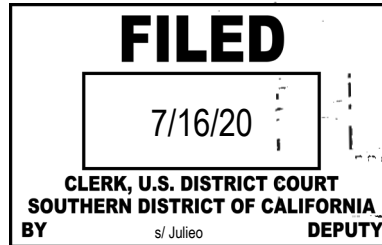


NUNC PRO TUNC
7/14/20



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON,

Plaintiffs,

vs.

LARRY GERACI, an individual;
REBECCA BERRY a/k/a REBECCA ANN
BERRY RUNYAN, an individual;
MICHAEL R. WEINSTEIN, an individual;
SCOTT TOOTHACRE, an individual;
FERRIS & BRITTON APC, a California
corporation; GINA M. AUSTIN, an
individual; AUSTIN LEGAL GROUP APC,
a California corporation, SEAN MILLER,
an individual FINACH THORTON &
BAIRD, a limited liability partnership,
DAVID DEMIAN, an individual, ADAM
WITT, an individual; and DOES 1 through
50, inclusive,

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

REQUEST FOR JUDICIAL NOTICE

Hearing Date: July 27, 2020

Time: NA

Judge: Hon. Cynthia Ann Bashant

Courtroom:

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

The documents listed below and attached hereto as RJN Exhibits Nos. 1–10 conformed copies of pleadings, transcripts, or other papers filed in *Geraci v. Cotton, et al.*, San Diego Superior Court Case No. 37-2017-10073-CU-BC-CTL ("*Cotton I*") and other cases named herein which are currently pending in and/or were previously adjudicated by the San Diego County Superior Court. This Court may properly take judicial notice of these exhibits pursuant to Federal Rules of Evidence, Rule 201.

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

RJN NO.	DOCUMENT TITLE/DESCRIPTION
6	<i>Cotton I</i> Trial Exhibit 30-001 – City of San Diego Department of Development Services Form DS-318 – Ownership Disclosure Statement for CUP Application of 6176 Federal Boulevard, San Diego, CA, Project No. 520606 executed on October 31, 2016 by Rebecca Berry as President
7	Reporter’s Transcript of Proceedings [at Trial] July 8, 2019 in <i>Cotton I</i> , Excerpt of Testimony of Rebecca Berry.
8	Reporter’s Transcript of Proceedings [at Trial] July 8, 2019 in <i>Cotton I</i> , Excerpt of Testimony of Gina Austin.
9	Reporter’s Transcript of Proceedings [Geraci’s Demurrer] November 3, 2017.
10	Copy of First Amended Complaint <i>Cotton I</i> , ROA 19.

Dated: July 13, 2020

DARRYL COTTON

By _____

Plaintiff *In Propria Persona*,

EXHIBIT 1

No Fee GC §6103

FILED
Clerk of the Superior Court

JUN 17 2015

FILED
Clerk of the Superior Court

JUN 17 2015

By: H. CHAVARIN, Deputy
JUN 11 PM 1:37

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal
corporation,

Plaintiff,

v.

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

Defendants.

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

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

IMAGED FILE

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

///

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

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

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

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

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

19 5. The legal description of the PROPERTY is:

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

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

24 INJUNCTION

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

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

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

11 COMPLIANCE MEASURES

12 DEFENDANTS agree to do the following at the PROPERTY:

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

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

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

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

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

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

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

MONETARY RELIEF

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

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

///

17. In the event of default by Defendants as to any amount due under this Stipulation, the entire amount due shall be deemed immediately due and payable as penalties to the City of San Diego, and Plaintiff shall be entitled to pursue any and all remedies provided by law for the enforcement of this Stipulation. Further, any amount in default shall bear interest at the prevailing legal rate from the date of default until paid in full. Service by mail shall constitute sufficient notice for all purposes.

11 18. Nothing in this Stipulation shall prevent any party from pursuing any remedies as
12 provided by law to subsequently enforce this Stipulation or the provisions of the SDMC,
13 including criminal prosecution and civil penalties that may be authorized by the court according
14 to the SDMC at a cumulative rate of up to \$2,500 per day per violation occurring after the
15 execution of this Stipulation.

16 19. Defendants agree that any act, intentional act, omission or failure by their contractors,
17 successors, assigns, partners, members, agents, employees or representatives on behalf of
18 Defendants to comply with the requirements set forth in Paragraphs 7-15 above will be deemed to
19 be the act, omission, or failure of Defendants and shall not constitute a defense to a failure to
20 comply with any part of this Stipulation. Further, should any dispute arise between any
21 contractor, successor, assign, partner, member, agent, employee or representative of Defendants
22 for any reason, Defendants agree that such dispute shall not constitute a defense to any failure to
23 comply with any part of this Stipulation, nor justify a delay in executing its requirements.

25 20. The Court will retain jurisdiction for the purpose of enabling any of the parties to
26 this Stipulation to apply to this Court at any time for such order or directions that may be
27 necessary or appropriate for the construction, operation or modification of the Stipulation, or for
28 the enforcement or compliance therewith, pursuant to Code of Civil Procedure 664.6.

1 **RECORDATION OF JUDGMENT**

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

5 **KNOWLEDGE AND ENTRY OF JUDGMENT**

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

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

9 **IT IS SO STIPULATED.**

10 Dated: June 11, 2015

JAN I. GOLDSMITH, City Attorney

11
12 By Marsha B. Kerr

Marsha B. Kerr
Deputy City Attorney
Attorneys for Plaintiff

13
14
15 Dated: 6-10, 2015

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

16
17
18 By Jeffrey Kacha

General Partner

19
20
21 Dated: 6-10, 2015

Jeffrey Kacha, an individual

22
23
24 Dated: 6-8, 2015

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

26
27 ///

1 Dated: 6/11/15, 2015

2 By 

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

7 **JUDGMENT**

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

11 Dated: 6-12-16

 JOHN S. MEYER

12 JUDGE OF THE SUPERIOR COURT
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27
28

EXHIBIT 2

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

6 Attorneys for Defendants
 Ninus Malan

ELECTRONICALLY FILED
 Superior Court of California,
 County of San Diego

09/04/2018 at 05:48:00 PM

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

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

11 SALAM RAZUKI, an individual,

12 Plaintiff,

13 vs.

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

23 Defendants.
 24
 25
 26
 27
 28

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

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

[Imaged File]

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

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92116

1 I, Gina M. Austin, declare:

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

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

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

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

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

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

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

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

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

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

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

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

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

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3990 Old Town Ave, Ste A-112
San Diego, CA 92110

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

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

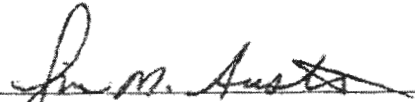
9 13. I informed Mr. Essary of the discrepancy. On August 27, 2018 Mr. Essary sent an
10 email stating that he would have to contact Mr. Yaeger to determine why there is a discrepancy.
11 As of the drafting of this declaration MGO has not received a response from Mr. Yaeger or Mr.
12 Essary as to the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

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

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

1 contingent on our office attending the hearing.

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

4
5 
6 Gina M. Austin

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92116

EXHIBIT 3

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

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

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

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

[IMAGED FILE]

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

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

I, Larry Geraci, declare:

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

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

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

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

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

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

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

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

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

Darryl Cotton and I did meet at my office on November 2, 2016, to negotiate the final terms of the sale of the Property and we reached an agreement on the final terms of the sale of the Property. That agreement was not oral. We put our agreement in writing in a simple and straightforward written

1 agreement that we both signed before a notary. (See paragraph 5, *supra*, Nov 2nd Written Agreement,
2 Exhibit 2 to Geraci NOL.) The written agreement states in its entirety:

3 **11/02/2016**

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

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

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

10 /s/
Larry Geraci

/s/
Darryl Cotton

11 I never agreed to pay Mr. Cotton a \$50,000.00 non-refundable deposit. At the meeting, Mr.
12 Cotton stated he would like a \$50,000 non-refundable deposit. I said "no." Mr. Cotton then asked for a
13 \$10,000 non-refundable deposit and I said "ok" and that amount was put into the written agreement.
14 After he signed the written agreement, I paid him the \$10,000 cash as we had agreed. If I had agreed to
15 pay Mr. Cotton a \$50,000 deposit, it would have been a very simple thing to change "\$10,000" to
16 "\$50,000" in the agreement before we signed it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Hi Larry,

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

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

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

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

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

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

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

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

24 14. Mr. Cotton thereafter made good on his threats. On the morning of March 21, 2017, Mr.
25 Cotton had a conversation with Firouzeh Tirandazi at the City of San Diego, who was in charge of
26 processing the CUP Application, regarding Mr. Cotton's interest in withdrawing the CUP Application.
27 That discussion is confirmed in an 8:54 a.m. e-mail from Ms. Tirandazi to Mr. Cotton with a cc to
28

1 Rebecca Berry. A true and correct copy of that March 21, 2017, at 8:54 a.m. e-mail is attached as
2 Exhibit 4 to the Geraci NOL.

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

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

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

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

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

1 Declaration of Abhay Schweitzer.

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

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

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

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

25 ///

26 ///

27 ///

28 ///

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

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4 
5 LARRY GERACI
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EXHIBIT 4

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

Court's Ex.	035
Case #	37-2017-00010079-CJ-BC-CTL
Rec'd	
Dept.	C-73 Clk.

Larry,

Here is what I need:

Rebecca to finish filling out and sign the following:

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

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

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

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

Please let me know if you have any questions.

Thank you

ABHAY SCHWEITZER
 Assoc. AIA- Principal

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

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

Hi Abhay,

Can you tell me what you exactly need from me?

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Client: L30 Disclaimer.

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

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

Hi Gina,

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

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

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

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

Thank you

ABHAY SCHWEITZER
Assoc. AIA- Principal

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

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

One more thing...

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

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

Gina

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

Good afternoon Gina,

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

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

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

Please let me know if you need anything else meanwhile.

Thank you

ABHAY SCHWEITZER
Assoc. AIA- Principal

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

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

Hi Gina,

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

Thank you

ABHAY SCHWEITZER
Assoc. AIA- Principal

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

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

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

Gina

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

Good afternoon,

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

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

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

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

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

Thank you

ABHAY SCHWEITZER
Assoc. AIA- Principal

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

EXHIBIT 5

	City of San Diego Development Services 1222 First Ave., MS-802 San Diego, CA 92101 (619) 446-5000	General Application	FORM DS-3032 AUGUST 2013
	The City of San Diego		

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

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

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

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

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

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

3. Property Owner/Lessor Tenant Name: *Check one* ☐ Owner ☒ Lessor or Tenant **Telephone:** **Fax:**

Rebecca Berry

Address: 6982 Gullstrand Street **City:** San Diego **State:** CA **Zip Code:** 92122 **E-mail Address:** becky@tfcad.net

4. Permit Holder Name: *This is the property owning person, or entity that is granted authority by the property owner to be responsible for scheduling inspections, receiving notices of failed inspections, permit expirations or revocation hearings, and who has the right to cancel the approval (in addition to the property owner). SDMC Section 113.0103.*

Name: Rebecca Berry **Telephone:** **Fax:**

Address: 6982 Gullstrand Street **City:** San Diego **State:** CA **Zip Code:** 92122 **E-mail Address:** becky@tfcad.net

5. Licensed Design Professional (if required): *Check one* ☒ Architect ☐ Engineer **License No.:** C-19371

Name: Michael R. Morton AIA **Telephone:** **Fax:**

Address: 3956 30th Street **City:** San Diego **State:** CA **Zip Code:** 92104 **E-mail Address:**

6. Historical Resources/Lead Hazard Prevention and Control *(not required for roof mounted electric-photovoltaic permits, deferred fire approvals, or completion of expired permit approvals).*


a. Year constructed for all structures on project site: 1951

b. HRB Site # and/or historic district if property is designated or in a historic district (if none write N/A): N/A

c. Does the project include any permanent or temporary alterations or impacts to the exterior (cutting-patching-access-repair, roof repair or replacement, windows added-removed-repaired-replaced, etc)? ☒ Yes ☐ No

d. Does the project include any foundation repair, digging, trenching or other site work? ☒ Yes ☐ No

I certify that the information above is correct and accurate to the best of my knowledge. I understand that the project will be distributed/reviewed based on the information provided.

Print Name: Abhay Schweitzer **Signature:**  **Date:** 10/28/2016

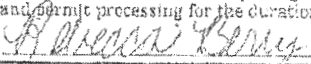
7. Notice of Violation: *If you have received a Notice of Violation, Civil Penalty Notice and Order, or Stipulated Judgment, a copy must be provided at the time of project submittal. Is there an active code enforcement violation case on this site?* ☐ No ☐ Yes, copy attached

8. Applicant Name: *Check one* ☐ Property Owner ☐ Authorized Agent of Property Owner ☒ Other Person per M.C. Section 113.0102

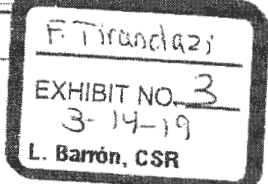
Rebecca Berry **Telephone:** **Fax:**

Address: 6982 Gullstrand Street **City:** San Diego **State:** CA **Zip Code:** 92122 **E-mail Address:** becky@tfcad.net

Applicant's Signature: I certify that I have read this application and state that the above information is correct, and that I am the property owner, authorized agent of the property owner, or other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application (Municipal Code Section 113.0102). I understand that the applicant is responsible for knowing and complying with the governing policies and regulations applicable to the proposed development or permit. The City is not liable for any damages or loss resulting from the actual or alleged failure to inform the applicant of any applicable laws or regulations, including before or during final inspections. City approval of a permit application, including all related plans and documents, is not a grant of approval to violate any applicable policy or regulation, nor does it constitute a waiver by the City to pursue any remedy, which may be available to enforce and correct violations of the applicable policies and regulations. I authorize representatives of the city to enter the above-identified property for inspection purposes. I have the authority and grant City staff and advisory bodies the right to make copies of any plans or reports submitted for review and permit processing for the duration of this project.

Signature:  **Date:** Oct 31 2016

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 DS-3032 (08-13)



EB

EXHIBIT 6

Geraci vs. Cotton, et al.

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



Transcript of Proceedings

Geraci vs. Cotton, et al.

1 SUPERIOR COURT OF CALIFORNIA
2 COUNTY OF SAN DIEGO, CENTRAL DIVISION
3 Department 73 Hon. Joel R. Wohlfeil
4
5 LARRY GERACI, an individual,)
6 Plaintiff,)
7 vs.) 37-2017-00010073-CU-BC-CTL
8 DARRYL COTTON, an individual;)
9 and DOES 1 through 10,)
10 inclusive,)
11 Defendants.)
12 _____)
13 AND RELATED CROSS-ACTION.)
14 _____)

15
16 Reporter's Transcript of Proceedings
17 JULY 3, 2019
18
19
20
21
22
23
24

25 Reported By:
26 Margaret A. Smith, CSR 9733, RPR, CRR
27 Certified Shorthand Reporter
28 Job No. 10057773

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 APPEARANCES

2

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

5 FERRIS & BRITTON

6 BY: MICHAEL R. WEINSTEIN, ESQUIRE

7 BY: SCOTT H. TOOTHACRE, ESQUIRE

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12 stoothacre@ferrisbritton.com

13 ekulas@ferrisbritton.com

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15 FOR DEFENDANT AND CROSS-COMPLAINANT DARRYL COTTON:

16 ATTORNEY AT LAW

17 BY: JACOB P. AUSTIN, ESQUIRE

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20 619.357.6850

21 jpa@jacobaustinesq.com

22

23

24

25

26

27

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Transcript of Proceedings

Geraci vs. Cotton, et al.

1	I N D E X	
2		PAGE
3	OPENING STATEMENTS:	
4	On behalf of Plaintiff/Cross-Defendant	14
5	On behalf of Defendant/Cross-Complainant	39
6	WITNESSES:	
7	LARRY GERACI	
8	Direct by Mr. Weinstein	54
9	Cross by Mr. Austin	160
10	REBECCA BERRY	
11	Direct by Mr. Weinstein	190
12	Cross by Mr. Austin	200
13		
14		
15		
16		
17		
18		
19		
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21		
22		
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24		
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Transcript of Proceedings

Geraci vs. Cotton, et al.

1	I N D E X (continued)		
2			
3	EXHIBITS	IDENTIFIED / ADMITTED	
4	1 Letter of Agreement with Bartell & Associates dated 10/29/15	60	60
5			
6	5 Text messages between Larry Geraci and Darryl Cotton from 7/21/16 to 5/08/17	71	71
7			
8	8 Email to Larry Geraci from Darryl Cotton re 6176 Federal Blvd property, dated 9/21/16 with attached letter to Dale and Darryl Cotton from Kirk Ross regarding payoff, dated 9/21/16	79	79
9			
10	9 Email to Larry Geraci from Darryl Cotton re GERL MAIN - Invitation to collaborate, dated 9/26/16	81	81
11			
12	10 Draft Services Agreement Contract between Inda-Gro and GERL Investments, dated 9/24/16	81	81
13			
14	14 Email to Larry Geraci and Neil Dutta from Abhay Schweitzer re 6176 Federal Blvd. - Site Visit, dated 10/04/16	84	84
15			
16	15 Email to Rebecca Berry from Abhay Schweitzer re Federal Blvd. - Proposal for Survey, dated 10/06/16	85	85
17			
18	17 Email to Larry Geraci and Neil Dutta from Abhay Schweitzer re Federal Blvd. - Width of ROW, dated 10/18/16 with attached Lundstrom Topographic Survey, Project No. L222-01	88	88
19			
20	18 Email thread between Neil Dutta from Abhay Schweitzer Re: FW: Federal Blvd. - Zoning, dated 10/19/16	88	88
21			
22			
23			
24			
25			
26			
27			
28			

Transcript of Proceedings

Geraci vs. Cotton, et al.

1	I N D E X (continued)		
2	EXHIBITS	IDENTIFIED / ADMITTED	
3	21 Email from Larry Geraci to Darryl Cotton dated 10/24/16, attaching A102 Site Plan - Proposed - Scheme	90	90
5	30 City of San Diego Ownership Disclosure Statement (Form DS-318) signed, dated 10/31/16	93	93
8	34 Forms submitted to City of San Diego in relation to 6176 Federal Blvd CUP Application, dated 10/31/16, Form DS-3032 General Application dated 10/31/2016	196	196
11	38 Agreement between Larry Geraci or assignee and Darryl Cotton, dated 11/02/16	97	97
14	39 Excerpt from Jessica Newell Notary Book dated 11/02/2016	103	103
15	40 Email to Darryl Cotton from Larry Geraci attaching Nov 2 Agreement, dated 11/2/2016	106	106
17	41 Email from Darryl Cotton to Larry Geraci re Agreement, dated 11/2/16	107	107
19	42 Email to Darryl Cotton from Larry Geraci re Agreement, dated 11/2/16	109	109
21	43 Email to Becky Berry from Abhay Schweitzer re Federal Blvd - Authorization to view County Tax Assessor Records, dated 11/07/16 with attachment	120	120
24	44 Email to Darryl Cotton from Larry Geraci re Federal Blvd need sig ASAP, dated 11/14/16	121	121
26	46 Authorization to view records - signed by Cotton 11/15/16	122	122
27	59 Email to Darryl Cotton from Larry Geraci re Federal Blvd Property, dated 2/27/17	130	130

Transcript of Proceedings

Geraci vs. Cotton, et al.

1	I N D E X (continued)		
2	EXHIBITS	IDENTIFIED / ADMITTED	
3	62 Email to Darryl Cotton from	132	132
4	Larry Geraci re Statement		
5	attaching draft Side Agreement,		
6	dated 3/2/17		
7	63 Email to Larry Geraci from	134	134
8	Darryl Cotton re Statement,		
9	dated 3/03/17		
10	64 Email to Darryl Cotton from	136	136
11	Larry Geraci re Contract		
12	Review, dated 3/7/17		
13	69 Email to Larry Geraci from	137	137
14	Darryl Cotton Re Contract		
15	Review, dated 3/17/17		
16	72 Email to Larry Geraci from	144	144
17	Darryl Cotton re Contract		
18	Review, dated 3/19/17		
19	137 Federal Blvd. - Summary of All	155	155
20	Expense Payments		
21	(Excel Spreadsheet)		
22			
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Transcript of Proceedings

Geraci vs. Cotton, et al.

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

3 A No.

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

6 A No.

7 Q Do you know Darryl Cotton?

8 A No.

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

11 A Yesterday in the courtroom.

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

14 A No.

15 Q Have you ever seen him in the office?

16 A No.

17 Q Okay. Now, are you currently employed?

18 A Yes.

19 Q And by whom?

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

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

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

25 A Almost 15 years.

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

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

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 the office.

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

3 A Almost 15 years.

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

5 A Yes.

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

11 A Yes.

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

14 A Yes.

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

18 A Yes.

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

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

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

24 A He's an enrolled agent.

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

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 A Yes.

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

5 A No.

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

8 A Yes.

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

12 A Yes.

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

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

18 Q Okay.

19 A And then I made no decisions.

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

23 A I had some interaction.

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

26 A Abhay.

27 Q That's Mr. Schweitzer?

28 A Mr. Schweitzer.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Q What did you understand his role as?

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

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

10 A Yes.

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

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

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

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

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

20 A Yes.

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

23 A No decisions.

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

27 A Yes.

28 Q Okay. Did you prepare those forms?

Transcript of Proceedings

Geraci vs. Cotton, et al.

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

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

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

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

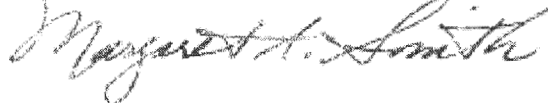
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EXHIBIT 7

Geraci vs. Cotton, et al.

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



Transcript of Proceedings

Geraci vs. Cotton, et al.

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

Reporter's Transcript of Proceedings
JULY 8, 2019

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

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 APPEARANCES

2

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4 CROSS-DEFENDANT REBECCA BERRY:

5 FERRIS & BRITTON

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22

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Transcript of Proceedings

Geraci vs. Cotton, et al.

1	I N D E X	
2		PAGE
3	WITNESSES:	
4	GINA AUSTIN	
	Direct by Mr. Weinstein	10
5	Cross by Mr. Austin	46
	Redirect by Mr. Weinstein	65
6		
	DARRYL COTTON (UNDER 776)	
7	Cross by Mr. Weinstein	69
8	ABHAY SCHWEITZER	
	Direct by Mr. Toothacre	165
9		
10		
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12		
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Transcript of Proceedings

Geraci vs. Cotton, et al.

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

Transcript of Proceedings

Geraci vs. Cotton, et al.

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

Transcript of Proceedings

Geraci vs. Cotton, et al.

1	I N D E X (continued)		
2			
3	EXHIBITS	IDENTIFIED / ADMITTED	
4	48 Email to Jim Bartell from	229	229
5	Abhay Schweitzer Re: Update,		
	dated 11/29/16		
6	49 Email to Abhay Schweitzer from	39	39
7	Jim Bartell RE: Federal Blvd -		
	Completeness Review corrections,		
8	dated 11/30/16		
9	70 Email to Larry Geraci from Darryl	140	140
	Cotton re Contract Review,		
10	dated 3/19/17		
11	71 Email to Darryl Cotton from	143	143
12	Larry Geraci re Contract Review,		
	dated 3/19/17		
13	73 Email to Darryl Cotton from	141	141
14	Firouzeh Tirandazi re Federal		
	Boulevard MMCC, dated 3/21/17		
15	74 Email to Larry Geraci from	145	145
16	Darryl Cotton re Contract Review,		
	dated 3/21/17		
17	75 Email to Firozeh Tirandazi	148	148
18	from Darryl Cotton re PTS		
	520606 - Federal Blvd MMCC,		
19	dated 3/21/17, with attached		
	Addendum Nos. 102		
20	76 CAR Commercial Property Purchase	149	149
21	Agreement and Joint Escrow		
	Instructions, dated 3/21/17		
22	77 Addendum No. 2 - MOU re Martin	151	151
	and Cotton dated 4/15/17		
23	78 Addendum No. 3 - Permit Disclosure	152	152
24	of Agreement in Cotton's Response		
	to Geraci lawsuit - Martin & Cotton		
25	dated 5/12/17		
26	84 Email to Darryl Cotton from	154	154
27	Michael Weinstein re Geraci v.		
	Cotton - Posting of Notice of		
28	Application, dated 3/28/17		

Transcript of Proceedings

Geraci vs. Cotton, et al.

1	I N D E X (continued)			
2				
3	EXHIBITS	IDENTIFIED / ADMITTED		
4	87	Picture of Posted Notice of	155	155
5		Application on property fence of		
6		6176 Federal Blvd , dated 4/04/17		
7	94	Email to Darryl Cotton from	156	156
8		Firouzeh Tirandazi re PTS		
9		520606 - Federal Boulevard MMCC,		
10		dated 05/08/17		
11	118	Notice of Ruling After Hearing	162	162
12		Re Motion by Plaintiff for		
13		Preliminary Injunction or other		
14		Order to Compel Access to the		
15		Subject Property for Soils		
16		Testing, 3/26/18		
17	119	Order Granting Ex Parte	163	163
18		Application by Plaintiff for		
19		Appointment of Court Clerk or		
20		Court Clerk's Designees as		
21		Elisor, 4/3/2018		
22	138	Austin Legal Group Expense	14	14
23		Summary with Supporting		
24		Documentation		
25	164	City Ordinance No. 0-20793	22	24
26	281	B&P Code Section 26057	56	
27				
28				

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 A Yes.

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

4 A Yes.

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

9 A As a good attorney? Sure.

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

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

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

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

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

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

Transcript of Proceedings

Geraci vs. Cotton, et al.

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

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

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

17 MR. WEINSTEIN: Objection. Vague as phrased.

18 THE COURT: Overruled.

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

Transcript of Proceedings

Geraci vs. Cotton, et al.

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

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

5 BY MR. AUSTIN:

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

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

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

15 So on the 5176 property, Mr. Geraci's name was
16 not used on the CUP application. Correct?

17 A That's correct.

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

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

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

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

Transcript of Proceedings

Geraci vs. Cotton, et al.

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

5 A No.

6 Q You're not aware of that?

7 A No.

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

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

15 MR. WEINSTEIN: Waived, your Honor.

16 THE COURT: I'm sorry?

17 MR. WEINSTEIN: We will waive the privilege.

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

21 BY MR. AUSTIN:

22 Q Were those marijuana related?

23 A They were not.

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

28 A That's correct.

Transcript of Proceedings

Geraci vs. Cotton, et al.

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

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

7 Q Yes.

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

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

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

16 BY MR. AUSTIN:

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

24 A Yes.

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

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

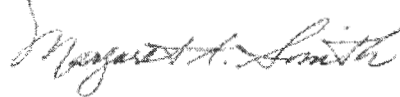
Transcript of Proceedings

Geraci vs. Cotton, et al.

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

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

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

13 
14

15 Margaret A. Smith, CSR No. 9733, RPR, CRR
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EXHIBIT 9



Transcript of Proceedings:

Geraci

v.

Cotton

November 03, 2017

Transcript of Proceedings

November 03, 2017

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY SAN DIEGO

3
4 DEPARTMENT 73

HON. JOEL R. WOHLFEIL, JUDGE

5) Case No.

6) 37-2017-00010073-CU-BC-CTL

7 LARRY GERACI, AN
8 INDIVIDUAL,

9 Plaintiff ,

10 vs.

11 DARRYL COTTON, AN
12 INDIVIDUAL; AND DOES 1
13 THROUGH 10, INCLUSIVE,

14 Defendants.

15 _____
16 DARRYL COTTON, AN INDIVIDUAL,

17 Cross-complainant,

18 vs.

19 LARRY GERACI, AN INDIVIDUAL,
20 REBECCA BERRY, AN INDIVIDUAL,
21 and DOES 1 THROUGH 10,
22 INCLUSIVE,

23 Cross-Defendants.
24 _____

25
26
27 REPORTER'S TRANSCRIPT OF PROCEEDINGS

28 SAN DIEGO, CALIFORNIA

NOVEMBER 3, 2017

29
30
31 REPORTED BY: JULIE A. MCKAY, CSR 9059
32 OFFICIAL REPORTER PRO TEMPORE

Transcript of Proceedings

November 03, 2017

1 APPEARANCES:

2

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3

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Transcript of Proceedings

November 03, 2017

1 FRIDAY, NOVEMBER 3, 2017, 9:13 A.M.

2 SAN DIEGO, CALIFORNIA

3 DEPARTMENT 73 HON. JOEL R. WOHLFEIL, JUDGE

4

5 THE COURT: Item 7. Case number ending 10073.

6 Counsel, good to see both of you. You were
7 temporarily confused, Counsel.

8 MR. WEINSTEIN: Because we have two actions
9 between us; and in one, with real parties in interest.

10 THE COURT: Can I have your appearance?

11 MR. WEINSTEIN: Michael Weinstein with Ferris &
12 Britton for plaintiff Larry Geraci, also a
13 cross-defendant, and cross-defendant, Rebecca Berry.

14 MR. DEMIAN: Good morning, Your Honor. David
15 Demian appearing on behalf of Darryl Cotton.

16 THE COURT: Okay. Just give me one moment to
17 remind myself of what the Court is inclined to do. This
18 is your demurrer?

19 MR. WEINSTEIN: Yes.

20 THE COURT: That's what I thought. That's why
21 when you were heading over there and ended up there --
22 okay. This is on a cross-complaint?

23 MR. WEINSTEIN: It is.

24 THE COURT: Interesting case. Are you
25 submitting?

26 MR. DEMIAN: On the tentative, yes, Your Honor.

27 THE COURT: Right.

28 Counsel?

Transcript of Proceedings

November 03, 2017

1 MR. WEINSTEIN: Yes. What I would like to do
2 is address only the breach of contract claim. That's
3 the one that we take issue with the tentative on.

4 So with respect to the breach of contract, your
5 tentative ruling rejects the argument that Mr. Cotton's
6 alleged oral agreement is inconsistent with the --
7 contradicts the signed written agreement, which you've
8 referred to in your tentative ruling as the written
9 memorandum and, therefore, you reject the argument that
10 it's violative of the statute of frauds.

11 What you say in support of that is the argument
12 lacks merit because the written memorandum attached to
13 the second amended cross-complaint is unclear. The
14 acknowledgment as to payment of \$10,000 does not
15 necessarily mean that the total deposit was not, in
16 fact, \$50,000, and \$40,000 was remained to be paid.

17 You also say it's not clear whether the statute
18 of fraud applies to an agreement to negotiate. I'm
19 going to address that second point last.

20 As to the issue of whether the alleged oral
21 agreement is inconsistent with the written memorandum, I
22 think you're reading the controlling decision in
23 California, the Supreme Court cases in Sterling versus
24 Taylor and Beazell versus Shrader. And these are cited
25 in the brief. I think you're reading them too narrowly.
26 Those decisions hold --

27 THE COURT: Counsel, the case, again? I'm
28 sorry. I just want to be --

Transcript of Proceedings

November 03, 2017

1 MR. WEINSTEIN: Two California Supreme Court
2 cases are Sterling versus Taylor and Beazell,
3 B-e-a-z-e-l-l.

4 THE COURT: Gotcha.

5 MR. WEINSTEIN: So those decisions clearly hold
6 that under the statute of frauds, extrinsic evidence
7 can't be employed to prove an agreement at odds with the
8 terms of the memorandum. Put another way, the parol
9 agreement, in this case, alleged oral agreement that
10 Mr. Cotton is alleging of which the written agreement is
11 a memorandum, must be one whose terms are consistent
12 with the terms of the memorandum.

13 So determining whether extrinsic evidence
14 provides the certainty required by the statutes, Court
15 has to recognize that extrinsic evidence cannot
16 contradict the terms of the writing.

17 Here your tentative focuses on the \$10,000
18 deposit in the written agreement versus the \$50,000
19 that's alleged in the oral agreement. But there's more
20 than that. Mr. Cotton clearly alleges an \$800,000 price
21 for the purchase of real property. That's in the
22 written agreement.

23 But he also alleges that the parties orally
24 agreed to provide him that he would receive a 10 percent
25 equity stake in the dispensary that was going to operate
26 on the property and, also, 10 percent of the profits.
27 There's nothing in the written agreement about that.

28 And the purpose of the parol evidence rule is

Transcript of Proceedings

November 03, 2017

1 it's only there to -- and these cases hold that -- it's
2 only there to explain ambiguities in the written
3 memorandum. There's nothing in the written agreement
4 that's ambiguous about the total consideration that's
5 being paid for the property.

6 You've got the oral agreement that's being
7 alleged lead to substantially additional consideration
8 in the form of an equity stake and 10 percent of
9 profits. So those additional terms and conditions are
10 automatically inconsistent with the terms of the written
11 agreement.

12 In addition, if we look at the 10,000 versus
13 \$50,000 deposit, which I think is a lesser
14 contradiction, you've said that that particular
15 provision in the written agreement, the \$10,000 earnest
16 money, is ambiguous and could be explained by the
17 extrinsic evidence that he provided of an agreement that
18 there be a \$50,000 deposit.

19 I also think that's flawed, because if you read
20 the allegations of the complaint, Mr. Cotton alleges
21 that Geraci agreed to pay -- this is in paragraph 14A of
22 the second amended cross-complaint. Geraci agreed to
23 pay the total sum of \$800,000 consideration for the
24 purchase of the property, with a \$50,000 nonrefundable
25 deposit payable to Cotton upon the parties' execution of
26 final integrated written agreements and the remaining
27 \$750,000 payable to Cotton upon the City's approval of
28 his CUP application for the property.

Transcript of Proceedings

November 03, 2017

1 In the written agreement, what it says, it
2 talks about he agrees to pay \$300,000 for the property.
3 And then it says \$10,000 has been given in good faith
4 earnest money to be applied to the sales price and to
5 remain in effect until the license is granted.

6 So the written agreement says, I've given
7 \$10,000. The remaining balance of \$790,000 is not due
8 until the license or the CUP application is approved.
9 That's inconsistent with what's alleged in the oral
10 agreement that says, I was supposed to get 50,000 and
11 pay the balance of 750- at the end. So that provision
12 is inconsistent with the -- contradicts the terms of the
13 written agreement.

14 And as I said before, the two provisions for
15 10 percent equity stake and 10 percent of the profits
16 clearly add to the written memorandum and don't clear up
17 any ambiguity in the written memorandum. It doesn't
18 speak to those issues at all.

19 So you have agreement for the purchase of real
20 property that is subject to the statute of frauds. All
21 the material terms and conditions have to be stated in
22 writing. And an oral agreement that alleges additional
23 material terms and conditions that -- and that evidence
24 doesn't explain any ambiguity in the written agreement.
25 It adds to the terms. And that's violative of the
26 statute of frauds.

27 So that takes us to the other argument, which
28 is, Okay. You said it's not clear that the statute of

Transcript of Proceedings

November 03, 2017

1 frauds applies to an agreement to negotiate in good
2 faith. And you cite the Copeland case, Copeland versus
3 Baskin-Robbins, which counsel cited in their papers.

4 And I submit that that case doesn't apply at
5 all. Copeland was a written agreement between
6 Mr. Copeland and Baskin-Robbins where Copeland bought
7 Baskin-Robbins' ice cream manufacturing plant and in the
8 written agreement agreed that they would negotiate on
9 the terms of a co-packing agreement. In other words, on
10 an agreement whereby once he started operating the
11 plant, he would sell the ice cream to Baskin-Robbins.
12 Previously Baskin-Robbins owned both the plant and sold
13 itself ice cream from the plant.

14 These -- this is not a case in which there's an
15 agreement to negotiate a future or another agreement.
16 I've looked at all the citations to Copeland. There's
17 about 109 of them, about 90-plus of which are
18 unpublished, but they come up, also, in the context of a
19 letter of intent or, like, in a lease where it has a
20 provision that says, You have an -- You have an
21 obligation to negotiate in good faith with respect to a
22 lease extension.

23 The -- when I say sine qua non, I'm not sure
24 that's the correct Latin phrase, but the whole point of
25 this type of claim that's recognized in California for
26 breach of an agreement to negotiate is when there is no
27 agreement already. It's a situation in which the
28 parties agree to negotiate to try and reach an agreement

Transcript of Proceedings

November 03, 2017

1 in the future. And, in fact, there's no obligation on
2 the part of the parties to reach an agreement about
3 anything.

4 So what the case law says -- and Copeland says
5 this directly in its quote -- is you can violate an
6 agreement to negotiate without actually reaching an
7 agreement. You don't have to reach an agreement. And
8 that's why under this particular type of claim, you're
9 only entitled to reliance damages, not expectancy
10 damages, because you don't get what you say the contract
11 should have been. You get what you expended in reliance
12 on the promise to negotiate.

13 So the way these cases are litigated is the
14 people decide whether it was negotiated in good faith,
15 because there was an obligation to do so, and then you
16 did or didn't.

17 In this case, it's very clear from the second
18 amended cross-complaint. If you look at paragraphs 13,
19 14, 15, Mr. Cotton has alleged that on November 2nd,
20 2016, the parties reached an agreement about the
21 material terms and conditions for the purchase of the
22 property: \$800,000. He sets \$50,000 deposit,
23 10 percent equity stake, 10 percent profit. And that
24 was all agreed to on November 2nd, 2016. And my client,
25 Mr. Geraci promises to reduce it to a writing.

26 There was nothing to negotiate. There was no
27 negotiation that was going to happen on the deposit.
28 There was no agreement to negotiate on the equity stake

Transcript of Proceedings

November 03, 2017

1 or on the 10 percent of the property profits. He claims
2 that was already agreed to.

3 So this is a case in which it's an agreement
4 that has, according to Mr. Cotton, all of these material
5 terms and concerns. Not reflected in the written
6 memorandum, but there's nothing to agree to negotiate,
7 to reach.

8 The issue -- what's really happening in this
9 complaint and what's really alleged, if you look at the
10 factual allegations, is my client failed to reduce to
11 writing the agreement -- the oral agreement that
12 Mr. Cotton says was reached between them.

13 You can't get around the statute of frauds that
14 easily. You can't have an agreement that requires
15 compliance with the statute of frauds and say, But I
16 don't have to comply with it because I had an oral
17 agreement to put it in writing; and they failed to put
18 it in writing, so, therefore, the statute of frauds
19 isn't violated. That's not the law. So that's my
20 position on breach of contract claim.

21 THE COURT: All right. And, Counsel, I'm going
22 to take the matter under submission. I'm going to look
23 at the authorities and reflect.

24 Did you want me to make note of anything that
25 you would like to respond to?

26 MR. DEMIAN: Yes. I would like the opportunity
27 to respond briefly. And I will be brief. If Your Honor
28 has decided to take it under submission, then I think

Transcript of Proceedings

November 03, 2017

1 the papers speak clearly to the strength of our
2 position.

3 However, several of the statements of
4 Mr. Weinstein are interesting to me and they point up
5 that our case and our causes of action for breach of
6 contract have merit. The position of Mr. Weinstein is
7 that if there is no conflict between the November 2
8 document, which he calls an agreement -- I prefer to
9 call it a document simply to distinguish between the
10 idea that they're asserting that this is a fully
11 integrated, signed real estate purchase agreement, which
12 we do not believe it is.

13 That November 2nd document leads with this
14 language: "Darryl Cotton has agreed to sell the
15 property located at," et cetera. Darryl Cotton has
16 agreed. Darryl Cotton does not hereby agree pursuant to
17 the terms of this agreement.

18 If you look at real estate purchase agreements,
19 CAR forms, commercially drafted, they will all say, The
20 seller of the property hereby agrees to sell the
21 property.

22 Our case is based on the idea that this is a
23 receipt. This is more a receipt than an agreement.
24 This document was signed because Mr. Geraci said, I'm
25 going to give you \$10,000. We need to at least put down
26 that we have this agreement to agree and have an
27 exchange of this cash in a writing that documents it.

28 And that's what it does. So is there a

Transcript of Proceedings

November 03, 2017

1 conflict between or an ambiguity in this agreement and
2 the other allegations in our complaint? Well, no,
3 there's not. Because what I just said is completely
4 consistent with all the allegations of the complaint.

5 Similarly, I know that we have an ambiguity and
6 a conflict because in the moving parties for the
7 demurrer -- and I apologize if I misremember, but we can
8 go back, if Your Honor does take this under submission,
9 and look at the documents. Frequently, the \$10,000 is
10 referred to as a deposit.

11 However, in the November 2nd writing, the
12 document states \$10,000 cash has been given in good
13 faith earnest money. Wait a second. Is good faith
14 earnest money the exact same thing as a deposit? And
15 more importantly, is it a final statement as to all the
16 money that must be tendered prior to the sale of the
17 property?

18 And consistent with all our allegations in our
19 cause of action, we assert that there was an agreement
20 to reach the final terms of an agreement. I know I
21 firmly believe this complaint states a cause of action
22 that survives the statute of frauds and the standard for
23 general demurrer, which is the standard here. All
24 allegations must be assumed in the light most favorable
25 to our paper.

26 And then I'll just say briefly on the Beazell
27 case -- and Your Honor, if you review this, you will
28 see. The Beazell case cited by Mr. Weinstein involved a

Transcript of Proceedings

November 03, 2017

1 writing that provided for a total 1.25 percent
2 commission, which conflicted with a writing that then
3 called for a 5 percent commission, which is different
4 and can plainly distinguishable from a \$10,000 earnest
5 money statement versus a \$50,000 deposit. So that case
6 is not on point.

7 And then I guess my -- on the agreement to
8 agree on Baskin-Robbins, I have read Baskin-Robbins,
9 although maybe not the 109-plus citations, as
10 Mr. Weinstein seems to have reviewed. Baskin-Robbins
11 does stand. Where there is a written agreement to
12 agree, the cause of action can stand.

13 And I think that's what the Court found in its
14 demurrer, and I encourage the Court to not deflect from
15 that path because that is a fact. When you have that
16 agreement to agree, it's not necessarily an unhinged
17 agreement to agree. You may have agreement. Regularly
18 we do write letters of intent that have agreements as to
19 the material terms that set the baseline for the
20 discussion that frame what is the good faith negotiation
21 that then follows.

22 So for all of those reasons and the reasons
23 stated in our papers, we request the Court to rule as it
24 did in its tentative ruling.

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

26 MR. WEINSTEIN: May I have 15 seconds,
27 Your Honor? You've been patient. I appreciate it.

28 THE COURT: Sure.

Transcript of Proceedings

November 03, 2017

1 MR. WEINSTEIN: Counsel is now saying they had
2 an agreement to agree. If that's the case, then this
3 case gets -- the cause of action gets knocked out
4 automatically. There's no such thing as agreement to
5 agree.

6 It's even in your quotation in the tentative
7 ruling. You were distinguishing in there between
8 agreement to agree and actual agreement to negotiate in
9 good faith towards something. Those are different
10 things. So I need to make that point.

11 The other thing is, again, we're comparing the
12 alleged oral agreement to the written memorandum. And
13 that's the important thing to focus on in looking at the
14 parol evidence rule.

15 Thank you.

16 THE COURT: Thank you both. I'll take it under
17 submission. I'll get a minute order out as soon as
18 possible. I'll be looking at everything and reflect it
19 in my arguments.

20 MR. DEMIAN: Thank you.

21 MR. WEINSTEIN: Thank you. Your Honor, may I
22 approach the court reporter?

23 THE COURT: Sure.

24 (The proceedings were adjourned at 9:31 a.m.)

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Transcript of Proceedings

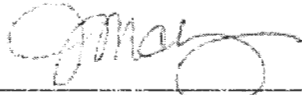
November 03, 2017

CERTIFICATE OF REPORTER

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

I, JULIE A. MCKAY, CSR NO. 9059, AN OFFICIAL
REPORTER PRO TEM IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, IN AND FOR THE COUNTY OF SAN DIEGO, HEREBY
CERTIFY THAT I REPORTED IN SHORTHAND THE RECORD OF THE
PROCEEDINGS HAD IN THE WITHIN CASE AND LATER TRANSCRIBED
SAID RECORD AND THAT THE FOREGOING TRANSCRIPT IS A FULL,
TRUE, AND CORRECT TRANSCRIPTION OF THE PROCEEDINGS IN
THIS CASE.

DATED THIS 14th DAY OF NOVEMBER, 2017.



JULIE A. MCKAY,
CSR NO. 9059
OFFICIAL REPORTER PRO TEMPORE

EXHIBIT 10

ORIGINAL

FILED
CLERK BUSINESS OFFICE 18 /
CENTRAL DIVISION

2017 MAY 12 P 3:49

CLERK SUPERIOR COURT
SAN DIEGO COUNTY, CA

Darryl Cotton, *In pro se*
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Fax: (619) 229-9387
Defendant and Cross-Complainant

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

LARRY GERACI, an individual,
Plaintiff,

vs.

DARRYL COTTON, an individual; and
DOES 1 through 10, inclusive,
Defendant.

DARRYL COTTON, an individual,
Cross-Complainant,

v.

LARRY GERACI, an individual, REBECCA
BERRY, an individual, and DOES 1
through 10, inclusive,
Cross-Defendants

CASE NO.: 37-2017-00010073-CU-BC-CTL

Judge: The Honorable Joel Wohlfeil
Dept.: C-73

COTTON'S CROSS-COMPLAINT FOR:

1. QUIET TITLE
2. SLANDER OF TITLE
3. FRAUD / FRAUDULENT
MISREPRESENTATION
4. FRAUD IN THE INDUCEMENT
5. BREACH OF CONTRACT
6. BREACH OF ORAL CONTRACT
7. BREACH OF IMPLIED CONTRACT
8. BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH AND
FAIR DEALING
9. TRESPASS
10. CONSPIRACY
11. DECLARATORY AND INJUNCTIVE
RELIEF

Defendant and Cross-complainant Darryl Cotton ("Cotton") alleges as follows:

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

2. Plaintiff and Cross-defendant Larry Geraci ("Geraci") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

1 3. Cross-defendant Rebecca Berry ("Berry") is, and at all times mentioned was,
2 an individual residing within the County of San Diego, California.

3 4. Cotton, at all times material to this action, was the sole owner of the
4 commercial property located at 6176 Federal Boulevard in San Diego, California
5 92114 (the "Property"), the subject of this dispute.

6 5. Cotton is the President of Inda-Gro, a manufacturer of environmentally
7 sustainable products, primarily induction lighting systems, that help enhance crop
8 production while conserving energy and water resources.

9 6. Cotton is the President of 151 Farms, a not-for-profit organization he founded
10 in that is focused on providing ecologically sustainable cultivation practices for the
11 food and medical needs of urban communities.

12 7. Cotton, at the Property, operates both his Inda-Gro business and his 151
13 Farms not-for-profit.

14 8. Cotton does not know the true names and capacities of the defendants named
15 DOES 1 through 10 and, therefore, sues them by fictitious names. Cotton is informed
16 and believes that DOES 1 through 10 are in some way responsible for the events
17 described in this Cross-complaint and are liable to Cotton based on the causes of
18 action below. Cotton will seek leave to amend this Cross-complaint when the true
19 names and capacities of these parties have been ascertained.

20 9. Based on the foregoing, jurisdiction is proper in this Court and venue in San
21 Diego County, California.

22 GENERAL ALLEGATIONS

23 10. Geraci contacted Cotton in August of 2016 seeking to purchase the
24 Property from Cotton. Geraci desired to buy the Property because it meets certain
25 requirements by the City of San Diego (the "City") that would allow Geraci to apply
26 for a Conditional Use Permit ("CUP"). If granted, the CUP would permit the operation
27 of a Medical Marijuana Consumer Cooperative ("MMCC") at the Property.

28 11. Subsequent to the initial conversation in August between Geraci and
Cotton, over the course of approximately two months, the parties entered into

1 intense negotiations regarding the sale of the Property. During this period of time, in
2 good-faith anticipation of finalizing the sale of the Property, the parties
3 simultaneously engaged in preliminary due diligence and preparation of the CUP
4 application.

5 12. During the course of the negotiations and preparation of the CUP
6 application, Geraci represented to Cotton, among other things, the following:

7 a. That his due diligence uncovered a critical zoning issue that would
8 prevent the Property from being issued a CUP permit unless he lobbied with the City
9 to have the issue resolved (the "Critical Zoning Issue");

10 b. That he, through his personal and professional relationships, was in a
11 unique position to lobby and influence key City political figures to (i) have the Critical
12 Zoning Issue favorably resolved and (ii) have the CUP application approved once
13 submitted.

14 c. That he was in a position to successfully operate a MMCC because, at
15 that point in time, he owned and was managing several other marijuana dispensaries
16 in the San Diego County area.

17 d. That as an Enrolled Agent for the IRS, and the owner-manager of Tax
18 and Financial Center, Inc. (a tax-related business), he was an individual that Cotton
19 could trust because he operated in a fiduciary capacity on a daily-basis for many
20 high-net worth individuals and businesses.

21 13. On November 2, 2016, after months of negotiations, Geraci and Cotton
22 met at Geraci's office to negotiate the unsettled terms and finalize their agreement
23 for the sale of the Property. The parties agreed to over thirty different terms for the
24 sale of the Property and their intention was to reduce those terms to a writing.

25 14. The consideration for the purchase of the Property consisted of
26 monetary and non-monetary components. Under the terms of the agreement
27 reached, Geraci agreed to provide Cotton, among other things, the following
28 consideration for the Property:

a. The sum of \$800,000;

- b. A 10% equity stake in the NMCC upon the City's approval of the CUP at the Property (the "Business") and
- c. On a monthly basis, 10% of the profits of the Business for the preceding month or \$10,000, whichever was greater.

15. A condition precedent to closing the sale of the Property was the City's approval of the CUP application.

16. Further, Geraci would pay Cotton a non-refundable deposit in the amount of \$50,000 (the "Non-Refundable Deposit"). Geraci was then to submit a CUP application to the City. If the City granted the application, the sale and transfer of title to the Property to Geraci would be consummated upon Geraci's payment of the \$750,000 balance. However, if the City rejected the CUP application, the sale and transfer of the Property would not proceed and Cotton would be entitled to retain the \$50,000 Non-Refundable Deposit.

17. The transaction was to be effectuated via two agreements: (i) a Real Estate Purchase Agreement and (ii) a Side Agreement. The Real Estate Purchase Agreement was to specify the payment of \$400,000 from Geraci to Cotton for the purchase of the Property.

18. The Side Agreement was to include the additional, remaining \$400,000 payment obligation (such that, in aggregate, the monetary components of the Real Estate Purchase Agreement and the Side Agreement totaled \$800,000). The Side Agreement was also to include various other material terms, including, without limitation, the 10% equity stake and monthly profit sharing (i.e., 10% of profits or a minimum monthly payment of \$10,000).

19. After the parties finalized consideration for the Property, Geraci requested of Cotton that he be given time to put together the \$50,000 Non-Refundable Deposit. Geraci alleged that he needed time as he had limited cash and he would require the cash he did have to immediately fund the costly preparation of the CUP application and lobbying efforts needed to resolve the Critical Zoning Issue.

1 20. Geraci offered to provide Cotton on that day \$10,000 as a show of
2 "good-faith" towards the \$50,000 Non-Refundable Deposit even though the parties
3 did not have a final legal agreement for the sale of the Property. Cotton raised his
4 concern, that he would not receive the balance of the Non-Refundable Deposit if the
5 City denied the CUP application. Geraci promised to pay the balance of the Non-
6 Refundable Deposit prior to submission of the CUP application with the City and
7 stressed the need to immediately resolve the Critical Zoning Issue.

8 21. Cotton agreed and Geraci offered to incur the cost of having his
9 attorney, Gina Austin, "quickly" draft the Real Estate Purchase Agreement and the
10 Side agreement.

11 22. At Geraci's request, the parties executed a three-sentence agreement
12 that Geraci stated was for there to be a record of Cotton's receipt of the \$10,000
13 "good-faith" deposit (the "November 2nd Agreement").

14 23. That same day at 3:11 PM, Geraci emailed Cotton a scanned copy of
15 the notarized November 2nd Agreement.

16 24. Later that day at 6:55 PM, Cotton replied to Geraci, noting:
17 "I just noticed the 10% equity position in the dispensary was
18 not language added into that document. I just want to make
19 sure that we're not missing that language in any final
20 agreement as it is a factored element in my decision to sell the
21 property. I'll be fine if you would simply acknowledge that here
22 in a reply."

23 25. Approximately 2 hours later at 9:13 PM, Geraci replied, stating "No no
24 problem at all." (Exhibit 1.)

25 26. Cotton, having received written confirmation from Geraci regarding the
26 10% equity stake, continued to operate in good-faith under the assumption that
27 Geraci's attorney would draft the appropriate legal agreements reflecting the deal the
28 parties reached.

 27. Thereafter, over the course of the next four months, Cotton continuously
reached out to Geraci regarding the following three issues:

- a. The progress of the Critical Zoning Issue that precluded the submission of the CUP application;
- b. The balance of the Non-Refundable Deposit; and
- c. The status of the drafts of the Real Estate Purchase Agreement and the Side Agreement.

28. During this four-month period Geraci was predominantly unresponsive and failed to make substantive progress on any of his promises.

29. On January 6, 2017, Cotton, exasperated with Geraci for failing to provide any substantive updates on the Critical Zoning Issue or drafts of the legal agreements, texted him "Can you call me. If for any reason you're not moving forward I need to know."

30. That same day Geraci replied via text, stating "I'm at the doctor now everything is going fine the meeting went great yesterday supposed to sign off on the zoning on the 24th of this month I'll try to call you later today still very sick."

31. Between January 18, 2017 and February 7, 2017, the following text conversation took place between Geraci and Cotton:

Geraci: "The sign off date they said it's going to be the 30th."

Cotton: "This resolves the zoning issue?"

Geraci: "Yes"

Cotton: "Excellent"

Cotton: "How goes it?"

Geraci: "We're waiting for confirmation today at about 4 o'clock"

Cotton: "Whats new?"

Cotton: "Based on your last text I thought you'd have some information on the zoning by now. Your lack of response suggests no resolution as of yet."

Geraci: "I'm just walking in with clients they resolved it its fine we're just waiting for final paperwork."

32. Thus, Geraci's communications to Cotton regarding final resolution of the Critical Zoning Issue (the prerequisite to the submission of the CUP application and the latest point at which Cotton would receive the remaining \$40,000 of the Non-Refundable Deposit) was that although imminent, it had not yet been completed.

1 33. On February 16, 2017, Geraci texted Cotton "we are preparing the
2 documents with the attorney and hopefully will have them by the end of this week."

3 34. On February 22, 2017, Geraci texted Cotton "Contract should be ready
4 in a couple days."

5 35. On February 27, 2017, Geraci emailed Cotton a draft Agreement of
6 Purchase and Sale of Real Property for the Property (the "First Draft Real Estate
7 Agreement"). The First Draft Real Estate Agreement completely failed to reflect the
8 agreement that Geraci and Cotton had reached on November 2, 2016. Cotton called
9 Geraci who said it was a miscommunication between him and his attorney Gina
10 Austin and he promised to have her revise the First Draft Real Estate Agreement.

11 36. On March 2, 2017, Geraci emailed Cotton a draft Side Agreement (the
12 "First Draft Side Agreement").

13 37. On March 3, 2017, having reviewed the First Draft Side Agreement,
14 Cotton emailed Geraci stating: "I see no reference is made to the 10% equity position
15 [and] para 3.11 looks to avoid our agreement completely." Paragraph 3.11 of the
16 First Draft Side Agreement states that the parties have no joint venture or
17 partnership agreement of any kind, in complete contradiction of the deal reached
18 between the parties.

19 38. Thereafter, Cotton became increasingly frustrated by Geraci's lack of
20 progress on the outstanding issues. He noted to Geraci during a conversation that he
21 would be looking to get an attorney to revise the inaccurate drafts of the legal
22 agreements provided. Geraci assuaged Cotton by telling him it was a
23 misunderstanding on his attorney's part and that Cotton could speak with her directly
24 regarding any comments to the drafts.

25 39. On March 6, 2017, Geraci, having spoken with Cotton and knowing he
26 contemplated attending a social event at which his attorney Gina Austin would be,
27 texted "Gina Austin is there she has a red jacket on if you want to have a
28 conversation with her."

40. On March 7, 2017, Geraci emailed Cotton a revised draft of the Side Agreement (the "Second Draft Side Agreement"). The cover email contained the following language: "... the 10k a month might be difficult to hit until the sixth month... can we do 5k, and on the seventh month start 10k?"

41. The Second Draft Side Agreement contained the following language: "Buyer hereby agrees to pay to Seller 10% of the net revenues of Buyer's Business after all expenses and liabilities have been paid... Further, Buyer hereby guarantees a profits payment of not less than \$5,000 per month for the first three months the Business is open... and \$10,000 a month for each month thereafter the Business is operating on the Property."

42. On or about March 16, 2017, having grown increasingly tired of Geraci's failures to respond to his requests for substantive updates on the Critical Zoning Issue, Cotton reached out directly to the Development Project Manager for the City that is responsible for CUP applications. Cotton discovered from the Development Project Manager that a CUP application had been submitted on his Property on October 31, 2016.

a. Cotton specifically recalled that day, October 31, 2016, as it was the day that Geraci had asked Cotton to execute an Ownership Disclosure Statement reflecting that Cotton had leased the Property to an individual named Rebecca Berry. Geraci told Cotton he required the Ownership Disclosure Statement because:

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

ii. As a sign of good-faith by Cotton as they had not reached a final agreement and he wanted something in writing to prove Cotton's support of the CUP application at the Property as he needed to immediately spend large amounts of cash to continue with the preparation of the CUP application and the Critical Zoning Issue lobbying efforts.

1 43. Geraci told Cotton that Rebecca Berry is very familiar with medical
2 marijuana operations, is a trusted employee and is involved in his other medical
3 marijuana dispensaries.

4 44. Cotton has never met or directly entered into any type of agreement with
5 Rebecca Berry. Insofar as she is involved with Cotton, she has always been an
6 agent of Geraci and has been effectuating his plans, either in concert with him or at
7 his direction.

8 45. On March 16, 2017, Cotton, after having discovered that Geraci had
9 submitted a CUP application on the Property and, therefore, had been deceiving him
10 for months, emailed Geraci stating:

11 "we started these negotiations 4 months ago and the drafts and our
12 communications have not reflected what agreed upon and are still far from
13 reflecting our original agreement. Here is my proposal, please have your attorney
14 Gina revise the Purchase Agreement and the Side Agreement to incorporate all
15 the terms we have agreed upon so that we can execute final versions and get this
16 closed... Please confirm by Monday 12:00 PM whether we are on the same page
17 and you plan to continue with our agreement ... If, hopefully, we can work through
18 this, please confirm that revised final drafts that incorporate the terms [we agreed
19 to] will be provided by Wednesday at 12:00 PM. I promise to review and provide
20 comments that same day so we can execute the same or next day."

21 46. In response to this email, on the same day, Geraci texted Cotton asking
22 "Can we meet tomorrow[?]"

23 47. On March 17, 2017, Cotton replied via email to Geraci's text request for
24 an in-person meeting stating that:

25 "I would prefer that until we have final agreements that we converse exclusively
26 via email. My greatest concern is that you get a denial on the CUP application
27 and not provide the remaining \$40,000 non-refundable deposit. To be frank, I feel
28 that you are not dealing with me in good faith, you told me repeatedly that you
could not submit a CUP application until certain zoning issues had been resolved
and that you had spent hundreds of thousands of dollars on getting them
resolved. You lied to me, I found out yesterday from the City of San Diego that
you submitted a CUP application on October 31 2016 BEFORE we even signed
our agreement on the 2nd of November."

1 48. Thereafter, communications increasingly devolved between Geraci and
 2 Cotton as Geraci refused to confirm in writing, at Cotton's repeated requests, the
 3 original terms of their agreement.

4 49. On March 21, 2017, it being apparent to Cotton that Geraci had no
 5 intention of confirming or honoring the agreement they had reached on November
 6 2nd, 2016, Cotton called the Development Project Manager and asked her to
 7 withdraw the CUP application pending on his Property.

8 50. Later that day, the Development Project Manager emailed Cotton stating
 9 that she could not withdraw the CUP application on Cotton's Property as he
 10 requested because Rebecca Berry is the "financial responsible party" on the CUP
 11 application and not Cotton.

12 51. Also, on March 21, 2017, Cotton emailed Geraci letting him know that
 13 he had spoken with

14 "the Development Project Manager for the City of San Diego who is handling CUP
 15 applications. She made it 100% clear that there are no restrictions on my property
 16 and that there is no recommendation that a CUP application on my property be
 17 denied. In fact, she told me that the application had just passed the 'Deemed
 18 Complete' phase and was entering the review process. She also confirmed that
 19 the application was paid for in October, before we even signed our
 20 agreement...[t]his is our last communication, you have failed to live up to your
 21 agreement and have continuously lied to me and kept pushing off creating final
 22 legal agreements because you wanted to push it off to get a response from the
 23 City without taking the risk of losing the non-refundable deposit in the event the
 24 CUP application is denied. To be clear, as of now, you have no interest in my
 25 property..." (emphasis added.)

26 52. After terminating his agreement with Geraci, Cotton entered into an
 27 agreement with a third-party for the sale of the Property on the same day.

28 53. On March 22, 2017, Cotton was emailed the instant Complaint by
 Geraci's attorney, Michael Weinstein, claiming that

"[t]he November 2, 2016, written agreement is a valid, binding and enforceable
 agreement between Larry Geraci and [me] for the purchase and sale of the
 Property according to its terms and conditions... You have been paid \$10,000.00
 and, in the event the condition precedent of obtaining CUP approval is satisfied,
 then the remaining balance of \$790,000.00 will be due to you from Larry Geraci

1 and you will be obligated to transfer title to Larry Geraci or his assignee."

2 54. On April 29, 2017, Cotton emailed and provided Geraci and Rebecca
3 Berry with drafts of his Answer to Plaintiff's Complaint and his Cross-Complaint.
4 Cotton noted that notwithstanding Geraci's unethical behavior that led to this
5 needless dispute and the overwhelming evidence making clear Geraci's culpability,
6 that he would like to resolve the dispute as quickly and fairly as possible.

7 55. Neither Geraci or Berry replied to Cotton's request to settle the dispute.

8 56. On May 5, 2017, the Court notified Cotton that his Answer & Cross-
9 complaint were rejected because he submitted both pleadings in a single document.
10 Realizing that some time had passed for Geraci, Geraci's attorney and Berry to
11 further review and think about the evidence against them, Cotton emailed Geraci and
12 Berry again seeking to reach a settlement and "work out something reasonable."

13 57. Neither Geraci nor Berry replied to his request to settle the dispute.

14 Count One

15 (Quiet Title)

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

18 59. This cause of action is directed against plaintiff Larry Geraci and cross
19 defendant Rebecca Berry.

20 60. Cotton is the sole and rightful owner of record of the Property.

21 61. Based on the allegations contained in Geraci's Complaint and the Lis
22 Pendens filed by Geraci on the Property, Geraci has made a claim for title to the
23 Property adverse to Cotton. Further, Ms. Berry has filed a CUP application claiming
24 to be the sole owner of the Property.

25 62. Cotton is entitled to an order barring and forever estopping Geraci and
26 Berry from having or claiming any right or title to the Property.
27
28

Count Two

(Slander of Title)

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

64. This cause of action is directed against plaintiff Larry Geraci and cross defendant Rebecca Berry.

65. Geraci and Berry disparaged Cotton's exclusive valid title by and through the preparing, posting, publishing, and recording of the documents previously described herein, including, but not limited to, the instant Complaint, the Lis Pendens filed on the Property and the CUP application.

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

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

68. As a further and proximate result of Geraci's conduct, Cotton has incurred expenses in order to clear title to the Property. Moreover, these expenses are continuing and Cotton will incur additional charges for such purpose until the cloud on Cotton's title to the Property has been removed. The amounts of future expenses are not ascertainable at this time, but will be proven at trial.

69. As a further and proximate result of Geraci's conduct, Cotton has suffered humiliation, mental anguish, anxiety, depression, and emotional and physical distress, resulting in the loss of sleep and other injuries to his health and

1 well-being, and continues to suffer such injuries on an ongoing basis. The amount of
2 such damages shall be proven at trial.

3 a. By fortuitous happenstance, the Property qualifies to apply for a CUP,
4 which represents a significant windfall for Cotton and has the potential to be a life-
5 changing opportunity for him. Unfortunately, Geraci and Berry have sought to first
6 fraudulently deprive Cotton of the benefits that he bargained for and to which Geraci
7 agreed to on November 2nd, 2016, and, second, Geraci continues to harm Cotton by
8 proceeding with this action when he absolutely knows that the evidence is
9 unequivocal and he will not prevail if this action is seen through.

10 b. Geraci's continuation of this action causes ever increasing damage to
11 Cotton on a daily basis because, simply put, he is indescribably tormented
12 emotionally and physically as he sees a once in a lifetime opportunity, that could put
13 him in a position to provide for his loved ones and support him into retirement, being
14 destroyed by Geraci and Berry's greed and malicious behavior.

15 70. At the time that the false and disparaging documents were created and
16 published by Geraci, Geraci knew the documents were false and created and
17 published them with the malicious intent to injure Cotton and deprive him of his right,
18 title, and interest in the Property, and to obtain the Property for his own use by
19 unlawful means.

20 71. The conduct of Geraci in publishing the documents described above
21 was fraudulent, oppressive, and malicious. Therefore, Cotton is entitled to an award
22 of punitive damages in an amount sufficient to punish Geraci for his malicious
23 conduct and to deter such outrageous misconduct in the future.

24 Count Three

25 (Fraud / Fraudulent Misrepresentation)

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

28 73. This cause of action is directed against plaintiff Larry Geraci.

1 74. On November 2, 2016, Geraci represented to Cotton, among other
2 things, that:

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

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

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

12 d. That he, Geraci, as an Enrolled Agent by the IRS was someone who
13 was held to a high degree of ethical standards and could be trusted effectuate the
14 agreement reached.

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

17 76. Geraci knew that these representations were false because, among
18 other things, Geraci had already filed a CUP application with the City of San Diego
19 prior to that day. His subsequent communications via email and text messages make
20 clear that he continued to represent to Cotton that the preliminary work of preparing
21 the CUP application was underway, when, in fact, he was just stalling for time.
22 Presumably, to get an acceptance or denial from the City and, assuming he got a
23 denial, to be able to deprive Cotton of the \$40,000 balance due on the Non-
24 Refundable Deposit.

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

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

28 79. Cotton relied on Geraci's representations.

1 80. Cotton's reliance on Geraci's representations were reasonable and
2 justified.

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

8 82. Cotton has been damaged in an amount of no less than \$2,000,000.
9 Additional damages from potential future profit distributions and other damages will
10 be proven at trial.

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

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

17 **Count Four**

18 **(Fraud in the Inducement)**

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

21 86. This cause of action is directed against plaintiff Larry Geraci.

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

25 88. Geraci had no intent to perform the promises he made to Cotton on
26 November 2nd, 2016 when he made them, as is clear from his actions described
27 herein, that he represented he would be preparing a CUP application, when, in fact,
28 he had already deceived Cotton and submitted a CUP application.

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

3 90. Cotton reasonably relied on Geraci's promises.

4 91. Geraci failed to perform the promises he made on November 2nd, 2016,
5 notably, his delivery of the balance of the Non-Refundable Deposit and his promise
6 to treat the November 2nd Agreement as a memorialization of the \$10,000 received
7 towards the Non-Refundable Deposit and not the final legal agreement for the
8 purchase of the Property.

9 92. Cotton has suffered and continues to suffer damages because he relied
10 on Geraci's representations and promises in an amount to be determined at trial, but
11 which is no less than \$2,000,000.

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

15 **Count Five**

16 **(Breach of Contract)**

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

19 95. This cause of action is directed against plaintiff Larry Geraci.

20 96. The agreement reached on November 2nd, 2016 is a valid and binding
21 agreement between Cotton and Geraci and the November 2nd Agreement was meant
22 to be the written instrument that solely memorialized the partial receipt of the Non-
23 Refundable Deposit and was not representative of the entirety of the agreement.

24 97. Cotton upheld his end of the bargain, by, among other things, not selling
25 his Property and helping with the preparation of the CUP application.

26 98. Geraci breached the contract by, among other reasons, alleging the
27 November 2nd Agreement is the final agreement between the parties for the
28 purchase of the Property.

1 99. Cotton has suffered and continues to suffer damages because of
2 Geraci's actions that constitute a breach of contract in an amount to be determined
3 at trial, but which is no less than \$2,000,000.

4 **Count Six**

5 **(Breach of Oral Contract)**

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

8 101. This cause of action is directed against plaintiff Larry Geraci.

9 102. The agreement reached on November 2nd, 2016 is a valid and binding
10 oral agreement between Cotton and Geraci.

11 103. Geraci has breached the agreement by, among other actions described
12 herein, alleging the written November 2nd Agreement is the final and entire
13 agreement for the Property.

14 104. Cotton performed his obligations as agreed on November 2nd, 2016;
15 among other things, he did not sell his property and, as a consequence of Geraci's
16 breach of the agreement, is excused from having done so, but, Geraci, is still liable
17 for the remainder of the balance due on the Non-Refundable Deposit.

18 105. Cotton has suffered and continues to suffer damages because of
19 Geraci's actions that constitute a breach of oral contract in an amount to be
20 determined at trial, but which is no less than \$2,000,000.

21 **Count Seven**

22 **(Breach of Implied Contract)**

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

25 107. This cause of action is directed against plaintiff Larry Geraci.

26 108. A cause of action for breach of implied contract has the same elements
27 as does a cause of action for breach of contract, except that the promise is not
28 expressed in words but is implied from the promisor's conduct.

109. The agreement reached on November 2nd, 2016 is a valid and binding agreement between Cotton and Geraci.

110. Geraci fraudulently induced Cotton into executing the November 2nd Agreement, which Geraci now purports is the final agreement between the parties for the purchase of the Property. However, the emails, texts and actions taken by and between Geraci and Cotton make indisputably clear that there was an implied contract that is not the November 2nd Agreement.

111. Geraci has breached the implied contract by, among other actions described herein, alleging the November 2nd Agreement is the final agreement between the parties for the purchase of the Property.

112. Cotton has suffered and continues to suffer damages because of Geraci's actions that constitute a breach of implied contract in an amount to be determined at trial, but which is no less than \$2,000,000.

Count Eight

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

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

114. This cause of action is directed against plaintiff Larry Geraci and cross defendant Rebecca Berry.

115. There is an implied covenant of good faith and fair dealing in every contract that neither party will do anything which will injure the right of the other to receive the benefits of the agreement.

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

117. Cotton has suffered and continues to suffer damages because of Geraci's actions that constitute a breach of the implied covenant of good faith and fair dealing.

118. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages in an amount to be determined at trial, but which is no less than \$2,000,000.

Count Nine

(Trespass)

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

120. This cause of action is directed against plaintiff Larry Geraci and cross defendant Rebecca Berry.

121. At relevant times, the Property was owned solely by Cotton and, currently, is still in his sole possession.

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

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

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

125. On March 21, 2017 Cotton emailed Geraci stating that he no longer had any interests in the Property and should not trespass on his Property, yet he continued to do despite being warned not to.

126. Geraci's Notices of Application posted on his Property has caused and continues to damage to Cotton because:

a. It is a trespass upon Cotton's Property by Geraci who has no right to the Property.

b. The posting gives the appearance that Ms. Berry is the only owner of the CUP application for the Property, thereby damaging Mr. Cotton's interest in the CUP application.

c. Cotton has no adequate remedy at law for the injuries currently being suffered in that it will be impossible for Cotton to determine the precise amount of damages that he will suffer if Geraci and/or his agents conduct is not restrained.

127. Cotton has suffered and continues to suffer damages because of Geraci's actions in an amount to be determined at trial, but which is no less than \$2,000,000.

Count Ten
(Conspiracy)

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

129. This cause of action is directed against plaintiff Larry Geraci and cross defendant Rebecca Berry.

a. Geraci fraudulently induced Cotton to execute the Ownership Disclosure Statement on October 31st, 2016, alleging that the Ownership Disclosure Statement was necessary because the parties did not have a final agreement in place at that time, he needed it to show other professionals involved in the preparation of the CUP application and the lobbying efforts to prove that he, Geraci, had access to the Property.

b. Geraci wanted something in writing proving Cotton's support of the CUP application at his Property.

c. The Ownership Disclosure Statement is also executed by Berry and denotes Berry is the "Tenant/Lessee." Further, Berry filed a separate document with the City claiming she is the "Owner" of the Property.

130. Geraci represented to Cotton that Berry could be trusted, is a trusted employee, and is familiar with the medical marijuana industry.

1 131. Cotton has never met or entered into a direct agreement with Berry.
 2 Berry knew that she had not entered into a lease of any form with Cotton for the
 3 Property and knew that she had no ownership interest in the Property.

4 132. Upon information and belief, Berry submitted the CUP application in her
 5 name on behalf of Geraci because Geraci has been a named defendant in numerous
 6 lawsuits brought by the City of San Diego against him for the operation and
 7 management of unlicensed, unlawful and illegal marijuana dispensaries. These
 8 lawsuits would ruin Geraci's ability to obtain a CUP himself.

9 133. Berry knew that she was filing a document with the City of San Diego
 10 that contained false statements, specifically that she was a lessee of the Property
 11 and owner of the property.

12 134. Berry, at Geraci's instruction or her own desire, submitted the CUP
 13 application as Geraci's agent, and thereby participated in Geraci's scheme to deprive
 14 Cotton of his Property and his ownership interest in the CUP application.

15 135. Cotton has suffered and continues to suffer damages because of Geraci
 16 and Berrys' actions in an amount to be determined at trial, but which is no less than
 17 \$2,000,000.

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

21 Count 11

22 (Injunctive Relief)

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

25 138. This cause of action is directed against plaintiff Larry Geraci and cross
 26 defendant Rebecca Berry.

27 139. Geraci and Berry have continued to act as owners or parties of interest
 28 in the Property, even though both parties know they have no interest in the Property.

140. These actions, including applying for the CUP without making clear Cotton's ownership interest in the CUP application, trespassing on the Property to post notices, and filing the lis pendens, has caused Cotton to lose and continue to lose profits, the benefits of his bargain and the Property if their actions are permitted to continue.

141. Defendant Cotton does not have a plain, speedy, and adequate remedy in the ordinary course of law as the CUP application is currently under review before the City.

PRAYER FOR RELIEF

WHEREFORE, Cotton prays for relief as follows:

1. That the Court order the Lis Pendens on the Property be released;
2. That the Court order, by way of declaratory relief, that there is no purchase agreement between the parties and that Cotton and his successors-in-interest are the owners of the Property;
3. That the Court order that Geraci and Berry have no interest in the CUP application;
4. That Cotton be awarded damages in the amount of \$2,000,000;
5. That Cotton be awarded damages for a loss of profits and other damages in an amount to be proven at trial; and
6. That other relief is awarded as the Court determines is in the interest of justice.

Dated: May 12, 2017.


Darryl Cotton, Defendant in Pro Per

Exhibit 1

11/2/16 Email from Geraci to Cotton acknowledging additional terms



Darryl Cotton <indagrodarryl@gmail.com>

Agreement

Larry Geraci <Larry@tfcisd.net>
To: Darryl Cotton <darryl@inda-gro.com>

Wed, Nov 2, 2016 at 9:13 PM

No no problem at all

Sent from my iPhone

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

Hi Larry,

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

Regards.

Darryl Cotton, President



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

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[Quoted text hidden]