.

16 MR. AUSTIN: Can she be subject to re-call?

17 THE COURT: Subject to re-call. Thank you very  
18 much, Counsel. You're excused for the time being.  
19 Thank you very much.

20 THE WITNESS: Just for the Court's information,  
21 I have hearings all --

22 THE COURT: That's fine. If you want to step  
23 down, we'll chat for just a moment.

24 Ladies and gentlemen, we're going to take our  
25 morning break at this time. We're going to take a  
26 recess for 15 minutes. Do not form or express an  
27 opinion or discuss the case until deliberations. We'll  
28 be in recess for 15 minutes.

1 All right. The jury has left the courtroom.

2 Ms. Austin, you were saying?

3 THE WITNESS: Oh. I have hearings and meetings  
4 scheduled the rest of this week. So if there's going to  
5 be a re-call, I would need some advance notice.

6 THE COURT: Okay. So let me go to defense  
7 counsel. When did you project that you may want to  
8 re-call Ms. Austin?

9 MR. AUSTIN: Potentially, it could be towards  
10 the end of tomorrow.

11 THE COURT: End of tomorrow? Or we had talked  
12 about plaintiff's case lasting until sometime closer to  
13 the end of this week. So has your estimate changed?

14 MR. WEINSTEIN: No. Mine hasn't. I don't know  
15 whether he's going to cross -- I mean, he's going to  
16 question his own client or reserve and question him  
17 on -- and that will affect how long my case goes.

18 But right now, it's -- I'm expecting it will be  
19 done by the end of business either Tuesday or Wednesday  
20 morning.

21 THE COURT: All right. So, Counsel, when you  
22 say you reserve your right to re-call this witness, the  
23 earliest that you could he re-call her would be when you  
24 begin your case in chief. Now -- so counsel's point is  
25 a fair point. I thought we crossed this bridge next  
26 week.

27 Do you intend to examine Mr. Cotton when he's  
28 called next or reserve your right to examine him?

1 MR. AUSTIN: I'd like to reserve on Mr. Cotton.

2 THE COURT: All right. So that may accelerate  
3 how quickly the plaintiff's case in chief will move.

4 So, I mean, I'm -- I'm empathetic to  
5 Ms. Austin's concern, that she's got lots of commitments  
6 stacked up this week. She's an awful busy lawyer, as  
7 all of you are.

8 But how do you expect her to re-call if you  
9 can't give her some notice? And she's entitled to  
10 notice.

11 So, I mean, help us out here. And I'm taking  
12 the time now to do this while you're present.

13 THE WITNESS: Thank you. I appreciate it, your  
14 Honor.

15 THE COURT: All right. So -- I had expected --  
16 let me help.

17 MR. AUSTIN: Yeah, yeah.

18 THE COURT: I had expected that you would be  
19 presenting your case in chief in the next week.

20 MR. AUSTIN: Okay.

21 THE COURT: So the earliest it sounds like  
22 either Ms. Austin is available or you'll be in a  
23 position to re-call her would be early next week.

24 MR. AUSTIN: All right.

25 CENTER: Maybe Monday or Tuesday. Now, so if  
26 you want her to be re-called, then you need to  
27 communicate with her office to give her a date and time  
28 certain, if necessary, before you close your case in

1 chief. And if we need to interrupt a witness, we'll  
2 accommodate Ms. Austin. The Court will be receptive to  
3 that request.

4 But I'm hearing her say she's not available the  
5 rest of this week.

6 MR. AUSTIN: Okay.

7 THE COURT: So -- again, and if you say you  
8 want to call her but she's not otherwise available,  
9 we're not going to keep the jury waiting. So work this  
10 out with her between now and whenever you do choose to  
11 call her if you do. All right?

12 MR. AUSTIN: Okay.

13 THE COURT: Ms. Austin, you're good to go.

14 THE WITNESS: Thank you, your Honor.

15 THE COURT: Now, I need to give my staff some  
16 time off. We do have some things to talk about. But  
17 we're not going to take that time now. So let's take  
18 that 15-minute break now.

19 (Recess from 10:32 a.m. to 10:46 a.m.)

20 THE COURT: We've got all our jurors and  
21 parties accounted for.

22 Counsel, your next witness will be?

23 MR. WEINSTEIN: We'll call Darryl Cotton under  
24 776.

25 THE COURT: Good morning, Mr. Cotton. If you  
26 could please follow directions from my deputy and clerk,  
27 please.

28

1 Darryl Cotton,  
2 being called on behalf of the Plaintiff/Cross-Defendant,  
3 having been first duly sworn, testified as follows:  
4

5 THE CLERK: Please state your full name. Spell  
6 your first and last name for the record.

7 THE WITNESS: My name is Darryl Cotton,  
8 C-o-t-t-o-n. First name is D-a-r-r-y-l.

9 THE COURT: All right. Whenever you're ready,  
10 Counsel.

11 MR. WEINSTEIN: Thank you, your Honor.

12 (Examination under 776 of Darryl Cotton)

13 BY MR. WEINSTEIN:

14 Q Good morning, Mr. Cotton.

15 A Good morning.

16 Q How old are you?

17 A 59.

18 Q Did you graduate high school?

19 A I went to the Lang Township St. Ignatius High  
20 School.

21 Q When did you graduate high school?

22 A It would have been '87.

23 Q And where is that located?

24 A Chicago.

25 Q Now, did you go to college?

26 A No. Some on-line courses but nothing that  
27 involved me going to an actual college.

28 Q Okay. You've previously held licenses from the

1     **State of California, California State Contractors**  
2     **License Board?**

3           A     Correct.

4           Q     You had a general contractor's license?

5           A     I have.

6           Q     You had an electrical contractor's license?

7           A     Correct.

8           Q     And you had a pavement contractor's license.  
9     **Is that correct?**

10          A     Correct.

11          Q     And are those licenses currently expired?

12          A     Yes, they are.

13          Q     And about how long ago did the last of those  
14     **licenses expire?**

15          A     I believe I let them expire in about 2008/'09,  
16     in that neighborhood.

17          Q     So roughly 10 years ago or so?

18          A     Correct.

19          Q     All right. Now, how have you earned a  
20     **living -- in what profession have you earned a living**  
21     **since 2010?**

22          A     Well, I've always managed to have a generator  
23     business through Fleet Systems, which is one of my  
24     companies that services generators. We're a Kohler  
25     dealer.

26                 From my background being electrical, I also  
27     developed a line of induction grow lights called  
28     Inda-Gro. And that's the company that manufactured the

1 induction grow lights. That's been since 2010.

2 Q Okay. So let's talk about -- did you say Fleet  
3 Systems?

4 A Correct.

5 Q Okay. Are you still currently operating Fleet  
6 Systems?

7 A Yes.

8 Q Okay. And that you said was a Kohler dealer?  
9 It's in the generation business?

10 A Power generation. Standby and auxiliary power,  
11 emergency power systems, the design and repair and  
12 maintenance of those systems.

13 Q And did you do that design and repair yourself?

14 A I have engineers -- or had.

15 Q Okay. Anybody work in that business besides  
16 yourself currently?

17 A No.

18 Q Okay. And then you've also said since about  
19 2009 you have had a company called Inda-Gro?

20 A 2010 I began Inda-Gro, using induction, the  
21 Tesla technology, to utilize it in the artificial  
22 horticultural grow light industry.

23 Q Okay. Are you currently doing that as well?

24 A Correct.

25 Q Do you have any employees currently working for  
26 you besides yourself?

27 A No.

28 Q Now, have both those businesses been operated



1 at 2010 at the property 6176 Federal Boulevard?

2 A Yes.

3 Q So explain to the jury what induction grow  
4 lights are.

5 A In the artificial plant lighting situations,  
6 you have to mimic the sunlight as best as you can.  
7 Nikola Tesla gave us these electrode-less lamps in the  
8 late 1800s. And I found them fascinating. So we played  
9 with different --

10 THE REPORTER: I'm sorry, can the reporter ask  
11 the witness to slow down and back up some. Thank you.

12 THE WITNESS: So my interest in induction grow  
13 lights began with Nikola Tesla's patents in the late  
14 1800s for electrode-less lamps. And they last 10 plus  
15 years. And they're very stable spectrums at low  
16 wattage. My interest has always been to try to lower  
17 the wattage and increase plant performance.

18 My research and development at 6176 was always  
19 based upon, you know, those metrics.

20 BY MR. WEINSTEIN:

21 Q Okay. And then based on that research, you  
22 actually manufactured -- designed and manufactured these  
23 induction grow lights?

24 A Correct.

25 Q And you sell them?

26 A Yes.

27 Q And you sell them on the Internet?

28 A We sell them on the Internet and to dealers.

1           Q     And through dealers. Do you have a retail  
2     establishment at 6176?

3           A     I am not predisposed to retail. I'm more  
4     predisposed to online sales and those people that are  
5     qualified to put these systems in properly. I call  
6     those our -- they're like jobbers, if you will.

7           Q     Did you do any of the installation on these  
8     systems yourself?

9           A     Power generation, I do. Not so much the grow  
10    lighting.

11          Q     And so these induction grow lights are used to  
12    grow plants?

13          A     Correct.

14          Q     And they're capable of being used to grow  
15    cannabis plants?

16          A     That is correct.

17          Q     Would you explain to the jury what aquaponics  
18    is?

19          A     Aquaponics is a way of taking fish water and  
20    recirculating it between the plants and the fish. So  
21    another area that appealed to me is water savings.  
22    We're able to keep down to a 5 percent compared to a  
23    traditional crops way of feeding the plants. We only  
24    use 5 percent of the water by recirculating between the  
25    plants and the fish. So it's a symbiotic relationship  
26    between the two.

27          Q     Okay. Does that work together with induction  
28    grow lights as well?

1           A       It has in my case. There's a number of  
2 different grow light technologies, but I have been --  
3 until the last two years where I moved over into LEDs,  
4 primarily interested in phosper-based lamps coupled with  
5 our aquaponics systems, yes.

6           MR. WEINSTEIN: Your Honor, I offer Exhibit 32.

7           THE COURT: Any objection?

8           MR. AUSTIN: No objection, your Honor.

9           THE COURT: Exhibit 32 will be admitted.

10           (Premarked Joint Exhibit 32, CUP Completeness  
11 Review - Photographic Survey submitted  
12 10/31/2016, was admitted into evidence.)

13 BY MR. WEINSTEIN:

14           Q       Mr. Cotton, they will be on the screen but also  
15 in the books in front of you.

16           A       Okay. I'm there.

17           Q       So I want to have you -- Exhibit 32 is called  
18 photographic survey. I'm just going to use it to show  
19 some pictures of your property so we can describe that  
20 to the jury.

21           A       Okay.

22           Q       Would you go to page 3 of Exhibit 32.  
23 Actually, let's start with page 2. Blow it up.

24                   The first look at Exhibit -- page 2 of  
25 Exhibit 32.

26                   Do you recognize that as a diagram of your  
27 property?

28           A       I do.

1           Q     And does it purport to diagram your property in  
2     its current state, that is, with the containers and  
3     everything located on the property?

4           A     Yes, it would.

5           Q     Okay. And so on the left-hand side, it's in  
6     dark outline, that's a building. Correct?

7           A     Correct.

8           Q     And currently, it has a sign on the front --  
9     first of all, Federal Boulevard is to the bottom of that  
10    drawing. Correct?

11          A     Correct.

12          Q     All right. So there's a sign on that bottom  
13    side of the building, and that says Fleet Systems?

14          A     Correct.

15          Q     All right. And then there are a number of  
16    containers and sheds that are spread out throughout the  
17    property that are depicted in the diagram?

18          A     Correct.

19          Q     Would you go to page 3, please.

20                Sadly, these pictures are not great, but it  
21    should do the trick. All right. So do you recognize  
22    the photograph that's on page 3?

23          A     I do. That's my property.

24          Q     Okay. And that's the building that we saw in  
25    the diagram that -- and the side of the building that  
26    borders along Federal Boulevard?

27          A     Correct.

28          Q     And you have the Fleet Systems sign on top.

1 Correct?

2 A Yes.

3 Q All right. And Federal Boulevard is  
4 essentially to the left of the photograph. Correct?

5 A Correct.

6 Q And it's running in that direction. It's  
7 running west. Correct?

8 A East/west, correct.

9 Q But the way we're facing, the photographer is  
10 facing west?

11 A Correct.

12 Q Okay. So if you were to cross Federal  
13 Boulevard to the left or to the south, you would  
14 eventually -- if you kept walking, you'd eventually hit  
15 the 94 freeway. Correct?

16 A If you were going north, you'd hit the 94  
17 freeway.

18 Q Okay. So I'm backwards. If you go the other  
19 direction, you'd hit the 94 freeway?

20 A Correct.

21 Q Okay. Would you go to page 7, please.  
22 All right. So that's, again, a photograph of your  
23 property. This time, taken from a vantage point that's  
24 south, looking north towards the property. Correct?

25 A Correct.

26 Q And Federal Boulevard runs between the edge of  
27 that hill and where you see the Fleet Systems sign, it's  
28 essentially -- because of the angle of the photograph,

1     you can't really see it.  Correct?

2           A     You cannot see it.

3           Q     But -- and that's 94 in the background?

4           A     Correct.

5           Q     All right.  All right.  So we've seen this part  
6     of the building.  How far -- does your property extend  
7     all the way over here?

8           A     I own the property to where you have the red  
9     dot now.  I rent the property to the right of the dot.

10          Q     Okay.

11          A     I have two properties side by side.  6176 and  
12     6184 Federal.

13          Q     Okay.  So I'm just going to take this -- and  
14     that's 6184?

15          A     Correct.

16          Q     And that's the property you own that you rent  
17     out to somebody?

18          A     I rent that property.  I've been there for over  
19     20 years.

20          Q     You rent it yourself?

21          A     Yes.

22          Q     Is it owned by you?

23          A     No, it's not.

24          Q     All right.  And then the property you own is --  
25     I'm going to generally outline it.  You tell me if I'm  
26     correct.  But it's essentially that's your property?

27          A     Indeed, it is.

28          Q     All right.  So I wish we had an aerial view.

1 But I didn't get one. So you've got some sheds in the  
2 back or trailers?

3 A It's a 32-foot tractor-trailer bed. It's just  
4 a shipping container -- everything in there is portable  
5 and moveable, yes.

6 Q So this is a portable shed of some kind?

7 A That one is actually bolted down. But it's  
8 what secures the flowering trailer, which is the trailer  
9 you see standing up a little higher there.

10 Q Okay. And to the street side of that, that's  
11 a -- what is that?

12 A That's a small RV that my security guy stays  
13 in.

14 Q Okay. And then what's this?

15 A That's a shipping container and another  
16 shipping container.

17 Q And the green thing here is a shipping  
18 container?

19 A Correct.

20 Q Okay. All right. Would you go to page 12,  
21 please.

22 So this photograph on page 12, that is a  
23 photograph taken looking towards 94, standing towards  
24 the front of your property, looking north. Correct?

25 A Correct.

26 Q And we're on the inside of the property between  
27 the container and the building. Correct?

28 A Correct.

1           Q     So this is the green container we saw before.  
2     Correct?

3           A     Yes.

4           Q     And then behind it, but you can't see it, is  
5     the trailer you told us about, the mobile -- the mobile  
6     home, I can describe it as.

7           A     There is an RV that my security stays in.

8           Q     All right. And then this is the building over  
9     here?

10          A     Correct.

11          Q     Would you go back to page 2, please.

12                 And these photographs depict the condition of  
13     the property in its current state generally?

14          A     Yes, it would.

15          Q     Okay. And so the diagram then really is just a  
16     diagram of what we've seen in the photos laid out in  
17     diagram form. Correct?

18          A     Yes.

19          Q     So that's a trailer. That's the RV you talked  
20     about?

21          A     Mm-hmm.

22          Q     Another bolted down container, and this is a  
23     free-standing container. And then this is the building?

24          A     Yes.

25          Q     All right. Thank you.

26                 Do you know how many square feet it is?

27          A     The property measures 60 by 100. 6,000 square  
28     feet total.



1           Q     Now, as you -- you're on your property at  
2     the -- let's say the front of it, you know, coming out  
3     the front door of your building and you're looking south  
4     across Federal Boulevard, what's across the street on  
5     Federal Boulevard?

6           A     Vacant land.

7           Q     And then at some point is the land not vacant  
8     if you continue south?

9           A     There appears to be one parcel, and then beyond  
10    that, south of that would be the first single-family  
11    residence.

12          Q     Okay. And so that -- where we saw that one  
13    photograph, where you said that you couldn't see Federal  
14    Boulevard, that was taken from that empty parcel that  
15    you mentioned?

16          A     Correct.

17          Q     In that case, looking north?

18          A     Yes.

19          Q     Now, have you had any tenants at the property  
20    since 2009?

21          A     I have.

22          Q     Okay. And when did -- when did you have  
23    tenants?

24          A     In early 2016 I believe it was I had an  
25    individual approach me after one of my tours with the  
26    151 farms. We were very open to that to explain to  
27    people what it is we do there in terms of how all plants  
28    are grown, not just cannabis but hops and everything.

1 We get a wide variety of things that come through there.  
2 And this young man came through there and said the only  
3 thing you're missing is a dispensary. So that tenant  
4 ended up taking the front portion. If you look at that  
5 picture, it was only about 600 square feet that I  
6 parceled off for him. But that tenant occupied that  
7 area as a medical marijuana outlet.

8 Q Are you talking about the area in front of  
9 where the building is?

10 A Yes.

11 Q So this is not to scale, but it would be 600  
12 square feet, roughly?

13 A A sliver of that property at the front.

14 Q Okay. At the front, 600 feet at the front?

15 A Correct.

16 Q What was that person's name?

17 A He went by Ray, but I'd have to refer to my  
18 notes. I'm actually not allowed to talk about the  
19 conspiracy or any of those things under this line of  
20 questioning.

21 Q Okay. Now, when was your first contact with  
22 Mr. Geraci?

23 A It would have been August of 2016.

24 Q When you -- you don't believe you had a  
25 communication with him in July of 2016?

26 A I believe he may have called me in late July,  
27 early August. I would have to refer to my documents.

28 Q Would you -- would you put up Exhibit 5 that's

1 previously been admitted.

2 You might want to take a look at it in your  
3 books.

4 A Which one is that, sir?

5 Q Exhibit 5.

6 A Okay. I'm here.

7 Q All right. And why don't you take a look at it  
8 and let me know if you recognize those as text messages  
9 between you and Mr. Geraci?

10 A Correct. So it would have been some of our  
11 earliest exchanges.

12 Q Okay. So there's one as early as July 21st.  
13 Correct?

14 A Correct.

15 Q Okay. And there's a photograph in that text.  
16 Is that basil plants? What kind of plants are those?

17 A A combination of medical cannabis. I'm not a  
18 recreational cannabis activist. I never have been. I'm  
19 well known to promote medical cannabis for the benefits  
20 that it provides our patients.

21 Those are our lights, and those are vertical  
22 panels that we were doing -- a lot of the R&D at the  
23 time was involving space savings. So that was one of  
24 our R&D projects.

25 Q Would you go to the next one.

26 So these other -- additional photographs that  
27 you texted to Mr. Geraci on or about -- later in July of  
28 2016? We've got page 2.

1           A       Yes. July 25th, those were texted to him.

2           Q       And what are those photographs of?

3           A       The medical cannabis plants that are in the --  
4       the shipping container -- or that trailer, actually, in  
5       the back, using our lights.

6           Q       So the trailer along the back edge of the  
7       property?

8           A       Correct.

9           Q       Okay. And is that the one that's bolted down  
10       or the one that's on --

11          A       No. That one is on wheels.

12          Q       Okay. But there were two you mentioned. One  
13       was as we're facing the 94, one was to the left and one  
14       was to the right?

15          A       This one would be at the northern end of the  
16       property.

17          Q       But east or west side?

18          A       It's on the north end, west side. Northwest  
19       side.

20          Q       So the longer trailer?

21          A       Correct. The one that pops up above the rip  
22       line.

23          Q       So would you agree that you at least had some  
24       text communications with Mr. Geraci as early as July of  
25       2016?

26          A       I would agree.

27          Q       Okay. Now, you don't really remember what you  
28       spoke about in your first call with him, did you?

1           A     I have a pretty good recollection.

2           Q     We're going to come back to that, then. At the  
3 time that you first spoke with him, were you aware that  
4 the -- there was a zoning issue with respect to  
5 operating the medical marijuana consumer cooperative at  
6 the property?

7           A     Could you repeat that.

8           Q     Sure. Let me go a different way.

9                     At the time that Mr. Geraci first contacted  
10 you, did he tell you he was interested in buying a --  
11 your property to put a dispensary on it?

12          A     He did.

13          Q     Okay. And he told you he was interested in  
14 obtaining a CUP for the dispensary?

15          A     He did.

16          Q     Okay. And at the time, you knew that a  
17 dispensary -- the area was not zoned for a dispensary.  
18 Correct?

19          A     There was conflicting information coming to me.  
20 I had the tenant actually get shut down for running the  
21 illegal dispensary. When I found out it was not  
22 properly permitted, he had wanted to reopen. I wouldn't  
23 let him. But that opened up this Pandora's box of  
24 cannabis regulations, which until that tenant and that  
25 property getting shut down for that, I wasn't aware of  
26 all of the land use regulations requirements that go  
27 into this. Mr. Geraci and I discussed that during the  
28 first call.

1           Q     Right. So I think it was April of 2016 but  
2 before you talked to Mr. Geraci, the police executed a  
3 search warrant at the premises. Correct?

4           A     Correct.

5           Q     And they seized items and made arrests related  
6 to your tenant?

7           A     Correct.

8           Q     Okay. And -- and then you -- the City, then,  
9 without warning sued you in an action. Correct?

10          A     That is true.

11          Q     And sued your tenant?

12          A     Yes.

13          Q     Okay. And at that -- and they essentially  
14 allege that you did not have a permit or the -- there  
15 was not a permit to operate a dispensary at the  
16 location. Correct?

17          A     Correct.

18          Q     So you at least knew at that point in time  
19 there was an issue as to whether or not the -- a CUP  
20 needed to be obtained. Correct?

21          A     I knew for a fact the CUP had to be obtained  
22 when my tenant moved in because he told me he had the  
23 skills, background to do that.

24          Q     Okay. But you -- but he never got a CUP?

25          A     He never followed through.

26          Q     Okay. And you were unclear about the zoning?

27          A     There was conflicting information as Ms. Austin  
28 testified to, that the IB-170 form said it was a legally

1 acceptable place to apply for the conditional use  
2 permit, but then deeper in the municipal codes, it  
3 contradicted that and said, no, it was not. So it took  
4 the lawsuit, me being sued to start developing an  
5 understanding of what was at stake here.

6 Q Okay. And these things happen with the --  
7 essentially, the action against the illegal dispensary,  
8 this happened all before Mr. Geraci contacted you?

9 A Correct.

10 Q All right. Now, did you tell them in your  
11 initial conversations that you didn't think the property  
12 was eligible?

13 A I did.

14 Q Okay. And why did you think it was not  
15 eligible?

16 A Because of the conflict between the initial  
17 form that you see when you go up to pay for a CUP  
18 permit, it says it is. But deep within the Municipal  
19 Code, it contradicts that information and says that it  
20 is not. So I was left with that, and I shared that with  
21 him instantly.

22 Q And did he indicate to you that he had hired a  
23 team, including the lobbyist, Jim Bartell, that was  
24 going to attempt to resolve that zoning problem?

25 A He told me he had the professional and personal  
26 relationships to resolve that, yes.

27 Q Did he tell you he had them, or did he tell you  
28 Mr. Bartell did?

1           A     No.  He told me he had them.

2           Q     Did he mention Jim Bartell?

3           A     No, he did not.

4           Q     When did you first learn about Jim Bartell?

5           A     Months and months later.

6           Q     When you say "months and months later," what is  
7 your best estimate of when you learned that?

8           A     Perhaps 90 days later.

9           Q     So not until, like, October, at least October  
10 of 2016?

11          A     I would put it more like November/December.

12          Q     And as the -- as your estimate of when you  
13 first learned about Jim Bartell.  Correct?

14          A     Could you repeat that, please.

15          Q     Yeah.  That's your estimate -- November,  
16 December 2016 is your estimate of when you first learned  
17 about Jim Bartell?

18          A     Correct.

19          Q     Okay.  And had you -- did you at some point in  
20 time learn about Abhay Schweitzer?

21          A     I learned about Abhay Schweitzer very early in  
22 our process because he was the focal point for all  
23 things engineering and architecturally related on the  
24 Geraci team, or team Geraci.

25                I was also told that many of the contracts and  
26 things we were working on would come through his legal  
27 advisor, Gina Austin.

28          Q     Okay.  So you were introduced to Gina in terms



1 of their names early on?

2 A Yes. Within the first meeting.

3 Q Okay. Had you heard of Mr. Schweitzer?

4 A I had not.

5 Q Had you heard of Gina Austin?

6 A I may have heard of her, but I didn't really  
7 know much about her.

8 Q Now, at some point, did you have an initial  
9 face-to-face meeting with Mr. Geraci?

10 A I did.

11 Q When was that?

12 A I want to -- I would have to refer to my  
13 records here, but I'm going to think within the next 30  
14 days. We met at his office.

15 Q Okay. Do you believe that was on  
16 September 20th of 2016?

17 A I would defer to that date, yes.

18 Q Okay. If you look at Exhibit 5, and if you go  
19 down to the text, look down to the text messages for  
20 September 20th, 2016. Let me know if that refreshes  
21 your recollection as to when that first meeting was.

22 A Page 2?

23 Q Just keep going. They're in chronological  
24 order to September 20th of 2016.

25 A Okay. On page 5, it does in fact confirm our  
26 1 o'clock here today.

27 Q Does that refresh your recollection as to when  
28 you had the first face-to-face meeting?

1           A     I would defer to that, yes.

2           Q     Okay. And was the next time you met with  
3     Mr. Geraci face to face on November 2nd, 2016?

4           A     I wouldn't say that was the next time. There  
5     were opportunities to meet at his office between July  
6     and November.

7           Q     Do you recall meeting him at his office between  
8     July and November?

9           A     There were several --

10          Q     I'm sorry. September 20th, 2016, your initial  
11     meeting, and November 2nd, 2016?

12          A     I don't remember how many times, but there were  
13     other occasions that I met him at his office.

14          Q     Now, is it correct that -- you've seen the  
15     ownership disclosure statement. It's dated  
16     October 31st, 2016.

17          A     I have seen it, yes.

18          Q     And you signed that at Mr. Geraci's office.  
19     Correct?

20          A     I did.

21          Q     Do you have any specific recollection of  
22     meetings with Mr. Geraci face to face other than on  
23     those three dates, September 20th, 2016, October 31st,  
24     2016, and November 2nd, 2016?

25          A     I don't remember the exact dates. Some of them  
26     were sort of informal. There were opportunities that I  
27     had to sign documents that allowed for the county -- or  
28     his team to access county records. And then there were

1 some discussions about how our joint venture would be  
2 formed.

3 Q Okay. Now, you -- between your initial contact  
4 with Mr. Geraci in July of 2016 -- at least, that's when  
5 the text messages were --

6 A Mm-hmm.

7 Q -- and your first face-to-face meeting with  
8 him, were you providing him with access to your property  
9 so people that were on his team could start doing due  
10 diligence with respect to the feasibility of the  
11 property for a CUP?

12 A I was.

13 Q Okay. So you allowed a civil engineer to come  
14 on the property. Correct?

15 A I did.

16 Q In fact, somebody to do the drawings that we  
17 saw as -- on the topographic survey that was exhibit --

18 A He had -- he had free access to noninvasive  
19 design and engineering work that he needed to do for the  
20 CUP.

21 Q Right. So you allowed him on the property to  
22 take measurements and do things he needed to do to  
23 prepare things for a CUP?

24 A Correct.

25 Q And during that time period, between your first  
26 contact with him and this first face-to-face, you had  
27 discussions with him about the zoning issues. Correct?

28 A Those were some of our discussions, yes.

1           Q     All right. But during that time, there were no  
2     text messages about terms of potential purchases. Is  
3     that correct?

4           A     No. We decided to do a Google share document  
5     that I created, which in that folder contained two  
6     drafts of what would, I believe, cover our  
7     understanding.

8           Q     Well, we'll get -- we'll get there. But all  
9     I'm asking you is between the first meeting -- or first  
10    contact in July of 2016 and your first face-to-face  
11    meeting on September 20th, 2016, there aren't any text  
12    messages that reflect discussions about the terms of a  
13    potential purchase, are there?

14          A     There are no text messages that discuss terms.

15          Q     And there are no emails as well that discuss  
16    the potential terms of a deal during that period of  
17    time?

18          A     Not that I can recall.

19          Q     You met with Mr. Geraci face to face on  
20    September 20th, 2016. Correct?

21          A     Yes.

22          Q     And at the conclusion of that meeting, you told  
23    him you wanted to send him a proposal -- documents that  
24    would be a proposal for potential purchase of the  
25    property from you. Correct?

26          A     What date are we talking?

27          Q     After -- after the September 20th, 2016  
28    face-to-face meeting, you told him you wanted to send

1 him written proposals with respect to the purchase of  
2 the property?

3 A That is correct.

4 Q Okay. So would you bring up Exhibit 9. I'd  
5 offer -- it's already been admitted. Just bring up  
6 Exhibit 9?

7 THE COURT: Exhibit 9 has not yet been  
8 admitted.

9 MR. WEINSTEIN: My mistake. I had it written  
10 down.

11 So I'd offer Exhibit 9.

12 THE COURT: Any objection?

13 MR. AUSTIN: No. No objection.

14 THE COURT: Exhibit 9 will be admitted.

15 (Premarked Joint Exhibit 9 was previously  
16 admitted into evidence.)

17 BY MR. WEINSTEIN:

18 Q So following that September 20th, 2016 meeting,  
19 you sent this email on September 26th, 2016 that says  
20 Darryl Cotton has invited you to contribute to the  
21 following shared folder.

22 Do you see that?

23 A I do.

24 Q Okay. And in that, did you put documents you  
25 wanted to consider?

26 A I did.

27 Q Okay. Why don't you go to Exhibit 10. You can  
28 look at it in your book if you need to as well,

1     **Mr. Cotton.**

2                   **Is this document a document you sent to him in**  
3     **that shared folder September 24, 2016?**

4           A     It is.

5           Q     **And you prepared that document?**

6           A     I did.

7                   MR. WEINSTEIN:   Okay.   And -- your Honor, may  
8     we have a quick sidebar.

9                   THE COURT:   Ladies and gentlemen, I'm going to  
10    talk to the lawyers for just a moment.   If you want to  
11    stretch, feel free to do so.

12                   We'll be right back.

13                   (Sidebar held and not reported)

14                   THE COURT:   All right.   Thank you for your  
15    patience, ladies and gentlemen.

16                   All right.   So, Counsel, please continue.

17    BY MR. WEINSTEIN:

18           Q     **Mr. Cotton, there was a -- to your**  
19    **recollection, there was a second document in that shared**  
20    **folder?**

21           A     Correct.

22           Q     **Called a memo of understanding?**

23           A     Correct.

24           Q     **With the same date.**

25                   Over lunch break, we'll tag it as Exhibit 11.  
26    But I only have the one copy.   I can't show it to the  
27    jury yet.   Do you have a copy available to you?

28                   MR. AUSTIN:   I do.

1 THE WITNESS: I do -- I do not.

2 MR. WEINSTEIN: May I approach, your Honor.

3 THE COURT: You bet.

4 MR. WEINSTEIN: We're going to show it to you  
5 later, but I at least want to --

6 THE WITNESS: Thank you. Okay.

7 BY MR. WEINSTEIN:

8 Q Now, Mr. Cotton, the -- the document I just  
9 showed you we're going to have marked as Exhibit 11 over  
10 the lunch hour, is that the subcontracted document that  
11 was in that shared folder?

12 A It was.

13 Q Okay. Do you have a receipt that shows that  
14 that folder was opened?

15 A The metadata information is -- will be in 11.  
16 When you stamp it, you'll see it there.

17 Q Oh, I see. Okay. All right. So the last page  
18 of Exhibit 11 has got metadata printed out. Correct?

19 A Correct.

20 Q All right. So it looks like it was -- even  
21 though it was dated September 24th, it was modified in  
22 some way on September 25th and included with the email  
23 on September 26th?

24 A Correct.

25 Q All right. But this is the -- one of the two  
26 documents that you sent to Mr. Geraci on September 26th,  
27 2016?

28 A Correct.

1           Q     Is it your contention that Mr. Geraci has  
2     agreed -- had agreed on or prior to November 2nd, 2016  
3     to all the terms and conditions in those two documents?

4           A     He had.

5           Q     And so we're going to call those working  
6     documents. That's a term you use. Correct?

7           A     Fair enough.

8           Q     Okay. And it's your testimony that you had an  
9     oral agreement with Mr. Geraci as of November 2nd, 2016  
10    that contained all of the terms and conditions in those  
11    working -- two working documents. Correct?

12          A     Could you please repeat that.

13          Q     Sure. As of November 2nd, 2016, is it your  
14    testimony that you had an oral agreement with Mr. Geraci  
15    to sell the property to him on the terms and  
16    conditions -- terms and conditions stated in those two  
17    working documents?

18          A     Correct.

19          Q     And so over the course of this litigation,  
20    you've -- well, strike that.

21                You have at times referred to having over 30  
22    terms and conditions in your agreement with him.  
23    Correct?

24          A     I don't recall ever saying that. I would defer  
25    to the two working docs. Those were outlining  
26    everything that we had discussed.

27          Q     Okay. And so all the way back on  
28    September 24th, 2016, you had set out in writing what



1 the agreement was going to be. And then between that  
2 point in time and November 2nd, he agreed to all those  
3 things?

4 A He had.

5 Q Okay. Now, did he ever sign either one of  
6 those working documents?

7 A No, he did not.

8 Q All right. Would you put up Exhibit 24  
9 again -- I'm -- 10 again. Highlight paragraph 4.

10 So as of the time you met on November 2nd,  
11 2016, Mr. Geraci had agreed that upon signing this  
12 agreement, he was going to pay Inda-Gro \$200,000?

13 A Upon execution of that -- of this contract, in  
14 lieu of the final contract that was being prepared by  
15 his attorney, this is my understanding of what we had  
16 discussed. We were going to split it into two  
17 400,000-dollar parts. And he would make those payments,  
18 under this particular services agreement contract,  
19 \$200,000, and then the balance 200,000 within 30 days of  
20 notice to vacate.

21 Q Right. So it was a total purchase price of  
22 800,000. Correct?

23 A Correct.

24 Q Split into two 400,000-dollar segments.  
25 Correct?

26 A Correct.

27 Q Okay. And then with respect to the agreement  
28 that was going to be for the relocation of Inda-Gro,

1 that 400,000-dollar portion of the agreement, he was  
2 supposed to pay \$200,000 upon signing of that agreement.  
3 Correct?

4 A Correct.

5 Q And then he was supposed to pay you in  
6 connection with the other 400,000, he was supposed to  
7 pay you in addition to that according to that services  
8 agreement 10 -- a 10-percent equity interest in the  
9 dispensary as well as 10,000-dollar distributions?

10 A Are you referring to paragraph 1? Because that  
11 gets into the 10 percent. As far as the balance of the  
12 200,000, that would have been due once the drawings had  
13 been completed. I would maintain the property until  
14 such time that he was ready to construct. And then I  
15 would move out. He is a Realtor. So I deferred to his  
16 opportunities to provide me another property. This is  
17 one of the reasons we split it into two parts.

18 Q Okay. But part of that agreement was to pay  
19 200 grand upon signing one of those documents. Correct?

20 A Correct.

21 Q Okay. And he was going to give you  
22 a 10-percent equity position in the new licensed  
23 dispensary based on the services agreement. Correct?

24 A Correct.

25 Q Which was the second document?

26 A The memorandum of understanding is the second  
27 document. You're currently on the service agreement.

28 Q There are two documents. It doesn't really

1 matter the order. One is the service agreement, and one  
2 is the MOU?

3 A Correct.

4 Q And one of those is Exhibit 10 and what we are  
5 going to mark as Exhibit 11?

6 A Correct.

7 Q So if we want to understand what the oral  
8 agreement was that had been made between you and  
9 Mr. Geraci on November 2nd -- or as of November 2nd,  
10 with he would just look at those two documents, and they  
11 would give us those terms?

12 A Correct.

13 Q Now, we've already established you didn't sign  
14 them. Do you recall meeting with him on November 2nd to  
15 sign a written document?

16 A I do.

17 Q Okay. Before we get there, would you go to  
18 Exhibit 30, please. I believe that's been admitted.

19 A Okay.

20 Q Have you seen Exhibit 30, the ownership  
21 disclosure statement?

22 A I do.

23 Q Okay. And on the left-hand side in the middle,  
24 the space for you that has your address, lists you as  
25 the owner, and has your signature. Correct?

26 A Correct.

27 Q You signed that on October 31st, 2016?

28 A Yes.

1 Q In his office?

2 A I did.

3 Q Do you recall whether you actually met with him  
4 when you signed it?

5 A He was in the office when I signed this.

6 Q Okay. Do you know whether Ms. Berry, whose  
7 signature is to the right of yours on that document,  
8 whether she had signed the document before you did?

9 A My best recollection is it was already signed.

10 Q Okay. That's your recollection today?

11 A Yes.

12 Q But before -- Mr. -- is it Mr. Geraci who asked  
13 you to sign this form?

14 A Yes.

15 Q And before you signed the form, he told you  
16 that Ms. Berry was going to act as his agent or his  
17 assignee for purposes of submittal of the CUP, didn't  
18 he?

19 A He did.

20 Q And you signed the ownership disclosure  
21 statement. Correct?

22 A Correct.

23 Q You read the form before you signed it?

24 A I glanced over it.

25 Q Well, you read it, didn't you?

26 A I glanced over it. I didn't read it in detail.

27 MR. WEINSTEIN: Your Honor, I'd like to lodge  
28 this transcript and then read from it.

1           THE COURT: All right. You may read from  
2 there, Counsel. Are you just going to read from the  
3 transcript?

4           MR. WEINSTEIN: I'm going to read from the  
5 transcript.

6           THE COURT: What's the date of the transcript?

7           MR. WEINSTEIN: It's May 14th, 2018.

8           THE COURT: And what's the page and line?

9           MR. WEINSTEIN: It is page 96, line 15 through  
10 17.

11          THE COURT: All right. Just give me one  
12 moment.

13          All right. Folks, Counsel is going to read  
14 from a document called a deposition. I'm going to read  
15 you what a deposition means. Some of you may be  
16 familiar with it. Just in case you don't, Counsel, I'm  
17 going to read Jury Instruction 208.

18          A deposition is the testimony of a person taken  
19 before trial. At a deposition, the person is sworn to  
20 tell the truth and is questioned by the attorneys. You  
21 must consider the deposition testimony that was  
22 presented to you in the same manner -- I'm sorry -- in  
23 the same way as you consider testimony given in court.

24          All right. Counsel, please read.

25          MR. WEINSTEIN: Question: Did you read the  
26 form before you signed it?

27          Answer: I did.

28

1 BY MR. WEINSTEIN:

2 Q Now, you also read Part 1. If you can put up  
3 Part 1.

4 You also read Part 1 where it talks about the  
5 list of persons that must sign, and it must include the  
6 names and addresses of all persons who have an interest  
7 in the property. Is that correct?

8 A I did.

9 Q And you understood at the time you signed this  
10 that it needed to be signed by both you and Ms. Berry,  
11 the applicant, because she had to have an interest in  
12 the property -- strike that. Let me ask it again.

13 Did you understand at the time that you signed  
14 this that it needed to be signed by both you and  
15 Ms. Berry because the applicant had to have an interest  
16 in the property in order to be able to pursue the CUP  
17 application?

18 A I go by the underlined section, which stated a  
19 signature is required of at least one of the property  
20 owners. And at the time, I was the property owner. I  
21 was not going to hold the CUP. That was going to be the  
22 assignee Rebecca Berry.

23 Q So you didn't consider yourself the property  
24 owner as of that date?

25 A I did.

26 Q Okay. So you understood that she had to sign  
27 as the applicant because the applicant had to have an  
28 interest in the property. Correct?

1           A     As a tenant leasee, yes.

2           Q     And you understood, at least as of the time you  
3 signed this, that Ms. Berry was going to have an  
4 interest in the property as an agent of Mr. Geraci once  
5 the agreement was entered into between the two of U.S.  
6 in connection with the sale of the property?

7           A     Correct.

8           Q     Now, as of this date, Mr. Geraci had informed  
9 you that Abhay Schweitzer was the person he had employed  
10 to process the CUP application and that Mr. Schweitzer  
11 had done this type of work on other medical marijuana  
12 principals. Is that correct?

13          A     Correct.

14               MR. WEINSTEIN: I'd like to show the witness  
15 Exhibit 38 that's been previously admitted.

16               All right. While Ms. Kulas exits out and  
17 reboots, Mr. Geraci, do you have Exhibit 38 before you  
18 in the book?

19               THE WITNESS: I do.

20               BY MR. WEINSTEIN:

21          Q     Have you seen that before?

22          A     I have.

23          Q     And you signed it on November 2nd, 2016?

24          A     I did.

25          Q     And you did that -- you signed that before a  
26 notary. Correct?

27          A     Correct.

28          Q     And it was about at 3:05 in the afternoon?

1           A       Yes.

2           Q       Now, the meeting at which you signed this  
3 document marked as Exhibit 38 lasted about 30 minutes.  
4 Didn't it? Is that your best estimate?

5           A       I don't agree with that. I think it was very  
6 short and sweet. I came in, signed, got my money, and  
7 left.

8                   MR. WEINSTEIN: Your Honor, I'd like to read  
9 from the witness's deposition again.

10                  THE COURT: Page and line.

11                  MR. WEINSTEIN: Page 51, line 14, through 52,  
12 line 2 -- I'm sorry -- line 1.

13                  THE COURT: Line 1. And same date, by the way?

14                  MR. WEINSTEIN: Yes. One --

15                  THE COURT: Whenever you're ready.

16                  MR. WEINSTEIN: Question: Take a look at  
17 Exhibit 6 and let me know if you've seen that before.

18                   I have.

19                   And what's Exhibit 6?

20                   It represents a document that was signed on  
21 11/2/16 between Geraci and myself.

22                   Question: And where was it signed?

23                   Answer: Mr. Geraci's office.

24                   Question: How long did you meet with him at  
25 the office on the day you -- he signed that?

26                   How long did that meet -- I --

27                   Answer: I did.

28                   Question: How long did that meeting last?



1 I'm sorry.

2 How long did that meeting take?

3 Answer: Thirty minutes.

4 BY MR. WEINSTEIN:

5 Q Now, why -- at that meeting on November 2nd,  
6 2016, you didn't just sign the two working documents you  
7 told us about, did you?

8 A The working documents were not the subject of  
9 that meeting.

10 Q Wasn't that the agreement that you had reached  
11 as of that date?

12 A It was.

13 Q Okay. And so you didn't go to that meeting to  
14 sign an agreement?

15 A What I went to that meeting for, the way it was  
16 described to me, is I was going to get something in  
17 writing that constituted a receipt that gave him  
18 assurances he wasn't wasting his time with me until such  
19 time that the final contract was delivered to me and  
20 incorporated those terms and conditions as noted in our  
21 9/24 working docs.

22 Q So your only reason to go to that office to  
23 sign that document was to get \$10,000? Correct?

24 A And give him assurances that we had a sale  
25 price of \$800,000. It was not a fully integrated  
26 contract at that point.

27 Q Did you know what the word "integrated" meant  
28 at the time?

1           A       I did.

2           Q       Okay. So is that a word you used with him in  
3 your conversation?

4           A       Not really because there was a sense of trust.

5           Q       When you -- as of November 2nd, 2016, when you  
6 signed Exhibit 38, you -- your testimony is you had this  
7 other oral agreement with him that contained --

8           THE REPORTER: I'm sorry, can I hear a little  
9 bit slower. That contained --

10          BY MR. WEINSTEIN:

11          Q       -- the terms and conditions contained in those  
12 two working documents from September 24th, 2016?

13          A       So my understanding on the 11/2 meeting was  
14 that his attorney, Gina Austin, was using the working  
15 docs to incorporate into a California real estate  
16 contract and there would be a fully blown proper  
17 contract issued by her that we could enter into. This  
18 was more or less a receipt.

19          Q       As of November 2nd, 2016, did you -- did you  
20 believe you did not have a binding agreement with  
21 Mr. Geraci until Ms. Austin drafted the documents  
22 contained in the two -- the terms and conditions in  
23 those two working documents?

24          A       I did not. The fact is that she sent me some  
25 drafts that incorporated almost none of the terms that  
26 were in those working drafts.

27          Q       So as of November 2nd, 2016, it was your  
28 understanding you didn't have any binding agreement with

1 Mr. Geraci until a signed agreement was signed by both  
2 of you?

3 A That is correct.

4 Q Okay. And what you signed on November 2nd,  
5 2016 wasn't the agreement as far as you understood it?

6 A That was not the agreement that would have  
7 incorporated all the terms that we had discussed.

8 Q So as of November 2nd, 2016, in your view, to  
9 your understanding, you had no agreement that was  
10 binding with Mr. Geraci?

11 A Not until such time that I had the final  
12 contract documents, correct.

13 Q And those final contract documents were never  
14 signed. Correct?

15 A They were not.

16 Q So you never, to your understanding, ever had a  
17 binding agreement with Mr. Geraci for any of the terms  
18 and conditions of this oral agreement that you described  
19 to us earlier. Is that true?

20 A I would not consider this a binding contract,  
21 no.

22 Q I'm referring to your -- your agreement. You  
23 had no agreement with him. Correct? Let's --

24 A None.

25 Q Right. Put this one aside because I understand  
26 that wasn't an agreement to your understanding.  
27 Correct?

28 A Correct.

1           Q     So what you're telling us is that as of  
2     November 2nd, 2016, you had no binding agreement with  
3     him to sell your property to him?

4           A     I don't see this as a binding agreement. So,  
5     no, I did not have a binding agreement.

6           Q     And you never ended up having a binding  
7     agreement with him, to your understanding, because no  
8     other documents were ever signed. Correct?

9           A     Correct.

10          Q     Now, when you -- when you got to Mr. Geraci's  
11     office on November 2nd, 2016, is it your testimony that  
12     the document had already been entirely drafted on  
13     Mr. Geraci?

14          A     It had.

15          Q     And you were there for 30 minutes. We've  
16     established that. Correct?

17          A     On the outside of that time frame, possibly.  
18     But I recall it being probably half of that maybe --

19          Q     Well, certainly your best recollection --

20          A     At the time I ended up.

21          Q     Let me finish.

22                 That was certainly your recollection when you  
23     gave your deposition back in May of 2018. Correct?

24          A     Correct.

25          Q     Now, you had some discussions with him about  
26     the document that's marked as Exhibit 38. Correct?

27          A     Not really.

28          Q     Didn't you discuss -- didn't you testify in

1 deposition that you discussed a nonrefundable deposit of  
2 \$50,000?

3 A I don't recall if that was done on 11/2. But  
4 things that also had to be agreed to between us was who  
5 was going to pay for the CUP and whether or not that was  
6 a refundable \$10,000.

7 Q Okay. And those things were discussed either  
8 at the meeting or before the meeting. Correct?

9 A Before.

10 Q And you signed this document without  
11 modification. Correct?

12 A Correct.

13 Q You didn't ask him to revise any of the terms  
14 and conditions, did you?

15 A No, I did not.

16 Q Okay. You -- at that meeting, you did discuss  
17 the 50,000-dollar nonrefundable deposit. That is your  
18 recollection. Correct?

19 A Most definitely.

20 Q Okay. But you did not ask him to change that  
21 in the agreement marked as Exhibit 38, did you?

22 A I did not.

23 Q Now, you see the first word in the document, it  
24 says "Agreement"?

25 A Yes.

26 Q You did not question the use of that word at  
27 the time of your meeting, did you?

28 A No, I did not.

1           Q     You did have discussions with him that you  
2 might be selling their property to an assignee rather  
3 than to him. Correct?

4           A     Yes.

5           Q     Okay. So we look at the first word of the line  
6 of the document. It says agreement between Larry Geraci  
7 or assignee and Darryl Cotton.

8                     Do you see that?

9           A     I do.

10          Q     And what you are discussion with him was about  
11 the possibility that ultimately the buyer that was sold  
12 the property might be an entity that he owned and  
13 controlled?

14          A     Correct.

15          Q     Read -- if you read paragraph -- the next  
16 paragraph -- I'll call it paragraph 1. It says "Darryl  
17 Cotton has agreed to sell the property located at 6176  
18 Federal Boulevard, California, for a sum of \$800,000 to  
19 Larry Geraci or assignee on the approval of the  
20 marijuana dispensary" -- and then in parens -- "CUP for  
21 a dispensary," close parens.

22                     Do you see that?

23          A     I do.

24          Q     And at the time you signed that, that was a  
25 true statement. Correct?

26          A     Yes.

27          Q     And it was true because 800,000 was the  
28 cumulative price that you had agreed to pay -- to be

1 paid for the property?

2 A The cumulative between both drafts, yes.

3 Q And you received that day \$10,000 in cash from  
4 Mr. Geraci. Correct?

5 A I did.

6 Q Did you have any discussion on November 2nd,  
7 2016 about the language in the next paragraph that says,  
8 "\$10,000 cash has been given in good faith earnest  
9 money"? And then these are the words I'm interested in  
10 "to be applied to the sales price of 800,000 and to  
11 remain in effect until the license is approved."

12 Do you see that?

13 A I do.

14 Q Did you have any discussions at that time of  
15 that meeting about the language remaining in effect  
16 until the license to be approved?

17 A No, we did not.

18 Q But you understood at the time you signed  
19 Exhibit 38 that the \$800,000 would be the sales price if  
20 the CUP license was approved?

21 A Correct.

22 Q That was never an area of confusion between the  
23 two of you. Correct?

24 A It was not.

25 Q You also understand at the time the property  
26 had to be rezoned to make the sale probable at all. Is  
27 that true?

28 A Correct.

1           Q     And also that a CUP would also have to be  
2     signed -- or I'm sorry -- a CUP would have to be  
3     approved and issued by the City to make the sale  
4     possible at all. You knew that at the time as well?

5           A     Yes.

6           Q     So you understood that the ultimate sale and  
7     payment to you of the total sales price of \$800,000 was  
8     conditioned upon approval of the CUP?

9           A     Correct.

10          Q     Now, did you know before you showed up on  
11     November 2nd, 2016 that you were going to  
12     receive \$10,000 and not \$50,000 as a nonrefundable  
13     deposit?

14          A     Can you please repeat -- please repeat that.

15          Q     Sure.

16                 Before you actually showed up at his office,  
17     were you aware that he was only going to pay you  
18     a 10,000-dollar nonrefundable deposit rather than a  
19     50,000-dollar one?

20          A     I was.

21          Q     And that's because you had a discussion with  
22     him you say before the meeting. Correct?

23          A     Correct.

24          Q     But when you got there, you didn't ask him to  
25     change that 10,000-dollar figure to \$50,000, did you?

26          A     No, I did not.

27          Q     You also didn't ask Mr. Geraci to change the  
28     documents to reflect a 10-percent equity interest in the



1 dispensary. Is that correct?

2 A No, I did not.

3 Q You also did not ask him to change the document  
4 to reflect a guaranteed minimum payment stream  
5 of \$10,000 a month, did you?

6 A No.

7 Q Now, did you have discussions about  
8 the 10-percent equity interest at the November 2nd  
9 meeting?

10 A No, not really. As I said, I believe I was  
11 only in there maybe 15 minutes to be honest with you.

12 MR. WEINSTEIN: Your Honor, I'd like to read  
13 the deposition transcript of Mr. Cotton, page 75,  
14 lines 2 to 5.

15 THE COURT: Whenever you're ready.

16 MR. WEINSTEIN: Question: Did you have any  
17 discussion with him on November 2nd, 2016 about  
18 a 10-percent equity interest?

19 Answer: Yes.

20 BY MR. WEINSTEIN:

21 Q So you actually had a discussion with him you  
22 say about the 10-percent equity interest both before and  
23 after November 2nd, 2016. Is that true?

24 A True. And I believe what I was referring to in  
25 the deposition may have actually occurred at the  
26 meeting, but in all likelihood, I was referring back to  
27 my working docs and fact that the 10-percent equity  
28 position was, you know, fundamental in my decision to

1 sell the property.

2 Q Okay. So it wasn't your best recollection back  
3 in May of 2018 that you actually talked to him at the  
4 meeting about the 10-percent equity interest?

5 A We may have touched on it.

6 Q Just so we're clear what your understanding was  
7 of that 10-percent equity interest and the 10,000-dollar  
8 guaranteed minimum distributions, it was your  
9 understanding to say that once the dispensary opened,  
10 if 10 percent of the net profits on a monthly basis were  
11 less than \$10,000, you would receive \$10,000 that month.  
12 Correct?

13 A Correct.

14 Q And if 10 percent of the monthly net profit in  
15 a given month were greater than \$10,000, you would  
16 receive that greater amount for that month?

17 A Correct.

18 Q Would you put up Exhibit 40, please. Actually,  
19 I offer Exhibit 40, your Honor.

20 THE COURT: Exhibit 40 is in evidence.

21 MR. WEINSTEIN: Thank you.

22 BY MR. WEINSTEIN:

23 Q Mr. Cotton, do you recognize Exhibit 40?

24 A I do.

25 Q And that's an email sent to you at 3:11 p.m. by  
26 Mr. Geraci on November 2nd, 2016?

27 A Correct.

28 Q So roughly six minutes after you signed the

1 document before a notary, he emailed you a copy.

2 Correct?

3 A Correct.

4 Q Okay. And you asked him to do that?

5 A No. I asked for a copy at the time I signed  
6 it, and he offered to email it. And that's how I got  
7 the email.

8 Q Okay. And you were okay with that?

9 A Sure.

10 Q Okay. So would you -- when did you look at it?

11 A Well, I read it when I signed it. And, again,  
12 I felt it acted more as a receipt until we got the final  
13 transcript. But what alarmed me is in the title of this  
14 email, it says Cotton and Geraci contract. So that  
15 concerned me.

16 Q So my question was: What did you read it --  
17 when did you read it after it was emailed to you?

18 A I believe it would have been about 6:00 p.m.

19 Q So roughly 6:00 p.m., you open this email to  
20 find what you had signed. Correct?

21 A Correct.

22 Q And are you saying what concerned you was --

23 A The title.

24 Q -- the way the PDF was labeled?

25 A The title of the attachment.

26 Q Can we highlight that.

27 So this PDF that was emailed to you as an  
28 attachment said Cotton & Geraci contract, period, PDF.

1 Is that true?

2 A Correct.

3 Q And that's what gave you concern?

4 A Yes. I wanted to memorialize my response.

5 Q Okay. And the word "agreement" in the  
6 document, when you read it, it didn't give you concern.  
7 Correct?

8 A It did not.

9 Q Okay. So now that you have concern, you  
10 respond back to Mr. Geraci?

11 A Correct.

12 Q And what do you do? How do you respond? By  
13 email?

14 A There's an email response.

15 Q Okay. Why don't you go to Exhibit 41.  
16 Have you seen Exhibit 41 before?

17 A I have.

18 Q Okay. And is that your email response at  
19 6:56 p.m. to having received the 3:11 p.m. email that's  
20 marked as Exhibit 40?

21 A It is.

22 Q All right. Now -- and you sent this because  
23 you got concerned that he called the attachment  
24 "contract." Correct?

25 A Yes.

26 Q So you're thinking now when you got this email  
27 that, well, maybe he thinks this is an agreement, and we  
28 don't have an agreement, something to that effect?

1           A     Correct.

2           Q     Okay. And so you sent him an email, and you  
3 say I just noticed the 10 percent equity position in the  
4 dispensary was not language added into that document.

5                     Do you see that?

6           A     I do.

7           Q     Now, in fact haven't you already told us that  
8 you talked about the 10 percent equity after the  
9 November 2nd meeting?

10          A     Oh. There was just substantial difference in  
11 my mind between the agreement receipt and a contract.  
12 So it wasn't number I memorialized it here that I wanted  
13 to be absolutely certain that any final agreement would  
14 include that.

15                     MR. WEINSTEIN: Would you move -- I move to  
16 strike as nonresponsive.

17                     I ask the question to be read back.

18                     THE COURT: The objection is sustained in part  
19 and overruled in part. And the motion to strike is  
20 granted in part and denied in part.

21                     The first response of "No" will remain.  
22 Everything else will be stricken.

23                     MR. WEINSTEIN: Okay.

24                     BY MR. WEINSTEIN:

25          Q     So to be clear, you had a discussion at the  
26 November 2nd, 2016 meeting about the 10 percent equity  
27 interest?

28          A     Correct.

1           Q     But you didn't ask him to add it into that  
2 document, correct, at the time?

3           A     At the time, I did not.

4           Q     And then you get an email that evening where  
5 you then say you noticed for the first time it wasn't --  
6 a 10 percent equity interest wasn't in the document.  
7 Correct?

8           A     Correct.

9           Q     Okay. And you're concerned. And the reason  
10 you sent the email is because he had labeled the PDF  
11 contract. Correct?

12          A     Yes.

13          Q     Okay. And in fact in your second sentence, you  
14 say, "Since we executed the purchase agreement in your  
15 office for the sale price of the property." Do you see  
16 that?

17          A     I do.

18          Q     You actually referred to the document as a  
19 purchase agreement, didn't you?

20          A     Correct.

21          Q     And purchase agreement and contract are the  
22 same thing, aren't they?

23          A     That wasn't my interpretation. He had a lot  
24 more language to add into that.

25          Q     Okay. Okay. But you referred to it as a  
26 purchase agreement in this email?

27          A     I did.

28          Q     All right. And you told us your concern was

1     that he called it a contract?

2           A     Correct.

3           Q     All right. Now, you didn't mention any -- you  
4     didn't -- in this email, did you tell him I'm concerned  
5     you called this a contract. We don't have a contract?

6           A     I would take you to the next sentence. "I just  
7     want to make sure that that language what is missing is  
8     entered into any final agreement as it is a factored  
9     element in my decision to sell the property."

10          Q     Right. So you didn't tell him in this email we  
11     don't have an agreement?

12          A     We had an agreement. It just wasn't complete  
13     in terms of the terms and conditions.

14          Q     It wasn't binding. You hadn't signed anything  
15     at this point?

16          A     That's correct.

17          Q     Now, the -- you didn't ask in this email to put  
18     in a 10,000-dollar minimum guarantee can distributions.  
19     Did you?

20          A     No. I was told that when Gina Austin was done  
21     with her work, I would get a California real estate  
22     contract, and these would be addendums to that contract.

23          Q     So the only thing that you mention in this  
24     email that should be included in the final agreement was  
25     the 10 percent equity interest, not any of the other  
26     terms and conditions that you understood were part of  
27     the agreement based on the two working documents that  
28     you had drafted back in December of 2016. Is that

1 correct?

2 A Could you please repeat that again.

3 MR. WEINSTEIN: Sure. May I have it read back,  
4 please.

5 THE COURT: Madam Reporter, would you please  
6 read back the question.

7 (The following was read by the reporter:

8 Q. So the only thing that you mention in this  
9 email that should be included in the final  
10 agreement was the 10 percent equity interest,  
11 not any of the other terms and conditions that  
12 you understood were part of the agreement based  
13 on the two working documents that you had  
14 drafted back in December of 2016. Is that  
15 correct?)

16 THE WITNESS: That would be correct.

17 MR. WEINSTEIN: Your Honor, is this a good  
18 time?

19 THE COURT: Folks, we're almost at five to  
20 12:00. We're going to stop a few minutes early for our  
21 noon recess, and we'll be in recess now until 1:30. Do  
22 not form or express an opinion or discuss the case until  
23 deliberations. We'll be in recess now until 1:30.  
24 Thank you very much.

25 THE WITNESS: Kind of hard to get in and out of  
26 here.

27 THE COURT: Why don't you wait until they have  
28 left.



1 THE WITNESS: Of course.

2 THE COURT: Okay. The jury has left the room.

3 Feel free to step down, Mr. Cotton.

4 All right. Folks, anything we need to chat  
5 about before we take our noon recess?

6 MR. WEINSTEIN: We're supposed to be back at  
7 1:20. Correct?

8 THE COURT: Yes. Please be back at 1:20.  
9 We'll take our noon recess.

10 MR. WEINSTEIN: Thank you, your Honor.

11 (Lunch recess from 11:55 a.m. to 1:28 p.m.)

12 THE COURT: Mr. Cotton, may I ask you to retake  
13 the witness stand.

14 Bring them in whenever you're ready.

15 All right. We have everybody in their chairs.

16 Let me take just a quick moment to give you an  
17 idea of where we stand. Folks, we are way ahead of our  
18 estimate. We had told you when you first came in here  
19 that we would get you the case added before the close of  
20 business on, what, Thursday, the 22nd. It's possible  
21 we'll finish the presentation of evidence this week.

22 Now, please understand that Thursday is a short  
23 day for reasons that have nothing to do with this case  
24 but with a whole lot of other cases assigned to this  
25 department. We're stopping at noon on Thursday. I  
26 cannot guarantee you that we'll be done with the  
27 evidence as early as Thursday at noon. We're going to  
28 try real hard, which means that sometime next Monday, I

1 fully expect that I'll give you the instructions. The  
2 lawyers will argue, and you'll begin your -- when I say  
3 next Monday, let's see. That would be the 18th. I'm  
4 hopeful that you'll get the case as early as next week.  
5 We're moving along.

6 When we're not in session with you, I'm  
7 constantly talking to the lawyers about moving the case  
8 along, I can assure you. So for your planning purposes,  
9 we are ahead of schedule, I can assure you.

10 With that in mind, you will recall that when we  
11 stopped, Plaintiff's counsel was conducting examination  
12 of Mr. Cotton.

13 Mr. Cotton, you understand you're still under  
14 oath?

15 THE WITNESS: I do.

16 THE COURT: Thank you very much. We're going  
17 to continue with that at this point in time.

18 Counsel, whenever you're ready.

19 MR. WEINSTEIN: Thank you, your Honor. Good  
20 afternoon, Mr. Cotton.

21 THE WITNESS: Hello.

22 BY MR. WEINSTEIN:

23 Q I'm going to go back and get a couple things  
24 that I missed, and then we'll come back to our  
25 chronology.

26 I'd like to offer Exhibit 21, your Honor.

27 THE COURT: Twenty-one is in evidence.

28 MR. WEINSTEIN: Thank you.

1 BY MR. WEINSTEIN:

2 Q Mr. Cotton, I'd ask you to look at Exhibit 21  
3 and let me know if you have seen that before.

4 A I have.

5 Q And the attachment to it is a site plan?

6 A I'm familiar with it, yes.

7 Q Okay. So do you recall receiving this on or  
8 about October 24th, 2016?

9 A I did.

10 Q Okay. So this was during the period of time  
11 when you were allowing access to your property.  
12 Correct?

13 A Correct.

14 Q All right. Now, earlier, we were talking  
15 about -- I talked about when you first communicated your  
16 belief to Mr. Geraci that you didn't think the property  
17 was eligible for an MMCC because the property wasn't  
18 properly zoned.

19 Do you recall that?

20 A I do.

21 Q Was that one of your first conversations with  
22 Mr. Geraci?

23 A It would have been the first conversation, yes.

24 Q Okay. And if I recall your testimony --  
25 correct me if I'm wrong -- but you said something to the  
26 effect of Mr. Geraci told you that he had some unique  
27 skills that would enable him to try and overcome his own  
28 problem?

1           A       Relationships that would lend itself to getting  
2       it rezoned, yes.

3           Q       And then I asked you if those relationships  
4       were through Mr. Bartell, his lobbyist, and you said,  
5       no, you didn't learn about Mr. Bartell until three --  
6       maybe three months later, maybe October or November of  
7       2016.

8                   Do you recall that?

9           A       Jim Bartell's name never came up in our -- in  
10       the first few months of our meeting.

11                  MR. WEINSTEIN: Your Honor, I'd like to read  
12       from Mr. Cotton's deposition. Page 34, line 17 through  
13       3510.

14                  THE COURT: Whenever you're ready.

15                  MR. WEINSTEIN: Question: After you  
16       communicated your belief to Mr. Geraci that you didn't  
17       believe the property was eligible because it wasn't  
18       zoned properly, eligible to operate a medical marijuana  
19       dispensary, what was his response to you?

20                  Answer: His response was he had unique skills  
21       and connections to make it eligible for a medical  
22       marijuana consumer collective.

23                  Question: And he didn't -- and did he tell  
24       what you those skills and connections were?

25                  Answer: He did. He had a lobbyist under his  
26       employ that assisted in allowing him to acquire  
27       properties and get them into a medically marijuana  
28       consumer collective compliant relationship with the

1 City.

2 Question: Did he tell you who that lobbyist  
3 was at the time?

4 Answer: He did.

5 Question: Who was that?

6 Answer: Jim Bartell & Associates.

7 BY MR. WEINSTEIN:

8 Q You recall that was your recollection back in  
9 May of 2018, wasn't it?

10 A Based on that line of questioning, I may have  
11 concluded that he in fact did tell me that, that it  
12 wasn't a priority at the time when I answered that.

13 Q Okay.

14 A Frankly, it still isn't.

15 MR. WEINSTEIN: I would offer Exhibit 42,  
16 please, your Honor.

17 THE COURT: Forty-two is in evidence.

18 MR. WEINSTEIN: Publish it, please.

19 BY MR. WEINSTEIN:

20 Q Mr. Geraci -- Mr. Cotton, do you recognize  
21 what's been marked as Exhibit 42?

22 A I do.

23 Q And that email response you received from  
24 Mr. Geraci that evening at 9:13 p.m.?

25 A Yes.

26 Q And this was a response that he sent to the  
27 email -- that you had sent to him at 6:11 p.m. Correct?

28 A Correct.

1           Q     All right. And you've heard his testimony,  
2 obviously, that he was -- he was responding to the first  
3 sentence of the email when he said "No problem"?

4           A     I heard his testimony, yes.

5           Q     Okay. When you got this email, did you  
6 understand that he was not confirming that you should  
7 have a 10 percent equity interest in the property?

8           A     He was assuring me that what I put in my email  
9 to him was not a problem.

10          Q     Okay.

11          A     He doubled down on no. No, no problem at all.

12               MR. WEINSTEIN: All right. Would you show us  
13 Exhibit 69, please. I'd offer Exhibit 69 if it's not  
14 already admitted.

15               THE COURT: All right. Sixty-nine is in  
16 evidence.

17               MR. WEINSTEIN: Go to the next page, please. I  
18 think I may have the wrong exhibit. I apologize.

19               MR. TOOTHACRE: You might want to go to page 2.

20               MR. WEINSTEIN: Why don't you highlight that.  
21 Just the first paragraph -- the second paragraph.

22 BY MR. WEINSTEIN:

23          Q     Mr. Cotton, do you recognize this email thread  
24 that's been marked as Exhibit 69?

25          A     I did.

26          Q     And this was your capitulation -- or  
27 recapitulation of the events from your perspective that  
28 had occurred between you back on November 2nd, 2016. Is

1     that correct?

2           A     Correct.

3           Q     Okay. And so you go through and you say  
4     "Throughout October we had discussions regarding the  
5     sale of my property."

6                     That was your understanding. Correct?

7           A     Correct.

8           Q     And you talk about meeting on November 2nd and  
9     agreeing on a purchase price, nonrefundable deposit, a  
10    equity-percent equity stake, et cetera.

11                    Do you see that?

12          A     Correct.

13          Q     And you talk about the good-faith agreement in  
14    terms of providing a 10,000-dollar deposit.

15                    Do you see that?

16          A     Towards the 50,000-dollar nonrefundable  
17    deposit, yes.

18          Q     And then we get to the sentence that says "That  
19    same day, you scanned and emailed to me the agreement."

20                    So we're talking about the agreement that was  
21    marked as Exhibit 38. Correct?

22          A     Correct.

23          Q     And I replied and noted that the agreement did  
24    not contain the 10 percent equity stake of the  
25    dispensary.

26                    Do you see that?

27          A     Yes.

28          Q     And you're referring there to your email

1 response back after you had received a copy of  
2 Exhibit 38 where you had indicated that the 10 percent  
3 equity interest had not been included in there.

4 Correct?

5 A Correct.

6 Q And then you said "I asked you to please  
7 respond and confirm via email that a condition of the  
8 sale was my 10 percent equity stake."

9 Do you see that?

10 A I do.

11 Q And that was what you asked him in that entire  
12 email. Correct?

13 A Correct.

14 Q And then you go on to say "You did not respond  
15 and confirm the 10 percent as I requested."

16 Do you see that?

17 A I do.

18 Q And that was your understanding at the time you  
19 wrote this email, correct, that Mr. Geraci had not  
20 responded and confirmed the 10 percent as you requested?

21 A Not to the extent that I needed. I wanted to  
22 sign the contract.

23 Q What you thought at the time was he didn't  
24 expressly say that he agreed to the 10 percent equity  
25 stake. Isn't that what you meant?

26 A So this is dated March 16th. The email that  
27 you're referring to is November 2nd. And between then  
28 and this March 16th email, it was never delivered as a



1 fully integrated contract. So my problem and why I  
2 stated it this way is there was never confirmation to my  
3 agreement that I would get a fully integrated contract.

4 Q Well, isn't it true that when you received that  
5 email from Mr. Geraci on November 2nd that you didn't  
6 believe he was expressly confirming the 10 percent  
7 equity stake?

8 A I did believe he was confirming. His no, no  
9 problem goes to try to provide me some relief, some  
10 assurances that we were operating in good faith. And I  
11 took it at that. And I thought well, maybe I'm  
12 overreacting. But my spidey sense was tingling. That's  
13 why I wrote this email.

14 Q And you wrote this email when you were  
15 recapitulating those events before this lawsuit was ever  
16 filed. Correct?

17 A Correct.

18 Q So this reflects what your state of mind was  
19 before any lawsuit was filed between the two of you --

20 A This reflects my state of mind on March 16th.

21 THE REPORTER: And may the reporter request we  
22 have some space between the question and answer.

23 THE COURT: Thank you very much. All right.  
24 Folks, slow down just a bit.

25 MR. WEINSTEIN: Would you put up Exhibit 5.  
26 Would you go to page 19 of Exhibit 5.

27 BY MR. WEINSTEIN:

28 Q Mr. Cotton, on November 14th, 2016, you sent a

1 text message to Mr. Geraci and asked him did they accept  
2 the CUP application.

3 Do you see that?

4 A One moment. I do see it.

5 Q And at the time, November 16th, 2016, you knew  
6 the CUP application had been submitted, didn't you?

7 A I did not.

8 Q So you wrote that knowing that one hadn't been  
9 submitted?

10 A The question was did they accept the CUP  
11 application.

12 Q Wasn't it true that the application had been  
13 submitted but not accepted because it was stuck in the  
14 completeness review phase?

15 A Well, I had no interaction with the development  
16 services department. I had no idea what Mr. Geraci was  
17 doing with DSD. I had to take his assurances alone. I  
18 did not know if it had been submitted. And when I  
19 signed the document on 11/2, I hadn't realized he had  
20 submitted it prior to my even signing that document.

21 Q Didn't you know at the time that he had -- that  
22 zoning was holding up the process under the application?

23 A I knew the zoning issue had to be resolved  
24 before the CUP would be issued.

25 Q And as far as what Mr. Geraci was telling you,  
26 was that that zoning issue had not yet been resolved.  
27 Correct?

28 A Correct. It wasn't resolved until February.

1           Q     Okay. And you had constant communication was  
2 him -- I shouldn't say constant.

3                     You had several communications with him by text  
4 and phone where he updated you on the status of the  
5 zoning. Correct?

6           A     Correct.

7           Q     And you understood that nothing was going to  
8 happen with the CUP application until the zoning issue  
9 was resolved. Correct?

10          A     The agreement I had with Mr. Geraci was when it  
11 was accepted, the CUP was accepted as submitted, not  
12 necessarily approved, I would get the balance of the  
13 \$50,000.

14          Q     At that time, did you know what a completeness  
15 review phase was?

16          A     I did not.

17          Q     And so you didn't make any distinction between  
18 submittal and acceptance of the CUP application at that  
19 time. Is that fair?

20          A     That is fair.

21          Q     Would you go to page 21 of that same document.

22                     So during this time frame, Mr. Cotton, you were  
23 exchanging texts with Mr. Geraci about the status.  
24 Correct?

25          A     Correct.

26          Q     And he was updating you about what the status  
27 was as far as he understood. Correct?

28          A     Yes.

1 Q Okay. And you knew he was getting his  
2 information from his team. Correct?

3 A I presumed.

4 Q Okay. So on January 6th -- would you highlight  
5 January 6th -- he says he thinks it's going to be  
6 resolved by the 24th.

7 A I see that.

8 Q Okay. And that's something he updated you on  
9 at the time, January 6th. Correct?

10 A Yes.

11 Q You had no reason to believe at the time that  
12 was false. Correct?

13 A No.

14 Q And then on the 18th, as we scan down the page,  
15 in response to further inquiries, he updates you that  
16 it's going to be the 30th. Correct?

17 A I don't see where the 30th comes into this.

18 Q The sign-off date, they said it's going to be  
19 the 30th.

20 Do you see that?

21 A What date was that?

22 Q January 18th, 2017 at 10:27.

23 A Okay. Got it.

24 Q Okay. So he's revising the estimate. Correct?

25 A Correct.

26 Q You have no reason to believe that was false.  
27 Correct?

28 A No.

1 Q Okay. And then go to January 31st on the next  
2 page.

3 And he's continuing to update you about the  
4 status of the zoning. Correct?

5 A Correct.

6 Q Okay. And he says "We're waiting for  
7 confirmation today at about 4 o'clock."

8 Do you see that?

9 A Yes.

10 Q Okay. And you now know -- you had no reason to  
11 believe at the time that was false, did you?

12 A No, I did not.

13 Q And you now know from the -- that that was the  
14 case, that the ordinance to amend the zoning had been  
15 issued by the City Council. Correct?

16 A I do know that now.

17 Q Okay. And you know that as of that date, that  
18 zoning ordinance amendment had gone through the planning  
19 commission process and the Code amendment process before  
20 it went to the City Council. Correct?

21 A Correct.

22 Q Okay. And then would you go to the entry on  
23 February 7th. And here you ask him further about the  
24 zoning, and he says I'm just walking in with clients.  
25 They resolved it. It's fine. We're just waiting for  
26 the final paperwork. Correct?

27 A I see that.

28 Q Okay. Do you have any reason to believe that

1 was false?

2 A No.

3 Q Okay. And in fact, as you understand now, as  
4 you sit here, that what that meant was he was waiting  
5 for the ordinance to be passed through the legislative  
6 process?

7 A That's what I believed it to mean, yes.

8 Q So as of February 7th, you certainly had  
9 confidence that the zoning issue had been resolved. Is  
10 that true?

11 A No, that's not true.

12 Q So you were still worried about it?

13 A Yes.

14 Q Okay. And what had you heard from Mr. Geraci  
15 that made you worry about that?

16 A Our original agreement was that I would get a  
17 50,000-dollar nonrefundable deposit when the CUP was  
18 submitted. All right. Not had it -- it had nothing to  
19 do with zoning. If he had already worked the zoning  
20 issue out, there would be no risk, no reward. So I was  
21 under the belief that the CUP had not even been  
22 submitted when I was receiving these. It had nothing to  
23 do with the zoning. It had everything to do with  
24 whether or not he submitted it.

25 Q Okay. So I understand that. I appreciate  
26 that. But once the zoning is passed, that means that  
27 the property could proceed with the CUP application  
28 being processed through the review stage. Isn't that

1 true?

2 A Presumably. I had no control over it. I  
3 wasn't even advised what was going on.

4 Q But you understand that one of the  
5 conditions -- and you did understand at the time  
6 Mr. Geraci contacted you that one of the conditions that  
7 would make a sale possible would be for the zoning  
8 problem to be corrected. Correct?

9 A It was one of the conditions, yes.

10 Q Okay. The second one was to get a CUP.  
11 Correct?

12 A That is the end game.

13 Q And you can't get -- you can't get through the  
14 CUP application process until the zoning issue is  
15 resolved. Correct?

16 A That's true. But we -- our agreement was to  
17 see a 50,000-dollar nonrefundable deposit once the CUP  
18 had been submitted. That CUP was submitted on 10/31.

19 Q I understand that. But my question still  
20 relates to the zoning.

21 So you know now on February 7th that anybody in  
22 commercial zone CO-2-1, which your property was in, was  
23 now not going to have a problem with the zoning and  
24 could process a CUP application?

25 A I didn't know what to make of it because the  
26 ID-170 form said it was a legal zone.

27 Q But now you knew that the zoning itself under  
28 the Municipal Code had been corrected as well. So there

1 was no longer a conflict?

2 A Again, I was taking that information from  
3 Mr. Geraci.

4 Q And if that were true, then that would make the  
5 property much more likely to get a CUP?

6 A If the zoning had been resolved easily with the  
7 San Diego Municipal Court, yes.

8 Q In fact, anybody in that who had property in  
9 that zone would have now essentially overcome the zoning  
10 hurdle that existed with respect to that kind of  
11 zoning -- zoned commercial property.

12 A Is that a question?

13 Q Yes.

14 A The answer is no. I had a very unique  
15 property, something that everybody wanted because I had  
16 the setback less of about 7 feet. The other properties  
17 up and down that street were within preventible CUP  
18 applications. They would have been denied, in  
19 particular, 6220.

20 Q You knew that your CUP application didn't go  
21 forward because the zoning issue had been resolved as it  
22 related to your property?

23 A I did.

24 Q Okay. Now, at some point did you begin to  
25 entertain offers to sell your property to other people?

26 A I had a number of offers.

27 Q When did the first one come in?

28 A Prior to me meeting with Mr. Geraci even.



1           Q     Well, let's talk about after you signed the  
2 contract with Mr. Geraci. You had a -- do you recall  
3 Exhibit 38 saying you wouldn't enter into contracts with  
4 any other parties. Correct?

5           A     It was -- yes, it did in fact state that.

6           Q     Okay. And so after -- after you signed that  
7 document with Mr. Geraci at some point in time, you  
8 entertained additional offers, didn't you?

9           A     I had people approaching me.

10          Q     Okay. When was the first one?

11          A     I would have to look. I believe it was Chris  
12 Williams. I had Keith Henderson, quite a few people.  
13 Maybe three or four.

14          Q     And Keith Henderson approached you in about  
15 February of 2017. Correct?

16          A     Correct.

17          Q     And actually made you a written offer.  
18 Correct?

19          A     I believe it's one of your exhibits, yes.

20          Q     Okay. And you didn't sign that offer.  
21 Correct?

22          A     I did not.

23          Q     And then you got a subsequent offer on March  
24 21st from Richard Martin. Is that correct?

25          A     Correct.

26          Q     And we're going to come to that document in a  
27 minute. I'm going to go back to that for a moment,  
28 though.

1           After -- first of all, would you put up  
2 Exhibit 60 -- I apologize -- put up Exhibit 59, please.  
3 It's been submitted.

4           So just to kind of reorient us time-wise, you  
5 received the purchase agreement that Ms. Austin talked  
6 about today, correct, right around February 27th?

7           A     That was the first draft, yes.

8           Q     Right. And you received a draft side agreement  
9 on March 2nd, 2017?

10          A     I am not positive of that date, but if it's in  
11 here, I would agree.

12          THE COURT: Counsel, is this Exhibit 60?

13          MR. WEINSTEIN: No. It's Exhibit 62.

14          THE COURT: Sixty-two. All right.

15          MR. WEINSTEIN: These are documents on the --  
16 put it up.

17          BY MR. WEINSTEIN:

18          Q     These are documents that we discussed this  
19 morning with Ms. Austin. Remember that?

20          A     Correct.

21          Q     Okay. And you heard her testify these were  
22 documents she prepared in order to follow her client's  
23 instructions about potentially drafting a new agreement  
24 given -- to renegotiate with you --

25          A     Correct.

26          Q     -- do you remember that? All right.

27                 Now, you reviewed those draft agreements.

28                 Correct?

1           A       I did.

2           Q       And you responded by email to Mr. Geraci about  
3 your views regarding those draft agreements. Correct?

4           A       I did.

5           MR. WEINSTEIN: Okay. I would offer 63, your  
6 Honor.

7           THE COURT: Any objection? Sixty-three is in  
8 evidence.

9           MR. WEINSTEIN: All right.

10          BY MR. WEINSTEIN:

11          Q       And, again, in response, you're still -- you  
12 still want a 10 percent equity position to be in the  
13 agreement. Correct?

14          A       Yes.

15          Q       And he had not included that in the draft that  
16 Ms. Austin prepared. Is that true?

17          A       Correct.

18          MR. WEINSTEIN: So then if you would put up 64.  
19 I would offer 64 if it's not already admitted.

20          THE COURT: Sixty-four is in evidence.

21          MR. WEINSTEIN: Okay. Would you put up 64.

22          BY MR. WEINSTEIN:

23          Q       If you would look at 64.

24          A       I have it.

25          Q       And in fact Mr. Geraci responded to you and  
26 attempted to renegotiate and provide you with some  
27 income stream but not 10,000 a month starting at the  
28 outset of the opening of the dispensary. Is that true?

1           A     Yes. He tried to do a six-month deal at 5,000  
2     a month before the seventh month would go to 10,000.

3           Q     He proposed something different than the 10  
4     percent equity position and 10,000 guaranteed minimum  
5     distributions that you had wanted. Correct?

6           A     Right. I wanted the equity position because if  
7     the property were to be sold by him, I would still  
8     maintain a 10 percent right in that sale. But then net  
9     profits are what we're talking about here.

10          Q     Right. So the 10,000 guaranteed a month are  
11     the lesser -- or the greater of 10 percent of the net  
12     income of the dispensary or 10 percent of the net income  
13     of the dispensary?

14          A     Correct.

15          Q     Okay. And you wanted the greater of those  
16     sums. Correct?

17          A     Correct.

18          Q     And you wanted that money, the guaranteed  
19     amount, to be \$10,000 a month starting with the first  
20     month the dispensary opened. Correct?

21          A     Correct.

22          Q     And he wasn't willing to do that, and he tried  
23     to offer you something in between, I'll say?

24          A     This is the first I've seen that by this email.  
25     Prior to that, I was expecting responses to the working  
26     docs and never got them.

27          Q     Right.

28                 He had not -- he had not signed those working

1 docs?

2 A He had not.

3 Q Okay. And this is what he sent you?

4 A Right.

5 Q And you were not willing to do that. Correct?

6 A No.

7 Q So you didn't accept that?

8 A I did not.

9 Q All right. Would you go to No. 70, please.

10 I offer 70 if it's not already been admitted.

11 THE COURT: Any objection?

12 MR. AUSTIN: No, your Honor.

13 THE COURT: Exhibit 70 will be admitted into  
14 evidence.

15 (Premarked Joint Exhibit 70, Email to Larry  
16 Geraci from Darryl Cotton re Contract Review,  
17 dated 3/19/17, was admitted into evidence.)

18 BY MR. WEINSTEIN:

19 Q Mr. Cotton, have you seen Exhibit 70 before?

20 A I have.

21 Q It's one of the responses you made to  
22 Mr. Geraci in connection with these communications you  
23 were having about an attempted renegotiation of the  
24 agreement. Is that true?

25 A Yes.

26 Q All right. And go to 72, please.

27 A May I finish that thought, though. It wasn't a  
28 renegotiation of the agreement.

1           **Q     Okay. But you sent him this email?**

2           **A     In this email, I'm stating that the drafting of**  
3           the agreements will take time, and I felt like he was  
4           just trying to play for time.

5                   MR. WEINSTEIN: Would you go to 73, please. I  
6           offer 73 if it's not already admitted.

7                   THE COURT: Seventy-three is not yet admitted.  
8           Any objection?

9                   MR. AUSTIN: No, your Honor.

10                  THE COURT: Seventy-three will be admitted.  
11                  (Premarked Joint Exhibit 73, Email to Darryl  
12                  Cotton from Firouzeh Tirandazi re Federal  
13                  Boulevard MMCC, dated 3/21/17, was admitted  
14                  into evidence.)

15           BY MR. WEINSTEIN:

16           **Q     At that time, Mr. Cotton, you start contacting**  
17           the City of San Diego to stop the processing of the CUP  
18           application that had been submitted under Rebecca  
19           Berry's name, didn't you?

20           **A     No.**

21           **Q     When did -- did you ever attempt to do that?**

22           **A     This would indicate that I was -- after**  
23           discovering that the CUP was applied for October 31st  
24           and all of these things had transpired that got me to  
25           the understanding that I had been lied to. And the  
26           whole thing was to buy more time until the CUP could be  
27           approved and there would be no risk whatsoever.  
28           50,000-dollar earnest money was basically what I think

1 he was trying to play for.

2 Q Did you --

3 A And when I got ahold of Rebecca Berry in this  
4 email from Firouzeh -- this is actually Firouzeh  
5 Tirandazi, one of your upcoming witnesses, it was her  
6 telling me I would have to put the CUP in my name only  
7 if the financial interest party withdrew the  
8 application. And that's the purpose for this email.

9 Q And you also sent her an email later on telling  
10 her that you had never reached a deal with Mr. Geraci  
11 and that she should stop processing the CUP application  
12 of Rebecca Berry?

13 A That's correct.

14 Q And did you that right around March 21st of  
15 2017. Is that your recollection?

16 A I would defer to your date. In or around that  
17 time, yes.

18 Q And it was also the time that you signed the  
19 contract with John Richard Martin to purchase -- to have  
20 him purchase the property instead of Mr. Geraci?

21 A Richard John Martin was the next one in line to  
22 buy, yes.

23 Q And that -- you signed an agreement on  
24 March 21st, 2017 as well, didn't he?

25 A Indeed, we did.

26 MR. WEINSTEIN: Your Honor, I would offer 71 if  
27 it's not already admitted.

28 THE COURT: Any objection to the admission of

1 71?

2 MR. AUSTIN: No objection.

3 THE COURT: Exhibit 71 will be admitted.

4 (Premarked Joint Exhibit 71, Email to Darryl  
5 Cotton from Larry Geraci re Contract Review,  
6 dated 3/19/17, was admitted into evidence.)

7 MR. WEINSTEIN: One moment, your Honor.

8 BY MR. WEINSTEIN:

9 Q So do you recall seeing this email, Mr. Cotton?

10 A Exhibit 71?

11 Q Yes.

12 A Yes.

13 Q Okay. And this email on March 19th that you  
14 received from Mr. Geraci?

15 A Yes.

16 Q And he was responding to an email in which you  
17 not only demanded the 10 percent equity interest and  
18 minimum guaranteed distributions of \$10,000, but you  
19 also made additional demands related to an accounting.  
20 Correct?

21 A Third-party accounting was now mandatory, yes.

22 Q And you also made a demand with respect to  
23 having minority consent rights. Correct?

24 A Yes. Standard condition, yes.

25 Q Those are things that had never been discussed  
26 prior to that email?

27 A Correct.

28 Q And so he sent you this email saying at this



1 point, you just keep changing your mind. Do you see  
2 that?

3 A I do.

4 Q And you took that as an indication that he  
5 wasn't going to accept your demands. Correct?

6 A We were too far apart.

7 Q He wasn't going to accept your demands --

8 A Correct.

9 Q -- and you weren't going to accept his.  
10 Correct?

11 A Correct.

12 Q And so no new agreement was signed. Correct?

13 A Correct.

14 Q In fact, no agreement at all was signed after  
15 the November 2nd, 2016 document --

16 A No.

17 Q -- is that true?

18 A The final contract documents weren't  
19 acceptable.

20 Q Okay. So and then you terminated, purported to  
21 terminate the contract?

22 A That's correct.

23 Q Okay. Would you go to 74, please.

24 I offer 74, your Honor, if it's not been  
25 admitted.

26 THE COURT: Any objection?

27 MR. AUSTIN: No, your Honor.

28 THE COURT: Exhibit 74 will be admitted.

1 (Premarked Joint Exhibit 74, Email to Larry  
2 Geraci from Darryl Cotton re Contract Review,  
3 dated 3/21/17, was admitted into evidence.)

4 BY MR. WEINSTEIN:

5 Q Now, Mr. Cotton, do you recognize the email  
6 that's been marked as Exhibit 74?

7 A I do.

8 Q And is this an email that you sent to  
9 Mr. Geraci on March 21st at 3:18?

10 A It is.

11 Q And in it you say you're terminating the  
12 agreement. Correct?

13 A 3/21/17, I served notice, yes.

14 Q Okay. So first you told them that you had been  
15 in contact with Ms. Tirandazi. Correct?

16 A Yes.

17 THE REPORTER: I'm sorry, may I hear the name  
18 again?

19 MR. WEINSTEIN: Ms. Tirandazi, the City. Thank  
20 you.

21 BY MR. WEINSTEIN:

22 Q And that was part of your attempt -- you  
23 contacted her to attempt to stop the CUP application  
24 from being processed on behalf of Rebecca Berry. Is  
25 that true?

26 A No. It was my attempt to try to find out where  
27 the CUP process stood, if it had even been submitted or  
28 no. She told me it had.

1           Q     Okay. And no reason to disbelieve that.  
2     Correct?

3           A     Not from a DSD employee, no.

4           Q     Okay. And is it your understanding, as you sit  
5     here today, that the application was actually deemed  
6     complete on March 12th?

7           A     I did not know that. Again, those timelines  
8     were never shared with me.

9           Q     Okay. And are you aware that Ms. Tirandazi  
10    sent an email to Mr. Geraci after March 12th of 2017  
11    after the application was deemed complete, advising them  
12    that they were denying the CUP application because the  
13    zoning wasn't proper?

14          A     When was the date of that?

15          Q     Of the email -- the date of that was  
16    March 14th.

17          A     March 14th? I have a little problem with that  
18    because I've been told now that as of February 11th --  
19    or late February, the zoning issue had been resolved.  
20    So this is another bit of evidence I'm just hearing.

21          Q     So somebody is lying?

22          A     Precisely.

23          Q     Okay. So when Ms. Tirandazi comes in here and  
24    testifies that you sent that email on March 14th, would  
25    she be lying?

26          A     I'm not going to say she'd be lying. I don't  
27    have all the facts in front of me.

28          Q     So you don't -- you're not aware that even

1     though the CUP application had been deemed complete,  
2     even though the zoning had been -- amendment had been  
3     approved, Ms. Tirandazi hadn't become aware of that as  
4     of March 14th?

5           A     I'm not aware of what the DSD relationship was  
6     with Geraci or Berry or whoever was the applicant.

7           Q     Okay. So you don't know why she sent that  
8     email on March 14th?

9           A     I don't.

10          Q     Okay. Now, what agreement were you  
11     terminating?

12          A     That we would expect a final contract to be in  
13     place by now and there wasn't. So the agreement that we  
14     had on 11/2 and the receipt that went with it was my  
15     attempt to say you have not lived up to your  
16     expectations and I am going to go forward with a  
17     different party on the sale and development of the  
18     property.

19          Q     Well, when you sent that email on March 21st,  
20     were you terminating the November 2nd written document?

21          A     Any relationship that we had was being  
22     terminated at that point.

23          Q     Yeah, but you didn't believe you had an  
24     agreement on -- an oral agreement, did you, because it  
25     had never been signed into writing?

26          A     Correct.

27          Q     Okay. And you didn't believe the November 2nd  
28     document was a written agreement, did you?

1           A       I did not believe that was a fully integrated  
2 contract, no.

3           Q       So you're just terminating an agreement out of  
4 an abundance of caution even though you didn't believe  
5 an agreement existed between the parties?

6           A       Correct.

7           MR. WEINSTEIN:   Okay.   I'd offer 75, your  
8 Honor.

9           THE COURT:   Any objection?

10          MR. AUSTIN:   No objection.

11          THE COURT:   Exhibit 75 will be admitted.

12          (Premarked Joint Exhibit 75, Email to Firouzeh  
13 Tirandazi from Darryl Cotton re PTS 520606 -  
14 Federal Blvd MMCC, dated 3/21/17, with attached  
15 Addendum Nos. 102, was admitted into evidence.)

16          BY MR. WEINSTEIN:

17          Q       Mr. Cotton, would you look at Exhibit 75,  
18 please.

19          A       I have it.

20          Q       Okay.   Is this an email that you sent to  
21 Firouzeh Tirandazi on March 21st, 2017, at 3:25 p.m.?

22          A       I am aware of it.   I did sign this, yes.

23          Q       And you tell her that the agreement for your  
24 property hasn't been finalized and you ask her to deny  
25 the application on your property.   Correct?

26          A       Correct.

27          Q       And this is what you mentioned to us a few  
28 minutes ago.   Correct?

1           A     Correct.

2           Q     Okay. And were you able to have that  
3 application denied?

4           A     It did not -- it was not denied based on this  
5 email.

6           Q     All right. It was not denied because you  
7 didn't have the right to deny it. Isn't that true?

8           A     I was not the financially interested party.

9           Q     You weren't the applicant. Correct?

10          A     Correct.

11          Q     Okay. They said it can only be withdrawn by  
12 Rebecca Berry, didn't they?

13          A     That is correct.

14               MR. WEINSTEIN: I would offer 76, your Honor.

15               THE COURT: Any objection?

16               MR. AUSTIN: No, your Honor.

17               THE COURT: Exhibit 76 will be admitted.

18               (Premarked Joint Exhibit 76, CAR Commercial  
19 Property Purchase Agreement and Joint Escrow  
20 Instructions, dated 3/21/17, was admitted into  
21 evidence.)

22          BY MR. WEINSTEIN:

23          Q     And we'll move along pretty quick. We're  
24 almost done, Mr. Cotton. But Exhibit 76 is the original  
25 purchase agreement that you signed with Mr. Richard John  
26 Martin?

27          A     Correct.

28          Q     Okay. And there was an addendum to that

1 agreement signed also on April 15th, 2017?

2 A Is that part of the exhibit?

3 Q We're going to move to it. I just --

4 A I would want to confirm that date.

5 Q Okay.

6 A But it was a California real estate contract  
7 that I entered into, yes.

8 Q So on March 21st, you entered into what is  
9 marked as Exhibit 76. Correct?

10 A Correct.

11 Q Okay. And if you go to the last page of that  
12 document as an addendum one to that agreement.

13 A Okay.

14 Q Entered into on the same date?

15 A Correct.

16 Q Okay. And then you recall that you  
17 subsequently entered into an addendum to that agreement  
18 at a later date. Correct? A second addendum?

19 A I would want to see that addendum. I do recall  
20 it, but I would want to know specifically what you're  
21 referring to.

22 MR. WEINSTEIN: Okay. Your Honor, I'd offer  
23 Exhibit 77.

24 THE COURT: Any objection?

25 MR. AUSTIN: No objection, your Honor.

26 THE COURT: Exhibit 77 will be admitted.

27 \ \ \

28 \ \ \

1 (Premarked Joint Exhibit 77, Addendum No. 2 -  
2 MOU re Martin and Cotton dated 4/15/17, was  
3 admitted into evidence.)

4 THE WITNESS: Okay. Yes, I do recall this.  
5 April 15th.

6 BY MR. WEINSTEIN:

7 Q And that's the second addendum that you signed  
8 in connection with your agreement with Mr. Martin?

9 A Primarily for a confidentiality clause, yes.

10 Q Okay. You -- Mr. Martin became aware of the  
11 litigation between you and Mr. Geraci. Correct?

12 A Yes.

13 Q You notified him of that?

14 A I did.

15 Q Okay. And he didn't want originally that --  
16 originally, the March 21st agreement had a provision  
17 that made it confidential and it couldn't be disclosed  
18 to anybody. Correct?

19 A Correct.

20 Q You did that because you knew you had a  
21 contract with Mr. Geraci already, didn't you?

22 A That's not true.

23 Q Okay. Then why was it made confidential?

24 A It was made confidential because of  
25 Mr. Martin's position in Hawaiian politics and as an  
26 investor. And the litigation investors, Joe Hurtado,  
27 his job as broker was to keep him out of litigation.

28 Q Okay. So subsequently, the second addendum on



1 April 15th, you made it unconfidential, it was no longer  
2 confidential. Correct?

3 A There was a point in time when it was released  
4 to the public.

5 Q Okay. And then you actually recall signing a  
6 third addendum on May 12th?

7 A Is that here?

8 Q I'll show it to you.

9 A Right.

10 Q Do you recall signing a third --

11 A I'd have to see it.

12 Q Do you recall signing one?

13 A I don't.

14 MR. WEINSTEIN: Okay. I'd offer Exhibit 78,  
15 your Honor.

16 THE COURT: Any objection?

17 MR. AUSTIN: No, your Honor.

18 THE COURT: Exhibit 78 will be admitted.

19 (Premarked Joint Exhibit 78, Addendum No. 3 -  
20 Permit Disclosure of Agreement in Cotton's  
21 Response to Geraci lawsuit - Martin & Cotton  
22 dated 5/12/17, was admitted into evidence.)

23 BY MR. WEINSTEIN:

24 Q Mr. Cotton, do you recognize Exhibit 78?

25 A I do.

26 Q Is that the third addendum to the agreement  
27 with Mr. Martin?

28 A It is.

1           Q     And so as of March 12th, which is the date of  
2     that third addendum, your contract with Mr. Martin  
3     encompasses Exhibit 76, 77, and 78. Correct?

4           A     Correct.

5           Q     Okay. And -- all right. Now, you recall that  
6     this lawsuit was filed on or about March 21st of 2017?

7           A     Yes.

8           Q     Okay. And subsequent to the filing of this  
9     lawsuit, you understand that Mr. Geraci, through  
10    Ms. Berry, took steps with his team to process the CUP  
11    application?

12          A     Could you please repeat that.

13          Q     Additional steps were taken after this lawsuit  
14    was filed by the applicant to process the CUP  
15    application on your property. Correct?

16          A     Correct.

17          Q     Okay. And you knew that was being done under  
18    the direction of Mr. Geraci. Correct?

19          A     Correct.

20          Q     Okay. And one of the things that you learned  
21    that had to be done was a notice of the application had  
22    to be posted on your property?

23          A     It was.

24          Q     Okay. Well, you -- is it correct that you  
25    didn't want that notice posted on your property?

26          A     I did not.

27          Q     And you threatened that if it was posted, it  
28    would super trespass?

1           A     I believed at the time that you had no right to  
2     access my property.

3           Q     **Okay. And was that notice posted?**

4           A     It was.

5           MR. WEINSTEIN: Okay. And would you show us --  
6     I'd offer, your Honor, Exhibit -- let's do 84 first.  
7     I'd offer 84.

8           THE COURT: Any objection?

9           MR. AUSTIN: No, your Honor.

10          THE COURT: Exhibit 84 will be admitted.

11          (Premarked Joint Exhibit 84, Email to Darryl

12          Cotton from Michael Weinstein re Geraci v.

13          Cotton - Posting of Notice of Application, dated  
14          3/28/17, was admitted into evidence.)

15          BY MR. WEINSTEIN:

16          Q     **Mr. Cotton, have you seen Exhibit 84 before?**

17          A     I have.

18          Q     **And is this an email that you received from --**  
19     **from me to ask you not to interfere with the posting of**  
20     **that notice?**

21          A     I did receive this email from you.

22          Q     **And you responded saying there was no -- we're**  
23     **not going to allow the notice to be posted?**

24          A     No, I was not going to.

25          MR. WEINSTEIN: Okay. And when it was  
26     posted -- I'd offer Exhibit 87, please.

27          THE COURT: Any objection?

28          MR. AUSTIN: No objection.

1 THE COURT: Exhibit 87 will be admitted.  
2 (Premarked Joint Exhibit 87, Picture of Posted  
3 Notice of Application on property fence of 6176  
4 Federal Blvd., dated 4/04/17, was admitted into  
5 evidence.)

6 BY MR. WEINSTEIN:

7 Q And you understand that as part of the CUP  
8 application process, notice is required to be posted and  
9 then notice mailed to nearby property owners and also  
10 published. Correct?

11 A Correct.

12 Q All right. And you recognize this as the  
13 notice that was posted at your property?

14 A Yes.

15 Q Okay. Did you take down that notice?

16 A No, I did not.

17 Q Do you know how it got taken down?

18 A I don't know that it did. I believe it was  
19 approved by DSD as having met property posting rules.

20 Q So you believe it was posted properly.

21 Correct?

22 A Yes.

23 Q And it remained up?

24 A I do. I never took it down. It was on the  
25 outside of the property.

26 MR. WEINSTEIN: Your Honor, I'd offer 74 -- I'm  
27 sorry -- 94.

28 THE COURT: Any objection?

1 MR. AUSTIN: No, your Honor.

2 THE COURT: Exhibit 94 will be admitted.

3 (Premarked Joint Exhibit 94, Email to Darryl  
4 Cotton from Firouzeh Tirandazi re PTS 520606 -  
5 Federal Boulevard MMCC, dated 05/08/17, was  
6 admitted into evidence.)

7 BY MR. WEINSTEIN:

8 Q Okay. After the -- after you attempted to get  
9 the CUP application denied, did you then stay in contact  
10 with Ms. Tirandazi of the City to try to keep abreast  
11 with what was happening with the application?

12 A No. Because I felt like not being the one that  
13 had a financial interest in that process, the only thing  
14 that made sense to me was that I kept attention to its  
15 progress based on the DSD website where it's constantly  
16 updated. And I did that.

17 Q Okay. Do you know why Ms. Tirandazi sent you  
18 this email?

19 A It might have been me reaching out and trying  
20 to get more information as to where we stood. I did on  
21 occasion try to reach out to her. As the project  
22 manager at the time -- there ended up being three  
23 different ones. But to try to find out what the status  
24 of the CUP was.

25 Q And Ms. Tirandazi was the first project  
26 manager?

27 A She was. And there was Cherlyn Cac and one  
28 other. So that's unusual.

1           Q     So there was a second project manager that was  
2     assigned after Ms. Tirandazi was transferred positions.  
3     And she was the second project manager. Correct?

4           A     There was a total of three. Cherlyn Cac and a  
5     second.

6           Q     Do you know who the third person was?

7           A     The name escapes me.

8           Q     Do you know who Rodney Bruce is?

9           A     I do.

10          Q     Who is Rodney Bruce?

11          A     He is a land use regulation specialist, a  
12     specialist with the Development Services Department and  
13     those that would apply for permitted drawings to get to  
14     a CUP. That's his specialty.

15          Q     Okay. And who was he hired by?

16          A     That would have been about the time Joe Hurtado  
17     wanted more information on the DSD process. Joe Hurtado  
18     would have hired him.

19          Q     Were you during that period of time attempting  
20     to have Rebecca Berry's name taken off the CUP  
21     application and replaced by you?

22          A     No. What we actually did is we were trying to  
23     find out if we could put up a competing CUP. So for  
24     whatever reason, if the Geraci CUP or Berry CUP would be  
25     denied, we would be in line for the second.

26          Q     Do you recall ever seeking to have your name  
27     through a court action down here be put on the CUP in  
28     place of Ms. Berry's?

1           A     I don't believe there was any court action to  
2     that effect.

3           Q     Do you recall any court action whereby you  
4     attempted to become a co-applicant on the CUP  
5     application with Ms. Berry?

6           A     No.

7           Q     Do you recall that both those efforts were  
8     denied by court orders?

9           A     I don't recall that, no.

10          Q     Now, did you ever file a competing CUP  
11     application or another CUP application on the same  
12     property?

13          A     No. At first, we were told we couldn't. And  
14     then my law firm at the time was Pinch, Thorton and  
15     Beard. And they pushed the issue based on a case -- I  
16     think it was called Engebretsen -- that said there was  
17     already a precedent for doing that. So the City  
18     backtracked and said you could in fact put in the second  
19     CUP. But then we would have been in this horserace to  
20     finish on the same property, and we elected not to do  
21     so.

22          Q     So you were told you could do that. Correct?

23          A     Eventually.

24          Q     But you didn't do it?

25          A     We did not.

26          Q     Do you know whether or not a competing CUP  
27     application on the Magagna property that we've talked  
28     about before, whether that had already been filed at the

1 time you tried to file your own CUP application or -- or  
2 considering filing your own CUP application?

3 A The Magagna CUP application went in in March of  
4 2018, and that would have been after we considered not  
5 filing a CUP application on the property at 6176.

6 Q But so you chose not to pursue a second CUP  
7 application. Correct?

8 A We were not going to be in competition with  
9 Geraci -- Mr. Geraci.

10 Q And then at a later point in time,  
11 Mr. Magagna --

12 THE REPORTER: Can I hear again, slower.  
13 BY MR. WEINSTEIN:

14 Q Mr. Magagna -- at a subsequent time,  
15 Mr. Magagna put in a competing CUP application for  
16 another property that was within a thousand yards of  
17 your property?

18 A Yes. Very confounding.

19 Q Now, you recall that at one point in the  
20 processing of the CUP application for your property,  
21 Ms. Berry's CUP application, that access needed to be  
22 obtained to your property in order to do geotechnical  
23 testing, soils testing, for lack of a better word?

24 A Yes, I was made aware of that.

25 Q And did you refuse access to your property?

26 A I did.

27 Q And that necessitated having to go to Court,  
28 Mr. Geraci having to go to Court to get an order



1 ordering you to allow access to your property for the  
2 soils testing?

3 A Eventually, he was granted that right. But in  
4 the meantime, I wanted a third-party court-appointed  
5 administrator so that somebody would be looking at out  
6 for my interests with geotechnical soils, which is an  
7 invasive test.

8 Q Just so we're clear, in order -- you understood  
9 at the time that in order for the CUP application to  
10 progress, the City was requiring geotechnical testing?

11 A They were requiring that from day one, yes.

12 Q Okay. And when Mr. -- when Ms. Berry's  
13 application -- she was an agent for Mr. Geraci -- when  
14 they attempted to get on your property and asked you to  
15 get on your property to do the soils testing, you  
16 refused. Correct?

17 A I wanted insurance that the third-party  
18 court-appointed administrator would oversee those  
19 results, yes.

20 Q So the answer is yes?

21 A Yes.

22 Q And this -- you essentially necessitated a  
23 court proceeding in order to get an order allowing the  
24 soils testing engineers to get on your property. True?

25 A Eventually -- eventually, the judge ruled in  
26 your favor, and you were given access to the property  
27 without a third-party court-appointed administrator.  
28 That is correct.

1           Q     And then after the court order had been  
2     obtained to allow access to your property, in order to  
3     get the permit to do the soils testing, the City  
4     required that there be a consent form signed by the  
5     property owner.

6           A     Correct.

7           Q     Do you recall that?

8           A     I do.

9           Q     And you refused to sign that?   Correct?

10          A     Correct.

11          Q     And so Mr. Geraci had to go back to Court a  
12     second time to get an order that the clerk of the court  
13     of the San Diego Superior Court could sign that consent  
14     form in your place.   Correct?

15          A     Indeed.   The Court had to sign off my consent.

16          Q     And as a result of those two actions, there  
17     were months of delay in processing the CUP application.  
18     Isn't that true?

19          A     No.   It wouldn't take months.   I don't know how  
20     much time was lost to that, but we were actively arguing  
21     for a third-party court-appointed administrator.   The  
22     reality is if I were Mr. Geraci, I would want to  
23     sabotage that CUP with a soils analysis.   And that's the  
24     easiest way to do it.

25          Q     So that's what you thought was going on?

26          A     Most definitely.

27          Q     Okay.   And so you interfered with his ability  
28     to get soils testing.   Correct?

1           A       I wanted assurances that there would be a  
2       third-party court-appointed administrator to oversee  
3       those geological test results.

4           Q       Right.

5                   Because -- and by doing so, you interfered with  
6       getting that CUP application?

7           A       No. That CUP -- that was a requirement under  
8       task managements in January of 2017. You've known about  
9       that since day one.

10          Q       Would you agree that there were delays in  
11       submitting the CUP application because of delays in  
12       getting on the property to do soils testing?

13          A       It would be one condition for delays, yes.

14          Q       All right.

15                   MR. WEINSTEIN: Your Honor, I offer 118.

16                   THE COURT: Any objection?

17                   MR. AUSTIN: No objection.

18                   THE COURT: Exhibit 118 is submitted.

19                   (Premarked Joint Exhibit 118, Notice of Ruling  
20       After Hearing Re Motion by Plaintiff for  
21       Preliminary Injunction or other Order to Compel  
22       Access to the Subject Property for Soils  
23       Testing, 3/26/18, was admitted into evidence.)

24       BY MR. WEINSTEIN:

25          Q       Mr. Cotton, do you recognize this as the order  
26       that was obtained from the Court to force you to allow  
27       access to your property for soils testing?

28          A       Yes.

1 MR. WEINSTEIN: I'd offer 119, your Honor.

2 THE COURT: Any objection?

3 MR. AUSTIN: No objection.

4 THE COURT: Exhibit 119 is admitted.

5 (Premarked Joint Exhibit 119, Order Granting  
6 Ex Parte Application by Plaintiff for  
7 Appointment of Court Clerk or Court Clerk's  
8 Designees as Elisor, 4/3/2018, was admitted into  
9 evidence.)

10 BY MR. WEINSTEIN:

11 Q Mr. Geraci (sic), do you recognize Exhibit 119?

12 A Do I recognize it.

13 Q Sorry. Mr. Cotton?

14 A Yes, I do.

15 Q I apologize. And is that the second court  
16 order that had to be obtained for the clerk of the court  
17 to sign that consent form instead of you?

18 A I don't know if it's the second. It's one.

19 Q It's another court order?

20 A Okay.

21 Q Do you agree? Do you remember that?

22 A It was compelling access to the property for  
23 the subject soils testing, yes.

24 MR. WEINSTEIN: All right. Your Honor, may I  
25 have a quick moment to talk with counsel.

26 THE COURT: Sure.

27 MR. WEINSTEIN: I think that's all I have, your  
28 Honor.

1 THE COURT: All right. Counsel, are you  
2 reserving your right to conduct your examination of  
3 Mr. Cotton in your case in chief?

4 MR. AUSTIN: Yes, your Honor.

5 THE COURT: All right. Thank you very much.  
6 You can step down, Mr. Cotton.

7 All right. Counsel, your next witness?

8 MR. TOOTHACRE: Yes, your Honor. Plaintiff  
9 would call Mr. Abhay Schweitzer.

10 THE COURT: Is he in the hallway?

11 MR. TOOTHACRE: I think so.

12 THE COURT: All right. Would you retrieve the  
13 next witness, Madam Deputy.

14 THE BAILIFF: Yes, your Honor.

15 THE COURT: Good afternoon, sir. Would you  
16 follow the directions of my deputy and my clerk, please.

17  
18 Abhay Schweitzer,  
19 being called on behalf of the Plaintiff/Cross-Defendant,  
20 having been first duly sworn, testified as follows:

21  
22 THE CLERK: Please state your full name and  
23 spell your first and last name for the record.

24 THE WITNESS: Abhay, A-b-h-a-y, last name  
25 S-c-h-w-e-i-t-z-e-r.

26 THE COURT: Whenever you're ready, Counsel.

27 MR. TOOTHACRE: Thank you, your Honor.

28 \ \ \

1 (Direct examination of Abhay Schweitzer)

2 BY MR. TOOTHACRE:

3 Q Mr. Schweitzer, what is your education after  
4 high school?

5 A I graduated from Lawrence Technological  
6 University with a bachelor's of science in architecture  
7 in 2006.

8 Q Okay. And where is that university located?

9 A It's located in Southfield, Michigan.

10 Q And what is your work -- I take it you moved  
11 from Michigan to San Diego?

12 A I did. In 2006 just after graduating, I moved  
13 here.

14 Q And then did you commence your work history  
15 upon arriving in San Diego?

16 A Shortly after.

17 Q And what is your work history in San Diego?  
18 And if you could slow down just a little bit. Our court  
19 reporter has already had a workout today.

20 A Sorry. The first firm that I worked with was  
21 called Manual Rosen Architects. It's a very small firm.  
22 The architect, Manuel Rosen was getting close to  
23 retirement. So after a few months, he let me know that.

24 So then I went on to work for another firm  
25 called Marengo Morton Architects. They're located in  
26 La Jolla. We did mostly residential projects but also  
27 some -- some commercial projects.

28 Q And for what period of time were you with

1     **Marengo Morton Architects?**

2           A     I think from about 2007 until 2010.

3           Q     **I'm not sure if you said what period of time**  
4     **you were with Rosen Architects.**

5           A     It was from, I believe, late 2006 until some --  
6     some period in 2007. I don't remember the exact.

7           Q     **Did you do anything in the construction**  
8     **industry during your schooling?**

9           A     I did. I worked for a construction -- I worked  
10    in construction for a lot of years. And then I also  
11    worked from -- for one of the firms that one of my  
12    professors had. So I would do both while I was in  
13    school.

14          Q     **Okay. And did you work for Morgan Stanley?**

15          A     I did. I did an internship in 2000, I believe.  
16    A summer internship for what was called Morgan Stanley  
17    Dean Whittier at the time.

18          Q     **Okay. And what did you do working for Rosen**  
19    **Architects?**

20          A     For Manual Rosen Architects, my -- the bulk of  
21    my work was managing a project in Mexico for 600 new  
22    homes near Rosarito. And I was the project manager of  
23    that project.

24          Q     **Okay. And what sort of work did you do when**  
25    **you were working for Moraga -- Marengo Morton**  
26    **Architects?**

27          A     My responsibilities were a little bit broader  
28    there. But I worked on creating drawings. Sometimes I

1 met with clients. Sometimes I would go to the City of  
2 San Diego to meet with reviewers or to submit projects.  
3 I also did some designing, some detailing. Quite a  
4 broad scope of work.

5 Q Okay. At some point in time, did you found  
6 your own business?

7 A Yes.

8 Q And when was that?

9 A That was in 2010.

10 Q And what's the name of that business?

11 A It's called TECHNE.

12 Q And what does TECHNE do?

13 A We work -- we're a design firm, design and  
14 development firm. Part of our work is to render  
15 services to clients in an architectural manner. We work  
16 on single-family residential projects, multi-family,  
17 apartments, some mixed use, which means commercial and  
18 residential. We also work on quite a few  
19 cannabis-related projects, everything from retail, what  
20 you may know as the dispensary, to cultivation  
21 facilities where they grow the cannabis to another type,  
22 which is called the manufacturing facility. And  
23 that's -- that is where they would make byproducts from  
24 the cannabis, chocolates, oils, these sorts of things.  
25 So we do quite a few of those projects as well.

26 Q Okay. Do you -- are you solely responsible in  
27 your business for marijuana products? In other words,  
28 is there a portion of your business that has nothing to



1 do with marijuana, principals or CUP applications or any  
2 of that?

3 A Our firm currently has seven employees. On  
4 most projects, except for the admin, which is just one  
5 employee, typically, everybody would play a role in that  
6 project. So there isn't an exclusive cannabis team, so  
7 to speak. But I am involved in every single cannabis  
8 project that we do.

9 Q Okay. When did TECHNE have its first  
10 cannabis-related product -- project?

11 A From what I recall, it was around 2013, and  
12 this was in Oakland, I believe. Oakland or Richmond.  
13 That's in the Bay Area. That was our first project.

14 Q Okay. And how many CUP -- or medical marijuana  
15 outlets have you worked on in the interim between 2013  
16 and Mr. Geraci's project?

17 A Only here in San Diego, or totality?

18 Q Let's start with the broader picture. How many  
19 overall?

20 A I think we've worked on probably around 30 or  
21 40.

22 Q All in California?

23 A Yes.

24 Q Okay. What are some of the cities you've  
25 worked on, those sorts of CUPS?

26 A City of La Mesa, County of San Diego. Ramona,  
27 to be specific. City of San Diego, of course. City of  
28 Chula Vista. Also City of Santa Barbara. Oakland.

1 City of Oakland. And then City of Richmond. Those are  
2 the ones I recall now.

3 Q Okay. Does TECHNE currently have any active  
4 marijuana cases going?

5 A Yes. If you're asking do we have any active  
6 marijuana projects, yes.

7 Q And how many do you believe you have going at  
8 the current time?

9 A Around 20 currently.

10 Q And what is your role at TECHNE?

11 A I am the principal and the CEO. So I play both  
12 roles. I play a technical role as the principal to  
13 oversee the staff in their day-to-day work as it relates  
14 to projects.

15 I also manage some of the projects myself. We  
16 have other staff that do that function, but I take on  
17 that as well.

18 I often meet with clients when we have  
19 hearings, and in our case, it would typically be in  
20 front of a planning commission or the City Council. I'm  
21 the one that almost 100 percent of the time presents  
22 representing the firm at those hearings.

23 And then my role as the CEO has more to do with  
24 the direction of the business, the financial aspect of  
25 it, some of the day-to-day things that are not project  
26 related.

27 Q Okay. Are you familiar with Mr. Geraci?

28 A Yes.

1           Q     And when did you first become familiar with  
2     Mr. Geraci?

3           A     I think -- well, right when we started this  
4     project, I believe. Right around 2016.

5           Q     And are you referring to Mr. Geraci's project?

6           A     Yes, I am.

7           Q     And was that located at 61 -- 61 -- I've lost  
8     my mind. What was the address for where that project  
9     was located?

10          A     It's on Federal Boulevard. I think 6176.

11          Q     That's correct. Thank you.

12                 How did you first become involved in that  
13     project?

14          A     I believe that I was asked to participate in  
15     that project by Jim Bartell, who is another consultant  
16     on the project.

17          Q     Okay. And who is Jim Bartell in the medical  
18     marijuana industry?

19          A     Well, I know Jim Bartell is a public relations  
20     consultant, and we have worked on numerous projects,  
21     both cannabis and not cannabis, from around that time.

22          Q     Over what period of time have you worked on  
23     projects with Mr. Bartell?

24          A     I believe 2014 is the first time that we worked  
25     together.

26          Q     Okay. Do you have any current projects with  
27     Mr. Bartell?

28          A     Yes, we do.

1 Q Do you have an estimate as to how many?

2 A Maybe six or so. There could be more. I'd  
3 have to look at my records but a handful.

4 Q Okay. Do those all involve medical marijuana  
5 facilities?

6 A No.

7 Q Are you aware of a lady named Rebecca Berry?

8 A Yes.

9 Q And how did you become aware of Rebecca Berry?

10 A Through -- through Mr. Geraci's project.

11 Q Okay. Who first introduced you to her, if you  
12 can recall?

13 A I think I first met her at Mr. Geraci's office.

14 Q Okay. And were you aware of whether or not she  
15 was going to be acting as the agent for Mr. Geraci  
16 vis-a-vis the CUP application?

17 A My understanding is that she was going to act  
18 as his agent.

19 Q Okay. Is it unusual for a CUP investor to use  
20 an agent as the actual applicant on the application in  
21 your practice?

22 A In my practice, that's not unusual, no.

23 Q Is there a reason for that?

24 A I assume there is.

25 Q You just don't know?

26 A I don't know.

27 Q Okay. And were there any other consultants on  
28 Mr. Geraci's project that you're aware of?

1           A     Yes. There were a host of other consultants.

2           **Q     And were you the one charged with retaining --**  
3           **finding and retaining consultants?**

4           A     For the most part, I was. Any consultant, as I  
5     understood it, that related to what we were preparing  
6     and submitting to the City, we were the ones in charge  
7     of coordinating to get them under contract and to  
8     incorporate their work into the final work product.

9           **Q     To the best of your ability, from your**  
10          **recollection, can you tell the jury who the other**  
11          **consultants were or what their disciplines were.**

12          A     Yes. For sure I'll remember the discipline. I  
13     may not remember some of the names.

14                 So we had Lundstrom Engineering, who was the  
15     surveyor, land surveyor.

16                 We had Snipes-Dye and Associates was the civil  
17     engineer.

18                 We had Title Pro IS, who was a consultant who  
19     was responsible for a couple of technical things the  
20     City needs, one being the noticing package and the other  
21     a series of maps that they require.

22                 We also had Southern California Soils and  
23     Testing, SCST, they call themselves, who were the  
24     geotechnical engineers.

25                 And we had Sam Wade Landscape Architect, who  
26     was the landscape architect.

27          **Q     Okay. And did you retain all those people on**  
28          **your team for this project?**

1           A     They -- we weren't under contract with them,  
2     but we coordinated that they be under contract with our  
3     client.

4           Q     Okay. So would they submit their contract to  
5     you and then you would submit the contract to Mr. Geraci  
6     for signature or --

7           A     That's typically how it would happen, because  
8     we want to make sure that the contract accurately  
9     reflects the scope that we're hired to do. So typically  
10    the contracts would go through us. We would review  
11    them. And then if the scope was correct and we thought  
12    the fee was reasonable, we would send that to the  
13    client.

14          Q     Okay. To your knowledge, did Mr. Geraci draft  
15    any of those contracts with the consultants on the team?

16          A     Not that I'm aware of.

17          Q     Are you aware of whether or not the consultants  
18    provided their own contracts for signature?

19          A     To me, they all appeared to be their own  
20    contracts.

21          Q     Have you worked on prior cases -- well, first  
22    of all, do you know Gina Austin?

23          A     I do.

24          Q     And who is Gina Austin?

25          A     Gina Austin is an attorney, and we have worked  
26    on quite a few projects together.

27          Q     And what sort of projects do you work on with  
28    Gina Austin?

1           A     Typically, the projects that we work on are  
2     cannabis-related projects as well.

3           Q     Okay. Are you aware of whether or not Gina  
4     Austin was on Mr. Geraci's team for this project?

5           A     Yeah, she was.

6           Q     Did you select and retain her, or was she sort  
7     of an outlier that was retained by Mr. Geraci?

8           A     I didn't select or retain her.

9           Q     All right. Do you have an estimate of how many  
10    projects you've worked on with Gina Austin?

11          A     I think over the course of the years, over 20  
12    projects.

13               MR. TOOTHACRE: Okay. I would like to  
14    introduce, your Honor, Exhibit 12, if I could.

15               And may I approach to give the witness a  
16    pointer, your Honor?

17               THE COURT: You bet.

18               Any objection to the admission of Exhibit 12?

19               MR. AUSTIN: Absolutely not, no, your Honor.

20               THE COURT: Exhibit 12 will be admitted.

21               (Premarked Joint Exhibit 12, Agreement between  
22    TECHNE and Larry Geraci, dated 10/04/16, was  
23    admitted into evidence.)

24    BY MR. TOOTHACRE:

25          Q     You have books in front of you that you can  
26    also --

27          A     I do. Just give me a moment.

28          Q     Have you seen Exhibit 12 before,

1     **Mr. Schweitzer?**

2           A     Just -- just one moment.

3           Q     Okay. Sure.

4           A     Yes.

5           Q     Do you recognize that document?

6           A     I do.

7           Q     And was that a document prepared by yourself or  
8     somebody at TECHNE?

9           A     Yes.

10          Q     And is that your signature on page 9 of 9?

11          A     Yes.

12          Q     Okay. What does this document purport to be?

13          A     This is the agreement, which we prepared to  
14     render our services for this particular project.

15          Q     Okay. Who was the agreement between?

16     Actually, let me refer you to page 2 of 9.

17          A     The agreement is between my firm and Rebecca  
18     Berry.

19          Q     Okay. And can you cull up a couple sentences  
20     there. A little more.

21                 And this is the agreement entered as of  
22     October 4, 2016 between Rebecca Berry and your firm?

23          A     Yes.

24          Q     Is that correct?

25          A     Yes.

26          Q     And if you drop down to the scope of the  
27     project, A and B, what was the scope of the project?

28          A     The scope of the project is to include the



1 following: Modification of existing build structures in  
2 order to accommodate additional parking, conversion of  
3 approximately 1500 square feet of the existing  
4 structures into a medical marijuana consumer  
5 cooperative.

6 Q And on page 3 of that exhibit, what were the  
7 basic services you were going to be providing?

8 A The basic services for most projects are  
9 standard. And I'll go over each phase of it without  
10 trying to bore you or get too technical.

11 The first phase, which you'll see there is  
12 A1.2 -- if you'll go to the next one, please. Perfect.  
13 It's called schematic design or preliminary study. This  
14 is the phase where we're trying to find out sort of in  
15 broad strokes can we design something that we think  
16 works. Right. And you see itemized there some specific  
17 plans that we would give the client as a work product  
18 during that phase so that the client can see the ideas  
19 that we're trying to convey.

20 On the next page, if you go down to the next  
21 section, A.1.2.2, it's called design development. And  
22 in this particular phase, with he develop -- we refine  
23 our initial concepts. We get more detailed in the  
24 design. And in that particular case, we would provide  
25 more detailed floor plans, propose interior elevations,  
26 which is basically what you would see if you look at a  
27 wall. But drawn in a technical fashion without colors.

28 And then a materials concept with actual

1 samples of materials.

2 The phase after that, a 1.2.3, it's called the  
3 construction document phase. And this is the phase  
4 where we compile all of these ideas, all of these design  
5 concepts, materials, and we create documents that are  
6 very detailed, oftentimes 50 or 60 or 70 sheets of  
7 drawings, that get submitted to whatever jurisdiction  
8 we're in in order to obtain a building permit.

9 As we go through that process and address any  
10 comments they have, a permit is issued, and those  
11 particular drawings can be used for the construction of  
12 the project.

13 Q Okay. Dropping down to A.1.2.5, is that the  
14 next phase?

15 A .4.

16 Q Sorry. Did I skip four? Okay.

17 A That phase -- this is a phase that is during  
18 the construction of the project. And during that phase,  
19 our main responsibility is to represent the client, to  
20 make sure that whoever is building is building according  
21 to plans and according to any applicable codes. If  
22 there are any changes or requests for substitution, we  
23 represent the client in that negotiation. And at times  
24 too if the client wants us to review requests for  
25 payments from the builder, we do that as well just to  
26 make sure they're not requesting payment for something  
27 that hasn't been done or for something that hasn't been  
28 done properly.

1           Q     Now, skipping down to the next section,  
2     A.1.2.5, what's that section representing?

3           A     This section represents the scope of our work  
4     that deals with coordinating with other consultants that  
5     may be required for the project. And when we prepare an  
6     agreement, we always try to anticipate what we think may  
7     be required so that the client has some level of  
8     expectation.

9           Q     Okay. And the next section is A.2.0 and 2.1.  
10    What are those entries?

11          A     Those sections deal with in the event that we  
12    may need to do services that are outside of the original  
13    agreement. It sets forth a structure on how we would  
14    ask for that or how the client would ask for that and  
15    how we would incorporate it into the contract, which is  
16    what you see at A.2.2.

17          Q     Okay. The next section is Article B,  
18    compensation of payment.

19                Generally, what is that?

20          A     Generally, this is -- these are the details of  
21    how we get compensated along each phase of the project.

22          Q     And that goes on for two pages?

23          A     It goes on just a little bit onto the next  
24    page.

25          Q     Okay. Let's drop down to Article C,  
26    responsibilities. If you can give an overview to the  
27    jury, a short overview to the jury on what that is.

28          A     Our contracts are quite detailed. And I'll try

1 to do my best to explain to the jury what each section  
2 means and why we think it needs to be in there.

3 So Section C1.2 at the top of that page, in  
4 general with this section, we try to set forth  
5 Section C, Article C. What are our responsibilities and  
6 what are the client's responsibilities, because both do  
7 have responsibilities on a project.

8 The first one, we saw it referenced a little  
9 bit in more detail on the previous article -- is that  
10 when -- when there are additional services that they  
11 must be part of the agreement. Usually through an  
12 addendum.

13 C.1.3, the next one, this is the general  
14 responsibilities of my firm in this case. And it talks  
15 about the professional quality, technical accuracy,  
16 coordination of all design, drawings, specifications,  
17 and other services that we provide. And it also from a  
18 legal standpoint doesn't limit any rights or remedies  
19 otherwise afforded by law.

20 The next section, C.1.4, this explicitly states  
21 our compliance with laws, codes, ordinances, and  
22 regulations. We like to put it here just to be extra  
23 clear. And I'm not going to go through all of them.  
24 But federal, state, local laws and codes. It states  
25 that we're -- we're responsible for complying with  
26 those.

27 Next section. The next section also relates  
28 with complying with laws, and it states that "Licensed

1 design professionals shall affix their seals and  
2 signatures to drawings and specifications produced or  
3 managed under this agreement when required by law."

4 So it relates to our drawings, and it just  
5 relates to us checking consultants' drawings too to make  
6 sure before we incorporate them that we affix whatever  
7 seals and signatures are specifically required for that  
8 work product.

9 Q And then the last responsibility is to attend  
10 conferences. What is that regarding?

11 A Yes. On most projects, we always have -- or  
12 almost always have a series of meetings or conferences.  
13 The meeting could be with City staff. It could be with  
14 other consultants. It could be in front of  
15 decision-making boards. And it just states here in the  
16 agreement that we're responsible for attending those.

17 Q Okay. And we'll skip the next several pages.  
18 But that is your signature on page 9 of 9?

19 A Yes.

20 Q And does this agreement have a date on it?

21 A It's dated an first page, I believe. Second  
22 page.

23 Q Okay. And what's the date? October 4th, 2016?

24 A That's correct.

25 Q I'd like to draw your attention now,  
26 Mr. Schweitzer, to Exhibit 14 and ask if you've seen  
27 that document before. I believe that's already in  
28 evidence, your Honor?

1 THE COURT: It is.

2 THE WITNESS: I recognize that.

3 BY MR. TOOTHACRE:

4 Q Do you recognize that document?

5 A I do.

6 Q And is that an email you created?

7 A I believe it is.

8 Q And what date was it created?

9 A October 4th, 2016.

10 Q To whom did you send that?

11 A I sent it is to Larry Geraci and Neil Dutta.

12 Q Who is Neil Dutta?

13 A Neil Dutta, to my understanding, was working  
14 with Larry.

15 Q Do you know in what capacity?

16 A He seemed to be assisting Larry.

17 Q Okay. And you CC'd Gina Austin?

18 A I did.

19 Q And you CC'd Jim Bartell?

20 A Yes.

21 Q What was the purpose of sending this email?

22 A In the email, I describe a site visit that I  
23 did.

24 Q Okay. And where was the site you visited?

25 A It was the site of the subject property, 6176  
26 Federal Boulevard.

27 Q And there were some key points that you wanted  
28 to convey to these parties regarding that property?

1           A       Yes.

2           Q       And what were those? There's a one, a two, and  
3 a three?

4           A       Yes. If you could zoom back into them, please.  
5                   The first point -- when we visit a site, there  
6 are some basic things that we look for. And there may  
7 be specific things that the client asks us to look for.  
8 And I think this is a summary of both of those. I'll go  
9 over each.

10                   The first one, it seems pretty obvious that  
11 there is unpermitted construction on the property  
12 towards the rear. It's important for us to note that  
13 because we don't want to assume that something is  
14 permitted and could potentially be used when it's not.  
15 And also with this type of approval, if there are  
16 unpermitted structures on a property, it does affect our  
17 approval process. And we do have to show a solution for  
18 it during approval. So is it's important for us to note  
19 that.

20           Q       And what was your second key point?

21           A       The second was regarding parking. And what I  
22 note is that the parking area to the east of the  
23 building is not wide enough for parking and the drive  
24 aisle. Possible solution is to demolish the part of the  
25 structure. I'm not going to read it all. What I was  
26 trying to determine here is if parking was feasible and  
27 what would it entail for parking to be feasible on that  
28 side.

1           **Q     What's your third point just generally?**

2           **A     The third point relates to the ceiling height**  
3           **on the front portion of the property. So the California**  
4           **Building Code requires a seven foot six minimum ceiling**  
5           **height. And even though there may be buildings that**  
6           **have less than that, for this case, since we're**  
7           **converting it or proposing to convert it from one use to**  
8           **another, we would have to meet current Building**  
9           **Code requirements.**

10                   And I saw this as a potential issue that we  
11           would have to remedy through the process of getting this  
12           project approved.

13           **Q     At this point in time, were you just trying to**  
14           **decide whether or not Mr. Cotton's property was even**  
15           **feasible for a CUP MMCC?**

16           **A     Yes.**

17           **Q     And were you looking at other properties as**  
18           **well or was the focus solely on this property at this**  
19           **time?**

20           **A     I don't recall looking at other properties.**

21           **Q     And the last sentence -- the second-to-last**  
22           **sentence there, what was your conclusion or your**  
23           **summary?**

24           **A     What I -- what I said in the email and what I**  
25           **concluded was that I thought the location was feasible**  
26           **as far as parking is concerned, which is always a major**  
27           **concern for us. And then an option of parking in the**  
28           **adjacent lot would give us a little more flexibility.**



1           Q     Okay. And at some point early on, was there --  
2     was a topographical survey required?

3           A     Yes.

4           Q     Let me have you refer to Exhibit 15, please.  
5     Already in evidence, your Honor.

6           THE COURT: It is.

7     BY MR. TOOTHACRE:

8           Q     I'll ask you if seen that document,  
9     Mr. Schweitzer.

10          A     Yes.

11          Q     And what is this document? What is this email?

12          A     This is an email that I sent to Becky after  
13     myself or somebody on the firm had requested a proposal  
14     from a land surveyor.

15          Q     And who was the land surveyor?

16          A     In this case, the proposal was from Lundstrom  
17     Engineering. And in the email I give a couple of key  
18     points in the survey.

19          Q     And what are those?

20          A     The fee, the turnaround time, which is rather  
21     fast for this firm, and we wanted that.

22                 And then I also mentioned that we are waiting  
23     on another proposal but because of the fee and the  
24     turnaround time, I felt comfortable in the client was  
25     ready to accept this proposal.

26          Q     Okay. And the proposal is attached to  
27     Exhibit 15. Is that correct? What did I say?

28          A     Yes.

1           Q     And did Ms. Berry indicate that she would  
2     accept that proposal?

3           A     That's what I recall.

4           Q     Okay. If I could have you -- strike that?

5           MR. TOOTHACRE: Your Honor, I offer Exhibit 16?

6           THE COURT: Any objection?

7           MR. AUSTIN: No, your Honor.

8           THE COURT: Exhibit 16 will be admitted.

9           (Premarked Joint Exhibit 16, Executed Letter  
10          Agreement between Rebecca Berry and Lundstrom  
11          Engineering and Surveying, Inc. re Topographic  
12          Survey Proposal, dated 10/6/16, was admitted  
13          into evidence.)

14       BY MR. TOOTHACRE:

15          Q     Mr. Schweitzer, have you seen Exhibit 16  
16     before?

17          A     Yes.

18          Q     What is Exhibit 16?

19          A     Exhibit 16 appears to be the signed proposal  
20     from Lundstrom Engineering.

21          Q     Okay. And is that Rebecca Berry's signature at  
22     the bottom?

23          A     I believe it is.

24          Q     Okay. So Lundstrom Engineering was hired to  
25     work on this project. Correct?

26          A     Yes.

27               MR. TOOTHACRE: Okay. If I can direct your  
28     attention now, Mr. Schweitzer, to Exhibit 17.

1           THE COURT: Counsel, we're going to take our  
2 break now. Do not form or express any opinions or  
3 discuss the case until you deliberate. We'll be in  
4 recess for 15.

5           MR. TOOTHACRE: Thank you, your Honor.

6           THE COURT: All right. The jury has left the  
7 courtroom. Counsel, we will be in recess for 15  
8 minutes.

9           (Recess from 2:55 p.m. to 3:11 p.m.)

10          THE COURT: All right. So, Counsel, how much  
11 time do you have on direct with Mr. Schweitzer?

12          MR. TOOTHACRE: My guess is until the end of  
13 the day.

14          THE COURT: Oh, you are going to go that long?

15          MR. TOOTHACRE: I believe so.

16          THE COURT: Okay. That's fine.

17          MR. TOOTHACRE: Unless it's give or take.

18          THE COURT: And then on cross-examination,  
19 which if you stop any time before 4:30. If you finish  
20 with your direct, we're going to stop at that time for  
21 the day with the jury.

22          MR. TOOTHACRE: Okay.

23          THE COURT: And tomorrow morning, do you have  
24 any estimate of how long your cross would be, Counsel?

25          MR. AUSTIN: Oh, I would say probably 30  
26 minutes.

27          THE COURT: All right.

28          MR. AUSTIN: Until possibly 4:00 --

1 THE COURT: And you have a City witness that  
2 you don't estimate will take very long?

3 MR. WEINSTEIN: That's right. And she takes  
4 her kid to school. So it's half an hour after we start.

5 THE COURT: It sounds like we will be done with  
6 her by 10:30 or so, by our morning break?

7 MR. WEINSTEIN: That's correct.

8 THE COURT: So that's your last witness, other  
9 than Mr. Bartell, who won't be here until 9:00?

10 MR. WEINSTEIN: Correct.

11 THE COURT: You have somebody to call starting  
12 at about 10:30 tomorrow morning?

13 MR. AUSTIN: Yes.

14 THE COURT: That will include Mr. Hurtado and  
15 who else?

16 MR. AUSTIN: Mr. Hurtado is going to take a  
17 rather significant amount of time. I would say a couple  
18 hours.

19 THE COURT: And then Bartell will take how  
20 long?

21 MR. WEINSTEIN: Forty.

22 MR. TOOTHACRE: Forty minutes max.

23 THE COURT: Cross on Bartell?

24 MR. AUSTIN: Fifteen minutes. Well --

25 THE COURT: Okay.

26 MR. AUSTIN: Maybe more than that.

27 THE COURT: That's fine. But after Bartell,  
28 you're going to re-call Mr. Cotton?

1 MR. AUSTIN: That's the plan, yes.

2 THE COURT: And that's your last witness?

3 MR. TOOTHACRE: It sounds to me like we're  
4 going to run out tomorrow.

5 THE COURT: Hold on. Is that your last  
6 witness?

7 MR. AUSTIN: They did have someone on their  
8 list, Cherlyn Cac, who also works for the City. Her job  
9 is very similar to Tirandazi.

10 THE COURT: Let's not worry about them. Let's  
11 worry about you.

12 MR. AUSTIN: If they're not going to call her,  
13 if I can get a subpoena out in time --

14 THE COURT: So when you re-call Mr. Cotton, how  
15 much time do you think you'll need?

16 MR. AUSTIN: An hour, hour and a half.

17 THE COURT: Okay. I mean, even if you add a  
18 couple of witnesses, it sounds to me like we're going to  
19 be done with the evidence by Wednesday evening.

20 All right. I gotcha.

21 Madam Deputy, at this point, you can bring the  
22 jury in. All right. All of our jurors are in their  
23 chairs.

24 Counsel, please continue your direct  
25 examination of Mr. Schweitzer.

26 MR. TOOTHACRE: Thank you, your Honor.

27 BY MR. TOOTHACRE:

28 Q Mr. Schweitzer, can I direct your attention to

1 Exhibit 17, which is already in evidence, your Honor.

2 THE COURT: It is.

3 BY MR. TOOTHACRE:

4 Q Have you seen that document, Mr. Schweitzer?

5 A Yes.

6 Q And did you offer that email?

7 A I believe I did.

8 Q Okay. And that was to Larry Geraci, Neil  
9 Dutta, with a CC to Jim Bartell and Jim Austin again?

10 A Yes.

11 Q And it's done on October 18th?

12 A Correct.

13 Q What was your purpose in authoring this email,  
14 specifically, the second paragraph? If that -- what  
15 does that refer to?

16 A This is an email which I wrote after we  
17 received the topographic survey. And let me explain  
18 what that is because it's relevant to what I'm saying.  
19 The topographic survey accurately depicts what is there  
20 today as far as the property line, any buildings, the  
21 topography of the site, and also off site. And at  
22 least, usually half of the what's called right-of-way,  
23 which is the city-owned property in this case containing  
24 the street.

25 So after we received that, then we could  
26 ascertain if it met some of the specific requirements or  
27 if there were other issues that we didn't know about  
28 before until this. And there are two which we

1 identified.

2 For this particular type of use in the City of  
3 San Diego, the Municipal Code requires that it be  
4 separated from a residential zone by at least 100 feet.  
5 And in this particular case, once we receive the survey,  
6 we can know in detail what the separation was from the  
7 zone across the street, which was residential.

8 And we realized -- or we got confirmation that  
9 it was less than 100.

10 It varies because the lines were not parallel.  
11 But it varied from 95.53 to 93 feet.

12 Q And so that would not qualify for a medical  
13 marijuana dispensary. Is that correct?

14 A That's correct.

15 Q Or for approval of the CUP?

16 A If the distance would have remained that, then  
17 we wouldn't be able to get the project approved because  
18 not all of the findings for approval would be able to be  
19 made.

20 Q Can I have you look at the next page of that  
21 same exhibit. And if you could show the jury with your  
22 pointer what exactly you're talking about.

23 A If you could zoom into this section, please.  
24 So the drawing that you see there on the bottom, which  
25 was just zoomed into, that is the topographic survey.  
26 That is the work product that the topographer submitted  
27 to us.

28 If you see here on the bottom, it says Federal

1 Boulevard. This being the property where the project  
2 was proposed, this portion right here being the outline  
3 of the existing building, and there were some other  
4 structures, containers or I think other similar  
5 temporary structures. This in front, the double lines,  
6 that's the sidewalk. And then you see a couple of  
7 dimensions here.

8 And if you add up the dimensions, if you could  
9 zoom in one frame lower on that drawing, please, so we  
10 could see the other side of the street.

11 If you could get this whole portion, please.

12 The way that they're required to dimension is  
13 from one side of the right-of-way to the center and then  
14 from the center to the other side. When you add up  
15 those dimensions on either side, that's the result of  
16 what I outlined in my email, the 95.53 and 93, if I  
17 recall correctly.

18 So this document was very important in order  
19 for us not to only know what was on the site and what  
20 was around, but to know exactly what our separation was  
21 from a zone which we needed separation from.

22 Q So would you describe the lack of 100 feet  
23 separation as a zoning issue?

24 A Yes.

25 Q That is a zoning issue.

26 And was there a second zoning issue involved in  
27 this case? Let me have you refer to Exhibit 18.

28 Do you recognize that document, Mr. Schweitzer?



1           A       Yes.

2           **Q       And what is this document?**

3           A       If you could go to page 2 of the exhibit,  
4       please. This is an email which I sent to Jim Bartell  
5       where sometimes a client would tell us that they have  
6       done their zoning research. And even though we like our  
7       clients, it's good practice for us to double-check that.  
8       And this is what we did in this case.

9                        So we double-checked the zoning, and the  
10       information that we got was that it was CO-2-1. These  
11       are just letters and numbers that the City assigns for  
12       particular zones.

13          **Q       Okay.**

14          A       And if you look at page 3 of that exhibit, this  
15       is -- if you could zoom into the table at the top,  
16       please.

17                       This is a screenshot from the Municipal Code,  
18       and what this is showing are what are the uses that are  
19       allowed in certain zones.

20                       So if you see what I highlighted on the  
21       original document, you have to work your way up and go  
22       down. We are the CO zone, and then the second  
23       designator is two. The third designator is one.

24                       If you follow this down and accompany it with  
25       the uses on the left, it will tell you if a use is  
26       allowed. If a use is not allowed, which is what the  
27       dash means. If a use is allowed on a limited basis, and  
28       then C would be conditional.

1 Q Okay. And you have a highlight at the bottom?

2 A Yes. So if you --

3 Q What does that reference?

4 A If you see here, medical marijuana consumer  
5 cooperative, there is a dash, which according to this  
6 document, which is part of the Municipal Code, meant  
7 that it would not be allowed under any circumstances.

8 Q Okay. And did you find that that was in  
9 conflict with some other provision that the City was  
10 using?

11 A That was brought to my attention.

12 Q Okay. And is that the first box on page 1 that  
13 you highlighted?

14 A Yes.

15 Q Okay. If you could highlight that. What are  
16 we looking at there, Mr. Schweitzer?

17 A So the City of San Diego Development Services  
18 Department, in order to make things a little bit easier  
19 for owners and design professionals that are looking to  
20 submit for projects or do a host of other activities,  
21 they issue what they call information bulletins. And an  
22 information bulletin tends to condense information to  
23 provide a simple guide as to how to do something. It  
24 could be how to obtain a permit or how to build a deck.

25 And in this case, since in 2014, the City  
26 amended or revised the Municipal Code to include this  
27 new use, medical marijuana consumer cooperative, they  
28 issued this information bulletin in order to assist

1 whoever wanted to apply to understand how the process  
2 worked, to understand which zones they could propose  
3 these in. And this is a -- just a portion of that  
4 document.

5 Q Okay. Let me have you refer, if you would,  
6 Mr. Schweitzer, to Exhibit 19.

7 MR. TOOTHACRE: Your Honor, I don't believe 19  
8 is in. May I offer Exhibit 19?

9 THE COURT: Any objection?

10 MR. AUSTIN: No, your Honor.

11 THE COURT: Exhibit 19 will be admitted.

12 MR. TOOTHACRE: Thank you, your Honor.

13 (Premarked Joint Exhibit 19, Email to Larry  
14 Geraci and Neil Dutta from Abhay Schweitzer re  
15 Federal Blvd. - Site layout, dated 10/20/16 with  
16 two attachments A101 - Site Plan - Existing &  
17 A102 - Site Plan - Proposed, was admitted into  
18 evidence.)

19 BY MR. TOOTHACRE:

20 Q Mr. Schweitzer, have you seen Exhibit 19  
21 before?

22 A Yes.

23 Q And is that an email you sent to Larry Geraci,  
24 Neil Dutta, Jim Bartell, and Gina Austin on  
25 October 20th, 2016?

26 A Yes.

27 Q And at this time, were you still attempting to  
28 determine whether or not Mr. Cotton's property was

1     **feasible for the project?**

2           A     What we were trying to do at this time is to  
3     find out first if we could get a building that was  
4     compliant and if we could implement the parking solution  
5     that I alluded to in that earlier email --

6           Q     **Okay.**

7           A     -- to see how many parking spaces we could fit  
8     on this property.

9           Q     **I notice in the first paragraph, you discuss**  
10    **the parking situation. What are you recommending there?**

11          A     What the Municipal Code does is, depending on  
12    the use and depending on the zone, they stipulate you  
13    need a certain ratio of parking spaces usually per 1,000  
14    square feet. But for this particular zone, we couldn't  
15    find a clear category that matched what we were  
16    proposing.

17                So we, to the best of our ability, found the  
18    closest matching category, which requested four parking  
19    spaces per 1,000 square feet of building, and which is  
20    what we applied on the site plan that is part of this  
21    exhibit.

22          Q     **Okay. And the third paragraph down here, you**  
23    **talk about a 10-foot setback.**

24                **What is that referencing?**

25          A     What a setback is in the San Diego Municipal  
26    Code, that is a distance from the property line, a  
27    parallel projection, if you can imagine that. And that  
28    creates an area where you can't put a building in in

1 most cases. And in this case, from the existing front  
2 property line, we would have to copy that line  
3 back 10 feet, and we wouldn't be able to propose any  
4 buildings within that front yard, if you could visualize  
5 that.

6 Q Okay. Did you propose a dedication?

7 A Yes.

8 Q And what does that mean?

9 A I'm going to give my interpretation of it, not  
10 a legal interpretation. But a dedication is oftentimes  
11 when a property owner dedicates a portion of their  
12 property to the City for some means.

13 Q Okay. And I notice there's two drawings  
14 attached. Do those reference the parking situation  
15 and/or the proposed dedication?

16 A Yes. If you would go to Exhibit 3, please.

17 Q Page 3?

18 A Yes. Page 3 of this exhibit. You can keep it  
19 there for now.

20 So these are two drawings which we prepared.  
21 They're the same type of drawing, in this case, a site  
22 plan.

23 This one here at the top, this is a site plan  
24 which just shows what's there. It's similar to the  
25 survey, but it contains some more specific information  
26 that the City asks us to provide for this particular  
27 type of drawing. But it doesn't show any new design or  
28 any proposed solutions.

1           On the bottom, if you can zoom into this area,  
2     please. This is a portion of the proposed site plan,  
3     and in this case, we would show some existing elements  
4     like the property lines and the street, but on the site,  
5     we would show what we're proposing to do with this  
6     project.

7           Here where I'm circling, you can see the  
8     proposed outline of the building. This line right here,  
9     this is the front setback line. This being the front  
10    property line. So this is that area that I mentioned  
11    before where we can't have the building in.

12           So what we, in essence, proposed, is to cut off  
13    the front of the existing building.

14           MR. TOOTHACRE: Okay. Your Honor, I'd like to  
15    move Exhibit 20 into evidence.

16           THE COURT: Any objection?

17           MR. AUSTIN: No objection.

18           THE COURT: Exhibit 20 will be admitted.

19           (Premarked Joint Exhibit 20, Email to Larry  
20     Geraci from Abhay Schweitzer Re: Federal Blvd. -  
21     Site layout, dated 10/24/16 with attached A102 -  
22     Site Plan - Proposed - Scheme B, was admitted  
23     into evidence.)

24    BY MR. TOOTHACRE:

25           **Q     Mr. Schweitzer, have you seen Exhibit 20**  
26    **before? Specifically, I'm referencing the site plans**  
27    **attached.**

28           A     Yes.

1           Q     What are the -- what's the significance of this  
2 particular plan?

3           A     This is another proposed solution that we did  
4 of the site. This is the same type of drawing that we  
5 just saw in the previous exhibit. It is a site plan.  
6 In this one, you see the building in the back and then  
7 parking spaces on either side in front. And this is  
8 where you would maneuver in the parking area.

9           Q     Did this one solve the zoning problems, at  
10 least the 100-foot zoning problem?

11          A     Could you zoom in here, please.

12                If you see here, this bottom line is labeled as  
13 existing property line. So this is the property line as  
14 it existed -- as it exists today and before we proposed  
15 any changes.

16                The line next to it says new property line. So  
17 this is where we were proposing the property line be  
18 moved to in order to create the 100-foot separation from  
19 the zone across the street. And the area in between  
20 them would be the dedication to the City.

21          Q     Let me have you refer, if I could, to  
22 Exhibit 22.

23                MR. TOOTHACRE: Your Honor, may I move 22 into  
24 evidence?

25                THE COURT: Any objection?

26                MR. AUSTIN: No, your Honor.

27                THE COURT: Exhibit 22 will be admitted.

28                \ \ \

1 (Premarked Joint Exhibit 22, Email to Becky  
2 Berry from Abhay Schweitzer Fwd Federal Blvd.,  
3 dated 10/26/16 with attachment Blank City of  
4 San Diego Ownership Disclosure Statement,  
5 Form DS-318, was admitted into evidence.)

6 BY MR. TOOTHACRE:

7 Q All right. Mr. Schweitzer, Exhibit 22 appears  
8 to be an ownership disclosure statement. Is that  
9 correct?

10 A Yes.

11 Q And what is the -- what is an ownership  
12 disclosure statement?

13 A So an ownership disclosure statement, this is a  
14 form that the City of San Diego prepares. They provide  
15 it to us in blank format, and we're required to have it  
16 filled in and submitted as part of this type of  
17 approval.

18 Q Okay. And do you know whether or not one of  
19 these was submitted in this case?

20 A I know that it was submitted because there is a  
21 step in the submittal process where they check to make  
22 sure that you have a list of documents, drawings, and  
23 forms. This is one of the forms. So we wouldn't be  
24 able to submit unless we provided this form.

25 Q Okay. And is there a requirement by the City  
26 to submit a check with your submittal on the CUP  
27 application?

28 A Yes.



1 MR. TOOTHACRE: And, your Honor, I'd move 23  
2 into evidence.

3 THE COURT: Any objection?

4 MR. AUSTIN: No objection.

5 THE COURT: Exhibit 23 will be admitted.

6 (Premarked Joint Exhibit 23, Email to Rebecca  
7 Berry from Abhay Schweitzer re Invoice #339 from  
8 TECHNE City fees (Federal Blvd), dated 10/26/16  
9 with attached TECHNE Invoice No. 339, dated  
10 10/26/16, was admitted into evidence.)

11 BY MR. TOOTHACRE:

12 Q Exhibit 23 -- well, what is Exhibit 23,  
13 Mr. Schweitzer?

14 A Exhibit 23 contains an invoice which was  
15 generated by my firm, and then the email that we sent  
16 that invoice electronically with.

17 Q And what was the invoice representing?

18 A It was representing the deposit that would have  
19 to be made to the City of San Diego in order to start  
20 the review or start the process of obtaining this  
21 conditional use permit.

22 Q Okay. How much was that particular charge?

23 A \$8,800.

24 Q Is that a standard charge for each submittal on  
25 a CUP?

26 A So how the City approaches it -- and this  
27 value, unfortunately, they adjust it quite frequently --  
28 even though we don't like that -- this is what has to be

1 paid in order to start this sort of approval. There's a  
2 breakdown of the fees, but the bulk of it goes into a  
3 deposit account, and then City staff, as they're using  
4 their time working on this project, would bill against  
5 that deposit account.

6 MR. TOOTHACRE: Your Honor, I would like to  
7 move -- strike that.

8 Is 24 already in evidence?

9 THE COURT: It is.

10 BY MR. TOOTHACRE:

11 Q Mr. Schweitzer, I'd refer you to Exhibit 24, if  
12 I could, which appears to be an email to Rebecca Berry  
13 and CC'd to Larry Geraci from you. Is that correct?

14 A Yes.

15 Q Okay. This is dated October 26th, 2016. Is  
16 that correct?

17 A Yes.

18 Q What was your purpose in sending this email to  
19 Rebecca Berry?

20 A There were -- there was more than one purpose.  
21 One was to inform them of the fee, the 8,800 that we  
22 just discussed, why it was needed, and the breakdown on  
23 how it summed 8,800.

24 The City has another information bulletin, the  
25 same type that I discussed earlier, that gives the  
26 breakdown of this particular fee. I'm sorry. This is  
27 the same bulletin I discussed earlier.

28 Since the bulletin gives an overview of the

1 process of submitting for a conditional use permit for  
2 what was at this time called a medical marijuana  
3 consumer cooperative -- MMCC is short -- I suggested  
4 that the client familiarize themselves with the process,  
5 because it can be complicated. It can be confusing to  
6 someone who doesn't do it every day. And since the City  
7 provides such a concise set of information, we suggested  
8 that they read over it and be familiar with it.

9 And then at the end, I just give a status of  
10 where we are in our billing as it relates to how much of  
11 the retainer payment we received that we've already used  
12 in our hourly work.

13 Q Okay. And you attach the Information Bulletin  
14 170. Is that correct?

15 A Yes.

16 Q And this is something that is promulgated by  
17 the City. Is that correct?

18 A Yes.

19 Q Can you -- I don't want to belabor this, but  
20 can you give a brief overview of what all the  
21 requirements are by the City.

22 A I suppose I can.

23 Q Would you, please.

24 A Yes. Can you zoom into Section 1, please.

25 So this section, what it does is it refers to  
26 the portions of the Code that regulate this particular  
27 use. And you'll see SDMC, short for San Diego Municipal  
28 Code. Here, we see MMCC again. And then

1 section whatever that long section is, Chapter 4,  
2 Article 2, Division 15. And then it says what the  
3 purpose of the information bulletin is.

4 Q Okay.

5 A And at the end, this is the type of approval,  
6 which is a process three conditional use permit. There  
7 are more processes of conditional use permits, but  
8 process three is the one that these projects usually  
9 fall under.

10 Q Okay. And Section Roman Numeral II, does that  
11 indicate what the restrictions are that apply to this  
12 sort of application?

13 A So this provides in less detail than the  
14 Municipal Code but a general overview of the  
15 restrictions on these types of uses.

16 So No. 8 says total number of MMCCs limited to  
17 four per council district. The City of San Diego has  
18 nine. That would give a maximum potential number in the  
19 City.

20 Number -- letter B, this lists some of the uses  
21 that the MMCC needs to at least have 1,000-foot  
22 separation from, and that includes public park, church,  
23 childcare center, playground, and so forth.

24 And it lists the section that provides more  
25 detail.

26 Q With regard to Section B, 1,000 feet from other  
27 medical marijuana consumer cooperatives, that is a  
28 restriction?

1           A       Yes.

2           Q       Did that become important later in this  
3 process?

4           A       It sure did.

5           Q       Okay. And No. C -- strike that. Letter C,  
6 please?

7           A       Letter C is what I was discussing earlier, that  
8 MMCCs are not allowed within 1,000 (sic) feet of a  
9 residential zone.

10                   And then letter D, this lists all of the zones  
11 or it lists the zones, only the zones which MMCCs would  
12 be allotted.

13           Q       And then if you could go to subsection A on  
14 the -- let's do the documents referenced in the  
15 information bulletin.

16           A       Okay.

17           Q       The top grayed-in portion, are these all the  
18 documents required to be fulfilled for your initial  
19 completeness review?

20           A       So these are the documents referenced. They  
21 may not contain all the documents that we need to  
22 submit, but it references the Municipal Code, the  
23 project submittal manual, Section 4 specifically.  
24 Three, information bulletins that are all relevant to  
25 this sort of approval.

26                   And then five specific forms that we have to  
27 submit, have filled out and submit as part of these  
28 submittals.

1           Q     Okay. We'll look at those in a little bit.  
2 But down in the right-hand corner on that first page of  
3 the bulletin, the initial screening, step one, what is  
4 that generally?

5           A     So this section goes from this page to the next  
6 page. Once I get through six, if you could go onto the  
7 next page, please.

8                     From what I understand that the City does in  
9 order to make their job easier and it makes our job  
10 easier is there are a series of screening procedures  
11 before they actually start reviewing the merits of your  
12 project or getting into detail on your particular  
13 drawings.

14                    In this case, the first one is called initial  
15 screening. And in order to do that, you have to bring  
16 one copy of all these items, general application. And  
17 they list the form number, the City form. Deposit  
18 account, financially responsible party form with its  
19 number, owner disclosure statement, also with its  
20 number, proof of ownership and legal lot status -- and  
21 that's done through a grant deed -- Storm water  
22 requirement checklist, another City form, a photographic  
23 survey of photos and a CD-R.

24                    Now, we get into the actual drawings, site plan  
25 with development summary, floor plan, elevations if  
26 proposing exterior modifications, historical resource  
27 information. There's a bulletin that gives more detail  
28 on this, but this is related to the City determining if

1 a property or a building or both has any potential  
2 historical significance.

3 Fees would be Item No. 11. And they also have  
4 another bulletin for that.

5 And then in addition to that -- and this is  
6 very specific for these MMCCs, is this information here.

7 1,000-foot radius map. This is how the City  
8 determines if you have the separation you need from the  
9 uses that they listed. That's -- you must have a  
10 separation if you want to get these approved.

11 We use a consultant to provide it, but the City  
12 is quite specific on what they want. And that's what's  
13 described here.

14 And then also residential zones within  
15 100 feet. So two separate distances, depending on the  
16 use. One hundred for residential, and then some other  
17 uses are 1,000.

18 And then at the bottom is another form that the  
19 City issues, which we have to get filled out, which is  
20 affidavit for medical marijuana consumer cooperatives.

21 **Q Okay. And then going down to letter B, the**  
22 **next category, step 2, submittal -- strike -- submitted**  
23 **completeness review.**

24 **What is that describing?**

25 A This is the second step of the screening, and  
26 what it is, is this is when we submit a certain amount  
27 of copies of information that the City stipulates we  
28 need: Forms, documents, drawings. From our

1 understanding, there is a person at the City who gets  
2 assigned, then, over a period of time -- usually 10  
3 working days -- to review that information and make sure  
4 that the documents, the drawings, the forms at least  
5 have the basic information that's required for them to  
6 start reviewing it.

7 What usually happens at the end of that process  
8 is we get communication from the City, usually in  
9 writing, and they would say you have everything. Submit  
10 X amount of copies. Or you're missing something here,  
11 you're missing something in that drawing or that form.  
12 And in the worst-case scenario, if the submittal was  
13 really lacking, they'll say let's repeat that process.  
14 Give us something better to work with.

15 **Q Okay. Turning your attention to Exhibit 25.**  
16 **Have you seen that document before?**

17 THE COURT: I don't see that this is in  
18 evidence yet. Are you offering it into evidence?

19 MR. TOOTHACRE: If it's not in, I'm offering  
20 it.

21 THE COURT: Any objection, Counsel?

22 MR. AUSTIN: No, your Honor.

23 THE COURT: Exhibit 25 will be admitted.

24 THE WITNESS: I'm familiar with it.

25 BY MR. TOOTHACRE:

26 **Q Okay. And what is this? What's the email,**  
27 **first of all?**

28 A So the email is from myself to Larry and to



1 Becky. And I copied Gina Austin and Jim Bartell.

2 Q And what was your purpose in drafting this  
3 email?

4 A I wanted to communicate what the state was of  
5 the site plan and the proposed floor plan and also how  
6 we were proposing to deal with the separation required  
7 from the residential zone across the street.

8 Q Okay. And is that reflected on the two site  
9 plans you attached to this email? Strike that. Three  
10 site plans attached to this email?

11 A So there are two site plans and a floor plan.  
12 If you would go to page 2 of this exhibit, please. You  
13 can keep both of those up.

14 Q Does that reflect the two -- two site plans?

15 A Yes.

16 Q Okay.

17 A Because the roadway or the right-of-way was so  
18 wide, we couldn't fit it in one drawing. So what you  
19 see here is a drawing showing the entire site, the  
20 building -- proposed building in the rear, the parking  
21 spaces here on either side, and the shaded area is the  
22 proposed dedication.

23 And then if you imagine just scrolling down,  
24 that's what this shows. The front only of the property.

25 And if you could scroll down, please, so I  
26 could see the rest of this exhibit. There you go.

27 This shows both sides of the right-of-way so  
28 that we could depict to the City what we were trying to

1 do in order to achieve the 100-foot minimum separation.

2 The third page of the exhibit, page 4, this is  
3 a proposed floor plan. So what this shows is what's  
4 inside -- what we're proposing to be inside the  
5 building, the layout, and also a portion of the site for  
6 clarity. So here's the reception as you enter. Here's  
7 the actual sales area, and there are some other  
8 necessary functions of the space here.

9 Q Okay. This email was sent on October 26th.  
10 Correct?

11 A Yes.

12 Q And so you still had not submitted for  
13 completeness review at this point?

14 A Can you zoom in right here, please.

15 So this -- this is a section of what we call  
16 the title block where we note when drawings were  
17 submitted. Right. And I believe -- it's a little hard  
18 to read on this. But it says 10/28/2016, CUP  
19 completeness review. So if I'm reading this correctly,  
20 this was just a couple of days before we submitted for  
21 that completeness review.

22 Q Okay. And then let me have you -- strike that.

23 MR. TOOTHACRE: Your Honor, may I move 26 into  
24 evidence?

25 THE COURT: Any objection?

26 MR. AUSTIN: No, your Honor.

27 THE COURT: Exhibit 26 will be admitted.

28 \ \ \

1 (Premarked Joint Exhibit 26, CUP Submittal  
2 Plans - CUP Completeness Review dated  
3 10/28/2016, was admitted into evidence.)

4 BY MR. TOOTHACRE:

5 Q Mr. Schweitzer, Exhibit 26, does that represent  
6 the conditional use permit site plans that you submitted  
7 to the City?

8 A Yes. What we're looking at in this exhibit is  
9 the first set of plans which we produced to submit to  
10 the City for the completeness review.

11 Q And do you know when this was submitted?

12 A If you zoom in here, we have that date  
13 of 10/28. And, typically, we would only put that date  
14 when we were fairly certain we were going to submit.  
15 Sometimes, they can vary by a day or two when we  
16 actually submit. But it was right around this time.

17 Q Okay. And how many site drawings did you  
18 submit with this packet. If you look at the very back,  
19 they're numbered? Is it 14 site drawings?

20 A Yes. Now, there are many different types of  
21 drawings. Some of them are site plans. Some of them  
22 are floor plans. Some of them, like the one you see up  
23 now, just provides a summary of the project with a title  
24 and sort of an introduction. And then there are some  
25 consultant drawings too.

26 Q Okay. Let me have you refer to -- I'd like to  
27 move admission of 28, your Honor.

28 THE COURT: Any objection?

1 MR. AUSTIN: No, your Honor.

2 THE COURT: Exhibit 28 will be admitted.

3 (Premarked Joint Exhibit 28, Land Development  
4 Manual Vol 1, Ch 1 Project Submittal Reqts,  
5 Sec 4 Development Permits/Approvals June 2015,  
6 was admitted into evidence.)

7 BY MR. TOOTHACRE:

8 Q Do you recognize that document, Mr. Schweitzer?

9 A Yes.

10 Q And what is this document?

11 A This is a document that is produced by the City  
12 of San Diego, and what it provides is a manual for what  
13 to submit, how to prepare it, what the minimum  
14 information is, based on the type of permit that you're  
15 looking to obtain.

16 In here, you see that this particular Section 4  
17 is for development permits or approvals, and a  
18 conditional use permit for MMCCs would fall under this  
19 category.

20 Q And what was the significance of this document  
21 to this project, in general? I don't want to go into  
22 details. It's very lengthy.

23 A In general, this is the guide that we use to  
24 know what the minimum information is that is required  
25 for us to put into the drawings, for the consultants to  
26 put into the drawings, what type of drawing is required.  
27 For example, do they need an elevation of the building  
28 or do they not need elevation of the building? What

1 types of reports would be required, if any? What forms  
2 would be required, and what other documents would be  
3 required in order to meet the minimum requirements to  
4 submit for this type of permit?

5 Q And this is what you use for reference in  
6 determining what to submit on behalf of Mr. Geraci.  
7 Correct?

8 A Yes.

9 MR. TOOTHACRE: Okay. Your Honor, I'd like to  
10 move into evidence Exhibit 29.

11 THE COURT: Any objection?

12 MR. AUSTIN: No objection.

13 THE COURT: Exhibit 29 will be admitted.

14 (Premarked Joint Exhibit 29, Information  
15 Bulletin 515 Geotechnical Study Requirements  
16 October 2016, was admitted into evidence.)

17 BY MR. TOOTHACRE:

18 Q And do you recognize this document,  
19 Mr. Schweitzer?

20 A I do.

21 Q And what is this document?

22 A This is another information bulletin. This one  
23 specifically deals with geotechnical study requirements  
24 for development permits and grading permits.  
25 Development permits being the type that we were trying  
26 to obtain here.

27 Q Okay. And was this relevant to the project you  
28 were working on for Mr. Geraci?

1           A       Yes.

2           **Q       And why so?**

3           A       Could you please zoom in right here.

4                    So in the previous exhibit, there was an  
5 information -- a submittal manual. That submittal  
6 manual stipulates that a geotechnical report for this  
7 type of project may be required. In order to determine  
8 if it's required, then we reference this bulletin. And  
9 this section of it, Roman Numeral II, says that Table  
10 515A identifies when a geotechnical investigation report  
11 is required for proposed development projects based upon  
12 the geologic hazard category of the site.

13                   Some sites, as you may know, are more or less  
14 stable than others. The City determined, from our  
15 understanding, that based on a map that they do, which  
16 they reference here, if you are proposing a project on a  
17 site located in an area that has high hazard, according  
18 to their determination, they want a geotechnical  
19 investigation or study to be prepared and submitted.

20           **Q       And did they want -- did the City want a**  
21 **geotechnical report in this case?**

22           A       Yes.

23           **Q       Okay. And we'll get to that later on.**

24                   MR. TOOTHACRE: Next in order, I'd like you to  
25 look at No. 30, which is in evidence, your Honor.

26                   THE COURT: Yes.

27           BY MR. TOOTHACRE:

28           **Q       I'll ask you if you recognize that document,**

1     **Mr. Schweitzer.**

2           A     I do.

3           **Q     And what is that document?**

4           A     This is another form that the City issues,  
5     which we're required to have filled out and signed and  
6     submitted as a requirement to apply for these types of  
7     permits.

8           **Q     Okay. And is this one filled out?**

9           A     Yes.

10          **Q     And do you recognize the signature block for**  
11     **owner?**

12          A     Yes.

13          **Q     And who signed under owner?**

14          A     So here, you see owner box checked, Darryl  
15     Cotton, with his information. And I believe that's his  
16     signature.

17          **Q     Okay. And who is the signature on the other**  
18     **side, if you recognize it?**

19          A     So that's -- you see here the name filled out,  
20     Rebecca Berry.

21          **Q     Correct.**

22          A     With her information, and I believe that's her  
23     signature.

24          **Q     Okay. And she X'd the box tenant lessee?**

25          A     Yes.

26          **Q     Did you fill that out? Who fills out those**  
27     **boxes?**

28          A     It depends on the project. Sometimes, we try

1 to fill it out as much as possible to help the owner.  
2 Sometimes, the owner fills it out. I don't recall  
3 specifically --

4 Q Okay.

5 A -- who filled out this form.

6 MR. TOOTHACRE: Your Honor, I move admission of  
7 31.

8 THE COURT: Any objection?

9 MR. AUSTIN: No, your Honor.

10 THE COURT: Exhibit 31 will be admitted.

11 (Premarked Joint Exhibit 31, Form DS-3242

12 Deposit Account/Financially Responsible Party  
13 dated 10/31/2016, was admitted into evidence.)

14 BY MR. TOOTHACRE:

15 Q Mr. Schweitzer, I'll ask you if you recognize  
16 that document.

17 A Yes.

18 Q What is this document?

19 A This is another form which the City issues  
20 which we have to get filled out and signed and submit as  
21 part of processing these permits.

22 This particular form, as I understand it, is to  
23 set up the trust account that I mentioned earlier that  
24 staff bills against, and if there are funds left over in  
25 that account, who the City should reimburse those to.

26 Q Okay. And who was the -- who was the signatory  
27 on here as the financially responsible party?

28 A Rebecca Berry.



1 Q And what's the date that document is signed?

2 A 10/31/2016.

3 Q Okay. Was this document submitted with the  
4 original application package?

5 A I'm not certain. I believe it was because they  
6 typically don't allow us to proceed without having it.

7 Q Okay. Do you recall whether or not the  
8 application was submitted initially on October 31st,  
9 2016?

10 A I don't recall specifically offhand the exact  
11 date --

12 Q Okay.

13 A -- that we submitted it.

14 MR. TOOTHACRE: I'll refer you now to  
15 Exhibit 32, which I show is in evidence, your Honor.

16 THE COURT: It is.

17 BY MR. TOOTHACRE:

18 Q I'll ask if you recognize that document.

19 A Yes.

20 Q And what is that document?

21 A This is a photographic survey of the property  
22 and a little bit of the surrounding area. This is one  
23 of the documents that the City requires that somebody  
24 prepare and submit. And in this case, our firm prepared  
25 it.

26 Q Okay. We have seen some of the photos in this  
27 exhibit. Are there any in here that indicate where the  
28 setback would be for the 100-foot dedication, so you can

1     **show the jury.**

2           A     If you go to page 4, please. So this is a  
3     picture taken at the front of the proposed project  
4     property, looking east, across Federal Boulevard.

5                     And what you see there, roughly, this is the  
6     residential zone, which I mentioned earlier, which we  
7     would need the 100-foot separation from.

8           **Q     Are there any other photos that identify that**  
9     **particular zoning issue?**

10          A     Yes. If you go to page 7, please. So the  
11     building that you see here, that's the existing building  
12     on the project site. And this is that hill that we just  
13     looked at in the previous picture.

14                     And this picture is taken looking from that  
15     residential zone at the subject property. And then  
16     that's Highway 94 in the background.

17          **Q     Okay. And so what part of the building were**  
18     **you going to dedicate to the City?**

19          A     You can't see it from this picture.

20          **Q     Is there one that shows that?**

21          A     Yes. Give me a moment. If you go to page 3,  
22     please. The portion we were proposing to dedicate would  
23     be -- this is roughly where the existing property line  
24     is. And the new property line would be moved back a few  
25     feet from that.

26          **Q     So that front wall would come down?**

27          A     Yes.

28                     MR. WEINSTEIN: Okay. And I'd like to move 33

1 into evidence, your Honor.

2 THE COURT: Any objection?

3 MR. AUSTIN: No, your Honor.

4 THE COURT: Exhibit 33 will be admitted.

5 (Premarked Joint Exhibit 33, CUP Completeness  
6 Review - City of SD Receipt for \$8,800 Payment  
7 dated 10/31/2016, was admitted into evidence.)

8 BY MR. TOOTHACRE:

9 Q Do you recognize that document, Mr. Schweitzer?

10 A I do.

11 Q Blow it up. And what is this document?

12 A This is a receipt issued by the City of  
13 San Diego and --

14 Q For what?

15 A For the -- the first time which we submitted  
16 this project to them. So it shows the payment of the  
17 8,800. It shows our assigned project number and the  
18 name. And then it shows the date that it was paid to.  
19 And here's some details on the payment itself.

20 Q So do you believe this submission was made on  
21 October 31st, 2016?

22 A Yes.

23 MR. TOOTHACRE: I'd like to move 35 into  
24 evidence, your Honor.

25 THE COURT: Any objection?

26 MR. AUSTIN: No objection.

27 THE COURT: Exhibit 35 will be admitted.

28 \ \ \

1 (Premarked Joint Exhibit 35, Email to Larry  
2 Geraci from Abhay Schweitzer Re: Federal Blvd -  
3 Site Plan and Floor Plan, dated 10/31/16, was  
4 admitted into evidence.)

5 BY MR. TOOTHACRE:

6 Q And do you recognize that document,  
7 Mr. Schweitzer? It's a string of emails. Is that  
8 correct?

9 A Yes, I do recognize it.

10 Q And if you could read from back to front?

11 A Yes.

12 Q It's in reverse chronological order?

13 A Yes.

14 Q Okay. And what was the purpose of this in the  
15 emails, generally?

16 A Generally, it was to update the client and the  
17 consultant team, in this case, Gina Austin and Jim  
18 Bartell, as to the progress, the progress of the work  
19 that my firm was providing.

20 Q And on page 5, you indicate "We are on track to  
21 submit on Friday for the first step, which is the  
22 submitted completeness review." Is that correct?

23 A Yes.

24 Q Okay. And do you believe you submitted on  
25 Friday for the completeness review?

26 A No.

27 Q When did you submit?

28 A On the 31st.

1           Q     Which was?  You don't know?  Probably Monday?

2           A     Yes.

3           Q     Okay.

4           A     I think so.

5           Q     All right.  And you added some floor plan  
6 drawings to this email, indicating where the dedication  
7 was.  Is that correct?

8           A     I did see reference to them.  I don't see them  
9 attached to this exhibit.  I believe I did, yes.

10          Q     And the first paragraph on page 1 of  
11 Exhibit 35, you're requesting three items.

12          A     Yes.

13          Q     Tell me what you were asking for there.

14          A     So these -- what I'm asking for here is related  
15 to the numerous forms that we need.

16                 So Item No. 1, Form DS-190, we're asking that  
17 they put the phone number, that they date and sign that,  
18 and send it back.

19                 Item No. 2, which is another form, DS-318, I  
20 say we need Cotton as the owner, you as the tenant, both  
21 to sign, date, and send back.

22                 On DS -- on Item No. 3, DS-3032, another City  
23 form, we're asking to check the box "other person," and  
24 also date and signed and send it back to all.

25          Q     Okay.  Let me have you refer to Exhibit 34 now,  
26 which is in evidence, your Honor.

27                 THE COURT:  It is.

28

1 BY MR. TOOTHACRE:

2 Q Is this in response -- were these documents  
3 prepared in response to your request in the last  
4 exhibit?

5 A I believe so.

6 Q What is -- what is the first page of  
7 Exhibit 34?

8 A The first page, this is another form that the  
9 City issues. It's called a general application. They  
10 assign DS-3032 as an identifier. And this provides some  
11 basic information for the project. Every permit, as far  
12 as I know, requires one of these. At the top, you  
13 indicate what sort of permit, and then you provide the  
14 address of the property, the legal description, a very  
15 brief description of the project itself. And then  
16 property owner or tenant information, permit holder  
17 name, which is a different field, a licensed design  
18 professional if that's required, some additional  
19 information about potentially historical resources,  
20 which I mentioned before, and then towards the bottom,  
21 if there have been any code violations on the property,  
22 and at the very bottom of the page, who the applicant  
23 is. And that person is also required to sign that form.

24 Q Okay. And is that signed by Rebecca Berry?

25 A I believe it is.

26 Q On October 31, 2016?

27 A Yes.

28 Q And is that your signature in No. 6?

1           A     That's not my signature, but that is the  
2     signature of the agent which we hired --

3           Q     Oh. It says --

4           A     -- to submit that.

5           Q     Can you blow that up.

6                     Does that say agent down at the bottom  
7     right-hand corner of that signature?

8           A     Yes.

9           Q     Okay. The next page of Exhibit 34 is page 2.  
10    Is this an affidavit for a medical marijuana consumer  
11    cooperative?

12          A     Yes.

13          Q     And what is the purpose of an affidavit for a  
14    medical marijuana consumer cooperative?

15          A     Could you zoom in here, please.

16                     So this is another one, another form that the  
17    City requires. They give us a blank. We have to get it  
18    filled out and submitted. This particular form is  
19    specific for medical marijuana consumer cooperatives.

20                     And the purpose of it is this -- it's an  
21    affidavit by whoever is submitting that the project  
22    meets the separation requirements from the sensitive  
23    uses, how the City calls it.

24          Q     Okay. And is this executed by Rebecca Berry?

25          A     Yes.

26          Q     On October 31, 2016?

27          A     Yes.

28          Q     And was this also part of the initial

1 application sent in to the City?

2 A Yes.

3 Q Page 3 of that exhibit, entitled "Deposit  
4 Account Financial -- Financially Responsible Party,"  
5 what is that document?

6 A This is another form, and I think that I gave a  
7 brief explanation of it.

8 Q And the financially responsible party is listed  
9 here as Rebecca Berry?

10 A Yes, it is.

11 Q And this was also part of the original  
12 submittal?

13 A Yes.

14 Q And the last page of that particular exhibit is  
15 an ownership disclosure statement. I think we looked  
16 at -- strike that.

17 Have you seen that document before?

18 A Yes.

19 Q And who does it indicate the owner is?

20 A Darryl Cotton.

21 Q And who does it indicate the tenant/lessee is?

22 A Rebecca Berry.

23 Q Okay. And that was also part of your original  
24 submittal?

25 A Yes.

26 MR. TOOTHACRE: I'd like to flip to Exhibit 36,  
27 your Honor, which is in evidence.

28 THE COURT: It is.



1 BY MR. TOOTHACRE:

2 Q And I'll ask you if you recognize that  
3 document, Mr. Schweitzer.

4 A Yes, I do.

5 Q Okay. Was that email from you to Becky Berry,  
6 Larry Geraci, Jim Bartell, and Gina Austin from you?

7 A That's the first page of the exhibit, and it  
8 was from me.

9 Q And you're indicating that you successfully  
10 submitted the Federal Boulevard project for the first  
11 step of the conditional use permit process, which is  
12 called completeness review?

13 A Yes.

14 Q And that is dated October 31, 2016?

15 A Yes, it is.

16 Q Okay. And was your purpose just to update the  
17 clients?

18 A Yes.

19 Q Okay. I'm going to have you turn to Exhibit 43,  
20 which is in evidence.

21 And is this an email from you to Rebecca Berry  
22 with a CC to Larry Geraci, Jim Bartell, and Gina Austin?

23 A Yes.

24 Q And you were asking -- what were you asking  
25 Rebecca for?

26 A As part of the information that the City needs  
27 in order to determine if a property is potentially  
28 historic, what they request is the County of San Diego

1 tax assessor building records. In order to obtain those  
2 records, the County requires that you provide a letter  
3 of authorization from the property owner. And that's  
4 why we sent this particular email. And that -- that  
5 letter, which is not signed but which we prepared, is  
6 page 2 of this exhibit.

7 Q Okay. And if I could refer you now to  
8 page -- strike that.

9 -- Exhibit 46, which is in evidence.

10 Is this the executed authorization you were  
11 requesting?

12 A Yes.

13 Q Blow that up.

14 And is that Darryl Cotton's signature?

15 A I believe it is.

16 Q Okay. And he is giving his authorization for  
17 TECHNE to view and make copies of San Diego County tax  
18 assessor records?

19 A Tax assessor building records, correct.

20 Q Okay. Now I'd like you to refer back to  
21 Exhibit 45, which is in evidence, your Honor.

22 THE COURT: It is.

23 BY MR. TOOTHACRE:

24 Q This is dated November 14th, 2016. It appears  
25 to be an email to Jim Bartell with a CC to Larry Geraci,  
26 Gina Austin, and Becky Berry from Abhay Schweitzer. Is  
27 that correct?

28 A Yes.

1           Q     What was your purpose in sending this email?

2           A     So I had received the call from Nathan White  
3     who --

4           Q     Who is Nathan White?

5           A     Nathan White at that time was an employee of  
6     the City of San Diego Development Services Department.  
7     And what his function was is he was assigned to review  
8     our initial submittal to make sure it contained the  
9     basic information, which I previously referenced.

10           And what he told me is that during his -- his  
11     review, he -- he noticed that the zoning, which we were  
12     proposing the project in, didn't allow for this  
13     particular use.

14           What I did is I explained to him on that call  
15     that the information bulletin which we saw earlier did  
16     allow it. And he said he would take it up with his  
17     superiors.

18           And I just emailed so the team would be aware  
19     of what the City had told us.

20           Q     Okay. And did you take any -- did anybody on  
21     the team take any action with regard to that issue?

22           A     Yes.

23           Q     Who was that?

24           A     Jim Bartell.

25           Q     And do you know what actions he took on behalf  
26     of the team?

27           A     I don't know step by step, but what I knew his  
28     responsibility to be was to bring up this inconsistency

1 with the City of San Diego, that one document said we  
2 could do it and another document said that we couldn't,  
3 and to get that rectified.

4 Q And turning your attention -- strike that.

5 MR. TOOTHACRE: Your Honor, may I move 47 into  
6 evidence?

7 THE COURT: Any objection?

8 MR. AUSTIN: No, your Honor.

9 THE COURT: Exhibit 47 will be admitted.

10 (Premarked Joint Exhibit 47, CUP Completeness  
11 Review - Remaining Cycle Issues dated  
12 11/15/2016, was admitted into evidence.)

13 BY MR. TOOTHACRE:

14 Q Do you recognize that document, Mr. Schweitzer?

15 A Yes.

16 Q And what is this document?

17 A So once the completeness review is completed,  
18 the City issues a document which contains some  
19 corrections, if any. It also states if we're ready to  
20 go to the next phase, which is the full submittal. And  
21 if so, what documents we need for that and what quantity  
22 of each document we need.

23 Q Okay. Under No. 1, in the middle of the page,  
24 it indicates project team ready for full submittal. Is  
25 that correct?

26 A That's correct.

27 Q What does that mean?

28 A What that means is that we, in essence, passed

1 the first screening and that we can go on to the next  
2 step, which is the full submittal.

3 Q And you're still in completeness review,  
4 though?

5 A Yes. The project is not being reviewed for  
6 merit at this point. This is the second step of the  
7 City checking if what we submitted has the minimum  
8 amount of information they need to review the project  
9 for merit.

10 Q And they appear to be requiring additional  
11 items. Is that correct?

12 A Yes.

13 Q And what do you do in response to receiving one  
14 of these reports?

15 A What we typically do is we start to address the  
16 comments and prepare additional information, if it's  
17 needed, modify our drawings, if they're requesting us to  
18 do that, and last but not least, compile the specific  
19 number of copies for each item that they're requesting.

20 Q Okay. And were they requesting a geotechnical  
21 report in this cycle of the review?

22 A Yes.

23 Q Where do you see that?

24 A If you go to Item No. 2 on that page, if you  
25 see right here, it says three copies of geotechnical  
26 reports.

27 Q Okay. And that means you have to hire somebody  
28 to conduct a geotechnical survey?

1           A       Our firm doesn't provide that service. So in  
2 this case, ourselves or the client would have to hire a  
3 qualified professional to prepare that particular  
4 report.

5           MR. TOOTHACRE: I'd like to move 48 into  
6 evidence, your Honor.

7           THE COURT: Any objection?

8           MR. AUSTIN: No, your Honor.

9           THE COURT: Exhibit 48 will be admitted.  
10           (Premarked Joint Exhibit 48, Email to Jim  
11 Bartell from Abhay Schweitzer Re: Update, dated  
12 11/29/16, was admitted into evidence.)

13          THE COURT: This will be our last exhibit of  
14 the evening, Counsel.

15          MR. TOOTHACRE: Thank you, your Honor.

16 BY MR. TOOTHACRE:

17          Q       Mr. Schweitzer, do you recognize this email  
18 string?

19          A       Yes.

20          Q       And it appears to be initially from Mr. Geraci  
21 to you asking if you can update him on the status of  
22 Federal Boulevard. Correct?

23          A       That's correct.

24          Q       Was he, in essence -- well, was it your sense  
25 that he was pushing you to go forward around do this in  
26 an expedited manner?

27          A       Yes.

28          Q       Okay. You indicated "We are almost done

1 addressing the minor comments of completeness review and  
2 expect to submit either tomorrow or Thursday. As soon  
3 as we are submitted, I'll send an email out."

4 A That's correct.

5 Q Do you know if you submitted on the following  
6 day -- the following Thursday?

7 A I don't recall offhand if we submitted, but  
8 usually we -- we follow through when we make a  
9 commitment like that.

10 MR. TOOTHACRE: Okay. Thank you.

11 THE COURT: All right.

12 MR. TOOTHACRE: Thank you, your Honor.

13 THE COURT: We're going to stop for the  
14 evening. It's been a long enough day. It's almost --  
15 well, a little after 4:20, almost 4:25. We're going to  
16 be in recess until tomorrow morning at 9 o'clock. Do  
17 not form or express any opinions about the case until  
18 you deliberate.

19 We'll be in recess.

20 Thank you.

21 All right. The jury has left the room.

22 You can feel free to step down, Mr. Schweitzer.

23 Thank you very much.

24 All right. Counsel, just before I let you  
25 go -- and I'm going to direct that you be here by  
26 8:45 tomorrow morning so we can continue this evening's  
27 discussion before we adjourn.

28 I've completed draft verdict forms that my

1 clerk either has or will send you in Word. They  
2 currently reflect Plaintiff's claim for breach of  
3 contract and breach of the implied covenant of good  
4 faith and fair dealing and cross-complainant's claim for  
5 breach of contract, fraud, intentional  
6 misrepresentation, fraud, false promise, fraud, and  
7 negligent misrepresentation.

8 Now, I recognize that one or more of those  
9 claims -- and I'm not making any bold prediction, by any  
10 means. But one of them may need to be adjusted based  
11 upon motions that the defense brings at the end of  
12 Plaintiff's case or -- I'm sorry -- Cross-defendant  
13 brings at the end of cross-complainant's case. But as  
14 of right -- as of this moment, I'm satisfied that the  
15 verdict forms reflect your current claims.

16 But take a look at them. After a while, there  
17 are so many questions that, you know, I could easily  
18 have made a mistake in directions, following a question.  
19 So please scrutinize them and be prepared to give me  
20 your comments probably by this time tomorrow evening.

21 All right. Next, I'm in the process of  
22 completing the next draft of the jury instructions. I'm  
23 confident that by sometime tomorrow, if not well before  
24 tomorrow, my clerk will email those to each of you in  
25 Word.

26 Here's what I am imagining will happen. It's  
27 easy for me to perceive that the evidence will be  
28 completed in its entirety at or before the close of



1 business Wednesday by both sides. In fact, Counsel, I  
2 saw you spending a lot of time -- and I'm going over  
3 toward Plaintiff's counsel -- with Mr. Schweitzer that  
4 had already been admitted.

5 If there had been an objection on cumulative,  
6 which I didn't hear, I think that would have been  
7 well-taken. I'm not clear why we had to go back over a  
8 bunch of those documents that were already in evidence.

9 But so we spent a lot of time going over  
10 exhibits that had been admitted twice or for the second  
11 time. But putting that admonition aside, it looks to me  
12 like you all are moving quickly enough that assuming  
13 witnesses are available, the evidence will be done by  
14 the close of business Wednesday.

15 Now, here's the real question, though. Bearing  
16 in mind that we only have a half a day on Thursday, do  
17 we dismiss the jury at the close of business on  
18 Wednesday and tell them to return first thing Monday  
19 morning -- let's see. That would be the 15th -- at  
20 which I'll instruct you all to argue and they'll get the  
21 case sometime that day, or do we bring them in, if for  
22 no other reason than for the limited purpose of me  
23 instructing them, assuming we can have the instructions  
24 ready by then?

25 I'm anticipating there may be some time at the  
26 end of tomorrow for us to take a look at the  
27 instructions and maybe even Wednesday.

28 Now, even if that's the case -- I wouldn't

1 expect you to argue.

2 So what we're talking about is bringing them in  
3 for even less than a half a day, which is the most that  
4 they would come in for in any event on Thursday.

5 I'm almost tempted to say give them Thursday  
6 off and tell them to come back Monday.

7 That gives us lots of time to finalize the  
8 instructions, and then we instruct -- I would instruct  
9 at the top of the hour Monday morning at 9:00. And then  
10 you all would begin your closings.

11 So let me go to Plaintiff's side. What do you  
12 think?

13 MR. WEINSTEIN: I think the latter is the  
14 better plan. I don't think instruction is going to  
15 be -- take that much time. And I do think it would be  
16 nice to have the -- just in case there's issues with the  
17 instructions.

18 THE COURT: I would anticipate, based upon what  
19 I've seen so far, is the instructions would take  
20 somewhere in the neighborhood of 45 minutes.

21 Who is going to be giving the closing? Will it  
22 be you? Do you have any estimate of how long?

23 MR. WEINSTEIN: I cannot see it being over an  
24 hour.

25 THE COURT: All right.

26 MR. WEINSTEIN: So --

27 THE COURT: Nothing unreasonable about that.  
28 Counsel, what do you think about your side?

1 MR. AUSTIN: For the closing, 30 to 45 minutes.

2 THE COURT: All right. Again, nothing  
3 unreasonable about that.

4 So what I'm tempted to do is to limit each  
5 side -- and recognize there's a complaint and a  
6 cross-complaint. So each of you get to argue a second  
7 time. But regardless of how many times you argue, no  
8 more -- no more than one hour.

9 So here's what I would anticipate. After the  
10 Court finishes opening argument -- finishes the  
11 instructions, we would take a very short break.  
12 Probably no more than 10 minutes, if we can do so.  
13 Although, invariably when the jury leaves the room, it's  
14 hard to get them back within 15 minutes. But after they  
15 have gotten fresh air for the first time, Plaintiff's  
16 counsel will give your opening argument.

17 I'm assuming you would want to reserve some  
18 time for your second argument. So let's call it in or  
19 about 45 minutes or so.

20 MR. WEINSTEIN: Okay.

21 THE COURT: Then we would move immediately into  
22 defense counsel's first closing argument. And, Counsel,  
23 likewise, given your estimate, I would expect that you  
24 would keep your first argument within 45 minutes or  
25 less, saving time for your second argument.

26 Then we'll take our second morning break,  
27 assuming there's enough time left in the morning  
28 session. I think there will be. But if there's not, we

1 would adjourn for the lunch hour, come back, give each  
2 of your respective closing arguments so that at or  
3 before, if not well before the first afternoon -- the  
4 afternoon break on Monday, the 15th, the jury would get  
5 the case. All right. That's kind of how I'm seeing  
6 this play out.

7 And they will not, I can assure you, react in  
8 the slightest if we tell them we're ahead of time.  
9 Number one, working backwards, they're going to get the  
10 case sometime before close of business on Monday the  
11 15th. And they'd be able to get Thursday off as well.

12 All right. So let me go back to Plaintiff's  
13 counsel before we adjourn.

14 Any questions or comments on anything?

15 MR. WEINSTEIN: Only do I need to prepare  
16 tomorrow morning to talk about the lodgement issue? The  
17 one that --

18 THE COURT: What's the lodgement issue?

19 MR. WEINSTEIN: They lodged documents. You  
20 commented on it earlier today.

21 THE COURT: You know, let's do this. It sounds  
22 like we're going to have time tomorrow afternoon where  
23 we run out of witnesses. So I'm thinking about tabling  
24 any further discussion of that issue until we get  
25 finished with as many witnesses as we have available  
26 tomorrow. Let the jury go, and then we'll resolve all  
27 of those issues -- as many issues as we can including  
28 that one.

1           MR. WEINSTEIN: That's great. I can do it any  
2 time. So that works for me.

3           THE COURT: All right. Anything else, Counsel?  
4 Counsel, anything else?

5           MR. WEINSTEIN: No thank you.

6           THE COURT: Let me go to the defense side.  
7 Anything, Counsel?

8           MR. AUSTIN: No, your Honor.

9           THE COURT: All right. So we're going to be in  
10 recess now. Counsel, there's a bunch of people coming  
11 in tomorrow morning at 8:30. I'll try to get through as  
12 quickly as we can so that we will have sometime before  
13 we bring in our jury at 9 o'clock.

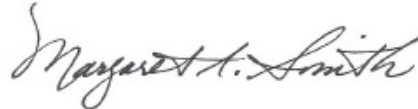
14           But in any event, make sure you're here at  
15 8:45. So that will conclude our hearing. You're in  
16 recess.

17           (The proceedings concluded at 4:31 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 236, inclusive, is a full,  
9 true and correct transcription of my shorthand notes  
10 taken during the proceeding had on July 8, 2019.

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

13   
14

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