

Geraci vs. Cotton, et al.

**Reporter's Transcript of Proceedings
July 10, 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 10, 2019

Reported By:

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CSR 9733, RPR, CRR

Certified Shorthand Reporter

Job No. 10057776

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1 July 10, 2019; San Diego, California; 8:44 a.m.

2 Hon. Joel R. Wohlfeil

3 -- o0o --

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

6 MR. TOOTHACRE: Good morning, your Honor.

7 MR. WEINSTEIN: Good morning, your Honor.

8 MR. AUSTIN: Good morning, your Honor.

9 THE COURT: Okay. Let's talk about scheduling
10 for just a moment. Mr. Bartell is lined up and ready to
11 go?

12 MR. TOOTHACRE: He is, your Honor.

13 THE COURT: And your best estimate is 45
14 minutes or less?

15 MR. TOOTHACRE: I think 30 or less. I
16 eliminated some things that have now been covered by
17 other witnesses.

18 THE COURT: Counsel, thank you.

19 MR. TOOTHACRE: You're welcome.

20 THE COURT: All right. And cross-examination,
21 Counsel?

22 MR. AUSTIN: Well, if it's going to be that
23 short, I can't imagine it taking more than 15.

24 THE COURT: All right. So, Counsel, I see that
25 you've taken your jacket off.

26 MR. AUSTIN: Oh. I can --

27 THE COURT: Usually, if you're going to do that
28 in the presence of the Court, you'll ask for permission.

1 I usually give counsel some latitude, but once the jury
2 comes, you've got to put that coat back on.

3 MR. AUSTIN: Sorry. I was just overheated.

4 THE COURT: No, I understand.

5 All right. So that sounds like we'll be done
6 with Mr. Bartell at or before 10 o'clock. And then at
7 that time, Plaintiff will rest?

8 MR. WEINSTEIN: Yes, your Honor.

9 THE COURT: Subject to the admission of any
10 additional exhibits. I always give every -- each side a
11 chance to do that. So we'll take that up if necessary.

12 You've been very good, both of you, about
13 offering exhibits as you go along. That's certainly the
14 better, and from my perspective, the preferred practice.

15 So we've got that taken care of. Would you
16 anticipate bringing a motion?

17 MR. AUSTIN: Yes, your Honor.

18 THE COURT: Okay. Here's what I'd like to
19 suggest. You defer without prejudice from making your
20 motion until after we complete all of the evidence, and
21 then we'll circle back. You make whatever motions you
22 want to make towards Plaintiff's case in chief. And
23 then plan on promptly putting Mr. Cotton on the stand.

24 And your best estimate right now is?

25 MR. AUSTIN: I said an hour before, but I don't
26 think it will take an hour.

27 THE COURT: There's nothing unreasonable about
28 an hour or so. All right. But with the morning break,

1 that puts us at or before 11:30 or so. Again, no
2 pressure. He's an important witness.

3 How about cross-examination?

4 MR. WEINSTEIN: If it's an hour, probably 30
5 minutes, max. Maybe less.

6 THE COURT: All right. And we bear in mind how
7 much you've covered --

8 MR. WEINSTEIN: Absolutely.

9 THE COURT: -- in your initial examination.

10 And I'd like to think neither one of you feel
11 it's necessary to go over the same points a second time.

12 All right. So after Mr. Cotton is done,
13 subject to the admission of any additional exhibits,
14 Defense will rest.

15 MR. AUSTIN: Yes.

16 THE COURT: All right. And I imagine you may
17 have a motion or two towards the defendant's case in
18 chief. Again, let's defer that without prejudice until
19 after all the evidence has been completed.

20 At this point, do you foresee any rebuttal?

21 MR. WEINSTEIN: It's conceivable I might put
22 Mr. Geraci up briefly.

23 THE COURT: All right.

24 MR. WEINSTEIN: But that's about it. It
25 wouldn't be long.

26 THE COURT: Okay. Now, folks, if we get to a
27 point where we can wrap at or about -- certainly at or
28 before would be preferable. But if we could wrap all

1 the evidence up and let the jury go at noon and then not
2 have to stick around for an hour and a half lunch hour
3 only to hear a few minutes of evidence, that would be
4 ideal. I don't think they'll object to that.

5 And that will give us as much of the afternoon
6 as necessary to hear all the motions and go over the
7 instructions and finalize the verdict forms and
8 hopefully get you out of here so you don't have to come
9 back tomorrow morning.

10 Now, I just want to confirm, yesterday, you
11 confirmed you had gotten the verdict forms and there's
12 some adjustments I know we're going to need to make.

13 Did each of you get the sets of jury
14 instructions?

15 MR. WEINSTEIN: I did. And I reviewed them.

16 THE COURT: All right.

17 MR. AUSTIN: I got them, and I made my way
18 through most of them but not all of them.

19 THE COURT: And that's understandable. You're
20 all plenty busy. What we'll do, after we've heard all
21 the motions, we'll take up both the instructions and the
22 verdict forms. And we'll finalize those. But we'll
23 display them on the overhead so we can all go through
24 them together. And at that time whatever objections, if
25 any, you all have to the verdict forms, the
26 instructions, we'll take up at that time.

27 Now, as things currently stand, Plaintiff has a
28 couple of contract claims. The defense, cross

1 complainant, has a contract claim and three fraud
2 theories. Plus, I thought you had indicated at the
3 beginning of trial that you were pursuing a claim for
4 punitive damages.

5 As I was going through the set of instructions
6 that I had been provided, I saw no instructions which
7 addressed the issue of punitive damages. It's a little
8 hard to have those claims go to the jury without you
9 having proposed instructions which may support the --
10 now, that's irregardless of whether there's evidence to
11 support them. But, Counsel, I did not on my own propose
12 instructions to support that part of your cross claims.

13 But, again, the absence of those instructions
14 was not lost on the Court.

15 All right. Let me go to Plaintiff's side. Are
16 there any issues that you want to bring to the Court's
17 attention before we bring the jury in at 9 o'clock?

18 MR. WEINSTEIN: No, your Honor.

19 THE COURT: All right. Let me go to the
20 defense side. Any issues?

21 MR. AUSTIN: No, your Honor.

22 THE COURT: All right. So stand down. And as
23 soon as the jury comes in -- or as soon as we get the
24 jury assembled, we'll bring them in and then plow
25 forward with the evidence.

26 MR. TOOTHACRE: Thank you, your Honor.

27 (Discussion off the record.)

28 THE COURT: Good morning, everybody. Thanks

1 for assembling like you did. We're getting started just
2 a couple minutes late, but we are going to move forward
3 as quickly as we can. The plaintiff has one last
4 witness in their case in chief. The defense will then
5 be recalling Mr. Cotton.

6 The plaintiff does have the right to call any
7 rebuttal witnesses. So I can't say that this next
8 witness will be Plaintiff's last witness, but we're on
9 the home stretch, folks. And we're moving forward as
10 sufficiently as we possibly can.

11 With that in mind, Counsel, your next witness,
12 please.

13 MR. TOOTHACRE: Mr. Jim Bartell, your Honor.

14 THE COURT: Is he outside in the hallway?

15 MR. TOOTHACRE: He should be, yes.

16 THE COURT: Madam Deputy, if you can please
17 retrieve.

18 Good morning, Mr. Bartell. If you could please
19 follow directions of my deputy and my clerk, please.

20
21 James Bartell,
22 being called on behalf of the plaintiff/cross-Defendant,
23 having been first duly sworn, testified as follows:

24
25 THE CLERK: Please state your full name and
26 spell your first and last name for the record.

27 THE WITNESS: James Patrick Bartell. J-a-m-e-s
28 B-a-r-t-e-l-l.

1 (Direct examination of James Bartell)

2 BY MR. TOOTHACRE:

3 Q Good morning, Mr. Bartell.

4 A Good morning.

5 Q Going into your education, could you briefly
6 explain your education to the jury.

7 A I have a bachelor's degree from San Diego State
8 University and a master's degree in public
9 administration from National University.

10 Q Okay. And what is your work history, starting
11 with the Navy?

12 A I was in the Navy for four years. I served
13 three years in Vietnam.

14 Q Okay.

15 A Got out, worked in politics. I was a chief of
16 staff to a county supervisor for seven years.

17 Q Which county supervisor was that?

18 A Jim Bates.

19 Q Okay. And then were you chief of staff?

20 A I was chief of staff in Washington, D.C. for a
21 Congressman.

22 Q And which Congressman was that?

23 A Jim Bates.

24 Q Okay. And then did you join a public affairs
25 agency?

26 A Yes. I joined originally Nelson communications
27 group. It's a California-based agency. I was with them
28 for eight years as a vice president. I was -- we then

1 sold the company to the fourth largest PR firm in the
2 world, Porter Novelli. And I was -- I ran their
3 San Diego office for five years. And then I left there
4 and formed my own company in 2006.

5 **Q Okay. Did you do a stint with the Metropolitan**
6 **Transit System as well?**

7 A Yes. I was an elected official for six terms,
8 and during that time, my City appointed me as their
9 representative to the Metropolitan transit board for
10 the --

11 THE COURT: Mr. Bartell, may I ask you slow
12 down just a little bit.

13 THE WITNESS: Yes.

14 BY MR. TOOTHACRE:

15 **Q Were you the mayor of a local city for**
16 **some --**

17 A I was mayor and city councilman in Santee for
18 22 years --

19 **Q From 1980 to --**

20 A To 2002.

21 **Q And, eventually, you formed**
22 **Bartell & Associates. Is that correct?**

23 A January 2006, I formed Bartell & Associates.

24 **Q Okay. And what does Bartell & Associates do?**

25 A We do public relations, government relations,
26 media relations, community outreach, coalition
27 development, labor relations.

28 **Q Is there -- is it a consulting firm?**

1 A Consulting firm, yes.

2 Q Okay. And just for me who are some of your
3 clients?

4 A I have about 40 clients. So we represent all
5 the transportation modes at the airport, all the taxis,
6 shuttles, charters, limousines, about 1400 vehicles.

7 I represent the largest Hispanic grocery store
8 firm in California, Northgate Gonzalez Markets.

9 Q And --

10 A And I do a lot of processing for land use
11 entitlements.

12 Q And encompassed in the land use entitlements,
13 does that cover the medical marijuana?

14 A Yes. About 20 percent of my business is in
15 that industry.

16 Q 20 percent of your business is in the medical
17 marijuana cooperative --

18 A Yes.

19 Q -- business?

20 And what do you do in that regard?

21 A I assist the applicants in their processing
22 through the City, whatever city they're -- they're in,
23 various jurisdictions. I kind of manage the project
24 team through the process.

25 Q Are you more or less the liaison between the
26 team and the City --

27 A Yes.

28 Q -- the government?

1 A Yes.

2 Q And do you know Mr. Geraci?

3 A Yes, I do.

4 Q And who is Mr. Geraci?

5 A He's my client.

6 Q Okay. Do you have an agreement with
7 Mr. Geraci?

8 A Yes, I do.

9 MR. TOOTHACRE: Your Honor, is Exhibit 1 in
10 evidence?

11 I would like to refer to Exhibit 1.

12 THE COURT: Exhibit 1 is in evidence.

13 MR. TOOTHACRE: Can you bring up Exhibit 1,
14 please.

15 BY MR. TOOTHACRE:

16 Q Do you recognize this document?

17 A Yes, I do.

18 Q And what is this document?

19 A It's a letter agreement between myself and
20 Mr. Geraci.

21 Q And what were you assigned to do pursuant to
22 this agreement?

23 A To represent him with the City of San Diego and
24 the processing of his application for a dispensary.

25 Q Okay. And this agreement was entered on
26 October 29th, 2015. Is that correct?

27 A That's correct.

28 Q And what specifically were you hired to do with

1 regard to the CUP application? Were you to attend City
2 meetings?

3 A I attended almost all meetings with the City
4 and with the project team. I worked to resolve major
5 issues that came up during the processing of the
6 application.

7 Q Okay. And was there a specific property
8 identified by Mr. Geraci which was going to be the focus
9 of your efforts?

10 A 6176 Federal Boulevard.

11 Q Okay. And do you know who the owner of 6176
12 Federal Boulevard?

13 A Mr. Cotton.

14 Q Okay. Do you know Mr. Cotton?

15 A I've never met him.

16 Q Did that particular property have any zoning
17 issues?

18 A Yes.

19 Q What were they?

20 A When we applied, we -- our zoning was
21 consistent with what was prescribed in the City's
22 bulletin. I think it was Bulletin 170, which lays out
23 the criteria for making an application for dispensary.

24 Q Okay. Was that bulletin in conflict with
25 something?

26 A The bulletin was correct. It was in conflict
27 with a Municipal Code, zoning ordinance.

28 Q Okay. And did you take efforts on behalf of

1 **Mr. Geraci to amend the Municipal Code?**

2 A Yes. When it became -- when it came to our
3 attention that City staff thought our zoning was
4 inconsistent with the Municipal Code, I met with City
5 staff and determined that the bulletin zoning was
6 correct, based on our application. The Municipal Code
7 had not been updated to reflect the bulletin.

8 **Q Okay.**

9 A So I had the City Council update the Municipal
10 Code --

11 **Q Okay.**

12 A -- to make it consistent.

13 **Q Was there a hearing already set to update the**
14 **Municipal Code at the time you became aware of this?**

15 A I arranged to have the -- well, the hearing was
16 already set, yes, on a general update of the zoning
17 ordinance.

18 **Q Okay. Did you arrange to have this issue added**
19 **onto that --**

20 A Yes, I did.

21 **Q -- agenda?**

22 A I had an errata sheet prepared, and it was
23 added to the agenda.

24 **Q And so this particular zoning issue made it**
25 **onto that agenda?**

26 A Yes, it did. I believe it was in February.

27 **Q What were the results of that?**

28 A The City Council approved it unanimously.

1 Q Do you recall approximately how long that
2 process took?

3 A A few months.

4 Q By "a few months," do you mean three or --

5 A Three or four.

6 Q Okay. And do you recall whether or not you
7 knew by the end of January of 2017 that this item was
8 going to be on the -- the agenda?

9 A Yes, I did.

10 Q Okay. So at that point in time, January 31st,
11 2017, you were pretty confident that this zoning issue
12 was going to get resolved. Is that correct?

13 A Yes.

14 Q And --

15 A That was important. They recognized the two
16 documents were inconsistent and they needed to bring
17 them into compliance.

18 Q Okay. And on February 22, do you recall
19 whether that was the date, 2017, that that change was
20 approved by the City Council?

21 A Yes.

22 Q And it takes more or less 30 days approval by
23 the City Council to become effective?

24 A Generally, yes.

25 Q So if I represent to you this was effective on
26 March 12th, does that sound --

27 A That's about right. Yeah.

28 Q Okay. Have you worked on medical marijuana

1 CUPS other than Mr. Geraci's?

2 A Yes. I've done about 20.

3 Q Okay. Have you ever seen a medical CUP
4 application which was applied for by an agent of a
5 person?

6 A Could you repeat that again.

7 Q Yes.

8 Have you ever seen an application applied
9 for -- let me strike that.

10 In this instance, do you understand that
11 Ms. Berry was the name of the applicant and she was an
12 agent of Mr. Geraci?

13 A Yes.

14 Q Okay. Have you seen that in other cases?

15 A Yes. It's common.

16 Q Generally, can you describe for the jury what
17 cycle reviews are.

18 A The City has about 13 disciplines, different
19 departments, anywhere from planning, zoning,
20 transportation. It goes on. Thirteen different
21 disciplines that review an application several times.
22 They're called cycle reviews. And then you have to
23 respond to the issues raised in those cycle reviews.
24 Generally, there's over 100 issues that have been
25 reviewed and identified.

26 If there's something that's -- that needs
27 correcting, then you need to resubmit and correct those
28 or respond to the comments made in the cycle review.

1 Q Let me ask you do -- when you have comments
2 back in cycle review from the disciplines, before you
3 resubmit for the next round, are you required to make
4 all the changes in that particular round --

5 A Yes.

6 Q -- before resubmitting?

7 A They want a full and complete resubmittal,
8 based on the issues you had to respond to.

9 Q Are you aware of whether or not there were some
10 geotechnical issues in this case?

11 A Yes.

12 Q And was the City requiring a technical
13 analysis?

14 A Yes.

15 Q Analysis. I'm sorry.

16 A Yes, they did.

17 Q And what was the issue with regard to the
18 geotechnical analysis?

19 A The property was in an area that required a
20 geotechnical analysis because of potential soil issues.

21 Q Okay. Is 105 in evidence?

22 THE COURT: Which one?

23 MR. TOOTHACRE: 105, your Honor. I think it's
24 in evidence.

25 THE COURT: 105 is in evidence.

26 BY MR. TOOTHACRE:

27 Q I would like you to refer to Exhibit 105. Do
28 you have a book in front of you? But you can also refer

1 up on the screen. Whichever is more comfortable for
2 you.

3 I'd like to call out the first paragraph.

4 Does this appear to be a letter from Abhay
5 Schweitzer to yourself?

6 A Yes.

7 Q And is that -- is that letter dated July 24th,
8 2017?

9 A Yes.

10 Q Actually, it's an email, but it appears to be
11 in letter format.

12 A It's an email, yes.

13 Q Okay. What was -- what was Abhay Schweitzer
14 telling you in this email?

15 A The reviewer in the geology department with the
16 City was asking for a Geo tech investigation to be
17 prepared. And Abhay was asking me to set that up, to
18 set that meeting up.

19 Q Okay. Do you know whether or not in the last
20 paragraph or the second paragraph there Abhay Schweitzer
21 was trying to find a way around the problem with not
22 having access to the property by submitting geotechnical
23 report from a nearby property?

24 A Yes. To do the geotech investigation, we
25 required access to the property.

26 Q Okay. And was Abhay asking you to set up a
27 meeting with Kreg Mills to determine whether or not he
28 would be permitted to submit nearby geotech --

1 A Yes. There was a property next door that we
2 thought we could get access to just a few feet away from
3 the -- our application property. And we felt that if we
4 did the geotech study there, it would be relatively
5 close to what the soil conditions would be on the
6 application process -- property.

7 Q Ultimately, were you allowed to submit those
8 nearby property geotech reports?

9 A No.

10 Q And so were you required to ultimately submit a
11 report based on the actual property at 61 --

12 A Yes. The City required -- after we met with
13 Mr. Mills, the City required us to do an investigation
14 of the subject property.

15 Q Okay. And are -- are you aware of whether or
16 not Mr. Geraci had to resort to the courts to get an
17 order permitting --

18 A That's correct. We did not have access to the
19 property.

20 Q Ultimately, Mr. Geraci was successful, and you
21 did have access to the property?

22 A Through the court process, yes.

23 Q Did that -- the lack of access to the property
24 for geotechnical analysis delay your CUP application
25 process?

26 A Yes.

27 Q Do you recall for how long it was delayed?

28 A Probably six months.

1 Q How many CUP applications have you been
2 successful on obtaining for clients?

3 A This is the only one I haven't been successful
4 on.

5 Q Have you been successful on 19 out of 20?

6 A Yes.

7 Q I'm going to change the topic and focus now to
8 look at 6220. Are you aware of whether or not there
9 eventually was a competing application competing with
10 Mr. Geraci's application for medical marijuana --

11 A Yes, I'm aware of that.

12 Q Okay. And do you know where that property was
13 located?

14 A 6220 Federal.

15 Q Okay. And do you know who the owner of that
16 property was?

17 A Mr. Magagna.

18 Q Did you know Mr. Magagna at the time?

19 A No.

20 Q Do you know Mr. Magagna now?

21 A I have met him once.

22 Q What was the occasion where you met him?

23 A I met him at the planning commission hearing
24 when his project was up for consideration.

25 Q Did you or Bartell & Associates ever do any
26 work on behalf of Mr. Magagna with regard to his CUP
27 application on 6220?

28 A No.

1 Q Ultimately, did Mr. Magagna's CUP application
2 beat Mr. Geraci's to the finish line?

3 A Yes, it did.

4 Q Do you believe, in your mind, that had you had
5 access or had the team had access to Mr. Cotton's
6 property in order to do the geotechnical studies, that
7 Mr. Geraci's would have been the first CUP to meet the
8 finish line?

9 A Yes. We were -- throughout the process, we
10 were tracking ahead of them, the competing project.

11 Q Were you actually tracking 6220 somehow?

12 A Yes. Through the City's web page.

13 Q And so were you ahead of them for most of the
14 race?

15 A Yes.

16 Q Okay. Do you recall at what point they passed
17 up 6176?

18 A During the geotech study process.

19 Q Okay. Was there any other interference on
20 behalf of Mr. Cotton with the CUP process regarding 6176
21 which you contend delayed the application process?

22 A Yes.

23 Q What was that?

24 A He was misrepresenting the project with the
25 City staff and with the community planning group chair.

26 Q Okay. Any other items that you thought -- felt
27 were disruptive to the process?

28 A General noncooperation in terms of access to

1 the property.

2 Q Okay. Was there some issue with the -- with
3 Mr. Marlborough?

4 A Mr. Marlborough was chairman of the committee
5 planning group.

6 Q And was there an issue between Mr. Marlborough
7 and Mr. Cotton?

8 A Mr. Marlborough was under the impression that
9 Mr. Cotton was the applicant.

10 Q And did that cause some issues?

11 A Yes.

12 Q What were those issues?

13 A We were unable to get on the community planning
14 group agenda, because under Mr. Marlborough's
15 understanding, we weren't the applicant.

16 Q Okay. And did Mr. Marlborough explain to you
17 that it was his belief that Mr. Cotton was the
18 applicant?

19 A Yes.

20 Q Okay. Do you know whether or not
21 Mr. Marlborough ceased communications with Mr. Cotton?

22 A Yes, he did. After I discussed it with him.

23 Q And were you aware or did you participate in
24 the appeal of the 6220 approval?

25 A I attended the hearing with one of our team
26 members.

27 Q And who was that team member?

28 A Abhay Schweitzer.

1 Q Were you -- did you -- were you involved in
2 creating an appeal report of some 30 discrepancies you
3 had with --

4 A Yes. Abhay and I went through the cycle
5 reviews for the other application and identified roughly
6 30 issues that we felt had been improperly approved.

7 Q Okay. And were you successful on the appeal?

8 A No.

9 MR. TOOTHACRE: Nothing further, your Honor.

10 THE COURT: Cross-examination.

11 (Cross-examination of James Bartell)

12 BY MR. AUSTIN:

13 Q Good morning, Mr. Bartell.

14 A Good morning.

15 Q So the zoning issue was resolved in late
16 January, 2017?

17 MR. TOOTHACRE: That misstates testimony, your
18 Honor.

19 THE COURT: Overruled.

20 MR. AUSTIN: Well, I'm asking.

21 BY MR. AUSTIN:

22 Q Or was it --

23 A It was -- it was resolved once the City Council
24 approved it.

25 Q Okay. And that was March 12 --

26 A The City Council approved it on February 22nd.
27 It took effect in March.

28 Q Okay. It took effect in 2017.

1 You said there was -- throughout the cycle
2 review, there are 13 different disciplines. You only
3 mentioned the geotechnical investigation as a reason why
4 the 6176 process was slowed down.

5 Were all other cycle issues resolved?

6 A Well, we had issues with the -- the zoning,
7 getting that resolved, inconsistencies between Bulletin
8 170 and the Municipal Code. That also caused delay.

9 There were issues related to public
10 right-of-way, which we resolved.

11 Q So you had that resolved within a few months.
12 Correct?

13 A Well, the -- the right-of-way issue took
14 several months.

15 Q Okay. Overall, how long did this process take
16 from --

17 A Over two years.

18 Q Over two years?

19 MR. TOOTHACRE: Vague as to "the process," your
20 Honor.

21 THE COURT: Overruled.

22 BY MR. AUSTIN:

23 Q So in Exhibit 105, the email that we saw
24 earlier, it was dated July 2017. So you knew the soils
25 had to be conducted -- the soils testing had to be
26 conducted in July 2017, but no court order came down
27 until approximately January, the following year.

28 Do you know why there was such a long delay?

1 A No. I wasn't involved in the court process.

2 Q Okay. It would have been reasonable to try and
3 force that issue sooner, wouldn't it have been?

4 A In terms of access to the property?

5 Q Yes.

6 A Yes. And we tried.

7 Q So in July 2017, did Mr. Cotton actually refuse
8 to let the testing be conducted?

9 A It's my understanding he refused to have --
10 provide us with access to the property.

11 Q Being as you're one of the head figures of the
12 team, were you made aware that at the time Mr. Cotton,
13 approximately at -- in this time period, July 2017, are
14 you aware that his law firm attempted to offer to split
15 the costs of the CUP and they wanted to participate with
16 you?

17 A No.

18 MR. TOOTHACRE: Assumes facts. And relevance,
19 your Honor.

20 THE COURT: Overruled.

21 BY MR. AUSTIN:

22 Q You were never made aware of that?

23 A No.

24 Q Okay. Going back to the cycle reviews, how
25 many outstanding issues remained in March 2018?

26 A I'm not sure there were any at that point.

27 Q So everything was resolved, other than the soil
28 samples?

1 A Pretty much, yeah. Nothing significant.

2 Q Well, nothing significant. But there -- there
3 were things that could have been done with the City.
4 Correct?

5 A I think everything --

6 MR. TOOTHACRE: Vague.

7 THE WITNESS: Everything was resolved that
8 needed to be resolved.

9 BY MR. AUSTIN:

10 Q So there's -- there was nothing problematic,
11 but there were still things that could be done.
12 Correct?

13 MR. TOOTHACRE: Vague.

14 BY MR. AUSTIN:

15 Q In other words --

16 THE COURT: Do you understand the question,
17 Mr. Bartell?

18 THE WITNESS: I'm not sure.

19 THE COURT: All right. The objection is
20 sustained.

21 Please rephrase.

22 BY MR. AUSTIN:

23 Q Okay. A member of your team, Abhay Schweitzer
24 yesterday said there was between 1 and 100 issues
25 remaining around the time that the soils testing was
26 being conducted. Does that sound accurate to you?

27 A I wouldn't -- I wouldn't disagree with
28 Mr. Schweitzer. Anything that remained at that point,

1 though, was clean-up stuff that were minor notes on
2 maps, things like that. Nothing of any significance
3 that I was directly involved with. I only became
4 involved when there was a significant issue.

5 Q Okay. Did you ever receive notification from
6 the City that the project was going to be canceled due
7 to inactivity for a period of 90 days?

8 A Yes.

9 Q So when you got that, presumably some of the
10 minor issues, the insignificant issues, had they been
11 getting worked on, that notification would not have been
12 received. Correct? Essentially, the City would like to
13 see some progress throughout -- throughout the entire
14 process. Correct?

15 A Yes. That was during the time, I believe, that
16 we were trying to negotiate access to the property for
17 the geotech study.

18 Q I believe the notification came after the
19 testing was ordered. Does that sound accurate?

20 A No.

21 Q Okay. So ordinarily, you attend pretty much
22 all of the hearings. Correct?

23 A Anything to do with our project, yes.

24 Q Okay. Did you attend the public hearing
25 regarding 6220 Federal Boulevard's CUP?

26 A Which hearing?

27 Q The appeal?

28 A The appeal hearing, yes, I did.

1 Q Did you make any arguments at that hearing?

2 A Mr. Abhay Schweitzer did.

3 Q Okay. Are you aware of the 1,000-foot radius
4 requirement where a CUP is not to be within 1,000 feet
5 of any public park, church, **childcare** center,
6 playground, or library?

7 A Yes.

8 Q Was 6220 within 1,000 feet of any of those
9 places?

10 A No.

11 Q Did you conduct a search on this yourself?

12 A I didn't. But members of the team did.

13 Q Okay. So you're not aware of whether there was
14 a childcare center or two within a thousand feet?

15 A We had no separation issues from any of those
16 categories.

17 Q At the hearing, did anyone mention two
18 childcare centers?

19 A No.

20 Q So you were there. You don't recall anyone
21 mentioning it?

22 A I don't recall that, no.

23 Q Did you ever tell anyone that the 6176 CUP was
24 going to be denied?

25 A No.

26 Q Did you ever have any belief that it would be
27 denied?

28 A No.

1 Q At any point, did Mr. Geraci indicate to you
2 that he did not want the CUP to go through?

3 A No.

4 Q Was the rezoning an expensive task for you?

5 A What do you mean by "expensive"?

6 Q The process of having the Municipal Code
7 updated, about how much effort did you have to put into
8 that?

9 A A lot.

10 Q It took a few months. Right?

11 A Yes.

12 Q I know you -- I know you already spoke of some
13 of what you had to do, but could you explain it to me a
14 little bit further in order to request the update of the
15 Municipal Code.

16 A Once we identified the conflict between the
17 bulletin and the Municipal Code, I met with City staff.
18 They acknowledged that the bulletin was correct, which
19 we had relied on but that the Municipal Code had not
20 been updated to reflect that bulletin.

21 And so they added it to an agenda item related
22 to zoning updates to an errata sheet that correctly
23 updated the Municipal Code.

24 Q Do you know Jim Strome?

25 A No.

26 Q Have you ever heard of Jim Strome at permitting
27 services?

28 A No.

1 Q Are you familiar with the 6220 CUP?

2 A Familiar with it in what sense?

3 Q Are you familiar with all the plans and other
4 paperwork that was submitted to the City?

5 A Just in reviewing their cycle reviews.

6 Q So between --

7 THE REPORTER: I'm sorry, Counsel. May the
8 reporter hear the question again?

9 BY MR. AUSTIN:

10 Q Between you and Abhay, your appeal noticed 20
11 or 30 discrepancies. Correct?

12 A About 30, yes.

13 Q Yes. Would you anticipate the City approving
14 that CUP?

15 A That's why we appealed. No.

16 Q So it looked like it was insufficient.
17 Correct?

18 A It was our contention that 30 issues had not
19 been properly resolved.

20 Q If you submitted -- if the City were reviewing
21 6176 and they had 30 issues, would you anticipate that
22 CUP being approved?

23 A No.

24 MR. AUSTIN: No further questions.

25 THE COURT: Redirect?

26 MR. TOOTHACRE: I don't think so, your Honor.

27 THE COURT: All right. May Mr. Bartell be
28 excused?

1 MR. TOOTHACRE: He may.

2 THE COURT: All right. Subject to the
3 admission of any additional exhibits, does Plaintiff
4 rest?

5 MR. WEINSTEIN: Yes, your Honor.

6 THE COURT: Thank you very much.
7 Counsel, your next witness is?

8 MR. AUSTIN: Mr. Cotton.

9 THE COURT: All right. Good morning again,
10 Mr. Cotton. If you could follow -- let's give
11 Mr. Bartell an extra moment, Madam Deputy.

12 THE BAILIFF: Yes, your Honor.

13 THE COURT: Mr. Cotton, we'll ask you to retake
14 the witness stand.

15
16 Darryl Cotton,
17 being called on behalf of the defendant/cross-Complainant,
18 having been previously duly sworn, testified as follows:

19
20 THE COURT: All right. Mr. Cotton, you've been
21 previously sworn. You understand you're still under
22 oath?

23 THE WITNESS: Yes, your Honor.

24 THE COURT: Thank you very much. Counsel,
25 whenever you're ready, please begin your examination.

26 (Direct examination of Darryl Cotton)

27 BY MR. AUSTIN:

28 Q I'm not going to go into great detail about all

1 the testimony that we heard last week. So I'm going to
2 try to make it a little more brief.

3 When did you acquire the property on 6176
4 Federal Boulevard?

5 A I don't remember the exact year. I believe it
6 was in mid-1980.

7 Q Have you ever purchased any other real estate?

8 A Yes.

9 Q Did you ever purchase or sell any real estate
10 based on a handshake?

11 A Never.

12 Q Would you ever sell your property without an
13 explicit contract?

14 A No.

15 Q In 2016, do you know the approximate value of
16 your property?

17 MR. AUSTIN: Objection. Foundation.

18 THE COURT: Overruled.

19 THE WITNESS: I had had accounts done, and at
20 the time in 2016 when I met Mr. Geraci, who was also a
21 Realtor, we established its fair market value at
22 400,000.

23 BY MR. AUSTIN:

24 Q Can you estimate what you feel the value would
25 be of that property if a marijuana outlet were approved?

26 MR. WEINSTEIN: Objection. Lack of foundation.
27 Improper opinion.

28 THE COURT: Overruled.

1 THE WITNESS: It would be worth quite a bit
2 more. In the tens of millions. Based on the way the
3 licensing works, you have that guaranteed for, I
4 believe, it's up to 10 years. And if you just had a net
5 profit of 1.2 per year, that would be 12 million just in
6 the value of that license, not necessarily having to do
7 with the value of the real estate itself.

8 BY MR. AUSTIN:

9 **Q You reached an oral agreement with Mr. Geraci.**
10 **Correct?**

11 A I did.

12 **Q At the time you signed that November 2nd**
13 **document, did you intend for that to be the final**
14 **contract?**

15 A No, I did not.

16 **Q How would you define that document?**

17 MR. WEINSTEIN: Objection. Vague.

18 THE COURT: Sustained.

19 BY MR. AUSTIN:

20 **Q When you signed that document, what did you**
21 **understand it to be?**

22 A Mr. Geraci had me signing documents that would
23 help expedite the submittal of the CUP process with the
24 Development Services Department, or DSD for short. And
25 I was expected to come in and pick up a 10,000-dollar
26 deposit and pretty much give him some sureties that, you
27 know, we had a preliminary agreement in place.

28 **Q Did you expect a contract to be forthcoming?**

1 A I did.

2 **Q And why did you think that?**

3 A Well, I needed to reduce to writing all the
4 terms and conditions that had been established in my
5 working documents. And there were others too, but, you
6 know, that was all contingent upon seeing the final
7 contract documents.

8 **Q And those working documents, I believe, are**
9 **Exhibits 10 and 11, the services agreement and your**
10 **memorandum of understanding. Correct?**

11 A Correct. That was broken into two parts. One
12 would have more or less aligned itself with the fair
13 market value of the property, and the other one was to
14 pick up my agreed location costs and some joint venture
15 language that we had built into that.

16 **Q So you had never -- or were you ever given a**
17 **final contract by Mr. Geraci?**

18 A Not a -- not one that I felt adequately
19 reflected everything we had discussed and were in my
20 working documents, no.

21 **Q Okay. But you did expect it?**

22 A I did.

23 **Q And why is that?**

24 A Why did I expect it? Because I don't do
25 real estate or joint venture deals on a -- on a
26 handshake and oral promises.

27 **Q You just said joint venture. Did you believe**
28 **that you were going to be partners?**

1 A He represented on many occasions that this was
2 in our best interest to do these things and, you know,
3 we'd all make money and so on. We had texts to that
4 effect.

5 Q **Yes. I believe that's Exhibit 5.**

6 A Correct.

7 Q **The -- the text messages, I did see some**
8 **language along the lines of we're going to make some**
9 **money. Is that correct?**

10 A Let me just double-check that.

11 Yes. Exhibit 5 goes through a series of texts
12 between Mr. Geraci and I that started on July 21st. I
13 was showing him what we're doing in terms of 151 Farms.
14 And he was providing me lists of properties that were
15 for sale that would allow for the relocation to -- for
16 him to assist in that. There was some discussion about
17 having to relocate my company, Inda-Gro. With him being
18 in real estate, I thought that would be a nice service
19 to be able to avail myself to.

20 Somewhere in here -- I don't see it jumping out
21 at me, though -- he does indicate that we're going to
22 make some money together.

23 Q **Were there any terms in -- so the oral**
24 **agreement that you had, were there any terms in there**
25 **that you expected to be in a final contract, like 10**
26 **percent equity, \$10,000 a month minimum?**

27 A Yes. There were terms that were outlined in my
28 draft -- my working draft documents that we shared a

1 folder on, both the memorandum of understanding, or MOU,
2 for short, and the services agreement. Mr. Geraci had
3 assured me he had seen them, and he had passed that off
4 to his attorney, Gina Austin, to incorporate those items
5 within our final contract. And that kind of led me to
6 feel we could have had that, you know, we were both
7 pulling in the same direction.

8 **Q And how much did you anticipate --**

9 THE REPORTER: Can the reporter hear again,
10 please.

11 BY MR. AUSTIN:

12 **Q How much money did you anticipate receiving for**
13 **a down deposit on the property?**

14 A In terms of earnest money?

15 **Q Yes.**

16 A 50,000.

17 **Q Mr. Geraci stated that you were never given a**
18 **separate receipt for that \$10,000 cash. Does that sound**
19 **accurate?**

20 A No, I was not given a separate document, other
21 than the 11/2 document, which I considered a receipt.

22 **Q So it was \$10,000 cash. Has anyone ever given**
23 **you \$10,000 cash without a receipt or some sort of an**
24 **acknowledgment?**

25 MR. WEINSTEIN: Objection. Relevance.

26 THE COURT: Sustained.

27 BY MR. AUSTIN:

28 **Q Would you anticipate someone giving you a**

1 **substantial amount of cash without protecting themselves**
2 **in some manner by acknowledging your receipt?**

3 A That's normal business practices. I found
4 nothing unusual about having a receipt notarized for
5 cash. I was a little surprised it was cash, but
6 nonetheless, I accepted it.

7 Q **You testified that you were told Attorney**
8 **Austin would be providing you a contract. Did you ever**
9 **speak with Mrs. Austin?**

10 A I have never spoken with Ms. Austin, ever.

11 Q **So you never met her?**

12 A No, I have never met her.

13 Q **Did Mr. Geraci attempt to give you an**
14 **opportunity to meet her?**

15 A He did.

16 Q **And how did he go about doing that?**

17 A Well, I was frustrated that since 11/2 I hadn't
18 seen any draft documents from Ms. Austin. He had
19 coordinated a meeting where she was speaking and I was
20 to attend that meeting, introduce myself, and get an
21 update on the final contract documents she was putting
22 together. They were to mirror my memorandum of
23 understanding and service agreement in two parts. I
24 wasn't able to go, but my litigation investor, Joseph
25 Hurtado, did go. And he did meet with her for a brief
26 time just to feel confident that those documents were
27 forthcoming.

28 Q **Okay. And this meeting was suggested by**

1 **Mr. Geraci himself. Right?**

2 A It did indeed get suggested, and in the text, I
3 was told what color shirt to look for. And that's who
4 we would find.

5 **Q Did he also tell you that she was going to be a**
6 **headnote speaker?**

7 A I recall her being a speaker. Whether or not
8 it was headnote, I couldn't say. But she was one of the
9 featured speakers.

10 **Q But he did tell you what she would be wearing**
11 **and told you to go?**

12 A Absolutely.

13 **Q Had that conversation. Okay.**
14 **And approximately when was that?**

15 A I don't remember the exact date, but there is a
16 record of that, and Ms. Austin acknowledged it. And
17 Mr. Hurtado testified to it.

18 **Q Yeah. I believe if you went through the text**
19 **messages, it's March 6th, 2017.**

20 A I would concur that is about the time it would
21 have been.

22 **Q So you considered yourself to be a partner with**
23 **Mr. Geraci, even though you would be sell -- selling him**
24 **the property. Why is that?**

25 A Well, I'm reviewing the Exhibit 5. And I can
26 see, you know, all of the things we were discussing
27 involved, you know, the work I had been doing as an
28 activist and a medical cannabis proponent.

1 **Q Right.**

2 A And he seemed very interested in that. So
3 there were some branding opportunities we had discussed
4 over time. And the way that we grow with aquaponics was
5 of interest to him at the time. So I saw that as a
6 joint venture opportunity with him from day one.

7 **Q And also because of the 10 percent equity**
8 **position. Correct?**

9 A Certainly, that would have been outlined right
10 out the gate. There was no mistaking it.

11 **Q Do you know the difference between a 10 percent**
12 **profit share and 10 percent equity stake?**

13 A I do.

14 **Q And what is that?**

15 A The 10 percent profit share is at the end of
16 all accounting and expenses having been taken off, which
17 as a minority partner, I don't have much say in that.

18 So I was interested at some point later to find
19 out the third-party accounting would at least give me
20 assurances there weren't unusual expenses. But 10,000
21 minimum was a guarantee regardless.

22 And then the other aspect would be should they
23 decide to reorganize or sell to another party, that
24 whole agreement is out the window. So I would
25 get 10 percent of whatever the sale price is at the time
26 it was sold.

27 **Q Did Mr. Geraci or anyone on his team keep you**
28 **abreast of updates to the CUP application?**

1 A The only person that ever updated me with
2 anything -- and that's only up until the lawsuit -- was
3 Mr. Geraci. I've never been part of an email or text
4 stream, chain, with any of the so-called team.

5 **Q But you were communicating directly with**
6 **Mr. Geraci in getting updates pretty much as they**
7 **happened?**

8 A Correct. I was insistent on knowing what the
9 status of the zoning was because my understanding was
10 with Mr. Geraci that the 10 -- the 50,000-dollar earnest
11 money would become due and payable once the City
12 accepted the CUP, based on zoning having been resolved.

13 **Q So Mr. Geraci and his team knew about the soils**
14 **testing that needed to be done in October of 2016, and**
15 **then they were having conversations with Mr. Mills in**
16 **July 2017. In July 2017, were you blocking access to**
17 **the soils testing?**

18 A Up until the lawsuit, I didn't block access at
19 all.

20 **Q Well, initially, did the law firm that you have**
21 **try to facilitate working together with Mr. Geraci?**

22 A Finch, Thornton & Baird was counsel at the
23 time, and I had some issues with them as well. But
24 access to the property wasn't a problem as long as there
25 was a third-party court-appointed administrator to
26 review any of the findings and results that would result
27 from those types of invasive tests. I've been a
28 developer.

1 Q And at the time you wanted a third-party
2 receiver, is that -- or appointed person to supervise
3 that, is that because -- why was that?

4 A Simply put, it was because I had no control
5 over the CUP processing whatsoever. So as previously
6 stated by Ms. Firouzeh, I was not able to pull the
7 application and get any authority for the processing of
8 that application. The only evidence I had as to its
9 status was on DSD's website, which was done and updated
10 often enough to at least make me think it was being
11 processed in a timely fashion.

12 Q But you did want to see a CUP on 6176 approved.
13 Correct?

14 A Absolutely.

15 Q So the reason you wanted the third party was to
16 make sure that things were being done correctly and
17 would be successful. Correct?

18 A I just wanted to make sure that, being as
19 Mr. Geraci's needs have changed and it might be in his
20 better interest to have the CUP sabotaged financially
21 speaking, that there would be somebody that the Court
22 would put in place to make sure that didn't occur.

23 Q Is that because of your confidence that you
24 would win this litigation?

25 MR. WEINSTEIN: Objection. Leading.

26 THE COURT: Sustained.

27 BY MR. AUSTIN:

28 Q And why do you believe that Mr. Geraci would

1 **have it in his best interests to see the CUP sabotaged?**

2 A Well, if we take the low-end estimates of,
3 like, 1.2 million per year, you know, this is a
4 profitable business. And it's just in its infancy. And
5 that's a low-end estimation. Over 10 years, that's
6 \$12 million.

7 Should he lose the lawsuit, you know, whether
8 that was a receipt or a contract -- I may be confused on
9 that issue -- but at no point in time did I believe that
10 we didn't have a joint venture understanding. And that
11 was never reduced to writing.

12 So I was concerned that the CUP would be
13 sabotaged in order to reduce any economic expense that
14 would come from losing that lawsuit.

15 Q **I sense sometimes you -- you confuse some legal**
16 **terminology. And I know the other day when**
17 **Mr. Weinstein was asking you several rapid fire**
18 **questions, you get a little hazy on, you know, the issue**
19 **of the receipt.**

20 **On that day, you did have an understanding.**

21 **Correct?**

22 MR. WEINSTEIN: Objection. Your Honor,
23 argumentative as phrased.

24 THE COURT: As framed, sustained.

25 Why don't you rephrase, Counsel.

26 BY MR. AUSTIN:

27 Q **You are clear on what your understanding was on**
28 **November 2nd. Correct?**

1 A In terms of what I signed?

2 Q No. In terms of what you anticipated, like all
3 the things that you're asking for: 10,000-dollar
4 monthly minimum, 10 percent equity stake, 50,000-dollar
5 down deposit, 800,000-dollar purchase price, and, you
6 know, your belief that in some capacity, you would be
7 working with Mr. Geraci throughout the course of the
8 business. Correct?

9 MR. WEINSTEIN: Objection. Leading.

10 THE COURT: Your objection on leading is
11 sustained, Counsel.

12 BY MR. AUSTIN:

13 Q Were you clear on the terms that you were
14 expecting to be reduced to writing?

15 MR. WEINSTEIN: Objection. Vague as to time.

16 THE COURT: Overruled.

17 BY MR. AUSTIN:

18 Q On --

19 THE COURT: Overruled.

20 You can answer the question.

21 THE WITNESS: On November 2nd, I was clear that
22 there was an oral agreement that would be reduced to
23 writing, if that's what you're asking.

24 BY MR. AUSTIN:

25 Q Exactly.

26 A Okay.

27 Q All right. Do you know why or do you have
28 suspicions as to why your property's CUP took almost two

1 **years with one of the best teams in San Diego?**

2 MR. WEINSTEIN: Objection. Relevance.

3 THE COURT: That objection is overruled.

4 THE WITNESS: Could you repeat the question.

5 (The following was read by the reporter:

6 Q. All right. Do you know why or do you have
7 suspicions as to why your property's CUP took
8 almost two years with one of the best teams in
9 San Diego?)

10 MR. WEINSTEIN: I'm going to also object on
11 foundation, your Honor.

12 THE COURT: As to suspicion, your answer is --
13 or the objection is sustained.

14 Counsel, why don't you rephrase.

15 MR. AUSTIN: Okay.

16 BY MR. AUSTIN:

17 **Q We've all heard the credentials of Mr. Geraci's**
18 **team. Between them, each one has -- each one of his**
19 **team members has done 20 or 30 marijuana-related CUPs.**
20 **Wouldn't you anticipate they could be successful in**
21 **getting your -- the CUP on your property completed much**
22 **faster?**

23 MR. WEINSTEIN: Objection. Argumentative as
24 phrased and leading.

25 THE COURT: Overruled.

26 THE WITNESS: I knew Mr. Geraci as my primary
27 point of contact. And I knew him to be a tax and
28 financial advisor. So I thought the people that he

1 would surround himself with would be equally competent
2 in their disciplines. I was not involved in any of the
3 email exchanges or texts. So I had no idea, having
4 never done a marijuana -- medical marijuana MMCC before,
5 what the time frame would be to see one of these get
6 approved.

7 I was concerned that there were conflicts
8 within San Diego Municipal Code and the information
9 bulletins that I believe still exist to this day where
10 it says you can put one of these MMCCs in place. Today,
11 they call them marijuana outlets, MOs. And that would
12 require a team like Mr. Geraci assembled to try to work
13 through that.

14 In terms of how long that would take, I had
15 other than maybe a year, round numbers, based on
16 communications we had had. My expectation is that
17 process would have taken a year.

18 BY MR. AUSTIN:

19 Q Do you feel you're to blame for the delays?

20 A What delays?

21 Q On the CUP application.

22 A I don't believe there were any delays.

23 Q Do you know why your -- or the CUP on your
24 property was denied?

25 MR. WEINSTEIN: Objection. Foundation.

26 THE COURT: Overruled.

27 THE WITNESS: Do I know why it was denied?

28 Because 6220 was approved, and that was 300 feet east of

1 me on a property that simply does not qualify. So I
2 wasn't too concerned that it would be approved. But,
3 yet, it had been approved.

4 BY MR. AUSTIN:

5 **Q What makes you think it did not qualify?**

6 A Because there's two --

7 MR. WEINSTEIN: Objection. Foundation.

8 THE COURT: Overruled.

9 THE WITNESS: There are two licensed childcare
10 facilities within a thousand feet of the radius of that
11 property. And I wasn't able to attend any of the
12 hearings. So it required Mr. Geraci's team to do so.
13 And they never raised that issue.

14 BY MR. AUSTIN:

15 **Q Why was that issue raised?**

16 A It was never raised. It's easy to see. It's
17 on their website. It's on the social services website.
18 Those two licensed childcare facilities have been there
19 forever. That doesn't exist on a 6176 property. That
20 DS-190 form was signed and approved as not having any
21 subject setback interference issues. 6220 had them.

22 **Q So the only way you were able to monitor the
23 status of the CUPs on 6220 and 6176 was through the DSD
24 website. Correct?**

25 A Correct. Well, not entirely. I did reach out
26 to some of the project managers and request information.
27 I did reach out to Ken Marlborough, who was the community
28 planning group's president, just to see -- I was very

1 surprised that 6220 got a community planning group
2 review in under six months. And according to
3 Mr. Bartell, their hands were tied. They were never
4 able to get a meeting set up with Ken Marlborough.

5 Q Did you find anything odd on the DSD website
6 about 6220?

7 MR. WEINSTEIN: Objection. Vague, ambiguous.
8 Relevance.

9 THE COURT: Overruled.

10 THE WITNESS: Could you repeat the question.

11 BY MR. AUSTIN:

12 Q On the DSD website, when you were looking up
13 the property on 6220, did you see anything that
14 concerned you?

15 THE COURT: You need to rephrase. The
16 objection is sustained as framed.

17 BY MR. AUSTIN:

18 Q On the -- on the DSD website for 6220, did you
19 see the names of the project managers or anyone
20 associated with that property?

21 MR. WEINSTEIN: Object. It's hearsay also,
22 your Honor.

23 THE COURT: The objection is sustained.

24 BY MR. AUSTIN:

25 Q Did you see Abhay Schweitzer or Carlos Gonzales
26 listed as being a part of the 6220 CUP application on
27 the DSD website?

28 MR. WEINSTEIN: Objection. Hearsay.

1 THE COURT: Sustained.

2 BY MR. AUSTIN:

3 Q Lastly, do you recall an email from Mr. Geraci
4 where he says the \$10,000 a month would be a little hard
5 to reach so maybe for the first six months could we do
6 \$5,000?

7 A I do recall that email.

8 Q Do you remember approximately when that was?

9 A I don't remember the exact date, but it was
10 after the lawsuit. No. It was before the lawsuit was
11 filed.

12 Q Okay.

13 A Near -- near the time where the lawsuit was
14 filed.

15 Q So essentially, you anticipated that your
16 partnership was going to move forward and all the terms
17 you were asking for were either going to be met or
18 possibly renegotiate before final contract?

19 A I had no reason --

20 MR. WEINSTEIN: Object to form. Object. It's
21 leading. And actually argumentative, as phrased as
22 well.

23 THE COURT: Sustained on leading.

24 BY MR. AUSTIN:

25 Q Why do you expect -- why -- why would you have
26 gotten that email from Mr. Geraci if November 2nd you
27 had everything written -- if all terms were already
28 specified?

1 MR. WEINSTEIN: Objection. Calls for
2 speculation. Relevance.

3 THE COURT: As framed, Counsel, the "would"
4 part is calling for speculation. That will be
5 sustained.

6 BY MR. AUSTIN:

7 Q When did it occur to you that the contract you
8 were expecting would probably not happen -- or not be
9 delivered?

10 A I reached out to Firouzeh to -- Firouzeh
11 Tirandazi, the DSD project manager, who at the time had
12 this project, and I wanted a status update outside of
13 what I was being told from Mr. Geraci. That would have
14 been, like, February, early March. And I -- it came to
15 be understood or I found out that he had submitted that
16 application on October 31st of 2016. I was furious. I
17 didn't trust him the moment I heard that.

18 MR. WEINSTEIN: Objection. your Honor.
19 Nonresponsive after he identifies the date.

20 THE COURT: The objection is sustained.
21 Everything after "February or early March," the motion
22 to strike is granted. Everything after "February or
23 March" is sustained as nonresponsive.

24 Next question, Counsel.

25 BY MR. AUSTIN:

26 Q When did you anticipate the CUP on 6176 would
27 be submitted?

28 A Well, as many of the text messages between

1 Mr. Geraci and I would bear out, he was -- through
2 Mr. Bartell and others, working on getting the zoning
3 approved. I believe that was finally accomplished in
4 March. And with that being said, I would have expected
5 the CUP to be submitted at that time.

6 It came to my understanding after talking to
7 Firouzeh Tirandazi that it had been submitted in
8 October. So I had a real problem with that.

9 MR. WEINSTEIN: Objection, your Honor. Again,
10 it's nonresponsive after he identifies the date.

11 THE COURT: The objection is sustained, and the
12 motion to strike everything after "October" is stricken
13 as nonresponsive, Counsel.

14 BY MR. AUSTIN:

15 Q Upon submission of the application, is that
16 when you anticipated getting the full 50,000-dollar
17 deposit?

18 A It is.

19 Q Okay. And it upset you that you didn't know
20 the application had been submitted until a few months
21 later?

22 A Until I reached out to DSD project management,
23 who at the time -- there's been a total of four project
24 managers on that site. I had no idea, other than what
25 was posted on the DSD website. That's the only access I
26 had to that information.

27 Q But the reason you were upset was because of
28 the deposit. Correct?

1 A Correct.

2 Q Okay. And at that time, did you have any
3 suspicion that perhaps Mr. Geraci wasn't being
4 completely honest with you?

5 A I finally decided to call DSD myself because
6 the only source of information I was getting was from
7 Mr. Geraci. And it just -- I mean, I had my other
8 things going on. So I was taking his word for it until
9 I reached out and spoke with Ms. Tirandazi directly.

10 Q Okay. And when you started becoming
11 suspicious, is that when you were making requests for
12 assurances?

13 MR. WEINSTEIN: Objection. Vague as phrased.

14 THE COURT: Overruled.

15 THE WITNESS: In terms --

16 THE COURT: Do you understand the question?

17 THE WITNESS: I do, your Honor.

18 THE COURT: All right. The objection is
19 overruled.

20 THE WITNESS: I believe what you're referring
21 to is third-party accounting. And, yes, I did insist on
22 that going forward. If we were going to have everything
23 reduced to writing, that would have to be part of the
24 contract.

25 BY MR. AUSTIN:

26 Q Okay. And I believe on the first day, we went
27 through a significant amount of emails where it shows
28 you're asking that everything be reduced to writing?

1 A Yes.

2 MR. AUSTIN: No further questions.

3 THE COURT: Cross-examination?

4 MR. WEINSTEIN: Yes, your Honor.

5 May I have a moment with my co-counsel.

6 THE COURT: You bet.

7 Folks, if you want to stretch your legs for
8 just a minute while counsel talks among themselves.

9 We're going to be taking our morning break in
10 just a little bit.

11 All right. Are you ready to go, Mr. Weinstein?

12 MR. WEINSTEIN: I am. Thank you.

13 THE COURT: All right.

14 (Cross-examination of Darryl Cotton)

15 BY MR. WEINSTEIN:

16 **Q Mr. Cotton, have you -- have you reviewed**
17 **financials of the operations of any medical marijuana**
18 **principals in San Diego County?**

19 A I have not.

20 **Q So you have no idea based on any kind of**
21 **written financial documents as to what the net profits**
22 **are of different medical marijuana dispensaries in**
23 **San Diego, do you?**

24 A I pay attention to some of the industry
25 recognized media that's available and that has discussed
26 what the low, medium, and high values of those marijuana
27 outlets tend to be.

28 **Q Do you --**

1 A I have not seen the financials, though.

2 Q **In fact, you understand that the operation of**
3 **medical marijuana dispensaries don't release their**
4 **financials to the public?**

5 A No, I wouldn't know if they -- actually, there
6 are investment cannabis companies that do in fact now
7 have audited financials. And they do release them.

8 Q **But you've seen none for any dispensaries in**
9 **San Diego County?**

10 A Not for San Diego County.

11 Q **And the comparable sales that you looked at,**
12 **when did you do that?**

13 A I never said I looked at comparable sales.

14 Q **Okay. So when you told us what your evaluation**
15 **of what -- of the property at \$400,000 in 2016, I**
16 **thought you said you had seen comps?**

17 A Comps for real estate value.

18 Q **Okay. So these are all properties that didn't**
19 **have a CUP associated with them. Correct?**

20 A Correct.

21 Q **And you have never looked at or seen comps for**
22 **any medical marijuana dispensary properties, have you?**

23 A I have not.

24 Q **Okay. In fact, you don't even know if any**
25 **exist. Is that true?**

26 A I wouldn't know either way.

27 Q **Okay. Have you ever been a licensed**
28 **real estate broker?**

1 A I have not.

2 Q Have you ever been a licensed appraiser?

3 A No.

4 Q Have you ever been asked to value a real
5 property other than evaluating your own?

6 A I'm not qualified to do that.

7 MR. WEINSTEIN: One moment, your Honor.

8 THE COURT: You bet.

9 MR. WEINSTEIN: I need a moment, your Honor, to
10 have my associate identify a document for me.

11 THE COURT: All right.

12 MR. WEINSTEIN: While she is doing that, I'm
13 going to move on to another question.

14 THE COURT: Thank you.

15 BY MR. WEINSTEIN:

16 Q All right. Mr. Cotton, to be clear, you -- you
17 didn't delay -- your testimony is you didn't delay
18 access to the property up until the time the lawsuit was
19 filed. Correct? That's what you testified to?

20 A That would be true.

21 Q Okay. And that lawsuit was filed March 21st of
22 2017. Is that your recollection?

23 A Correct.

24 Q Now, in this joint venture -- first of all, did
25 you ever use the words "joint venture" in your
26 discussions with Mr. Geraci?

27 A Yes.

28 Q Okay. And what -- what was going to be your

1 participation in this joint venture that you -- thought
2 you were going to go forward with?

3 A There were some emails, texts, and discussions
4 about co-branding 151 Farms and my efforts literally
5 across the country to see --

6 THE REPORTER: I'm sorry, may the reporter hear
7 again, please, after co-branding 151 Farms and my
8 efforts literally across the country to see.

9 THE WITNESS: -- co-branding opportunities as
10 they became available for cannabis-based products using
11 151 Farms to do that.

12 BY MR. WEINSTEIN:

13 Q So when you talk about this joint venture,
14 you're not talking about any involvement in the
15 operation of the dispensary itself, are you?

16 A I wanted nothing to do with retail cannabis.

17 Q Right.

18 You wanted nothing to do with the operation of
19 the business?

20 A Correct.

21 Q And you had no discussions with Mr. Geraci
22 about your involvement in any operation of the medical
23 marijuana dispensary. Is that true?

24 A Here's what I excluded. Retail -- daily retail
25 involvement. In my working drafts, the first thing I do
26 is acknowledge his expertise in that industry and would,
27 you know, rely on his operating acumen and his resources
28 to develop my returns.

1 Q Okay. So he was going to operate the business.
2 Correct?

3 A Correct.

4 Q And you were going to get a revenue stream
5 based on what your understanding was. Correct?

6 A Correct.

7 Q And you had no interest in operating the
8 business. Correct?

9 A None whatsoever.

10 Q You were only interested in getting a revenue
11 stream?

12 A Well, I mean, I wanted to make sure that my
13 products weren't misrepresented and that we enhanced
14 co-branding opportunities using that facility as a -- a
15 model, if you will.

16 Q For example, you hoped potentially to be able
17 to sell product to the dispensary. Correct?

18 A I had my brand I was considering under 151
19 being joint ventured with Mr. Geraci, yes.

20 Q That was something that you guys had discussed.
21 Correct?

22 A Correct.

23 Q Okay. And that would be no different than if
24 he didn't get product from you, the dispensary would
25 have to get product from another vendor. Correct?

26 A Presumably, yes.

27 Q And so you were hopeful that possibly you could
28 be the person that supplied the product to the

1 **dispensary. Correct?**

2 A No. I am not interested in being a wholesaler.
3 I was interested in being a manufacturer and allowing
4 more people to understand what 151 Farms represented.

5 **Q Okay. And so that had nothing to do with the**
6 **operation of the dispensary itself. Right?**

7 A Other than I wanted it to be held to a certain
8 standard so it wouldn't possibly distract from our
9 message.

10 **Q Okay. Your Honor, I'd like to offer**
11 **Exhibit 40. If it's already been offered --**

12 THE COURT: Which --

13 MR. WEINSTEIN: Exhibit 40, please. And I
14 think it's already admitted.

15 THE COURT: Exhibit 40 is admitted.

16 MR. WEINSTEIN: We've already covered that.
17 I'm not going to take the Court's time.

18 Instead, I'd like to offer Exhibit 85, please.

19 THE COURT: Eighty-five has not been admitted?

20 MR. WEINSTEIN: Correct.

21 THE COURT: Any objections, Counsel, to the
22 admission of Exhibit 85?

23 MR. AUSTIN: No objection.

24 THE COURT: Okay. Exhibit 85 will be admitted.

25 (Premarked Joint Exhibit 85, Email to Michael
26 Weinstein from Darryl Cotton re Geraci v.

27 Cotton - Posting of Notice of Application, dated
28 3/28/17, was admitted into evidence.)

1 MR. WEINSTEIN: Would you blow up the email at
2 the top, please.

3 BY MR. WEINSTEIN:

4 Q Okay. Do you recognize this email?

5 A I do.

6 Q This is an email you wrote to me on March 28,
7 2017?

8 A Yes.

9 Q It says, "Michael, as I have previously
10 informed you, your client has no right whatsoever to my
11 property in any manner. This is my notice to you,
12 Larry, if you or any one of your agents come onto my
13 property, I will immediately call the police and have
14 you and your agents arrested for trespassing. Any
15 notices will be immediately removed, and I will call the
16 police."

17 Do you see that?

18 A Yes.

19 Q You wrote that at that time?

20 A I did.

21 Q And you meant it when you wrote it, didn't you?

22 A I did.

23 MR. WEINSTEIN: I believe that's all I have,
24 your Honor.

25 THE COURT: All right. Redirect, Counsel?

26 (Redirect examination of Darryl Cotton)

27 BY MR. AUSTIN:

28 Q And referring back to that email that you were

1 just shown, why were you saying that they had no right
2 to the property?

3 A Because I had filed a counterclaim to their
4 lawsuit indicating that we did not have a contract, and
5 this was no longer a joint venture opportunity. The
6 terms had never been reduced to writing. And, if
7 necessary, we would litigate it. But they did not have
8 my approval to access the property from that point
9 forward.

10 Q So, essentially, the agreement that you guys
11 had was terminated?

12 MR. WEINSTEIN: Objection. Calls for a legal
13 conclusion. It's argumentative as phrased.

14 THE COURT: Those objections are overruled.

15 MR. WEINSTEIN: I'll also object as leading.

16 THE COURT: That objection is sustained.

17 THE WITNESS: Should I answer this or --

18 MR. AUSTIN: No.

19 THE COURT: Not yet.

20 MR. AUSTIN: I have to rephrase.

21 THE COURT: Wait for the next question.

22 THE WITNESS: Got it.

23 BY MR. AUSTIN:

24 Q Did you sell -- did you enter into a different
25 contract other than what you were hoping to achieve with
26 Mr. Geraci?

27 MR. WEINSTEIN: Objection. Vague.

28 THE COURT: Do you understand the question?

1 THE WITNESS: I did.

2 THE COURT: All right. The objection is
3 overruled.

4 THE WITNESS: I did ultimately sell the
5 property to Richard John Martin. He met the terms and
6 even then some beyond what Mr. Geraci and I would have
7 agreed to had it been reduced to writing.

8 BY MR. AUSTIN:

9 Q And you don't feel that Mr. Geraci ever lived
10 up to what he had been promising you for months.
11 Correct?

12 A No. He was wasting my time.

13 MR. AUSTIN: No further questions.

14 THE COURT: Anything else, Counsel?

15 (Recross-examination of Darryl Cotton)

16 BY MR. WEINSTEIN:

17 Q Mr. Cotton, is it correct that --

18 THE REPORTER: I'm sorry, ma the reporter hear
19 the question again, please.

20 MR. WEINSTEIN: Sure.

21 BY MR. WEINSTEIN:

22 Q Is it correct that Mr. Martin has assigned his
23 right to the property through this contract you claim to
24 individuals including your attorney, Mr. Austin?

25 A That is incorrect.

26 Q Has he assigned his rights to others?

27 A He did.

28 MR. WEINSTEIN: Okay. Nothing further, your

1 Honor.

2 THE COURT: Anything else, Counsel?

3 MR. AUSTIN: No, your Honor.

4 THE COURT: Subject to the admission of
5 additional exhibits, does the defense rest?

6 MR. AUSTIN: The defense rests.

7 THE COURT: All right. Will there be any
8 rebuttal?

9 MR. WEINSTEIN: Very briefly. A few questions.

10 THE COURT: All right. That's fine. Folks,
11 we're going to take our morning break. We're nearly
12 done with all of the evidence. We're going to get you
13 out of here by noon for sure.

14 But we're going to take our morning break at
15 this time. We're going to be in recess for
16 approximately 15 minutes. Do not form or express an
17 opinion or discuss the case until deliberations. We'll
18 be in recess for 15 minutes.

19 All right. The jury has left.

20 Feel free to step down, Mr. Cotton.

21 There were a number of objections interposed
22 while Defense counsel was examining Mr. Cotton:
23 Foundation, opinion. There were some other objections.

24 What the Court was taking into consideration is
25 the vast volume of evidence you have already elicited
26 from Mr. Cotton including the exhibits, which based upon
27 what I had heard and what I reviewed, establish the
28 foundation for him to say just about everything that he

1 was asked to say. So that's what I was taking into
2 consideration when I overruled your objections.

3 So do I take it that your rebuttal witness will
4 be Mr. Geraci?

5 MR. WEINSTEIN: It is. And it will be I
6 literally think two minutes.

7 THE COURT: And I wasn't sure. I didn't want
8 to put you under any pressure. I expected that it would
9 be really short. Not maybe as short as two minutes, but
10 I expected it to be shorter.

11 All right. And then that will conclude your
12 part of the evidence?

13 All right. Now, I would expect that when
14 you're done with Mr. Geraci, we'll let the jury go and
15 tell them not to come back until Monday day for
16 instructions and closing arguments. Is that what you
17 all are asking the Court to do?

18 MR. WEINSTEIN: Yes.

19 MR. AUSTIN: Yes, your Honor.

20 THE COURT: Okay. So we'll be in recess now
21 for 15 minutes.

22 (Recess from 10:27 a.m. to 10:41 a.m.)

23 THE COURT: All right. We've got all of our
24 jurors. We're nearly done with the evidence. Then I've
25 got a few admonitions, and we're going to be letting you
26 go a little early today.

27 Counsel, it's now time for your rebuttal case.
28 Your witness will be?

1 MR. WEINSTEIN: Mr. Geraci. It will be very
2 brief.

3 THE COURT: Good morning, Mr. Geraci. If you
4 could please follow directions from my deputy and take
5 the stand.

6 All right. And you recall you've been
7 previously sworn and you're still under oath?

8 THE WITNESS: Yes.

9 THE COURT: Thank you very much. Counsel,
10 whenever you're ready.

11
12 Larry Geraci,
13 being called on behalf of the plaintiff/cross-defendant,
14 having been previously duly sworn, testified as follows:

15
16 (Direct examination of Larry Geraci on rebuttal)

17 BY MR. WEINSTEIN:

18 Q Mr. Geraci, you just heard Mr. Cotton testify
19 about using the words "joint venture" in communications
20 with you. Do you recall that testimony?

21 A Yes, I do.

22 Q Have you ever used the word "joint venture" in
23 any text to Mr. Cotton?

24 A No, I haven't.

25 Q Have you used the term "joint venture" in any
26 emails to Mr. Cotton?

27 A No, I haven't.

28 Q Did you use the term "joint venture" in any

1 telephone communication with Mr. Cotton?

2 A No, I haven't.

3 Q Has Mr. Cotton used the word "joint venture" in
4 any text to you?

5 A No, he hasn't.

6 Q Has he used the word "joint venture" in any
7 email to you?

8 A No, he hasn't.

9 Q Has he used the word "joint venture" in any
10 telephone communication with you?

11 A No, he hasn't.

12 Q Now, putting aside any traffic tickets that you
13 may have gotten over the years, have you been convicted
14 of a crime?

15 A No, I haven't.

16 Q Have you ever even been arrested of a crime?

17 A No, I haven't.

18 MR. WEINSTEIN: That's all I have, your Honor.
19 Thank you.

20 THE COURT: Cross-examination?

21 MR. AUSTIN: No, your Honor.

22 THE COURT: All right. Mr. Weinstein, does
23 Plaintiff rest?

24 MR. WEINSTEIN: We do. Thank you.

25 THE COURT: So, folks, that takes --

26 Mr. Geraci, you can have a seat back at your counsel's
27 table. That completes the presentation of the evidence.

28 Now you're probably wondering why in the world

1 on Wednesday at 10:45 can we not plow forward with
2 closing -- with the instructions and closing arguments.

3 Things have accelerated tremendously compared
4 to what I thought it might take this long. And that's a
5 tribute, not a criticism of the lawyers. Certain
6 witnesses that they had planned on calling that would
7 have consumed more time, people have elected not to
8 call.

9 So we are now where we are. I still need time
10 to talk to the lawyers to finalize the verdict forms and
11 the instructions.

12 Second of all, for reasons that were set long
13 ago which have nothing to do with this case, I have
14 something starting tomorrow morning at 1:30. So we
15 would need -- I'm sorry -- tomorrow afternoon at 1:30.

16 So I need the afternoon with the lawyers, and
17 we don't have enough time tomorrow morning to, if you
18 will, squeeze in the instructions and the arguments.

19 And then I've got this conflict at 1:30. It
20 doesn't always happen that I have juries with this much
21 downtime. If you're upset or frustrated, you get upset
22 or frustrated with me, not the lawyers or the parties.
23 This is an important case to them. So if you vent, you
24 vent on Judge Wohlfeil.

25 And one of these days, you'll have a chance to
26 vote for or against me when my name appears on a ballot.
27 So that is important.

28 So I do appreciate -- you're a terrific jury.

1 I appreciate your patience and understanding. So we're
2 now going to let you go.

3 When you come in Monday, the 15th at 9 o'clock,
4 it will probably take me in the neighborhood of 30 to 45
5 minutes to give you the instructions. And once we do
6 that, then the lawyers will begin arguing. I don't know
7 if you'll get the case as early as noon, but you'll get
8 it shortly after your noon recess.

9 So you'll have all of Monday and however much
10 longer that you want in order to complete your
11 deliberations.

12 So we are on track compared to what we had
13 originally told you. I wish we could be doing this
14 tomorrow afternoon, but it's just not something we can
15 do.

16 So with all that in mind, we're going to be in
17 recess until Monday, the 15th. Do not form express or
18 an opinion or discuss the case until deliberations.

19 I look forward to seeing you Monday morning.

20 All right. So, Counsel, all of our jurors
21 are -- have left the department.

22 That's what's called falling on the Court's
23 sword to keep your playing field as level as possible.

24 MR. TOOTHACRE: Thank you, your Honor.

25 MR. WEINSTEIN: I appreciate it.

26 THE COURT: It's not the first time I've done
27 that. But in any event.

28 So let's start with exhibits. And we'll go to

1 Plaintiff's side first. I -- I indicated you have one
2 last opportunity to go over the admission of any
3 additional exhibits.

4 So let me ask you -- and then I'm going to go
5 to the defense in just a moment. Let's just take a
6 moment and review the list. If there are any additional
7 exhibits that you have not yet moved that you want to,
8 let's do so at this time.

9 So let's start with plaintiff.

10 MR. WEINSTEIN: We have no additional exhibits
11 to move into evidence.

12 THE COURT: All right. So Plaintiff rests in
13 its entirety.

14 MR. WEINSTEIN: Thank you.

15 THE COURT: Great. Now, let's go to the
16 defense side. Are there any additional exhibits that
17 you would like to have admitted at this time?

18 And if you need an extra moment, we'll take the
19 time.

20 MR. AUSTIN: I think just Exhibit 281.

21 THE COURT: All right. That's Business and
22 Professions Code 26051.

23 Are there any others other than 281?

24 MR. AUSTIN: I don't know if it was done
25 properly but also with the Business and Professions Code
26 are two of the three lawsuits where Mr. Geraci is a
27 named party.

28 THE COURT: All right. We had previously

1 discussed those. So you're asking the Court to take
2 judicial notice of those two?

3 MR. AUSTIN: Yes, your Honor.

4 THE COURT: Okay.

5 Anything else other than 281 and Mr. Geraci's
6 two lawsuits?

7 MR. AUSTIN: I can't think of anything, your
8 Honor.

9 THE COURT: All right. So let's talk about
10 Exhibit 281.

11 Objections, if any?

12 MR. WEINSTEIN: Yes, your Honor. I don't see
13 why the jury should see a Code section.

14 THE COURT: The objection is sustained.

15 (Premarked Joint Exhibit 281 was not admitted
16 into evidence over objection.)

17 THE COURT: Now, let's go to the request for
18 judicial notice of the two judgments involving
19 Mr. Geraci, one of which is case -- it was. It's 2014,
20 case ending 20897. And the second one, the year is
21 2015, case number ending 4430.

22 Objections, if any, from Plaintiff's side?

23 MR. WEINSTEIN: Yes, your Honor. We object to
24 them for the following reason. It's cumulative.
25 There's been testimony that both parties have been
26 subject to these kinds of orders, number one.

27 Number two, I think there's a danger that the
28 jury is going to end up trying to interpret what those

1 orders mean. And I think if there's any appropriate
2 legal conclusions to draw from those, then they ought to
3 be in the form of instructions from the Court rather
4 than having them just look at documents and -- you know,
5 and attempt to determine and conclude what they mean.

6 THE COURT: Thank you. So I think I'm hearing
7 a 352 objection?

8 MR. WEINSTEIN: Yes. And it's cumulative
9 because I think both -- there's been testimony that they
10 both received -- they both were in lawsuits involving
11 legal dispensaries.

12 THE COURT: All right. Counsel, putting aside
13 the 352 factors and just focusing on relevancy, I've
14 looked at these two prior judgments. Do you have them
15 in front of you?

16 MR. AUSTIN: I do not, your Honor.

17 THE COURT: You don't have them anywhere in
18 your file?

19 MR. AUSTIN: Oh, I have them. It's just --

20 THE COURT: Are they somewhere that you can get
21 ahold of them so you can --

22 MR. AUSTIN: If it's your inclination not to
23 include them?

24 THE COURT: Well, everything starts with
25 relevancy. Putting aside whether the probative value is
26 substantially outweighed by undue prejudice or any other
27 of the 352 factors including but not limited to
28 cumulativeness, as I read these judgments, Mr. Geraci is

1 not barred from trying to obtain whatever permission he
2 would need or anybody would need from operating a
3 marijuana dispensary. And I thought that was your
4 theory at one point.

5 And if that were your theory, I'm not seeing
6 anything, well, inside the four corners of these
7 judgments that prohibit Mr. Geraci from, for example,
8 doing the deal that he had proposed to do with
9 Mr. Cotton.

10 MR. AUSTIN: I think there was a change in the
11 law, which would -- would change that. But I'm willing
12 to not argue the matter if your Honor is inclined not to
13 include it. We can just -- we can forget about it.

14 THE COURT: All right. Well, then, I'll
15 sustain the objections and not take judicial notice of
16 Mr. Geraci's two prior judgments.

17 I also am mindful of the evidence that the jury
18 has heard evidence to the effect that Mr. Geraci was a
19 defendant in two civil judgments where some injunctions
20 were issued and Mr. Cotton, I think I heard, was a
21 defendant in a civil case in which a Court issued an
22 injunction.

23 So the jury has heard evidence of that part of
24 each of your respective clients' history.

25 All right. So that completes all of the
26 evidence.

27 Now, let's talk about motions. Let's start
28 with Defendant's motion to Plaintiff's case in chief.

1 Do you have a motion directed towards Plaintiff's case
2 in chief?

3 MR. AUSTIN: I was starting to prepare a motion
4 for nonsuit, but I do not have one completed.

5 THE COURT: Well, let's not worry about whether
6 it's in writing or not. But do you have a motion for
7 nonsuit you'd like to bring against Plaintiff's case?

8 MR. AUSTIN: Yes, your Honor.

9 Plaintiff has not proven that there even is a
10 contract, and they certainly can't meet the barrier of
11 showing a meeting of the minds. Their entire case is
12 based off that November 2nd document, and I feel the
13 facts have established that that is not a fully
14 integrated contract. That is not a contract at all.
15 It's -- it's an agreement. It's an acknowledgment of a
16 receipt of a part of a down deposit.

17 THE COURT: All right. Just give me one
18 moment.

19 All right. The response from Plaintiff's side?

20 MR. WEINSTEIN: I believe evidence has been
21 submitted that would be sufficient to sustain that a
22 contract was formed, a written contract, and that a
23 meeting of the minds was obtained. And that's what the
24 jury is here to decide. You know, they can argue the
25 evidence the way they want to argue it at the time of
26 closing, but we presented evidence of an agreement that
27 was signed, that has all the essential terms of a
28 real estate deal, according to the law, and we have

1 Mr. Geraci's testimony about their meeting when it was
2 signed. That's sufficient to go to the jury on whether
3 there's been a contract.

4 THE COURT: The motion is denied. The Court is
5 satisfied that Plaintiff has introduced or made a prima
6 facie showing on each of the elements on which Plaintiff
7 bears the burden of proof for its two contract claims,
8 mainly breach of written contract 303, CACI 303, and
9 breach of the implied covenants for good faith and fair
10 dealing, which is CACI 325.

11 Now, let me emphasize. All I'm saying is that
12 there is enough evidence before the jury that could, not
13 will, but could enable the jury to return a verdict on
14 those claims. Whether the jury does so or not is why we
15 have a jury.

16 So now, let me go to Plaintiff's side. Do you
17 have any motion directed towards Cross-complainant's
18 claim?

19 THE WITNESS: Yes. We have motions for
20 directed verdict. And the first one, I think we have it
21 prepared in writing.

22 THE COURT: If you can file that with my deputy
23 and provide a copy to opposing counsel.

24 This is technically Cross-Defendant's motion?

25 MR. WEINSTEIN: Cross-Defendant Geraci's motion
26 for a directed verdict.

27 So the written motion really is, to cite the
28 law, as it relates to the contract claim. I'll speak to

1 that first. And then I'm going to bring a motion with
2 respect to the court claims, which is based on different
3 grounds. But it would be a motion for a directed
4 verdict.

5 May I go ahead?

6 THE COURT: You bet.

7 MR. WEINSTEIN: All right. So there are
8 competing contracts, if you will, in this case. My
9 client contends that the written agreement was entered
10 into between the parties on November 2nd, 2016.

11 Mr. Cotton has contended and it's become clear
12 through his testimony that the parties he says agreed on
13 terms but that it was the understanding of the parties
14 that there would not be a binding agreement unless and
15 until it was reduced to a writing and signed by both
16 parties.

17 That raises two issues. One is under the Beck
18 case, which is cited in our brief, if the intention of
19 the parties was to not have a binding agreement until it
20 was reduced to writing and signed, that never happened
21 and there's no -- there's no binding contract that was
22 ever formed. That's number one.

23 The flip side of that is if under some
24 theory -- and I don't see any other one that's
25 consistent with the evidence, because the evidence
26 presented was pretty clear by Mr. Cotton as to what he
27 believes happened -- it would be an oral agreement for
28 the purchase of property that would be barred by the

1 statute of frauds.

2 But the primary argument is that under his
3 testimony, he's essentially alleged and provided
4 evidence of the fact that they never entered into a
5 binding agreement. That's been his contention, and
6 that's what he testified to on multiple occasions under
7 examination. So that's the primary basis for the
8 contract motion.

9 There's a secondary argument based on the
10 damages, which I think I'll address in connection with
11 the tort motion.

12 THE COURT: All right.

13 MR. WEINSTEIN: All right.

14 THE COURT: That's fine.

15 MR. WEINSTEIN: Shall I move to -- do you want
16 to hear the tort motion first?

17 THE COURT: Let's resolve the contract claim
18 first. So your theory in contract is what, Counsel?
19 Your turn.

20 MR. AUSTIN: Mr. Weinstein -- oh. It's my
21 turn?

22 THE COURT: I'm sorry. No. You.

23 MR. AUSTIN: Okay.

24 THE COURT: But Mr. Cotton's cross claim for a
25 breach of contract against Mr. Geraci is what?

26 MR. AUSTIN: That they entered into an oral
27 agreement. It was intended to be binding. All the
28 terms were included. And the realty is Mr. Geraci just

1 strung Mr. Cotton along for several months indicating
2 that, yeah, we're going to go forward with this, we're
3 going to do it. And it was Mr. Cotton's understanding
4 the whole time that the terms that they agreed on were
5 going to be reduced to writing and -- and --

6 THE REPORTER: Couldn't hear. Again, for the
7 reporter, please.

8 MR. AUSTIN: So all the terms were -- were
9 oral. But everything was included. It was -- it was an
10 integrated oral agreement. And I know it's for the sale
11 of property. So there is a statute and fraud issue.
12 But Mr. Geraci was fraudulently leading him along,
13 making promises, and just not delivering.

14 THE COURT: All right. The Court heard
15 references both on direct and cross-examination of
16 Mr. Cotton to a joint venture.

17 MR. AUSTIN: Yes. It was his understanding
18 that he was going to be essentially a partner. Albeit a
19 very small sliver. But that's where the equity stake
20 comes in.

21 And even a 10 percent share makes him
22 essentially a general partner or a joint venture. And I
23 think joint venture is the most appropriate terminology.

24 THE COURT: All right.

25 MR. WEINSTEIN: Your Honor, may I address those
26 points.

27 THE COURT: Absolutely.

28 MR. WEINSTEIN: All right. First, Mr. --

1 Mr. Austin has argued that the testimony was that they
2 entered into an oral agreement -- or an agreement that
3 was intended to be binding. That wasn't the testimony.
4 The testimony of Mr. Cotton on the four or five
5 occasions was it wasn't intended to be binding unless
6 and until it was written to -- put into writing and
7 signed by the parties.

8 So that means it's not -- under that theory, he
9 can't have a binding agreement, under the Beck case.
10 And the distinction is whether there's a factual dispute
11 as to what the intention of the parties were in terms of
12 reducing it to writing. My client says that wasn't the
13 agreement at all. But Mr. Cotton has been clear on what
14 the theory is. That's number one.

15 As for the joint venture, I don't think that is
16 implicated by the first argument. But I think what the
17 Court is driving on on the joint venture is if there's a
18 theory -- evidence to support some type of binding
19 agreement, is there a statute of frauds issue because
20 there was this alleged joint venture.

21 There has been -- other than using the words
22 "joint venture," there has been nothing alleged -- or
23 I'm sorry -- no testimony about any obligations that
24 Mr. Cotton was going to be bound to in connection with
25 the operation of the business. In fact, he said clearly
26 he had no interest in the operation. He was just
27 looking for a revenue stream.

28 So they can call it the joint venture. The

1 joint venture is two people coming together like a
2 partnership to work and share a profit.

3 MR. TOOTHACRE: Or loss. Or loss. His claim
4 is simply I agree -- as part of the purchase, I agree to
5 get 10 percent ownership interest, which would be
6 passive. Okay. He's not obligated to do anything like
7 you would in a classic joint venture.

8 So there is -- the words Mr. Cotton certainly
9 testified that -- he used the words "joint venture" in
10 communication with Mr. Geraci, even though there's not a
11 single written document that has those words in it.

12 But what he's described isn't a joint venture.
13 So if the Court is looking at whether the -- you know,
14 assuming there was an agreement in the first place,
15 whether the joint venture would be something that
16 naturally would be the subject of a separate agreement,
17 therefore not subject to the statute of frauds, I think
18 that failed because there's no evidence to actually
19 support an actual joint venture.

20 And, in fact, the testimony has been clear it
21 was all part of what he was going to get for giving up
22 his property. He wasn't going to be involved in the
23 business.

24 So I don't think the evidence would support
25 that kind of a finding or argument. Thank you.

26 THE COURT: Final comments.

27 MR. AUSTIN: On the joint venture, whether he
28 was going to be a part of operations isn't -- isn't the

1 determining factor. There were many discussions about,
2 you know, branding and working together and essentially
3 doing some marketing of his 151 Farms.

4 And if you look at even the first page on
5 Exhibit 5, nine text messages down, the third from
6 Mr. Geraci is if we can get this through, that should
7 work as a great asset to the business. There's other
8 language about, like, let's do this. We are going to
9 make a lot of money together, throughout their text
10 messages. It's clear that the course of their
11 conversation indicated there was going to be some degree
12 of working together. So --

13 MR. WEINSTEIN: Your Honor, one quick point on
14 that, if I may.

15 THE COURT: Sure.

16 MR. WEINSTEIN: The text messages -- the text
17 messages that have been referred to was a discussion
18 about the possibility of Mr. Cotton supplying product to
19 the business. That's it. Which he testified would
20 be -- wasn't part of the deal because he wasn't going to
21 have an interest in operating the dispensary or running
22 the dispensary. It's no different than any other
23 potential, if you will, business opportunity. And the
24 comment about making some money if we do this is -- is a
25 reference to the deal. It's sort of a circular thing.
26 There's nothing explicit about any -- any evidence to
27 support that they had some deal to work together to
28 split the profit and losses of the business.

1 THE COURT: All right. If the evidence had
2 ended as of yesterday, we would be having a very
3 different discussion than I expect we'll have this
4 morning.

5 As of this time yesterday, I understood
6 Plaintiff's theory in the case. But I was not clear on
7 what Plaintiff's (sic) theory was.

8 From Mr. Geraci's perspective, this was a
9 straight-on purchase of real estate, which requires a
10 writing. Now, I agree with the defense -- well, let me
11 back up.

12 I disagree with the defendant's position
13 that -- well, let me rephrase that.

14 I agree with the proposition that the
15 three-sentence paragraph -- three-sentence contract on
16 November 2 was not an integrated contract. I do think,
17 though, that there's enough there that a jury could
18 return a verdict in favor of Mr. Geraci on his breach of
19 contract claim, given his theory.

20 Now, today, we heard evidence of a joint
21 venture, the terms of which are not entirely clear to
22 the Court. But, folks, if the Court of Appeal were
23 looking at this record, I'm of the view that they would
24 see enough that would allow Mr. Cotton's theory, based
25 upon an oral joint venture agreement to go to the jury,
26 which does not require a writing for him to contribute
27 his property to what he's characterizing as a venture.

28 There's more the Court could say, but that may

1 sound like I'm commenting on the weight of the evidence,
2 and it's not my prerogative to comment on the weight of
3 the evidence.

4 MR. WEINSTEIN: May I ask --

5 THE COURT: I do think -- no, Counsel. I've
6 heard.

7 I think there's enough, given what I now
8 understand cross-complainant's theory to be, for him to
9 survive a motion for -- I thought it was actually
10 nonsuit. You called it a directed verdict -- and allow
11 the contract claim to go to the jury.

12 Like I commented when I was denying Defendant's
13 motion, the plaintiff's claims, I have no idea whether
14 the jury might find that there's enough to return a
15 verdict in favor of Mr. Cotton on his contract claim.
16 However, there appears to be enough of a foundation in
17 the evidence that would support one, in contract.

18 So that part of Cross-Defendant's motion will
19 be denied.

20 Now, let's go to the tort claims.

21 MR. WEINSTEIN: Thank you, your Honor. So
22 the -- I'm still not sure I've heard what the alleged
23 false representations are.

24 THE COURT: You know what, let me just -- I
25 agree. Now, let me go over here. Well, I better let
26 you make your record, because I have some reservations
27 too. But --

28 MR. WEINSTEIN: I don't see any sufficient

1 evidence of -- that's been put forth for a prima facie
2 case of intentional or negligent misrepresentations or
3 even false promise in the testimony we heard. And
4 that -- and then evidence that it was somehow relied
5 upon and caused damage, because the second part of the
6 motion is I haven't heard any evidence of legally
7 sufficient damages. There's been no evidence of any
8 direct out-of-pocket loss.

9 There's been some testimony that Mr. Cotton
10 believed that there were -- you know, there would be
11 lost profits, if you will. But under Sargon, I don't
12 think there's any foundation or support for that
13 opinion.

14 On cross, we elicit the fact that there's
15 really no basis for saying that he was going to make
16 billions of dollars or he would have lost money on a
17 dispensary that had never even opened and without any
18 information about any similar dispensaries and their
19 operation and what they have done that might support
20 what an expert might testify to support some kind of
21 lost profit analysis.

22 And, certainly, no evidence of -- you know, I
23 don't know how you get past the fact that he would have
24 to prove under his theory that I think that a CUP would
25 have been gotten. And I don't think he's presented any
26 evidence of that. And the evidence that's been
27 submitted as to fair market value or value of the
28 property, which were -- which was elicited, which both

1 involved time periods before the deal was made don't
2 have anything to do with the value of the property with
3 a potential conditional use permit which had not been
4 achieved but was only a possibility in the future.

5 So I just don't think there's any connection
6 between any testimony about misrepresentations and any
7 legally sufficient damages that were caused by it. And
8 that's -- that's the essence of my argument as to the
9 tort claims.

10 I would also say that I'm -- and this is not to
11 go back to the contract claim. But we said I would
12 address damages at one time. I don't understand the
13 damage theory on the breach of contract claim even
14 because the instructions -- and we'll obviously be going
15 through those -- talk about -- you know, there are
16 specific instructions on the sale of property and the
17 seller's remedy and the buyer's remedy. There's been no
18 evidence to support the types of things you would have
19 to establish for those damages.

20 And we've not sought those damages. So we
21 haven't put on any expert testimony about that. We just
22 have asked for reliance damages.

23 THE COURT: I got you.

24 MR. WEINSTEIN: So those are my arguments, your
25 Honor.

26 THE COURT: All right. So let me go to --

27 MR. WEINSTEIN: One more point. And certainly
28 no evidence sufficient to support any kind of -- well,

1 punitive damage claim I guess would rest on the finding.
2 So I'll withdraw that.

3 THE COURT: Yeah. So what is the specific
4 misrepresentation or misrepresentations, plural, that
5 you're relying upon?

6 MR. AUSTIN: They're contained within the
7 emails the text messages that have been submitted.
8 Like, there's one from Darryl -- like -- this is in
9 Exhibit 5, February 27th.

10 THE COURT: Of 2017?

11 MR. AUSTIN: Of 2017, yes.

12 So there's a continued course of conduct of
13 misrepresentation where Mr. Geraci is saying that, yes,
14 like, I'm having her rewrite it now, in reference to
15 Gina drafting the contract. So he believes
16 everything -- he's led to believe everything is moving
17 along. And it's just a continuous set of
18 misrepresentations.

19 He even tells Darryl Gina Austin is there, in
20 reference to -- to this speaking engagement. She has on
21 a red jacket. If you want to have a conversation with
22 her.

23 From Mr. Cotton's perspective, it only makes
24 sense that, you know, he feels their oral agreement from
25 November 2nd is being pursued.

26 THE COURT: All right. Let me -- I understand
27 Mr. Cotton's view on him being strung along by
28 Mr. Geraci. But your theory is that there was an oral

1 agreement, which was entered into when? On or before
2 the 11/2/2016 written agreement?

3 MR. AUSTIN: Yes.

4 THE COURT: Or does it coincide with that?

5 MR. AUSTIN: I think November 2nd is when they
6 officially had, you know, essentially their meeting of
7 the minds.

8 THE COURT: All right. So misrepresentation or
9 false promise contemplates that whatever statement
10 Mr. Geraci allegedly made that's fraudulent in nature
11 induced Mr. Cotton to enter into something or to do
12 something. And I think what you're saying, your theory
13 is that he was induced to enter into this oral agreement
14 to become joint ventures. And that occurred on or about
15 November 2 of 2016.

16 So what misrepresentation or false promise, if
17 any, did Mr. Geraci make that induced Mr. Cotton to
18 enter into this oral joint venture agreement?

19 MR. AUSTIN: It was all the terms that he had
20 promised him. You know, Mr. Geraci is a very
21 sophisticated -- and he was making a lot of promises to
22 Darryl about how successful it's going to be, how much
23 influence he had, how we had this team assembled. And
24 he was going to get the CUP in there and how he was
25 going to give Darryl the 10 percent equity stake, the
26 minimum payments per month. Everything that he promised
27 him was to induce.

28 THE COURT: Let me just stop you there for one

1 moment here.

2 All right. So you identified a number of
3 statements. The only one of which, if there's evidence
4 to support it, that might form the basis of a fraud
5 theory, the representation that Mr. Geraci was
6 sophisticated. He is. The representation that he has
7 influence. He does. The representation that he would
8 assemble a team. He did. The representation that he
9 would go in there to obtain the CUP. He made, from the
10 Court's perspective, substantial, if not overwhelming
11 efforts to try to secure the CUP.

12 Now, he may have all kinds of motivations to do
13 this, but he did -- or let me put it this way -- there's
14 no evidence to con -- from my perspective, no evidence
15 to contradict the reasonableness of those
16 representations.

17 Now, let's get to your representation that he
18 said Mr. Cotton would get a 10 percent equity stake with
19 minimum payments per month.

20 Who testified to that?

21 MR. AUSTIN: Mr. Cotton.

22 THE COURT: All right. Let me stop you there.
23 Let me go back to the plaintiff/Cross-Defendant side.

24 MR. WEINSTEIN: So --

25 THE COURT: The only thing you need to focus
26 on --

27 MR. WEINSTEIN: Right.

28 THE COURT: -- is evidence of whether

1 Mr. Geraci made the statement that Mr. Cotton would get
2 a 10 percent stake in what they're characterizing as an
3 oral joint venture.

4 MR. WEINSTEIN: All right. So that's a --
5 there was -- there was testimony by Mr. Cotton that
6 that's what they discussed. Mr. Geraci has denied that.
7 But for purposes of this motion, we rely on Mr. Cotton's
8 testimony.

9 It's -- ultimately, you can't have a fraud
10 claim that's based on mere nonperformance of the
11 representation. Otherwise, every contract claim,
12 dispute over a contract, would be a tort claim. And
13 there -- there has to be -- the -- I suppose that the --
14 there's nothing in -- there's no written representation,
15 obviously, because they came in documents that
16 Mr. Cotton prepared that Mr. Geraci undisputed --
17 indisputably didn't sign. So those representations in
18 the written documents can't be attributed to him.

19 So what he's really saying is he promised to
20 sign an agreement containing these terms and he never
21 did. That -- that -- I don't believe can convert a
22 contract claim to a tort claim. I don't believe it's
23 sufficient.

24 I know there's -- the Tenzer versus Superscope
25 case is the one that comes to mind.

26 THE COURT: Well, I'm not so concerned about
27 this because I do not consider the 11/2/16 agreement to
28 be an agreement.

1 All right. Well, I appreciate your candor,
2 Counsel. All right. Based upon that evidence, the
3 Court denies the motions to dismiss Plaintiff's claims
4 in fraud. However, that still gets us down to the issue
5 of damages.

6 And let me go back to Cross-complainant's
7 counsel. What's your theory in damages?

8 MR. AUSTIN: Well, his -- his expectation was
9 to be getting a minimum of \$10,000 a month, and the CUP
10 lasts 10 years. So that would be a minimum. And with
11 the 10 percent equity stake, like, if the business was
12 doing exceptionally well, it would be more than that.
13 And but -- but for the process taking so long, it's
14 almost certain that that CUP would have been acquired.
15 And Mr. Cotton has asserted many concerns throughout
16 this litigation that Mr. Geraci had an incentive to
17 prevent the CUP from going through. I think it's
18 certainly clear with his team that they could have
19 gotten this done much faster.

20 There's only 36 of these CUPs in San Diego.

21 THE COURT: Well, counsel -- but, Counsel, let
22 me stop you, because I'm trying to understand your
23 theory in damages.

24 MR. AUSTIN: Okay.

25 THE COURT: So beyond the 10 percent -- well,
26 anything else, Counsel?

27 MR. AUSTIN: Mr. -- Mr. Cotton has had to sell
28 off his interest in the property, and I don't know if

1 it's too late to enter any of that into evidence.

2 THE COURT: The evidence is closed.

3 MR. AUSTIN: Yeah.

4 THE COURT: So even though it might have been
5 introduced, your side chose not to do so. So --
6 all right.

7 MR. AUSTIN: But --

8 THE COURT: I'm sorry?

9 MR. AUSTIN: But assuming \$10,000 a month,
10 that's \$120,000 --

11 THE COURT: What's the evidence to support
12 that?

13 MR. AUSTIN: The writings, the service
14 agreement, the memorandum of understanding. And -- oh.
15 Also, there was an email from Mr. Geraci to Darryl
16 Cotton saying, oh, my guy, Matt, says \$10,000 a month
17 might be difficult to reach for the first six months.
18 Can we do 5,000 instead.

19 THE COURT: All right. So what's the evidence?
20 And that's what I keep coming back to. What's the
21 evidence to support when that was supposed to begin?

22 MR. AUSTIN: I think as soon as -- as soon as
23 the dispensary opened and -- and once all the building
24 was complete.

25 THE COURT: But who testified to when the
26 dispensary would reasonably be opened?

27 MR. AUSTIN: I don't think that was testified
28 to.

1 THE COURT: I'm sorry?

2 MR. AUSTIN: I don't believe that was testified
3 to.

4 THE COURT: Well, so then we don't have
5 evidence of it, at least not a foundation of a start
6 date. So how long was this revenue stream supposed to
7 go on?

8 MR. AUSTIN: Well, presumably, the life span of
9 a CUP is 10 years. And they could be renewed.

10 THE COURT: Did somebody testify to the life
11 span of a CUP?

12 MR. AUSTIN: I believe Mr. Cotton did.

13 THE COURT: All right. All right. Let me go
14 back to you, Counsel.

15 MR. WEINSTEIN: First of all, why -- I'm not
16 saying Mr. Cotton didn't testify to that. I don't
17 remember him testifying to that. But nevertheless, they
18 still have -- there's no evidence that the CUP would
19 ever have been obtained.

20 THE COURT: Well, on that subject, there is
21 evidence from Mr. Bartell --

22 MR. WEINSTEIN: Right.

23 THE COURT: They can rely upon your witnesses'
24 testimony as well.

25 MR. WEINSTEIN: So --

26 THE COURT: Mr. Bartell made an awful good
27 witness and all but said that instead of being 19 for
28 20, he would have been 20 for 20 but for Mr. Cotton's

1 interference.

2 MR. WEINSTEIN: So --

3 THE COURT: In fact, I think you may have
4 elicited it.

5 MR. WEINSTEIN: I did.

6 THE COURT: Counsel, you may have. I'm not
7 picking on you, but that's what I seem to recall to be
8 the up -- so there's evidence, I think, that it's more
9 probable than not that a CUP had been issued and the
10 dispensary opened.

11 MR. WEINSTEIN: Had Mr. Cotton not interfered.

12 THE COURT: Right.

13 MR. WEINSTEIN: So what Mr. Cotton is saying
14 I've put on evidence that the CUP would have been
15 granted had I not interfered. But there's no evidence
16 from his side that he wouldn't have interfered the way
17 he did. I don't think he can -- we have an argument
18 that there's been an excuse of performance, but he
19 doesn't have an argument that getting the CUP was
20 excused.

21 It's -- so --

22 THE COURT: I think, though, what I'm hearing
23 is that he thought he had a deal involving a joint
24 venture, Mr. Geraci refused to memorialize it in that
25 form. And I understand why Mr. Geraci chose not to do
26 so. I understand your theory of the case.

27 But what you're calling interference was --

28 MR. WEINSTEIN: So how -- how does -- what

1 evidence is there of what the damages would have been?

2 THE COURT: Well, Counsel, all is not lost yet
3 from your side. The most that I'm hearing -- well,
4 first of all, I'm not persuaded that there is a rational
5 foundation in the evidence to support a lot of profits
6 claim by Mr. Cotton. There's just too many variables
7 that the jury couldn't possibly -- that are not before
8 the jury that would prevent them from returning a
9 verdict on lost profits.

10 So what you may be down to is, number one, a
11 nominal case of damages, and perhaps something measured
12 by this 10 percent equity stake that there is evidence
13 of.

14 I mean, I know that there are a lot of
15 inferences to be drawn. I have to be very careful that
16 I don't dismiss something where there is some foundation
17 in the evidence that might support an award.

18 Now, folks, your guess is as good as mine as to
19 what the jury is going to do with this. But all of
20 this, I would expect, will become the subject of post
21 trial motions depending upon what the jury does. And
22 I'm not going to be shy taking another look at this
23 depending upon what the jury does. That's not to
24 suggest that I'm going to second-guess -- second-guess
25 the jury. But it's a lot easier to let the juror speak
26 and then we all revisit this topic a second time.

27 For example -- for example -- and I'm not
28 trying to pick on the plaintiff -- well, the

1 cross-defendant's side.

2 But you want me to dismiss one, if not all of
3 the cross claims by Mr. Cotton. What if, for example,
4 the jury denied -- the Court denies that motion but the
5 jury ultimately finds in favor of Mr. Geraci on
6 everything. It doesn't sound like there's much room for
7 an appeal, does it?

8 MR. WEINSTEIN: I'm not -- I guess I didn't
9 follow. I'll admit it. So if you --

10 THE COURT: We need to take a lunch. Is that
11 correct at some point, don't we, Counsel?

12 All right. Now, what I'm saying -- just
13 reflect upon this, because we are going to stop in just
14 a few minutes. If the Court denies the motions by
15 Cross-Defendant and let's the jury decide and the jury
16 ultimately decides in favor of Mr. Geraci on
17 everything --

18 MR. WEINSTEIN: I get that.

19 THE COURT: -- all right. What's left, if
20 anything, for Mr. Cotton to complain about?

21 Now, let me look over towards Mr. Cotton's
22 side. I'm not predicting that Mr. Geraci is going to
23 win on everything, but it's a lot safer to let the jury
24 decide in the first instance, if there is a risk that I
25 would be making a mistake by granting the motion and not
26 letting the jury decide it. And I expect no matter what
27 I do, the loser in this -- and there will be a loser --
28 is going to file an appeal.

1 So part of what I need to take into
2 consideration is how the Court of Appeal who is going to
3 have a lot more time to look at the record than I do is
4 going to evaluate the decisions we make before the jury
5 gets the case.

6 So what I --

7 MR. WEINSTEIN: May I have one comment, though,
8 because I understand --

9 THE COURT: Sure.

10 MR. WEINSTEIN: I mean, I've heard that
11 argument before in cases I've tried. And I understand
12 the practical nature of that. There's a limit to the
13 Court's willingness and practicality of being a
14 gatekeeper, so to speak.

15 But the -- I still have not yet heard what the
16 evidence is of causation of those damages, who testified
17 that -- that those damages would have occurred? It
18 would have occurred --

19 THE COURT: Well, what damages are you
20 referring to now?

21 MR. WEINSTEIN: The -- I'm sorry.
22 Cross-complainant's damages.

23 THE COURT: I know. But are we talking about
24 the measure of the 10 percent equity stake?

25 MR. WEINSTEIN: Well, the 10 percent equity
26 stake, I think there's no basis for that because what
27 does that mean? It means you have a 10 percent
28 ownership interest, according to the testimony, in this

1 enterprise that nobody knows what its value is going to
2 be.

3 THE COURT: Let me step back. You raised a
4 good point. In and of itself, I tend to agree with what
5 counsel is saying. But you said something about \$10,000
6 per month?

7 MR. AUSTIN: Yes. So it comes up multiple
8 times. It's a 10 percent equity stake but also a
9 minimum 10,000-dollar-a-month payment. Actually, it
10 suggests language whichever is greater. So
11 theoretically, it could be more than \$10,000 a month.
12 And some of these principals make, like, \$80,000 a day.
13 I know I didn't introduce that evidence through an
14 expert.

15 MR. WEINSTEIN: Still --

16 THE COURT: In some respects --

17 MR. WEINSTEIN: I mean, you still have to have
18 a dispensary. It has to start at some time. There has
19 to be money to make the payments. There's no evidence
20 that any of that would have occurred. They have put no
21 evidence in of that.

22 THE COURT: Here's what we're going to do. You
23 may be right, Counsel. I mean, folks, I'm not trying to
24 arbitrarily end your case. But it is your obligation to
25 give the jury enough evidence that they can rationally
26 return a verdict in accordance with your theory.

27 And if I can't make an initial finding that
28 there's a prima facie showing of evidence in the record,

1 then I have to grant the motion. I'm not weighing
2 anything.

3 These are good issues that the other side is
4 raising.

5 So what we're going to do, we're going to end a
6 little earlier. I'm going to reflect upon it over
7 lunch. And it's possible that I'll still remain
8 inclined to deny the motion. But that will not
9 necessarily stop us from having a very candid discussion
10 on the damages.

11 And I remain of the view that Mr. Cotton's side
12 is going to have an uphill battle to persuade the Court
13 to give a loss of profits instruction.

14 Now, I don't know how, if at all, that's
15 connected to his theory that he was entitled to a 10
16 percent equity stake measured at the rate of \$10,000 or
17 so per month. I don't know how those will be
18 reconciled.

19 But I need to think about this a little further
20 before I make the final decision.

21 So why don't we do this. We're going to need a
22 fair amount of time this afternoon in any event. Let's
23 stop a little early now. And then I'm going to ask
24 everyone to get back by call it 1:20 or so. I'll take
25 the bench as soon as I can. Hopefully, before 1:30.
26 But we'll try to resume at 1:20 or so, finalize the
27 motion, which we're down to Cross-complainant's
28 motion -- or I'm sorry -- Cross-Defendant's motion

1 against the cross-complainant. And it's really down now
2 to fraud.

3 And then we'll go into the jury instructions
4 and finalize the verdict form. Clearly, the verdict
5 form -- well, the verdict form could look very
6 differently than it was when I sent it to you a couple
7 of days ago.

8 So we'll be in recess now until about 1:20.

9 MR. WEINSTEIN: Thank you, your Honor.

10 MR. TOOTHACRE: Thank you, your Honor.

11 (Lunch recess from 11:36 a.m. to 1:22 p.m.)

12 THE COURT: All right.

13 MR. TOOTHACRE: Afternoon, your Honor.

14 THE COURT: I got caught up with one of my
15 colleagues, which is why I'm running a few minutes late.

16 Okay. Why don't we just make a quick note of
17 something here.

18 Okay. When we left off, the Court had heard
19 arguments on Cross-Defendant's motion for nonsuit or
20 directed verdict on Cross-complainant's claims for
21 fraud.

22 Here's what I'm inclined to do. And I'll give
23 each of you one last opportunity to weigh in if you'd
24 like.

25 The Court is inclined to grant in part and deny
26 in part that motion. To deny the motion and dismiss the
27 underlying claims for intentional misrepresentation,
28 false promise, and negative misrepresentation.

1 To grant the motion and dismiss the claims for
2 malice, fraud, and oppression -- or oppression, which
3 may form the predicate for punitive damages.

4 Though I am of the view that there is enough
5 evidence in the record to support a finding on one or
6 more of those underlying claims, I am not persuaded that
7 there's enough evidence that would support a finding by
8 clear and convincing evidence that Mr. Geraci involved
9 in malice, fraud, or oppression that would support a
10 claim for punitive damages.

11 Now, I'm still not clear on how, if at all, the
12 Court should address the arguments made by
13 Cross-Defendant on Cross-complainant's theory of
14 damages. What I'm going to do is to address that when
15 we get into the jury instructions. There may be some
16 limitations based upon the lack of evidence of the
17 nature and scope of damages Cross-complainant may be
18 allowed to ask the jury to award. In fact, I expect
19 there will be.

20 But I'm not sure how to define them at this
21 point. It seems reasonable that the Court do so, if at
22 all, in context of the jury instructions.

23 So nobody is getting everything you want. Each
24 of you are getting a little bit. But, again, I am
25 limited by what the Court can or should do based on the
26 evidence in the record.

27 So let me go to moving party comments.

28 MR. WEINSTEIN: Yes. And I understand the

1 Court's tentative, what it's inclined to do.

2 I just want to add a couple of arguments for
3 the record, at least.

4 As to damages, I want to additional say that I
5 think that based on the evidence presented, damages are
6 too speculative to go to the jury. And what's
7 different -- what I didn't mention earlier, which I'm
8 going to bring up now is -- Mr. Cotton -- first of all,
9 the theory of damages has been sort of a tar baby in the
10 case. I'm having a hard time following that theory as
11 it's changed, and theory of liability has sort of
12 changed over time.

13 But what was clear in the testimony of
14 Mr. Cotton as to what he claims the agreement was is he
15 says the parties agree to put down in -- to reduce to
16 writing the terms and conditions that were in the two
17 working documents that he submitted to Mr. Geraci on
18 September 24th, 2016.

19 And those were Exhibits 10 and 11. One was
20 called a services agreement, and one was called a
21 memorandum of understanding.

22 Now, as I understood the Court's discussion
23 this morning, it was sort of based on the sliver of the
24 fact that the alleged agreement or what Mr. Cotton is
25 alleging was agreed to included
26 a 10,000-dollar-per-month guaranteed payment. So it's
27 one thing to calculate net profits, which the Court
28 recognized was really difficult and speculative, but,

1 you know, \$10,000 guaranteed minimum payments is a fixed
2 number irrespective of what the net profits are, in
3 theory, at least.

4 I went back and looked at Exhibit 10 and
5 Exhibit 11, which is the claimed agreement -- or what
6 was to be in the claimed agreement. There was no
7 mention of a 10,000-dollar guaranteed minimum payment in
8 those documents. There's a mention of a 10 percent
9 interest -- a 10 percent of net profit interest. But no
10 mention -- can I bring up Exhibit 11? Is that
11 all right?

12 THE COURT: I don't care. That's fine. Or I
13 can just reach for it.

14 MR. WEINSTEIN: That's fine.

15 THE COURT: Let me see here. You said
16 Exhibit 11, Counsel?

17 MR. WEINSTEIN: Yes. 10 and 11, but 11 is the
18 one I want to focus on.

19 THE COURT: But, Counsel, let me -- before we
20 invest this time -- and I'll look at it. But let's
21 assume that there is little, if not anything, involving
22 the testimony that Mr. Cotton has now presided --
23 presented in the documents. Wouldn't there still be
24 evidence in the record to support his claim? Maybe not
25 credibility evidence, from your side's perspective. I
26 gotcha.

27 But wouldn't there still be evidence in the
28 record? And that's where I have limitations.

1 MR. WEINSTEIN: I understand because there's
2 been, I would argue, inconsistent testimony, then, that
3 I can argue to a jury. And I do appreciate that. But I
4 wanted -- I had not brought that to the Court's
5 attention. And since the sliver was on this -- there's
6 at least certainty when there's a guaranteed amount, you
7 know. When it's only net profits, it's completely -- 10
8 percent net profits is completely speculative. But I
9 appreciate the Court's comment that, well, he can
10 present inconsistent testimony. I can argue it and say
11 consistent. And I can win or lose that argument.

12 But I wanted to at least put that on the
13 record.

14 THE COURT: Do you still want me to look at
15 Exhibit 11, though?

16 MR. WEINSTEIN: It would just make me more
17 assured. It's paragraph 5 on Exhibit 11.

18 THE COURT: Exhibit 11 did not find its way
19 into my notebook.

20 MR. WEINSTEIN: Okay. Because it was added --

21 THE COURT: Does that not surprise you,
22 Counsel. Isn't that the way things have worked in this
23 trial. That may be one that you added.

24 MR. WEINSTEIN: It was.

25 THE COURT: Okay. Can you provide that to my
26 deputy, please.

27 MR. WEINSTEIN: I know it made it into the
28 witness exhibit.

1 THE CLERK: That's my fault. Sorry.

2 MR. WEINSTEIN: I prefer to blame my colleague.

3 THE COURT: The paragraph again?

4 MR. WEINSTEIN: Five. It's on the second page,
5 if my memory is correct. Now I don't have one in front
6 of me.

7 THE COURT: And remind me. This is something
8 that -- who sent this to who?

9 MR. WEINSTEIN: This was one of the two
10 documents that there's been testimony was sent on
11 September 26th of the working documents drafted by
12 Mr. Geraci -- Mr. Cotton on September -- he sent it to
13 Mr. Geraci on September 26th. He's testified that the
14 agreement, the terms they agreed to, as of November --
15 as of November 2nd, 2016, were the terms and conditions
16 that were encompassed in these working documents that he
17 then said Gina Austin was supposed to reduce to a
18 writing to be signed by the parties.

19 But paragraph 5 of the MOU talks about a
20 monthly 10 percent of the dispensary's net profits.
21 There's no mention in that MOU of any guaranteed payment
22 of \$10,000 under it. There's no mention of that in
23 the -- in the service agreement, which is Exhibit 10.
24 So he had split the -- split -- his proposal split
25 things in two documents that he sent to Mr. Geraci.

26 THE COURT: All right. Anything else, Counsel?

27 MR. WEINSTEIN: Yes. The -- yes, for the
28 record. It's, again, back in his testimony, it's hard

1 to understand what is alleged to be the JVA. And in
2 these two documents. And the reason that's important is
3 that we -- I believe we still have a statute of frauds
4 issue. And let me explain why.

5 Because what the Court -- as I understand what
6 the Court is saying is, well, if there's a claim that
7 there was an oral -- breach of an oral joint venture
8 agreement, that wouldn't have to be in writing because
9 it could be the subject of -- the factors is it could be
10 the subject of a separate agreement. But you would
11 still have to have a writing of the essential terms of
12 the purchase of the sale of real property. That would
13 still have to be in writing to satisfy the statute of
14 frauds as to the purchase and sale of the agreement.

15 Now, those -- those terms that were in writing
16 are in the signed November 2nd, 2016 document that
17 Mr. Geraci says was the agreement between the parties.
18 But Mr. Cotton's theory is that that was not even an
19 agreement. It was merely a -- a receipt.

20 And so I'm not sure how he can argue that it
21 was a receipt, contend it was a receipt only and not
22 part of the agreement, which was really reflected in
23 these two documents and then satisfy the statute of
24 frauds with respect to the purchase and sale of the
25 property, because he's relying on it for his agreement
26 on the oral agreement to the terms in these two working
27 documents that were to be later reduced to a writing.

28 So I still think that there's a statute of

1 frauds argument based on that.

2 Finally, the Court has indicated that the
3 contract is not integrated. And I understand the
4 Court's ruling in that regard. But even if the contract
5 is not fully integrated, there still can't be oral or
6 prior contemporaneous evidence of terms that are
7 contradictory to the -- to the agreement. And we still
8 have this issue of oral or prior contemporaneous terms
9 50 -- 50,000-dollar nonrefundable deposit as opposed to
10 a 10 percent nonrefundable deposit as a perfect example.
11 And so that may have to be addressed in the jury
12 instructions.

13 But the point is even if it's not fully
14 integrated, there's still an issue, I believe, as to
15 what evidence could be argued as part of the agreement
16 because I don't believe it could be -- you could have
17 different terms, if Mr. Cotton is relying on the
18 November 2nd written agreement at all, which he doesn't
19 appear to be.

20 So I hope that wasn't too circular. But the
21 statute of frauds argument is that he's -- he's saying
22 that's a receipt. So he has no writing that -- in his
23 view that states the essential terms of the purchase
24 agreement. So that -- those are my additional comments
25 that I wanted to make to the Court.

26 THE COURT: Thank you, Counsel.

27 Let me go back to the Defense/Cross-complainant
28 side. Any additional comments?

1 MR. AUSTIN: Well, in regards to the services
2 agreement and in the memorandum of understanding, those
3 were the base proposals by Mr. Cotton. It also doesn't
4 mention an amount for the deposit, which they had later
5 agreed upon, which was supposed -- my client says was
6 50,000. Mr. Geraci says it was 10,000. So those aren't
7 contained in there.

8 And in the email that sends the link to the
9 shared folder for those two agreements, that's where
10 Mr. Cotton says let's -- you know, make any suggestions
11 or edits you want. So their discussions stay --
12 continue. And it's November 2nd that they, you know,
13 came to that final joint venture agreement, as my client
14 describes here.

15 And the November 2nd document that he brings
16 up, as soon as Mr. Cotton received that email, that's
17 when he's, like, just to be clear, in our final
18 agreement, that 10 percent equity stake will be
19 included. Correct? To which Mr. Geraci alleges he
20 accidentally agreed.

21 So I think there's enough there to establish
22 the 10 percent equity stake.

23 THE COURT: Each of you have arguments that you
24 can pitch to the jury. Maybe some of them from the
25 Court's perspective are a little weightier than others.
26 It's not my prerogative to weigh in on that at this
27 time. But I do see the more I reflect upon it -- and I
28 hear your respective arguments that there's a conflict

1 in the evidence. But I -- I remain of the view, subject
2 to how we massage the instructions on damages, that
3 Plaintiff has introduced enough evidence on your fraud
4 claims. Not the malice, fraud, or oppression. The
5 Court confirms that. There will not be a second phase
6 in this trial. The jury will decide this case in one
7 phase, and that will be it.

8 But the Court denies the motion to dismiss
9 Cross-complainant's fraud claims.

10 So, Counsel, let's move to the jury
11 instructions. And then we'll -- the last thing we'll do
12 will be the verdict forms.

13 MR. AUSTIN: On damages, I'm wondering if
14 attorneys' fees will be appropriate. And one of the --
15 actually, the drafts from Gina Austin, which --

16 THE COURT: May I stop you?

17 MR. AUSTIN: Yes.

18 THE COURT: Jury fees, if at all, assuming
19 there's a threshold case to award fees will be handled
20 in a post trial motion. The jury will not be asked to
21 evaluate attorneys' fees or even the threshold issue of
22 entitlement. The Court will do that in post trial
23 motion.

24 MR. AUSTIN: Thank you.

25 THE COURT: Madam Deputy, may I ask that you
26 turn our projector on, please.

27 THE BAILIFF: Yes, your Honor.

28 THE COURT: What we're going to go through is

1 the same set that we had emailed, I believe, to you
2 yesterday. Some of these won't need much, if any time.
3 Some of them might. What I want to emphasize, to the
4 extent that they have not been included in what I send
5 to you that you proposed, the Court will not give -- for
6 whatever reason, the Court finds those instructions to
7 be objectionable. So you have that record. If I didn't
8 tell you this, I want to make sure, though, that it's
9 imperative and your responsibility to file your proposal
10 instructions with the Court. If you've done so, you've
11 got a record. But merely emailing -- emailing them to
12 my clerk is not sufficient. So please bear that in
13 mind.

14 MR. WEINSTEIN: So we still need to do that,
15 then?

16 THE COURT: Yes.

17 MR. WEINSTEIN: Okay.

18 THE COURT: And try to do so before Monday at
19 9:00.

20 All right. So in the order that the Court will
21 give them, if at all, 5,000. Unless I give you any
22 indication otherwise, this is straight from CACI, folks.
23 I didn't make any editorial changes whatsoever. If you
24 want to bring something up to my attention, feel free to
25 do so.

26 All right. I added this. 5007, Ms. Berry was
27 a party at one point. She's no longer a party.

28 Let me hear first from I guess it would be --

1 I'm just going to continue to call the two sides
2 Plaintiff and Defense sides.

3 What do you think?

4 MR. WEINSTEIN: That's fine.

5 THE COURT: Defense side, what do you think?

6 MR. AUSTIN: That's fine, your Honor.

7 THE COURT: All right. The Court will give
8 5007.

9 Continuing on. 5020, did anybody refer to
10 something by way of demonstrative purposes only? If so,
11 I'll give it. If not, I probably won't.

12 So let me hear from counsel.

13 MR. WEINSTEIN: I do not -- I do not believe we
14 had any demonstrative evidence.

15 THE COURT: Okay. Going to the defense side.

16 MR. AUSTIN: No, I didn't.

17 THE COURT: So any objection if I do not give
18 5020?

19 MR. WEINSTEIN: No objection.

20 MR. AUSTIN: No objection.

21 THE COURT: All right. So I'm going to delete
22 it. Again, it's a lot easier to delete than to add.
23 Boom, it's gone.

24 Just give me one moment here. We may be having
25 a similar discussion on the next one.

26 The next one that somebody proposed is 5021,
27 which I cleaned up. There were some parentheses and
28 stuff. But I cleaned it up.

1 Let me go to Plaintiff's side. What do you
2 think?

3 MR. WEINSTEIN: I need to ask the person that
4 actually knows --

5 THE COURT: That's okay. The person who is the
6 brains of the evidence.

7 MR. WEINSTEIN: The person who certainly knows
8 electronic evidence and has the brains.

9 All right. So I don't believe we have any --

10 THE COURT: Counsel?

11 MR. AUSTIN: Did you say you wanted to keep it?

12 MR. WEINSTEIN: No. We don't -- I don't -- it
13 talks about accessing the Internet. I would say we
14 don't need to give it.

15 For example, there was no phone.

16 THE COURT: Right. So let me --

17 MR. WEINSTEIN: No video.

18 THE COURT: Well, I have no evidence
19 necessarily in mind. So if there's evidence to support
20 this, I'll give it. But if there's not, I'm inclined
21 not to. So let me --

22 I've heard from Plaintiffs. Let me hear from
23 the defense side. Is there any evidence to support the
24 giving of this instruction?

25 MR. AUSTIN: I don't -- I don't think so, your
26 Honor.

27 THE COURT: All right. Is there any objection
28 if the Court does not give 5021?

1 MR. WEINSTEIN: Not by Plaintiff.

2 MR. AUSTIN: No objection.

3 THE COURT: All right. So the Court will
4 delete this. Don't get motion sickness as I'm scrolling
5 this up.

6 Okay. The next instruction is 200.

7 Next instruction is 201. Now, given the
8 Court's ruling to dismiss Cross-complainant's claims for
9 malice, fraud, and oppression, which could become the
10 basis of a claim for punitive damages, and I don't think
11 there's any other issue that would lend itself to a
12 clear and convincing instruction, I'm going to go to
13 Plaintiff's side. Any objection if the Court does not
14 give this?

15 MR. WEINSTEIN: No objection.

16 THE COURT: Let me go to the defense side?

17 MR. AUSTIN: No objection.

18 THE COURT: All right. The Court will not give
19 201.

20 All right. Next is 202.

21 Next is 203.

22 Now, let me stop at 204. Who proposes that the
23 Court give this instruction?

24 MR. AUSTIN: I believe I would have proposed
25 it.

26 THE COURT: All right. So you need to tell me
27 what's the evidence that --

28 MR. AUSTIN: Well --

1 THE COURT: -- Mr. Geraci or somebody on his
2 team willfully suppressed evidence?

3 MR. AUSTIN: I think it goes in part to us --
4 the unavailability of a witness in the form of Corina
5 Young. But since that was never brought up, I don't --

6 THE COURT: I'm not so sure this instruction
7 contemplates the -- one party making a witness
8 unavailable. I've not heard that argument.

9 Anything else, Counsel, that I'm missing or
10 that you'd like to bring to the Court's attention?

11 Again, let me emphasize, if there's some
12 evidence to support the giving of a CACI instruction, I
13 give it. If there's no evidence, I'm not inclined to do
14 so.

15 MR. AUSTIN: I don't have any evidence on that.

16 THE COURT: All right. Let me go to
17 Plaintiff's side. Your comments?

18 MR. WEINSTEIN: I don't believe it's
19 appropriate, and I have no objection to it being --

20 THE COURT: Okay. So the Court will not give
21 204.

22 Next, just to make sure. There we go. Next is
23 205.

24 Next is 206. Now, let's stop. Let me go to
25 Plaintiff's side. Did the Court give a limiting
26 instruction?

27 MR. WEINSTEIN: I do not believe so.

28 MR. TOOTHACRE: I do not believe so.

1 THE COURT: Let me go to the defense side. I
2 don't recall having given -- or for that matter being
3 asked to give a limiting instruction.

4 MR. AUSTIN: No, I don't recall that either,
5 your Honor.

6 THE COURT: So does anybody object if I delete
7 206?

8 MR. WEINSTEIN: Not Plaintiff.

9 MR. AUSTIN: No, your Honor.

10 THE COURT: All right. So the Court will not
11 give 206.

12 Next, it's 208.

13 Next is 209. Now, remind me did anybody read
14 an answer to a interrogatory?

15 MR. WEINSTEIN: No, your Honor.

16 MR. AUSTIN: No, your Honor.

17 THE COURT: All right. So the Court will not
18 give 209.

19 Scrolling down to 210, request for admissions.
20 I don't recall that anybody read an answer to a request
21 for admissions.

22 MR. WEINSTEIN: That's correct.

23 MR. AUSTIN: No, your Honor.

24 THE COURT: All right. So the Court, then,
25 will not give 210.

26 Just give me a moment to scroll up here a
27 little bit.

28 All right. Next is 212. I'm going to start

1 slowing things down a bit. You don't have to comment
2 unless there's an objection. I presume that this should
3 be given.

4 Next is 215. I did hear one or more witnesses
5 exercise their right to assert a privilege in the
6 presence of the jury. So the Court would be inclined to
7 give 215.

8 MR. WEINSTEIN: Your Honor, may I comment on
9 that?

10 THE COURT: Absolutely.

11 MR. WEINSTEIN: I believe that the only person
12 who did that was a nonparty, Gina Austin.

13 THE COURT: Okay.

14 MR. WEINSTEIN: So it may need to be modified.

15 THE COURT: What would you suggest?

16 MR. WEINSTEIN: A witness has an absolute
17 right.

18 THE COURT: Let me go to --

19 MR. WEINSTEIN: Or should we just make it
20 specific to Gina Austin since she -- she's the only one
21 that did it.

22 THE COURT: You know, I like the proposal of a
23 witness has an absolute right not to disclose -- and we
24 can even say she instead of they.

25 MR. TOOTHACRE: It's kind of the reverse. An
26 attorney cannot disclose what she was told.

27 THE COURT: Now, this was Ms. Austin who
28 asserted a privilege involving another client other than

1 Mr. Geraci?

2 MR. TOOTHACRE: Yes.

3 MR. WEINSTEIN: Yes.

4 MR. AUSTIN: Was that --

5 THE COURT: You know, I'm not disagreeing with
6 the application of Ms. Austin. But what we're telling
7 them, meaning the jury, is regardless of who exercises
8 it, you can't hold it against them. So I'm not sure,
9 given the purpose of the instruction, how this could
10 harm anybody, whether it be Mr. Geraci or Mr. Cotton.

11 So are you --

12 MR. WEINSTEIN: I have no problem saying a
13 witness has an absolute right. The jury -- I'm not sure
14 it's even going to come up, but the jury will not be
15 bias.

16 THE COURT: So you want to change it to a
17 witness instead of a party?

18 MR. WEINSTEIN: Right.

19 THE COURT: Any objection?

20 MR. AUSTIN: No objection.

21 THE COURT: All right. So let me just take a
22 moment here.

23 Okay. Counsel, I made a couple changes. Why
24 don't you take a look at it on the screen and let me
25 know what your thoughts are.

26 MR. WEINSTEIN: No objection.

27 MR. AUSTIN: No objection.

28 THE COURT: All right. So the Court, then,

1 will give 215 as modified.

2 And what we're going to do, as soon as we're
3 done here, my clerk will email the entire set to you.
4 So you'll have them probably before you get home.

5 MR. TOOTHACRE: Your Honor, on the first line,
6 you indicate their attorneys, and on the bottom line --
7 the second line, his or her attorneys. I don't know if
8 you want to be consistent.

9 THE COURT: Okay. Let me see here. Ah. Okay.
10 Gotcha.

11 Is that it, Counsel?

12 MR. TOOTHACRE: That's it.

13 THE COURT: Okay. Any objection from either
14 side?

15 MR. AUSTIN: No, your Honor.

16 MR. WEINSTEIN: No, your Honor.

17 THE COURT: All right. Continuing on.

18 Now, here's where it gets a bit interesting.
19 Let me just -- does Plaintiff prefer that the Court not
20 give 219? Well, what are your thoughts?

21 MR. WEINSTEIN: I prefer it, but, you know, the
22 only persons I think that testified about -- that would
23 be considered expert opinions are probably Ms. Austin
24 and Mr. Schweitzer. Those are the two.

25 THE COURT: Maybe Mr. Bartell.

26 MR. WEINSTEIN: And maybe Mr. Bartell.

27 THE COURT: Very impressive witness, by the
28 way. There were a lot of impressive witnesses in this

1 case, by the way. Parties and witnesses. We'll let the
2 jury decide.

3 MR. WEINSTEIN: Even if -- even if they weren't
4 designated, I have no problem with the instruction
5 because I assume the defense is going to need it anyway.

6 CENTER: Okay. So let me go to the defense
7 side. What do you think?

8 MR. AUSTIN: We can leave it.

9 THE COURT: Leave it?

10 MR. AUSTIN: That's fine.

11 THE COURT: Okay. So the Court will give 219.
12 Did anybody ask anybody to express a
13 hypothetical -- well, yeah, an opinion based upon a
14 hypothetical? Let me go to the plaintiffs.

15 MR. TOOTHACRE: I suppose we did ask if it
16 weren't for the interference of Mr. Cotton, would the
17 CUP have gone through.

18 THE COURT: All right. So one or more people
19 probably did, based on an assumed set of facts. So the
20 Court will give 220.

21 Next is 223. The Court will give.

22 Okay. Now, 302. Who's proposing 302?

23 MR. WEINSTEIN: Well, it's certainly the
24 plaintiff, as I thought both parties were.

25 THE COURT: Okay.

26 MR. WEINSTEIN: And I think --

27 THE COURT: Well, let me go -- comments from
28 Plaintiff's side.

1 MR. WEINSTEIN: I think it should be given. I
2 thought we deleted 300 but kept 302 when we did the
3 preliminary instructions.

4 THE COURT: I deleted 300. There was so much
5 argumentative information in there that it was hard for
6 me to make sense of. So I deleted it. I don't usually
7 give an introductory instruction, in any event.

8 So now, you're in favor of giving it. Are
9 there any proposed modifications to 302, Counsel?

10 MR. WEINSTEIN: No, your Honor.

11 THE COURT: Let me go to the defense side.

12 MR. AUSTIN: No, your Honor.

13 THE COURT: I'm sorry?

14 MR. AUSTIN: No, your Honor.

15 THE COURT: So the Court will give 302 as is.

16 MR. WEINSTEIN: May I raise an issue, your
17 Honor?

18 THE COURT: Sure.

19 MR. WEINSTEIN: It's not really to this
20 instruction specifically, but just to keep in mind as we
21 go through them, you know, I always read these in a way
22 to try to understand how a jury might understand or be
23 confused by them. And so, for example, the CACI
24 instruction that -- we're on 303 -- is basically
25 reciprocal instructions, but both based on CACI 303.

26 But there's nothing that -- in these
27 instructions that tells a -- the jury whether they
28 should be thinking about the contract that was -- that

1 Plaintiff contends was entered into versus the contract
2 that the defendant says was entered into. So you can
3 get to the jury forms -- or the verdict forms, and
4 you're just asked if X entered into a contract with Y.
5 And when they're deciding our claim, they might be --
6 you know -- or their claim, they could be thinking of
7 either.

8 THE COURT: All right.

9 MR. WEINSTEIN: That's my concern.

10 THE COURT: So are we on to 303 now?

11 MR. WEINSTEIN: Yes.

12 THE COURT: So let's go to 303, which the Court
13 will give. The oath question is -- so let's go -- and,
14 again, I just took them in the order in which Plaintiff
15 is presenting the contract claim, Cross-complainant is
16 also presenting a contract claim.

17 So looking at your side's contract claim and
18 the reference to contract in Element No. 1, are you
19 suggesting we describe that a little bit more clearly?

20 MR. WEINSTEIN: Actually, I'm brainstorming, to
21 be honest with you. I -- the alternative would be to
22 just make sure that the lawyers argue it. The lawyers
23 could argue it to the jury and make the distinction.

24 THE COURT: You're arguing that there was a
25 written contract entered into. Correct?

26 MR. WEINSTEIN: Right.

27 THE COURT: And does it start with
28 November 2016 agreement?

1 MR. WEINSTEIN: It is the November 2nd, 2016.

2 THE COURT: All right. So there's nothing --
3 let me just suggest. We could specify -- and if we do
4 so with Plaintiff, we're going to do so with the
5 defendant -- or Cross-complainant. Element No. 1 could
6 read Geraci and Cotton entered into the November 2, 2016
7 written contract. And let me just throw it out there.
8 It's easy to do this one. Here. I'll just put it up
9 there. All right. Okay. So No. 1 will -- could read
10 Geraci and Cotton entered into the November 2, 2016
11 written contract.

12 Now, again, I want to emphasize if we put more
13 information in for Geraci's contract, we're also going
14 to put in more -- more description for Cotton's
15 contract. So --

16 MR. TOOTHACRE: I think that's a good way to do
17 it, your Honor.

18 THE COURT: Okay.

19 MR. TOOTHACRE: That's my two cents.

20 MR. AUSTIN: I think it actually kind of -- I
21 almost think it would make things more confusing.

22 THE COURT: How is it more confusing? I mean,
23 in just looking at Plaintiff's contract theory, he lives
24 and dies on the November 2, 2016 written contract. The
25 jury can't possibly be confused that that's the
26 foundation of his theory.

27 MR. AUSTIN: Can we add the language fully --

28 THE COURT: No, I'm not going to make it

1 argumentative. You can argue that.

2 MR. WEINSTEIN: And there's an instruction on
3 that as well.

4 MR. AUSTIN: Yeah, I guess 302 does explain the
5 contract. You know, the more I -- and this is why we're
6 having this conversation. I think it's a reasonable
7 proposal. I'm going to leave it as is.

8 Now, let me go to Plaintiff. As to the balance
9 of the elements, any other proposed modifications?

10 MR. WEINSTEIN: Not in -- I mean, that's
11 straight out of the CACI.

12 THE COURT: Okay. Let me go to the defense
13 side. As to Elements 2 through 6, Mr. Geraci's contract
14 claim, any other proposed modifications, Counsel?

15 Did you find something?

16 MR. WEINSTEIN: Yeah. I want to flip to the
17 special verdict form.

18 THE COURT: We'll get to that --

19 MR. WEINSTEIN: Well, I think it may affect
20 the --

21 THE COURT: Oh.

22 MR. WEINSTEIN: Just give me one second.

23 THE COURT: Because we would make a similar
24 modification --

25 MR. WEINSTEIN: Right.

26 THE COURT: -- on the verdict form.

27 MR. AUSTIN: On 2 through 6, I can't think of
28 any other.

1 THE COURT: All right. Let me give counsel
2 a --

3 MR. WEINSTEIN: No, I think it's fine. I was
4 concerned about the "excused" portion which is in the
5 element before. And I think it carries over. So I
6 think it's fine.

7 THE COURT: All right. So as we currently have
8 reflected, Element No. 1, you're good with it?

9 MR. WEINSTEIN: Yes, your Honor.

10 THE COURT: All right. So let me go to
11 Cross-complainant, Cotton's breach of contract claim.
12 Now, let me go to defense counsel first.

13 Your contract is an oral contract to enter into
14 a joint venture agreement -- or to enter into a joint
15 venture. Is that what your theory is?

16 MR. AUSTIN: Actually, I think that would be
17 even a separate jury instruction. I need to find -- I
18 need to find the joint venture one. I had it written
19 down, which one that was, but I don't --

20 THE COURT: Okay. So let me -- subject to
21 argument. But let me just put this down. Okay. Now,
22 I'm going to go to Plaintiff's side in just a moment.
23 But let me stay with the defense side.

24 I've modified the first element to now read
25 Cotton and Geraci entered into an oral contract to form
26 a joint venture.

27 Now, are you satisfied with that?

28 MR. AUSTIN: Yes, your Honor.

1 THE COURT: All right. Let me go to the
2 defense side. Your comments?

3 MR. WEINSTEIN: Well, initially the
4 introductory language needs to be carried over from the
5 top instruction of that instruction to recover from --
6 or recover damages from.

7 THE COURT: Oh. Cross-Defendant. I'm sorry.
8 The introductory language?

9 MR. WEINSTEIN: So the first sentence should
10 read to recover damages from Geraci for breach of
11 contract. Cotton must prove all the following. That's
12 not included in the --

13 THE COURT: Oh. I'm sorry. Let me do that
14 right now.

15 MR. WEINSTEIN: The other generic comment I
16 have -- and it may come up later -- is sometimes --

17 THE COURT: Let me just finalize this.

18 MR. WEINSTEIN: Sure.

19 THE COURT: That was a good comment. Let me
20 see here.

21 Okay. Next.

22 MR. WEINSTEIN: Yeah, so the language "to form"
23 sounds like -- more like an agreement to agree, which I
24 think is a problem.

25 THE COURT: What would you -- that crossed my
26 mind too. So what -- I'm not so sure that you're
27 challenged, by the way, Counsel. But be that as it may,
28 how, if at all, would you suggest the Court change that

1 language?

2 MR. WEINSTEIN: It could just be an oral
3 contract for a joint venture.

4 THE COURT: I'm not so sure I'm hearing a
5 significant difference there. I'm not trying to quarrel
6 with you. But initially I thought oral contract to
7 enter into a joint venture. But I'm not so sure that's
8 any different than to form a joint venture. Let me go
9 to the defense side.

10 MR. COTTON: How about that included?

11 THE COURT: You've got to talk to your lawyer.

12 MR. AUSTIN: I like the way you wrote it, to
13 form a joint venture.

14 THE COURT: Let me go back one more time to
15 Plaintiff's counsel.

16 MR. WEINSTEIN: I still prefer the word "for."

17 THE COURT: I'm going to overrule that
18 objection and leave it as is. Cotton and Geraci entered
19 into an oral contract to form a joint venture.

20 Okay. Anything else on Elements 2 through 6 of
21 Cotton's contract claim?

22 MR. WEINSTEIN: Not from Plaintiff.

23 THE COURT: What about the defense side?

24 MR. AUSTIN: No changes.

25 THE COURT: All right. So now, let's go on to
26 304. Plaintiff's side?

27 MR. WEINSTEIN: No objection. That's the --

28 THE COURT: Defense side?

1 MR. AUSTIN: No objection.

2 THE COURT: Next is 305.

3 MR. WEINSTEIN: May I ask -- we'll go back on
4 304. I apologize.

5 THE COURT: Let me go back here. Okay. Okay.

6 MR. WEINSTEIN: Is there a contention that by
7 the -- by the defendant or Cross-complainant that the
8 contract that they are seeking to -- that they allege is
9 partly oral and partly written --

10 THE COURT: Let me go to Defense counsel.

11 MR. AUSTIN: In a way, yeah, it is part --
12 partly written when you get the drafts back from Gina
13 Austin, like those were some of the terms being reduced
14 to writing.

15 THE COURT: All right. There's enough
16 ambiguity in my mind that we're going to leave it as is.

17 MR. WEINSTEIN: Fair enough.

18 THE COURT: Let's move on to 305. Comments?
19 Plaintiff's counsel, comments?

20 MR. WEINSTEIN: Just give me a moment.

21 THE COURT: Defense counsel, any comments?

22 MR. AUSTIN: No. I like it.

23 THE COURT: Now, some of these -- well, all of
24 them, one or both of you proposed. Some of them -- and
25 this may be an example -- I did not go back and
26 cross-reference with CACI to make sure every single word
27 corresponded with CACI. It looks to me like it does.

28 So if one of you decided to modify some

1 language, I may not have caught it.

2 MR. TOOTHACRE: Is anybody alleging an
3 implied-in-fact contract? I don't remember that being a
4 point.

5 THE COURT: Well --

6 MR. AUSTIN: I feel it seems appropriate
7 because especially when it talks about looking at the
8 conduct of the parties.

9 THE COURT: I'm of the view that it probably is
10 appropriate. The only question is whether some of the
11 language should change. And if it's accurately taken
12 from CACI, I'd be inclined to give it as is. If
13 somebody modified something that I'm not aware of, then
14 now is the time to bring it to my attention.

15 MR. WEINSTEIN: So my issue is with the second
16 paragraph in particular. I have not heard any testimony
17 that the parties -- that the agreement was formed by the
18 parties not speaking or writing.

19 THE COURT: All right. So let me go to the
20 defense side. What conduct is there that either party's
21 contract was created by conduct of the parties
22 without -- without spoken or written words? This may be
23 one of those cases where that part of the instruction
24 does not apply.

25 MR. AUSTIN: Yeah. We can -- I'd be okay with
26 striking that line.

27 MR. WEINSTEIN: It -- okay.

28 THE COURT: All right. So you two agree that I

1 should strike the second paragraph of this instruction.

2 MR. WEINSTEIN: It -- yes, your Honor, we
3 believe that should be stricken.

4 THE COURT: All right. Defense counsel?

5 MR. AUSTIN: That's fine, your Honor.

6 MR. WEINSTEIN: Then the --

7 THE COURT: There you go. It's gone.

8 MR. WEINSTEIN: And I don't -- I mean, I guess
9 I question the third and fourth paragraphs as well. I
10 just felt those are more ambiguous.

11 THE COURT: All right. Thank you. Let's go
12 up -- so the Court, then, will give 305 as modified.

13 Next is 306.

14 MR. AUSTIN: Did you just take out the second
15 or --

16 THE COURT: Just the second. Here. Let me go
17 back. Take a look at it. Other than deleting just the
18 second paragraph of 305, everything else remains as is.

19 MR. AUSTIN: Okay. Thank you, your Honor.

20 THE COURT: 306. Who is proposing 306?

21 MR. WEINSTEIN: The defense did.

22 THE COURT: Well, there is a CACI instruction
23 to support this.

24 MR. WEINSTEIN: May I argue. I object, and I
25 have an argument that the CACI instruction isn't
26 supported.

27 THE COURT: Okay.

28 MR. WEINSTEIN: Here's the reason. First of

1 all, the way it's been drafted, you need to change in
2 the second -- in the -- it says "Defendant Darryl Cotton
3 contends that the parties did not enter into a contract
4 because they have not signed a final written agreement."
5 To prove that a contract was created, it should say
6 "Plaintiff must prove." That's the -- that's the way
7 the --

8 THE COURT: Ah. So --

9 MR. WEINSTEIN: And when you put it in those
10 terms, okay --

11 THE COURT: I agree. That's what CACI does
12 say.

13 MR. WEINSTEIN: And --

14 THE COURT: I don't know if I messed that up
15 or --

16 MR. WEINSTEIN: And we're not claiming a
17 contract was formed by the failure to sign a final
18 written agreement. So I don't see how that contract
19 applies to our -- to us at all.

20 The second thing is that the directions for use
21 says "Give this instruction, if the parties agree to
22 contract terms with the intention of reducing the
23 agreement to a writing -- a written and signed contract
24 but an alleged breach occurred before the written
25 contract was completed and signed."

26 That, I understand. But I don't -- we're not
27 making that claim.

28 So the question is, does --

1 THE COURT: But Defendant may be making that
2 claim.

3 MR. WEINSTEIN: So if you put -- if you do it
4 the other way, okay, it would say Plaintiff contends
5 that the parties have not entered into a contract
6 because they have not signed a final written agreement.
7 To prove that a contract was created, Defendant must
8 prove. It doesn't work in either direction, in my
9 opinion.

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

12 So let me go to Defense side. Are you
13 proposing this instruction?

14 MR. WEINSTEIN: May I make a further comment,
15 your Honor.

16 THE COURT: It may not be necessary.

17 MR. WEINSTEIN: I just want to bring it to the
18 Court's attention because this is a complicated one.
19 The -- first of all, my argument stands. But the
20 problem is that it depends which contract you're talking
21 about.

22 So we do contend that the parties didn't enter
23 into a contract, the contract that they alleged, because
24 no final written agreement was signed as it relates to
25 their contract. We're claiming there was no agreement
26 because there was no final agreement signed because the
27 mutual intention of the parties, according to their
28 claim, was to -- was to -- the contract wouldn't be

1 binding until it was signed.

2 And so as it relates to our contract, we're not
3 making any such contention at all. That's the reason
4 why I think it's confusing.

5 THE COURT: All right. Let me just go back to
6 Defense side. Comments?

7 MR. AUSTIN: Yeah. I think even with certain
8 edits to specify which contract we don't believe in, I
9 think it would just kind of make this one probably too
10 convoluted. So --

11 THE COURT: Are you proposing that the Court
12 give 306, or not?

13 MR. AUSTIN: Only Parts 1 and 2 would make
14 sense. The very first section would get too confusing.
15 I -- I would say that we don't use it.

16 THE COURT: You're withdrawing it?

17 MR. AUSTIN: Yes.

18 THE COURT: All right. Let me hear from the
19 plaintiff's side. You object if 306 is withdrawn?

20 MR. WEINSTEIN: I actually -- now that I've
21 read it again carefully, I -- I think it should be given
22 but in the opposite direction, I think it should say
23 Plaintiff -- or Cross-Defendant contends that the
24 parties did not enter into an oral joint venture because
25 they have not signed a final written agreement. And to
26 prove that a contract -- oral joint venture was created,
27 Cross-complainant must prove both of the following. I
28 think it actually works in connection with our defense

1 of their claim.

2 THE COURT: All right. Well, there is evidence
3 to support that. So I'm inclined to modify this to
4 reflect Cross-Defendant Larry Geraci contends and then
5 Cross-complainant Darryl Cotton must prove. I'm not
6 inclined to change any of the other words.

7 Is that what you're proposing, Counsel?

8 MR. WEINSTEIN: Yeah, I would -- I would
9 propose that. Although, I think it makes sense to tie
10 it into the --

11 THE COURT: You can do that in argument.

12 MR. WEINSTEIN: Okay.

13 THE COURT: I mean, they can be strung together
14 or reconciled through argument.

15 MR. WEINSTEIN: Okay.

16 THE COURT: So let me go back to
17 Cross-complainant's counsel.

18 MR. AUSTIN: So --

19 THE COURT: Do you want me to modify it so you
20 can take a look at it?

21 MR. AUSTIN: Yes.

22 THE COURT: All right. Here we go.

23 MR. AUSTIN: Thanks, your Honor.

24 THE COURT: All right. Objections, if any,
25 from Cross-complainant's counsel?

26 MR. AUSTIN: No objection.

27 THE COURT: All right. The Court will give 306
28 as modified. Continuing on.

1 307. Objections, if any?

2 Continuing on.

3 310, objections, if any?

4 MR. TOOTHACRE: Did we have objections on 307?

5 MR. WEINSTEIN: I apologize, your Honor. I'm
6 moving slower than you are. I should open my -- I'm
7 focused.

8 THE COURT: So are we back at 307?

9 MR. WEINSTEIN: We are. Thank you.

10 THE COURT: All right.

11 MR. TOOTHACRE: What contract is he talking
12 about?

13 MR. WEINSTEIN: I'm not sure what --

14 THE COURT: So you object?

15 MR. WEINSTEIN: I object because -- I
16 apologize.

17 THE COURT: Okay. Let me go to Defense side.
18 Are you proposing to give this instruction?

19 MR. AUSTIN: If it were to say -- the second
20 sentence, "Defendant Darryl Cotton contends that a
21 contract was not created" -- if it said by the
22 November 2nd document. I --

23 THE COURT: Well, much like my earlier comments
24 to counsel, all of these instructions can be reconciled.
25 You can do that in argument.

26 Are you proposing 307 either as is or as
27 modified?

28 MR. AUSTIN: Yeah, I think it's okay as it is.

1 THE COURT: I'm sorry?

2 MR. AUSTIN: It's okay as it is.

3 THE COURT: All right. So let me go back to
4 Plaintiff's objection.

5 Now, what's the basis for your objection?

6 MR. WEINSTEIN: The basis is I don't believe,
7 as it relates to our written contract, that Defense has
8 contended there was never an offer. I know they contend
9 there was never an agreement at all. But I don't -- I
10 don't think the theory of their case is that it was
11 never --

12 THE COURT: All right.

13 MR. WEINSTEIN: -- an offer.

14 THE COURT: Thank you, Counsel.

15 Let me go back to the defense side.

16 Counsel, I have to tell you I'm not accustomed
17 to spending this much time on some of these
18 instructions.

19 So I think Plaintiff's objection is well-taken.
20 There's no question there was an offer and an
21 acceptance. Whether the entirety of the agreement was
22 memorialized is an entirely different issue.

23 So I'm not so sure, as I've heard you argue,
24 307 is applicable.

25 So one more time, does Defense propose 307 or
26 not?

27 MR. AUSTIN: No, your Honor.

28 THE COURT: All right. Any objection from

1 Plaintiff's side if I delete it?

2 MR. WEINSTEIN: No, your Honor.

3 THE COURT: All right. So 307 will be deleted.
4 All right. Now, let's go to 310. Who proposed this
5 instruction?

6 MR. WEINSTEIN: The defense.

7 THE COURT: All right. So let me go to the
8 defense side.

9 MR. AUSTIN: No changes.

10 THE COURT: Well, so you're -- how is this
11 applicable?

12 MR. AUSTIN: Well, I think based off the course
13 of communications, Mr. Geraci never denied any of the
14 things that Darryl was asking for for several months.
15 So if he were to say the oral contract didn't exist, he
16 could have -- he could have refuted it or said those
17 were not the terms. And there's no mention of that
18 until, like, two days before the lawsuit was filed. So
19 he never disputes anything was asked for.

20 THE COURT: Well, now, you're referring to your
21 client's oral contract?

22 MR. AUSTIN: Yes.

23 THE COURT: All right. That's not what this
24 says. And, again, I don't think I edited this
25 instruction so much that I flipped the parties. I mean,
26 this is not Plaintiff's theory. So Plaintiff objects.
27 And, as worded, I would sustain the objection.

28 MR. AUSTIN: Yeah, I'll withdraw it.

1 THE COURT: You're -- well, okay. So 310 will
2 not be given. Is that what you're suggesting? Is that
3 what you're saying?

4 MR. AUSTIN: Yes, your Honor.

5 THE COURT: Plaintiff's side agrees?

6 MR. WEINSTEIN: Yes. No objection.

7 THE COURT: All right. 310 will not be given.
8 Okay. The next one is 312. Let me go to the
9 defense side. This looks to be something that you
10 proposed. Are you still proposing this?

11 MR. AUSTIN: Yes.

12 THE COURT: All right. Let me go to
13 Plaintiff's side.

14 MR. WEINSTEIN: I didn't have that marked down.
15 So I need to look at it in the full --

16 THE COURT: You bet.

17 MR. WEINSTEIN: -- full version.

18 I mean, the essence of the claim is that --
19 boy.

20 MR. AUSTIN: Oh. I -- I think I --

21 MR. WEINSTEIN: I don't -- I guess I don't
22 believe it's appropriate because I don't think we're
23 arguing substantial performance.

24 THE COURT: Well, I don't know if you are, but
25 maybe the other side is. So let me go back to Defense
26 side.

27 Are you proposing this instruction, Counsel?

28 MR. AUSTIN: Yeah. But I think Plaintiff and

1 Defendant might be switched here. And on Numbers 1 and
2 2.

3 Like, on 1 and 2, wouldn't it be Defendant
4 Cotton made a good faith effort to comply with the
5 contract?

6 THE COURT: The language comes verbatim from
7 312. So I'm not inclined to change the language that
8 appears in Elements 1 and 2.

9 MR. AUSTIN: Actually -- okay. Never mind.
10 That is correct.

11 THE COURT: So you're proposing it?

12 MR. AUSTIN: Yes.

13 THE COURT: All right. It is an accurate
14 statement of the law.

15 MR. WEINSTEIN: It is, but it still should be
16 given if substantial performance is an issue. And so
17 Defendant is not contending that we failed to
18 substantially perform. They're contending that we had a
19 completely different agreement and we didn't perform at
20 all. So I don't know why demonstrating -- why there's
21 an instruction demonstrating substantial performance,
22 because we're not going to say we performed what he says
23 we were supposed to perform. So it just seems
24 inapplicable.

25 THE COURT: Counsel, it may be, but I'm going
26 to err on the side of giving it. So the Court will
27 overrule the objection and give 312.

28 Now, let's go to 313. Who is proposing 313?

1 MR. WEINSTEIN: The defense again.

2 THE COURT: So, Counsel, let me go to Defense
3 side.

4 Are you still proposing the Court give 313?

5 MR. AUSTIN: Yes, your Honor.

6 THE COURT: Okay. What's the nature of the
7 modification?

8 MR. AUSTIN: Well, I could be wrong, but my
9 reading of this is if the jury actually found the
10 November 2nd document to be a contract, there -- there
11 was -- there was testimony about -- related to the other
12 terms that Mr. Cotton has alleged have been part of the
13 contract the whole time, like including the email from
14 Mr. Geraci about paying him \$5,000 a month for the first
15 six months while the outlet is running.

16 THE COURT: Let me hear from Plaintiff.

17 MR. WEINSTEIN: I don't think the testimony
18 supports it. Number one, the allegation has been that
19 as of November 2nd, all -- their claim is the agreement
20 contained all the terms and conditions in the two
21 working documents. There's been no testimony that
22 Mr. Cotton agreed that he entered into a contract on
23 November 2nd and then modified it. And the provisions
24 which result in a modification of a written contract,
25 most -- I think most, if not all of them -- so, for
26 example, one of the things is a contract in writing may
27 be modified by a contract in writing. That did not
28 happen even under the alternative theory.

1 The second thing is a contract in writing may
2 be modified by an oral agreement to the extent the oral
3 agreement is carried out by the parties. That did not
4 happen under the testimony.

5 A contract in writing may be modified by oral
6 agreement if the parties agree to give each other
7 something of value.

8 So what testimony has there been of some
9 subsequent oral agreement to modify the written
10 November 2nd agreement in which there's been testimony
11 of additional consideration that's been given.

12 And there's clearly, the last provision doesn't
13 apply because there was no consent in writing to modify
14 the whole contract.

15 THE COURT: Okay. The objection will be
16 overruled. The Court will give 313. I don't know how,
17 if at all, it might apply, but there could be a theory
18 that could be advanced. And it's not my purpose to
19 anticipate every argument. So one side has asked for
20 it. There's some evidence that it could be supported.
21 So I'm going to give it.

22 Let's go to 314.

23 All right. Now, for starters, this is
24 incomplete. Who proposed this?

25 MR. WEINSTEIN: We proposed it. We provided
26 what we thought was in dispute. We don't know what
27 they're contending is ambiguous. So I left that blank
28 for them to fill in. It could be deleted if they

1 don't -- I mean, I'm not sure they have a different
2 interpretation at this point. So if they -- if their
3 interpretation is the same, then we don't need the
4 instruction at all. But if they have a different
5 interpretation of what good faith earnest money means,
6 then it should go in there and then we would need the
7 instruction.

8 MR. AUSTIN: Well, we did also interpret
9 that 10,000-dollar payment as a nonrefundable deposit.

10 MR. WEINSTEIN: So then we don't need it, your
11 Honor.

12 THE COURT: The Court will not give 314, and
13 you will give counsel's argument.

14 Likewise, good faith earnest money definition.

15 MR. WEINSTEIN: Don't need it at this point
16 because we don't have 314.

17 THE COURT: Do you agree, Counsel?

18 MR. AUSTIN: I agree.

19 THE COURT: All right. Let me scroll down
20 here. Some of these instructions may also -- some of
21 the follow-up instructions may be moot as well. We're
22 getting there.

23 How about 315, does that need to be given?

24 MR. WEINSTEIN: I believe it should be given.
25 I think it's appropriate in all cases.

26 THE COURT: All right. Let me go to the
27 defense side.

28 MR. AUSTIN: I have no objection to that.

1 THE COURT: All right. The Court -- one
2 moment -- will give 315.
3 Next is 317. Plaintiff.
4 MR. WEINSTEIN: I believe it should be given.
5 THE COURT: Defense?
6 MR. AUSTIN: Yeah, no objection.
7 THE COURT: The Court will give 317.
8 Next is 318. Plaintiff?
9 MR. WEINSTEIN: I believe it should be given.
10 THE COURT: Defense?
11 MR. AUSTIN: No objection.
12 THE COURT: The Court will give 318.
13 Next is 319.
14 MR. WEINSTEIN: No objection.
15 MR. AUSTIN: No objection.
16 THE COURT: The Court will give 319.
17 320.
18 MR. WEINSTEIN: I object to 320 because I don't
19 believe that there's a -- there's a dispute as to what
20 the agreement was, but there's not a dispute over what
21 the words mean in the respectively alleged agreements.
22 THE COURT: Let me go to the defense side.
23 This interpretation seems to be applicable --
24 applicable, if at all, if one side or the other objects
25 to the meaning of one or more of the words contained
26 within an agreement. And I'm not so sure I hear that.
27 So let me go to the defense side.
28 MR. AUSTIN: I agree with your Honor. I don't

1 think --

2 THE COURT: So both of you agree the Court
3 should delete 320?

4 MR. WEINSTEIN: Yes, your Honor.

5 MR. AUSTIN: Yes.

6 THE COURT: Right? You agree to delete 320?

7 MR. AUSTIN: Yes, your Honor.

8 THE COURT: All right. So the Court will
9 delete 320.

10 Now, let's go to 322. Plaintiff?

11 MR. WEINSTEIN: I proposed it, and I think it
12 should be given.

13 THE COURT: By the way, was this intended to be
14 a medical marijuana dispensary, or a marijuana
15 dispensary?

16 MR. WEINSTEIN: So it -- if I'm -- it's
17 medical -- it was medical marijuana dispensary. They
18 changed the description to marijuana outlet. And I'll
19 be honest with you, I don't know when they gave a
20 definition of marijuana outlet.

21 He may know. But whether that expanded --
22 whether you can sell something besides medical
23 marijuana, I believe you can.

24 THE COURT: All right. So let me go to the
25 defense side.

26 Your comments to 322.

27 MR. AUSTIN: Yeah, now it is just a marijuana
28 outlet. It can be for recreational retail. Is the last

1 line too argumentative?

2 THE COURT: All right. Just give me a moment.

3 Well, this is Plaintiff's burden to show that
4 Defendant interfered with Plaintiff's efforts to satisfy
5 this condition. So in and of itself, I don't find it to
6 be argumentative. It does seem to reasonably identify
7 Plaintiff's burden to show that Mr. Cotton interfered
8 with the efforts to get the CUP.

9 So if the objection is argumentative, the Court
10 will overrule that.

11 MR. AUSTIN: I don't have a problem with it.
12 But on the very last line, on Plaintiff's efforts, you
13 have an extra space between the apostrophe.

14 THE COURT: One moment here.

15 MR. AUSTIN: Oh. And should we change it to
16 just a marijuana dispensary, or a marijuana outlet?

17 THE COURT: Okay. Let me go -- when all of
18 this litigation started to unfold in this department, it
19 was medical marijuana dispensary. I'm not so sure that
20 the medical part is necessary anymore. So I'm not so
21 sure -- and the jury heard a lot of evidence about
22 selling marijuana retail.

23 MR. WEINSTEIN: Right. No, I believe the word
24 "medical" should come out on both paragraphs.

25 THE COURT: All right. You both agree with
26 that, Counsel?

27 MR. AUSTIN: Yes, your Honor.

28 THE COURT: All right. So I'm going to delete

1 the reference to medical. So now it will just be a
2 marijuana dispensary. Otherwise, the Court is inclined
3 to leave it as is.

4 Any objections?

5 MR. TOOTHACRE: Medical in the first paragraph,
6 second line.

7 THE COURT: Thank you, Counsel.

8 MR. AUSTIN: No objection.

9 THE COURT: I think those are the only two
10 instances where I had to delete medical. All right. So
11 the Court will give 322 as modified.

12 Let's go on to 324. Who is proposing this?

13 MR. WEINSTEIN: Plaintiff proposed it because
14 of the -- essentially the termination and refusals to
15 perform that was given, that Mr. Cotton notified us
16 about on March 21st.

17 THE COURT: You see the subcontracted line
18 where it says he or she. I'm going to modify that to be
19 he only.

20 So let me go to defense side. Objections, if
21 any, to 324?

22 MR. AUSTIN: No objection.

23 THE COURT: All right. The Court will give
24 324, as modified, to delete the reference to she.

25 Next is 325. I took this verbatim from the
26 pre-instructions. So let me go to Plaintiff's side.
27 Any objections?

28 MR. WEINSTEIN: No.

1 THE COURT: Defense side?

2 MR. AUSTIN: No.

3 THE COURT: Okay. The Court will give 325.

4 I'm sorry?

5 MS. KULAS: We changed the contract because we
6 have a confusion which contract the party is alleging.

7 THE COURT: Okay.

8 MS. KULAS: The prior --

9 THE COURT: I got you.

10 Is that what you were referring to, Counsel?

11 MS. KULAS: Yes.

12 MR. TOOTHACRE: 2016, your Honor.

13 THE COURT: Yes. Yes, yes, yes.

14 So please take note of Element 1. What I've
15 done is change it to be consistent with CACI 303 on
16 No. 1, which -- so this element in 325 now reads "Geraci
17 and Cotton entered into the November 2, 2016 written
18 contract."

19 MR. WEINSTEIN: No objection, your Honor.

20 MR. TOOTHACRE: That's good.

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

22 Comments?

23 MR. AUSTIN: No objection.

24 THE COURT: All right. As modified, the Court
25 will give 325.

26 Now, let's go to 335. I think this also is one
27 of the pre-instructions. Let me go to the defense side
28 first.

1 Comments? Counsel? Mr. Austin, any comments?

2 MR. AUSTIN: No. I have no comments on this.

3 THE COURT: All right. Defense -- I mean,
4 Plaintiff side?

5 MR. WEINSTEIN: Yes. I don't believe that the
6 defendant has ever taken the position that he consented
7 at all, let alone that he consented -- the consent was
8 obtained by fraud. So I don't know that it's
9 applicable. He could -- he merely has to show he didn't
10 consent. So -- but I -- that's my only point on this
11 one.

12 THE COURT: Okay. Well, you can certainly
13 argue that. Given the evidence, it could be that 335
14 will be applicable. So I'll give 335 as is.

15 Next is Special Instruction No. 1, statute of
16 frauds. Is Plaintiff asking for this?

17 MR. WEINSTEIN: Yes, your Honor.

18 THE COURT: All right. And we did get this as
19 part of the pre-instructions.

20 Let me go to the defense side. Objections, if
21 any?

22 MR. AUSTIN: No, your Honor.

23 THE COURT: Okay. The Court will give No. 1.

24 No. 2 -- I'm sorry. We're going to modify
25 this. This will be become No. 2. Special Instruction
26 No. 2, integration of a written contract. Let me go to
27 Plaintiff's side.

28 Is this your instruction, by the way?

1 MR. WEINSTEIN: Give me one second.

2 THE COURT: I think this was part of the
3 pre-instructions.

4 MR. WEINSTEIN: It was. And I just want to
5 make sure. You know, there's a lot --

6 THE COURT: I don't think I changed any of the
7 wording, other than I just modified the number to be
8 from three to two.

9 MR. WEINSTEIN: No, I understand. Just give me
10 one second.

11 Yeah, we propose this be in.

12 THE COURT: Let me go to the defense side.

13 MR. AUSTIN: No objection.

14 THE COURT: All right. The Court will give
15 what we now call No. 2.

16 Continuing on, now, there was a proposed
17 special by I think it was the plaintiff's side. And it
18 was identified as special. What I did is I converted it
19 into what I understood to be the most applicable CACI
20 instruction, which is 3703. So this one, folks, I've
21 changed -- or I did change.

22 So let me go to Plaintiff's side. Comments?

23 MR. WEINSTEIN: No objection.

24 THE COURT: Defense side.

25 MR. AUSTIN: No objection.

26 THE COURT: All right. 3703 will be given.

27 Next is 350. Comments from Plaintiff? Other
28 than the names of the parties --

1 MR. WEINSTEIN: No.

2 THE COURT: -- it's as-is.

3 MR. WEINSTEIN: No objection.

4 THE COURT: Defense side?

5 MR. AUSTIN: No objection.

6 THE COURT: The Court will give 350.

7 MR. WEINSTEIN: Your Honor, I would note one
8 thing.

9 THE COURT: Sure.

10 MR. WEINSTEIN: And we'll get to it I think in
11 a moment. But originally, because CACI tells you to do
12 it, I put in that we were seeking reliance damages in
13 this instruction. And we also had a separate
14 instruction for reliance damages, which the Court has
15 not included.

16 THE COURT: Let's get to that.

17 MR. WEINSTEIN: Okay.

18 THE COURT: I'm sorry. We'll get to that,
19 because that sounds familiar. If I didn't do it,
20 there's -- there's something I saw that I replaced it
21 with or -- so we'll get there.

22 MR. WEINSTEIN: Okay.

23 THE COURT: So after 350, let's go to 351.
24 Is this Mr. Cotton's instruction?

25 MR. WEINSTEIN: Yes.

26 THE COURT: All right. Now, this is where the
27 rubber is going to start meeting the road. So what
28 special damages, if any, in contra, is there evidence to

1 support, as being sought by Mr. Cotton?

2 MR. AUSTIN: The -- the \$1.2 million over
3 a 10-year CUP --

4 THE COURT: The \$1.2 million in what?

5 MR. AUSTIN: So at the -- at the -- calculated
6 at the rate of, like, the \$10,000 a month times 12
7 months times 10 years. So special damages -- special
8 damages being what he would have had was guaranteed to
9 him.

10 THE COURT: I'm not so sure this instruction
11 contemplates that theory of damages. I think I can seek
12 that without this instruction. Whether you're going to
13 get it is something else.

14 MR. WEINSTEIN: I agree with your Honor.
15 That's not a special damages, which is an out-of-pocket
16 damage. There's no out-of-pocket damage.

17 THE COURT: Yeah. I'm not convinced. Counsel,
18 I think your theory that you just articulated is
19 contemplated within the contract itself. So there's
20 nothing about me deleting this that's going to void you
21 from seeking those damages.

22 So the Court will delete and not give 351.

23 Let me go up here. Okay. 352. Is this
24 Mr. Cotton's instruction?

25 MR. WEINSTEIN: Yes.

26 MR. AUSTIN: Yes.

27 THE COURT: All right. So what's the evidence
28 of lost profits?

1 MR. AUSTIN: The -- the presumption that the
2 CUP would be approved with the guaranteed monthly
3 payment.

4 THE COURT: Well, okay. But I think the
5 testimony from Mr. Cotton was that he was going to get
6 a 10 percent equity but in the amount of \$10,000 --

7 MR. AUSTIN: Or up to 10 percent of the
8 profits.

9 THE COURT: Whichever was --

10 MR. AUSTIN: Whichever was greater. And,
11 theoretically -- that's definitely too speculative to
12 say if sold, but he would have a 10 percent interest in
13 the sale price.

14 THE COURT: From the Court's perspective,
15 there's not evidence to support a loss of profits claim
16 in this case, whether it be Mr. Geraci or Mr. Cotton.
17 Nobody gave the jury enough money -- enough evidence
18 that they could evaluate, at least intelligently, what
19 the range of lost profits would include.

20 So I'm not going to give 352.

21 Gentlemen, I want to emphasize that does not
22 stop Plaintiff from articulating the theory you just
23 articulated. Let me go back up here.

24 MR. WEINSTEIN: Your Honor, when you make that
25 comment -- this was going to be one of the issues I was
26 going to raise. When you say that's not going to
27 prevent us from articulating that theory, are you
28 referring to the theory that he was to get 10,000 a

1 month guaranteed, not the theory of I was to
2 get 10 percent of net profits, which is --

3 THE COURT: Right.

4 MR. WEINSTEIN: So what I'm concerned about is
5 I believe -- and you mentioned this when we got together
6 this afternoon -- I believe that he has to limit --
7 counsel has to limit his argument on damages to
8 the 10,000 a month guarantee.

9 THE COURT: Now, how he pitches that -- I agree
10 with you, Counsel. But, for example, if you were to
11 suggest to the jury that 10 percent of a large number,
12 whatever that large number is, means that he could have
13 made more than \$10,000 a month, there's no evidence of
14 what that large money -- large number is so that in
15 effect, Mr. Cotton at most will be limited to
16 recovering \$10,000 per month for some period of time.
17 And I'm not even clear what that is. But I agree with
18 counsel nobody is going to be allowed to speculate in
19 the absence of evidence -- and there's no evidence -- of
20 what that large number might be.

21 So, Counsel, I'm dialed into the issue. So
22 let's go to 356.

23 Who proposed -- well, is this Plaintiff's
24 instruction?

25 MR. WEINSTEIN: It is not.

26 THE COURT: Okay.

27 MR. WEINSTEIN: We made a conscious decision to
28 seek reliance damages, and so we didn't give 356 and

1 357.

2 THE COURT: So let me -- is this -- is this
3 Defendant's instruction?

4 MR. AUSTIN: I don't think so.

5 THE COURT: So am I correct that nobody is
6 proposing 356 at this point?

7 MR. WEINSTEIN: Yes, your Honor.

8 MR. AUSTIN: Correct, your Honor.

9 THE COURT: All right. So the Court will
10 delete 356 and not give it.

11 Let's go to 357. And I've already heard
12 Plaintiff say that you're not proposing 357. So let me
13 go to Defense side.

14 Are you proposing 357?

15 MR. AUSTIN: I think that one seems
16 appropriate.

17 THE COURT: What is that?

18 MR. AUSTIN: I feel that seems appropriate.

19 THE COURT: Okay. Seller's damages for breach
20 of contract to purchase property. All right.

21 MR. WEINSTEIN: So do you want my comments?

22 THE COURT: Well, I don't know if it's
23 necessary.

24 Let me just stay with Defense side. I've
25 already heard from Plaintiff that they aren't asking for
26 it. To recover damages for the breach of a contract to
27 buy real property, Cross-complainant, which happens to
28 have been the seller, right?

1 MR. AUSTIN: Yeah.

2 THE COURT: So your theory is not in real
3 property, as I understand it. Your theory is in joint
4 venture.

5 MR. AUSTIN: I think we can get rid of this
6 one, your Honor.

7 THE COURT: All right. So the Court will
8 delete and not give 357.

9 Any objection?

10 MR. WEINSTEIN: Not from Plaintiff.

11 MR. AUSTIN: No objection.

12 THE COURT: All right. We're going to have to
13 take a break in just a few moments here.

14 Okay. Now, who proposed 359?

15 MR. WEINSTEIN: I believe the defense did, but
16 there's no --

17 THE COURT: Plaintiff is not asking for future
18 damages. I get that.

19 MR. WEINSTEIN: We are --

20 THE COURT: You are?

21 MR. WEINSTEIN: We are asking for reliance
22 damages.

23 THE COURT: Right.

24 MR. WEINSTEIN: Which are expenditures that
25 already occurred.

26 THE COURT: Right.

27 MR. WEINSTEIN: Okay. I -- I did not propose
28 it, to be quite honest, but if they're -- they're

1 alleging a stream of future damages that would have to
2 be discounted to present value. There's no witness
3 that's testified or could testify to that. But that
4 would be a correct statement of the law.

5 THE COURT: So this contemplates
6 Cross-complainant Darryl Cotton's claim for future
7 damages?

8 MR. WEINSTEIN: Right.

9 THE COURT: All right. Which if economic in
10 nature, which they would be, Plaintiff -- well, I guess
11 Cross-Defendant is entitled to a present cash value
12 reduction. Oh, boy. Now, there's a lot of issues that
13 arise from this instruction, but I think you're entitled
14 to it.

15 So let me go to the defense side. Let me ask
16 this before we take our afternoon break.

17 For what period of time do you expect to be
18 asking for an award of future damages?

19 MR. AUSTIN: Ten years.

20 THE COURT: Ten years from when?

21 MR. AUSTIN: Well, theoretically, the CUP
22 probably --

23 THE COURT: Counsel, not theoretically. The
24 evidence is done. We're talking about instructions.
25 We're literally hours away from you giving closing
26 arguments. And I'm trying to deal with these
27 instructions. And I'm trying to do so neutrally. I
28 really am.

1 I'm going to give the instruction if requested
2 by Cross-Defendant because I think they're entitled to
3 it, depending on just how far into the future you think
4 you're entitled to ask the jury to award future damages.

5 So let's start with from when. At what point
6 do you -- do you think, based upon the evidence, that
7 your side should begin getting \$10,000 a month?

8 MR. WEINSTEIN: Present time.

9 THE COURT: From today's date? Okay. Why?
10 Why today as opposed to some other time frame? Based
11 upon the evidence -- we're in trial. I mean, that has
12 no connection to the reasonableness of when that
13 application would have been issued and the dispensary
14 opened and begin operating business and making a profit.

15 MR. AUSTIN: Well, Mr. Cotton believes because
16 the competing CUP was just approved, and his -- the CUP
17 on 6176 property rightly should have been awarded that.

18 THE COURT: What's the evidence that the
19 competing dispensary's application was just approved?

20 MR. AUSTIN: I believe it passed all the
21 committee hearings and --

22 THE COURT: Well, I'm not questioning that it
23 may have happened. But what's the evidence that's been
24 presented to the jury. Did you present evidence -- did
25 somebody present evidence of that?

26 MR. AUSTIN: I believe so. Like, when he
27 appealed on the 6176, the CUP was denied.

28 THE COURT: This is Mr. Magagna?

1 MR. AUSTIN: Yes.

2 MR. WEINSTEIN: So my question is, what -- he's
3 not suing on the Magagna CUP. What's the evidence that
4 the 6176 CUP would have been approved on a particular
5 date?

6 THE COURT: Well, partially what Mr. Bartell
7 said.

8 MR. WEINSTEIN: I get that. But when?

9 THE COURT: We're going to take our
10 afternoon -- folks, at this rate, you're definitely
11 coming back tomorrow morning. But these are important.
12 More err is committed on jury instructions than any
13 other issue. So we're going to take our time and try to
14 do it right.

15 But let me just lean toward the
16 Cross-complainant's side. Please, reflect on what your
17 damages theory is and be prepared to -- again, based
18 upon the evidence, to let us know what it is. We've
19 still got a lot of instructions to get our way through.

20 So we're going to take our -- we're going to
21 stop at 3:59, not make any final decisions. And we'll
22 take our break now for 15 minutes.

23 (Recess from 2:58 p.m. to 3:12 p.m.)

24 THE COURT: All right. Counsel, as I was
25 reflecting over the last several minutes on the evidence
26 that's been presented or maybe more so the lack of
27 evidence, I'm not of the view that the -- I guess the
28 cross-defendants should be subjected to a claim for

1 future economic damages.

2 I've heard you say that the CUP application's
3 duration is 10 years. I don't recall any of that
4 introduced to that effect. But even if there was, that
5 is not nearly enough evidence to support a claim for
6 future damages.

7 So what I'm inclined to do upon reflection is
8 to limit the amount of damages, given your theory, that
9 Mr. Cotton may seek from whatever point in the past you
10 think that that application would have been granted and
11 a dispensary -- well, and then he may have then begun to
12 collect his \$10,000 a month to the present.

13 I don't see enough evidence to support a claim
14 into the future that isn't speculative and, quite
15 frankly, puts the cross defense side at a completely
16 unfair disadvantage. And that's not the Court's
17 intention to either one of you.

18 So I'm going to -- I'm not inclined to give any
19 damages -- any instructions -- I'm sorry -- which
20 contemplates an award of future economic damages beyond
21 the date of trial.

22 Let me go to Mr. Cotton's side. Comments or
23 objections?

24 MR. AUSTIN: No objection, your Honor.

25 THE COURT: All right. Let me go to
26 Mr. Geraci's side.

27 MR. WEINSTEIN: No objection. That makes
28 sense.

1 THE COURT: All right. So what I'm not going
2 to do is give 359, since that's no longer applicable.

3 The next one will be 380. Who is proposing
4 380?

5 MR. WEINSTEIN: The defense.

6 THE COURT: Okay. So what did you have in mind
7 with 380?

8 MR. AUSTIN: Well, some of the emails pretty
9 much verify the terms that Mr. Cotton is alleging. And
10 the November 2nd email -- emails back and forth from --

11 THE COURT: All right. Let me -- I got you.
12 Let me just go to the other side.

13 Is there any question that either side can rely
14 upon the electronically communicated messages?

15 MR. WEINSTEIN: May I -- I don't -- my response
16 may sound nonresponsive, and I apologize. I've never
17 understood -- I've understood their theory being that --
18 first of all, the electronic means deals with how you
19 accept and -- as to contract formation. I understood
20 the testimony to be that it was an oral agreement that
21 was formed when they had oral communications where my
22 client allegedly agreed to what Mr. Cotton said were the
23 terms and conditions that were contained in the two
24 working documents.

25 But the essence of the formation of the
26 contract, I always understood, and I think was -- based
27 on the evidence is a verbal consent to it, not because
28 some email was sent. In fact, I don't know of any email

1 that was sent where consent was --

2 THE COURT: The only thing I'm thinking of is
3 the one that Mr. Geraci sent to Mr. Cotton which
4 Mr. Geraci explained on his examination to be something
5 different than Mr. Cotton understood. But, okay, or
6 some form of acceptance --

7 MR. WEINSTEIN: But that evidence is being used
8 not to establish formation of a contract but to
9 establish that Mr. -- Mr. Geraci agreed to a single
10 term, the equity interest.

11 THE COURT: Well, that's the oral agreement.
12 Right?

13 MR. WEINSTEIN: Well, but the oral is much
14 broader than that. And so I think the testimony is,
15 yeah, that's -- that's going to be argued as evidence
16 that corroborates that he made that oral agreement. But
17 he would have had to orally agree to all of these other
18 terms and conditions. And there's nothing under the --
19 under the -- there's no emails that are being proposed
20 to say, you know, that somehow the formation occurred of
21 that oral agreement as a result of the exchange of
22 emails. That's my point.

23 THE COURT: So let me hear from you.

24 MR. AUSTIN: Well, the email -- in that email,
25 Mr. Cotton says the 10 percent was a factored element in
26 my decision to move forward. Please confirm that this
27 will be in our -- in any final contract. So it doesn't
28 say that's exclusively the one thing. He just kind of

1 puts emphasis on that's one of his primary concerns, to
2 which the response is, no, no problem at all.

3 THE COURT: Okay. Just give me a moment here.

4 MR. WEINSTEIN: And I would -- the use notes
5 explains that it goes to contract formation.

6 THE COURT: Goes to what?

7 MR. WEINSTEIN: Contract formation. So I'm not
8 suggesting he can't argue that that corroborates my
9 client's consent to that provision, but it's really not
10 being used to establish the formation of this larger
11 oral agreement.

12 So the evidence comes in. He argues it. But
13 he just doesn't need this instruction. It's not
14 applicable.

15 THE COURT: Well, is this more
16 Cross-complainant Darryl Cotton?

17 MR. AUSTIN: Yes.

18 MR. WEINSTEIN: Yes.

19 THE COURT: All right. It's very -- it's been
20 a long time since I've had a case to try to work this
21 hard to understand the application of certain
22 instructions. Wow. All right. Just give me a moment.

23 MR. TOOTHACRE: Is there any evidence in the
24 record, your Honor, on the second paragraph?

25 THE COURT: One moment. I'm just trying to
26 line this up --

27 MR. TOOTHACRE: Okay.

28 THE COURT: Okay.

1 MR. TOOTHACRE: Is there any evidence in the
2 record that the parties agreed to formalize the
3 agreement by the use of email?

4 THE COURT: Well, I've seen -- I see a lot of
5 evidence of email communications. Whether that's an
6 agreement, explicit or tacit, I'll leave it up to the
7 jury to decide.

8 All right. So I'm going to give 380 as
9 modified.

10 And I take it I'm doing so over Mr. Geraci's
11 objection?

12 MR. WEINSTEIN: Yes, your Honor.

13 THE COURT: All right. And this is what
14 Mr. Cotton is proposing?

15 MR. AUSTIN: Yes, your Honor.

16 THE COURT: All right.

17 Now, let's go on to 3501. Who is proposing
18 this?

19 MR. WEINSTEIN: The defense.

20 THE COURT: All right.

21 MR. AUSTIN: We don't need that, your Honor.

22 THE COURT: All right. 3501 will not be given.
23 Let's go to 3502. Who is proposing?

24 MR. WEINSTEIN: Defense again.

25 THE COURT: All right. Again, I had
26 reservations about including this, but I don't --

27 MR. AUSTIN: We don't need it, your Honor.

28 THE COURT: All right. So 3502 is gone.

1 Let me just go up.

2 The next one is 1900.

3 MR. WEINSTEIN: Your Honor, before we leave the
4 damage instruction, I think it's an appropriate time to
5 address 361, reliance damages. That was an instruction
6 where we had requested and didn't appear in your
7 version. And I think it's a proper instruction.

8 THE COURT: Okay. Let me see if -- oh, boy.
9 Let me see if I can retrieve your instructions.

10 MR. WEINSTEIN: I can give you a copy of the
11 sheet I have.

12 THE COURT: It's different.

13 Why don't you give it to me.

14 MR. WEINSTEIN: It's got my note on it that
15 says should be put back in. But other than that --

16 THE COURT: All right. That's fine -- let me
17 just -- I may have found your instructions, Counsel.

18 MR. WEINSTEIN: Okay.

19 THE COURT: I didn't see -- Counsel, this is
20 what you sent me, truly. And I can go back -- I can get
21 out of this to show you. This skipped from 359 to 380.
22 Now, was there a special instruction that you gave to
23 me?

24 MR. WEINSTEIN: No.

25 THE COURT: Because, see, look at this, jury
26 instruction from Michael Weinstein. So, you know, we
27 could have messed up here.

28 Now, this is an earlier set that we got on

1 June 28.

2 MR. WEINSTEIN: Right.

3 THE COURT: Let me go there.

4 MR. WEINSTEIN: It was in our report --

5 THE COURT: Let me go to this one.

6 MR. WEINSTEIN: It should be on page 75 of that
7 document.

8 THE COURT: Page 75.

9 MS. KULAS: Your Honor, in the version that was
10 provided to you -- I just did a control find on CACI
11 361. It looks like it's on page 75. So it might have
12 been a little bit out of order.

13 THE COURT: All right. Let's see what we can
14 find here.

15 Okay. Was it identified as CACI 361?

16 MR. WEINSTEIN: It was.

17 Here we go. So let me do -- does this look to
18 be what you proposed?

19 THE WITNESS: It was.

20 BY MR. WEINSTEIN:

21 **Q Okay. So let me do this. I don't know if I**
22 **know how to do any control searches.**

23 MR. AUSTIN: Go control F. And then --

24 THE COURT: Counsel, I'm just kidding. I mean,
25 I'm not so sure I do know how to do it. So now what I'm
26 going to do is scroll back to 350, in between 350 and
27 380. We're going to paste this in. So just give me a
28 moment to set this up a bit. Okay. So we'll -- so now

1 we're all looking at 361.

2 And I take it that this is what Mr. Geraci's
3 side is comfortable with?

4 MR. WEINSTEIN: And it should be -- I believe
5 it's --

6 THE COURT: I'm going to add Defendant.

7 MR. WEINSTEIN: I don't think there's any
8 modification of CACI in there.

9 THE COURT: Okay. So Plaintiff Jerry -- Larry.
10 I'm getting these names mixed up now.

11 So let me go to the defense side. Comments?

12 MR. AUSTIN: No objection to -- to how it is.

13 THE COURT: Okay. Let me just -- what I've
14 learned is as easy as you all have come to refer to each
15 other by last names, it's much more complicated from the
16 jury and the Court's perspective. So I just put down
17 Plaintiff and Defendant. Just give me one moment.

18 Just give me a moment here.

19 MR. WEINSTEIN: That's the way I do page breaks
20 too.

21 THE COURT: Yeah. Let me just drop that down a
22 bit. I'll clean this up if I have to before I send it.

23 Okay. So there's 361, as modified. And I'm
24 inclined to give that.

25 Did I hear no objection from the defense side?

26 MR. AUSTIN: Correct, your Honor.

27 THE COURT: All right. Now, are there any
28 other damages instructions that the Court failed to

1 include from Plaintiff's side?

2 MR. WEINSTEIN: No, your Honor.

3 THE COURT: All right. So in order, 350, 361,
4 380, and now we're up to 1900. Right? 1900.

5 Okay. This is -- we need to make some
6 corrections to get rid of Ms. Berry.

7 MR. WEINSTEIN: So with -- you're going very --
8 with the damage instructions we just talked about
9 limiting no future damages. Is there going to be -- is
10 that just going to be argued that way, or is there going
11 to be --

12 THE COURT: I'm going to leave it as argument
13 with the admonition that the Court has granted at least
14 in part Cross-Defendant's motion for nonsuit and will
15 limit Mr. Cotton's claim for economic damages based on
16 contract or fraud. I should say and fraud to
17 the \$10,000 per month from some date prior to trial to
18 no later than the date of trial. Just give me a moment
19 here.

20 And if there's an -- if there's a statement or
21 an argument made, then I would expect Mr. Geraci's side
22 to object.

23 On the other hand, if the jury does go beyond
24 what the Court has now ordered, it will become the
25 subject of a proposed trial motion. So one way or the
26 other, we're going to get to it.

27 Okay. So now we're at 1900. And what I've
28 done is I've deleted all the references to Ms. Berry.

1 Otherwise, I think it's consistent with what we had
2 given the jury in pre-instructions.

3 Any objection from either one of you?

4 MR. WEINSTEIN: No objection from Plaintiff.

5 MR. AUSTIN: No objection.

6 THE COURT: All right. After 1900, is 1902,
7 false promise.

8 Comments? Objections?

9 MR. WEINSTEIN: No objection from Plaintiff.

10 MR. AUSTIN: No objection, your Honor.

11 MR. TOOTHACRE: Wait.

12 MR. WEINSTEIN: Two needs to be --

13 MR. TOOTHACRE: Two needs to be he -- the he or
14 she.

15 THE COURT: Did not intend -- you're right. So
16 let's get rid of or she.

17 MR. TOOTHACRE: That's good.

18 THE COURT: Anything else, Counsel?

19 MR. TOOTHACRE: No, your Honor.

20 THE COURT: So the Court will give 1902 as
21 modified to delete the reference to she.

22 Next is 1903. Let me get rid of the references
23 to Ms. Berry.

24 All right. As modified, Counsel, any comments
25 or questions?

26 MR. WEINSTEIN: Not from Plaintiff.

27 MR. AUSTIN: Only that on the top line, it
28 says -- after you got rid of Rebecca Berry, it says

1 Cross-Defendants Larry Geraci.

2 THE COURT: Gotcha.

3 MR. AUSTIN: But no objection to the substance.

4 THE COURT: All right. There we go. I've
5 cleaned that up.

6 Continuing on, 1904. Comments?

7 MR. WEINSTEIN: So the -- the representation
8 that's being -- I'm not sure it's necessary. The
9 representation that they're pursuing is that he didn't
10 intend -- he said he would pay \$10,000 a month
11 guaranteed and that he didn't mean it. I mean, I'm not
12 going to argue that opinion, if that's what you're going
13 to limit their argument to.

14 THE COURT: Thank you. Let me go to defense
15 side -- or Mr. Cotton's side.

16 Are you asking for this?

17 MR. AUSTIN: I think at one time we did want to
18 make that argument about his claim to have special
19 knowledge and special skill sets. But I -- I don't
20 think we need that anymore.

21 THE COURT: So you're withdrawing 1904, or not?

22 MR. AUSTIN: Yeah. I can withdraw that.

23 THE COURT: All right.

24 MR. WEINSTEIN: Your Honor --

25 THE COURT: Any objection?

26 MR. WEINSTEIN: No. But it's under the
27 understanding that their argument is limited to -- I
28 mean, when we talked in the motion about what they could

1 go forward on and you asked them to identify the
2 misrepresentation, the misrepresentation that was
3 identified was the statement before November 2nd, 2016
4 that he was going to, you know, pay -- you know,
5 essentially live up to these terms and conditions, none
6 of which are opinions. They're just statements of fact.
7 And that was the only representation they identified
8 that was actionable to induce reliance.

9 If they're going to argue there were other
10 representations, I don't know what those are. But, you
11 know, I'm concerned that I eliminate the instruction if
12 they're not limited in that regard based on the Court's
13 ruling.

14 THE COURT: Well, I'm seeing dual arguments.
15 The misrepresentation of fact is not opinion. It was
16 that Mr. Cotton would become a joint venture partner and
17 get paid in equity interest or some major damages per
18 month. That's a fact.

19 But either side can argue testimony that may
20 fall into the category of opinions for other purposes.
21 Like, for example, if Mr. Cotton or Mr. Geraci say he's
22 a super star in getting applications authorized by the
23 City and he was going to make a zillion dollars
24 operating a dispensary, part of which Mr. Cotton was
25 entitled to get some money, I mean --

26 MR. WEINSTEIN: Then I would not withdraw it,
27 then.

28 THE COURT: Well, you can argue the same thing

1 toward --

2 MR. WEINSTEIN: I understand.

3 THE COURT: So you would want to withdraw it,
4 or not withdraw it?

5 MR. WEINSTEIN: I would want to keep it, then.

6 THE COURT: Okay. So -- okay. So if one side
7 wants to keep it -- so how do you -- what I'm inclined
8 to do is delete the references to Plaintiff Larry Geraci
9 and Defendant Darryl Cotton and let you all argue it
10 however.

11 MR. WEINSTEIN: No objection to making it
12 generic.

13 THE COURT: Okay. Counsel?

14 MR. AUSTIN: That's fine, your Honor.

15 THE COURT: All right. Now, I want to make
16 sure -- okay. Oh, boy. Okay. Now, having said what I
17 just said, I don't want either side to be boxed in.

18 So let me ask Plaintiff's side, do you want
19 this to be reciprocal? I mean, what we talked about is
20 why it could be relevant from Cotton's perspective. I
21 don't want --

22 MR. WEINSTEIN: Well --

23 THE COURT: I can make this reciprocal if we
24 can figure out a way to do it.

25 MR. WEINSTEIN: I don't -- it really goes to
26 the false misrepresentation claim. So I have no
27 objection to it being that way.

28 THE COURT: Thank you. The Court then will

1 give 1904 as modified.

2 Continuing on, 1907. Any objection?

3 MR. WEINSTEIN: No objection from Plaintiff.

4 MR. AUSTIN: No objection.

5 THE COURT: 1908? These are standard --

6 MR. WEINSTEIN: No objection.

7 MR. AUSTIN: No objection.

8 THE COURT: All right. Let's get rid of that
9 comma.

10 1922.

11 MR. WEINSTEIN: This is Defense's instruction.
12 I don't think it applies anymore.

13 MR. AUSTIN: Yeah, we can -- we can remove
14 that.

15 THE COURT: You agree we can withdraw it -- or
16 remove it?

17 MR. AUSTIN: Yes.

18 THE COURT: 1922 will be deleted and not given.
19 1923. I know that needs to be harm.

20 All right.

21 MR. WEINSTEIN: This is typically -- there
22 needs to be a damages instruction, obviously. And
23 typically it's the out-of-pocket rule, but we don't have
24 a situation in which we're seeking remedies that would
25 normally be involved with the breach of the sale of the
26 property, which this is designed to do.

27 THE COURT: I gotcha.

28 So let me go to the defendant's perspective and

1 Mr. Cotton's perspective or side.

2 Are you asking for this instruction?

3 MR. AUSTIN: No, your Honor.

4 THE COURT: All right. 1923 will not be given.

5 MR. WEINSTEIN: That has the -- that has the
6 effect of just reverting everything to the damage
7 instructions that are in the other part of the
8 instructions --

9 THE COURT: Right.

10 MR. WEINSTEIN: -- which is fine.

11 THE COURT: Let me see here.

12 And then somebody proposed 3925. So after
13 1908, we skip all the way to 3925.

14 MR. WEINSTEIN: No objection.

15 MR. AUSTIN: Yeah, no objection.

16 THE COURT: And next instruction -- okay. So
17 that's the last substantive -- we've got some closing
18 instructions to go over.

19 Let me go to Plaintiff's side. Is there any
20 other instructions that you wanted to bring to my
21 attention that I have failed to address so far?

22 MR. WEINSTEIN: Yes. But not because you
23 failed to address it.

24 Could we put up 306 again.

25 THE COURT: 306?

26 MR. WEINSTEIN: Yes. Unformalized agreement.
27 I think I may have muffed that one.

28 THE COURT: All right. There it is. There you

1 go.

2 MR. WEINSTEIN: So I think we should withdraw
3 that. I think it's confusing.

4 THE COURT: Withdraw it?

5 MR. WEINSTEIN: I would withdraw it. It's
6 confusing.

7 THE COURT: All right. Let's go to the
8 Defendant's side.

9 MR. AUSTIN: I do think it's pretty confusing.

10 THE COURT: I'm sorry?

11 MR. AUSTIN: I think it's confusing. Like --

12 THE COURT: Okay. If both of you agree, the
13 Court will delete it. Agreed?

14 MR. WEINSTEIN: Agreed.

15 THE COURT: Mr. Austin, agreed?

16 MR. AUSTIN: Yes, your Honor.

17 THE COURT: The Court will withdraw 306. Now,
18 let me just line it up here.

19 Okay. Let me go back to Plaintiff's side. Any
20 other instructions you want to talk about?

21 MR. WEINSTEIN: No, your Honor.

22 THE COURT: Let me go to the defense side. Any
23 other instructions you want to talk about?

24 MR. AUSTIN: I would just like to add the joint
25 venture agreement instruction. And I -- I don't -- my
26 phone died. So I wasn't able to --

27 THE COURT: What's the number?

28 MR. AUSTIN: I had it written down, but I can't

1 find that note and my phone is dead. So I wasn't able
2 to look it up.

3 THE COURT: All right. Just give me one
4 moment.

5 I think it's 3712. Okay. Let me see if I can
6 get there. All right. Let me -- I found it in CACI, by
7 the way, on my -- so let me try to get it as big as I
8 can. Sorry, Counsel. Oh, wait a minute. Maybe if I
9 can get rid of that. There we go.

10 All right. That's as big as I can get it for
11 you. For those of you who are not as young as you used
12 to be, I've made it as big as I can. No disrespect
13 intended to anybody.

14 MR. TOOTHACRE: I don't think we need the first
15 paragraph because I don't think there's any
16 allegation --

17 THE COURT: I tend to agree with that. Well,
18 first of all, let me go to Mr. Cotton's counsel.

19 So is this the instruction that you were
20 thinking about?

21 MR. AUSTIN: Yeah, it is.

22 THE COURT: And I agree with Mr. Geraci's
23 counsel that the first paragraph should be deleted.
24 What you're looking for is the definition of joint
25 venture. Right?

26 MR. AUSTIN: Yeah. Primarily. Although --

27 THE COURT: So it seems to me that 3712, as
28 modified to delete the first paragraph, satisfies your

1 purpose.

2 MR. WEINSTEIN: I believe the first sentence of
3 the next paragraph should be deleted as well so that it
4 just says definition.

5 THE COURT: Well, don't they have to decide
6 whether there was a joint venture entered into?

7 MR. WEINSTEIN: I suppose. I viewed it sort of
8 like a special instruction. But --

9 THE COURT: I'm not --

10 MR. WEINSTEIN: I don't -- the first paragraph
11 is sufficient. I'll agree to that without objection.

12 THE COURT: All right. So let me go to the
13 defense side. Let me do this. Let me see if I can find
14 where we left off.

15 So I'm trying to think where that would go.

16 MR. TOOTHACRE: Probably behind the contract.

17 THE COURT: 303?

18 MR. TOOTHACRE: Yeah.

19 THE COURT: All right.

20 MR. WEINSTEIN: Or it literally could be added
21 as part of the second half of 303.

22 THE COURT: Oh, well --

23 MR. WEINSTEIN: Where we say --

24 THE COURT: Okay. I mean, we tell them that
25 the order of the instructions doesn't matter.

26 MR. AUSTIN: We could just put it on the page
27 following -- or even before 303.

28 MR. WEINSTEIN: I would say after. But --

1 MR. TOOTHACRE: I would say after. Drop 304
2 down.

3 THE COURT: 304 down. 305. 312.

4 MR. WEINSTEIN: It's right after -- it would be
5 right after the first instruction where the term "joint
6 venture" is used. It seems to me to make the most sense
7 there.

8 THE COURT: Okay. So that would be after 303?

9 MR. WEINSTEIN: Correct.

10 THE COURT: Okay. So there -- the first
11 reference to joint venture is 303. So then here's what
12 we'll do --

13 MR. WEINSTEIN: So it could become Special
14 No. 1, I guess.

15 THE COURT: I'd still call it CACI --

16 MR. WEINSTEIN: Oh, that's right.

17 THE COURT: -- 3712. Let me just do something.

18 MR. AUSTIN: Well, there are some allegations
19 that were testified to about, you know, perhaps some of
20 the legal dispensary sanctions.

21 THE COURT: Oh, wait a minute. Let me just do
22 this here, then. Okay.

23 Now, your -- are you addressing the first
24 paragraph?

25 MR. AUSTIN: I agree with you guys.

26 THE COURT: Okay.

27 MR. AUSTIN: We can take that out.

28 THE COURT: Okay. So what I've done is I've

1 deleted the reference to the first paragraph of 3712.
2 Otherwise, I've left it as is.

3 Let me go to the defense side. You're
4 proposing it. Any objections to 3712 as modified?

5 MR. AUSTIN: No, your Honor.

6 THE COURT: Let me go to Plaintiff's side.

7 MR. WEINSTEIN: No objection as modified, your
8 Honor.

9 THE COURT: All right. Now, let me go back
10 to -- let me just scroll this down. I think all the
11 rest of these will be fine.

12 MR. AUSTIN: Your Honor, in relation to the
13 contract instructions, isn't there also one about, like,
14 mutual incentive, something that kind of maybe describes
15 meeting of the minds? I think it's entitled mutual
16 ascent. I mean, it's not included in here, but would
17 that be a standard?

18 THE COURT: Let me ask you this. Did you
19 propose it? There's probably a good reason that it's
20 not in here. If you proposed -- although, I did miss
21 the 361 one.

22 MR. TOOTHACRE: What are the odds of making two
23 mistakes, your Honor.

24 THE COURT: Yeah.

25 MR. WEINSTEIN: I'm looking at the index in
26 CACI, and I don't see a --

27 THE COURT: I'm not seeing anything either.
28 Let me go to 309.

1 MR. WEINSTEIN: Contract formation.

2 THE COURT: Well, Counsel, at some point, you
3 have the responsibility to at least give us a number.
4 And I -- we're all aware of the principle that you're
5 referring to, but --

6 MR. AUSTIN: I --

7 THE COURT: -- I don't see it. So in the
8 absence of you having given me something to get me
9 started, I don't know how to respond to that, other than
10 to just not accept it, for the time being.

11 I mean, if you can propose something, maybe we
12 can integrate it between now and Monday, but --

13 MR. AUSTIN: Yeah, I apologize. I can't access
14 my phone.

15 THE COURT: So what I'm going to do is I'm
16 going to -- now, let me just go to the very end. The
17 Court will give all the instructions that we've
18 discussed -- now, through and including 3925. At that
19 point, Counsel, I'm going to stop. You argue.

20 When you're done arguing, the concluding
21 instructions will consist of the following: 5009, 5010,
22 5011 -- and, by the way, you need to have your Court
23 reporter available for readback, if requested -- and
24 5012.

25 And at that point, subject to a couple of
26 additional admonitions, the jury will get the case.

27 So I'm going to send this to my clerk, and
28 going to send it to you in just a few moments.

1 MR. WEINSTEIN: May I address one issue before
2 you do that?

3 THE COURT: Uh-huh.

4 MR. WEINSTEIN: And I apologize. The Court has
5 been very patient. 1908, reasonable reliance, it
6 doesn't look like it's the full CACI instruction. And
7 I'm not sure why.

8 THE COURT: 3908?

9 MR. WEINSTEIN: No. 1908. Reasonable
10 reliance.

11 THE COURT: Now, this may be one that I did not
12 cross-reference. Somebody may have proposed it as is.
13 So let me see if I can retrieve 1908. Oh. There's a
14 lot more here.

15 MR. WEINSTEIN: Yes. I thought maybe I didn't
16 have the most up-to-date book.

17 THE COURT: Let me see if I can retrieve it
18 real quick. Oh, boy. Well, maybe not.

19 MR. WEINSTEIN: Oh, that's an old one.

20 THE COURT: I have an old one. Believe it or
21 not, this is what we get online from the Court. But the
22 newer model has a lot more to it.

23 MR. WEINSTEIN: Yes.

24 THE COURT: That may be part of the issue.

25 MR. WEINSTEIN: It may very well have been --

26 THE COURT: Well, are you asking that the Court
27 give the balance of the instruction?

28 MR. WEINSTEIN: Yes.

1 THE COURT: All right. Let me go to --

2 MR. AUSTIN: I did review the much lengthier
3 one, and I'm fine with that one.

4 THE COURT: All right. So, Counsel, I would
5 need to do some additional word processing. Let's not
6 take the time for you to stare at me to do that.

7 So here's what I'm going to do. Plus -- oops.
8 Plus rest of 1908.

9 So when I send this to you in just a moment --
10 I'll send you another set, but I want to get something
11 to you tonight. So I won't forget, I can assure you.

12 Is there anything else from Mr. Geraci's
13 side --

14 MR. WEINSTEIN: No, your Honor.

15 THE COURT: -- on instructions?

16 MR. WEINSTEIN: No, your Honor.

17 THE COURT: Okay. Just, again, let me save
18 this and send it to you.

19 Okay. So, Counsel, here's what I propose we
20 do. It's 4 o'clock now. It's been an awful long day.

21 We're going to get you the instructions. And
22 then rather than spend any more time tonight, at or
23 before I take the bench tomorrow morning at 8:30 for my
24 ex parte calendar, we will arrange to email you the
25 verdict forms, which I think will reflect all of the
26 changes that the Court has made as a result of its
27 rulings.

28 What I'm going to suggest is that we

1 reconvene -- and I'm going to give you leave to appear
2 telephonically -- at 10:30.

3 MR. WEINSTEIN: Okay.

4 THE COURT: Now, what I'll try to do well
5 before then is not only to have emailed you the current
6 set of the verdict forms but the most recent set of the
7 jury instructions which -- jury instructions which
8 includes the completed 1908.

9 So our 10:30 hearing, which, again, you have
10 leave to appear telephonically. If you want to come
11 down, that's fine. It may be very short. If all I hear
12 is you're good with the instructions, you're good with
13 the verdict forms, that will be that.

14 I will want to get you on the phone or have you
15 say in person that you're good with -- there may be an
16 objection. You can interpose the objection.

17 But I want to know that we've done the best we
18 can as of tomorrow morning.

19 And then that will be the last I need to hear
20 from you before Monday morning.

21 MR. WEINSTEIN: What's the number, your Honor?

22 THE COURT: Any objection?

23 MR. WEINSTEIN: No. What's the number I should
24 call?

25 THE COURT: Call the department.

26 THE CLERK: There's only one line. So they
27 have to call in.

28 THE COURT: Is that what we do, get them on the

1 line?

2 THE CLERK: Yes. I can do the conference call.

3 THE COURT: So if you choose to appear
4 telephonically, before you leave, make sure we know what
5 number to reach you no later than 10:30. And I'll get
6 this to you before then. When I say "I," my clerk will
7 have emailed it to you.

8 Okay.

9 MR. TOOTHACRE: I have one question, your
10 Honor.

11 THE COURT: Sure.

12 MR. TOOTHACRE: In closing arguments, what's
13 the Court's feeling of publishing rough transcripts from
14 the court reporter?

15 THE COURT: Good question.

16 My first reaction is if counsel is satisfied in
17 representing that this is what a witness said, I'm
18 satisfied.

19 MR. TOOTHACRE: Okay.

20 THE COURT: Let's go to the defense side. And
21 you may want to publish draft dailies of what the
22 witness said too. I'm inclined to let you do so.

23 MR. AUSTIN: Okay. If I did choose to do that,
24 I would ideally just want to have a printed copy for
25 everyone, because I don't know how to use any of these,
26 like, projectors. I don't think they'll use it. But if
27 I were to do so, would I want, like, a copy?

28 THE COURT: No. You wouldn't be giving the

1 jury anything. You'd be displaying it.

2 MR. AUSTIN: Okay.

3 THE COURT: Now, how you display it is entirely
4 up to you.

5 MR. AUSTIN: Okay.

6 THE COURT: Folks, I'm not going to allow
7 anybody to compromise the court reporter. She's done
8 the best she can and, apparently, has given you dailies
9 or drafts of something. This is not about the court
10 reporter.

11 So if there's any question about what appears
12 on the draft that you displayed to the jury, you are
13 putting yourself on the line. It's not the court
14 reporter who has done the best she can.

15 Do you understand that?

16 MR. WEINSTEIN: Understood.

17 THE COURT: Counsel?

18 MR. AUSTIN: Yes, your Honor.

19 THE COURT: All right. So you've got leave.

20 THE REPORTER: Your Honor, for the reporter,
21 excuse the interruption, will there be a need for me to
22 be on the line as well tomorrow morning?

23 MR. WEINSTEIN: Not from the Plaintiff's
24 perspective.

25 THE COURT: In other words, waive reporting of
26 tomorrow morning's conference call -- or hearing.

27 MR. WEINSTEIN: Waived.

28 MR. AUSTIN: So waived.

1 THE COURT: Gotcha. And I think our minute
2 order captures the objections to instructions or
3 something. So there's not a whole lot of business to
4 accomplish. And, folks, I'm going to do it the same way
5 tomorrow whether we have a reporter present or not.

6 All right. So we'll waive reporting of
7 tomorrow morning's hearing.

8 Anything else from Plaintiff's side?

9 MR. WEINSTEIN: No.

10 THE COURT: Defense side?

11 MR. AUSTIN: No, your Honor.

12 THE COURT: We've got a ton of people coming
13 through tomorrow morning. So make sure your belongings
14 are protected.

15 (The proceedings concluded at 4:01 p.m.)

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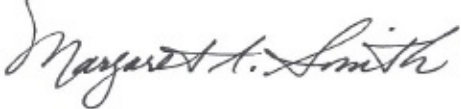
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I, Margaret A. Smith, a Certified Shorthand Reporter, No. 9733, State of California, RPR, CRR, do hereby certify:

That I reported stenographically the proceedings held in the above-entitled cause; that my notes were thereafter transcribed with Computer-Aided Transcription; and the foregoing transcript, consisting of pages number from 1 to 182, inclusive, is a full, true and correct transcription of my shorthand notes taken during the proceeding had on July 10, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of July 2019.



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

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